

CLERK OF THE COURT

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**ACOM**  
CORY R. EICHELBERGER, ESQ.  
Nevada Bar Number 10577  
LEWIS & ASSOCIATES, LLC  
500 South Rancho Drive, Suite 7  
Las Vegas, Nevada 89106  
Tel: (702) 870-5571  
Fax: (702) 870-8978  
*Attorneys for Plaintiff*

JASPER D. WARD, IV  
BAHE COOK CANTLEY & JONES PLC  
Kentucky Home Life Bldg. Suite 700  
Louisville, Kentucky 40202  
Tel: (502) 587-2002  
Fax: (502) 587-2006  
*Attorneys for Plaintiff*  
*Filed With Motion for Pro Hac Vice*

**DISTRICT COURT**  
**CLARK COUNTY, NEVADA**

WILMA HERRERA, as Special Co-Administrator of the Estate of JOVITA SALVADOR, deceased; SYLVIA GAUSCH, as Special Co-Administrator of the Estate of JOVITA SALVADOR, deceased WILMA HERRERA, individually and as an heir of The Estate of JOVITA SALVADOR, Deceased; CAROLINA SALVADOR, individually and as an heir of the Estate of JOVITA SALVADOR, Deceased; SYLVIA GAUSCH, individually and as heir of the Estate of JOVITA SALVADOR, Deceased; and EDGARDO SOLIMAN, individually and as heir of the Estate of JOVITA SALVADOR, Deceased, The Estate of JOVITA SALVADOR, Deceased,

**Plaintiffs,**

vs.

TOYOTA MOTOR SALES, U.S.A., INC., a California Corporation; TOYOTA MOTOR ENGINEERING & MANUFACTURING NORTH AMERICA, INC., a Kentucky Corporation and TOYOTA MOTOR MANUFACTURING, KENTUCKY, INC., a Kentucky Corporation, DOE CORPORATIONS I through V, and ROE ENTITIES VI through X.

**Defendants.**

**CASE NO.: A615713**  
**DEPT. NO.: XIX**

**AMENDED COMPLAINT**

**LEWIS AND ASSOCIATES, LLC**  
Attorneys at Law  
500 SOUTH RANCHO DRIVE, SUITE 7  
LAS VEGAS, NEVADA 89106  
(702) 870-5571 FAX (702) 870-8978

1 Plaintiffs allege as follows:

2 **PARTIES**

3 1. That at all times relevant hereto, Plaintiffs WILMA HERRERA, as Special Co-  
4 Administrator of the Estate of JOVITA SALVADOR, Deceased; SYLVIA GAUSCH, as Special  
5 Co-Administrator of the Estate of JOVITA SALVADOR, Deceased; WILMA HERRERA,  
6 individually and as an heir of the Estate of JOVITA SALVADOR, Deceased; CAROLINA  
7 SALVADOR, individually and as an heir of the Estate of JOVITA SALVADOR, Deceased;  
8 SYLVIA GAUSCH, individually and as heir of the Estate of JOVITA SALVADOR, Deceased;  
9 and EDGARDO SOLIMAN, individually and as heir of the Estate of JOVITA SALVADOR,  
10 Deceased; The Estate of JOVITA SALVADOR, Deceased, were residents of Clark County, State of  
11 Nevada.

12  
13 2. Plaintiffs are the surviving children, heirs to, and/or the Administrators of the Estate  
14 of JOVITA SALVADOR, Deceased.

15  
16 3. Decedent, JOVITA SALVADOR, died on or about January 27, 2009, as a result of  
17 injuries caused by Defendants Toyota Motor Sales, U.S.A., Inc ("TMS-USA"), Toyota Motor  
18 Engineering & Manufacturing North America, Inc. ("TEMA"), Toyota Motor Manufacturing,  
19 Kentucky, Inc. ("TMMK"), in Clark County, Nevada, as alleged herein.

20  
21 4. Plaintiff CAROLINA SALVADOR, in addition to injuries suffered as an heir to the  
22 Estate of JOVITA SALVADOR, Deceased, suffered personal injuries in the automobile collision  
23 on December 21, 2008, that caused the death of her mother, JOVITA SALVADOR.

