

Allen D. Levine
CLERK OF THE COURT

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8 DISTRICT COURT
9 CLARK COUNTY, NEVADA

10 * * *

11 KIM LEVINE, individually and as Special)
Administratrix for the Estate of JEFFREY)
12 LEVINE; NICOLAS LEVINE, a minor, by and)
through KIM LEVINE, his Guardian ad Litem;)
13 LUKAS LEVINE, a minor, by and through KIM)
LEVINE, his Guardian ad Litem;)

14 Plaintiffs,

15 vs.

16 TOYOTA MOTOR CORPORATION, a Foreign)
Corporation, TOYOTA MOTOR SALES, USA,)
17 INC, a California Corporation; FINDLAY)
18 AUTOMOTIVE, INC., a Nevada Corporation)
doing business as Findlay Toyota and DOES 1)
19 through 50, and ROE CORPORATIONS I through)
50, inclusive,)

20 Defendants.
21

CASE NO. A-10-621686
DEPT. NO. XIX

FIRST AMENDED COMPLAINT

Hearing Date:
Hearing Time:

22 COMES NOW the plaintiffs, KIM LEVINE, LUKAS LEVINE AND NICOLAS LEVINE
23 (minors by and through their Guardian ad Litem, KIM LEVINE) ; by and through their attorneys of
24 record, GERALD I. GILLOCK, ESQ. and CAROL F. HAY, ESQ. of the law firm of GILLOCK &
25 ASSOCIATES and complain and allege as follows:
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GENERAL ALLEGATIONS

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2 1. Plaintiff KIM LEVINE is, and was, at all times mentioned herein, an individual
3 residing in Las Vegas, Nevada. She is the wife of decedent JEFFREY LEVINE and the Special
4 Administratrix of his estate.

5 2. Plaintiff, LUKAS LEVINE, a minor, and was, at all times mentioned herein the son
6 of JEFFREY LEVINE. He is and was at all times relevant herein, a resident of Las Vegas, Nevada.
7 He was six (6) years old at the time of his father's death.

8 3. Plaintiff, NICOLAS LEVINE, a minor is, and was, at all times mentioned herein the son
9 of JEFFREY LEVINE. He is and was at all times relevant herein, a resident of Las Vegas, Nevada. He
10 was thirteen (13) years old at the time of his father's death.

11 4. Defendant TOYOTA MOTOR CORPORATION is a foreign corporation and its
12 principal place of business is Japan.

13 5. Defendant TOYOTA MOTOR SALES, USA, INC is a foreign Corporation with its
14 principal place of business is California.

15 6. Defendant FINDLAY AUTOMOTIVE, INC., is a Nevada Corporation doing business
16 as Findlay Toyota (henceforth "Findlay Toyota"), and located in the City of Henderson and County of
17 Clark.

18 7. Defendants, TOYOTA MOTOR CORPORATION; TOYOTA MOTOR SALES, USA,
19 INC., (collectively referred to herein as the "TOYOTA DEFENDANTS"), are in the business of
20 designing, manufacturing, testing, marketing, selling and distributing motor vehicles.

21 8. Jurisdiction is conferred pursuant to N.R.S. 14.080 in as far as Defendants
22 manufactured, tested, marketed, sold and/or distributed the Toyota Tacoma, which Jeffrey Levine was
23 driving in the state of Nevada when the injuries/death occurred. Toyota defendants maintain a
24 continuous and substantial presence in the State of Nevada through the conduct of regular business,
25 sales, marketing and/or deliveries in the State. It is reasonably foreseeable to Toyota defendants, that
26 when its product, entered the State of Nevada, that Defendants, could be expected to be sued in the state
27 where its product caused the injury.

1 9. Jurisdiction is appropriate under the Due Process Clause. Upon information and belief,
2 Toyota defendants, were aware of the national distribution system and as a consequence of that
3 awareness, the defendant indirectly and/or directly served the national retail market and derived
4 economic benefit therefrom. As such, Defendants, could reasonably anticipate being subject to suit in
5 any forum within that market where their product caused injury.

