

Case No. 16-15496

**IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

HELENE CAHEN, KERRY J. TOMPULIS, MERRILL NISAM, RICHARD
GIBBS, and LUCY L. LANGDON,

Plaintiffs-Appellants,

v.

TOYOTA MOTOR CORPORATION,
TOYOTA MOTOR SALES, U.S.A., INC., and
GENERAL MOTORS LLC,

Defendants-Appellees.

On Appeal From the United States District Court
for the Northern District of California
The Honorable William H. Orrick | Case No. 4:15-cv-01104-WHO

**SUPPLEMENTAL EXCERPTS OF RECORD
VOLUME I OF II.**

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SUPPLEMENTAL EXCERPTS OF RECORD INDEX**VOLUME I****Civil Case #4:15-cv-01104-WHO**

Docket #	Document	Date	Page
81	Plaintiffs' Notice of Intent Not to Amend Complaint: Class Action	2/19/2016	SER 0001 – SER 0002
80	Order Granting Plaintiffs' Motion for Administrative Relief to Enlarge Time to File Amended Complaint: Class Action	1/4/2016	SER 0003 – SER 0004
78	Plaintiffs' Motion for Administrative Relief to Enlarge Time to File Amended Complaint: Class Action	12/30/2015	SER 0005 – SER 0009
76	Transcript of Proceedings of the Official Electronic Sound Recording [Transcript of Hearing on Motion to Dismiss]	11/3/2015	SER 0010 – SER 0032
61	Defendants Toyota Motor Corporation and Toyota Motor Sales, U.S.A., Inc.'s Reply in Support of Their Motion to Dismiss Plaintiffs' First Amended Complaint	10/14/2015	SER 0033 – SER 0055
52	Plaintiffs' Opposition to Defendant Toyota's Motion to Dismiss Plaintiffs' First Amended Complaint: Class Action	9/28/2015	SER 0056 – SER 0084
49	Defendants Toyota Motor Corporation and Toyota Motor Sales, U.S.A., Inc.'s Notice of Motion and Motion to Dismiss Plaintiffs' First Amended Complaint; Supporting Memorandum of Points and Authorities	8/28/2015	SER 0085 – SER 0122

Docket #	Document	Date	Page
47	Ford Motor Company's Motion to Dismiss the First Amended Complaint and Supporting Memorandum of Points and Authorities	8/28/2015	SER 0123 – SER 0133
1	Complaint for Breach of Warranty, Breach of Contract, and Violation of Consumer Protection Law: Class Action [Part 1 of 2]	3/10/2015	SER 0134 – SER 0300 (continued in SER Volume II)

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12 **UNITED STATES DISTRICT COURT**

13 **NORTHERN DISTRICT OF CALIFORNIA-SAN FRANCISCO DIVISION**

14 HELENE CAHEN, KERRY J. TOMPULIS,
 15 MERRILL NISAM, RICHARD GIBBS, and
 16 LUCY L. LANGDON, on Behalf of
 Themselves and All Others Similarly
 Situated,

17 Plaintiffs,

18 v.

19 TOYOTA MOTOR CORPORATION,
 20 TOYOTA MOTOR SALES, U.S.A., INC.,
 FORD MOTOR COMPANY, GENERAL
 MOTORS LLC, and DOES 1 through 50,

21 Defendants.

CASE NO. 15-cv-01104-WHO

**PLAINTIFFS' NOTICE OF INTENT NOT
 TO AMEND COMPLAINT**

CLASS ACTION

Current Date: February 22, 2016
Judge: Hon. William H. Orrick
Ctrm: 2

22
 23 TO THE COURT, ALL PARTIES, AND THEIR ATTORNEYS OF RECORD:

24 PLEASE TAKE NOTICE THAT Plaintiffs Helene Cahen, Kerry J. Tompulis, Merrill
 25 Nisam, Richard Gibbs, and Lucy L. Langdon will not amend their complaint but reserve their
 26 right to appeal any judgment entered.
 27
 28

1 DATED: February 19, 2016

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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA-SAN FRANCISCO DIVISION

HELENE CAHEN, KERRY J. TOMPULIS,
MERRILL NISAM, RICHARD GIBBS, and
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TOYOTA MOTOR SALES, U.S.A., INC.,
FORD MOTOR COMPANY, GENERAL
MOTORS LLC, and DOES 1 through 50,

Defendants.

CASE NO. 15-cv-01104-WHO

**~~PROPOSED~~ ORDER GRANTING
PLAINTIFFS' MOTION FOR
ADMINISTRATIVE RELIEF TO
ENLARGE TIME TO FILE AMENDED
COMPLAINT**

CLASS ACTION

**Current Date: January 8, 2016
Judge: Hon. William H. Orrick
Ctrm: 2**

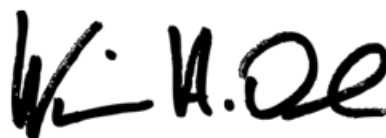
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PROPOSED ORDER

Having considered the Plaintiffs' Motion for Administrative Relief to Enlarge Time to File Amended Complaint and the Declaration of Marc R. Stanley in support thereof, the Court hereby GRANTS the Motion and orders the following:

Plaintiffs shall file an amended complaint, if any, by February 22, 2016.

IT IS SO ORDERED.



DATED: January 4, 2016

The Honorable William H. Orrick
United States District Judge

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12 **UNITED STATES DISTRICT COURT**

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21 Defendants.

CASE NO. 15-cv-01104-WHO

**PLAINTIFFS' MOTION FOR
 ADMINISTRATIVE RELIEF TO
 ENLARGE TIME TO FILE AMENDED
 COMPLAINT**

CLASS ACTION

**Current Date: January 8, 2016
 Judge: Hon. William H. Orrick
 Ctrm: 2**

23 Pursuant to Local Rules 7-11, 6-1, and 6-3(a), Plaintiffs Helene Cahen, Kerry J.
 24 Tompulis, Merrill Nisam, Richard Gibbs, and Lucy L. Langdon (collectively, "Plaintiffs")
 25 respectfully request the Court to enlarge the time within which Plaintiffs may file an amended
 26 complaint, if any, from the current date of January 8, 2016, to February 22, 2016—a 45-day
 27 extension of time.

1 A. RELEVANT PROCEDURAL HISTORY (Local Rule 6-3(a)(5-6))

2 On November 25, 2015, the Court granted the motions to dismiss filed by all
3 Defendants (Dkt. Nos. 43, 47, 49), and gave Plaintiffs leave to file an amended complaint, if
4 any, by January 8, 2016. Dkt. No. 77 at 24. The Court had previously granted the parties'
5 stipulations to stay discovery, and for an extended briefing schedule and hearing on the
6 motions to dismiss and for the Case Management Conference. *See generally* Dkt. Nos. 32, 33,
7 40, 41.

8 Following the Court's Order granting Defendants' motions to dismiss (Dkt. No. 77),
9 there are no current deadlines in the schedule for this case except for the January 8, 2016
10 deadline for filing an amended complaint. Therefore, a 45-day extension of this deadline
11 would have no effect on the schedule for this case.

12 B. REASONS FOR REQUESTED ENLARGEMENT (Local Rule 6-3(a)(1-3))

13 Plaintiffs' counsel Marc R. Stanley lost his brother on November 13, 2015, following
14 an unsuccessful double lung transplant. Declaration of Marc R. Stanley ("Stanley Decl.") ¶ 2.
15 For the remainder of November and for most of December, Mr. Stanley had primary
16 responsibility for funeral arrangements, hosting *shiva* (Judaism's traditional seven-day
17 mourning period), and estate administration issues relating to his brother's passing. *Id.* ¶ 3. In
18 addition, the emotional toll from the death of a close sibling was considerable, and presented
19 significant obstacles to focusing exclusively on litigation for extended periods of time. *Id.* ¶¶ 2,
20 4.

21 Mr. Stanley took a vacation to South America on December 23, 2015, to refresh from
22 the events of the previous months. *Id.* ¶ 5. His wife is scheduled for major surgery on January
23 7, 2016, days after he returns from vacation, and he will have primary responsibility for taking
24 care of her while she recovers. *Id.* ¶ 6.

25 For these reasons, Plaintiffs' counsel requests the 45-day enlargement of time for filing
26 an amended complaint. Without the requested enlargement, Plaintiffs and the proposed Classes
27 will be prejudiced substantially by a decision to amend or appeal that lacks the benefit of the
28 full period of deliberation the Court initially contemplated in granting leave to amend in its

1 Order. *See* Dkt. No. 77 at 24.

2 Plaintiffs’ counsel reached out to Defendants’ counsel in a December 16, 2015 email
3 and requested a stipulation to a 45-day extension. Stanley Decl. ¶ 7 & Exh. A. Counsel for
4 Ford responded on behalf of all Defendants and conferred with Plaintiffs’ counsel by
5 telephone on December 18, but did not agree to the requested enlargement. *Id.* ¶¶ 8-9 & Exh.
6 B-C. On December 28, 2015, Plaintiffs’ counsel emailed Ford’s counsel and asked about the
7 status of the proposed stipulation. *Id.* ¶ 9 & Exh. C. Ford’s counsel responded by email the
8 next day that Defendants would agree to a shorter (28-day) extension—conditioned on a
9 “pledge that no new plaintiffs will be added to the pleading and all claims brought will pertain
10 to existing Plaintiffs only,” adding “When we last spoke, you indicated you have no new
11 plaintiffs and are not now intending to add any, so we trust you will consider this a reasonable
12 compromise.” *Id.* ¶ 10 & Exh. D.

13 While Ford’s counsel accurately summarizes the substance of the December 18
14 telephone conversation, Plaintiffs’ counsel does not find it reasonable to “pledge” as a
15 condition for a stipulated extension of time *never* to add new named plaintiffs to this case.
16 Plaintiffs’ counsel will amend or appeal the claims of the five currently-named Plaintiffs, but
17 cannot reasonably commit that no additional plaintiffs shall ever be named in this case at any
18 time. For this reason, a stipulation could not be reached, and Plaintiffs now respectfully
19 request the Court to grant their requested 45-day enlargement of time to February 22, 2016 to
20 file an amended complaint, if any. A proposed order is attached hereto.

21 DATED: December 30, 2015

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[PROPOSED] ORDER

Having considered the Plaintiffs’ Motion for Administrative Relief to Enlarge Time to File Amended Complaint and the Declaration of Marc R. Stanley in support thereof, the Court hereby GRANTS the Motion and orders the following:

Plaintiffs shall file an amended complaint, if any, by February 22, 2016.

IT IS SO ORDERED.

DATED: _____

The Honorable William H. Orrick
United States District Judge

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

Before The Honorable William H. Orrick, District Judge

HELENE CAHEN,)
)
Plaintiff,)
)
vs.) No. C 15-01104-WHO
)
TOYOTA MOTOR CORPORATION,)
)
Defendant.)

San Francisco, California
Tuesday, November 3, 2015

TRANSCRIPT OF PROCEEDINGS OF THE OFFICIAL ELECTRONIC SOUND
RECORDING 3:12 - 3:38 = 26 MINUTES

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7 BY: CHRISTOPHER CHORBA, ESQ.

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1 Tuesday, November 3, 2015

3:12 p.m.

2 P-R-O-C-E-E-D-I-N-G-S

3 --oOo--

4 THE CLERK: Calling Civil Matter 15-1104, Helene
5 Cahen, et al., versus Toyota Motor Corporation, et al.
6 Counsel, please come forward and state your appearance.
7 (Pause.)

8 THE COURT: Don't stand on ceremony. Come on.
9 State your appearance, please.

10 MR. STANLEY: Marc Stanley, Donald Slavik and
11 Martin Woodward for the Plaintiffs. Afternoon, sir.

12 THE COURT: Afternoon.

13 MR. CHORBA: Good morning, your Honor. Chris
14 Chorba, Gibson, Dunn and Crutcher, for Defendants Toyota
15 Motor Corporation and Toyota Motor Sales, USA.

16 MS. KISER: Good afternoon, your Honor. Liv Kiser
17 on behalf of Ford Motor Company.

18 MR. MALLOW: Good afternoon, your Honor. Good to
19 see you again. Michael Mallow, Sidley Austin, on behalf of
20 Ford.

21 MS. FALVEY: Cheryl Falvey, your Honor, on behalf
22 of General Motors, from Crowell Moring.

23 THE COURT: Afternoon all.

24 All right. So let me tell you sort of tentatively
25 where I stand with this and then get your reactions. I am

1 inclined not to find standing, Mr. Stanley. So I would --
2 I'm inclined to grant the motion with leave to amend.
3 With respect to the claims against Ford for the Oregon and
4 Washington classes, I think Daimler is squarely on
5 point, and so I think those claims fail because there's no
6 general jurisdiction, and this is not an exceptional case as
7 I understand the cases to define it. It would have been a
8 different case if this was being argued when I graduated
9 from law school, but -- but I think the world has changed a
10 little bit on those claims.

11 And then with respect to Toyota and General Motors, the
12 lack of injury in fact is very -- makes this claim
13 speculative it seems to me. Clapper and Onovy and Birdsong
14 I think are instructive, and there's not a plausible
15 allegation of something that -- a damage that's certainly
16 impending.

17 And then the second problem I have with it is that
18 every car has the same issue, and so the -- I'm not sure
19 what the economic theory would be for a claim of paying an
20 inflated price. There's no evidence of declining value.
21 And I think the Jinohos (phonetic) case, the Toyota
22 Acceleration cases are really different, and they're not --
23 and this is not like a product labeling case, it seems to
24 me, where Plaintiffs can claim that they were duped by false
25 advertising to buy one product over another because I think

1 the allegations are that all products have this -- the same
2 problem.

3 And then with respect to the privacy claims, I just --
4 at the moment I don't think they're sufficiently pleaded. I
5 think there's a need to allege concrete harm, and
6 specifically how the -- one of the questions I have is how
7 the geographic -- knowing the geographic location of the car
8 rises to the level of a constitutionally protected interest.
9 There's been no loss of the information being alleged, just
10 that it's being collected.

11 So those weren't the -- those were my thoughts. So
12 take them as you'd like to.

13 MR. STANLEY: I'll do it, and my previous
14 experience is that once you've given your tentative, it's
15 not easy to switch you, but I do want to say that --

16 THE COURT: It happens, though, Mr. Stanley, I
17 just want you to know.

18 MR. STANLEY: It has happened I'm sure.

19 I don't understand a world where under Kohl's and My
20 Ford Touch and that under Toyota that standing isn't
21 alleged. Standing's pretty easy to get to. It's the
22 starting gates. If there's a horse race, do we have the
23 Plaintiffs in the right starting gates? Is there injury?
24 Have we experienced a manifest defect in order to establish
25 it? Have we alleged cognizable loss under the benefit of

1 the bargain or the legal theory. We did do that.

2 Judge Chen in the My Ford Touch, they had a system that
3 wasn't working right. A lot of the Plaintiffs hadn't had
4 it. All the cars have experienced the same issue, have the
5 same defect, and Judge Chen, under that sustained -- in
6 fact, to be honest with you, we used My Ford Touch as a
7 template when we pled this.

8 So at this point standing is a pleading issue. Your
9 charge, your job as the referee is did we get the horses in
10 the slots, and we did, in fact, use My Ford Touch and pled
11 almost exactly what Judge Chen said. Now, if you disagree
12 with Judge Chen, you disagree with Judge Chen. I can't do
13 anything about that. If you disagree with Judge Selna, you
14 disagree, because we used also Toyota as a template to
15 allege that.

16 Under Kohl's, we contend that the class members paid
17 more for a product than they would have otherwise paid or
18 they otherwise wouldn't have bought it. And, in fact, you
19 can buy cars that don't have this system in it. You said
20 that all the cars have it, and that's not true. Not all the
21 cars necessarily have it. You pay more for gradations of
22 the system.

23 So you're also -- it appears to me that the Court's
24 bought into this theory that really we're waiting for the
25 hacker to do something before someone has been injured.

1 THE COURT: Well, one -- one person, one problem,
2 and so far there's --

3 MR. STANLEY: Well, and to be honest, Judge, I
4 hope it's not your car. I honestly do. I hope it's not
5 your car or a senator's car or a congressman's car. This is
6 not much different than a bank that says "We're going to
7 sell you -- we have safe deposit boxes, and we have the best
8 safe deposit boxes out there with the best security around
9 there. We've got electronic combinations for your box.
10 We've got all these accoutrements. We've got TV's in the
11 room. We've got a stereo. We've got a soft drink machine,
12 even a beer tab. Come use our safe deposit box." They
13 build it in the front -- front yard of the bank. They
14 forgot to put a door there, and all the boxes can come up
15 and open early. Yes, if a thief comes and takes it out of
16 there, that's a case. But we know for a fact that every one
17 of these -- and this is also not just Stanley talking. This
18 is the federal government. DARPA is an agency of the
19 federal government. Senator Marky found this. There've
20 been numerous reports showing it. There've been numerous
21 reports showing white hat hackers. There's always the first
22 time that an ATM was hacked. There's always the first time
23 that a Target was hacked. There's always the first time
24 that some black hat hacker does it. But I don't think we
25 have to wait for that.

1 Going back down to the basics, under My Ford Touch,
2 under Toyota, and under Kohl's, have we alleged economic
3 loss? I encourage the Court before -- you said you change
4 your mind sometimes. I'd ask you to reread My Ford Touch,
5 Toyota, and Kohl's. We have the horses in the starting
6 gate. You may not think I've got a great case. You may
7 think I'll lose on summary judgment one day if I can't prove
8 it, but I have met the elements of standing.

9 As to the Ford and Daimler Chrysler issue, I'm actually
10 quite shocked by that. I don't think Daimler's on point.
11 It was an Argentinian dispute that was brought to the
12 States. Ford has a place in Silicon Valley. Presumably I
13 assume they're working on technology. They sell tons of
14 cars here. They certainly had standing enough to be sued in
15 Judge Chen's court for My Ford Touch. They come and avail
16 themselves of these courts all the time as a plaintiff, even
17 in the Northern District of Texas, and there are plenty of
18 cases that say if you avail yourself -- or there are cases
19 that say if you decide to step into our jurisdiction as a
20 plaintiff, you can't later say "Huh-uh, you can't sue me
21 here." You can't selectively use it as a shield and a
22 sword. They come here voluntarily as Ford Motor Company and
23 sue in this District, I think you're wrong. But, again, I
24 would look at that if I were you, if you can.

25 The lack of injury we talked about. You said not a

1 plausible enough allegation. I think that the difference
2 between this case and other cases like the sudden
3 acceleration where you have manifestation and plausible
4 injury. It's every single one of these. It's almost like
5 unprotected sex. There's no firewall whatsoever. There's
6 no firewall whatsoever. There's nothing stopping anyone
7 from getting into your car or my car. There's a video in
8 Wired Magazine. I think we referenced it in our deal, but
9 it's in the video where someone remotely is able to hack a
10 car and stop it on the highway, and the guy was freaked out,
11 and then they turned him -- in a parking lot they turned him
12 and drove him into a ditch.

13 It's certainly plausible out there that every one of
14 these, they've known about this for years. The federal
15 government hasn't done anything. Congress hasn't done
16 anything. NTSA hasn't done anything. It's now come to
17 light, and one day it's going to be Judge Orrick's car, Marc
18 Stanley's car or a senator's car, and all of a sudden people
19 are going to go crazy. You have the chance -- this is a
20 very important case. Every single one of these cars has
21 this defect. You have a chance to say "The horse is in the
22 starting gate. Let's give this another look and see whether
23 or not there's a case here." We pled the right things under
24 My Ford Touch.

25 Now, you're making almost a summary judgment

1 determination, but really what Luhan says, we don't have to
2 plead with -- with specificity. As long as the Plaintiffs
3 allege a legally cognizable loss under the benefit of the
4 bargain or other legal theory, they have standing. Luhan
5 says:

6 "At the pleading stage general
7 allegations of injury resulting from
8 Defendant's conduct may suffice. On a
9 motion to dismiss, we presume the
10 general allegations embrace the specific
11 facts."

12 Again, it seems to me that plaintiffs in Judge Chen's
13 court can go forward under the exact same allegations, and
14 in the Toyota court, they get a roadblock in Judge Orrick's
15 court, and that's inconceivable to me how that can be
16 justice in the Northern District, and I think that's
17 something that has to be looked at.

18 Inflated price, I addressed that issue and that not
19 every car has the same issue. You said every car has the
20 same issue. By the way, that would be great for me for
21 class certification when we get to that. So I'd like you to
22 remember that point. But, in fact, every car does have the
23 same defect. The defect is not the hack. The defect is the
24 lack of a firewall that allows anybody to get in there, get
25 close to their car with a blue tooth, get on Ford's case to

11

1 be able to control it by login on a computer and turn off a
2 car from anywhere in the world. The defect is no firewall,
3 and these communications -- this is 1960's technology that
4 they're putting in 2014, 2015, 2016 cars. It's all wrong.

5 In terms of the privacy, I'm shocked by what you said.
6 There are cases here --

7 THE COURT: You're shocked by everything I say,
8 Mr. Stanley. Sort of temper it down a little bit.

9 MR. STANLEY: Well, I --

10 THE COURT: It's just you're just shocked being
11 here.

12 MR. STANLEY: As your assistant told you, I'm not
13 having a great day My --

14 THE COURT: I understand.

15 MR. STANLEY: So I'm sorry.

16 THE COURT: I do understand, and I --

17 MR. STANLEY: So I'm just --

18 THE COURT: -- sympathize.

19 MR. STANLEY: -- getting to the gist of it.

20 THE COURT: Okay.

21 MR. STANLEY: The cases we cited say that in the
22 Ninth Circuit, where the geo location of someone is tracked,
23 in fact, that it does give rise to it if it's given to a
24 third party.

25 In this case the allegation is whether I'm driving to

1 an AIDS clinic, a divorce lawyer, having an affair with
2 somebody, whatever else, they're tracking that information
3 on my car in my name or my client's car in their names.
4 They're selling that information or giving that information
5 to third parties. If Wal-Mart says "I want to build a
6 location on Stockton, and I want to know what kind of cars
7 drive by here at 4:00 o'clock on a Wednesday," they tell
8 them because of this data analytics what kind of cars do it.
9 If a clever defense lawyer is smart enough to realize that
10 -- or prosecutor -- that Ford and GM and Toyota are keeping
11 this information, almost like the NSA did on all your phone
12 calls, that they know exactly where Judge Orrick went at
13 every single moment of the day in his car and could drill
14 down with the right signal, they could find that. But the
15 point is, without our client's permission, they're giving
16 that information to third parties or selling it and
17 benefitting. There's no opt out. Justice Kagan and
18 Sotomayor talked about this quite extensively. This is
19 exactly the kind of information.

20 THE COURT: Well, I think if you plead -- you
21 might be able to plead this.

22 MR. STANLEY: We did plead that.

23 THE COURT: Well, you pled like three paragraphs
24 in your -- it seemed like a -- it's something that I believe
25 you can plead more extensively and perhaps make some of the

1 points that you've been making orally.

2 MR. STANLEY: Well, okay. We certainly addressed
3 it in our response. Again, we were -- on Luhan --

4 THE COURT: It needs to be in the complaint, Mr.
5 Stanley.

6 MR. STANLEY: On Luhan what we -- okay. I think
7 that if the Court wants -- let me just say, without
8 discovery, we can plead that this is our fear and that this
9 is our belief. The Markey report certainly talks about it.
10 I don't know with specificity, and I'll admit it, what GM,
11 Toyota, and Ford are doing with this information. I only
12 have what I read in the newspapers, what I read in the
13 federal government's publication from Senator Markey. I --
14 certainly, if the Court believes that -- I'll also say
15 though, again, Luhan says general allegations of injury,
16 which is what we said here, and it's very simple. They're
17 taking my information. It's private to me, and they're
18 giving it or selling it to a third party. I think that
19 suffices. Again, the Court can differ. I understand that
20 and respect that.

21 THE COURT: All right. Let's hear from the
22 Defense.

23 MR. CHORBA: Your Honor, Chris Chorba on behalf of
24 the Toyota Defendants. With your permission, we divided
25 each of the three issues your Honor identified. I will

1 address Article III standing very briefly. Ms. Kiser, on
2 behalf of Ford, will address personal jurisdiction, and then
3 Ms. Falvey on behalf of GM will address the privacy claim if
4 that's permissible.

5 THE COURT: All right.

6 MR. CHORBA: Your Honor, I think your Honor is
7 right on in terms of the key cases and the lack of injury.
8 In fact, we don't have that. As you noted, we don't have a
9 single instance of an actual hack. We have a lot of
10 experiments, and it's noteworthy -- Mr. Stanley sought
11 judicial notice of those studies. All of them involved
12 extensive time and physical access to the vehicle. So this
13 is very hypothetical, very conjectural, and we're well --
14 we're well before the actual Article III injury and fact
15 standing bar, and I would submit, your Honor, Mr. Stanley is
16 addressing a number of parade of horrors saying "I hope
17 it's not your car." We would respectfully submit that the
18 parade of horrors flows not from dismissing this case but
19 allowing such a broad and limitless view of standing to
20 proceed beyond the pleadings, because if Mr. Stanley's
21 theory that this could happen some day in the future with a
22 sophisticated criminal hacking into a vehicle and taking
23 control, then there's really no limit and you can have any
24 number of low-tech hacks such as slashing tires, cutting the
25 vehicle's brake lines. Even outside of the vehicle context,

1 is the computer manufacturer liable, and is its products --
2 are their products defective because a computer virus may
3 infiltrate the computer? And, in addition to the cases you
4 cited, your Honor, Clapper, Onovy and Birdsong, we would
5 also just bring to your attention the Cropper case.
6 Although in that case the Ninth Circuit found standing
7 because there had been an actual theft of employee data from
8 the laptop, the panel specifically noted, and it's quoted at
9 length in our brief, that had the laptop not been stolen,
10 the panel specifically found there that we would find the
11 alleged injury to be far less credible, and that's exactly
12 what we have here. And we would respectfully submit, your
13 Honor, that this isn't a case where it's a misrepresentation
14 and it hasn't been alleged with specificity. Candidly, the
15 theory -- and we just heard Mr. Stanley say this. This is
16 the best he has. He had months, after filing this case in
17 March, to investigate, to amend his claims. We know what
18 the theory is, and we would respectfully submit that further
19 amendment would be futile. The core theory is known. It's
20 not something that can be fixed, and it's something that
21 should be dismissed with prejudice.

22 Unless your Honor has questions on economic injury,
23 I'll let my colleagues from Ford address personal
24 jurisdiction.

25 THE COURT: All right.

1 MS. KISER: Thank you, your Honor. We obviously
2 concur with the Court's analysis. First of all, I think
3 Plaintiffs conceded that specific jurisdiction is not
4 present here, which makes sense because we have two
5 Plaintiffs who are not California residents. There's no
6 nexus to California whatsoever. Their vehicles weren't made
7 here. The CAN buses aren't designed here. There's no nexus
8 between Ford's activities and the claims that they're
9 alleging. So specific jurisdiction we all agree does not
10 lie.

11 So then the question becomes is general jurisdiction
12 present, meaning is Ford so present in this state that it
13 can be sued for any reason in this state. And, of course,
14 under Daimler the answer is no. Daimler is so squarely on
15 point because for purposes of the decision, the Court
16 imputed Mercedes Benz U.S.A. contacts to Daimler, and
17 Mercedes is the largest seller of luxury vehicles in
18 California, and Mercedes has employees here and some
19 operations here.

20 In this case, as we have submitted to the Court, Ford
21 only had 302 employees here out of 187,000 employees
22 worldwide and between 75 and 80 thousand in the United
23 States. So, overall, this could not possibly be an
24 exceptional case. The Ninth Circuit has interpreted Daimler
25 to rule consistent with what your Honor is saying in

1 Martinez. Amiry is another case where a court -- the Court,
2 this Court, recognized that general jurisdiction doesn't lie
3 over a company even when it has significant contracts and --
4 and relatively higher percentage of employees. I think it
5 was like 250 out of 13,000 worldwide.

6 So, your Honor, unless you have any further questions,
7 I have nothing further.

8 THE COURT: No. Thank you.

9 MR. MALLOW: Your Honor, Michael Mallow also on
10 behalf of Ford. Understanding that all of my comments are
11 subject to your Honor's ruling on the personal jurisdiction
12 motion, the one item that I'm here to talk about and I think
13 it was glossed over by opposing counsel is the significance
14 of the regulatory requirements that all of these vehicles
15 have a CAN Bus. Core to the Plaintiff's allegations of
16 defect in this case is that the vehicles have a CAN Bus, not
17 that the CAN Buses work improperly, which distinguishes this
18 case from My Touch, and it's a major distinguishing factor,
19 but that they have the CAN Bus, and because they have a CAN
20 Bus and it's regulatorily required to have a CAN Bus, there
21 can be no economic injury, and essentially what we are
22 dealing with, as counsel said, is a hypothetical, and courts
23 are not really good at hypothetical. The hypotheticals,
24 future conduct, that is something that's relegated to the
25 legislator, to the regulators who are taking input from the

1 -- from those who have a stake in the issue, and they are
2 making decisions, and perhaps the decisions are not being
3 made as quickly as counsel would like them to be made, but
4 those are the right entities to be dealing with the
5 balancing that goes on between the positive effects of
6 technology and potential detriments of technology.

7 Without an actual case of controversy, without a
8 something has happened that the Court needs to figure out
9 what it is and whether somebody is responsible for it and
10 what compensation is due flowing from that, it doesn't
11 belong here. It belongs where it is right now.

12 THE COURT: Thank you, Mr. Mallow.

13 MS. FALVEY: So, your Honor, on behalf of GM, I
14 want to talk about the privacy claim. We already know
15 there's been no hack, no criminal intrusion, no data
16 compromised. And, for all of those reasons, I would submit
17 there is no privacy claim even if there were to be an
18 amendment here.

19 But if we look at it, I don't believe the geo location
20 information is a legally protected privacy interest, and,
21 importantly, the second element of a constitutional privacy
22 claim is a reasonable expectation of privacy, and Plaintiff
23 Neesom (phonetic), which is the owner of the Chevy Volt, the
24 GM car, has not alleged whether he is or isn't a participant
25 in OnStar, but if we assume he must be to have his

1 information tracked and participate in this, to view the
2 complaint in the most reasonable sense, he's alleged in the
3 complaint that Plaintiff Neesom understood the terms and
4 conditions under which that information would be collected,
5 and when you think about it, the only way OnStar can work to
6 go rescue you in an accident or watch to make sure your
7 tires are inflated properly so that you don't pop it out on
8 the road is to collect and know that information.

9 So, with consent, I don't see how he can amend to
10 allege anything more, your Honor.

11 THE COURT: I understand the argument. I just
12 think at the moment that it's flushed out well enough for me
13 to make a determination.

14 So, Mr. Stanley?

15 MR. STANLEY: I have five short responses, and
16 I'll start with the last one on privacy. I think, again, it
17 misses the point. And I understand you said it's not
18 flushed out, but as to the terms and conditions, yes, the
19 terms and conditions may allow it, but they don't specify
20 that they're giving it or selling it to third parties. It's
21 not -- the difference between OnStar using the information
22 to tell where you are versus giving it to some data
23 analytics company to tell Wal-Mart where to build, that's
24 the issue. We think we meet all -- everything there. We
25 think it's flushed out well enough, but I respect what the

1 Court says.

2 As to what Mr. Chorba was saying, no single hack, it's
3 really not true. There's been no single malicious hack or
4 black hat hacker. The truth is there have been lots of
5 hacks. There was a kid in Vegas who did it in 30 minutes
6 going to Radio Shack and spending \$60. There's an article
7 about it. There's lots of hacks.

8 The issue is not the hack. The issue -- or whether
9 it's a sophisticated hacker. The issue is that there's no
10 firewall whatsoever and that these are all susceptible to
11 the hacks.

12 Crotner actually helps us. The notion about had no
13 laptop been stolen, then there's no problem here. This is
14 not the case of the horse is still in the barn. All of
15 these -- first of all, they took the position that if a
16 third party's responsible, it shouldn't be their fault.
17 Well, Crotner, the Court actually held that a third party
18 was responsible. A bad person released the data in the
19 Starbucks case, and a third party was responsible, and they
20 said, even though he was involved, Starbucks was responsible
21 for it. So Crotner actually supports our case. In this
22 case, when I said the horse out of the barn, all of these --
23 all of these are defective, as I said before. So Crotner, I
24 think is a great case for us. Again, I encourage the Court
25 to go back to it.

1 Ford talked about jurisdiction, and I'll say it again.
2 I don't -- I don't think you can use it as a sword and a
3 shield. I don't think that Ford should be able to come into
4 the Northern District of California and sue businesses in
5 Case Number -- I have it in front of me, and we cited it to
6 the Court -- 3:15CV1068, and it's South City Motors versus
7 Automotive Industries Pension Fund, and Ford Motor Company,
8 a Delaware Corporation, is a Plaintiff. If they're going to
9 come and eat in your restaurant, they ought to be able to --
10 you ought to be able to --

11 THE COURT: I want you to know that's the rule on
12 general jurisdiction, though, Mr. Stanley.

13 MR. STANLEY: I do think --

14 THE COURT: I hear you. I hear you on the sort of
15 moral equivalence, but I'm not sure that that's the --
16 anyway, I -- I understand your point.

17 MR. STANLEY: We'll find the case on that. I may
18 supplement on this one.

19 Finally, there was a red herring that was served to you
20 in terms of a CAN Bus was regulatory required. First of
21 all, it's not true. There's nothing in the record about
22 that. There could be a BEAN, B-E-A-N, a LIN, L-I-N, a
23 FlexRay. Any bus that allows OBD2 access can be allowed in
24 the car, but it still misses the point. The point is I
25 don't care what's regulatory required. Nobody told them

1 that they didn't have to have a firewall. There's no
2 regulatory -- regulation saying don't have a firewall to
3 stop these people from coming into your car. I do think
4 this is an important case. I do think that we have met the
5 rules in Luhan, particularly if -- Kohl's is very clear
6 we've alleged economic injury. We literally tailored word
7 for word from the My Ford Touch where Judge Chen found
8 personal jurisdiction. You may not like the case, but, in
9 fact, we have alleged personal jurisdiction as exists in
10 other courts in the Northern District of California.

11 So I think we're good. You're the arbiter. You're the
12 one that makes the determination. You disagree. That's why
13 we got (**3:38) people to grade your homework on, but that's
14 -- that's our position. Thank you, sir.

15 THE COURT: All right. Thank you, Mr. Stanley. I
16 wish you good luck. And thank you all for your argument.
17 I'll try and get an order out pretty soon.

18 ALL: Thank you, your Honor.

19 (Proceedings adjourned at 3:38 p.m.)
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CERTIFICATE OF TRANSCRIBER

I certify that the foregoing is a true and correct transcript, to the best of my ability, of the above pages of the official electronic sound recording provided to me by the U.S. District Court, Northern District of California, of the proceedings taken on the date and time previously stated in the above matter.

I further certify that I am neither counsel for, related to, nor employed by any of the parties to the action in which this hearing was taken; and, further, that I am not financially nor otherwise interested in the outcome of the action.



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10 UNITED STATES DISTRICT COURT
 11 NORTHERN DISTRICT OF CALIFORNIA
 12 SAN FRANCISCO DIVISION

13 HELENE CAHEN, KERRY J. TOMPULIS,
 14 MERRILL NISAM, RICHARD GIBBS, and
 LUCY L. LANGDON,

15 Plaintiffs,

16 v.

17 TOYOTA MOTOR CORPORATION,
 18 TOYOTA MOTOR SALES, U.S.A., INC.,
 FORD MOTOR COMPANY, and GENERAL
 MOTORS LLC,

19 Defendants.
 20

CASE NO. 3:15-cv-01104-WHO

**DEFENDANTS TOYOTA MOTOR
 CORPORATION AND TOYOTA MOTOR
 SALES, U.S.A., INC.'S REPLY IN SUPPORT
 OF THEIR MOTION TO DISMISS
 PLAINTIFFS' FIRST AMENDED
 COMPLAINT**

Hearing

Date: November 3, 2015

Time: 3:00 p.m.

Courtroom: 2

The Hon. William H. Orrick

TABLE OF CONTENTS

Page

I. INTRODUCTION AND SUMMARY OF ARGUMENT 1

II. PLAINTIFF LACKS ARTICLE III STANDING TO PURSUE HER CLAIMS 2

 A. Plaintiff Does Not And Cannot Plead Any “Injury In Fact” 2

 1. *Plaintiff Fails To Allege Any “Certainly Impending Injury”* 3

 2. *Plaintiff Cannot Establish Article III Standing Based On Her Conclusory “Economic Injury” Allegations.*..... 4

 B. Plaintiff Cannot Base Article III Standing On Hypothetical Criminal Conduct..... 7

 C. Plaintiff’s Generalized Allegations About Defendants’ “Data Collection” Practices Also Are Legally Insufficient To Establish Article III Standing..... 8

III. PLAINTIFF’S CLAIMS ARE BARRED BY THE STATUTES OF LIMITATIONS..... 8

IV. THE COMPLAINT ALSO FAILS TO PLEAD ANY VIABLE STATE LAW CLAIMS..... 10

 A. Each Of Plaintiff’s Warranty Theories Fail As A Matter Of Law..... 10

 B. Plaintiff Also Cannot State Any Derivative Warranty Claims Through California’s Consumer Protection Statutes 12

 C. Plaintiff’s Conclusory And General Allegations Do Not State A Constitutional Invasion Of Privacy Claim..... 14

V. CONCLUSION 15

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

TABLE OF AUTHORITIES

Page(s)

Cases

1

2

3 *Ashcroft v. Iqbal*,

4 556 U.S. 662 (2009)..... 5

5 *Banga v. Equifax Info. Servs., LLC*,

6 No. 14-03038-WHO, 2015 WL 3799546 (N.D. Cal. June 18, 2015)..... 14

7 *Bardin v. DaimlerChrysler Corp.*,

8 136 Cal. App. 4th 1255 (2006) 12

9 *Birdsong v. Apple, Inc.*,

10 590 F.3d 955 (9th Cir. 2009)..... 4, 5, 6, 11, 13

11 *Chapman v. Pier 1 Imports (U.S.) Inc.*,

12 631 F.3d 939 (9th Cir. 2011)..... 5

13 *Clapper v. Amnesty Int’l USA*,

14 133 S. Ct. 1138 (2013)..... 3, 7

15 *Clemens v. DaimlerChrysler Corp.*,

16 534 F.3d 1017 (9th Cir. 2008)..... 9, 11

17 *Contreras v. Toyota Motor Sales U.S.A., Inc.*,

18 No. 09–06024–JSW, 2010 WL 2528844 (N.D. Cal. June 18, 2010),

19 *aff’d in part*, 484 F. App’x 116 (9th Cir. 2012)..... 5

20 *Daugherty v. Am. Honda Motor Co.*,

21 144 Cal. App. 4th 824 (2006) 12

22 *Davidson v. Kimberly-Clark Corp.*,

23 76 F. Supp. 3d 964 (N.D. Cal. 2014) 8

24 *Durkee v. Ford Motor Co.*,

25 No. 14–0617–PJH, 2014 WL 7336672 (N.D. Cal. Dec. 24, 2014) 9

26 *Eclectic Props. East, LLC v. Marcus & Millichap Co.*,

27 751 F.3d 990 (9th Cir. 2014)..... 15

28 *Ehrlich v. BMW of N. Am., LLC*,

801 F. Supp. 2d 908 (C.D. Cal. 2010) 10

Gilbert Fin. Corp. v. Steelform Contracting Co.,

82 Cal. App. 3d 65 (1978)..... 11

Goodman v. HTC Am., Inc.,

No. 11-1793-MJP, 2012 WL 2412070 (W.D. Wash. June 26, 2012)..... 15

Hill v. NCAA,

7 Cal. 4th 1 (1994) 14

Hinojos v. Kohl’s Corp.,

718 F.3d 1098 (9th Cir. 2013)..... 7

1 *In re iPhone App. Litig.*,
844 F. Supp. 2d 1040 (N.D. Cal. 2012) 15

2

3 *In re MyFord Touch Consumer Litig.*,
46 F. Supp. 3d 936 (N.D. Cal. 2014) 9, 10, 12, 14

4 *In re Sony Gaming Networks & Customer Data Sec. Breach Litig.*,
996 F. Supp. 2d 942 (S.D. Cal. 2014) 8

5

6 *In re Toyota Motor Corp. Unintended Acceleration Litig.*,
754 F. Supp. 2d 1145 (C.D. Cal. 2010) 4, 5

7 *In re Toyota Motor Corp. Unintended Acceleration Litig.*,
790 F. Supp. 2d 1152 (C.D. Cal. 2011) 6, 7

8

9 *Juniper Networks v. Shipley*,
No. 09–0696–SBA, 2009 WL 1381873 (N.D. Cal. May 14, 2009) 9

10 *Keilholtz v. Lennox Hearth Prods. Inc.*,
No. 08–00836–CW, 2009 WL 2905960 (N.D. Cal. Sept. 8, 2009) 9

11

12 *Krottner v. Starbucks Corp.*,
628 F.3d 1139 (9th Cir. 2010)..... 3, 4, 8

13 *Kwikset Corp. v. Super. Ct.*,
51 Cal. 4th 310 (2011) 7

14

15 *Lee v. Toyota Motor Sales, U.S.A., Inc.*,
992 F. Supp. 2d 962 (C.D. Cal. 2014) 5, 7

16 *Levitt v. Yelp! Inc.*,
765 F.3d 1123 (9th Cir. 2014)..... 15

17

18 *Long v. Graco Children’s Prods., Inc.*,
No. 13–01257–WHO, 2013 WL 4655763 (N.D. Cal. Aug. 26, 2013) 11

19 *Lujan v. Defenders of Wildlife*,
504 U.S. 555 (1992)..... 3, 7

20

21 *MacDonald v. Ford Motor Co.*,
37 F. Supp. 3d 1087 (N.D. Cal. 2014) 9

22 *Maya v. Centex Corp.*,
658 F.3d 1060 (9th Cir. 2011)..... 8

23

24 *Morgan v. Harmonix Music Sys., Inc.*,
No. 08–5211–BZ, 2009 WL 2031765 (N.D. Cal. July 7, 2009)..... 12

25 *N.L.R.B. v. Hotel & Rest. Emps. & Bartenders’ Union Local 531*,
623 F.2d 61 (9th Cir. 1980)..... 7

26

27 *Osborne v. Subaru of Am. Inc.*,
198 Cal. App. 3d 646 (1988)..... 11

28 *Parker v. Iolo Techs., LLC*,
No. 12-00984, 2012 WL 4168837 (C.D. Cal. Aug. 20, 2012)..... 5

1 *Public Citizen, Inc. v. NHTSA*,
2 489 F.3d 1279 (D.C. Cir. 2007),
3 subsequent determination, 513 F.3d 234 (D.C. Cir. 2008) 4

4 *Raines v. Byrd*,
5 521 U.S. 811 (1997) 5

6 *Seifi v. Mercedes-Benz USA, LLC*,
7 No. 12–5493–TEH, 2013 WL 2285339 (N.D. Cal. May 23, 2013) 9

8 *Smith v. Ford Motor Co.*,
9 462 F. App’x 660 (9th Cir. 2011) 13

10 *Soares v. Lorono*,
11 No. 12–05979–WHO, 2014 WL 723645 (N.D. Cal. Feb. 25, 2014) 11

12 *Stanford Hosp. & Clinics v. Humana, Inc.*,
13 No. 13-04924-HRL, 2015 WL 5590793 (N.D. Cal. Sept. 23, 2015) 7

14 *Swartz v. KPMG LLP*,
15 476 F.3d 756 (9th Cir. 2007) 5

16 *Taragan v. Nissan N. Am., Inc.*,
17 No. 09–3660–SBA, 2013 WL 3157918 (N.D. Cal. June 20, 2013) 10, 11

18 *Tietsworth v. Sears, Roebuck & Co.*,
19 720 F. Supp. 2d 1123 (N.D. Cal. 2010) 9, 11, 13

20 *United States v. Jones*,
21 132 S. Ct. 945 (2012) 15

22 *United States v. Pineda-Moreno*,
23 617 F.3d 1120 (9th Cir. 2010) 15

24 *Valencia v. Volkswagen Grp. of Am., Inc.*,
25 No. 15–00887–HSG, 2015 WL 4747533 (N.D. Cal. Aug. 11, 2015) 9

26 *Whitson v. Bumbo*,
27 No. 07-05597-MHP, 2009 WL 1515597 (N.D. Cal. Apr. 16, 2009) 5

28 *Wilson v. Hewlett-Packard Co.*,
668 F.3d 1136 (9th Cir. 2012) 12, 13

Xavier v. Philip Morris USA Inc.,
787 F. Supp. 2d 1075 (N.D. Cal. 2011) 12

Constitutional Provisions

U.S. Const. art. III, § 2 3

Statutes

Cal. Civ. Code § 1791.1(c) 10

Cal. Com. Code § 2316(2) 10

I. INTRODUCTION AND SUMMARY OF ARGUMENT

Plaintiff Helene Cahen’s lawsuit places the proverbial cart before the horse, and seeks preemptive redress for injuries that have not yet occurred, and that, by her own admission, may never occur. Ms. Cahen admits that she has not experienced any problems with her vehicle. She does not deny that her vehicle has performed in accordance with the terms of the limited warranty, as she voluntarily abandons her breach of express warranty claim. She also concedes that she “does not allege that her vehicle was ‘hacked,’” and that “many if not most of the cars driven by the class Cahen seeks to represent will not be the target of a hack that takes over the vehicle and causes physical injury.” (Opp’n at 2, 14.) As a result, there is no dispute that Plaintiff has driven her vehicle for over seven years without incident.

Nevertheless, Plaintiff brings this lawsuit because of her speculative fear that someday, a sophisticated cyber-criminal *may* be able to access and take control of certain vehicles manufactured by Defendants Toyota Motor Corporation and Toyota Motor Sales, U.S.A., Inc.’s (collectively, “Toyota”). But this “highly attenuated chain of possibilities” is not a “defect,” and it falls far short of the type of “*certainly impending* injury” the Supreme Court repeatedly has required to establish Article III standing. Ms. Cahen’s allegations are legally akin to claims that a computer is “defective” because a virus may infect it or that a door lock is “defective” because a criminal may break it open. That no vehicle can be designed to thwart every destructive or illegal act is not something for which Toyota can be liable, and Plaintiff’s “[a]llegations of *possible* future injury are not sufficient.”

Plaintiff attempts to side-step these sensible and well-established constitutional limitations by arguing that she simply needs to allege—in the most conclusory manner—that she “would not have purchased” her 2008 Lexus RX 400h or “paid as much as [she] did” had she known there was a theoretical chance her vehicle *could* be hacked. (FAC ¶¶ 66, 81, 89; Opp’n at 11–12.) If this theory were sufficient to establish Article III standing, any consumer could bring a claim against any manufacturer based on a theoretical, future injury simply because that consumer paid money for the product. But the Ninth Circuit and district courts have rejected similar attempts to manufacture Article III standing by relying on these types of conclusory allegations. And even if Plaintiff alleged monetary loss that arose from reports of real-world, non-experimental incidents involving her

1 vehicle—and she concedes there are none—courts nonetheless reject claims that seek preemptive
2 redress for injuries that could only be caused (if at all) by third-party criminal acts.

3 Nor may Plaintiff base Article III standing on her “data collection” claim. Her Opposition
4 repeats the same generic, conclusory allegations (FAC ¶¶ 49–50, 134–138; Opp’n at 12, 14), but
5 notably, the FAC *never* alleges that any of *Ms. Cahen*’s data was collected from *her* vehicle, or that
6 any data were wrongfully disclosed *by Toyota*. Instead, she pleads only that “*Defendants*” collected
7 and transmitted unspecified “personal data” from “drivers” or “*Plaintiffs*,” to unidentified “third
8 parties. (FAC ¶¶ 49–50, 135–138.) These generalized allegations are legally insufficient.

9 On top of these threshold Article III problems, which provide ample grounds for dismissal, all
10 of Plaintiff’s California law claims fail for additional reasons: *First*, the statutes of limitations bar all
11 of her claims. Plaintiff purchased her vehicle more than seven years ago, and the longest applicable
12 limitations period expired more than three years ago. The FAC’s conclusory averments are legally
13 insufficient and/or do not plead necessary elements to toll the statutes of limitations.

14 *Second*, Plaintiff’s implied warranty claims fail because: (a) any applicable implied warranty
15 has expired; (b) Plaintiff cannot plausibly allege that her vehicle was unfit for the ordinary purpose of
16 transportation; and (c) she lacks privity to pursue an implied warranty claim. Binding authority from
17 the Ninth Circuit and prior decisions from this Court have dismissed implied warranty claims on
18 these grounds, and Plaintiff offers no basis for reaching a different result here.

19 *Third*, Plaintiff cannot maintain any fraud-based claims because she does not allege that
20 Toyota knew about the alleged susceptibility to “hacking” at the time she purchased her vehicle in
21 2008, much less that this imagined “defect” presented a plausible safety risk.

22 *Fourth*, Plaintiff does not allege any facts to establish a constitutional privacy claim.

23 In sum, Plaintiff has not met her pleading burden, she cannot cure these deficiencies through
24 further amendment, and Toyota respectfully requests that the Court dismiss this action with prejudice.

25 **II. PLAINTIFF LACKS ARTICLE III STANDING TO PURSUE HER CLAIMS**

26 **A. Plaintiff Does Not And Cannot Plead Any “Injury In Fact”**

27 Plaintiff Cahen’s Opposition does nothing to rebut the fact that the FAC failed to plead *any*
28 cognizable “injury in fact” that satisfies “the irreducible constitutional minimum of standing” under

1 Article III. *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992); U.S. Const. art. III, § 2, cl. 1.
 2 To meet this burden, Plaintiff must allege more than a “highly attenuated chain of possibilities”;
 3 instead, the alleged injury must be “concrete, particularized, and actual or imminent.” *Clapper v.*
 4 *Amnesty Int’l USA*, 133 S. Ct. 1138, 1147–48 (2013). A “threatened injury must be *certainly*
 5 *impending* to constitute injury in fact,” and “[a]llegations of *possible* future injury’ are not
 6 sufficient.” *Id.* at 1147. As explained below, Ms. Cahen also cannot rely on conclusory allegations
 7 of “economic harm” as a legal panacea to establish Article III standing.

8 **1. Plaintiff Fails To Allege Any “Certainly Impending Injury”**

9 Plaintiff alleges exactly the type of theoretical injuries and “highly attenuated chain of
 10 possibilities” that are legally insufficient to establish an Article III “injury in fact.” *Id.* at 1148. The
 11 FAC alleges nothing more than the possibility that Plaintiff *may* suffer harm in the future *if* a
 12 sophisticated third party unlawfully accesses the CAN bus unit installed in her vehicle. (FAC ¶ 4.)
 13 Nowhere in the 200 paragraphs of the FAC is there *any* allegation that the CAN bus malfunctioned or
 14 was “hacked” in the seven years that Plaintiff owned her vehicle, or that she was harmed in any way.
 15 In fact, Plaintiff concedes that she did not experience any such “hack” and that she is not at risk of a
 16 future “hack.” (Opp’n at 2 (“Cahen does not allege that her vehicle was ‘hacked.’”); *id.* at 14 (“[i]t is
 17 true that *many if not most* of the cars driven by the class Cahen seeks to represent *will not be the*
 18 *target* of a hack that takes over the vehicle and causes physical injury”) (emphases added).)

19 Even before *Clapper*, the Ninth Circuit rejected attempts to base Article III standing on these
 20 types of remote, conjectural, or speculative harms. As explained (Mot. at 9), the Ninth Circuit has
 21 held that *actual* victims of data theft had Article III standing to pursue data breach claims, but that
 22 *potential* victims would not. See *Krottner v. Starbucks Corp.*, 628 F.3d 1139, 1143 (9th Cir. 2010)
 23 (explaining that “if no laptop had been stolen, and Plaintiffs had sued based on the risk that it *would*
 24 *be stolen at some point in the future*[,] we would find the threat far less credible” under Article III)
 25 (emphasis added). In response, Ms. Cahen contends that the plaintiffs in *Krottner* satisfied Article III
 26 “even though[] they did not allege that they had suffered a misuse of their personal data—harm they
 27 alleged they were only at risk of” suffering. (Opp’n at 13.) But the information *was stolen* in
 28 *Krottner*, and the Ninth Circuit specifically cautioned that if there had been no theft, there would be

1 no standing. 628 F.3d at 1143. Plaintiff, who concedes her vehicle was not “hacked,” is analogous to
2 the hypothetical victims discussed in *Krottner* who “sued based on the risk that [their data] *would be*
3 *stolen at some point in the future*,” which the court found insufficient to establish Article III standing.

4 And, contrary to Plaintiff’s assertion, Toyota does *not* suggest that Article III requires a
5 “serious bodily injury or death in a hacked Toyota car before anyone has standing[.]” (Opp’n at 14.)
6 But mere conjecture that an injury (however serious) could occur in the future is insufficient, and
7 Article III requires more than a hypothetical “worst-case scenario” that never has occurred. For
8 example, the Ninth Circuit rejected such a “worst case scenario” theory in another product “defect”
9 action, holding that plaintiffs lacked standing to challenge an Apple iPod as “defective” because it
10 “pose[d] an unreasonable risk of noise-induced hearing loss to its users” when no one suffered any
11 hearing loss or even alleged using the product in a way that could cause hearing loss. *Birdsong v.*
12 *Apple, Inc.*, 590 F.3d 955, 956, 959, 960 n.4 (9th Cir. 2009); *see also Public Citizen, Inc. v. NHTSA*,
13 489 F.3d 1279, 1293–94 (D.C. Cir. 2007), *subsequent determination*, 513 F.3d 234 (D.C. Cir. 2008)
14 (rejecting plaintiff’s theory of standing based on “an increased risk of death, physical injury, or
15 property damage from *future car accidents*”).¹

16 **2. Plaintiff Cannot Establish Article III Standing Based On Her Conclusory**
17 **“Economic Injury” Allegations.**

18 Next, Ms. Cahen attempts to base Article III standing on the conclusory and generic
19 allegations offered to support her state law UCL, CLRA, and FAL claims that “**Plaintiffs**” “would
20 not have purchased their Class Vehicles or would not have paid as much as they did to purchase
21 them” had they known that these vehicles *could* be hacked. (FAC ¶¶ 66, 81, 89; *see* Opp’n at 11–12.)
22 Plaintiff’s generic and conclusory allegations do not satisfy Article III for several reasons.

23 _____
24 ¹ Plaintiff also contends that a “manifested defect” is not “an absolute requirement for Article III
25 standing” (Opp’n at 13), but the case she cites—*In re Toyota Motor Corp. Unintended Acceleration*
26 *Litig.*, 754 F. Supp. 2d 1145 (C.D. Cal. 2010)—does not support her position. Notably, several
27 plaintiffs in that case allegedly experienced the purported problem—unintended acceleration (*id.*
28 at 1160)—which contrasts sharply with Plaintiff’s concession here that no one (including herself) has
suffered any “hack” or problem with their CAN bus units. The court also did not “entertain the
possibility” of future injury, as the plaintiffs did not assert standing on that basis. *Id.* at 1161 n.9. But
that possible, future injury is all that Ms. Cahen asserts here. (*See* FAC ¶ 4 (“***If*** an outside source,
such as a hacker,” broke into a Toyota vehicle and gained “physical access,” “the hacker ***could***
confuse one or more ECUs and . . . take control of basic functions of the vehicle”) (emphases added).)

1 First, as a preliminary matter, Plaintiffs’ allegations that they “have suffered an injury in fact,
 2 including the loss of money or property” (FAC ¶ 88), and that they “would not have purchased their
 3 Class Vehicles” or “paid as much as they did to purchase them” (*id.* ¶¶ 66, 81, 89) are generic,
 4 conclusory, and legally insufficient to satisfy Ms. Cahen’s pleading burden. *See, e.g., Ashcroft v.*
 5 *Iqbal*, 556 U.S. 662, 678 (2009); *Lee v. Toyota Motor Sales, U.S.A., Inc.*, 992 F. Supp. 2d 962, 973
 6 (C.D. Cal. 2014) (“conclusory allegations” about diminished value were “insufficient” to establish
 7 Article III standing); *Contreras v. Toyota Motor Sales U.S.A., Inc.*, No. 09–06024–JSW, 2010 WL
 8 2528844, at *6 (N.D. Cal. June 18, 2010) (“Plaintiffs[’] allegation that their vehicles are worth
 9 substantially less than they would be without the alleged defect is conclusory and unsupported by any
 10 facts.”), *aff’d in part*, 484 F. App’x 116, 118 (9th Cir. 2012) (“[T]he district court did not err in
 11 dismissing the complaint for lack of standing.”). Like the plaintiffs in these cases, Ms. Cahen offers
 12 *no facts* to substantiate her conclusory and implausible assertion that her 2008 vehicle was worth
 13 “less” than she paid for it, or that she would not have purchased it seven years ago had she known of
 14 some future risk of hacking that has yet to occur (if ever).

15 Nor does Ms. Cahen allege *anything* specific about Toyota, her experience, or her 2008 Lexus
 16 RX 400h. All of the allegations refer generically to all “Plaintiffs,” “Defendants,” and “Class
 17 Vehicles.” (FAC ¶¶ 66, 81, 89.) These generalized allegations are plainly insufficient.² Further,
 18 “Rule 9(b) does not allow a complaint to merely lump multiple defendants together but ‘require[s]
 19 plaintiffs to differentiate their allegations when suing more than one defendant . . . and inform each
 20 defendant separately of the allegations surrounding his alleged participation in the fraud.’” *Swartz v.*
 21 *KPMG LLP*, 476 F.3d 756, 764–65 (9th Cir. 2007).

22 Second, courts have rejected attempts to manufacture Article III standing based solely on

23 ² *See, e.g., Raines v. Byrd*, 521 U.S. 811 (1997) (holding that plaintiff must establish a “‘personal
 24 stake’ in the alleged dispute, and that the alleged injury suffered is particularized as to him”);
 25 *Chapman v. Pier 1 Imports (U.S.) Inc.*, 631 F.3d 939, 955 (9th Cir. 2011) (no Article III standing
 26 because plaintiff “does not even attempt to relate the alleged violations to his” situation); *Birdsong*,
 27 590 F.3d at 960 (no standing because “[t]he risk of injury the plaintiffs allege [was] not concrete and
 28 particularized as to themselves”); *In re Toyota*, 754 F. Supp. 2d at 1167 (plaintiffs must “show that
 they personally have been injured, ‘not that injury has been suffered by other, unidentified members of
 the class to which they belong and which they purport to represent’”); *Whitson v. Bumbo*, No. 07-
 05597-MHP, 2009 WL 1515597, at *6 (N.D. Cal. Apr. 16, 2009) (no Article III standing because
 plaintiff failed to allege that she experienced the alleged defect); *Parker v. Iolo Techs., LLC*, No. 12-
 00984, 2012 WL 4168837, at *4 (C.D. Cal. Aug. 20, 2012) (same).

1 allegations of economic injury that, at their core, rest on a *hypothetical* risk of *future* harm. For
2 example, the plaintiffs in *Birdsong* argued they had standing based on their conclusory assertion that
3 they would not have purchased their iPods had they known that the devices posed “an inherent risk of
4 hearing loss.” 590 F.3d at 961 & 960 n.4. The Ninth Circuit rejected this argument: “[T]he alleged
5 loss in value does not constitute a distinct and palpable injury that is actual or imminent because it
6 rests on a *hypothetical* risk of hearing loss to *other* consumers who may or may not choose to use their
7 iPods in a risky manner” in the future. *Id.* at 961 (emphases added). The same is true here: not only
8 does this entire lawsuit rest on a “hypothetical risk” of hacking, but Ms. Cahen, like the plaintiffs in
9 *Birdsong*, also fails “to allege [her vehicle] failed to do anything [it was] designed to do” or that she
10 (or anyone else) has “suffered or [is] substantially certain to suffer” an imminent injury. *Id.* at 959.

11 Plaintiff also cites *In re Toyota* to support her “economic harm” argument (Opp’n at 11, 12,
12 13), but she does not disclose to this Court that one year later, Judge Selna issued another decision in
13 that case that explicitly rejected this argument:

14 When the economic loss is predicated solely on how a product functions, *and the*
15 *product has not malfunctioned*, the Court agrees that ***something more is required***
than simply alleging an overpayment for a ‘defective’ product.

16 *In re Toyota Motor Corp. Unintended Acceleration Litig.*, 790 F. Supp. 2d 1152, 1165 n.11 (C.D. Cal.
17 2011) (emphases added). The court also agreed with Toyota that “buyers’ remorse is insufficient to
18 confer standing,” and that allegations of “overpayment, loss in value, or loss in usefulness” are
19 implausible if “[p]laintiffs do not allege that they experienced a safety defect, . . . that they tried to sell
20 or trade in the vehicle at a loss, and . . . that they have stopped using the vehicle owing to the safety
21 defect.” *Id.* at 1165. In those circumstances, the court asked (rhetorically), “[h]ow plausible are
22 allegations of ‘overpayment, loss in value, or loss of usefulness’?” *Id.* The same question arises here,
23 where Plaintiff does not allege *any* of these facts, nor could she in good faith contend that she
24 attempted to sell her 2008 vehicle at a loss or stopped driving it based on a future “hacking” risk.

25 Third, in another effort to rely solely on “economic harm” to establish her standing, Ms.
26 Cahen reaches outside of the product liability realm altogether to cite a series of false advertising
27 cases involving statutory standing under the UCL or FAL. But she does not allege any false or
28 misleading advertising in this case, and her Opposition expressly abandoned the only remaining

claim (“Breach of Contract/Warranty”) that purported to rely on any “representation” by Toyota. (Opp’n at 1.) Accordingly, her reliance on *Hinojos v. Kohl’s Corp.*, 718 F.3d 1098 (9th Cir. 2013), and *Kwikset Corp. v. Super. Ct.*, 51 Cal. 4th 310 (2011) (Opp’n at 11–12), is misplaced. In those cases, the asserted economic injury was that consumers allegedly were deceived by advertisements upon which they relied in making their purchases. *See Hinojos*, 718 F.3d at 1101 (challenging Kohl’s alleged practice of advertising merchandise as marked down from a “fictitious ‘original’ or ‘regular’ price”); *Kwikset*, 51 Cal. 4th at 316 (challenging “Made in the USA” label). These false advertising cases differ from products liability cases (like *Birdsong* and *In re Toyota*) because “the overpayment injury [in *Kwikset*] **does not depend on how the product functions** because ‘labels’ and ‘brands’ have independent economic value.” *In re Toyota*, 790 F. Supp. 2d at 1165 n.11 (emphasis added). Likewise, Ms. Cahen does not assert a “*Kwikset*-type allegation” that she was “duped into buying a different ‘type’ of vehicle.” *Id.* Her “buyers’ remorse” claim is plainly insufficient. *Id.* at 1165; *see also Lee*, 992 F. Supp. 2d at 972 (rejecting attempt to base Article III standing solely on an alleged “economic injury” when plaintiffs “have not had any negative experience with the [alleged defect] and have not identified any false representations” about the alleged defect).³

B. Plaintiff Cannot Base Article III Standing On Hypothetical Criminal Conduct

In addition to not pleading a concrete “injury in fact,” Plaintiff cannot meet the “traceability” or causation prong of Article III because her purported “injury” requires third-party criminal conduct. *See Lujan*, 504 U.S. at 560 (the injury must be “fairly . . . trace[able] to the challenged action of the defendant, and not . . . th[e] result [of] the independent action of some third party not before the court”); *Clapper*, 133 S. Ct. at 1150 (“We decline to abandon our usual reluctance to endorse standing theories that rest on speculation about the decisions of independent actors.”). As the Ninth Circuit

³ *Hinojos* addressed standing under the UCL and FAL, and Plaintiff relies exclusively on footnote 3, in which the court held that “[t]here is no difficulty in this case regarding Article III injury in fact, and neither party suggests otherwise.” 718 F.3d at 1104 n.3; *see also id.* (“The *only issue before us* . . . is whether this ‘injury in fact’ is an economic injury sufficient for purposes of statutory standing under the UCL and FAL.”) (emphasis added). Thus, *Hinojos* did not deal with Article III, and a case is not authority for propositions not presented. *See, e.g., N.L.R.B. v. Hotel & Rest. Emps. & Bartenders’ Union Local 531*, 623 F.2d 61, 68 (9th Cir. 1980); *Stanford Hosp. & Clinics v. Humana, Inc.*, No. 13-04924-HRL, 2015 WL 5590793, at *8 (N.D. Cal. Sept. 23, 2015). Further, *Kwikset* involved state law and could not resolve Article III standing. 51 Cal. 4th at 317 (noting it “granted review to address the standing requirements of the unfair competition and false advertising laws in the wake of” Prop. 64).

1 explained, “[i]n cases where a chain of causation ‘involves numerous third parties’ whose
2 ‘independent decisions’ collectively have a ‘significant effect’ on plaintiffs’ injuries, the Supreme
3 Court and this court have found the causal chain too weak to support standing at the pleading stage.”
4 *Maya v. Centex Corp.*, 658 F.3d 1060, 1070 (9th Cir. 2011). But that speculative causal chain is all
5 Plaintiff alleges here—she seeks to hold Toyota liable now for future, third-party criminal conduct.

6 In response, Plaintiff mistakenly relies on *Krottner* and *In re Sony Gaming Networks &*
7 *Customer Data Sec. Breach Litig.*, 996 F. Supp. 2d 942 (S.D. Cal. 2014), but she fails to appreciate
8 that in both cases, an **actual data breach had occurred**. *Krottner*, 628 F.3d at 1143; *In re Sony*, 996
9 F. Supp. 2d at 955. By contrast, Ms. Cahen alleges that an “attacker” “**could**” hack her vehicle in the
10 future (FAC ¶ 4), which is analogous to a preemptive lawsuit before any theft (*Krottner*) or data
11 breach (*Sony*) has occurred. No court would find Article III standing in such a case.⁴

12 **C. Plaintiff’s Generalized Allegations About Defendants’ “Data Collection” Practices Also**
13 **Are Legally Insufficient To Establish Article III Standing**

14 In another attempt to create an illusion of standing, Plaintiff pleads nothing more than a
15 generalized grievance that “Defendants” collected and transmitted unspecified “personal data” about
16 “Plaintiffs” to unidentified “third-parties.” (FAC ¶¶ 49–50; 135–138.) These allegations, which
17 Plaintiff does not bother to quote and are reproduced in the attached Appendix (*infra*), improperly
18 lump all “Defendants” together, and there is *nothing* specific to Ms. Cahen or Toyota. As discussed
19 above (*supra* n.2), these generic allegations cannot establish Article III standing.⁵ And as discussed
20 below (*infra* pp. 14–15), Plaintiff cannot state a claim for “invasion of privacy” in any event.

21 **III. PLAINTIFF’S CLAIMS ARE BARRED BY THE STATUTES OF LIMITATIONS**

22 Plaintiff’s claims are presumptively barred by the two-, three-, or four-year statute of

23 ⁴ Plaintiff also contends that “Toyota suggests that the Supreme Court changed the analysis for
24 standing in *Clapper* to rule out any theories connected to third-party actors.” (Opp’n at 13 (citing Mot.
25 at 11).) But Toyota made no such “suggest[ion].” (*Id.*) In fact, it explained that *Clapper reaffirmed*
the line of precedent affirmatively rejecting standing theories that depend upon the “unfettered choices
made by independent actors not before the court.” (Mot. at 11.)

26 ⁵ This specificity is particularly important here, because Plaintiff cannot in good faith allege any
27 “data collection” relating to her 2008 Lexus RX 400h. Nor can she pursue class action claims based
28 solely on a generalized report that is not specific to any defendant. *See, e.g., Davidson v. Kimberly-*
Clark Corp., 76 F. Supp. 3d 964, 975–76 (N.D. Cal. 2014) (conclusory allegations based on news
reports not specific to defendant and a few comments posted to defendant’s website were insufficient
“to meet the pleading requirements of Rule 8”).

1 limitations. (See Mot. at 13–14.) Plaintiff’s brief response reiterates her conclusory “concealment”
 2 allegations and offers a new theory (“future performance”) that is not pleaded in the FAC. (Opp’n
 3 at 20–21.)⁶ Neither exception applies to toll her time-barred claims:

4 First, Plaintiff has not met her pleading burden to toll the statute of limitations based on
 5 alleged “concealment.” The FAC alleges in the most conclusory manner that “[a]ny applicable
 6 statute(s) of limitations has been tolled by Defendants’ knowing and active concealment and denial of
 7 the facts alleged herein.” (FAC ¶ 26.) Once again, this allegation is not specific to any plaintiff or
 8 defendant and it fails for that reason alone. (*Supra* p. 5 & n.2.) Nor does the FAC plead the requisite
 9 elements of (1) **when** Ms. Cahen discovered that her CAN bus unit was susceptible to hacking,
 10 (2) **how** she discovered the alleged “defect,” or (3) **why** she did not discover it sooner. *Clemens v.*
 11 *DaimlerChrysler Corp.*, 534 F.3d 1017, 1024 (9th Cir. 2008); *Keilholtz v. Lennox Hearth Prods. Inc.*,
 12 No. 08–00836–CW, 2009 WL 2905960, at *5 (N.D. Cal. Sept. 8, 2009). By contrast, in the primary
 13 case upon which Ms. Cahen relies (*In re MyFord Touch Consumer Litig.*, 46 F. Supp. 3d 936, 961
 14 (N.D. Cal. 2014) (Opp’n at 20)), the plaintiffs specifically alleged that “Ford pretended to fix the
 15 problems with [the system] instead of actually admitting that the problems could not be fixed,” and
 16 that Ford kept critical information “secret.” Ms. Cahen alleges nothing of the sort here, or “active
 17 conduct by the defendant ‘above and beyond the wrongdoing upon which’” she bases her claim.
 18 *Juniper Networks v. Shipley*, No. 09–0696–SBA, 2009 WL 1381873, at *5 (N.D. Cal. May 14, 2009).

19 Second, Plaintiff invokes a new tolling doctrine (the “future performance” exception) in her
 20 brief. (Opp’n at 21.) As an initial matter, “[i]t is axiomatic that the complaint may not be amended
 21 by briefs in opposition to a motion to dismiss.” *Tietzworth v. Sears, Roebuck & Co.*, 720 F. Supp. 2d
 22 1123, 1145 (N.D. Cal. 2010). Plaintiff also cannot obtain leave to plead this theory, because the
 23 “future performance” exception to the statute of limitations does *not* apply to implied warranties⁷ and

24 ⁶ Apparently, Plaintiff has abandoned her “delayed discovery” allegations (FAC ¶ 26), as she does
 25 not address this doctrine in response to Toyota’s Motion. (See Opp’n at 20–21; Mot. at 14–15.)

26 ⁷ See, e.g., *MacDonald v. Ford Motor Co.*, 37 F. Supp. 3d 1087, 1100 (N.D. Cal. 2014) (“Courts have
 27 consistently held [that an implied warranty] is not a warranty that ‘explicitly extends to future
 28 performance of the goods.’”); *Seifi v. Mercedes-Benz USA, LLC*, No. 12–5493–TEH, 2013 WL
 2285339, at *6 (N.D. Cal. May 23, 2013) (same); *Durkee v. Ford Motor Co.*, No. 14–0617–PJH, 2014
 WL 7336672, at *5 (N.D. Cal. Dec. 24, 2014) (same); *Valencia v. Volkswagen Grp. of Am., Inc.*,
 No. 15–00887–HSG, 2015 WL 4747533, at *8 (N.D. Cal. Aug. 11, 2015) (“The Court respectfully

[Footnote continued on next page]

1 she voluntarily abandoned her express warranty claims (Opp'n at 1).

2 **IV. THE COMPLAINT ALSO FAILS TO PLEAD ANY VIABLE STATE LAW CLAIMS**

3 Finally, all of Ms. Cahen's California state law warranty, consumer protection (UCL/FAL/
4 CLRA), and invasion of privacy claims fail as a matter of law.

5 **A. Each Of Plaintiff's Warranty Theories Fail As A Matter Of Law**

6 At the outset of her brief (*see* Opp'n at 1), Plaintiff confirms that she has abandoned all of her
7 express warranty claims, including "Count V—Breach of Contract/Common Law Warranty."

8 Nor may Plaintiff plead an implied warranty: *First*, any implied warranties applicable to her
9 2008 Lexus RX 400h expired no later than September 2012. Toyota limited "[a]ny implied warranty
10 of merchantability . . . to the duration of the[] written warranties" (Toyota's Req. for Judicial Notice
11 ("RJN"), Ex. 1 [Dkt. 50-2] at 17), consistent with the Song-Beverly Act and the UCC (Cal. Civ. Code
12 § 1791.1(c); Cal. Com. Code § 2316(2); Mot. at 16–17). Plaintiff *ignores* this argument, and as noted
13 (*supra* p. 9 & n.7), implied warranties also have no "future performance" exception.

14 *Second*, Plaintiff cannot bring an implied warranty claim because she does not (and cannot)
15 allege that her 2008 Lexus RX 400h was unfit for the ordinary purpose of providing transportation.
16 (Mot. at 18–19.) She has driven her vehicle for seven years without it "manifest[ing] a defect that is
17 so basic it renders the vehicle unfit for its ordinary purpose of providing transportation." *Taragan v.*
18 *Nissan N. Am., Inc.*, No. 09–3660–SBA, 2013 WL 3157918, at *4 (N.D. Cal. June 20, 2013) (quoting
19 *Am. Suzuki Motor Corp. v. Super. Ct.*, 37 Cal. App. 4th 1291, 1296 (1995)).

20 To overcome this common-sense bar, Plaintiff again relies solely on *MyFord Touch*. (Opp'n
21 at 19.) But the plaintiffs in that case alleged "various problems with the [touchscreen] system,"
22 including: (i) "the entire system freezing up or crashing"; (ii) an inability to use "the navigation
23 technology, the radio, the rearview camera, and the defroster"; (iii) "frequent screen black outs,
24 nonresponsiveness to touch or voice commands, locking up of the rearview camera, and inaccurate
25 directions on the navigation system." 46 F. Supp. 3d at 949. By contrast, after seven years, Ms.

26 _____
27 [Footnote continued from previous page]
28 disagrees with the reasoning of *Ehrlich [v. BMW of N. Am., LLC]*, 801 F. Supp. 2d 908 (C.D. Cal. 2010)... and declines to insert an unwritten exception in [Cal. Civ. Code §] 2725.").

1 Cahen cannot identify any problem with her CAN bus unit or any other vehicle component—only her
2 fear of a future “hacking.” As Judge Armstrong explained in rejecting a similar theory (a speculative,
3 future “‘risk’ that [certain Nissan] vehicles equipped with the Intelligent Key system [would] roll
4 away if the operator fail[ed] to place the transmission in park after shutting off the engine”), “[i]t is
5 **not enough** to allege that a product line contains a defect or that a product is at risk for manifesting
6 this defect; rather, the plaintiffs must allege that their product **actually exhibited the alleged defect.**”
7 *Taragan*, 2013 WL 3157918, at *4 (emphases added). *See also Birdsong*, 590 F.3d at 959
8 (upholding dismissal of implied warranty of merchantability claim as “plaintiffs do not allege the
9 iPods failed to do anything they were designed to do nor do they allege that they, or any others, have
10 suffered or are substantially certain to suffer inevitable hearing loss or other injury from iPod use”).

11 Third, because Plaintiff purchased her vehicle from a dealer and not directly from Toyota, she
12 lacks privity to pursue an implied warranty claim. (Mot. at 19–20; FAC ¶ 12.) Plaintiff may not like
13 this result, but it is required by settled California and Ninth Circuit law. *See, e.g., Clemens*, 534 F.3d
14 at 1021, 1023–24 (dismissing implied warranty claim against vehicle manufacturer for lack of privity
15 because plaintiff purchased his vehicle from an “independent Dodge dealership”); *Osborne v. Subaru*
16 *of Am. Inc.*, 198 Cal. App. 3d 646, 656 & n.6 (1988) (barring vehicle owners from recovering on an
17 implied warranty theory against manufacturer); *Tietsworth*, 720 F. Supp. 2d at 1142 (dismissing
18 Song-Beverly implied warranty of merchantability claim against manufacturer for lack of privity).

19 Ms. Cahen acknowledges that this Court has rejected her attempt to manufacture a “third-
20 party beneficiary” exception to California warranty law (Opp’n at 20, citing *Long v. Graco*
21 *Children’s Prods., Inc.*, No. 13–01257–WHO, 2013 WL 4655763, at *12 (N.D. Cal. Aug. 26, 2013)),
22 a result this Court has reached not once but at least twice. *See, e.g., Soares v. Lorono*, No. 12–
23 05979–WHO, 2014 WL 723645, at *4 (N.D. Cal. Feb. 25, 2014) (citing *Clemens* and dismissing
24 UCC implied warranty claim for lack of vertical privity). But she asks this Court to revisit its own
25 holdings as well as the Ninth Circuit’s binding decision in *Clemens*, arguing that *Gilbert Fin. Corp. v.*
26 *Steelform Contracting Co.*, 82 Cal. App. 3d 65 (1978)—which predates *Clemens* by three decades—
27 mandates a “third-party beneficiary” exception. Plaintiff also argues that *MyFord Touch* concluded
28 that *Clemens* was not binding because it was “not clear whether the plaintiff [in *Clemens*] argued for

1 application of the third-party beneficiary exception,” and *Gilbert* is not referenced in the opinion. 46
 2 F. Supp. 3d at 983–84. But the dispute in *Gilbert* arose out of a contract for services, and “[n]o
 3 reported California decision has held that the purchaser of a consumer product may dodge the privity
 4 rule by asserting that he or she is a third-party beneficiary of the distribution agreements linking the
 5 manufacturer to the retailer who ultimately made the sale.” *Xavier v. Philip Morris USA Inc.*, 787 F.
 6 Supp. 2d 1075, 1083 (N.D. Cal. 2011) (distinguishing *Gilbert*). This Court should continue to follow
 7 binding Ninth Circuit law—especially in cases (like *Clemens* and this case) involving the purchase of
 8 a vehicle from an independent dealership.

9 **B. Plaintiff Also Cannot State Any Derivative Warranty Claims Through California’s**
 10 **Consumer Protection Statutes**

11 As Toyota established (Mot. at 20–22), Plaintiff cannot bring statutory (UCL, FAL, CLRA)
 12 and common law fraud claims based on a purported failure to disclose the alleged “defect” in the
 13 CAN bus. Binding California law forecloses these types of claims if the defendant did not have any
 14 duty to notify customers of the purported “defect.” (Mot. at 20, citing *Daugherty v. Am. Honda*
 15 *Motor Co.*, 144 Cal. App. 4th 824, 839 (2006); *Morgan v. Harmonix Music Sys., Inc.*, No. 08–5211–
 16 BZ, 2009 WL 2031765, at *5 (N.D. Cal. July 7, 2009); and *Bardin v. DaimlerChrysler Corp.*, 136
 17 Cal. App. 4th 1255, 1276 (2006).) As the Ninth Circuit has held, to establish a duty to disclose the
 18 alleged “defect,” Plaintiff must allege that (1) the purported defect poses “an unreasonable safety
 19 hazard” *and* (2) that defendant was aware of the alleged “defect at the time of the sale.” *Wilson v.*
 20 *Hewlett-Packard Co.*, 668 F.3d 1136, 1142–43, 1145 (9th Cir. 2012); *Daugherty*, 144 Cal. App. 4th
 21 at 835–36 (same). Plaintiff cannot establish either element here.

22 First, Plaintiff contends very generally that the risk of vehicle “hacking” establishes a safety
 23 risk because a criminal could “take control of *all* essential functions of the vehicle.” (Opp’n at 16.)
 24 But she fails to identify a single real-world incident in which this occurred. Her speculative
 25 allegations of a future theoretical risk again contrast starkly with the sole authority upon which she
 26 relies—*MyFord Touch*. In that case, the plaintiffs cited a failure rate of 50% and specifically alleged
 27 that they experienced these problems, including a failure of the backup camera “while driving.” 46 F.
 28 Supp. 3d at 949, 957. Here, by contrast, the alleged “defect” is that Toyota did not make its vehicles

1 impregnable to criminals. (*See, e.g.*, FAC ¶ 4 (alleging that “**if** an outside source, such as a hacker,
 2 were able to send CAN packets to ECUs on a vehicle’s CAN bus, the hacker **could** . . . take control of
 3 basic functions of the vehicle away from the driver”) (emphases added).) As *Birdsong* held, the
 4 alleged risk of hearing loss (undeniably a “safety” issue in the abstract) did not create a duty to
 5 disclose in the context of an implied warranty claim because the plaintiffs did “not claim that they, or
 6 anyone else, [had] suffered” the alleged injury. 590 F.3d at 961. And, in *Smith v. Ford Motor Co.*,
 7 the Ninth Circuit again rejected an attempt to invoke a speculative, future injury to create a duty to
 8 disclose, because “the ‘safety’ concerns raised by plaintiffs were **too speculative**, as a matter of law,
 9 to amount to a safety issue giving rise to a duty of disclosure.” 462 F. App’x 660, 663 (9th Cir. 2011)
 10 (emphasis added). Here, as in *Birdsong* and *Smith*, Plaintiff has failed to plead facts showing that
 11 “any identifiable member of the putative class actually experienced a malfunction” that manifested
 12 the alleged safety risk. *Tietzworth*, 720 F. Supp. 2d at 1133–34. And she ignores that Toyota cannot
 13 be held liable on an omission theory when it expressly *disclaimed* any warranty for vehicle intrusion
 14 (including “[a]lteration or tampering”). (RJN, Ex. 1 [Dkt. 50-2] at 19; *see also* Mot. at 21.)⁸

15 Second, Plaintiff does not allege *any* facts showing that Toyota “knew of the alleged defect at
 16 the time of sale.” *Wilson*, 668 F.3d at 1145, 1147–48. The only allegations that she cites (FAC ¶¶ 5,
 17 36) are generic to all “Defendants,” without anything specific to Toyota. These allegations are
 18 indistinguishable from the legally deficient allegations in *Wilson* that defendant “‘became familiar
 19 with’ and was ‘on notice’ of the defect plaguing the [HP] [l]aptops at the time of manufacture and as
 20 early as 2002” 668 F.3d at 1146–47. And nowhere does Plaintiff contend that Toyota was
 21 aware of the risk of “hacking” in September 2008 when she purchased her Lexus RX 400h. (FAC
 22 ¶ 12.) In fact, the “specific example” from the FAC that Plaintiff cites to establish Toyota’s
 23 knowledge was not published until 2013—five years *after* she purchased her vehicle. (Opp’n at 16;
 24 FAC ¶¶ 37–38.) Plaintiff also cites a 2011 study that references other research as early as 2002

25 _____
 26 ⁸ Plaintiff also cannot avoid the “safety” element by asserting that Toyota’s “exclusive knowledge of
 27 material facts not known to” her is sufficient to create a duty to disclose. (Opp’n at 17.) The plaintiffs
 28 in *Wilson* made the same argument, and the Ninth Circuit rejected it. 668 F.3d at 1142 (“[F]or the
 omission to be material, the failure **must [still] pose ‘safety concerns’**”) (emphasis added). Further,
 broadening the duty in this manner “would eliminate term limits on warranties, effectively making
 them perpetual or at least for the ‘useful life’ of the product.” *Id.* at 1141.

(Opp’n at 16–17), but that study does not mention Toyota or establish the company’s knowledge in 2008, when Plaintiff purchased her vehicle. At best, that study simply reinforces the speculative nature of Plaintiff’s claim. (See Pls.’ RJN (Dkt. 55-5), Ex. 5, at 16 (“[A]n adversary *can* seriously impact the safety of a vehicle *if* he or she is capable of sending packets on the car’s internal wired network, and numerous other papers have discussed *potential* security risks with *future* (wired and wireless) automobiles in the *abstract* or on the bench.”) (emphases added).)⁹

C. Plaintiff’s Conclusory And General Allegations Do Not State A Constitutional Invasion Of Privacy Claim

Plaintiff cannot establish the essential elements to state a constitutional privacy claim: “(1) a legally protected privacy interest; (2) a reasonable expectation of privacy in the circumstances; and (3) conduct by defendant constituting a serious invasion of privacy.” *Hill v. NCAA*, 7 Cal. 4th 1, 39–40 (1994). As explained (*supra* p. 8), Plaintiff fails to address what, if any, specific “personal data” about her that the Defendants “collected and transmitted to third parties.” (FAC ¶¶ 135–36.) This is reason enough for this Court to reject this claim, as it has done before. See, e.g., *Banga v. Equifax Info. Servs., LLC*, No. 14-03038-WHO, 2015 WL 3799546, at *11 (N.D. Cal. June 18, 2015) (dismissing invasion of privacy claim because plaintiff did “not adequately allege[] what, if any, offensive and objectionable facts about her were disclosed to third parties.”).

The Opposition also does not respond to Toyota’s argument that Plaintiff lacked a reasonable expectation of privacy in any data allegedly collected by Defendants. (Mot. at 23.) Instead, she admits that “Plaintiffs” knew of these practices from disclosures “in owners’ manuals, online ‘privacy statements,’ and terms & conditions of specific feature activations[.]” (FAC ¶ 50; Opp’n at 10.) These disclosures defeat any expectation of privacy. *Hill*, 7 Cal. 4th at 42 (collegiate athletes had no reasonable expectation of privacy given disclosures of drug tests at beginning of athletic season).

Plaintiff essentially concedes that she has not alleged any specific facts by asking the Court to “*reasonably infer* that simply by driving, [she] is constantly creating data about her personal travel locations” and concludes that “Toyota collects, aggregates, and disseminates” this data without any

⁹ Plaintiff again cites *MyFord Touch* to establish this “knowledge” element, but the facts of that case are readily distinguishable. Among other reasons, Ford conceded that plaintiffs would not have had full access to information regarding the alleged “defect” with the system, “because the full content of the TSBs was not publicly available on the NHTSA website.” 46 F. Supp. 3d at 960.

1 supporting factual allegations. (Opp’n at 22 (emphasis added).) But Plaintiff has not alleged any
 2 facts upon which this Court can “infer” anything—again, her allegations are not specific to any
 3 defendant or plaintiff. (*Supra* pp. 5, 8.) Accordingly, her requested inference is neither plausible nor
 4 supported by the facts alleged in the complaint. *See, e.g., Eclectic Proprs. East, LLC v. Marcus &*
 5 *Millichap Co.*, 751 F.3d 990, 996 (9th Cir. 2014) (“[W]hen faced with two possible explanations,
 6 only one of which can be true and only one of which results in liability, plaintiffs cannot offer
 7 allegations that are merely consistent with their favored explanation but are also consistent with the
 8 alternative explanation.”); *Levitt v. Yelp! Inc.*, 765 F.3d 1123, 1135–36 (9th Cir. 2014) (same).

9 Plaintiff does not allege “ongoing, continuous disclosure of location information” (Opp’n
 10 at 23), but rather a “*transactional* exchange” of geolocation information (*id.* at 21) that does “not
 11 constitute an egregious breach of social norms.” *In re iPhone App. Litig.*, 844 F. Supp. 2d 1040,
 12 1063 (N.D. Cal. 2012). Her allegations that “Defendants” collected location data and distributed it to
 13 third parties are legally insufficient to support an invasion of privacy claim.¹⁰

14 V. CONCLUSION

15 Plaintiff cannot meet the Article III standing requirements under binding precedent, all of her
 16 state law claims are time-barred, and she fails to plead any warranty, consumer protection, or
 17 invasion of privacy claim as a matter of California law. Toyota respectfully requests the Court
 18 dismiss this action with prejudice.

19 DATED: October 14, 2015

GIBSON, DUNN & CRUTCHER LLP

By: /s/ Christopher Chorba
 CHRISTOPHER CHORBA

21 102003893.15

Attorneys for Defendants Toyota Motor Corporation
and Toyota Motor Sales, U.S.A., Inc.

23 ¹⁰ *Goodman v. HTC Am., Inc.*, No. 11-1793-MJP, 2012 WL 2412070 (W.D. Wash. June 26, 2012)
 24 (Opp’n at 1, 21–23) does not support Plaintiff’s position. The plaintiff in that case sued one defendant
 25 (a smartphone manufacturer) and alleged that its products operated as “surreptitious tracking devices”
 26 to “transmit ‘fine’ location data . . . to track their movements, including where they live, work, dine,
 and shop”; “build profiles about them”; and “sell this information to third parties.” *Id.* at *1. These
 very specific, particularized allegations stand in stark contrast with Ms. Cahen’s generalized
 allegations in this case.

27 Further, *United States v. Jones*, 132 S. Ct. 945 (2012), and Judge Kozinski’s dissent in *United*
 28 *States v. Pineda-Moreno*, 617 F.3d 1120 (9th Cir. 2010) (cited in Opp’n at 22), are not relevant here,
 as those decisions involved law enforcement’s violation of the Fourth Amendment by attaching GPS
 tracking devices to a suspect’s vehicle that potentially jeopardized the suspect’s life.

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Appendix

Plaintiffs’ Allegations Regarding Defendants’ Purported “Data Collection” Practices

- FAC ¶ 49: “Without drivers ever knowing, *Defendants* also collect data from their vehicles and share the data with third parties. While *Defendants* agreed to adopt voluntary privacy guidelines governing their collection and sharing of this data, the American Automobile Association and Senator Markey of Massachusetts stated that these measures are insufficient, as they do not provide drivers the right to control their own information and fail to allow drivers to withhold sensitive information from collection in the first instance.”
- FAC ¶ 50: “As detailed in Sen. Markey’s report, *Defendants* collect large amounts of data on driving history and vehicle performance, and they transmit the data to third-party data centers without effectively securing the data. *Defendants* only make drivers aware of such data collection in owners’ manuals, online ‘privacy statements,’ and terms & conditions of specific feature activations—but drivers can’t comprehensively opt out of all collection of data by *Defendants*, and in the limited situations where opting out is permitted, the driver must turn off a feature or cancel a service subscription.”
- FAC ¶ 135: “*Plaintiffs* maintain a legally protected privacy interest in their personal data collected and transmitted to third parties by *Defendants*, including but not limited to the geographic location of their vehicles at various times.”
- FAC ¶ 136: “*Defendants* knew, or should have known, that *Plaintiffs* had a reasonable expectation of privacy in their personal data, and that *Defendants*’ collection and transmission to third parties of such data constituted a violation of *Plaintiffs*’ constitutionally protected right to privacy.”
- FAC ¶ 137: “*Defendants*’ wrongful conduct as alleged herein, without regard to whether *Defendants* acted intentionally or with any other particular state of mind or scienter, renders *Defendants* liable to *Plaintiffs* for the wrongful violations of *Plaintiffs*’ constitutionally protected right to privacy and for the damages caused thereby. In doing the acts alleged herein, *Defendants* acted intentionally or with conscious disregard for *Plaintiffs*’ right to privacy.”

(FAC ¶¶ 49–50, 135–137 (emphases added).)

CERTIFICATE OF SERVICE

I, Christina Yang, declare as follows:

I am employed in the County of Los Angeles, State of California, I am over the age of eighteen years and am not a party to this action; my business address is 333 South Grand Avenue, Los Angeles, CA 90071-3197, in said County and State. On October 14, 2015, I served the

DEFENDANTS TOYOTA MOTOR CORPORATION AND TOYOTA MOTOR SALES, U.S.A., INC.'S REPLY IN SUPPORT OF THEIR MOTION TO DISMISS PLAINTIFFS' FIRST AMENDED COMPLAINT

on the parties stated below, by the following means of service:

Table with 2 columns: Plaintiff/Defendant Name and Address, and Attorneys Name and Firm. Rows include Marc R. Stanley (Stanley Iola, LLP), Martin Darren Woodward (Stanley Law Group), Matthew J. Zevin (Stanley Law Group), Donald H. Slavik (Slavik Law Firm, LLC), Michael Mallow (Sidley Austin LLP), Gregory Oxford (Isaacs Clouse Crose & Oxford LLP), Douglas Warren Sullivan (Crowell & Moring LLP), and Cheryl Adams Falvey (Kathleen Taylor Sooy).

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- BY ELECTRONIC TRANSFER TO THE CM/ECF SYSTEM:** On this date, I electronically uploaded a true and correct copy in Adobe “pdf” format the above-listed document(s) to the United States District Court’s Case Management and Electronic Case Filing (CM/ECF) system. After the electronic filing of a document, service is deemed complete upon receipt of the Notice of Electronic Filing (“NEF”) by the registered CM/ECF users.
- I am employed in the office of Christopher Chorba, a member of the bar of this court, and that the foregoing document(s) was(were) printed on recycled paper.
- (FEDERAL)** I declare under penalty of perjury that the foregoing is true and correct.

Executed on October 14, 2015.

/s/ Christina Yang
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11 **UNITED STATES DISTRICT COURT**

12 **NORTHERN DISTRICT OF CALIFORNIA-SAN FRANCISCO DIVISION**

13 HELENE CAHEN, KERRY J. TOMPULIS,
14 MERRILL NISAM, RICHARD GIBBS, and
LUCY L. LANGDON, on Behalf of
15 Themselves and All Others Similarly
Situated,

16 Plaintiffs,

17 v.

18 TOYOTA MOTOR CORPORATION,
19 TOYOTA MOTOR SALES, U.S.A., INC.,
FORD MOTOR COMPANY, GENERAL
20 MOTORS LLC, and DOES 1 through 50,

21 Defendants.

CASE NO. 15-cv-01104-WHO

**PLAINTIFFS' OPPOSITION TO
DEFENDANT TOYOTA'S MOTION TO
DISMISS PLAINTIFFS' FIRST AMENDED
COMPLAINT**

CLASS ACTION

Date: November 3, 2015
Time: 3:00 p.m.
Judge: Hon. William H. Orrick
Ctrl: 2

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TABLE OF CONTENTS

1

2

3

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7

8

9

10

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12

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16

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18

19

20

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	<u>Page</u>
STATEMENT OF ISSUES TO BE DECIDED (L.R. 7-4(A)(3))	1
MEMORANDUM OF POINTS AND AUTHORITIES	2
I. INTRODUCTION	2
II. SUMMARY OF CAHEN’S KEY ALLEGATIONS	3
A. Using Old Technology, Toyota Builds and Sells Unsafe Vehicles, and It Violates Drivers’ Privacy Rights	4
B. How Toyota’s Computerized Vehicles Work	5
C. Toyota’s Computerized Vehicles Are Susceptible to Dangerous Hacking	6
D. Toyota Has Known for Years that Its Computerized Vehicles Can Be Hacked	7
E. Despite Selling Unsafe Computerized Vehicles, Toyota Touts Their Safety	9
F. Toyota Collects and Transmits Vehicle Data in Violation of Privacy Rights	9
III. ARGUMENT	10
A. Cahen Has Article III Standing To Bring All Her Claims	10
1. The Article III Standard at the Pleading Stage Requires General Factual Allegations of Injury	10
2. Cahen’s Allegations Meet the Article III Standard.....	11
3. Toyota’s Case Law Does Not Support Its Challenge To Standing	12
B. Cahen’s Allegations Support All Of Her Fraud-Based Claims	15
1. Cahen Establishes Materiality.....	15
2. Cahen Sufficiently Alleges Toyota Had Knowledge.....	16
3. Cahen Establishes That Toyota Failed To Discharge Its Duty To Disclose.....	17
C. Cahen’s Allegations Support Her Implied Warranty Claims.....	18
D. Cahen’s Claims Are Not Barred by Limitations	20
E. Cahen Sufficiently Alleges That Toyota Invaded Her Right To Privacy	21
IV. CONCLUSION.....	23

TABLE OF AUTHORITIES

CASES

1

2

3 *Aguilar v. Gen. Motors, LLC*
No. 13-cv-00437-LJO-GS, 2013 WL 5670888 (E.D. Cal. Oct. 16, 2013)19

4

5 *Belluomini v. CitiGroup, Inc.*
No. CV 13-01743 CRB, 2013 WL 3855589 (N.D. Cal. July 24, 2013)20

6 *Birdsong v. Apple, Inc.*
590 F.3d 955 (9th Cir. 2009).....12

7

8 *Cholakyan v. Mercedes-Benz USA, LLC*
796 F. Supp. 2d 1220 (C.D. Cal. 2011)19

9 *Clapper v. Amnesty Int’l USA*
133 S. Ct. 1138 (2013)10

10

11 *Clemens v. DaimlerChrysler Corp.*
534 F.3d 1017 (9th Cir. 2008).....20

12 *Collins v. eMachines, Inc.*
202 Cal. App. 4th 249, 134 Cal. Rptr. 3d 588 (2011).....18

13

14 *Czuchaj v. Conair Corp.*
No. 13-CV-1901-BEN (RBB), 2014 WL 1664235 (S.D. Cal. Apr. 17, 2014).....18

15 *Doe 1 v. AOL, LLC*
719 F. Supp. 2d 1102 (N.D. Cal. 2010)11

16 *Ehrlich v. BMW of N. Am., LLC*
801 F. Supp. 2d 908 (C.D. Cal. 2010)20, 21

17 *Folgelstrom v. Lamps Plus, Inc*
195 Cal. App. 4th 986 (2011)21

18

19 *Fredenburg v. City of Fremont*
119 Cal. App. 4th 408 (2004)22, 23

20

21 *Gilbert Financial Corp. v. Steelform Contracting Co.*
82 Cal. App. 3d 65, 145 Cal. Rptr. 448 (1978).....20

22

23 *Goodman v. HTC America, Inc.*
No. C11-1793 MJP, 2012 WL 2412070 (W.D. Wash. June 26, 2012)1, 10, 21

24 *Hill v. Nat’l Collegiate Athletic Assn.*
7 Cal. 4th 1, 39 (1994)21

25

26 *Hinojos v. Kohl’s Corp.*
718 F.3d 1098 (9th Cir. 2013)..... passim

27 *In re Facebook Privacy Litig.*
791 F. Supp. 2d 705 (N.D. Cal. 2011)11, 15

28

1 *In re iPhone Application Litig.*
844 F. Supp. 2d 104023

2

3 *In re MyFord Touch Consumer Litig.*
46 F. Supp. 3d 936 (N.D. Cal. 2014) passim

4 *In re Sony Gaming Networks and Customer Data Security Breach Litig.*
996 F. Supp. 2d 942 (S.D. Cal. 2014) 11, 12, 13, 15

5

6 *In re Toyota Motor Corp. Unintended Acceleration Mktg., Sales Practices, & Prods. Liab.*
Litig.
754 F. Supp. 2d 1145 (C.D. Cal. 2010) 11, 12, 13

7

8 *Krottner v. Starbucks*
628 F.3d 1139 (9th Cir. 2010)..... 11, 12, 13, 15

9 *Kwikset Corp. v. Superior Court*
51 Cal. 4th 310, 120 Cal. Rptr. 3d 741, 246 P.3d 877 (2011).....16

10

11 *Long v. Graco Children’s Prods., Inc.*
No. 13-cv-01257-WHO, 2013 WL 4655763, (N.D. Cal. Aug. 26, 2013)20

12 *Lujan v. Defenders of Wildlife*
504 U.S. 555 (1992).....10

13

14 *Mazza v. Am. Honda Motor Co.*
666 F.3d 581 (9th Cir. 2012).....11

15 *Smith v. Ford Motor Co.*
749 F. Supp. 2d 980 (N.D. Cal. 2010) 17, 18

16

17 *U.S. Hotel & Resort Mgmt. v. Onity*
No. 13-1499 (SRN/FLN), 2014 WL 3748639 (D. Minn. 2014)13

18 *U.S. v. Jones*
--U.S.--, 132 S. Ct. 945 (2012).....22

19

20 *United States v. Pineda-Moreno*
617 F.3d 1120 (9th Cir. 2010).....22

21 *Wilson v. Hewlett-Packard*
668 F.3d 1136 (9th Cir.2012).....17

22

23 *Yunker v. Pandora Media, Inc.*
No. 11-CV-03113 JSW, 2013 WL 1282980 (N.D. Cal. Mar. 26, 2013)21

24 **STATUTES**

25 California Business & Professions Code § 1720015

26 California Civil Code § 175015

27 California Civil Code § 1791.119

28 California Civil Code § 179219

1 California Business & Professions Code § 1750015

2 California Commercial Code § 210418

3 California Commercial Code § 272521

4 **RULES**

5 Federal Rules of Civil Procedure 12(b)(6).....1, 19

6 Federal Rules of Civil Procedure 9(b)1

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1 Plaintiff Helene Cahen (“Cahen”) hereby opposes the motion to dismiss [Doc. 49]
2 (“Motion”) filed by Defendants Toyota Motor Corporation and Toyota Motor Sales, U.S.A.,
3 Inc. (collectively, “Toyota”).

4 **STATEMENT OF ISSUES TO BE DECIDED (L.R. 7-4(A)(3))**

5 Cahen does not oppose Toyota’s motion to dismiss her claim for breach of
6 contract/common law warranty (Count V), leaving the following issues to be decided:

7 1. Because Cahen meets all pleading requirements for Article III standing as to all
8 her claims as discussed in *Hinojos v. Kohl’s Corp.*, 718 F.3d 1098 (9th Cir. 2013), should the
9 Court reject Toyota’s challenge to Cahen’s standing?

10 2. Because Cahen sufficiently alleges under Fed. R. Civ. P. 9(b) that Toyota had a
11 duty to disclose the defects in its vehicles it failed to fulfill as discussed in *In re MyFord*
12 *Touch Consumer Litig.*, 46 F. Supp. 3d 936 (N.D. Cal. 2014), should the Court deny Toyota’s
13 motion to dismiss the fraud-based claims (Counts I, II, III and VI) pursuant to Fed. R. Civ. P.
14 12(b)(6)?

15 3. Because Cahen adequately alleges that her vehicle cannot reliably provide safe
16 transportation as discussed in *In re MyFord Touch Consumer Litig.*, 46 F. Supp. 3d 936 (N.D.
17 Cal. 2014), should the Court deny Toyota’s motion to dismiss her implied warranty claims
18 (Counts IV and VII) pursuant to Fed. R. Civ. P. 12(b)(6)?

19 4. Because Cahen sufficiently alleges that any applicable limitations periods are
20 tolled as discussed in *In re MyFord Touch Consumer Litig.*, 46 F. Supp. 3d 936 (N.D. Cal.
21 2014), should the Court reject Toyota’s argument that her claims are time-barred?

22 5. Because Cahen squarely alleges a serious invasion of a legally-protected
23 privacy interest under the California Constitution as discussed in *Goodman v. HTC America,*
24 *Inc.*, No. C11-1793 MJP, 2012 WL 2412070 (W.D. Wash. June 26, 2012), should the Court
25 deny Toyota’s motion to dismiss her invasion of privacy claim (Count VIII)?

26 This Opposition is based on the foregoing and on the following Memorandum of Points
27 and Authorities in Support, the pleadings and papers on file, and upon such matters as may be
28 presented to the Court at the hearing on the Motion.

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

1
2
3 A car must be safe before it can be sold—and a car whose vital functions are open and
4 exposed to anyone on the internet is not safe. While drivers may like some features of cars
5 with internet connectivity, Toyota should not build and sell vehicles that rely on computer
6 components if it can't do so without risking the basic safety of the driver and passengers.
7 And—obviously—Toyota should not use its vehicles' technology to collect and siphon
8 drivers' private data to third parties.

9 Shockingly, Toyota fails to respect driver safety and privacy. It builds and markets
10 cars containing outmoded technology that needlessly exposes drivers and passengers to the
11 risk of serious bodily injury and death. Even having been told years ago that its technology
12 places the lives of drivers and passengers at risk, Toyota nevertheless continues to make and
13 sell cars with the same components and without disclosing the risk to consumers. And Toyota
14 gathers and distributes driver location data to others, even though this violates protected
15 privacy rights.

16 Toyota sold Helene Cahen one of its cars. There's no dispute that the car Cahen
17 bought—like all others Toyota made and sold with the same antiquated technology—is
18 defective and unsafe. Nor is there any doubt Toyota has been tracking Cahen's whereabouts
19 and selling that information to others. After news of these issues broke earlier this year on the
20 heels of a Congressional report, Cahen sued Toyota.

21 In her First Amended Complaint [Doc. 37] (“Complaint”), despite thoroughly detailing
22 the problems with her car and Toyota's practices, Cahen does not allege that her vehicle was
23 “hacked.” Toyota argues that Cahen therefore lacks standing to bring any of her claims.
24 Toyota also claims Cahen's claims are legally untenable and otherwise barred by limitations,
25 and it says that Cahen has no legally-protected privacy interest in her whereabouts.

26 As Cahen's complaint illustrates, her allegations state multiple claims on which relief
27 can be granted, and she necessarily has standing to bring them. Toyota knew all about the
28 problems with the technology it put in its cars, and it therefore had a corresponding duty to

1 disclose them to potential buyers like Cahen; Toyota’s indisputable failure to do this gives rise
2 to Cahen’s consumer fraud claims. And because, as Cahen alleges, Toyota’s cars cannot
3 reliably provide safe transportation given their defects, she states implied warranty claims
4 (which, like her other claims, are not time-barred). Additionally, Toyota’s collection and sale
5 of Cahen’s location information to third parties is, as Cahen alleges, a serious invasion of a
6 legally protected privacy interest.

7 The Court should deny Toyota’s motion in its entirety. There is no reason under
8 controlling law or otherwise for this Court to wait for the tragic death of *any* driver or
9 passenger before proceeding to address the issues Cahen raises in this case.

10 **II. SUMMARY OF CAHEN’S KEY ALLEGATIONS**

11 In evaluating whether Cahen’s allegations plausibly support her claims, the Court must
12 accept them as true and view them in the light most favorable to Cahen. These allegations
13 describe, in detail, Toyota’s knowing manufacture and sale of flawed and dangerous cars to
14 consumers without any disclosure of their problems, as well as Toyota’s collection and
15 unauthorized sharing of consumers’ private data. But Toyota wants the Court to ignore the
16 bulk of these allegations and instead focus on its unfair characterization of the complaint as
17 painting a purely hypothetical picture that doesn’t merit any further judicial scrutiny.

18 As the following summary shows, Toyota’s intentional use of outmoded technology in
19 its vehicles, its knowledge of their susceptibility to hacking, its intentional failure to disclose
20 these issues to consumers, and its invasion of privacy by tracking the location information of
21 Toyota drivers and selling it to third parties is thoroughly documented by Cahen, and is neither
22 conjectural nor speculative.¹ The Court must draw all reasonable inferences in Cahen’s favor
23 in determining whether her thorough allegations of Toyota’s actions and omissions plausibly
24 support her claims.

25
26
27

28 ¹ If the Court determines that any of Cahen’s allegations are not adequate, Cahen respectfully requests leave to replead.

1 **A. Using Old Technology, Toyota Builds and Sells Unsafe Vehicles, and It Violates**
2 **Drivers’ Privacy Rights**

3 Toyota assumed a very significant responsibility in choosing to manufacture and sell
4 cars that rely heavily on computer technology: the obligation to keep drivers and passengers
5 safe from harm, even though the computer technology in the cars is exposed to the dangers of
6 being “hacked”—infiltrated and taken over by third parties. Complaint ¶ 1. Such “hacking”
7 can result in loss of driver authority over the basic functions of the vehicle—the throttle,
8 braking and steering—as well as loss of personal and private data. Complaint ¶¶ 1-2.

9 But Toyota used ancient, outmoded technology with known vulnerabilities that make
10 its cars highly susceptible to hacking and, therefore, unreasonably dangerous. Complaint ¶ 2.
11 Its vehicles contain dozens of electronic control units (ECUs) that are connected through an
12 insecure controller area network (typically a “CAN” or “CAN bus”). Complaint ¶ 3. The
13 ECUs communicate by sending each other “CAN packets,” which are digital messages
14 containing data and/or requests. Complaint ¶ 4. Because a CAN bus is insecure, an outside
15 source sending CAN packets to ECUs on a vehicle’s CAN bus will confuse one or more ECUs
16 and thereby, either temporarily or permanently, take control of basic functions of the vehicle
17 away from the driver. Complaint ¶ 4.

18 Toyota knows its CAN bus-equipped vehicles, when connected to integrated cell phone
19 systems or a Class 1 or Class 2 master Bluetooth device² are susceptible to hacking, and their
20 ECUs cannot detect or stop hacked CAN packets. Complaint ¶ 5. For this reason, Toyota’s
21 vehicles are not secure, and are therefore not safe—owners and lessees of Toyota’s vehicles
22 are currently at risk of theft, damage, serious physical injury, or death as a result of hacking.
23 Complaint ¶¶ 5-6.

24 Additionally, Toyota remotely collects data from the vehicles, such as their geographic
25 locations at various times. Complaint ¶¶ 7, 135. Even though drivers have a reasonable

26 _____
27 ² Bluetooth is a wireless technology standard for exchanging data over short distances (using
28 short-wavelength UHF radio waves in the ISM band from 2.4 to 2.485 GHz[4]) from fixed and
mobile devices, and building personal area networks (PANs). Class 1 has a range of 66-98
feet and Class 2 has a range of 16-33 feet. Complaint ¶ 5 (citing [https://en.wikipedia.
rg/wiki/Bluetooth](https://en.wikipedia.org/wiki/Bluetooth)).

1 expectation of privacy as to such data, Toyota shares it with or sells it to third parties, often
2 without adequate security (making it an attractive target for hackers). Complaint ¶ 7. This
3 violates the privacy rights of the owners and lessees. Complaint ¶ 7.

4 **B. How Toyota’s Computerized Vehicles Work**

5 Toyota automobiles contain a number of different networked electronic components
6 that together monitor and control the vehicle. Complaint ¶ 28. They each contain dozens of
7 electronic control units (“ECUs”), many of which are networked together on a controller area
8 network (typically a “CAN” or “CAN bus”); other such networks are LINBus, MOST,
9 Flexray, and Ethernet. Complaint ¶ 28 (citing Craig Smith, *Car Hackers 2014: Owner’s*
10 *Manual* at 21). Crucially, the overall safety of the vehicle relies on near real time
11 communication between these various ECUs. Complaint ¶ 28 (citing *Tracking & Hacking:*
12 *Security & Privacy Gaps Out American Drivers at Risk*, A report written by the staff of
13 Senator Edward J. Markey (D-Massachusetts), *available at* http://www.markey.senate.gov/imo/media/doc/2015-02-06_MarkeyReport-Tracking_Hacking_CarSecurity%202.pdf at 3;
14 Charlie Miller & Chris Valasek, Technical White Paper: *Adventures in Automotive Networks*
15 *and Control Units*, *available at* [http://www.ioactive.com/pdfs/IOActive_Adventures](http://www.ioactive.com/pdfs/IOActive_Adventures_in_Automotive_Networks_and_Control_Units.pdf)
16 [_in_Automotive_Networks_and_Control_Units.pdf](http://www.ioactive.com/pdfs/IOActive_Adventures_in_Automotive_Networks_and_Control_Units.pdf) at 5, 7-8).³

17
18 As stated by two researchers in a 2013 study funded by the U.S. Defense Advanced
19 Research Projects Agency (“DARPA”): “Drivers and passengers are strictly at the mercy of
20 the code running in their automobiles and, unlike when their web browser crashes or is
21 compromised, the threat to their physical well-being is real.” Complaint ¶ 29 (quoting Miller
22 & Valasek (RJN Ex. 2) at 4; *see also* Markey Report (RJN Ex. 1) at 3).

