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13 Attorneys for Plaintiffs and the putative Class

14 **UNITED STATES DISTRICT COURT**

15 **FOR THE CENTRAL DISTRICT OF CALIFORNIA**

16 BRIAN WARNER, KENNETH  
MAC LEOD; MICHAEL MEADE,  
17 MICHAEL WATSON, JAMES  
FULLER, and DALE FRANQUET,  
18 individually and on behalf of all  
others similarly situated,

19 Plaintiffs,

20 v.

21 TOYOTA MOTOR SALES, U.S.A.,  
22 INC., a California corporation,

23 Defendant.

Case No. 2:15-cv-02171-FMO-(FFMx)

**CLASS ACTION**

**SECOND AMENDED COMPLAINT**

USDJ: Fernando M. Olguin  
Ctrm: 22, 5th Floor – Spring  
USMJ: Frederick F. Mumm  
Ctrm: E, 9th Floor – Spring

JURY TRIAL DEMANDED

Complaint Filed: March 24, 2015

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1 Plaintiffs Brian Warner, Ryan Burns, Kenneth MacLeod, Michael Watson,  
2 Michael Meade, James Fuller, James Good, and Dale Franquet (“Plaintiffs”),  
3 individually and on behalf of all others similarly situated, upon personal  
4 knowledge of the facts pertaining to themselves and on information and belief as  
5 to all other matters, by and through undersigned counsel, hereby bring this Class  
6 Action Complaint against Defendant Toyota Motor Sales, U.S.A., Inc. (“Toyota”  
7 or “Defendant”), and allege as follows:

8 **NATURE OF THE CASE**

9 1. The frames for certain model year Toyota vehicles are prone to  
10 excessive, premature rust corrosion because the frames were not properly  
11 prepared and treated against rust corrosion when they were manufactured. The  
12 model years at issue are: 2005 to 2010 Toyota Tacomas (“Tacoma Vehicles”),  
13 2007 to 2008 Toyota Tundras (“Tundra Vehicles”), and 2005 to 2008 Toyota  
14 Sequoias (“Sequoia Vehicles”) (collectively, the “Toyota Vehicles”).  
15 Excessively corroded frames pose a serious safety hazard to a vehicle’s  
16 occupants because a vehicle’s frame forms the basis of a vehicle’s  
17 crashworthiness, including its ability to withstand or minimize damage to the  
18 occupant compartment in the event of an accident.

19 2. Defendant has represented that its vehicles are crashworthy  
20 throughout the expected life of the vehicles and its customers expect vehicles to  
21 remain crashworthy throughout the vehicle’s life. Contrary to this promise and  
22 expectation, the frames of the Toyota Vehicles were designed, manufactured, and  
23 sold with inadequate rust corrosion protection. As a result, the frames on every  
24 Toyota Vehicle are prone to excessive rust corrosion, which render the vehicles  
25 unstable and unsafe.

26 3. This condition is unrelated to and separate from normal surface rust,  
27 which is commonly found on metallic surfaces after some years of usage and  
28 environmental exposure. A vehicle with a sufficiently corroded frame is

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1 worthless unless the corroded frame is replaced.

2 4. Toyota has long known the frames on the Toyota Vehicles are  
3 defective because they lack adequate rust corrosion protection. Despite this  
4 knowledge, Toyota failed to disclose the existence of this defect to Plaintiffs,  
5 other Class members, and the public. Nor has it issued a recall to inspect and  
6 repair the Toyota Vehicles, or offered to reimburse the Toyota Vehicle owners  
7 for costs incurred to identify and repair this defect.

8 5. Instead Toyota initiated non-publicized Limited Service Campaigns  
9 that provided inadequate relief for only some of the affected models in limited  
10 geographic areas. The Limited Service Campaigns continued to mislead Toyota  
11 Vehicle owners because those vehicles not covered by the campaign were lead to  
12 believe their vehicles were not affected, when they were.

13 **JURISDICTION AND VENUE**

14 6. The Court has jurisdiction over Plaintiffs' claims pursuant to  
15 28 U.S.C. §1332(d), because: (a) this action is brought as a proposed class action  
16 under Fed. R. Civ. P. 23; (b) the proposed Class includes more than 100  
17 members; (c) many of the proposed Class members are citizens of states that are  
18 diverse from Toyota's citizenship; and (d) the matter in controversy exceeds  
19 \$5,000,000, exclusive of interest and costs.

20 7. Venue is proper in this judicial District under 28 U.S.C. §1391(a)  
21 because a substantial part of the challenged conduct or omissions giving rise to  
22 claims occurred and/or emanated from this District, Toyota is headquartered in  
23 this District and Toyota has caused harm to Class members residing in this  
24 District.

25 **PARTIES**

26 8. Plaintiff Brian Warner is in the military and resides in the State of  
27 Texas. He is a citizen of the State of Ohio. In 2010, Warner purchased a used  
28 2006 Toyota Tacoma in Ohio. The frame on Warner's Tacoma vehicle is

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1 severely corroded. Toyota has refused to replace the frame or apply rust  
2 corrosion protection to the frame.

3 9. Plaintiff Kenneth MacLeod resides in and is a citizen of the State of  
4 Maryland. In 2009, MacLeod purchased a new 2009 Toyota Tacoma. The frame  
5 on MacLeod's Tacoma has suffered significant rust corrosion requiring  
6 replacement at a cost of approximately \$15,000. Toyota has refused to replace  
7 the frame on MacLeod's vehicle.

8 10. Plaintiff Ryan Burns resides in and is a citizen of the State of  
9 Arkansas. Burns purchased a 2005 Toyota Tacoma from J. Pauley Toyota in Fort  
10 Smith, Arkansas on April 30, 2005. Burns' Tacoma has suffered significant rust  
11 corrosion to his vehicle's frame. Toyota has refused to replace the frame on  
12 Burns' vehicle.

13 11. Plaintiff Michael Meade resides in and is a citizen of the State of  
14 Louisiana. In 2010, Meade purchased a certified-used 2006 Toyota Tacoma. The  
15 frame on Meade's Tacoma suffered significant rust corrosion, requiring  
16 replacement.

17 12. Plaintiff Michael Watson resides in and is a citizen of the State of  
18 Florida. In September 2005, Watson purchased a new 2005 Toyota Tacoma from  
19 Stadium Toyota in Tampa Florida. The frame on Watson's Tacoma vehicle  
20 experienced significant rust corrosion, requiring replacement.

21 13. Plaintiff Dale Franquet resides in and is a citizen of the State of  
22 Pennsylvania. In 2009, Franquet purchased a used 2005 Toyota Tacoma in New  
23 York. The frame on Franquet's Tacoma experienced significant rust corrosion,  
24 requiring replacement.

25 14. Plaintiff James Fuller resides in and is a citizen of the State of South  
26 Carolina. In January 2014, Fuller purchased a used 2006 Toyota Tacoma. The  
27 frame on Fuller's Tacoma experienced significant rust corrosion, requiring  
28 replacement.

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1 15. Plaintiff James Good resides in and is a citizen of the State of  
2 Maryland. In May 2006, Good purchased a new 2006 Toyota Sequoia. Good’s  
3 Sequoia has suffered significant rust corrosion to the frame.

4 16. Defendant Toyota Motor Sales, U.S.A., Inc. (“Toyota”), is  
5 incorporated in the State of California and is headquartered in Torrance,  
6 California. Toyota sells, markets, distributes, and services Toyota vehicles in the  
7 United States, including the Toyota Vehicles. From its Torrance, California  
8 office, Toyota makes all decisions related to marketing the Toyota Vehicles in  
9 the United States and implementing its Limited Service Campaigns. All inquiries  
10 related to the Limited Service Campaigns and requests for reimbursement as  
11 alleged below, are directed to Toyota’s Torrance, California headquarters.

12 **FACTUAL BACKGROUND**

13 *Excessive Rust Corrosion and Perforation*

14 *Renders the Toyota Vehicles Unsafe*

15 17. A vehicle frame is the main supporting structure to which all other  
16 components are attached of a motor vehicle with a “body on frame” design. The  
17 function of frames include handling static and dynamic loads with unintended  
18 deflection and distortion, preventing undesirable forces and twisting from driving  
19 over uneven surfaces, engine torque, vehicle handling and accelerating and  
20 decelerating. Frames also are the primary component that guard against sudden  
21 impacts and collisions.

22 18. The Toyota Vehicles were manufactured with frames lacking  
23 adequate rust corrosion protection. As a result, the Toyota Vehicles’ frames are  
24 prone to experiencing severe premature rust corrosion, which affects the  
25 structural integrity of the vehicles, rendering them unsafe to drive and a hazard  
26 on the roadways.

27 19. Rust corrosion has a significant deleterious effect on metal items. It  
28 makes them weaker by replacing the strong iron or steel with flaky powder,

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1 ultimately leading to perforations. Rust corrosion is a progressive process. Once  
2 corrosion begins, it will not stop until adequately repaired.

3 20. The frames on the Toyota Vehicles are materially the same for  
4 purposes of this lawsuit and suffer from the same defect. All of the frames were  
5 manufactured by the same corporation (Dana Holding Corporation) pursuant to  
6 the same defective process. Further, the Sequoia is based on the Tundra, sharing  
7 the same frame and frame assembly.

