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Attorneys for Plaintiffs

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY**

ELLEN S. WERTHEIM, individually and on
behalf of others similarly situated,

Plaintiff,

vs.

TOYOTA MOTOR SALES USA, INC. d/b/a
LEXUS,

Defendant.

Civil Action Number:

CLASS ACTION

CLASS ACTION COMPLAINT

JURY DEMAND

Plaintiff Ellen S. Wertheim, residing at 17-06 Calabrese Place, Fair Lawn, New Jersey, on behalf of herself and all others similarly situated (hereinafter "Plaintiff"), by and through her attorneys, Cohn Lifland Pearlman Herrmann & Knopf LLP, complains against the defendant Toyota Motor Sales USA, Inc. d/b/a Lexus ("Lexus" or "Defendant") as follows:

NATURE OF CASE

1. This is a consumer class action pursuant to Fed. R. Civ. P. 23 brought on behalf the Plaintiff and all New Jersey citizens who in connection with either an outright purchase or lease of a Lexus automobile model 2015 GS 350, expended funds in purchasing a "cold weather package" from Lexus.

2. The Plaintiff brings this class action to secure compensatory relief on behalf of herself and all other class members who have suffered harm as a result of the purchase of the cold weather package option as part of their purchase or lease of a 2015 Lexus GS 350 (the “Automobile”). As set forth below, the Plaintiff alleges that the Defendant induced consumers to purchase this cold weather package so that they would obtain a heated steering wheel when in fact the Automobile sold or leased to Class Members did not contain a heated steering wheel. Plaintiff asserts claims for damages for violation of applicable New Jersey consumer protection statutes.

PARTIES

3. Plaintiff Ellen S. Wertheim resides in the Borough of Fair Lawn, County of Bergen, State of New Jersey. On June 19, 2015, she agreed to lease from Lexus of Englewood a brand new 2015 Lexus model GS 350. Further, she agreed to pay additional funds for an option known as the Cold Weather Package. Plaintiff had previously leased earlier model Lexus automobiles and in each occasion paid for and in fact received as part of the Cold Weather Package a heated steering wheel.

4. Defendant Toyota Motor Sales USA, Inc. is a corporation with its principal place of business in Torrance, California. This entity is responsible for the sale and marketing of automobiles under the Lexus brand through its unincorporated Lexus Division. At all relevant times, the Defendant marketed and sold Lexus automobiles in the State of New Jersey as well as throughout the United States. Said Defendant further is responsible for preparing sales literature including sales brochures concerning the 2015 Lexus GS 350 and various options that would be available to a consumer purchasing or leasing the Automobile.

JURISDICTION AND VENUE

5. This Court has original jurisdiction over this class action pursuant to the Class Action Fairness Act, 28 U.S.C. §§ 1332(a)(d)(2), (5)(b)(d), and (6) because (i) the Plaintiff and Defendant are citizens of different States, (ii) there are more than 100 class members, and (iii) there is an aggregate amount in controversy of at least \$5,000,000 exclusive of interest and cost.

CLASS ALLEGATIONS

6. This action is brought and may properly proceed as a class action, pursuant to the provisions of Fed. R. Civ. P. 23. The Plaintiff brings this action on behalf of herself and all others similarly situated New Jersey citizens. The proposed Fed. R. Civ. P. 23(b)(3) Class is to be composed of all New Jersey citizens who purchased or leased a 2015 Lexus GS 350 who paid an additional sum to obtain a Cold Weather Package for the Automobile (the “Plaintiff Class”).

7. This action is properly maintainable as a Class Action. While the precise number of members of the Plaintiff Class cannot be ascertained without discovery of documents in possession of the Defendant, Plaintiff believes that the Plaintiff Class consists of hundreds, if not thousands of persons and therefore is so numerous that joinder of all members is impracticable.

8. There are questions of law that are common to the members of the Plaintiff Class including (a) whether the business practices and misrepresentations made by Lexus concerning the inclusion of a heated steering wheel as part of the Cold Weather Package constitute violations of the New Jersey Consumer Fraud Act; (b) whether the members of the Plaintiff Class suffered an ascertainable loss as a result of such violations; (c) the quantum of damages.