24  
25 5. Defendant TMS-USA is, and at all times relevant to this Complaint was, a  
26 California Corporation headquartered in California and licensed to do business and actually doing  
27 business in Nevada as a foreign corporation. TMS-USA is a wholly-owned subsidiary of Toyota  
28 Motor Corporation, and is responsible for the manufacture, distribution and sale of all Toyota and

**LEWIS AND ASSOCIATES, LLC**

Attorneys at Law

500 SOUTH RANCHO DRIVE, SUITE 7

LAS VEGAS, NEVADA 89106

(702) 870-5571 FAX (702) 870-8878

**LEWIS AND ASSOCIATES, LLC**

Attorneys at Law  
500 SOUTH RANCHO DRIVE, SUITE 7  
LAS VEGAS, NEVADA 89106  
(702) 870-5571 FAX (702) 870-8978

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

Lexus automobiles and trucks in the United States. TMS-USA does business in the State of Nevada and has committed torts as set forth herein in the State of Nevada.

6. Defendant TEMA is headquartered and has its principal place of business is in Erlanger, Kentucky. Defendant TEMA is responsible for Toyota's engineering, design, development, research and development and manufacturing activities in the United States, Canada and Mexico. TEMA was created in April 2006 following the consolidation of Toyota Technical Center and Toyota Motor Manufacturing North America. TEMA operates 14 parts and vehicle manufacturing plants across North America. TEMA does business in the State of Nevada and has committed torts as set forth herein in the State of Nevada.

7. Defendant TMMK, Toyota's largest manufacturing facility outside of Japan, manufacturers automobiles in Kentucky for distribution across the United States and, upon information and belief, manufactures automobiles and component parts of automobiles with the same or similar design and manufacturing defects that are the cause of Plaintiff's injuries and was aware of those defects at all times relevant to this Complaint. TMMK does business in the State of Nevada and has committed torts as set forth herein in the State of Nevada.

8. The names and capacities of Defendants named herein as DOES I through V and/or ROE CORPORATIONS VI through X, inclusive, whether individual, corporate, associate or otherwise, are presently unknown to Plaintiffs who, therefore, sues said Defendants by such fictitious names. Plaintiffs are informed and believe and thereon allege that each of the Defendants so designated herein are responsible in some manner for the actions outlined below and that Plaintiff's damages were proximately caused by those Defendants. Each reference in this complaint to "Defendant," "Defendants," or a specifically named defendant refers also to all defendants sued under fictitious names. Plaintiff will ask leave of the Court to amend this Complaint to insert the names and capacities of DOES I through V and/or ROE

1 CORPORATIONS VI through X, inclusive, when the same have been ascertained and to join  
2 such Defendants in this action.

3 **FACTUAL ALLEGATIONS**

4 9. Plaintiff incorporates the allegations contained in all of the above paragraphs as if  
5 fully set out herein.

6  
7 10. Upon information and belief, Defendants jointly participated in the design,  
8 manufacture and/or sale of Toyota automobiles, cars, SUVs and trucks, including but not limited to  
9 researching, developing, designing, testing, supplying, manufacturing, assembling, inspecting,  
10 shipping, warranting, marketing, advertising, selling, distributing, after-marketing, retrofitting,  
11 modifying, labeling, issuing instructions and warnings for, and/or otherwise participating in all  
12 aspects of sales of Toyota automobiles, including the model year 2002 RAV4 involved in the death  
13 of JOVITA SALVADOR and the personal injuries suffered by CAROLINA SALVADOR, as set  
14 forth in this Complaint, and as a result are all individually, jointly and severally liable for the acts  
15 and omissions of one another.

16  
17 11. Upon information and belief, each Defendant was at all times acting as the agent or  
18 employee of the other Defendants pursuant to an agreement whereby each principal authorized each  
19 agent to act on its behalf and subject to its direction and control.

20  
21 12. At all times herein, Defendants were acting within the scope of their agency and  
22 employment and all acts, omissions and breaches of each Defendants are attributable to the other  
23 Defendants as principal and all Defendants are liable for all damages resulting therefrom.

24  
25 13. Alternatively, Defendants are jointly and severally liable for the acts and omissions  
26 of the other Defendants through the doctrine of respondent superior.

27  
28 14. On December 21, 2008, CAROLINA SALVADOR ("Carolina") was the driver of a  
2002 Toyota RAV4, VIN number JTEGH20V526007682 ("the Toyota" or "the RAV4").

