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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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA-SAN FRANCISCO DIVISION

HELENE CAHEN, KERRY J. TOMPULIS, MERRILL NISAM, RICHARD GIBBS, and LUCY L. LANGDON, on Behalf of Themselves and All Others Similarly Situated, Plaintiffs, v. TOYOTA MOTOR CORPORATION, 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 **PLAINTIFFS' NOTICE OF INTENT NOT TO AMEND COMPLAINT** **CLASS ACTION** **Current Date: February 22, 2016** **Judge: Hon. William H. Orrick** **Ctrm: 2**

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

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

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 LUCY L. LANGDON, on Behalf of Themselves and All Others Similarly Situated,

Plaintiffs,

v.

TOYOTA MOTOR CORPORATION, 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

~~[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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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA-SAN FRANCISCO DIVISION

HELENE CAHEN, KERRY J. TOMPULIS, MERRILL NISAM, RICHARD GIBBS, and LUCY L. LANGDON, on Behalf of Themselves and All Others Similarly Situated, Plaintiffs, v. TOYOTA MOTOR CORPORATION, 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 **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**

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

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

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

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

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

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

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

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

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

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

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

DATED: December 30, 2015

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Attorneys for Plaintiffs

[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

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

Before The Honorable William H. Orrick, District Judge

HELENE CAHEN,

Plaintiff,

vs.

TOYOTA MOTOR CORPORATION,

Defendant.

No. C 15-01104-WHO

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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<u>Tuesday, November 3, 2015</u> <u>3:12 p.m.</u>

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

--oOo--

THE CLERK: Calling Civil Matter 15-1104, Helene Cahen, et al., versus Toyota Motor Corporation, et al.

Counsel, please come forward and state your appearance.

(Pause.)

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

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

THE COURT: Afternoon.

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

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

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

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

THE COURT: Afternoon all.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Now, you're making almost a summary judgment

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

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

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

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

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

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

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

MR. STANLEY: Well, I --

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

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

THE COURT: I understand.

MR. STANLEY: So I'm sorry.

THE COURT: I do understand, and I --

MR. STANLEY: So I'm just --

THE COURT: -- sympathize.

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

THE COURT: Okay.

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

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

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

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

MR. STANLEY: We did plead that.

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

points that you've been making orally.

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

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

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

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

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

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

THE COURT: All right.

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

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

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

THE COURT: All right.

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

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

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

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

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

THE COURT: No. Thank you.

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

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

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

THE COURT: Thank you, Mr. Mallow.

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

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

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

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

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

So, Mr. Stanley?

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

Court says.

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

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

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

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

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

MR. STANLEY: I do think --

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

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

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

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

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

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

ALL: Thank you, your Honor.

(Proceedings adjourned at 3:38 p.m.)

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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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

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

Plaintiffs,

v.

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

Defendants.

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

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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

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

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

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

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

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

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

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

II. PLAINTIFF LACKS ARTICLE III STANDING TO PURSUE HER CLAIMS

A. Plaintiff Does Not And Cannot Plead Any "Injury In Fact"

Plaintiff Cahen's Opposition does nothing to rebut the fact that the FAC failed to plead *any* cognizable "injury in fact" that satisfies "the irreducible constitutional minimum of standing" under

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

1. *Plaintiff Fails To Allege Any "Certainly Impending Injury"*

Plaintiff alleges exactly the type of theoretical injuries and "highly attenuated chain of possibilities" that are legally insufficient to establish an Article III "injury in fact." *Id.* at 1148. The FAC alleges nothing more than the possibility that Plaintiff *may* suffer harm in the future *if* a sophisticated third party unlawfully accesses the CAN bus unit installed in her vehicle. (FAC ¶ 4.) Nowhere in the ***200*** paragraphs of the FAC is there ***any*** allegation that the CAN bus malfunctioned or was "hacked" in the seven years that Plaintiff owned her vehicle, or that she was harmed in any way. In fact, Plaintiff concedes that she did not experience any such "hack" and that she is not at risk of a future "hack." (Opp'n at 2 ("Cahen does not allege that her vehicle was 'hacked.'"); *id.* at 14 ("[i]t is true 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") (emphases added).)

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

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

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

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

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

[1] Plaintiff also contends that a "manifested defect" is not "an absolute requirement for Article III standing" (Opp'n at 13), but the case she cites—*In re Toyota Motor Corp. Unintended Acceleration Litig.*, 754 F. Supp. 2d 1145 (C.D. Cal. 2010)—does not support her position. Notably, several plaintiffs in that case allegedly experienced the purported problem—unintended acceleration (*id.* 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 ("***[I]f*** 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).)

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

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

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

[2] *See, e.g.*, *Raines v. Byrd*, 521 U.S. 811 (1997) (holding that plaintiff must establish a "'personal stake' in the alleged dispute, and that the alleged injury suffered is particularized as to him"); *Chapman v. Pier 1 Imports (U.S.) Inc.*, 631 F.3d 939, 955 (9th Cir. 2011) (no Article III standing because plaintiff "does not even attempt to relate the alleged violations to his" situation); *Birdsong*, 590 F.3d at 960 (no standing because "[t]he risk of injury the plaintiffs allege [was] not concrete and 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).

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

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

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

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

<u>*Third*</u>, in another effort to rely solely on "economic harm" to establish her standing, Ms. Cahen reaches outside of the product liability realm altogether to cite a series of false advertising cases involving statutory standing under the UCL or FAL. But she does not allege any false or 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).

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

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

C. Plaintiff's Generalized Allegations About Defendants' "Data Collection" Practices Also Are Legally Insufficient To Establish Article III Standing

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

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

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

[4] Plaintiff also contends that "Toyota suggests that the Supreme Court changed the analysis for standing in *Clapper* to rule out any theories connected to third-party actors." (Opp'n at 13 (citing Mot. 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.)

[5] This specificity is particularly important here, because Plaintiff cannot in good faith allege any "data collection" relating to her 2008 Lexus RX 400h. Nor can she pursue class action claims based 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").

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

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

<u>*Second*</u>, Plaintiff invokes a new tolling doctrine (the "future performance" exception) in her brief. (Opp'n at 21.) As an initial matter, "[i]t is axiomatic that the complaint may not be amended by briefs in opposition to a motion to dismiss." *Tietsworth v. Sears, Roebuck & Co.*, 720 F. Supp. 2d 1123, 1145 (N.D. Cal. 2010). Plaintiff also cannot obtain leave to plead this theory, because the "future performance" exception to the statute of limitations does *not* apply to implied warranties[7] and

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

[7] *See, e.g.*, *MacDonald v. Ford Motor Co.*, 37 F. Supp. 3d 1087, 1100 (N.D. Cal. 2014) ("Courts have consistently held [that an implied warranty] is not a warranty that 'explicitly extends to future 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]

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

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

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

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

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

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

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

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

[Footnote continued from previous page]

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.").

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

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

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

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

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

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

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

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

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

[8] Plaintiff also cannot avoid the "safety" element by asserting that Toyota's "exclusive knowledge of material facts not known to" her is sufficient to create a duty to disclose. (Opp'n at 17.) The plaintiffs 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.

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

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

V. CONCLUSION

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

DATED: October 14, 2015

GIBSON, DUNN & CRUTCHER LLP

By: /s/ Christopher Chorba
CHRISTOPHER CHORBA

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

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[10] *Goodman v. HTC Am., Inc.*, No. 11-1793-MJP, 2012 WL 2412070 (W.D. Wash. June 26, 2012) (Opp'n at 1, 21–23) does not support Plaintiff's position. The plaintiff in that case sued one defendant (a smartphone manufacturer) and alleged that its products operated as "surreptitious tracking devices" 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.

Further, *United States v. Jones*, 132 S. Ct. 945 (2012), and Judge Kozinski's dissent in *United 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.

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:

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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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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA-SAN FRANCISCO DIVISION

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

Plaintiffs,

v.

TOYOTA MOTOR CORPORATION, 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

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
Ctrm: 2

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

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

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

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

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

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

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

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

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

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

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

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

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

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

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

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

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

II. SUMMARY OF CAHEN'S KEY ALLEGATIONS

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

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

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

A. Using Old Technology, Toyota Builds and Sells Unsafe Vehicles, and It Violates Drivers' Privacy Rights

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

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

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

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

[2] Bluetooth is a wireless technology standard for exchanging data over short distances (using 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).

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

B. How Toyota's Computerized Vehicles Work

Toyota automobiles contain a number of different networked electronic components that together monitor and control the vehicle. Complaint ¶ 28. They each contain dozens of electronic control units ("ECUs"), many of which are networked together on a controller area network (typically a "CAN" or "CAN bus"); other such networks are LINBus, MOST, Flexray, and Ethernet. Complaint ¶ 28 (citing Craig Smith, *Car Hackers 2014: Owner's Manual* at 21). Crucially, the overall safety of the vehicle relies on near real time communication between these various ECUs. Complaint ¶ 28 (citing *Tracking & Hacking: Security & Privacy Gaps Out American Drivers at Risk*, A report written by the staff of 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; Charlie Miller & Chris Valasek, Technical White Paper: *Adventures in Automotive Networks and Control Units*, *available at* http://www.ioactive.com/pdfs/IOActive_Adventures _in_Automotive_Networks_and_Control_Units.pdf at 5, 7-8).[3]

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

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

[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*.

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

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

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

Lacking security, an automobile reliant upon CAN packets for safety is exposed to hacking that injects one or more false messages onto a CAN bus or manipulates packets in transit on the network. Complaint ¶ 33 (citing Xavier Aaronson, *We Drove a Car While It 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 a CAN bus equipped vehicle. Complaint ¶ 33.

Moreover, wireless interfaces dramatically increase the attack surface in a vehicle by allowing anyone capable of connecting to such a wireless interface to thereby gain access to the CAN bus to invade a user's privacy, by observing CAN packets, and/or inject or modify CAN packets to take remote control of the operation of a vehicle. Complaint ¶ 34. For example, a vehicle equipped with a Bluetooth wireless interface is susceptible to an attacker remotely and wirelessly accessing the vehicle's CAN bus through Bluetooth connections. Complaint ¶ 34 (citing Miller & Valasek (RJN Ex. 2) at 4; *see also* Markey Report (RJN Ex. 1) at 3). An even greater risk exists with an integrated cell phone connected to the CAN bus. Complaint ¶ 34. Vehicles equipped with Toyota's "Entune" and other telematics services have such integrated cellular phones. Complaint ¶ 34 (citing PRN Newswire Sprint and Ford Team to Deliver In-Vehicle, Integrated, Voice-Activated Wireless Products And Services, *available 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

accomplished by connecting to such integrated phones, as demonstrated by DARPA in an episode broadcast on CBS 60 Minutes. Complaint ¶ 34 (citing 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 Send A Message to Automakers*, *available at* http://www.pbs.org/newshour/bb/hacking-researchers-kill-car-engine-highway-send-message-automakers/ (RJN Ex. 4).

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

> As I drove to the top of the parking lot ramp, the car's engine suddenly shut off, and I started to roll backward. I expected this to happen, but it still left me wide-eyed.
>
> I felt as though someone had just performed a magic trick on me. What ought to have triggered panic actually elicited a dumbfounded surprise in me. However, as the car slowly began to roll back down the ramp, surprise turned to alarm as the task of steering backwards without power brakes finally sank in.
>
> This wasn't some glitch triggered by a defective ignition switch, but rather an orchestrated attack performed wirelessly, from the other side of the parking lot, by a security researcher.

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

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

These security vulnerabilities have been known in the automotive industry—and, specifically, by Toyota—for years. Complaint ¶ 36. Researchers at the University of California San Diego and University of Washington had discovered in 2010 that modern automobiles can be hacked in a number of different ways—and, crucially, that wireless 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

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

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

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

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

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

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

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

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

Without drivers ever knowing, Toyota also collects data from their vehicles and shares the data with third parties. Complaint ¶ 49 (citing Lucas Mearian, *Once Your Car's Connected to The Internet, Who Guards Your Privacy? available at* http://www.computerworld.com/article/2684298/once-your-cars-connected-to-the-internet-who-guards-your-privacy.html). While Toyota 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. Complaint ¶ 49 (citing Kate Kaye, *Ford, Toyota and Others to Adopt Data Privacy Rules, But AAA Says The Industry's Voluntary Guidelines Fall Short*, *available at* http://adage.com/article/privacy-and-regulation/ford-gm-adopt-auto-data-privacy-rules/295859).

As detailed in Sen. Markey's report, Toyota collects large amounts of data on driving history and vehicle performance, and it transmits the data to third-party data centers without effectively securing the data. Complaint ¶ 50 (citing Markey Report (RJN Ex. 1) at 8-11). Toyota only makes 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 Toyota, and in the limited situations where opting out is permitted, the driver must turn off a feature or cancel a service subscription. Complaint ¶ 50 (citing Markey Report (RJN Ex. 1) at 12).

III. ARGUMENT

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

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

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

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

(1990)).

The Ninth Circuit recently underscored that this threshhold is cleared easily in the context of statutory consumer fraud claims: "We have explained that when, as here, 'Plaintiffs contend that class members paid more for [a product] than they otherwise would have paid, or bought it when they otherwise would not have done so' they have suffered an Article III injury in fact." *Hinojos v. Kohl's Corp.*, 718 F.3d 1098, 1104 n.3 (9th Cir. 2013) (quoting *Mazza v. Am. Honda Motor Co.*, 666 F.3d 581, 595 (9th Cir. 2012)). And in the context of claims based on a wrongful disclosure of personal information, even if actual harm has not occurred as a result of the disclosure, "courts in this circuit have routinely denied motions to dismiss based on Article III standing where a plaintiff alleges that his personal information was collected and then wrongfully disclosed…." *In re Sony Gaming Networks and Customer Data Security Breach Litig.*, 996 F. Supp. 2d 942, 961-62 (S.D. Cal. 2014) (citing *Krottner v. Starbucks*, 628 F.3d 1139, 1142 (9th Cir. 2010); *In re Facebook Privacy Litig.*, 791 F. Supp. 2d 705, 711-12 (N.D. Cal. 2011); *Doe 1 v. AOL, LLC*, 719 F. Supp. 2d 1102, 1108-09 (N.D. Cal. 2010)).

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

2. Cahen's Allegations Meet the Article III Standard

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

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

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

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

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

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

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

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

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

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

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

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

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

It is true 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. But for others, it is simply a matter of time before it happens—unless Toyota addresses the problem. *See* Complaint ¶ 40 ("Any cyber expert will tell you that you can't prevent it; it's just a question of when") (quoting Mark Dowd, assistant general counsel of Global Automakers). While Toyota suggests that a plaintiff such as Cahen must first experience a severe hack as a prerequisite for standing, the consequences of such a rule are unreasonably dire. Why must any driver or passenger be made to suffer serious bodily injury or death in a hacked Toyota car before anyone has standing to sue Toyota to remedy this issue?

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

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

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

B. Cahen's Allegations Support All Of Her Fraud-Based Claims

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

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

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

1. Cahen Establishes Materiality

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

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

2. Cahen Sufficiently Alleges Toyota Had Knowledge

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

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

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

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

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

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

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

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

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

C. Cahen's Allegations Support Her Implied Warranty Claims

Toyota challenges Cahen's claims for breach of the implied warranty of merchantability under Cal. Com. Code § 2104 ("UCC") and under California's Song-Beverly

Consumer Warranty Act, Cal. Civ. Code §§ 1791.1 & 1792 ("Song-Beverly") on the ground that Cahen fails to allege "that her vehicle was not fit for the ordinary purpose for which it was intended—namely, transportation." Motion at 18; *see generally* Motion at 18-19.[4]

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

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

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

[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.

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

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

D. Cahen's Claims Are Not Barred by Limitations

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

repairs….").

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

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

Toyota correctly states the three factors establishing invasion of privacy under Article I, Section 1 of the California Constitution: "(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." Motion at 23 (quoting *Hill v. Nat'l Collegiate Athletic Assn.*, 7 Cal. 4th 1, 39-40 (1994). But Toyota incorrectly argues Cahen does not meet any of these factors. Motion at 22-25.

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

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

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

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

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

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

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

IV. CONCLUSION

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

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

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

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

DATED: September 28, 2015

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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 LUCY L. LANGDON, Plaintiffs, v. TOYOTA MOTOR CORPORATION, TOYOTA MOTOR SALES, U.S.A., INC., FORD MOTOR COMPANY, GENERAL MOTORS LLC, Defendants.	CASE NO. 4:15-cv-01104-WHO **<u>PUTATIVE CLASS ACTION</u>** **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** <u>Hearing</u> Date: November 3, 2015 Time: 3:00 p.m. Courtroom: 2 The Hon. William H. Orrick

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TO THE COURT AND ALL PARTIES AND COUNSEL OF RECORD:

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

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

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

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

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

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

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

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

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

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

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

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

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

5. Whether Plaintiff's invasion of privacy claim must be dismissed because the complaint fails to allege either a reasonable expectation of privacy or the type of serious invasion of 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

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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-

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

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

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

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

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

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

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

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

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

II. SUMMARY OF ALLEGED FACTS AND PROCEDURAL HISTORY

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

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

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

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

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

was made available to researchers attempting to "hack" the vehicle:

- The cited reports noted "the absence of any known attacks in the wild," that widespread attacks "are highly speculative,"[1] and that the "possibilities seem more theoretical tha[n] practical at this point" (Chris Ingalls, "Smart apps pose privacy, security risks in some new cars" (May 20, 2015), *available at* http://www.king5.com/story/news/2015/05/19/cars-auto-computer-security-hacking/27610967 (cited in FAC ¶ 15 n.3)).

- The FAC admitted that "[o]ne journalist described the experience of driving a vehicle whose CAN bus was being hacked remotely (but ***under controlled circumstance***s) . . . ." (FAC ¶ 35 (emphasis added).)

- Plaintiff cited a "Technical White Paper" in which a cable-connected laptop computer was used to gain physical access to the CAN bus units in *other* vehicles (a 2010 Toyota Prius and 2010 Ford Focus). (*Id.* ¶ 37 n.19 & n.20, citing Miller & Valasek, "Adventures in Automotive Networks & Control Units," http://illmatics.com/car_hacking.pdf.)

- One article reported that to take control over vehicle functions "requires having a computer plugged into the car as well as having someone with an intimate knowledge of a car's software system," and that "remote access is not currently possible without having hardware that is hardwired into the car." (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 (cited in FAC ¶ 40 n.24).)

- Another article quoted an information security researcher, who acknowledged that "[i]t is not easy to hack a car, the sophistication level is pretty high. Each car has a different language, each piece speaks different words, and not all those pieces have been mapped publicly." (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 (cited in FAC ¶ 35 n.17).)

- Another report confirmed the speculative nature of these attacks by emphasizing that, "in the ***wrong hands***," technical information "***could*** also be used maliciously" and that the 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]

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[1] (Stephen Checkoway, "Comprehensive Experimental Analyses of Automotive Attack Surfaces," at 12−13 (2011), *available at* http://www.autosec.org/pubs/cars-usenixsec2011.pdf (cited in FAC ¶ 36 n.18) (hereinafter "Checkoway").)

[2] An article that post-dated the filing of Plaintiffs' FAC reported another highly-controlled experiment involving a vehicle (2014 Jeep Cherokee) that is not at issue in this lawsuit. (*See* Andy Greenberg, "Hackers Remotely Kill A Jeep On The Highway—With Me In It," WIRED (July 21, 2015), *available at* http://www.wired.com/2015/07/hackers-remotely-kill-jeep-highway/.) The researchers who 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.) Further, these researchers (Miller and Valasek) criticized this lawsuit as "unfortunate" and noted that it "subverts the spirit of our research." (Valasek, "Lawsuit

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

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

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

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

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

III. THE LEGAL STANDARDS GOVERNING THIS MOTION

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

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

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

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

IV. PLAINTIFF LACKS ARTICLE III STANDING TO PURSUE HER CLAIMS

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

> To establish Article III standing, an injury must be [1] "concrete, particularized, and actual or imminent; [2] fairly traceable to the challenged action; and [3] redressable by a favorable ruling." "Although imminence is concededly a somewhat elastic concept, it cannot be stretched beyond its purpose, which is to 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.

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

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

A. Plaintiff Does Not Allege That She Experienced Any Vehicle "Hacking"

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

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

The Supreme Court has "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." *Clapper*, 133 S. Ct. at 1147. Likewise, the Ninth Circuit has consistently rejected attempts to base Article III standing on remote, conjectural, hypothetical, or speculative harms. For example, that court held that plaintiffs lacked Article III standing to pursue claims that the Apple iPod was "defective" because it "pose[d] an unreasonable risk of noise-induced hearing loss to its users." *Birdsong v. Apple, Inc.*, 590 F.3d 955, 956, 960 n.4 (9th Cir. 2009). It explained that "[a]t most, the plaintiffs plead a potential risk of hearing loss not to themselves, but to other unidentified iPod users who might *choose* to use their iPods in an unsafe manner[,]" and therefore, "[t]he risk of injury the plaintiffs allege is not concrete and particularized *as to themselves*." *Id*. at 960−61.

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

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

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

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

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

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

[3] (*See also* FAC, Ex. 1, at 3 [Sen. Markey Report] ("Such information-gathering abilities ***can*** be used by automobile manufacturers to provide customized service and improve customer experiences, but in 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).)

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

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

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

[4] *See, e.g.*, 18 U.S.C. § 1030 (Computer Fraud and Abuse Act; outlaws third-party hacking, such as "intentionally access[ing] a computer without authorization [] and thereby obtains [] information from 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").

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

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

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

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

Plaintiff's alleged injury—potential "hacking" of her vehicle—is speculative and entirely contingent upon the criminal acts of unknown third parties. Plaintiff's claims are no different than a claim that a vehicle is "defective" because a criminal *might* cut the vehicle's brake lines, slash its tires, 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'

criminal acts are legally insufficient to establish Article III standing.

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

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

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

V. THE STATUTES OF LIMITATIONS BAR ALL OF PLAINTIFF'S CLAIMS

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

[5] *See* Cal. Bus. & Prof. Code § 17208 (UCL—4 years); Cal. Civ. Code § 1783 (CLRA—3 years); Cal. Civ. Proc. Code § 338(d) (fraud—3 years); Cal. Com. Code § 2725 and *MacDonald v. Ford Motor 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.
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accrued at the time of sale and tender of the vehicle—*i.e.*, when she purchased her Lexus RX 400h vehicle in September 2008.[6] Accordingly, the longest applicable statutes of limitations period presumptively expired in September 2012, almost three years before Plaintiff filed this lawsuit.

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

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

> Any applicable statute(s) of limitations has been tolled by Defendants' knowing

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

[6] *See* Cal. Com. Code § 2725(2) (statute of limitations accrues upon tender of delivery); Cal. Civ. 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.").

> 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 until shortly before this class action litigation was commenced.

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

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

Nor has Plaintiff satisfied the additional requirement of alleging "some active conduct by the defendant above and beyond the wrongdoing upon which the plaintiff's claim is filed, to prevent the plaintiff from suing in time." *Juniper Networks v. Shipley*, No. 09–0696–SBA, 2009 WL 1381873, at *5 (N.D. Cal. May 14, 2009) (internal quotations omitted); *Kirsopp v. Yamaha Motor Co.*, No. 14-496, 2015 U.S. Dist. LEXIS 68639, at *13–14 (C.D. Cal. Jan. 7, 2015) (holding that neither "failure to act" nor marketing representations constitute an "affirmative act of concealment on behalf of 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.*,

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

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

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

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

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

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

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

[7] As an initial matter, it is unclear whether Plaintiff intends to assert an express or implied warranty claim through "Count V—Breach of Contract/Common Law Warranty." (FAC ¶¶ 101–105.) The 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.)

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

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

[8] *See* Cal. Civ. Code § 1791.1(c) ("The duration of the implied warranty of merchantability . . . shall be coextensive with an express warranty which accompanies the consumer goods[,] but *in no event shall such implied warranty have a duration of . . . more than one year* following the sale of new consumer goods to a retail buyer.") (emphasis added); *Tietsworth v. Sears, Roebuck & Co.*, 720 F. Supp. 2d 1123, 1142 (N.D. Cal. 2010) ("The duration of an implied warranty of merchantability is one 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).

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

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

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

[9] Nor can Plaintiff base any breach of an express warranty on an allegation that her vehicle's CAN bus unit was defectively "designed" (*see, e.g.*, FAC ¶ 27), because elsewhere she admits that Toyota 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).

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

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

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

diversity is not free to create new exceptions to it." *Clemens*, 534 F.3d at 1024.[10]

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

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

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

First, the FAC contends that because Toyota "failed to ensure the basic electronic security of [its] vehicles, control of the basic functions of the vehicle can be taken by others not behind the wheel or necessarily even in the car, which can endanger the safety of the driver and others." (FAC ¶ 2.) Although Plaintiff alleges in a conclusory manner that the alleged "defect" presents a safety hazard

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[10] Plaintiff's conclusory allegation that "privity is also not required because [her vehicle is a] dangerous instrumentalit[y] due to the aforementioned defects and nonconformities" (FAC ¶ 99) cannot excuse her from the privity requirement here. As an initial matter, she does not substantiate this far-fetched claim with any facts, and it is implausible that Plaintiff enjoyed the use of her vehicle for nearly seven years while it operated as a "dangerous instrumentalit[y]." Further, courts have 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").

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

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

> Plaintiffs contend that the failure rate of the Focus ignition locks was related to safety because a defective lock may prevent the driver from starting the engine, thereby leaving the driver stranded on the roadway, or *may* prevent the engine 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.

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

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

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

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

C. Plaintiff Does Not Allege A Sufficiently "Serious" Invasion To Support A Privacy Claim

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

[11] Ms. Cahen's only allegation regarding Toyota's knowledge is conclusory, implausible, and post-dates the relevant time period (her 2008 purchase) by several years: "Before the researchers went public with their 2013 findings, they shared the results with Toyota and Ford in the hopes that the 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.

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

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

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

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

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

Second, Plaintiff also alleges that "[a]s 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." (FAC ¶ 50.) As an initial matter, the cited report does *not* identify which manufacturer engaged in this conduct, and Plaintiff does not allege that *Toyota* collected and/or shared "driving history and vehicle performance" data. (*Id.*) Without any specific allegation against Toyota that implicates a *serious* invasion, Plaintiff cannot meet her burden. *See, e.g., White v. Social Security Admin.*, No. 14–05604–JST, 2015 WL 3902789, at *7 (N.D. Cal. June 24, 2015) (holding that "unauthorized photocop[ying] of identity documents, without any allegation that [defendant] sold, distributed, or otherwise improperly used the information, does

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

VII. CONCLUSION

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

Toyota respectfully requests the Court dismiss this action with prejudice.

DATED: August 28, 2015

GIBSON, DUNN & CRUTCHER LLP

By: _____
Christopher Chorba

101980989.11

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

Email: CChorba@gibsondunn.com

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:

Marc R. Stanley Stanley Iola, LLP 3100 Monticello Avenue, Suite 750 Dallas, Texas 75205	Attorneys for Plaintiffs Helene Cahen, Kerry J. Tompulis, Merrill Nisam, Richard Gibbs, and Lucy L. Langdon
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Executed on August 28, 2015.

/s/ Tiaunia Bedell
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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

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

Plaintiffs,

vs.

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

Defendants.

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

2009).

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

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

ARGUMENT

I. THE COURT CANNOT EXERCISE PERSONAL JURISDICTION OVER FORD

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

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

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[3] In this motion, Ford addresses the infirmities of the Ford Plaintiffs' pleading pursuant to Fed. R. Civ. P. 8, 9 and 12 unique to it. The Ford Plaintiffs' claims against Ford are not viable for reasons 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.

[4] Ford respectfully submits in the alternative that the Ford Plaintiffs' claims also should be dismissed 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 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. *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*. 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); *Monaghan v. Fiddler*, No. C11-3278 CW, 2011 WL 4984710 (N.D. Cal. 2011) (dismissing action where Northern District of California was improper venue).

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

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

"General jurisdiction over a corporation is appropriate only when the corporation's contacts with the forum state 'are so constant and pervasive as to render it essentially at home' in the state." *Martinez*, 764 F.3d at 1066 (quoting *Daimler*, 134 S. Ct. at 755. As the Supreme Court recently clarified, this test generally is only met when a lawsuit is brought in the jurisdiction in which a defendant (1) is incorporated or (2) maintains its principal place of business. *Daimler*, 134 S. Ct. at 761, n.19; *accord Martinez*, 764 F.3d at 1070.[6]

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

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[5] Where, as here, no federal statute governs personal jurisdiction, a district court applies the long-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.

[6] Although *Daimler* allowed that there could be an "exceptional case" where a company has 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." *Amiri*, 2015 WL 166910, at *2. Accordingly, "outside a corporation's place of incorporation or 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*.

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

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

> [i]f [defendant's] activities sufficed to allow adjudication of this [foreign]-rooted case in California, the same global reach would presumably be available in every other 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.'

Id. at 761-62 (quoting *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 472 (1985)). Such a result, the Court determined, would stretch beyond the bounds of general jurisdiction, which instead "calls for an appraisal of a corporation's activities in their entirety, nationwide and worldwide. A corporation that operates in many places can scarcely be deemed at home in all of them." *Id*. at 762 n.20; *Martinez*, 764 F.3d at 1066; *Amiri*, 2015 WL 166910, at *1. Similarly, in *Martinez*, the Ninth Circuit found no general jurisdiction over a foreign defendant corporation that had "contracts, worth between $225 and $450 million, to sell airplanes to . . . a California corporation;" "contracts with eleven California component suppliers;" representatives in the state that attended industry conferences, promoted defendant's products, and met with suppliers; deployed airplanes in California routes; and "advertis[ed] in trade publications with distribution in California." 764 F.3d at 1070. Relying on *Daimler*, the court held that "[t]hese contacts are plainly insufficient to subject [defendant] to general jurisdiction in California," because "its California contacts are minor compared to its other worldwide contacts." *Id*. (citing *Daimler*, 134 S. Ct. at 762 n.20). In

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

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

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

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

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

Schwarzenegger v. Fred Martin Motor Co., 374 F.3d 797, 802 (9th Cir. 2004); *see also Burger King 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. The Ford Plaintiffs Do Not Allege That Ford Purposefully Availed Itself of The Forum Or Purposefully Directed Its Activities At The Forum

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

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

2. The Ford Plaintiffs' Claims Do Not Arise Out Of Ford's Contacts With California

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

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

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

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

[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.

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

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

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

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

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

"The UTPA extends a private cause of action to 'any person who suffers any ascertainable loss of money or property' as a result of an unlawful trade practice." *Bojorquez v. Wells Fargo Bank, NA*, No. 6:12-cv-02077, 2013 WL 6055258, at *7 (D. Or. Nov. 7, 2013) (*quoting* Or. Rev. Stat. § 646.638(1)). Therefore, "[t]o state a claim under the UTPA, a plaintiff is required to plead: (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).

These scant references do not suffice to state a claim for fraudulent concealment pursuant to Rule 9(b). Rather, to plead the circumstances of omission with sufficient specificity, a plaintiff

> must describe the content of the omission and where the omitted information should or could have been revealed, as well as provide representative samples of advertisements, offers, or other representations that plaintiffs relied on to make their purchases and that failed to include the allegedly omitted information. Plaintiffs' complaint should also include samples of materials documenting . . . purchases that leave out the essential information . . .

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

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

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

The Ford Plaintiffs' claims depend upon the premise that Ford broke the law by failing to 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.)

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

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

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

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

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

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

CONCLUSION

For the reasons set forth herein, Ford respectfully requests the Court dismiss the claims against Ford. Ford respectfully requests such other, further relief the Court deems appropriate.

[14] A "covered person" includes "any person" who is engaged in the business of service or repair of passenger cars … ." CAL. CODE REGS. tit. 13, § 1968 (d)(4).

[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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IN THE UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA – SAN FRANCISCO DIVISION

HELENE CAHEN, KERRY J. TOMPULIS, and MERRILL NISAM, Plaintiffs, v. TOYOTA MOTOR CORPORATION, TOYOTA MOTOR SALES, U.S.A., INC., FORD MOTOR COMPANY, GENERAL MOTORS LLC, and DOES 1 through 50, Defendants.	CASE NO. **COMPLAINT FOR BREACH OF WARRANTY, BREACH OF CONTRACT, AND VIOLATION OF CONSUMER PROTECTION LAWS** **CLASS ACTION** **DEMAND FOR JURY TRIAL**

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

INTRODUCTION

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

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

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

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

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

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

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

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

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

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

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.

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

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

20. TMS and TMC are collectively referred to in this complaint as "Toyota" or the "Toyota Defendants" unless identified as TMS or TMC.

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

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

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

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

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

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

26. GM also expressly assumed:

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

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

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

29. Plaintiffs do not know the true names and capacities of Defendants sued herein as Does 1 through 50, and will amend this Complaint to set forth the true names and capacities of said 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

until shortly before this class action litigation was commenced.

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

FACTUAL ALLEGATIONS

How Defendants' CAN Buses Work

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

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

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

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

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

[3] Miller & Valasek at 4.

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

Defendants' CAN Buses Are Susceptible to Dangerous Hacking

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

36. This capability can 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. An attacker with physical access to a CAN bus-equipped vehicle could insert malicious code or CAN packets – and could also remotely and wirelessly access a vehicle's CAN bus through Bluetooth connections.[7]

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

> As I drove to the top of the parking lot ramp, the car's engine suddenly shut off, and I started to roll backward. I expected this to happen, but it still left me wide-eyed.
>
> I felt as though someone had just performed a magic trick on me. What ought to have triggered panic actually elicited a dumbfounded surprise in me. However, as the car slowly began to roll back down the ramp, surprise turned to alarm as the task of steering backwards without power brakes finally sank in.
>
> This wasn't some glitch triggered by a defective ignition switch, but rather an orchestrated attack performed wirelessly, from the other side of the parking lot, by a security researcher.[8]

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[4] http://en.wikipedia.org/w/index.php?title=CAN_bus (last accessed February 20, 2015).

[5] *Id.*

[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).

[7] Miller & Valasek at 4; *see also* Markey Report at 3.

[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).

Defendants Have Known for Years that Their CAN Bus-Equipped Vehicles Can Be Hacked

38. These security vulnerabilities have been known in the automotive industry – and, specifically, by Defendants – for years. Researchers at the University of California San Diego and University of Washington had discovered in 2011 that modern automobiles can be hacked in a number of different ways – and, crucially, that wireless communications allow a hacker to take control of a vehicle from a long distance.[9]

39. Building on this research, in a 2013 DARPA-funded study, two researchers demonstrated their ability to connect a laptop to the CAN bus of a 2010 Toyota Prius and a 2010 Ford Escape using a cable, send commands to different ECUs through the CAN, and thereby control the engine, brakes, steering and other critical vehicle components.[10] In their initial tests with a laptop, the researchers were able to cause the cars to suddenly accelerate, turn, kill the brakes, activate the horn, control the headlights, and modify the speedometer and gas gauge readings.[11]

40. Before the researchers went public with their 2013 findings, they shared the results with Toyota and Ford in the hopes that the companies would address the identified vulnerabilities.[12] The companies, however, did not.

Despite Selling Unsafe CAN-Bus Equipped Vehicles, Defendants Tout Their Safety

A. Toyota

41. Toyota has consistently marketed its vehicles as "safe" and portrayed safety as one of its highest priorities.

42. As Toyota states in one of its promotional materials:

> Toyota believes that the ultimate goal of a society that values mobility is to eliminate traffic fatalities and injuries. Toyota's Integrated Safety Management

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[9] Stephen Checkoway et al., *Comprehensive Experimental Analyses of Automotive Attack Surfaces*, http://www.autosec.org/pubs/cars-usenixsec2011.pdf (last accessed February 20, 2015).

[10] *See generally* Miller & Valasek.

[11] *See generally* Miller & Valasek. A video of the researchers hacking and taking control of the 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.

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> Concept sets the direction for safety technology development and vehicle development, and covers all aspects of driving by integrating individual vehicle safety technologies and systems rather than viewing them as independently functioning units.[13]

43. In another, Toyota states:

> Pursuit for Vehicle Safety
>
> Toyota has been implementing "safety" measures to help create safer vehicles.[14]

44. And in a third, Toyota states:

> Toyota recognizes the importance of the driver being in ultimate control of a vehicle and is therefore aiming to introduce AHDA and other advanced driving support systems where the driver maintains control and the fun-to-drive aspect of controlling a vehicle is not compromised.[15]

B. Ford

45. Ford similarly markets and promotes its vehicles as "safe." For example, in describing its 2015 Fusion, Ford states:

> Safety
>
> When you look over the impressive list of collision avoidance and occupant protection features, you'll know how well-equipped Fusion is when it comes to you and your passengers' safety.[16]

46. In describing its 2015 Focus, Ford states:

> Safety
>
> You don't have to pick and choose when it comes to safety. Focus is well equipped with an impressive list of safety features.[17]

C. GM

47. GM also heavily promotes the safety of its vehicles. As GM states in one of its

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[13] http://www.toyota-global.com/innovation/safety_technology/media-tour/ (last accessed February 20, 2015).

[14] http://www.toyota-global.com/innovation/safety_technology/safety_measurements/ (last accessed February 20, 2015).

[15] http://www.toyota.com/esq/safety/active-safety/advanced-driving-support-system.html (last 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).

promotional materials:

> GM's Commitment to Safety
>
> Quality and safety are at the top of the agenda at GM, as we work on technology improvements in crash avoidance and crashworthiness to augment the post-event benefits of OnStar, like advanced automatic crash notification.[18]

48. And in a recent press release, GM stated:

> GM Paves Way for Global Active Safety Development
>
> Thu, Oct 23 2014
>
> 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.
>
> * * *
>
> The Active Safety Testing Area, or ASTA, will complement the Milford Proving Ground's vast test capabilities and increase GM's ability to bring the best new safety technologies to the customer.[19]

Defendants Expressly Warrant that They Will Repair or Replace Any Defects

49. In connection with the sale (by purchase or lease) of each one of its new vehicles, Defendants provide an express limited warranty on each vehicle. In those warranties, Defendants promise to repair any defect or malfunction that arises in the vehicle during a defined period of time. This warranty is provided by Defendants to the vehicle owner in writing and regardless of what state the customer purchased his or her vehicle in. As further alleged below, the relevant terms of the warranties in this case are essentially identical, regardless of the manufacturer or model year.

50. Plaintiffs Cahen, Tompulis, and Nisam were each provided with a warranty and it was a basis of the purchase of their vehicles. Plaintiffs and the members of the Class experienced defects within the warranty period. However, despite the existence of the express warranties provided to Plaintiffs and the members of the Class, Defendants have failed to honor the terms of the warranties by failing to correct the CAN bus defects at no charge.

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[18] http://www.gm.com/vision/quality_safety/gms_commitment_tosafety.html (last accessed March 5, 2015)

[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).

A. Toyota's warranty

51. In its Limited Warranties and in advertisements, brochures, and through other statements in the media, Toyota expressly warranted that it would repair or replace defects in material or workmanship free of charge if they became apparent during the warranty period. The following uniform language appears in all Toyota Warranty booklets:

> *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. . . .

B. Ford's warranty

52. In its Limited Warranties and in advertisements, brochures, and through other statements in the media, Ford expressly warranted that it would repair or replace defects in material or workmanship free of charge if they became apparent during the warranty period. The following uniform language appears in all Ford Warranty booklets:

> *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 REFERRENCE: 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. . . .

C. GM's warranty

53. In its Limited Warranties and in advertisements, brochures, and through other

statements in the media, GM expressly warranted that it would repair or replace defects in material or workmanship free of charge if they became apparent during the warranty period. The following uniform language appears in all GM Warranty booklets:

> *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.

CLASS ALLEGATIONS

54. Plaintiffs bring this action on behalf of themselves and as a class action, pursuant to the provisions of Rules 23(a), (b)(2), and (b)(3) of the Federal Rules of Civil Procedure on behalf of the following classes:

> All persons or entities in the United States who are current or former owners and/or lessees of a Toyota Vehicle, Ford Vehicle, or GM Vehicle equipped with a CAN bus (the "Nationwide 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 California (the "California 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 Alabama (the "Alabama 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").

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 Colorado (the "Colorado 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 Connecticut (the "Connecticut 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 Delaware (the "Delaware Class").

All persons or entities who purchased or leased a Toyota Vehicle, Ford Vehicle, or GM Vehicle equipped with a CAN bus in the District of Columbia (the "District of Columbia 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 Florida (the "Florida 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 Georgia (the "Georgia 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 Hawaii (the "Hawaii 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 Idaho (the "Idaho 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 Illinois (the "Illinois 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 Indiana (the "Indiana 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 Iowa (the "Iowa 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 Kansas (the "Kansas 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 Kentucky (the "Kentucky 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 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").

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 Maryland (the "Maryland 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 Massachusetts (the "Massachusetts 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 Michigan (the "Michigan 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 Minnesota (the "Minnesota 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 Mississippi (the "Mississippi 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 Missouri (the "Missouri 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 Montana (the "Montana 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 Nebraska (the "Nebraska 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 Nevada (the "Nevada 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 New Hampshire (the "New Hampshire 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 New Jersey (the "New Jersey 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 New Mexico (the "New Mexico 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 New York (the "New York 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 North Carolina (the "North 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 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").

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 Wisconsin (the "Wisconsin 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 Wyoming (the "Wyoming Class").

(Collectively, the "Class," unless otherwise noted).

55. Excluded from the Class are Defendants and their subsidiaries and affiliates; all persons who make a timely election to be excluded from the Class; governmental entities; and the judge to whom this case is assigned and his/her immediate family.

56. Plaintiffs reserve the right to revise the Class definition based upon information learned through discovery.

57. Certification of Plaintiffs' claims for class-wide treatment is appropriate because Plaintiffs can prove the elements of their claims on a class-wide basis using the same evidence as would be used to prove those elements in individual actions alleging the same claim.

58. This action has been brought and may be properly maintained on behalf of each of the Classes proposed herein under Federal Rule of Civil Procedure 23.

59. Numerosity. Federal Rule of Civil Procedure 23(a)(1): The members of the Class are so numerous and geographically dispersed that individual joinder of all Class members is impracticable. While Plaintiffs are informed and believe that there are not less than tens of thousands of members of the Class, the precise number of Class members is unknown to Plaintiffs, but may be ascertained from Defendants' books and records. Class members may be notified of the pendency of this action by recognized, Court-approved notice dissemination methods, which may include U.S. mail, electronic mail, Internet postings, and/or published notice.

