

1 Robert J. Nelson (State Bar No. 132797)
Todd A. Walburg (State Bar No. 213063)
2 LIEFF, CABRASER, HEIMANN & BERNSTEIN, LLP
275 Battery Street, 29th Floor
3 San Francisco, CA 94111-3339
Telephone: (415) 956-1000
4 Facsimile: (415) 956-1008
Email: rmelson@lchb.com; twalburg@lchb.com

5 Wendy R. Fleishman (New York Bar No. WF 3017)
6 LIEFF, CABRASER, HEIMANN & BERNSTEIN, LLP
250 Hudson Street, 8th Floor
7 New York, New York 10013-1413
Telephone: (212) 355-9500
8 Facsimile: (212) 355-9592
Email: wfleishman@lchb.com

9 Attorneys for Plaintiffs CHIN LIN, PEI-YEN CHENG
10 and JESSICA LIN

11 SUPERIOR COURT OF THE STATE OF CALIFORNIA
12 IN AND FOR THE COUNTY OF LOS ANGELES - UNLIMITED

13
14 CHIN LIN, PEI-YEN CHENG and
JESSICA LIN,

15 Plaintiffs,

16 v.

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

22 Defendants.

CASE NO.

[COMPLEX]

COMPLAINT FOR DAMAGES

(Products Liability – Toyota Sudden
Unintended Acceleration Resulting in Personal
Injuries)

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

DEMAND FOR JURY TRIAL

1 COME NOW Plaintiffs CHIN LIN, PEI-YEN CHENG and JESSICA LIN
2 (“Plaintiffs”), by and through her counsel, Lief Cabraser Heimann & Bernstein, LLP, and allege
3 as follows:

4 **INTRODUCTION**

5 1. This product liability action involves the 2005 Toyota Camry, which was
6 designed, manufactured, marketed, promoted, sold and distributed by the Toyota entity
7 defendants.

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

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

16 4. Toyota has known about the problems associated with sudden unintended
17 acceleration for some time. Instead of recalling the vehicles and changing their design to improve
18 safety, Toyota essentially hid the problem. This has resulted in numerous injuries and fatalities.

19 **PARTIES**

20 5. At all times herein referenced, Plaintiff JESSICA LIN resided and
21 continues to reside in Los Angeles County, California.

22 6. At the time of the subject incident, Plaintiff PEI-YEN CHENG resided in
23 Los Angeles County, California.

24 7. At the time of the subject incident, Plaintiff CHIN LIN temporarily resided
25 in Los Angeles County, California.

26 8. At all times herein mentioned, Defendant Toyota Motor North America,
27 Inc. was and is a California corporation, and a corporate citizen of California, with its principal
28

1 place of business at 19001 South Western Avenue, in the City of Torrance, County of Los
2 Angeles, in the State of California.

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

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

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

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

22 13. At all times herein mentioned, Defendant CTS Corporation was and is an
23 Indiana corporation, with its principal place of business located at Elkhart, Indiana. Plaintiff
24 alleges that CTS Corporation and DOES 1 through 10, inclusive, designed and manufactured
25 accelerator pedals for the Toyota entities.

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

1 and consent of each of the other Defendants.

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

10 **JURISDICTION AND VENUE**

11 16. Jurisdiction and venue are proper in Los Angeles County Superior Court,
12 in the State of California, because two of the primary defendants named herein are residents of
13 Los Angeles County, California. Defendants Toyota Motor North America, Inc. and Toyota
14 Motor Sales, Inc. are both California corporations and they each have their principal place of
15 business located in Los Angeles County. Furthermore, said venue is convenient to the parties and
16 is an appropriate venue for a multiple party product liability action.

17 17. Plaintiffs were residents of Los Angeles County at the time of the incident.

18 18. Many of the actions and inactions related to the liability of the Toyota
19 defendants occurred in Los Angeles County.

20 19. Diversity jurisdiction, as is required in federal district court for a case of
21 this nature, does not exist here. Diversity jurisdiction requires “complete diversity,” which does
22 not exist if any plaintiff is from the same state as any defendant. 28 U.S.C. § 1332. Here, the
23 plaintiff are residents of the State of California. Defendants Toyota Motor North America, Inc.
24 and Toyota Motor Sales, Inc. are also residents of the State of California. As such, there is not
25 complete diversity of the parties, and therefore diversity jurisdiction does not apply.

