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16 UNITED STATES DISTRICT COURT
 17 CENTRAL DISTRICT OF CALIFORNIA

18 TAE HEE LEE and ALAN QUAN,
 19 individually and on behalf of all others
 20 similarly situated,

21 Plaintiffs,

22 vs.

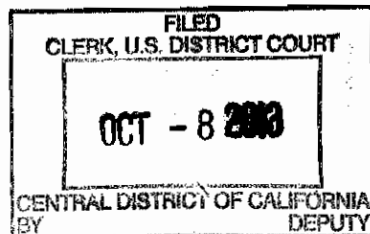
23 TOYOTA MOTOR SALES, U.S.A. INC.,
 24 and DOES 1 through 10, inclusive,

25 Defendants.

Case No.: **CV 13-7431 JFW (VBKx)**
CLASS ACTION COMPLAINT

1. BREACH OF EXPRESS WARRANTY;
2. BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY;
3. FRAUD;
4. BREACH OF CONTRACT
5. BREACH OF DUTY OF GOOD FAITH AND FAIR DEALING;
6. VIOLATION OF CA UNFAIR COMPETITION LAWS;
7. VIOLATION OF CA CONSUMER LEGAL REMEDIES ACT; AND
8. UNJUST ENRICHMENT

DEMAND FOR JURY TRIAL



1 **COMPLAINT**

2 Plaintiffs Tae Hee Lee and Alan Quan (“Plaintiffs”), bring this action against
3 Toyota Motor Sales, U.S.A., Inc. (“Defendant” or “TMS”), by and through their
4 attorneys, individually and on behalf of all others similarly situated, and allege as
5 follows:

6 **INTRODUCTION**

7 1. This is a class action lawsuit brought by consumers who purchased or
8 leased the Toyota Prius V and other Toyota models equipped with the optional Pre-
9 Collision System (“PCS”) (the “Class Vehicles” or “Vehicles”).¹

10 2. PCS is an expensive safety option on the Class Vehicles that is marketed,
11 contracted, warranted and represented to consumers as an accident mitigation system that
12 would provide automatic braking to the Class Vehicles when the vehicle’s radar system
13 determines that a frontal collision is unavoidable.

14 3. These representations were material, and Plaintiffs and class members
15 relied on these representations as true as evidenced by the substantial amounts paid for
16 this optional safety feature². Further, as the accuracy of the representations could only be
17 evaluated by consumers in either a crash test setting, or a real world accident, consumers
18 would have no way of verifying the accuracy of the representations.

19 4. However, as documented by the Insurance Institute of Highway Safety
20 (“IIHS”) in frontal crash scenarios set up at 12 and 25 miles per hour, the Prius V
21 registered such negligible reduction in speed through automatic braking when a frontal
22 collision was detected, that the PCS system does not qualify as a forward collision
23 warning system under the National Highway Transportation Safety Administration
24 (“NHTSA”) or as a front crash prevention system under the IIHS standard. The Toyota
25
26
27

28 ¹ Plaintiffs will amend or add to the vehicle models included in the definition of Class Vehicles after conducting discovery.

1 Prius V was one of 47 models tested by IHSS that claim to be equipped with some form
2 of frontal accident warning system. Of those 47 models, only the Toyota Prius V and one
3 Infinity model failed to qualify as a crash prevention system. Despite the PCS being
4 marketed and sold by TMS as an accident mitigation system that provides automatic
5 braking in unavoidable frontal collisions, it provides no real safety benefit to consumers
6 who paid for the option through either a sale or a lease.

7 5. TMS knew or should have known that the PCS was ineffective and did
8 not provide effective pre-collision automatic braking in rear-end accidents. Despite
9 specifically representing in marketing materials that the PCS provides automatic braking
10 in unavoidable frontal collisions, in responding to the IHSS study, Toyota officials falsely
11 claimed that they did not represent that their vehicles have a pre-collision mitigation
12 system. This false statement makes clear that Toyota knew that the Class Vehicles
13 equipped with PCS did not provide any effective automatic braking in unavoidable
14 frontal collisions.

15 6. While TMS had knowledge that the PCS did not have value, as it did not
16 do what it was represented or designed to do, consumers would have no way of knowing
17 that they were sold an ineffective system at the time of sale or lease as it is a system
18 activated only in an accident scenario.

19 7. Plaintiffs seek relief requested below pursuant to Fed. R. Civ. P. 23(a),
20 (b)(2) and (b)(3), and seek to certify a class consisting of all current and former owners
21 and lessees of the Class Vehicles.

22 **JURISDICTION AND VENUE**

23 8. This Court has subject matter jurisdiction of this action pursuant to 28
24 U.S.C. §1332 of the Class Action Fairness Act of 2005 because: (i) there are 100 or more
25 class members, (ii) there is an aggregate amount in controversy exceeding \$5,000,000,
26

27 ² The PCS came bundled with other technology options as part of the “Advanced
28 Technology Package”. Together, it is believed that the option cost approximately \$5,000,
with the PCS comprising approximately \$1,000 of that cost.

1 exclusive of interest and costs, and (iii) there is minimal diversity because at least one
2 putative class member and one defendant are citizens of different states. This Court has
3 supplemental jurisdiction over the state law claims pursuant to 28 U.S.C. § 1367.

