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10 Melanie Berlieb, Elvira Gesell,
11 and the Putative Class

12 UNITED STATES DISTRICT COURT
13 CENTRAL DISTRICT OF CALIFORNIA
14 SOUTHERN DIVISION

15 MELANIE BERLIEB and ELVIRA)
16 GESELL, individually and on behalf)
17 of all others similarly situated in)
18 Germany,)

19 Plaintiffs,)

20 v.)

21 TOYOTA MOTOR CORPORATION,)
22 a Japanese corporation; TOYOTA)
23 MOTOR NORTH AMERICA, INC., a)
24 California corporation; TOYOTA MOTOR)
25 ENGINEERING & MANUFACTURING)
26 NORTH AMERICA, INC., a Kentucky)
27 corporation; TOYOTA MOTOR SALES)
28 U.S.A., INC., a California corporation;)
29 TOYOTA MOTOR CREDIT)
30 CORPORATION, a California corporation;)
31 TOYOTA DEUTSCHLAND GmbH, a)
32 German limited liability company;)
33 CTS CORPORATION, an Indiana)
34 corporation; and JOHN DOE)
35 DEFENDANTS 1 through 50 inclusive,)

36 Defendants.)

Case No. 8:10ML02151JVS(FMOx)

(PROPOSED)

AMENDED CLASS ACTION COMPLAINT

- 1. RICO 18 U.S.C. §§1961, et seq.,
- 2. Unfair Business Practices, Cal.Bus. & Prof. Code §17200, et seq.
- 3. Breach of Implied Warranty, Cal.Civ. Code §1792
- 4. Breach of Implied Warranty of Merchantability, Cal.Civ. Code §1792
- 5. Breach of Implied Warranty of Fitness for a Particular Purpose, Cal. Civ. Code §1792.2
- 6. Unfair Business Practices Act, Cal. Bus. & Prof. Code §17500, et seq.
- 7. Unjust Enrichment
- 8. Negligence

DEMAND FOR JURY TRIAL

Plaintiffs MELANIE BERLIEB and ELVIRA GESELL, individually and on behalf of all

1 others similarly situated in Germany (hereinafter “Plaintiffs”), by and through their attorney,
2 William A. Cohan, of the law firm William A. Cohan, P.C., hereby AMEND their Class Action
3 Complaint filed on April 27, 2010, in the United States District Court for the Northern District of
4 Illinois, Eastern Division, Case No: 10 CV-01931, to bring this action for relief pursuant to the
5 federal Racketeer Influenced and Corrupt Organizations Act (“RICO”) and pendent state law
6 claims for damages, hereby alleging as follows:

7 **INTRODUCTION**

8 1. This class action lawsuit is filed on behalf of all persons who suffered economic
9 injuries, personal injuries, death and other compensable injuries as the result of their purchase
10 and/or lease of Toyota vehicles that share common design and engineering defects allowing the
11 vehicles to experience sudden and unintentional acceleration without driver input and against the
12 intentions of the driver.

13 2. This action is brought on behalf of Plaintiffs and consumers who purchased or
14 leased a recalled Toyota vehicle in Germany to recoup, *inter alia*, the diminished resale value in
15 the car caused by the worldwide recall, as well as other damages sustained as a result of
16 Defendants’ conduct.

17 3. “Honor the language and spirit of the law of every nation and undertake open and
18 fair corporate activities to be a good corporate citizen of the world.” This is one of the guiding
19 principles of Toyota. Toyota violated those principles when it jeopardized the lives and safety of
20 consumers worldwide by selling defective automobiles to consumers worldwide for many years.

21 4. These Toyota vehicles have demonstrated that they are unreasonably dangerous
22 due to the sudden and unintentional acceleration, and have caused numerous injuries and
23 fatalities. The extent of the problems is still being discovered.

24 5. For years, Toyota has suppressed the dangers of sudden unintended acceleration
25 that have plagued their vehicles. Even more egregiously, Toyota suppressed the fact that this
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1 problem was the result of a defect or design flaw in their vehicles. Rather than make an effort to
2 repair these problems, Toyota made and continues making concerted efforts to conceal this
3 information from consumers worldwide.

4 6. These issues have been known to Toyota for years. On information and belief,
5 Toyota has known since at least 2000 that there were serious problems with their newly
6 implemented electronic throttle control system (“ETCS”). Toyota failed to include several
7 failsafes in their vehicles, failsafes that may have prevented many of the sudden unintended
8 acceleration problems encountered by Toyota owners. For the past decade, Toyota suppressed
9 information, including test results, denied that there were any problems with their cars, failed to
10 provide notice to consumers, denied that any problem or defect existed and failed to provide a
11 necessary and available design or components to enable drivers to bring their vehicles back under
12 control in case a runaway event occurred, as other vehicle manufacturers have done.

13 7. Despite knowledge of the common design and engineering defects which created
14 such risks, Toyota continues to advertise and market its vehicles as safe and reliable.

15 8. Over the last decade, Toyota grew into the largest automaker in the world. In
16 2008, Toyota surpassed General Motors for the top spot amongst automakers, selling 8.97
17 million automobiles in comparison to 8.35 million by General Motors. In advertisements and
18 sales materials, Toyota proclaimed and continues to proclaim that it is a safe brand and that it
19 makes high quality, reliable vehicles.

20 9. In a rush to cut costs and increase profits, Toyota began to make more and more
21 shortcuts. Quality fell and instead of making efforts to fix problems, Toyota simply used its
22 financial clout to either suppress or hide faults and defects.

23 10. Although Toyota was able to conceal most of its troubles for many years, the
24 flaws and design defects would not go away. For nearly a decade, Toyota executives made false
25 misrepresentations of material facts and omitted material facts regarding the serious problems
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1 with their vehicles. Toyota claimed that improperly installed floor mats bought in the
2 aftermarket or driver error explained all of the sudden unintended acceleration problems. As the
3 complaints against Toyota began to pile up worldwide, it soon became apparent that Toyota's
4 excuses could not explain away everything

5 11. Everything changed in August of 2009 when a horrible tragedy in San Diego that
6 killed four people drew national and international attention to the problems of sudden unintended
7 acceleration. As the probe grew, it became more and more apparent that Toyota vehicles had an
8 extraordinarily high number of sudden acceleration problems, resulting from a combination of
9 manufacturing defects, design flaws or failures to incorporate safety features that could have
10 saved consumer lives in the United States and around the globe.

11 12. On September 29, 2009, Toyota announced its first recall in the United States, still
12 claiming at that time that faulty aftermarket floor mats explained all of the sudden unintended
13 acceleration problems. In its recall, Toyota included eight models from its Toyota and Lexus
14 brands. Toyota spokespersons and executives stated definitively that there were "no defects" that
15 could not be explained by the floor mats.

16 13. According to documents obtained by the *Associated Press*, on September 29,
17 2009, Toyota's European division issued technical information identifying a production
18 improvement and repair procedure to address complaints by customers in those countries of
19 sticking accelerator pedals, sudden rpm increase and/or sudden vehicle acceleration. Toyota
20 Distributors throughout Europe and in Russia, Georgia, Kazakhstan, Turkey and Israel received
21 the technical information. According to an April 7, 2010, article in the StarTribune.com entitled
22 "Toyota warned European distributors about pedal problems well before telling US government,"
23 Toyota admitted in a document turned over to the US government that: "[Toyota's] engineers
24 concluded that the phenomenon experienced in the United States was essentially the same as the
25 phenomenon experienced in Europe."
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1 14. On January 21, 2010, Toyota issued a formal recall notice in the United States
2 covering 2.3 million vehicles, admitting that in “rare circumstances,” sticky gas pedals may also
3 be a culprit for sudden unintended acceleration. Toyota advised American consumers that if they
4 experienced problems with the accelerator pad, “[t]he vehicle should be driven to the nearest safe
5 location, the engine shut off and a Toyota dealer contacted for assistance.” Although Toyota
6 increased the size of its recall, covering a wider range of Toyota models than those included in
7 the first recall, Toyota vociferously denied any problems existed with their electronic throttle
8 control system, blaming all incidents of sudden unintended acceleration on faulty floor mats and
9 sticky gas pedals.

10 15. On January 27, 2010, Toyota made the highly unusual announcement that it was
11 suspending the sale of eight models in the United States because of a sticking accelerator pedal.
12 The eight Toyota models that were being suspended were the RAV4, Corolla, Matrix, Avalon,
13 Camry, Highlander, Tundra and Sequoia. By this time, it was apparent that Toyota’s problems
14 ran deeper than Toyota had proclaimed.

15 16. Despite acknowledging that the defect was serious enough that it was necessary to
16 stop selling those vehicles, Toyota failed to prevent vehicles already sold or leased from being
17 operated and it did not offer to cancel leases and purchases and refund the monies paid by its
18 customers.

19 17. Two days later, on January 29, 2010, Toyota recalled 215,796 vehicles in
20 Germany and German owners of affected cars were contacted personally by Toyota Deutschland
21 GmbH and requested to bring their cars to a dealership for the accelerator pedals to be inspected
22 and modified. Plaintiff MELANIE BERLIEB’s Auris and Plaintiff ELVIRA GESELL’s Yaris
23 were among those included in the recall.

24 18. On February 3, 2010, the United States’ National Highway Transportation Safety
25 Administration (hereinafter “NHTSA”) announced that it would launch a full investigation of
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1 Toyota's electronic throttle control system.

2 19. Two days later, on February 5, 2010, Toyota president Akio Toyoda attended a
3 press conference in which he apologized to Toyota owners: "I apologize from the bottom of my
4 heart for all the concern that we have given to so many customers."

5 20. Thereafter, Toyota began recalling its vehicles around the globe. For example: (1)
6 on February 8, 2010, Toyota recalled 30,000 vehicles in Mexico to adjust the accelerator pedal
7 wherein the customers affected would receive a free installation of a piece of high-precision
8 reinforced steel in the accelerator pedal assembly; and then (2) on February 15, 2010, Toyota
9 recalled 57,300 vehicles in Turkey and asked customers to contact their dealership for an
10 accelerator repair that would take about half an hour.

11 21. To date, more than eight million Toyota cars have been recalled worldwide due to
12 the sudden and unintentional acceleration problem (hereinafter "SUA").

13 22. Based on the unusually high number of acceleration problems with Toyota and the
14 fact that those problems grew exponentially after Toyota introduced its ETCS systems,
15 automotive experts believe that there may be serious defects relating to Toyota's ETCS that
16 contribute to the problems with Toyota's vehicles.