26 20. This Court is also proper as to the other named defendants because each of
27 these entities conduct substantial business in the State of California.

1 **FACTUAL BACKGROUND**

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

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

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

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

15 25. Beginning with the 2002 model year, however, Defendants began
16 manufacturing, distributing, and selling vehicles without such mechanical linkage.

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

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

24 28. According to an article in the November 8, 2009 issue of the *Los Angeles*
25 *Times* (“*LA Times*”), the *LA Times* located federal and other records of 19 fatalities and over
26 1,000 reports by owners involving the unintended acceleration of Toyota vehicles from the 2002
27 model year and newer.

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

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

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

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

13 33. Thus, at all relevant times, Toyota had full knowledge of the numerous
14 complaints regarding its vehicles, that such vehicles were susceptible to incidents of sudden
15 unintended acceleration, and thus that such vehicles posed a significant risk of injury and death to
16 vehicle occupants, other motorists, and pedestrians.

17 34. Toyota knew, or should have known, about the risks of sudden unintended
18 acceleration present in Toyota vehicles for many years, based upon the following timeline of
19 events:

20 **1992**

21 NHTSA’s Office of Defects Investigation undertook an
22 investigation of 1987-1989 Toyota Camry and Toyota Celica
23 vehicles based upon 556 complaints and 30 accidents resulting from
24 sudden acceleration when a sticking throttle caused unwanted
25 engine power.

26 **2001**

27 2002 Model Year Camry is substantially redesigned on a
28 new platform. The ETCS-i system was one of several new or
revised vehicle systems (including transmission and braking
system) introduced for the model year 2002 subject vehicles,
consisting of an accelerator pedal sensor, a throttle control motor, a
throttle position sensor and the engine control module (ECM). To
control throttle position and monitor system operation, the system
uses redundant hardware at the APS and TPS main and sub sensor

1 and the ECM (main and sub processor).

2 Toyota warns that the installation of a mobile two-way radio
3 system could affect electronic systems, including the fuel injection,
4 electronic throttle control system, cruise control system, and other
5 electronics. Owner's are told to "be sure to check with your Toyota
6 dealer for precautionary measures or special instructions regarding
7 installation."

8 **2002**

9 *February 2, 2002:* First consumer complaint of 2002
10 Camry engine surging when the brakes were depressed.

11 *August 30, 2002:* Toyota issues Technical Service
12 Bulletin TSB EG017-02 to update the Electronic Control Module
13 calibration to address "engine surging" on 2002 Camrys with 1MZ-
14 FE engine.

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

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

20 **2003**

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

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

April 25, 2003: Peter Boddaert petitions NHTSA to
conduct an analysis of 1997 through 2000 model year Lexus 300
and 400 series vehicles for problems of vehicle speed control
linkages and sudden unexpected excessive acceleration. Boddart
cites 271 other complaints to the agency about these vehicles, with
36 referring specifically to sudden unintended acceleration,
including several crashes. Boddaert previously complained to the
agency about sudden unintended acceleration when he experienced
the first of three sudden unintended acceleration events. The final
instance resulted in Boddeart rear-ending another vehicle.

May 16, 2003: Toyota issues Technical Service Bulletin
TSB EG008-03 to update the Electronic Control Module calibration
to address "engine surging" in 2003 Camry's with 1MZ-FE engine.

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

4 *June 3, 2003:* Toyota changes the shape of the trim panel
5 on the 2004 Sienna after an incident during production in which
6 trim panel interference resulted in a sudden unintended acceleration
7 event.

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

12 **2004**

13 *January 15, 2004:* Ms. Carol J. Mathews of Rockville,
14 Maryland submits a petition to NHTSA requesting an investigation
15 of 2002 and 2003 Lexus ES300 for a defect in the vehicle speed
16 control linkages. She alleged that the throttle control system in her
17 vehicle malfunctioned on multiple occasions and was the cause of a
18 vehicle crash.

19 *February 17, 2004:* NHTSA formally begins DP04003 to
20 investigate Matthews request.

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

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

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

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

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

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

2005

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

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

November 15, 2005: Toyota files final response in DP05002, in which it says that it believes no defect or defect trend exists. Toyota completely discounts drivers’ experiences noting that the experiences as described could not have occurred without the fault detection system taking note. Toyota also noted that it reviewed the complaints to NHTSA and found that there are two major allegations; one is that the vehicle unintentionally or suddenly “ACCELERATED” and the other is that the vehicle “SURGED” or “LURCHED”. Toyota believes that these two descriptions of vehicle behavior are two completely different issues.