8 21. Because the damage is typically on the undercarriage of the Toyota  
9 Vehicles it goes undetected unless purposefully inspected, for example, through  
10 a mandatory state safety inspection or otherwise.

11 22. Corrosion of the Toyota Vehicles is unrelated to and separate from  
12 normal surface rust experienced after years of usage and/or exposure to  
13 environmental conditions.

14 23. The excessive rust corrosion on the Toyota Vehicles compromises  
15 the vehicles' safety, stability, and crash-worthiness because important suspension  
16 components, engine mounts, transmission mounts, and body mounts anchor to  
17 the vehicles' frames. It has also affected the value of the vehicles.

18 24. According to Popular Mechanics, "A rusted-through frame means  
19 the structural and crash integrity of the car is questionable, and it should be  
20 inspected and repaired by a qualified repair facility." See  
21 [http://www.popularmechanics.com/cars/how-to/repair/how-to-fight-rust-and-](http://www.popularmechanics.com/cars/how-to/repair/how-to-fight-rust-and-win-14930616)  
22 [win-14930616](http://www.popularmechanics.com/cars/how-to/repair/how-to-fight-rust-and-win-14930616) (last visited October 5, 2016).

23 25. As described on AutoGuide.com, "excessive rust often signals the  
24 impending death of a vehicle. Its useful life [is] essentially over." Further:

25 Frame rust is a big concern, as it affects the integrity of the car. Bad  
26 enough frame rust can cause parts to snap off or crack, which will  
27 really compromise the safety of you, your passengers and other  
28 motorists. It may also significantly diminish the car's ability to  
protect you in a crash.

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1 Sami Haj-Assaad, *Should You Buy a Car with Rust?*, AutoGuide.com (Feb. 24,  
2 2014), available at [http://www.autoguide.com/auto-news/2014/02/buy-car-](http://www.autoguide.com/auto-news/2014/02/buy-car-rust.html)  
3 [rust.html](http://www.autoguide.com/auto-news/2014/02/buy-car-rust.html) (last visited October 5, 2016).

4 26. Excessive rust corrosion and perforation on the Toyota Vehicles  
5 also causes the vehicles to fail state safety inspections. Once a vehicle fails state  
6 safety inspection, consumers cannot use their vehicle unless and until they spend  
7 time and money to remediate the rust and perforation.

8 ***Toyota Knew of the Defect and Failed to Protect Consumers***

9 27. Toyota represented and promised that it used the “most advanced  
10 technology available” to ensure the Toyota Vehicles were, at the least, equipped  
11 with reasonably corrosion-resistant parts. For example, Toyota made the  
12 following representation in the owner’s manuals for the Toyota Vehicles:

13 Toyota, through its diligent research, design and use of the most  
14 advanced technology available, helps prevent corrosion and  
15 provides you with the finest quality vehicle construction.

16 28. Toyota has long been aware that frames on the Toyota Vehicles  
17 exhibited excessive rust corrosion and perforation because they did not have  
18 adequate corrosion-resistant protection. Similar frames on other Toyota vehicles  
19 exhibited the same excessive rust corrosion and perforation. Further, Limited  
20 Service Campaigns initiated by Toyota to address this known defect were  
21 inadequate and failed to warn consumers about the extent and gravity of this  
22 hazard. Toyota has long been aware that frames on the Toyota Vehicles were  
23 exhibiting excessive rust corrosion because they were not manufactured  
24 correctly.

25 29. In or around March 2008, after receiving numerous reports that  
26 frames on approximately 813,000 model year 1995 through 2000 Tacoma  
27 vehicles had exhibited excessive rust corrosion, Toyota initiated a Customer  
28 Support Program that extended the vehicles’ warranty coverage for frame

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1 perforation caused by rust corrosion. Under the program, Toyota, at its option,  
2 was to repair or repurchase any vehicle exhibiting perforation of the frame due to  
3 rust corrosion.

4 30. At that time, Toyota conceded that it had investigated “reports of  
5 1995-2000 model year Tacoma vehicles exhibiting excessive rust corrosion to  
6 the frame causing perforation of the metal” and “determined that the vehicle  
7 frames in some vehicles may not have adequate corrosion-resistant protection.”  
8 In a memorandum sent to dealers, distributors, and certain owners, Toyota  
9 emphasized that “[t]his [rust corrosion] is unrelated to and separate from normal  
10 surface rust which is commonly found on metallic surfaces after some years of  
11 usage.”

12 31. Another Toyota “Warranty Policy Bulletin,” distributed on or  
13 around March 7, 2008, instructed service managers and warranty administrators  
14 that “[v]ehicle inspections should only be performed if the customer has noticed  
15 excessive rust.” Toyota sought to limit the costs of this campaign by offering  
16 inspections only when a customer requested one. Toyota, knowing that many  
17 owners would not notice excessive rust corrosion in the undercarriage of the  
18 vehicle, disregarded its responsibility to correct latent defects in its products and  
19 reduce the unreasonable risk that its customers and others would be injured by  
20 the undiscovered, hidden defect.

21 32. Toyota subsequently modified and expanded this Customer Support  
22 Program to include 2001-2004 Tacoma models.

23 33. In November 2012, Toyota recalled approximately 150,000 Tacoma  
24 vehicles to inspect and replace the spare-tire carrier on vehicles sold in twenty  
25 cold weather states. The recall was issued to address the problem of spare-tire  
26 carriers rusting through and causing the spare tire to drop to the ground.

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*Toyota Tacoma Limited Service Campaigns*

34. Although Toyota has known that the Toyota Vehicles suffer from excessive premature rust corrosion and that this is a safety-related defect, Toyota continues to mislead consumers and fails to adequately remedy the problem.

35. Through the issuance of two separate Limited Service Campaigns in 2014 and 2015, Toyota admits that the Tacoma Vehicles suffer from inadequate rust protection leading to excessive premature rust corrosion. However, Toyota has failed to adequately inform consumers of the true nature of the defect, the number of vehicles and models actually affected and continues to offer inadequate remedies.

36. In 2014, Toyota issued the first Limited Service Campaign (“2014 Campaign”), which applied only to certain 2005-2008 Tacoma Vehicles registered in certain cold weather states (Connecticut, Delaware, Illinois, Indiana, Massachusetts, Maryland, Maine, Michigan, Minnesota, New Hampshire, New Jersey, Ohio, Pennsylvania, Rhode Island, Virginia, Vermont, Wisconsin, and West Virginia). In notifying dealerships of the 2014 Campaign, Toyota expressly admitted as follows:

- Toyota has received reports that certain 2005 through 2008 model year Tacoma vehicles operated in specific cold climate areas (Cold Climate States) with high road salt usage may exhibit more-than-normal corrosion to the vehicle’s frame.
- Toyota investigated these reports and determined that the frames in some vehicles may not have corrosion-resistant protection sufficient for use in these areas.
- This combined with prolonged exposure to road salts and other environmental factors, may contribute to the development of more-than-normal rust in the frame of some vehicles.

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- 1 • This condition is unrelated to and separate from normal surface rust which  
2 is commonly found on metallic surfaces after some years of usage and/or  
3 exposure to the environment.

4 37. The 2014 Campaign was not a formal recall and was not widely  
5 publicized. Rather, Toyota's efforts to notify affected individuals of the 2014  
6 Campaign consisted solely of sending letters to certain owners of affected  
7 Tacoma Vehicles registered in above-mentioned cold-weather states based on  
8 address information obtained from a third party and instructing dealerships to  
9 forward notice of the 2014 Campaign to non-original purchasers of Tacoma  
10 Vehicles whom they were aware of. Accordingly, by design, the 2014 Campaign  
11 did not reach numerous affected Class members.

12 38. Additionally, the relief provided under the 2014 Campaign was  
13 inadequate and unnecessarily limited. Under this Campaign, owners of Tacoma  
14 Vehicles registered in the 20 defined cold weather states could bring their  
15 vehicles to a participating Toyota dealership for inspection to determine whether  
16 rust perforation of 10 mm or larger was identifiable on certain designated areas  
17 of the vehicle's frame. Compliance with the program and requirements was  
18 inconsistent.

19 39. If a dealership's inspection revealed a hole 10 mm or larger on a  
20 designated portion of a Tacoma Vehicle's frame, a new frame was to be  
21 installed. However, Toyota did not mandate that a replacement frame be installed  
22 within a defined time period, forcing owners to unwittingly drive unsafe  
23 vehicles.

24 40. Additionally, the 2014 Campaign limited relief to only those  
25 vehicles that were brought in for inspection before March 31, 2016, an arbitrary  
26 deadline. Thus, Tacoma Vehicles that suffered from excessive rust corrosion  
27 after March 31, 2016, were not eligible for any repair from Toyota.

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1 41. In April 2015, after the filing of Plaintiffs’ initial complaint, Toyota  
2 issued a second Limited Service Campaign (the “2015 Campaign”) for certain  
3 model year 2005-2008 Tacoma Vehicles in the 30 states not covered by the 2014  
4 Campaign. Through the 2015 Campaign, Toyota conceded that Toyota Vehicles  
5 in warm weather states also suffer from excessive rust corrosion and perforation.

