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CAUSE NO. _____

Time: _____
By _____
Harris County, Texas
Deputy

NATALIE PHAM AND ANHA PHAM,

PLAINTIFFS,

VS.

TOYOTA MOTOR CORPORATION,
TOYOTA MOTOR SALES U.S.A., INC.,
AND HANAN TUCHSHNIEDER D/B/A
AUTO SPOT,

DEFENDANTS.

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IN THE DISTRICT COURT

80 JUDICIAL DISTRICT

HARRIS COUNTY, TEXAS

PLAINTIFFS' ORIGINAL PETITION AND REQUEST FOR DISCLOSURE

Plaintiffs NATALIE PHAM and ANHA PHAM ("Plaintiffs") bring this action against Defendants, TOYOTA MOTOR CORPORATION, TOYOTA MOTOR SALES U.S.A., INC., and HANAN TUCHSNIEDER D/B/A AUTO SPOT and would show the Court as follows:

I.
PARTIES

1. Plaintiff NATALIE PHAM is a resident of Harris County, Texas.
2. Plaintiff ANHA PHAM is a resident of Harris County and attends the University of Texas.
3. Defendant, Toyota Motor Corporation, is a Japanese Corporation having its principal place of business at 1 Toyota-Cho, Toyota City, Aichi Prefecture 471-8571, Japan. Toyota Motor Corporation designs, develops and manufactures automobiles that are sold throughout the world. This defendant may be served with process by and through its registered agent CT Corporation System, 350 N. St. Paul Street, Dallas, Texas, 75201.
4. Defendant, Toyota Motor Sales USA, Inc., is an American corporation incorporated under the laws of the State of California with its principal place of business with its USA

headquarters located at 19001 Western Avenue, Torrance, California 90509. Toyota Motor Sales USA, Inc., markets, distributes, and sells Toyota, Prius, Scion, and Lexus vehicles manufactured by Defendant Toyota Motor Corporation throughout the United States. Defendant is authorized to do business in the State of Texas and is doing business in the State of Texas. This defendant may be served with process by and through its registered agent CT Corporation System, 350 N. St. Paul Street, Dallas, Texas, 75201.

5. Defendant Hanan Tuchshnieder d/b/a Auto Spot is an individual resident of Harris County, Texas doing business in Harris County, Texas. He can be served at 6441 Bissonnet, Houston, Texas 77074.

6. Toyota Motor Corporation, Toyota Motor Sales USA, Inc., and Hanan Tuchshnieder d/b/a Auto Spot are collectively and interchangeably referred herein to as "Toyota" or "Defendants."

II. JURISDICTION AND VENUE

7. This Court has jurisdiction over Defendants because they conduct business in the State of Texas, have sufficient minimum contacts with the State of Texas, and/or reside in the State of Texas.

8. Further, venue is proper in Harris County, Texas pursuant to Tex. Bus. & Com. Code §17.56 since Defendants or their authorized agents solicited and injected themselves into Texas' channel of commerce.

9. The Court has jurisdiction over the controversy because the damages sought are within the jurisdictional limits of the Court.

10. Venue is proper in Harris County because a substantial part of the acts, events, or omissions giving rise to the claims occurred in Harris County. Toyota Motor Corporation,

Toyota Motor Sales, USA, Inc., and Hanan Tuchshnieder d/b/a Auto Spot are subject to personal jurisdiction in this Court. Venue is further proper in Harris County pursuant to §15.002(a)(3) based on Hanan Tuchshnieder d/b/a Auto Spot having its principal office in Harris County.

III.
FACTUAL ALLEGATIONS

11. Plaintiff NATALIE PHAM is an individual consumer who purchased a 2008 Toyota Camry SE.

12. Plaintiff ANHA PHAM is the daughter of NATALIE PHAM who resides in Harris County. ANHA PHAM is a straight "A" pre-medicine student at the University of Texas who operated NATALIE PHAM's 2008 Toyota Camry SE at different times and was injured on two occasions.

13. Toyota Motor Corporation is the world's largest automobile manufacturer. Toyota reported more than \$200 billion in worldwide sales for the fiscal year that ended in March 2009. Toyota manufactures numerous vehicles sold under various brand names including Toyota, Prius, Scion and Lexus. Toyota recently issued massive recalls for accelerator and braking problems. Since the fall of 2009, Toyota has issued 10 million recall notices for problems related to unintended acceleration, with approximately 2 million vehicles subject to more than one recall. The recalls followed consumer reports of numerous crashes of Toyota vehicles causing injury and death and concerns about significant risk of injury and death to vehicle occupants, other motorists, and pedestrians.