2006

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

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

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

September 14, 2006: ODI opens Defect Petition DP06003 in response to petition from William Jefferson III.

December 20, 2006: Toyota responds to NHTSA request in DP06003. Toyota noted the results of an investigation of the throttle actuator recovered from the Petitioner’s vehicle, and said that it could find no abnormality. During the investigations of other returned throttle actuators, Toyota found that some parts inside the throttle actuator had corroded due to water intrusion, concentrated in specific areas where water could intrude into the throttle actuator from the drain hose. Toyota blamed this on heavy weather

1 conditions such as a flooded road or a hurricane. “Although the rate
2 of occurrence of this type of failure is low, to eliminate any
3 possibility of water intrusion under such circumstances, Toyota
4 modified the drain hose.

4 **2007**

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

7 *March 5, 2007:* NHTSA denies the Jefferson Petition
8 stating it has not identified a vehicle-based defect, nor was it able to
9 witness such an event when road testing the Petitioner’s vehicle. An
10 evaluation of a suspect throttle actuator removed from the
11 Petitioner’s vehicle did not reveal a component problem.
12 NHTSA notes: “This in no way implies that we doubt the
13 Petitioner’s reported experiences with his vehicle. Rather, the
14 agency simply lacks evidence of a safety related defect in his
15 vehicle or a trend of such defects in the subject vehicles. In view of
16 the foregoing, it is unlikely that NHTSA would issue an order for
17 the notification and remedy of a safety-related defect as alleged by
18 the Petitioner in the subject vehicles at the conclusion of the
19 requested investigation. Therefore, in view of the need to allocate
20 and prioritize NHTSA’s limited resources to best accomplish the
21 agency’s safety mission, the petition is denied.”

22 *March 29, 2007:* NHTSA opens a low-level investigation
23 (PE07016) into 80,000 2007 Lexus ES350 for accessory floor mat
24 interference with the throttle pedal. NHTSA’s Office of Defects
25 Investigation notes that these vehicles come equipped with a
26 standard floor mat made from a carpeted material.

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

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

August 30, 2007: NHTSA files memo in EA07010 about
the inspection of a Lexus ES350 that experienced a sudden
unintended acceleration incident and conducted a telephone
interview with the owners. An inspection of the vehicle found all
weather mats are installed at all four seating positions. The driver
side all weather mat was found to be installed by itself; it was not
on top of another floor mat. The installed mat was found to be
unsecured by the retention hooks; the mat did not interfere with the
accelerator pedal in the position it was originally inspected.

September, 2007: Bookout fatal crash in Oklahoma

1 involving 2005 Camry.

2 *September 26, 2007:* Toyota issues Recall 07E-082
3 involving 55,000 Lexus/Toyota with optional All Weather Floor
4 Mats manufactured January 3, 2006-September 13, 2007. All
5 owners of 2007 and early 2008 model year Lexus ES350 and
6 Toyota Camry vehicles were to be notified of the safety campaign
7 and the timing when the replacement mats will become available.
8 Toyota also stopped the sale of the Toyota/Lexus All Weather Floor
9 Mat designed specifically for 2007 and early 2008 model year
10 Camry and ES 350 Lexus vehicles.

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

16 *October 11, 2007:* ODI closes EA07010 into accessory
17 floor mat interference in 2002 – 2008 Lexus ES350 and Camry
18 vehicles in the wake of Recall 07E-082.

19 **2008**

20 *January 10, 2008:* William Kronholm of Helena, MT files
21 a request for a defect investigation into Sudden Unintended
22 Acceleration in 2006 Tacomas. Kronholm experienced two
23 incidents of sudden unintended acceleration and investigated the
24 agency complaints database and found 32 complaints involving the
25 trucks.

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

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

April 18, 2008: Toyota responds to NHTSA information
request in the Kronholm petition and reports a total of 326 unique
vehicle complaints of sudden unintended acceleration in Tacomas.

As part of PE08025, the NHTSA Vehicle Research and Test
Center is asked to conduct tests of 2004 Toyota Sienna vans for a
condition that can cause the engine to produce power when the
accelerator is not depressed. NHTSA notes that the driver's side
trim panel, which is secured by a trim clip to the center console, can

1 become detached and prevent the pedal from returning to the fully
2 closed position.