4 9. Venue is proper in this judicial district pursuant to 28 U.S.C. §1391
5 because Defendant has its headquarters in this district, transacts business in this district,
6 is subject to personal jurisdiction in this district, and therefore is deemed to be a citizen of
7 this district. Additionally, Defendant has advertised in this district and has received
8 substantial revenue and profits from its sales and/or leasing of Class Vehicles in this
9 district; therefore, a substantial part of the events and/or omissions giving rise to the
10 claims occurred, in part, within this district.

11 10. This Court has personal jurisdiction over Defendant because it has
12 conducted substantial business in this judicial district, and intentionally and purposefully
13 placed Class Vehicles into the stream of commerce within this district and throughout the
14 United States.

15 **THE PARTIES**

16 **A. The Plaintiffs**

17 **Plaintiff Tae Hee Lee**

18 11. Plaintiff Tae Hee Lee is a resident in the County of Orange, California.

19 12. On September 30, 2010, Plaintiff purchased a used 2010 Toyota Prius
20 (with only 2,141 miles) with the PCS system from Crevier BMW in the City of Santa
21 Ana, County of Orange, State of California. Plaintiff purchased this car for personal use.

22 13. Plaintiff was shopping for a vehicle to meet the needs of a new family, as
23 he was about to get married and start a family, and the safety of the vehicle was an
24 important issue for him.

25 14. Prior to purchasing the vehicle, Plaintiff undertook significant research
26 on the PCS system. He had narrowed his search to the Toyota Prius and the Honda
27 Insight. In researching the Prius, Plaintiff first learned of the PCS from the Edmunds
28 review of the vehicle, but the review did not include the details about the PCS system.

1 Plaintiff then searched online for information about the PCS, and found various videos
2 that demonstrated how the system worked. He also looked at reviews from MotorTrend,
3 Consumer Reports, Auto Trader, Kelly Blue Book and other vehicle review sources.
4 Based on information and belief, Defendant was the source of the information and videos
5 on the PCS for each of these review sources. Each of those sources provided specific
6 information in describing the PCS as providing automatic braking in unavoidable frontal
7 collision accidents.

8 15. Plaintiff then decided to purchase a Toyota Prius rather than the Honda
9 Insight, with the main motivating factor in choosing the Toyota Prius rather than the
10 Honda Insight, was the inclusion of the PCS and other safety features sold with the Prius.

11 16. Plaintiff then expanded his research to call numerous Toyota dealerships
12 to learn more about the PCS and other safety systems on the Prius. Plaintiff then went
13 and talked to salespersons at Tustin Toyota and AutoNation Toyota Buena Park and
14 reviewed the brochure for the Prius. Plaintiff wanted to buy a used Prius with the safety
15 options that he wanted, including the PCS. He could not find a model with the PCS at the
16 Toyota dealerships, so he purchased the vehicle from Crevier BMW. Based on
17 information and belief, all of the new vehicle warranties and contract obligations of
18 Defendant in relation to this PCS safety option on this vehicle were transferred to
19 Plaintiff with his purchase of the vehicle. He paid substantially more for the vehicle with
20 the PCS than he would have paid for a same vehicle without the PCS.

21 17. Plaintiff expected that the PCS that Toyota stated was included in the
22 option package was in fact included in the vehicle and functioned the way it was
23 represented by Toyota. Plaintiff was never advised that the PCS was ineffective or not
24 included as part of the options package purchased.

25 18. Had Plaintiff known these material facts, he would not have purchased
26 the PCS option or would have paid less for it.

27 19. As a result of TMS's conduct, Plaintiff has been (and will continue to be)
28 harmed.

1 **Plaintiff Alan Quan**

2 20. Plaintiff Alan Quan is a resident in the County of Los Angeles,
3 California.

4 21. On January 1, 2010, Plaintiff Quan purchased a new 2012 Toyota Prius
5 with the PCS system from Longo Toyota in the City of El Monte, County of Los
6 Angeles, State of California. Plaintiff purchased this car for personal use.

7 22. Plaintiff paid \$5,580 for the Advanced Technology package, which
8 included the PCS. He decided to purchase this expensive option after reviewing the Prius
9 brochure that contains a description of the PCS, and listening to the salesperson
10 describing the safety value of crash mitigation in rear-end accidents provided by the PCS
11 by automatically applying the brakes in unavoidable frontal collisions. Plaintiff was also
12 provided an owner's manual that described the automatic breaking feature of the PCS in
13 unavoidable front-end accidents.

14 23. Plaintiff expected that the PCS that Toyota stated was included in the
15 option package was in fact included in the vehicle and functioned the way represented by
16 Toyota. Plaintiff was never advised that the PCS was ineffective or not included as part
17 of the options package purchased.

18 24. Had Plaintiff known these material facts, he would not have purchased a
19 Prius with this expensive option.

20 25. As a result of TMS's conduct, Plaintiff has been (and will continue to be)
21 harmed.

22 **B. The Defendant**

23 26. Defendant Toyota Motors Sales U.S.A., Inc. is a California corporation
24 with its principal place of business in the County of Los Angeles, located at 19001 S.
25 Western Avenue in Torrance, CA.

