

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

FILED
IN CLERK'S OFFICE
U.S. DISTRICT COURT E.D.N.Y.

★ FEB 22 2010 ★

BROOKLYN OFFICE

MARIE DUBOIS, individually, and
on behalf of all persons similarly situated,

PRESS COPY

CASE NO.:

Plaintiff.

-v-

TOYOTA MOTOR NORTH AMERICA,
INC., a foreign corporation, and TOYOTA
MOTOR SALES, U.S.A., INC., a foreign
corporation, and GENERAL MOTORS, LLC.,
a foreign corporation.

BLOCK, J.

POLLAK, M.J.

Defendants.

COMPLAINT

MARIE DUBOIS (hereinafter "Plaintiff"), individually, and on behalf of all persons similarly situated (hereinafter the "Proposed Class") hereby brings this action against TOYOTA MOTOR NORTH AMERICA, INC., TOYOTA MOTOR SALES, U.S.A., INC., and GENERAL MOTORS, LLC. (hereinafter "Defendants"), and states as follows:

PARTIES, JURISDICTION AND VENUE

1. Plaintiff is, and at all times material was, a resident of Staten Island, New York, who purchased a 2009 Toyota RAV4, manufactured, marketed and/or sold by the Defendants.
2. TOYOTA MOTOR NORTH AMERICA, INC., is, and at all times material was, a California corporation with its principal place of business located at 19001 South Western Avenue, Torrance, California 90501.
3. TOYOTA MOTOR SALES, U.S.A., INC., is, and at all times material was, a foreign corporation with its principal place of business located at 19001 South Western Avenue, Torrance, California 90501.
4. GENERAL MOTORS, LLC, is, and at all times material was, a foreign corporation with its principal place of business located at 300 Renaissance Center, Detroit, Michigan, 48265-3000.
5. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. § 1332(d).

6. Venue is proper in New York under 28 U.S.C. § 1391 because Plaintiff is a resident of this district, and Defendants TOYOTA MOTOR NORTH AMERICA, INC., TOYOTA MOTOR SALES, U.S.A., INC., and GENERAL MOTORS, LLC. operate active businesses in New York, and its resident agents reside here.

GENERAL ALLEGATIONS

1. Defendant TOYOTA MOTOR NORTH AMERICA, INC., manufactures, markets and/or sells the following non-exclusive list of automotive vehicles: 2007-2010 Camry; 2009-2010 Corolla; 2005-2010 Avalon; 2004-2009 Prius; 2005-2010 Tacoma; 2007-2010 Tundra; 2009-2010 RAV4; 2009-2010 Matrix; 2008-2010 Highlander; 2008-2010 Sequoia; 2009-2010 Venza; 2007-2010 Lexus ES350; 2006-2010 Lexus IS250 and IS350; 2009-2010 Pontiac Vibe (through a joint venture with Defendant GENERAL MOTORS, LLC.).

2. Defendant TOYOTA MOTOR SALES, U.S.A., INC., manufactures, markets and/or sells the following non-exclusive list of automotive vehicles: 2007-2010 Camry; 2009-2010 Corolla; 2005-2010 Avalon; 2004-2009 Prius; 2005-2010 Tacoma; 2007-2010 Tundra; 2009-2010 RAV4; 2009-2010 Matrix; 2008-2010 Highlander; 2008-2010 Sequoia; 2009-2010 Venza; 2007-2010 Lexus ES350; 2006-2010 Lexus IS250 and IS350; 2009-2010 Pontiac Vibe (through a joint venture with Defendant GENERAL MOTORS, LLC.).

3. Upon information and belief, in 2009 Toyota reported that they sold 1,770,149 cars and trucks, for a net income of \$4.33 billion, and a market share of 18.2 percent. In 2008, Toyota reported that they sold 2,217,662 cars and trucks.

4. On January 21, 2010, Defendant's announced it would recall approximately 2.3 million vehicles to correct defective accelerator pedals on specific Toyota models. Defendants said their accelerator pedals can become stuck in a partly depressed position. Recent complaints also indicate that there are problems with the brakes in the Prius. A separate recall took place on September 29, 2009, with a NHTSA recall notice of approximately 4.2 million Toyota and Lexus vehicles to reduce the risk of pedal entrapment by incorrect or out-of-place accessory floor mats. Upon information and belief, millions of Toyota vehicles are subject to various separate recall actions.