6 42. Like the 2014 Campaign, the 2015 Campaign was not widely  
7 publicized. Rather, Toyota’s efforts to notify affected individuals of the 2015  
8 Campaign consisted solely of sending letters to certain owners of affected  
9 Tacoma Vehicles registered in above-mentioned cold weather states based on  
10 address information obtained from a third party and instructing dealerships to  
11 forward notice of the 2015 Campaign to non-original purchasers of Tacoma  
12 Vehicles whom they were aware of.

13 43. The letters Toyota sent to owners of certain Toyota Vehicles  
14 registered in the 30 states covered by the 2015 Campaign were misleading on the  
15 cause of the rust corrosion attributing it solely to cold climate areas with “high”  
16 road salt use. Each such letter stated:

17 **What is the condition?**

18 Toyota has received reports that certain 2005 through 2008 model  
19 year Tacoma Vehicles operated in specific cold climate areas with  
20 high road salt use may exhibit more-than-normal corrosion to the  
21 vehicle’s frame. This condition is unrelated to and separate from  
22 normal surface rust which is commonly found on metallic surfaces  
after some years of usage and/or exposure to the environment.

23 44. The 2015 Campaign letters left decisions to the vehicle owner,  
24 rather than directing all vehicles to be inspected:

25 **What is included in this Limited Service Campaign?**

26 If you believe your vehicle has been operated in cold climate  
27 regions of the United States where high road salt is frequently used,  
28 any authorized Toyota Dealer will inspect your vehicle’s frame for  
excessive rust corrosion.



1 to frame rust. The Tundra safety recall required dealers to inspect the rear cross-  
2 member and rear brake line mounts on certain model year 2000-2003 Tundra  
3 vehicles for significant rust. If dealers found significant rust, the corroded parts  
4 (but not the entire frame) were to be replaced. According to Toyota, the  
5 excessive corrosion could cause “the spare tire stowed under the truck bed [to]  
6 become separated from the rear cross-member,” or “lead to the loss of the rear  
7 brake circuits which will increase vehicle stopping distances and the risk of a  
8 crash.”

9 50. The Tundra safety recall did not cover many of the components on  
10 the frame of first generation Tundra vehicles that were exhibiting excessive rust.  
11 Accordingly, in May 2010, Toyota announced a Limited Service Campaign for  
12 all 2000-2003 Tundra vehicles (regardless of geographic location) for excessive  
13 frame rust (“LSC A0F”). However, Toyota instructed dealers “*that direct*  
14 *marketing of warranty or this LSC is strictly prohibited*” and emphasized that  
15 “exposure to cold climate and high road salt usage conditions are primary  
16 contributors” to the abnormal rust. (Emphasis in original). Under LSC A0F,  
17 Toyota provided a limited time offer to replace the vehicle frame if specific areas  
18 of the frame had perforation of 10mm or larger.

19 51. Toyota also issued a Corrosion Resistant Compound (“CRC”)  
20 Campaign B0D “as the extension to Safety Recall 90M – CRC application to the  
21 rear portion of the frame” for 2000-2003 model year Tundra vehicles registered  
22 in cold weather states (“Tundra B0D”). Tundra B0D is a combination of Safety  
23 Recall 90M that offered to apply a CRC to the rear portion of the vehicle frame,  
24 and a limited time offer for a CRC to the front portion of the frame. Toyota  
25 issued Tundra B0D “as an additional measure of confidence” to owners.

26 52. In December 2011, for the same excessive spare tire rust defects  
27 relating to Safety Recall 90M, Toyota issued a Limited Service Campaign for  
28 approximately 316,000 model year 2000-2003 Tundra Vehicles sold or

1 registered in the remaining 30 states (“LSC 9SM”). Again, Toyota instructed  
2 dealers to “not solicit opportunities to perform this campaign” and told owners  
3 “it is unlikely that these vehicles will experience prolonged exposure to high  
4 concentrations of road salts and other environmental factors that contribute to  
5 [excessive corrosion].” (Emphasis in original). Owners who brought in eligible  
6 vehicles by December 2012, could have the rear cross-member, fuel tank  
7 mounting system, brake tubes and valves, and spare tire carrier inspected. Only,  
8 if “significant corrosion” was found could the impacted parts be replaced.

9 53. In August 2013, Toyota began another Limited Service Campaign  
10 for approximately 78,000 model year 2004-2006 Tundra vehicles (“LSC D0D”).  
11 LSC D0D applied to 2004-2006 Tundra vehicles only then “currently registered”  
12 in “cold climate states” (CT, DE, IL, IN, KY, MA, MD, ME, MI, MN, NH, NJ,  
13 NY, OH, PA, RI, VA, VT, WI & WV) and the District of Columbia. According  
14 to Toyota, it investigated reports that these vehicles may “exhibit more-than-  
15 normal corrosion to the vehicle’s frame” and “determined that the frames in  
16 some vehicles may not have corrosion-resistant protection sufficient for use in  
17 these areas.” Toyota stated “[t]his condition is unrelated to and separate from  
18 normal surface rust which is commonly found on metallic surfaces after some  
19 years of usage and/or exposure to the environment.”

20 54. LSC D0D did not apply to 2004-2006 Tundra vehicles registered  
21 outside the twenty cold climate states or in the District of Columbia. LSC D0D  
22 did not provide a full “remedy” for eligible vehicles either. Pursuant to LSC  
23 D0D, owners only had until March 31, 2015, to have their vehicle inspected at an  
24 authorized Toyota dealer.

### 25 ***Toyota Sequoia Limited Service Campaign***

26 55. In late 2012 through early 2013, Toyota issued a Limited Service  
27 Campaign for certain 2001 through 2004 model year Toyota Sequoia vehicles  
28 (“LSC C0D”). LSC C0D was limited to vehicles then currently registered in

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1 what Toyota described as the “Cold Climate States” or the District of Columbia:  
2 CT, IN, KY, MA, MD, ME, MI, MN, NH, NJ, NY, OH, PA, RI, VA, VT, WI &  
3 WV. Pursuant to LSC C0D, vehicles brought to an authorized Toyota dealer in  
4 those “Cold Climate States” would be inspected for “more than normal corrosion  
5 to the vehicle’s frame” because Toyota had determined the vehicles lacked  
6 “corrosion-resistant protection sufficient for use in [Cold Climate States].”

7 56. Pursuant to LSC C0D, eligible Sequoia vehicles would be inspected  
8 and provided one of two so-called remedies at Toyota’s sole discretion, but only  
9 “until *July 31, 2014*.”

10 57. In its letter to owners announcing LSC C0D, Toyota added an  
11 untrue and vague condition on LSC C0D, representing that only vehicles  
12 “operated in specific cold climate areas with high road salt usage” were at risk of  
13 above average rust problems. This was false, deceptive and likely to dissuade  
14 customers from bringing in their vehicles for inspection and/or provided them  
15 with a false sense of security by thinking their vehicle was not subject to  
16 excessive corrosion if it was not driven in so-called “cold climate areas with high  
17 road salt usage.” In fact, the defect was and is present on all Toyota Vehicles  
18 nationwide.

19 58. Under Toyota’s definition, “Cold Climate States” excluded states  
20 such as North Dakota, Montana, Idaho, Washington and Alaska.

21 59. In a tacit admission that LSC C0D was inadequate (from both  
22 geographic and remedial standpoints), in or about September 2013, Toyota  
23 issued a Limited Service Campaign (“LSC CSD”) for certain 2001 through 2004  
24 model year Toyota Sequoia vehicles. LSC CSD applied to approximately  
25 200,000 Sequoia vehicles in all states other than the so-called “Cold Climate  
26 States.”

27 60. In its notice letter accompanying LSC CSD, Toyota downplayed the  
28 scope of the defect by stating “If you believe your vehicle has been operated in

1 cold climate regions of the United States where high road salt is frequently  
2 used,” then you could ask for an inspection. Even then, eligible owners had less  
3 than one year, until July 31, 2014, to complete vehicle inspection under LSC  
4 CSD.

5 61. Toyota’s letter Q&A accompanying the LSD CSD stated:

6 **What is the condition?**

7 Toyota has received reports that certain 2001 through 2004 model  
8 year Sequoia vehicles operated in specific cold climate areas with  
9 high road salt usage may exhibit more-than-normal corrosion to the  
10 vehicle’s frame. Toyota investigated these reports and determined  
11 that the frames in some vehicles may not have adequate corrosion-  
12 resistant protection. This combined with prolonged exposure to road  
13 salts and other environmental factors may contribute to the  
14 development of more than normal rust in the frame of some  
15 vehicles. This condition is unrelated to and separate from normal  
16 surface rust which is commonly found on metallic surfaces after  
17 some years of usage and/or exposure to the environment.

18 62. Like the others, this letter to owners was false, deceptive and likely  
19 to dissuade customers from bringing in their vehicles for inspection and/or  
20 provided them with a false sense of security by thinking their vehicle was not  
21 subject to excessive corrosion if it was not driven in so-called “cold climate areas  
22 with high road salt usage.” The defect was and is present on all Toyota Vehicles  
23 nationwide.

24 ***Plaintiffs’ Experiences with Their Toyota Vehicles***

25 **Michael Watson**

26 63. In September 2005, Michael Watson purchased a new 2005 Toyota  
27 Tacoma from Stadium Toyota in Tampa, Florida.