26 27. Upon information and belief, the marketing, sales, warranty and
27 representation decisions regarding the PCS systems within the Class Vehicles were
28 performed exclusively by Defendant or its affiliated companies.

1 28. Upon information and belief, Defendant TMS develops the advertising,
2 brochures, owner’s manuals and warranty booklets pertaining to the Class Vehicles.

3 29. Defendant TMS engages in continuous and substantial business in
4 California.

5 30. The true names and capacities of the defendants sued herein as DOES 1
6 through 10, inclusive, are currently unknown to Plaintiffs, who therefore sues such
7 defendants by such fictitious names. Each of the defendants designated herein as a DOE
8 is legally responsible in some manner for the unlawful acts referred to herein. Plaintiffs
9 will seek leave of Court to amend this Complaint to reflect the true names and capacities
10 of the defendants designated herein as DOES when such identities become known.

11 31. Based upon information and belief, Plaintiffs allege that at all times
12 mentioned herein, each and every defendant was acting as an agent and/or employee of
13 each of the other defendants, and at all times mentioned was acting within the course and
14 scope of said agency and/or employment with the full knowledge, permission, and
15 consent of each of the other defendants. In addition, each of the acts and/or omissions of
16 each defendant alleged herein were made known to, and ratified by, each of the other
17 defendants.

18 **TOLLING OF STATUTES OF LIMITATION**

19 32. Any applicable statute(s) of limitations has been tolled by Defendant’s
20 knowing and active concealment and denial of the facts alleged herein. Plaintiffs and
21 members of the Class could not have reasonably discovered the true, latent defective
22 nature of the PCS system until shortly before this class action litigation was commenced.

23 33. Defendant was and remains under a continuing duty to disclose to
24 Plaintiffs and members of the Class the true character, quality and nature of the Class
25 Vehicles, that the PCS is defective in design as it does not effectively perform automatic
26 braking in unavoidable frontal collisions. As a result of the active concealment by
27 Defendant, any and all applicable statutes of limitations otherwise applicable to the
28 allegations herein have been tolled.

1 **FACTUAL ALLEGATIONS**

2 **A. Toyota Represented and Marketed the Prius equipped with the Optional PCS**
3 **as Providing Automatic Braking in Unavoidable Frontal Collisions**

4 34. Based on information and belief, Toyota uniformly described and
5 represented the PCS to consumers, review sources and government regulators as an
6 accident mitigation system that provided automatic braking in unavoidable front-end
7 collisions.

8 35. For example, the owner’s manual for the 2012 Prius V includes a section
9 for the PCS (Pre-Collision System):

10 When the radar sensor detects possibility of a frontal collision, the pre-collision
11 systems such as the brakes and seat belts are **automatically engaged** to lessen
12 impact to occupants as wells as vehicle damage.

13 Pre-Collision Braking

14 When there is a high possibility of a frontal collision, the system warns the
15 driver using a warning light, warning display and buzzer. **If the system**
determines that a collision is unavoidable, the brakes are automatically
applied to reduce the collision speed. (Emphasis added.)

16 The brochure for the 2013 Prius V provides the following description for the “Dynamic
17 Radar Cruise Control (DRCC)/Pre-Collision System (PCS):

18 This available radar system automatically adjusts vehicle speed to help maintain
19 a preset following distance between your Prius v and the vehicle traveling
20 directly in front of you. Plus, an **available Pre-Collision System (PCS)**
employs the radar to determine if a frontal collision is unavoidable, and
automatically applies to brakes and retracts the front seatbelts to help prepare
21 for such scenario. (Emphasis added.)
22

23 **B. The PCS did not Provide Effective Automatic Braking in Unavoidable Front-**
24 **End Accidents as Represented by Defendant**

25 36. However, as documented by the Insurance Institute of Highway Safety
26 (“IHSS”), in frontal crash scenarios set up at 12 and 25 miles per hour, the Prius V
27 registered such negligible reduction in speed through automatic braking when a frontal
28 collision was detected, that the PCS system does not qualify as a forward collision

1 warning system under the National Highway Transportation Safety Administration
2 (“NHTSA”) or as a front crash prevention system under the IIHS standard.

3 37. As such, and based on information and belief, Defendants representation
4 and warranties of the PCS as constituting an accident mitigation system with automatic
5 braking in unavoidable front-end collisions were false.

6 **C. The Accident Mitigation Feature was Material to Plaintiffs and Class**
7 **Members**

8 38. The PCS was a significant part of a bundled advantaged technology
9 option package that increased the cost of the Prius by over 15%. The PCS was an
10 important part of the advance technology package, and based on information and belief
11 constituted nearly 3% of the purchase price.

12 39. Plaintiffs and reasonable consumers would not have paid approximately
13 \$1,000 for a PCS that did not provide the safety benefit it claimed to provide.

14 **D. Plaintiffs and the Class Members Were Unaware that the PCS did not**
15 **Provide Effective Braking in Unavoidable Front-End Collisions**

16 40. The PCS, like many accident safety features, are not capable of being
17 safely tested by consumers while making the decision to purchase the vehicle, or even
18 after buying the vehicle. Consumers must rely on Toyota to provide them with accurate
19 and truthful information about these features that comprise a substantial portion of the
20 purchase price.

