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UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION

DALE BALDISSERI, on behalf of
himself and all others similarly situated
and the general public,

Plaintiff,

v.

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

and DOES 1 THROUGH 20

Defendants.

Case No. CV 09-9386 GAF(FMOx)
CLASS ACTION
Assigned to Hon. Gary A. Feess
FIRST AMENDED COMPLAINT
DEMAND FOR JURY TRIAL

1 **I. INTRODUCTORY FACTS**

2 1. Toyota’s vehicles have a defective condition that causes uncontrolled
3 acceleration to speeds up to 100 m.p.h and more. The defective condition is deadly.
4 Data compiled by the safety research organization, Safety Research and Strategies,
5 shows that since 2001, Toyota uncontrolled acceleration incidents have accounted for
6 725 crashes, 304 injuries, and 18 fatalities. This summer, an off-duty California
7 Highway Patrol officer and his family were killed when the Toyota-made Lexus he was
8 driving sped out of control and crashed.

9 2. Toyota has known about the uncontrolled acceleration in its vehicles, and
10 the crashes, injuries, and deaths since 2001. Since 2002, these incidents have resulted
11 in at least eight investigations into uncontrolled acceleration in Toyota vehicles by the
12 National Highway Traffic Safety Administration (NHTSA).

13 3. Toyota continued to manufacture, sell, advertise, and market the vehicles
14 in which high incidence of uncontrolled acceleration was occurring, without warning
15 buyers about this life-threatening uncontrolled acceleration peril, but instead concealed
16 it.

17 4. Toyota also knew of an important measure against unintended acceleration,
18 “smart pedal” software that overrides the throttle when the brake pedal is pressed. But
19 even though unintended acceleration in Toyota vehicles has been far greater than all
20 other vehicles, Toyota has never installed this software in its vehicles.

21 5. Toyota has had a reputation for safety for decades, and knows people buy
22 its vehicles because of that reputation. Toyota markets and advertises safety. In a
23 national Toyota Camry television commercial Toyota says, “It’s OK to be overprotective.
24 We are.”

25 6. In August, 2009, after a widely reported unintended acceleration crash that
26 killed a California highway patrol officer and his family, Akio Toyoda, president of the
27 Japanese parent corporation, issued a public apology saying, “Customers bought our cars
28 because they thought they were the safest but now we have given them cause for grave

1 concern. I can't begin to express my remorse.” But Toyota’s actions have not matched
2 the words of its president. For years Toyota continued to sell its dangerous vehicles
3 without modification to address the danger, without admitting the defect, and continued
4 to do so even after the president’s statement.

5 7. Finally, after more than eight years of abnormal and unacceptable incidence
6 of unintended acceleration, in September 2009, Toyota admitted there is a defect in its
7 vehicles that causes unintended acceleration. But Toyota limited its admission only to
8 some of its models that have had unintended acceleration and resulting crashes, not all
9 that have had the problem. Also, Toyota claimed the defect “does not exist in vehicles
10 in which the driver’s side floor mat is compatible with the vehicle and properly secured.”

11 8. On October 30, 2009, Toyota began mailing a letter to owners¹ of only some
12 of its models that have experienced high incidence of unintended acceleration, not to
13 owners of all Toyota models that have experienced it. Toyota calls the letter an “Interim
14 Notice.” The letter contains the statement about “compatible, properly secured” floor
15 mats quoted above.

16 9. Even though Toyota has made a limited admission of a defect in a limited
17 number of its models, Toyota continues to manufacture and sell even those models
18 without making the changes it announced in the October 30, 2009 “Interim Notice,” and
19 without installing “smart pedal” software.

20 10. Even though Toyota knows about the high incidence of unintended
21 acceleration in **other** Toyota models, Toyota denies there is any defect in them. Instead,
22 Toyota still continues to manufacture, sell, advertise, and market them, leading buyers
23 to believe they are free of defects. And Toyota is not making any changes in those
24 vehicles to address unintended acceleration, and is not installing “smart pedal” software
25 on those vehicles or any others.

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28 ¹ Many people lease the vehicles rather than own them. When we refer to “owners,” we include lessees.

1 **II. SOME DEFINITIONS**

2 11. In this pleading:

3 a. **“Toyota”** and **“Defendants”** both mean all the defendants, jointly and
4 individually.

5 b. **“2009 Notice Vehicles”** means the Toyota and Lexus vehicles referred to
6 in Toyota’s notice October 30, 2009 “Interim Notice”. They are, according to Toyota’s
7 website: 2007 – 2010 Camry, 2005 – 2010 Avalon, 2004 – 2009 Prius, 2005 – 2010
8 Tacoma, 2007 – 2010 Tundra, 2007 – 2010 ES350, 2006 – 2010 IS250 and IS350.

9 c. **“2002 - 2010 Vehicles”** means all model year 2002 - 2010 Toyota vehicles.
10 (This means all model year 2002 - 2010 vehicles of the Toyota brand, including Prius,
11 and all model year 2002 - 2010 vehicles of the Lexus brand. The “brand” is also called
12 the “badge.” “Vehicles” includes cars, trucks, SUVs, and crossovers.)

13 d. **“Subject Vehicles”** means the 2009 Notice Vehicles together with the 2002
14 - 2010 Vehicles.

15 12. The allegations in this pleading are made without any admission that, as to
16 any particular allegation, plaintiff bears the burden of pleading, proof, or persuasion.
17 plaintiff reserves all rights to plead in the alternative.

18
19 **III. JURISDICTION AND VENUE**

20 13. This Court also has original diversity jurisdiction under 28 U.S.C. § 1332
21 (d)(2), as amended by the Class Action Fairness Act of 2005, because this is a class
22 action in which the matter in controversy exceeds the sum or value of \$5,000,000,
23 exclusive of interest and costs, and:

24 a. the majority of class members are citizens of states different from all
25 defendants;

26 b. and less than one-third of the members of all proposed plaintiff classes in
27 the aggregate, and the primary defendants, are citizens of the state in which the action
28 was originally filed, namely California;

1 c. and all class members are citizens of states and one defendant is a citizen
2 or subject of a foreign state.

3 14. Also, this Court has original federal question jurisdiction under 28 U.S.C.
4 § 1331 because this case arises under the laws of the United States federal law. Rights
5 to relief for plaintiff and the class depend on the resolution of substantial questions of
6 federal law.

7 15. Also, this Court has supplemental jurisdiction over the state law claims.
8 The state law claims are so related to the claims in the action within the original
9 jurisdiction that they form part of the same case or controversy under Article III of the
10 United States Constitution.

11 16. Venue is proper in this district because a substantial part of the events and
12 omissions giving rise to the claims occurred in this district, including Defendants'
13 headquarters in Torrance, Los Angeles County. Venue is proper in this district also
14 because there is personal jurisdiction in this district over all Defendants. Presently and
15 at all relevant times, all Defendants' headquarters have been in Torrance, Los Angeles
16 County.

17 18 **IV. PARTIES**

19 17. Plaintiff, Mr. Baldisseri, is a citizen of California.

20 18. Defendant Toyota Motor Sales U.S.A., Inc., is a California corporation and
21 a citizen of California, with its principal place of business in California.

22 19. Defendant Toyota Motor North America, Inc. is a California corporation
23 and a citizen of California, with its principal place of business in California.

24 20. Defendant Toyota Motor Manufacturing, California, Inc. is a California
25 corporation and a citizen of California, with its principal place of business in California.