5. In a recent press release regarding the safety recall of the 2.3 million vehicles affected by the sticking accelerator, Defendant's Vice President Irv Miller stated "our investigation indicates that there is a possibility that certain accelerator pedal mechanisms may mechanically stick in a partially depressed position or return slowly to the idle position." See <http://pressroom.toyota.com/pr/tms/toyota-toyota-files-voluntary-safety-152979.aspx>.

6. The accelerator condition can occur making the accelerator pedal harder to

depress, slower to return or, in the worst case, stuck in a partially depressed position leading to injury and/or death. Purchasers of these vehicles concerned about potential defects have been advised not to drive the vehicles until repaired.

7. Recent complaints also indicate that there are problems with the brakes in the Toyota Prius model. On February 4, 2010, the National Highway Traffic Safety Administration announced that it had opened a formal investigation into the 2010 model Prius after getting complaints from drivers of a brief loss in braking power, which has been blamed in four crashes, two of which resulted in injuries. There have also been numerous complaints from consumer relating to the Prius' headlights.

8. On February 17, 2010, Toyota announced they are considering a recall of the Toyota Corolla, the world's best-selling car, after complaints about power steering problems.

9. As a result of all of these problems, New York and national purchasers of Toyota automotive vehicles manufactured by the Defendants, including but not limited to those listed in paragraphs 7-9, paid more than they would have for the product, and have been harmed as a result of the diminished value of the vehicles purchased and non-use of the vehicles. Major automobile valuation services, including Edmunds, have indicated a reduction in resale and/or trade-in value of as much as 6 percent, with further reductions expected.

10. New York and national purchasers of Toyota automotive vehicles have been deprived of their ability to trade in or sell their vehicles due to this drop in resale value. Indeed, when news of the defects in Toyota vehicles and the subsequent recall became public, Plaintiff considered trading in her Toyota vehicle for another brand, but widespread reports of the drop in resale value caused her to abandon the idea.

11. Quality and resale value have long been the main reason New York and national consumers buy a Toyota over another vehicle.

12. Upon information and belief, Toyota made resale value a major element of their marketing, advertising and sales efforts as far back as, at least, the 1970s. As recently as June 22, 2009, Toyota Motor President Jim Lentz was quoted in a Toyota press release stating that "warranty claims, long-term durability, resale value and buyer loyalty" were important factors for the company. (Toyota News Release, "Toyota and Lexus Earn Ten Segment Awards in the J.D. Power and Associates," July 22, 2009)

13. Thus, for New York and national purchasers of Toyota automotive vehicles manufactured by the Defendants, potential resale value was a central part of the bargain when purchasing a Toyota. Resale value was as important a reason for buying a Toyota as the desire to get from Point "A" to Point "B."

14. New York and national purchasers of the Toyota automotive vehicles have suffered specific and actual economic damage as a result of Toyota's materially deceptive and misleading trade practices. It is obvious that a car with a potentially defective acceleration pedal, brakes or steering, is worth less than one with no concern over potential defective conditions. In other words, consumers did not get what they bargained for. It is also clear that nonuse of the vehicle pending fears of vehicle safety and successful repair is a loss of use and value to the purchaser.

15. The actual damages are the difference in the market value of the Toyota, Lexus, and GM vehicles in the condition in which it was delivered, namely defective, and the market value in the condition in which it was delivered according to the contract of the parties, as well as the loss of use of the vehicles for days, weeks, or months, pending successful repair.

16. Defendants had knowledge of a design defect regarding the accelerator pedal as early as 2007, but withheld publication of the data results for almost three years. Defendants made production changes in August of 2009 for models in Europe, and were aware of this problem in Europe as early as April and May of 2009. Yet, in the United States, Defendants did not respond to these same concerns and protection of American consumers, until after officials from the Federal Department of Transportation personally flew to Japan to remind Toyota, and wake them up about the seriousness of its obligations to the American purchasers. Federal officials described Defendants as "maybe a little safety dead." Meanwhile, despite knowledge of this information and taking preventative steps in Europe, Defendants continued to manufacture, market and/or sell automotive vehicles affected with said defect until directly requested by Federal Department of Transportation officials.