14. Toyota initially blamed unintended acceleration on floor mats that could entrap the accelerator. As consumer complaints continued to mount and government officials investigated, Toyota eventually expanded possible factors causing unintended acceleration to include gas pedals that could stick.

15. On information and belief, Plaintiffs allege that the causes of unintended acceleration are more than mechanical and include unsafe electronic defects in Toyota vehicles. On information and belief, Plaintiffs allege Toyota was aware of safety problems with unintended acceleration for a significant period of time and intentionally failed to disclose the full scope of the problems fearing full disclosure and broadened safety recalls might harm Toyota's reputation and hurt its sales.

16. On information and belief, Plaintiffs assert that Toyota failed to properly and timely remedy an unsafe and defective throttle control system known as drive-by-wire accelerator controls or Electronic Throttle Control System with Intelligence ("ETCS-I") or Electronic Throttle Control System ("ETCS") (collectively "ETC") in multiple Toyota models. The unsafe and defective accelerators on the Toyota vehicles can make it difficult and sometimes impossible to stop the vehicle.

17. In the last decade, the electronic throttle system in many Toyota vehicles has used sensors, microprocessors and electronic motors instead of mechanical linkage or steel cable to connect the accelerator pedal to the throttle plate. When the ETC system was first introduced by Toyota in 1998, vehicles using it also had a mechanical throttle as a failsafe backup in the event of a problem with the ETC system. Many newer vehicles made by Toyota have no such failsafe. In addition, although many vehicle manufacturers use a safety feature known as "brake-to-idle override" that enables drivers to override the electronic throttle and control the vehicle in the event of sudden unintended acceleration, Toyota has failed to equip vehicles with this safety feature.

18. Recently Toyota began a series of product recalls relating to sudden unintended acceleration. The recalls have failed to address the problem with the ETC system. In fact, Toyota

sought to conceal the defect in its ETC by publicly stating that sudden unintended acceleration in Toyota vehicles was caused by floor mats. On information and belief, Toyota was aware that floor mats were not the cause of sudden unintended acceleration.

19. On September 29, 2009, the National Highway Traffic Safety Administration (“NHTSA”) issued a warning to owners of Toyota and Lexus vehicles that: “Toyota has announced that it will soon launch a safety recall of various model year vehicles to redress the problem.” The safety agency warned owners to remove all driver-side floor mats from the affected models immediately as an interim safety measure in advance of the recall.

20. The same day, Defendants launched a safety recall on eight Toyota and Lexus vehicles:

- 2007 – 2010 Toyota Camry
- 2005 – 2010 Toyota Avalon
- 2004 – 2009 Toyota Prius
- 2005 – 2010 Toyota Tacoma
- 2007 – 2010 Toyota Tundra
- 2007 – 2010 Lexus ES 350
- 2006 – 2010 Lexus IS 250; and
- 2006 – 2010 Lexus IS 350

21. Upon information and belief, these reports to NHTSA and the public were false and misleading as Toyota was aware that other vehicles were involved and that floor mats were not the cause of the sudden acceleration in many vehicles.

22. In September, 2009, Defendants continued to receive numerous consumer reports of vehicles accelerating rapidly after release of the accelerator pedal, many of which were not included in the recall. Defendants continued to falsely claim that the incidents “appear to be

related to factors including the use of a variety of unsecured mats, the particular configuration of the accelerator pedals in these vehicles, and the unique steps needed to shut off the engines in some of these vehicles with keyless ignition.” During the following 60 days, Defendants issued false and misleading reports denying actual defects leading to the unintended acceleration.

23. On November 5, 2009, NHTSA issued a statement correcting inaccurate and misleading information put out by Toyota. NHTSA said a press release put out by Toyota earlier that week inaccurately stated NHTSA had reached a conclusion “that no defect exists in vehicles in which the driver’s floor mat is compatible with the vehicle and properly secured.” The statement issued by NHTSA said: “NHTSA has told Toyota and consumers that removing the recalled floor mats is the most immediate way to address the safety risk and avoid the possibility of the accelerator becoming stuck. But it is simply an interim measure. This remedy does not correct the underlying defect in the vehicles involving the potential for entrapment of the accelerator by floor mats, which is related to accelerator and floor pan design. Safety is the number one priority for NHTSA and this is why officials are working with Toyota to find the right way to fix this very dangerous problem. This matter is not closed until Toyota has effectively addressed the defect by providing a suitable vehicle-based solution.”

