

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

TERRY FREEMAN and ANDREW TROUT,)
on behalf of themselves and all others similarly)
situated,)

Plaintiffs,)

v.)

TOYOTA MOTOR SALES, U.S.A., INC. et al.,)

Defendants.)

Case No.: 4:19-cv-02550-CDP

JURY TRIAL DEMANDED

PLAINTIFFS' FIRST AMENDED CLASS ACTION COMPLAINT

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PLAINTIFFS TERRY FREEMAN AND ANDREW TROUT (“Plaintiffs”), on behalf of themselves and all others similarly situated, file this Amended Complaint against Defendants Toyota Motor Sales, U.S.A., Inc.; Toyota Motor North America, Inc.; and Toyota Motor Engineering & Manufacturing North America, Inc. (collectively “Toyota”), based on personal knowledge as to their own actions and on information and belief, based on the investigation of counsel, as to Toyota’s conduct and practices.

INTRODUCTION

1. Plaintiffs bring this class action individually and on behalf of a Class of similarly situated individuals (referred to collectively as “Class Members”) who purchased or leased a Toyota vehicle with a defective hands-free phone system, such that when the driver of the Toyota uses the hands-free phone system to make or receive a call the person on the other end of the call hears an echo of his or her own words (sometimes referred to herein as the “echo defect”). This echo defect makes continuation of the phone conversation impossible to maintain, meaning Plaintiffs and Class Members have therefore purchased or leased vehicles with hands-free phone systems that are virtually unusable.

2. Toyota has known about this echo defect since at least 2007 as shown by its references to it in its Owner’s Manuals, which are provided to consumers after they purchase or lease a vehicle. But not only has Toyota failed to notify Plaintiffs and Class Members of the echo defect prior to their purchases or leases of Toyota’s vehicles, it has breached its written warranties and failed to repair their vehicles.

3. Toyota’s actions as alleged herein violate the Missouri Merchandising Practices Act (“MMPA”), § 407.010 *et seq.*, by means of unfair practices, deception and omissions,

constitute unjust enrichment, and breach its written warranties with Plaintiffs and Class Members.

THE PARTIES

Plaintiffs

4. Plaintiff Terry Freeman is a resident of St. Louis County and a citizen of the State of Missouri. During the relevant class period he purchased a 2018 Toyota Highlander that has the echo defect described above.

5. Plaintiff Andrew Trout is a resident of St. Louis County and a citizen of the State of Missouri. During the relevant class period he purchased a 2016 Toyota Highlander from Toyota. The Bluetooth hands-free phone system in Plaintiff Trout's vehicle has the echo defect described above.

Defendants

6. Defendant Toyota Motor Sales, U.S.A., Inc. ("Toyota Sales"), is a California corporation, with its principal place of business at 6565 Headquarters Drive, Plano, TX 75024. Its registered agent in Missouri is C T Corporation System, 120 S. Central Ave., Clayton, MO 63105. On information and belief, it manufactures, distributes, markets, and sells Toyota vehicles in the United States on behalf of Toyota Motor Corporation.

7. Defendant Toyota Motor North America, Inc., is a California corporation, with its principal place of business at 6565 Headquarters Drive, Plano, TX 75024. Its registered agent in Missouri is C T Corporation System, 120 S. Central Ave., Clayton, MO 63105. On information and belief, it is a holding company for Toyota Motor Corporation's sales and manufacturing subsidiaries in the United States.

8. Defendant Toyota Motor Engineering & Manufacturing North America, Inc., is a Kentucky corporation, with its principal place of business at 6565 Headquarters Drive, Plano, TX 75024. Its registered agent in Missouri is C T Corporation System, 120 S. Central Ave., Clayton, MO 63105. On information and belief, its responsibilities include engineering, designing, developing and manufacturing Toyota Motor Corporation's vehicles in North America.

9. Toyota markets the high quality of its vehicles and represents them as the best in their field. For example, in a post on Toyota's website entitled "2016 Toyota Highlander: Leader of the Midsize Crossover Pack," Toyota refers to the 2016 Highlander as "The Benchmark for Three-Row Crossovers" and its high quality materials.¹ In a post on its website entitled "2018 Toyota Highlander Delivers on Value, Safety Features and Performance for Families of All Sizes," Toyota states that the "current generation" of Highlanders "continues to draw accolades for its exemplary safety features, performance and overall drivability" and refers to "Toyota quality, dependability, reliability and value . . ."²

JURISDICTION AND VENUE

10. This is a class action under Rule 23 of the Federal Rules of Civil Procedure.

11. As Defendants alleged in removing this case, this Court has jurisdiction pursuant to the Class Action Fairness Act, 18 U.S.C. § 1332(d). Because Plaintiff and Defendants are citizens of different states, there is minimal diversity. The total claims of Class Members exceed \$5,000,000 exclusive of interest and costs. There are at least 100 Class Members.

12. Venue is proper in this Court pursuant to 28 U.S.C. § 1391.

¹ Available at <https://pressroom.toyota.com/2016-toyota-highlander-debut/> (accessed 7/19/19).

² Available at <https://pressroom.toyota.com/2018-toyota-highlander-delivers-value-safety-features-perfo-families-all-sizes/> (accessed 7/19/19).

FACTUAL ALLEGATIONS REGARDING TOYOTA'S LIABILITY

13. Toyota has manufactured and sold vehicles containing a Bluetooth hands-free phone system for over ten-years. This is shown by a review of its Owner's Manuals and Navigation Owner's Manuals³ for many different Toyota models. For example, Section 3-4 of the Owner's Manual for the 2008 Toyota Highlander is entitled "Using the hands-free phone system (for cellular phone)." It states in that section: "This system supports Bluetooth, which allows you to make or receive calls without using cables to connect a cellular phone and the system, and without operating the cellular phone."⁴

14. The same language is included in the 2009-2013 Toyota Highlander Owner's Manuals.⁵

15. The 2014 Toyota Highlander Owner's Manual has slightly different language regarding the hands-free phone system; it states: "This system supports Bluetooth. Bluetooth is a wireless data system that allows the cellular phone to wirelessly connect to the hands-free system

³ For Toyota's vehicles containing a navigation system, Toyota offers a separate navigation owner's manual that explains the operation of the navigation system. The navigation owner's manuals also include information regarding the vehicles' hands-free phone system. For example, the "Introduction" to the 2016 Highlander, Highlander HV Owner's Navigation Manual contains a heading entitled, "NAVIGATION AND MULTIMEDIA SYSTEM OWNER'S MANUAL," underneath which it states: "This manual explains the operation of this system. Please read this manual carefully to ensure proper use." See 2016 Highlander, Highlander HV Owner's Navigation Manual, at 2, available at <https://www.toyota.com/t3Portal/document/omnav-s/OM48F13U/pdf/OM48F13U.pdf> (accessed 7/11/19). This manual also has a section entitled, "PHONE OPERATON (HANDS-FREE SYSTEM FOR CELLULAR PHONES). *Id.* at 222.

⁴ 2008 Toyota Highlander Owner's Manual (OM48690U), at 324, available at <https://www.toyota.com/t3Portal/document/om-s/OM48690U/pdf/OM48690U.pdf>. (accessed 6/12/19); 2008 Toyota Highlander Owner's Manual (OM48851U), at 325, available at <https://www.toyota.com/t3Portal/document/om-s/OM48851U/pdf/OM48851U.pdf> (accessed 7/10/19).

⁵ 2009 Toyota Highlander Owner's Manual, at 342, available at <https://www.toyota.com/t3Portal/document/om-s/OM48853U/pdf/OM48853U.pdf> (accessed 6/14/19); 2010 Toyota Highlander Owner's Manual, at 348, available at <https://www.toyota.com/t3Portal/document/om-s/OM48B60U/pdf/OM48B60U.pdf> (accessed 6/14/19); 2011 Toyota Highlander Owner's Manual, at 340, available at <https://www.toyota.com/t3Portal/document/om-s/OM48A73U/pdf/OM48A73U.pdf> (accessed 6/14/19); 2012 Toyota Highlander Owner's Manual, at 363, available at <https://www.toyota.com/t3Portal/document/om-s/OM48A09U/pdf/OM48A09U.pdf> (accessed 6/14/19); 2013 Toyota Highlander Owner's Manual, at 373, available at <https://www.toyota.com/t3Portal/document/om-s/OM48A38U/pdf/OM48A38U.pdf> (accessed 6/14/19).

and make/receive calls.”⁶ The 2015-2019 Toyota Highlander Owner’s Manuals have this same language.⁷

16. Other Toyota models have also included or offered Bluetooth hands-free phone systems for many years, as shown by the Owner’s Manuals and Navigation Owner’s Manuals for those models. This includes the following, which, along with the Toyota Highlander, constitute the “Class Vehicles,” as set forth below:

- Toyota 4Runner⁸,

⁶ 2014 Toyota Highlander Owner’s Manual, at 384, available at <https://www.toyota.com/t3Portal/document/om-s/OM48A12U/pdf/OM48A12U.pdf> (accessed 6/14/19).

⁷ 2015 Toyota Highlander Owner’s Manual, at 384, available at <https://www.toyota.com/t3Portal/document/om-s/OM48E98U/pdf/OM48E98U.pdf> (accessed 6/14/19); 2016 Toyota Highlander Owner’s Manual, at 386, available at <https://www.toyota.com/t3Portal/document/om-s/OM48F09U/pdf/OM48F09U.pdf> (accessed 6/14/19); 2017 Toyota Highlander Owner’s Manual, at 397, available at <https://www.toyota.com/t3Portal/document/om-s/OM0E017U/pdf/OM0E017U.pdf> (accessed 6/14/19); 2018 Toyota Highlander Owner’s Manual, at 397, available at <https://www.toyota.com/t3Portal/document/om-s/OM0E031U/pdf/OM0E031U.pdf> (accessed 6/14/19); 2019 Toyota Highlander Owner’s Manual, at 403, available at <https://www.toyota.com/t3Portal/document/om-s/OM0E047U/pdf/OM0E047U.pdf> (accessed 6/14/19).

⁸ 2007 Toyota 4Runner Navigation Owner’s Manual, at 99, available at <https://www.toyota.com/t3Portal/document/omnav-s/OM35868U/pdf/OM35868U.pdf> (accessed 7/9/19); 2008 Toyota 4Runner Navigation Owner’s Manual, at 124, available at <https://www.toyota.com/t3Portal/document/omnav-s/OM35895U/pdf/OM35895U.pdf> (accessed 7/9/19); 2009 Toyota 4Runner Navigation Owner’s Manual, at 127, available at <https://www.toyota.com/t3Portal/document/omnav-s/OM35A04U/pdf/OM35A04U.pdf> (accessed 7/9/19); 2010 Toyota 4Runner Owner’s Manual, at 380, available at <https://www.toyota.com/t3Portal/document/om-s/OM35A36U/pdf/OM35A36U.pdf> (accessed 7/9/19); 2011 Toyota 4Runner Owner’s Manual, at 380, available at <https://www.toyota.com/t3Portal/document/om-s/OM35A52U/pdf/OM35A52U.pdf> (accessed 7/9/19); 2012 Toyota 4Runner Owner’s Navigation Manual, at 157, available at <https://www.toyota.com/t3Portal/document/omnav-s/OM33A02U-02/pdf/OM33A02U-02.pdf> (accessed 7/9/19); 2013 Toyota 4Runner Owner’s Manual, at 407, available at <https://www.toyota.com/t3Portal/document/om-s/OM35A22U/pdf/OM35A22U.pdf> (accessed 7/9/19); 2014 Toyota 4Runner Owner’s Navigation Manual, at 159, available at <https://www.toyota.com/t3Portal/document/omnav-s/OM35A86U/pdf/OM35A86U.pdf> (accessed 7/9/19); 2015 Toyota 4Runner Owner’s Navigation Manual, at 159, available at <https://www.toyota.com/t3Portal/document/omnav-s/OM35B19U/pdf/OM35B19U.pdf> (accessed 7/9/19); 2016 Toyota 4Runner Owner’s Navigation Manual, at 157, available at <https://www.toyota.com/t3Portal/document/omnav-s/OM35B26U/pdf/OM35B26U.pdf> (accessed 7/9/19); 2017 Toyota 4Runner Navigation System Owner’s Manual, at 157, available at <https://www.toyota.com/t3Portal/document/omnav-s/OM35B38U/pdf/OM35B38U.pdf> (accessed 7/9/19); 2018 Toyota 4Runner Navigation and Multimedia System Owner’s Manual, at 157, available at <https://www.toyota.com/t3Portal/document/omnav-s/OM35B47U/pdf/OM35B47U.pdf> (accessed 7/9/19); 2019 Toyota 4Runner Navigation and Multimedia System Owner’s Manual, at 157, available at <https://www.toyota.com/t3Portal/document/omnav-s/OM35B49U/pdf/OM35B49U.pdf> (accessed 7/9/19).

- Toyota Avalon⁹
- Toyota Avalon HV¹⁰,
- Toyota Highlander, HV¹¹,

⁹ 2008 Toyota Avalon Owner's Manual, at 220, available at <https://www.toyota.com/t3Portal/document/om-s/OM41433U/pdf/OM41433U.pdf> (accessed 7/8/19); 2009 Toyota Avalon Owner's Manual, at 234, available at <https://www.toyota.com/t3Portal/document/om-s/OM41430U/pdf/OM41430U.pdf> (accessed 7/8/19); 2010 Toyota Avalon Owner's Manual, at 242, available at <https://www.toyota.com/t3Portal/document/om-s/OM41437U/pdf/OM41437U.pdf> (accessed 7/8/19); 2011 Toyota Avalon Owner's Manual, at 296, available at <https://www.toyota.com/t3Portal/document/om-s/OM41434U/pdf/OM41434U.pdf> (accessed 7/8/19); 2012 Toyota Avalon Owner's Manual, at 308, available at <https://www.toyota.com/t3Portal/document/om-s/OM41445U/pdf/OM41445U.pdf> (accessed 7/8/19); 2013 Toyota Avalon, Avalon HV Owner's Navigation Manual, at 122, available at <https://www.toyota.com/t3Portal/document/omnav-s/OM41444U/pdf/OM41444U.pdf> (accessed 7/8/19); 2014 Toyota Avalon, Avalon HV Owner's Navigation Manual, at 122, available at <https://www.toyota.com/t3Portal/document/omnav-s/OM41455U/pdf/OM41455U.pdf> (accessed 7/8/19); 2015 Toyota Avalon, Avalon HV Owner's Navigation Manual, at 173, available at <https://www.toyota.com/t3Portal/document/omnav-s/OM41459U/pdf/OM41459U.pdf> (accessed 7/8/19); 2016 Toyota Avalon, Avalon HV Owner's Navigation Manual, at 175, available at <https://www.toyota.com/t3Portal/document/omnav-s/OM07003U/pdf/OM07003U.pdf> (accessed 7/8/19); 2017 Toyota Avalon, Avalon HV Navigation System Owner's Manual, at 175, available at <https://www.toyota.com/t3Portal/document/omnav-s/OM07009U/pdf/OM07009U.pdf> (accessed 7/8/19); 2018 Toyota Avalon, Avalon HV Navigation System Owner's Manual, at 175, available at <https://www.toyota.com/t3Portal/document/omnav-s/OM07012U/pdf/OM07012U.pdf> (accessed 7/8/19); 2019 Toyota Avalon, Avalon HV Navigation and Multimedia System Owner's Manual, at 195, available at <https://www.toyota.com/t3Portal/document/omnav-s/OM07006U/pdf/OM07006U.pdf> (accessed 7/9/19).

¹⁰ 2013 Toyota Avalon, Avalon HV Owner's Navigation Manual, at 122, available at <https://www.toyota.com/t3Portal/document/omnav-s/OM41444U/pdf/OM41444U.pdf> (accessed 7/9/19); 2014 Toyota Avalon, Avalon HV Owner's Navigation Manual, at 122, available at <https://www.toyota.com/t3Portal/document/omnav-s/OM41455U/pdf/OM41455U.pdf> (accessed 7/9/19); 2015 Toyota Avalon, Avalon, HV Owners Navigation Manual, at 173, available at <https://www.toyota.com/t3Portal/document/omnav-s/OM41459U/pdf/OM41459U.pdf> (accessed 7/9/19); 2016 Toyota Avalon, Avalon HV Owner's Navigation Manual, at 175, available at <https://www.toyota.com/t3Portal/document/omnav-s/OM07003U/pdf/OM07003U.pdf> (accessed 7/9/19); 2017 Toyota Avalon, Avalon HV Navigation System Owner's Manual, at 175, available at <https://www.toyota.com/t3Portal/document/omnav-s/OM07009U/pdf/OM07009U.pdf> (accessed 7/9/19); 2018 Toyota Avalon, Avalon HV Navigation System Owner's Manual, at 175, available at <https://www.toyota.com/t3Portal/document/omnav-s/OM07012U/pdf/OM07012U.pdf> (accessed 7/9/19); 2019 Toyota Avalon, Avalon HV Navigation and Multimedia System Owner's Manual, at 195, available at <https://www.toyota.com/t3Portal/document/omnav-s/OM07006U/pdf/OM07006U.pdf> (accessed 7/9/19).