23 ECUs networked together on one or more CAN buses communicate with one another
24 by sending electronic messages comprised of small amounts of data called CAN packets.
25 Complaint ¶ 30 (citing Miller & Valasek (RJN Ex. 2) at 4). These CAN packets are broadcast
26 to all components on a CAN bus, and each ECU decides whether it is the intended recipient of

27
28 ³ Complete copies of these materials are attached as Exhibits 1 and 2, respectively, to
Plaintiffs’ Request for Judicial Notice (“RJN”) filed concurrently. Other materials cited herein
are also attached as Exhibits to Plaintiffs’ RJN, as noted *infra*.

1 any given CAN packet. Complaint ¶ 30. Notably, there is no ECU source or authentication,
2 nor any encryption, built into CAN packets. Complaint ¶ 30.

3 **C. Toyota's Computerized Vehicles Are Susceptible to Dangerous Hacking**

4 The CAN standard was first developed in the mid-1980s and is a low-level protocol
5 which does not intrinsically support any security features. Complaint ¶ 32 (citing
6 http://en.wikipedia.org/w/index.php?title=CAN_bus). Companies that employ CAN busses
7 must deploy their own security mechanisms with higher protocol layers; e.g., to authenticate
8 senders and prevent man-in-the-middle and replay attacks. Complaint ¶ 32 (citing
9 http://en.wikipedia.org/w/index.php?title=CAN_bus).

10 Lacking security, an automobile reliant upon CAN packets for safety is exposed to
11 hacking that injects one or more false messages onto a CAN bus or manipulates packets in
12 transit on the network. Complaint ¶ 33 (citing Xavier Aaronson, *We Drove a Car While It*
13 *Was Being Hacked*, available at <http://motherboard.vice.com/read/we-drove-a-car-while-it-was-being-hacked>). This capability can be used maliciously by anyone with physical access to
14 a CAN bus equipped vehicle. Complaint ¶ 33.

15 Moreover, wireless interfaces dramatically increase the attack surface in a vehicle by
16 allowing anyone capable of connecting to such a wireless interface to thereby gain access to
17 the CAN bus to invade a user's privacy, by observing CAN packets, and/or inject or modify
18 CAN packets to take remote control of the operation of a vehicle. Complaint ¶ 34. For
19 example, a vehicle equipped with a Bluetooth wireless interface is susceptible to an attacker
20 remotely and wirelessly accessing the vehicle's CAN bus through Bluetooth connections.
21 Complaint ¶ 34 (citing Miller & Valasek (RJN Ex. 2) at 4; *see also* Markey Report (RJN Ex.
22 1) at 3). An even greater risk exists with an integrated cell phone connected to the CAN bus.
23 Complaint ¶ 34. Vehicles equipped with Toyota's "Entune" and other telematics services have
24 such integrated cellular phones. Complaint ¶ 34 (citing PRN Newswire Sprint and Ford Team
25 to Deliver In-Vehicle, Integrated, Voice-Activated Wireless Products And Services, *available*
26 *at* <http://www.prnewswire.com/news-releases/sprint-and-ford-team-to-deliver-in-vehicle-integrated-voice-activated-wireless-products-and-services-73097807.html>). Hacking can be
27
28

1 accomplished by connecting to such integrated phones, as demonstrated by DARPA in an
 2 episode broadcast on CBS 60 Minutes. Complaint ¶ 34 (citing
 3 [https://news.cs.washington.edu/2015/02/09/watch-uw-cse-and-darpa-hack-a-car-driven-by-60-](https://news.cs.washington.edu/2015/02/09/watch-uw-cse-and-darpa-hack-a-car-driven-by-60-minutes-leslie-stahl/)
 4 [minutes-leslie-stahl/](https://news.cs.washington.edu/2015/02/09/watch-uw-cse-and-darpa-hack-a-car-driven-by-60-minutes-leslie-stahl/)); *see also Hacking Researchers Kill A Car Engine on The Highway to*
 5 *Send A Message to Automakers*, available at [http://www.pbs.org/newshour/bb/hacking-](http://www.pbs.org/newshour/bb/hacking-researchers-kill-car-engine-highway-send-message-automakers/)
 6 [researchers-kill-car-engine-highway-send-message-automakers/](http://www.pbs.org/newshour/bb/hacking-researchers-kill-car-engine-highway-send-message-automakers/) (RJN Ex. 4).

7 One journalist described the experience of driving a vehicle whose CAN bus was being
 8 hacked remotely (but under controlled circumstances) as follows:

9
 10 As I drove to the top of the parking lot ramp, the car's engine
 11 suddenly shut off, and I started to roll backward. I expected this
 12 to happen, but it still left me wide-eyed.

13 I felt as though someone had just performed a magic trick on me.
 14 What ought to have triggered panic actually elicited a
 15 dumbfounded surprise in me. However, as the car slowly began
 16 to roll back down the ramp, surprise turned to alarm as the task
 17 of steering backwards without power brakes finally sank in.

18 This wasn't some glitch triggered by a defective ignition switch,
 19 but rather an orchestrated attack performed wirelessly, from the
 20 other side of the parking lot, by a security researcher.

21 Complaint ¶ 35 (citing Xavier Aaronson, *We Drove a Car While It Was Being Hacked*,
 22 available at <http://motherboard.vice.com/read/we-drove-a-car-while-it-was-being-hacked>).

23 **D. Toyota Has Known for Years that Its Computerized Vehicles Can Be Hacked**

24 These security vulnerabilities have been known in the automotive industry—and,
 25 specifically, by Toyota—for years. Complaint ¶ 36. Researchers at the University of
 26 California San Diego and University of Washington had discovered in 2010 that modern
 27 automobiles can be hacked in a number of different ways—and, crucially, that wireless
 28 interfaces can allow a hacker to take control of a vehicle from a long distance. Complaint ¶ 36
 (citing Stephen Checkoway et al., *Comprehensive Experimental Analyses of Automotive Attack*
Surfaces, available at <http://www.autosec.org/pubs/cars-usenixsec2011.pdf> (RJN Ex. 5)).

Building on this research, in a 2013 DARPA-funded study, two researchers

1 demonstrated their ability to connect a laptop to the CAN bus of a 2010 Toyota Prius using a
2 cable, send commands to different ECUs through the CAN, and thereby control the engine,
3 brakes, steering and other critical vehicle components. Complaint ¶ 37 (citing Miller &
4 Valasek (RJN Ex. 2)). In their initial tests with a laptop, the researchers were able to cause the
5 cars to suddenly accelerate and turn, kill the brakes, activate the horn, control the headlights,
6 and modify the speedometer and gas gauge readings. Complaint ¶ 37 (citing Miller & Valasek
7 (RJN Ex. 2); a video of the researchers hacking and taking control of the car can be viewed at
8 <https://www.youtube.com/watch?v=oqe6S6m73Zw>).

9 Before the researchers went public with their 2013 findings, they shared the results
10 with Toyota in the hope that the company would address the identified vulnerabilities.
11 Complaint ¶ 38 (citing Markey Report (RJN Ex. 1) at 3). Toyota, however, did not.
12 Complaint ¶ 38.

13 In August of 2014, members of a security research group who had independently
14 studied automobile hacking wrote an open letter to the CEOs of major automobile
15 manufacturers, urging them to work collaboratively with the cyber security industry in making
16 vehicles safe from the threat of hacking. Complaint ¶ 39 (citing August 8, 2014 letter from “I
17 Am The Cavalry,” *available at* [https://www.iamthecavalry.org/wp-content](https://www.iamthecavalry.org/wp-content/uploads/2014/08/IATC-Open-letter-to-the-Automotive-Industry.pdf)
18 [/uploads/2014/08/IATC-Open-letter-to-the-Automotive-Industry.pdf](https://www.iamthecavalry.org/wp-content/uploads/2014/08/IATC-Open-letter-to-the-Automotive-Industry.pdf)). The group proposed a
19 five-point protocol for automobile manufacturers to follow—including such measures as
20 ensuring that vehicles have the capability for security updates, logging and evidence capture
21 (similar to an airplane’s “black box”), and segmentation and isolation to ensure that non-
22 critical systems (e.g., Bluetooth) cannot affect critical systems (e.g., brakes or steering) if
23 compromised. Complaint ¶ 39 (citing I Am The Cavalry, Five Star Automotive Cyber Safety
24 Framework, *available at* [https://www.iamthecavalry.org/](https://www.iamthecavalry.org/domains/automotive/5star/)
25 [domains/automotive/5star/](https://www.iamthecavalry.org/domains/automotive/5star/)). Despite
26 the group’s elaborate description of known vulnerabilities to the automotive industry CEOs,
27 Toyota has not adopted any of the proposed security protocols that would address the
28 vulnerabilities and make vehicles safer. Complaint ¶ 39.

And, as recently as May of 2015, the general counsel for an automobile industry

1 association (of which Toyota is a member) acknowledged the imminent eventuality of a
2 remote hacking attack on cars: “‘Any cyber expert will tell you that you can’t prevent it; it’s
3 just a question of when,’ says Mark Dowd, assistant general counsel for Global Automakers, a
4 coalition of car manufacturers working to combat the looming threat of cyber attacks.”
5 Complaint ¶ 40 (quoting Jim Travers, *Keeping Your Car Safe from Hacking*, available at
6 [http://www.consumerreports.org/cro/news/2015/05/keeping-your-car-safe-from-](http://www.consumerreports.org/cro/news/2015/05/keeping-your-car-safe-from-hacking/index.htm)
7 [hacking/index.htm](http://www.consumerreports.org/cro/news/2015/05/keeping-your-car-safe-from-hacking/index.htm)).

8 **E. Despite Selling Unsafe Computerized Vehicles, Toyota Touts Their Safety**

9 Toyota also heavily promotes the safety of its vehicles. Complaint ¶ 41. As Toyota
10 states in one of its promotional materials: “Toyota believes that the ultimate goal of a society
11 that values mobility is to eliminate traffic fatalities and injuries. Toyota’s Integrated Safety
12 Management Concept sets the direction for safety technology development and vehicle
13 development, and covers all aspects of driving by integrating individual vehicle safety
14 technologies and systems rather than viewing them as independently functioning units.”
15 Complaint ¶ 42 (citing [http://www.toyota-global.com/innovation/safety_technology/media-](http://www.toyota-global.com/innovation/safety_technology/media-tour/)
16 [tour/](http://www.toyota-global.com/innovation/safety_technology/media-tour/)); *see also* Complaint ¶ 43 (citing promotional material available at [http://www.toyota-](http://www.toyota-global.com/innovation/safety_technology/safety_measurements/)
17 [global.com/innovation/safety_technology/safety_measurements/](http://www.toyota-global.com/innovation/safety_technology/safety_measurements/)); Complaint ¶ 44 (citing
18 promotional material available at [http://www.toyota.com/esq/safety/active-safety/advanced-](http://www.toyota.com/esq/safety/active-safety/advanced-driving-support-system.html)
19 [driving-support-system.html](http://www.toyota.com/esq/safety/active-safety/advanced-driving-support-system.html)).

20 **F. Toyota Collects and Transmits Vehicle Data in Violation of Privacy Rights**

21 Without drivers ever knowing, Toyota also collects data from their vehicles and shares
22 the data with third parties. Complaint ¶ 49 (citing Lucas Mearian, *Once Your Car’s Connected*
23 *to The Internet, Who Guards Your Privacy?* available at [http://www.computerworld.com/](http://www.computerworld.com/article/2684298/once-your-cars-connected-to-the-internet-who-guards-your-privacy.html)
24 [article/2684298/once-your-cars-connected-to-the-internet-who-guards-your-privacy.html](http://www.computerworld.com/article/2684298/once-your-cars-connected-to-the-internet-who-guards-your-privacy.html)).

25 While Toyota agreed to adopt voluntary privacy guidelines governing their collection and
26 sharing of this data, the American Automobile Association and Senator Markey of
27 Massachusetts stated that these measures are insufficient, as they do not provide drivers the
28 right to control their own information and fail to allow drivers to withhold sensitive

1 information from collection in the first instance. Complaint ¶ 49 (citing Kate Kaye, *Ford,*
 2 *Toyota and Others to Adopt Data Privacy Rules, But AAA Says The Industry’s Voluntary*
 3 *Guidelines Fall Short*, available at [http://adage.com/article/privacy-and-regulation/ford-gm-](http://adage.com/article/privacy-and-regulation/ford-gm-adopt-auto-data-privacy-rules/295859)
 4 [adopt-auto-data-privacy-rules/295859](http://adage.com/article/privacy-and-regulation/ford-gm-adopt-auto-data-privacy-rules/295859)).

5 As detailed in Sen. Markey’s report, Toyota collects large amounts of data on driving
 6 history and vehicle performance, and it transmits the data to third-party data centers without
 7 effectively securing the data. Complaint ¶ 50 (citing Markey Report (RJN Ex. 1) at 8-11).
 8 Toyota only makes drivers aware of such data collection in owners’ manuals, online “privacy
 9 statements,” and terms & conditions of specific feature activations—but drivers can’t
 10 comprehensively opt out of all collection of data by Toyota, and in the limited situations where
 11 opting out is permitted, the driver must turn off a feature or cancel a service subscription.
 12 Complaint ¶ 50 (citing Markey Report (RJN Ex. 1) at 12).

13 III. ARGUMENT

14 A. Cahen Has Article III Standing To Bring All Her Claims

15 As a threshold matter, Toyota contends Cahen lacks Article III standing to bring any
 16 of her claims. Motion at 8-13. Toyota relies heavily on the premise that Cahen’s failure to
 17 allege that her car was hacked by a third party deprives her of standing. *Id.* But Toyota’s
 18 premise is incorrect, and its challenge to standing fails accordingly.

19 1. The Article III Standard at the Pleading Stage Requires General Factual 20 Allegations of Injury

21 Toyota is correct that in order to establish standing, Cahen must allege an injury caused
 22 by Toyota that will be redressed by a favorable decision. Motion at 8 (citing, *inter alia*,
 23 *Clapper v. Amnesty Int’l USA*, 133 S. Ct. 1138, 1147-48 (2013); *Lujan v. Defenders of*
 24 *Wildlife*, 504 U.S. 555, 560 (1992)). But Toyota leaves out what this entails at the pleading
 25 stage. As the Supreme Court held: “At the pleading stage, general factual allegations of injury
 26 resulting from the defendant’s conduct may suffice, for on a motion to dismiss we ‘presum[e]
 27 that general allegations embrace those specific facts that are necessary to support the claim[.]’”
 28 *Lujan*, 504 U.S. at 561 (quoting *Lujan v. National Wildlife Federation*, 497 U.S. 871, 889

1 (1990)).

2 The Ninth Circuit recently underscored that this threshold is cleared easily in the
 3 context of statutory consumer fraud claims: “We have explained that when, as here, ‘Plaintiffs
 4 contend that class members paid more for [a product] than they otherwise would have paid, or
 5 bought it when they otherwise would not have done so’ they have suffered an Article III injury
 6 in fact.” *Hinojos v. Kohl’s Corp.*, 718 F.3d 1098, 1104 n.3 (9th Cir. 2013) (quoting *Mazza v.*
 7 *Am. Honda Motor Co.*, 666 F.3d 581, 595 (9th Cir. 2012)). And in the context of claims based
 8 on a wrongful disclosure of personal information, even if actual harm has not occurred as a
 9 result of the disclosure, “courts in this circuit have routinely denied motions to dismiss based
 10 on Article III standing where a plaintiff alleges that his personal information was collected and
 11 then wrongfully disclosed....” *In re Sony Gaming Networks and Customer Data Security*
 12 *Breach Litig.*, 996 F. Supp. 2d 942, 961-62 (S.D. Cal. 2014) (citing *Krottner v. Starbucks*, 628
 13 F.3d 1139, 1142 (9th Cir. 2010); *In re Facebook Privacy Litig.*, 791 F. Supp. 2d 705, 711-12
 14 (N.D. Cal. 2011); *Doe I v. AOL, LLC*, 719 F. Supp. 2d 1102, 1108-09 (N.D. Cal. 2010)).

15 And, as another court held in denying a motion to dismiss many of the same claims
 16 Cahen pleads, it is not necessary for Cahen to have experienced a “manifested defect”—a
 17 hacking—in order to establish Article III standing. *In re Toyota Motor Corp. Unintended*
 18 *Acceleration Mktg., Sales Practices, & Prods. Liab. Litig.*, 754 F. Supp. 2d 1145, 1161 (C.D.
 19 Cal. 2010). “As long as plaintiffs allege a legally cognizable loss under the ‘benefit of the
 20 bargain’ or some other legal theory, they have standing.” *Id.* at 1164.

21 2. Cahen’s Allegations Meet the Article III Standard

22 As Cahen alleges, she bought a car made by Toyota—a 2008 Lexus RX 400 H.
 23 Complaint ¶¶ 8, 12, 21. Cahen thoroughly describes the defects in the car she bought: because
 24 Toyota built the car with a CAN bus, the car is susceptible to a hack that takes over control of
 25 the vehicle’s essential functions, making it unreasonably dangerous. Complaint ¶¶ 1-7, 28-40.
 26 Cahen also alleges that Toyota collects data from her car, such as its location information, and
 27 wrongfully shares it with third parties. Complaint ¶¶ 49-50, 134-36.

28 As well, Cahen alleges that if she had known about the defects that Toyota failed to

1 disclose, she wouldn't have bought the car for as much as she did, or she wouldn't have
2 bought it at all. Complaint ¶¶ 66, 78, 80-81, 88-89, 112-14, 124-25, 128. And, to redress the
3 problems Toyota caused, Cahen asks the Court for equitable and monetary relief, including
4 damages. Complaint ¶¶ 67-68, 83, 90-91, 100, 115-16, 129-31. Cahen additionally requests
5 damages as a result of Toyota's wrongful conduct in collecting and transmitting data from her
6 car to third parties. Complaint ¶¶ 137-38.

7 In making these allegations, Cahen indisputably meets all three requirements for
8 Article III standing: injury, causation, and redressability. *Clapper*, 133 S. Ct. at 1147-48;
9 *Lujan*, 504 U.S. at 560-61. She includes a detailed description of the problems Toyota caused
10 by making and selling her a defective car, and her allegations that she paid more for the car
11 than she otherwise would have or bought it when she otherwise wouldn't have had she known
12 of the problems are demonstrably sufficient in the Ninth Circuit—even without her alleging
13 that she experienced a hack. *Hinojos*, 718 F.3d at 1104 n.3; *In re Toyota*, 754 F. Supp. 2d at
14 1161. And her allegations of Toyota's collection and wrongful disclosure of data from her
15 vehicle in violation of her privacy rights are likewise adequate for Article III standing under
16 Ninth Circuit authority. *Krottner*, 628 F.3d at 1142; *In re Sony*, 996 F. Supp. 2d at 961-62.

17 3. Toyota's Case Law Does Not Support Its Challenge To Standing

18 The thrust of Toyota's challenge to Cahen's Article III standing is that Cahen does not
19 allege her car was hacked, and she therefore fails to establish an injury sufficient for standing
20 purposes. Motion at 8-10. Toyota misses the mark by incorrectly equating the Article III
21 injury requirement with a "hack," and by failing to address any of Cahen's allegations of
22 economic harm and the binding Ninth Circuit authority that holds they are sufficient for
23 standing. Compare Motion at 8-10 with Complaint ¶¶ 66, 78, 80-81, 88-89, 112-14, 124-25,
24 128 and *Hinojos*, 718 F.3d at 1104 n.3.

25 And the Ninth Circuit caselaw Toyota cites does not support its argument. The holding
26 in *Birdsong v. Apple, Inc.*, 590 F.3d 955, 960-61 (9th Cir. 2009) was based, as Toyota
27 acknowledges (Motion at 9), on the plaintiffs' failure to allege they were exposed to any risk
28 of hearing loss based on their use of iPods—in contrast to Cahen's allegations that her car, like

1 all others Toyota equipped with the same technology, suffers from the same defect. *See, e.g.*,
2 Complaint ¶¶ 12, 8 (alleging that the computerized components in all Toyota vehicles are
3 essentially identical and thus equally defective). And *Krottner v. Starbucks*, 628 F.3d 1139,
4 1142-43 (9th Cir. 2010), held that the plaintiffs sufficiently alleged an injury for purposes of
5 Article III standing even though they did not allege that they had suffered a misuse of their
6 personal data—harm they alleged they were only at risk of.

7 Toyota emphasizes “the absence of any known attacks in the wild” to suggest that the
8 eventuality of a hack is too remote a risk to qualify even under *Krottner*. Motion at 9-10. But
9 this is essentially an argument that a “manifested defect” is an absolute requirement for Article
10 III standing, and that is plainly not the law in the Ninth Circuit. *See In re Toyota*, 754 F. Supp.
11 2d at 1161. In fact, the *Toyota* court made clear that allegations of any legally cognizable loss
12 under any legal theory are sufficient to confer standing. *Id.* at 1164.

13 Toyota also argues that Cahen can’t meet the causation element of standing “because
14 her speculative claims hinge on the future misconduct of third-party criminals.” Motion at 10;
15 *see generally* Motion at 10-13. Toyota suggests that the Supreme Court changed the analysis
16 for standing in *Clapper* to rule out any theories connected to third-party actors. Motion at 11.
17 However, as the court made clear in *In re Sony*, “the Supreme Court’s decision in *Clapper*
18 simply reiterated an already well-established framework for assessing whether a plaintiff had
19 sufficiently alleged an ‘injury-in-fact’ for purposes of standing.” *In re Sony*, 996 F. Supp. 2d
20 at 961. And, if the rule were as Toyota suggests, the Ninth Circuit in *Krottner* and the *In re*
21 *Sony* court would have found that the plaintiffs could not meet the causation requirement for
22 standing in light of the actions of third-party data thieves—but the law is to the contrary, as
23 those courts held. *Krottner*, 628 F.3d at 1142; *In re Sony*, 996 F. Supp. 2d at 961-62.

24 Toyota also relies on the Minnesota case of *U.S. Hotel & Resort Mgmt. v. Onity*, No.
25 13-1499 (SRN/FLN), 2014 WL 3748639 (D. Minn. 2014) (cited in Motion at 12). The
26 Minnesota district court in this case didn’t address any of the California claims that Cahen
27 alleges here. *Compare* Complaint at ¶¶ 62-131 with *Onity*, 2014 WL 3748639, at *1. Nor did
28 the Minnesota court cite or discuss any of the Ninth Circuit authority that governs Article III

1 standing in the Northern District of California. *See generally Onity*.

2 Thus, *Onity* should not control this Court’s decision. It is already well-established in
3 the Ninth Circuit that allegations of economic loss are enough for an Article III injury. *E.g.*,
4 *Hinojos*, 718 F.3d at 1104 n.3. But the facts of *Onity* bring into focus another important
5 reason this Court should find that Cahen alleges an Article III injury. In *Onity*, the hotel owner
6 plaintiffs were worried about the inability of the defendant’s locks to prevent break-ins to hotel
7 rooms. 2014 WL 3748639, at *1. Here, Cahen sues not only because Toyota’s defect puts her
8 car at risk of theft, but also because it unreasonably puts her at risk of severe bodily injury or
9 death. *E.g.*, Complaint ¶ 6.

10 It is true that many if not most of the cars driven by the class Cahen seeks to represent
11 will not be the target of a hack that takes over the vehicle and causes physical injury. But for
12 others, it is simply a matter of time before it happens—unless Toyota addresses the problem.
13 *See* Complaint ¶ 40 (“Any cyber expert will tell you that you can’t prevent it; it’s just a
14 question of when”) (quoting Mark Dowd, assistant general counsel of Global Automakers).
15 While Toyota suggests that a plaintiff such as Cahen must first experience a severe hack as a
16 prerequisite for standing, the consequences of such a rule are unreasonably dire. Why must
17 any driver or passenger be made to suffer serious bodily injury or death in a hacked Toyota car
18 before anyone has standing to sue Toyota to remedy this issue?

19 Toyota’s remaining Article III argument also fails. Toyota targets Cahen’s standing to
20 bring her invasion of privacy claim by mischaracterizing the nature of her allegations as
21 “generalized grievances” that are not linked to her own experience. Motion at 13 (citing, *inter*
22 *alia*, *Birdsong*, 590 F.3d at 961 & n.4).

23 In fact, Cahen alleges (1) she has a legally protected privacy interest in her personal
24 data (including location information) that Toyota collects and transmits to third parties; (2)
25 Toyota knew or should have known she had a reasonable expectation of privacy in this data;
26 (3) Toyota collected it and transmitted it to third parties regardless and without her consent;
27 and (4) that this violated her constitutionally-protected right to privacy and (5) caused her
28 damage. Complaint ¶¶ 135-38. Cahen bases her allegations on the findings of the Markey

1 Report (RJN Ex. 1) and on reporting of Toyota’s practices. Complaint ¶¶ 49-50 (citing
 2 sources). Toyota’s contention that Cahen’s allegations are legally insufficient for standing
 3 purposes is incorrect, as she indisputably alleges injury and, thus, Article III standing for her
 4 privacy claim under controlling law. *Krottner*, 628 F. 3d at 1142; *In re Sony*, 996 F. Supp. 2d
 5 at 961-62; *In re Facebook Privacy Litig.*, 791 F. Supp.2d at 711-12; *Doe I*, 719 F. Supp. 2d at
 6 1108-09.

7 **B. Cahen’s Allegations Support All Of Her Fraud-Based Claims**

8 Toyota argues for dismissal of Cahen’s claims under California’s Unfair Competition
 9 Law (“UCL”), Cal. Bus. & Prof. Code §§ 17200, *et seq.*, California’s Consumers Legal
 10 Remedies Act (“CLRA”), Cal. Civ. Code §§ 1750, *et seq.*, California’s False Advertising Law
 11 (“FAL”), California Bus. & Prof. Code § 17500, and for common law fraud by concealment.
 12 Motion at 20-22. Toyota’s only argument as to all these claims is that Cahen’s allegations do
 13 not establish that Toyota had a duty to disclose the defects in its vehicles it failed to fulfill. *Id.*

14 In *In re MyFord Touch Consumer Litig.*, 46 F. Supp. 3d 936 (N.D. Cal. 2014) (Chen,
 15 J.), the court thoroughly analyzed—and ultimately rejected—arguments similar to Toyota’s
 16 here. The plaintiffs in *MyFord* alleged that an “infotainment system” in Ford vehicles (known
 17 as “MyFord Touch”) was defective, and that Ford knew the system was defective at the time it
 18 sold them the vehicles. 46 F. Supp. 3d at 948-49. The court rejected fraud-based claims based
 19 on affirmative misrepresentations, but sustained the plaintiffs’ claims based on allegations that
 20 Ford knew about the defects in MyFord Touch but did not disclose them to plaintiffs at the
 21 time of sale. *Id.* at 956-60.

22 In reaching its conclusion, the Court carefully considered Ford’s arguments that the
 23 plaintiffs failed to adequately allege (1) Ford knew, at the time of sale, a material fact of which
 24 plaintiffs were not aware, and (2) Ford had a duty to disclose the fact in the first place. These
 25 are essentially Toyota’s arguments here. *Compare MyFord*, 46 F. Supp. 3d at 956 with
 26 Motion at 20-22.

27 **1. Cahen Establishes Materiality**

28 The court first noted that “materiality is generally a question of fact.” *MyFord*, 46 F.

1 Supp. 3d at 957 (citing *Kwikset Corp. v. Superior Court*, 51 Cal. 4th 310, 333, 120 Cal. Rptr.
2 3d 741, 246 P.3d 877 (2011)); *see also Hinojos v. Kohl's Corp.*, 718 F.3d 1098, 1107 n.7 (9th
3 Cir. 2013). It then reasoned that a reasonable jury could find a safety risk if a person was
4 relying on the rearview camera feature of MyFord Touch while driving in reverse and that
5 feature broke down. *MyFord*, 46 F. Supp. 3d at 957. In this case, Cahen alleges consequences
6 far more serious than losing the benefit of a rearview camera while driving in reverse—she
7 explains that the insecure CAN buses in her and other Toyota cars can allow a third party to
8 take control of *all* essential functions of the vehicle. *See, e.g.*, Complaint ¶¶ 1-6, 28-35. She
9 also alleges that Toyota promotes the safety of its vehicles, Complaint ¶¶ 41-44, which
10 illustrates the importance of safety to Toyota as well as to her. This Court should therefore
11 determine that the safety hazards in Cahen's allegations are sufficiently material, especially for
12 purposes of Rule 12(b)(6). *MyFord*, 46 F. Supp. 3d at 957.

13 2. Cahen Sufficiently Alleges Toyota Had Knowledge

14 In *MyFord*, the court concluded Ford had knowledge of the problems with MyFord
15 Touch based on the plaintiffs' allegations of Ford issuing Technical Service Bulletins
16 ("TSBs") and software updates to dealers, as well as consumer complaints. *MyFord*, 46 F.
17 Supp. 3d at 957-58. Here, Cahen alleges Toyota has known about the CAN bus-related
18 vulnerabilities in its vehicles for years. Complaint ¶ 36. In her Complaint, she includes the
19 specific example of DARPA-funded researchers disclosing the results of their experimentation
20 with a 2010 Toyota Prius directly to Toyota. Complaint ¶ 37-38 (citing Miller & Valasek (RJN
21 Ex. 2)). But this is not enough for Toyota, which complains Cahen "does not allege that
22 Toyota was aware of the purported problem *at the time of sale* in 2008." Motion at 21-22.

23 This Court should decline Toyota's request to find that it didn't know, and reasonably
24 couldn't have known, of the defects by 2008. *Cf.* Complaint ¶ 79. As the 2011 research paper
25 makes clear, other researchers had been studying CAN bus security in vehicles and publishing
26 papers on the topic since at least 2002. *See* Stephen Checkoway et al., *Comprehensive*
27 *Experimental Analyses of Automotive Attack Surfaces*, available at [http://www.autosec.org/](http://www.autosec.org/pubs/cars-usenixsec2011.pdf)
28 [pubs/cars-usenixsec2011.pdf](http://www.autosec.org/pubs/cars-usenixsec2011.pdf) (RJN Ex. 5) at 15-16 (citing, *e.g.*, M. Wolf, A. Weimerskirch,

1 and C. Paar, *Security in automotive bus systems*, In C. Paar, editor, ESCAR 2004, Nov. 2004;
2 M. Wolf, A. Weimerskirch, and T. Wollinger, *State of the art: Embedding security in vehicles*,
3 EURASIP Journal on Embedded Systems, 2007); *see also* Complaint ¶ 36. Yet, Toyota would
4 have the Court believe it knew nothing about the vulnerabilities of CAN bus technology
5 several years after this research had begun, and could not have known of it by 2008. Motion at
6 21-22.

7 The Court should decline to accept Toyota's suggestion. As the *MyFord* court held,
8 even if the Court believes the question is close or has some doubts that the plaintiff will be
9 able to prove the defendant's knowledge of the defect at the time of sale, that does not make
10 the plaintiff's case implausible and subject to dismissal. *MyFord*, 46 F. Supp. 3d at 958.
11 Here, the Court similarly determine that Cahen has adequately alleged knowledge on the part
12 of Toyota—especially given that all reasonable inferences must be drawn in her favor for
13 purposes of Rule 12(b)(6). *See MyFord*, 46 F. Supp. 3d at 958.

14 3. Cahen Establishes That Toyota Failed To Discharge Its Duty To Disclose

15 The court in *MyFord* next discussed that where a fraud claim is based on nondisclosure
16 or concealment, there must first be a duty to disclose which can arise either when (1) there is a
17 known defect in a consumer product and there are safety concerns associated with the
18 product's use, or (2) the defendant had exclusive knowledge of material facts not known to the
19 plaintiff. *MyFord*, 46 F. Supp. 3d at 958-59 (citing *Wilson v. Hewlett-Packard*, 668 F.3d
20 1136, 1141 (9th Cir.2012); *Smith v. Ford Motor Co.*, 749 F. Supp. 2d 980, 987–88 (N.D. Cal.
21 2010)). The court again concluded that a reasonable jury could find safety concerns with
22 MyFord Touch giving rise to a duty to disclose on Ford's part based on potential malfunctions
23 “if the rearview mirror camera or the defroster were to stop functioning.” *MyFord*, 46 F.
24 Supp. 3d at 959. The court specifically distinguished *Smith* (which involved ignition locks
25 that allegedly could fail and prevent a driver from starting the car), finding that even the
26 potential of a malfunctioning rearview camera while driving backwards or a defroster in winter
27 are “safety concerns [] not speculative as the concerns were in *Smith*, 749 F. Supp. 2d 991[.]”
28 *MyFord*, 46 F. Supp. 3d at 959 (citation in original).

1 Toyota again protests that the safety concerns Cahen raises are “too speculative,”
 2 relying on *Smith*. Motion at 21 (citing *Smith v. Ford Motor Co.*, 462 F. App’x 660, 663 (9th
 3 Cir. 2011), affirming 749 F. Supp. 2d 980 (N.D. Cal. 2010)). Accordingly, following *MyFord*,
 4 this Court should have no difficulty finding that the considerably more dangerous hazards
 5 described in Cahen’s allegations constitute safety concerns giving rise to Toyota’s duty to
 6 disclose them to buyers. *MyFord*, 46 F. Supp. 3d at 959; see Complaint ¶¶ 1-6, 28-35, 65, 75,
 7 87, 109-112. These allegations sufficiently plead that Toyota had a duty to disclose specific
 8 facts that it deliberately failed to reveal, which are adequate to support Cahen’s fraud-based
 9 claims under Rule 9(b). See *MyFord*, 46 F. Supp. 3d at 959.

10 In *MyFord*, the court found alternatively that Ford met the “exclusive knowledge”
 11 ground supporting a duty to disclose, 46 F. Supp. 3d at 960, and this Court should reach the
 12 same conclusion as to Toyota based on Cahen’s allegations. The court in *MyFord* noted that
 13 exclusive knowledge can established where the defendant knew of a defect while the plaintiffs
 14 did not and, “given the nature of the defect, it was difficult to discover.” *Id.* (citing *Collins v.*
 15 *eMachines, Inc.*, 202 Cal. App. 4th 249, 256, 134 Cal. Rptr. 3d 588 (2011)). It stated that even
 16 the presence of information online does not automatically defeat exclusive knowledge,
 17 *MyFord*, 46 F. Supp. 3d at 960 (citing *Czuchaj v. Conair Corp.*, No. 13–CV–1901–BEN
 18 (RBB), 2014 WL 1664235, at *4 (S.D. Cal. Apr. 17, 2014)).

19 Here, Cahen’s allegations directly support Toyota’s superior knowledge of the defect.
 20 Complaint ¶¶ 79, 36-38 (citing Miller & Valasek (RJN Ex. 2); Stephen Checkoway et al.,
 21 *Comprehensive Experimental Analyses of Automotive Attack Surfaces*, available at
 22 <http://www.autosec.org/pubs/cars-usenixsec2011.pdf> (RJN Ex. 5) at 15-16). This Court
 23 should find Cahen has established the “exclusive knowledge” ground sufficient to support
 24 Toyota’s duty and failure to disclose the security vulnerabilities under Rule 9(b). Complaint
 25 ¶¶ 1-6, 28-35, 65, 75, 87, 109-112; *MyFord*, 46 F. Supp. 3d at 960.

26 C. Cahen’s Allegations Support Her Implied Warranty Claims

27 Toyota challenges Cahen’s claims for breach of the implied warranty of
 28 merchantability under Cal. Com. Code § 2104 (“UCC”) and under California’s Song-Beverly

1 Consumer Warranty Act, Cal. Civ. Code §§ 1791.1 & 1792 (“Song-Beverly”) on the ground
 2 that Cahen fails to allege “that her vehicle was not fit for the ordinary purpose for which it was
 3 intended—namely, transportation.” Motion at 18; *see generally* Motion at 18-19.⁴

4 The court’s opinion in *In re MyFord Touch Consumer Litig.*, 46 F. Supp. 3d 936, 980-
 5 81 (N.D. Cal. 2014) (Chen, J.), is, again, instructive. Turning back arguments essentially the
 6 same as Toyota’s, the court noted that “the ordinary purpose of a car is not just to provide
 7 transportation but rather safe, reliable transportation.” *MyFord*, 46 F. Supp. 3d at 980. The
 8 court found “it is a question of fact for the jury as to whether the problems with [MyFord
 9 Touch] posed enough of a safety risk that the cars at issue could not be said to provide safe,
 10 reliable transportation.” *Id.* It noted that the magnitude of the safety risk posed by the alleged
 11 problems with MyFord Touch were not as significant as in other cases, but held that “the level
 12 of risk to safety need not be gross or certain” and denied Ford’s request for dismissal under
 13 Rule 12(b)(6). *Id.* at 980-81 (citing *Cholakyan v. Mercedes-Benz USA, LLC*, 796 F. Supp. 2d
 14 1220, 1243–44 (C.D. Cal. 2011); *Aguilar v. Gen. Motors, LLC*, No. 13-cv-00437-LJO-GS,
 15 2013 WL 5670888, at *7 (E.D. Cal. Oct. 16, 2013)).

16 Here, as Cahen alleges, the safety risk presented by Toyota’s defect puts her in
 17 jeopardy of severe bodily injury or death. *E.g.*, Complaint ¶ 6. This Court should therefore
 18 hold that a reasonable jury could find the problems with Toyota’s CAN bus-equipped vehicles
 19 pose enough of a safety risk that the vehicles can’t be said to provide safe, reliable
 20 transportation. *MyFord*, 46 F. Supp. 3d at 980-81. Similar to the materiality inquiry in
 21 connection with Cahen’s fraud-based claims, this is a question of fact. *See Hinojos v. Kohl’s*
 22 *Corp.*, 718 F.3d 1098, 1107 n.7 (9th Cir. 2013).

23 The Court should likewise reject Toyota’s challenge to Cahen’s implied warranty of
 24 merchantability claim based on lack of privity because Cahen purchased her car from a car
 25 dealer. Motion at 19-20; Complaint ¶ 12. There is no privity requirement for implied
 26 warranty claims under Song-Beverly. *Ehrlich v. BMW of N. Am., LLC*, 801 F. Supp. 2d 908,
 27

28 ⁴ Cahen addresses Toyota’s argument that she cannot bring implied warranty claims after the
 expiration of the express warranty period (Motion at 16-17) *infra* in Part VI.

1 921 (C.D. Cal. 2010). And for Cahen’s implied warranty claim under California’s UCC, she
 2 specifically pleads that she is an intended third-party beneficiary of contracts between Toyota
 3 and its dealers. Complaint ¶ 98.

4 As *MyFord* explains, California specifically recognizes a third-party beneficiary
 5 exception to the privity requirement under the California UCC. *MyFord*, 46 F. Supp. 3d at 983
 6 (discussing *Gilbert Financial Corp. v. Steelform Contracting Co.*, 82 Cal. App. 3d 65, 145
 7 Cal. Rptr. 448 (1978)). Cahen acknowledges that this Court has previously declined, in *Long*
 8 *v. Graco Children’s Prods., Inc.*, No. 13-cv-01257-WHO, 2013 WL 4655763, (N.D. Cal.
 9 Aug. 26, 2013) (Orrick, J.), to recognize this exception in light of *Clemens v. DaimlerChrysler*
 10 *Corp.*, 534 F.3d 1017 (9th Cir. 2008), which Toyota cites (Motion at 19). Cahen respectfully
 11 urges the Court to follow the reasoning in *MyFord*, 46 F. Supp. 3d at 983-84, and find that
 12 *Gilbert* should control the outcome in light of Cahen’s specific pleading of the third-party
 13 beneficiary exception, and because *Clemens* (which nowhere addresses *Gilbert*) does not
 14 foreclose the application of this exception.

15 **D. Cahen’s Claims Are Not Barred by Limitations**

16 The Court should reject Toyota’s argument that all of Cahen’s claims are time-barred
 17 by various statutes of limitation. *See generally* Motion at 13-16. As the *MyFord* court noted,
 18 “Statute of limitations is, of course, an affirmative defense that a plaintiff has no obligation to
 19 plead around in his or her complaint.” *MyFord*, 46 F. Supp. 3d at 961 (citing *Belluomini v.*
 20 *CitiGroup, Inc.*, No. CV 13-01743 CRB, 2013 WL 3855589, at *3 n.3, (N.D. Cal. July 24,
 21 2013)). But where, as here, a plaintiff pleads tolling based on the defendant’s active
 22 concealment—in this case, Toyota’s active concealment of the problems with its CAN bus
 23 technology—a court should find, particularly for purposes of Rule 12(b)(6), that an allegation
 24 of active concealment is adequate. *Compare MyFord*, 46 F. Supp. 3d at 961 *with* Complaint ¶¶
 25 26-27 (alleging, *inter alia*, Cahen “could not have reasonably discovered the true, latent
 26 defective nature of the CAN buses until shortly before this class action litigation was
 27 commenced. ... Defendants were and remain under a continuing duty to disclose to [Cahen] ...
 28 that this defect is a result of Defendants’ design choices, and that it will require costly

1 repairs....”).

2 The Court should accordingly decline to dismiss any of Cahen’s claims as time-
3 barred—including her implied warranty claims under California’s UCC and Song-Beverly. As
4 Toyota admits, a four-year express warranty covered claims for Cahen’s car (Motion at 16-17
5 (citing Toyota’s RJN Ex. 1)), and it is a warranty that “explicitly extends to future
6 performance of the goods” such that it tolls limitations until Cahen reasonably could have
7 known of the car’s defects. *Ehrlich v. BMW of N. Am., LLC*, 801 F. Supp. 2d 908, 924-25
8 (C.D. Cal. 2010) (quoting Cal. Comm. Code § 2725 and sustaining implied warranty claims
9 brought after the expiration of the express warranty period); *see also* Complaint ¶¶ 26-27.

10 **E. Cahen Sufficiently Alleges That Toyota Invaded Her Right To Privacy**

11 Toyota correctly states the three factors establishing invasion of privacy under Article
12 I, Section 1 of the California Constitution: “(1) a legally protected privacy interest; (2) a
13 reasonable expectation of privacy in the circumstances; and (3) conduct by defendant
14 constituting a serious invasion of privacy.” Motion at 23 (quoting *Hill v. Nat’l Collegiate*
15 *Athletic Assn.*, 7 Cal. 4th 1, 39-40 (1994). But Toyota incorrectly argues Cahen does not meet
16 any of these factors. Motion at 22-25.

17 There is an important distinction between a *transactional* exchange of information—
18 such as between a defendant who “ask[ed] its customers for their ZIP codes during credit card
19 transactions so that it could obtain their home addresses for the purpose of mailing marketing
20 materials” and a more pervasive, *continuous* collection of information—such as by a phone
21 manufacturer who “transform[ed] the phones into surreptitious tracking devices” that allowed
22 it to create “a continually updated log of precisely where [consumers] live, work, park, dine,
23 pick up children from school, worship, vote, and assemble, and what time they are ordinarily
24 at these locations.” *Yunker v. Pandora Media, Inc.* No. 11-CV-03113 JSW, 2013 WL
25 1282980, at *14-15 (N.D. Cal. Mar. 26, 2013) (comparing *Folgelstrom v. Lamps Plus, Inc.*,
26 195 Cal. App. 4th 986 (2011) with *Goodman v. HTC America, Inc.*, No. C11-1793 MJP, 2012
27 WL 2412070 (W.D. Wash. June 26, 2012) (finding sufficient statement of a claim)). The latter
28 exchange has been held to impact legally protected privacy interests, and it constitutes an

1 actionable invasion of privacy under the California Constitution. *Goodman*, 2012 WL
2 2412070, at *14.

3 The Supreme Court and the Ninth Circuit have also recognized the pervasive nature of
4 modern GPS tracking and its potential harm to privacy interests. *See, e.g., U.S. v. Jones*, --
5 U.S.--, 132 S. Ct. 945, 955 (2012) (Sotomayor, J., concurring) (“GPS monitoring generates a
6 precise, comprehensive record of a person’s public movements that reflects a wealth of details
7 about his familial, political, professional, religious, and sexual associations.”); *see also United*
8 *States v. Pineda-Moreno*, 617 F.3d 1120, 1125 (9th Cir. 2010) (Kozinski, C.J., dissenting)
9 (“[W]here we go says so much about who we are. Are Winston and Julia’s cell phones
10 together near a hotel a bit too often? Was Syme’s OnStar near an STD clinic? Were Jones,
11 Aaronson and Rutherford at that protest outside the White House?”).

12 Cahen alleges an invasion of her privacy based on Toyota’s continuous collection and
13 transmission of information about the geographic location of her vehicle at various times.
14 Complaint ¶ 135. The Court can reasonably infer that simply by driving, Cahen is constantly
15 creating data about her personal travel locations, which Toyota collects, aggregates, and
16 disseminates. *Id.*; *see also* Complaint ¶¶ 49-50. This is precisely the type of legally-protected
17 privacy interest under the California Constitution the *Goodman* court found, and this Court
18 should also recognize. *Goodman*, 2012 WL 2412070, at *14. Toyota’s suggestion that only
19 medical information, financial records, or sexual activity are legally protected is incorrect, and
20 its citation to *Fredenburg v. City of Fremont*, 119 Cal. App. 4th 408, 423 (2004) for the
21 proposition that location information is not legally protected is misleading, as the information
22 in *Fredenburg* was the address of a convicted sex offender. *See Goodman*, 2012 WL
23 2412070, at *15 (“Unlike collecting someone’s address or telephone number, which courts
24 have called ‘routine commercial behavior,’ Plaintiffs allege that Defendants engaged in the
25 continuous tracking of their location and movements”) (quoting *Folgelstrom*, 195 Cal. App.
26 4th at 992).

27 *Goodman* is also instructive on the question of whether Cahen adequately alleges a
28 reasonable expectation of privacy in the circumstances. There, the court rejected the

1 defendant's argument that the plaintiffs could not meet this factor because they admitted that
2 they expected their phones to transmit GPS location data when using certain applications.
3 2012 WL 2412070, at *15. "While Plaintiffs may have expected their phones to transmit fine
4 GPS data occasionally for certain reasons, they did not expect their phones to continually track
5 them for reasons not related to consumer needs." *Id.* Correspondingly, Cahen alleges Toyota
6 shares her location information without her consent, and that Toyota knew or should have
7 known she had a reasonable expectation of privacy in this information. Complaint ¶¶ 134-36.
8 The Court should therefore reject Toyota's argument that Cahen concedes any reasonable
9 expectation of privacy in such data by noting that Toyota refers to its practices in sources such
10 as owner's manuals, Motion at 23 (citing Complaint ¶ 50), and it should find that Cahen's
11 allegations meet the second element of the *Hill* test. *Goodman*, 2012 WL 2412070, at *15.

12 Likewise, the Court should give no credence to Toyota's argument that its ongoing
13 collection and sharing of Cahen's whereabouts is not a "serious invasion" under the *Hill* test
14 because it ostensibly does not constitute "an egregious breach of social norms." Motion at 22
15 (citing *In re iPhone Application Litig.*, 844 F. Supp. 2d 1040, 1063 (N.D. Cal. 2012)). The
16 *iPhone* opinion relied exclusively on *Fogelstrom* and its example of collecting transactional
17 information—ZIP codes—in reaching its holding, and never analyzed or discussed the severity
18 of ongoing, continuous disclosure of location information as in *Goodman*, 2012 WL 2412070,
19 at *15, or *Jones*, 132 S. Ct. at 955. The Court should reasonably find Toyota's continuous
20 collection and transmission of Cahen's whereabouts to be a serious invasion of her privacy
21 under *Hill*, 7 Cal. 4th at 39-40.

22 IV. CONCLUSION

23 It would be unimaginably tragic for anyone to die in a vehicle that is commandeered
24 over the internet. Yet, Toyota continues to build and sell vehicles with the same defects, fully
25 aware of the gruesome consequences to its drivers and passengers in the event of a malicious
26 hack. Toyota also proceeds to gather and market data on the whereabouts of its drivers
27 without their consent, profiting off the private information of its customers.

28 And, as Cahen alleges, Toyota persists in avoiding any corrective action—even

1 refusing to inform consumers about the nature of the enormous problem it created in the face
2 of its duty to do so.

3 The Court should not permit Toyota to stand idly by while the problem metastasizes
4 into a major crisis. It should deny Toyota’s Motion in its entirety.

5
6 DATED: September 28, 2015

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10
 11 UNITED STATES DISTRICT COURT
 12 NORTHERN DISTRICT OF CALIFORNIA
 13 SAN FRANCISCO DIVISION

14 HELENE CAHEN, KERRY J. TOMPULIS,
 MERRILL NISAM, RICHARD GIBBS, and
 15 LUCY L. LANGDON,

16 Plaintiffs,

17 v.

18 TOYOTA MOTOR CORPORATION,
 TOYOTA MOTOR SALES, U.S.A., INC.,
 19 FORD MOTOR COMPANY, GENERAL
 MOTORS LLC,

20 Defendants.
 21

CASE NO. 4:15-cv-01104-WHO

PUTATIVE CLASS ACTION

**DEFENDANTS TOYOTA MOTOR
 CORPORATION AND TOYOTA MOTOR
 SALES, U.S.A., INC.'S NOTICE OF MOTION
 AND MOTION TO DISMISS PLAINTIFFS'
 FIRST AMENDED COMPLAINT;
 SUPPORTING MEMORANDUM OF POINTS
 AND AUTHORITIES**

**REQUEST FOR JUDICIAL NOTICE AND
 DECLARATION OF CHRISTINA YANG
 FILED CONCURRENTLY**

Hearing

Date: November 3, 2015
 Time: 3:00 p.m.
 Courtroom: 2
 The Hon. William H. Orrick

TABLE OF CONTENTS

Page

I. INTRODUCTION AND SUMMARY OF ARGUMENT 1

II. SUMMARY OF ALLEGED FACTS AND PROCEDURAL HISTORY 3

III. THE LEGAL STANDARDS GOVERNING THIS MOTION 7

IV. PLAINTIFF LACKS ARTICLE III STANDING TO PURSUE HER CLAIMS 8

 A. Plaintiff Does Not Allege That She Experienced Any Vehicle “Hacking” 8

 B. Courts Have Rejected Similar Attempts To Base Article III Standing On Hypothetical, Third-Party Criminal Conduct..... 10

 C. Plaintiff Also Lacks Standing To Challenge Defendants’ “Data Collection” Practices, Because She Does Not Link That Alleged Conduct To Her Own Experience..... 13

V. THE STATUTES OF LIMITATIONS BAR ALL OF PLAINTIFF’S CLAIMS 13

VI. PLAINTIFF’S STATE LAW WARRANTY, FRAUD, AND INVASION OF PRIVACY CLAIMS FAIL AS A MATTER OF LAW 16

 A. Plaintiff Does Not State, And Cannot Pursue, Any Warranty Claim 16

 B. Plaintiff Also May Not Pursue Derivative Warranty Claims Through Her California Consumer Protection Or Fraud Claims..... 20

 C. Plaintiff Does Not Allege A Sufficiently “Serious” Invasion To Support A Privacy Claim..... 22

VII. CONCLUSION 25

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

TABLE OF AUTHORITIES

Page(s)

Cases

1

2

3

4 *Am. Suzuki Motor Corp. v. Super. Ct.*,
37 Cal. App. 4th 1291 (1995)..... 19

5

6 *Asghari v. Volkswagen Grp. of Am., Inc.*,
42 F. Supp. 3d 1306 (C.D. Cal. 2013)..... 14

7 *Ashcroft v. Iqbal*,
556 U.S. 662 (2009)..... 7

8

9 *Banga v. Equifax Info. Servs., LLC*,
No. 14-03038-WHO, 2015 WL 3799546 (N.D. Cal. June 18, 2015)..... 23

10 *Bardin v. DaimlerChrysler Corp.*,
136 Cal. App. 4th 1255 (2006)..... 20

11

12 *Bell Atl. Corp. v. Twombly*,
550 U.S. 544 (2007)..... 7

13 *Belluomini v. Citigroup, Inc.*,
No. 13-01743-CRB, 2013 WL 5645168 (N.D. Cal. Oct. 16, 2013)..... 25

14

15 *Biden v. Common Cause*,
748 F.3d 1280 (D.C. Cir. 2014) 11

16 *Birdsong v. Apple, Inc.*,
590 F.3d 955 (9th Cir. 2009)..... 9, 13, 18, 19, 21

17

18 *Brooks v. Wash. Mut. Bank*,
No. 12-00765-WHA, 2012 WL 5869617 (N.D. Cal. Nov. 19, 2012) 14

19 *Cain v. State Farm Mut. Auto. Ins. Co.*,
62 Cal. App. 3d 310 (1976)..... 14

20

21 *Chapman v. Pier 1 Imports (U.S.) Inc.*,
631 F.3d 939 (9th Cir. 2011)..... 13

22 *Clapper v. Amnesty Int’l USA*,
133 S. Ct. 1138 (2013)..... 8, 9, 11

23

24 *Clemens v. DaimlerChrysler Corp.*,
534 F.3d 1017 (9th Cir. 2008)..... 15, 19, 20

25 *DaimlerChrysler Corp. v. Cuno*,
547 U.S. 3321 (2006)..... 8, 11

26

27 *Daugherty v. Am. Honda Motor Co.*,
144 Cal. App. 4th 824 (2006)..... 16, 20

28 *Doe v. Kaweah Delta Hosp.*,
No. 08-118, 2010 WL 5399228 (E.D. Cal. Dec. 23, 2010)..... 14

TABLE OF AUTHORITIES
(continued)

Page(s)

1

2

3 *Durkee v. Ford Motor Co.*,
No. 14–0617–PJH, 2014 WL 7336672 (N.D. Cal. Dec. 24, 2014)..... 14

4

5 *Eclectic Prop. East, LLC v. Marcus & Millichap Co.*,
751 F.3d 990 (9th Cir. 2014)..... 7

6

7 *Elias v. Hewlett-Packard Co.*,
950 F. Supp. 2d 1123 (N.D. Cal. 2013) 22

8

9 *Folgelstrom v. Lamps Plus, Inc.*,
195 Cal. App. 4th 986 (2011)..... 24

10

11 *Fredenberg v. City of Fremont*,
119 Cal. App. 4th 408 (2004)..... 24

12

13 *Frenzel v. AliphCom*,
76 F. Supp. 3d 999 (N.D. Cal. 2014) 7

14

15 *Hill v. Nat’l Coll. Athletic Ass’n*,
7 Cal. 4th 1 (1994) 23, 24

16

17 *Hovsepian v. Apple, Inc.*,
No. 08–5788–JF, 2009 WL 2591445 (N.D. Cal. Aug. 21, 2009)..... 17

18

19 *In re Horizon Healthcare Servs., Inc. Data Breach Litig.*,
No. 13–7418, 2015 WL 1472483 (D.N.J. Mar. 31, 2015)..... 12

20

21 *In re iPhone App. Litig.*,
844 F. Supp. 2d 1040 (N.D. Cal. 2012) 22, 24

22

23 *In re Toyota Motor Corp. Unintended Acceleration Litig.*,
754 F. Supp. 2d 1145 (C.D. Cal. 2010)..... 17

24

25 *In re Yahoo Mail Litig.*,
7 F. Supp. 3d 1016 (N.D. Cal. 2014) 23

26

27 *Isaacs v. United States*,
No. 13-01394-WHO, 2013 WL 4067597 (N.D. Cal. Aug. 1, 2013) 7

28

Jones v. ConocoPhillips,
198 Cal. App. 4th 1187 (2011)..... 20

Juniper Networks v. Shipley,
No. 09–0696–SBA, 2009 WL 1381873 (N.D. Cal. May 14, 2009) 15

Kearns v. Ford Motor Co.,
567 F.3d 1120 (9th Cir. 2009)..... 8

Keilholtz v. Lennox Hearth Prods. Inc.,
No. 08–00836–CW, 2009 WL 2905960 (N.D. Cal. Sept. 8, 2009)..... 15

TABLE OF AUTHORITIES

(continued)

Page(s)

1

2

3 *Kirsopp v. Yamaha Motor Co.*,

4 No. 14-496, 2015 U.S. Dist. LEXIS 68639 (C.D. Cal. Jan. 7, 2015) 15

5 *Krottner v. Starbucks Corp.*,

6 628 F.3d 1139 (9th Cir. 2010)..... 9, 12

7 *Lee v. Toyota Motor Sales, U.S.A., Inc.*,

8 992 F. Supp. 2d 962 (C.D. Cal. 2014)..... 17, 21, 22

9 *Loder v. City of Glendale*,

10 14 Cal. 4th 846 (1997) 23

11 *Long v. Graco Children’s Prods., Inc.*,

12 No. 13–01257–WHO, 2013 WL 4655763 (N.D. Cal. Aug. 26, 2013) 19

13 *Lujan v. Defenders of Wildlife*,

14 504 U.S. 555 (1992)..... 8, 10, 11

15 *MacDonald v. Ford Motor Co.*,

16 37 F. Supp. 3d 1087 (N.D. Cal. 2014) 13

17 *Maya v. Centex Corp.*,

18 658 F.3d 1060 (9th Cir. 2011)..... 11

19 *Morgan v. Harmonix Music Sys., Inc.*,

20 No. 08–5211, 2009 WL 2031765 (N.D. Cal. July 7, 2009)..... 20

21 *Morning Star Packing Co. v. Crown Cork & Seal Co.*,

22 303 F. App’x 399 (9th Cir. Dec. 10, 2008) 13

23 *Osborne v. Subaru of Am. Inc.*,

24 198 Cal. App. 3d 646 (1988)..... 19

25 *Parker v. Iolo Techs., LLC*,

26 No. 12-00984, 2012 WL 4168837 (C.D. Cal. Aug. 20, 2012)..... 13

27 *Peterson v. Mazda Motor of Am., Inc.*,

28 44 F. Supp. 3d 965 (C.D. Cal. 2014) 17

Pioneer Elec. (USA), Inc. v. Super. Ct.,

 40 Cal. 4th 360 (2007) 22, 23

Public Citizen, Inc. v. NHTSA,

 489 F.3d 1279 (D.C. Cir. 2007),

 subsequent determination, 513 F.3d 234 (D.C. Cir. 2008) 9

Raines v. Byrd,

 521 U.S. 811 (1997)..... 13

Reilly v. Ceridian Corp.,

 664 F.3d 38 (3d Cir. 2011)..... 12

TABLE OF AUTHORITIES

(continued)

Page(s)

1

2

3 *Ries v. Arizona Beverages USA LLC,*
287 F.R.D. 523 (N.D. Cal. 2012)..... 14

4

5 *Riva v. PepsiCo,*
No. 14-02020-EMC, 2015 WL 993350 (N.D. Cal. Mar. 4, 2015)..... 10

6 *Seifi v. Mercedes-Benz USA, LLC,*
No. 12-5439-TEH, 2013 WL 2285339 (N.D. Cal. May 23, 2013) 7, 14, 16

7

8 *Sharma v. BMW of N. Am., LLC,*
No. 13-2274-MMC, 2015 WL 75057 (N.D. Cal. Jan. 6, 2015) 17

9 *Smith v. Ford Motor Co.,*
462 F. App'x 660 (9th Cir. 2011) 21

10

11 *Smith v. LG Elecs. U.S.A., Inc.,*
No. 13-4361-PJH, 2014 WL 989742 (N.D. Cal. Mar. 11, 2014) 17

12 *Storm v. Paytime,*
No. 14-1138, 2015 WL 1119724 (M.D. Pa. Mar. 13, 2015)..... 10

13

14 *Taragan v. Nissan N. Am., Inc.,*
No. 09-3660-SBA, 2013 WL 3157918 (N.D. Cal. June 20, 2013) 18, 19

15 *Tietsworth v. Sears, Roebuck & Co.,*
720 F. Supp. 2d 1123 (N.D. Cal. 2010) 17, 21

16

17 *Troup v. Toyota Motors Corp.,*
545 F. App'x 668 (9th Cir. 2013) 18

18 *U.S. Hotel & Resort Mgmt., Inc. v. Onity Inc.,*
No. 13-1499, 2014 WL 3748639 (D. Minn. July 30, 2014) 12

19

20 *Vess v. Ciba-Geigy Corp. USA,*
317 F.3d 1097 (9th Cir. 2003)..... 8

21 *Wasco Prods., Inc. v. Southwall Techs., Inc.,*
435 F.3d 989 (9th Cir. 2006)..... 16

22

23 *White v. Social Security Admin.,*
No. 14-05604-JST, 2015 WL 3902789 (N.D. Cal. June 24, 2015) 24

24 *Wilson v. Hewlett-Packard Co.,*
668 F.3d 1136 (9th Cir. 2012)..... 20, 21

25

26 *Xavier v. Philip Morris USA, Inc.,*
787 F. Supp. 2d 1075 (N.D. Cal. 2011) 20

27 *Yumul v. Smart Balance, Inc.,*
733 F. Supp. 2d 1117 (C.D. Cal. 2010)..... 14, 15

28

TABLE OF AUTHORITIES
(continued)

Page(s)

1		
2		
3	<i>Yunker v. Pandora Media Inc.</i> ,	
4	No. 11-03113-JSW, 2013 WL 1282980 (N.D. Cal.),	
	and 2014 WL 988833 (N.D. Cal. Mar. 10, 2014).....	24

Constitutional Provisions

5		
6	U.S. Const. art. III, § 2, cl. 1	8
7	Cal. Const. Art. I, § 1	6

Statutes

8		
9	18 U.S.C. § 1030.....	11
10	Cal. Bus. & Prof. Code § 17200 <i>et seq.</i>	6
11	Cal. Bus. & Prof. Code § 17208	13
12	Cal. Bus. & Prof. Code § 17500 <i>et seq.</i>	6
13	Cal. Civ. Code § 1750 <i>et seq.</i>	6
14	Cal. Civ. Code § 1770(a).....	14
15	Cal. Civ. Code § 1783	13
16	Cal. Civ. Code § 1791.1(a)	18
17	Cal. Civ. Code § 1791.1(c)	17
18	Cal. Civ. Code §§1790-1795.8.....	6
19	Cal. Civ. Proc. Code § 335.1.....	14
20	Cal. Civ. Proc. Code § 337.....	13
21	Cal. Civ. Proc. Code § 338(d).....	13
22	Cal. Com. Code § 2314.....	6, 13
23	Cal. Com. Code § 2314(2)(c).....	18
24	Cal. Com. Code § 2316(2)	17
25	Cal. Com. Code § 2725	13
26	Cal. Com. Code § 2725(2)	14
27	Cal. Penal Code § 502.....	11
28		

TABLE OF AUTHORITIES

(continued)

Page(s)

Rules

Fed. R. Civ. P. 9(b) 7

Other Authorities

“Don’t Fret. It’s Still Really Hard To Hack Cars,” POLITICO (July 28, 2015),
[http://www.politico.com/morningtransportation/
0715/morningtransportation19332.html](http://www.politico.com/morningtransportation/0715/morningtransportation19332.html)..... 5

Andy Greenberg, “Hackers Remotely Kill A Jeep On The Highway—With Me In It,” WIRED
(July 21, 2015), <http://www.wired.com/2015/07/hackers-remotely-kill-jeep-highway/> 5

Charlie Miller & Chris Valasek, “Adventures in Automotive Networks & Control Units,”
http://illmatics.com/car_hacking.pdf..... 5

Chris Ingalls, “Smart apps pose privacy, security risks in some new cars” (May 20, 2015),
[http://www.king5.com/story/news/2015/05/19/
cars-auto-computer-security-hacking/27610967](http://www.king5.com/story/news/2015/05/19/cars-auto-computer-security-hacking/27610967)..... 5

Chris Valasek, “Lawsuit counterproductive for automotive industry,”
[http://blog.ioactive.com/2015/03/
lawsuit-counterproductive-for.html](http://blog.ioactive.com/2015/03/lawsuit-counterproductive-for.html) 6

Jim Travers, “Keeping Your Car Safe From Hacking,” CONSUMER REPORTS (May 7, 2015),
[http://www.consumerreports.org/cro/
news/2015/05/keeping-your-car-safe-from-hacking/index.htm](http://www.consumerreports.org/cro/news/2015/05/keeping-your-car-safe-from-hacking/index.htm) 5

Jonathan Vanian, “Automakers unite to prevent cars from being hacked,” FORTUNE (July 14,
2015), <http://fortune.com/2015/07/14/automakers-share-security-data>..... 6

Stephen Checkoway, “Comprehensive Experimental Analyses of Automotive Attack
Surfaces” (2011), <http://www.autosec.org/pubs/cars-usenixsec2011.pdf>..... 5, 9, 10

Xavier Aaronson, “We Drove a Car While It Was Being Hacked,” MOTHERBOARD (2014),
available at <http://motherboard.vice.com/read/we-drove-a-car-while-it-was-being-hacked> ... 5, 10

1 TO THE COURT AND ALL PARTIES AND COUNSEL OF RECORD:

2 PLEASE TAKE NOTICE that on November 3, 2015, at 3:00 p.m., or as soon thereafter as
3 they may be heard, in Courtroom 2 of this Court, located at 450 Golden Gate Avenue, San Francisco,
4 California, before the Honorable William H. Orrick, Defendants Toyota Motor Corporation and
5 Toyota Motor Sales, U.S.A., Inc. (collectively, "Toyota") will and hereby do move the Court for an
6 order dismissing all of the claims and causes of action contained in Plaintiff Helene Cahen's First
7 Amended Complaint pursuant to Rules 12(b)(1), 12(b)(6), and 9(b) of the Federal Rules of Civil
8 Procedure. Toyota brings this Motion on the following grounds:

9 (1) Plaintiff Cahen's purported "injury" rests on purely hypothetical, contingent, and
10 conjectural allegations of harm that could only result from third parties' criminal acts. Plaintiff's
11 allegations of some potential future alleged injuries are not the type of imminent, concrete, and
12 particularized harms required for Article III standing.

13 (2) Even if this Court concluded that Plaintiff had standing to pursue her state law claims,
14 the complaint still must be dismissed because all of her California warranty, fraud, consumer
15 protection, and privacy claims are barred by the applicable statutes of limitations, which expired no
16 later than 2012 (four years *after* she purchased her 2008 Lexus RX 400h, and more than two years
17 *before* she filed this lawsuit).

18 (3) Separately, Plaintiff also fails to plead any claim for breach of warranty, fraud or
19 deception, or invasion of privacy:

20 (a) Plaintiff cannot plausibly allege any claim for breach of warranty because:
21 (i) any warranties applicable to her 2008 Lexus RX 400h expired by no later than September 2012;
22 (ii) she does not identify any actionable statement, promise, or malfunction to support a claim for
23 breach of express warranty; (iii) there are no allegations that her vehicle was not fit for its ordinary
24 purpose of transportation, and therefore Plaintiff cannot pursue an implied warranty of
25 merchantability claim under California law; and (iv) she also cannot pursue an implied warranty
26 claim pursuant to binding Ninth Circuit precedent because she purchased her vehicle from a third-
27 party dealer and thus lacks privity with Toyota.

28 (b) Plaintiff does not state a claim for fraudulent concealment or violations of

1 California’s consumer protection/false advertising laws, because she cannot show that Toyota had
2 any duty to disclose the alleged (and purely hypothetical) “defect,” and she fails to satisfy Rule 9(b)’s
3 heightened pleading standard applicable to fraud claims.

4 (c) Finally, Plaintiff cannot plausibly allege an invasion of privacy claim under the
5 California Constitution because she has not alleged, and cannot amend her complaint to allege, either
6 a *reasonable* expectation of privacy or the type of *serious* invasion of privacy required to maintain
7 this claim.

8 **STATEMENT OF ISSUES TO BE DECIDED PER CIVIL L.R. 7-4(A)(3)**

9 1. Whether Plaintiff can establish Article III standing based on a theoretical possibility
10 that her vehicle might be accessed unlawfully by criminals at some point in the future.

11 2. Whether the applicable statutes of limitations bar Plaintiff’s California law claims
12 relating to her 2008 Lexus RX 400h.

13 3. Whether Plaintiff may pursue a claim for breach of express or implied warranty given
14 that any applicable warranties expired by their own terms more than two years ago, Plaintiff does not
15 allege that she experienced any problems with her vehicle, and she lacks privity with Toyota.

16 4. Whether Plaintiff may pursue derivative warranty claims through her California
17 consumer protection and/or common law fraud claims when Toyota had no legal duty to disclose the
18 alleged hypothetical “defect,” and when Plaintiff failed to plead her fraud claims with the
19 particularity required under Rule 9(b) of the Federal Rules of Civil Procedure.

20 5. Whether Plaintiff’s invasion of privacy claim must be dismissed because the
21 complaint fails to allege either a reasonable expectation of privacy or the type of serious invasion of
22 privacy required to maintain such a claim.

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This Motion is based on this Notice of Motion, the attached Memorandum of Points and Authorities; the accompanying Declaration of Christina Yang, Request for Judicial Notice, and attached exhibits; the pleadings and papers on file in this action; and such other matters and argument as may be presented to the Court at the time of the hearing on this Motion.

DATED: August 28, 2015

GIBSON, DUNN & CRUTCHER LLP

By:  Christopher Chorba

Attorneys for Defendants Toyota Motor Corporation and Toyota Motor Sales, U.S.A., Inc.

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I. INTRODUCTION AND SUMMARY OF ARGUMENT

Although the First Amended Complaint is a streamlined version of the original pleading (which was 343 pages long and alleged 238 separate claims arising under the laws of 50 states), it does not, and cannot, fix the underlying flaws in Plaintiffs’ legal theory. Specifically, Plaintiffs base this putative class action on a speculative fear that someday, a very sophisticated cyber-criminal *might* be able to gain unlawful access to certain vehicles manufactured by Defendants Ford Motor Company, General Motors LLC, Toyota Motor Corporation, and Toyota Motor Sales, U.S.A., Inc.: “*if* an outside source, such as a *hacker*,” were able to break into a Ford, GM, or Toyota vehicle, and gain “physical access” to the vehicle’s Electrical Control Unit (“ECU”), then “the hacker *could* confuse one or more ECUs and . . . take control of basic functions of the vehicle away from the driver” (Pls.’ First Am. Complaint [Dkt. 37] (“FAC”) ¶¶ 4, 33 (emphases added)).

None of the Plaintiffs alleges that this criminal “hacking” has occurred to them, or that there is an imminent danger that an “attacker” will gain access to the controller access network (“CAN”) bus units or ECUs inside their vehicles. Nor can Plaintiffs cite any actual, real-world incident in which any of the models of vehicles they own have been “hacked” (a point confirmed by the secondary sources cited in the complaint that report heavily controlled experiments). But Plaintiffs nonetheless seek to hold Defendants liable for the mere *possibility* of a high-tech criminal attack at some point in the future. This case is analogous to a lawsuit over a “data breach” before there has been any “breach,” on the theory that a defendant’s computer system *might* be vulnerable and *could* be attacked in the future. Plaintiffs’ lawsuit thus represents the very type of “highly attenuated chain of possibilities” and “possible future injury” that the Supreme Court has rejected as insufficient to confer standing. Stretching Article III to accommodate this case would conflict with binding precedent and contravene the reasonable and sensible limitations enshrined in the United States Constitution.

Even if there were reports of a real-world, non-experimental incident in the vehicles that Plaintiffs own (and there are none), courts uniformly reject claims that seek preemptive redress for injuries that could only be caused (if at all) through the tortious and criminal acts of third parties. Plaintiffs’ speculative theory of liability is not only contrary to precedent, it also defies common sense. Their claims are legally indistinguishable from the risk that vehicles may be subjected to other, non-

1 computerized acts of vandalism, such as tampering with the brakes, slashing the tires, smashing the
2 headlights, or cutting the fuel line. That Defendants' vehicles (like any other product) are not
3 completely invulnerable to destructive and illegal acts does not make them "defective," and the
4 immutable fact that a vehicle cannot be designed to completely thwart all of the potential machinations
5 of the criminal mind is hardly something for which Defendants can be liable.

6 Moreover, although the issues Plaintiffs identify have not arisen in real-world scenarios,
7 vehicle manufacturers are mindful of the need to keep their proprietary technology secure, and they
8 are working cooperatively with the responsible executive-branch regulators to proactively anticipate
9 and address future threats. Those efforts are far more effective at stopping a hypothetical scenario
10 from ever becoming a real one than a private class action based on a purely speculative injury.

11 Plaintiffs' lack of Article III standing disposes of this entire action, but all of the California
12 state law claims by Plaintiff Helene Cahen—the only named plaintiff who purchased or leased a
13 Toyota vehicle—are legally deficient for several additional and independent reasons:

14 First, all of Ms. Cahen's claims are barred by the applicable statutes of limitations. She
15 purchased her Lexus RX 400h in September 2008, and she was required to bring all of her state law
16 claims by no later than September 2012 (and earlier for her fraud and privacy claims). Plaintiff cannot
17 circumvent the limitations barrier by asserting that Toyota somehow "misrepresented" or "failed to
18 disclose" that a sophisticated criminal could tamper with the vehicle, as both state and federal courts
19 repeatedly have rejected similar attempts to make manufacturers perpetual "guarantors" of their
20 products. All of Plaintiff's claims are several years too late, she has not even attempted to meet her
21 pleading burden to establish an exception to the statutes of limitations, and the Court should dismiss
22 her claims with prejudice.

23 Second, Plaintiff cannot assert any express or implied warranty claim for several reasons:

24 (a) any warranties applicable to her 2008 Lexus RX 400h expired by their plain terms more than two
25 years ago (by no later than September 2012); (b) Plaintiff does not identify any actionable statement,
26 promise, or vehicle malfunction to support her "common law" breach of warranty claim; (c) there are
27 no allegations that her vehicle was not fit for its ordinary purpose of transportation, and therefore
28 Plaintiff cannot pursue a claim for breach of the implied warranty of merchantability (either through

1 the Song-Beverly Act or Cal. Com. Code § 2314); and (d) she also cannot pursue an implied warranty
2 claim because she purchased her vehicle from a third-party dealer and thus lacks privity with Toyota.

3 Third, Plaintiff cannot allege any derivative warranty claim based on either California
4 consumer protection/false advertising statutes (Cal. Bus. & Prof. Code §§ 17200 or 17500) or common
5 law “fraud by concealment,” because she cannot plausibly assert that Toyota had a legal duty to
6 disclose the CAN bus unit’s alleged vulnerability to hacking. Plaintiff also fails to plead any of her
7 statutory or common law fraud claims with the particularity required by Rule 9(b).

8 Fourth, the amended complaint does not state a plausible invasion of privacy claim under the
9 California Constitution, because Plaintiff admits that the “data collection” practices were disclosed
10 (and thus, she cannot claim that she had a reasonable expectation of privacy), and the alleged
11 collection and transmittal of vehicle location data—even if true—does not constitute a sufficiently
12 “serious” or “egregious” invasion to support this claim. Several courts in this District have rejected
13 attempts to assert a constitutional privacy claim based on the alleged transmittal of geolocation data.

14 In sum, after taking two months to amend her pleading, Plaintiff Cahen still cannot plausibly
15 assert a claim for relief. No future amendment can cure these fundamental legal deficiencies, and
16 Toyota respectfully requests that this Court dismiss this action with prejudice.

17 **II. SUMMARY OF ALLEGED FACTS AND PROCEDURAL HISTORY**

18 Plaintiffs Kerry Tompulis, Merrill Nisam, and Helene Cahen filed a 343-page complaint on
19 March 10, 2015, that asserted 238 claims against Defendants Ford Motor Company, General Motors
20 LLC, Toyota Motor Corporation, and Toyota Motor Sales, U.S.A., Inc. (Compl. [Dkt. 1].) Plaintiffs
21 alleged that the Electrical Control Units (ECUs) found in modern vehicles are “connected through a
22 controller area network (‘CAN or ‘CAN bus’),” and that “[a]n attacker with physical access to a CAN
23 bus-equipped vehicle could insert malicious code or CAN packets—and could also remotely and
24 wirelessly access a vehicle’s CAN bus through Bluetooth connections.” (*Id.* ¶ 36.)

25 On April 30, 2015, Plaintiffs’ counsel informed Defendants that they were “consulting with
26 experts and conducting further investigation,” and that they intended to amend the complaint. (*See*
27 Joint Stip. [Dkt. 32] at 2; Order Granting Joint Stip. [Dkt. 33] at 1.) In their First Amended Complaint
28 (“FAC”) filed on July 1, 2015 (Dkt. 37), Plaintiffs assert claims under California, Oregon, and

1 Washington law. They dropped 223 of their claims arising under federal law and the laws of other
2 states, named two additional Ford owners as plaintiffs (but no new Toyota owners), and added a
3 California invasion of privacy claim. But the central legal theory remains unchanged: Plaintiffs
4 contend that Defendants’ vehicles are “defective” because there is a future possibility of “hacking.”
5 (*Id.* ¶¶ 4, 8, 21, 26–28.) Specifically, they assert that “[t]he ECUs communicate by sending each other
6 ‘CAN packets,’ which are digital messages containing data and/or requests,” and that “*if* an outside
7 source, such as a *hacker*, were able to send CAN packets to ECUs on a vehicle’s CAN bus, the hacker
8 *could* confuse one or more ECUs and thereby, either temporarily or permanently, take control of basic
9 functions of the vehicle away from the driver.” (*Id.* ¶ 4 (emphases added).)

10 Plaintiff Cahen (the sole named plaintiff who owned or leased any Toyota vehicle) alleges that
11 she purchased a new 2008 Lexus RX 400h from an authorized Lexus dealer in San Rafael, California,
12 in September 2008. (*Id.* ¶ 12.) When Ms. Cahen purchased her vehicle, she received a limited
13 warranty (*see* Compl. [Dkt. 1] ¶ 51) that covered any “repairs and adjustments needed to correct
14 defects in materials or workmanship of any part supplied by Lexus” for 48 months or 50,000 miles
15 (whichever occurred first). (*See* Def.’s Request for Judicial Notice (“RJN”), Ex. 1, at 17–19.) The
16 warranty expressly disclaimed any guarantee against intrusion through “alteration or tampering,” and
17 limited any implied warranties “to the duration of these written warranties.” (*Id.*)

18 Although Ms. Cahen (like her co-Plaintiffs) asserts that the CAN bus units on Toyota vehicles
19 “are susceptible to hacking” (FAC ¶¶ 5, 8), she fails to allege that she has experienced any problems
20 with her CAN bus unit or any other part of her vehicle. To the contrary, she concedes that she did not
21 realize there could be anything allegedly “defective” with her vehicle “until shortly before this class
22 action litigation was commenced” (*id.* ¶ 26), and the FAC continues to rely on secondary sources in
23 which an unidentified vehicle was hacked under artificially-controlled conditions to demonstrate
24 possible security vulnerabilities that could be exploited by sophisticated criminals (*id.* ¶¶ 28–39).
25 Notably, none of these sources discussed an actual, non-experimental, incident despite widespread use
26 of CAN-bus technology for more than a decade; the sources did not discuss Plaintiff Cahen’s vehicle
27 (Lexus RX 400h); nor did these sources explain how an “attacker” could gain “physical” or “remote”
28 access to the CAN bus unit outside of the conditions of a controlled experiment in which the vehicle

1 was made available to researchers attempting to “hack” the vehicle:

- 2 • The cited reports noted “the absence of any known attacks in the wild,” that widespread
3 attacks “are highly speculative,”¹ and that the “possibilities seem more theoretical than
4 practical at this point” (Chris Ingalls, “Smart apps pose privacy, security risks in some
5 new cars” (May 20, 2015), *available at* [http://www.king5.com/story/news/2015/05/19/
6 cars-auto-computer-security-hacking/27610967](http://www.king5.com/story/news/2015/05/19/cars-auto-computer-security-hacking/27610967) (cited in FAC ¶ 15 n.3)).
- 7 • The FAC admitted that “[o]ne journalist described the experience of driving a vehicle
8 whose CAN bus was being hacked remotely (but *under controlled circumstances*)”
9 (FAC ¶ 35 (emphasis added)).
- 10 • Plaintiff cited a “Technical White Paper” in which a cable-connected laptop computer was
11 used to gain physical access to the CAN bus units in *other* vehicles (a 2010 Toyota Prius
12 and 2010 Ford Focus). (*Id.* ¶ 37 n.19 & n.20, citing Miller & Valasek, “Adventures in
13 Automotive Networks & Control Units,” http://illmatics.com/car_hacking.pdf.)
- 14 • One article reported that to take control over vehicle functions “requires having a
15 computer plugged into the car as well as having someone with an intimate knowledge of a
16 car’s software system,” and that “remote access is not currently possible without having
17 hardware that is hardwired into the car.” (Travers, “Keeping Your Car Safe From
18 Hacking,” CONSUMER REPORTS (May 7, 2015), [http://www.consumerreports.org/cro/
19 news/2015/05/keeping-your-car-safe-from-hacking/index.htm](http://www.consumerreports.org/cro/news/2015/05/keeping-your-car-safe-from-hacking/index.htm) (cited in FAC ¶ 40 n.24).)
- 20 • Another article quoted an information security researcher, who acknowledged that “[i]t is
21 not easy to hack a car, the sophistication level is pretty high. Each car has a different
22 language, each piece speaks different words, and not all those pieces have been mapped
23 publicly.” (Xavier Aaronson, “We Drove a Car While It Was Being Hacked,”
24 MOTHERBOARD (2014), *available at* [http://motherboard.vice.com/read/we-drove-a-car-
25 while-it-was-being-hacked](http://motherboard.vice.com/read/we-drove-a-car-while-it-was-being-hacked) (cited in FAC ¶ 35 n.17).)
- 26 • Another report confirmed the speculative nature of these attacks by emphasizing that, “in
27 the *wrong hands*,” technical information “*could* also be used maliciously” and that the
28 vehicles “*could be* compromised.” (FAC, Ex. 1 [Sen. Edward J. Markey Report, at 3
(2015)] (emphases added).) This report also did not identify any real-world incidents.²

21 ¹ (Stephen Checkoway, “Comprehensive Experimental Analyses of Automotive Attack Surfaces,”
22 at 12–13 (2011), *available at* <http://www.autosec.org/pubs/cars-usenixsec2011.pdf> (cited in FAC ¶ 36
23 n.18) (hereinafter “Checkoway”).)

24 ² An article that post-dated the filing of Plaintiffs’ FAC reported another highly-controlled experiment
25 involving a vehicle (2014 Jeep Cherokee) that is not at issue in this lawsuit. (*See* Andy Greenberg,
26 “Hackers Remotely Kill A Jeep On The Highway—With Me In It,” WIRED (July 21, 2015), *available at*
27 <http://www.wired.com/2015/07/hackers-remotely-kill-jeep-highway/>.) The researchers who
28 performed this experiment—“who had already devoted years to researching automotive security
exploits—took months to discover the Jeep’s specific vulnerabilities,” which is “not the sort of
investment malicious hackers are likely to make, especially when it would be much easier and cheaper
to just cut an enemy’s brakes or put sugar in their gas tank.” (“Don’t Fret. It’s Still Really Hard To
Hack Cars,” POLITICO (July 28, 2015), *available at* [http://www.politico.com/morningtransportation/
0715/morningtransportation19332.html](http://www.politico.com/morningtransportation/0715/morningtransportation19332.html).) Further, these researchers (Miller and Valasek) criticized
this lawsuit as “unfortunate” and noted that it “subverts the spirit of our research.” (Valasek, “Lawsuit

[Footnote continued on next page]

1 This is not to say that the automobile industry is ignoring the potential threat of criminal
 2 intervention. Key industry stakeholders—including the Defendants in this case, nine other major
 3 automobile manufacturers, parts suppliers, and technology companies—have rallied together and
 4 established an information sharing and analysis center to share best practices on cybersecurity and
 5 subverting potential threats. (*See* Vanian, “Automakers unite to prevent cars from being hacked,”
 6 FORTUNE (July 14, 2015), *available at* <http://fortune.com/2015/07/14/automakers-share-security-data>.)

7 The FAC also alleges that Toyota collects and transmits data from Plaintiffs’ vehicles to third
 8 parties, “including but not limited to the geographic location of [her] vehicle[] at various times” (FAC
 9 ¶ 135), but Plaintiffs do not cite any specific practices by Toyota or how these practices impacted
 10 Plaintiff Cahen, and the FAC also concedes that “Defendants” disclosed these “data collection”
 11 practices in “owners’ manuals, online ‘privacy statements,’ and terms & conditions of specific feature
 12 activations.” (*Id.* ¶ 50.)

13 Although Plaintiff Cahen still cannot allege that any “hacker” ever gained “physical” or
 14 “remote” access to the CAN bus unit in her vehicle (or any other real-world incident in which anyone
 15 else’s vehicle was hacked), and she fails to identify the specific data that Toyota allegedly collected
 16 and transmitted from her 2008 Lexus RX 400h, she nonetheless asserts eight claims arising under
 17 California law on the ground that at some unknown point in the future, third parties *may* commit
 18 criminal acts involving her vehicle: (1) Unfair Competition Law (Cal. Bus. & Prof. Code § 17200 *et*
 19 *seq.*; “UCL”); (2) Consumers Legal Remedies Act (Cal. Civ. Code § 1750 *et seq.*; “CLRA”); (3) False
 20 Advertising Law (Cal. Bus. & Prof. Code § 17500 *et seq.*; “FAL”); (4) Implied Warranty of
 21 Merchantability (Cal. Com. Code § 2314); (5) Breach of Contract / Common Law Warranty;
 22 (6) Fraudulent Concealment; (7) Song-Beverly Consumer Warranty Act / Implied Warranty of
 23 Merchantability; and (8) Invasion of Privacy (Cal. Const. Art. I, § 1). (*Id.* ¶¶ 62–138.) Plaintiff seeks
 24 injunctive and monetary relief on behalf of a putative statewide class of “[a]ll persons or entities who
 25 purchased or leased a . . . Toyota Vehicle equipped with networked electronic or computerized

26 _____
 27 [Footnote continued from previous page]

28 counterproductive for automotive industry,” *available at* <http://blog.ioactive.com/2015/03/lawsuit-counterproductive-for.html>.)

1 components connected via a controller area network to an integrated cell phone or Class 1 or Class 2
2 master Bluetooth device in the State of California.” (*Id.* ¶ 51.)

3 **III. THE LEGAL STANDARDS GOVERNING THIS MOTION**

4 A complaint must be dismissed under Rule 12(b)(6) of the Federal Rules of Civil Procedure
5 unless it “contain[s] sufficient factual matter, accepted as true, to ‘state a claim to relief that is
6 plausible on its face.’” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v.*
7 *Twombly*, 550 U.S. 544, 570 (2007)). The court also may dismiss a complaint under Rule 12(b)(1) if
8 the “plaintiffs do not carry their burden to allege facts which, if proved, would confer standing on
9 them.” *Seifi v. Mercedes-Benz USA, LLC*, No. 12–5439–TEH, 2013 WL 2285339, at *2 (N.D. Cal.
10 May 23, 2013); *Isaacs v. United States*, No. 13-01394-WHO, 2013 WL 4067597, at *1 (N.D. Cal.
11 Aug. 1, 2013) (“If a plaintiff lacks standing . . . the district court has no subject matter jurisdiction.”).

12 Although courts must accept factual allegations as true for purposes of a motion to dismiss, this
13 tenet is “inapplicable to legal conclusions.” *Iqbal*, 556 U.S. at 678; *see also Frenzel v. AliphCom*, 76
14 F. Supp. 3d 999, 1005 (N.D. Cal. 2014) (“Nor is the court required to accept as true allegations that
15 are merely conclusory, unwarranted deductions of fact, or unreasonable inferences.”) (quoting *In re*
16 *Gilead Scis. Sec. Litig.*, 536 F.3d 1049, 1055 (9th Cir. 2008)). After stripping away the “conclusory
17 statement[s]” in a complaint, the remaining factual allegations must do more than “create[] a suspicion
18 of a legally cognizable right of action”; they must “raise a right to relief above the speculative level.”
19 *Twombly*, 550 U.S. at 555, 561 (citation and quotations omitted); *Frenzel*, 76 F. Supp. 3d at 1005
20 (“[I]t is within [the court’s] wheelhouse to reject, as implausible, allegations that are too speculative
21 to warrant further factual development.”) (quoting *Dahlia v. Rodriguez*, 735 F.3d 1060, 1076 (9th Cir.
22 2013)). In making this “context-specific” determination, a court must “draw on its judicial experience
23 and common sense.” *Iqbal*, 556 U.S. at 679. This analysis provides a critical gatekeeping function,
24 because claims must be sufficiently plausible such “that it is not unfair to require the opposing party to
25 be subjected to the expense of discovery and continued litigation.” *Eclectic Prop. East, LLC v.*
26 *Marcus & Millichap Co.*, 751 F.3d 990, 996 (9th Cir. 2014) (citation and quotation omitted).

27 In addition to these general pleading requirements, Rule 9 requires fraud-based claims to be
28 pled with particularity. Fed. R. Civ. P. 9(b). As the Ninth Circuit explained, “[a]verments of fraud

1 must be accompanied by the ‘who, what, when, where, and how’ of the misconduct charged.” *Vess v.*
 2 *Ciba-Geigy Corp. USA*, 317 F.3d 1097, 1106 (9th Cir. 2003). *See also Kearns v. Ford Motor Co.*, 567
 3 F.3d 1120, 1125–27 (9th Cir. 2009) (applying Rule 9(b) to UCL and CLRA claims).

4 **IV. PLAINTIFF LACKS ARTICLE III STANDING TO PURSUE HER CLAIMS**

5 Plaintiff Cahen has failed to plead facts sufficient to establish that she suffered a cognizable
 6 “injury in fact” that satisfies “the irreducible constitutional minimum of standing” under Article III.
 7 *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992); U.S. Const. art. III, § 2, cl. 1. To meet her
 8 burden, Plaintiff must allege more than a “highly attenuated chain of possibilities”; instead, as the
 9 Supreme Court has explained:

10 To establish Article III standing, an injury must be [1] “concrete, particularized,
 11 and actual or imminent; [2] fairly traceable to the challenged action; and
 12 [3] redressable by a favorable ruling.” “Although imminence is concededly a
 13 somewhat elastic concept, it cannot be stretched beyond its purpose, which is to
 14 ensure that the alleged injury is not too speculative for Article III purposes—that
 the injury is *certainly* impending.” Thus, we have repeatedly reiterated that
 “threatened injury must be *certainly impending* to constitute injury in fact,” and
 that “[a]llegations of *possible* future injury” are not sufficient.

15 *Clapper v. Amnesty Int’l USA*, 133 S. Ct. 1138, 1147–48 (2013) (emphases in original) (internal
 16 citations omitted); *see also DaimlerChrysler Corp. v. Cuno*, 547 U.S. 332, 341 (2006) (“No principle
 17 is more fundamental to the judiciary’s proper role in our system of government than the constitutional
 18 limitation of federal-court jurisdiction to actual cases or controversies.”).

19 Plaintiff does not (and cannot) meet these requirements here, because she alleges a “highly
 20 attenuated chain of possibilities” that would occur only (if at all) as a result of sophisticated, third-
 21 party criminal conduct, *Clapper*, 133 S. Ct. at 1147, and she fails to allege any specific information
 22 about her own experience with “Defendants’” “data collection practices” (FAC ¶¶ 134–138).

23 **A. Plaintiff Does Not Allege That She Experienced Any Vehicle “Hacking”**

24 The complaint suffers from a fundamental, incurable defect: Plaintiff does not allege that any
 25 vehicle (let alone her vehicle) was “hacked,” nor does she allege any facts to plausibly demonstrate
 26 that she was at risk of being “hacked.” Instead, she alleges nothing more than the “possibility” that, at
 27 some point in the future, she *may* suffer harm because the CAN bus unit installed in her vehicle *may*
 28 be accessed unlawfully by a sophisticated third party: “*if* an outside source, such as a *hacker*, were

1 able to send CAN packets to ECUs on a vehicle’s CAN bus, the hacker *could* confuse one or more
 2 ECUs and thereby, either temporarily or permanently, take control of basic functions of the vehicle
 3 away from the driver.” (FAC ¶ 4 (emphases added).) **Nowhere in the 200 numbered paragraphs of**
 4 **the complaint is there any allegation that the CAN bus unit installed in Plaintiff Cahen’s 2008**
 5 **Lexus RX 400h was hacked, or that she was harmed in any way.**

6 The Supreme Court has “repeatedly reiterated that ‘threatened injury must be *certainly*
 7 *impending* to constitute injury in fact,’ and that ‘[a]llegations of *possible* future injury’ are not
 8 sufficient.” *Clapper*, 133 S. Ct. at 1147. Likewise, the Ninth Circuit has consistently rejected
 9 attempts to base Article III standing on remote, conjectural, hypothetical, or speculative harms. For
 10 example, that court held that plaintiffs lacked Article III standing to pursue claims that the Apple iPod
 11 was “defective” because it “pose[d] an unreasonable risk of noise-induced hearing loss to its users.”
 12 *Birdsong v. Apple, Inc.*, 590 F.3d 955, 956, 960 n.4 (9th Cir. 2009). It explained that “[a]t most, the
 13 plaintiffs plead a potential risk of hearing loss not to themselves, but to other unidentified iPod users
 14 who might *choose* to use their iPods in an unsafe manner[.]” and therefore, “[t]he risk of injury the
 15 plaintiffs allege is not concrete and particularized *as to themselves*.” *Id.* at 960–61.

16 One year later, in *Krottner v. Starbucks Corp.*, 628 F.3d 1139, 1143 (9th Cir. 2010), the Ninth
 17 Circuit held that employees whose data was *stolen* had sufficiently alleged an increased risk of identity
 18 theft that was neither conjectural nor hypothetical, but “if no laptop had been stolen, and Plaintiffs had
 19 sued based on the risk that it *would be stolen at some point in the future*, [the court] would find the
 20 threat far less credible” and insufficient to establish Article III standing. Similarly, in a pre-*Clapper*
 21 decision, the D.C. Circuit rejected plaintiff’s theory of standing based on “an increased risk of death,
 22 physical injury, or property damage from *future car accidents* that [plaintiff] says NHTSA’s rule will
 23 fail to prevent.” *Public Citizen, Inc. v. NHTSA*, 489 F.3d 1279, 1293–94 (D.C. Cir. 2007), *subsequent*
 24 *determination*, 513 F.3d 234 (D.C. Cir. 2008).

25 In addition, none of the articles and secondary sources cited in the FAC demonstrates that there
 26 is an “imminent” and “real” threat that Plaintiff’s vehicle will be hacked. In fact, they illustrate the
 27 opposite by (1) expressly acknowledging “*the absence of any known attacks in the wild*”
 28 (Checkoway, *supra*, at 12-13); (2) recognizing that the likelihood of widespread attacks is “*highly*

1 *speculative*” (*id.*); (3) explaining that “it is *not easy to hack a car, the sophistication level is pretty*
 2 *high*” (*id.*); and (4) noting that the test vehicles were “*modified with third-party hardware*” because
 3 “*[i]n stock form, [the car] is not vulnerable to these attacks*” (Xavier Aaronson, “We Drove a Car
 4 While It Was Being Hacked,” MotherBoard, available at [http://motherboard.vice.com/read/we-drove-](http://motherboard.vice.com/read/we-drove-a-car-while-it-was-being-hacked)
 5 [a-car-while-it-was-being-hacked](http://motherboard.vice.com/read/we-drove-a-car-while-it-was-being-hacked) (2014) (see embedded video) (all emphases added)). One of these
 6 reports quotes a professor who observed, “[i]f you don’t have a risk of being assassinated normally,
 7 then you don’t have a risk of being assassinated from someone hacking your car. *If I just want to take*
 8 *you out, much easier to just shoot you.*” (*Id.*) Underscoring the point, one study repeatedly cautioned
 9 that its results were “*experimental*” (Checkoway, *supra*, at 15), and based on “*hypothetical*” scenarios
 10 (*id.* at 13) (emphases added).³ Notably, *none* of the cited sources involved the 2008 Lexus RX 400h.

11 By advancing a theory of injury that is based on nothing more than simulations demonstrating
 12 what a sophisticated criminal *might* do under controlled circumstances, Plaintiffs “have effectively
 13 invited the Court to engage in an ‘ingenious academic exercise in the conceivable to explain how
 14 defendants’ actions caused their injury.’” *Riva v. PepsiCo*, No. 14–02020–EMC, 2015 WL 993350,
 15 at *4, *14 (N.D. Cal. Mar. 4, 2015) (citation omitted). But theoretical, academic exercises cannot
 16 establish a threshold “injury in fact” that satisfies Article III. *See, e.g., Storm v. Paytime*,
 17 No. 14–1138, 2015 WL 1119724, at *6, *7 (M.D. Pa. Mar. 13, 2015) (rejecting plaintiffs’ attempt to
 18 establish Article III injury-in-fact, and noting that “courts cannot be in the business of prognosticating
 19 whether a particular hacker was sophisticated or malicious enough” to “engage in identity theft”). The
 20 Court should dismiss all of Plaintiff’s claims on this basis alone.

21 **B. Courts Have Rejected Similar Attempts To Base Article III Standing On Hypothetical,**
 22 **Third-Party Criminal Conduct**

23 In addition to a concrete and particularized “injury in fact,” Plaintiff also fails to establish
 24 Article III standing because her speculative claims hinge on the future misconduct of third-party
 25 criminals. *See, e.g., Lujan*, 504 U.S. at 560 (the actual injury-in-fact must be “‘fairly . . . trace[able] to

26 ³ (*See also* FAC, Ex. 1, at 3 [Sen. Markey Report] (“Such information-gathering abilities *can* be used
 27 by automobile manufacturers to provide customized service and improve customer experiences, but in
 28 the *wrong hands* such information *could* also be used maliciously. In particular, wireless technologies
 create vulnerabilities to hacking attacks that *could* be used to invade a user’s privacy or modify the
 operation of a vehicle.”) (emphases added).)

1 the challenged action of the defendant, and not . . . the result [of] the independent action of some third
2 party not before the court”). The Supreme Court recently “decline[d] to abandon [its] usual
3 reluctance to endorse standing theories that rest on speculation about the decisions of independent
4 actors.” *Clapper*, 133 S. Ct. at 1150; *see also id.* at 1150 n.5 (“[P]laintiffs bear the burden of pleading
5 and proving concrete facts showing that the defendant’s actual action has caused the substantial risk of
6 harm. Plaintiffs cannot rely on speculation about ‘the unfettered choices *made by independent actors*
7 *not before the court.*”) (emphasis added; quoting *Lujan*, 504 U.S. at 562). As the Ninth Circuit has
8 explained, “[i]n cases where a chain of causation ‘involves numerous third parties’ whose
9 ‘independent decisions’ collectively have a ‘significant effect’ on plaintiffs’ injuries, the Supreme
10 Court and this court have found the causal chain too weak to support standing at the pleading stage.”
11 *Maya v. Centex Corp.*, 658 F.3d 1060, 1070 (9th Cir. 2011) (citing *Allen v. Wright*, 468 U.S. 737, 757
12 (1984)). *See also Cuno*, 547 U.S. at 344 (holding that taxpayers lacked Article III standing because
13 their claim depended on the future conduct of third-party actors in response to hypothetical events);
14 *Biden v. Common Cause*, 748 F.3d 1280, 1285 (D.C. Cir. 2014) (holding that plaintiff lacked standing
15 because the “alleged injury was caused not by any of the defendants, but by an ‘absent third party’”).

16 Here, any “harm” depends upon the future tortious and even ***criminal*** conduct that would
17 violate a number of federal and state laws.⁴ Plaintiff apparently believes that vehicle manufacturers
18 should be held liable *now* for alleged vulnerabilities that *might be* the subject of a criminal attack in
19 the *future*. But the Ninth Circuit expressly rejected this very argument in *Krottner*. There, the court
20 explained that although employees whose data had been *stolen* may satisfy Article III standing, the
21 absence of any actual “theft” would render any injury speculative and non-actionable:

22 Were Plaintiffs-Appellants’ allegations more conjectural or hypothetical—for
23 example, if no laptop had been stolen, and Plaintiffs had sued based on the risk that
24 it ***would be stolen at some point in the future***—we would find the threat far less
credible.

25 _____
26 ⁴ *See, e.g.*, 18 U.S.C. § 1030 (Computer Fraud and Abuse Act; outlaws third-party hacking, such as
27 “intentionally access[ing] a computer without authorization [] and thereby obtains [] information from
28 any protected computer,” or “intentionally access[ing] a protected computer without authorization, and
as a result of such conduct, recklessly causes damage”); Cal. Penal Code § 502 (Comprehensive
Computer Data Access & Fraud Act; criminalizes third-party acts that “tamper[], interfere[], damage,
and [provide] unauthorized access to lawfully created computer data and computer systems”).

1 628 F.3d at 1143 (emphasis added). That is precisely the theory offered by Plaintiff in this case—that
2 an “attacker” “*could*” hack her vehicle at some point in the future. (FAC ¶ 4 (emphasis added).)

3 Other federal courts have rejected similar theories that depend on future criminal acts,
4 including “hacking” or other sophisticated attacks. As the Third Circuit explained in *Reilly v.*
5 *Ceridian Corp.*, 664 F.3d 38 (3d Cir. 2011), “we cannot now describe how [plaintiffs] will be injured
6 in this case without beginning our explanation with the word ‘if’: *if* the hacker read, copied, and
7 understood the hacked information, and *if* the hacker attempts to use the information, and *if* he does so
8 successfully, only then will [plaintiffs] have suffered an injury.” *Id.* at 43 (emphases in original). And
9 *U.S. Hotel & Resort Mgmt., Inc. v. Onity Inc.*, No. 13–1499, 2014 WL 3748639 (D. Minn. July 30,
10 2014), confronted a similar attempt by private plaintiffs to base Article III standing on hypothetical
11 injuries that would occur in the future (if at all) only through the criminal intervention of third parties.
12 In that case, an engineer published a study showing how to open hotel door locks using a homemade
13 device. Several hotel owners brought a class action against the lock manufacturer, citing the future
14 risk of unauthorized entry into the hotel rooms. But the District Court held that plaintiffs lacked
15 Article III standing:

16 [T]he fact remains that no such unauthorized entry could occur unless and until
17 that third party acted with *criminal intent* to gain entry. But where the future
18 injury is contingent upon the actions of another, the Supreme Court has declined
19 “to abandon [its] usual reluctance to endorse standing theories that rest on
20 speculation about the decisions of independent actors” not before the court.

21 2014 WL 3748639, at *4 (quoting *Clapper*, 133 S. Ct. at 1150) (emphasis added). *See also In re*
22 *Horizon Healthcare Servs., Inc. Data Breach Litig.*, No. 13–7418, 2015 WL 1472483, at *6 (D.N.J.
23 Mar. 31, 2015) (“Plaintiffs’ future injuries stem from the conjectural conduct of a third party bandit
24 and are therefore inadequate to confer standing.”).

25 Plaintiff’s alleged injury—potential “hacking” of her vehicle—is speculative and entirely
26 contingent upon the criminal acts of unknown third parties. Plaintiff’s claims are no different than a
27 claim that a vehicle is “defective” because a criminal *might* cut the vehicle’s brake lines, slash its tires,
28 smash the headlights, or throw a brick through the windshield. But this chain of “ifs” and “coulds”
leads only to an independent third-party criminal actor, not Toyota. In sum, Plaintiff stands before the
Court unharmed, and her speculative allegations of future injury that depend upon third parties’

1 criminal acts are legally insufficient to establish Article III standing.

2 **C. Plaintiff Also Lacks Standing To Challenge Defendants’ “Data Collection” Practices,
3 Because She Does Not Link That Alleged Conduct To Her Own Experience**

4 Plaintiff’s “invasion of privacy” claim (FAC ¶¶ 132–138) also fails for lack of Article III
5 standing. As the Supreme Court has held, private plaintiffs must establish that they have a “‘personal
6 stake’ in the alleged dispute, and that the alleged injury suffered is particularized as to [themselves],”
7 *Raines v. Byrd*, 521 U.S. 811, 819 (1997), and the Ninth Circuit consistently rejects attempts to base
8 Article III standing on general allegations that are not specific to the plaintiffs, *see, e.g., Birdsong*, 590
9 F.3d at 961 & n.4; *Chapman v. Pier 1 Imports (U.S.) Inc.*, 631 F.3d 939, 954–56 (9th Cir. 2011).

10 Here, Plaintiff has pled nothing more than a generalized grievance that “Defendants” collected
11 and transmitted unspecified “personal data” to unidentified third parties. (FAC ¶¶ 134–138.) She
12 does not identify what “personal data” Toyota collected from her vehicle, what information Toyota
13 shared with third parties, which third parties received the data, what those third parties did with the
14 data, or any other facts that link the challenged practice to her own experience. In fact, Plaintiff
15 concedes that she learned about this conduct because Defendants *disclosed* “such data collection in
16 owners’ manuals, online ‘privacy statements,’ and terms & conditions of specific feature activations.”
17 (*Id.* ¶ 50.) Plaintiff’s generalized grievances are legally insufficient to establish Article III standing.
18 *See, e.g., Parker v. Iolo Techs., LLC*, No. 12-00984, 2012 WL 4168837, at *4 (C.D. Cal. Aug. 20,
19 2012) (rejecting general allegations that computer software did not work as advertised, because
20 “Plaintiff does not plausibly allege that he suffered from these deficiencies of the software,” and thus
21 he lacked standing). In any event, as discussed below, Plaintiff cannot pursue this claim because she
22 has not established the necessary elements. (*Infra* pp. 22–25.)

23 **V. THE STATUTES OF LIMITATIONS BAR ALL OF PLAINTIFF’S CLAIMS**

24 All of the claims against Toyota fail for the independent reason that they are time-barred.
25 Plaintiff’s claims are governed by two-, three-, or four-year statutes of limitations.⁵ Her claims

26 ⁵ *See* Cal. Bus. & Prof. Code § 17208 (UCL—4 years); Cal. Civ. Code § 1783 (CLRA—3 years); Cal.
27 Civ. Proc. Code § 338(d) (fraud—3 years); Cal. Com. Code § 2725 and *MacDonald v. Ford Motor*
28 *Co.*, 37 F. Supp. 3d 1087, 1100 (N.D. Cal. 2014) (Song-Beverly Act/Cal. Com. Code § 2314/breach of
implied warranties—4 years); Cal. Civ. Proc. Code § 337 and *Morning Star Packing Co. v. Crown*
Cork & Seal Co., 303 F. App’x 399, 402 (9th Cir. Dec. 10, 2008) (breach of contract—4 years); Cal.

[Footnote continued on next page]

1 accrued at the time of sale and tender of the vehicle—*i.e.*, when she purchased her Lexus RX 400h
2 vehicle in September 2008.⁶ Accordingly, the longest applicable statutes of limitations period
3 presumptively expired in September 2012, almost three years before Plaintiff filed this lawsuit.

4 In an attempt to avoid the obvious limitations bar, Plaintiff invokes the “delayed discovery
5 rule” and the “fraudulent concealment doctrine” (FAC ¶¶ 26–27), but neither exception applies here:

6 First, the delayed discovery rule cannot excuse Plaintiff’s delay in filing this action. As
7 another court in this District recently explained, “where applicable, [the delayed discovery rule]
8 postpones accrual of a cause of action until the plaintiff discovers, or has reason to discover, the
9 cause of action.” *Durkee v. Ford Motor Co.*, No. 14–0617–PJH, 2014 WL 7336672, at *6 (N.D. Cal.
10 Dec. 24, 2014). To delay the accrual of a cause of action under this rule, a plaintiff “must specifically
11 plead facts showing the time and manner of discovery and the inability to have made earlier
12 discovery despite reasonable diligence.” *Id.* Moreover, it is plaintiff’s burden to “show diligence,
13 and conclusory allegations will not withstand” dismissal. *Yumul v. Smart Balance, Inc.*, 733 F.
14 Supp. 2d 1117, 1130 (C.D. Cal. 2010) (quoting *E-Fab, Inc. v. Accountants, Inc. Servs.*, 153 Cal.
15 App. 4th 1308, 1319 (2007)). Here, despite the opportunity to further investigate and amend her
16 complaint, Plaintiff continues to offer only conclusory allegations that her claims should be tolled:

17 Any applicable statute(s) of limitations has been tolled by Defendants’ knowing

18 [Footnote continued from previous page]

19 Civ. Proc. Code § 335.1 and *Doe v. Kaweah Delta Hosp.*, No. 08–118, 2010 WL 5399228, at *13
20 (E.D. Cal. Dec. 23, 2010) (invasion of privacy—2 years). In addition, Plaintiff’s FAL claim is barred
21 by either the three-year limitations period in Cal. Code Civ. Proc. § 338(a) or the four-year limitations
22 period in the UCL. *Compare Ries v. Arizona Beverages USA LLC*, 287 F.R.D. 523, 534 (N.D. Cal.
23 2012) (“Claims under the [FAL] are governed by the three-year statute of limitations set forth in
24 California Code of Civil Procedure Section 338(a)”), with *Brooks v. Wash. Mut. Bank*, No. 12–00765–
25 WHA, 2012 WL 5869617, at *3 (N.D. Cal. Nov. 19, 2012) (applying UCL’s four-year statute of
26 limitations to FAL claim). Either way, this claim is time-barred.

27 ⁶ See Cal. Com. Code § 2725(2) (statute of limitations accrues upon tender of delivery); Cal. Civ.
28 Code § 1770(a) (a CLRA violation arises only in the context of a “transaction intended to result or
which results in the sale or lease of goods”); *Asghari v. Volkswagen Grp. of Am., Inc.*, 42 F.
Supp. 3d 1306, 1319 (C.D. Cal. 2013) (“Under the CLRA, the limitations period begins to run on the
date the improper consumer practice was committed.”); *Seifi*, 2013 WL 2285339, at *6 (“In this case,
the [Song-Beverly Act] cause of action on Plaintiffs’ implied warranty claims accrued, and the four-
year statute of limitations began to run, when the breach occurred, which was when tender of delivery
was made.”). See also *Cain v. State Farm Mut. Auto. Ins. Co.*, 62 Cal. App. 3d 310, 314 (1976)
 (“[T]he statute of limitations does not run [on a constitutional invasion of privacy claim] until the act
causing the [invasion] is discovered, or with reasonable diligence should have been discovered.”).