21 41. As such, Plaintiffs and the Class could not know that the PCS was not
22 effective in providing automatic braking in a unavoidable front-end collision as
23 represented by Toyota, and as there was no way to effectively and safely test the PCS,
24 they were reasonably unaware that the performance claims of the PCS were false.

25 **CLASS ACTION ALLEGATIONS**

26 42. Plaintiffs bring this action on their behalf, and on behalf of the following
27 Classes pursuant to FED. R. CIV. P. 23(a), 23(b)(2), and/or 23(b)(3). Specifically, the
28 Classes consist of each of the following:

1 **Nationwide Class:**

2 All persons in the United States that have purchased or leased a Class
3 Vehicle.

4 In the alternative to the Nationwide Class, Plaintiffs seeks to represent the following
5 state-subclass:

6 **California Class:**

7 All persons in the State of California that have purchased or leased a Class
8 Vehicle.

9
10 43. Excluded from the Class is Defendant, its affiliates, employees, officers
11 and directors, persons or entities that purchased the Class Vehicles for resale, and the
12 Judge(s) assigned to this case. Plaintiffs reserve the right to modify, change or expand
13 the Class definition.

14 44. Numerosity: Upon information and belief, the Class is so numerous that
15 joinder of all members is impracticable. While the exact number and identities of
16 individual members of the Class are unknown at this time, such information being in the
17 sole possession of Defendant and obtainable by Plaintiffs only through the discovery
18 process, Plaintiffs believe that thousands of Class Vehicles have been sold and leased in
19 each of the states that are the subject of the Class.

20 45. Existence and Predominance of Common Questions of Fact and Law:
21 Common questions of law and fact exist as to all members of the Class. These questions
22 predominate over the questions affecting individual Class members. These common
23 legal and factual questions include, but are not limited to:

- 24 a. Does the PCS system fail to provide effective automatic braking in an
25 unavoidable frontal collision scenario?
26 b. Do all of the Class Vehicles have the same PCS system?
27 c. Did TMS represent to consumers that purchased or leased the Class Vehicles
28 that the PCS system provided automatic braking in an unavoidable frontal
 collision scenario when selling or leasing the vehicle?

- 1 d. Whether Defendant's conduct violates consumer protection statutes and
- 2 warranty laws asserted herein?
- 3 e. Whether Defendant breached its contracts with customers?
- 4 f. Whether, as a result of Defendant's omissions and/or misrepresentations of
- 5 material facts related to the PCS, Plaintiffs and members of the Class have
- 6 suffered ascertainable loss of monies and/or property and/or value;
- 7 g. Whether Plaintiffs and Class members are entitled to monetary damages
- 8 and/or other remedies and, if so, the nature of any such relief.

9 46. Typicality: All of Plaintiffs' claims are typical of the claims of the Class
10 since Plaintiffs purchased a Class Vehicle equipped with PCS, and each member of the
11 Class similarly leased or purchased their Class Vehicle equipped with PCS. Furthermore,
12 Plaintiffs and all members of the Class sustained monetary and economic injuries
13 including, but not limited to, ascertainable loss arising out of Defendant's wrongful
14 conduct. Plaintiffs are advancing the same claims and legal theories on behalf of
15 themselves and all absent Class members.

16 47. Adequacy: Plaintiffs are adequate representatives because their interests
17 do not conflict with the interests of the Class that they to represent, they have retained
18 counsel competent and highly experienced in complex class action litigation, and they
19 will prosecute this action vigorously. The interests of the Class will be fairly and
20 adequately protected by Plaintiffs and their counsel.

21 48. Superiority: A class action is superior to all other available means of fair
22 and efficient adjudication of the claims of Plaintiffs and members of the Class. The
23 injury suffered by each individual Class member is relatively small in comparison to the
24 burden and expense of individual prosecution of the complex and extensive litigation
25 necessitated by Defendant's conduct. It would be virtually impossible for members of
26 the Class to individually and effectively redress the wrongs done to them. Even if the
27 members of the Class could afford such individual litigation, the court system could not.
28 Individualized litigation presents a potential for inconsistent or contradictory judgments.

1 Individualized litigation increases the delay and expense to all parties, and to the court
2 system, presented by the complex legal and factual issues of the case. By contrast, the
3 class action device presents far fewer management difficulties, and provides the benefits
4 of single adjudication, economy of scale, and comprehensive supervision by a single
5 court.

6 49. Ascertainability. Members of the Class can be readily identified and
7 notified based on, *inter alia*, Defendant's records through vehicle identification numbers
8 (VINs), warranty claims, registration records, Department of Transportation records, and
9 the database of complaints.

10 50. TMS has acted, and refused to act, on grounds generally applicable to the
11 Class, thereby making appropriate final equitable relief with respect to the Class as a
12 whole.

13 VIOLATIONS ALLEGED

14 COUNT I

15 BREACH OF EXPRESS WARRANTY

16 51. Plaintiffs and the Class incorporate by reference each paragraph as
17 though fully set forth at length herein.

18 52. Each of the Class Vehicles are accompanied an owner's manual created
19 and authored by Defendant.

20 53. Defendant expressly warrants in the owner's manual for the Class
21 Vehicles that the PCS package includes the function that the vehicle automatically brakes
22 in unavoidable front-end collisions. Defendant also expressly warranted that they would
23 repair and/or replace defects in material and/or workmanship free of charge that occurred
24 during the applicable warranty periods.