¹¹ 2008 Toyota Highlander HV Owner's Manual (OM48694U), at 330, available at <https://www.toyota.com/t3Portal/document/om-s/OM48694U/pdf/OM48694U.pdf> (accessed 7/9/19); 2008 Toyota Highlander HV Owner's Manual (OM48852U), at 330, available at <https://www.toyota.com/t3Portal/document/om-s/OM48852U/pdf/OM48852U.pdf> (accessed 7/9/19); 2009 Toyota Highlander HV Owner's Manual, at 338, available at <https://www.toyota.com/t3Portal/document/om-s/OM48837U/pdf/OM48837U.pdf> (accessed 7/9/19); 2010 Toyota Highlander HV Owner's Manual, at 340, available at <https://www.toyota.com/t3Portal/document/om-s/OM48A63U/pdf/OM48A63U.pdf> (accessed 7/9/19); 2011 Toyota Highlander HV Owner's Manual, at 352, available at <https://www.toyota.com/t3Portal/document/om-s/OM48A67U/pdf/OM48A67U.pdf> (accessed 7/9/19); 2012 Toyota Highlander HV Owner's Manual, at 368, available at <https://www.toyota.com/t3Portal/document/om-s/OM48A10U/pdf/OM48A10U.pdf> (accessed 7/9/19); 2013 Toyota Highlander HV Owner's Manual, at 376, available at <https://www.toyota.com/t3Portal/document/om-s/OM48A24U/pdf/OM48A24U.pdf> (accessed 7/9/19); 2014 Highlander, Highlander HV Owner's Navigation Manual, at 221, available at

- Toyota Prius¹²
- Toyota Prius V¹³
- Toyota Sequoia¹⁴

<https://www.toyota.com/t3Portal/document/omnav-s/OM48A19U/pdf/OM48A19U.pdf> (accessed 7/9/19); 2015 Toyota Highlander, Highlander HV Owner's Manual, at 221, available at <https://www.toyota.com/t3Portal/document/omnav-s/OM48F03U/pdf/OM48F03U.pdf> (accessed 7/9/19); 2016 Toyota Highlander Owner's Manual, at 386, available at <https://www.toyota.com/t3Portal/document/om-s/OM48F09U/pdf/OM48F09U.pdf> (accessed 7/9/19); 2017 Toyota Highlander HV Owner's Manual, at 395, available at <https://www.toyota.com/t3Portal/document/om-s/OM0E018U/pdf/OM0E018U.pdf> (accessed 7/9/19); 2018 Toyota Highlander HV Owner's Manual, at 395, available at <https://www.toyota.com/t3Portal/document/om-s/OM0E032U/pdf/OM0E032U.pdf> (accessed 7/9/19); 2019 Highlander HV Owner's Manual, at 401, available at <https://www.toyota.com/t3Portal/document/om-s/OM0E048U/pdf/OM0E048U.pdf> (accessed 7/9/19).

¹² 2007 Toyota Prius Owner's Manual, at 171, available at <https://www.toyota.com/t3Portal/document/om-s/OM47568U/pdf/OM47568U.pdf> (accessed 7/9/19); 2008 Toyota Prius Owner's Manual, at 272, available at <https://www.toyota.com/t3Portal/document/om-s/OM47613U/pdf/OM47613U.pdf> (accessed 7/9/19); 2009 Toyota Prius Owner's Manual, at 269, available at <https://www.toyota.com/t3Portal/document/om-s/OM47614U/pdf/OM47614U.pdf> (accessed 7/9/19); 2010 Toyota Prius Owner's Manual, at 326, available at <https://www.toyota.com/t3Portal/document/om-s/OM47668U/pdf/OM47668U.pdf> (accessed 7/9/19); 2011 Toyota Prius Owner's Manual, at 337, available at <https://www.toyota.com/t3Portal/document/om-s/OM47685U/pdf/OM47685U.pdf> (accessed 7/9/19); 2012 Toyota Prius Navigation Owner's Manual, at 134, available at <https://www.toyota.com/t3Portal/document/omnav-s/OM47719U/pdf/OM47719U.pdf> (accessed 7/9/19); 2013 Toyota Prius/Prius PHV Owner's Navigation Manual, at 134, available at <https://www.toyota.com/t3Portal/document/omnav-s/OM47805U/pdf/OM47805U.pdf> (accessed 7/9/19); 2014 Toyota Prius/Prius PHV Owner's Navigation Manual, at 134, available at <https://www.toyota.com/t3Portal/document/omnav-s/OM47858U/pdf/OM47858U.pdf> (accessed 7/9/19); 2015 Toyota Prius/Prius PHV Owner's Navigation Manual, at 134, available at <https://www.toyota.com/t3Portal/document/omnav-s/OM47A72U/pdf/OM47A72U.pdf> (accessed 7/9/19); 2016 Toyota Prius Owner's Manual, at 470, available at <https://www.toyota.com/t3Portal/document/om-s/OM47A29U/pdf/OM47A29U.pdf> (accessed 7/9/19); 2017 Toyota Prius Owner's Manual, at 468, available at <https://www.toyota.com/t3Portal/document/om-s/OM47B54U/pdf/OM47B54U.pdf> (accessed 7/9/19); 2018 Toyota Prius Owner's Manual, at 474, available at <https://www.toyota.com/t3Portal/document/om-s/OM47B89U/pdf/OM47B89U.pdf> (accessed 7/9/19); 2019 Toyota Prius Owner's Manual, at 484, available at <https://www.toyota.com/t3Portal/document/om-s/OM47C35U/pdf/OM47C35U.pdf> (accessed 7/9/19).

¹³ 2012 Toyota Prius V Navigation Owner's Manual, at 132, available at <https://www.toyota.com/t3Portal/document/omnav-s/OM47675U/pdf/OM47675U.pdf> (accessed 7/9/19); 2013 Toyota Prius V Owner's Navigation Manual, at 132, available at <https://www.toyota.com/t3Portal/document/omnav-s/OM47828U/pdf/OM47828U.pdf> (accessed 7/9/19); 2014 Toyota Prius V Owner's Navigation Manual at 132, available at <https://www.toyota.com/t3Portal/document/omnav-s/OM47847U/pdf/OM47847U.pdf> (accessed 7/9/19); 2015 Toyota Prius V Owner's Manual, at 321, available at <https://www.toyota.com/t3Portal/document/om-s/OM47887U/pdf/OM47887U.pdf> (accessed 7/9/19); 2016 Toyota Prius V Owner's Manual, at 323, available at <https://www.toyota.com/t3Portal/document/om-s/OM47B12U/pdf/OM47B12U.pdf> (accessed 7/9/19); 2017 Toyota Prius V Owner's Manual, at 323, available at <https://www.toyota.com/t3Portal/document/om-s/OM47B23U/pdf/OM47B23U.pdf> (accessed 7/9/19).

¹⁴ 2008 Toyota Sequoia Owner's Manual, at 329, available at <https://www.toyota.com/t3Portal/document/om-s/OM34478U/pdf/OM34478U.pdf> (accessed 7/9/19); 2009 Toyota Sequoia Owner's Manual, at 338, available at <https://www.toyota.com/t3Portal/document/om-s/OM34471U/pdf/OM34471U.pdf> (accessed 7/9/19); 2010 Toyota Sequoia Owner's Manual (OM34496U), at 336, available at <https://www.toyota.com/t3Portal/document/om-s/OM34496U/pdf/OM34496U.pdf> (accessed 7/9/19); 2010 Toyota Sequoia Owner's Manual (OM34501U), at 338, available at <https://www.toyota.com/t3Portal/document/om-s/OM34501U/pdf/OM34501U.pdf> (accessed 7/9/19); 2011 Toyota Sequoia Owner's Manual (OM34453U), at 399, available at

- Toyota Sienna¹⁵
- Toyota Tacoma¹⁶

<https://www.toyota.com/t3Portal/document/om-s/OM34453U/pdf/OM34453U.pdf> (accessed 7/9/19); 2011 Toyota Sequoia Owner's Manual (OM34523U), at 399, available at <https://www.toyota.com/t3Portal/document/om-s/OM34523U/pdf/OM34523U.pdf> (accessed 7/9/19); 2012 Toyota Sequoia Owner's Manual, at 419, available at <https://www.toyota.com/t3Portal/document/om-s/OM34518U/pdf/OM34518U.pdf> (accessed 7/9/19); 2013 Toyota Sequoia Owner's Manual (OM34441U), at 448, available at <https://www.toyota.com/t3Portal/document/om-s/OM34441U/pdf/OM34441U.pdf> (accessed 7/9/19); 2013 Toyota Sequoia Owner's Manual (OM34450U), at 448, available at <https://www.toyota.com/t3Portal/document/om-s/OM34450U/pdf/OM34450U.pdf> (accessed 7/9/19); 2014 Toyota Sequoia Owner's Manual, at 380, available at <https://www.toyota.com/t3Portal/document/om-s/OM34540U/pdf/OM34540U.pdf> (accessed 7/9/19); 2015 Toyota Sequoia through Oct. 2014 Prod. Owner's Manual (OM34549U), at 378, available at <https://www.toyota.com/t3Portal/document/om-s/OM34549U/pdf/OM34549U.pdf> (accessed 7/9/19); 2015 Toyota Sequoia from Nov. 2014 Prod. Sequoia Owner's Manual (OM34565U), at 378, available at <https://www.toyota.com/t3Portal/document/om-s/OM34565U/pdf/OM34565U.pdf> (accessed 7/9/19); 2016 Toyota Sequoia Owner's Navigation Manual, at 185, available at <https://www.toyota.com/t3Portal/document/omnav-s/OM34578U/pdf/OM34578U.pdf> (accessed 7/9/19); 2017 Toyota Sequoia Navigation System Owner's Manual, at 185, available at <https://www.toyota.com/t3Portal/document/omnav-s/OM34601U/pdf/OM34601U.pdf> (accessed 7/9/19); 2018 Toyota Sequoia Navigation and Multimedia System Owner's Manual, at 187, available at <https://www.toyota.com/t3Portal/document/omnav-s/OM0C007U/pdf/OM0C007U.pdf> (accessed 7/9/19); 2019 Toyota Sequoia Navigation and Multimedia System Owner's Manual, at 187, available at <https://www.toyota.com/t3Portal/document/omnav-s/OM0C015U/pdf/OM0C015U.pdf> (accessed 7/9/19).

¹⁵ 2007 Toyota Sienna Navigation Owner's Manual, at 99, available at <https://www.toyota.com/t3Portal/document/omnav-s/OM45439U/pdf/OM45439U.pdf> (accessed 7/8/19); 2008 Toyota Sienna Owner's Manual, at 317, available at <https://www.toyota.com/t3Portal/document/om-s/OM45455U/pdf/OM45455U.pdf> (accessed 7/8/19); 2009 Toyota Sienna Owner's Manual, at 327, available at <https://www.toyota.com/t3Portal/document/om-s/OM45452U/pdf/OM45452U.pdf> (accessed 7/8/19); 2010 Toyota Sienna Owner's Manual, at 327, available at <https://www.toyota.com/t3Portal/document/om-s/OM45462U/pdf/OM45462U.pdf> (accessed 7/8/19); 2011 Toyota Sienna Owner's Manual, at 488, available at <https://www.toyota.com/t3Portal/document/om-s/OM45466U/pdf/OM45466U.pdf> (accessed 7/8/19); 2012 Toyota Sienna Owner's Manual, at 529, available at <https://www.toyota.com/t3Portal/document/om-s/OM45477U/pdf/OM45477U.pdf> (accessed 7/9/18); 2013 Toyota Sienna Owner's Manual, at 543, available at <https://www.toyota.com/t3Portal/document/om-s/OM45472U/pdf/OM45472U.pdf> (accessed 7/9/19); 2014 Toyota Sienna Owner's Manual, at 545, available at <https://www.toyota.com/t3Portal/document/om-s/OM45483U/pdf/OM45483U.pdf> (accessed 7/9/19); 2015 Toyota Sienna Owner's Manual, at 366, available at <https://www.toyota.com/t3Portal/document/om-s/OM08001U/pdf/OM08001U.pdf> (accessed 7/9/19); 2016 Toyota Sienna Owner's Manual, at 367, available at <https://www.toyota.com/t3Portal/document/om-s/OM08013U/pdf/OM08013U.pdf> (accessed 7/9/19); 2017 Toyota Sienna Owner's Manual, at 371, available at <https://www.toyota.com/t3Portal/document/om-s/OM08007U/pdf/OM08007U.pdf> (accessed 7/9/19); 2018 Toyota Sienna Navigation and Multimedia System Owner's Manual, at 287, available at <https://www.toyota.com/t3Portal/document/omnav-s/OM08021U/pdf/OM08021U.pdf> (accessed 7/9/19); 2019 Toyota Sienna Navigation and Multimedia System Owner's Manual, at 293, available at <https://www.toyota.com/t3Portal/document/omnav-s/OM08027U/pdf/OM08027U.pdf> (accessed 7/9/19).

¹⁶ 2009 Toyota Tacoma Owner's Manual, at 262, available at <https://www.toyota.com/t3Portal/document/om-s/OM35883U/pdf/OM35883U.pdf> (accessed 7/9/19); 2010 Toyota Tacoma Owner's Manual, at 268, available at <https://www.toyota.com/t3Portal/document/om-s/OM35A51U/pdf/OM35A51U.pdf> (accessed 7/9/19); 2011 Toyota Tacoma Owner's Manual (OM35A58U), at 276, available at <https://www.toyota.com/t3Portal/document/om-s/OM35A34U/pdf/OM35A34U.pdf> (accessed 7/9/19); 2011 Toyota Tacoma Owner's Manual (OM35A58U), at 276, available at <https://www.toyota.com/t3Portal/document/om-s/OM35A58U/pdf/OM35A58U.pdf> (accessed 7/9/19); 2012 Toyota Tacoma Owner's Manual, at 326, available at <https://www.toyota.com/t3Portal/document/om-s/OM35A48U/pdf/OM35A48U.pdf> (accessed 7/9/19); 2014 Toyota Tacoma Owner's Manual, at 314, available at

- Toyota Tundra¹⁷
- Toyota Yaris¹⁸

17. Toyota publicizes the supposed hands-free phone capabilities that are available in its vehicles. For example, on Toyota Sales' website, under the heading entitled "Local Specials," there is a webpage with the headline "Drive Safely with Hands Free In-Car Navigation & Calling" referencing the advantages of hands-free calling that states: "Taking your eyes off the road to dial is never a good decision. With hands-free calling in your car you can say the number

<https://www.toyota.com/t3Portal/document/om-s/OM35A38U/pdf/OM35A38U.pdf> (accessed 7/9/19); 2015 Toyota Tacoma through Oct. 2014 Prod. Owner's Manual (OM04001U), at 305, available at <https://www.toyota.com/t3Portal/document/om-s/OM04001U/pdf/OM04001U.pdf> (accessed 7/9/19); 2015 Toyota Tacoma from Nov. 2014 Prod. Owner's Manual (OM04009U), at 305, available at <https://www.toyota.com/t3Portal/document/om-s/OM04009U/pdf/OM04009U.pdf> (accessed 7/9/19); 2016 Toyota Tacoma Owner's Manual, at 329, available at <https://www.toyota.com/t3Portal/document/om-s/OM04005U/pdf/OM04005U.pdf> (accessed 7/9/19); 2017 Toyota Tacoma Owner's Manual, at 333, available at <https://www.toyota.com/t3Portal/document/om-s/OM04013U/pdf/OM04013U.pdf> (accessed 7/9/19); 2018 Toyota Tacoma Owner's Manual, at 386, available at <https://www.toyota.com/t3Portal/document/om-s/OM04017U/pdf/OM04017U.pdf> (accessed 7/9/19); 2019 Toyota Tacoma Owner's Manual, at 386, available at <https://www.toyota.com/t3Portal/document/om-s/OM04021U/pdf/OM04021U.pdf> (accessed 7/9/19).

