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SUPERIOR COURT OF CALIFORNIA
COUNTY OF ORANGE
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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF ORANGE

30-2010

NICOLE SCHREIBER and JOHN WHIFFEN,
M.D., individually and on behalf of all others
similarly situated,

Plaintiffs,

vs.

TOYOTA MOTOR SALES, U.S.A., INC.;
TOYOTA MOTOR NORTH AMERICA, INC.;
TOYOTA MOTOR MANUFACTURING,
CALIFORNIA, INC.; and, DOES 1 through 100
inclusive,

Defendants.

Case No.:

00352242

**COMPLEX CLASS ACTION COMPLAINT
FOR:**

1. FRAUDULENT CONCEALMENT;
2. VIOLATION OF THE CLRA, Civil Code § 1750, et seq.;
3. VIOLATION OF CALIFORNIA'S LEMON LAW, Civ. Code § 1793.2, et seq.;
4. BREACH OF IMPLIED WARRANTY, Civ. Code § 1791, et seq.;
5. VIOLATION OF CALIFORNIA'S UNFAIR COMPETITION LAW ("UCL"), Bus. & Prof. Code § 17200, et seq.

DEMAND FOR JURY TRIAL

THIS CASE IS SUBJECT TO
MANDATORY ELECTRONIC FILING
PURSUANT TO RULE 308 OF THE LOCAL RULES
OF THE SUPERIOR COURT OF CALIFORNIA, COUNTY OF ORANGE

**JUDGE RONALD L. BAUER
DEPT. CX103**

CLASS ACTION COMPLAINT - JURY TRIAL DEMANDED

1 Plaintiffs NICOLE SCHREIBER and JOHN WHIFFEN, M.D., (“Plaintiffs”), individually,
2 and on behalf of all others similarly situated, allege against TOYOTA MOTOR SALES, U.S.A.,
3 INC., TOYOTA MOTOR NORTH AMERICA, INC., TOYOTA MOTOR MANUFACTURING,
4 CALIFORNIA, INC. (collectively, herein after “Toyota” or “Defendants”) as follows:

5
6 **I. INTRODUCTION**

7 1. For years, Toyota has been selling vehicles with a defective acceleration control and
8 throttle system. This defect, present in many if not most of the vehicles manufactured, sold and/or
9 leased by Toyota in the last decade, causes dangerous, sudden and uncontrolled acceleration (“the
10 Defect”). California is Toyota’s biggest market for its defect-riddled vehicles, and Californians
11 buy more of them per capita than other Americans. California is home to Toyota’s U.S.
12 headquarters. Despite California’s decades of support for Toyota, California is the locus of
13 Toyota’s fraud, cover-ups, deceitful “recalls,” and callous preference of profits over people’s lives.
14 This class action is to obtain recompense for Californians.

15 2. Beginning at least as early as the 2001 model year, Toyota knowingly manufactured,
16 sold and leased vehicles with a defective acceleration control and throttle system that cause the
17 vehicles to uncontrollably accelerate without warning, causing hundreds or thousands of crashes
18 and injuries, and, at last report, 56 deaths. Toyota has known about the Defect since approximately
19 2001. Toyota’s duplicitous scheme has been to fail to disclose the Defect, to intentionally conceal
20 it, to spend far more money marketing the vehicles and their supposed safety than trying to solve
21 the uncontrolled acceleration problem, and to foist more and more of these life-threatening
22 machines into our state. Toyota did this because the Defect is a fundamental one, for which there is
23 no easy or inexpensive fix. Rather than halt sales until it genuinely fixed this problem, Toyota
24 placed profits over safety and chose to continue selling their defective products to Californians,
25 who paid full price without having any knowledge of this fundamental problem.

26 3. Thus, this case is based on a few very simple facts: (1) millions of Californians
27 purchased Toyota vehicles with a defective acceleration control and throttle system: (2) Toyota
28 failed to disclose this fundamental defect, and actually took affirmative steps to hide it and mislead

1 the public about it; (3) as a result millions of Californians bought the defective vehicles without
2 knowing about the Defect; and (4) millions of Californians essentially overpaid and have
3 subsequently been harmed by owning the affected vehicles.

4 4. Since 2002, the National Highway Traffic Safety Administration (NHTSA) has
5 conducted at least eight investigations of uncontrolled acceleration in Toyota vehicles. Toyota is
6 required to cooperate with these investigations, but instead withheld and misrepresented
7 information to NHTSA, stymied the investigations, and even lauded itself for doing so.

8 5. This consumer fraud class action is brought pursuant to the Consumers Legal
9 Remedies Act, Civil Code §§ 1750 et seq., California's Unfair Competition Law (the "UCL"), Bus.
10 & Prof. Code §§ 17200, et seq., and the Song-Beverly Consumer Warranty Act, and other statutory
11 and common law.

12 **II. PARTIES**

13 **A. Plaintiffs**

14 6. Plaintiff, NICOLE SCHREIBER, is, and at all times relevant to this Complaint was,
15 a citizen and resident of Huntington Beach, California. In 2007, she purchased a new 2007 Toyota
16 Camry Hybrid from an authorized Toyota dealer in Huntington Beach, Orange County, California,
17 without knowledge of the Defect. After purchasing her new 2007 Toyota Camry Hybrid, Plaintiff
18 Schreiber experienced several sudden uncontrollable acceleration incidents, nearly resulting in a
19 crash each time. The symptoms, which she soon afterwards reported to the Toyota authorized
20 dealer where she purchased the vehicle, included uncontrollable acceleration at high speeds even
21 when the driver was not touching the gas pedal. After the first episode of unintended acceleration,
22 upon presenting her car to the Toyota authorized repair facility, the Toyota representative took the
23 vehicle for a "test drive" and then gave the car back to Ms. Schreiber and told her that "the problem
24 is not uncommon." The Toyota representative then told her that she needed to "break the car in."
25 No repairs were performed and the Toyota agent handed Ms. Schreiber back her keys without
26 correcting or repairing (let alone disclosing) the Defect. Thereafter, while driving, the Defect
27 caused Ms. Schreiber's 2007 Toyota Camry to suddenly and uncontrollably accelerate while at a
28 stop sign. As a result, Ms. Schreiber was nearly hit by oncoming traffic as her car launched into

1 the intersection. Ms. Schreiber immediately took the car, again, to an authorized Toyota repair
2 facility for correction and repair of the sudden uncontrollable acceleration problem. After
3 “checking” the vehicle, the Toyota agent gave Ms. Schreiber her car back telling her that the car
4 “did not have enough miles on it” and that she needed to “break it in” by driving the defective car
5 some more. Shortly thereafter, after getting in to drive the car, all of the instrument lights on the
6 dash board lit up and would not respond. Ms. Schreiber had the car towed to an authorized Toyota
7 repair facility, which, after having the car for approximately *five days*, gave the defective 2007
8 Toyota Camry Hybrid back to Ms. Schreiber and told her that the problem was a “fuse.” Toyota
9 did not correct or repair the Defect on this third attempt either, and the Defect persisted. In one
10 incident, among many, her car suddenly and uncontrollably accelerated, and in order to avoid
11 crashing into other vehicles, she had to drive off the side of the road, which caused her to ram into
12 a pole. After numerous and repeated requests and attempts to get Toyota to fix or repair the
13 problem, Toyota still refused, rendering her car useless and unsafe to drive. At no time did Toyota
14 actually disclose the Defect. Instead, each time she advised Toyota of her experiences, she was
15 offered other supposed “reasons” for her episodes of unintended acceleration.

16 7. Plaintiff, Dr. John Whiffen, M.D, is, and at all times relevant to this Complaint was,
17 a citizen and resident of California. Dr. Whiffen purchased a new 2006 Toyota Highlander from an
18 authorized Toyota dealer in California. While driving the car, Dr. Whiffen experienced four
19 incidents of uncontrolled acceleration, commencing in the fall of 2008. Before then, he had no
20 knowledge of any such problems with the car. Each time his foot was not on the gas pedal. In the
21 fourth incident, while he was parking the car, it suddenly sped forward, jumped over a curb, then
22 over a two-foot wall, and crashed in the front yard of a residence, destroying major parts of the car
23 and doing damaging to the yard. He had the car towed to an authorized Toyota dealership. Toyota
24 never fixed the Defect. Because of the unreasonable risk of injury or death, Dr. Whiffen will not,
25 and cannot reasonably, drive the car or let anyone else drive it. At no time did Toyota actually
26 disclose the existence of the Defect. Instead, consistent with its pattern of conduct alleged herein,
27 it concealed the Defect.