26 21. Defendant Toyota Motor Engineering & Manufacturing North America,
27 Inc., is a Kentucky corporation and a citizen of Kentucky, with its principal place of
28

1 business in Kentucky. It is registered² to do business in California.

2 22. The true names of defendants Does 1 through 20 are unknown. Those
3 defendants are sued by said fictitious names, and the complaints will be amended as
4 necessary to obtain relief against defendants Does 1 through 20 when the true names and
5 capacities are ascertained, or when such facts pertaining to liability are ascertained, or
6 as permitted by law or by the Court.

7 23. On information and belief: Each defendant is a wholly owned subsidiary
8 of the Japanese parent company, Toyota Motor Corporation. Each defendant is part of
9 a joint enterprise for profit whose business is to sell and manufacture Toyota and Lexus
10 vehicles, including the vehicles that are the subject of this complaint. Each defendant
11 is under common control and management.

12 24. On information and belief, at all relevant times, directly or indirectly, or
13 through agents or other persons, each defendant was the principal, agent, partner, joint
14 venturer, officer, director, controlling shareholder, subsidiary, affiliate, parent
15 corporation, successor in interest and/or predecessor in interest of some or all of the
16 other defendants, and was engaged with some or all of the other defendants in a joint
17 enterprise for profit, and bore such other relationships to some or all of the other
18 defendants so as to be liable for their conduct with respect to the matters alleged below.
19 On information and belief, it is alleged that each defendant acted pursuant to and within
20 the scope of these relationships, that each defendant knew or should have known about
21 the conduct of all other defendants, and that each defendant authorized, ratified, adopted,
22 approved, controlled, aided and abetted the conduct of all other defendants.

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² “Qualified” is the technically correct term

1 Tacoma pickup from accelerating through the back wall of her garage, destroying
2 a bathroom on the other side. She reports that both her dealer and Toyota's
3 national sales division told her the vehicle had no defects.

4 c. A woman in Medford, Oregon reported three frightening incidents
5 of unintended acceleration, including one with her 15-year-old daughter behind
6 the wheel. She took her 2007 Prius to the dealership. But mechanics and a
7 Toyota field representative told her that they believed the problem lay in the pedal,
8 which was replaced. Not trusting this explanation, she traded in her Prius for a
9 2008 BMW 5-series.

10 d. In October 2009, a man was stopped at a busy Long Beach
11 intersection when he said his 2008 Toyota Tacoma pickup unexpectedly started
12 accelerating, forcing him to stand on the brakes to keep the bucking truck from
13 plowing into oncoming cars. Toyota said the gas pedal design in the truck and
14 more than 4 million other Toyota and Lexus vehicles makes the gas pedal
15 vulnerable to being trapped open by floor mats. But the man said he removed the
16 mats in his truck months earlier on the advice of his Toyota dealer after his truck
17 suddenly accelerated and rear-ended a BMW. He said he will not drive the truck
18 anymore, and does not want anyone else to.

19 e. A woman awoke in an Oklahoma hospital a month after a crash in her
20 2005 Camry. She said the car sped out of control on a freeway, then smashed into
21 an embankment after she swerved it onto an exit ramp, leaving behind long skid
22 marks from attempts to stop the vehicle with her brakes and emergency brake.
23 She reports she sustained permanent memory loss, and her best friend died.

24 f. A Long Beach, California woman, a former science teacher, said she
25 was taken on an 8-mile high-speed ride by her 2007 Prius while she was following
26 her husband in a group bicycle tour in Wisconsin. She said her Prius accelerated
27 from 45 mph to 75 mph on a winding, two-lane highway crowded with 100
28 cyclists. She reported standing on the brakes with both feet and seeing fire from

1 her car.

2 g. A San Dimas emergency room physician said he was driving his
3 Lexus with the cruise control on a Central California on Highway in 2008, not
4 touching the accelerator, when suddenly the vehicle accelerated to 100 mph. He
5 reported that the brakes did not release the cruise control or slow down the
6 vehicle. He said he hasn't used the car since.

7 h. In 2004, NHTSA began a probe into a defect petition filed by a
8 registered nurse who was then director of health services for the Montgomery
9 County, Md., school system. She reported that she had her foot on the brake of her
10 2002 Lexus ES when it took off and hit a tree.

11 i. A Texas man, who has a mechanical engineering degree and spent 15
12 years as an engineer at General Motors, Chrysler and other auto and truck makers
13 reports that in July, 2008, his wife was driving her 2006 Lexus ES 330 with four
14 grandchildren near Houston when it accelerated out of control. To avoid a wreck,
15 she crossed four lanes of traffic before smashing into a masonry sign, totaling the
16 car and deploying the air bags. No one was seriously injured.

17 j. The driver of a 2007 Lexus ES 350 reported that the sedan
18 accelerated into a building, bounced backward, struck another vehicle and ended
19 up on top of a snowbank.

20 k. At least five other lawsuits filed against Toyota in the last few years
21 before 2009 alleged a defect causing unintended acceleration. One, involved a
22 runaway 2007 Toyota Camry that crashed and killed a man near San Jose,
23 California

24 l. Another suit alleges that the two men experienced repeated incidents
25 of unintended acceleration in their vehicles, a 2008 Toyota FJ Cruiser and a 2004
26 Toyota Camry. No allegations of crashes or injury were made. Neither vehicle is
27 included in the current recall.

28 m. The wife of a Torrance, California woman experienced a runaway

1 acceleration incident in 2009, in her 2007 Lexus IS. She traded it for a Buick.

2 28. Owner complaints helped trigger at least eight investigations into sudden
3 acceleration in Toyota and Lexus vehicles by the NHTSA since 2002.³

4 29. The *Times* reports: Toyota first installed electronic throttles in 2002 model
5 year Lexus ES and Camry sedans. Total complaints of sudden acceleration for the Lexus
6 and Camry in the 2002-2004 model years averaged 132 a year, up from an average of 26
7 annually for the 1999-2001 models. The average number of sudden-acceleration
8 complaints involving the Toyota Tacoma jumped more than 20 times, on average, in the
9 three years after Toyota's introduction of drive-by-wire in these trucks in 2005.
10 Increases were also found on the hybrid Prius, among other models. Although Toyota
11 said it knows of no electronic defects that would cause a vehicle to surge out of control,
12 it issued at least three technical service bulletins to its dealers warning of problems with
13 the new electronic throttles in the 2002 and 2003 Camry. According to one of the
14 bulletins that was published by Alldata, a vehicle information company, the throttle
15 systems on six-cylinder engines can cause the vehicle to "exhibit a surging during light
16 throttle input at speeds between 38 mph and 42 mph." The solution provided to dealers
17 was to reprogram the engine control module. A NHTSA test found that a Toyota throttle
18 exhibited unusual behavior when researchers applied a magnetic field to the device's
19 sensitive electronics. Engine speed surged by 1,000 revolutions per minute, according
20 to a 2008 report by the agency's Vehicle Research and Test Center. Nonetheless, the lab
21 concluded that the system "showed no vulnerabilities to electric signal activities." The
22 details of the experiment were not explained in the lab report, and the agency never
23 explained the apparent contradiction.

24 30. In the NHTSA investigation of the 2004 unintended acceleration incident

25
26 ³ The *Times* reports the following about those investigations. Federal officials systematically
27 excluded or dismissed the majority of complaints by owners that their Toyota and Lexus vehicles had
28 suddenly accelerated, which sharply narrowed the scope of the probes. Federal officials eliminated
broad categories of sudden-acceleration complaints, including cases in which drivers said they were
unable to stop runaway cars using their brakes; incidents of unintended acceleration lasting more than
a few seconds; and reports in which owners did not identify the possible causes of the problem.

