

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MINNESOTA**

---

BRIDGETTE TRICE, individually and as  
trustee for the heirs and next of kin of  
D.D.B., deceased,

Case No. 0:10-cv-02804-ADM-AJB

Plaintiffs,

**PLAINTIFF-SECOND INTERVENOR'S**  
**AMENDED COMPLAINT IN**  
**INTERVENTION**  
**(JURY TRIAL DEMANDED)**

and

KOUA FONG LEE; PANGHOUA  
MOUA; NHIA KOUA LEE; NONG LEE;  
A.P.L., a minor child; Y.L., a minor child;  
Y.L., a minor child; J.L., a minor child,

Plaintiff-Intervenors,

and

AMERICAN FAMILY MUTUAL INSURANCE COMPANY,  
as subrogee of Koua Fong Lee,

Plaintiff-Second Intervenor,

vs.

TOYOTA MOTOR CORPORATION, a Japanese corporation;  
TOYOTA MOTOR NORTH AMERICA, INC., a California  
corporation; CALTY DESIGN RESEARCH, INC., a California  
corporation; TOYOTA MOTOR ENGINEERING AND  
MANUFACTURING NORTH AMERICA, INC., a Kentucky  
Corporation; TOYOTA MOTOR MANUFACTURING,  
KENTUCKY, INC., a Kentucky corporation; and TOYOTA MOTOR  
SALES, USA, INC., a California corporation,

Defendants.

---

Plaintiff-Second Intervenor, American Family Mutual Insurance Company, as subrogee of Koua Fong Lee (“American Family”), for its Amended Complaint against Defendants, states and alleges as follows:

### **INTRODUCTION**

1. American Family brings this action to recover damages against Defendants, each and all of them, for wrongful conduct and/or omissions related to the design, engineering, development, assembly, manufacture, equipping, labeling, testing, marketing, promotion, sale, and/or distribution of a 1996 Toyota Camry (VIN: 4T1BF12K6TU863938) (the “1996 Camry”), which was owned by Plaintiff-Intervenor Koua Fong Lee (“Koua Lee”) and insured by American Family at all relevant times.

### **PARTIES**

2. American Family is an insurance company authorized to do business in the State of Minnesota with its principal place of business located at 6000 American Parkway, Madison, Wisconsin, 53783.

3. Defendant Toyota Motor Corporation (“TMC”) is a Japanese corporation. TMC is in the business of designing, manufacturing, marketing, distributing, selling, and/or exporting motor vehicles. TMC was primarily responsible for the design of the 1996 Camry.

4. Defendant Toyota Motor North America, Inc. (“TMA”) is a California corporation. TMA is in the business of designing, manufacturing, marketing, distributing, selling, and/or importing motor vehicles. TMA imported the 1996 Camry in the usual and ordinary course of business.

5. Defendant Calty Design Research, Inc. (“Calty”) is a California corporation. Calty is in the business of designing and styling motor vehicles. Calty was responsible for, or played an active role in, designing and styling the 1996 Camry.

6. Defendant Toyota Motor Engineering and Manufacturing North America, Inc. (“TEMA”) is a Kentucky corporation. TEMA is in the business of engineering, designing, developing and testing motor vehicles. TEMA was responsible for, or played an active role in, designing, engineering, developing and/or testing the 1996 Camry.

7. Defendant Toyota Motor Manufacturing, Kentucky, Inc. (“TMMK”) is a Kentucky corporation. TMMK is in the business of manufacturing motor vehicles. TMMK was primarily responsible for manufacturing the 1996 Camry.

8. Defendant Toyota Motor Sales, USA, Inc. (“TMS”) is a California corporation. TMS has offices and/or agents in the State of Minnesota for purposes of conducting its usual and ordinary business. TMS is responsible for distributing and/or selling motor vehicles in the United States. TMS was involved in the distribution of the 1996 Camry.

### **JURISDICTION AND VENUE**

9. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1332 because American Family alleges the amount in controversy exceeds \$75,000, exclusive of interest and costs, and there is complete diversity of citizenship.

10. Venue in this Court is proper pursuant to 28 U.S.C. § 1391(a) because a substantial part of the events or omissions giving rise to this matter occurred in the District of Minnesota.

**FACTUAL ALLEGATIONS**

11. At all relevant times, Koua Lee maintained an insurance policy issued by American Family that provided coverage for the 1996 Camry and permitted drivers, including Koua Lee.

12. Defendants designed, engineered, developed, assembled, manufactured, equipped, labeled, tested, marketed, promoted, sold, and/or distributed the 1996 Camry.

13. On June 10, 2006, Koua Lee and the 1996 Toyota Camry were involved in an automobile accident when the 1996 Camry struck the rear of a 1995 Oldsmobile Ciera (the “Oldsmobile”), which was stopped at the intersection of Snelling Avenue and Concordia in St. Paul, Minnesota.

14. As a result of the accident, three individuals occupying the Oldsmobile, Jarvis Adams, Sr., J.A.J. and D.D.B., were killed and two other occupants, Quincy Adams and J.A., were severely injured. Other vehicles sustained property damage and other individuals sustained injuries or died as a result of the accident.