1 **B. Defendants**

2 8. Defendant Toyota Motor Sales U.S.A., Inc. (“Toyota-Sales”), is a California
3 corporation and a citizen of California, with its principal place of business in California. At all
4 relevant times, Toyota Sales was engaged in California in the business of marketing, distributing,
5 selling and leasing the Toyota and Lexus cars and trucks that are the subject of this Complaint. At
6 all relevant times, Toyota-Sales has engaged in significant business throughout California.

7 9. Defendant, Toyota Motor North America, Inc. (“Toyota-North America”) is a
8 California corporation and a citizen of California, with its principal place of business in California.
9 At all relevant times, Toyota-North America was engaged in California in the business of
10 designing, manufacturing, marketing, distributing, selling and leasing the Toyota and Lexus cars
11 and trucks that are the subject of this Complaint. At all relevant times, Toyota-North America has
12 engaged in significant business throughout California.

13 10. Defendant Toyota Motor Manufacturing, California, Inc. (“Toyota-Manufacturing
14 CA”) is a California corporation and a citizen of California, with its principal place of business in
15 California. At all relevant times hereto Toyota-Manufacturing CA was engaged in California in the
16 business of designing, manufacturing, distrusting and selling and leasing the Toyota and Lexus cars
17 and trucks that are the subject of this Complaint. At all relevant times, Toyota-Manufacturing CA
18 has engaged in significant business throughout California.

19 11. Defendants, Toyota Motor Sales U.S.A., Inc., Toyota Motor North America, Inc.,
20 and Toyota Motor Manufacturing, California, Inc., are collectively referred to herein as “Toyota”
21 or “Defendants.”

22 12. Plaintiffs are informed, believe, and thereon allege that Does 1 through 100 are
23 designers, manufacturers, distributors, marketers, seller and lessors of the Toyota cars and trucks
24 that are the subject of this action. Plaintiffs will seek leave of Court to replace the fictitious names
25 of these entities with their true names when they are discovered.

26 13. The true names and capacities Defendants Does 1 through 100 are unknown to
27 Plaintiffs at this time, and Plaintiffs therefore sue said Defendants by such fictitious names.
28 Plaintiffs allege, on information and belief, that each Doe defendant is responsible for the actions

1 herein alleged. Plaintiffs will seek leave of Court to amend this Complaint when the names of said
2 Doe defendants have been ascertained, or when the facts concerning their liability have been
3 ascertained, or as otherwise permitted by the Court.

4 14. On information and belief, the following is true of each defendant, i.e. each named
5 defendants and each Doe defendant: (a) each was engaged in the business of designing,
6 manufacturing, distributing, marketing selling and leasing the Toyota cars and trucks that are the
7 subject of this Complaint, throughout the state of California; (b) each is a wholly owned subsidiary
8 of the same parent company; (c) each is part of a joint enterprise for profit whose business is to
9 design, manufacture, market, distribute, sell and lease Toyota and Lexus vehicles, including the
10 vehicles that are the subject of this complaint; (d) each is under common control and management;
11 (e) each is responsible in some manner, either by act or omission, strict liability, fraud, deceit,
12 fraudulent concealment, negligence, respondeat superior, breach of contract or otherwise, for the
13 occurrences and damages herein alleged, and Plaintiffs' injuries and damages were proximately
14 caused by the conduct of each; (f) each was the agent, servant, employer, joint venturer, partner,
15 division, owner, subsidiary, alias, aider and abettor, assignee and/or alter-ego of each of the others
16 and was at all times acting within the purpose and scope of such agency, servitude, joint venture,
17 division, ownership, subsidiary, alias, assignment, alter-ego, partnership or employment, with the
18 authority, consent, approval and ratification of each of the other defendants.

19 **III. JURISDICTION AND VENUE**

20 15. This Court has jurisdiction over this matter pursuant to the California Constitution,
21 Article XI, Section 10 and California Code of Civil Procedure ("CCP") § 410.10 because
22 Defendants transacted business and committed the acts complained of herein in California. The
23 allegations are sufficient to sustain the causes of action without resort to federal law. More than
24 two-thirds of the Class Members are citizens and residents of California, all Defendants are located
25 in California, and the Toyota Defendants, each of them, have their principal place of business in
26 and are headquartered in California; thus, this case is not subject to removal under the Class Action
27 Fairness Act of 2005 under both the "home state exception" and the "local controversy exception."
28

1 28 U.S.C. §1332(d)(4)(A) (home state exception); 28 U.S.C. §1332 (d)(4)(B) (local controversy
2 exception).

3 16. Venue is proper in Orange County, California pursuant to CCP §395.5 and § 395,
4 because the obligations, liability, and breaches occurred in Orange County, and because many of
5 the acceleration control and throttle systems complained about were sold and/or used in Orange
6 County.

7 **IV. FACTS COMMON TO ALL CAUSES OF ACTION**

8 **A. The Defective Toyota Cars and Trucks at Issue**

9 17. As a result of Toyota's fraudulent concealment and suppression of facts concerning
10 the sudden uncontrollable acceleration defect as alleged, the precise models and years are currently
11 not yet precisely known. However, at present, the Toyota-made cars and trucks that are the subject
12 of this Complaint include, but are not limited to, all model year 2002 - 2010 Toyota brand and
13 Lexus brand vehicles, which includes all 2002 – 2010 model year Toyota Prius vehicles, and all
14 Toyota-made model year 2002 – 2010 cars, trucks, SUVs, and cross-overs (the "Subject
15 Vehicles"). As the concealed and suppressed information becomes known, Plaintiffs reserve the
16 right to add or remove any other Toyota-made vehicles from the Subject Vehicle list.

17 18. The Toyota cars and trucks that are the subject of this Complaint each have defective
18 acceleration control and throttle systems that cause sudden unexpected and uncontrollable
19 acceleration of speeds up to 100 m.p.h. and more.

20 **B. Toyota's Knowledge of the Defect and Public Safety Risk**

21 19. Beginning at least as early as the 2001 model year, Toyota began to replace its
22 mechanical throttle linkage with a computer-controlled accelerator system, also known as "fly-by -
23 wire" and "drive-by-wire," in certain models. Toyota knew the new system was less reliable and
24 more prone to sudden unintended acceleration, placing consumers and the public at risk of
25 suffering serious bodily injuries and death. Nevertheless, Toyota began using the new system in
26 even more models at least partly for profit reasons.

27 20. Toyota has known since 2001 that the acceleration control and throttle system in
28 certain of its cars and trucks sold or leased in the State of California is defective and that consumers

1 and members of the public would be seriously injured or killed as a direct and proximate result of
2 the Defect. In 2002, at least ten Toyota owners advised Toyota that the engine in the 2002 Model
3 Year Camry surged when the car was stopped or when the driver had his foot on the brake.

4 21. The Defect in the Subject Vehicles causes sudden uncontrolled acceleration to
5 speeds up to 100 m.p.h. and more. Reports and NHTSA data demonstrate that since 2001, Toyota
6 uncontrolled acceleration incidents have accounted for *thousands of incidents of unintended*
7 *acceleration, hundreds or thousands of crashes, hundreds of injures, and at least 56 deaths*. In one
8 incident, an off-duty California Highway Patrol Officer and his family were killed when their
9 Toyota-made vehicle suddenly accelerated and their brakes failed to stop their car from entering an
10 intersection. Their vehicle crashed into another vehicle, ran through a fence, rolled over and burst
11 into flames. These deaths occurred in August 2009, long after Toyota knew about the Defect. Had
12 Toyota publicly disclosed the existence of the Defect and taken real steps to remedy it in a timely
13 fashion, instead of concealing it, this family would likely be alive today.