1 reported by the Alabama registered nurse, NHTSA and Toyota both winnowed down
2 other reports of sudden acceleration involving 2002 and 2003 Lexus ES and Camry
3 models. When NHTSA asked Toyota to disgorge all of the reports it knew about, Toyota
4 eliminated an unknown number in five broad categories, including cases in which drivers
5 said they were unable to control a runaway engine by applying the brakes. Federal
6 investigators said only 20 cases were considered relevant. But *The Times'* examination
7 of consumer complaints and a sampling of reports from Toyota dealers found more than
8 400 reports of sudden acceleration involving those models. And federal records show
9 that the NHTSA knew about 260 of those cases and another 114 cases identified by Toyota.

10 31. As for Toyota's position that brakes can always overcome a vehicle's
11 engine, Toyota and NHTSA now acknowledge that a braking system cannot always
12 counter a wide-open throttle, as is the case in sudden acceleration. This is shown by a
13 number of Toyota actions, one of which is its announcement that some of its cars will
14 be modified so that the brake overrides the accelerator if both pedals are pressed at the
15 same time.

16 32. In 2005, a Phoenix man who had experienced a minor accident he blamed
17 on sudden acceleration, filed a defect petition with the NHTSA that included nearly
18 1,200 owner complaints about Toyota vehicles. The automaker argued that the majority
19 should be eliminated because they dealt "with two completely different issues."

20 33. The *Times* reports that when owners said the "vehicle unintentionally or
21 suddenly 'accelerated,'" Toyota claimed that represented a different issue than when
22 they said "the vehicle 'surged' or 'lurched.'" On information and belief, the truth is, while
23 the vocabulary used in the complaints have differences, the issues were the same.

24 34. According to the complaint in *Choi v Toyota*, pending in this Court, an
25 initial Toyota design for the Subject Vehicles called for "an electronic throttle control
26 and a redundant mechanical linkage between the gas pedal and the engine throttle control
27 as a failsafe in the event of a sudden unintended acceleration"; this feature would
28 disconnect the electronic throttle control and allow a driver to stop the vehicle, but

1 Toyota began selling vehicles without this feature around 2001; Toyota failed to include
2 another “failsafe measure” that would “automatically reduce the engine to idle when the
3 brakes are being applied while the throttle is in an open position”.

4 35. Until recently, Toyota maintained that its vehicles have no defect and that
5 runaway accelerations were caused by incorrectly installed floor mats wedging the
6 accelerator pedal into a wide-open position. Toyota’s insistence that the vehicles had
7 no defect drew a sharp rebuke from NHTSA, saying Toyota made “inaccurate and
8 misleading” statements about the nature of the problem.

9 36. Toyota continues its advertising and public statements touting “safety.”
10 Toyota’s video of November, 2009, placed on its website, states that NHTSA
11 “thoroughly investigated” Toyota uncontrolled acceleration and used “stringent safety
12 testing. . . . Toyota and Lexus take public safety very seriously. We believe our vehicles
13 are among the safest on the road. Your best source of information can be found at
14 Toyota.com and Lexus.com.” The video also states that Toyota’s November 2009
15 “recall” is “voluntary.” The video is at:

16 <http://pressroom.toyota.com/pr/tms/electronic.aspx?fid=84801>

17 37. Toyota website statement dated November 18, 2009 states: “Toyota is
18 confident its vehicles are among the safest on the road today and is committed to the
19 highest levels of vehicle safety and quality. [¶] “In 2009, Toyota won more IIHS Top
20 Safety Pick (TSP) awards than any other manufacturer. Toyota continues to improve
21 vehicle passive and active safety, including improvement of past winners of IIHS TSP”.

22 The statement is at:

23 <http://pressroom.toyota.com/pr/tms/our-point-of-view-post.aspx?id=2273>.

24
25 **B. Toyota’s So-Called “Recall”**

26 38. Toyota’s “Interim Notice,” published in the press and on the Internet, has
27 caused serious misinformation and misunderstanding about what to do about the
28 problem.

1 39. On October 30, 2009, Toyota announced what it termed a “recall” of some
2 models that have experienced uncontrolled acceleration, but not all models. Toyota
3 states the “recall” covers 3.86 million vehicles in the United States.

4 40. Plaintiff places quotes around “recall” because the term is misleading.
5 Toyota has not told anyone to bring their vehicles in yet. Toyota has said it plans to have
6 dealers ready to do the “recall” work possibly as early as January, 2010, but on a
7 “rolling” basis, starting with some models and model years then moving to others. That
8 is part of the problem – these dangerous vehicles will still be on the road for months, and
9 the drivers have in mind Toyota’s dangerous “advice” to stall them, unless a corrective
10 notice is sent.

11 41. Toyota states that to reduce the risk of the mat snagging the gas pedal,
12 technicians will cut off about three-quarters of an inch from the bottom of the pedal. On
13 Toyota Camry and Avalon and Lexus ES models, they also will replace thick foam
14 padding under the carpeting with thinner pads to allow more clearance between the pedal
15 and floor.

16 42. At an even later unspecified time, Toyota will modify software in the
17 vehicles’ engine control systems that, says Toyota, will override the throttle any time the
18 brake is applied. The remedy will be made initially only in the Camry, Avalon, Lexus ES
19 and Lexus IS sedans, only later in all models.

20 43. That software, often called a smart pedal, has been is in use for years by
21 many other manufacturers as a protection against unintended acceleration, such as
22 Volkswagen, Audi, Porsche, BMW, Nissan and Chrysler. But even though unintended
23 acceleration in Toyota vehicles has been far greater than all other vehicles, Toyota has
24 never installed this software in its vehicles.

25
26 **C. Toyota’s “Interim Notice” Instructions to Owners.**

27 44. In connection with what Toyota refers to as a “recall,” beginning October
28 30, 2009, Toyota mailed the “Interim Notice,” and put it on Toyota’s website. On

1 November 2, 2009, Toyota distributed a press release announcing the letter campaign.

2 45. Toyota's uncontrolled acceleration problem causes cars to rush to speeds
3 of 100 m.p.h. and faster. Toyota's "Interim Notice" only compounds the problem. The
4 critical fact is this: Toyota's "Interim Notice" gives the following misguided,
5 misguiding, terrifying directions [words in brackets are added by plaintiff, as is the
6 bolding]:

7 "What should you do if you experience accelerator pedal interference?

8 "Should the vehicle continue to accelerate rapidly after releasing the accelerator
9 pedal, this could be an indication of floor mat interference. If this occurs, Toyota
recommends you take the following actions:

10 "First, if it is possible and safe to do so, **pull back the floor mat and dislodge it**
11 **from the accelerator pedal** [*while the vehicle is accelerating*]; then pull over and
stop the vehicle.

12 "If the floor mat cannot be dislodged, then firmly and steadily step on the brake
13 pedal with both feet. Do NOT pump the brake pedal repeatedly as this will
increase the effort required to slow the vehicle.

14 "**Shift the transmission gear selector to the Neutral (N) position** [*eliminating*
15 *any possibility of accelerating in a controlled manner in order to pull over*
16 *safely*] and use the brakes to make a controlled stop at the side of the road and turn
off the engine.

