

1 Robert Ahdoot, SBN 172098
rahdoot@ahdootwolfson.com
2 Tina Wolfson, SBN 174806
twolfson@ahdootwolfson.com
3 **AHDOOT & WOLFSON, PC**
4 1016 Palm Avenue
West Hollywood, California 90069
5 Tel: 310-474-9111; Fax: 310-474-8585

6 John A. Yanchunis (*Pro Hac Vice* application to be filed)
7 jyanchunis@forthepeople.com
8 **MORGAN & MORGAN COMPLEX LITIGATION GROUP**
201 North Franklin Street, 7th Floor
Tampa, Florida 33602
9 Tel: (813) 223-5505; Fax: (813) 223-5402

10 Counsel for Plaintiff,
ANNITA EMERSON
11

12 **UNITED STATES DISTRICT COURT**
13 **NORTHERN DISTRICT OF CALIFORNIA**

14 ANNITA EMERSON, individually and on behalf
15 of all others similarly situated,

16
17 Plaintiff,

18 v.

19 TOYOTA MOTOR NORTH AMERICA, INC., a
California corporation; TOYOTA MOTOR
20 SALES, U.S.A., INC., a California corporation,

21 Defendants.
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Case No. _____

CLASS ACTION COMPLAINT

JURY TRIAL DEMANDED

1. Violation of Consumer Legal Remedies Act, Cal. Civ. Code § 1750, *et seq.*
2. Violation of California Unfair Competition Law, Cal. Bus. & Prof. Code § 17200, *et seq.*
3. Negligence
4. Fraudulent Concealment
5. Violation of Magnuson-Moss Warranty Act, 15 U.S.C. § 2301, *et seq.*
6. Breach of Express Warranty
7. Breach of Implied Warranties

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1 Plaintiffs Annita Emerson (“Plaintiff”), by and through her counsel, brings this Class Action
2 Complaint against Toyota Motor North America, Inc. and Toyota Motor Sales, U.S.A., Inc.
3 (collectively, “Defendants” or “Toyota”), on behalf of herself and all others similarly situated, and
4 alleges, upon personal knowledge as to her own actions and her counsel’s investigations, and upon
5 information and belief as to all other matters, as follows:

6 **NATURE OF THE CASE**

7 1. This is a consumer protection and automotive defect class action arising out of the
8 purchase of certain Toyota Highlander vehicles designed, marketed, and sold by Defendants,
9 including, but not limited to the following models: Toyota Highlander XU20, Toyota Highlander
10 XU40, Highlander Hybrid MHU28, Toyota Highlander XU50 and other Toyota vehicles equipped
11 with the defective power lift gates (collectively, the “Defective Vehicles”). The Defective Vehicles
12 have defective power lift gates that fail to operate and costs thousands of dollars to fix (the “Defect”).

13 2. Confronted with customer complaints related to the Defect, Defendants have
14 systematically denied the existence of the Defect, and thus refused to honor any applicable warranties.
15 As a consequence, Defendants have failed to reimburse vehicle owners for the costs they incur
16 resulting from damages related to the failures of the lift gate and/or refuse to provide repairs free of
17 charge. As explained in detail below, Defendants were aware of but have failed to notify purchasers
18 regarding the lift gate defects, and these omissions were false, misleading, and had the capacity to
19 deceive.

20 3. Plaintiff brings claims individually and on behalf of a class of all other similarly
21 situated purchasers of the Defective Vehicles against Defendants for violations of California’s
22 Consumers Legal Remedies Act, Cal. Civ. Code § 1750, *et seq.*, violations of California’s Unfair
23 Competition Law, Cal. Bus. & Prof. Code § 17200, *et seq.* (“UCL”), negligence, fraudulent
24 concealment, product liability (design defect), violations of the Magnuson-Moss Warranty Act, 15
25 U.S.C. § 2301, *et seq.* (“MMWA”), breach of express warranty, and breach of implied warranties.

26 4. Plaintiff seeks an order requiring Defendants to, among other things: (1) cease the
27 unlawful omissions; (2) conduct a corrective advertising campaign to alert the public of the defect; (3)
28 pay damages and restitution to Plaintiff and Class members in the amounts paid to repair the Defective

1 Vehicles; and (4) reimburse Plaintiffs and Class members for the loss of value of the Defective
2 Vehicles.

3 **JURISDICTION AND VENUE**

4 5. The Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §
5 1332(d)(2), because the proposed class has more than 100 members, the class contains at least one
6 member of diverse citizenship from Defendants, and the amount in controversy exceeds \$5 million.