**LEWIS AND ASSOCIATES, LLC**

Attorneys at Law  
500 SOUTH RANCHO DRIVE, SUITE 7  
LAS VEGAS, NEVADA 89106  
(702) 870-5571 FAX (702) 870-8878

**LEWIS AND ASSOCIATES, LLC**

Attorneys at Law  
500 SOUTH RANCHO DRIVE, SUITE 7  
LAS VEGAS, NEVADA 89106  
(702) 870-5571 FAX (702) 870-8978

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

15. On December 21, 2008, JOVITA SALVADOR (“Ms. Salvador”) was a passenger in the Toyota driven by CAROLINA SALVADOR.

16. Carolina was driving eastbound on Warm Springs Road in Las Vegas and attempted to turn left onto Rainbow Drive. Carolina applied the brakes, but the Toyota did not slow down and in fact accelerated without warning despite application of the brakes. Carolina was unable to slow the Toyota and, because of the high rate of speed, was unable to control the Toyota. Carolina collided with a light post on Rainbow Drive.

17. As a result of the collision, Carolina and Jovita suffered severe injuries. Jovita ultimately died as a result of the injuries she sustained in the collision.

18. Carolina purchased the Toyota from Desert Toyota of Las Vegas in 2002. At the time of Carolina’s purchase, upon information and belief, Defendants TMA-USA, TEMA and TMMK (or, collectively, “Toyota”) all knew or should have known that cars and trucks designed, manufactured, distributed and marketed by them under the Toyota and Lexus brands, including the Toyota driven by Carolina, were designed and/or manufactured with the dangerous defect of unintended, sudden acceleration. Defendants TMA-USA, TEMA and/or TMMK had known since at least 2001 that its vehicles could accelerate uncontrollably, resulting in crashes causing serious injuries and deaths of occupants and bystanders.

19. After the time of Carolina’s purchase, any and all Defendants that were not actually aware should have become aware or known that the cars and trucks designed, manufactured, distributed and marketed by TMA-USA, TEMA and/or TMMK, including the Toyota driven by Carolina, were designed and/or manufactured with the dangerous defect of unintended, sudden acceleration.

20. After knowing of unintended, sudden acceleration problems for several years and after making modifications to vehicles sold in Europe to allegedly correct the problem, Toyota

**LEWIS AND ASSOCIATES, LLC**

Attorneys at Law  
500 SOUTH RANCHO DRIVE, SUITE 7  
LAS VEGAS, NEVADA 89106  
(702) 870-5571 FAX (702) 870-8978

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

recently acknowledged that its American-sold vehicles suffer sticking accelerator pedals or other design or manufacturing defects that cause unintended, sudden acceleration, and recalled those vehicles.

21. Toyota has not recalled the 2002 RAV4 and has affirmatively stated that RAV4 “vehicles with VINs that begin with ‘J’ are not affected.” See <http://pressroom.toyota.com/pr/tms/toyota/FAQ-for-Sticking-Accelerator-Pedal-152196.aspx#link%201>. Carolina’s VIN begins with the letter J.

22. According to information disclosed in a Congressional investigation, approximately 70% of the unintended, sudden acceleration events in Toyota’s customer call database involve vehicles that are not subject to the pedal or floor mat recalls.

23. According to the National Highway Traffic Safety Administration (“NHTSA”), there have been complaints about unintended sudden acceleration on RAV4 model years not recalled by Toyota, including 2001, 2002, 2004, 2006, 2007 model years. Defendants were aware of these complaints about the RAV4.

24. By the fall of 2009, Toyota had received more than 2,000 complaints of unintended acceleration of its vehicles and was the subject of multiple investigations by the federal government. However, in spite of the numerous complaints by customers and the government investigators, Toyota did nothing – other than deny there was a problem.

25. In August 2009, a California Highway Patrol Officer and his family were killed when their Toyota-made vehicle suddenly accelerated and their brakes failed to stop their car. The vehicle crashed into an SUV, ran through a fence, rolled over and burst into flames.

26. After this tragedy and others like it, Toyota continued to attempt to minimize the problem and conceal its extent. First, Toyota blamed the acceleration on floor mats. Toyota informed customers that they could prevent any risk of danger by simply removing the floor mats

**LEWIS AND ASSOCIATES, LLC**

Attorneys at Law  
500 SOUTH RANCHO DRIVE, SUITE 7  
LAS VEGAS, NEVADA 89106  
(702) 870-5571 FAX (702) 870-8978

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

on the driver's side. As of November 2009, Toyota stated "there is no evidence to support" any other conclusion. Toyota stated that the NHTSA supported the company's conclusion, but the agency responded by stating that Toyota's statement was "misleading and inaccurate."