14 22. Since 2001, and likely earlier, many others have experienced episodes of
15 uncontrolled, sudden acceleration. One such well-publicized event reportedly occurred just this
16 week, on or about March 8, 2010, when a Prius driver accelerated unintentionally on a crowded
17 San Diego County freeway to speeds up to 90 miles per hour, for a distance of approximately 30
18 miles. While the exact injury and death toll caused by these uncontrolled acceleration episodes
19 and by Toyota's campaign of concealment and suppression, as alleged herein, is unknown,
20 numerous drivers and passengers of Toyota vehicles have died and suffered serious injuries and
21 property damage. All owners and lessees of Toyota-made vehicles have suffered economic loss
22 due to the Defect. As news about the Defect and the deaths and injuries resulting from it has
23 spread in recent months, owners and lessees of the Subject Vehicles have been unable to sell or
24 trade their cars at a price that is not discounted by the Defect, the vehicles have lost market value as
25 a direct and proximate result of the Defect, and the class members have sustained loss use of the
26 vehicles. Indeed, because the existence of the Defect is such obviously material information to any
27 reasonable consumer, had it been honestly disclosed to them prior to purchase or lease, Plaintiffs
28 and other class members would not have purchased or leased these vehicles in the first place.

1 Because of Toyota's concealment and omissions, Plaintiffs and consumers overpaid for vehicles
2 which are not safe and which have a substantial defect.

3 23. Despite its knowledge of the Defect, Toyota continued to manufacture, sell and lease
4 its cars and trucks with the Defect – even after commencing recent recall processes. As a result,
5 the injury and death toll has continued to increase. To this day, Toyota continues to conceal and
6 suppress this information and fails to disclose to buyers the facts about this life-threatening
7 uncontrolled acceleration peril. Instead, for years Toyota knowingly chose to conceal and suppress
8 information about the Defect, and instead, to conduct a misinformation campaign and scheme to
9 conceal this information from Plaintiffs and the class, falsely assuring them, in various written and
10 broadcast statements, that the vehicles were safe and reliable.

11 24. Toyota's misinformation campaign includes misrepresenting to Plaintiffs and Class
12 Members that the Defect was caused by floor mats, or by accelerator pedals that were "sticking,"
13 or, as in the case of Ms. Schreiber, by the vehicles having not been "broken in" enough. Toyota
14 continues to cover up and conceal the fact that drivers were experiencing sudden, uncontrollable
15 acceleration with the brake pedal depressed, and without touching the accelerator. Toyota
16 continues to conceal the fact that when Toyota began installing its computer-controlled accelerator
17 system, it knew the system was less reliable and caused sudden unintended acceleration. Making
18 matters worse, unlike American automobile companies, Toyota knowingly failed to include
19 sufficient redundancy, and fail-safe and back-up safety systems to prevent sudden uncontrolled
20 accelerations, all in order to save money and increase profits. Because of the lack of any
21 appropriate safety system to guard against sudden uncontrolled acceleration, there is no adequate
22 fail-safe mechanism to stop Toyota vehicles in the event the defective acceleration control and
23 throttle system malfunctions and engage in uncontrolled acceleration. As a result, the injuries and
24 deaths caused by the Defect and by Toyota's concealment of it have continued to mount.

25 25. Toyota has, for decades, touted its reputation for safety and reliability, knowing that
26 people buy its vehicles because of that reputation. During the last decade, however, while
27 marketing the Subject Vehicles as safe and trading on its reputation as a producer of safe and
28

1 reliable vehicles Toyota was purposefully concealing and suppressing the existence and nature of
2 the Defect, for profit reasons.

3 26. In August, 2009, after the widely reported sudden unintended acceleration crash that
4 killed an off-duty California Highway Patrol Officer and his family, Akio Toyoda, president of the
5 Japanese parent corporation, issued a public apology admitting: "*Customers bought our cars*
6 *because they thought they were the safest* but now we have given them cause for grave concern. I
7 can't begin to express my remorse."

8 27. On October 30, 2009, Toyota began distributing "recall" notices, entitled "interim
9 notice," falsely claiming that the cause of the Defect was certain floor mats in certain vehicles, and
10 offering to replace floor mats in certain vehicles. As late as November 2009, Toyota insisted that
11 "there is no evidence to support" any other cause for the defect, a statement that NHTSA later
12 determined was "misleading and inaccurate."

13 28. In early 2010, Toyota then claimed that many of its vehicles suffered from sticking
14 accelerator pedals and conducted a recall program to physically modify the accelerators.
15 Defendants have known about the repair of accelerator modification to allegedly correct the Defect
16 since at least 2006, when they modified the accelerator of a 2005 Toyota Camry at a dealership in
17 Cincinnati, Ohio. At that time, they intentionally and recklessly failed to recall similarly-affected
18 vehicles. Through the fall of 2009, more than 2,000 formal complaints of unintended acceleration
19 were made regarding Toyota vehicles and Toyota was the subject of multiple investigations by the
20 federal government. Defendants' recent assertion of sticking accelerator pedals as the cause of the
21 sudden uncontrollable acceleration problem is, upon information and belief, not truthful and is part
22 of Toyota's overall scheme to minimize the number of recalls and repairs and defraud Plaintiffs
23 and prospective class members. Indeed, a number of Class Members have experienced sudden
24 uncontrollable acceleration when their foot was on the brake and not touching the accelerator.
25 Moreover, scores of sudden uncontrollable acceleration events reportedly have occurred *after* their
26 Toyota-made vehicle received the accelerator modification on recall. Still, Toyota has not notified
27 consumers about this serious public safety risk and persists in its campaign of misinformation,
28

1 concealment and suppression of the existence and nature of the Defect, denying that the Defect has
2 anything to do with the acceleration control and throttle system.

3 29. As of February 15, 2010, the National Highway Transportation Safety
4 Administration (“NHTSA”) reported that sudden acceleration by Toyota vehicles is responsible for
5 at least 34 deaths, and recent reports are that the total is 56.

6 30. In February 2010 Toyota executives stated in testimony to Congress that Toyota is
7 not aware of the cause of the unintended acceleration problem in many cases, although Toyota
8 continues to represent, as it has all along, that there is no defect in the acceleration control and
9 throttle system.

10 31. As alleged herein, Toyota has known since at least 2001, and likely earlier, that its
11 vehicles could accelerate uncontrollably, resulting in crashes and causing serious injuries and
12 deaths of occupants. During this time period, as set forth in detail below, Toyota falsely assured
13 Plaintiffs and the Class members in various written statements that their cars were safe and reliable
14 and concealed and suppress the true facts that the Toyota-made vehicles were, in fact, defective at
15 the time of sale and/or lease. Instead of disclosing the truth about the dangerous propensity of
16 Toyota-manufactured vehicles to suddenly and unintentionally accelerate, Plaintiffs and the Class
17 Members were given assurances that their vehicles were safe and defect free. For example,
18 Plaintiffs and each Class Member were given a Warranty and a Maintenance Guide that states:

19 At Toyota, our top priority is always our customers. We know your Toyota is an
20 important part of your life and something you depend on every day. That’s why
21 we’re dedicated to building **products of the highest quality and reliability**. . . Our
goal is for every Toyota customer to enjoy **outstanding quality, dependability and
peace of mind** . . . (Emphasis added).

22 Toyota’s warranties also state that, among other things, the vehicles were “built to exceptional
23 standards.”

24 32. At all times relevant, as a part of Toyota’s national marketing and advertising
25 campaigns and through statements made in brochures and other writings through its dealership
26 network, controlled out of its headquarters in California, Toyota widely disseminated and/or
27 distributed to the Class members numerous pamphlets, brochures and specification sheets which
28 emphasized or focused on the quality, safety and functionality of the Subject Vehicles here at issue.

1 33. The written materials distributed and widely disseminated by Toyota in its numerous
2 marketing campaigns repeatedly stated that the Subject Vehicles are safe, reliable, and free from
3 inherent risk of failure, particularly with regard to safety. As stated above, Toyota's Akio Toyoda
4 recently admitted publicly that purchasers bought his company's vehicles because they thought
5 they were the safest.

6 34. After more than eight years of suppression and concealment of the existence and
7 nature of the Defect, presumably because it could no longer conceal the rising injury and death toll,
8 in September 2009, Toyota admitted there is a defect in its vehicles that causes unintended
9 acceleration, but falsely stated it was only in vehicles with certain floor mats or certain type of gas
10 pedals that "stick", even though sudden acceleration incidents occurred in Toyota vehicles without
11 that type of floor mats or with none at all, and in vehicles without that type of gas pedal. Toyota
12 blamed a manufacturer of the gas pedals, even though many sudden acceleration incidents occurred
13 in Toyota vehicles with gas pedals not made by that manufacturer. Toyota's belated, half-hearted
14 and misleading admission is only about some of its models that have had unintended acceleration
15 and resulting crashes, and continues its plan and scheme of concealment by denying the existence of
16 the Defect in numerous models which also have suffered unacceptable levels of unintended
17 acceleration. For example, Toyota claimed the Defect "does not exist in vehicles in which the
18 driver's side floor mat is compatible with the vehicle and properly secured." Toyota knows, and
19 knew, this was false because Toyota was fully aware that the Defect had occurred on numerous
20 occasions when there were no floor mats in the involved vehicles.

