

UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF ILLINOIS AT EAST ST. LOUIS

RONALD WALLS  
103 N. Chamberlin Drive  
Marion, Illinois 62959,  
on behalf of himself  
and all others similarly situated,

Plaintiff,

v.

TOYOTA MOTOR CORPORATION,  
1, Toyota-cho, Toyota City,  
Aichi-ken, 471-8571, Japan

&

TOYOTA MOTOR SALES U.S.A., Inc.  
Serve:  
CT Corporation System  
208 S. LaSalle Street, Suite 814  
Chicago, IL 60604

&

TOYOTA MOTOR ENGINEERING &  
MANUFACTURING NORTH AMERICA,  
INC.,  
Serve:  
CT Corporation System  
208 S. LaSalle Street, Suite 814  
Chicago, IL 60604

Defendants.

Case No. 3:10-cv-00215-MJR-PMF

CLASS ACTION

JURY TRIAL DEMANDED

CLASS ACTION COMPLAINT

INTRODUCTION

1. This is a class action seeking damages, restitution and equitable relief for consumers who have purchased a Toyota or Lexus vehicle containing electronic throttle control systems (ETC S) or the electronic throttle controls system known as the ETCS-Intelligent System (ETCS-i), and for individuals who have been injured as a result of failures of the ETCS or ETCS-i systems. Vehicles equipped with ETCS or ETC S-i have a dangerous tendency to accelerate suddenly without driver input and against the intentions of the driver. This increased propensity for runaway acceleration stems in part from the ETCS or ETCS-i's vulnerability to electronic "confusion" in the systems' sensors and electronics processors. Despite knowledge of such risks, Toyota failed to provide necessary electronic and mechanical failsafes to enable drivers to bring their vehicles back under control if a runaway event should occur, as many other vehicle manufacturers have done. The Plaintiff brings this action on behalf of himself, and all others similarly situated.

2. Plaintiff makes the allegations in this Class Action upon actual knowledge, and as to all other matters upon information and belief and the investigation of counsel.

### **JURISDICTION AND VENUE**

3. The Court has jurisdiction pursuant to 28 U.S.C. § 1332(d)(2) ("CAFA Jurisdiction") because the matter in controversy exceeds the sum of \$5,000,000 exclusive of interests and costs and is a class action in which members of the Class are citizens of a state different from any Defendant.

4. Venue is proper in this Court pursuant to 28 U.S.C. § 1391 because the Defendants are subject to personal jurisdiction in this district and because a substantial portion of the acts and omissions complained of occurred in this judicial district.

#### **PARTIES**

5. Ronald Walls is a citizen and resident of Marion, Illinois, and was damaged by the defects in the Defendants' systems in a 2007 Toyota Camry, VIN4TBE46K27V114719.

6. Defendant Toyota Motor North America, Inc. is a California corporation with its principal place of business in California.

7. Defendant Toyota Motor Sales U.S.A., Inc., is a California corporation with its principal place of business in California.

8. Defendant Toyota Motor Corporation is a Japanese corporation.

9. Defendant Toyota Motor Engineering and Manufacturing North America, Inc. is a Kentucky corporation with its principal place of business in Kenton County, Kentucky.

10. Defendants (jointly described as "Toyota") were involved, directly or indirectly, in the manufacture and assembly of the vehicles owned by, or which caused the injuries, to the plaintiff, as well as all other vehicles that are the subject of this action.

#### **FACTUAL ALLEGATIONS**

11. The defendants designed and manufactured Toyota and Lexus vehicles during all periods relevant to this complaint.

12. During the 1990s, the defendants began installing electronic throttle control systems (ETCS) in its vehicles.

13. ETCS is a “drive by wire” system: there is no direct mechanical linkage between the accelerator pedal and the throttle linkages, as in older models of vehicles.

14. Instead, the position of the accelerator pedal is detected by sensors, which feed this information to a control unit, which then uses this information, in combination with inputs from other sensors, to regulate the throttle opening and the amount of fuel being sent to the fuel injectors.

15. Beginning in approximately 2002, the defendants began installing ETCS-i systems in its vehicles.

16. The ETCS-i is an enhanced version of the ETCS, with more sophisticated electronics and processing, but is still a “drive by wire” system.