27. Instead of being told the truth about the dangerous propensity of Toyota vehicles to suddenly accelerate, Carolina was given assurances that her vehicle was safe and defect free.

28. After years of covering up the life-threatening problems in its vehicles, on January 21, 2010, Toyota announced that it was recalling 2.3 million vehicles for the alleged reason of "sticking accelerator pedals." Toyota stated that its investigation, which it said it had only conducted "in recent months," "indicates there is a possibility that certain accelerator pedal mechanisms may, in rare instances, mechanically stick in a partially depressed position or return slowly to the idle position." Thus, Toyota continued to downplay the problems by saying they were caused by floor mats and by accelerator pedals that were the wrong size. Upon information and belief, Toyota failed to include back-up safety systems in its cars and trucks, including the Toyota driven by Carolina, that would prevent unintended sudden acceleration. Upon information and belief, Toyota omitted the back-up safety systems in order to save money and increase profits. As a result of the lack of safety systems, there is no adequate mechanical or electronic failsafe mechanism to allow drivers like Carolina to stop Toyota vehicles in the event the acceleration systems malfunction and engage in uncontrolled acceleration.

29. Until learning of the recall, Carolina was unaware that unintended, sudden acceleration was a defect commonly found in Toyota and was likely the substantial factor and/or only factor causing her wreck and injuries.

30. Despite similar complaints of sudden unintended acceleration on multiple brands, including the RAV4, across multiple model years, including 2002, Toyota has not recalled or made attempts to repair those vehicles and has affirmatively denied that there is any unintended sudden

**LEWIS AND ASSOCIATES, LLC**

Attorneys at Law  
500 SOUTH RANCHO DRIVE, SUITE 7  
LAS VEGAS, NEVADA 89106  
(702) 870-5571 FAX (702) 870-8978

1 acceleration problem with those vehicles.

2 31. JOVITA SALVADOR's injuries and subsequent death were directly and  
3 proximately caused by design and/or manufacturing flaws and/or Toyota's failure to warn of the  
4 possibility of sudden, unintended acceleration in the Toyota which led to it accelerating without  
5 warning and CAROLINA SALVADOR's wreck.

6  
7 32. From the time of her injuries until her death, JOVITA SALVADOR suffered intense  
8 physical and mental pain, disfigurement and shock all to her damage recoverable by Plaintiffs in an  
9 amount in excess of TEN THOUSAND DOLLARS (\$10,000.00).

10 33. JOVITA SALVADOR's estate is entitled to special damages for funeral and burial  
11 expenses in an amount according to proof at trial.

12 34. As a result of the wreck described above, CAROLINA SALVADOR suffered  
13 intense physical and mental pain, permanent disfigurement, shock, emotional distress, loss of  
14 earnings and loss of earning power, medical expenses and other damages in excess of TEN  
15 THOUSAND DOLLARS (\$10,000.00).

16  
17 35. JOVITA SALVADOR was a loving and devoted mother, grandmother and great-  
18 grandmother, and as the result of her death, Plaintiffs have suffered extreme grief and sorrow and  
19 have been deprived of her companionship, society and comfort, all to their general damages in an  
20 amount in excess of TEN THOUSAND DOLLARS (\$10,000.00).

21  
22 36. As a direct and proximate result of the incident which led to JOVITA  
23 SALVADOR's injuries and death and CAROLINA SALVADOR's injuries, Plaintiffs were  
24 forced to retain the services of the undersigned attorneys to prosecute this matter including all  
25 causes of action as stated herein.

26  
27 **COUNT I**  
**(Fraudulent Concealment and Fraud by Omission)**

28



**LEWIS AND ASSOCIATES, LLC**

Attorneys at Law  
500 SOUTH RANCHO DRIVE, SUITE 7  
LAS VEGAS, NEVADA 89106  
(702) 870-5571 FAX (702) 870-8978

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

37. Plaintiffs incorporate the allegations contained in all of the above paragraphs as if fully set out herein.

38. Toyota (collectively and each individual Toyota Defendant) has known since at least 2002, but possibly as early as 2000 and likely much earlier, that their vehicles were subject to unintended, sudden acceleration that placed occupants of its vehicles and the public in general at great risk of injury and death. Toyota was aware that there were fatalities in its vehicles because of unintended sudden acceleration from 2002-2009. Toyota knew that the risk of losing control of a vehicle in a high speed accident would be very frightening and dangerous to consumers and would cause Toyota's sales to decline. Toyota intentionally concealed the information, and/or acted with reckless disregard for the truth, and denied the consuming public, including Plaintiffs, information that is highly relevant to their purchasing decision. Defendants fraudulently concealed the information for years, because it was important to Toyota to increase sales and become the largest manufacturer in the world.