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

7 *April 30, 2008:* ODI issues Final Report in its investigation
8 of floor mats (EA07010). The Vehicle Research and Test Center
9 (VRTC) tested a Lexus ES-350. During its tests of the vehicle
10 electronics, the VRTC said that it introduced multiple electrical
11 signals into the electrical system to test the robustness of the
12 electronics against single point electrical interference failures and
13 could not identify the problem.

14 The VRTC also sent surveys to 1986 registered owners of a
15 2007 Lexus ES-350 requesting information regarding episodes of
16 unintended acceleration. Of the 600 people that responded, 59
17 stated that they experienced unintended acceleration and 35
18 complained of pedal interference with the Lexus rubber all-weather
19 floor mats.

20 *June 25, 2008:* In response to the Sienna investigation
21 (PE08025) regarding 2004 Siennas, Toyota reported complaints
22 about sudden unintended acceleration in Siennas that take two
23 forms: allegations of excessive engine speed and/or power output
24 without the driver pressing on the accelerator pedal or the engine
25 speed and or power output failing to decrease (subside) when the
26 accelerator pedal was no longer being depressed by the driver.
27 Toyota also says that it sees no evidence of a defect and explains
28 how the trim could catch the accelerator and the design changes it
made to the trim panel to correct this.

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

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

October 15, 2008: Toyota made a presentation to NHTSA
on sudden unintended acceleration and trim interference in 2004
Siennas. Toyota demonstrated how an unrestrained early design
level trim panel interacts with the accelerator after pedal
depression. Toyota also advised that it was conducting a field
survey to examine panel retention and that preliminarily one vehicle
had been identified with a concern.

2009

January 26, 2009: NHTSA closes its investigation into
2004 Sienna sudden unintended acceleration after Toyota agrees to

1 recall vehicles built between January 10, 2003 and June 11, 2003,
2 when the original design floor carpet cover was used in production.

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

12 *March 19, 2009:* Jeffrey Pepski of Plymouth Minnesota
13 files a defect petition requesting NHTSA to re-open the sudden
14 unintended acceleration investigation into Lexus vehicles
15 requesting “an additional investigation into the unwanted and
16 unintended acceleration of model year [MY] 2007 Lexus ES350 as
17 the initial investigation (PE7-016) was too narrow in scope and did
18 not adequately address all complaints made to the NHTSA with
19 respect to vehicle speed control concerns.” Additionally the
20 petitioner requested an “investigation of MY 2002-2003 Lexus
21 ES300 for those ‘longer duration incidents involving uncontrollable
22 acceleration where brake pedal application allegedly had no effect’
23 that were determined not to be within the scope of Investigation
24 PE04-021.

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

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

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

2007 – 2010 Camry

2005 – 2010 Avalon

2004 – 2009 Prius

2005 – 2010 Tacoma

2007 – 2010 Tundra

2007 – 2010 ES350

2006 – 2010 IS250 and IS350

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

October 28, 2009: NHTSA closes Defect Petition 09001.

1 The Office of Defects Investigations' analysis concludes 78 percent
2 of the complaints involved incidents of floor mat interference,
including all of the crashes and injuries:

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

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

7 "Toyota has announced a safety recall involving 3.8 million
8 vehicles in which the accelerator pedal may become stuck at high
9 vehicle speeds due to interference by the driver's side floor mat,
10 which is obviously a very dangerous situation. Toyota has written
11 to vehicle owners stating that it has decided that a safety defect
12 exists in their vehicles and asking owners to remove all floor mats
13 while the company is developing a remedy. We believe consumers
14 should follow Toyota's recommendation to address the most
immediate safety risk. However, removal of the mats is simply an
interim measure, not a remedy of the underlying defect in the
vehicles. NHTSA is discussing with Toyota what the appropriate
vehicle remedy or remedies will be. This matter is not closed until
Toyota has effectively addressed the vehicle defect by providing a
suitable remedy."

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

The recalled vehicles include:

19 2007-2010 Camry
20 2005 -2010 Avalon
21 2004 -2009 Prius
22 2005-2010 Tacoma
23 2007-2010 Tundra
2007-2010 Lexus ES 350
2006-2010 Lexus IS 250
2006 – 2010 Lexus IS 350.

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

2010

January 4, 2010: NHTSA posts the anonymous complaint

1 to the public file.