7 6. The Court has personal jurisdiction over Defendants because Defendants are California
8 corporations and are headquartered in California and are authorized to and conduct substantial
9 business in California, generally and this District, specifically. Defendants have marketed, promoted,
10 distributed, and sold the Defective Vehicles in California and in this District.

11 7. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b)(2), because a
12 substantial part of the events and omissions giving rise to this action occurred in this District as
13 Plaintiff purchased the subject vehicle containing the Defect within this District, and the Defect in
14 Plaintiff's subject vehicle manifested itself within this District.

15 **PARTIES**

16 8. Plaintiff Annita Emerson is a resident of San Ramon, California. On June 19, 2009,
17 Plaintiff purchased a 2009 Toyota Highlander (vehicle identification number: JTEES42A992132149)
18 from Toyota Vallejo, a Toyota dealership in Vallejo, California and is currently the owner of the
19 vehicle ("Subject Vehicle"). Plaintiff's Subject Vehicle is equipped with a power lift gate. Plaintiff's
20 Subject Vehicle came with a 36,000-mile / 3-year warranty.

21 9. Over her lifetime Plaintiff had previously purchased eleven Toyota vehicles. Plaintiff
22 also purchased a Toyota Venza, which also has a power lift gate like the Toyota Highlander.

23 10. Because of Toyota's represented dedication to quality and superior design (discussed
24 below), Plaintiff purchased twelve Toyotas.

25 11. On or about March of 2013, the power lift gate on Plaintiff's Subject Vehicle failed
26 when the power arm broke off of the rear power lift gate, and the driver side hinge on the rear power
27 lift gate bowed. As a result, the rear power lift gate would not close, but instead was stuck in an
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1 opened position. Plaintiff could not manually close the lift gate and, therefore, it remained stuck in
2 this opened position.

3 12. As a result of this Defect, Plaintiff brought her Subject Vehicle into Service Outlet, a
4 Toyota certified repair center in San Ramon, California.

5 13. On April 23, 2013, Plaintiff made a warranty claim with Toyota to have Toyota pay for
6 repair of the defective power lift gate. In the warranty claim, Plaintiff wrote that “[t]he power arm
7 broke off of the rear power lift gate when closing. The driver side hinge on the rear power liftgate is
8 bowed. This hatchback / liftgate support device issue occurred March 2013. Subsequently to fix this
9 issue it was \$4700.00.”

10 14. On May 8, 2013, Toyota refused to honor the warranty claim or pay for repairs for
11 Plaintiff’s Subject Vehicle. As a result, Plaintiff had to pay \$4700.00 out of pocket to fix the power
12 lift gate.

13 15. During the time period that the power lift gate was broken and awaiting repair,
14 Plaintiff was unable to drive Plaintiff’s Subject Vehicle.

15 16. Plaintiff also did not want to drive Subject Vehicle until the power lift gate was fixed
16 because the Defect poses a severe safety concern in that the power rear door can get stuck in a way
17 that can trap small children. Plaintiff has a young daughter.

18 17. Defendant Toyota Motor North America, Inc. is a California corporation with its
19 principal place of business at 19001 South Western Avenue, Torrance California 90501.

20 18. Defendant Toyota Motor Sales, U.S.A., Inc. is a California corporation with its
21 principal place of business at 19001 South Western Avenue, Torrance California 90501.

22 19. Defendants manufacture and distribute the Defective Vehicles to consumers in
23 California and throughout the United States.

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TOYOTA HAS TOUTED THAT ITS VEHICLES HAVE SUPERIOR QUALITY AND DESIGN, BUT THE FACTS SHOW THAT THE POWER LIFT GATES SYSTEMATICALLY FAIL

20. Toyota came to America in 1957, establishing its headquarters in Hollywood, California in an old Rambler dealership. Toyota quickly gained traction in the United States auto market and eventually became a leader. In 2003, Toyota sold 6,780,000 vehicles and overtook Ford Motor Company to become second in annual sales behind only General Motors. Three years later, Toyota passed General Motors as the number one brand of cars sold in the United States, with 8,800,000 vehicles sold.