17. “Drive by wire” systems can have a problem with runaway acceleration. Runaway acceleration events almost always begin suddenly and without warning; the throttle opens so rapidly it is wide open before the driver has time to react; the automobile continues out of control despite desperate braking efforts by the driver; and, unless the driver manages to disengage the engine quickly, the likelihood of a catastrophic outcome is great. Consequently, manufacturers must provide an electronic or mechanical failsafe to allow the driver to return the vehicle safely under control when faced with such an emergency.

18. It soon became apparent that models with the ETCS-i were experiencing a failure rate significantly greater than other models. As the number of reports involving

Toyota models with “throttle-by-wire” electronics grew, the claimed injury and death toll also increased alarmingly. However, Toyota and Toyota dealers continue to deceptively market ETCS-i-equipped vehicles despite knowledge that they are unreasonably dangerous.

19. By marketing vehicles equipped with ETCS-i such as the 2009 Toyota Camry LE, without incorporating an electronic or mechanical failsafe similar to those provided by Toyota’s manufacturing competitors, Toyota has dangerously misled the Plaintiff and thousands of unsuspecting consumers throughout the United States.

20. Toyota engaged in unfair and deceptive marketing of its ETCS-i-equipped vehicles both in direct communications to its consumers and in misinformation supplied by Toyota to National Highway Traffic Safety Administration’s (“NHTSA”) investigators.

21. When the NHTSA opened an investigation of 2002 and 2003 model year Camrys (all equipped with ETCS-i), the safety agency described the defect alleged by Toyota owners: “Allegations of (A) an engine speed increase without the driver pressing on the accelerator pedal or, (B) the engine speed failing to decrease when the accelerator pedal was no longer being depressed—both circumstances requiring greater than expected brake pedal application force to control or stop the vehicle and where the brake system functioned normally.” Defect Petition DP04003; Investigation PE0402 1.

25. At the outset of its investigation, NHTSA asked Toyota to state the number of each of the following, received by Toyota, or of which Toyota is otherwise aware, which relate to, or may relate to, the alleged defect in the subject vehicles:

- a. Consumer complaints, including those from fleet operators;

- b. Field reports, including dealer field reports;
- c. Reports involving a crash, injury, or fatality, based on claims against the manufacturer involving a death or injury; notices received by the manufacturer alleging or proving that a death or injury was caused by a possible defect in a subject vehicle; property damage claims; consumer complaints; and/or field reports;
- d. Property damage claims;
- e. Third-party arbitration proceedings where Toyota is or was a party to the arbitration; and
- f. Lawsuits, both pending and closed, in which Toyota is or was a defendant or codefendant.

26. For paragraph 25, a through f above, the Defendants were asked to show each category (e.g., consumer complaints, field reports, etc.) separately. Multiple incidents involving the same vehicle were to be counted/shown separately. Multiple reports of the same incident were also to be counted/shown separately (i.e., a consumer complaint and a field report involving the same incident in which a crash occurred are to be shown as a crash report, a field report and a consumer complaint).

27. Toyota reported 123 complaints that it said “may relate to the alleged defect”; however, Toyota intentionally excluded from its response the following categories of complaints, among others:

- a. an incident alleging uncontrollable acceleration that occurred for a long duration [lasting longer than one (1) second];

b. an incident in which the customer alleged that they could not control a vehicle by applying the brake; and

c. an incident alleging unintended acceleration occurred when moving the shift lever to the reverse or the drive position.

28. Toyota thus deceptively concealed from NHTSA as well as from the news media and consumer safety groups that monitor NHTSA safety defect investigations, an entire universe of potentially relevant customer complaints.

29. For example, the report from a driver who had experienced a sudden acceleration which carried him for a considerable distance, would not be seen by NHTSA because Toyota did not include it in its response, since it occurred for a “long duration.” Similarly, a driver who reported that he was standing on the brake and could not overcome the open throttle would have had his report excluded from the investigation.

30. NHTSA's investigation of the alleged defect in 2002 and 2003 Camrys was based largely on information supplied by Toyota, including a cleverly-limited group of customer complaints and assertions by the company that its dealers and manufacturer representatives had “failed to identify a fault within the vehicle.”