1 and active concealment and denial of the facts alleged herein. Plaintiffs and the
 2 other Class members could not have reasonably discovered the true, latent
 3 defective nature of the CAN buses until shortly before this class action litigation
 4 was commenced.

5 (FAC ¶ 26.) Because Plaintiff fails to allege the “time and manner of her discovery of the facts giving
 6 rise to her claims,” she cannot invoke the discovery rule to salvage her untimely claims. *See, e.g.,*
 7 *Yumul*, 733 F. Supp. 2d at 1131 (holding that plaintiff’s “complaint does not plead sufficient facts to
 8 invoke the delayed discovery rule” because she failed to allege how she discovered the breach).

9 Second, for similar reasons, Plaintiff’s conclusory allegations are insufficient to invoke the
 10 “fraudulent concealment” doctrine. (*See* FAC ¶ 26 (“Any applicable statute(s) of limitations has
 11 been tolled by Defendants’ knowing and active concealment and denial of the facts alleged herein.”).)
 12 To invoke this exception, “plaintiff must show: (1) when the fraud was discovered; (2) the
 13 circumstances under which it was discovered; and (3) that the plaintiff was not at fault for failing to
 14 discover it or had no actual or presumptive knowledge of facts sufficient to put him on inquiry.”
 15 *Clemens v. DaimlerChrysler Corp.*, 534 F.3d 1017, 1024 (9th Cir. 2008) (internal quotations
 16 omitted). Plaintiff does not plead any of these elements here; she does not allege (1) **when** she
 17 discovered that her CAN bus unit was susceptible to hacking, (2) **how** she discovered the alleged
 18 “defect,” or (3) **why** she was not at fault for failing to discover it sooner. For these reasons, Plaintiff
 19 has failed to carry her burden and her claims should be dismissed. *See, e.g., Clemens*, 534 F.3d
 20 at 1024; *Yumul*, 733 F. Supp. 2d at 1133; *Keilholtz v. Lennox Hearth Prods. Inc.*, No. 08–00836–CW,
 21 2009 WL 2905960, at *5 (N.D. Cal. Sept. 8, 2009).

22 Nor has Plaintiff satisfied the additional requirement of alleging “some active conduct by the
 23 defendant above and beyond the wrongdoing upon which the plaintiff’s claim is filed, to prevent the
 24 plaintiff from suing in time.” *Juniper Networks v. Shipley*, No. 09–0696–SBA, 2009 WL 1381873,
 25 at *5 (N.D. Cal. May 14, 2009) (internal quotations omitted); *Kirsopp v. Yamaha Motor Co.*, No. 14–
 26 496, 2015 U.S. Dist. LEXIS 68639, at *13–14 (C.D. Cal. Jan. 7, 2015) (holding that neither “failure
 27 to act” nor marketing representations constitute an “affirmative act of concealment on behalf of
 28 Defendant”). Once again, Plaintiff offers only vague and conclusory allegations of concealment
 (FAC ¶¶ 26–27) that fail to satisfy Rule 9(b). *See, e.g., Wasco Prods., Inc. v. Southwall Techs., Inc.*,

1 435 F.3d 989, 991 (9th Cir. 2006) (applying Rule 9(b) to allegations of “fraudulent concealment”
2 designed to toll the statute of limitations).

3 Despite the opportunity for further amendment, Plaintiff continues to rely only on vague and
4 conclusory allegations to toll her otherwise time-barred claims. These contentions are legally
5 insufficient, and all of her warranty, fraud, statutory consumer protection, and invasion of privacy
6 claims expired no later than September 2012 and are more than two years too late.

7 **VI. PLAINTIFF’S STATE LAW WARRANTY, FRAUD, AND INVASION OF PRIVACY**
8 **CLAIMS FAIL AS A MATTER OF LAW**

9 In addition to the statute of limitations bar, all of Plaintiff’s claims fail for the alternate and
10 independently sufficient reason that Plaintiff has not pled several essential elements to support her
11 state law claims for breach of warranty, common law fraud, statutory consumer protection/false
12 advertising, or invasion of privacy.

13 **A. Plaintiff Does Not State, And Cannot Pursue, Any Warranty Claim**

14 Plaintiff cannot pursue any claim for breach of warranty under California law (Counts IV, V,
15 and VII) for several reasons:⁷

16 *First*, Plaintiff cannot maintain these claims because any warranties applicable to her 2008
17 Lexus RX 400h expired many years ago, and no later than September 2012. (RJN, Ex. 1 [express
18 limited warranty covered 48 months or 50,000 miles, whichever occurred first].) The expiration of the
19 limited express warranty bars any claim for an alleged post-warranty defect. *See, e.g., Daugherty v.*
20 *Am. Honda Motor Co.*, 144 Cal. App. 4th 824, 830, 833 (2006) (rejecting attempt to require
21 manufacturer to repair alleged defects “outside the limits of a written warranty”); *Seifi*, 2013 WL
22 2285339, at *4 (“[T]he warranty covers only those ‘repairs or replacements necessary’ as a result of
23 something going wrong with the covered vehicle due to a defect within the specified time/mil[e]age
24 limit. Since Plaintiffs do not allege that the defective gears failed during the warranty period, they
25 have not stated a claim for breach of [Mercedes’] express warranty.”). Toyota also specifically limited

26 ⁷ As an initial matter, it is unclear whether Plaintiff intends to assert an express or implied warranty
27 claim through “Count V—Breach of Contract/Common Law Warranty.” (FAC ¶¶ 101–105.) The
28 FAC dropped all of Plaintiff’s federal and state statutory express warranty claims (*see* Compl. [Dkt. 1]
¶¶ 65–76, 132–144), but whether or not Plaintiff intended to bring an express or implied warranty
theory through Count V, it fails as a matter of law for the reasons discussed below. (*Infra* pp. 17–18.)

1 “[a]ny implied warranty of merchantability . . . to the duration of the[] written warranties” (RJN, Ex. 1,
 2 at 17), which is consistent with California law.⁸ Because Plaintiff purchased her 2008 Lexus RX 400h
 3 in September 2008 (FAC ¶ 12), any implied warranty would have expired no later than September
 4 2009. *See, e.g., Sharma v. BMW of N. Am., LLC*, No. 13–2274–MMC, 2015 WL 75057, at *4–5 (N.D.
 5 Cal. Jan. 6, 2015) (dismissing implied warranty claim “where the goods perform[ed] as warranted
 6 during the statutorily provided period and thereafter fail[ed] to continue to so perform”); *Peterson v.*
 7 *Mazda Motor of Am., Inc.*, 44 F. Supp. 3d 965, 972 (C.D. Cal. 2014) (holding that plaintiff must
 8 demonstrate that “her vehicle was unmerchantable *within* the implied warranty period set by the Song-
 9 Beverly Act in order to adequately plead a claim under the Song-Beverly Act”) (emphasis added).

10 Second, to the extent Plaintiff intends to assert an express warranty claim (*see supra* note 7),
 11 she cannot base this claim on Toyota’s description of its vehicles as “safe” in its marketing and
 12 promotional materials (FAC ¶¶ 41–44), because those descriptions do not include the type of “specific
 13 and unequivocal” statement necessary to create an express warranty. *In re Toyota Motor Corp.*
 14 *Unintended Acceleration Litig.*, 754 F. Supp. 2d 1145, 1182 (C.D. Cal. 2010); *see also Smith v. LG*
 15 *Elects. U.S.A., Inc.*, No. 13–4361–PJH, 2014 WL 989742, at *5 (N.D. Cal. Mar. 11, 2014) (“Vague
 16 statements regarding reliability, dependability, and *safety* are not actionable express warranties.”)
 17 (emphasis added). This claim also fails as a matter of law because Plaintiff does not even allege that
 18 she reviewed and relied upon these statements before purchasing her vehicle. *See, e.g., In re Toyota*
 19 *Motor Corp.*, 754 F. Supp. 2d at 1183 (dismissing warranty claim because plaintiffs failed to allege
 20 “they heard or read these statements or that the statements were otherwise disseminated to them”); *Lee*
 21 *v. Toyota Motor Sales, U.S.A., Inc.*, 992 F. Supp. 2d 962, 979 (C.D. Cal. 2014) (holding plaintiffs

22 _____
 23 ⁸ *See* Cal. Civ. Code § 1791.1(c) (“The duration of the implied warranty of merchantability . . . shall
 24 be coextensive with an express warranty which accompanies the consumer goods[,] but *in no event*
 25 *shall such implied warranty have a duration of . . . more than one year* following the sale of new
 26 consumer goods to a retail buyer.”) (emphasis added); *Tietsworth v. Sears, Roebuck & Co.*, 720 F.
 27 Supp. 2d 1123, 1142 (N.D. Cal. 2010) (“The duration of an implied warranty of merchantability is one
 28 year if the express warranty is one year or more.”) (citing Cal. Civ. Code § 1791.1(c)); *Hovsepian v.*
Apple, Inc., No. 08–5788–JF, 2009 WL 2591445, at *7 (N.D. Cal. Aug. 21, 2009) (“In the absence of
 any indication in the statute that it is intended to supersede or extend Civil Code section 1791.1, we
 assume that [Cal. Com. Code] § 2314 does not extend the implied warranty . . . beyond the one year
 maximum contained in Civil Code section 1791.1.”); Cal. Com. Code § 2316(2) (authorizing the
 exclusion or modification of the implied warranty of merchantability).

1 could not base a claim on an express warranty created by statements in a marketing brochure, as they
 2 did “not allege that they read or relied on the ‘marketing brochure’ before making their purchases”).
 3 Nor does Plaintiff allege any “breach” by Toyota—she does not contend that her 2008 Lexus RX 400h
 4 was “unsafe,” that she had any problems with her vehicle, that she notified Toyota of any issues with
 5 her CAN bus unit, or that she sought any “repairs” pursuant to any warranty. As noted, Toyota’s
 6 express limited warranty covered 48 months or 50,000 miles (RJN, Ex. 1), and that warranty expressly
 7 disclaimed any damages resulting from “[a]lteration or tampering” (*id.* at 19), so Plaintiff cannot assert
 8 a preemptive “breach of warranty” claim based on a “hack” that has not yet occurred.⁹

9 Third, the Ninth Circuit has held that if a product is “fit for ordinary purposes for which such
 10 goods are used,” there is no breach of the implied warranty of merchantability. *Birdsong*, 590 F.3d
 11 at 958. *See also* Cal. Com. Code § 2314(2)(c) (“[T]o be merchantable,” goods “must be at least such
 12 as . . . [a]re fit for ordinary purposes for which such goods are used”); Cal. Civ. Code § 1791.1(a)
 13 (same). Here, Plaintiff cannot assert a claim for breach of the implied warranty of merchantability
 14 (Counts IV and VII) because she has failed to plead, and cannot plausibly amend her complaint to
 15 contend, that her vehicle was not fit for the ordinary purpose for which it was intended—namely,
 16 transportation. As another court in this District explained, “[i]n the case of automobiles, the implied
 17 warranty of merchantability can be breached only if the vehicle manifests a defect that is so basic it
 18 renders the vehicle unfit for its ordinary purpose of providing transportation.” *See, e.g., Taragan v.*
 19 *Nissan N. Am., Inc.*, No. 09–3660–SBA, 2013 WL 3157918, at *4 (N.D. Cal. June 20, 2013) (quoting
 20 *Am. Suzuki Motor Corp. v. Super. Ct.*, 37 Cal. App. 4th 1291, 1296 (1995)).

21 In *Taragan*, the plaintiffs alleged that Nissan’s vehicles were “not merchantable because there
 22 [was] a ‘risk’ that vehicles equipped with the Intelligent Key system [would] roll away if the operator
 23 fail[ed] to place the transmission in park after shutting off the engine.” 2013 WL 3157918, at *4.
 24 Notably, as in this case, “none of the Plaintiffs ha[d] actually experienced a rollaway incident” in
 25

26 ⁹ Nor can Plaintiff base any breach of an express warranty on an allegation that her vehicle’s CAN
 27 bus unit was defectively “designed” (*see, e.g.,* FAC ¶ 27), because elsewhere she admits that Toyota
 28 warranted only against defects in “materials or workmanship” (*id.* ¶ 103), and “[i]n California,
 express warranties covering defects in materials and workmanship *exclude defects in design.*” *Troup*
v. Toyota Motors Corp., 545 F. App’x 668, 668–69 (9th Cir. 2013) (emphasis added).

1 *Taragan. Id.* The court explained that “it is **not enough** to allege that a product line contains a defect
2 or that a product is at risk for manifesting this defect; rather, the plaintiffs must allege that their
3 product **actually exhibited the alleged defect.**” *Id.* (emphases added). Similarly, Plaintiff merely
4 alleges that a third party “could” engage in criminal conduct to “hack” her vehicle (FAC ¶ 4), but she
5 does not allege that this has occurred. These allegations are legally insufficient. *See, e.g., Birdsong,*
6 *590 F.3d at 959* (upholding dismissal of an implied warranty of merchantability claim because
7 “plaintiffs do not allege the iPods failed to do anything they were designed to do nor do they allege
8 that they, or any others, have suffered or are substantially certain to suffer inevitable hearing loss or
9 other injury from iPod use”); *Am. Suzuki*, 37 Cal. App. 4th at 1298 (rejecting plaintiffs’ argument that
10 “a remote fear or expectation of failure is sufficient to establish non-merchantability”).

11 Fourth, Plaintiff purchased her “new 2008 Lexus RX 400 H from an authorized Lexus dealer
12 in San Rafael, California” (FAC ¶ 12), and thus she lacks privity with Toyota. As the Ninth Circuit
13 has held, an “end consumer such as [plaintiff] who buys from a retailer is not in privity with a
14 manufacturer,” and “[a] lack of vertical privity requires the dismissal of [plaintiff’s] implied warranty
15 claims.” *Clemens*, 534 F.3d at 1023–24 (dismissing plaintiff’s implied warranty claim for lack of
16 privity even though plaintiff purchased his vehicle from an “independent Dodge dealership”); *see also*
17 *Osborne v. Subaru of Am. Inc.*, 198 Cal. App. 3d 646, 656 & n.6 (1988) (noting that California law
18 requires vertical privity and holding that vehicle owners were foreclosed from recovering against
19 manufacturer on an implied warranty of merchantability claim).

20 The FAC attempts to sidestep the privity requirement by alleging that Plaintiffs “are intended
21 third-party beneficiaries of contracts between Defendants and their dealers; specifically, they are the
22 intended beneficiaries of Defendants’ warranties.” (FAC ¶ 98.) But as this Court has held, the Ninth
23 Circuit “does not recognize the [third-party beneficiary] exception under California law.” *Long v.*
24 *Graco Children’s Prods., Inc.*, No. 13–01257–WHO, 2013 WL 4655763, at *12 (N.D. Cal. Aug. 26,
25 2013) (citing *Clemens*, 534 F.3d at 1024); *see also id.* (rejecting decisions purporting to create a
26 “third-party beneficiary” exception, because they “are not binding on the Court whereas *Clemens* is”).
27 As the Ninth Circuit explained, “California courts have painstakingly established the scope of the
28 privity requirement under California Commercial Code section 2314, and a federal court sitting in

1 diversity is not free to create new exceptions to it.” *Clemens*, 534 F.3d at 1024.¹⁰

2 **B. Plaintiff Also May Not Pursue Derivative Warranty Claims Through Her California**
 3 **Consumer Protection Or Fraud Claims**

4 Next, Plaintiff asserts that Toyota violated the UCL, CLRA, and FAL (Counts I, II, III) and
 5 engaged in common law “fraud by concealment” (Count VI) by failing to disclose the alleged “defect”
 6 in its CAN bus system. (FAC ¶¶ 65(a), 81, 89, 111, 114.) Under binding California law, however, the
 7 omission of a fact that the defendant was not bound to disclose does not support a claim. *See, e.g.,*
 8 *Daugherty*, 144 Cal. App. 4th at 839; *Morgan v. Harmonix Music Sys., Inc.*, No. 08–5211, 2009 WL
 9 2031765, at *5 (N.D. Cal. July 7, 2009) (“[A]bsent a duty to disclose, the failure to do so does not
 10 support a claim under the fraudulent prong of the UCL.”); *Bardin v. DaimlerChrysler Corp.*, 136 Cal.
 11 App. 4th 1255, 1276 (2006) (rejecting plaintiff’s CLRA claim because the complaint did not allege
 12 facts showing that defendant was “bound to disclose” the allegedly concealed fact).

13 If Plaintiff seeks to base a claim on the alleged failure to notify customers of a supposed
 14 “defect,” she must allege that (1) the purported defect poses “an unreasonable safety hazard” *and*
 15 (2) the defendant “was aware of [the] defect *at the time of sale.*” *Wilson v. Hewlett-Packard Co.*, 668
 16 F.3d 1136, 1142–43, 1145 (9th Cir. 2012) (emphasis added); *Daugherty*, 144 Cal. App. 4th at 835–36
 17 (same). Both requirements are necessary to impose a legal duty on the defendant to disclose the
 18 alleged “defect,” *Wilson*, 668 F.3d at 1142–43, 1145–46, but Plaintiff cannot establish either of them:

19 First, the FAC contends that because Toyota “failed to ensure the basic electronic security of
 20 [its] vehicles, control of the basic functions of the vehicle can be taken by others not behind the wheel
 21 or necessarily even in the car, which can endanger the safety of the driver and others.” (FAC ¶ 2.)

22 Although Plaintiff alleges in a conclusory manner that the alleged “defect” presents a safety hazard

23 ¹⁰ Plaintiff’s conclusory allegation that “privity is also not required because [her vehicle is a]
 24 dangerous instrumentalit[y] due to the aforementioned defects and nonconformities” (FAC ¶ 99)
 25 cannot excuse her from the privity requirement here. As an initial matter, she does not substantiate
 26 this far-fetched claim with any facts, and it is implausible that Plaintiff enjoyed the use of her vehicle
 27 for nearly seven years while it operated as a “dangerous instrumentalit[y].” Further, courts have
 28 explained that this limited exception applies to a defendant’s *employees*, not its customers. *See, e.g.,*
Jones v. ConocoPhillips, 198 Cal. App. 4th 1187, 1201 (2011) (“[T]he strict requirement of privity has
 also been excused when an inherently dangerous instrumentality causes harm to a buyer’s
 employee.”); *Xavier v. Philip Morris USA, Inc.*, 787 F. Supp. 2d 1075, 1083–84 (N.D. Cal. 2011)
 (noting that the “dangerous instrumentalities” exception to privity was limited to addressing “injur[ies]
 to an employee of the purchaser of the allegedly dangerous item”).

1 (*id.*), she alleges no real-world incident in which such a risk has ever manifested or is even likely to
 2 occur. An abstract and hypothetical risk does not trigger a “duty to disclose.”

3 For example, in *Birdsong*, Apple iPod users alleged that their portable music devices created a
 4 risk of hearing loss because there were no warnings or volume limits that kept the decibel levels at a
 5 safe range. The Ninth Circuit recognized that this was a potential risk in the abstract, but it
 6 nonetheless dismissed the plaintiffs’ UCL claim because “they [did] not claim that they, or anyone
 7 else, [had] suffered” the alleged injury. 590 F.3d at 961. Here, as in *Birdsong*, Plaintiff has failed to
 8 plead facts showing that “any identifiable member of the putative class actually experienced a
 9 malfunction” where the alleged safety consequences manifested. *Tietsworth*, 720 F. Supp. 2d at 1133–
 10 34. Instead, she merely alleges that “**if** an outside source, such as a hacker, were able to send CAN
 11 packets to ECUs on a vehicle’s CAN bus, the hacker **could** . . . take control of basic functions of the
 12 vehicle away from the driver.” (FAC ¶ 4 (emphases added).) These speculative fears are
 13 indistinguishable from a claim that a vehicle’s tires are dangerously “defective” because they are
 14 capable of being slashed, or that a windshield poses an “unreasonable safety hazard” because someone
 15 could maliciously shatter it with a baseball bat. The Ninth Circuit rejected another plaintiff’s attempt
 16 to use a speculative, future injury as sufficient to establish a “safety” issue:

17 Plaintiffs contend that the failure rate of the Focus ignition locks was related to
 18 safety because a defective lock may prevent the driver from starting the engine,
 19 thereby leaving the driver stranded on the roadway, or *may* prevent the engine
 20 from being shutoff, rendering the vehicle vulnerable to runaway or theft. We agree
 with the district court that the “safety” concerns raised by plaintiffs were **too**
speculative, as a matter of law, to amount to a safety issue giving rise to a duty of
 disclosure.

21 *Smith v. Ford Motor Co.*, 462 F. App’x 660, 663 (9th Cir. 2011) (emphasis added). This is an even
 22 weaker case, because Toyota expressly *disclaimed* any warranty against vehicle intrusion: “This
 23 warranty does not cover damage or failures resulting directly or indirectly from any of the
 24 following: . . . **Alteration or tampering**” (RJN, Ex. 1 at 19 (emphasis added).)

25 Second, Plaintiff does not contend that Toyota “knew of the alleged defect *at the time of sale*.”
 26 *Wilson*, 668 F.3d at 1148. Although she generally claims that Toyota knew about the alleged “defect”
 27 (FAC ¶¶ 5, 36), she does not identify a single fact to support that conclusory allegation (*see, e.g., Lee*,
 28 992 F. Supp. 2d at 973 (rejecting plaintiff’s “conclusory allegations” as “insufficient”)) nor does she

1 allege that Toyota was aware of the purported problem *at the time of sale* in 2008 (*see Elias v.*
 2 *Hewlett-Packard Co.*, 950 F. Supp. 2d 1123, 1138 (N.D. Cal. 2013) (dismissing CLRA, UCL, and
 3 common law fraud claims because plaintiff “has not sufficiently alleged enough facts to support an
 4 inference that [defendant] knew of the power inadequacies at the time of sale” and as a result, he failed
 5 to allege that defendant “‘intentionally’ concealed or suppressed this information”).¹¹

6 Plaintiff’s “fraud by concealment” claim (Count VI) fails for the same reasons. As explained
 7 immediately above (*supra* pp. 20–22), Plaintiff cannot plead with particularity that Toyota had a “duty
 8 to disclose” the alleged “defect” because she cannot show that the problem materialized, that it poses
 9 an unreasonable safety hazard, *and* that Toyota knew about it *at the time of sale*. *See, e.g., Lee*, 992 F.
 10 Supp. 2d at 977; *Elias*, 950 F. Supp. 2d at 1136–37.

11 **C. Plaintiff Does Not Allege A Sufficiently “Serious” Invasion To Support A Privacy Claim**

12 Finally, Plaintiff’s “invasion of privacy” claim under the California Constitution (Count VIII;
 13 FAC ¶¶ 132–138) also fails as a matter of law. As the Supreme Court of California has explained,
 14 the constitutional “right of privacy protects the individual’s *reasonable* expectation of privacy against
 15 a *serious* invasion.” *Pioneer Elec. (USA), Inc. v. Super. Ct.*, 40 Cal. 4th 360, 370 (2007) (emphases
 16 added); *see also In re iPhone App. Litig.*, 844 F. Supp. 2d 1040, 1063 (N.D. Cal. 2012) (“Actionable
 17 invasions of privacy must be sufficiently serious in their nature, scope, and actual or potential impact
 18 to constitute an *egregious breach of the social norms* underlying the privacy right.”) (internal
 19 quotations and citation omitted; emphasis added). As one court explained, “[e]ven negligent conduct
 20 that leads to theft of highly personal information, including social security numbers, does not
 21 ‘approach [the] standard’ of actionable conduct under the California Constitution and thus does not
 22 constitute a violation of [a plaintiff’s] right to privacy.” *In re iPhone App. Litig.*, 844 F. Supp. 2d at
 23 1063 (quoting *Ruiz v. Gap, Inc.*, 540 F. Supp. 2d 1121, 1128 (N.D. Cal. 2008)).

24 _____
 25 ¹¹ Ms. Cahen’s only allegation regarding Toyota’s knowledge is conclusory, implausible, and post-
 26 dates the relevant time period (her 2008 purchase) by several years: “Before the researchers went
 27 public with their 2013 findings, they shared the results with Toyota and Ford in the hopes that the
 28 companies would address the identified vulnerabilities. The companies, however, did not.” (FAC
 ¶ 38.) Not only does Plaintiff fail to identify a single fact to support her conclusory allegation, but
 even if true, she bought her vehicle five years *before* the findings allegedly put Toyota on “notice” of a
 potential hacking risk. These pleaded facts foreclose any out-of-warranty UCL, FAL, or CLRA claim.

1 To state a claim for invasion of the constitutional right to privacy, Plaintiff must plead (and
 2 prove) three elements: “(1) a legally protected privacy interest; (2) a reasonable expectation of
 3 privacy in the circumstances; and (3) conduct by defendant constituting a *serious* invasion of
 4 privacy.” *Hill v. Nat’l Coll. Athletic Ass’n*, 7 Cal. 4th 1, 39–40 (1994) (emphasis added). These
 5 elements are intended to “weed out claims that involve *so insignificant or de minimis an intrusion* on
 6 a constitutionally protected privacy interest as not even to require an explanation or justification by
 7 the defendant.” *Loder v. City of Glendale*, 14 Cal. 4th 846, 893 (1997) (emphasis added).

8 Plaintiff’s conclusory allegations do not come close to meeting this high bar. For starters, her
 9 allegations do not even identify the specific “personal data” that Defendants allegedly “collected and
 10 transmitted to third parties.” (FAC ¶¶ 135–36.) This Court rejected a similarly conclusory “invasion
 11 of privacy” claim because the plaintiff did “not adequately allege[] what, if any, offensive and
 12 objectionable facts about her were disclosed to third parties.” *Banga v. Equifax Info. Servs., LLC*,
 13 No. 14–03038–WHO, 2015 WL 3799546, at *11 (N.D. Cal. June 18, 2015).

14 But even if Plaintiff overcame this hurdle, she cannot establish a “reasonable expectation of
 15 privacy” in the unspecified “personal data,” because she concedes that “Defendants” disclosed the
 16 alleged “data collection” practices (whatever they were) “in owners’ manuals, online ‘privacy
 17 statements,’ and terms & conditions of specific feature activations” (FAC ¶ 50.) *See, e.g., Hill*,
 18 7 Cal. 4th at 42 (collegiate athletes had no reasonable expectation of privacy in the observation of
 19 their urination for purposes of drug testing, given previous disclosures of drug testing procedures at
 20 beginning of athletic season); *Pioneer*, 40 Cal. 4th at 372 (finding that plaintiffs, “having already
 21 voluntarily disclosed their identifying information to [defendant] in the hope of obtaining some form
 22 of relief, would [not] have a reasonable expectation that such information would be kept private”); *In*
 23 *re Yahoo Mail Litig.*, 7 F. Supp. 3d 1016, 1041 (N.D. Cal. 2014) (rejecting generalized claim that
 24 plaintiffs had a “reasonable expectation of privacy” in all of their email messages).

25 Next, the FAC broadly identifies only two general categories of “personal data,” neither of
 26 which can support a claim for a “*serious* invasion of privacy.” *Hill*, 7 Cal. 4th at 40 (emphasis
 27 added). *First*, Plaintiff contends that Toyota and the other Defendants collected “the geographic
 28 location of [her] vehicle.” (FAC ¶ 135.) But sharing a vehicle’s location is not a “sufficiently

1 serious” invasion that would constitute “an *egregious* breach of the social norms underlying the
2 privacy right.” *Hill*, 7 Cal. 4th at 37 (emphasis added). Courts in this District have ruled that the
3 disclosure of location data does not constitute an “egregious” breach of social norms and is, therefore,
4 legally insufficient to support an invasion of privacy claim. *See, e.g., In re iPhone App. Litig.*, 844 F.
5 Supp. 2d at 1063 (holding that the disclosure to third parties of “unique device identifier number[s],
6 personal data, and geolocation information” from plaintiffs’ cellphones did “not constitute an
7 egregious breach of social norms” even if the information “was transmitted without [p]laintiffs’
8 knowledge and consent”); *Yunker v. Pandora Media Inc.*, No. 11–03113–JSW, 2013 WL 1282980,
9 at *15 (N.D. Cal.) (holding that disclosure of plaintiffs’ personally identifiable information, including
10 geolocation data, “to advertising libraries for marketing purposes” was insufficient to “allege that
11 Pandora’s conduct constitutes an egregious breach of social norms”), and 2014 WL 988833, at *5
12 (N.D. Cal. Mar. 10, 2014) (dismissing amended right to privacy claim with prejudice “for the reasons
13 set forth in its previous order”). Likewise, California courts have held that an individual’s location
14 “is not the type of core value, informational privacy explicated in *Hill*.” *Fredenberg v. City of*
15 *Fremont*, 119 Cal. App. 4th 408, 423 (2004); *see also Folgelstrom v. Lamps Plus, Inc.*, 195 Cal.
16 App. 4th 986, 992 (2011) (“Here, the supposed invasion of privacy essentially consisted of
17 [defendant] obtaining plaintiff’s address without his knowledge or permission, and using it to mail
18 him coupons and other advertisements. This is not an egregious breach of social norms, but *routine*
19 *commercial behavior*.”) (emphasis added).

20 Second, Plaintiff also alleges that “[a]s detailed in Sen. Markey’s report, Defendants collect
21 large amounts of data on driving history and vehicle performance, and they transmit the data to third-
22 party data centers without effectively securing the data.” (FAC ¶ 50.) As an initial matter, the cited
23 report does *not* identify which manufacturer engaged in this conduct, and Plaintiff does not allege
24 that *Toyota* collected and/or shared “driving history and vehicle performance” data. (*Id.*) Without
25 any specific allegation against *Toyota* that implicates a *serious* invasion, Plaintiff cannot meet her
26 burden. *See, e.g., White v. Social Security Admin.*, No. 14–05604–JST, 2015 WL 3902789, at *7
27 (N.D. Cal. June 24, 2015) (holding that “unauthorized photocop[ying] of identity documents, without
28 any allegation that [defendant] sold, distributed, or otherwise improperly used the information, does

1 not rise to the level of a ‘highly offensive disclosure of information nor a serious invasion of a
 2 privacy interest”); *Belluomini v. Citigroup, Inc.*, No. 13–01743–CRB, 2013 WL 5645168, at *3
 3 (N.D. Cal. Oct. 16, 2013) (rejecting claims that sharing of plaintiff’s “address and identity” stated an
 4 invasion of privacy claim, and reiterating earlier order that if the “disclosure of individual’s social
 5 security numbers does not constitute an ‘egregious breach,’ it certainly cannot be the case that
 6 disclosure of contact information constitutes an ‘egregious breach”). Moreover, collecting “driving
 7 history and vehicle performance” (even if true) would not rise to the level of a “serious” invasion to
 8 support a constitutional privacy claim. (*Supra* pp. 23–24.)

9 **VII. CONCLUSION**

10 This action rests on a purely hypothetical, future injury that depends on the malicious acts of
 11 sophisticated criminals. Pursuant to binding Supreme Court and Ninth Circuit precedent, Plaintiff has
 12 not alleged sufficient “injury in fact” to satisfy Article III of the United States Constitution, and she
 13 may not cure this threshold problem with further amendment. On top of this threshold legal defect,
 14 Plaintiff’s California law claims are time-barred and her complaint fails to state any warranty,
 15 consumer protection, or invasion of privacy claim as a matter of law.

16 Toyota respectfully requests the Court dismiss this action with prejudice.

17
 18 DATED: August 28, 2015

GIBSON, DUNN & CRUTCHER LLP

19 By: 
 Christopher Chorba

20 101980989.11

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 and Toyota Motor Sales, U.S.A., Inc.
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CERTIFICATE OF SERVICE

I, Tiaunia Bedell, declare as follows:

I am employed in the County of Los Angeles, State of California, I am over the age of eighteen years and am not a party to this action; my business address is 333 South Grand Avenue, Los Angeles, CA 90071-3197, in said County and State. On August 28, 2015, I served the following document(s):

DEFENDANTS TOYOTA MOTOR CORPORATION AND TOYOTA MOTOR SALES, U.S.A., INC.'S NOTICE OF MOTION AND MOTION TO DISMISS PLAINTIFFS' FIRST AMENDED COMPLAINT; SUPPORTING MEMORANDUM OF POINTS AND AUTHORITIES

on the parties stated below, by the following means of service:

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18 **(FEDERAL)** I declare under penalty of perjury that the foregoing is true and correct.

19 Executed on August 28, 2015.

20 _____
21 /s/ Tiaunia Bedell
22 Tiaunia Bedell

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 12

13 **UNITED STATES DISTRICT COURT**
 14 **NORTHERN DISTRICT OF CALIFORNIA**
 15 **SAN FRANCISCO DIVISION**

16 Helene Cahen, Kerry J. Tompulis, and Merrill
 17 Nisam, Richard Gibbs, and Lucy L. Langdon,
 on Behalf of Themselves and All Others
 18 Similarly Situated,

19 Plaintiffs,

20 vs.

21 Toyota Motor Corporation, Toyota Motor
 Sales, U.S.A., Inc., Ford Motor Company,
 22 General Motors LLC, and Does 1 through 50,

23 Defendants.
 24

Case No. 3:15-cv-01104-WHO

**FORD MOTOR COMPANY'S MOTION
 TO DISMISS THE FIRST AMENDED
 COMPLAINT AND SUPPORTING
 MEMORANDUM OF POINTS AND
 AUTHORITIES**

Judge: Hon. William H. Orrick
 Date: November 3, 2015
 Time: 3:00 p.m.
 Place: Courtroom 2

1 2009).

2 *Finally*, the Ford Plaintiffs’ claims should be dismissed because they directly conflict with
3 federal law and the laws of states that obligate Ford to make vehicles’ CAN bus systems readily
4 accessible to third parties. As a practical matter (and as the law requires), CAN bus units must be
5 reasonably accessible so (among other reasons) the vehicles can be diagnosed and repaired. In the
6 FAC, the Ford Plaintiffs claim the fact that the CAN bus system is accessible *at all* is somehow
7 indicia of defect, but that cannot form the basis of a claim, as federal and state laws require motor
8 vehicle manufacturers to make their CAN bus systems reasonably available to third parties.

9 In short, all of the claims against Ford should be dismissed.³

10 ARGUMENT

11 I. **THE COURT CANNOT EXERCISE PERSONAL JURISDICTION OVER FORD**

12 This Court need not delve further into this case than to dismiss it for lack of personal
13 jurisdiction over Ford. Because Ford is neither headquartered nor incorporated in California, this
14 Court does not have general personal jurisdiction over Ford. Moreover, because the Ford Plaintiffs’
15 claims do not arise out of Ford’s California-related activities, the Court does not have specific
16 personal jurisdiction over Ford either. Consequently, the Ford Plaintiffs’ claims against Ford must
17 be dismissed, *Martinez v. Aero Caribbean*, 764 F.3d 1062, 1066 (9th Cir. 2014).⁴

18 Where a defendant moves to dismiss a complaint for lack of personal jurisdiction pursuant to
19

20 ³ In this motion, Ford addresses the infirmities of the Ford Plaintiffs’ pleading pursuant to Fed. R.
21 Civ. P. 8, 9 and 12 unique to it. The Ford Plaintiffs’ claims against Ford are not viable for reasons
22 stated herein, but in an abundance of caution, Ford expressly reserves the right to raise other,
potentially-dispositive defenses to the Ford Plaintiffs’ claims (including arbitration) should they
elect to refile their lawsuit in a forum in which Ford is subject to personal jurisdiction.

23 ⁴ Ford respectfully submits in the alternative that the Ford Plaintiffs’ claims also should be dismissed
24 pursuant to Rule 12(b)(3) and 28 U.S.C. § 1391 for improper venue. Plaintiff Tompulis resides in
Oregon and leases her car from a dealership there. (FAC ¶ 13.) Plaintiffs Gibbs and Langdon reside
25 and purchased their car in Washington. (FAC ¶ 15.) None of the alleged events or omissions
“giving rise to the claim[s]” occurred in this judicial district, and Ford does not reside in this district.
26 *See generally* Declaration of Elizabeth Dwyer (“Dwyer Decl.”), Exhibit 1 hereto, at *passim*;
Declaration of Bill Pappas (“Pappas Decl.”), Exhibit 2 hereto, at *passim*. None of the other plaintiffs
(who are residents of California) have any claims against Ford. *See generally* FAC at *passim*.
27 Accordingly, the claims against Ford should be dismissed. *See Porche v. Pilot & Associates, Inc.*,
319 Fed.Appx. 619 (9th Cir. 2009) (affirming dismissal of lawsuit where venue was improper);
28 *Monaghan v. Fiddler*, No. C11-3278 CW, 2011 WL 4984710 (N.D. Cal. 2011) (dismissing action
where Northern District of California was improper venue).

1 Rule 12(b)(2), “Plaintiffs bear the burden of showing that the Court has personal jurisdiction over
 2 Defendants,” and must make “a prima facie showing of jurisdictional facts to withstand the motion
 3 to dismiss.” *Amiri v. DynCorp Int’l, Inc.*, No. 14-CV-03333, 2015 WL 166910, at *1 (N.D. Cal. Jan.
 4 13, 2015) (quotations and citation omitted); *Picot v. Weston*, 780 F.3d 1206, 1211 (9th Cir. 2015)
 5 (“[T]he plaintiff bears the burden of demonstrating that jurisdiction is appropriate.”) (quotation
 6 omitted).⁵ For the reasons set forth below, the Ford Plaintiffs cannot meet this burden.

7 **A. The Ford Plaintiffs Cannot Establish That This Court Can Exercise General**
 8 **Personal Jurisdiction Over Ford**

9 “General jurisdiction over a corporation is appropriate only when the corporation’s contacts
 10 with the forum state ‘are so constant and pervasive as to render it essentially at home’ in the state.”
 11 *Martinez*, 764 F.3d at 1066 (quoting *Daimler*, 134 S. Ct. at 755. As the Supreme Court recently
 12 clarified, this test generally is only met when a lawsuit is brought in the jurisdiction in which a
 13 defendant (1) is incorporated or (2) maintains its principal place of business. *Daimler*, 134 S. Ct. at
 14 761, n.19; accord *Martinez*, 764 F.3d at 1070.⁶

15 In support of jurisdiction, the Ford Plaintiffs allege only that Ford “manufactured, sold,
 16 leased, and warranted the Ford Vehicles . . . throughout the United States.” (FAC ¶ 23.) These
 17 facts, even if true, do not render Ford “at home” in California, and do not even begin to satisfy the
 18 Supreme Court’s “rigorous test.” *Daimler*, 134 S. Ct. at 751, 757. Indeed, the Supreme Court in
 19 *Daimler* found that this Court did not have general jurisdiction over a vehicle manufacturer
 20 analogous to Ford, one who “distributes . . . vehicles to independent dealerships throughout the
 21 United States, including California.” *Id.* at 751. As the Court explained, “[a]lthough the placement

22 _____
 23 ⁵ Where, as here, no federal statute governs personal jurisdiction, a district court applies the long-
 24 arm statute of the state in which it sits. *Boschetto v. Hansing*, 539 F.3d 1011, 1015 (9th Cir. 2008).
 California’s long-arm statute permits a court to exercise personal jurisdiction where doing so
 comports with federal constitutional due process. *Id.*; Cal. Code Civ. P. § 410.10.

25 ⁶ Although *Daimler* allowed that there could be an “exceptional case” where a company has
 26 operations “so substantial and of such a nature as to render the corporation at home” in a jurisdiction,
 134 S. Ct. at 761 n.19, this Court has recognized that “[t]he bar for such a finding is very high.”
 27 *Amiri*, 2015 WL 166910, at *2. Accordingly, “outside a corporation’s place of incorporation or
 28 principal place of business” general personal jurisdiction “is *rarely* satisfied.” *Id.* (emphasis
 supplied). Plaintiffs do not allege any facts suggesting that Ford’s California activities “approach
 th[is] level.” *Daimler*, 134 S. Ct. at 761 n.19. And indeed, Ford’s activities do not. *See generally*
 Dwyer Decl., Exhibit 1 hereto, at *passim*; Pappas Decl., Exhibit 2 hereto, at *passim*.

1 of a product into the stream of commerce ‘may bolster an affiliation germane to *specific*
2 jurisdiction,’ . . . such contacts ‘do not warrant a determination that, based on those ties, the forum
3 has *general* jurisdiction over a defendant.’” *Id.* at 757 (quoting *Goodyear Dunlop Tires Operations,*
4 *S.A. v. Brown*, 131 S.Ct. 2846, 2857 (2011) (emphasis in original). Plaintiffs do not (and cannot)
5 plead any facts suggesting Ford is different.

6 Moreover, in *Daimler*, even though: (1) the foreign defendant’s subsidiary (whose California
7 contacts were imputed to defendant for purposes of the Court’s analysis, 134 S. Ct. at 749) “ha[d]
8 multiple California-based facilities, including a regional office in Costa Mesa, a Vehicle Preparation
9 Center in Carson, and a Class Center in Irvine”; (*id.* at 752) and (2) the subsidiary was “the largest
10 supplier of luxury vehicles to the California market, . . . account[ing] for 2.4% of [defendant’s]
11 worldwide sales” (*id.*), the Court held that the Northern District of California lacked general personal
12 jurisdiction over defendant, recognizing that

13 [i]f [defendant’s] activities sufficed to allow adjudication of this [foreign]-rooted case
14 in California, the same global reach would presumably be available in every other
15 State in which [defendant’s subsidiary’s] sales are sizable. Such exorbitant exercises
of all-purpose jurisdiction would scarcely permit out-of-state defendants ‘to structure
their primary conduct with some minimum assurance as to where that conduct will
and will not render them liable to suit.’

16 *Id.* at 761-62 (quoting *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 472 (1985)).

17 Such a result, the Court determined, would stretch beyond the bounds of general jurisdiction, which
18 instead “calls for an appraisal of a corporation’s activities in their entirety, nationwide and
19 worldwide. A corporation that operates in many places can scarcely be deemed at home in all of
20 them.” *Id.* at 762 n.20; *Martinez*, 764 F.3d at 1066; *Amiri*, 2015 WL 166910, at *1. Similarly, in
21 *Martinez*, the Ninth Circuit found no general jurisdiction over a foreign defendant corporation that
22 had “contracts, worth between \$225 and \$450 million, to sell airplanes to . . . a California
23 corporation;” “contracts with eleven California component suppliers;” representatives in the state
24 that attended industry conferences, promoted defendant’s products, and met with suppliers; deployed
25 airplanes in California routes; and “advertis[ed] in trade publications with distribution in California.”
26 764 F.3d at 1070. Relying on *Daimler*, the court held that “[t]hese contacts are plainly insufficient
27 to subject [defendant] to general jurisdiction in California,” because “its California contacts are
28 minor compared to its other worldwide contacts.” *Id.* (citing *Daimler*, 134 S. Ct. at 762 n.20). In

1 addition, in *Amiri*, this Court recognized no jurisdiction over a foreign defendant that had “a
2 contract . . . worth between \$46.6 million and \$176.9 million . . . for aircraft maintenance and
3 support split between four facilities, one of which is located in California,” “a \$9,643,087 contract . .
4 . with 16 percent of the work to be performed . . . [in] California,” “239 employees [out of 13,350
5 worldwide] who reside in California,” and “registration with the Secretary of State to do business in
6 California.” 2015 WL 166910, at *4. When “[c]onsidering [defendants’] activities ‘in their entirety,
7 nationwide and worldwide,’ [the Court held that] none of the . . . entities can be deemed ‘at home’ in
8 California.” *Id.* (quoting *Daimler*, 134 S. Ct. at 762 n.20).

9 Like defendants in *Daimler*, *Martinez*, and *Amiri*, Ford is a global company with significant
10 sales throughout the world. (*See* FAC ¶ 23. In addition, Ford is a Delaware corporation with
11 headquarters in Michigan. (*Id.* at ¶ 22.) Plaintiffs plead no facts that would make general
12 jurisdiction in California proper, and this Court should so hold. *Tyson Foods, Inc.*, 2015 WL
13 1034452 at *5-6 (corporate defendant incorporated in Delaware with principal place of business in
14 Arkansas not “at home” in New York even though its “alter ego” operated a manufacturing plant in
15 Buffalo, New York; court thus “lack[ed] authority to exercise general jurisdiction over” defendant).

16 **B. The Ford Plaintiffs Cannot Establish That The Court Has Specific Personal**
17 **Jurisdiction Over Ford**

18 Plaintiffs have also failed to establish that this Court has specific jurisdiction over Ford. The
19 Ninth Circuit analyzes specific jurisdiction under a three-pronged test:

20 (1) The non-resident defendant must purposefully direct his activities or consummate
21 some transaction with the forum or resident thereof; or perform some act by which he
22 purposefully avails himself of the privilege of conducting activities in the forum,
23 thereby invoking the benefits and protections of its laws; (2) the claim must be one
24 which arises out of or relates to the defendant's forum related activities; and (3) the
25 exercise of jurisdiction must comport with fair play and substantial justice, *i.e.*, it
26 must be reasonable.

27 *Schwarzenegger v. Fred Martin Motor Co.*, 374 F.3d 797, 802 (9th Cir. 2004); *see also Burger King*
28 *Corp.*, 471 U.S. at 475-76. The plaintiffs bear the burden of satisfying the first two prongs, and if
either of these prongs is not satisfied, personal jurisdiction cannot be established. *Schwarzenegger*,
374 F.3d at 802.

1 **1. The Ford Plaintiffs Do Not Allege That Ford Purposefully Availed Itself**
2 **of The Forum Or Purposefully Directed Its Activities At The Forum**

3 Plaintiffs, who are Oregon and Washington residents who purchased or leased their vehicles
4 in those states, fail to allege that their claims are grounded in any activities Ford purposefully
5 directed at California, because no such activities exist. *See* Pappas Decl., Ex. 2 hereto, *at passim*;
6 Dwyer Decl., Ex. 1 hereto, *at passim*. In *Walden v. Fiore*, the Supreme Court clarified that the
7 purposeful availment test requires a court to look to the defendant’s suit-related contacts with the
8 forum. 134 S.Ct. 1115, 1122 (2014). *Walden* underscores the longstanding principle that “for a
9 State to exercise jurisdiction consistent with due process, the defendant’s suit related conduct must
10 create a substantial connection with the forum-State.” *Id.* at 1121.

11 Here, the Ford Plaintiffs’ claims arise from the allegedly defective CAN bus units in their
12 vehicles and alleged deficiencies in Ford’s disclosures to consumers in Oregon and Washington *vis-*
13 *à-vis* the sale, marketing, distribution and warranties of those cars. But Plaintiffs have not alleged
14 California is where Ford designed, manufactured and installed the allegedly defective CAN bus units
15 in their vehicles, nor could they, because Ford designed and manufactured the vehicles (including
16 installing the CAN bus systems) elsewhere. Pappas Decl. ¶¶ 3-5; Dwyer Decl. ¶¶ 4-5. In point of
17 fact, neither of the Ford Plaintiffs’ vehicles has any connection to or with California. The 2014 Ford
18 Escape Ms. Tompulis leased was manufactured at Ford’s Louisville, Kentucky Assembly Plant in
19 Louisville, Kentucky. Dwyer Decl. ¶¶ 4. The vehicle was then sold by Ford to Landmark Ford
20 Lincoln in Oregon. *Id.* The 2013 Ford Fusion Richard Gibbs and Lucy L. Langdon purchased used
21 was manufactured at Ford’s Hermosillo Stamping and Assembly Plant in Sonora, Mexico. *Id.* ¶¶ 5.
22 Ford then sold the vehicle to Sound Ford in Washington. *Id.* The warranties, owner manuals and
23 other “glove box” documents are disseminated with new vehicles at point of sale, and are also online
24 at Ford’s website. Dwyer Decl. ¶ 6 and Ex. A. Ford’s website is administered from Michigan. *See*
25 <http://corporate.ford.com/legal/terms-and-conditions.html> (last visited Aug. 27, 2015). In fact,
26 Plaintiffs allege no facts connecting any Ford activity to California, let alone any “suit-related
27 conduct...[that] create[s] a substantial connection” with California. *Walden*, 134 S.Ct. at 1121.
28

1 **2. The Ford Plaintiffs’ Claims Do Not Arise Out Of Ford’s Contacts With**
 2 **California**

3 To establish the causation element, the Ninth Circuit applies a “but for” analysis. *Terracom*
 4 *v. Valley Nat’l Bank*, 49 F.3d 555, 561 (9th Cir. 1995); *Glencore Grain Rotterdam B.V. v. Shivnath*
 5 *Rai Harnarain Co.*, 284 F.3d 1114, 1123 (9th Cir. 2002) (“We apply a ‘but for’ test to assess
 6 whether [the plaintiff]’s claims ‘arise out of’ [the defendant]’s forum conduct: [The plaintiff] must
 7 show that it would not have been injured ‘but for’ [the defendant]’s contacts with California.”).

8 The Ford Plaintiffs’ claims against Ford have no connection whatsoever to California.
 9 Plaintiff Tompulis leased and drives her 2014 Ford Escape in Oregon (FAC ¶ 13), and the Escape
 10 was first sold to an independent Ford dealership in Oregon.⁷ Dwyer Decl. ¶ 4. Plaintiffs Gibbs and
 11 Langdon purchased and drive their used 2013 Ford Fusion in Washington (FAC ¶ 15), and the
 12 Fusion was first sold to an independent Ford dealership in Washington. Dwyer Decl. ¶ 5.

13 Moreover, Plaintiffs do not and cannot allege that the allegedly defective CAN bus units, let
 14 alone Plaintiffs’ vehicles, have any nexus to California. In fact, as noted above, Tompulis’s Escape
 15 was manufactured in Louisville, Kentucky, and Gibbs/Langdon’s Fusion was manufactured in
 16 Mexico. Dwyer Decl. ¶¶ 4-5. The CAN bus system in the 2014 Ford Escape was not even designed
 17 in California, and neither was the CAN bus system in the 2013 Ford Fusion (which is different from
 18 the CAN bus system in the 2014 Ford Escape). Pappas Decl. ¶4-5. In fact, both vehicles were
 19 designed in locations *other than* California. Pappas Decl. ¶3.

20 Thus, it is certainly not the case that the Ford Plaintiffs’ “cause[s] of action would not have
 21 arisen . . . ‘but for’ the contacts between” Ford and California. *Terracom*, 49 F.3d at 561. Even if
 22 Ford had never sold a single vehicle to any independent California Ford dealership and even if Ford
 23 had no employees or business operations in California, Plaintiffs’ claims would be exactly the same.
 24 As a result, none of the Ford Plaintiffs can demonstrate that their claims “arose out of or were related
 25 to . . . [Ford’s] activities in California.” *Porche*, 319 Fed.Appx. 619 (affirming dismissal of lawsuit
 26 where venue was improper and the district court did not have personal or specific jurisdiction over
 27 defendant). The Ford Plaintiffs’ claims do not “arise[] out of or relate[] to [Ford’s] forum-related

28 ⁷ It is worth noting that Ford does not sell vehicles to consumers. Ford sells to independently owned and operated dealerships who in turn sell and/or lease vehicles to the public. Dwyer Decl. ¶ 3.

1 activities,” *Schwarzenegger*, 374 F.3d at 802, and, therefore, specific personal jurisdiction over Ford
 2 is lacking. *See also Young v. Actions Semiconductor Co. Ltd.*, 386 F. App’x. 623, 627 (9th Cir.
 3 2010); *Doe v. Unocal Corp.*, 248 F.3d 915, 924-25 (9th Cir. 2001).

4 As this Court has neither general nor specific personal jurisdiction over Ford, the Ford
 5 Plaintiffs’ claims against Ford must be dismissed. *Martinez*, 764 F.3d at 1066.

6 II. **The Ford Plaintiffs Lack Standing Under State Law And Article III Because They Have** 7 **Suffered No Legally-Cognizable Injury**

8 Even if the Ford Plaintiffs could establish that the Court has jurisdiction over Ford, which it
 9 does not, the Ford Plaintiffs do not have standing to pursue their claims. The UTPA and CPA
 10 require a person to have suffered an “ascertainable loss” in order to have standing, but none of the
 11 Ford Plaintiffs have alleged (or actually suffered) such a loss. Or. Rev. Stat. § 646.638. Similarly,
 12 “[t]o establish Article III standing, a plaintiff must show” that he/she has suffered an “injury in
 13 fact”—*i.e.*, “an injury that is concrete and particularized, and actual or imminent.” *Alliance for the*
 14 *Wild Rockies v. U.S. Dep’t of Agric.*, 772 F.3d 592, 598 (9th Cir. 2014). In *Clapper v. Amnesty Int’l*
 15 *USA*, the Supreme Court recently “reiterated that threatened injury must be *certainly impending* to
 16 constitute injury in fact, and that [a]llegations of *possible* future injury are not sufficient.” 133 S. Ct.
 17 1138, 1147 (2013) (quotations omitted) (emphasis in original). The Supreme Court further made
 18 clear that a plaintiff cannot “manufacture standing merely by inflicting harm on [himself] based on
 19 ... fears of hypothetical harm that is not certainly impending.” *Id.* at 1151. In other words,
 20 allegations that the Ford Plaintiffs are afraid that their vehicles could be hacked in the future is not a
 21 cognizable harm that satisfies standing requirements.

22 **A. The Ford Plaintiffs Lack Standing Under State Law Because They Suffered No** 23 **Loss**

24 “The UTPA extends a private cause of action to ‘any person who suffers any ascertainable
 25 loss of money or property’ as a result of an unlawful trade practice.” *Bojorquez v. Wells Fargo*
 26 *Bank, NA*, No. 6:12-cv-02077, 2013 WL 6055258, at *7 (D. Or. Nov. 7, 2013) (*quoting* Or. Rev.
 27 Stat. § 646.638(1)). Therefore, “[t]o state a claim under the UTPA, a plaintiff is required to plead:
 28 (1) that defendant violated one or more of the[] subsections” delineated by Or. Rev. Stat. § 646.638;
 (2) “causation (‘as a result of’); and (3) damage (‘ascertainable loss’).” *Id.* (quotation omitted).

1 These scant references do not suffice to state a claim for fraudulent concealment pursuant to
 2 Rule 9(b). Rather, to plead the circumstances of omission with sufficient specificity, a plaintiff
 3 must describe the content of the omission and where the omitted information
 4 should or could have been revealed, as well as provide representative samples of
 5 advertisements, offers, or other representations that plaintiffs relied on to make
 6 their purchases and that failed to include the allegedly omitted information. Plaintiffs' complaint should also include samples of materials documenting . . .
 7 purchases that leave out the essential information . . .

8 *Marolda v Symantec Corp.*, 672 F. Supp. 2d 992, 1002 (N.D. Cal. 2009); *accord Baughn*, 2015 WL
 9 4759151, at *3; *see also, e.g., Kearns*, 567 F.3d 1126. The Ford Plaintiffs' fraud-based claims must
 10 be dismissed.

11 IV. **THE FORD PLAINTIFFS' CLAIMS ARE PREEMPTED AND/OR FORECLOSED** 12 **BY STATE LAW**

13 The Ford Plaintiffs' claims should also be dismissed because, as pled, they are preempted
 14 and/or barred by state law. Federal preemption stems from the constitutional provision that the laws
 15 of the United States are the supreme law of the land. U.S. Const., art. VI, cl. 2. The intent of
 16 Congress to preempt state law "may be explicitly stated in the statute's language or implicitly
 17 contained in its structure and purpose." *Cipollone v. Liggett Group, Inc.*, 505 U.S. 504, 516 (1992)
 18 (internal quotations omitted). Implied conflict preemption will be found when an actual conflict
 19 exists between state and federal law, *Geier v. Am. Honda Motor Co., Inc.*, 529 U.S. 861, 873 (2000),
 20 or when state law "stands as an obstacle to the accomplishment and execution of the full purposes
 21 and objectives of Congress." *Capital Cities Cable, Inc. v. Crisp*, 467 U.S. 691, 698-99 (1984). With
 22 regard to the latter, "[i]f the purpose of the act cannot otherwise be accomplished . . . the state law
 23 must yield to the regulation of Congress within the sphere of its delegated power." *Hines v.*
 24 *Davidowitz*, 312 U.S. 52, 67 n.20 (1941) (internal quotations omitted); *see also Geier*, 529 U.S. at
 25 873 (obstacles exist where state law presents "difference; irreconcilability; inconsistency; violation;
 26 curtailment . . . ; interference, or the like" with federal law) (internal quotations omitted).

27 The Ford Plaintiffs' claims depend upon the premise that Ford broke the law by failing to
 28 prevent third-party access to the CAN bus units of all "current and former owners and/or lessees of .
 . . Ford Vehicles . . . equipped with computerized components that are connected via a controller
 area network to an integrated cell phone or Class 1 or Class 2 master Bluetooth device." (FAC ¶ 9.)

1 In fact, Ford would have violated the law had it *not* provided the access that the Ford Plaintiffs are
2 now trying to claim is actionable. Because Ford has a duty under federal and state law to allow
3 third-party access to vehicles' CAN bus units, Plaintiffs' claims are preempted. *See, e.g.*, CAL.
4 CODE REGS. tit. 13, § 1968.9; MASS. GEN. LAWS ch. 93K, § 2 (2013); *Geier*, 529 U.S. at 884.

5 **A. The Clean Air Act Amendments Of 1990 Require Ford To Permit Access To**
6 **Vehicles' CAN Bus Units**

7 The House Energy and Commerce Committee approved amendments to Clean Air Act
8 legislation ("1990 Amendments") that require all 1994 and later vehicles to be equipped with
9 computer systems that monitor and control nearly every emissions-related function (*i.e.*, what is now
10 the CAN bus). 40 C.F.R. § 86.094 *et seq.* As currently implemented, the 1990 Amendments and
11 implementing regulations not only require access to the CAN bus, they also require car companies to
12 make *all* emissions-related information available over websites that are accessible to third parties,
13 and to also make their emissions-related diagnostic tools available *to all*. *Id.* In point of fact, all
14 information that is made available either directly or indirectly to an authorized dealer must be made
15 available to third parties (including, but is not limited to, service manuals, technical service bulletins,
16 recall service information, data stream information, bi-directional control information and training
17 information). 40 C.F.R. §86.094-38(g)(1). "Emission-related information" is defined broadly to
18 include (but is not limited to): (1) information "regarding any system, component or part of a
19 vehicle that controls emissions and any system, components and/or parts associated with the
20 powertrain system, including, but not limited to, the fuel system and ignition system"; (2)
21 information "for any system, component or part that is likely to impact emissions, such as
22 transmission systems"; and (3) "[a]ny other information specified by the Administrator to be
23 relevant for the diagnosis and repair of an emission failure" 40 C.F.R. § 86.094-38(2)(i)-(iii).
24 Most of the foregoing information is stored in a vehicle's CAN bus system.

25 **B. State Law Also Requires Ford To Permit CAN Bus Access**

26 Likewise, state laws also require that Ford give third parties access not only to vehicles'
27 CAN bus systems, but also all training, service and diagnostic tools and information related thereto.
28 For example, under California law, "[m]otor vehicle manufacturers .. shall make available for

1 purchase to all covered persons,¹⁴ a general description of each OBD system used in 1996 and
 2 subsequent model year passenger cars ... which shall include,” *inter alia*: (1) a description of the
 3 operation of each monitor; (2) a listing of typical OBD diagnostic trouble codes associated with each
 4 monitor; and (3) a description of the typical enabling conditions for each monitor to execute during
 5 vehicle or engine operation. CAL. CODE REGS. tit. 13, § 1968.9(e)(1), (e)(2) The law of
 6 Massachusetts is equally clear: “each manufacturer of motor vehicles sold in the commonwealth
 7 shall make available for purchase by owners and independent repair facilities *all diagnostic repair*
 8 *tools* incorporating the same diagnostic, repair and wireless capabilities that such manufacturer
 9 makes available to dealers.” MASS. GEN. LAWS ch. 93K, § 2 (2013) (emphasis supplied). Ford
 10 cannot be held liable under state tort, warranty, and consumer protection statutes for complying with
 11 state and federal laws requiring broad CAN-bus access.¹⁵ *See, e.g.*, CAL. CODE REGS. tit. 13, §
 12 1968.9; MASS. GEN. LAWS ch. 93K, § 2 (2013). Because the Ford Plaintiffs’ claims depend on
 13 the Court finding as a threshold matter Ford’s legally-required conduct to be wrongful, the Ford
 14 Plaintiffs’ claims fail as a matter of law. *Geier*, 529 U.S. at 884.

CONCLUSION

15
 16 For the reasons set forth herein, Ford respectfully requests the Court dismiss the claims
 17 against Ford. Ford respectfully requests such other, further relief the Court deems appropriate.
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 22
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 24
 25

26 ¹⁴ A “covered person” includes “any person” who is engaged in the business of service or repair of
 27 passenger cars” CAL. CODE REGS. tit. 13, § 1968 (d)(4).

28 ¹⁵ To be clear, Ford is not asserting that California or Washington law applies to the Ford Plaintiffs’
 claims, only that California and Washington law, among other states, require Ford to allow third-
 party access to vehicles’ CAN bus systems.

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15 **IN THE UNITED STATES DISTRICT COURT**

16 **NORTHERN DISTRICT OF CALIFORNIA – SAN FRANCISCO DIVISION**

17 HELENE CAHEN, KERRY J. TOMPULIS,
 18 and MERRILL NISAM,

19 Plaintiffs,

20 v.

21 TOYOTA MOTOR CORPORATION,
 TOYOTA MOTOR SALES, U.S.A., INC.,
 22 FORD MOTOR COMPANY, GENERAL
 MOTORS LLC, and DOES 1 through 50,

23 Defendants.

CASE NO.

**COMPLAINT FOR BREACH OF
 WARRANTY, BREACH OF CONTRACT,
 AND VIOLATION OF CONSUMER
 PROTECTION LAWS**

CLASS ACTION

DEMAND FOR JURY TRIAL

1 Plaintiffs Helene Cahen, Kerry J. Tompulis, and Merrill Nisam (“Plaintiffs”), individually
2 and on behalf of all others similarly situated (the “Class”), allege as follows:

3 INTRODUCTION

4 1. There are certain basic rules all automobile manufacturers must follow. This case
5 arises from a breach of these rules by the Defendants: Toyota Motor Corporation and Toyota
6 Motor Sales, U.S.A., Inc. (together, “Toyota”), Ford Motor Company (“Ford”), and General
7 Motors LLC (“GM”).

8 2. When Defendants sell or lease any vehicle to a customer, they have a duty to
9 ensure the vehicle functions properly and safely, and is free from defects. When they become
10 aware of a defect in their vehicles, they have an obligation to correct the defect or cease selling
11 the vehicles. When Defendants introduce a new technology in their vehicles, and tout its benefits,
12 they must test the technology to ensure that it functions properly. And when Defendants provide
13 a warranty to a customer, Defendants are bound to stand by that warranty.

14 3. But Defendants failed consumers in all of these areas when they sold or leased
15 vehicles that are susceptible to computer hacking and are therefore unsafe. Because Defendants
16 failed to ensure the basic electronic security of their vehicles, anyone can hack into them, take
17 control of the basic functions of the vehicle, and thereby endanger the safety of the driver and
18 others.

19 4. This is because Defendants’ vehicles contain more than 35 separate electronic
20 control units (ECUs), connected through a controller area network (“CAN” or “CAN bus”).
21 Vehicle functionality and safety depend on the functions of these small computers, the most
22 essential of which is how they communicate with one another.

23 5. The ECUs communicate by sending each other “CAN packets,” digital messages
24 containing small amounts of data. But if an outside source, such as a hacker, were able to send
25 CAN packets to ECUs on a vehicle’s CAN bus, the hacker could take control of such basic
26 functions of the vehicle as braking, steering, and acceleration – and the driver of the vehicle
27 would not be able to regain control.
28

1 6. Disturbingly, as Defendants have known, their CAN bus-equipped vehicles for
2 years have been (and currently are) susceptible to hacking, and their ECUs cannot detect and stop
3 hacker attacks on the CAN buses. For this reason, Defendants' vehicles are not secure, and are
4 therefore not safe.

5 7. Yet, Defendants have charged a substantial premium for their CAN bus-equipped
6 vehicles since their rollout. These defective vehicles are worth far less than are similar non-
7 defective vehicles, and far less than the defect-free vehicles the Plaintiffs and the other Class
8 members bargained for and thought they had received.

9 8. As a result of Defendants' unfair, deceptive, and/or fraudulent business practices,
10 and their failure to disclose the highly material fact that their vehicles were susceptible to hacking
11 and neither secure nor safe, owners and/or lessees of Defendants' CAN bus-equipped vehicles
12 have suffered losses in money and/or property. Had Plaintiffs and the other Class members
13 known of the defects at the time they purchased or leased their vehicles, they would not have
14 purchased or leased those vehicles, or would have paid substantially less for the vehicles than
15 they did.

16 9. Toyota manufactures and sells vehicles under the Toyota, Lexus, and Scion
17 names (the "Toyota Vehicles"); Ford manufactures and sells vehicles under the Ford, Lincoln,
18 and (until 2011) Mercury names (the "Ford Vehicles"); GM manufactures and sells vehicles
19 under the Buick, Cadillac, Chevrolet, and GMC names, and (until 2009) under the Hummer,
20 Pontiac, and Saturn names (the "GM Vehicles"). The CAN buses in all Toyota Vehicles, Ford
21 Vehicles, and GM Vehicles are essentially identical in that they are all susceptible to hacking and
22 thus suffer from the same defect. For purposes of this Complaint, all CAN bus-equipped vehicles
23 are referred to collectively as the "Class Vehicles" or "Defective Vehicles."

24 10. Plaintiffs bring this action individually and on behalf of all other current and
25 former owners or lessees of Toyota Vehicles, Ford Vehicles, and GM Vehicles equipped with
26 CAN buses. Plaintiffs seek damages, injunctive relief, and equitable relief for the conduct of
27 Defendants, as alleged in this complaint.
28

JURISDICTION

11. This Court has jurisdiction pursuant to the Class Action Fairness Act of 2005, 28 U.S.C. § 1332(d), because the proposed Class consists of 100 or more members; the amount in controversy exceed \$5,000,000, exclusive of costs and interest; and minimal diversity exists. This Court also has supplemental jurisdiction over the state law claims pursuant to 28 U.S.C. § 1367.

VENUE

12. Venue is proper in this District under 28 U.S.C. § 1391 because a substantial part of the events or omissions giving rise to Plaintiffs' claims occurred in this District. Plaintiffs Cahen and Nisam purchased Class Vehicles in this District, and Defendants have marketed, advertised, sold, and leased the Class Vehicles within this District.

PARTIES

13. Plaintiff Helene Cahen is an individual residing in Berkeley, California. In September 2008, Plaintiffs Cahen purchased a new 2008 Lexus RX 400 H from an authorized Lexus dealer in San Rafael, California. Plaintiff Cahen still owns this vehicle.

14. Plaintiff Kerry J. Tompulis is an individual residing in Beaverton, Oregon. In August 2014, Plaintiffs Tompulis leased a new 2014 Ford Escape from Landmark Ford, an authorized Ford dealer in Tigard, Oregon. Plaintiff Tompulis still leases this vehicle.

15. Plaintiff Merrill Nisam is an individual residing in Mill Valley, California. In March 2013, Plaintiffs Nisam purchased a new 2013 Chevrolet Volt from Novato Chevrolet, an authorized Chevrolet dealer in Novato, California. Plaintiff Nisam still owns this vehicle.

16. Defendant Toyota Motor Corporation ("TMC") is a Japanese corporation. TMC is the parent corporation of Toyota Motor Sales, U.S.A., Inc. TMC, through its various entities, designs, manufactures, markets, distributes and sells Toyota, Lexus and Scion automobiles in California and multiple other locations in the United States and worldwide.

17. Defendant Toyota Motor Sales, U.S.A., Inc. ("TMS") is incorporated and headquartered in California. TMS is Toyota's U.S. sales and marketing arm, which oversees sales and other operations in 49 states. TMS distributes Toyota, Lexus and Scion vehicles and sells these vehicles through its network of dealers.

1 18. Money received from the purchase of a Toyota Vehicle from a dealer flows from
2 the dealer to TMS. Money received by the dealer from a purchaser can be traced to TMS and
3 TMC.

4 19. TMS and TMC sell Toyota Vehicles through a network of dealers who are the
5 agents of TMS and TMC.

6 20. TMS and TMC are collectively referred to in this complaint as “Toyota” or the
7 “Toyota Defendants” unless identified as TMS or TMC.

8 21. At all times relevant to this action, Toyota manufactured, sold, leased, and
9 warranted the Toyota Vehicles at issue under the Toyota, Lexus, and Scion names throughout the
10 United States. Toyota and/or its agents designed, manufactured, and installed the defective CAN
11 buses in the Toyota Vehicles. Toyota also developed and disseminated the owner’s manuals and
12 warranty booklets, advertisements, and other promotional materials relating to the Toyota
13 Vehicles.

14 22. Defendant Ford Motor Company is a corporation doing business in all fifty states
15 (including the District of Columbia) and is organized under the laws of the State of Delaware,
16 with its principal place of business in Dearborn, Michigan.

17 23. At all times relevant to this action, Ford manufactured, sold, leased, and
18 warranted the Ford Vehicles at issue under the Ford, Lincoln, and (until 2011) Mercury names
19 throughout the United States. Ford and/or its agents designed, manufactured, and installed the
20 defective CAN buses in the Ford Vehicles. Ford also developed and disseminated the owner’s
21 manuals and warranty booklets, advertisements, and other promotional materials relating to the
22 Ford Vehicles.

23 24. Defendant General Motors LLC is a limited liability company formed under the
24 laws of the State of Delaware with its principal place of business in Detroit, Michigan. GM was
25 incorporated in 2009 and on July 10, 2009 acquired substantially all assets and assumed certain
26 liabilities of General Motors Corporation (“Old GM”) through a Section 363 sale under Chapter
27 11 of the U.S. Bankruptcy Code.

28

1 25. Among the liabilities and obligations expressly retained by GM after the
2 bankruptcy are the following:

3 From and after the Closing, Purchaser [GM] shall comply with the certification,
4 reporting and recall requirements of the National Traffic and Motor Vehicle Act,
5 the Transportation Recall Enhancement, Accountability and Documentation Act,
6 the Clean Air Act, the California Health and Safety Code, and similar laws, in each
7 case, to the extent applicable in respect of vehicles and vehicle parts manufactured
8 or distributed by [Old GM].

9 26. GM also expressly assumed:

10 All Liabilities arising under express written warranties of [Old GM] that are
11 specifically identified as warranties and delivered in connection with the sale of
12 new, certified used or pre-owned vehicles or new or remanufactured motor vehicle
13 parts and equipment (including service parts, accessories, engines and
14 transmissions) manufactured or sold by [Old GM] or Purchaser prior to or after the
15 Closing and (B) all obligations under Lemon Laws.

16 27. Because GM acquired and operated Old GM and ran it as a continuing business
17 enterprise, and because GM was aware from its inception of the CAN bus defects in the GM
18 Vehicles, GM is liable through successor liability for the deceptive and unfair acts and omissions
19 of Old GM, as alleged in this Complaint.

20 28. At all times relevant to this action, GM manufactured, sold, leased, and warranted
21 the GM Vehicles at issue under the Buick, Cadillac, Chevrolet, and GMC names, and (until 2009)
22 under the Hummer, Pontiac, and Saturn names throughout the United States. GM and/or its agents
23 designed, manufactured, and installed the defective CAN buses in the GM Vehicles. GM also
24 developed and disseminated the owner’s manuals and warranty booklets, advertisements, and
25 other promotional materials relating to the GM Vehicles.

26 29. Plaintiffs do not know the true names and capacities of Defendants sued herein as
27 Does 1 through 50, and will amend this Complaint to set forth the true names and capacities of said
28 defendants, along with the appropriate charging allegations when the same have been ascertained.

TOLLING OF THE STATUTE OF LIMITATIONS

30. Any applicable statute(s) of limitations has been tolled by Defendants’ knowing
and active concealment and denial of the facts alleged herein. Plaintiffs and the other Class
members could not have reasonably discovered the true, latent defective nature of the CAN buses

1 until shortly before this class action litigation was commenced.

2 31. Defendants were and remain under a continuing duty to disclose to Plaintiffs and
3 the other Class members the true character, quality, and nature of the Class Vehicles, that this
4 defect is a result of Defendants' design choices, and that it will require costly repairs, and
5 diminishes the resale value of the Class Vehicles. As a result of the active concealment by
6 Defendants, any and all statutes of limitations otherwise applicable to the allegations herein have
7 been tolled.

8 **FACTUAL ALLEGATIONS**

9 **How Defendants' CAN Buses Work**

10 32. Many modern automobiles, including the Class Vehicles, contain a number of
11 different networked electronic components that together monitor and control the vehicle. Class
12 Vehicles contain upwards of 35 electronic control units ("ECUs") networked together on a
13 controller area network ("CAN" or "CAN bus"). Crucially, the overall safety of the vehicle relies
14 on near real time communication between these various ECUs.¹

15 33. As stated by two researchers in a 2013 study funded by the U.S. Defense
16 Advanced Research Projects Agency ("DARPA"): "Drivers and passengers are strictly at the
17 mercy of the code running in their automobiles and, unlike when their web browser crashes or is
18 compromised, the threat to their physical well-being is real."²

19 34. The ECUs are networked together on one or more CAN buses, and they
20 communicate with one another by sending electronic messages comprised of small amounts of
21 data called CAN packets.³ The CAN packets are broadcast to all components on the CAN bus,

23 ¹ *Tracking & Hacking: Security & Privacy Gaps Out American Drivers at Risk*, A report written
24 by the staff of Senator Edward J. Markey (D-Massachusetts), http://www.markey.senate.gov/imo/media/doc/2015-02-06_MarkeyReport-Tracking_Hacking_CarSecurity%202.pdf (last
25 accessed February 20, 2015) (hereinafter "Markey Report") at 3; Dr. Charlie Miller & Chris
26 Valasek, Technical White Paper: *Adventures in Automotive Networks and Control Units*,
[http://www.ioactive.com/pdfs/IOActive_Adventures_in_Automotive_Networks_and_Control_](http://www.ioactive.com/pdfs/IOActive_Adventures_in_Automotive_Networks_and_Control_units.pdf)
27 [units.pdf](http://www.ioactive.com/pdfs/IOActive_Adventures_in_Automotive_Networks_and_Control_units.pdf) (last accessed February 20, 2015) (hereinafter "Miller & Valasek") at 5, 7-8.

28 ² Miller & Valasek at 4; *see also* Markey Report at 3.

³ Miller & Valasek at 4.

1 and each component decides whether it is the intended recipient of any given CAN packet.
2 Notably, there is no source identifier or authentication built into CAN packets.

3 **Defendants' CAN Buses Are Susceptible to Dangerous Hacking**

4 35. The CAN standard was first developed in the mid-1980s and is a low-level
5 protocol which does not intrinsically support any security features.⁴ Applications are expected to
6 deploy their own security mechanisms; e.g., to authenticate each other.⁵ But if an outside source
7 manages to insert messages onto a CAN bus, the ECUs will not be able to properly authenticate
8 each other.⁶

9 36. This capability can be used maliciously. In particular, wireless technologies create
10 vulnerabilities to hacking attacks that could be used to invade a user's privacy or modify the
11 operation of a vehicle. An attacker with physical access to a CAN bus-equipped vehicle could
12 insert malicious code or CAN packets – and could also remotely and wirelessly access a vehicle's
13 CAN bus through Bluetooth connections.⁷

14 37. One journalist described the experience of driving a vehicle whose CAN bus was
15 being hacked remotely (but under controlled circumstances) as follows:

16 As I drove to the top of the parking lot ramp, the car's engine suddenly shut off,
17 and I started to roll backward. I expected this to happen, but it still left me wide-
18 eyed.

19 I felt as though someone had just performed a magic trick on me. What ought to
20 have triggered panic actually elicited a dumbfounded surprise in me. However, as
21 the car slowly began to roll back down the ramp, surprise turned to alarm as the
22 task of steering backwards without power brakes finally sank in.

23 This wasn't some glitch triggered by a defective ignition switch, but rather an
24 orchestrated attack performed wirelessly, from the other side of the parking lot, by
25 a security researcher.⁸

24 ⁴ http://en.wikipedia.org/w/index.php?title=CAN_bus (last accessed February 20, 2015).

25 ⁵ *Id.*

26 ⁶ See Xavier Aaronson, *We Drove a Car While It Was Being Hacked*, <http://motherboard.vice.com/read/we-drove-a-car-while-it-was-being-hacked> (last accessed February 20, 2015).

27 ⁷ Miller & Valasek at 4; see also Markey Report at 3.

28 ⁸ Xavier Aaronson, *We Drove a Car While It Was Being Hacked*, <http://motherboard.vice.com/read/we-drove-a-car-while-it-was-being-hacked> (last accessed February 20, 2015).

1 **Defendants Have Known for Years that Their CAN Bus-Equipped Vehicles Can Be Hacked**

2 38. These security vulnerabilities have been known in the automotive industry – and,
3 specifically, by Defendants – for years. Researchers at the University of California San Diego
4 and University of Washington had discovered in 2011 that modern automobiles can be hacked in
5 a number of different ways – and, crucially, that wireless communications allow a hacker to take
6 control of a vehicle from a long distance.⁹

7 39. Building on this research, in a 2013 DARPA-funded study, two researchers
8 demonstrated their ability to connect a laptop to the CAN bus of a 2010 Toyota Prius and a 2010
9 Ford Escape using a cable, send commands to different ECUs through the CAN, and thereby
10 control the engine, brakes, steering and other critical vehicle components.¹⁰ In their initial tests
11 with a laptop, the researchers were able to cause the cars to suddenly accelerate, turn, kill the
12 brakes, activate the horn, control the headlights, and modify the speedometer and gas gauge
13 readings.¹¹

14 40. Before the researchers went public with their 2013 findings, they shared the
15 results with Toyota and Ford in the hopes that the companies would address the identified
16 vulnerabilities.¹² The companies, however, did not.

17 **Despite Selling Unsafe CAN-Bus Equipped Vehicles, Defendants Tout Their Safety**

18 **A. Toyota**

19 41. Toyota has consistently marketed its vehicles as “safe” and portrayed safety as
20 one of its highest priorities.

21 42. As Toyota states in one of its promotional materials:

22 Toyota believes that the ultimate goal of a society that values mobility is to
23 eliminate traffic fatalities and injuries. Toyota’s Integrated Safety Management

24 ⁹ Stephen Checkoway et al., *Comprehensive Experimental Analyses of Automotive Attack*
25 *Surfaces*, <http://www.autosec.org/pubs/cars-usenixsec2011.pdf> (last accessed February 20, 2015).

26 ¹⁰ See generally Miller & Valasek.

27 ¹¹ See generally Miller & Valasek. A video of the researchers hacking and taking control of the
28 operation of the cars can be viewed at <https://www.youtube.com/watch?v=oqe6S6m73Zw> (last
accessed February 20, 2015).

¹² Markey Report at 3.

1 Concept sets the direction for safety technology development and vehicle
2 development, and covers all aspects of driving by integrating individual vehicle
3 safety technologies and systems rather than viewing them as independently
4 functioning units.¹³

43. In another, Toyota states:

5 Pursuit for Vehicle Safety

6 Toyota has been implementing “safety” measures to help create safer vehicles.¹⁴

7 44. And in a third, Toyota states:

8 Toyota recognizes the importance of the driver being in ultimate control of a
9 vehicle and is therefore aiming to introduce AHDA and other advanced driving
10 support systems where the driver maintains control and the fun-to-drive aspect of
11 controlling a vehicle is not compromised.¹⁵

11 **B. Ford**

12 45. Ford similarly markets and promotes its vehicles as “safe.” For example, in
13 describing its 2015 Fusion, Ford states:

14 Safety

15 When you look over the impressive list of collision avoidance and occupant
16 protection features, you’ll know how well-equipped Fusion is when it comes to
17 you and your passengers’ safety.¹⁶

17 46. In describing its 2015 Focus, Ford states:

18 Safety

19 You don’t have to pick and choose when it comes to safety. Focus is well
20 equipped with an impressive list of safety features.¹⁷

20 **C. GM**

21 47. GM also heavily promotes the safety of its vehicles. As GM states in one of its
22

23 ¹³ http://www.toyota-global.com/innovation/safety_technology/media-tour/ (last accessed
24 February 20, 2015).

25 ¹⁴ http://www.toyota-global.com/innovation/safety_technology/safety_measurements/ (last
26 accessed February 20, 2015).

27 ¹⁵ <http://www.toyota.com/esq/safety/active-safety/advanced-driving-support-system.html> (last
28 accessed February 20, 2015).

¹⁶ <http://www.ford.com/cars/fusion/trim/s/safety/> (last accessed March 5, 2015).

¹⁷ <http://www.ford.com/cars/focus/trim/st/safety/> (last accessed March 5, 2015).

1 promotional materials:

2 GM’s Commitment to Safety

3 Quality and safety are at the top of the agenda at GM, as we work on technology
4 improvements in crash avoidance and crashworthiness to augment the post-event
benefits of OnStar, like advanced automatic crash notification.¹⁸

5 48. And in a recent press release, GM stated:

6 GM Paves Way for Global Active Safety Development

7 Thu, Oct 23 2014

8 MILFORD, Mich. – General Motors today revealed that the development of one of
the largest active automotive safety testing areas in North America is nearly
complete at its Milford Proving Ground campus.

9 * * *

10 The Active Safety Testing Area, or ASTA, will complement the Milford Proving
11 Ground’s vast test capabilities and increase GM’s ability to bring the best new
safety technologies to the customer.¹⁹

12 **Defendants Expressly Warrant that They Will Repair or Replace Any Defects**

13 49. In connection with the sale (by purchase or lease) of each one of its new vehicles,
14 Defendants provide an express limited warranty on each vehicle. In those warranties, Defendants
15 promise to repair any defect or malfunction that arises in the vehicle during a defined period of
16 time. This warranty is provided by Defendants to the vehicle owner in writing and regardless of
17 what state the customer purchased his or her vehicle in. As further alleged below, the relevant
18 terms of the warranties in this case are essentially identical, regardless of the manufacturer or
19 model year.

20 50. Plaintiffs Cahen, Tompulis, and Nisam were each provided with a warranty and it
21 was a basis of the purchase of their vehicles. Plaintiffs and the members of the Class experienced
22 defects within the warranty period. However, despite the existence of the express warranties
23 provided to Plaintiffs and the members of the Class, Defendants have failed to honor the terms of
24 the warranties by failing to correct the CAN bus defects at no charge.

26 ¹⁸ http://www.gm.com/vision/quality_safety/gms_commitment_tosafety.html (last accessed
27 March 5, 2015)

28 ¹⁹ http://www.gm.com/article.content_pages_news_us_en_2014_oct_1023-active-safety.~content~gmcom~home~vision~quality_safety.html (last accessed March 5, 2015).

1 **A. Toyota’s warranty**

2 51. In its Limited Warranties and in advertisements, brochures, and through other
3 statements in the media, Toyota expressly warranted that it would repair or replace defects in
4 material or workmanship free of charge if they became apparent during the warranty period. The
5 following uniform language appears in all Toyota Warranty booklets:

6 *When Warranty Begins*

7 The warranty period begins on the vehicle’s in-service date, which is the first date
8 the vehicle is either delivered to an ultimate purchaser, leased, or used as a
9 company car or demonstrator.

10 *Repairs Made at No Charge*

11 Repairs and adjustments covered by these warranties are made at no charge for
12 parts and labor.

13 *Basic Warranty*

14 This warranty covers repairs and adjustments needed to correct defects in materials
15 or workmanship of any part supplied by Toyota Coverage is for 36 months or
16 36,000 miles, whichever occurs first. . . .

17 **B. Ford’s warranty**

18 52. In its Limited Warranties and in advertisements, brochures, and through other
19 statements in the media, Ford expressly warranted that it would repair or replace defects in
20 material or workmanship free of charge if they became apparent during the warranty period. The
21 following uniform language appears in all Ford Warranty booklets:

22 *KNOW WHEN YOUR WARRANTY BEGINS*

23 Your Warranty Start Date is the day you take delivery of your new vehicle or the
24 day it is first put into service

25 *QUICK REFERENCE: WARRANTY COVERAGE*

26 * * *

27 Your Bumper to Bumper Coverage lasts for three years – unless you drive more
28 than 36,000 miles before three years elapse.

WHO PAYS FOR WARRANTY REPAIRS?

 You will not be charged for repairs covered by any applicable warranty during the
stated coverage periods. . . .

C. GM’s warranty

53. In its Limited Warranties and in advertisements, brochures, and through other

1 statements in the media, GM expressly warranted that it would repair or replace defects in
2 material or workmanship free of charge if they became apparent during the warranty period. The
3 following uniform language appears in all GM Warranty booklets:

4 *Warranty Period*

5 The warranty period for all coverages begins on the date the vehicle is first
6 delivered or put in use and ends at the expiration of the coverage period.

7 *Bumper-to-Bumper Coverage*

8 The complete vehicle is covered for 4 years or 50,000 miles, whichever comes
9 first. . . .

10 *No Charge*

11 Warranty repairs, including towing, parts, and labor, will be made at no charge.

12 *Repairs Covered*

13 This warranty covers repairs to correct any vehicle defect related to materials or
14 workmanship occurring during the warranty period. Needed repairs will be
15 performed using new or remanufactured parts.

16 **CLASS ALLEGATIONS**

17 54. Plaintiffs bring this action on behalf of themselves and as a class action, pursuant
18 to the provisions of Rules 23(a), (b)(2), and (b)(3) of the Federal Rules of Civil Procedure on
19 behalf of the following classes:

20 All persons or entities in the United States who are current or former owners
21 and/or lessees of a Toyota Vehicle, Ford Vehicle, or GM Vehicle equipped with a
22 CAN bus (the "Nationwide Class").

23 All persons or entities who purchased or leased a Toyota Vehicle, Ford Vehicle, or
24 GM Vehicle equipped with a CAN bus in the State of California (the "California
25 Class").

26 All persons or entities who purchased or leased a Toyota Vehicle, Ford Vehicle, or
27 GM Vehicle equipped with a CAN bus in the State of Alabama (the "Alabama
28 Class").

All persons or entities who purchased or leased a Toyota Vehicle, Ford Vehicle, or
GM Vehicle equipped with a CAN bus in the State of Alaska (the "Alaska Class").

All persons or entities who purchased or leased a Toyota Vehicle, Ford Vehicle, or
GM Vehicle equipped with a CAN bus in the State of Arizona (the "Arizona
Class").

All persons or entities who purchased or leased a Toyota Vehicle, Ford Vehicle, or
GM Vehicle equipped with a CAN bus in the State of Arkansas (the "Arkansas
Class").

1 All persons or entities who purchased or leased a Toyota Vehicle, Ford Vehicle, or
2 GM Vehicle equipped with a CAN bus in the State of Colorado (the “Colorado
Class”).

3 All persons or entities who purchased or leased a Toyota Vehicle, Ford Vehicle, or
4 GM Vehicle equipped with a CAN bus in the State of Connecticut (the
“Connecticut Class”).

5 All persons or entities who purchased or leased a Toyota Vehicle, Ford Vehicle, or
6 GM Vehicle equipped with a CAN bus in the State of Delaware (the “Delaware
Class”).

7 All persons or entities who purchased or leased a Toyota Vehicle, Ford Vehicle, or
8 GM Vehicle equipped with a CAN bus in the District of Columbia (the “District of
Columbia Class”).

9 All persons or entities who purchased or leased a Toyota Vehicle, Ford Vehicle, or
10 GM Vehicle equipped with a CAN bus in the State of Florida (the “Florida
Class”).

11 All persons or entities who purchased or leased a Toyota Vehicle, Ford Vehicle, or
12 GM Vehicle equipped with a CAN bus in the State of Georgia (the “Georgia
Class”).

13 All persons or entities who purchased or leased a Toyota Vehicle, Ford Vehicle, or
14 GM Vehicle equipped with a CAN bus in the State of Hawaii (the “Hawaii
Class”).

15 All persons or entities who purchased or leased a Toyota Vehicle, Ford Vehicle, or
16 GM Vehicle equipped with a CAN bus in the State of Idaho (the “Idaho Class”).

17 All persons or entities who purchased or leased a Toyota Vehicle, Ford Vehicle, or
18 GM Vehicle equipped with a CAN bus in the State of Illinois (the “Illinois Class”).

19 All persons or entities who purchased or leased a Toyota Vehicle, Ford Vehicle, or
20 GM Vehicle equipped with a CAN bus in the State of Indiana (the “Indiana
Class”).

21 All persons or entities who purchased or leased a Toyota Vehicle, Ford Vehicle, or
22 GM Vehicle equipped with a CAN bus in the State of Iowa (the “Iowa Class”).

23 All persons or entities who purchased or leased a Toyota Vehicle, Ford Vehicle, or
24 GM Vehicle equipped with a CAN bus in the State of Kansas (the “Kansas
Class”).

25 All persons or entities who purchased or leased a Toyota Vehicle, Ford Vehicle, or
26 GM Vehicle equipped with a CAN bus in the State of Kentucky (the “Kentucky
Class”).

27 All persons or entities who purchased or leased a Toyota Vehicle, Ford Vehicle, or
28 GM Vehicle equipped with a CAN bus in the State of Louisiana (the “Louisiana
Class”).

All persons or entities who purchased or leased a Toyota Vehicle, Ford Vehicle, or
GM Vehicle equipped with a CAN bus in the State of Maine (the “Maine Class”).

1 All persons or entities who purchased or leased a Toyota Vehicle, Ford Vehicle, or
2 GM Vehicle equipped with a CAN bus in the State of Maryland (the “Maryland
Class”).

3 All persons or entities who purchased or leased a Toyota Vehicle, Ford Vehicle, or
4 GM Vehicle equipped with a CAN bus in the State of Massachusetts (the
“Massachusetts Class”).

5 All persons or entities who purchased or leased a Toyota Vehicle, Ford Vehicle, or
6 GM Vehicle equipped with a CAN bus in the State of Michigan (the “Michigan
Class”).

7 All persons or entities who purchased or leased a Toyota Vehicle, Ford Vehicle, or
8 GM Vehicle equipped with a CAN bus in the State of Minnesota (the “Minnesota
Class”).

9 All persons or entities who purchased or leased a Toyota Vehicle, Ford Vehicle, or
10 GM Vehicle equipped with a CAN bus in the State of Mississippi (the
“Mississippi Class”).

11 All persons or entities who purchased or leased a Toyota Vehicle, Ford Vehicle, or
12 GM Vehicle equipped with a CAN bus in the State of Missouri (the “Missouri
Class”).

13 All persons or entities who purchased or leased a Toyota Vehicle, Ford Vehicle, or
14 GM Vehicle equipped with a CAN bus in the State of Montana (the “Montana
Class”).

15 All persons or entities who purchased or leased a Toyota Vehicle, Ford Vehicle, or
16 GM Vehicle equipped with a CAN bus in the State of Nebraska (the “Nebraska
Class”).

17 All persons or entities who purchased or leased a Toyota Vehicle, Ford Vehicle, or
18 GM Vehicle equipped with a CAN bus in the State of Nevada (the “Nevada
Class”).

19 All persons or entities who purchased or leased a Toyota Vehicle, Ford Vehicle, or
20 GM Vehicle equipped with a CAN bus in the State of New Hampshire (the “New
Hampshire Class”).

21 All persons or entities who purchased or leased a Toyota Vehicle, Ford Vehicle, or
22 GM Vehicle equipped with a CAN bus in the State of New Jersey (the “New
Jersey Class”).

23 All persons or entities who purchased or leased a Toyota Vehicle, Ford Vehicle, or
24 GM Vehicle equipped with a CAN bus in the State of New Mexico (the “New
Mexico Class”).

25 All persons or entities who purchased or leased a Toyota Vehicle, Ford Vehicle, or
26 GM Vehicle equipped with a CAN bus in the State of New York (the “New York
Class”).

27 All persons or entities who purchased or leased a Toyota Vehicle, Ford Vehicle, or
28 GM Vehicle equipped with a CAN bus in the State of North Carolina (the “North
Carolina Class”).

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All persons or entities who purchased or leased a Toyota Vehicle, Ford Vehicle, or GM Vehicle equipped with a CAN bus in the State of North Dakota (the "North Dakota Class").

All persons or entities who purchased or leased a Toyota Vehicle, Ford Vehicle, or GM Vehicle equipped with a CAN bus in the State of Ohio (the "Ohio Class").

All persons or entities who purchased or leased a Toyota Vehicle, Ford Vehicle, or GM Vehicle equipped with a CAN bus in the State of Oklahoma (the "Oklahoma Class").

All persons or entities who purchased or leased a Toyota Vehicle, Ford Vehicle, or GM Vehicle equipped with a CAN bus in the State of Oregon (the "Oregon Class").

All persons or entities who purchased or leased a Toyota Vehicle, Ford Vehicle, or GM Vehicle equipped with a CAN bus in the State of Pennsylvania (the "Pennsylvania Class").

All persons or entities who purchased or leased a Toyota Vehicle, Ford Vehicle, or GM Vehicle equipped with a CAN bus in the State of Rhode Island (the "Rhode Island Class").

All persons or entities who purchased or leased a Toyota Vehicle, Ford Vehicle, or GM Vehicle equipped with a CAN bus in the State of South Carolina (the "South Carolina Class").

All persons or entities who purchased or leased a Toyota Vehicle, Ford Vehicle, or GM Vehicle equipped with a CAN bus in the State of South Dakota (the "South Dakota Class").

All persons or entities who purchased or leased a Toyota Vehicle, Ford Vehicle, or GM Vehicle equipped with a CAN bus in the State of Tennessee (the "Tennessee Class").

All persons or entities who purchased or leased a Toyota Vehicle, Ford Vehicle, or GM Vehicle equipped with a CAN bus in the State of Texas (the "Texas Class").

All persons or entities who purchased or leased a Toyota Vehicle, Ford Vehicle, or GM Vehicle equipped with a CAN bus in the State of Utah (the "Utah Class").

All persons or entities who purchased or leased a Toyota Vehicle, Ford Vehicle, or GM Vehicle equipped with a CAN bus in the State of Vermont (the "Vermont Class").

All persons or entities who purchased or leased a Toyota Vehicle, Ford Vehicle, or GM Vehicle equipped with a CAN bus in the State of Virginia (the "Virginia Class").

All persons or entities who purchased or leased a Toyota Vehicle, Ford Vehicle, or GM Vehicle equipped with a CAN bus in the State of Washington (the "Washington Class").

All persons or entities who purchased or leased a Toyota Vehicle, Ford Vehicle, or GM Vehicle equipped with a CAN bus in the State of West Virginia (the "West Virginia Class").

1 All persons or entities who purchased or leased a Toyota Vehicle, Ford Vehicle, or
2 GM Vehicle equipped with a CAN bus in the State of Wisconsin (the “Wisconsin
3 Class”).

4 All persons or entities who purchased or leased a Toyota Vehicle, Ford Vehicle, or
5 GM Vehicle equipped with a CAN bus in the State of Wyoming (the “Wyoming
6 Class”).

7 (Collectively, the “Class,” unless otherwise noted).

8 55. Excluded from the Class are Defendants and their subsidiaries and affiliates; all
9 persons who make a timely election to be excluded from the Class; governmental entities; and the
10 judge to whom this case is assigned and his/her immediate family.

11 56. Plaintiffs reserve the right to revise the Class definition based upon information
12 learned through discovery.

13 57. Certification of Plaintiffs’ claims for class-wide treatment is appropriate because
14 Plaintiffs can prove the elements of their claims on a class-wide basis using the same evidence as
15 would be used to prove those elements in individual actions alleging the same claim.

16 58. This action has been brought and may be properly maintained on behalf of each of
17 the Classes proposed herein under Federal Rule of Civil Procedure 23.

18 59. Numerosity. Federal Rule of Civil Procedure 23(a)(1): The members of the Class
19 are so numerous and geographically dispersed that individual joinder of all Class members is
20 impracticable. While Plaintiffs are informed and believe that there are not less than tens of
21 thousands of members of the Class, the precise number of Class members is unknown to
22 Plaintiffs, but may be ascertained from Defendants’ books and records. Class members may be
23 notified of the pendency of this action by recognized, Court-approved notice dissemination
24 methods, which may include U.S. mail, electronic mail, Internet postings, and/or published notice.

25 60. Commonality and Predominance. Federal Rule of Civil Procedure 23(a)(2) and
26 23(b)(3): This action involves common questions of law and fact, which predominate over any
27 questions affecting individual Class members, including, without limitation:

- 28 a) Whether Defendants engaged in the conduct alleged herein;
- b) Whether Defendants designed, advertised, marketed, distributed, leased,
sold, or otherwise placed Class Vehicles into the stream of commerce in the United States;

- 1 c) Whether the CAN buses in the Class Vehicles contains a defect;
- 2 d) Whether such defect can cause the Class Vehicles to malfunction;
- 3 e) Whether Defendants knew about the defect and, if so, how long
- 4 Defendants have known of the defect;
- 5 f) Whether Defendants designed, manufactured, marketed, and distributed
- 6 Class Vehicles with defective CAN buses;
- 7 g) Whether Defendants' conduct violates consumer protection statutes,
- 8 warranty laws, and other laws as asserted herein;
- 9 h) Whether Defendants knew or reasonably should have known of the defects
- 10 in the Class Vehicles before it sold or leased them to Class members;
- 11 i) Whether Plaintiffs and the other Class members are entitled to equitable
- 12 relief, including, but not limited to, restitution or injunctive relief; and
- 13 j) Whether Plaintiffs and the other Class members are entitled to damages
- 14 and other monetary relief and, if so, in what amount.

15 61. Typicality. Federal Rule of Civil Procedure 23(a)(3): Plaintiffs' claims are typical
 16 of the other Class members' claims because, among other things, all Class members were
 17 comparably injured through Defendants' wrongful conduct as described above.

18 62. Adequacy. Federal Rule of Civil Procedure 23(a)(4): Plaintiffs are adequate Class
 19 representatives because their interests do not conflict with the interests of the other members of
 20 the Classes each respectively seeks to represent; Plaintiffs have retained counsel competent and
 21 experienced in complex class action litigation; and Plaintiffs intend to prosecute this action
 22 vigorously. The Classes' interests will be fairly and adequately protected by Plaintiffs and their
 23 counsel.

24 63. Declaratory and Injunctive Relief. Federal Rule of Civil Procedure 23(b)(2):
 25 Defendants have acted or refused to act on grounds generally applicable to Plaintiffs and the other
 26 members of the Classes, thereby making appropriate final injunctive relief and declaratory relief,
 27 as described below, with respect to the Class as a whole.

28 64. Superiority. Federal Rule of Civil Procedure 23(b)(3): A class action is superior

1 to any other available means for the fair and efficient adjudication of this controversy, and no
 2 unusual difficulties are likely to be encountered in the management of this class action. The
 3 damages or other financial detriment suffered by Plaintiffs and the other Class members are
 4 relatively small compared to the burden and expense that would be required to individually
 5 litigate their claims against Defendants, so it would be impracticable for Nationwide and
 6 California Class members to individually seek redress for Defendants’ wrongful conduct. Even if
 7 Class members could afford individual litigation, the court system could not. Individualized
 8 litigation creates a potential for inconsistent or contradictory judgments, and increases the delay
 9 and expense to all parties and the court system. By contrast, the class action device presents far
 10 fewer management difficulties, and provides the benefits of single adjudication, economy of
 11 scale, and comprehensive supervision by a single court.

12 **VIOLATIONS ALLEGED**

13 **Claims Brought on Behalf of the Nationwide Class**

14 **COUNT I**

15 **Violation of Magnuson-Moss Warranty Act**

16 **(15 U.S.C. Sections 2301, et seq.)**

17 65. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set
 18 forth herein.

19 66. Plaintiffs bring this Count on behalf of the Nationwide Class.

20 67. Plaintiffs are “consumers” within the meaning of the Magnuson-Moss Warranty
 21 Act, 15 U.S.C. § 2301(3).

22 68. Defendants are “suppliers” and “warrantors” within the meaning of the
 23 Magnuson-Moss Warranty Act, 15 U.S.C. § 2301(4)-(5).

24 69. The Class Vehicles are “consumer products” within the meaning of the
 25 Magnuson-Moss Warranty Act, 15 U.S.C. § 2301(1). 15 U.S.C. § 2301(d)(1) provides a cause of
 26 action for any consumer who is damaged by the failure of a warrantor to comply with a written or
 27 implied warranty.

28 70. Defendants’ express warranties are written warranties within the meaning of the

1 Magnuson-Moss Warranty Act, 15 U.S.C. § 2301(6). The Class Vehicles' implied warranties are
2 covered under 15 U.S.C. § 2301(7).

3 71. Defendants breached these warranties as described in more detail above. Without
4 limitation, the Class Vehicles are equipped with CAN buses, a defective electronic unit within the
5 Class Vehicles. The Class Vehicles share a common design defect in that the CAN buses fail to
6 operate as represented by Defendants.

7 72. Plaintiffs and the other Nationwide Class members have had sufficient direct
8 dealings with either Defendants or their agents (dealerships and technical support) to establish
9 privity of contract between Defendants, on one hand, and Plaintiffs and each of the other
10 Nationwide Class members on the other hand. Nonetheless, privity is not required here because
11 Plaintiffs and each of the other Nationwide Class members are intended third-party beneficiaries
12 of contracts between Defendants and their dealers, and specifically, of Defendants' implied
13 warranties. The dealers were not intended to be the ultimate consumers of the Class Vehicles and
14 have no rights under the warranty agreements provided with the Class Vehicles; the warranty
15 agreements were designed for and intended to benefit the consumers only.

16 73. Affording Defendants a reasonable opportunity to cure their breach of written
17 warranties would be unnecessary and futile here. Indeed, Plaintiffs have already done so, and
18 Defendants have failed to cure the defects. At the time of sale or lease of each Class Vehicle,
19 Defendants knew, should have known, or were reckless in not knowing of their
20 misrepresentations and omissions concerning the Class Vehicles' inability to perform as
21 warranted, but nonetheless failed to rectify the situation and/or disclose the defective design.
22 Under the circumstances, the remedies available under any informal settlement procedure would
23 be inadequate and any requirement that Plaintiffs resort to an informal dispute resolution
24 procedure and/or afford Defendants a reasonable opportunity to cure their breach of warranties is
25 excused and thereby deemed satisfied.

26 74. Plaintiffs and the other Nationwide Class members would suffer economic
27 hardship if they returned their Class Vehicles but did not receive the return of all payments made
28 by them. Because Defendants are refusing to acknowledge any revocation of acceptance and

1 return immediately any payments made, Plaintiffs and the other Nationwide Class members have
2 not re-accepted their Class Vehicles by retaining them.

3 75. The amount in controversy of Plaintiffs’ individual claims meets or exceeds the
4 sum of \$25. The amount in controversy of this action exceeds the sum of \$50,000, exclusive of
5 interest and costs, computed on the basis of all claims to be determined in this lawsuit.

6 76. Plaintiffs, individually and on behalf of the other Nationwide Class members,
7 seek all damages permitted by law, including diminution in value of the Class Vehicles, in an
8 amount to be proven at trial.

9 **Claims Brought on Behalf of the California Class**

10 **COUNT II**

11 **Violation of California Unfair Competition Law**
12 **(California Business & Professions Code Sections 17200, et seq.)**

13 77. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set
14 forth herein.

15 78. Plaintiffs bring this Count on behalf of the California Class.

16 79. California’s Unfair Competition Law (“UCL”), Cal. Bus. & Prof. Code §§ 17200,
17 *et seq.*, proscribes acts of unfair competition, including “any unlawful, unfair or fraudulent
18 business act or practice and unfair, deceptive, untrue or misleading advertising.”

19 80. Defendants’ conduct, as described herein, was and is in violation of the UCL.
20 Defendants’ conduct violates the UCL in at least the following ways:

21 a) By knowingly and intentionally concealing from Plaintiffs and the other
22 California Class members that the Class Vehicles suffer from a design defect while obtaining
23 money from Plaintiffs;

24 b) By marketing Class Vehicles as possessing functional and defect-free
25 electronic units;

26 c) By refusing or otherwise failing to repair and/or replace defective CAN
27 buses in Class Vehicles;

28 d) By violating federal laws, including the Magnuson-Moss Warranty Act,

1 15 U.S.C. § 2301; and

2 e) By violating other California laws, including Cal. Civ. Code §§ 1709,
3 1710, and 1750, *et seq.*, and Cal. Comm. Code § 2313.

4 81. Defendants’ misrepresentations and omissions alleged herein caused Plaintiffs
5 and the other California Class members to make their purchases or leases of their Class Vehicles.
6 Absent those misrepresentations and omissions, Plaintiffs and the other California Class members
7 would not have purchased or leased these Vehicles, would not have purchased or leased these
8 Class Vehicles at the prices they paid, and/or would have purchased or leased less expensive
9 alternative vehicles that did not contain CAN buses.

10 82. Accordingly, Plaintiffs and the other California Class members have suffered
11 injury in fact including lost money or property as a result of Defendants’ misrepresentations and
12 omissions.

13 83. Plaintiffs seek to enjoin further unlawful, unfair, and/or fraudulent acts or
14 practices by Defendants under Cal. Bus. & Prof. Code § 17200.

15 84. Plaintiffs request that this Court enter such orders or judgments as may be
16 necessary to enjoin Defendants from continuing their unfair, unlawful, and/or deceptive practices
17 and to restore to Plaintiffs and members of the Class any money Defendants acquired by unfair
18 competition, including restitution and/or restitutionary disgorgement, as provided in Cal. Bus. &
19 Prof. Code § 17203 and Cal. Civ. Code § 3345; and for such other relief set forth below.

20 **COUNT III**

21 **Violation of California Consumers Legal Remedies Act**
22 **(California Civil Code Sections 1750, *et seq.*)**

23 85. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set
24 forth herein.

25 86. Plaintiffs bring this Count on behalf of the California Class.

26 87. California’s Consumers Legal Remedies Act (“CLRA”), Cal. Civ. Code §§ 1750,
27 *et seq.*, proscribes “unfair methods of competition and unfair or deceptive acts or practices
28 undertaken by any person in a transaction intended to result or which results in the sale or lease of

1 goods or services to any consumer.”

2 88. The Class Vehicles are “goods” as defined in Cal. Civ. Code § 1761(a).

3 89. Plaintiffs and the other California class members are “consumers” as defined in
4 Cal. Civ. Code § 1761(d), and Plaintiffs, the other California class members, and Defendants are
5 “persons” as defined in Cal. Civ. Code § 1761(c).

6 90. As alleged above, Defendants made numerous representations concerning the
7 benefits and safety features of the Class Vehicles that were misleading.

8 91. In purchasing or leasing the Class Vehicles, Plaintiffs and the other California
9 Class members were deceived by Defendants’ failure to disclose that the Class Vehicles were
10 equipped with defective CAN buses.

11 92. Defendants’ conduct, as described hereinabove, was and is in violation of the
12 CLRA.

13 93. Defendants’ conduct violates at least the following enumerated CLRA provisions:

14 a) Cal. Civ. Code § 1770(a)(5): Representing that goods have characteristics,
15 uses, and benefits which they do not have;

16 b) Cal. Civ. Code § 1770(a)(7): Representing that goods are of a particular
17 standard, quality, or grade, if they are of another;

18 c) Cal. Civ. Code § 1770(a)(9): Advertising goods with intent not to sell
19 them as advertised; and

20 d) Cal. Civ. Code § 1770(a)(16): Representing that goods have been supplied
21 in accordance with a previous representation when they have not.

22 94. Plaintiffs and the other California Class members have suffered injury in fact and
23 actual damages resulting from Defendants’ material omissions and misrepresentations because
24 they paid an inflated purchase or lease price for the Class Vehicles.

25 95. Defendants knew, should have known, or were reckless in not knowing of the
26 defective design and/or manufacture of the CAN buses, and that the CAN buses were not suitable
27 for their intended use.

28 96. The facts concealed and omitted by Defendants to Plaintiffs and the other

1 California Class members are material in that a reasonable consumer would have considered them
 2 to be important in deciding whether to purchase or lease the Class Vehicles or pay a lower price.
 3 Had Plaintiffs and the other California Class members known about the defective nature of the
 4 Class Vehicles and their CAN buses, they would not have purchased or leased the Class Vehicles
 5 or would not have paid the prices they paid in fact.

6 97. Concurrently with the filing of this Complaint, Plaintiffs are providing
 7 Defendants with notice of their violations of the CLRA pursuant to Cal. Civ. Code § 1782(a).

8 98. Plaintiffs’ and the other California Class members’ injuries were proximately
 9 caused by Defendants’ fraudulent and deceptive business practices. Therefore, Plaintiffs and the
 10 other California Class members are entitled to equitable and monetary relief under the CLRA. At
 11 this time, until thirty days after the date of the pre-suit demand letter, Plaintiffs seek only
 12 equitable relief and not damages under the CLRA. If Defendants do not comply in full with
 13 Plaintiffs’ demand letter, Plaintiffs will amend this Complaint to add a claim for damages after
 14 thirty days.

15 **COUNT IV**

16 **Violation of California False Advertising Law**
 17 **(California Business & Professions Code Sections 17500, et seq.)**

18 99. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set
 19 forth herein.

20 100. Plaintiffs bring this Count on behalf of the California Class.

21 101. California Bus. & Prof. Code § 17500 states: “It is unlawful for any . . .
 22 corporation . . . with intent directly or indirectly to dispose of real or personal property . . . to
 23 induce the public to enter into any obligation relating thereto, to make or disseminate or cause to
 24 be made or disseminated . . . from this state before the public in any state, in any newspaper or
 25 other publication, or any advertising device, . . . or in any other manner or means whatever,
 26 including over the Internet, any statement . . . which is untrue or misleading, and which is known,
 27 or which by the exercise of reasonable care should be known, to be untrue or misleading.”

28 102. Defendants caused to be made or disseminated through California and the United

1 States, through advertising, marketing and other publications, statements that were untrue or
2 misleading, and which were known, or which by the exercise of reasonable care should have been
3 known to Defendants, to be untrue and misleading to consumers, including Plaintiffs and the
4 other Class members.