39. Toyota's customers, including Plaintiffs, relied on Defendants' reputation coupled with the fact that Toyota did not disclose the acceleration problems in purchasing Toyota's vehicles. The facts concealed were material, because if they had been disclosed, CAROLINA SALVADOR would not have bought the Toyota.

40. As a result of her reliance, Plaintiffs have been injured in an amount to be proved at trial, including, but not limited to, personal injuries sustained in the wreck, death, pain, suffering, emotional distress, destruction of power to labor and earn money, lost wages, permanent physical impairment, all other damages enumerated above and the loss of value of the use of CAROLINA SALVADOR's car.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

41. Defendants' conduct was knowing, intentional, with malice, willful, wanton and in reckless disregard for the rights of Plaintiffs, and therefore Plaintiffs are entitled to an award of punitive damages against Defendants.

**COUNT II**  
**(Fraud)**

42. Plaintiff incorporates the allegations contained in all of the above paragraphs as if fully set out herein.

43. Defendants represented to Plaintiffs and the public in advertising and other forms of communications, including standard and uniform material provided with each car, that the vehicles they were selling, including the Toyota CAROLINA SALVADOR purchased, were new, had no significant defects and would perform and operate properly when driven in normal usage. In fact, Defendants affirmatively represent that their vehicles are "reliable."

44. The Toyota purchased and driven by CAROLINA SALVADOR was in fact defective, unsafe and unreliable, because it was subject to unintended sudden acceleration leading to personal injury and death.

45. The representations of Defendants as described above were material, because they were facts that would typically be relied on by a person purchasing a new motor vehicle. Defendants knew the representations were false, because it knew that people had died in its vehicles after instances of unintended, sudden acceleration between 2002 and 2009. CAROLINA SALVADOR relied on the statements and other statements like them in purchasing her vehicle. Defendants intentionally made the false statements in order to sell vehicles.

46. As a result of Defendants' conduct, Plaintiffs have been defrauded into purchasing a vehicle with undisclosed defects and has been damaged in an amount to be proven at trial.

///  
///

**LEWIS AND ASSOCIATES, LLC**  
Attorneys at Law  
500 SOUTH RANCHO DRIVE, SUITE 7  
LAS VEGAS, NEVADA 89106  
(702) 870-5571 FAX (702) 870-8978

**LEWIS AND ASSOCIATES, LLC**

Attorneys at Law  
500 SOUTH RANCHO DRIVE, SUITE 7  
LAS VEGAS, NEVADA 89106  
(702) 870-5571 FAX (702) 870-8978

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

47. Defendants' conduct was knowing, intentional, done with malice, willful, wanton, demonstrated a complete lack of care, and was in conscious disregard for the rights of Plaintiffs, and they are therefore entitled to an award of punitive damages.

**COUNT III**  
**(Violation of Consumer Protection Act, NRS 598.0903 et seq.)**

48. Plaintiff incorporates the allegations contained in all of the above paragraphs as if fully set out herein.

49. The Nevada Deceptive Trade Practices Act, NRS 598.0903, et seq., prohibits unfair or deceptive consumer sales practices.

50. The conduct of Defendants alleged above constitutes unfair and/or deceptive consumer sales practices in violation of NRS Chapter 598 because Defendants represented through advertising and other marketing communications that the vehicles were new and free from defects and could be driven safely in normal operation. Instead, the vehicles were not of the standard, quality or grade of new vehicles.

51. Defendants' conduct caused Plaintiffs' damages as alleged.

52. As a result of the foregoing wrongful conduct of Defendants, Plaintiffs have been damaged in an amount to be proved at trial.

**COUNT IV**  
**(False Advertising and Negligence Per Se)**

53. Plaintiff incorporates the allegations contained in all of the above paragraphs as if fully set out herein.

54. Defendants violated NRS Chapter 598 by engaging in deceptive trade practices, including but not limited to false or misleading advertisements and/or representations in connection with the promotion of goods.