24. In early October, 2009, Defendants announced the recall of additional vehicles and said it would soon develop a vehicle-based remedy to reduce the risk of a crash due to accelerator pedal entrapment. On or about November 25, 2009, Defendants announced that it had identified a vehicle-based remedy to fix the sudden acceleration safety issue involving floor mats trapping accelerator pedals in various Toyota and Lexus models. Once again Defendants assured consumers that the only models involved in the recall were:

- 2007 — 2010 Toyota Camry

- 2005 — 2010 Toyota Avalon
- 2004 — 2009 Toyota Prius
- 2005 — 2010 Toyota Tacoma
- 2007 — 2010 Toyota Tundra
- 2007 — 2010 Lexus ES 350
- 2005 — 2010 Lexus IS 250; and
- 2006 — 2010 Lexus IS 350

25. To avoid having to address the real problem with the “drive by wire” ETC system, Defendants said they would reconfigure the accelerator pedal, and in some cases, the shape of the floor surface under the pedal, to address the risk of pedal entrapment due to floor mat interference. Defendants said they would develop replacement pedals for these vehicles. Defendants stated that they would provide owners with the new pedal, when it becomes available, even if the vehicle has already received the modified pedal under the recall.

26. Although it had knowledge of continued reports of accelerator problems in other vehicles, Defendants stated that they would only replace floor mats in those vehicles identified in their recall and not other vehicles it sold.

27. As part of the repair Defendants stated that they would, in addition to the announced vehicle-based remedies, install a brake override system on the involved Camry, Avalon and Lexus ES 350, IS 350 and IS 250 models as an “extra measure of confidence.” The brake override system would ensure the vehicle would stop if both the brake and the accelerator pedals were simultaneously applied.

28. At no time during 2009 did Toyota or Lexus acknowledge that the unexpected acceleration problem was a widespread defect in many, if not all, of its product line, thereby

leaving drivers of its vehicles at risk for sudden and unexpected acceleration.

29. While publicly blaming floor mats for sudden unintended acceleration problem, Defendants have recently indicated that they are considering software changes to the onboard computer systems as a solution to the sudden and unintended acceleration. The considered software change would cause the accelerator to disengage whenever the brakes are engaged.

30. A former Toyota lawyer responsible for handling safety litigation sued Toyota, disclosing that Toyota perpetrated a “calculated conspiracy to prevent the disclosure of damaging evidence” as part of a pattern and practice to “prevent evidence of its vehicles’ structural shortcomings from becoming known” to Plaintiff’s lawyers, courts, NHTSA, and the public.

31. On February 8, 2010, Toyota finally admitted that critical component parts in Toyota vehicles are defective and issued a massive recall. As a result of the massive recalls, Toyota vehicles have experienced, and continue to experience, a substantial decline in value. Auto pricing experts Kelley Blue Book and Edmonds.com have commenced pricing declines in the value of Toyota vehicles. According to Kelley Blue Book, prices for Toyota vehicles subject to the recalls have declined up to 4.5%. Edmonds.com has estimated that Toyota vehicles have dropped 6% in trade-in value since disclosure of the safety defects. On information and belief, Toyota vehicle owners have been adversely impacted by the recalls in that the value of their vehicles has dropped. The estimated aggregate value loss for impacted Toyota owners exceeds \$2 Billion.

32. On information and belief, Plaintiffs allege that Toyota knew its product was susceptible to malfunction that could result in unintended acceleration and braking conditions and serious safety issues including injury and death. On information and belief, Plaintiffs allege that Toyota intentionally concealed knowledge and information about safety defects to protect Toyota sales,

values, goodwill, and reputation for safety.

33. Plaintiffs have received Toyota recall notice and are unable to safely operate their vehicle due to the safety problems. On information and belief, the value of all Toyota vehicles subject to any recall, and possibly other Toyota vehicles as well, have declined.

34. According to an investigative report published by *The Los Angeles Times* on February 13, 2010, Toyota has commenced repair or modification of vehicles at a rate of 54,000 vehicles a day. According to the *LA Times*, which relied upon statements by Toyota service managers, dealers are keeping service bays open on weekends and operating extended hours. "Across the country, Toyota Motor Corp. has repaired more than 400,000 vehicles" and Toyota has hired extra technicians to repair, place, or modify vehicles. While Toyota may be finally addressing some of the colossal safety issues in terms of repairing, replacing, or modifying vehicles, no provision has been made to preserve the defective parts and systems being repaired or altered in the subject Toyota vehicles. With the number of lawsuits against Toyota for fraud, concealment and product liability mounting, the component parts and systems being removed from Toyota vehicles is critical evidence that needs to be preserved, cataloged and, examined in ongoing litigation.