17 23. Nevertheless, Toyota continues to cover up the fact that drivers were experiencing
18 sudden unintentional acceleration when their foot was on the brake and not touching the
19 accelerator. Toyota conceals the fact that when Toyota replaced its mechanical throttle linkage in
20 the late 1990's with a computer-controlled accelerator system, it could be adversely affected by
21 "radio waves." Upon information and belief, unlike American automobile companies, Toyota
22 failed to include sufficient back-up safety systems that would prevent SUA. Consequently, there
23 is no adequate fail-safe mechanism to stop Toyota vehicles in the event the acceleration systems
24 malfunction and engage in uncontrolled acceleration.

25 24. As a result of these serious safety concerns, Plaintiffs reasonably and
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1 understandably no longer wish to operate their vehicles. Additionally, the fair market values of
2 Plaintiffs' vehicles have been substantially and permanently diminished as a result of the SUA
3 defect.

4 **THE PARTIES**

5 **A. Plaintiffs.**

6 25. Plaintiff MELANIE BERLIEB is a consumer who, at all times relevant to the
7 Complaint, resides in Gross-Umstadt, Germany, and is thus a citizen and resident of the Federal
8 Republic of Germany. On September 18, 2009, Plaintiff MELANIE BERLIEB purchased a 2010
9 Toyota Auris (VIN SB1KV56E60E009383) as a new vehicle from Autohaus Herpich GmbH, an
10 independent new car dealership located in Erbach, Germany.

11 26. Plaintiff ELVIRA GESELL is a consumer who, at all times relevant to the
12 Complaint, resides in Schwalbach am Taunus, Germany, and is thus a citizen and resident of the
13 Federal Republic of Germany. On March 27, 2008, Plaintiff ELVIRA GESELL purchased a
14 2008 Toyota Yaris (VIN VNKKL9370A291118) as a new vehicle from Autohaus NIX GmbH,
15 an authorized Toyota dealership located in Offenbach, Germany.

16 27. The 2010 Toyota Auris and 2008 Toyota Yaris -- like the models recalled and for
17 which manufacturing was suspended in the United States -- are unreasonably dangerous as
18 designed and manufactured by Toyota.

19 28. Plaintiffs did not learn of their vehicles' unique propensity for runaway
20 acceleration, or that Toyota failed to provide adequate fail-safes, until after their purchases, after
21 Toyota issued a safety warning regarding the floor mats in certain Toyota vehicles.

22 29. As a consequence of Defendants' RICO activity and unlawful and misleading
23 business practices, Plaintiffs have suffered injury in fact and have otherwise been damaged as a
24 result of Defendants' wrongful conduct.

25 30. Plaintiffs appear in this action on behalf of themselves and on behalf of all others
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1 similarly situated in Germany.

2 **B. Defendants.**

3 31. Defendant TOYOTA MOTOR CORPORATION (“TMC”) is a Japanese
4 corporation with its headquarters at 1 Toyota-Cho, Toyota City, Aichi Prefecture 471-8571,
5 Japan. In 2008, Toyota was the largest automaker in the world. At all relevant times, TMC
6 wholly owned and controlled Toyota Motor Sales, U.S.A., Inc., which served as the American
7 subsidiary for TMC. At all relevant times TMC exercised complete control over: (1) Toyota
8 Motor Sales U.S.A., Inc., a California corporation; (2) Toyota Motor North America, Inc., a
9 California corporation; (3) Toyota Motor Engineering & Manufacturing North America, Inc., a
10 Kentucky corporation; (4) Toyota Motor Credit Corporation, a California corporation; (5) Toyota
11 Deutschland GmbH, a German limited liability company; (6) CTS Corporation, an Indiana
12 corporation; and (7) DOES 1 through 50, and directed all of their actions, policies and business
13 strategies.

14 32. On information and belief, defendants are and were responsible for Toyota’s
15 policies and business strategies, as well as the manufacture, design, distribution, sale and lease of
16 Toyota vehicles, or parts thereof, worldwide, including those which are the subject of this action.

17 33. The true names and capacities, whether individual, corporate, associate, or
18 otherwise, of Defendants Doe 1 through Doe 50, inclusive, are unknown to Plaintiffs, who
19 therefore sue said Defendants by such fictitious names. Plaintiffs are informed and believe, and
20 on that basis allege, that each of said fictitious Doe Defendants is in some manner responsible for
21 the acts, conduct, and occurrences alleged herein, as either actual perpetrators or co-conspirators,
22 aiders and abettors, or primary officers and/or managers with knowledge and control of the
23 perpetrators’ activities. Plaintiffs will seek leave of Court to amend this complaint to allege the
24 true names and capacities of the Doe Defendants when the same are ascertained, as well as the
25 manner in which each fictitious Defendant is responsible for the damages sustained by Plaintiffs.

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1 The decision to withhold information from American and worldwide consumers, including
2 German consumers, and engage in deceptive marketing was made, in part, in California.

3 38. Additionally, this Court has subject matter jurisdiction pursuant to 18 U.S.C.
4 §1961, et seq. In particular, Defendants' racketeering activity includes many acts within the last
5 four (4) years chargeable under 18 U.S.C. §2314, which provides in pertinent part that

6 Whoever transports, transmits, or transfers in interstate or foreign commerce any goods,
7 wares, merchandise, securities or money, of the value of \$5,000 or more, knowing the
8 same to have been stolen, converted or taken by fraud; ... shall be fined under this title or
imprisoned not more than ten years or both.

9 39. Venue properly lies in this District pursuant to 28 U.S.C. §1391(c) because
10 defendants, as corporations, are "deemed to reside in any judicial district in which it is subject to
11 personal jurisdiction at the time the action is commenced," because a substantial part of the acts
12 or omissions giving rise to Plaintiffs' claims occurred in this district and because Defendants
13 conduct substantial business in this judicial district.

14 CLASS ACTION ALLEGATIONS

15 40. Plaintiffs bring this action on behalf of a Class consisting of:

16 All residents and citizens of the Federal Republic of Germany who purchased or leased
17 Toyota vehicles that have an electronic throttle control system, including those presently
the subject of recall.

18 41. Specifically excluded from the proposed Class are Defendants herein, any entities
19 in which Defendants have a controlling interest, and the officers, directors, affiliates, legal
20 representatives, successors, subsidiaries and/or assigns of Defendants.

21 42. This action may properly be maintained as a class action under Federal Rules of
22 Civil Procedure Rule 23 because the action satisfies the numerosity, typicality, adequacy,
23 predominance and superiority requirements of the Rule.

24 43. The Plaintiffs and all Class Members seek damages and other relief, including but
25 not limited to compensatory damages for economic losses, property damages, reimbursement of
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1 costs, litigation expenses, interest to the extent legally applicable, punitive damages, injunctive
2 relief, attorneys' fees and any other relief to which they may be entitled in law and/or equity.

3 44. The number of Class Members is so large that joinder of all members is
4 impracticable. While the exact number of Class members is unknown at this time, Plaintiffs are
5 informed and believe that the number of citizens and residents of Germany who have purchased
6 Toyota vehicles in the past five years exceeds 100,000. In 2008, Toyota surpassed General
7 Motors as the largest automaker in the world, selling nearly 8.97 million cars that year and,
8 moreover, recalled 215,796 vehicles in Germany on January 29, 2010. The number of Class
9 Members and the identity of the Class Members easily can be obtained through the records of the
10 Defendants.

11 45. The claims of Plaintiffs are typical of the claims of the Class that they seek to
12 represent. The Defendants have treated all of the Class Members the same, and all of the recalled
13 vehicles possess similar defects.

14 46. Plaintiffs will fairly and adequately protect the interests of the members of the
15 Class. Plaintiffs are represented by experienced and able attorneys, who intend to prosecute this
16 action vigorously for the benefit of Plaintiffs and all Class members.

17 47. Common questions of law and fact exist. The common issues include, but are not
18 limited to:

- 19 A. Whether Defendants should be declared financially responsible for notifying all
20 class members of the defective nature of the cars and for the costs and expenses of
21 inspecting, repairing, and replacing all such defective parts and/or entire vehicles;
22 B. Whether Toyota vehicles suffer from a SUA defect;
23 C. Whether design defects cause the vehicles to suffer from SUA;
24 D. Whether Defendants knew or became aware that the vehicles were not properly
25 designed, yet continued to manufacture, distribute, advertise, and market the cars
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1 without correcting the problems and while concealing the defective design from
2 consumers worldwide, including the class;

3 E. Whether Defendants violated 18 U.S.C. §1962(a), (b), (c) and/or (d) through a
4 pattern of racketeering activity designed to deceive and defraud consumers
5 worldwide, including the class, and to conceal serious and dangerous defects of
6 Toyota vehicles from consumers worldwide, including the class;

7 F. Whether Defendant TMC engaged in a worldwide deceptive and unlawful
8 advertising and marketing campaign by concealing serious defects in Toyota
9 vehicles;

10 G. Whether Defendants failed to give adequate warning regarding Toyota vehicles;

11 H. Whether Defendants created express or implied warranties through written
12 advertising and other representations that were breached;

13 I. Whether the conduct complained of herein constitutes deceptive and misleading
14 advertising in violation of Business & Professions Code §17200, et seq;

15 J. Whether the conduct complained of herein constitutes an unfair, illegal and/or
16 fraudulent business practice, in violation of Business & Professions Code section
17 17500, et seq.;

18 K. Whether Toyota's conduct complained of herein is intentional and knowing;

19 L. Whether Plaintiffs and members of the Class are entitled to damages, restitution,
20 disgorgement of profits, declaratory relief, punitive damages and/or injunctive
21 relief, as a result of Toyota's conduct complained of herein; and

22 M. Whether Plaintiffs and members of the proposed class are entitled to an award of
23 reasonable attorneys' fees, prejudgment interest, post-judgment interest and costs
24 of suit.

25 48. Defendants have acted or refused to act worldwide, with respect to some or all
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1 issues presented in this complaint, on grounds generally applicable to the Class thereby making it
2 appropriate to provide relief with respect to the Class as a whole.