15. Koua Lee provided a blood sample immediately after the accident. Subsequent analysis of that blood sample produced negative results for drugs and alcohol.

16. Koua Lee was not using a cell phone at the time of the accident and was not otherwise distracted.

17. Following the accident, Koua Lee repeatedly told police investigators that he depressed the brake pedal throughout his approach to the scene of the accident but the brakes would not work.

18. Subsequent investigation by the St. Paul Police Department determined that the 1996 Camry was traveling well in excess of the posted speed limit at the time of the accident.

19. On or about June 12, 2006, representatives of City of St. Paul Equipment Services, Fire-Police, conducted an inspection of the 1996 Camry and determined that the brakes held and released when the brake pedal was applied.

20. On or about June 15, 2006, representatives of American Family began making arrangements to inspect the 1996 Camry, which was being held due to the ongoing criminal investigation.

21. Representatives of American Family inspected the 1996 Camry on or about October 24, 2006, and were unable to find any defects with the brake system that corroborated Koua Lee's assertion that the brakes failed.

22. Pursuant to its insurance policy, as a direct result of the accident, American Family made payments in the amount of \$348,416.73 to or on behalf of Koua Lee and became subrogated to all rights and causes of action held by Koua Lee.

23. Koua Lee was subsequently arrested and charged with eight counts of criminal vehicular homicide/injury and one count of careless driving. He was ultimately found guilty by a jury and sentenced to eight years in prison.

24. As discussed in greater detail below, more than two years after Koua Lee's conviction, on November 25, 2009, and again on January 22, 2010, Toyota issued two recalls supposedly intended to remedy sudden unintended acceleration ("SUA") problems with their vehicles. Thereafter, reports and evidence of similar problems with Toyota vehicles outside the scope of the recalls began to surface. Prior to these recalls, American Family was unaware of a potential defect in the 1996 Camry related to SUA events due to Defendants' substantial efforts to conceal

SUA events and other defects described below in numerous Toyota brand vehicles, including Toyota Camrys.

25. In light of this newly discovered evidence, Koua Lee filed a Motion for Post-Conviction Relief in which he requested a new trial. On July 6, 2010, a hearing on the Motion was granted.

26. The hearing on Koua Lee's Motion occurred on August 2-5, 2010. During that time, 13 witnesses testified on behalf of Koua Lee, including two experts who examined the 1996 Camry and not only found that the brake lights were on at the time of the accident, but that the accelerator system had malfunctioned. Eleven lay witnesses from across the country testified about their experiences with SUA events while driving 1995 and 1996 Toyota Camrys.

27. Kiersten Jaeger of Minnesota testified that she experienced five events of SUA while driving her 1996 Toyota Camry LE/XLE. During Ms. Jaeger's first SUA event in May 2010, after she left a stop sign, the Camry's RPMs increased and the car suddenly sped up to 30-35 miles per hour. During the second SUA incident, the Camry's RPMs raced and the car suddenly sped up to 45 miles per hour. During the third SUA incident, Ms. Jaeger was in stop-and-go traffic when the vehicle's RPMs increased and the car accelerated. Ms. Jaeger pushed firmly on her brakes to avoid hitting the car in front of her. After the third SUA incident, Ms. Jaeger's husband took the Camry to the Inver Grove Toyota dealership. During the fourth SUA incident, while Ms. Jaeger was in rush-hour traffic, the RPMs raced and she could not push the brakes in. After the fourth SUA incident, Ms. Jaeger went back to Inver Grove Toyota. The Toyota dealership replaced Ms. Jaeger's cruise control in June 2010.

28. Maggie Bolton-Henly of Minnesota testified that she encountered SUA in her 1995 Toyota Camry in March 2010. While driving in rush-hour traffic on the freeway, Ms. Bolton-Henly's Camry accelerated when she took her foot off the brakes. The Camry continued to

accelerate even when her foot was not on the gas pedal. When Ms. Bolton-Henly applied the brakes, the car continued to accelerate. She exited the freeway and placed the car in park to stop the vehicle. Ms. Bolton-Henly called a Toyota dealership to inform them of her incident.

29. Patrick Powers of Minnesota testified that he experienced SUA in his 1996 Toyota Camry in April 2008. As Mr. Powers was entering the highway and accelerating his vehicle, the gas pedal got stuck and completely floored. Mr. Powers put his foot on the brakes, which failed to slow the vehicle down. Mr. Powers' Camry accelerated to approximately 110-120 miles per hour. Mr. Powers had to place his car in neutral in order to stop. Mr. Powers called two Toyota dealerships to inform them of his experience.

30. Lisa Falchetti of California testified that she encountered SUA in her 1996 Toyota Camry in July 2007. While driving through a residential neighborhood, going approximately 15 miles per hour, Ms. Falchetti's Camry accelerated to approximately 40-47 miles per hour. Ms. Falchetti applied the brakes, but they did not stop the car. Ms. Falchetti called Toyota and took the Camry to Roway Toyota on July 28, 2007.