25 54. Defendant breached this warranty by selling to Plaintiffs and Class
26 members the Class Vehicles with a PCS package that does not effectively brake
27 automatically in an unavoidable front-end collision.

28 55. As a result of the Defendant's actions, Plaintiffs and Class members have

1 suffered economic damages including but not limited to not receiving the safety feature
2 that they paid for, diminished value and other related damage.

3 56. Plaintiffs and Class members have complied with all obligations under
4 the warranty, or otherwise have been excused from performance of said obligations as a
5 result of Defendant's conduct described herein.

6 57. To the extent it is required, the parties are in privity.

7 **COUNT II**

8 **BREACH OF THE IMPLIED WARRANTY**
9 **OF MERCHANTABILITY**

10 58. Plaintiffs and the Class incorporate by reference each preceding and
11 succeeding paragraph as though fully set forth at length herein.

12 59. Defendant is and at all relevant times was a merchant with respect to the
13 Class Vehicles.

14 60. A warranty that the Vehicles were in merchantable quality and
15 condition is implied by law.

16 61. Defendants impliedly warranted that the Vehicles were of good and
17 merchantable condition and quality, fit and safe for their ordinary intended use, and
18 would be reasonably safe.

19 62. The Vehicles were defective at the time they left the possession of
20 Defendant. Defendant knew, or reasonably should have known at the time these
21 transactions occurred that the PCS did not provide effective automatic braking in
22 unavoidable front-end collisions. Thus, the PCS, and the Vehicles, when sold and at all
23 times thereafter, were not in merchantable condition or quality and are not fit for their
24 ordinary intended purpose.

25 63. By virtue of the conduct described herein and throughout this Complaint,
26 Defendant breached the implied warranty of merchantability.

27 64. Plaintiffs have been damaged as a direct and proximate result of the
28 breach of the implied warranty.

1 faith and fair dealing. The implied covenant of good faith and fair dealing is an
2 independent duty and may be breached even if there is no breach of a contract's express
3 terms.

4 80. Defendant breached the covenant of good faith and fair dealing through
5 malicious conduct by, *inter alia*, failing to notify Plaintiffs and Class members of the
6 defect in the PCS package in the Class Vehicles, and failing to fully and properly repair
7 this defect or refund Plaintiffs for the money spent on the PCS package.

8 81. Meanwhile, Plaintiffs and Class members have performed all of the
9 obligations under the contract, or otherwise have been excused from performance of said
10 obligations as a result of Defendant's conduct described herein.

11 82. Defendant acted in bad faith and/or with a malicious motive to deny
12 Plaintiffs and Class members some benefit of the bargain originally intended by the
13 parties, thereby causing them injuries in an amount to be determined at trial.

14 **COUNT VI**

15 **VIOLATION OF THE CALIFORNIA BUSINESS**

16 **AND PROFESSIONS CODE § 17200**

17 83. Plaintiffs and the Class incorporate by reference the allegations of all
18 foregoing Paragraphs as if such had been set forth in full herein.

19 84. The California Unfair Competition Law ("UCL") prohibits acts of
20 "unfair competition," including any "unlawful, unfair or fraudulent business act or
21 practice" and "unfair, deceptive, untrue or misleading advertising."

22 85. Defendant has engaged in unfair competition and unfair, unlawful or
23 fraudulent business practices by the conduct, affirmative statements, and omissions
24 described above, and by knowingly and intentionally concealing from Plaintiffs and Class
25 members that the Class Vehicles do not have an effective PCS package as was sold to
26 them. Defendant should have disclosed this information because they were in a superior
27 position to know the true facts related to this design defect, and Plaintiffs and Class
28 members could not have been reasonably expected to learn or discover the true facts

1 related to this defect.

2 86. These acts and practices have deceived Plaintiffs and are likely to deceive
3 the public. In misrepresenting the PCS system as an effective safety feature, failing to
4 disclose the design defect and suppressing other material facts from Plaintiffs and Class
5 members, Defendant breached its duties to disclose these facts, violated the UCL, and
6 caused injuries to Plaintiffs and Class members. The omissions and acts of concealment
7 by Defendant pertained to information that was material to Plaintiffs and Class members,
8 as it would have been to all reasonable consumers.

9 87. The injuries suffered by Plaintiffs and Class members are greatly
10 outweighed by any potential countervailing benefit to consumers or to competition. Nor
11 are they injuries that Plaintiffs and Class members should or could have reasonably
12 avoided.

13 88. Defendant's acts and practices are unlawful because they violate
14 California Civil Code §§ 1668, 1709, 1710 and 1750 *et seq.*, and California Commercial
15 Code § 2313.

16 89. Plaintiffs seek to enjoin further unlawful, unfair and/or fraudulent acts or
17 practices by Defendant, to obtain restitutionary disgorgement of all monies and revenues
18 generated as a result of such practices, require notice of this dangerous condition be
19 provided to the Class, and all other relief allowed under CAL. BUS. & PROF. CODE §
20 17200.