3 49. A class action is the best available method for the efficient adjudication of this
4 litigation because individual litigation of Class members' claims would be impracticable and
5 unduly burdensome to the courts, and have the potential to result in inconsistent or contradictory
6 judgments worldwide. There are no unusual difficulties likely to be encountered in the
7 management of this litigation as a class action. A class action presents fewer management
8 problems and provides the benefits of a single worldwide adjudication, economies of scale,
9 comprehensive supervision by a single court, and it provides access to the courts for thousands of
10 citizens and residents of Germany who, like millions of residents around the world and the
11 United States, are driving dangerous cars manufactured by Toyota, which sells those cars
12 globally. Accordingly, class certification is desirable and appropriate.

13 **FACTUAL BACKGROUND ALLEGATIONS**

14 50. In 2008, Toyota became the world's largest automobile manufacturer with net
15 revenues in 2009 of over \$227 billion.

16 51. Toyota manufactures, sells and leases various models of passenger and
17 commercial vehicles (including Plaintiffs' Auris and Yaris) to customers in the United States and
18 worldwide.

19 52. In the late 1990's, Toyota manufactured, distributed, leased and sold vehicles with
20 an electronic throttle control system ("ETCS").

21 53. In 2000, Toyota began using a "drive-by-wire" system. The drive-by-wire system
22 uses sensors, microprocessors and electric motors rather than a mechanical link such as a steel
23 cable to connect the accelerator pedal to the throttle plate in the engine. The acceleration pedal
24 has no direct connection to the engine through a cable or mechanical link. The connection
25 between the pedal and the engine is made by electrical signals traveling through wires. This
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1 system costs less to install than a traditional mechanical link system.

2 54. Defendant CTS's Automotive Products Division operates multiple manufacturing
3 locations in North America, Europe and the Far East. CTS Automotive Products supplies the
4 world's vehicle original equipment manufacturers ("OEMs") and Tier II suppliers with rotary and
5 linear position sensors, rotary actuators and electronic accelerator pedal modules.

6 55. CTS issued a news release on March 30, 2001 announcing that CTS Automotive
7 Products had received the Toyota "Value Improvement Award for 2000," from Toyota Motor
8 Manufacturing North America ("TMMNA"), stating *inter alia*:

9 CTS Automotive Products received the 2000 award for the throttle position sensors
10 supplied for use on the Camry, Solara and Avalon model automobiles and the Sienna
11 minivan. CTS has now achieved the "Value Improvement Award" in three out of the last
12 four years, which complements its overall business development strategy, including
13 continual product and process improvements. CTS Automotive Products designs and
14 manufactures a variety of electronic position sensors and actuators used in automotive
15 powertrain, suspension, fuel system and emission control systems for automotive
16 manufacturers throughout the world....

17 56. On September 20, 2005, CTS issued a press release announcing that it had received
18 an "Excellent Launch Award" from Toyota TMMNA "for design quality and launch coordination
19 of its Electronic Throttle Control (ETC) Pedal Assemblies," which recognized CTS' achievement
20 in *inter alia*, "[c]oordination of launches in North America and Europe."

21 57. SUA occurs when the throttle, not necessarily the accelerator, becomes stuck in the
22 wide-open position contrary to the driver's intention. The vehicle will continue to accelerate
23 despite attempts by the driver to employ the brakes. Toyota's computerized engine control system
24 lacks an appropriate fail-safe mechanism that can quickly extinguish unintended acceleration. As
25 designed, SUA in Toyota vehicles can overpower the vehicles' brakes, leading to an out-of-
26 control vehicle.

27 58. In sharp contrast to Toyota vehicles, other manufacturers use fail-safe mechanisms
28 such as smart gas pedal technology which overrides any other instruction and commands the

1 ETCS to automatically set the engine to idle whenever the brakes are applied without success.

2 Smart pedals sense when a vehicle's accelerator and brake pedals are being pressed
3 simultaneously and a computer instructs the engine to disregard the accelerator pedal.

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5 59. Many of Toyota's vehicles now include an electronic ignition button rather than a
6 mechanical ignition key-turned switch. In such cars, no mechanical means exists to turn off the
7 engine in the case of sudden, unintended acceleration.

8 60. The combination of the lack of safety systems creates a situation in which there are
9 no mechanical or electronic failsafe mechanisms to allow the driver to effectively stop or slow the
10 car in such circumstances.

11 61. All of the Toyota vehicles obtained and driven by Plaintiffs have ETCS or
12 Electronic Throttle Control System with Intelligence (hereinafter "ETCS-i").

13 62. Toyota and its affiliates have known since at least 2002 that its vehicles could
14 accelerate uncontrollably, resulting in crashes causing property damage as well as serious injuries
15 and deaths of occupants. Through the fall of 2009, Toyota received more than 2,000 complaints
16 that its vehicles had incidents of sudden unintended acceleration and was the subject of multiple
17 investigations by the U.S. federal government. In spite of the numerous complaints by consumers
18 and government investigators, Toyota denied there was a problem and did nothing to mitigate or
19 remedy the common design and engineering defects.

20 63. After multiple incidents in which Toyota vehicles suddenly accelerated and their
21 brakes failed to stop the vehicle causing or resulting in deaths or serious injuries and property
22 damage, Toyota for the first time attempted to minimize and conceal the extent of the problem by
23 blaming the sudden acceleration on floor mats. Toyota informed customers that they could
24 prevent any risk of danger by simply removing the driver side floor mat.

25 64. Prior to admitting the problem in the United States, Toyota issued a warning to its
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1 European and certain other non-U.S. distributors regarding problems with the accelerator pedal
2 manufactured by Defendant CTS Corporation and the modifications necessary to allegedly correct
3 the problem. Toyota began equipping its European vehicles with accelerator pedals from other
4 manufacturers, rather than from Defendant CTS Corporation, due to the known problems with the
5 CTS accelerator pedals.

6 65. In or about December, 2008, Toyota began an investigation of SUA occurring in
7 Toyota's vehicles in Europe. Toyota allegedly found that condensation from heaters caused
8 increased friction in the accelerator pedal, making it stick. In mid-August 2009, Toyota made a
9 design change in its European cars that lengthened the arm of the friction lever and changed its
10 materials in all vehicles being produced in Europe.

11 66. As of November 2009, Toyota stated "there is no evidence to support" any other
12 conclusion than that sudden accelerations were caused by floor mats. Toyota stated to Toyota
13 vehicle owners, Toyota consumers, and the public that NHTSA supported the company's
14 conclusion. NHTSA responded to Toyota's public statement by stating that it was "misleading
15 and inaccurate."

16 67. After years of concealing the life-threatening defects in its vehicles, on January 21,
17 2010, Toyota initiated a massive unintended acceleration recall covering approximately 2.3
18 million vehicles sold and leased in the United States. Days later, Toyota recalled 215,796
19 vehicles in Germany, 57,300 vehicles in Turkey and 30,000 vehicles in Mexico for the same
20 problem. To date, Toyota has recalled approximately 8 million vehicles worldwide for the
21 unintended acceleration problem.

22 68. Toyota attributed the cause of the recall to "accelerator pedal problems," whereby
23 the accelerator pedal sticks in a partially or fully-depressed position. Toyota claims that "[i]n rare
24 instances, there is a possibility that certain accelerator pedal mechanisms may mechanically stick
25 in a partially-depressed position or return slowly to the idle position."

1 69. On information and belief, the Toyota models affected by the “accelerator pedal
2 problems” and which are being recalled include, but are not limited to the following:

3 A. In the United States:

- 4 * Certain 2009-2010 RAV4,
- 5 * Certain 2009-2010 Corolla,
- 6 * 2009-2010 Matrix,
- 7 * 2005-2010 Avalon,
- 8 * Certain 2007-2010 Camry,
- 9 * Certain 2010 Highlander,
- 10 * 2007-2010 Tundra,
- 11 * 2008-2010 Sequoia
- 12 * Certain 4Runners SUV
- 13 * Certain FJ Cruiser
- 14 * Certain Land Cruiser
- 15 * Certain Sienna
- 16 * Certain Tacoma pickup trucks

17 B. In Germany:

- 18 * AYGO (manufactured from 02/2005 to 08/2009)
- 19 * iQ (manufactured from 11/2008 to 11/2009)
- 20 * Yaris (manufactured from 11/2005 to 09/2009)
- 21 * Auris (manufactured from 10/2006 to 01/05/2010)
- 22 * Corolla (manufactured from 10/2006 to 12/2009)
- 23 * Verso (manufactured from 02/2009 to 01/05/2010)
- 24 * Avenus (manufactured from 11/2008 to 12/2009)
- 25 * RAV4 (manufactured from 11/2005 to 11/2009)

26 70. Automotive safety experts have rejected Toyota’s explanation that these sudden
27 acceleration problems are solely the result of human error, floor mats and/or sticky gas pedals.

28 71. There is no guarantee that the “fix” will work effectively. According to a recent
29 article in *Barrons*, “the effectiveness of the solution – basically a shim to increase tension in a
30 spring connected to the pedal – won’t be known for months after suspect vehicles are modified at
31 dealerships and on Toyota assembly lines.” It has been reported that the same supplier of pedals
32 used in the Recalled Toyota vehicles is also making the replacement parts. Indeed, there have
33 been complaints to NHTSA that consumers who have taken their recalled Toyota vehicle to their
34 respective dealers to have the recall repairs performed continue to experience sudden,
35 uncontrolled acceleration. Plaintiff BERLIEB continues to experience sudden, unintended engine
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1 revving despite her vehicle having received the “fix.”

2 72. Plaintiffs allege that Toyota vehicles equipped with ETCS or ETCS-i are defective
3 and unsafe in that such vehicles are susceptible to incidents of sudden, unintended acceleration
4 rendering such vehicles uncontrollable.

5 73. Plaintiffs further allege that Toyota vehicles equipped with ETCS and ETCS-i are
6 defective and unsafe in that Toyota failed to incorporate essential failsafe measures critical to
7 assisting a driver in maintaining control of the vehicle during a sudden, unintended acceleration
8 event.

9 74. Toyota advises consumers who suspect that they have the accelerator problem to
10 stop using the car and drive it “to the nearest safe location, [to have] the engine shut off and a
11 Toyota dealer contacted for assistance.”

12 **CAUSES OF ACTION**

13 **FIRST CAUSE OF ACTION**

14 **(Violation of Racketeer Influenced and Corrupt Organization Act, 18 U.S.C. §1961, et seq.)**

15 75. Plaintiffs hereby incorporate by reference the above paragraphs as if those
16 allegations were fully set out herein..