60. Commonality and Predominance. Federal Rule of Civil Procedure 23(a)(2) and 23(b)(3): This action involves common questions of law and fact, which predominate over any questions affecting individual Class members, including, without limitation:

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;

c) Whether the CAN buses in the Class Vehicles contains a defect;

d) Whether such defect can cause the Class Vehicles to malfunction;

e) Whether Defendants knew about the defect and, if so, how long Defendants have known of the defect;

f) Whether Defendants designed, manufactured, marketed, and distributed Class Vehicles with defective CAN buses;

g) Whether Defendants' conduct violates consumer protection statutes, warranty laws, and other laws as asserted herein;

h) Whether Defendants knew or reasonably should have known of the defects in the Class Vehicles before it sold or leased them to Class members;

i) Whether Plaintiffs and the other Class members are entitled to equitable relief, including, but not limited to, restitution or injunctive relief; and

j) Whether Plaintiffs and the other Class members are entitled to damages and other monetary relief and, if so, in what amount.

61. Typicality. Federal Rule of Civil Procedure 23(a)(3): Plaintiffs' claims are typical of the other Class members' claims because, among other things, all Class members were comparably injured through Defendants' wrongful conduct as described above.

62. Adequacy. Federal Rule of Civil Procedure 23(a)(4): Plaintiffs are adequate Class representatives because their interests do not conflict with the interests of the other members of the Classes each respectively seeks to represent; Plaintiffs have retained counsel competent and experienced in complex class action litigation; and Plaintiffs intend to prosecute this action vigorously. The Classes' interests will be fairly and adequately protected by Plaintiffs and their counsel.

63. Declaratory and Injunctive Relief. Federal Rule of Civil Procedure 23(b)(2): Defendants have acted or refused to act on grounds generally applicable to Plaintiffs and the other members of the Classes, thereby making appropriate final injunctive relief and declaratory relief, as described below, with respect to the Class as a whole.

64. Superiority. Federal Rule of Civil Procedure 23(b)(3): A class action is superior

to any other available means for the fair and efficient adjudication of this controversy, and no unusual difficulties are likely to be encountered in the management of this class action. The damages or other financial detriment suffered by Plaintiffs and the other Class members are relatively small compared to the burden and expense that would be required to individually litigate their claims against Defendants, so it would be impracticable for Nationwide and California Class members to individually seek redress for Defendants' wrongful conduct. Even if Class members could afford individual litigation, the court system could not. Individualized litigation creates a potential for inconsistent or contradictory judgments, and increases the delay and expense to all parties and the court system. By contrast, the class action device presents far fewer management difficulties, and provides the benefits of single adjudication, economy of scale, and comprehensive supervision by a single court.

VIOLATIONS ALLEGED

Claims Brought on Behalf of the Nationwide Class

COUNT I

Violation of Magnuson-Moss Warranty Act
(15 U.S.C. Sections 2301, *et seq.*)

65. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

66. Plaintiffs bring this Count on behalf of the Nationwide Class.

67. Plaintiffs are "consumers" within the meaning of the Magnuson-Moss Warranty Act, 15 U.S.C. § 2301(3).

68. Defendants are "suppliers" and "warrantors" within the meaning of the Magnuson-Moss Warranty Act, 15 U.S.C. § 2301(4)-(5).

69. The Class Vehicles are "consumer products" within the meaning of the Magnuson-Moss Warranty Act, 15 U.S.C. § 2301(1). 15 U.S.C. § 2301(d)(1) provides a cause of action for any consumer who is damaged by the failure of a warrantor to comply with a written or implied warranty.

70. Defendants' express warranties are written warranties within the meaning of the

Magnuson-Moss Warranty Act, 15 U.S.C. § 2301(6). The Class Vehicles' implied warranties are covered under 15 U.S.C. § 2301(7).

71. Defendants breached these warranties as described in more detail above. Without limitation, the Class Vehicles are equipped with CAN buses, a defective electronic unit within the Class Vehicles. The Class Vehicles share a common design defect in that the CAN buses fail to operate as represented by Defendants.

72. Plaintiffs and the other Nationwide Class members have had sufficient direct dealings with either Defendants or their agents (dealerships and technical support) to establish privity of contract between Defendants, on one hand, and Plaintiffs and each of the other Nationwide Class members on the other hand. Nonetheless, privity is not required here because Plaintiffs and each of the other Nationwide Class members are intended third-party beneficiaries of contracts between Defendants and their dealers, and specifically, 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 consumers only.

73. Affording Defendants a reasonable opportunity to cure their breach of written warranties would be unnecessary and futile here. Indeed, Plaintiffs have already done so, and Defendants have failed to cure the defects. At the time of sale or lease of each Class Vehicle, Defendants knew, should have known, or were reckless in not knowing of their misrepresentations and omissions concerning the Class Vehicles' inability to perform as warranted, but nonetheless failed to rectify the situation and/or disclose the defective design. Under the circumstances, the remedies available under any informal settlement procedure would be inadequate and any requirement that Plaintiffs resort to an informal dispute resolution procedure and/or afford Defendants a reasonable opportunity to cure their breach of warranties is excused and thereby deemed satisfied.

74. Plaintiffs and the other Nationwide Class members would suffer economic hardship if they returned their Class Vehicles but did not receive the return of all payments made by them. Because Defendants are refusing to acknowledge any revocation of acceptance and

return immediately any payments made, Plaintiffs and the other Nationwide Class members have not re-accepted their Class Vehicles by retaining them.

75. The amount in controversy of Plaintiffs' individual claims meets or exceeds the sum of $25. The amount in controversy of this action exceeds the sum of $50,000, exclusive of interest and costs, computed on the basis of all claims to be determined in this lawsuit.

76. Plaintiffs, individually and on behalf of the other Nationwide Class members, seek all damages permitted by law, including diminution in value of the Class Vehicles, in an amount to be proven at trial.

Claims Brought on Behalf of the California Class

COUNT II

Violation of California Unfair Competition Law
(California Business & Professions Code Sections 17200, *et seq.*)

77. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

78. Plaintiffs bring this Count on behalf of the California Class.

79. California's Unfair Competition Law ("UCL"), Cal. Bus. & Prof. Code §§ 17200, *et seq.*, proscribes acts of unfair competition, including "any unlawful, unfair or fraudulent business act or practice and unfair, deceptive, untrue or misleading advertising."

80. Defendants' conduct, as described herein, was and is in violation of the UCL. Defendants' conduct violates the UCL in at least the following ways:

a) By knowingly and intentionally concealing from Plaintiffs and the other California Class members that the Class Vehicles suffer from a design defect while obtaining money from Plaintiffs;

b) By marketing Class Vehicles as possessing functional and defect-free electronic units;

c) By refusing or otherwise failing to repair and/or replace defective CAN buses in Class Vehicles;

d) By violating federal laws, including the Magnuson-Moss Warranty Act,

15 U.S.C. § 2301; and

e) By violating other California laws, including Cal. Civ. Code §§ 1709, 1710, and 1750, *et seq.*, and Cal. Comm. Code § 2313.

81. Defendants' misrepresentations and omissions alleged herein caused Plaintiffs and the other California Class members to make their purchases or leases of their Class Vehicles. Absent those misrepresentations and omissions, Plaintiffs and the other California Class members would not have purchased or leased these Vehicles, would not have purchased or leased these Class Vehicles at the prices they paid, and/or would have purchased or leased less expensive alternative vehicles that did not contain CAN buses.

82. Accordingly, Plaintiffs and the other California Class members have suffered injury in fact including lost money or property as a result of Defendants' misrepresentations and omissions.

83. Plaintiffs seek to enjoin further unlawful, unfair, and/or fraudulent acts or practices by Defendants under Cal. Bus. & Prof. Code § 17200.

84. Plaintiffs request that this Court enter such orders or judgments as may be necessary to enjoin Defendants from continuing their unfair, unlawful, and/or deceptive practices and to restore to Plaintiffs and members of the Class any money Defendants acquired by unfair competition, including restitution and/or restitutionary disgorgement, as provided in Cal. Bus. & Prof. Code § 17203 and Cal. Civ. Code § 3345; and for such other relief set forth below.

COUNT III

Violation of California Consumers Legal Remedies Act
(California Civil Code Sections 1750, *et seq.*)

85. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

86. Plaintiffs bring this Count on behalf of the California Class.

87. California's Consumers Legal Remedies Act ("CLRA"), Cal. Civ. Code §§ 1750, *et seq.*, proscribes "unfair methods of competition and unfair or deceptive acts or practices undertaken by any person in a transaction intended to result or which results in the sale or lease of

goods or services to any consumer."

88. The Class Vehicles are "goods" as defined in Cal. Civ. Code § 1761(a).

89. Plaintiffs and the other California class members are "consumers" as defined in Cal. Civ. Code § 1761(d), and Plaintiffs, the other California class members, and Defendants are "persons" as defined in Cal. Civ. Code § 1761(c).

90. As alleged above, Defendants made numerous representations concerning the benefits and safety features of the Class Vehicles that were misleading.

91. In purchasing or leasing the Class Vehicles, Plaintiffs and the other California Class members were deceived by Defendants' failure to disclose that the Class Vehicles were equipped with defective CAN buses.

92. Defendants' conduct, as described hereinabove, was and is in violation of the CLRA.

93. Defendants' conduct violates at least the following enumerated CLRA provisions:

a) Cal. Civ. Code § 1770(a)(5): Representing that goods have characteristics, uses, and benefits which they do not have;

b) Cal. Civ. Code § 1770(a)(7): Representing that goods are of a particular standard, quality, or grade, if they are of another;

c) Cal. Civ. Code § 1770(a)(9): Advertising goods with intent not to sell them as advertised; and

d) Cal. Civ. Code § 1770(a)(16): Representing that goods have been supplied in accordance with a previous representation when they have not.

94. Plaintiffs and the other California Class members have suffered injury in fact and actual damages resulting from Defendants' material omissions and misrepresentations because they paid an inflated purchase or lease price for the Class Vehicles.

95. Defendants knew, should have known, or were reckless in not knowing of the defective design and/or manufacture of the CAN buses, and that the CAN buses were not suitable for their intended use.

96. The facts concealed and omitted by Defendants to Plaintiffs and the other

California Class members are material in that a reasonable consumer would have considered them to be important in deciding whether to purchase or lease the Class Vehicles or pay a lower price. Had Plaintiffs and the other California Class members known about the defective nature of the Class Vehicles and their CAN buses, they would not have purchased or leased the Class Vehicles or would not have paid the prices they paid in fact.

97. Concurrently with the filing of this Complaint, Plaintiffs are providing Defendants with notice of their violations of the CLRA pursuant to Cal. Civ. Code § 1782(a).

98. Plaintiffs' and the other California Class members' injuries were proximately caused by Defendants' fraudulent and deceptive business practices. Therefore, Plaintiffs and the other California Class members are entitled to equitable and monetary relief under the CLRA. At this time, until thirty days after the date of the pre-suit demand letter, Plaintiffs seek only equitable relief and not damages under the CLRA. If Defendants do not comply in full with Plaintiffs' demand letter, Plaintiffs will amend this Complaint to add a claim for damages after thirty days.

COUNT IV

Violation of California False Advertising Law
(California Business & Professions Code Sections 17500, *et seq.*)

99. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

100. Plaintiffs bring this Count on behalf of the California Class.

101. California Bus. & Prof. Code § 17500 states: "It is unlawful for any . . . corporation . . . with intent directly or indirectly to dispose of real or personal property . . . to induce the public to enter into any obligation relating thereto, to make or disseminate or cause to be made or disseminated . . . from this state before the public in any state, in any newspaper or other publication, or any advertising device, . . . or in any other manner or means whatever, including over the Internet, any statement . . . which is untrue or misleading, and which is known, or which by the exercise of reasonable care should be known, to be untrue or misleading."

102. Defendants caused to be made or disseminated through California and the United

States, through advertising, marketing and other publications, statements that were untrue or misleading, and which were known, or which by the exercise of reasonable care should have been known to Defendants, to be untrue and misleading to consumers, including Plaintiffs and the other Class members.

103. Defendants have violated § 17500 because the misrepresentations and omissions regarding the safety, reliability, and functionality of their Class Vehicles as set forth in this Complaint were material and likely to deceive a reasonable consumer.

104. Plaintiffs and the other Class members have suffered an injury in fact, including the loss of money or property, as a result of Defendants' unfair, unlawful, and/or deceptive practices. In purchasing or leasing their Class Vehicles, Plaintiffs and the other Class members relied on the misrepresentations and/or omissions of Defendants with respect to the safety and reliability of the Class Vehicles. Defendants' representations turned out not to be true because the Class Vehicles are distributed with faulty and defective in-car communication and entertainment systems, rendering certain safety, communication, navigational, and entertainment functions inoperative. Had Plaintiffs and the other Class members known this, they would not have purchased or leased their Class Vehicles and/or paid as much for them. Accordingly, Plaintiffs and the other Class members overpaid for their Class Vehicles and did not receive the benefit of their bargain.

105. All of the wrongful conduct alleged herein occurred, and continues to occur, in the conduct of Defendants' business. Defendants' wrongful conduct is part of a pattern or generalized course of conduct that is still perpetuated and repeated, both in the State of California and nationwide.

106. Plaintiffs, individually and on behalf of the other Class members, request that this Court enter such orders or judgments as may be necessary to enjoin Defendants from continuing their unfair, unlawful, and/or deceptive practices and to restore to Plaintiffs and the other Class members any money Defendants acquired by unfair competition, including restitution and/or restitutionary disgorgement, and for such other relief set forth below.

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.

115. As a direct and proximate result of Defendants' breach of the warranties of merchantability, Plaintiffs and the other Class members have been damaged in an amount to be proven at trial.

COUNT VI

Breach of Contract/Common Law Warranty
(Based on California Law)

116. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

117. Plaintiffs bring this Count on behalf of the California Class.

118. To the extent Defendants' limited remedies are deemed not to be warranties under California'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.

119. Defendants breached this warranty or contract obligation by failing to repair the Class Vehicles evidencing faulty and defective CAN buses, or to replace them.

120. 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 VII

Fraud by Concealment
(Based on California Law)

121. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

122. Plaintiffs bring this Count on behalf of the California Class.

123. As set forth above, Defendants concealed and/or suppressed material facts concerning the safety, quality, functionality, and reliability of their Class Vehicles.

124. Defendants had a duty to disclose these safety, quality, functionality, and reliability issues because they consistently marketed their Class Vehicles as safe and proclaimed that safety is one of Defendants' highest corporate priorities. Once Defendants made representations to the public about safety, quality, functionality, and reliability, Defendants were under a duty to disclose these omitted facts, because where one does speak one must speak the whole truth and not conceal any facts which materially qualify those facts stated. One who volunteers information must be truthful, and the telling of a half-truth calculated to deceive is fraud.

125. In addition, Defendants had a duty to disclose these omitted material facts because they were known and/or accessible only to Defendants which has superior knowledge and access to the facts, and Defendants knew they were not known to or reasonably discoverable by Plaintiffs and the other Class members. These omitted facts were material because they directly impact the safety, quality, functionality, and reliability of the Class Vehicles.

126. Whether or not a vehicle is susceptible to hacking as a result of the defect alleged herein is a material safety concern. Defendants possessed exclusive knowledge of the defect rendering the Class Vehicles inherently more dangerous and unreliable than similar vehicles.

127. Defendants actively concealed and/or suppressed these material facts, in whole or in part, with the intent to induce Plaintiffs and the other Class members to purchase or lease Class Vehicles at a higher price for the Class Vehicles, which did not match the Class Vehicles' true value.

128. Defendants still have not made full and adequate disclosure and continues to defraud Plaintiffs and the other Class members.

129. Plaintiffs and the other Class members were unaware of these omitted material facts and would not have acted as they did if they had known of the concealed and/or suppressed facts. Plaintiffs' and the other Class members' actions were justified. Defendants were in exclusive control of the material facts and such facts were not known to the public, Plaintiffs, or the Class.

130. As a result of the concealment and/or suppression of the facts, Plaintiffs and the other Class members sustained damage.

131. Defendants' acts were done maliciously, oppressively, deliberately, with intent to defraud, and in reckless disregard of Plaintiffs' and the other Class members' rights and well-being to enrich Defendants. Defendants' conduct warrants an assessment of punitive damages in an amount sufficient to deter such conduct in the future, which amount is to be determined according to proof.

COUNT VIII

Violation of Song-Beverly Consumer Warranty Act for Breach of Express Warranties (California Civil Code Sections 1791.2 & 1793.2(d))

132. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

133. Plaintiffs bring this Count on behalf of the California Class.

134. Plaintiffs and the other Class members who purchased or leased the Class Vehicles in California are "buyers" within the meaning of Cal. Civ. Code § 1791(b).

135. The Class Vehicles are "consumer goods" within the meaning of Cal. Civ. Code § 1791(a).

136. Defendants are "manufacturers" of the Class Vehicles within the meaning of Cal. Civ. Code § 1791(j).

137. Plaintiffs and the other Class members bought/leased new motor vehicles manufactured by Defendants.

138. Defendants made express warranties to Plaintiffs and the other Class members within the meaning of Cal. Civ. Code §§ 1791.2 and 1793.2, as described above.

139. 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 REFERRENCE: 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.

140. As set forth above in detail, the Class Vehicles are inherently defective in that there are defects in the Class Vehicles' CAN buses that render the vehicles susceptible to hacking and thus dangerous, defects that were and continue to be covered by Defendants' express warranties, and these defects substantially impair the use, value, and safety of Defendants' Class Vehicles to reasonable consumers like Plaintiffs and the other Class members.

141. Defendants did not promptly replace or buy back the Class Vehicles of Plaintiffs and the other Class members.

142. As a result of Defendants' breach of their express warranties, Plaintiffs and the other Class members received goods whose dangerous condition substantially impairs their value to Plaintiffs and the other Class members. Plaintiffs and the other Class members have been damaged as a result of the diminished value of Defendants' products, the products' malfunctioning, and the nonuse of their Class Vehicles.

143. Pursuant to Cal. Civ. Code §§ 1793.2 & 1794, Plaintiffs and the other Class members are entitled to damages and other legal and equitable relief including, at their election, the purchase price of their Class Vehicles, or the overpayment or diminution in value of their Class Vehicles.

144. Pursuant to Cal. Civ. Code § 1794, Plaintiffs and the other Class members are entitled to costs and attorneys' fees.

COUNT IX

Violation of Song-Beverly Consumer Warranty Act for Breach of Implied Warranty of Merchantability

(California Civil Code Sections 1791.1 and 1792)

145. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

146. Plaintiffs bring this Count on behalf of the California Class.

147. Plaintiffs and the other Class members who purchased or leased the Class Vehicles in California are "buyers" within the meaning of Cal. Civ. Code § 1791(b).

148. The Class Vehicles are "consumer goods" within the meaning of Cal. Civ. Code § 1791(a).

149. Defendants are "manufacturers" of the Class Vehicles within the meaning of Cal. Civ. Code § 1791(j).

150. Defendants impliedly warranted to Plaintiffs and the other Class members that their Class Vehicles were "merchantable" within the meaning of Cal. Civ. Code §§ 1791.1(a) & 1792, however, the Class Vehicles do not have the quality that a buyer would reasonably expect.

151. Cal. Civ. Code § 1791.1(a) states:

> "Implied warranty of merchantability" or "implied warranty that goods are merchantable" means that the consumer goods meet each of the following:
>
> a. Pass without objection in the trade under the contract description.
> b. Are fit for the ordinary purposes for which such goods are used.
> c. Are adequately contained, packaged, and labeled.
> d. Conform to the promises or affirmations of fact made on the container or label.

152. The Class Vehicles would not pass without objection in the automotive trade because of the defects in the Class Vehicles' CAN buses that cause crucial functions of the Class Vehicles to be susceptible to hacking.

153. Because of the defects in the Class Vehicles' CAN buses that cause crucial functions of the Class Vehicles to be susceptible to hacking, they are not safe to drive and thus not fit for ordinary purposes.

154. The Class Vehicles are not adequately labeled because the labeling fails to disclose the defects in the Class Vehicles' CAN buses that cause crucial functions of the Class Vehicles to be susceptible to hacking.

155. Defendants breached the implied warranty of merchantability by manufacturing and selling Class Vehicles containing defects associated with the CAN buses. Furthermore, these defects have caused Plaintiffs and the other Class members to not receive the benefit of their bargain and have caused Class Vehicles to depreciate in value.

156. 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

dysfunctional condition substantially impairs their value to Plaintiffs and the other Class members.

157. Plaintiffs and the other Class members have been damaged as a result of the diminished value of Defendants' products, the products' malfunctioning, and the nonuse of their Class Vehicles.

158. Pursuant to Cal. Civ. Code §§ 1791.1(d) & 1794, Plaintiffs and the other Class members are entitled to damages and other legal and equitable relief including, at their election, the purchase price of their Class Vehicles, or the overpayment or diminution in value of their Class Vehicles.

159. Pursuant to Cal. Civ. Code § 1794, Plaintiffs and the other Class members are entitled to costs and attorneys' fees.

Claims Brought on Behalf of the Alabama Class

COUNT X

Breach of Express Warranty
(Alabama Code Section 7-2-313)

160. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

161. Plaintiffs bring this Count on behalf of the Alabama Class.

162. Defendants are and were at all relevant times merchants with respect to motor vehicles under Ala. Code § 7-2-104.

163. 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 REFERRENCE: 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.

165. 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.

166. In addition to these Limited Warranties, Defendants otherwise expressly warranted several attributes, characteristics, and qualities of the CAN bus.

167. 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' websitess, 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.

168. 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.

169. Furthermore, the limited warranty of repair and/or adjustments to defective parts, fails in its essential purpose because the contractual remedy is insufficient to make Plaintiffs and the other Class members whole and because Defendants have failed and/or have refused to adequately provide the promised remedies within a reasonable time.

170. Accordingly, recovery by Plaintiffs and the other Class members is not limited to the limited warranty of repair or adjustments to parts defective in materials or workmanship, and Plaintiffs, individually and on behalf of the other Class members, seek all remedies as allowed by law.

171. Also, as alleged in more detail herein, at the time that Defendants warranted and sold the Class Vehicles they knew that the Class Vehicles did not conform to the warranties and

were inherently defective, and Defendants wrongfully and fraudulently misrepresented and/or concealed material facts regarding their Class Vehicles. Plaintiffs and the other Class members were therefore induced to purchase or lease the Class Vehicles under false and/or fraudulent pretenses.

172. Moreover, many of the injuries flowing from the Class Vehicles cannot be resolved through the limited remedy of "replacement or adjustments," as many incidental and consequential damages have already been suffered due to Defendants' fraudulent conduct as alleged herein, and due to their failure and/or continued failure to provide such limited remedy within a reasonable time, and any limitation on Plaintiffs' and the other Class members' remedies would be insufficient to make Plaintiffs and the other Class members whole.

173. Finally, due to Defendants' breach of warranties as set forth herein, Plaintiffs and the other Class members assert as an additional and/or alternative remedy, as set forth in Ala. Code § 7-2- 711, for a revocation of acceptance of the goods, and for a return to Plaintiffs and to the other Class members of the purchase price of all Class Vehicles currently owned and for such other incidental and consequential damages as allowed under Ala. Code §§ 7-2-711 and 7-2-608.

174. Defendants were provided notice of these issues by the instant Complaint, and by other means before or within a reasonable amount of time after the allegations of Class Vehicle defects became public.

175. As a direct and proximate result of Defendants' breach of express warranties, Plaintiffs and the other Class members have been damaged in an amount to be determined at trial.

COUNT XI

Breach of the Implied Warranty of Merchantability (Alabama Code Section 7-2-314)

176. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

177. Plaintiffs bring this Count on behalf of the Alabama Class.

178. Defendants are and were at all relevant times merchants with respect to motor vehicles under Ala. Code § 7-2-104.

179. A warranty that the Class Vehicles were in merchantable condition was implied by law in the instant transactions, pursuant to Ala. Code § 7-2-314. These vehicles and the CAN buses in the Class Vehicles, when sold and at all times thereafter, were not in merchantable condition and are not fit for the ordinary purpose for which they are used. Specifically, the Class Vehicles are inherently defective in that there are defects in the CAN bus which prevent users from enjoying many features of the Class Vehicles they purchased and/or leased and that they paid for; and the CAN bus was not adequately tested.

180. Defendants were provided notice of these issues by numerous complaints filed against them, including the instant Complaint, and by other means.

181. 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 XII

Breach of Contract/Common Law Warranty
(Based on Alabama Law)

182. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

183. Plaintiffs bring this Count on behalf of the Alabama Class.

184. To the extent Defendants' limited remedies are deemed not to be warranties under Alabama'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 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.

185. 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 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

buses were susceptible to hacking. Defendants intentionally made the false statements in order to sell Class Vehicles.

195. Plaintiffs and the other Class members relied on Defendants' reputation – along with Defendants' failure to disclose the faulty and defective nature of the CAN buses and Defendants' affirmative assurance that their Class Vehicles were safe and reliable, and other similar false statements – in purchasing or leasing Defendants' Class Vehicles.

196. As a result of their reliance, Plaintiffs and the other Class members have been injured in an amount to be proven at trial, including, but not limited to, their lost benefit of the bargain and overpayment at the time of purchase or lease and/or the diminished value of their Class Vehicles.

197. Defendants' conduct was knowing, intentional, with malice, demonstrated a complete lack of care, and was in reckless disregard for the rights of Plaintiffs and the other Class members.

198. Plaintiffs and the other Class members are therefore entitled to an award of punitive damages.

COUNT XIV

Violation of Alabama Deceptive Trade Practices Act
(Alabama Code Sections 8-19-1, *et seq.*)

199. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

200. The conduct of Defendants, as set forth herein, constitutes unfair or deceptive acts or practices, including but not limited to, Defendants' manufacture and sale of vehicles with CAN buses susceptible to hacking, which Defendants failed to adequately investigate, disclose and remedy, and their misrepresentations and omissions regarding the safety and reliability of their vehicles.

201. Defendants' actions, as set forth above, occurred in the conduct of trade or commerce.

202. Defendants' actions impact the public interest because Plaintiffs were injured in exactly the same way as millions of others purchasing and/or leasing Defendants vehicles as a result of Defendants' generalized course of deception. All of the wrongful conduct alleged herein occurred, and continues to occur, in the conduct of Defendants' business.

203. Plaintiffs and the Class were injured as a result of Defendants' conduct. Plaintiffs overpaid for their Defective Vehicles and did not receive the benefit of their bargain, and their vehicles have suffered a diminution in value.

204. Defendants' conduct proximately caused the injuries to Plaintiffs and the Class.

205. Defendants are liable to Plaintiffs and the Class for damages in amounts to be proven at trial, including attorneys' fees, costs, and treble damages.

206. Pursuant to Ala. Code § 8-19-8, Plaintiffs will serve the Alabama Attorney General with a copy of this complaint as Plaintiffs seek injunctive relief.

Claims Brought on Behalf of the Alaska Class

COUNT XV

Violation of the Alaska Unfair Trade Practices and Consumer Protection Act
(Alaska Statutes Sections 45.50.471, *et seq.*)

207. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

208. The Alaska Unfair Trade Practices And Consumer Protection Act ("AUTPCPA") declares unfair methods of competition and unfair or deceptive acts or practices in the conduct of trade or commerce unlawful, including: "(4) representing that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities that they do not have or that a person has a sponsorship, approval, status, affiliation, or connection that the person does not have"; "(6) representing that goods or services are of a particular standard, quality, or grade, or that goods are of a particular style or model, if they are of another"; "(8) advertising goods or services with intent not to sell them as advertised"; "(12) using or employing deception, fraud, false pretense, false promise, misrepresentation, or knowingly concealing, suppressing, or omitting a material fact with intent that others rely upon the concealment, suppression or omission

in connection with the sale or advertisement of goods or services whether or not a person has in fact been misled, deceived or damaged"; and "(14) representing that an agreement confers or involves rights, remedies, or obligations which it does not confer or involve, or which are prohibited by law." Alaska Stat. § 45.50.471.

209. In the course of Defendants' business, they willfully failed to disclose and actively concealed the dangerous risk of hacking as described above. Accordingly, Defendants engaged in unlawful trade practices, including representing that the Defective Vehicles have characteristics, uses, benefits, and qualities which they do not have; representing that the Defective Vehicles are of a particular standard and quality when they are not; advertising the Defective Vehicles with the intent not to sell them as advertised; omitting material facts in describing the Defective Vehicles; and representing that their warranties confers or involves rights, remedies, or obligations which it does not confer or involve, or which are prohibited by law.

210. Defendants' misrepresentations and omissions described herein have the capacity or tendency to deceive. As a result of these unlawful trade practices, Plaintiffs have suffered ascertainable loss.

211. Plaintiffs and the Class suffered ascertainable loss caused by Defendants' failure to disclose material information. Plaintiffs and the Class overpaid for their vehicles and did not receive the benefit of their bargain. The value of their vehicles has diminished now that the safety issues have come to light, and Plaintiffs and the Class own vehicles that are not safe.

212. Plaintiffs are entitled to recover the greater of three times the actual damages or $500, pursuant to § 45.50.531(a). Attorneys' fees may also be awarded to the prevailing party pursuant to § 45.50.531(g).

COUNT XVI

BREACH OF THE IMPLIED WARRANTY OF MERCHANTABILITY
(Alaska Statutes Section 45.02.314)

213. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

214. Defendants are and were at all relevant times merchants with respect to motor vehicles.

215. A warranty that the Defective Vehicles were in merchantable condition is implied by law in the instant transactions.

216. 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.

217. 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.

218. 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 Arizona Class

COUNT XVII

Violations of the Consumer Fraud Act
(Arizona Revised Statutes Sections 44-1521, *et seq.*)

219. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

220. Plaintiffs bring this Count on behalf of the Arizona Class.

221. Plaintiffs and Defendants are each "persons" as defined by Ariz. Rev. Stat. § 44-1521(6). The Class Vehicles are "merchandise" as defined by Ariz. Rev. Stat. § 44-1521(5).

222. The Arizona Consumer Fraud Act proscribes "[t]he act, use or employment by any person of any deception, deceptive act or practice, fraud, false pretense, false promise, misrepresentation, or concealment, suppression or omission of any material fact with intent that others rely upon such concealment, suppression or omission, in connection with the sale or advertisement of any merchandise whether or not any person has in fact been misled, deceived or damaged thereby." Ariz. Rev. Stat. § 44-1522(A).

223. By failing to disclose and actively concealing the defects in the Class Vehicles, Defendants engaged in deceptive business practices prohibited by the Arizona Consumer Fraud Act, Ariz. Rev. Stat. § 44-1522(A), 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.

224. As alleged above, Defendants made numerous material statements about the benefits and characteristics of the CAN bus that were either false or misleading. Each of these statements contributed to the deceptive context of Defendants' unlawful advertising and representations as a whole.

225. Defendants knew that the CAN buses in the Class Vehicles were defectively designed or manufactured, would fail without warning, and were not suitable for their intended use. Defendants nevertheless failed to warn Plaintiffs about these defects despite having a duty to do so.

226. Defendants owed Plaintiffs a duty to disclose the defective nature of the CAN buses in the Class Vehicles, because Defendants:

a) Possessed exclusive knowledge of the defects rendering the Class Vehicles more unreliable than similar vehicles;

b) Intentionally concealed the defects through their deceptive marketing campaign that it designed to hide the defects in the CAN bus; and/or

c) Made incomplete representations about the characteristics and performance of the CAN bus generally, while purposefully withholding material facts from Plaintiffs that contradicted these representations.

227. Defendants' unfair or deceptive acts or practices were likely to and did in fact deceive reasonable consumers, including Plaintiffs, about the true performance and characteristics of the CAN bus.

228. As a result of their violations of the Arizona Consumer Fraud Act detailed above, Defendants caused actual damage to Plaintiffs and, if not stopped, will continue to harm Plaintiffs. Plaintiffs currently own or lease, or within the class period has owned or leased, a Class Vehicle that is defective. Defects associated with the CAN bus have caused the value of Class Vehicles to decrease.

229. Plaintiffs and the Class sustained damages as a result of the Defendants' unlawful acts and are, therefore, entitled to damages and other relief as provided under the Arizona Consumer Fraud Act.

230. Plaintiffs also seeks court costs and attorneys' fees as a result of Defendants' violation of the Arizona Consumer Fraud Act as provided in Ariz. Rev. Stat. § 12-341.01.

COUNT XVIII

Breach of Express Warranty
(Arizona Revised Statutes Section 47-2313)

231. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

232. Plaintiffs bring this Count on behalf of the Arizona Class.

233. Defendants are and were at all relevant times merchants with respect to motor vehicles under Ariz. Rev. Stat. § 47-2104(A).

234. In their Limited Warranties and in advertisements, brochures, and through other statements in the media, Defendants expressly warranted that it 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 REFERRENCE: 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

workmanship defects.

237. In addition to these Limited Warranties, Defendants otherwise expressly warranted several attributes, characteristics, and qualities of the CAN bus.

238. 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.

239. 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.

240. Furthermore, the limited warranty of repair and/or adjustments to defective parts, fails in its essential purpose because the contractual remedy is insufficient to make Plaintiffs and the other Class members whole and because Defendants have failed and/or have refused to adequately provide the promised remedies within a reasonable time.

241. Accordingly, recovery by Plaintiffs and the other Class members is not limited to the limited warranty of repair or adjustments to parts defective in materials or workmanship, and Plaintiffs, individually and on behalf of the other Class members, seek all remedies as allowed by law.

242. Also, as alleged in more detail herein, at the time that Defendants warranted and sold the Class Vehicles it knew that the Class Vehicles did not conform to the warranties and were inherently defective, and Defendants wrongfully and fraudulently misrepresented and/or concealed material facts regarding their Class Vehicles. Plaintiffs and the other Class members were therefore induced to purchase or lease the Class Vehicles under false and/or fraudulent

pretenses.

243. Moreover, many of the injuries flowing from the Class Vehicles cannot be resolved through the limited remedy of "replacement or adjustments," as many incidental and consequential damages have already been suffered due to Defendants' fraudulent conduct as alleged herein, and due to their failure and/or continued failure to provide such limited remedy within a reasonable time, and any limitation on Plaintiffs' and the other Class members' remedies would be insufficient to make Plaintiffs and the other Class members whole.

244. Finally, due to Defendants' breach of warranties as set forth herein, Plaintiffs and the other Class members assert as an additional and/or alternative remedy, as set forth in Ariz. Rev. Stat. § 47-2711, for a revocation of acceptance of the goods, and for a return to Plaintiffs and to the other Class members of the purchase price of all Class Vehicles currently owned and for such other incidental and consequential damages as allowed under Ariz. Rev. Stat. §§ 47-2711 and 47-2608.

245. Defendants were provided notice of these issues by the instant Complaint, and by other means before or within a reasonable amount of time after the allegations of Class Vehicle defects became public.

246. As a direct and proximate result of Defendants' breach of express warranties, Plaintiffs and the other Class members have been damaged in an amount to be determined at trial.

COUNT XIX

Breach of the Implied Warranty of Merchantability (Arizona Revised Statutes Section 47-2314)

247. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

248. Plaintiffs bring this Count on behalf of the Arizona Class.

249. Defendants are and were at all relevant times merchants with respect to motor vehicles under Ariz. Rev. Stat. § 47-2014.

250. A warranty that the Class Vehicles were in merchantable condition was implied by law in the instant transactions, pursuant to Ariz. Rev. Stat. § 47-2314. These vehicles and the

CAN buses in the Class Vehicles, when sold and at all times thereafter, were not in merchantable condition and are not fit for the ordinary purpose for which they are used. Specifically, the Class Vehicles are inherently defective in that there are defects in the CAN buses which prevent users from enjoying many features of the Class Vehicles they purchased and/or leased and that they paid for; and the CAN bus was not adequately tested.

251. Defendants were provided notice of these issues by numerous complaints filed against them, including the instant Complaint, and by other means.

252. 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 XX

Breach of Contract/Common Law Warranty
(Based on Arizona Law)

253. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

254. Plaintiffs bring this Count on behalf of the Arizona Class.

255. To the extent Defendants' limited remedies are deemed not to be warranties under the Uniform Commercial Code as adopted in Arizona, 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.

256. 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 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

CAN buses were susceptible to hacking. Defendants intentionally made the false statements in order to sell Class Vehicles.

266. Plaintiffs and the other Class members relied on Defendants' reputation – along with Defendants' failure to disclose the faulty and defective nature of the CAN buses and Defendants' affirmative assurance that their Class Vehicles were safe and reliable, and other similar false statements – in purchasing or leasing Defendants' Class Vehicles.

267. As a result of their reliance, Plaintiffs and the other Class members have been injured in an amount to be proven at trial, including, but not limited to, their lost benefit of the bargain and overpayment at the time of purchase or lease and/or the diminished value of their Class Vehicles.

268. Defendants' conduct was knowing, intentional, with malice, demonstrated a complete lack of care, and was in reckless disregard for the rights of Plaintiffs and the other Class members.

269. Plaintiffs and the other Class members are therefore entitled to an award of punitive damages.

Claims Brought on Behalf of the Arkansas Class

COUNT XXII

Breach of Implied Warranty of Merchantability
(Arkansas Code Annotated Section 4-2-314)

270. Plaintiffs incorporate the allegations set forth above as is fully set forth herein.

271. In their manufacture and sale of the Defective Vehicles, Defendants impliedly warranted to Plaintiffs and the Class that their vehicles were in merchantable condition and fit for their ordinary purpose.

272. 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.

273. Under the Uniform Commercial Code there exists an implied warranty of merchantability.

274. Defendants have breached the warranty of merchantability by having sold their automobiles with defects such that the vehicles were not fit for their ordinary purpose and Plaintiffs and the Class suffered damages as a result.

COUNT XXIII

Negligent Misrepresentation/Fraud
(Arkansas Code Annotated Section 4-2-721)

275. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

276. As set forth above, Defendants concealed and/or suppressed material facts concerning the safety of their vehicles.

277. Defendants had a duty to disclose these safety issues because they consistently marketed their vehicles as safe and proclaimed that safety is one of Defendants' highest corporate priorities. Once Defendants made representations to the public about safety, Defendants were under a duty to disclose these omitted facts, because where one does speak one must speak the whole truth and not conceal any facts which materially qualify those facts stated. One who volunteers information must be truthful, and the telling of a half-truth calculated to deceive is fraud.

278. In addition, Defendants had a duty to disclose these omitted material facts because they were known and/or accessible only to Defendants who have superior knowledge and access to the facts, and Defendants knew they were not known to or reasonably discoverable by Plaintiffs and the Class. These omitted facts were material because they directly impact the safety of the Defective Vehicles. Whether or not a vehicle accelerates only at the driver's command, and whether a vehicle will stop or not upon application of the brake by the driver, are material safety concerns. Defendants possessed exclusive knowledge of the defects rendering the Defective Vehicles inherently more dangerous and unreliable than similar vehicles.

279. Defendants actively concealed and/or suppressed these material facts, in whole or

in part, with the intent to induce Plaintiffs and the Class to purchase the Defective Vehicles at a higher price for the vehicles, which did not match the vehicles' true value.

280. Defendants still have not made full and adequate disclosure and continue to defraud Plaintiffs and the Class.

281. Plaintiffs and the Class were unaware of these omitted material facts and would not have acted as they did if they had known of the concealed and/or suppressed facts. Plaintiffs' and the Class' actions were justified. Defendants were in exclusive control of the material facts and such facts were not known to the public or the Class.

282. As a result of the misrepresentation concealment and/or suppression of the facts, Plaintiffs and the Class sustained damage. For those Plaintiffs and the Class who elect to affirm the sale, these damages, pursuant to A.C.A. § 4-2-72, include the difference between the actual value of that which Plaintiffs and the Class paid and the actual value of that which they received, together with additional damages arising from the sales transaction, amounts expended in reliance upon the fraud, compensation for loss of use and enjoyment of the property, and/or lost profits. For those Plaintiffs and the Class who want to rescind the purchase, then those Plaintiffs and the Class are entitled to restitution and consequential damages pursuant to A.C.A. § 4-2-72.

283. Defendants' acts were done maliciously, oppressively, deliberately, with intent to defraud, and in reckless disregard of Plaintiffs' and the Class' rights and well-being to enrich Defendants. Defendants' conduct warrants an assessment of punitive damages in an amount sufficient to deter such conduct in the future, which amount is to be determined according to proof.

Claims Brought on Behalf of the Colorado Class

COUNT XXIV

Violations of the Colorado Consumer Protection Act
(Colorado Revised Statutes Sections 6-1-101, *et seq.*)

284. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

285. Plaintiffs bring this Count on behalf of the Colorado Class.

286. Colorado's Consumer Protection Act (the "CCPA") prohibits a person from engaging in a "deceptive trade practice," which includes knowingly making "a false representation as to the source, sponsorship, approval, or certification of goods," or "a false representation as to the characteristics, ingredients, uses, benefits, alterations, or quantities of goods." Colo. Rev. Stat. § 6-1-105(1)(b), (e). The CCPA further prohibits "represent[ing] that goods … are of a particular standard, quality, or grade … if he knows or should know that they are of another," and "advertis[ing] goods . . . with intent not to sell them as advertised." Colo. Rev. Stat. § 6-1-105(1)(g),(i).

287. Defendants are "persons" within the meaning of Colo. Rev. Stat. § 6-1-102(6).

288. In the course of Defendants' business, they willfully misrepresented and failed to disclose, and actively concealed, the dangerous risk of CAN bus hacking in Class Vehicles as described above. Accordingly, Defendants engaged in unlawful trade practices, including representing that Class Vehicles have characteristics, uses, benefits, and qualities which they do not have; representing that Class Vehicles are of a particular standard and quality when they are not; advertising Class Vehicles with the intent not to sell them as advertised; and otherwise engaging in conduct likely to deceive.

289. Defendants' actions as set forth above occurred in the conduct of trade or commerce.

290. Defendants' conduct proximately caused injuries to Plaintiffs and the other Class members.

291. Plaintiffs and the other Class members were injured as a result of Defendants' conduct in that Plaintiffs and the other Class members overpaid for their Class Vehicles and did not receive the benefit of their bargain, and their Class Vehicles have suffered a diminution in value. These injuries are the direct and natural consequence of Defendants' misrepresentations and omissions.

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.

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 REFERRENCE: 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.

304. 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.

305. 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.

306. In addition to these Limited Warranties, Defendants otherwise expressly warranted several attributes, characteristics, and qualities of the CAN bus.

307. 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.

308. 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.

309. Furthermore, the limited warranty of repair and/or adjustments to defective parts, fails in its essential purpose because the contractual remedy is insufficient to make Plaintiffs and the other Class members whole and because Defendants have failed and/or have refused to adequately provide the promised remedies within a reasonable time.

310. Accordingly, recovery by Plaintiffs and the other Class members is not limited to the limited warranty of repair or adjustments to parts defective in materials or workmanship, and Plaintiffs, individually and on behalf of the other Class members, seek all remedies as allowed by law.