28 64. Watson monitored his truck’s condition diligently and noticed  
modest rust corrosion sometime in 2013. Shortly thereafter, Watson contacted  
his local Toyota dealer, Toyota Melbourne, regarding rust corrosion protection.  
He was advised that the dealer did not offer that service.

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1           65. During the fall of 2014, Watson corresponded with Toyota  
2 regarding the rust corrosion on the frame of his truck. Watson was told that  
3 because his truck was not included in the 2014 Limited Service Campaign for  
4 certain Tacoma trucks registered in certain salt-belt states, there was nothing  
5 Toyota would do to remedy the frame rust issue with his truck.

6           66. The frame on Watson's Tacoma truck was finally replaced in May  
7 2016, under the 2015 Limited Service Campaign.

8 **Kenneth MacLeod**

9           67. In 2009, Kenneth MacLeod purchased a new 2009 Toyota Tacoma,  
10 from Toyota of Bowie, located in Bowie, Maryland.

11           68. MacLeod independently discovered significant rust accumulation  
12 and blistering of the frame while inspecting his vehicle in late 2014. Defendant  
13 did not notify MacLeod of the Limited Service Campaign or the defective nature  
14 of the frame on his vehicle.

15           69. MacLeod sought out Toyota's website regarding his concerns,  
16 which directed him to contact a local dealership. When MacLeod contacted a  
17 local dealer, the dealer did not offer to repair or replace his frame; rather, the  
18 dealer attempted to sell MacLeod another vehicle. When they discussed the  
19 condition of MacLeod's frame, the dealer stated that a new frame was needed  
20 and that it would cost about \$15,000.

21 **Ryan Burns**

22           70. Ryan Burns purchased a 2005 Toyota Tacoma from J. Pauley  
23 Toyota Dealership in Fort Smith, Arkansas on April 30, 2005.

24           71. In February 2014, Burns took his Toyota Tacoma in for service of  
25 the fan, which was coming into contact with the fan shroud. Shortly thereafter,  
26 Burns was advised that the frame on his Tacoma vehicle was rusted through and  
27 broken, resulting in the engine sitting two or three inches lower than normal, and  
28 that the condition rendered the vehicle unsafe to drive. In July 2014, Burns was

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1 informed by an employee of J. Pauley Toyota that it would cost in excess of  
2 \$10,600 plus tax to replace the frame on his vehicle.

3 72. Toyota has refused to replace the frame on Burns' Tacoma vehicle.  
4 With the exception of being towed to J. Pauley Toyota for a few days for  
5 inspection in March 2016, Burns' Tacoma has been sitting in his backyard since  
6 March of 2014.

7 **Michael Meade**

8 73. Michael Meade owns a 2006 Toyota Tacoma, which he acquired in  
9 Maryland in July 2010 as a Toyota-certified used vehicle. He subsequently  
10 moved to Louisiana.

11 74. In September 2014, Meade noticed excessive rust accumulation and  
12 flaking on the frame of his truck. Shortly thereafter, he took his truck to Toyota  
13 of Slidell, Louisiana, for an inspection. The dealer confirmed that the frame on  
14 Meade's vehicle exhibited excessive rust corrosion, but told Meade that Toyota  
15 would not replace the frame because no perforation was found.

16 75. In January 2015, while changing the oil on the truck, Meade noticed  
17 a clear perforation of the truck's frame. Meade took his truck to the Slidell  
18 dealership, but Toyota again refused to replace the frame on his vehicle.

19 76. The frame on Meade's Tacoma was replaced through the 2015  
20 Limited Service Campaign.

21 **Brian Warner**

22 77. Brian Warner owns a 2006 Toyota Tacoma, which he purchased  
23 used on March 18, 2010, in Ohio.

24 78. In November 2014, Warner took his Tacoma to Alamo Toyota  
25 Collision Center in San Antonio, Texas, to get an inspection pursuant to Toyota's  
26 Limited Service Campaign. An employee at the Collision Center informed  
27 Warner that the frame on his truck was severely corroded and that the dealership  
28 would need to get further guidance from Toyota on what actions to take.

1           79. On or around January 21, 2015, Warner was informed by employees  
2 at Alamo Toyota Collision Center that Toyota refused to repair or replace his  
3 frame or otherwise resolve his predicament, claiming that the absence of any rust  
4 perforation warranted that no corrective, remedial, or curative measures would be  
5 done. A Toyota employee repeated this information to Warner on or about  
6 January 28, 2015.

7           80. After being notified that Warner's Tacoma was from Ohio – a state  
8 included in the Limited Service Campaign – Toyota still refused repair or  
9 replacement. Specifically, Toyota refused to offer to apply compounds that might  
10 delay or prevent further rusting. Toyota explained that it did not apply rust  
11 corrosion countermeasures to vehicles in the State of Texas.

12 **Dale Franquet**

13           81. Dale Franquet purchased a used 2005 Tacoma in a private sale in  
14 New York in 2009. He has primarily used the truck in Pennsylvania.

15           82. When Franquet took his truck in for regular maintenance in  
16 Pennsylvania, he was informed that his frame had excessive rust corrosion  
17 accumulation and multiple perforations. The condition of the frame was so  
18 severe that the technician refused to release the vehicle to Franquet, saying that it  
19 was too dangerous to operate on the roads.

20           83. It took the Toyota dealer approximately six months to replace the  
21 frame on Franquet's Tacoma. After the frame was replaced Franquet's Tacoma  
22 vehicle experienced multiple problems, including problems steering, a shredded  
23 serpentine belt, and a broken hose, all of which are attributable to the  
24 replacement of the frame on his vehicle and process relating to same.

25 **James Fuller**

26           84. James Fuller owns a 2006 Toyota Tacoma. He purchased it used in  
27 January 2014 from Hendrick Toyota Scion of South Charleston in South  
28 Carolina.

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1 85. After contacting Toyota and at Toyota's instruction, Fuller took his  
2 Tacoma to Hendrick Toyota in North Charleston, South Carolina, on or around  
3 June 19, 2014, and January 19, 2015. As of January 2015, the frame on Fuller's  
4 vehicle was severely corroded and perforated, including a hole of around 6  
5 inches in diameter appearing on the inside of the frame. Despite that fact, Toyota  
6 refused to replace the frame on Fuller's vehicle. Rather, Toyota recommended  
7 that Fuller replace the frame on the Tacoma at his own expense.

8 86. During the Spring of 2015, the frame on Fuller's Tacoma was  
9 finally replaced by Toyota under the Limited Service Campaign.

10 **James Good**

11 87. On May 20, 2006, James Good purchased a new 2006 Toyota  
12 Sequoia SR5 from Beltway Toyota, Marlow Heights, Maryland.

13 88. On September 20, 2016, Mr. Good took his Toyota Sequoia to  
14 Younger Toyota, Hagerstown, Maryland to replace the recalled Takata airbag  
15 and to inspect the front end of the vehicle for an unidentified rattle. During this  
16 inspection, the service technician discovered a large perforation (over 10 mm) in  
17 the frame. Mr. Good was advised that the vehicle was unsafe to drive until the  
18 frame was replaced at an estimated cost of over \$12,000. Mr. Good was denied  
19 any remedy or rust corrosion countermeasures other than the offer of a loyalty  
20 coupon for a new or used Toyota.

21 **CLASS ACTION ALLEGATIONS**

22 89. Plaintiffs bring this class action pursuant to Fed. R. Civ. P. 23(a)  
23 and (b)(3) on behalf of a proposed class defined as:

24 All persons, entities or organizations who, at any time as of the  
25 entry of the Preliminary Approval Order, own or owned,  
26 purchase(d) or lease(d) Subject Vehicles distributed for sale or lease  
27 in any of the fifty States, the District of Columbia, Puerto Rico and  
28 all other United States territories and possessions.

1 Excluded from the Class are: (a) Toyota, its officers, directors and employees; its  
2 affiliates and affiliates' officers, directors and employees; its distributors and  
3 distributors' officers, directors and employees; and Toyota Dealers and Toyota  
4 Dealers' officers and directors; (b) Plaintiffs' Counsel; (c) judicial officers and  
5 their immediate family members and associated court staff assigned to this case;  
6 and (d) persons or entities who or which timely and properly excluded  
7 themselves from the Class.

8 90. Certification of Plaintiffs' claims for classwide treatment is  
9 appropriate because Plaintiffs can prove the elements of their claims on a  
10 classwide basis using the same evidence as would be used to prove those  
11 elements in individual actions alleging the same claims.

12 91. **Numerosity – Federal Rule of Civil Procedure 23(a)(1).** The  
13 Class consists of more than one million people. Therefore, the Class is so  
14 numerous that joinder of all members would be impracticable. The sheer number  
15 of Class members makes joinder of all members impracticable.