31. Judith Poss of Minnesota testified that she encountered SUA in her 1996 Toyota Camry during the winter of 2007. As Ms. Poss was entering the highway and accelerating her vehicle, the car did not stop accelerating. The car sped up to 80 miles per hour in a 65 miles per hour zone. Ms. Poss pressed the brakes but they failed to work or stop the vehicle. Ms. Poss turned off her car and drifted to the side of the road. Ms. Poss's husband called a Toyota dealership and explained the problem.

32. Michael Frazier testified that he experienced SUA in his 1996 Toyota Camry LE in September 2006. While driving in rush hour traffic, Mr. Frazier heard the engine race and felt the vehicle accelerate on multiple occasions. Mr. Frazier had to have both of his feet on the

brakes to keep the car from hitting other vehicles. Mr. Frazier had the vehicle towed to Boch Toyota.

33. John Gathright, Jr. of Virginia testified that he experienced SUA in his 1995 Toyota Camry V6 LE in September 2002. Mr. Gathright was driving home from work, in rush hour traffic, when his Camry suddenly accelerated and took off. Although Mr. Gathright's foot was not on the accelerator, the car was going approximately 90-95 miles per hour. Mr. Gathright veered in and out of traffic and tried to stop his car by braking. On September 18, 2002, Mr. Gathright took his Camry to the David R. McGeorge Car Co., Inc. Toyota dealership.

34. Dena Ferguson of Ohio testified that she experienced multiple occurrences of SUA in her 1996 Toyota Camry LXS. In September or October of 2001, Ms. Ferguson experienced her car just take off while driving. When she applied the brakes, she felt the car accelerate. On October 1, 2001, Ms. Ferguson took her Camry to the Sunnyside Toyota dealership. Shortly thereafter, Ms. Ferguson experienced multiple events of sudden acceleration during which she was unable to stop her vehicle. At one point, Ms. Ferguson's Camry was going 80 miles per hour in a 55 mile per hour zone. Ms. Ferguson applied the brakes but the car continued to accelerate. On October 29, 2001, Ms. Ferguson took the car back to the Sunnyside Toyota. On May 14, 2010, Ms. Ferguson's Camry lunged forward, the engine revved and the car accelerated when the brakes were released. Ms. Ferguson took the Camry back to Sunnyside Toyota. One day later, the Camry suddenly accelerated while she was driving. Ms. Ferguson drove the car straight to the Toyota dealership to have the mechanics inspect it. The engine was roaring upon arrival at the dealership. The mechanics suggested that Ms. Ferguson call Toyota and she did.

35. Ronald Neumeister of Minnesota who, as a pilot in the National Guard, has experience dealing with emergency situations, testified that he experienced multiple occurrences of SUA

while driving his 1996 Camry. Mr. Neumeister's first acceleration incident occurred in either 2006 or 2007. As Mr. Neumeister was entering the highway and accelerating, the Camry ran away from him and continued to accelerate. Despite the fact that Mr. Neumeister did not have his foot on the gas pedal, the Camry accelerated to over 80 miles per hour. In order to stop his Camry, Mr. Neumeister placed the vehicle in neutral, turned it off and pulled over to the side of the road. During the second SUA incident, Mr. Neumeister shifted his Camry from park to drive and the vehicle accelerated on its own, without Mr. Neumeister placing his foot on the gas pedal. Mr. Neumeister's third SUA incident occurred in July of 2009. As Mr. Neumeister was driving his sons and a foreign exchange student to the Minnesota Zoo, the Camry accelerated on its own after leaving a stop sign. Once again, Mr. Neumeister placed his Camry in neutral and shut it off. Mr. Neumeister had to drive his Camry home by repeating the following acts – starting it up, placing it in drive, letting it take off by itself, speeding up to 30-40 miles per hour, placing it in neutral, turning it off, and coasting to a stop.

36. Kurt Thomson of Minnesota testified that he experienced SUA in his 1995 Camry V6 LE on August 15, 2009. After being stopped at a light, Mr. Thomson removed his foot from the brakes and without touching the gas pedal his Camry accelerated up to 45 miles per hour. Shortly after this occurred Mr. Thomson entered a 30 mile per hour speed limit zone. In order to keep his Camry from accelerating further, Mr. Thomson had to keep his foot on the brakes. At one point, Mr. Thomson had to place both of his feet on the brakes. Mr. Thomson was not able to stop his Camry until he hit another car.

37. Karen Galley of Oregon testified that she experienced SUA in her 1996 Camry station wagon over the Memorial Day weekend of 2008. As Ms. Galley attempted to disengage her Camry's cruise control system, her vehicle rapidly accelerated and her brakes were

unresponsive. When Ms. Galley tried to apply the brakes, her Camry wildly accelerated instead of slowing down. In order to stop her Camry, Ms. Galley placed the vehicle in neutral, pulled over to the side of the road and turned the Camry off.

