

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION**

**DAVID PULKRABEK, BARBARA
RAINEY, ANDREW SCHWAB, WESLEY
DICKMAN, and WHITNEY DICKMAN, on
their own behalf and on behalf of a class of
similarly situated individuals,**

Plaintiffs,

vs.

Case No. 2:20-cv-00036-JRG-RSP

TOYOTA MOTOR SALES, U.S.A., INC.,

and

**TOYOTA MOTOR NORTH AMERICA,
INC.,**

Defendants.

DEMAND FOR JURY TRIAL

**PLAINTIFFS' THIRD AMENDED
CLASS ACTION COMPLAINT; AND JURY TRIAL DEMAND**

Plaintiffs David Pulkrabek, Barbara Rainey, Andrew Schwab, Wesley Dickman Whitney Dickman, and Ken Ly, individually and on behalf of all others similarly situated, bring this action against Defendants Toyota Motor Sales, U.S.A., Inc. and Toyota Motor North America, Inc. (“Defendants” or “Toyota”) by and through their attorneys and allege as follows:

INTRODUCTION

1. This is a class action lawsuit brought by Plaintiffs on behalf of themselves and a class of owners and lessees of certain model year 2019, 2020, and 2021 Toyota RAV4 Hybrid vehicles (hereinafter referred to collectively as the “Subject Vehicles”). Defendants manufactured, distributed and sold the 2019, 2020, and 2021 Toyota RAV4 Hybrid vehicles, which are compact crossover SUVs.

2. The Subject Vehicles contain fuel tanks and fuel sending units with a defect in the tank design and, for some of the Subject Vehicles, a defect in the manufacture of the tanks which can cause the fuel gauge to inaccurately display the fuel level (the “Defect”). The floor of the fuel tank is not sufficiently rigid, which caused it to permanently deform beyond specifications. Further, the manufacturing process for a subset of the fuel tanks was deficient, causing the floor of the fuel tanks to be even less rigid.

3. The inaccurate readings on the fuel gauge have several consequences for the consumer. First, although the fuel tank is full, the fuel gauge reads that the fuel tank is not full, leading consumers to reasonably believe they cannot completely fill up their vehicles. This was the most common complaint Toyota received from its customers about this Defect. Second, the fuel gauge indicates the fuel tank is nearing empty, even though there is far more than 1.5 gallons of gas remaining. Likewise, the low fuel level warning light illuminates when there is much more than the specified 2.2 gallons of gas remaining, and the “miles to empty” display is inaccurate. Third, the combination of the gas gauge reading less than full even though the fuel tank is full, coupled with the fuel gauge reading close to empty when it is not, leads some consumers to reasonably, but incorrectly, believe the fuel tank cannot hold its stated or capacity. The Defect does not affect gas mileage (miles per gallon) or vehicle emissions. It also has only a negligible impact on the capacity of the fuel tank, so the actual capacity of the fuel tank remains unchanged. This action does not challenge the actual capacity of the Subject Vehicles’ fuel tanks.

4. At all relevant times, Defendants knew, or through the exercise of reasonable care had reason to know, of the Defect.

5. Defendants omitted and/or concealed the existence of the Defect to increase profits by selling additional Subject Vehicles. Knowledge and information regarding the Defect were in

the exclusive and superior possession of Defendants and its dealers, and this information was not provided to Plaintiffs and members of the Class.

6. Based on pre-production testing, pre-sale durability testing, design failure mode analysis, bench testing, warranty and post-warranty claims, consumer complaints on forums monitored by Defendants, and consumer complaints made to and by dealers, and directly to Defendants, Defendants were aware of the Defect and omitted the existence of and/or fraudulently concealed the Defect from Plaintiffs and members of the Class.

7. As a direct result of Defendants' wrongful conduct, Plaintiffs and members of the Class have been harmed and are entitled to actual damages, including damages for the benefit of the bargain they struck when purchasing their vehicles, the diminished value of their vehicles, statutory damages, attorneys' fees, costs, restitution, and injunctive and declaratory relief.

8. Specifically, Plaintiffs seek the following potential non-exclusive remedies: immediate installation of fuel tanks that do not suffer from the Defect; provision of a temporary replacement vehicle while repair of the Defect is pending; buyback of the Subject Vehicles; compensation for any additional sums spent on any repairs to address the Defect; restitution for purchase of extended warranties that will go unused; compensation for the loss in value and depreciation of the Subject Vehicles; and punitive or other damages for Defendants' knowing fraud.

JURISDICTION AND VENUE

9. This Court has subject matter jurisdiction of this action pursuant to 28 U.S.C. § 1332(d) of the Class Action Fairness Act of 2005 because: (i) there are 100 or more class members, (ii) there is an aggregate amount in controversy exceeding \$5,000,000, exclusive of interest and costs, and (iii) there is minimal diversity because at least one plaintiff and one

defendant are citizens of different States. This court has supplemental jurisdiction over the state law claims pursuant to 28 U.S.C. § 1367 and jurisdiction over the Magnuson Moss Warranty Act claim by virtue of diversity jurisdiction being exercised under the Class Action Fairness Act (“CAFA”).

10. Defendants are responsible for the manufacture, distribution, marketing, and sale of Toyota-brand vehicles in the United States.

11. Defendants market their vehicles through online, radio, and TV advertisements as well as other popular media platforms throughout the United States.

12. Defendants distribute and/or sell Toyotas through their nationwide network of dealerships, offices and facilities throughout the United States.

PARTIES

Plaintiffs

13. Plaintiffs David Pulkrabek and Barbara Rainey are married, are citizens of the State of Missouri, and reside in Springfield, Missouri.

14. Plaintiff Andrew Schwab is a citizen of the State of Missouri and resides in Springfield, Missouri.

15. Plaintiffs Wesley Dickman and Whitney Dickman (“Dickman Plaintiffs”) are married, citizens of the State of Missouri, and reside in Springfield, Missouri.

16. Plaintiff Ken Ly is a citizen of the State of California and resides in Sunnyvale, California.

Defendants

17. Defendants are automobile design, manufacturing, distribution, and/or service corporations doing business within the United States, and they design, develop, manufacture,

distribute, market, sell, lease, warrant, service, and repair passenger vehicles, including Subject Vehicles.

18. Toyota Motor Sales, U.S.A., Inc. and Toyota Motor North America, Inc., are Texas corporations with their principal place of business at 6565 Headquarters Drive, Plano, TX 75024. Toyota Motor Sales, U.S.A., Inc. and Toyota Motor North America, Inc. have both been served and have appeared in this matter.

19. Defendant Toyota Motor North America, Inc. (“TMNA”) is a California corporation headquartered in Plano, Texas as of May 2017. TMNA operates as a wholly owned subsidiary of Toyota Motor Corporation (“TMC”), the Japanese parent company, and is the corporate parent of Toyota Motor Sales, U.S.A., Inc. (“TMS”). TMNA oversees government and regulatory affairs, energy, economic research, philanthropy, corporate advertising and corporate communications for all of TMC’s North American operations.

20. TMS is a California corporation headquartered in Plano, Texas. TMS is the U.S. sales and marketing division for TMC and TMNA, and it oversees sales and other operations across the United States. TMS distributes Toyota parts and vehicles, which are then sold through Defendants’ network of dealers. Money received from the purchase of a Toyota vehicle from a dealership flows from the dealer to TMS.

21. There exists, and at all times herein mentioned existed, a unity of ownership between TMC, TMNA, and TMS and their agents such that any individuality or separateness between them has ceased and each of them is the alter ego of the others. Adherence to the fiction of the separate existence of Defendants, would, under the circumstances set forth in this complaint, sanction fraud or promote injustice.

22. For example, upon information and belief, Defendants TMNA and TMS communicate with TMC concerning virtually all aspects of the Toyota products TMNA and TMS distribute within the United States, including appropriate repairs for pervasive defects, and whether Toyota will cover repairs to parts customers claim to be defective. Toyota's decision not to disclose the Defect to Plaintiffs or the Class, or whether to cover repairs to the same pursuant to an extended warranty or goodwill program, was a decision made jointly by TMC, TMNA and TMS. Plaintiffs believe that discovery will bear this out, but at this time will bring no claims against TMC.

