

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
NORTHERN DIVISION AT COVINGTON

CHRISTINE STADLER,	:	Case No.
	:	
Plaintiff	:	Judge
	:	
vs.	:	CLASS ACTION COMPLAINT FOR
	:	DAMAGES AND EQUITABLE
TOYOTA MOTOR NORTH	:	RELIEF, WITH JURY DEMAND
AMERICA INC., a California	:	
corporation;	:	
TOYOTA MOTOR SALES U.S.A.,	:	
INC., a California corporation;	:	
TOYOTA MOTOR CORPORATION, a	:	
Japanese corporation,	:	
TOYOTA MOTOR ENGINEERING &	:	
MANUFACTURING NORTH	:	
AMERICA, INC., a Kentucky	:	
corporation,	:	
T O Y O T A M O T O R	:	
M A N U F A C T U R I N G	:	
KENTUCKY, INC., a Kentucky	:	
corporation,	:	
	:	
Defendants	:	

INTRODUCTION

1. This is a class action seeking damages, restitution and equitable relief for consumers who have purchased or leased a Toyota or Lexus hybrid vehicle, including the Toyota Prius, the Toyota Highlander Hybrid, and the Lexus Hybrids (collectively, the “Hybrids”), and for individuals who have been injured as a result of failures of the braking systems in those vehicles (the “Class”). The Hybrids have a defect in the braking mechanism that causes a delay between the time the brake pedal is depressed and when the braking system actually begins to slow the vehicle. Despite knowledge of such defect, Toyota failed to notify purchasers, lessees, and the Hybrid-using public about the dangers, and failed to provide necessary corrections to enable drivers to properly and

safely stop their vehicles. The Plaintiff brings this action on behalf of herself, 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) 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 a substantial portion of the acts and omissions complained of occurred in this judicial district.

PARTIES

5. Christine Stadler is a citizen and resident of Georgia, and is the owner of the 2005 Toyota Prius, VIN JTDKB20U653066852, which she purchased in April 2005, and which suffered from the defect in the defendants' systems.

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, having its principal place of business at 1 Toyota-Co, Toyota City, Aichi Prefecture 471 -8571.

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. Toyota Motor Manufacturing Kentucky, Inc., is a Kentucky corporation with its principal

place of business in Kenton County, Kentucky.

11. 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 plaintiffs, as well as all other vehicles that are the subject of this action.

FACTUAL ALLEGATIONS

A. TOYOTA

12. The defendants designed and manufactured Toyotas and Lexus vehicles during all periods relevant to this complaint.

13. The Hybrids are equipped with a hybrid vehicle brake system which includes both standard hydraulic brakes and a unique regenerative brake system that uses the Hybrid vehicle’s momentum to recharge the battery.

14. As soon as the accelerator pedal is released, the Hybrid electronic control unit (“ECU”) initiates regenerative braking. Electric motor generators are turned by the wheels and used as a generator to recharge the batteries.

15. During this phase of braking, the hydraulic brakes are not used. When more rapid deceleration is required, the hydraulic brakes are activated to provide additional stopping power.

16. To increase energy efficiency the system uses the regenerative brakes whenever possible.

17. In the 2004 and later Hybrids, brake control processing was moved to the “Skid Control ECU” (“SCECU”) which controls (i) conventional brake control, (ii) anti-lock brake systems (“ABS”), (iii) vehicle stability control (“VSC”) and (iv) regenerative brake cooperative control.

18. The Hybrid brake system does not function properly when the Hybrid encounters slippery or uneven roadways, causing the activation of the ABS and VSC systems, and the inability of the SCECU to cause the brakes to function properly.

19. The design defect in the Hybrids is the result in a flaw in software which controls the Hybrids' brake system.

20. The design defect in the Hybrids causes a delay of at least one to two seconds between the time the brake pedal is engaged and when the brake system begins to slow the Hybrid. With the delay, a Hybrid traveling at 60 miles per hour ("mph") will have traveled an additional 90-100 feet before the brakes even begin to engage, creating an grave safety issue for Class members and the public.

21. Toyota has known about the brake problems in its Hybrids for years, and went so far as to secretly fix the problem in its Prius models sold after January 2010, but has kept Hybrid consumers in the dark about the problem until Japan's consumer affairs minister compelled Toyota to make an "accurate and quick release of information" to consumers related to the Prius brake problems.