38. At the conclusion of the hearing, based in part on the testimony of the other Toyota drivers who had experienced SUA events in 1995/1996 Camrys, the Court granted Koua Lee's Petition and vacated and set aside his prior convictions. Thereafter, in light of the Ramsey County Attorney's decision not to appeal the Court's ruling, and her stated intention not to re-file the matter, the Court unconditionally released Koua Lee.

### **CONDUCT BY DEFENDANTS**

39. The Toyota dealerships are agents of Defendants and their knowledge of defects reported by consumers, including those individuals identified above who testified on behalf of Koua Lee, are imputed to Defendants.

40. Upon information and belief, TMA, Calty, TEMA, TMMK and TMS are wholly owned subsidiaries of TMC or otherwise operate under the direction and control of, and share information with, TMC.

41. Upon information and belief, Defendants accept and gather customer complaints generally and those specifically related to SUA events involving 1995 and 1996 Camrys, including those made by consumers to Toyota dealerships, those reported directly to Defendants and those obtained by governmental agencies such as NHTSA.

42. Defendants obtained actual knowledge of SUA events and defects relating to the throttle mechanism and cruise control in 1995 and 1996 Camrys, which have the same throttle mechanism and cruise control as the 1996 Camry at issue, through Toyota dealerships reporting such SUA events directly to Defendants and, upon information and belief, by accepting and

gathering customer complaints directly from customers and governmental agencies such as NHTSA.

43. Well before the above-described accident on June 10, 2006, Defendants knew, or should have known, that certain vehicles it designed and manufactured and later marketed distributed, sold or leased in the State of Minnesota, including the 1996 Camry at issue, contained defects in the acceleration control and throttle system.

44. The knowledge and information of TMA, Caltly, TEMA, TMMK and TMS, including but not limited to knowledge of the existence of defects, are imputed to TMC.

45. In addition to the sources described above, Defendants obtained knowledge of SUA events and the existence of the defects in the 1996 Camry acceleration control and throttle system through complaints filed with the NHTSA by owners of 1995 and 1996 Camrys who experienced SUA events:

- a. As reported in the NHTSA Office of Defects' Investigation Identification Number 10320362, John/Jane Doe No. 1, who is the owner of a 1996 Toyota Camry, Vehicle Identification No. ("VIN") 4T1EF12K5TU,<sup>1</sup> experienced sudden unintended acceleration on multiple occasions, including on April 13, 2006. While John/Jane Doe No. 1 was driving at speeds of 40 miles per hour and pressing the brake pedal, the Camry did not stop and proceeded to abnormally accelerate. After stopping the vehicle, John/Jane Doe No. 1 noticed that the accelerator pedal had collapsed into the open throttle position. On another occasion, the vehicle abnormally accelerated when applying the brakes. John/Jane Doe No. 1 took the vehicle to a mechanic.
- b. As reported in the NHTSA Office of Defects' Investigation Identification Number 10079465, John/Jane Doe No. 2, who is the owner of a 1996 Toyota Camry, VIN not available, experienced sudden unintended acceleration on June 5, 2004. While stopped at a traffic light, the Camry

---

<sup>1</sup> Plaintiff-Second Intervenor notes that the publicly accessible complaints in the NHTSA database contain only 11 of the 17 total digits of the applicable VINs.

surged forward and rear-ended another car. John/Jane Doe No. 2 took the vehicle to a dealer for inspection.

- c. As reported in the NHTSA Office of Defects' Investigation Identification Number 10314472, John/Jane Doe No. 3, who is the owner of a 1996 Toyota Camry, VIN 4TBG12K6TU7, experienced sudden unintended acceleration on July 26, 2003. The Camry was stopped at a red light when it suddenly surged forward into an intersection, where it was struck by a motorcycle and a pick-up truck. The Camry and the motorcycle were totaled. The accident caused three injuries and one fatality. The driver of the motorcycle died five years later as a result of the injuries sustained in the accident.
- d. As reported in the NHTSA Office of Defects' Investigation Identification Number 869819, John/Jane Doe No. 4, who is the owner of a 1996 Toyota Camry, VIN 4T1BG12K4TU764807, experienced sudden unintended acceleration on August 12, 2000. While driving in stop and go traffic, the vehicle experienced several erratic surges, which resulted in a rear end collision. John/Jane Doe No. 4 took the vehicle to the Glen Toyota dealership in New Jersey for inspection.
- e. As reported in the NHTSA Office of Defects' Investigation Identification Number 881216, John/Jane Doe No. 5, who is the owner of a 1996 Toyota Camry, VIN JT2BF12K0T0, experienced sudden unintended acceleration on February 1, 2000. While driving, the vehicle accelerated without warning. John/Jane Doe No. 5 applied the brakes, but they failed to stop the vehicle. John/Jane Doe No. 5 took the vehicle to a Toyota dealer to determine the cause of the incident.
- f. As reported in the NHTSA Office of Defects' Investigation Identification Number 705251, John/Jane Doe No. 6, who is owner of a 1996 Toyota Camry, VIN 4T1BG12K3TU, experienced sudden unintended acceleration on March 20, 1999. While pulling in to a garage, the Camry accelerated. The brakes failed to stop the vehicle, which caused it to run into the house.
- g. As reported in the NHTSA Office of Defects' Investigation Identification Number 814465, John/Jane Doe No. 7, who is the owner of a 1996 Toyota Camry, VIN 4T1BG12K1TU,

experienced sudden unintended acceleration on March 17, 1996. While driving down a hill and applying the brakes, the vehicle suddenly surged forward. John/Jane Doe No. 7 took the vehicle to the dealer and a mechanic.