21 **COUNT VII**

22 **VIOLATION OF THE CALIFORNIA CONSUMERS**

23 **LEGAL REMEDIES ACT, CALIFORNIA CIVIL**

24 **CODE § 1750, ET SEQ.**

25 90. Plaintiffs and the Class incorporate by reference the allegations of all
26 foregoing Paragraphs as if such had been set forth in full herein.

27 91. California's Consumer Legal Remedies Act ("CLRA") prohibits unfair
28 methods of competition and unfair or deceptive acts or practices undertaken by any

1 person in a transaction intended to result or which results in the sale or lease of goods or
2 services to any consumer.” CAL. CIV. CODE § 1770.

3 92. Defendant is a “persons” as defined by Civil Code section 1761(c).

4 93. Plaintiffs and California Class members are consumers who purchased or
5 leased the Class Vehicles.

6 94. Defendant engaged in unfair and deceptive acts in violation of the CLRA
7 by the practices described above, and by knowingly and intentionally concealing from
8 Plaintiffs and Class members that the Class Vehicles suffer from a design defect in that
9 the PCS does not work as represented. These acts and practices violate, at a minimum,
10 the following sections of the CLRA:

11 (a)(2) Misrepresenting the source, sponsorship, approval or certification of
12 goods or services;

13 (a)(5) Representing that goods or services have sponsorships, characteristics,
14 uses, benefits or quantities which they do not have, or that a person has a sponsorship,
15 approval, status, affiliation or connection which he or she does not have;

16 (a)(7) Representing that goods or services are of a particular standard, quality,
17 or grade, or that goods are of a particular style or model, if they are of another; and

18 (a)(9) Advertising goods and services with the intent not to sell them as
19 advertised.

20 95. Defendant’s unfair or deceptive acts or practices occurred repeatedly in
21 Defendant’s trade or business, and deceived a substantial portion of the purchasing
22 public.

23 96. Defendant knew, or should have known that the Class Vehicles PCS
24 package did not operate as represented and warranted by Defendant.

25 97. The false misrepresentation of the PCS package provided by Defendants
26 and Defendant’s omission as to the defects rendering the PCS ineffective were material in
27 that a reasonable consumer would have considered them to be important in deciding
28 whether to purchase Defendants’ Class Vehicles or buy the PCS option. Had Plaintiffs

1 and the Class known about the true nature of the PCS package, they would not have
2 purchased the PCS option or would have paid less for them.

3 98. As a direct and proximate result of Defendant's unfair or deceptive acts
4 or practices, Plaintiffs and Class members are entitled to injunctive relief, restitution and
5 other appropriate equitable relief.

6 99. Plaintiffs have provided Defendant with notice of its alleged violations of
7 the CLRA along with a demand for appropriate remedies, pursuant to California Civil
8 Code § 1782(a). If, within 30 days of the date of the notification letter, Defendant fails to
9 provide appropriate relief for their violations of the CLRA, Plaintiffs will amend this
10 complaint to seek monetary, compensatory, and punitive damages.

11 **COUNT VIII**

12 **UNJUST ENRICHMENT**

13 100. Plaintiffs and the Class incorporate the foregoing allegations. This count
14 is pled in the alternative to the contract based claims.

15 101. Plaintiffs and members of the Class conferred a benefit on Defendant.

16 102. Defendant had knowledge that this benefit was conferred upon them.

17 103. Defendant has been unjustly enriched at the expense of Plaintiffs, and its
18 retention of this benefit under the circumstances would be inequitable.

19 **PRAYER FOR RELIEF**

20 WHEREFORE, Plaintiffs, on behalf of themselves and members of the Class,
21 respectfully requests that this Court:

22 A. determine that the claims alleged herein may be maintained as a class action
23 under Rule 23 of the Federal Rules of Civil Procedure, and issue an order
24 certifying one or more Classes as defined above;

25 B. appoint Plaintiffs as the representatives of the Class and their counsel as
26 Class counsel;

27 C. require Defendant to provide, at its expense, reasonable notification to Class
28 Members (and to its dealers) the true nature of the PCS package;

- 1 D. award all actual, general, special, incidental, statutory, punitive (under
- 2 California Civil Code § 3294), and consequential damages to which
- 3 Plaintiffs and Class members are entitled;
- 4 E. award pre-judgment and post-judgment interest on such monetary relief;
- 5 F. grant any additional appropriate injunctive and/or declaratory relief
- 6 California Business and Professions Code §§ 17203 and 17535 and
- 7 California Civil Code §§ 1780 and 1781 , including, without limitation, an
- 8 order that prohibits Defendant from further representing and selling the PCS
- 9 as a system that provides automatic braking in an unavoidable front-end
- 10 collision;
- 11 G. award reasonable attorney’s fees and costs pursuant to California Code of
- 12 Civil Procedure § 1021.5, California Civil Code § 1780(d), and other
- 13 statutes as may be applicable; and
- 14 H. grant such further relief that this Court deems appropriate.

15
16 Dated: October 7, 2013

Respectfully submitted,

MCCUNEWRIGHT LLP

17
18 By: 

19 Richard D. McCune
20 Attorneys for Plaintiffs

21 **JURY DEMAND**

22 Plaintiffs, and all others similarly situated, hereby demands a trial by jury.

23 MCCUNEWRIGHT LLP

24
25 By: 

26 Richard D. McCune
27 Attorneys for Plaintiffs

AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT
for the
Central District of California

TAE HEE LEE and ALAN QUAN, individually and on
behalf of all others similarly situated,

Plaintiff(s)

v.