6 10. The true names or capacities, whether individual, corporation, associate or otherwise
7 of Defendants, DOES 1 through 50 and ROE CORPORATIONS 1 through 50, are unknown to
8 Plaintiffs, who therefore sues said Defendants by such fictitious names. Plaintiffs is informed and
9 believes and thereon alleges that each of the Defendants designated herein as DOES I-X and ROE
10 CORPORATIONS I-X are strictly liable under theory of products liability, or were negligent or grossly
11 negligent for the events and happenings herein referred to, which caused injury and damages to the
12 Plaintiffs as herein alleged. Plaintiffs also alleges that DOES I-X and ROE CORPORATIONS I-X, are
13 the agents, employees, servants, subsidiary or affiliated companies, retailers, wholesalers and/or
14 distributors of Defendants. Plaintiffs are informed and believe and thereupon alleges that each of
15 Defendants designated herein as DOE and ROE CORPORATIONS were negligent or otherwise
16 responsible in some manner for the acts, events, circumstances and happenings complained of herein,
17 and actually and proximately thereby caused the injuries to Plaintiffs and further proximately caused
18 Plaintiffs to suffer expenses and damages herein alleged, and specifically were the designers,
19 manufacturers, assemblers, testers, retailers, material suppliers, distributors, owners and/or suppliers of
20 the Toyota Tacoma and its parts.

21 11. At all times relevant herein, Defendants, and each of them, were agents, servants,
22 partners, subsidiaries, and employees of each and every other Defendant, and were acting within the
23 course and scope of their agency.

24 12. As originally designed, manufactured, tested, sold and delivered, TOYOTA
25 vehicles (including the Tacoma) were unreasonably dangerous for their intended use, namely, to
26 transport people from one place to another without risk of unnecessary injury and/or death.

1 13. As originally designed, manufactured, tested, sold and delivered, TOYOTA
2 vehicles (including the Tacoma) were defective and were in inadequate condition for sale and
3 distribution in the United States.

4 14. As originally designed, manufactured, tested, sold and delivered, the TOYOTA
5 Tacoma was defectively designed for its intended and foreseeable uses in that:

6 15. Defendants, are strictly liable for injuries since they knew that in the course of their
7 normal and intended use, TOYOTA DEFENDANTS vehicles (including the Toyota Tacoma)
8 accelerators were subject to getting stuck in the full open position due to driver side floor mat
9 interference.

- 10 a. The Tacoma would be subjected to accelerator/mat interference, which could
11 cause the accelerator to get stuck in the full open position;
- 12 b. That a stuck open accelerator pedal could result in very high vehicle
13 speeds and make it difficult to stop the vehicle, which could cause a crash,
14 serious injury and/or death;
- 15 c. Particularly in light of the foreseeable need to stop the vehicle with a stuck open
16 accelerator pedal, the design of the TOYOTA Tacoma provided inadequate
17 and/or no brake over-ride system;
- 18 d. Particularly because of the foreseeable need to stop the vehicle with a stuck open
19 accelerator pedal from mat interference, which could cause a crash, serious injury
20 or death, the design of the Toyota Tacoma provided an inadequate braking
21 system;
- 22 e. The Toyota Tacoma had improper accelerator pedal design;
- 23 f. The Toyota Tacoma had inadequate and insufficient warnings and instructions
24 about the risks, dangers and harms presented by its foreseeable use;
- 25 g. The Toyota Tacoma lacked elements necessary to make it safe for its intended
26 and foreseeable uses and contained conditions that made it unsafe for its intended
27 and foreseeable uses;
- 28 h. The defect(s) existed at the time the Toyota Tacoma left the manufacturer;

- 1 i. The Toyota Tacoma failed to perform in the manner reasonably expected in the
- 2 light of its nature and intended function;
- 3 j. Consumers, including Jeffrey Levine were not adequately warned of the
- 4 anticipated danger of floor mat interference and/or runaway acceleration;
- 5 k. Ordinary consumers would not be aware of anticipated danger of floor mat
- 6 interference and/or runaway acceleration;
- 7 l. The defect(s) rendered the Toyota Tacoma unreasonably dangerous;
- 8 m. The defective condition(s) caused Jeffrey Levine's death.
- 9 n. Existing safety design and engineering alternatives that would correct the defects
- 10 and reduce or eliminate the risk of injury were available but not utilized on the
- 11 Toyota Tacoma.