22. As a result. on February 4, 2010, faced with investigations by both Japanese and U.S. regulators, and a public relations nightmare with the way the Company had been handling a dangerous safety defect in other Toyota models, Toyota admitted that there was design defect in its 2010 Prius.

23. Toyota, however, chose to ignore the existence of the design defect in the other Toyota Hybrids, despite receiving complaints of the problems since before 2006, and sought to downplay the seriousness of the Hybrids' failure of the brakes to engage by causing Toyota managing officer Hiroyuki Yokoyama to state:

The brakes become a little slow when you are using light braking under certain road conditions. . . . But if you continue to step on them. the car will stop safely.

24. This statement offers little comfort to Toyota Hybrids owners who, for example, depress the brake pedal when traveling at 60 mph and encounter a "little slow[ness]" in the brakes engaging,

and thus travel an additional 90-100 feet before the brakes begin to take hold, and hope to avoid crashing their Toyota Hybrid.

25. On February 4, 2010, the United States National Highway Traffic Safety Administration (“NHTSA”) announced an investigation into the brake problems in 2010 Prius models after receiving 124 formal complaints about brake problems with the cars.

26. Prius owners in Japan, where the hybrid car is the nation’s most popular model, have also lodged complaints about the problem.

27. According to NHTSA, “[c]onsumers allege a momentary loss in braking during brake applications while traveling over an uneven road surface, pothole or bump in the roadway.”

28. Evidencing the serious safety problem posed by the design defect, there have been a total of four crashes, two involving injuries, attributed to brake problems in 2010 model year Toyota Prius alone.

29. Despite Toyota’s actual knowledge of the design defect since as early as 2006. Defendants have failed to properly cure the defect that has unfairly damaged the interests of the Plaintiffs and the Class as defined herein.

30. In the marketing and sale of its Hybrids, Toyota promotes the Hybrids’ safety. The website <http://www.safetytoyota.com/en-gb/>, devoted exclusively to promoting the safety of the Hybrids, claims:

What can we do to realize an ideal vehicle, which is a goal we never cease pursuing?
That is what we always have in mind.

What technology can prevent an accident in any situation and minimize the damage in an accident? Toyota has been developing various safety technologies by using variant means such as the Driving Simulator, which allows driving tests that are difficult to conduct even on test courses not to mention ordinary roads, and the THUMS technology, a virtual human model developed for computer collision analysis, in addition to the verification at the collision test center that can reproduce many different types of accidents.

“What causes accidents?” “What can be done to prevent accidents?” “What mitigates

the damage of accidents that have occurred?”

These are the questions to which we are constantly seeking answers. Our technologies will continue to advance toward the ultimate goal of making a vehicle that is safe for everybody.

31. Toyota first introduced the Prius in Japan in December 1997, and became available to the American consumer in 2001.

32. This first generation Prius was marketed and sold in the United States from 2001-2003.

33. The Prius was redesigned in 2004, and this second generation Prius was marketed in the United States from 2004-2009.

34. The Toyota Highlander Hybrid was introduced in 2005, the Lexus RX 400h in 2005, and the Lexus RX450h and HS250h in 2009.

35. The Hybrids combine a gasoline engine with an electric motor.

36. Because Hybrids are still fueled by gasoline, they do not have to be plugged in or recharged, because of its unique ability to generate electricity and recharge its batteries during the braking process, known as a “regenerative brake system.”

37. The Toyota Hybrids employ a combination of multiple brake systems, a traditional mechanical-hydraulic brake system and a regenerative brake system (which uses the Hybrid’s momentum to recharge the battery).

38. As soon as the accelerator pedal is released, the Hybrid’s ECU initiates regenerative braking.

39. Electric motor generators are turned by the wheels and used to recharge the batteries.

40. During this phase of braking, the hydraulic brakes are not used.

41. When more rapid deceleration is required, the hydraulic brakes are activated to provide additional stopping power.

42. The system uses the regenerative brakes whenever possible to increase energy efficiency.

43. In a traditional mechanical-hydraulic brake system, depressing the brake pedal pushes hydraulic fluid to the brake calipers forcing the brake pads to produce friction with the brake rotors to slow or stop the vehicle, with additional friction produced between the slowed wheels and the surface of the road.

44. With regenerative brakes, the system that drives the vehicle does the majority of the braking, analogously with downshifting in a traditional vehicle with a manual transmission.

