

1 Tarek H. Zohdy (SBN 247775)
2 Cody R. Padgett (SBN 275553)
3 **CAPSTONE LAW APC**
4 1875 Century Park East, Suite 1000
5 Los Angeles, California 90067
6 Telephone: (310) 556-4811
7 Facsimile: (310) 943-0396
8 Tarek.Zohdy@capstonelawyers.com
9 Cody.Padgett@capstonelawyers.com

10 *Additional Counsel on Signature Page*
11 Attorneys for Plaintiffs

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

14 PAOLA GUEVARA, LEE KRUKOWSKI,
15 PAMELA WOODMAN, and KRIS
16 HUCHTEMAN, individually and on behalf
17 of all others similarly situated,

18 Plaintiffs,

19 v.

20 TOYOTA MOTOR CORPORATION;
21 TOYOTA MOTOR SALES, U.S.A., INC.;;
22 TOYOTA MOTOR NORTH AMERICA,
23 INC., AND DOES 1-50, inclusive

24 Defendants,

25 **CLASS ACTION COMPLAINT**

- 26 **1. Violation of Magnuson-Moss
Warranty Act (15 U.S.C. § 2301,
et seq.)**
- 27 **2. Breach of Express Warranty**
- 28 **3. Breach of Implied Warranty**
- 4. Violation of Florida Deceptive and
Unfair Trade Practices Act, (Fla.
Stat. § 501.201, et seq.)**
- 5. Violation of Illinois Consumer
Fraud and Deceptive Business
Practices Act (815 Ill. Comp. Stat.
505/1, et seq.)**
- 6. Violation of New Hampshire
Consumer Protection Act (N.H.
Rev. Stat. Ann. § 358-A:1, et seq.)**
- 7. Violation of Missouri
Merchandising Practices Act (Mo.
Rev. Stata. §§ 407.010, et seq.)**
- 8. Fraudulent Concealment**
- 9. Unjust Enrichment (in the
alternative)**

1 Plaintiffs Paola Guevara, Lee Krukowski, Pamela Woodman, and Kris
2 Huchteman (“Plaintiffs”), by and through counsel, bring this Class Action
3 Complaint against Defendants Toyota Motor Corporation (“TMC”), Toyota Motor
4 Sales, U.S.A., Inc. (“TMS”), Toyota Motor North America, Inc. (“TMNA”), and
5 Does 1-50 (collectively, “Defendants” or “Toyota”), on behalf of themselves and all
6 others similarly situated, and allege, upon personal knowledge as to their own
7 actions and their counsel’s investigations, and upon information and belief as to all
8 other matters, as follows:

9 I. NATURE OF THE CASE

10 1. Plaintiffs bring this case on behalf of themselves and on behalf of all
11 similarly situated persons (“Class Members”) in the United States, and in the
12 alternative on behalf of all persons in the states of Florida, Illinois, New Hampshire,
13 and Missouri who purchased or leased any model year 2013-2018 Toyota RAV4
14 vehicles (“Class Vehicles” or “Vehicles”) equipped with a 12-Volt Battery and that
15 were designed, manufactured, distributed, marketed, sold, and leased by Toyota or
16 Toyota’s parent, subsidiary, or affiliates thereof.

17 2. This is a consumer class action concerning the misrepresentation of
18 material facts and the failure to disclose material facts and safety concerns to
19 consumers.

20 3. Toyota manufactured, marketed, distributed, and sold the Class
21 Vehicles without disclosing that the batteries equipped in the Class Vehicles are
22 defective.

23 4. A vehicle’s battery provides power for starting the vehicle, acts as a
24 surge protector for the car’s computer, and provides power for short-term use of
25 vehicle functions such as lights, infotainment systems, GPS, or wipers when the
26 engine is turned off.

27 5. Based on publicly available information, counsel’s investigations, and
28 Plaintiffs’ own experiences, Plaintiffs allege that the Class Vehicles are defective in

1 design, manufacture, materials and/or workmanship in that the Vehicles' 12-Volt
2 Battery (the "12V Battery") causes electrical shorts when the B+ terminal makes
3 contact with the battery hold down frame, which may result in the sudden loss of
4 electrical power, vehicle stalling, and/or a fire originating in the engine compartment
5 (the "Battery Defect" or "Defect").

6 6. The Battery equipped in the Class Vehicles was also designed and
7 manufactured by Toyota.

8 7. The Battery Defect is inherent in each Class Vehicle and was present at
9 the time of sale or lease to each Class Member.

10 8. The Battery Defect presents a safety risk for Plaintiffs, members of the
11 Class, and the general public because the Class Vehicles can and do suddenly lose
12 electrical power, stall, smoke, or catch fire due to the Battery Defect.

13 9. This hazardous defect has resulted in numerous complaints to
14 authorized dealerships throughout the country and to the to the National Highway
15 Traffic Safety Administration ("NHTSA")

16 10. Toyota's New Vehicle Limited Warranty ("NVLW") "covers repairs
17 and adjustments needed to correct defects in materials and workmanship of any part
18 supplied by Toyota."

19 11. Despite the common design and/or manufacturing defect in the Batteries
20 being a potentially life-threatening safety issue, Toyota has refused to recall or
21 replace the defective Batteries. Indeed, discovery will show and based on interactions
22 between Plaintiffs and Toyota authorized dealerships, Toyota refuses to replace or
23 repair the Batteries.

24 12. Prior to purchasing or leasing the Class Vehicles, Plaintiffs and other
25 Class Members did not know that the Class Vehicles would suddenly lose electrical
26 power, stall, smoke, or catch fire due to the Battery Defect.

27 13. Based on pre-production testing and design failure mode analysis, early
28 complaints to dealerships and warranty claims, replacement part orders, and

1 complaints made by consumers to Defendant TMS and to the NHTSA, Defendants
2 were aware of the Battery Defect in Class Vehicles but continued to conceal the
3 Defect and its effects from Plaintiffs and members of the Class.

4 14. Discovery will show that Toyota knew or should have known that the
5 Class Vehicles are defective and suffer from the Battery Defect and are not fit for
6 their intended purpose of providing consumers with safe and reliable transportation.
7 Knowledge and information regarding the Battery Defect and associated safety risks
8 that the Class Vehicles would suddenly lose electrical power, stall, smoke, or catch
9 fire, were in the exclusive and superior possession of Defendants and their authorized
10 dealerships. Nevertheless, Toyota failed to disclose this defect at the time of purchase
11 or lease and thereafter to Plaintiffs and Class Members, who could not reasonably
12 discovery the Defect through due diligence.

13 15. The Battery Defect is material to Plaintiffs and members of the Class
14 because when they purchased or leased their Class Vehicles, they reasonably
15 expected that the battery in their vehicles would operate as intended and not short
16 and result in their vehicles suddenly losing electrical power, stalling, smoking, or
17 catching fire.

18 16. Had Toyota disclosed the Battery Defect at the time of sale or lease, as
19 well as the associated costs related to the Battery Defect, Plaintiffs and the Class
20 Members would not have purchased the Class Vehicles or would have paid less for
21 them.

22 17. As a result of their reliance on Toyota's omissions and/or
23 misrepresentations, Plaintiffs and other owners and/or lessees of the Class Vehicles
24 have suffered ascertainable loss of money, property, and/or loss in value of their
25 Class Vehicles.

26 18. The first priority of an automobile manufacturer should be to ensure that
27 its vehicles are safe and operate as intended to prevent or minimize the threat of death
28 or serious bodily harm. In addition, an automobile manufacturer must take all

1 reasonable steps to ensure that, once a vehicle is running, it operates safely, and its
2 mechanical systems (such as the battery) work properly. Moreover, an automobile
3 manufacturer that is aware of dangerous design and/or manufacturing defects that
4 cause its vehicles to suddenly lose power, stall, smoke, or catch fire must promptly
5 disclose and remedy such defects.

6 19. This case arises from Toyota's breach of its obligations and duties,
7 including Toyota's omissions and failure to disclose that, as a result of the Battery
8 Defect, Class Vehicles may unexpectedly lose power, stall, smoke, or catch fire,
9 creating an unreasonable risk of serious bodily harm and death.

10 20. To the extent warranted by the developing facts, Plaintiffs will further
11 supplement the list of Class Vehicles to include additional Toyota vehicles that have
12 the Battery Defect.

13 21. The Battery Defect makes the Class Vehicles unreasonably dangerous.
14 Because of the Defect, the Class Vehicles are likely to suffer serious damages and
15 potentially catch fire if accidents occur, and there is an unreasonable and extreme
16 risk of serious bodily harm or death to the vehicle's occupants and others in the
17 vicinity.

18 II. PARTIES

19 A. Plaintiffs

20 Plaintiff Paola Guevara

21 22. Plaintiff Paola Guevara is Florida citizen who lives in Orlando, located
22 in Orange County, Florida.

23 23. On or about March 19, 2021, Plaintiff Guevara purchased a certified
24 pre-owned 2018 Toyota Rav4 equipped with the 12V Battery from Winter Park
25 Toyota AutoNation, an authorized Toyota dealership located in Winter Park, Florida.
26 This vehicle was designed, manufactured, sold, distributed, advertised, marketed,
27 and/or warranted by Toyota.

28

1 24. Plaintiff Guevara purchased her vehicle for approximately \$20,508.00.
2 Passenger safety and reliability were important factors in Plaintiff Guevara's
3 decision to purchase his vehicle.

4 25. Before purchasing her 2018 Toyota RAV4, Plaintiff Guevara
5 researched the vehicle. Plaintiff Guevara believed that the Toyota RAV4 would be
6 a safe and reliable vehicle.

7 26. At the time of Plaintiff Guevara's purchase, Toyota knew that its RAV4
8 12V batteries were defective, but the Toyota sales representative did not disclose the
9 Defect to Plaintiff Guevara when discussing the features, components, and
10 performance of the Vehicle prior to purchase. In reliance on these material omissions
11 and misrepresentations, Plaintiff Guevara purchased – then operated the Vehicle on
12 the reasonable but incorrect belief that the Vehicle's battery would operate properly
13 as warranted. Had Plaintiff Guevara been informed of the Battery Defect prior to or
14 at the time of purchase, he would not have purchased the Vehicle or else would have
15 paid significantly less for the Vehicle.

16 27. On or above May 5, 2021, Plaintiff Guevara was driving her vehicle
17 when the vehicle experienced a sudden loss of power. Plaintiff Guevara coasted the
18 vehicle to the side of the road and exited the vehicle. Upon exiting, Plaintiff Guevara
19 noticed smoke, sparks, and flames coming from her vehicle. She immediately called
20 911 and the City of Orland Fire Department responded to her call and extinguished
21 her vehicle. As a result of the fire, Plaintiff Guevara's vehicle is complete inoperable.
22 Plaintiff Guevara has spent approximately \$2,000.00 as a result of Battery Defect.

23 28. Neither Toyota nor any of its agents, dealers, or representatives
24 informed Plaintiff Guevara of the Battery Defect prior to her purchase of the
25 Vehicle.

26 29. Had Plaintiff Guevara been advised of the Battery Defect at or before
27 the point of sale, she would not have purchased her Vehicle or else would have paid
28

1 significantly less for the Vehicle. Plaintiff Guevara did not receive the benefit of her
2 bargain.

3 30. Plaintiff Guevara might purchase or lease a Class Vehicle in the future,
4 despite the fact it was once marred by false advertising or labeling, as Plaintiff
5 Guevara may reasonably, but incorrectly, assume the Class Vehicles' Battery Defect
6 was remedied or improved. At all times, Plaintiff Guevara, like all Class Members,
7 has attempted to drive her Toyota RAV4 in a manner that is and was both foreseeable,
8 and in which it was intended to be used.

9 **Plaintiff Lee Krukowski**

10 31. Plaintiff Lee Krukowski is an Illinois citizen who lives in Yorkville,
11 located in Kendall County, Illinois.

12 32. On or about April 18, 2019, Plaintiff Krukowski purchased a certified
13 pre-owned 2018 Toyota RAV4 equipped with the 12V Battery from Grossinger City
14 Toyota, an authorized Toyota dealership located in Chicago, Illinois. This vehicle
15 was designed, manufactured, sold, distributed, advertised, marketed, and/or
16 warranted by Toyota.

17 33. Plaintiff Krukowski purchased his vehicle for approximately
18 \$21,415.00.

19 34. Passenger safety and reliability were important factors in Plaintiff
20 Krukowski's decision to purchase his vehicle. Before purchasing his 2018 Toyota
21 RAV4, Plaintiff Krukowski researched the vehicle. Plaintiff Krukowski believed
22 that the Toyota RAV4 would be a safe and reliable vehicle.

23 35. At the time of Plaintiff Krukowski's purchase, Toyota knew that its
24 RAV4 12V batteries were defective, but the Toyota sales representative did not
25 disclose the Defect to Plaintiff Krukowski when discussing the features,
26 components, and performance of the Vehicle prior to purchase. In reliance on these
27 material omissions and misrepresentations, Plaintiff Krukowski purchased – then
28 operated the Vehicle on the reasonable but incorrect belief that the Vehicle's battery

1 would operate properly as warranted. Had Plaintiff Krukowski been informed of the
2 Battery Defect prior to or at the time of purchase, he would not have purchased the
3 Vehicle or else would have paid significantly less for the Vehicle.

4 36. In February 2021, Plaintiff Krukowski began to notice a burning smell
5 in his garage after returning from a trip in his Vehicle.

6 37. Neither Toyota nor any of its agents, dealers, or representatives
7 informed Plaintiff Krukowski of the Battery Defect prior to his purchase of the
8 Vehicle.

9 38. Had Plaintiff Krukowski been advised of the Battery Defect at or before
10 the point of sale, he would not have purchased his Vehicle or else would have paid
11 significantly less for the Vehicle. Plaintiff Krukowski did not receive the benefit of
12 his bargain.

13 39. Plaintiff Krukowski might purchase or lease a Class Vehicle in the
14 future, despite the fact it was once marred by false advertising or labeling, as Plaintiff
15 Krukowski may reasonably, but incorrectly, assume the Class Vehicles' Battery
16 Defect was remedied or improved. At all times, Plaintiff Krukowski, like all Class
17 Members, has attempted to drive his Toyota RAV4 in a manner that is and was both
18 foreseeable, and in which it was intended to be used.

19 **Plaintiff Pamela Woodman**

20 40. Plaintiff Pamela Woodman is a New Hampshire citizen who lives in
21 Dover, located in Strafford County, New Hampshire.

22 41. On or about January 2018, Plaintiff Woodman purchased a new 2018
23 Toyota RAV4 equipped with the 12V Battery from Bill Dube, Inc., an authorized
24 Toyota dealership located in Dover, New Hampshire. This vehicle was designed,
25 manufactured, sold, distributed, advertised, marketed, and/or warranted by Toyota.

26 42. Plaintiff Woodman purchased her vehicle for approximately
27 \$27,300.00.
28

1 43. Passenger safety and reliability were important factors in Plaintiff
2 Woodman's decision to purchase her vehicle. Before purchasing her 2018 Toyota
3 RAV4, Plaintiff Woodman researched the vehicle. Plaintiff Woodman believed that
4 the Toyota RAV4 would be a safe and reliable vehicle.

5 44. At the time of Plaintiff Woodman's purchase, Toyota knew that its
6 RAV4 12V batteries were defective, but the Toyota sales representative did not
7 disclose the Defect to Plaintiff Woodman when discussing the features, components,
8 and performance of the Vehicle prior to purchase. In reliance on these material
9 omissions and misrepresentations, Plaintiff Woodman purchased – then operated the
10 Vehicle on the reasonable but incorrect belief that the Vehicle's battery would
11 operate properly as warranted. Had Plaintiff Woodman been informed of the Battery
12 Defect prior to or at the time of purchase, she would not have purchased the Vehicle
13 or else would have paid significantly less for the Vehicle.

14 45. On or about May 12, 2020, Plaintiff Woodman was driving the vehicle
15 when she began to smell a burning rubber odor. As she pulled over the side of the
16 road, Plaintiff Woodman saw flames coming from the center console. She stopped
17 the vehicle and exited quickly, before the vehicle burned to its frame, including all
18 possessions inside the vehicle. As a result of the fire, Plaintiff Woodman's vehicle
19 is completely inoperable. Plaintiff Woodman has spent approximately \$10,000.00
20 as a result of Battery Defect.

21 46. Neither Toyota nor any of its agents, dealers, or representatives
22 informed Plaintiff Woodman of the Battery Defect prior to her purchase of the
23 Vehicle.

24 47. Had Plaintiff Woodman been advised of the Battery Defect at or before
25 the point of sale, she would not have purchased her Vehicle or else would have paid
26 significantly less for the Vehicle. Plaintiff Woodman did not receive the benefit of
27 her bargain.
28

1 48. Plaintiff Woodman might purchase or lease a Class Vehicle in the
2 future, despite the fact it was once marred by false advertising or labeling, as Plaintiff
3 Woodman may reasonably, but incorrectly, assume the Class Vehicles' Battery
4 Defect was remedied or improved. At all times, Plaintiff Woodman, like all Class
5 Members, has attempted to drive her Toyota RAV4 in a manner that is and was both
6 foreseeable, and in which it was intended to be used.