9. Because the Plaintiff’s claims and the claims of other members of the Plaintiff Class were derived from a common nucleus of operative facts, the Plaintiff’s claims are typical of the claims of all members of the Plaintiff Class.

10. The Plaintiff will fully and adequately protect the interest of the Plaintiff Class. The Plaintiff has retained the services of experienced class counsel to prosecute the claims on behalf of the Plaintiff Class and has no interest antagonistic to those of other members of the Plaintiff Class.

11. The members of the Plaintiff Class were owed the same duties by Lexus and sustained the same damages arising out of the same type of wrongful conduct of Lexus. Common questions of law and fact far predominate over any questions effecting individual members.

12. Because the damage sustained by individual Class Members will be relatively small given the magnitude and consummate cost of litigation if this matter is not permitted to proceed on behalf of a class, many, if not all Class Members, will be denied the ability to properly present their claims.

13. No difficulties are likely to be encountered in the management of this action as a Class Action and it is desirable to litigate in one form the claims of the Plaintiff Class.

14. For these reasons, a Class Action is superior to other available methods for the fair and efficient adjudication of this controversy.

FACTUAL AND LEGAL ALLEGATIONS
(Violations of the New Jersey Consumer Fraud Act)

15. Plaintiff, on behalf of herself and on behalf of all similarly situated re-asserts and incorporates by reference each and every allegation set forth in the preceding paragraphs 1 - 14 as though stated in full herein.

16. At all relevant times, Defendant Lexus has been involved in the sale and marketing of an automobile model commonly known as the 2015 Lexus GS 350. Lexus offers consumers this model containing a wide variety of equipment known as standard equipment at a manufacturer's suggested retail price of approximately \$50,000. In addition, Lexus offered consumers a variety of optional equipment that could be purchased for additional cost.

17. Consumers, including all members of the Plaintiff Class, were provided a brochure prepared by the Defendant. This brochure which is entitled “15-GS” provides in addition to various photographs and marketing material, a description of these additional options that may be purchased to supplement the standard equipment contained in the Automobile. Among the optional packages provided, is the “Cold Weather Package”. This package is standard on the more expensive GS 450H model, but must be purchased at an additional expense for those persons purchasing the GS 350 model.

18. The brochure prepared by the Defendant states the following:

COLD WEATHER PACKAGE

Heated steering wheel // High-intensity interior heater // Headlamp washers //
Windshield-wiper deicer // Water-repellent front-door glass // LED headlamps

19. Therefore, Lexus represented to Plaintiff and other members of the Plaintiff Class that should they agree to pay additional funds, they could purchase an option that would provide them with a heated steering wheel. The heated steering wheel had been included in the Cold Weather Package purchased by the Plaintiff in connection with the lease of an earlier Lexus and has, upon information and belief, been part of the Cold Weather Package since Lexus began marketing this option for this and other Lexus models.

20. Further, the Plaintiff agreed to purchase this option because of the promised heated steering wheel and would not have purchased the Cold Weather Package if she had been informed that a heated steering wheel would not be included. The Plaintiff’s decision to include this option resulted in an increase in purchase price of \$190.

21. The representation that the Cold Weather Package included the heated steering wheel was widely disseminated to the public. The Defendant’s own website contained this representation. Further, prominent motor vehicle internet sites such as Motortrend.com and

Edmunds.com reported that purchasers of the 2015 Lexus GS 350 would receive a heated steering wheel should they choose to purchase as one of their options the Cold Weather Package.

22. In fact, none of the 2015 Lexus GS 350 automobiles sold in the United States contained heated steering wheels.

23. Plaintiff alleges that the Defendant Lexus in violation of N.J.S.A. 56:8-2 made material affirmative misrepresentations and engaged in prohibited affirmative acts by representing that a person who purchased at an additional cost the Cold Weather Package for the 2015 Lexus GS 350 would obtain a heated steering wheel when in fact the car as manufactured simply did not contain such equipment.