23. TMS also oversees Toyota's National Warranty Operations (NWO), which, among other things, reviews and analyzes warranty data submitted by Toyota's dealerships and authorized technicians in order to identify defect trends in vehicles. Upon information and belief, Toyota dictates that when a repair is made under warranty (or warranty coverage is requested), service centers must provide Defendants with detailed documentation of the problem and the fix that describes the complaint, cause, and correction, and also save the broken part in the event Defendants decide to audit the dealership. NWO collects this information, makes it available to other Toyota divisions, and assists Toyota in determining whether particular repairs—such as those made to Plaintiffs' and the Class's fuel tanks—are covered by an applicable Toyota warranty or are indicative of a pervasive defect.

24. Toyota also jointly designs, determines the substance of, and affixes to its vehicles the window stickers visible on each new Toyota vehicle that is offered for sale at its authorized dealerships, including those omitting mention of the Defect. These stickers were reviewed by Plaintiffs and the Class prior to purchasing Subject Vehicles. Toyota controls the content of these window stickers; its authorized dealerships have no input with respect to their content. Vehicle manufacturers like Toyota are legally required to affix a window sticker to every vehicle offered

for sale in the United States pursuant to the Automobile Information Disclosure Act of 1958, 15 U.S.C. §§ 1231-1233, *et seq.* The Act specifically prohibits the removal or alteration of the sticker by anyone other than the ultimate purchaser prior to the sale of the car, including the dealership at which the vehicle is offered for sale.

25. Toyota developed the marketing materials to which Plaintiffs and the Class were exposed, owner's manuals, informational brochures, warranty booklets and information included in maintenance recommendations and/or schedules for the Subject Vehicles, all of which fail to disclose the Defect.

26. Toyota also employs a Customer Experience Center, the representatives of which are responsible for fielding customer complaints and monitoring customer complaints posted to Toyota or third-party web sites: data which informs NWO's operations, and through which Toyota acquires knowledge of defect trends in its vehicles.

TOLLING OF STATUTES OF LIMITATIONS

27. Any applicable statute(s) of limitations have been tolled by Toyota's knowing and active concealment and denial of the facts alleged herein. Plaintiffs and the members of the Class could not have reasonably discovered the true, latent nature of the Defect until shortly before this class action litigation was commenced.

28. In addition, even after Plaintiffs and class members contacted Toyota and/or its authorized dealers regarding the Defect, they were routinely informed that the Subject Vehicles were not defective.

29. Toyota was and remains under a continuing duty to disclose to Plaintiffs and the members of the Class the true character, quality, and nature of Subject Vehicles, that the Defect is the result of poor manufacturing processes, workmanship and/or design, and that it will require

costly repairs, and diminishes the resale value of the Subject Vehicles. As a result of Toyota's active concealment, any and all statutes of limitations otherwise applicable to the allegations herein have been tolled.

FACTUAL ALLEGATIONS

The Defect

30. The Subject Vehicles utilize a Dynamic Force 2.5-liter inline four-cylinder engine and dual electric motors with an Electronically Controlled Continuously Variable Transmission.

31. Like other modern automobile fuel tanks in the United States, the Toyota RAV4 Hybrid utilizes a closed system fuel tank. Closed system fuel tanks do not allow fuel vapors to vent to the outside environment, thereby decreasing harmful emissions of gasoline and increasing efficiency by keeping vapors in the fuel tank and fueling system, rather than allowing them to vent into the atmosphere. Because the system is closed, by design modern fuel tanks build up positive and negative pressure inside of them. This pressure varies based on several factors, including the amount of fuel in the tank, ambient temperature, temperature of the fuel, and whether the vehicle is being operated. As a result, modern fuel tanks typically exhibit slight inward deformation. Over time, these deformations become permanent. The deformations do not materially alter the total fuel capacity of the fuel tank. Modern fuel tanks are also designed to allow sufficient space for gasoline vapors. Similarly, there are also a variety of factors which determine the amount of fuel that can be put into a fuel tank at any given time, such as the ambient temperature, atmospheric pressure, differences in fuel pump nozzles at gas stations, and the pitch or slope of the ground when fueling. A fuel tank of a given capacity also is designed to hold less liquid gasoline than the full capacity of the tank to allow room for vapor, gasoline expansion, and the proper operation of the fuel system. These types of variances are normal and exist in modern fuel tanks.

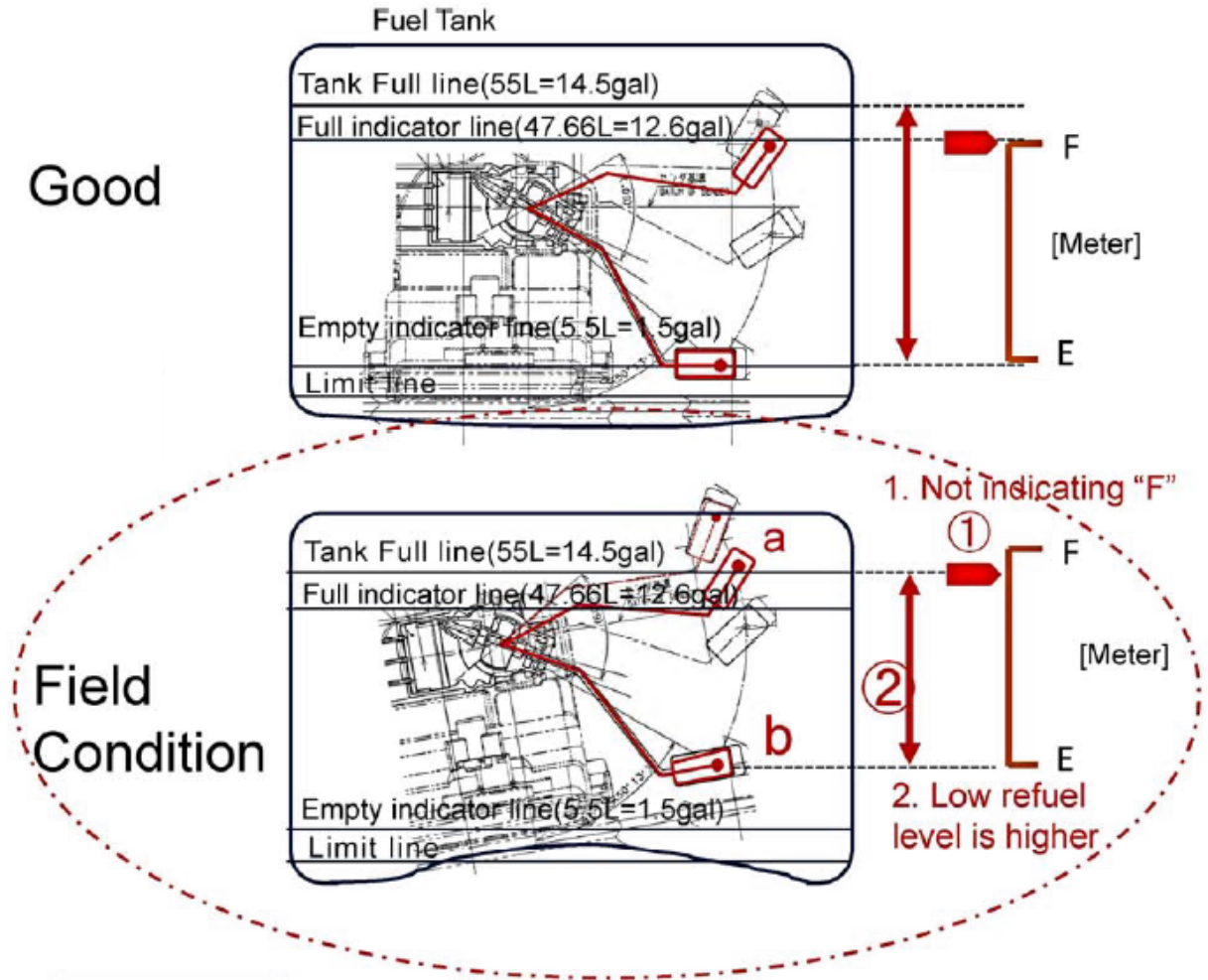
32. During the period in which the Subject Vehicles were manufactured, the fuel tank was manufactured at manufacturing plants in Japan and North America, although the tank had the same design regardless of the place of production.

33. Like other vehicles, inside the RAV4 Hybrid's fuel tank is a fuel sending unit. Fuel sending units measure the amount of fuel in the fuel tank. The information is sent to the vehicle's fuel gauge, which the driver uses to determine the approximate amount of fuel remaining in the fuel tank. For the Subject Vehicles, the information gathered from the fuel sending unit is also used to provide the approximate number of miles left until the fuel tank should be refueled. The fuel sending unit in the Subject Vehicles sits on the floor inside of the Subject Vehicle's fuel tank. Attached to the fuel sending unit is a float arm that rises and falls with the level of fuel in the tank. The fuel indicator on the dashboard should read "full" when there is approximately 12.6 gallons of fuel in the fuel tank. As with fuel tanks and gauges in other vehicles, more fuel can be added to the tank beyond the full level indicated on the fuel gauge because the amount of gas is determined by the automatic shut-off feature of the fuel pump nozzle at gas stations.