17 **A. THE ENTERPRISE.**

18 76. Since at least 2004, Toyota-Japan (Defendant TMC), its subsidiaries (co-
19 defendants), worldwide affiliates, including Toyota Deutschland GmbH (Toyota’s German sales
20 company), and their spokespersons, have associated-in-fact to conduct certain aspects of Toyota’s
21 “marketing, advertising, promotion and sales and leasing” activities (hereinafter Toyota’s
22 “misleading marketing enterprise”) by means of false statements and omissions of material facts
23 to sell and lease certain vehicles known to defendants to be unreasonably dangerous and defective
24 through a pattern of racketeering activity in violation of 18 U.S.C. §§1341 (mail fraud); 1343
25 (wire fraud); laundering and transmitting sales and lease proceeds by violating 1956 (laundering
26 of monetary instruments) and 2314 (transferring in interstate or foreign commerce sums of \$5,000

1 or more with knowledge that said sums have been taken by fraud).

2 77. Toyota's "misleading marketing enterprise" as set forth in the preceding paragraph
3 constitutes an "enterprise" as that term is defined in 18 U.S.C. §1961(4).

4 78. Toyota's "misleading marketing enterprise" has an ascertainable structure separate
5 and apart from the pattern of racketeering activity in which defendants have engaged since at least
6 2007.

7 79. Defendants, their subsidiaries and worldwide affiliates are ongoing organizations
8 which engage in, and the activities of which affect interstate and foreign commerce.

9 80. Each defendant associated with the enterprise.

10 81. Each defendant intended that the enterprise transmit false and misleading
11 information as set forth herein to Plaintiffs, members of the proposed Class, government
12 investigators, and worldwide consumers through means of domestic and international mail and
13 wire carriers.

14 82. Defendants have engaged in a "pattern of racketeering activity," as defined by 18
15 U.S.C. §1961(5), by committing or aiding and abetting in the commission of at least two acts of
16 racketeering activity indictable under 18 U.S.C. §§1341, 1343, 1956 and 2314.

17 83. Defendants are "persons" as defined by 18 U.S.C. §1961(3) and have: (1) derived
18 income directly or indirectly from a pattern of racketeering activity in violation of 18 U.S.C.
19 §1962(a); (2) through a pattern of racketeering activity have maintained, directly or indirectly, an
20 interest in and control of the Toyota marketing enterprise which is engaged in and the activities of
21 which affect interstate or foreign commerce in violation of 18 U.S.C. §1962(b); (3) conducted or
22 participated, directly or indirectly in the conduct of the Toyota marketing enterprise through a
23 pattern of racketeering activity in violation of 18 U.S.C. §1962(c); and (4) conspired with each
24 other, subsidiaries, affiliates and spokespersons to violate 18 U.S.C. §§1962(a),(b) and (c).

25 **B. PREDICATE ACTS.**

26

27

1 **1. OMISSIONS OF MATERIAL FACTS.**

2 84. Toyota has generated a worldwide reputation for quality and safety which is the
3 center piece of Toyota’s marketing enterprise to increase sales of Toyota vehicles. Toyota’s
4 marketing enterprise touts its safety awards, including an award in 2008 from the Insurance
5 Institute for Highway Safety (“IIHS”) naming the Toyota Tundra and the Toyota Highlander as
6 their “Top Safety Picks.” Toyota did not disclose at the time the defects and design flaws with
7 their vehicles that could lead to SUA.

8 85. Toyota was aware that the defect with certain vehicles posed a potentially dire
9 safety risk to Plaintiffs and members of the Class. Rather than notify consumers of the defect and
10 attendant safety risk, Toyota opted to conceal the existence of the defect for an unreasonable
11 period of time, even after being contacted by consumers who experienced the problem. Toyota
12 was in the exclusive possession of this information, which was material to Plaintiffs and Class
13 members, and Toyota had a duty, under all circumstances, to disclose the defect and associated
14 safety hazards to Plaintiffs and Class members.

15 86. Instead of warning consumers that Toyota vehicles may experience an SUA event
16 and providing instructions in the event an SUA occurred, Toyota vehicle owners, like Plaintiffs,
17 were provided a Warranty and Maintenance Guide which states, *inter alia*:

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

21 **(a). Toyota’s History of Exerting Undue Influence To Conceal Material Facts
22 Concerning Deadly Design Flaws.**

22 87. According to Reuters, Christopher Tinto, vice president of regulatory affairs in
23 Toyota’s Washington, D.C. office, left NHTSA in 1994 and joined Toyota. Christopher Santucci,
24 who now works for Tinto, did the same in 2003. These two individuals may have exerted
25 influence over the former regulatory agency they worked in to stall or otherwise misdirect
26
27

1 investigation into complaints to conceal material defects.

2 88. From 2003 to 2009, NHTSA opened eight investigations of SUA involving Toyota
3 vehicles. Of those, three resulted in floor mat recalls and five were closed. According to court
4 papers and other documents, Tinto and Santucci worked with NHTSA on Toyota's responses to
5 the consumer complaints.

6 89. The first investigation of SUA events involved 2002 and 2003 Toyota Camrys and
7 Solara, and a lawsuit filed on behalf of a Michigan woman who was killed in an April 2008
8 accident. The lawsuit blamed a defect in the electronic throttle control system for the fatal
9 accident. According to Reuters, Santucci testified in a deposition for that lawsuit that Toyota and
10 NHTSA discussed limiting an investigation of SUA to incidents lasting less than a second.

11 90. The Reuters report went on to say that twenty days after starting its probe – and
12 after talking with Tinto – NHTSA decided not to investigate “longer duration incidents involving
13 uncontrollable acceleration where brake pedal application allegedly had no effect.” The decision
14 was made to limit the cases to eliminate instances in which a driver may have used the wrong
15 pedal.

16 91. The second NHTSA investigation, which occurred in 2005, was prompted by a
17 consumer complaint of two instances of sudden acceleration in a 2002 Camry, one of which
18 involved a crash. The vehicle owner who filed the petition with NHTSA also cited eight
19 complaints from other drivers about similar episodes with other Toyota vehicles. According to
20 Reuters, Toyota itself said dealer representatives investigated 59 of 100 vehicles whose owners
21 complained.

22 92. In November of that year, Tinto wrote to NHTSA that no evidence of a system or
23 component failure was found and the vehicles were operating as designed. Based on the
24 representations and statement of Tinto, NHTSA ended that probe in January, 2006, citing lack of
25 evidence of a problem and the agency's need to allocate “limited resources” to other
26
27

1 investigations.

2 93. The third case, which started with a consumer complaint made in August, 2006,
3 again involved the Camry, model years 2002 to 2006. The Camry owner who made the complaint
4 to NHTSA blamed the throttle actuator or controller. According to Reuters, NHTSA also noted
5 3,546 cases where Toyota had replaced throttle actuators under warranty terms. Tinto wrote to the
6 agency that Toyota had not found a defect with the throttle actuator, but did find evidence that
7 returned actuators had corroded due to water intrusion. According to Tinto, intrusion was usually
8 caused by drivers going through a flooded road or similar circumstances. NHTSA decided not to
9 pursue the probe, saying it was “not warranted.”

10 94. The final investigation, in 2008, involved 2006-2007 Toyota Tacoma pickup
11 trucks. According to Reuters, the consumer who made the initial complaint reported two
12 incidents of unintended acceleration in his 2006 Tacoma and pointed to 32 similar complaints in
13 the NHTSA database. A memo from Tinto also said that Toyota had received similar complaints
14 involving more than 400 Tacomas, model years 2004 to 2009. Of those reports, 49 involved
15 crashes.

16 95. Reuters discovered that Tinto wrote a letter to NHTSA stating that he felt the
17 complaints didn’t warrant NHTSA investigation and that he believed that media attention played a
18 major role in the filing of these complaints. NHTSA closed that investigation in August, 2008,
19 saying it was unable to find any underlying cause for the issue.

20 96. Toyota continues to take actions to “shut-down” any material disclosures that its
21 electronic accelerator system is defective, as revealed in an *Associated Press* article published in
22 *The San Diego Union-Tribune*, on July 11, 2010, entitled “A ‘startling discovery’ leads to fallout
23 for school:”

24 **CARBONDALE, Ill – It’s the kind of publicity any university might dream about: An**
25 **instructor uncovers a possible flaw that’s causing some of the world’s most popular**
26 **cars to accelerate suddenly. His ground breaking work attracts interest from**
27 **Congress and reporters worldwide.**

1 **But as Southern Illinois University’s David Gilbert sought to show that electronics**
2 **might be to blame for the problem in Toyotas, the world’s largest automaker tried to**
3 **cast doubt on his findings. One Toyota employee even questioned whether he should**
4 **be employed by the school, which has long been a recipient of company donations.**

5 Electronic messages obtained by The Associated Press show the automaker grew
6 increasingly frustrated with Gilbert’s work and made its displeasure clear to his bosses at
7 the 20,000-student school. “It did kind of catch us off-guard,” university spokesman Rod
8 Sievers said.

9 So did the fallout. Two Toyota employees quickly resigned from an advisory board of the
10 school’s auto-technology program and the company withdrew offers to fund two spring-
11 break internships.

12 **“I didn’t really set out to take on Toyota. I set out to tell the truth, and I felt very**
13 **strongly about that,” said Gilbert, who was among the first to suggest that**
14 **electronics, not sticky gas pedals or badly designed floor mats, caused the**
15 **acceleration that required the Japanese automaker to recall millions of vehicles.**

16 Toyota insists its relationship with the school remains “strong,” and company officials say
17 they have no plans to stop contributing to SIU. They also say the two Toyota
18 representatives who stepped down from the advisory board did so merely to avoid any
19 appearance that the company was exerting influence over Gilbert’s testimony.

20 Driven by his own curiosity, **Gilbert in January found he could manipulate the**
21 **electronics in a Toyota Avalon to re-create the acceleration without triggering any**
22 **trouble codes in the vehicle’s computer. Such codes send the vehicle’s computer into**
23 **a fail-safe mode that allows the brake to override the gas.**

24 **Gilbert said he reported his “startling discovery” to Toyota, and the automaker**
25 **“listened attentively.” But Gilbert said he never heard back from the company,**
26 **which has steadfastly maintained the problems were mechanical, not electronic.**

27 **A short time later, Mark Thompson – identifying himself as an SIU alumnus and,**
28 **without elaboration, a Toyota Motor Sales employee – voiced in an e-mail to the**
29 **university’s then-chancellor, Sam Goldman, his “great concern and disappointment”**
30 **about Gilbert. Thompson said he was “deeply disturbed” by what he called Gilbert’s**
31 **false accusations about the automaker.**

32 Thompson reminded Goldman that he and Toyota regularly contributed to the university –
33 including a \$100,000 check to the auto-tech program in late 2008 – and “due to the
34 outstanding reputation your automotive technology program has, we donate much more
35 than money,” including cars. [Emphasis added].