31. Complaints and incident reports from Toyota customers who had experienced sudden, unintended accelerations continued to come in to NHTSA and Toyota in substantial numbers after the NHTSA investigation was closed. Defendants issued statements blaming the driver's-side floor mat as the cause, knowing that floor mats were almost never the cause.

32. In 2007, and prompted by the failure rate of Toyota and Lexus models, NHTSA's Office of Defects Investigation ("ODI") opened an engineering analysis of 2007 Lexus ES-350 vehicles. EA07010. According to the report, the purpose of the engineering analysis was to:

- a. Determine whether reported incidents of unintended acceleration were caused by a vehicle system malfunction or mechanical interference;
- b. Understand and document the effects of unintended acceleration as they impact controllability of the vehicle; and
- c. Document potential difficulties experienced by the operator while attempting to regain control of the vehicle.

33. Section 3.3 of the NHTSA report entitled "Analysis of the Effects of Unintended uncontrolled acceleration. The agency's analysis began as follows:

The safety consequences of an unsecured rubber floor mat trapping the accelerator pedal with the vehicle in gear can be severe. With the engine throttle plate open, the vacuum power assist of the braking system cannot be replenished and the effectiveness of the brakes is reduced significantly. During trapped throttle acceleration testing, several methods to defeat acceleration proved effective but not necessarily intuitive. These methods included:

3.3.1 Application of the brake - Significant brake pedal force in excess of 150 pounds was required to stop the vehicle, compared to 30 pounds required when the vehicle is operating normally. Stopping distances increased from less than 200 feet to more than 1,000 feet.

34. The required braking force of 150 pounds is more than many drivers are able to apply.

35. This indicates a pressing need for an electronic or mechanical failsafe.

36. On September 29, 2009, following the widespread publicity surrounding the apparent sudden acceleration of a 2009 Lexus ES350 that resulted in a four-fatality crash near San Diego, California, Toyota issued a “Safety Advisory,” saying that the company had “taken a closer look” at the potential for the accelerator to get “stuck in the full open position” due to interfering floor mats (“pedal entrapment”). The advisory stated that the company would soon be recalling certain 2007–2010 Camrys and Lexus vehicles, 3.8 million in all, to address the issue – the largest recall in Toyota’s history and the sixth largest in the United States.

37. Toyota’s advisory is dangerously misleading, for the following reasons, among others:

a. It lures owners of models with no driver’s side floor mat into believing there is no possibility of a potentially catastrophic loss of throttle and braking control.

b. It misleads owners with a driver’s-side floor mat into believing that, in the event of a sustained throttle malfunction, the first response should be to visually determine if the floor mat is interfering with the accelerator pedal. This will, in many cases, exacerbate the driver's loss of control as he/she will lose valuable time before shifting into neutral or turning off the ignition.

38. There is a real and imminent danger to the public at large from the subject Toyota and Lexus models that will continue without the benefit of: (1) a warning to Toyota owners as to the dangers presented by the defects in the system that allow sudden, unintended acceleration, (2) cogent instructions from Toyota to drivers of those vehicles as to the steps to be taken in the event of a sudden, uncontrollable loss of throttle control, (3)

the implementation by Toyota of a failsafe device that would ensure that the system will return the throttle to idle or immediately disengage the engine, and (4) the installation by Toyota of an electronic component in each at-risk vehicle that senses the conditions which produce an unintended acceleration and prevents such an occurrence.

39. On January 21, 2010, Toyota announced a further recall for certain vehicle models for a sticking accelerator pedal (“sticky pedal”), stating:

“Our investigation indicates that 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. Consistent with our commitment to the safety of our cars and our customers, we have initiated this voluntary recall action.”

40. On February 1, 2010, Toyota announced it had a solution for the sticky pedal, and informed consumers asking “Is my car safe to drive if it has not yet received this solution?”:

“To be clear, the condition is rare and generally does not occur suddenly. It can occur when the pedal mechanism becomes worn and, in certain conditions, the accelerator pedal may become harder to depress, slower to return or, in the worst case, stuck in a partially depressed position.”

41. Toyota’s advisory is dangerously misleading, because it lures owners of recent models with low mileage into believing there is an insignificant possibility of a potentially catastrophic loss of throttle and braking control.