17 "If unable to put the vehicle in Neutral, **turn the engine OFF, or to ACC** [*engine*
18 *will be off, but there will be power to some accessories*]. This will not cause loss
of steering or braking, but **the power assist to these systems will be lost** [*i.e.,*
19 *there will be no power steering or power brakes*]."

20 46. These instructions are extremely dangerous. When cars suddenly accelerate
21 out of control, these instructions might be better than nothing, but that is the point –
22 Toyota should disclose to people that because these maneuvers are not safe, it might be
23 better to do nothing with the vehicles, i.e. not drive them. Instead, Toyota suggests that
24 its instructions are safe, vested with Toyota's expertise, and that people should continue
driving these defective vehicles.

25 a. If a driver pulls back on the floor mat while the vehicle is moving,
26 her attention is taken away from driving, and her vision away from the road.
27 Doing that while the car is accelerating, probably wildly accelerating, is inviting
28 a crash.

1 b. “Pull back.” Toyota means the driver should bend down to move the
2 floor mat. A driver doing that cannot effectively use the steering wheel, apply the
3 brakes, or use anything else on the car, probably cannot do any of these things at
4 all.

5 c. Putting the car in neutral is just as bad or worse. You are driving on
6 a freeway or in street traffic. If you put the car in neutral, you completely lose the
7 ability to accelerate in order to move the car to the side safely. It is the same as
8 stalling. Cars have been recalled because of stalling problems. Tendency to stall
9 is a defect. A stalled car in traffic is a safety hazard.

10 d. In the same breath, Toyota’s instructions say, “make a controlled
11 stop at the side of the road and turn off the engine”. When the car is put in
12 neutral, it slows down. The other cars on the road do not. In order to make a
13 “controlled stop at the side of the road,” a driver has to be able to accelerate out
14 of the way of cars coming up from the right. But Toyota’s driver cannot do that.

15 e. Turning off the engine is worse yet. Now we have a stalled car that
16 has no power steering and no power brakes. Cars designed with power steering
17 are not designed to be steered without it. Steering them without the power is
18 extremely difficult. The same is true of power brakes.

19 f. For example, older cars designed without power steering had much
20 larger steering wheels than today’s cars. Why? Because the driver needed lots of
21 leverage in order to steer. When a modern car loses its power steering, the little
22 steering wheel and other design features in the car make it very hard to steer.
23

24 **D. The Risks and Dangers Caused By Toyota’s “Interim Notice” Instructions**

25 47. The risks caused by Toyota’s “Interim Notice” are unacceptable for many
26 reasons, including these and others:

27 a. The actions recommended by Toyota create a new and different set
28 of hazards (1) loss of vehicle control and (2) disabling/stalling of the vehicle in

1 traffic.”

2 b. Loss of vehicle control by drivers has been repeatedly recognized as
3 a cause of serious and fatal crashes. As recently as September of this year, the
4 National Highway Traffic Administration [NHTSA] noted the role of driver
5 distraction and loss of control in crash causation. “Distraction from the primary
6 task of driving could present a serious and potentially deadly danger. In 2008,
7 5,870 people lost their lives and an estimated 515,000 people were injured in
8 police-reported crashes in which at least one form of driver distraction was
9 reported on the crash report.” NHTSA urges drivers: “Avoid conditions that lead
10 to a loss of control.”

11 c. Toyota’s recommendations could lead to out-of-control, distracted
12 driving situations that present ‘serious and potentially deadly danger’ to occupants
13 of the involved Toyota vehicle and those of other vehicles on the highways. as
14 well as bicyclists and pedestrians

15 d. Toyota’s instructions to “pull back the floor mat and dislodge it from
16 the accelerator pedal” could not possibly be accomplished without a diversion of
17 the driver’s vision and attention for at least several seconds, totaling even into
18 minutes if the driver has to try more than once, which is likely under the stress of
19 this emergency. This is a forced diversion away from the driving task and
20 attention to the stream of traffic. NHTSA has found that glances away from the
21 roadway totaling “more than 2 seconds for any purpose increase near-crash/crash
22 risk by at least two times that of normal, baseline driving.”

23 e. The dangers presented to occupants of vehicles disabled in traffic or
24 along the sides of busy highways have been long recognized.

25 f. A California court found that “stalling, under almost any
26 circumstances, presents an unreasonable risk to automobile safety and to the safety
27 of occupants of any such automobile. It would defy common sense and the weight
28 of the evidence to find otherwise.” (October 11, 2000 Alameda Superior Court

1 statement of decision after trial, stating intention to order recall of 23 million
2 vehicles because of defects causing stalling.)

3 g. Following the recommendations in the “Interim Notice” would cause
4 the vehicle to stall. A stalled or disabled vehicle is one which, due to loss of
5 power, is no longer able to maintain its travel speed. In the case of a Toyota
6 suddenly afflicted by an uninvited power surge due to its “uncontrolled
7 acceleration” defect, the vehicle may be traveling at a dangerously high rate of
8 speed while its driver attempts to carry out Toyota’s recommendations.

9 h. As the vehicle slows, it increasingly presents a hazard to itself and
10 to other vehicles, which are traveling at highway rates of speed. Even if the driver
11 is able to successfully maneuver the disabled vehicle out of the road’s traffic lanes
12 and onto the roadside – a difficult and dangerous undertaking -- it continues to
13 present a hazard, since it is now a ‘fixed object’ subject to impact by other
14 vehicles. If the incident occurs on a stretch of highway that has no shoulder, the
15 disabled vehicle is forced to a stop in a lane of traffic.

16 i. Drivers of these vehicles thus are caught between the devil of the
17 uncorrected, uncontrolled acceleration defect and the deep blue sea of Toyota’s
18 recommendations. Toyota should advise owners of these vehicles to not drive
19 them until its ‘campaign remedy’ has been accomplished.

20
21 **E. Plaintiff’s Damages, Injuries and Losses**

22 48. As a result of Toyota’s reputation for safety and quality, which has been
23 advertised and marketed by Toyota, and as a result of Toyota’s concealments and
24 misrepresentations and other conduct described in this complaint, above and below,
25 plaintiff suffered injury in fact and lost money and property, and plaintiff conferred
26 benefits on Toyota, in a number of ways, including but not limited to the following:

27 a. Plaintiff bought a new 2009 Toyota Camry from a Toyota dealership.
28 He would not have bought it otherwise. He would not have bought it if Toyota

1 had not concealed and the facts about unintended acceleration, described above.

2 b. Plaintiff paid the purchase price and continued to make payments.

3 c. Plaintiff remained loyal to Toyota and returned to the Toyota dealer
4 for repairs and maintenance. He purchased parts manufactured by Toyota, such
5 as a replacement undercarriage part, and replacement wipers.

6 d. Plaintiff lost money and property, consisting of the difference in
7 value between a vehicle free of defects the value of the vehicles he bought, with
8 a defective condition, and reduced resale value as a result of having it.

9 e. After plaintiff learned about the unintended acceleration defect, and
10 received the "Interim Notice," he called Toyota and asked that Toyota supply him
11 with a substitute car. Toyota refused.

12 f. Instead, Toyota told him to take out the floor mat, and he did. The
13 car is now being driven without the mat, and there will be extra wear and tear on
14 the carpet that otherwise would be covered by the floor mat. The purpose of the
15 floor mat is to protect the carpet beneath it.