5 103. Defendants have violated § 17500 because the misrepresentations and omissions
6 regarding the safety, reliability, and functionality of their Class Vehicles as set forth in this
7 Complaint were material and likely to deceive a reasonable consumer.

8 104. Plaintiffs and the other Class members have suffered an injury in fact, including
9 the loss of money or property, as a result of Defendants’ unfair, unlawful, and/or deceptive
10 practices. In purchasing or leasing their Class Vehicles, Plaintiffs and the other Class members
11 relied on the misrepresentations and/or omissions of Defendants with respect to the safety and
12 reliability of the Class Vehicles. Defendants’ representations turned out not to be true because the
13 Class Vehicles are distributed with faulty and defective in-car communication and entertainment
14 systems, rendering certain safety, communication, navigational, and entertainment functions
15 inoperative. Had Plaintiffs and the other Class members known this, they would not have
16 purchased or leased their Class Vehicles and/or paid as much for them. Accordingly, Plaintiffs
17 and the other Class members overpaid for their Class Vehicles and did not receive the benefit of
18 their bargain.

19 105. All of the wrongful conduct alleged herein occurred, and continues to occur, in
20 the conduct of Defendants’ business. Defendants’ wrongful conduct is part of a pattern or
21 generalized course of conduct that is still perpetuated and repeated, both in the State of California
22 and nationwide.

23 106. Plaintiffs, individually and on behalf of the other Class members, request that this
24 Court enter such orders or judgments as may be necessary to enjoin Defendants from continuing
25 their unfair, unlawful, and/or deceptive practices and to restore to Plaintiffs and the other Class
26 members any money Defendants acquired by unfair competition, including restitution and/or
27 restitutionary disgorgement, and for such other relief set forth below.

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COUNT V

**Breach of Implied Warranty of Merchantability
(California Commercial Code Section 2314)**

107. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

108. Plaintiffs bring this Count on behalf of the California Class.

109. Defendants are and were at all relevant times merchants with respect to motor vehicles under Cal. Com. Code § 2104.

110. A warranty that the Class Vehicles were in merchantable condition was implied by law in the instant transaction, pursuant to Cal. Com. Code § 2314.

111. These Class Vehicles, when sold and at all times thereafter, were not in merchantable condition and are not fit for the ordinary purpose for which cars are used. Specifically, the Class Vehicles are inherently defective in that there are defects in the CAN buses; and the CAN buses were not adequately designed, manufactured, and tested.

112. Defendants were provided notice of these issues by research studies, and by this Complaint, before or within a reasonable amount of time after the allegations of Class Vehicle defects became public.

113. Plaintiffs and the other Class members have had sufficient direct dealings with either Defendants or their agents (dealerships) to establish privity of contract between Plaintiffs and the other Class members. Notwithstanding this, privity is not required in this case because Plaintiffs and the other Class members are intended third-party beneficiaries of contracts between Defendants and their dealers; specifically, they are the intended beneficiaries of Defendants' implied warranties. The dealers were not intended to be the ultimate consumers of the Class Vehicles and have no rights under the warranty agreements provided with the Class Vehicles; the warranty agreements were designed for and intended to benefit the ultimate consumers only.

114. Finally, privity is also not required because Plaintiffs' and the other Class members' Class Vehicles are dangerous instrumentalities due to the aforementioned defects and nonconformities.

1 115. As a direct and proximate result of Defendants’ breach of the warranties of
2 merchantability, Plaintiffs and the other Class members have been damaged in an amount to be
3 proven at trial.

4 **COUNT VI**

5 **Breach of Contract/Common Law Warranty**
6 **(Based on California Law)**

7 116. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set
8 forth herein.

9 117. Plaintiffs bring this Count on behalf of the California Class.

10 118. To the extent Defendants’ limited remedies are deemed not to be warranties under
11 California’s Commercial Code, Plaintiffs, individually and on behalf of the other Class members,
12 plead in the alternative under common law warranty and contract law. Defendants limited the
13 remedies available to Plaintiffs and the other Class members to repairs and adjustments needed to
14 correct defects in materials or workmanship of any part supplied by Defendants and/or warranted
15 the quality or nature of those services to Plaintiffs and the other Class members.

16 119. Defendants breached this warranty or contract obligation by failing to repair the
17 Class Vehicles evidencing faulty and defective CAN buses, or to replace them.

18 120. As a direct and proximate result of Defendants’ breach of contract or common
19 law warranty, Plaintiffs and the other Class members have been damaged in an amount to be
20 proven at trial, which shall include, but is not limited to, all compensatory damages, incidental
21 and consequential damages, and other damages allowed by law.

22 **COUNT VII**

23 **Fraud by Concealment**
24 **(Based on California Law)**

25 121. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set
26 forth herein.

27 122. Plaintiffs bring this Count on behalf of the California Class.

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1 123. As set forth above, Defendants concealed and/or suppressed material facts
2 concerning the safety, quality, functionality, and reliability of their Class Vehicles.

3 124. Defendants had a duty to disclose these safety, quality, functionality, and
4 reliability issues because they consistently marketed their Class Vehicles as safe and proclaimed
5 that safety is one of Defendants' highest corporate priorities. Once Defendants made
6 representations to the public about safety, quality, functionality, and reliability, Defendants were
7 under a duty to disclose these omitted facts, because where one does speak one must speak the
8 whole truth and not conceal any facts which materially qualify those facts stated. One who
9 volunteers information must be truthful, and the telling of a half-truth calculated to deceive is
10 fraud.

11 125. In addition, Defendants had a duty to disclose these omitted material facts
12 because they were known and/or accessible only to Defendants which has superior knowledge
13 and access to the facts, and Defendants knew they were not known to or reasonably discoverable
14 by Plaintiffs and the other Class members. These omitted facts were material because they
15 directly impact the safety, quality, functionality, and reliability of the Class Vehicles.

16 126. Whether or not a vehicle is susceptible to hacking as a result of the defect alleged
17 herein is a material safety concern. Defendants possessed exclusive knowledge of the defect
18 rendering the Class Vehicles inherently more dangerous and unreliable than similar vehicles.

19 127. Defendants actively concealed and/or suppressed these material facts, in whole or
20 in part, with the intent to induce Plaintiffs and the other Class members to purchase or lease Class
21 Vehicles at a higher price for the Class Vehicles, which did not match the Class Vehicles' true
22 value.

23 128. Defendants still have not made full and adequate disclosure and continues to
24 defraud Plaintiffs and the other Class members.

25 129. Plaintiffs and the other Class members were unaware of these omitted material facts
26 and would not have acted as they did if they had known of the concealed and/or suppressed facts.
27 Plaintiffs' and the other Class members' actions were justified. Defendants were in exclusive
28 control of the material facts and such facts were not known to the public, Plaintiffs, or the Class.

1 130. As a result of the concealment and/or suppression of the facts, Plaintiffs and the
2 other Class members sustained damage.

3 131. Defendants’ acts were done maliciously, oppressively, deliberately, with intent to
4 defraud, and in reckless disregard of Plaintiffs’ and the other Class members’ rights and well-
5 being to enrich Defendants. Defendants’ conduct warrants an assessment of punitive damages in
6 an amount sufficient to deter such conduct in the future, which amount is to be determined
7 according to proof.

8 **COUNT VIII**

9 **Violation of Song-Beverly Consumer Warranty Act for Breach of Express Warranties**
10 **(California Civil Code Sections 1791.2 & 1793.2(d))**

11 132. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set
12 forth herein.

13 133. Plaintiffs bring this Count on behalf of the California Class.

14 134. Plaintiffs and the other Class members who purchased or leased the Class
15 Vehicles in California are “buyers” within the meaning of Cal. Civ. Code § 1791(b).

16 135. The Class Vehicles are “consumer goods” within the meaning of Cal. Civ. Code
17 § 1791(a).

18 136. Defendants are “manufacturers” of the Class Vehicles within the meaning of Cal.
19 Civ. Code § 1791(j).

20 137. Plaintiffs and the other Class members bought/leased new motor vehicles
21 manufactured by Defendants.

22 138. Defendants made express warranties to Plaintiffs and the other Class members
23 within the meaning of Cal. Civ. Code §§ 1791.2 and 1793.2, as described above.

24 139. In their Limited Warranties and in advertisements, brochures, and through other
25 statements in the media, Defendants expressly warranted that they would repair or replace defects
26 in material or workmanship free of charge if they became apparent during the warranty period.
27 For example, the following language appears in all Class Vehicles’ Warranty booklets:
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1. Toyota’s warranty

When Warranty Begins

The warranty period begins on the vehicle’s in-service date, which is the first date the vehicle is either delivered to an ultimate purchaser, leased, or used as a company car or demonstrator.

Repairs Made at No Charge

Repairs and adjustments covered by these warranties are made at no charge for parts and labor.

Basic Warranty

This warranty covers repairs and adjustments needed to correct defects in materials or workmanship of any part supplied by Toyota. . . . Coverage is for 36 months or 36,000 miles, whichever occurs first. . . .

2. Ford’s warranty

KNOW WHEN YOUR WARRANTY BEGINS

Your Warranty Start Date is the day you take delivery of your new vehicle or the day it is first put into service. . . .

QUICK REFERENCE: WARRANTY COVERAGE

. . .

Your Bumper to Bumper Coverage lasts for three years – unless you drive more than 36,000 miles before three years elapse.

WHO PAYS FOR WARRANTY REPAIRS?

You will not be charged for repairs covered by any applicable warranty during the stated coverage periods. . . .

3. GM’s warranty

Warranty Period

The warranty period for all coverages begins on the date the vehicle is first delivered or put in use and ends at the expiration of the coverage period.

Bumper-to-Bumper Coverage

The complete vehicle is covered for 4 years or 50,000 miles, whichever comes first. . . .

No Charge

Warranty repairs, including towing, parts, and labor, will be made at no charge.

Repairs Covered

This warranty covers repairs to correct any vehicle defect related to materials or workmanship occurring during the warranty period. Needed repairs will be performed using new or remanufactured parts.

1 140. As set forth above in detail, the Class Vehicles are inherently defective in that
2 there are defects in the Class Vehicles’ CAN buses that render the vehicles susceptible to hacking
3 and thus dangerous, defects that were and continue to be covered by Defendants’ express
4 warranties, and these defects substantially impair the use, value, and safety of Defendants’ Class
5 Vehicles to reasonable consumers like Plaintiffs and the other Class members.

6 141. Defendants did not promptly replace or buy back the Class Vehicles of Plaintiffs
7 and the other Class members.

8 142. As a result of Defendants’ breach of their express warranties, Plaintiffs and the
9 other Class members received goods whose dangerous condition substantially impairs their value
10 to Plaintiffs and the other Class members. Plaintiffs and the other Class members have been
11 damaged as a result of the diminished value of Defendants’ products, the products’
12 malfunctioning, and the nonuse of their Class Vehicles.

13 143. Pursuant to Cal. Civ. Code §§ 1793.2 & 1794, Plaintiffs and the other Class
14 members are entitled to damages and other legal and equitable relief including, at their election,
15 the purchase price of their Class Vehicles, or the overpayment or diminution in value of their
16 Class Vehicles.

17 144. Pursuant to Cal. Civ. Code § 1794, Plaintiffs and the other Class members are
18 entitled to costs and attorneys’ fees.

19 **COUNT IX**

20 **Violation of Song-Beverly Consumer Warranty Act for**
21 **Breach of Implied Warranty of Merchantability**
22 **(California Civil Code Sections 1791.1 and 1792)**

23 145. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set
24 forth herein.

25 146. Plaintiffs bring this Count on behalf of the California Class.

26 147. Plaintiffs and the other Class members who purchased or leased the Class
27 Vehicles in California are “buyers” within the meaning of Cal. Civ. Code § 1791(b).
28

1 148. The Class Vehicles are “consumer goods” within the meaning of Cal. Civ. Code
2 § 1791(a).

3 149. Defendants are “manufacturers” of the Class Vehicles within the meaning of Cal.
4 Civ. Code § 1791(j).

5 150. Defendants impliedly warranted to Plaintiffs and the other Class members that
6 their Class Vehicles were “merchantable” within the meaning of Cal. Civ. Code §§ 1791.1(a) &
7 1792, however, the Class Vehicles do not have the quality that a buyer would reasonably expect.

8 151. Cal. Civ. Code § 1791.1(a) states:

9 “Implied warranty of merchantability” or “implied warranty that goods are
10 merchantable” means that the consumer goods meet each of the following:

- 11 a. Pass without objection in the trade under the contract description.
- 12 b. Are fit for the ordinary purposes for which such goods are used.
- 13 c. Are adequately contained, packaged, and labeled.
- 14 d. Conform to the promises or affirmations of fact made on the container or
15 label.

16 152. The Class Vehicles would not pass without objection in the automotive trade
17 because of the defects in the Class Vehicles’ CAN buses that cause crucial functions of the Class
18 Vehicles to be susceptible to hacking.

19 153. Because of the defects in the Class Vehicles’ CAN buses that cause crucial
20 functions of the Class Vehicles to be susceptible to hacking, they are not safe to drive and thus not
21 fit for ordinary purposes.

22 154. The Class Vehicles are not adequately labeled because the labeling fails to
23 disclose the defects in the Class Vehicles’ CAN buses that cause crucial functions of the Class
24 Vehicles to be susceptible to hacking.

25 155. Defendants breached the implied warranty of merchantability by manufacturing
26 and selling Class Vehicles containing defects associated with the CAN buses. Furthermore, these
27 defects have caused Plaintiffs and the other Class members to not receive the benefit of their
28 bargain and have caused Class Vehicles to depreciate in value.

As a direct and proximate result of Defendants’ breach of the implied warranty of
merchantability, Plaintiffs and the other Class members received goods whose dangerous and

1 dysfunctional condition substantially impairs their value to Plaintiffs and the other Class
2 members.

3 157. Plaintiffs and the other Class members have been damaged as a result of the
4 diminished value of Defendants’ products, the products’ malfunctioning, and the nonuse of their
5 Class Vehicles.

6 158. Pursuant to Cal. Civ. Code §§ 1791.1(d) & 1794, Plaintiffs and the other Class
7 members are entitled to damages and other legal and equitable relief including, at their election,
8 the purchase price of their Class Vehicles, or the overpayment or diminution in value of their
9 Class Vehicles.

10 159. Pursuant to Cal. Civ. Code § 1794, Plaintiffs and the other Class members are
11 entitled to costs and attorneys’ fees.

12 **Claims Brought on Behalf of the Alabama Class**

13 **COUNT X**

14 **Breach of Express Warranty**
15 **(Alabama Code Section 7-2-313)**

16 160. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set
17 forth herein.

18 161. Plaintiffs bring this Count on behalf of the Alabama Class.

19 162. Defendants are and were at all relevant times merchants with respect to motor
20 vehicles under Ala. Code § 7-2-104.

21 163. In their Limited Warranties and in advertisements, brochures, and through other
22 statements in the media, Defendants expressly warranted that they would repair or replace defects
23 in material or workmanship free of charge if they became apparent during the warranty period.

24 For example, the following language appears in all Class Vehicles’ Warranty booklets:

25 1. Toyota’s warranty

26 *When Warranty Begins*

27 The warranty period begins on the vehicle’s in-service date, which is the first date
28 the vehicle is either delivered to an ultimate purchaser, leased, or used as a
company car or demonstrator.

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Repairs Made at No Charge

Repairs and adjustments covered by these warranties are made at no charge for parts and labor.

Basic Warranty

This warranty covers repairs and adjustments needed to correct defects in materials or workmanship of any part supplied by Toyota. . . . Coverage is for 36 months or 36,000 miles, whichever occurs first. . . .

2. Ford’s warranty

KNOW WHEN YOUR WARRANTY BEGINS

Your Warranty Start Date is the day you take delivery of your new vehicle or the day it is first put into service. . . .

QUICK REFERENCE: WARRANTY COVERAGE

. . .

Your Bumper to Bumper Coverage lasts for three years – unless you drive more than 36,000 miles before three years elapse.

WHO PAYS FOR WARRANTY REPAIRS?

You will not be charged for repairs covered by any applicable warranty during the stated coverage periods. . . .

3. GM’s warranty

Warranty Period

The warranty period for all coverages begins on the date the vehicle is first delivered or put in use and ends at the expiration of the coverage period.

Bumper-to-Bumper Coverage

The complete vehicle is covered for 4 years or 50,000 miles, whichever comes first. . . .

No Charge

Warranty repairs, including towing, parts, and labor, will be made at no charge.

Repairs Covered

This warranty covers repairs to correct any vehicle defect related to materials or workmanship occurring during the warranty period. Needed repairs will be performed using new or remanufactured parts.

164. Defendants’ Limited Warranties, as well as advertisements, brochures, and other statements in the media regarding the Class Vehicles, formed the basis of the bargain that was reached when Plaintiffs and the other Class members purchased or leased their Class Vehicles equipped with a CAN bus from Defendants.

1 165. Defendants breached the express warranty to repair and adjust to correct defects
2 in materials and workmanship of any part supplied by Defendants. Defendants have not repaired
3 or adjusted, and have been unable to repair or adjust, the Class Vehicles' materials and
4 workmanship defects.

5 166. In addition to these Limited Warranties, Defendants otherwise expressly
6 warranted several attributes, characteristics, and qualities of the CAN bus.

7 167. These warranties are only a sampling of the numerous warranties that Defendants
8 made relating to safety, reliability, and operation. Generally these express warranties promise
9 heightened, superior, and state-of-the-art safety, reliability, and performance standards, and
10 promote the benefits of the CAN bus. These warranties were made, *inter alia*, in advertisements,
11 on Defendants' websites, and in uniform statements provided by Defendants to be made by
12 salespeople, or made publicly by Defendants' executives or by other authorized' representatives.
13 These affirmations and promises were part of the basis of the bargain between the parties.

14 168. These additional warranties were also breached because the Class Vehicles were
15 not fully operational, safe, or reliable (and remained so even after the problems were
16 acknowledged), nor did they comply with the warranties expressly made to purchasers or lessees.
17 Defendants did not provide at the time of sale, and have not provided since then, Class Vehicles
18 conforming to these express warranties.

19 169. Furthermore, the limited warranty of repair and/or adjustments to defective parts,
20 fails in its essential purpose because the contractual remedy is insufficient to make Plaintiffs and
21 the other Class members whole and because Defendants have failed and/or have refused to
22 adequately provide the promised remedies within a reasonable time.

23 170. Accordingly, recovery by Plaintiffs and the other Class members is not limited to
24 the limited warranty of repair or adjustments to parts defective in materials or workmanship, and
25 Plaintiffs, individually and on behalf of the other Class members, seek all remedies as allowed by
26 law.

27 171. Also, as alleged in more detail herein, at the time that Defendants warranted and
28 sold the Class Vehicles they knew that the Class Vehicles did not conform to the warranties and

1 were inherently defective, and Defendants wrongfully and fraudulently misrepresented and/or
2 concealed material facts regarding their Class Vehicles. Plaintiffs and the other Class members
3 were therefore induced to purchase or lease the Class Vehicles under false and/or fraudulent
4 pretenses.

5 172. Moreover, many of the injuries flowing from the Class Vehicles cannot be
6 resolved through the limited remedy of “replacement or adjustments,” as many incidental and
7 consequential damages have already been suffered due to Defendants’ fraudulent conduct as
8 alleged herein, and due to their failure and/or continued failure to provide such limited remedy
9 within a reasonable time, and any limitation on Plaintiffs’ and the other Class members’ remedies
10 would be insufficient to make Plaintiffs and the other Class members whole.

11 173. Finally, due to Defendants’ breach of warranties as set forth herein, Plaintiffs and
12 the other Class members assert as an additional and/or alternative remedy, as set forth in Ala.
13 Code § 7-2- 711, for a revocation of acceptance of the goods, and for a return to Plaintiffs and to
14 the other Class members of the purchase price of all Class Vehicles currently owned and for such
15 other incidental and consequential damages as allowed under Ala. Code §§ 7-2-711 and 7-2-608.

16 174. Defendants were provided notice of these issues by the instant Complaint, and by
17 other means before or within a reasonable amount of time after the allegations of Class Vehicle
18 defects became public.

19 175. As a direct and proximate result of Defendants’ breach of express warranties,
20 Plaintiffs and the other Class members have been damaged in an amount to be determined at trial.

21 **COUNT XI**

22 **Breach of the Implied Warranty of Merchantability**
23 **(Alabama Code Section 7-2-314)**

24 176. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set
25 forth herein.

26 177. Plaintiffs bring this Count on behalf of the Alabama Class.

27 178. Defendants are and were at all relevant times merchants with respect to motor
28 vehicles under Ala. Code § 7-2-104.

1 179. A warranty that the Class Vehicles were in merchantable condition was implied
2 by law in the instant transactions, pursuant to Ala. Code § 7-2-314. These vehicles and the CAN
3 buses in the Class Vehicles, when sold and at all times thereafter, were not in merchantable
4 condition and are not fit for the ordinary purpose for which they are used. Specifically, the Class
5 Vehicles are inherently defective in that there are defects in the CAN bus which prevent users
6 from enjoying many features of the Class Vehicles they purchased and/or leased and that they
7 paid for; and the CAN bus was not adequately tested.

8 180. Defendants were provided notice of these issues by numerous complaints filed
9 against them, including the instant Complaint, and by other means.

10 181. As a direct and proximate result of Defendants' breach of the warranties of
11 merchantability, Plaintiffs and the Class have been damaged in an amount to be proven at trial.

12 **COUNT XII**

13 **Breach of Contract/Common Law Warranty**
14 **(Based on Alabama Law)**

15 182. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set
16 forth herein.

17 183. Plaintiffs bring this Count on behalf of the Alabama Class.

18 184. To the extent Defendants' limited remedies are deemed not to be warranties under
19 Alabama's Commercial Code, Plaintiffs plead in the alternative under common law warranty and
20 contract law. Defendants limited the remedies available to Plaintiffs and the Class to repairs and
21 adjustments needed to correct defects in materials or workmanship of any part supplied by
22 Defendants, and/or warranted the quality or nature of those services to Plaintiffs. Defendants
23 breached this warranty or contract obligation by failing to repair the defective Class Vehicles, or
24 to replace them.

25 185. As a direct and proximate result of Defendants' breach of contract or common
26 law warranty, Plaintiffs and the Class have been damaged in an amount to be proven at trial,
27 which shall include, but is not limited to, all compensatory damages, incidental and consequential
28 damages, and other damages allowed by law.

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COUNT XIII

**Fraudulent Concealment
(Based On Alabama Law)**

186. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

187. Plaintiffs bring this Count on behalf of the Alabama Class.

188. Defendants intentionally concealed the above-described material safety and functionality information, or acted with reckless disregard for the truth, and denied Plaintiffs and the other Class members information that is highly relevant to their purchasing decision.

189. Defendants further affirmatively misrepresented to Plaintiffs in advertising and other forms of communication, including standard and uniform material provided with each car, that the Class Vehicles it was selling were new, had no significant defects, and would perform and operate properly when driven in normal usage.

190. Defendants knew these representations were false when made.

191. The Class Vehicles purchased or leased by Plaintiffs and the other Class members were, in fact, defective, unsafe, and unreliable because the Class Vehicles contained faulty and defective CAN buses, as alleged herein.

192. Defendants had a duty to disclose that these Class Vehicles were defective, unsafe, and unreliable in that certain crucial safety functions of the Class Vehicles would be rendered inoperative due to faulty and defective CAN buses, because Plaintiffs and the other Class members relied on Defendants' material representations that the Class Vehicles they were purchasing were safe and free from defects.

193. The aforementioned concealment was material because if it had been disclosed Plaintiffs and the other Class members would not have bought or leased the Class Vehicles, or would not have bought or leased those Vehicles at the prices they paid.

194. The aforementioned representations were material because they were facts that would typically be relied on by a person purchasing or leasing a new motor vehicle. Defendants knew or recklessly disregarded that their representations were false because it knew that the CAN

1 buses were susceptible to hacking. Defendants intentionally made the false statements in order to
2 sell Class Vehicles.

3 195. Plaintiffs and the other Class members relied on Defendants’ reputation – along
4 with Defendants’ failure to disclose the faulty and defective nature of the CAN buses and
5 Defendants’ affirmative assurance that their Class Vehicles were safe and reliable, and other
6 similar false statements – in purchasing or leasing Defendants’ Class Vehicles.

7 196. As a result of their reliance, Plaintiffs and the other Class members have been
8 injured in an amount to be proven at trial, including, but not limited to, their lost benefit of the
9 bargain and overpayment at the time of purchase or lease and/or the diminished value of their
10 Class Vehicles.

11 197. Defendants’ conduct was knowing, intentional, with malice, demonstrated a
12 complete lack of care, and was in reckless disregard for the rights of Plaintiffs and the other Class
13 members.

14 198. Plaintiffs and the other Class members are therefore entitled to an award of
15 punitive damages.

16 **COUNT XIV**

17 **Violation of Alabama Deceptive Trade Practices Act**
18 **(Alabama Code Sections 8-19-1, et seq.)**

19 199. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set
20 forth herein.

21 200. The conduct of Defendants, as set forth herein, constitutes unfair or deceptive acts
22 or practices, including but not limited to, Defendants’ manufacture and sale of vehicles with CAN
23 buses susceptible to hacking, which Defendants failed to adequately investigate, disclose and
24 remedy, and their misrepresentations and omissions regarding the safety and reliability of their
25 vehicles.

26 201. Defendants’ actions, as set forth above, occurred in the conduct of trade or
27 commerce.

28

1 202. Defendants’ actions impact the public interest because Plaintiffs were injured in
2 exactly the same way as millions of others purchasing and/or leasing Defendants vehicles as a
3 result of Defendants’ generalized course of deception. All of the wrongful conduct alleged herein
4 occurred, and continues to occur, in the conduct of Defendants’ business.

5 203. Plaintiffs and the Class were injured as a result of Defendants’ conduct. Plaintiffs
6 overpaid for their Defective Vehicles and did not receive the benefit of their bargain, and their
7 vehicles have suffered a diminution in value.

8 204. Defendants’ conduct proximately caused the injuries to Plaintiffs and the Class.

9 205. Defendants are liable to Plaintiffs and the Class for damages in amounts to be
10 proven at trial, including attorneys’ fees, costs, and treble damages.

11 206. Pursuant to Ala. Code § 8-19-8, Plaintiffs will serve the Alabama Attorney
12 General with a copy of this complaint as Plaintiffs seek injunctive relief.

13 **Claims Brought on Behalf of the Alaska Class**

14 **COUNT XV**

15 **Violation of the Alaska Unfair Trade Practices and Consumer Protection Act**
16 **(Alaska Statutes Sections 45.50.471, et seq.)**

17 207. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set
18 forth herein.

19 208. The Alaska Unfair Trade Practices And Consumer Protection Act (“AUTPCPA”)
20 declares unfair methods of competition and unfair or deceptive acts or practices in the conduct of
21 trade or commerce unlawful, including: “(4) representing that goods or services have sponsorship,
22 approval, characteristics, ingredients, uses, benefits, or quantities that they do not have or that a
23 person has a sponsorship, approval, status, affiliation, or connection that the person does not
24 have”; “(6) representing that goods or services are of a particular standard, quality, or grade, or
25 that goods are of a particular style or model, if they are of another”; “(8) advertising goods or
26 services with intent not to sell them as advertised”; “(12) using or employing deception, fraud,
27 false pretense, false promise, misrepresentation, or knowingly concealing, suppressing, or
28 omitting a material fact with intent that others rely upon the concealment, suppression or omission

1 in connection with the sale or advertisement of goods or services whether or not a person has in
2 fact been misled, deceived or damaged”; and “(14) representing that an agreement confers or
3 involves rights, remedies, or obligations which it does not confer or involve, or which are
4 prohibited by law.” Alaska Stat. § 45.50.471.

5 209. In the course of Defendants’ business, they willfully failed to disclose and
6 actively concealed the dangerous risk of hacking as described above. Accordingly, Defendants
7 engaged in unlawful trade practices, including representing that the Defective Vehicles have
8 characteristics, uses, benefits, and qualities which they do not have; representing that the
9 Defective Vehicles are of a particular standard and quality when they are not; advertising the
10 Defective Vehicles with the intent not to sell them as advertised; omitting material facts in
11 describing the Defective Vehicles; and representing that their warranties confers or involves
12 rights, remedies, or obligations which it does not confer or involve, or which are prohibited by
13 law.

14 210. Defendants’ misrepresentations and omissions described herein have the capacity
15 or tendency to deceive. As a result of these unlawful trade practices, Plaintiffs have suffered
16 ascertainable loss.

17 211. Plaintiffs and the Class suffered ascertainable loss caused by Defendants’ failure
18 to disclose material information. Plaintiffs and the Class overpaid for their vehicles and did not
19 receive the benefit of their bargain. The value of their vehicles has diminished now that the safety
20 issues have come to light, and Plaintiffs and the Class own vehicles that are not safe.

21 212. Plaintiffs are entitled to recover the greater of three times the actual damages or
22 \$500, pursuant to § 45.50.531(a). Attorneys’ fees may also be awarded to the prevailing party
23 pursuant to § 45.50.531(g).

24 **COUNT XVI**

25 **BREACH OF THE IMPLIED WARRANTY OF MERCHANTABILITY**
26 **(Alaska Statutes Section 45.02.314)**

27 213. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set
28 forth herein.

1 214. Defendants are and were at all relevant times merchants with respect to motor
2 vehicles.

3 215. A warranty that the Defective Vehicles were in merchantable condition is implied
4 by law in the instant transactions.

5 216. These vehicles, when sold and at all times thereafter, were not in merchantable
6 condition and are not fit for the ordinary purpose for which cars are used. As set forth above in
7 detail, the Defective Vehicles are inherently defective in that the CAN buses are susceptible to
8 hacking.

9 217. Defendants were provided notice of these issues by numerous means, including
10 the instant complaint, and by numerous communications before or within a reasonable amount of
11 time after the allegations of vehicle defects became public.

12 218. As a direct and proximate result of Defendants’ breach of the warranties of
13 merchantability, Plaintiffs and the Class have been damaged in an amount to be proven at trial.

14 Claims Brought on Behalf of the Arizona Class

15 **COUNT XVII**

16 **Violations of the Consumer Fraud Act**
17 **(Arizona Revised Statutes Sections 44-1521, et seq.)**

18 219. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set
19 forth herein.

20 220. Plaintiffs bring this Count on behalf of the Arizona Class.

21 221. Plaintiffs and Defendants are each “persons” as defined by Ariz. Rev. Stat. § 44-
22 1521(6). The Class Vehicles are “merchandise” as defined by Ariz. Rev. Stat. § 44-1521(5).

23 222. The Arizona Consumer Fraud Act proscribes “[t]he act, use or employment by
24 any person of any deception, deceptive act or practice, fraud, false pretense, false promise,
25 misrepresentation, or concealment, suppression or omission of any material fact with intent that
26 others rely upon such concealment, suppression or omission, in connection with the sale or
27 advertisement of any merchandise whether or not any person has in fact been misled, deceived or
28 damaged thereby.” Ariz. Rev. Stat. § 44-1522(A).

1 223. By failing to disclose and actively concealing the defects in the Class Vehicles,
 2 Defendants engaged in deceptive business practices prohibited by the Arizona Consumer Fraud
 3 Act, Ariz. Rev. Stat. § 44-1522(A), including (1) representing that Class Vehicles have
 4 characteristics, uses, benefits, and qualities which they do not have, (2) representing that Class
 5 Vehicles are of a particular standard, quality, and grade when they are not, (3) advertising Class
 6 Vehicles with the intent not to sell them as advertised, and (4) engaging in acts or practices which
 7 are otherwise unfair, misleading, false, or deceptive to the consumer.

8 224. As alleged above, Defendants made numerous material statements about the
 9 benefits and characteristics of the CAN bus that were either false or misleading. Each of these
 10 statements contributed to the deceptive context of Defendants’ unlawful advertising and
 11 representations as a whole.

12 225. Defendants knew that the CAN buses in the Class Vehicles were defectively
 13 designed or manufactured, would fail without warning, and were not suitable for their intended
 14 use. Defendants nevertheless failed to warn Plaintiffs about these defects despite having a duty to
 15 do so.

16 226. Defendants owed Plaintiffs a duty to disclose the defective nature of the CAN
 17 buses in the Class Vehicles, because Defendants:

- 18 a) Possessed exclusive knowledge of the defects rendering the Class
 19 Vehicles more unreliable than similar vehicles;
- 20 b) Intentionally concealed the defects through their deceptive marketing
 21 campaign that it designed to hide the defects in the CAN bus; and/or
- 22 c) Made incomplete representations about the characteristics and
 23 performance of the CAN bus generally, while purposefully withholding material facts from
 24 Plaintiffs that contradicted these representations.

25 227. Defendants’ unfair or deceptive acts or practices were likely to and did in fact
 26 deceive reasonable consumers, including Plaintiffs, about the true performance and characteristics
 27 of the CAN bus.

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1 228. As a result of their violations of the Arizona Consumer Fraud Act detailed above,
2 Defendants caused actual damage to Plaintiffs and, if not stopped, will continue to harm
3 Plaintiffs. Plaintiffs currently own or lease, or within the class period has owned or leased, a Class
4 Vehicle that is defective. Defects associated with the CAN bus have caused the value of Class
5 Vehicles to decrease.

6 229. Plaintiffs and the Class sustained damages as a result of the Defendants’ unlawful
7 acts and are, therefore, entitled to damages and other relief as provided under the Arizona
8 Consumer Fraud Act.

9 230. Plaintiffs also seeks court costs and attorneys’ fees as a result of Defendants’
10 violation of the Arizona Consumer Fraud Act as provided in Ariz. Rev. Stat. § 12-341.01.

11 **COUNT XVIII**

12 **Breach of Express Warranty**
13 **(Arizona Revised Statutes Section 47-2313)**

14 231. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set
15 forth herein.

16 232. Plaintiffs bring this Count on behalf of the Arizona Class.

17 233. Defendants are and were at all relevant times merchants with respect to motor
18 vehicles under Ariz. Rev. Stat. § 47-2104(A).

19 234. In their Limited Warranties and in advertisements, brochures, and through other
20 statements in the media, Defendants expressly warranted that it would repair or replace defects in
21 material or workmanship free of charge if they became apparent during the warranty period. For
22 example, the following language appears in all Class Vehicle Warranty booklets:

23 1. Toyota’s warranty

24 *When Warranty Begins*

25 The warranty period begins on the vehicle’s in-service date, which is the first date
26 the vehicle is either delivered to an ultimate purchaser, leased, or used as a
27 company car or demonstrator.

28 *Repairs Made at No Charge*

Repairs and adjustments covered by these warranties are made at no charge for
parts and labor.

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Basic Warranty

This warranty covers repairs and adjustments needed to correct defects in materials or workmanship of any part supplied by Toyota Coverage is for 36 months or 36,000 miles, whichever occurs first. . . .

2. Ford’s warranty

KNOW WHEN YOUR WARRANTY BEGINS

Your Warranty Start Date is the day you take delivery of your new vehicle or the day it is first put into service. . . .

QUICK REFERENCE: WARRANTY COVERAGE

. . .

Your Bumper to Bumper Coverage lasts for three years – unless you drive more than 36,000 miles before three years elapse.

WHO PAYS FOR WARRANTY REPAIRS?

You will not be charged for repairs covered by any applicable warranty during the stated coverage periods. . . .

3. GM’s warranty

Warranty Period

The warranty period for all coverages begins on the date the vehicle is first delivered or put in use and ends at the expiration of the coverage period.

Bumper-to-Bumper Coverage

The complete vehicle is covered for 4 years or 50,000 miles, whichever comes first. . . .

No Charge

Warranty repairs, including towing, parts, and labor, will be made at no charge.

Repairs Covered

This warranty covers repairs to correct any vehicle defect related to materials or workmanship occurring during the warranty period. Needed repairs will be performed using new or remanufactured parts.

235. Defendants’ Limited Warranties, as well as advertisements, brochures, and other statements in the media regarding the Class Vehicles, formed the basis of the bargain that was reached when Plaintiffs and the other Class members purchased or leased their Class Vehicles equipped with a CAN bus from Defendants.

236. Defendants breached the express warranty to repair and adjust to correct defects in materials and workmanship of any part supplied by Defendants. Defendants have not repaired or adjusted, and have been unable to repair or adjust, the Class Vehicles’ materials and

1 workmanship defects.

2 237. In addition to these Limited Warranties, Defendants otherwise expressly
3 warranted several attributes, characteristics, and qualities of the CAN bus.

4 238. These warranties are only a sampling of the numerous warranties that Defendants
5 made relating to safety, reliability, and operation. Generally these express warranties promise
6 heightened, superior, and state-of-the-art safety, reliability, and performance standards, and
7 promote the benefits of the CAN bus. These warranties were made, *inter alia*, in advertisements,
8 on Defendants' websites, and in uniform statements provided by Defendants to be made by
9 salespeople, or made publicly by Defendants' executives or by other authorized representatives.
10 These affirmations and promises were part of the basis of the bargain between the parties.

11 239. These additional warranties were also breached because the Class Vehicles were
12 not fully operational, safe, or reliable (and remained so even after the problems were
13 acknowledged), nor did they comply with the warranties expressly made to purchasers or lessees.
14 Defendants did not provide at the time of sale, and have not provided since then, Class Vehicles
15 conforming to these express warranties.

16 240. Furthermore, the limited warranty of repair and/or adjustments to defective parts,
17 fails in its essential purpose because the contractual remedy is insufficient to make Plaintiffs and
18 the other Class members whole and because Defendants have failed and/or have refused to
19 adequately provide the promised remedies within a reasonable time.

20 241. Accordingly, recovery by Plaintiffs and the other Class members is not limited to the
21 limited warranty of repair or adjustments to parts defective in materials or workmanship, and
22 Plaintiffs, individually and on behalf of the other Class members, seek all remedies as allowed by
23 law.

24 242. Also, as alleged in more detail herein, at the time that Defendants warranted and
25 sold the Class Vehicles it knew that the Class Vehicles did not conform to the warranties and
26 were inherently defective, and Defendants wrongfully and fraudulently misrepresented and/or
27 concealed material facts regarding their Class Vehicles. Plaintiffs and the other Class members
28 were therefore induced to purchase or lease the Class Vehicles under false and/or fraudulent

1 pretenses.

2 243. Moreover, many of the injuries flowing from the Class Vehicles cannot be
3 resolved through the limited remedy of “replacement or adjustments,” as many incidental and
4 consequential damages have already been suffered due to Defendants’ fraudulent conduct as
5 alleged herein, and due to their failure and/or continued failure to provide such limited remedy
6 within a reasonable time, and any limitation on Plaintiffs’ and the other Class members’ remedies
7 would be insufficient to make Plaintiffs and the other Class members whole.

8 244. Finally, due to Defendants’ breach of warranties as set forth herein, Plaintiffs and
9 the other Class members assert as an additional and/or alternative remedy, as set forth in Ariz.
10 Rev. Stat. § 47-2711, for a revocation of acceptance of the goods, and for a return to Plaintiffs and
11 to the other Class members of the purchase price of all Class Vehicles currently owned and for
12 such other incidental and consequential damages as allowed under Ariz. Rev. Stat. §§ 47-2711
13 and 47-2608.

14 245. Defendants were provided notice of these issues by the instant Complaint, and by
15 other means before or within a reasonable amount of time after the allegations of Class Vehicle
16 defects became public.

17 246. As a direct and proximate result of Defendants’ breach of express warranties,
18 Plaintiffs and the other Class members have been damaged in an amount to be determined at trial.

19 **COUNT XIX**

20 **Breach of the Implied Warranty of Merchantability**
21 **(Arizona Revised Statutes Section 47-2314)**

22 247. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set
23 forth herein.

24 248. Plaintiffs bring this Count on behalf of the Arizona Class.

25 249. Defendants are and were at all relevant times merchants with respect to motor
26 vehicles under Ariz. Rev. Stat. § 47-2014.

27 250. A warranty that the Class Vehicles were in merchantable condition was implied
28 by law in the instant transactions, pursuant to Ariz. Rev. Stat. § 47-2314. These vehicles and the

1 CAN buses in the Class Vehicles, when sold and at all times thereafter, were not in merchantable
2 condition and are not fit for the ordinary purpose for which they are used. Specifically, the Class
3 Vehicles are inherently defective in that there are defects in the CAN buses which prevent users
4 from enjoying many features of the Class Vehicles they purchased and/or leased and that they
5 paid for; and the CAN bus was not adequately tested.

6 251. Defendants were provided notice of these issues by numerous complaints filed
7 against them, including the instant Complaint, and by other means.

8 252. As a direct and proximate result of Defendants’ breach of the warranties of
9 merchantability, Plaintiffs and the Class have been damaged in an amount to be proven at trial.

10 **COUNT XX**

11 **Breach of Contract/Common Law Warranty**
12 **(Based on Arizona Law)**

13 253. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set
14 forth herein.

15 254. Plaintiffs bring this Count on behalf of the Arizona Class.

16 255. To the extent Defendants’ limited remedies are deemed not to be warranties under
17 the Uniform Commercial Code as adopted in Arizona, Plaintiffs plead in the alternative under
18 common law warranty and contract law. Defendants limited the remedies available to Plaintiffs
19 and the Class to repairs and adjustments needed to correct defects in materials or workmanship of
20 any part supplied by Defendants, and/or warranted the quality or nature of those services to
21 Plaintiffs. Defendants breached this warranty or contract obligation by failing to repair the
22 defective Class Vehicles, or to replace them.

23 256. As a direct and proximate result of Defendants’ breach of contract or common
24 law warranty, Plaintiffs and the Class have been damaged in an amount to be proven at trial,
25 which shall include, but is not limited to, all compensatory damages, incidental and consequential
26 damages, and other damages allowed by law.

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COUNT XXI

**Fraudulent Concealment
(Based on Arizona Law)**

257. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

258. Plaintiffs bring this Count on behalf of the Arizona Class.

259. Defendants intentionally concealed the above-described material safety and functionality information, or acted with reckless disregard for the truth, and denied Plaintiffs and the other Class members information that is highly relevant to their purchasing decision.

260. Defendants further affirmatively misrepresented to Plaintiffs in advertising and other forms of communication, including standard and uniform material provided with each car, that the Class Vehicles they was selling were new, had no significant defects, and would perform and operate properly when driven in normal usage.

261. Defendants knew these representations were false when made.

262. The Class Vehicles purchased or leased by Plaintiffs and the other Class members were, in fact, defective, unsafe, and unreliable because the Class Vehicles contained faulty and defective CAN buss, as alleged herein.

263. Defendants had a duty to disclose that these Class Vehicles were defective, unsafe, and unreliable in that certain crucial safety functions of the Class Vehicles would be rendered inoperative due to faulty and defective CAN buses, because Plaintiffs and the other Class members relied on Defendants’ material representations that the Class Vehicles they were purchasing were safe and free from defects.

264. The aforementioned concealment was material because if it had been disclosed Plaintiffs and the other Class members would not have bought or leased the Class Vehicles, or would not have bought or leased those Vehicles at the prices they paid.

265. The aforementioned representations were material because they were facts that would typically be relied on by a person purchasing or leasing a new motor vehicle. Defendants knew or recklessly disregarded that their representations were false because they knew that the

1 CAN buses were susceptible to hacking. Defendants intentionally made the false statements in
2 order to sell Class Vehicles.

3 266. Plaintiffs and the other Class members relied on Defendants’ reputation – along
4 with Defendants’ failure to disclose the faulty and defective nature of the CAN buses and
5 Defendants’ affirmative assurance that their Class Vehicles were safe and reliable, and other
6 similar false statements – in purchasing or leasing Defendants’ Class Vehicles.

7 267. As a result of their reliance, Plaintiffs and the other Class members have been
8 injured in an amount to be proven at trial, including, but not limited to, their lost benefit of the
9 bargain and overpayment at the time of purchase or lease and/or the diminished value of their
10 Class Vehicles.

11 268. Defendants’ conduct was knowing, intentional, with malice, demonstrated a
12 complete lack of care, and was in reckless disregard for the rights of Plaintiffs and the other Class
13 members.

14 269. Plaintiffs and the other Class members are therefore entitled to an award of
15 punitive damages.

16 **Claims Brought on Behalf of the Arkansas Class**

17 **COUNT XXII**

18 **Breach of Implied Warranty of Merchantability**
19 **(Arkansas Code Annotated Section 4-2-314)**

20 270. Plaintiffs incorporate the allegations set forth above as is fully set forth herein.

21 271. In their manufacture and sale of the Defective Vehicles, Defendants impliedly
22 warranted to Plaintiffs and the Class that their vehicles were in merchantable condition and fit for
23 their ordinary purpose.

24 272. These vehicles, when sold and at all times thereafter, were not in merchantable
25 condition and are not fit for the ordinary purpose for which cars are used. As set forth above in
26 detail, the Defective Vehicles are inherently defective in that the CAN buses are susceptible to
27 hacking.

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1 273. Under the Uniform Commercial Code there exists an implied warranty of
2 merchantability.

3 274. Defendants have breached the warranty of merchantability by having sold their
4 automobiles with defects such that the vehicles were not fit for their ordinary purpose and
5 Plaintiffs and the Class suffered damages as a result.

6 **COUNT XXIII**

7 **Negligent Misrepresentation/Fraud**
8 **(Arkansas Code Annotated Section 4-2-721)**

9 275. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set
10 forth herein.

11 276. As set forth above, Defendants concealed and/or suppressed material facts
12 concerning the safety of their vehicles.

13 277. Defendants had a duty to disclose these safety issues because they consistently
14 marketed their vehicles as safe and proclaimed that safety is one of Defendants' highest corporate
15 priorities. Once Defendants made representations to the public about safety, Defendants were
16 under a duty to disclose these omitted facts, because where one does speak one must speak the
17 whole truth and not conceal any facts which materially qualify those facts stated. One who
18 volunteers information must be truthful, and the telling of a half-truth calculated to deceive is
19 fraud.

20 278. In addition, Defendants had a duty to disclose these omitted material facts
21 because they were known and/or accessible only to Defendants who have superior knowledge and
22 access to the facts, and Defendants knew they were not known to or reasonably discoverable by
23 Plaintiffs and the Class. These omitted facts were material because they directly impact the safety
24 of the Defective Vehicles. Whether or not a vehicle accelerates only at the driver's command, and
25 whether a vehicle will stop or not upon application of the brake by the driver, are material safety
26 concerns. Defendants possessed exclusive knowledge of the defects rendering the Defective
27 Vehicles inherently more dangerous and unreliable than similar vehicles.

28 279. Defendants actively concealed and/or suppressed these material facts, in whole or

1 in part, with the intent to induce Plaintiffs and the Class to purchase the Defective Vehicles at a
2 higher price for the vehicles, which did not match the vehicles' true value.

3 280. Defendants still have not made full and adequate disclosure and continue to
4 defraud Plaintiffs and the Class.

5 281. Plaintiffs and the Class were unaware of these omitted material facts and would
6 not have acted as they did if they had known of the concealed and/or suppressed facts. Plaintiffs'
7 and the Class' actions were justified. Defendants were in exclusive control of the material facts
8 and such facts were not known to the public or the Class.

9 282. As a result of the misrepresentation concealment and/or suppression of the facts,
10 Plaintiffs and the Class sustained damage. For those Plaintiffs and the Class who elect to affirm
11 the sale, these damages, pursuant to A.C.A. § 4-2-72, include the difference between the actual
12 value of that which Plaintiffs and the Class paid and the actual value of that which they received,
13 together with additional damages arising from the sales transaction, amounts expended in reliance
14 upon the fraud, compensation for loss of use and enjoyment of the property, and/or lost profits.
15 For those Plaintiffs and the Class who want to rescind the purchase, then those Plaintiffs and the
16 Class are entitled to restitution and consequential damages pursuant to A.C.A. § 4-2-72.

17 283. Defendants' acts were done maliciously, oppressively, deliberately, with intent to
18 defraud, and in reckless disregard of Plaintiffs' and the Class' rights and well-being to enrich
19 Defendants. Defendants' conduct warrants an assessment of punitive damages in an amount
20 sufficient to deter such conduct in the future, which amount is to be determined according to
21 proof.

22 **Claims Brought on Behalf of the Colorado Class**

23 **COUNT XXIV**

24 **Violations of the Colorado Consumer Protection Act**
25 **(Colorado Revised Statutes Sections 6-1-101, et seq.)**

26 284. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set
27 forth herein.

28 285. Plaintiffs bring this Count on behalf of the Colorado Class.

1 286. Colorado’s Consumer Protection Act (the “CCPA”) prohibits a person from
 2 engaging in a “deceptive trade practice,” which includes knowingly making “a false
 3 representation as to the source, sponsorship, approval, or certification of goods,” or “a false
 4 representation as to the characteristics, ingredients, uses, benefits, alterations, or quantities of
 5 goods.” Colo. Rev. Stat. § 6-1-105(1)(b), (e). The CCPA further prohibits “represent[ing] that
 6 goods ... are of a particular standard, quality, or grade ... if he knows or should know that they
 7 are of another,” and “advertis[ing] goods . . . with intent not to sell them as advertised.” Colo.
 8 Rev. Stat. § 6-1-105(1)(g),(i).

9 287. Defendants are “persons” within the meaning of Colo. Rev. Stat. § 6-1-102(6).

10 288. In the course of Defendants’ business, they willfully misrepresented and failed to
 11 disclose, and actively concealed, the dangerous risk of CAN bus hacking in Class Vehicles as
 12 described above. Accordingly, Defendants engaged in unlawful trade practices, including
 13 representing that Class Vehicles have characteristics, uses, benefits, and qualities which they do
 14 not have; representing that Class Vehicles are of a particular standard and quality when they are
 15 not; advertising Class Vehicles with the intent not to sell them as advertised; and otherwise
 16 engaging in conduct likely to deceive.

17 289. Defendants’ actions as set forth above occurred in the conduct of trade or
 18 commerce.

19 290. Defendants’ conduct proximately caused injuries to Plaintiffs and the other Class
 20 members.

21 291. Plaintiffs and the other Class members were injured as a result of Defendants’
 22 conduct in that Plaintiffs and the other Class members overpaid for their Class Vehicles and did
 23 not receive the benefit of their bargain, and their Class Vehicles have suffered a diminution in
 24 value. These injuries are the direct and natural consequence of Defendants’ misrepresentations
 25 and omissions.

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COUNT XXV

**Strict Product Liability
(Based on Colorado Law)**

292. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

293. Plaintiffs bring this Count on behalf of the Colorado Class.

294. Colorado law recognizes an action for product defects that complements Colorado’s Product Liability Statute, Colo. Rev. Stat. Title 13, Article 21, Part 4.

295. Defendants are “manufacturers” and “sellers” of the Class Vehicles within the meaning of Colo. Rev. Stat. § 13-21-401(1).

296. Defendants manufactured and sold the Class Vehicles in a defective condition and in a condition that was unreasonably dangerous to drivers, other motorists, pedestrians, and others or to their property, including persons who may reasonably be expected to use, consume, or be affected by them, in at least the following respects: (i) the Class Vehicles were defectively designed, assembled, fabricated, produced, and constructed in that they were susceptible to hacking and dysfunction of crucial safety functions; and (ii) the Class Vehicles were not accompanied by adequate warnings about their defective nature.

297. The Class Vehicles were defective and unreasonably dangerous at the time they were sold by Defendants and were intended to and did reach Plaintiffs and the other Class Members in substantially the same condition as they were in when they were manufactured, sold, and left the control of Defendants.

298. Plaintiffs and the other Class members are persons who were reasonably expected to use, consume, or be affected by the Class Vehicles.

299. As a direct and proximate result of the defective and unreasonably dangerous conditions of the Class Vehicles, Plaintiffs and the other Class members have suffered damages.

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COUNT XXVI

**Breach of Express Warranty
(Colorado Revised Statutes Sections 4-2-313)**

300. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

301. Plaintiffs bring this Count on behalf of the Colorado Class.

302. Defendants are and were at all relevant times merchants with respect to motor vehicles.

303. In their Limited Warranties and in advertisements, brochures, and through other statements in the media, Defendants expressly warranted that they would repair or replace defects in material or workmanship free of charge if they became apparent during the warranty period. For example, the following language appears in all Class Vehicles' Warranty booklets:

1. Toyota's warranty

When Warranty Begins

The warranty period begins on the vehicle's in-service date, which is the first date the vehicle is either delivered to an ultimate purchaser, leased, or used as a company car or demonstrator.

Repairs Made at No Charge

Repairs and adjustments covered by these warranties are made at no charge for parts and labor.

Basic Warranty

This warranty covers repairs and adjustments needed to correct defects in materials or workmanship of any part supplied by Toyota Coverage is for 36 months or 36,000 miles, whichever occurs first

2. Ford's warranty

KNOW WHEN YOUR WARRANTY BEGINS

Your Warranty Start Date is the day you take delivery of your new vehicle or the day it is first put into service

QUICK REFERENCE: WARRANTY COVERAGE

. . .

Your Bumper to Bumper Coverage lasts for three years - unless you drive more than 36,000 miles before three years elapse.

WHO PAYS FOR WARRANTY REPAIRS?

1 You will not be charged for repairs covered by any applicable warranty during the
2 stated coverage periods

3 3. GM's warranty

4 *Warranty Period*

5 The warranty period for all coverages begins on the date the vehicle is first
6 delivered or put in use and ends at the expiration of the coverage period.

7 *Bumper-to-Bumper Coverage*

8 The complete vehicle is covered for 4 years or 50,000 miles, whichever comes first
9

10 *No Charge*

11 Warranty repairs, including towing, parts, and labor, will be made at no charge.

12 *Repairs Covered*

13 This warranty covers repairs to correct any vehicle defect related to materials or
14 workmanship occurring during the warranty period. Needed repairs will be
15 performed using new or remanufactured parts.

16 304. Defendants' Limited Warranties, as well as advertisements, brochures, and other
17 statements in the media regarding the Class Vehicles, formed the basis of the bargain that was
18 reached when Plaintiffs and the other Class members purchased or leased their Class Vehicles
19 equipped with a CAN bus from Defendants.

20 305. Defendants breached the express warranty to repair and adjust to correct defects
21 in materials and workmanship of any part supplied by Defendants. Defendants have not repaired
22 or adjusted, and have been unable to repair or adjust, the Class Vehicles' materials and
23 workmanship defects.

24 306. In addition to these Limited Warranties, Defendants otherwise expressly
25 warranted several attributes, characteristics, and qualities of the CAN bus.

26 307. These warranties are only a sampling of the numerous warranties that Defendants
27 made relating to safety, reliability, and operation. Generally these express warranties promise
28 heightened, superior, and state-of-the-art safety, reliability, and performance standards, and
promote the benefits of the CAN bus. These warranties were made, *inter alia*, in advertisements,
on Defendants' websites, and in uniform statements provided by Defendants to be made by
salespeople, or made publicly by Defendants' executives or by other authorized representatives.

1 These affirmations and promises were part of the basis of the bargain between the parties.

2 308. These additional warranties were also breached because the Class Vehicles were
3 not fully operational, safe, or reliable (and remained so even after the problems were
4 acknowledged), nor did they comply with the warranties expressly made to purchasers or lessees.
5 Defendants did not provide at the time of sale, and have not provided since then, Class Vehicles
6 conforming to these express warranties.

7 309. Furthermore, the limited warranty of repair and/or adjustments to defective parts,
8 fails in its essential purpose because the contractual remedy is insufficient to make Plaintiffs and
9 the other Class members whole and because Defendants have failed and/or have refused to
10 adequately provide the promised remedies within a reasonable time.

11 310. Accordingly, recovery by Plaintiffs and the other Class members is not limited to
12 the limited warranty of repair or adjustments to parts defective in materials or workmanship, and
13 Plaintiffs, individually and on behalf of the other Class members, seek all remedies as allowed by
14 law.

15 311. Also, as alleged in more detail herein, at the time that Defendants warranted and
16 sold the Class Vehicles they knew that the Class Vehicles did not conform to the warranties and
17 were inherently defective, and Defendants wrongfully and fraudulently misrepresented and/or
18 concealed material facts regarding their Class Vehicles. Plaintiffs and the other Class members
19 were therefore induced to purchase or lease the Class Vehicles under false and/or fraudulent
20 pretenses.

21 312. Moreover, many of the injuries flowing from the Class Vehicles cannot be
22 resolved through the limited remedy of “replacement or adjustments,” as many incidental and
23 consequential damages have already been suffered due to Defendants’ fraudulent conduct as
24 alleged herein, and due to their failure and/or continued failure to provide such limited remedy
25 within a reasonable time, and any limitation on Plaintiffs’ and the other Class members’ remedies
26 would be insufficient to make Plaintiffs and the other Class members whole.

27 313. Finally, due to Defendants’ breach of warranties as set forth herein, Plaintiffs and
28 the other Class members assert as an additional and/or alternative remedy, as set forth in Colo.

1 Rev. Stat. § 4-2-608, for a revocation of acceptance of the goods, and for a return to Plaintiffs and
2 to the other Class members of the purchase price of all Class Vehicles currently owned for such
3 other incidental and consequential damages as allowed under Colo. Rev. Stat. §§ 4-2-711 and 4-2-
4 608.

5 314. Defendants were provided notice of these issues by the instant Complaint, and by
6 other means before or within a reasonable amount of time after the allegations of Class Vehicle
7 defects became public.

8 315. As a direct and proximate result of Defendants’ breach of express warranties,
9 Plaintiffs and the other Class members have been damaged in an amount to be determined at trial.

10 **COUNT XXVII**

11 **Breach of Implied Warranty of Merchantability**
12 **(Colorado Revised Statutes Sections 4-2-314)**

13 316. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set
14 forth herein.

15 317. Plaintiffs bring this Count on behalf of the Colorado Class.

16 318. Defendants are and were at all relevant times merchants with respect to motor
17 vehicles.

18 319. A warranty that the Class Vehicles were in merchantable condition is implied by
19 law in the instant transactions.

20 320. These Class Vehicles, when sold and at all times thereafter, were not in
21 merchantable condition and are not fit for the ordinary purpose for which cars are used.
22 Defendants were provided notice of these issues by numerous complaints filed against them,
23 including the instant Complaint, and by other means.

24 321. As a direct and proximate result of Defendants’ breach of the warranties of
25 merchantability, Plaintiffs and the Class have been damaged in an amount to be proven at trial.

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COUNT XXVIII

**Breach of Contract/Common Law Warranty
(Based on Colorado Law)**

322. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

323. Plaintiffs bring this Count on behalf of the Colorado Class.

324. To the extent Defendants’ limited remedies are deemed not to be warranties under Colorado’s Commercial Code, Plaintiffs, individually and on behalf of the other Class members, plead in the alternative under common law warranty and contract law. Defendants limited the remedies available to Plaintiffs and the other Class members to repairs and adjustments needed to correct defects in materials or workmanship of any part supplied by Defendants, and/or warranted the quality or nature of those services to Plaintiffs and the other Class members.

325. Defendants breached this warranty or contract obligation by failing to repair the Class Vehicles evidencing a faulty and defective CAN bus, or to replace them.

326. As a direct and proximate result of Defendants’ breach of contract or common law warranty, Plaintiffs and the other Class members have been damaged in an amount to be proven at trial, which shall include, but is not limited to, all compensatory damages, incidental and consequential damages, and other damages allowed by law.

COUNT XXIX

**Fraudulent Concealment
(Based on Colorado Law)**

327. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

328. Plaintiffs bring this Count on behalf of the Colorado Class.

329. Defendants intentionally concealed the above-described material safety and functionality information, or acted with reckless disregard for the truth, and denied Plaintiffs and the other Class members information that is highly relevant to their purchasing decision.

330. Defendants further affirmatively misrepresented to Plaintiffs in advertising and

1 other forms of communication, including standard and uniform material provided with each car,
2 that the Class Vehicles they was selling were new, had no significant defects, and would perform
3 and operate properly when driven in normal usage.

4 331. Defendants knew these representations were false when made.

5 332. The Class Vehicles purchased or leased by Plaintiffs and the other Class members
6 were, in fact, defective, unsafe, and unreliable because the Class Vehicles contained faulty and
7 defective CAN buses, as alleged herein.

8 333. Defendants had a duty to disclose that these Class Vehicles were defective,
9 unsafe, and unreliable in that certain crucial safety functions of the Class Vehicles would be
10 rendered inoperative due to faulty and defective CAN buses, because Plaintiffs and the other
11 Class members relied on Defendants' material representations that the Class Vehicles they were
12 purchasing were safe and free from defects.

13 334. The aforementioned concealment was material because if it had been disclosed
14 Plaintiffs and the other Class members would not have bought or leased the Class Vehicles, or
15 would not have bought or leased those Vehicles at the prices they paid.

16 335. The aforementioned representations were material because they were facts that
17 would typically be relied on by a person purchasing or leasing a new motor vehicle. Defendants
18 knew or recklessly disregarded that their representations were false because they knew the CAN
19 buses were susceptible to hacking. Defendants intentionally made the false statements in order to
20 sell Class Vehicles.

21 336. Plaintiffs and the other Class members relied on Defendants' reputations – along
22 with Defendants' failure to disclose the faulty and defective nature of the CAN bus and
23 Defendants' affirmative assurances that their Class Vehicles were safe and reliable, and other
24 similar false statements – in purchasing or leasing Defendants' Class Vehicles.

25 337. As a result of their reliance, Plaintiffs and the other Class members have been
26 injured in an amount to be proven at trial, including, but not limited to, their lost benefit of the
27 bargain and overpayment at the time of purchase or lease and/or the diminished value of their
28 Class Vehicles.

1 338. Defendants’ conduct was knowing, intentional, with malice, demonstrated a
2 complete lack of care, and was in reckless disregard for the rights of Plaintiffs and the other Class
3 members.

4 339. Plaintiffs and the other Class members are therefore entitled to an award of
5 punitive damages.

6 **Claims Brought on Behalf of the Connecticut Class**

7 **COUNT XXX**

8 **Violations of the Unfair Trade Practices Act**

9 **(Connecticut General Statutes Annotated Sections 42-110A, et seq.)**

10 340. Plaintiffs incorporate by reference all allegations of the preceding paragraphs as
11 though fully set forth herein.

12 341. Plaintiffs bring this Count on behalf of the Connecticut Class.

13 342. Plaintiffs and Defendants are each “persons” as defined by Conn. Gen. Stat. Ann.
14 § 42-110a(3).

15 343. The Connecticut Unfair Trade Practices Act (“CUTPA”) provides that “[n]o
16 person shall engage in unfair methods of competition and unfair or deceptive acts or practices in
17 the conduct of any trade or commerce.” Conn. Gen. Stat. Ann. § 42-110b(a). The CUTPA further
18 provides a private right of action under Conn. Gen. Stat. Ann. § 42-110g(a).

19 344. By failing to disclose and actively concealing the defects in the Class Vehicles,
20 Defendants engaged in deceptive business practices prohibited by the CUTPA, including (1)
21 representing that Class Vehicles have characteristics, uses, benefits, and qualities which they do
22 not have, (2) representing that Class Vehicles are of a particular standard, quality, and grade when
23 they are not, (3) advertising Class Vehicles with the intent not to sell them as advertised, and (4)
24 engaging in acts or practices which are otherwise unfair, misleading, false, or deceptive to the
25 consumer.

26 345. As alleged above, Defendants made numerous material statements about the
27 benefits and characteristics of the Class Vehicles that were either false or misleading. Each of
28 these statements contributed to the deceptive context of Defendants’ unlawful advertising and

1 representations as a whole.

2 346. Defendants knew that the CAN buses in the Class Vehicles were defectively
3 designed or manufactured, were susceptible to hacking, and were not suitable for their intended
4 use. Defendants nevertheless failed to warn Plaintiffs about these defects despite having a duty to
5 do so.

6 347. Defendants owed Plaintiffs a duty to disclose the defective nature of the CAN
7 buses in the Class Vehicles, because Defendants:

8 a) Possessed exclusive knowledge of the defects rendering the Class
9 Vehicles more unreliable than similar vehicles;

10 b) Intentionally concealed the defects associated with the CAN buses through
11 their deceptive marketing campaign that they designed to hide the defects; and/or

12 c) Made incomplete representations about the characteristics and
13 performance of the Class Vehicles generally, while purposefully withholding material facts from
14 Plaintiffs that contradicted these representations.

15 348. Defendants' unfair or deceptive acts or practices were likely to and did in fact
16 deceive reasonable consumers, including Plaintiffs, about the true performance and characteristics
17 of the Class Vehicles.

18 349. As a result of their violations of the CUTPA detailed above, Defendants caused
19 actual damage to Plaintiffs and, if not stopped, will continue to harm Plaintiffs. Plaintiffs
20 currently own or lease, or within the class period have owned or leased, a Class Vehicle that is
21 defective. Defects associated with the CAN bus have caused the value of Class Vehicles to
22 decrease.

23 350. Plaintiffs and the Class sustained damages as a result of the Defendants' unlawful
24 acts and are, therefore, entitled to damages and other relief as provided under the CUTPA.

25 351. Plaintiffs also seeks court costs and attorneys' fees as a result of Defendants'
26 violation of the CUTPA as provided in Conn. Gen. Stat. Ann. § 42-110g(d). A copy of this
27 Complaint has been mailed to the Attorney General and the Commissioner of Consumer
28 Protection of the State of Connecticut in accordance with Conn. Gen. Stat. Ann. § 42-110g(c).

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COUNT XXXI

**Breach of Express Warranty
(Connecticut General Statutes Annotated Section 42A-2-313)**

352. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

353. Plaintiffs bring this Count on behalf of the Connecticut Class.

354. Defendants are and were at all relevant times merchants with respect to motor vehicles under Conn. Gen. Stat. Ann. § 42a-2-104(1).

355. In their Limited Warranties and in advertisements, brochures, and through other statements in the media, Defendants expressly warranted that they would repair or replace defects in material or workmanship free of charge if they became apparent during the warranty period. For example, the following language appears in all Class Vehicle Warranty booklets:

1. Toyota’s warranty

When Warranty Begins

The warranty period begins on the vehicle’s in-service date, which is the first date the vehicle is either delivered to an ultimate purchaser, leased, or used as a company car or demonstrator.

Repairs Made at No Charge

Repairs and adjustments covered by these warranties are made at no charge for parts and labor.

Basic Warranty

This warranty covers repairs and adjustments needed to correct defects in materials or workmanship of any part supplied by Toyota Coverage is for 36 months or 36,000 miles, whichever occurs first

2. Ford’s warranty

KNOW WHEN YOUR WARRANTY BEGINS

Your Warranty Start Date is the day you take delivery of your new vehicle or the day it is first put into service

QUICK REFERENCE: WARRANTY COVERAGE

. . .

Your Bumper to Bumper Coverage lasts for three years - unless you drive more than 36,000 miles before three years elapse.

WHO PAYS FOR WARRANTY REPAIRS?

1 You will not be charged for repairs covered by any applicable warranty during the
2 stated coverage periods

3 3. GM's warranty

4 *Warranty Period*

5 The warranty period for all coverages begins on the date the vehicle is first
6 delivered or put in use and ends at the expiration of the coverage period.

7 *Bumper-to-Bumper Coverage*

8 The complete vehicle is covered for 4 years or 50,000 miles, whichever comes first
9

10 *No Charge*

11 Warranty repairs, including towing, parts, and labor, will be made at no charge.

12 *Repairs Covered*

13 This warranty covers repairs to correct any vehicle defect related to materials or
14 workmanship occurring during the warranty period. Needed repairs will be
15 performed using new or remanufactured parts.

16 356. Defendants' Limited Warranties, as well as advertisements, brochures, and other
17 statements in the media regarding the Class Vehicles, formed the basis of the bargain that was
18 reached when Plaintiffs and the other Class members purchased or leased their Class Vehicles
19 equipped with a CAN bus from Defendants.

20 357. Defendants breached the express warranty to repair and adjust to correct defects
21 in materials and workmanship of any part supplied by Defendants. Defendants have not repaired
22 or adjusted, and have been unable to repair or adjust, the Class Vehicles' materials and
23 workmanship defects.

24 358. In addition to these Limited Warranties, Defendants otherwise expressly
25 warranted several attributes, characteristics, and qualities of the CAN bus.

26 359. These warranties are only a sampling of the numerous warranties that Defendants
27 made relating to safety, reliability, and operation. Generally these express warranties promise
28 heightened, superior, and state-of-the-art safety, reliability, and performance standards, and
promote the benefits of the CAN bus. These warranties were made, *inter alia*, in advertisements,
on Defendants' websites, and in uniform statements provided by Defendants to be made by
salespeople, or made publicly by Defendants' executives or by other authorized representatives.

1 These affirmations and promises were part of the basis of the bargain between the parties.

2 360. These additional warranties were also breached because the Class Vehicles were
3 not fully operational, safe, or reliable (and remained so even after the problems were
4 acknowledged), nor did they comply with the warranties expressly made to purchasers or lessees.
5 Defendants did not provide at the time of sale, and have not provided since then, Class Vehicles
6 conforming to these express warranties.

7 361. Furthermore, the limited warranty of repair and/or adjustments to defective parts,
8 fails in its essential purpose because the contractual remedy is insufficient to make Plaintiffs and
9 the other Class members whole and because Defendants have failed and/or have refused to
10 adequately provide the promised remedies within a reasonable time.

11 362. Accordingly, recovery by Plaintiffs and the other Class members is not limited to
12 the limited warranty of repair or adjustments to parts defective in materials or workmanship, and
13 Plaintiffs, individually and on behalf of the other Class members, seek all remedies as allowed by
14 law.

15 363. Also, as alleged in more detail herein, at the time that Defendants warranted and
16 sold the Class Vehicles they knew that the Class Vehicles did not conform to the warranties and
17 were inherently defective, and Defendants wrongfully and fraudulently misrepresented and/or
18 concealed material facts regarding their Class Vehicles. Plaintiffs and the other Class members
19 were therefore induced to purchase or lease the Class Vehicles under false and/or fraudulent
20 pretenses.

21 364. Moreover, many of the injuries flowing from the Class Vehicles cannot be
22 resolved through the limited remedy of “replacement or adjustments,” as many incidental and
23 consequential damages have already been suffered due to Defendants’ fraudulent conduct as
24 alleged herein, and due to their failure and/or continued failure to provide such limited remedy
25 within a reasonable time, and any limitation on Plaintiffs’ and the other Class members’ remedies
26 would be insufficient to make Plaintiffs and the other Class members whole.

27 365. Finally, due to Defendants’ breach of warranties as set forth herein, Plaintiffs and
28 the other Class members assert as an additional and/or alternative remedy, as set forth in Conn.

1 Gen. Stat. Ann. § 42a-2-711, for a revocation of acceptance of the goods, and for a return to
2 Plaintiffs and to the other Class members of the purchase price of all Class Vehicles currently
3 owned and for such other incidental and consequential damages as allowed under Conn. Gen.
4 Stat. Ann. §§ 42a-2-711 and 42a-2-608.

5 366. Defendants were provided notice of these issues by the instant Complaint, and by
6 other means before or within a reasonable amount of time after the allegations of Class Vehicle
7 defects became public.

8 367. As a direct and proximate result of Defendants’ breach of express warranties,
9 Plaintiffs and the other Class members have been damaged in an amount to be determined at trial.

10 **COUNT XXXII**

11 **Breach of the Implied Warranty of Merchantability**
12 **(Connecticut General Statutes Annotated Section 42A-2-314)**

13 368. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set
14 forth herein.

15 369. Plaintiffs bring this Count on behalf of the Connecticut Class.

16 370. Defendants are and were at all relevant times merchants with respect to motor
17 vehicles under Conn. Gen. Stat. Ann. § 42a-2-104(1).

18 371. A warranty that the Class Vehicles were in merchantable condition was implied
19 by law in the instant transactions, pursuant to Conn. Gen. Stat. Ann. § 42a-2-314. These vehicles
20 and the CAN buses in the Class Vehicles, when sold and at all times thereafter, were not in
21 merchantable condition and are not fit for the ordinary purpose for which they are used.
22 Specifically, the Class Vehicles are inherently defective in that there are defects in the CAN buses
23 which prevent users from enjoying many features of the Class Vehicles they purchased and/or
24 leased and that they paid for; and the CAN bus was not adequately tested.

25 372. Defendants were provided notice of these issues by numerous complaints filed
26 against them, including the instant Complaint, and by other means.

27 373. As a direct and proximate result of Defendants’ breach of the warranties of
28 merchantability, Plaintiffs and the Class have been damaged in an amount to be proven at trial.

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COUNT XXXIII

**Breach of Contract/Common Law Warranty
(Based on Connecticut Law)**

374. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

375. Plaintiffs bring this Count on behalf of the Connecticut Class.

376. To the extent Defendants’ limited remedies are deemed not to be warranties under the Uniform Commercial Code as adopted in Connecticut, Plaintiffs plead in the alternative under common law warranty and contract law. Defendants limited the remedies available to Plaintiffs and the Class to repairs and adjustments needed to correct defects in materials or workmanship of any part supplied by Defendants, and/or warranted the quality or nature of those services to Plaintiffs. Defendants breached this warranty or contract obligation by failing to repair the defective Class Vehicles, or to replace them.

377. As a direct and proximate result of Defendants’ breach of contract or common law warranty, Plaintiffs and the Class have been damaged in an amount to be proven at trial, which shall include, but is not limited to, all compensatory damages, incidental and consequential damages, and other damages allowed by law.

COUNT XIV

**Fraudulent Concealment
(Based on Connecticut Law)**

378. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

379. Plaintiffs bring this Count on behalf of the Connecticut Class.

380. Defendants intentionally concealed the above-described material safety and functionality information, or acted with reckless disregard for the truth, and denied Plaintiffs and the other Class members information that is highly relevant to their purchasing decision.

381. Defendants further affirmatively misrepresented to Plaintiffs in advertising and other forms of communication, including standard and uniform material provided with each car,

1 that the Class Vehicles they were selling were new, had no significant defects, and would perform
2 and operate properly when driven in normal usage.

3 382. Defendants knew these representations were false when made.

4 383. The Class Vehicles purchased or leased by Plaintiffs and the other Class members
5 were, in fact, defective, unsafe, and unreliable because the Class Vehicles contained faulty and
6 defective CAN buses, as alleged herein.

7 384. Defendants had a duty to disclose that these Class Vehicles were defective,
8 unsafe, and unreliable in that certain crucial safety functions of the Class Vehicles would be
9 rendered inoperative due to faulty and defective CAN buses, because Plaintiffs and the other
10 Class members relied on Defendants' material representations that the Class Vehicles they were
11 purchasing were safe and free from defects.

12 385. The aforementioned concealment was material because if it had been disclosed
13 Plaintiffs and the other Class members would not have bought or leased the Class Vehicles, or
14 would not have bought or leased those Vehicles at the prices they paid.

15 386. The aforementioned representations were material because they were facts that
16 would typically be relied on by a person purchasing or leasing a new motor vehicle. Defendants
17 knew or recklessly disregarded that their representations were false because they knew that the
18 CAN buses were susceptible to hacking. Defendants intentionally made the false statements in
19 order to sell Class Vehicles.

20 387. Plaintiffs and the other Class members relied on Defendants' reputation – along
21 with Defendants' failure to disclose the faulty and defective nature of the CAN buses and
22 Defendants' affirmative assurance that their Class Vehicles were safe and reliable, and other
23 similar false statements – in purchasing or leasing Defendants' Class Vehicles.

24 388. As a result of their reliance, Plaintiffs and the other Class members have been
25 injured in an amount to be proven at trial, including, but not limited to, their lost benefit of the
26 bargain and overpayment at the time of purchase or lease and/or the diminished value of their
27 Class Vehicles.

28 389. Defendants' conduct was knowing, intentional, with malice, demonstrated a

1 complete lack of care, and was in reckless disregard for the rights of Plaintiffs and the other Class
2 members.

3 390. Plaintiffs and the other Class members are therefore entitled to an award of
4 punitive damages.

5 **Claims Brought on Behalf of the Delaware Class**

6 **COUNT XXXV**

7 **Violation of the Delaware Consumer Fraud Act**

8 **(6 Delaware Code Sections 2513, et seq.)**

9 391. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set
10 forth herein.

11 392. The Delaware Consumer Fraud Act (“CFA”) prohibits the “act, use or
12 employment by any person of any deception, fraud, false pretense, false promise,
13 misrepresentation, or the concealment, suppression, or omission of any material fact with intent
14 that others rely upon such concealment, suppression or omission, in connection with the sale,
15 lease or advertisement of any merchandise, whether or not any person has in fact been misled,
16 deceived or damaged thereby.” 6 Del. Code § 2513(a).

17 393. Defendants are persons with the meaning of 6 Del. Code § 2511(7).

18 394. As described herein Defendants made false representations regarding the safety
19 and reliability of their vehicles and concealed important facts regarding the susceptibility of their
20 vehicles to hacking. Defendants intended that others rely on these misrepresentations and
21 omissions in connection with the sale and lease of their vehicles.

22 395. Defendants’ actions as set forth above occurred in the conduct of trade or
23 commerce.

24 396. Defendants’ conduct proximately caused injuries to Plaintiffs and the Class.

25 397. Plaintiffs and the Class were injured as a result of Defendants’ conduct in that
26 Plaintiffs overpaid for their Defective Vehicles and did not receive the benefit of their bargain,
27 and their vehicles have suffered a diminution in value. These injuries are the direct and natural
28 consequence of Defendants’ misrepresentations and omissions.

1 398. Plaintiffs are entitled to recover damages, as well as punitive damages for
2 Defendants’ gross and aggravated misconduct.

3 **COUNT XXXVI**

4 **Violation of the Delaware Deceptive Trade Practices Act**
5 **(6 Delaware Code Sections 2532, et seq.)**

6 399. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set
7 forth herein.

8 400. Delaware’s Deceptive Trade Practices Act (“DTPA”) prohibits a person from
9 engaging in a “deceptive trade practice,” which includes: “(5) Represent[ing] that goods or
10 services have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities that
11 they do not have, or that a person has a sponsorship, approval, status, affiliation, or connection
12 that the person does not have”; “(7) Represent[ing] that goods or services are of a particular
13 standard, quality, or grade, or that goods are of a particular style or model, if they are of another”;
14 “(9) Advertis[ing] goods or services with intent not to sell them as advertised”; or
15 “(12) Engag[ing] in any other conduct which similarly creates a likelihood of confusion or of
16 misunderstanding.”

17 401. Defendants are persons with the meaning of 6 Del. Code § 2531(5).

18 402. In the course of Defendants’ business, they willfully failed to disclose and
19 actively concealed the dangerous risk of the Defective Vehicles being hacked as described above.
20 Accordingly, Defendants engaged in unlawful trade practices, including representing that
21 Defective Vehicles have characteristics, uses, benefits, and qualities which they do not have;
22 representing that Defective Vehicles are of a particular standard and quality when they are not;
23 advertising Defective Vehicles with the intent not to sell them as advertised; and otherwise
24 engaging in conduct likely to deceive.

25 403. Defendants’ actions as set forth above occurred in the conduct of trade or
26 commerce.

27 404. Defendants’ conduct proximately caused injuries to Plaintiffs and the Class.

28 405. Plaintiffs and the Class were injured as a result of Defendants’ conduct in that

1 Plaintiffs overpaid for their Defective Vehicles and did not receive the benefit of their bargain,
2 and their vehicles have suffered a diminution in value. These injuries are the direct and natural
3 consequence of Defendants’ misrepresentations and omissions.

4 406. Plaintiffs seek injunctive relief and, if awarded damages under Delaware common
5 law or Delaware Consumer Fraud Act, treble damages pursuant to 6 Del. Code § 2533(c).

6 407. Plaintiffs also seek punitive damages based on the outrageousness and
7 recklessness of Defendants’ conduct and their high net worth.

8 **COUNT XXXVII**

9 **Breach of Express Warranty**
10 **(6 Delaware Code Section 2-313)**

11 408. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set
12 forth herein.

13 409. Defendants are and were at all relevant times merchants with respect to motor
14 vehicles.

15 410. In the course of selling their vehicles, Defendants expressly warranted in writing
16 that the Vehicles were covered by a Basic Warranty.

17 411. Defendants breached the express warranty to repair and adjust to correct defects
18 in materials and workmanship of any part supplied by Defendants. Defendants have not repaired
19 or adjusted, and have been unable to repair or adjust, the Vehicles’ materials and workmanship
20 defects.

21 412. In addition to this Basic Warranty, Defendants expressly warranted several
22 attributes, characteristics and qualities. These affirmations and promises were part of the basis of
23 the bargain between the parties.

24 413. These additional warranties were also breached because the Defective Vehicles
25 were not fully operational, safe, or reliable, nor did they comply with the warranties expressly
26 made to purchasers or lessees. Defendants did not provide at the time of sale, and have not
27 provided since then, vehicles conforming to these express warranties.

28 414. Furthermore, the limited warranty of repair and/or adjustments to defective parts

1 fails in its essential purpose because the contractual remedy is insufficient to make the Plaintiffs
2 and the Class whole and because the Defendants have failed and/or have refused to adequately
3 provide the promised remedies within a reasonable time.

4 415. Accordingly, recovery by the Plaintiffs is not limited to the limited warranty of
5 repair or adjustments to parts defective in materials or workmanship, and Plaintiffs seek all
6 remedies as allowed by law.

7 416. Also, as alleged in more detail herein, at the time that Defendants warranted and
8 sold the vehicles they knew that the vehicles did not conform to the warranties and were
9 inherently defective, and Defendants wrongfully and fraudulently misrepresented and/or
10 concealed material facts regarding their vehicles. Plaintiffs and the Class were therefore induced
11 to purchase the vehicles under false and/or fraudulent pretenses.

12 417. Moreover, many of the damages flowing from the Defective Vehicles cannot be
13 resolved through the limited remedy of “replacement or adjustments,” as those incidental and
14 consequential damages have already been suffered due to Defendants’ fraudulent conduct as
15 alleged herein, and due to their failure and/or continued failure to provide such limited remedy
16 within a reasonable time, and any limitation on Plaintiffs’ and the Class’ remedies would be
17 insufficient to make Plaintiffs and the Class whole.

18 418. Finally, due to the Defendants’ breach of warranties as set forth herein, Plaintiffs
19 and the Class assert as an additional and/or alternative remedy, as set forth in 6 Del. Code. § 2-
20 608, for a revocation of acceptance of the goods, and for a return to Plaintiffs and to the Class of
21 the purchase price of all vehicles currently owned.

22 419. Defendants were provided notice of these issues by the instant Complaint, and by
23 other means before or within a reasonable amount of time after the allegations of Class Vehicle
24 defects became public.

25 420. As a direct and proximate result of Defendants’ breach of express warranties,
26 Plaintiffs and the other Class members have been damaged in an amount to be determined at trial.

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COUNT XXXVIII

**Breach of the Implied Warranty of Merchantability
(6 Delaware Code Section 2-314)**

421. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

422. Defendants are and were at all relevant times merchants with respect to motor vehicles.

423. A warranty that the Defective Vehicles were in merchantable condition is implied by law in the instant transactions.

424. These vehicles, when sold and at all times thereafter, were not in merchantable condition and are not fit for the ordinary purpose for which cars are used. As set forth above in detail, the Defective Vehicles are inherently defective in that the CAN buses are susceptible to hacking.

425. Defendants were provided notice of these issues by numerous means, including the instant complaint, and by numerous communications before or within a reasonable amount of time after the allegations of vehicle defects became public.

426. As a direct and proximate result of Defendants’ breach of the warranties of merchantability, Plaintiffs and the Class have been damaged in an amount to be proven at trial.

COUNT XXXIX

**Breach of Contract/Common Law Warranty
(Based on Delaware Law)**

427. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

428. To the extent Defendants’ repair or adjust commitment is deemed not to be a warranty under Delaware’s Commercial Code, Plaintiffs plead in the alternative under common law warranty and contract law. Defendants limited the remedies available to Plaintiffs and the Class to just repairs and adjustments needed to correct defects in materials or workmanship of any part supplied by Defendants, and/or warranted the quality or nature of those services to Plaintiffs.

1 429. Defendants breached this warranty or contract obligation by failing to repair the
2 Defective Vehicles, or to replace them.

3 430. As a direct and proximate result of Defendants’ breach of contract or common
4 law warranty, Plaintiffs and the Class have been damaged in an amount to be proven at trial,
5 which shall include, but is not limited to, all compensatory damages, incidental and consequential
6 damages, and other damages allowed by law.

7 **Claims Brought on Behalf of the District of Columbia Class**

8 **COUNT XL**

9 **Violation of the Consumer Protection Procedures Act**
10 **(District of Columbia Code Sections 28-3901, et seq.)**

11 431. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set
12 forth herein.

13 432. Defendants are “persons” under D.C. Code § 28-3901(a)(1).

14 433. Plaintiffs are “consumers,” as defined by D.C. Code § 28-3901(1)(2), who
15 purchased or leased one or more Defective Vehicles.

16 434. Defendants all participated in unfair or deceptive acts or practices that violated the
17 Consumer Protection Procedures Act (“CPPA”), D.C. Code §§ 28-3901, et seq., as described
18 above and below. Defendants each are directly liable for these violations of law. TMC also is
19 liable for TMS’s violations of the CPPA because TMS acts as TMC’s general agent in the United
20 States for purposes of sales and marketing.

21 435. By failing to disclose and actively concealing the dangerous risk of hacking in
22 Defective Vehicles equipped with CAN buses, Defendants engaged in unfair or deceptive
23 practices prohibited by the CPPA, D.C. Code § 28-3901, et seq., including (1) representing that
24 Defective Vehicles have characteristics, uses, benefits, and qualities which they do not have,
25 (2) representing that Defective Vehicles are of a particular standard, quality, and grade when they
26 are not, (3) advertising Defective Vehicles with the intent not to sell them as advertised,
27 (4) representing that a transaction involving Defective Vehicles confers or involves rights,
28 remedies, and obligations which it does not, and (5) representing that the subject of a transaction

1 involving Defective Vehicles has been supplied in accordance with a previous representation
2 when it has not.

3 436. Defendants’ actions as set forth above occurred in the conduct of trade or
4 commerce.

5 437. Defendants’ actions affect the public interest because Plaintiffs were injured in
6 exactly the same way as millions of others purchasing and/or leasing Defendants’ vehicles as a
7 result of Defendants’ generalized course of deception. All of the wrongful conduct alleged herein
8 occurred, and continues to occur, in the conduct of Defendants’ business.

9 438. Plaintiffs and the Class suffered ascertainable loss as a result of Defendants’
10 conduct. Plaintiffs overpaid for their Defective Vehicles and did not receive the benefit of their
11 bargain, and their vehicles have suffered a diminution in value.

12 439. Defendants’ conduct proximately caused the injuries to Plaintiffs and the Class.

13 440. Defendants are liable to Plaintiffs and the Class for damages in amounts to be
14 proven at trial, including attorneys’ fees, costs, and treble damages.

15 441. Plaintiffs further allege that Defendants are liable for punitive damages under the
16 CPPA as Defendants acted with a state of mind evincing malice or their equivalent.

17 **COUNT XLI**

18 **BREACH OF EXPRESS WARRANTY**
19 **(District of Columbia Code Section 28:2-313)**

20 442. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set
21 forth herein.

22 443. Defendants are and were at all relevant times a seller with respect to motor
23 vehicles.

24 444. In the course of selling their vehicles, Defendants expressly warranted in writing
25 that the Vehicles were covered by a Basic Warranty.

26 445. Defendants breached the express warranty to repair and adjust to correct defects in
27 materials and workmanship of any part supplied by Defendants. Defendants have not repaired or
28 adjusted, and have been unable to repair or adjust, the Vehicles’ materials and workmanship defects.

1 446. In addition to this Basic Warranty, Defendants expressly warranted several
2 attributes, characteristics and qualities. These affirmations and promises were part of the basis of
3 the bargain between the parties.

4 447. These additional warranties were also breached because the Defective Vehicles
5 were not fully operational, safe, or reliable, nor did they comply with the warranties expressly
6 made to purchasers or lessees. Defendants did not provide at the time of sale, and have not
7 provided since then, vehicles conforming to these express warranties.

8 448. Furthermore, the limited warranty of repair and/or adjustments to defective parts
9 fails in its essential purpose because the contractual remedy is insufficient to make the Plaintiffs
10 and the Class whole and because the Defendants have failed and/or have refused to adequately
11 provide the promised remedies within a reasonable time.

12 449. Accordingly, recovery by the Plaintiffs is not limited to the limited warranty of
13 repair or adjustments to parts defective in materials or workmanship, and Plaintiffs seek all
14 remedies as allowed by law.

15 450. Also, as alleged in more detail herein, at the time that Defendants warranted and
16 sold the vehicles they knew that the vehicles did not conform to the warranties and were
17 inherently defective, and Defendants wrongfully and fraudulently misrepresented and/or
18 concealed material facts regarding their vehicles. Plaintiffs and the Class were therefore induced
19 to purchase the vehicles under false and/or fraudulent pretenses.

20 451. Moreover, many of the damages flowing from the Defective Vehicles cannot be
21 resolved through the limited remedy of “replacement or adjustments,” as those incidental and
22 consequential damages have already been suffered due to Defendants’ fraudulent conduct as
23 alleged herein, and due to their failure and/or continued failure to provide such limited remedy
24 within a reasonable time, and any limitation on Plaintiffs’ and the Class’ remedies would be
25 insufficient to make Plaintiffs and the Class whole.

26 452. Finally, due to the Defendants’ breach of warranties as set forth herein, Plaintiffs
27 and the Class assert as an additional and/or alternative remedy, as set forth in D.C. Code § 28:2-
28 608, for a revocation of acceptance of the goods, and for a return to Plaintiffs and to the Class of

1 the purchase price of all vehicles currently owned.

2 453. Defendants were provided notice of these issues by numerous complaints filed
3 against them, including the instant complaint, before or within a reasonable amount of time after
4 the allegations of vehicle defects became public.

5 454. As a direct and proximate result of Defendants’ breach of express warranties,
6 Plaintiffs and the Class have been damaged in an amount to be determined at trial.

7 **COUNT XLII**

8 **Breach of the Implied Warranty of Merchantability**

9 **(District of Columbia Code Section 28:2-314)**

10 455. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set
11 forth herein.

12 456. Defendants are and were at all relevant times merchants with respect to motor
13 vehicles.

14 457. A warranty that the Defective Vehicles were in merchantable condition is implied
15 by law in the instant transactions.

16 458. These vehicles, when sold and at all times thereafter, were not in merchantable
17 condition and are not fit for the ordinary purpose for which cars are used. As set forth above in
18 detail, the Defective Vehicles are inherently defective in that the CAN buses are susceptible to
19 hacking.

20 459. Defendants were provided notice of these issues by numerous means, including
21 the instant complaint, and by numerous communications before or within a reasonable amount of
22 time after the allegations of vehicle defects became public.

23 460. As a direct and proximate result of Defendants’ breach of the warranties of
24 merchantability, Plaintiffs and the Class have been damaged in an amount to be proven at trial.

25 **COUNT XLIII**

26 **Breach of Contract/Common Law Warranty**

27 **(Based on District of Columbia Law)**

28 461. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set

1 forth herein.

2 462. To the extent Defendants’ repair or adjust commitment is deemed not to be a
3 warranty under the District of Columbia’s Commercial Code, Plaintiffs plead in the alternative
4 under common law warranty and contract law. Defendants limited the remedies available to
5 Plaintiffs and the Class to just repairs and adjustments needed to correct defects in materials or
6 workmanship of any part supplied by Defendants, and/or warranted the quality or nature of those
7 services to Plaintiffs.

8 463. Defendants breached this warranty or contract obligation by failing to repair the
9 Defective Vehicles, or to replace them.

10 464. As a direct and proximate result of Defendants’ breach of contract or common
11 law warranty, Plaintiffs and the Class have been damaged in an amount to be proven at trial,
12 which shall include, but is not limited to, all compensatory damages, incidental and consequential
13 damages, and other damages allowed by law.

14 **Claims Brought on Behalf of the Florida Class**

15 **COUNT XLIV**

16 **Violations of the Florida Deceptive & Unfair Trade Practices Act**
17 **(Florida Statutes Sections 501.201, et seq.)**

18 465. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set
19 forth herein.

20 466. Plaintiffs bring this Count on behalf of the Florida Class.

21 467. Florida’s Deceptive and Unfair Trade Practices Act prohibits “[u]nfair methods of
22 competition, unconscionable acts or practices, and unfair or deceptive acts or practices in the
23 conduct of any trade or commerce.” Fla. Stat. § 501.204(1).

24 468. In the course of Defendants’ business, they willfully failed to disclose and
25 actively concealed the dangerous risk of CAN bus hacking in Class Vehicles as described above.
26 Accordingly, Defendants engaged in unfair methods of competition, unconscionable acts or
27 practices, and unfair or deceptive acts or practices as defined in Fla. Stat. § 501.204(1), including
28 representing that Class Vehicles have characteristics, uses, benefits, and qualities which they do

1 not have; representing that Class Vehicles are of a particular standard and quality when they are
2 not; advertising Class Vehicles with the intent not to sell them as advertised; and otherwise
3 engaging in conduct likely to deceive.

4 469. Defendants’ actions as set forth above occurred in the conduct of trade or
5 commerce.

6 470. Defendants’ conduct proximately caused injuries to Plaintiffs and the other Class
7 members.

8 471. Plaintiffs and the other Class members were injured as a result of Defendants’
9 conduct in that Plaintiffs and the other Class members overpaid for their Class Vehicles and did
10 not receive the benefit of their bargain, and their Class Vehicles have suffered a diminution in
11 value. These injuries are the direct and natural consequence of Defendants’ misrepresentations
12 and omissions.

13 **COUNT XLV**

14 **Breach of Express Warranty**
15 **(Florida Statutes Section 672.313)**

16 472. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set
17 forth herein.

18 473. Plaintiffs bring this Count on behalf of the Florida Class.

19 474. Defendants are and were at all relevant times merchants with respect to motor
20 vehicles.

21 475. In their Limited Warranties and in advertisements, brochures, and through other
22 statements in the media, Defendants expressly warranted that they would repair or replace defects
23 in material or workmanship free of charge if they became apparent during the warranty period.

24 For example, the following language appears in all Class Vehicle Warranty booklets:

25 1. Toyota’s warranty

26 *When Warranty Begins*

27 The warranty period begins on the vehicle’s in-service date, which is the first date
28 the vehicle is either delivered to an ultimate purchaser, leased, or used as a
company car or demonstrator.

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Repairs Made at No Charge

Repairs and adjustments covered by these warranties are made at no charge for parts and labor.

Basic Warranty

This warranty covers repairs and adjustments needed to correct defects in materials or workmanship of any part supplied by Toyota Coverage is for 36 months or 36,000 miles, whichever occurs first

2. Ford’s warranty

KNOW WHEN YOUR WARRANTY BEGINS

Your Warranty Start Date is the day you take delivery of your new vehicle or the day it is first put into service

QUICK REFERENCE: WARRANTY COVERAGE

. . .

Your Bumper to Bumper Coverage lasts for three years - unless you drive more than 36,000 miles before three years elapse.

WHO PAYS FOR WARRANTY REPAIRS?

You will not be charged for repairs covered by any applicable warranty during the stated coverage periods

3. GM’s warranty

Warranty Period

The warranty period for all coverages begins on the date the vehicle is first delivered or put in use and ends at the expiration of the coverage period.

Bumper-to-Bumper Coverage

The complete vehicle is covered for 4 years or 50,000 miles, whichever comes first

No Charge

Warranty repairs, including towing, parts, and labor, will be made at no charge.

Repairs Covered

This warranty covers repairs to correct any vehicle defect related to materials or workmanship occurring during the warranty period. Needed repairs will be performed using new or remanufactured parts.

476. Defendants’ Limited Warranties, as well as advertisements, brochures, and other statements in the media regarding the Class Vehicles, formed the basis of the bargain that was reached when Plaintiffs and the other Class members purchased or leased their Class Vehicles equipped with a CAN bus from Defendants.

1 477. Defendants breached the express warranty to repair and adjust to correct defects
2 in materials and workmanship of any part supplied by Defendants. Defendants have not repaired
3 or adjusted, and have been unable to repair or adjust, the Class Vehicles' materials and
4 workmanship defects.

5 478. In addition to these Limited Warranties, Defendants otherwise expressly
6 warranted several attributes, characteristics, and qualities of the CAN bus.

7 479. These warranties are only a sampling of the numerous warranties that Defendants
8 made relating to safety, reliability, and operation. Generally these express warranties promise
9 heightened, superior, and state-of-the-art safety, reliability, and performance standards, and
10 promote the benefits of the CAN bus. These warranties were made, *inter alia*, in advertisements,
11 on Defendants' websites, and in uniform statements provided by Defendants to be made by
12 salespeople, or made publicly by Defendants' executives or by other authorized representatives.
13 These affirmations and promises were part of the basis of the bargain between the parties.

14 480. These additional warranties were also breached because the Class Vehicles were
15 not fully operational, safe, or reliable (and remained so even after the problems were
16 acknowledged), nor did they comply with the warranties expressly made to purchasers or lessees.
17 Defendants did not provide at the time of sale, and have not provided since then, Class Vehicles
18 conforming to these express warranties.

19 481. Furthermore, the limited warranty of repair and/or adjustments to defective parts,
20 fails in its essential purpose because the contractual remedy is insufficient to make s and the other
21 Class members whole and because Defendants have failed and/or have refused to adequately
22 provide the promised remedies within a reasonable time.

23 482. Accordingly, recovery by Plaintiffs and the other Class members is not limited to
24 the limited warranty of repair or adjustments to parts defective in materials or workmanship, and
25 Plaintiffs, individually and on behalf of the other Class members, seek all remedies as allowed by
26 law.

27 483. Also, as alleged in more detail herein, at the time that Defendants warranted and
28 sold the Class Vehicles they knew that the Class Vehicles did not conform to the warranties and

1 were inherently defective, and Defendants wrongfully and fraudulently misrepresented and/or
2 concealed material facts regarding their Class Vehicles. Plaintiffs and the other Class members
3 were therefore induced to purchase or lease the Class Vehicles under false and/or fraudulent
4 pretenses.

5 484. Moreover, many of the injuries flowing from the Class Vehicles cannot be
6 resolved through the limited remedy of “replacement or adjustments,” as many incidental and
7 consequential damages have already been suffered due to Defendants’ fraudulent conduct as
8 alleged herein, and due to their failure and/or continued failure to provide such limited remedy
9 within a reasonable time, and any limitation on Plaintiffs’ and the other Class members’ remedies
10 would be insufficient to make Plaintiffs and the other Class members whole.

11 485. Finally, due to Defendants’ breach of warranties as set forth herein, Plaintiffs and
12 the other Class members assert as an additional and/or alternative remedy, as set forth in Fla. Stat.
13 § 672.608, for a revocation of acceptance of the goods, and for a return to Plaintiffs and to the
14 other Class members of the purchase price of all Class Vehicles currently owned for such other
15 incidental and consequential damages as allowed under Fla. Stat. §§ 672.711 and 672.608.

16 486. Defendants were provided notice of these issues by the instant Complaint, and by
17 other means before or within a reasonable amount of time after the allegations of Class Vehicle
18 defects became public.

19 487. As a direct and proximate result of Defendants’ breach of express warranties,
20 Plaintiffs and the other Class members have been damaged in an amount to be determined at trial.

21 **COUNT XLVI**

22 **Breach of Implied Warranty of Merchantability**
23 **(Florida Statutes Section 672.314)**

24 488. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set
25 forth herein.

26 489. Plaintiffs bring this Count on behalf of the Florida Class.

27 490. Defendants are and were at all relevant times merchants with respect to motor
28 vehicles.

1 491. A warranty that the Class Vehicles were in merchantable condition is implied by
2 law in the instant transactions.

3 492. These Class Vehicles, when sold and at all times thereafter, were not in
4 merchantable condition and are not fit for the ordinary purpose for which cars are used.
5 Defendants were provided notice of these issues by numerous complaints filed against them,
6 including the instant Complaint, and by other means.

7 493. As a direct and proximate result of Defendants’ breach of the warranties of
8 merchantability, Plaintiffs and the Class have been damaged in an amount to be proven at trial.

9 **COUNT XLVII**

10 **Breach of Contract/Common Law Warranty**
11 **(Based on Florida Law)**

12 494. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set
13 forth herein.

14 495. Plaintiffs bring this Count on behalf of the Florida Class.

15 496. To the extent Defendants’ limited remedies are deemed not to be warranties under
16 Florida’s Commercial Code, Plaintiffs, individually and on behalf of the other Class members,
17 plead in the alternative under common law warranty and contract law. Defendants limited the
18 remedies available to Plaintiffs and the other Class members to repairs and adjustments needed to
19 correct defects in materials or workmanship of any part supplied by Defendants, and/or warranted
20 the quality or nature of those services to Plaintiffs and the other Class members.

21 497. Defendants breached this warranty or contract obligation by failing to repair the
22 Class Vehicles, or to replace them.

23 498. As a direct and proximate result of Defendants’ breach of contract or common
24 law warranty, Plaintiffs and the other Class members have been damaged in an amount to be
25 proven at trial, which shall include, but is not limited to, all compensatory damages, incidental
26 and consequential damages, and other damages allowed by law.

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COUNT XLVIII

**Fraudulent Concealment
(Based on Florida Law)**

499. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

500. Plaintiffs bring this Count on behalf of the Florida Class.

501. Defendants intentionally concealed the above-described material safety and functionality information, or acted with reckless disregard for the truth, and denied Plaintiffs and the other Class members information that is highly relevant to their purchasing decision.

502. Defendants further affirmatively misrepresented to Plaintiffs in advertising and other forms of communication, including standard and uniform material provided with each car, that the Class Vehicles they was selling were new, had no significant defects, and would perform and operate properly when driven in normal usage.

503. Defendants knew these representations were false when made.

504. The Class Vehicles purchased or leased by Plaintiffs and the other Class members were, in fact, defective, unsafe, and unreliable because the Class Vehicles contained faulty and defective CAN buses, as alleged herein.

505. Defendants had a duty to disclose that these Class Vehicles were defective, unsafe, and unreliable in that certain crucial safety functions of the Class Vehicles would be rendered inoperative due to faulty and defective CAN buses, because Plaintiffs and the other Class members relied on Defendants’ material representations that the Class Vehicles they were purchasing were safe and free from defects.

506. The aforementioned concealment was material because if it had been disclosed Plaintiffs and the other Class members would not have bought or leased the Class Vehicles, or would not have bought or leased those Vehicles at the prices they paid.

507. The aforementioned representations were material because they were facts that would typically be relied on by a person purchasing or leasing a new motor vehicle. Defendants knew or recklessly disregarded that their representations were false because they knew the CAN

1 buses were susceptible to hacking. Defendants intentionally made the false statements in order to
2 sell Class Vehicles.

3 508. Plaintiffs and the other Class members relied on Defendants’ reputations – along
4 with Defendants’ failure to disclose the faulty and defective nature of the CAN bus and
5 Defendants’ affirmative assurances that their Class Vehicles were safe and reliable, and other
6 similar false statements – in purchasing or leasing Defendants’ Class Vehicles.

7 509. As a result of their reliance, Plaintiffs and the other Class members have been
8 injured in an amount to be proven at trial, including, but not limited to, their lost benefit of the
9 bargain and overpayment at the time of purchase or lease and/or the diminished value of their
10 Class Vehicles.

11 510. Defendants’ conduct was knowing, intentional, with malice, demonstrated a
12 complete lack of care, and was in reckless disregard for the rights of Plaintiffs and the other Class
13 members.

14 511. Plaintiffs and the other Class members are therefore entitled to an award of
15 punitive damages.

16 **Claims Brought on Behalf of the Georgia Class**

17 **COUNT XLIX**

18 **Violation of Georgia’s Uniform Deceptive Trade Practices Act**
19 **(Georgia Code Annotated Sections 10-1-370, et seq.)**

20 512. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set
21 forth herein.

22 513. The conduct of Defendants as set forth herein constitutes unfair or deceptive acts
23 or practices, including, but not limited to Defendants’ manufacture and sale of vehicles with CAN
24 buses susceptible to hacking, which Defendants failed to adequately investigate, disclose and
25 remedy, and their misrepresentations and omissions regarding the safety and reliability of their
26 vehicles.

27 514. Defendants’ actions as set forth above occurred in the conduct of trade or
28 commerce.

1 515. Defendants’ actions impact the public interest because Plaintiffs were injured in
2 exactly the same way as millions of others purchasing and/or leasing Defendants vehicles as a
3 result of Defendants’ generalized course of deception. All of the wrongful conduct alleged herein
4 occurred, and continues to occur, in the conduct of Defendants’ business.

5 516. Plaintiffs and the Class were injured as a result of Defendants’ conduct.

6 517. Plaintiffs overpaid for their Defective Vehicles and did not receive the benefit of
7 their bargain, and their vehicles have suffered a diminution in value.

8 518. Defendants’ conduct proximately caused the injuries to Plaintiffs and the Class.

9 519. Defendants are liable to Plaintiffs and the Class for damages in amounts to be
10 proven at trial, including attorneys’ fees, costs, and treble damages.

11 520. Pursuant to Ga. Code Ann. § 10-1-370, Plaintiffs will serve the Georgia Attorney
12 General with a copy of this complaint as Plaintiffs seek injunctive relief.

13 **COUNT L**

14 **Violation of Georgia’s Fair Business Practices Act**
15 **(Georgia Code Annotated Sections 10-1-390, et seq.)**

16 521. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set
17 forth herein.

18 522. The conduct of Defendants as set forth herein constitutes unfair or deceptive acts
19 or practices, including, but not limited to, Defendants’ manufacture and sale of vehicles with
20 CAN buses susceptible to hacking, which Defendants failed to adequately investigate, disclose
21 and remedy, and their misrepresentations and omissions regarding the safety and reliability of
22 their vehicles.

23 523. Defendants’ actions as set forth above occurred in the conduct of trade or
24 commerce.

25 524. Defendants’ actions impact the public interest because Plaintiffs were injured in
26 exactly the same way as millions of others purchasing and/or leasing Defendants vehicles as a
27 result of Defendants’ generalized course of deception. All of the wrongful conduct alleged herein
28 occurred, and continues to occur, in the conduct of Defendants’ business.

1 525. Plaintiffs and the Class were injured as a result of Defendants’ conduct.

2 526. Plaintiffs overpaid for their Defective Vehicles and did not receive the benefit of
3 their bargain, and their vehicles have suffered a diminution in value.

4 527. Defendants’ conduct proximately caused the injuries to Plaintiffs and the Class.

5 528. Defendants are liable to Plaintiffs and the Class for damages in amounts to be
6 proven at trial, including attorneys’ fees, costs, and treble damages.

7 529. Pursuant to Ga. Code Ann. § 10-1-390, Plaintiffs will serve the Georgia Attorney
8 General with a copy of this complaint as Plaintiffs seek injunctive relief.

9 **COUNT LI**

10 **Breach of Express Warranty**
11 **(Georgia Code Annotated Sections 11-2-313)**

12 530. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set
13 forth herein.

14 531. Plaintiffs bring this Count on behalf of the Georgia Class.

15 532. Defendants are and were at all relevant times merchants with respect to motor
16 vehicles.

17 533. In their Limited Warranties and in advertisements, brochures, and through other
18 statements in the media, Defendants expressly warranted that they would repair or replace defects
19 in material or workmanship free of charge if they became apparent during the warranty period.
20 For example, the following language appears in all Class Vehicle Warranty booklets:

21 1. Toyota’s warranty

22 *When Warranty Begins*

23 The warranty period begins on the vehicle’s in-service date, which is the first date
24 the vehicle is either delivered to an ultimate purchaser, leased, or used as a
25 company car or demonstrator.

26 *Repairs Made at No Charge*

27 Repairs and adjustments covered by these warranties are made at no charge for
28 parts and labor.

Basic Warranty

This warranty covers repairs and adjustments needed to correct defects in materials
or workmanship of any part supplied by Toyota . . . Coverage is for 36 months or

1 36,000 miles, whichever occurs first

2 2. Ford’s warranty

3 *KNOW WHEN YOUR WARRANTY BEGINS*

4 Your Warranty Start Date is the day you take delivery of your new vehicle or the
5 day it is first put into service

6 *QUICK REFERENCE: WARRANTY COVERAGE*

7 . . .

8 Your Bumper to Bumper Coverage lasts for three years - unless you drive more
9 than 36,000 miles before three years elapse.

10 *WHO PAYS FOR WARRANTY REPAIRS?*

11 You will not be charged for repairs covered by any applicable warranty during the
12 stated coverage periods

13 3. GM’s warranty

14 *Warranty Period*

15 The warranty period for all coverages begins on the date the vehicle is first
16 delivered or put in use and ends at the expiration of the coverage period.

17 *Bumper-to-Bumper Coverage*

18 The complete vehicle is covered for 4 years or 50,000 miles, whichever comes first
19

20 *No Charge*

21 Warranty repairs, including towing, parts, and labor, will be made at no charge.

22 *Repairs Covered*

23 This warranty covers repairs to correct any vehicle defect related to materials or
24 workmanship occurring during the warranty period. Needed repairs will be
25 performed using new or remanufactured parts.

26 534. Defendants’ Limited Warranties, as well as advertisements, brochures, and other
27 statements in the media regarding the Class Vehicles, formed the basis of the bargain that was
28 reached when Plaintiffs and the other Class members purchased or leased their Class Vehicles
equipped with a CAN bus from Defendants.

535. Defendants breached the express warranty to repair and adjust to correct defects
in materials and workmanship of any part supplied by Defendants. Defendants have not repaired
or adjusted, and have been unable to repair or adjust, the Class Vehicles’ materials and
workmanship defects.

1 536. In addition to these Limited Warranties, Defendants otherwise expressly
2 warranted several attributes, characteristics, and qualities of the CAN bus.

3 537. These warranties are only a sampling of the numerous warranties that Defendants
4 made relating to safety, reliability, and operation. Generally these express warranties promise
5 heightened, superior, and state-of-the-art safety, reliability, and performance standards, and
6 promote the benefits of the CAN bus. These warranties were made, *inter alia*, in advertisements,
7 on Defendants' websites, and in uniform statements provided by Defendants to be made by
8 salespeople, or made publicly by Defendants' executives or by other authorized representatives.
9 These affirmations and promises were part of the basis of the bargain between the parties.