45. When the driver steps on the brake pedal of an electric or hybrid vehicle, these types of brakes put the vehicle's electric motor into reverse mode, causing it to run backwards, thus slowing the car's wheels.

46. While running backwards, the motor also acts as an electric generator, producing electricity that is then fed into the vehicle's batteries.

47. Since the Hybrids have more than one brake system, the Hybrid's electronics must decide which brake system is appropriate at which time.

48. Regenerative brakes work better at certain speeds, and are most effective in stop-and-go driving situations.

49. In situations where regenerative braking simply would not supply enough stopping power, the vehicle must switch over to traditional mechanical-hydraulic brakes to permit the vehicle to stop.

50. In the 2004 and later Hybrids, brake control processing was moved to the "Skid Control ECU" ("SCECU") which controls (i) conventional brake control, (ii) anti-lock brake systems ("ABS"), (iii) vehicle stability control ("VSC") and (iv) regenerative brake cooperative control.

51. In May 2009, Toyota released the re-designed 2010 Toyota Prius (Generation 3) for distribution and sale in the United States and Japan.

52. The Hybrids' brake system is defectively designed because the programming for the hybrid vehicle brake system contains a software glitch which causes a delay between 1 and 2 seconds between the time the brake pedal is engaged and when the hybrid vehicle brake system actually begins to stop the car.

53. When the Hybrids travel along a bumpy or slippery surface, a driver can feel a pause in the braking system when the SCECU switches between the electronically operated brake system and the traditional mechanical-hydraulic brakes.

54. The brakes in the defective Hybrids will eventually start to work if the driver keeps pushing the brake pedal, but there can be a lag between the time the driver depresses the brake pedal and when the brakes actually start to slow the car.

55. The design defect described above is prevalent in Toyota's Hybrids.

B. ADMISSIONS BY TOYOTA

56. In response to the Japan's consumer affairs minister Mizuho Fukushima's February 4, 2010 direction to Toyota to make an "accurate and quick release of information" to consumers related to the Prius brake problems, Toyota held a press conference on February 4, 2010, to discuss the Prius brake issue.

57. Toyota stated:

Toyota is aware that NHTSA has opened a Preliminary Evaluation centered on owner complaints of a braking issue with the 2010 model year Prius. Toyota will cooperate fully with NHTSA's investigation.

Some customers have complained of inconsistent brake feel during slow and steady application of brakes on rough or slick road surfaces when the anti-lock brake system (ABS) is activated in an effort to maintain tire traction. The system, in normal operation, engages and disengages rapidly (many times per second) as the control system senses and reacts to tire slippage. A running production change was introduced last month, improving the ABS system's response time, as well as the system's overall sensitivity to tire slippage.

This preliminary evaluation addresses owner complaints specific to the 2010 Prius. This condition is not related to either the floor mat entrapment recall or the sticky pedal recall currently in action.

Toyota will continue to evaluate the condition as it relates to owner complaints and will keep NHTSA informed of its progress.

<http://pressroom.toyota.com/pr/tms/toyota/updated-statement-from-toyota-153525.aspx>.

58. This disclosure was further compelled by the fact that Toyota was faced with investigations by both the Japanese and U.S. regulators, and a public relations nightmare with the way the Company had been handling a different dangerous safety defect in other Toyota models.

59. During the February 4, 2010 press conference, Hiroyuki Yokoyama, Toyota's quality general manager, admitted that in late January Toyota rewrote the brake system software following an increase in complaints in December.

60. Toyota further admitted that all Prius cars assembled since then have the modified version of software in their brake systems, but that Toyota has yet to decide on whether and how to rewrite the programs on the cars it has already sold.

61. Mr. Yokoyama said Toyota first received consumer complaints via dealers in Fall, 2009, and went to state that, “[d]epending on road conditions Prius brakes were sometimes a little slow to respond when drivers kept lightly pressing them.”

62. He further explained that when the automatic brake system is enabled on certain road conditions, the car switches from regenerative braking to hydraulic braking, and that the brief lag time between the two brake systems results in cars stopping “a little later than the drivers expected.”

63. Even though the Company failed to inform the public of the changes to the Prius’ brake system in January 2010, the Company, through Mr. Yokoyama, insisted that “We weren't covering up the claims [on the Prius].”

64. Contrary to Mr. Yokoyama’s statement that Toyota had only learned of the defectively

designed brake system in the Toyota Hybrids in the Fall of 2009, Toyota has long had actual knowledge of the design defect in the brake system in these vehicles.