///

**LEWIS AND ASSOCIATES, LLC**

Attorneys at Law  
500 SOUTH RANCHO DRIVE, SUITE 7  
LAS VEGAS, NEVADA 89106  
(702) 870-5571 FAX (702) 870-8878

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

55. Defendants violated this statute because they advertised that their vehicles were safe and reliable, despite their knowledge since at least 2002 that its vehicles, including the Toyota purchased and driven by CAROLINA SALVADOR, were highly dangerous, unsafe and unreliable due to the propensity and likelihood of the vehicle to suddenly accelerate without the driver's intent to accelerate.

56. Defendants' violation of NRS Chapter 598 is a misdemeanor. Defendants are negligent per se.

57. As a result of Defendants' negligence, Plaintiffs have been damaged in an amount to be determined at trial.

**COUNT V**  
**(Breach of Contract)**

58. Plaintiffs incorporate the allegations contained in all of the above paragraphs as if fully set out herein.

59. CAROLINA SALVADOR entered into an agreement with Desert Toyota of Las Vegas that directly or indirectly benefited Toyota.

60. The agreement was that CAROLINA SALVADOR would pay compensation for a vehicle that was not defective and of a quality that would reasonably be expected of a new automobile.

61. CAROLINA SALVADOR fully performed her duties under the sales contract.

62. Defendants are liable for all damages suffered by CAROLINA SALVADOR as a result of this breach of contract.

**COUNT VI**  
**(Breach of Express Warranties)**

63. Plaintiffs incorporate the allegations contained in all of the above paragraphs as if fully set out herein.

**LEWIS AND ASSOCIATES, LLC**  
Attorneys at Law  
500 SOUTH RANCHO DRIVE, SUITE 7  
LAS VEGAS, NEVADA 89106  
(702) 870-5571 FAX (702) 870-8978

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

64. Defendants made express warranties that new vehicles they sold would be fully operational, safe and highly reliable. The warranties were made in advertisements and in statements by Toyota and Toyota's salespeople and licensed dealers and franchises. These affirmations of fact, including via commercial advertisements, are express warranties under the Uniform Commercial Code, NRS 104.2313.

65. Defendants breached these warranties because the Toyota sold to CAROLINA SALVADOR has been demonstrated to have been unsafe, and indeed, Toyota has now admitted that many of its vehicles are unsafe by recalling them and ceasing their sale altogether. Defendants further breached the warranties by failing to notify Plaintiffs of the defects the Toyota had at the time of design and/or manufacture and that were known to Defendants at the time of sale or of which they became aware after the time of sale to CAROLINA SALVADOR.

66. Plaintiffs have been harmed as a result of these breaches of warranty by being injured when the unintended sudden acceleration defect manifested itself and caused CAROLINA SALVADOR to wreck her car at a high speed, injuring her and her mother and ultimately causing JOVITA SALVADOR's death.

67. Plaintiffs have been injured by these breaches in an amount to be proven at trial.

**COUNT VII**  
**(Unjust Enrichment)**

68. Plaintiff incorporates the allegations contained in all of the above paragraphs as if fully set out herein.

69. As a result of the foregoing wrongful, unjust and inequitable conduct, Defendants have obtained funds and property to which they are not entitled, and have been unjustly enriched at the expense of Plaintiffs. Defendants should be required to make restitution of all amounts by which they were enriched through their misconduct, including interest.

///

**LEWIS AND ASSOCIATES, LLC**  
Attorneys at Law  
500 SOUTH RANCHO DRIVE, SUITE 7  
LAS VEGAS, NEVADA 89106  
(702) 870-5571 FAX (702) 870-8878

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**COUNT VIII**  
**(Breach of Implied Warranty of Merchantability)**

70. Plaintiff incorporates the allegations contained in all of the above paragraphs as if fully set out herein.

71. Defendants impliedly warranted under NRS 104.2314 that their vehicles, including the Toyota purchased by CAROLINA SALVADOR, were fit for the ordinary purpose for which such a product is sold.

72. The ordinary purpose for which Defendants' vehicles are sold is to provide the purchaser with a vehicle that is capable of transporting the driver and passengers in reasonable safety during normal operation, and without itself unduly endangering them or members of the public.