12 16. Defendants, owed to all purchasers, operators and passengers (including Jeffrey Levine)

13 the following duties and obligations, among others:

- 14 a. The exercise of care in the design, manufacture, sale and distribution of the
- 15 Toyota Tacoma so as not to cause harm as a result of the use of the Toyota
- 16 Tacoma;
- 17 b. To engage in proper and adequate testing, research and design work for the
- 18 determination and provision of adequate brake system of the said vehicles;
- 19 c. To engage in proper and adequate testing, research and design work for the
- 20 determination and provisions of adequate accelerator pedal;
- 21 d. To engage in proper and adequate testing, research and design work to equip said
- 22 vehicles with proper and adequate safeguards and safety equipment;
- 23 e. To engage in proper and adequate testing, research and design work to provide
- 24 vehicles that included all elements necessary to make them safe for their intended
- 25 and foreseeable uses;
- 26 f. To engage in proper and adequate testing, research, and design work to provide
- 27 vehicles that did not contain any conditions that made them unsafe for their
- 28 intended and foreseeable uses;

1 g. To recall said vehicles for the purpose of retrofitting them with all elements
2 necessary to make them safe for their intended and foreseeable uses.

3 17. Defendants were negligent in the design, manufacture, sale and distribution of the
4 Toyota Tacoma in that:

5 a. DEFENDANTS, designed, manufactured, tested, sold and/or distributed the
6 Tacoma in a defective condition, when it knew or should have known of the said
7 defects;

8 b. DEFENDANTS, failed to act reasonably to identify, eliminate or reduce the risks
9 and hazards associated with the intended and foreseeable uses of the Tacoma;

10 c. DEFENDANTS, failed to utilize existing technology or to apply longstanding
11 safety engineering principles to eliminate or reduce the risks and hazards
12 associated with the intended and foreseeable uses of the Tacoma;

13 d. DEFENDANTS, failed to engage in proper and adequate testing, research, and
14 design work:

15 i. To provide adequate vehicle safety protection;

16 ii. For the determination of adequate design and manufacture of vehicle
17 brake systems;

18 iii. For the determination of adequate design and manufacture of vehicle
19 accelerator systems;

20 iv. To provide adequate and sufficient warnings and instructions of the risks,
21 dangers and harms presented by the foreseeable use of the Toyota
22 Tacoma;

23 v. To equip said vehicles with proper and adequate safeguards and safety
24 equipment;

25 vi. To provide vehicles that included all elements necessary to make them
26 safe for their intended and foreseeable uses; and,

27 vii. To provide vehicles that did not contain any conditions that made them
28 unsafe for their intended and foreseeable uses.

1 18. As a direct and proximate result of the said negligent and defective design and
2 condition of the TOYOTA DEFENDANTS Tacoma, the driver side floor mat interfered with the
3 accelerator, causing acceleration of the subject Toyota Tacoma to speeds reaching 100 mph.

4 19. As a direct and proximate result of the said negligent and defective design and
5 condition of the Toyota Tacoma's brake system, the vehicle could not be slowed causing the vehicle to
6 careen into the back end of a motor home.

7 20. The catastrophic and fatal injuries to JEFFREY LEVINE were directly and
8 proximately caused by the aforesaid negligence and/or defective design by TOYOTA DEFENDANTS
9 and FINDLAY TOYOTA.

10 21. The collision was not due to any act or failure to act on the part of JEFFREY LEVINE.

11 22. TOYOTA DEFENDANTS's failed to warn the operators of the vehicle in the United
12 States and their own conduct was outrageous, wanton and in reckless disregard for the health, safety and
13 welfare of others, including JEFFREY LEVINE.

14 23. Toyota President, Akio Toyoda admitted to Congress that Toyota expanded its
15 business rapidly over the past few years.

16 24. Akio Toyoda admitted to Congress that Toyotas priority of "safety first" became
17 confused due to the rapid expansion which resulted in safety issues resulting in recalls and accidents.

18 25. Decedent Jeffrey Levine, age 54, died in the SUBJECT TOYOTA on December 17,
19 2009, in Nevada, within the County of Clark.

20 26. FINDLAY TOYOTA, located at 7733 Eastgate Rd., Henderson, Nevada, serviced
21 the Silver 2009 Toyota Tacoma, license 495VZY on November 16, 2009.

22 27. The servicing included a "floor mat inspection", that was conducted as part of a covert
23 Toyota Campaign, in which the owners/users of the vehicles, from the United States, were not informed
24 of the life threatening dangers regarding floor mat interference with the accelerator.