16 g. After plaintiff learned about the unintended acceleration defect, and
17 received the "Interim Notice," use of the Camry was lost for a time, because of the
18 danger of using the car. Plaintiff spent money to rent a substitute car. But
19 plaintiff could not rent a substitute car for long. Use of the car remains less than
20 it would be without the unintended acceleration defect.

21
22 **VI. CLASS ACTION ALLEGATIONS**

23 49. This action is brought and is properly be maintained as a class action under
24 Fed. Rule of Civ. Proced. 23(a) and 23(b)(2). It is brought on behalf of those who fall
25 within the following CLASS DEFINITIONS. In these definitions, "Owners" includes
26 those who lease the vehicles. The classes do not include any individual who has
27 suffered any bodily, emotional or psychological injury as a result of any crash that
28 resulted from sudden or uncontrolled acceleration of any of the vehicles mentioned in

1 this complaint, or the successors of any individuals who died as a result of any such
2 crash. The claims in this action do not include any claims for bodily, emotional or
3 psychological injury or for physical injury to property. Also, the classes do not include
4 any judge who handles any aspect of this case, or any defendant or executive of any
5 defendant, or their family members.

6 **A. Definition of California 2009 Notice Class**

7 All individuals, entities, and organizations who purchased or leased any of the
8 2009 Notice Vehicles in California, or who purchase or lease any of them in
9 California while this case is pending.

10 As stated above, the 2009 Notice Vehicles are: 2007 to 2010 MY (model
11 year) Camry, 2005 to 2010 MY Avalon, 2004 to 2009 MY Prius, 2005 to
12 2010 MY Tacoma, 2007 to 2010 MY Tundra, 2007 to 2010 MY ES350,
13 2006 to 2010 MY IS250, and 2006 to 2010 MY IS 350.

14 **B. Definition of California 2002 - 2010 Vehicles Class**

15 All individuals, entities, and organizations who purchased or leased any of the
16 2002 - 2010 Vehicles in California, or who purchase or lease any of them in
17 California while this case is pending.

18 As stated above, the 2002 - 2010 Vehicles are all model year 2002 - 2010
19 Toyota vehicles. (This means all model year 2002 - 2010 vehicles of the
20 Toyota brand, including Prius, and all model year 2002 - 2010 vehicles of
21 the Lexus brand. The "brand" is also called the "badge." "Vehicles
22 includes cars, trucks, SUVs, and crossovers.)

23 **C. Definition of National 2009 Notice Class**

24 All individuals, entities, and organizations who purchased or leased any of the
25 2009 Notice Vehicles in the United States, or who purchase or lease any of them
26 in the United States while this case is pending.

27 **D. Definition of National 2002 - 2010 Vehicles Class**

28 All individuals, entities, and organizations who purchased or leased any of the

1 2002 - 2010 Vehicles in the United States, or who purchase or lease any of them
2 in the United States while this case is pending.

3 a. Numerosity: The class is so numerous that individual joinder of all members
4 is impracticable. There are approximately 3.86 million class members.

5 b. **Ascertainability**: The class members are specific individuals, entities, and
6 organizations whose identity can easily be ascertained from Defendants' records.

7 c. Existence and Predominance of Common Questions of Law and Fact:
8 Common questions of law and fact exist as to all Class members, and predominate over
9 any questions that affect only individual members of the Class. The common questions
10 of law and fact include, but are not limited to:

11 i. What is the extent of the implied warranty of fitness Toyota gave on
12 the Subject Vehicles.

13 ii. What is the extent of the implied warranty of merchantability Toyota
14 gave on the Subject Vehicles.

15 iii. What express warranty did Toyota give on the Subject Vehicles?

16 iv. Did Toyota fail to comply with its implied warranty of fitness on the
17 Subject Vehicles?

18 v. Did Toyota fail to comply with its implied warranty of
19 merchantability on the Subject Vehicles?

20 vi. Did Toyota fail to comply with its express warranty on the Subject
21 Vehicles?

22 vii. Did Toyota violate the Song-Beverly Consumer Warranty Act?

23 viii. What is the proper measure of damages for the class for breach of the
24 implied warranty of fitness?

25 ix. What is the proper measure of damages for the class for breach of the
26 implied warranty of merchantability?

27 x. What is the proper measure of damages for the class for breach of the
28 express warranty?

1 xi. What is the proper measure of damages for the class for breach of the
2 Song-Beverly Consumer Warranty Act?

3 xii. Does Toyota's conduct satisfy any of the tests for punitive damages
4 to the class?

5 xiii. If so, what punitive damages should be awarded the class?

6 d. Typicality: Plaintiff's claims are typical of the claims of the class. Plaintiff
7 and other class members sustained damages, losses, and injuries in fact arising out of the
8 propensity for unintended acceleration of the vehicles, and arising out of Defendants'
9 common misrepresentations, practices, and violations of law referred to in each claim for
10 relief. Plaintiff seeks recoveries for the same types of damages, losses, and injuries in
11 fact as were sustained by the other class members. Each class member, as well as
12 plaintiff, purchased and owned at least one of the Subject Vehicles. Plaintiffs and the
13 members of the Class sustained the same types of damages, losses and injuries in fact.

14 e. Adequacy: will fairly and adequately protect the interests of the class. The
15 attorneys for plaintiff and the potential class are qualified and competent and very
16 experienced in class action litigation. Plaintiff is not disqualified by any interests
17 antagonistic to the rest of the class.

18 f. Superiority: A class action is superior to other available means for the fair
19 and efficient adjudication of this controversy. Individual joinder of all class members
20 is impracticable. Class action treatment will permit a large number of similarly situated
21 persons to prosecute their common claims in a single forum simultaneously, efficiently,
22 and without the unnecessary duplication of effort and expense that numerous individual
23 actions engender. Also, because the losses, injuries and damages suffered by each of the
24 class members are small in the sense pertinent to class action analysis, the expenses and
25 burden of individual litigation would make it extremely difficult or impossible for the
26 individual class members to redress the wrongs done to them. On the other hand,
27 important public interests will be served by addressing the matter as a class action. The
28 cost to the court system and the public of adjudication of individual litigation and claims

1 would be very substantial, and substantially more than if the claims are treated as class
2 action. Individual litigation and claims would also present the potential for inconsistent
3 or contradictory results. The issues in this lawsuit can be decided by means of common,
4 classwide proof. In addition, if appropriate, the court can, and is empowered to, fashion
5 methods to efficiently manage this lawsuit as a class action. There is no administrative
6 remedy available to the class members for the relief sought here.

7 g. F.R.Civ.P. 23(b)(2), Defendants Acting Generally Toward the Class: Toyota
8 has acted and refused to act on grounds that apply generally to the class, so that final
9 injunctive relief and corresponding declaratory relief is appropriate respecting the class
10 as a whole.

11 **FIRST CLAIM FOR RELIEF**

12 **(Class Action Against All Defendants for Breach of Warranty and** 13 **Violation of the California Song-Beverly Consumer Warranty Act)**

14 50. Plaintiff incorporates paragraphs 1 through 49.

15 51. When the Subject Vehicles were purchased or leased by plaintiff and the
16 other class members, the purchases and leases carried with them an implied warranty by
17 Toyota that the Subject Vehicles were fit for the ordinary purposes for which such
18 vehicles are used.