- h. As reported in the NHTSA Office of Defects' Investigation Identification Number 10315653, John/Jane Doe No. 8, who is the owner of a 1995 Toyota Camry, VIN 4T1SK12E8SU, experienced sudden unintended acceleration on August 11, 2000. While John/Jane Doe No. 8 was driving out of a carwash, the Camry suddenly accelerated without warning, which caused the car to crash into a house. John/Jane Doe No. 8 took the vehicle to a dealer.

46. Since the above-described accident, complaints regarding SUA events in 1995 and 1996

Camrys have continued unabated:

- a. As reported in the NHTSA Office of Defects' Investigation Identification Number 10352798, John/Jane Doe No. 9, who is the owner of a 1996 Toyota Camry, VIN 4T1BF12K4TU, experienced sudden unintended acceleration on multiple occasions, including on August 10, 2010. The Camry had self-accelerated while driving. Additionally, the gas pedal had gotten stuck, which caused the vehicle to gain incredible sudden speed. John/Jane Doe No. 9 contacted a local Toyota dealer about the problem.
- b. As reported in the NHTSA Office of Defects' Investigation Identification Number 10325898, John/Jane Doe No. 10, who is the owner of a 1996 Toyota Camry, VIN JT2BG12K0T0, experienced sudden unintended acceleration on April 12, 2010. While entering the highway and accelerating into traffic, the Camry raced to speeds of 65-75 miles per hour and almost hit another vehicle. John/Jane Doe No. 10 took the car to a Toyota dealership.
- c. As reported in the NHTSA Office of Defects' Investigation Identification Number 10304592, John/Jane Doe No. 11, who is the owner of a 1996 Toyota Camry, VIN JT2BG12K2T0, experienced sudden unintended acceleration on December 15, 2009. While driving at 65 miles per hour and applying the brakes, the vehicle accelerated on its own. John/Jane Doe No. 11 took the vehicle to a Toyota dealer.

- d. As reported in the NHTSA Office of Defects' Investigation Identification Number 10291132, John/Jane Doe No. 12, who is the owner of a 1996 Toyota Camry, VIN 4T1BG12K2TU, experienced sudden unintended acceleration on October 30, 2009. While driving down at hill at 15 miles per hour, the vehicle accelerated without warning, reached speeds of approximately 60-80 miles per hour, ran two stop lights and crashed into a tree and another vehicle. John/Jane Doe No. 12, who suffered injuries to his right area, contacted the manufacturer.
  
- e. As reported in the NHTSA Office of Defects' Investigation Identification Number 10291270, John/Jane Doe No. 13, who is the owner of a 1996 Toyota Camry, VIN 4T1BG12K0TU, experienced sudden unintended acceleration on October 17, 2009. While John/Jane Doe No. 13 was driving the Camry, the vehicle accelerated out of control. John/Jane Doe No. 13 took the vehicle to a mechanic.
  
- f. As reported in the NHTSA Office of Defects' Investigation Identification Number 10314319, John/Jane Doe No. 14, who is the owner of a 1996 Toyota Camry, VIN 4T1BF12K2TU, experienced sudden unintended acceleration on August 19, 2009. While John/Jane Doe No. 14 was driving the Camry, it suddenly accelerated to a high rate of speed and the brakes did not work. John/Jane Doe No. 14 had to weave in between cars, turn on her hazard lights and beep her horn to avoid crashing into other vehicles.
  
- g. As reported in the NHTSA Office of Defects' Investigation Identification Number 10315960, John/Jane Doe No. 15, who is the owner of a 1996 Toyota Camry, VIN JT2BG12K3T0, experienced sudden unintended acceleration on February 12, 2008. While John/Jane Doe No. 15 was entering the highway and accelerating into traffic, the car accelerated after releasing the gas pedal and the gas pedal subsequently stuck to the floor. The brakes slowed down the car some, but the speedometer read 95 miles per hour. John/Jane Doe No. 15 took the vehicle to a repair shop.
  
- h. As reported in the NHTSA Office of Defects' Investigation Identification Number 10195480, John/Jane Doe No. 16,

who is the owner of a 1996 Toyota Camry, VIN 4T1BF12K6TU, experienced sudden unintended acceleration on June 30, 2007. While John/Jane Doe No. 16 was driving at 10 miles per hour, the vehicle accelerated without warning. John/Jane Doe No. 16 was unable to stop the vehicle and rear ended another vehicle.