36 97. Likewise, as reported in the *Los Angeles Times* on July 28, 2010, in an article
37 entitled “Toyota appears to do an about-face on reliability of black boxes in its vehicles;
38 *The automaker previously said the devices’ data could not be relied upon to determine the*

1 *cause of accidents, but is now citing the readings to suggest that driver error is causing*
2 *sudden acceleration.”*

3 Toyota Motor Corp. has argued for years that the electronic black boxes in its vehicles
4 used unproven technology that could not be relied upon to determine the cause of
5 accidents. Now, facing continued claims that its vehicles are defective, Toyota appears to
6 have done an about-face. The Japanese automaker has been citing data from black boxes
7 in Toyota and Lexus vehicles to suggest that driver error, rather than mechanical or
8 electronic defects, is causing sudden acceleration. In court cases, regulatory filings and
9 dealings with customers, Toyota has for years branded the devices – called event data
10 recorders, or EDRs – as unreliable. It has also said the tools used to read the reports are
11 prototypes. “It sounds duplicitious when all along Toyota has been saying this is
12 unreliable, and now they are using it as their defense and they are not releasing the data to
13 the public,” said Henry Jasney, senior counsel at Advocates for Highway and Auto Safety,
14 a Washington, D.C., group. “Until there is full disclosure of all the information in all the
15 accidents, we can’t be sure what the data is telling us.”

16 The devices, introduced about a decade ago, record data such as speed, braking and gas
17 pedal position, and are part of the electronics that control airbags. Toyota spokesman
18 Mike Michels said the automaker’s position had evolved as EDRs improved over time.
19 “The technology in EDRs has been developing over many years,” Michels said. “I’d say if
20 we were asked today whether we had confidence in them, we’d have a different answer.”
21 This spring, amid widening concerns about sudden acceleration, Toyota sent teams of
22 technicians around the U.S. to investigate motorist claims. It has reviewed more than
23 20,000 incidents to date, extracting data from black boxes when there was a wreck. This
24 month, Toyota said EDR data in a selected group of those crashes – it declined to reveal
25 how many – showed that drivers had mistakenly stepped on the gas even though they
26 claimed they had hit the brake. “We’re not implying that everything is driver error,”
27 Michels said, noting that floor mat interference and sticking pedals can also cause sudden
28 acceleration. “But in instances where they reported having their foot on the brake pedal,
there is very clear evidence that it is pedal misapplication.”....

2. **FALSE AND MISLEADING STATEMENTS WHICH WERE AND WERE
INTENDED TO BE DISSEMINATED BY INTERSTATE AND FOREIGN
CARRIERS OF MAIL AND WIRE COMMUNICATIONS WITH
KNOWLEDGE OF THEIR FALSITY CONCERNING THE CAUSES OF
SUA (18 U.S.C. §1341 AND 1343)**

98. Driver complaints resulted in at least eight separate investigations into Toyota
vehicles by NHTSA. In response to the complaints and investigations, Toyota issued six minor
recalls to fix various problems related to its acceleration system, but defendants blamed human
error for the problems.

99. Toyota intentionally and falsely denied in documents mailed to NHTSA and

1 reasonably relied upon by dealers, potential consumers and owners that the electronic throttle
2 control system in its vehicles may contribute to a SUA event. In a June 19, 2004, letter to
3 NHTSA, Toyota falsely stated that its ETC system contained a built in redundancy to prevent
4 acceleration and that in the event of sudden acceleration the “vehicle brakes would have restrained
5 vehicle motion.” Defendants have never withdrawn this position, yet the evidence suggests that
6 Toyota vehicles can and do experience SUA and that applications of the brakes have failed to
7 restrain vehicle motion.

8 100. Defendants intentionally and falsely denied in documents mailed to NHTSA and
9 reasonably relief upon by dealers, potential customers and owners that Toyota’s vehicles were
10 subject to SUA. In a November 15, 2005, letter to NHTSA, Toyota falsely denied that its vehicles
11 could ever experience SUA. According to Toyota, SUA cannot occur “without the driver
12 applying the accelerator pedal because of ... several detection systems ...” Defendants have never
13 withdrawn this position, yet the evidence suggests that Toyota vehicles can and do experience
14 sudden unintended acceleration without application of the accelerator pedal.

15 101. In March of 2007, Toyota identified problems with the accelerator pedals in the
16 Tundra pickup. According to the Company, it determined the problem was caused by the material
17 in the accelerators’ friction lever and made a change. Toyota falsely claimed that this was a
18 drivability issue and not a safety issue.

19 102. Similar issues arose with the Toyota Tacoma. Toyota denied that there was any
20 problem with the acceleration system. An April 7, 2008, article in the *Detroit Free Press* entitled
21 “Toyota Pickup Probe Pushed; Sudden Accelerations Claims Hard to Pin Down,” states:

22 Toyota spokesman Bill Kwong says the company has found no problems with the Tacoma
23 that would explain the complaints. “We don’t feel it’s an issue with the vehicle,” he said.
24 Regulators “get sudden acceleration complaints from consumers for various
25 manufacturers. ... and in most cases they have found it’s a misapplication of the pedals by
26 the driver.”

27 103. Toyota further claimed there were no flaws in its trucks’ design and the reports of
28

1 sudden acceleration were “inspired by publicity.” As reported in an article in the *Detroit Free*
2 *Press* on June 10, 2008, entitled: “Toyota Denies Tacoma is Defective; Media Inspired
3 Acceleration Claims, It Says:”

4 Some 431 customers from around the country have reported unintended or sudden
5 acceleration in their Toyota Tacoma pickups, resulting in 51 crashes and 12 injuries, but
6 the automaker said there are no flaws in the trucks and that many reports were “**inspired
by publicity.**” [Emphasis added].

7 104. Toyota went on to blame “extensive media coverage” for spurring additional
8 reports of problems with Toyota which would explain why no other pickup has similar
9 complaints:

10 Toyota believes that it is likely that many of the consumer complaints about the general
11 issue of unwanted acceleration ... **as well as many of the complaints about this subject
that have been received by Toyota,** were inspired by publicity,” Toyota said in a letter to
12 the NHTSA released Thursday. But even taking them at face value, it is clear that the
13 majority of the complaints are related to *minor drivability issues and are not indicative of
a safety-related defect.* * * * Toyota spokesman Bill Kwong said tests by the automaker
14 and the NHTSA revealed no problems that would explain the complaints. He said the
15 problems were not as prevalent as the number of complaints suggested, saying the NHTSA
16 asked for any cases where engine idle speed increased. “We remain confident in the safety
17 of the vehicles,” Kwong said. [Emphasis added].

18 105. In December, 2008, a similar issue arose in Europe in the right-hand drive versions
19 of Toyota’s Aygo and Yaris models. After an investigation, Toyota allegedly found that
20 condensation from heaters caused increased friction in the accelerator pedal, making it stick. In
21 mid-August 2009, Toyota made a design change in its European cars which lengthened the arm of
22 the friction lever and changed its materials on all vehicles being produced in Europe. Despite the
23 fact that the same material used in manufacturing of gas pedals in Europe -- the material that
24 allegedly caused the sudden acceleration problems in Europe – was the same material used in the
25 United States, Toyota did not make the change to vehicles sold in the United States.

26 106. On April 23, 2009, *Westword* published an article entitled “The Prius can take
27 owners on a wild ride.” The article discussed several incidents involving situations where Prius
28 drivers experienced SUA. When asked for a response, Toyota denied any problems with its

1 accelerators:

2 Toyota responded to the acceleration problem in 2007 by recalling “*faulty floor mats*” that
3 the company said could cause the gas pedal to stick. Another explanation from Toyota is
4 *simple driver error*. “You get these customers that say, ‘I stood on the brake with all my
5 might and the car just kept on accelerating.’ **They’re not stepping on the brake,**” says
6 corporate Toyota spokesman Bill Kwong. “People are so under stress right now, people
7 have so much on their minds. With pagers and cell phones and IM, people are just so busy
8 with kids and family and boyfriends and girlfriends. So you’re driving along, and the next
9 thing you know, you’re two miles down the road and you don’t remember driving, because
10 you’re thinking about something else.” [Emphasis added].

11 107. On September 14, 2009, Toyota issued a press released entitled “Lexus ES 350
12 Accident Investigation,” which stated *inter alia*:

13 On August 28th, 2009, California Highway Patrol Officer Mark Saylor and three members
14 of his family tragically lost their lives on a highway near San Diego California, while
15 driving a 2009 ES350 loaned to them by a local Lexus dealer. Our deepest sympathies go
16 out to the friends and family of Mark, Cleofe, Mahala, and Cleofe’s brother Chris
17 Lastrella. Preliminary information from law enforcement investigators indicates that **the**
18 **cause may have been an all-weather floor mat** from a different Lexus model which, if
19 installed incorrectly in the ES350, could cause it to interfere with the accelerator pedal.

20 All-weather floor mats are installed by dealers or customers as an accessory item.
21 Driver’s floor mat interference with the accelerator pedal is possible in any vehicle make
22 with any combination of floor mats when the floor mat is not properly secured or if it is
23 not the factory designed floor mat for the vehicle.

24 Toyota Motor Sales, USA, Inc. takes public safety very seriously and will fully cooperate
25 with any investigation. We believe our vehicles to be among the safest on the road today.

26 **We are instructing all of our Lexus and Toyota dealers** to immediately inspect their
27 new, used, and loaner fleet vehicles and we urge all other automakers, dealers, vehicle
28 owners, and the independent service and car wash industries to assure that any floor mat,
whether factory or aftermarket, is correct for the vehicle and properly installed and secured
[Emphasis added].

108. In a press release issued after the September 29, 2009, recall, Toyota unequivocally
and falsely stated “no defect exists in vehicles in which the driver’s floor mat is compatible with
the vehicle and properly secured.” Toyota repeated such assurances in subsequent months, stating
that the faulty floor mats were the only cause of SUA in Toyota vehicles.