34. When there is approximately 2.2 gallons of gas left in the fuel tank, the low fuel level warning light should illuminate on the dashboard. Meanwhile, the fuel gauge will continue to go down until it reads empty, which should be indicated on the fuel gauge when there is about 1.5 gallons of gas left in the tank. The 12.6, 2.2, and 1.5 gallons of fuel are approximations for many of the same reasons stated in paragraph 31, above, including ambient temperature, atmospheric pressure, driving pressure changes, and the slope and pitch of the vehicle.

35. The problem at issue is fundamentally a problem with the floor of the fuel tank. While deformation is expected and designed for any closed system fuel tank, with some of the fuel tanks originally in the RAV4 Hybrid, excessive deformation of the fuel tank's floor occurred.

While most of the subject fuel tanks do not deform to this degree, in those that did, the bottom of the fuel tank permanently bowed inward beyond Toyota's design specifications, causing the fuel sending unit to sit on an incline. In turn, this incline causes the arm of the fuel sending unit to inaccurately read both the high and the low level of fuel remaining in the fuel tank. When the Defect manifests, the low fuel level warning light illuminates when there is substantially more than 2.2 gallons of liquid fuel left in the tank and the fuel gauge reads empty when there is substantially more than 1.5 gallons of liquid fuel left in the fuel tank. Likewise, when the fuel tank is full, the arm of the fuel unit hits the ceiling of the fuel tank, preventing it from fully raising to its highest level, thereby causing the fuel gauge to inaccurately indicate that the full tank is not full, even though it is. The Defect is depicted as follows (the floating arm attached to the fuel sending unit is red):



36. In a defective fuel tank, the fuel gauge reads that the fuel tank is less than full, even though the fuel tank is full.

37. Toyota recognizes that consumers will pay a premium for hybrid and electric vehicles that are energy efficient and produce low emissions such as the RAV4 Hybrid and which have an acceptable driving range.

38. Toyota has capitalized on this through its targeted and increased advertisements for its hybrid and electric vehicles such as the RAV4 Hybrid. In its RAV4 Hybrid eBrochure, Toyota prominently represents that the hybrid model provides more horsepower and gets 10 miles per

gallon more than the gas only models next to the slogan “Go farther. Go faster.”¹



39. The eBrochure makes clear that Toyota is highlighting the benefits of the RAV4 Hybrid over its gas-only version.

40. As a result of the superior efficiency and driving range Toyota claims the RAV4 Hybrid has over the gas-only version, Toyota’s MSRP for the RAV4 Hybrid is nearly \$2000 higher than the gas-only version.

41. Based on Toyota’s representations, the RAV4 Hybrid should be able to travel further per tank of gas than the gas-only versions.

¹ MY19 RAV4 GAS/HYBRID eBrochure, p.5, <https://www.toyota.com/rav4/ebrochure/> (last visited Jan. 30, 2020).

42. While the fuel tank capacity remains the same, the inaccurate readings on the fuel gauge have several consequences for the consumer. First, although the fuel tank is full, the fuel gauge reads that the fuel tank is not full, leading consumers to reasonably believe they cannot completely fill up their vehicles. Second, the fuel gauge indicates the fuel tank is nearing empty, even though there is far more than 1.5 gallons of gas remaining. Likewise, the low fuel level warning light illuminates when there is much more than the specified 2.2 gallons of gas remaining and the “miles to empty” display is inaccurate. Third, the combination of the gas gauge reading less than full even though it is full, coupled with the fuel gauge reading close to empty when it is not, leads some consumers to reasonably, but incorrectly, believe the fuel tank cannot hold its stated capacity. As a result of the apparent reduced fuel capacity created by the Defect in the RAV4 Hybrid’s fuel tank, Toyota’s representations as to the Subject Vehicles’ fuel tanks are misleading and fraudulent.

43. The Defect causes the affected vehicles to functionally have a markedly lower driving range than designed.

44. Although the Defect does not manifest in each of the Subject Vehicles, it is present in each of the Subject Vehicles.

45. The Defect causes the Subject Vehicles to suffer a diminished value in that the Subject Vehicle:

- a. Appears to not have the fuel capacity represented by Toyota;
- b. Appears to have a lower fuel capacity than gas-only models;
- c. Appears to have a lower driving range than represented by Toyota;
- d. Forces owners to make more frequent trips to the fuel pump and expend more time engaged in this activity; and

- e. Forces owners to cycle the starting components more frequently during increased fill ups.

46. The apparent fuel tank capacity and driving range of a vehicle are material facts that consumers rely on when deciding whether to purchase a vehicle.

47. Had Toyota disclosed the existence of the Defect, Plaintiffs and the Class would not have purchased their Subject Vehicles, or would have paid substantially less for them.

48. Additionally, the Defect creates environmental hazards when drivers, misled by Toyota as to the actual fuel level of their vehicles, attempt to top-off the fuel tank after the fuel pump's automatic shut-off has triggered seemingly prematurely. Topping off a fuel tank is likely to result in fuel spills; a hazard Toyota recognizes and warns against in its Owner's Manual.

Toyota's Warranty-Related Practices

49. In its New Vehicle Limited Warranty, Toyota agrees to repair defects reported within the earlier of three years or 36,000 miles, so long as the vehicle owner tenders the vehicle to a Toyota authorized dealer for repair. The Warranty Information Booklet included with all Subject Vehicles provides that:

This warranty covers repairs and adjustments needed to correct defects in materials or workmanship of any part supplied by Toyota... Coverage is for 36 months or 36,000 miles, whichever occurs first...

50. Further, Toyota maintains a Federal Emission Control Warranty wherein Defendants represent the RAV4 Hybrid was "designed, built and equipped to conform at the time of sale with applicable federal emissions standards", that the Subject Vehicle is "free from defects in materials and workmanship that may cause the vehicle to fail to meet these standards", and that "[f]ederal regulations require that this warranty be in effect for two years or 24,000 miles from the vehicle's in-service date, whichever occurs first" but "under the terms of the Basic Warranty, Toyota provides coverage of three years or 36,000 miles, whichever occurs first."

51. The Federal Emissions Control Warranty covers the fuel tank for the RAV4 Hybrid.

52. Toyota evades its warranty obligations by claiming that the Defect is not a defect at all, but a normal operating condition, and declines any warranty coverage.

Toyota's Knowledge of the Defect

53. Upon information and belief, Toyota had knowledge of the Defect prior to the Subject Vehicles' release.

54. Manufactures such as Toyota perform rigorous product testing prior to releasing their vehicles to confirm, among other things, the vehicle's compliance with specification representations and marketing materials Toyota intends to provide to the public, as well as compliance with state and federal regulations.

55. On information and belief, such product testing would include testing to determine the apparent fuel capacity of the Subject Vehicles when utilizing a commonly used gas pump with an automatic shutoff nozzle and the correct calibration of the fuel gauge.

56. As a result, Toyota was well aware of the Defect described herein yet continued to make its misleading statements regarding the Subject Vehicles.

57. In November of 2019, Toyota provided a Tech Tip to its authorized dealers and repair shops regarding this problem with the 2019 RAV4 Hybrid fuel system.

58. In the Tech Tip, Toyota characterized the issue as a fuel gauge concern "related to fuel gauge reading less than full."

59. Toyota's repair technicians were advised to test the fuel gauge.

60. If the fuel gauge was operational, Toyota directed its technicians to advise that no further repairs were recommended and that the concern is under investigation.

61. KDFW, a Fox TV affiliate in the Dallas/Ft. Worth area conducted a consumer investigation and publicly reported, “On Toyota message boards there are hundreds of complaints from consumers, and the National Highway Traffic Safety Administration listed more than 100 fuel tank related complaints about the RAV4 Hybrid at the time of this report all making the same claim that the gas tank on the redesigned 2019 RAV4 hybrid just won’t fill. Drivers say that means more trips to the gas station and shorter driving distance range on a full tank despite Toyota’s ads for the car which say just the opposite.”²

62. Plano-based Toyota acknowledged to KDFW that it is aware of the problem and is investigating but would not talk to a reporter on camera or address why it is continuing to sell 2019 and 2020 RAV4 Hybrids without proactively disclosing all of the information to potential buyers.