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

20 2009-2010 RAV4,
21 2009-2010 Corolla,
22 2009-2010 Matrix,
23 2005-2010 Avalon,
24 2007-2010 Camry,
25 2010 Highlander,
26 2007-2010 Tundra,
27 2008-2010 Sequoia

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

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

37. As a result of Toyota’s conscious disregard for the safety of consumers,
numerous individuals have been killed or severely injured.

38. As a result of Toyota’s marketing campaigns, and the guise of safety
created by Toyota, numerous consumers purchased and drove Toyota cars and trucks.

1 39. Plaintiffs purchased a 2005 Toyota Camry, unaware of the hidden and
2 potentially lethal dangers, of which Toyota was or should have been aware.

3 40. Prior to the subject incident, Plaintiff Chin Lin was a mechanical engineer
4 in a managerial position in which he supervised 20 other engineers in the design and building of
5 propulsion systems for cargo ships. He traveled the world and loved spending time with his wife,
6 daughter and son. Plaintiff Lin Chin was a safe and experienced driver with no prior accidents or
7 speeding tickets.

8 41. On March 1, 2007, Plaintiff Chin Lin (age 57) and his wife, Plaintiff Pei-
9 Yen Cheng (age 58) were driving their daughter, Plaintiff Jessica Lin (age 22) to an interview at
10 the University of Pacific, where Jessica hoped to attend school. The family was riding in their
11 2005 Toyota Camry and each of them were wearing their seatbelts. Chin Lin was driving, Pei-
12 Yen Cheng was in the front passenger seat, and Jessica Lin was in the back seat. They were in
13 the left lane proceeding south on Interstate 5 in California. The car pulled slightly to the left so
14 Mr. Lin straightened it out, then all of the sudden the vehicle shot off like an arrow, went very
15 fast and the brakes did not work. The vehicle crossed to the right side of the highway, went over
16 the shoulder, and flew airborne off the side of the highway. The Camry rolled over several times
17 and landed at the bottom of the hill.

18 42. As a result of the incident, Plaintiff Chin Lin was paralyzed and is now
19 permanently disabled. Among other injuries, he suffered fractured vertebrae in his cervical spine,
20 rendering him quadriplegic. He requires 24-hour care and will never work again.

21 43. As a result of the incident, Plaintiff Pei-Yen Cheng suffered head trauma,
22 fractured ribs, a wrist injury and other injuries.

23 44. As a result of the incident, Plaintiff Jessica Lin suffered a back injury and
24 other injuries.

25 45. Plaintiffs did not, and could not have, learned of the cause of this sudden
26 unintended acceleration incident until recent news stories began to air. As such, Plaintiffs did not
27 discover the basis for their claims until a time within the past month, well within the applicable
28 statute of limitations.

1 requirements, and failing to disclose known defects. Instead of revealing the defects, Toyota
2 continued to represent that their cars and trucks were safe for their intended use.

3 49. Toyota's conduct, as described in this complaint, amounts to conduct
4 purposely committed, which Toyota must have realized was dangerous, heedless and reckless,
5 without regard to the consequences or the rights and safety of Plaintiff and consumers.

6 **FIRST CAUSE OF ACTION:**

7 **Negligence**

8 50. Plaintiffs incorporate by reference and realleges all paragraphs previously
9 alleged herein.

10 51. At all times herein mentioned, Defendants Toyota Motor North America,
11 Inc., Toyota Motor Engineering & Manufacturing of North America, Toyota Motor
12 Manufacturing, California, Inc., Toyota Motor Sales, Inc., and Toyota Motor Corporation, CTS
13 Corporation and DOES 1 through 10, inclusive, ("Defendants"), designed, manufactured,
14 assembled, analyzed, recommended, merchandised, advertised, promoted, distributed, supplied,
15 and sold to distributors and retailers for sale, the vehicle known as "2005 Camry," and/or its
16 component parts, including the subject vehicle at issue in this lawsuit.

17 52. Defendants manufactured, designed, promoted and/or sold the 2005 Camry
18 and its component parts to the public, including the subject Camry that suddenly accelerated and
19 injured Plaintiffs.

20 53. Defendants owed Plaintiffs a duty to exercise reasonable care in the design,
21 testing, manufacture, assembly, sale, distribution and servicing of the Camry, including a duty to
22 assure that the subject vehicle did not cause Plaintiffs, other users, bystanders, or the public,
23 unnecessary injuries or deaths.