TOYOTA MOTOR SALES, U.S.A. INC., and DOES
1 through 10, inclusive,

Defendant(s)

CV13-7431 FFW (VBKx)

Civil Action No.

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)* TOYOTA MOTOR SALES U.S.A., INC.
19001 S. Western Avenue
Torrance, California

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

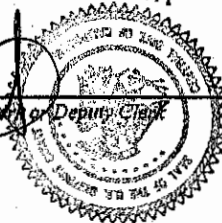
RICHARD D. McCUNE, (#132124)
rdm@mccunewright.com
MCCUNEWRIGHT LLP
2068 Orange Tree Lane, Suite 216
Redlands, CA 92374
Tel: 909.557.1250 / Fax: 909.557.1275

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

OCT - 8 2013

Date: _____

CLERK OF COURT

1154
Signature of Clerk or Deputy Clerk


AJ 440 (Rev. 06/12) Summons in a Civil Action (Page 2)

Civil Action No. _____

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____
was received by me on *(date)* _____

I personally served the summons on the individual at *(place)* _____
_____ on *(date)* _____ ; or

I left the summons at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____, and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* _____, who is
designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____ ; or

I returned the summons unexecuted because _____ ; or

Other *(specify)*: _____

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ 0.00

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

CIVIL COVER SHEET

I. (a) PLAINTIFFS (Check box if you are representing yourself)

TAE HEE LEE and ALAN QUAN, individually and on behalf of all others similarly situated

DEPENDANTS (Check box if you are representing yourself)

TOYOTA MOTOR SALES, U.S.A. INC., and DOES 1 through 10, inclusive

(b) Attorneys (Firm Name, Address and Telephone Number. If you are representing yourself, provide same information.)

Richard O. McCune (#132124) - rdm@mccunewright.com
McCuneWright, LLP
206B Orange Tree Lane, Suite 216, Redlands, CA 92374
Tel: 909.557.1250

(b) Attorneys (Firm Name, Address and Telephone Number. If you are representing yourself, provide same information.)

II. BASIS OF JURISDICTION (Place an X in one box only.)

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

III. CITIZENSHIP OF PRINCIPAL PARTIES-For Diversity Cases Only (Place an X in one box for plaintiff and one for defendant)

- Citizen of This State
Citizen of Another State Putative Class Member
Citizen or Subject of a Foreign Country
Incorporated or Principal Place of Business in This State
Incorporated and Principal Place of Business in Another State
Foreign Nation

IV. ORIGIN (Place an X in one box only.)

- 1. Original Proceeding
2. Removed from State Court
3. Remanded from Appellate Court
4. Reinstated or Reopened
5. Transferred from Another District (Specify)
6. Multi-District Litigation

V. REQUESTED IN COMPLAINT: JURY DEMAND: Yes No (Check "Yes" only if demanded in complaint.)

CLASS ACTION under F.R.Cv.P. 23: Yes No MONEY DEMANDED IN COMPLAINT: \$

VI. CAUSE OF ACTION (Cite the U.S. Civil Statute under which you are filing and write a brief statement of cause. Do not cite jurisdictional statutes unless diversity.)

28 U.S.C. 51332(d) - Nationwide Consumer Class Action under minimal diversity pursuant to the Class Action Fairness Act alleging false advertising of vehicle safety features.

VII. NATURE OF SUIT (Place an X in one box only.)

Table with 6 columns: OTHER STATUTES, CONTRACT, REAL PROPERTY CONT., IMMIGRATION, PRISONER PETITIONS, PROPERTY RIGHTS. Contains various legal categories and checkboxes.

FOR OFFICE USE ONLY:

Case Number:

CV13-7431

VIII. VENUE: Your answers to the questions below will determine the division of the Court to which this case will most likely be initially assigned. This initial assignment is subject to change, in accordance with the Court's General Orders, upon review by the Court of your Complaint or Notice of Removal.

Question A: Was this case removed from state court? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No If "no," go to Question B. If "yes," check the box to the right that applies, enter the corresponding division in response to Question D, below, and skip to Section IX.	STATE CASE WAS PENDING IN THE COUNTY OF:		INITIAL DIVISION IN CACD IS:
	<input type="checkbox"/> Los Angeles		Western
	<input type="checkbox"/> Ventura, Santa Barbara, or San Luis Obispo		Western
	<input type="checkbox"/> Orange		Southern
	<input type="checkbox"/> Riverside or San Bernardino		Eastern

Question B: Is the United States, or one of its agencies or employees, a party to this action? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No If "no," go to Question C. If "yes," check the box to the right that applies, enter the corresponding division in response to Question D, below, and skip to Section IX.	If the United States, or one of its agencies or employees, is a party, is it:		INITIAL DIVISION IN CACD IS:
	A PLAINTIFF? Then check the box below for the county in which the majority of DEFENDANTS reside.	A DEFENDANT? Then check the box below for the county in which the majority of PLAINTIFFS reside.	
	<input type="checkbox"/> Los Angeles	<input type="checkbox"/> Los Angeles	Western
	<input type="checkbox"/> Ventura, Santa Barbara, or San Luis Obispo	<input type="checkbox"/> Ventura, Santa Barbara, or San Luis Obispo	Western
	<input type="checkbox"/> Orange	<input type="checkbox"/> Orange	Southern
	<input type="checkbox"/> Riverside or San Bernardino	<input type="checkbox"/> Riverside or San Bernardino	Eastern
<input type="checkbox"/> Other	<input type="checkbox"/> Other	Western	