19 52. Also, when the Subject Vehicles were purchased or leased, Toyota had
20 reason to know the Subject Vehicles were required for safe transportation, and that
21 plaintiff and the other class members were relying on the skill and judgment of Toyota
22 to select and furnish vehicles suitable for that purpose. Therefore when the Subject
23 Vehicles were purchased or leased by plaintiff and the other class members, the
24 purchases and leases carried with them an implied warranty by Toyota that the Subject
25 Vehicles were fit for that purpose.

26 53. Toyota gave express warranties along with the purchases and leases of the
27 Subject Vehicles by plaintiff and the other class members that, among other things, the
28

1 vehicles were “built to exceptional standards.” Along with the purchases and leases,
2 Toyota also expressly warranted the powertrain, engine, transmission/transaxle, and
3 other components of the powertrain for 60 months/60,000 miles.

4 54. As a result of the unintended acceleration defective condition and the
5 conduct of Toyota described in this complaint, Toyota failed to comply with these
6 warranties and breached them, and plaintiff and the other class members have been
7 damaged by the failures. The failures and breaches were and are willful.

8 55. The damages include, but are not limited to, these:

9 a. The difference in value between a vehicle free of defects the value
10 of the vehicles they bought, with a defective condition, and reduced resale value
11 as a result of having it.

12 b. Extra wear and tear on the carpet that otherwise would be covered by
13 the floor mat.

14 c. Lost of use of the vehicle and payments for substitute vehicles.

15 d. The cost to correct the defective condition, and loss of use of the
16 vehicles while the corrections are made.

17 e. Payments of the purchase price and lease payments.

18 56. This claim for relief is limited to those class members who are individuals.
19 The Song-Beverly Consumer Warranty Act violations are limited to those class members
20 who purchased or leased new Subject Vehicles primarily for personal, family, or
21 household purposes.

22 57. Plaintiff and the class gave Toyota all notices and demands required to
23 recover under this claim for relief.

24 58. By its conduct described above, at all relevant times, Toyota has been aware
25 of the unintended acceleration defective condition, and has consciously disregarded the
26 rights and safety of plaintiff and the other class members. The misconduct by Toyota
27 was done with malice, fraud, and oppression and in willful and conscious disregard of
28 the rights and safety of plaintiff and others. Toyota’s conduct is despicable conduct

1 carried on by the Toyota with a willful and conscious disregard of the rights or safety of
2 others. It is despicable conduct that subjects persons to cruel and unjust hardship in
3 conscious disregard of their rights. It was intentional misrepresentation, deceit, or
4 concealment of a material fact known to Toyota, with the intention on the part of Toyota
5 of thereby depriving persons of property or legal rights. Plaintiff and the class are
6 entitled to punitive damages.

7
8 **SECOND CLAIM FOR RELIEF**

9 **(Class Action Against All Defendants for Injunction and Declaratory Relief for**
10 **Unlawful, Fraudulent, and Unlawful Practices in Violation of the**
11 **California Unfair Competition Law)**

12 59. Plaintiff incorporates paragraphs 1 through 58.

13 60. On information and belief, all the conduct by Toyota described in this
14 complaint took place, originated, or emanated at the headquarters of Toyota in Los
15 Angeles County, California.

16 61. Plaintiff owns a 2009 Camry, which he purchased in California
17 approximately in February, 2009.

18 62. This conduct by Toyota constitutes unlawful, fraudulent, and unfair
19 competition under the California Unfair Competition Law.

20 63. Toyota's conduct is unlawful because, among other things, it constitutes
21 breach of warranty and violation of the Song-Beverly Consumer Warranty Act.

22 64. Toyota's conduct is fraudulent within the meaning of the Unfair
23 Competition Law because, among other things, as stated more particularly above, it is
24 and has been likely to deceive the class members and members of the public about the
25 safety of the Subject Vehicles, the unintended acceleration and its risks, what can and
26 has been done about it, and the safety of the instructions in the "Interim Notice," all as
27 stated in above.

28 65. Toyota's conduct is unfair within the meaning of the Unfair Competition

1 Law (UCL) because, among other things, as the facts above show:

2 a. The gravity of the harm to the class members and the public far
3 outweighs the utility of Toyota's conduct. The risk and actuality of crashes,
4 injuries, and deaths far outweigh any legitimate reasons or utility Toyota could
5 have had in not correcting the unintended acceleration long ago, in not recalling
6 all the Subject Vehicles, in not manufacturing them with the smart pedal, in not
7 installing the smart pedal on all the Subject Vehicles years ago, certainly by now,
8 in not sending the class members a new notice correcting the "Interim Notice."
9 conduct is unfair within the meaning of the Unfair Competition Law (UCL)

10 b. Toyota's conduct offends established public policy, and is immoral,
11 unethical, oppressive, unscrupulous and substantially injurious to the class
12 members.

13 c. Toyota's conduct violates the policy or spirit of one of the various
14 antitrust laws because its effects are comparable to or the same as a violation of
15 the law, or otherwise significantly threatens or harms competition, because, among
16 other things, Toyota has, for many years, for many years Toyota has sold the
17 Subject Vehicles without devoting to them the necessary cost and effort to
18 sufficiently protect against unintended acceleration, and without the smart pedal
19 and other technology that would sufficiently protect against it.

20 66. In this Claim for Relief, additional common questions of law and fact exist
21 as to all Class members, and additionally predominate over any questions that affect only
22 individual members of the Class. These common questions of law and fact include, but
23 are not limited to:

24 a. Do the Subject Vehicles have a defective condition that causes unintended
25 acceleration?

26 b. What did Toyota know about the defective condition, and when did Toyota
27 know it?

28 c. What did Toyota conceal or fail to disclose regarding the defective

1 condition?

2 d. What did Toyota fail to do that would have ameliorated the defective
3 condition?

4 e. What did Toyota fail to do that would have ameliorated the number or
5 severity of the crashes, injuries, and deaths that have resulted from defective condition?

6 f. What is the proper injunctive and declaratory relief for Toyota's violation
7 of the Unfair Competition Law?

8 g. What are the proper measures of restitution for Toyota's violation of the
9 Unfair Competition Law?

10 h. What would have been the cost to Toyota to manufacture the Subject
11 Vehicles so as to sufficiently protect against unintended acceleration?

12 i. What would have been the cost to Toyota to manufacture the Subject
13 Vehicles with smart pedal technology?

14

15

THIRD CLAIM FOR RELIEF

16

(Additional Class Action Claim Against All Defendants for Injunction and

17

Declaratory Relief for Unlawful, Fraudulent, and Unlawful Practices in

18

Violation of the California Unfair Competition Law)

19

67. Plaintiff incorporates paragraphs 1 through 49.

20

69. NHTSA has a legislative mandate to issue motor vehicle safety standards.

21

Toyota, like all manufacturers of motor vehicles, is required to adhere to the standards.

22

The purpose of the standards is to protect the public against unreasonable risk of crashes

23

occurring as a result of the design, construction, or performance of motor vehicles.

24

70. Toyota, like all motor vehicle manufacturers, is required to certify that its

25

vehicles comply with all the standards, and must place on its vehicles a manufacturer's

26

certificate of compliance with all the standards. A motor vehicle manufacturer may not

27

issue the certificate if, in exercising reasonable care, the manufacturer has reason to

28

know the certificate is false or misleading in a material respect. Toyota placed the

1 certificate on plaintiff's Camry and all the Subject Vehicles. They are representations
2 that the vehicles comply with all the standards, but the representations are false, and they
3 were false when they were made, as Toyota knew.