21. Toyota is currently the world's largest manufacturer of vehicles. For the fiscal year ending in March 2013, Toyota reported billions in worldwide sales.

22. Toyota holds its brand out as synonymous with "innovation, quality and reliability." <http://www.toyota.com> (cite); <https://www.facebook.com/toyota/info> (last visited May 30, 2014). Toyota further states "[f]rom our associates and dealers to our suppliers and customers, our devotion to constant improvement results in an exceptional line of cars and trucks." <https://www.facebook.com/toyota/info> (last visited May 30, 2014)

23. Furthermore, Toyota promises that "[f]rom the early stages of the design process up until our cars roll off the assembly line, quality is key at Toyota. You can see it in the materials, the fit and finish, and the innovative new technology that we put into each of our vehicles." <http://www.toyota.com/quality> (last visited May 30, 2014).

24. As its dedication to "Continuous improvement," Toyota states: "Kaizen" means striving for "continuous improvement, and it's a philosophy that we stand by. At our factories, the production line is seen as a progression of customers, not employees – and each team member is responsible for passing along a perfect part or assembly to the next. Every team member has the authority and the responsibility to stop the line if a component or assembly doesn't meet our quality standards." <http://www.toyota.com/quality> (last visited May 30, 2014).

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**DEFENDANTS HAVE BEEN AWARE OF THE DEFECT SINCE AT LEAST 2010,
BUT HAVE FAILED TO PUBLICLY ACKNOWLEDGE, DIAGNOSE, AND RECTIFY
THE DEFECT**

25. Defendants have ignored a number of consumer complaints submitted to the NHTSA since at least 2011, and upon information and belief, have received consumer complaints about the defect directly from customers, its dealers, Toyota-certified repair centers, and from NHTSA even prior to that date.

26. Defendants have also ignored the consumer complaints posted on the Internet, *Youtube.com*, and Toyota's own dedicated websites. *See e.g.* <http://www.toyotanation.com/forum/122-2nd-generation-2008-2013/431214-2010-highlander-lift-gate-arm-broken.html> (last visited May 29, 2014); <http://www.toyotanation.com/forum/122-2nd-generation-2008-2013/379708-2011-power-rear-door-problem-recall.html> (last visited May 29, 2014); and <http://www.toyotanation.com/forum/122-2nd-generation-2008-2013/384975-highlander-power-rear-hatch-stuck.html> (last visited May 29, 2014).

27. Furthermore, on June 21, 2012, Toyota put out a service bulletin, numbered, TSB-0091-12, entitled, "Power Back Door Does Not Close Properly" ("2012 Service Bulletin"). The 2012 Service Bulletin provides:

Applicability

YEAR(S) MODEL(S) ADDITIONAL INFORMATION

2008 – 2012 Highlander, Highlander

Introduction

Some 2008 – 2012 model year Highlander and Highlander HV vehicles may exhibit a condition where the Power Back Door does not close properly. The Back Door may get to the fully closed position and then reverse to the open position. In cases where the Power Back Door does close, a pop or clunk noise may also be heard when the back door latch reaches the striker during the power close function. In some cases, Diagnostic Trouble Codes (DTCs) B2222 and/or U0230 may be present. Use the following information to inspect the Power Back Door and address this condition.

NOTICE

The purpose of this Service Bulletin is to provide repair instructions for the Power Back Door. It enhances the durability of the Power Back Door when operating using the Power Close function. When the Power Close function is used, if objects or cargo are

1 continually interfering with the closure of the back door, damage to the back door and/or
back door hinges may occur.

2 To minimize the possibility of damage occurring, before closing the Power Back Door,
3 customers should always confirm that objects in the cargo area will not impede or interfere
4 with the closing operation of the back door. Additionally, customers should not use any
part of their body to intentionally activate the Jam Protection function of the Power Back Door.
5 Please see the Owner's Manual for additional information on the Power Back Door
Jam Protection function.

6 28. The 2012 Service Bulletin recommends the following inspection procedure:

7 **Inspect the Power Back Door Assembly.**

8 Inspect the upper hinges for any gaps present by placing a 0.05 mm (0.002 in.) or greater
9 feeler gauge between the 2 bolts mounted to the back door as shown in Figure 1. If a gap
exists, replacement of both Back Door Hinges AND the Back Door Panel Sub-assembly is
10 required. Proceed to step 2. If a gap is not found, STOP – this bulletin does NOT apply.