311. Also, as alleged in more detail herein, at the time that Defendants warranted and sold the Class Vehicles they knew that the Class Vehicles did not conform to the warranties and were inherently defective, and Defendants wrongfully and fraudulently misrepresented and/or concealed material facts regarding their Class Vehicles. Plaintiffs and the other Class members were therefore induced to purchase or lease the Class Vehicles under false and/or fraudulent pretenses.

312. Moreover, many of the injuries flowing from the Class Vehicles cannot be resolved through the limited remedy of "replacement or adjustments," as many incidental and consequential damages have already been suffered due to Defendants' fraudulent conduct as alleged herein, and due to their failure and/or continued failure to provide such limited remedy within a reasonable time, and any limitation on Plaintiffs' and the other Class members' remedies would be insufficient to make Plaintiffs and the other Class members whole.

313. Finally, due to Defendants' breach of warranties as set forth herein, Plaintiffs and the other Class members assert as an additional and/or alternative remedy, as set forth in Colo.

Rev. Stat. § 4-2-608, for a revocation of acceptance of the goods, and for a return to Plaintiffs and to the other Class members of the purchase price of all Class Vehicles currently owned for such other incidental and consequential damages as allowed under Colo. Rev. Stat. §§ 4-2-711 and 4-2-608.

314. Defendants were provided notice of these issues by the instant Complaint, and by other means before or within a reasonable amount of time after the allegations of Class Vehicle defects became public.

315. As a direct and proximate result of Defendants' breach of express warranties, Plaintiffs and the other Class members have been damaged in an amount to be determined at trial.

COUNT XXVII

Breach of Implied Warranty of Merchantability
(Colorado Revised Statutes Sections 4-2-314)

316. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

317. Plaintiffs bring this Count on behalf of the Colorado Class.

318. Defendants are and were at all relevant times merchants with respect to motor vehicles.

319. A warranty that the Class Vehicles were in merchantable condition is implied by law in the instant transactions.

320. 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.

321. 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 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

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.

331. Defendants knew these representations were false when made.

332. 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.

333. 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.

334. 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.

335. 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 sell Class Vehicles.

336. Plaintiffs and the other Class members relied on Defendants' reputations – along with Defendants' failure to disclose the faulty and defective nature of the CAN bus and Defendants' affirmative assurances that their Class Vehicles were safe and reliable, and other similar false statements – in purchasing or leasing Defendants' Class Vehicles.

337. As a result of their reliance, Plaintiffs and the other Class members have been injured in an amount to be proven at trial, including, but not limited to, their lost benefit of the bargain and overpayment at the time of purchase or lease and/or the diminished value of their Class Vehicles.

338. Defendants' conduct was knowing, intentional, with malice, demonstrated a complete lack of care, and was in reckless disregard for the rights of Plaintiffs and the other Class members.

339. Plaintiffs and the other Class members are therefore entitled to an award of punitive damages.

Claims Brought on Behalf of the Connecticut Class

COUNT XXX

Violations of the Unfair Trade Practices Act
(Connecticut General Statutes Annotated Sections 42-110A, *et seq.*)

340. Plaintiffs incorporate by reference all allegations of the preceding paragraphs as though fully set forth herein.

341. Plaintiffs bring this Count on behalf of the Connecticut Class.

342. Plaintiffs and Defendants are each "persons" as defined by Conn. Gen. Stat. Ann. § 42-110a(3).

343. The Connecticut Unfair Trade Practices Act ("CUTPA") provides that "[n]o person shall engage in unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce." Conn. Gen. Stat. Ann. § 42-110b(a). The CUTPA further provides a private right of action under Conn. Gen. Stat. Ann. § 42-110g(a).

344. By failing to disclose and actively concealing the defects in the Class Vehicles, Defendants engaged in deceptive business practices prohibited by the CUTPA, 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.

345. 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.

346. Defendants knew that the CAN buses in the Class Vehicles were defectively designed or manufactured, were susceptible to hacking, and were not suitable for their intended use. Defendants nevertheless failed to warn Plaintiffs about these defects despite having a duty to do so.

347. Defendants owed Plaintiffs a duty to disclose the defective nature of the CAN buses in the Class Vehicles, because Defendants:

a) Possessed exclusive knowledge of the defects rendering the Class Vehicles more unreliable than similar vehicles;

b) Intentionally concealed the defects associated with the CAN buses through their deceptive marketing campaign that they designed to hide the defects; and/or

c) Made incomplete representations about the characteristics and performance of the Class Vehicles generally, while purposefully withholding material facts from Plaintiffs that contradicted these representations.

348. Defendants' unfair or deceptive acts or practices were likely to and did in fact deceive reasonable consumers, including Plaintiffs, about the true performance and characteristics of the Class Vehicles.

349. As a result of their violations of the CUTPA detailed above, Defendants caused actual damage to Plaintiffs and, if not stopped, will continue to harm Plaintiffs. Plaintiffs currently own or lease, or within the class period have owned or leased, a Class Vehicle that is defective. Defects associated with the CAN bus have caused the value of Class Vehicles to decrease.

350. Plaintiffs and the Class sustained damages as a result of the Defendants' unlawful acts and are, therefore, entitled to damages and other relief as provided under the CUTPA.

351. Plaintiffs also seeks court costs and attorneys' fees as a result of Defendants' violation of the CUTPA as provided in Conn. Gen. Stat. Ann. § 42-110g(d). A copy of this Complaint has been mailed to the Attorney General and the Commissioner of Consumer Protection of the State of Connecticut in accordance with Conn. Gen. Stat. Ann. § 42-110g(c).

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 REFERRENCE: 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.

356. 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.

357. 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.

358. In addition to these Limited Warranties, Defendants otherwise expressly warranted several attributes, characteristics, and qualities of the CAN bus.

359. 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.

360. 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.

361. Furthermore, the limited warranty of repair and/or adjustments to defective parts, fails in its essential purpose because the contractual remedy is insufficient to make Plaintiffs and the other Class members whole and because Defendants have failed and/or have refused to adequately provide the promised remedies within a reasonable time.

362. Accordingly, recovery by Plaintiffs and the other Class members is not limited to the limited warranty of repair or adjustments to parts defective in materials or workmanship, and Plaintiffs, individually and on behalf of the other Class members, seek all remedies as allowed by law.

363. Also, as alleged in more detail herein, at the time that Defendants warranted and sold the Class Vehicles they knew that the Class Vehicles did not conform to the warranties and were inherently defective, and Defendants wrongfully and fraudulently misrepresented and/or concealed material facts regarding their Class Vehicles. Plaintiffs and the other Class members were therefore induced to purchase or lease the Class Vehicles under false and/or fraudulent pretenses.

364. Moreover, many of the injuries flowing from the Class Vehicles cannot be resolved through the limited remedy of "replacement or adjustments," as many incidental and consequential damages have already been suffered due to Defendants' fraudulent conduct as alleged herein, and due to their failure and/or continued failure to provide such limited remedy within a reasonable time, and any limitation on Plaintiffs' and the other Class members' remedies would be insufficient to make Plaintiffs and the other Class members whole.

365. Finally, due to Defendants' breach of warranties as set forth herein, Plaintiffs and the other Class members assert as an additional and/or alternative remedy, as set forth in Conn.

Gen. Stat. Ann. § 42a-2-711, for a revocation of acceptance of the goods, and for a return to Plaintiffs and to the other Class members of the purchase price of all Class Vehicles currently owned and for such other incidental and consequential damages as allowed under Conn. Gen. Stat. Ann. §§ 42a-2-711 and 42a-2-608.

366. Defendants were provided notice of these issues by the instant Complaint, and by other means before or within a reasonable amount of time after the allegations of Class Vehicle defects became public.

367. As a direct and proximate result of Defendants' breach of express warranties, Plaintiffs and the other Class members have been damaged in an amount to be determined at trial.

COUNT XXXII

Breach of the Implied Warranty of Merchantability
(Connecticut General Statutes Annotated Section 42A-2-314)

368. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

369. Plaintiffs bring this Count on behalf of the Connecticut Class.

370. Defendants are and were at all relevant times merchants with respect to motor vehicles under Conn. Gen. Stat. Ann. § 42a-2-104(1).

371. A warranty that the Class Vehicles were in merchantable condition was implied by law in the instant transactions, pursuant to Conn. Gen. Stat. Ann. § 42a-2-314. These vehicles and the CAN buses in the Class Vehicles, when sold and at all times thereafter, were not in merchantable condition and are not fit for the ordinary purpose for which they are used. Specifically, the Class Vehicles are inherently defective in that there are defects in the CAN buses which prevent users from enjoying many features of the Class Vehicles they purchased and/or leased and that they paid for; and the CAN bus was not adequately tested.

372. Defendants were provided notice of these issues by numerous complaints filed against them, including the instant Complaint, and by other means.

373. 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 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,

that the Class Vehicles they were selling were new, had no significant defects, and would perform and operate properly when driven in normal usage.

382. Defendants knew these representations were false when made.

383. 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.

384. 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.

385. 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.

386. 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 CAN buses were susceptible to hacking. Defendants intentionally made the false statements in order to sell Class Vehicles.

387. Plaintiffs and the other Class members relied on Defendants' reputation – along with Defendants' failure to disclose the faulty and defective nature of the CAN buses and Defendants' affirmative assurance that their Class Vehicles were safe and reliable, and other similar false statements – in purchasing or leasing Defendants' Class Vehicles.

388. As a result of their reliance, Plaintiffs and the other Class members have been injured in an amount to be proven at trial, including, but not limited to, their lost benefit of the bargain and overpayment at the time of purchase or lease and/or the diminished value of their Class Vehicles.

389. Defendants' conduct was knowing, intentional, with malice, demonstrated a

complete lack of care, and was in reckless disregard for the rights of Plaintiffs and the other Class members.

390. Plaintiffs and the other Class members are therefore entitled to an award of punitive damages.

Claims Brought on Behalf of the Delaware Class

COUNT XXXV

Violation of the Delaware Consumer Fraud Act
(6 Delaware Code Sections 2513, *et seq.*)

391. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

392. The Delaware Consumer Fraud Act ("CFA") prohibits the "act, use or employment by any person of any deception, fraud, false pretense, false promise, misrepresentation, or the concealment, suppression, or omission of any material fact with intent that others rely upon such concealment, suppression or omission, in connection with the sale, lease or advertisement of any merchandise, whether or not any person has in fact been misled, deceived or damaged thereby." 6 Del. Code § 2513(a).

393. Defendants are persons with the meaning of 6 Del. Code § 2511(7).

394. As described herein Defendants made false representations regarding the safety and reliability of their vehicles and concealed important facts regarding the susceptibility of their vehicles to hacking. Defendants intended that others rely on these misrepresentations and omissions in connection with the sale and lease of their vehicles.

395. Defendants' actions as set forth above occurred in the conduct of trade or commerce.

396. Defendants' conduct proximately caused injuries to Plaintiffs and the Class.

397. Plaintiffs and the Class were injured as a result of Defendants' conduct in that Plaintiffs overpaid for their Defective Vehicles and did not receive the benefit of their bargain, and their vehicles have suffered a diminution in value. These injuries are the direct and natural consequence of Defendants' misrepresentations and omissions.

398. Plaintiffs are entitled to recover damages, as well as punitive damages for Defendants' gross and aggravated misconduct.

COUNT XXXVI

Violation of the Delaware Deceptive Trade Practices Act
(6 Delaware Code Sections 2532, *et seq.*)

399. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

400. Delaware's Deceptive Trade Practices Act ("DTPA") prohibits a person from engaging in a "deceptive trade practice," which includes: "(5) Represent[ing] that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities that they do not have, or that a person has a sponsorship, approval, status, affiliation, or connection that the person does not have"; "(7) Represent[ing] that goods or services are of a particular standard, quality, or grade, or that goods are of a particular style or model, if they are of another"; "(9) Advertis[ing] goods or services with intent not to sell them as advertised"; or "(12) Engag[ing] in any other conduct which similarly creates a likelihood of confusion or of misunderstanding."

401. Defendants are persons with the meaning of 6 Del. Code § 2531(5).

402. In the course of Defendants' business, they willfully failed to disclose and actively concealed the dangerous risk of the Defective Vehicles being hacked as described above. Accordingly, Defendants engaged in unlawful trade practices, including representing that Defective Vehicles have characteristics, uses, benefits, and qualities which they do not have; representing that Defective Vehicles are of a particular standard and quality when they are not; advertising Defective Vehicles with the intent not to sell them as advertised; and otherwise engaging in conduct likely to deceive.

403. Defendants' actions as set forth above occurred in the conduct of trade or commerce.

404. Defendants' conduct proximately caused injuries to Plaintiffs and the Class.

405. Plaintiffs and the Class were injured as a result of Defendants' conduct in that

Plaintiffs overpaid for their Defective Vehicles and did not receive the benefit of their bargain, and their vehicles have suffered a diminution in value. These injuries are the direct and natural consequence of Defendants' misrepresentations and omissions.

406. Plaintiffs seek injunctive relief and, if awarded damages under Delaware common law or Delaware Consumer Fraud Act, treble damages pursuant to 6 Del. Code § 2533(c).

407. Plaintiffs also seek punitive damages based on the outrageousness and recklessness of Defendants' conduct and their high net worth.

COUNT XXXVII

Breach of Express Warranty
(6 Delaware Code Section 2-313)

408. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

409. Defendants are and were at all relevant times merchants with respect to motor vehicles.

410. In the course of selling their vehicles, Defendants expressly warranted in writing that the Vehicles were covered by a Basic Warranty.

411. 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 Vehicles' materials and workmanship defects.

412. In addition to this Basic Warranty, Defendants expressly warranted several attributes, characteristics and qualities. These affirmations and promises were part of the basis of the bargain between the parties.

413. These additional warranties were also breached because the Defective Vehicles were not fully operational, safe, or reliable, 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, vehicles conforming to these express warranties.

414. Furthermore, the limited warranty of repair and/or adjustments to defective parts

fails in its essential purpose because the contractual remedy is insufficient to make the Plaintiffs and the Class whole and because the Defendants have failed and/or have refused to adequately provide the promised remedies within a reasonable time.

415. Accordingly, recovery by the Plaintiffs is not limited to the limited warranty of repair or adjustments to parts defective in materials or workmanship, and Plaintiffs seek all remedies as allowed by law.

416. Also, as alleged in more detail herein, at the time that Defendants warranted and sold the vehicles they knew that the vehicles did not conform to the warranties and were inherently defective, and Defendants wrongfully and fraudulently misrepresented and/or concealed material facts regarding their vehicles. Plaintiffs and the Class were therefore induced to purchase the vehicles under false and/or fraudulent pretenses.

417. Moreover, many of the damages flowing from the Defective Vehicles cannot be resolved through the limited remedy of "replacement or adjustments," as those incidental and consequential damages have already been suffered due to Defendants' fraudulent conduct as alleged herein, and due to their failure and/or continued failure to provide such limited remedy within a reasonable time, and any limitation on Plaintiffs' and the Class' remedies would be insufficient to make Plaintiffs and the Class whole.

418. Finally, due to the Defendants' breach of warranties as set forth herein, Plaintiffs and the Class assert as an additional and/or alternative remedy, as set forth in 6 Del. Code. § 2-608, for a revocation of acceptance of the goods, and for a return to Plaintiffs and to the Class of the purchase price of all vehicles currently owned.

419. Defendants were provided notice of these issues by the instant Complaint, and by other means before or within a reasonable amount of time after the allegations of Class Vehicle defects became public.

420. As a direct and proximate result of Defendants' breach of express warranties, Plaintiffs and the other Class members have been damaged in an amount to be determined at trial.

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.

429. Defendants breached this warranty or contract obligation by failing to repair the Defective Vehicles, or to replace them.

430. 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.

Claims Brought on Behalf of the District of Columbia Class

COUNT XL

Violation of the Consumer Protection Procedures Act
(District of Columbia Code Sections 28-3901, *et seq.*)

431. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

432. Defendants are "persons" under D.C. Code § 28-3901(a)(1).

433. Plaintiffs are "consumers," as defined by D.C. Code § 28-3901(1)(2), who purchased or leased one or more Defective Vehicles.

434. Defendants all participated in unfair or deceptive acts or practices that violated the Consumer Protection Procedures Act ("CPPA"), D.C. Code §§ 28-3901, *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 CPPA because TMS acts as TMC's general agent in the United States for purposes of sales and marketing.

435. By failing to disclose and actively concealing the dangerous risk of hacking in Defective Vehicles equipped with CAN buses, Defendants engaged in unfair or deceptive practices prohibited by the CPPA, D.C. Code § 28-3901, *et seq.*, 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.

436. Defendants' actions as set forth above occurred in the conduct of trade or commerce.

437. Defendants' actions affect the public interest because Plaintiffs were injured in exactly the same way as millions of others purchasing and/or leasing Defendants' vehicles as a result of Defendants' generalized course of deception. All of the wrongful conduct alleged herein occurred, and continues to occur, in the conduct of Defendants' business.

438. Plaintiffs and the Class suffered ascertainable loss as a result of Defendants' conduct. Plaintiffs overpaid for their Defective Vehicles and did not receive the benefit of their bargain, and their vehicles have suffered a diminution in value.

439. Defendants' conduct proximately caused the injuries to Plaintiffs and the Class.

440. Defendants are liable to Plaintiffs and the Class for damages in amounts to be proven at trial, including attorneys' fees, costs, and treble damages.

441. Plaintiffs further allege that Defendants are liable for punitive damages under the CPPA as Defendants acted with a state of mind evincing malice or their equivalent.

COUNT XLI

BREACH OF EXPRESS WARRANTY
(District of Columbia Code Section 28:2-313)

442. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

443. Defendants are and were at all relevant times a seller with respect to motor vehicles.

444. In the course of selling their vehicles, Defendants expressly warranted in writing that the Vehicles were covered by a Basic Warranty.

445. 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 Vehicles' materials and workmanship defects.

446. In addition to this Basic Warranty, Defendants expressly warranted several attributes, characteristics and qualities. These affirmations and promises were part of the basis of the bargain between the parties.

447. These additional warranties were also breached because the Defective Vehicles were not fully operational, safe, or reliable, 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, vehicles conforming to these express warranties.

448. Furthermore, the limited warranty of repair and/or adjustments to defective parts fails in its essential purpose because the contractual remedy is insufficient to make the Plaintiffs and the Class whole and because the Defendants have failed and/or have refused to adequately provide the promised remedies within a reasonable time.

449. Accordingly, recovery by the Plaintiffs is not limited to the limited warranty of repair or adjustments to parts defective in materials or workmanship, and Plaintiffs seek all remedies as allowed by law.

450. Also, as alleged in more detail herein, at the time that Defendants warranted and sold the vehicles they knew that the vehicles did not conform to the warranties and were inherently defective, and Defendants wrongfully and fraudulently misrepresented and/or concealed material facts regarding their vehicles. Plaintiffs and the Class were therefore induced to purchase the vehicles under false and/or fraudulent pretenses.

451. Moreover, many of the damages flowing from the Defective Vehicles cannot be resolved through the limited remedy of "replacement or adjustments," as those incidental and consequential damages have already been suffered due to Defendants' fraudulent conduct as alleged herein, and due to their failure and/or continued failure to provide such limited remedy within a reasonable time, and any limitation on Plaintiffs' and the Class' remedies would be insufficient to make Plaintiffs and the Class whole.

452. Finally, due to the Defendants' breach of warranties as set forth herein, Plaintiffs and the Class assert as an additional and/or alternative remedy, as set forth in D.C. Code § 28:2-608, for a revocation of acceptance of the goods, and for a return to Plaintiffs and to the Class of

the purchase price of all vehicles currently owned.

453. Defendants were provided notice of these issues by numerous complaints filed against them, including the instant complaint, before or within a reasonable amount of time after the allegations of vehicle defects became public.

454. As a direct and proximate result of Defendants' breach of express warranties, Plaintiffs and the Class have been damaged in an amount to be determined at trial.

COUNT XLII

Breach of the Implied Warranty of Merchantability (District of Columbia Code Section 28:2-314)

455. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

456. Defendants are and were at all relevant times merchants with respect to motor vehicles.

457. A warranty that the Defective Vehicles were in merchantable condition is implied by law in the instant transactions.

458. 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.

459. 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.

460. 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 XLIII

Breach of Contract/Common Law Warranty (Based on District of Columbia Law)

461. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set

forth herein.

462. To the extent Defendants' repair or adjust commitment is deemed not to be a warranty under the District of Columbia'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.

463. Defendants breached this warranty or contract obligation by failing to repair the Defective Vehicles, or to replace them.

464. 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.

Claims Brought on Behalf of the Florida Class

COUNT XLIV

Violations of the Florida Deceptive & Unfair Trade Practices Act
(Florida Statutes Sections 501.201, *et seq.*)

465. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

466. Plaintiffs bring this Count on behalf of the Florida Class.

467. Florida's Deceptive and Unfair Trade Practices Act prohibits "[u]nfair methods of competition, unconscionable acts or practices, and unfair or deceptive acts or practices in the conduct of any trade or commerce." Fla. Stat. § 501.204(1).

468. In the course of Defendants' business, they willfully failed to disclose and actively concealed the dangerous risk of CAN bus hacking in Class Vehicles as described above. Accordingly, Defendants engaged in unfair methods of competition, unconscionable acts or practices, and unfair or deceptive acts or practices as defined in Fla. Stat. § 501.204(1), including representing that Class Vehicles have characteristics, uses, benefits, and qualities which they do

not have; representing that Class Vehicles are of a particular standard and quality when they are not; advertising Class Vehicles with the intent not to sell them as advertised; and otherwise engaging in conduct likely to deceive.

469. Defendants' actions as set forth above occurred in the conduct of trade or commerce.

470. Defendants' conduct proximately caused injuries to Plaintiffs and the other Class members.

471. Plaintiffs and the other Class members were injured as a result of Defendants' conduct in that Plaintiffs and the other Class members overpaid for their Class Vehicles and did not receive the benefit of their bargain, and their Class Vehicles have suffered a diminution in value. These injuries are the direct and natural consequence of Defendants' misrepresentations and omissions.

COUNT XLV

Breach of Express Warranty
(Florida Statutes Section 672.313)

472. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

473. Plaintiffs bring this Count on behalf of the Florida Class.

474. Defendants are and were at all relevant times merchants with respect to motor vehicles.

475. 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 REFERRENCE: 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.

477. 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.

478. In addition to these Limited Warranties, Defendants otherwise expressly warranted several attributes, characteristics, and qualities of the CAN bus.

479. 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.

480. 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.

481. Furthermore, the limited warranty of repair and/or adjustments to defective parts, fails in its essential purpose because the contractual remedy is insufficient to make s and the other Class members whole and because Defendants have failed and/or have refused to adequately provide the promised remedies within a reasonable time.

482. Accordingly, recovery by Plaintiffs and the other Class members is not limited to the limited warranty of repair or adjustments to parts defective in materials or workmanship, and Plaintiffs, individually and on behalf of the other Class members, seek all remedies as allowed by law.

483. Also, as alleged in more detail herein, at the time that Defendants warranted and sold the Class Vehicles they knew that the Class Vehicles did not conform to the warranties and

were inherently defective, and Defendants wrongfully and fraudulently misrepresented and/or concealed material facts regarding their Class Vehicles. Plaintiffs and the other Class members were therefore induced to purchase or lease the Class Vehicles under false and/or fraudulent pretenses.

484. Moreover, many of the injuries flowing from the Class Vehicles cannot be resolved through the limited remedy of "replacement or adjustments," as many incidental and consequential damages have already been suffered due to Defendants' fraudulent conduct as alleged herein, and due to their failure and/or continued failure to provide such limited remedy within a reasonable time, and any limitation on Plaintiffs' and the other Class members' remedies would be insufficient to make Plaintiffs and the other Class members whole.

485. Finally, due to Defendants' breach of warranties as set forth herein, Plaintiffs and the other Class members assert as an additional and/or alternative remedy, as set forth in Fla. Stat. § 672.608, for a revocation of acceptance of the goods, and for a return to Plaintiffs and to the other Class members of the purchase price of all Class Vehicles currently owned for such other incidental and consequential damages as allowed under Fla. Stat. §§ 672.711 and 672.608.

486. Defendants were provided notice of these issues by the instant Complaint, and by other means before or within a reasonable amount of time after the allegations of Class Vehicle defects became public.

487. As a direct and proximate result of Defendants' breach of express warranties, Plaintiffs and the other Class members have been damaged in an amount to be determined at trial.

COUNT XLVI

Breach of Implied Warranty of Merchantability
(Florida Statutes Section 672.314)

488. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

489. Plaintiffs bring this Count on behalf of the Florida Class.

490. Defendants are and were at all relevant times merchants with respect to motor vehicles.

491. A warranty that the Class Vehicles were in merchantable condition is implied by law in the instant transactions.

492. 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.

493. 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 XLVII

Breach of Contract/Common Law Warranty
(Based on Florida Law)

494. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

495. Plaintiffs bring this Count on behalf of the Florida Class.

496. To the extent Defendants' limited remedies are deemed not to be warranties under Florida'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.

497. Defendants breached this warranty or contract obligation by failing to repair the Class Vehicles, or to replace them.

498. 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 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

buses were susceptible to hacking. Defendants intentionally made the false statements in order to sell Class Vehicles.

508. Plaintiffs and the other Class members relied on Defendants' reputations – along with Defendants' failure to disclose the faulty and defective nature of the CAN bus and Defendants' affirmative assurances that their Class Vehicles were safe and reliable, and other similar false statements – in purchasing or leasing Defendants' Class Vehicles.

509. As a result of their reliance, Plaintiffs and the other Class members have been injured in an amount to be proven at trial, including, but not limited to, their lost benefit of the bargain and overpayment at the time of purchase or lease and/or the diminished value of their Class Vehicles.

510. Defendants' conduct was knowing, intentional, with malice, demonstrated a complete lack of care, and was in reckless disregard for the rights of Plaintiffs and the other Class members.

511. Plaintiffs and the other Class members are therefore entitled to an award of punitive damages.

Claims Brought on Behalf of the Georgia Class

COUNT XLIX

Violation of Georgia's Uniform Deceptive Trade Practices Act
(Georgia Code Annotated Sections 10-1-370, *et seq.*)

512. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

513. The conduct of Defendants as set forth herein constitutes unfair or deceptive acts or practices, including, but not limited to Defendants' manufacture and sale of vehicles with CAN buses susceptible to hacking, which Defendants failed to adequately investigate, disclose and remedy, and their misrepresentations and omissions regarding the safety and reliability of their vehicles.

514. Defendants' actions as set forth above occurred in the conduct of trade or commerce.

515. Defendants' actions impact the public interest because Plaintiffs were injured in exactly the same way as millions of others purchasing and/or leasing Defendants vehicles as a result of Defendants' generalized course of deception. All of the wrongful conduct alleged herein occurred, and continues to occur, in the conduct of Defendants' business.

516. Plaintiffs and the Class were injured as a result of Defendants' conduct.

517. Plaintiffs overpaid for their Defective Vehicles and did not receive the benefit of their bargain, and their vehicles have suffered a diminution in value.

518. Defendants' conduct proximately caused the injuries to Plaintiffs and the Class.

519. Defendants are liable to Plaintiffs and the Class for damages in amounts to be proven at trial, including attorneys' fees, costs, and treble damages.

520. Pursuant to Ga. Code Ann. § 10-1-370, Plaintiffs will serve the Georgia Attorney General with a copy of this complaint as Plaintiffs seek injunctive relief.

COUNT L

Violation of Georgia's Fair Business Practices Act
(Georgia Code Annotated Sections 10-1-390, *et seq.*)

521. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

522. The conduct of Defendants as set forth herein constitutes unfair or deceptive acts or practices, including, but not limited to, Defendants' manufacture and sale of vehicles with CAN buses susceptible to hacking, which Defendants failed to adequately investigate, disclose and remedy, and their misrepresentations and omissions regarding the safety and reliability of their vehicles.

523. Defendants' actions as set forth above occurred in the conduct of trade or commerce.

524. Defendants' actions impact the public interest because Plaintiffs were injured in exactly the same way as millions of others purchasing and/or leasing Defendants vehicles as a result of Defendants' generalized course of deception. All of the wrongful conduct alleged herein occurred, and continues to occur, in the conduct of Defendants' business.

525. Plaintiffs and the Class were injured as a result of Defendants' conduct.

526. Plaintiffs overpaid for their Defective Vehicles and did not receive the benefit of their bargain, and their vehicles have suffered a diminution in value.

527. Defendants' conduct proximately caused the injuries to Plaintiffs and the Class.

528. Defendants are liable to Plaintiffs and the Class for damages in amounts to be proven at trial, including attorneys' fees, costs, and treble damages.

529. Pursuant to Ga. Code Ann. § 10-1-390, Plaintiffs will serve the Georgia Attorney General with a copy of this complaint as Plaintiffs seek injunctive relief.

COUNT LI

Breach of Express Warranty
(Georgia Code Annotated Sections 11-2-313)

530. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

531. Plaintiffs bring this Count on behalf of the Georgia Class.

532. Defendants are and were at all relevant times merchants with respect to motor vehicles.

533. 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 REFERRENCE: 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.

534. 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.

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.

536. In addition to these Limited Warranties, Defendants otherwise expressly warranted several attributes, characteristics, and qualities of the CAN bus.

537. 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.

538. 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.

539. Furthermore, the limited warranty of repair and/or adjustments to defective parts, fails in its essential purpose because the contractual remedy is insufficient to make Plaintiffs and the other Class members whole and because Defendants have failed and/or have refused to adequately provide the promised remedies within a reasonable time.

540. Accordingly, recovery by Plaintiffs and the other Class members is not limited to the limited warranty of repair or adjustments to parts defective in materials or workmanship, and Plaintiffs, individually and on behalf of the other Class members, seek all remedies as allowed by law.

541. Also, as alleged in more detail herein, at the time that Defendants warranted and sold the Class Vehicles they knew that the Class Vehicles did not conform to the warranties and were inherently defective, and Defendants wrongfully and fraudulently misrepresented and/or concealed material facts regarding their Class Vehicles. Plaintiffs and the other Class members were therefore induced to purchase or lease the Class Vehicles under false and/or fraudulent pretenses.

542. Moreover, many of the injuries flowing from the Class Vehicles cannot be resolved through the limited remedy of "replacement or adjustments," as many incidental and consequential damages have already been suffered due to Defendants' fraudulent conduct as alleged herein, and due to their failure and/or continued failure to provide such limited remedy within a reasonable time, and any limitation on Plaintiffs' and the other Class members' remedies would be insufficient to make Plaintiffs and the other Class members whole.

543. Finally, due to the Defendants' breach of warranties as set forth herein, Plaintiffs and the Class assert as an additional and/or alternative remedy, as set forth in Ga. Code Ann. § 11-2-608, for a revocation of acceptance of the goods, and for a return to Plaintiffs and to the Class of the purchase price of all vehicles currently owned.

544. Defendants were provided notice of these issues by the instant Complaint, and by other means before or within a reasonable amount of time after the allegations of Class Vehicle defects became public.

545. As a direct and proximate result of Defendants' breach of express warranties, Plaintiffs and the other Class members have been damaged in an amount to be determined at trial.

COUNT LII

Breach of the Implied Warranty of Merchantability
(Georgia Code Annotated Section 11-2-314)

546. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

547. Defendants are and were at all relevant times merchants with respect to motor vehicles.

548. A warranty that the Defective Vehicles were in merchantable condition is implied by law in the instant transactions, pursuant to Ga. Code Ann. § 11-2-314.

549. 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.

550. 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 LIII

Breach of Contract/Common Law Warranty

551. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

552. Plaintiffs bring this Count on behalf of the Georgia Class.

553. To the extent Defendants' limited remedies are deemed not to be warranties under Georgia'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.

554. Defendants breached this warranty or contract obligation by failing to repair the Class Vehicles, or to replace them.

555. 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 LIV

Fraud by Concealment
(Georgia Code Annotated Section 51-6-2)

556. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

557. As set forth above, Defendants concealed and/or suppressed material facts concerning the safety of their vehicles.

558. 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.

559. 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.

560. Defendants knew these representations were false when made.

561. 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.

562. 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.

563. 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.

564. 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 sell Class Vehicles.

565. Plaintiffs and the other Class members relied on Defendants' reputations – along with Defendants' failure to disclose the faulty and defective nature of the CAN bus and Defendants' affirmative assurances that their Class Vehicles were safe and reliable, and other similar false statements – in purchasing or leasing Defendants' Class Vehicles.

566. As a result of their reliance, Plaintiffs and the other Class members have been injured in an amount to be proven at trial, including, but not limited to, their lost benefit of the

bargain and overpayment at the time of purchase or lease and/or the diminished value of their Class Vehicles.

567. Defendants' conduct was knowing, intentional, with malice, demonstrated a complete lack of care, and was in reckless disregard for the rights of Plaintiffs and the other Class members.

568. Plaintiffs and the other Class members are therefore entitled to an award of punitive damages.

Claims Brought on Behalf of the Hawaii Class

COUNT LV

Unfair Competition and Practices
(Hawaii Revised Statutes Sections 480, *et seq.*)

569. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

570. Hawaii's Revised Statute § 480-2(a) prohibits "unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce. . . . "

571. Defendants' conduct as set forth herein constitutes unfair methods of competition and unfair or deceptive acts or practices in violation of Haw. Rev. Stat. § 480-2, because Defendants' acts and practices, including the manufacture and sale of vehicles with CAN buses susceptible to hacking, and Defendants' failure to adequately investigate, disclose and remedy and Defendants' misrepresentations and omissions regarding the safety and reliability of their vehicles, offend established public policy, and because the harm they cause to consumers greatly outweighs any benefits associated with those practices.

572. Defendants' conduct has also impaired competition within the automotive vehicles market and has prevented Plaintiffs from making fully informed decisions about whether to purchase or lease Defective Vehicles and/or the price to be paid to purchase or lease Defective Vehicles.

573. Defendants' misrepresentations and omissions regarding the safety and reliability of their Defective Vehicles were material and caused Plaintiffs to purchase or lease vehicles they

would not have otherwise purchased or leased, or paid as much for, had Plaintiffs known the vehicles were defective.

574. Defendants' acts or practices as set forth above occurred in the conduct of trade or commerce.

575. Plaintiffs and the Class have suffered injury, including the loss of money or property, as a result of Defendants' unfair methods of competition and unfair or deceptive acts or practices.

576. In addition to damages in amounts to be proven at trial, Plaintiffs and the Class seek attorneys' fees, costs of suit and treble damages.

577. Plaintiffs and the Class also seek injunctive relief to enjoin Defendants from continuing their unfair competition and unfair or deceptive acts or practices.

COUNT LVI

Violation of Hawaii's Uniform Deceptive Trade Practice Act
(Hawaii Revised Statutes Sections 481A, *et seq.*)

578. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

579. Defendants participated in unfair or deceptive acts or practices that violated the Uniform Deceptive Trade Practice Act ("UDAP"), Haw. Rev. Stat. § 481A, *et seq.*, as described herein.

580. By failing to disclose and actively concealing the dangerous risk of hacking, Defendants engaged in deceptive business practices prohibited by the UDAP, Haw. Rev. Stat. § 481A, *et seq.*, 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 and (3) advertising Defective Vehicles with the intent not to sell them as advertised.

581. 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.

582. Defendants knew that the CAN buses in Defective Vehicles 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.

583. Defendants owed Plaintiffs a duty to disclose the defective nature of Defective Vehicles, including the dangerous risk of hacking, because they:

a) Possessed exclusive knowledge of the defects rendering Defective Vehicles inherently more dangerous and unreliable than similar vehicles;

b) Intentionally concealed the hazardous situation with Defective Vehicles through their deceptive marketing campaign that they designed to hide the life-threatening problems from Plaintiffs; and/or

c) Made incomplete representations about the safety and reliability of Defective Vehicles generally, while purposefully withholding material facts from Plaintiffs that contradicted these representations.

584. Defective Vehicles pose an unreasonable risk of death or serious bodily injury to Plaintiffs, passengers, other motorists, pedestrians, and the public at large, because they are susceptible to hacking and loss of driver control.

585. Whether or not a vehicle can be hacked and control of the vehicle's essential functions being removed from the driver are facts that a reasonable consumer would consider important in selecting a vehicle to purchase or lease. When Plaintiffs bought Defendants' vehicles for personal, family, or household purposes, they reasonably expected the vehicles would not be susceptible to hacking.

586. 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 the Defective Vehicles.

587. As a result of their violations of the UDAP detailed above, Defendants caused actual damage to Plaintiffs and, if not stopped, will continue to harm Plaintiffs. Plaintiffs currently own or lease, or within the class period have owned or leased, Defective Vehicles that

are defective and inherently unsafe.

588. Plaintiffs risk irreparable injury as a result of Defendants' acts and omissions in violation of the UDAP, and these violations present a continuing risk to Plaintiffs as well as to the general public.

589. Plaintiffs seek monetary damages and an order enjoining Defendants' unfair or deceptive acts or practices, restitution, punitive damages, costs of Court, attorney's fees and any other just and proper relief available under the UDAP.

COUNT LVII

Breach of Express Warranty
(Hawaii Revised Statutes Section 490:2-313)

590. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

591. Plaintiffs bring this Count on behalf of the Hawaii Class.

592. Defendants are and were at all relevant times merchants with respect to motor vehicles.

593. 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 REFERRENCE: 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.

596. In addition to these Limited Warranties, Defendants otherwise expressly warranted several attributes, characteristics, and qualities of the CAN bus.

597. 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.

598. 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.

599. Furthermore, the limited warranty of repair and/or adjustments to defective parts, fails in its essential purpose because the contractual remedy is insufficient to make Plaintiffs and the other Class members whole and because Defendants have failed and/or have refused to adequately provide the promised remedies within a reasonable time.

600. Accordingly, recovery by Plaintiffs and the other Class members is not limited to the limited warranty of repair or adjustments to parts defective in materials or workmanship, and Plaintiffs, individually and on behalf of the other Class members, seek all remedies as allowed by law.

601. Also, as alleged in more detail herein, at the time that Defendants warranted and sold the Class Vehicles they knew that the Class Vehicles did not conform to the warranties and were inherently defective, and Defendants wrongfully and fraudulently misrepresented and/or concealed material facts regarding their Class Vehicles. Plaintiffs and the other Class members were therefore induced to purchase or lease the Class Vehicles under false and/or fraudulent pretenses.

602. Moreover, many of the injuries flowing from the Class Vehicles cannot be resolved through the limited remedy of "replacement or adjustments," as many incidental and consequential damages have already been suffered due to Defendants' fraudulent conduct as alleged herein, and due to their failure and/or continued failure to provide such limited remedy within a reasonable time, and any limitation on Plaintiffs' and the other Class members' remedies would be insufficient to make Plaintiffs and the other Class members whole.

603. Finally, due to the Defendants' breach of warranties as set forth herein, Plaintiffs and the Class assert as an additional and/or alternative remedy, as set forth in Haw. Rev. Stat. § 490:2-608, for a revocation of acceptance of the goods, and for a return to Plaintiffs and to the Class of the purchase price of all vehicles currently owned and for such other incidental and consequential damages as allowed under Hawaii law.

604. Defendants were provided notice of these issues by the instant Complaint, and by other means before or within a reasonable amount of time after the allegations of Class Vehicle defects became public.

605. As a direct and proximate result of Defendants' breach of express warranties, Plaintiffs and the other Class members have been damaged in an amount to be determined at trial.

COUNT LVIII

Breach of Implied Warranty of Merchantability
(Hawaii Revised Statutes Section 490:2-314)

606. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

607. Plaintiffs bring this Count on behalf of the Hawaii Class.

608. Defendants are and were at all relevant times merchants with respect to motor vehicles.

609. A warranty that the Class Vehicles were in merchantable condition is implied by law in the instant transactions.

610. 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.

611. Privity is not required in this case because Plaintiffs and the Class 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 Defective Vehicles and have no rights under the warranty agreements provided with the Defective Vehicles; the warranty agreements were designed for and intended to benefit the ultimate consumers only.

612. 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 LIX

Breach of Contract/Common Law Warranty
(Based on Hawaii Law)

613. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

614. Plaintiffs bring this Count on behalf of the Hawaii Class.

615. To the extent Defendants' limited remedies are deemed not to be warranties under Hawaii'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.

616. Defendants breached this warranty or contract obligation by failing to repair the Class Vehicles, or to replace them.

617. 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 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.

625. Defendants each owed Plaintiffs a duty to disclose the defective nature of Defective Vehicles, including the dangerous risk of hacking, because they:

a) Possessed exclusive knowledge of the defects rendering Defective Vehicles inherently more dangerous and unreliable than similar vehicles;

b) Intentionally concealed the hazardous situation with Defective Vehicles through their deceptive marketing campaign and recall program that they designed to hide the life-threatening problems from Plaintiffs; and/or

c) Made incomplete representations about the safety and reliability of Defective Vehicles while purposefully withholding material facts from Plaintiffs that contradicted these representations.

626. Defective Vehicles equipped with CAN buses pose an unreasonable risk of death or serious bodily injury to Plaintiffs, passengers, other motorists, pedestrians, and the public at large, because they are susceptible to hacking.

627. Whether or not a vehicle can be hacked and the taken over by a third party are facts that a reasonable consumer would consider important in selecting a vehicle to purchase or lease. When Plaintiffs bought a Defendants Vehicle for personal, family, or household purposes, they reasonably expected the vehicle would (a) not be vulnerable to hacking; and (b) equipped with any necessary fail-safe mechanisms.

628. TMC's and TMS's misleading, false, 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.

629. As a result of their violations of the ICPA detailed above, Defendants caused actual damage to Plaintiffs and, if not stopped, will continue to harm Plaintiffs. Plaintiffs currently own or lease, or within the class period have owned or leased, Defective Vehicles that are defective and inherently unsafe. CAN bus defects have caused the value of Defective Vehicles to plummet.

630. Plaintiffs risk irreparable injury as a result of TMC's and TMS's acts and omissions in violation of the ICPA, and these violations present a continuing risk to Plaintiffs as

well as to the general public.

631. Plaintiffs also seek punitive damages against Defendants because each carried out despicable conduct with willful and conscious disregard of the rights and safety of others, subjecting Plaintiffs to cruel and unjust hardship as a result.

632. Defendants intentionally and willfully misrepresented the safety and reliability of Defective Vehicles, deceived Plaintiffs on life-or-death matters, and concealed material facts that only they knew, all to avoid the expense and public relations nightmare of correcting a deadly flaw in the Defective Vehicles they repeatedly promised Plaintiffs were safe. Defendants' unlawful conduct constitutes malice, oppression, and fraud warranting punitive damages.

633. Plaintiffs further seek an order enjoining Defendants' unfair or deceptive acts or practices, restitution, punitive damages, costs of Court, attorney's fees under Idaho Civil Code § 48-608, and any other just and proper relief available under the ICPA.

