2

4

5

6

7

8

10

11

12

13

14

15

16

17 18

19

2021

22

2324

25

26

UNITED STATES DISTRICT COURT, WESTERN DISTRICT OF WASHINGTON AT SEATTLE

DANA CLARK WELLER and DOUGLAS W. WELLER, individually and on behalf of themselves and all others similarly situated,

Plaintiffs.

v.

TOYOTA MOTOR SALES, U.S.A., INC.,

Defendant.

No.

CLASS ACTION COMPLAINT

JURY TRIAL DEMANDED

I. INTRODUCTION

Plaintiffs Dana Clark Weller and Douglas W. Weller ("Plaintiffs"), on behalf of themselves and all others similarly situated, allege the following, based on personal knowledge, information and belief, and their counsel's investigation and research:

1. Plaintiffs bring this action as a class action on behalf of all persons or entities in the State of Washington who own Toyota vehicles which have been or will be subject to various recalls starting in September 2009 and continuing thereafter due to a tendency to accelerate unexpectedly out of a driver's control. Plaintiffs and the Class seek to return the vehicles to Toyota by revoking acceptance and seek damages, including a full refund for the purchase price. Alternatively, if the Court determines that revocation is not an appropriate remedy, Plaintiffs and



20

- 2. Defendant Toyota Motor Sales, U.S.A., Inc. ("Toyota") has known since 2002 that accelerator pedals and mechanisms in its vehicles could stick, causing vehicles to speed uncontrollably, resulting in crashes causing serious injuries and deaths of occupants of Toyota vehicles. Through the fall of 2009, Toyota had received more than 2,000 complaints of unintended acceleration of its vehicles and had been the subject of multiple investigations by the federal government. However, in spite of the numerous complaints both by customers and the government, Toyota did nothing other than deny there was a problem.
- 3. In August 2009, a California Highway Patrol Officer and his family were killed when their accelerator stuck and their brakes failed to stop their Toyota car. The vehicle crashed into an SUV, ran through a fence, rolled over and burst into flames.
- 4. After this tragedy and others like it, Toyota continued to attempt to minimize the problem and conceal its extent. First, Toyota blamed the acceleration on "floor mats." Toyota informed customers that they could prevent any risk of danger by simply removing the floor mats on the drivers' side. As of November 2009, Toyota stated "there is no evidence to support" any other conclusion. Toyota stated that the National Highway Traffic Safety Administration ("NHTSA") supported the company's conclusion, but the agency responded by stating that Toyota's statement was "misleading and inaccurate."
- 5. After years of covering up the life-threatening problems in its vehicles, on January 21, 2010, Toyota announced that it was recalling 2.3 million vehicles for the admitted reason of "sticking accelerator pedals." Toyota stated that its investigation, which it said it had only conducted "in recent months," "indicates there is a possibility that certain accelerator pedal mechanisms may, in rare instances, *mechanically* stick in a partially depressed position or return slowly to the idle position." (emphasis added). The models recalled were: RAV4, Corolla, Matrix, Avalon, Camry, Highlander, Tundra and Sequoia. Thus, Toyota continued to downplay



7

8 9

10

11

12

13 14

15

16

17

18

19

20

21 22

23

24

26

25

the problems by saying they were simply caused by floor mats and gas pedals that were the wrong size. Toyota covered up the fact that when it replaced the traditional mechanical throttle linkage in the late 1990s with a computer-controlled accelerator system, unlike American automobile companies, Toyota failed to include back-up safety systems that would prevent uncontrolled acceleration. On information and belief, Plaintiffs allege that Toyota omitted the back-up safety systems in order to save money and increase profits. As a result of the lack of safety systems, there is no mechanical or electronic fails afe mechanism to allow drivers to stop Toyota vehicles in the event the computerized "drive-by-wire" acceleration systems malfunction and engage in uncontrolled acceleration.