65. As a result of the design defect, drivers of the Hybrids have experienced brake system failures since 2005, as evidenced by the complaints filed with the NHTSA's Office of Defect Investigation ("ODI") and the hundreds of complaints on the World Wide Web, which were readily accessible on the internet on public websites such as www.priuschat.com, www.clublexus.com, www.greenhybrid.com, and www.consumeraffairs.com.

66. In addition. Defendants had actual knowledge of the design defects of the Hybrids' braking system as a result of the numerous complaints lodged by their customers since as early as 2005.

67. NHTSA has been collecting the complaints from Hybrid drivers regarding their defective braking systems since 2004.

68. According to NHTSA's records, through March 2009 there have been forty-four low-speed brake failures reported on the Prius for the model years 2004-2009.

69. Despite Toyota's knowledge of the design defect that existed in the Hybrids sold prior to January 2010, they have failed to publicly acknowledge the existence of the design defect in the Hybrids. and have further failed to warn customers and recall the Hybrids in order to correct the defect that exists in the Hybrid brake system.

70. Toyota deliberately hid this defect from the public and its Hybrid consumers until almost a year after the Generation 3 Prius were released for sale in the United States. and has continued to keep the defect from other Hybrid consumers.

71. Further, NHTSA has opened an investigation into reported brake system problems in the Generation 3 Prius.

72. According to a February 4, 2010 press release issued by NHTSA (available at <http://www.nhtsa.gov/>):

The National Highway Traffic Safety Administration (NHTSA) today announced that it is opening a formal investigation of the Toyota Prius Hybrid model year 2010 to look into allegations of momentary loss of braking capability while traveling over an uneven road surface, pothole or bump.

The Office of Defects Investigation has received 124 reports from consumers, including four reports alleging that crashes occurred. Investigators have spoken with consumers and conducted pre-investigatory field work.

73. Toyota has yet to acknowledge that the defective hybrid vehicle brake system affecting the Generation 3 Prius is also affecting the other Hybrids, nor has it done anything to repair the issue in these other Hybrids.

74. Toyota has not recalled the other (i.e., non-2010 Prius) Hybrids, notwithstanding the fact that Toyota has knowledge of the fact that Hybrid consumers have been experiencing problems with their brake systems since 2004.

75. Toyota has in fact ignored the problem for years. For example, in ODI complaint 10306605, the consumer reported:

My 2004 Prius has the same braking problem that has been reported for the 2010 Prius, that is, when I am slowing down and hit a bump or hole, there is a momentary acceleration. I reported this to Toyota in 2004 and regional Toyota rep came out and looked at the car and said it was normal. So...this problem is not limited to 2010 prius.

76. The defectively designed Hybrids pose a significant safety risk to Class members and the public, as hundreds of Class members have experienced loss of braking as a result of the defective brake systems described above.

77. Despite Toyota's awareness of the serious safety issues presented by the defective Hybrids' brake systems, Toyota has nonetheless refused to take action to protect Class members from a known dangerous defect.

78. Toyota has failed to disclose the existence of the Hybrids' defective brake systems anywhere, including on its websites, where it has long misrepresented the safety characteristics of all Toyota automobiles, including the specific safety characteristic of the Hybrid models.

79. The defect described above was a material fact related to the reliability and safety of the Hybrids, known only to Toyota.

80. Had Plaintiff and the other members of the Class known about the defect, they would not have purchased their Hybrid vehicles.

81. Defendants, at all relevant times, knew that Plaintiff and members of the Class did not know, or could not have reasonably discovered, the defect inherent in the Hybrids prior to purchasing or leasing their defectively designed Hybrids.

C. STADLER

82. The plaintiff, Christine Stadler purchased a 2005 Toyota Prius, VIN JTDKB20U653066852, in April 2005.

83. Christine Stadler, was injured on July 16, 2009, by the braking defect described above in her 2005 Toyota Prius.

84. After Christine has passed through an intersection at approximately 20 mph, when the vehicle two car lengths in front of her stopped suddenly, she hit the brake and the Prius would not stop or slow down, and hit the SUV in front of her.

85. As a result of the failure of the braking system, the plaintiff Christine Stadler, suffered injuries, including dislocating her heel from her foot, rotating 45 degrees to the left from pressing on the brake pedal; suffered the loss of her Prius; endured pain and suffering; has temporary and permanent injuries; and has suffered temporary loss of income.