11 29. The 2012 Service Bulletin further provides: "This repair is covered under the Toyota
12 Comprehensive Warranty. This warranty is in effect for 36 months or 36,000 miles, whichever
13 occurs first, from the vehicle's in-service date. Warranty application is limited to occurrence of the
14 specified condition described in this bulletin."

15 30. Defendants knew about the Defect since at least 2010. Nevertheless, following the
16 notice, Defendants have failed to issue any recall or provide compensation for those who had already
17 repaired their power lift gate or paid for damages resulting from the failure.

18 31. Furthermore, Defendants provide a standard express warranty against any "defects in
19 materials or workmanship" in the Defective Vehicles to the purchaser for 36 months or 36,000 miles,
20 whichever occurs first, from the vehicle's in-service date. Defendants have purposefully concealed
21 the Defect so that Defendants can claim that customers' written warranty period has expired before
22 the Defect manifests itself. Defendants' failure to disclose unfairly shifts the cost of repairs to Class
23 members.

24 32. The Defect has forced owners of the Defective Vehicles to spend thousands of dollars
25 in replacement and repair costs.

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1 38. Defendants have known about the Defect since at least 2010, if not earlier, have failed
2 to alert Class members to the Defect, and have told Class members who reported the Defect that the
3 mechanical failures caused by the Defect were attributable to other causes.

4 39. Defendants were and remain under a continuing duty to disclose to the NHTSA,
5 Plaintiff, and the Class the true character, quality and nature of the Defective Vehicles; that this defect
6 is based on dangerous, inadequate, and defective design and/or substandard materials; and that it will
7 require repair, poses a severe safety concern in that the power door can get stuck in a way that can trap
8 small children, and diminishes the value of the Defective Vehicles.

9 40. Because of the active concealment by Defendants, any and all limitations periods
10 otherwise applicable to Plaintiff's claims have been tolled and Defendants are estopped from relying
11 on any statutes of limitation in its defense of this action.

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13 **CLASS ACTION ALLEGATIONS**

14 41. Plaintiff seeks relief in her individual capacity and seeks to represent a class consisting
15 of all others who are similarly situated. Pursuant to rule 23(a) and (b)(2) and/or (b)(3), Fed. R. Civ. P.,
16 Plaintiff seeks certification of a class initially defined as follows:

17 All persons who formerly or currently own or lease the following Toyota Highlander
18 vehicles in the United States of America: Toyota Highlander XU20, Toyota Highlander
19 XU40, Highlander Hybrid MHU28, Toyota Highlander XU50.

20 42. Excluded from the Class are Defendants and their subsidiaries and affiliates,
21 Defendants' executives, board members, legal counsel, the judges and all other court personnel to
22 whom this case is assigned, their immediate families, and those who purchased the Product for the
23 purpose of resale.

24 43. Plaintiff reserves the right to amend or modify the Class definition with greater
25 specificity or division into subclasses after they have had an opportunity to conduct discovery.

26 44. Numerosity. Fed. R. Civ. P. 23(a)(1). The Class is so numerous that joinder of all
27 members is unfeasible and not practicable. While the precise number of Class members has not been
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1 determined at this time, Plaintiff is informed and believes that many thousands of consumers have
2 purchased the Products.

3 45. Commonality. Fed. R. Civ. P. 23(a)(2) and (b)(3). There are questions of law and fact
4 common to the Class, which predominate over any questions affecting only individual Class members.

5 These common questions of law and fact include, without limitation:

- 6 a. Whether Defendants violated the CLRA, California Civil Code § 1750, *et seq.*;
- 7 b. Whether Defendants violated the UCL, California Business and Professions
8 Code § 17200, *et seq.*;
- 9 c. Whether Defendants were negligent;
- 10 d. Whether Defendants fraudulently concealed the Defect;
- 11 e. Whether Defendants are liable for a design defect;
- 12 f. Whether Defendants violated the MMWA, 15 U.S.C. § 2301, *et seq.*;
- 13 g. Whether Defendants breached the express warranty;
- 14 h. Whether Defendants breached the implied warranties; and
- 15 i. The nature of the relief, including equitable relief, to which Plaintiff and the
16 Class members are entitled.