16 92. **Commonality and Predominance – Federal Rule of Civil**  
17 **Procedure 23(a)(2) and 23(b)(3).** This action involves common questions of  
18 law and fact that predominate over any questions affecting individual Class  
19 members, including:

- 20 a. whether the Toyota Vehicles are defective;
- 21 b. whether Toyota misrepresented the standard, quality, and  
22 characteristics of the Toyota Vehicles;
- 23 c. whether Toyota's misrepresentations regarding the standard,  
24 quality and characteristics of the Toyota Vehicles were likely  
25 to mislead reasonable consumers;
- 26 d. whether Toyota's omission that frames on the Toyota  
27 Vehicles lacked adequate rust corrosion protection was a  
28 material fact that a reasonable consumer would be expected to

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- 1                   rely on when deciding whether to purchase a vehicle;
- 2           e.       whether Plaintiffs and the other Class members have been
- 3                   damaged and, if so, the extent of such damages; and
- 4           f.       whether Plaintiffs and the other Class members are entitled to
- 5                   equitable relief, including but not limited to, restitution and
- 6                   injunctive relief.

7           93.   Toyota engaged in a common course of conduct giving rise to the  
8   legal rights sought to be enforced by Plaintiffs individually and on behalf of the  
9   other Class members. Similar or identical statutory and common law violations,  
10   business practices, and injuries are involved. Individual questions, if any, pale by  
11   comparison, in both quality and quantity, to the numerous common questions  
12   that dominate this action.

13           94.   **Typicality – Federal Rule of Civil Procedure 23(a)(3).** Plaintiffs’  
14   claims are typical of the claims of the other Class members because, among other  
15   things, Plaintiffs and the other Class members were injured through the  
16   substantially uniform misconduct described above. Plaintiffs are advancing the  
17   same claims and legal theories on behalf of themselves and all other Class  
18   members, and no defense is available to Toyota that is unique to any one  
19   Plaintiff.

20           95.   **Adequacy of Representation – Federal Rule of Civil Procedure**  
21   **23(a)(4).** Plaintiffs are adequate representatives of the Class because their  
22   interests do not conflict with the interests of the other Class members.  
23   Additionally, Plaintiffs have retained counsel competent and experienced in  
24   complex class action litigation. Thus, the Class’s interests will be fairly and  
25   adequately protected by Plaintiffs and their counsel.

26           96.   **Superiority – Federal Rule of Civil Procedure 23(b)(3).** A class  
27   action is superior to any other available means for the fair and efficient  
28   adjudication of this controversy, and no unusual difficulties are likely to be

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1 encountered in the management of this matter as a class action. The damages,  
 2 harm, or other financial detriment suffered individually by Plaintiffs and the  
 3 other Class members are relatively small compared to the burden and expense  
 4 that would be required to litigate their claims on an individual basis against  
 5 Toyota, making it impracticable for Class members to individually seek redress  
 6 for Toyota’s wrongful conduct. Even if Class members could afford individual  
 7 litigation, the court system should not be forced to shoulder such inefficiency.  
 8 Individualized litigation would create a potential for inconsistent or contradictory  
 9 judgments and increase the delay and expense to all parties and the court system.  
 10 By contrast, the class action device presents far fewer management difficulties  
 11 and provides the benefits of single adjudication, economies of scale, and  
 12 comprehensive supervision by a single court.

**CAUSES OF ACTION**

**COUNT I**

**VIOLATION OF CALIFORNIA CONSUMERS LEGAL REMEDIES ACT**

16 97. Plaintiffs repeat and reallege all other paragraphs as if fully set forth  
17 herein.

18 98. Toyota is a “person,” under Cal. Civ. Code §1761(c).

19 99. Plaintiffs are “consumers,” as defined by Cal. Civ. Code §1761(d),  
20 who purchased or leased one more Toyota Vehicles.

21 100. Defendant’s conduct, as described herein, in misrepresenting that it  
 22 used state-of-the-art methods and materials to prevent rust corrosion on the  
 23 Toyota Vehicles, and omitting the fact that it failed to use adequate and  
 24 reasonable rust preventative measures, and manufactured the Toyota Vehicles  
 25 with a uniform defect that caused excessive and significant rust corrosion and  
 26 perforation to the frames of the Vehicles, violates the California Consumers  
 27 Legal Remedies Act (“CLRA”), Cal. Civ. Code §1750, *et seq.* Specifically,  
 28 Defendant violated the CLRA by omitting material facts and stating in the

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1 Vehicle manuals that it used state-of-the-art methods and materials to prevent  
2 rust corrosion on the Toyota Vehicles, and by engaging in the following practices  
3 proscribed by Civil Code §1770(a) in transactions that were intended to result in,  
4 and did result in, the sale of the product:

- 5 a. representing that the Toyota Vehicles have approval, characteristics,  
6 ingredients, uses, benefits, or quantities which they do not have;
- 7 b. representing that the Toyota Vehicles are original or new if they  
8 have deteriorated unreasonably;
- 9 c. representing that the Toyota Vehicles are of a particular standard,  
10 quality, or grade if they are of another;
- 11 d. advertising the Toyota Vehicles with intent not to sell them as  
12 advertised; and
- 13 e. representing that the Toyota Vehicles have been supplied in  
14 accordance with previous representations when they have not.

15 101. Defendant violated the Act by selling Toyota Vehicles that it knew  
16 did not have adequate rust corrosion protection, possessed uniform defects that  
17 caused the Toyota Vehicles' frames to rust excessively and perforate, and  
18 exposed the public to an unreasonable safety risk. Defendant omitted from  
19 Plaintiffs and the other Class members the material fact that Toyota Vehicles  
20 were sold with defective frames that caused excessive rust corrosion and  
21 perforation to who it had a duty to disclose. This is a fact that a reasonable  
22 consumer would consider important in selecting a vehicle to purchase or lease.

23 102. Toyota's Limited Service Campaigns were false, deceptive and  
24 purposely dissuaded customers from bringing their Vehicles in for inspection  
25 and/or provided them with a false sense of security by representing that the  
26 Vehicles were not subject to excessive corrosion if they were not driven in so-  
27 called "cold climate areas with high road salt usage." The Limited Service  
28 Campaigns instituted by Toyota were not adequate and the Toyota Vehicles are

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1 still defective.

2 103. Pursuant to Civil Code §1782(d), Plaintiffs, individually and on  
3 behalf of the other members of the Class, seek a Court order enjoining the above-  
4 described wrongful acts and practices of Defendant, ordering Defendant to  
5 extend repair and replacement remedies to all Class members who experience  
6 significant rust corrosion, and awarding restitution and disgorgement.

7 104. Pursuant to §1782 of the Act, Plaintiffs notified Defendant in  
8 writing by certified mail of the particular violations of §1770 of the Act and  
9 demanded that Defendant rectify the problems associated with the actions  
10 detailed above and give notice to all affected consumers of Defendant’s intent to  
11 so act. A copy of the letter is attached hereto as Exhibit A.

12 105. Defendant did not rectify the problems associated with the actions  
13 detailed above, which are continuing. Accordingly, Plaintiffs seek actual,  
14 punitive, and statutory damages, as appropriate.

15 106. Defendant’s conduct is fraudulent, wanton, and malicious.

16 107. Pursuant to §1782(d) of the Act, attached hereto as Exhibit B is the  
17 affidavit showing that this action has been commenced in the proper forum.

18 **COUNT II**

19 **VIOLATION OF CALIFORNIA’S UNFAIR COMPETITION LAW**

20 108. Plaintiffs repeat and reallege all other paragraphs as if fully set forth  
21 herein.

22 109. The Unfair Competition Law, Business & Professions Code  
23 §17200, *et seq.* (“UCL”), and similar laws in other states, prohibits any  
24 “unlawful,” “fraudulent,” or “unfair” business act or practice and any false or  
25 misleading advertising. In the course of conducting business, Defendant  
26 committed “unlawful” business practices by, among other things, making the  
27 representations and omissions of material facts, as set forth more fully herein,  
28 and violating Civil Code §§1572, 1573, 1709, 1711, 1770(a)(5), (6), (7), (9), and

1 (16), and Business & Professions Code §§17200, *et seq.*, 17500, *et seq.*, and the  
2 common law. Plaintiffs, individually and on behalf of the other Class members,  
3 reserve the right to allege other violations of the law, which constitute other  
4 unlawful business acts or practices. Such conduct is ongoing and continues to  
5 this date.

6 110. In the course of conducting business, Defendant committed “unfair”  
7 business practices by, among other things, making the representations and  
8 omissions of material facts regarding rust corrosion on the frame of the Toyota  
9 Vehicles, as alleged. There is no societal benefit from such false and misleading  
10 representations and omissions – only harm. While Plaintiffs and the other Class  
11 members were harmed by this conduct, Defendant was unjustly enriched. As a  
12 result, Defendant’s conduct is “unfair” as it has offended an established public  
13 policy. Further, Defendant engaged in immoral, unethical, oppressive, and  
14 unscrupulous activities that are substantially injurious to consumers.

15 111. Further, as set forth in this Complaint, Plaintiffs allege violations of  
16 consumer protection, unfair competition, and truth in advertising laws in  
17 California and other states, resulting in harm to consumers. Defendant’s acts and  
18 omissions also violate and offend the public policy against engaging in false and  
19 misleading advertising, unfair competition, and deceptive conduct towards  
20 consumers. This conduct constitutes violations of the unfair prong of Business &  
21 Professions Code §17200, *et seq.* There were reasonably available alternatives to  
22 further Defendant’s legitimate business interests other than the conduct described  
23 herein.