4 68. Standard 124, in 49 C.F.R. 571.124, states:

5 "S5.1 There shall be at least two sources of energy **capable of returning**
6 **the throttle to the idle position** within the time limit specified by S5.3 from any
7 accelerator position or speed **whenever the driver removes the opposing**
8 **actuating force**. In the event of failure of one source of energy by a single
9 severance or disconnection, **the throttle shall return to the idle position** within
10 the time limits specified by S5.3, from any accelerator position or speed whenever
11 the driver removes the opposing actuating force.

12 "S5.2 The throttle shall return to the idle position from any accelerator
13 position or any speed of which the engine is capable whenever any one component
14 of the accelerator control system is disconnected or severed at a single point. The
15 return to idle shall occur within the time limit specified by S5.3, measured either
16 from the time of severance or disconnection or from the first removal of the
17 opposing actuating force by the driver.

18 "S5.3 Except as provided below, maximum time to return to idle position
19 shall be 1 **second** for vehicles of 4536 kilograms or less GVWR, and **2 seconds**
20 for vehicles of more than 4536 kilograms GVWR. **Maximum time to return to**
21 **idle position shall be 3 seconds for any vehicle** that is exposed to ambient air at
22 -18 degrees Celsius to -40 degrees Celsius during the test or for any portion of
23 the 12-hour conditioning period.

24 69. The Subject Vehicles do not meet this standard. The vehicles do not have
25 a source of energy capable of returning the throttle to the idle position within specified
26 times, maximum 3 seconds, **whenever** the driver removes the opposing actuating force.
27 Instead, in the Subject Vehicles, the throttle does not return to the idle position at all
28

1 when there is unintended acceleration. This is shown by the enormously higher
2 incidence of uncontrolled acceleration in the Subject Vehicles than in all other vehicles
3 combined.

4 70. A notice to owners is required by the National Traffic and Motor Vehicle
5 Safety Act⁴ whenever a manufacturer “decides” there is a defect that relates to vehicle
6 safety. On October 30, 2009, Toyota began mailing a notice, although the notice does
7 not comply with the Act. Toyota calls it an “Interim Notice.” The “Interim Notice” is
8 Exhibit A to this complaint.⁵ It states:

9 “Toyota has decided that a defect which relates to motor vehicle safety exists”
10 in specified Toyota and Lexus vehicles. Toyota claims on its website that the “Interim
11 Notice” is “in compliance with the National Traffic and Motor Vehicle Safety Act.” It
12 is not.

13 71. Section 30118 of the National Traffic and Motor Vehicle Safety Act
14 requires that when a manufacturer “decides” that its vehicles have a “defect . . . related
15 to motor vehicle safety,” the manufacturer must send a mailed notice to “the owners
16 [and] purchasers. Section 30119 requires that the notice “shall contain”, among other
17 things:

18 “(2) an evaluation of the risk to motor vehicle safety reasonably related to the
19 defect or noncompliance;

20 “(3) the measures to be taken to obtain a remedy of the defect or noncompliance;

21 “(4) a statement that the manufacturer giving notice will remedy the defect or
22 noncompliance without charge under section 30120 of this title;

23 “(5) the earliest date on which the defect or noncompliance will be remedied
24 without charge, and for tires, the period during which the defect or noncompliance
25 will be remedied without charge under section 30120 of this title”

26 72. As to “(2) an evaluation of the risk to motor vehicle safety reasonably
27 related to the defect or noncompliance,” the “Interim Notice,” rather than stating the true
28

26 ⁴ 49 U.S.C. 30101 *et seq.*

27 ⁵ Exhibit A is a form devised by Toyota, which it then adapts to the various Toyota and Lexus
28 models covered by the notice. The form is on the Toyota website. In the actual notices sent to owners,
the top states the model name and model years that apply to the particular owners receiving the notice.
For example, Mr. Baldisseri’s owns a 2009 Camry. The top of his notice states, “Certain 2007 through
2010 Model Year Camry”. His notice is Exhibit B to this complaint.

1 risk, contains horribly dangerous instructions⁶ about the risk. It falsely implies that the
2 risk is avoidable or controllable by taking steps that are terribly dangerous, and that in
3 fact add to the risk. It falsely and strongly implies that if the safety risk of the defect
4 occurs, namely uncontrolled acceleration, the car can still be safe, and can safely be
5 stopped at the side of the road. That is dangerously misleading. It is the opposite of a
6 truthful “evaluation of the risk to motor vehicle safety.” Specifically, the notice tells the
7 reader to do the following if the risk materializes, i.e. if the car suddenly speeds out of
8 control:

9 a. First, go down and try to “pull back the floor mat.” In other words,
10 at high speeds, take your eyes and mind off the road, reach down to the floor and
11 try to move the mat;

12 b. If that doesn’t work, instructs Toyota, then stall the car right on the
13 road. Do so regardless of whether it is in the middle of traffic or on a freeway.
14 Toyota doesn’t use the word “stall,” but that is precisely what happens if you
15 follow Toyota’s instructions to put the car in neutral or turn off the engine. The
16 car necessarily slows to a stop. The wheels cannot receive power to move out of
17 the way of traffic on the right or behind. And with the engine off, the power
18 steering and power brakes do not work. Nevertheless, the notice instructs the
19 impossible: after putting the car in neutral, or turning off the engine, “make a
20 controlled stop at the side of the road.”

21 73. As to items (3), (4) or (5), the “Interim Notice” states that this information
22 will be given in a later notice, but it doesn’t say now much later. The Act does not
23 provide that some of the information required by section 30119 can be given in one
24 notice, and some in a later notice. It provides that all the information is to be in a single
25 notice. The Act does provide for a second notice, but not for the purposes Toyota is
26 using it. Section 30119(e) provides as follows for a second notice:

27 (e) Second Notification.— If the Secretary decides that a notification sent by a
28

⁶ On its own website, Toyota calls them “instructions”.

1 manufacturer under this section has not resulted in an adequate number of motor
2 vehicles or items of replacement equipment being returned for remedy, the
3 Secretary may order the manufacturer to send a 2d⁷ notification in the way the
4 Secretary prescribes by regulation.”

5 Toyota violates the Act by not including all the section 30119 information in its “Interim
6 Notice,” and by using a second notice for a different purpose.

7 74. This conduct by Toyota constitutes unlawful, fraudulent, and unfair
8 competition under the California Unfair Competition Law.

9 75. As stated above, Toyota has mailed a notice that violates the National
10 Traffic and Motor Vehicle Safety Act. Therefore, Toyota has engaged in unlawful
11 conduct because:

- 12 a. Toyota’s notice violates the National Traffic and Motor Vehicle Safety Act.
- 13 b. Any conduct that violates any law, federal or state, also violates the Unfair
14 Competition Law, under its unlawful “prong.”
- 15 c. Therefore, Toyota’s “Interim Notice” violates the Unfair Competition Law.

16 76. On information and belief, the “Interim Notice” was devised and written at
17 the headquarters of Toyota in Los Angeles County, California, and all of Defendants’
18 conduct described in this complaint emanated from there.

19 77. The “Interim Notice” is required by the National Traffic and Motor Vehicle
20 Safety Act⁸ whenever a manufacturer “decides” there is a defect that relates to vehicle
21 safety.

22 78. In this Claim for Relief, additional common questions of law and fact exist
23 as to all Class members, and additionally predominate over any questions that affect only
24 individual members of the Class. These common questions of law and fact include, but
25 are not limited to:

- 26 i. Did Toyota violate section 30119 of the Act, which requires the
27 notice to contain “(2) an evaluation of the risk to motor vehicle safety reasonably

28 ⁷ “2d” is how the statute reads

⁸ 49 U.S.C. 30101 *et seq.*

1 related to the defect or noncompliance”?