IV.
TOYOTA MODEL AND MODEL YEARS SUBJECT TO RECALL

MODEL	MODEL YEAR
Toyota Camry	2002 – 2006
Lexus ES	2002 – 2010
Toyota Tacoma	2003 – 2010
Toyota Prius	2001 – 2010
Toyota Sienna	2004 – 2010
Toyota Rav4	2004 – 2008
Toyota Tundra	2001 – 2006

Toyota Highlander	2004 – 2010
Toyota Solara	2003 – 2008
Toyota Corolla	2005 – 2008
Toyota 4-Runner	2001 – 2010
Lexus IS250	2006 – 2010
Lexus RX	2004 – 2010
Toyota Sequoia	2001 – 2007
Lexus GS 3 Series	2001 – 2010
Lexus IS300 & 350	2002 – 2010

V.

MODELS AND MODEL YEARS WITH UNINTENDED THROTTLE ACTIVATION REPORTS THAT ARE NOT INCLUDED IN ANY RECALL

MODEL	MODEL YEARS	ANY RECALL MODEL/MODEL	NON-RECALL MODEL/MODEL
Camry	2002 — 2006		344
	2007 — 2010	166	
Lexus ES	2002 — 2006		88
	2007 — 2010	58	
Tacoma	2003 — 2004		11
	2005 — 2010	120	
Prius	2001 — 2003		6
	2004 — 2010	85	
Avalon	2005 — 2010	52	
Sienna	2004 — 2010		45
Rav4	2004 — 2008		41
	2009 — 2010	3	
Tundra	2001 — 2006		21
	2007 — 2010	17	
Highlander	2004 — 2007		31
	2008 — 2010	4	
Solara	2003 — 2008		30
Corolla	2005 — 2008		18
	2009 — 2010	6	

4-Runner	2001 — 2010		23
Lexus IS250	2006 — 2010	16	
Lexus RX	2004 — 2010		15
Sequoia	2001 — 2007		13
	2008 — 2010	1	
Lexus GS 3 Series	2002 — 2005		8
	2006 — 2010	1	

VI.
FIRST CAUSE OF ACTION
FRAUDULENT CONCEALMENT

35. Plaintiffs repeat each and every allegation contained in the prior paragraphs of this Original Petition. Defendants affirmatively misrepresented that the unintended acceleration of their vehicles was caused by floor mats and defectively designed pedals. Defendants affirmatively concealed the fact that the ETC was defective. Defendants failed to inform Plaintiffs that the true defect was in the ETC and in the failure of Defendants to include safety override controls.

36. Defendants had a duty to inform Plaintiffs of all material facts based upon their assumption of that responsibility by inviting consumers to place trust in them to provide safe vehicles. Toyota had a duty to disclose the truth about risks associated with the design, testing, manufacture, assembly and development of its vehicles, but delayed and failed to do so.

37. Toyota concealed facts relating to the accelerator and braking systems of the vehicles when they knew, or had reason to know, the true and correct facts regarding the defects, and Toyota took steps to prevent these facts from becoming known to the public in the marketing, promotion, and sale of the vehicles. The concealment of the true facts was done with the intent to induce Plaintiff Natalie Pham to purchase the vehicle in question.

38. As a result of the unlawful and fraudulent concealment and course of conduct of

Defendants as alleged herein, the running statute of limitations has been suspended with respect to claims that Plaintiffs have brought or could bring. Plaintiffs had no knowledge of Defendants' unlawful conduct, or any of the facts that might have lead to the discovery of Defendants' wrongdoing, until shortly before the Original Petition was filed. The reliance by Plaintiffs was reasonable and justified in that Toyota appeared to be, and represented itself to be, a reputable business. Plaintiff Natalie Pham would not have purchased the vehicle in question had she known the true facts about the vehicle that possible defects could result in potential injury or death.

39. As a direct and proximate result of the fraud and deceit alleged, Plaintiff Natalie Pham was induced to purchase the vehicle in question, and she used it for its intended and foreseeable purpose, and she and her daughter, Anha Pham, have suffered damages in an amount to be determined at trial.

40. Toyota knew, or should have known, that the design, testing, manufacture, assembly, and development of the vehicles in question, as set forth in detail above, were defective before it issued a recall. Toyota intended that its customers rely on its representations that it was a reputable and reliable business, as well as Toyota's suppression of the true facts about the vehicles in question, in inducing customers to purchase its vehicles.