17. In September 2007, Toyota recalled an accessory all-weather floor mat sold for use in some 2007 and 2008 model year Lexus ES 350 and Toyota Camry vehicles because of similar problems, thereby proving that Defendants had knowledge since at least 2007 of this safety problem affecting the previously listed automotive vehicles.

CLASS REPRESENTATION ALLEGATIONS

18. Plaintiffs incorporate the foregoing paragraphs as though fully set forth at length herein.

19. Plaintiff brings this action pursuant to Rule 23, Fed.R.Civ.P., on behalf of the Proposed Class, which is defined herein.

20. Membership in the Proposed Class is so numerous as to make it impractical to bring all of the Proposed Class members before the Court. The exact number and identity of the Proposed Class is unknown; however, Plaintiff knows that there are millions of persons in the Proposed Class. Plaintiff is a member of the Proposed Class.

21. There are numerous and substantial questions of law and fact common to the Proposed Class which control this litigation, and which predominate over any individual issues. Included within the common questions are:

- i. whether Defendants had knowledge of the design defect prior to its issuance of the current safety recall affecting millions of vehicles;
- ii. whether Defendants concealed the design defect affecting the following models of automotive vehicles: 2007-2010 Camry; 2009-2010 Corolla; 2005-2010 Avalon; 2004-2009 Prius; 2005-2010 Tacoma; 2007-2010 Tundra; 2009-2010 RAV4; 2009-2010 Matrix; 2008-2010 Highlander; 2008-2010 Sequoia; 2009-2010 Venza; 2007-2010 Lexus ES350; 2006-2101 Lexus IS250 and IS350; and 2009-2010 Pontiac Vibe;
- iii. whether Defendants misrepresented the safety of the automotive vehicles at issue;
- iv. whether Defendants actions or omissions with regard to the select models of vehicles violate various state consumer protection statutes;
- v. whether Defendants warranted the vehicles for a particular purpose for which they are unfit or ineffective;
- vi. whether Plaintiff and the Proposed Class conferred non-gratuitous benefits on Defendants in the absence of a contract;
- vii. whether Defendants retained such non-gratuitous benefits from Plaintiffs;
- viii. whether Defendants maintenance of such non-gratuitous benefits is unjust or inequitable;
- ix. whether Plaintiff and the Proposed Class are entitled to damages, restitution, equitable relief and other relief;
- x. the amount and nature of such relief to be awarded to Plaintiff and the Proposed Class;

22. Plaintiff's claims are typical of the claims of the Proposed Class, and Plaintiff has no interest adverse to the interests of the members of the Proposed Class.

23. Plaintiff will fairly and adequately protect the interests of the Proposed Class and has retained counsel experienced and competent in the prosecution of class actions and complex

litigation. Plaintiff is willing to appear at depositions, assist counsel in the prosecution of the action and subordinate his own interests for those of the Class. Plaintiff will give complete support to the vigorous prosecution of the entire Proposed Class' claims.

24. Adjudications with respect to individual members of the Proposed Class would, as a practical matter, be dispositive of the interests of other members of the Proposed Class who are not parties to the adjudication and may impair and impede their ability to protect their interests.

25. A class action is superior to other available methods for the fair and efficient adjudication of this controversy. Absent a class action, the Proposed Class will continue to suffer damages and Defendants' violations of law will proceed without remedy.

26. As a result, New York and national purchasers of Toyota automotive vehicles manufactured by the Defendants, paid more than they would have for the product, and have been harmed as a result of the diminished value of the vehicles purchased.

27. Most individual members of the Proposed Class have little ability to prosecute an individual action, due to the complexity of the issues involved in this litigation, the significant costs attendant to litigation on this scale, and the comparatively small, although significant, damages suffered by individual members of the Proposed Class.

28. This action will result in the orderly and expeditious administration of the Proposed Class members' claims, economies of time, effort and expense will be fostered, and uniformity of decisions will be ensured.

COUNT I -- CONSUMER PROTECTION
(violations of state consumer protection statutes)

29. Plaintiffs incorporate the foregoing paragraphs as though fully set forth at length herein.

30. Plaintiff is a consumer who purchased an affected automotive vehicle from Defendants for personal purposes.

31. Defendants had a statutory duty to refrain from unfair or deceptive acts or practices in the manufacture, marketing and/or sale of the affected automotive vehicles to Plaintiff and the proposed class members.