¹⁷ 2007 Toyota Tundra Owner's Manual, at 348, available at <https://www.toyota.com/t3Portal/document/om-s/OM34463U/pdf/OM34463U.pdf> (accessed 7/9/19); 2008 Toyota Tundra Owner's Manual, at 351, available at <https://www.toyota.com/t3Portal/document/om-s/OM34477U/pdf/OM34477U.pdf> (accessed 7/9/19); 2009 Toyota Tundra Owner's Manual, at 360, available at <https://www.toyota.com/t3Portal/document/om-s/OM34474U/pdf/OM34474U.pdf> (accessed 7/9/19); 2010 Toyota Tundra Owner's Manual (OM34516U), at 413, available at <https://www.toyota.com/t3Portal/document/om-s/OM34516U/pdf/OM34516U.pdf> (accessed 7/9/19); 2010 Toyota Tundra Owner's Manual (OM34495U), at 415, available at <https://www.toyota.com/t3Portal/document/om-s/OM34495U/pdf/OM34495U.pdf> (accessed 7/9/19); 2011 Toyota Tundra Owner's Manual, at 417, available at <https://www.toyota.com/t3Portal/document/om-s/OM34510U/pdf/OM34510U.pdf> (accessed 7/9/19); 2012 Toyota Tundra Owner's Manual, at 426, available at <https://www.toyota.com/t3Portal/document/om-s/OM34525U/pdf/OM34525U.pdf> (accessed 7/9/19); 2013 Toyota Tundra Owner's Manual, at 426, available at <https://www.toyota.com/t3Portal/document/om-s/OM34491U/pdf/OM34491U.pdf> (accessed 7/9/19); 2014 Toyota Tundra Owner's Manual, at 296, available at <https://www.toyota.com/t3Portal/document/om-s/OM34534U/pdf/OM34534U.pdf> (accessed 7/9/19); 2015 Toyota Tundra Owner's Manual, at 296, available at <https://www.toyota.com/t3Portal/document/om-s/OM34556U/pdf/OM34556U.pdf> (accessed 7/9/19); 2016 Toyota Tundra Owner's Manual, at 303, available at <https://www.toyota.com/t3Portal/document/om-s/OM34569U/pdf/OM34569U.pdf> (accessed 7/9/19); 2017 Toyota Tundra Owner's Manual, at 305, available at <https://www.toyota.com/t3Portal/document/om-s/OM34594U/pdf/OM34594U.pdf> (accessed 7/9/19); 2018 Toyota Tundra Owner's Manual, at 370, available at <https://www.toyota.com/t3Portal/document/om-s/OM0C009U/pdf/OM0C009U.pdf> (accessed 7/9/19); 2019 Toyota Tundra Owner's Manual, at 370, available at <https://www.toyota.com/t3Portal/document/om-s/OM0C017U/pdf/OM0C017U.pdf> (accessed 7/9/19).

¹⁸ 2012-2014 Toyota Yaris Hatchback Premium Audio Owners Manual, at 48, available at <https://www.toyota.com/t3Portal/document/omnav-s/OMTADG0261D/pdf/T-ADG-0261-D.pdf> (accessed 7/11/19); 2019 Toyota Yaris Sedan Owner's Manual, at 373, available at <https://www.toyota.com/t3Portal/document/om-s/OM99S50z/pdf/OM99S50z.pdf> (accessed 7/11/19).

or the contact name that you want to connect with.”¹⁹ It further provides: “[Y]ou do not need a smartphone to use Bluetooth hands-free phone.” *Id.* Toyota has made this same statement on this web page since at least 2015, as shown by the Internet Archive Wayback Machine.²⁰

18. Toyota also has a “*Bluetooth Support*” webpage, on which it states, “Toyota multimedia systems work with your smartphone to give you hands-free calling, audio streaming and more.”²¹ Toyota has made a similar statement on this webpage since at least 2016, as shown by the Internet Archive Wayback Machine.²²

19. Furthermore, if a consumer accesses Toyota’s “Build Your Toyota” webpage, which lets consumers customize their own Toyota vehicles,²³ after clicking through the prompts for “Models,” “Powertrain,” “Colors,” “Packages,” and “Accessories,” if a consumer then clicks on “DOWNLOAD DETAILS,”²⁴ a new PDF document is downloaded that refers to “hands-free phone capability” under the section entitled “Multimedia,”²⁵ even though the consumer did not specifically choose a hands-free phone system as part of the prompts.

20. While Toyota publicizes the hands-free phone capabilities in its vehicles, many of its vehicles suffer from the echo defect described above due to a defect in their design and/or manufacturing, which makes it nearly impossible for Plaintiffs’ and Class Members’ to use their hands-free phone systems.

¹⁹ Available at <https://www.toyota.com/car-tips/drive-safe-hands-free-in-car-navigation-calling> (accessed 6/6/19).

²⁰ Available at <https://web.archive.org/web/20151218030339/https://www.toyota.com/car-tips/drive-safe-hands-free-in-car-navigation-calling> (accessed 6/6/19).

²¹ See Ex. A, also available at <https://www.toyota.com/connect/> (accessed 6/6/19), (*italics in original*).

²² See Ex. B, also available at <https://web.archive.org/web/20160802225037/https://www.toyota.com/connect/> (accessed 6/6/19).

²³ Ex. C, also available at <https://www.toyota.com/configurator> (accessed 7/15/19).

²⁴ After following the prompts to customize a sample 2019 Toyota Highlander, the “DOWNLOAD DETAILS” option can be seen at

<https://www.toyota.com/configurator/build/step/summary/year/2019/series/highlander/model/6942/exteriorcolor/0218/interiorcolor/FB20/packages/option0>.

²⁵ See Ex. D, at 3.

21. Despite having a webpage specifically entitled “*Bluetooth* Support,” Toyota failed to make any disclosure relating to the echo defect on this webpage. To avoid omitting material facts concerning the existence and nature of the echo defect, Toyota could and should have used this or a similar webpage to inform consumers of the echo defect.

22. Specifically, Toyota should have disclosed on this or a similar webpage that when the driver of a Class Vehicle uses the Bluetooth hands-free phone system to make or receive a phone call, the person on the other end of the phone call will hear an echo of his or her own words. Toyota also should have disclosed the severity of the echo on such a webpage, so that consumers would understand that the echo defect prevents them from being able to carry on a conversation.

23. Yet, even though it had exclusive knowledge of the echo defect, Toyota failed to make any such disclosures on its “*Bluetooth* Support” webpage. Nor did it make any such disclosures on its webpage with the headline “Drive Safely with Hands Free In-Car Navigation & Calling,” or on any other easily accessible webpage specifically relating to its Bluetooth hands-free system.

24. Toyota, having control of the content included on its website, should have made these disclosures on such a webpage as soon as it was aware of the echo defect, which as shown by its Owner’s Manuals addressed below, was no later than 2007.

25. By failing to make these disclosures on such a webpage Toyota prevented consumers from learning about the existence and nature of the echo defect prior to their purchases or leases. As a result, Toyota obtained money from consumers through their purchases or leases of Class Vehicles in transactions in which Class Members lacked material information relevant to their purchases or leases.

26. Although it has known about the echo defect since at least 2007, Toyota failed to inform Plaintiffs and Class Members of the echo defect prior to their purchases or leases of Toyota's vehicles and has failed to repair Plaintiffs' and Class Members' vehicles to alleviate the echo defect.

27. Toyota's knowledge of the echo defect is demonstrated by statements contained in Toyota's Owner's Manuals and Navigation Owner's Manuals. Toyota could not have made the below statements in its Owner's Manuals and Navigation Owner's Manuals relating to the existence of an echo if it did not know about the echo defect at the time the Owner's Manuals and Navigation Owner's Manuals were published.

28. As shown by the following review of Toyota's Owner's Manuals for Toyota Highlanders, Toyota has acknowledged that there is an echo in calls made with its hands-free phone system in Highlanders since 2008.

29. The 2008 Highlander Owner's Manual has a section entitled, "Using the hands-free phone system (for cellular phone)/ Hands-free phone system (for cellular phone) features," and a subsection entitled, "when using the hands-free system." In that subsection there is a bullet point, in which Toyota states: "If the received call volume is overly loud, an echo may be heard."²⁶ In the same section under a subsection entitled, "When talking on the phone," Toyota states, "Keep the volume of the receiving voice down. Otherwise, voice echo will increase."²⁷ Because Toyota states that "voice echo will increase," rather than "voice echo will occur," Toyota acknowledges that voice echo is inherent in the system.

²⁶ 2008 Highlander Owner's Manual (OM48690U), at 324; 2008 Highlander Owner's Manual (OM48851U), at 325.

²⁷ 2008 Highlander Owner's Manual (OM48690U), at 339; 2008 Highlander Owner's Manual (OM48851U), at 339.

30. Similarly, the 2008 Highlander Navigation Owner's Manual has a section entitled, "Other Functions." A box in that section labeled "Information" contains a bullet point that states: "Keep the volume of receiving voice down. Otherwise, echo is coming up. When you talk on the phone, speak clearly towards the microphone."²⁸

31. Both the 2009 and 2010 Highlander Owner's Manuals and Highlander Navigation Owner's Manuals contain the same statements as the ones quoted above from the 2008 Owner's Manual.²⁹

32. The 2011 Highlander Owner's Manual only contains the second of the two statements from 2008, and changes the words "receiving voice" to "incoming voice," so that it states: "Keep the volume of the incoming voice down. Otherwise, voice echo will increase."³⁰ The 2011 Highlander Navigation Owner's Manual has no change from the above language in the 2008 Highlander Navigation Owner's Manual.³¹

33. The 2012 Highlander Owner's Manual and 2012 Highlander Navigation Owner's Manual contain the same language set forth above from the 2011 Manuals³², as do the 2013 Highlander Owner's Manual and 2013 Highlander Navigation Owner's Manual.³³

34. The 2014 Highlander Owner's Manual contains a section entitled "Bluetooth" and a subsection entitled, "When using the hands-free system." There, Toyota states: "If the received

²⁸ 2008 Highlander Navigation Owner's Manual, at 128, available at

<https://www.toyota.com/t3Portal/document/omnav-s/OM48695U/pdf/OM48695U.pdf> (accessed 6/12/19).

²⁹ 2009 Highlander Owner's Manual at 342, 346; 2009 Highlander Navigation Owner's Manual, at 108, available at <https://www.toyota.com/t3Portal/document/omnav-s/OM48838U/pdf/OM48838U.pdf> (accessed 6/12/19); 2010 Highlander Owner's Manual, at 348, 362; 2010 Highlander Owner's Navigation Manual, at 128, available at <https://www.toyota.com/t3Portal/document/omnav-s/OM48A61U/pdf/OM48A61U.pdf> (accessed 6/12/19).

³⁰ 2011 Highlander Owner's Manual, at 356.

³¹ 2011 Highlander Navigation Owner's Manual, at 124, available at

<https://www.toyota.com/t3Portal/document/omnav-s/OM48A75U/pdf/OM48A75U.pdf> (accessed 6/13/19).

³² 2012 Highlander Owner's Manual, at 379; 2012 Highlander Navigation Owner's Manual at 124, available at <https://www.toyota.com/t3Portal/document/omnav-s/OM48D02U/pdf/OM48D02U.pdf> (accessed 6/13/19).

³³ 2013 Highlander Owner's Manual, at 389; 2013 Highlander Navigation Owner's Manual, at 124, available at <https://www.toyota.com/t3Portal/document/omnav-s/OM48A37U/pdf/OM48A37U.pdf> (accessed 6/13/19).

call volume is overly loud, an echo may be heard.”³⁴ The 2014 Highlander Owner’s Navigation Manual has a section entitled, “Phone Operation (Hands-Free System for Cellular Phones),” that states: “Keep call volume down. Otherwise, the other party’s voice may be audible outside the vehicle and voice echo may increase. When talking on the phone, speak clearly towards the microphone.”³⁵ Again, this is an acknowledgement that voice echo is inherent in the system.

35. The language in the 2015-2019 Highlander Owner’s Manuals and Highlander Navigation Owner’s Manuals is the same as the language set forth above from the respective manuals for 2014.³⁶

36. Toyota also acknowledges that there is an echo in calls made with its hands-free phone system in many of the Owner’s Manuals and/or Navigation Owner’s Manuals for the other Class Vehicles identified above. These admissions are set forth below.

37. **Toyota 4Runner.**

- 2007 - 2013 Navigation Owner’s Manuals: “Keep the volume of receiving voice down. Otherwise, echo is coming up.”³⁷

³⁴ 2014 Highlander Owner’s Manual, at 412.

³⁵ 2014 Highlander, Highlander HV Owner’s Navigation Manual, at 223, available at <https://www.toyota.com/t3Portal/document/omnav-s/OM48A19U/pdf/OM48A19U.pdf> (accessed 6/13/19).

³⁶ 2015 Highlander Owner’s Manual, at 412; 2015 Highlander, Highlander HV Owner’s Navigation Manual, at 223, available at <https://www.toyota.com/t3Portal/document/omnav-s/OM48F03U/pdf/OM48F03U.pdf> (accessed 6/13/19); 2016 Highlander Owner’s Manual, at 414; 2016 Highlander, Highlander HV Owner’s Navigation Manual, at 225, available at <https://www.toyota.com/t3Portal/document/omnav-s/OM48F13U/pdf/OM48F13U.pdf> (accessed 6/13/19); 2017 Highlander Owner’s Manual, at 425; 2017 Highlander, Highlander HV Navigation System Owner’s Manual, at 263; 2018 Highlander Owner’s Manual, at 425; 2018 Highlander, Highlander HV Navigation System Owner’s Manual, at 263, available at <https://www.toyota.com/t3Portal/document/omnav-s/OM0E034U/pdf/OM0E034U.pdf> (accessed 6/13/19); 2019 Highlander Owner’s Manual, at 431; 2019 Highlander, Highlander HV Navigation System Owner’s Manual, at 263, available at <https://www.toyota.com/t3Portal/document/omnav-s/OM0E050U/pdf/OM0E050U.pdf> (accessed 6/13/19).

³⁷ 2007 Toyota 4Runner Navigation Owner’s Manual, at 100, available at <https://www.toyota.com/t3Portal/document/omnav-s/OM35868U/pdf/OM35868U.pdf> (accessed 7/10/19); 2008 Toyota 4Runner Navigation Owner’s Manual, at 125, available at <https://www.toyota.com/t3Portal/document/omnav-s/OM35895U/pdf/OM35895U.pdf> (accessed 7/10/19); 2009 Toyota 4Runner Navigation Owner’s Manual, at 128, available at <https://www.toyota.com/t3Portal/document/omnav-s/OM35A04U/pdf/OM35A04U.pdf> (accessed 7/10/19); 2010 Toyota 4Runner Navigation Owner’s Manual, at 122, available at <https://www.toyota.com/t3Portal/document/omnav-s/OM35A16U/pdf/OM35A16U.pdf> (accessed 7/10/19); 2011

- 2014 - 2019 Navigation Owner's Manuals: "Keep call volume down. Otherwise, the other party's voice may be audible outside the vehicle and voice echo may increase."³⁸
- 2010 - 2013 Owner's Manuals: "Keep the volume of the incoming voice down. Otherwise, voice echo will increase."³⁹

38. **Toyota Avalon/Avalon HV.**

- 2008-2012 Owner's Manuals: "Keep the volume of the receiving voice down. Otherwise, voice echo will increase."⁴⁰

Toyota 4Runner Navigation Owner's Manual, at 122, available at <https://www.toyota.com/t3Portal/document/omnav-s/OM35A56U/pdf/OM35A56U.pdf> (accessed 7/10/19); 2012 Toyota 4Runner Navigation Owner's Manual, at 122, available at <https://www.toyota.com/t3Portal/document/omnav-s/OM35A57U/pdf/OM35A57U.pdf> (accessed 7/10/19); 2013 Toyota 4Runner Navigation Owner's Manual, at 122, available at <https://www.toyota.com/t3Portal/document/omnav-s/OM35A79U/pdf/OM35A79U.pdf> (accessed 7/10/19).

³⁸ 2014 Toyota 4Runner Navigation Owner's Manual, at 161, available at <https://www.toyota.com/t3Portal/document/omnav-s/OM35A86U/pdf/OM35A86U.pdf> (accessed 7/10/19); 2015 Toyota 4Runner Navigation Owner's Manual, at 161, available at <https://www.toyota.com/t3Portal/document/omnav-s/OM35B19U/pdf/OM35B19U.pdf> (accessed 7/10/19); 2016 Toyota 4Runner Navigation Owner's Manual, at 159, available at <https://www.toyota.com/t3Portal/document/omnav-s/OM35B26U/pdf/OM35B26U.pdf> (accessed 7/10/19); 2017 Toyota 4Runner Navigation Owner's Manual, at 159, available at <https://www.toyota.com/t3Portal/document/omnav-s/OM35B38U/pdf/OM35B38U.pdf> (accessed 7/10/19); 2018 Toyota 4Runner Navigation and Multimedia System Owner's Manual, at 159, available at <https://www.toyota.com/t3Portal/document/omnav-s/OM35B47U/pdf/OM35B47U.pdf> (accessed 7/10/19); 2019 Toyota 4Runner Navigation and Multimedia System Owner's Manual, at 159, available at <https://www.toyota.com/t3Portal/document/omnav-s/OM35B49U/pdf/OM35B49U.pdf> (accessed 7/10/19).