41. Plaintiff Natalie Pham, in purchasing and using the vehicles in question, did rely on Toyota's representations and suppression of facts, and suffered damages a result. In taking these actions, Toyota was guilty of malice, oppression, and fraud, and Plaintiffs are, therefore, entitled to recover punitive damages.

42. Additionally, or in the alternative, Plaintiff Natalie Pham suffered actual damages, including a diminution of value of the vehicle (the difference in market value of the product in

the condition in which it was delivered, and its market value in the condition in which it should have been delivered according to contract of the parties), plus further diminution based upon Toyota's actions, including other pecuniary losses.

VII.
SECOND CAUSE ACTION
BREACH OF IMPLIED WARRANTIES

43. Plaintiffs repeat each and every allegation contained in the prior paragraphs of this Original Petition.

44. Defendants breached the implied warranties of merchantability. All commercial transactions have an implied warranty of merchantability requiring that products be of reasonable workmanlike quality and free from defects. Defendants gave an implied warranty to Plaintiff Natalie Pham that the vehicle was of merchantable quality. Defendants breached the warranty of merchantability by designing, manufacturing, distributing, selling, and refusing to adequately repair or replace the vehicle after it became apparent it was defective and could be unsafe to drive.

45. At all times Plaintiff Natalie Pham relied on the implied warranty of merchantability as well as representations made by Defendants that their vehicle was reliable and of a quality that rendered it suitable for its intended use.

46. Defendants have breached its implied warranties to Plaintiff Natalie Pham in that the defective design of Toyota vehicle in question renders it unusable for its intended purpose, and Defendants refuse to properly repair or replace the vehicle.

47. As a direct and proximate cause of Defendants' breach of the implied warranty of merchantability, Plaintiff Natalie Pham has suffered and will continue to suffer losses.

VIII.
THIRD CAUSE OF ACTION
MISREPRESENTATION

48. Plaintiffs repeat each and every allegation contained in the prior paragraphs of this Original Petition.

49. Defendants uniformly misrepresented the true cause of the unintended acceleration of Toyota vehicles. Defendants owed a duty of care to Plaintiffs. Defendants breached their duty by making uniform, written, material misrepresentations that unintended acceleration of Toyota vehicles was caused by floor mats or faulty pedal designs. Defendants' misrepresentations pertained to material terms of the purchase and/or maintenance of Defendants' vehicles.

50. Plaintiff Natalie Pham foreseeably and permissibly relied upon Defendants' uniform written misrepresentations when making a decision to purchase the vehicle at issue. Plaintiff Natalie Pham reasonably believed that she was purchasing the vehicle that was free from defects. Plaintiff relied upon Defendants' misrepresentations of material facts concerning the qualities and characteristics of the vehicle and the purported cause of the unintended acceleration — floor mats and pedals.

51. Because of Defendants' uniform misrepresentations, Plaintiff Natalie Pham has suffered losses and is entitled to a remedy.

IX.
FOURTH CAUSE OF ACTION
NEGLIGENCE

52. Plaintiffs repeat each and every allegation contained in the prior paragraphs of this Original Petition.

53. Defendants had a duty to Plaintiffs to provide a safely designed and manufactured product. Defendants also had a duty to warn the NHTSA and Plaintiffs of the true nature of the

defective design of Defendants' vehicles. Defendants failed to fulfill this duty to Plaintiffs.

54. Defendants breached the duty owed to Plaintiffs by negligently designing its electronic throttle control (ETC) system such that vehicles were prone to unintended acceleration and inability to stop that acceleration once started. Defendants failed to properly program software in their vehicles to disengage the throttle when the brake was pressed and/or to design mechanical throttle control systems as a safety back up for their electronic throttle control system.

55. Defendants breached the duty owed to Plaintiffs by failing to adequately warn that the vehicle at issue and other vehicles were prone to unintended acceleration and/or that it might be difficult to disengage the throttle once the accelerator pedal had been pressed. Defendants also failed to adequately warn Plaintiffs how to disengage the accelerator pedal manually — by shifting to neutral and/or turning off the vehicle. Defendants also breached their duty to warn Plaintiffs when they failed to recall the vehicle at issue and all similarly designed vehicles following the first reports of unintended acceleration or problems disengaging the throttle.

56. As a direct and proximate result of Defendants' negligence, Plaintiffs have been harmed and continue to suffer harm. Plaintiffs have or will suffer the loss of use of the subject vehicle and other consequential damages.