25 28. The driver side floor mat, at issue, was not removed by Findlay Toyota. The driver
26 side mat was intentionally left, where it could cause interference with the accelerator.

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1 29. Almost 30 days to the date of the inspection, December 17, 2009, Deceased, Jeffrey
2 Levine was driving the Toyota Tacoma, while delivering racing forms, for his employer, Daily Racing
3 Forms.

4 30. Decedent was traveling northbound on US 95 in the #2 lane north of mile marker 13
5 Clark, Nevada, when suddenly and without warning, the Toyota Tacoma began to accelerate on its own
6 and without Decedent Jeffrey Levine causing it to do so.

7 31. Decedent attempted to slow the vehicle, to include reaching down in an attempt to free
8 the accelerator pedal.

9 32. Decedents' vehicle traveling between 90 and 100 miles per hour careened into the rear
10 of 2005 Country Coach Motor home. Following impact, the Toyota veered to the left across the #1 travel
11 lane, center median and entered the desert area west of US 95. The subject Toyota traveled through the
12 barbed wire right-of-way fence and came to rest upright, facing west of US 95.

13 33. Jeffrey Levine suffered fatal injuries as a result of the crash and was pronounced dead
14 at the scene on December 17, 2009, at 0830 by Clark County Coroner.

15 34. The state troopers took 112 photos at the scene of the accident, immediately
16 following the incident.

17 35. One photo was taken in the area where the accelerator could be visualized. The photo
18 clearly shows a portion of the driver side floor mat over the accelerator pedal and the accelerator pedal
19 remaining depressed from the floor mat.

20 **FIRST CAUSE OF ACTION**

21 **WRONGFUL DEATH, PRODUCTS LIABILITY/STRICT LIABILITY**

22 (As to Defendants: TOYOTA MOTOR CORPORATION; TOYOTA MOTOR SALES, USA, INC.
23 and FINDLAY TOYOTA)

24 36. Plaintiff hereby adopts and incorporates by reference Paragraphs 1 through 35 of
25 this Complaint and makes them a part of the instant cause of action as though fully set forth herein.

26 37. TOYOTA DEFENDANTS and FINDLAY TOYOTA, knew the subject
27 Toyota would be purchased or used without inspection for defects. The subject Toyota was defective
28 when it left the control of each defendant. The subject Toyota at the time of injury was being used in

1 the manner intended by the TOYOTA DEFENDANTS AND FINDLAY TOYOTA. The subject
2 Toyota at the time of injury was being used in manner that was reasonably foreseeable by the
3 TOYOTA DEFENDANTS, and FINDLAY TOYOTA as involving a substantial danger not readily
4 apparent. Adequate warnings of the danger were not given.

5 38. Decedent JEFFREY LEVINE was a user of the subject Toyota Tacoma.

6 39. Plaintiff's injuries were the legal/proximate result of the acts and/or omissions of
7 the TOYOTA DEFENDANTS and FINDLAY TOYOTA and each defendant knew the subject
8 Toyota would be purchased or used without inspection for defects. The subject Toyota was defective
9 when it left the control of each defendant. The subject Toyota at the time of injury was being used in
10 a manner intended by the TOYOTA DEFENDANTS and FINDLAY TOYOTA, who manufactured
11 or assembled the product.

12 40. Plaintiffs injures were the legal/proximate result of the acts and/or omissions of
13 the TOYOTA DEFENDANTS and FINDLAY TOYOTA, who designed and/or manufactured
14 component parts supplied in the manufacturer.

15 41. Plaintiffs' injuries were the legal/proximate result of the acts and/or omissions of
16 the TOYOTA DEFENDANTS and FINDLAY TOYOTA who sold and/or distributed the subject
17 Toyota to the public.

18 42. The TOYOTA DEFENDANTS and FINDLAY TOYOTA owed a duty of care to
19 Plaintiffs and Decedent and breached that duty, regarding the design, manufacturing, testing,
20 marketing, sale and distribution of the product.

21 43. Plaintiffs' injuries were the legal/proximate result of the acts and/or omissions
22 of the TOYOTA DEFENDANTS and FINDLAY TOYOTA, who designed and/or manufactured
23 component parts supplied to the manufacturer.