³⁹ 2010 Toyota 4Runner Owner's Manual, at 395, available at <https://www.toyota.com/t3Portal/document/om-s/OM35A36U/pdf/OM35A36U.pdf> (accessed 7/10/19); 2011 Toyota 4Runner Owner's Manual, at 395, available at <https://www.toyota.com/t3Portal/document/om-s/OM35A52U/pdf/OM35A52U.pdf> (accessed 7/10/19); 2012 Toyota 4Runner Owner's Manual, at 420, available at <https://www.toyota.com/t3Portal/document/om-s/OM35819U/pdf/OM35819U.pdf> (accessed 7/10/19); 2013 Toyota 4Runner Owner's Manual, at 423, available at <https://www.toyota.com/t3Portal/document/om-s/OM35A22U/pdf/OM35A22U.pdf> (accessed 7/10/19).

⁴⁰ 2008 Toyota Avalon Owner's Manual, at 235, available at <https://www.toyota.com/t3Portal/document/om-s/OM41433U/pdf/OM41433U.pdf> (accessed 7/9/19); 2009 Toyota Avalon Owner's Manual, at 249, available at <https://www.toyota.com/t3Portal/document/om-s/OM41430U/pdf/OM41430U.pdf> (accessed 7/9/19); 2010 Toyota Avalon Owner's Manual, at 258, available at <https://www.toyota.com/t3Portal/document/om-s/OM41437U/pdf/OM41437U.pdf> (accessed 7/9/19); 2011 Toyota Avalon Owner's Manual, at 312, available at <https://www.toyota.com/t3Portal/document/om-s/OM41434U/pdf/OM41434U.pdf> (accessed 7/9/19); 2012 Toyota Avalon Owner's Manual, at 324, available at <https://www.toyota.com/t3Portal/document/om-s/OM41445U/pdf/OM41445U.pdf> (accessed 7/9/19).

- 2011 Navigation Owner's Manual: "Keep the volume of receiving voice down. Otherwise, an echo will be heard."⁴¹
- 2013-2019 Owner's Navigation Manuals (Avalon/Avalon HV): "Keep call volume down. Otherwise, the other party's voice may be audible outside the vehicle and voice echo may increase."⁴²

39. **Toyota Highlander HV.**

- 2008 - 2010 and 2017 - 2019 Owner's Manuals: "If the received call volume is overly loud, an echo may be heard."⁴³
- 2011 - 2013 Owner's Manuals: "Keep the volume of the incoming voice down. Otherwise, voice echo will increase."⁴⁴

⁴¹ 2011 Toyota Avalon Navigation Owner's Manual, at 122, available at <https://www.toyota.com/t3Portal/document/omnav-s/OM41436U/pdf/OM41436U.pdf> (accessed 7/9/19).

⁴² 2013 Toyota Avalon, Avalon HV Owner's Navigation Manual, at 124, available at <https://www.toyota.com/t3Portal/document/omnav-s/OM41444U/pdf/OM41444U.pdf> (accessed 7/9/19); 2014 Toyota Avalon, Avalon HV Owner's Navigation Manual, at 124, available at <https://www.toyota.com/t3Portal/document/omnav-s/OM41455U/pdf/OM41455U.pdf> (accessed 7/9/19); 2015 Toyota Avalon, Avalon HV Owner's Navigation Manual, at 175, available at <https://www.toyota.com/t3Portal/document/omnav-s/OM41459U/pdf/OM41459U.pdf> (accessed 7/9/19); 2016 Toyota Avalon, Avalon HV Owner's Navigation Manual, at 177, available at <https://www.toyota.com/t3Portal/document/omnav-s/OM07003U/pdf/OM07003U.pdf> (accessed 7/9/19); 2017 Toyota Avalon, Avalon HV Navigation System Owner's Manual, at 177, available at <https://www.toyota.com/t3Portal/document/omnav-s/OM07009U/pdf/OM07009U.pdf> (accessed 7/9/19); 2018 Toyota Avalon, Avalon HV Navigation System Owner's Manual, at 177, available at <https://www.toyota.com/t3Portal/document/omnav-s/OM07012U/pdf/OM07012U.pdf> (accessed 7/9/19); 2019 Toyota Avalon, Avalon HV Navigation and Multimedia System Owner's Manual, at 197, available at <https://www.toyota.com/t3Portal/document/omnav-s/OM07006U/pdf/OM07006U.pdf> (accessed 7/9/19).

⁴³ 2008 Toyota Highlander HV Owner's Manual (OM48694U), at 330, available at <https://www.toyota.com/t3Portal/document/om-s/OM48694U/pdf/OM48694U.pdf> (accessed 7/10/19); 2008 Toyota Highlander HV Owner's Manual (OM48852U), at 330, available at <https://www.toyota.com/t3Portal/document/om-s/OM48852U/pdf/OM48852U.pdf> (accessed 7/10/19); 2009 Toyota Highlander HV Owner's Manual, at 342, available at <https://www.toyota.com/t3Portal/document/om-s/OM48853U/pdf/OM48853U.pdf> (accessed 7/10/19); 2010 Toyota Highlander HV Owner's Manual, at 340, available at <https://www.toyota.com/t3Portal/document/om-s/OM48A63U/pdf/OM48A63U.pdf> (accessed 7/10/19); 2017 Toyota Highlander HV Owner's Manual, at 423, available at <https://www.toyota.com/t3Portal/document/om-s/OM0E018U/pdf/OM0E018U.pdf> (accessed 7/10/19); 2018 Toyota Highlander HV Owner's Manual, at 423, available at <https://www.toyota.com/t3Portal/document/om-s/OM0E032U/pdf/OM0E032U.pdf> (accessed 7/10/19); 2019 Toyota Highlander HV Owner's Manual, at 429, available at <https://www.toyota.com/t3Portal/document/om-s/OM0E048U/pdf/OM0E048U.pdf> (accessed 7/10/19).

⁴⁴ 2011 Toyota Highlander HV Owner's Manual, at 368, available at <https://www.toyota.com/t3Portal/document/om-s/OM48A67U/pdf/OM48A67U.pdf> (accessed 7/10/19); 2012 Toyota Highlander HV Owner's Manual, at 384, available at <https://www.toyota.com/t3Portal/document/om->

- 2008 - 2013 Owner's Navigation Manuals: "Keep the volume of receiving voice down. Otherwise, echo is coming up."⁴⁵
- 2014 - 2019 Owner's Navigation Manuals: "Keep call volume down. Otherwise, the other party's voice may be audible outside the vehicle and voice echo may increase."⁴⁶

40. **Toyota Prius.**

- 2007 Owner's Manual: "Keep the volume of the receiving voice down. Otherwise, echo is coming up."⁴⁷
- 2008-2009 and 2016-2019 Owner's Manuals: "If the received call volume is overly loud, an echo may be heard."⁴⁸

[s/OM48A10U/pdf/OM48A10U.pdf](https://www.toyota.com/t3Portal/document/omnav-s/OM48A10U/pdf/OM48A10U.pdf) (accessed 7/10/19); 2013 Toyota Highlander HV Owner's Manual, at 392, available at <https://www.toyota.com/t3Portal/document/om-s/OM48A24U/pdf/OM48A24U.pdf> (accessed 7/10/19).

⁴⁵ 2008 Toyota Highlander HV Navigation Owner's Manual, at 128, available at <https://www.toyota.com/t3Portal/document/omnav-s/OM49698U/pdf/OM49698U.pdf> (accessed 7/10/19); 2009 Toyota Highlander HV Navigation Owner's Manual, at 128, available at <https://www.toyota.com/t3Portal/document/omnav-s/OM48838U/pdf/OM48838U.pdf> (accessed 7/10/19); 2010 Toyota Highlander HV Navigation Owner's Manual, at 128, available at <https://www.toyota.com/t3Portal/document/omnav-s/OM48A62U/pdf/OM48A62U.pdf> (accessed 7/10/19); 2011 Toyota Highlander HV Navigation Owner's Manual, at 124, available at <https://www.toyota.com/t3Portal/document/omnav-s/OM48A70U/pdf/OM48A70U.pdf> (accessed 7/10/19); 2012 Highlander HV Navigation Owner's Manual, at 124, available at <https://www.toyota.com/t3Portal/document/omnav-s/OM48D04U/pdf/OM48D04U.pdf> (accessed 7/10/19); 2013 Highlander HV Navigation Owner's Manual, at 124, available at <https://www.toyota.com/t3Portal/document/omnav-s/OM48A25U/pdf/OM48A25U.pdf> (accessed 7/10/19)

⁴⁶ 2014 Highlander, Highlander HV Owner's Navigation Manual, at 223, available at <https://www.toyota.com/t3Portal/document/omnav-s/OM48A19U/pdf/OM48A19U.pdf> (accessed 7/10/19); 2015 Highlander, Highlander HV Owner's Navigation Manual, at 223, available at <https://www.toyota.com/t3Portal/document/omnav-s/OM48F03U/pdf/OM48F03U.pdf> (accessed 7/10/19); 2016 Highlander, Highlander HV Owner's Navigation Manual, at 225, available at <https://www.toyota.com/t3Portal/document/omnav-s/OM48F13U/pdf/OM48F13U.pdf> (accessed 7/10/19); 2017 Highlander, Highlander HV Navigation System Owner's Manual, at 263, available at <https://www.toyota.com/t3Portal/document/omnav-s/OM0E020U/pdf/OM0E020U.pdf> (accessed 7/10/19); 2018 Highlander, Highlander HV Navigation and Multimedia System Owner's Manual, at 263, available at <https://www.toyota.com/t3Portal/document/omnav-s/OM0E034U/pdf/OM0E034U.pdf> (accessed 7/10/19); 2019 Highlander, Highlander HV Navigation and Multimedia System Owner's Manual, at 263, available at <https://www.toyota.com/t3Portal/document/omnav-s/OM0E050U/pdf/OM0E050U.pdf> (accessed 7/10/19).

⁴⁷ 2007 Toyota Prius Owner's Manual, at 171, available at <https://www.toyota.com/t3Portal/document/om-s/OM47568U/pdf/OM47568U.pdf> (accessed 7/10/19).

⁴⁸ 2008 Toyota Prius Owner's Manual, at 272, available at <https://www.toyota.com/t3Portal/document/om-s/OM47613U/pdf/OM47613U.pdf> (accessed 7/10/19); 2009 Toyota Prius Owner's Manual, at 269, available at

- 2010-2011 Owner’s Manuals: “Keep the volume of the receiving voice down. Otherwise, voice echo will increase.”⁴⁹
- 2010-2012 Owner’s Navigation Manuals: “Keep the volume of receiving voice down. Otherwise, an echo will be heard and receiving voice can be heard outside of the vehicle.”⁵⁰
- 2013-2019 Owner’s Navigation Manuals: “Keep call volume down. Otherwise, the other party’s voice may be audible outside the vehicle and voice echo may increase.”⁵¹

<https://www.toyota.com/t3Portal/document/om-s/OM47614U/pdf/OM47614U.pdf> (accessed 7/10/19); 2016 Toyota Prius through Feb. 2016 Prod. Owner’s Manual, at 499, available at <https://www.toyota.com/t3Portal/document/om-s/OM47A29U/pdf/OM47A29U.pdf> (accessed 7/10/19); 2016 Toyota Prius from Mar. 2016 Prod. Owner’s Manual, at 499, available at <https://www.toyota.com/t3Portal/document/om-s/OM47B39U/pdf/OM47B39U.pdf> (accessed 7/10/19); 2017 Toyota Prius Owner’s Manual, at 497, available at <https://www.toyota.com/t3Portal/document/om-s/OM47B54U/pdf/OM47B54U.pdf> (accessed 7/10/19); 2018 Toyota Prius Owner’s Manual, at 503, available at <https://www.toyota.com/t3Portal/document/om-s/OM47B89U/pdf/OM47B89U.pdf> (accessed 7/10/19); 2019 Toyota Prius Owner’s Manual, at 513, available at <https://www.toyota.com/t3Portal/document/om-s/OM47C35U/pdf/OM47C35U.pdf> (accessed 7/10/19).

⁴⁹ 2010 Toyota Prius Owner’s Manual, at 343, available at <https://www.toyota.com/t3Portal/document/om-s/OM47668U/pdf/OM47668U.pdf> (accessed 7/10/19); 2011 Toyota Prius Owner’s Manual, at 337, available at <https://www.toyota.com/t3Portal/document/om-s/OM47685U/pdf/OM47685U.pdf> (accessed 7/10/19).

⁵⁰ 2010 Toyota Prius Owner’s Navigation Manual, at 122, available at <https://www.toyota.com/t3Portal/document/omnav-s/OM47605U/pdf/OM47605U.pdf> (accessed 7/10/19); 2011 Toyota Prius Navigation Owner’s Manual, at 123, available at <https://www.toyota.com/t3Portal/document/omnav-s/OM47699U/pdf/OM47699U.pdf> (accessed 7/10/19); 2012 Toyota Prius Navigation Owner’s Manual, at 136, available at <https://www.toyota.com/t3Portal/document/omnav-s/OM47719U/pdf/OM47719U.pdf> (accessed 7/10/19).

⁵¹ 2013 Toyota Prius/Prius PHV Owner’s Navigation Manual, at 136, available at <https://www.toyota.com/t3Portal/document/omnav-s/OM47805U/pdf/OM47805U.pdf> (accessed 7/10/19); 2014 Toyota Prius/Prius PHV Owner’s Navigation Manual, at 136, available at <https://www.toyota.com/t3Portal/document/omnav-s/OM47858U/pdf/OM47858U.pdf> (accessed 7/10/19); 2015 Toyota Prius/Prius PHV Owner’s Navigation Manual, at 136, available at <https://www.toyota.com/t3Portal/document/omnav-s/OM47A72U/pdf/OM47A72U.pdf> (accessed 7/10/19); 2016 Toyota Prius Navigation System Owner’s Manual, at 155, available at <https://www.toyota.com/t3Portal/document/omnav-s/OM47A41U/pdf/OM47A41U.pdf> (accessed 7/10/19); 2017 Toyota Prius Navigation System Owner’s Manual, at 155, available at <https://www.toyota.com/t3Portal/document/omnav-s/OM47B62U/pdf/OM47B62U.pdf> (accessed 7/10/19); 2018 Toyota Prius Navigation System Owner’s Manual, at 157, available at <https://www.toyota.com/t3Portal/document/omnav-s/OM47C01U/pdf/OM47C01U.pdf> (accessed 7/10/19); 2019 Toyota Prius Navigation and Multimedia System Owner’s Manual (7 in. Screen), at 157, available at <https://www.toyota.com/t3Portal/document/omnav-s/OM47C47U/pdf/OM47C47U.pdf> (accessed 7/10/19); 2019 Toyota Prius Navigation and Multimedia System Owner’s Manual (11.6 in. Screen), at 152, available at <https://www.toyota.com/t3Portal/document/omnav-s/OM47C48U/pdf/OM47C48U.pdf> (accessed 7/10/19).

41. **Toyota Prius V.**

- 2012 Navigation Owner's Manual: "Keep the volume of receiving voice down. Otherwise, an echo will be heard . . ." ⁵²
- 2013 - 2017 Navigation Owner's Manuals: "Keep call volume down. Otherwise, the other party's voice may be audible outside the vehicle and voice echo may increase." ⁵³
- 2015 - 2017 Owner's Manuals: "If the received call volume is overly loud, an echo may be heard." ⁵⁴

42. **Toyota Sequoia.**

- 2008 - 2009 and 2014 - 2015 Owner's Manuals: "If the received call volume is overly loud, an echo may be heard." ⁵⁵

⁵² 2012 Toyota Prius V Navigation Owner's Manual, at 134, available at <https://www.toyota.com/t3Portal/document/omnav-s/OM47675U/pdf/OM47675U.pdf> (accessed 7/10/19)

⁵³ 2013 Toyota Prius V Navigation Owner's Manual, at 134, available at <https://www.toyota.com/t3Portal/document/omnav-s/OM47828U/pdf/OM47828U.pdf> (accessed 7/10/19); 2014 Toyota Prius V Navigation Owner's Manual, at 134, available at <https://www.toyota.com/t3Portal/document/omnav-s/OM47847U/pdf/OM47847U.pdf> (accessed 7/10/19); 2015 Toyota Prius V Navigation Owner's Manual, at 151, available at <https://www.toyota.com/t3Portal/document/omnav-s/OM47895U/pdf/OM47895U.pdf> (accessed 7/10/19); 2016 Toyota Prius V Navigation Owner's Manual, at 151, available at <https://www.toyota.com/t3Portal/document/omnav-s/OM47B14U/pdf/OM47B14U.pdf> (accessed 7/10/19); 2017 Toyota Prius V Navigation Owner's Manual, at 149, available at <https://www.toyota.com/t3Portal/document/omnav-s/OM47B31U/pdf/OM47B31U.pdf> (accessed 7/10/19).