7 **Plaintiff Kris Huchteman**

8 49. Plaintiff Kris Huchteman is a Missouri citizen who lives in Bolivar,
9 located in Polk County, Missouri.

10 50. On or about June 17, 2017, Plaintiff Huchteman purchased a new 2017
11 Toyota RAV4 equipped with the 12V Battery from Joe Machens Toyota, an
12 authorized Toyota dealership located in Columbia, Missouri. This vehicle was
13 designed, manufactured, sold, distributed, advertised, marketed, and/or warranted by
14 Toyota.

15 51. Plaintiff Huchteman purchased her vehicle for approximately
16 \$32,809.00.

17 52. Passenger safety and reliability were important factors in Plaintiff
18 Huchteman's decision to purchase her vehicle. Before purchasing her 2017 Toyota
19 RAV4, Plaintiff Huchteman researched the vehicle. Plaintiff Huchteman believed
20 that the Toyota RAV4 would be a safe and reliable vehicle.

21 53. At the time of Plaintiff Huchteman's purchase, Toyota knew that its
22 RAV4 12V batteries were defective, but the Toyota sales representative did not
23 disclose the Defect to Plaintiff Huchteman when discussing the features,
24 components, and performance of the Vehicle prior to purchase. In reliance on these
25 material omissions and misrepresentations, Plaintiff Huchteman purchased – then
26 operated the Vehicle on the reasonable but incorrect belief that the Vehicle's battery
27 would operate properly as warranted. Had Plaintiff Huchteman been informed of the
28

1 Battery Defect prior to or at the time of purchase, she would not have purchased the
2 Vehicle or else would have paid significantly less for the Vehicle.

3 54. On or about July 16, 2020, Plaintiff Huchteman's spouse, Sarah
4 Huchteman, was driving the vehicle when she began to notice smoke coming from
5 the vehicle. Mrs. Huchteman immediately pulled the vehicle over to the side of the
6 road and exited the vehicle before it began to catch fire. Although the fire department
7 was able to extinguish the vehicle, it was deemed a complete loss. Plaintiff
8 Huchteman has spent approximately \$6,000.00 as a result of Battery Defect.

9 55. Neither Toyota nor any of its agents, dealers, or representatives
10 informed Plaintiff Huchteman of the Battery Defect prior to his purchase of the
11 Vehicle.

12 56. Had Plaintiff Huchteman been advised of the Battery Defect at or before
13 the point of sale, he would not have purchased his Vehicle or else would have paid
14 significantly less for the Vehicle. Plaintiff Huchteman did not receive the benefit of
15 his bargain.

16 57. Plaintiff Huchteman might purchase or lease a Class Vehicle in the
17 future, despite the fact it was once marred by false advertising or labeling, as Plaintiff
18 Huchteman may reasonably, but incorrectly, assume the Class Vehicles' Battery
19 Defect was remedied or improved. At all times, Plaintiff Huchteman, like all Class
20 Members, has attempted to drive her Toyota RAV4 in a manner that is and was both
21 foreseeable, and in which it was intended to be used.

22 **B. Defendants**

23 58. Defendants are all corporations doing business in the United States, and
24 they design, manufacture, distribute, market, sell, lease, warranty, service and/or
25 repair passenger vehicles, including Class Vehicles.

26 59. Founded in 1937 and headquartered in Toyota City, Japan, Defendant
27 Toyota Motor Corporation ("TMC") is a corporation organized under the laws of
28 Japan. TMC is the corporate parent of TMNA, and through its various subsidiaries

1 and affiliates, designs, manufactures, markets, distributes and warrants Toyota
2 automobiles throughout the fifty states. TMC manufactures and distributes
3 automobiles, as well as parts for Toyota branded vehicles, and is the parent company
4 of both TMS and TMNA. Discovery will show that TMC is responsible for the
5 design of the Class Vehicles, and also manufactures the Class Vehicles and the 12V
6 Battery, in Japan and in the United States through TMNA.

7 58. Defendant Toyota Motor North America, Inc. (“TMNA”), is a
8 corporation organized and in existence under the laws of the State of California and
9 registered to do business in the State of California. TMNA is headquartered at 6565
10 Headquarters Dr, Plano, TX 75024. According to Toyota’s official website, TMNA
11 “brings together Toyota’s marketing, sales, engineering and manufacturing arms in
12 North America on one shared, state-of-the-art campus.”¹ TMNA is the holding
13 company for all its parent company’s (TMC) North American operations, including
14 sales, engineering, and manufacturing subsidiaries. TMNA is the corporate parent
15 of Toyota Motor Sales, U.S.A., Inc. (“TMS”). TMNA oversees government and
16 regulatory affairs, energy, economic research, philanthropy, corporate advertising
17 and corporate communications for all of TMC’s North American operations.

18 59. Defendant Toyota Motor Sales, U.S.A., Inc. (“TMS”) is a corporation
19 organized and in existence under the laws of the State of California and registered
20 to do business in the State of California. TMS is headquartered at 6565 Headquarters
21 Dr, Plano, TX 75024. TMS is the sales, distribution, and marketing division for
22 TMC and TMNA, and oversees sales and other operations across the United States.
23 TMS markets motor vehicles, parts, and other products for sale in California, in the
24 United States, and throughout the world. TMS is the warrantor and distributor of
25 Class Vehicles in California and throughout the United States. Discovery will show
26 that TMS maintains the North American Parts Center in Ontario, California, which
27

28 ¹ <https://www.toyota.com/usa/operations/map.html#!/tcal> (last visited Jan. 30, 2020)

1 is responsible for shipping “goods to over 16 distribution centers across the US,”
2 and maintains the Los Angeles Parts Distribution Center in Torrance, California,
3 which “provide[s] daily service to over 240 Toyota and Lexus Dealers across
4 California and the western U.S.”²

5 60. In order to sell vehicles to the general public, TMS enters into
6 agreements with dealerships who are then authorized to sell Toyota-branded
7 vehicles to consumers such as Plaintiffs. In return for the exclusive right to sell new
8 Toyota vehicles in a geographic area, authorized dealerships are also permitted to
9 service and repair these vehicles under the warranties TMS provides directly to
10 consumers. These contracts give TMS a significant amount of control over the
11 actions of the dealerships, including sale and marketing of vehicles and parts for
12 those vehicles. All service and repairs at an authorized dealership are also completed
13 according to TMS’s explicit instructions, issued through service manuals, technical
14 service bulletins (“TSBs”), and other documents, that were created with input from
15 TMNA. Per the agreements between TMS and the authorized dealers, consumers
16 such as Plaintiffs can receive services under TMS’s issued warranties at dealer
17 locations that are convenient to them. TMS has a nationwide dealership network and
18 operates offices and facilities throughout the United States. TMS distributes Toyota
19 parts and vehicles, which are then sold through Defendants’ network of dealerships.
20 Money received from the purchase of a Toyota vehicle from a dealership flows from
21 the dealer to TMS.

22 61. At all relevant times, there exists a unity of ownership between TMC,
23 TMNA, and TMS and their agents such that any individuality or separateness
24 between them has ceased and each of them is the alter ego of the others. Adherence
25 to the fiction of the separate existence of Defendants, would, under the
26 circumstances set forth in this complaint, sanction fraud or promote injustice.

27
28

² <https://www.toyota.com/usa/operations/map.html#!/USCA> (last visited Jan. 30, 2020)

1 62. Upon information and belief, TMC communicates with TMNA and
2 TMS concerning virtually all aspects of Toyota products distributed within the
3 United States, including appropriate repairs for pervasive defects and whether
4 Toyota will cover those repairs under its New Vehicle Limited Warranty. Toyota's
5 decision to not disclose the Battery Defect to Plaintiffs or the Class was a decision
6 made jointly by TMC, TMNA, and TMS.

7 63. TMS also oversees Toyota's warranty operations, including reviewing
8 and analyzing warranty data submitted by Toyota dealerships in order to identify
9 defect trends in vehicles. Upon information and belief, Toyota requires that when a
10 repair is made under warranty, service centers must provide Defendants with
11 detailed documentation of the problem and repair. NOW collects this information,
12 makes it available to other Toyota divisions, and assists Toyota in determining
13 whether particular repairs are covered by Toyota's warranty or are indicative of a
14 pervasive defect.

15 64. Toyota also jointly designs, determines the substance of, and affixes to
16 its vehicles the window stickers visible on each new Toyota vehicle that is offered
17 for sale at its authorized dealerships, including those omitting mention of the Defect.
18 These stickers were reviewed by Plaintiffs and the Class prior to purchasing Class
19 Vehicles. Toyota controls the content of these window stickers; its authorized
20 dealerships have no input with respect to their content. Vehicle manufacturers like
21 Toyota are legally required to affix a window sticker to every vehicle offered for
22 sale in the United States pursuant to the Automobile Information Disclosure Act of
23 1958, 15 U.S.C. §§ 1231-1233, *et seq.* The Act specifically prohibits the removal or
24 alteration of the sticker by anyone other than the ultimate purchaser prior to the sale
25 of the car, including the dealership at which the vehicle is offered for sale.

26 65. Toyota developed and disseminated the marketing materials to which
27 Plaintiffs and the Class were exposed, including owner's manuals, informational
28 brochures, warranty booklets, and information included in maintenance

1 recommendations and/or schedules for the Class Vehicles, and other promotional
2 materials relating to the Class Vehicles, all of which fail to disclose the Defect.

3 66. Toyota also employs a Customer Experience Center, where
4 representatives are responsible for receiving customer complaints and monitoring
5 customer complaints posted to Toyota or third-party websites. This data is received
6 by NOW, through which Toyota acquires knowledge of defect trends in its vehicles.

7 67. Defendants, through their various entities, design, manufacture,
8 market, distribute, service, repair, sell, and lease passenger vehicles, including the
9 Class Vehicles, nationwide and in California.

10 68. At all relevant times, Defendants were and are engaged in the business
11 of designing, manufacturing, constructing, assembling, marketing, distributing, and
12 selling automobiles and motor vehicle components in Riverside County and
13 throughout the United States of America.

14 **III. JURISDICTION AND VENUE**

15 69. The Court has subject matter jurisdiction over this action under the
16 Class Action Fairness Act (“CAFA”), 28 U.S.C. § 1332(d). There are at least 100
17 members in the proposed class, the aggregated claims of the individual Class
18 Members exceed the sum or value of \$5,000,000.00 exclusive of interest and costs,
19 and Plaintiffs and Class Members are citizens of states different from Defendant.

20 70. The Court has personal jurisdiction over Toyota because, through its
21 business of distributing, selling, and leasing the Class Vehicles in this District,
22 Toyota has established sufficient contacts in this District such that personal
23 jurisdiction is appropriate.

24 71. Venue is proper in this District under 28 U.S.C. § 1391(a) because a
25 substantial part of the events or omissions giving rise to Plaintiffs’ claims occurred
26 in this District. Specifically, TMNA and TMS are incorporated in this District.

27 **IV. FACTUAL ALLEGATIONS**

28 **A. The Nature Of The Battery Defect**

1 72. A typical 12V car battery is contained in a plastic case that holds all of
2 the internal components in place. The top of the battery is a plastic lid that has a
3 positive and negative terminal made of lead. These are called terminal posts.

4 73. The battery casing is divided into six separate chambers separated by a
5 plastic wall. Each chamber is known as a cell. A 12V battery consists of six
6 individual cells that generate around 2 volts. Each cell is connected to the positive
7 of the next cell via two lead plate straps to give a total voltage of around 12V.

8 74. The battery uses a lead-acid chemical reaction. Each cell consists of
9 two plates, one made from lead and the other from lead dioxide. The plates are
10 submerged in sulfuric acid, which acts as a catalyst and triggers a chemical reaction
11 between them. This reaction produces electrons, which generate electricity. The
12 electricity is then released through the positive terminal and returned to the negative
13 terminal.

14 75. When the driver switches the vehicle ignition on, it sends a signal to
15 the battery to begin the chemical reaction. The electricity produced by this reaction
16 supplies power to the starter motor, which then turns the engine over. At the same
17 time, the battery provides power to the spark plugs, which ignite the air and fuel
18 mixture that is compressed in the engine combustion cylinders.

19 76. The power provided by the battery is then replaced by the alternator,
20 which supplies most of the electrical current to the electrical systems in the vehicle,
21 as well as keeps the battery charged.

22 77. In order to keep a battery secured firmly in place in the battery tray,
23 manufacturers such as Toyota use hold down straps or frames to prolong the life of
24 the battery. This both minimizes excessive vibration of the battery while the vehicle
25 is in use and prevents the battery from coming into contact with other components
26 of the engine which could cause it to short.

27 78. In this case, the Class Vehicles contain one or more design and/or
28 manufacturing defects that cause electrical shorts when the battery's B+ terminals

1 comes into contact with the battery hold down frame itself, making the Class
2 Vehicles unsafe to drive.

3 79. When the battery short circuits, there may be a sudden loss of electrical
4 power, vehicle stalling, and/or a fire originating in the engine compartment

5 80. Short circuits occur when there is a fault in the wiring harness, which
6 shunts electricity between circuits before it gets to its destination. When the hold
7 down frame comes into contact with the B+ terminal, it causes a short circuit in that
8 the electrical current is directed away from its intended destination.

9 81. Short circuits are extremely dangerous and can damage electronic
10 components, set the check engine light, blow fuses, drain the battery, and leave
11 drivers stranded. Short circuits can also cause excessive heat to wiring components
12 and can result in smoke and fire. It is common for the object which caused the
13 external short circuit to melt or fuse to the battery due to the heat produced.

14 82. Class Member complaints to NHTSA, cited *infra*, as well as the
15 hundreds of complaints Toyota has received directly from consumers, and the
16 complaints Toyota has received via its authorized dealerships, demonstrate the
17 unsafe and widespread nature of the Battery Defect and Defendants' awareness that
18 the Defect existed before selling the Class Vehicles to Plaintiffs.

19 83. On or about February 25, 2021, NHTSA opened an investigation into
20 the Class Vehicles and a "thermal event originating in the left side of the engine
21 compartment" of the Class Vehicles.³

22 84. NHTSA's investigation summary reports:

23 A majority of thermal events occurred during driving conditions, with
24 four taking place with the ignition off. Drivers experienced stalling
25 prior to the thermal event in half of the instances where the vehicle was
26 in motion. The twelve-volt battery was identified as the area of origin
27

28 ³ <https://static.nhtsa.gov/odi/inv/2021/INOA-PE21005-5918.PDF>

1 in a majority of the incidents reviewed.⁴

2 85. NHTSA opened the investigation after receiving eleven complaints
3 from consumers and additional Early Warning Report (“EWR”) data from Toyota.
4 The investigation remains open for NHTSA to “better understand the contributing
5 factors and frequency of vehicle fires originating from the battery region” of the
6 Class Vehicles.⁵

7 **B. Toyota Had Superior and Exclusive Knowledge of the Battery Defect**

8 86. Toyota had superior and exclusive knowledge of the Battery Defect and
9 knew or should have known that the Defect was not known or reasonably
10 discoverable by Plaintiffs and Class Members before they purchased or leased the
11 Class Vehicles.

12 87. Plaintiffs are informed and believe and based thereon allege that before
13 Plaintiffs purchased or leased their respective Class Vehicles, and Toyota knew
14 about the Battery Defect through sources not available to consumers, including pre-
15 release testing data, such as design mode failure analysis, early consumer complaints
16 to Toyota and its dealers, testing conducted in response to those complaints, high
17 failure rates and replacement part sales data, and other aggregate data from Toyota
18 dealers about the problem. Publicly available facts set forth infra further confirm
19 Toyota’s knowledge.

20 88. Toyota is experienced in the design and manufacture of consumer
21 vehicles. As an experienced manufacturer, Toyota conducts tests, including pre-sale
22 durability testing, on vehicle components such as the batteries in Class Vehicles, to
23 verify the parts are free from defect and align with Toyota’s specifications. Further,
24 pre-production testing on vehicles and their components is designed to be harsher
25 than expected “real-world” driving experience of consumers. Such testing
26 necessarily includes testing the vehicle battery as well as any other testing which
27

28 ⁴ *Id.*

⁵ *Id.*

1 certainly engages the vehicle battery. Thus, Toyota knew or should have known that
2 the batteries in Class Vehicles were defective and may cause the Class Vehicles to
3 suddenly lose electrical power, stall, smoke, or catch fire.

4 89. Moreover, Toyota is experienced in the design and manufacture of
5 consumer vehicles. As an experienced manufacturer, Toyota conducts tests,
6 including pre-sale durability, reliability, and safety testing, to verify the Class
7 Vehicles and their components are free from defects and align with Toyota's
8 specifications. Toyota also uses pre-production testing to evaluate assembly
9 methods and manufacturing workflows, in addition to evaluating the final product –
10 the car. Thus, Toyota knew or should have known of the Battery Defect and its
11 inherent risk to the vehicle's safety.

