

1 CHAVEZ & GERTLER LLP
2 MARK A. CHAVEZ (Bar No. 90858)
3 42 Miller Ave.
4 Mill Valley, CA 94941
5 Tel: (415) 381-5599
6 Fax: (415) 381-5572

7 *Attorneys for Objecting Class Members*
8 *Allen Roger Snyder and Linton Stone Weeks*

9 **UNITED STATES DISTRICT COURT**
10 **CENTRAL DISTRICT OF CALIFORNIA**

11 IN RE: TOYOTA MOTOR CORP.
12 UNINTENDED ACCELERATION
13 MARKETING, SALES PRACTICES,
14 AND PRODUCTS LIABILITY
15 LITIGATION

Case No: 8:10 ML2151 JVS (FMOx)

**DECLARATION OF CLARENCE
DITLOW IN SUPPORT OF
OBJECTIONS OF ALLEN ROGER
SNYDER AND LINTON STONE
WEEKS TO CY PRES
PROVISIONS OF CLASS ACTION
SETTLEMENT**

16 _____
17 THIS DOCUMENT RELATES TO:
18
19 ALL ECONOMIC LOSS CASES
20 _____

Date: June 14, 2013
Time: 9:00 a.m.
Place: Courtroom 10C
Judge: Hon. James V. Selna

1 I, Clarence M. Ditlow, declare as follows:

2 1. I am the Executive Director of the Center for Auto Safety (the
3 “Center”), a non-profit public interest organization that consumer advocate Ralph
4 Nader and the Consumers Union founded in 1970, and I have served in that
5 capacity since 1976.

6 2. Neither I nor the Center has a financial stake in this litigation. To
7 the contrary, I am submitting this declaration in support of the objections of Allen
8 Roger Snyder and Linton Stone Weeks to the proposed settlement of this lawsuit
9 because the Center shares their concerns that the Automobile Safety and Education
10 Program portion of the settlement will not benefit class members and does nothing
11 to detect and eliminate defects in electronic throttle control systems in Toyota
12 vehicles which cause unintended acceleration (“UA”).

13 3. I have a Bachelor of Science degree in Chemical Engineering
14 from Lehigh University (1965), a J.D. degree from Georgetown University (1970),
15 and an L.L.M. degree from the Harvard law School (1971). I received the
16 Consumer Lawyer of the Year award from the Washington, D.C. bar Association
17 and the Salzburg Medallion from Syracuse University in 1987. I have authored
18 several books, including *The Lemon Book: Auto Rights* (Moyer Bell 1990) with
19 Ralph Nader, *Little Secrets of the Auto Industry: Hidden Warranties Cost Billions*
20 *of Dollars* (Moyer Bell 1994) with Ray Gold and *Sudden Acceleration: The Myth of*
21 *Driver Error* (CALCE EPSC Press, University of Maryland 2003). I am also the
22 chief editor of *Automobile Design Liability*, a six volume work published by West,
23 and supplemented annually, on state and federal regulation of the automobile.

24 4. The Center has approximately 15,000 members who reside in all
25 50 states and the District of Columbia. The Center is a member of the Consumer
26 Federation of America, and is dedicated to, among other things, promoting motor
27 vehicle safety, ensuring that defective and unsafe vehicles and automotive

1 equipment are removed from the road, and ensuring that consumers' interests are
2 protected in matters relating to motor vehicles generally. The Center is concerned
3 about defects in modern electronics and computers in motor vehicles. See
4 <http://www.autosafety.org/campaigns/223365>.

5 5. Since the 1970s, the Center has worked to ensure that consumers
6 have adequate safety information before they purchase automobiles, to remove
7 defective and unsafe automobiles from the road, and to improve the quality and
8 reduce the cost of automotive repairs. The Center advocates before Congress,
9 administrative agencies, and the courts on issues related to auto safety. Examples
10 of the Center's many accomplishments include the following:

- 11 · helping to secure lemon laws in every state;
- 12 · working for the recall of the infamous Ford Pinto for exploding gas
13 tanks and the Firestone 500 and Wilderness ATX tires for failures in
14 use.
- 15 · exposing General Motors pickups with side saddle gas tanks that
16 resulted in more than 1,500 people being burned to death;
- 17 · advocating for state laws to force manufacturers to disclose secret
18 warranties on cars, laws that will save consumers billions of dollars
19 each year;
- 20 · advocating for auto safety and highway standards that helped lower the
21 death rate on America's roads from 5.2 per 100 million miles traveled
22 in 1969 to 1.1 in 2011; and
- 23 · filing the first defect petition for a Toyota UA recall on 1983-84
24 Camry's in 1986 which were later recalled in 1990 for a cruise control
25 computer short circuit.