24 44. Plaintiffs' injuries were the legal/proximate result of the acts and/or
25 omissions of the TOYOTA DEFENDANTS and FINDLAY TOYOTA, who directed and/or
26 followed a covert Toyota floor mat campaign.

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1 45. As a direct and proximate result of the defective subject TOYOTA, and the
2 negligent acts and omissions of the TOYOTA DEFENDANTS and FINDLAY TOYOTA , Decedent
3 Jeffrey Levine died on December 17, 2009.

4 46. Plaintiffs are the sole remaining heirs of Decedent.

5 47. To his death, JEFFREY LEVINE was rendered sick and lame and received both
6 internal and external injuries, severe shock to his nervous system, emotional trauma, and great pain,
7 suffering, anxiety, disfigurement and loss of the enjoyment of life.

8 48. As a direct and proximate result of the aforesaid accident, JEFFREY LEVINE was
9 required to incur expenses, in the form of Paramedics.

10 49. As a direct and proximate result of the defective subject TOYOTA, and the negligent
11 acts and omissions of the TOYOTA DEFENDANTS, FINDLAY TOYOTA, Plaintiffs have suffered
12 the loss of Jeffrey Levine love, companionship, comfort, care, assistance, protection, affection,
13 society and moral and economic support, all in an amount exceeding 10,000.00.

14 50. As a further and proximate result of the subject accident, Plaintiffs, are entitled to
15 damages for the pain, suffering and disfigurement of their deceased husband/father, JEFFREY
16 LEVINE;

17 51. As a further direct and proximate result of the subject accident, the Estate of
18 JEFFREY LEVINE, through his Personal Representative, is entitled to recover damages for burial
19 and funeral expenses on behalf of Decedent JEFFREY LEVINE.

20 52. Plaintiffs have secured the services of attorneys in order to prosecute this action, and
21 Plaintiff is entitled to reasonable attorneys' fees and costs.

22 **SECOND CAUSE OF ACTION**

23 **WRONGFUL DEATH/STRICT PRODUCT LIABILITY/FAILURE TO WARN**
24 **(As to Defendants: TOYOTA MOTOR CORPORATION; TOYOTA MOTOR SALES, USA, INC.**
and FINDLAY TOYOTA)

25 53. Plaintiff hereby adopts and incorporates by reference Paragraphs 1 through 52 of
26 this Complaint and makes them a part of the instant cause of action as though fully set forth herein.

27 a. The Tacoma would be subjected to accelerator/mat interference, which could
28 cause the accelerator to get stuck in the full open position;

- 1 b. That a stuck open accelerator pedal could result in very high vehicle
2 speeds and make it difficult to stop the vehicle, which could cause a crash,
3 serious injury and/or death;
- 4 c. Particularly in light of the foreseeable need to stop the vehicle with a stuck
5 open accelerator pedal, the design of the TOYOTA Tacoma provided
6 inadequate and/or no brake over-ride system;
- 7 d. Particularly because of the foreseeable need to stop the vehicle with a stuck
8 open accelerator pedal from mat interference, which could cause a crash,
9 serious injury or death, the design of the Toyota Tacoma provided an
10 inadequate braking system;
- 11 e. The Toyota Tacoma had improper accelerator pedal design;
- 12 f. The Toyota Tacoma had inadequate and insufficient warnings and instructions
13 about the risks, dangers and harms presented by its foreseeable use;
- 14 g. The Toyota Tacoma lacked elements necessary to make it safe for its intended
15 and foreseeable uses and contained conditions that made it unsafe for its
16 intended and foreseeable uses;
- 17 h. The defect(s) existed at the time the Toyota Tacoma left the manufacturer;
- 18 i. The Toyota Tacoma failed to perform in the manner reasonably expected in
19 the light of its nature and intended function;
- 20 j. Consumers, including Jeffrey Levine were not adequately warned of the
21 anticipated danger of floor mat interference and/or runaway acceleration;
- 22 k. Ordinary consumers would not be aware of anticipated danger of floor mat
23 interference and/or runaway acceleration;
- 24 l. The defect(s) rendered the Toyota Tacoma unreasonably dangerous;
- 25 m. The defective condition(s) caused Jeffrey Levine's death.
- 26 n. Existing safety design and engineering alternatives that would correct the
27 defects and reduce or eliminate the risk of injury were available but not
28 utilized on the Toyota Tacoma.