COUNT LXI

Breach of Express Warranty
(Idaho Commercial Code Section 28-2-313)

634. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

635. Defendants are and were at all relevant times merchants with respect to motor vehicles under Idaho Com. Code § 28-2-104.

636. Defendants' dealerships who sold Defective Vehicles to Plaintiffs and the Class acted as the agents of TMS and/or TMC. Plaintiffs and the Class therefore were in a relationship of privity with Defendants, to the extent such a relationship is required by Idaho Com. Code § 28-2-313.

637. 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 REFERRENCE: 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

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.

639. 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.

640. In addition to these Limited Warranties, Defendants otherwise expressly warranted several attributes, characteristics, and qualities of the CAN bus.

641. 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.

642. 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.

643. Furthermore, the limited warranty of repair and/or adjustments to defective parts, fails in its essential purpose because the contractual remedy is insufficient to make Plaintiffs and the other Class members whole and because Defendants have failed and/or have refused to adequately provide the promised remedies within a reasonable time.

644. Accordingly, recovery by Plaintiffs and the other Class members is not limited to the limited warranty of repair or adjustments to parts defective in materials or workmanship, and Plaintiffs, individually and on behalf of the other Class members, seek all remedies as allowed by law.

645. Also, as alleged in more detail herein, at the time that Defendants warranted and sold the Class Vehicles they knew that the Class Vehicles did not conform to the warranties and were inherently defective, and Defendants wrongfully and fraudulently misrepresented and/or concealed material facts regarding their Class Vehicles. Plaintiffs and the other Class members were therefore induced to purchase or lease the Class Vehicles under false and/or fraudulent pretenses. The enforcement under these circumstances of any limitations whatsoever precluding the recovery of incidental and/or consequential damages is unenforceable pursuant to Idaho Com. Code § 28-2-302(1).

646. Moreover, many of the injuries flowing from the Class Vehicles cannot be resolved through the limited remedy of "replacement or adjustments," as many incidental and consequential damages have already been suffered due to Defendants' fraudulent conduct as alleged herein, and due to their failure and/or continued failure to provide such limited remedy within a reasonable time, and any limitation on Plaintiffs' and the other Class members' remedies would be insufficient to make Plaintiffs and the other Class members whole.

647. Defendants were provided notice of these issues by the instant Complaint, and by other means before or within a reasonable amount of time after the allegations of Class Vehicle defects became public.

648. As a direct and proximate result of Defendants' breach of express warranties, Plaintiffs and the other Class members have been damaged in an amount to be determined at trial.

COUNT LXII

Breach of the Implied Warranty pf Merchantability
(Idaho Commercial Code Section 28-2-314)

649. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

650. Defendants are and were at all relevant times merchants with respect to motor vehicles under Idaho Com. Code § 28-2-104.

651. A warranty that the Defective Vehicles were in merchantable condition was implied by law in the instant transaction, pursuant to Idaho Com. Code § 28-2-314.

652. 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.

653. Plaintiffs and the Class have had sufficient direct dealings with either the Defendants or their agents (dealerships) to establish privity of contract between Plaintiffs and the Class. Notwithstanding this, privity is not required in this case because Plaintiffs and the Class 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 Defective Vehicles and have no rights under the warranty agreements provided with the Defective Vehicles; the warranty agreements were designed for and intended to benefit the ultimate consumers only.

654. 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 LXIII

Breach of Contract/Common Law Warranty
(Under Idaho Law)

655. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

656. To the extent Defendants' repair or adjust commitment is deemed not to be a warranty under Idaho's Commercial Code, Plaintiffs 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.

657. Defendants breached this warranty or contract obligation by failing to repair the Class Vehicles, or to replace them.

658. 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 LXIV

Fraud by Concealment
(Based on Idaho Law)

659. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

660. As set forth above, Defendants concealed and/or suppressed material facts concerning the safety of their vehicles.

661. Defendants had a duty to disclose these safety issues because they consistently marketed their vehicles as safe and proclaimed that safety is one of Defendants' highest corporate priorities. Once Defendants made representations to the public about safety, Defendants were under a duty to disclose these omitted facts, because where one does speak one must speak the whole truth and not conceal any facts which materially qualify those facts stated. One who volunteers information must be truthful, and the telling of a half-truth calculated to deceive is fraud.

662. In addition, Defendants had a duty to disclose these omitted material facts because they were known and/or accessible only to Defendants who have superior knowledge and access to the facts, and Defendants knew they were not known to or reasonably discoverable by Plaintiffs and the Class. These omitted facts were material because they directly impact the safety of the Defective Vehicles.

663. Whether or not a vehicle is susceptible to hacking and can be commandeered by a third party are material safety concerns. Defendants possessed exclusive knowledge of the defects rendering Defective Vehicles inherently more dangerous and unreliable than similar vehicles.

664. Defendants actively concealed and/or suppressed these material facts, in whole or in part, with the intent to induce Plaintiffs and the Class to purchase Defective Vehicles at a higher price for the vehicles, which did not match the vehicles' true value.

665. Defendants still have not made full and adequate disclosure and continue to defraud Plaintiffs and the Class.

666. Plaintiffs and the Class were unaware of these omitted material facts and would not have acted as they did if they had known of the concealed and/or suppressed facts. Plaintiffs' and the Class' actions were justified. Defendants were in exclusive control of the material facts and such facts were not known to the public or the Class.

667. As a result of the concealment and/or suppression of the facts, Plaintiffs and the Class sustained damage.

668. Defendants' acts were done maliciously, oppressively, deliberately, with intent to defraud, and in reckless disregard of Plaintiffs' and the Class' rights and well-being to enrich Defendants. Defendants' conduct warrants an assessment of punitive damages in an amount sufficient to deter such conduct in the future, which amount is to be determined according to proof.

Claims Brought on Behalf of the Illinois Class

COUNT LXV

Violation of Illinois Consumer Fraud and Deceptive Business Practices Act (815 Illinois Compiled Statutes Sections 505/1, *et seq*. and 720 Illinois Compiled Statutes Section 295/1A)

669. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

670. The Illinois Consumer Fraud and Deceptive Business Practices Act, 815 Ill. Comp. Stat. 505/2 prohibits unfair or deceptive acts or practices in connection with any trade or commerce. Specifically, the Act prohibits suppliers from representing that their goods are of a particular quality or grade they are not.

671. Defendants are "persons" as that term is defined in the Illinois Consumer Fraud and Deceptive Practices Act, 815 Ill. Comp. Stat. 505/1(c).

672. Plaintiffs are "consumers" as that term is defined in the Illinois Consumer Fraud and Deceptive Practices Act, 815 Ill. Comp. Stat. 505/1(e).

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

674. As a result of the foregoing wrongful conduct of Defendants, Plaintiffs and the Class have been damaged in an amount to be proven at trial, including, but not limited to, actual damages, court costs, and reasonable attorneys' fees pursuant to 815 Ill. Comp. Stat. 505/1, *et seq.*

COUNT LXVI

Violation of the Illinois Uniform Deceptive Trade Practices Act
(815 Illinois Compiled Statutes Sections 510/1, *et. seq*. and
720 Illinois Compiled Statutes Section 295/1A)

675. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

676. 815 Ill. Comp. Stat. 510/2 provides that a "person engages in a deceptive trade practice when, in the course of his or her business, vocation, or occupation," the person does any of the following: "(2) causes likelihood of confusion or of misunderstanding as to the source, sponsorship, approval, or certification of goods or services; . . . (5) represents that goods or services have sponsorship, approval, characteristics ingredients, uses, benefits, or quantities that they do not have or that a person has a sponsorship, approval, status, affiliation, or connection that he or she does not have; . . . (7) represents that goods or services are of a particular standard, quality, or grade or that goods are a particular style or model, if they are of another; . . . (9) advertises goods or services with intent not to sell them as advertised; . . . [and] (12) engages in any other conduct which similarly creates a likelihood of confusion or misunderstanding."

677. Defendants are "persons" within the meaning of 815 Ill. Comp. Stat. 510/1(5).

678. The vehicles sold to Plaintiffs were not of the particular sponsorship, approval, characteristics, ingredients, uses benefits, or qualities represented by Defendants.

679. Defendants' conduct was knowing and/or intentional and/or with malice and/or demonstrated a complete lack of care and/or reckless and/or was in conscious disregard for the rights of Plaintiffs.

680. As a result of the foregoing wrongful conduct of Defendants, Plaintiffs have been damaged in an amount to proven at trial, including, but not limited to, actual and punitive damages, equitable relief and reasonable attorneys' fees.

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

what the Plaintiffs paid to purchase, which was reasonably foreseeable to Defendants.

COUNT LXIX

Strict Product Liability (Defective Design)
(Based on Illinois Law)

690. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

691. Defendants are and have been at all times pertinent to this Complaint, engaged in the business of designing, manufacturing, assembling, promoting, advertising, distributing and selling Defective Vehicles in the United States, including those owned or leased by the Plaintiffs and the Class.

692. Defendants knew and anticipated that the vehicles owned or leased by Plaintiffs and the Class would be sold to and operated by purchasers and/or eventual owners or leasors of Defendants' vehicles, including Plaintiffs and the Class.

693. Defendants also knew that these Defective Vehicles would reach the Plaintiffs and the Class without substantial change in their condition from the time the vehicles departed the Defendants' assembly lines.

694. Defendants designed the Defective Vehicles defectively, causing them to fail to perform as safely as an ordinary consumer would expect when used in an intended and reasonably foreseeable manner.

695. Defendants had the capability to use a feasible, alternative, safer design, and failed to correct the design defects.

696. The risks inherent in the design of Defective Vehicles outweigh significantly any benefits of such design.

697. Plaintiffs and the Class could not have anticipated and did not know of the aforementioned defects at any time prior to recent revelations regarding the problems of the Defective Vehicles.

698. As a direct and proximate result of Defendants' wrongful conduct, Plaintiffs have suffered damages, including, but not limited to, diminution in value, return of lease payments and

penalties, and injunctive relief related to future lease payments or penalties.

699. Plaintiffs and the Class have sustained and will continue to sustain economic losses and other damages for which they are entitled to compensatory and equitable damages and declaratory relief in an amount to be proven at trial.

COUNT LXX

Strict Product Liability (Failure to Warn)
(Based on Illinois Law)

700. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

701. Defendants are and have been at all times pertinent to this Complaint, engaged in the business of designing, manufacturing, assembling, promoting, advertising, distributing and selling Defective Vehicles in the United States, including those owned or leased by the Plaintiffs and the Class.

702. Defendants, at all times pertinent to this Complaint, knew and anticipated that the Defective Vehicles and their component parts would be purchased, leased and operated by consumers, including Plaintiffs and the Class.

703. Defendants also knew that these Defective Vehicles would reach the Plaintiffs and the Class without substantial change in their conditions from the time that the vehicles departed the Defendants' assembly lines.

704. Defendants knew or should have known of the substantial dangers involved in the reasonably foreseeable use of the Defective Vehicles, defective design, manufacturing and lack of sufficient warnings which caused them to have an unreasonably dangerous vulnerability to hacking.

705. Defendants failed to adequately warn Plaintiffs and the Class when they became aware of the defect that caused Plaintiffs and the Class' vehicles to be prone to hacking.

706. Defendants also failed to timely recall the vehicles or take any action to timely warn Plaintiffs or the Class of these problems and instead continue to subject Plaintiffs and the Class to harm.

707. Defendants knew, or should have known, that these defects were not readily recognizable to an ordinary consumer and that consumers would lease, purchase and use these products without inspection.

708. Defendants should have reasonably foreseen that the defect in the Defective Vehicles would subject the Plaintiffs and the Class to harm resulting from the defect.

709. Plaintiffs and the Class have used the Defective Vehicles for their intended purpose and in a reasonable and foreseeable manner.

710. As a direct and proximate result of Defendants' wrongful conduct, Plaintiffs and the Class have sustained and will continue to sustain economic losses and other damages for which they are entitled to compensatory and equitable damages and declaratory relief in an amount to be proven at trial.

COUNT LXXI

Fraudulent Concealment/Fraud by Omission
(Based on Illinois Law)

711. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

712. Defendants intentionally concealed the above-described material safety information, or acted with reckless disregard for the truth, and denied Plaintiffs and the Class information that is highly relevant to their purchasing decision.

713. 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.

714. Defendants knew these representations were false when made.

715. 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.

716. 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.

717. 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.

718. 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 sell Class Vehicles.

719. Plaintiffs and the other Class members relied on Defendants' reputations – along with Defendants' failure to disclose the faulty and defective nature of the CAN bus and Defendants' affirmative assurances that their Class Vehicles were safe and reliable, and other similar false statements – in purchasing or leasing Defendants' Class Vehicles.

720. As a result of their reliance, Plaintiffs and the other Class members have been injured in an amount to be proven at trial, including, but not limited to, their lost benefit of the bargain and overpayment at the time of purchase or lease and/or the diminished value of their Class Vehicles.

721. Defendants' conduct was knowing, intentional, with malice, demonstrated a complete lack of care, and was in reckless disregard for the rights of Plaintiffs and the other Class members.

722. Plaintiffs and the other Class members are therefore entitled to an award of punitive damages.

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

standard, quality, grade, style or model, if it is not and if the supplier knows or should reasonably know that it is not; . . . (7) That the supplier has a sponsorship, approval or affiliation in such consumer transaction that the supplier does not have, and which the supplier knows or should reasonably know that the supplier does not have; . . . (b) Any representations on or within a product or their packaging or in advertising or promotional materials which would constitute a deceptive act shall be the deceptive act both of the supplier who places such a representation thereon or therein, or who authored such materials, and such suppliers who shall state orally or in writing that such representation is true if such other supplier shall know or have reason to know that such representation was false."

732. Defendants are persons with the meaning of Ind. Code § 24-5-0.5-2(2).

733. 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.

734. Accordingly, Defendants engaged in unlawful trade practices, including representing that Defective Vehicles have characteristics, uses, benefits, and qualities which they do not have; representing that Defective Vehicles are of a particular standard and quality when they are not; advertising Defective Vehicles with the intent not to sell them as advertised; and otherwise engaging in conduct likely to deceive.

735. Defendants' actions as set forth above occurred in the conduct of trade or commerce.

736. Defendants' conduct proximately caused injuries to Plaintiffs and the Class.

737. Plaintiffs and the Class were injured as a result of Defendants' conduct in that Plaintiffs overpaid for their Defective Vehicles and did not receive the benefit of their bargain, and their vehicles have suffered a diminution in value. These injuries are the direct and natural consequence of Defendants' misrepresentations and omissions.

738. Plaintiffs seek injunctive relief and, if awarded damages under Indiana Deceptive Consumer Protection Act, treble damages pursuant to Ind. Code § 24-5-0.5-4(a)(1).

739. Plaintiffs also seek punitive damages based on the outrageousness and

recklessness of Defendants' conduct and their high net worth.

COUNT LXXIV

Breach of Express Warranty
(Indiana Code Section 26-1-2-313)

740. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

741. 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 REFERRENCE: 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.

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

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.

747. Furthermore, the limited warranty of repair and/or adjustments to defective parts, fails in its essential purpose because the contractual remedy is insufficient to make Plaintiffs and the other Class members whole and because Defendants have failed and/or have refused to adequately provide the promised remedies within a reasonable time.

748. Accordingly, recovery by Plaintiffs and the other Class members is not limited to the limited warranty of repair or adjustments to parts defective in materials or workmanship, and Plaintiffs, individually and on behalf of the other Class members, seek all remedies as allowed by law.

749. Also, as alleged in more detail herein, at the time that Defendants warranted and sold the Class Vehicles they knew that the Class Vehicles did not conform to the warranties and were inherently defective, and Defendants wrongfully and fraudulently misrepresented and/or concealed material facts regarding their Class Vehicles. Plaintiffs and the other Class members were therefore induced to purchase or lease the Class Vehicles under false and/or fraudulent pretenses.

750. Moreover, many of the injuries flowing from the Class Vehicles cannot be resolved through the limited remedy of "replacement or adjustments," as many incidental and consequential damages have already been suffered due to Defendants' fraudulent conduct as alleged herein, and due to their failure and/or continued failure to provide such limited remedy within a reasonable time, and any limitation on Plaintiffs' and the other Class members' remedies would be insufficient to make Plaintiffs and the other Class members whole.

751. Finally, due to the Defendants' breach of warranties as set forth herein, Plaintiffs and the Class assert as an additional and/or alternative remedy, as set forth in Ind. Code § 26-1-2-608, for a revocation of acceptance of the goods, and for a return to Plaintiffs and to the Class of the purchase price of all vehicles currently owned.

752. Defendants were provided notice of these issues by the instant Complaint, and by other means before or within a reasonable amount of time after the allegations of Class Vehicle defects became public.

753. As a direct and proximate result of Defendants' breach of express warranties, Plaintiffs and the other Class members have been damaged in an amount to be determined at trial.

COUNT LXXV

Breach of the Implied Warranty of Merchantability
(Indiana Code Section 26-1-2-314)

754. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

755. Defendants are and were at all relevant times merchants with respect to motor vehicles.

756. A warranty that the Class Vehicles were in merchantable condition is implied by law in the instant transactions.

757. 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.

758. 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 LXXVI

Breach of Contract/Common Law Warranty
(Based on Indiana Law)

759. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

760. To the extent Defendants' repair or adjust commitment is deemed not to be a warranty under Indiana's Commercial Code, Plaintiffs 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.

761. Defendants breached this warranty or contract obligation by failing to repair the Class Vehicles, or to replace them.

762. 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 LXXVII

Fraudulent Concealment
(Based on Indiana Law)

763. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

764. 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.

765. 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.

766. Defendants knew these representations were false when made.

767. 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.

768. 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.

769. 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.

770. 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 sell Class Vehicles.

771. Plaintiffs and the other Class members relied on Defendants' reputations – along with Defendants' failure to disclose the faulty and defective nature of the CAN bus and Defendants' affirmative assurances that their Class Vehicles were safe and reliable, and other similar false statements – in purchasing or leasing Defendants' Class Vehicles.

772. As a result of their reliance, Plaintiffs and the other Class members have been injured in an amount to be proven at trial, including, but not limited to, their lost benefit of the bargain and overpayment at the time of purchase or lease and/or the diminished value of their Class Vehicles.

773. Defendants' conduct was knowing, intentional, with malice, demonstrated a complete lack of care, and was in reckless disregard for the rights of Plaintiffs and the other Class members.

774. Plaintiffs and the other Class members are therefore entitled to an award of punitive damages.

Claims Brought on Behalf of the Iowa Class

COUNT LXXVIII

Violations of the Private Right of Action for Consumer Frauds Act
(Iowa Code Sections 714H.1, *et seq.*)

775. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set

forth herein.

776. Defendants are "persons" under Iowa Code § 714H.2(7).

777. Plaintiffs are "consumers," as defined by Iowa Code § 714H.2(3), who purchased or leased one or more Class Vehicles.

778. Defendants participated in unfair or deceptive acts or practices that violated Iowa's Private Right of Action for Consumer Fraud Act ("Iowa CFA"), Iowa Code §§ 714H.1, *et seq.*, as described herein. Defendants are directly liable for these violations of law.

779. By failing to disclose and actively concealing the defects in the CAN buses in the Class Vehicles, Defendants engaged in deceptive business practices prohibited by the Iowa CFA, 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.

780. 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.

781. Defendants knew that the CAN buses in the Class Vehicles were defectively designed or manufactured, were susceptible to hacking, and were not suitable for their intended use. Defendants nevertheless failed to warn Plaintiffs about these defects despite having a duty to do so.

782. Defendants owed Plaintiffs a duty to disclose the defective nature of the CAN buses in the Class Vehicles, because Defendants:

a) Possessed exclusive knowledge of the defects rendering the Class Vehicles more unreliable than similar vehicles;

b) Intentionally concealed the defects through their deceptive marketing campaign that they designed to hide the defects; and/or

c) Made incomplete representations about the characteristics and performance of the Class Vehicles generally, while purposefully withholding material facts from Plaintiffs that contradicted these representations.

783. Defendants' unfair or deceptive acts or practices were likely to and did in fact deceive reasonable consumers, including Plaintiffs, about the true performance and characteristics of the Class Vehicles.

784. As a result of their violations of the Iowa CFA detailed above, Defendants caused actual damage to Plaintiffs and, if not stopped, will continue to harm Plaintiffs. Plaintiffs currently owns or leases, or within the Class Period has owned or leased, a Class Vehicle that is defective. Defects associated with the CAN buses have caused the value of the Class Vehicles, including Plaintiffs' Vehicle, to decrease.

785. Plaintiffs and the Class sustained damages as a result of the Defendants' unlawful acts and are, therefore, entitled to damages and other relief as provided under Chapter 714H of the Iowa Code. Because Defendants' conduct was committed willfully, Plaintiffs seeks treble damages as provided in Iowa Code § 714H.5(4).

786. Plaintiffs also seeks court costs and attorneys' fees as a result of Defendants' violation of Chapter 714H as provided in Iowa Code § 714H.5(2).

<u>COUNT LXXIX</u>

Breach of Express Warranty
<u>(Iowa Code Section 554.2313)</u>

787. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

788. Defendants are and were at all relevant times merchants with respect to motor vehicles under Iowa Code § 554.2104.

789. 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 REFERRENCE: 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

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.

791. 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.

792. In addition to these Limited Warranties, Defendants otherwise expressly warranted several attributes, characteristics, and qualities of the CAN bus.

793. 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.

794. 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.

795. Furthermore, the limited warranty of repair and/or adjustments to defective parts, fails in its essential purpose because the contractual remedy is insufficient to make Plaintiffs and the other Class members whole and because Defendants have failed and/or have refused to adequately provide the promised remedies within a reasonable time.

796. Accordingly, recovery by Plaintiffs and the other Class members is not limited to the limited warranty of repair or adjustments to parts defective in materials or workmanship, and Plaintiffs, individually and on behalf of the other Class members, seek all remedies as allowed by law.

797. Also, as alleged in more detail herein, at the time that Defendants warranted and sold the Class Vehicles they knew that the Class Vehicles did not conform to the warranties and were inherently defective, and Defendants wrongfully and fraudulently misrepresented and/or concealed material facts regarding their Class Vehicles. Plaintiffs and the other Class members were therefore induced to purchase or lease the Class Vehicles under false and/or fraudulent pretenses.

798. Moreover, many of the injuries flowing from the Class Vehicles cannot be resolved through the limited remedy of "replacement or adjustments," as many incidental and consequential damages have already been suffered due to Defendants' fraudulent conduct as alleged herein, and due to their failure and/or continued failure to provide such limited remedy within a reasonable time, and any limitation on Plaintiffs' and the other Class members' remedies would be insufficient to make Plaintiffs and the other Class members whole.

799. Finally, due to Defendants' breach of warranties as set forth herein, Plaintiffs and the other Class members assert as an additional and/or alternative remedy, as set forth in Iowa Code § 554.2608, for a revocation of acceptance of the goods, and for a return to Plaintiffs and to the other Class members of the purchase price of all Class Vehicles currently owned and for such other incidental and consequential damages as allowed under Iowa Code §§ 554.2711 and 554.2608.

800. Defendants were provided notice of these issues by the instant Complaint, and by other means before or within a reasonable amount of time after the allegations of Class Vehicle defects became public.

801. As a direct and proximate result of Defendants' breach of express warranties, Plaintiffs and the other Class members have been damaged in an amount to be determined at trial.

COUNT LXXX

Breach of Implied Warranty of Merchantability
(Iowa Code Section 554.2314)

802. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

803. Defendants are and were at all relevant times merchants with respect to motor vehicles under Iowa Code § 554.2104.

804. A warranty that the Class Vehicles were in merchantable condition is implied by law in the instant transactions.

805. 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.

806. 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 LXXXI

Breach of Contract/Common Law Warranty
(Based on Iowa Law)

807. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

808. To the extent Defendants' limited remedies are deemed not to be warranties under Iowa'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.

809. Defendants breached this warranty or contract obligation by failing to repair the Class Vehicles, or to replace them.

810. 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 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

sell Class Vehicles.

819. Plaintiffs and the other Class members relied on Defendants' reputations – along with Defendants' failure to disclose the faulty and defective nature of the CAN bus and Defendants' affirmative assurances that their Class Vehicles were safe and reliable, and other similar false statements – in purchasing or leasing Defendants' Class Vehicles.

820. As a result of their reliance, Plaintiffs and the other Class members have been injured in an amount to be proven at trial, including, but not limited to, their lost benefit of the bargain and overpayment at the time of purchase or lease and/or the diminished value of their Class Vehicles.

821. Defendants' conduct was knowing, intentional, with malice, demonstrated a complete lack of care, and was in reckless disregard for the rights of Plaintiffs and the other Class members.

822. Plaintiffs and the other Class members are therefore entitled to an award of punitive damages.

Claims Brought on Behalf of the Kansas Class

COUNT LXXX III

Violations of the Kansas Consumer Protection Act
(Kansas Statutes Annotated Sections 50-623, *et seq.*)

823. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

824. Defendants are "suppliers" under § 50-624(l) of the Kansas Consumer Protection Act ("Kansas CPA")

825. Plaintiffs are "consumers," as defined by § 50-624(b) of the Kansas CPA, who purchased or leased one or more Defective Vehicles.

826. Defendants both participated in deceptive acts or practices that violated the Kansas CPA, 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 CPA because TMS acts as TMC's general agent in the United States for purposes of sales and marketing.

827. Defendants engaged in deceptive acts or practices prohibited by the Kansas CPA, including (1) representing that Defective Vehicles have characteristics, uses, and benefits that they do not have and (2) representing that Defective Vehicles are of a particular standard, quality, and grade when they are of another which differs materially from the representation. Specifically, 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.

828. Defendants knew or had reason to know that their representations were false. Defendants knew that the CAN bus in Defective Vehicles was defectively designed or manufactured, was susceptible to hacking, and was not suitable for their intended use. Defendants nevertheless failed to warn Plaintiffs about these inherent dangers despite having a duty to do so.

829. Defendants engaged in further deceptive acts or practices prohibited by the Kansas CPA by willfully failing to disclose or willfully concealing, suppressing, or omitting material facts about Defective Vehicles. Specifically, Defendants 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. Defendants knew that the CAN bus in Defective Vehicles was defectively designed or manufactured, was susceptible to hacking, and was not suitable for their intended use. Defendants nevertheless failed to warn Plaintiffs and the Class about these inherent dangers despite having a duty to do so.

830. Whether or not a vehicle is vulnerable to hacking and can be commandeered by a third party are facts that a reasonable consumer would consider important in selecting a vehicle to purchase or lease.

831. When Plaintiffs bought a Defendants Vehicle for personal, family, or household purposes, they reasonably expected the vehicle would not be vulnerable to hacking, and was equipped with any necessary fail-safe mechanisms.

832. Defendants' acts or practices alleged above are unconscionable because, among other reasons, Defendants knew or had reason to know they had had made misleading statements of opinion on which Plaintiffs were likely to rely to their detriment.

833. Defendants' deceptive and unconscionable acts or practices were likely to and did in fact deceive reasonable consumers, including Plaintiffs, about the true safety and reliability of Defective Vehicles as a result of Defendants' violations of the Kansas CPA.

834. Plaintiffs and the Class suffered loss as a result of Defendants' violations of the Kansas CPA detailed above. Plaintiffs currently own or lease, or within the class period have owned or leased, Defective Vehicles that are defective and inherently unsafe. CAN bus defects have caused the value of Defective Vehicles to plummet.

835. Pursuant to § 50-634(b) of the Kansas CPA, Plaintiffs seek monetary relief against Defendants measured as the greater of (a) actual damages in an amount to be determined at trial and (b) civil penalties provided for by § 50-636 of the Kansas CPA.

836. Plaintiffs also seek punitive damages against Defendants because they acted willfully, wantonly, fraudulently, or maliciously. Defendants intentionally and willfully misrepresented the safety and reliability of Defective Vehicles, deceived Plaintiffs on life-or-death matters, and concealed material facts that only they knew, all to avoid the expense and public relations nightmare of correcting a deadly flaw in the Defective Vehicles they repeatedly promised Plaintiffs were safe. Defendants' unlawful conduct constitutes malice, oppression, and fraud warranting punitive damages.

837. Plaintiffs risk irreparable injury as a result of Defendants' deceptive and unconscionable acts or practices in violation of the Kansas CPA, and these violations present a continuing risk to Plaintiffs as well as to the general public.

838. Plaintiffs and the Class further seek an order enjoining Defendants' deceptive and unconscionable acts or practices, restitution, punitive damages, costs of Court, attorney's fees, and any other just and proper relief available under the Kansas CPA.

COUNT LXXXIV

Breach of Express Warranty
(Kansas Statutes Annotated Section 84-2-313)

839. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

840. Defendants are and were at all relevant times merchants with respect to motor vehicles under Kan. Stat. Ann. § 84-2-104.

841. 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 REFERRENCE: 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.

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.

847. Furthermore, the limited warranty of repair and/or adjustments to defective parts, fails in its essential purpose because the contractual remedy is insufficient to make Plaintiffs and the other Class members whole and because Defendants have failed and/or have refused to adequately provide the promised remedies within a reasonable time.

848. Accordingly, recovery by Plaintiffs and the other Class members is not limited to the limited warranty of repair or adjustments to parts defective in materials or workmanship, and Plaintiffs, individually and on behalf of the other Class members, seek all remedies as allowed by law.

849. Also, as alleged in more detail herein, at the time that Defendants warranted and sold the Class Vehicles they knew that the Class Vehicles did not conform to the warranties and were inherently defective, and Defendants wrongfully and fraudulently misrepresented and/or concealed material facts regarding their Class Vehicles. Plaintiffs and the other Class members were therefore induced to purchase or lease the Class Vehicles under false and/or fraudulent pretenses.

850. Moreover, many of the injuries flowing from the Class Vehicles cannot be resolved through the limited remedy of "replacement or adjustments," as many incidental and consequential damages have already been suffered due to Defendants' fraudulent conduct as alleged herein, and due to their failure and/or continued failure to provide such limited remedy within a reasonable time, and any limitation on Plaintiffs' and the other Class members' remedies would be insufficient to make Plaintiffs and the other Class members whole.

851. Finally, due to the Defendants' breach of warranties as set forth herein, Plaintiffs and the Class assert as an additional and/or alternative remedy, as set forth in KAN. STAT. ANN. § 84-2-711, for a revocation of acceptance of the goods, and for a return to Plaintiffs and to the Class of the purchase price of all vehicles currently owned and for such other incidental and consequential damages as allowed under KAN. STAT. ANN. §§ 84-2-711 and 84-2-608.

852. Defendants were provided notice of these issues by the instant Complaint, and by other means before or within a reasonable amount of time after the allegations of Class Vehicle defects became public.

853. As a direct and proximate result of Defendants' breach of express warranties, Plaintiffs and the other Class members have been damaged in an amount to be determined at trial.

COUNT LXXXV

Breach of the Implied Warranty of Merchantability
(Kansas Statutes Annotated Section 84-2-314)

854. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

855. Plaintiffs are "natural persons" within the meaning of Kan. Stat. Ann. § 84-2-318.

856. Defendants are and were at all relevant times merchants with respect to motor vehicles under Kan. Stat. Ann. § 84-2-104.

857. A warranty that the Defective Vehicles were in merchantable condition was implied by law in the instant transaction, pursuant to Kan. Stat. Ann. § 84-2-314.

858. 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. Specifically, the Defective Vehicles are inherently defective in that there are defects in the CAN buses that make them vulnerable to hacking and the Defective Vehicles do not have an adequate fail-safe to protect against such attacks.

859. Defendants were provided notice of these issues by numerous complaints filed against them, including the instant Complaint, and by other means.

860. Privity is not required because the Defective Vehicles are inherently dangerous.

861. 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 LXXXVI

Breach of Contract/Common Law Warranty
(Based on Kansas Law)

862. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

863. To the extent Defendants' limited remedies are deemed not to be warranties under

Kansas' 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.

864. Defendants breached this warranty or contract obligation by failing to repair the Class Vehicles, or to replace them.

865. 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 LXXXVII

Fraud by Concealment
(Based on Kansas Law)

866. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

867. As set forth above, Defendants concealed and/or suppressed material facts concerning the safety of their vehicles.

868. Defendants had a duty to disclose these safety issues because they consistently marketed their vehicles as safe and proclaimed that safety is one of Defendants' highest corporate priorities. Once Defendants made representations to the public about safety, Defendants were under a duty to disclose these omitted facts, because where one does speak one must speak the whole truth and not conceal any facts which materially qualify those facts stated. One who volunteers information must be truthful, and the telling of a half-truth calculated to deceive is fraud.

869. In addition, Defendants had a duty to disclose these omitted material facts because they were known and/or accessible only to Defendants who have superior knowledge and access to the facts, and Defendants knew they were not known to or reasonably discoverable by Plaintiffs and the Class. These omitted facts were material because they directly impact the safety

of the Defective Vehicles.

870. Whether or not a vehicle is susceptible to hacking and being commandeered by a third party are material safety concerns. Defendants possessed exclusive knowledge of the defects rendering Defective Vehicles inherently more dangerous and unreliable than similar vehicles.

871. Defendants actively concealed and/or suppressed these material facts, in whole or in part, with the intent to induce Plaintiffs and the Class to purchase Defective Vehicles at a higher price for the vehicles, which did not match the vehicles' true value.

872. Defendants still have not made full and adequate disclosure and continue to defraud Plaintiffs and the Class.

873. Plaintiffs and the Class were unaware of these omitted material facts and would not have acted as they did if they had known of the concealed and/or suppressed facts. Plaintiffs' and the Class' actions were justified. Defendants were in exclusive control of the material facts and such facts were not known to the public or the Class.

874. As a result of the concealment and/or suppression of the facts, Plaintiffs and the Class sustained damage. Plaintiffs and the Class reserve their right to elect either to (a) rescind their purchase or lease of Defective Vehicles and obtain restitution (b) affirm their purchase or lease of Defective Vehicles and recover damages.

875. Defendants' acts were done willfully, wantonly, fraudulently, or maliciously, oppressively, deliberately, with intent to defraud, and in reckless disregard of Plaintiffs' and the Class' rights and well-being to enrich Defendants.

876. Defendants' conduct warrants an assessment of punitive damages in an amount sufficient to deter such conduct in the future, which amount is to be determined according to proof.

Claims Brought on Behalf of the Kentucky Class

COUNT LXXXVIII

Violation of the Kentucky Consumer Protection Act
(Kentucky Revised Statutes Sections 367.110, *et seq.*)

877. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

878. Defendants misrepresented the safety of the Defective Vehicles after learning of their defects with the intent that Plaintiffs relied on such representations in their decision regarding the purchase, lease and/or use of the Defective Vehicles.

879. Plaintiffs did, in fact, rely on such representations in their decision regarding the purchase, lease and/or use of the Defective Vehicles.

880. Through those misleading and deceptive statements and false promises, Defendants violated the Kentucky Consumer Protection Act ("KCPA").

881. The KCPA applies to Defendants' transactions with Plaintiffs because Defendants' deceptive scheme was carried out in Kentucky and affected Plaintiffs.

882. Defendants also failed to advise NHSTA and the public about what they knew about the CAN bus defects in the Defective Vehicles.

883. Plaintiffs relied on Defendants' silence as to known defects in connection with their decision regarding the purchase, lease and/or use of the Defective Vehicles.

884. As a direct and proximate result of Defendants' deceptive conduct and violation of the KCPA, Plaintiffs have sustained and will continue to sustain economic losses and other damages for which they are entitled to compensatory and equitable damages and declaratory relief in an amount to be proven at trial.

COUNT LXXXIX

Breach of Express Warranty
(Kentucky Statutes Annotated Section 355.2-313)

885. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

886. Defendants expressly warranted – through statements and advertisements described above – that the vehicles were of high quality, and at a minimum, would actually work properly and safely.

887. Defendants breached this warranty by knowingly selling to Plaintiffs vehicles with dangerous defects, and which were not of high quality.

888. 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.

COUNT XC

Breach of Implied Warranties of Merchantability
(Kentucky Statutes Annotated Section 335.2-314)

889. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

890. 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.

891. As described above, there were dangerous defects in the vehicles manufactured, distributed, and/or sold by Defendants, which Plaintiffs purchased, including, but not limited to, defects that caused the vehicles to be vulnerable to hacking.

892. These dangerous defects existed at the time the vehicles left Defendants' manufacturing facilities and at the time they were sold to Plaintiffs. Furthermore, because of these dangerous defects, Plaintiffs did not receive the benefit of their bargain and the vehicles have suffered a diminution in value.

893. These dangerous defects were the direct and proximate cause of damages to the Plaintiffs and the Class.

COUNT XCI

Fraudulent Concealment
(Based on Kentucky Law)

894. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

895. 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.

896. 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.

897. Defendants knew these representations were false when made.

898. 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.

899. 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.

900. 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.

901. 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 sell Class Vehicles.

902. Plaintiffs and the other Class members relied on Defendants' reputations – along with Defendants' failure to disclose the faulty and defective nature of the CAN bus and Defendants' affirmative assurances that their Class Vehicles were safe and reliable, and other similar false statements – in purchasing or leasing Defendants' Class Vehicles.

903. As a result of their reliance, Plaintiffs and the other Class members have been injured in an amount to be proven at trial, including, but not limited to, their lost benefit of the bargain and overpayment at the time of purchase or lease and/or the diminished value of their

Class Vehicles.

904. Defendants' conduct was knowing, intentional, with malice, demonstrated a complete lack of care, and was in reckless disregard for the rights of Plaintiffs and the other Class members.

905. Plaintiffs and the other Class members are therefore entitled to an award of punitive damages.

Claims Brought on Behalf of the Louisiana Class

COUNT XCII

Louisiana Products Liability Act
(Louisiana Revised Statutes Sections 9:2800.51, *et seq.*)

906. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

907. Plaintiffs allege that Defendants have defectively designed, manufactured, sold or otherwise placed in the stream of commerce Defective Vehicles as set forth above.

908. The product in question is unreasonably dangerous for the following reasons:

a) It is unreasonably dangerous in construction or composition as provided in La. Rev. Stat. § 9:2800.55;

b) It is unreasonably dangerous in design as provided in La. Rev. Stat. § 9:2800.56;

c) It is unreasonably dangerous because an adequate warning about the product was not provided as required by La. Rev. Stat. § 9:2800.57; and

d) It is unreasonably dangerous because it does not conform to an express warranty of the manufacturer about the product that render it unreasonably dangerous under La. Rev. Stat. §§ 9:2800.55, *et seq.*, that existed at the time the product left the control of the manufacturer.

909. Defendants knew and expected for the Defective Vehicles to eventually be sold to and operated by purchasers and/or eventual owners of the Defective Vehicles, including Plaintiffs; consequently, Plaintiffs were an expected user of the product which Defendants

manufactured.

910. The Defective Vehicles reached Plaintiffs without substantial changes in their condition from time of completion of manufacture by Defendants.

911. The defects in the Defective Vehicles could not have been contemplated by any reasonable person expected to operate the Defective Vehicles, and, therefore, presented an unreasonably dangerous situation for expected users of the Defective Vehicles even though the Defective Vehicles were operated by expected users in a reasonable manner.

912. As a direct and proximate cause of Defendants' design, manufacture, assembly, marketing, and sales of the Defective Vehicles, Plaintiffs have sustained and will continue to sustain the loss of use of his/her vehicle, economic losses and consequential damages, and are therefore entitled to compensatory relief according to proof, and entitled to a declaratory judgment that Defendants are liable to Plaintiffs for breach of their duty to design, manufacture, assemble, market, and sell a safe product, fit for their reasonably intended use. Plaintiffs allege that the vulnerability of the CAN buses to hacking would not happen in the absence of a defective product. Plaintiffs allege the application of res ipsa loquitur under Louisiana Products Liability Law.

COUNT XCIII

Redhibition
(Louisiana Civil Code Articles 2520, *et seq*. and 2545)

913. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

914. Plaintiffs allege that Defendants defectively designed, manufactured, sold or otherwise placed in the stream of commerce vehicles that are defective.

915. Plaintiffs allege that the vulnerability of the CAN buses to hacking would not happen in the absence of a defective product.

916. Plaintiffs allege the application of res ipsa loquitur under Louisiana Products Liability Law.

917. Plaintiffs allege that Defendants have known about safety hazards that result in

susceptibility to hacking of their vehicles for a number of years and have failed to adequately address those safety concerns.

918. Defendants, as manufacturers of the Defective Vehicles, are responsible for damages caused by the failure of their product to conform to well-defined standards. In particular, the vehicles contain vices or defects which rendered them useless or their use so inconvenient and unsafe that a reasonable buyer would not have purchased them. Defendants manufactured, sold and promoted the vehicles and placed the vehicles into the stream of commerce. Under Louisiana Law, the seller and manufacturers warrants the buyer against redhibitory defects or vices in the things sold. La. Code Civ. P. Art. 2520. The vehicles as sold and promoted by Defendants possessed redhibitory defects because they were not manufactured and marketed in accordance with industry standards and/or were unreasonably dangerous as described above, which rendered the vehicles useless or their use so inconvenient and unsafe that it must be presumed that a buyer would not have bought the vehicles had he/she known of the defect. Pursuant to La. Code Civ. P. Art. 2520, Plaintiffs are entitled to obtain a rescission of the sale of the subject product.

919. The vehicles alternatively possess redhibitory defects because the vehicles were not manufactured and marketed in accordance with industry standards and/or were unreasonably dangerous as described above, which diminished the value of the vehicles so that it must be presumed that a reasonable buyer would still have bought the vehicles, but for a lesser price, had the redhibitory defects been disclosed. In this instance, Plaintiffs are entitled to a reduction of the purchase price.

920. As the manufacturers of the vehicle, under Louisiana Law, defendants are deemed to know that the vehicle contained redhibitory defects pursuant to La. Code Civ. P. Art. 2545. Defendants are liable as bad faith sellers for selling a defective product with knowledge of defects and thus are liable to Plaintiffs for the price of the subject product, with interest from the purchase date, as well as reasonable expenses occasioned by the sale of the subject product, and attorney's fees.

921. Due to the defects and redhibitory vices in the vehicles sold to Plaintiffs, they have suffered damages under Louisiana Law.

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

methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce. . . .” per Me. Rev. Stat. Ann. tit. 5 § 207.

931. The advertising and sale of motor vehicles by Defendants constitutes “trade or commerce” within the meaning of UTPA per Me. Rev. Stat. Ann. tit. 5 § 206(3).

932. In the course of Defendants’ business, they willfully failed to disclose and actively concealed the dangerous risk of hacking 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 UTPA.

933. Defendants engaged in a deceptive trade practice 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’ susceptibility to hacking in order to ensure that consumers would purchase their vehicles and to induce the consumer to enter into a transaction.