X.
FIFTH CAUSE OF ACTION
PRODUCTS LIABILITY

57. Plaintiffs repeat each and every allegation contained in the prior paragraphs of this Original Petition.

58. Defendants are and have been at all times pertinent to this Original Petition, engaged in the business of designing, manufacturing, assembling, promoting, advertising, distributing and selling Toyota, Scion, Prius and Lexus vehicles in the United States including that owned by

Plaintiff defined herein. Defendants knew and anticipated that their vehicles would be sold or leased and operated by consumers, including Plaintiffs.

59. The defects in Defendants' acceleration and braking equipment and ETC could not have been anticipated by a reasonable person, and, therefore presented an unreasonable danger for expected users such as Plaintiffs, even when used in a reasonable and foreseeable manner.

60. Plaintiffs have used Defendants' vehicle for its intended purpose and in a reasonable and foreseeable manner. Nevertheless, Plaintiffs have suffered damage through no fault of their own but as a direct and proximate result of Defendants' negligence.

61. Defendants should have reasonably foreseen that the dangerous conditions caused by the defective acceleration and braking equipment and ETC would subject Plaintiffs to harm resulting from the defects.

62. The defects described in this Original Petition constitute defects in design and marketing which caused harm to Plaintiffs.

XI.
SIXTH CAUSE OF ACTION
UNJUST ENRICHMENT

63. Plaintiffs repeat each and every allegation contained in the prior paragraphs of this Original Petition.

64. Defendants obtained monies from the marketing, labeling and/or sale of their vehicles and profited from the payment of the purchase price for Toyota's vehicles when the vehicle in question was not safe as Toyota represented it to be in deceptive, fraudulent and misleading labeling, advertising, marketing and sales.

65. Defendants have been unjustly enriched to the detriment of Plaintiffs by the retention of consumers' purchase money.

66. Consumers conferred this enrichment on Defendants as a direct result of the failures, omissions and deceptive and fraudulent conduct of Defendants. Defendants' retention of monies they have gained through their failures, omissions and deceptive and fraudulent conduct would be unjust considering the totality of the circumstances. Defendants should be ordered to disgorge their unjustly obtained monies and to make restitution to Plaintiff Natalie Pham in amounts to be determined.

XII.
SEVENTH CAUSE OF ACTION
FRAUD IN THE OMISSIONS OF MATERIAL FACTS

67. Toyota has known for many years that its vehicles had safety problems that could result in losses and/or injury or death. Defendants failed to disclose these problems to the public and in fact, intentionally denied knowledge of safety defects.

68. Defendants made false or misleading statements and omissions about the safety of their vehicles in advertising, promotional materials and marketing efforts, and other communications with prospective buyers, owners and the public. Defendants concealed adverse information and misrepresented information at a time when they knew, or should have known, because they were in a superior position to know. Alternatively, Defendants made statements or omissions with reckless disregard for their truth or falsity.

69. The facts misrepresented, concealed or not fully disclosed were material.

70. Defendants made misrepresentations, failed to disclose information, or actively concealed information with the intention that the public would rely on the misrepresentations or omissions in selecting its products for purchase and use.

71. Defendants should have reasonably known that consumers were likely to rely on the facts misrepresented or not disclosed.

72. Plaintiff Natalie Pham reasonably relied on and was induced by Defendants' misrepresentations and/or active concealment in selecting and/or using Defendants' vehicles. Plaintiff Natalie Pham sustained losses as a direct and proximate result of Defendants' misrepresentations or active concealment of information.

XIII.
EIGHTH CAUSE OF ACTION
BREACH OF EXPRESS WARRANTY

73. Plaintiffs repeat each and every allegation contained in the prior paragraphs of this Original Petition.

74. Defendants provided Plaintiff Natalie Pham with written express warranties including, but not limited to, that the vehicle in question was safe to operate. Specifically, Toyota's website promises that their ultimate goal is "making a vehicle that is safe for everybody."

75. Defendants breached these express warranties, which resulted in damages to Plaintiff Natalie Pham who overpaid for the vehicle, as the vehicle in question was not safe as it may contain defects that could cause serious injury or death, including defects to the accelerator and braking equipment.

76. As a proximate result of the breach of warranties by Defendants, Plaintiff Natalie Pham suffered damages in an amount to be determined at trial. Plaintiff Natalie Pham paid for a product that did not conform to what was promised as promoted, marketed, advertised, packaged and labeled. She was deprived of the benefit of her bargain and spent money on a product that did not have any value or had less value than warranted or a product she would not have purchased and used had she known the true facts about it.