- i. As reported in the NHTSA Office of Defects' Investigation Identification Number 10378280, John/Jane Doe No. 17, who is the owner of a 1995 Toyota Camry, VIN 4T1GK12C5SU, experienced sudden unintended acceleration on January 21, 2011. While John/Jane Doe No. 17 was driving on the highway, the Camry suddenly accelerated to 100 miles per hour without him/her pressing the gas pedal. He/she applied the brakes, but this did not slow down the vehicle. John/Jane Doe No. 17 took the vehicle to a Toyota dealer.
- j. As reported in the NHTSA Office of Defects' Investigation Identification Number 10334915, John/Jane Doe No. 18, who is the owner of a 1995 Toyota Camry, VIN 4T1SK12E7SU, experienced sudden unintended acceleration on May 27, 2010. While John/Jane Doe No. 18 was driving in heavy traffic, the Camry's RPMs increased and the vehicle accelerated on its own without him/her pressing the gas pedal. Suddenly, the RPMs went up to 5,000 and with both of John/Jane Doe No. 18's feet on the brakes, the car would not stop. John/Jane Doe No. 18 took the vehicle to a Toyota dealership.
- k. As reported in the NHTSA Office of Defects' Investigation Identification Number 10285844, John/Jane Doe No. 19, who is the owner of a 1995 Toyota Camry, VIN not available, experienced sudden unintended acceleration on August 5, 2009. While John/Jane Doe No. 19 was driving approximately 30 miles per hour and accelerating, the gas pedal stuck to the floor. The vehicle reached speeds of approximately 90 miles per hour. The brakes failed to stop the vehicle. John/Jane Doe No. 19 took the vehicle to a mechanic.
- l. As reported in the NHTSA Office of Defects' Investigation Identification Number 10314277, John/Jane Doe No. 20, who is the owner of a 1995 Toyota Camry, VIN JT2SK12E7S0, experienced sudden unintended acceleration on April 28, 2009. While John/Jane Doe No. 20 was

driving the vehicle, it suddenly accelerated causing the car to crash into a tree and wall. John/Jane Doe No. 20 was seriously injured.

47. At all relevant times, Defendants knew that owners of 1996 Camrys and the general public did not know, and could not have reasonably discovered, defects relating to SUA events or in the acceleration control, cruise control or throttle system of 1996 Camrys such as the 1996 Camry at issue.

48. Despite Defendants' actual knowledge of the existence of the unreasonable safety defects in 1996 Camrys, including the 1996 Camry at issue, and awareness of the serious safety issues presented by such defects, Defendants failed to disclose the existence of such defects.

49. Defendants never disclosed such defects to any of the individuals who filed complaints regarding their 1995 and 1996 Camrys with the NHTSA.

50. Defendants never disclosed defects in the acceleration control and throttle system to Kiersten Jaeger, who took her 1996 Camry to the Inver Grove Toyota dealership after experiencing multiple SUA events.

51. Defendants never disclosed such defects to Maggie Bolton-Henly, who called her Toyota dealership to inform them of her SUA incident.

52. Defendants never disclosed such defects to Patrick Powers, who called two Toyota dealerships to inform them of his SUA experience.

53. Defendants never disclosed such defects to Lisa Falchetti, who called Toyota and took her Camry to Roway Toyota after experiencing her SUA event.

54. Defendants never disclosed such defects to Judith Poss, whose husband called their Toyota dealership and explained the SUA problem.

55. Defendants never disclosed such defects to Michael Frazier, who had his 1996 Camry towed to Boch Toyota after his SUA experience.

56. Defendants never disclosed such defects to John Gathright, Jr., who took his Camry to the David R. McGeorge Car Co., Inc. Toyota dealership after his SUA experience.

57. Defendants never disclosed such defects to Dena Ferguson, who took her Camry to the Sunnyside Toyota dealership multiple times after her multiple SUA events, and called Toyota.

58. To date, Defendants continue to conceal defects that have caused, and continue to cause, SUA events in 1996 Camrys, including the 1996 Camry at issue, among other vehicles in Toyota's fleet.

59. Defendants' affirmative efforts to conceal defects and SUA problems with its vehicles, including the 1996 Camry at issue, is well documented.

60. After being pressured, and after receiving numerous SUA complaints, Toyota issued two recalls supposedly intended to remedy the SUA issues: one on November 25, 2009 for floor mats and another on January 22, 2010 for potentially defective accelerator pedals. However, according to a February 22, 2010 letter from Bart Stupak, Chairman of the Congressional Subcommittee on Oversight and Investigations, to James Lentz, President and Chief Operating Officer of TMS, approximately 70% of the SUA events in Toyota's own customer call database involved vehicles that fell outside of both recalls. The recalls did not cover the 1996 Camry at issue.

61. According to a Toyota internal document turned over to congressional investigators, Toyota officials bragged about avoiding a costly, massive recall related to SUA complaints in 2007. The document, an internal presentation out of Toyota's Washington office listing TMA's president Yoshi Inaba on its cover, describes as a "Win for Toyota" (a reference to the limited

2007 recall of less than expected 55,000 vehicles), the fact that Toyota safety officials saved the company more than \$100 million in negotiating the recall: “Negotiated ‘equipment’ recall on Camry/ES re SA (Sudden Acceleration); saved \$100M+, w/ no defect found,” the document claims. This document evidences Toyota knew about the SUA problems but attempted to avoid the problem to save and gain profits in conscious disregard of the safety of consumers, the traveling public at large and others.