10 538. These additional warranties were also breached because the Class Vehicles were
11 not fully operational, safe, or reliable (and remained so even after the problems were
12 acknowledged), nor did they comply with the warranties expressly made to purchasers or lessees.
13 Defendants did not provide at the time of sale, and have not provided since then, Class Vehicles
14 conforming to these express warranties.

15 539. Furthermore, the limited warranty of repair and/or adjustments to defective parts,
16 fails in its essential purpose because the contractual remedy is insufficient to make Plaintiffs and
17 the other Class members whole and because Defendants have failed and/or have refused to
18 adequately provide the promised remedies within a reasonable time.

19 540. Accordingly, recovery by Plaintiffs and the other Class members is not limited to
20 the limited warranty of repair or adjustments to parts defective in materials or workmanship, and
21 Plaintiffs, individually and on behalf of the other Class members, seek all remedies as allowed by
22 law.

23 541. Also, as alleged in more detail herein, at the time that Defendants warranted and
24 sold the Class Vehicles they knew that the Class Vehicles did not conform to the warranties and
25 were inherently defective, and Defendants wrongfully and fraudulently misrepresented and/or
26 concealed material facts regarding their Class Vehicles. Plaintiffs and the other Class members
27 were therefore induced to purchase or lease the Class Vehicles under false and/or fraudulent
28 pretenses.

1 542. Moreover, many of the injuries flowing from the Class Vehicles cannot be
2 resolved through the limited remedy of “replacement or adjustments,” as many incidental and
3 consequential damages have already been suffered due to Defendants’ fraudulent conduct as
4 alleged herein, and due to their failure and/or continued failure to provide such limited remedy
5 within a reasonable time, and any limitation on Plaintiffs’ and the other Class members’ remedies
6 would be insufficient to make Plaintiffs and the other Class members whole.

7 543. Finally, due to the Defendants’ breach of warranties as set forth herein, Plaintiffs
8 and the Class assert as an additional and/or alternative remedy, as set forth in Ga. Code Ann.
9 § 11-2-608, for a revocation of acceptance of the goods, and for a return to Plaintiffs and to the
10 Class of the purchase price of all vehicles currently owned.

11 544. Defendants were provided notice of these issues by the instant Complaint, and by
12 other means before or within a reasonable amount of time after the allegations of Class Vehicle
13 defects became public.

14 545. As a direct and proximate result of Defendants’ breach of express warranties,
15 Plaintiffs and the other Class members have been damaged in an amount to be determined at trial.

16 **COUNT LII**

17 **Breach of the Implied Warranty of Merchantability**
18 **(Georgia Code Annotated Section 11-2-314)**

19 546. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set
20 forth herein.

21 547. Defendants are and were at all relevant times merchants with respect to motor
22 vehicles.

23 548. A warranty that the Defective Vehicles were in merchantable condition is implied
24 by law in the instant transactions, pursuant to Ga. Code Ann. § 11-2-314.

25 549. These Class Vehicles, when sold and at all times thereafter, were not in
26 merchantable condition and are not fit for the ordinary purpose for which cars are used.
27 Defendants were provided notice of these issues by numerous complaints filed against them,
28 including the instant Complaint, and by other means.

1 550. As a direct and proximate result of Defendants’ breach of the warranties of
2 merchantability, Plaintiffs and the Class have been damaged in an amount to be proven at trial.

3 **COUNT LIII**

4 **Breach of Contract/Common Law Warranty**

5 551. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set
6 forth herein.

7 552. Plaintiffs bring this Count on behalf of the Georgia Class.

8 553. To the extent Defendants’ limited remedies are deemed not to be warranties under
9 Georgia’s Commercial Code, Plaintiffs, individually and on behalf of the other Class members,
10 plead in the alternative under common law warranty and contract law. Defendants limited the
11 remedies available to Plaintiffs and the other Class members to repairs and adjustments needed to
12 correct defects in materials or workmanship of any part supplied by Defendants, and/or warranted
13 the quality or nature of those services to Plaintiffs and the other Class members.

14 554. Defendants breached this warranty or contract obligation by failing to repair the
15 Class Vehicles, or to replace them.

16 555. As a direct and proximate result of Defendants’ breach of contract or common
17 law warranty, Plaintiffs and the other Class members have been damaged in an amount to be
18 proven at trial, which shall include, but is not limited to, all compensatory damages, incidental
19 and consequential damages, and other damages allowed by law.

20 **COUNT LIV**

21 **Fraud by Concealment**

22 **(Georgia Code Annotated Section 51-6-2)**

23 556. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set
24 forth herein.

25 557. As set forth above, Defendants concealed and/or suppressed material facts
26 concerning the safety of their vehicles.

27 558. Defendants intentionally concealed the above-described material safety and
28 functionality information, or acted with reckless disregard for the truth, and denied Plaintiffs and

1 the other Class members information that is highly relevant to their purchasing decision.

2 559. Defendants further affirmatively misrepresented to Plaintiffs in advertising and
3 other forms of communication, including standard and uniform material provided with each car,
4 that the Class Vehicles they was selling were new, had no significant defects, and would perform
5 and operate properly when driven in normal usage.

6 560. Defendants knew these representations were false when made.

7 561. The Class Vehicles purchased or leased by Plaintiffs and the other Class members
8 were, in fact, defective, unsafe, and unreliable because the Class Vehicles contained faulty and
9 defective CAN buses, as alleged herein.

10 562. Defendants had a duty to disclose that these Class Vehicles were defective,
11 unsafe, and unreliable in that certain crucial safety functions of the Class Vehicles would be
12 rendered inoperative due to faulty and defective CAN buses, because Plaintiffs and the other
13 Class members relied on Defendants' material representations that the Class Vehicles they were
14 purchasing were safe and free from defects.

15 563. The aforementioned concealment was material because if it had been disclosed
16 Plaintiffs and the other Class members would not have bought or leased the Class Vehicles, or
17 would not have bought or leased those Vehicles at the prices they paid.

18 564. The aforementioned representations were material because they were facts that
19 would typically be relied on by a person purchasing or leasing a new motor vehicle. Defendants
20 knew or recklessly disregarded that their representations were false because they knew the CAN
21 buses were susceptible to hacking. Defendants intentionally made the false statements in order to
22 sell Class Vehicles.

23 565. Plaintiffs and the other Class members relied on Defendants' reputations – along
24 with Defendants' failure to disclose the faulty and defective nature of the CAN bus and
25 Defendants' affirmative assurances that their Class Vehicles were safe and reliable, and other
26 similar false statements – in purchasing or leasing Defendants' Class Vehicles.

27 566. As a result of their reliance, Plaintiffs and the other Class members have been
28 injured in an amount to be proven at trial, including, but not limited to, their lost benefit of the

1 bargain and overpayment at the time of purchase or lease and/or the diminished value of their
2 Class Vehicles.

3 567. Defendants’ conduct was knowing, intentional, with malice, demonstrated a
4 complete lack of care, and was in reckless disregard for the rights of Plaintiffs and the other Class
5 members.

6 568. Plaintiffs and the other Class members are therefore entitled to an award of
7 punitive damages.

8 **Claims Brought on Behalf of the Hawaii Class**

9 **COUNT LV**

10 **Unfair Competition and Practices**

11 **(Hawaii Revised Statutes Sections 480, et seq.)**

12 569. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set
13 forth herein.

14 570. Hawaii’s Revised Statute § 480-2(a) prohibits “unfair methods of competition and
15 unfair or deceptive acts or practices in the conduct of any trade or commerce. . . . “

16 571. Defendants’ conduct as set forth herein constitutes unfair methods of competition
17 and unfair or deceptive acts or practices in violation of Haw. Rev. Stat. § 480-2, because
18 Defendants’ acts and practices, including the manufacture and sale of vehicles with CAN buses
19 susceptible to hacking, and Defendants’ failure to adequately investigate, disclose and remedy
20 and Defendants’ misrepresentations and omissions regarding the safety and reliability of their
21 vehicles, offend established public policy, and because the harm they cause to consumers greatly
22 outweighs any benefits associated with those practices.

23 572. Defendants’ conduct has also impaired competition within the automotive
24 vehicles market and has prevented Plaintiffs from making fully informed decisions about whether
25 to purchase or lease Defective Vehicles and/or the price to be paid to purchase or lease Defective
26 Vehicles.

27 573. Defendants’ misrepresentations and omissions regarding the safety and reliability
28 of their Defective Vehicles were material and caused Plaintiffs to purchase or lease vehicles they

1 would not have otherwise purchased or leased, or paid as much for, had Plaintiffs known the
2 vehicles were defective.

3 574. Defendants’ acts or practices as set forth above occurred in the conduct of trade or
4 commerce.

5 575. Plaintiffs and the Class have suffered injury, including the loss of money or
6 property, as a result of Defendants’ unfair methods of competition and unfair or deceptive acts or
7 practices.

8 576. In addition to damages in amounts to be proven at trial, Plaintiffs and the Class
9 seek attorneys’ fees, costs of suit and treble damages.

10 577. Plaintiffs and the Class also seek injunctive relief to enjoin Defendants from
11 continuing their unfair competition and unfair or deceptive acts or practices.

12 **COUNT LVI**

13 **Violation of Hawaii’s Uniform Deceptive Trade Practice Act**
14 **(Hawaii Revised Statutes Sections 481A, et seq.)**

15 578. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set
16 forth herein.

17 579. Defendants participated in unfair or deceptive acts or practices that violated the
18 Uniform Deceptive Trade Practice Act (“UDAP”), Haw. Rev. Stat. § 481A, *et seq.*, as described
19 herein.

20 580. By failing to disclose and actively concealing the dangerous risk of hacking,
21 Defendants engaged in deceptive business practices prohibited by the UDAP, Haw. Rev. Stat.
22 § 481A, *et seq.*, including (1) representing that Defective Vehicles have characteristics, uses,
23 benefits, and qualities which they do not have, (2) representing that Defective Vehicles are of a
24 particular standard, quality, and grade when they are not and (3) advertising Defective Vehicles
25 with the intent not to sell them as advertised.

26 581. As alleged above, Defendants made numerous material statements about the
27 safety and reliability of Defective Vehicles that were either false or misleading. Each of these
28 statements contributed to the deceptive context of Defendants’ unlawful advertising and

1 representations as a whole.

2 582. Defendants knew that the CAN buses in Defective Vehicles were susceptible to
3 hacking, and were not suitable for their intended use. Defendants nevertheless failed to warn
4 Plaintiffs about these inherent dangers despite having a duty to do so.

5 583. Defendants owed Plaintiffs a duty to disclose the defective nature of Defective
6 Vehicles, including the dangerous risk of hacking, because they:

7 a) Possessed exclusive knowledge of the defects rendering Defective
8 Vehicles inherently more dangerous and unreliable than similar vehicles;

9 b) Intentionally concealed the hazardous situation with Defective Vehicles
10 through their deceptive marketing campaign that they designed to hide the life-threatening
11 problems from Plaintiffs; and/or

12 c) Made incomplete representations about the safety and reliability of
13 Defective Vehicles generally, while purposefully withholding material facts from Plaintiffs that
14 contradicted these representations.

15 584. Defective Vehicles pose an unreasonable risk of death or serious bodily injury to
16 Plaintiffs, passengers, other motorists, pedestrians, and the public at large, because they are
17 susceptible to hacking and loss of driver control.

18 585. Whether or not a vehicle can be hacked and control of the vehicle's essential
19 functions being removed from the driver are facts that a reasonable consumer would consider
20 important in selecting a vehicle to purchase or lease. When Plaintiffs bought Defendants' vehicles
21 for personal, family, or household purposes, they reasonably expected the vehicles would not be
22 susceptible to hacking.

23 586. Defendants' unfair or deceptive acts or practices were likely to and did in fact
24 deceive reasonable consumers, including Plaintiffs, about the true safety and reliability of the
25 Defective Vehicles.

26 587. As a result of their violations of the UDAP detailed above, Defendants caused
27 actual damage to Plaintiffs and, if not stopped, will continue to harm Plaintiffs. Plaintiffs
28 currently own or lease, or within the class period have owned or leased, Defective Vehicles that

1 are defective and inherently unsafe.

2 588. Plaintiffs risk irreparable injury as a result of Defendants’ acts and omissions in
3 violation of the UDAP, and these violations present a continuing risk to Plaintiffs as well as to the
4 general public.

5 589. Plaintiffs seek monetary damages and an order enjoining Defendants’ unfair or
6 deceptive acts or practices, restitution, punitive damages, costs of Court, attorney’s fees and any
7 other just and proper relief available under the UDAP.

8 **COUNT LVII**

9 **Breach of Express Warranty**
10 **(Hawaii Revised Statutes Section 490:2-313)**

11 590. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set
12 forth herein.

13 591. Plaintiffs bring this Count on behalf of the Hawaii Class.

14 592. Defendants are and were at all relevant times merchants with respect to motor
15 vehicles.

16 593. In their Limited Warranties and in advertisements, brochures, and through other
17 statements in the media, Defendants expressly warranted that they would repair or replace defects
18 in material or workmanship free of charge if they became apparent during the warranty period.
19 For example, the following language appears in all Class Vehicle Warranty booklets:

20 1. Toyota’s warranty

21 *When Warranty Begins*

22 The warranty period begins on the vehicle’s in-service date, which is the first date
23 the vehicle is either delivered to an ultimate purchaser, leased, or used as a
24 company car or demonstrator.

25 *Repairs Made at No Charge*

26 Repairs and adjustments covered by these warranties are made at no charge for
27 parts and labor.

28 *Basic Warranty*

This warranty covers repairs and adjustments needed to correct defects in materials
or workmanship of any part supplied by Toyota Coverage is for 36 months or
36,000 miles, whichever occurs first

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2. Ford’s warranty

KNOW WHEN YOUR WARRANTY BEGINS

Your Warranty Start Date is the day you take delivery of your new vehicle or the day it is first put into service

QUICK REFERENCE: WARRANTY COVERAGE

. . .

Your Bumper to Bumper Coverage lasts for three years - unless you drive more than 36,000 miles before three years elapse.

WHO PAYS FOR WARRANTY REPAIRS?

You will not be charged for repairs covered by any applicable warranty during the stated coverage periods

3. GM’s warranty

Warranty Period

The warranty period for all coverages begins on the date the vehicle is first delivered or put in use and ends at the expiration of the coverage period.

Bumper-to-Bumper Coverage

The complete vehicle is covered for 4 years or 50,000 miles, whichever comes first

No Charge

Warranty repairs, including towing, parts, and labor, will be made at no charge.

Repairs Covered

This warranty covers repairs to correct any vehicle defect related to materials or workmanship occurring during the warranty period. Needed repairs will be performed using new or remanufactured parts.

594. Defendants’ Limited Warranties, as well as advertisements, brochures, and other statements in the media regarding the Class Vehicles, formed the basis of the bargain that was reached when Plaintiffs and the other Class members purchased or leased their Class Vehicles equipped with a CAN bus from Defendants.

595. Defendants breached the express warranty to repair and adjust to correct defects in materials and workmanship of any part supplied by Defendants. Defendants have not repaired or adjusted, and have been unable to repair or adjust, the Class Vehicles’ materials and workmanship defects.

1 596. In addition to these Limited Warranties, Defendants otherwise expressly
2 warranted several attributes, characteristics, and qualities of the CAN bus.

3 597. These warranties are only a sampling of the numerous warranties that Defendants
4 made relating to safety, reliability, and operation. Generally these express warranties promise
5 heightened, superior, and state-of-the-art safety, reliability, and performance standards, and
6 promote the benefits of the CAN bus. These warranties were made, *inter alia*, in advertisements,
7 on Defendants' websites, and in uniform statements provided by Defendants to be made by
8 salespeople, or made publicly by Defendants' executives or by other authorized representatives.
9 These affirmations and promises were part of the basis of the bargain between the parties.

10 598. These additional warranties were also breached because the Class Vehicles were
11 not fully operational, safe, or reliable (and remained so even after the problems were
12 acknowledged), nor did they comply with the warranties expressly made to purchasers or lessees.
13 Defendants did not provide at the time of sale, and have not provided since then, Class Vehicles
14 conforming to these express warranties.

15 599. Furthermore, the limited warranty of repair and/or adjustments to defective parts,
16 fails in its essential purpose because the contractual remedy is insufficient to make Plaintiffs and
17 the other Class members whole and because Defendants have failed and/or have refused to
18 adequately provide the promised remedies within a reasonable time.

19 600. Accordingly, recovery by Plaintiffs and the other Class members is not limited to
20 the limited warranty of repair or adjustments to parts defective in materials or workmanship, and
21 Plaintiffs, individually and on behalf of the other Class members, seek all remedies as allowed by
22 law.

23 601. Also, as alleged in more detail herein, at the time that Defendants warranted and
24 sold the Class Vehicles they knew that the Class Vehicles did not conform to the warranties and
25 were inherently defective, and Defendants wrongfully and fraudulently misrepresented and/or
26 concealed material facts regarding their Class Vehicles. Plaintiffs and the other Class members
27 were therefore induced to purchase or lease the Class Vehicles under false and/or fraudulent
28 pretenses.

1 602. Moreover, many of the injuries flowing from the Class Vehicles cannot be
2 resolved through the limited remedy of “replacement or adjustments,” as many incidental and
3 consequential damages have already been suffered due to Defendants’ fraudulent conduct as
4 alleged herein, and due to their failure and/or continued failure to provide such limited remedy
5 within a reasonable time, and any limitation on Plaintiffs’ and the other Class members’ remedies
6 would be insufficient to make Plaintiffs and the other Class members whole.

7 603. Finally, due to the Defendants’ breach of warranties as set forth herein, Plaintiffs
8 and the Class assert as an additional and/or alternative remedy, as set forth in Haw. Rev. Stat.
9 § 490:2-608, for a revocation of acceptance of the goods, and for a return to Plaintiffs and to the
10 Class of the purchase price of all vehicles currently owned and for such other incidental and
11 consequential damages as allowed under Hawaii law.

12 604. Defendants were provided notice of these issues by the instant Complaint, and by
13 other means before or within a reasonable amount of time after the allegations of Class Vehicle
14 defects became public.

15 605. As a direct and proximate result of Defendants’ breach of express warranties,
16 Plaintiffs and the other Class members have been damaged in an amount to be determined at trial.

17 **COUNT LVIII**

18 **Breach of Implied Warranty of Merchantability**
19 **(Hawaii Revised Statutes Section 490:2-314)**

20 606. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set
21 forth herein.

22 607. Plaintiffs bring this Count on behalf of the Hawaii Class.

23 608. Defendants are and were at all relevant times merchants with respect to motor
24 vehicles.

25 609. A warranty that the Class Vehicles were in merchantable condition is implied by
26 law in the instant transactions.

27 610. These Class Vehicles, when sold and at all times thereafter, were not in
28 merchantable condition and are not fit for the ordinary purpose for which cars are used.

1 Defendants were provided notice of these issues by numerous complaints filed against them,
2 including the instant Complaint, and by other means.

3 611. Privity is not required in this case because Plaintiffs and the Class are intended
4 third-party beneficiaries of contracts between Defendants and their dealers; specifically, they are
5 the intended beneficiaries of Defendants’ implied warranties. The dealers were not intended to be
6 the ultimate consumers of the Defective Vehicles and have no rights under the warranty
7 agreements provided with the Defective Vehicles; the warranty agreements were designed for and
8 intended to benefit the ultimate consumers only.

9 612. As a direct and proximate result of Defendants’ breach of the warranties of
10 merchantability, Plaintiffs and the Class have been damaged in an amount to be proven at trial.

11 **COUNT LIX**

12 **Breach of Contract/Common Law Warranty**
13 **(Based on Hawaii Law)**

14 613. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set
15 forth herein.

16 614. Plaintiffs bring this Count on behalf of the Hawaii Class.

17 615. To the extent Defendants’ limited remedies are deemed not to be warranties under
18 Hawaii’s Commercial Code, Plaintiffs, individually and on behalf of the other Class members,
19 plead in the alternative under common law warranty and contract law. Defendants limited the
20 remedies available to Plaintiffs and the other Class members to repairs and adjustments needed to
21 correct defects in materials or workmanship of any part supplied by Defendants, and/or warranted
22 the quality or nature of those services to Plaintiffs and the other Class members.

23 616. Defendants breached this warranty or contract obligation by failing to repair the
24 Class Vehicles, or to replace them.

25 617. As a direct and proximate result of Defendants’ breach of contract or common
26 law warranty, Plaintiffs and the other Class members have been damaged in an amount to be
27 proven at trial, which shall include, but is not limited to, all compensatory damages, incidental
28 and consequential damages, and other damages allowed by law.

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Claims Brought on Behalf of the Idaho Class

COUNT LX

**Violations of the Idaho Consumer Protection Act
(Idaho Civil Code Sections 48-601, et seq.)**

618. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

619. Defendants are “persons” under Idaho Civil Code § 48-602(1).

620. Plaintiffs are “consumers” who purchased or leased one or more Defective Vehicles.

621. Defendants both participated in misleading, false, or deceptive acts that violated the Idaho Consumer Protection Act (“ICPA”), Idaho Civ. Code § 48-601, *et seq.*, as described above and below. Defendants each are directly liable for these violations of law. TMC also is liable for TMS’s violations of the ICPA because TMS acts as TMC’s general agent in the United States for purposes of sales and marketing.

622. By failing to disclose and actively concealing the dangerous risk of hacking in Defective Vehicles equipped with CAN buses, Defendants engaged in deceptive business practices prohibited by the ICPA, including (1) representing that Defective Vehicles have characteristics, uses, and benefits which they do not have, (2) representing that Defective Vehicles are of a particular standard, quality, and grade when they are not, (3) advertising Defective Vehicles with the intent not to sell them as advertised, and (4) engaging in acts or practices which are otherwise misleading, false, or deceptive to the consumer.

623. As alleged above, Defendants made numerous material statements about the safety and reliability of Defective Vehicles that were either false or misleading. Each of these statements contributed to the deceptive context of TMC’s and TMS’s unlawful advertising and representations as a whole.

624. Defendants knew that the CAN buses were susceptible to hacking and were not suitable for their intended use. Defendants nevertheless failed to warn Plaintiffs about these inherent dangers despite having a duty to do so.

1 625. Defendants each owed Plaintiffs a duty to disclose the defective nature of
2 Defective Vehicles, including the dangerous risk of hacking, because they:

3 a) Possessed exclusive knowledge of the defects rendering Defective
4 Vehicles inherently more dangerous and unreliable than similar vehicles;

5 b) Intentionally concealed the hazardous situation with Defective Vehicles
6 through their deceptive marketing campaign and recall program that they designed to hide the
7 life-threatening problems from Plaintiffs; and/or

8 c) Made incomplete representations about the safety and reliability of
9 Defective Vehicles while purposefully withholding material facts from Plaintiffs that contradicted
10 these representations.

11 626. Defective Vehicles equipped with CAN buses pose an unreasonable risk of death
12 or serious bodily injury to Plaintiffs, passengers, other motorists, pedestrians, and the public at
13 large, because they are susceptible to hacking.

14 627. Whether or not a vehicle can be hacked and the taken over by a third party are
15 facts that a reasonable consumer would consider important in selecting a vehicle to purchase or
16 lease. When Plaintiffs bought a Defendants Vehicle for personal, family, or household purposes,
17 they reasonably expected the vehicle would (a) not be vulnerable to hacking; and (b) equipped
18 with any necessary fail-safe mechanisms.

19 628. TMC's and TMS's misleading, false, or deceptive acts or practices were likely to
20 and did in fact deceive reasonable consumers, including Plaintiffs, about the true safety and
21 reliability of Defective Vehicles.

22 629. As a result of their violations of the ICPA detailed above, Defendants caused
23 actual damage to Plaintiffs and, if not stopped, will continue to harm Plaintiffs. Plaintiffs
24 currently own or lease, or within the class period have owned or leased, Defective Vehicles that
25 are defective and inherently unsafe. CAN bus defects have caused the value of Defective Vehicles
26 to plummet.

27 630. Plaintiffs risk irreparable injury as a result of TMC's and TMS's acts and
28 omissions in violation of the ICPA, and these violations present a continuing risk to Plaintiffs as

1 well as to the general public.

2 631. Plaintiffs also seek punitive damages against Defendants because each carried out
3 despicable conduct with willful and conscious disregard of the rights and safety of others,
4 subjecting Plaintiffs to cruel and unjust hardship as a result.

5 632. Defendants intentionally and willfully misrepresented the safety and reliability of
6 Defective Vehicles, deceived Plaintiffs on life-or-death matters, and concealed material facts that
7 only they knew, all to avoid the expense and public relations nightmare of correcting a deadly
8 flaw in the Defective Vehicles they repeatedly promised Plaintiffs were safe. Defendants'
9 unlawful conduct constitutes malice, oppression, and fraud warranting punitive damages.

10 633. Plaintiffs further seek an order enjoining Defendants' unfair or deceptive acts or
11 practices, restitution, punitive damages, costs of Court, attorney's fees under Idaho Civil Code
12 § 48-608, and any other just and proper relief available under the ICPA.

13 **COUNT LXI**

14 **Breach of Express Warranty**
15 **(Idaho Commercial Code Section 28-2-313)**

16 634. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set
17 forth herein.

18 635. Defendants are and were at all relevant times merchants with respect to motor
19 vehicles under Idaho Com. Code § 28-2-104.

20 636. Defendants' dealerships who sold Defective Vehicles to Plaintiffs and the Class
21 acted as the agents of TMS and/or TMC. Plaintiffs and the Class therefore were in a relationship
22 of privity with Defendants, to the extent such a relationship is required by Idaho Com. Code § 28-
23 2-313.

24 637. In their Limited Warranties and in advertisements, brochures, and through other
25 statements in the media, Defendants expressly warranted that they would repair or replace defects
26 in material or workmanship free of charge if they became apparent during the warranty period.
27 For example, the following language appears in all Class Vehicle Warranty booklets:
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1. Toyota's warranty

When Warranty Begins

The warranty period begins on the vehicle's in-service date, which is the first date the vehicle is either delivered to an ultimate purchaser, leased, or used as a company car or demonstrator.

Repairs Made at No Charge

Repairs and adjustments covered by these warranties are made at no charge for parts and labor.

Basic Warranty

This warranty covers repairs and adjustments needed to correct defects in materials or workmanship of any part supplied by Toyota Coverage is for 36 months or 36,000 miles, whichever occurs first

2. Ford's warranty

KNOW WHEN YOUR WARRANTY BEGINS

Your Warranty Start Date is the day you take delivery of your new vehicle or the day it is first put into service

QUICK REFERENCE: WARRANTY COVERAGE

. . .

Your Bumper to Bumper Coverage lasts for three years - unless you drive more than 36,000 miles before three years elapse.

WHO PAYS FOR WARRANTY REPAIRS?

You will not be charged for repairs covered by any applicable warranty during the stated coverage periods

3. GM's warranty

Warranty Period

The warranty period for all coverages begins on the date the vehicle is first delivered or put in use and ends at the expiration of the coverage period.

Bumper-to-Bumper Coverage

The complete vehicle is covered for 4 years or 50,000 miles, whichever comes first

No Charge

Warranty repairs, including towing, parts, and labor, will be made at no charge.

Repairs Covered

This warranty covers repairs to correct any vehicle defect related to materials or workmanship occurring during the warranty period. Needed repairs will be performed using new or remanufactured parts.

638. Defendants' Limited Warranties, as well as advertisements, brochures, and other

1 statements in the media regarding the Class Vehicles, formed the basis of the bargain that was
2 reached when Plaintiffs and the other Class members purchased or leased their Class Vehicles
3 equipped with a CAN bus from Defendants.

4 639. Defendants breached the express warranty to repair and adjust to correct defects
5 in materials and workmanship of any part supplied by Defendants. Defendants have not repaired
6 or adjusted, and have been unable to repair or adjust, the Class Vehicles' materials and
7 workmanship defects.

8 640. In addition to these Limited Warranties, Defendants otherwise expressly
9 warranted several attributes, characteristics, and qualities of the CAN bus.

10 641. These warranties are only a sampling of the numerous warranties that Defendants
11 made relating to safety, reliability, and operation. Generally these express warranties promise
12 heightened, superior, and state-of-the-art safety, reliability, and performance standards, and
13 promote the benefits of the CAN bus. These warranties were made, *inter alia*, in advertisements,
14 on Defendants' websites, and in uniform statements provided by Defendants to be made by
15 salespeople, or made publicly by Defendants' executives or by other authorized representatives.
16 These affirmations and promises were part of the basis of the bargain between the parties.

17 642. These additional warranties were also breached because the Class Vehicles were
18 not fully operational, safe, or reliable (and remained so even after the problems were
19 acknowledged), nor did they comply with the warranties expressly made to purchasers or lessees.
20 Defendants did not provide at the time of sale, and have not provided since then, Class Vehicles
21 conforming to these express warranties.

22 643. Furthermore, the limited warranty of repair and/or adjustments to defective parts,
23 fails in its essential purpose because the contractual remedy is insufficient to make Plaintiffs and
24 the other Class members whole and because Defendants have failed and/or have refused to
25 adequately provide the promised remedies within a reasonable time.

26 644. Accordingly, recovery by Plaintiffs and the other Class members is not limited to the
27 limited warranty of repair or adjustments to parts defective in materials or workmanship, and
28 Plaintiffs, individually and on behalf of the other Class members, seek all remedies as allowed by law.

1 652. These Class Vehicles, when sold and at all times thereafter, were not in
2 merchantable condition and are not fit for the ordinary purpose for which cars are used.
3 Defendants were provided notice of these issues by numerous complaints filed against them,
4 including the instant Complaint, and by other means.

5 653. Plaintiffs and the Class have had sufficient direct dealings with either the
6 Defendants or their agents (dealerships) to establish privity of contract between Plaintiffs and the
7 Class. Notwithstanding this, privity is not required in this case because Plaintiffs and the Class are
8 intended third-party beneficiaries of contracts between Defendants and their dealers; specifically,
9 they are the intended beneficiaries of Defendants’ implied warranties. The dealers were not
10 intended to be the ultimate consumers of the Defective Vehicles and have no rights under the
11 warranty agreements provided with the Defective Vehicles; the warranty agreements were
12 designed for and intended to benefit the ultimate consumers only.

13 654. As a direct and proximate result of Defendants’ breach of the warranties of
14 merchantability, Plaintiffs and the Class have been damaged in an amount to be proven at trial.

15 **COUNT LXIII**

16 **Breach of Contract/Common Law Warranty**

17 **(Under Idaho Law)**

18 655. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set
19 forth herein.

20 656. To the extent Defendants’ repair or adjust commitment is deemed not to be a
21 warranty under Idaho’s Commercial Code, Plaintiffs plead in the alternative under common law
22 warranty and contract law. Defendants limited the remedies available to Plaintiffs and the other
23 Class members to repairs and adjustments needed to correct defects in materials or workmanship
24 of any part supplied by Defendants, and/or warranted the quality or nature of those services to
25 Plaintiffs and the other Class members.

26 657. Defendants breached this warranty or contract obligation by failing to repair the
27 Class Vehicles, or to replace them.

28 658. As a direct and proximate result of Defendants’ breach of contract or common

1 law warranty, Plaintiffs and the other Class members have been damaged in an amount to be
2 proven at trial, which shall include, but is not limited to, all compensatory damages, incidental
3 and consequential damages, and other damages allowed by law.

4 **COUNT LXIV**

5 **Fraud by Concealment**

6 **(Based on Idaho Law)**

7 659. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set
8 forth herein.

9 660. As set forth above, Defendants concealed and/or suppressed material facts
10 concerning the safety of their vehicles.

11 661. Defendants had a duty to disclose these safety issues because they consistently
12 marketed their vehicles as safe and proclaimed that safety is one of Defendants' highest corporate
13 priorities. Once Defendants made representations to the public about safety, Defendants were
14 under a duty to disclose these omitted facts, because where one does speak one must speak the
15 whole truth and not conceal any facts which materially qualify those facts stated. One who
16 volunteers information must be truthful, and the telling of a half-truth calculated to deceive is
17 fraud.

18 662. In addition, Defendants had a duty to disclose these omitted material facts
19 because they were known and/or accessible only to Defendants who have superior knowledge and
20 access to the facts, and Defendants knew they were not known to or reasonably discoverable by
21 Plaintiffs and the Class. These omitted facts were material because they directly impact the safety
22 of the Defective Vehicles.

23 663. Whether or not a vehicle is susceptible to hacking and can be commandeered by a
24 third party are material safety concerns. Defendants possessed exclusive knowledge of the defects
25 rendering Defective Vehicles inherently more dangerous and unreliable than similar vehicles.

26 664. Defendants actively concealed and/or suppressed these material facts, in whole or
27 in part, with the intent to induce Plaintiffs and the Class to purchase Defective Vehicles at a
28 higher price for the vehicles, which did not match the vehicles' true value.

1 665. Defendants still have not made full and adequate disclosure and continue to
2 defraud Plaintiffs and the Class.

3 666. Plaintiffs and the Class were unaware of these omitted material facts and would
4 not have acted as they did if they had known of the concealed and/or suppressed facts. Plaintiffs'
5 and the Class' actions were justified. Defendants were in exclusive control of the material facts
6 and such facts were not known to the public or the Class.

7 667. As a result of the concealment and/or suppression of the facts, Plaintiffs and the
8 Class sustained damage.

9 668. Defendants' acts were done maliciously, oppressively, deliberately, with intent to
10 defraud, and in reckless disregard of Plaintiffs' and the Class' rights and well-being to enrich
11 Defendants. Defendants' conduct warrants an assessment of punitive damages in an amount
12 sufficient to deter such conduct in the future, which amount is to be determined according to
13 proof.

14 **Claims Brought on Behalf of the Illinois Class**

15 **COUNT LXV**

16 **Violation of Illinois Consumer Fraud and Deceptive Business Practices Act**
17 **(815 Illinois Compiled Statutes Sections 505/1, et seq. and**
18 **720 Illinois Compiled Statutes Section 295/1A)**

19 669. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set
20 forth herein.

21 670. The Illinois Consumer Fraud and Deceptive Business Practices Act, 815 Ill.
22 Comp. Stat. 505/2 prohibits unfair or deceptive acts or practices in connection with any trade or
23 commerce. Specifically, the Act prohibits suppliers from representing that their goods are of a
24 particular quality or grade they are not.

25 671. Defendants are "persons" as that term is defined in the Illinois Consumer Fraud
26 and Deceptive Practices Act, 815 Ill. Comp. Stat. 505/1(c).

27 672. Plaintiffs are "consumers" as that term is defined in the Illinois Consumer Fraud
28 and Deceptive Practices Act, 815 Ill. Comp. Stat. 505/1(e).

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

1 674. As a result of the foregoing wrongful conduct of Defendants, Plaintiffs and the
2 Class have been damaged in an amount to be proven at trial, including, but not limited to, actual
3 damages, court costs, and reasonable attorneys’ fees pursuant to 815 Ill. Comp. Stat. 505/1, *et seq.*

4 **COUNT LXVI**

5 **Violation of the Illinois Uniform Deceptive Trade Practices Act**
6 **(815 Illinois Compiled Statutes Sections 510/1, *et. seq.* and**
7 **720 Illinois Compiled Statutes Section 295/1A)**

8 675. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set
9 forth herein.

10 676. 815 Ill. Comp. Stat. 510/2 provides that a “person engages in a deceptive trade
11 practice when, in the course of his or her business, vocation, or occupation,” the person does any
12 of the following: “(2) causes likelihood of confusion or of misunderstanding as to the source,
13 sponsorship, approval, or certification of goods or services; . . . (5) represents that goods or
14 services have sponsorship, approval, characteristics ingredients, uses, benefits, or quantities that
15 they do not have or that a person has a sponsorship, approval, status, affiliation, or connection that
16 he or she does not have; . . . (7) represents that goods or services are of a particular standard,
17 quality, or grade or that goods are a particular style or model, if they are of another; . . .
18 (9) advertises goods or services with intent not to sell them as advertised; . . . [and] (12) engages
19 in any other conduct which similarly creates a likelihood of confusion or misunderstanding.”

20 677. Defendants are “persons” within the meaning of 815 Ill. Comp. Stat. 510/1(5).

21 678. The vehicles sold to Plaintiffs were not of the particular sponsorship, approval,
22 characteristics, ingredients, uses benefits, or qualities represented by Defendants.

23 679. Defendants’ conduct was knowing and/or intentional and/or with malice and/or
24 demonstrated a complete lack of care and/or reckless and/or was in conscious disregard for the
25 rights of Plaintiffs.

26 680. As a result of the foregoing wrongful conduct of Defendants, Plaintiffs have been
27 damaged in an amount to proven at trial, including, but not limited to, actual and punitive
28 damages, equitable relief and reasonable attorneys’ fees.

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COUNT LXVII

**Breach of Implied Warranty of Merchantability
(810 Illinois Compiled Statutes Section 5/2-314 and
810 Illinois Compiled Statutes Section 5/2A-212)**

681. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

682. Defendants impliedly warranted that their vehicles were of good and merchantable quality and fit, and safe for their ordinary intended use – transporting the driver and passengers in reasonable safety during normal operation, and without unduly endangering them or members of the public.

683. Defendants breached the implied warranty that the vehicle was merchantable and safe for use as public transportation by marketing, advertising, distributing and selling vehicles with the common design and manufacturing defect, without incorporating adequate electronic or mechanical fail-safes, and while misrepresenting the dangers of such vehicles to the public.

684. These dangerous defects existed at the time the vehicles left Defendants’ manufacturing facilities and at the time they were sold to the Plaintiffs.

685. These dangerous defects were the direct and proximate cause of damages to the Plaintiffs.

COUNT LXVIII

**Breach of Express Warranties
(810 Illinois Compiled Statutes Section 5/2-313)**

686. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

687. Defendants expressly warranted – through statements and advertisements – that the vehicles were of high quality, and at a minimum, would actually work properly and safely.

688. Defendants breached this warranty by knowingly selling to Plaintiffs vehicles with dangerous defects, and which were not of high quality.

689. Plaintiffs have been damaged as a direct and proximate result of the breaches by Defendants in that the Defective Vehicles purchased by Plaintiffs were and are worth far less than

1 what the Plaintiffs paid to purchase, which was reasonably foreseeable to Defendants.

2 **COUNT LXIX**

3 **Strict Product Liability (Defective Design)**

4 **(Based on Illinois Law)**

5 690. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set
6 forth herein.

7 691. Defendants are and have been at all times pertinent to this Complaint, engaged in
8 the business of designing, manufacturing, assembling, promoting, advertising, distributing and
9 selling Defective Vehicles in the United States, including those owned or leased by the Plaintiffs
10 and the Class.

11 692. Defendants knew and anticipated that the vehicles owned or leased by Plaintiffs
12 and the Class would be sold to and operated by purchasers and/or eventual owners or lessors of
13 Defendants' vehicles, including Plaintiffs and the Class.

14 693. Defendants also knew that these Defective Vehicles would reach the Plaintiffs
15 and the Class without substantial change in their condition from the time the vehicles departed the
16 Defendants' assembly lines.

17 694. Defendants designed the Defective Vehicles defectively, causing them to fail to
18 perform as safely as an ordinary consumer would expect when used in an intended and reasonably
19 foreseeable manner.

20 695. Defendants had the capability to use a feasible, alternative, safer design, and
21 failed to correct the design defects.

22 696. The risks inherent in the design of Defective Vehicles outweigh significantly any
23 benefits of such design.

24 697. Plaintiffs and the Class could not have anticipated and did not know of the
25 aforementioned defects at any time prior to recent revelations regarding the problems of the
26 Defective Vehicles.

27 698. As a direct and proximate result of Defendants' wrongful conduct, Plaintiffs have
28 suffered damages, including, but not limited to, diminution in value, return of lease payments and

1 penalties, and injunctive relief related to future lease payments or penalties.

2 699. Plaintiffs and the Class have sustained and will continue to sustain economic
3 losses and other damages for which they are entitled to compensatory and equitable damages and
4 declaratory relief in an amount to be proven at trial.

5 **COUNT LXX**

6 **Strict Product Liability (Failure to Warn)**

7 **(Based on Illinois Law)**

8 700. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set
9 forth herein.

10 701. Defendants are and have been at all times pertinent to this Complaint, engaged in
11 the business of designing, manufacturing, assembling, promoting, advertising, distributing and
12 selling Defective Vehicles in the United States, including those owned or leased by the Plaintiffs
13 and the Class.

14 702. Defendants, at all times pertinent to this Complaint, knew and anticipated that the
15 Defective Vehicles and their component parts would be purchased, leased and operated by
16 consumers, including Plaintiffs and the Class.

17 703. Defendants also knew that these Defective Vehicles would reach the Plaintiffs
18 and the Class without substantial change in their conditions from the time that the vehicles
19 departed the Defendants' assembly lines.

20 704. Defendants knew or should have known of the substantial dangers involved in the
21 reasonably foreseeable use of the Defective Vehicles, defective design, manufacturing and lack of
22 sufficient warnings which caused them to have an unreasonably dangerous vulnerability to
23 hacking.

24 705. Defendants failed to adequately warn Plaintiffs and the Class when they became
25 aware of the defect that caused Plaintiffs and the Class' vehicles to be prone to hacking.

26 706. Defendants also failed to timely recall the vehicles or take any action to timely
27 warn Plaintiffs or the Class of these problems and instead continue to subject Plaintiffs and the
28 Class to harm.

1 707. Defendants knew, or should have known, that these defects were not readily
2 recognizable to an ordinary consumer and that consumers would lease, purchase and use these
3 products without inspection.

4 708. Defendants should have reasonably foreseen that the defect in the Defective
5 Vehicles would subject the Plaintiffs and the Class to harm resulting from the defect.

6 709. Plaintiffs and the Class have used the Defective Vehicles for their intended
7 purpose and in a reasonable and foreseeable manner.

8 710. As a direct and proximate result of Defendants' wrongful conduct, Plaintiffs and
9 the Class have sustained and will continue to sustain economic losses and other damages for
10 which they are entitled to compensatory and equitable damages and declaratory relief in an
11 amount to be proven at trial.

12 **COUNT LXXI**

13 **Fraudulent Concealment/Fraud by Omission** 14 **(Based on Illinois Law)**

15 711. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set
16 forth herein.

17 712. Defendants intentionally concealed the above-described material safety
18 information, or acted with reckless disregard for the truth, and denied Plaintiffs and the Class
19 information that is highly relevant to their purchasing decision.

20 713. Defendants further affirmatively misrepresented to Plaintiffs in advertising and
21 other forms of communication, including standard and uniform material provided with each car,
22 that the Class Vehicles they was selling were new, had no significant defects, and would perform
23 and operate properly when driven in normal usage.

24 714. Defendants knew these representations were false when made.

25 715. The Class Vehicles purchased or leased by Plaintiffs and the other Class members
26 were, in fact, defective, unsafe, and unreliable because the Class Vehicles contained faulty and
27 defective CAN buses, as alleged herein.

28 716. Defendants had a duty to disclose that these Class Vehicles were defective,

1 unsafe, and unreliable in that certain crucial safety functions of the Class Vehicles would be
2 rendered inoperative due to faulty and defective CAN buses, because Plaintiffs and the other
3 Class members relied on Defendants’ material representations that the Class Vehicles they were
4 purchasing were safe and free from defects.

5 717. The aforementioned concealment was material because if it had been disclosed
6 Plaintiffs and the other Class members would not have bought or leased the Class Vehicles, or
7 would not have bought or leased those Vehicles at the prices they paid.

8 718. The aforementioned representations were material because they were facts that
9 would typically be relied on by a person purchasing or leasing a new motor vehicle. Defendants
10 knew or recklessly disregarded that their representations were false because they knew the CAN
11 buses were susceptible to hacking. Defendants intentionally made the false statements in order to
12 sell Class Vehicles.

13 719. Plaintiffs and the other Class members relied on Defendants’ reputations – along
14 with Defendants’ failure to disclose the faulty and defective nature of the CAN bus and
15 Defendants’ affirmative assurances that their Class Vehicles were safe and reliable, and other
16 similar false statements – in purchasing or leasing Defendants’ Class Vehicles.

17 720. As a result of their reliance, Plaintiffs and the other Class members have been
18 injured in an amount to be proven at trial, including, but not limited to, their lost benefit of the
19 bargain and overpayment at the time of purchase or lease and/or the diminished value of their
20 Class Vehicles.

21 721. Defendants’ conduct was knowing, intentional, with malice, demonstrated a
22 complete lack of care, and was in reckless disregard for the rights of Plaintiffs and the other Class
23 members.

24 722. Plaintiffs and the other Class members are therefore entitled to an award of
25 punitive damages.

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COUNT LXXII

**Breach of Lease/Contract
(Based on Illinois Law)**

723. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

724. Plaintiffs and the Class entered into lease agreements with Defendants.

725. Plaintiffs and the Class entered into agreements to purchase Defendants vehicles which also directly or indirectly benefited Defendants.

726. The leases and purchase agreements provided that Plaintiffs and the Class would make payments and in return would receive a new vehicle that would operate properly.

727. Defendants breached their agreements with Plaintiffs and the Class, because the vehicles sold or leased to Plaintiffs and the Class were defective and not of a quality that reasonably would be expected of a new automobile.

728. Plaintiffs and the Class have fully performed their duties under the purchase and lease agreements.

729. Defendants are liable for all damages suffered by Plaintiffs and the Class caused by such breaches of contract.

Claims Brought on Behalf of the Indiana Class

COUNT LXXIII

**Violation of the Indiana Deceptive Consumer Sales Act
(Indiana Code Section 24-5-0.5-3)**

730. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

731. Indiana’s Deceptive Consumer Sales Act prohibits a person from engaging in a “deceptive trade practice,” which includes representing: “(1) That such subject of a consumer transaction has sponsorship, approval, performance, characteristics, accessories, uses, or benefits that they do not have, or that a person has a sponsorship, approval, status, affiliation, or connection it does not have; (2) That such subject of a consumer transaction is of a particular

1 standard, quality, grade, style or model, if it is not and if the supplier knows or should reasonably
 2 know that it is not; . . . (7) That the supplier has a sponsorship, approval or affiliation in such
 3 consumer transaction that the supplier does not have, and which the supplier knows or should
 4 reasonably know that the supplier does not have; . . . (b) Any representations on or within a
 5 product or their packaging or in advertising or promotional materials which would constitute a
 6 deceptive act shall be the deceptive act both of the supplier who places such a representation
 7 thereon or therein, or who authored such materials, and such suppliers who shall state orally or in
 8 writing that such representation is true if such other supplier shall know or have reason to know
 9 that such representation was false.”

10 732. Defendants are persons with the meaning of Ind. Code § 24-5-0.5-2(2).

11 733. In the course of Defendants’ business, they willfully failed to disclose and
 12 actively concealed the dangerous risk of hacking and the lack of adequate fail-safe mechanisms in
 13 Defective Vehicles equipped with CAN buses.

14 734. Accordingly, Defendants engaged in unlawful trade practices, including
 15 representing that Defective Vehicles have characteristics, uses, benefits, and qualities which they
 16 do not have; representing that Defective Vehicles are of a particular standard and quality when
 17 they are not; advertising Defective Vehicles with the intent not to sell them as advertised; and
 18 otherwise engaging in conduct likely to deceive.

19 735. Defendants’ actions as set forth above occurred in the conduct of trade or
 20 commerce.

21 736. Defendants’ conduct proximately caused injuries to Plaintiffs and the Class.

22 737. Plaintiffs and the Class were injured as a result of Defendants’ conduct in that
 23 Plaintiffs overpaid for their Defective Vehicles and did not receive the benefit of their bargain,
 24 and their vehicles have suffered a diminution in value. These injuries are the direct and natural
 25 consequence of Defendants’ misrepresentations and omissions.

26 738. Plaintiffs seek injunctive relief and, if awarded damages under Indiana Deceptive
 27 Consumer Protection Act, treble damages pursuant to Ind. Code § 24-5-0.5-4(a)(1).

28 739. Plaintiffs also seek punitive damages based on the outrageousness and

1 recklessnes of Defendants’ conduct and their high net worth.

2 **COUNT LXXIV**

3 **Breach of Express Warranty**
4 **(Indiana Code Section 26-1-2-313)**

5 740. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set
6 forth herein.

7 741. In their Limited Warranties and in advertisements, brochures, and through other
8 statements in the media, Defendants expressly warranted that they would repair or replace defects
9 in material or workmanship free of charge if they became apparent during the warranty period.
10 For example, the following language appears in all Class Vehicle Warranty booklets:

11 1. Toyota’s warranty

12 *When Warranty Begins*

13 The warranty period begins on the vehicle’s in-service date, which is the first date
14 the vehicle is either delivered to an ultimate purchaser, leased, or used as a
15 company car or demonstrator.

16 *Repairs Made at No Charge*

17 Repairs and adjustments covered by these warranties are made at no charge for
18 parts and labor.

19 *Basic Warranty*

20 This warranty covers repairs and adjustments needed to correct defects in materials
21 or workmanship of any part supplied by Toyota Coverage is for 36 months or
22 36,000 miles, whichever occurs first

23 2. Ford’s warranty

24 *KNOW WHEN YOUR WARRANTY BEGINS*

25 Your Warranty Start Date is the day you take delivery of your new vehicle or the
26 day it is first put into service

27 *QUICK REFERENCE: WARRANTY COVERAGE*

28 . . .
Your Bumper to Bumper Coverage lasts for three years - unless you drive more
than 36,000 miles before three years elapse.

WHO PAYS FOR WARRANTY REPAIRS?

You will not be charged for repairs covered by any applicable warranty during the
stated coverage periods

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3. GM’s warranty

Warranty Period

The warranty period for all coverages begins on the date the vehicle is first delivered or put in use and ends at the expiration of the coverage period.

Bumper-to-Bumper Coverage

The complete vehicle is covered for 4 years or 50,000 miles, whichever comes first

No Charge

Warranty repairs, including towing, parts, and labor, will be made at no charge.

Repairs Covered

This warranty covers repairs to correct any vehicle defect related to materials or workmanship occurring during the warranty period. Needed repairs will be performed using new or remanufactured parts.

742. Defendants’ Limited Warranties, as well as advertisements, brochures, and other statements in the media regarding the Class Vehicles, formed the basis of the bargain that was reached when Plaintiffs and the other Class members purchased or leased their Class Vehicles equipped with a CAN bus from Defendants.

743. Defendants breached the express warranty to repair and adjust to correct defects in materials and workmanship of any part supplied by Defendants. Defendants have not repaired or adjusted, and have been unable to repair or adjust, the Class Vehicles’ materials and workmanship defects.

744. In addition to these Limited Warranties, Defendants otherwise expressly warranted several attributes, characteristics, and qualities of the CAN bus.

745. These warranties are only a sampling of the numerous warranties that Defendants made relating to safety, reliability, and operation. Generally these express warranties promise heightened, superior, and state-of-the-art safety, reliability, and performance standards, and promote the benefits of the CAN bus. These warranties were made, *inter alia*, in advertisements, on Defendants’ websites, and in uniform statements provided by Defendants to be made by salespeople, or made publicly by Defendants’ executives or by other authorized representatives. These affirmations and promises were part of the basis of the bargain between the parties.

746. These additional warranties were also breached because the Class Vehicles were

1 not fully operational, safe, or reliable (and remained so even after the problems were
2 acknowledged), nor did they comply with the warranties expressly made to purchasers or lessees.
3 Defendants did not provide at the time of sale, and have not provided since then, Class Vehicles
4 conforming to these express warranties.

5 747. Furthermore, the limited warranty of repair and/or adjustments to defective parts,
6 fails in its essential purpose because the contractual remedy is insufficient to make Plaintiffs and
7 the other Class members whole and because Defendants have failed and/or have refused to
8 adequately provide the promised remedies within a reasonable time.

9 748. Accordingly, recovery by Plaintiffs and the other Class members is not limited to
10 the limited warranty of repair or adjustments to parts defective in materials or workmanship, and
11 Plaintiffs, individually and on behalf of the other Class members, seek all remedies as allowed by
12 law.

13 749. Also, as alleged in more detail herein, at the time that Defendants warranted and
14 sold the Class Vehicles they knew that the Class Vehicles did not conform to the warranties and
15 were inherently defective, and Defendants wrongfully and fraudulently misrepresented and/or
16 concealed material facts regarding their Class Vehicles. Plaintiffs and the other Class members
17 were therefore induced to purchase or lease the Class Vehicles under false and/or fraudulent
18 pretenses.

19 750. Moreover, many of the injuries flowing from the Class Vehicles cannot be
20 resolved through the limited remedy of “replacement or adjustments,” as many incidental and
21 consequential damages have already been suffered due to Defendants’ fraudulent conduct as
22 alleged herein, and due to their failure and/or continued failure to provide such limited remedy
23 within a reasonable time, and any limitation on Plaintiffs’ and the other Class members’ remedies
24 would be insufficient to make Plaintiffs and the other Class members whole.

25 751. Finally, due to the Defendants’ breach of warranties as set forth herein, Plaintiffs
26 and the Class assert as an additional and/or alternative remedy, as set forth in Ind. Code § 26-1-2-
27 608, for a revocation of acceptance of the goods, and for a return to Plaintiffs and to the Class of
28 the purchase price of all vehicles currently owned.

1 752. Defendants were provided notice of these issues by the instant Complaint, and by
2 other means before or within a reasonable amount of time after the allegations of Class Vehicle
3 defects became public.

4 753. As a direct and proximate result of Defendants’ breach of express warranties,
5 Plaintiffs and the other Class members have been damaged in an amount to be determined at trial.

6 **COUNT LXXV**

7 **Breach of the Implied Warranty of Merchantability**

8 **(Indiana Code Section 26-1-2-314)**

9 754. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set
10 forth herein.

11 755. Defendants are and were at all relevant times merchants with respect to motor
12 vehicles.

13 756. A warranty that the Class Vehicles were in merchantable condition is implied by
14 law in the instant transactions.

15 757. These Class Vehicles, when sold and at all times thereafter, were not in
16 merchantable condition and are not fit for the ordinary purpose for which cars are used.
17 Defendants were provided notice of these issues by numerous complaints filed against them,
18 including the instant Complaint, and by other means.

19 758. As a direct and proximate result of Defendants’ breach of the warranties of
20 merchantability, Plaintiffs and the Class have been damaged in an amount to be proven at trial.

21 **COUNT LXXVI**

22 **Breach of Contract/Common Law Warranty**

23 **(Based on Indiana Law)**

24 759. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set
25 forth herein.

26 760. To the extent Defendants’ repair or adjust commitment is deemed not to be a
27 warranty under Indiana’s Commercial Code, Plaintiffs plead in the alternative under common law
28 warranty and contract law. Defendants limited the remedies available to Plaintiffs and the other

1 Class members to repairs and adjustments needed to correct defects in materials or workmanship
2 of any part supplied by Defendants, and/or warranted the quality or nature of those services to
3 Plaintiffs and the other Class members.

4 761. Defendants breached this warranty or contract obligation by failing to repair the
5 Class Vehicles, or to replace them.

6 762. As a direct and proximate result of Defendants’ breach of contract or common
7 law warranty, Plaintiffs and the other Class members have been damaged in an amount to be
8 proven at trial, which shall include, but is not limited to, all compensatory damages, incidental
9 and consequential damages, and other damages allowed by law.

10 **COUNT LXXVII**

11 **Fraudulent Concealment**
12 **(Based on Indiana Law)**

13 763. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set
14 forth herein.

15 764. Defendants intentionally concealed the above-described material safety and
16 functionality information, or acted with reckless disregard for the truth, and denied Plaintiffs and
17 the other Class members information that is highly relevant to their purchasing decision.

18 765. Defendants further affirmatively misrepresented to Plaintiffs in advertising and
19 other forms of communication, including standard and uniform material provided with each car,
20 that the Class Vehicles they was selling were new, had no significant defects, and would perform
21 and operate properly when driven in normal usage.

22 766. Defendants knew these representations were false when made.

23 767. The Class Vehicles purchased or leased by Plaintiffs and the other Class members
24 were, in fact, defective, unsafe, and unreliable because the Class Vehicles contained faulty and
25 defective CAN buses, as alleged herein.

26 768. Defendants had a duty to disclose that these Class Vehicles were defective,
27 unsafe, and unreliable in that certain crucial safety functions of the Class Vehicles would be
28 rendered inoperative due to faulty and defective CAN buses, because Plaintiffs and the other

1 Class members relied on Defendants’ material representations that the Class Vehicles they were
2 purchasing were safe and free from defects.

3 769. The aforementioned concealment was material because if it had been disclosed
4 Plaintiffs and the other Class members would not have bought or leased the Class Vehicles, or
5 would not have bought or leased those Vehicles at the prices they paid.

6 770. The aforementioned representations were material because they were facts that
7 would typically be relied on by a person purchasing or leasing a new motor vehicle. Defendants
8 knew or recklessly disregarded that their representations were false because they knew the CAN
9 buses were susceptible to hacking. Defendants intentionally made the false statements in order to
10 sell Class Vehicles.

11 771. Plaintiffs and the other Class members relied on Defendants’ reputations – along
12 with Defendants’ failure to disclose the faulty and defective nature of the CAN bus and
13 Defendants’ affirmative assurances that their Class Vehicles were safe and reliable, and other
14 similar false statements – in purchasing or leasing Defendants’ Class Vehicles.

15 772. As a result of their reliance, Plaintiffs and the other Class members have been
16 injured in an amount to be proven at trial, including, but not limited to, their lost benefit of the
17 bargain and overpayment at the time of purchase or lease and/or the diminished value of their
18 Class Vehicles.

19 773. Defendants’ conduct was knowing, intentional, with malice, demonstrated a
20 complete lack of care, and was in reckless disregard for the rights of Plaintiffs and the other Class
21 members.

22 774. Plaintiffs and the other Class members are therefore entitled to an award of
23 punitive damages.

24 **Claims Brought on Behalf of the Iowa Class**

25 **COUNT LXXVIII**

26 **Violations of the Private Right of Action for Consumer Frauds Act**
27 **(Iowa Code Sections 714H.1, et seq.)**

28 775. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set

1 forth herein.

2 776. Defendants are “persons” under Iowa Code § 714H.2(7).

3 777. Plaintiffs are “consumers,” as defined by Iowa Code § 714H.2(3), who purchased
4 or leased one or more Class Vehicles.

5 778. Defendants participated in unfair or deceptive acts or practices that violated
6 Iowa’s Private Right of Action for Consumer Fraud Act (“Iowa CFA”), Iowa Code §§ 714H.1, *et*
7 *seq.*, as described herein. Defendants are directly liable for these violations of law.

8 779. By failing to disclose and actively concealing the defects in the CAN buses in the
9 Class Vehicles, Defendants engaged in deceptive business practices prohibited by the Iowa CFA,
10 including (1) representing that Class Vehicles have characteristics, uses, benefits, and qualities
11 which they do not have, (2) representing that Class Vehicles are of a particular standard, quality,
12 and grade when they are not, (3) advertising Class Vehicles with the intent not to sell them as
13 advertised, and (4) engaging in acts or practices which are otherwise unfair, misleading, false, or
14 deceptive to the consumer.

15 780. As alleged above, Defendants made numerous material statements about the
16 benefits and characteristics of the Class Vehicles that were either false or misleading. Each of
17 these statements contributed to the deceptive context of Defendants’ unlawful advertising and
18 representations as a whole.

19 781. Defendants knew that the CAN buses in the Class Vehicles were defectively
20 designed or manufactured, were susceptible to hacking, and were not suitable for their intended
21 use. Defendants nevertheless failed to warn Plaintiffs about these defects despite having a duty to
22 do so.

23 782. Defendants owed Plaintiffs a duty to disclose the defective nature of the CAN
24 buses in the Class Vehicles, because Defendants:

25 a) Possessed exclusive knowledge of the defects rendering the Class Vehicles more
26 unreliable than similar vehicles;

27 b) Intentionally concealed the defects through their deceptive marketing campaign
28 that they designed to hide the defects; and/or

1 c) Made incomplete representations about the characteristics and performance of the
2 Class Vehicles generally, while purposefully withholding material facts from Plaintiffs that
3 contradicted these representations.

4 783. Defendants’ unfair or deceptive acts or practices were likely to and did in fact
5 deceive reasonable consumers, including Plaintiffs, about the true performance and characteristics
6 of the Class Vehicles.

7 784. As a result of their violations of the Iowa CFA detailed above, Defendants caused
8 actual damage to Plaintiffs and, if not stopped, will continue to harm Plaintiffs. Plaintiffs
9 currently owns or leases, or within the Class Period has owned or leased, a Class Vehicle that is
10 defective. Defects associated with the CAN buses have caused the value of the Class Vehicles,
11 including Plaintiffs’ Vehicle, to decrease.

12 785. Plaintiffs and the Class sustained damages as a result of the Defendants’ unlawful
13 acts and are, therefore, entitled to damages and other relief as provided under Chapter 714H of the
14 Iowa Code. Because Defendants’ conduct was committed willfully, Plaintiffs seeks treble
15 damages as provided in Iowa Code § 714H.5(4).

16 786. Plaintiffs also seeks court costs and attorneys’ fees as a result of Defendants’
17 violation of Chapter 714H as provided in Iowa Code § 714H.5(2).

18 **COUNT LXXIX**

19 **Breach of Express Warranty**
20 **(Iowa Code Section 554.2313)**

21 787. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set
22 forth herein.

23 788. Defendants are and were at all relevant times merchants with respect to motor
24 vehicles under Iowa Code § 554.2104.

25 789. In their Limited Warranties and in advertisements, brochures, and through other
26 statements in the media, Defendants expressly warranted that they would repair or replace defects
27 in material or workmanship free of charge if they became apparent during the warranty period.
28 For example, the following language appears in all Class Vehicle Warranty booklets:

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1. Toyota's warranty

When Warranty Begins

The warranty period begins on the vehicle's in-service date, which is the first date the vehicle is either delivered to an ultimate purchaser, leased, or used as a company car or demonstrator.

Repairs Made at No Charge

Repairs and adjustments covered by these warranties are made at no charge for parts and labor.

Basic Warranty

This warranty covers repairs and adjustments needed to correct defects in materials or workmanship of any part supplied by Toyota Coverage is for 36 months or 36,000 miles, whichever occurs first

2. Ford's warranty

KNOW WHEN YOUR WARRANTY BEGINS

Your Warranty Start Date is the day you take delivery of your new vehicle or the day it is first put into service

QUICK REFERENCE: WARRANTY COVERAGE

. . .

Your Bumper to Bumper Coverage lasts for three years - unless you drive more than 36,000 miles before three years elapse.

WHO PAYS FOR WARRANTY REPAIRS?

You will not be charged for repairs covered by any applicable warranty during the stated coverage periods

3. GM's warranty

Warranty Period

The warranty period for all coverages begins on the date the vehicle is first delivered or put in use and ends at the expiration of the coverage period.

Bumper-to-Bumper Coverage

The complete vehicle is covered for 4 years or 50,000 miles, whichever comes first

No Charge

Warranty repairs, including towing, parts, and labor, will be made at no charge.

Repairs Covered

This warranty covers repairs to correct any vehicle defect related to materials or workmanship occurring during the warranty period. Needed repairs will be performed using new or remanufactured parts.

790. Defendants' Limited Warranties, as well as advertisements, brochures, and other

1 statements in the media regarding the Class Vehicles, formed the basis of the bargain that was
2 reached when Plaintiffs and the other Class members purchased or leased their Class Vehicles
3 equipped with a CAN bus from Defendants.

4 791. Defendants breached the express warranty to repair and adjust to correct defects
5 in materials and workmanship of any part supplied by Defendants. Defendants have not repaired
6 or adjusted, and have been unable to repair or adjust, the Class Vehicles' materials and
7 workmanship defects.

8 792. In addition to these Limited Warranties, Defendants otherwise expressly
9 warranted several attributes, characteristics, and qualities of the CAN bus.

10 793. These warranties are only a sampling of the numerous warranties that Defendants
11 made relating to safety, reliability, and operation. Generally these express warranties promise
12 heightened, superior, and state-of-the-art safety, reliability, and performance standards, and
13 promote the benefits of the CAN bus. These warranties were made, *inter alia*, in advertisements,
14 on Defendants' websites, and in uniform statements provided by Defendants to be made by
15 salespeople, or made publicly by Defendants' executives or by other authorized representatives.
16 These affirmations and promises were part of the basis of the bargain between the parties.

17 794. These additional warranties were also breached because the Class Vehicles were
18 not fully operational, safe, or reliable (and remained so even after the problems were
19 acknowledged), nor did they comply with the warranties expressly made to purchasers or lessees.
20 Defendants did not provide at the time of sale, and have not provided since then, Class Vehicles
21 conforming to these express warranties.

22 795. Furthermore, the limited warranty of repair and/or adjustments to defective parts,
23 fails in its essential purpose because the contractual remedy is insufficient to make Plaintiffs and
24 the other Class members whole and because Defendants have failed and/or have refused to
25 adequately provide the promised remedies within a reasonable time.

26 796. Accordingly, recovery by Plaintiffs and the other Class members is not limited to the
27 limited warranty of repair or adjustments to parts defective in materials or workmanship, and
28 Plaintiffs, individually and on behalf of the other Class members, seek all remedies as allowed by law.

1 797. Also, as alleged in more detail herein, at the time that Defendants warranted and
2 sold the Class Vehicles they knew that the Class Vehicles did not conform to the warranties and
3 were inherently defective, and Defendants wrongfully and fraudulently misrepresented and/or
4 concealed material facts regarding their Class Vehicles. Plaintiffs and the other Class members
5 were therefore induced to purchase or lease the Class Vehicles under false and/or fraudulent
6 pretenses.

7 798. Moreover, many of the injuries flowing from the Class Vehicles cannot be
8 resolved through the limited remedy of “replacement or adjustments,” as many incidental and
9 consequential damages have already been suffered due to Defendants’ fraudulent conduct as
10 alleged herein, and due to their failure and/or continued failure to provide such limited remedy
11 within a reasonable time, and any limitation on Plaintiffs’ and the other Class members’ remedies
12 would be insufficient to make Plaintiffs and the other Class members whole.

13 799. Finally, due to Defendants’ breach of warranties as set forth herein, Plaintiffs and
14 the other Class members assert as an additional and/or alternative remedy, as set forth in Iowa
15 Code § 554.2608, for a revocation of acceptance of the goods, and for a return to Plaintiffs and to
16 the other Class members of the purchase price of all Class Vehicles currently owned and for such
17 other incidental and consequential damages as allowed under Iowa Code §§ 554.2711 and
18 554.2608.

19 800. Defendants were provided notice of these issues by the instant Complaint, and by
20 other means before or within a reasonable amount of time after the allegations of Class Vehicle
21 defects became public.

22 801. As a direct and proximate result of Defendants’ breach of express warranties,
23 Plaintiffs and the other Class members have been damaged in an amount to be determined at trial.

24 **COUNT LXXX**

25 **Breach of Implied Warranty of Merchantability**
26 **(Iowa Code Section 554.2314)**

27 802. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set
28 forth herein.

1 803. Defendants are and were at all relevant times merchants with respect to motor
2 vehicles under Iowa Code § 554.2104.

3 804. A warranty that the Class Vehicles were in merchantable condition is implied by
4 law in the instant transactions.

5 805. These Class Vehicles, when sold and at all times thereafter, were not in
6 merchantable condition and are not fit for the ordinary purpose for which cars are used.
7 Defendants were provided notice of these issues by numerous complaints filed against them,
8 including the instant Complaint, and by other means.

9 806. As a direct and proximate result of Defendants’ breach of the warranties of
10 merchantability, Plaintiffs and the Class have been damaged in an amount to be proven at trial.

11 **COUNT LXXXI**

12 **Breach of Contract/Common Law Warranty**
13 **(Based on Iowa Law)**

14 807. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set
15 forth herein.

16 808. To the extent Defendants’ limited remedies are deemed not to be warranties under
17 Iowa’s Commercial Code, Plaintiffs, individually and on behalf of the other Class members, plead
18 in the alternative under common law warranty and contract law. Defendants limited the remedies
19 available to Plaintiffs and the other Class members to repairs and adjustments needed to correct
20 defects in materials or workmanship of any part supplied by Defendants, and/or warranted the
21 quality or nature of those services to Plaintiffs and the other Class members.

22 809. Defendants breached this warranty or contract obligation by failing to repair the
23 Class Vehicles, or to replace them.

24 810. As a direct and proximate result of Defendants’ breach of contract or common
25 law warranty, Plaintiffs and the other Class members have been damaged in an amount to be
26 proven at trial, which shall include, but is not limited to, all compensatory damages, incidental
27 and consequential damages, and other damages allowed by law.

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COUNT LXXXII

**Fraudulent Concealment
(Based on Iowa Law)**

811. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

812. Defendants intentionally concealed the above-described material safety and functionality information, or acted with reckless disregard for the truth, and denied Plaintiffs and the other Class members information that is highly relevant to their purchasing decision.

813. Defendants further affirmatively misrepresented to Plaintiffs in advertising and other forms of communication, including standard and uniform material provided with each car, that the Class Vehicles they was selling were new, had no significant defects, and would perform and operate properly when driven in normal usage.

814. Defendants knew these representations were false when made.

815. The Class Vehicles purchased or leased by Plaintiffs and the other Class members were, in fact, defective, unsafe, and unreliable because the Class Vehicles contained faulty and defective CAN buses, as alleged herein.

816. Defendants had a duty to disclose that these Class Vehicles were defective, unsafe, and unreliable in that certain crucial safety functions of the Class Vehicles would be rendered inoperative due to faulty and defective CAN buses, because Plaintiffs and the other Class members relied on Defendants’ material representations that the Class Vehicles they were purchasing were safe and free from defects.

817. The aforementioned concealment was material because if it had been disclosed Plaintiffs and the other Class members would not have bought or leased the Class Vehicles, or would not have bought or leased those Vehicles at the prices they paid.

818. The aforementioned representations were material because they were facts that would typically be relied on by a person purchasing or leasing a new motor vehicle. Defendants knew or recklessly disregarded that their representations were false because they knew the CAN buses were susceptible to hacking. Defendants intentionally made the false statements in order to

1 sell Class Vehicles.

2 819. Plaintiffs and the other Class members relied on Defendants’ reputations – along
3 with Defendants’ failure to disclose the faulty and defective nature of the CAN bus and
4 Defendants’ affirmative assurances that their Class Vehicles were safe and reliable, and other
5 similar false statements – in purchasing or leasing Defendants’ Class Vehicles.

6 820. As a result of their reliance, Plaintiffs and the other Class members have been
7 injured in an amount to be proven at trial, including, but not limited to, their lost benefit of the
8 bargain and overpayment at the time of purchase or lease and/or the diminished value of their
9 Class Vehicles.

10 821. Defendants’ conduct was knowing, intentional, with malice, demonstrated a
11 complete lack of care, and was in reckless disregard for the rights of Plaintiffs and the other Class
12 members.

13 822. Plaintiffs and the other Class members are therefore entitled to an award of
14 punitive damages.

15 **Claims Brought on Behalf of the Kansas Class**

16 **COUNT LXXX III**

17 **Violations of the Kansas Consumer Protection Act**
18 **(Kansas Statutes Annotated Sections 50-623, et seq.)**

19 823. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set
20 forth herein.

21 824. Defendants are “suppliers” under § 50-624(l) of the Kansas Consumer Protection
22 Act (“Kansas CPA”)

23 825. Plaintiffs are “consumers,” as defined by § 50-624(b) of the Kansas CPA, who
24 purchased or leased one or more Defective Vehicles.

25 826. Defendants both participated in deceptive acts or practices that violated the
26 Kansas CPA, as described above and below. Defendants each are directly liable for these
27 violations of law. TMC also is liable for TMS’s violations of the CPA because TMS acts as
28 TMC’s general agent in the United States for purposes of sales and marketing.

1 827. Defendants engaged in deceptive acts or practices prohibited by the Kansas CPA,
2 including (1) representing that Defective Vehicles have characteristics, uses, and benefits that
3 they do not have and (2) representing that Defective Vehicles are of a particular standard, quality,
4 and grade when they are of another which differs materially from the representation. Specifically,
5 as alleged above, Defendants made numerous material statements about the safety and reliability
6 of Defective Vehicles that were either false or misleading. Each of these statements contributed to
7 the deceptive context of TMC's and TMS's unlawful advertising and representations as a whole.

8 828. Defendants knew or had reason to know that their representations were false.
9 Defendants knew that the CAN bus in Defective Vehicles was defectively designed or
10 manufactured, was susceptible to hacking, and was not suitable for their intended use. Defendants
11 nevertheless failed to warn Plaintiffs about these inherent dangers despite having a duty to do so.

12 829. Defendants engaged in further deceptive acts or practices prohibited by the
13 Kansas CPA by willfully failing to disclose or willfully concealing, suppressing, or omitting
14 material facts about Defective Vehicles. Specifically, Defendants failed to disclose and actively
15 concealed the dangerous risk of hacking and the lack of adequate fail-safe mechanisms in
16 Defective Vehicles equipped with CAN buses. Defendants knew that the CAN bus in Defective
17 Vehicles was defectively designed or manufactured, was susceptible to hacking, and was not
18 suitable for their intended use. Defendants nevertheless failed to warn Plaintiffs and the Class
19 about these inherent dangers despite having a duty to do so.

20 830. Whether or not a vehicle is vulnerable to hacking and can be commandeered by a
21 third party are facts that a reasonable consumer would consider important in selecting a vehicle to
22 purchase or lease.

23 831. When Plaintiffs bought a Defendants Vehicle for personal, family, or household
24 purposes, they reasonably expected the vehicle would not be vulnerable to hacking, and was
25 equipped with any necessary fail-safe mechanisms.

26 832. Defendants' acts or practices alleged above are unconscionable because, among
27 other reasons, Defendants knew or had reason to know they had had made misleading statements
28 of opinion on which Plaintiffs were likely to rely to their detriment.

1 833. Defendants’ deceptive and unconscionable acts or practices were likely to and did
2 in fact deceive reasonable consumers, including Plaintiffs, about the true safety and reliability of
3 Defective Vehicles as a result of Defendants’ violations of the Kansas CPA.

4 834. Plaintiffs and the Class suffered loss as a result of Defendants’ violations of the
5 Kansas CPA detailed above. Plaintiffs currently own or lease, or within the class period have
6 owned or leased, Defective Vehicles that are defective and inherently unsafe. CAN bus defects
7 have caused the value of Defective Vehicles to plummet.

8 835. Pursuant to § 50-634(b) of the Kansas CPA, Plaintiffs seek monetary relief
9 against Defendants measured as the greater of (a) actual damages in an amount to be determined
10 at trial and (b) civil penalties provided for by § 50-636 of the Kansas CPA.

11 836. Plaintiffs also seek punitive damages against Defendants because they acted
12 willfully, wantonly, fraudulently, or maliciously. Defendants intentionally and willfully
13 misrepresented the safety and reliability of Defective Vehicles, deceived Plaintiffs on life-or-
14 death matters, and concealed material facts that only they knew, all to avoid the expense and
15 public relations nightmare of correcting a deadly flaw in the Defective Vehicles they repeatedly
16 promised Plaintiffs were safe. Defendants’ unlawful conduct constitutes malice, oppression, and
17 fraud warranting punitive damages.

18 837. Plaintiffs risk irreparable injury as a result of Defendants’ deceptive and
19 unconscionable acts or practices in violation of the Kansas CPA, and these violations present a
20 continuing risk to Plaintiffs as well as to the general public.

21 838. Plaintiffs and the Class further seek an order enjoining Defendants’ deceptive and
22 unconscionable acts or practices, restitution, punitive damages, costs of Court, attorney’s fees,
23 and any other just and proper relief available under the Kansas CPA.

24 **COUNT LXXXIV**

25 **Breach of Express Warranty**
26 **(Kansas Statutes Annotated Section 84-2-313)**

27 839. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set
28 forth herein.

1 840. Defendants are and were at all relevant times merchants with respect to motor
2 vehicles under Kan. Stat. Ann. § 84-2-104.

3 841. In their Limited Warranties and in advertisements, brochures, and through other
4 statements in the media, Defendants expressly warranted that they would repair or replace defects
5 in material or workmanship free of charge if they became apparent during the warranty period.
6 For example, the following language appears in all Class Vehicle Warranty booklets:

7 1. Toyota’s warranty

8 *When Warranty Begins*

9 The warranty period begins on the vehicle’s in-service date, which is the first date
10 the vehicle is either delivered to an ultimate purchaser, leased, or used as a
11 company car or demonstrator.

12 *Repairs Made at No Charge*

13 Repairs and adjustments covered by these warranties are made at no charge for
14 parts and labor.

15 *Basic Warranty*

16 This warranty covers repairs and adjustments needed to correct defects in materials
17 or workmanship of any part supplied by Toyota Coverage is for 36 months or
18 36,000 miles, whichever occurs first

19 2. Ford’s warranty

20 *KNOW WHEN YOUR WARRANTY BEGINS*

21 Your Warranty Start Date is the day you take delivery of your new vehicle or the
22 day it is first put into service

23 *QUICK REFERENCE: WARRANTY COVERAGE*

24 . . .

25 Your Bumper to Bumper Coverage lasts for three years - unless you drive more
26 than 36,000 miles before three years elapse.

27 *WHO PAYS FOR WARRANTY REPAIRS?*

28 You will not be charged for repairs covered by any applicable warranty during the
stated coverage periods

3. GM’s warranty

Warranty Period

The warranty period for all coverages begins on the date the vehicle is first
delivered or put in use and ends at the expiration of the coverage period.

Bumper-to-Bumper Coverage

The complete vehicle is covered for 4 years or 50,000 miles, whichever comes first

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No Charge

Warranty repairs, including towing, parts, and labor, will be made at no charge.

Repairs Covered

This warranty covers repairs to correct any vehicle defect related to materials or workmanship occurring during the warranty period. Needed repairs will be performed using new or remanufactured parts.

842. Defendants’ Limited Warranties, as well as advertisements, brochures, and other statements in the media regarding the Class Vehicles, formed the basis of the bargain that was reached when Plaintiffs and the other Class members purchased or leased their Class Vehicles equipped with a CAN bus from Defendants.

843. Defendants breached the express warranty to repair and adjust to correct defects in materials and workmanship of any part supplied by Defendants. Defendants have not repaired or adjusted, and have been unable to repair or adjust, the Class Vehicles’ materials and workmanship defects.

844. In addition to these Limited Warranties, Defendants otherwise expressly warranted several attributes, characteristics, and qualities of the CAN bus.

845. These warranties are only a sampling of the numerous warranties that Defendants made relating to safety, reliability, and operation. Generally these express warranties promise heightened, superior, and state-of-the-art safety, reliability, and performance standards, and promote the benefits of the CAN bus. These warranties were made, *inter alia*, in advertisements, on Defendants’ websites, and in uniform statements provided by Defendants to be made by salespeople, or made publicly by Defendants’ executives or by other authorized representatives. These affirmations and promises were part of the basis of the bargain between the parties.

846. These additional warranties were also breached because the Class Vehicles were not fully operational, safe, or reliable (and remained so even after the problems were acknowledged), nor did they comply with the warranties expressly made to purchasers or lessees. Defendants did not provide at the time of sale, and have not provided since then, Class Vehicles conforming to these express warranties.

1 847. Furthermore, the limited warranty of repair and/or adjustments to defective parts,
2 fails in its essential purpose because the contractual remedy is insufficient to make Plaintiffs and
3 the other Class members whole and because Defendants have failed and/or have refused to
4 adequately provide the promised remedies within a reasonable time.

5 848. Accordingly, recovery by Plaintiffs and the other Class members is not limited to
6 the limited warranty of repair or adjustments to parts defective in materials or workmanship, and
7 Plaintiffs, individually and on behalf of the other Class members, seek all remedies as allowed by
8 law.

9 849. Also, as alleged in more detail herein, at the time that Defendants warranted and
10 sold the Class Vehicles they knew that the Class Vehicles did not conform to the warranties and
11 were inherently defective, and Defendants wrongfully and fraudulently misrepresented and/or
12 concealed material facts regarding their Class Vehicles. Plaintiffs and the other Class members
13 were therefore induced to purchase or lease the Class Vehicles under false and/or fraudulent
14 pretenses.

15 850. Moreover, many of the injuries flowing from the Class Vehicles cannot be
16 resolved through the limited remedy of “replacement or adjustments,” as many incidental and
17 consequential damages have already been suffered due to Defendants’ fraudulent conduct as
18 alleged herein, and due to their failure and/or continued failure to provide such limited remedy
19 within a reasonable time, and any limitation on Plaintiffs’ and the other Class members’ remedies
20 would be insufficient to make Plaintiffs and the other Class members whole.

21 851. Finally, due to the Defendants’ breach of warranties as set forth herein, Plaintiffs
22 and the Class assert as an additional and/or alternative remedy, as set forth in KAN. STAT. ANN.
23 § 84-2-711, for a revocation of acceptance of the goods, and for a return to Plaintiffs and to the
24 Class of the purchase price of all vehicles currently owned and for such other incidental and
25 consequential damages as allowed under KAN. STAT. ANN. §§ 84-2-711 and 84-2-608.

26 852. Defendants were provided notice of these issues by the instant Complaint, and by
27 other means before or within a reasonable amount of time after the allegations of Class Vehicle
28 defects became public.

1 853. As a direct and proximate result of Defendants’ breach of express warranties,
2 Plaintiffs and the other Class members have been damaged in an amount to be determined at trial.

3 **COUNT LXXXV**

4 **Breach of the Implied Warranty of Merchantability**
5 **(Kansas Statutes Annotated Section 84-2-314)**

6 854. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set
7 forth herein.

8 855. Plaintiffs are “natural persons” within the meaning of Kan. Stat. Ann. § 84-2-318.

9 856. Defendants are and were at all relevant times merchants with respect to motor
10 vehicles under Kan. Stat. Ann. § 84-2-104.

11 857. A warranty that the Defective Vehicles were in merchantable condition was
12 implied by law in the instant transaction, pursuant to Kan. Stat. Ann. § 84-2-314.

13 858. These vehicles, when sold and at all times thereafter, were not in merchantable
14 condition and are not fit for the ordinary purpose for which cars are used. Specifically, the
15 Defective Vehicles are inherently defective in that there are defects in the CAN buses that make
16 them vulnerable to hacking and the Defective Vehicles do not have an adequate fail-safe to
17 protect against such attacks.

18 859. Defendants were provided notice of these issues by numerous complaints filed
19 against them, including the instant Complaint, and by other means.

20 860. Privity is not required because the Defective Vehicles are inherently dangerous.

21 861. As a direct and proximate result of Defendants’ breach of the warranties of
22 merchantability, Plaintiffs and the Class have been damaged in an amount to be proven at trial.

23 **COUNT LXXXVI**

24 **Breach of Contract/Common Law Warranty**
25 **(Based on Kansas Law)**

26 862. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set
27 forth herein.

28 863. To the extent Defendants’ limited remedies are deemed not to be warranties under

1 Kansas' Commercial Code, Plaintiffs, individually and on behalf of the other Class members,
2 plead in the alternative under common law warranty and contract law. Defendants limited the
3 remedies available to Plaintiffs and the other Class members to repairs and adjustments needed to
4 correct defects in materials or workmanship of any part supplied by Defendants, and/or warranted
5 the quality or nature of those services to Plaintiffs and the other Class members.

6 864. Defendants breached this warranty or contract obligation by failing to repair the
7 Class Vehicles, or to replace them.

8 865. As a direct and proximate result of Defendants' breach of contract or common
9 law warranty, Plaintiffs and the other Class members have been damaged in an amount to be
10 proven at trial, which shall include, but is not limited to, all compensatory damages, incidental
11 and consequential damages, and other damages allowed by law.

12 **COUNT LXXXVII**

13 **Fraud by Concealment**
14 **(Based on Kansas Law)**

15 866. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set
16 forth herein.

17 867. As set forth above, Defendants concealed and/or suppressed material facts
18 concerning the safety of their vehicles.

19 868. Defendants had a duty to disclose these safety issues because they consistently
20 marketed their vehicles as safe and proclaimed that safety is one of Defendants' highest corporate
21 priorities. Once Defendants made representations to the public about safety, Defendants were under
22 a duty to disclose these omitted facts, because where one does speak one must speak the whole truth
23 and not conceal any facts which materially qualify those facts stated. One who volunteers
24 information must be truthful, and the telling of a half-truth calculated to deceive is fraud.

25 869. In addition, Defendants had a duty to disclose these omitted material facts
26 because they were known and/or accessible only to Defendants who have superior knowledge and
27 access to the facts, and Defendants knew they were not known to or reasonably discoverable by
28 Plaintiffs and the Class. These omitted facts were material because they directly impact the safety

1 of the Defective Vehicles.

2 870. Whether or not a vehicle is susceptible to hacking and being commandeered by a
3 third party are material safety concerns. Defendants possessed exclusive knowledge of the defects
4 rendering Defective Vehicles inherently more dangerous and unreliable than similar vehicles.

5 871. Defendants actively concealed and/or suppressed these material facts, in whole or
6 in part, with the intent to induce Plaintiffs and the Class to purchase Defective Vehicles at a
7 higher price for the vehicles, which did not match the vehicles' true value.

8 872. Defendants still have not made full and adequate disclosure and continue to
9 defraud Plaintiffs and the Class.

10 873. Plaintiffs and the Class were unaware of these omitted material facts and would
11 not have acted as they did if they had known of the concealed and/or suppressed facts. Plaintiffs'
12 and the Class' actions were justified. Defendants were in exclusive control of the material facts
13 and such facts were not known to the public or the Class.

14 874. As a result of the concealment and/or suppression of the facts, Plaintiffs and the
15 Class sustained damage. Plaintiffs and the Class reserve their right to elect either to (a) rescind
16 their purchase or lease of Defective Vehicles and obtain restitution (b) affirm their purchase or
17 lease of Defective Vehicles and recover damages.

18 875. Defendants' acts were done willfully, wantonly, fraudulently, or maliciously,
19 oppressively, deliberately, with intent to defraud, and in reckless disregard of Plaintiffs' and the
20 Class' rights and well-being to enrich Defendants.

21 876. Defendants' conduct warrants an assessment of punitive damages in an amount
22 sufficient to deter such conduct in the future, which amount is to be determined according to proof.

23 **Claims Brought on Behalf of the Kentucky Class**

24 **COUNT LXXXVIII**

25 **Violation of the Kentucky Consumer Protection Act**
26 **(Kentucky Revised Statutes Sections 367.110, et seq.)**

27 877. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set
28 forth herein.

1 878. Defendants misrepresented the safety of the Defective Vehicles after learning of
2 their defects with the intent that Plaintiffs relied on such representations in their decision
3 regarding the purchase, lease and/or use of the Defective Vehicles.

4 879. Plaintiffs did, in fact, rely on such representations in their decision regarding the
5 purchase, lease and/or use of the Defective Vehicles.

6 880. Through those misleading and deceptive statements and false promises,
7 Defendants violated the Kentucky Consumer Protection Act (“KCPA”).

8 881. The KCPA applies to Defendants’ transactions with Plaintiffs because
9 Defendants’ deceptive scheme was carried out in Kentucky and affected Plaintiffs.

10 882. Defendants also failed to advise NHSTA and the public about what they knew
11 about the CAN bus defects in the Defective Vehicles.

12 883. Plaintiffs relied on Defendants’ silence as to known defects in connection with
13 their decision regarding the purchase, lease and/or use of the Defective Vehicles.

14 884. As a direct and proximate result of Defendants’ deceptive conduct and violation
15 of the KCPA, Plaintiffs have sustained and will continue to sustain economic losses and other
16 damages for which they are entitled to compensatory and equitable damages and declaratory relief
17 in an amount to be proven at trial.

18 **COUNT LXXXIX**

19 **Breach of Express Warranty**

20 **(Kentucky Statutes Annotated Section 355.2-313)**

21 885. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set
22 forth herein.

23 886. Defendants expressly warranted – through statements and advertisements
24 described above – that the vehicles were of high quality, and at a minimum, would actually work
25 properly and safely.

26 887. Defendants breached this warranty by knowingly selling to Plaintiffs vehicles
27 with dangerous defects, and which were not of high quality.

28 888. Plaintiffs have been damaged as a direct and proximate result of the breaches by

1 Defendants in that the Defective Vehicles purchased by Plaintiffs were and are worth far less than
2 what the Plaintiffs paid to purchase, which was reasonably foreseeable to Defendants.

3 **COUNT XC**

4 **Breach of Implied Warranties of Merchantability**
5 **(Kentucky Statutes Annotated Section 335.2-314)**

6 889. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set
7 forth herein.

8 890. Defendants impliedly warranted that their vehicles were of good and
9 merchantable quality and fit, and safe for their ordinary intended use – transporting the driver and
10 passengers in reasonable safety during normal operation, and without unduly endangering them or
11 members of the public.

12 891. As described above, there were dangerous defects in the vehicles manufactured,
13 distributed, and/or sold by Defendants, which Plaintiffs purchased, including, but not limited to,
14 defects that caused the vehicles to be vulnerable to hacking.

15 892. These dangerous defects existed at the time the vehicles left Defendants’
16 manufacturing facilities and at the time they were sold to Plaintiffs. Furthermore, because of these
17 dangerous defects, Plaintiffs did not receive the benefit of their bargain and the vehicles have
18 suffered a diminution in value.

19 893. These dangerous defects were the direct and proximate cause of damages to the
20 Plaintiffs and the Class.

21 **COUNT XCI**

22 **Fraudulent Concealment**
23 **(Based on Kentucky Law)**

24 894. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set
25 forth herein.

26 895. Defendants intentionally concealed the above-described material safety and
27 functionality information, or acted with reckless disregard for the truth, and denied Plaintiffs and
28 the other Class members information that is highly relevant to their purchasing decision.

1 896. Defendants further affirmatively misrepresented to Plaintiffs in advertising and
2 other forms of communication, including standard and uniform material provided with each car,
3 that the Class Vehicles they was selling were new, had no significant defects, and would perform
4 and operate properly when driven in normal usage.

5 897. Defendants knew these representations were false when made.

6 898. The Class Vehicles purchased or leased by Plaintiffs and the other Class members
7 were, in fact, defective, unsafe, and unreliable because the Class Vehicles contained faulty and
8 defective CAN buses, as alleged herein.

9 899. Defendants had a duty to disclose that these Class Vehicles were defective,
10 unsafe, and unreliable in that certain crucial safety functions of the Class Vehicles would be
11 rendered inoperative due to faulty and defective CAN buses, because Plaintiffs and the other
12 Class members relied on Defendants' material representations that the Class Vehicles they were
13 purchasing were safe and free from defects.

14 900. The aforementioned concealment was material because if it had been disclosed
15 Plaintiffs and the other Class members would not have bought or leased the Class Vehicles, or
16 would not have bought or leased those Vehicles at the prices they paid.

17 901. The aforementioned representations were material because they were facts that
18 would typically be relied on by a person purchasing or leasing a new motor vehicle. Defendants
19 knew or recklessly disregarded that their representations were false because they knew the CAN
20 buses were susceptible to hacking. Defendants intentionally made the false statements in order to
21 sell Class Vehicles.

22 902. Plaintiffs and the other Class members relied on Defendants' reputations – along
23 with Defendants' failure to disclose the faulty and defective nature of the CAN bus and
24 Defendants' affirmative assurances that their Class Vehicles were safe and reliable, and other
25 similar false statements – in purchasing or leasing Defendants' Class Vehicles.

26 903. As a result of their reliance, Plaintiffs and the other Class members have been
27 injured in an amount to be proven at trial, including, but not limited to, their lost benefit of the
28 bargain and overpayment at the time of purchase or lease and/or the diminished value of their

1 Class Vehicles.

2 904. Defendants' conduct was knowing, intentional, with malice, demonstrated a
3 complete lack of care, and was in reckless disregard for the rights of Plaintiffs and the other Class
4 members.

5 905. Plaintiffs and the other Class members are therefore entitled to an award of
6 punitive damages.

7 **Claims Brought on Behalf of the Louisiana Class**

8 **COUNT XCII**

9 **Louisiana Products Liability Act**
10 **(Louisiana Revised Statutes Sections 9:2800.51, et seq.)**

11 906. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set
12 forth herein.

13 907. Plaintiffs allege that Defendants have defectively designed, manufactured, sold or
14 otherwise placed in the stream of commerce Defective Vehicles as set forth above.

15 908. The product in question is unreasonably dangerous for the following reasons:

16 a) It is unreasonably dangerous in construction or composition as provided in
17 La. Rev. Stat. § 9:2800.55;

18 b) It is unreasonably dangerous in design as provided in La. Rev. Stat.
19 § 9:2800.56;

20 c) It is unreasonably dangerous because an adequate warning about the
21 product was not provided as required by La. Rev. Stat. § 9:2800.57; and

22 d) It is unreasonably dangerous because it does not conform to an express
23 warranty of the manufacturer about the product that render it unreasonably dangerous under La.
24 Rev. Stat. §§ 9:2800.55, et seq., that existed at the time the product left the control of the
25 manufacturer.

26 909. Defendants knew and expected for the Defective Vehicles to eventually be sold to
27 and operated by purchasers and/or eventual owners of the Defective Vehicles, including
28 Plaintiffs; consequently, Plaintiffs were an expected user of the product which Defendants

1 manufactured.

2 910. The Defective Vehicles reached Plaintiffs without substantial changes in their
3 condition from time of completion of manufacture by Defendants.

4 911. The defects in the Defective Vehicles could not have been contemplated by any
5 reasonable person expected to operate the Defective Vehicles, and, therefore, presented an
6 unreasonably dangerous situation for expected users of the Defective Vehicles even though the
7 Defective Vehicles were operated by expected users in a reasonable manner.

8 912. As a direct and proximate cause of Defendants’ design, manufacture, assembly,
9 marketing, and sales of the Defective Vehicles, Plaintiffs have sustained and will continue to
10 sustain the loss of use of his/her vehicle, economic losses and consequential damages, and are
11 therefore entitled to compensatory relief according to proof, and entitled to a declaratory
12 judgment that Defendants are liable to Plaintiffs for breach of their duty to design, manufacture,
13 assemble, market, and sell a safe product, fit for their reasonably intended use. Plaintiffs allege
14 that the vulnerability of the CAN buses to hacking would not happen in the absence of a defective
15 product. Plaintiffs allege the application of res ipsa loquitur under Louisiana Products Liability
16 Law.

17 **COUNT XCIII**

18 **Redhibition**

19 **(Louisiana Civil Code Articles 2520, et seq. and 2545)**

20 913. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set
21 forth herein.

22 914. Plaintiffs allege that Defendants defectively designed, manufactured, sold or
23 otherwise placed in the stream of commerce vehicles that are defective.

24 915. Plaintiffs allege that the vulnerability of the CAN buses to hacking would not
25 happen in the absence of a defective product.

26 916. Plaintiffs allege the application of res ipsa loquitur under Louisiana Products
27 Liability Law.

28 917. Plaintiffs allege that Defendants have known about safety hazards that result in

1 susceptibility to hacking of their vehicles for a number of years and have failed to adequately
2 address those safety concerns.

3 918. Defendants, as manufacturers of the Defective Vehicles, are responsible for
4 damages caused by the failure of their product to conform to well-defined standards. In particular,
5 the vehicles contain vices or defects which rendered them useless or their use so inconvenient and
6 unsafe that a reasonable buyer would not have purchased them. Defendants manufactured, sold
7 and promoted the vehicles and placed the vehicles into the stream of commerce. Under Louisiana
8 Law, the seller and manufacturers warrants the buyer against redhibitory defects or vices in the
9 things sold. La. Code Civ. P. Art. 2520. The vehicles as sold and promoted by Defendants
10 possessed redhibitory defects because they were not manufactured and marketed in accordance
11 with industry standards and/or were unreasonably dangerous as described above, which rendered
12 the vehicles useless or their use so inconvenient and unsafe that it must be presumed that a buyer
13 would not have bought the vehicles had he/she known of the defect. Pursuant to La. Code Civ. P.
14 Art. 2520, Plaintiffs are entitled to obtain a rescission of the sale of the subject product.

15 919. The vehicles alternatively possess redhibitory defects because the vehicles were
16 not manufactured and marketed in accordance with industry standards and/or were unreasonably
17 dangerous as described above, which diminished the value of the vehicles so that it must be
18 presumed that a reasonable buyer would still have bought the vehicles, but for a lesser price, had
19 the redhibitory defects been disclosed. In this instance, Plaintiffs are entitled to a reduction of the
20 purchase price.

21 920. As the manufacturers of the vehicle, under Louisiana Law, defendants are deemed
22 to know that the vehicle contained redhibitory defects pursuant to La. Code Civ. P. Art. 2545.
23 Defendants are liable as bad faith sellers for selling a defective product with knowledge of defects
24 and thus are liable to Plaintiffs for the price of the subject product, with interest from the purchase
25 date, as well as reasonable expenses occasioned by the sale of the subject product, and attorney's
26 fees.

27 921. Due to the defects and redhibitory vices in the vehicles sold to Plaintiffs, they
28 have suffered damages under Louisiana Law.

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COUNT XCIV

**Breach of Implied Warranty of Fitness for Ordinary Use
(Louisiana Civil Code Article 2524)**

922. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

923. At all relevant times, Defendants marketed, sold and distributed the automobile for use by Plaintiffs, knew of the use for which the Defective Vehicles were intended, and impliedly warranted them to be fit for ordinary use.

924. The Defective Vehicles, when sold, were defective, unmerchantable, and unfit for ordinary use.

925. The Defective Vehicles contain vices or defects which render them either absolutely useless or render their use inconvenient, imperfect, and unsafe such that Plaintiffs would not have purchased the Defective Vehicles had they known of the vices or defects.

926. The damages in question arose from the reasonably anticipated use of the product in question.

927. Defendants breached the implied warranties of merchantability and fitness for ordinary use when the Defective Vehicles were sold to Plaintiffs because they are vulnerable to hacking and lack a fail-safe mechanism.

928. As a direct and proximate cause of Defendants’ breach of the implied warranties of merchantability and fitness for ordinary use, Plaintiffs and the Class have suffered injuries and damages.

Claims Brought on Behalf of the Maine Class

COUNT XCV

**Violation of Maine Unfair Trade Practices Act
(Maine Revised Statutes Annotated title 5 Sections 205-A, et seq.)**

929. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

930. The Maine Unfair Trade Practices Act (“UTPA”) makes unlawful “[u]nfair

1 methods of competition and unfair or deceptive acts or practices in the conduct of any trade or
2 commerce. . . .” per Me. Rev. Stat. Ann. tit. 5 § 207.

3 931. The advertising and sale of motor vehicles by Defendants constitutes “trade or
4 commerce” within the meaning of UTPA per Me. Rev. Stat. Ann. tit. 5 § 206(3).

5 932. In the course of Defendants’ business, they willfully failed to disclose and
6 actively concealed the dangerous risk of hacking as described above. This was a deceptive act in
7 that Defendants represented that Defective Vehicles have characteristics, uses, benefits, and
8 qualities which they do not have; represented that Defective Vehicles are of a particular standard
9 and quality when they are not; and advertised Defective Vehicles with the intent not to sell them
10 as advertised. Defendants knew or should have known that their conduct violated the UTPA.

11 933. Defendants engaged in a deceptive trade practice when they failed to disclose
12 material information concerning the Defendants vehicles which was known to Defendants at the
13 time of the sale. Defendants deliberately withheld the information about the vehicles’
14 susceptibility to hacking in order to ensure that consumers would purchase their vehicles and to
15 induce the consumer to enter into a transaction.

16 934. The information withheld was material in that it was information that was
17 important to consumers and likely to affect their choice of, or conduct regarding, the purchase of
18 their cars. Defendants’ withholding of this information was likely to mislead consumers acting
19 reasonably under the circumstances. The vulnerability of the vehicles to hacking and their lack of
20 a fail-safe mechanism were material to Plaintiffs and the Class. Had Plaintiffs and the Class
21 known that their vehicles had these serious safety defects, they would not have purchased their
22 vehicles.

23 935. Defendants’ conduct has caused or is to cause a substantial injury that is not
24 reasonably avoided by consumers, and the harm is not outweighed by a countervailing benefit to
25 consumers or competition.

26 936. As a result of Defendants’ deceptive and unfair practices, Plaintiffs and the Class
27 have suffered loss of money or property. Plaintiffs and the Class overpaid for their vehicles and
28 did not receive the benefit of their bargain. The value of their vehicles have diminished now that

1 the safety issues have come to light, and Plaintiffs and the Class own vehicles that are not safe.

2 937. Plaintiffs are entitled to actual damages, restitution and such other equitable relief,
3 including an injunction, as the Court determines to be necessary and proper.

4 938. Pursuant to Me. Rev. Stat. Ann. tit. 5 § 213(3), Plaintiffs will mail a copy of the
5 complaint to Maine’s Attorney General.

6 **COUNT XCVI**

7 **Breach of Implied Warranty of Merchantability**
8 **(Maine Revised Statutes Annotated title 11 Section 2-314)**

9 939. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set
10 forth herein.

11 940. Defendants are and were at all relevant times merchants with respect to motor
12 vehicles.

13 941. A warranty that the Class Vehicles were in merchantable condition is implied by
14 law in the instant transactions.

15 942. These Class Vehicles, when sold and at all times thereafter, were not in
16 merchantable condition and are not fit for the ordinary purpose for which cars are used.
17 Defendants were provided notice of these issues by numerous complaints filed against them,
18 including the instant Complaint, and by other means.

19 943. As a direct and proximate result of Defendants’ breach of the warranties of
20 merchantability, Plaintiffs and the Class have been damaged in an amount to be proven at trial.

21 **COUNT XCVII**

22 **Breach of Contract**
23 **(Based on Maine Law)**

24 944. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set
25 forth herein.

26 945. To the extent Defendants’ limited remedies are deemed not to be warranties under
27 Maine’s Commercial Code, Plaintiffs, individually and on behalf of the other Class members,
28 plead in the alternative under common law contract law. Defendants limited the remedies

1 available to Plaintiffs and the other Class members to repairs and adjustments needed to correct
2 defects in materials or workmanship of any part supplied by Defendants, and/or warranted the
3 quality or nature of those services to Plaintiffs and the other Class members.

4 946. Defendants breached this contract obligation by failing to repair the Class
5 Vehicles, or to replace them.

6 947. As a direct and proximate result of Defendants’ breach of contract, Plaintiffs and
7 the other Class members have been damaged in an amount to be proven at trial, which shall
8 include, but is not limited to, all compensatory damages, incidental and consequential damages,
9 and other damages allowed by law.

10 **Claims Brought on Behalf of the Maryland Class**

11 **COUNT XCVIII**

12 **Violations of the Maryland Consumer Protection Act**
13 **(Maryland Code of Commercial Law Sections 13-101, et seq.)**

14 948. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set
15 forth herein.

16 949. Plaintiffs are persons within the meaning of the Maryland Consumer Protection
17 Act (the “Act”) for all purposes therein.

18 950. Defendants are persons within the meaning of the Act for all purposes therein.

19 951. The false, deceptive and misleading statements and representations made by
20 Defendants alleged above and below are Unfair and Deceptive Trade Practices within the
21 meaning of the Act.

22 952. Defendants participated in unfair or deceptive acts or practices that violated the
23 Act, as described above and below, and those unfair and deceptive trade practices occurred or
24 were committed in the course, vocation or occupation of Defendants’ businesses. Defendants
25 engaged in the unfair and deceptive trade practices and each are directly liable for these violations
26 of law.

27 953. The Unfair and Deceptive Trade Practices as alleged above and below
28 significantly impact the public as actual or potential customers of Defendants.

1 954. By failing to disclose and actively concealing the dangerous risk of hacking and
 2 the lack of adequate fail-safe mechanisms in Defective Vehicles equipped with CAN buses,
 3 Defendants engaged in deceptive business practices prohibited by the Act, including, but not
 4 limited to, (1) representing that Defective Vehicles have characteristics, uses, benefits, and
 5 qualities which they do not have, (2) representing that Defective Vehicles are of a particular
 6 standard, quality, and grade when they are not, (3) advertising Defective Vehicles with the intent
 7 not to sell them as advertised; (4) representing that a transaction involving Defective Vehicles
 8 confers or involves rights, remedies, and obligations which it does not, and (5) representing that
 9 the subject of a transaction involving Defective Vehicles has been supplied in accordance with a
 10 previous representation when it has not.

11 955. As alleged above, Defendants made numerous material statements about the
 12 safety and reliability of Defective Vehicles that were either false or misleading. Each of these
 13 statements contributed to the deceptive context of Defendants’ unlawful advertising and
 14 representations as a whole.

15 956. Defendants’ unfair or deceptive acts or practices were likely to and did in fact
 16 deceive reasonable consumers, including Plaintiffs, about the true safety and reliability of
 17 Defective Vehicles.

18 957. As a direct and proximate result of their unfair and deceptive business practices,
 19 and violations of the Act detailed above, Defendants caused actual damages, injuries, and losses
 20 to Plaintiffs and, if not stopped, will continue to harm Plaintiffs. Plaintiffs currently own or lease,
 21 or within the class period have owned or leased, Defective Vehicles that are defective and
 22 inherently unsafe. CAN bus defects and the resulting vulnerability to hacking have caused the
 23 value of Defective Vehicles to plummet.

24 958. Plaintiffs are entitled to all damages permitted by M.R.S. §§ 13-101, *et seq.*,
 25 including actual damages sustained, civil penalties, attorneys’ fees, and costs of this action. Also,
 26 the State of Maryland is entitled to statutory penalties from defendants for each violation of the
 27 Act.

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COUNT XCIX

**Breach of Express Warranty
(Maryland Code of Commercial Law Section 2-313)**

959. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

960. Defendants are and were at all relevant times merchants as defined by the Uniform Commercial Code.

961. In their Limited Warranties and in advertisements, brochures, and through other statements in the media, Defendants expressly warranted that they would repair or replace defects in material or workmanship free of charge if they became apparent during the warranty period. For example, the following language appears in all Class Vehicle Warranty booklets:

1. Toyota’s warranty

When Warranty Begins

The warranty period begins on the vehicle’s in-service date, which is the first date the vehicle is either delivered to an ultimate purchaser, leased, or used as a company car or demonstrator.

Repairs Made at No Charge

Repairs and adjustments covered by these warranties are made at no charge for parts and labor.

Basic Warranty

This warranty covers repairs and adjustments needed to correct defects in materials or workmanship of any part supplied by Toyota Coverage is for 36 months or 36,000 miles, whichever occurs first

2. Ford’s warranty

KNOW WHEN YOUR WARRANTY BEGINS

Your Warranty Start Date is the day you take delivery of your new vehicle or the day it is first put into service

QUICK REFERENCE: WARRANTY COVERAGE

. . .

Your Bumper to Bumper Coverage lasts for three years - unless you drive more than 36,000 miles before three years elapse.

WHO PAYS FOR WARRANTY REPAIRS?

You will not be charged for repairs covered by any applicable warranty during the stated coverage periods

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3. GM’s warranty

Warranty Period

The warranty period for all coverages begins on the date the vehicle is first delivered or put in use and ends at the expiration of the coverage period.

Bumper-to-Bumper Coverage

The complete vehicle is covered for 4 years or 50,000 miles, whichever comes first
....

No Charge

Warranty repairs, including towing, parts, and labor, will be made at no charge.

Repairs Covered

This warranty covers repairs to correct any vehicle defect related to materials or workmanship occurring during the warranty period. Needed repairs will be performed using new or remanufactured parts.

962. Defendants’ Limited Warranties, as well as advertisements, brochures, and other statements in the media regarding the Class Vehicles, formed the basis of the bargain that was reached when Plaintiffs and the other Class members purchased or leased their Class Vehicles equipped with a CAN bus from Defendants.

963. Defendants breached the express warranty to repair and adjust to correct defects in materials and workmanship of any part supplied by Defendants. Defendants have not repaired or adjusted, and have been unable to repair or adjust, the Class Vehicles’ materials and workmanship defects.

964. In addition to these Limited Warranties, Defendants otherwise expressly warranted several attributes, characteristics, and qualities of the CAN bus.

965. These warranties are only a sampling of the numerous warranties that Defendants made relating to safety, reliability, and operation. Generally these express warranties promise heightened, superior, and state-of-the-art safety, reliability, and performance standards, and promote the benefits of the CAN bus. These warranties were made, *inter alia*, in advertisements, on Defendants’ websites, and in uniform statements provided by Defendants to be made by salespeople, or made publicly by Defendants’ executives or by other authorized representatives. These affirmations and promises were part of the basis of the bargain between the parties.

966. These additional warranties were also breached because the Class Vehicles were

1 not fully operational, safe, or reliable (and remained so even after the problems were
2 acknowledged), nor did they comply with the warranties expressly made to purchasers or lessees.
3 Defendants did not provide at the time of sale, and have not provided since then, Class Vehicles
4 conforming to these express warranties.

5 967. Furthermore, the limited warranty of repair and/or adjustments to defective parts,
6 fails in its essential purpose because the contractual remedy is insufficient to make Plaintiffs and
7 the other Class members whole and because Defendants have failed and/or have refused to
8 adequately provide the promised remedies within a reasonable time.

9 968. Accordingly, recovery by Plaintiffs and the other Class members is not limited to
10 the limited warranty of repair or adjustments to parts defective in materials or workmanship, and
11 Plaintiffs, individually and on behalf of the other Class members, seek all remedies as allowed by
12 law.

13 969. Also, as alleged in more detail herein, at the time that Defendants warranted and
14 sold the Class Vehicles they knew that the Class Vehicles did not conform to the warranties and
15 were inherently defective, and Defendants wrongfully and fraudulently misrepresented and/or
16 concealed material facts regarding their Class Vehicles. Plaintiffs and the other Class members
17 were therefore induced to purchase or lease the Class Vehicles under false and/or fraudulent
18 pretenses.

19 970. Moreover, many of the injuries flowing from the Class Vehicles cannot be
20 resolved through the limited remedy of “replacement or adjustments,” as many incidental and
21 consequential damages have already been suffered due to Defendants’ fraudulent conduct as
22 alleged herein, and due to their failure and/or continued failure to provide such limited remedy
23 within a reasonable time, and any limitation on Plaintiffs’ and the other Class members’ remedies
24 would be insufficient to make Plaintiffs and the other Class members whole.

25 971. Finally, due to the Defendants’ breach of warranties as set forth herein, Plaintiffs
26 and the Class assert as an additional and/or alternative remedy, as set forth in Md. Code Com.
27 Law § 2-608 for a revocation of acceptance of the goods, and for a return to Plaintiffs and to the
28 Class of the purchase price of all vehicles currently.