26 6. The Center has also played an active role in class action litigation
27 — opposing as well as supporting class-action settlements, and providing expert
28 testimony. The Center has participated in class actions as an objector and as legal
counsel to objectors in a number of automotive class actions, including *In re*
General Motors Corp. Pick-Up Truck Fuel Tank Prods. Liab. Litig., 55 F.3d 768

1 (3d Cir. 1995), *cert. denied sub nom. GMC v. French*, 64 USLW 3241 (Oct. 3,
2 1995); *Bloyed v. General Motors Corp.*, 881 S.W.2d 422 (Tex. App. 1994), *aff'd*
3 916 S.W.2d 949 (Tex. 1996); *Hanlon v. Chrysler Corp.*, 150 F.3d 1011 (9th Cir.
4 1998); *West v. Carfax, Inc.*, Case No. 04-CV-1898 (Ohio Ct. Comm. Pl., Trumble
5 County 2004); *Ford Explorer Cases*, Case Nos. JCPP 4266 & 4270 (Sacramento
6 County Super. Ct. 2008); *True v American Honda Motor Co.*, 749 F.Supp 2d 1052
7 (C.D.Cal. 2010). I have appeared as an expert witness (at trial and in connection
8 with various law-and-motion proceedings) on behalf of class-action plaintiffs in a
9 number of cases, including *Howard v. Ford Motor Co.*, Case No. 763785-2
10 (Alameda Super. Ct. 2000); *Anelli v. Ford Motor Co.*, 2007 WL 3087960 (Conn.
11 Super. Ct. 2007); *Trew v. Volvo Cars of No. Am. LLC*, 2007 WL 22339210 (E.D.,
12 Cal. 2007); and *Anderson v. General Motors Corp.*, Case No. JCCP 4396 (Los
13 Angeles Super. Ct. 2007); and on behalf of class-action defendants in such cases as
14 *Avery v. State Farm Mut. Automobile Ins. Co.*, 216 Ill.2d 100 (Ill. 2005), *cert.*
15 *denied*, 547 U.S. 1003 (2006), and a related case entitled *Smith v. Allstate Insurance*
16 *Co.*, Case No. 03-L-125 (Ill. Cir. Ct. 2003), among others.

17 7. I have also testified about motor vehicle-related issues before
18 Congressional committees more than 50 occasions. For example, the Center was
19 the only consumer or auto safety group to be invited to testify before both House
20 and Senate Committees in 2010 regarding the very issue at the heart of this
21 litigation — unintended acceleration (UA) in Toyota vehicles. The Center was also
22 invited to present testimony on amendments to the National Traffic and Motor
23 Vehicle Safety Act to upgrade safety standards and the National Highway Traffic
24 Safety Administrations ability to advance motor vehicle safety and hold auto
25 companies accountable as the industry moved to more electronics in automobiles.
26 See:

- 1 · Statement of Clarence M. Ditlow, Executive Director, Center for
2 Auto Safety, On S. 3302, The Motor Vehicle Safety Act of 2010,
3 Before the Senate Commerce, Science & Transportation
4 Committee - 5/19/10
- 5 · Statement of Clarence M. Ditlow, Executive Director, Center for
6 Auto Safety, On Proposed Motor Vehicle Safety Act of 2010,
7 Before the Subcommittee on Commerce, Trade, and Consumer
8 Protection, House Energy and Commerce Committee - 5/6/10
- 9 · Statement of Clarence M. Ditlow, Executive Director, Center for
10 Auto Safety, On Toyota Sudden Unintended Acceleration Before
11 the Senate Commerce, Science & Transportation Committee -
12 3/2/10
- 13 · Statement of Clarence M. Ditlow, Executive Director, Center for
14 Auto Safety, On Toyota Sudden Unintended Acceleration Before
15 the House Oversight & Government Reform Committee - 2/24/10

14 8. I am very knowledgeable about Toyota Unintended Acceleration
15 as shown by the invitations to testify before the US Congress multiple times as
16 shown above and by my presentation before the National Academy of Sciences on
17 Unintended Acceleration. The Center has a web page on Toyota UA at
18 www.autosafety.org/toyota-sudden-acceleration. I have reviewed the Settlement
19 documents in this litigation as well as Operative Third Amended Economic Loss
20 Master Consolidated Complaint (hereinafter “Amended Master Complaint”).