⁵⁴ 2015 Toyota Prius V Owner's Manual, at 350, available at <https://www.toyota.com/t3Portal/document/om-s/OM47887U/pdf/OM47887U.pdf> (accessed 7/10/19); 2016 Toyota Prius V Owner's Manual, at 352, available at <https://www.toyota.com/t3Portal/document/om-s/OM47B12U/pdf/OM47B12U.pdf> (accessed 7/10/19); 2017 Toyota Prius V Owner's Manual, at 352, available at <https://www.toyota.com/t3Portal/document/om-s/OM47B23U/pdf/OM47B23U.pdf> (accessed 7/10/19).

⁵⁵ 2008 Toyota Sequoia Owner's Manual, at 329, available at <https://www.toyota.com/t3Portal/document/om-s/OM34478U/pdf/OM34478U.pdf> (accessed 7/10/19); 2009 Toyota Sequoia Owner's Manual, at 338, available at <https://www.toyota.com/t3Portal/document/om-s/OM34471U/pdf/OM34471U.pdf> (accessed 7/10/19); 2014 Toyota Sequoia Owner's Manual, at 372, available at <https://www.toyota.com/t3Portal/document/om-s/OM34540U/pdf/OM34540U.pdf> (accessed 7/10/19); 2015 Toyota Sequoia through Oct. 2014 Prod. Owner's Manual (OM3459U), at 370, available at <https://www.toyota.com/t3Portal/document/om-s/OM34549U/pdf/OM34549U.pdf> (accessed 7/10/19); 2015 Toyota Sequoia from Nov. 2014 Prod. Owner's Manual (OM34565U), at 370, <https://www.toyota.com/t3Portal/document/om-s/OM34565U/pdf/OM34565U.pdf> (accessed 7/10/19).

- 2008 - 2013 Owner's Manuals: "Keep the volume of the received voice down. Otherwise, voice echo will increase."⁵⁶
- 2008 Navigation Owner's Manual: "Keep the volume of receiving voice down. Otherwise, echo is coming up."⁵⁷
- 2009 Navigation Owner's Manual: "Keep the volume of receiving voice down. Otherwise, echo is coming up."⁵⁸
- 2010 - 2013 Navigation Owner's Manuals: "Keep the volume of receiving voice down. Otherwise, an echo will be heard . . ."⁵⁹
- 2014 -2019 Navigation Owner's Manuals: "Keep call volume down. Otherwise, the other party's voice may be audible outside the vehicle and voice echo may increase."⁶⁰

⁵⁶ 2008 Toyota Sequoia Owner's Manual, at 346; 2009 Toyota Sequoia Owner's Manual, at 355; 2010 Toyota Sequoia Owner's Manual (OM34496U), at 403, available at <https://www.toyota.com/t3Portal/document/om-s/OM34496U/pdf/OM34496U.pdf> (accessed 7/10/19); 2010 Toyota Sequoia Owner's Manual (OM34501U), at 405, available at <https://www.toyota.com/t3Portal/document/om-s/OM34501U/pdf/OM34501U.pdf> (accessed 7/10/19); 2011 Toyota Sequoia Owner's Manual (OM34453U), at 415, available at <https://www.toyota.com/t3Portal/document/om-s/OM34453U/pdf/OM34453U.pdf> (accessed 7/10/19); 2011 Toyota Sequoia Owner's Manual (OM34523U), at 415, available at <https://www.toyota.com/t3Portal/document/om-s/OM34523U/pdf/OM34523U.pdf> (accessed 7/10/19); 2012 Toyota Sequoia Owner's Manual, at 435, available at <https://www.toyota.com/t3Portal/document/om-s/OM34518U/pdf/OM34518U.pdf> (accessed 7/10/19); 2013 Toyota Sequoia Owner's Manual (OM3441U), at 464, available at <https://www.toyota.com/t3Portal/document/om-s/OM3441U/pdf/OM3441U.pdf> (accessed 7/10/19); 2013 Toyota Sequoia Owner's Manual (OM34450U), at 464, available at <https://www.toyota.com/t3Portal/document/om-s/OM34450U/pdf/OM34450U.pdf> (accessed 7/10/19).

⁵⁷ 2008 Toyota Sequoia Navigation Owner's Manual, at 122, available at <https://www.toyota.com/t3Portal/document/omnav-s/OM34446U/pdf/OM34446U.pdf> (accessed 7/10/19).

⁵⁸ 2009 Toyota Sequoia Navigation Owner's Manual, at 130, available at <https://www.toyota.com/t3Portal/document/omnav-s/OM34473U/pdf/OM34473U.pdf> (accessed 7/10/19).

⁵⁹ 2010 Toyota Sequoia Navigation Owner's Manual JBL type with 7 inch screen, at 124, available at <https://www.toyota.com/t3Portal/document/omnav-s/OM34487U/pdf/OM34487U.pdf> (accessed 7/10/19); 2011 Toyota Sequoia Navigation Owner's Manual JBL type with 7 inch screen, at 124, available at <https://www.toyota.com/t3Portal/document/omnav-s/OM34507U/pdf/OM34507U.pdf> (accessed 7/10/19); 2012 Toyota Sequoia Owner's Navigation Manual, at 124, available at <https://www.toyota.com/t3Portal/document/omnav-s/OM34521U/pdf/OM34521U.pdf> (accessed 7/10/19); 2013 Toyota Sequoia Owner's Navigation Manual, at 117, available at <https://www.toyota.com/t3Portal/document/omnav-s/OM34530U/pdf/OM34530U.pdf> (accessed 7/10/19).

⁶⁰ 2014 Toyota Sequoia Owner's Navigation Manual, at 185, available at <https://www.toyota.com/t3Portal/document/omnav-s/OM34543U/pdf/OM34543U.pdf> (accessed 7/10/19); 2015 Toyota Sequoia Owner's Navigation Manual, at 183, available at

43. **Toyota Sienna.**

- 2007 - 2014 Navigation Owner's Manuals: "Keep the volume of receiving voice down. Otherwise, echo is coming up."⁶¹
- 2008 Owner's Manual has this same language.⁶²
- 2015 – 2019 Navigation Owner's Manuals: "Keep call volume down. Otherwise, the other party's voice may be audible out-side the vehicle and voice echo may increase."⁶³

<https://www.toyota.com/t3Portal/document/omnav-s/OM34553U/pdf/OM34553U.pdf> (accessed 7/10/19); 2016 Toyota Sequoia Owner's Navigation Manual, at 187, available at <https://www.toyota.com/t3Portal/document/omnav-s/OM34578U/pdf/OM34578U.pdf> (accessed 7/10/19); 2017 Toyota Sequoia Navigation System Owner's Manual, at 187, available at <https://www.toyota.com/t3Portal/document/omnav-s/OM34601U/pdf/OM34601U.pdf> (accessed 7/10/19); 2018 Toyota Sequoia Navigation and Multimedia System Owner's Manual, at 187, available at <https://www.toyota.com/t3Portal/document/omnav-s/OM0C007U/pdf/OM0C007U.pdf> (accessed 7/10/19); 2019 Toyota Sequoia Navigation and Multimedia System Owner's Manual, at 189, available at <https://www.toyota.com/t3Portal/document/omnav-s/OM0C015U/pdf/OM0C015U.pdf> (accessed 7/10/19).

⁶¹ 2007 Toyota Sienna Navigation Owner's Manual, at 100, available at <https://www.toyota.com/t3Portal/document/omnav-s/OM45439U/pdf/OM45439U.pdf> (accessed 7/9/19); 2008 Toyota Sienna Navigation Owner's Manual, at 119, available at <https://www.toyota.com/t3Portal/document/omnav-s/OM45451U/pdf/OM45451U.pdf> (accessed 7/9/19); 2009 Toyota Sienna Navigation Owner's Manual, at 130, available at <https://www.toyota.com/t3Portal/document/omnav-s/OM45454U/pdf/OM45454U.pdf> (accessed 7/9/19); 2010 Toyota Sienna Navigation Owner's Manual, at 130, available at <https://www.toyota.com/t3Portal/document/omnav-s/OM45464U/pdf/OM45464U.pdf> (accessed 7/9/19); 2011 Toyota Sienna Navigation Owner's Manual, at 124, available at <https://www.toyota.com/t3Portal/document/omnav-s/OM45461U/pdf/OM45461U.pdf> (accessed 7/9/19); 2012 Toyota Sienna Navigation (Mid) Owner's Manual, at 124, available at <https://www.toyota.com/t3Portal/document/omnav-s/OM45470U/pdf/OM45470U.pdf> (accessed 7/9/19); 2013 Toyota Sienna Navigation (Mid) Owner's Manual, at 124, available at <https://www.toyota.com/t3Portal/document/omnav-s/OM45475U/pdf/OM45475U.pdf> (accessed 7/9/19); 2014 Toyota Sienna Navigation Owner's Manual, at 124, available at <https://www.toyota.com/t3Portal/document/omnav-s/OM45485U/pdf/OM45485U.pdf> (accessed 7/9/19).

⁶² 2008 Toyota Sienna Owner's Manual, at 345, available at <https://www.toyota.com/t3Portal/document/om-s/OM45455U/pdf/OM45455U.pdf> (accessed 7/9/19).

⁶³ 2015 Toyota Sienna Navigation Owner's Manual, at 217, available at <https://www.toyota.com/t3Portal/document/omnav-s/OM08003U/pdf/OM08003U.pdf> (accessed 7/9/19); 2016 Toyota Sienna Navigation Owner's Manual, at 227, available at <https://www.toyota.com/t3Portal/document/omnav-s/OM08015U/pdf/OM08015U.pdf> (accessed 7/9/19); 2017 Toyota Sienna Navigation System Owner's Manual, at 227, <https://www.toyota.com/t3Portal/document/omnav-s/OM08009U/pdf/OM08009U.pdf> (accessed 7/9/19); 2018 Toyota Sienna Navigation and Multimedia System Owner's Manual, at 289, available at <https://www.toyota.com/t3Portal/document/omnav-s/OM08021U/pdf/OM08021U.pdf> (accessed 7/9/19); 2019 Toyota Sienna Navigation and Multimedia System Owner's Manual, at 295 (accessed 7/9/19).

- 2009 - 2014 Owner's Manuals: "Keep the volume of the received voice down. Otherwise, voice echo will increase."⁶⁴
- 2011- 2014 Owner's manuals: "If the incoming call volume is overly loud, an echo may be heard."⁶⁵
- 2015 - 2017 Toyota slightly changed this language: "If the received call volume is overly loud, an echo may be heard."⁶⁶

44. **Toyota Tacoma.**

- 2009 - 2011 and 2014 - 2019 Owner's Manuals: "If the received call volume is overly loud, an echo may be heard."⁶⁷

⁶⁴ 2009 Toyota Sienna Owner's Manual, at 344, available at <https://www.toyota.com/t3Portal/document/om-s/OM45452U/pdf/OM45452U.pdf> (accessed 7/9/19); 2010 Toyota Sienna Owner's Manual, at 344, available at <https://www.toyota.com/t3Portal/document/om-s/OM45462U/pdf/OM45462U.pdf> (accessed 7/9/19); 2011 Toyota Sienna Owner's Manual, at 506, available at <https://www.toyota.com/t3Portal/document/om-s/OM45466U/pdf/OM45466U.pdf> (accessed 7/9/19); 2012 Toyota Sienna Owner's Manual, at 547, available at <https://www.toyota.com/t3Portal/document/om-s/OM45477U/pdf/OM45477U.pdf> (accessed 7/9/19); 2013 Toyota Sienna Owner's Manual, at 561, available at <https://www.toyota.com/t3Portal/document/om-s/OM45472U/pdf/OM45472U.pdf> (accessed 7/9/19); 2014 Toyota Sienna Owner's Manual, at 563, available at <https://www.toyota.com/t3Portal/document/om-s/OM45483U/pdf/OM45483U.pdf> (accessed 7/9/19).

⁶⁵ 2011 Toyota Sienna Owner's Manual, at 490; 2012 Toyota Sienna Owner's Manual, at 531; 2013 Toyota Sienna Owner's Manual, at 545; 2014 Toyota Sienna Owner's Manual, at 547.

⁶⁶ 2015 Toyota Sienna Owner's Manual, at 394, available at <https://www.toyota.com/t3Portal/document/om-s/OM08001U/pdf/OM08001U.pdf> (accessed 7/9/19); 2016 Toyota Sienna Owner's Manual, at 395, available at <https://www.toyota.com/t3Portal/document/om-s/OM08013U/pdf/OM08013U.pdf> (accessed 7/9/19); 2017 Toyota Sienna Owner's Manual, at 399, available at <https://www.toyota.com/t3Portal/document/om-s/OM08007U/pdf/OM08007U.pdf> (accessed 7/9/19).

⁶⁷ 2009 Toyota Tacoma Owner's Manual, at 282, available at <https://www.toyota.com/t3Portal/document/om-s/OM35883U/pdf/OM35883U.pdf> (accessed 7/10/19); 2010 Toyota Tacoma Owner's Manual, at 268, available at <https://www.toyota.com/t3Portal/document/om-s/OM35A51U/pdf/OM35A51U.pdf> (accessed 7/10/19); 2011 Toyota Tacoma Owner's Manual (OM35A34U), at 276, available at <https://www.toyota.com/t3Portal/document/om-s/OM35A34U/pdf/OM35A34U.pdf> (accessed 7/10/19); 2011 Toyota Tacoma Owner's Manual (OM35A58U), at 276, available at <https://www.toyota.com/t3Portal/document/om-s/OM35A58U/pdf/OM35A58U.pdf> (accessed 7/10/19); 2014 Toyota Tacoma Owner's Manual, at 306, available at <https://www.toyota.com/t3Portal/document/om-s/OM35A38U/pdf/OM35A38U.pdf> (accessed 7/10/19); 2015 Toyota Tacoma through Oct. 2014 Prod. Owner's Manual (OM04001U), at 297, available at <https://www.toyota.com/t3Portal/document/om-s/OM04001U/pdf/OM04001U.pdf> (accessed 7/10/19); 2015 Toyota Tacoma from Nov. 2014 Prod. Owner's Manual (OM04009U), at 297, available at <https://www.toyota.com/t3Portal/document/om-s/OM04009U/pdf/OM04009U.pdf> (accessed 7/10/19); 2016 Toyota Tacoma Owner's Manual, at 358, available at <https://www.toyota.com/t3Portal/document/om-s/OM04005U/pdf/OM04005U.pdf> (accessed 7/10/19); 2017 Toyota Tacoma Owner's Manual, at 362, available at <https://www.toyota.com/t3Portal/document/om-s/OM04013U/pdf/OM04013U.pdf> (accessed 7/10/19); 2018 Toyota Tacoma Owner's Manual, at 415, available at <https://www.toyota.com/t3Portal/document/om->

- 2012 Owner's Manual: "Keep the volume of the received voice down. Otherwise, voice echo will increase."⁶⁸
- 2014- 2019 Navigation Owner's Manuals: "Keep call volume down. Otherwise, the other party's voice may be audible outside the vehicle and voice echo may increase."⁶⁹

45. **Toyota Tundra.**

- 2007-2008 Owner's Manuals and 2007-2008 Navigation Owner's Manual: "Keep the volume of the receiving voice down. Otherwise, echo is coming up."⁷⁰
- 2009 and 2014 - 2019 Owner's Manuals: "If the received call volume is overly loud, an echo may be heard."⁷¹

[s/OM04017U/pdf/OM04017U.pdf](https://www.toyota.com/t3Portal/document/om-s/OM04017U/pdf/OM04017U.pdf) (accessed 7/10/19); 2019 Toyota Tacoma Owner's Manual, at 415, available at <https://www.toyota.com/t3Portal/document/om-s/OM04021U/pdf/OM04021U.pdf> (accessed 7/10/19).

⁶⁸ 2012 Toyota Tacoma Owner's Manual, at 343, available at <https://www.toyota.com/t3Portal/document/om-s/OM35A48U/pdf/OM35A48U.pdf> (accessed 7/10/19).