24 112. Business & Professions Code §17200, *et seq.*, also prohibits any  
25 “fraudulent business act or practice.” In the course of conducting business,  
26 Defendant committed “fraudulent business act[s] or practices” by among other  
27 things, prominently making the representations (which also constitute advertising  
28 within the meaning of §17200) and omissions of material facts regarding the

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1 safety, characteristics, and production quality of the Toyota Vehicles.

2 113. Defendant's actions, claims, omissions, and misleading statements,  
3 as more fully set forth above, were also false, misleading and likely to deceive  
4 the consuming public within the meaning of Business & Professions Code  
5 §17200, *et seq.*

6 114. Plaintiffs have in fact been deceived as a result of their reliance on  
7 Defendant's material representations and omissions, which are described above.  
8 Plaintiffs have suffered injury in fact and lost money as a result of purchasing the  
9 deceptively advertised Toyota Vehicles by paying more than they should have  
10 and expending time, effort, and money to attempt to repair or replace the frame  
11 and arrange alternative means of transportation.

12 115. Unless restrained and enjoined, Defendant will continue to engage  
13 in the above-described conduct. Accordingly, injunctive relief is appropriate.

14 116. Plaintiffs, on behalf of themselves, all others similarly situated, and  
15 the general public, seeks restitution from Defendant of all money obtained from  
16 Plaintiffs and the other members of the Class collected as a result of unfair  
17 competition, an injunction prohibiting Defendant from continuing such practices,  
18 corrective advertising, and all other relief this Court deems appropriate,  
19 consistent with Business & Professions Code §17203.

20 **COUNT III**

21 **VIOLATION OF FLORIDA DECEPTIVE AND**  
22 **UNFAIR TRADE PRACTICE ACT**

23 **Claims Brought in the Alternative on Behalf of the Florida State Class**

24 117. Plaintiff Watson repeats and realleges all other paragraphs as if fully  
25 set forth herein.

26 118. Florida declares unlawful all unfair methods of competition,  
27 unconscionable acts or practices, and unfair or deceptive acts or practices in the  
28 conduct of any trade or commerce. Fla. Stat. §501.201, *et seq.*

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1           119. Defendant engaged in unfair methods of competition,  
2 unconscionable acts or practices, and unfair or deceptive practices in the conduct  
3 of trade or commerce under Florida law by manufacturing and selling Toyota  
4 Vehicles with defective frames, misrepresenting the quality, reliability, and  
5 safety of Toyota Vehicles, and omitting material facts concerning the defective  
6 frames and inadequate rustproofing with the intent that Plaintiff Watson and the  
7 other Florida Class members rely on the omissions. Plaintiff Watson and the  
8 other Florida Class members would not have purchased or leased Toyota  
9 Vehicles had they been informed of the important fact that they lacked adequate  
10 rustproofing, were defective, and would pose serious risks to their safety and the  
11 safety of others.

12           120. Plaintiff Watson and the other Florida Class members justifiably  
13 relied on Defendant's wrongful conduct and omissions. No reasonable consumer  
14 would have purchased a Toyota Vehicle knowing that its frame did not possess  
15 adequate rust corrosion protection, that this defect would greatly diminish the  
16 useful life of Toyota Vehicles, and that they would be exposed (and expose  
17 others) to an unreasonable risk of serious injury.

18           121. Plaintiff Watson and the other Florida Class members are persons  
19 who suffered loss as a result of Defendant's unfair methods of competition,  
20 unconscionable acts or practices, and unfair or deceptive practices. Plaintiff  
21 Watson and the other Florida Class members overpaid for Toyota Vehicles  
22 because the defective frames made them less valuable than the purchase price,  
23 incurred losses in order to arrange alternate means of transportation, and paid for  
24 repairs.

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**COUNT IV**

**VIOLATION OF THE MARYLAND CONSUMER PROTECTION ACT**  
**Brought in the Alternative on Behalf of the Maryland State Class**

122. Plaintiffs MacLeod and Good repeat and reallege all other paragraphs as if fully set forth herein.

123. The prohibition on unfair and deceptive trade practices under Maryland law extends to any misrepresentation that consumer goods are of a particular quality and any failure to state a material fact if the failure deceives or tends to deceive. *See* Md. Code, Com. Law §§13-101, *et seq.*

124. Defendant committed unfair and deceptive trade practices in violation of the Maryland Consumer Protection Act by marketing, distributing, and selling Toyota Vehicles with frames that lacked adequate rust corrosion protection and failing to disclose the material fact that the Toyota Vehicles were equipped with defective frames that were prone to excessive and premature rust corrosion with the intent that Plaintiffs MacLeod, Good and the other Maryland Class members rely upon these misrepresentations and omissions of material fact.

125. Defendant's unfair and deceptive acts or practices were likely to and did deceive reasonable consumers, including Plaintiffs MacLeod, Good and the other Maryland Class members, causing actual damages. Plaintiffs MacLeod's, Good's and the other Maryland Class members' Toyota Vehicles are unsafe for ordinary use, diminished in value, unmerchantable, and a risk to Maryland Class members and others.

126. Toyota Vehicles were less valuable than the purchase price. Plaintiffs MacLeod, Good and the other Maryland Class members also suffered actual damages when they had to arrange alternate means of transportation and paid for repairs.

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**COUNT V**  
**VIOLATION OF OHIO CONSUMER SALES PRACTICES ACT**  
**Brought in the Alternative on Behalf of the Ohio Class**

127. Plaintiff Warner repeats and realleges all other paragraphs as if fully set forth herein.

128. The Ohio Consumer Protection Act, Ohio Rev. Code §1345.02, prohibits suppliers from committing unfair and deceptive acts or practices in connection with a consumer transaction. The Act enumerates an inclusive list of unfair and deceptive acts and includes the following: representing that the subject of the consumer transaction is of a particular standard, quality, grade, style, prescription, or model, if it is not.

129. Defendant’s conduct alleged herein constitutes unfair and deceptive acts or practices in violation of the Ohio Consumer Sales Practices Act. Defendant made false misrepresentations that Toyota Vehicles were free from defects and safe to operate on the roadways. Defendant also knowingly omitted material facts with respect to the inadequate rustproofing and excessive rust risk and failed to disclose the frame defect in Toyota Vehicles.

130. Defendant was on notice that its actions had been declared deceptive and unfair. Defendant’s conduct was declared unfair and deceptive with reasonable specificity under the following rules adopted under Ohio Rev. Code §1345.05(B)(2) and court decisions, among others:

- *Amato v. General Motors Corp.*, 463 N.E.2d 625 (Ohio Ct. App. 1982);
- Ohio Admin. Code 109:4-3-16(B)(14);
- *Mason v. Mercedex-Benz USA, LLC*, Online Public Inspection File<sup>1</sup> (“O.P.I.F.”) No. 10002382 (Ohio Ct. App. Aug. 26, 2005);

<sup>1</sup> Ohio’s Online Public Inspection File is available at <http://opif.ag.state.oh.us/Secured/Landing2.aspx>.

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- 1 • *Bellinger v. Hewlett-Packard Co.*, O.P.I.F. No. 10002077 (Ohio Ct. App. 2002);
- 2
- 3 • *Khoury v. Lewis*, O.P.I.F. No. 10001995 (Ohio Ct. App. 2001);
- 4 • *Quality Pontiac, Buick, Cadillac, GMC, Inc. v. Ringwald*, O.P.I.F. No. 10000937 (Ohio Ct. App. 1988).
- 5

6 131. Had Plaintiff Warner and the other Ohio Class members been  
 7 informed of the defect that rendered Toyota Vehicles prone to excessive and  
 8 premature rust corrosion, they would not have purchased the Toyota Vehicles.

9 132. Had Plaintiff Warner and the other Ohio Class members been  
 10 informed of the defect that rendered Toyota Vehicles prone to excessive and  
 11 premature rust corrosion, they would not have purchased the Toyota Vehicles.

12 133. As a direct and foreseeable result of Defendant’s unfair and  
 13 deceptive acts or practices, Plaintiff Warner and the other Ohio Class members  
 14 sustained damages. They overpaid for their Toyota Vehicles, incurred out-of-  
 15 pocket losses related to repairing, maintaining, and servicing their defective  
 16 Toyota Vehicles, costs associated with arranging and obtaining alternative means  
 17 of transportation, treble, consequential, and incidental damages recoverable  
 18 under the law.

19 **COUNT VI**

20 **VIOLATION OF THE NEW YORK DECEPTIVE PRACTICES ACT,**  
 21 **NEW YORK GENERAL BUSINESS LAW §349**

22 **Brought in the Alternative on Behalf of the New York Class**

23 134. Plaintiff Franquet repeats and realleges all other paragraphs as if  
 24 fully set forth herein.

25 135. Plaintiff and other members of the alternative New York State Class  
 26 are persons within the meaning of New York General Business Law (“GBL”)  
 27 §349(h). Defendant engaged in business, trade or commerce within the meaning  
 28 of GBL §349(a).

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1 136. GBL §349(a) declares unlawful “[d]eceptive acts or practices in the  
2 conduct of any business, trade or commerce or in the furnishing of any service in  
3 [New York State].”

4 137. As described herein, Defendant engaged in consumer-oriented  
5 conduct that was misleading and directed at the consuming public. The  
6 fundamental nature of Defendant’s activities was to mislead the consuming  
7 public into believing that their Toyota Vehicles had adequate rust protection  
8 when in fact Defendant knew that was not true.