62. Toyota executives recently admitted the existence of SUA issues in Toyota vehicles and that Toyota had been concealing this problem from the public. In a January 16, 2010 email from TMS Group Vice President of Environmental and Public Affairs, Irv Miller, to Katsuhiko Koganei, TMS Executive Coordinator for Corporate Communications, Mr. Miller stated, “I hate to break this to you but WE HAVE A tendency for MECHANICAL failure in accelerator pedals of a certain manufacturer on certain models. We are not protecting our customers by keeping this quiet. The time to hide on this one is over. We need to come clean....”

63. The Congressional Subcommittee on Oversight and Investigations concluded that “Toyota resisted the possibility the electronic defects could cause safety concerns, relied on a flawed engineering report, and made misleading public statements concerning the adequacy of recent recalls to address the risk of [SUA].”

64. NHTSA recently imposed a \$16.4 million civil penalty against TMC for its conduct related to its response to the SUA complaints. According to an NHTSA statement attached to the fine, Toyota “knowingly hid” safety problems from regulators. When the fine was announced, Transportation Secretary Ray La Hood said, “We now have proof Toyota failed to live up to its legal obligations.”

65. According to a February 13, 2010 Bloomberg News report, court and government records show that former regulators hired by TMC helped end at least four U.S. investigations of Toyota for unintended acceleration in the last decade, warding off possible recalls. Christopher Tinto, Vice President of Regulatory Affairs in Toyota's Washington office, and Christopher Santucci, who works for Mr. Tinto, were both NHTSA regulators prior to joining Toyota in 2003. According to the Bloomberg News report, Mr. Tinto and Mr. Santucci helped persuade NHTSA to end probes into Toyota's SUA issues.

66. According to the February 13, 2010 Bloomberg News report, Mr. Santucci testified in a Michigan lawsuit that Toyota and NHTSA discussed limiting an examination of the unintended acceleration complaints to incidents lasting less than a second. Mr. Santucci testified that, "We discussed the scope" of the investigation. "NHTSA's concerns about the scope ultimately led to a decision by the agency to reduce that scope. You say it worked out well for Toyota, I think it worked out well for both the agency and Toyota," Santucci testified. The report further states that according to Safety Research & Strategies, Inc., NHTSA opened eight investigations of unintended acceleration of Toyota motor vehicles from 2003 to 2010. Three of the probes resulted in recalls of floor mats and the other five were closed, meaning no evidence of a defect was found—Mr. Santucci and Mr. Tinto worked on four of these five investigations.

67. Toyota's conscious disregard for the safety of consumers has resulted in numerous individuals being severely injured or killed. Data compiled by Safety Research & Strategy Inc., an automotive safety research organization that gathers data from NHTSA and other sources, shows that Toyota SUA incidents have accounted for at least 725 crashes, 304 injuries and 18 fatalities. Even more recent figures from NHTSA indicate 52 deaths as of March 2010 and possibly 89 deaths as of late May 2010.

68. Defendants, specifically including, but not limited to, TMC, TMA and TMS, are estopped from relying on the applicable statutes of limitations as a defense because Defendants, specifically including, but not limited to, TMC, TMA and TMS, actively and fraudulently concealed the evidence of SUA events and defects with acceleration, cruise control and throttle systems in 1996 Camrys, including the 1996 Camry at issue, by among other things, suppressing reports and complaints, failing to follow through on NHTSA notification requirements, and failing to disclose known defects.

69. Upon information and belief, such fraudulent concealment of SUA events and defects with acceleration, cruise control and throttle systems in 1996 Camrys, including the 1996 Camry at issue, occurred from top to bottom and across all levels within Toyota's corporate structure, including involving all Defendants. Upon information and belief, all Defendants participated in this institutional fraudulent concealment.

70. Instead of revealing the defects, Defendants, specifically including, but not limited to, TMC, TMA and TMS, concealed the evidence of SUA events and such defects while representing to the general public and Koua Lee that its vehicles were safe for their intended use with the intention that the general public and Koua Lee would rely on such representations and upon which Koua Lee did rely.

**COUNT ONE-STRICT LIABILITY(DESIGN/MANUFACTURE DEFECT)**

71. American Family restates and realleges paragraphs 1 through 70 above, and further states and alleges as follows:

72. Defendants delivered the 1996 Camry into the stream of commerce.

73. At the time the 1996 Camry left Defendants' control, it was unreasonably dangerous and defective in design and/or manufacture including, but not limited to:

a) The 1996 Camry experienced SUA or other unexpected acceleration problems during normal use and under reasonably foreseeable circumstances;

b) The 1996 Camry's electrical system was susceptible to failure, causing SUA and/or other unexpected acceleration problems;

c) Defendants design did not include a "brake override" system, which would have allowed the driver to control the vehicle regardless of the cause of the sudden and unintended acceleration. Such systems were in common use at the time the 1996 Camry was designed and/or manufactured;

d) The 1996 Camry's throttle, cruise control and/or acceleration systems were defective, causing the vehicle to suddenly and unintentionally accelerate; and/or

e) The 1996 Camry's accelerator cable was susceptible to being caught or stuck.