⁶⁹ 2014 Toyota Tacoma Owner's Navigation Manual, at 147, available at <https://www.toyota.com/t3Portal/document/omnav-s/OM35A94U/pdf/OM35A94U.pdf> (accessed 7/10/19); 2015 Toyota Tacoma Owner's Navigation Manual, at 151, available at <https://www.toyota.com/t3Portal/document/omnav-s/OM04003U/pdf/OM04003U.pdf> (accessed 7/10/19); 2016 Toyota Tacoma Owner's Navigation Manual, at 159, available at <https://www.toyota.com/t3Portal/document/omnav-s/OM04007U/pdf/OM04007U.pdf> (accessed 7/10/19); 2017 Toyota Tacoma Navigation System Owner's Manual, at 159, available at <https://www.toyota.com/t3Portal/document/omnav-s/OM04015U/pdf/OM04015U.pdf> (accessed 7/10/19); 2018 Toyota Tacoma Navigation and Multimedia System Owner's Manual, at 161, available at <https://www.toyota.com/t3Portal/document/omnav-s/OM04019U/pdf/OM04019U.pdf> (accessed 7/10/19); 2019 Toyota Tacoma Navigation and Multimedia System Owner's Manual, at 161, available at <https://www.toyota.com/t3Portal/document/omnav-s/OM04023U/pdf/OM04023U.pdf> (accessed 7/10/19).

⁷⁰ 2007 Toyota Tundra Owner's Manual, at 376, available at <https://www.toyota.com/t3Portal/document/om-s/OM34463U/pdf/OM34463U.pdf> (accessed 7/10/19); 2008 Toyota Tundra Owner's Manual, at 379, available at <https://www.toyota.com/t3Portal/document/om-s/OM34477U/pdf/OM34477U.pdf> (accessed 7/10/19); 2007 Toyota Tundra Navigation Owner's Manual, at 101, available at <https://www.toyota.com/t3Portal/document/omnav-s/OM34461U/pdf/OM34461U.pdf> (accessed 7/10/19); 2008 Toyota Tundra Navigation Owner's Manual, at 123, available at <https://www.toyota.com/t3Portal/document/omnav-s/OM34469U/pdf/OM34469U.pdf> (accessed 7/10/19).

⁷¹ 2009 Toyota Tundra Owner's Manual, at 360, available at <https://www.toyota.com/t3Portal/document/om-s/OM34474U/pdf/OM34474U.pdf> (accessed 7/10/19); 2014 Toyota Tundra through Feb. 2014 Prod. Owner's Manual, at 327, available at <https://www.toyota.com/t3Portal/document/om-s/OM34534U/pdf/OM34534U.pdf> (accessed 7/10/19); 2014 Toyota Tundra from Mar. 2014 Prod. Owner's Manual, at 327, available at

- 2009-2013 Owner's Manuals: "Keep the volume of the received voice down. Otherwise, voice echo will increase."⁷²
- 2010-2013 Navigation Owner's Manuals: "Keep the volume of receiving voice down. Otherwise, an echo will be heard and receiving voice can be heard outside of the vehicle."⁷³
- 2014-2019 Owner's Navigation Manuals: "Keep call volume down. Otherwise, the other party's voice may be audible outside the vehicle and voice echo may increase."⁷⁴

<https://www.toyota.com/t3Portal/document/om-s/OM34561U/pdf/OM34561U.pdf> (accessed 7/10/19); 2015 Toyota Tundra Owner's Manual, at 327, available at <https://www.toyota.com/t3Portal/document/om-s/OM34556U/pdf/OM34556U.pdf> (accessed 7/10/19); 2016 Toyota Tundra Owner's Manual, at 336, available at <https://www.toyota.com/t3Portal/document/om-s/OM34569U/pdf/OM34569U.pdf> (accessed 7/10/19); 2017 Toyota Tundra Owner's Manual, at 338, available at <https://www.toyota.com/t3Portal/document/om-s/OM34594U/pdf/OM34594U.pdf> (accessed 7/10/19); 2018 Toyota Tundra Owner's Manual, at 403, available at <https://www.toyota.com/t3Portal/document/om-s/OM0C009U/pdf/OM0C009U.pdf> (accessed 7/10/19); 2019 Toyota Tundra Owner's Manual, at 403, available at <https://www.toyota.com/t3Portal/document/om-s/OM0C017U/pdf/OM0C017U.pdf> (accessed 7/10/19).

⁷² 2009 Toyota Tundra Owner's Manual, at 376, available at <https://www.toyota.com/t3Portal/document/om-s/OM34474U/pdf/OM34474U.pdf> (accessed 7/10/19); 2010 Toyota Tundra Owner's Manual Through Oct. 2009 Prod., at 430, available at <https://www.toyota.com/t3Portal/document/om-s/OM34495U/pdf/OM34495U.pdf> (accessed 7/10/19); 2010 Toyota Tundra Owner's Manual from Nov. 2009 Prod., at 428, available at <https://www.toyota.com/t3Portal/document/om-s/OM34516U/pdf/OM34516U.pdf> (accessed 7/10/19); 2011 Toyota Tundra Owner's Manual, at 432, available at <https://www.toyota.com/t3Portal/document/om-s/OM34510U/pdf/OM34510U.pdf> (accessed 7/10/19); 2012 Toyota Tundra Owner's Manual, at 411, available at <https://www.toyota.com/t3Portal/document/om-s/OM34525U/pdf/OM34525U.pdf> (accessed 7/10/19); 2013 Toyota Tundra Owner's Manual, at 441, available at <https://www.toyota.com/t3Portal/document/om-s/OM34491U/pdf/OM34491U.pdf> (accessed 7/10/19).

⁷³ 2010 Toyota Tundra Navigation Owner's Manual, at 124, available at <https://www.toyota.com/t3Portal/document/omnav-s/OM34481U/pdf/OM34481U.pdf> (accessed 7/10/19); 2011 Toyota Tundra Navigation Owner's Manual Except JBL Type with 7 inch screen, at 124, available at <https://www.toyota.com/t3Portal/document/omnav-s/OM34513U/pdf/OM34513U.pdf> (accessed 7/10/19); 2012 Toyota Tundra Owner's Navigation Manual, at 124, available at <https://www.toyota.com/t3Portal/document/omnav-s/OM34527U/pdf/OM34527U.pdf> (accessed 7/10/19); 2013 Toyota Tundra Owner's Navigational Manual, at 124, available at <https://www.toyota.com/t3Portal/document/omnav-s/OM34533U/pdf/OM34533U.pdf> (accessed 7/10/19).

⁷⁴ 2014 Toyota Tundra Owner's Navigation Manual, at 147, available at <https://www.toyota.com/t3Portal/document/omnav-s/OM34536U/pdf/OM34536U.pdf> (accessed 7/10/19); 2015 Toyota Tundra Owner's Navigation Manual, at 149, available at <https://www.toyota.com/t3Portal/document/omnav-s/OM34559U/pdf/OM34559U.pdf> (accessed 7/10/19); 2016 Toyota Tundra Owner's Navigation Manual, at 153, available at <https://www.toyota.com/t3Portal/document/omnav-s/OM34572U/pdf/OM34572U.pdf> (accessed 7/10/19); 2017 Toyota Tundra Navigation System Owner's Manual, at 153, available at <https://www.toyota.com/t3Portal/document/omnav-s/OM34596U/pdf/OM34596U.pdf> (accessed 7/10/19); 2018

46. Accordingly, as shown by the above language contained in Toyota's Owner's Manuals and Navigation Owner's Manuals, Toyota was aware of the echo defect since at least 2007. If it had been unaware of the echo defect it would not have been able to include the above provisions in its Owner's Manuals and Navigation Owner's Manuals.

47. Toyota does not provide consumers with an Owner's Manual or Navigation Owner's Manual until after a consumer purchases or leases one of its vehicles.

48. In the unlikely event that a consumer viewed one of Toyota's Owner's Manuals or Navigation Owner's Manual prior to buying or leasing one of Toyota's vehicles (and managed to find the references to an echo set forth above after making his or her way through hundreds of pages), he or she still would not have received sufficient information regarding the echo defect to be adequately informed. Notably, those references to an echo do not adequately capture the severity of the echo defect, such that a reasonable consumer would understand that the echo defect makes the hands-free phone system virtually unusable. Nevertheless, Toyota elected not to provide consumers with *any* information about the echo defect prior to their purchases or leases.

49. Toyota's knowledge of the echo defect is also evident from a "Tech Tip," with the subject "Bluetooth Hands Free Call Echo," that it published on March 9, 2018.⁷⁵

50. The "Tech Tip" states that it applies to the following "Applicable Vehicles": 2016-2018 Highlander; 2017-2018 Avalon; 2016-2018 Sienna; 2016-2018 Prius V; 2016-2018 Tacoma; 2016-2018 Sequoia; 2016-2018 Prius; 2016-2018 Tundra; 2017-2018 Avalon HV; 2018 Yaris; 2017-2018 4Runner; 2016-2018 Highlander HV.

Toyota Tundra Navigation and Multimedia System Owner's Manual, at 153, available at <https://www.toyota.com/t3Portal/document/omnav-s/OM0C003U/pdf/OM0C003U.pdf> (accessed 7/108/19); 2019 Toyota Tundra Navigation and Multimedia System Owner's Manual, at 153, available at <https://www.toyota.com/t3Portal/document/omnav-s/OM0C019U/pdf/OM0C019U.pdf> (accessed 7/10/19).

⁷⁵ See Ex. E.

51. In the “Tech Tip,” Toyota states: “Some customers may experience echoing on the line calling the vehicle when using Bluetooth Hands Free. This is caused by the phone Hands Free volume being too low. These settings may need to be reapplied any time the phone is paired to a new head unit, a phone update is applied, or the phone is un-paired and re-paired.” The “head unit” is the component of the Bluetooth system located in the dashboard.

52. This “Tech Tip” makes the following recommendation: “Initiate a phone call and increase the volume on the phone to max volume using the volume up button on the side of the phone, then lower the head unit volume to 45 or lower.”

53. Despite what Toyota says in this “Tech Tip,” altering the volume on the phone or head unit is not an actual fix of the echo defect, as it does nothing to solve the underlying problem in the hands-free phone system. Moreover, while at least in certain instances lowering the head unit volume can reduce the echo heard by the person on the other end of the call, to achieve that result the volume on the head unit must be lowered to such a low level that it is difficult or impossible for the Toyota driver to hear the call, especially where there is background road noise.

54. However, because, as Toyota acknowledges, changing the volume on the head unit can reduce the echo on the other end of the phone call, there is no question that the echo defect results from a design and/or manufacturing defect in Toyota’s hands-free phone system, and not in either persons’ phone.

55. The echo defect exists regardless of whether the Toyota driver initiates or receives a phone call, and whether the person on the other end is using a cell phone, a landline, or a hands-free phone system in a vehicle.

Plaintiff Freeman's Experience

56. In February of 2019, Mr. Freeman purchased a used 2018 Toyota Highlander from CarMax, located at 6201 S. Lindbergh Blvd, St. Louis, MO 63123.

57. Prior to making his purchase, Mr. Freeman was aware that this vehicle included a Bluetooth hands-free phone system. Before his purchase he spent time searching on Toyota's website, including reading the sections of its website relating to the Toyota Highlander. Mr. Freeman saw representations on Toyota's website and in its marketing materials that its 2018 Highlanders included, or had the option to include, hands-free phone systems, but there was no mention of the systems' echo defect. He was also told by the salesperson at CarMax prior to making his purchase that his vehicle included a Bluetooth hands-free phone system.

58. Mr. Freeman expected that the Bluetooth hands-free phone system in his 2018 Toyota Highlander would function properly and would be free of defects.

59. Mr. Freeman was not made aware of the echo defect by Toyota prior to his purchase of his 2018 Toyota Highlander, nor was he otherwise aware of the echo defect prior to his purchase. Had he been aware, he would not have purchased the vehicle.

60. Mr. Freeman's 2018 Toyota Highlander is covered by Toyota's Basic Warranty. Under that warranty, coverage is for 36 months or 36,000 miles, whichever occurs first.⁷⁶ As set forth below, Mr. Freeman's vehicle was under 36 months and 36,000 miles when he reported the echo defect to Toyota.

61. The Highlander 2018 Warranty & Maintenance Guide states: "These warranties apply to all 2018 model year Highlander vehicles distributed by Toyota that are originally sold

⁷⁶ See Highlander 2018- Warranty & Maintenance Guide, at 13, available at <https://www.toyota.com/t3Portal/document/omms-s/T-MMS-18Highlander/pdf/T-MMS-18Highlander.pdf> (accessed 6/20/19).

by an authorized dealer in the United States and normally operated or touring in the United States, U.S. territories or Canada.”⁷⁷ It then states: “Warranty coverage is automatically transferred at no cost to subsequent vehicle owners.” *Id.*

62. Mr. Freeman’s 2018 Toyota Highlander was distributed by Toyota and was originally sold by Battlefield Toyota, 11013 James Monroe Hwy, Culpeper, VA 22701⁷⁸, an authorized Toyota dealer.⁷⁹ On information and belief, prior to Mr. Freeman’s purchase his vehicle was normally operated in the United States. Accordingly, upon taking ownership of his 2018 Toyota Highlander, the above referenced warranty coverage transferred to Mr. Freeman.

63. The Basic Warranty states: “This warranty covers repairs and adjustments needed to correct defects in materials or workmanship of any part supplied by Toyota, subject to the exceptions indicated under ‘What is Not Covered’ on pages 14-15.”⁸⁰ None of the exceptions are applicable here. The Basic Warranty therefore covers defects in the hands-free phone system.

64. Shortly after Mr. Freeman purchased his vehicle and set up the Bluetooth hands-free phone system, he was informed by people with whom he spoke that when he used his vehicle’s hands-free phone system to make or receive calls they heard their own words echo back to them.

65. On March 30, 2019, within the warranty period, Mr. Freeman had an appointment for his 20,000-mile checkup with Lou Fusz Toyota, located at 10725 Manchester Rd., Kirkwood, MO 63122, prior to which he informed it of the echo defect as an issue that needed to be repaired.⁸¹

⁷⁷ See Highlander 2018- Warranty & Maintenance Guide, at 10.

⁷⁸ See Ex. F, Vehicle Specification Details.

⁷⁹ See Ex. G, screenshot of Toyota’s “Find a Dealer,” available at <https://www.toyota.com/dealers/#search&zipcode=22701> (accessed 7/15/19).

⁸⁰ Highlander 2018- Warranty & Maintenance Guide, at 13.

⁸¹ See Ex. H, modification notice of Mr. Freeman’s appointment with Lou Fusz Toyota.

66. Lou Fusz Toyota told Mr. Freeman that his vehicle was a version behind in software, and that it would update the software so that the echo defect would be eliminated.

67. The echo defect in Mr. Freeman's vehicle was not fixed by the update that Lou Fusz Toyota made to the software.

68. Mr. Freeman then attempted to review Toyota's technical bulletins for any potential solutions, but did not find anything on point other than Ex. E, the "Tech Tip" described above that recommended adjusting the volume on the phone and on the head unit. As set forth above, this did not constitute a fix of the echo defect. When he reduced the volume on the head unit as recommended, the volume was too low to hear while driving.

69. Mr. Freeman then reached out to Toyota Sales via its website on April 1, 2019, and communicated with its customer support representatives between April 1, 2019 and April 15, 2019.⁸²

70. In Mr. Freeman's initial communication on April 1, 2019, he said that hands-free calling in his 2018 Highlander did not work and requested that Defendants fix the echo defect with a software fix or hardware replacement to the head unit, beyond simply telling him to turn down his speaker when making calls.

71. Toyota Sales' response on April 5, 2019 was simply to ask Mr. Freeman to "contact us at our toll free number" so that it might effectively address his concern and ensure that they have all pertinent information.

72. Mr. Freeman wrote back that same day and stated in part that as a simple internet search made clear, this was not an issue that Toyota was unfamiliar with, and requested that it focus on how it intended to solve the problem.

⁸² See Ex. I (email exchange between Mr. Freeman and Toyota Sales).

73. On April 11, 2019, while still awaiting Toyota Sales' response to his most recent email, Mr. Freeman requested a written response to his inquiry, as opposed to being sent to an "800 number." He asked that Toyota inform him in writing of its position on the echo defect.

74. Toyota Sales responded on April 15, 2019, stating in part: "While we understand your request to correspond via email, Toyota does not offer an email selection for product concerns. Since you stated you are having a product concern with Bluetooth, due to the nature of this concern, we request you contact our office."

75. Accordingly, Mr. Freeman had no choice but to call Toyota's helpline, and he did so on or about April 15, 2019. However, he was merely told to bring his vehicle in for service. As set forth above, he had already done this, to no avail.

76. Since he purchased his 2018 Toyota Highlander Plaintiff Freeman has upgraded his cell phone to a newer model, which had no effect on the echo defect in his vehicle.

Plaintiff Trout's Experience

77. On January 5, 2016, Mr. Trout purchased a new 2016 Toyota Highlander from Straatmann Toyota, located at 215 George Hildner Drive, Washington, MO 63090.

78. Prior to making his purchase, Mr. Trout was aware that this vehicle included a Bluetooth hands-free phone system. Before his purchase he spent time searching on Toyota's website, including reading the sections of its website relating to the Toyota Highlander. He saw representations on Toyota's website that its 2016 Toyota Highlanders included, or had the option to include, hands-free phone systems, but there was no mention of the systems' echo defect, and he elected to purchase a 2016 Toyota Highlander that included such a system.