On January 26, 2010, Toyota stopped selling the eight recalled models as set forth 6. above, stating that preventing the sale of the vehicles was "necessary until a remedy is finalized." Despite believing that the problem was serious enough that it was "necessary" to keep additional vehicles from being driven, Toyota did nothing to prevent vehicles already sold or leased from being operated, nor did it offer to cancel leases and purchases and refund the monies paid by its customers.

II. **PARTIES**

- 7. Plaintiffs Dana Clark Weller and Douglas W. Weller reside in Normandy Park, Washington. Plaintiffs purchased a 2009 Toyota RAV4 in September 2010. Shortly thereafter, Plaintiffs received notice of a recall and had the "repairs" completed. However, based upon news reports, Plaintiffs do not believe that Toyota knows what is causing acceleration. Plaintiffs tried to sell the car and were told its value is 20% less than what it was worth less than six months ago.
- 8. Defendant Toyota Motor Sales, U.S.A., Inc. ("Toyota") is a California corporation with its principal place of business located at 19001 South Western Avenue, Torrance, California 90501.



III. JURISDICTION AND VENUE

- 9. This Court has subject matter jurisdiction pursuant to the Class Action Fairness Act of 2005, 28 U.S.C. § 1332(d), because at least one Class member is of diverse citizenship from Defendant; there are more than 100 Class members nationwide; and the aggregate amount in controversy exceeds \$5,000,000 and minimal diversity exists. This Court also has subject matter jurisdiction because this matter presents a federal question.
- 10. Venue is proper in this District under 28 U.S.C. § 1391(a) because a substantial part of the events or omissions giving rise to the claims occurred and/or emanated from this District; and Defendant has caused harm to Class members residing in this District.

IV. FACTUAL ALLEGATIONS

- 11. Toyota is the largest automobile manufacturer in the United States in terms of number of sales per year. Over the last ten years, Toyota has sold over 20 million vehicles in the United States.
- 12. Toyota manufactures and sells various models of passenger and commercial vehicles (including the Avalon, Camry, Corolla, Highlander, Matrix, Rav4, Sequoia, Solara, 4Runner, and Tundra) to customers in each of the states.
- 13. Toyota operates manufacturing facilities in several different states, including, but not limited to, Alabama, California, Indiana, Kentucky, Texas, and West Virginia.
- 14. Prior to the events described herein, Toyota vehicles enjoyed a high resale value due to their reputation for quality and reliability.

A. The History of Toyota's Unintended Acceleration Problems

- 15. In 2002, Toyota redesigned the gas pedal of its Camry sedan.
- 16. Instead of physically connecting to the engine with a mechanical cable, the new pedal used electronic sensors to send signals to a computer controlling the engine. This is known as an "Electronic Throttle Control System."



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

- 17. While earlier Electronic Throttle Control systems were accompanied with a mechanical linkage as a fail-safe measure in the event of unintended acceleration, Toyota's post-2002 models contained no such fail-safe measure.
- 18. The Electronic Throttle Control system was then implemented into other Toyota vehicles, including its luxury Lexus ES sedan.
- 19. Shortly thereafter, Toyota became aware of multiple complaints that the Camry and the Lexus ES sometimes sped up without the driver hitting the gas. These complaints included reports of some 30 accidents related to the unexpected acceleration.
- 20. This unexpected acceleration would often overpower the vehicles' brakes, leading to an out of control vehicle.
- 21. In 2005 and 2006, hundreds of people reported unexpected acceleration involving their Toyotas, including in models other than the Camry and Lexus. By 2007, NHTSA requested that Toyota recall its Camry and Lexus vehicles to cure the problem.
- 22. Toyota purportedly did so. However, Toyota blamed the unexpected acceleration on a defective floor mat, and told Lexus and Camry owners to bring the cars to dealerships to get new mats.
- 23. Despite the floor mat recall, Toyota continued to receive reports of unintended acceleration. In certain instances, this unintended acceleration led to fatal collisions.
- 24. One such accident occurred on April 19, 2008, when 77-year old Guadalupe Alberto died after a Toyota she was driving at 25 miles per hour accelerated to 80 miles per hour, went airborne, and hit a tree.
- 25. Another such incident occurred in August 2009, when California Highway Patrol officer Mark Saylor and three others were killed after the Lexus ES350 they were driving went out of control after an episode of unintended acceleration.
- 26. Driver complaints have resulted in at least eight separate investigations into Toyota and Lexus vehicles by NHTSA. While Toyota has issued six minor recalls to fix various



problems related to its acceleration system, Toyota historically denied the existence of a problem until forced to admit otherwise.