24. Plaintiff further alleges that in omitting to state that those consumers who purchased a Cold Weather Package option would not receive a heated steering wheel acted knowingly and intentionally making a material omission in violation of N.J.S.A. 56:8-2.

25. Plaintiff further alleges that having included a heated steering wheel as part of a Cold Weather Package in previous models and having prepared a brochure to be given to all prospective and actual purchasers of the Automobile that the heated steering would be contained within said package and having disseminated to the public information to this effect, the Defendant engaged in unconscionable commercial practice in violation of N.J.S.A. 56:8-2 by inducing purchasers to pay additional funds to obtain something that the Defendant knew would not be provided.

26. The Plaintiff and all members of the Plaintiff Class suffered an ascertainable loss as they did not receive the benefit of the bargain. Specifically, Plaintiff and other members of the Plaintiff Class paid additional funds to obtain a heated steering wheel as part of the Cold Weather

Package but did not receive same. Said ascertainable loss was the proximate result of Defendant's violation of N.J.S.A. 56:8-2.

WHEREFORE, Plaintiff, on behalf of herself and all others similarly situated, demands judgment against Defendant as follows:

- a. Certifying this matter as a class action pursuant to Fed. R. Civ. P. 23(a) and (b)(3) and maintainable under R. 23 of the Federal Rules of Civil Procedure and certifying an appropriate Class and/or Sub-Class and certifying Plaintiff as such Class Representative;
- b. Appointing Plaintiff as Class Representative;
- c. Appointing Plaintiff's attorneys as Class Counsel;
- d. Awarding Plaintiff and members of the Plaintiff Class treble damages for violations of the New Jersey Consumer Fraud Act together with interest;
- e. Awarding reasonable attorneys' fees and costs pursuant to N.J.S.A. 56:8-19;
- f. Such other relief as the Court deems equitable and just.

JURY DEMAND

Plaintiffs demand a trial by jury on all issues so triable.

Respectfully submitted,

COHN LIFLAND PEARLMAN
HERRMANN & KNOPF LLP
Attorneys for Plaintiffs

By: /s/ Jeffrey W. Herrmann
Jeffrey W. Herrmann, Esq.
Park 80 West-Plaza One
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jwh@njlawfirm.com

DATED: April 27, 2016

**UNITED STATES DISTRICT COURT
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ELLEN S. WERTHEIM, individually and on
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Plaintiff,

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TOYOTA MOTOR SALES USA, INC. d/b/a
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**CERTIFICATION PURSUANT TO
L. CIV. R. 11.2**

I certify that to the best of my knowledge, the matter in controversy is not the subject of any other action pending in this court.

I certify under penalty of perjury that the foregoing is true and correct.

Executed on this 27th day of April, 2016.

COHN LIFLAND PEARLMAN
HERRMANN & KNOPF LLP
Attorneys for Plaintiffs

By: /s/ Jeffrey W. Herrmann
Jeffrey W. Herrmann, Esq.
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CLASS ACTION

**CERTIFICATION OF NON-
ARBITRABILITY PURSUANT TO
L. CIV. R. 201.1**

Jeffrey W. Herrmann, of full age, certifies that pursuant to L. Civ. R. 201.1, the within matter is not arbitrable, being that the Complaint seeks damages that are in an excess of \$150,000.

I certify under penalty of perjury that the foregoing is true and correct.

Executed on this 27th day of April, 2016.

COHN LIFLAND PEARLMAN
HERRMANN & KNOPF LLP
Attorneys for Plaintiffs

By: /s/ Jeffrey W. Herrmann
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CIVIL COVER SHEET

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

I. (a) PLAINTIFFS

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

(c) Attorneys (Firm Name, Address, Email and Telephone Number)

DEFENDANTS

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

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

Attorneys (If Known)

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

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

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

- Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, PTF DEF, Incorporated or Principal Place of Business In This State, Incorporated and Principal Place of Business In Another State, Foreign Nation

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

Table with 5 columns: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES. Contains various legal categories and checkboxes.

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

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

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
Brief description of cause:

VII. REQUESTED IN COMPLAINT:

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

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE DOCKET NUMBER

DATE SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

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

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