63. After KDFW’s investigative report, Toyota began offering what it is calling an interim fix until a final remedy is identified.

64. KDFW reported that “Hundreds of owners FOX 4 spoke to from across the country said they bought the hybrid because it was supposed to mean fewer trips to the gas station and longer driving distances on a full tank. But that hasn’t been their experience.”

65. Toyota acknowledges that its “interim fix” “may not prevent the condition from reoccurring.”

66. In a full statement from Toyota of North America, Toyota stated in part: “Until a final remedy is identified, the interim option is to install a replacement tank. Based on our ongoing investigation, replacing the fuel tank may mitigate these concerns, although it may not prevent the condition from reoccurring.”

² <https://www.fox4news.com/news/consumer-alert-gas-tank-design-flaw> (Last visited February 13, 2020).

Plaintiffs David Pulkrabek and Barbara Rainey

67. In August of 2019, Plaintiffs David Pulkrabek and Barbara Rainey saw an online advertisement for a 2019 RAV4 Hybrid listed for sale at Fowler Automotive, located in Tulsa, Oklahoma. Plaintiff Pulkrabek called the dealership from his home in Missouri and negotiated the sales price and trade-in value the dealership would give for Plaintiffs' old vehicle. The purchase price was approximately \$37,195.00.

68. Prior to the purchase, Pulkrabek and Rainey reviewed multiple materials concerning the fuel tank capacity and claimed range. The available fuel range claimed by Toyota, which they viewed on Toyota's website and while reviewing an E-Brochure during their research of the vehicle, was important to them. They saw additional representations at the time of sale on both the Monroney (window) sticker and a pamphlet they were given with the vehicle. They would not have purchased this vehicle if they had known that the fuel tank was defective resulting in inaccurate fuel level readings.

69. Once the deal was complete, Plaintiffs Pulkrabek and Rainey traveled to the dealership to pick up their 2019 RAV4 Hybrid. Plaintiffs purchased the Subject Vehicle and drove it back to their home in Springfield, Missouri.

70. Plaintiffs Pulkrabek and Rainey purchased (and still own) this vehicle, which is used for personal, family and/or household uses. Their vehicle bears Vehicle Identification Number JTMEWRFBV1KD511045.

71. On multiple occasions while refueling their Vehicle, Plaintiffs observed that the fuel tank would not fill to a "full" reading on the fuel gauge before the pump's automatic shutoff would engage. Plaintiffs would attempt to top-off the fuel but were never able to put enough gas in the fuel tank so that the fuel gauge would read "full."

72. Rather, the most Plaintiffs could add into their fuel tank when the fuel gauge read nearly empty was approximately 11 gallons of gas, thereby reducing their apparent driving range from that promised by Toyota. The theoretical maximum range of the vehicle is 594.5 to 551 miles (the EPA's estimated miles per gallon for the Subject Vehicles is 41 city/ 38 highway). Instead, the range is actually between 451 and 418 miles based upon the represented MPG and the apparent fuel tank capacity. This represents an almost 25% reduction from what Plaintiffs and the Class were promised.

73. This caused Plaintiffs to make more trips to refuel their Subject Vehicle than they should have been required to do based on Toyota's representations.

74. Plaintiffs took the Subject Vehicle to Reliable Toyota in Springfield, Missouri, an authorized Toyota dealership, to address this issue on three occasions. The dealership replaced multiple components on the Subject Vehicle and represented that it had addressed the fuel tank issue.

75. After the third trip to the dealership's shop, Plaintiffs traveled across the street to refuel their Subject Vehicle. According to their gas gauge, Plaintiffs were still unable to fill up their fuel tank before the pump nozzle clicked off.

76. Plaintiff Pulkrabek then called Toyota's customer service line and informed Toyota of the issue. Toyota represented they would investigate a potential lemon law claim based on Plaintiffs' complaint.

77. On January 16, 2020, Toyota responded with a letter to Plaintiff Pulkrabek wherein Toyota stated "we have determined that the concern that you reported is a normal operating characteristic of the vehicle. Therefore, we cannot offer you any assistance at this time."

78. As a result of the fuel tank Defect and Toyota's refusal to comply with its warranties and inability to remediate the issue, Plaintiffs Pulkrabek and Rainey have suffered actual damages in the form of the diminished value of their 2019 RAV4 Hybrid.

79. Plaintiffs Pulkrabek and Rainey have suffered an ascertainable loss as a result of Defendant's omissions and/or misrepresentations associated with the fuel tank Defect, including, but not limited to, more frequent fueling, out of pocket loss associated with the fuel tank Defect, future attempted repairs, and diminished value of their vehicle.

80. Neither Defendant, nor its agents, dealers or other representatives informed Plaintiffs of the existence of the fuel tank Defect prior to purchase.

81. Plaintiffs would not have purchased the Subject Vehicle, or would have paid substantially less for it, had Defendant disclosed the Defect prior to sale.

Plaintiff Andrew Schwab

82. On October 27, 2019, Plaintiff Andrew Schwab purchased his 2019 Toyota RAV4 Hybrid from Reliable Toyota in Springfield, Missouri for approximately \$25,943.61.

83. Plaintiff purchased (and still owns) this vehicle, which is used for personal, family and/or household uses. His vehicle bears Vehicle Identification Number JTMMWRFVXKD025474.

84. Plaintiff Schwab purchased his Subject Vehicle, in part, because of the long distances he expected to be able to travel on a single tank of fuel. Prior to his purchase, Plaintiff Schwab visited Toyota's website and saw the claimed fuel tank capacity and expected gas mileage for the RAV4. At the time of purchase, Plaintiff Schwab reviewed a pamphlet containing the fuel tank capacity and expected miles per gallon and saw fuel capacity representations on the Monroney (window) sticker during his test drive.

85. However, during use, Plaintiff Schwab did not get the expected fuel range out of his Vehicle and was forced to make more frequent fuel stops than expected.

86. On multiple occasions while refueling his Vehicle, Plaintiff observed that the fuel tank would not fill to a “full” reading on the fuel gauge before the pump’s automatic shutoff would engage. Plaintiff would attempt to top-off the fuel but were never able to put enough gas in the fuel tank so that the fuel gauge would read “full.”

87. Rather, the most Plaintiff could put into his tank when the fuel gauge read nearly empty was approximately 11 gallons of gas, thereby reducing his apparent driving range from that promised by Toyota. The theoretical maximum range of the vehicle is 594.5 to 551 miles (the EPA estimated miles per gallon for the Subject Vehicles is 41 city/ 38 highway). Instead, the range is actually between 451 to 418 miles based upon Toyota’s represented MPG and the apparent fuel tank capacity. This represents an almost 25% reduction from what Plaintiff and the Class were promised.

88. This caused Plaintiff to make more trips to refuel his Subject Vehicle than he should have been required to do.

89. A representative from Toyota called Plaintiff Schwab after he had the Subject Vehicle for a few weeks to ask him about his experience with the Subject Vehicle.

90. Plaintiff Schwab informed the Toyota representative about the fuel tank issue.

91. The Toyota representative did not offer any explanation or advise Plaintiff Schwab of anything that could be done to fix the issue.

92. Instead, the Toyota representative told Plaintiff Schwab he would get back to him about the fuel tank issue.

93. No one from Toyota has since called Plaintiff Schwab to address the fuel tank issue.

94. Plaintiff Schwab also advised the dealership regarding the fuel tank issues when he took the vehicle in for maintenance. He was advised that there was nothing wrong with the vehicle and it was operating as designed. Based upon this advice by the Toyota authorized dealership, there was nothing Plaintiff Schwab could request them to repair.

95. As a result of the fuel tank Defect and Toyota's refusal to comply with its warranties, Plaintiff has suffered actual damages in the form of the diminished value of his 2019 RAV4 Hybrid.

96. Plaintiff Schwab has suffered an ascertainable loss as a result of Defendant's omissions and/or misrepresentations associated with the fuel tank Defect, including, but not limited to, more frequent fueling, out of pocket loss associated with the fuel tank Defect, future attempted repairs, and diminished value of his vehicle.

97. Neither Defendant, nor its agents, dealers or other representatives informed Plaintiff of the existence of the fuel tank Defect prior to purchase.

98. Plaintiff would not have purchased the Subject Vehicle, or would have paid substantially less for it, had Defendant disclosed the Defect prior to sale.

Plaintiffs Wesley and Whitney Dickman

99. On November 14, 2019, Plaintiffs Wesley and Whitney Dickman purchased their 2019 Toyota RAV4 Hybrid from Reliable Toyota in Springfield, Missouri for \$45,443.85.