934. 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 vulnerability 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 known that their vehicles had these serious safety defects, they would not have purchased their vehicles.

935. Defendants’ conduct has caused or is to cause a substantial injury that is not reasonably avoided by consumers, and the harm is not outweighed by a countervailing benefit to consumers or competition.

936. As a result of Defendants’ deceptive and unfair practices, Plaintiffs and the Class have suffered loss of money or property. Plaintiffs and the Class overpaid for their vehicles and did not receive the benefit of their bargain. The value of their vehicles have diminished now that

the safety issues have come to light, and Plaintiffs and the Class own vehicles that are not safe.

937. Plaintiffs are entitled to actual damages, restitution and such other equitable relief, including an injunction, as the Court determines to be necessary and proper.

938. Pursuant to Me. Rev. Stat. Ann. tit. 5 § 213(3), Plaintiffs will mail a copy of the complaint to Maine's Attorney General.

COUNT XCVI

Breach of Implied Warranty of Merchantability
(Maine Revised Statutes Annotated title 11 Section 2-314)

939. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

940. Defendants are and were at all relevant times merchants with respect to motor vehicles.

941. A warranty that the Class Vehicles were in merchantable condition is implied by law in the instant transactions.

942. 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.

943. 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 XCVII

Breach of Contract
(Based on Maine Law)

944. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

945. To the extent Defendants' limited remedies are deemed not to be warranties under Maine's Commercial Code, Plaintiffs, individually and on behalf of the other Class members, plead in the alternative under common law 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.

946. Defendants breached this contract obligation by failing to repair the Class Vehicles, or to replace them.

947. As a direct and proximate result of Defendants' breach of contract, 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 Maryland Class

COUNT XCVIII

Violations of the Maryland Consumer Protection Act
(Maryland Code of Commercial Law Sections 13-101, *et seq.*)

948. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

949. Plaintiffs are persons within the meaning of the Maryland Consumer Protection Act (the "Act") for all purposes therein.

950. Defendants are persons within the meaning of the Act for all purposes therein.

951. The false, deceptive and misleading statements and representations made by Defendants alleged above and below are Unfair and Deceptive Trade Practices within the meaning of the Act.

952. Defendants participated in unfair or deceptive acts or practices that violated the Act, as described above and below, and those unfair and deceptive trade practices occurred or were committed in the course, vocation or occupation of Defendants' businesses. Defendants engaged in the unfair and deceptive trade practices and each are directly liable for these violations of law.

953. The Unfair and Deceptive Trade Practices as alleged above and below significantly impact the public as actual or potential customers of Defendants.

954. By failing to disclose and actively concealing the dangerous risk of hacking and the lack of adequate fail-safe mechanisms in Defective Vehicles equipped with CAN buses, Defendants engaged in deceptive business practices prohibited by the Act, including, but not limited to, (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.

955. 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.

956. 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.

957. As a direct and proximate result of their unfair and deceptive business practices, and violations of the Act detailed above, Defendants caused actual damages, injuries, and losses to Plaintiffs and, if not stopped, will continue to harm Plaintiffs. Plaintiffs currently own or lease, or within the class period have owned or leased, Defective Vehicles that are defective and inherently unsafe. CAN bus defects and the resulting vulnerability to hacking have caused the value of Defective Vehicles to plummet.

958. Plaintiffs are entitled to all damages permitted by M.R.S. §§ 13-101, *et seq.*, including actual damages sustained, civil penalties, attorneys' fees, and costs of this action. Also, the State of Maryland is entitled to statutory penalties from defendants for each violation of the Act.

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 REFERRENCE: 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.

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

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.

967. Furthermore, the limited warranty of repair and/or adjustments to defective parts, fails in its essential purpose because the contractual remedy is insufficient to make Plaintiffs and the other Class members whole and because Defendants have failed and/or have refused to adequately provide the promised remedies within a reasonable time.

968. Accordingly, recovery by Plaintiffs and the other Class members is not limited to the limited warranty of repair or adjustments to parts defective in materials or workmanship, and Plaintiffs, individually and on behalf of the other Class members, seek all remedies as allowed by law.

969. Also, as alleged in more detail herein, at the time that Defendants warranted and sold the Class Vehicles they knew that the Class Vehicles did not conform to the warranties and were inherently defective, and Defendants wrongfully and fraudulently misrepresented and/or concealed material facts regarding their Class Vehicles. Plaintiffs and the other Class members were therefore induced to purchase or lease the Class Vehicles under false and/or fraudulent pretenses.

970. Moreover, many of the injuries flowing from the Class Vehicles cannot be resolved through the limited remedy of "replacement or adjustments," as many incidental and consequential damages have already been suffered due to Defendants' fraudulent conduct as alleged herein, and due to their failure and/or continued failure to provide such limited remedy within a reasonable time, and any limitation on Plaintiffs' and the other Class members' remedies would be insufficient to make Plaintiffs and the other Class members whole.

971. Finally, due to the Defendants' breach of warranties as set forth herein, Plaintiffs and the Class assert as an additional and/or alternative remedy, as set forth in Md. Code Com. Law § 2-608 for a revocation of acceptance of the goods, and for a return to Plaintiffs and to the Class of the purchase price of all vehicles currently.

972. Defendants were provided notice of these issues by the instant Complaint, and by other means before or within a reasonable amount of time after the allegations of Class Vehicle defects became public.

973. As a direct and proximate result of Defendants' breach of express warranties, Plaintiffs and the other Class members have been damaged in an amount to be determined at trial.

COUNT C

Breach of the Implied Warranty of Merchantability
(Maryland Code of Commercial Law Section 2-314)

974. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

975. Defendants are and were at all relevant times merchants with respect to motor vehicles.

976. A warranty that the Class Vehicles were in merchantable condition is implied by law in the instant transactions.

977. 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.

978. 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 CI

Fraud by Concealment
(Based on Maryland Law)

979. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

980. As set forth above, Defendants concealed and/or suppressed material facts concerning the safety of their vehicles.

981. Defendants had a duty to disclose these safety issues because they consistently

marketed their vehicles as safe and proclaimed that safety is one of Defendants' highest corporate priorities. Once Defendants made representations to the public about safety, Defendants were under a duty to disclose these omitted facts, because where one does speak one must speak the whole truth and not conceal any facts which materially qualify those facts stated. One who volunteers information must be truthful, and the telling of a half-truth calculated to deceive is fraud.

982. In addition, Defendants had a duty to disclose these omitted material facts because they were known and/or accessible only to Defendants who have superior knowledge and access to the facts, and Defendants knew they were not known to or reasonably discoverable by Plaintiffs and the Class. These omitted facts were material because they directly impact the safety of the Defective Vehicles. Whether or not a vehicle is susceptible to hacking and can be commandeered by a third party are material safety concerns. Defendants possessed exclusive knowledge of the defects rendering Defective Vehicles inherently more dangerous and unreliable than similar vehicles.

983. Defendants actively concealed and/or suppressed these material facts, in whole or in part, with the intent to induce Plaintiffs and the Class to purchase Defective Vehicles at a higher price for the vehicles, which did not match the vehicles' true value.

984. Defendants still have not made full and adequate disclosure and continue to defraud Plaintiffs and the Class.

985. Plaintiffs and the Class were unaware of these omitted material facts and would not have acted as they did if they had known of the concealed and/or suppressed facts. Plaintiffs' and the Class' actions were justified. Defendants were in exclusive control of the material facts and such facts were not known to the public or the Class.

986. As a result of the concealment and/or suppression of the facts, Plaintiffs and the Class sustained damage. For those Plaintiffs and the Class who elect to affirm the sale, these damages, include the difference between the actual value of that which Plaintiffs and the Class paid and the actual value of that which they received, together with additional damages arising from the sales transaction, amounts expended in reliance upon the fraud, compensation for loss of

use and enjoyment of the property, and/or lost profits. For those Plaintiffs and the Class who want to rescind the purchase, then those Plaintiffs and the Class are entitled to restitution and consequential damages.

987. Defendants' acts were done maliciously, oppressively, deliberately, with intent to defraud, and in reckless disregard of Plaintiffs' and the Class' rights and well-being to enrich Defendants. Defendants' conduct warrants an assessment of punitive damages in an amount sufficient to deter such conduct in the future, which amount is to be determined according to proof.

COUNT CII

Strict Products Liability – Design Defect
(Based on Maryland Law)

988. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

989. At all times relevant hereto, Defendants were engaged in the business of designing, manufacturing, assembling, promoting, advertising, selling, and distributing Defendants vehicles in the United States, including, but not limited to, the Defective Vehicles.

990. Defendants knew and expected for the Defective Vehicles to eventually be sold to and operated by consumers and/or eventual owners of the Defective Vehicles, including Plaintiffs and the Class. Consequently, Plaintiffs and the Class were foreseeable users of the products which Defendants manufactured.

991. The Defective Vehicles reached Plaintiffs and the Class without substantial change in condition from the time they were manufactured by Defendants.

992. The susceptibility of the Defective Vehicles to hackling could not have been contemplated by any reasonable person expected to operate the Defective Vehicles, and for that reason, presented an unreasonably dangerous situation for foreseeable users of the Defective Vehicles even though the Defective Vehicles were operated by foreseeable users in a reasonable manner.

993. Defendants should have reasonably foreseen that the dangerous conditions of the

Defective Vehicles being vulnerable to hacking without a fail-safe mechanism to would subject Plaintiffs and the Class to harm.

994. As a result of these defective designs, the Defective Vehicles are unreasonably dangerous.

995. Plaintiffs and the Class have used the Defective Vehicles reasonably and as intended, to the fullest degree possible given their defective nature, and, nevertheless, have suffered damages through no fault of their own.

996. Safer, alternative designs existed for the Defective Vehicles.

997. As a direct and proximate result of Defendants' design, manufacture, assembly, marketing, and sales of the Defective Vehicles, Plaintiffs and the Class have sustained and will continue to sustain the loss of the use of their vehicles, economic losses, and consequential damages, and are, therefore, entitled to compensatory relief according to proof, and entitled to a declaratory judgment that Defendants are liable to Plaintiffs and the Class for breach of their duty to design, manufacture, assemble, market, and sell a safe product, fit for their reasonably intended use. Plaintiffs and the Class are therefore entitled to equitable relief as described below.

998. Plaintiffs and the Class demand judgment against Defendants for design defects as prayed for below.

COUNT CIII

Strict Products Liability – Defective Manufacturing
(Based on Maryland Law)

999. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

1000. Defendants are the manufacturers, designers, distributors, sellers, or suppliers of the Defective Vehicles.

1001. The Defective Vehicles manufactured, designed, sold, distributed, supplied and/or placed in the stream of commerce by Defendants were defective in their manufacture and construction such that they were unreasonably dangerous, were not fit for the ordinary purposes for which they were intended, and/or did not meet the reasonable expectations of any consumer.

1002. The Defective Vehicles manufactured, designed, sold, distributed, supplied and/or placed in the stream of commerce by Defendants, were defective in their manufacture and construction as described at the time they left Defendants' control.

1003. The Defective Vehicles are unreasonably dangerous due to their defective manufacture.

1004. As a direct and proximate result of Plaintiffs' purchase and use of the Defective Vehicles as manufactured, designed, sold, supplied and introduced into the stream of commerce by Defendants, Plaintiffs and the Class suffered economic losses, and will continue to suffer such damages and economic losses in the future.

1005. Plaintiffs demand judgment against Defendants for manufacturing defects as prayed for below.

COUNT CIV

Strict Products Liability – Defect Due to Nonconformance with Representations (Based on Maryland Law)

1006. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

1007. Defendants are the manufacturers, designers, distributors, sellers, or suppliers of the Defective Vehicles, and Defendants made representations regarding the character or quality of the Defective Vehicles.

1008. The Defective Vehicles manufactured and supplied by Defendants were defective in that, when they left the hands of Defendants, they did not conform to the representations made by Defendants concerning the Defective Vehicles.

1009. Plaintiffs and the Class justifiably relied upon Defendants' representations regarding the Defective Vehicles when they purchased and used the Defective Vehicles.

1010. As a direct and proximate result of their reliance on Defendants' representations regarding the character and quality of the Defective Vehicles, Plaintiffs and the Class suffered damages and economic losses, and will continue to suffer such damages and economic losses in the future.

1011. Plaintiffs demand judgment against Defendants for manufacturing defects as prayed for below.

Claims Brought on Behalf of the Massachusetts Class

<u>COUNT CV</u>

Violations of the Massachusetts Consumer Protection Act
<u>(Massachusetts General Laws Chapter 93A)</u>

1012. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

1013. The conduct of Defendants as set forth herein constitutes unfair and deceptive acts or practices in violation of the Massachusetts Consumer Protection Act, Mass. Gen. Laws Ch. 93A, including but not limited to Defendants' design, manufacture, and sale of Class Vehicles with the defective CAN bus, which Defendants failed to adequately investigate, disclose, and remedy, and their misrepresentations and omissions regarding the safety, reliability, and functionality of their Class Vehicles, which misrepresentations and omissions possessed the tendency to deceive.

1014. Defendants engages in the conduct of trade or commerce and the misconduct alleged herein occurred in trade or commerce.

1015. Plaintiffs, individually and on behalf of the other Class members, will make a demand on Defendants pursuant to Mass. Gen. Laws Ch. 93A, § 9(3). The letter will assert that rights of consumers as claimants had been violated, describe the unfair and deceptive acts committed by Defendants, and specify the injuries the Plaintiffs and the other Class members have suffered and the relief they seek.

1016. Therefore, Plaintiffs seeks monetary and equitable relief under the Massachusetts Consumer Protection Act as a result of Defendants' unfair and deceptive acts and practices.

<u>COUNT CVI</u>

Breach of Express Warranty
<u>(Massachusetts General Laws Chapter 106, Section 2-313)</u>

1017. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set

forth herein.

1018. Defendants are and were at all relevant times merchants with respect to motor vehicles.

1019. 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 REFERRENCE: 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.

1020. 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.

1021. 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.

1022. In addition to these Limited Warranties, Defendants otherwise expressly warranted several attributes, characteristics, and qualities of the CAN bus.

1023. 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.

1024. 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.

1025. Furthermore, the limited warranty of repair and/or adjustments to defective parts, fails in its essential purpose because the contractual remedy is insufficient to make Plaintiffs and the other Class members whole and because Defendants have failed and/or have refused to adequately provide the promised remedies within a reasonable time.

1026. Accordingly, recovery by Plaintiffs and the other Class members is not limited to the limited warranty of repair or adjustments to parts defective in materials or workmanship, and Plaintiffs, individually and on behalf of the other Class members, seek all remedies as allowed by law.

1027. Also, as alleged in more detail herein, at the time that Defendants warranted and sold the Class Vehicles they knew that the Class Vehicles did not conform to the warranties and were inherently defective, and Defendants wrongfully and fraudulently misrepresented and/or concealed material facts regarding their Class Vehicles. Plaintiffs and the other Class members were therefore induced to purchase or lease the Class Vehicles under false and/or fraudulent pretenses.

1028. Moreover, many of the injuries flowing from the Class Vehicles cannot be resolved through the limited remedy of "replacement or adjustments," as many incidental and consequential damages have already been suffered due to Defendants' fraudulent conduct as alleged herein, and due to their failure and/or continued failure to provide such limited remedy within a reasonable time, and any limitation on Plaintiffs' and the other Class members' remedies would be insufficient to make Plaintiffs and the other Class members whole.

1029. Finally, due to the Defendants' breach of warranties as set forth herein, Plaintiffs and the Class assert as an additional and/or alternative remedy, as set forth in ALM GL ch. 106, § 2-608, for a revocation of acceptance of the goods, and for a return to Plaintiffs and to the Class of the purchase price of all vehicles currently owned.

1030. Defendants were provided notice of these issues by the instant Complaint, and by other means before or within a reasonable amount of time after the allegations of Class Vehicle defects became public.

1031. As a direct and proximate result of Defendants' breach of express warranties,

Plaintiffs and the other Class members have been damaged in an amount to be determined at trial.

COUNT CVII

Breach of Implied Warranty of Merchantability
(Massachusetts General Laws Chapter 106, Section 2-314)

1032. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

1033. Defendants are and were at all relevant times merchants with respect to motor vehicles.

1034. A warranty that the Class Vehicles were in merchantable condition is implied by law in the instant transactions.

1035. 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.

1036. 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 CVIII

Breach of Contract/Common Law Warranty
(Based on Massachusetts Law)

1037. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

1038. Plaintiffs bring this Count on behalf of the Massachusetts Class.

1039. To the extent Defendants' limited remedies are deemed not to be warranties under Massachusetts' 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.

1040. Defendants breached this warranty or contract obligation by failing to repair the Class Vehicles, or to replace them.

1041. 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 CIX

Fraudulent Concealment
(Based on Massachusetts Law)

1042. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

1043. 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.

1044. 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.

1045. Defendants knew these representations were false when made.

1046. 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.

1047. 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.

1048. 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.

1049. 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 sell Class Vehicles.

1050. Plaintiffs and the other Class members relied on Defendants' reputations – along with Defendants' failure to disclose the faulty and defective nature of the CAN bus and Defendants' affirmative assurances that their Class Vehicles were safe and reliable, and other similar false statements – in purchasing or leasing Defendants' Class Vehicles.

1051. As a result of their reliance, Plaintiffs and the other Class members have been injured in an amount to be proven at trial, including, but not limited to, their lost benefit of the bargain and overpayment at the time of purchase or lease and/or the diminished value of their Class Vehicles.

1052. Defendants' conduct was knowing, intentional, with malice, demonstrated a complete lack of care, and was in reckless disregard for the rights of Plaintiffs and the other Class members.

1053. Plaintiffs and the other Class members are therefore entitled to an award of punitive damages.

Claims Brought on Behalf of the Michigan Class

COUNT CX

Violation of the Michigan Consumer Protection Act
(Michigan Compiled Laws Sections 445.901, *et seq.*)

1054. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

1055. Defendants misrepresented the safety of the Defective Vehicles after learning of

their defects with the intent that Plaintiffs relied on such representations in their decision regarding the purchase, lease and/or use of the Defective Vehicles.

1056. Plaintiffs did, in fact, rely on such representations in their decision regarding the purchase, lease and/or use of the Defective Vehicles.

1057. Through those misleading and deceptive statements and false promises, Defendants violated the Michigan Consumer Protection Act.

1058. The Michigan Consumer Protection Act applies to Defendants' transactions with Plaintiffs because Defendants' deceptive scheme was carried out in Michigan and affected Plaintiffs.

1059. Defendants also failed to advise NHSTA and the public about what they knew about the CAN bus defects in the Defective Vehicles.

1060. Plaintiffs relied on Defendants' silence as to known defects in connection with their decision regarding the purchase, lease and/or use of the Defective Vehicles.

1061. As a direct and proximate result of Defendants' deceptive conduct and violation of the Michigan Consumer Protection Act, Plaintiffs have sustained and will continue to sustain economic losses and other damages for which they are entitled to compensatory and equitable damages and declaratory relief in an amount to be proven at trial.

COUNT CXI

Breach of Express Warranty
(Michigan Compiled Laws Section 440.2313)

1062. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

1063. Defendants expressly warranted – through statements and advertisements described above – that the vehicles were of high quality, and at a minimum, would actually work properly and safely.

1064. Defendants breached this warranty by knowingly selling to Plaintiffs vehicles with dangerous defects, and which were not of high quality.

1065. 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.

<u>COUNT CXII</u>

Breach of Implied Warranty of Merchantability
<u>(Michigan Compiled Laws Section 440.2314)</u>

1066. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

1067. 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 reasonably safety during normal operation, and without unduly endangering them or members of the public.

1068. As described above, there were dangerous defects in the vehicles manufactured, distributed, and/or sold by Defendants, which Plaintiffs purchased, including, but not limited to, defects that caused the vehicles to be vulnerable to hacking.

1069. These dangerous defects existed at the time the vehicles left Defendants' manufacturing facilities and at the time they were sold to Plaintiffs. Furthermore, because of these dangerous defects, Plaintiffs did not receive the benefit of their bargain and the vehicles have suffered a diminution in value.

1070. These dangerous defects were the direct and proximate cause of damages to the Plaintiffs.

Claims Brought on Behalf of the Minnesota Class

<u>COUNT CXIII</u>

Violation of Minnesota False Statement in Advertising Statute
<u>(Minnesota Statutes Sections 325F.67 *et seq.*)</u>

1071. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

1072. Defendants produced and published advertisements and deceptive and misleading 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

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defects, with the intent to sell the Defective Vehicles.

1073. Defendants continue to represent or otherwise disseminate misleading information about the defect and cause of the defect with the intent to induce the public to by the Defective Vehicles.

1074. Defendants concealed their deceptive practices in order to increase the sale of and profit from the Defective Vehicles.

1075. Defendants violated the Minnesota False Statements in Advertising Act, Minn. Stat. §§ 325F.67, *et seq.*, by publicly misrepresenting safety of the Defective Vehicles, including the susceptibility of the CAN buses to hacking.

1076. Defendants also failed to advise the NHTSA and the public about what they knew about the vulnerable CAN buses.

1077. The Minnesota False Statements in Advertising Act applies to Plaintiffs' transactions with Defendants because Defendants' deceptive scheme was carried out in Minnesota and affected Plaintiffs.

1078. As a direct and proximate result of Defendants' deceptive, unfair, and fraudulent conduct and violations of Minn. Stat. § 325F.67, *et seq.*, Plaintiffs have sustained and will continue to sustain economic losses and other damages for which they are entitled to compensatory and equitable damages and declaratory relief in an amount to be proven at trial.

COUNT CXIV

Violation of Minnesota Uniform Deceptive Trade Practices Act (Minnesota Statutes Sections 325D.43-48, *et seq.*)

1079. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein

1080. Defendants engaged in – and continue to engage in – conduct that violates the Minnesota Deceptive Trade Practices Act, Minn. Stat. §§ 325D.44, *et seq.* The violations include the following:

a) Defendants violated Minn. Stat. § 325D.44(5) by representing the Defective Vehicles as having characteristics, uses, and benefits of safe and mechanically sound

vehicles while knowing that the statements were false and the Defective Vehicles contained defects;

b) Defendants violated Minn. Stat. § 325D.44(7) by representing the Defective Vehicles as a non-defective product of a particular standard, quality, or grade while knowing the statements were false and the Defective Vehicles contained defects;

c) Defendants violated Minn. Stat. § 325D.44(9) by advertising, marketing, and selling the Defective Vehicles as reliable and without a known defect while knowing those claims were false; and

d) Defendants violated Minn. Stat. § 325D.44(13) by creating a likelihood of confusion and/or misrepresenting the safety of the Defective Vehicles.

1081. Defendants' deceptive scheme was carried out in Minnesota and affected Plaintiffs.

1082. Defendants also failed to advise the NHSTA and the public about what they knew about the susceptibility of the CAN buses to hacking.

1083. As a direct and proximate result of Defendants' deceptive conduct and violation of Minn. Stat. §§ 325D.44, *et seq.*, Plaintiffs have sustained and will continue to sustain economic losses and other damages for which they are entitled to compensatory and equitable damages and declaratory relief in an amount to be proven at trial.

COUNT CXV

Violation of Minnesota Prevention of Consumer Fraud Act (Minnesota Statutes Sections 325F.68, *et seq.*)

1084. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

1085. Defendants misrepresented the safety of the Defective Vehicles after learning of their defects with the intent that Plaintiffs relied on such representations in their decision regarding the purchase, lease and/or use of the Defective Vehicles.

1086. Plaintiffs did, in fact, rely on such representations in their decision regarding the purchase, lease and/or use of the Defective Vehicles.

1087. Through these misleading and deceptive statements and false promises, Defendants violated Minn. Stat. § 325F.69.

1088. The Minnesota Prevention of Consumer Fraud Act applies to Defendants' transactions with Plaintiffs because Defendants' deceptive scheme was carried out in Minnesota and affected Plaintiffs.

1089. Defendants also failed to advise the NHSTA and the public about what they knew about the sudden and unintended acceleration defects in the Defective Vehicles.

1090. Plaintiffs relied on Defendants' silence as to known defects in connection with their decision regarding the purchase, lease and/or use of the Defective Vehicles.

1091. As a direct and proximate result of Defendants' deceptive conduct and violation of Minn. Stat. § 325F.69, Plaintiffs have sustained and will continue to sustain economic losses and other damages for which they are entitled to compensatory and equitable damages and declaratory relief in an amount to be proven at trial.

COUNT CXVI

Fraudulent Misrepresentation and Fraudulent Concealment (Based on Minnesota Law)

1092. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

1093. 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.

1094. 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.

1095. Defendants knew these representations were false when made.

1096. 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.

1097. 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.

1098. 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.

1099. 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 sell Class Vehicles.

1100. Plaintiffs and the other Class members relied on Defendants' reputations – along with Defendants' failure to disclose the faulty and defective nature of the CAN bus and Defendants' affirmative assurances that their Class Vehicles were safe and reliable, and other similar false statements – in purchasing or leasing Defendants' Class Vehicles.

1101. As a result of their reliance, Plaintiffs and the other Class members have been injured in an amount to be proven at trial, including, but not limited to, their lost benefit of the bargain and overpayment at the time of purchase or lease and/or the diminished value of their Class Vehicles.

1102. Defendants' conduct was knowing, intentional, with malice, demonstrated a complete lack of care, and was in reckless disregard for the rights of Plaintiffs and the other Class members.

1103. Plaintiffs and the other Class members are therefore entitled to an award of punitive damages.

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

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.

1113. As described above, there were dangerous defects in the vehicles manufactured, distributed, and/or sold by Defendants, which Plaintiffs purchased, including, but not limited to, defects that caused the vehicles to be vulnerable to hacking.

1114. These dangerous defects existed at the time the vehicles left Defendants' manufacturing facilities and at the time they were sold to the Plaintiffs. Furthermore, because of these dangerous defects, Plaintiffs did not receive the benefit of their bargain and the vehicles have suffered a diminution in value.

1115. These dangerous defects were the direct and proximate cause of damages to the Plaintiffs.

COUNT CXIX

Strict Liability (Design Defect)
(Based on Minnesota Law)

1116. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

1117. Defendants are and have been at all times pertinent to this Complaint, engaged in the business of designing, manufacturing, assembling, promoting, advertising, distributing and selling Defective Vehicles in the United States, including those owned or leased by the Plaintiffs and the Class.

1118. Defendants knew and anticipated that the vehicles owned or leased by Plaintiffs and the Class would be sold to and operated by purchasers and/or eventual owners or leasors of Defendants' vehicles, including Plaintiffs and the Class.

1119. Defendants also knew that these Defective Vehicles would reach the Plaintiffs and the Class without substantial change in their condition from the time the vehicles departed the Defendants' assembly lines.

1120. Defendants designed the Defective Vehicles defectively, causing them to fail to

perform as safely as an ordinary consumer would expect when used in an intended and reasonably foreseeable manner.

1121. Defendants had the capability to use a feasible, alternative, safer design, and failed to correct the design defects.

1122. The risks inherent in the design of the Defective Vehicles outweigh significantly any benefits of such design.

1123. Plaintiffs and the Class could not have anticipated and did not know of the aforementioned defects at any time prior to recent revelations regarding the problems with the Defective Vehicles.

1124. As a direct and proximate result of Defendants' wrongful conduct, Plaintiffs and the Class have sustained and will continue to sustain economic losses and other damages for which they are entitled to compensatory and equitable damages and declaratory relief in an amount to be proven at trial.

COUNT CXX

Strict Liability (Failure to Warn)
(Based on Minnesota Law)

1125. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

1126. Defendants are and have been at all times pertinent to this Complaint, engaged in the business of designing, manufacturing, assembling, promoting, advertising distributing and selling Defective Vehicles in the United States, including those owned or leased by the Plaintiffs and the Class.

1127. Defendants, at all times pertinent to this Complaint, knew and anticipated that the Defective Vehicles and their component parts would be purchased, leased and operated by consumers, including Plaintiffs and the Class.

1128. Defendants also knew that these Defective Vehicles would reach the Plaintiffs and the Class without substantial change in their conditions from the time that the vehicles departed the Defendants' assembly lines.

1129. Defendants knew or should have known of the substantial dangers involved in the reasonably foreseeable use of the Defective Vehicles, defective design, manufacturing and lack of sufficient warnings caused them to have an unreasonably dangerous propensity to sudden and unintended acceleration.

1130. The Defendants failed to adequately warn Plaintiffs and the Class when they became aware of the defect that caused Plaintiffs and the Class vehicles to be prone to sudden and unintended acceleration.

1131. Defendants also failed to timely recall the vehicles or take any action to timely warn Plaintiffs or the Class of these problems and instead continue to subject Plaintiffs and the Class to harm.

1132. Defendants knew, or should have known, that these defects were not readily recognizable to an ordinary consumer and that consumers would lease, purchase and use these products without inspection.

1133. Defendants should have reasonably foreseen that the CAN bus defect in the Defective Vehicles would subject the Plaintiffs and the Class to harm resulting from the defect.

1134. Plaintiffs and the Class have used the Defective Vehicles for their intended purpose and in a reasonable and foreseeable manner.

1135. As a direct and proximate result of Defendants' wrongful conduct, Plaintiffs and the Class have sustained and will continue to sustain economic losses and other damages for which they are entitled to compensatory and equitable damages and declaratory relief in an amount to be proven at trial.

Claims Brought on Behalf of the Mississippi Class

COUNT CXXI

Mississippi Products Liability Act
(Mississippi Code Annotated Sections 11-1-63, *et seq.*)

1136. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

1137. Defendants have defectively designed, manufactured, sold or otherwise placed in

the stream of commerce Defective Vehicles.

1138. Defendants are strictly liable in tort for the Plaintiffs' injuries and damages and the Plaintiffs respectfully rely upon the Doctrine as set forth in *Restatement, Second, Torts* § 402(a).

1139. Because of the negligence of the design and manufacture of the Defective Vehicle, by which Plaintiffs were injured and the failure of Defendants to warn Plaintiffs of the certain dangers concerning the operation of the Defective Vehicles which were known to Defendants but were unknown to Plaintiffs, the Defendants have committed a tort.

1140. The Defective Vehicles which caused Plaintiffs' injuries were manufactured by Defendants.

1141. At all times herein material, Defendants negligently and carelessly did certain acts and failed to do other things, including, but not limited to, inventing, developing, designing, researching, guarding, manufacturing, building, inspecting, investigating, testing, labeling, instructing, and negligently and carelessly failing to provide adequate and fair warning of the characteristics, angers and hazards associated with the operation of the vehicles in question to users of the Defective Vehicles, including, but not limited to, Plaintiffs, and willfully failing to recall or otherwise cure one or more of the defects in the product involved thereby directly and proximately causing the hereinafter described injury.

1142. The Defective Vehicles were unsafe for their use by reason of the fact that they were defective. For example, the Defective Vehicles were defective in their design, guarding, development, manufacture, and lack of permanent, accurate, adequate and fair warning of the characteristics, danger and hazard to the user, prospective user and members of the general public, including, but not limited to, Plaintiffs, and because Defendants failed to recall or otherwise cure one or more defects in the vehicles involved thereby directly and proximately causing the described injuries.

1143. Defendants, and each of them, knew or reasonably should have known that the above mentioned product would be purchased and used without all necessary testing or inspection for defects by the Plaintiffs and the Class.

1144. Plaintiffs were not aware of those defects, or else Plaintiffs was unable, as a practical matter, to cure that defective condition.

1145. Plaintiffs used the product in a foreseeable manner.

1146. As a proximate result of the negligence of Defendants, Plaintiffs suffered injuries and damages.

COUNT CXXII

Breach of Implied Warranty of Merchantability
(Mississippi Code Annotated Section 75-2-314)

1147. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

1148. Defendants have defectively designed, manufactured, sold or otherwise placed in the stream of commerce defective vehicles as set forth above.

1149. Defendants impliedly warranted that the Defective Vehicles were merchantable and for the ordinary purpose for which they were designed, manufactured, and sold.

1150. The Defective Vehicles were not in merchantable condition or fit for ordinary use due to the defects described above and as a result of the breach of warranty of merchantability by Defendants, Plaintiffs sustained injuries and damages.

COUNT CXXIII

Negligent Misrepresentation/Fraud
(Based on Mississippi Law)

1151. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

1152. As set forth above, Defendants concealed and/or suppressed material facts concerning the safety of their vehicles.

1153. Defendants had a duty to disclose these safety issues because they consistently marketed their vehicles as safe and proclaimed that safety is one of Defendants' highest corporate priorities. Once Defendants made representations to the public about safety, Defendants were under a duty to disclose these omitted facts, because where one does speak one must speak the

whole truth and not conceal any facts which materially qualify those facts stated. One who volunteers information must be truthful, and the telling of a half-truth calculated to deceive is fraud.

1154. In addition, Defendants had a duty to disclose these omitted material facts because they were known and/or accessible only to Defendants who have superior knowledge and access to the facts, and Defendants knew they were not known to or reasonably discoverable by Plaintiffs and the Class. These omitted facts were material because they directly impact the safety of the Defective Vehicles. Whether or not a vehicle is susceptible to hacking and to being commandeered by a third party are material safety concerns. Defendants possessed exclusive knowledge of the defects rendering Defective Vehicles inherently more dangerous and unreliable than similar vehicles.

1155. Defendants actively concealed and/or suppressed these material facts, in whole or in part, with the intent to induce Plaintiffs and the Class to purchase Defective Vehicles at a higher price for the vehicles, which did not match the vehicles' true value.

1156. Defendants still have not made full and adequate disclosure and continue to defraud Plaintiffs and the Class.

1157. Plaintiffs and the Class were unaware of these omitted material facts and would not have acted as they did if they had known of the concealed and/or suppressed facts. Plaintiffs' and the Class' actions were justified. Defendants were in exclusive control of the material facts and such facts were not known to the public or the Class.

1158. As a result of the misrepresentation concealment and/or suppression of the facts, Plaintiffs and the Class sustained damage. For those Plaintiffs and the Class who elect to affirm the sale, these damages, under Mississippi law, include the difference between the actual value of that which Plaintiffs and the Class paid and the actual value of that which they received, together with additional damages arising from the sales transaction, amounts expended in reliance upon the fraud, compensation for loss of use and enjoyment of the property, and/or lost profits. For those Plaintiffs and the Class who want to rescind the purchase, then those Plaintiffs and the Class are entitled to restitution and consequential damages under Mississippi law.

1159. Defendants' acts were done maliciously, oppressively, deliberately, with intent to defraud, and in reckless disregard of Plaintiffs' and the Class' rights and well-being to enrich Defendants. Defendants' conduct warrants an assessment of punitive damages in an amount sufficient to deter such conduct in the future, which amount is to be determined according to proof.

Claims Brought on Behalf of the Missouri Class

COUNT CXXIV

Violation of Missouri Merchandising Practices Act
(Missouri Revised Statutes Sections 407.010, *et seq.*)

1160. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

1161. The conduct of Defendants as set forth herein constitutes unfair or deceptive acts or practices, including, but not limited to, Defendants' manufacture and sale of vehicles with a CAN bus defect that lack an effective fail-safe mechanism, which Defendants failed to adequately investigate, disclose and remedy, and their misrepresentations and omissions regarding the safety and reliability of their vehicles.

1162. Defendants' actions as set forth above occurred in the conduct of trade or commerce.

1163. Defendants' actions impact the public interest because Plaintiffs were injured in exactly the same way as millions of others purchasing and/or leasing Defendants vehicles as a result of Defendants' generalized course of deception. All of the wrongful conduct alleged herein occurred, and continues to occur, in the conduct of Defendants' business.

1164. Plaintiffs and the Class were injured as a result of Defendants' conduct. Plaintiffs overpaid for their Defective Vehicles and did not receive the benefit of their bargain, and their vehicles have suffered a diminution in value.

1165. Defendants' conduct proximately caused the injuries to Plaintiffs and the Class.

1166. Defendants are liable to Plaintiffs and the Class for damages in amounts to be proven at trial, including attorneys' fees, costs, and treble damages.

1167. Pursuant to Mo. Rev. Stat. § 407.010, Plaintiffs will serve the Missouri Attorney General with a copy of this complaint as Plaintiffs seek injunctive relief.

COUNT CXXV

Breach of Express Warranty
(Missouri Revised Statutes Section 400.2-313)

1168. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

1169. Defendants are and were at all relevant times merchants with respect to motor vehicles.

1170. 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 REFERRENCE: 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.

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.

These affirmations and promises were part of the basis of the bargain between the parties.

1175. 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.

1176. Furthermore, the limited warranty of repair and/or adjustments to defective parts, fails in its essential purpose because the contractual remedy is insufficient to make Plaintiffs and the other Class members whole and because Defendants have failed and/or have refused to adequately provide the promised remedies within a reasonable time.

1177. Accordingly, recovery by Plaintiffs and the other Class members is not limited to the limited warranty of repair or adjustments to parts defective in materials or workmanship, and Plaintiffs, individually and on behalf of the other Class members, seek all remedies as allowed by law.

1178. Also, as alleged in more detail herein, at the time that Defendants warranted and sold the Class Vehicles they knew that the Class Vehicles did not conform to the warranties and were inherently defective, and Defendants wrongfully and fraudulently misrepresented and/or concealed material facts regarding their Class Vehicles. Plaintiffs and the other Class members were therefore induced to purchase or lease the Class Vehicles under false and/or fraudulent pretenses.

1179. Moreover, many of the injuries flowing from the Class Vehicles cannot be resolved through the limited remedy of "replacement or adjustments," as many incidental and consequential damages have already been suffered due to Defendants' fraudulent conduct as alleged herein, and due to their failure and/or continued failure to provide such limited remedy within a reasonable time, and any limitation on Plaintiffs' and the other Class members' remedies would be insufficient to make Plaintiffs and the other Class members whole.

1180. Finally, due to the Defendants' breach of warranties as set forth herein, Plaintiffs and the Class assert as an additional and/or alternative remedy, as set forth in Mo. Rev. Stat.

§ 400.2-608, for a revocation of acceptance of the goods, and for a return to Plaintiffs and to the Class of the purchase price of all vehicles currently owned.

1181. Defendants were provided notice of these issues by the instant Complaint, and by other means before or within a reasonable amount of time after the allegations of Class Vehicle defects became public.

1182. As a direct and proximate result of Defendants' breach of express warranties, Plaintiffs and the other Class members have been damaged in an amount to be determined at trial.

COUNT CXXVI

Breach of the Implied Warranty of Merchantability
(Missouri Revised Statutes Section 400.2-314)

1183. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

1184. Defendants are and were at all relevant times merchants with respect to motor vehicles.

1185. A warranty that the Defective Vehicles were in merchantable condition is implied by law in the instant transactions, pursuant to Mo. Rev. Stat. § 400.2-314.

1186. 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. Specifically, the Defective Vehicles are inherently defective in that there are defects in the CAN buses making them vulnerable to hacking, and the Defective Vehicles do not have an adequate fail-safe to protect against such attacks.

1187. Defendants were provided notice of these issues by numerous complaints filed against them, including the instant Complaint, and by other means.

1188. Plaintiffs and the Class have had sufficient dealings with either the Defendants or their agents (dealerships) to establish privity of contract between Plaintiffs and the Class. Notwithstanding this, privity is not required in this case because Plaintiffs and the Class 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 Defective Vehicles and have no rights under the warranty agreements provided with the Defective Vehicles; the warranty agreements were designed for and intended to benefit the ultimate consumers only. Finally, privity is also not required because Plaintiffs' and the Class' vehicles are dangerous instrumentalities due to the aforementioned defects and nonconformities.

1189. 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 CXXVII

Breach of Contract/Common Law Warranty
(Based on Missouri Law)

1190. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

1191. To the extent Defendants' limited remedies are deemed not to be warranties under Missouri'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.

1192. Defendants breached this warranty or contract obligation by failing to repair the Class Vehicles, or to replace them.

1193. 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 CXXVIII

Fraudulent Concealment
(Based on Missouri Law)

1194. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set

forth herein.

1195. 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.

1196. 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.

1197. Defendants knew these representations were false when made.

1198. 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.

1199. 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.

1200. 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.

1201. 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 sell Class Vehicles.

1202. Plaintiffs and the other Class members relied on Defendants' reputations – along with Defendants' failure to disclose the faulty and defective nature of the CAN bus and Defendants' affirmative assurances that their Class Vehicles were safe and reliable, and other

similar false statements – in purchasing or leasing Defendants' Class Vehicles.

1203. As a result of their reliance, Plaintiffs and the other Class members have been injured in an amount to be proven at trial, including, but not limited to, their lost benefit of the bargain and overpayment at the time of purchase or lease and/or the diminished value of their Class Vehicles.

1204. Defendants' conduct was knowing, intentional, with malice, demonstrated a complete lack of care, and was in reckless disregard for the rights of Plaintiffs and the other Class members.

1205. Plaintiffs and the other Class members are therefore entitled to an award of punitive damages.

Claims Brought on Behalf of the Montana Class

COUNT CXXIX

Breach of Express Warranty
(Montana Code Section 30-2-313)

1206. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

1207. Defendants are and were at all relevant times merchants with respect to motor vehicles under Mont. Code. Ann. § 30-2-104.

1208. 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 REFERRENCE: 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

workmanship defects.

1211. In addition to these Limited Warranties, Defendants otherwise expressly warranted several attributes, characteristics, and qualities of the CAN bus.

1212. 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.

1213. 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.

1214. Furthermore, the limited warranty of repair and/or adjustments to defective parts, fails in its essential purpose because the contractual remedy is insufficient to make Plaintiffs and the other Class members whole and because Defendants have failed and/or have refused to adequately provide the promised remedies within a reasonable time.

1215. Accordingly, recovery by Plaintiffs and the other Class members is not limited to the limited warranty of repair or adjustments to parts defective in materials or workmanship, and Plaintiffs, individually and on behalf of the other Class members, seek all remedies as allowed by law.

1216. Also, as alleged in more detail herein, at the time that Defendants warranted and sold the Class Vehicles they knew that the Class Vehicles did not conform to the warranties and were inherently defective, and Defendants wrongfully and fraudulently misrepresented and/or concealed material facts regarding their Class Vehicles. Plaintiffs and the other Class members were therefore induced to purchase or lease the Class Vehicles under false and/or fraudulent

pretenses.

1217. Moreover, many of the injuries flowing from the Class Vehicles cannot be resolved through the limited remedy of "replacement or adjustments," as many incidental and consequential damages have already been suffered due to Defendants' fraudulent conduct as alleged herein, and due to their failure and/or continued failure to provide such limited remedy within a reasonable time, and any limitation on Plaintiffs' and the other Class members' remedies would be insufficient to make Plaintiffs and the other Class members whole.