79. Mr. Trout expected that the Bluetooth hands-free phone system in his 2016 Toyota Highlander would function properly and would be free of defects.

80. Prior to his purchase of his 2016 Toyota Highlander, Toyota did not disclose the echo defect to Mr. Trout; nor was he otherwise aware of it prior to his purchase. Had he been aware, he would not have purchased the vehicle.

81. Almost immediately after purchasing his Highlander and setting up the Bluetooth hands-free phone system, Mr. Trout was informed by people on the other end of phone calls that they heard their own words echo back to them.

82. The echo defect in the hands-free phone system in Mr. Trout's vehicle is covered by the Basic Warranty that provides coverage for 36 months or 36,000 miles, whichever occurs first.⁸³ The Basic Warranty states: "This warranty covers repairs and adjustments needed to correct defects in materials or workmanship of any part supplied by Toyota, subject to the exceptions indicated under 'What is Not Covered' on pages 14-15. None of the exceptions are applicable here.

83. Within the Basic Warranty period, after owning his vehicle for approximately 6 months and at the 5,000 miles mark, Mr. Trout reported the echo defect to Lou Fusz Toyota, located at 10725 Manchester Rd., Kirkwood, MO 63122. Mr. Trout was told by Lou Fusz Toyota that they were not aware of this problem and that they did not have a solution. Mr. Trout also reported the echo defect to Straatmann Toyota, from whom he purchased his vehicle, within one-year of his purchase and while the vehicle was still under 36,000 miles. Straatmann Toyota similarly stated that they were unaware of the problem and did not have a solution.

84. On or about April 2, 2019, Mr. Trout called Toyota Sales regarding the echo defect, but the Toyota representative offered no instruction other than advising Mr. Trout to

⁸³ See 2016 Highlander Warranty and Maintenance Guide, at 13, available at <https://www.toyota.com/t3Portal/document/omms-s/T-MMS-16Highlander/pdf/T-MMS-16Highlander.pdf> (accessed 7/9/19).

adjust the volume on his cell phone and on the head-unit in his vehicle. Mr. Trout informed the representative that he had previously tried that and it did not fix the echo defect, but the representative stated that this was Toyota's "final position."

85. Mr. Trout then contacted Toyota Sales' customer support department about the echo defect via its website on April 3, 2019⁸⁴, based on his unsuccessful attempt to get any resolution during the April 2, 2019 phone call.

86. In response to that on-line request Toyota Sales made no attempt to resolve or repair the defect; instead, it responded in part: "We have confirmed that your concerns were reviewed appropriately with a Toyota representative and you were provided with Toyota's position on April 2, 2019. While we understand this is not the response you were hoping for, it does represent Toyota's final position."

87. Mr. Trout responded: "Can you tell me what Toyota's final position is? Are you saying too bad for you that the hands free feature doesn't work and you are on your own?"

88. Toyota Sales again elected to provide no assistance; instead, it stated in part that, "[i]f you feel the need to discuss the matter further, please call the Toyota Customer Experience Center at (800) 331-4331 and reference your case number." Its reply provided no further explanation of what Toyota's final position was or how he could repair the defect.

89. Mr. Trout then called the Toyota Customer Experience Center as instructed within a few days of Toyota Sales' last written response, but the representative that Mr. Trout spoke with again simply instructed him to alter the volume on his cell phone and on the head unit in his vehicle. As set forth above, this did not repair the echo defect.

⁸⁴ Ex. J (email exchange between Mr. Trout and Toyota Sales).

90. Since he purchased his 2016 Toyota Highlander Mr. Trout has upgraded his cell phone to a newer model, which had no effect on the echo defect in his vehicle.

TOYOTA’S PRACTICES ARE UNETHICAL AND VIOLATED ESTABLISHED ETHICAL STANDARDS

91. Toyota’s practice of selling or leasing vehicles with defective hands-free phone systems as described herein, without disclosing the defect prior to the time of sale or lease to consumers, as alleged herein, violates generally accepted ethical principles of business conduct.

92. The basis for the allegation that it was unethical to engage in the above practices comes, in part, from established ethical principles recognized by the Direct Marketing Association (“DMA”), the leading industry association for companies that, like Toyota, market directly to consumers, and the American Marketing Association, “the leading organization for marketers [and] the trusted go-to resource for marketers and academics.”⁸⁵

DMA Ethical Guidelines

93. DMA published principles of ethical business practices in Direct Marketing Association’s Guidelines for Ethical Business Practices (“DMA Ethical Guidelines”) (2014), Exhibit K, which is incorporated herein by reference.

94. These Ethical Guidelines “are intended to provide individuals and organizations involved in direct marketing in all media with generally accepted principles of conduct.” *Id.* at 2.

95. The Ethical Guidelines apply to all marketers, not just those that belong to DMA. DMA states that they “reflect DMA’s long-standing policy of high levels of ethics and the responsibility of the Association, its members, *and all marketers* to maintain consumer and community relationships that are based on fair and ethical principles.” *Id.* (emphasis added).

⁸⁵ <https://www.crunchbase.com/organization/american-marketing-association#section-overview> (accessed 7/2/2019).

96. DMA's Ethical Guidelines are set forth in a series of "Articles," each of which states a separate ethical principle.

97. Article #1 of DMA's Ethical Guidelines is "HONESTY AND CLARITY OF OFFER." It states: "All offers should be clear, honest and complete so that the consumer may know the exact nature of what is being offered"

98. By not giving potential purchasers or lessees any information about the echo defect prior to their purchase or lease of a Toyota vehicle, Toyota violated this principle because their offer was not clear, honest and complete.

99. Article #2 of DMA's Ethical Guidelines is "ACCURACY AND CONSISTENCY." It states: "Simple and consistent statements or representations of all the essential points of the offer should appear in the promotional material. The overall impression of an offer should not be contradicted by individual statements, representations or disclaimers."

100. DMA has published a companion volume to its Ethical Guidelines called *Do the Right Thing: A Companion to DMA's Guidelines for Ethical Business Practice* (Revised January 2009) ("*Do the Right Thing*"), Exhibit L, incorporated herein by reference. That volume is intended to "give [] direct marketers advice on how to assure their business practices comply with" the Ethical Guidelines. *Do the Right Thing* at 2.

101. In *Do the Right Thing*, DMA elaborates on Article #2 of its ethical principles. It states, "Keep in mind that a disclaimer or disclosure alone usually is not enough to remedy a misleading or false claim."

102. By not including any information about the echo defect in material that it made available to consumers prior to their purchases or leases of Toyota's vehicles, Toyota violated the ethical principle in DMA's Article #2 because the information Toyota provided did not

contain all the essential points of the offer. It omitted the point that many of its vehicles contain the echo defect, which it waited to inform purchasers or lessees of until after they had purchased or leased their vehicles.

103. In July 2018, DMA (then going by the name “Data & Marketing Association”) was acquired by the Association of National Advertisers (“ANA”), “one of the oldest and most venerated trade association in the marketing industry.”⁸⁶ ANA adopted DMA’s Ethical Guidelines, which it publishes on its web site as Part II of its Member Principles under the heading, “Marketing.”⁸⁷ Thus, these ethical principles are still current and applicable.

AMA Statement of Ethics

104. The American Marketing Association (“AMA”) “commits itself to promoting the highest standard of professional ethical norms and values ...” Exhibit M.⁸⁸ As such, it has published its “Statement of Ethics.” *Id.* AMA states that “marketers are expected to embrace the highest professional ethical norms and the ethical values implied by our responsibility toward multiple stakeholders (e.g., customers ...).” *Id.* Thus, the Statement of Ethics contains “Ethical Norms,” which “are established standards of conduct that are expected and maintained by society and/or professional organizations.” *Id.*

105. The AMA’s Ethical Norms state that marketers must “consciously avoid [] harmful actions and omissions,” “striv[e] for good faith and fair dealing,” “avoid [] deception in ... pricing, communication, and delivery of distribution,” and affirm “core values” of honesty, ... fairness [and] transparency.”

⁸⁶ <https://www.ana.net/content/show/id/49074> (accessed 7/2/2019).

⁸⁷ <https://thedma.org/accountability/ethics-and-compliance/dma-ethical-guidelines/> (accessed 7/2/2019)

⁸⁸ Available at <https://www.ama.org/codes-of-conduct/> (accessed 7/2/2019).

106. By not including any information about the echo defect in material that it made available to consumers prior to their purchases or leases of Toyota's vehicles, Toyota violated these Ethical Norms because, among other reasons, it did not strive (or achieve) good faith and fair dealing, did not avoid deception in communication, and did not affirm the core values of honesty, fairness and transparency.

107. The AMA has also published "Ethical Values," which "represent the collective conception of what communities find desirable, important and morally proper." *Id.* AMA states that marketers' Ethical Values include honesty, meaning "[s]triv[ing] to be truthful in all situations and at all times" and "[h]onoring our explicit and implicit commitments and promises."

108. Another Ethical Value, according to the AMA, is fairness, which includes "[r]epresent[ing] products in a clear way in selling, advertising and other forms of communication," "avoid[ing] false, misleading and deceptive promotion," and "[r]efusing to engage in 'bait-and-switch' tactics." *Id.*

109. Yet another Ethical Value, according to the AMA, is "Transparency," which includes "[s]triv[ing] to communicate clearly with all constituencies." *Id.*

110. By not disclosing any information regarding the echo defect in material that it made available to consumers prior to their purchases or leases of Toyota's vehicles, and by failing to repair the defect in accordance with its warranties, Toyota violated these Ethical Values, because, among other reasons, it was not truthful (to say nothing of not striving to be truthful) in all situations, did not honor its explicit and implicit commitments and promises, did not represent its products in a clear way, did not avoid false, misleading and deceptive promotion, and did not communicate clearly.

CLASS ACTION ALLEGATIONS

111. **The Class.** Plaintiffs bring this action on their own behalf and as a class action on behalf of all Missouri owners and lessees of Toyota vehicles identified herein who have been and will be harmed by the echo defect described herein (“the Class”), as well as Subclasses of Members in Missouri who purchased or leased their vehicles for personal, family, or household purposes (“MMPA Subclass”) and Members with applicable written warranties that Toyota breached by failing to repair the echo defect within a reasonable time (“Warranty Subclass”).

112. Specifically, Plaintiffs seek to represent the following Class:

All individuals who reside in Missouri who purchased or leased a Toyota Highlander, Avalon, Sienna, Prius V, Tacoma, Sequoia, Prius, Tundra, Avalon HV, Yaris, 4Runner, or Highlander HV (a “Class Vehicle”) that, within the applicable period of limitations preceding the filing of this lawsuit to the date of class certification, has or had a defect such that during use of the vehicle’s hands-free phone system, the person on the other end of a phone call hears an echo of his or her own words.

(“Class”).

All Class Members within the State of Missouri who own or owned or leased his or her Class Vehicle for personal, family, or household purposes.

(“MMPA Subclass”).

All Class Members with vehicles covered by Toyota’s Basic Warranty who reported the echo defect to Toyota within the warranty period, for whom Toyota breached the warranty by failing to repair their hands-free phone systems within a reasonable time.

(“Warranty Subclass”).

Excluded from the Class are officers, directors and employees of Toyota, counsel and members of the immediate families of counsel for Plaintiffs herein, and the judge presiding over this action and any member of the judge’s immediate family.

113. This action is properly maintainable as a class action under Missouri Supreme Court Rule 52.08.

114. Plaintiffs reserve the right to re-define the Class and/or Class Vehicles prior to class certification.

115. **Numerosity.** The members of the proposed Class are so numerous that joinder of all members is impracticable. The precise number of Class Members is unknown at this time, as such information is in the exclusive control of Toyota.

116. **Common Questions of Law and Fact and Predominance.** Numerous questions of law and fact are common to Plaintiffs and the Class Members, and predominate over any individual questions. Such common legal and factual questions include, but are not limited to:

- a. Whether Toyota sells or has sold vehicles that have the echo defect described herein;
- b. When Toyota first learned of the echo defect;
- c. Whether Toyota has omitted relevant information regarding the echo defect from its communications with consumers prior to their purchases or leases;
- d. Whether and to what capacity Toyota is able to repair the echo defect and whether it results from a design or manufacturing defect;
- e. Whether Toyota has unjustly profited from the sale and/or lease of vehicles with defective hands-free phone systems;
- f. Whether Toyota's actions described herein constitute breach of warranty;
- g. Whether Toyota's actions described herein are unfair, deceptive, or constitute an omission of a material fact under the MMPA;
- h. Whether Toyota's actions described herein are unethical;
- i. Whether Plaintiffs and the Class are entitled to compensatory and statutory damages and the amount of such damages based on Toyota's sale and/or lease of vehicles with defective hands-free phone systems.

117. **Typicality.** Plaintiffs' claims are typical of the claims of the Class Members.

Plaintiffs and all Class Members have suffered damages as a result of Toyota's unfair acts and

omissions in failing to disclose the echo defect prior to their purchases or leases of Toyota's vehicles.

118. **Adequacy of Representation.** Plaintiffs will fairly and adequately represent and protect the interests of the proposed Class. Plaintiffs have retained counsel with substantial experience in prosecuting complex litigation and consumer class actions.

119. Plaintiffs and counsel are committed to prosecuting this action vigorously on behalf of the Class, and do not have any interests that are contrary to or in conflict with those of the Class they seek to represent.

120. **Superiority.** A class action is superior to all other available methods for fair and efficient adjudication of this controversy. Plaintiffs know of no difficulty to be encountered in the management of this action that would preclude its maintenance as a class action.

121. The prosecution of separate actions by individual members of the Class would create a risk of inconsistent and varying adjudications concerning the subject of this action.

122. Absent a class action, the vast majority of Class Members likely would not be in a position to litigate their claims individually and would have no effective remedy at law through which to vindicate their claims against Toyota and be made whole.

123. Class treatment will conserve the resources of the courts and the litigants, and further efficient adjudication of Class Member claims.

COUNT I: BREACH OF WRITTEN WARRANTY
(Plaintiffs and the Warranty Subclass)

124. Plaintiffs incorporate by reference all preceding paragraphs of this Petition as if fully set forth herein, and further allege as follows:

125. Plaintiffs and members of the Warranty Subclass have written warranties covering the defective hands-free phone system in their vehicles.

126. The echo defect is present in Plaintiffs' and the Warranty Subclass' vehicles, which they reported to Toyota within the warranty period.

127. Toyota breached its written warranties with Plaintiffs and the Warranty Subclass because Toyota failed to repair their defective hands-free phone systems within a reasonable time.

128. As evidenced by Toyota's statement to Mr. Trout that its "final position" was that it was not remedying the defect, and its refusal to even provide Mr. Freeman with a written response, any further attempts to achieve a resolution with Toyota, including by proceeding through any informal dispute resolution procedures offered by Toyota, would have been futile.

129. By failing to repair the defective hands-free phone systems in Plaintiffs' and the Warranty Subclass' vehicles within a reasonable period, Toyota has caused these warranties and the remedies set forth therein to fail of their essential purpose. Accordingly, Plaintiffs and Warranty Subclass members are not limited to a remedy constituting repair of the defect.

130. Toyota's acts and practices alleged herein have directly, foreseeably, and proximately caused loss, damages, and injury to Plaintiffs and the Warranty Subclass. Toyota's failure to repair the defective hands-free phone systems in Plaintiffs' and the Warranty Subclass' vehicles has left Plaintiffs and the Warranty Subclass with vehicles of diminished value, in an amount to be determined at trial.

131. WHEREFORE, Plaintiffs and the Warranty Subclass pray for the relief requested in the Prayer for Relief set forth below in this Petition

COUNT II: VIOLATION OF THE MMPA BY MEANS OF UNFAIR PRACTICES-
FAILURE TO DISCLOSE THE ECHO DEFECT
(Plaintiffs and the MMPA Subclass)

132. Plaintiffs incorporate by reference each of the allegations contained in the preceding paragraphs of this Petition, and further allege as follows:

133. The actions of Toyota alleged herein in failing to disclose the echo defect to Plaintiffs and MMPA Subclass Members prior to their purchases or leases of Toyota's vehicles violated, and continue to violate, the Missouri Merchandising Practices Act ("MMPA") because they constitute unfair practices.

134. The MMPA, Mo. Rev. Stat. § 407.020, states in relevant part:

The act, use or employment by any person of any deception, fraud, false pretense, false promise, misrepresentation, unfair practice or the concealment, suppression, or omission of any material fact in connection with the sale or advertisement of any merchandise in trade or commerce . . . is declared to be an unlawful practice.