100. Prior to this purchase, the Dickman Plaintiffs visited Toyota's website where they saw the claimed fuel tank capacity and expected gas mileage for the RAV4 and also viewed similar representations in the E-brochure for the vehicle. While test driving the Subject Vehicle, the Dickman Plaintiffs reviewed the Monroney (window) sticker where the representations regarding fuel capacity and range were made.

101. Plaintiffs purchased (and still own) this vehicle, which is used for personal, family and/or household uses. Their vehicle bears Vehicle Identification Number JTMDWRFVXKD519348.

102. The Dickman Plaintiffs purchased the Subject Vehicle, in part, because of the long distances they expected to be able to travel on a single tank of fuel.

103. However, due to the apparent diminished capacity of the fuel tank, the Dickman Plaintiffs did not get the expected fuel range out of their Vehicle and were forced to make more frequent fuel stops than expected.

104. On multiple occasions while filling up their Vehicle, Plaintiffs observed that the fuel tank would not fill to a “full” reading on the fuel gauge before the pump’s automatic shutoff would engage. Plaintiffs would attempt to top-off the fuel but were never able to put enough gas in the fuel tank so that the fuel gauge would read “full.”

105. Rather, the most Plaintiffs could put into their tank when the fuel gauge read “empty” was approximately 11 gallons of gas, thereby reducing their apparent driving range. The theoretical maximum range of the vehicle is 594.5 to 551 miles (the EPA estimated miles per gallon for the Subject Vehicles is 41 city/ 38 highway). Instead, the range is actually between 451 to 418 miles based upon the apparent fuel tank capacity. This represents an almost 25% reduction from what Plaintiffs and the Class were promised.

106. This caused Plaintiffs to make more trips to refuel their Subject Vehicle than they should have been required to do.

107. The Dickman Plaintiffs took their Subject Vehicle into Reliable Toyota for a 5,000-mile service.

108. At that time, Plaintiff Whitney Dickman reported the fuel tank issue to a Toyota representative.

109. Despite requests for the dealership to address the issue, nothing was done. When pressed, the Toyota representative stated that there was not a problem with the fuel tank and it was operating as designed.

110. Toyota did not offer to repair the issue and did not suggest any fix was being investigated. As a result of the fuel tank Defect and Toyota's refusal to comply with its warranties, Plaintiffs have suffered actual damages in the form of the diminished value of their 2019 RAV4 Hybrid.

111. The Dickman Plaintiffs have suffered an ascertainable loss as a result of Defendant's omissions and/or misrepresentations associated with the fuel tank Defect, including, but not limited to, more frequent fueling, out of pocket loss associated with the fuel tank Defect, future attempted repairs, and diminished value of their vehicle.

112. Neither Defendant, nor its agents, dealers or other representatives informed Plaintiffs of the existence of the fuel tank Defect prior to purchase.

113. Plaintiffs would not have purchased the Subject Vehicle, or would have paid substantially less for it, had Defendant disclosed the Defect prior to sale.

Plaintiff Ken Ly

114. In August 2019, Plaintiff Ken Ly purchased his 2019 Toyota RAV4 Hybrid XSE from Piercely Toyota in Milpitas, California for approximately \$34,745.

115. Plaintiff purchased (and still owns) this vehicle, which is used for personal, family and/or household uses. His vehicle bears Vehicle Identification Number 2T3EWRV1KW032174.

116. Primary drivers of Plaintiff Ly's decision to purchase the 2019 RAV4 Hybrid, although more expensive than comparable gas models, including the RAV4 non-hybrid, were Toyota's promised savings on gas, the driving range offered, including representations by Toyota that he would get on average 41/38/40 mpg (city/highway/combined), giving it a range of over 550 miles.

117. Plaintiff Ly decided against purchasing other vehicles and instead purchased the Toyota RAV4 Hybrid because of Toyota's representations. Other vehicles he considered purchasing included the Subaru Outback, Honda CRV and Mazda CX5.

118. Prior to purchase, Plaintiff Ly reviewed Toyota's sales and promotional materials, including Toyota's website and the RAV4 Hybrid brochure where he looked at the specifications, pricing and features for this car. He also researched his vehicle online by reading articles and watching YouTube videos of people reviewing the car. He also saw Toyota ads on television for the RAV4 Hybrid and received targeted advertisements from Toyota when he was researching cars online. Plaintiff also test drove his vehicle, spoke with the dealer sales representative, and reviewed specifications in the Owner's Manual.

119. However, during use, Plaintiff Ly did not get the expected fuel range out of his Subject Vehicle and was forced to make more frequent fuel stops than expected.

120. Plaintiff Ly encountered the fuel tank Defect on his first attempt to refuel. From this point on, each time he tried to fill his vehicle to capacity the gas pump would appear to prematurely shut-off because the gauge would not read full. Even when the low fuel light was on, Plaintiff Ly could not put more than 10 gallons of gas into the fuel tank before the nozzle would automatically shut-off, indicating the fuel tank was full.

121. As a result of the fuel tank Defect, Plaintiff Ly does not get the 550 plus mile range Toyota promised. When Plaintiff Ly drove his new car off the lot it had 5 miles on it and showed an estimated driving range of 550 miles. Since then, he has never achieved anything close to this range. At this point, his average range is 435 miles before the fuel gauge reads empty. This is significantly less than the range he was promised prior to purchase and at the time of sale and for which he paid a premium for his hybrid vehicle. As a result of the fuel tank Defect, Plaintiff Ly has had to make more trips to the gas station to refuel.

122. In and around October 2019, Plaintiff Ly took his Subject Vehicle into Piercey Toyota, in Milpitas, California for his 5,000-mile service at which time he mentioned his problem with the fuel tank Defect and asked his Toyota dealership to diagnose and fix the problem. At the time, Plaintiff Ly's vehicle was within the New Vehicle Limited Warranty of 3 years/36,000 miles, Federal Emission Control Warranty, and the California Emission Control Warranty. The dealership kept Plaintiff Ly's vehicle overnight but was not able to diagnose or repair the fuel tank Defect at that time. Plaintiff Ly had to get alternate transportation to/from work.

123. On or about early January 2020, while still under warranty, Plaintiff Ly took his Subject Vehicle to Piercey Toyota, in Milpitas, California for a second time to try and diagnose and repair the fuel tank Defect. At this time, the dealership informed him Toyota was aware of the problem and was investigating but offered no indication that Toyota could or would fix his vehicle and provided no timeframe for when a fix might be forthcoming.

124. At all relevant times, Plaintiff Ly has driven the vehicle in a foreseeable manner and the manner in which it was intended to be used.

125. As a result of the fuel tank Defect and Toyota's refusal to comply with its warranties, Plaintiff has suffered actual damages in the form of the diminished value of his 2019 RAV4 Hybrid.

126. Plaintiff Ly has suffered an ascertainable loss as a result of Defendant's omissions and/or misrepresentations associated with the fuel tank Defect, including, but not limited to, more frequent fueling, out of pocket loss associated with the fuel tank Defect, future attempted repairs, and diminished value of his vehicle.

127. Neither Defendant, nor its agents, dealers or other representatives informed Plaintiff of the existence of the fuel tank Defect prior to purchase. Plaintiff would not have purchased the Subject Vehicle, or would have paid substantially less for it, had Defendant disclosed the Defect prior to sale.

CLASS ACTION ALLEGATIONS

128. Plaintiffs bring this action on their own behalf, and on behalf of a nationwide class pursuant to Rules 23(a), 23(b)(2), and/or 23(b)(3) of the Federal Rules of Civil Procedure defined as all persons, entities or organizations who, at any time as of the entry of the Preliminary Approval Order, own or owned, purchase(d) or lease(d) Subject Vehicles distributed for sale or lease in any of the fifty States, the District of Columbia, Puerto Rico and all other United States territories and/or possessions.

129. Excluded from the Class are: (a) Toyota, its officers, directors and employees; its affiliates and affiliates' officers, directors and employees; its distributors and distributors' officers, directors and employees; and Toyota Dealers and Toyota Dealers' officers and directors; (b) Plaintiffs' Counsel; (c) judicial officers and their immediate family members and associated

court staff assigned to this case; and (d) persons or entities who or which timely and properly exclude themselves from the Class as provided in this Settlement Agreement.