12 90. Toyota's pre-production vehicle testing is particularly robust, as
13 demonstrated by a timeline of vehicle testing and evaluation published on TMC's
14 website, www.toyota-global.com, which discovery will show is conducted in
15 concert with TNMA. Testing includes test driving the vehicle on the four test tracks
16 at the Tahara Plant, TMC's main manufacturing facility in Japan, at the Shibetsu
17 Proving Ground in Hokkaido, Japan, or at the Toyota Arizona Proving Ground in
18 Wittman, Arizona. The Proving Ground facilities enable Toyota to conduct
19 continuous driving tests at 250 kilometer/hour in both extreme temperatures.
20 Testing at these facilities would necessarily include circumstances that may result in
21 the battery to short, and as such, Toyota would have become aware of the Battery
22 Defect.

23 91. Additionally, Toyota should have learned and did learn of this
24 widespread Defect from the sheer number of reports received from dealerships and
25 from customer complaints directly to Toyota. Toyota's customer relations
26 department collects and analyzes field data including, but not limited to, repair
27 requests made at dealerships, technical reports prepared by engineers who have
28

1 reviewed vehicles for which warranty coverage is being requested, parts sales
2 reports, and warranty claims data.

3 92. Since the Class Vehicles were sold, drivers have repeatedly complained
4 about sudden loss of electrical power, vehicle stalling, and/or fire in the engine
5 compartment. For the Class Vehicles at issue, there was an unusually large number
6 of these complaints such that Toyota was put on notice of a specific problem.

7 93. Namely, as the consumer complaints below indicate, Toyota was
8 aware, or should have been aware, that the Battery Defect was present in the Class
9 Vehicles dating back to at least 2016 when Toyota began receiving customer
10 complaints through NHTSA.

11 94. Thus, by 2016, Toyota knew or should have known through sufficient
12 product testing, consumer complaints, or other methods, that the Class Vehicles
13 contained the Battery Defect.

14 95. In addition to consumer complaints, there were several high-profile
15 incidents where Toyota RAV4s caught fire and exploded.

16 96. For example, in June 2018, a Minneapolis couple's brand new 2018
17 model year RAV4 spontaneously caught fire in the middle of the night while the car
18 was turned off. The fire department arrived and while they were laying down a hose
19 line, the vehicle violently exploded. After investigating the fire, Toyota suggested
20 that it that an improperly routed tow hitch wiring could have started the fire and
21 refused to compensate the couple.⁶

22 97. In March 2019, a San Diego family's 2017 RAV4 began to suddenly
23 smoke under the steering column. Seconds after the family safely evacuated, the
24 interior of the car was on fire. The fire department did not determine the cause of
25

26
27
28 ⁶ <https://www.consumeraffairs.com/news/it-was-their-brand-new-toyota-it-exploded-in-their-driveway-and-no-one-can-explain-why-112718.html> (last visited May 20, 2021).

1 the fire. When the owner tried to contact Toyota regarding the fire, the owner
2 reported that Toyota's customer service was difficult to contact.⁷

3 98. These events and the customer complaints referenced below,
4 demonstrate that Toyota had knowledge of the Battery Defect yet continued to fail
5 to warn drivers or provide an adequate remedy.

6 99. Hundreds, if not thousands, of purchasers and lessees of the Class
7 Vehicles have experienced the Battery Defect. Complaints filed by consumers with
8 the NHTSA and posted on the Internet demonstrate that the Battery Defect is
9 widespread. Not only have consumers complained about sudden loss of Vehicle
10 power and stalling, but this Defect has often led to potentially life-threatening
11 situations. In addition, these complaints evidence Toyota's awareness of the Battery
12 Defect and its potential danger (note that spelling and grammar mistakes remain as
13 found in the original).

14 100. Toyota monitors customers' complaints made to NHTSA. Federal law
15 requires automakers like Toyota to be in close contact with NHTSA regarding
16 potential automobile defects, including imposing a legal requirement (backed by
17 criminal penalties) compelling the confidential disclosure of defects and related data
18 by automakers to NHTSA, including field reports, customer complaints, and
19 warranty data. See TREAD Act, Pub. L. No. 106-414, 114 Stat.1800 (2000).

20 101. Automakers have a legal obligation to identify and report emerging
21 safety-related defects to NHTSA under the Early Warning Report requirements. *Id.*
22 Similarly, automakers monitor NHTSA databases for consumer complaints
23 regarding their automobiles as part of their ongoing obligation to identify potential
24 defects in their vehicles, including safety-related defects. *Id.* Thus, Toyota knew of
25 the many complaints about the Battery Defect logged by the NHTSA Office of
26

27 _____
28 ⁷ [https://www.consumeraffairs.com/news/another-new-toyota-rav4-has-exploded-
this-time-while-its-owner-was-taking-his-children-to-school-032219.html](https://www.consumeraffairs.com/news/another-new-toyota-rav4-has-exploded-this-time-while-its-owner-was-taking-his-children-to-school-032219.html) (last visited May 20,
2021).

1 Defect Investigation (ODI), and the content, consistency, and large number of those
2 complaints alerted, or would have alerted, Toyota to the Battery Defect.

3 102. Complaints filed by consumers with the NHTSA and other websites,
4 which Toyota actively monitored during the relevant period, continue to accrue and
5 demonstrate that the Battery Defect is a widespread, dangerous, and unresolved
6 problem. The following are examples of many complaints from owners and lessees
7 of the Class Vehicles concerning the Battery available through NHTSA's website,
8 www.safercar.gov. Spelling and grammar mistakes appear as in original.

9 103. For example, complaints to NHTSA involving the Battery Defect
10 include:

11
12 **a) 2018 Toyota RAV4**

- 13 i. NHTSA Complaint from March 14, 2021 (Lenox, MA): This car started a fire
14 on the road while it was in motion, and after i drove it over a mile on a city
15 street on April 22nd, 2019. I stopped the car and turned off the car after i saw
16 smoke came out of the hood in front of driver side windshield. I left the car
17 immediately to call for help. Less than a minute, after I left the car, the fire
18 started, the flames went up to 10 feet high in a short 2 minutes, in less than 10
19 minutes, before the firemen put fire off, the car was burned to the frame with
20 nothing left inside. The car was driven a little over 6000 miles at the time.
21 Toyota has not covered any of my loss and taken the responsibility. (ID #
22 11402838)
- 23 ii. NHTSA Complaint from March 11, 2021 (Alexandria, VA): While driving,
24 there is a little shakes on the car and a message appeared that the anti locking
25 brake failed. I stop the vehicle and I saw smoke coming from the hood. I turned
26 off the vehicle and took the key from the ignition. A fire start coming out of
27 the hood and I told my wife to get out of the vehicle and I get out also, the
28 driver of a vehicle behind us called the fire department and in a few minutes
the fire fighters arrived and start extinguishing the fire. The fire engulf the
whole vehicle. (ID # 11400275)
- iii. NHTSA Complaint from March 5, 2021 (Gulf Shores, AL): TL* the contact
owns a 2018 Toyota RAV4. The contact stated while driving at 55 mph, when
the vehicle stalled. the contact stated no warning light was illuminated. The

1 contact stated she saw smoke exit the hood. The contact was able to park on
2 the side of the road. The vehicle was not drivable. The vehicle was towed to
3 her residence. The contact called local dealer eastern shore Toyota (29732
4 Frederick Blvd, Daphne, AL 36526: (251) 250-0161) and were made aware of
5 the failure. The vehicle had not been diagnosed or repaired. the manufacturer
6 had been informed of the failure. The failure mileage was approximately
7 30,000. (ID # 11399349)

8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
iv. NHTSA Complaint from March 4, 2021 (Virginia Beach, VA): Constant
battery failure on 2018 Rav 4. Replaced Jan 2020 and again March 2021. All
the lights lit up, bells & whistles then dead. Have called triple a so many times
we are out of service unless upgrade plan. Dealer states car not driven enough
(despite driven several times per week) but dealer would not state how much
car should be driven to avoid battery failure issue. Also noted squirrel had built
nest under the hood with insulation. Notified dealer of all & they replaced
battery which was not included in warranty that is active. Vehicle was
stationary. Concerned as others having same issue and some with battery
explosion/fire. My mom is elderly and concerned about her being stranded out
and about or worse fire hazard. (ID # 11399097)

v. NHTSA Complaint from May 9, 2019 (Joplin, MO): TL* The contact owned
a 2018 Toyota RAV4. The contact stated after parking and returning to the
vehicle in their garage, smoke was seen coming from the vehicle. The contact
quickly entered the vehicle and reversed the vehicle out of the garage. The fire
department was called and extinguished the fire. a police report was filed. No
injuries were sustained. the vehicle was destroyed by the fire. the contact called
Frank Fletcher Toyota (2209 S Rangeline Rd, Joplin, MO 64804 (417) 622-
5447) and was informed that since the vehicle was moved they could offer no
assistance. The manufacturer was not made aware of the failure. The failure
mileage was 48,000. The vin was not available. (ID # 11206563)

vi. NHTSA Complaint from April 2, 2019 (San Diego, CA): My 2018 Toyota
RAV4 has stalled 5 times while driving on city streets in moving traffic, first
time in Feb 2019 while driving home from work, in April three times while
driving to work and one time while driving home from work(rush hour). all
documented with Toyota. Occurs when I take my foot off the gas while
driving, and difficulty restarting after it stalls with loss of power and
sputtering. 'charging system malfunction' warning msg appeared on
dashboard(I took photo and emailed to Toyota). I followed instructions in 2018
Toyotal RAV4 owner's manual "stop the car immediately...continuing to drive
the vehicle may be dangerous". Had car towed to Toyota immediately. 3

1 trouble codes were recorded P1603(engine stall), P1604 startability
2 malfunction, and P1605(rough idling), however they were unable to determine
3 root cause of stalling and refused to keep my car to do further analysis despite
4 the fact that I told them I did not feel safe driving vehicle, and my car is still
5 under comprehensive warranty coverage. I contacted corporate, and they
6 restated dealer conclusions and would not allow me to speak to a field tech
7 specialist. I then emailed and wrote a letter to VP sales of Toyota, Andrew
8 Gilleland. Rep from executive office called me. I asked for Toyota to provide
9 me with either transportation assistance and a no cost-to-me extended
10 comprehensive warranty until the underlying cause is determined and without
11 further stalling incidences, or a replacement vehicle. He refused, despite all the
12 significant potentially dangerous safety issues in a vehicle with less than 9,200
13 miles. Toyota does not appear to be concerned with reliability, peace of mind,
14 and most of all safety. I have a case # with Toyota. I recently discovered there
15 are several other reports on this site with same stalling issues as my car. (ID #
16 11205343)

17 vii. NHTSA Complaint from February 29, 2019 (Parsippany, NJ): I was driving to
18 work around 740AM on 287 South just past RT 24. Dashboard has "4WD"
19 warning and smoke coming out from hood. I quickly moved to the shoulder
20 and fire broke out before car came to full stop, all within one minute. I barely
21 escape the car and called police and fire dept. They came and put off the fire.
22 There are two explosions before the fire was put off. (ID # 11183106)

23 viii. NHTSA Complaint from February 10, 2019 (Pine Mountain, GA): While
24 driving the car just shut down and the code read charging system malfunction,
25 we had it towed to the dealership and they erased the codes but they
26 acknowledged they existed however they said there is nothing wrong and want
27 us to continue driving this vehicle with no assurance it will not happen again.
28 (ID # 11176121)

ix. NHTSA Complaint from January 2, 2019 (Alpharetta, GA): After purchasing
our brand-new 2018 RAV4 from authorized Toyota dealer, we were heading
back home. On our way, we noticed burning smell followed by black smoke
filled front side of the cabin. I quickly moved my car to the right side parking
lot. while changing the lane I could not even see the right mirror because of
the black smoke in the cabin. as soon as I parked the car and we got off the car,
within a few seconds flames from the hoods were noticed I called emergency
service (911) and to our disbelief to watch our new car burning in front of us.
It was only 15 mins drive from dealer when we the incident happened. It took

1 only 10 mins to see my car was destroyed by flames. I could not get anything
2 out from front or back seats (ID # 11164698)

- 3 x. NHTSA Complaint from October 1, 2018: While driving on Saturday morning
4 9/29/18, I stopped at a stop light and my 2018 Toyota RAV4 lost all engine
5 power while in traffic. The computer video screen showed the message
6 "charging system failure\malfunction". I then attempted to restart the vehicle
7 and it did not crank over, I waited a few seconds, made another attempt, the
8 vehicle started. I pulled over and parked the vehicle, looked up the error
9 message in the car manual and it instructed me that it was a serious problem
10 and to take the vehicle immediately to the nearest Toyota dealer. I then took
11 the vehicle to my local dealer, they ran a vehicle diagnostic report, they found
12 no error messages or voltage problems with the vehicle. They offered no
13 reason for the loss of vehicle power. The service manager stated that they could
14 only diagnose the vehicle so far and that they would need "corporate" to send
15 someone out to do further diagnostics on the black box. On 10/1/18, I opened
16 a problem report with Toyota USA and was given a case#. (ID # 1132810)
- 17 xi. NHTSA Complaint from August 22, 2018: My RAV4 caught fire in the middle
18 of the night while parked on the street in front of my house. it had been parked
19 for 12+ hours. After burning for about 10 minutes, it exploded with a force so
20 great that it lifted the car onto the curb, knocked over a firefighter, and
21 damaged our boat parked 10 feet across the street. The inspector from the fire
22 department determined the initial fire was from faulty electrical wiring but said
23 he had never seen a car explode in his 25 years on the force. Toyota conducted
24 their own investigation and agreed it was electrical but could not determine
25 fault due to the severity of the damage (ID # 1121578)

26 **b) 2017 Toyota RAV4**

- 27 i. NHTSA Complaint from March 10, 2021: TL* The contact owned a 2017
28 Toyota RAV4. The contact stated that after parking and exiting the vehicle,
she noticed smoke coming from the engine then the engine caught fire. The
vehicle was towed and the insurance company deemed it totaled. The contact
informed the dealer Jay Wolfe Toyota of West County (14700 Manchester Rd,
Ballwin, MO 63011) and the manufacturer of the failure. The failure mileage
was 50,000. (ID # 11400228)
- ii. NHTSA Complaint from March 5, 2021 (Irmo, SC): While I was at my local
dealership they let me know my battery kept coming back weak. I have also

1 noticed how my car seems to almost stall out sometimes while driving. It
2 hasn't but this makes me very nervous while driving (ID # 11399365)

3 iii. NHTSA Complaint from March 5, 2021 (West Warwick, RI): I was stopped
4 at a red light and suddenly the battery light came on and the car shut down
5 completely. I could not steer or move. After a moment I was able to start the
6 car and proceed home. That was the only time it has happened and it occurred
7 in October of 2020. I brought the car to my mechanic a few days later and they
8 could not find a problem. Invoice is attached. (ID # 11399310)

9 iv. NHTSA Complaint from March 2, 2021 (Cedar Hill, TX): Please see attached
10 sheet for all that has happened since I purchased the car. I've had to replace the
11 battery 2 times in 3 years as well. I have new battery and it became corroded
12 fast. My car kept telling me there was an electrical issue and the check engine
13 light would come on and all of the fails led to the transmission issues. (ID #
14 11398650)

15 v. NHTSA Complaint from August 11, 2020 (Lyons, CO): TL* The contact
16 owned a 2017 Toyota RAV4 hybrid. the contact stated that while driving
17 approximately 50 mph, the check engine light suddenly illuminated, warning
18 messages began to display on the dash screen; before white smoke was present
19 coming from under the hood of the vehicle. Moments later flames were coming
20 from the engine compartment. The fire department was called to the scene and
21 extinguished the flames. During the incident, the vehicle was destroyed and
22 towed away. The cause of the failure was not determined. The manufacturer
23 and local dealer Larry Miller Toyota (2465 48th Ct. Boulder, CO 80301) were
24 notified of the incident. The failure mileage was 66,500. (ID # 11348663)

25 vi. NHTSA Complaint from June 3, 2020 (Manvel, TX): I had own 2017 Toyota
26 RAV4le for less than 3 years and less then 25000 mile, we follow the
27 instructions to have a schedule maintenance. We have never experience any
28 problem at all, overall it was good driving car. However, on 5/4/2020, I parked
my car at parking lot, turned off engine. I heard gentle click click two sound,
do not realized it was from my car (other people was unload stuff). I open the
driver side door get ready to off my car and go. I smelled rubber burning. I
look around and see my engine had light smoke came out from engine, then
became darker smoke, and follow by fire. I called 911, they send a fire
department to put off the fire for me. My Toyota RAV4 le was all burned by
unknown reason. I do not smoke, I paid off my car and I have no financial gain
to have car burn. I just want to warning other owner, it could happened to you,
I was lucky to be able to work out from my burning vehicle. My car was under