1 54. Plaintiffs are the sole remaining heirs of Decedent.

2 55. To his death, JEFFREY LEVINE was rendered sick and lame and received both
3 internal and external injuries, severe shock to his nervous system, emotional trauma, and great pain,
4 suffering, anxiety, disfigurement and loss of the enjoyment of life.

5 56. As a direct and proximate result of the aforesaid defect(s), JEFFREY LEVINE was
6 required to incur expenses, in the form of Paramedics.

7 57. As a direct and proximate result of the defective subject TOYOTA, Plaintiffs have
8 suffered the loss of Jeffrey Levine love, companionship, comfort, care, assistance, protection,
9 affection, society and moral and economic support, all in an amount exceeding 10,000.00.

10 58. As a further and proximate result of the subject accident, Plaintiffs, are entitled to
11 damages for the pain, suffering and disfigurement of their deceased husband/father, JEFFREY
12 LEVINE;

13 59. As a further direct and proximate result of the subject accident, the Estate of
14 JEFFREY LEVINE, through his Personal Representative, is entitled to recover damages for burial
15 and funeral expenses on behalf of Decedent JEFFREY LEVINE.

16 60. Plaintiffs have secured the services of attorneys in order to prosecute this action, and
17 Plaintiff is entitled to reasonable attorneys' fees and costs.

18 **THIRD CAUSE OF ACTION**

19 **WRONGFUL DEATH THROUGH NEGLIGENCE**

20 (As to Defendants: TOYOTA MOTOR CORPORATION; TOYOTA MOTOR SALES, USA, INC.
21 and FINDLAY TOYOTA)

22 61. Plaintiff hereby adopts and incorporates by reference Paragraphs 1 through 60 of this
23 Complaint and makes them a part of the instant cause of action as though fully set forth herein.

24 62. The Defendants had a duty to use reasonable care in the marketing, and sale of the
25 subject truck and floor mat.

26 63. The subject truck, was negligently designed and/or negligently manufactured and
27 failed during normal use.
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1 64. Defendants breached their duty of reasonable care by failing to make a proper
2 inspection of said truck to include proper inspection of the driver side floor mat, prior to placing the
3 truck back on the public roads.

4 65. Defendants breached their duty of reasonable care by failing to make a proper
5 inspection of said truck to include removal of the driver side floor mat, prior to placing the truck
6 back on the public roads.

7 66. Defendants breached their duty of reasonable care by failing to provide adequate and
8 sufficient warnings and instructions of the risks, dangers and harms presented by the foreseeable use
9 of the Toyota Tacoma

10 67. As a direct and proximate result of the defective subject TOYOTA, and the negligent
11 acts and omissions of the TOYOTA DEFENDANTS and FINDLAY TOYOTA, Decedent Jeffrey
12 Levine died on December 17, 2009.

13 68. Plaintiffs are the sole remaining heirs of Decedent.

14 69. To his death, JEFFREY LEVINE was rendered sick and lame and received both
15 internal and external injuries, severe shock to his nervous system, emotional trauma, and great pain,
16 suffering, anxiety, disfigurement and loss of the enjoyment of life.

17 70. As a direct and proximate result of the aforesaid accident, JEFFREY LEVINE was
18 required to incur expenses, in the form of Paramedics.

19 71. As a direct and proximate result of the defective subject TOYOTA, and the negligent
20 acts and omissions of the TOYOTA DEFENDANTS, FINDLAY TOYOTA, Plaintiffs have suffered
21 the loss of Jeffrey Levine love, companionship, comfort, care, assistance, protection, affection,
22 society and moral and economic support, all in an amount exceeding 10,000.00.

23 72. As a further and proximate result of the subject accident, Plaintiffs, are entitled to
24 damages for the pain, suffering and disfigurement of their deceased husband/father, JEFFREY
25 LEVINE;

26 73. As a further direct and proximate result of the subject accident, the Estate of
27 JEFFREY LEVINE, through his Personal Representative, is entitled to recover damages for burial
28 and funeral expenses on behalf of Decedent JEFFREY LEVINE.

1 74. Plaintiffs have secured the services of attorneys in order to prosecute this action, and
2 Plaintiff is entitled to reasonable attorneys' fees and costs.