1218. Finally, due to the Defendants' breach of warranties as set forth herein, Plaintiffs and the Class assert as an additional and/or alternative remedy, as set forth in Mont. Code § 30-2-711, for a revocation of acceptance of the goods, and for a return to Plaintiffs and to the Class of the purchase price of all vehicles currently owned and for such other incidental and consequential damages as allowed under Mont. Code §§ 30-2-711 and 30-2-608.

1219. Defendants were provided notice of these issues by the instant Complaint, and by other means before or within a reasonable amount of time after the allegations of Class Vehicle defects became public.

1220. As a direct and proximate result of Defendants' breach of express warranties, Plaintiffs and the other Class members have been damaged in an amount to be determined at trial.

COUNT CXXX

Breach of the Implied Warranty of Merchantability
(Montana Code Section 30-2-314)

1221. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

1222. Defendants are and were at all relevant times merchants with respect to motor vehicles under Mont. Code § 30-2-104.

1223. A warranty that the Defective Vehicles were in merchantable condition was implied by law in the instant transaction, pursuant to Mont. Code § 30-2-314.

1224. 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.

1225. 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 CXXXI

Breach of Contract/Common Law Warranty
(Based on Montana Law)

1226. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

1227. To the extent Defendants' limited remedies are deemed not to be warranties under Montana'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.

1228. Defendants breached this warranty or contract obligation by failing to repair the Class Vehicles, or to replace them.

1229. 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 CXXXII

Fraudulent Concealment
(Based on Montana Law)

1230. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

1231. 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.

1232. 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.

1233. Defendants knew these representations were false when made.

1234. 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.

1235. 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.

1236. 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.

1237. 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 sell Class Vehicles.

1238. Plaintiffs and the other Class members relied on Defendants' reputations – along with Defendants' failure to disclose the faulty and defective nature of the CAN bus and Defendants' affirmative assurances that their Class Vehicles were safe and reliable, and other similar false statements – in purchasing or leasing Defendants' Class Vehicles.

1239. As a result of their reliance, Plaintiffs and the other Class members have been injured in an amount to be proven at trial, including, but not limited to, their lost benefit of the

bargain and overpayment at the time of purchase or lease and/or the diminished value of their Class Vehicles.

1240. Defendants' conduct was knowing, intentional, with malice, demonstrated a complete lack of care, and was in reckless disregard for the rights of Plaintiffs and the other Class members.

1241. Plaintiffs and the other Class members are therefore entitled to an award of punitive damages.

Claims Brought on Behalf of the Nebraska Class

COUNT CXXXIII

Violation of the Nebraska Consumer Protection Act
(Nebraska Revised Statutes Sections 59-1601, *et seq.*)

1242. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

1243. The Nebraska Consumer Protection Act ("NCPA") prohibits "unfair or deceptive acts or practices in the conduct of any trade or commerce."

1244. "Trade or commerce" means "the sale of assets or services and any commerce directly or indirectly affecting the people of the State of Nebraska."

1245. The conduct of Defendants as set forth herein constitutes unfair or deceptive acts or practices, including, but not limited to, Defendants' manufacture and sale of vehicles with a CAN bus defect that lack an effective fail-safe mechanism, which Defendants failed to adequately investigate, disclose and remedy, and their misrepresentations and omissions regarding the safety and reliability of their vehicles, which misrepresentations and omissions possessed the tendency or capacity to mislead.

1246. Defendants' actions as set forth above occurred in the conduct of trade or commerce.

1247. Defendants' actions impact the public interest because Plaintiffs were injured in exactly the same way as millions of others purchasing and/or leasing Defendants vehicles as a result of Defendants' generalized course of deception. All of the wrongful conduct alleged herein

occurred, and continues to occur, in the conduct of Defendants' business.

1248. Plaintiffs and the Class were injured as a result of Defendants' conduct. Plaintiffs overpaid for their Defective Vehicles and did not receive the benefit of their bargain, and their vehicles have suffered a diminution in value.

1249. Defendants' conduct proximately caused the injuries to Plaintiffs and the Class, who are entitled to recover actual damages, as well as enhanced damages pursuant to § 59-1609.

COUNT CXXXIV

Breach of the Implied Warranty of Merchantability
(Nebraska Revised Statutes Section 2-314)

1250. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

1251. Defendants are and were at all relevant times merchants with respect to motor vehicles.

1252. A warranty that the Class Vehicles were in merchantable condition is implied by law in the instant transactions.

1253. 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.

1254. 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 Nevada Class

COUNT CXXXV

Violation of the Nevada Deceptive Trade Practices Act
(Nevada Revised Statutes Sections 598.0903, *et seq.*)

1255. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

1256. Defendants are "persons" as required under the statute.

1257. Defendants' actions as set forth above occurred in the course of business.

1258. The Nevada Deceptive Trade Practices Act, Nev. Rev. Stat. §§ 598.0903, *et seq.*, prohibits unfair or deceptive consumer sales practices.

1259. The Nev. Rev. Stat. § 598.0915 provides that a person engages in a "deceptive trade practice" if, in the course of his or her business or occupation, he or she does any of the following, including: "5. Knowingly makes a false representation as to the characteristics, ingredients, uses, benefits, alterations or quantities of goods or services for sale or lease or a false representation as to the sponsorship, approval, status, affiliation or connection of a person therewith"; "7. Represents that goods or services for sale or lease are of a particular standard, quality or grade, or that such goods are of a particular style or model, if he or she knows or should know that they are of another standard, quality, grade, style or model"; "9. Advertises goods or services with intent not to sell or lease them as advertised"; or "15. Knowingly makes any other false representation in a transaction."

1260. 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. Accordingly, Defendants engaged in deceptive trade practices, including making false representation as to the characteristics, uses, and benefits of the Defective Vehicles; representing that Defective Vehicles are of a particular standard and quality when they are not; advertising Defective Vehicles with the intent not to sell them as advertised; and knowingly made numerous other false representations as further described during the fact section of this complaint.

1261. Defendants knowingly made false representations to consumers with the intent to induce consumers into purchasing Defendants' vehicles. Plaintiffs reasonably relied on false representations by Defendants and were induced to each purchase a Defendants vehicle, to his/her detriment. As a result of these unlawful trade practices, Plaintiffs have suffered ascertainable loss.

1262. Plaintiffs and the Class suffered ascertainable loss caused by Defendants' false representations and failure to disclose material information. Plaintiffs and the Class overpaid for their vehicles and did not receive the benefit of their bargain. The value of their vehicles has

diminished now that the safety issues have come to light, and Plaintiffs and the Class own vehicles that are not safe.

COUNT CXXXVI

Breach of Express Warranty
(Nevada Revised Statutes Sections 104.2313)

1263. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

1264. Defendants are and were at all relevant times merchants with respect to motor vehicles under the Uniform Commercial Code.

1265. 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 REFERRENCE: 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.

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.

These affirmations and promises were part of the basis of the bargain between the parties.

1270. 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.

1271. Furthermore, the limited warranty of repair and/or adjustments to defective parts, fails in its essential purpose because the contractual remedy is insufficient to make Plaintiffs and the other Class members whole and because Defendants have failed and/or have refused to adequately provide the promised remedies within a reasonable time.

1272. Accordingly, recovery by Plaintiffs and the other Class members is not limited to the limited warranty of repair or adjustments to parts defective in materials or workmanship, and Plaintiffs, individually and on behalf of the other Class members, seek all remedies as allowed by law.

1273. Also, as alleged in more detail herein, at the time that Defendants warranted and sold the Class Vehicles they knew that the Class Vehicles did not conform to the warranties and were inherently defective, and Defendants wrongfully and fraudulently misrepresented and/or concealed material facts regarding their Class Vehicles. Plaintiffs and the other Class members were therefore induced to purchase or lease the Class Vehicles under false and/or fraudulent pretenses.

1274. Moreover, many of the injuries flowing from the Class Vehicles cannot be resolved through the limited remedy of "replacement or adjustments," as many incidental and consequential damages have already been suffered due to Defendants' fraudulent conduct as alleged herein, and due to their failure and/or continued failure to provide such limited remedy within a reasonable time, and any limitation on Plaintiffs' and the other Class members' remedies would be insufficient to make Plaintiffs and the other Class members whole.

1275. Defendants were provided notice of these issues by the instant Complaint, and by other means before or within a reasonable amount of time after the allegations of Class Vehicle

defects became public.

1276. As a direct and proximate result of Defendants' breach of express warranties, Plaintiffs and the other Class members have been damaged in an amount to be determined at trial.

COUNT CXXXVII

Breach of the Implied Warranty of Merchantability
(Nevada Revised Statutes Section 104.2314)

1277. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

1278. Defendants are and were at all relevant times merchants with respect to motor vehicles under the Uniform Commercial Code.

1279. A warranty that the Defective Vehicles were in merchantable condition was implied by law in the instant transaction, pursuant to the Uniform Commercial Code.

1280. 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.

1281. 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 CXXXVIII

Breach of Contract/Common Law Warranty
(Based on Nevada Law)

1282. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

1283. To the extent Defendants' limited remedies are deemed not to be warranties under Nevada'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.

1284. Defendants breached this warranty or contract obligation by failing to repair the Class Vehicles, or to replace them.

1285. 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 CXXXIX

Fraudulent Concealment
(Based on Nevada Law)

1286. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

1287. 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.

1288. 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.

1289. Defendants knew these representations were false when made.

1290. 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.

1291. 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.

1292. 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.

1293. 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 sell Class Vehicles.

1294. Plaintiffs and the other Class members relied on Defendants' reputations – along with Defendants' failure to disclose the faulty and defective nature of the CAN bus and Defendants' affirmative assurances that their Class Vehicles were safe and reliable, and other similar false statements – in purchasing or leasing Defendants' Class Vehicles.

1295. As a result of their reliance, Plaintiffs and the other Class members have been injured in an amount to be proven at trial, including, but not limited to, their lost benefit of the bargain and overpayment at the time of purchase or lease and/or the diminished value of their Class Vehicles.

1296. Defendants' conduct was knowing, intentional, with malice, demonstrated a complete lack of care, and was in reckless disregard for the rights of Plaintiffs and the other Class members.

1297. Plaintiffs and the other Class members are therefore entitled to an award of punitive damages.

Claims Brought on Behalf of the New Hampshire Class

COUNT CXL

Violation of New Hampshire Consumer Protection Act
(New Hampshire Revised Statutes Annotated Sections 358A:1, *et seq.*)

1298. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

1299. The New Hampshire Consumer Protection Act ("CPA") prohibits a person, in the

conduct of any trade or commerce, from doing any of the following:

1300. "(V) Representing that goods or services have . . . characteristics, . . . uses, benefits, or quantities that they do not have; . . . (VII) Representing that goods or services are of a particular standard, quality, or grade, . . . if they are of another; . . . and (IX) Advertising goods or services with intent not to sell them as advertised." N.H. Rev. Stat. § 358-A:2.

1301. Defendants are persons within the meaning of the CPA. *See* N.H. Rev. Stat. § 358A:1(I).

1302. 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. Accordingly, Defendants engaged in unlawful trade practices, including representing that Defective Vehicles have characteristics, uses, benefits, and qualities which they do not have; representing that Defective Vehicles are of a particular standard and quality when they are not; and advertising Defective Vehicles with the intent not to sell them as advertised. Defendants knew or should have known that their conduct violated the CPA.

1303. Defendants engaged in a deceptive trade practice 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.

1304. 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 known that their vehicles had these serious safety defects, they would not have purchased their vehicles.

1305. Defendants' failure to disclose material information has injured Plaintiffs and the Class. Plaintiffs and the Class overpaid for their vehicles and did not receive the benefit of their bargain. The value of their vehicles has diminished now that the safety issues have come to light, and Plaintiffs and the Class own vehicles that are not safe.

1306. Plaintiffs are entitled to recover the greater of actual damages or $1,000 pursuant

to N.H. Rev. Stat. § 358-A:10. Plaintiffs are also entitled to treble damages because Defendants acted willfully in their unfair and deceptive practices.

COUNT CXLI

Breach of Express Warranty
(New Hampshire Revised Statutes Annotated Section 382-A:2-313)

1307. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

1308. Defendants are and were at all relevant times merchants with respect to motor vehicles under N.H. Rev. Stat. § 382-A:2-313.

1309. 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 REFERRENCE: 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.

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.

These affirmations and promises were part of the basis of the bargain between the parties.

1314. 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.

1315. Furthermore, the limited warranty of repair and/or adjustments to defective parts, fails in its essential purpose because the contractual remedy is insufficient to make Plaintiffs and the other Class members whole and because Defendants have failed and/or have refused to adequately provide the promised remedies within a reasonable time.

1316. Accordingly, recovery by Plaintiffs and the other Class members is not limited to the limited warranty of repair or adjustments to parts defective in materials or workmanship, and Plaintiffs, individually and on behalf of the other Class members, seek all remedies as allowed by law.

1317. Also, as alleged in more detail herein, at the time that Defendants warranted and sold the Class Vehicles they knew that the Class Vehicles did not conform to the warranties and were inherently defective, and Defendants wrongfully and fraudulently misrepresented and/or concealed material facts regarding their Class Vehicles. Plaintiffs and the other Class members were therefore induced to purchase or lease the Class Vehicles under false and/or fraudulent pretenses.

1318. Moreover, many of the injuries flowing from the Class Vehicles cannot be resolved through the limited remedy of "replacement or adjustments," as many incidental and consequential damages have already been suffered due to Defendants' fraudulent conduct as alleged herein, and due to their failure and/or continued failure to provide such limited remedy within a reasonable time, and any limitation on Plaintiffs' and the other Class members' remedies would be insufficient to make Plaintiffs and the other Class members whole.

1319. Finally, due to the Defendants' breach of warranties as set forth herein, Plaintiffs and the Class assert as an additional and/or alternative remedy, as set forth in N.H. Rev. Stat.

§§ 382-A:2-608 and 382-A:2-711, for a revocation of acceptance of the goods, and for a return to Plaintiffs and to the Class of the purchase price of all vehicles currently owned and for such other incidental and consequential damages as allowed under N.H. Rev. Stat. §§ 382-A:2-608 and 382-A:2-711.

1320. Defendants were provided notice of these issues by the instant Complaint, and by other means before or within a reasonable amount of time after the allegations of Class Vehicle defects became public.

1321. As a direct and proximate result of Defendants' breach of express warranties, Plaintiffs and the other Class members have been damaged in an amount to be determined at trial.

COUNT CXLII

Breach of Implied Warranty of Merchantability
(New Hampshire Revised Statutes Annotated Section 382-A:2-314)

1322. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

1323. Defendants are and were at all relevant times merchants with respect to motor vehicles.

1324. A warranty that the Class Vehicles were in merchantable condition is implied by law in the instant transactions.

1325. 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.

1326. 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 CXLIII

Breach of Common Law Warranty
(Based on New Hampshire Law)

1327. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set

forth herein.

1328. To the extent Defendants' limited remedies are deemed not to be warranties under New Hampshire's Commercial Code, Plaintiffs, individually and on behalf of the other Class members, plead in the alternative under common law 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.

1329. Defendants breached this warranty or contract obligation by failing to repair the Class Vehicles, or to replace them.

1330. 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 New Jersey Class

COUNT CXLIV

Violations of the New Jersey Consumer Fraud Act
(New Jersey Statutes Annotated Sections 56:8-1, *et seq.*)

1331. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

1332. The New Jersey Consumer Fraud Act, N.J. Stat. Ann. §§ 56:8-1, *et seq.* ("NJ CFA"), prohibits unfair or deceptive acts or practices in the conduct of any trade or commerce.

1333. In the course of Defendants' business, they willfully failed to disclose and actively concealed the dangerous risk of CAN bus hacking in Class Vehicles as described above. Accordingly, Defendants engaged in unfair and deceptive trade practices, including representing that Class Vehicles have characteristics, uses, benefits, and qualities which they do not have; representing that Class Vehicles are of a particular standard and quality when they are not; advertising Class Vehicles with the intent not to sell them as advertised; and otherwise engaging in conduct likely to deceive. Further, Defendants' acts and practices described herein offend

established public policy because the harm they cause to consumers, motorists, and pedestrians outweighs any benefit associated with such practices, and because Defendants fraudulently concealed the defective nature of the Class Vehicles from consumers.

1334. Defendants' actions as set forth above occurred in the conduct of trade or commerce.

1335. Defendants' conduct proximately caused injuries to Plaintiffs and the other Class members.

1336. Plaintiffs and the other Class members were injured as a result of Defendants' conduct in that Plaintiffs and the other Class members overpaid for their Class Vehicles and did not receive the benefit of their bargain, and their Class Vehicles have suffered a diminution in value. These injuries are the direct and natural consequence of Defendants' misrepresentations and omissions.

1337. Pursuant to N.J. Stat. Ann. § 56:8-20, Plaintiffs will serve the New Jersey Attorney General with a copy of this Complaint.

COUNT CXLV

Breach of Express Warranty
(New Jersey Statutes Annotated Section 12A:2-313)

1338. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

1339. Defendants are and were at all relevant times merchants with respect to motor vehicles.

1340. 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 REFERRENCE: 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.

1341. 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.

1342. 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.

1343. In addition to these Limited Warranties, Defendants otherwise expressly warranted several attributes, characteristics, and qualities of the CAN bus.

1344. 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.

1345. 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.

1346. Furthermore, the limited warranty of repair and/or adjustments to defective parts, fails in its essential purpose because the contractual remedy is insufficient to make Plaintiffs and the other Class members whole and because Defendants have failed and/or have refused to adequately provide the promised remedies within a reasonable time.

1347. Accordingly, recovery by Plaintiffs and the other Class members is not limited to the limited warranty of repair or adjustments to parts defective in materials or workmanship, and Plaintiffs, individually and on behalf of the other Class members, seek all remedies as allowed by law.

1348. Also, as alleged in more detail herein, at the time that Defendants warranted and sold the Class Vehicles they knew that the Class Vehicles did not conform to the warranties and

were inherently defective, and Defendants wrongfully and fraudulently misrepresented and/or concealed material facts regarding their Class Vehicles. Plaintiffs and the other Class members were therefore induced to purchase or lease the Class Vehicles under false and/or fraudulent pretenses.

1349. Moreover, many of the injuries flowing from the Class Vehicles cannot be resolved through the limited remedy of "replacement or adjustments," as many incidental and consequential damages have already been suffered due to Defendants' fraudulent conduct as alleged herein, and due to their failure and/or continued failure to provide such limited remedy within a reasonable time, and any limitation on Plaintiffs' and the other Class members' remedies would be insufficient to make Plaintiffs and the other Class members whole.

1350. Finally, due to Defendants' breach of warranties as set forth herein, Plaintiffs and the other Class members assert as an additional and/or alternative remedy, as set forth in N.J. Stat. Ann § 12A:2-608, for a revocation of acceptance of the goods, and for a return to Plaintiffs and to the other Class members of the purchase price of all Class Vehicles currently owned for such other incidental and consequential damages as allowed under N.J. Stat. Ann. §§ 12A:2-711 and 12A:2-608.

1351. Defendants were provided notice of these issues by the instant Complaint, and by other means before or within a reasonable amount of time after the allegations of Class Vehicle defects became public.

1352. As a direct and proximate result of Defendants' breach of express warranties, Plaintiffs and the other Class members have been damaged in an amount to be determined at trial.

COUNT CXLVI

Breach of Implied Warranty of Merchantability
(New Jersey Statutes Annotated Section 12A:2-314)

1353. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

1354. Defendants are and were at all relevant times merchants with respect to motor vehicles.

1355. A warranty that the Class Vehicles were in merchantable condition is implied by law in the instant transactions.

1356. 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.

1357. 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 CXLVII

Breach of Contract/Common Law Warranty
(Based on New Jersey Law)

1358. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

1359. To the extent Defendants' limited remedies are deemed not to be warranties under New Jersey'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.

1360. Defendants breached this warranty or contract obligation by failing to repair the Class Vehicles, or to replace them.

1361. 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 CXLVIII

Fraudulent Concealment
(Based on New Jersey Law)

1362. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

1363. 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.

1364. 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.

1365. Defendants knew these representations were false when made.

1366. 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.

1367. 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.

1368. 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.

1369. 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

sell Class Vehicles.

1370. Plaintiffs and the other Class members relied on Defendants' reputations – along with Defendants' failure to disclose the faulty and defective nature of the CAN bus and Defendants' affirmative assurances that their Class Vehicles were safe and reliable, and other similar false statements – in purchasing or leasing Defendants' Class Vehicles.

1371. As a result of their reliance, Plaintiffs and the other Class members have been injured in an amount to be proven at trial, including, but not limited to, their lost benefit of the bargain and overpayment at the time of purchase or lease and/or the diminished value of their Class Vehicles.

1372. Defendants' conduct was knowing, intentional, with malice, demonstrated a complete lack of care, and was in reckless disregard for the rights of Plaintiffs and the other Class members.

1373. Plaintiffs and the other Class members are therefore entitled to an award of punitive damages.

Claims Brought on Behalf of the New Mexico Class

COUNT CXLIX

Breach of Express Warranty
(New Mexico Statutes Annotated Section 55-2-313)

1374. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

1375. Defendants are and were at all relevant times merchants with respect to motor vehicles under N.M. Stat. Ann. § 55-2-104.

1376. 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 REFERRENCE: 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

reached when Plaintiffs and the other Class members purchased or leased their Class Vehicles equipped with a CAN bus from Defendants.

1378. 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.

1379. In addition to these Limited Warranties, Defendants otherwise expressly warranted several attributes, characteristics, and qualities of the CAN bus.

1380. 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.

1381. 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.

1382. Furthermore, the limited warranty of repair and/or adjustments to defective parts, fails in its essential purpose because the contractual remedy is insufficient to make Plaintiffs and the other Class members whole and because Defendants have failed and/or have refused to adequately provide the promised remedies within a reasonable time.

1383. Accordingly, recovery by Plaintiffs and the other Class members is not limited to the limited warranty of repair or adjustments to parts defective in materials or workmanship, and Plaintiffs, individually and on behalf of the other Class members, seek all remedies as allowed by law.

1384. Also, as alleged in more detail herein, at the time that Defendants warranted and sold the Class Vehicles they knew that the Class Vehicles did not conform to the warranties and were inherently defective, and Defendants wrongfully and fraudulently misrepresented and/or concealed material facts regarding their Class Vehicles. Plaintiffs and the other Class members were therefore induced to purchase or lease the Class Vehicles under false and/or fraudulent pretenses.

1385. Moreover, many of the injuries flowing from the Class Vehicles cannot be resolved through the limited remedy of "replacement or adjustments," as many incidental and consequential damages have already been suffered due to Defendants' fraudulent conduct as alleged herein, and due to their failure and/or continued failure to provide such limited remedy within a reasonable time, and any limitation on Plaintiffs' and the other Class members' remedies would be insufficient to make Plaintiffs and the other Class members whole.

1386. Finally, due to the Defendants' breach of warranties as set forth herein, Plaintiffs and the Class assert as an additional and/or alternative remedy, as set forth in N.M. Stat. Ann. § 55-2-711, for a revocation of acceptance of the goods, and for a return to Plaintiffs and to the Class of the purchase price of all vehicles currently owned and for such other incidental and consequential damages as allowed under N.M. Stat. Ann. §§ 55-2-711 and 55-2-608.

1387. Defendants were provided notice of these issues by the instant Complaint, and by other means before or within a reasonable amount of time after the allegations of Class Vehicle defects became public.

1388. As a direct and proximate result of Defendants' breach of express warranties, Plaintiffs and the other Class members have been damaged in an amount to be determined at trial.

COUNT CL

Breach of the Implied Warranty of Merchantability
(New Mexico Statutes Annotated Section 55-2-314)

1389. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

1390. Defendants are and were at all relevant times merchants with respect to motor

vehicles under N.M. Stat. Ann. § 55-2-104.

1391. A warranty that the Defective Vehicles were in merchantable condition was implied by law in the instant transaction, pursuant to N.M. Stat. Ann. § 55-2-314.

1392. 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.

1393. 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 CLI

Breach of Contract/Common Law Warranty
(Based on New Mexico Law)

1394. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

1395. To the extent Defendants' limited remedies are deemed not to be warranties under New Mexico'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.

1396. Defendants breached this warranty or contract obligation by failing to repair the Class Vehicles, or to replace them.

1397. 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 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

sell Class Vehicles.

1406. Plaintiffs and the other Class members relied on Defendants' reputations – along with Defendants' failure to disclose the faulty and defective nature of the CAN bus and Defendants' affirmative assurances that their Class Vehicles were safe and reliable, and other similar false statements – in purchasing or leasing Defendants' Class Vehicles.

1407. As a result of their reliance, Plaintiffs and the other Class members have been injured in an amount to be proven at trial, including, but not limited to, their lost benefit of the bargain and overpayment at the time of purchase or lease and/or the diminished value of their Class Vehicles.

1408. Defendants' conduct was knowing, intentional, with malice, demonstrated a complete lack of care, and was in reckless disregard for the rights of Plaintiffs and the other Class members.

1409. Plaintiffs and the other Class members are therefore entitled to an award of punitive damages.

COUNT CLIII

Violations of the New Mexico Unfair Trade Practices Act
(New Mexico Statutes Annotated Sections 57-12-1, *et seq.*)

1410. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

1411. Defendants' above-described acts and omissions constitute unfair or deceptive acts or practices under the New Mexico Unfair Trade Practices Act, N.M. Stat. Ann. §§ 57-12-1, *et seq.* ("New Mexico UTPA").

1412. By failing to disclose and actively concealing the dangerous risk of hacking and the lack of adequate fail-safe mechanisms in Defective Vehicles equipped with CAN buses, Defendants engaged in deceptive business practices prohibited by the New Mexico UTPA, including (1) representing that Defective Vehicles have characteristics 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) using exaggeration as to a material fact and by doing so deceiving or

tending to deceive, (4) failing to state a material fact and by doing so deceiving or tending to deceive, and (5) representing that a transaction involving Defective Vehicles confers or involves rights, remedies, and obligations which it does not.

1413. 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.

1414. Defendants took advantage of the lack of knowledge, ability, experience, and capacity of Plaintiffs and the Class to a grossly unfair degree. Defendants' actions resulted in a gross disparity between the value received and the price paid by Plaintiffs and the Class. Defendants' actions constitute unconscionable actions under § 57-12-2(E) of the New Mexico UTPA.

1415. Plaintiffs and the Class sustained damages as a result of the Defendants' unlawful acts and are, therefore, entitled to damages and other relief provided for under § 57-12-10 of the New Mexico UTPA. Because Defendants' conduct was committed willfully, Plaintiffs and the Class seek treble damages.

1416. Plaintiffs and the Class also seek court costs and attorneys' fees under § 57-12-10(C) of the New Mexico UTPA.

COUNT CLIV

Violations of the New Mexico Motor Vehicle Dealers Franchising Act (New Mexico Statutes Annotated Sections 57-16-1, *et seq.*)

1417. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

1418. As alleged above, Defendants used false, misleading, and deceptive advertising in connection with their business in violation of the New Mexico Motor Vehicle Dealers Franchising Act, N.M. Stat. Ann. §§ 57-16-1, *et seq.* ("New Mexico MVDFA").

1419. Plaintiffs and the Class sustained damages as a result of the Defendants' unlawful acts and are, therefore, entitled to damages and other relief provided for under § 57-16-13 of the

New Mexico MVDFA. Because Defendants' conduct was committed maliciously, Plaintiffs and the Class seek treble damages.

1420. Plaintiffs and the Class also seek court costs and attorneys' fees under § 57-16-13 of the New Mexico MVDFA.

Claims Brought on Behalf of the New York Class

COUNT CLV

Violations of New York General Business Law Section 349
(New York General Business Law Section 349)

1421. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

1422. New York's General Business Law § 349 makes unlawful "[d]eceptive acts or practices in the conduct of any business, trade or commerce."

1423. In the course of Defendants' business, they willfully failed to disclose and actively concealed the dangerous risk of CAN bus hacking in Class Vehicles as described above. Accordingly, Defendants engaged in unfair methods of competition, unconscionable acts or practices, and unfair or deceptive acts or practices as defined in N.Y. Gen. Bus. Law § 349, including representing that Class Vehicles have characteristics, uses, benefits, and qualities which they do not have; representing that Class Vehicles are of a particular standard and quality when they are not; advertising Class Vehicles with the intent not to sell them as advertised; and otherwise engaging in conduct likely to deceive.

1424. Defendants' actions as set forth above occurred in the conduct of trade or commerce.

1425. Because Defendants' deception takes place in the context of automobile safety, their deception affects the public interest. Further, Defendants' unlawful conduct constitutes unfair acts or practices that have the capacity to deceive consumers, and that have a broad impact on consumers at large.

1426. Defendants' conduct proximately caused injuries to Plaintiffs and the other Class members.

1427. Plaintiffs and the other Class members were injured as a result of Defendants' conduct in that Plaintiffs and the other Class members overpaid for their Class Vehicles and did not receive the benefit of their bargain, and their Class Vehicles have suffered a diminution in value. These injuries are the direct and natural consequence of Defendants' misrepresentations and omissions.

COUNT CLVI

Violations of New York General Business Law Section 350
(New York General Business Law Section 350)

1428. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

1429. New York's General Business Law § 350 makes unlawful "[f]alse advertising in the conduct of any business, trade or commerce[.]" False advertising includes "advertising, including labeling, of a commodity . . . if such advertising is misleading in a material respect," taking into account "the extent to which the advertising fails to reveal facts material in the light of . . . representations [made] with respect to the commodity . . . ." N.Y. Gen. Bus. Law § 350-a. 818. Defendants caused to be made or disseminated through New York, through advertising, marketing, and other publications, statements that were untrue or misleading, and which were known, or which by the exercise of reasonable care should have been known to Defendants, to be untrue and misleading to consumers, including Plaintiffs and the other Class members.

1430. Defendants have violated N.Y. Gen. Bus. Law § 350 because the misrepresentations and omissions regarding the dangerous risk of CAN bus hacking in Class Vehicles as described above, as well as the inherently defective nature of the CAN bus as designed and sold by Defendants, were material and likely to deceive a reasonable consumer.

1431. Plaintiffs and the other Class members have suffered injury, including the loss of money or property, as a result of Defendants' false advertising. In purchasing or leasing their Class Vehicles, Plaintiffs and the other Class members relied on the misrepresentations and/or omissions of Defendants with respect to the safety, quality, functionality, and reliability of the Class Vehicles. Defendants' representations turned out to be untrue because the CAN buses

installed in Class Vehicles are vulnerable to hacking and other failures as described hereinabove. Had Plaintiffs and the other Class members known this, they would not have purchased or leased their Class Vehicles and/or paid as much for them.

1432. Accordingly, Plaintiffs and the other Class members overpaid for their Class Vehicles and did not receive the benefit of the bargain for their Class Vehicles, which have also suffered diminution in value.

1433. Plaintiffs, individually and on behalf of the other Class members, request that this Court enter such orders or judgments as may be necessary to enjoin Defendants from continuing their unfair, unlawful and/or deceptive practices. Plaintiffs and the other Class members are also entitled to recover their actual damages or $500, whichever is greater. Because Defendants acted willfully or knowingly, Plaintiffs and the other Class members are entitled to recover three times actual damages, up to $10,000.

COUNT CLVII

Breach of Express Warranty
(New York Uniform Commercial Code Section 2-313)

1434. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

1435. Defendants are and were at all relevant times merchants with respect to motor vehicles.

1436. 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 REFERRENCE: 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.

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

or adjusted, and have been unable to repair or adjust, the Class Vehicles' materials and workmanship defects.

1439. In addition to these Limited Warranties, Defendants otherwise expressly warranted several attributes, characteristics, and qualities of the CAN bus.

1440. 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.

1441. 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.

1442. Furthermore, the limited warranty of repair and/or adjustments to defective parts, fails in its essential purpose because the contractual remedy is insufficient to make Plaintiffs and the other Class members whole and because Defendants have failed and/or have refused to adequately provide the promised remedies within a reasonable time.

1443. Accordingly, recovery by Plaintiffs and the other Class members is not limited to the limited warranty of repair or adjustments to parts defective in materials or workmanship, and Plaintiffs, individually and on behalf of the other Class members, seek all remedies as allowed by law.

1444. Also, as alleged in more detail herein, at the time that Defendants warranted and sold the Class Vehicles they knew that the Class Vehicles did not conform to the warranties and were inherently defective, and Defendants wrongfully and fraudulently misrepresented and/or concealed material facts regarding their Class Vehicles. Plaintiffs and the other Class members

were therefore induced to purchase or lease the Class Vehicles under false and/or fraudulent pretenses.

1445. Moreover, many of the injuries flowing from the Class Vehicles cannot be resolved through the limited remedy of "replacement or adjustments," as many incidental and consequential damages have already been suffered due to Defendants' fraudulent conduct as alleged herein, and due to their failure and/or continued failure to provide such limited remedy within a reasonable time, and any limitation on Plaintiffs' and the other Class members' remedies would be insufficient to make Plaintiffs and the other Class members whole.

1446. Finally, due to Defendants' breach of warranties as set forth herein, Plaintiffs and the other Class members assert as an additional and/or alternative remedy, as set forth in N.Y. U.C.C. § 2-608, for a revocation of acceptance of the goods, and for a return to Plaintiffs and to the other Class members of the purchase price of all Class Vehicles currently owned for such other incidental and consequential damages as allowed under N.Y. U.C.C. §§ 2-711 and 2-608.

1447. Defendants were provided notice of these issues by the instant Complaint, and by other means before or within a reasonable amount of time after the allegations of Class Vehicle defects became public.

1448. As a direct and proximate result of Defendants' breach of express warranties, Plaintiffs and the other Class members have been damaged in an amount to be determined at trial.

COUNT CLVIII

Breach of Implied Warranty of Merchantability
(New York Uniform Commercial Code Section 2-314)

1449. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

1450. Defendants are and were at all relevant times merchants with respect to motor vehicles.

1451. A warranty that the Class Vehicles were in merchantable condition is implied by law in the instant transactions.

1452. 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.

1453. 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 CLIX

Breach of Contract/Common Law Warranty
(Based on New York Law)

1454. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

1455. To the extent Defendants' limited remedies are deemed not to be warranties under New York'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.

1456. Defendants breached this warranty or contract obligation by failing to repair the Class Vehicles, or to replace them.

1457. 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 CLX

Fraudulent Concealment
(Based on New York Law)

1458. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

1459. 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.

1460. 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.

1461. Defendants knew these representations were false when made.

1462. 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.

1463. 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.

1464. 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.

1465. 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 sell Class Vehicles.

1466. Plaintiffs and the other Class members relied on Defendants' reputations – along with Defendants' failure to disclose the faulty and defective nature of the CAN bus and Defendants' affirmative assurances that their Class Vehicles were safe and reliable, and other similar false statements – in purchasing or leasing Defendants' Class Vehicles.

1467. As a result of their reliance, Plaintiffs and the other Class members have been

injured in an amount to be proven at trial, including, but not limited to, their lost benefit of the bargain and overpayment at the time of purchase or lease and/or the diminished value of their Class Vehicles.

1468. Defendants' conduct was knowing, intentional, with malice, demonstrated a complete lack of care, and was in reckless disregard for the rights of Plaintiffs and the other Class members.

1469. Plaintiffs and the other Class members are therefore entitled to an award of punitive damages.

Claims Brought on Behalf of the North Carolina Class

COUNT CLXI

Violations of the North Carolina Unfair and Deceptive Trade Practices Act
(North Carolina General Statutes Sections 75-1.1, *et seq.*)

1470. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

1471. North Carolina's Unfair and Deceptive Trade Practices Act, N.C. Gen. Stat. §§ 75-1.1, *et seq.* ("NCUDTPA"), prohibits a person from engaging in "[u]nfair methods of competition in or affecting commerce, and unfair or deceptive acts or practices in or affecting commerce[.]" The NCUDTPA provides a private right of action for any person injured "by reason of any act or thing done by any other person, firm or corporation in violation of" the NCUDTPA. N.C. Gen. Stat. § 75-16.

1472. Defendants' acts and practices complained of herein were performed in the course of Defendants' trade or business and thus occurred in or affected "commerce," as defined in N.C. Gen. Stat. § 75-1.1(b).

1473. In the course of Defendants' business, they willfully failed to disclose and actively concealed the dangerous risk of CAN bus hacking in Class Vehicles as described above.

1474. Accordingly, Defendants engaged in unlawful trade practices, including representing that Class Vehicles have characteristics, uses, benefits, and qualities which they do not have; representing that Class Vehicles are of a particular standard and quality when they are

not; advertising Class Vehicles with the intent not to sell them as advertised; and otherwise engaging in conduct likely to deceive.

1475. Defendants' conduct proximately caused injuries to Plaintiffs and the other Class members.

1476. Defendants acted with willful and conscious disregard of the rights and safety of others, subjecting Plaintiffs and the other Class members to cruel and unjust hardship as a result, such that an award of punitive damages is appropriate.

1477. Plaintiffs and the other Class members were injured as a result of Defendants' conduct in that Plaintiffs and the other Class members overpaid for their Class Vehicles and did not receive the benefit of their bargain, and their Class Vehicles have suffered a diminution in value. These injuries are the direct and natural consequence of Defendants' misrepresentations and omissions.

1478. Plaintiffs, individually and on behalf of the other Class members, seeks treble damages pursuant to N.C. Gen. Stat. § 75-16, and an award of attorneys' fees pursuant to N.C. Gen. Stat. § 75-16.1.

COUNT CLXII

Breach of Express Warranty
(North Carolina General Statutes Section 25-2-313)

1479. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

1480. Defendants are and were at all relevant times merchants with respect to motor vehicles.

1481. 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 REFERRENCE: 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.

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

reached when Plaintiffs and the other Class members purchased or leased their Class Vehicles equipped with a CAN bus from Defendants.

1483. 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.

1484. In addition to these Limited Warranties, Defendants otherwise expressly warranted several attributes, characteristics, and qualities of the CAN bus.

1485. 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.

1486. 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.

1487. Furthermore, the limited warranty of repair and/or adjustments to defective parts, fails in its essential purpose because the contractual remedy is insufficient to make Plaintiffs and the other Class members whole and because Defendants have failed and/or have refused to adequately provide the promised remedies within a reasonable time.

1488. Accordingly, recovery by Plaintiffs and the other Class members is not limited to the limited warranty of repair or adjustments to parts defective in materials or workmanship, and Plaintiffs, individually and on behalf of the other Class members, seek all remedies as allowed by law.

1489. Also, as alleged in more detail herein, at the time that Defendants warranted and sold the Class Vehicles they knew that the Class Vehicles did not conform to the warranties and were inherently defective, and Defendants wrongfully and fraudulently misrepresented and/or concealed material facts regarding their Class Vehicles. Plaintiffs and the other Class members were therefore induced to purchase or lease the Class Vehicles under false and/or fraudulent pretenses.

1490. Moreover, many of the injuries flowing from the Class Vehicles cannot be resolved through the limited remedy of "replacement or adjustments," as many incidental and consequential damages have already been suffered due to Defendants' fraudulent conduct as alleged herein, and due to their failure and/or continued failure to provide such limited remedy within a reasonable time, and any limitation on Plaintiffs' and the other Class members' remedies would be insufficient to make Plaintiffs and the other Class members whole.

1491. Finally, due to Defendants' breach of warranties as set forth herein, Plaintiffs and the other Class members assert as an additional and/or alternative remedy, as set forth in N.C. Gen. Stat. § 25-2-608, for a revocation of acceptance of the goods, and for a return to Plaintiffs and to the other Class members of the purchase price of all Class Vehicles currently owned for such other incidental and consequential damages as allowed under N.C. Gen. Stat. §§ 25-2-711 and 25-2-608.

1492. Defendants were provided notice of these issues by the instant Complaint, and by other means before or within a reasonable amount of time after the allegations of Class Vehicle defects became public.

1493. As a direct and proximate result of Defendants' breach of express warranties, Plaintiffs and the other Class members have been damaged in an amount to be determined at trial.

COUNT CLXIII

Breach of Implied Warranty of Merchantability
(North Carolina General Statutes Section 25-2-314)

1494. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

1495. Defendants are and were at all relevant times merchants with respect to motor vehicles.

1496. A warranty that the Class Vehicles were in merchantable condition is implied by law in the instant transactions.

1497. 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.

1498. 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 CLXIV

Breach of Contract/Common Law Warranty
(Based on North Carolina Law)

1499. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

1500. To the extent Defendants' limited remedies are deemed not to be warranties under North 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.

1501. Defendants breached this warranty or contract obligation by failing to repair the Class Vehicles, or to replace them.

1502. 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 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

sell Class Vehicles.

1511. Plaintiffs and the other Class members relied on Defendants' reputations – along with Defendants' failure to disclose the faulty and defective nature of the CAN bus and Defendants' affirmative assurances that their Class Vehicles were safe and reliable, and other similar false statements – in purchasing or leasing Defendants' Class Vehicles.

1512. As a result of their reliance, Plaintiffs and the other Class members have been injured in an amount to be proven at trial, including, but not limited to, their lost benefit of the bargain and overpayment at the time of purchase or lease and/or the diminished value of their Class Vehicles.

1513. Defendants' conduct was knowing, intentional, with malice, demonstrated a complete lack of care, and was in reckless disregard for the rights of Plaintiffs and the other Class members.

1514. Plaintiffs and the other Class members are therefore entitled to an award of punitive damages.

Claims Brought on Behalf of the North Dakota Class

COUNT CLXVI

Breach of Express Warranty
(North Dakota Century Code Section 41-02-30)

1515. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

1516. Defendants are and were at all relevant times merchants with respect to motor vehicles.

1517. 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 REFERRENCE: 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.

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

reached when Plaintiffs and the other Class members purchased or leased their Class Vehicles equipped with a CAN bus from Defendants.

1519. 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.

1520. In addition to these Limited Warranties, Defendants otherwise expressly warranted several attributes, characteristics, and qualities of the CAN bus.

1521. 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.

1522. 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.

1523. Furthermore, the limited warranty of repair and/or adjustments to defective parts, fails in its essential purpose because the contractual remedy is insufficient to make Plaintiffs and the other Class members whole and because Defendants have failed and/or have refused to adequately provide the promised remedies within a reasonable time.

1524. Accordingly, recovery by Plaintiffs and the other Class members is not limited to the limited warranty of repair or adjustments to parts defective in materials or workmanship, and Plaintiffs, individually and on behalf of the other Class members, seek all remedies as allowed by law.

1525. Also, as alleged in more detail herein, at the time that Defendants warranted and sold the Class Vehicles they knew that the Class Vehicles did not conform to the warranties and were inherently defective, and Defendants wrongfully and fraudulently misrepresented and/or concealed material facts regarding their Class Vehicles. Plaintiffs and the other Class members were therefore induced to purchase or lease the Class Vehicles under false and/or fraudulent pretenses.