1 warranty, but Toyota dealer stated that they would not able to honor such
2 warranty, asked me call headquarter, I tried to email but after I upload pictures
3 and it was suddenly intercepted in the cloud-disappear. I am report this incident
4 to warning others. *TR (ID # 11327143)

5 vii. NHTSA Complaint from March 11, 2020 (Seattle, WA): While I was driving
6 home from work on Thursday, March 5, 2020, I smelled smoke. I looked at
7 the temperature on the dashboard and it showed that the temperature was a
8 little below the middle line indicating the vehicle was not hot. I continued
9 driving for a couple more blocks and continued to smell smoke so attempted
10 to pull over into a parking lot. When I tried to pull over, the vehicle stopped
11 on its own so i was half way between the street and parking lot. I saw smoke
12 come out from under the hood of the vehicle. About two minutes later, flames
13 started coming out from under the hood. The vehicle caught fire. (ID #
14 11317639)

15 viii. NHTSA Complaint from February 10, 2020 (Baltimore, MD): TL* The
16 contact owned a 2017 Toyota RAV4. The contact stated that while her
17 daughter was making a turn the steering wheel ceased as white smoke was seen
18 coming from under the hood. the contact stated that the vehicle came to a stop
19 as flames were seen coming from under the hood and from underneath the
20 vehicle. the contact's daughter was able to exit the vehicle with no injuries.
21 The fire department was called and extinguished the fire. A fire department
22 report was filed. the contact stated was awaiting inspection by the insurance
23 company. The manufacturer the dealership was made of aware of the failure.
24 the vehicle failure was not diagnosed by a dealer or independent mechanic.
25 The manufacturer was made aware of the failure, however no assistance was
26 offered. the approximate failure mileage was 57,000. (ID # 11308368)

27 ix. NHTSA Complaint from August 20, 2019: TL* The contact owns a 2017
28 Toyota rav4. While driving approximately 10 mph, the vehicle stalled. in
addition, the traction control and charging system malfunction indicators
illuminated. the vehicle was able to restart and was taken to Toyota of
Hollywood (6000 Hollywood Blvd., Hollywood CA, 323-498-2260) to be
diagnosed. the results were unknown. The vehicle was being repaired under
warranty. the manufacturer was not contacted. the failure mileage was 27,220.
(ID # 11245340)

x. NHTSA Complaint from June 1, 2018 (Verona, PA): I was driving home and
at a red light when my RAV4 started to shake and feel as though it was going
to stall out. Everything shut down and I was unable to move. I received the

1 following error on our display, "charging system malfunction". After a few
2 seconds I was able to turn my vehicle on and proceed through the intersection.
3 Approximately one minute later it started to stutter again. I was able to make
4 it to my driveway before it turned off and lost power. I informed my husband
5 what had happened and he took the vehicle out to see if the same error would
6 occur. Within five minutes into his drive the vehicle shut off. We had it towed
7 to our Toyota dealership, as we just purchased this RAV4 brand new nine
8 months ago. The service department conducted multiple tests and informed us
9 that everything was fine. It is a little unnerving to know that the vehicle I drive
10 could completely turn off, potentially on a busy highway. The risk for serious
11 injury or death, to me or my family, is high if this occurs. Again, to recap, the
12 vehicle shut down while stopped at a red light and also when it was in motion.
13 (ID # 1100181)

14 **c) 2016 Toyota RAV4**

- 15 i. NHTSA Complaint from March 9, 2021 (Lakewood, NJ): While driving on a
16 local road I started to lose electrical power. At first I lost power steering and
17 shortly after the heat stopped working and all the lights on the dashboard lit
18 up. When I brought the car to be diagnosed the fuse box had been burned and
19 wires melted and there was smoke indicating there had been a fire around the
20 fuse/electrical area (ID # 11399953)
- 21 ii. NHTSA Complaint from March 3, 2021 (San Antonio, TX): My brand new
22 car caught fire in the front while it was parked outside a restaurant. I came
23 outside to leave and it was towed away. The car was totaled from the fire. I
24 saw the RAV4 investigation is happening and wanted to make sure you had
25 my report included. the fire happened in the front left (as it was stated in the
26 article other cars). I can send you additional details if needed but everything is
27 matching up with the other incidents. it was a brand new car which is why it
28 was such a strange event. (ID # 11398858)
- iii. NHTSA Complaint from March 2, 2021 (Stafford, VA): TL* The contact
owned a 2016 Toyota RAV4. while her husband was making a right turn at 30
mph, the vehicle abruptly shut off without warning; however, her husband was
able to restart the vehicle upon depression of the accelerator pedal. as they
continued to drive, the failure occurred two more times and after the third
failure, a blackish smoke began to emit from underneath the front passenger
side of the hood. The contact's husband was able to exit the vehicle and
extinguish the fire with a water bottle. The authorities were called to the scene,
and the fire department removed the battery from the vehicle. a fire and police

1 report were filed; no injuries were reported. due to the failure, the vehicle was
2 towed to Sheehy Toyota of StafToyota(95 Garrisonville Rd, StafToyota, VA
3 22554) where they initially gave the contact an estimate to replace the vehicle
4 parts in order to check if the vehicle was still operable. Due to the high cost of
5 the repair, her insurance company deemed the vehicle total loss and was
6 destroyed. The manufacturer had yet to be notified of the failure. the vehicle
7 had been destroyed. the failure mileage was 44,156. (ID # 11398767)

8 iv. NHTSA Complaint from October 3, 2017 (Houston, TX): I was driving on the
9 highway and smoke began to fill my vehicle. I pulled over and my vehicle
10 caught fire. Unsure of the cause. (ID # 11031632)

11 **d) 2015 Toyota RAV4**

12 i. NHTSA Complaint from March 17, 2021 (Venice, FL): The vehicle stalled
13 while i was driving on a highway at approximately 55 mph. I had been driving
14 for 15 minutes. I lost power at the dashboard, lost power steering, and the
15 engine stopped running. I coasted to a side street and stopped the car. I opened
16 the hood, and discovered a fire in the engine compartment. The battery cable
17 closest to the engine was on fire, and had melted one corner of the battery. A
18 passerby helped extinguish the fire, and the fire department was called to
19 inspect and make sure the fire was out. Earlier that day, the vehicle stalled in
20 the same way while driving approximately 5 mph in a parking lot, but the
21 power came back in a few seconds. Immediately preceding that was a 1-hour
22 drive at interstate highway speeds with no troubles. (ID # 11403613)

23 ii. NHTSA Complaint from September 29, 2020 (Westminster, CA): The car was
24 running on the street in the city when it suddenly stopped, fire and smoke rose
25 from the battery's side. After extinguishing the fire, the vehicle could not
26 move, and had to call the tow truck to the repair shop. I have witnesses. (ID #
27 11398820)

28 iii. NHTSA Complaint from March 3, 2020 (Rockville, MD): Shortly after driving
with no issues, the parked car started to smoke from underneath the hood.
within seconds, a large fire had started which completely consumed the car
and also spread to my wife's car and the house's carport. Insurance investigator
informed us that the fire likely started in/near the engine towards the drivers
side based on where the hottest parts of the fire appeared to have been.
however, no conclusive determination was made regarding the cause. The car
was in good condition and had not had any maintenance work performed on it
recently. There were also no signs of intrusion by rodents or other animals.

1 This happened with no warning. I've also since learned this had happened only
2 one month before to the parents of one of our childrens' friends. They also had
3 a RAV4, although not the same model year (i believe it was a 2013). I have
4 also seen many other reports while researching this issue. If there is a defect
5 or design flaw contributing to these fires, it should be addressed quickly! (ID
6 # 11315799)

7 iv. NHTSA Complaint from February 25, 2020 (Rutledge, TN): I was driving on
8 the interstate entrance ramp when the battery died but then i was able to start
9 it back and drove just a short distance when the hood started smoking. I pulled
10 over and turned the motor off and raised the hood, and the battery was on fire.
11 the battery and electrical system burned. (ID # 11311546)

12 v. NHTSA Complaint from August 27, 2019 (Yonkers, NY): I drove for a few
13 seconds, less than a block out of a parking lot, onto a local street, when my
14 2015 RAV4 suddenly shut down and smoke starting coming out from under
15 the hood. I turned the steering wheel to roll to the side of the road and get out
16 of the way of traffic, and got out of the car to walk far away. I saw flames
17 under the front of the car and called 911. (ID # 11246595)

18 vi. NHTSA Complaint from October 7, 2018 (McKinney, TX): Car stalled so I
19 pulled over. There was smoking under the hood. Within minutes it turned into
20 a big fire. Fire department had to be called. (ID # 1113884)

21 e) **2014 Toyota RAV4**

22 i. NHTSA Complaint from April 7, 2021 (Gnadenhutten, OH): On March 20,
23 my 2014 Toyota RAV4 caught fire. It was parked in my garage and had not
24 been moved for at least 24 hours. The car fire caught the rafters in my attached
25 garage and then caught the rest of my home on fire. (ID #11406924)

26 ii. NHTSA Complaint from March 24, 2021 (Park City, UT): While I was driving
27 in Capitol Reef National Park on a well graded and fully maintained dirt road,
28 all the lights in my dash started flickering, and then my cars engine shut down.
It felt like I was driving / coasting in neutral. I pulled over and put the car in
park, then smoke started coming from beneath the hood. I got out of the car. It
was a little smoke, then more, and then subsided to being barley noticeable
after a couple of minutes. After it subsided, I got back in the car to try to start
it, hoping it was an overheated engine and I might get the car to turn over. It
would not start. I called a tow truck. Shortly after that, I noticed a hissing noise
coming from beneath the hood, saw a liquid dripping beneath the the front left

1 (drivers side) part of the car. I also saw a small flame. I called 911 to report
2 that my car was on fire. Within 10-15 minutes, the car was completely engulfed
3 in flames. The park ranger, sheriff, and fire department showed up shortly after
4 that. A charred car frame is essentially what's left. (ID # 11404722)

5 iii. NHTSA Complaint from March 2, 2021 (Glennallen, AK): Over the past three
6 months, the electrical system will restart while I'm driving, usually when
7 flicking on my brights. I got the car checked and the mechanics stated it
8 probably was from the build up on the battery. There were a couple days when
9 the battery was completely dead. Thanks for any advice. (ID # 11398781)

10 iv. NHTSA Complaint from January 22, 2021 (Ponte Vedra Beach, FL): TL* the
11 contact owned a 2014 Toyota RAV4. The contact stated while driving
12 approximately 5 mph, the vehicle caught on fire coming in the driver's side
13 engine compartment. the fire department was contacted and arrived at the
14 scene and extinguished the fire. the vehicle was towed to independent
15 mechanic where it was deemed a total loss. Upon investigation, the contact
16 associated the failure with NHTSA campaign number: 15v011000 (trailer
17 hitches, exterior lighting) however, the vin was not included. The
18 manufacturer was not informed of the failure. The failure mileage was
19 approximately 51,000. (ID # 11394683)

20 **f) 2013 Toyota RAV4**

21 i. NHTSA Complaint from May 1, 2021 (Canton, MA): The car was parked and
22 off. The engine compartment burst into flames. Firefighters had to extinguish.
23 Car is a total loss. (ID # 114723)

24 ii. NHTSA Complaint from April 7, 2021: TL* The contact owns a 2013 Toyota
25 RAV-4. The contact stated the while the vehicle was parked, the contact stated
26 they noticed smoke coming from underneath the hood from the engine. The
27 contact got out the vehicle and called 911. The vehicle engulfed in flames and
28 no one was injured during the fire. The fire department was notified and
extinguished the fire. a fire department report was filed. There was no warning
light illuminated. The vehicle was towed to a tow yard. The vehicle was not
inspected or diagnosed by insurance company. The manufacturer was not
made aware of the failure. The failure mileage was 75,000. (ID # 11406921)

iii. NHTSA Complaint from December 7, 2020: Vehicle was parked in parking
lot, ignition turned off. Left car for approximately 1-2 minutes, returned to
parking lot to find vehicle had caught fire. Fire appeared to originate in front

1 of vehicle. Fire department was called and fire extinguished. Most of damage
2 done to front of vehicle and passenger compartment. Vehicle destroyed. (ID #
3 11378273)

4 iv. NHTSA Complaint from March 10, 2016: The engine started on fire under
5 normal driving conditions. The car was not involved in any accident. The
6 RAV4 Limited was totaled. It was less than 3 years old and had 17,500 miles
7 on it. The care was serviced regularly by Toyota. The last service was about 4
8 months prior to the fire. Toyota has not honored their 3YR/36,000 mile
9 warranty coverage on the car. Toyota has not offered a replacement car, rental
10 or anything. Every time we call our Toyota case manager or legal department
11 managers, we have to leave a message and they never return our calls. (ID #
12 10860544)

13 104. Toyota failed to disclose the Battery Defect. As a result, Toyota has
14 caused RAV4 drivers to spend money and time at its dealerships or other third-party
15 repair facilities and/or take other remedial measure related to the Battery Defect in
16 the Class Vehicles.

17 105. As evidenced by the voluminous consumer complaints made to
18 NHTSA and posted to online forums, Toyota was put on sufficient notice regarding
19 sudden loss of vehicle power, stalling, smoke, and fire.

20 106. The existence of the Battery Defect is a material fact that a reasonable
21 consumer would consider when deciding whether to purchase or lease a Class
22 Vehicle. Had Plaintiffs and other Class Members known of the Battery Defect, they
23 would have paid less for the Class Vehicles or would not have purchased or leased
24 them.

25 107. Reasonable consumers, like Plaintiffs, reasonably expect that a
26 vehicle's battery is safe, will function in a manner that will not pose a safety risk,
27 and are free of defects, all of which were not true with respect to the batteries in the
28 Class Vehicles. They also expected that the Class Vehicles would be fit for their
ordinary purposes and would confirm to the promises and affirmations on their
window stickers and in Toyota marketing materials, which they could not due to the
Battery Defect. Plaintiffs and Class Members further reasonably expected that

1 Toyota would not sell or lease vehicles with a known safety defect such as the
2 Battery Defect, and would disclose any such defects to its consumers when it learns
3 of them. They did not expect Toyota to fail to disclose the Battery Defect to them
4 and to continually deny it.

5 **C. Toyota Has Actively Concealed the Battery Defect**

6 108. Despite knowing of the existence of the Battery Defect, Toyota
7 continues to conceal the existence and nature of the defect from Plaintiffs and Class
8 Members and failed to issue a Technical Tip or TSB to its dealerships informing
9 them that they should acknowledge the problem and reveal it to prospective buyers.

10 109. Nor has Toyota informed potential purchasers and lessees of the
11 Battery Defect and its corresponding safety risk.

12 110. Specifically, Toyota failed to disclose or actively concealed at and after
13 the time of purchase, lease, or repair:

- 14 a. any and all known material defects or material nonconformity of the
15 Class Vehicles, including the defects pertaining to the battery;
16 b. that the Class Vehicles, including the batteries, were unsafe, not in good
17 in working order, not merchantable, defective, and not fit for their
18 intended or particular purposes; and
19 c. that the Class Vehicles and the Batteries were defective, despite the fact
20 that Toyota learned of such defects before it placed the Class Vehicles
21 in the stream of commerce.

22 111. Defendants have deprived Class Members of the benefit of their bargain,
23 exposed them all to a dangerous safety Defect, and caused them to expend money at
24 their dealerships and/or be unable to drive their vehicles for long stretches of time
25 while they are being constantly repaired or completely lose the use of their vehicles
26 if destroyed by fire.

27
28

1 112. Moreover, when vehicles are brought to Defendants' dealers for repair,
2 Class Members are provided with ineffective repairs in which one defective Battery
3 is replaced with another defective Battery.

4 113. As a result, Class Members continue to experience the Battery Defect
5 despite having repairs. Because many Class Members, like Plaintiffs, are current
6 owners or lessees who rely on their vehicles on a daily basis, compensation for
7 repairs, related expenses (e.g. towing), and diminution in value is not sufficient. A
8 remedial scheme which also makes available a fix and/or warranty extension is
9 necessary to make Class Members whole.

10 114. Defendants have not recalled all the Class Vehicles to repair the Battery
11 Defect, have not offered to its customers a free suitable repair or free replacement of
12 parts related to the Battery Defect, under the recall or otherwise, and have not
13 reimbursed all Class Vehicle owners and leaseholders who incurred costs for repairs
14 related to the Battery Defect.

15 115. Class Members have not received the value for which they bargained
16 when they purchased or leased the Class Vehicles.

17 116. As a result of the Battery Defect, the value of the Class Vehicles has
18 diminished, including without limitation, the resale value of the Class Vehicles.

19 117. The existence of the Battery Defect is a material fact that a reasonable
20 consumer would consider when deciding whether to purchase or lease a Class
21 Vehicle. Whether a vehicle's battery can operate as expected is material safety
22 concern. Had Plaintiffs and other Class Members known of the Battery Defect, they
23 would have paid less for the Class Vehicles or would not have purchased or leased
24 them.