B. Toyota Denies the Problem

- 27. Toyota's initial reaction to the reports of unintended acceleration was not to solve to problem, but to deny it even existed.
- 28. Instead, Toyota blamed the incidents on driver error. For example, when responding to reports of sudden unintended acceleration in its Tacoma pickup, Toyota spokesperson Bill Kwong was quoted in the *Detroit Free Press* on April 7, 2008, as saying "[w]e don't feel it's an issue with the vehicle" and argued that regulators "get sudden acceleration complaints from consumers for various manufacturers . . . and in most cases they have found it's a misapplication of the pedals by the driver."
- 29. Similarly, in a November 15, 2005 letter to NHTSA, Toyota falsely asserted that sudden, unintended acceleration could not occur "without the driver applying the acceleration pedal" because of "several detection systems." Moreover according to Toyota even if the acceleration system failed, "the brake system still works as designed and unintended acceleration cannot occur."
- 30. In a June 19, 2004 letter to NHTSA, Toyota stated that its Electronic Throttle Control system contained a built in redundancy to prevent acceleration, and in the event of sudden acceleration the "vehicle brakes would have restrained vehicle motion."
- 31. In an April 25, 2008 response to NHTSA concerning an inquiry about the Tacoma, Toyota attempted to shift blame for reports of sudden unexpected acceleration onto the media: "The Tacoma has been the subject of extensive media coverage related to the possibility of sudden acceleration . . . Such exposure tends to generate consumer interest and complaints."
 - 32. Moreover, a June 10, 2008 Detroit Free Press article stated as follows:

Some 431 customers from around the country have reported unintended or sudden acceleration in their Toyota Tacoma pickups, resulting in 51 crashes and 12 injuries, but the automaker said there



67

8

9

10

1112

13

1415

16

18

17

1920

2122

23

2425

26

are no flaws in the trucks and that many reports were "inspired by publicity." It also said "extensive media coverage" spurred additional reports and could explain why no other pickup has similar complaints. "Toyota believes that it is likely that many of the consumer complaints about the general issue of unwanted acceleration . . . as well as many of the complaints about this subject that have been received by Toyota, were inspired by publicity," Toyota said in a letter to the NHTSA released Thursday. "But even taking them at face value, it is clear that the majority of the complaints are related to minor drivability issues and are not indicative of a safety-related defect."

C. The 2009 Floor Mat Recalls

- 33. On September 29, 2009, NHTSA announced Toyota's intention to recall approximately 3.8 million vehicles equipped with floor mats that allegedly could cause the accelerator pedals in those vehicles to become stuck in the depressed position causing uncontrollable and rapid acceleration of the vehicle.
 - 34. Toyota implemented that recall on October 5, 2009.
- 35. On November 25, 2009, Toyota announced a plan to fix the problem related to the floor mats by shortening the accelerator pedal in the affected cars. It also expanded the number of vehicles involved in that recall to a total of 4.2 million.

D. Toyota Insists the Floor Mat Recall Solved the Problem

- 36. Following the September 2009 floor mat recalls, Toyota made repeated public statements ascribing sole responsibility for the sudden unexpected acceleration issues to Toyota's floor mats.
- 37. For example, in a September 14, 2009 press release discussing Officer Saylor's accident, Toyota stated that "preliminary information from law enforcement investigators indicates that the cause [of the accident] may have been an all-weather floor mat from a different Lexus model."
- 38. Similarly, on September 29, 2009, Toyota issued a press release stating that "[r]ecent events have prompted Toyota to take a closer look at the potential for an accelerator



9

11

21

25

pedal to get stuck in the full open position due to an unsecured or incompatible driver's floor mat."