21 35. The current recall repair for "sticking accelerators" is not effective in preventing the
22 sudden uncontrollable acceleration defect in that numerous reported and documented incidents of
23 sudden uncontrollable acceleration have occurred *after* Toyota has claimed to have "fixed" the
24 Defect. All the while, and in each instance, Toyota assured consumers that vehicle recall repair
25 eliminated the sudden uncontrollable acceleration problem. However, since the claimed "repair,"
26 the Defect has continued without abatement. Toyota purchasers and lessees of recalled vehicles
27 have not received substitute vehicles and are simply left to drive admittedly dangerous vehicles
28

1 endangering not only their lives but all others in the vicinity of these run-away Toyota-made
2 vehicles.

3 36. Even though Toyota has made a limited admission of a defect in a limited number of
4 its models, Toyota continues to manufacture and sell even those models without making the
5 changes it announced in the October 30, 2009 "Interim Notice," and without installing a "smart
6 pedal" it promised in that notice. While it has recently commenced making the repairs it claims are
7 needed to correct the acceleration problem in some of the Subject Vehicles, it still has not
8 adequately disclosed the Defect. Moreover, there have been scores of reports that the recall repairs
9 that Toyota claims will fix the problem have not in fact done so, and that unintended acceleration
10 problems persist after those so-called repairs have been made. On information and belief, the
11 reason the recall repairs have not worked is because the problem is not limited to the causes
12 publicly identified by Toyota.

13 37. On January 26, 2010, due to ever-increasing adverse publicity, Toyota stopped
14 selling its recalled models, even used ones, stating that preventing the sale of the vehicles was
15 "necessary until a remedy is finalized." Despite acknowledging that the defect was serious enough
16 that it was necessary to stop selling these vehicles, Toyota failed to prevent vehicles already sold or
17 leased from being operated, nor did it offer to cancel leases and purchases and refund the monies
18 paid by its customers. Then, approximately a week, later, Toyota completely reversed course and
19 began selling the defect vehicles again.

20 38. As a consequence of Defendants' unlawful scheme and misleading business
21 practices, Plaintiffs and prospective class members have suffered economic harm, which includes
22 the loss in value of their vehicles and being deprived of the full use and benefit of their vehicles,
23 and paying more for the vehicles than they would have if they had known of the defect.

24
25 **V. TOLLING OF STATUTE OF LIMITATIONS AND ESTOPPEL**

26 39. Any applicable statutes of limitation have been equitably tolled by Toyota's
27 affirmative acts of fraud, fraudulent concealment, suppression and denial of the true facts regarding
28 the existence of the defective acceleration control and throttle system in the Subject Vehicles.

1 Since as early as 2001, Toyota knew of the Defect and concealed and suppressed these facts.
2 However, despite Toyota's exclusive knowledge of the defect, Toyota continued to make
3 statements touting the reliability and safety of its vehicles, including the Subject Vehicles with the
4 dangerous defect that Toyota knew had and was likely to cause further serious injuries and deaths.

5 40. At all times relevant, Toyota has exclusive knowledge of the dangerously defective
6 nature of the acceleration control and throttle system on the Subject Vehicles and continued to
7 conceal these facts from Plaintiffs, the public, and NHTSA. For example, in a November 15, 2005
8 letter to NHTSA, Toyota falsely denied that its vehicles ever could experience sudden unintended
9 acceleration. According to Toyota, sudden unintended acceleration cannot occur "without the
10 driver applying the accelerator pedal because of ...several detection systems..." Toyota maintained
11 this position for years, even though it knew that Toyota-manufactured vehicles can and do
12 experience sudden unintended acceleration without application of the accelerator pedal. In a June
13 19, 2004 letter to NHTSA, Toyota falsely stated that its Electronic Control Throttle system
14 contained a built in redundancy to prevent acceleration and that in the event of sudden acceleration
15 the "vehicle brakes would have restrained vehicle motion." Toyota maintained this position for
16 years, even though it knew that Toyota-manufactured vehicles can and do experience sudden
17 unintended acceleration and that application of the brakes have failed to restrain vehicle motion.

18 41. Plaintiffs, the Class Members and the public were, at all times relevant, ignorant of
19 the existence of the Defect and, knowing this, Toyota continued to broadly disseminate statements
20 about the safety and reliability of the Subject Vehicles, while denying the existence of the Defect.
21 For example, on September 29, 2009, Toyota issued a press release entitled Toyota Lexus
22 Consumer Safety Advisory: Potential Floor Mat Interference with accelerator Pedal," stating in
23 part: "Toyota Motor Sales, USA, Inc. takes public safety very seriously. It believes its vehicles to
24 be among the safest on the road today."

25 42. Toyota's fraudulent concealment scheme includes, but is not limited to, intentionally
26 covering up and refusing to publicly disclose critical internal memoranda, design plans, studies,
27 Notices of Action, Problem Detail Reports and other reports of failure and injury. Through such
28 acts of fraudulent concealment, Toyota was able to actively conceal from the public for years the

1 truth about the existence of the dangerously defective acceleration control and throttle system in the
2 Subject Vehicles, thereby tolling the running of any applicable statute of limitations.

3 43. Toyota is estopped from relying on any statutes of limitation because of its
4 fraudulent concealment and misrepresentations of the true facts concerning the dangerously
5 defective acceleration control and throttle system on the Subject Vehicles. Toyota was, at all times
6 relevant, aware of the nature and existence of the Defect in the Subject Vehicles, but at all times
7 has continued to manufacture, certify, market, advertise, distribute, and sell the Subject Vehicles
8 without revealing the true facts concerning the Defect, in order to sell Toyota and Lexus cars, to
9 avoid bad publicity, and to avoid expensive recall processes. The true facts about the Subject
10 Vehicles continue to be concealed from the public, including Plaintiffs, the General Public, and
11 those similarly situated to this day.

12 44. Through such acts of fraudulent concealment, Toyota has successfully concealed
13 from the public facts necessary to support the claims herein. Plaintiffs, the General Public and
14 others similarly situated, were and are prevented from knowing and having knowledge of such
15 unlawful, unfair, fraudulent, untrue and/or deceptive conduct or of facts that might have led to the
16 discovery thereof. Plaintiffs exercised due diligence to learn of their legal rights and despite such
17 diligence, failed to uncover the existence of the violations alleged herein until within (3) years of
18 the filing this complaint.

19 45. Particularly given Toyota's past and continuing denials of, and concealment of, the
20 existence of any defect in the acceleration control and throttle system, and Toyota's repeated past
21 and continuing assertions that unintended acceleration episodes were due to other causes, Plaintiffs
22 and class members were not placed on inquiry notice regarding the defect in the acceleration
23 control and throttle system until, *at the earliest*, February, 2010. It was in February, 2010 that
24 Toyota stated publicly, in connection with congressional hearings, that it does not, in fact, know the
25 cause of the unintended acceleration problem in the majority of cases (contrary to its repeated past
26 claims about floor mats, sticking pedals, etc.). Toyota has continued to deny, and to conceal, that
27 there is any flaw or defect in the acceleration control and throttle system itself.

1 **VI. CLASS ACTION ALLEGATIONS**

2 46. Plaintiffs bring this action on behalf of themselves, and on behalf of all others
3 similarly situated.

4 47. All claims alleged herein arise under California law, for which Plaintiffs seek relief
5 authorized by California law.

6 48. The Class that Plaintiffs seek to represent is presently defined as follows:

7 **All citizens¹ of California (including California citizens who are individuals,**
8 **entities and organizations, who, during the four year period from the date of**
9 **the filing of the original complaint, and likely earlier,² through the date that**
10 **notice is mailed to the Class Members, purchased or leased any model Toyota-**
11 **made vehicle.**

12 Excluded from the California Class are Defendants' employees, officers, directors
13 and their immediate family members, as well as any judge who is assigned any
14 matter in this action and the judge's immediate relatives. Also excluded are all
15 persons with claims for property damage, personal injury and/or emotional distress
16 as a result of crashes in the Subject Vehicles.