17 46. Typicality. Fed. R. Civ. P. 23(a)(3). Plaintiff's claims are typical of the claims of the
18 Class. Plaintiff and all Class members were exposed to uniform practices and sustained injury arising
19 out of and caused by Defendants' unlawful conduct.

20 47. Adequacy of Representation. Fed. R. Civ. P. 23(a)(4). Plaintiff will fairly and
21 adequately represent and protect the interests of the members of the Class. Plaintiff's Counsel are
22 competent and experienced in litigating class actions.

23 48. Superiority of Class Action. Fed. R. Civ. P. 23(b)(3). A class action is superior to
24 other available methods for the fair and efficient adjudication of this controversy since joinder of all
25 the members of the Class is impracticable. Furthermore, the adjudication of this controversy through a
26 class action will avoid the possibility of inconsistent and potentially conflicting adjudication of the
27 asserted claims. There will be no difficulty in the management of this action as a class action.

1 56. Defendants violated the Act by representing that the Defective Vehicles were safe and
2 free of defects when they were not and by failing to notify Plaintiff and Class Members of the Defect.
3 Defendants knew, or should have known, that these omissions were false and misleading.

4 57. Defendants' acts and omissions constitute unfair, deceptive, and misleading business
5 practices in violation of Civil Code §1770(a).

6 58. On June 12, 2014, Plaintiffs notified Defendants in writing, by certified mail, of the
7 violations alleged herein and demanded that Defendants remedy those violations.

8 59. If Defendants fail to rectify or agree to rectify the problems associated with the actions
9 detailed above and give notice to all affected consumers within 30 days of receipt of Plaintiff's written
10 notice pursuant to §1782 of the California Act, Plaintiff will amend this Complaint to add claims for
11 actual, punitive, statutory damages, and attorney fees pursuant to the CLRA. Plaintiff and the Class
12 also will seek a Court order enjoining the above-described wrongful acts and practices of Defendants
13 and for restitution, disgorgement, statutory damages, attorneys' fees and any other relief that the Court
14 deems proper.

15 60. Defendants' conduct is malicious, fraudulent, and wanton in that Defendants
16 intentionally and knowingly provided misleading information to the public.

17 **SECOND CAUSE OF ACTION**

18 **(California Unfair Competition Law – Cal. Bus. & Prof. Code § 17200, *et seq.*)**

19 61. Plaintiff incorporates by reference and re-alleges the preceding paragraphs.

20 62. Defendants engaged in unlawful, unfair, and/or fraudulent conduct under California
21 Business & Professional Code § 17200, *et seq.*

22 63. Defendants' conduct is unlawful in that it violates the Consumers Legal Remedies Act,
23 California Civil Code § 1750, *et seq.* (as set forth in the first cause of action), and the Transportation
24 Recall Enhancement, Accountability and Documentation Act (the "TREAD Act"), 49 U.S.C. § 30101,
25 *et seq.* (by failing to timely inform the NHTSA of the Defect and allowing the Defective Vehicles to
26 be sold with the Defect).

27 64. Defendants' conduct also is unlawful in that it violates the California Secret Warranty
28 Law, California Civil Code § 1795.90, *et seq.*, by:

1 a. Failing to timely notify all affected vehicle owners that Defective Vehicles
2 exhibit a condition where the power back door does not close properly;

3 b. Failing to reimburse vehicle owners who paid to have their power lift gates
4 repaired or replaced;

5 c. Replacing or repairing power lift gates for some customers, but failing to
6 notify all other customers of that benefit; and/or

7 d. Failing to comply with the applicable notification provisions in the Secret
8 Warranty Law.

9 65. Defendants' conduct is unfair in that it offends established public policy and/or is
10 immoral, unethical, oppressive, unscrupulous and/or substantially injurious to Plaintiff and Class
11 members. The harm to Plaintiff and Class members arising from Defendants' conduct outweighs any
12 legitimate benefit Defendants derived from the conduct. Defendants' conduct undermines and violates
13 the stated spirit and policies underlying the Consumers Legal Remedies Act and the TREAD ACT as
14 alleged herein.