- 39. Moreover, on November 2, 2009, Toyota issued a press release stating that "no defect exists in vehicles in which the driver's floor mat is compatible with the vehicle and properly secured."
- 40. On November 25, 2009, Toyota held a conference call with media representatives. In that conference, Toyota representative Irv Miller stated that Toyota was "very, very confident that we have addressed this [unexpected acceleration] issue" and that Toyota could "come up with no indication whatsoever that there is a throttle or electronic control system malfunction."
- 41. Mr. Miller was also quoted in the November 29, 2009 NEW YORK TIMES as saying "[w]e have come to the conclusion this [problem] is pedal misapplication or pedal entrapment" and that Toyota "continue[es] to find no reason to believe that there is a problem with the electronic control systems."

Ε. The 2010 Recalls

- 42. It was not until January 21, 2010, that Toyota admitted that the sudden, unexpected acceleration problem might have to do with more than the floor mats. On that date, Toyota announced that it would recall 2.3 million vehicles produced in the years 2005 through 2010 that have shown a heightened propensity to unexpectedly accelerate, allegedly due to problems with the gas pedals on those vehicles becoming stuck in a depressed position.
- 43. In addition to the gas pedal problem, on January 27, 2010, Toyota announced that it was expanding its earlier recall of cars with defective floor mats. The new recall added 1.09 million vehicles to the recall that Toyota had announced on October 5, 2009, and had previously expanded on November 25, 2009.
- 44. To date, Toyota has recalled approximately 9 million vehicles worldwide for an apparent propensity to unexpectedly and suddenly accelerate out of the driver's control.



45. Automotive experts outside of Toyota have expressed doubts about whether the alleged floor mat defects or sticking gas pedals could completely explain the number of unexpected acceleration problem seen in numerous Toyota models. It remains unclear whether Toyota has identified all of the causes of the unexpected acceleration problem.

- 46. Thus far, the affected models for the accelerator pedal recall are certain 2009-2010 RAV4s, certain 2009-2010 Corollas, the 2009-2010 Matrix, 2005-2010 Avalon, Certain 2007-2010 Camrys, Certain 2010 Highlanders, the 2007-2010 Tundra, and the 2008-2010 Sequoia. In addition, Toyota has recalled the following models for the floor mat pedal entrapment recall: the 2007-2010 Camry; 2005-2010 Avalon; 2004 2009 Prius; 2005-2010 Tacoma; 2007-2010 Tundra; 2008-2010 Highlander; 2009-2010 Corolla; 2009-2010 Venza; 2009-2010 Matrix; the 2006-2010 Lexis IS 250; the 2006-2010 Lexis IS 350; and the 2007-2010 Lexis ES 350.
- 47. On February 13, 2010, Toyota announced that it retained Exponent, an engineering company, to conduct a comprehensive and independent analysis of the Electronic Throttle Control System installed on Toyota and Lexus vehicles, which indicates that to date, Toyota has been unable to resolve the unexpected acceleration problem affecting the vehicles of Plaintiffs and Class members.
- 48. In the aftermath of the negative publicity associated with the safety defect, Toyota has predictably suffered a loss in sales. In February 2010, a month where industry sales were up 12% and Toyota's major competitors experienced significant sales increases, Toyota alone showed an 8.7% decrease from the previous year.

F. Toyotas Have Declined in Value

- 49. The value of Toyotas has declined dramatically since the January recalls.
- 50. A February 9, 2010 article in the Los ANGELES TIMES reported that the Kelley Blue Book value of used Toyotas had declined by four and a half percent -i.e., hundreds of dollars per vehicle since the recall was announced.