86. The failure of the braking system was caused by Toyota's defective braking system in

the Prius.

FACTS COMMON TO ALL CLAIMS FOR RELIEF

87. Plaintiffs appear in this action on behalf of themselves and on behalf of all others similarly situated.

88. Hybrids containing the defective braking systems have been purchased throughout the United States, and are in wide use on the national roads.

89. Consumers purchasing a Hybrid containing the defective braking systems are not informed of the defect.

90. Indeed, even with respect to the 2010 Prius, for which Toyota acknowledges a problem, Toyota publishes the following FAQ:

5. What should 2010 Prius customers do if they experience this braking issue?

If a Prius owner were to experience this condition, pressing hard on the brake pedal will stop the vehicle safely.

6. Are these vehicles safe to drive until they get their update?

The vehicles are safe to drive because pressing hard on the brake pedal will stop the vehicle.

(available at <http://www.toyota.com/recall/abs.html>), and fails to warn consumers that the brakes may not function to prevent accidents in emergency situations, such as occurred to Plaintiff Christine Stadler.

91. Toyota had actual knowledge that the Hybrid braking systems, as currently designed and manufactured, are unreasonably dangerous to a person who can be expected to use them.

92. Plaintiff brings this action on behalf of herself 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 Plaintiffs seek to represent is composed of and defined as follows:

(A) A class containing all persons who purchased one or more of the defendants' vehicles containing a Generation Two or Three Hybrid braking system.

(B) A class containing all persons who leased one or more of the defendants' vehicles containing a Generation Two or Three Hybrid braking system.

(C) A class containing all persons who are obligated on any notes secured by one or more of the defendants' vehicles containing a Generation Two or Three Hybrid braking system.

(C) A class containing all persons who have been injured as a result of defects in a Generation Two or Three Hybrid braking system.

93. 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.

94. 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.

95. Plaintiffs' claims are typical of the claims of the Classes, and Plaintiffs have no interests adverse to the interests of other members of the Class.

96. 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 a Generation Two or Three Hybrid braking system into the stream of commerce throughout the United States?

B. Is the Generation Two or Three Hybrid braking system defectively designed?

C. Did Toyota know, or was reckless in not knowing, that the Hybrid vehicles equipped with a Generation Two or Three Hybrid braking system were defective at the times that Toyota manufactured and sold the Hybrids to the Class members?

D. Did Toyota mislead consumers as to the relative safety of the Hybrid vehicles equipped with a Generation Two or Three Hybrid braking system?

E. Was Toyota engaged in unfair business practices?

F. Did Plaintiff and others similarly situated suffer damages?

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

H. Was Toyota unjustly enriched?

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

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

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

98. The nature of this action and the nature of the laws available to the Classes 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 Plaintiffs 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.

99. 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)**

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

101. Plaintiff asserts these claims on behalf of themselves and others similarly situated who have expended funds that Toyota should be required to pay or reimburse under applicable law.

102. Each of the Toyota Defendants participates in a joint enterprise to design, manufacture, assemble, market, advertise, distribute and sell the Hybrids. 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.

103. Toyota was negligent, and breached this duty owed to the Plaintiffs.

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

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

105. At all times relevant, the Toyota Defendants sold, marketed, advertised, distributed, and otherwise placed the Hybrid vehicles into the stream of commerce in an unfair, false, misleading, or deceptive manner that was likely to deceive the public.

106. The Toyota Defendants' marketing of the Hybrid vehicles, with the defect described above, and while misrepresenting the safety of such vehicles to the public, constitutes unfair, false, misleading, or deceptive acts or practices within the meaning of applicable law.

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

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

108. By marketing, advertising, distributing and selling Hybrid vehicles containing defective braking systems, and while misrepresenting the safety 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.

109. 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)**

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

111. 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.

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

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

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs, on their 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 her counsel 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;
4. For an order requiring the Toyota Defendants to immediately cease and desist from marketing, advertising, distributing and selling vehicles containing the defective braking system;
5. All equitable remedies available under applicable law;
6. Attorneys' fees, expenses and costs;
7. Punitive Damages
8. Awarding pre- and post-judgment interest; and
9. Trial by jury for all claims so triable;

10. Any and all other relief as this Court may deem just and proper.

/s/ Eric C. Deters

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