74. At the time of the accident, the 1996 Camry was being used in a manner reasonably anticipated by Defendants.

75. As a direct and proximate result of the unreasonably dangerous design and/or manufacture of the 1996 Camry, American Family made the above-referenced payments to or on behalf of Koua Lee, for which amounts it is now entitled to recover from Defendants.

**COUNT TWO-STRICT LIABILITY(FAILURE TO WARN)**

76. American Family restates and realleges paragraphs 1 through 75 above, and further states and alleges as follows:

77. Defendants delivered the 1996 Camry into the stream of commerce.

78. At the time the 1996 Camry left Defendants' control, it was unreasonably dangerous and defective.

79. Defendants knew or should have known of the substantial dangers involved with the reasonably foreseeable use of the 1996 Camry and/or its component parts as a result of the 1996 Camry's defects. Defendants knew or should have known these dangerous defects were not readily apparent to the driving public, including Koua Lee, in the ordinary and foreseeable use of the 1996 Camry.

80. Defendants failed to provide adequate warnings, instructions, guidelines or admonitions to the driving public, including Koua Lee, of the substantial dangers Defendants knew or should have known of at the time of design, manufacture and/or distribution of the 1996 Camry, including SUA issues.

81. At the time of the accident, the 1996 Camry was being used in a manner reasonably anticipated by Defendants.

82. As a direct and proximate result of the failure to warn, American Family made the above-referenced payments to or on behalf of Koua Lee, for which amounts it is now entitled to recover from Defendants.

**COUNT THREE-BREACH OF WARRANTIES**

83. American Family restates and realleges paragraphs 1 through 81 above, and further states and alleges as follows:

84. Defendants delivered the 1996 Camry into the stream of commerce in a marketable state.

85. Defendants knew or should have known the 1996 Camry would be used in the manner in which it was used at the time of and leading up to the accident.

86. Defendants represented and impliedly warranted that the 1996 Camry was merchantable in that it was of like kind and quality comparable to that generally accepted in the motor vehicle industry.

87. Defendants represented and impliedly warranted that the 1996 Camry was fit and safe for the use ordinarily associated with motor vehicles and that it was fit and safe for the specific use utilized by Koua Lee leading up to and at the time of the accident.

88. The 1996 Camry was defective and unreasonably dangerous when used in the manner ordinarily associated with motor vehicles.

89. By virtue of the defect(s), Defendants breached express warranties and/or the implied warranties of merchantability and fitness for a particular use.

90. As a direct and proximate result of Defendants' breaches, American Family made the above-referenced payments to or on behalf of Koua Lee, for which amounts it is now entitled to recover from Defendants.

#### **COUNT FOUR-NEGLIGENCE**

91. American Family restates and realleges paragraphs 1 through 90 above, and further states and alleges as follows:

92. Defendants had a duty to exercise reasonable care in designing, engineering, manufacturing, assembling, inspecting, testing, marketing, promoting, selling and/or distributing the 1996 Camry and a duty to warn foreseeable users of the 1996 Camry of the dangers associated with the vehicle that were known or should have been known to Defendants prior to the time of the accident.

93. Defendants breached their duties by failing to properly design, engineer, manufacture, assemble, inspect, test, market, promote, and/or distribute the 1996 Camry and by failing to warn foreseeable users of the 1996 Camry of the dangers associated with the vehicle that were known or should have been known to Defendants prior to the accident.

94. As a direct and proximate result of Defendants' negligence, American Family made the above-referenced payments to or on behalf of Koua Lee, for which amounts it is now entitled to recover from Defendants.

**DEMAND FOR JURY TRIAL**

95. American Family hereby demands a jury trial as to all claims so triable in this action.

**RELIEF SOUGHT**

**WHEREFORE**, Plaintiff-Second Intervenor American Family demands judgment against Defendants, each and all of them, for damages in the amount of \$348,416.73, together with interest thereon as well as costs and fees, and for such other relief as the Court deems just and proper.

**BORGELT, POWELL, PETERSON &  
FRAUEN S.C.**

Dated: July 13, 2011

By: s/Forrest G. Hopper  
Kevin J. Kennedy (#193872)  
Forrest G. Hopper (#0389417)  
7825 3<sup>rd</sup> Street North  
Suite 206  
Oakdale, MN 55128  
Telephone: 651-256-5000  
*Local Counsel for American Family*

**WILLIAMS & MAHONEY, LLC**

Dated: July 13, 2011

By: s/Lori J. Blangger  
Lori J. Blangger, Esq. (pro hac vice)  
500 Cummings Center, Suite 4500  
Beverly, MA 01915  
Telephone: 978-232-9500  
*Lead Counsel for American Family*

F:\KJK\61971 KOUA FONG LEE\PLEADINGS\AMND.COMPLAINT.002.DOC