25 **D. The Agency Relationship Between Toyota Motor Sales, U.S.A., Inc.,**
26 **and its Network of Authorized Dealerships**

27 87. In order to sell vehicles to the general public, TMS enters into
28 agreements with its nationwide network of authorized dealerships to engage in retail

1 sales with consumers such as Plaintiffs. In return for the exclusive right to sell new,
2 TMS-branded vehicles, the authorized dealerships are also permitted under these
3 agreements with TMS to service and repair these vehicles under the warranties TMS
4 provides directly to consumers who purchased new vehicles from the authorized
5 dealerships. Accordingly, TMS's authorized dealerships are TMS's agents, and the
6 consumers who purchase or lease TMS vehicles are the third-party beneficiaries of
7 these dealership agreements, which allow the consumers to purchase and service their
8 TMS vehicles locally. Because Plaintiffs and members of the Class there are third-
9 party beneficiaries of the dealership agreements which create the implied warranty,
10 they may avail themselves of the implied warranty. This is true because third-party
11 beneficiaries to contracts between other parties that create an implied warranty of
12 merchantability may avail themselves of the implied warranty. *See In re Toyota*
13 *Motor Corp. Unintended Acceleration Mktg., Sales Practices, & Prod. Liab. Litig.*,
14 754 F. Supp. 2d 1145, 1185 (C.D. Cal. 2010).

15 98. Further, Plaintiffs and each of the members of the Class are the intended
16 beneficiaries of TMS's express and implied warranties. The dealers were not
17 intended to be the ultimate consumers of the Class Vehicles, and they have no rights
18 under the warranty agreements provided by TMS. TMS's warranties were designed
19 for and intended to benefit the consumers only. The consumers are the true intended
20 beneficiaries of TMS's express and implied warranties, and the consumers may
21 therefore avail themselves of those warranties.

22 99. TMS issued the express warranty to the Plaintiffs and the Class
23 members. TMS also developed and disseminated the owner's manual and warranty
24 booklets, advertisements, and other promotional materials relating to the Class
25 Vehicles. TMS also is responsible for the content of the Monroney Stickers on TMS-
26 branded vehicles. Because TMS issues the express warranty directly to the
27 consumers, the consumers are in direct privity with TMS with respect to the
28 warranties

1 100. In promoting, selling, and repairing its defective vehicles, TMS acts
2 through numerous authorized dealers who act, and represent themselves to the public,
3 as exclusive TMS representatives and agents. That the dealers act as TMS's agents
4 is demonstrated by the following facts:

- 5 a. The authorized Toyota dealerships complete all service and repair
6 according to TMS's instructions, which TMS issues to its authorized
7 dealerships through service manuals, technical service bulletins
8 ("TSBs"), technical tips ("TT"), and other documents;
- 9 b. Consumers are able to receive services under TMS's issued New
10 Vehicle Limited Warranty only at TMS's authorized dealerships, and
11 they are able to receive these services because of the agreements
12 between TMS and the authorized dealers. These agreements provide
13 TMS with a significant amount of control over the actions of the
14 authorized dealerships;
- 15 c. The warranties provided by TMS for the defective vehicles direct
16 consumers to take their vehicles to authorized dealerships for repairs or
17 services;
- 18 d. TMS dictates the nature and terms of the purchase contracts entered into
19 between its authorized dealers and consumers;
- 20 e. TMS controls the way in which its authorized dealers can respond to
21 complaints and inquiries concerning defective vehicles, and the
22 dealerships are able to perform repairs under warranty only with TMS's
23 authorization;
- 24 f. TMS has entered into agreements and understandings with its
25 authorized dealers pursuant to which it authorizes and exercises
26 substantial control over the operations of its dealers and the dealers'
27 interaction with the public; and
28

1 g. TMS implemented its express and implied warranties as they relate to
2 the defects alleged herein by instructing authorized TMS dealerships to
3 address complaints of the Defect by prescribing and implementing the
4 relevant TSBs cited herein.

5 101. Indeed, Toyota's warranty booklets make it abundantly clear that
6 Toyota's authorized dealerships are Toyota's agents for vehicle sales and service.
7 The booklets, which are plainly written for the consumers, not the dealerships, tell
8 the consumers repeatedly to seek repairs and assistance at its "authorized
9 dealerships." For example, at the outset, Toyota notifies Plaintiffs and class members
10 in the warranty booklet that coverage applies only to vehicles "**originally sold by an**
11 **authorized dealer**" and that "[t]he decision whether a part would be repaired or
12 **replaced will be made by the servicing Toyota dealership and/or Toyota.**"
13 Further, the booklets state "Both Toyota and your Toyota dealer are dedicated to
14 serving your automotive needs." The booklets direct Plaintiffs and class members,
15 should they have a problem or concern, to first "discuss the situation with a dealership
16 manager, such as the service manager or customer relations manager. In most cases,
17 a satisfactory solution can be reached at this step." Toyota then directs Plaintiffs and
18 class members: "If the dealership does not address your concern to your satisfaction,
19 to "call the Toyota Customer Experience Center" and notify Toyota of the VIN
20 number, the mileage, and "the name of your Toyota dealership." Then, "A Toyota
21 customer relations representative will assist you in working with the dealership to
22 find a satisfactory solution."

23 102. Additionally, the transportation assistance component of the New
24 Vehicle Limited Warranty, which provides transportation assistance if the vehicle
25 must be kept overnight for warranty-covered repairs, applies only to vehicles "sold
26 and serviced by authorized Toyota dealerships..."

27 103. Accordingly, as the above paragraphs demonstrate, the authorized
28 dealerships are agents of TMS. Plaintiffs and each of the members of the Class have

1 had sufficient direct dealings with either TMS or its agent dealerships to establish
2 privity of contract between TMS, on one hand, and Plaintiffs and each of the
3 members of the Class, on the other hand. This establishes privity with respect to the
4 express and implied warranty between Plaintiffs and TMS.

5 **E. Tolling of the Statute of Limitations**

6 **Discovery Rule Tolling**

7 104. Plaintiffs and Class Members could not have discovered through the
8 exercise of reasonable diligence that their Class Vehicles were defective within the
9 time period of any applicable statutes of limitation.

10 105. Among other things, neither Plaintiffs nor the other Class Members
11 knew or could have known that the Class Vehicles are equipped with 12V Batteries
12 with the Battery Defect, which causes B+ terminal shorts, resulting in sudden loss
13 of vehicle power, stalling, smoke, and fire.

14 106. Further, Plaintiffs and Class Members had no knowledge of the Defect
15 and it occurred in a part of the vehicle that was not visible to consumers. Toyota
16 attempted to squelch public recognition of the Battery Defect by failing to remedy
17 the Battery Defect or reimburse Class Members. Accordingly, any applicable statute
18 of limitation is tolled.

19 **Fraudulent Concealment Tolling**

20 107. Throughout the time period relevant to this action, Toyota concealed
21 from and failed to disclose to Plaintiffs and the other Class Members vital
22 information about the Battery Defect described herein.

23 108. Toyota kept Plaintiffs and the other Class Members ignorant of vital
24 information essential to the pursuit of their claims. As a result, neither Plaintiffs nor
25 the other Class Members could have discovered the Defect, even upon reasonable
26 exercise of diligence.

27 109. Throughout the Class Period, Toyota has been aware that the Batteries
28 it designed, manufactured, and installed in the Class Vehicles contained the Battery

1 Defect, resulting in loss of vehicle power, stalling, smoke, and fire, placing Plaintiffs
2 and other drivers in unsafe situations.

3 110. Despite its knowledge of the Defect, Toyota failed to disclose and
4 concealed, and continues to conceal, this critical information from Plaintiffs and the
5 other Class Members, even though, at any point in time, it could have disclosed the
6 Battery Defect through individual correspondence, media release, a recall, or by
7 other means.

8 111. Plaintiffs and the other Class Members justifiably relied on Toyota to
9 disclose the Battery Defect in the Class Vehicles that they purchased or leased,
10 because the Defect was hidden and not discoverable through reasonable efforts by
11 Plaintiffs and the other Class Members.

12 112. Thus, the running of all applicable statutes of limitation have been
13 suspended with respect to any claims that Plaintiffs and the other Class Members
14 have sustained as a result of the Defect, by virtue of the fraudulent concealment
15 doctrine.

16 **Estoppel**

17 113. Toyota was under a continuous duty to disclose to Plaintiffs and the
18 other Class Members the true character, quality, and nature of the unsafe and
19 defective Batteries.

20 114. Toyota knowingly concealed the true nature, quality, and character of
21 the defective Batteries from consumers.

22 115. Based on the foregoing, Toyota is estopped from relying on any statutes
23 of limitations in defense of this action.

24 **F. CLASS ACTION ALLEGATIONS**

25 116. Plaintiffs bring this lawsuit as a class action on behalf of themselves
26 and all others similarly situated pursuant to Federal Rules of Civil Procedure 23(a),
27 (b)(2), and/or (b)(3). This action satisfies the numerosity, commonality, typicality,
28 adequacy, predominance, and superiority requirements of Rule 23.

1 117. The Class and Sub-Class are defined as:

2 **Class:** All individuals in the United States who purchased or leased a Class
3 Vehicle.

4 **Florida Sub-Class:** All Class Members who reside in or purchased or leased
5 their Class Vehicle in the State of Florida.

6 **Illinois Sub-Class:** All Class Members who reside in or purchased or leased
7 their Class Vehicle in the State of Illinois.

8 **New Hampshire Sub-Class:** All Class Members who reside in or purchased
9 or leased their Class Vehicle in the State of New Hampshire.

10 **Missouri Sub-Class:** All Class Members who reside in or leased their Class
11 Vehicle in the State of Missouri.

12 118. Excluded from the Class and Sub-Classes are: (1) Defendants, any
13 entity or division in which Defendants has a controlling interest, and their legal
14 representatives, officers, directors, assigns, and successors; (2) the Judge to whom
15 this case is assigned and the Judge's staff; (3) any Judge sitting in the presiding state
16 and/or federal court system who may hear an appeal of any judgment entered; and
17 (4) those persons who have suffered personal injuries as a result of the facts alleged
18 herein.

19 119. Plaintiffs reserves the right to amend or modify the Class and Sub-Class
20 definitions after they have had an opportunity to conduct discovery.

21 120. **Numerosity:** Fed. R. Civ. P. 23(a)(1). Although the exact number of
22 Class Members is uncertain and can only be ascertained through appropriate
23 discovery, that discovery will show that, tens of thousands of Class Vehicles have
24 sold in the United States, and thousands within California. The number is great
25 enough such that joinder is impracticable. The disposition of the claims of these
26 Class Members in a single action will provide substantial benefits to all parties and
27 to the Court. The Class Members are readily identifiable from information and
28

1 records in Defendants' possession, custody, or control, as well as from records kept
2 by the Department of Motor Vehicles.

3 121. Commonality: Fed. R. Civ. P. (b)(3). There are numerous questions of
4 law and fact common to the Class, which predominate over any questions affecting
5 only individual Class Members. These common questions of law and fact include,
6 without limitation:

7 a. whether the Class Vehicles and their Batteries are defectively designed
8 or manufactured such that they are not suitable for their intended use;

9 b. whether the fact that the Class Vehicles suffer from the Battery Defect
10 would be considered material to a reasonable consumer;

11 c. whether, as a result of Toyota's concealment or failure to disclose
12 material facts, Plaintiffs and Class Members acted to their detriment by purchasing
13 Class Vehicles manufactured by Toyota;

14 d. whether Toyota was aware of the Battery Defect;

15 e. whether the Battery Defect constitutes an unreasonable safety risk;

16 f. whether Plaintiffs and the other Class Members are entitled to equitable
17 relief, including a preliminary and/or permanent injunction;

18 g. whether Defendants should be declared financially responsible for
19 notifying the Class Members of problems with the Class Vehicles and for the costs
20 and expenses of repairing and replacing the defective batteries;

21 h. whether Toyota breached its express and/or implied warranties with
22 respect to the Class Vehicles;

23 i. whether Toyota violated consumer protection laws for failing to notify
24 Plaintiffs and Class Members about the Battery Defect;

25 j. whether Toyota has a duty to disclose the defective nature of the Class
26 Vehicles and the Battery Defect to Plaintiffs and Class Members;

27 k. whether Plaintiffs and Class Members are entitled to equitable relief,
28 including but not limited to a preliminary and/or permanent injunction;

1 l. whether Toyota violated the Magnusson-Moss Warranty Act when it
2 sold Class Vehicles with the Battery Defect to consumers; and

3 m. whether damages, restitution, equitable, injunctive, compulsory or other
4 relief are warranted.

5 122. Typicality: Fed. R. Civ. P. 23(a)(2). Plaintiffs' claims are typical of
6 the claims of the Class in that Plaintiffs, like all Class Members, purchased or leased
7 a Class Vehicle designed, manufactured, and distributed by Toyota. The
8 representative Plaintiffs, like all Class Members, have been damaged by Defendants'
9 misconduct in that they have incurred or will incur the cost of repairing or replacing
10 their vehicles due to the Battery Defect. Furthermore, the factual bases of Toyota's
11 misconduct are common to all Class Members and represent a common thread
12 resulting in injury to the Class.

13 123. Adequate Representation: Plaintiffs will fairly and adequately protect
14 the interests of Class Members. Plaintiffs has retained attorneys experienced in the
15 prosecution of class actions, including consumer and product defect class actions,
16 and Plaintiffs intends to prosecute this action vigorously.

17 124. Predominance and Superiority: Plaintiffs and Class Members have all
18 suffered and will continue to suffer harm and damages as a result of Toyota's
19 unlawful and wrongful conduct. A class action is superior to other available
20 methods for the fair and efficient adjudication of the controversy. Absent a class
21 action, Class Members would likely find the cost of litigating their claims
22 prohibitively high and would therefore have no effective remedy at law. Because of
23 the relatively small size of Class Members' individual claims, it is likely that few
24 Class Members could afford to seek legal redress for Toyota's misconduct. Absent
25 a class action, Class Members will continue to incur damages, and Toyota's
26 misconduct will continue without remedy. Class treatment of common questions of
27 law and fact would also be a superior method to multiple individual actions or
28

1 piecemeal litigation in that class treatment will conserve the resources of the courts
2 and the litigants and will promote consistency and efficiency of adjudication.

3 **V. CAUSES OF ACTION**

4 **FIRST CAUSE OF ACTION**

5 **VIOLATION OF MAGNUSON-MOSS WARRANTY ACT**

(15 U.S.C. § 2301, *et seq.*)

(Plaintiffs, individually, and on behalf of the Class against all Defendants)

6
7 125. Plaintiffs incorporate by reference and realleges the preceding
8 paragraphs as if fully set forth herein.

9 126. Plaintiffs bring this cause of action for themselves and on behalf of the
10 Class against all Defendants.

11 127. This Court has jurisdiction to decide claims brought under 15 U.S.C.
12 § 2301 by virtue of 28 U.S.C. §§ 1332(a) and (d).

13 128. Plaintiffs and Class Members are “consumers” within the meaning of
14 15 U.S.C. § 2301(6).

15 129. Toyota is a “supplier” and “warrantor” within the meaning of 15 U.S.C.
16 § 2301(6).

17 130. The Class Vehicles are “consumer products” within the meaning of 15
18 U.S.C. § 2301(6).

19 131. 15 U.S.C. § 2301(d)(1) provides a cause of action for any consumer
20 who is damaged by the failure of a warrantor to comply with a written warranty.

21 132. Toyota’s express warranties are each a “written warranty” within the
22 meaning of 15 U.S.C. § 2301(6).

23 133. As discussed herein, Toyota extended a three-year/36,000-mile New
24 Vehicle Limited Warranty with the purchase or lease of the Class Vehicles, thereby
25 warranting to repair or replace any part defective in material or workmanship at no
26 cost to the owner or lessee.

27 134. Toyota breached each of these express warranties by:
28

- 1 a. Selling and leasing Class Vehicles with batteries that were defective
2 in material and/or workmanship, requiring repair or replacement
3 within the warranty period; and
4 b. refusing and/or failing to honor the express warranties by repairing
5 or replacing, free of charge, any defective component parts.

6 135. Toyota's breach of express warranty has deprived Plaintiffs and Class
7 Members of the benefit of their bargain.

8 136. The matter in controversy exceeds the sum or value of \$5,000,000.00
9 exclusive of interest and costs, and there are over 100 Class Members.

10 137. Toyota has been afforded a reasonable opportunity to cure its breach of
11 written warranties, including when Toyota consumers brought their vehicles in for
12 diagnosis and repair of the Battery Defect.

13 138. As a direct and proximate cause of Toyota's breach of written
14 warranties, Plaintiffs and Class Members sustained damages and other losses in an
15 amount to be determined at trial. Toyota's conduct damaged Plaintiffs and Class
16 Members, who are entitled to recover actual damages, consequential damages,
17 specific performance, diminution of value, costs, including statutory attorneys' fees
18 and/or other relief as appropriate.