135. Plaintiffs, on behalf of themselves and all others similarly situated in Missouri, are entitled to bring this action pursuant to Mo. Rev. Stat. § 407.025, which provides in relevant part that:

1. Any person who purchases or leases merchandise primarily for personal, family or household purposes and thereby suffers an ascertainable loss of money or property, real or personal, as a result of the use or employment by another person of a method, act or practice declared unlawful by section 407.020, may bring a private civil action in either the circuit court of the county in which the seller or lessor resides or in which the transaction complained of took place, to recover actual damages. The court may, in its discretion, award punitive damages and may award to the prevailing party attorney's fees, based on the amount of time reasonably expended, and may provide such equitable relief as it deems necessary or proper.

2. Persons entitled to bring an action pursuant to subsection 1 of this section may, if the unlawful method, act or practice has caused similar injury to numerous other persons, institute an action as representative or representatives of a class against one or more defendants as representatives of a class In any action brought pursuant to this section, the court may in its discretion order, in addition to damages, injunction or other equitable relief and reasonable attorney's fees.

136. The MMPA defines “merchandise” as any objects, wares, goods, commodities, intangibles, real estate or services. Mo. Rev. Stat. § 407.010. Thus, the vehicles that Toyota sell and lease to consumers are merchandise.

137. By selling and leasing its vehicles to consumers, Toyota is engaging in the sale of merchandise in trade or commerce.

138. Plaintiffs and the MMPA Subclass purchased or leased Toyota’s vehicles containing hands-free phone systems for personal, family, or household purposes but received vehicles with defective hands-free phone systems. Specifically, during their use of the hands-free phone systems the echo defect described herein is present, such that the person on the other end of the phone call hears his or her words echo to such a degree that continued conversation is impossible to maintain.

139. The Missouri Attorney General has promulgated regulations defining the meaning of unfair practice as used in the MMPA. That definition states that unethical practices are unfair in violation of the above statute. Mo. Code Regs. tit. 15, § 60-8.020.

140. Pursuant to the MMPA, Toyota has a duty not to engage in any unethical or unfair practice in connection with the sale or advertisement of any merchandise in trade or commerce. For the reasons stated herein, it breached that duty.

141. Selling or leasing vehicles to Plaintiffs and MMPA Subclass Members that contain defective hands-free phone systems, while knowing of the defect but not disclosing it prior to Plaintiffs’ and MMPA Subclass Members’ purchases or leases, is unfair and unethical and violates generally accepted principles of ethical business conduct, including the principles of the Direct Marketing Association and American Marketing Association, as set forth above.

142. As shown by the above provisions in Toyota's Owner's Manuals and Navigation Owner's Manuals, Toyota has known about the echo defect since at least 2007. Yet it failed to inform Plaintiffs and the MMPA Subclass about the echo defect prior to their purchases or leases of Toyota's vehicles.

143. Toyota's unfair and unethical actions in failing to inform Plaintiffs and the MMPA Subclass about the known echo defect prior to their purchases or leases were therefore purposeful, as Toyota chose not to give them any information regarding the echo defect prior to their purchases or leases, despite having had knowledge of the echo defect for many years.

144. Plaintiffs and the MMPA Subclass have suffered ascertainable loss by paying for vehicles with properly functioning hands-free phone systems without being told of the echo defect by Toyota prior to their purchases or leases, but instead received vehicles that have defective hands-free phone systems that are therefore worth a lesser value.

145. Toyota's acts and practices alleged herein have directly, foreseeably, and proximately caused loss, damages, and injury to Plaintiffs and the MMPA Subclass in an amount to be determined at trial.

146. Toyota's unfair and unethical acts and practices in violation of the MMPA were performed willfully and wantonly, were outrageous, and were done in reckless indifference to the rights of Plaintiffs and MMPA Subclass.

147. WHEREFORE, Plaintiffs and the MMPA Subclass pray for the relief requested in the Prayer for Relief set forth below in this Petition

**COUNT III: VIOLATION OF THE MMPA BY MEANS OF UNFAIR PRACTICES-
BREACH OF WRITTEN WARRANTY
(Plaintiffs and Members of the MMPA and Warranty Subclasses)**

148. Plaintiffs incorporate by reference each of the allegations contained in the preceding paragraphs of this Petition, and further allege as follows:

149. The actions of Toyota alleged herein in failing to repair the defective hands-free phone systems in Plaintiffs' and members of the MMPA and Warranty Subclasses' vehicles as required by their written warranties violated, and continue to violate, the Missouri Merchandising Practices Act ("MMPA") because they constitute unfair practices.

150. Plaintiffs and Class Members in the MMPA and Warranty Subclasses purchased or leased their vehicles for personal, family, or household purposes and have written warranties covering the defective hands-free phone systems in their vehicles.

151. The vehicles that Plaintiffs' and Class Members in the MMPA and Warranty Subclasses purchased or leased suffer or suffered from the echo defect, which they reported to Toyota within the warranty period.

152. Toyota breached its written warranties with Plaintiffs and Class Members in the MMPA and Warranty Subclasses by failing to repair the defective hands-free phone systems in their vehicles within a reasonable time.

153. Toyota's failure to honor written warranties within a reasonable time that provide for the repair of defects, including defects in the hands-free phone systems, is unfair and unethical and violates generally accepted principles of ethical business conduct, including the principles of the Direct Marketing Association and American Marketing Association, as set forth above. Such failure is particularly unfair and unethical because Toyota has failed to honor the warranties of numerous individuals over many years, and because Toyota was aware of the echo

defect prior to the time when Plaintiffs and Class Members in the MMPA and Warranty Subclasses purchased or leased their vehicles. Accordingly, such failure constitutes an unfair practice under the MMPA.

154. Moreover, pursuant to 15 C.S.R. § 60-8.070, “It is an unfair practice for any person in connection with the sale of merchandise to unilaterally breach unambiguous provisions of consumer contracts.”

155. Toyota unilaterally breached unambiguous provisions of the warranties that applied to Plaintiffs and Class Members in the MMPA and Warranty Subclasses by failing to repair the reported defects in their hands-free phone systems within a reasonable time, and accordingly engaged in an unfair practice under 15 C.S.R. § 60-8.070.

156. Plaintiffs and Class Members in the MMPA and Warranty Subclasses suffered ascertainable loss based on Toyota’s failure to repair their defective hands-free phone systems in accordance with their warranties, as the value of their vehicles containing defective hands-free phone systems is less than the value of their vehicles with hands-free phone systems that are repaired as required by the warranties.

157. Toyota’s acts and practices alleged herein have directly, foreseeably, and proximately caused loss, damages, and injury to Plaintiffs and Class Members in the MMPA and Warranty Subclasses in an amount to be determined at trial.

158. Toyota’s unfair and unethical acts and practices in violation of the MMPA were performed willfully and wantonly, were outrageous, and were done in reckless indifference to the rights of Plaintiffs and Class Members in the MMPA and Warranty Subclasses.

159. WHEREFORE, Plaintiffs and Class Members in the MMPA and Warranty Subclasses pray for the relief requested in the Prayer for Relief set forth below in this Petition.

COUNT IV: VIOLATION OF THE MMPA BY MEANS OF DECEPTION
(Plaintiffs and the MMPA Subclass)

160. Plaintiffs incorporate by reference each of the allegations contained in the preceding paragraphs of this Petition, and further allege as follows:

161. The actions of Toyota alleged herein violated, and continue to violate, the Missouri Merchandising Practices Act (“MMPA”) because they constitute deception.

162. Mo. Rev. Stat. § 407.020.1 prohibits by any person “any deception, fraud, false pretense, false promise, misrepresentation, unfair practice or the concealment, suppression, or omission of any material fact in connection with the sale or advertisement of any merchandise in trade or commerce.”

163. The Missouri Attorney General has promulgated regulations defining the meaning of terms in the MMPA. Accordingly, deception as used in the MMPA “is any method, act, use, practice, advertisement or solicitation that has the tendency or capacity to mislead, deceive or cheat, or that tends to create a false impression.” 15 C.S.R. § 60-9.020(1).

164. The regulations further provide that reliance, actual deception, knowledge of deception and intent are not elements of deception under the MMPA: “Reliance, actual deception, knowledge of deception, intent to mislead or deceive, or any other culpable mental state such as recklessness or negligence, are not elements of deception as used in section 407.020.1, RSMo .” 15 C.S.R. § 60-9.020.

165. Pursuant to the MMPA, Toyota has a duty not to engage in any deception in connection with the sale or advertisement of any merchandise in trade or commerce. For the reasons stated herein, it breached that duty.

166. By promoting its vehicles as containing usable hands-free phone systems even though those systems had the echo defect, Toyota engaged in deception in violation of the

MMPA, because such acts or practices have the tendency or capacity to mislead, deceive, cheat, and/or create a false impression as to the ability of consumers to use the hands-free phone systems in their vehicles. Mo. Rev. Stat. 407.020.1.

167. Plaintiffs and the MMPA Subclass have suffered ascertainable loss as a result of Toyota's promoting of its vehicles as containing usable hands-free phone systems without referencing the echo defect, as they paid for vehicles with properly functioning hands-free phone systems but instead received vehicles that have defective hands-free phone systems that are therefore worth a lesser value.

168. Toyota's deceptive acts and practices have directly, foreseeably, and proximately caused loss, damages and injury to Plaintiffs and the MMPA Subclass.

169. Toyota's deceptive acts and practices in violation of the MMPA were performed willfully and wantonly, were outrageous and were done in reckless indifference to the rights of Plaintiffs and the MMPA Subclass.

170. WHEREFORE, Plaintiffs and the MMPA Subclass pray for the relief requested in the Prayer for Relief set forth below in this Petition.

**COUNT V: VIOLATION OF THE MMPA BY MEANS OF OMISSION OF A
MATERIAL FACT
(Plaintiffs and the MMPA Subclass)**

171. Plaintiffs incorporate by reference each of the allegations contained in the preceding paragraphs of this Petition, and further allege as follows:

172. The actions of Toyota alleged herein violated, and continue to violate, the Missouri Merchandising Practices Act ("MMPA") because they constitute omission of a material fact.

173. Mo. Rev. Stat. § 407.020.1 prohibits by any person the “any deception, fraud, false pretense, false promise, misrepresentation, unfair practice or the concealment, suppression, or omission of any material fact in connection with the sale or advertisement of any merchandise in trade or commerce.”

174. The Missouri Attorney General has promulgated regulations defining the meaning of terms in the MMPA. Accordingly, omission of a material fact as used in the MMPA is “any failure by a person to disclose material facts known to him/her, or upon reasonable inquiry would be known to him/her.” 15 C.S.R. § 60-9.110.

175. A material fact is “any fact which a reasonable consumer would likely consider to be important in making a purchasing decision, or which would be likely to induce a person to manifest his/her assent, or which the seller knows would be likely to induce a particular consumer to manifest his/her assent, or which would be likely to induce a reasonable consumer to act, respond or change his/her behavior in any substantial manner.” 15 C.S.R. § 60-9.010.

176. Pursuant to the MMPA, Toyota has a duty not to omit material facts in connection with the sale or advertisement of any merchandise in trade or commerce. For the reasons stated herein, it breached that duty.

177. As set forth above, Toyota was aware of the echo defect in its vehicles since at least 2007.

178. This is shown by Toyota’s statements in its Owner’s Manuals and Navigation Owner’s Manuals regarding the existence of an echo in connection with its hands-free phone system, making it inconceivable that Toyota was unaware of the echo defect. Toyota could not have made such statements in its Owner’s Manuals and Navigation Owner’s Manuals had it been unaware of the echo defect.

179. Even if Toyota had been unaware of the echo defect, which it was not, the echo defect would have been known to it upon reasonable inquiry. As shown by its Owner's Manuals and Navigation Owner's Manuals, testing the hands-free phone systems in its vehicles for the existence of an echo is an act that Toyota performs.

180. The existence of the echo defect is a material fact, because a reasonable consumer would likely consider it important to know, when purchasing or leasing a vehicle, that the hands-free phone system in the vehicle results in the person on the other end of a phone call hearing a severe echo when he or she speaks, so that the hands-free phone system is not usable.

181. Furthermore, the existence of the echo defect is also a material fact because a reasonable consumer would likely be induced to change his or her decision to purchase or lease one of Toyota's vehicles based on knowing that the hands-free phone system in that vehicle results in the person on the other end of a phone call hearing a severe echo when he or she speaks, so that the hands-free phone system is not usable.

182. Despite its knowledge of the echo defect since at least 2007, Toyota omitted any reference of the echo defect to Plaintiffs and the MMPA Subclass prior to their purchases or leases of Toyota's vehicles. At a minimum, Toyota omitted material facts by not giving Plaintiffs and the MMPA Subclass the information set forth in Paragraph 22 above, prior to their purchases or leases.

183. Accordingly, Toyota's selling and leasing of vehicles with defective hands-free phone systems to Plaintiffs and MMPA Subclass Members, without disclosing the known defect prior to their purchases or leases, constitutes omission of a material fact under the MMPA.

184. Moreover, Toyota's omission of any information regarding the echo defect to Plaintiffs and the MMPA Subclass prior to their purchases or leases was purposeful. As set forth

above, Toyota knew about the echo defect since at least 2007 and continued to market and sell vehicles containing hands-free phone systems, yet failed to inform Plaintiffs and MMPA Subclass Members of the echo defect prior to their purchases or leases.

185. Plaintiffs and the MMPA Subclass have suffered ascertainable loss as a result of Toyota's failure to provide them with any information regarding the echo defect prior to their purchases or leases, as they paid for vehicles with properly functioning hands-free phone systems without being informed of the echo defect, but instead received vehicles that have defective hands-free phone systems that are therefore worth a lesser value.

186. Toyota's omissions have directly, foreseeably, and proximately caused loss, damages and injury to Plaintiffs and the MMPA Subclass.

187. Toyota's omissions in violation of the MMPA were performed willfully and wantonly, were outrageous and were done in reckless indifference to the rights of Plaintiffs and the MMPA Subclass.

188. WHEREFORE, Plaintiffs and the MMPA Subclass pray for the relief requested in the Prayer for Relief set forth below in this Petition.

COUNT VI: UNJUST ENRICHMENT
(Plaintiffs and the Class)

189. Plaintiffs incorporate by reference all preceding paragraphs of this Petition as if fully set forth herein, and further allege as follows:

190. Substantial benefits have been conferred upon Toyota from Plaintiffs and Class Members by Plaintiffs and Class Members purchasing or leasing Toyota's vehicles that have defective hands-free phone systems.

191. As set forth above, Toyota either knew or should have known that it was selling or leasing vehicles with defective hands-free phone systems and that it was therefore accepting

money through Plaintiffs' and Class Members' purchases or leases of its vehicles that was in part for the defective hands-free phone systems. Yet Toyota failed to inform Plaintiffs and Class Members of the echo defect prior to their purchases or leases. For Toyota to retain the benefit of Plaintiffs' and Class Members' payments for defective hands-free phone systems is inequitable under these circumstances.

192. Toyota's acceptance and retention of these benefits under the circumstances make it inequitable for Toyota to retain these benefits without payment of the value to Plaintiffs and the Class.

193. Toyota's acceptance and retention of these benefits under the circumstances is inequitable regardless of whether Toyota deems the echo defect to be covered by its Basic Warranty.

194. Plaintiffs and the Class are entitled to recover from Toyota all amounts wrongfully collected and improperly retained by Toyota based on its practice of selling or leasing vehicles that have defective hands-free phone systems.

195. As a direct and proximate result of Toyota's wrongful conduct and unjust enrichment, Plaintiffs and the Class are entitled to restitution from, and institution of, a constructive trust disgorging all profits, benefits, and other compensation obtained by Toyota, plus attorneys' fees, costs, and interest thereon.

196. WHEREFORE, Plaintiffs and the Class pray for the relief requested in the Prayer for Relief set forth below in this Petition.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs, on behalf of themselves and the Class, pray judgment against Toyota as follows:

1. Certifying the Class as requested herein;
2. Entering an order appointing Law Office of Richard S. Cornfeld, LLC and The Simon Law Firm, P.C. as lead counsel for the Class;
3. Awarding actual damages against Toyota in an amount to be determined;
4. Awarding punitive damages against Toyota as the Court deems necessary or proper;
5. Awarding injunctive relief as permitted by law or equity, including a preliminary and permanent injunction enjoining Toyota from continuing the unlawful practices as set forth herein;
6. Awarding pre-judgment and post-judgment interest;
7. Awarding reasonable attorneys' fees and costs herein;
8. Awarding such other and further relief as the Court deems fit and proper.

JURY DEMAND

Plaintiffs demand a trial by jury.

Dated: October 10, 2019

Respectfully submitted,

LAW OFFICE OF RICHARD S. CORNFELD, LLC

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CERTIFICATE OF SERVICE

I hereby certify that on this 10th day of October, 2019, the foregoing was served by operating of the Court's electronic filing system on all counsel of record in this matter.

/s/ Richard S. Cornfeld _____