3 **FOURTH CAUSE OF ACTION**

4 **WRONGFUL DEATH THROUGH FAILURE TO WARN**

5 (As to Defendants: TOYOTA MOTOR CORPORATION; TOYOTA MOTOR SALES, USA, INC.
6 and FINDLAY TOYOTA)

7 75. Plaintiff hereby adopts and incorporates by reference Paragraphs 1 through 74 of this
8 Complaint and makes them a part of the instant cause of action as though fully set forth herein.

9 76. Defendants were aware of the risks and hazards created by floor mat accelerator
10 interference prior to December 17, 2009, and failed to warn its customers from the United States.

11 77. Defendants had begun recalls in other countries, prior to December 17, 2009.

12 78. Defendants were aware of the risks and hazards created by floor mat accelerator
13 interference and failed to remove floor mats during covert floor mat campaigns.

14 79. Defendants were aware of the risks and hazards created by the floor mat
15 accelerator interference and failed to properly/adequately/timely warn customers to simply remove
16 the floor mat until further corrections could be made.

17 80. Defendant failed to timely perform a recall on Toyota Tacomas when it knew prior
18 to December 17, 2009 of the dangers of serious harm or death from floor mat accelerator interference
19 and/or unintended acceleration.

20 81. Defendants were aware of the risks and hazards created by sudden unintended
21 acceleration and failure of the brake system to override the accelerator, which could cause severe
22 injury and or death and failed to give appropriate and/or timely warnings to buyers/users of the
23 vehicle.

24 82. Defendants were aware of the risks and hazards created by sudden unintended
25 acceleration and failure of the brake system to override the accelerator prior to December 17, 2009.

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1 83. Defendants were aware of the risks and hazards created by sudden unintended
2 acceleration and failure of the brake system to override the accelerator and failed to
3 properly/adequately warn customers to simply remove the floor mat until further corrections could
4 be made.

5 84. Defendant failed to timely perform a recall when it knew prior to December 17,
6 2009 of the dangers of serious harm or death from floor mat accelerator interference and/or
7 unintended acceleration and/or failure of its brake system to override the accelerator.

8 85. Defendants failed to timely/properly warn buyers and/or users of it vehicles, when
9 they knew prior to December 17, 2009 of the dangers of serious harm or death from floor mat
10 accelerator interference and/or unintended acceleration and/or failure of its brake system to override
11 the accelerator.

12 86. Defendants failed to timely inform its buyers/users to remove the driver side floor
13 mat.

14 87. Defendants failed to remove the driver side floor mat on or before November 16,
15 2009, when it was well aware of the risk of harm and death to the vehicle users, prior to November
16 16, 2009.

17 88. As a direct and proximate result of the defective subject TOYOTA, and the
18 negligent acts and omissions of the TOYOTA DEFENDANTS and FINDLAY TOYOTA , Decedent
19 Jeffrey Levine died on December 17, 2009.

20 89. Plaintiffs are the sole remaining heirs of Decedent.

21 90. To his death, JEFFREY LEVINE was rendered sick and lame and received both
22 internal and external injuries, severe shock to his nervous system, emotional trauma, and great pain,
23 suffering, anxiety, disfigurement and loss of the enjoyment of life.

24 91. As a direct and proximate result of the aforesaid accident, JEFFREY LEVINE was
25 required to incur expenses, in the form of Paramedics.
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1 92. As a direct and proximate result of the defective subject TOYOTA, and the
2 negligent acts and omissions of the TOYOTA DEFENDANTS, FINDLAY TOYOTA, Plaintiffs
3 have suffered the loss of Jeffrey Levine love, companionship, comfort, care, assistance, protection,
4 affection, society and moral and economic support, all in an amount exceeding 10,000.00.

5 93. As a further and proximate result of the subject accident, Plaintiffs, are entitled to
6 damages for the pain, suffering and disfigurement of their deceased husband/father, JEFFREY
7 LEVINE;

8 94. As a further direct and proximate result of the subject accident, the Estate of
9 JEFFREY LEVINE, through his Personal Representative, is entitled to recover damages for burial
10 and funeral expenses on behalf of Decedent JEFFREY LEVINE.

11 95. Plaintiffs have secured the services of attorneys in order to prosecute this action, and
12 Plaintiff is entitled to reasonable attorneys' fees and costs.