2 ii. Did Toyota violate section 30119 because the notice, rather than
3 stating the true risk, contains very dangerous instructions about the risk?

4 iii. Did Toyota violate section 30119 because the notice falsely implies
5 that the risk is avoidable or controllable by taking steps that are dangerous, and
6 add to the risk?

7 iv. Did Toyota violate section 30119 because the notice falsely and
8 strongly implies that if the safety risk of the defect occurs, namely uncontrolled
9 acceleration, the car can still be safe, and can safely be stopped at the side of the
10 road?

11 v. Did Toyota violate section 30119 because the notice is dangerously
12 misleading and is the opposite of a truthful “evaluation of the risk to motor vehicle
13 safety”?

14 vi. Does the Act require that all the information specified in section
15 30119 be in a single notice?

16 vii. Does the Act require that a second notice can be used only for the
17 purpose provided in section 30119(e)?

18 viii. Did Toyota violate section 30119 of the Act by not including in the
19 notice “(3) the measures to be taken to obtain a remedy of the defect or
20 noncompliance” and/or by using a second notice to do so, and using a second
21 notice for a different purpose other than provided for in section 30119(e)?

22 ix. Did Toyota violate section 30119 of the Act by not including in the
23 notice “(4) a statement that the manufacturer giving notice will remedy the defect
24 or noncompliance without charge under section 30120 of this title” and/or by
25 using a second notice to do so, and using a second notice for a different purpose
26 other than permitted by section 30119(e)?

27 x. Did Toyota violate section 30119 of the Act by not including in the
28 notice “(5) the earliest date on which the defect or noncompliance will be

1 remedied without charge, and for tires, the period during which the defect or
2 noncompliance will be remedied without charge under section 30120” and/or by
3 using a second notice to do so, and using a second notice for a different purpose
4 other than permitted by section 30119(e)?
5

6 **PRAYER**

7 WHEREFORE, Plaintiff prays judgment for himself and all others on whose
8 behalf this suit is brought, against Defendants, jointly and severally:

9 a. For preliminary injunction and permanent injunctions, including but not limited
10 to the following:

11 1. Defendants are enjoined from any further mailing or communicating the
12 following, quoted from the “Interim Notice,” or anything substantially similar
13 concerning what to do when unintended acceleration occurs in Toyota vehicles:

14 “pull back the floor mat and dislodge it from the accelerator pedal”.

15 “Shift the transmission gear selector to the Neutral (N) position”.

16 “If unable to put the vehicle in Neutral, turn the engine OFF, or to ACC”.

17 2. Defendants are ordered to mail a corrective notice to all owners of the same
18 vehicles⁹ that were the subject of the “Interim Notice,” including lessees. Toyota shall
19 also place the notice on its website on a page directly accessible from the website home
20 page. The corrective notice shall state:

21 A. “The safest means to protect yourself from the defect in the vehicles
22 is not to drive them.

23 B. “Earlier, Toyota instructed that if you experience acceleration
24 problems in a Toyota vehicle, then if it is possible and safe to do so, pull back the
25 floor mat and dislodge it from the accelerator pedal. But if there is an acceleration
26

27
28 ⁹ The vehicles are 2007 to 2010 MY (model year) Camry, 2005 to 2010 MY Avalon, 2004 to
2009 MY Prius, 2005 to 2010 MY Tacoma, 2007 to 2010 MY Tundra, 2007 to 2010 MY ES350, 2006
to 2010 MY IS250, and 2006 to 2010 MY IS 350.

1 problem, it is not possible to do that safely. Do not attempt it.”

2 C. “Toyota also instructed that if you experience acceleration problems
3 in a Toyota vehicle, Shift the transmission gear selector to the Neutral (N)
4 position, and if unable to put the vehicle in Neutral, turn the engine OFF, or to
5 ACC”. But if there is an acceleration problem, it is very dangerous to shift into
6 neutral or turn the engine OFF, or to ACC. Do not do that.”

7
8 b. For restitution and disgorgement in amounts exceeding \$5 million.

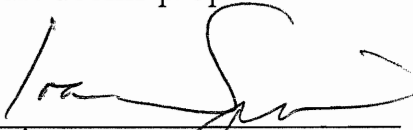
9 c. For claims other than those under the Unfair Competition Law, for damages in
10 amounts exceeding \$5 million, and punitive damages in an amounts to be determined.

11 d. For claims other than those under the Unfair Competition Law, for attorneys’ fees.

12 e. For costs of suit.

13 f. For such other relief as the Court deems proper.


14
15 Dated: December 28, 2009


Ira Spiro
of Spiro Moss LLP

17 **DEMAND FOR JURY TRIAL**

18 Plaintiff demands a trial by jury for himself and the class on any claims and issues
19 that are triable by jury.

20 Dated: December 28, 2009


Ira Spiro
of Spiro Moss LLP

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PROOF OF SERVICE

Baldisseri v. Toyota

United States District Court Case No. CV 09-9386 GAF(FMOx)

I am over the age of eighteen years and not a party to the within action. My business address is 11377 W. Olympic Blvd., Fifth Floor, Los Angeles, CA 90064-1683. I am employed at that address at the firm of Spiro Moss LLP. On the date set forth below I served the document(s) described as **First Amended Complaint** on all the interested parties in this action, by placing: [] the original [xx] true copies thereof enclosed in sealed envelopes, addressed as follows, which addresses are the addresses last given by the respective addressees on any document filed in the above case and served on Spiro Moss LLP:

Toyota Motor Sales, U.S.A., Inc. Toyota Motor North America, Inc. Toyota Motor Manufacturing, California, Inc.; Toyota Motor Engineering & Manufacturing North America, Inc.; c/o C T Corporation System 818 West Seventh Street Los Angeles, CA 90017	
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BY MAIL: On the date set forth below I deposited such envelope(s), in a mailbox regularly maintained by the U.S. Postal Service in Los Angeles County, California. The envelope(s) was/were deposited with postage thereon fully prepaid.

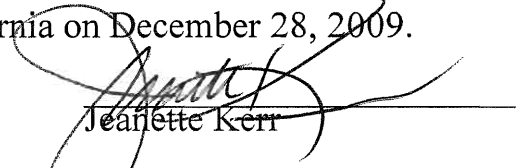
BY METHOD OF DELIVERY PROVIDING FOR OVERNIGHT DELIVERY On the date set forth below I deposited such envelope(s) in a box or other facility regularly maintained by the express service carrier, or delivered such envelope(s) to an authorized courier or driver authorized by the express service carrier to receive documents, with delivery fees paid or provided for. The envelope was an envelope or package designated by the express service carrier.

(BY FAX) On the date set forth below, at approximately 5:30 p.m., I transmitted the above document(s) from fax machine number (310) 235-2456.

(BY PERSONAL SERVICE -- AT OFFICE OF ATTORNEYS): I personally served said document(s) on the date set forth below, by leaving them, inside the envelope(s) clearly labeled to identify the attorney(s) being served, at the offices of the attorney(s) listed above, at the address(es) listed above, with a receptionist or other person having charge of the office(s), between the hours of 9:00 a.m. and 5:00 p.m.

(FEDERAL) I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Executed at Los Angeles, California on December 28, 2009.


Jeanette Kerr