42. The Toyota models at risk with the ETCS-i systems (“ETCS-i Class Vehicles”) include, but are not limited to, the following:

Toyota Camrys from Model Year (“MY”) 2002 through 2009

Toyota FJ Cruisers from MY 2003 through 2008

Toyota Tacoma pickup trucks from MY 2003 through 2008

Lexus models from MY 1998 through 2009

Toyota Tundra pickup trucks MY 2000 through 2009

Toyota 4Runner SUVs from MY 2001 through 2009

Toyota Avalons from MY 2005 through 2009

Toyota Land Cruisers from MY 2001 through 2009

Toyota RAV-4s from MY 2005 through 2009

Toyota Sequoias from MY 2001 through 2009

Toyota Siennas from MY 2004 through 2009

43. The Toyota models at risk with the ETCS systems (“ETC S Class Vehicles”) are believed to include an unknown number of models built from the 1990s through 2005.

44. As a result of the Toyota defendants’ unlawful and misleading business practices and their concealment, suppression and/or omission of material facts in connection with the marketing, advertising and sale of their vehicles, Plaintiff has suffered harm which includes being deprived of the full use, benefit and value of his vehicle, including the difference in value between what Plaintiff paid for his vehicle and what he would have paid at the time of purchase had the defendants fully disclosed the dangers of sudden unintended acceleration inherent in his and the other Toyota Class Vehicles; a diminished value in the vehicles from what the vehicle would have been worth without the defects; costs for rental vehicles used by Plaintiff because of the defects to his vehicle; and costs associated with replacing his defective vehicle.

45. Furthermore, one of the Toyota defendants’ main selling points for their vehicles is that they are safe and reliable. Plaintiff relied on the Toyota defendants’

carefully crafted reputation for reliability and safety, the reputation it had created by its own affirmative brand imaging through its marketing and advertising, in selecting his Toyota vehicle over the competition.

46. Had the Toyota defendants disclosed the danger of serious injury or death as a result of the propensity of their vehicles to suddenly accelerate, the many sudden acceleration complaints they had received, the details of NHTSA's numerous defect investigations and/or the fact of their incorporation of ETCS-i into the Class Vehicles without appropriate failsafe designs such as a brake override system, Plaintiff would not have purchased his vehicle, or would not have purchased the vehicle for as much was paid.

47. Because of the aforementioned facts, Toyotas have, and continue to, decline in value faster than the expected and/or usual rate of depreciation.

48. The value of Toyotas has declined dramatically since the January 2010 recalls.

49. A February 9, 2010, article in the Los Angeles Times reported that the Kelley Blue Book value of used Toyotas had declined up to four and a half percent – i.e. hundreds of dollars per vehicle – since the recall was announced.

50. This decrease reflects a real loss of value for used Toyotas.

51. Kelly Blue Book values are relied upon by the banking and insurance industries, auto dealer, and consumers buying and selling cars.

52. Kelly Blue Book values are based on actual transaction information including data from wholesale auctions, dealer sales, consumer private party transactions and other sources.

53. Kelly 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.

54. 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.

55. Edmunds.com describes their proprietary pricing algorithm, the True Market Value® or TMV® pricing system as Edmunds' "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."

56. The Kelly Blue Book value and the Edmunds.com TMV® value are both widely accepted measures of value, based on real world transactions and therefore reflect Plaintiff's losses in value to his vehicle.

57. Even after the recall, sudden acceleration in the Defendants' vehicles continues.

58. On March 8, 2010, a California driver, Mr. Sikes, 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.

59. A California Highway Patrol officer helped the Prius driver, identified in Paragraph 58 of this complaint, slow the car and bring it to a stop.

60. The incident identified in paragraph 58-59 of this Complaint 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.

61. The automaker had hoped that the presentation would kick off a week of aggressive rebuttals to critics.

62. Reports of the San Diego incident sparked a flurry of new negative headlines about the company and its vehicles.

63. According to the Associated Press, Mr. Sikes said the following at a news conference following the San Diego incident: "I pushed the gas pedal to pass a car and it did something kind of funny...it jumped and it just stuck there."

64. Mr. Sikes went on to state, "I was trying the brakes... it wasn't stopping, it wasn't doing anything and it just kept speeding up."

65. Mr. Sikes also stated he could smell the brakes burning.

66. 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.