- 51. This decrease reflects a real loss of value for used Toyotas. Kelley Blue Book values are relied upon by the banking and insurance industries, auto dealers, and consumers buying and selling cars. Kelley Blue Book values are based on actual transaction information, including data from wholesale auctions, dealer sales, consumer private party transactions, and other sources. Kelley Blue Book values reflect the most current representation of a changing marketplace and are relied upon by a variety of leading organizations as well as the average consumer.
- 52. Similarly, a February 13, 2010 article by the Associated Press noted that recalled Toyotas had declined as much as 6% in value according to online automobile research site Edmunds.com.
- 53. Edmunds.com describes their proprietary pricing algorithm, the True Market Value®, or TMV® pricing system, as Edmund's "determination of what other consumers are actually paying for the vehicle. TMV® accounts for the effect of all of the manufacturer's extra charges as well as the dealer's hidden subsidies, and [Edmunds believes] it is the most important price to know when negotiating a purchase."
- 54. The Kelley Blue Book value and the Edmunds.com TMV value are both widely accepted measures of value, based on real world transactions and therefore reflect Plaintiffs' losses.

G. Sudden Accelerations Continue

- 55. On March 8 a California driver called 911 for help and said his blue 2008 Toyota Prius sped up to more than 90 miles per hour on Interstate 8 near San Diego before a California Highway Patrolman helped him slow the car and bring it to a stop.
- 56. The reported incident occurred only hours after Toyota completed a presentation intended to demonstrate that the electronics in its cars couldn't be the cause of unwanted acceleration. The auto maker had hoped the presentation would kick off a week of aggressive rebuttals to critics.



Reports of the San Diego incident sparked a flurry of new negative headlines

57.

about the company and its vehicles.

4

7

9

13

1516

1718

1920

21

23

22

24

2526

"I pushed the gas pedal to pass a car and it did something kind of funny ... it jumped and it just stuck there," Mr. Sikes said at a news conference, according to the Associated Press.

"I was trying the brakes ... it wasn't stopping, it wasn't doing anything and it just kept speeding up," Mr. Sikes said, adding he could smell the brakes burning.

After calling 911, Mr. Sikes said his Prius hit speeds of up to 94 mph for about 20 minutes before a highway patrolman pulled up next to him and offered suggestions over a loudspeaker on how to stop the car.

- 58. The police did a visual inspection and saw the mat was in place and the pedal wasn't trapped, Officer Pennings said. Mr. Sikes appeared to be so shaken that an ambulance was called, the police said. "He was extremely distraught," Officer Pennings said. "It was clear he was dealing with a large amount of anxiety and adrenaline."
- 59. The following day, March 9, an accident in Harrison, New York involving a 2005 Prius also caught the attention of federal regulators after the car accelerated on its own, then lurched down a driveway, across a road and into a stone wall. The air bags deployed when the car hit the stone wall of the estate across the street. On March 10, Department of Transportation spokeswoman Olivia Alair confirmed that the Department was investigating the crash. The silver-gray Prius was removed from the site and taken to a police parking lot. Its front end was severely pushed in, the hood was buckled and the front bumper and one front headlight were broken.
- 60. The driver, a 56-year-old housekeeper, was driving down a curving driveway several hundred feet long with a putting green next to it, when the accident happened. She told police that she doesn't know whether the accelerator stuck, but she was just pulling out of the driveway and did not depressed it much. Capt. Anthony Marraccini of the police department in Harrison said she was lucky to escape serious injury because she could have driven into traffic



4

11

23

25

and the impact with the wall "was pretty substantial." He also noted that "[s]he appears to have all her faculties. She didn't appear to be disoriented in any way. There's nothing at this particular time that would indicate driver error."

V. **CLASS ACTION ALLEGATIONS**

61. Pursuant to Rules 23(a) and (b)(3) of the Federal Rules of Civil Procedure, Plaintiffs bring this action both on behalf of themselves and on behalf of a Class initially defined as follows:

> All individuals or entities in the State of Washington who own a Toyota vehicle subject to recall by Toyota due to a heightened risk of sudden unintended acceleration, i.e. either the accelerator pedal or floor mat entrapment recalls.