130. Numerosity. Upon information and belief, the Class is so numerous that joinder of all members is impracticable. Although the exact number and identities of individual members of the Class are unknown at this time, such information being in the sole possession of Toyota and obtainable by Plaintiffs only through the discovery process, Plaintiffs believe, and on that basis allege, Defendants sold over 90,000 Subject Vehicles. As a result, there are far too many class members to be practically joined in a single action.

131. Existence and predominance of common questions. Common questions of law and fact exist as to all members of the proposed class and predominate over questions affecting only individual class members. These common questions include:

- a. Whether the Subject Vehicles were materially defective when sold;
- b. Whether Defendants concealed the material Defect in the Subject Vehicles;
- c. Whether Defendants had a duty to disclose the material Defects in the Subject Vehicles;
- d. Whether Defendants' marketing of the Subject Vehicles was likely to deceive or mislead consumers;
- e. Whether Defendants' conduct violates any applicable warranties;
- f. Whether Plaintiffs and class members were injured as a direct result of Defendants' conduct;
- g. Whether the parties and class members are entitled to rescission of contract based upon mistake of fact;

- h. Whether Defendants violated the Missouri Merchandising Practices Act;
- i. Whether Defendants engaged in fraud;
- j. Whether equitable tolling applies to the statutes of limitation; and
- k. Whether Defendants had a duty to disclose the existence of the Defect in the Subject Vehicles to their customers.

132. Typicality. Plaintiffs' claims are typical of the claims of the proposed classes. Plaintiffs and the class members they propose to represent purchased the defective Subject Vehicles, all of which contained the same Defect, Plaintiffs and the putative class suffered the same or similar damages, and Defendants' conduct gives rise to the same or similar claims for Plaintiffs and putative class members.

133. Superiority. The action may be certified under Rule 23(b)(3) because common questions predominate as described above and because a class action is the best available method for the fair and efficient adjudication of this controversy. This litigation involves technical issues that will require expert testimony and targeted discovery of sophisticated defendants, and could not practically be taken on by individual litigants. In addition, individual litigation of class members' claims would be impracticable and unduly burdensome to the court system and has the potential to lead to inconsistent results. A class action presents fewer management problems and provides the benefits of single adjudication, economies of scale, and comprehensive supervision by a single court.

134. In the alternative to class certification under Rule 23(b)(3), the proposed classes may be certified under Rule 23(b)(2) because Defendants have acted or refused to act on grounds generally applicable to the class, thereby making final injunctive relief or corresponding declaratory appropriate with respect to the class as a whole.

COUNT I

VIOLATION OF MAGNUSON-MOSS WARRANTY ACT

**(15 U.S.C. §§ 2301, *et seq.*)
(Nationwide Class)**

135. Plaintiffs incorporate the preceding paragraphs as if set out fully herein.

136. Plaintiffs bring this class on their own behalf and on behalf of a Nationwide Class, as defined above, against Defendants.

137. The Subject Vehicles are “consumer product[s]” under 15 U.S.C. § 2301(1).

138. Plaintiffs and members of the putative class are “consumers” under 15 U.S.C. § 2301(3).

139. Defendants are “suppliers” and “warrantors” within the meaning of 15 U.S.C. § 2301(4)-(5).

140. Defendants provided purchasers of the Subject Vehicles with a written warranty as defined by 15 U.S.C. § 2301(6).

141. Defendants sold the Subject Vehicles with the written warranty described above.

142. Defendants breached this warranty by selling the Subject Vehicles with the Defect and other deficiencies described more fully above.

143. As Defendants have represented, this Defect cannot be repaired.

144. Defendants’ breach of warranty has deprived Plaintiffs and class members of the benefit of their bargain. The amount in controversy of Plaintiffs’ individual claims meets or exceeds the sum or value of \$25. In addition, the amount in controversy meets or exceeds the sum or value of \$50,000 (exclusive of interest and costs) computed on the basis of all claims to be determined in this suit.

145. Defendants had an opportunity to disclose information concerning the Subject Vehicle's inability to perform as warranted, and to cure its breach of warranties. Defendants have failed to do so.

146. As a direct and proximate result of Defendants' conduct, Plaintiffs and other members of the Nationwide Class have suffered damages and continue to suffer damages, including economic damages at the point of sale, that is, the difference between the value of the Subject Vehicles as promised and the value of the Subject Vehicles as delivered. Plaintiffs and members of the Nationwide Class are entitled to legal and equitable relief against Defendants, including damages, specific performance, attorney fees, costs, and other relief as appropriate.

COUNT II

COMMON LAW FRAUD

(Nationwide Class or, Alternatively, Missouri Class)

147. Plaintiffs incorporate the preceding paragraphs by reference as if set out fully herein.

148. Plaintiffs bring this claim on behalf of themselves and a proposed Nationwide Class against Defendants.

149. Defendants made these representations, *inter alia*, in their product brochures, website, advertising materials, specifications, and in the Owner's Manual they provided to their customers.

150. Defendants made these representations for the purpose of driving sales to consumers.

151. Defendants knew that their representations were misleading, or acted in deliberate ignorance and/or with reckless disregard of the truth of their representations.

152. Defendants knew that the Subject Vehicles suffered from the fuel tank Defect.

153. Even though Defendants knew of this Defect, they failed to disclose the Defect to its customers at the point of sale and continued to make the representations described herein to drive sales.

154. Defendants had a duty to disclose these material facts because they had exclusive knowledge of the material facts described above and such facts were not known or reasonably knowable by the Plaintiffs and putative class; because Toyota actively concealed these material facts from Plaintiffs and the putative class; and because it made representations regarding the Subject Vehicles specifications to federal agencies.

155. Defendants actively concealed or suppressed these material facts at least since 2019, in order to profit from the sale of the Subject Vehicles and to defraud Plaintiffs and class members.

156. From the release of the 2019 model year to present, consumers paid hundreds of millions of dollars for Defendants' defective RAV4 Hybrid due to Defendants' misleading statements and omissions concerning the Subject Vehicles' ability to perform as promised.

157. Plaintiffs and the proposed Nationwide Class had no knowledge of, and had no reason to know, at the time of purchase that Defendants had concealed or suppressed the Defect facts and/or had misrepresented material facts relating to the Subject Vehicles.

158. As a result of Defendants' fraud, Plaintiffs and proposed Nationwide class members have suffered diminished value of their Subject Vehicles.

159. Because Defendants' conduct was wanton, deliberate, oppressive and malicious, or in reckless disregard of Plaintiffs' and class members' rights, Plaintiffs and the proposed

Nationwide Class are entitled to an award of punitive or exemplary damages in an amount to be determined at trial.

COUNT III

UNJUST ENRICHMENT

(Nationwide Class or, Alternatively, Missouri Class)

160. Plaintiffs incorporate the preceding paragraphs as if set out fully herein.

161. Plaintiffs bring this claim in the alternative to their contract-based claims pursuant Fed. R. Civ. P. 8(a)(3).

162. From the release of model year 2019 to present, consumers paid hundreds of millions of dollars for Defendant's defective Subject Vehicles due to Defendants' misleading statements and omissions concerning the Subject Vehicles.

163. Plaintiffs and class members are entitled to the return of all payments by them for the defective Vehicles due to the misleading statements and omissions by the Defendants.

164. By reason of the above-described payments, Defendants have received money, directly or indirectly, to which they were not entitled, as the expense of the Plaintiffs and class members. Defendants therefore have been unjustly enriched in an amount to be established at trial.

COUNT IV

MISSOURI MERCHANDISING PRACTICES ACT

(Missouri Class)

165. Plaintiffs incorporate the preceding paragraphs as if set out fully herein.

166. Plaintiffs bring this count on their own behalf and on behalf of the Missouri Class pursuant to 407.025.2 RSMo.

167. Defendants advertised that the Subject Vehicles would “[g]o farther” than the gas-only version.

168. In fact, however, and as Defendant knew or should have known, the RAV4 Hybrid’s fuel gauge would read “empty” while there was still a significant amount of fuel remaining in the fuel tank and fail to read full even though it was full, resulting in a shorter driving range than expected.

169. Defendants’ representations regarding the Subject Vehicles’ were, therefore, misleading and made knowingly, or without knowledge as to its truth or falsity, by Defendants and were therefore deception, fraud, false pretense, false promise, and misrepresentation as described in § 407.020, RSMo., and constitute a violation of that statute, which prohibits such practices.

170. Pleading alternatively, Defendants’ representation that the Subject Vehicles could “[g]o farther” than the gas-only version constituted the omission or suppression of a material fact in violation of the provisions of § 407.020, RSMo. in that it was known the Subject Vehicles’ fuel gauge showed “empty” before it was actually empty and fail to read full even though it was full, as set out above, and further that testing showed this Defect in the product before it was sold to consumers.