24 54. Defendants knew or should have known that the Camry is defectively
25 designed and inherently dangerous and has a propensity to suddenly accelerate, lose control, and
26 cause injuries and death.

1 60. Defendants, and each of them, designed, engineered, developed,
2 manufactured, fabricated, assembled, equipped, tested or failed to test, inspected or failed to
3 inspect, repaired, retrofit or failed to retrofit, failed to recall, labeled, advertised, promoted,
4 marketed, supplied, distributed, wholesaled, and sold a certain 2005 Toyota Camry and its
5 component parts and constituents, which was intended by the Defendants, and each of them, to be
6 used for the purpose of use as passenger vehicle, and other related activities.

7 61. Defendants, and each of them, knew that said Camry was to be purchased
8 and used without inspection for defects by Plaintiffs and the general public.

9 62. The subject Camry was unsafe for its intended use by reason of defects in
10 its manufacture, design, testing, components and constituents, so that it would not safely serve its
11 purpose, but would instead expose the users of said product to serious injuries because of the
12 failure of Defendants, and each of them, to properly guard and protect the users of the subject
13 Toyota Camry from the defective design of said product.

14 63. Defendants designed the Camry defectively, causing it to fail to perform as
15 safely as an ordinary consumer would expect when used in an intended or reasonably foreseeable
16 manner.

17 64. The risks inherent in the design of the Camry outweigh significantly any
18 benefits of such design.

19 65. Plaintiff was not aware of the aforementioned defects at any time prior to
20 recent revelations regarding problems with the Toyota Camry.

21 66. As a legal and proximate result of the aforementioned defects of the subject
22 Camry, Plaintiffs sustained the injuries and damages set forth herein.

23 67. Plaintiffs are, therefore, entitled to damages in an amount to be proven at
24 the time of trial.

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

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

1
2 68. Plaintiffs hereby incorporate by reference and reallege all paragraphs
3 previously alleged herein.

4 69. Defendants, and each of them, knew that the 2005 Toyota Camry, and its
5 component parts, would be purchased and used without inspection for defects in the design of the
6 vehicle.

7 70. The subject Camry was defective when it left the control of each of these
8 Defendants.

9 71. Defendants knew or should have known of the substantial dangers involved
10 in the reasonably foreseeable use of the Camry, whose defective design, manufacturing, and lack
11 of sufficient warnings caused them to have an unreasonably dangerous propensity suffer from
12 sudden unintended acceleration and thereby cause catastrophic injuries.

13 72. Defendants failed to adequately warn of the substantial dangers known or
14 knowable at the time of the defective Camry's design, manufacture, and distribution.

15 73. Defendants failed to provide adequate warnings, instructions, guidelines or
16 admonitions to members of the consuming public, including Plaintiff, of the design and
17 manufacturing defects, which Defendants knew, or in the exercise of reasonable care should have
18 known, to have existed in the Camry, and its component parts.

19 74. Defendants knew that these substantial dangers are not readily recognizable
20 to an ordinary consumer and that consumers would purchase and use these products without
21 inspection.

22 75. At the time of Plaintiff's injuries, the subject Camry was being used in the
23 manner intended by Defendants, and in a manner that was reasonably foreseeable by Defendants
24 as involving substantial danger that was not readily apparent to its users.

25 76. Plaintiffs' damages were the legal and proximate result of the actions and
26 inactions of the Defendants, who owed a duty to Plaintiffs in designing, manufacturing, warning
27 about, and distributing the Camry.

1 **FIFTH CAUSE OF ACTION:**
2 **(Fraud and Deceit: Fraudulent Concealment, California Civil Code §§ 1709 *et seq.* Against**
3 **the Toyota Defendants Only**

4 84. Plaintiffs hereby incorporate by reference and reallege all paragraphs
5 previously alleged herein.

6 85. Throughout the relevant time period, Defendants knew that Toyota Camrys
7 were defective in that they have an unreasonably dangerous propensity to suddenly accelerate and
8 thereby injure the user of these vehicles and others.

9 86. In violation of California Civil Code Sections 1709 and 1710, Defendants
10 fraudulently concealed from and/or failed to disclose to or warn Plaintiffs of the true defective
11 nature of the Toyota Camry.