19 **SECOND CAUSE OF ACTION**

20 FLORIDA DECEPTIVE AND UNFAIR TRADE PRACTICES ACT,
(Fla. Stat. § 501.201, *et seq.*)

21 (Plaintiff Guevara individually, and on behalf of the Florida Sub-class against all
22 Defendants)

23 139. Plaintiffs incorporates by reference and realleges the preceding
24 paragraphs as if fully set forth herein.

25 140. Plaintiff Guevara ("Florida Plaintiff") brings this cause of action
26 individually and on behalf of the Florida Sub-class against all Defendants.
27
28

1 141. Florida Plaintiff and the Florida Sub-Class Members are
2 “consumers[s]” under the Florida Deceptive and Unfair Trade Practices Act
3 (“FDUPTA”), Fla. Stat. § 501.203(7).

4 142. Toyota engaged in “trade or commerce” in Florida within the meaning
5 of the FDUPTA. See Fla. Stat. § 501.203(8).

6 143. The FDUPTA prohibits “[u]nfair methods of competition,
7 unconscionable acts or practices, and unfair or deceptive acts or practices in the
8 conduct of any trade or commerce.” Fla. Stat. § 501.204(1).

9 144. Toyota engaged in deceptive trade practices in violation of the
10 FDUPTA by failing to disclose and actively concealing the dangers and risks posed
11 by the Class Vehicles and/or the defective batteries installed in them. Toyota’s
12 deceptive business practices include: (i) representing that its vehicles had
13 characteristics, uses, or benefits which they do not have; (ii) advertising its goods
14 with intent not to sell them as advertised; (iii) representing that its vehicles are of a
15 particular standard, quality, or grade when they are not; (iv) representing that a
16 transaction conferred or involved rights, remedies, or obligations which they do not;
17 and (v) representing that its goods have been supplied in accordance with a previous
18 representation when they have not.
19

20 145. Toyota owed Florida Plaintiff and Florida Sub-Class Members a duty
21 to disclose the true safety and reliability of the Class Vehicles and/or the defective
22 batteries installed in them because Toyota: (a) possessed exclusive knowledge of the
23 dangers and risks posed by the foregoing; (b) intentionally concealed the foregoing
24 from Plaintiff; and/or (c) made incomplete representations about the safety and
25 reliability of the foregoing generally, while withholding material facts from Florida
26 Plaintiff and Florida Sub-Class Members that contradicted these representations.
27
28

1 146. Toyota's failure to disclose and active concealment of the dangers and
2 risks posed by the defective batteries in Class Vehicles were material to Florida
3 Plaintiff and Florida Sub-Class Members. A vehicle made by a reputable
4 manufacturer of safe vehicles is worth more than an otherwise comparable vehicle
5 made by a disreputable manufacturer of unsafe vehicles that conceals defects rather
6 than promptly remedies them.

7 147. Florida Plaintiff and Florida Sub-Class Members suffered ascertainable
8 loss caused by Toyota's misrepresentations and failure to disclose material
9 information. Had they been aware of the defective batteries installed in the Class
10 Vehicles, Florida Plaintiff and Florida Sub-Class Members either would have paid
11 less for their vehicles or would not have purchased or leased them at all. Florida
12 Plaintiff and Florida Sub-Class Members did not receive the benefit of their bargain
13 as a result of Toyota's misconduct.

14 148. Toyota knew or should have known that its conduct violated the
15 FDUPTA.
16

17 149. Toyota's violations present a continuing risk to Florida Plaintiff, the
18 Florida Sub-Class, as well as to the general public. Toyota's unlawful acts and
19 practices complained of herein affect the public interest.

20 150. As a direct and proximate result of Toyota's violations of the FDUPTA,
21 Florida Plaintiff and Florida Sub-Class Members have suffered injury-in-fact and/or
22 actual damages.

23 151. Florida Plaintiff and the Florida Sub-Class Members seek, inter alia,
24 actual damages in an amount to be determined at trial, reasonable attorneys' fees;
25 and any other just and proper relief available under the FDUPTA. Because Toyota
26 acted with willful and conscious disregard of the rights and safety of others, Toyota's
27 conduct constitutes malice, oppression, and fraud warranting punitive damages.
28

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

**THIRD CAUSE OF ACTION
BREACH OF EXPRESS WARRANTY
(FLA. STAT. §§ 672.313 and 680.21)**

(Plaintiff Guevara individually, and on behalf of the Florida Sub-Class against TMS)

104. Plaintiffs incorporate by reference and re-allege the preceding paragraphs as if fully set forth herein.

105. Florida Plaintiff brings this cause of action individually and on behalf of the Florida Sub-Class against TMS.

106. TMS is and was at all relevant times a “merchant” with respect to motor vehicles under Fla. Stat. §§ 672.104(1) and 680.1031(3)(k), and a “seller” of motor vehicles under § 672.103(1)(d).

107. With respect to leases, TMS is and was at all relevant times a “lessor” of motor vehicles under Fla. Stat. § 680.1031(1)(p).

108. The Class Vehicles are and were at all relevant times “goods” within the meaning of Fla. Stat. §§ 672.105(1) and 680.1031(1)(h).

109. Florida Plaintiff and Class Members bought or leased Toyota RAV4 vehicles equipped with defective 12V Batteries.

110. TMS made express warranties to Florida Plaintiff and Florida Sub-Class Members within the meaning of the warranty statutes.

111. In the course of selling and leasing the Class Vehicles, TMS expressly warranted in writing that the vehicles were covered by certain warranties in TMS’s “New Vehicle Limited Warranty” as described herein. This express warranty states that “[t]his warranty covers repairs and adjustments needed to correct defects in materials or workmanship of any part supplied by Toyota.”

112. The Battery Defect is covered by the New Vehicle Limited Warranty.

113. The New Vehicle Limited Warranty as described was made part of the basis of the bargain when Plaintiff and Class Members bought or leased the Class Vehicles.

1 114. TMS breached its express warranties to repair defects in materials and
2 workmanship of any part supplied by TMS. TMS has not repaired, and has been
3 unwilling to reasonably repair, the Battery Defect.

4 115. Furthermore, the express warranties to repair defective parts fail in their
5 essential purpose because the contractual remedy is insufficient to make Florida
6 Plaintiff and Florida Sub-Class Members whole and because TMS has failed and/or
7 has refused to adequately provide the promised remedies within a reasonable time.

8 116. Accordingly, recovery by Florida Plaintiff and Florida Sub-Class
9 Members is not limited to the express warranties of repair to parts defective in
10 materials or workmanship, and Plaintiff seeks all remedies as allowed by law.

11 117. TMS was provided notice of these issues by numerous customer
12 complaints regarding the Battery Defect before or within a reasonable amount of
13 time after the allegations of the Defect became public.

14 118. In addition, Florida Plaintiff himself gave notice of the Battery Defect
15 in his vehicle via a letter to TMS on June 18, 2021.

16 119. However, Florida Plaintiff was not required to notify TMS of its breach
17 because giving TMS a reasonable opportunity to cure any breach of written warranty
18 would have been futile. TMS was also on notice of the defect from the complaints
19 and service requests it received from Class Members, from repairs and/or
20 replacements of the Batteries or a component thereof, through the NHTSA
21 investigation opened on February 25, 2021, and through other internal sources.

22 120. Florida Plaintiff and other Florida Sub-Class members are entitled to
23 statutory damages and other legal and equitable relief including, at their election, the
24 purchase price of or a buyback of their TMS vehicles, or the overpayment or
25 diminution in value of their Class Vehicles.

26 121. Florida Plaintiff and Florida Sub-Class Members are also entitled to
27 costs and reasonable attorneys' fees.

28

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

FOURTH CAUSE OF ACTION
BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY
(F.S.A. §§ 672.314 and 680.212)
(Plaintiff Guevara individually, and on behalf of the Florida Sub-Class against all Defendants)

122. Plaintiffs incorporate by reference and re-alleges the preceding paragraphs as if fully set forth herein.

123. Florida Plaintiff brings this cause of action individually and on behalf of the Florida Sub-Class against all Defendants.

124. Toyota is and was at all relevant times a “merchant” with respect to motor vehicles under Fla. Stat. §§ 672.104(1) and 680.1031(3)(k), and a “seller” of motor vehicles under § 672.103(1)(d).

125. With respect to leases, Toyota is and was at all relevant times a “lessor” of motor vehicles under Fla. Stat. § 680.1031(1)(p).

126. The Class Vehicles are and were at all relevant times “goods” within the meaning of Fla. Stat. §§ 672.105(1) and 680.1031(1)(h).

127. A warranty that the Class Vehicles were in merchantable condition and fit for the ordinary purpose for which vehicles are used is implied by law under Fla. Stat. §§ 672.314 and 680.212.

128. Toyota was and is in actual or constructive privity with Plaintiff and Class Members.

129. At all relevant times hereto, applicable law imposed upon Toyota a duty that the batteries installed in the Class Vehicles be fit for the ordinary purposes for which batteries are used and that they pass without objection in the trade under the contract description.

130. Toyota has not validly disclaimed, excluded, or modified the implied warranties or duties described above, and any attempted disclaimer or exclusion of the implied warranties was an is ineffectual.

131. The batteries installed in the Class Vehicles were defective at the time they left the possession of Toyota, as set forth above. Toyota knew of this Defect at

1 the time the purchase and lease transactions occurred. Thus, the Batteries installed
2 in the Class Vehicles, when sold and at all times thereafter, were not in merchantable
3 condition or quality because they are not fit for their ordinary intended purpose and
4 they do not pass without objection in the trade under the contract description.

5 132. Florida Plaintiff and Florida Sub-Class Members used the batteries
6 installed in the Class Vehicles in a manner consistent with their intended use and
7 performed each and every duty required under the terms of the warranties, except as
8 may have been excused or prevented by the conduct of Toyota or by operation of
9 law in light of Toyota's unconscionable conduct.

10 133. Toyota had actual knowledge of, and received timely notice regarding,
11 the Defect at issue in this litigation and, notwithstanding such notice, failed and
12 refused to offer an effective remedy.

13 134. In addition, Toyota received, on information and belief, numerous
14 consumer complaints and other notices from customers advising of the Defect
15 associated with the batteries installed in the Class Vehicles.

16 135. By virtue of the conduct described herein and throughout this
17 Complaint, Toyota breached the implied warranty of merchantability.

18 136. As a direct and proximate result of Toyota's breach of warranties,
19 Florida Plaintiff and Florida Sub-Class Members suffered economic damage,
20 including loss attributable to the diminished value of their Class Vehicles, loss of
21 use of their Class Vehicles and other tangible property, as well as the monies spent
22 and to be spent to repair and/or replace their batteries.

23
24 **FIFTH CAUSE OF ACTION**
25 **ILLINOIS CONSUMER FRAUD**
26 **AND DECEPTIVE BUSINESS PRACTICES ACT ("CFA")**
(815 Ill. Comp. Stat. 505/1, *et seq.*)
(Plaintiff Kurkowski individually, and on behalf of the Illinois Sub-Class against
all Defendants)

27 152. Plaintiffs incorporates by reference and reallege the preceding
28 paragraphs as if fully set forth herein.

1 153. Plaintiff Kurkowski (“Illinois Plaintiff”) brings this cause of action
2 individually and on behalf of the Illinois Sub-Class against all Defendants.

3 154. Toyota is a “person” as that term is defined in 815 Ill. Comp. Stat.
4 295/1(c).

5 155. Illinois Plaintiff and the proposed Illinois Sub-Class are “consumers”
6 as that term is defined in 815 Ill. Comp. Stat. 505/1(e).

7 156. The CFA prohibits “unfair or deceptive acts or practices, including but
8 not limited to the use or employment of any deception, fraud, false pretense, false
9 promise, misrepresentation or the concealment, suppression or omission of any
10 material fact, with intent that others rely upon the concealment, suppression or
11 omission of such material fact...in the conduct of trade or commerce...whether any
12 person has in fact been misled, deceived or damaged thereby.” 815 Ill. Comp. Stat.
13 505/2.

14 157. Toyota engaged in deceptive trade practices in violation of the CFA by
15 failing to disclose and actively concealing the dangers and risks posed by the Class
16 Vehicles and/or the defective batteries installed in them. Toyota’s deceptive
17 business practices include: (i) representing that its vehicles had characteristics, uses,
18 or benefits which they do not have; (ii) advertising its goods with intent not to sell
19 them as advertised; (iii) representing that its vehicles are of a particular standard,
20 quality, or grade when they are not; (iv) representing that a transaction conferred or
21 involved rights, remedies, or obligations which they do not; and (v) representing that
22 its goods have been supplied in accordance with a previous representation when they
23 have not.

24 158. Toyota owed Illinois Plaintiff and Illinois Sub-Class Members a duty
25 to disclose the true safety and reliability of the Class Vehicles and/or the defective
26 batteries installed in them because Toyota: (a) possessed exclusive knowledge of the
27 dangers and risks posed by the foregoing; (b) intentionally concealed the foregoing
28 from Illinois Plaintiff; and/or (c) made incomplete representations about the safety

1 and reliability of the foregoing generally, while withholding material facts from
2 Illinois Plaintiff and Illinois Sub-Class Members that contradicted these
3 representations.

4 159. Toyota's failure to disclose and active concealment of the dangers and
5 risks posed by the defective batteries in Class Vehicles were material to Illinois
6 Plaintiff and Illinois Sub-Class Members. A vehicle made by a reputable
7 manufacturer of safe vehicles is worth more than an otherwise comparable vehicle
8 made by a disreputable manufacturer of unsafe vehicles that conceals defects rather
9 than promptly remedies them.

10 160. Illinois Plaintiff and Illinois Sub-Class Members suffered ascertainable
11 loss caused by Toyota's misrepresentations and failure to disclose material
12 information. Had they been aware of the defective batteries installed in the Class
13 Vehicles, Illinois Plaintiff and Illinois Sub-Class Members either would have paid
14 less for their vehicles or would not have purchased or leased them at all. Plaintiff
15 and Illinois Sub-Class Members did not receive the benefit of their bargain as a result
16 of Ford's misconduct.

17 161. Toyota knew or should have known that its conduct violated the CFA.

18 162. Toyota's violations present a continuing risk to Illinois Plaintiff, the
19 Illinois Sub-Class, as well as to the general public. Toyota's unlawful acts and
20 practices complained of herein affect the public interest.

21 163. As a direct and proximate result of Toyota's violations of the CFA,
22 Illinois Plaintiff and Illinois Sub-Class Members have suffered injury-in-fact and/or
23 actual damages.

24 164. Pursuant to 815 Ill. Comp. Stat. 505/10a(a), Illinois Plaintiff and the
25 Illinois Sub-Class seek monetary relief against Toyota in the amount of actual
26 damages, as well as punitive damages because Toyota acted with fraud and/or malice
27 and/or was grossly negligent.
28

1 165. Illinois Plaintiff and the Illinois Sub-Class also seek an order enjoining
2 Toyota's unfair and/or deceptive acts or practices, punitive damages, and attorneys'
3 fees, and any other just and proper relief available under 815 Ill. Comp. Stat. 505/1
4 *et seq.*

5 **SIXTH CAUSE OF ACTION**
6 **BREACH OF EXPRESS WARRANTY**
7 (810 Ill. Comp. Stat. 5/2-313)

8 (Plaintiff Kurkowski individually, and on behalf of the Illinois Sub-Class against
9 TMS)

10 166. Plaintiffs incorporate by reference and re-allege the preceding
11 paragraphs as if fully set forth herein.

12 167. Illinois Plaintiff brings this cause of action individually and on behalf
13 of the Illinois Sub-Class against TMS.

14 168. TMS is and was at all relevant times a "merchant" with respect to motor
15 vehicles under 810 Ill. Comp. Stat. §§ 5/2-104(1) and 5/2A-103(3), and a "seller" of
16 motor vehicles under § 5/2-103(1)(d).

17 169. With respect to leases, TMS is and was at all relevant times a "lessor"
18 of motor vehicles under 810 Ill. Comp. Stat. § 5/2A-103(1)(p).

19 170. The Class Vehicles are and were at all relevant times "goods" within
20 the meaning of 810 Ill. Comp. Stat. §§ 5/2-105(1) and 5/2A-103(1)(h).

21 171. Illinois Plaintiff and Class Members bought or leased Toyota RAV4
22 vehicles equipped with defective 12V Batteries.

23 172. TMS made express warranties to Illinois Plaintiff and Illinois Sub-
24 Class Members within the meaning of the warranty statutes.

25 173. In the course of selling and leasing the Class Vehicles, TMS expressly
26 warranted in writing that the vehicles were covered by certain warranties in TMS's
27 "New Vehicle Limited Warranty" as described herein. This express warranty states
28 that "[t]his warranty covers repairs and adjustments needed to correct defects in
materials or workmanship of any part supplied by Toyota."

174. The Battery Defect is covered by the New Vehicle Limited Warranty.

1 175. The New Vehicle Limited Warranty as described was made part of the
2 basis of the bargain when Plaintiff and Class Members bought or leased the Class
3 Vehicles.

4 176. TMS breached its express warranties to repair defects in materials and
5 workmanship of any part supplied by TMS. TMS has not repaired, and has been
6 unwilling to reasonably repair, the Battery Defect.