1526. Moreover, many of the injuries flowing from the Class Vehicles cannot be resolved through the limited remedy of "replacement or adjustments," as many incidental and consequential damages have already been suffered due to Defendants' fraudulent conduct as alleged herein, and due to their failure and/or continued failure to provide such limited remedy within a reasonable time, and any limitation on Plaintiffs' and the other Class members' remedies would be insufficient to make Plaintiffs and the other Class members whole.

1527. Finally, due to the Defendants' breach of warranties as set forth herein, Plaintiffs and the Class assert as an additional and/or alternative remedy, as set forth in N.D. Cent. Code § 41-02-71 (2-608), for a revocation of acceptance of the goods, and for a return to Plaintiffs and to the Class of the purchase price of all vehicles currently owned.

1528. Defendants were provided notice of these issues by the instant Complaint, and by other means before or within a reasonable amount of time after the allegations of Class Vehicle defects became public.

1529. As a direct and proximate result of Defendants' breach of express warranties, Plaintiffs and the other Class members have been damaged in an amount to be determined at trial.

COUNT CLXVII

Breach of the Implied Warranty of Merchantability
(North Dakota Century Code Section 41-02-31)

1530. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

1531. Defendants are and were at all relevant times merchants with respect to motor vehicles.

1532. A warranty that the Class Vehicles were in merchantable condition is implied by law in the instant transactions.

1533. 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.

1534. 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 CLXVIII

Violation of the North Dakota Consumer Fraud Act
(North Dakota Century Code Section 51-15-02)

1535. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

1536. 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 with a defect that leaves them vulnerable to hacking and that lack an effective fail-safe mechanism which Defendants failed to adequately investigate, disclose and remedy, and Defendants' misrepresentations and omissions regarding the safety and reliability of their vehicles.

1537. Plaintiffs and the Class were injured as a result of Defendants' conduct. Plaintiffs overpaid for their Defective Vehicles and did not receive the benefit of their bargain, and their vehicles have suffered a diminution in value.

1538. Defendants' conduct proximately caused the injuries to Plaintiffs and the Class.

1539. Further, Defendants knowingly committed the conduct described above, and thus, under N.D. Cent. Code § 51-15-09, Defendants are liable to Plaintiffs and the Class for treble damages in amounts to be proven at trial, as well as attorneys' fees, costs, and disbursements.

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

and operate properly when driven in normal usage.

1547. Defendants knew these representations were false when made.

1548. 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.

1549. 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.

1550. 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.

1551. 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 sell Class Vehicles.

1552. Plaintiffs and the other Class members relied on Defendants' reputations – along with Defendants' failure to disclose the faulty and defective nature of the CAN bus and Defendants' affirmative assurances that their Class Vehicles were safe and reliable, and other similar false statements – in purchasing or leasing Defendants' Class Vehicles.

1553. As a result of their reliance, Plaintiffs and the other Class members have been injured in an amount to be proven at trial, including, but not limited to, their lost benefit of the bargain and overpayment at the time of purchase or lease and/or the diminished value of their Class Vehicles.

1554. Defendants' conduct was knowing, intentional, with malice, demonstrated a complete lack of care, and was in reckless disregard for the rights of Plaintiffs and the other Class

members.

1555. Plaintiffs and the other Class members are therefore entitled to an award of punitive damages.

Claims Brought on Behalf of the Ohio Class

COUNT CLXXI

Violations of the Consumer Sales Practices Act
(Ohio Revised Code Sections 1345.01, *et seq.*)

1556. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

1557. Plaintiffs and the other Ohio Class members are "consumers" as defined by the Ohio Consumer Sales Practices Act, Ohio Rev. Code § 1345.01 ("OCSPA"). Defendants are "suppliers" as defined by the OCSPA. Plaintiffs' and the other Ohio Class members' purchases or leases of Class Vehicles were "consumer transactions" as defined by the OCSPA.

1558. By failing to disclose and actively concealing the defects in the Class Vehicles, Defendants engaged in deceptive business practices prohibited by the OCSPA, 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.

1559. 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.

1560. Defendants knew that the CAN buses in the Class Vehicles were defectively designed or manufactured because they were susceptible to hacking, and were not suitable for their intended use. Defendants nevertheless failed to warn Plaintiffs about these defects despite having a duty to do so.

1561. Defendants owed Plaintiffs a duty to disclose the defective nature of the CAN buses in the Class Vehicles, because Defendants:

1562. Possessed exclusive knowledge of the defects rendering the Class Vehicles more unreliable than similar vehicles;

1563. Intentionally concealed the defects associated with the CAN buses through their deceptive marketing campaign that they designed to hide the defects; and/or

1564. Made incomplete representations about the characteristics and performance of the Class Vehicles generally, while purposefully withholding material facts from Plaintiffs that contradicted these representations.

1565. Defendants' unfair or deceptive acts or practices were likely to, and did in fact, deceive reasonable consumers, including Plaintiffs, about the true performance and characteristics of the Class Vehicles.

1566. As a result of their violations of the OCSPA detailed above, Defendants caused actual damage to Plaintiffs and, if not stopped, will continue to harm Plaintiffs. Plaintiffs currently owns or leases, or within the class period has owned or leased, a Class Vehicle that is defective. Defects associated with the CAN bus have caused the value of Class Vehicles to decrease.

1567. Plaintiffs and the Class sustained damages as a result of the Defendants' unlawful acts and are, therefore, entitled to damages and other relief as provided under the OCSPA.

1568. Plaintiffs also seeks court costs and attorneys' fees as a result of Defendants' violation of the OCSPA as provided in Ohio Rev. Code § 1345.09.

COUNT CLXXII

Breach of Express Warranty
(Ohio Revised Code Section 1302.26)

1569. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

1570. Defendants are and were at all relevant times merchants with respect to motor vehicles.

1571. 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 REFERRENCE: 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.

1572. 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.

1573. 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.

1574. In addition to these Limited Warranties, Defendants otherwise expressly warranted several attributes, characteristics, and qualities of the CAN bus.

1575. 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.

1576. 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.

1577. Furthermore, the limited warranty of repair and/or adjustments to defective parts, fails in its essential purpose because the contractual remedy is insufficient to make Plaintiffs and the other Class members whole and because Defendants have failed and/or have refused to

adequately provide the promised remedies within a reasonable time.

1578. Accordingly, recovery by Plaintiffs and the other Class members is not limited to the limited warranty of repair or adjustments to parts defective in materials or workmanship, and Plaintiffs, individually and on behalf of the other Class members, seek all remedies as allowed by law.

1579. Also, as alleged in more detail herein, at the time that Defendants warranted and sold the Class Vehicles they knew that the Class Vehicles did not conform to the warranties and were inherently defective, and Defendants wrongfully and fraudulently misrepresented and/or concealed material facts regarding their Class Vehicles. Plaintiffs and the other Class members were therefore induced to purchase or lease the Class Vehicles under false and/or fraudulent pretenses.

1580. Moreover, many of the injuries flowing from the Class Vehicles cannot be resolved through the limited remedy of "replacement or adjustments," as many incidental and consequential damages have already been suffered due to Defendants' fraudulent conduct as alleged herein, and due to their failure and/or continued failure to provide such limited remedy within a reasonable time, and any limitation on Plaintiffs' and the other Class members' remedies would be insufficient to make Plaintiffs and the other Class members whole.

1581. Finally, due to Defendants' breach of warranties as set forth herein, Plaintiffs and the other Class members assert as an additional and/or alternative remedy, as set forth in Ohio Rev. Code § 1302.66, for a revocation of acceptance of the goods, and for a return to Plaintiffs and to the other Class members of the purchase price of all Class Vehicles currently owned for such other incidental and consequential damages as allowed under Ohio Rev. Code §§ 1302.66 and 1302.85.

1582. Defendants were provided notice of these issues by the instant Complaint, and by other means before or within a reasonable amount of time after the allegations of Class Vehicle defects became public.

1583. As a direct and proximate result of Defendants' breach of express warranties, Plaintiffs and the other Class members have been damaged in an amount to be determined at trial.

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

failing to repair the defective Class Vehicles, or to replace them.

1591. As a direct and proximate result of Defendants' breach of contract, 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 CLXXV

Fraudulent Concealment
(Based on Ohio Law)

1592. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

1593. 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.

1594. 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.

1595. Defendants knew these representations were false when made.

1596. 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.

1597. 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.

1598. 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.

1599. 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 sell Class Vehicles.

1600. Plaintiffs and the other Class members relied on Defendants' reputations – along with Defendants' failure to disclose the faulty and defective nature of the CAN bus and Defendants' affirmative assurances that their Class Vehicles were safe and reliable, and other similar false statements – in purchasing or leasing Defendants' Class Vehicles.

1601. As a result of their reliance, Plaintiffs and the other Class members have been injured in an amount to be proven at trial, including, but not limited to, their lost benefit of the bargain and overpayment at the time of purchase or lease and/or the diminished value of their Class Vehicles.

1602. Defendants' conduct was knowing, intentional, with malice, demonstrated a complete lack of care, and was in reckless disregard for the rights of Plaintiffs and the other Class members.

1603. Plaintiffs and the other Class members are therefore entitled to an award of punitive damages.

Claims Brought on Behalf of the Oklahoma Class

COUNT CLXXVI

Violation of Oklahoma Consumer Protection Act
(Oklahoma Statutes title 15 Sections 751, *et seq.*)

1604. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

1605. The conduct of Defendants as set forth herein constitutes unfair or deceptive acts or practices, including, but not limited to, Defendants' manufacture and sale of vehicles that are susceptible to hacking and lack effective fail-safe mechanisms, which Defendants failed to

adequately investigate, disclose and remedy, and their misrepresentations and omissions regarding the safety and reliability of their vehicles.

1606. Defendants' actions as set forth above occurred in the conduct of trade or commerce.

1607. Defendants' actions impact the public interest because Plaintiffs were injured in exactly the same way as millions of others purchasing and/or leasing Defendants vehicles as a result of Defendants' generalized course of deception. All of the wrongful conduct alleged herein occurred, and continues to occur, in the conduct of Defendants' business.

1608. Plaintiffs and the Class were injured as a result of Defendants' conduct. Plaintiffs overpaid for their Defective Vehicles and did not receive the benefit of their bargain, and their vehicles have suffered a diminution in value.

1609. Defendants' conduct proximately caused the injuries to Plaintiffs and the Class.

1610. Defendants are liable to Plaintiffs and the Class for damages in amounts to be proven at trial, including attorneys' fees, costs, and treble damages.

1611. Pursuant to Okla. Stat. tit. 15 § 751, Plaintiffs will serve the Oklahoma Attorney General with a copy of this complaint as Plaintiffs seek injunctive relief.

COUNT CLXXVII

Violation of Oklahoma Deceptive Trade Practices Act
(78 Oklahoma Statutes Annotated Sections 51, *et seq.*)

1612. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

1613. The conduct of Defendants as set forth herein constitutes unfair or deceptive acts or practices, including, but not limited to, Defendants' manufacture and sale of vehicles that are susceptible to hacking and lack effective fail-safe mechanisms, which Defendants failed to adequately investigate, disclose and remedy, and their misrepresentations and omissions regarding the safety and reliability of their vehicles.

1614. Defendants' actions as set forth above occurred in the conduct of trade or commerce.

1615. Defendants' actions impact the public interest because Plaintiffs were injured in exactly the same way as millions of others purchasing and/or leasing Defendants vehicles as a result of Defendants' generalized course of deception. All of the wrongful conduct alleged herein occurred, and continues to occur, in the conduct of Defendants' business.

1616. Plaintiffs and the Class were injured as a result of Defendants' conduct. Plaintiffs overpaid for their Defective Vehicles and did not receive the benefit of their bargain, and their vehicles have suffered a diminution in value.

1617. Defendants' conduct proximately caused the injuries to Plaintiffs and the Class.

1618. Defendants are liable to Plaintiffs and the Class for damages in amounts to be proven at trial, including attorneys' fees, costs, and treble damages.

1619. Pursuant to Okla. Stat. tit. 78 § 51, Plaintiffs will serve the Oklahoma Attorney General with a copy of this complaint as Plaintiffs seek injunctive relief.

COUNT CLXXVIII

Breach of Express Warranty
(12A Oklahoma Statutes Annotated Section 2-313)

1620. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

1621. Defendants are and were at all relevant times merchants with respect to motor vehicles.

1622. 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 REFERRENCE: 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.

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

or adjusted, and have been unable to repair or adjust, the Class Vehicles' materials and workmanship defects.

1625. In addition to these Limited Warranties, Defendants otherwise expressly warranted several attributes, characteristics, and qualities of the CAN bus.

1626. 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.

1627. 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.

1628. Furthermore, the limited warranty of repair and/or adjustments to defective parts, fails in its essential purpose because the contractual remedy is insufficient to make Plaintiffs and the other Class members whole and because Defendants have failed and/or have refused to adequately provide the promised remedies within a reasonable time.

1629. Accordingly, recovery by Plaintiffs and the other Class members is not limited to the limited warranty of repair or adjustments to parts defective in materials or workmanship, and Plaintiffs, individually and on behalf of the other Class members, seek all remedies as allowed by law.

1630. Also, as alleged in more detail herein, at the time that Defendants warranted and sold the Class Vehicles they knew that the Class Vehicles did not conform to the warranties and were inherently defective, and Defendants wrongfully and fraudulently misrepresented and/or concealed material facts regarding their Class Vehicles. Plaintiffs and the other Class members

were therefore induced to purchase or lease the Class Vehicles under false and/or fraudulent pretenses.

1631. Moreover, many of the injuries flowing from the Class Vehicles cannot be resolved through the limited remedy of "replacement or adjustments," as many incidental and consequential damages have already been suffered due to Defendants' fraudulent conduct as alleged herein, and due to their failure and/or continued failure to provide such limited remedy within a reasonable time, and any limitation on Plaintiffs' and the other Class members' remedies would be insufficient to make Plaintiffs and the other Class members whole.

1632. Finally, due to the Defendants' breach of warranties as set forth herein, Plaintiffs and the Class assert as an additional and/or alternative remedy, as set forth in 12A Okla. Stat. Ann. § 2-608, for a revocation of acceptance of the goods, and for a return to Plaintiffs and to the Class of the purchase price of all vehicles currently owned.

1633. Defendants were provided notice of these issues by the instant Complaint, and by other means before or within a reasonable amount of time after the allegations of Class Vehicle defects became public.

1634. As a direct and proximate result of Defendants' breach of express warranties, Plaintiffs and the other Class members have been damaged in an amount to be determined at trial.

COUNT CLXXIX

Breach of the Implied Warranty of Merchantability (12A Oklahoma Statutes Annotated Section 2-314)

1635. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

1636. Defendants are and were at all relevant times merchants with respect to motor vehicles.

1637. A warranty that the Defective Vehicles were in merchantable condition is implied by law in the instant transactions, pursuant to 12A Okla. Stat. Ann. § 2-314.

1638. 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. Defendants were

provided notice of these issues by numerous complaints filed against them, including the instant Complaint, and by other means.

1639. Plaintiffs and the Class have had sufficient dealings with either the Defendants or their agents (dealerships) to establish privity of contract between Plaintiffs and the Class. Notwithstanding this, privity is not required in this case because Plaintiffs and the Class 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 Defective Vehicles and have no rights under the warranty agreements provided with the Defective Vehicles; the warranty agreements were designed for and intended to benefit the ultimate consumers only. Finally, privity is also not required because Plaintiffs' and Class members' vehicles are dangerous instrumentalities due to the aforementioned defects and nonconformities.

1640. 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 CLXXX

Breach of Contract/Common Law Warranty
(Based on Oklahoma Law)

1641. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

1642. To the extent Defendants' limited remedies are deemed not to be warranties under Oklahoma'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.

1643. Defendants breached this warranty or contract obligation by failing to repair the Class Vehicles, or to replace them.

1644. 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 CLXXXI

Fraudulent Concealment
(Based on Oklahoma Law)

1645. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

1646. 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.

1647. 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.

1648. Defendants knew these representations were false when made.

1649. 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.

1650. 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.

1651. 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.

1652. 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 sell Class Vehicles.

1653. Plaintiffs and the other Class members relied on Defendants' reputations – along with Defendants' failure to disclose the faulty and defective nature of the CAN bus and Defendants' affirmative assurances that their Class Vehicles were safe and reliable, and other similar false statements – in purchasing or leasing Defendants' Class Vehicles.

1654. As a result of their reliance, Plaintiffs and the other Class members have been injured in an amount to be proven at trial, including, but not limited to, their lost benefit of the bargain and overpayment at the time of purchase or lease and/or the diminished value of their Class Vehicles.

1655. Defendants' conduct was knowing, intentional, with malice, demonstrated a complete lack of care, and was in reckless disregard for the rights of Plaintiffs and the other Class members.

1656. Plaintiffs and the other Class members are therefore entitled to an award of punitive damages.

Claims Brought on Behalf of the Oregon Class

COUNT CLXXXII

Violation of the Oregon Unlawful Trade Practices Act
(Oregon Revised Statutes Sections 646.605, *et seq.*)

1657. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

1658. The Oregon Unfair Trade Practices Act ("OUTPA") prohibits a person from, in the course of the person's business, doing any of the following: "(e) Represent[ing] that . . . goods . . . have . . . characteristics . . . uses, benefits, . . . or qualities that they do not have; (g) Represent[ing] that . . . goods . . . are of a particular standard [or] quality . . . if they are of another; and (i) Advertis[ing] . . . goods or services with intent not to provide them as advertised." Or. Rev. Stat. § 646.608(1).

1659. Defendants are persons within the meaning of Or. Rev. Stat. § 646.605(4).

1660. The Defective Vehicles at issue are "goods" obtained primarily for personal family or household purposes within the meaning of Or. Rev. Stat. § 646.605(6).

1661. 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. Accordingly, Defendants engaged in unlawful trade practices, including representing that Defective Vehicles have characteristics, uses, benefits, and qualities which they do not have; representing that Defective Vehicles are of a particular standard and quality when they are not; and advertising Defective Vehicles with the intent not to sell them as advertised. Defendants knew or should have known that their conduct violated the OUTPA.

1662. As a result of these unlawful trade practices, Plaintiffs have suffered ascertainable loss.

1663. Defendants engaged in a deceptive trade practice when they failed to disclose material information concerning the vehicles that was known to Defendants at the time of the sale. Defendants deliberately withheld the information about the vehicles' susceptibility to hacking in order to ensure that consumers would purchase their vehicles and to induce the consumer to enter into a transaction.

1664. 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 known that their vehicles had these serious safety defects, they would not have purchased their vehicles.

1665. Plaintiffs and the Class suffered ascertainable loss caused by Defendants' failure to disclose material information. Plaintiffs and the Class overpaid for their vehicles and did not receive the benefit of their bargain. The value of their Vehicles has diminished now that the safety issues have come to light, and Plaintiffs and the Class own vehicles that are not safe.

1666. Plaintiffs are entitled to recover the greater of actual damages or $200 pursuant to Or. Rev. Stat. § 646.638(1). Plaintiffs are also entitled to punitive damages because Defendants engaged in conduct amounting to a particularly aggravated, deliberate disregard of the rights of

others.

1667. Pursuant to Or. Rev. Stat. § 646.638(2), Plaintiffs will mail a copy of the complaint to Oregon's attorney general.

COUNT CLXXXIII

Breach of the Implied Warranty of Merchantability
(Oregon Revised Statutes Section 72.3140)

1668. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

1669. Defendants are and were at all relevant times merchants with respect to motor vehicles.

1670. A warranty that the Class Vehicles were in merchantable condition is implied by law in the instant transactions.

1671. 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.

1672. 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 CLXXXIV

Fraudulent Concealment
(Based on Oregon Law)

1673. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

1674. 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.

1675. 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.

1676. Defendants knew these representations were false when made.

1677. 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.

1678. 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.

1679. 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.

1680. 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 sell Class Vehicles.

1681. Plaintiffs and the other Class members relied on Defendants' reputations – along with Defendants' failure to disclose the faulty and defective nature of the CAN bus and Defendants' affirmative assurances that their Class Vehicles were safe and reliable, and other similar false statements – in purchasing or leasing Defendants' Class Vehicles.

1682. As a result of their reliance, Plaintiffs and the other Class members have been injured in an amount to be proven at trial, including, but not limited to, their lost benefit of the bargain and overpayment at the time of purchase or lease and/or the diminished value of their Class Vehicles.

1683. Defendants' conduct was knowing, intentional, with malice, demonstrated a

complete lack of care, and was in reckless disregard for the rights of Plaintiffs and the other Class members.

1684. Plaintiffs and the other Class members are therefore entitled to an award of punitive damages.

Claims Brought on Behalf of the Pennsylvania Class

COUNT CLXXXV

Violations of the Unfair Trade Practices and Consumer Protection Law
(Pennsylvania Statutes Annotated Sections 201-1, *et seq*.)

1685. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

1686. By failing to disclose and actively concealing the defects in the Class Vehicles, Defendants engaged in deceptive business practices prohibited by the Pennsylvania Unfair Trade Practices and Consumer Protection Law, Pa. Stat. Ann. §§ 201-1, *et seq.* ("UTPCPL"), 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.

1687. 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.

1688. Defendants knew that the CAN buses in the Class Vehicles were defectively designed or manufactured, were susceptible to hacking, and were not suitable for their intended use. Defendants nevertheless failed to warn Plaintiffs about these defects despite having a duty to do so.

1689. Defendants owed Plaintiffs a duty to disclose the defective nature of the Class Vehicles, because Defendants:

1690. Possessed exclusive knowledge of the defects rendering the Class Vehicles more unreliable than similar vehicles;

1691. Intentionally concealed the defects associated with the CAN buses through their deceptive marketing campaign and recall program that they designed to hide the defects in the Class Vehicles; and/or

1692. Made incomplete representations about the characteristics and performance of the Class Vehicles generally, while purposefully withholding material facts from Plaintiffs that contradicted these representations.

1693. Defendants' unfair or deceptive acts or practices were likely to and did in fact deceive reasonable consumers, including Plaintiffs, about the true performance and characteristics of the Class Vehicles.

1694. As a result of their violations of the UTPCPL detailed above, Defendants caused actual damage to Plaintiffs and, if not stopped, will continue to harm Plaintiffs. Plaintiffs currently own or lease, or within the class period have owned or leased, a Class Vehicle that is defective. Defects associated with the CAN buses have caused the value of Class Vehicles to decrease.

1695. Plaintiffs and the Class sustained damages as a result of the Defendants' unlawful acts and are, therefore, entitled to damages and other relief as provided under the UTPCPL, including treble damages.

1696. Plaintiffs also seeks court costs and attorneys' fees as a result of Defendants' violation of the UTPCPL as provided in Pa. Stat. Ann. § 201-9.2.

COUNT CLXXXVI

Breach of Express Warranty
(13 Pennsylvania Statutes Annotated Section 2313)

1697. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

1698. Defendants are and were at all relevant times merchants with respect to motor vehicles under 13 Pa. Stat. Ann. § 2104.

1699. 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 REFERRENCE: 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.

1700. 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.

1701. 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.

1702. In addition to these Limited Warranties, Defendants otherwise expressly warranted several attributes, characteristics, and qualities of the CAN bus.

1703. 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.

1704. 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.

1705. Furthermore, the limited warranty of repair and/or adjustments to defective parts, fails in its essential purpose because the contractual remedy is insufficient to make Plaintiffs and the other Class members whole and because Defendants have failed and/or have refused to

adequately provide the promised remedies within a reasonable time.

1706. Accordingly, recovery by Plaintiffs and the other Class members is not limited to the limited warranty of repair or adjustments to parts defective in materials or workmanship, and Plaintiffs, individually and on behalf of the other Class members, seek all remedies as allowed by law.

1707. Also, as alleged in more detail herein, at the time that Defendants warranted and sold the Class Vehicles they knew that the Class Vehicles did not conform to the warranties and were inherently defective, and Defendants wrongfully and fraudulently misrepresented and/or concealed material facts regarding their Class Vehicles. Plaintiffs and the other Class members were therefore induced to purchase or lease the Class Vehicles under false and/or fraudulent pretenses.

1708. Moreover, many of the injuries flowing from the Class Vehicles cannot be resolved through the limited remedy of "replacement or adjustments," as many incidental and consequential damages have already been suffered due to Defendants' fraudulent conduct as alleged herein, and due to their failure and/or continued failure to provide such limited remedy within a reasonable time, and any limitation on Plaintiffs' and the other Class members' remedies would be insufficient to make Plaintiffs and the other Class members whole.

1709. Finally, due to Defendants' breach of warranties as set forth herein, Plaintiffs and the other Class members assert as an additional and/or alternative remedy, as set forth in 13 Pa. Stat. Ann. § 2711, for a revocation of acceptance of the goods, and for a return to Plaintiffs and to the other Class members of the purchase price of all Class Vehicles currently owned and for such other incidental and consequential damages as allowed under 13 Pa. Stat. Ann. §§ 2711 and 2608.

1710. Defendants were provided notice of these issues by the instant Complaint, and by other means before or within a reasonable amount of time after the allegations of Class Vehicle defects became public.

1711. As a direct and proximate result of Defendants' breach of express warranties, Plaintiffs and the other Class members have been damaged in an amount to be determined at trial.

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

Class Vehicles, or to replace them.

1720. 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 CLXXXIX

Fraudulent Concealment
(Based on Pennsylvania Law)

1721. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

1722. 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.

1723. 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.

1724. Defendants knew these representations were false when made.

1725. 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.

1726. 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.

1727. 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.

1728. 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 sell Class Vehicles.

1729. Plaintiffs and the other Class members relied on Defendants' reputations – along with Defendants' failure to disclose the faulty and defective nature of the CAN bus and Defendants' affirmative assurances that their Class Vehicles were safe and reliable, and other similar false statements – in purchasing or leasing Defendants' Class Vehicles.

1730. As a result of their reliance, Plaintiffs and the other Class members have been injured in an amount to be proven at trial, including, but not limited to, their lost benefit of the bargain and overpayment at the time of purchase or lease and/or the diminished value of their Class Vehicles.

1731. Defendants' conduct was knowing, intentional, with malice, demonstrated a complete lack of care, and was in reckless disregard for the rights of Plaintiffs and the other Class members.

1732. Plaintiffs and the other Class members are therefore entitled to an award of punitive damages.

Claims Brought on Behalf of the Rhode Island Class

COUNT CXC

Violation of the Rhode Island Unfair Trade Practices and Consumer Protection Act (Rhode Island General Laws Sections 6-13.1, *et seq.*)

1733. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

1734. Plaintiffs are persons who purchase or lease goods primarily for personal, family, or household purposes within the meaning of R.I. Gen. Laws § 6-13.1-5.2(a).

1735. Rhode Island's Unfair Trade Practices and Consumer Protection Act

("UTPCPA") prohibits "unfair or deceptive acts or practices in the conduct of any trade or commerce" including: "(v) Representing that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities that they do not have"; "(vii) Representing that goods or services are of a particular standard, quality, or grade . . . , if they are of another"; "(ix) Advertising goods or services with intent not to sell them as advertised"; "(xii) Engaging in any other conduct that similarly creates a likelihood of confusion or of misunderstanding"; "(xiii) Engaging in any act or practice that is unfair or deceptive to the consumer"; and "(xiv) Using any other methods, acts or practices which mislead or deceive members of the public in a material respect." R.I. Gen. Laws § 6-13.1-1(6).

1736. 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. Accordingly, Defendants engaged in unlawful trade practices, including representing that Defective Vehicles have characteristics, uses, benefits, and qualities which they do not have; representing that Defective Vehicles are of a particular standard and quality when they are not; advertising Defective Vehicles with the intent not to sell them as advertised; and otherwise engaging in conduct likely to deceive.

1737. Defendants' actions as set forth above occurred in the conduct of trade or commerce.

1738. Plaintiffs suffered ascertainable loss of money as a result of Defendants' violation of the UTPCPA.

1739. Plaintiffs and the Class were injured as a result of Defendants' conduct in that Plaintiffs overpaid for their Defective Vehicles and did not receive the benefit of their bargain, and their vehicles have suffered a diminution in value. These injuries are the direct and natural consequence of Defendants' misrepresentations and omissions.

1740. Accordingly, Plaintiffs are entitled to recover the greater of actual damages or $200 pursuant to R.I. Gen. Laws § 6-13.1-5.2(a).

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,

including the instant Complaint, and by other means.

1750. 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 CXCIII

Violations of the South Carolina Unfair Trade Practices Act (South Carolina Code Annotated Sections 39-5-10, *et seq.*)

1751. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

1752. Defendants are "persons" under S.C. Code Ann. § 39-5-10.

1753. Defendants both participated in unfair or deceptive acts or practices that violated the South Carolina Unfair Trade Practices Act (the "Act"), S.C. Code Ann. §§ 39-5-10, *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 Act because TMS acts as TMC's general agent in the United States for purposes of sales and marketing.

1754. By failing to disclose and actively concealing the dangerous risk of hacking and the lack of adequate fail-safe mechanisms in Defective Vehicles equipped with CAN buses, Defendants engaged in unfair or deceptive practices prohibited by the Act, S.C. Code Ann. §§ 39-5-10, *et seq.*, 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.

1755. 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.

1756. Defendants knew that the CAN buses in Defective Vehicles were defectively designed or manufactured, 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.

1757. Defendants each owed Plaintiffs a duty to disclose the defective nature of Defective Vehicles, including the dangerous risk of hacking and the lack of adequate fail-safe mechanisms, because they:

1758. Possessed exclusive knowledge of the defects rendering Defective Vehicles inherently more dangerous and unreliable than similar vehicles;

1759. Intentionally concealed the hazardous situation with Defective Vehicles through their deceptive marketing campaign that they designed to hide the life-threatening problems from Plaintiffs; and/or

1760. Made incomplete representations about the safety and reliability of Defective Vehicles while purposefully withholding material facts from Plaintiffs that contradicted these representations.

1761. Defective Vehicles equipped with CAN buses pose an unreasonable risk of death or serious bodily injury to Plaintiffs, passengers, other motorists, pedestrians, and the public at large, because they are susceptible to incidents of hacking.

1762. Whether or not a vehicle is vulnerable to hacking and can be commandeered by a third party are facts that a reasonable consumer would consider important in selecting a vehicle to purchase or lease. When Plaintiffs bought a Defendants Vehicle for personal, family, or household purposes, they reasonably expected the vehicle would not be vulnerable to hacking, and was equipped with any necessary fail-safe mechanisms.

1763. Defendants' unfair or deceptive trade practices were likely to and did in fact deceive reasonable consumers, including Plaintiffs, about the true safety and reliability of Defective Vehicles.

1764. As a result of their violations of the Act detailed above, Defendants caused actual damage to Plaintiffs and, if not stopped, will continue to harm Plaintiffs. Plaintiffs currently own

or lease, or within the class period have owned or leased, Defective Vehicles that are defective and inherently unsafe. CAN bus defects have caused the value of Defective Vehicles to plummet.

1765. Plaintiffs risk irreparable injury as a result of Defendants' acts and omissions in violation of the Act, and these violations present a continuing risk to Plaintiffs as well as to the general public.

1766. Pursuant to S.C. Code Ann. § 39-5-140, Plaintiffs seek monetary relief against Defendants to recover for their sustained losses.

1767. Plaintiffs further allege that Defendants' malicious and deliberate conduct warrants an assessment of punitive damages because Defendants each carried out despicable conduct with willful and conscious disregard of the rights and safety of others, subjecting Plaintiffs to cruel and unjust hardship as a result. Defendants intentionally and willfully misrepresented the safety and reliability of Defective Vehicles, deceived Plaintiffs on life-or-death matters, and concealed material facts that only they knew, all to avoid the expense and public relations nightmare of correcting a deadly flaw in the Defective Vehicles they repeatedly promised Plaintiffs were safe. Defendants' unlawful conduct constitutes malice, oppression, and fraud warranting punitive damages.

1768. Plaintiffs further seek an order enjoining Defendants' unfair or deceptive acts or practices, restitution, punitive damages, costs of Court, attorney's fees, and any other just and proper relief available under the Act.

COUNT CXCIV

Violations of the South Carolina Regulation of Manufacturers, Distributors, and Dealers Act (South Carolina Code Annotated Sections 56-15-10, *et seq.*)

1769. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

1770. Defendants are "manufacturers" as set forth in S.C. Code Ann. § 56-15-10, as they are engaged in the business of manufacturing or assembling new and unused motor vehicles.

1771. Defendants both participated in unfair or deceptive acts or practices that violated the South Carolina Regulation of Manufacturers, Distributors, and Dealers Act ("Dealers Act"),

S.C. Code Ann. § 56-15-30. Defendants each are directly liable for these violations of law. TMC also is liable for TMS's violations of the Dealers Act because TMS acts as TMC's general agent in the United States for purposes of sales and marketing.

1772. Defendants have engaged in actions which were arbitrary, in bad faith, unconscionable, and which caused damage to Plaintiffs, the Class, and to the public. Defendants have directly participated in the wrongful conduct.

1773. Defendants' bad faith and unconscionable actions include, but are not limited to: (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.

1774. Defendants have resorted to and used false and misleading advertisement in connection with their business. 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.

1775. Pursuant to S.C. Code Ann. § 56-15-110(2), Plaintiffs bring this action on behalf of themselves and the Class, as the action is one of common or general interest to many persons and the parties are too numerous to bring them all before the court.

1776. Plaintiffs and the Class are entitled to double the actual damages, the cost of the suit, attorney's fees pursuant to S.C. Code Ann. § 56-15-110, and Plaintiffs also seek injunctive relief under S.C. Code Ann. § 56-15-110. Plaintiffs also seek treble damages because Defendants have acted maliciously.

COUNT CXCV

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.

1784. 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 REFERRENCE: 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.

1785. 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.

1786. 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.

1787. In addition to these Limited Warranties, Defendants otherwise expressly warranted several attributes, characteristics, and qualities of the CAN bus.

1788. 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.

1789. 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.

1790. Furthermore, the limited warranty of repair and/or adjustments to defective parts, fails in its essential purpose because the contractual remedy is insufficient to make Plaintiffs and the other Class members whole and because Defendants have failed and/or have refused to

adequately provide the promised remedies within a reasonable time.

1791. Accordingly, recovery by Plaintiffs and the other Class members is not limited to the limited warranty of repair or adjustments to parts defective in materials or workmanship, and Plaintiffs, individually and on behalf of the other Class members, seek all remedies as allowed by law.

1792. Also, as alleged in more detail herein, at the time that Defendants warranted and sold the Class Vehicles they knew that the Class Vehicles did not conform to the warranties and were inherently defective, and Defendants wrongfully and fraudulently misrepresented and/or concealed material facts regarding their Class Vehicles. Plaintiffs and the other Class members were therefore induced to purchase or lease the Class Vehicles under false and/or fraudulent pretenses.

1793. Moreover, many of the injuries flowing from the Class Vehicles cannot be resolved through the limited remedy of "replacement or adjustments," as many incidental and consequential damages have already been suffered due to Defendants' fraudulent conduct as alleged herein, and due to their failure and/or continued failure to provide such limited remedy within a reasonable time, and any limitation on Plaintiffs' and the other Class members' remedies would be insufficient to make Plaintiffs and the other Class members whole.

1794. Finally, due to the Defendants' breach of warranties as set forth herein, Plaintiffs and the Class assert as an additional and/or alternative remedy, as set forth in S.D. Codified Laws § 57A-2-608, for a revocation of acceptance of the goods, and for a return to Plaintiffs and to the Class of the purchase price of all vehicles currently owned.

1795. Defendants were provided notice of these issues by the instant Complaint, and by other means before or within a reasonable amount of time after the allegations of Class Vehicle defects became public.

1796. As a direct and proximate result of Defendants' breach of express warranties, Plaintiffs and the other Class members have been damaged in an amount to be determined at trial.

COUNT CXCVII

Breach of the Implied Warranty pf 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

overpaid for their Defective Vehicles and did not receive the benefit of their bargain, and their vehicles have suffered a diminution in value.

1806. Defendants' conduct proximately caused the injuries to Plaintiffs and the Class.

1807. Under S.D. Codified Laws § 37-24-31, Plaintiffs and the Class are entitled to a recovery of their actual damages suffered as a result of Defendants' acts and practices.

COUNT CXCIX

Breach of Contract/Common Law Warranty
(Based on South Dakota Law)

1808. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

1809. To the extent Defendants' limited remedies are deemed not to be warranties under South Dakota'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.

1810. Defendants breached this warranty or contract obligation by failing to repair the Class Vehicles, or to replace them.

1811. 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 Tennessee Class

COUNT CC

Violation of Tennessee Consumer Protection Act
(Tennessee Code Annotated Sections 47-18-101, *et seq.*)

1812. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set

forth herein.

1813. Defendants misrepresented the safety of the Defective Vehicles after learning of their defects with the intent that Plaintiffs relied on such representations in their decision regarding the purchase, lease and/or use of the Defective Vehicles.

1814. Plaintiffs did, in fact, rely on such representations in their decision regarding the purchase, lease and/or use of the Defective Vehicles.

1815. Through these misleading and deceptive statements and false promises, Defendants violated the Tennessee Consumer Protection Act.

1816. The Tennessee Consumer Protection Act applies to Defendants' transactions with Plaintiffs because Defendants' deceptive scheme was carried out in Tennessee and affected Plaintiffs.

1817. Defendants also failed to advise the NHSTA and the public about what they knew about the vulnerability of the Defective Vehicles to hacking.

1818. Plaintiffs relied on Defendants' silence as to known defects in connection with their decision regarding the purchase, lease and/or use of the Defective Vehicles.

1819. As a direct and proximate result of Defendants' deceptive conduct and violation of the Tennessee Consumer Protection Act, Plaintiffs have sustained and will continue to sustain economic losses and other damages for which they are entitled to compensatory and equitable damages and declaratory relief in an amount to be proven at trial.

COUNT CCI

Fraudulent Misrepresentation and Fraudulent Concealment (Based on Tennessee Law)

1820. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

1821. 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.

1822. 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.

1823. Defendants knew these representations were false when made.

1824. 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.

1825. 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.

1826. 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.

1827. 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 the CAN buses were susceptible to hacking. Defendants intentionally made the false statements in order to sell Class Vehicles.

1828. Plaintiffs and the other Class members relied on Defendants' reputations – along with Defendants' failure to disclose the faulty and defective nature of the CAN bus and Defendants' affirmative assurances that their Class Vehicles were safe and reliable, and other similar false statements – in purchasing or leasing Defendants' Class Vehicles.

1829. As a result of their reliance, Plaintiffs and the other Class members have been injured in an amount to be proven at trial, including, but not limited to, their lost benefit of the bargain and overpayment at the time of purchase or lease and/or the diminished value of their Class Vehicles.

1830. Defendants' conduct was knowing, intentional, with malice, demonstrated a complete lack of care, and was in reckless disregard for the rights of Plaintiffs and the other Class members.

1831. Plaintiffs and the other Class members are therefore entitled to an award of punitive damages.

COUNT CCII

Breach of Express Warranty
(Tennessee Code Annotated Section 47-2-313)

1832. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

1833. Defendants are and at all relevant times were sellers as defined by Tenn. Code Ann. § 47-2-103.

1834. 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 REFERRENCE: 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

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.

1839. 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.

1840. Furthermore, the limited warranty of repair and/or adjustments to defective parts, fails in its essential purpose because the contractual remedy is insufficient to make Plaintiffs and the other Class members whole and because Defendants have failed and/or have refused to adequately provide the promised remedies within a reasonable time.

1841. Accordingly, recovery by Plaintiffs and the other Class members is not limited to the limited warranty of repair or adjustments to parts defective in materials or workmanship, and Plaintiffs, individually and on behalf of the other Class members, seek all remedies as allowed by law.

1842. Also, as alleged in more detail herein, at the time that Defendants warranted and sold the Class Vehicles they knew that the Class Vehicles did not conform to the warranties and were inherently defective, and Defendants wrongfully and fraudulently misrepresented and/or concealed material facts regarding their Class Vehicles. Plaintiffs and the other Class members were therefore induced to purchase or lease the Class Vehicles under false and/or fraudulent pretenses.

1843. Moreover, many of the injuries flowing from the Class Vehicles cannot be resolved through the limited remedy of "replacement or adjustments," as many incidental and consequential damages have already been suffered due to Defendants' fraudulent conduct as alleged herein, and due to their failure and/or continued failure to provide such limited remedy within a reasonable time, and any limitation on Plaintiffs' and the other Class members' remedies

would be insufficient to make Plaintiffs and the other Class members whole.

1844. Defendants were provided notice of these issues by the instant Complaint, and by other means before or within a reasonable amount of time after the allegations of Class Vehicle defects became public.

1845. As a direct and proximate result of Defendants' breach of express warranties, Plaintiffs and the other Class members have been damaged in an amount to be determined at trial.

COUNT CCIII

Breach of Implied Warranty of Merchantability
(Tennessee Code Annotated Section 47-2-314)

1846. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

1847. 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.

1848. As described above, there were dangerous defects in the vehicles manufactured, distributed, and/or sold by Defendants, which Plaintiffs purchased, including, but not limited to, defects that caused the vehicles to be susceptible to hacking, and the lack of safety systems to stave off an attack.

1849. These dangerous defects existed at the time the vehicles left Defendants' manufacturing facilities and at the time they were sold to the Plaintiffs. Furthermore, because of these dangerous defects, Plaintiffs did not receive the benefit of their bargain and the vehicles have suffered a diminution in value.

1850. These dangerous defects were the direct and proximate cause of damages to the Plaintiffs.

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

designed or manufactured, were susceptible to hacking, and were not suitable for their intended use. Defendants nevertheless failed to warn Plaintiffs about these defects despite having a duty to do so.

1857. Defendants owed Plaintiffs a duty to disclose the defective nature of the CAN buses in the Class Vehicles, because Defendants:

1858. Possessed exclusive knowledge of the defects rendering the Class Vehicles

1859. more unreliable than similar vehicles;

1860. Intentionally concealed the defects through their deceptive marketing campaign that they designed to hide the defects in the Class Vehicles; and/or

1861. Made incomplete representations about the characteristics and performance of the Class Vehicles generally, while purposefully withholding material facts from Plaintiffs that contradicted these representations.

1862. Defendants' unfair or deceptive acts or practices were likely to and did in fact deceive reasonable consumers, including Plaintiffs, about the true performance and characteristics of the Class Vehicles.

1863. Defendants' intentional concealment of and failure to disclose the defective nature of the Class Vehicles to Plaintiffs and the other Class members constitutes an "unconscionable action or course of action" under Tex. Bus. & Com. Code § 17.45(5) because, to the detriment of Plaintiffs and the other Class members, that conduct took advantage of their lack of knowledge, ability, and experience to a grossly unfair degree. That "unconscionable action or course of action" was a producing cause of the economic damages sustained by Plaintiffs and the other Class members.