171. Defendant’s representation regarding the Subject Vehicles’ apparent fuel capacity was material to Plaintiffs’ and proposed class members’ decisions to purchase the Vehicle.

172. Plaintiffs and class members relied on Defendants’ representations to their detriment by purchasing the defective Subject Vehicles.

173. Plaintiffs and class members purchased the Subject Vehicles for personal or household use in Missouri.

174. Proposed class members also relied on Defendants' representations to their detriment and suffered similar damages as those of Plaintiffs.

175. Defendants knew or should have known their statements were misleading and would deceive consumers, including Plaintiffs and the Missouri Class.

176. Plaintiffs and Missouri class members suffered ascertainable loss and injury-in-fact, including the loss of money and property, as a result of Defendants' misrepresentations and omissions, which are unfair, deceptive, untrue, or misleading in violation of the MMPA.

177. Plaintiffs and the Missouri Class would not have purchased the Subject Vehicles had they known of the deceptive nature of Defendants' misrepresentations and omissions, or they would have paid less for the Subject Vehicles.

178. Plaintiffs and the proposed class have suffered diminution in the performance of their Subject Vehicles vis-à-vis advertised performance.

179. Defendants' conduct was intentional, wrongful, and malicious and entitled Plaintiffs and proposed class members to the recovery of punitive damages as authorized by statute at § 407.025.1, RSMo.

180. Plaintiffs are entitled to recover their attorney's fees and costs pursuant to statute.

COUNT V

VIOLATIONS OF CALIFORNIA'S CONSUMER LEGAL REMEDIES ACT ("CLRA")

**(Cal. Civ. Code §§ 1750, *et seq.*)
(California Class)**

181. Plaintiffs incorporate the preceding paragraphs as if set out fully herein.

182. Plaintiffs bring this claim on their own behalf and on behalf of the California Class.

183. Defendants advertised that the Subject Vehicles would "[g]o farther" than the gas-only version.

184. In fact, however, and as Defendant knew or should have known, the RAV4 Hybrid's fuel gauge would read "empty" while there were still several gallons of fuel remaining in the tank and fail to read full even though it was full, resulting in a shorter driving range than expected.

185. Defendants engaged in unfair and deceptive acts in violation of the CLRA by the practices described above, and by knowingly and intentionally concealing from Plaintiffs and class members that the Subject Vehicles suffer from a Defect (and the costs, risks, and diminished value of the vehicles as a result of this problem). These acts and practices violate, at a minimum, the following sections of the CLRA:

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

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

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

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

186. Defendants' unfair or deceptive acts or practices occurred repeatedly in Defendants' trade or business, and were capable of deceiving a substantial portion of the purchasing public.

187. Defendants knew that the Subject Vehicles were defectively designed or manufactured, would fail prematurely, and were not suitable for their intended use.

188. Defendants were under a duty to Plaintiffs and the class members to disclose the defective nature of the Subject Vehicles because:

- a. Defendants were in a superior position to know the true state of facts about the Defect and associated repair costs in the Subject Vehicles;
- b. Plaintiffs and the class members could not reasonably have been expected to learn or discover that the Subject Vehicles were defective;
- c. Defendants knew that Plaintiffs and the class members could not reasonably have been expected to learn or discover the Defect and the associated repair costs that it causes until the manifestation of the Defect; and
- d. Defendants actively concealed the Defect and the associated repair costs by asserting to Plaintiffs and class members that their vehicles were not defective.

189. In failing to disclose the Defect, Defendants have knowingly and intentionally concealed material facts and breached their duty to disclose.

190. The facts concealed or not disclosed by Defendants to Plaintiffs and the class members are material in that a reasonable consumer would have considered them to be important in deciding whether to purchase Defendants' Subject Vehicles or pay a lesser price. Had Plaintiffs and the Class known about the defective nature of the Subject Vehicles, they would not have purchased or leased the Subject Vehicles or would have paid less for them.

191. Plaintiffs' and the other class members' injuries were proximately caused by Defendants' fraudulent and deceptive business practices.

192. Pursuant to Cal. Civ. Code § 1782 of the Act, Plaintiff notified Defendants in writing by certified mail of the particular violations of § 1770 of the Act and demanded that Defendants rectify the problems associated with the actions detailed above and give notice to all

affected consumers of Defendants' intent to so act. However, Defendants did not provide the relief requested within the time permitted under the Act. Therefore, Plaintiffs and the other class members seek all relief available under the CLRA.

COUNT VI

VIOLATIONS OF THE CALIFORNIA UNFAIR COMPETITION LAW

(Cal. Bus. & Prof. Code § 17200)

(California Class)

193. Plaintiffs incorporate the preceding paragraphs as if set out fully herein.

194. Plaintiffs bring this claim on their own behalf and on behalf of the California Class.

195. The California Unfair Competition Law ("UCL") prohibits acts of "unfair competition," including any "unlawful, unfair or fraudulent business act or practice" and "unfair, deceptive, untrue or misleading advertising." Cal. Bus. & Prof. Code § 17200.

196. Defendants advertised that the Subject Vehicles would "[g]o farther" than the gas-only version.

197. In fact, however, and as Defendant knew or should have known, the RAV4 Hybrid's fuel gauge would read "empty" while there were still several gallons of fuel remaining in the tank and fail to read full even though it was full.

198. Defendants have engaged in unfair competition and unfair, unlawful or fraudulent business practices by the conduct, statements, and omissions described above, and by knowingly and intentionally concealing from Plaintiffs and the class members that the Subject Vehicles suffer from a Defect (and the costs and diminished value of the vehicles as a result of these problems). Defendants should have disclosed this information because they were in a superior position to know the true facts related to the Defect, and Plaintiffs and class members could not reasonably be expected to learn or discover the true facts related to the Defect.

199. These acts and practices have deceived Plaintiffs and are likely to deceive the public. In failing to disclose the Defect and suppressing other material facts from Plaintiffs and the class members, Defendants breached their duties to disclose these facts, violated the UCL, and caused injuries to Plaintiffs and the class members. The omissions and acts of concealment by Defendants pertained to information that was material to Plaintiffs and the class members, as it would have been to all reasonable consumers.

200. The injuries suffered by Plaintiffs and the class members are not greatly outweighed by any potential countervailing benefit to consumers or to competition, nor are they injuries that Plaintiffs and the class members should have reasonably avoided.

201. Defendants' acts and practices are unlawful because they violate California Civil Code §§ 1668, 1709, 1710, and 1750, *et seq.*, and California Commercial Code § 2313.

202. Plaintiffs seek to enjoin further unlawful, unfair and/or fraudulent acts or practices by Defendants, to obtain restitutionary disgorgement of all monies and revenues generated as a result of such practices, and all other relief allowed under California Business & Professions Code § 17200.

COUNT VII

VIOLATION OF CALIFORNIA FALSE ADVERTISING LAW

**(Cal. Bus. & Prof. Code §§ 17500, *et seq.*)
(California Class)**

203. Plaintiffs incorporate the preceding paragraphs as if set out fully herein.

204. Plaintiffs bring this claim on their own behalf and on behalf of the California Class.

205. Defendants advertised that the Subject Vehicles would “[g]o farther” than the gas-only version.

206. In fact, however, and as Defendant knew or should have known, the RAV4 Hybrid's fuel gauge would read "empty" while there were still several gallons of fuel remaining in the tank and fail to read full even though it was full, resulting in a shorter driving range than expected.

207. California Business & Professions Code § 17500 states: "It is unlawful for any . . . corporation . . . with intent directly or indirectly to dispose of real or personal property . . . to induce the public to enter into any obligation relating thereto, to make or disseminate or cause to be made or disseminated . . . from this state before the public in any state, in any newspaper or other publication, or any advertising device, . . . or in any other manner or means whatever, including over the Internet, any statement . . . which is untrue or misleading, and which is known, or which by the exercise of reasonable care should be known, to be untrue or misleading."

208. Defendants caused to be made or disseminated through California and the United States, through advertising, marketing and other publications, statements that were untrue or misleading, and which were known, or which by the exercise of reasonable care should have been known to Defendants, to be untrue and misleading to consumers, including Plaintiffs and the other class members.

209. Defendants have violated section 17500 because the misrepresentations and omissions regarding the reliability and functionality of their Subject Vehicles as set forth in this Complaint were material and likely to deceive a reasonable consumer.