77. Plaintiff Natalie Pham is further harmed in having to spend money to obtain other transportation for her daughter while the vehicle cannot be used. Plaintiff also suffers in that not

knowing if any repair made by Defendants will be successful in making the vehicle safe. Additionally, or in alternative, Plaintiff suffered actual damages, including a diminution of value of the subject vehicle (the difference in market value of the product in the condition in which it was delivered, and its market value in the condition in which it should have been delivered according to contract of parties).

XIV.
NINTH CAUSE OF ACTION
BREACH OF IMPLIED WARRANTY OF FITNESS FOR PARTICULAR PURPOSE

78. Plaintiffs repeat each and every allegation contained in the prior paragraphs of this Original Petition.

79. Defendants impliedly warranted by their promotion, marketing, advertising, packaging and labeling of their vehicles that they were safe to operate. Plaintiff Natalie Pham bought the vehicle in question from Toyota, relying on Toyota's skill and judgment in furnishing suitable goods as well as Toyota's representations that the vehicle in question was safe to operate. However, the Toyota's vehicle in question was not safe to operate as it may have had defects causing unintended acceleration and/or erratic braking conditions potentially resulting in injury and death.

80. Defendants breached the implied warranty at the time of sale in that Plaintiff did not receive vehicle that was safe to operate as it possibly contained defects that could potentially result in injury or death, and thus the car was not fit for the purpose as promoted, marketed, advertised, packaged, labeled or sold.

81. As a proximate result of this breach of warranty by Toyota, Plaintiff Natalie Pham has suffered damages in an amount to be determined at trial, among other things, as follows: (1) she purchased and paid for a vehicle that did not conform to what was promised as promoted,

marketed, advertised, packaged and labeled by Toyota; and (2) she was deprived of the benefit of her bargain and spent money on a product that did not have any value or had less value than warranted or a product she would not have purchased and used had she known the true facts about it. Plaintiff Natalie Pham is further harmed in having to spend money on obtaining other transportation while the vehicle in question cannot be used. Additionally, Plaintiff suffered actual damages, including a diminution of value of the subject vehicle (the difference in market value of the product in the condition in which it was delivered, and its market value in the condition in which it should have been delivered according to contract of parties).

XV.
TENTH CAUSE OF ACTION
BREACH OF THE COVENANT OF GOOD FAITH AND FAIR DEALING

82. Plaintiffs repeat each and every allegation contained in the prior paragraphs of this Original Petition.

83. Plaintiff Natalie Pham's agreement with Defendants includes not only express written provisions, but also terms and conditions, which although not formally expressed, are implied by the law. Such terms are as binding as the terms that are actually written in the agreement with this Plaintiff.

84. Inherent in all contracts and agreements is a covenant that the parties will act in good faith and deal fairly with each other in the performance of their respective covenants and obligations under the agreement and not take any action that will inure the other party or compromise the benefit of the agreement.

85. The obligation of Defendants to abide by the covenant of good faith and fair dealing is heightened by the imbalance of power between Defendants and Plaintiff Natalie Pham that allowed Defendants to engage in business as described in this Original Petition.

86. Through the actions and inactions of Defendants as outlined in this Original Petition, Defendants have failed to abide by the covenant of good faith and have failed to deal fairly with Plaintiff Natalie Pham.

87. As a proximate result of the breach of the covenant of good faith and fair dealing by Defendants, Plaintiff Natalie Pham has suffered damages in an amount to be determined at trial in that, among other things, she purchased a vehicle that did not conform to what was promised as promoted, marketed, advertised, packaged and labeled by Toyota, and she was deprived of the benefit of her bargain and spent money on a product that did not have any value or had less value than warranted or a product she would not have purchased and used had she known the true facts about it. Plaintiff is further harmed in having to spend money on attaining other transportation while the vehicle in question cannot be used. Additionally, Plaintiff suffered actual damages, including a diminution of value of the subject vehicle (the difference in market value of the product in the condition in which it was delivered, and its market value in the condition in which it should have been delivered according to contract of parties).

XVI.
ELEVENTH CAUSE OF ACTION
TEXAS DECEPTIVE TRADE PRACTICES ACT

88. Based on the foregoing, Defendants violated the Texas Deceptive Trade Practices – Consumer Protection Act (“DTPA”). Plaintiff Natalie Pham is a consumer under the DTPA because she sought or acquired goods by purchase. Defendants violated the DTPA by engaging in false, misleading, or deceptive acts or practices that Plaintiff relied on to her detriment. Defendants violated the following lists set forth in the DTPA:

- (a) caused confusion or misunderstanding about the source, sponsorship, approval, or certification of goods or services;

(b) representing that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities they do not have;

(c) representing that an agreement confers or involves rights, remedies, or obligations that it does not have, or that are prohibited by law;

(d) failing to disclose information about goods or services that was known at the time of the transaction if the failure to disclose was intended to induce the consumer to enter into a transaction that the consumer would not have entered into if the information had been disclosed.