17 49. Plaintiffs reserve the right to amend or otherwise alter the class definitions presented
18 to the Court at the appropriate time, or to propose or eliminate sub-Classes.

19 50. Plaintiffs are members of the Class.

20 51. This action has been brought and may be properly maintained as a class action
21 pursuant to the provisions of California Code of Civil Procedure § 382 and other applicable law.

22 52. There is a well-defined community of interest in the litigation and the class is readily
23 ascertainable:

- 24 (a) Numerosity: While the exact number of Class Members is unknown at this
25 time, Plaintiffs are informed and believe that the Class numbers in the
26 hundreds of thousands. Also, while the precise number of Class Members
27 and their addresses are presently unknown to Plaintiffs, Plaintiffs are
28 informed and believe that the number can be obtained from the Defendants'

26 ¹ Regardless whether the individuals who are class members have "citizenship" within
27 the meaning of the immigration laws.

28 ² See Section V *supra* re tolling under fraudulent concealment, equitable tolling and
the delayed discovery rule.

1 records. Class Members may be notified of the pendency of this action by
2 electronic mail, the Internet, or published notice.

3 (b) Ascertainability: The proposed classes are ascertainable in that the members
4 can be identified and located using information contained in Defendants'
5 records. The proposed class definition is sufficiently precise so that each
6 Class member can determine that they are a member of the proposed Class.

7 (c) Typicality: Plaintiffs are qualified to, and will, fairly and adequately protect
8 the interests of each class member with whom there is a shared, well-defined
9 community of interest. Plaintiffs' claims are typical of all Class members'
10 claims. Plaintiffs and the other Class Members were subjected to the same
11 kind of unlawful conduct and the claims of Plaintiffs and the other Class
12 Members are based on the same legal theories and on the existence of the
13 Defect.

14 (d) Adequacy: Plaintiffs are qualified to, and will, fairly and adequately protect
15 the interests of each Class member with whom there is a shared, well-defined
16 community of interest and typicality of claims, as demonstrated herein.
17 Plaintiffs acknowledge that Plaintiffs have an obligation to make known to
18 the Court any relationship, conflicts or differences with any class member.
19 Plaintiffs have retained counsel competent and experienced in complex class
20 action litigation and Plaintiffs intend on prosecuting this action vigorously.
21 The interests of members of the Class will be fairly and adequately protected
22 by Plaintiffs and their counsel.

23 (e) Superiority: A class action is superior to other available means for the fair
24 and efficient adjudication of Plaintiffs' and the Class Members' claims. The
25 damages suffered by each individual Class member may be limited.
26 Damages of such magnitude are small given the burden and expense of
27 individual prosecution of the complex and extensive litigation necessitated by
28 Defendants' conduct. Further, it would be virtually impossible for the Class

1 Members to redress the wrongs done to them on an individual basis. Even if
2 members of the Class themselves could afford such individual litigation, the
3 court system could not. Individualized litigation increases the delay and
4 expense to all parties and the court system, due to the complex legal and
5 factual issues of the case. By contrast, the class action device presents far
6 fewer management difficulties, and provides the benefits of single
7 adjudication, economy of scale, and comprehensive supervision by a single
8 court.

9 53. There are common questions of law and fact as to the class (and each subclass, if
10 any) that predominate over questions affecting only individual members, including but not limited
11 to:

- 12 (a) Whether the acceleration control and throttle system in the Subject Vehicles
13 is and was defective;
- 14 (b) Whether Toyota actually or constructively knew that the acceleration control
15 and throttle system in the Subject Vehicles is and was defective;
- 16 (c) When Toyota actually or constructively knew that the acceleration control
17 and throttle system on the Subject Vehicles is and was defective;
- 18 (d) Whether the acceleration control and throttle system in the Subject Vehicles
19 endangers the safety of the class members and/or the public;
- 20 (e) Whether Toyota had a duty to Plaintiffs and the Class to disclose the Defect
21 to Plaintiffs and Class members before they purchased or leased one or more
22 of the Subject Vehicles;
- 23 (f) Whether Toyota concealed and/or failed to disclose material facts concerning
24 the nature and existence of the dangerous defect(s) to Plaintiffs and the Class
25 before they purchased or leased one or more of the Subject Vehicles;
- 26 (g) Whether Toyota's concealment, suppression and omissions had and have had
27 a tendency to deceive, by either failing to disclose the existence of the defect
28 known exclusively to Toyota, and unknown to Plaintiffs and others or by

1 misleading Plaintiffs and the Class that the Subject Vehicles were safe and
2 reliable and contained no serious safety-related defects;

3 (h) Whether Toyota had exclusive knowledge of material facts concerning the
4 Defect alleged herein, not known to Plaintiffs and others similarly situated;

5 (i) Whether Toyota made partial representations concerning the safety,
6 reliability and quality of the Subject Vehicles, all the while concealing,
7 suppressing and omitting material facts concerning the nature and existence
8 of the Defect as alleged herein;

9 (j) Whether Toyota failed to adequately warn and/or notify class members and
10 the General Public regarding the hazards of the Defect in the Subject
11 Vehicles, before and after purchase and sale of the Subject Vehicles;

12 (k) Whether Toyota continued to sell the Subject Vehicles with the Defect as
13 alleged herein despite its exclusive knowledge and/or reckless or negligent
14 disregard of the rights and safety of others, including Plaintiffs and Class
15 Members;

16 (l) Whether Toyota violated the Consumer Legal Remedies Act ("CLRA"),
17 California Civil Code § 1750 *et seq.*;

18 (m) Whether Toyota represented that the Subject Vehicles had qualities regarding
19 safety and reliability which they do not have in violation of Civil Code
20 section 1770(a)(5);

21 (n) Whether Toyota represented that the Subject Vehicles are of a particular
22 standard, quality, or grade regarding safety and reliability when in fact they
23 were of another in violation of Civil Code section 1770(a)(7);

24 (o) Whether Toyota advertised the Subject Vehicles with intent not to sell them
25 as advertised in violation of Civil Code section 1770(a)(9);

26 (p) Whether Toyota violated California' Song-Beverly Consumer Warranty Act,
27 Civ. Code § 1790, *et seq.*;
28

- 1 (q) Whether Toyota committed an unlawful, unfair and/or “fraudulent” business
2 act or practice within the meaning of the Business and Professions Code §§
3 17200 *et. seq.*;
- 4 (r) Whether Plaintiffs and Class members are entitled to damages, for the cost of
5 repair and other attendant costs and/or the difference between what was
6 represented, a vehicle with a non-dangerously defective acceleration control
7 and throttle system, and what they received, a vehicle with a dangerously
8 defective acceleration control and throttle system that was substantially likely
9 to and has caused serious bodily injury and death;
- 10 (s) Whether Plaintiffs and Class members are entitled to disgorgement of profits
11 to the extent it is equitable in nature - restitution;
- 12 (t) Whether the class members are entitled to unjust enrichment, legal restitution
13 and/or disgorgement of all profits wrongfully obtained as a result of the
14 Toyota’s concealment and omissions as alleged herein;
- 15 (u) Whether, as a result of Toyota’s concealment and omissions, Plaintiffs and
16 the Class are entitled to damages, restitution, equitable relief and other relief,
17 and the nature and amount of such relief;
- 18 (v) The appropriate amount of damages, restitution, or monetary penalties
19 resulting from Defendants’ violations of California law.

20 54. In the alternative, the Class should be certified because:

- 21 (a) The prosecution of separate actions by individual members of the Class
22 would create a risk of inconsistent or varying adjudications with respect to
23 individual Class Members which would establish incompatible standards of
24 conduct for Defendants;
- 25 (b) The prosecution of separate actions by individual members of the Class
26 would create a risk of adjudications with respect to them, which would, as a
27 practical matter, be dispositive of the interests of the other Class Members
28

1 not parties to the adjudications, or substantially impair or impede their ability
2 to protect their interests; and

3 (c) Defendants have acted or refused to act on grounds generally applicable to
4 the class, and/or the general public, thereby making appropriate final and
5 injunctive relief with respect to the class as a whole.
6

7 **FIRST CAUSE OF ACTION**

8 **Fraudulent Concealment**

9 **(Against all Defendants)**

10 55. Plaintiffs incorporate all preceding paragraphs.