7 177. Furthermore, the express warranties to repair defective parts fail in their
8 essential purpose because the contractual remedy is insufficient to make Illinois
9 Plaintiff and Illinois Sub-Class Members whole and because TMS has failed and/or
10 has refused to adequately provide the promised remedies within a reasonable time.

11 178. Accordingly, recovery by Illinois Plaintiff and Illinois Sub-Class
12 Members is not limited to the express warranties of repair to parts defective in
13 materials or workmanship, and Plaintiff seeks all remedies as allowed by law.

14 179. TMS was provided notice of these issues by numerous customer
15 complaints regarding the Battery Defect before or within a reasonable amount of
16 time after the allegations of the Defect became public.

17 180. In addition, Illinois Plaintiff himself gave notice of the Battery Defect
18 in his vehicle via a letter to TMS on June 18, 2021.

19 181. However, Illinois Plaintiff was not required to notify TMS of its breach
20 because giving TMS a reasonable opportunity to cure any breach of written warranty
21 would have been futile. TMS was also on notice of the defect from the complaints
22 and service requests it received from Class Members, from repairs and/or
23 replacements of the Batteries or a component thereof, through the NHTSA
24 investigation opened on February 25, 2021, and through other internal sources.

25 182. Illinois Plaintiff and other Illinois Sub-Class members are entitled to
26 statutory damages and other legal and equitable relief including, at their election, the
27 purchase price of or a buyback of their TMS vehicles, or the overpayment or
28 diminution in value of their Class Vehicles.

1 183. Illinois Plaintiff and Illinois Sub-Class Members are also entitled to
2 costs and reasonable attorneys' fees.

3
4 **SEVENTH CAUSE OF ACTION**
5 **BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY**
6 (810 Ill. Comp. Stat. 5/2-314)

7 (Plaintiff Krukowski individually, and on behalf of the Illinois Sub-Class against
8 all Defendants)

9 184. Plaintiff incorporates by reference and re-alleges the preceding
10 paragraphs as if fully set forth herein.

11 185. Illinois Plaintiff brings this cause of action individually and on behalf
12 of the Illinois Sub-Class against all Defendants.

13 186. Toyota is and was at all relevant times a "merchant" with respect to
14 motor vehicles under 810 Ill. Comp. Stat. §§ 5/2-104(1) and 5/2A-103(3), and a
15 "seller" of motor vehicles under § 5/2-103(1)(d).

16 187. With respect to leases, Toyota is and was at all relevant times a "lessor"
17 of motor vehicles under 810 Ill. Comp. Stat. § 5/2A-103(1)(p).

18 188. The Class Vehicles are and were at all relevant times "goods" within
19 the meaning of 810 Ill. Comp. Stat. §§ 5/2-105(1) and 5/2A-103(1)(h).

20 189. A warranty that the Class Vehicles were in merchantable condition and
21 fit for the ordinary purpose for which vehicles are used is implied by law under 810
22 Ill. Comp. Stat. §§ 5/2-314 and 5/2A-212.

23 190. Toyota was and is in actual or constructive privity with Plaintiff and
24 Class Members.

25 191. At all relevant times hereto, applicable law imposed upon Toyota a duty
26 that the batteries installed in the Class Vehicles be fit for the ordinary purposes for
27 which batteries are used and that they pass without objection in the trade under the
28 contract description.

1 192. Toyota has not validly disclaimed, excluded, or modified the implied
2 warranties or duties described above, and any attempted disclaimer or exclusion of
3 the implied warranties was an is ineffectual.

4 193. The batteries installed in the Class Vehicles were defective at the time
5 they left the possession of Toyota, as set forth above. Toyota knew of this Defect at
6 the time the purchase and lease transactions occurred. Thus, the Batteries installed
7 in the Class Vehicles, when sold and at all times thereafter, were not in merchantable
8 condition or quality because they are not fit for their ordinary intended purpose and
9 they do not pass without objection in the trade under the contract description.

10 194. Illinois Plaintiff and Illinois Sub-Class Members used the batteries
11 installed in the Class Vehicles in a manner consistent with their intended use and
12 performed each and every duty required under the terms of the warranties, except as
13 may have been excused or prevented by the conduct of Toyota or by operation of
14 law in light of Toyota's unconscionable conduct.

15 195. Toyota had actual knowledge of, and received timely notice regarding,
16 the Defect at issue in this litigation and, notwithstanding such notice, failed and
17 refused to offer an effective remedy.

18 196. In addition, Toyota received, on information and belief, numerous
19 consumer complaints and other notices from customers advising of the Defect
20 associated with the batteries installed in the Class Vehicles.

21 197. By virtue of the conduct described herein and throughout this
22 Complaint, Toyota breached the implied warranty of merchantability.

23 198. As a direct and proximate result of Toyota's breach of warranties,
24 Illinois Plaintiff and Illinois Sub-Class Members suffered economic damage,
25 including loss attributable to the diminished value of their Class Vehicles, loss of
26 use of their Class Vehicles and other tangible property, as well as the monies spent
27 and to be spent to repair and/or replace their batteries.

28

EIGHTH CAUSE OF ACTION

**NEW HAMPSHIRE CONSUMER PROTECTION ACT,
(N.H. REV. STAT. ANN. § 358-A:1, *ET SEQ.*)**

(Plaintiff Woodman individually, and on behalf of the New Hampshire Sub-class
against all Defendants)

199. Plaintiff incorporates by reference and realleges the preceding paragraphs as if fully set forth herein.

200. Plaintiff Woodman (“New Hampshire Plaintiff”) brings this cause of action individually and on behalf of the New Hampshire Sub-class.

201. New Hampshire Plaintiff, the New Hampshire Sub-Class Members, and Toyota are “persons” under the New Hampshire Consumer Protection Act (“New Hampshire CPA”). N.H. Rev. Stat. § 358-A:1.

202. Toyotas actions as set forth herein occurred in the conduct of trade or commerce as defined under N.H. Rev. Stat. § 358-A:1.

203. The New Hampshire CPA prohibits a person in the conduct of any trade or commerce from using “any unfair or deceptive act or practice,” including “but . . . not limited to the following: . . . (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.

204. Toyota engaged in deceptive trade practices in violation of the New Hampshire CPA by failing to disclose and actively concealing the dangers and risks posed by the Class Vehicles and/or the defective batteries installed in them. Toyota’s deceptive business practices include: (i) representing that its vehicles had characteristics, uses, or benefits which they do not have; (ii) advertising its goods with intent not to sell them as advertised; (iii) representing that its vehicles are of a particular standard, quality, or grade when they are not; (iv) representing that a

1 transaction conferred or involved rights, remedies, or obligations which they do not;
2 and (v) representing that its goods have been supplied in accordance with a previous
3 representation when they have not.

4 205. Toyota owed New Hampshire Plaintiff and New Hampshire Sub-Class
5 Members a duty to disclose the true safety and reliability of the Class Vehicles
6 and/or the defective batteries installed in them because Toyota: (a) possessed
7 exclusive knowledge of the dangers and risks posed by the foregoing; (b)
8 intentionally concealed the foregoing from Plaintiff; and/or (c) made incomplete
9 representations about the safety and reliability of the foregoing generally, while
10 withholding material facts from New Hampshire Plaintiff and New Hampshire Sub-
11 Class Members that contradicted these representations.
12

13 206. Toyota's failure to disclose and active concealment of the dangers and
14 risks posed by the defective batteries in Class Vehicles were material to New
15 Hampshire Plaintiff and New Hampshire Sub-Class Members. A vehicle made by a
16 reputable manufacturer of safe vehicles is worth more than an otherwise comparable
17 vehicle made by a disreputable manufacturer of unsafe vehicles that conceals defects
18 rather than promptly remedies them.

19 207. New Hampshire Plaintiff and New Hampshire Sub-Class Members
20 suffered ascertainable loss caused by Toyota's misrepresentations and failure to
21 disclose material information. Had they been aware of the defective batteries
22 installed in the Class Vehicles, New Hampshire Plaintiff and New Hampshire Sub-
23 Class Members either would have paid less for their vehicles or would not have
24 purchased or leased them at all. New Hampshire Plaintiff and New Hampshire Sub-
25 Class Members did not receive the benefit of their bargain as a result of Toyota's
26 misconduct.
27
28

1 208. Toyota knew or should have known that its conduct violated the New
2 Hampshire CPA.

3 209. Toyota's violations present a continuing risk to New Hampshire
4 Plaintiff, the New Hampshire Sub-Class, as well as to the general public. Toyota's
5 unlawful acts and practices complained of herein affect the public interest.

6 210. As a direct and proximate result of Toyota's violations of the New
7 Hampshire CPA, New Hampshire Plaintiff and New Hampshire Sub-Class Members
8 have suffered injury-in-fact and/or actual damages.

9 211. Pursuant to N.H. Rev. Stat. § 358-A:10, New Hampshire Plaintiff and
10 the New Hampshire Sub-Class Members seek recovery of actual damages or \$1,000,
11 whichever is greater, treble damages, costs and reasonable attorneys' fees, and any
12 other just and proper relief available under N.H. Rev. Stat. § 358-A:10.

13
14 **NINTH CAUSE OF ACTION**
15 **BREACH OF EXPRESS WARRANTY**
16 (N.H. REV. STAT. §§ 382-A:2-313 AND 382-A:2A-210)
17 (Plaintiff Woodman individually, and on behalf of the New Hampshire Sub-Class
18 against TMS)

19 137. Plaintiffs incorporate by reference and re-allege the preceding
20 paragraphs as if fully set forth herein.

21 138. New Hampshire Plaintiff brings this cause of action individually and
22 on behalf of the New Hampshire Sub-Class against TMS.

23 139. TMS is and was at all relevant times a "merchant" with respect to motor
24 vehicles under N.H. Rev. Stat. § 382-A:2-104(1), and a "seller" of motor vehicles
25 under 382-A:2-103(1)(d).

26 140. With respect to leases, TMS is and was at all relevant times a "lessor"
27 of motor vehicles under N.H. Rev. Stat. § 382-A:2A-103(1)(p).

28 141. The Class Vehicles are and were at all relevant times "goods" within
the meaning of N.H. Rev. Stat. §§ 382-A:2-105(1) and 2A-103(1)(h).

1 142. New Hampshire Plaintiff and Class Members bought or leased Toyota
2 RAV4 vehicles equipped with defective 12V Batteries.

3 143. TMS made express warranties to New Hampshire Plaintiff and New
4 Hampshire Sub-Class Members within the meaning of the warranty statutes.

5 144. In the course of selling and leasing the Class Vehicles, TMS expressly
6 warranted in writing that the vehicles were covered by certain warranties in TMS's
7 "New Vehicle Limited Warranty" as described herein. This express warranty states
8 that "[t]his warranty covers repairs and adjustments needed to correct defects in
9 materials or workmanship of any part supplied by Toyota."

10 145. The Battery Defect is covered by the New Vehicle Limited Warranty.

11 146. The New Vehicle Limited Warranty as described was made part of the
12 basis of the bargain when Plaintiff and Class Members bought or leased the Class
13 Vehicles.

14 147. TMS breached its express warranties to repair defects in materials and
15 workmanship of any part supplied by TMS. TMS has not repaired, and has been
16 unwilling to reasonably repair, the Battery Defect.

17 148. Furthermore, the express warranties to repair defective parts fail in their
18 essential purpose because the contractual remedy is insufficient to make New
19 Hampshire Plaintiff and New Hampshire Sub-Class Members whole and because
20 TMS has failed and/or has refused to adequately provide the promised remedies
21 within a reasonable time.

22 149. Accordingly, recovery by New Hampshire Plaintiff and New
23 Hampshire Sub-Class Members is not limited to the express warranties of repair to
24 parts defective in materials or workmanship, and Plaintiff seeks all remedies as
25 allowed by law.

26 150. TMS was provided notice of these issues by numerous customer
27 complaints regarding the Battery Defect before or within a reasonable amount of
28 time after the allegations of the Defect became public.

1 151. In addition, New Hampshire Plaintiff himself gave notice of the Battery
2 Defect in his vehicle via a letter to TMS on June 18, 2021.

3 152. However, New Hampshire Plaintiff was not required to notify TMS of
4 its breach because giving TMS a reasonable opportunity to cure any breach of
5 written warranty would have been futile. TMS was also on notice of the defect from
6 the complaints and service requests it received from Class Members, from repairs
7 and/or replacements of the Batteries or a component thereof, through the NHTSA
8 investigation opened on February 25, 2021, and through other internal sources.

9 153. New Hampshire Plaintiff and other New Hampshire Sub-Class
10 members are entitled to statutory damages and other legal and equitable relief
11 including, at their election, the purchase price of or a buyback of their TMS vehicles,
12 or the overpayment or diminution in value of their Class Vehicles.

13 154. New Hampshire Plaintiff and New Hampshire Sub-Class Members are
14 also entitled to costs and reasonable attorneys' fees.

15
16 **TENTH CAUSE OF ACTION**
17 **BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY**
(N.H. Rev. Stat. §§ 382-A:2-314 and 382-A:2A-212)
18 (Plaintiff Woodman individually, and on behalf of the New Hampshire Sub-Class
against all Defendants)

19 155. Plaintiffs incorporate by reference and re-alleges the preceding
20 paragraphs as if fully set forth herein.

21 156. New Hampshire Plaintiff brings this cause of action individually and
22 on behalf of the New Hampshire Sub-Class against all Defendants.

23 157. Toyota is and was at all relevant times a “merchant” with respect to
24 motor vehicles under N.H. Rev. Stat. § 382-A:2-104(1), and a “seller” of motor
25 vehicles under 382-A:2-103(1)(d).

26 158. With respect to leases, Toyota is and was at all relevant times a “lessor”
27 of motor vehicles under N.H. Rev. Stat. § 382-A:2A-103(1)(p).
28

1 159. The Class Vehicles are and were at all relevant times “goods” within
2 the meaning of N.H. Rev. Stat. §§ 382-A:2-105(1) and 2A-103(1)(h).

3 160. A warranty that the Class Vehicles were in merchantable condition and
4 fit for the ordinary purpose for which vehicles are used is implied by law under N.H.
5 Rev. Stat. §§ 382-A:2-314 and 382-A:2A-212.

6 161. Toyota was and is in actual or constructive privity with Plaintiff and
7 Class Members.

8 162. At all relevant times hereto, applicable law imposed upon Toyota a duty
9 that the batteries installed in the Class Vehicles be fit for the ordinary purposes for
10 which batteries are used and that they pass without objection in the trade under the
11 contract description.

12 163. Toyota has not validly disclaimed, excluded, or modified the implied
13 warranties or duties described above, and any attempted disclaimer or exclusion of
14 the implied warranties was an is ineffectual.

15 164. The batteries installed in the Class Vehicles were defective at the time
16 they left the possession of Toyota, as set forth above. Toyota knew of this Defect at
17 the time the purchase and lease transactions occurred. Thus, the Batteries installed
18 in the Class Vehicles, when sold and at all times thereafter, were not in merchantable
19 condition or quality because they are not fit for their ordinary intended purpose and
20 they do not pass without objection in the trade under the contract description.

21 165. New Hampshire Plaintiff and New Hampshire Sub-Class Members
22 used the batteries installed in the Class Vehicles in a manner consistent with their
23 intended use and performed each and every duty required under the terms of the
24 warranties, except as may have been excused or prevented by the conduct of Toyota
25 or by operation of law in light of Toyota’s unconscionable conduct.

26 166. Toyota had actual knowledge of, and received timely notice regarding,
27 the Defect at issue in this litigation and, notwithstanding such notice, failed and
28 refused to offer an effective remedy.

1 167. In addition, Toyota received, on information and belief, numerous
2 consumer complaints and other notices from customers advising of the Defect
3 associated with the batteries installed in the Class Vehicles.

4 168. By virtue of the conduct described herein and throughout this
5 Complaint, Toyota breached the implied warranty of merchantability.

6 169. As a direct and proximate result of Toyota's breach of warranties, New
7 Hampshire Plaintiff and New Hampshire Sub-Class Members suffered economic
8 damage, including loss attributable to the diminished value of their Class Vehicles,
9 loss of use of their Class Vehicles and other tangible property, as well as the monies
10 spent and to be spent to repair and/or replace their batteries.

11 **ELEVENTH CAUSE OF ACTION**

12 **MISSOURI MERCHANDISING PRACTICES ACT**

13 (MO. REV. STAT. §§ 407.010, *et seq.*)

14 (Plaintiff Huchteman individually, and on behalf of the Missouri
15 Sub-Class against all Defendants)

16 170. Plaintiffs incorporate by reference and re-allege the preceding
17 paragraphs as if fully set forth herein.

18 171. Kris Huchteman ("Missouri Plaintiff") brings this cause of action on
19 behalf of himself and on behalf of the Missouri Sub-Class against all Defendants.

20 172. Toyota, Missouri Plaintiff and Missouri Subclass Members are
21 "persons" within the meaning of Mo. Rev. Stat. § 407.010(5).