89. Defendants also breached the warranties and engaged in unconscionable conduct which is actionable under the DPTA.

90. As a proximate result of Defendants' conduct, Plaintiff Natalie Pham suffered actual damages and is entitled to treble damages as provided under the DTPA.

91. At all material times hereto, Defendants are liable for the aforementioned acts of their employees, agents, servants and/or representatives through the legal doctrines of *respondeat superior*, agency and/or ostensible agency, because they were at all times material hereto agents, ostensible agents, servants, and/or employees of Defendants acting within the course and scope of their employment and/or agency relationship.

92. Plaintiffs seek the imposition of joint and several liability on all Defendants.

XVII. **DAMAGES**

93. As a direct and producing/proximate result of Defendants' conduct as alleged above, Plaintiff Natalie Pham has suffered actual and consequential damages within the jurisdictional limits of this Court, including but not limited to, diminution of value, loss of use of the vehicle, vehicle rentals, and/or other losses. Furthermore, Plaintiff Anha Pham has suffered general and

specific damages such as past and future: a) physical pain, b) mental anguish, c) disfigurement, d) physical impairment, and f) medical expenses.

94. Plaintiff Natalie Pham is further entitled to reasonable and necessary attorneys' fees pursuant to Texas Civil Practice and Remedies Code, Chapter 38, Section 38.001 and the DTPA.

95. Plaintiff Natalie Pham further seeks treble and additional damages as may be proper under the facts and circumstances.

Punitive Damages

96. Plaintiffs further seek punitive damages in a sum sufficient to deter others from engaging in the same or similar misconduct or omissions as committed by Defendants.

97. The conduct of Defendants violated the Texas Penal Code. The offensive nature of Defendants' conduct justifies an award of exemplary or punitive damages which by its nature is not limited under Sec. 41.008 (b) of the Texas Civil Practice & Remedies Code.

98. As such, Plaintiffs request Defendants to jointly and severally pay exemplary damages in a substantial amount to deter others from engaging in similar misconduct. Plaintiffs allege that punitive damages in this case are warranted and should be awarded in a manner that takes into account the nature of the wrongful actions of Defendants, the character of the conduct involved, the degree of Defendants' culpability, the situation and sensibilities of the parties, the extent to which such conduct offends a public sense of justice and propriety, and the net worth of Defendants.

99. Defendants had a specific intent to cause substantial injury to Plaintiffs, or Defendants engaged in acts or omission that, when viewed objectively from the standpoint of Defendants at the time of the occurrence, involved an extreme degree of risk, considering the probability and

magnitude of the potential harm to others. Defendants had actual, subjective awareness of the risk involved in their acts and omissions but nevertheless proceeded with conscious indifference to the rights, safety, or welfare of others.

100. **Plaintiffs respectfully request for an Instruction of Spoliation of Evidence.** Plaintiffs plead the foregoing facts and theories cumulatively and alternatively, with no election or waiver of rights or remedies.

XVIII.

REQUEST FOR DISCLOSURES

101. Under Rule 194 of the Texas Rules of Civil Procedure, Plaintiffs request that Defendants disclose, within fifty (50) days of the service of this petition and request, the information, and material described in Rule 194.2.

XIX.

JURY DEMAND

102. Plaintiffs demand a trial by jury and tender payment of the jury fee.

XX.

PRAYER

WHEREFORE, PREMISES CONSIDERED, Plaintiffs pray that Defendants be cited to appear and answer herein, and that upon final trial of this cause, Plaintiffs have and recover:

1. Judgment awarded to Plaintiffs against Defendants for actual, compensatory and consequential damages within the jurisdictional limits of the Court;
2. Judgment awarded Plaintiff Anha Pham for general and specific damages such as past and future: a) physical pain, b) mental anguish, c) disfigurement, e) physical impairment, and f) medical expenses;
3. Judgment awarded to all Plaintiffs against Defendants for exemplary and or treble damages and additional damages in a sum to be determined by the trier of fact;
4. Reasonable and necessary attorney's fees for Plaintiff Natalie Pham;
5. Costs of court;

6. Pre- and post-judgment interest at the rate allowed by law until paid; and
7. Such other and further relief, at law or in equity, to which Plaintiffs may by this pleading or proper amendment thereto show themselves justly entitled.

Respectfully submitted,



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