210. Plaintiffs and the other class members have suffered an injury in fact, including the loss of money or property, as a result of Defendants' unfair, unlawful, and/or deceptive practices. In purchasing or leasing their Subject Vehicles, Plaintiffs and the other class members relied on the misrepresentations and/or omissions of Defendants with respect to the reliability of the Subject Vehicles.

211. Defendants' representations were untrue because the Subject Vehicles were distributed with a Defect. Had Plaintiffs and the other class members known this, they would not have purchased or leased their Subject Vehicles and/or paid as much for them. Accordingly, Plaintiffs and the other class members overpaid for their Subject Vehicles and did not receive the benefit of their bargain.

212. All of the wrongful conduct alleged herein occurred, and continues to occur, in the conduct of Defendants' businesses. Defendants' wrongful conduct is part of a pattern or generalized course of conduct that is still perpetuated and repeated, both in the state of California and nationwide.

213. Plaintiffs, individually and on behalf of the other class members, request that this Court enter such orders or judgments as may be necessary to enjoin Defendants from continuing their unfair, unlawful, and/or deceptive practices and to restore to Plaintiffs and the other class members any money Defendants acquired by unfair competition, including restitution and/or restitutionary disgorgement, and for such other relief set forth below.

COUNT VIII

BREACH OF EXPRESS WARRANTY

(Nationwide Class or, alternatively, Missouri Class [Against Toyota Motor Sales, U.S.A., Inc.]

214. Plaintiffs incorporate the preceding paragraphs as if set out fully herein.

215. Plaintiffs bring this claim on their own behalf and on behalf of the Nationwide Class.

216. Alternatively, Plaintiffs bring this claim on behalf of the Missouri Class.

217. Defendants provided Plaintiffs and class members with the express warranties set out above.

218. Specifically, Defendants warranted that the Subject Vehicles had been manufactured in a workmanlike manner and were free of any material defects; and that in the event the Subject Vehicles suffered from defects in either of these respects, Defendants would correct such defects at no cost to Plaintiffs or class members.

219. The Subject Vehicles were not manufactured in a workmanlike manner and/or suffered from a material Defect as set out above.

220. Defendants have refused to and continue to refuse to comply with the terms of their warranty to correct the Defect outlined above.

221. The express warranty was in effect at all times relevant herein.

222. As a result, Plaintiffs and class members have suffered damages.

223. Defendants' conduct was done knowingly, wantonly, maliciously and/or in conscious disregard for the rights of Plaintiffs and the class, justifying the imposition of punitive damages.

COUNT IX

BREACH OF THE IMPLIED WARRANTY OF MERCHANTABILITY

(Nationwide Class or, Alternatively, the Missouri Class)

224. Plaintiffs incorporate the preceding paragraphs as if set out fully herein.

225. Plaintiffs bring this claim on their own behalf and on behalf of the Nationwide Class.

226. Alternatively, Plaintiffs bring this claim on behalf of the Missouri Class.

227. Plaintiffs and class members purchased new Subject Vehicles from Defendants.

228. Those new cars carried with them an implied warranty of merchantability.

229. The Subject Vehicles were not merchantable as set out above in that the Subject Vehicles:

- a. Could not pass without objection in the trade under the contract description;
- b. Were not fit for the ordinary purposes for which they were used;
- c. Were not adequately contained, packaged, and labeled; and
- d. Did not conform to the promises or affirmations of fact made by Toyota.

230. Defendants' conduct deprived Plaintiffs and the proposed class of the benefit of their bargain in that they paid more than the Subject Vehicles were worth in their actual condition.

231. As a direct and proximate result of Defendants' breach of their duties, Plaintiffs and proposed class members received goods whose condition substantially impairs their value. Plaintiffs and the proposed class have been damaged by the diminished value of the Subject Vehicles.

232. Plaintiffs and class members have complied with all obligations under the warranty, or otherwise have been excused from performance of said obligations as a result of Defendants' conduct described above.

233. Defendants' conduct was intentional, wrongful, and malicious and entitles Plaintiffs and class members to the recovery of punitive damages.

COUNT X

**VIOLATIONS OF SONG-BEVERLY CONSUMER WARRANTY ACT -
BREACH OF EXPRESS WARRANTY**

**(Cal. Civ. Code §§ 1791.2 & 1793.2(d))
(California Class)**

234. Plaintiffs incorporate the preceding paragraphs as if set out fully herein.

235. Plaintiffs bring this claim on their own behalf and on behalf of the California Class.

236. Plaintiffs and the other class members who purchased or leased the Subject Vehicles in California are “buyers” within the meaning of Cal. Civ. Code § 1791(b).

237. The Subject Vehicles are “consumer goods” within the meaning of Cal. Civ. Code § 1791(a).

238. Defendants are “manufacturers” of the Subject Vehicles within the meaning of Cal. Civ. Code § 1791(j).

239. Defendants made express warranties to Plaintiffs and the other class members within the meaning of Cal. Civ. Code §§ 1791.2 and 1793.2, as described above.

240. Plaintiff and other class members have requested repairs of the Defect pursuant to the express warranty, but have failed to receive such repairs.

241. Pursuant to Cal. Civ. Code §§ 1793.2 & 1794, Plaintiffs and the other class members are entitled to damages and other legal and equitable relief including, at their election, the purchase price of their Subject Vehicles, or the overpayment or diminution in value of their Subject Vehicles.

242. Pursuant to Cal. Civ. Code § 1794, Plaintiffs and the other class members are entitled to costs and attorneys’ fees.

COUNT XI

**VIOLATIONS OF SONG-BEVERLY CONSUMER WARRANTY ACT -
BREACH OF IMPLIED WARRANTY**

**(Cal. Civ. Code §§ 1791.2 & 1792)
(California Class)**

243. Plaintiffs incorporate the preceding paragraphs as if set out fully herein.

244. Plaintiffs bring this claim on their own behalf and on behalf of the California Class.

245. Plaintiffs and the other class members who purchased or leased the Subject Vehicles in California are “buyers” within the meaning of Cal. Civ. Code § 1791(b).

246. The Subject Vehicles are “consumer goods” within the meaning of Cal. Civ. Code § 1791(a).

247. Defendants are “manufacturers” of the Subject Vehicles within the meaning of Cal. Civ. Code § 1791(j).

248. Defendant impliedly warranted to Plaintiff and the other class members that the Subject Vehicles were “merchantable” within the meaning of Cal. Civ. Code §§ 1791.1 & 1792.

249. However, the Subject Vehicles do not have the quality that a reasonable purchaser would expect.

250. Cal. Civ. Code § 1791.1(a) states: “Implied warranty of merchantability” or “implied warranty that goods are merchantable” means that the consumer goods meet each of the following: (1) pass without objection in the trade under the contract description; (2) are fit for the ordinary purposes for which such goods are used; and (3) conform to the promises or affirmations of fact made on the container or label.

251. The Subject Vehicles would not pass without objection in the trade because of the Defect.

252. The Subject Vehicles are not fit for the ordinary purpose for which they are used because of the Defect.

253. The Subject Vehicles do not conform to the promises or affirmations of fact made by Defendants.

254. Defendants breached the implied warranty of merchantability by manufacturing and selling Subject Vehicles containing the Defect. The existence of the Defect has caused Plaintiff and the other class members to not receive the benefit of their bargain and have caused Subject Vehicles to depreciate in value.

255. As a direct and proximate result of the Defendants' breach of the implied warranty of merchantability, Plaintiffs and the other class members received goods whose defective condition substantially impairs their value to Plaintiffs and the other class members. Plaintiffs and the other class members have been damaged as a result of the diminished value of the Subject Vehicles.

256. Plaintiffs and the other class members are entitled to damages and other legal and equitable relief including, at their election, the purchase price of their Subject Vehicles, or the overpayment or diminution in value of their Subject Vehicles.

257. Pursuant to Cal. Civ. Code § 1794, Plaintiffs and the other class members are entitled to costs and attorneys' fees.

WHEREFORE, Plaintiffs and class members pray this Court enter judgment against Defendants for their damages, for punitive damages, for their costs incurred herein and for such other relief as the Court deems just and proper.

DEMAND FOR JURY TRIAL

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

Respectfully submitted,

Dated: October 14, 2021

By: *s/ Bonner C. Walsh by permission
Charles Everingham IV*

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CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing document was filed electronically in compliance with Local Rule CV-5(a). Therefore, this document was served on all counsel who are deemed to have consented to electronic service on October 14, 2021.

/s/ Bonner C. Walsh

Bonner C. Walsh