32. Defendants violated this duty by misrepresenting the characteristics, uses, benefits, quality and usefulness of the affected automotive vehicles by concealing differences between vehicles built with the defective accelerator pedal as compared to those vehicles built with alternative accelerator pedals.

33. Plaintiff was directly and proximately injured by Defendants' conduct and would not have purchased Toyota automotive vehicles and/or paid as much for the vehicle had they known the true nature of the product; and would have had full use of the vehicles.

34. Defendants' concealment, misrepresentations and material omissions to Plaintiff are unfair and deceptive acts and practices under N.Y. Gen. Bus. Law § 349 and §350, *et seq.*, and other states' consumer protection laws.

35. Defendant engaged in wrongful conduct while at the same time obtaining, under false pretenses, significant sums of money from Plaintiff.

36. As a proximate result of Defendants' misrepresentations and omissions, Plaintiff and the proposed class members have suffered specific and actual losses as a result of the diminished value of the Defendants' products, and nonuse of the vehicles, and are entitled to relief, in an amount to be determined at trial. Defendants' actions constitute unfair competition and/or unfair, unconscionable, deceptive or fraudulent acts or practices in violation of various additional state consumer protection statutes listed below:

- i. Defendants have engaged in unfair competition or unfair or deceptive acts or practices in violation of Ala. Code § 8 19 1, *et seq.*;
- ii. Defendants have engaged in unfair competition or unfair or deceptive acts or practices in violation of Alaska Stat. Code § 40.50.471, *et seq.*;
- iii. Defendants have engaged in unfair competition or unfair or deceptive acts or practices in violation of Ariz. Rev. Stat. § 44 1522, *et seq.*;
- iv. Defendants have engaged in unfair competition or unfair or deceptive acts or practices in violation of Ark. Code § 4 88 101, *et seq.*;
- v. Defendants have engaged in unfair competition or unfair or deceptive acts or practices in violation of Cal. Bus & Prof. Code § 17070, *et seq.*;
- vi. Defendants have engaged in unfair competition or unfair or deceptive acts or practices in violation of Colo. Rev. Stat. § 6 1 105, *et seq.*;
- vii. Defendants have engaged in unfair competition or unfair or deceptive acts or practices in violation of Conn. Gen. Stat. § 42 110b, *et seq.*;
- viii. Defendants have engaged in unfair competition or unfair or deceptive acts or practices in violation of 6 Del. Code § 2511, *et seq.*;

- ix. Defendants have engaged in unfair competition or unfair or deceptive acts or practices in violation of D.C. Code § 28 3901, et seq.;
- x. Defendants have engaged in unfair competition or unfair or deceptive acts or practices in violation of Fla. Stat. § 501.201, et seq.;
- xi. Defendants have engaged in unfair competition or unfair or deceptive acts or practices in violation of Ga. Stat. § 10 1 392. et seq.;
- xii. Defendants have engaged in unfair competition or unfair or deceptive acts or practices in violation of Haw. Rev. Stat. § 480, et seq.;
- xiii. Defendants have engaged in unfair competition or unfair or deceptive acts or practices in violation of Idaho Code § 48 601, et seq.;
- xiv. Defendants have engaged in unfair competition or unfair or deceptive acts or practices in violation of 815 ILCS § 505/1, et seq.;
- xv. Defendants have engaged in unfair competition or unfair or deceptive acts or practices in violation of Ind. Code Ann. § 24 5 0.5.1, et seq.;
- xvi. Defendants have engaged in unfair competition or unfair or deceptive acts or practices in violation of Iowa Code § 714.1b, et seq.;
- xvii. Defendants have engaged in unfair competition or unfair or deceptive acts or practices in violation of Kan. Stat. § 50 623, et seq.;
- xviii. Defendants have engaged in unfair competition or unfair or deceptive acts or practices in violation of Ky. Rev. Stat. § 367.110, et seq.;
- xix. Defendants have engaged in unfair competition or unfair or deceptive acts or practices in violation of La. Rev. Stat. § 51:1401, et seq.;
- xx. Defendants have engaged in unfair competition or unfair or deceptive acts or practices in violation of 5 Me. Rev. Stat. § 207. et seq.;
- xxi. Defendants have engaged in unfair competition or unfair or deceptive acts or practices in violation of Md. Com. Law Code § 13 101, et seq.;
- xxii. Defendants have engaged in unfair competition or unfair or deceptive acts or practices in violation of Mass. Gen. L. Ch. 93A, et seq.;