109. On November 2, 2009, Robert S. Carter, Group Vice President and Toyota
Division General Manager of Toyota USA appeared on a conference call with the media at

1 Thomson Reuters Autos Summit where he unequivocally denied all problems with Toyota
2 vehicles, claiming that all incidents of sudden unintended acceleration could be traced to floor
3 mats and denying any other problems with Toyota vehicles:

4 [CARTER]: *There has been speculation and theories that there are some concerns with*
5 *our fuel delivery systems, our braking systems, our throttle systems. I will tell you there*
is absolutely no evidence to support any of that.

6 In fact, last week NHTSA just closed another investigation of a vehicle that was looked at,
7 and again they concluded that the source was an incompatible floor mat or a floor mat that
8 was not attached properly. So our position is this. Until we thoroughly review this and
work with NHTSA, is to tell consumers that this potential exists; if there is any concern,
remove the floor mat.

9 At the same time, if it is a properly designed floor mat for the vehicle and it is attached on
10 the hooks that come from the factory, there is no concern, there is no evidence of any
accelerator pedal interference. If consumers would like to keep the floor mat installed, we
11 are suggesting four things. One, make sure it is a compatible mat. Two, make sure that it
is hooked properly to the floor. Three, that floormats are designed to fit in the car. Don't
12 reverse the floormat and expose the rubber side. And then the fourth is, in many inclement
areas such as Detroit, some consumers will keep their carpet and floormats in their car and
13 place a rubber mat on top and stack the mats. We highly recommend against that. * * *

14 [MEDIA]: But at the moment, though, as this moves to recall, I guess what you said will
happen. *The locus is just the floormat, floormat design, nothing beyond that?*

15 [CARTER]: *Absolutely. Absolutely. There is no evidence that goes beyond that.*
16 [Emphasis added].

17 110. On November 2, 2009, Toyota issued a press release entitled "Toyota Begins
18 Interim Notification to Owners Regarding Future Voluntary Safety Recall Related to Floor Mats,"
which states in part:

19 Toyota Motor Sales (TMS), U.S.A., Inc., today announced that it has begun mailing letters
20 to owners of certain Toyota and Lexus models regarding the potential for an unsecured or
incompatible driver's floor mat to interfere with the accelerator pedal and cause it to get
21 stuck in the wide-open position.

22 The letter, in compliance with National Traffic and Motor Vehicle Safety Act and
23 reviewed by the [NHTSA] also confirms that **no defect exists in vehicles in which the
driver's floor mat is compatible with the vehicle and properly secured.** * * *

24 This is the sixth time in the past six years that NHTSA has undertaken such an exhaustive
25 review of allegations of unintended acceleration on Toyota and Lexus vehicles and the
sixth time the agency has found **no vehicle based cause for the unwanted acceleration
26 allegations. The question of unintended acceleration involving Toyota and Lexus**

1 **vehicles has been repeatedly and thoroughly investigated by NHTSA, without any**
2 **finding of defect other than the risk from an unsecured or incompatible driver's**
3 **floor mat,** said Bob Daly, TMS senior vice president. * * *

4 111. In a highly unusual move, NHTSA publicly reprimanded Toyota for statements
5 made by the Company in its October 30th notification letter to owners. On November 4, 2009, an
6 *Associated Press* article entitled "Govt Criticizes Toyota Press Release on Floor Mats," states in
7 part:

8 **Toyota Motor Corp. released misleading information about an investigation into**
9 **problems with stuck gas pedals** that led to a massive Toyota recall, the government said
10 Wednesday, stressing the issue is still under review by federal safety regulators. The
11 National Highway Traffic Safety Administration said it was still investigating the case and
12 meeting with Toyota to hear about the company's plan to redesign the vehicles and fix
13 "this very dangerous problem." * * * Toyota said in a statement on Monday that NHTSA
14 had confirmed "that *no defect exists* in vehicles in which the driver's floor mat is
15 compatible with the vehicle and properly secured."

16 **But NHTSA said that was inaccurate and the government was investigating possible**
17 **causes of the acceleration problem. Removing the floor mats was "simply an interim**
18 **measure" and "does not correct the underlying defect in the vehicles involving the**
19 **potential for entrapment of the accelerator by floor mats,** which is related to
20 accelerator and floor pan design." "The matter is not closed until Toyota has
21 effectively addressed the defect by providing a suitable vehicle based solution,"
22 NHTSA said in the statement, which the department said was issued *to correct*
23 *"inaccurate and misleading information" from the automaker.* * * *

24 112. On November 25, 2009, without admitting fault or any design defects, Toyota
25 issued a press release entitled "Toyota Announces Details of Remedy to Address Potential
26 Accelerator Pedal Entrapment," which states in part:

27 ... In addition, as a separate measure independent of the vehicle based remedy, Toyota **will**
28 **install a brake override system onto the involved [vehicles] as an extra measure of**
29 **confidence. This system cuts engine power in case of simultaneous application of**
30 **both the accelerator and brake pedals.** Toyota is in the process of completing
31 development of these actions for the ES 350, Camry, and Avalon and will start notifying
32 owners of the involved vehicles via first-class mail by the end of the year. The remedy
33 process regarding the other five models will occur on a rolling schedule during 2010.
34 [Emphasis added].

35 113. The *International Herald Tribune* reported that, on November 25, 2009, Toyota
36 spokesman Irving Miller stated on a conference call that, "We are very confident that we have
37 addressed this issue [referring to the sudden unintended acceleration problems]. Mr. Miller went
38

1 on to say, “We can come up with **no indication whatsoever that there is a throttle or electronic**
2 **control system malfunction.**”

3 114. On November 29, 2009, *The New York Times* reported that Irving Miller stated that
4 Toyota would begin shortening their vehicles’ existing gas pedals by about three-quarters of an
5 inch and would start equipping its vehicles with smart gas pedals, even though smart gas pedals
6 have been used for years by European automakers like BMW, Audi and Volkswagen. Irving
7 Miller, Toyota’s spokesman stated that Toyota was confident that these steps would solve the
8 SUA problem. According to Mr. Miller, “We have come to the conclusion this is pedal
9 misapplication or pedal entrapment.” Mr. Miller went on to say, “We continue to find no reason
10 to believe that there is a problem with the electronic control systems.”

11 115. On December 9, 2009, Mr. Miller submitted a letter to the *Los Angeles Times*
12 vigorously challenging a December 5, 2009 editorial that questioned Toyota’s ETCS and ETCS-i
13 system. The *Los Angeles Times* noted that incidents of sudden unintended acceleration grew
14 exponentially after the introduction of Toyota’s electronic throttle control system. Mr. Miller’s
15 letter emphatically denied that there was any problem with the electronic throttle control system.

16 116. On December 23, 2009, the *Los Angeles Times* released another story accusing
17 Toyota of hiding the defects and design flaws in their vehicles for years. According to the *Los*
18 *Angeles Times*, Toyota destroyed documents and hid testing results from American consumers, as
19 well as paying cash settlements to people who say their vehicles have raced out of control and
20 caused serious accidents. According to the news story, a computerized search of NHTSA records
21 had issued eight previous recalls related to **SUA** – more than any other automaker. The *Los*
22 *Angeles Times* news report found that Toyota had been allowing sudden acceleration problems to
23 fester for nearly a decade, since the introduction of the electronic throttle controls system in the
24 early 2000's.

25 117. Mr. Miller, Toyota’s spokesman, responded with a press release entitled “Setting
26
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1 the Record Straight.” The press release stated:

2 Today the *Los Angeles Times* published an article that wrongly and unfairly attacks
3 Toyota’s integrity and reputation. While outraged by the Times’ attack, we were not
4 totally surprised. The tone of the article was foreshadowed by the phrasing of a lengthy
5 list of detailed questions that the Times emailed to us recently. The questions were
6 couched in accusatory terms. Despite the tone, we answered each of the many questions
7 and sent them to the Times. Needless to say, we were disappointed by the article and
8 much of what was used [sic] was distorted. Toyota has a well-earned reputation for
9 integrity and we will vigorously defend it.

10 118. On December 26, 2009, four people were killed in an accident involving a Toyota
11 Avalon. At the time a problem with the accelerator pedal was the suspected cause for the crash.
12 However, it was determined that the floor mats could not have caused the accident as the mats
13 were in the trunk at the time of the crash. This caused Toyota to change it’s story. On January 21,
14 2010, Toyota released a statement saying,

15 Toyota has investigated *isolated reports* of sticking accelerator pedal mechanisms in
16 certain vehicles without the presence of floor mats. *There is a possibility that **certain***
17 **accelerator pedal mechanisms may, in rare instances, mechanically stick in a**
18 **partially depressed position or return slowly to the idle position.** [Emphasis added].

19 A vehicle with the throttle stuck in a partially depressed position can lead to accidents which can
20 kill or maim not only the drivers and passengers of the defective vehicles, but others whom the
21 vehicles might run into. This is a serious design flaw and defect that poses serious risk to not only
22 consumers but also the public as a whole worldwide.

23 119. A January 25, 2010 *USA Today* article revealed that Toyota knew that there were
24 problems with accelerator-pedal assemblies from one of its Canadian suppliers since 2009 but
25 decided it did not warrant a recall at that time. However, Toyota announced the January 2010
26 recall because the defect trend had picked up. John Hanson, Toyota’s U.S. safety spokesperson
27 stated, “The quickness that this all came together is one reason why I don’t have numbers of
28 complaints.” Mr. Hanson further stated, “And why we don’t have a fix.”

120. During a Congressional hearing on January 27, 2010, Toyota officials stated that
they first learned of “sticking pedals” in England and Ireland in the spring of 2009. But Toyota

1 acknowledged that it had received reports in England and Ireland as early as December 2008.