15 66. Defendants' actions and practices constitute "fraudulent" business practices in violation
16 of the UCL because, among other things, they are likely to deceive reasonable consumers. Plaintiff
17 relied on Defendants' omissions / affirmative representations in purchasing the Defective Vehicle,
18 driving it at the risk to her safety, and in paying for the repairs.

19 67. As a direct and proximate result of Defendants' violations, Plaintiff suffered injury in
20 fact and lost money because she purchased the Defective Vehicle and paid the price she paid believing
21 it to be free of defects when it was not and paid for the resulting necessary repairs.

22 68. Plaintiff, on behalf of herself and Class members, seeks equitable relief in the form of
23 an order requiring Defendants to refund Plaintiff and all Class members all monies they paid for
24 repairing and/or replacing the Defective Vehicles, for loss of value of the Defective Vehicles resulting
25 from the inherent defect, and injunctive relief in the form of an order prohibiting Defendants from
26 engaging in the alleged misconduct and performing a corrective recall campaign.

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THIRD CAUSE OF ACTION

(Negligence)

69. Plaintiff incorporates by reference and re-alleges the preceding paragraphs.

70. Plaintiff brings this claim individually and on behalf of the Class.

71. Defendants had a duty to its customers as a manufacturer of motor vehicles to design, manufacture, market, and provide vehicles that, in their ordinary operation, are reasonably safe for their intended uses. Defendants had a duty to adequately test its vehicles' safety before selling millions to consumers worldwide.

72. Defendants had a duty to test vehicles for power lift gate problems once Defendants were on notice that its vehicles had a propensity to have defective power lift gates. Moreover, Defendants had a duty to provide true and accurate information to the public to prevent undue risks arising from the foreseeable use of its products.

73. At all times relevant, Defendants sold, marketed, advertised, distributed, and otherwise placed Defective Vehicles into the stream of commerce in an unlawful, unfair, fraudulent, and/or deceptive manner that was likely to deceive the public.

74. Defendants were negligent, and breached the above duties owed to Plaintiff and Class members.

75. As direct and proximate causes of Defendants' breaches, Plaintiff and the Class have been damaged including, but not limited to, the cost of repairs required due to timing chain tensioner problems, the financial loss of owning the Defective Vehicles that are unsafe, and being subjected to potential risk of injury.

FOURTH CAUSE OF ACTION

(Fraudulent Concealment)

76. Plaintiff incorporates by reference and re-alleges the preceding paragraphs.

77. Defendants concealed material facts concerning the Defect before, during, and after the sale of the Defective Vehicles to Plaintiff and Class members.

78. Defendants had a duty to disclose the Defect because it was known only to Defendants, who had superior knowledge and access to the facts, and Defendants knew it was not known to or

1 reasonably discoverable by Plaintiff and Class members. These concealed facts were material because
2 they directly impact the safety of the Defective Vehicles. Whether a power lift gate was designed and
3 manufactured with appropriate safeguards is a material safety concern.

4 79. Defendants actively concealed these material facts, in whole or in part, to protect its
5 profits and avoid a costly recall, and it did so at the expense of Plaintiff and the Class.

6 80. Plaintiff and the Class were unaware of these concealed material facts and would not
7 have acted as they did if they had known of the concealed facts. Plaintiff's and Class members'
8 actions were justified. Defendants were in exclusive control of the material facts and the public,
9 Plaintiff, and the Class did not know of these facts prior to purchasing the Defective Vehicles.

10 81. Because of the concealment of the facts, Plaintiff and the Class sustained damage
11 because they purchased and retained Defective Vehicles that are now diminished in value from what
12 they would have been, had Defendants timely disclosed the Defect.

13 82. Defendants' acts were done maliciously, oppressively, deliberately, with intent to
14 defraud, in reckless disregard of Plaintiff's and Class members' rights and wellbeing, and to enrich
15 Defendants. Defendants' conduct warrants an assessment of punitive damages in an amount sufficient
16 to deter such conduct in the future, which amount is to be determined according to proof.

17 **FIFTH CAUSE OF ACTION**

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

19 83. Plaintiff incorporates by reference and re-alleges the preceding paragraphs.

20 84. Plaintiff and Class members are "consumers" within the meaning of the MMWA, 15
21 U.S.C. § 2301(3).