73. Defendants breached their implied warranty of merchantability by selling vehicles, including the Toyota purchased by CAROLINA SALVADOR, that have the propensity to unintentionally and suddenly accelerate, and which do not contain safety systems that would prevent such acceleration or allow a driver to safely slow down and stop the vehicle when such acceleration occurred.

74. As a result of the breach of implied warranty, Plaintiffs have been damaged in an amount to be proven at trial.

**COUNT IX**  
**(Breach of Implied Warranty of Fitness for a Particular Purpose)**

75. Plaintiff incorporates the allegations contained in all of the above paragraphs as if fully set out herein.

76. Defendants are, and at all times relevant to this Complaint have been, in the business of designing, manufacturing, distributing, servicing and selling motor vehicles to consumers.

**LEWIS AND ASSOCIATES, LLC**  
Attorneys at Law  
500 SOUTH RANCHO DRIVE, SUITE 7  
LAS VEGAS, NEVADA 89106  
(702) 870-5571 FAX (702) 870-8878

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

77. Defendants knew when they sold the Toyota CAROLINA SALVADOR that it would be used by her for safely transporting herself and occupants.

78. Defendants also knew that CAROLINA SALVADOR, as a normal consumer who purchased their vehicles, relied on Defendants' skill and expertise, judgment and knowledge in furnishing vehicles, including components thereof, that were able to transport herself and occupants without unreasonable risk of harm to herself, her occupants or members of the public. Therefore, Defendants impliedly warranted under NRS 104.2315 that the vehicles were fit for the purposes for which CAROLINA SALVADOR intended the Toyota.

79. Defendants' vehicles, including the Toyota CAROLINA SALVADOR purchased, were not fit for that purpose in that its their design, choice of components, manufacture or servicing were so defective as to cause such vehicles to suddenly and unintentionally accelerate. Additionally, the vehicles fail to provide an adequate means of braking or stopping once they have so accelerated.

80. As a result, Plaintiffs have been damaged in an amount to be determined at trial.

**COUNT X**  
**(Negligence)**

81. Plaintiff incorporates the allegations contained in all of the above paragraphs as if fully set out herein.

82. Defendants had a duty to its customers and Plaintiffs as manufacturers, sellers and servicers of vehicles to provide vehicles that, in their ordinary operation, would be safe and, if they learned of a dangerous defect that was present at the time of manufacture, design and/or sale, to notify Plaintiffs of this defect. Defendants had duties to adequately test the safety of their vehicles before selling them to consumers, including CAROLINA SALVADOR. Defendants particularly had a duty to test vehicles for acceleration problems once they were on notice that its vehicles had a propensity to suddenly accelerate and were causing bodily injury, death and

**LEWIS AND ASSOCIATES, LLC**

Attorneys at Law  
500 SOUTH RANCHO DRIVE, SUITE 7  
LAS VEGAS, NEVADA 89106  
(702) 870-5571 FAX (702) 870-8978

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

property damage, and warn or notify consumers, including CAROLINA SALVADOR, of this defect.

83. Defendants breached their duties to Plaintiffs. Defendants knew, or in the exercise of reasonable care, should have known, that the Toyota was a product of such nature that if it was not properly designed, engineered, developed, manufactured, fabricated, assembled, equipped, tested, inspected, repaired, retrofitted, labeled, advertised, promoted, marketed, supplied, distributed, wholesaled and sold, for the use and purpose for which it was intended, it was likely to injure or kill the person or persons by whom it was used and possibly the general public.

84. As a direct and proximate result of Defendants breaches of their duties to Plaintiffs, Plaintiffs have been damaged, including, but not limited to, personal injuries sustained in the wreck, pain, suffering, emotional distress, death, destruction of power to labor and earn money, lost wages, permanent physical impairment, extreme grief and sorrow and have been deprived of JOVITA SALVADOR's companionship, society and comfort and the loss of value of the use of CAROLINA SALVADOR's car.

**COUNT XI**  
**(Strict Products Liability)**

85. Plaintiff incorporates the allegations contained in all of the above paragraphs as if fully set out herein.

86. The Toyota defendants are manufacturers and suppliers of automobiles.

87. The Toyota that CAROLINA SALVADOR purchased was supplied by the Defendants and failed to comply with Defendants' representations, as alleged above, that the vehicles were safe, reliable and that they would accelerate, decelerate, brake and otherwise drive as users and CAROLINA SALVADOR and JOVITA SALVADOR would reasonably expect.