67. The police did a visual inspection and saw the mat was in place and the pedal wasn't trapped, according to Officer Pennings, Mr. Sikes appeared to be so shaken that an ambulance was called, according to the police.

68. “He was extremely distraught,” officer Pennings said. “It was clear he was dealing with a large amount of anxiety and adrenaline.”

69. The following day, March 9, 2010, an accident in Harrison, New York involving a 2005 Toyota 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.

70. On March 10, 2010, the 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.

71. The driver, a 56 year old housekeeper, was driving down a curving driveway sever hundred feet long with a putting green next to it, when the accident happened.

72. She told police she didn’t know whether the accelerator stuck, but she was just pulling out of the driveway and did not press it much.

73. Capt. Anthony Marraccini of the police department in Harrison said she was lucky to escape serious injury because she could have driven into traffic 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.”

**FACTS COMMON TO ALL CLAIMS FOR RELIEF**

74. Plaintiff appears in this action on behalf of himself and on behalf of all others similarly situated.

75. Toyota and Lexus vehicles containing the ETCS and ETCS-i systems have been purchased throughout Illinois, and are in wide use on Illinois roads.

78. Consumers purchasing a Toyota or Lexus vehicle containing ETCS and ETCS-i are not informed of the heightened propensity for runaway acceleration in ETCS and ETCS-i-equipped vehicles. Nor are they informed that Toyota does not incorporate an adequate electronic or mechanical failsafe into its design.

79. Toyota had actual knowledge that ETCS and ETCS-i-equipped vehicles, as currently designed and manufactured, are unreasonably dangerous to a person who can be expected to drive them.

80. ETCS and ETCS-i-equipped vehicles are unreasonably dangerous due to the following acts and omissions by the Defendants:

- a. On the part of each Defendant, failure properly and adequately to design the ETCS and ETCS-i Class Vehicles and the systems, components, and parts thereof, including, but not limited to, the electronic engine control, the cruise control and other components of the Engine Control Module, collectively denominated by the Toyota entities as the Electronic Throttle Control System (ETCS) and Electronic Throttle Control System-Intelligent ("ETCS-i), and the braking system;

b. On the part of each Defendant, failure properly and adequately to install a fail-safe software component and/or mechanical safeguard against sudden, unintended acceleration;

c. On the part of each Defendant, failure properly and adequately to specify components and component systems for the ETCS and ETCS-i Class Vehicles that would shield the sensors from transient signals that confuse the ETCS or ETCS-i and thereby ensure that the vehicle's throttle responded to the intentions and actions of the driver;

d. On the part of each Defendant, failure properly and adequately to test the ETCS and ETCS-i Class Vehicles and the systems, components, and parts thereof, specifically including, but not limited to, the electronic engine control, the cruise control and other components of the Engine Control Module, the ETCS or ETCS-i, and the braking system;

e. On the part of each Defendant, failure properly and adequately to perform or heed an adequate failure mode and effects analysis (FMEA) or fault tree analysis (FTA) of the ETCS and ETCS-i Class Vehicles and the systems, components, and parts thereof, specifically including, but not limited to, the ETCS or ETCS-i, the cruise control and other components of the Engine Control Module, and the braking system;

f. On the part of each Defendant, failure properly and adequately to manufacture, fabricate, and assemble the ETCS and ETCS-i Class Vehicles and the systems, components, and parts thereof, specifically including, but not limited to, the electronic engine control, the cruise control and other components of the ETCS or ETCS-i, and the braking system;

g. On the part of each Defendant, failure properly and adequately to warn of the dangers attendant upon use of the ETCS and ETCS-i Class Vehicles, specifically including, but not limited to, the extreme risk to the driver and occupants of a loss of control of the throttle and resultant sudden, unintended acceleration of the vehicle, with the attendant risk of severe bodily injury and/or death;

h. Prior to and during the design, manufacturing, marketing and sale of the subject vehicle and thereafter, the Toyota Defendants knew, or in the exercise of reasonable care should have known, that other feasible and safer design alternatives were available to them which would have significantly reduced the risk of sudden, unintended accelerations and the lack of efficacy of the braking system under such conditions. Defendants, and each of them, negligently failed to utilize such other and feasible safer designs in their design of the electronic engine control, the cruise control and other

components of the ETCS or ETCS-i, and the braking system in the ETCS and ETCS-i Class Vehicles.