9 138. Plaintiff Franquet and the other members of the alternative New  
10 York Class have been injured by Defendant’s deceptive acts and practices in that  
11 they purchased Toyota Vehicles reasonably believing them to have adequate rust  
12 protection when they do not.

13 139. Defendant willfully and/or violated GBL §349.

14 140. The damages suffered by Plaintiff Franquet and the other members  
15 of the alternative New York Class were directly and proximately caused by the  
16 materially misleading acts and/or practices of Defendant, as more fully described  
17 herein.

18 141. Plaintiff Franquet and the other members of the alternative New  
19 York Class have no adequate remedy at law.

20 142. Pursuant to GBL §349(h), Plaintiff Franquet, individually and on  
21 behalf of the other members of the alternative New York Class, seeks a court  
22 order enjoining the above-described wrongful acts and practices of Defendant.

23 **COUNT VII**

24 **VIOLATION OF NORTH CAROLINA’S UNFAIR DECEPTIVE TRADE**  
25 **PRACTICES ACT, N.C. GEN. STAT. ANN. §75-1, et seq.**

26 **Brought in the Alternative on Behalf of the North Carolina Class**

27 143. Plaintiff Fuller repeats and realleges all other paragraphs as if fully  
28 set forth herein.

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1 144. N.C. Gen. Stat. Ann. §75-1.1(a) states: “Unfair methods of  
2 competition in or affecting commerce, and unfair or deceptive acts or practices in  
3 or affecting commerce, are declared unlawful.”

4 145. As alleged herein, Defendant engaged in unfair or deceptive acts  
5 and practices by failing to inform Plaintiff and Class members that the Toyota  
6 Vehicles did not have adequate rust corrosion protection in violation of N.C.  
7 Gen. Stat. Ann. §75-1.1.

8 146. Defendant’s deceptive acts and practices as alleged herein caused  
9 and continue to cause injury to Plaintiff Fuller and the members of the alternative  
10 North Carolina Class. Plaintiff Fuller has suffered actual injury in the purchase of  
11 his Toyota Tacoma Vehicle.

12 **COUNT VIII**  
13 **VIOLATION OF LOUISIANA’S UNFAIR TRADE PRACTICES AND**  
14 **CONSUMER PROTECTION LAW, LA. REV. STAT. §51.1401, et seq.**  
15 **Brought on in the Alternative on Behalf of the Louisiana Class**

16 147. Plaintiff Meade repeats and realleges all other paragraphs as if fully  
17 set forth herein.

18 148. The Louisiana Unfair Trade Practices and Consumer Protection Law  
19 §51.1401, et seq., prohibits acts of unfair competition, which means and includes  
20 any “unfair methods of competition and unfair or deceptive acts or practices in  
21 the conduct of any trade or commerce,” and further §51.411 prohibits any  
22 “untrue, deceptive, or misleading” advertising.

23 149. Defendant violated the Louisiana Unfair Trade Practices and  
24 Consumer Protection Law §51.1401, et seq. prohibition against engaging in an  
25 “unfair or deceptive act,” *inter alia*, by engaging in the conduct alleged,  
26 including the omissions regarding adequate rust corrosion protection, which  
27 information Defendant had a duty to disclose under the Louisiana Unfair Trade  
28 Practices and Consumer Protection Law, §51.1401, et seq.

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1 150. Plaintiff Meade reserves his right to allege on behalf of himself and  
2 others similarly situated, other violations of law which constitute other unlawful,  
3 unfair, or fraudulent business acts or practices.

4 151. Plaintiff Meade and the members of the alternative Louisiana Class  
5 have been actually injured by Defendant's unfair or deceptive acts and practices.

6 152. Plaintiff Meade and the members of the alternative Louisiana Class  
7 are entitled to equitable relief in the form of full restitution, including all monies  
8 paid for the Toyota Vehicles.

9 **COUNT IX**

10 **VIOLATION OF ARKANSAS DECEPTIVE TRADE PRACTICES ACT**

11 **Brought in the Alternative on Behalf of the Ohio Class**

12 153. Plaintiff Burns repeats and realleges all other paragraphs as if fully  
13 set forth herein.

14 154. The Arkansas Deceptive Trade Practices Act, Ark. Stat. Ann. §4-88-  
15 107(a)(10), prohibits suppliers from committing unconscionable, false, and  
16 deceptive acts and practices in business, commerce, or trade.

17 155. The Arkansas Deceptive Trade Practices Act also prohibits the  
18 omission of any material fact in connection with the sale or advertising of goods  
19 with the intent that others rely upon the omission. *See* Ark. Stat. Ann. §4-88-108.

20 156. Toyota's marketing, distribution, and sale of Toyota Vehicles with  
21 frames that lacked adequate rust corrosion protection was unconscionable, false,  
22 and deceptive under the Arkansas Deceptive Trade Practices Act.

23 157. Toyota made false misrepresentations that Toyota Vehicles were  
24 free from defects and safe to operate on the roadways. Defendant also knowingly  
25 omitted material facts with respect to the inadequate rustproofing and excessive  
26 rust risk and failed to disclose the frame defect in Toyota Vehicles.

27 158. A reasonable consumer would consider the fact that the Toyota  
28 Vehicles had frames that did not possess adequate rust corrosion protection to be

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1 important when deciding whether to purchase a Toyota Vehicle.

2 159. Toyota's unconscionable conduct and omission of material facts  
3 occurred in connection with Toyota's conduct of trade and commerce in  
4 Arkansas.

5 160. As a direct and foreseeable result of Defendant's unfair and  
6 deceptive acts or practices, Plaintiff Burns and the other Arkansas Class  
7 members sustained damages. They overpaid for their Toyota Vehicles, incurred  
8 out-of-pocket losses related to repairing, maintaining, and servicing their  
9 defective Toyota Vehicles, costs associated with arranging and obtaining  
10 alternative means of transportation, treble, consequential, and incidental damages  
11 recoverable under the law.

12 **COUNT X**

13 **BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY**

14 161. Plaintiffs repeat and reallege all other paragraphs as if fully set forth  
15 herein.

16 162. Toyota is and was at all relevant times a merchant with respect to  
17 motor vehicles under Cal. Com. Code §2104.

18 163. A warranty that the Toyota Vehicles were in merchantable condition  
19 was implied by law in the instant transaction, pursuant to Cal. Com. Code §2314.

20 164. Plaintiffs and the other Class members purchased the Toyota  
21 Vehicles that were manufactured and sold by Defendant in consumer  
22 transactions. Defendant was and is in the business of selling vehicles and was  
23 and is a merchant of the Toyota Vehicles.

24 165. The Toyota Vehicles, when sold and at all times thereafter, were not  
25 in merchantable condition and were not fit for the ordinary purpose for which  
26 cars are used. The Toyota Vehicles left Defendant's possession and control  
27 equipped with defective frames that rendered them at all times thereafter  
28 unmerchantable, unfit for ordinary use, unsafe, and a threat to public safety.

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1 Plaintiffs and the other Class members used their Toyota Vehicles in the normal  
2 and ordinary manner for which the Toyota Vehicles were designed and  
3 advertised.

4 166. Toyota knew before the time of sale to Plaintiffs or earlier, that the  
5 Toyota Vehicles were produced with defective frames that lacked adequate rust  
6 corrosion protection, rendering the Toyota Vehicles unfit for their ordinary  
7 purpose.

8 167. Despite Plaintiffs' and the other Class members' normal and  
9 ordinary use, maintenance, and upkeep, the frames of the Toyota Vehicles  
10 experienced an unusually rapid rate of rust corrosion, rust perforation, and  
11 structural degradation as a result of a manufacturing or design defect that existed  
12 at the time Defendant transferred the Toyota Vehicles from its possession or  
13 control. The defect rendered the Toyota Vehicles unfit for their ordinary use and  
14 incapable of performing the tasks they were designed, advertised, and sold to  
15 perform.

16 168. As a result, the Toyota Vehicles' frames are not of fair average  
17 quality. Nor would they pass without objection in the automotive industry.  
18 Excessive rust corrosion to a vehicle frame affects the stability of a vehicle,  
19 rendering the vehicle unsafe to drive and requiring substantial repairs or even  
20 replacement of the Vehicle's entire frame before safe, ordinary use can resume.

21 169. All conditions precedent have occurred or been performed.

22 170. Defendant has actual notice of its breach of warranty. Through  
23 consumer complaints and regulatory agencies' investigations, Defendant learned  
24 that the defect, the existence and ubiquity of which it knew much earlier, has  
25 been the subject of publicized consumer disputes nationwide. Its implementation  
26 of the Limited Service Campaigns directed to the Toyota Vehicles shows actual  
27 notice. Prior related lawsuits also establish that Defendant had actual notice of its  
28 breach of warranty.

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1 171. Defendant's warranty disclaimers, exclusions, and limitations, to the  
2 extent that they may be argued to apply, were, at the time of sale, and continue to  
3 be unconscionable and unenforceable to disclaim liability for a known, latent  
4 defect. Defendant knew when it first made these warranties and their limitations  
5 that the defect existed and that the warranties would expire before a reasonable  
6 consumer would notice or observe the defect. Defendant also failed to take  
7 necessary actions to adequately disclose or cure the defect after the existence of  
8 the defect came to the public's attention and sat on its reasonable opportunity to  
9 cure or remedy the defect, its breaches of warranty, and consumers' losses.  
10 Under these circumstances, it would be futile to enforce any informal resolution  
11 procedures or give Defendant any more time to cure the defect, its breaches of  
12 warranty, or otherwise attempt to resolve or address Plaintiffs' and the other  
13 Class members' claims.