///



**LEWIS AND ASSOCIATES, LLC**

Attorneys at Law  
500 SOUTH RANCHO DRIVE, SUITE 7  
LAS VEGAS, NEVADA 89106  
(702) 870-5571 FAX (702) 870-8978

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

88. The Toyota purchased by CAROLINA SALVADOR was defective because, as alleged above, it was subject to and actually had the defect of unintended sudden acceleration without notice and without the ability to slow or stop the vehicle.

89. CAROLINA SALVADOR's vehicle and those like it were defective in design and manufacture because when they left the hands of Toyota they were more dangerous than an ordinary customer would expect.

90. CAROLINA SALVADOR's vehicle and those like it were defective due to inadequate warning or instruction by Defendants and because Defendants knew or should have known that the product was defective and created a risk of harm to Plaintiffs and failed to warn of those risks.

91. Defendants additionally failed to warn Plaintiffs after the sale of the Toyota when Defendants learned or had reason to learn that there were defects present in the Toyota at the time of design, manufacture and sale that could cause the vehicle to suddenly accelerate without warning and without the ability to stop the Toyota.

92. The Toyota supplied by Defendants was defective due to inadequate post-marketing warning or instruction because Defendants knew of the risk of unintended sudden acceleration.

93. As a direct and proximate result of the defective condition of Toyota's vehicles, including the Toyota purchased by CAROLINA SALVADOR, and Defendants' failure to warn pre- and post-sale of these defects, Plaintiffs been damaged in an amount to be proven at trial.

**COUNT XII**  
**(Breach of Implied Covenant of Good Faith and Fair Dealing)**

94. Plaintiff incorporates the allegations contained in all of the above paragraphs as if fully set out herein.

///

**LEWIS AND ASSOCIATES, LLC**  
Attorneys at Law  
500 SOUTH RANCHO DRIVE, SUITE 7  
LAS VEGAS, NEVADA 89106  
(702) 870-5571 FAX (702) 870-8978

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

95. Nevada law implies a covenant of good faith and fair dealing in all contracts between parties entered into in this State.

96. Defendants breached the covenant of good faith and fair dealing as Defendants, in exchange for payment, were to provide a vehicle that was not defective and of a quality that would reasonably be expected of a new automobile.

97. As a result of the actions of Defendants, and each of them, set forth hereinabove, said Defendants have violated the implied covenant of good faith and fair dealing and as a result thereof, Plaintiff is entitled to damages in an amount to be proven at trial.

98. The actions of said Defendants in violation of the implied covenant of good faith and fair dealing have caused the Plaintiffs to suffer damages in an amount in excess of \$10,000.00.

**PUNITIVE CONDUCT**

99. Plaintiff incorporates the allegations contained in all of the above paragraphs as if fully set out herein.

100. Defendants have fraudulently and knowingly concealed for years that their automobiles had defective acceleration systems that were causing death, bodily injury and property damage in Clark County, Nevada, and the United States. Defendants knowingly concealed this information in order to be able to continue to sell their defective, unsafe vehicles. Defendants defrauded American consumers, including Plaintiffs, by representing that their vehicles were safe and reliable when they were secretly aware of the highly dangerous acceleration system. Defendants have intentionally violated consumer laws by falsely advertising that their cars were safe and reliable when, in fact, they are defective.

101. Defendants' conduct was knowing, intentional, with malice, demonstrated a complete lack of care, willful, wanton and was in reckless disregard for the rights of Plaintiffs.



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

- 6. Cost of suit including attorney fees and costs;
- 7. Prejudgment interest as provided by law;
- 8. A trial by jury;
- 9. For any other and further relief as this Court may deem appropriate, just and proper.

DATED this \_\_\_ day of May, 2009.

**LEWIS AND ASSOCIATES, LLC**

/s/ Cory R. Eichelberger, Esq. /s/  
 CORY EICHELBERGER, ESQ.  
 Nevada Bar Number 10577  
 500 S. Rancho Dr., Ste. 7  
 Las Vegas, NV 89106  
*Attorney for Plaintiff*

**LEWIS AND ASSOCIATES, LLC**

Attorneys at Law  
 500 SOUTH RANCHO DRIVE, SUITE 7  
 LAS VEGAS, NEVADA 89106  
 (702) 870-5571 FAX (702) 870-8878