11 56. As alleged herein, Toyota knew, as early as 2001, that certain of the vehicles it
12 designed, manufactured, marketed, distributed, sold or leased in the state of California contained
13 the Defect in the acceleration control and throttle system in the Subject Vehicles and, at all times
14 relevant, Defendants concealed and suppressed this material fact from Plaintiffs and Class
15 members.

16 57. At all times relevant, Toyota had exclusive knowledge of the Defect and concealed,
17 suppressed and failed to disclose the true facts to Plaintiffs and Class Members who, at all times
18 relevant, were ignorant of and were unaware of the existence and nature of the Defect. Toyota
19 therefore had a duty to disclose the nature and existence of the Defect to Plaintiffs and Class
20 Members before they purchased or leased one or more of the Subject Vehicles, and after. Had
21 Toyota disclosed the whole truth about the existence and nature of the Defect, Plaintiffs and Class
22 Members would have paid less for the vehicles or would not have purchased them at all.

23 58. As alleged herein, Toyota made repeated statements to Plaintiffs and Class Members
24 touting the safety and reliability of the Subject Vehicles. An example, among many, is the uniform
25 written statements contained in the Toyota Warranty and a Maintenance Guides that accompanied
26 the sale or lease of each of the Subject Vehicles. They uniformly stated:

27 At Toyota, our top priority is always our customers. We know your Toyota is an
28 important part of your life and something you depend on every day. That's why
we're dedicated to building **products of the highest quality and reliability**. . . Our

1 goal is for every Toyota customer to enjoy **outstanding quality, dependability and**
2 **peace of mind . . .** (Emphasis added).

3 This statement was only partially true, hardly at all with respect to uncontrolled acceleration. This
4 partially true statement created a duty for Toyota to disclose the whole truth that, in fact, the
5 Subject Vehicles were dangerously defective as a result of the sudden uncontrollable acceleration
6 defect alleged herein. Had Toyota disclosed the existence and nature of the Defect to Plaintiffs and
7 Class Members, before they purchased or leased one or more of the Subject Vehicles, Plaintiffs and
8 Class Members would have paid less for the vehicles or would not have purchased them at all.

9 59. Whether a car or truck contains a known defect that has resulted in crashes, deaths
10 and injuries, is critically important information for consumers and families alike, when choosing to
11 purchase or lease a vehicle. The existence and nature of the Defect was material information and
12 had Toyota disclosed this material information to Plaintiffs and Class members, they would have
13 paid less for the vehicles or would not have purchased them at all. The omitted information, as
14 alleged herein, was objectively material to both the decision as to whether to purchase a car or
15 truck and the price consumers would be willing to pay for the vehicles.

16 60. At all times relevant, Defendants, and each of them, intentionally concealed and/or
17 suppressed the nature and extent of the Defect with the intent to defraud Plaintiffs and each Class
18 Member.

19 61. Plaintiffs and Class members were, at all times relevant, unaware and ignorant of the
20 nature and existence of the Defect in the Subject Vehicles and would not have purchased their
21 Toyota or Lexus cars and trucks and/or paid substantially less for them had they known of the
22 concealed or suppressed facts exclusively known to Defendants.

23 62. At all times relevant, Toyota purposefully and intentionally devised its scheme of
24 concealment and suppression of the true facts concerning the existence and nature of the Defect.

25 63. As a direct and proximate result of Defendants' failures to disclose and omission of
26 material facts, as alleged herein, Plaintiffs and Class Members have suffered damages, which
27 include, but are not limited to, the purchase price paid for the vehicles and/or the difference
28 between the price paid and the value of the vehicles had Defendants disclosed the deadly dangerous

1 defect in the Subject Vehicles, and reduction in the value of the vehicles, and loss of use and/or
2 diminished use of the vehicles.

3 64. The wrongful conduct of Defendants, as alleged herein, was willful, oppressive,
4 immoral, unethical, unscrupulous, substantially injurious, malicious and in conscious disregard for
5 the well being of Plaintiffs and Class Members; it was intended by Defendants to cause injury to
6 the Plaintiffs and the Class Members, and was despicable conduct carried on by Defendants with a
7 willful and conscious disregard of the rights or safety of others, and that subjects Plaintiffs and the
8 Class Members to cruel and unjust hardship; it was intentional deceit and concealment of a material
9 fact known to the Defendants, with the intention on the part of Defendants of thereby depriving
10 Plaintiffs and the Class Members of property and legal rights and otherwise causing injury.
11 Accordingly, Plaintiffs and Class members are entitled to an award of punitive damages against
12 Defendants in an amount to deter them from similar conduct in the future.

13 65. WHEREFORE, Plaintiffs and Class Members are entitled to all legal and equitable
14 remedies provided by law, including but not limited to actual damages, exemplary damages,
15 prejudgment interest and costs.

16
17 **SECOND CAUSE OF ACTION**

18 **Violation of California's Consumer Legal Remedies Act**

19 **Cal. Civ. Code § 1750, et seq.**

20 **(Against all Defendants)**

21 66. Plaintiffs incorporate all preceding paragraphs.

22 67. Defendants are "persons" as defined by Civil Code § 1761(c).

23 68. Plaintiffs and each member of the Class are "consumers" within the meaning of
24 Civil Code § 1761(d). This cause of action is on behalf of Plaintiffs and all Class Members who
25 are consumers within the meaning of that statute.

26 69. The Consumer Legal Remedies Act ("CLRA"), California Civil Code § 1750 et seq.
27 applies to Defendants' actions and the conduct described herein because it extends to transactions
28

1 that are intended to result, or which have resulted, in the sale or lease of goods or services to
2 consumers.

3 70. Defendants have violated the CLRA in at least the following respects:

- 4 (a) In violation of Section 1770(a)(5), Defendants have represented that the
5 Subject Vehicles have characteristics and benefits that they do not have, as
6 alleged herein, specifically, that the vehicles are safe and reliable when in
7 fact, as a result of the undisclosed defect in the acceleration control and
8 throttle system, they are not, and in fact, present a risk of serious bodily
9 injury and death, as alleged herein;
- 10 (b) In violation of Section 1770(a)(7), Defendants have represented that the
11 Subject Vehicles are of a particular standard, quality, or grade when they are
12 not. In particular, as alleged herein, Toyota has, for years, widely
13 disseminated statements touting the safety and reliability of its vehicles,
14 including the Subject Vehicles, when in fact they are not safe or reliable and
15 because of the Defect presents a risk of serious bodily injury and death;
- 16 (c) In violation of Section 1770(a)(9), Defendants have advertised the Subject
17 Vehicles with an intent not to sell them as advertised; As alleged herein,
18 Toyota widely disseminated, broadcasted and represented throughout the
19 liability period, and for many years prior, that its vehicles are safe and
20 reliable. These partial representations were deceptive and/or misleading
21 because the acceleration control and throttle system on the Subject Vehicles
22 are and were in fact defective at the time of manufacture, delivery and sale.
23 As a result, Plaintiffs and others similarly situated did not receive a vehicle
24 with the characteristics and benefits of having a reliable throttle device on
25 these vehicles, were not "exceptional quality," or safe and are in fact, not
26 only deadly dangerous but are of substandard quality, and at all times
27 relevant, Defendants advertised the Subject Vehicles with intent not to sell
28

1 the Subject Vehicles as advertised thus violating Section 1770(a)(5), (a)(7)
2 and (a)(9).

3 71. Defendants' misconduct and/or deceptive acts alleged above and incorporated in this
4 cause of action occurred in the course of selling or leasing goods to consumers, and Defendants
5 have done so continuously through and after the filing of this complaint.

6 72. As a direct and proximate result of Defendants' violation of Civil Code Section
7 1770, et seq., Plaintiffs and other Class members have suffered irreparable harm and monetary
8 damages, and are entitled to both injunctive relief and restitution.

9 73. As set forth above, the widely disseminated statements of safety and reliability in its
10 marketing and promotional material, on its Web Site, and through public statements made by its
11 executives are misrepresentations and/or concealments of material facts and constitute unfair,
12 deceptive, and misleading business practices in violation of Civil Code section 1770(a).