12 87. Defendants were under a duty to Plaintiffs to disclose and warn of the
13 defective nature of the Toyota Camry because: (1) Defendants were in a superior position to
14 know the true state of the facts about the hidden defect in the Toyota Camry, and that defect was
15 latent; (2) Defendants made partial disclosures about the safety and quality of the Toyota Camry
16 while not revealing their true defective nature; and (3) Defendants fraudulently and affirmatively
17 concealed the defective nature of the Toyota Camry from Plaintiffs.

18 88. The facts concealed and/or not disclosed by Defendants to Plaintiffs were
19 material facts that a reasonable person would have considered to be important in deciding
20 whether or not to purchase and/or operate the Toyota Camry.

21 89. Defendants intentionally concealed and/or failed to disclose the true nature
22 of the problems with the Camry for the purpose of inducing Plaintiffs to act thereon, and
23 Plaintiffs justifiably acted or relied upon, to their detriment, the concealed and/or non-disclosed
24 facts as evidenced by their purchase and operation of the Camry.

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

28 91. As a direct and proximate cause of Defendants' misconduct, Plaintiffs have
suffered actual damages.

1 general public, of the dangers of using the subject Camry.

2 104. At all times herein mentioned, Defendants, and each of them, had actual
3 knowledge of the facts hereinabove alleged demonstrating that serious injury to users of the
4 subject Camry, including Plaintiffs, would potentially result. Defendants, and each of them,
5 nevertheless deliberately failed and refused to recall the 2005 Camry, or to take any other steps
6 whatsoever to prevent such injuries. Defendants, and each of them, misrepresented the safety of
7 the subject Camry, and failed and refused to take any steps to prevent injuries from said vehicle in
8 order to increase the profits of Defendants, and each of them, from the sale of said vehicle.

9 105. As a legal and proximate result of the said defects and the acts and conduct
10 of Defendants, and each of them, as hereinabove alleged, Plaintiffs sustained the injuries and
11 damages hereinabove set forth.

12 106. The conduct and acts of Defendants, and each of them, as hereinabove set
13 forth, in allowing such an extremely dangerous product to be used by members of the general
14 public, including Plaintiffs, constitute fraud, malice and oppression toward Plaintiffs and others,
15 and a conscious disregard of the safety of Plaintiffs and others.

16 107. Plaintiff is therefore entitled to exemplary or punitive damages, which
17 would serve to punish the Defendants, and each of them, and to deter wrongful conduct in the
18 future.

19 WHEREFORE, Plaintiffs pray for judgment against Defendants, and each of them,
20 as hereinafter set forth.

21 **PRAYER FOR RELIEF**

22 WHEREFORE, Plaintiffs request of this Court the following relief:

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

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

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

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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

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

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

G. For an award providing for payment of costs of suit;

H. For such other and further relief as this Court may deem just and proper.

Dated: February 16, 2010

LIEFF, CABRASER, HEIMANN & BERNSTEIN, LLP



By: _____
Robert J. Nelson

Robert J. Nelson (State Bar No. 132797)
Todd A. Walburg (State Bar No. 213063)
LIEFF, CABRASER, HEIMANN & BERNSTEIN, LLP
275 Battery Street, 29th Floor
San Francisco, CA 94111-3339
Telephone: (415) 956-1000
Facsimile: (415) 956-1008

Wendy R. Fleishman (New York Bar No. WF 3017)
LIEFF, CABRASER, HEIMANN & BERNSTEIN, LLP
250 Hudson Street, 8th Floor
New York, New York 10013-1413
Telephone: (212) 355-9500
Facsimile: (212) 355-9592

Attorneys for Plaintiffs CHIN LIN, PEI-YEN CHENG
and JESSICA LIN

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

DEMAND FOR JURY TRIAL

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

Dated: February 16, 2010

LIEFF, CABRASER, HEIMANN & BERNSTEIN, LLP



By: _____
Robert J. Nelson

Robert J. Nelson (State Bar No. 132797)
Todd A. Walburg (State Bar No. 213063)
LIEFF, CABRASER, HEIMANN & BERNSTEIN, LLP
275 Battery Street, 29th Floor
San Francisco, CA 94111-3339
Telephone: (415) 956-1000
Facsimile: (415) 956-1008

Wendy R. Fleishman (New York Bar No. WF 3017)
LIEFF, CABRASER, HEIMANN & BERNSTEIN, LLP
250 Hudson Street, 8th Floor
New York, New York 10013-1413
Telephone: (212) 355-9500
Facsimile: (212) 355-9592

Attorneys for Plaintiffs CHIN LIN, PEI-YEN CHENG
and JESSICA LIN