2 **C. PATTERN OF RACKETEERING INJURY.**

3 121. As a result, and by reason of the foregoing pattern of racketeering activity, false
4 statements of material facts and omissions of material facts, the Plaintiffs and the proposed Class
5 members have sustained injury to their property, to wit:

6 A. Toyota was in the exclusive possession of the information set forth *supra*, which
7 was material to Plaintiffs and Class members and Toyota had a duty, under all the
8 circumstances, to disclose the defects and associated safety hazards to Plaintiffs
9 and prospective Class members;

10 B. Plaintiffs and prospective Class members reasonably expected that the subject
11 vehicles would not contain a serious safety defect that could, *inter alia*, result in
12 putting the occupants at risk of serious bodily injury or death;

13 C. As a result of the lack of safety systems, there is no mechanical or electronic
14 failsafe mechanism to allow Plaintiffs and the prospective Class members to stop
15 their Toyota recalled vehicles in the event the computerized “drive-by-wire”
16 acceleration systems malfunction and engage in uncontrolled acceleration, putting
17 the occupants at risk of serious bodily injury or death;

18 D. As a result of the defect plaguing the Toyota recalled vehicles, Plaintiffs and the
19 prospective Class members overpaid for their vehicles because their value is and
20 will remain diminished;

21 E. Given the widespread publicity associated with the recall, Plaintiffs and other
22 prospective Class members who purchased a recalled Toyota vehicle have suffered
23 injury in fact or otherwise been damaged because the resale and fair market values
24 of the recalled Toyota vehicles are and will remain substantially depreciated;

25 F. Prospective Class members who leased a recalled Toyota vehicle have been injured
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1 because they must continue to pay for leasing the subject unsafe vehicle or pay a
2 penalty to break the lease prematurely.

3 122. Plaintiffs and the prospective Class members are therefore entitled to recover treble
4 damages and the costs of their suit, including reasonable attorney fees, pursuant to 18 U.S.C.
5 §1964(c).

6 **SECOND CAUSE OF ACTION**
7 **(Unfair Competition Law: Bus. & Prof. Code §17200 et seq.)**

8 123. Plaintiffs hereby incorporate by reference the above paragraphs as if those
9 allegations were fully set out herein.

10 124. The Unfair Competition Law, Business and Professions Code §17200, provides
11 that “unfair competition shall mean and include any unlawful unfair or fraudulent business act or
12 practice and unfair, deceptive, untrue or misleading advertising and any act prohibited by” the
13 False Advertising Act, Business and Professions Code §17500. The Unfair Competition Law
14 provides that a Court may order injunctive relief and restitution as remedies for any violation of
15 the Act.

16 125. Plaintiffs may pursue a representative claim on behalf of others if Plaintiffs meet
17 the standing requirements of California Business and Professions Code §§17204 and complies
18 with Section 382 of the Code of Civil Procedure.

19 126. At all times herein, Defendants have engaged in unfair and unlawful business
20 practices. Defendants’ business practices include, without limitation:

- 21 a. Selling to Plaintiffs and the Class vehicles which contain defects or design flaws
22 which make them inherently more dangerous than other similar vehicles;
- 23 b. Failing to disclose to Plaintiffs and the Class that the vehicles sold to such
24 consumers contain a defect or design flaw which makes them inherently more
25 dangerous than other similar vehicles;

- 1 c. Failing to remedy the defects or design flaws which make the Defendants' vehicles
- 2 inherently more dangerous than other similar vehicles;
- 3 d. Failing to manufacture, distribute, and sell a product which would perform in a
- 4 safe manner when used in a reasonably foreseeable manner by a reasonable
- 5 consumer;
- 6 e. Violating the other statutes as alleged in this complaint.

7 127. The business acts and practices of Defendants, as herein above described,
8 constitute an unlawful business practice in violation of the Unfair Competition Law for the
9 reasons set forth below, without limitation:

- 10 a. The acts and practices violate California Civil Code §§ 1709 and 1710 and are
- 11 therefore unlawful;
- 12 b. The acts and practices violate California Civil Code §1750 et seq., and are
- 13 therefore unlawful.

14 128. The business acts and practices of Defendants as herein described also constitute
15 an unfair business practice in violation of the Unfair Competition Law in that such acts and
16 practices are substantially injurious to consumers and offensive to established California public
17 policy.

18 129. The business acts and practices of Defendants as herein described constitute a
19 fraudulent business practice in violation of the Unfair Competition Law in that such acts and
20 practices are likely to deceive consumers as to their legal rights and obligations with respect to the
21 purchase of Toyota's vehicles.

22 130. Defendants' conduct has further injured Plaintiffs and the Class by impairing
23 competition within the automotive vehicles markets and preventing Plaintiffs and the Class from
24 making fully informed decisions about whether or not to purchase or lease Toyota vehicles and/or
25 the price to be paid to purchase or lease Toyota vehicles.

1 131. Plaintiffs and the Class have suffered harm as a proximate result of the wrongful
2 conduct of the Defendants alleged herein, and therefore bring this claim for restitution and
3 disgorgement. Plaintiffs and the Class have suffered injury in fact and have suffered an economic
4 loss by, *inter alia*, (1) purchasing an inferior product whose nature and characteristics render it of
5 a lesser value than represented, (2) incurring costs for diminished resale value of the products
6 purchased, (3) purchasing a product that poses a danger to the health and safety of not only the
7 purchaser or leaser but also other motorists and pedestrians, and (4) incurring increased costs to
8 repair the products purchased. Named Plaintiffs are persons who have suffered injury in fact and
9 have lost money as a result of such unfair competition.

10 132. In purchasing the vehicles from Defendants, Plaintiffs and the Class reasonably
11 believed and/or relied on the material false statements and/or omissions of material facts provided
12 by Defendants with respect to the safety and quality of the vehicles manufactured and sold by
13 Defendants. Defendants induced Plaintiffs and the Class to purchase or lease Toyota vehicles
14 through the acts and omissions alleged herein.

15 133. Unless restrained and enjoined, Defendants will continue in the acts and practices
16 alleged above. Accordingly, the Court must issue an injunction restraining and enjoining
17 Defendants from advertising, selling, or otherwise disseminating false and misleading information
18 about their products or failing to disclose relevant material information.

19 134. Plaintiffs further request an order restoring to Plaintiffs any money or property
20 which may have been lost by means of Defendants' unfair and deceptive business practices.

21 135. Additionally, pursuant to California Code of Civil Procedure §1021.5, Plaintiffs
22 are entitled to recover their reasonable attorneys' fees, costs and expenses incurred in bringing this
23 action.

24 **THIRD CAUSE OF ACTION**
25 **(False Advertising Act: Bus. & Prof. Code §17500 et seq.)**

26 136. Plaintiffs hereby incorporate by reference the above paragraphs as if those
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1 allegations were fully set out herein.

2 137. Business and Professions Code §17500 et seq., the False Advertising Act, prohibits
3 any person, firm, corporation or association, or any employee thereof, with the intent to dispose of
4 real or personal property, from performing services or inducing the public to enter into any
5 obligation relating to property or services, disseminating an untrue or misleading statement
6 concerning such property or services which the Defendants knew, or in the exercise of reasonable
7 care should have known, was untrue or misleading. A Court may order injunctive relief and
8 restitution to affected members as remedies for any violations of Business and Professions Code
9 §17500 as part of the Unfair Competition Law.

10 138. At all times herein, Defendants have engaged in disseminating false and
11 misleading communications which misrepresent the characteristics, nature, quality and safety of
12 the vehicles being sold to Plaintiffs and the Class and have failed to disclose the true quality and
13 defects of these products. Defendants' business practices include, without limitation:

- 14 a. Selling to Plaintiffs and the Class vehicles which contain defects or design flaws
15 which make them inherently more dangerous than other similar vehicles;
- 16 b. Failing to disclose to Plaintiffs and the Class that the vehicles sold to such
17 consumers contain a defect or design flaw which makes them inherently more
18 dangerous than other similar vehicles;
- 19 c. Failing to remedy the defects or design flaws which make the Defendants' vehicles
20 inherently more dangerous than other similar vehicles;
- 21 d. Failing to manufacture, distribute, and sell a product which would perform in a
22 safe manner when used in a reasonably foreseeable manner by a reasonable
23 customer;
- 24 e. Violating the other statutes and common law causes of action as alleged in this
25 complaint.

1 139. Defendants engaged in the advertising and the failure to disclose the defects and
2 design flaws in its products herein alleged with the intent to induce Plaintiffs and all class
3 members to purchase and/or lease Defendants' products.

4 140. Defendants caused to be made or disseminated throughout California and the
5 world, including Germany, through advertising, marketing and other publications, statements that
6 are untrue or misleading, and which were known, or which by the exercise of reasonable care
7 should have been known to Defendants to be untrue, misleading to consumers and Plaintiffs and
8 members of the Class. Defendants' advertising was untrue or misleading and likely to deceive the
9 public in that the true characteristics and nature of the vehicles sold by Toyota were not as
10 advertised.

11 141. In purchasing the vehicles from Defendants, Plaintiffs reasonably believed and/or
12 relied on the material false and/or misleading information and omission of material facts provided
13 by Defendants with respect to the quality and safety of the vehicles being sold. Defendants
14 induced Plaintiffs and the Class to purchase or lease Toyota products through the acts and
15 omissions alleged herein.

16 142. In making and disseminating the statements herein alleged, Defendants knew, or by
17 the exercise of reasonable care should have known, that the statements were and are untrue or
18 misleading and so acted in violation of California Business and Professions Code §17500.
19 Moreover, Plaintiffs were exposed to Defendants' advertising and its false and misleading
20 statements and were affected by the advertising in that they believed it to be true and/or relied on
21 it when making purchasing decisions.

22 143. The business acts and practices of Defendants herein described also constitute an
23 unfair business practice in violation of the Unfair Competition Law in that such acts and practices
24 are substantially injurious to consumers and offensive to established California public policy.

25 144. In addition, the business acts and practices of Defendants as herein described
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1 constitute a fraudulent business practice in violation of the Unfair Competition Law in that such
2 acts and practices are likely to deceive consumers as to their legal rights and obligations with
3 respect to the purchase of vehicles from Toyota.

4 145. Plaintiffs and the Class have suffered injury in fact and have suffered an economic
5 loss by, *inter alia*, (1) purchasing an inferior product whose nature and characteristics render it of
6 a lesser value than represented, (2) incurring costs for diminished resale value of the products
7 purchased, (3) purchasing a product that poses a danger to the health and safety of not only the
8 purchaser but also occupants, other motorists and pedestrians, and (4) incurring increased costs to
9 repair the products purchased.

10 146. Accordingly, the Court must issue an injunction restraining and enjoining
11 defendants from sending or transmitting false and misleading advertising to individuals or entities
12 concerning the purported safety and quality of vehicles from Defendants.

13 147. Plaintiffs further request an order restoring to Plaintiffs any money or property
14 which may have been lost by means of Defendants' false advertising.

15 148. Additionally, pursuant to California Code of Civil Procedure §1021.5, Plaintiffs
16 are entitled to recover their reasonable attorneys' fees, costs and expenses incurred in bringing this
17 action.