- 62. The Class is so numerous that joinder of all members is impracticable. Due to the nature of the trade and commerce involved, Plaintiffs believe that the members of the Class are geographically dispersed throughout the State, and that joinder of all Class members would be impracticable. While the exact number of Class members is unknown to Plaintiffs at this time, Plaintiffs believe that there are, at least, many thousands of members of the Class.
- 63. Plaintiffs' claims are typical of the claims of the other members of the Class. Plaintiffs and the members of the Class purchased Toyotas at artificially high prices established by the actions of Defendant. Plaintiffs and the members of the Class have all sustained damage in that they paid inflated prices for Toyotas due to Defendant's wrongful conduct.
- 64. Plaintiffs will fairly and adequately protect the interests of the members of the Class and have retained counsel competent and experienced in class action and consumer fraud litigation.
- 65. Toyota has acted or refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the Class as a whole.



- 66. Common questions of law and fact exist as to all members of the Class and predominate over any questions solely affecting individual members of the Class. Among the questions of law and fact common to the Class are:
- a. whether Toyota had knowledge of the design defect prior to its issuance of the current safety recall affecting millions of vehicles;
 - b. whether Toyota concealed the design defect affecting Toyota vehicles;
- c. whether Toyota misrepresented the safety of the automotive vehicles at issue;
- d. whether Toyota breached its express warranties; whether Toyota breached its implied warranty of merchantability;
- e. whether Plaintiffs and the Class conferred non-gratuitous benefits on Toyota in the absence of a contract;
- f. whether Toyota retained such non-gratuitous benefits from Plaintiffs and the Class;
- g. whether Defendant's maintenance of such non-gratuitous benefits is unjust or inequitable;
- h. whether Plaintiffs and the Class are entitled to damages, restitution, equitable relief and other relief; and
- i. the amount and nature of such relief to be awarded to Plaintiffs and the
 Class.
- 67. A class action is superior to other available methods for the fair and efficient adjudication of this controversy since joinder of all Class members is impracticable. The prosecution of separate actions by individual members of the Class would impose heavy burdens upon the courts and Defendant, and would create a risk of inconsistent or varying adjudications of the questions of law and fact common to the Class. A class action would achieve substantial



1

3

4

5

6

7

9 10

11

1213

14

15

16

1718

19

21

20

22

2324

2526

26

economies of time, effort and expense, and would assure uniformity of decision as to persons similarly situated without sacrificing procedural fairness

COUNT I

Breach of Express Warranty

- 68. Plaintiffs incorporate by reference and reallege all paragraphs alleged herein.
- 69. Toyota is and was at all relevant times a merchant as defined by the Uniform Commercial Code ("UCC").
 - 70. Toyota warranted the vehicles for three years or 36,000 miles:

BASIC WARRANTY

This warranty covers repairs and adjustments needed to correct defects in materials or workmanship of any part supplied by Toyota, subject to the exceptions indicated under "What Is Not Covered" on pages 11-12.

Coverage is for 36 months or 36,000 miles, whichever occurs first, with the exception of wheel alignment and wheel balancing, which are covered for 12 months or 20,000 miles, whichever occurs first.

- 71. In addition, Toyota made affirmations of fact or promises to Class Members that the vehicles they sold would be fully operational, safe, and reliable. These warranties were made, *inter alia*, in advertisements, in Toyota's "e-brochures," and in uniform statements provided by Toyota to be made by salespeople. These affirmations and promises were express warranties, and were part of the basis of the bargain between the parties.
- 72. These express warranties were breached because the vehicles sold to Class Members were not fully operational, safe, or reliable. Toyota exacerbated the breach by failing to provide safe automobiles after the problems were acknowledged. Toyota further breached the warranty by failing to repair vehicles returned under the recall notices sent out or to provide safe vehicles, due in part to Toyota's failure to identify the problem.