- xxiii. Defendants have engaged in unfair competition or unfair or deceptive acts or practices in violation of Mich. Stat. § 445.901, et seq.;
- xxiv. Defendants have engaged in unfair competition or unfair or deceptive acts or practices in violation of Minn. Stat. § 325F.67, et seq.;
- xxv. Defendants have engaged in unfair competition or unfair or deceptive acts or practices in violation of Miss. Code Ann. § 75 24 1, et seq.;
- xxvi. Defendants have engaged in unfair competition or unfair or deceptive acts or practices in violation of Vernon's Mo. Rev. Stat. § 407.010, et seq.;
- xxvii. Defendants have engaged in unfair competition or unfair or deceptive acts or practices in violation of Mont. Code § 30 14 101, et seq.;
- xxviii. Defendants have engaged in unfair competition or unfair or deceptive acts or practices in violation of Neb. Rev. Stat. § 59 1601, et seq.;
- xxix. Defendants have engaged in unfair competition or unfair or deceptive acts or practices in violation of Nev. Rev. Stat. § 598.0903, et seq.;
- xxx. Defendants have engaged in unfair competition or unfair or deceptive acts or practices in violation of N.H. Rev. Stat. § 358 A:1, et seq.;
- xxxi. Defendants have engaged in unfair competition or unfair or deceptive acts or practices in violation of N.J. Stat. Ann. § 56:8 1, et seq.;
- xxxii. Defendants have engaged in unfair competition or unfair or deceptive acts or practices in violation of N.M. Stat. Ann. § 57 12 1, et seq.;
- xxxiii. Defendants have engaged in unfair competition or unfair or deceptive acts or practices in violation of N.C. Gen. Stat. § 75 1.1, et seq.;
- xxxiv. Defendants have engaged in unfair competition or unfair or deceptive acts or practices in violation of N.D. Cent. Code § 51 15 01, et seq.;
- xxxv. Defendants have engaged in unfair competition or unfair or deceptive acts or practices in violation of Ohio Rev. Stat. § 1345.01, et seq.;
- xxxvi. Defendants have engaged in unfair competition or unfair or deceptive acts or practices or representations in violation of Okla. Stat. tit. 15 § 751, et seq.;

- xxxvii. Defendants have engaged in unfair competition or unfair or deceptive acts or practices in violation of Or. Rev. Stat. § 646.605, et seq.;
- xxxviii. Defendants have engaged in unfair competition or unfair or deceptive acts or practices in violation of 73 Pa. Stat. § 201 1, et seq.;
- xxxix. Defendants have engaged in unfair competition or unfair or deceptive acts or practices in violation of R.I. Gen. Laws. § 6 13.1 1, et seq.;
- xl. Defendants have engaged in unfair competition or unfair or deceptive acts or practices in violation of S.C. Code Laws § 39 5 10, et seq.;
- xli. Defendants have engaged in unfair competition or unfair or deceptive acts or practices in violation of S.D. Code Laws § 37 24 1, et seq.;
- xl.ii. Defendants have engaged in unfair competition or unfair or deceptive acts or practices in violation of Tenn. Code § 47 18 101, et seq.;
- xl.iii. Defendants have engaged in unfair competition or unfair or deceptive acts or practices in violation of Tex. Bus. & Com. Code § 17.41, et seq.;
- xl.iiii. Defendants have engaged in unfair competition or unfair or deceptive acts or practices in violation of Utah Code Ann. § 13.1, et seq.;
- xl.v. Defendants have engaged in unfair competition or unfair or deceptive acts or practices in violation of Vt. Stat. Ann. tit. 9, § 245.1, et seq.;
- xl.vi. Defendants have engaged in unfair competition or unfair or deceptive acts or practices in violation of Va. Code § 59.1 196, et seq.;
- xl.vii. Defendants have engaged in unfair competition or unfair, deceptive acts or fraudulent acts or practices in violation of Wash. Rev. Code § 19.86.010, et seq.;
- xl.viii. Defendants have engaged in unfair competition or unfair or deceptive acts or practices in violation of W. Va. Code § 46A 6 101, et seq.;
- xl.ix. Defendants have engaged in unfair competition or unfair or deceptive acts or practices in violation of Wis. Stat. § 100.20, et seq.; and
- l. Defendants have engaged in unfair competition or unfair or deceptive acts or practices in violation of Wyo. Stat. § 40 12 100, et seq.