13 74. WHEREFORE, pursuant to the provisions of California Civil Code § 1780,
14 Plaintiffs are entitled to restitution and other appropriate equitable relief, an order enjoining
15 defendants from the unlawful practices described herein, as well as recovery of attorneys' fees and
16 costs of litigation. Plaintiffs do not presently seek damages for violations of the Consumer Legal
17 Remedies Act, but intend to amend to add a claim for damages when appropriate.

18
19 **THIRD CAUSE OF ACTION**

20 **Violation of the Song-Beverly Consumer Warranty Act, Civ. Code § 1793.2, et seq.**

21 **"Lemon Law"**

22 **(Against all Defendants)**

23 75. Plaintiffs incorporate all preceding paragraphs.

24 76. Plaintiffs and Class Members purchased or leased one or more of the Toyota-made
25 Subject Vehicles for personal, family, or household purposes.

26 77. At all times relevant during the liability period, Defendants failed to diligently make
27 the repairs to the acceleration control and throttle systems on the Subject Vehicles when owners
28 and lessees presented the vehicles for repairs and/or service.

1 78. Plaintiff Whiffen presented his vehicle for repair of sudden uncontrollable
2 acceleration problems on multiple occasions and Toyota, through its authorized dealership and
3 repair facilities located in California failed to correct, and refused to correct, the Defect.

4 79. Plaintiff Schreiber presented her vehicle for repair of sudden uncontrollable
5 acceleration defect on at least three occasions and Toyota, through its authorized dealership and
6 repair facilities located in California failed to correct, and refused to correct the Defect.

7 80. At all times relevant during the liability period, Toyota was provided with numerous
8 opportunities to correct or repair the Defect in Plaintiffs' and the Class Members' Subject Vehicles.
9 Toyota knowingly and wilfully refused to correct or repair the Defect and/or was unable to even
10 after being provided multiple opportunities to do so.

11 81. At all times relevant during the liability period, Toyota wilfully refused to correct or
12 repair the Defect in the Subject Vehicles and wilfully refused to return the purchase price paid or
13 buy back the defective Subject Vehicles in violation of Civil Code § 1793.2.

14 82. As alleged herein, Toyota's conduct was wilful, oppressive, immoral, unethical,
15 unscrupulous, substantially injurious and malicious and in callous conscious disregard for the rights
16 and safety of Plaintiffs and all other similarly situated.

17 83. To the extent some Class Members have not yet formally presented their vehicles or
18 demanded that Toyota repair the vehicles and fix the Defect, such presentation or demands would
19 have been futile, as Toyota is unable to appropriately repair the vehicles and fix the Defect.

20 84. WHEREFORE, pursuant to the provisions of California Civil Code § 1793.2,
21 Plaintiffs and class members are entitled to restitution, including the purchase price paid and any
22 other amounts allowable, and damages, including punitive damages as a result of Toyota's wanton
23 and wilful refusal to correct or repair the Defect and/or refusal to return the purchase price or buy
24 back the defective Subject Vehicles. Plaintiffs and class members also are entitled to an injunction,
25 ordering Toyota to comply with its Lemon Law obligations, with which it has not complied.

1 **FOURTH CAUSE OF ACTION**

2 **Violation of the Song-Beverly Warranty Act, Civ. Code § 1792, et seq.**

3 **Breach of Implied Warranty**

4 **(Against all Defendants)**

5 85. Plaintiffs incorporate all preceding paragraphs.

6 86. The subject vehicles are manufactured goods and at all times relevant, Defendant
7 manufactured, sold and placed these products into the stream of commerce.

8 87. The transactions by which the members of the California Class purchased and leased
9 the Subject Vehicles were transactions for the sale of goods and at all times relevant, the Toyota
10 Defendants were in the business of manufacturing, distributing and/or selling these goods for sale
11 throughout California.

12 88. The presence of the Defect in the Subject Vehicles purchased and leased by
13 Plaintiffs and members of the California Class substantially impaired the value of these goods.
14 Moreover, the Defect renders the Subject Vehicles non-conforming goods and/or goods that are not
15 the same quality of those generally accepted in the trade, goods not fit for the ordinary purposes for
16 which they are used, goods of poor or below average quality within the description and/or goods
17 that did not conform to the affirmations of fact made by Toyota in its labeling, product inserts
18 and/or warranty materials provided along with the transfer of each of the Subject Vehicles.

19 89. The Defect makes the Subject Vehicles unfit for the ordinary purposes for which
20 they are to be used, and at all times relevant, Toyota has failed and refused to repair the Defect in
21 the Subject Vehicles, and has failed and refused to do so at no charge to the class members.

22 90. Upon discovering the uncontrolled acceleration problem in the Subject Vehicles,
23 Plaintiffs took reasonable steps to notify Toyota within a reasonable time that the vehicles did not
24 have the expected quality, reliability, and safety, and that the vehicles were subject to the
25 uncontrolled acceleration problem.

26 91. As a direct and proximate result of the foregoing, Plaintiffs and Class Members
27 sustained significant loss and damage, and did not receive the benefit of their bargain. The
28 damages include, but are not limited to, these:

- 1 (a) The difference in value between a vehicle free of the Defect and the value of
2 the vehicles they bought, with the Defect;
- 3 (b) The diminution in value of the Subject Vehicles with the Defect;
- 4 (c) Loss of use of the vehicle and payments for substitute vehicles;
- 5 (d) The cost to correct the defective condition, and loss of use of the vehicles
6 while the corrections are made;
- 7 (e) Payments of the purchase price and lease payments.

8 92. Plaintiffs and the class gave Toyota all notices and demands required to recover
9 under this claim for relief.

10
11 **FIFTH CAUSE OF ACTION**

12 **Breach of Warranty – California Commercial Code**

13 **(Against All Defendants)**

14 93. Plaintiffs incorporate all preceding paragraphs.

15 94. When the Subject Vehicles were purchased or leased by Plaintiffs and the other
16 Class Members, the purchases and leases carried with them an implied warranty by Toyota that the
17 Subject Vehicles were fit for the ordinary purposes for which such vehicles are used. In fact, they
18 were not.

19 95. As a result of the Defect and the conduct of Toyota described in this complaint,
20 Toyota failed to comply with this warranty and breached it, and Plaintiffs and the other Class
21 Members have been damaged by the failures. The failures and breaches were and are willful.

22 96. The damages include, but are not limited to, these:

- 23 (a) The difference in value between a vehicle free of the Defect and the value of
24 the vehicles they bought, with the Defect;
- 25 (b) The diminution in value of the Subject Vehicles with the Defect;
- 26 (c) Loss of use of the vehicle and payments for substitute vehicles;
- 27 (d) The cost to correct the defective condition, and loss of use of the vehicles
28 while the corrections are made;

1 (e) Payments of the purchase price and lease payments.

2 97. Plaintiff and the class gave Toyota all notices and demands required to recover under
3 this claim for relief.

4
5 **SIXTH CAUSE OF ACTION**

6 **Unfair Competition**

7 **Violation of Bus. & Prof. Code § 17200, et seq.**

8 **(Against all Defendants)**

9 98. Plaintiffs incorporate all preceding paragraphs.

10 99. Plaintiffs bring this cause of action on behalf of themselves, on behalf of the Class
11 Members, and in their capacity as private attorney generals against all Defendants for their
12 unlawful, unfair, fraudulent and/or deceptive business acts and/or practices pursuant to California
13 Business & Professions Code section 17200 et seq. (“UCL”) which prohibits all unlawful, unfair
14 and/or fraudulent business acts and/or practices.

15 100. Plaintiffs assert these claims as they are representatives of an aggrieved group and as
16 private attorneys general on behalf of the general public and other persons who have expended
17 funds that the Defendants should be required to pay or reimburse under the restitutionary remedy
18 provided by California Business & Professions Code §§ 17200, et seq.

19 101. Plaintiffs and Class Members purchased or leased one or more of the subject Toyota
20 or Lexus vehicles. In connection with each Plaintiff and Class member, Defendants uniformly
21 concealed, failed to disclose and omitted important safety-related material information that was
22 known only to Defendants and that could not reasonably have been discovered by Plaintiffs and
23 Class Members prior to acquiring the Subject Vehicles, as set forth in the preceding counts.