81. Plaintiff brings this action on behalf of himself and all others similarly situated as a class action pursuant to Rule 23(b)(2) and (b)(3) of the Federal Rules of Civil Procedure. The classes that Plaintiff seeks to represent is composed of and defined as follows:

All individuals or entities in the State of Illinois 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.

82. Excluded from the Classes are (a) Toyota Defendants herein, and any person, firm, trust, corporation, or other entity related to or affiliated with Toyota Defendants, including without limitation, persons who are directors, officers or partners of Toyota Defendants and any legal representatives, heirs, successors, and assigns of Toyota Defendants, and (b) any Judge assigned to this action, and her or his immediate family.

83. The members of the Classes are so numerous that joinder of all members would be neither feasible nor practical. The membership of the entire classes is unknown to Plaintiff at this time; however, it is estimated that each class is greater than 1,000 individuals. The disposition of the Class members' claims in a class action will provide substantial benefit to the parties and the Court.

84. Plaintiff's claims are typical of the claims of the Classes, and Plaintiff has no interests adverse to the interests of other members of the Class.

85. This dispute raises questions of law and fact that are common to all Class members, which predominate over questions that arise on an individual basis for Class

members. The common questions of law and fact include, without limitation, the following:

A. Did Toyota sell, market, advertise, distribute and otherwise place its vehicles utilizing ETCS and ETCS-i into the stream of commerce throughout Illinois, and the United States?

B. Did Toyota mislead consumers as to the relative safety of the Toyota vehicles listed above as being equipped with the ETCS and ETCS-i?

C. Was Toyota engaged in unfair and/or deceptive business practices?

D. Did Plaintiff and others similarly situated suffer damages?

E. The extent of damages suffered by Plaintiff and the Classes and the appropriate amount of compensation.

F. Was Toyota unjustly enriched?

G. Did Toyota act with malice, oppression and fraud so as to justify an award of punitive and exemplary damages?

H. Are the Plaintiff and the Classes entitled to injunctive relief?

86. Plaintiff, as representative parties, will fairly and adequately protect the interests of the Classes and has retained counsel experienced and competent in the prosecution of class action litigation.

87. The nature of this action and the nature of the laws available to the Class make use of the class action format a particularly efficient and appropriate procedure to afford relief to the Classes. Further, this case involves business entity defendants and a large number of individuals possessing claims with common issues of law and fact. If each individual were required to file an individual lawsuit, the business entity defendants

would necessarily gain an unconscionable advantage since they would be able to exploit and overwhelm the limited resources of each individual plaintiff with their vastly superior financial and legal resources. Proof of common business practices or factual patterns, which the named Plaintiff experienced, is representative of the class mentioned herein and will establish the right of each of the members of the class to recovery on the claims alleged herein.

88. The prosecution of separate actions by the individual class members, even if possible, would create: (a) a substantial risk of inconvenient or varying verdicts or adjudications with respect to the individual class members against Toyota herein; and (b) legal determinations with respect to individual class members not parties to the adjudications or which would substantially impair or impede the ability of class members to protect their interests. Further, the claims of the individual members of the A and B classes are not sufficiently large to warrant vigorous individual prosecution considering all of the concomitant costs and expenses attending thereto. Plaintiff is unaware of any difficulties that are likely to be encountered in the management of this action that would preclude its maintenance as a class action. Plaintiff anticipates providing appropriate notice to be approved by the Court after discovery into the size and nature of the Class.

### **FIRST CLAIM FOR RELIEF**

#### **(Negligence)**

89. Plaintiff incorporates by reference all preceding paragraphs as if fully set forth herein.

90. Plaintiff asserts these claims on behalf of himself and others similarly situated who have expended funds that the Toyota Defendants should be required to pay or reimburse under Illinois law.

91. Each of the Toyota Defendants participates in a joint enterprise to design, manufacture, assemble, market, advertise, distribute and sell ETSC and ETSC-i-equipped vehicles. Toyota thus has a duty to design, manufacture, and market vehicles that are reasonably safe for their intended uses, and to provide true and accurate information to the public to prevent undue risks arising from the foreseeable use of its products.