37. Plaintiff and members of the proposed Class were injured by Defendants' conduct, which created artificial demand for Toyota automotive vehicles at a premium price. In other words, consumers did not get what they bargained for. As a direct and proximate result of Defendants' unfair methods of competition and unfair or deceptive acts or practices, Plaintiff and the proposed class have suffered actual economic loss by paying for Toyota vehicles at a premium price, and nonuse of the vehicles pending successful repair. It is clear that a car with potentially defective acceleration pedals, steering and/or brakes is worth less than one with no concern over potentially defective acceleration pedals, steering and brakes. In the absence of Defendants' conduct, Plaintiff would have purchased alternate brands of automotive vehicles available at significantly reduced cost, or would have had the full use of the vehicles without fear or concern for safety.

38. Plaintiff and the proposed class members are entitled to actual damages, attorneys' fees and costs pursuant to N.Y. Gen. Bus. Law §349 and §350, *et seq.*

COUNT II - - BREACH OF EXPRESS WARRANTY

39. Plaintiffs incorporate the foregoing paragraphs as though fully set forth at length herein.

40. Defendants expressly warranted that Toyota automotive vehicles were merchantable.

41. Defendants expressly warranted that Toyota automotive vehicles were fit for use for particular purposes.

42. Defendants' automobiles were unfit for the particular purposes for which they were manufactured, marketed and/or sold.

43. As a direct and proximate result of Defendants' breach of the express warranty of fitness for a particular purpose, N.Y. U.C.C. § 2-313, Plaintiff class has been damaged as a result of the diminished value of the Defendants' products, and non-use of the vehicles pending successful repair. Plaintiff is entitled to damages, including the diminished value of his vehicles, and non use of his vehicles, as a result of the defective accelerator pedals and brakes that are affected by the instant safety recall, in addition to any costs associated with purchasing safer vehicles, incidental and consequential damages, and all other damages allowable under law.

COUNT III - - BREACH OF IMPLIED WARRANTY

44. Plaintiffs incorporate the foregoing paragraphs as though fully set forth at length herein.

45. Defendants impliedly warranted that Toyota automotive vehicles were merchantable and fit for use for particular purposes.

46. Defendants expressly warranted that Toyota automotive vehicles were fit for use for particular purposes.

47. Defendants' automobiles were unfit for the particular purposes for which they were manufactured, marketed and/or sold.

48. As a direct and proximate result of Defendants' breach of the implied warranty of fitness for a particular purpose, N.Y. U.C.C. § 2-314, Plaintiff class has been damaged as a result of the diminished value of the Defendant's products, and non-use of the vehicles pending successful repair. Plaintiff is entitled to damages, including the diminished value of his vehicles, and non use of his vehicles, as a result of the defective accelerator pedals and brakes that are affected by the instant safety recall, in addition to any costs associated with purchasing safer vehicles, incidental and consequential damages, and all other damages allowable under law.

COUNT IV – UNJUST ENRICHMENT

49. Plaintiffs incorporate the foregoing paragraphs as though fully set forth at length herein.

50. Count IV is pled in the alternative to all contract-based and negligence-based causes of action.

51. Defendants had knowledge of the safety defect of select automotive vehicles.

52. Defendants failed to disclose the design defect of Toyota automotive vehicles to Plaintiff and Members of the Class either at the time of purchase or anytime thereafter prior to the recent recall.

53. During the class period, Plaintiff and Class Members conferred upon Defendants, without knowledge of the safety condition affecting select models, payment for these vehicles, which are benefits that were clearly non-gratuitous.

54. Defendants accepted or retained the non-gratuitous benefits conferred by Plaintiff and the Class Members despite their knowledge of the defects affected the select automotive vehicle models. Retaining the non-gratuitous benefits conferred upon Defendants by Plaintiff and the Class Members under these circumstances is unjust and inequitable.