Question C: Location of plaintiffs, defendants, and claims?	A. Los Angeles County	B. Ventura, Santa Barbara, or San Luis Obispo Counties	C. Orange County	D. Riverside or San Bernardino Counties	E. Outside the Central District of California	F. Other
Indicate the location in which a majority of plaintiffs reside:	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Indicate the location in which a majority of defendants reside:	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Indicate the location in which a majority of claims arose:	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

C.1. Is either of the following true? If so, check the one that applies: <input type="checkbox"/> 2 or more answers in Column C <input type="checkbox"/> only 1 answer in Column C and no answers in Column D Your case will initially be assigned to the SOUTHERN DIVISION. Enter "Southern" in response to Question D, below. If none applies, answer question C2 to the right. →	C.2. Is either of the following true? If so, check the one that applies: <input type="checkbox"/> 2 or more answers in Column D <input type="checkbox"/> only 1 answer in Column D and no answers in Column C Your case will initially be assigned to the EASTERN DIVISION. Enter "Eastern" in response to Question D, below. If none applies, go to the box below. ↓
Your case will initially be assigned to the WESTERN DIVISION. Enter "Western" in response to Question D below.	

Question D: Initial Division? Enter the initial division determined by Question A, B, or C above: →	INITIAL DIVISION IN CACD WESTERN DIVISION
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CIVIL COVER SHEET

IX(a). IDENTICAL CASES: Has this action been previously filed in this court and dismissed, remanded or closed? NO YES

If yes, list case number(s): _____

IX(b). RELATED CASES: Have any cases been previously filed in this court that are related to the present case? NO YES

If yes, list case number(s): _____

Civil cases are deemed related if a previously filed case and the present case:

(Check all boxes that apply)

- A. Arise from the same or closely related transactions, happenings, or events; or
- B. Call for determination of the same or substantially related or similar questions of law and fact; or
- C. For other reasons would entail substantial duplication of labor if heard by different judges; or
- D. Involve the same patent, trademark or copyright, and one of the factors identified above in a, b or c also is present.

**X. SIGNATURE OF ATTORNEY
(OR SELF-REPRESENTED LITIGANT):**



DATE: October 7, 2013

Notice to Counsel/Parties: The CV-71 (JS-44) Civil Cover Sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law. This form, approved by the Judicial Conference of the United States in September 1974, is required pursuant to Local Rule 3-1 is not filed but is used by the Clerk of the Court for the purpose of statistics, venue and initiating the civil docket sheet. (For more detailed instructions, see separate instructions sheet).

Key to Statistical codes relating to Social Security Cases:

Nature of Suit Code	Abbreviation	Substantive Statement of Cause of Action
861	HIA	All claims for health insurance benefits (Medicare) under Title 18, Part A, of the Social Security Act, as amended. Also, include claims by hospitals, skilled nursing facilities, etc., for certification as providers of services under the program. (42 U.S.C. 1935FF(b))
862	BL	All claims for "Black Lung" benefits under Title 4, Part B, of the Federal Coal Mine Health and Safety Act of 1969. (30 U.S.C. 923)
863	DIWC	All claims filed by insured workers for disability insurance benefits under Title 2 of the Social Security Act, as amended; plus all claims filed for child's insurance benefits based on disability. (42 U.S.C. 405 (g))
863	DIWW	All claims filed for widows or widowers insurance benefits based on disability under Title 2 of the Social Security Act, as amended. (42 U.S.C. 405 (g))
864	SSID	All claims for supplemental security income payments based upon disability filed under Title 16 of the Social Security Act, as amended.
865	RSI	All claims for retirement (old age) and survivors benefits under Title 2 of the Social Security Act, as amended. (42 U.S.C. 405 (g))

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

NOTICE OF ASSIGNMENT TO UNITED STATES JUDGES

This case has been assigned to District Judge John F. Walter and the assigned Magistrate Judge is Victor B. Kenton.

The case number on all documents filed with the Court should read as follows:

2:13CV7431 JFW VBKx

Pursuant to General Order 05-07 of the United States District Court for the Central District of California, the Magistrate Judge has been designated to hear discovery related motions.

All discovery related motions should be noticed on the calendar of the Magistrate Judge.

Clerk, U. S. District Court

October 8, 2013
Date

By J.Prado
Deputy Clerk

NOTICE TO COUNSEL

A copy of this notice must be served with the summons and complaint on all defendants (if a removal action is filed, a copy of this notice must be served on all plaintiffs).

Subsequent documents must be filed at the following location:

Western Division
312 N. Spring Street, G-8
Los Angeles, CA 90012

Southern Division
411 West Fourth St., Ste 1053
Santa Ana, CA 92701

Eastern Division
3470 Twelfth Street, Room 134
Riverside, CA 92501

Failure to file at the proper location will result in your documents being returned to you.