21 9. The lawsuit is all about defects in Toyota’s with electronic
22 throttle control systems (“ETCS” or “ETCS-I”). The lawsuit is not about defective
23 drivers or how driver error caused UA. Indeed, driver error is Toyota’s defense to
24 defects in its vehicles.

25 10. Plaintiffs alleged: “Toyota promised that these new systems
26 would operate safely and reliably. This promise turned out to be false in several
27 material respects. In reality, Toyota concealed and did not fix a serious quality and
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1 safety problem plaguing all ETCS cars – the vehicles had a propensity to run away
2 or accelerate contrary to the driver’s intent that was greater in vehicles without
3 ETCS.” Amended Master Complaint, ¶ 2. “Despite notice of the SUA defect in
4 ETCS vehicles, Toyota did not disclose to consumers that its vehicles – which
5 Toyota for years had advertised as “safe” and “reliable” – were in fact not as safe or
6 reliable as a reasonable consumer expected due to the heightened risk of unintended
7 acceleration.” Amended Master Complaint, ¶ 9. Plaintiff’s further alleged “Toyota
8 has sent tens of thousands of letters to UA victims falsely claiming that their UA
9 event was caused by driver error.” Amended Master Complaint, ¶ 363.

10 11. Even after the Toyota UA recalls in 2009 and 2010, Plaintiffs
11 alleged: “SUA events kept occurring, even in vehicles that did not have floor mats
12 and vehicles that were not subject to the sticky pedal recall. In 2010 there were
13 14,000 UA customer complaints investigated by Toyota, most of these vehicles had
14 supposedly been “fixed” by the sticky pedal and floor mat recalls. For 99% of these
15 UA complaints Toyota concluded “NTF,” i.e., no trouble found and has wrongfully
16 blamed the incidents on driver error, and thus has not fixed the cause of the UA in
17 these vehicles.” Amended Master Complaint, ¶ 10. “Toyota has not disclosed that
18 for the period after the recalls through January 2011 over 300 complaints of SUA
19 have been filed with NHTSA.” Amended Master Complaint, at ¶ 362.

20 12. The need to determine the failure mode of UA in Toyota’s
21 continues after the recalls because: “Secretly, Toyota has received credible reports
22 of SUA events on vehicles that were subject of both recalls, including an incident
23 with videotape evidence that the driver was attempting to brake the vehicle. Toyota
24 has not provided these reports to NHTSA or revealed these facts to the public or at
25 its webinars.” Amended Master Complaint, at ¶ 361.

1 13. The Amended Master Complaint is replete with allegations that
2 Toyota concealed information on UA from the National Highway Traffic Safety
3 Administration (“NHTSA”) prior to the recalls. See e.g., ¶ 188-97. In fact, NHTSA
4 fined Toyota \$16.375 million over the sticky pedal recall on April 19, 2010
5 (<http://www.nhtsa.gov/PR/DOT-71-10>) and an additional \$16.375 million over the
6 trapped floor mat recall on December 20, 2010 ([http://www.nhtsa.gov/PR/DOT-
7 216-10](http://www.nhtsa.gov/PR/DOT-216-10)). In both cases, Toyota violated the National Traffic and Motor Vehicle
8 Safety Act by knowing about the defects and failing to do timely recalls.

9 14. The Amended Master Complaint is replete with examples of
10 vehicle related failure modes that cause UA in Toyota Vehicles. Amended Master
11 Complaint, ¶¶ 364-378. The Amended Master Complaint contains no allegations
12 that driver error caused UA in Toyota vehicles or that drivers were not educated.
13 Indeed, the Complaint highlights the tragic Saylor UA crash that killed four people
14 in a 2009 Lexus ES 350. The driver, Mark Saylor, was a 19-year veteran of the
15 California Highway Patrol who was a highly trained and experienced driver.
16 Amended Master Complaint, ¶¶ 268-275.

17 15. Section II (A)(6) of the Settlement Agreement in this lawsuit
18 creates a \$30 million cy pres fund for an Automobile Safety Research and
19 Education Program (hereinafter “Research and Education Program”). Settlement
20 Agreement Exhibit 16. Plaintiffs’ Memorandum in Support of Plaintiffs’ Motion for
21 Final Approval Of Class Action Settlement (hereinafter “Plaintiffs’
22 Memorandum”), The \$30 million Automobile Safety Research and Education Fund,
23 § IV.A.1.c.