22 173. Toyota engaged in "trade" or "commerce" in the State of Missouri
23 within the meaning of Mo. Rev. Stat. § 407.010(7).

24 174. The Class Vehicles are "merchandise" within the meaning of Mo. Rev.
25 Stat. § 407.010(4).

26 175. The Missouri Merchandising Practices Act ("MMPA") makes unlawful
27 the "act, use or employment by any person of any deception, fraud, false pretense,
28 misrepresentation, unfair practice, or the concealment, suppression, or omission of

1 any material fact in connection with the sale or advertisement of any merchandise.”
2 Mo. Rev. Stat. § 407.020.

3 176. Toyota engaged in deceptive trade practices in violation of the MMPA
4 by failing to disclose and actively concealing the dangers and risks posed by the
5 Class Vehicles and/or the defective batteries installed in them. Toyota’s deceptive
6 business practices include: (i) representing that its vehicles had characteristics, uses,
7 or benefits which they do not have; (ii) advertising its goods with intent not to sell
8 them as advertised; (iii) representing that its vehicles are of a particular standard,
9 quality, or grade when they are not; (iv) representing that a transaction conferred or
10 involved rights, remedies, or obligations which they do not; and (v) representing that
11 its goods have been supplied in accordance with a previous representation when they
12 have not.

13 177. Toyota owed Missouri Plaintiff and Missouri Sub-Class Members a
14 duty to disclose the true safety and reliability of the Class Vehicles and/or the
15 defective batteries installed in them because Toyota: (a) possessed exclusive
16 knowledge of the dangers and risks posed by the foregoing; (b) intentionally
17 concealed the foregoing from Plaintiff; and/or (c) made incomplete representations
18 about the safety and reliability of the foregoing generally, while withholding
19 material facts from Missouri Plaintiff and Missouri Sub-Class Members that
20 contradicted these representations.

21 178. Toyota’s failure to disclose and active concealment of the dangers and
22 risks posed by the defective batteries in Class Vehicles were material to Missouri
23 Plaintiff and Missouri Sub-Class Members. A vehicle made by a reputable
24 manufacturer of safe vehicles is worth more than an otherwise comparable vehicle
25 made by a disreputable manufacturer of unsafe vehicles that conceals defects rather
26 than promptly remedies them.

27 179. Missouri Plaintiff and Missouri Sub-Class Members suffered
28 ascertainable loss caused by Toyota’s misrepresentations and failure to disclose

1 material information. Had they been aware of the defective batteries installed in the
2 Class Vehicles, Missouri Plaintiff and Missouri Sub-Class Members either would
3 have paid less for their vehicles or would not have purchased or leased them at all.
4 Missouri Plaintiff and Missouri Sub-Class Members did not receive the benefit of
5 their bargain as a result of Toyota's misconduct.

6 180. Toyota knew or should have known that its conduct violated the
7 MMPA.

8 181. Toyota's violations present a continuing risk to Missouri Plaintiff, the
9 Missouri Sub-Class, as well as to the general public. Toyota's unlawful acts and
10 practices complained of herein affect the public interest.

11 182. As a direct and proximate result of Toyota's violations of the MMPA,
12 Missouri Plaintiff and Missouri Sub-Class Members have suffered injury-in-fact
13 and/or actual damages.

14 183. Toyota is liable to Missouri Plaintiff and the Missouri Sub-Class
15 Members for damages in amounts to be proven at trial, including attorneys' fees,
16 costs, and punitive damages, as well as injunctive relief enjoining Toyota's unfair
17 and deceptive practices, and any other just and proper relief under Mo. Rev. Stat. §
18 407.025.

19 **TWELFTH CAUSE OF ACTION**
20 **BREACH OF EXPRESS WARRANTY**
21 **(MO. REV. STAT. §§ 400.2-313010)**

22 **(Plaintiff Huchteman individually, and on behalf of the Missouri**
23 **Sub-Class against TMS)**

24 184. Plaintiffs incorporate by reference and re-allege the preceding
25 paragraphs as if fully set forth herein.

26 185. Missouri Plaintiff brings this cause of action individually and on behalf
27 of the Missouri Subclass against TMS.

28 186. Missouri Plaintiff and Missouri Sub-Class Members are and were at all
relevant times buyers under Mo. Rev. Stat. § 400.2-313, a bought the Class Vehicles
for personal, family, and/or household purposes.

1 187. Toyota is and was at all relevant times a seller of the Class Vehicles
2 under Mo. Rev. Stat. § 400.2-313.

3 188. The Class Vehicles at issue constitute goods under Mo. Rev. Stat. §
4 400.2-313.

5 189. Missouri Plaintiff and Class Members bought or leased Toyota RAV4
6 vehicles equipped with defective 12V Batteries.

7 190. TMS made express warranties to Missouri Plaintiff and Missouri Sub-
8 Class Members within the meaning of the warranty statutes.

9 191. In the course of selling and leasing the Class Vehicles, TMS expressly
10 warranted in writing that the vehicles were covered by certain warranties in TMS's
11 "New Vehicle Limited Warranty" as described herein. This express warranty states
12 that "[t]his warranty covers repairs and adjustments needed to correct defects in
13 materials or workmanship of any part supplied by Toyota."

14 192. The Battery Defect is covered by the New Vehicle Limited Warranty.

15 193. The New Vehicle Limited Warranty as described was made part of the
16 basis of the bargain when Plaintiff and Class Members bought or leased the Class
17 Vehicles.

18 194. TMS breached its express warranties to repair defects in materials and
19 workmanship of any part supplied by TMS. TMS has not repaired, and has been
20 unwilling to reasonably repair, the Battery Defect.

21 195. Furthermore, the express warranties to repair defective parts fail in their
22 essential purpose because the contractual remedy is insufficient to make Missouri
23 Plaintiff and Missouri Sub-Class Members whole and because TMS has failed
24 and/or has refused to adequately provide the promised remedies within a reasonable
25 time.

26 196. Accordingly, recovery by Missouri Plaintiff and Missouri Sub-Class
27 Members is not limited to the express warranties of repair to parts defective in
28 materials or workmanship, and Plaintiff seeks all remedies as allowed by law.

1 197. TMS was provided notice of these issues by numerous customer
2 complaints regarding the Battery Defect before or within a reasonable amount of
3 time after the allegations of the Defect became public.

4 198. In addition, Missouri Plaintiff herself gave notice of the Battery Defect
5 in his vehicle via a letter to TMS on June 18, 2021.

6 199. However, Missouri Plaintiff was not required to notify TMS of its
7 breach because giving TMS a reasonable opportunity to cure any breach of written
8 warranty would have been futile. TMS was also on notice of the defect from the
9 complaints and service requests it received from Class Members, from repairs and/or
10 replacements of the Batteries or a component thereof, through the NHTSA
11 investigation opened on February 25, 2021, and through other internal sources.

12 200. Missouri Plaintiff and other Missouri Sub-Class members are entitled
13 to statutory damages and other legal and equitable relief including, at their election,
14 the purchase price of or a buyback of their TMS vehicles, or the overpayment or
15 diminution in value of their Class Vehicles.

16 201. Missouri Plaintiff and Missouri Sub-Class Members are also entitled to
17 costs and reasonable attorneys' fees.

18
19 **THIRTEENTH CAUSE OF ACTION**
20 **BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY**
21 **(Mo. Rev. Stat. § 400.2-314(2)(c))**
(Plaintiff Huchteman individually, and on behalf of the
Missouri Sub-Class against all Defendants)

22 202. Plaintiffs incorporate by reference and re-alleges the preceding
23 paragraphs as if fully set forth herein.

24 203. Missouri Plaintiff brings this cause of action individually and on behalf
25 of the Missouri Sub-Class against all Defendants.

26 204. Toyota is and was at all relevant times a “merchant” with respect to
27 motor vehicles under Mo. Rev. Stat. § 400.2-314(1).
28

1 205. The Class Vehicles are and were at all relevant times “goods” within
2 the meaning of Mo. Rev. Stat. § 400.2-314(1).

3 206. A warranty that the Class Vehicles were in merchantable condition and
4 fit for the ordinary purpose for which vehicles are used is implied by law under Mo.
5 Rev. Stat. § 400.2-314(2)(c).

6 207. Toyota was and is in actual or constructive privity with Plaintiff and
7 Class Members.

8 208. At all relevant times hereto, applicable law imposed upon Toyota a duty
9 that the batteries installed in the Class Vehicles be fit for the ordinary purposes for
10 which batteries are used and that they pass without objection in the trade under the
11 contract description.

12 209. Toyota has not validly disclaimed, excluded, or modified the implied
13 warranties or duties described above, and any attempted disclaimer or exclusion of
14 the implied warranties was an is ineffectual.

15 210. The Batteries installed in the Class Vehicles were defective at the time
16 they left the possession of Toyota, as set forth above. Toyota knew of this Defect at
17 the time the purchase and lease transactions occurred. Thus, the Batteries installed
18 in the Class Vehicles, when sold and at all times thereafter, were not in merchantable
19 condition or quality because they are not fit for their ordinary intended purpose and
20 they do not pass without objection in the trade under the contract description.

21 211. Missouri Plaintiff and Missouri Sub-Class Members used the batteries
22 installed in the Class Vehicles in a manner consistent with their intended use and
23 performed each and every duty required under the terms of the warranties, except as
24 may have been excused or prevented by the conduct of Toyota or by operation of
25 law in light of Toyota’s unconscionable conduct.

26 212. Toyota had actual knowledge of, and received timely notice regarding,
27 the Defect at issue in this litigation and, notwithstanding such notice, failed and
28 refused to offer an effective remedy.

1 220. Toyota had a duty to disclose the true performance of Class Vehicles
2 and the Battery Defect because knowledge thereof and the details related thereto
3 were known and/or accessible only to Toyota; Toyota had superior knowledge and
4 access to the facts; and knew the facts were not known to, or reasonably
5 discoverable, by Plaintiffs and the Class. Toyota also had a duty to disclose because
6 they made many general affirmative representations about the qualities of the Class
7 Vehicles.

8 221. On information and belief, Toyota still has not made full and adequate
9 disclosures, and continues to defraud consumers by concealing material information
10 regarding the Defect and the performance and quality of Class Vehicles.

11 222. Plaintiffs and the Class were unaware of these omitted material facts
12 and would not have acted as they did if they had known of the concealed and/or
13 suppressed facts, in that they would not have purchased or leased the Class Vehicles.
14 The actions of Plaintiffs and Class Members were justified. Toyota was in exclusive
15 control of the material facts and such facts were not known to the public, Plaintiffs,
16 or Class Members.

17 223. Plaintiffs and the Class relied upon Toyota's representations and
18 omissions regarding the quality of Class Vehicles and the Defect in deciding to
19 purchase or lease Class Vehicles.

20 224. Because of the concealment and/or suppression of the facts, Plaintiffs
21 and the Class sustained damage because they did not receive the value of the price
22 paid for their Class Vehicles. Plaintiffs and Class Members would have paid less for
23 Class Vehicles had they known about the Battery Defect, or they would not have
24 purchased or leased Class Vehicles at all.

25 225. Accordingly, Toyota is liable to Plaintiffs and Class Members for
26 damages in an amount to be proven at trial.

27 226. Toyota's actions and omissions were done maliciously, oppressively,
28 deliberately, with intent to defraud, and in reckless disregard of Plaintiffs' and the

1 Class' rights and well-being, to enrich Toyota. Toyota's conduct warrants an
2 assessment of punitive damages in an amount sufficient to deter such conduct in the
3 future, which amount is to be determined according to proof.

4 227. Furthermore, as the intended and expected result of its fraud and
5 conscious wrongdoing, Toyota has profited and benefited from Plaintiffs' and Class
6 Members' purchase of Class Vehicles containing the Battery Defect. Toyota has
7 voluntarily accepted and retained these profits and benefits with full knowledge and
8 awareness that, as a result of Toyota's misconduct alleged herein, Plaintiffs and Class
9 Members were not receiving trucks of the quality, nature, fitness, or value that had
10 been represented by Toyota, and that a reasonable consumer would expect.

11 228. Toyota has been unjustly enriched by its fraudulent, deceptive, and
12 otherwise unlawful conduct in connection with the sale and lease of Class Vehicles
13 and by withholding benefits from Plaintiffs and Class Members at the expense of
14 these parties. Equity and good conscience militate against permitting Toyota to
15 retain these profits and benefits, and Toyota should be required to make restitution
16 of its ill-gotten gains resulting from the conduct alleged herein.

17
18 **FIFTEENTH CAUSE OF ACTION**
UNJUST ENRICHMENT

19 (Plaintiffs individually, and on behalf of the Class against all Defendants)
20 (IN THE ALTERNATIVE)

21 229. Plaintiffs incorporate by reference and re-allege the preceding
22 paragraphs as if fully set forth herein.

23 230. Plaintiffs bring this cause of action on behalf of themselves and on
24 behalf of the Class against all Defendants.

25 231. Toyota has long known that its 12V Batteries have a propensity to short,
26 causing loss of power, vehicle stalling, smoke and fire, posing a serious safety risk,
27 which it concealed and failed to disclose to Plaintiffs and Class Members.
28

1 WHEREFORE, Plaintiffs, individually and on behalf of the other members of
2 the Class and Sub-Classes proposed in this Complaint, respectfully requests that the
3 Court enter judgment in their favor and against Toyota, as follows:

- 4 A. Declaring that this action is a proper class action, certifying the
5 Class as requested herein, designating Plaintiffs as Class and
6 Sub-Class Representative and appointing the undersigned
7 counsel as Class Counsel;
- 8 B. A declaration that Defendants are financially responsible for
9 notifying all Class Members about the defective nature of the of
10 the battery, including the need for repairs;
- 11 C. An order enjoining Defendants from further deceptive
12 distribution, sales, and lease practices with respect to Class
13 Vehicles; compelling Defendants to issue a voluntary recall for
14 the Class Vehicles pursuant to 49 U.S.C. § 30118(a); compelling
15 Defendants to remove, repair, and/or replace the Class Vehicles'
16 defective batteries with suitable alternative product(s) that do not
17 contain the defects alleged herein; enjoining Defendants from
18 selling the Class Vehicles with the misleading information;
19 and/or compelling TMS to reform its warranty, in a manner
20 deemed to be appropriate by the Court, to cover the injury alleged
21 and to notify all Class Members that such warranty has been
22 reformed;
- 23 D. Ordering Toyota to pay actual damages (and no less than the
24 statutory minimum damages) and equitable monetary relief to
25 Plaintiffs and the other members of the Class and Sub-Classes;
- 26 E. Ordering Toyota to pay punitive damages, as allowable by law,
27 to Plaintiffs and the other members of the Class and Sub-Classes;
28

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

- F. Ordering Toyota to pay statutory damages, as allowable by the statutes asserted herein, to Plaintiffs and the other members of the Class and Sub-Classes;
- G. Any and all remedies provided pursuant to the state and federal consumer protection statutes herein alleged, including any applicable statutory and civil penalties;
- H. Any and all remedies provided pursuant to the state warranty statutes herein alleged, including any applicable statutory and civil penalties;
- I. A declaration that Defendants must disgorge, for the benefit of the Class, all or part of the ill-gotten profits it received from the sale or lease of its Class Vehicles or make full restitution to Plaintiffs and Class Members;
- J. Ordering Toyota to pay attorneys' fees and litigation costs incurred by Plaintiffs for the benefit of the Class and Sub-Classes;
- K. Ordering Toyota to pay both pre- and post-judgement interest on any amounts awarded; and
- L. Ordering such other and further relief as may be just and proper.

DEMAND FOR JURY TRIAL

Plaintiff, on behalf of themselves and all others similarly situated, hereby demand a trial by jury as to all matters so triable.

1 Dated: June 24, 2021

Respectfully submitted,

3 /s/ Tarek H. Zohdy

4 Tarek H. Zohdy (SBN 247775)

5 Cody R. Padgett (SBN 275553)

CAPSTONE LAW APC

6 1875 Century Park East, Suite 1000

7 Los Angeles, California 90067

8 Telephone: (310) 556-4811

9 Facsimile: (310) 943-0396

Tarek.Zohdy@capstonelawyers.com

Cody.Padgett@capstonelawyers.com

10 Russell D. Paul (*pro hac vice* forthcoming)

11 Abigail Gertner (*pro hac vice* forthcoming)

12 Amey J. Park (*pro hac vice* forthcoming)

BERGER MONTAGUE PC

13 1818 Market Street, Suite 3600

14 Philadelphia, PA 19103

15 Tel.: (215) 875-3000

16 Fax: (215) 875-4604

Email: rpaul@bm.net

agertner@bm.net

apark@bm.net

18 Greg Coleman (*pro hac vice* forthcoming)

19 Ryan P. McMillan (*pro hac vice* forthcoming)

20 Milberg Coleman Bryson Phillips Grossman
21 LLP

22 800 S. Gay Street, Suite 1100

23 Knoxville, TN 37929

24 Tel: 865-232-1315

gcoleman@milberg.com

rmcmillan@milberg.com