14 172. As a direct and foreseeable result of the defect in the Toyota  
15 Vehicles' frames, Plaintiffs and the other Class members suffered diminution in  
16 the value of the Toyota Vehicles, out-of-pocket losses related to repairing,  
17 maintaining, and servicing their defective Toyota Vehicles, costs associated with  
18 arranging and obtaining alternative means of transportation, and other incidental  
19 and consequential damages recoverable under the law.

20 173. Plaintiffs and Class members have had sufficient direct dealings  
21 with either the Toyota or its agents (dealerships) to establish privity of contract  
22 between Plaintiffs and the Class members. Notwithstanding this, privity is not  
23 required in this case because Plaintiffs and Class members are intended third-  
24 party beneficiaries of contracts between Toyota and its dealers; specifically, they  
25 are the intended beneficiaries of Toyota's implied warranties. The dealers were  
26 not intended to be the ultimate consumers of the Toyota Vehicles; the warranty  
27 agreements were designed for and intended to benefit the ultimate consumers  
28 only. Finally, privity is also not required because Plaintiffs' and Class members'

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1 Toyotas are inherently dangerous due to the aforementioned defects and  
2 nonconformities.

3 **COUNT XI**

4 **BREACH OF EXPRESS WARRANTY**

5 174. Plaintiffs repeat and reallege all other paragraphs as if fully set forth  
6 herein.

7 175. Toyota is and was at all relevant times a merchant with respect to  
8 motor vehicles under Cal. Com. Code §2104.

9 176. When marketing, distributing, and selling the Toyota Vehicles,  
10 Toyota expressly warranted that it provided 36 months or 36,000 miles of  
11 comprehensive coverage, whichever occurred first, during which time Toyota  
12 represented it would cover the cost of any repair or replacement necessary due to  
13 a defect in materials or workmanship relating to the Toyota Vehicles.

14 177. Defendant also represented and affirmed, contrary to facts, that it  
15 used the most advanced technology to help prevent corrosion on the Toyota  
16 Vehicles. In actuality, Defendant failed to use adequate rust prevention  
17 techniques or materials in constructing the Toyota Vehicles. It has admitted that  
18 frames on the Toyota Vehicles experience an unnatural and excessive degree of  
19 rust corrosion. The rust corrosion is a result of a defect in the manufacture or  
20 design of the Toyota Vehicles.

21 178. Toyota knew that the frames on the Toyota Vehicles were defective  
22 at the time of sale. Indeed, Toyota was well aware of the frame rust corrosion  
23 problems on the Toyota Vehicles. Defendant breached express warranties when  
24 Defendant delivered the Toyota Vehicles that did not conform to its affirmations  
25 of fact and industry standards for truck frames.

26 179. Toyota breached the express warranty to repair the defects in the  
27 Toyota Vehicles, because it failed to repair the inadequately coated frames on the  
28 Toyota Vehicles to ensure such vehicles did not exhibit severe rust corrosion and

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1 perforation.

2 180. Despite Toyota's knowledge of the problem and opportunity to cure  
3 (as evidenced by the Limited Service Campaigns), Toyota failed to notify  
4 Plaintiffs and the other members of the Class of the defect and to repair or  
5 replace, at no charge to the Class, the defective frames.

6 181. All conditions precedent have occurred or been performed.

7 182. Defendant had actual notice of its breaches of express warranty.  
8 Through consumer complaints and regulatory agencies' investigations Defendant  
9 learned that the defect, the existence and ubiquity of which it knew much earlier,  
10 was the subject of consumer disputes nationwide. Its implementation of the  
11 Limited Service Campaigns directed at the Toyota Vehicles shows actual notice.  
12 Prior related lawsuits also establish that Defendant had actual notice of its breach  
13 of warranty.

14 183. Defendant's warranty disclaimers, exclusions, and limitations, to the  
15 extent that they may be argued to apply, were, at the time of sale, and continue to  
16 be unconscionable and unenforceable to disclaim liability for a known, latent  
17 defect. Defendant knew when it first made these warranties and their limitations  
18 that the defect existed and that the warranties would expire before a reasonable  
19 consumer would notice or observe the defect. Defendant also failed to take any  
20 actions to adequately disclose or cure the defect after the existence of the defect  
21 came to the public's attention and sat on its reasonable opportunity to cure or  
22 remedy the defect, its breaches of warranty, and consumers' losses. Under these  
23 circumstances, it would be futile to enforce any informal resolution procedures or  
24 give Defendant any more time to cure the defect, its breaches of warranty, or  
25 otherwise attempt to resolve or address Plaintiffs' and the other Class members'  
26 claims.

27 184. Plaintiffs and the other Class members were damaged as a result of  
28 Toyota's breach of express warranty because the frames on the Toyota Vehicles

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1 are defective, compromising the stability and safety of the vehicles, and requiring  
2 repair and even replacement of the Vehicles' frames.

3 185. As a direct and foreseeable result of Defendant's failure to repair the  
4 Toyota Vehicles' frames, Plaintiffs and the other Class members suffered  
5 diminution in the value of the Toyota Vehicles, out-of-pocket losses related to  
6 the repairing, maintaining, and servicing their defective Toyota Vehicles, costs  
7 associated with arranging other forms of transportation, and other incidental and  
8 consequential damages recoverable under the law.

9 **COUNT XII**

10 **DECLARATORY RELIEF**

11 **Claim Brought on Behalf of the Declaratory Relief Class**

12 186. Plaintiffs repeat and reallege all paragraphs as if fully set forth  
13 herein.

14 187. Pursuant to 28 U.S.C. §2201, the Court may "declare the rights and  
15 legal relations of any interested party seeking such declaration, whether or not  
16 further relief is or could be sought."

17 188. Defendant marketed, distributed, and sold the Toyota Vehicles  
18 equipped with frames prone to exhibiting excessive rust corrosion and  
19 perforation on account of Defendant's failure to treat the frames on such vehicles  
20 with adequate rust corrosion protection.

21 189. Accordingly, Plaintiffs seek entry of the following declarations:  
22 (1) model years 2005 to 2010 Tacoma Vehicles, model years 2007 to 2008  
23 Tundra Vehicles, and model years 2005 to 2008 Sequoia Vehicles, lack adequate  
24 rust corrosion protection and are defective; (2) all persons who purchased model  
25 years 2005 to 2010 Tacoma Vehicles, model years 2007 to 2008 Tundra  
26 Vehicles, and model years 2005 to 2008 Sequoia Vehicles, are to be provided the  
27 best practicable notice of the defect, which cost shall be borne by Defendant; and  
28 (3) Defendant must establish an inspection, repair, and replacement program and

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1 protocol and notify Class members of such program, pursuant to which  
2 Defendant, including its authorized representatives, and at no cost to Class  
3 members, will inspect, upon request, Class members' Toyota Vehicles for frame  
4 rust corrosion, treat the Toyota Vehicles that have not exhibited rust corrosion  
5 with adequate rust corrosion protection, and to repair or replace the frames on the  
6 Toyota Vehicles that have experienced frame rust corrosion.

7 **REQUESTS FOR RELIEF**

8 **WHEREFORE**, Plaintiffs, individually and on behalf of all others  
9 similarly situated, respectfully request that the Court enter an Order:

- 10 a. certifying the Class under Federal Rule of Civil Procedure 23(a),
- 11 23(b)(2), and 23(b)(3), as requested herein;
- 12 b. appointing Plaintiffs as Class Representatives and undersigned
- 13 counsel as Class Counsel;
- 14 c. finding that Toyota engaged in the unlawful conduct as alleged
- 15 herein;
- 16 d. awarding Plaintiffs and the other Class members damages;
- 17 e. awarding Plaintiffs and the other Class members restitution and
- 18 disgorgement of monies Defendant acquired through its violations
- 19 of the law;
- 20 f. awarding Plaintiffs and the other Class members declaratory and
- 21 injunctive relief;
- 22 g. requiring Toyota to repair or replace the frames on the Toyota
- 23 Vehicles;
- 24 h. awarding Plaintiffs and the other Class members pre-judgment and
- 25 post-judgment interest on all amounts awarded;
- 26 i. awarding Plaintiffs and the other Class members reasonable
- 27 attorneys' fees, costs, and expenses; and
- 28 j. granting such other relief as the Court deems just and appropriate.

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**JURY TRIAL DEMAND**

Pursuant to Federal Rule of Civil Procedure 38(b), Plaintiffs demand a trial by jury on all claims in this Class Action Complaint so triable.

Respectfully Submitted,

Dated: November 8, 2016

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**CERTIFICATE OF SERVICE**

I hereby certify that on November 8, 2016, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the e-mail addresses denoted on the Electronic Mail Notice List, and I hereby certify that I have mailed the foregoing document or paper via the United States Postal Service to the non-CM/ECF participants indicated on the Electronic Mail Notice List.

I certify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on November 8, 2016.

*s/ Timothy G. Blood*

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