13 FIFTH CAUSE OF ACTION

14 WRONGFUL DEATH THROUGH PUNITIVE DAMAGES

15 (AS AGAINST "TOYOTA DEFENDANTS" & FINDLAY TOYOTA)

16 96. Plaintiff hereby adopts and incorporates by reference Paragraphs 1 through 95 of this
17 Complaint and makes them a part of the instant cause of action as though fully set forth herein.

18 97. Defendants were aware of the risks and hazards created by floor mat accelerator
19 interference prior to December 17, 2009, and failed to warn its customers from the United States.

20 98. Defendants had begun recalls in other countries, prior to December 17, 2009.

21 99. Defendants were aware of the risks and hazards created by floor mat accelerator
22 interference and failed to remove floor mats during covert floor mat campaigns.

23 100. Defendants were aware of the risks and hazards created by the floor mat
24 accelerator interference and failed to properly/adequately/timely warn customers to simply remove
25 the floor mat until further corrections could be made.

26 101. Defendant failed to timely perform a recall on Toyota Tacomas when it knew prior
27 to December 17, 2009 of the dangers of serious harm or death from floor mat accelerator interference
28 and/or unintended acceleration.

1 102. Defendants were aware of the risks and hazards created by sudden unintended
2 acceleration and failure of the brake system to override the accelerator, which could cause severe
3 injury and or death and failed to give appropriate and/or timely warnings to buyers/users of the
4 vehicle.

5 103. Defendants were aware of the risks and hazards created by sudden unintended
6 acceleration and failure of the brake system to override the accelerator prior to December 17, 2009.

7 104. Defendants were aware of the risks and hazards created by sudden unintended
8 acceleration and failure of the brake system to override the accelerator and failed to
9 properly/adequately warn customers to simply remove the floor mat until further corrections could
10 be made.

11 105. Defendant failed to timely perform a recall when it knew prior to December 17,
12 2009 of the dangers of serious harm or death from floor mat accelerator interference and/or
13 unintended acceleration and/or failure of its brake system to override the accelerator.

14 106. Defendants failed to timely/properly warn buyers and/or users of it vehicles, when
15 they knew prior to December 17, 2009 of the dangers of serious harm or death from floor mat
16 accelerator interference and/or unintended acceleration and/or failure of its brake system to override
17 the accelerator.

18 107. Defendants failed to timely inform its buyers/users to remove the driver side floor
19 mat.

20 108. Defendants failed to remove the driver side floor mat on or before November 16,
21 2009, when it was well aware of the risk of harm and death to the vehicle users, prior to November
22 16, 2009.

23 109. Toyota President, Akio Toyoda admitted to Congress that they put volume before
24 safety, resulting in recalls and accidents.

25 110. The conduct of TOYOTA DEFENDANTS, were despicable and oppressive.

26 111. This oppressive conduct, was with a conscious disregard for the safety of JEFFREY
27 LEVINE.

28 112. Plaintiffs are the sole remaining heirs of Decedent.

1 113. In doing the acts complained of herein, Defendant, and each of them, acted
2 maliciously, and were guilty of willful and wanton disregard of the rights of the Plaintiffs, so as to
3 warrant and justify an assessment of punitive and exemplary damages against Defendants.

4 114. By reason of the foregoing, the Plaintiffs demand punitive damages against Defendants
5 and each of them, in the amount in excess of \$10,000.00, in a sufficient sum to make examples of the
6 Defendants' conduct and to deter similar conduct by persons similarly situated in the future.

7 115. That as a further proximate result of Defendants oppression and/or malice, Plaintiff was
8 forced to retain the services of attorneys in this matter and therefore seek reimbursement for attorneys'
9 fees and costs.

10 **WHEREFORE**, Plaintiffs pray for the following:

- 11 1. For general and special damages, past, present, and future, in excess of TEN
12 THOUSAND DOLLARS (\$10,000.00) per plaintiff:
- 13 2. For punitive and/or exemplary damages in excess of TEN THOUSAND DOLLARS
14 (\$10,000.00) per plaintiff:
- 15 3. For Plaintiffs' costs of suit and reasonable attorneys' fees:
- 16 4. For prejudgment interest according to proof; and
- 17 5. For such other and further relief as the Court deem just and proper.

18 DATED this ____ day of JULY, 2010.

19
20 BY: 

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