24 16. The Research and Education Program has three components -
25 (1) an \$800,000 consumer study on defensive driving techniques and proper use of
26 vehicle safety systems, (2) a \$14.2 million driver education media campaign, and
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1 (3) a \$15 million research program into active safety features, vehicle control, and
2 driver attention. Plaintiffs' Memorandum, § IV.A.1.c.(1)-(3).

3 17. Parts (1) and (2) of the Research and Education Program not
4 only have nothing to with the underlying cause of action but also will not provide
5 any safety benefits to class members. The underlying cause of action relates to
6 defective electronic control systems and Toyota's cover-up of the defects by
7 blaming driver error. To provide cy pres funding for driver education would
8 legitimize Toyota's cover-up. Furthermore, driver education programs have been
9 dismal flops in improving vehicle safety.

10 18. The single most life saving measure a driver can take is to
11 buckle his or her seat belt. Well over a hundred million dollars have been spent on
12 educational campaigns to get drivers to buckle up with little, if any, success since
13 seat belts became standard in the mid-1960's. According to NHTSA:

14 Seat belts were 1st installed in passenger cars in the late 1950s, and
15 their installation in all new vehicles was required in 1968. About
16 the same time, several public awareness efforts were implemented
17 in the United States (as well as in Australia) to encourage seat belt
18 use. Perhaps the most widely known of the early U.S. efforts was
19 the *Buckle Up for Safety* campaign sponsored by the National
20 Safety Council in 1968. This was an extensive public service
21 campaign that was recognized and remembered by a high
22 percentage of the public. However, this campaign appeared to have
23 little, if any, effect on seat belt use. Observational surveys
24 conducted by NHTSA in 19 cities across the United States found
25 that seat belt use by drivers was only about 11% as late as 1979
26 (Phillips, 1983). Other public information programs were
27 implemented by the automobile industry in Michigan, one of
28 which was a paid media campaign, but neither produced a
substantial increase in use (e.g., Oakland County Traffic
Improvement Association, 1969, and Motorists Information
Institute, 1978).” *Strategies to Increase Seat Belt Use: An Analysis
of Levels of Fines and the Type of Law*, DOT HS 811413, p.7
(November 2010).

1 19. The driver education campaigns in Parts (1) and (2) of the
2 Research and Education Program involve tasks far more complex than that in the
3 unsuccessful seat belt education which had a simple message that everyone could
4 understand - Buckle Up for Safety. Yet Buckle Up for Safety and similar seat belt
5 use campaigns failed. It is simply impossible to teach far more complex “defensive
6 driving skills, the proper use of technology, and the most important vehicle safety
7 errors associated with UA and driver attention” in a “combination of print,
8 television, Internet, and radio advertising and public service announcements” as
9 proposed under Part (2) of the Research and Education Program. Moreover
10 emergency situations are rare events, and public announcements are soon forgotten
11 so any remotely possible benefits are fleeting.

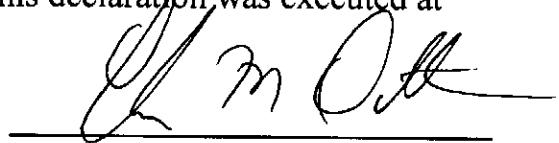
12 20. Officer Mark Saylor with 19 years of experience with California
13 Highway Patrol had hands on driver training but was unable to avoid the UA crash
14 that killed him and three others. The media campaign envisioned by Parts (1) and
15 (2) of the Research and Education Program does not begin to compare to on track
16 emergency driving courses and will not deliver better drivers on the road.

17 21. The safety research program in Part (3) of the Research and
18 Education Program covers areas of safety unrelated to the underlying cause of
19 action which is defects in Toyota vehicles that cause UA. The Research and
20 Education Program does not include any research programs on vehicle electronic
21 failure modes as alleged in the Amended Master Complaint, ¶¶ 364-378. If defects
22 in electronic throttle control systems are found and corrected, then the driver does
23 not have to be trained for the emergency unintended acceleration event because it
24 doesn’t occur. It is far better to cure unintended acceleration rather than “targeting
25 the symptoms of unintended acceleration.” Plaintiffs’ Memorandum, p. 23.

26 22. As shown in Attachment A to this declaration, a research program
27 could and should be implemented to address the underlying issue of failures in
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1 electronic systems and controls in modern vehicles. Such research would benefit
2 the class members far more than the Research and Education Program in the
3 proposed settlement.

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5 I declare under penalty of perjury under the laws of the United States that
6 the foregoing is true and correct, and that this declaration was executed at
7 Washington, D.C., on May 10, 2013.



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9 Clarence M. Ditlow

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