92. Toyota was negligent, and breached this duty owed to the Plaintiff.

93. The following acts and omissions by the Defendants were negligent:

a. On the part of each Defendant, failure properly and adequately to design the ETSC and ETSC-i Class Vehicles and the systems, components, and parts thereof, including, but not limited to, the electronic engine control, the cruise control and other components of the Engine Control Module, collectively denominated by the Toyota entities as ETSC and ETSC-i, and the braking system;

b. On the part of each Defendant, failure properly and adequately to install a fail-safe software component and/or mechanical safeguard against sudden, unintended acceleration;

c. On the part of each Defendant, failure properly and adequately to specify components and component systems for the Class Vehicles that would shield the sensors from transient signals that confuse the ETSC and ETSC-i and thereby ensure that the vehicle's throttle responded to the intentions and actions of the driver;

d. On the part of each Defendant, failure properly and adequately to test the ETSC and ETSC-i Class Vehicles and the systems, components, and parts thereof, specifically including, but not limited to, the electronic engine control, the cruise control and other components of the Engine Control Module, the ETSC or ETSC-i and the braking system;

e. On the part of each Defendant, failure properly and adequately to perform and/or heed an adequate failure mode and effects analysis (FMEA) or fault tree analysis (FTA) of the ETSC and ETSC-i Class Vehicles and the systems, components, and parts thereof, specifically including, but not limited to, the ETSC or ETSC-i, the cruise control and other components of the Engine Control Module, and the braking system;

f. On the part of each Defendant, failure properly and adequately to manufacture, fabricate, and assemble the ETSC and ETSC-i Class Vehicles and the systems, components, and parts thereof, specifically including, but not limited to, the electronic engine control, the cruise control and other components of the ETSC or ETSC-i, and the braking system;

g. On the part of each Defendant, failure properly and adequately to warn of the dangers attendant upon use of the ETSC and ETSC-i Class Vehicle, specifically including, but not limited to, the extreme risk to the driver and occupants of a loss of control of the throttle and resultant sudden, unintended acceleration of the vehicle, with the attendant risk of severe bodily injury and/or death.

h. Prior to and during the design, manufacturing, marketing and sale of the subject vehicle and thereafter, the Toyota Defendants knew, or in the exercise of reasonable care should have known, that other feasible and safer design alternatives were available to them which would have significantly reduced the risk of sudden, unintended accelerations and the lack of efficacy of the braking system under such conditions. Defendants, and each of them, negligently failed to utilize such other and feasible safer designs in their design of the electronic engine control, the cruise control and other components of the ETCS or ETCS-i, and the braking system in the ETSC and ETSC-i Class Vehicles.

**SECOND CLAIM FOR RELIEF  
(Deceptive Practices)**

94. Plaintiff incorporates by reference all preceding paragraphs as if fully set forth herein.

95. At all times relevant, the Toyota Defendants sold, marketed, advertised, distributed, and otherwise placed the above-listed Toyota vehicles into the stream of

commerce in an unfair, false, misleading, or deceptive manner that was likely to deceive the public.

96. The Toyota Defendants' marketing of vehicles containing ETCS or ETCS-i, without incorporating adequate electronic or mechanical failsafes, and while misrepresenting the dangers of such vehicles to the public, constitutes unfair, false, misleading, or deceptive acts or practices

**THIRD CLAIM FOR RELIEF  
(Breach of Express and Implied Warranty)**

97. Plaintiff incorporates by reference all preceding paragraphs as if fully set forth herein.

98. By marketing, advertising, distributing and selling vehicles containing ETCS or ETCS-i, without incorporating adequate electronic or mechanical fail-safes, and while misrepresenting the dangers of such vehicles to the public, the Toyota Defendants created and breached both express and implied warranties that the vehicle was safe for use as public transportation, when in fact, it was not.

99. As a result of the foregoing, Plaintiff and the Classes have suffered economic damages in an amount to be proven at trial.

**FOURTH CLAIM FOR RELIEF  
(Unjust Enrichment)**

100. Plaintiff incorporates by reference all preceding paragraphs as if fully set forth herein.

101. Plaintiff and the Classes unknowingly conferred a benefit upon Toyota by paying for vehicles which were, in fact, unreasonably dangerous for use as public transportation.