9

1213

14 15

1617

18

19

20

21

2223

24

2526

- 71. As a direct and proximate result of Defendant's breach of express warranty,
 Plaintiffs and the Class have been damaged by receiving vehicles that were worth far less than
 what they paid to lease or purchase the vehicles.
- 72. As a direct and proximate result of Defendant's breach of express warranty, Plaintiffs and the Class received goods whose dangerous condition substantially impairs their value to Plaintiffs and the Class.
- 73. Plaintiffs and the Class were unaware of these defects and reasonably could not have discovered them when they purchased their automobiles from Toyota.
- 74. Plaintiffs and the Class seek to revoke their acceptance of the vehicles, return their vehicles, and receive a full refund for the purchase price.
- 75. Plaintiffs and the Class bring this notice of revocation of acceptance within a reasonable amount of time after Toyota issued the recall and the vehicle defects became public knowledge.
- 76. Alternatively, Plaintiffs and the Class seek damages based on the diminished value of their automobiles as a result of these manufacturer defects.
- 77. In addition, Plaintiffs and Class members seek any incidental and consequential damages, including the costs associated with purchasing safer vehicles, and all other damages allowable under law.

COUNT II

Breach of the Implied Warranty of Merchantability

- 78. Plaintiffs incorporate by reference and reallege all paragraphs alleged herein.
- 79. The vehicles Toyota provided to Plaintiffs and the Class violated Toyota's implied warranty of merchantability. Because of the sudden acceleration defect, they are not safe to drive and thus not fit for ordinary purposes. Furthermore, the defective accelerator pedals and brakes have caused the vehicles to depreciate in value.



- 23
- 24

26

- 80. As a direct and proximate result of Defendant's breach of merchantability, Plaintiffs and Class members received goods whose dangerous condition substantially impairs their value to Plaintiffs and the Class.
- 81. As a direct and proximate result of Defendant's breach of merchantability, Plaintiffs and the Class have been damaged as a result of the diminished value of the Defendant's products, the products' malfunctioning and the nonuse of their vehicles.
- Plaintiffs and the Class were unaware of these defects and reasonably could not 82. have discovered them when they purchased their automobiles from Toyota.
- 83. Plaintiffs and the Class seek to return their vehicles and to receive a full refund for the purchase price.
- 84. Plaintiffs and the Class bring this notice of revocation of acceptance within a reasonable amount of time after Toyota issued the recall and the vehicle defects became public knowledge.
- 85. Alternatively, Plaintiffs and the Class seek damages based on the diminished value of their automobiles as a result of these manufacturer defects.
- 86. In addition, Plaintiffs and Class members seek any incidental and consequential damages, including the costs associated with purchasing safer vehicles, and all other damages allowable under law.

COUNT III

In the Alternative, Unjust Enrichment

- 87. Plaintiffs incorporate by reference and realleges all paragraphs alleged herein. Plaintiffs plead this count in the alternative should Plaintiffs' statutory claims fail or be dismissed.
 - 88. Toyota had knowledge of the safety defect of select automotive vehicles.



8

6

- 89. Toyota failed to disclose the design defect of Toyota automotive vehicles to Plaintiffs and the Class either at the time of purchase or anytime thereafter prior to the recent recall.
- 90. During the Class Period, Plaintiffs and the Class conferred upon Defendant, without knowledge of the safety condition affecting select models, payment for these vehicles, which are benefits that were clearly non-gratuitous.
- 91. Toyota appreciated, accepted and retained the non-gratuitous benefits conferred by Plaintiffs and the Class despite Defendant's knowledge of the defects affected the select automotive vehicle models. Retaining the non-gratuitous benefits conferred upon Toyota by Plaintiff and the Class under these circumstances is unjust and inequitable, and Toyota should pay restitution.

COUNT IV

Violation of Magnuson-Moss Warranty Act 15 U.S.C. 2301 et seq.