1864. Defendants are also liable under Tex. Bus. & Com. Code § 17.50(a) because Defendants' breach of the implied warranty of merchantability set forth herein was a producing cause of economic damages sustained by Plaintiffs and the other Class members.

1865. As a result of their violations of the DTPA detailed above, Defendants caused actual damage to Plaintiffs and, if not stopped, will continue to harm Plaintiffs. Plaintiffs currently own or lease, or within the class period have owned or leased, a Class Vehicle that is

defective. Defects associated with the CAN bus have caused the value of Class Vehicles to decrease.

1866. All procedural prerequisites, including notice, have been met. The giving of notice to Defendants is rendered impracticable pursuant to Tex. Bus. & Com. Code § 17.505(b) and unnecessary because Defendants have notice of the claims against them.

1867. Pursuant to Tex. Bus. & Com. Code § 17.505(b), Plaintiffs, individually and on behalf of the other Class members, will send to the Texas Consumer Protection Division a copy of this Complaint.

1868. Plaintiffs and the Class sustained damages as a result of the Defendants' unlawful acts and are, therefore, entitled to damages and other relief as provided under the DTPA.

1869. Plaintiffs and the other Class members should be awarded three times the amount of their economic damages because Defendants intentionally concealed and failed to disclose the defective nature of the Class Vehicles.

COUNT CCV

Breach of Express Warranty
(Texas Business and Commercial Code Section 2.313)

1870. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

1871. Defendants are and were at all relevant times merchants with respect to motor vehicles under Tex. Bus. & Com. Code § 2.104.

1872. 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 REFERRENCE: 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.

1874. 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.

1875. In addition to these Limited Warranties, Defendants otherwise expressly warranted several attributes, characteristics, and qualities of the CAN bus.

1876. 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.

1877. 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.

1878. Furthermore, the limited warranty of repair and/or adjustments to defective parts, fails in its essential purpose because the contractual remedy is insufficient to make Plaintiffs and the other Class members whole and because Defendants have failed and/or have refused to adequately provide the promised remedies within a reasonable time.

1879. Accordingly, recovery by Plaintiffs and the other Class members is not limited to the limited warranty of repair or adjustments to parts defective in materials or workmanship, and Plaintiffs, individually and on behalf of the other Class members, seek all remedies as allowed by law.

1880. Also, as alleged in more detail herein, at the time that Defendants warranted and sold the Class Vehicles they knew that the Class Vehicles did not conform to the warranties and

were inherently defective, and Defendants wrongfully and fraudulently misrepresented and/or concealed material facts regarding their Class Vehicles. Plaintiffs and the other Class members were therefore induced to purchase or lease the Class Vehicles under false and/or fraudulent pretenses.

1881. Moreover, many of the injuries flowing from the Class Vehicles cannot be resolved through the limited remedy of "replacement or adjustments," as many incidental and consequential damages have already been suffered due to Defendants' fraudulent conduct as alleged herein, and due to their failure and/or continued failure to provide such limited remedy within a reasonable time, and any limitation on Plaintiffs' and the other Class members' remedies would be insufficient to make Plaintiffs and the other Class members whole.

1882. Finally, due to Defendants' breach of warranties as set forth herein, Plaintiffs and the other Class members assert as an additional and/or alternative remedy, as set forth in Tex. Bus. & Com. Code § 2.711, for a revocation of acceptance of the goods, and for a return to Plaintiffs and to the other Class members of the purchase price of all Class Vehicles currently owned and for such other incidental and consequential damages as allowed under Tex. Bus. & Com. Code §§ 2.711 and 2.608.

1883. Defendants were provided notice of these issues by the instant Complaint, and by other means before or within a reasonable amount of time after the allegations of Class Vehicle defects became public.

1884. As a direct and proximate result of Defendants' breach of express warranties, Plaintiffs and the other Class members have been damaged in an amount to be determined at trial.

COUNT CCVI

Breach of the Implied Warranty of Merchantability
(Texas Business and Commercial Code Section 2.314)

1885. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

1886. Defendants are and were at all relevant times merchants with respect to motor vehicles under Tex. Bus. & Com. Code § 2.104.

1887. A warranty that the Class Vehicles were in merchantable condition was implied by law in the instant transactions, pursuant to Tex. Bus. & Com. Code § 2.314.

1888. 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.

1889. 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 CCVII

Breach of Contract/Common Law Warranty
(Based on Texas Law)

1890. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

1891. To the extent Defendants' limited remedies are deemed not to be warranties under the Uniform Commercial Code as adopted in Texas, 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.

1892. Defendants breached this warranty or contract obligation by failing to repair the Class Vehicles, or to replace them.

1893. 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 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

sell Class Vehicles.

1902. Plaintiffs and the other Class members relied on Defendants' reputations – along with Defendants' failure to disclose the faulty and defective nature of the CAN bus and Defendants' affirmative assurances that their Class Vehicles were safe and reliable, and other similar false statements – in purchasing or leasing Defendants' Class Vehicles.

1903. As a result of their reliance, Plaintiffs and the other Class members have been injured in an amount to be proven at trial, including, but not limited to, their lost benefit of the bargain and overpayment at the time of purchase or lease and/or the diminished value of their Class Vehicles.

1904. Defendants' conduct was knowing, intentional, with malice, demonstrated a complete lack of care, and was in reckless disregard for the rights of Plaintiffs and the other Class members.

1905. Plaintiffs and the other Class members are therefore entitled to an award of punitive damages.

Claims Brought on Behalf of the Utah Class

COUNT CCIX

Breach of Express Warranty
(Utah Code Annotated Section 70A-2-313)

1906. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

1907. Defendants are and were at all relevant times merchants as defined by the Uniform Commercial Code.

1908. 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 REFERRENCE: 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.

1909. 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.

1910. 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.

1911. In addition to these Limited Warranties, Defendants otherwise expressly warranted several attributes, characteristics, and qualities of the CAN bus.

1912. 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.

1913. 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.

1914. Furthermore, the limited warranty of repair and/or adjustments to defective parts, fails in its essential purpose because the contractual remedy is insufficient to make Plaintiffs and the other Class members whole and because Defendants have failed and/or have refused to adequately provide the promised remedies within a reasonable time.

1915. Accordingly, recovery by Plaintiffs and the other Class members is not limited to the limited warranty of repair or adjustments to parts defective in materials or workmanship, and Plaintiffs, individually and on behalf of the other Class members, seek all remedies as allowed by law.

1916. Also, as alleged in more detail herein, at the time that Defendants warranted and sold the Class Vehicles they knew that the Class Vehicles did not conform to the warranties and were inherently defective, and Defendants wrongfully and fraudulently misrepresented and/or concealed material facts regarding their Class Vehicles. Plaintiffs and the other Class members were therefore induced to purchase or lease the Class Vehicles under false and/or fraudulent pretenses.

1917. Moreover, many of the injuries flowing from the Class Vehicles cannot be resolved through the limited remedy of "replacement or adjustments," as many incidental and consequential damages have already been suffered due to Defendants' fraudulent conduct as alleged herein, and due to their failure and/or continued failure to provide such limited remedy within a reasonable time, and any limitation on Plaintiffs' and the other Class members' remedies would be insufficient to make Plaintiffs and the other Class members whole.

1918. Finally, due to the Defendants' breach of warranties as set forth herein, Plaintiffs and the Class assert as an additional and/or alternative remedy, as set forth in U.C.A. § 70A-2-608 for a revocation of acceptance of the goods, and for a return to Plaintiffs and to the Class of the purchase price of all vehicles currently.

1919. Defendants were provided notice of these issues by the instant Complaint, and by other means before or within a reasonable amount of time after the allegations of Class Vehicle defects became public.

1920. As a direct and proximate result of Defendants' breach of express warranties, Plaintiffs and the other Class members have been damaged in an amount to be determined at trial.

COUNT CCX

Breach of the Implied Warranty of Merchantability
(Utah Code Annotated Section 70A-2-314)

1921. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

1922. Defendants are and were at all relevant times merchants with respect to motor vehicles.

1923. A warranty that the Class Vehicles were in merchantable condition is implied by law in the instant transactions.

1924. 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.

1925. 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 CCXI

Breach of Contract/Common Law Warranty
(Based on Utah Law)

1926. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

1927. To the extent Defendants' limited remedies are deemed not to be warranties under the Utah 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.

1928. Defendants breached this warranty or contract obligation by failing to repair the Class Vehicles, or to replace them.

1929. 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 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

known that their Vehicles had these serious safety defects, they would not have purchased their Vehicles.

1936. Defendants' conduct has caused or is to cause a substantial injury that is not reasonably avoided by consumers, and the harm is not outweighed by a countervailing benefit to consumers or competition.

1937. Plaintiffs and the Class have suffered injury and damages as a result of Defendants' false or fraudulent representations and practices in violation of § 2453. Plaintiffs and the Class overpaid for their vehicles and did not receive the benefit of their bargain. The value of their vehicles has diminished now that the safety issues have come to light, and Plaintiffs and the Class own vehicles that are not safe.

1938. Plaintiffs are entitled to recover "appropriate equitable relief" and "the amount of [their] damages, or the consideration or the value of the consideration given by [them], reasonable attorney's fees, and exemplary damages not exceeding three times the value of the consideration given by [them]" pursuant to Vt. Stat. Ann. tit. 9, § 2461(b).

COUNT CCXIII

Breach of Express Warranty
(Vermont Statutes Annotated title 9A Section 2-313)

1939. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

1940. Defendants are and were at all relevant times merchants with respect to motor vehicles.

1941. 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 REFERRENCE: 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.

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.

1943. 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.

1944. In addition to these Limited Warranties, Defendants otherwise expressly warranted several attributes, characteristics, and qualities of the CAN bus.

1945. 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.

1946. 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.

1947. Furthermore, the limited warranty of repair and/or adjustments to defective parts, fails in its essential purpose because the contractual remedy is insufficient to make Plaintiffs and the other Class members whole and because Defendants have failed and/or have refused to adequately provide the promised remedies within a reasonable time.

1948. Accordingly, recovery by Plaintiffs and the other Class members is not limited to the limited warranty of repair or adjustments to parts defective in materials or workmanship, and Plaintiffs, individually and on behalf of the other Class members, seek all remedies as allowed by law.

1949. Also, as alleged in more detail herein, at the time that Defendants warranted and sold the Class Vehicles they knew that the Class Vehicles did not conform to the warranties and

were inherently defective, and Defendants wrongfully and fraudulently misrepresented and/or concealed material facts regarding their Class Vehicles. Plaintiffs and the other Class members were therefore induced to purchase or lease the Class Vehicles under false and/or fraudulent pretenses.

1950. Moreover, many of the injuries flowing from the Class Vehicles cannot be resolved through the limited remedy of "replacement or adjustments," as many incidental and consequential damages have already been suffered due to Defendants' fraudulent conduct as alleged herein, and due to their failure and/or continued failure to provide such limited remedy within a reasonable time, and any limitation on Plaintiffs' and the other Class members' remedies would be insufficient to make Plaintiffs and the other Class members whole.

1951. Finally, due to the Defendants' breach of warranties as set forth herein, Plaintiffs and the Class assert as an additional and/or alternative remedy, as set forth in Vt. Stat. Ann. tit. 9, § 2-608, for revocation of acceptance of the goods, and for a return to Plaintiffs and to the Class of the purchase price of all vehicles currently owned.

1952. Defendants were provided notice of these issues by the instant Complaint, and by other means before or within a reasonable amount of time after the allegations of Class Vehicle defects became public.

1953. As a direct and proximate result of Defendants' breach of express warranties, Plaintiffs and the other Class members have been damaged in an amount to be determined at trial.

COUNT CCXIV

Breach of Implied Warranty of Merchantability
(Vermont Statutes Annotated title 9A Section 2-314)

1954. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

1955. Defendants are and were at all relevant times merchants with respect to motor vehicles.

1956. A warranty that the Class Vehicles were in merchantable condition is implied by law in the instant transactions.

1957. 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.

1958. 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 CCXV

Breach of Contract
(Based on Vermont Law)

1959. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

1960. To the extent Defendants' limited remedies are deemed not to be warranties under Vermont's Commercial Code, Plaintiffs, individually and on behalf of the other Class members, plead in the alternative under common law 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.

1961. Defendants breached this warranty or contract obligation by failing to repair the Class Vehicles, or to replace them.

1962. 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 Virginia Class

COUNT CCXVI

Violations of the Virginia Consumer Protection Act
(Virginia Code Annotated Sections 59.1-196, *et seq.*)

1963. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set

forth herein.

1964. The Virginia Consumer Protection prohibits "(5) misrepresenting that goods or services have certain quantities, characteristics, ingredients, uses, or benefits; (6) misrepresenting that goods or services are of a particular standard, quality, grade, style, or model; . . . (8) advertising goods or services with intent not to sell them as advertised . . . ; [and] (14) using any other deception, fraud, false pretense, false promise, or misrepresentation in connection with a consumer transaction[.]" Va. Code Ann. § 59.1-200(A).

1965. Defendants are "persons" as defined by Va. Code Ann. § 59.1-198. The transactions between Plaintiffs and the other Class members on one hand and Defendants on the other, leading to the purchase or lease of the Class Vehicles by Plaintiffs and the other Class members, are "consumer transactions" as defined by Va. Code Ann. § 59.1-198, because the Class Vehicles were purchased or leased primarily for personal, family or household purposes.

1966. In the course of Defendants' business, they willfully failed to disclose and actively concealed the dangerous risk of hacking in Class Vehicles as described above. Accordingly, Defendants engaged in acts and practices violating Va. Code Ann. § 59.1-200(A), including representing that Class Vehicles have characteristics, uses, benefits, and qualities which they do not have; representing that Class Vehicles are of a particular standard and quality when they are not; advertising Class Vehicles with the intent not to sell them as advertised; and otherwise engaging in conduct likely to deceive.

1967. Defendants' actions as set forth above occurred in the conduct of trade or commerce.

1968. Defendants' conduct proximately caused injuries to Plaintiffs and the other Class members.

1969. Plaintiffs and the other Class members were injured as a result of Defendants' conduct in that Plaintiffs and the other Class members overpaid for their Class Vehicles and did not receive the benefit of their bargain, and their Class Vehicles have suffered a diminution in value. These injuries are the direct and natural consequence of Defendants' misrepresentations and omissions.

1970. Defendants actively and willfully concealed and/or suppressed the material facts regarding the defective and unreasonably dangerous nature of the CAN bus and the Class Vehicles, in whole or in part, with the intent to deceive and mislead Plaintiffs and the other Class members and to induce Plaintiffs and the other Class members to purchase or lease Class Vehicles at a higher price, which did not match the Class Vehicles' true value. Plaintiffs and the other Class members therefore seek treble damages.

COUNT CCXVII

Breach of Express Warranty
(Virginia Code Annotated Section 8.2-313)

1971. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

1972. Defendants are and were at all relevant times merchants with respect to motor vehicles.

1973. 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 REFERRENCE: 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.

1974. 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.

1975. 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.

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

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.

1978. 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.

1979. Furthermore, the limited warranty of repair and/or adjustments to defective parts, fails in its essential purpose because the contractual remedy is insufficient to make Plaintiffs and the other Class members whole and because Defendants have failed and/or have refused to adequately provide the promised remedies within a reasonable time.

1980. Accordingly, recovery by Plaintiffs and the other Class members is not limited to the limited warranty of repair or adjustments to parts defective in materials or workmanship, and Plaintiffs, individually and on behalf of the other Class members, seek all remedies as allowed by law.

1981. Also, as alleged in more detail herein, at the time that Defendants warranted and sold the Class Vehicles they knew that the Class Vehicles did not conform to the warranties and were inherently defective, and Defendants wrongfully and fraudulently misrepresented and/or concealed material facts regarding their Class Vehicles. Plaintiffs and the other Class members were therefore induced to purchase or lease the Class Vehicles under false and/or fraudulent pretenses.

1982. Moreover, many of the injuries flowing from the Class Vehicles cannot be resolved through the limited remedy of "replacement or adjustments," as many incidental and consequential damages have already been suffered due to Defendants' fraudulent conduct as alleged herein, and due to their failure and/or continued failure to provide such limited remedy

within a reasonable time, and any limitation on Plaintiffs' and the other Class members' remedies would be insufficient to make Plaintiffs and the other Class members whole.

1983. Finally, due to Defendants' breach of warranties as set forth herein, Plaintiffs and the other Class members assert as an additional and/or alternative remedy, as set forth in Va. Code Ann. § 8.2-608, for a revocation of acceptance of the goods, and for a return to Plaintiffs and to the other Class members of the purchase price of all Class Vehicles currently owned for such other incidental and consequential damages as allowed under Va. Code Ann. §§ 8.2-711 and 8.2-608.

1984. Defendants were provided notice of these issues by the instant Complaint, and by other means before or within a reasonable amount of time after the allegations of Class Vehicle defects became public.

1985. As a direct and proximate result of Defendants' breach of express warranties, Plaintiffs and the other Class members have been damaged in an amount to be determined at trial.

COUNT CCXVIII

Breach of Implied Warranty of Merchantability
(Virginia Code Annotated Section 8.2-314)

1986. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

1987. Defendants are and were at all relevant times merchants with respect to motor vehicles.

1988. A warranty that the Class Vehicles were in merchantable condition is implied by law in the instant transactions.

1989. 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.

1990. 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 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

and operate properly when driven in normal usage.

1998. Defendants knew these representations were false when made.

1999. 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.

2000. 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.

2001. 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.

2002. 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 sell Class Vehicles.

2003. Plaintiffs and the other Class members relied on Defendants' reputations – along with Defendants' failure to disclose the faulty and defective nature of the CAN bus and Defendants' affirmative assurances that their Class Vehicles were safe and reliable, and other similar false statements – in purchasing or leasing Defendants' Class Vehicles.

2004. As a result of their reliance, Plaintiffs and the other Class members have been injured in an amount to be proven at trial, including, but not limited to, their lost benefit of the bargain and overpayment at the time of purchase or lease and/or the diminished value of their Class Vehicles.

2005. Defendants' conduct was knowing, intentional, with malice, demonstrated a complete lack of care, and was in reckless disregard for the rights of Plaintiffs and the other Class

members.

2006. Plaintiffs and the other Class members are therefore entitled to an award of punitive damages.

Claims Brought on Behalf of the Washington Class

COUNT CCXXI

Violation of the Consumer Protection Act
(Revised Code of Washington Annotated Sections 19.86.010, *et seq.*)

2007. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

2008. The conduct of Defendants as set forth herein constitutes unfair or deceptive acts or practices, including, but not limited to, Defendants' manufacture and sale of vehicles with a sudden acceleration defect that lack brake-override or other effective fail-safe mechanisms, which Defendants failed to adequately investigate, disclose and remedy, and their misrepresentations and omissions regarding the safety and reliability of their vehicles.

2009. Defendants' actions as set forth above occurred in the conduct of trade or commerce.

2010. Defendants' actions impact the public interest because Plaintiffs were injured in exactly the same way as millions of others purchasing and/or leasing Defendants vehicles as a result of Defendants' generalized course of deception. All of the wrongful conduct alleged herein occurred, and continues to occur, in the conduct of Defendants' business.

2011. Plaintiffs and the Class were injured as a result of Defendants' conduct. Plaintiffs overpaid for their Defective Vehicles and did not receive the benefit of their bargain, and their vehicles have suffered a diminution in value.

2012. Defendants' conduct proximately caused the injuries to Plaintiffs and the Class.

2013. Defendants are liable to Plaintiffs and the Class for damages in amounts to be proven at trial, including attorneys' fees, costs, and treble damages.

2014. Pursuant to Wash. Rev. Code Ann. § 19.86.095, Plaintiffs will serve the Washington Attorney General with a copy of this complaint as Plaintiffs seek injunctive relief.

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 REFERRENCE: 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.

2018. 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.

2019. 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.

2020. In addition to these Limited Warranties, Defendants otherwise expressly warranted several attributes, characteristics, and qualities of the CAN bus.

2021. 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.

2022. 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.

2023. Furthermore, the limited warranty of repair and/or adjustments to defective parts, fails in its essential purpose because the contractual remedy is insufficient to make Plaintiffs and the other Class members whole and because Defendants have failed and/or have refused to adequately provide the promised remedies within a reasonable time.

2024. Accordingly, recovery by Plaintiffs and the other Class members is not limited to the limited warranty of repair or adjustments to parts defective in materials or workmanship, and Plaintiffs, individually and on behalf of the other Class members, seek all remedies as allowed by law.

2025. Also, as alleged in more detail herein, at the time that Defendants warranted and sold the Class Vehicles they knew that the Class Vehicles did not conform to the warranties and were inherently defective, and Defendants wrongfully and fraudulently misrepresented and/or concealed material facts regarding their Class Vehicles. Plaintiffs and the other Class members were therefore induced to purchase or lease the Class Vehicles under false and/or fraudulent pretenses.

2026. Moreover, many of the injuries flowing from the Class Vehicles cannot be resolved through the limited remedy of "replacement or adjustments," as many incidental and consequential damages have already been suffered due to Defendants' fraudulent conduct as alleged herein, and due to their failure and/or continued failure to provide such limited remedy within a reasonable time, and any limitation on Plaintiffs' and the other Class members' remedies would be insufficient to make Plaintiffs and the other Class members whole.

2027. Finally, due to the Defendants' breach of warranties as set forth herein, Plaintiffs and the Class assert as an additional and/or alternative remedy, as set forth in Rev. Code Wash. § 62A.2-608, for a revocation of acceptance of the goods, and for a return to Plaintiffs and to the Class of the purchase price of all vehicles currently owned.

2028. Defendants were provided notice of these issues by the instant Complaint, and by other means before or within a reasonable amount of time after the allegations of Class Vehicle defects became public.

2029. As a direct and proximate result of Defendants' breach of express warranties, Plaintiffs and the other Class members have been damaged in an amount to be determined at trial.

COUNT CCXXIII

Breach of the Implied Warranty of Merchantability
(Revised Code of Washington Section 62A.2-614)

2030. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

2031. Defendants are and were at all relevant times merchants with respect to motor vehicles.

2032. A warranty that the Class Vehicles were in merchantable condition is implied by law in the instant transactions.

2033. 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.

2034. Privity is not required in this case because Plaintiffs and the Class 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 Defective Vehicles and have no rights under the warranty agreements provided with the Defective Vehicles; the warranty agreements were designed for and intended to benefit the ultimate consumers only.

2035. 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 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,

that the Class Vehicles they was selling were new, had no significant defects, and would perform and operate properly when driven in normal usage.

2043. Defendants knew these representations were false when made.

2044. 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.

2045. 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.

2046. 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.

2047. 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 sell Class Vehicles.

2048. Plaintiffs and the other Class members relied on Defendants' reputations – along with Defendants' failure to disclose the faulty and defective nature of the CAN bus and Defendants' affirmative assurances that their Class Vehicles were safe and reliable, and other similar false statements – in purchasing or leasing Defendants' Class Vehicles.

2049. As a result of their reliance, Plaintiffs and the other Class members have been injured in an amount to be proven at trial, including, but not limited to, their lost benefit of the bargain and overpayment at the time of purchase or lease and/or the diminished value of their Class Vehicles.

2050. Defendants' conduct was knowing, intentional, with malice, demonstrated a

complete lack of care, and was in reckless disregard for the rights of Plaintiffs and the other Class members.

2051. Plaintiffs and the other Class members are therefore entitled to an award of punitive damages.

Claims Brought on Behalf of the West Virginia Class

COUNT CCXXVI

Violations of the Consumer Credit and Protection Act
(West Virginia Code Sections 46A-1-101, *et seq.*)

2052. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

2053. Defendants are "persons" under W.Va. Code § 46A-1-102(31).

2054. Plaintiffs are "consumers," as defined by W.Va. Code §§ and 46A-1-102(12) and 46A-6-102(2), who purchased or leased one or more Defective Vehicles.

2055. Defendants both participated in unfair or deceptive acts or practices that violated the Consumer Credit and Protection Act ("CCPA"), W.Va. Code §§ 46A-1-101, *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 CCPA because TMS acts as TMC's general agent in the United States for purposes of sales and marketing.

2056. By failing to disclose and actively concealing the dangerous risk of hacking and the lack of adequate fail-safe mechanisms in Defective Vehicles equipped with CAN buses, Defendants engaged in deceptive business practices prohibited by the CCPA, W.Va. Code § 46A-1-101, *et seq.*, 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.

2057. As alleged above, Defendants made numerous material statements about the safety and reliability of Defective Vehicles that were either false or misleading.

2058. Each of these statements contributed to the deceptive context of TMC's and TMS's unlawful advertising and representations as a whole.

2059. Defendants knew that the CAN buses in Defective Vehicles were defectively designed or manufactured, 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.

2060. Defendants each owed Plaintiffs a duty to disclose the defective nature

2061. of Defective Vehicles, including the dangerous risk of hacking and the lack of adequate fail-safe mechanisms, because they:

a) Possessed exclusive knowledge of the defects rendering Defective Vehicles inherently more dangerous and unreliable than similar vehicles;

b) Intentionally concealed the hazardous situation with Defective Vehicles through their deceptive marketing campaign that they designed to hide the life-threatening problems from Plaintiffs; and/or

c) Made incomplete representations about the safety and reliability of Defective Vehicles while purposefully withholding material facts from Plaintiffs that contradicted these representations.

2062. Defective Vehicles equipped with CAN buses pose an unreasonable risk of death or serious bodily injury to Plaintiffs, passengers, other motorists, pedestrians, and the public at large, because they are susceptible to hacking.

2063. Whether or not a vehicle is susceptible to hacking and can be commandeered by a third party are facts that a reasonable consumer would consider important in selecting a vehicle to purchase or lease. When Plaintiffs bought a Defendants Vehicle for personal, family, or household purposes, they reasonably expected the vehicle was not vulnerable to hacking and was equipped with any necessary fail-safe mechanisms.

2064. Defendants' unfair or deceptive acts or practices were likely to deceive reasonable

consumers, including Plaintiffs, about the true safety and reliability of Defective Vehicles.

2065. As a result of their violations of the CCPA detailed above, Defendants caused ascertainable loss to Plaintiffs and, if not stopped, will continue to harm Plaintiffs. Plaintiffs currently own or lease, or within the class period have owned or leased, Defective Vehicles that are defective and inherently unsafe. CAN bus defects have caused the value to Defective Vehicles to plummet.

2066. Plaintiffs risk irreparable injury as a result of Defendants' acts and omissions in violation of the CCPA, and these violations present a continuing risk to Plaintiffs as well as to the general public.

2067. Plaintiffs will send a notice and demand letter pursuant to W.Va. Code § 46A-1-106(b).

2068. Pursuant to W.Va. Code § 46A-1-106, Plaintiffs seek monetary relief against TMS and TMC measured as the greater of (a) actual damages in an amount to be determined at trial and (b) statutory damages in the amount of $200 per violation of the CCPA for each Plaintiffs and each member of the Class they seek to represent.

2069. Plaintiffs also seek punitive damages against Defendants because each carried out despicable conduct with willful and conscious disregard of the rights and safety of others, subjecting Plaintiffs to cruel and unjust hardship as a result. Defendants intentionally and willfully misrepresented the safety and reliability of Defective Vehicles, deceived Plaintiffs on life-or-death matters, and concealed material facts that only they knew, all to avoid the expense and public relations nightmare of correcting a deadly flaw in the Defective Vehicles they repeatedly promised Plaintiffs were safe. Defendants' unlawful conduct constitutes malice, oppression, and fraud warranting punitive damages.

2070. Plaintiffs further seek an order enjoining Defendants' unfair or deceptive acts or practices, restitution, punitive damages, costs of Court, attorney's fees under W.Va. Code §§ 46A-5-101, *et seq.*, and any other just and proper relief available under the CCPA.

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 REFERRENCE: 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.

2075. 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.

2076. 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.

2077. In addition to these Limited Warranties, Defendants otherwise expressly warranted several attributes, characteristics, and qualities of the CAN bus.

2078. 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.

2079. 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.

2080. Furthermore, the limited warranty of repair and/or adjustments to defective parts, fails in its essential purpose because the contractual remedy is insufficient to make Plaintiffs and the other Class members whole and because Defendants have failed and/or have refused to adequately provide the promised remedies within a reasonable time.

2081. Accordingly, recovery by Plaintiffs and the other Class members is not limited to the limited warranty of repair or adjustments to parts defective in materials or workmanship, and Plaintiffs, individually and on behalf of the other Class members, seek all remedies as allowed by law.

2082. Also, as alleged in more detail herein, at the time that Defendants warranted and sold the Class Vehicles they knew that the Class Vehicles did not conform to the warranties and were inherently defective, and Defendants wrongfully and fraudulently misrepresented and/or concealed material facts regarding their Class Vehicles. Plaintiffs and the other Class members were therefore induced to purchase or lease the Class Vehicles under false and/or fraudulent pretenses.

2083. Moreover, many of the injuries flowing from the Class Vehicles cannot be resolved through the limited remedy of "replacement or adjustments," as many incidental and consequential damages have already been suffered due to Defendants' fraudulent conduct as alleged herein, and due to their failure and/or continued failure to provide such limited remedy within a reasonable time, and any limitation on Plaintiffs' and the other Class members' remedies would be insufficient to make Plaintiffs and the other Class members whole.

2084. Finally, due to the Defendants' breach of warranties as set forth herein,

2085. Plaintiffs and the Class assert as an additional and/or alternative remedy, as set

forth in W.Va. Code § 46A-6A-4, for a revocation of acceptance of the goods, and for a return to Plaintiffs and to the Class of the purchase price of all vehicles currently owned and for such other incidental and consequential damages as allowed under W.Va. Code §§ 46A-6A-1, *et seq.*

2086. Defendants were provided notice of these issues by the instant Complaint, and by other means before or within a reasonable amount of time after the allegations of Class Vehicle defects became public.

2087. As a direct and proximate result of Defendants' breach of express warranties, Plaintiffs and the other Class members have been damaged in an amount to be determined at trial.

COUNT CCXXVIII

Breach of Implied Warranty of Merchantability
(West Virginia Code Section 46-2-314)

2088. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

2089. Defendants are and were at all relevant times sellers of motor vehicles under

2090. West Virginia Code Section § 46-2-314, and are also "merchants" as the term is used in W.Va. Code §§ 46A-6-107 and 46-2-314.

2091. A warranty that the Class Vehicles were in merchantable condition is implied by law in the instant transactions.

2092. 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.

2093. Plaintiffs and the Class have had sufficient direct dealings with either the Defendants or their agents (dealerships) to establish privity of contract between Plaintiffs and Defendants. Notwithstanding this, privity is not required in this case for the Plaintiffs pursuant to W.Va. Code § 46A-6-107. Moreover, privity is not required as to any Plaintiff because Plaintiffs and the Class 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 Defective Vehicles and have no rights under the warranty agreements provided with the Defective Vehicles; the warranty agreements were designed for and intended to benefit the ultimate users or owners only. Finally, privity is also not required because Plaintiffs' and Class members' Vehicles are dangerous instrumentalities due to the aforementioned defects and nonconformities.

2094. 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 CCXXIX

Breach of Contract/Common Law Warranty
(Based on West Virginia Law)

2095. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

2096. To the extent Defendants' limited remedies are deemed not to be warranties under West 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.

2097. Defendants breached this warranty or contract obligation by failing to repair the Class Vehicles, or to replace them.

2098. 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 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

vehicles. Defendants' representations turned out not to be true because the vehicles can unexpectedly and dangerously be hacked.

2105. Had the Plaintiffs known this they would not have purchased or leased their Defective Vehicles and/or paid as much for them.

2106. Plaintiffs and the Class sustained damages as a result of the Defendants' unlawful acts and are, therefore, entitled to damages and other relief provided for under § 110.18(11)(b)(2) of the Wisconsin DTPA. Because Defendants' conduct was committed knowingly and/or intentionally, the Plaintiffs and the Class are entitled to treble damages.

2107. Plaintiffs and the Class also seek court costs and attorneys' fees under § 110.18(11)(b)(2) of the Wisconsin DTPA.

COUNT CCXXXI

Breach of Express Warranty
(Wisconsin Statutes Section 402.313)

2108. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

2109. Defendants are and were at all relevant times merchants with respect to motor vehicles under Wisc. Stat. § 402.104.

2110. 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 REFERRENCE: 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.

2113. In addition to these Limited Warranties, Defendants otherwise expressly warranted several attributes, characteristics, and qualities of the CAN bus.

2114. 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.

2115. 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.

2116. Furthermore, the limited warranty of repair and/or adjustments to defective parts, fails in its essential purpose because the contractual remedy is insufficient to make Plaintiffs and the other Class members whole and because Defendants have failed and/or have refused to adequately provide the promised remedies within a reasonable time.

2117. Accordingly, recovery by Plaintiffs and the other Class members is not limited to the limited warranty of repair or adjustments to parts defective in materials or workmanship, and Plaintiffs, individually and on behalf of the other Class members, seek all remedies as allowed by law.

2118. Also, as alleged in more detail herein, at the time that Defendants warranted and sold the Class Vehicles they knew that the Class Vehicles did not conform to the warranties and were inherently defective, and Defendants wrongfully and fraudulently misrepresented and/or concealed material facts regarding their Class Vehicles. Plaintiffs and the other Class members were therefore induced to purchase or lease the Class Vehicles under false and/or fraudulent pretenses.

2119. Moreover, many of the injuries flowing from the Class Vehicles cannot be resolved through the limited remedy of "replacement or adjustments," as many incidental and consequential damages have already been suffered due to Defendants' fraudulent conduct as alleged herein, and due to their failure and/or continued failure to provide such limited remedy within a reasonable time, and any limitation on Plaintiffs' and the other Class members' remedies would be insufficient to make Plaintiffs and the other Class members whole.

2120. Finally, due to the Defendants' breach of warranties as set forth herein, Plaintiffs and the Class assert as an additional and/or alternative remedy, as set forth in Wisc. Stat. § 402.608, for a revocation of acceptance of the goods, and for a return to Plaintiffs and to the Class of the purchase price of all vehicles currently owned and for such other incidental and consequential damages as allowed under Wisc. Stat. §§ 402.711 and 402.608.

2121. Defendants were provided notice of these issues by the instant Complaint, and by other means before or within a reasonable amount of time after the allegations of Class Vehicle defects became public.

2122. As a direct and proximate result of Defendants' breach of express warranties, Plaintiffs and the other Class members have been damaged in an amount to be determined at trial.

COUNT CCXXXII

Breach of Contract/Common Law Warranty
(Based on Wisconsin Law)

2123. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

2124. To the extent Defendants' limited remedies are deemed not to be warranties under the Uniform Commercial Code as adopted in Wisconsin, 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.

2125. Defendants breached this warranty or contract obligation by failing to repair the Class Vehicles, or to replace them.

2126. 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 CCXXXIII

Fraudulent Concealment
(Based on Wisconsin Law)

2127. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

2128. 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.

2129. 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.

2130. Defendants knew these representations were false when made.

2131. 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.

2132. 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.

2133. 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.

2134. 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 sell Class Vehicles.

2135. Plaintiffs and the other Class members relied on Defendants' reputations – along with Defendants' failure to disclose the faulty and defective nature of the CAN bus and Defendants' affirmative assurances that their Class Vehicles were safe and reliable, and other similar false statements – in purchasing or leasing Defendants' Class Vehicles.

2136. As a result of their reliance, Plaintiffs and the other Class members have been injured in an amount to be proven at trial, including, but not limited to, their lost benefit of the bargain and overpayment at the time of purchase or lease and/or the diminished value of their Class Vehicles.

2137. Defendants' conduct was knowing, intentional, with malice, demonstrated a complete lack of care, and was in reckless disregard for the rights of Plaintiffs and the other Class members.

2138. Plaintiffs and the other Class members are therefore entitled to an award of punitive damages.

Claims Brought on Behalf of the Wyoming Class

<u>COUNT CCXXXIV</u>

Violation of the Wyoming Consumer Protection Act
<u>(Wyoming Statutes Sections 45-12-105, *et seq*.)</u>

2139. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

2140. The Wyoming Consumer Protection Act describes that a person engages in a deceptive trade practice under this act when, in the course of his business and in connection with

a consumer transaction he knowingly does one or more of the following, including: "(iii) Represents that merchandise is of a particular standard, grade, style or model, if it is not"; "(v) Represents that merchandise has been supplied in accordance with a previous representation, if it has not . . . "; "(viii) Represents that a consumer transaction involves a warranty, a disclaimer of warranties, particular warranty terms, or other rights, remedies or obligations if the representation is false"; "(x) Advertises merchandise with intent not to sell it as advertised"; and "(xv) Engages in unfair or deceptive acts or practices." Wyo. Stat. § 45-12-105.

2141. 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. Accordingly, Defendants engaged in deceptive trade practices, including representing that Defective Vehicles are of a particular standard and grade, which they are not; representing that Defective Vehicles have been supplied with a previous representation when they are not; advertising Defective Vehicles with the intent not to sell them as advertised; representing that their transaction involves a warranty, rights, remedies, or obligations that are false; and overall engaging in unfair and deceptive acts or practices.

2142. Defendants knowingly made false representations to consumers with the intent to induce consumers into purchasing Defendants vehicles. Plaintiffs reasonably relied on false representations by Defendants and were induced to each purchase a Defendants vehicle, to his/her detriment. As a result of these unlawful trade practices, Plaintiffs have suffered ascertainable loss.

2143. Plaintiffs and the Class suffered ascertainable loss caused by Defendants' false representations and failure to disclose material information. Plaintiffs and the Class overpaid for their vehicles and did not receive the benefit of their bargain. The value of their vehicles has diminished now that the safety issues have come to light, and Plaintiffs and the Class own vehicles that are not safe.

2144. Defendants are "persons" as required under the statute.

2145. Defendants' actions as set forth above occurred in the course of business and in connection with a consumer transaction.

2146. As required under the Wyoming Consumer Protection Act, a notice letter will be sent on behalf of the Class.

COUNT CCXXXV

Breach of Express Warranty
(Wyoming Statutes Section 34.1-2-313)

2147. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

2148. Defendants are and were at all relevant times merchants with respect to motor vehicles.

2149. 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 REFERRENCE: 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.

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.

These affirmations and promises were part of the basis of the bargain between the parties.

2154. 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.

2155. Furthermore, the limited warranty of repair and/or adjustments to defective parts, fails in its essential purpose because the contractual remedy is insufficient to make Plaintiffs and the other Class members whole and because Defendants have failed and/or have refused to adequately provide the promised remedies within a reasonable time.

2156. Accordingly, recovery by Plaintiffs and the other Class members is not limited to the limited warranty of repair or adjustments to parts defective in materials or workmanship, and Plaintiffs, individually and on behalf of the other Class members, seek all remedies as allowed by law.

2157. Also, as alleged in more detail herein, at the time that Defendants warranted and sold the Class Vehicles they knew that the Class Vehicles did not conform to the warranties and were inherently defective, and Defendants wrongfully and fraudulently misrepresented and/or concealed material facts regarding their Class Vehicles. Plaintiffs and the other Class members were therefore induced to purchase or lease the Class Vehicles under false and/or fraudulent pretenses.

2158. Moreover, many of the injuries flowing from the Class Vehicles cannot be resolved through the limited remedy of "replacement or adjustments," as many incidental and consequential damages have already been suffered due to Defendants' fraudulent conduct as alleged herein, and due to their failure and/or continued failure to provide such limited remedy within a reasonable time, and any limitation on Plaintiffs' and the other Class members' remedies would be insufficient to make Plaintiffs and the other Class members whole.

2159. Defendants were provided notice of these issues by the instant Complaint, and by other means before or within a reasonable amount of time after the allegations of Class Vehicle

defects became public.

2160. As a direct and proximate result of Defendants' breach of express warranties, Plaintiffs and the other Class members have been damaged in an amount to be determined at trial.

COUNT CCXXXVI

Breach of the Implied Warranty of Merchantability
(Wyoming Statutes Section 34.1-2-314)

2161. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

2162. Defendants are and were at all relevant times merchants with respect to motor vehicles.

2163. A warranty that the Class Vehicles were in merchantable condition is implied by law in the instant transactions.

2164. 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.

2165. 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 CCXXXVII

Breach of Contract/Common Law Warranty
(Based on Wyoming Law)

2166. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

2167. To the extent Defendants' limited remedies are deemed not to be warranties under Wyoming'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.

2168. Defendants breached this warranty or contract obligation by failing to repair the Class Vehicles, or to replace them.

2169. 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 CCXXXVIII

Fraudulent Concealment
(Based on Wyoming Law)

2170. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

2171. 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.

2172. 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.

2173. Defendants knew these representations were false when made.

2174. 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.

2175. 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.

2176. 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.

2177. 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 sell Class Vehicles.

2178. Plaintiffs and the other Class members relied on Defendants' reputations – along with Defendants' failure to disclose the faulty and defective nature of the CAN bus and Defendants' affirmative assurances that their Class Vehicles were safe and reliable, and other similar false statements – in purchasing or leasing Defendants' Class Vehicles.

2179. As a result of their reliance, Plaintiffs and the other Class members have been injured in an amount to be proven at trial, including, but not limited to, their lost benefit of the bargain and overpayment at the time of purchase or lease and/or the diminished value of their Class Vehicles.

2180. Defendants' conduct was knowing, intentional, with malice, demonstrated a complete lack of care, and was in reckless disregard for the rights of Plaintiffs and the other Class members.

2181. Plaintiffs and the other Class members are therefore entitled to an award of punitive damages.

REQUEST FOR RELIEF

WHEREFORE, Plaintiffs, individually and on behalf of members of the Nationwide and California Classes, respectfully request that the Court enter judgment in their favor and against Defendants, as follows:

A. Certification of the proposed Nationwide Class and California Class, including appointment of Plaintiffs' counsel as Class Counsel;

B. An order temporarily and permanently enjoining Defendants from continuing the

unlawful, deceptive, fraudulent, and unfair business practices alleged in this Complaint;

C. Complaint;

D. Injunctive relief in the form of a recall or free replacement program;

E. Costs, restitution, damages, including punitive damages, and disgorgement in an amount to be determined at trial;

F. An order requiring Defendants to pay both pre- and post-judgment interest on any amounts awarded;

G. An award of costs and attorneys' fees; and

H. Such other or further relief as may be appropriate.

DEMAND FOR JURY TRIAL

Plaintiffs hereby demand a jury trial for all claims so triable.

DATED: March 10, 2015

STANLEY LAW GROUP
MATTHEW J. ZEVIN

/s/ Matthew J. Zevin
MATTHEW J. ZEVIN

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Attorneys for Plaintiffs, Helene Cahen, Kerry J. Tompulis, and Merrill Nisam

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