24 102. Based on Defendants’ concealment and Defendants’ partially true statements and
25 failures to disclose as alleged herein, Plaintiffs and Class Members agreed to purchase or lease one
26 or more of the subject Toyota or Lexus vehicles, and have been actually harmed. They would not
27 have agreed to purchase or lease these vehicles had Toyota not concealed and omitted to disclose
28 that the vehicles had the Defect.

1 103. As a direct and proximate result of Defendants' concealment and failure to disclose
2 the Defect, Defendants intended that Plaintiffs and Class Members would be misled into believing
3 that they would be purchasing a safe and reliable vehicle, when in fact, the Subject Vehicles are
4 dangerously defective.

5 104. By engaging in the above-described acts and practices, Defendants, and each of
6 them, have committed one or more acts of unfair competition within the meaning of Business &
7 Professions Code §§ 17200, et seq.

8 105. Defendants' misconduct, as alleged herein, gave them an unfair competitive
9 advantage over their competitors.

10 106. Unlawful: The unlawful acts and practices of Defendants alleged above constitute
11 unlawful business acts and/or practices within the meaning of California Business & Professions
12 Code §§ 17200, et seq. Defendants' unlawful business acts and/or practice as alleged herein have
13 violated numerous state, statutory and/or common law - and said predicate acts are therefore per se
14 violations of §17200, et seq. These predicate unlawful business acts and/or practices include, but
15 are not limited to, the following: California Civil Code §§ 1572 (Actual Fraud - Omissions), 1573
16 (Constructive Fraud by Omission), and 1710 (Deceit), and CLRA, Civil Code §§ 1750, et seq.,
17 California's Song-Beverly Consumer Warranty Act ("Lemon Law"), Civil Code §§ 1793.2, et seq.,
18 California's Song-Beverly Consumer Warranty Act ("Breach of Implied Warranty"), the warranty
19 provisions of the California Commercial Code, California Civil Code §§ 1792, et seq. and other
20 California statutory and common law.

21 107. Unfair: Defendants' concealment, omissions and misconduct as alleged in this
22 action constitute negligence and other tortious conduct and gave Defendants an unfair competitive
23 advantage over their competitors which did not engage in such practices. Said misconduct, as
24 alleged herein, also violated established law and/or public policies which seek to promote prompt
25 disclosure of important safety related information. Concealing and failing to disclose the nature
26 and extent of the Defect to Plaintiffs and Class Members, before they purchase or leased one or
27 more of the Subject Vehicles, as alleged herein, was and is directly contrary to established
28 legislative goals and policies promoting safety and the prompt disclosure of such defects, prior to

1 purchase and thus, Defendants' acts and/or practices alleged herein were and are unfair within the
2 meaning of Bus. & Prof. Code 17200, et seq.

3 108. The harm to Plaintiffs, members of the general public and Class Members outweighs
4 the utility, if any, of Defendants' acts and/or practices as alleged herein. Thus, Defendants'
5 deceptive and sharp business acts and/or practices, as alleged herein, were unfair within the
6 meaning of Bus. & Prof. Code 17200, et seq.

7 109. As alleged herein, Defendants' business acts and practices offend established public
8 policies, including, public policies against making partial half truths and failing to disclose
9 important material facts to borrowers before they entered into the subject Option ARM loans. In
10 addition, as alleged herein, Defendants intended that Plaintiffs and Class Members would be misled
11 and/or deceived into believing that, they would be purchasing a safe and reliable vehicle, when in
12 fact, they were purchasing a vehicle that was substantially likely to cause serious bodily injury
13 and/or death. This practice is and was immoral, unethical, oppressive, unscrupulous or
14 substantially injurious to consumer and thus unfair within the meaning of Bus. & Prof. Code
15 17200, et seq.

16 110. At all times relevant, Defendants' misconduct and omissions alleged herein caused:
17 1) substantial injury to Plaintiffs and the public, 2) had no countervailing benefit to consumers or to
18 competition that could possibly outweigh this substantial injury; and 3) caused injury that could not
19 have been avoided or even discovered by ordinary consumers, because it resulted from Defendants'
20 concealment, failure to disclose and/or omission of important safety related material information
21 that only the Defendants knew or could have known. Thus, Defendants' acts and/or practices as
22 alleged herein were unfair within the meaning of Bus. & Prof. Code 17200, et seq.

23 111. Fraudulent: Defendants' acts and practices, as alleged herein, were likely to, and did
24 deceive Plaintiffs and members of the public. Defendants' concealment, material omissions, acts,
25 practices and non-disclosures, as alleged herein, therefore constitute fraudulent business acts and/or
26 practices within the meaning of California Business & Professions Code §§ 17200, et seq
27
28

1 112. Plaintiffs were actually deceived by Defendants' concealment and material
2 omissions as alleged herein. Plaintiffs, and similarly situated members of the public, suffered
3 injury in fact and lost money as a direct result of the deceptive conduct as alleged herein.

4 113. As a direct and proximate result of the aforementioned concealments, omissions,
5 acts and/or practices, Defendants received monies and continue to hold the monies expended by
6 Plaintiffs and Class Members who purchased the Subject Vehicles as alleged herein.

7 114. The unlawful, unfair, deceptive and/or fraudulent business acts and practices of
8 Defendants, as fully described herein, present a continuing threat to members of the public to be
9 mislead and/or deceived by Defendants as alleged herein, and or be substantially injured by these
10 dangerously defective cars and trucks. Plaintiffs and other members of the general public have no
11 other remedy of law that will prevent Defendants' misconduct as alleged herein from occurring
12 and/or reoccurring in the future.

13 115. As a direct and proximate result of Defendants' unlawful, unfair and/or fraudulent
14 conduct alleged herein, Plaintiffs and Class Members have lost millions if not billions of dollars in
15 that they either would not have purchased or leased the dangerously defective vehicles or would
16 have paid substantially less for them had they known of the dangerous defective condition that
17 existed in the vehicles when they purchased or leased them. Plaintiffs and Class Members are
18 direct victims of the Defendants' unlawful, unfair and fraudulent conduct, and the named Plaintiffs
19 have suffered injury in fact and have lost money or property as a result of Defendants' unfair
20 competition.

21 116. WHEREFORE, Plaintiffs and Class Members are entitled to equitable relief,
22 including restitution, restitutionary disgorgement of all profits accruing to Defendants because of
23 their unfair, unlawful and deceptive acts and/or practices, attorney's fees and costs, declaratory
24 relief, and a permanent injunction enjoining Defendants from engaging in the wrongful activity
25 alleged herein.

1 **PRAYER FOR RELIEF**

2 WHEREFORE, Plaintiffs and all Class Members pray for judgment against each Defendant,
3 jointly and severally, as follows:

4 A. An order certifying this case as a class action and appointing Plaintiffs and their
5 counsel to represent each Class and sub-class;

6 B. For actual damages according to proof;

7 C. For compensatory damages as permitted by law;

8 D. For consequential damages as permitted by law;

9 E. For punitive damages as permitted by law;

10 F. For equitable relief, including restitution;

11 H. For restitutionary disgorgement of all profits Defendants obtained as a result of their
12 unfair competition;

13 I. For unjust enrichment including legal restitution;

14 J. For interest as permitted by law;

15 K. For Declaratory Relief;

16 L. For a prohibitory injunction forbidding Defendants from distributing, selling and/or
17 leasing the Subject Vehicles with the Defect and/or distributing, selling and/or leasing the Subject
18 Vehicles with the Defect without completely, fully and conspicuously disclosing the nature and
19 existence of the Defect to any consumer interested in purchasing or leasing one of the Subject
20 Vehicles'

21 M. For a mandatory injunction requiring Defendants to issue a notice program advising
22 all purchasers and lessees of the Subject Vehicles with the Defect during the liability period of the
23 existence and serious consequences of the Defect and advising them of their rights under California
24 Consumer protection laws, including but not limited their rights under California's Song-Beverly
25 Consumer Warranty Act ("Lemon Law"), Civil Code §§ 1793.2;

26 N. For reasonable attorneys' fees and costs; and

27 O. For such other relief as is just and proper.
28

1 Dated: March 10, 2010

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and all others similarly situated

1 **DEMAND FOR JURY TRIAL**

2 Plaintiffs hereby demand a trial by jury to the full extent permitted by law.

3
4 Dated: March 10, 2010

Respectfully submitted,

5 **ROBINSON, CALCAGNIE & ROBINSON**

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