1 972. Defendants were provided notice of these issues by the instant Complaint, and by
2 other means before or within a reasonable amount of time after the allegations of Class Vehicle
3 defects became public.

4 973. As a direct and proximate result of Defendants' breach of express warranties,
5 Plaintiffs and the other Class members have been damaged in an amount to be determined at trial.

6 **COUNT C**

7 **Breach of the Implied Warranty of Merchantability**
8 **(Maryland Code of Commercial Law Section 2-314)**

9 974. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set
10 forth herein.

11 975. Defendants are and were at all relevant times merchants with respect to motor
12 vehicles.

13 976. A warranty that the Class Vehicles were in merchantable condition is implied by
14 law in the instant transactions.

15 977. These Class Vehicles, when sold and at all times thereafter, were not in
16 merchantable condition and are not fit for the ordinary purpose for which cars are used.
17 Defendants were provided notice of these issues by numerous complaints filed against them,
18 including the instant Complaint, and by other means.

19 978. As a direct and proximate result of Defendants' breach of the warranties of
20 merchantability, Plaintiffs and the Class have been damaged in an amount to be proven at trial.

21 **COUNT CI**

22 **Fraud by Concealment**
23 **(Based on Maryland Law)**

24 979. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set
25 forth herein.

26 980. As set forth above, Defendants concealed and/or suppressed material facts
27 concerning the safety of their vehicles.

28 981. Defendants had a duty to disclose these safety issues because they consistently

1 marketed their vehicles as safe and proclaimed that safety is one of Defendants' highest corporate
2 priorities. Once Defendants made representations to the public about safety, Defendants were
3 under a duty to disclose these omitted facts, because where one does speak one must speak the
4 whole truth and not conceal any facts which materially qualify those facts stated. One who
5 volunteers information must be truthful, and the telling of a half-truth calculated to deceive is
6 fraud.

7 982. In addition, Defendants had a duty to disclose these omitted material facts
8 because they were known and/or accessible only to Defendants who have superior knowledge and
9 access to the facts, and Defendants knew they were not known to or reasonably discoverable by
10 Plaintiffs and the Class. These omitted facts were material because they directly impact the safety
11 of the Defective Vehicles. Whether or not a vehicle is susceptible to hacking and can be
12 commandeered by a third party are material safety concerns. Defendants possessed exclusive
13 knowledge of the defects rendering Defective Vehicles inherently more dangerous and unreliable
14 than similar vehicles.

15 983. Defendants actively concealed and/or suppressed these material facts, in whole or
16 in part, with the intent to induce Plaintiffs and the Class to purchase Defective Vehicles at a
17 higher price for the vehicles, which did not match the vehicles' true value.

18 984. Defendants still have not made full and adequate disclosure and continue to
19 defraud Plaintiffs and the Class.

20 985. Plaintiffs and the Class were unaware of these omitted material facts and would
21 not have acted as they did if they had known of the concealed and/or suppressed facts. Plaintiffs'
22 and the Class' actions were justified. Defendants were in exclusive control of the material facts
23 and such facts were not known to the public or the Class.

24 986. As a result of the concealment and/or suppression of the facts, Plaintiffs and the
25 Class sustained damage. For those Plaintiffs and the Class who elect to affirm the sale, these
26 damages, include the difference between the actual value of that which Plaintiffs and the Class
27 paid and the actual value of that which they received, together with additional damages arising
28 from the sales transaction, amounts expended in reliance upon the fraud, compensation for loss of

1 use and enjoyment of the property, and/or lost profits. For those Plaintiffs and the Class who want
2 to rescind the purchase, then those Plaintiffs and the Class are entitled to restitution and
3 consequential damages.

4 987. Defendants’ acts were done maliciously, oppressively, deliberately, with intent to
5 defraud, and in reckless disregard of Plaintiffs’ and the Class’ rights and well-being to enrich
6 Defendants. Defendants’ conduct warrants an assessment of punitive damages in an amount
7 sufficient to deter such conduct in the future, which amount is to be determined according to
8 proof.

9 **COUNT CII**

10 **Strict Products Liability – Design Defect**
11 **(Based on Maryland Law)**

12 988. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set
13 forth herein.

14 989. At all times relevant hereto, Defendants were engaged in the business of
15 designing, manufacturing, assembling, promoting, advertising, selling, and distributing
16 Defendants vehicles in the United States, including, but not limited to, the Defective Vehicles.

17 990. Defendants knew and expected for the Defective Vehicles to eventually be sold to
18 and operated by consumers and/or eventual owners of the Defective Vehicles, including Plaintiffs
19 and the Class. Consequently, Plaintiffs and the Class were foreseeable users of the products which
20 Defendants manufactured.

21 991. The Defective Vehicles reached Plaintiffs and the Class without substantial
22 change in condition from the time they were manufactured by Defendants.

23 992. The susceptibility of the Defective Vehicles to hackling could not have been
24 contemplated by any reasonable person expected to operate the Defective Vehicles, and for that
25 reason, presented an unreasonably dangerous situation for foreseeable users of the Defective
26 Vehicles even though the Defective Vehicles were operated by foreseeable users in a reasonable
27 manner.

28 993. Defendants should have reasonably foreseen that the dangerous conditions of the

1 Defective Vehicles being vulnerable to hacking without a fail-safe mechanism to would subject
2 Plaintiffs and the Class to harm.

3 994. As a result of these defective designs, the Defective Vehicles are unreasonably
4 dangerous.

5 995. Plaintiffs and the Class have used the Defective Vehicles reasonably and as
6 intended, to the fullest degree possible given their defective nature, and, nevertheless, have
7 suffered damages through no fault of their own.

8 996. Safer, alternative designs existed for the Defective Vehicles.

9 997. As a direct and proximate result of Defendants’ design, manufacture, assembly,
10 marketing, and sales of the Defective Vehicles, Plaintiffs and the Class have sustained and will
11 continue to sustain the loss of the use of their vehicles, economic losses, and consequential
12 damages, and are, therefore, entitled to compensatory relief according to proof, and entitled to a
13 declaratory judgment that Defendants are liable to Plaintiffs and the Class for breach of their duty
14 to design, manufacture, assemble, market, and sell a safe product, fit for their reasonably intended
15 use. Plaintiffs and the Class are therefore entitled to equitable relief as described below.

16 998. Plaintiffs and the Class demand judgment against Defendants for design defects
17 as prayed for below.

18 **COUNT CIII**

19 **Strict Products Liability – Defective Manufacturing**

20 **(Based on Maryland Law)**

21 999. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set
22 forth herein.

23 1000. Defendants are the manufacturers, designers, distributors, sellers, or suppliers of
24 the Defective Vehicles.

25 1001. The Defective Vehicles manufactured, designed, sold, distributed, supplied and/or
26 placed in the stream of commerce by Defendants were defective in their manufacture and
27 construction such that they were unreasonably dangerous, were not fit for the ordinary purposes
28 for which they were intended, and/or did not meet the reasonable expectations of any consumer.

1 1002. The Defective Vehicles manufactured, designed, sold, distributed, supplied and/or
2 placed in the stream of commerce by Defendants, were defective in their manufacture and
3 construction as described at the time they left Defendants’ control.

4 1003. The Defective Vehicles are unreasonably dangerous due to their defective
5 manufacture.

6 1004. As a direct and proximate result of Plaintiffs’ purchase and use of the Defective
7 Vehicles as manufactured, designed, sold, supplied and introduced into the stream of commerce
8 by Defendants, Plaintiffs and the Class suffered economic losses, and will continue to suffer such
9 damages and economic losses in the future.

10 1005. Plaintiffs demand judgment against Defendants for manufacturing defects as
11 prayed for below.

12 **COUNT CIV**

13 **Strict Products Liability – Defect Due to Nonconformance with Representations**
14 **(Based on Maryland Law)**

15 1006. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set
16 forth herein.

17 1007. Defendants are the manufacturers, designers, distributors, sellers, or suppliers of
18 the Defective Vehicles, and Defendants made representations regarding the character or quality of
19 the Defective Vehicles.

20 1008. The Defective Vehicles manufactured and supplied by Defendants were defective
21 in that, when they left the hands of Defendants, they did not conform to the representations made
22 by Defendants concerning the Defective Vehicles.

23 1009. Plaintiffs and the Class justifiably relied upon Defendants’ representations
24 regarding the Defective Vehicles when they purchased and used the Defective Vehicles.

25 1010. As a direct and proximate result of their reliance on Defendants’ representations
26 regarding the character and quality of the Defective Vehicles, Plaintiffs and the Class suffered
27 damages and economic losses, and will continue to suffer such damages and economic losses in
28 the future.

1 1011. Plaintiffs demand judgment against Defendants for manufacturing defects as
2 prayed for below.

3 **Claims Brought on Behalf of the Massachusetts Class**

4 **COUNT CV**

5 **Violations of the Massachusetts Consumer Protection Act**

6 **(Massachusetts General Laws Chapter 93A)**

7 1012. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set
8 forth herein.

9 1013. The conduct of Defendants as set forth herein constitutes unfair and deceptive acts
10 or practices in violation of the Massachusetts Consumer Protection Act, Mass. Gen. Laws Ch.
11 93A, including but not limited to Defendants’ design, manufacture, and sale of Class Vehicles
12 with the defective CAN bus, which Defendants failed to adequately investigate, disclose, and
13 remedy, and their misrepresentations and omissions regarding the safety, reliability, and
14 functionality of their Class Vehicles, which misrepresentations and omissions possessed the
15 tendency to deceive.

16 1014. Defendants engages in the conduct of trade or commerce and the misconduct
17 alleged herein occurred in trade or commerce.

18 1015. Plaintiffs, individually and on behalf of the other Class members, will make a
19 demand on Defendants pursuant to Mass. Gen. Laws Ch. 93A, § 9(3). The letter will assert that
20 rights of consumers as claimants had been violated, describe the unfair and deceptive acts
21 committed by Defendants, and specify the injuries the Plaintiffs and the other Class members
22 have suffered and the relief they seek.

23 1016. Therefore, Plaintiffs seeks monetary and equitable relief under the Massachusetts
24 Consumer Protection Act as a result of Defendants’ unfair and deceptive acts and practices.

25 **COUNT CVI**

26 **Breach of Express Warranty**

27 **(Massachusetts General Laws Chapter 106, Section 2-313)**

28 1017. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set

1 forth herein.

2 1018. Defendants are and were at all relevant times merchants with respect to motor
3 vehicles.

4 1019. In their Limited Warranties and in advertisements, brochures, and through other
5 statements in the media, Defendants expressly warranted that they would repair or replace defects
6 in material or workmanship free of charge if they became apparent during the warranty period.
7 For example, the following language appears in all Class Vehicle Warranty booklets:

8 1. Toyota’s warranty

9 *When Warranty Begins*

10 The warranty period begins on the vehicle’s in-service date, which is the first date
11 the vehicle is either delivered to an ultimate purchaser, leased, or used as a
12 company car or demonstrator.

13 *Repairs Made at No Charge*

14 Repairs and adjustments covered by these warranties are made at no charge for
15 parts and labor.

16 *Basic Warranty*

17 This warranty covers repairs and adjustments needed to correct defects in materials
18 or workmanship of any part supplied by Toyota Coverage is for 36 months or
19 36,000 miles, whichever occurs first

20 2. Ford’s warranty

21 *KNOW WHEN YOUR WARRANTY BEGINS*

22 Your Warranty Start Date is the day you take delivery of your new vehicle or the
23 day it is first put into service

24 *QUICK REFERENCE: WARRANTY COVERAGE*

25
26 Your Bumper to Bumper Coverage lasts for three years - unless you drive more
27 than 36,000 miles before three years elapse.

28 *WHO PAYS FOR WARRANTY REPAIRS?*

You will not be charged for repairs covered by any applicable warranty during the
stated coverage periods

3. GM’s warranty

Warranty Period

The warranty period for all coverages begins on the date the vehicle is first
delivered or put in use and ends at the expiration of the coverage period.

Bumper-to-Bumper Coverage

1 The complete vehicle is covered for 4 years or 50,000 miles, whichever comes first
2

No Charge

3 Warranty repairs, including towing, parts, and labor, will be made at no charge.

4 *Repairs Covered*

5 This warranty covers repairs to correct any vehicle defect related to materials or
6 workmanship occurring during the warranty period. Needed repairs will be
performed using new or remanufactured parts.

7 1020. Defendants' Limited Warranties, as well as advertisements, brochures, and other
8 statements in the media regarding the Class Vehicles, formed the basis of the bargain that was
9 reached when Plaintiffs and the other Class members purchased or leased their Class Vehicles
10 equipped with a CAN bus from Defendants.

11 1021. Defendants breached the express warranty to repair and adjust to correct defects
12 in materials and workmanship of any part supplied by Defendants. Defendants have not repaired
13 or adjusted, and have been unable to repair or adjust, the Class Vehicles' materials and
14 workmanship defects.

15 1022. In addition to these Limited Warranties, Defendants otherwise expressly
16 warranted several attributes, characteristics, and qualities of the CAN bus.

17 1023. These warranties are only a sampling of the numerous warranties that Defendants
18 made relating to safety, reliability, and operation. Generally these express warranties promise
19 heightened, superior, and state-of-the-art safety, reliability, and performance standards, and
20 promote the benefits of the CAN bus. These warranties were made, *inter alia*, in advertisements,
21 on Defendants' websites, and in uniform statements provided by Defendants to be made by
22 salespeople, or made publicly by Defendants' executives or by other authorized representatives.
23 These affirmations and promises were part of the basis of the bargain between the parties.

24 1024. These additional warranties were also breached because the Class Vehicles were
25 not fully operational, safe, or reliable (and remained so even after the problems were
26 acknowledged), nor did they comply with the warranties expressly made to purchasers or lessees.
27 Defendants did not provide at the time of sale, and have not provided since then, Class Vehicles
28 conforming to these express warranties.

1 1025. Furthermore, the limited warranty of repair and/or adjustments to defective parts,
2 fails in its essential purpose because the contractual remedy is insufficient to make Plaintiffs and
3 the other Class members whole and because Defendants have failed and/or have refused to
4 adequately provide the promised remedies within a reasonable time.

5 1026. Accordingly, recovery by Plaintiffs and the other Class members is not limited to
6 the limited warranty of repair or adjustments to parts defective in materials or workmanship, and
7 Plaintiffs, individually and on behalf of the other Class members, seek all remedies as allowed by
8 law.

9 1027. Also, as alleged in more detail herein, at the time that Defendants warranted and
10 sold the Class Vehicles they knew that the Class Vehicles did not conform to the warranties and
11 were inherently defective, and Defendants wrongfully and fraudulently misrepresented and/or
12 concealed material facts regarding their Class Vehicles. Plaintiffs and the other Class members
13 were therefore induced to purchase or lease the Class Vehicles under false and/or fraudulent
14 pretenses.

15 1028. Moreover, many of the injuries flowing from the Class Vehicles cannot be
16 resolved through the limited remedy of “replacement or adjustments,” as many incidental and
17 consequential damages have already been suffered due to Defendants’ fraudulent conduct as
18 alleged herein, and due to their failure and/or continued failure to provide such limited remedy
19 within a reasonable time, and any limitation on Plaintiffs’ and the other Class members’ remedies
20 would be insufficient to make Plaintiffs and the other Class members whole.

21 1029. Finally, due to the Defendants’ breach of warranties as set forth herein, Plaintiffs
22 and the Class assert as an additional and/or alternative remedy, as set forth in ALM GL ch. 106, §
23 2-608, for a revocation of acceptance of the goods, and for a return to Plaintiffs and to the Class
24 of the purchase price of all vehicles currently owned.

25 1030. Defendants were provided notice of these issues by the instant Complaint, and by
26 other means before or within a reasonable amount of time after the allegations of Class Vehicle
27 defects became public.

28 1031. As a direct and proximate result of Defendants’ breach of express warranties,

1 Plaintiffs and the other Class members have been damaged in an amount to be determined at trial.

2 **COUNT CVII**

3 **Breach of Implied Warranty of Merchantability**
4 **(Massachusetts General Laws Chapter 106, Section 2-314)**

5 1032. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set
6 forth herein.

7 1033. Defendants are and were at all relevant times merchants with respect to motor
8 vehicles.

9 1034. A warranty that the Class Vehicles were in merchantable condition is implied by
10 law in the instant transactions.

11 1035. These Class Vehicles, when sold and at all times thereafter, were not in
12 merchantable condition and are not fit for the ordinary purpose for which cars are used.
13 Defendants were provided notice of these issues by numerous complaints filed against them,
14 including the instant Complaint, and by other means.

15 1036. As a direct and proximate result of Defendants' breach of the warranties of
16 merchantability, Plaintiffs and the Class have been damaged in an amount to be proven at trial.

17 **COUNT CVIII**

18 **Breach of Contract/Common Law Warranty**
19 **(Based on Massachusetts Law)**

20 1037. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set
21 forth herein.

22 1038. Plaintiffs bring this Count on behalf of the Massachusetts Class.

23 1039. To the extent Defendants' limited remedies are deemed not to be warranties under
24 Massachusetts' Commercial Code, Plaintiffs, individually and on behalf of the other Class
25 members, plead in the alternative under common law warranty and contract law. Defendants
26 limited the remedies available to Plaintiffs and the other Class members to repairs and
27 adjustments needed to correct defects in materials or workmanship of any part supplied by
28 Defendants, and/or warranted the quality or nature of those services to Plaintiffs and the other

1 Class members.

2 1040. Defendants breached this warranty or contract obligation by failing to repair the
3 Class Vehicles, or to replace them.

4 1041. As a direct and proximate result of Defendants’ breach of contract or common
5 law warranty, Plaintiffs and the other Class members have been damaged in an amount to be
6 proven at trial, which shall include, but is not limited to, all compensatory damages, incidental
7 and consequential damages, and other damages allowed by law.

8 **COUNT CIX**

9 **Fraudulent Concealment**
10 **(Based on Massachusetts Law)**

11 1042. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set
12 forth herein.

13 1043. Defendants intentionally concealed the above-described material safety and
14 functionality information, or acted with reckless disregard for the truth, and denied Plaintiffs and
15 the other Class members information that is highly relevant to their purchasing decision.

16 1044. Defendants further affirmatively misrepresented to Plaintiffs in advertising and
17 other forms of communication, including standard and uniform material provided with each car,
18 that the Class Vehicles they was selling were new, had no significant defects, and would perform
19 and operate properly when driven in normal usage.

20 1045. Defendants knew these representations were false when made.

21 1046. The Class Vehicles purchased or leased by Plaintiffs and the other Class members
22 were, in fact, defective, unsafe, and unreliable because the Class Vehicles contained faulty and
23 defective CAN buses, as alleged herein.

24 1047. Defendants had a duty to disclose that these Class Vehicles were defective,
25 unsafe, and unreliable in that certain crucial safety functions of the Class Vehicles would be
26 rendered inoperative due to faulty and defective CAN buses, because Plaintiffs and the other
27 Class members relied on Defendants’ material representations that the Class Vehicles they were
28 purchasing were safe and free from defects.

1 1048. The aforementioned concealment was material because if it had been disclosed
2 Plaintiffs and the other Class members would not have bought or leased the Class Vehicles, or
3 would not have bought or leased those Vehicles at the prices they paid.

4 1049. The aforementioned representations were material because they were facts that
5 would typically be relied on by a person purchasing or leasing a new motor vehicle. Defendants
6 knew or recklessly disregarded that their representations were false because they knew the CAN
7 buses were susceptible to hacking. Defendants intentionally made the false statements in order to
8 sell Class Vehicles.

9 1050. Plaintiffs and the other Class members relied on Defendants’ reputations – along
10 with Defendants’ failure to disclose the faulty and defective nature of the CAN bus and
11 Defendants’ affirmative assurances that their Class Vehicles were safe and reliable, and other
12 similar false statements – in purchasing or leasing Defendants’ Class Vehicles.

13 1051. As a result of their reliance, Plaintiffs and the other Class members have been
14 injured in an amount to be proven at trial, including, but not limited to, their lost benefit of the
15 bargain and overpayment at the time of purchase or lease and/or the diminished value of their
16 Class Vehicles.

17 1052. Defendants’ conduct was knowing, intentional, with malice, demonstrated a
18 complete lack of care, and was in reckless disregard for the rights of Plaintiffs and the other Class
19 members.

20 1053. Plaintiffs and the other Class members are therefore entitled to an award of
21 punitive damages.

22 **Claims Brought on Behalf of the Michigan Class**

23 **COUNT CX**

24 **Violation of the Michigan Consumer Protection Act**
25 **(Michigan Compiled Laws Sections 445.901, et seq.)**

26 1054. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set
27 forth herein.

28 1055. Defendants misrepresented the safety of the Defective Vehicles after learning of

1 their defects with the intent that Plaintiffs relied on such representations in their decision
2 regarding the purchase, lease and/or use of the Defective Vehicles.

3 1056. Plaintiffs did, in fact, rely on such representations in their decision regarding the
4 purchase, lease and/or use of the Defective Vehicles.

5 1057. Through those misleading and deceptive statements and false promises,
6 Defendants violated the Michigan Consumer Protection Act.

7 1058. The Michigan Consumer Protection Act applies to Defendants’ transactions with
8 Plaintiffs because Defendants’ deceptive scheme was carried out in Michigan and affected
9 Plaintiffs.

10 1059. Defendants also failed to advise NHSTA and the public about what they knew
11 about the CAN bus defects in the Defective Vehicles.

12 1060. Plaintiffs relied on Defendants’ silence as to known defects in connection with
13 their decision regarding the purchase, lease and/or use of the Defective Vehicles.

14 1061. As a direct and proximate result of Defendants’ deceptive conduct and violation
15 of the Michigan Consumer Protection Act, Plaintiffs have sustained and will continue to sustain
16 economic losses and other damages for which they are entitled to compensatory and equitable
17 damages and declaratory relief in an amount to be proven at trial.

18 **COUNT CXI**

19 **Breach of Express Warranty**
20 **(Michigan Compiled Laws Section 440.2313)**

21 1062. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set
22 forth herein.

23 1063. Defendants expressly warranted – through statements and advertisements
24 described above – that the vehicles were of high quality, and at a minimum, would actually work
25 properly and safely.

26 1064. Defendants breached this warranty by knowingly selling to Plaintiffs vehicles
27 with dangerous defects, and which were not of high quality.

28 1065. Plaintiffs have been damaged as a direct and proximate result of the breaches by

1 Defendants in that the Defective Vehicles purchased by Plaintiffs were and are worth far less than
2 what the Plaintiffs paid to purchase, which was reasonably foreseeable to Defendants.

3 **COUNT CXII**

4 **Breach of Implied Warranty of Merchantability**
5 **(Michigan Compiled Laws Section 440.2314)**

6 1066. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set
7 forth herein.

8 1067. Defendants impliedly warranted that their vehicles were of good and
9 merchantable quality and fit, and safe for their ordinary intended use – transporting the driver and
10 passengers in reasonably safety during normal operation, and without unduly endangering them or
11 members of the public.

12 1068. As described above, there were dangerous defects in the vehicles manufactured,
13 distributed, and/or sold by Defendants, which Plaintiffs purchased, including, but not limited to,
14 defects that caused the vehicles to be vulnerable to hacking.

15 1069. These dangerous defects existed at the time the vehicles left Defendants’
16 manufacturing facilities and at the time they were sold to Plaintiffs. Furthermore, because of these
17 dangerous defects, Plaintiffs did not receive the benefit of their bargain and the vehicles have
18 suffered a diminution in value.

19 1070. These dangerous defects were the direct and proximate cause of damages to the
20 Plaintiffs.

21 **Claims Brought on Behalf of the Minnesota Class**

22 **COUNT CXIII**

23 **Violation of Minnesota False Statement in Advertising Statute**
24 **(Minnesota Statutes Sections 325F.67 et seq.)**

25 1071. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set
26 forth herein.

27 1072. Defendants produced and published advertisements and deceptive and misleading
28 statements on the safety and reliability of the Defective Vehicles, even after learning of their

CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system on September 28, 2016.

I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

Dated: September 28, 2016

/s/ Ashley Nummer Ladner
Ashley Nummer Ladner

Case No. 16-15496

**IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

HELENE CAHEN, KERRY J. TOMPULIS, MERRILL NISAM, RICHARD
GIBBS, and LUCY L. LANGDON,

Plaintiffs-Appellants,

v.

TOYOTA MOTOR CORPORATION,
TOYOTA MOTOR SALES, U.S.A., INC., and
GENERAL MOTORS LLC,

Defendants-Appellees.

On Appeal From the United States District Court
for the Northern District of California
The Honorable William H. Orrick | Case No. 4:15-cv-01104-WHO

**SUPPLEMENTAL EXCERPTS OF RECORD
VOLUME II OF II.**

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SUPPLEMENTAL EXCERPTS OF RECORD INDEX**VOLUME II****Civil Case #4:15-cv-01104-WHO**

Docket #	Document	Date	Page
1	Complaint for Breach of Warranty, Breach of Contract, and Violation of Consumer Protection Law: Class Action [Part 2 of 2]	3/10/2015	SER 0301 – SER 0476 (continued from SER Volume I)

1 defects, with the intent to sell the Defective Vehicles.

2 1073. Defendants continue to represent or otherwise disseminate misleading information
3 about the defect and cause of the defect with the intent to induce the public to buy the Defective
4 Vehicles.

5 1074. Defendants concealed their deceptive practices in order to increase the sale of and
6 profit from the Defective Vehicles.

7 1075. Defendants violated the Minnesota False Statements in Advertising Act, Minn.
8 Stat. §§ 325F.67, *et seq.*, by publicly misrepresenting safety of the Defective Vehicles, including
9 the susceptibility of the CAN buses to hacking.

10 1076. Defendants also failed to advise the NHTSA and the public about what they knew
11 about the vulnerable CAN buses.

12 1077. The Minnesota False Statements in Advertising Act applies to Plaintiffs’
13 transactions with Defendants because Defendants’ deceptive scheme was carried out in Minnesota
14 and affected Plaintiffs.

15 1078. As a direct and proximate result of Defendants’ deceptive, unfair, and fraudulent
16 conduct and violations of Minn. Stat. § 325F.67, *et seq.*, Plaintiffs have sustained and will
17 continue to sustain economic losses and other damages for which they are entitled to
18 compensatory and equitable damages and declaratory relief in an amount to be proven at trial.

19 **COUNT CXIV**

20 **Violation of Minnesota Uniform Deceptive Trade Practices Act**
21 **(Minnesota Statutes Sections 325D.43-48, *et seq.*)**

22 1079. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set
23 forth herein

24 1080. Defendants engaged in – and continue to engage in – conduct that violates the
25 Minnesota Deceptive Trade Practices Act, Minn. Stat. §§ 325D.44, *et seq.* The violations include
26 the following:

27 a) Defendants violated Minn. Stat. § 325D.44(5) by representing the
28 Defective Vehicles as having characteristics, uses, and benefits of safe and mechanically sound

1 vehicles while knowing that the statements were false and the Defective Vehicles contained
2 defects;

3 b) Defendants violated Minn. Stat. § 325D.44(7) by representing the
4 Defective Vehicles as a non-defective product of a particular standard, quality, or grade while
5 knowing the statements were false and the Defective Vehicles contained defects;

6 c) Defendants violated Minn. Stat. § 325D.44(9) by advertising, marketing,
7 and selling the Defective Vehicles as reliable and without a known defect while knowing those
8 claims were false; and

9 d) Defendants violated Minn. Stat. § 325D.44(13) by creating a likelihood of
10 confusion and/or misrepresenting the safety of the Defective Vehicles.

11 1081. Defendants’ deceptive scheme was carried out in Minnesota and affected
12 Plaintiffs.

13 1082. Defendants also failed to advise the NHSTA and the public about what they knew
14 about the susceptibility of the CAN buses to hacking.

15 1083. As a direct and proximate result of Defendants’ deceptive conduct and violation
16 of Minn. Stat. §§ 325D.44, *et seq.*, Plaintiffs have sustained and will continue to sustain economic
17 losses and other damages for which they are entitled to compensatory and equitable damages and
18 declaratory relief in an amount to be proven at trial.

19 **COUNT CXV**

20 **Violation of Minnesota Prevention of Consumer Fraud Act**
21 **(Minnesota Statutes Sections 325F.68, *et seq.*)**

22 1084. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set
23 forth herein.

24 1085. Defendants misrepresented the safety of the Defective Vehicles after learning of
25 their defects with the intent that Plaintiffs relied on such representations in their decision
26 regarding the purchase, lease and/or use of the Defective Vehicles.

27 1086. Plaintiffs did, in fact, rely on such representations in their decision regarding the
28 purchase, lease and/or use of the Defective Vehicles.

1 1087. Through these misleading and deceptive statements and false promises,
2 Defendants violated Minn. Stat. § 325F.69.

3 1088. The Minnesota Prevention of Consumer Fraud Act applies to Defendants’
4 transactions with Plaintiffs because Defendants’ deceptive scheme was carried out in Minnesota
5 and affected Plaintiffs.

6 1089. Defendants also failed to advise the NHSTA and the public about what they knew
7 about the sudden and unintended acceleration defects in the Defective Vehicles.

8 1090. Plaintiffs relied on Defendants’ silence as to known defects in connection with
9 their decision regarding the purchase, lease and/or use of the Defective Vehicles.

10 1091. As a direct and proximate result of Defendants’ deceptive conduct and violation
11 of Minn. Stat. § 325F.69, Plaintiffs have sustained and will continue to sustain economic losses
12 and other damages for which they are entitled to compensatory and equitable damages and
13 declaratory relief in an amount to be proven at trial.

14 **COUNT CXVI**

15 **Fraudulent Misrepresentation and Fraudulent Concealment**
16 **(Based on Minnesota Law)**

17 1092. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set
18 forth herein.

19 1093. Defendants intentionally concealed the above-described material safety and
20 functionality information, or acted with reckless disregard for the truth, and denied Plaintiffs and
21 the other Class members information that is highly relevant to their purchasing decision.

22 1094. Defendants further affirmatively misrepresented to Plaintiffs in advertising and
23 other forms of communication, including standard and uniform material provided with each car,
24 that the Class Vehicles they was selling were new, had no significant defects, and would perform
25 and operate properly when driven in normal usage.

26 1095. Defendants knew these representations were false when made.

27 1096. The Class Vehicles purchased or leased by Plaintiffs and the other Class members
28 were, in fact, defective, unsafe, and unreliable because the Class Vehicles contained faulty and

1 defective CAN buses, as alleged herein.

2 1097. Defendants had a duty to disclose that these Class Vehicles were defective,
3 unsafe, and unreliable in that certain crucial safety functions of the Class Vehicles would be
4 rendered inoperative due to faulty and defective CAN buses, because Plaintiffs and the other
5 Class members relied on Defendants' material representations that the Class Vehicles they were
6 purchasing were safe and free from defects.

7 1098. The aforementioned concealment was material because if it had been disclosed
8 Plaintiffs and the other Class members would not have bought or leased the Class Vehicles, or
9 would not have bought or leased those Vehicles at the prices they paid.

10 1099. The aforementioned representations were material because they were facts that
11 would typically be relied on by a person purchasing or leasing a new motor vehicle. Defendants
12 knew or recklessly disregarded that their representations were false because they knew the CAN
13 buses were susceptible to hacking. Defendants intentionally made the false statements in order to
14 sell Class Vehicles.

15 1100. Plaintiffs and the other Class members relied on Defendants' reputations – along
16 with Defendants' failure to disclose the faulty and defective nature of the CAN bus and
17 Defendants' affirmative assurances that their Class Vehicles were safe and reliable, and other
18 similar false statements – in purchasing or leasing Defendants' Class Vehicles.

19 1101. As a result of their reliance, Plaintiffs and the other Class members have been
20 injured in an amount to be proven at trial, including, but not limited to, their lost benefit of the
21 bargain and overpayment at the time of purchase or lease and/or the diminished value of their
22 Class Vehicles.

23 1102. Defendants' conduct was knowing, intentional, with malice, demonstrated a
24 complete lack of care, and was in reckless disregard for the rights of Plaintiffs and the other Class
25 members.

26 1103. Plaintiffs and the other Class members are therefore entitled to an award of
27 punitive damages.

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COUNT CXVII

**Breach of Express Warranty
(Minnesota Statutes Section 325G.19 Express Warranties)**

1104. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

1105. Defendants are and at all relevant times were merchants as defined by the Uniform Commercial Code (“UCC”).

1106. Defendants expressly warranted – through uniform statements described above – that the vehicles were of high quality, and, at a minimum, would actually work properly and safely. These warranties became part of the basis of the bargain.

1107. Defendants breached this warranty by knowingly selling to Plaintiffs vehicles with dangerous defects, and which were not of high quality.

1108. Plaintiffs have been damaged as a direct and proximate result of the breaches by Defendants in that the Defective Vehicles purchased by Plaintiffs were and are worth far less than what the Plaintiffs paid to purchase, which was reasonably foreseeable to Defendants.

1109. Plaintiffs were unaware of these defects and could not have reasonably discovered them when they purchased their vehicles from Defendants.

1110. Plaintiffs and the Class are entitled to damages, including the diminished value of their vehicles and the value of the non-use of the vehicles pending successful repair, in addition to any costs associated with purchasing safer vehicles, incidental an consequential damages, and all other damages allowable under the law, including such further relief as the Court deems just and proper.

COUNT CXVIII

**Breach of Implied Warranty of Merchantability (Strict Liability)
(Minnesota Statutes Section 336.2-314 Implied Warranty; Merchantability; Usage of Trade)**

1111. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

1112. Defendants impliedly warranted that their vehicles were of good and

1 merchantable quality and fit, and safe for their ordinary intended use – transporting the driver and
2 passengers in reasonable safety during normal operation, and without unduly endangering them or
3 members of the public.

4 1113. As described above, there were dangerous defects in the vehicles manufactured,
5 distributed, and/or sold by Defendants, which Plaintiffs purchased, including, but not limited to,
6 defects that caused the vehicles to be vulnerable to hacking.

7 1114. These dangerous defects existed at the time the vehicles left Defendants’
8 manufacturing facilities and at the time they were sold to the Plaintiffs. Furthermore, because of
9 these dangerous defects, Plaintiffs did not receive the benefit of their bargain and the vehicles
10 have suffered a diminution in value.

11 1115. These dangerous defects were the direct and proximate cause of damages to the
12 Plaintiffs.

13 **COUNT CXIX**

14 **Strict Liability (Design Defect)**

15 **(Based on Minnesota Law)**

16 1116. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set
17 forth herein.

18 1117. Defendants are and have been at all times pertinent to this Complaint, engaged in
19 the business of designing, manufacturing, assembling, promoting, advertising, distributing and
20 selling Defective Vehicles in the United States, including those owned or leased by the Plaintiffs
21 and the Class.

22 1118. Defendants knew and anticipated that the vehicles owned or leased by Plaintiffs
23 and the Class would be sold to and operated by purchasers and/or eventual owners or lessors of
24 Defendants’ vehicles, including Plaintiffs and the Class.

25 1119. Defendants also knew that these Defective Vehicles would reach the Plaintiffs
26 and the Class without substantial change in their condition from the time the vehicles departed the
27 Defendants’ assembly lines.

28 1120. Defendants designed the Defective Vehicles defectively, causing them to fail to

1 perform as safely as an ordinary consumer would expect when used in an intended and reasonably
2 foreseeable manner.

3 1121. Defendants had the capability to use a feasible, alternative, safer design, and
4 failed to correct the design defects.

5 1122. The risks inherent in the design of the Defective Vehicles outweigh significantly
6 any benefits of such design.

7 1123. Plaintiffs and the Class could not have anticipated and did not know of the
8 aforementioned defects at any time prior to recent revelations regarding the problems with the
9 Defective Vehicles.

10 1124. As a direct and proximate result of Defendants' wrongful conduct, Plaintiffs and
11 the Class have sustained and will continue to sustain economic losses and other damages for
12 which they are entitled to compensatory and equitable damages and declaratory relief in an
13 amount to be proven at trial.

14 **COUNT CXX**

15 **Strict Liability (Failure to Warn)**

16 **(Based on Minnesota Law)**

17 1125. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set
18 forth herein.

19 1126. Defendants are and have been at all times pertinent to this Complaint, engaged in
20 the business of designing, manufacturing, assembling, promoting, advertising distributing and
21 selling Defective Vehicles in the United States, including those owned or leased by the Plaintiffs
22 and the Class.

23 1127. Defendants, at all times pertinent to this Complaint, knew and anticipated that the
24 Defective Vehicles and their component parts would be purchased, leased and operated by
25 consumers, including Plaintiffs and the Class.

26 1128. Defendants also knew that these Defective Vehicles would reach the Plaintiffs
27 and the Class without substantial change in their conditions from the time that the vehicles
28 departed the Defendants' assembly lines.

1 1129. Defendants knew or should have known of the substantial dangers involved in the
2 reasonably foreseeable use of the Defective Vehicles, defective design, manufacturing and lack of
3 sufficient warnings caused them to have an unreasonably dangerous propensity to sudden and
4 unintended acceleration.

5 1130. The Defendants failed to adequately warn Plaintiffs and the Class when they
6 became aware of the defect that caused Plaintiffs and the Class vehicles to be prone to sudden and
7 unintended acceleration.

8 1131. Defendants also failed to timely recall the vehicles or take any action to timely
9 warn Plaintiffs or the Class of these problems and instead continue to subject Plaintiffs and the
10 Class to harm.

11 1132. Defendants knew, or should have known, that these defects were not readily
12 recognizable to an ordinary consumer and that consumers would lease, purchase and use these
13 products without inspection.

14 1133. Defendants should have reasonably foreseen that the CAN bus defect in the
15 Defective Vehicles would subject the Plaintiffs and the Class to harm resulting from the defect.

16 1134. Plaintiffs and the Class have used the Defective Vehicles for their intended
17 purpose and in a reasonable and foreseeable manner.

18 1135. As a direct and proximate result of Defendants' wrongful conduct, Plaintiffs and
19 the Class have sustained and will continue to sustain economic losses and other damages for
20 which they are entitled to compensatory and equitable damages and declaratory relief in an
21 amount to be proven at trial.

22 **Claims Brought on Behalf of the Mississippi Class**

23 **COUNT CXXI**

24 **Mississippi Products Liability Act**

25 **(Mississippi Code Annotated Sections 11-1-63, et seq.)**

26 1136. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set
27 forth herein.

28 1137. Defendants have defectively designed, manufactured, sold or otherwise placed in

1 the stream of commerce Defective Vehicles.

2 1138. Defendants are strictly liable in tort for the Plaintiffs' injuries and damages and
3 the Plaintiffs respectfully rely upon the Doctrine as set forth in *Restatement, Second, Torts*
4 § 402(a).

5 1139. Because of the negligence of the design and manufacture of the Defective
6 Vehicle, by which Plaintiffs were injured and the failure of Defendants to warn Plaintiffs of the
7 certain dangers concerning the operation of the Defective Vehicles which were known to
8 Defendants but were unknown to Plaintiffs, the Defendants have committed a tort.

9 1140. The Defective Vehicles which caused Plaintiffs' injuries were manufactured by
10 Defendants.

11 1141. At all times herein material, Defendants negligently and carelessly did certain acts
12 and failed to do other things, including, but not limited to, inventing, developing, designing,
13 researching, guarding, manufacturing, building, inspecting, investigating, testing, labeling,
14 instructing, and negligently and carelessly failing to provide adequate and fair warning of the
15 characteristics, dangers and hazards associated with the operation of the vehicles in question to
16 users of the Defective Vehicles, including, but not limited to, Plaintiffs, and willfully failing to
17 recall or otherwise cure one or more of the defects in the product involved thereby directly and
18 proximately causing the hereinafter described injury.

19 1142. The Defective Vehicles were unsafe for their use by reason of the fact that they
20 were defective. For example, the Defective Vehicles were defective in their design, guarding,
21 development, manufacture, and lack of permanent, accurate, adequate and fair warning of the
22 characteristics, danger and hazard to the user, prospective user and members of the general public,
23 including, but not limited to, Plaintiffs, and because Defendants failed to recall or otherwise cure
24 one or more defects in the vehicles involved thereby directly and proximately causing the
25 described injuries.

26 1143. Defendants, and each of them, knew or reasonably should have known that the
27 above mentioned product would be purchased and used without all necessary testing or inspection
28 for defects by the Plaintiffs and the Class.

1 1144. Plaintiffs were not aware of those defects, or else Plaintiffs was unable, as a
2 practical matter, to cure that defective condition.

3 1145. Plaintiffs used the product in a foreseeable manner.

4 1146. As a proximate result of the negligence of Defendants, Plaintiffs suffered injuries
5 and damages.

6 **COUNT CXXII**

7 **Breach of Implied Warranty of Merchantability**

8 **(Mississippi Code Annotated Section 75-2-314)**

9 1147. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set
10 forth herein.

11 1148. Defendants have defectively designed, manufactured, sold or otherwise placed in
12 the stream of commerce defective vehicles as set forth above.

13 1149. Defendants impliedly warranted that the Defective Vehicles were merchantable
14 and for the ordinary purpose for which they were designed, manufactured, and sold.

15 1150. The Defective Vehicles were not in merchantable condition or fit for ordinary use
16 due to the defects described above and as a result of the breach of warranty of merchantability by
17 Defendants, Plaintiffs sustained injuries and damages.

18 **COUNT CXXIII**

19 **Negligent Misrepresentation/Fraud**

20 **(Based on Mississippi Law)**

21 1151. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set
22 forth herein.

23 1152. As set forth above, Defendants concealed and/or suppressed material facts
24 concerning the safety of their vehicles.

25 1153. Defendants had a duty to disclose these safety issues because they consistently
26 marketed their vehicles as safe and proclaimed that safety is one of Defendants' highest corporate
27 priorities. Once Defendants made representations to the public about safety, Defendants were
28 under a duty to disclose these omitted facts, because where one does speak one must speak the

1 whole truth and not conceal any facts which materially qualify those facts stated. One who
2 volunteers information must be truthful, and the telling of a half-truth calculated to deceive is
3 fraud.

4 1154. In addition, Defendants had a duty to disclose these omitted material facts
5 because they were known and/or accessible only to Defendants who have superior knowledge and
6 access to the facts, and Defendants knew they were not known to or reasonably discoverable by
7 Plaintiffs and the Class. These omitted facts were material because they directly impact the safety
8 of the Defective Vehicles. Whether or not a vehicle is susceptible to hacking and to being
9 commandeered by a third party are material safety concerns. Defendants possessed exclusive
10 knowledge of the defects rendering Defective Vehicles inherently more dangerous and unreliable
11 than similar vehicles.

12 1155. Defendants actively concealed and/or suppressed these material facts, in whole or
13 in part, with the intent to induce Plaintiffs and the Class to purchase Defective Vehicles at a
14 higher price for the vehicles, which did not match the vehicles' true value.

15 1156. Defendants still have not made full and adequate disclosure and continue to
16 defraud Plaintiffs and the Class.

17 1157. Plaintiffs and the Class were unaware of these omitted material facts and would
18 not have acted as they did if they had known of the concealed and/or suppressed facts. Plaintiffs'
19 and the Class' actions were justified. Defendants were in exclusive control of the material facts
20 and such facts were not known to the public or the Class.

21 1158. As a result of the misrepresentation concealment and/or suppression of the facts,
22 Plaintiffs and the Class sustained damage. For those Plaintiffs and the Class who elect to affirm
23 the sale, these damages, under Mississippi law, include the difference between the actual value of
24 that which Plaintiffs and the Class paid and the actual value of that which they received, together
25 with additional damages arising from the sales transaction, amounts expended in reliance upon
26 the fraud, compensation for loss of use and enjoyment of the property, and/or lost profits. For
27 those Plaintiffs and the Class who want to rescind the purchase, then those Plaintiffs and the Class
28 are entitled to restitution and consequential damages under Mississippi law.

1 1159. Defendants’ acts were done maliciously, oppressively, deliberately, with intent to
2 defraud, and in reckless disregard of Plaintiffs’ and the Class’ rights and well-being to enrich
3 Defendants. Defendants’ conduct warrants an assessment of punitive damages in an amount
4 sufficient to deter such conduct in the future, which amount is to be determined according to
5 proof.

6 **Claims Brought on Behalf of the Missouri Class**

7 **COUNT CXXIV**

8 **Violation of Missouri Merchandising Practices Act**
9 **(Missouri Revised Statutes Sections 407.010, et seq.)**

10 1160. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set
11 forth herein.

12 1161. The conduct of Defendants as set forth herein constitutes unfair or deceptive acts
13 or practices, including, but not limited to, Defendants’ manufacture and sale of vehicles with a
14 CAN bus defect that lack an effective fail-safe mechanism, which Defendants failed to adequately
15 investigate, disclose and remedy, and their misrepresentations and omissions regarding the safety
16 and reliability of their vehicles.

17 1162. Defendants’ actions as set forth above occurred in the conduct of trade or
18 commerce.

19 1163. Defendants’ actions impact the public interest because Plaintiffs were injured in
20 exactly the same way as millions of others purchasing and/or leasing Defendants vehicles as a
21 result of Defendants’ generalized course of deception. All of the wrongful conduct alleged herein
22 occurred, and continues to occur, in the conduct of Defendants’ business.

23 1164. Plaintiffs and the Class were injured as a result of Defendants’ conduct. Plaintiffs
24 overpaid for their Defective Vehicles and did not receive the benefit of their bargain, and their
25 vehicles have suffered a diminution in value.

26 1165. Defendants’ conduct proximately caused the injuries to Plaintiffs and the Class.

27 1166. Defendants are liable to Plaintiffs and the Class for damages in amounts to be
28 proven at trial, including attorneys’ fees, costs, and treble damages.

1 1167. Pursuant to Mo. Rev. Stat. § 407.010, Plaintiffs will serve the Missouri Attorney
2 General with a copy of this complaint as Plaintiffs seek injunctive relief.

3 **COUNT CXXV**

4 **Breach of Express Warranty**
5 **(Missouri Revised Statutes Section 400.2-313)**

6 1168. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set
7 forth herein.

8 1169. Defendants are and were at all relevant times merchants with respect to motor
9 vehicles.

10 1170. In their Limited Warranties and in advertisements, brochures, and through other
11 statements in the media, Defendants expressly warranted that they would repair or replace defects
12 in material or workmanship free of charge if they became apparent during the warranty period.
13 For example, the following language appears in all Class Vehicle Warranty booklets:

14 1. Toyota’s warranty

15 *When Warranty Begins*

16 The warranty period begins on the vehicle’s in-service date, which is the first date
17 the vehicle is either delivered to an ultimate purchaser, leased, or used as a
18 company car or demonstrator.

19 *Repairs Made at No Charge*

20 Repairs and adjustments covered by these warranties are made at no charge for
21 parts and labor.

22 *Basic Warranty*

23 This warranty covers repairs and adjustments needed to correct defects in materials
24 or workmanship of any part supplied by Toyota Coverage is for 36 months or
25 36,000 miles, whichever occurs first

26 2. Ford’s warranty

27 *KNOW WHEN YOUR WARRANTY BEGINS*

28 Your Warranty Start Date is the day you take delivery of your new vehicle or the
day it is first put into service

QUICK REFERENCE: WARRANTY COVERAGE

. . .

Your Bumper to Bumper Coverage lasts for three years - unless you drive more
than 36,000 miles before three years elapse.

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WHO PAYS FOR WARRANTY REPAIRS?

You will not be charged for repairs covered by any applicable warranty during the stated coverage periods

3. GM's warranty

Warranty Period

The warranty period for all coverages begins on the date the vehicle is first delivered or put in use and ends at the expiration of the coverage period.

Bumper-to-Bumper Coverage

The complete vehicle is covered for 4 years or 50,000 miles, whichever comes first

No Charge

Warranty repairs, including towing, parts, and labor, will be made at no charge.

Repairs Covered

This warranty covers repairs to correct any vehicle defect related to materials or workmanship occurring during the warranty period. Needed repairs will be performed using new or remanufactured parts.

1171. Defendants' Limited Warranties, as well as advertisements, brochures, and other statements in the media regarding the Class Vehicles, formed the basis of the bargain that was reached when Plaintiffs and the other Class members purchased or leased their Class Vehicles equipped with a CAN bus from Defendants.

1172. Defendants breached the express warranty to repair and adjust to correct defects in materials and workmanship of any part supplied by Defendants. Defendants have not repaired or adjusted, and have been unable to repair or adjust, the Class Vehicles' materials and workmanship defects.

1173. In addition to these Limited Warranties, Defendants otherwise expressly warranted several attributes, characteristics, and qualities of the CAN bus.

1174. These warranties are only a sampling of the numerous warranties that Defendants made relating to safety, reliability, and operation. Generally these express warranties promise heightened, superior, and state-of-the-art safety, reliability, and performance standards, and promote the benefits of the CAN bus. These warranties were made, *inter alia*, in advertisements, on Defendants' websites, and in uniform statements provided by Defendants to be made by salespeople, or made publicly by Defendants' executives or by other authorized representatives.

1 These affirmations and promises were part of the basis of the bargain between the parties.

2 1175. These additional warranties were also breached because the Class Vehicles were
3 not fully operational, safe, or reliable (and remained so even after the problems were
4 acknowledged), nor did they comply with the warranties expressly made to purchasers or lessees.
5 Defendants did not provide at the time of sale, and have not provided since then, Class Vehicles
6 conforming to these express warranties.

7 1176. Furthermore, the limited warranty of repair and/or adjustments to defective parts,
8 fails in its essential purpose because the contractual remedy is insufficient to make Plaintiffs and
9 the other Class members whole and because Defendants have failed and/or have refused to
10 adequately provide the promised remedies within a reasonable time.

11 1177. Accordingly, recovery by Plaintiffs and the other Class members is not limited to
12 the limited warranty of repair or adjustments to parts defective in materials or workmanship, and
13 Plaintiffs, individually and on behalf of the other Class members, seek all remedies as allowed by
14 law.

15 1178. Also, as alleged in more detail herein, at the time that Defendants warranted and
16 sold the Class Vehicles they knew that the Class Vehicles did not conform to the warranties and
17 were inherently defective, and Defendants wrongfully and fraudulently misrepresented and/or
18 concealed material facts regarding their Class Vehicles. Plaintiffs and the other Class members
19 were therefore induced to purchase or lease the Class Vehicles under false and/or fraudulent
20 pretenses.

21 1179. Moreover, many of the injuries flowing from the Class Vehicles cannot be
22 resolved through the limited remedy of “replacement or adjustments,” as many incidental and
23 consequential damages have already been suffered due to Defendants’ fraudulent conduct as
24 alleged herein, and due to their failure and/or continued failure to provide such limited remedy
25 within a reasonable time, and any limitation on Plaintiffs’ and the other Class members’ remedies
26 would be insufficient to make Plaintiffs and the other Class members whole.

27 1180. Finally, due to the Defendants’ breach of warranties as set forth herein, Plaintiffs
28 and the Class assert as an additional and/or alternative remedy, as set forth in Mo. Rev. Stat.

1 § 400.2-608, for a revocation of acceptance of the goods, and for a return to Plaintiffs and to the
2 Class of the purchase price of all vehicles currently owned.

3 1181. Defendants were provided notice of these issues by the instant Complaint, and by
4 other means before or within a reasonable amount of time after the allegations of Class Vehicle
5 defects became public.

6 1182. As a direct and proximate result of Defendants’ breach of express warranties,
7 Plaintiffs and the other Class members have been damaged in an amount to be determined at trial.

8 **COUNT CXXVI**

9 **Breach of the Implied Warranty of Merchantability**
10 **(Missouri Revised Statutes Section 400.2-314)**

11 1183. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set
12 forth herein.

13 1184. Defendants are and were at all relevant times merchants with respect to motor
14 vehicles.

15 1185. A warranty that the Defective Vehicles were in merchantable condition is implied
16 by law in the instant transactions, pursuant to Mo. Rev. Stat. § 400.2-314.

17 1186. These vehicles, when sold and at all times thereafter, were not in merchantable
18 condition and are not fit for the ordinary purpose for which cars are used. Specifically, the
19 Defective Vehicles are inherently defective in that there are defects in the CAN buses making
20 them vulnerable to hacking, and the Defective Vehicles do not have an adequate fail-safe to
21 protect against such attacks.

22 1187. Defendants were provided notice of these issues by numerous complaints filed
23 against them, including the instant Complaint, and by other means.

24 1188. Plaintiffs and the Class have had sufficient dealings with either the Defendants or
25 their agents (dealerships) to establish privity of contract between Plaintiffs and the Class.
26 Notwithstanding this, privity is not required in this case because Plaintiffs and the Class are
27 intended third-party beneficiaries of contracts between Defendants and their dealers; specifically,
28 they are the intended beneficiaries of Defendants’ implied warranties. The dealers were not

1 intended to be the ultimate consumers of the Defective Vehicles and have no rights under the
2 warranty agreements provided with the Defective Vehicles; the warranty agreements were
3 designed for and intended to benefit the ultimate consumers only. Finally, privity is also not
4 required because Plaintiffs' and the Class' vehicles are dangerous instrumentalities due to the
5 aforementioned defects and nonconformities.

6 1189. As a direct and proximate result of Defendants' breach of the warranties of
7 merchantability, Plaintiffs and the Class have been damaged in an amount to be proven at trial.

8 **COUNT CXXVII**

9 **Breach of Contract/Common Law Warranty**
10 **(Based on Missouri Law)**

11 1190. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set
12 forth herein.

13 1191. To the extent Defendants' limited remedies are deemed not to be warranties under
14 Missouri's Commercial Code, Plaintiffs, individually and on behalf of the other Class members,
15 plead in the alternative under common law warranty and contract law. Defendants limited the
16 remedies available to Plaintiffs and the other Class members to repairs and adjustments needed to
17 correct defects in materials or workmanship of any part supplied by Defendants, and/or warranted
18 the quality or nature of those services to Plaintiffs and the other Class members.

19 1192. Defendants breached this warranty or contract obligation by failing to repair the
20 Class Vehicles, or to replace them.

21 1193. As a direct and proximate result of Defendants' breach of contract or common
22 law warranty, Plaintiffs and the other Class members have been damaged in an amount to be
23 proven at trial, which shall include, but is not limited to, all compensatory damages, incidental
24 and consequential damages, and other damages allowed by law.

25 **COUNT CXXVIII**

26 **Fraudulent Concealment**
27 **(Based on Missouri Law)**

28 1194. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set

1 forth herein.

2 1195. Defendants intentionally concealed the above-described material safety and
3 functionality information, or acted with reckless disregard for the truth, and denied Plaintiffs and
4 the other Class members information that is highly relevant to their purchasing decision.

5 1196. Defendants further affirmatively misrepresented to Plaintiffs in advertising and
6 other forms of communication, including standard and uniform material provided with each car,
7 that the Class Vehicles they was selling were new, had no significant defects, and would perform
8 and operate properly when driven in normal usage.

9 1197. Defendants knew these representations were false when made.

10 1198. The Class Vehicles purchased or leased by Plaintiffs and the other Class members
11 were, in fact, defective, unsafe, and unreliable because the Class Vehicles contained faulty and
12 defective CAN buses, as alleged herein.

13 1199. Defendants had a duty to disclose that these Class Vehicles were defective,
14 unsafe, and unreliable in that certain crucial safety functions of the Class Vehicles would be
15 rendered inoperative due to faulty and defective CAN buses, because Plaintiffs and the other
16 Class members relied on Defendants' material representations that the Class Vehicles they were
17 purchasing were safe and free from defects.

18 1200. The aforementioned concealment was material because if it had been disclosed
19 Plaintiffs and the other Class members would not have bought or leased the Class Vehicles, or
20 would not have bought or leased those Vehicles at the prices they paid.

21 1201. The aforementioned representations were material because they were facts that
22 would typically be relied on by a person purchasing or leasing a new motor vehicle. Defendants
23 knew or recklessly disregarded that their representations were false because they knew the CAN
24 buses were susceptible to hacking. Defendants intentionally made the false statements in order to
25 sell Class Vehicles.

26 1202. Plaintiffs and the other Class members relied on Defendants' reputations – along
27 with Defendants' failure to disclose the faulty and defective nature of the CAN bus and
28 Defendants' affirmative assurances that their Class Vehicles were safe and reliable, and other

1 similar false statements – in purchasing or leasing Defendants’ Class Vehicles.

2 1203. As a result of their reliance, Plaintiffs and the other Class members have been
3 injured in an amount to be proven at trial, including, but not limited to, their lost benefit of the
4 bargain and overpayment at the time of purchase or lease and/or the diminished value of their
5 Class Vehicles.

6 1204. Defendants’ conduct was knowing, intentional, with malice, demonstrated a
7 complete lack of care, and was in reckless disregard for the rights of Plaintiffs and the other Class
8 members.

9 1205. Plaintiffs and the other Class members are therefore entitled to an award of
10 punitive damages.

11 **Claims Brought on Behalf of the Montana Class**

12 **COUNT CXXIX**

13 **Breach of Express Warranty**
14 **(Montana Code Section 30-2-313)**

15 1206. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set
16 forth herein.

17 1207. Defendants are and were at all relevant times merchants with respect to motor
18 vehicles under Mont. Code. Ann. § 30-2-104.

19 1208. In their Limited Warranties and in advertisements, brochures, and through other
20 statements in the media, Defendants expressly warranted that they would repair or replace defects
21 in material or workmanship free of charge if they became apparent during the warranty period.
22 For example, the following language appears in all Class Vehicle Warranty booklets:

23 1. Toyota’s warranty

24 *When Warranty Begins*

25 The warranty period begins on the vehicle’s in-service date, which is the first date
the vehicle is either delivered to an ultimate purchaser, leased, or used as a
26 company car or demonstrator.

27 *Repairs Made at No Charge*

28 Repairs and adjustments covered by these warranties are made at no charge for
parts and labor.

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Basic Warranty

This warranty covers repairs and adjustments needed to correct defects in materials or workmanship of any part supplied by Toyota Coverage is for 36 months or 36,000 miles, whichever occurs first

2. Ford’s warranty

KNOW WHEN YOUR WARRANTY BEGINS

Your Warranty Start Date is the day you take delivery of your new vehicle or the day it is first put into service

QUICK REFERENCE: WARRANTY COVERAGE

. . .

Your Bumper to Bumper Coverage lasts for three years - unless you drive more than 36,000 miles before three years elapse.

WHO PAYS FOR WARRANTY REPAIRS?

You will not be charged for repairs covered by any applicable warranty during the stated coverage periods

3. GM’s warranty

Warranty Period

The warranty period for all coverages begins on the date the vehicle is first delivered or put in use and ends at the expiration of the coverage period.

Bumper-to-Bumper Coverage

The complete vehicle is covered for 4 years or 50,000 miles, whichever comes first

No Charge

Warranty repairs, including towing, parts, and labor, will be made at no charge.

Repairs Covered

This warranty covers repairs to correct any vehicle defect related to materials or workmanship occurring during the warranty period. Needed repairs will be performed using new or remanufactured parts.

1209. Defendants’ Limited Warranties, as well as advertisements, brochures, and other statements in the media regarding the Class Vehicles, formed the basis of the bargain that was reached when Plaintiffs and the other Class members purchased or leased their Class Vehicles equipped with a CAN bus from Defendants.

1210. Defendants breached the express warranty to repair and adjust to correct defects in materials and workmanship of any part supplied by Defendants. Defendants have not repaired or adjusted, and have been unable to repair or adjust, the Class Vehicles’ materials and

1 workmanship defects.

2 1211. In addition to these Limited Warranties, Defendants otherwise expressly
3 warranted several attributes, characteristics, and qualities of the CAN bus.

4 1212. These warranties are only a sampling of the numerous warranties that Defendants
5 made relating to safety, reliability, and operation. Generally these express warranties promise
6 heightened, superior, and state-of-the-art safety, reliability, and performance standards, and
7 promote the benefits of the CAN bus. These warranties were made, *inter alia*, in advertisements,
8 on Defendants' websites, and in uniform statements provided by Defendants to be made by
9 salespeople, or made publicly by Defendants' executives or by other authorized representatives.
10 These affirmations and promises were part of the basis of the bargain between the parties.

11 1213. These additional warranties were also breached because the Class Vehicles were
12 not fully operational, safe, or reliable (and remained so even after the problems were
13 acknowledged), nor did they comply with the warranties expressly made to purchasers or lessees.
14 Defendants did not provide at the time of sale, and have not provided since then, Class Vehicles
15 conforming to these express warranties.

16 1214. Furthermore, the limited warranty of repair and/or adjustments to defective parts,
17 fails in its essential purpose because the contractual remedy is insufficient to make Plaintiffs and
18 the other Class members whole and because Defendants have failed and/or have refused to
19 adequately provide the promised remedies within a reasonable time.

20 1215. Accordingly, recovery by Plaintiffs and the other Class members is not limited to
21 the limited warranty of repair or adjustments to parts defective in materials or workmanship, and
22 Plaintiffs, individually and on behalf of the other Class members, seek all remedies as allowed by
23 law.

24 1216. Also, as alleged in more detail herein, at the time that Defendants warranted and
25 sold the Class Vehicles they knew that the Class Vehicles did not conform to the warranties and
26 were inherently defective, and Defendants wrongfully and fraudulently misrepresented and/or
27 concealed material facts regarding their Class Vehicles. Plaintiffs and the other Class members
28 were therefore induced to purchase or lease the Class Vehicles under false and/or fraudulent

1 pretenses.

2 1217. Moreover, many of the injuries flowing from the Class Vehicles cannot be
3 resolved through the limited remedy of “replacement or adjustments,” as many incidental and
4 consequential damages have already been suffered due to Defendants’ fraudulent conduct as
5 alleged herein, and due to their failure and/or continued failure to provide such limited remedy
6 within a reasonable time, and any limitation on Plaintiffs’ and the other Class members’ remedies
7 would be insufficient to make Plaintiffs and the other Class members whole.

8 1218. Finally, due to the Defendants’ breach of warranties as set forth herein, Plaintiffs
9 and the Class assert as an additional and/or alternative remedy, as set forth in Mont. Code § 30-2-
10 711, for a revocation of acceptance of the goods, and for a return to Plaintiffs and to the Class of
11 the purchase price of all vehicles currently owned and for such other incidental and consequential
12 damages as allowed under Mont. Code §§ 30-2-711 and 30-2-608.

13 1219. Defendants were provided notice of these issues by the instant Complaint, and by
14 other means before or within a reasonable amount of time after the allegations of Class Vehicle
15 defects became public.

16 1220. As a direct and proximate result of Defendants’ breach of express warranties,
17 Plaintiffs and the other Class members have been damaged in an amount to be determined at trial.

18 **COUNT CXXX**

19 **Breach of the Implied Warranty of Merchantability**
20 **(Montana Code Section 30-2-314)**

21 1221. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set
22 forth herein.

23 1222. Defendants are and were at all relevant times merchants with respect to motor
24 vehicles under Mont. Code § 30-2-104.

25 1223. A warranty that the Defective Vehicles were in merchantable condition was
26 implied by law in the instant transaction, pursuant to Mont. Code § 30-2-314.

27 1224. These Class Vehicles, when sold and at all times thereafter, were not in
28 merchantable condition and are not fit for the ordinary purpose for which cars are used.

1 Defendants were provided notice of these issues by numerous complaints filed against them,
2 including the instant Complaint, and by other means.

3 1225. As a direct and proximate result of Defendants’ breach of the warranties of
4 merchantability, Plaintiffs and the Class have been damaged in an amount to be proven at trial.

5 **COUNT CXXXI**

6 **Breach of Contract/Common Law Warranty**
7 **(Based on Montana Law)**

8 1226. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set
9 forth herein.

10 1227. To the extent Defendants’ limited remedies are deemed not to be warranties under
11 Montana’s Commercial Code, Plaintiffs, individually and on behalf of the other Class members,
12 plead in the alternative under common law warranty and contract law. Defendants limited the
13 remedies available to Plaintiffs and the other Class members to repairs and adjustments needed to
14 correct defects in materials or workmanship of any part supplied by Defendants, and/or warranted
15 the quality or nature of those services to Plaintiffs and the other Class members.

16 1228. Defendants breached this warranty or contract obligation by failing to repair the
17 Class Vehicles, or to replace them.

18 1229. As a direct and proximate result of Defendants’ breach of contract or common
19 law warranty, Plaintiffs and the other Class members have been damaged in an amount to be
20 proven at trial, which shall include, but is not limited to, all compensatory damages, incidental
21 and consequential damages, and other damages allowed by law.

22 **COUNT CXXXII**

23 **Fraudulent Concealment**
24 **(Based on Montana Law)**

25 1230. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set
26 forth herein.

27 1231. Defendants intentionally concealed the above-described material safety and
28 functionality information, or acted with reckless disregard for the truth, and denied Plaintiffs and

1 the other Class members information that is highly relevant to their purchasing decision.

2 1232. Defendants further affirmatively misrepresented to Plaintiffs in advertising and
3 other forms of communication, including standard and uniform material provided with each car,
4 that the Class Vehicles they was selling were new, had no significant defects, and would perform
5 and operate properly when driven in normal usage.

6 1233. Defendants knew these representations were false when made.

7 1234. The Class Vehicles purchased or leased by Plaintiffs and the other Class members
8 were, in fact, defective, unsafe, and unreliable because the Class Vehicles contained faulty and
9 defective CAN buses, as alleged herein.

10 1235. Defendants had a duty to disclose that these Class Vehicles were defective,
11 unsafe, and unreliable in that certain crucial safety functions of the Class Vehicles would be
12 rendered inoperative due to faulty and defective CAN buses, because Plaintiffs and the other
13 Class members relied on Defendants' material representations that the Class Vehicles they were
14 purchasing were safe and free from defects.

15 1236. The aforementioned concealment was material because if it had been disclosed
16 Plaintiffs and the other Class members would not have bought or leased the Class Vehicles, or
17 would not have bought or leased those Vehicles at the prices they paid.

18 1237. The aforementioned representations were material because they were facts that
19 would typically be relied on by a person purchasing or leasing a new motor vehicle. Defendants
20 knew or recklessly disregarded that their representations were false because they knew the CAN
21 buses were susceptible to hacking. Defendants intentionally made the false statements in order to
22 sell Class Vehicles.

23 1238. Plaintiffs and the other Class members relied on Defendants' reputations – along
24 with Defendants' failure to disclose the faulty and defective nature of the CAN bus and
25 Defendants' affirmative assurances that their Class Vehicles were safe and reliable, and other
26 similar false statements – in purchasing or leasing Defendants' Class Vehicles.

27 1239. As a result of their reliance, Plaintiffs and the other Class members have been
28 injured in an amount to be proven at trial, including, but not limited to, their lost benefit of the

1 bargain and overpayment at the time of purchase or lease and/or the diminished value of their
2 Class Vehicles.

3 1240. Defendants’ conduct was knowing, intentional, with malice, demonstrated a
4 complete lack of care, and was in reckless disregard for the rights of Plaintiffs and the other Class
5 members.

6 1241. Plaintiffs and the other Class members are therefore entitled to an award of
7 punitive damages.

8 **Claims Brought on Behalf of the Nebraska Class**

9 **COUNT CXXXIII**

10 **Violation of the Nebraska Consumer Protection Act**
11 **(Nebraska Revised Statutes Sections 59-1601, et seq.)**

12 1242. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set
13 forth herein.

14 1243. The Nebraska Consumer Protection Act (“NCPA”) prohibits “unfair or deceptive
15 acts or practices in the conduct of any trade or commerce.”

16 1244. “Trade or commerce” means “the sale of assets or services and any commerce
17 directly or indirectly affecting the people of the State of Nebraska.”

18 1245. The conduct of Defendants as set forth herein constitutes unfair or deceptive acts
19 or practices, including, but not limited to, Defendants’ manufacture and sale of vehicles with a
20 CAN bus defect that lack an effective fail-safe mechanism, which Defendants failed to adequately
21 investigate, disclose and remedy, and their misrepresentations and omissions regarding the safety
22 and reliability of their vehicles, which misrepresentations and omissions possessed the tendency
23 or capacity to mislead.

24 1246. Defendants’ actions as set forth above occurred in the conduct of trade or
25 commerce.

26 1247. Defendants’ actions impact the public interest because Plaintiffs were injured in
27 exactly the same way as millions of others purchasing and/or leasing Defendants vehicles as a
28 result of Defendants’ generalized course of deception. All of the wrongful conduct alleged herein

1 occurred, and continues to occur, in the conduct of Defendants’ business.

2 1248. Plaintiffs and the Class were injured as a result of Defendants’ conduct. Plaintiffs
3 overpaid for their Defective Vehicles and did not receive the benefit of their bargain, and their
4 vehicles have suffered a diminution in value.

5 1249. Defendants’ conduct proximately caused the injuries to Plaintiffs and the Class,
6 who are entitled to recover actual damages, as well as enhanced damages pursuant to § 59-1609.

7 **COUNT CXXXIV**

8 **Breach of the Implied Warranty of Merchantability**
9 **(Nebraska Revised Statutes Section 2-314)**

10 1250. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set
11 forth herein.

12 1251. Defendants are and were at all relevant times merchants with respect to motor
13 vehicles.

14 1252. A warranty that the Class Vehicles were in merchantable condition is implied by
15 law in the instant transactions.

16 1253. These Class Vehicles, when sold and at all times thereafter, were not in
17 merchantable condition and are not fit for the ordinary purpose for which cars are used.
18 Defendants were provided notice of these issues by numerous complaints filed against them,
19 including the instant Complaint, and by other means.

20 1254. As a direct and proximate result of Defendants’ breach of the warranties of
21 merchantability, Plaintiffs and the Class have been damaged in an amount to be proven at trial.

22 **Claims Brought on Behalf of the Nevada Class**

23 **COUNT CXXXV**

24 **Violation of the Nevada Deceptive Trade Practices Act**
25 **(Nevada Revised Statutes Sections 598.0903, et seq.)**

26 1255. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set
27 forth herein.

28 1256. Defendants are “persons” as required under the statute.

1 1257. Defendants' actions as set forth above occurred in the course of business.

2 1258. The Nevada Deceptive Trade Practices Act, Nev. Rev. Stat. §§ 598.0903, *et seq.*,
3 prohibits unfair or deceptive consumer sales practices.

4 1259. The Nev. Rev. Stat. § 598.0915 provides that a person engages in a "deceptive
5 trade practice" if, in the course of his or her business or occupation, he or she does any of the
6 following, including: "5. Knowingly makes a false representation as to the characteristics,
7 ingredients, uses, benefits, alterations or quantities of goods or services for sale or lease or a false
8 representation as to the sponsorship, approval, status, affiliation or connection of a person
9 therewith"; "7. Represents that goods or services for sale or lease are of a particular standard,
10 quality or grade, or that such goods are of a particular style or model, if he or she knows or should
11 know that they are of another standard, quality, grade, style or model"; "9. Advertises goods or
12 services with intent not to sell or lease them as advertised"; or "15. Knowingly makes any other
13 false representation in a transaction."

14 1260. In the course of Defendants' business, they willfully failed to disclose and
15 actively concealed the dangerous risk of hacking and the lack of adequate fail-safe mechanisms in
16 Defective Vehicles equipped with CAN buses as described above. Accordingly, Defendants
17 engaged in deceptive trade practices, including making false representation as to the
18 characteristics, uses, and benefits of the Defective Vehicles; representing that Defective Vehicles
19 are of a particular standard and quality when they are not; advertising Defective Vehicles with the
20 intent not to sell them as advertised; and knowingly made numerous other false representations as
21 further described during the fact section of this complaint.

22 1261. Defendants knowingly made false representations to consumers with the intent to
23 induce consumers into purchasing Defendants' vehicles. Plaintiffs reasonably relied on false
24 representations by Defendants and were induced to each purchase a Defendants vehicle, to his/her
25 detriment. As a result of these unlawful trade practices, Plaintiffs have suffered ascertainable loss.

26 1262. Plaintiffs and the Class suffered ascertainable loss caused by Defendants' false
27 representations and failure to disclose material information. Plaintiffs and the Class overpaid for
28 their vehicles and did not receive the benefit of their bargain. The value of their vehicles has

1 diminished now that the safety issues have come to light, and Plaintiffs and the Class own
2 vehicles that are not safe.

3 **COUNT CXXXVI**

4 **Breach of Express Warranty**
5 **(Nevada Revised Statutes Sections 104.2313)**

6 1263. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set
7 forth herein.

8 1264. Defendants are and were at all relevant times merchants with respect to motor
9 vehicles under the Uniform Commercial Code.

10 1265. In their Limited Warranties and in advertisements, brochures, and through other
11 statements in the media, Defendants expressly warranted that they would repair or replace defects
12 in material or workmanship free of charge if they became apparent during the warranty period.
13 For example, the following language appears in all Class Vehicle Warranty booklets:

14 1. Toyota’s warranty

15 *When Warranty Begins*

16 The warranty period begins on the vehicle’s in-service date, which is the first date
17 the vehicle is either delivered to an ultimate purchaser, leased, or used as a
18 company car or demonstrator.

19 *Repairs Made at No Charge*

20 Repairs and adjustments covered by these warranties are made at no charge for
21 parts and labor.

22 *Basic Warranty*

23 This warranty covers repairs and adjustments needed to correct defects in materials
24 or workmanship of any part supplied by Toyota Coverage is for 36 months or
25 36,000 miles, whichever occurs first

26 2. Ford’s warranty

27 *KNOW WHEN YOUR WARRANTY BEGINS*

28 Your Warranty Start Date is the day you take delivery of your new vehicle or the
day it is first put into service

QUICK REFERENCE: WARRANTY COVERAGE

. . .

Your Bumper to Bumper Coverage lasts for three years - unless you drive more
than 36,000 miles before three years elapse.

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WHO PAYS FOR WARRANTY REPAIRS?

You will not be charged for repairs covered by any applicable warranty during the stated coverage periods

3. GM's warranty

Warranty Period

The warranty period for all coverages begins on the date the vehicle is first delivered or put in use and ends at the expiration of the coverage period.

Bumper-to-Bumper Coverage

The complete vehicle is covered for 4 years or 50,000 miles, whichever comes first

No Charge

Warranty repairs, including towing, parts, and labor, will be made at no charge.

Repairs Covered

This warranty covers repairs to correct any vehicle defect related to materials or workmanship occurring during the warranty period. Needed repairs will be performed using new or remanufactured parts.

1266. Defendants' Limited Warranties, as well as advertisements, brochures, and other statements in the media regarding the Class Vehicles, formed the basis of the bargain that was reached when Plaintiffs and the other Class members purchased or leased their Class Vehicles equipped with a CAN bus from Defendants.

1267. Defendants breached the express warranty to repair and adjust to correct defects in materials and workmanship of any part supplied by Defendants. Defendants have not repaired or adjusted, and have been unable to repair or adjust, the Class Vehicles' materials and workmanship defects.

1268. In addition to these Limited Warranties, Defendants otherwise expressly warranted several attributes, characteristics, and qualities of the CAN bus.

1269. These warranties are only a sampling of the numerous warranties that Defendants made relating to safety, reliability, and operation. Generally these express warranties promise heightened, superior, and state-of-the-art safety, reliability, and performance standards, and promote the benefits of the CAN bus. These warranties were made, *inter alia*, in advertisements, on Defendants' websites, and in uniform statements provided by Defendants to be made by salespeople, or made publicly by Defendants' executives or by other authorized representatives.

1 These affirmations and promises were part of the basis of the bargain between the parties.

2 1270. These additional warranties were also breached because the Class Vehicles were
3 not fully operational, safe, or reliable (and remained so even after the problems were
4 acknowledged), nor did they comply with the warranties expressly made to purchasers or lessees.
5 Defendants did not provide at the time of sale, and have not provided since then, Class Vehicles
6 conforming to these express warranties.

7 1271. Furthermore, the limited warranty of repair and/or adjustments to defective parts,
8 fails in its essential purpose because the contractual remedy is insufficient to make Plaintiffs and
9 the other Class members whole and because Defendants have failed and/or have refused to
10 adequately provide the promised remedies within a reasonable time.

11 1272. Accordingly, recovery by Plaintiffs and the other Class members is not limited to
12 the limited warranty of repair or adjustments to parts defective in materials or workmanship, and
13 Plaintiffs, individually and on behalf of the other Class members, seek all remedies as allowed by
14 law.

15 1273. Also, as alleged in more detail herein, at the time that Defendants warranted and
16 sold the Class Vehicles they knew that the Class Vehicles did not conform to the warranties and
17 were inherently defective, and Defendants wrongfully and fraudulently misrepresented and/or
18 concealed material facts regarding their Class Vehicles. Plaintiffs and the other Class members
19 were therefore induced to purchase or lease the Class Vehicles under false and/or fraudulent
20 pretenses.

21 1274. Moreover, many of the injuries flowing from the Class Vehicles cannot be
22 resolved through the limited remedy of “replacement or adjustments,” as many incidental and
23 consequential damages have already been suffered due to Defendants’ fraudulent conduct as
24 alleged herein, and due to their failure and/or continued failure to provide such limited remedy
25 within a reasonable time, and any limitation on Plaintiffs’ and the other Class members’ remedies
26 would be insufficient to make Plaintiffs and the other Class members whole.

27 1275. Defendants were provided notice of these issues by the instant Complaint, and by
28 other means before or within a reasonable amount of time after the allegations of Class Vehicle

1 defects became public.

2 1276. As a direct and proximate result of Defendants’ breach of express warranties,
3 Plaintiffs and the other Class members have been damaged in an amount to be determined at trial.

4 **COUNT CXXXVII**

5 **Breach of the Implied Warranty of Merchantability**
6 **(Nevada Revised Statutes Section 104.2314)**

7 1277. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set
8 forth herein.

9 1278. Defendants are and were at all relevant times merchants with respect to motor
10 vehicles under the Uniform Commercial Code.

11 1279. A warranty that the Defective Vehicles were in merchantable condition was
12 implied by law in the instant transaction, pursuant to the Uniform Commercial Code.

13 1280. These Class Vehicles, when sold and at all times thereafter, were not in
14 merchantable condition and are not fit for the ordinary purpose for which cars are used.
15 Defendants were provided notice of these issues by numerous complaints filed against them,
16 including the instant Complaint, and by other means.

17 1281. As a direct and proximate result of Defendants’ breach of the warranties of
18 merchantability, Plaintiffs and the Class have been damaged in an amount to be proven at trial.

19 **COUNT CXXXVIII**

20 **Breach of Contract/Common Law Warranty**
21 **(Based on Nevada Law)**

22 1282. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set
23 forth herein.

24 1283. To the extent Defendants’ limited remedies are deemed not to be warranties under
25 Nevada’s Commercial Code, Plaintiffs, individually and on behalf of the other Class members,
26 plead in the alternative under common law warranty and contract law. Defendants limited the
27 remedies available to Plaintiffs and the other Class members to repairs and adjustments needed to
28 correct defects in materials or workmanship of any part supplied by Defendants, and/or warranted

1 the quality or nature of those services to Plaintiffs and the other Class members.

2 1284. Defendants breached this warranty or contract obligation by failing to repair the
3 Class Vehicles, or to replace them.

4 1285. As a direct and proximate result of Defendants’ breach of contract or common
5 law warranty, Plaintiffs and the other Class members have been damaged in an amount to be
6 proven at trial, which shall include, but is not limited to, all compensatory damages, incidental
7 and consequential damages, and other damages allowed by law.

8 **COUNT CXXXIX**

9 **Fraudulent Concealment**
10 **(Based on Nevada Law)**

11 1286. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set
12 forth herein.

13 1287. Defendants intentionally concealed the above-described material safety and
14 functionality information, or acted with reckless disregard for the truth, and denied Plaintiffs and
15 the other Class members information that is highly relevant to their purchasing decision.

16 1288. Defendants further affirmatively misrepresented to Plaintiffs in advertising and
17 other forms of communication, including standard and uniform material provided with each car,
18 that the Class Vehicles they was selling were new, had no significant defects, and would perform
19 and operate properly when driven in normal usage.

20 1289. Defendants knew these representations were false when made.

21 1290. The Class Vehicles purchased or leased by Plaintiffs and the other Class members
22 were, in fact, defective, unsafe, and unreliable because the Class Vehicles contained faulty and
23 defective CAN buses, as alleged herein.

24 1291. Defendants had a duty to disclose that these Class Vehicles were defective,
25 unsafe, and unreliable in that certain crucial safety functions of the Class Vehicles would be
26 rendered inoperative due to faulty and defective CAN buses, because Plaintiffs and the other
27 Class members relied on Defendants’ material representations that the Class Vehicles they were
28 purchasing were safe and free from defects.

1 1292. The aforementioned concealment was material because if it had been disclosed
2 Plaintiffs and the other Class members would not have bought or leased the Class Vehicles, or
3 would not have bought or leased those Vehicles at the prices they paid.

4 1293. The aforementioned representations were material because they were facts that
5 would typically be relied on by a person purchasing or leasing a new motor vehicle. Defendants
6 knew or recklessly disregarded that their representations were false because they knew the CAN
7 buses were susceptible to hacking. Defendants intentionally made the false statements in order to
8 sell Class Vehicles.

9 1294. Plaintiffs and the other Class members relied on Defendants’ reputations – along
10 with Defendants’ failure to disclose the faulty and defective nature of the CAN bus and
11 Defendants’ affirmative assurances that their Class Vehicles were safe and reliable, and other
12 similar false statements – in purchasing or leasing Defendants’ Class Vehicles.

13 1295. As a result of their reliance, Plaintiffs and the other Class members have been
14 injured in an amount to be proven at trial, including, but not limited to, their lost benefit of the
15 bargain and overpayment at the time of purchase or lease and/or the diminished value of their
16 Class Vehicles.

17 1296. Defendants’ conduct was knowing, intentional, with malice, demonstrated a
18 complete lack of care, and was in reckless disregard for the rights of Plaintiffs and the other Class
19 members.

20 1297. Plaintiffs and the other Class members are therefore entitled to an award of
21 punitive damages.

22 **Claims Brought on Behalf of the New Hampshire Class**

23 **COUNT CXL**

24 **Violation of New Hampshire Consumer Protection Act**
25 **(New Hampshire Revised Statutes Annotated Sections 358A:1, et seq.)**

26 1298. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set
27 forth herein.

28 1299. The New Hampshire Consumer Protection Act (“CPA”) prohibits a person, in the

1 conduct of any trade or commerce, from doing any of the following:

2 1300. “(V) Representing that goods or services have . . . characteristics, . . . uses,
3 benefits, or quantities that they do not have; . . . (VII) Representing that goods or services are of a
4 particular standard, quality, or grade, . . . if they are of another; . . . and (IX) Advertising goods or
5 services with intent not to sell them as advertised.” N.H. Rev. Stat. § 358-A:2.

6 1301. Defendants are persons within the meaning of the CPA. *See* N.H. Rev. Stat.
7 § 358A:1(I).

8 1302. In the course of Defendants’ business, they willfully failed to disclose and
9 actively concealed the dangerous risk of hacking and the lack of adequate fail-safe mechanisms in
10 Defective Vehicles equipped with CAN buses as described above. Accordingly, Defendants
11 engaged in unlawful trade practices, including representing that Defective Vehicles have
12 characteristics, uses, benefits, and qualities which they do not have; representing that Defective
13 Vehicles are of a particular standard and quality when they are not; and advertising Defective
14 Vehicles with the intent not to sell them as advertised. Defendants knew or should have known
15 that their conduct violated the CPA.

16 1303. Defendants engaged in a deceptive trade practice when they failed to disclose
17 material information concerning the Defendants vehicles which was known to Defendants at the
18 time of the sale. Defendants deliberately withheld the information about the vehicles’
19 vulnerability to hacking in order to ensure that consumers would purchase their vehicles and to
20 induce the consumer to enter into a transaction.

21 1304. The susceptibility of the vehicles to hacking and their lack of a fail-safe
22 mechanism were material to Plaintiffs and the Class. Had Plaintiffs and the Class known that their
23 vehicles had these serious safety defects, they would not have purchased their vehicles.

24 1305. Defendants’ failure to disclose material information has injured Plaintiffs and the
25 Class. Plaintiffs and the Class overpaid for their vehicles and did not receive the benefit of their
26 bargain. The value of their vehicles has diminished now that the safety issues have come to light,
27 and Plaintiffs and the Class own vehicles that are not safe.

28 1306. Plaintiffs are entitled to recover the greater of actual damages or \$1,000 pursuant

1 to N.H. Rev. Stat. § 358-A:10. Plaintiffs are also entitled to treble damages because Defendants
2 acted willfully in their unfair and deceptive practices.

3 **COUNT CXLI**

4 **Breach of Express Warranty**

5 **(New Hampshire Revised Statutes Annotated Section 382-A:2-313)**

6 1307. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set
7 forth herein.

8 1308. Defendants are and were at all relevant times merchants with respect to motor
9 vehicles under N.H. Rev. Stat. § 382-A:2-313.

10 1309. In their Limited Warranties and in advertisements, brochures, and through other
11 statements in the media, Defendants expressly warranted that they would repair or replace defects
12 in material or workmanship free of charge if they became apparent during the warranty period.
13 For example, the following language appears in all Class Vehicle Warranty booklets:

14 1. Toyota's warranty

15 *When Warranty Begins*

16 The warranty period begins on the vehicle's in-service date, which is the first date
17 the vehicle is either delivered to an ultimate purchaser, leased, or used as a
18 company car or demonstrator.

19 *Repairs Made at No Charge*

20 Repairs and adjustments covered by these warranties are made at no charge for
21 parts and labor.

22 *Basic Warranty*

23 This warranty covers repairs and adjustments needed to correct defects in materials
24 or workmanship of any part supplied by Toyota Coverage is for 36 months or
25 36,000 miles, whichever occurs first

26 2. Ford's warranty

27 *KNOW WHEN YOUR WARRANTY BEGINS*

28 Your Warranty Start Date is the day you take delivery of your new vehicle or the
day it is first put into service

QUICK REFERENCE: WARRANTY COVERAGE

. . .

Your Bumper to Bumper Coverage lasts for three years - unless you drive more
than 36,000 miles before three years elapse.

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WHO PAYS FOR WARRANTY REPAIRS?

You will not be charged for repairs covered by any applicable warranty during the stated coverage periods

3. GM's warranty

Warranty Period

The warranty period for all coverages begins on the date the vehicle is first delivered or put in use and ends at the expiration of the coverage period.

Bumper-to-Bumper Coverage

The complete vehicle is covered for 4 years or 50,000 miles, whichever comes first

No Charge

Warranty repairs, including towing, parts, and labor, will be made at no charge.

Repairs Covered

This warranty covers repairs to correct any vehicle defect related to materials or workmanship occurring during the warranty period. Needed repairs will be performed using new or remanufactured parts.

1310. Defendants' Limited Warranties, as well as advertisements, brochures, and other statements in the media regarding the Class Vehicles, formed the basis of the bargain that was reached when Plaintiffs and the other Class members purchased or leased their Class Vehicles equipped with a CAN bus from Defendants.

1311. Defendants breached the express warranty to repair and adjust to correct defects in materials and workmanship of any part supplied by Defendants. Defendants have not repaired or adjusted, and have been unable to repair or adjust, the Class Vehicles' materials and workmanship defects.

1312. In addition to these Limited Warranties, Defendants otherwise expressly warranted several attributes, characteristics, and qualities of the CAN bus.

1313. These warranties are only a sampling of the numerous warranties that Defendants made relating to safety, reliability, and operation. Generally these express warranties promise heightened, superior, and state-of-the-art safety, reliability, and performance standards, and promote the benefits of the CAN bus. These warranties were made, *inter alia*, in advertisements, on Defendants' websites, and in uniform statements provided by Defendants to be made by salespeople, or made publicly by Defendants' executives or by other authorized representatives.

1 These affirmations and promises were part of the basis of the bargain between the parties.

2 1314. These additional warranties were also breached because the Class Vehicles were
3 not fully operational, safe, or reliable (and remained so even after the problems were
4 acknowledged), nor did they comply with the warranties expressly made to purchasers or lessees.
5 Defendants did not provide at the time of sale, and have not provided since then, Class Vehicles
6 conforming to these express warranties.

7 1315. Furthermore, the limited warranty of repair and/or adjustments to defective parts,
8 fails in its essential purpose because the contractual remedy is insufficient to make Plaintiffs and
9 the other Class members whole and because Defendants have failed and/or have refused to
10 adequately provide the promised remedies within a reasonable time.

11 1316. Accordingly, recovery by Plaintiffs and the other Class members is not limited to
12 the limited warranty of repair or adjustments to parts defective in materials or workmanship, and
13 Plaintiffs, individually and on behalf of the other Class members, seek all remedies as allowed by
14 law.

15 1317. Also, as alleged in more detail herein, at the time that Defendants warranted and
16 sold the Class Vehicles they knew that the Class Vehicles did not conform to the warranties and
17 were inherently defective, and Defendants wrongfully and fraudulently misrepresented and/or
18 concealed material facts regarding their Class Vehicles. Plaintiffs and the other Class members
19 were therefore induced to purchase or lease the Class Vehicles under false and/or fraudulent
20 pretenses.

21 1318. Moreover, many of the injuries flowing from the Class Vehicles cannot be
22 resolved through the limited remedy of “replacement or adjustments,” as many incidental and
23 consequential damages have already been suffered due to Defendants’ fraudulent conduct as
24 alleged herein, and due to their failure and/or continued failure to provide such limited remedy
25 within a reasonable time, and any limitation on Plaintiffs’ and the other Class members’ remedies
26 would be insufficient to make Plaintiffs and the other Class members whole.

27 1319. Finally, due to the Defendants’ breach of warranties as set forth herein, Plaintiffs
28 and the Class assert as an additional and/or alternative remedy, as set forth in N.H. Rev. Stat.

1 §§ 382-A:2-608 and 382-A:2-711, for a revocation of acceptance of the goods, and for a return to
2 Plaintiffs and to the Class of the purchase price of all vehicles currently owned and for such other
3 incidental and consequential damages as allowed under N.H. Rev. Stat. §§ 382-A:2-608 and 382-
4 A:2-711.

5 1320. Defendants were provided notice of these issues by the instant Complaint, and by
6 other means before or within a reasonable amount of time after the allegations of Class Vehicle
7 defects became public.

8 1321. As a direct and proximate result of Defendants’ breach of express warranties,
9 Plaintiffs and the other Class members have been damaged in an amount to be determined at trial.

10 **COUNT CXLII**

11 **Breach of Implied Warranty of Merchantability**
12 **(New Hampshire Revised Statutes Annotated Section 382-A:2-314)**

13 1322. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set
14 forth herein.

15 1323. Defendants are and were at all relevant times merchants with respect to motor
16 vehicles.

17 1324. A warranty that the Class Vehicles were in merchantable condition is implied by
18 law in the instant transactions.

19 1325. These Class Vehicles, when sold and at all times thereafter, were not in
20 merchantable condition and are not fit for the ordinary purpose for which cars are used.
21 Defendants were provided notice of these issues by numerous complaints filed against them,
22 including the instant Complaint, and by other means.

23 1326. As a direct and proximate result of Defendants’ breach of the warranties of
24 merchantability, Plaintiffs and the Class have been damaged in an amount to be proven at trial.

25 **COUNT CXLIII**

26 **Breach of Common Law Warranty**
27 **(Based on New Hampshire Law)**

28 1327. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set

1 forth herein.

2 1328. To the extent Defendants’ limited remedies are deemed not to be warranties under
3 New Hampshire’s Commercial Code, Plaintiffs, individually and on behalf of the other Class
4 members, plead in the alternative under common law contract law. Defendants limited the
5 remedies available to Plaintiffs and the other Class members to repairs and adjustments needed to
6 correct defects in materials or workmanship of any part supplied by Defendants, and/or warranted
7 the quality or nature of those services to Plaintiffs and the other Class members.

8 1329. Defendants breached this warranty or contract obligation by failing to repair the
9 Class Vehicles, or to replace them.

10 1330. As a direct and proximate result of Defendants’ breach of contract or common
11 law warranty, Plaintiffs and the other Class members have been damaged in an amount to be
12 proven at trial, which shall include, but is not limited to, all compensatory damages, incidental
13 and consequential damages, and other damages allowed by law.

14 **Claims Brought on Behalf of the New Jersey Class**

15 **COUNT CXLIV**

16 **Violations of the New Jersey Consumer Fraud Act**
17 **(New Jersey Statutes Annotated Sections 56:8-1, et seq.)**

18 1331. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set
19 forth herein.

20 1332. The New Jersey Consumer Fraud Act, N.J. Stat. Ann. §§ 56:8-1, et seq. (“NJ
21 CFA”), prohibits unfair or deceptive acts or practices in the conduct of any trade or commerce.

22 1333. In the course of Defendants’ business, they willfully failed to disclose and
23 actively concealed the dangerous risk of CAN bus hacking in Class Vehicles as described above.
24 Accordingly, Defendants engaged in unfair and deceptive trade practices, including representing
25 that Class Vehicles have characteristics, uses, benefits, and qualities which they do not have;
26 representing that Class Vehicles are of a particular standard and quality when they are not;
27 advertising Class Vehicles with the intent not to sell them as advertised; and otherwise engaging
28 in conduct likely to deceive. Further, Defendants’ acts and practices described herein offend

1 established public policy because the harm they cause to consumers, motorists, and pedestrians
 2 outweighs any benefit associated with such practices, and because Defendants fraudulently
 3 concealed the defective nature of the Class Vehicles from consumers.

4 1334. Defendants' actions as set forth above occurred in the conduct of trade or
 5 commerce.

6 1335. Defendants' conduct proximately caused injuries to Plaintiffs and the other Class
 7 members.

8 1336. Plaintiffs and the other Class members were injured as a result of Defendants'
 9 conduct in that Plaintiffs and the other Class members overpaid for their Class Vehicles and did
 10 not receive the benefit of their bargain, and their Class Vehicles have suffered a diminution in
 11 value. These injuries are the direct and natural consequence of Defendants' misrepresentations
 12 and omissions.

13 1337. Pursuant to N.J. Stat. Ann. § 56:8-20, Plaintiffs will serve the New Jersey
 14 Attorney General with a copy of this Complaint.

COUNT CXLV

Breach of Express Warranty

(New Jersey Statutes Annotated Section 12A:2-313)

18 1338. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set
 19 forth herein.

20 1339. Defendants are and were at all relevant times merchants with respect to motor
 21 vehicles.

22 1340. In their Limited Warranties and in advertisements, brochures, and through other
 23 statements in the media, Defendants expressly warranted that they would repair or replace defects
 24 in material or workmanship free of charge if they became apparent during the warranty period.
 25 For example, the following language appears in all Class Vehicle Warranty booklets:

26 1. Toyota's warranty

27 *When Warranty Begins*

28 The warranty period begins on the vehicle's in-service date, which is the first date
 the vehicle is either delivered to an ultimate purchaser, leased, or used as a

1 company car or demonstrator.

2 *Repairs Made at No Charge*

3 Repairs and adjustments covered by these warranties are made at no charge for
4 parts and labor.

4 *Basic Warranty*

5 This warranty covers repairs and adjustments needed to correct defects in materials
6 or workmanship of any part supplied by Toyota Coverage is for 36 months or
7 36,000 miles, whichever occurs first

7 2. Ford's warranty

8 *KNOW WHEN YOUR WARRANTY BEGINS*

9 Your Warranty Start Date is the day you take delivery of your new vehicle or the
10 day it is first put into service

10 *QUICK REFERENCE: WARRANTY COVERAGE*

11 . . .

12 Your Bumper to Bumper Coverage lasts for three years - unless you drive more
13 than 36,000 miles before three years elapse.

13 *WHO PAYS FOR WARRANTY REPAIRS?*

14 You will not be charged for repairs covered by any applicable warranty during the
15 stated coverage periods

15 3. GM's warranty

16 *Warranty Period*

17 The warranty period for all coverages begins on the date the vehicle is first
18 delivered or put in use and ends at the expiration of the coverage period.

18 *Bumper-to-Bumper Coverage*

19 The complete vehicle is covered for 4 years or 50,000 miles, whichever comes first
20

21 *No Charge*

22 Warranty repairs, including towing, parts, and labor, will be made at no charge.

22 *Repairs Covered*

23 This warranty covers repairs to correct any vehicle defect related to materials or
24 workmanship occurring during the warranty period. Needed repairs will be
25 performed using new or remanufactured parts.

25 1341. Defendants' Limited Warranties, as well as advertisements, brochures, and other
26 statements in the media regarding the Class Vehicles, formed the basis of the bargain that was
27 reached when Plaintiffs and the other Class members purchased or leased their Class Vehicles
28 equipped with a CAN bus from Defendants.

1 1342. Defendants breached the express warranty to repair and adjust to correct defects
2 in materials and workmanship of any part supplied by Defendants. Defendants have not repaired
3 or adjusted, and have been unable to repair or adjust, the Class Vehicles' materials and
4 workmanship defects.

5 1343. In addition to these Limited Warranties, Defendants otherwise expressly
6 warranted several attributes, characteristics, and qualities of the CAN bus.

7 1344. These warranties are only a sampling of the numerous warranties that Defendants
8 made relating to safety, reliability, and operation. Generally these express warranties promise
9 heightened, superior, and state-of-the-art safety, reliability, and performance standards, and
10 promote the benefits of the CAN bus. These warranties were made, *inter alia*, in advertisements,
11 on Defendants' websites, and in uniform statements provided by Defendants to be made by
12 salespeople, or made publicly by Defendants' executives or by other authorized representatives.
13 These affirmations and promises were part of the basis of the bargain between the parties.

14 1345. These additional warranties were also breached because the Class Vehicles were
15 not fully operational, safe, or reliable (and remained so even after the problems were
16 acknowledged), nor did they comply with the warranties expressly made to purchasers or lessees.
17 Defendants did not provide at the time of sale, and have not provided since then, Class Vehicles
18 conforming to these express warranties.

19 1346. Furthermore, the limited warranty of repair and/or adjustments to defective parts,
20 fails in its essential purpose because the contractual remedy is insufficient to make Plaintiffs and
21 the other Class members whole and because Defendants have failed and/or have refused to
22 adequately provide the promised remedies within a reasonable time.

23 1347. Accordingly, recovery by Plaintiffs and the other Class members is not limited to
24 the limited warranty of repair or adjustments to parts defective in materials or workmanship, and
25 Plaintiffs, individually and on behalf of the other Class members, seek all remedies as allowed by
26 law.

27 1348. Also, as alleged in more detail herein, at the time that Defendants warranted and
28 sold the Class Vehicles they knew that the Class Vehicles did not conform to the warranties and

1 were inherently defective, and Defendants wrongfully and fraudulently misrepresented and/or
2 concealed material facts regarding their Class Vehicles. Plaintiffs and the other Class members
3 were therefore induced to purchase or lease the Class Vehicles under false and/or fraudulent
4 pretenses.

5 1349. Moreover, many of the injuries flowing from the Class Vehicles cannot be
6 resolved through the limited remedy of “replacement or adjustments,” as many incidental and
7 consequential damages have already been suffered due to Defendants’ fraudulent conduct as
8 alleged herein, and due to their failure and/or continued failure to provide such limited remedy
9 within a reasonable time, and any limitation on Plaintiffs’ and the other Class members’ remedies
10 would be insufficient to make Plaintiffs and the other Class members whole.

11 1350. Finally, due to Defendants’ breach of warranties as set forth herein, Plaintiffs and
12 the other Class members assert as an additional and/or alternative remedy, as set forth in N.J. Stat.
13 Ann § 12A:2-608, for a revocation of acceptance of the goods, and for a return to Plaintiffs and to
14 the other Class members of the purchase price of all Class Vehicles currently owned for such
15 other incidental and consequential damages as allowed under N.J. Stat. Ann. §§ 12A:2-711 and
16 12A:2-608.

17 1351. Defendants were provided notice of these issues by the instant Complaint, and by
18 other means before or within a reasonable amount of time after the allegations of Class Vehicle
19 defects became public.

20 1352. As a direct and proximate result of Defendants’ breach of express warranties,
21 Plaintiffs and the other Class members have been damaged in an amount to be determined at trial.

22 **COUNT CXLVI**

23 **Breach of Implied Warranty of Merchantability** 24 **(New Jersey Statutes Annotated Section 12A:2-314)**

25 1353. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set
26 forth herein.

27 1354. Defendants are and were at all relevant times merchants with respect to motor
28 vehicles.

1 1355. A warranty that the Class Vehicles were in merchantable condition is implied by
2 law in the instant transactions.

3 1356. These Class Vehicles, when sold and at all times thereafter, were not in
4 merchantable condition and are not fit for the ordinary purpose for which cars are used.
5 Defendants were provided notice of these issues by numerous complaints filed against them,
6 including the instant Complaint, and by other means.

7 1357. As a direct and proximate result of Defendants’ breach of the warranties of
8 merchantability, Plaintiffs and the Class have been damaged in an amount to be proven at trial.

9 **COUNT CXLVII**

10 **Breach of Contract/Common Law Warranty**
11 **(Based on New Jersey Law)**

12 1358. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set
13 forth herein.

14 1359. To the extent Defendants’ limited remedies are deemed not to be warranties under
15 New Jersey’s Commercial Code, Plaintiffs, individually and on behalf of the other Class
16 members, plead in the alternative under common law warranty and contract law. Defendants
17 limited the remedies available to Plaintiffs and the other Class members to repairs and
18 adjustments needed to correct defects in materials or workmanship of any part supplied by
19 Defendants, and/or warranted the quality or nature of those services to Plaintiffs and the other
20 Class members.

21 1360. Defendants breached this warranty or contract obligation by failing to repair the
22 Class Vehicles, or to replace them.

23 1361. As a direct and proximate result of Defendants’ breach of contract or common
24 law warranty, Plaintiffs and the other Class members have been damaged in an amount to be
25 proven at trial, which shall include, but is not limited to, all compensatory damages, incidental
26 and consequential damages, and other damages allowed by law.

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COUNT CXLVIII**Fraudulent Concealment
(Based on New Jersey Law)**

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4 1362. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set
5 forth herein.

6 1363. Defendants intentionally concealed the above-described material safety and
7 functionality information, or acted with reckless disregard for the truth, and denied Plaintiffs and
8 the other Class members information that is highly relevant to their purchasing decision.

9 1364. Defendants further affirmatively misrepresented to Plaintiffs in advertising and
10 other forms of communication, including standard and uniform material provided with each car,
11 that the Class Vehicles they was selling were new, had no significant defects, and would perform
12 and operate properly when driven in normal usage.

13 1365. Defendants knew these representations were false when made.

14 1366. The Class Vehicles purchased or leased by Plaintiffs and the other Class members
15 were, in fact, defective, unsafe, and unreliable because the Class Vehicles contained faulty and
16 defective CAN buses, as alleged herein.

17 1367. Defendants had a duty to disclose that these Class Vehicles were defective,
18 unsafe, and unreliable in that certain crucial safety functions of the Class Vehicles would be
19 rendered inoperative due to faulty and defective CAN buses, because Plaintiffs and the other
20 Class members relied on Defendants' material representations that the Class Vehicles they were
21 purchasing were safe and free from defects.

22 1368. The aforementioned concealment was material because if it had been disclosed
23 Plaintiffs and the other Class members would not have bought or leased the Class Vehicles, or
24 would not have bought or leased those Vehicles at the prices they paid.

25 1369. The aforementioned representations were material because they were facts that
26 would typically be relied on by a person purchasing or leasing a new motor vehicle. Defendants
27 knew or recklessly disregarded that their representations were false because they knew the CAN
28 buses were susceptible to hacking. Defendants intentionally made the false statements in order to

1 sell Class Vehicles.

2 1370. Plaintiffs and the other Class members relied on Defendants’ reputations – along
3 with Defendants’ failure to disclose the faulty and defective nature of the CAN bus and
4 Defendants’ affirmative assurances that their Class Vehicles were safe and reliable, and other
5 similar false statements – in purchasing or leasing Defendants’ Class Vehicles.

6 1371. As a result of their reliance, Plaintiffs and the other Class members have been
7 injured in an amount to be proven at trial, including, but not limited to, their lost benefit of the
8 bargain and overpayment at the time of purchase or lease and/or the diminished value of their
9 Class Vehicles.

10 1372. Defendants’ conduct was knowing, intentional, with malice, demonstrated a
11 complete lack of care, and was in reckless disregard for the rights of Plaintiffs and the other Class
12 members.

13 1373. Plaintiffs and the other Class members are therefore entitled to an award of
14 punitive damages.

15 **Claims Brought on Behalf of the New Mexico Class**

16 **COUNT CXLIX**

17 **Breach of Express Warranty**

18 **(New Mexico Statutes Annotated Section 55-2-313)**

19 1374. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set
20 forth herein.

21 1375. Defendants are and were at all relevant times merchants with respect to motor
22 vehicles under N.M. Stat. Ann. § 55-2-104.

23 1376. In their Limited Warranties and in advertisements, brochures, and through other
24 statements in the media, Defendants expressly warranted that they would repair or replace defects
25 in material or workmanship free of charge if they became apparent during the warranty period.
26 For example, the following language appears in all Class Vehicle Warranty booklets:

- 27 1. Toyota’s warranty
28 *When Warranty Begins*

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The warranty period begins on the vehicle’s in-service date, which is the first date the vehicle is either delivered to an ultimate purchaser, leased, or used as a company car or demonstrator.

Repairs Made at No Charge

Repairs and adjustments covered by these warranties are made at no charge for parts and labor.

Basic Warranty

This warranty covers repairs and adjustments needed to correct defects in materials or workmanship of any part supplied by Toyota Coverage is for 36 months or 36,000 miles, whichever occurs first

2. Ford’s warranty

KNOW WHEN YOUR WARRANTY BEGINS

Your Warranty Start Date is the day you take delivery of your new vehicle or the day it is first put into service

QUICK REFERENCE: WARRANTY COVERAGE

. . .

Your Bumper to Bumper Coverage lasts for three years - unless you drive more than 36,000 miles before three years elapse.

WHO PAYS FOR WARRANTY REPAIRS?

You will not be charged for repairs covered by any applicable warranty during the stated coverage periods

3. GM’s warranty

Warranty Period

The warranty period for all coverages begins on the date the vehicle is first delivered or put in use and ends at the expiration of the coverage period.

Bumper-to-Bumper Coverage

The complete vehicle is covered for 4 years or 50,000 miles, whichever comes first

No Charge

Warranty repairs, including towing, parts, and labor, will be made at no charge.

Repairs Covered

This warranty covers repairs to correct any vehicle defect related to materials or workmanship occurring during the warranty period. Needed repairs will be performed using new or remanufactured parts.

1377. Defendants’ Limited Warranties, as well as advertisements, brochures, and other statements in the media regarding the Class Vehicles, formed the basis of the bargain that was

1 reached when Plaintiffs and the other Class members purchased or leased their Class Vehicles
2 equipped with a CAN bus from Defendants.

3 1378. Defendants breached the express warranty to repair and adjust to correct defects
4 in materials and workmanship of any part supplied by Defendants. Defendants have not repaired
5 or adjusted, and have been unable to repair or adjust, the Class Vehicles' materials and
6 workmanship defects.

7 1379. In addition to these Limited Warranties, Defendants otherwise expressly
8 warranted several attributes, characteristics, and qualities of the CAN bus.

9 1380. These warranties are only a sampling of the numerous warranties that Defendants
10 made relating to safety, reliability, and operation. Generally these express warranties promise
11 heightened, superior, and state-of-the-art safety, reliability, and performance standards, and
12 promote the benefits of the CAN bus. These warranties were made, *inter alia*, in advertisements,
13 on Defendants' websites, and in uniform statements provided by Defendants to be made by
14 salespeople, or made publicly by Defendants' executives or by other authorized representatives.
15 These affirmations and promises were part of the basis of the bargain between the parties.

16 1381. These additional warranties were also breached because the Class Vehicles were
17 not fully operational, safe, or reliable (and remained so even after the problems were
18 acknowledged), nor did they comply with the warranties expressly made to purchasers or lessees.
19 Defendants did not provide at the time of sale, and have not provided since then, Class Vehicles
20 conforming to these express warranties.

21 1382. Furthermore, the limited warranty of repair and/or adjustments to defective parts,
22 fails in its essential purpose because the contractual remedy is insufficient to make Plaintiffs and
23 the other Class members whole and because Defendants have failed and/or have refused to
24 adequately provide the promised remedies within a reasonable time.

25 1383. Accordingly, recovery by Plaintiffs and the other Class members is not limited to
26 the limited warranty of repair or adjustments to parts defective in materials or workmanship, and
27 Plaintiffs, individually and on behalf of the other Class members, seek all remedies as allowed by
28 law.

1 1384. Also, as alleged in more detail herein, at the time that Defendants warranted and
2 sold the Class Vehicles they knew that the Class Vehicles did not conform to the warranties and
3 were inherently defective, and Defendants wrongfully and fraudulently misrepresented and/or
4 concealed material facts regarding their Class Vehicles. Plaintiffs and the other Class members
5 were therefore induced to purchase or lease the Class Vehicles under false and/or fraudulent
6 pretenses.

7 1385. Moreover, many of the injuries flowing from the Class Vehicles cannot be
8 resolved through the limited remedy of “replacement or adjustments,” as many incidental and
9 consequential damages have already been suffered due to Defendants’ fraudulent conduct as
10 alleged herein, and due to their failure and/or continued failure to provide such limited remedy
11 within a reasonable time, and any limitation on Plaintiffs’ and the other Class members’ remedies
12 would be insufficient to make Plaintiffs and the other Class members whole.

13 1386. Finally, due to the Defendants’ breach of warranties as set forth herein, Plaintiffs
14 and the Class assert as an additional and/or alternative remedy, as set forth in N.M. Stat. Ann.
15 § 55-2-711, for a revocation of acceptance of the goods, and for a return to Plaintiffs and to the
16 Class of the purchase price of all vehicles currently owned and for such other incidental and
17 consequential damages as allowed under N.M. Stat. Ann. §§ 55-2-711 and 55-2-608.

18 1387. Defendants were provided notice of these issues by the instant Complaint, and by
19 other means before or within a reasonable amount of time after the allegations of Class Vehicle
20 defects became public.

21 1388. As a direct and proximate result of Defendants’ breach of express warranties,
22 Plaintiffs and the other Class members have been damaged in an amount to be determined at trial.

23 **COUNT CL**

24 **Breach of the Implied Warranty of Merchantability**
25 **(New Mexico Statutes Annotated Section 55-2-314)**

26 1389. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set
27 forth herein.

28 1390. Defendants are and were at all relevant times merchants with respect to motor

1 vehicles under N.M. Stat. Ann. § 55-2-104.