102. The circumstances, as described in this Complaint, are such that allowing the Toyota Defendants to retain all of the benefits provided by Plaintiff and the Classes would be inequitable.

103. The Toyota Defendants have been unjustly enriched at the expense of Plaintiff and the Classes and, as a matter of equity, the Toyota Defendants should be required to make Plaintiff and the Classes whole in an amount to be proven at trial.

**FIFTH CLAIM FOR RELIEF  
(BREACH OF THE ILLINOIS CONSUMER FRAUD  
AND DECEPTIVE BUSINESS PRACTICES ACT)**

104. Plaintiff repeats and re-alleges Paragraphs 1-74 above as if said allegations were set forth expressly herein.

105. At all times material hereto, there has been in effect in the State of Illinois a certain statute known as the Illinois Consumer Fraud and Deceptive Business Practices Act (“the Act”), set forth as Chapter 815, Act 505 of the Illinois Compiled Statutes, which provides in pertinent part, as follows:

Unfair methods of competition and unfair or deceptive acts or practices, including but not limited to the use or employment of any deception fraud, false pretense, false promise, misrepresentation or the concealment, suppression or omission of any material fact . . . in the conduct of any trade or commerce are hereby declared unlawful whether any person has in fact been misled, deceived or damage thereby . . .” See 815 ILCS 505/2.

106. The act of the Toyota Defendants, issuing press releases stating that no problems existed with the accelerator system in the Defendants' vehicles; issuing press releases stating that floor mats were responsible for sudden acceleration; and issuing press releases stating that driver error was the cause of sudden acceleration, were "deceptive" practices under the Act. These representations became false and fraudulent later when the Toyota Defendants continued to make these claims and sell defective vehicles even though the Toyota Defendants knew Plaintiff's Toyota vehicle was defective for other reasons aforementioned in this complaint.

107. Toyota Defendants issued false statements and press releases which misrepresented the danger of defects in the acceleration systems of its vehicles.

108. Toyota Defendants issued false statements and press releases which concealed the true causes of acceleration problems in its vehicles.

109. Toyota Defendants suppressed material facts about the safety and reliability of its vehicles in its press releases and advertisements, including but not limited to the suppression of material facts surrounding the requested implementation of additional safety features by the federal government and its agencies in connection with documented sudden acceleration problems.

110. Toyota Defendants issued press releases and advertised vehicles in a manner which omitted material facts regarding said vehicles' accelerator issues and problems.

111. Toyota Defendants committed the aforementioned acts in the conduct of trade and/or commerce in Illinois and throughout the United States.

112. At all times material hereto, it was reasonably foreseeable that Plaintiff, and others similarly situated, would rely on the false and fraudulent statements made by the Toyota Defendants.

113. Said reliance has caused Plaintiff, and others similarly situated, to be damaged.

114. The actions of the Toyota Defendants were done willfully, intentionally and with reckless disregard for harm that would be caused to Plaintiff, and others similarly situated, and the Defendants' conduct warrants imposition of exemplary damages to deter the Defendants, and others in similar circumstances, from committing such actions in the future.

#### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiff, on his own behalf, on behalf of all others similarly situated and on behalf of the general public, prays for judgment against the Toyota Defendants as follows:

1. For an order certifying this case as a class action and appointing Plaintiff and Holland, Groves, Schneller & Stolze, LLC to represent the Class;
2. Awarding damages to Plaintiff and the other Class members for all causes of action alleged herein;
3. Awarding restitution and disgorgement as a result of the Toyota Defendants' unfair, false, misleading, or deceptive business practices, including but not limited to a total buyback of each vehicle;

4. For an order requiring the Toyota Defendants to immediately cease and desist from marketing, advertising, distributing and selling vehicles containing ETCS or ETCS-i;
5. All equitable remedies available at law, up to and including complete restitution via buyback of Plaintiff's vehicle;
6. Attorneys' fees, expenses and costs;
7. Punitive Damages
8. Awarding pre- and post-judgment interest;
9. Trial by jury for all claims so triable; and
10. Any and all other relief as this Court may deem just and proper.

Holland, Groves, Schneller & Stolze, LLC.

/s/ Eric D. Holland

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