18 **FOURTH CAUSE OF ACTION**
19 **(Consumer Legal Remedy Act: Civil Code §1750, et seq.)**

20 149. Plaintiffs hereby incorporate by reference the above paragraphs as if those
21 allegations were fully set out herein.

22 150. The Consumer Legal Remedies Act, California Civil Code §1750 et seq.
23 (Hereinafter "CLRA"), was designed to protect consumers from unfair and deceptive business
24 practices. To this end, the CLRA sets forth a list of unfair and deceptive acts and practices that
25 are specifically prohibited in any transaction intended to result in the sale or lease of goods or
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1 services to a consumer.

2 151. Defendants are “persons” within the meaning of Civil Code §§761(c) and 1770,
3 and sell “goods” within the meaning of Civil Code §§1761(b) and 1770.

4 152. Plaintiffs are consumers within the meaning of Civil Code §1761(d).

5 153. The subject vehicles constitute “goods” under California Civil Code §1761(a).

6 154. Plaintiffs’ purchase or lease of vehicles from Defendants constitutes a transaction
7 within the meaning of Civil Code §§1761(e) and 1770.

8 155. Civil Code §1770(a) provides that “[t]he following unfair methods of competition
9 and unfair or deceptive acts or practices undertaken by any person in a transaction intended to
10 result or which results in the sale or lease of goods or services to any consumer are unlawful,”
11 including:

12 a. In violation of §1770(a)(2) of the CLRA, Toyota “misrepresent[ed] the source,
13 sponsorship, approval, or certification of goods.”

14 b. In violation of §1770(a)(5) of the CLRA, Toyota “represent[ed] that goods have
15 sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities
16 which they do not have.”

17 c. In violation of §1770(a)(7) of the CLRA, Toyota represented that goods are of a
18 particular standard, quality or grade when they are of another.

19 d. In violation of §1770(a)(9) of the CLRA, Toyota advertised goods with the intent
20 not to sell them as advertised.

21 e. In violation of §1770(a)(14) of the CLRA, Toyota represented that the transaction
22 was supplied in accordance with a previous representation when it was not.

23 156. By reason of the acts and practices alleged herein, Defendants have engaged in
24 unfair methods of competition and unfair or deceptive acts or practices in a transaction intended to
25 result or which results in the sale of goods to any customer, in violation of *inter alia*, Civil Code
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1 §§1770(a)(2), (5), (7), (9) and (14).

2 157. Defendants engaged in these unfair and/or deceptive acts and practices with the
3 intent that they result, and which did result, in the sale of the Toyota vehicles to Plaintiffs and
4 members of the Class.

5 158. In purchasing the vehicles from Defendants, Plaintiffs reasonably believed and/or
6 relied on the material false and/or misleading information provided by Defendants with respect to
7 the safety and quality of the Toyota vehicles. Defendants induced Plaintiffs to purchase the
8 vehicles through the acts and omissions alleged herein.

9 159. In engaging in unfair or deceptive conduct in violation of the CLRA, Defendants
10 actively concealed and failed to disclose material facts about the true characteristics and nature of
11 the Toyota vehicles purchased by Plaintiffs.

12 160. As a result of the unfair and deceptive acts and practices of Defendant herein
13 described, Plaintiffs and the Class have suffered damages in an amount to be proven at trial.

14 161. Pursuant to California Civil Code §§1780 and 1781, Plaintiffs and the Class hereby
15 request certification of the Class, damages, injunctive relief, restitution and attorneys' fees, costs
16 and expenses pursuant to California Civil Code §1780(d) and California Code of Civil Procedure
17 §1021.5

18 162. As a direct and proximate result of Defendants' violations of law, Plaintiffs have
19 been injured. Pursuant to the provisions of California Civil Code § 1782, Plaintiffs demand that
20 within thirty (30) days from service of this Complaint, Defendants correct the deceptive practices
21 described in this Complaint, pursuant to California Civil Code §1770. This includes providing
22 notice and full compensation to consumers who have purchased the affected vehicles from
23 Toyota. If Defendants fail to do so, Plaintiffs will amend this Complaint to seek damages
24 pursuant to Civil Code §1782.

25 **FIFTH CAUSE OF ACTION**
26 **(Breach of Implied Warranty)**

1 163. Plaintiffs hereby incorporate by reference the above paragraphs as if those
2 allegations were fully set out herein.

3 164. Defendants impliedly warranted to persons purchasing or leasing their products
4 that the products were what they were represented to be.

5 165. These implied warranties induced the worldwide community in general and the
6 Plaintiffs and other Class members in particular to purchase or lease the products from the
7 Defendants. These implied warranties were both directly and indirectly believed and relied upon
8 by Plaintiffs and Class members and induced them to choose Defendants' product. This reliance
9 was justified by Defendants' skill, expertise, and judgment in the manufacturing, testing, labeling,
10 distribution or sale of such products.

11 166. At the time of the sale or lease, Defendants had knowledge of the purpose for
12 which their products were purchased and impliedly warranted the same to be, in all respects, fit
13 and proper for this purpose.

14 167. Defendants breached their aforesaid warranties in that the products were not fit for
15 the purpose for which they were intended and used; rather Defendants sold to Plaintiffs a product
16 which was not fit for use. The defect in the products existed prior to the delivery of the products
17 to Plaintiffs.

18 168. Plaintiffs and the Class have suffered injury in fact and have suffered an economic
19 loss by, *inter alia*, (1) purchasing an inferior product whose nature and characteristics render it of
20 a lesser value than represented, (2) incurring costs for diminished resale value of the products
21 purchased, (3) purchasing a product that poses a danger to the health and safety of not only the
22 purchaser but also other occupants, motorists and pedestrians and (4) incurring increased costs to
23 repair the products purchased.

24 169. Accordingly, the Court must issue an injunction restraining and enjoining
25 Defendants from sending or transmitting false and misleading advertising to individuals or entities
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1 concerning the purported safety and quality of vehicles from Defendants.

2 **SIXTH CAUSE OF ACTION**
3 **(Breach of Express Warranty)**

4 170. Plaintiffs hereby incorporate by reference the above paragraphs as if those
5 allegations were fully set out herein.

6 171. Defendants expressly warranted to persons purchasing their products that they were
7 what they were represented to be.

8 172. These express warranties induced the community in general and the Plaintiffs and
9 members of the Class in particular to use and purchase Defendants' products. These express
10 warranties were both directly and indirectly believed and relied upon by Plaintiffs and induced
11 Plaintiffs to choose Defendants' products.

12 173. Defendants breached their aforesaid warranties in that their products were not fit
13 for the use and purpose expressly warranted by the Defendants.

14 174. Plaintiffs and the Class have suffered injury in fact and have suffered an economic
15 loss by, *inter alia*, (1) purchasing an inferior product whose nature and characteristics render it of
16 a lesser value than represented, (2) incurring costs for diminished resale value of the products
17 purchased, (3) purchasing a product that poses a danger to the health and safety of not only the
18 purchaser but also other motorists and pedestrians and (4) incurring increased costs to repair the
19 products purchased.

20 175. Accordingly, the Court must issue an injunction restraining and enjoining
21 Defendants from sending or transmitting false and misleading advertising to individuals or entities
22 concerning the purposed safety and quality of vehicles from Defendants.

23 **SEVENTH CAUSE OF ACTION**
24 **(Unjust Enrichment)**

25 176. Plaintiffs hereby incorporate by reference the above paragraphs as if those
26 allegations were fully set out herein.

1 177. As a result of their continuous and systematic misrepresentations and failure to
2 disclose that the vehicles they had manufactured contained serious defects that affected the
3 acceleration and braking of their vehicles, Defendants were able to charge a higher price for their
4 vehicles, which did not match the item's value. Based on these practices, Defendants were
5 unjustly enriched.

6 178. Defendant knew, or should have known of the benefit it was receiving due to their
7 misrepresentations and failure to disclose, and enjoyed the benefit of increased financial gains, to
8 the detriment of Plaintiffs and other Class members, who paid a higher price for a product with a
9 lower value. It would be inequitable and unjust for Defendants to retain these unlawfully obtained
10 profits.

11 179. Plaintiffs seek an order establishing Defendants as constructive trustees of the
12 profits unjustly obtained, plus interest.

13 **EIGHTH CAUSE OF ACTION**
14 **(Negligence)**

15 180. Plaintiffs hereby incorporate by reference the above paragraphs as if those
16 allegations were fully set out herein.

17 181. As the manufacturer and seller of automotive vehicles, Defendants had a duty to
18 Plaintiffs and the Class to act not to sell products that were defective and could result in serious
19 injuries or death to either Plaintiffs or even innocent third parties. Defendants breached that duty
20 by manufacturing and selling products to Plaintiffs and the Class that had serious accelerator
21 problems without disclosing these facts to Plaintiffs and the Class. That breach caused the
22 economic harm, injury and/or damage to Plaintiffs that are herein above set forth.

23 182. As a direct and legal result of this wrongful conduct, Plaintiffs and the Class have
24 been damaged in an amount to be ascertained at the time of trial.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for judgment against the Defendants and each of them as follows:

1. That this Court certify this case as a class action;
2. That this Court find and declare Defendants’ acts and practices as described herein to be unlawful, unfair and fraudulent;
3. For threefold the damages actually sustained and the costs of suit including a reasonable attorney’s fee, pursuant to 18 U.S.C. §1964(c) with interest thereon at the legal rate;
4. For general damages according to proof;
5. For special damages according to proof;
6. For exemplary and punitive damages;
7. For statutory damages;
8. For declaratory relief;
9. For restitution to Plaintiffs;
10. That Plaintiffs be awarded attorney fees and expenses pursuant to California Code of Civil Procedure §1021.5, California Civil Code §1780 and pursuant to any other statute which provides for award of such fees and expenses;
11. That Plaintiffs be awarded prejudgment interest on all sums collected; and
12. Any other and further relief the court may deem proper.

JURY TRIAL DEMAND

Plaintiffs demand a trial by jury of all of the claims asserted in this Complaint so triable.

RESPECTFULLY SUBMITTED this 2nd day of August, 2010

WILLIAM A. COHAN, P.C.

By: *s/ William A. Cohan*
WILLIAM A. COHAN

Attorney for Plaintiffs
MELANIE BERLIER, ELVIRA GESELL and
The Putative Class

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