2 1391. A warranty that the Defective Vehicles were in merchantable condition was
3 implied by law in the instant transaction, pursuant to N.M. Stat. Ann. § 55-2-314.

4 1392. These Class Vehicles, when sold and at all times thereafter, were not in
5 merchantable condition and are not fit for the ordinary purpose for which cars are used.
6 Defendants were provided notice of these issues by numerous complaints filed against them,
7 including the instant Complaint, and by other means.

8 1393. As a direct and proximate result of Defendants’ breach of the warranties of
9 merchantability, Plaintiffs and the Class have been damaged in an amount to be proven at trial.

10 **COUNT CLI**

11 **Breach of Contract/Common Law Warranty**
12 **(Based on New Mexico Law)**

13 1394. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set
14 forth herein.

15 1395. To the extent Defendants’ limited remedies are deemed not to be warranties under
16 New Mexico’s Commercial Code, Plaintiffs, individually and on behalf of the other Class
17 members, plead in the alternative under common law warranty and contract law. Defendants
18 limited the remedies available to Plaintiffs and the other Class members to repairs and
19 adjustments needed to correct defects in materials or workmanship of any part supplied by
20 Defendants, and/or warranted the quality or nature of those services to Plaintiffs and the other
21 Class members.

22 1396. Defendants breached this warranty or contract obligation by failing to repair the
23 Class Vehicles, or to replace them.

24 1397. As a direct and proximate result of Defendants’ breach of contract or common
25 law warranty, Plaintiffs and the other Class members have been damaged in an amount to be
26 proven at trial, which shall include, but is not limited to, all compensatory damages, incidental
27 and consequential damages, and other damages allowed by law.

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COUNT CLII
Fraudulent Concealment
(Based on New Mexico Law)

1398. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

1399. Defendants intentionally concealed the above-described material safety and functionality information, or acted with reckless disregard for the truth, and denied Plaintiffs and the other Class members information that is highly relevant to their purchasing decision.

1400. Defendants further affirmatively misrepresented to Plaintiffs in advertising and other forms of communication, including standard and uniform material provided with each car, that the Class Vehicles they was selling were new, had no significant defects, and would perform and operate properly when driven in normal usage.

1401. Defendants knew these representations were false when made.

1402. The Class Vehicles purchased or leased by Plaintiffs and the other Class members were, in fact, defective, unsafe, and unreliable because the Class Vehicles contained faulty and defective CAN buses, as alleged herein.

1403. Defendants had a duty to disclose that these Class Vehicles were defective, unsafe, and unreliable in that certain crucial safety functions of the Class Vehicles would be rendered inoperative due to faulty and defective CAN buses, because Plaintiffs and the other Class members relied on Defendants’ material representations that the Class Vehicles they were purchasing were safe and free from defects.

1404. The aforementioned concealment was material because if it had been disclosed Plaintiffs and the other Class members would not have bought or leased the Class Vehicles, or would not have bought or leased those Vehicles at the prices they paid.

1405. The aforementioned representations were material because they were facts that would typically be relied on by a person purchasing or leasing a new motor vehicle. Defendants knew or recklessly disregarded that their representations were false because they knew the CAN buses were susceptible to hacking. Defendants intentionally made the false statements in order to

1 sell Class Vehicles.

2 1406. Plaintiffs and the other Class members relied on Defendants’ reputations – along
3 with Defendants’ failure to disclose the faulty and defective nature of the CAN bus and
4 Defendants’ affirmative assurances that their Class Vehicles were safe and reliable, and other
5 similar false statements – in purchasing or leasing Defendants’ Class Vehicles.

6 1407. As a result of their reliance, Plaintiffs and the other Class members have been
7 injured in an amount to be proven at trial, including, but not limited to, their lost benefit of the
8 bargain and overpayment at the time of purchase or lease and/or the diminished value of their
9 Class Vehicles.

10 1408. Defendants’ conduct was knowing, intentional, with malice, demonstrated a
11 complete lack of care, and was in reckless disregard for the rights of Plaintiffs and the other Class
12 members.

13 1409. Plaintiffs and the other Class members are therefore entitled to an award of
14 punitive damages.

15 **COUNT CLIII**

16 **Violations of the New Mexico Unfair Trade Practices Act**
17 **(New Mexico Statutes Annotated Sections 57-12-1, et seq.)**

18 1410. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set
19 forth herein.

20 1411. Defendants’ above-described acts and omissions constitute unfair or deceptive
21 acts or practices under the New Mexico Unfair Trade Practices Act, N.M. Stat. Ann. §§ 57-12-1,
22 et seq. (“New Mexico UTPA”).

23 1412. By failing to disclose and actively concealing the dangerous risk of hacking and
24 the lack of adequate fail-safe mechanisms in Defective Vehicles equipped with CAN buses,
25 Defendants engaged in deceptive business practices prohibited by the New Mexico UTPA,
26 including (1) representing that Defective Vehicles have characteristics and benefits, which they
27 do not have, (2) representing that Defective Vehicles are of a particular standard, quality, and
28 grade when they are not, (3) using exaggeration as to a material fact and by doing so deceiving or

1 tending to deceive, (4) failing to state a material fact and by doing so deceiving or tending to
2 deceive, and (5) representing that a transaction involving Defective Vehicles confers or involves
3 rights, remedies, and obligations which it does not.

4 1413. As alleged above, Defendants made numerous material statements about the
5 safety and reliability of Defective Vehicles that were either false or misleading. Each of these
6 statements contributed to the deceptive context of TMC’s and TMS’s unlawful advertising and
7 representations as a whole.

8 1414. Defendants took advantage of the lack of knowledge, ability, experience, and
9 capacity of Plaintiffs and the Class to a grossly unfair degree. Defendants’ actions resulted in a
10 gross disparity between the value received and the price paid by Plaintiffs and the Class.
11 Defendants’ actions constitute unconscionable actions under § 57-12-2(E) of the New Mexico
12 UTPA.

13 1415. Plaintiffs and the Class sustained damages as a result of the Defendants’ unlawful
14 acts and are, therefore, entitled to damages and other relief provided for under § 57-12-10 of the
15 New Mexico UTPA. Because Defendants’ conduct was committed willfully, Plaintiffs and the
16 Class seek treble damages.

17 1416. Plaintiffs and the Class also seek court costs and attorneys’ fees under § 57-12-
18 10(C) of the New Mexico UTPA.

19 **COUNT CLIV**

20 **Violations of the New Mexico Motor Vehicle Dealers Franchising Act**
21 **(New Mexico Statutes Annotated Sections 57-16-1, et seq.)**

22 1417. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set
23 forth herein.

24 1418. As alleged above, Defendants used false, misleading, and deceptive advertising in
25 connection with their business in violation of the New Mexico Motor Vehicle Dealers Franchising
26 Act, N.M. Stat. Ann. §§ 57-16-1, et seq. (“New Mexico MVDFFA”).

27 1419. Plaintiffs and the Class sustained damages as a result of the Defendants’ unlawful
28 acts and are, therefore, entitled to damages and other relief provided for under § 57-16-13 of the

1 New Mexico MVDFAs. Because Defendants’ conduct was committed maliciously, Plaintiffs and
2 the Class seek treble damages.

3 1420. Plaintiffs and the Class also seek court costs and attorneys’ fees under § 57-16-13
4 of the New Mexico MVDFAs.

5 **Claims Brought on Behalf of the New York Class**

6 **COUNT CLV**

7 **Violations of New York General Business Law Section 349**

8 **(New York General Business Law Section 349)**

9 1421. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set
10 forth herein.

11 1422. New York’s General Business Law § 349 makes unlawful “[d]eceptive acts or
12 practices in the conduct of any business, trade or commerce.”

13 1423. In the course of Defendants’ business, they willfully failed to disclose and
14 actively concealed the dangerous risk of CAN bus hacking in Class Vehicles as described above.
15 Accordingly, Defendants engaged in unfair methods of competition, unconscionable acts or
16 practices, and unfair or deceptive acts or practices as defined in N.Y. Gen. Bus. Law § 349,
17 including representing that Class Vehicles have characteristics, uses, benefits, and qualities which
18 they do not have; representing that Class Vehicles are of a particular standard and quality when
19 they are not; advertising Class Vehicles with the intent not to sell them as advertised; and
20 otherwise engaging in conduct likely to deceive.

21 1424. Defendants’ actions as set forth above occurred in the conduct of trade or
22 commerce.

23 1425. Because Defendants’ deception takes place in the context of automobile safety,
24 their deception affects the public interest. Further, Defendants’ unlawful conduct constitutes
25 unfair acts or practices that have the capacity to deceive consumers, and that have a broad impact
26 on consumers at large.

27 1426. Defendants’ conduct proximately caused injuries to Plaintiffs and the other Class
28 members.

1 1427. Plaintiffs and the other Class members were injured as a result of Defendants’
2 conduct in that Plaintiffs and the other Class members overpaid for their Class Vehicles and did
3 not receive the benefit of their bargain, and their Class Vehicles have suffered a diminution in
4 value. These injuries are the direct and natural consequence of Defendants’ misrepresentations
5 and omissions.

6 **COUNT CLVI**

7 **Violations of New York General Business Law Section 350**

8 **(New York General Business Law Section 350)**

9 1428. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set
10 forth herein.

11 1429. New York’s General Business Law § 350 makes unlawful “[f]alse advertising in
12 the conduct of any business, trade or commerce[.]” False advertising includes “advertising,
13 including labeling, of a commodity . . . if such advertising is misleading in a material respect,”
14 taking into account “the extent to which the advertising fails to reveal facts material in the light of
15 . . . representations [made] with respect to the commodity” N.Y. Gen. Bus. Law § 350-a.
16 818. Defendants caused to be made or disseminated through New York, through advertising,
17 marketing, and other publications, statements that were untrue or misleading, and which were
18 known, or which by the exercise of reasonable care should have been known to Defendants, to be
19 untrue and misleading to consumers, including Plaintiffs and the other Class members.

20 1430. Defendants have violated N.Y. Gen. Bus. Law § 350 because the
21 misrepresentations and omissions regarding the dangerous risk of CAN bus hacking in Class
22 Vehicles as described above, as well as the inherently defective nature of the CAN bus as
23 designed and sold by Defendants, were material and likely to deceive a reasonable consumer.

24 1431. Plaintiffs and the other Class members have suffered injury, including the loss of
25 money or property, as a result of Defendants’ false advertising. In purchasing or leasing their
26 Class Vehicles, Plaintiffs and the other Class members relied on the misrepresentations and/or
27 omissions of Defendants with respect to the safety, quality, functionality, and reliability of the
28 Class Vehicles. Defendants’ representations turned out to be untrue because the CAN buses

1 installed in Class Vehicles are vulnerable to hacking and other failures as described hereinabove.
 2 Had Plaintiffs and the other Class members known this, they would not have purchased or leased
 3 their Class Vehicles and/or paid as much for them.

4 1432. Accordingly, Plaintiffs and the other Class members overpaid for their Class
 5 Vehicles and did not receive the benefit of the bargain for their Class Vehicles, which have also
 6 suffered diminution in value.

7 1433. Plaintiffs, individually and on behalf of the other Class members, request that this
 8 Court enter such orders or judgments as may be necessary to enjoin Defendants from continuing
 9 their unfair, unlawful and/or deceptive practices. Plaintiffs and the other Class members are also
 10 entitled to recover their actual damages or \$500, whichever is greater. Because Defendants acted
 11 willfully or knowingly, Plaintiffs and the other Class members are entitled to recover three times
 12 actual damages, up to \$10,000.

COUNT CLVII

Breach of Express Warranty

(New York Uniform Commercial Code Section 2-313)

16 1434. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set
 17 forth herein.

18 1435. Defendants are and were at all relevant times merchants with respect to motor
 19 vehicles.

20 1436. In their Limited Warranties and in advertisements, brochures, and through other
 21 statements in the media, Defendants expressly warranted that they would repair or replace defects
 22 in material or workmanship free of charge if they became apparent during the warranty period.
 23 For example, the following language appears in all Class Vehicle Warranty booklets:

24 1. Toyota's warranty

When Warranty Begins

25 The warranty period begins on the vehicle's in-service date, which is the first date
 26 the vehicle is either delivered to an ultimate purchaser, leased, or used as a
 27 company car or demonstrator.

Repairs Made at No Charge

28 Repairs and adjustments covered by these warranties are made at no charge for

1 parts and labor.

2 *Basic Warranty*

3 This warranty covers repairs and adjustments needed to correct defects in materials
4 or workmanship of any part supplied by Toyota Coverage is for 36 months or
36,000 miles, whichever occurs first

5 2. Ford's warranty

6 *KNOW WHEN YOUR WARRANTY BEGINS*

7 Your Warranty Start Date is the day you take delivery of your new vehicle or the
8 day it is first put into service

9 *QUICK REFERENCE: WARRANTY COVERAGE*

10 . . .

11 Your Bumper to Bumper Coverage lasts for three years - unless you drive more
12 than 36,000 miles before three years elapse.

13 *WHO PAYS FOR WARRANTY REPAIRS?*

14 You will not be charged for repairs covered by any applicable warranty during the
15 stated coverage periods

16 3. GM's warranty

17 *Warranty Period*

18 The warranty period for all coverages begins on the date the vehicle is first
19 delivered or put in use and ends at the expiration of the coverage period.

20 *Bumper-to-Bumper Coverage*

21 The complete vehicle is covered for 4 years or 50,000 miles, whichever comes first
22

23 *No Charge*

24 Warranty repairs, including towing, parts, and labor, will be made at no charge.

25 *Repairs Covered*

26 This warranty covers repairs to correct any vehicle defect related to materials or
27 workmanship occurring during the warranty period. Needed repairs will be
28 performed using new or remanufactured parts.

1437. Defendants' Limited Warranties, as well as advertisements, brochures, and other
statements in the media regarding the Class Vehicles, formed the basis of the bargain that was
reached when Plaintiffs and the other Class members purchased or leased their Class Vehicles
equipped with a CAN bus from Defendants.

1438. Defendants breached the express warranty to repair and adjust to correct defects
in materials and workmanship of any part supplied by Defendants. Defendants have not repaired

1 or adjusted, and have been unable to repair or adjust, the Class Vehicles' materials and
2 workmanship defects.

3 1439. In addition to these Limited Warranties, Defendants otherwise expressly
4 warranted several attributes, characteristics, and qualities of the CAN bus.

5 1440. These warranties are only a sampling of the numerous warranties that Defendants
6 made relating to safety, reliability, and operation. Generally these express warranties promise
7 heightened, superior, and state-of-the-art safety, reliability, and performance standards, and
8 promote the benefits of the CAN bus. These warranties were made, *inter alia*, in advertisements,
9 on Defendants' websites, and in uniform statements provided by Defendants to be made by
10 salespeople, or made publicly by Defendants' executives or by other authorized representatives.
11 These affirmations and promises were part of the basis of the bargain between the parties.

12 1441. These additional warranties were also breached because the Class Vehicles were
13 not fully operational, safe, or reliable (and remained so even after the problems were
14 acknowledged), nor did they comply with the warranties expressly made to purchasers or lessees.
15 Defendants did not provide at the time of sale, and have not provided since then, Class Vehicles
16 conforming to these express warranties.

17 1442. Furthermore, the limited warranty of repair and/or adjustments to defective parts,
18 fails in its essential purpose because the contractual remedy is insufficient to make Plaintiffs and
19 the other Class members whole and because Defendants have failed and/or have refused to
20 adequately provide the promised remedies within a reasonable time.

21 1443. Accordingly, recovery by Plaintiffs and the other Class members is not limited to
22 the limited warranty of repair or adjustments to parts defective in materials or workmanship, and
23 Plaintiffs, individually and on behalf of the other Class members, seek all remedies as allowed by
24 law.

25 1444. Also, as alleged in more detail herein, at the time that Defendants warranted and
26 sold the Class Vehicles they knew that the Class Vehicles did not conform to the warranties and
27 were inherently defective, and Defendants wrongfully and fraudulently misrepresented and/or
28 concealed material facts regarding their Class Vehicles. Plaintiffs and the other Class members

1 were therefore induced to purchase or lease the Class Vehicles under false and/or fraudulent
2 pretenses.

3 1445. Moreover, many of the injuries flowing from the Class Vehicles cannot be
4 resolved through the limited remedy of “replacement or adjustments,” as many incidental and
5 consequential damages have already been suffered due to Defendants’ fraudulent conduct as
6 alleged herein, and due to their failure and/or continued failure to provide such limited remedy
7 within a reasonable time, and any limitation on Plaintiffs’ and the other Class members’ remedies
8 would be insufficient to make Plaintiffs and the other Class members whole.

9 1446. Finally, due to Defendants’ breach of warranties as set forth herein, Plaintiffs and
10 the other Class members assert as an additional and/or alternative remedy, as set forth in N.Y.
11 U.C.C. § 2-608, for a revocation of acceptance of the goods, and for a return to Plaintiffs and to
12 the other Class members of the purchase price of all Class Vehicles currently owned for such
13 other incidental and consequential damages as allowed under N.Y. U.C.C. §§ 2-711 and 2-608.

14 1447. Defendants were provided notice of these issues by the instant Complaint, and by
15 other means before or within a reasonable amount of time after the allegations of Class Vehicle
16 defects became public.

17 1448. As a direct and proximate result of Defendants’ breach of express warranties,
18 Plaintiffs and the other Class members have been damaged in an amount to be determined at trial.

19 COUNT CLVIII

20 **Breach of Implied Warranty of Merchantability** 21 **(New York Uniform Commercial Code Section 2-314)**

22 1449. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set
23 forth herein.

24 1450. Defendants are and were at all relevant times merchants with respect to motor
25 vehicles.

26 1451. A warranty that the Class Vehicles were in merchantable condition is implied by
27 law in the instant transactions.

28 1452. These Class Vehicles, when sold and at all times thereafter, were not in

1 merchantable condition and are not fit for the ordinary purpose for which cars are used.
2 Defendants were provided notice of these issues by numerous complaints filed against them,
3 including the instant Complaint, and by other means.

4 1453. As a direct and proximate result of Defendants' breach of the warranties of
5 merchantability, Plaintiffs and the Class have been damaged in an amount to be proven at trial.

6 **COUNT CLIX**

7 **Breach of Contract/Common Law Warranty**

8 **(Based on New York Law)**

9 1454. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set
10 forth herein.

11 1455. To the extent Defendants' limited remedies are deemed not to be warranties under
12 New York's Commercial Code, Plaintiffs, individually and on behalf of the other Class members,
13 plead in the alternative under common law warranty and contract law. Defendants limited the
14 remedies available to Plaintiffs and the other Class members to repairs and adjustments needed to
15 correct defects in materials or workmanship of any part supplied by Defendants, and/or warranted
16 the quality or nature of those services to Plaintiffs and the other Class members.

17 1456. Defendants breached this warranty or contract obligation by failing to repair the
18 Class Vehicles, or to replace them.

19 1457. As a direct and proximate result of Defendants' breach of contract or common
20 law warranty, Plaintiffs and the other Class members have been damaged in an amount to be
21 proven at trial, which shall include, but is not limited to, all compensatory damages, incidental
22 and consequential damages, and other damages allowed by law.

23 **COUNT CLX**

24 **Fraudulent Concealment**

25 **(Based on New York Law)**

26 1458. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set
27 forth herein.

28 1459. Defendants intentionally concealed the above-described material safety and

1 functionality information, or acted with reckless disregard for the truth, and denied Plaintiffs and
2 the other Class members information that is highly relevant to their purchasing decision.

3 1460. Defendants further affirmatively misrepresented to Plaintiffs in advertising and
4 other forms of communication, including standard and uniform material provided with each car,
5 that the Class Vehicles they was selling were new, had no significant defects, and would perform
6 and operate properly when driven in normal usage.

7 1461. Defendants knew these representations were false when made.

8 1462. The Class Vehicles purchased or leased by Plaintiffs and the other Class members
9 were, in fact, defective, unsafe, and unreliable because the Class Vehicles contained faulty and
10 defective CAN buses, as alleged herein.

11 1463. Defendants had a duty to disclose that these Class Vehicles were defective,
12 unsafe, and unreliable in that certain crucial safety functions of the Class Vehicles would be
13 rendered inoperative due to faulty and defective CAN buses, because Plaintiffs and the other
14 Class members relied on Defendants' material representations that the Class Vehicles they were
15 purchasing were safe and free from defects.

16 1464. The aforementioned concealment was material because if it had been disclosed
17 Plaintiffs and the other Class members would not have bought or leased the Class Vehicles, or
18 would not have bought or leased those Vehicles at the prices they paid.

19 1465. The aforementioned representations were material because they were facts that
20 would typically be relied on by a person purchasing or leasing a new motor vehicle. Defendants
21 knew or recklessly disregarded that their representations were false because they knew the CAN
22 buses were susceptible to hacking. Defendants intentionally made the false statements in order to
23 sell Class Vehicles.

24 1466. Plaintiffs and the other Class members relied on Defendants' reputations – along
25 with Defendants' failure to disclose the faulty and defective nature of the CAN bus and
26 Defendants' affirmative assurances that their Class Vehicles were safe and reliable, and other
27 similar false statements – in purchasing or leasing Defendants' Class Vehicles.

28 1467. As a result of their reliance, Plaintiffs and the other Class members have been

1 injured in an amount to be proven at trial, including, but not limited to, their lost benefit of the
2 bargain and overpayment at the time of purchase or lease and/or the diminished value of their
3 Class Vehicles.

4 1468. Defendants’ conduct was knowing, intentional, with malice, demonstrated a
5 complete lack of care, and was in reckless disregard for the rights of Plaintiffs and the other Class
6 members.

7 1469. Plaintiffs and the other Class members are therefore entitled to an award of
8 punitive damages.

9 **Claims Brought on Behalf of the North Carolina Class**

10 **COUNT CLXI**

11 **Violations of the North Carolina Unfair and Deceptive Trade Practices Act**
12 **(North Carolina General Statutes Sections 75-1.1, et seq.)**

13 1470. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set
14 forth herein.

15 1471. North Carolina’s Unfair and Deceptive Trade Practices Act, N.C. Gen. Stat.
16 §§ 75-1.1, et seq. (“NCUDTPA”), prohibits a person from engaging in “[u]nfair methods of
17 competition in or affecting commerce, and unfair or deceptive acts or practices in or affecting
18 commerce[.]” The NCUDTPA provides a private right of action for any person injured “by reason
19 of any act or thing done by any other person, firm or corporation in violation of” the NCUDTPA.
20 N.C. Gen. Stat. § 75-16.

21 1472. Defendants’ acts and practices complained of herein were performed in the course
22 of Defendants’ trade or business and thus occurred in or affected “commerce,” as defined in N.C.
23 Gen. Stat. § 75-1.1(b).

24 1473. In the course of Defendants’ business, they willfully failed to disclose and
25 actively concealed the dangerous risk of CAN bus hacking in Class Vehicles as described above.

26 1474. Accordingly, Defendants engaged in unlawful trade practices, including
27 representing that Class Vehicles have characteristics, uses, benefits, and qualities which they do
28 not have; representing that Class Vehicles are of a particular standard and quality when they are

1 not; advertising Class Vehicles with the intent not to sell them as advertised; and otherwise
2 engaging in conduct likely to deceive.

3 1475. Defendants’ conduct proximately caused injuries to Plaintiffs and the other Class
4 members.

5 1476. Defendants acted with willful and conscious disregard of the rights and safety of
6 others, subjecting Plaintiffs and the other Class members to cruel and unjust hardship as a result,
7 such that an award of punitive damages is appropriate.

8 1477. Plaintiffs and the other Class members were injured as a result of Defendants’
9 conduct in that Plaintiffs and the other Class members overpaid for their Class Vehicles and did
10 not receive the benefit of their bargain, and their Class Vehicles have suffered a diminution in
11 value. These injuries are the direct and natural consequence of Defendants’ misrepresentations
12 and omissions.

13 1478. Plaintiffs, individually and on behalf of the other Class members, seeks treble
14 damages pursuant to N.C. Gen. Stat. § 75-16, and an award of attorneys’ fees pursuant to N.C.
15 Gen. Stat. § 75-16.1.

16 **COUNT CLXII**

17 **Breach of Express Warranty**

18 **(North Carolina General Statutes Section 25-2-313)**

19 1479. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set
20 forth herein.

21 1480. Defendants are and were at all relevant times merchants with respect to motor
22 vehicles.

23 1481. In their Limited Warranties and in advertisements, brochures, and through other
24 statements in the media, Defendants expressly warranted that they would repair or replace defects
25 in material or workmanship free of charge if they became apparent during the warranty period.
26 For example, the following language appears in all Class Vehicle Warranty booklets:

- 27 1. Toyota’s warranty
28 *When Warranty Begins*

1 The warranty period begins on the vehicle’s in-service date, which is the first date
2 the vehicle is either delivered to an ultimate purchaser, leased, or used as a
3 company car or demonstrator.

4 *Repairs Made at No Charge*

5 Repairs and adjustments covered by these warranties are made at no charge for
6 parts and labor.

7 *Basic Warranty*

8 This warranty covers repairs and adjustments needed to correct defects in materials
9 or workmanship of any part supplied by Toyota Coverage is for 36 months or
10 36,000 miles, whichever occurs first

11 2. Ford’s warranty

12 *KNOW WHEN YOUR WARRANTY BEGINS*

13 Your Warranty Start Date is the day you take delivery of your new vehicle or the
14 day it is first put into service

15 *QUICK REFERENCE: WARRANTY COVERAGE*

16 . . .

17 Your Bumper to Bumper Coverage lasts for three years - unless you drive more
18 than 36,000 miles before three years elapse.

19 *WHO PAYS FOR WARRANTY REPAIRS?*

20 You will not be charged for repairs covered by any applicable warranty during the
21 stated coverage periods

22 3. GM’s warranty

23 *Warranty Period*

24 The warranty period for all coverages begins on the date the vehicle is first
25 delivered or put in use and ends at the expiration of the coverage period.

26 *Bumper-to-Bumper Coverage*

27 The complete vehicle is covered for 4 years or 50,000 miles, whichever comes first
28

No Charge

Warranty repairs, including towing, parts, and labor, will be made at no charge.

Repairs Covered

This warranty covers repairs to correct any vehicle defect related to materials or
workmanship occurring during the warranty period. Needed repairs will be
performed using new or remanufactured parts.

1482. Defendants’ Limited Warranties, as well as advertisements, brochures, and other
statements in the media regarding the Class Vehicles, formed the basis of the bargain that was

1 reached when Plaintiffs and the other Class members purchased or leased their Class Vehicles
2 equipped with a CAN bus from Defendants.

3 1483. Defendants breached the express warranty to repair and adjust to correct defects
4 in materials and workmanship of any part supplied by Defendants. Defendants have not repaired
5 or adjusted, and have been unable to repair or adjust, the Class Vehicles' materials and
6 workmanship defects.

7 1484. In addition to these Limited Warranties, Defendants otherwise expressly
8 warranted several attributes, characteristics, and qualities of the CAN bus.

9 1485. These warranties are only a sampling of the numerous warranties that Defendants
10 made relating to safety, reliability, and operation. Generally these express warranties promise
11 heightened, superior, and state-of-the-art safety, reliability, and performance standards, and
12 promote the benefits of the CAN bus. These warranties were made, *inter alia*, in advertisements,
13 on Defendants' websites, and in uniform statements provided by Defendants to be made by
14 salespeople, or made publicly by Defendants' executives or by other authorized representatives.
15 These affirmations and promises were part of the basis of the bargain between the parties.

16 1486. These additional warranties were also breached because the Class Vehicles were
17 not fully operational, safe, or reliable (and remained so even after the problems were
18 acknowledged), nor did they comply with the warranties expressly made to purchasers or lessees.
19 Defendants did not provide at the time of sale, and have not provided since then, Class Vehicles
20 conforming to these express warranties.

21 1487. Furthermore, the limited warranty of repair and/or adjustments to defective parts,
22 fails in its essential purpose because the contractual remedy is insufficient to make Plaintiffs and
23 the other Class members whole and because Defendants have failed and/or have refused to
24 adequately provide the promised remedies within a reasonable time.

25 1488. Accordingly, recovery by Plaintiffs and the other Class members is not limited to
26 the limited warranty of repair or adjustments to parts defective in materials or workmanship, and
27 Plaintiffs, individually and on behalf of the other Class members, seek all remedies as allowed by
28 law.

1 1489. Also, as alleged in more detail herein, at the time that Defendants warranted and
2 sold the Class Vehicles they knew that the Class Vehicles did not conform to the warranties and
3 were inherently defective, and Defendants wrongfully and fraudulently misrepresented and/or
4 concealed material facts regarding their Class Vehicles. Plaintiffs and the other Class members
5 were therefore induced to purchase or lease the Class Vehicles under false and/or fraudulent
6 pretenses.

7 1490. Moreover, many of the injuries flowing from the Class Vehicles cannot be
8 resolved through the limited remedy of “replacement or adjustments,” as many incidental and
9 consequential damages have already been suffered due to Defendants’ fraudulent conduct as
10 alleged herein, and due to their failure and/or continued failure to provide such limited remedy
11 within a reasonable time, and any limitation on Plaintiffs’ and the other Class members’ remedies
12 would be insufficient to make Plaintiffs and the other Class members whole.

13 1491. Finally, due to Defendants’ breach of warranties as set forth herein, Plaintiffs and
14 the other Class members assert as an additional and/or alternative remedy, as set forth in N.C.
15 Gen. Stat. § 25-2-608, for a revocation of acceptance of the goods, and for a return to Plaintiffs
16 and to the other Class members of the purchase price of all Class Vehicles currently owned for
17 such other incidental and consequential damages as allowed under N.C. Gen. Stat. §§ 25-2-711
18 and 25-2-608.

19 1492. Defendants were provided notice of these issues by the instant Complaint, and by
20 other means before or within a reasonable amount of time after the allegations of Class Vehicle
21 defects became public.

22 1493. As a direct and proximate result of Defendants’ breach of express warranties,
23 Plaintiffs and the other Class members have been damaged in an amount to be determined at trial.

24 **COUNT CLXIII**

25 **Breach of Implied Warranty of Merchantability**
26 **(North Carolina General Statutes Section 25-2-314)**

27 1494. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set
28 forth herein.

1 1495. Defendants are and were at all relevant times merchants with respect to motor
2 vehicles.

3 1496. A warranty that the Class Vehicles were in merchantable condition is implied by
4 law in the instant transactions.

5 1497. These Class Vehicles, when sold and at all times thereafter, were not in
6 merchantable condition and are not fit for the ordinary purpose for which cars are used.
7 Defendants were provided notice of these issues by numerous complaints filed against them,
8 including the instant Complaint, and by other means.

9 1498. As a direct and proximate result of Defendants’ breach of the warranties of
10 merchantability, Plaintiffs and the Class have been damaged in an amount to be proven at trial.

11 **COUNT CLXIV**

12 **Breach of Contract/Common Law Warranty**
13 **(Based on North Carolina Law)**

14 1499. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set
15 forth herein.

16 1500. To the extent Defendants’ limited remedies are deemed not to be warranties under
17 North Carolina’s Commercial Code, Plaintiffs, individually and on behalf of the other Class
18 members, plead in the alternative under common law warranty and contract law. Defendants
19 limited the remedies available to Plaintiffs and the other Class members to repairs and
20 adjustments needed to correct defects in materials or workmanship of any part supplied by
21 Defendants, and/or warranted the quality or nature of those services to Plaintiffs and the other
22 Class members.

23 1501. Defendants breached this warranty or contract obligation by failing to repair the
24 Class Vehicles, or to replace them.

25 1502. As a direct and proximate result of Defendants’ breach of contract or common
26 law warranty, Plaintiffs and the other Class members have been damaged in an amount to be
27 proven at trial, which shall include, but is not limited to, all compensatory damages, incidental
28 and consequential damages, and other damages allowed by law.

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COUNT CLXV

**Fraudulent Concealment
(Based on North Carolina Law)**

1503. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

1504. Defendants intentionally concealed the above-described material safety and functionality information, or acted with reckless disregard for the truth, and denied Plaintiffs and the other Class members information that is highly relevant to their purchasing decision.

1505. Defendants further affirmatively misrepresented to Plaintiffs in advertising and other forms of communication, including standard and uniform material provided with each car, that the Class Vehicles they was selling were new, had no significant defects, and would perform and operate properly when driven in normal usage.

1506. Defendants knew these representations were false when made.

1507. The Class Vehicles purchased or leased by Plaintiffs and the other Class members were, in fact, defective, unsafe, and unreliable because the Class Vehicles contained faulty and defective CAN buses, as alleged herein.

1508. Defendants had a duty to disclose that these Class Vehicles were defective, unsafe, and unreliable in that certain crucial safety functions of the Class Vehicles would be rendered inoperative due to faulty and defective CAN buses, because Plaintiffs and the other Class members relied on Defendants’ material representations that the Class Vehicles they were purchasing were safe and free from defects.

1509. The aforementioned concealment was material because if it had been disclosed Plaintiffs and the other Class members would not have bought or leased the Class Vehicles, or would not have bought or leased those Vehicles at the prices they paid.

1510. The aforementioned representations were material because they were facts that would typically be relied on by a person purchasing or leasing a new motor vehicle. Defendants knew or recklessly disregarded that their representations were false because they knew the CAN buses were susceptible to hacking. Defendants intentionally made the false statements in order to

1 sell Class Vehicles.

2 1511. Plaintiffs and the other Class members relied on Defendants’ reputations – along
3 with Defendants’ failure to disclose the faulty and defective nature of the CAN bus and
4 Defendants’ affirmative assurances that their Class Vehicles were safe and reliable, and other
5 similar false statements – in purchasing or leasing Defendants’ Class Vehicles.

6 1512. As a result of their reliance, Plaintiffs and the other Class members have been
7 injured in an amount to be proven at trial, including, but not limited to, their lost benefit of the
8 bargain and overpayment at the time of purchase or lease and/or the diminished value of their
9 Class Vehicles.

10 1513. Defendants’ conduct was knowing, intentional, with malice, demonstrated a
11 complete lack of care, and was in reckless disregard for the rights of Plaintiffs and the other Class
12 members.

13 1514. Plaintiffs and the other Class members are therefore entitled to an award of
14 punitive damages.

15 **Claims Brought on Behalf of the North Dakota Class**

16 **COUNT CLXVI**

17 **Breach of Express Warranty**

18 **(North Dakota Century Code Section 41-02-30)**

19 1515. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set
20 forth herein.

21 1516. Defendants are and were at all relevant times merchants with respect to motor
22 vehicles.

23 1517. In their Limited Warranties and in advertisements, brochures, and through other
24 statements in the media, Defendants expressly warranted that they would repair or replace defects
25 in material or workmanship free of charge if they became apparent during the warranty period.
26 For example, the following language appears in all Class Vehicle Warranty booklets:

- 27 1. Toyota’s warranty
- 28 *When Warranty Begins*

1 The warranty period begins on the vehicle’s in-service date, which is the first date
2 the vehicle is either delivered to an ultimate purchaser, leased, or used as a
3 company car or demonstrator.

4 *Repairs Made at No Charge*

5 Repairs and adjustments covered by these warranties are made at no charge for
6 parts and labor.

7 *Basic Warranty*

8 This warranty covers repairs and adjustments needed to correct defects in materials
9 or workmanship of any part supplied by Toyota Coverage is for 36 months or
10 36,000 miles, whichever occurs first

11 2. Ford’s warranty

12 *KNOW WHEN YOUR WARRANTY BEGINS*

13 Your Warranty Start Date is the day you take delivery of your new vehicle or the
14 day it is first put into service

15 *QUICK REFERENCE: WARRANTY COVERAGE*

16 . . .

17 Your Bumper to Bumper Coverage lasts for three years - unless you drive more
18 than 36,000 miles before three years elapse.

19 *WHO PAYS FOR WARRANTY REPAIRS?*

20 You will not be charged for repairs covered by any applicable warranty during the
21 stated coverage periods

22 3. GM’s warranty

23 *Warranty Period*

24 The warranty period for all coverages begins on the date the vehicle is first
25 delivered or put in use and ends at the expiration of the coverage period.

26 *Bumper-to-Bumper Coverage*

27 The complete vehicle is covered for 4 years or 50,000 miles, whichever comes first
28

No Charge

Warranty repairs, including towing, parts, and labor, will be made at no charge.

Repairs Covered

This warranty covers repairs to correct any vehicle defect related to materials or
workmanship occurring during the warranty period. Needed repairs will be
performed using new or remanufactured parts.

1518. Defendants’ Limited Warranties, as well as advertisements, brochures, and other
statements in the media regarding the Class Vehicles, formed the basis of the bargain that was

1 reached when Plaintiffs and the other Class members purchased or leased their Class Vehicles
2 equipped with a CAN bus from Defendants.

3 1519. Defendants breached the express warranty to repair and adjust to correct defects
4 in materials and workmanship of any part supplied by Defendants. Defendants have not repaired
5 or adjusted, and have been unable to repair or adjust, the Class Vehicles' materials and
6 workmanship defects.

7 1520. In addition to these Limited Warranties, Defendants otherwise expressly
8 warranted several attributes, characteristics, and qualities of the CAN bus.

9 1521. These warranties are only a sampling of the numerous warranties that Defendants
10 made relating to safety, reliability, and operation. Generally these express warranties promise
11 heightened, superior, and state-of-the-art safety, reliability, and performance standards, and
12 promote the benefits of the CAN bus. These warranties were made, *inter alia*, in advertisements,
13 on Defendants' websites, and in uniform statements provided by Defendants to be made by
14 salespeople, or made publicly by Defendants' executives or by other authorized representatives.
15 These affirmations and promises were part of the basis of the bargain between the parties.

16 1522. These additional warranties were also breached because the Class Vehicles were
17 not fully operational, safe, or reliable (and remained so even after the problems were
18 acknowledged), nor did they comply with the warranties expressly made to purchasers or lessees.
19 Defendants did not provide at the time of sale, and have not provided since then, Class Vehicles
20 conforming to these express warranties.

21 1523. Furthermore, the limited warranty of repair and/or adjustments to defective parts,
22 fails in its essential purpose because the contractual remedy is insufficient to make Plaintiffs and
23 the other Class members whole and because Defendants have failed and/or have refused to
24 adequately provide the promised remedies within a reasonable time.

25 1524. Accordingly, recovery by Plaintiffs and the other Class members is not limited to
26 the limited warranty of repair or adjustments to parts defective in materials or workmanship, and
27 Plaintiffs, individually and on behalf of the other Class members, seek all remedies as allowed by
28 law.

1 1525. Also, as alleged in more detail herein, at the time that Defendants warranted and
2 sold the Class Vehicles they knew that the Class Vehicles did not conform to the warranties and
3 were inherently defective, and Defendants wrongfully and fraudulently misrepresented and/or
4 concealed material facts regarding their Class Vehicles. Plaintiffs and the other Class members
5 were therefore induced to purchase or lease the Class Vehicles under false and/or fraudulent
6 pretenses.

7 1526. Moreover, many of the injuries flowing from the Class Vehicles cannot be
8 resolved through the limited remedy of “replacement or adjustments,” as many incidental and
9 consequential damages have already been suffered due to Defendants’ fraudulent conduct as
10 alleged herein, and due to their failure and/or continued failure to provide such limited remedy
11 within a reasonable time, and any limitation on Plaintiffs’ and the other Class members’ remedies
12 would be insufficient to make Plaintiffs and the other Class members whole.

13 1527. Finally, due to the Defendants’ breach of warranties as set forth herein, Plaintiffs
14 and the Class assert as an additional and/or alternative remedy, as set forth in N.D. Cent. Code
15 § 41-02-71 (2-608), for a revocation of acceptance of the goods, and for a return to Plaintiffs and
16 to the Class of the purchase price of all vehicles currently owned.

17 1528. Defendants were provided notice of these issues by the instant Complaint, and by
18 other means before or within a reasonable amount of time after the allegations of Class Vehicle
19 defects became public.

20 1529. As a direct and proximate result of Defendants’ breach of express warranties,
21 Plaintiffs and the other Class members have been damaged in an amount to be determined at trial.

22 **COUNT CLXVII**

23 **Breach of the Implied Warranty of Merchantability**
24 **(North Dakota Century Code Section 41-02-31)**

25 1530. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set
26 forth herein.

27 1531. Defendants are and were at all relevant times merchants with respect to motor
28 vehicles.

1 1532. A warranty that the Class Vehicles were in merchantable condition is implied by
2 law in the instant transactions.

3 1533. These Class Vehicles, when sold and at all times thereafter, were not in
4 merchantable condition and are not fit for the ordinary purpose for which cars are used.
5 Defendants were provided notice of these issues by numerous complaints filed against them,
6 including the instant Complaint, and by other means.

7 1534. As a direct and proximate result of Defendants’ breach of the warranties of
8 merchantability, Plaintiffs and the Class have been damaged in an amount to be proven at trial.

9 **COUNT CLXVIII**

10 **Violation of the North Dakota Consumer Fraud Act**
11 **(North Dakota Century Code Section 51-15-02)**

12 1535. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set
13 forth herein.

14 1536. The conduct of Defendants as set forth herein constitutes deceptive acts or
15 practices, fraud, and misrepresentation, including, but not limited to, Defendants’ manufacture
16 and sale of vehicles with a defect that leaves them vulnerable to hacking and that lack an effective
17 fail-safe mechanism which Defendants failed to adequately investigate, disclose and remedy, and
18 Defendants’ misrepresentations and omissions regarding the safety and reliability of their
19 vehicles.

20 1537. Plaintiffs and the Class were injured as a result of Defendants’ conduct. Plaintiffs
21 overpaid for their Defective Vehicles and did not receive the benefit of their bargain, and their
22 vehicles have suffered a diminution in value.

23 1538. Defendants’ conduct proximately caused the injuries to Plaintiffs and the Class.

24 1539. Further, Defendants knowingly committed the conduct described above, and thus,
25 under N.D. Cent. Code § 51-15-09, Defendants are liable to Plaintiffs and the Class for treble
26 damages in amounts to be proven at trial, as well as attorneys’ fees, costs, and disbursements.

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COUNT CLXIX

**Breach of Contract/Common Law Warranty
(Based on North Dakota Law)**

1540. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

1541. To the extent Defendants’ limited remedies are deemed not to be warranties under North Dakota’s Century Code, Plaintiffs, individually and on behalf of the other Class members, plead in the alternative under common law warranty and contract law. Defendants limited the remedies available to Plaintiffs and the other Class members to repairs and adjustments needed to correct defects in materials or workmanship of any part supplied by Defendants, and/or warranted the quality or nature of those services to Plaintiffs and the other Class members.

1542. Defendants breached this warranty or contract obligation by failing to repair the Class Vehicles, or to replace them.

1543. As a direct and proximate result of Defendants’ breach of contract or common law warranty, Plaintiffs and the other Class members have been damaged in an amount to be proven at trial, which shall include, but is not limited to, all compensatory damages, incidental and consequential damages, and other damages allowed by law.

COUNT CLXX

**Fraudulent Concealment
(Based on North Dakota Law)**

1544. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

1545. Defendants intentionally concealed the above-described material safety and functionality information, or acted with reckless disregard for the truth, and denied Plaintiffs and the other Class members information that is highly relevant to their purchasing decision.

1546. Defendants further affirmatively misrepresented to Plaintiffs in advertising and other forms of communication, including standard and uniform material provided with each car, that the Class Vehicles they was selling were new, had no significant defects, and would perform

1 and operate properly when driven in normal usage.

2 1547. Defendants knew these representations were false when made.

3 1548. The Class Vehicles purchased or leased by Plaintiffs and the other Class members
4 were, in fact, defective, unsafe, and unreliable because the Class Vehicles contained faulty and
5 defective CAN buses, as alleged herein.

6 1549. Defendants had a duty to disclose that these Class Vehicles were defective,
7 unsafe, and unreliable in that certain crucial safety functions of the Class Vehicles would be
8 rendered inoperative due to faulty and defective CAN buses, because Plaintiffs and the other
9 Class members relied on Defendants' material representations that the Class Vehicles they were
10 purchasing were safe and free from defects.

11 1550. The aforementioned concealment was material because if it had been disclosed
12 Plaintiffs and the other Class members would not have bought or leased the Class Vehicles, or
13 would not have bought or leased those Vehicles at the prices they paid.

14 1551. The aforementioned representations were material because they were facts that
15 would typically be relied on by a person purchasing or leasing a new motor vehicle. Defendants
16 knew or recklessly disregarded that their representations were false because they knew the CAN
17 buses were susceptible to hacking. Defendants intentionally made the false statements in order to
18 sell Class Vehicles.

19 1552. Plaintiffs and the other Class members relied on Defendants' reputations – along
20 with Defendants' failure to disclose the faulty and defective nature of the CAN bus and
21 Defendants' affirmative assurances that their Class Vehicles were safe and reliable, and other
22 similar false statements – in purchasing or leasing Defendants' Class Vehicles.

23 1553. As a result of their reliance, Plaintiffs and the other Class members have been
24 injured in an amount to be proven at trial, including, but not limited to, their lost benefit of the
25 bargain and overpayment at the time of purchase or lease and/or the diminished value of their
26 Class Vehicles.

27 1554. Defendants' conduct was knowing, intentional, with malice, demonstrated a
28 complete lack of care, and was in reckless disregard for the rights of Plaintiffs and the other Class

1 members.

2 1555. Plaintiffs and the other Class members are therefore entitled to an award of
3 punitive damages.

4 **Claims Brought on Behalf of the Ohio Class**

5 **COUNT CLXXI**

6 **Violations of the Consumer Sales Practices Act**
7 **(Ohio Revised Code Sections 1345.01, et seq.)**

8 1556. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set
9 forth herein.

10 1557. Plaintiffs and the other Ohio Class members are “consumers” as defined by the
11 Ohio Consumer Sales Practices Act, Ohio Rev. Code § 1345.01 (“OCSPA”). Defendants are
12 “suppliers” as defined by the OCSPA. Plaintiffs’ and the other Ohio Class members’ purchases or
13 leases of Class Vehicles were “consumer transactions” as defined by the OCSPA.

14 1558. By failing to disclose and actively concealing the defects in the Class Vehicles,
15 Defendants engaged in deceptive business practices prohibited by the OCSPA, including
16 (1) representing that Class Vehicles have characteristics, uses, benefits, and qualities which they
17 do not have, (2) representing that Class Vehicles are of a particular standard, quality, and grade
18 when they are not, (3) advertising Class Vehicles with the intent not to sell them as advertised,
19 and (4) engaging in acts or practices which are otherwise unfair, misleading, false, or deceptive to
20 the consumer.

21 1559. As alleged above, Defendants made numerous material statements about the
22 benefits and characteristics of the Class Vehicles that were either false or misleading. Each of
23 these statements contributed to the deceptive context of Defendants’ unlawful advertising and
24 representations as a whole.

25 1560. Defendants knew that the CAN buses in the Class Vehicles were defectively
26 designed or manufactured because they were susceptible to hacking, and were not suitable for
27 their intended use. Defendants nevertheless failed to warn Plaintiffs about these defects despite
28 having a duty to do so.

1 1561. Defendants owed Plaintiffs a duty to disclose the defective nature of the CAN
2 buses in the Class Vehicles, because Defendants:

3 1562. Possessed exclusive knowledge of the defects rendering the Class Vehicles more
4 unreliable than similar vehicles;

5 1563. Intentionally concealed the defects associated with the CAN buses through their
6 deceptive marketing campaign that they designed to hide the defects; and/or

7 1564. Made incomplete representations about the characteristics and performance of the
8 Class Vehicles generally, while purposefully withholding material facts from Plaintiffs that
9 contradicted these representations.

10 1565. Defendants' unfair or deceptive acts or practices were likely to, and did in fact,
11 deceive reasonable consumers, including Plaintiffs, about the true performance and characteristics
12 of the Class Vehicles.

13 1566. As a result of their violations of the OCSPA detailed above, Defendants caused
14 actual damage to Plaintiffs and, if not stopped, will continue to harm Plaintiffs. Plaintiffs
15 currently owns or leases, or within the class period has owned or leased, a Class Vehicle that is
16 defective. Defects associated with the CAN bus have caused the value of Class Vehicles to
17 decrease.

18 1567. Plaintiffs and the Class sustained damages as a result of the Defendants' unlawful
19 acts and are, therefore, entitled to damages and other relief as provided under the OCSPA.

20 1568. Plaintiffs also seeks court costs and attorneys' fees as a result of Defendants'
21 violation of the OCSPA as provided in Ohio Rev. Code § 1345.09.

22 **COUNT CLXXII**

23 **Breach of Express Warranty**
24 **(Ohio Revised Code Section 1302.26)**

25 1569. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set
26 forth herein.

27 1570. Defendants are and were at all relevant times merchants with respect to motor
28 vehicles.

1 1571. In their Limited Warranties and in advertisements, brochures, and through other
2 statements in the media, Defendants expressly warranted that they would repair or replace defects
3 in material or workmanship free of charge if they became apparent during the warranty period.
4 For example, the following language appears in all Class Vehicle Warranty booklets:

5 1. Toyota’s warranty

6 *When Warranty Begins*

7 The warranty period begins on the vehicle’s in-service date, which is the first date
8 the vehicle is either delivered to an ultimate purchaser, leased, or used as a
9 company car or demonstrator.

10 *Repairs Made at No Charge*

11 Repairs and adjustments covered by these warranties are made at no charge for
12 parts and labor.

13 *Basic Warranty*

14 This warranty covers repairs and adjustments needed to correct defects in materials
15 or workmanship of any part supplied by Toyota Coverage is for 36 months or
16 36,000 miles, whichever occurs first

17 2. Ford’s warranty

18 *KNOW WHEN YOUR WARRANTY BEGINS*

19 Your Warranty Start Date is the day you take delivery of your new vehicle or the
20 day it is first put into service

21 *QUICK REFERENCE: WARRANTY COVERAGE*

22 . . .

23 Your Bumper to Bumper Coverage lasts for three years - unless you drive more
24 than 36,000 miles before three years elapse.

25 *WHO PAYS FOR WARRANTY REPAIRS?*

26 You will not be charged for repairs covered by any applicable warranty during the
27 stated coverage periods

28 3. GM’s warranty

Warranty Period

The warranty period for all coverages begins on the date the vehicle is first
delivered or put in use and ends at the expiration of the coverage period.

Bumper-to-Bumper Coverage

The complete vehicle is covered for 4 years or 50,000 miles, whichever comes first
. . . .

No Charge

Warranty repairs, including towing, parts, and labor, will be made at no charge.

1 *Repairs Covered*

2 This warranty covers repairs to correct any vehicle defect related to materials or
3 workmanship occurring during the warranty period. Needed repairs will be
4 performed using new or remanufactured parts.

5 1572. Defendants' Limited Warranties, as well as advertisements, brochures, and other
6 statements in the media regarding the Class Vehicles, formed the basis of the bargain that was
7 reached when Plaintiffs and the other Class members purchased or leased their Class Vehicles
8 equipped with a CAN bus from Defendants.

9 1573. Defendants breached the express warranty to repair and adjust to correct defects
10 in materials and workmanship of any part supplied by Defendants. Defendants have not repaired
11 or adjusted, and have been unable to repair or adjust, the Class Vehicles' materials and
12 workmanship defects.

13 1574. In addition to these Limited Warranties, Defendants otherwise expressly
14 warranted several attributes, characteristics, and qualities of the CAN bus.

15 1575. These warranties are only a sampling of the numerous warranties that Defendants
16 made relating to safety, reliability, and operation. Generally these express warranties promise
17 heightened, superior, and state-of-the-art safety, reliability, and performance standards, and
18 promote the benefits of the CAN bus. These warranties were made, *inter alia*, in advertisements,
19 on Defendants' websites, and in uniform statements provided by Defendants to be made by
20 salespeople, or made publicly by Defendants' executives or by other authorized representatives.
21 These affirmations and promises were part of the basis of the bargain between the parties.

22 1576. These additional warranties were also breached because the Class Vehicles were
23 not fully operational, safe, or reliable (and remained so even after the problems were
24 acknowledged), nor did they comply with the warranties expressly made to purchasers or lessees.
25 Defendants did not provide at the time of sale, and have not provided since then, Class Vehicles
26 conforming to these express warranties.

27 1577. Furthermore, the limited warranty of repair and/or adjustments to defective parts,
28 fails in its essential purpose because the contractual remedy is insufficient to make Plaintiffs and
29 the other Class members whole and because Defendants have failed and/or have refused to

1 adequately provide the promised remedies within a reasonable time.

2 1578. Accordingly, recovery by Plaintiffs and the other Class members is not limited to
3 the limited warranty of repair or adjustments to parts defective in materials or workmanship, and
4 Plaintiffs, individually and on behalf of the other Class members, seek all remedies as allowed by
5 law.

6 1579. Also, as alleged in more detail herein, at the time that Defendants warranted and
7 sold the Class Vehicles they knew that the Class Vehicles did not conform to the warranties and
8 were inherently defective, and Defendants wrongfully and fraudulently misrepresented and/or
9 concealed material facts regarding their Class Vehicles. Plaintiffs and the other Class members
10 were therefore induced to purchase or lease the Class Vehicles under false and/or fraudulent
11 pretenses.

12 1580. Moreover, many of the injuries flowing from the Class Vehicles cannot be
13 resolved through the limited remedy of “replacement or adjustments,” as many incidental and
14 consequential damages have already been suffered due to Defendants’ fraudulent conduct as
15 alleged herein, and due to their failure and/or continued failure to provide such limited remedy
16 within a reasonable time, and any limitation on Plaintiffs’ and the other Class members’ remedies
17 would be insufficient to make Plaintiffs and the other Class members whole.

18 1581. Finally, due to Defendants’ breach of warranties as set forth herein, Plaintiffs and
19 the other Class members assert as an additional and/or alternative remedy, as set forth in Ohio
20 Rev. Code § 1302.66, for a revocation of acceptance of the goods, and for a return to Plaintiffs
21 and to the other Class members of the purchase price of all Class Vehicles currently owned for
22 such other incidental and consequential damages as allowed under Ohio Rev. Code §§ 1302.66
23 and 1302.85.

24 1582. Defendants were provided notice of these issues by the instant Complaint, and by
25 other means before or within a reasonable amount of time after the allegations of Class Vehicle
26 defects became public.

27 1583. As a direct and proximate result of Defendants’ breach of express warranties,
28 Plaintiffs and the other Class members have been damaged in an amount to be determined at trial.

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COUNT CLXXIII

**Breach of Implied Warranty in Tort
(Based on Ohio Law)**

1584. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

1585. The Class Vehicles contained a design defect, namely, a CAN bus that is vulnerable to hacking and enables the commandeering of the vehicle by a third party, as detailed herein more fully.

1586. The design, manufacturing, and/or assembly defect existed at the time these Class Vehicles containing the CAN buses left the hands of Defendants.

1587. Based upon the dangerous product defect and their certainty to occur, Defendants failed to meet the expectations of a reasonable consumer. The Class Vehicles failed their ordinary, intended use because the Class Vehicles do not function as a reasonable consumer would expect. Moreover, it presents a serious danger to Plaintiffs and the other Class members that cannot be eliminated without significant cost.

1588. The design defect in the CAN buses in these Class Vehicles was the direct and proximate cause of economic damages to Plaintiffs, as well as damages incurred or to be incurred by each of the other Class members.

COUNT CLXXIV

**Breach of Contract
(Based on Ohio Law)**

1589. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

1590. To the extent Defendants' limited remedies are deemed not to be warranties under Ohio law, Plaintiffs plead in the alternative under common law contract law. Defendants limited the remedies available to Plaintiffs and the Class to repairs and adjustments needed to correct defects in materials or workmanship of any part supplied by Defendants, and/or warranted the quality or nature of those services to Plaintiffs. Defendants breached this contract obligation by

1 failing to repair the defective Class Vehicles, or to replace them.

2 1591. As a direct and proximate result of Defendants’ breach of contract, Plaintiffs and
3 the Class have been damaged in an amount to be proven at trial, which shall include, but is not
4 limited to, all compensatory damages, incidental and consequential damages, and other damages
5 allowed by law.

6 **COUNT CLXXV**

7 **Fraudulent Concealment**

8 **(Based on Ohio Law)**

9 1592. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set
10 forth herein.

11 1593. Defendants intentionally concealed the above-described material safety and
12 functionality information, or acted with reckless disregard for the truth, and denied Plaintiffs and
13 the other Class members information that is highly relevant to their purchasing decision.

14 1594. Defendants further affirmatively misrepresented to Plaintiffs in advertising and
15 other forms of communication, including standard and uniform material provided with each car,
16 that the Class Vehicles they was selling were new, had no significant defects, and would perform
17 and operate properly when driven in normal usage.

18 1595. Defendants knew these representations were false when made.

19 1596. The Class Vehicles purchased or leased by Plaintiffs and the other Class members
20 were, in fact, defective, unsafe, and unreliable because the Class Vehicles contained faulty and
21 defective CAN buses, as alleged herein.

22 1597. Defendants had a duty to disclose that these Class Vehicles were defective,
23 unsafe, and unreliable in that certain crucial safety functions of the Class Vehicles would be
24 rendered inoperative due to faulty and defective CAN buses, because Plaintiffs and the other
25 Class members relied on Defendants’ material representations that the Class Vehicles they were
26 purchasing were safe and free from defects.

27 1598. The aforementioned concealment was material because if it had been disclosed
28 Plaintiffs and the other Class members would not have bought or leased the Class Vehicles, or

1 would not have bought or leased those Vehicles at the prices they paid.

2 1599. The aforementioned representations were material because they were facts that
3 would typically be relied on by a person purchasing or leasing a new motor vehicle. Defendants
4 knew or recklessly disregarded that their representations were false because they knew the CAN
5 buses were susceptible to hacking. Defendants intentionally made the false statements in order to
6 sell Class Vehicles.

7 1600. Plaintiffs and the other Class members relied on Defendants’ reputations – along
8 with Defendants’ failure to disclose the faulty and defective nature of the CAN bus and
9 Defendants’ affirmative assurances that their Class Vehicles were safe and reliable, and other
10 similar false statements – in purchasing or leasing Defendants’ Class Vehicles.

11 1601. As a result of their reliance, Plaintiffs and the other Class members have been
12 injured in an amount to be proven at trial, including, but not limited to, their lost benefit of the
13 bargain and overpayment at the time of purchase or lease and/or the diminished value of their
14 Class Vehicles.

15 1602. Defendants’ conduct was knowing, intentional, with malice, demonstrated a
16 complete lack of care, and was in reckless disregard for the rights of Plaintiffs and the other Class
17 members.

18 1603. Plaintiffs and the other Class members are therefore entitled to an award of
19 punitive damages.

20 **Claims Brought on Behalf of the Oklahoma Class**

21 **COUNT CLXXVI**

22 **Violation of Oklahoma Consumer Protection Act**
23 **(Oklahoma Statutes title 15 Sections 751, et seq.)**

24 1604. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set
25 forth herein.

26 1605. The conduct of Defendants as set forth herein constitutes unfair or deceptive acts
27 or practices, including, but not limited to, Defendants’ manufacture and sale of vehicles that are
28 susceptible to hacking and lack effective fail-safe mechanisms, which Defendants failed to

1 adequately investigate, disclose and remedy, and their misrepresentations and omissions
2 regarding the safety and reliability of their vehicles.

3 1606. Defendants’ actions as set forth above occurred in the conduct of trade or
4 commerce.

5 1607. Defendants’ actions impact the public interest because Plaintiffs were injured in
6 exactly the same way as millions of others purchasing and/or leasing Defendants vehicles as a
7 result of Defendants’ generalized course of deception. All of the wrongful conduct alleged herein
8 occurred, and continues to occur, in the conduct of Defendants’ business.

9 1608. Plaintiffs and the Class were injured as a result of Defendants’ conduct. Plaintiffs
10 overpaid for their Defective Vehicles and did not receive the benefit of their bargain, and their
11 vehicles have suffered a diminution in value.

12 1609. Defendants’ conduct proximately caused the injuries to Plaintiffs and the Class.

13 1610. Defendants are liable to Plaintiffs and the Class for damages in amounts to be
14 proven at trial, including attorneys’ fees, costs, and treble damages.

15 1611. Pursuant to Okla. Stat. tit. 15 § 751, Plaintiffs will serve the Oklahoma Attorney
16 General with a copy of this complaint as Plaintiffs seek injunctive relief.

17 **COUNT CLXXVII**

18 **Violation of Oklahoma Deceptive Trade Practices Act**
19 **(78 Oklahoma Statutes Annotated Sections 51, et seq.)**

20 1612. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set
21 forth herein.

22 1613. The conduct of Defendants as set forth herein constitutes unfair or deceptive acts
23 or practices, including, but not limited to, Defendants’ manufacture and sale of vehicles that are
24 susceptible to hacking and lack effective fail-safe mechanisms, which Defendants failed to
25 adequately investigate, disclose and remedy, and their misrepresentations and omissions
26 regarding the safety and reliability of their vehicles.

27 1614. Defendants’ actions as set forth above occurred in the conduct of trade or
28 commerce.

1 1615. Defendants’ actions impact the public interest because Plaintiffs were injured in
2 exactly the same way as millions of others purchasing and/or leasing Defendants vehicles as a
3 result of Defendants’ generalized course of deception. All of the wrongful conduct alleged herein
4 occurred, and continues to occur, in the conduct of Defendants’ business.

5 1616. Plaintiffs and the Class were injured as a result of Defendants’ conduct. Plaintiffs
6 overpaid for their Defective Vehicles and did not receive the benefit of their bargain, and their
7 vehicles have suffered a diminution in value.

8 1617. Defendants’ conduct proximately caused the injuries to Plaintiffs and the Class.

9 1618. Defendants are liable to Plaintiffs and the Class for damages in amounts to be
10 proven at trial, including attorneys’ fees, costs, and treble damages.

11 1619. Pursuant to Okla. Stat. tit. 78 § 51, Plaintiffs will serve the Oklahoma Attorney
12 General with a copy of this complaint as Plaintiffs seek injunctive relief.

13 **COUNT CLXXVIII**

14 **Breach of Express Warranty**

15 **(12A Oklahoma Statutes Annotated Section 2-313)**

16 1620. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set
17 forth herein.

18 1621. Defendants are and were at all relevant times merchants with respect to motor
19 vehicles.

20 1622. In their Limited Warranties and in advertisements, brochures, and through other
21 statements in the media, Defendants expressly warranted that they would repair or replace defects
22 in material or workmanship free of charge if they became apparent during the warranty period.
23 For example, the following language appears in all Class Vehicle Warranty booklets:

24 1. Toyota’s warranty

25 *When Warranty Begins*

26 The warranty period begins on the vehicle’s in-service date, which is the first date
27 the vehicle is either delivered to an ultimate purchaser, leased, or used as a
28 company car or demonstrator.

Repairs Made at No Charge

Repairs and adjustments covered by these warranties are made at no charge for

1 parts and labor.

2 *Basic Warranty*

3 This warranty covers repairs and adjustments needed to correct defects in materials
4 or workmanship of any part supplied by Toyota Coverage is for 36 months or
36,000 miles, whichever occurs first

5 2. Ford's warranty

6 *KNOW WHEN YOUR WARRANTY BEGINS*

7 Your Warranty Start Date is the day you take delivery of your new vehicle or the
8 day it is first put into service

9 *QUICK REFERENCE: WARRANTY COVERAGE*

10 . . .

11 Your Bumper to Bumper Coverage lasts for three years - unless you drive more
12 than 36,000 miles before three years elapse.

13 *WHO PAYS FOR WARRANTY REPAIRS?*

14 You will not be charged for repairs covered by any applicable warranty during the
15 stated coverage periods

16 3. GM's warranty

17 *Warranty Period*

18 The warranty period for all coverages begins on the date the vehicle is first
19 delivered or put in use and ends at the expiration of the coverage period.

20 *Bumper-to-Bumper Coverage*

21 The complete vehicle is covered for 4 years or 50,000 miles, whichever comes first
22

23 *No Charge*

24 Warranty repairs, including towing, parts, and labor, will be made at no charge.

25 *Repairs Covered*

26 This warranty covers repairs to correct any vehicle defect related to materials or
27 workmanship occurring during the warranty period. Needed repairs will be
28 performed using new or remanufactured parts.

1623. Defendants' Limited Warranties, as well as advertisements, brochures, and other
statements in the media regarding the Class Vehicles, formed the basis of the bargain that was
reached when Plaintiffs and the other Class members purchased or leased their Class Vehicles
equipped with a CAN bus from Defendants.

1624. Defendants breached the express warranty to repair and adjust to correct defects
in materials and workmanship of any part supplied by Defendants. Defendants have not repaired

1 or adjusted, and have been unable to repair or adjust, the Class Vehicles' materials and
2 workmanship defects.

3 1625. In addition to these Limited Warranties, Defendants otherwise expressly
4 warranted several attributes, characteristics, and qualities of the CAN bus.

5 1626. These warranties are only a sampling of the numerous warranties that Defendants
6 made relating to safety, reliability, and operation. Generally these express warranties promise
7 heightened, superior, and state-of-the-art safety, reliability, and performance standards, and
8 promote the benefits of the CAN bus. These warranties were made, *inter alia*, in advertisements,
9 on Defendants' websites, and in uniform statements provided by Defendants to be made by
10 salespeople, or made publicly by Defendants' executives or by other authorized representatives.
11 These affirmations and promises were part of the basis of the bargain between the parties.

12 1627. These additional warranties were also breached because the Class Vehicles were
13 not fully operational, safe, or reliable (and remained so even after the problems were
14 acknowledged), nor did they comply with the warranties expressly made to purchasers or lessees.
15 Defendants did not provide at the time of sale, and have not provided since then, Class Vehicles
16 conforming to these express warranties.

17 1628. Furthermore, the limited warranty of repair and/or adjustments to defective parts,
18 fails in its essential purpose because the contractual remedy is insufficient to make Plaintiffs and
19 the other Class members whole and because Defendants have failed and/or have refused to
20 adequately provide the promised remedies within a reasonable time.

21 1629. Accordingly, recovery by Plaintiffs and the other Class members is not limited to
22 the limited warranty of repair or adjustments to parts defective in materials or workmanship, and
23 Plaintiffs, individually and on behalf of the other Class members, seek all remedies as allowed by
24 law.

25 1630. Also, as alleged in more detail herein, at the time that Defendants warranted and
26 sold the Class Vehicles they knew that the Class Vehicles did not conform to the warranties and
27 were inherently defective, and Defendants wrongfully and fraudulently misrepresented and/or
28 concealed material facts regarding their Class Vehicles. Plaintiffs and the other Class members

1 were therefore induced to purchase or lease the Class Vehicles under false and/or fraudulent
2 pretenses.

3 1631. Moreover, many of the injuries flowing from the Class Vehicles cannot be
4 resolved through the limited remedy of “replacement or adjustments,” as many incidental and
5 consequential damages have already been suffered due to Defendants’ fraudulent conduct as
6 alleged herein, and due to their failure and/or continued failure to provide such limited remedy
7 within a reasonable time, and any limitation on Plaintiffs’ and the other Class members’ remedies
8 would be insufficient to make Plaintiffs and the other Class members whole.

9 1632. Finally, due to the Defendants’ breach of warranties as set forth herein, Plaintiffs
10 and the Class assert as an additional and/or alternative remedy, as set forth in 12A Okla. Stat.
11 Ann. § 2-608, for a revocation of acceptance of the goods, and for a return to Plaintiffs and to the
12 Class of the purchase price of all vehicles currently owned.

13 1633. Defendants were provided notice of these issues by the instant Complaint, and by
14 other means before or within a reasonable amount of time after the allegations of Class Vehicle
15 defects became public.

16 1634. As a direct and proximate result of Defendants’ breach of express warranties,
17 Plaintiffs and the other Class members have been damaged in an amount to be determined at trial.

18 **COUNT CLXXIX**

19 **Breach of the Implied Warranty of Merchantability**
20 **(12A Oklahoma Statutes Annotated Section 2-314)**

21 1635. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set
22 forth herein.

23 1636. Defendants are and were at all relevant times merchants with respect to motor
24 vehicles.

25 1637. A warranty that the Defective Vehicles were in merchantable condition is implied
26 by law in the instant transactions, pursuant to 12A Okla. Stat. Ann. § 2-314.

27 1638. These vehicles, when sold and at all times thereafter, were not in merchantable
28 condition and are not fit for the ordinary purpose for which cars are used. Defendants were

1 provided notice of these issues by numerous complaints filed against them, including the instant
2 Complaint, and by other means.

3 1639. Plaintiffs and the Class have had sufficient dealings with either the Defendants or
4 their agents (dealerships) to establish privity of contract between Plaintiffs and the Class.
5 Notwithstanding this, privity is not required in this case because Plaintiffs and the Class are
6 intended third-party beneficiaries of contracts between Defendants and their dealers; specifically,
7 they are the intended beneficiaries of Defendants’ implied warranties. The dealers were not
8 intended to be the ultimate consumers of the Defective Vehicles and have no rights under the
9 warranty agreements provided with the Defective Vehicles; the warranty agreements were
10 designed for and intended to benefit the ultimate consumers only. Finally, privity is also not
11 required because Plaintiffs’ and Class members’ vehicles are dangerous instrumentalities due to
12 the aforementioned defects and nonconformities.

13 1640. As a direct and proximate result of Defendants’ breach of the warranties of
14 merchantability, Plaintiffs and the Class have been damaged in an amount to be proven at trial.

15 **COUNT CLXXX**

16 **Breach of Contract/Common Law Warranty**
17 **(Based on Oklahoma Law)**

18 1641. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set
19 forth herein.

20 1642. To the extent Defendants’ limited remedies are deemed not to be warranties under
21 Oklahoma’s Commercial Code, Plaintiffs, individually and on behalf of the other Class members,
22 plead in the alternative under common law warranty and contract law. Defendants limited the
23 remedies available to Plaintiffs and the other Class members to repairs and adjustments needed to
24 correct defects in materials or workmanship of any part supplied by Defendants, and/or warranted
25 the quality or nature of those services to Plaintiffs and the other Class members.

26 1643. Defendants breached this warranty or contract obligation by failing to repair the
27 Class Vehicles, or to replace them.

28 1644. As a direct and proximate result of Defendants’ breach of contract or common

1 law warranty, Plaintiffs and the other Class members have been damaged in an amount to be
2 proven at trial, which shall include, but is not limited to, all compensatory damages, incidental
3 and consequential damages, and other damages allowed by law.

4 **COUNT CLXXXI**

5 **Fraudulent Concealment**
6 **(Based on Oklahoma Law)**

7 1645. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set
8 forth herein.

9 1646. Defendants intentionally concealed the above-described material safety and
10 functionality information, or acted with reckless disregard for the truth, and denied Plaintiffs and
11 the other Class members information that is highly relevant to their purchasing decision.

12 1647. Defendants further affirmatively misrepresented to Plaintiffs in advertising and
13 other forms of communication, including standard and uniform material provided with each car,
14 that the Class Vehicles they was selling were new, had no significant defects, and would perform
15 and operate properly when driven in normal usage.

16 1648. Defendants knew these representations were false when made.

17 1649. The Class Vehicles purchased or leased by Plaintiffs and the other Class members
18 were, in fact, defective, unsafe, and unreliable because the Class Vehicles contained faulty and
19 defective CAN buses, as alleged herein.

20 1650. Defendants had a duty to disclose that these Class Vehicles were defective,
21 unsafe, and unreliable in that certain crucial safety functions of the Class Vehicles would be
22 rendered inoperative due to faulty and defective CAN buses, because Plaintiffs and the other
23 Class members relied on Defendants' material representations that the Class Vehicles they were
24 purchasing were safe and free from defects.

25 1651. The aforementioned concealment was material because if it had been disclosed
26 Plaintiffs and the other Class members would not have bought or leased the Class Vehicles, or
27 would not have bought or leased those Vehicles at the prices they paid.

28 1652. The aforementioned representations were material because they were facts that

1 would typically be relied on by a person purchasing or leasing a new motor vehicle. Defendants
2 knew or recklessly disregarded that their representations were false because they knew the CAN
3 buses were susceptible to hacking. Defendants intentionally made the false statements in order to
4 sell Class Vehicles.

5 1653. Plaintiffs and the other Class members relied on Defendants’ reputations – along
6 with Defendants’ failure to disclose the faulty and defective nature of the CAN bus and
7 Defendants’ affirmative assurances that their Class Vehicles were safe and reliable, and other
8 similar false statements – in purchasing or leasing Defendants’ Class Vehicles.

9 1654. As a result of their reliance, Plaintiffs and the other Class members have been
10 injured in an amount to be proven at trial, including, but not limited to, their lost benefit of the
11 bargain and overpayment at the time of purchase or lease and/or the diminished value of their
12 Class Vehicles.

13 1655. Defendants’ conduct was knowing, intentional, with malice, demonstrated a
14 complete lack of care, and was in reckless disregard for the rights of Plaintiffs and the other Class
15 members.

16 1656. Plaintiffs and the other Class members are therefore entitled to an award of
17 punitive damages.

18 **Claims Brought on Behalf of the Oregon Class**

19 **COUNT CLXXXII**

20 **Violation of the Oregon Unlawful Trade Practices Act**
21 **(Oregon Revised Statutes Sections 646.605, et seq.)**

22 1657. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set
23 forth herein.

24 1658. The Oregon Unfair Trade Practices Act (“OUTPA”) prohibits a person from, in the
25 course of the person’s business, doing any of the following: “(e) Represent[ing] that . . . goods . . .
26 have . . . characteristics . . . uses, benefits, . . . or qualities that they do not have; (g) Represent[ing] that
27 . . . goods . . . are of a particular standard [or] quality . . . if they are of another; and (i) Advertis[ing]
28 . . . goods or services with intent not to provide them as advertised.” Or. Rev. Stat. § 646.608(1).

1 1659. Defendants are persons within the meaning of Or. Rev. Stat. § 646.605(4).

2 1660. The Defective Vehicles at issue are “goods” obtained primarily for personal
3 family or household purposes within the meaning of Or. Rev. Stat. § 646.605(6).

4 1661. In the course of Defendants’ business, they willfully failed to disclose and
5 actively concealed the dangerous risk of hacking and the lack of adequate fail-safe mechanisms in
6 Defective Vehicles equipped with CAN buses as described above. Accordingly, Defendants
7 engaged in unlawful trade practices, including representing that Defective Vehicles have
8 characteristics, uses, benefits, and qualities which they do not have; representing that Defective
9 Vehicles are of a particular standard and quality when they are not; and advertising Defective
10 Vehicles with the intent not to sell them as advertised. Defendants knew or should have known
11 that their conduct violated the OUTPA.

12 1662. As a result of these unlawful trade practices, Plaintiffs have suffered ascertainable
13 loss.

14 1663. Defendants engaged in a deceptive trade practice when they failed to disclose
15 material information concerning the vehicles that was known to Defendants at the time of the
16 sale. Defendants deliberately withheld the information about the vehicles’ susceptibility to
17 hacking in order to ensure that consumers would purchase their vehicles and to induce the
18 consumer to enter into a transaction.

19 1664. The susceptibility of the vehicles to hacking and their lack of a fail-safe
20 mechanism were material to Plaintiffs and the Class. Had Plaintiffs and the Class known that their
21 vehicles had these serious safety defects, they would not have purchased their vehicles.

22 1665. Plaintiffs and the Class suffered ascertainable loss caused by Defendants’ failure
23 to disclose material information. Plaintiffs and the Class overpaid for their vehicles and did not
24 receive the benefit of their bargain. The value of their Vehicles has diminished now that the safety
25 issues have come to light, and Plaintiffs and the Class own vehicles that are not safe.

26 1666. Plaintiffs are entitled to recover the greater of actual damages or \$200 pursuant to
27 Or. Rev. Stat. § 646.638(1). Plaintiffs are also entitled to punitive damages because Defendants
28 engaged in conduct amounting to a particularly aggravated, deliberate disregard of the rights of

1 others.

2 1667. Pursuant to Or. Rev. Stat. § 646.638(2), Plaintiffs will mail a copy of the
3 complaint to Oregon’s attorney general.

4 **COUNT CLXXXIII**

5 **Breach of the Implied Warranty of Merchantability**
6 **(Oregon Revised Statutes Section 72.3140)**

7 1668. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set
8 forth herein.

9 1669. Defendants are and were at all relevant times merchants with respect to motor
10 vehicles.

11 1670. A warranty that the Class Vehicles were in merchantable condition is implied by
12 law in the instant transactions.

13 1671. These Class Vehicles, when sold and at all times thereafter, were not in
14 merchantable condition and are not fit for the ordinary purpose for which cars are used.
15 Defendants were provided notice of these issues by numerous complaints filed against them,
16 including the instant Complaint, and by other means.

17 1672. As a direct and proximate result of Defendants’ breach of the warranties of
18 merchantability, Plaintiffs and the Class have been damaged in an amount to be proven at trial.

19 **COUNT CLXXXIV**

20 **Fraudulent Concealment**
21 **(Based on Oregon Law)**

22 1673. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set
23 forth herein.

24 1674. Defendants intentionally concealed the above-described material safety and
25 functionality information, or acted with reckless disregard for the truth, and denied Plaintiffs and
26 the other Class members information that is highly relevant to their purchasing decision.

27 1675. Defendants further affirmatively misrepresented to Plaintiffs in advertising and
28 other forms of communication, including standard and uniform material provided with each car,

1 that the Class Vehicles they was selling were new, had no significant defects, and would perform
2 and operate properly when driven in normal usage.

3 1676. Defendants knew these representations were false when made.

4 1677. The Class Vehicles purchased or leased by Plaintiffs and the other Class members
5 were, in fact, defective, unsafe, and unreliable because the Class Vehicles contained faulty and
6 defective CAN buses, as alleged herein.

7 1678. Defendants had a duty to disclose that these Class Vehicles were defective,
8 unsafe, and unreliable in that certain crucial safety functions of the Class Vehicles would be
9 rendered inoperative due to faulty and defective CAN buses, because Plaintiffs and the other
10 Class members relied on Defendants' material representations that the Class Vehicles they were
11 purchasing were safe and free from defects.

12 1679. The aforementioned concealment was material because if it had been disclosed
13 Plaintiffs and the other Class members would not have bought or leased the Class Vehicles, or
14 would not have bought or leased those Vehicles at the prices they paid.

15 1680. The aforementioned representations were material because they were facts that
16 would typically be relied on by a person purchasing or leasing a new motor vehicle. Defendants
17 knew or recklessly disregarded that their representations were false because they knew the CAN
18 buses were susceptible to hacking. Defendants intentionally made the false statements in order to
19 sell Class Vehicles.

20 1681. Plaintiffs and the other Class members relied on Defendants' reputations – along
21 with Defendants' failure to disclose the faulty and defective nature of the CAN bus and
22 Defendants' affirmative assurances that their Class Vehicles were safe and reliable, and other
23 similar false statements – in purchasing or leasing Defendants' Class Vehicles.

24 1682. As a result of their reliance, Plaintiffs and the other Class members have been
25 injured in an amount to be proven at trial, including, but not limited to, their lost benefit of the
26 bargain and overpayment at the time of purchase or lease and/or the diminished value of their
27 Class Vehicles.

28 1683. Defendants' conduct was knowing, intentional, with malice, demonstrated a

1 complete lack of care, and was in reckless disregard for the rights of Plaintiffs and the other Class
2 members.

3 1684. Plaintiffs and the other Class members are therefore entitled to an award of
4 punitive damages.

5 **Claims Brought on Behalf of the Pennsylvania Class**

6 **COUNT CLXXXV**

7 **Violations of the Unfair Trade Practices and Consumer Protection Law**

8 **(Pennsylvania Statutes Annotated Sections 201-1, et seq.)**

9 1685. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set
10 forth herein.

11 1686. By failing to disclose and actively concealing the defects in the Class Vehicles,
12 Defendants engaged in deceptive business practices prohibited by the Pennsylvania Unfair Trade
13 Practices and Consumer Protection Law, Pa. Stat. Ann. §§ 201-1, et seq. (“UTPCPL”), including
14 (1) representing that Class Vehicles have characteristics, uses, benefits, and qualities which they
15 do not have, (2) representing that Class Vehicles are of a particular standard, quality, and grade
16 when they are not, (3) advertising Class Vehicles with the intent not to sell them as advertised,
17 and (4) engaging in acts or practices which are otherwise unfair, misleading, false, or deceptive to
18 the consumer.

19 1687. As alleged above, Defendants made numerous material statements about the
20 benefits and characteristics of the Class Vehicles that were either false or misleading. Each of
21 these statements contributed to the deceptive context of Defendants’ unlawful advertising and
22 representations as a whole.

23 1688. Defendants knew that the CAN buses in the Class Vehicles were defectively
24 designed or manufactured, were susceptible to hacking, and were not suitable for their intended
25 use. Defendants nevertheless failed to warn Plaintiffs about these defects despite having a duty to
26 do so.

27 1689. Defendants owed Plaintiffs a duty to disclose the defective nature of the Class
28 Vehicles, because Defendants:

1 1690. Possessed exclusive knowledge of the defects rendering the Class Vehicles more
2 unreliable than similar vehicles;

3 1691. Intentionally concealed the defects associated with the CAN buses through their
4 deceptive marketing campaign and recall program that they designed to hide the defects in the
5 Class Vehicles; and/or

6 1692. Made incomplete representations about the characteristics and performance of the
7 Class Vehicles generally, while purposefully withholding material facts from Plaintiffs that
8 contradicted these representations.

9 1693. Defendants' unfair or deceptive acts or practices were likely to and did in fact
10 deceive reasonable consumers, including Plaintiffs, about the true performance and characteristics
11 of the Class Vehicles.

12 1694. As a result of their violations of the UTPCPL detailed above, Defendants caused
13 actual damage to Plaintiffs and, if not stopped, will continue to harm Plaintiffs. Plaintiffs
14 currently own or lease, or within the class period have owned or leased, a Class Vehicle that is
15 defective. Defects associated with the CAN buses have caused the value of Class Vehicles to
16 decrease.

17 1695. Plaintiffs and the Class sustained damages as a result of the Defendants' unlawful
18 acts and are, therefore, entitled to damages and other relief as provided under the UTPCPL,
19 including treble damages.

20 1696. Plaintiffs also seeks court costs and attorneys' fees as a result of Defendants'
21 violation of the UTPCPL as provided in Pa. Stat. Ann. § 201-9.2.

22 **COUNT CLXXXVI**

23 **Breach of Express Warranty**

24 **(13 Pennsylvania Statutes Annotated Section 2313)**

25 1697. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set
26 forth herein.

27 1698. Defendants are and were at all relevant times merchants with respect to motor
28 vehicles under 13 Pa. Stat. Ann. § 2104.

1 1699. In their Limited Warranties and in advertisements, brochures, and through other
2 statements in the media, Defendants expressly warranted that they would repair or replace defects
3 in material or workmanship free of charge if they became apparent during the warranty period.
4 For example, the following language appears in all Class Vehicle Warranty booklets:

5 1. Toyota’s warranty

6 *When Warranty Begins*

7 The warranty period begins on the vehicle’s in-service date, which is the first date
8 the vehicle is either delivered to an ultimate purchaser, leased, or used as a
9 company car or demonstrator.

10 *Repairs Made at No Charge*

11 Repairs and adjustments covered by these warranties are made at no charge for
12 parts and labor.

13 *Basic Warranty*

14 This warranty covers repairs and adjustments needed to correct defects in materials
15 or workmanship of any part supplied by Toyota Coverage is for 36 months or
16 36,000 miles, whichever occurs first

17 2. Ford’s warranty

18 *KNOW WHEN YOUR WARRANTY BEGINS*

19 Your Warranty Start Date is the day you take delivery of your new vehicle or the
20 day it is first put into service

21 *QUICK REFERENCE: WARRANTY COVERAGE*

22
23 Your Bumper to Bumper Coverage lasts for three years - unless you drive more
24 than 36,000 miles before three years elapse.

25 *WHO PAYS FOR WARRANTY REPAIRS?*

26 You will not be charged for repairs covered by any applicable warranty during the
27 stated coverage periods

28 3. GM’s warranty

Warranty Period

The warranty period for all coverages begins on the date the vehicle is first
delivered or put in use and ends at the expiration of the coverage period.

Bumper-to-Bumper Coverage

The complete vehicle is covered for 4 years or 50,000 miles, whichever comes first
. . . .

No Charge

Warranty repairs, including towing, parts, and labor, will be made at no charge.

1 *Repairs Covered*

2 This warranty covers repairs to correct any vehicle defect related to materials or
3 workmanship occurring during the warranty period. Needed repairs will be
4 performed using new or remanufactured parts.

5 1700. Defendants' Limited Warranties, as well as advertisements, brochures, and other
6 statements in the media regarding the Class Vehicles, formed the basis of the bargain that was
7 reached when Plaintiffs and the other Class members purchased or leased their Class Vehicles
8 equipped with a CAN bus from Defendants.

9 1701. Defendants breached the express warranty to repair and adjust to correct defects
10 in materials and workmanship of any part supplied by Defendants. Defendants have not repaired
11 or adjusted, and have been unable to repair or adjust, the Class Vehicles' materials and
12 workmanship defects.

13 1702. In addition to these Limited Warranties, Defendants otherwise expressly
14 warranted several attributes, characteristics, and qualities of the CAN bus.

15 1703. These warranties are only a sampling of the numerous warranties that Defendants
16 made relating to safety, reliability, and operation. Generally these express warranties promise
17 heightened, superior, and state-of-the-art safety, reliability, and performance standards, and
18 promote the benefits of the CAN bus. These warranties were made, *inter alia*, in advertisements,
19 on Defendants' websites, and in uniform statements provided by Defendants to be made by
20 salespeople, or made publicly by Defendants' executives or by other authorized representatives.
21 These affirmations and promises were part of the basis of the bargain between the parties.

22 1704. These additional warranties were also breached because the Class Vehicles were
23 not fully operational, safe, or reliable (and remained so even after the problems were
24 acknowledged), nor did they comply with the warranties expressly made to purchasers or lessees.
25 Defendants did not provide at the time of sale, and have not provided since then, Class Vehicles
26 conforming to these express warranties.

27 1705. Furthermore, the limited warranty of repair and/or adjustments to defective parts,
28 fails in its essential purpose because the contractual remedy is insufficient to make Plaintiffs and
29 the other Class members whole and because Defendants have failed and/or have refused to

1 adequately provide the promised remedies within a reasonable time.

2 1706. Accordingly, recovery by Plaintiffs and the other Class members is not limited to
3 the limited warranty of repair or adjustments to parts defective in materials or workmanship, and
4 Plaintiffs, individually and on behalf of the other Class members, seek all remedies as allowed by
5 law.

6 1707. Also, as alleged in more detail herein, at the time that Defendants warranted and
7 sold the Class Vehicles they knew that the Class Vehicles did not conform to the warranties and
8 were inherently defective, and Defendants wrongfully and fraudulently misrepresented and/or
9 concealed material facts regarding their Class Vehicles. Plaintiffs and the other Class members
10 were therefore induced to purchase or lease the Class Vehicles under false and/or fraudulent
11 pretenses.

12 1708. Moreover, many of the injuries flowing from the Class Vehicles cannot be
13 resolved through the limited remedy of “replacement or adjustments,” as many incidental and
14 consequential damages have already been suffered due to Defendants’ fraudulent conduct as
15 alleged herein, and due to their failure and/or continued failure to provide such limited remedy
16 within a reasonable time, and any limitation on Plaintiffs’ and the other Class members’ remedies
17 would be insufficient to make Plaintiffs and the other Class members whole.

18 1709. Finally, due to Defendants’ breach of warranties as set forth herein, Plaintiffs and
19 the other Class members assert as an additional and/or alternative remedy, as set forth in 13 Pa.
20 Stat. Ann. § 2711, for a revocation of acceptance of the goods, and for a return to Plaintiffs and to
21 the other Class members of the purchase price of all Class Vehicles currently owned and for such
22 other incidental and consequential damages as allowed under 13 Pa. Stat. Ann. §§ 2711 and 2608.

23 1710. Defendants were provided notice of these issues by the instant Complaint, and by
24 other means before or within a reasonable amount of time after the allegations of Class Vehicle
25 defects became public.

26 1711. As a direct and proximate result of Defendants’ breach of express warranties,
27 Plaintiffs and the other Class members have been damaged in an amount to be determined at trial.

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COUNT CLXXXVII

**Breach of Implied Warranty of Merchantability
(13 Pennsylvania Statutes Annotated Section 2314)**

1712. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

1713. Defendants are and were at all relevant times merchants with respect to motor vehicles under 13 Pa. Stat. Ann. § 2104.

1714. A warranty that the Class Vehicles were in merchantable condition was implied by law in the instant transactions, pursuant to 13 Pa. Stat. Ann. § 2314.

1715. These Class Vehicles, when sold and at all times thereafter, were not in merchantable condition and are not fit for the ordinary purpose for which cars are used. Defendants were provided notice of these issues by numerous complaints filed against them, including the instant Complaint, and by other means.

1716. As a direct and proximate result of Defendants’ breach of the warranties of merchantability, Plaintiffs and the Class have been damaged in an amount to be proven at trial.

COUNT CLXXXVIII

**Breach of Contract/Common Law Warranty
(Based on Pennsylvania Law)**

1717. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

1718. To the extent Defendants’ limited remedies are deemed not to be warranties under Pennsylvania’s Commercial Code, Plaintiffs, individually and on behalf of the other Class members, plead in the alternative under common law warranty and contract law. Defendants limited the remedies available to Plaintiffs and the other Class members to repairs and adjustments needed to correct defects in materials or workmanship of any part supplied by Defendants, and/or warranted the quality or nature of those services to Plaintiffs and the other Class members.

1719. Defendants breached this warranty or contract obligation by failing to repair the

1 Class Vehicles, or to replace them.

2 1720. As a direct and proximate result of Defendants’ breach of contract or common
3 law warranty, Plaintiffs and the other Class members have been damaged in an amount to be
4 proven at trial, which shall include, but is not limited to, all compensatory damages, incidental
5 and consequential damages, and other damages allowed by law.

6 **COUNT CLXXXIX**

7 **Fraudulent Concealment**
8 **(Based on Pennsylvania Law)**

9 1721. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set
10 forth herein.

11 1722. Defendants intentionally concealed the above-described material safety and
12 functionality information, or acted with reckless disregard for the truth, and denied Plaintiffs and
13 the other Class members information that is highly relevant to their purchasing decision.

14 1723. Defendants further affirmatively misrepresented to Plaintiffs in advertising and
15 other forms of communication, including standard and uniform material provided with each car,
16 that the Class Vehicles they was selling were new, had no significant defects, and would perform
17 and operate properly when driven in normal usage.

18 1724. Defendants knew these representations were false when made.

19 1725. The Class Vehicles purchased or leased by Plaintiffs and the other Class members
20 were, in fact, defective, unsafe, and unreliable because the Class Vehicles contained faulty and
21 defective CAN buses, as alleged herein.

22 1726. Defendants had a duty to disclose that these Class Vehicles were defective,
23 unsafe, and unreliable in that certain crucial safety functions of the Class Vehicles would be
24 rendered inoperative due to faulty and defective CAN buses, because Plaintiffs and the other
25 Class members relied on Defendants’ material representations that the Class Vehicles they were
26 purchasing were safe and free from defects.

27 1727. The aforementioned concealment was material because if it had been disclosed
28 Plaintiffs and the other Class members would not have bought or leased the Class Vehicles, or

1 would not have bought or leased those Vehicles at the prices they paid.

2 1728. The aforementioned representations were material because they were facts that
3 would typically be relied on by a person purchasing or leasing a new motor vehicle. Defendants
4 knew or recklessly disregarded that their representations were false because they knew the CAN
5 buses were susceptible to hacking. Defendants intentionally made the false statements in order to
6 sell Class Vehicles.

7 1729. Plaintiffs and the other Class members relied on Defendants’ reputations – along
8 with Defendants’ failure to disclose the faulty and defective nature of the CAN bus and
9 Defendants’ affirmative assurances that their Class Vehicles were safe and reliable, and other
10 similar false statements – in purchasing or leasing Defendants’ Class Vehicles.

11 1730. As a result of their reliance, Plaintiffs and the other Class members have been
12 injured in an amount to be proven at trial, including, but not limited to, their lost benefit of the
13 bargain and overpayment at the time of purchase or lease and/or the diminished value of their
14 Class Vehicles.

15 1731. Defendants’ conduct was knowing, intentional, with malice, demonstrated a
16 complete lack of care, and was in reckless disregard for the rights of Plaintiffs and the other Class
17 members.

18 1732. Plaintiffs and the other Class members are therefore entitled to an award of
19 punitive damages.

20 **Claims Brought on Behalf of the Rhode Island Class**

21 **COUNT CXC**

22 **Violation of the Rhode Island Unfair Trade Practices and Consumer Protection Act**
23 **(Rhode Island General Laws Sections 6-13.1, et seq.)**

24 1733. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set
25 forth herein.

26 1734. Plaintiffs are persons who purchase or lease goods primarily for personal, family,
27 or household purposes within the meaning of R.I. Gen. Laws § 6-13.1-5.2(a).

28 1735. Rhode Island’s Unfair Trade Practices and Consumer Protection Act

1 (“UTPCPA”) prohibits “unfair or deceptive acts or practices in the conduct of any trade or
 2 commerce” including: “(v) Representing that goods or services have sponsorship, approval,
 3 characteristics, ingredients, uses, benefits, or quantities that they do not have”; “(vii) Representing
 4 that goods or services are of a particular standard, quality, or grade . . . , if they are of another”;
 5 “(ix) Advertising goods or services with intent not to sell them as advertised”; “(xii) Engaging in
 6 any other conduct that similarly creates a likelihood of confusion or of misunderstanding”;
 7 “(xiii) Engaging in any act or practice that is unfair or deceptive to the consumer”; and “(xiv)
 8 Using any other methods, acts or practices which mislead or deceive members of the public in a
 9 material respect.” R.I. Gen. Laws § 6-13.1-1(6).

10 1736. In the course of Defendants’ business, they willfully failed to disclose and
 11 actively concealed the dangerous risk of hacking and the lack of adequate fail-safe mechanisms in
 12 Defective Vehicles equipped with CAN buses as described above. Accordingly, Defendants
 13 engaged in unlawful trade practices, including representing that Defective Vehicles have
 14 characteristics, uses, benefits, and qualities which they do not have; representing that Defective
 15 Vehicles are of a particular standard and quality when they are not; advertising Defective
 16 Vehicles with the intent not to sell them as advertised; and otherwise engaging in conduct likely
 17 to deceive.

18 1737. Defendants’ actions as set forth above occurred in the conduct of trade or
 19 commerce.

20 1738. Plaintiffs suffered ascertainable loss of money as a result of Defendants’ violation
 21 of the UTPCPA.

22 1739. Plaintiffs and the Class were injured as a result of Defendants’ conduct in that
 23 Plaintiffs overpaid for their Defective Vehicles and did not receive the benefit of their bargain,
 24 and their vehicles have suffered a diminution in value. These injuries are the direct and natural
 25 consequence of Defendants’ misrepresentations and omissions.

26 1740. Accordingly, Plaintiffs are entitled to recover the greater of actual damages or
 27 \$200 pursuant to R.I. Gen. Laws § 6-13.1-5.2(a).

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COUNT CXCI

**Breach of the Implied Warranty of Merchantability
(Rhode Island General Laws Section 6A-2-314)**

1741. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

1742. Defendants are and were at all relevant times merchants with respect to motor vehicles.

1743. A warranty that the Class Vehicles were in merchantable condition is implied by law in the instant transactions.

1744. These Class Vehicles, when sold and at all times thereafter, were not in merchantable condition and are not fit for the ordinary purpose for which cars are used. Defendants were provided notice of these issues by numerous complaints filed against them, including the instant Complaint, and by other means.

1745. As a direct and proximate result of Defendants' breach of the warranties of merchantability, Plaintiffs and the Class have been damaged in an amount to be proven at trial.

Claims Brought on Behalf of the South Carolina Class

COUNT CXCII

**Breach of the Implied Warranty of Merchantability
(South Carolina Code Section 36-2-314)**

1746. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

1747. Defendants are and were at all relevant times merchants with respect to motor vehicles under S.C. Code § 36-2-314.

1748. A warranty that the Defective Vehicles were in merchantable condition was implied by law in the instant transaction, pursuant to S.C. Code § 36-2-314.

1749. These Class Vehicles, when sold and at all times thereafter, were not in merchantable condition and are not fit for the ordinary purpose for which cars are used. Defendants were provided notice of these issues by numerous complaints filed against them,

1 including the instant Complaint, and by other means.

2 1750. As a direct and proximate result of Defendants’ breach of the warranties of
3 merchantability, Plaintiffs and the Class have been damaged in an amount to be proven at trial.

4 **COUNT CXCVI**

5 **Violations of the South Carolina Unfair Trade Practices Act**
6 **(South Carolina Code Annotated Sections 39-5-10, et seq.)**

7 1751. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set
8 forth herein.

9 1752. Defendants are “persons” under S.C. Code Ann. § 39-5-10.

10 1753. Defendants both participated in unfair or deceptive acts or practices that violated
11 the South Carolina Unfair Trade Practices Act (the “Act”), S.C. Code Ann. §§ 39-5-10, *et seq.*, as
12 described above and below. Defendants each are directly liable for these violations of law. TMC
13 also is liable for TMS’s violations of the Act because TMS acts as TMC’s general agent in the
14 United States for purposes of sales and marketing.

15 1754. By failing to disclose and actively concealing the dangerous risk of hacking and
16 the lack of adequate fail-safe mechanisms in Defective Vehicles equipped with CAN buses,
17 Defendants engaged in unfair or deceptive practices prohibited by the Act, S.C. Code Ann. §§ 39-
18 5-10, *et seq.*, including (1) representing that Defective Vehicles have characteristics, uses,
19 benefits, and qualities which they do not have, (2) representing that Defective Vehicles are of a
20 particular standard, quality, and grade when they are not, (3) advertising Defective Vehicles with
21 the intent not to sell them as advertised, (4) representing that a transaction involving Defective
22 Vehicles confers or involves rights, remedies, and obligations which it does not, and
23 (5) representing that the subject of a transaction involving Defective Vehicles has been supplied
24 in accordance with a previous representation when it has not.

25 1755. As alleged above, Defendants made numerous material statements about the
26 safety and reliability of Defective Vehicles that were either false or misleading. Each of these
27 statements contributed to the deceptive context of Defendants’ unlawful advertising and
28 representations as a whole.

1 1756. Defendants knew that the CAN buses in Defective Vehicles were defectively
2 designed or manufactured, were susceptible to hacking, and were not suitable for their intended
3 use. Defendants nevertheless failed to warn Plaintiffs about these inherent dangers despite having
4 a duty to do so.

5 1757. Defendants each owed Plaintiffs a duty to disclose the defective nature of
6 Defective Vehicles, including the dangerous risk of hacking and the lack of adequate fail-safe
7 mechanisms, because they:

8 1758. Possessed exclusive knowledge of the defects rendering Defective Vehicles
9 inherently more dangerous and unreliable than similar vehicles;

10 1759. Intentionally concealed the hazardous situation with Defective Vehicles through
11 their deceptive marketing campaign that they designed to hide the life-threatening problems from
12 Plaintiffs; and/or

13 1760. Made incomplete representations about the safety and reliability of Defective
14 Vehicles while purposefully withholding material facts from Plaintiffs that contradicted these
15 representations.

16 1761. Defective Vehicles equipped with CAN buses pose an unreasonable risk of death
17 or serious bodily injury to Plaintiffs, passengers, other motorists, pedestrians, and the public at
18 large, because they are susceptible to incidents of hacking.

19 1762. Whether or not a vehicle is vulnerable to hacking and can be commandeered by a
20 third party are facts that a reasonable consumer would consider important in selecting a vehicle to
21 purchase or lease. When Plaintiffs bought a Defendants Vehicle for personal, family, or
22 household purposes, they reasonably expected the vehicle would not be vulnerable to hacking,
23 and was equipped with any necessary fail-safe mechanisms.

24 1763. Defendants' unfair or deceptive trade practices were likely to and did in fact
25 deceive reasonable consumers, including Plaintiffs, about the true safety and reliability of
26 Defective Vehicles.

27 1764. As a result of their violations of the Act detailed above, Defendants caused actual
28 damage to Plaintiffs and, if not stopped, will continue to harm Plaintiffs. Plaintiffs currently own

1 or lease, or within the class period have owned or leased, Defective Vehicles that are defective
2 and inherently unsafe. CAN bus defects have caused the value of Defective Vehicles to plummet.

3 1765. Plaintiffs risk irreparable injury as a result of Defendants’ acts and omissions in
4 violation of the Act, and these violations present a continuing risk to Plaintiffs as well as to the
5 general public.

6 1766. Pursuant to S.C. Code Ann. § 39-5-140, Plaintiffs seek monetary relief against
7 Defendants to recover for their sustained losses.

8 1767. Plaintiffs further allege that Defendants’ malicious and deliberate conduct
9 warrants an assessment of punitive damages because Defendants each carried out despicable
10 conduct with willful and conscious disregard of the rights and safety of others, subjecting
11 Plaintiffs to cruel and unjust hardship as a result. Defendants intentionally and willfully
12 misrepresented the safety and reliability of Defective Vehicles, deceived Plaintiffs on life-or-
13 death matters, and concealed material facts that only they knew, all to avoid the expense and
14 public relations nightmare of correcting a deadly flaw in the Defective Vehicles they repeatedly
15 promised Plaintiffs were safe. Defendants’ unlawful conduct constitutes malice, oppression, and
16 fraud warranting punitive damages.

17 1768. Plaintiffs further seek an order enjoining Defendants’ unfair or deceptive acts or
18 practices, restitution, punitive damages, costs of Court, attorney’s fees, and any other just and
19 proper relief available under the Act.

20 **COUNT CXCIV**

21 **Violations of the South Carolina Regulation of Manufacturers, Distributors, and Dealers Act**
22 **(South Carolina Code Annotated Sections 56-15-10, et seq.)**

23 1769. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set
24 forth herein.

25 1770. Defendants are “manufacturers” as set forth in S.C. Code Ann. § 56-15-10, as
26 they are engaged in the business of manufacturing or assembling new and unused motor vehicles.

27 1771. Defendants both participated in unfair or deceptive acts or practices that violated
28 the South Carolina Regulation of Manufacturers, Distributors, and Dealers Act (“Dealers Act”),

1 S.C. Code Ann. § 56-15-30. Defendants each are directly liable for these violations of law. TMC
2 also is liable for TMS’s violations of the Dealers Act because TMS acts as TMC’s general agent
3 in the United States for purposes of sales and marketing.

4 1772. Defendants have engaged in actions which were arbitrary, in bad faith,
5 unconscionable, and which caused damage to Plaintiffs, the Class, and to the public. Defendants
6 have directly participated in the wrongful conduct.

7 1773. Defendants’ bad faith and unconscionable actions include, but are not limited to:
8 (1) representing that Defective Vehicles have characteristics, uses, benefits, and qualities which
9 they do not have, (2) representing that Defective Vehicles are of a particular standard, quality, and
10 grade when they are not, (3) advertising Defective Vehicles with the intent not to sell them as
11 advertised, (4) representing that a transaction involving Defective Vehicles confers or involves
12 rights, remedies, and obligations which it does not, and (5) representing that the subject of a
13 transaction involving Defective Vehicles has been supplied in accordance with a previous
14 representation when it has not.

15 1774. Defendants have resorted to and used false and misleading advertisement in
16 connection with their business. As alleged above, Defendants made numerous material statements
17 about the safety and reliability of Defective Vehicles that were either false or misleading. Each of
18 these statements contributed to the deceptive context of Defendants’ unlawful advertising and
19 representations as a whole.

20 1775. Pursuant to S.C. Code Ann. § 56-15-110(2), Plaintiffs bring this action on behalf
21 of themselves and the Class, as the action is one of common or general interest to many persons
22 and the parties are too numerous to bring them all before the court.

23 1776. Plaintiffs and the Class are entitled to double the actual damages, the cost of the
24 suit, attorney’s fees pursuant to S.C. Code Ann. § 56-15-110, and Plaintiffs also seek injunctive
25 relief under S.C. Code Ann. § 56-15-110. Plaintiffs also seek treble damages because Defendants
26 have acted maliciously.

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COUNT CXCIV

**Breach of Contract/Common Law Warranty
(Based on South Carolina Law)**

1777. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

1778. To the extent Defendants’ limited remedies are deemed not to be warranties under South Carolina’s Commercial Code, Plaintiffs, individually and on behalf of the other Class members, plead in the alternative under common law warranty and contract law. Defendants limited the remedies available to Plaintiffs and the other Class members to repairs and adjustments needed to correct defects in materials or workmanship of any part supplied by Defendants, and/or warranted the quality or nature of those services to Plaintiffs and the other Class members.

1779. Defendants breached this warranty or contract obligation by failing to repair the Class Vehicles, or to replace them.

1780. As a direct and proximate result of Defendants’ breach of contract or common law warranty, Plaintiffs and the other Class members have been damaged in an amount to be proven at trial, which shall include, but is not limited to, all compensatory damages, incidental and consequential damages, and other damages allowed by law.

Claims Brought on Behalf of the South Dakota Class

COUNT CXCVI

**Breach of Express Warranty
(South Dakota Codified Laws Section 57A-2-313)**

1781. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

1782. Defendants are and were at all relevant times merchants with respect to motor vehicles.

1783. Under S.D. Codified Laws § 57A-2-318, Plaintiffs have the same standing as any direct purchaser of a vehicle from Defendants.

1 1784. In their Limited Warranties and in advertisements, brochures, and through other
2 statements in the media, Defendants expressly warranted that they would repair or replace defects
3 in material or workmanship free of charge if they became apparent during the warranty period.
4 For example, the following language appears in all Class Vehicle Warranty booklets:

5 1. Toyota’s warranty

6 *When Warranty Begins*

7 The warranty period begins on the vehicle’s in-service date, which is the first date
8 the vehicle is either delivered to an ultimate purchaser, leased, or used as a
9 company car or demonstrator.

10 *Repairs Made at No Charge*

11 Repairs and adjustments covered by these warranties are made at no charge for
12 parts and labor.

13 *Basic Warranty*

14 This warranty covers repairs and adjustments needed to correct defects in materials
15 or workmanship of any part supplied by Toyota Coverage is for 36 months or
16 36,000 miles, whichever occurs first

17 2. Ford’s warranty

18 *KNOW WHEN YOUR WARRANTY BEGINS*

19 Your Warranty Start Date is the day you take delivery of your new vehicle or the
20 day it is first put into service

21 *QUICK REFERENCE: WARRANTY COVERAGE*

22
23 Your Bumper to Bumper Coverage lasts for three years - unless you drive more
24 than 36,000 miles before three years elapse.

25 *WHO PAYS FOR WARRANTY REPAIRS?*

26 You will not be charged for repairs covered by any applicable warranty during the
27 stated coverage periods

28 3. GM’s warranty

Warranty Period

The warranty period for all coverages begins on the date the vehicle is first
delivered or put in use and ends at the expiration of the coverage period.

Bumper-to-Bumper Coverage

The complete vehicle is covered for 4 years or 50,000 miles, whichever comes first
. . . .

No Charge

Warranty repairs, including towing, parts, and labor, will be made at no charge.

1 *Repairs Covered*

2 This warranty covers repairs to correct any vehicle defect related to materials or
3 workmanship occurring during the warranty period. Needed repairs will be
4 performed using new or remanufactured parts.

5 1785. Defendants' Limited Warranties, as well as advertisements, brochures, and other
6 statements in the media regarding the Class Vehicles, formed the basis of the bargain that was
7 reached when Plaintiffs and the other Class members purchased or leased their Class Vehicles
8 equipped with a CAN bus from Defendants.

9 1786. Defendants breached the express warranty to repair and adjust to correct defects
10 in materials and workmanship of any part supplied by Defendants. Defendants have not repaired
11 or adjusted, and have been unable to repair or adjust, the Class Vehicles' materials and
12 workmanship defects.

13 1787. In addition to these Limited Warranties, Defendants otherwise expressly
14 warranted several attributes, characteristics, and qualities of the CAN bus.

15 1788. These warranties are only a sampling of the numerous warranties that Defendants
16 made relating to safety, reliability, and operation. Generally these express warranties promise
17 heightened, superior, and state-of-the-art safety, reliability, and performance standards, and
18 promote the benefits of the CAN bus. These warranties were made, *inter alia*, in advertisements,
19 on Defendants' websites, and in uniform statements provided by Defendants to be made by
20 salespeople, or made publicly by Defendants' executives or by other authorized representatives.
21 These affirmations and promises were part of the basis of the bargain between the parties.

22 1789. These additional warranties were also breached because the Class Vehicles were
23 not fully operational, safe, or reliable (and remained so even after the problems were
24 acknowledged), nor did they comply with the warranties expressly made to purchasers or lessees.
25 Defendants did not provide at the time of sale, and have not provided since then, Class Vehicles
26 conforming to these express warranties.

27 1790. Furthermore, the limited warranty of repair and/or adjustments to defective parts,
28 fails in its essential purpose because the contractual remedy is insufficient to make Plaintiffs and
29 the other Class members whole and because Defendants have failed and/or have refused to

1 adequately provide the promised remedies within a reasonable time.

2 1791. Accordingly, recovery by Plaintiffs and the other Class members is not limited to
3 the limited warranty of repair or adjustments to parts defective in materials or workmanship, and
4 Plaintiffs, individually and on behalf of the other Class members, seek all remedies as allowed by
5 law.

6 1792. Also, as alleged in more detail herein, at the time that Defendants warranted and
7 sold the Class Vehicles they knew that the Class Vehicles did not conform to the warranties and
8 were inherently defective, and Defendants wrongfully and fraudulently misrepresented and/or
9 concealed material facts regarding their Class Vehicles. Plaintiffs and the other Class members
10 were therefore induced to purchase or lease the Class Vehicles under false and/or fraudulent
11 pretenses.

12 1793. Moreover, many of the injuries flowing from the Class Vehicles cannot be
13 resolved through the limited remedy of “replacement or adjustments,” as many incidental and
14 consequential damages have already been suffered due to Defendants’ fraudulent conduct as
15 alleged herein, and due to their failure and/or continued failure to provide such limited remedy
16 within a reasonable time, and any limitation on Plaintiffs’ and the other Class members’ remedies
17 would be insufficient to make Plaintiffs and the other Class members whole.