22 85. Defendants are each a "supplier" and "warrantor" within the meaning of the MMWA,
23 15 U.S.C. § 2301(4)-(5).

24 86. The Defective Vehicles are "consumer products" within the meaning of the MMWA, 15
25 U.S.C. § 2301(1).

26 87. Defendants affirmed the fact, promised, and/or described in writing that the power lift
27 gate would meet a specified level of performance over a specified period of time, namely, that it would
28 not require maintenance and last for the life of the Defective Vehicles. Defendants' written

1 affirmations of fact, promises, or descriptions related to the nature of the power lift gate in the
2 Defective Vehicles became part of the basis of the bargain between Plaintiff and Defendants.
3 Defendants refuse to recognize or honor the written power lift gate warranties and, indeed, denies the
4 existence of these warranties. Defendants breached their written warranties when the Defective
5 Vehicles did not perform as represented by Defendants and thereafter when Defendants refused to
6 recognize or honor the warranties. Defendants' conduct thereby caused damages to Plaintiff and Class
7 members.

8 88. The amount in controversy of Plaintiff's individual claim meets or exceeds the sum or
9 value of \$25. In addition, the amount in controversy meets or exceeds the sum or value of \$50,000
10 (exclusive of interests and costs) computed on the basis of all claims to be determined in this suit.

11 89. Resorting to any informal dispute resolution procedure and/or affording Defendants a
12 reasonable opportunity to cure its breach of written warranties to Plaintiff is unnecessary and/or futile.
13 At the time of sale to Plaintiff, Defendants knew, should have known, or was reckless in not knowing
14 of its omissions concerning the Defect, but nevertheless failed to rectify the situation and/or disclose it
15 to Plaintiff. Moreover, the remedies available through any informal dispute resolution procedure would
16 be wholly inadequate under the circumstances. Accordingly, any requirement under the MMWA or
17 otherwise that Plaintiff resort to any informal dispute resolution procedure and/or afford Defendants a
18 reasonable opportunity to cure their breach of written warranties is excused and, thereby, deemed
19 satisfied.

20 90. As a direct and proximate result of Defendants' breach of written warranties, Plaintiff
21 and Class members sustained damages and other losses. Defendants' conduct caused Plaintiff's and
22 Class members' damages and, accordingly, Plaintiff and Class members are entitled to recover
23 damages, specific performance, diminution in value, costs, attorneys' fees, rescission, and/or other
24 equitable relief as appropriate.

25 **SIXTH CAUSE OF ACTION**

26 **(Breach of Express Warranty)**

27 91. Plaintiff incorporates by reference and re-alleges the preceding paragraphs.

28 92. Plaintiff brings this claim individually and on behalf of the Class.

1 93. Plaintiff, and each member of the Class, formed a contract with Defendants at the time
2 Plaintiff and the other members of the Class purchased the Defective Vehicles. The terms of that
3 contract include the promises and affirmations to provide vehicles free of “defects in materials or
4 workmanship.” This express warranty became part of the basis of the bargain and is part of a
5 standardized contract between Plaintiff and the members of the Class on the one hand, and Defendants
6 on the other.

7 94. All conditions precedent to Defendants’ liability under this contract have been
8 performed by Plaintiff and the Class.

9 95. Defendants breached the terms of this contract, including the express warranty, with
10 Plaintiff and the Class by not providing a vehicle that could provide the benefits described above (being
11 free from defects).

12 96. As a result of Defendants’ breach of its express warranty, Plaintiff and the Class have
13 been damaged in the amount of the repair costs associated with the Defect, as well as their vehicles’
14 diminished value as a result of the Defect.

15 **SEVENTH CAUSE OF ACTION**

16 **(Breach of Implied Warranties)**

17 97. Plaintiff incorporates by reference and re-alleges the preceding paragraphs.

18 98. Plaintiff brings this claim individually and on behalf of the Class.

19 99. Plaintiff, and each member of the Class, formed a contract with Defendants at the time
20 Plaintiff and Class members purchased the Defective Vehicles.

21 100. The terms of that contract included the implied promises of merchantability that the
22 product was fit for the ordinary purpose for which it was intended, *i.e.*, not having a defective power
23 lift gate.