55. Defendants' retention of the non-gratuitous benefits conferred by Plaintiff and the Class Members is unjust and inequitable, and Defendants should pay restitution in the manner established by the Court, in addition to any other equitable remedy the Court may choose to impose.

COUNT V -- PUNITIVE DAMAGES

56. Plaintiffs incorporate the foregoing paragraphs as though fully set forth at length herein.

57. Plaintiff reserves the right to amend the complaint to add punitive damages upon obtaining record evidence to demonstrate that Defendants intentionally pursued the above-described course of conduct despite their actual knowledge of the wrongfulness and high probability that Plaintiff would incur substantial monetary damages in selecting Toyota over alternate brands of automotive vehicles.

58. Plaintiff reserves the right to amend the complaint to provide record evidence that Defendants' above-described conduct was so reckless or wanting in care that it constituted a conscious disregard or indifference to the life, safety, or rights of all individuals that purchased the automotive vehicles affected, including Plaintiff, and entitlement to punitive damages.

COUNT VI -- FEDERAL CONSUMER PROTECTION

1. Plaintiffs incorporate the foregoing paragraphs as though fully set forth at length herein.

2. Defendants have violated federal consumer protection statutes, including but not limited to 15 U.S.C.A. § 2304, *et seq.*, (Magnuson-Moss Warranty Act).

3. Defendants had knowledge of the safety defect of select automotive vehicles.

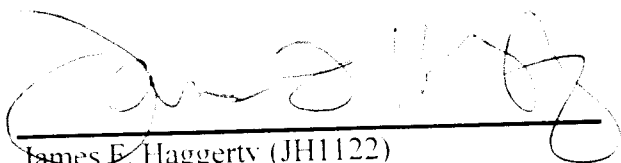
4. Defendants failed to remedy the defect or malfunction after a reasonable number of attempts by some members of the Plaintiff class to repair such defect.

5. Pursuant to 15 U.S.C.A. § 2304(a)(4), Defendants are required to replace the vehicle or return the purchase price of the vehicle if Defendants fail to remedy the defect or malfunction.

DEMAND FOR TRIAL BY JURY

Plaintiff demands trial by jury.

Respectfully Submitted on this 22nd day of February, 2010.



James F. Haggerty (JH1122)
The Law Offices of James F. Haggerty
45 Broadway, 31st Floor
New York, NY 10006
National Toll Free: (866) 960-8648
Fax: (646) 619-4324
jamesfhaggerty@gmail.com

Tim Howard, Esq., J.D., Ph.D.
John Rimes, Esq.
Howard & Associates, P.A.
8511 Bull Headley Rd., Ste. 405
Tallahassee, FL 32312
ptim@aol.com, ti.howard@neu.edu
rimesjohn@aol.com

Norwood S. Wilner, Esq.
Wilner, Hartley & Metcalf
3127 Atlantic Blvd., Ste. 3
Jacksonville, FL 32207
(904) 446-9817
nwilner@whmlegal.com

Stephen A. Sheller, Esq.
1528 Walnut Street, 3rd Floor
Philadelphia, PA 19102
(215) 790-7300
sasheller@sheller.com

Richard A. Daynard, Esq., Ph.D.
400 Huntington Avenue
Boston, MA 02115
(617) 373-2026
r.daynard@neu.edu

Edward A. Broderick, Esq.
The Law Office of Edward A. Broderick
727 Atlantic Avenue, Second Floor
Boston, MA 02111
(617) 738-7080 office
ted@broderick-law.com

Neil S. Sader, Esq.
The Sader Law Firm
4739 Belleview Avenue, Ste. 300
Kansas City, Missouri 64112-1364
(816) 561-1818
nsader@saderlawfirm.com

Douglas Lyons, Esq.
Lyons & Farrar, P.A.
325 Calhoun Street
Tallahassee, FL 32301
(850) 222-8811
doug_lyons@comcast.net

Eddie Farrah, Esq.
Farrah & Farrah
10 W. Adams Street
Jacksonville, FL 32202
(904) 807-3112
efarah@farahandfarah.com

Larry Gornick, Esq.
Levin, Simes, Keiser & Gornick, LLP
44 Montgomery St., 36th Floor
San Francisco, CA 94104
(877) 575-4529
(415) 981-1270
lgornick@lsgk-law.com

Pro hac vice admission motions to follow.