18 1794. Finally, due to the Defendants’ breach of warranties as set forth herein, Plaintiffs
19 and the Class assert as an additional and/or alternative remedy, as set forth in S.D. Codified Laws
20 § 57A-2-608, for a revocation of acceptance of the goods, and for a return to Plaintiffs and to the
21 Class of the purchase price of all vehicles currently owned.

22 1795. Defendants were provided notice of these issues by the instant Complaint, and by
23 other means before or within a reasonable amount of time after the allegations of Class Vehicle
24 defects became public.

25 1796. As a direct and proximate result of Defendants’ breach of express warranties,
26 Plaintiffs and the other Class members have been damaged in an amount to be determined at trial.

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COUNT CXCVII

**Breach of the Implied Warranty of Merchantability
(South Dakota Codified Laws Section 57A-2-314)**

1797. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

1798. Defendants are and were at all relevant times merchants with respect to motor vehicles.

1799. A warranty that the Defective Vehicles were merchantable is implied by law in the instant transactions.

1800. Under S.D. Codified Laws § 57A-2-318, Plaintiffs have the same standing as any direct purchaser of a vehicle from Defendants.

1801. These Class Vehicles, when sold and at all times thereafter, were not in merchantable condition and are not fit for the ordinary purpose for which cars are used. Defendants were provided notice of these issues by numerous complaints filed against them, including the instant Complaint, and by other means.

1802. As a direct and proximate result of Defendants’ breach of the warranties of merchantability, Plaintiffs and the Class have been damaged in an amount to be proven at trial.

COUNT CXCVIII

**Violation of the South Dakota Deceptive Trade Practices Act
(South Dakota Codified Laws Section 37-24-6)**

1803. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

1804. The conduct of Defendants as set forth herein constitutes deceptive acts or practices, fraud, and misrepresentation, including, but not limited to, Defendants’ manufacture and sale of vehicles that are susceptible to hacking and that lack effective fail-safe mechanisms which Defendants failed to adequately investigate, disclose and remedy, and Defendants’ misrepresentations and omissions regarding the safety and reliability of their vehicles.

1805. Plaintiffs and the Class were injured as a result of Defendants’ conduct. Plaintiffs

1 overpaid for their Defective Vehicles and did not receive the benefit of their bargain, and their
2 vehicles have suffered a diminution in value.

3 1806. Defendants’ conduct proximately caused the injuries to Plaintiffs and the Class.

4 1807. Under S.D. Codified Laws § 37-24-31, Plaintiffs and the Class are entitled to a
5 recovery of their actual damages suffered as a result of Defendants’ acts and practices.

6 **COUNT CXCIX**

7 **Breach of Contract/Common Law Warranty**

8 **(Based on South Dakota Law)**

9 1808. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set
10 forth herein.

11 1809. To the extent Defendants’ limited remedies are deemed not to be warranties under
12 South Dakota’s Commercial Code, Plaintiffs, individually and on behalf of the other Class
13 members, plead in the alternative under common law warranty and contract law. Defendants
14 limited the remedies available to Plaintiffs and the other Class members to repairs and
15 adjustments needed to correct defects in materials or workmanship of any part supplied by
16 Defendants, and/or warranted the quality or nature of those services to Plaintiffs and the other
17 Class members.

18 1810. Defendants breached this warranty or contract obligation by failing to repair the
19 Class Vehicles, or to replace them.

20 1811. As a direct and proximate result of Defendants’ breach of contract or common
21 law warranty, Plaintiffs and the other Class members have been damaged in an amount to be
22 proven at trial, which shall include, but is not limited to, all compensatory damages, incidental
23 and consequential damages, and other damages allowed by law.

24 **Claims Brought on Behalf of the Tennessee Class**

25 **COUNT CC**

26 **Violation of Tennessee Consumer Protection Act**

27 **(Tennessee Code Annotated Sections 47-18-101, et seq.)**

28 1812. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set

1 forth herein.

2 1813. Defendants misrepresented the safety of the Defective Vehicles after learning of
3 their defects with the intent that Plaintiffs relied on such representations in their decision
4 regarding the purchase, lease and/or use of the Defective Vehicles.

5 1814. Plaintiffs did, in fact, rely on such representations in their decision regarding the
6 purchase, lease and/or use of the Defective Vehicles.

7 1815. Through these misleading and deceptive statements and false promises,
8 Defendants violated the Tennessee Consumer Protection Act.

9 1816. The Tennessee Consumer Protection Act applies to Defendants' transactions with
10 Plaintiffs because Defendants' deceptive scheme was carried out in Tennessee and affected
11 Plaintiffs.

12 1817. Defendants also failed to advise the NHSTA and the public about what they knew
13 about the vulnerability of the Defective Vehicles to hacking.

14 1818. Plaintiffs relied on Defendants' silence as to known defects in connection with
15 their decision regarding the purchase, lease and/or use of the Defective Vehicles.

16 1819. As a direct and proximate result of Defendants' deceptive conduct and violation
17 of the Tennessee Consumer Protection Act, Plaintiffs have sustained and will continue to sustain
18 economic losses and other damages for which they are entitled to compensatory and equitable
19 damages and declaratory relief in an amount to be proven at trial.

20 **COUNT CCI**

21 **Fraudulent Misrepresentation and Fraudulent Concealment**

22 **(Based on Tennessee Law)**

23 1820. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set
24 forth herein.

25 1821. Defendants intentionally concealed the above-described material safety and
26 functionality information, or acted with reckless disregard for the truth, and denied Plaintiffs and
27 the other Class members information that is highly relevant to their purchasing decision.

28 1822. Defendants further affirmatively misrepresented to Plaintiffs in advertising and

1 other forms of communication, including standard and uniform material provided with each car,
2 that the Class Vehicles they was selling were new, had no significant defects, and would perform
3 and operate properly when driven in normal usage.

4 1823. Defendants knew these representations were false when made.

5 1824. The Class Vehicles purchased or leased by Plaintiffs and the other Class members
6 were, in fact, defective, unsafe, and unreliable because the Class Vehicles contained faulty and
7 defective CAN buses, as alleged herein.

8 1825. Defendants had a duty to disclose that these Class Vehicles were defective,
9 unsafe, and unreliable in that certain crucial safety functions of the Class Vehicles would be
10 rendered inoperative due to faulty and defective CAN buses, because Plaintiffs and the other
11 Class members relied on Defendants’ material representations that the Class Vehicles they were
12 purchasing were safe and free from defects.

13 1826. The aforementioned concealment was material because if it had been disclosed
14 Plaintiffs and the other Class members would not have bought or leased the Class Vehicles, or
15 would not have bought or leased those Vehicles at the prices they paid.

16 1827. The aforementioned representations were material because they were facts that
17 would typically be relied on by a person purchasing or leasing a new motor vehicle. Defendants
18 knew or recklessly disregarded that their representations were false because it knew the CAN
19 buses were susceptible to hacking. Defendants intentionally made the false statements in order to
20 sell Class Vehicles.

21 1828. Plaintiffs and the other Class members relied on Defendants’ reputations – along
22 with Defendants’ failure to disclose the faulty and defective nature of the CAN bus and
23 Defendants’ affirmative assurances that their Class Vehicles were safe and reliable, and other
24 similar false statements – in purchasing or leasing Defendants’ Class Vehicles.

25 1829. As a result of their reliance, Plaintiffs and the other Class members have been
26 injured in an amount to be proven at trial, including, but not limited to, their lost benefit of the
27 bargain and overpayment at the time of purchase or lease and/or the diminished value of their
28 Class Vehicles.

1 1830. Defendants’ conduct was knowing, intentional, with malice, demonstrated a
2 complete lack of care, and was in reckless disregard for the rights of Plaintiffs and the other Class
3 members.

4 1831. Plaintiffs and the other Class members are therefore entitled to an award of
5 punitive damages.

6 **COUNT CCII**

7 **Breach of Express Warranty**
8 **(Tennessee Code Annotated Section 47-2-313)**

9 1832. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set
10 forth herein.

11 1833. Defendants are and at all relevant times were sellers as defined by Tenn. Code
12 Ann. § 47-2-103.

13 1834. In their Limited Warranties and in advertisements, brochures, and through other
14 statements in the media, Defendants expressly warranted that they would repair or replace defects
15 in material or workmanship free of charge if they became apparent during the warranty period.
16 For example, the following language appears in all Class Vehicle Warranty booklets:

17 1. Toyota’s warranty

18 *When Warranty Begins*

19 The warranty period begins on the vehicle’s in-service date, which is the first date
20 the vehicle is either delivered to an ultimate purchaser, leased, or used as a
21 company car or demonstrator.

22 *Repairs Made at No Charge*

23 Repairs and adjustments covered by these warranties are made at no charge for
24 parts and labor.

25 *Basic Warranty*

26 This warranty covers repairs and adjustments needed to correct defects in materials
27 or workmanship of any part supplied by Toyota Coverage is for 36 months or
28 36,000 miles, whichever occurs first

2. Ford’s warranty

KNOW WHEN YOUR WARRANTY BEGINS

Your Warranty Start Date is the day you take delivery of your new vehicle or the
day it is first put into service

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QUICK REFERENCE: WARRANTY COVERAGE

...

Your Bumper to Bumper Coverage lasts for three years - unless you drive more than 36,000 miles before three years elapse.

WHO PAYS FOR WARRANTY REPAIRS?

You will not be charged for repairs covered by any applicable warranty during the stated coverage periods

3. GM's warranty

Warranty Period

The warranty period for all coverages begins on the date the vehicle is first delivered or put in use and ends at the expiration of the coverage period.

Bumper-to-Bumper Coverage

The complete vehicle is covered for 4 years or 50,000 miles, whichever comes first

No Charge

Warranty repairs, including towing, parts, and labor, will be made at no charge.

Repairs Covered

This warranty covers repairs to correct any vehicle defect related to materials or workmanship occurring during the warranty period. Needed repairs will be performed using new or remanufactured parts.

1835. Defendants' Limited Warranties, as well as advertisements, brochures, and other statements in the media regarding the Class Vehicles, formed the basis of the bargain that was reached when Plaintiffs and the other Class members purchased or leased their Class Vehicles equipped with a CAN bus from Defendants.

1836. Defendants breached the express warranty to repair and adjust to correct defects in materials and workmanship of any part supplied by Defendants. Defendants have not repaired or adjusted, and have been unable to repair or adjust, the Class Vehicles' materials and workmanship defects.

1837. In addition to these Limited Warranties, Defendants otherwise expressly warranted several attributes, characteristics, and qualities of the CAN bus.

1838. These warranties are only a sampling of the numerous warranties that Defendants made relating to safety, reliability, and operation. Generally these express warranties promise heightened, superior, and state-of-the-art safety, reliability, and performance standards, and

1 promote the benefits of the CAN bus. These warranties were made, *inter alia*, in advertisements,
2 on Defendants' websites, and in uniform statements provided by Defendants to be made by
3 salespeople, or made publicly by Defendants' executives or by other authorized representatives.
4 These affirmations and promises were part of the basis of the bargain between the parties.

5 1839. These additional warranties were also breached because the Class Vehicles were
6 not fully operational, safe, or reliable (and remained so even after the problems were
7 acknowledged), nor did they comply with the warranties expressly made to purchasers or lessees.
8 Defendants did not provide at the time of sale, and have not provided since then, Class Vehicles
9 conforming to these express warranties.

10 1840. Furthermore, the limited warranty of repair and/or adjustments to defective parts,
11 fails in its essential purpose because the contractual remedy is insufficient to make Plaintiffs and
12 the other Class members whole and because Defendants have failed and/or have refused to
13 adequately provide the promised remedies within a reasonable time.

14 1841. Accordingly, recovery by Plaintiffs and the other Class members is not limited to
15 the limited warranty of repair or adjustments to parts defective in materials or workmanship, and
16 Plaintiffs, individually and on behalf of the other Class members, seek all remedies as allowed by
17 law.

18 1842. Also, as alleged in more detail herein, at the time that Defendants warranted and
19 sold the Class Vehicles they knew that the Class Vehicles did not conform to the warranties and
20 were inherently defective, and Defendants wrongfully and fraudulently misrepresented and/or
21 concealed material facts regarding their Class Vehicles. Plaintiffs and the other Class members
22 were therefore induced to purchase or lease the Class Vehicles under false and/or fraudulent
23 pretenses.

24 1843. Moreover, many of the injuries flowing from the Class Vehicles cannot be
25 resolved through the limited remedy of "replacement or adjustments," as many incidental and
26 consequential damages have already been suffered due to Defendants' fraudulent conduct as
27 alleged herein, and due to their failure and/or continued failure to provide such limited remedy
28 within a reasonable time, and any limitation on Plaintiffs' and the other Class members' remedies

1 would be insufficient to make Plaintiffs and the other Class members whole.

2 1844. Defendants were provided notice of these issues by the instant Complaint, and by
3 other means before or within a reasonable amount of time after the allegations of Class Vehicle
4 defects became public.

5 1845. As a direct and proximate result of Defendants’ breach of express warranties,
6 Plaintiffs and the other Class members have been damaged in an amount to be determined at trial.

7 **COUNT CCIII**

8 **Breach of Implied Warranty of Merchantability**
9 **(Tennessee Code Annotated Section 47-2-314)**

10 1846. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set
11 forth herein.

12 1847. Defendants impliedly warranted that their vehicles were of good and
13 merchantable quality and fit, and safe for their ordinary intended use – transporting the driver and
14 passengers in reasonable safety during normal operation, and without unduly endangering them or
15 members of the public.

16 1848. As described above, there were dangerous defects in the vehicles manufactured,
17 distributed, and/or sold by Defendants, which Plaintiffs purchased, including, but not limited to,
18 defects that caused the vehicles to be susceptible to hacking, and the lack of safety systems to
19 stave off an attack.

20 1849. These dangerous defects existed at the time the vehicles left Defendants’
21 manufacturing facilities and at the time they were sold to the Plaintiffs. Furthermore, because of
22 these dangerous defects, Plaintiffs did not receive the benefit of their bargain and the vehicles
23 have suffered a diminution in value.

24 1850. These dangerous defects were the direct and proximate cause of damages to the
25 Plaintiffs.

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Claims Brought on Behalf of the Texas Class

COUNT CCIV

**Violations of the Deceptive Trade Practices Act
(Texas Business and Commercial Code Sections 17.41, et seq.)**

1851. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

1852. Plaintiffs and Defendants are each “persons” as defined by Tex. Bus. & Com. Code § 17.45(3). The Class Vehicles are “goods” under Tex. Bus. & Com. Code § 17.45(1). Plaintiffs and the other Texas Class members are “consumers” as defined in Tex. Bus. & Com. Code § 17.45(4). Defendants have at all relevant times engaged in “trade” and “commerce” as defined in Tex. Bus. & Com. Code § 17.45(6), by advertising, offering for sale, selling, leasing, and/or distributing the Class Vehicles in Texas, directly or indirectly affecting Texas citizens through that trade and commerce.

1853. The allegations set forth herein constitute false, misleading, or deceptive trade acts or practices in violation of Texas’s Deceptive Trade Practices-Consumer Protection Act (“DTPA”), Tex. Bus. & Com. Code §§ 17.41, et seq.

1854. By failing to disclose and actively concealing the defects in the Class Vehicles, Defendants engaged in deceptive business practices prohibited by the DTPA, including (1) representing that Class Vehicles have characteristics, uses, benefits, and qualities which they do not have, (2) representing that Class Vehicles are of a particular standard, quality, and grade when they are not, (3) advertising Class Vehicles with the intent not to sell them as advertised, and (4) engaging in acts or practices which are otherwise unfair, misleading, false, or deceptive to the consumer.

1855. As alleged above, Defendants made numerous material statements about the benefits and characteristics of the Class Vehicles that were either false or misleading. Each of these statements contributed to the deceptive context of Defendants’ unlawful advertising and representations as a whole.

1856. Defendants knew that the CAN buses in the Class Vehicles were defectively

1 designed or manufactured, were susceptible to hacking, and were not suitable for their intended
2 use. Defendants nevertheless failed to warn Plaintiffs about these defects despite having a duty to
3 do so.

4 1857. Defendants owed Plaintiffs a duty to disclose the defective nature of the CAN
5 buses in the Class Vehicles, because Defendants:

6 1858. Possessed exclusive knowledge of the defects rendering the Class Vehicles

7 1859. more unreliable than similar vehicles;

8 1860. Intentionally concealed the defects through their deceptive marketing campaign
9 that they designed to hide the defects in the Class Vehicles; and/or

10 1861. Made incomplete representations about the characteristics and performance of the
11 Class Vehicles generally, while purposefully withholding material facts from Plaintiffs that
12 contradicted these representations.

13 1862. Defendants’ unfair or deceptive acts or practices were likely to and did in fact
14 deceive reasonable consumers, including Plaintiffs, about the true performance and characteristics
15 of the Class Vehicles.

16 1863. Defendants’ intentional concealment of and failure to disclose the defective nature
17 of the Class Vehicles to Plaintiffs and the other Class members constitutes an “unconscionable
18 action or course of action” under Tex. Bus. & Com. Code § 17.45(5) because, to the detriment of
19 Plaintiffs and the other Class members, that conduct took advantage of their lack of knowledge,
20 ability, and experience to a grossly unfair degree. That “unconscionable action or course of
21 action” was a producing cause of the economic damages sustained by Plaintiffs and the other
22 Class members.

23 1864. Defendants are also liable under Tex. Bus. & Com. Code § 17.50(a) because
24 Defendants’ breach of the implied warranty of merchantability set forth herein was a producing
25 cause of economic damages sustained by Plaintiffs and the other Class members.

26 1865. As a result of their violations of the DTPA detailed above, Defendants caused
27 actual damage to Plaintiffs and, if not stopped, will continue to harm Plaintiffs. Plaintiffs
28 currently own or lease, or within the class period have owned or leased, a Class Vehicle that is

1 defective. Defects associated with the CAN bus have caused the value of Class Vehicles to
2 decrease.

3 1866. All procedural prerequisites, including notice, have been met. The giving of
4 notice to Defendants is rendered impracticable pursuant to Tex. Bus. & Com. Code § 17.505(b)
5 and unnecessary because Defendants have notice of the claims against them.

6 1867. Pursuant to Tex. Bus. & Com. Code § 17.505(b), Plaintiffs, individually and on
7 behalf of the other Class members, will send to the Texas Consumer Protection Division a copy of
8 this Complaint.

9 1868. Plaintiffs and the Class sustained damages as a result of the Defendants' unlawful
10 acts and are, therefore, entitled to damages and other relief as provided under the DTPA.

11 1869. Plaintiffs and the other Class members should be awarded three times the amount
12 of their economic damages because Defendants intentionally concealed and failed to disclose the
13 defective nature of the Class Vehicles.

14 **COUNT CCV**

15 **Breach of Express Warranty**

16 **(Texas Business and Commercial Code Section 2.313)**

17 1870. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set
18 forth herein.

19 1871. Defendants are and were at all relevant times merchants with respect to motor
20 vehicles under Tex. Bus. & Com. Code § 2.104.

21 1872. In their Limited Warranties and in advertisements, brochures, and through other
22 statements in the media, Defendants expressly warranted that they would repair or replace defects
23 in material or workmanship free of charge if they became apparent during the warranty period.

24 For example, the following language appears in all Class Vehicle Warranty booklets:

25 1. Toyota's warranty

26 *When Warranty Begins*

27 The warranty period begins on the vehicle's in-service date, which is the first date
28 the vehicle is either delivered to an ultimate purchaser, leased, or used as a
company car or demonstrator.

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Repairs Made at No Charge

Repairs and adjustments covered by these warranties are made at no charge for parts and labor.

Basic Warranty

This warranty covers repairs and adjustments needed to correct defects in materials or workmanship of any part supplied by Toyota Coverage is for 36 months or 36,000 miles, whichever occurs first

2. Ford’s warranty

KNOW WHEN YOUR WARRANTY BEGINS

Your Warranty Start Date is the day you take delivery of your new vehicle or the day it is first put into service

QUICK REFERENCE: WARRANTY COVERAGE

. . .

Your Bumper to Bumper Coverage lasts for three years - unless you drive more than 36,000 miles before three years elapse.

WHO PAYS FOR WARRANTY REPAIRS?

You will not be charged for repairs covered by any applicable warranty during the stated coverage periods

3. GM’s warranty

Warranty Period

The warranty period for all coverages begins on the date the vehicle is first delivered or put in use and ends at the expiration of the coverage period.

Bumper-to-Bumper Coverage

The complete vehicle is covered for 4 years or 50,000 miles, whichever comes first

No Charge

Warranty repairs, including towing, parts, and labor, will be made at no charge.

Repairs Covered

This warranty covers repairs to correct any vehicle defect related to materials or workmanship occurring during the warranty period. Needed repairs will be performed using new or remanufactured parts.

1873. Defendants’ Limited Warranties, as well as advertisements, brochures, and other statements in the media regarding the Class Vehicles, formed the basis of the bargain that was reached when Plaintiffs and the other Class members purchased or leased their Class Vehicles equipped with a CAN bus from Defendants.

1 1874. Defendants breached the express warranty to repair and adjust to correct defects
2 in materials and workmanship of any part supplied by Defendants. Defendants have not repaired
3 or adjusted, and have been unable to repair or adjust, the Class Vehicles' materials and
4 workmanship defects.

5 1875. In addition to these Limited Warranties, Defendants otherwise expressly
6 warranted several attributes, characteristics, and qualities of the CAN bus.

7 1876. These warranties are only a sampling of the numerous warranties that Defendants
8 made relating to safety, reliability, and operation. Generally these express warranties promise
9 heightened, superior, and state-of-the-art safety, reliability, and performance standards, and
10 promote the benefits of the CAN bus. These warranties were made, *inter alia*, in advertisements,
11 on Defendants' websites, and in uniform statements provided by Defendants to be made by
12 salespeople, or made publicly by Defendants' executives or by other authorized representatives.
13 These affirmations and promises were part of the basis of the bargain between the parties.

14 1877. These additional warranties were also breached because the Class Vehicles were
15 not fully operational, safe, or reliable (and remained so even after the problems were
16 acknowledged), nor did they comply with the warranties expressly made to purchasers or lessees.
17 Defendants did not provide at the time of sale, and have not provided since then, Class Vehicles
18 conforming to these express warranties.

19 1878. Furthermore, the limited warranty of repair and/or adjustments to defective parts,
20 fails in its essential purpose because the contractual remedy is insufficient to make Plaintiffs and
21 the other Class members whole and because Defendants have failed and/or have refused to
22 adequately provide the promised remedies within a reasonable time.

23 1879. Accordingly, recovery by Plaintiffs and the other Class members is not limited to
24 the limited warranty of repair or adjustments to parts defective in materials or workmanship, and
25 Plaintiffs, individually and on behalf of the other Class members, seek all remedies as allowed by
26 law.

27 1880. Also, as alleged in more detail herein, at the time that Defendants warranted and
28 sold the Class Vehicles they knew that the Class Vehicles did not conform to the warranties and

1 were inherently defective, and Defendants wrongfully and fraudulently misrepresented and/or
2 concealed material facts regarding their Class Vehicles. Plaintiffs and the other Class members
3 were therefore induced to purchase or lease the Class Vehicles under false and/or fraudulent
4 pretenses.

5 1881. Moreover, many of the injuries flowing from the Class Vehicles cannot be
6 resolved through the limited remedy of “replacement or adjustments,” as many incidental and
7 consequential damages have already been suffered due to Defendants’ fraudulent conduct as
8 alleged herein, and due to their failure and/or continued failure to provide such limited remedy
9 within a reasonable time, and any limitation on Plaintiffs’ and the other Class members’ remedies
10 would be insufficient to make Plaintiffs and the other Class members whole.

11 1882. Finally, due to Defendants’ breach of warranties as set forth herein, Plaintiffs and
12 the other Class members assert as an additional and/or alternative remedy, as set forth in Tex.
13 Bus. & Com. Code § 2.711, for a revocation of acceptance of the goods, and for a return to
14 Plaintiffs and to the other Class members of the purchase price of all Class Vehicles currently
15 owned and for such other incidental and consequential damages as allowed under Tex. Bus. &
16 Com. Code §§ 2.711 and 2.608.

17 1883. Defendants were provided notice of these issues by the instant Complaint, and by
18 other means before or within a reasonable amount of time after the allegations of Class Vehicle
19 defects became public.

20 1884. As a direct and proximate result of Defendants’ breach of express warranties,
21 Plaintiffs and the other Class members have been damaged in an amount to be determined at trial.

22 **COUNT CCVI**

23 **Breach of the Implied Warranty of Merchantability**
24 **(Texas Business and Commercial Code Section 2.314)**

25 1885. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set
26 forth herein.

27 1886. Defendants are and were at all relevant times merchants with respect to motor
28 vehicles under Tex. Bus. & Com. Code § 2.104.

1 1887. A warranty that the Class Vehicles were in merchantable condition was implied
2 by law in the instant transactions, pursuant to Tex. Bus. & Com. Code § 2.314.

3 1888. These Class Vehicles, when sold and at all times thereafter, were not in
4 merchantable condition and are not fit for the ordinary purpose for which cars are used.
5 Defendants were provided notice of these issues by numerous complaints filed against them,
6 including the instant Complaint, and by other means.

7 1889. As a direct and proximate result of Defendants’ breach of the warranties of
8 merchantability, Plaintiffs and the Class have been damaged in an amount to be proven at trial.

9 **COUNT CCVII**

10 **Breach of Contract/Common Law Warranty**
11 **(Based on Texas Law)**

12 1890. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set
13 forth herein.

14 1891. To the extent Defendants’ limited remedies are deemed not to be warranties under
15 the Uniform Commercial Code as adopted in Texas, Plaintiffs, individually and on behalf of the
16 other Class members, plead in the alternative under common law warranty and contract law.
17 Defendants limited the remedies available to Plaintiffs and the other Class members to repairs and
18 adjustments needed to correct defects in materials or workmanship of any part supplied by
19 Defendants, and/or warranted the quality or nature of those services to Plaintiffs and the other
20 Class members.

21 1892. Defendants breached this warranty or contract obligation by failing to repair the
22 Class Vehicles, or to replace them.

23 1893. As a direct and proximate result of Defendants’ breach of contract or common
24 law warranty, Plaintiffs and the other Class members have been damaged in an amount to be
25 proven at trial, which shall include, but is not limited to, all compensatory damages, incidental
26 and consequential damages, and other damages allowed by law.

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COUNT CCVIII

**Fraudulent Concealment
(Based on Texas Law)**

1894. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

1895. Defendants intentionally concealed the above-described material safety and functionality information, or acted with reckless disregard for the truth, and denied Plaintiffs and the other Class members information that is highly relevant to their purchasing decision.

1896. Defendants further affirmatively misrepresented to Plaintiffs in advertising and other forms of communication, including standard and uniform material provided with each car, that the Class Vehicles they was selling were new, had no significant defects, and would perform and operate properly when driven in normal usage.

1897. Defendants knew these representations were false when made.

1898. The Class Vehicles purchased or leased by Plaintiffs and the other Class members were, in fact, defective, unsafe, and unreliable because the Class Vehicles contained faulty and defective CAN buses, as alleged herein.

1899. Defendants had a duty to disclose that these Class Vehicles were defective, unsafe, and unreliable in that certain crucial safety functions of the Class Vehicles would be rendered inoperative due to faulty and defective CAN buses, because Plaintiffs and the other Class members relied on Defendants’ material representations that the Class Vehicles they were purchasing were safe and free from defects.

1900. The aforementioned concealment was material because if it had been disclosed Plaintiffs and the other Class members would not have bought or leased the Class Vehicles, or would not have bought or leased those Vehicles at the prices they paid.

1901. The aforementioned representations were material because they were facts that would typically be relied on by a person purchasing or leasing a new motor vehicle. Defendants knew or recklessly disregarded that their representations were false because they knew the CAN buses were susceptible to hacking. Defendants intentionally made the false statements in order to

1 sell Class Vehicles.

2 1902. Plaintiffs and the other Class members relied on Defendants’ reputations – along
3 with Defendants’ failure to disclose the faulty and defective nature of the CAN bus and
4 Defendants’ affirmative assurances that their Class Vehicles were safe and reliable, and other
5 similar false statements – in purchasing or leasing Defendants’ Class Vehicles.

6 1903. As a result of their reliance, Plaintiffs and the other Class members have been
7 injured in an amount to be proven at trial, including, but not limited to, their lost benefit of the
8 bargain and overpayment at the time of purchase or lease and/or the diminished value of their
9 Class Vehicles.

10 1904. Defendants’ conduct was knowing, intentional, with malice, demonstrated a
11 complete lack of care, and was in reckless disregard for the rights of Plaintiffs and the other Class
12 members.

13 1905. Plaintiffs and the other Class members are therefore entitled to an award of
14 punitive damages.

15 **Claims Brought on Behalf of the Utah Class**

16 **COUNT CCIX**

17 **Breach of Express Warranty**

18 **(Utah Code Annotated Section 70A-2-313)**

19 1906. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set
20 forth herein.

21 1907. Defendants are and were at all relevant times merchants as defined by the
22 Uniform Commercial Code.

23 1908. In their Limited Warranties and in advertisements, brochures, and through other
24 statements in the media, Defendants expressly warranted that they would repair or replace defects
25 in material or workmanship free of charge if they became apparent during the warranty period.
26 For example, the following language appears in all Class Vehicle Warranty booklets:

- 27 1. Toyota’s warranty
- 28 *When Warranty Begins*

1 The warranty period begins on the vehicle’s in-service date, which is the first date
2 the vehicle is either delivered to an ultimate purchaser, leased, or used as a
company car or demonstrator.

3 *Repairs Made at No Charge*

4 Repairs and adjustments covered by these warranties are made at no charge for
parts and labor.

5 *Basic Warranty*

6 This warranty covers repairs and adjustments needed to correct defects in materials
7 or workmanship of any part supplied by Toyota Coverage is for 36 months or
36,000 miles, whichever occurs first

8 2. Ford’s warranty

9 *KNOW WHEN YOUR WARRANTY BEGINS*

10 Your Warranty Start Date is the day you take delivery of your new vehicle or the
day it is first put into service

11 *QUICK REFERENCE: WARRANTY COVERAGE*

12 . . .

13 Your Bumper to Bumper Coverage lasts for three years - unless you drive more
than 36,000 miles before three years elapse.

14 *WHO PAYS FOR WARRANTY REPAIRS?*

15 You will not be charged for repairs covered by any applicable warranty during the
16 stated coverage periods

17 3. GM’s warranty

Warranty Period

18 The warranty period for all coverages begins on the date the vehicle is first
19 delivered or put in use and ends at the expiration of the coverage period.

Bumper-to-Bumper Coverage

20 The complete vehicle is covered for 4 years or 50,000 miles, whichever comes first
21

No Charge

22 Warranty repairs, including towing, parts, and labor, will be made at no charge.

23 *Repairs Covered*

24 This warranty covers repairs to correct any vehicle defect related to materials or
25 workmanship occurring during the warranty period. Needed repairs will be
performed using new or remanufactured parts.

26 1909. Defendants’ Limited Warranties, as well as advertisements, brochures, and other
27 statements in the media regarding the Class Vehicles, formed the basis of the bargain that was
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1 reached when Plaintiffs and the other Class members purchased or leased their Class Vehicles
2 equipped with a CAN bus from Defendants.

3 1910. Defendants breached the express warranty to repair and adjust to correct defects
4 in materials and workmanship of any part supplied by Defendants. Defendants have not repaired
5 or adjusted, and have been unable to repair or adjust, the Class Vehicles' materials and
6 workmanship defects.

7 1911. In addition to these Limited Warranties, Defendants otherwise expressly
8 warranted several attributes, characteristics, and qualities of the CAN bus.

9 1912. These warranties are only a sampling of the numerous warranties that Defendants
10 made relating to safety, reliability, and operation. Generally these express warranties promise
11 heightened, superior, and state-of-the-art safety, reliability, and performance standards, and
12 promote the benefits of the CAN bus. These warranties were made, *inter alia*, in advertisements,
13 on Defendants' websites, and in uniform statements provided by Defendants to be made by
14 salespeople, or made publicly by Defendants' executives or by other authorized representatives.
15 These affirmations and promises were part of the basis of the bargain between the parties.

16 1913. These additional warranties were also breached because the Class Vehicles were
17 not fully operational, safe, or reliable (and remained so even after the problems were
18 acknowledged), nor did they comply with the warranties expressly made to purchasers or lessees.
19 Defendants did not provide at the time of sale, and have not provided since then, Class Vehicles
20 conforming to these express warranties.

21 1914. Furthermore, the limited warranty of repair and/or adjustments to defective parts,
22 fails in its essential purpose because the contractual remedy is insufficient to make Plaintiffs and
23 the other Class members whole and because Defendants have failed and/or have refused to
24 adequately provide the promised remedies within a reasonable time.

25 1915. Accordingly, recovery by Plaintiffs and the other Class members is not limited to
26 the limited warranty of repair or adjustments to parts defective in materials or workmanship, and
27 Plaintiffs, individually and on behalf of the other Class members, seek all remedies as allowed by
28 law.

1 1916. Also, as alleged in more detail herein, at the time that Defendants warranted and
2 sold the Class Vehicles they knew that the Class Vehicles did not conform to the warranties and
3 were inherently defective, and Defendants wrongfully and fraudulently misrepresented and/or
4 concealed material facts regarding their Class Vehicles. Plaintiffs and the other Class members
5 were therefore induced to purchase or lease the Class Vehicles under false and/or fraudulent
6 pretenses.

7 1917. Moreover, many of the injuries flowing from the Class Vehicles cannot be
8 resolved through the limited remedy of “replacement or adjustments,” as many incidental and
9 consequential damages have already been suffered due to Defendants’ fraudulent conduct as
10 alleged herein, and due to their failure and/or continued failure to provide such limited remedy
11 within a reasonable time, and any limitation on Plaintiffs’ and the other Class members’ remedies
12 would be insufficient to make Plaintiffs and the other Class members whole.

13 1918. Finally, due to the Defendants’ breach of warranties as set forth herein, Plaintiffs
14 and the Class assert as an additional and/or alternative remedy, as set forth in U.C.A. § 70A-2-608
15 for a revocation of acceptance of the goods, and for a return to Plaintiffs and to the Class of the
16 purchase price of all vehicles currently.

17 1919. Defendants were provided notice of these issues by the instant Complaint, and by
18 other means before or within a reasonable amount of time after the allegations of Class Vehicle
19 defects became public.

20 1920. As a direct and proximate result of Defendants’ breach of express warranties,
21 Plaintiffs and the other Class members have been damaged in an amount to be determined at trial.

22 **COUNT CCX**

23 **Breach of the Implied Warranty of Merchantability**
24 **(Utah Code Annotated Section 70A-2-314)**

25 1921. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set
26 forth herein.

27 1922. Defendants are and were at all relevant times merchants with respect to motor
28 vehicles.

1 1923. A warranty that the Class Vehicles were in merchantable condition is implied by
2 law in the instant transactions.

3 1924. These Class Vehicles, when sold and at all times thereafter, were not in
4 merchantable condition and are not fit for the ordinary purpose for which cars are used.
5 Defendants were provided notice of these issues by numerous complaints filed against them,
6 including the instant Complaint, and by other means.

7 1925. As a direct and proximate result of Defendants’ breach of the warranties of
8 merchantability, Plaintiffs and the Class have been damaged in an amount to be proven at trial.

9 **COUNT CCXI**

10 **Breach of Contract/Common Law Warranty**
11 **(Based on Utah Law)**

12 1926. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set
13 forth herein.

14 1927. To the extent Defendants’ limited remedies are deemed not to be warranties under
15 the Utah Code, Plaintiffs, individually and on behalf of the other Class members, plead in the
16 alternative under common law warranty and contract law. Defendants limited the remedies
17 available to Plaintiffs and the other Class members to repairs and adjustments needed to correct
18 defects in materials or workmanship of any part supplied by Defendants, and/or warranted the
19 quality or nature of those services to Plaintiffs and the other Class members.

20 1928. Defendants breached this warranty or contract obligation by failing to repair the
21 Class Vehicles, or to replace them.

22 1929. As a direct and proximate result of Defendants’ breach of contract or common
23 law warranty, Plaintiffs and the other Class members have been damaged in an amount to be
24 proven at trial, which shall include, but is not limited to, all compensatory damages, incidental
25 and consequential damages, and other damages allowed by law.

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Claims Brought on Behalf of the Vermont Class

COUNT CCXII

Violation of Vermont Consumer Fraud Act
(Vermont Statutes Annotated title 9, Sections 2451, et seq.)

1930. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

1931. The Vermont Consumer Fraud Act (“VCFA”) makes unlawful “[u]nfair methods of competition in commerce, and unfair or deceptive acts or practices in commerce. . . .” Vt. Stat. Ann. tit. 9, § 2453(a).

1932. Defendants are sellers within the meaning of the VCFA. Vt. Stat. Ann. tit. 9, § 2451(a)(c).

1933. In the course of Defendants’ business, they willfully failed to disclose and actively concealed the dangerous risk of hacking and the lack of adequate fail-safe mechanisms in Defective Vehicles equipped with CAN buses as described above. This was a deceptive act in that Defendants represented that Defective Vehicles have characteristics, uses, benefits, and qualities which they do not have; represented that Defective Vehicles are of a particular standard and quality when they are not; and advertised Defective Vehicles with the intent not to sell them as advertised. Defendants knew or should have known that their conduct violated the VCFA.

1934. Defendants engaged in a deceptive trade practice under the VCFA when they failed to disclose material information concerning the Defendants vehicles which was known to Defendants at the time of the sale. Defendants deliberately withheld the information about the vehicles’ vulnerability to hacking in order to ensure that consumers would purchase their vehicles and to induce the consumer to enter into a transaction.

1935. The information withheld was material in that it was information that was important to consumers and likely to affect their choice of, or conduct regarding, the purchase of their cars. Defendants’ withholding of this information was likely to mislead consumers acting reasonably under the circumstances. The susceptibility of the Vehicles to hacking and their lack of a fail-safe mechanism were material to Plaintiffs and the Class. Had Plaintiffs and the Class

1 known that their Vehicles had these serious safety defects, they would not have purchased their
2 Vehicles.

3 1936. Defendants’ conduct has caused or is to cause a substantial injury that is not
4 reasonably avoided by consumers, and the harm is not outweighed by a countervailing benefit to
5 consumers or competition.

6 1937. Plaintiffs and the Class have suffered injury and damages as a result of
7 Defendants’ false or fraudulent representations and practices in violation of § 2453. Plaintiffs and
8 the Class overpaid for their vehicles and did not receive the benefit of their bargain. The value of
9 their vehicles has diminished now that the safety issues have come to light, and Plaintiffs and the
10 Class own vehicles that are not safe.

11 1938. Plaintiffs are entitled to recover “appropriate equitable relief” and “the amount of
12 [their] damages, or the consideration or the value of the consideration given by [them], reasonable
13 attorney’s fees, and exemplary damages not exceeding three times the value of the consideration
14 given by [them]” pursuant to Vt. Stat. Ann. tit. 9, § 2461(b).

15 **COUNT CCXIII**

16 **Breach of Express Warranty**

17 **(Vermont Statutes Annotated title 9A Section 2-313)**

18 1939. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set
19 forth herein.

20 1940. Defendants are and were at all relevant times merchants with respect to motor
21 vehicles.

22 1941. In their Limited Warranties and in advertisements, brochures, and through other
23 statements in the media, Defendants expressly warranted that they would repair or replace defects
24 in material or workmanship free of charge if they became apparent during the warranty period.
25 For example, the following language appears in all Class Vehicle Warranty booklets:

26 1. Toyota’s warranty

27 *When Warranty Begins*

28 The warranty period begins on the vehicle’s in-service date, which is the first date
the vehicle is either delivered to an ultimate purchaser, leased, or used as a

1 company car or demonstrator.

2 *Repairs Made at No Charge*

3 Repairs and adjustments covered by these warranties are made at no charge for
4 parts and labor.

5 *Basic Warranty*

6 This warranty covers repairs and adjustments needed to correct defects in materials
7 or workmanship of any part supplied by Toyota Coverage is for 36 months or
8 36,000 miles, whichever occurs first

9 2. Ford's warranty

10 *KNOW WHEN YOUR WARRANTY BEGINS*

11 Your Warranty Start Date is the day you take delivery of your new vehicle or the
12 day it is first put into service

13 *QUICK REFERENCE: WARRANTY COVERAGE*

14 . . .

15 Your Bumper to Bumper Coverage lasts for three years - unless you drive more
16 than 36,000 miles before three years elapse.

17 *WHO PAYS FOR WARRANTY REPAIRS?*

18 You will not be charged for repairs covered by any applicable warranty during the
19 stated coverage periods

20 3. GM's warranty

21 *Warranty Period*

22 The warranty period for all coverages begins on the date the vehicle is first
23 delivered or put in use and ends at the expiration of the coverage period.

24 *Bumper-to-Bumper Coverage*

25 The complete vehicle is covered for 4 years or 50,000 miles, whichever comes first
26

27 *No Charge*

28 Warranty repairs, including towing, parts, and labor, will be made at no charge.

Repairs Covered

This warranty covers repairs to correct any vehicle defect related to materials or
workmanship occurring during the warranty period. Needed repairs will be
performed using new or remanufactured parts.

1942. Defendants' Limited Warranties, as well as advertisements, brochures, and other
statements in the media regarding the Class Vehicles, formed the basis of the bargain that was
reached when Plaintiffs and the other Class members purchased or leased their Class Vehicles
equipped with a CAN bus from Defendants.

1 1943. Defendants breached the express warranty to repair and adjust to correct defects
2 in materials and workmanship of any part supplied by Defendants. Defendants have not repaired
3 or adjusted, and have been unable to repair or adjust, the Class Vehicles' materials and
4 workmanship defects.

5 1944. In addition to these Limited Warranties, Defendants otherwise expressly
6 warranted several attributes, characteristics, and qualities of the CAN bus.

7 1945. These warranties are only a sampling of the numerous warranties that Defendants
8 made relating to safety, reliability, and operation. Generally these express warranties promise
9 heightened, superior, and state-of-the-art safety, reliability, and performance standards, and
10 promote the benefits of the CAN bus. These warranties were made, *inter alia*, in advertisements,
11 on Defendants' websites, and in uniform statements provided by Defendants to be made by
12 salespeople, or made publicly by Defendants' executives or by other authorized representatives.
13 These affirmations and promises were part of the basis of the bargain between the parties.

14 1946. These additional warranties were also breached because the Class Vehicles were
15 not fully operational, safe, or reliable (and remained so even after the problems were
16 acknowledged), nor did they comply with the warranties expressly made to purchasers or lessees.
17 Defendants did not provide at the time of sale, and have not provided since then, Class Vehicles
18 conforming to these express warranties.

19 1947. Furthermore, the limited warranty of repair and/or adjustments to defective parts,
20 fails in its essential purpose because the contractual remedy is insufficient to make Plaintiffs and
21 the other Class members whole and because Defendants have failed and/or have refused to
22 adequately provide the promised remedies within a reasonable time.

23 1948. Accordingly, recovery by Plaintiffs and the other Class members is not limited to
24 the limited warranty of repair or adjustments to parts defective in materials or workmanship, and
25 Plaintiffs, individually and on behalf of the other Class members, seek all remedies as allowed by
26 law.

27 1949. Also, as alleged in more detail herein, at the time that Defendants warranted and
28 sold the Class Vehicles they knew that the Class Vehicles did not conform to the warranties and

1 were inherently defective, and Defendants wrongfully and fraudulently misrepresented and/or
2 concealed material facts regarding their Class Vehicles. Plaintiffs and the other Class members
3 were therefore induced to purchase or lease the Class Vehicles under false and/or fraudulent
4 pretenses.

5 1950. Moreover, many of the injuries flowing from the Class Vehicles cannot be
6 resolved through the limited remedy of “replacement or adjustments,” as many incidental and
7 consequential damages have already been suffered due to Defendants’ fraudulent conduct as
8 alleged herein, and due to their failure and/or continued failure to provide such limited remedy
9 within a reasonable time, and any limitation on Plaintiffs’ and the other Class members’ remedies
10 would be insufficient to make Plaintiffs and the other Class members whole.

11 1951. Finally, due to the Defendants’ breach of warranties as set forth herein, Plaintiffs
12 and the Class assert as an additional and/or alternative remedy, as set forth in Vt. Stat. Ann. tit. 9,
13 § 2-608, for revocation of acceptance of the goods, and for a return to Plaintiffs and to the Class
14 of the purchase price of all vehicles currently owned.

15 1952. Defendants were provided notice of these issues by the instant Complaint, and by
16 other means before or within a reasonable amount of time after the allegations of Class Vehicle
17 defects became public.

18 1953. As a direct and proximate result of Defendants’ breach of express warranties,
19 Plaintiffs and the other Class members have been damaged in an amount to be determined at trial.

20 **COUNT CCXIV**

21 **Breach of Implied Warranty of Merchantability**
22 **(Vermont Statutes Annotated title 9A Section 2-314)**

23 1954. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set
24 forth herein.

25 1955. Defendants are and were at all relevant times merchants with respect to motor
26 vehicles.

27 1956. A warranty that the Class Vehicles were in merchantable condition is implied by
28 law in the instant transactions.

1 1957. These Class Vehicles, when sold and at all times thereafter, were not in
 2 merchantable condition and are not fit for the ordinary purpose for which cars are used.
 3 Defendants were provided notice of these issues by numerous complaints filed against them,
 4 including the instant Complaint, and by other means.

5 1958. As a direct and proximate result of Defendants' breach of the warranties of
 6 merchantability, Plaintiffs and the Class have been damaged in an amount to be proven at trial.

7 **COUNT CCXV**

8 **Breach of Contract**
 9 **(Based on Vermont Law)**

10 1959. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set
 11 forth herein.

12 1960. To the extent Defendants' limited remedies are deemed not to be warranties under
 13 Vermont's Commercial Code, Plaintiffs, individually and on behalf of the other Class members,
 14 plead in the alternative under common law contract law. Defendants limited the remedies
 15 available to Plaintiffs and the other Class members to repairs and adjustments needed to correct
 16 defects in materials or workmanship of any part supplied by Defendants, and/or warranted the
 17 quality or nature of those services to Plaintiffs and the other Class members.

18 1961. Defendants breached this warranty or contract obligation by failing to repair the
 19 Class Vehicles, or to replace them.

20 1962. As a direct and proximate result of Defendants' breach of contract or common
 21 law warranty, Plaintiffs and the other Class members have been damaged in an amount to be
 22 proven at trial, which shall include, but is not limited to, all compensatory damages, incidental
 23 and consequential damages, and other damages allowed by law.

24 **Claims Brought on Behalf of the Virginia Class**

25 **COUNT CCXVI**

26 **Violations of the Virginia Consumer Protection Act**
 27 **(Virginia Code Annotated Sections 59.1-196, et seq.)**

28 1963. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set

1 forth herein.

2 1964. The Virginia Consumer Protection prohibits “(5) misrepresenting that goods or
3 services have certain quantities, characteristics, ingredients, uses, or benefits; (6) misrepresenting
4 that goods or services are of a particular standard, quality, grade, style, or model; . . .
5 (8) advertising goods or services with intent not to sell them as advertised . . . ; [and] (14) using
6 any other deception, fraud, false pretense, false promise, or misrepresentation in connection with
7 a consumer transaction[.]” Va. Code Ann. § 59.1-200(A).

8 1965. Defendants are “persons” as defined by Va. Code Ann. § 59.1-198. The
9 transactions between Plaintiffs and the other Class members on one hand and Defendants on the
10 other, leading to the purchase or lease of the Class Vehicles by Plaintiffs and the other Class
11 members, are “consumer transactions” as defined by Va. Code Ann. § 59.1-198, because the
12 Class Vehicles were purchased or leased primarily for personal, family or household purposes.

13 1966. In the course of Defendants’ business, they willfully failed to disclose and
14 actively concealed the dangerous risk of hacking in Class Vehicles as described above.
15 Accordingly, Defendants engaged in acts and practices violating Va. Code Ann. § 59.1-200(A),
16 including representing that Class Vehicles have characteristics, uses, benefits, and qualities which
17 they do not have; representing that Class Vehicles are of a particular standard and quality when
18 they are not; advertising Class Vehicles with the intent not to sell them as advertised; and
19 otherwise engaging in conduct likely to deceive.

20 1967. Defendants’ actions as set forth above occurred in the conduct of trade or
21 commerce.

22 1968. Defendants’ conduct proximately caused injuries to Plaintiffs and the other Class
23 members.

24 1969. Plaintiffs and the other Class members were injured as a result of Defendants’
25 conduct in that Plaintiffs and the other Class members overpaid for their Class Vehicles and did
26 not receive the benefit of their bargain, and their Class Vehicles have suffered a diminution in
27 value. These injuries are the direct and natural consequence of Defendants’ misrepresentations
28 and omissions.

1 1970. Defendants actively and willfully concealed and/or suppressed the material facts
 2 regarding the defective and unreasonably dangerous nature of the CAN bus and the Class
 3 Vehicles, in whole or in part, with the intent to deceive and mislead Plaintiffs and the other Class
 4 members and to induce Plaintiffs and the other Class members to purchase or lease Class Vehicles
 5 at a higher price, which did not match the Class Vehicles' true value. Plaintiffs and the other
 6 Class members therefore seek treble damages.

7 **COUNT CCXVII**

8 **Breach of Express Warranty**
 9 **(Virginia Code Annotated Section 8.2-313)**

10 1971. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set
 11 forth herein.

12 1972. Defendants are and were at all relevant times merchants with respect to motor
 13 vehicles.

14 1973. In their Limited Warranties and in advertisements, brochures, and through other
 15 statements in the media, Defendants expressly warranted that they would repair or replace defects
 16 in material or workmanship free of charge if they became apparent during the warranty period.
 17 For example, the following language appears in all Class Vehicle Warranty booklets:

18 1. Toyota's warranty

19 *When Warranty Begins*

20 The warranty period begins on the vehicle's in-service date, which is the first date
 21 the vehicle is either delivered to an ultimate purchaser, leased, or used as a
 22 company car or demonstrator.

23 *Repairs Made at No Charge*

24 Repairs and adjustments covered by these warranties are made at no charge for
 25 parts and labor.

26 *Basic Warranty*

27 This warranty covers repairs and adjustments needed to correct defects in materials
 28 or workmanship of any part supplied by Toyota Coverage is for 36 months or
 36,000 miles, whichever occurs first

2. Ford's warranty

KNOW WHEN YOUR WARRANTY BEGINS

Your Warranty Start Date is the day you take delivery of your new vehicle or the

1 day it is first put into service

2 *QUICK REFERENCE: WARRANTY COVERAGE*

3 . . .

4 Your Bumper to Bumper Coverage lasts for three years - unless you drive more
5 than 36,000 miles before three years elapse.

6 *WHO PAYS FOR WARRANTY REPAIRS?*

7 You will not be charged for repairs covered by any applicable warranty during the
8 stated coverage periods

9 3. GM's warranty

10 *Warranty Period*

11 The warranty period for all coverages begins on the date the vehicle is first
12 delivered or put in use and ends at the expiration of the coverage period.

13 *Bumper-to-Bumper Coverage*

14 The complete vehicle is covered for 4 years or 50,000 miles, whichever comes first
15

16 *No Charge*

17 Warranty repairs, including towing, parts, and labor, will be made at no charge.

18 *Repairs Covered*

19 This warranty covers repairs to correct any vehicle defect related to materials or
20 workmanship occurring during the warranty period. Needed repairs will be
21 performed using new or remanufactured parts.

22 1974. Defendants' Limited Warranties, as well as advertisements, brochures, and other
23 statements in the media regarding the Class Vehicles, formed the basis of the bargain that was
24 reached when Plaintiffs and the other Class members purchased or leased their Class Vehicles
25 equipped with a CAN bus from Defendants.

26 1975. Defendants breached the express warranty to repair and adjust to correct defects
27 in materials and workmanship of any part supplied by Defendants. Defendants have not repaired
28 or adjusted, and have been unable to repair or adjust, the Class Vehicles' materials and
workmanship defects.

1976. In addition to these Limited Warranties, Defendants otherwise expressly
warranted several attributes, characteristics, and qualities of the CAN bus.

1977. These warranties are only a sampling of the numerous warranties that Defendants
made relating to safety, reliability, and operation. Generally these express warranties promise

1 heightened, superior, and state-of-the-art safety, reliability, and performance standards, and
2 promote the benefits of the CAN bus. These warranties were made, *inter alia*, in advertisements,
3 on Defendants' websites, and in uniform statements provided by Defendants to be made by
4 salespeople, or made publicly by Defendants' executives or by other authorized representatives.
5 These affirmations and promises were part of the basis of the bargain between the parties.

6 1978. These additional warranties were also breached because the Class Vehicles were
7 not fully operational, safe, or reliable (and remained so even after the problems were
8 acknowledged), nor did they comply with the warranties expressly made to purchasers or lessees.
9 Defendants did not provide at the time of sale, and have not provided since then, Class Vehicles
10 conforming to these express warranties.

11 1979. Furthermore, the limited warranty of repair and/or adjustments to defective parts,
12 fails in its essential purpose because the contractual remedy is insufficient to make Plaintiffs and
13 the other Class members whole and because Defendants have failed and/or have refused to
14 adequately provide the promised remedies within a reasonable time.

15 1980. Accordingly, recovery by Plaintiffs and the other Class members is not limited to
16 the limited warranty of repair or adjustments to parts defective in materials or workmanship, and
17 Plaintiffs, individually and on behalf of the other Class members, seek all remedies as allowed by
18 law.

19 1981. Also, as alleged in more detail herein, at the time that Defendants warranted and
20 sold the Class Vehicles they knew that the Class Vehicles did not conform to the warranties and
21 were inherently defective, and Defendants wrongfully and fraudulently misrepresented and/or
22 concealed material facts regarding their Class Vehicles. Plaintiffs and the other Class members
23 were therefore induced to purchase or lease the Class Vehicles under false and/or fraudulent
24 pretenses.

25 1982. Moreover, many of the injuries flowing from the Class Vehicles cannot be
26 resolved through the limited remedy of "replacement or adjustments," as many incidental and
27 consequential damages have already been suffered due to Defendants' fraudulent conduct as
28 alleged herein, and due to their failure and/or continued failure to provide such limited remedy

1 within a reasonable time, and any limitation on Plaintiffs' and the other Class members' remedies
2 would be insufficient to make Plaintiffs and the other Class members whole.

3 1983. Finally, due to Defendants' breach of warranties as set forth herein, Plaintiffs and
4 the other Class members assert as an additional and/or alternative remedy, as set forth in Va.
5 Code Ann. § 8.2-608, for a revocation of acceptance of the goods, and for a return to Plaintiffs
6 and to the other Class members of the purchase price of all Class Vehicles currently owned for
7 such other incidental and consequential damages as allowed under Va. Code Ann. §§ 8.2-711 and
8 8.2-608.

9 1984. Defendants were provided notice of these issues by the instant Complaint, and by
10 other means before or within a reasonable amount of time after the allegations of Class Vehicle
11 defects became public.

12 1985. As a direct and proximate result of Defendants' breach of express warranties,
13 Plaintiffs and the other Class members have been damaged in an amount to be determined at trial.

14 **COUNT CCXVIII**

15 **Breach of Implied Warranty of Merchantability** 16 **(Virginia Code Annotated Section 8.2-314)**

17 1986. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set
18 forth herein.

19 1987. Defendants are and were at all relevant times merchants with respect to motor
20 vehicles.

21 1988. A warranty that the Class Vehicles were in merchantable condition is implied by
22 law in the instant transactions.

23 1989. These Class Vehicles, when sold and at all times thereafter, were not in
24 merchantable condition and are not fit for the ordinary purpose for which cars are used.
25 Defendants were provided notice of these issues by numerous complaints filed against them,
26 including the instant Complaint, and by other means.

27 1990. As a direct and proximate result of Defendants' breach of the warranties of
28 merchantability, Plaintiffs and the Class have been damaged in an amount to be proven at trial.

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COUNT CCXIX

**Breach of Contract/Common Law Warranty
(Based on Virginia Law)**

1991. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

1992. To the extent Defendants’ limited remedies are deemed not to be warranties under Virginia’s Commercial Code, Plaintiffs, individually and on behalf of the other Class members, plead in the alternative under common law warranty and contract law. Defendants limited the remedies available to Plaintiffs and the other Class members to repairs and adjustments needed to correct defects in materials or workmanship of any part supplied by Defendants, and/or warranted the quality or nature of those services to Plaintiffs and the other Class members.

1993. Defendants breached this warranty or contract obligation by failing to repair the Class Vehicles, or to replace them.

1994. As a direct and proximate result of Defendants’ breach of contract or common law warranty, Plaintiffs and the other Class members have been damaged in an amount to be proven at trial, which shall include, but is not limited to, all compensatory damages, incidental and consequential damages, and other damages allowed by law.

COUNT CCXX

**Fraudulent Concealment
(Based on Virginia Law)**

1995. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

1996. Defendants intentionally concealed the above-described material safety and functionality information, or acted with reckless disregard for the truth, and denied Plaintiffs and the other Class members information that is highly relevant to their purchasing decision.

1997. Defendants further affirmatively misrepresented to Plaintiffs in advertising and other forms of communication, including standard and uniform material provided with each car, that the Class Vehicles they was selling were new, had no significant defects, and would perform

1 and operate properly when driven in normal usage.

2 1998. Defendants knew these representations were false when made.

3 1999. The Class Vehicles purchased or leased by Plaintiffs and the other Class members
4 were, in fact, defective, unsafe, and unreliable because the Class Vehicles contained faulty and
5 defective CAN buses, as alleged herein.

6 2000. Defendants had a duty to disclose that these Class Vehicles were defective,
7 unsafe, and unreliable in that certain crucial safety functions of the Class Vehicles would be
8 rendered inoperative due to faulty and defective CAN buses, because Plaintiffs and the other
9 Class members relied on Defendants' material representations that the Class Vehicles they were
10 purchasing were safe and free from defects.

11 2001. The aforementioned concealment was material because if it had been disclosed
12 Plaintiffs and the other Class members would not have bought or leased the Class Vehicles, or
13 would not have bought or leased those Vehicles at the prices they paid.

14 2002. The aforementioned representations were material because they were facts that
15 would typically be relied on by a person purchasing or leasing a new motor vehicle. Defendants
16 knew or recklessly disregarded that their representations were false because they knew the CAN
17 buses were susceptible to hacking. Defendants intentionally made the false statements in order to
18 sell Class Vehicles.

19 2003. Plaintiffs and the other Class members relied on Defendants' reputations – along
20 with Defendants' failure to disclose the faulty and defective nature of the CAN bus and
21 Defendants' affirmative assurances that their Class Vehicles were safe and reliable, and other
22 similar false statements – in purchasing or leasing Defendants' Class Vehicles.

23 2004. As a result of their reliance, Plaintiffs and the other Class members have been
24 injured in an amount to be proven at trial, including, but not limited to, their lost benefit of the
25 bargain and overpayment at the time of purchase or lease and/or the diminished value of their
26 Class Vehicles.

27 2005. Defendants' conduct was knowing, intentional, with malice, demonstrated a
28 complete lack of care, and was in reckless disregard for the rights of Plaintiffs and the other Class

1 members.

2 2006. Plaintiffs and the other Class members are therefore entitled to an award of
3 punitive damages.

4 **Claims Brought on Behalf of the Washington Class**

5 **COUNT CCXXI**

6 **Violation of the Consumer Protection Act**
7 **(Revised Code of Washington Annotated Sections 19.86.010, et seq.)**

8 2007. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set
9 forth herein.

10 2008. The conduct of Defendants as set forth herein constitutes unfair or deceptive acts
11 or practices, including, but not limited to, Defendants’ manufacture and sale of vehicles with a
12 sudden acceleration defect that lack brake-override or other effective fail-safe mechanisms, which
13 Defendants failed to adequately investigate, disclose and remedy, and their misrepresentations
14 and omissions regarding the safety and reliability of their vehicles.

15 2009. Defendants’ actions as set forth above occurred in the conduct of trade or
16 commerce.

17 2010. Defendants’ actions impact the public interest because Plaintiffs were injured in
18 exactly the same way as millions of others purchasing and/or leasing Defendants vehicles as a
19 result of Defendants’ generalized course of deception. All of the wrongful conduct alleged herein
20 occurred, and continues to occur, in the conduct of Defendants’ business.

21 2011. Plaintiffs and the Class were injured as a result of Defendants’ conduct. Plaintiffs
22 overpaid for their Defective Vehicles and did not receive the benefit of their bargain, and their
23 vehicles have suffered a diminution in value.

24 2012. Defendants’ conduct proximately caused the injuries to Plaintiffs and the Class.

25 2013. Defendants are liable to Plaintiffs and the Class for damages in amounts to be
26 proven at trial, including attorneys’ fees, costs, and treble damages.

27 2014. Pursuant to Wash. Rev. Code Ann. § 19.86.095, Plaintiffs will serve the
28 Washington Attorney General with a copy of this complaint as Plaintiffs seek injunctive relief.

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COUNT CCXXII

**Breach of Express Warranty
(Revised Code of Washington Section 62A.2-313)**

2015. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

2016. Defendants are and were at all relevant times merchants with respect to motor vehicles.

2017. In their Limited Warranties and in advertisements, brochures, and through other statements in the media, Defendants expressly warranted that they would repair or replace defects in material or workmanship free of charge if they became apparent during the warranty period.

For example, the following language appears in all Class Vehicle Warranty booklets:

1. Toyota’s warranty

When Warranty Begins

The warranty period begins on the vehicle’s in-service date, which is the first date the vehicle is either delivered to an ultimate purchaser, leased, or used as a company car or demonstrator.

Repairs Made at No Charge

Repairs and adjustments covered by these warranties are made at no charge for parts and labor.

Basic Warranty

This warranty covers repairs and adjustments needed to correct defects in materials or workmanship of any part supplied by Toyota Coverage is for 36 months or 36,000 miles, whichever occurs first

2. Ford’s warranty

KNOW WHEN YOUR WARRANTY BEGINS

Your Warranty Start Date is the day you take delivery of your new vehicle or the day it is first put into service

QUICK REFERENCE: WARRANTY COVERAGE

. . .

Your Bumper to Bumper Coverage lasts for three years - unless you drive more than 36,000 miles before three years elapse.

WHO PAYS FOR WARRANTY REPAIRS?

You will not be charged for repairs covered by any applicable warranty during the stated coverage periods

1 3. GM’s warranty

2 *Warranty Period*

3 The warranty period for all coverages begins on the date the vehicle is first
4 delivered or put in use and ends at the expiration of the coverage period.

5 *Bumper-to-Bumper Coverage*

6 The complete vehicle is covered for 4 years or 50,000 miles, whichever comes first
7

8 *No Charge*

9 Warranty repairs, including towing, parts, and labor, will be made at no charge.

10 *Repairs Covered*

11 This warranty covers repairs to correct any vehicle defect related to materials or
12 workmanship occurring during the warranty period. Needed repairs will be
13 performed using new or remanufactured parts.

14 2018. Defendants’ Limited Warranties, as well as advertisements, brochures, and other
15 statements in the media regarding the Class Vehicles, formed the basis of the bargain that was
16 reached when Plaintiffs and the other Class members purchased or leased their Class Vehicles
17 equipped with a CAN bus from Defendants.

18 2019. Defendants breached the express warranty to repair and adjust to correct defects
19 in materials and workmanship of any part supplied by Defendants. Defendants have not repaired
20 or adjusted, and have been unable to repair or adjust, the Class Vehicles’ materials and
21 workmanship defects.

22 2020. In addition to these Limited Warranties, Defendants otherwise expressly
23 warranted several attributes, characteristics, and qualities of the CAN bus.

24 2021. These warranties are only a sampling of the numerous warranties that Defendants
25 made relating to safety, reliability, and operation. Generally these express warranties promise
26 heightened, superior, and state-of-the-art safety, reliability, and performance standards, and
27 promote the benefits of the CAN bus. These warranties were made, *inter alia*, in advertisements,
28 on Defendants’ websites, and in uniform statements provided by Defendants to be made by
29 salespeople, or made publicly by Defendants’ executives or by other authorized representatives.
30 These affirmations and promises were part of the basis of the bargain between the parties.

31 2022. These additional warranties were also breached because the Class Vehicles were

1 not fully operational, safe, or reliable (and remained so even after the problems were
2 acknowledged), nor did they comply with the warranties expressly made to purchasers or lessees.
3 Defendants did not provide at the time of sale, and have not provided since then, Class Vehicles
4 conforming to these express warranties.

5 2023. Furthermore, the limited warranty of repair and/or adjustments to defective parts,
6 fails in its essential purpose because the contractual remedy is insufficient to make Plaintiffs and
7 the other Class members whole and because Defendants have failed and/or have refused to
8 adequately provide the promised remedies within a reasonable time.

9 2024. Accordingly, recovery by Plaintiffs and the other Class members is not limited to
10 the limited warranty of repair or adjustments to parts defective in materials or workmanship, and
11 Plaintiffs, individually and on behalf of the other Class members, seek all remedies as allowed by
12 law.

13 2025. Also, as alleged in more detail herein, at the time that Defendants warranted and
14 sold the Class Vehicles they knew that the Class Vehicles did not conform to the warranties and
15 were inherently defective, and Defendants wrongfully and fraudulently misrepresented and/or
16 concealed material facts regarding their Class Vehicles. Plaintiffs and the other Class members
17 were therefore induced to purchase or lease the Class Vehicles under false and/or fraudulent
18 pretenses.

19 2026. Moreover, many of the injuries flowing from the Class Vehicles cannot be
20 resolved through the limited remedy of “replacement or adjustments,” as many incidental and
21 consequential damages have already been suffered due to Defendants’ fraudulent conduct as
22 alleged herein, and due to their failure and/or continued failure to provide such limited remedy
23 within a reasonable time, and any limitation on Plaintiffs’ and the other Class members’ remedies
24 would be insufficient to make Plaintiffs and the other Class members whole.

25 2027. Finally, due to the Defendants’ breach of warranties as set forth herein, Plaintiffs
26 and the Class assert as an additional and/or alternative remedy, as set forth in Rev. Code Wash.
27 § 62A.2-608, for a revocation of acceptance of the goods, and for a return to Plaintiffs and to the
28 Class of the purchase price of all vehicles currently owned.

1 2028. Defendants were provided notice of these issues by the instant Complaint, and by
2 other means before or within a reasonable amount of time after the allegations of Class Vehicle
3 defects became public.

4 2029. As a direct and proximate result of Defendants’ breach of express warranties,
5 Plaintiffs and the other Class members have been damaged in an amount to be determined at trial.

6 **COUNT CCXXIII**

7 **Breach of the Implied Warranty of Merchantability**

8 **(Revised Code of Washington Section 62A.2-614)**

9 2030. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set
10 forth herein.

11 2031. Defendants are and were at all relevant times merchants with respect to motor
12 vehicles.

13 2032. A warranty that the Class Vehicles were in merchantable condition is implied by
14 law in the instant transactions.

15 2033. These Class Vehicles, when sold and at all times thereafter, were not in
16 merchantable condition and are not fit for the ordinary purpose for which cars are used.
17 Defendants were provided notice of these issues by numerous complaints filed against them,
18 including the instant Complaint, and by other means.

19 2034. Privity is not required in this case because Plaintiffs and the Class are intended
20 third-party beneficiaries of contracts between Defendants and their dealers; specifically, they are
21 the intended beneficiaries of Defendants’ implied warranties. The dealers were not intended to be
22 the ultimate consumers of the Defective Vehicles and have no rights under the warranty
23 agreements provided with the Defective Vehicles; the warranty agreements were designed for and
24 intended to benefit the ultimate consumers only.

25 2035. As a direct and proximate result of Defendants’ breach of the warranties of
26 merchantability, Plaintiffs and the Class have been damaged in an amount to be proven at trial.

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COUNT CCXXIV

**Breach of Contract/Common Law Warranty
(Based on Washington Law)**

2036. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

2037. To the extent Defendants’ limited remedies are deemed not to be warranties under Washington’s Commercial Code, Plaintiffs, individually and on behalf of the other Class members, plead in the alternative under common law warranty and contract law. Defendants limited the remedies available to Plaintiffs and the other Class members to repairs and adjustments needed to correct defects in materials or workmanship of any part supplied by Defendants, and/or warranted the quality or nature of those services to Plaintiffs and the other Class members.

2038. Defendants breached this warranty or contract obligation by failing to repair the Class Vehicles, or to replace them.

2039. As a direct and proximate result of Defendants’ breach of contract or common law warranty, Plaintiffs and the other Class members have been damaged in an amount to be proven at trial, which shall include, but is not limited to, all compensatory damages, incidental and consequential damages, and other damages allowed by law.

COUNT CCXXV

**Fraudulent Concealment
(Based on Washington Law)**

2040. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

2041. Defendants intentionally concealed the above-described material safety and functionality information, or acted with reckless disregard for the truth, and denied Plaintiffs and the other Class members information that is highly relevant to their purchasing decision.

2042. Defendants further affirmatively misrepresented to Plaintiffs in advertising and other forms of communication, including standard and uniform material provided with each car,

1 that the Class Vehicles they was selling were new, had no significant defects, and would perform
2 and operate properly when driven in normal usage.

3 2043. Defendants knew these representations were false when made.

4 2044. The Class Vehicles purchased or leased by Plaintiffs and the other Class members
5 were, in fact, defective, unsafe, and unreliable because the Class Vehicles contained faulty and
6 defective CAN buses, as alleged herein.

7 2045. Defendants had a duty to disclose that these Class Vehicles were defective,
8 unsafe, and unreliable in that certain crucial safety functions of the Class Vehicles would be
9 rendered inoperative due to faulty and defective CAN buses, because Plaintiffs and the other
10 Class members relied on Defendants’ material representations that the Class Vehicles they were
11 purchasing were safe and free from defects.

12 2046. The aforementioned concealment was material because if it had been disclosed
13 Plaintiffs and the other Class members would not have bought or leased the Class Vehicles, or
14 would not have bought or leased those Vehicles at the prices they paid.

15 2047. The aforementioned representations were material because they were facts that
16 would typically be relied on by a person purchasing or leasing a new motor vehicle. Defendants
17 knew or recklessly disregarded that their representations were false because they knew the CAN
18 buses were susceptible to hacking. Defendants intentionally made the false statements in order to
19 sell Class Vehicles.

20 2048. Plaintiffs and the other Class members relied on Defendants’ reputations – along
21 with Defendants’ failure to disclose the faulty and defective nature of the CAN bus and
22 Defendants’ affirmative assurances that their Class Vehicles were safe and reliable, and other
23 similar false statements – in purchasing or leasing Defendants’ Class Vehicles.

24 2049. As a result of their reliance, Plaintiffs and the other Class members have been
25 injured in an amount to be proven at trial, including, but not limited to, their lost benefit of the
26 bargain and overpayment at the time of purchase or lease and/or the diminished value of their
27 Class Vehicles.

28 2050. Defendants’ conduct was knowing, intentional, with malice, demonstrated a

1 complete lack of care, and was in reckless disregard for the rights of Plaintiffs and the other Class
2 members.

3 2051. Plaintiffs and the other Class members are therefore entitled to an award of
4 punitive damages.

5 **Claims Brought on Behalf of the West Virginia Class**

6 **COUNT CCXXVI**

7 **Violations of the Consumer Credit and Protection Act**

8 **(West Virginia Code Sections 46A-1-101, et seq.)**

9 2052. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set
10 forth herein.

11 2053. Defendants are “persons” under W.Va. Code § 46A-1-102(31).

12 2054. Plaintiffs are “consumers,” as defined by W.Va. Code §§ and 46A-1-102(12) and
13 46A-6-102(2), who purchased or leased one or more Defective Vehicles.

14 2055. Defendants both participated in unfair or deceptive acts or practices that violated
15 the Consumer Credit and Protection Act (“CCPA”), W.Va. Code §§ 46A-1-101, et seq. as
16 described above and below. Defendants each are directly liable for these violations of law. TMC
17 also is liable for TMS’s violations of the CCPA because TMS acts as TMC’s general agent in the
18 United States for purposes of sales and marketing.

19 2056. By failing to disclose and actively concealing the dangerous risk of hacking and
20 the lack of adequate fail-safe mechanisms in Defective Vehicles equipped with CAN buses,
21 Defendants engaged in deceptive business practices prohibited by the CCPA, W.Va. Code § 46A-
22 1-101, et seq., including (1) representing that Defective Vehicles have characteristics, uses,
23 benefits, and qualities which they do not have, (2) representing that Defective Vehicles are of a
24 particular standard, quality, and grade when they are not, (3) advertising Defective Vehicles with
25 the intent not to sell them as advertised, (4) representing that a transaction involving Defective
26 Vehicles confers or involves rights, remedies, and obligations which it does not, and
27 (5) representing that the subject of a transaction involving Defective Vehicles has been supplied
28 in accordance with a previous representation when it has not.

1 2057. As alleged above, Defendants made numerous material statements about the
2 safety and reliability of Defective Vehicles that were either false or misleading.

3 2058. Each of these statements contributed to the deceptive context of TMC’s and
4 TMS’s unlawful advertising and representations as a whole.

5 2059. Defendants knew that the CAN buses in Defective Vehicles were defectively
6 designed or manufactured, were susceptible to hacking, and were not suitable for their intended
7 use. Defendants nevertheless failed to warn Plaintiffs about these inherent dangers despite having
8 a duty to do so.

9 2060. Defendants each owed Plaintiffs a duty to disclose the defective nature

10 2061. of Defective Vehicles, including the dangerous risk of hacking and the lack of
11 adequate fail-safe mechanisms, because they:

12 a) Possessed exclusive knowledge of the defects rendering Defective
13 Vehicles inherently more dangerous and unreliable than similar vehicles;

14 b) Intentionally concealed the hazardous situation with Defective Vehicles
15 through their deceptive marketing campaign that they designed to hide the life-threatening
16 problems from Plaintiffs; and/or

17 c) Made incomplete representations about the safety and reliability of
18 Defective Vehicles while purposefully withholding material facts from Plaintiffs that contradicted
19 these representations.

20 2062. Defective Vehicles equipped with CAN buses pose an unreasonable risk of death
21 or serious bodily injury to Plaintiffs, passengers, other motorists, pedestrians, and the public at
22 large, because they are susceptible to hacking.

23 2063. Whether or not a vehicle is susceptible to hacking and can be commandeered by a
24 third party are facts that a reasonable consumer would consider important in selecting a vehicle to
25 purchase or lease. When Plaintiffs bought a Defendants Vehicle for personal, family, or
26 household purposes, they reasonably expected the vehicle was not vulnerable to hacking and was
27 equipped with any necessary fail-safe mechanisms.

28 2064. Defendants’ unfair or deceptive acts or practices were likely to deceive reasonable

1 consumers, including Plaintiffs, about the true safety and reliability of Defective Vehicles.

2 2065. As a result of their violations of the CCPA detailed above, Defendants caused
3 ascertainable loss to Plaintiffs and, if not stopped, will continue to harm Plaintiffs. Plaintiffs
4 currently own or lease, or within the class period have owned or leased, Defective Vehicles that
5 are defective and inherently unsafe. CAN bus defects have caused the value to Defective Vehicles
6 to plummet.

7 2066. Plaintiffs risk irreparable injury as a result of Defendants’ acts and omissions in
8 violation of the CCPA, and these violations present a continuing risk to Plaintiffs as well as to the
9 general public.

10 2067. Plaintiffs will send a notice and demand letter pursuant to W.Va. Code § 46A-1-
11 106(b).

12 2068. Pursuant to W.Va. Code § 46A-1-106, Plaintiffs seek monetary relief against
13 TMS and TMC measured as the greater of (a) actual damages in an amount to be determined at
14 trial and (b) statutory damages in the amount of \$200 per violation of the CCPA for each
15 Plaintiffs and each member of the Class they seek to represent.

16 2069. Plaintiffs also seek punitive damages against Defendants because each carried out
17 despicable conduct with willful and conscious disregard of the rights and safety of others,
18 subjecting Plaintiffs to cruel and unjust hardship as a result. Defendants intentionally and
19 willfully misrepresented the safety and reliability of Defective Vehicles, deceived Plaintiffs on
20 life-or-death matters, and concealed material facts that only they knew, all to avoid the expense
21 and public relations nightmare of correcting a deadly flaw in the Defective Vehicles they
22 repeatedly promised Plaintiffs were safe. Defendants’ unlawful conduct constitutes malice,
23 oppression, and fraud warranting punitive damages.

24 2070. Plaintiffs further seek an order enjoining Defendants’ unfair or deceptive acts or
25 practices, restitution, punitive damages, costs of Court, attorney’s fees under W.Va. Code
26 §§ 46A-5-101, *et seq.*, and any other just and proper relief available under the CCPA.

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COUNT CCXXVII

**Breach of Express Warranty
(West Virginia Code Section 46-2-313)**

2071. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

2072. Defendants are and were at all relevant times sellers of motor vehicles under

2073. West Virginia Code Section 46-2-313, and are also “merchants” as the term is used in W.Va. Code § 46A-6-107.

2074. In their Limited Warranties and in advertisements, brochures, and through other statements in the media, Defendants expressly warranted that they would repair or replace defects in material or workmanship free of charge if they became apparent during the warranty period. For example, the following language appears in all Class Vehicle Warranty booklets:

1. Toyota’s warranty

When Warranty Begins

The warranty period begins on the vehicle’s in-service date, which is the first date the vehicle is either delivered to an ultimate purchaser, leased, or used as a company car or demonstrator.

Repairs Made at No Charge

Repairs and adjustments covered by these warranties are made at no charge for parts and labor.

Basic Warranty

This warranty covers repairs and adjustments needed to correct defects in materials or workmanship of any part supplied by Toyota Coverage is for 36 months or 36,000 miles, whichever occurs first

2. Ford’s warranty

KNOW WHEN YOUR WARRANTY BEGINS

Your Warranty Start Date is the day you take delivery of your new vehicle or the day it is first put into service

QUICK REFERENCE: WARRANTY COVERAGE

. . .

Your Bumper to Bumper Coverage lasts for three years - unless you drive more than 36,000 miles before three years elapse.

WHO PAYS FOR WARRANTY REPAIRS?

1 You will not be charged for repairs covered by any applicable warranty during the
2 stated coverage periods

3 3. GM's warranty

4 *Warranty Period*

5 The warranty period for all coverages begins on the date the vehicle is first
6 delivered or put in use and ends at the expiration of the coverage period.

7 *Bumper-to-Bumper Coverage*

8 The complete vehicle is covered for 4 years or 50,000 miles, whichever comes first
9

10 *No Charge*

11 Warranty repairs, including towing, parts, and labor, will be made at no charge.

12 *Repairs Covered*

13 This warranty covers repairs to correct any vehicle defect related to materials or
14 workmanship occurring during the warranty period. Needed repairs will be
15 performed using new or remanufactured parts.

16 2075. Defendants' Limited Warranties, as well as advertisements, brochures, and other
17 statements in the media regarding the Class Vehicles, formed the basis of the bargain that was
18 reached when Plaintiffs and the other Class members purchased or leased their Class Vehicles
19 equipped with a CAN bus from Defendants.

20 2076. Defendants breached the express warranty to repair and adjust to correct defects
21 in materials and workmanship of any part supplied by Defendants. Defendants have not repaired
22 or adjusted, and have been unable to repair or adjust, the Class Vehicles' materials and
23 workmanship defects.

24 2077. In addition to these Limited Warranties, Defendants otherwise expressly
25 warranted several attributes, characteristics, and qualities of the CAN bus.

26 2078. These warranties are only a sampling of the numerous warranties that Defendants
27 made relating to safety, reliability, and operation. Generally these express warranties promise
28 heightened, superior, and state-of-the-art safety, reliability, and performance standards, and
promote the benefits of the CAN bus. These warranties were made, *inter alia*, in advertisements,
on Defendants' websites, and in uniform statements provided by Defendants to be made by
salespeople, or made publicly by Defendants' executives or by other authorized representatives.

1 These affirmations and promises were part of the basis of the bargain between the parties.

2 2079. These additional warranties were also breached because the Class Vehicles were
3 not fully operational, safe, or reliable (and remained so even after the problems were
4 acknowledged), nor did they comply with the warranties expressly made to purchasers or lessees.
5 Defendants did not provide at the time of sale, and have not provided since then, Class Vehicles
6 conforming to these express warranties.

7 2080. Furthermore, the limited warranty of repair and/or adjustments to defective parts,
8 fails in its essential purpose because the contractual remedy is insufficient to make Plaintiffs and
9 the other Class members whole and because Defendants have failed and/or have refused to
10 adequately provide the promised remedies within a reasonable time.

11 2081. Accordingly, recovery by Plaintiffs and the other Class members is not limited to
12 the limited warranty of repair or adjustments to parts defective in materials or workmanship, and
13 Plaintiffs, individually and on behalf of the other Class members, seek all remedies as allowed by
14 law.

15 2082. Also, as alleged in more detail herein, at the time that Defendants warranted and
16 sold the Class Vehicles they knew that the Class Vehicles did not conform to the warranties and
17 were inherently defective, and Defendants wrongfully and fraudulently misrepresented and/or
18 concealed material facts regarding their Class Vehicles. Plaintiffs and the other Class members
19 were therefore induced to purchase or lease the Class Vehicles under false and/or fraudulent
20 pretenses.

21 2083. Moreover, many of the injuries flowing from the Class Vehicles cannot be
22 resolved through the limited remedy of “replacement or adjustments,” as many incidental and
23 consequential damages have already been suffered due to Defendants’ fraudulent conduct as
24 alleged herein, and due to their failure and/or continued failure to provide such limited remedy
25 within a reasonable time, and any limitation on Plaintiffs’ and the other Class members’ remedies
26 would be insufficient to make Plaintiffs and the other Class members whole.

27 2084. Finally, due to the Defendants’ breach of warranties as set forth herein,

28 2085. Plaintiffs and the Class assert as an additional and/or alternative remedy, as set

1 forth in W.Va. Code § 46A-6A-4, for a revocation of acceptance of the goods, and for a return to
2 Plaintiffs and to the Class of the purchase price of all vehicles currently owned and for such other
3 incidental and consequential damages as allowed under W.Va. Code §§ 46A-6A-1, *et seq.*

4 2086. Defendants were provided notice of these issues by the instant Complaint, and by
5 other means before or within a reasonable amount of time after the allegations of Class Vehicle
6 defects became public.

7 2087. As a direct and proximate result of Defendants’ breach of express warranties,
8 Plaintiffs and the other Class members have been damaged in an amount to be determined at trial.

9 **COUNT CCXXVIII**

10 **Breach of Implied Warranty of Merchantability**
11 **(West Virginia Code Section 46-2-314)**

12 2088. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set
13 forth herein.

14 2089. Defendants are and were at all relevant times sellers of motor vehicles under

15 2090. West Virginia Code Section § 46-2-314, and are also “merchants” as the term is
16 used in W.Va. Code §§ 46A-6-107 and 46-2-314.

17 2091. A warranty that the Class Vehicles were in merchantable condition is implied by
18 law in the instant transactions.

19 2092. These Class Vehicles, when sold and at all times thereafter, were not in
20 merchantable condition and are not fit for the ordinary purpose for which cars are used.
21 Defendants were provided notice of these issues by numerous complaints filed against them,
22 including the instant Complaint, and by other means.

23 2093. Plaintiffs and the Class have had sufficient direct dealings with either the
24 Defendants or their agents (dealerships) to establish privity of contract between Plaintiffs and
25 Defendants. Notwithstanding this, privity is not required in this case for the Plaintiffs pursuant to
26 W.Va. Code § 46A-6-107. Moreover, privity is not required as to any Plaintiff because Plaintiffs
27 and the Class are intended third-party beneficiaries of contracts between Defendants and their
28 dealers; specifically, they are the intended beneficiaries of Defendants’ implied warranties. The

1 dealers were not intended to be the ultimate consumers of the Defective Vehicles and have no
2 rights under the warranty agreements provided with the Defective Vehicles; the warranty
3 agreements were designed for and intended to benefit the ultimate users or owners only. Finally,
4 privity is also not required because Plaintiffs' and Class members' Vehicles are dangerous
5 instrumentalities due to the aforementioned defects and nonconformities.

6 2094. As a direct and proximate result of Defendants' breach of the warranties of
7 merchantability, Plaintiffs and the Class have been damaged in an amount to be proven at trial.

8 **COUNT CCXXIX**

9 **Breach of Contract/Common Law Warranty**
10 **(Based on West Virginia Law)**

11 2095. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set
12 forth herein.

13 2096. To the extent Defendants' limited remedies are deemed not to be warranties under
14 West Virginia's Commercial Code, Plaintiffs, individually and on behalf of the other Class
15 members, plead in the alternative under common law warranty and contract law. Defendants
16 limited the remedies available to Plaintiffs and the other Class members to repairs and
17 adjustments needed to correct defects in materials or workmanship of any part supplied by
18 Defendants, and/or warranted the quality or nature of those services to Plaintiffs and the other
19 Class members.

20 2097. Defendants breached this warranty or contract obligation by failing to repair the
21 Class Vehicles, or to replace them.

22 2098. As a direct and proximate result of Defendants' breach of contract or common
23 law warranty, Plaintiffs and the other Class members have been damaged in an amount to be
24 proven at trial, which shall include, but is not limited to, all compensatory damages, incidental
25 and consequential damages, and other damages allowed by law.

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Claims Brought on Behalf of the Wisconsin Class

COUNT CCXXX

**Violations of the Wisconsin Deceptive Trade Practices Act
(Wisconsin Statute Section 110.18)**

2099. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

2100. Defendants’ above-described acts and omissions constitute false, misleading or deceptive acts or practices under the Wisconsin Deceptive Trade Practices Act § 110.18 (“Wisconsin DTPA”).

2101. By failing to disclose and misrepresenting the risk of hacking and lack of fail-safe mechanisms in Defective Vehicles equipped with CAN buses, Defendants engaged in deceptive business practices prohibited by the Wisconsin DTPA, including (1) representing that Defective Vehicles have characteristics, uses, benefits, and qualities which they do not have, (2) representing that Defective Vehicles are of a particular standard, quality, and grade when they are not, (3) advertising Defective Vehicles with the intent not to sell them as advertised, (4) representing that a transaction involving Defective Vehicles confers or involves rights, remedies, and obligations which it does not, and (5) representing that the subject of a transaction involving Defective Vehicles has been supplied in accordance with a previous representation when it has not.

2102. As alleged above, Defendants made numerous material statements about the safety and reliability of Defective Vehicles that were either false or misleading. Each of these statements contributed to the deceptive context of Defendants’ unlawful advertising and representations as a whole.

2103. Defendants’ unfair or deceptive acts or practices were likely to and did in fact deceive reasonable consumers, including Plaintiffs, about the true safety and reliability of Defective Vehicles.

2104. In purchasing or leasing their vehicles, the Plaintiffs relied on the misrepresentations and/or omissions of Defendants with respect of the safety and reliability of the

1 vehicles. Defendants’ representations turned out not to be true because the vehicles can
2 unexpectedly and dangerously be hacked.

3 2105. Had the Plaintiffs known this they would not have purchased or leased their
4 Defective Vehicles and/or paid as much for them.

5 2106. Plaintiffs and the Class sustained damages as a result of the Defendants’ unlawful
6 acts and are, therefore, entitled to damages and other relief provided for under § 110.18(11)(b)(2)
7 of the Wisconsin DTPA. Because Defendants’ conduct was committed knowingly and/or
8 intentionally, the Plaintiffs and the Class are entitled to treble damages.

9 2107. Plaintiffs and the Class also seek court costs and attorneys’ fees under §
10 110.18(11)(b)(2) of the Wisconsin DTPA.

11 **COUNT CCXXXI**

12 **Breach of Express Warranty**
13 **(Wisconsin Statutes Section 402.313)**

14 2108. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set
15 forth herein.

16 2109. Defendants are and were at all relevant times merchants with respect to motor
17 vehicles under Wisc. Stat. § 402.104.

18 2110. In their Limited Warranties and in advertisements, brochures, and through other
19 statements in the media, Defendants expressly warranted that they would repair or replace defects
20 in material or workmanship free of charge if they became apparent during the warranty period.
21 For example, the following language appears in all Class Vehicle Warranty booklets:

22 1. Toyota’s warranty

23 *When Warranty Begins*

24 The warranty period begins on the vehicle’s in-service date, which is the first date
25 the vehicle is either delivered to an ultimate purchaser, leased, or used as a
26 company car or demonstrator.

27 *Repairs Made at No Charge*

28 Repairs and adjustments covered by these warranties are made at no charge for
parts and labor.

Basic Warranty

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This warranty covers repairs and adjustments needed to correct defects in materials or workmanship of any part supplied by Toyota Coverage is for 36 months or 36,000 miles, whichever occurs first

2. Ford’s warranty

KNOW WHEN YOUR WARRANTY BEGINS

Your Warranty Start Date is the day you take delivery of your new vehicle or the day it is first put into service

QUICK REFERENCE: WARRANTY COVERAGE

. . .

Your Bumper to Bumper Coverage lasts for three years - unless you drive more than 36,000 miles before three years elapse.

WHO PAYS FOR WARRANTY REPAIRS?

You will not be charged for repairs covered by any applicable warranty during the stated coverage periods

3. GM’s warranty

Warranty Period

The warranty period for all coverages begins on the date the vehicle is first delivered or put in use and ends at the expiration of the coverage period.

Bumper-to-Bumper Coverage

The complete vehicle is covered for 4 years or 50,000 miles, whichever comes first

No Charge

Warranty repairs, including towing, parts, and labor, will be made at no charge.

Repairs Covered

This warranty covers repairs to correct any vehicle defect related to materials or workmanship occurring during the warranty period. Needed repairs will be performed using new or remanufactured parts.

2111. Defendants’ Limited Warranties, as well as advertisements, brochures, and other statements in the media regarding the Class Vehicles, formed the basis of the bargain that was reached when Plaintiffs and the other Class members purchased or leased their Class Vehicles equipped with a CAN bus from Defendants.

2112. Defendants breached the express warranty to repair and adjust to correct defects in materials and workmanship of any part supplied by Defendants. Defendants have not repaired or adjusted, and have been unable to repair or adjust, the Class Vehicles’ materials and workmanship defects.

1 2113. In addition to these Limited Warranties, Defendants otherwise expressly
2 warranted several attributes, characteristics, and qualities of the CAN bus.

3 2114. These warranties are only a sampling of the numerous warranties that Defendants
4 made relating to safety, reliability, and operation. Generally these express warranties promise
5 heightened, superior, and state-of-the-art safety, reliability, and performance standards, and
6 promote the benefits of the CAN bus. These warranties were made, *inter alia*, in advertisements,
7 on Defendants' websites, and in uniform statements provided by Defendants to be made by
8 salespeople, or made publicly by Defendants' executives or by other authorized representatives.
9 These affirmations and promises were part of the basis of the bargain between the parties.

10 2115. These additional warranties were also breached because the Class Vehicles were
11 not fully operational, safe, or reliable (and remained so even after the problems were
12 acknowledged), nor did they comply with the warranties expressly made to purchasers or lessees.
13 Defendants did not provide at the time of sale, and have not provided since then, Class Vehicles
14 conforming to these express warranties.

15 2116. Furthermore, the limited warranty of repair and/or adjustments to defective parts,
16 fails in its essential purpose because the contractual remedy is insufficient to make Plaintiffs and
17 the other Class members whole and because Defendants have failed and/or have refused to
18 adequately provide the promised remedies within a reasonable time.

19 2117. Accordingly, recovery by Plaintiffs and the other Class members is not limited to
20 the limited warranty of repair or adjustments to parts defective in materials or workmanship, and
21 Plaintiffs, individually and on behalf of the other Class members, seek all remedies as allowed by
22 law.

23 2118. Also, as alleged in more detail herein, at the time that Defendants warranted and
24 sold the Class Vehicles they knew that the Class Vehicles did not conform to the warranties and
25 were inherently defective, and Defendants wrongfully and fraudulently misrepresented and/or
26 concealed material facts regarding their Class Vehicles. Plaintiffs and the other Class members
27 were therefore induced to purchase or lease the Class Vehicles under false and/or fraudulent
28 pretenses.

1 2119. Moreover, many of the injuries flowing from the Class Vehicles cannot be
2 resolved through the limited remedy of “replacement or adjustments,” as many incidental and
3 consequential damages have already been suffered due to Defendants’ fraudulent conduct as
4 alleged herein, and due to their failure and/or continued failure to provide such limited remedy
5 within a reasonable time, and any limitation on Plaintiffs’ and the other Class members’ remedies
6 would be insufficient to make Plaintiffs and the other Class members whole.

7 2120. Finally, due to the Defendants’ breach of warranties as set forth herein, Plaintiffs
8 and the Class assert as an additional and/or alternative remedy, as set forth in Wisc. Stat.
9 § 402.608, for a revocation of acceptance of the goods, and for a return to Plaintiffs and to the
10 Class of the purchase price of all vehicles currently owned and for such other incidental and
11 consequential damages as allowed under Wisc. Stat. §§ 402.711 and 402.608.

12 2121. Defendants were provided notice of these issues by the instant Complaint, and by
13 other means before or within a reasonable amount of time after the allegations of Class Vehicle
14 defects became public.

15 2122. As a direct and proximate result of Defendants’ breach of express warranties,
16 Plaintiffs and the other Class members have been damaged in an amount to be determined at trial.

17 **COUNT CCXXXII**

18 **Breach of Contract/Common Law Warranty**

19 **(Based on Wisconsin Law)**

20 2123. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set
21 forth herein.

22 2124. To the extent Defendants’ limited remedies are deemed not to be warranties under
23 the Uniform Commercial Code as adopted in Wisconsin, Plaintiffs, individually and on behalf of
24 the other Class members, plead in the alternative under common law warranty and contract law.
25 Defendants limited the remedies available to Plaintiffs and the other Class members to repairs and
26 adjustments needed to correct defects in materials or workmanship of any part supplied by
27 Defendants, and/or warranted the quality or nature of those services to Plaintiffs and the other
28 Class members.

1 2125. Defendants breached this warranty or contract obligation by failing to repair the
2 Class Vehicles, or to replace them.

3 2126. As a direct and proximate result of Defendants’ breach of contract or common
4 law warranty, Plaintiffs and the other Class members have been damaged in an amount to be
5 proven at trial, which shall include, but is not limited to, all compensatory damages, incidental
6 and consequential damages, and other damages allowed by law.

7 **COUNT CCXXXIII**

8 **Fraudulent Concealment**
9 **(Based on Wisconsin Law)**

10 2127. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set
11 forth herein.

12 2128. Defendants intentionally concealed the above-described material safety and
13 functionality information, or acted with reckless disregard for the truth, and denied Plaintiffs and
14 the other Class members information that is highly relevant to their purchasing decision.

15 2129. Defendants further affirmatively misrepresented to Plaintiffs in advertising and
16 other forms of communication, including standard and uniform material provided with each car,
17 that the Class Vehicles they was selling were new, had no significant defects, and would perform
18 and operate properly when driven in normal usage.

19 2130. Defendants knew these representations were false when made.

20 2131. The Class Vehicles purchased or leased by Plaintiffs and the other Class members
21 were, in fact, defective, unsafe, and unreliable because the Class Vehicles contained faulty and
22 defective CAN buses, as alleged herein.

23 2132. Defendants had a duty to disclose that these Class Vehicles were defective,
24 unsafe, and unreliable in that certain crucial safety functions of the Class Vehicles would be
25 rendered inoperative due to faulty and defective CAN buses, because Plaintiffs and the other
26 Class members relied on Defendants’ material representations that the Class Vehicles they were
27 purchasing were safe and free from defects.

28 2133. The aforementioned concealment was material because if it had been disclosed

1 Plaintiffs and the other Class members would not have bought or leased the Class Vehicles, or
2 would not have bought or leased those Vehicles at the prices they paid.

3 2134. The aforementioned representations were material because they were facts that
4 would typically be relied on by a person purchasing or leasing a new motor vehicle. Defendants
5 knew or recklessly disregarded that their representations were false because they knew the CAN
6 buses were susceptible to hacking. Defendants intentionally made the false statements in order to
7 sell Class Vehicles.

8 2135. Plaintiffs and the other Class members relied on Defendants’ reputations – along
9 with Defendants’ failure to disclose the faulty and defective nature of the CAN bus and
10 Defendants’ affirmative assurances that their Class Vehicles were safe and reliable, and other
11 similar false statements – in purchasing or leasing Defendants’ Class Vehicles.

12 2136. As a result of their reliance, Plaintiffs and the other Class members have been
13 injured in an amount to be proven at trial, including, but not limited to, their lost benefit of the
14 bargain and overpayment at the time of purchase or lease and/or the diminished value of their
15 Class Vehicles.

16 2137. Defendants’ conduct was knowing, intentional, with malice, demonstrated a
17 complete lack of care, and was in reckless disregard for the rights of Plaintiffs and the other Class
18 members.

19 2138. Plaintiffs and the other Class members are therefore entitled to an award of
20 punitive damages.

21 **Claims Brought on Behalf of the Wyoming Class**

22 **COUNT CCXXXIV**

23 **Violation of the Wyoming Consumer Protection Act**
24 **(Wyoming Statutes Sections 45-12-105, et seq.)**

25 2139. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set
26 forth herein.

27 2140. The Wyoming Consumer Protection Act describes that a person engages in a
28 deceptive trade practice under this act when, in the course of his business and in connection with

1 a consumer transaction he knowingly does one or more of the following, including:
 2 “(iii) Represents that merchandise is of a particular standard, grade, style or model, if it is not”;
 3 “(v) Represents that merchandise has been supplied in accordance with a previous representation,
 4 if it has not”; “(viii) Represents that a consumer transaction involves a warranty, a disclaimer
 5 of warranties, particular warranty terms, or other rights, remedies or obligations if the
 6 representation is false”; “(x) Advertises merchandise with intent not to sell it as advertised”; and
 7 “(xv) Engages in unfair or deceptive acts or practices.” Wyo. Stat. § 45-12-105.

8 2141. In the course of Defendants’ business, they willfully failed to disclose and
 9 actively concealed the dangerous risk of hacking and the lack of adequate fail-safe mechanisms in
 10 Defective Vehicles equipped with CAN buses as described above. Accordingly, Defendants
 11 engaged in deceptive trade practices, including representing that Defective Vehicles are of a
 12 particular standard and grade, which they are not; representing that Defective Vehicles have been
 13 supplied with a previous representation when they are not; advertising Defective Vehicles with
 14 the intent not to sell them as advertised; representing that their transaction involves a warranty,
 15 rights, remedies, or obligations that are false; and overall engaging in unfair and deceptive acts or
 16 practices.

17 2142. Defendants knowingly made false representations to consumers with the intent to
 18 induce consumers into purchasing Defendants vehicles. Plaintiffs reasonably relied on false
 19 representations by Defendants and were induced to each purchase a Defendants vehicle, to his/her
 20 detriment. As a result of these unlawful trade practices, Plaintiffs have suffered ascertainable loss.

21 2143. Plaintiffs and the Class suffered ascertainable loss caused by Defendants’ false
 22 representations and failure to disclose material information. Plaintiffs and the Class overpaid for
 23 their vehicles and did not receive the benefit of their bargain. The value of their vehicles has
 24 diminished now that the safety issues have come to light, and Plaintiffs and the Class own
 25 vehicles that are not safe.

26 2144. Defendants are “persons” as required under the statute.

27 2145. Defendants’ actions as set forth above occurred in the course of business and in
 28 connection with a consumer transaction.

1 2146. As required under the Wyoming Consumer Protection Act, a notice letter will be
2 sent on behalf of the Class.

3 **COUNT CCXXXV**

4 **Breach of Express Warranty**
5 **(Wyoming Statutes Section 34.1-2-313)**

6 2147. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set
7 forth herein.

8 2148. Defendants are and were at all relevant times merchants with respect to motor
9 vehicles.

10 2149. In their Limited Warranties and in advertisements, brochures, and through other
11 statements in the media, Defendants expressly warranted that they would repair or replace defects
12 in material or workmanship free of charge if they became apparent during the warranty period.
13 For example, the following language appears in all Class Vehicle Warranty booklets:

14 1. Toyota's warranty

15 *When Warranty Begins*

16 The warranty period begins on the vehicle's in-service date, which is the first date
17 the vehicle is either delivered to an ultimate purchaser, leased, or used as a
18 company car or demonstrator.

19 *Repairs Made at No Charge*

20 Repairs and adjustments covered by these warranties are made at no charge for
21 parts and labor.

22 *Basic Warranty*

23 This warranty covers repairs and adjustments needed to correct defects in materials
24 or workmanship of any part supplied by Toyota Coverage is for 36 months or
25 36,000 miles, whichever occurs first

26 2. Ford's warranty

27 *KNOW WHEN YOUR WARRANTY BEGINS*

28 Your Warranty Start Date is the day you take delivery of your new vehicle or the
day it is first put into service

QUICK REFERENCE: WARRANTY COVERAGE

. . .

Your Bumper to Bumper Coverage lasts for three years - unless you drive more
than 36,000 miles before three years elapse.

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WHO PAYS FOR WARRANTY REPAIRS?

You will not be charged for repairs covered by any applicable warranty during the stated coverage periods

3. GM's warranty

Warranty Period

The warranty period for all coverages begins on the date the vehicle is first delivered or put in use and ends at the expiration of the coverage period.

Bumper-to-Bumper Coverage

The complete vehicle is covered for 4 years or 50,000 miles, whichever comes first

No Charge

Warranty repairs, including towing, parts, and labor, will be made at no charge.

Repairs Covered

This warranty covers repairs to correct any vehicle defect related to materials or workmanship occurring during the warranty period. Needed repairs will be performed using new or remanufactured parts.

2150. Defendants' Limited Warranties, as well as advertisements, brochures, and other statements in the media regarding the Class Vehicles, formed the basis of the bargain that was reached when Plaintiffs and the other Class members purchased or leased their Class Vehicles equipped with a CAN bus from Defendants.

2151. Defendants breached the express warranty to repair and adjust to correct defects in materials and workmanship of any part supplied by Defendants. Defendants have not repaired or adjusted, and have been unable to repair or adjust, the Class Vehicles' materials and workmanship defects.

2152. In addition to these Limited Warranties, Defendants otherwise expressly warranted several attributes, characteristics, and qualities of the CAN bus.

2153. These warranties are only a sampling of the numerous warranties that Defendants made relating to safety, reliability, and operation. Generally these express warranties promise heightened, superior, and state-of-the-art safety, reliability, and performance standards, and promote the benefits of the CAN bus. These warranties were made, *inter alia*, in advertisements, on Defendants' websites, and in uniform statements provided by Defendants to be made by salespeople, or made publicly by Defendants' executives or by other authorized representatives.

1 These affirmations and promises were part of the basis of the bargain between the parties.

2 2154. These additional warranties were also breached because the Class Vehicles were
3 not fully operational, safe, or reliable (and remained so even after the problems were
4 acknowledged), nor did they comply with the warranties expressly made to purchasers or lessees.
5 Defendants did not provide at the time of sale, and have not provided since then, Class Vehicles
6 conforming to these express warranties.

7 2155. Furthermore, the limited warranty of repair and/or adjustments to defective parts,
8 fails in its essential purpose because the contractual remedy is insufficient to make Plaintiffs and
9 the other Class members whole and because Defendants have failed and/or have refused to
10 adequately provide the promised remedies within a reasonable time.

11 2156. Accordingly, recovery by Plaintiffs and the other Class members is not limited to
12 the limited warranty of repair or adjustments to parts defective in materials or workmanship, and
13 Plaintiffs, individually and on behalf of the other Class members, seek all remedies as allowed by
14 law.

15 2157. Also, as alleged in more detail herein, at the time that Defendants warranted and
16 sold the Class Vehicles they knew that the Class Vehicles did not conform to the warranties and
17 were inherently defective, and Defendants wrongfully and fraudulently misrepresented and/or
18 concealed material facts regarding their Class Vehicles. Plaintiffs and the other Class members
19 were therefore induced to purchase or lease the Class Vehicles under false and/or fraudulent
20 pretenses.

21 2158. Moreover, many of the injuries flowing from the Class Vehicles cannot be
22 resolved through the limited remedy of “replacement or adjustments,” as many incidental and
23 consequential damages have already been suffered due to Defendants’ fraudulent conduct as
24 alleged herein, and due to their failure and/or continued failure to provide such limited remedy
25 within a reasonable time, and any limitation on Plaintiffs’ and the other Class members’ remedies
26 would be insufficient to make Plaintiffs and the other Class members whole.

27 2159. Defendants were provided notice of these issues by the instant Complaint, and by
28 other means before or within a reasonable amount of time after the allegations of Class Vehicle

1 defects became public.

2 2160. As a direct and proximate result of Defendants’ breach of express warranties,
3 Plaintiffs and the other Class members have been damaged in an amount to be determined at trial.

4 **COUNT CCXXXVI**

5 **Breach of the Implied Warranty of Merchantability**
6 **(Wyoming Statutes Section 34.1-2-314)**

7 2161. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set
8 forth herein.

9 2162. Defendants are and were at all relevant times merchants with respect to motor
10 vehicles.

11 2163. A warranty that the Class Vehicles were in merchantable condition is implied by
12 law in the instant transactions.

13 2164. These Class Vehicles, when sold and at all times thereafter, were not in
14 merchantable condition and are not fit for the ordinary purpose for which cars are used.
15 Defendants were provided notice of these issues by numerous complaints filed against them,
16 including the instant Complaint, and by other means.

17 2165. As a direct and proximate result of Defendants’ breach of the warranties of
18 merchantability, Plaintiffs and the Class have been damaged in an amount to be proven at trial.

19 **COUNT CCXXXVII**

20 **Breach of Contract/Common Law Warranty**
21 **(Based on Wyoming Law)**

22 2166. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set
23 forth herein.

24 2167. To the extent Defendants’ limited remedies are deemed not to be warranties under
25 Wyoming’s Commercial Code, Plaintiffs, individually and on behalf of the other Class members,
26 plead in the alternative under common law warranty and contract law. Defendants limited the
27 remedies available to Plaintiffs and the other Class members to repairs and adjustments needed to
28 correct defects in materials or workmanship of any part supplied by Defendants, and/or warranted

1 the quality or nature of those services to Plaintiffs and the other Class members.

2 2168. Defendants breached this warranty or contract obligation by failing to repair the
3 Class Vehicles, or to replace them.

4 2169. As a direct and proximate result of Defendants’ breach of contract or common
5 law warranty, Plaintiffs and the other Class members have been damaged in an amount to be
6 proven at trial, which shall include, but is not limited to, all compensatory damages, incidental
7 and consequential damages, and other damages allowed by law.

8 **COUNT CCXXXVIII**

9 **Fraudulent Concealment**
10 **(Based on Wyoming Law)**

11 2170. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set
12 forth herein.

13 2171. Defendants intentionally concealed the above-described material safety and
14 functionality information, or acted with reckless disregard for the truth, and denied Plaintiffs and
15 the other Class members information that is highly relevant to their purchasing decision.

16 2172. Defendants further affirmatively misrepresented to Plaintiffs in advertising and
17 other forms of communication, including standard and uniform material provided with each car,
18 that the Class Vehicles they was selling were new, had no significant defects, and would perform
19 and operate properly when driven in normal usage.

20 2173. Defendants knew these representations were false when made.

21 2174. The Class Vehicles purchased or leased by Plaintiffs and the other Class members
22 were, in fact, defective, unsafe, and unreliable because the Class Vehicles contained faulty and
23 defective CAN buses, as alleged herein.

24 2175. Defendants had a duty to disclose that these Class Vehicles were defective,
25 unsafe, and unreliable in that certain crucial safety functions of the Class Vehicles would be
26 rendered inoperative due to faulty and defective CAN buses, because Plaintiffs and the other
27 Class members relied on Defendants’ material representations that the Class Vehicles they were
28 purchasing were safe and free from defects.

1 2176. The aforementioned concealment was material because if it had been disclosed
2 Plaintiffs and the other Class members would not have bought or leased the Class Vehicles, or
3 would not have bought or leased those Vehicles at the prices they paid.

4 2177. The aforementioned representations were material because they were facts that
5 would typically be relied on by a person purchasing or leasing a new motor vehicle. Defendants
6 knew or recklessly disregarded that their representations were false because they knew the CAN
7 buses were susceptible to hacking. Defendants intentionally made the false statements in order to
8 sell Class Vehicles.

9 2178. Plaintiffs and the other Class members relied on Defendants’ reputations – along
10 with Defendants’ failure to disclose the faulty and defective nature of the CAN bus and
11 Defendants’ affirmative assurances that their Class Vehicles were safe and reliable, and other
12 similar false statements – in purchasing or leasing Defendants’ Class Vehicles.

13 2179. As a result of their reliance, Plaintiffs and the other Class members have been
14 injured in an amount to be proven at trial, including, but not limited to, their lost benefit of the
15 bargain and overpayment at the time of purchase or lease and/or the diminished value of their
16 Class Vehicles.

17 2180. Defendants’ conduct was knowing, intentional, with malice, demonstrated a
18 complete lack of care, and was in reckless disregard for the rights of Plaintiffs and the other Class
19 members.

20 2181. Plaintiffs and the other Class members are therefore entitled to an award of
21 punitive damages.

22 **REQUEST FOR RELIEF**

23 WHEREFORE, Plaintiffs, individually and on behalf of members of the Nationwide and
24 California Classes, respectfully request that the Court enter judgment in their favor and against
25 Defendants, as follows:

26 A. Certification of the proposed Nationwide Class and California Class, including
27 appointment of Plaintiffs’ counsel as Class Counsel;

28 B. An order temporarily and permanently enjoining Defendants from continuing the

1 unlawful, deceptive, fraudulent, and unfair business practices alleged in this

2 C. Complaint;

3 D. Injunctive relief in the form of a recall or free replacement program;

4 E. Costs, restitution, damages, including punitive damages, and disgorgement in an
5 amount to be determined at trial;

6 F. An order requiring Defendants to pay both pre- and post-judgment interest on any
7 amounts awarded;

8 G. An award of costs and attorneys' fees; and

9 H. Such other or further relief as may be appropriate.

10 **DEMAND FOR JURY TRIAL**

11 Plaintiffs hereby demand a jury trial for all claims so triable.

12 DATED: March 10, 2015

STANLEY LAW GROUP
MATTHEW J. ZEVIN

13
14
15 /s/ Matthew J. Zevin
MATTHEW J. ZEVIN

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28

CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system on September 28, 2016.

I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

Dated: September 28, 2016

/s/ Ashley Nummer Ladner
Ashley Nummer Ladner