- 92. Plaintiffs incorporate by reference and reallege all paragraphs alleged herein.
- 94. Plaintiffs assert this claim on behalf of themselves and the Class members.
- 95. Plaintiffs are "consumers" within the meaning of the Magnuson-Moss Warranty Act, 15 U.S.C. § 2301(c).
- 96. Toyota is a "supplier" and "warrantor" within the meaning of the Magnuson-Moss Warranty Act, 15 U.S.C. § 2301(4)-(5).
- 97. The Toyota vehicles are "consumer products" within the meaning of the Magnuson-Moss Warranty Act, 15 U.S.C. § 2301(1).
- 98. Toyota's express warranties are written warranties within the meaning of the Magnuson Moss Warranty Act, 15 U.S.C. § 2301(6). Toyota breached its express warranties by selling Toyota vehicles because the vehicles sold to Class Members were not fully operational,



safe, or reliable. Toyota exacerbated the breach by failing to provide safe automobiles after the problems were acknowledged.

- 99. The amount in controversy of Plaintiffs' individual claims meets or exceeds the sum of \$25. The amount in controversy of this action exceeds the sum of \$50,000, exclusive of interest and costs, computed on the basis of all claims to be determined in this lawsuit.
- 100. Plaintiffs have been damaged by Toyota's breach of warranty. Plaintiffs seek to revoke their acceptance of the Toyota vehicles or, in the alternative, seek the diminution in value of their vehicles.
- 101. Requiring an informal dispute settlement procedure, or affording Toyota a reasonable opportunity to cure its breach of written warranties, would be unnecessary and futile. At the time of sale of each vehicle, Toyota knew, should have known, or was reckless in not knowing of its misrepresentations concerning the vehicles' inability to perform as warranted, but nonetheless failed to rectify the situation and/or disclose the defective design. Under the circumstances, the remedies available under any informal settlement procedure would be inadequate and any requirement whether under the Magnuson-Moss Warranty Act or otherwise—that Plaintiffs resort to an informal dispute resolution procedure and/or afford Toyota a reasonable opportunity to cure its breach of warranties is excused and thereby deemed satisfied.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that this Honorable Court enter judgment against Toyota as follows:

- A. For an order certifying this case is a class action pursuant to Federal Rule of Civil Procedure 23:
- B. For an order appointing Plaintiffs as class representatives and Hagens Berman Sobol Shapiro as class counsel;



- C. For an order ruling that Plaintiffs and members of the Class have properly revoked acceptance of the Toyotas and are entitled to a full refund of their purchase price;
- D. For an order awarding damages to the Plaintiffs and the members of the Class, including the diminution in value of their vehicles;
- E. For an order awarding Plaintiffs and Class members incidental and consequential damages, including the costs associated with purchasing safer vehicles, and all other damages allowable under law;
- F. For an order enjoining Toyota from selling automotive vehicles that have a defect causing a propensity for sudden, unintentional acceleration;
- G. For an order requiring Toyota to recall its automotive vehicles that have a defect causing a propensity for sudden, unintentional acceleration that are in the stream of commerce;
- H. For an order requiring Toyota to provide Plaintiffs and the Class with notices and warnings of the danger of driving vehicles with a defect causing a propensity for sudden, unintentional acceleration;
- I. For an order requiring Toyota to disgorge all profits, benefits, and other compensation Toyota obtained from the sale of these products, including actual damages, and to pay restitution to Plaintiffs and the Class;
- J. For an order awarding Plaintiffs and the Class all costs of this action, including attorney fees and costs, pre-judgment and post-judgment interest; and
 - K. For an order granting any such other relief as the Court deems just and proper.

JURY TRIAL DEMANDED

Plaintiffs demand a trial by jury for all claims so triable.





DATED March 15, 2010.

HAGENS BERMAN SOBOL SHAPIRO LLP

By ______/s/ Steve W. Berman

Steve W. Berman, WSBA #12536 Barbara M. Mahoney, WSBA #31845

1918 Eighth Avenue, Suite 3300 Seattle, Washington 98101 Telephone: (206) 623-7292

Facsimile: (206) 623-0594

Attorneys for Plaintiffs

CLASS ACTION COMPLAINT - 20 Case No.