24 101. The terms of the contract also included an implied promise of fitness for a particular
25 purpose, *i.e.*, having a power lift gate that is free of defects, in which Defendants had reason to know
26 the particular purpose for which Plaintiff and Class members required the vehicles and Plaintiff and
27 Class members relied on Defendants’ skill and judgment to select and furnish suitable vehicles that
28 were fit for that purpose.

1 F. Ordering Defendants to pay attorneys' fees and litigation costs to Plaintiff's and the
2 other members of the Class;

3 G. Ordering Defendants to pay both pre- and post-judgment interest on any amounts
4 awarded; and

5 H. Ordering such other and further relief as may be just and proper.

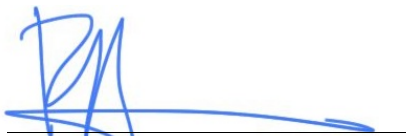
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7 **JURY DEMAND**

8 Plaintiff demands a trial by jury of all claims in this Complaint so triable.

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10 Dated: June 19, 2014

Respectfully submitted,

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12 **AHDOOT & WOLFSON, PC**

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14 

15 Robert Ahdoot
16 Tina Wolfson
17 1016 Palm Avenue
18 West Hollywood, California 90069
19 Tel: 310-474-9111
20 Fax: 310-474-8585
21 Email: rahdoot@ahdootwolfson.com
22 twolfson@ahdootwolfson.com

23 **MORGAN & MORGAN**
24 **COMPLEX LITIGATION GROUP**
25 John A. Yanchunis (*pro hac vice* to be filed)
26 201 N. Franklin Street, 7th Floor
27 Tampa, Florida 33602
28 Tel: 813-223-5505
Fax: 813-223-5402
Email: jyanchunis@forthepeople.com

Counsel for Plaintiff,
Annita Emerson


AFFIDAVIT OF ROBERT AHDOOT

I, Robert Ahdoot, declare as follows:

1. I am an attorney with the law firm of Ahdoot & Wolfson, PC, counsel for Plaintiff Annita Emerson in this action. I am admitted to practice law in California and before this Court, and am a member in good standing of the State Bar of California. This declaration is made pursuant to California Civil Code section 1780(d). I make this declaration based on my research of public records and upon personal knowledge and, if called upon to do so, could and would testify competently thereto.

2. Based on my research and personal knowledge, Defendants do business within the Northern District of California.

I declare under penalty of perjury under the laws of the United States and the State of California this 19th day of June 2014 in West Hollywood, California that the foregoing is true and correct.



Robert Ahdoot

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

ANNITA EMERSON, individually and on behalf of all others similarly situated,

(b) County of Residence of First Listed Plaintiff San Francisco (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number) Robert Ahdoot, Ahdoot & Wolfson, PC 1016 Palm Ave., West Hollywood, CA 90069 T: 310-474-9111; F: 310-474-8585; E: rahdoot@ahdootwolfson.com

DEFENDANTS

TOYOTA MOTOR NORTH AMERICA, INC., a California corporation; TOYOTA MOTOR SALES, U.S.A., INC., a California corporation

County of Residence of First Listed Defendant (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff, 2 U.S. Government Defendant, 3 Federal Question (U.S. Government Not a Party), 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

Table with columns for Plaintiff (PTF) and Defendant (DEF) citizenship and business location (Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country).

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Large table with categories: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES.

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding, 2 Removed from State Court, 3 Remanded from Appellate Court, 4 Reinstated or Reopened, 5 Transferred from Another District, 6 Multidistrict Litigation

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): 28 U.S.C. § 1332(d)(2)

Brief description of cause: Violations of California's CLRA, UCL, negligence, fraudulent concealment, breach of warranties

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ 5,000,000.00 CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE DOCKET NUMBER

DATE 06/19/2014 SIGNATURE OF ATTORNEY OF RECORD /s/ Robert Ahdoot

00F0K00PCN'CUH PO GPV'EklrIN05/4+

(Place an "X" in One Box Only)

- San Francisco/Oakland, San Jose, Eureka

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
- (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
- (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
 United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.
 United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
 Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
 Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerk(s) in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.
- V. Origin.** Place an "X" in one of the six boxes.
 Original Proceedings. (1) Cases which originate in the United States district courts.
 Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.
 Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
 Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
 Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
 Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
 Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
 Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.
- Date and Attorney Signature.** Date and sign the civil cover sheet.