UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

ANGELA KILKENNY, WILLIAM BOLTON, TARA WILLIAMS, MONGLYN T. UTIDJIAN, DAVID SHUGERMAN, LINDSAY L. CLEGETT, TIMOTHY ENGLERT, VICKY GAFNEY and MARCUS STUBBINS on behalf of themselves and all others similarly situated, Plaintiffs, v. TOYOTA MOTOR CORPORATION and TOYOTA MOTOR NORTH AMERICA, INC., Defendants.	Civil Action No. **CLASS ACTION COMPLAINT** **JURY TRIAL DEMANDED**

CLASS ACTION COMPLAINT

Plaintiffs Angela Kilkenny, William Bolton, Tara Williams, Monglyn T. Utidjian, David Shugerman, Lindsay L. Clegett, Timothy Englert, Vicky Gafney and Marcus Stubbins allege for their class action complaint the following through their attorneys Squitieri & Fearon, LLP, on behalf of themselves and all others similarly situated based on personal knowledge as to their own vehicles and upon information and belief as to all other matters.

PRELIMINARY STATEMENT

1. Plaintiffs bring this action on behalf of themselves and on behalf of all similarly situated persons ("Class Members") in the United States who purchased or leased any Toyota vehicles identified herein whose telematics equipment was rendered wholly or partially inoperable when the major wireless carriers phased out "3G" beginning in early 2022 ("Class Vehicles"). The Class Vehicles' internet enabled features which includes Automatic Collision Notification; Enhanced Roadside Assistance; Emergency Assistance Button and Stolen Vehicle

Locator, *inter alia*, ("3G Features") were rendered inoperable after 3G was phased out by carriers and replaced with 4G and/or 5G due to defendants' use of obsolete telematics equipment they installed in the Class Vehicles which were 3G only telematics. The allegations herein are based on personal knowledge as to Plaintiffs' own experiences and are made as to other matters based on an investigation by counsel, including analysis of publicly available information.

2. This action was commenced to obtain refunds of overpayments and/or recompense for diminution in value, and/or the cost to replace the telematics features in Class Vehicles which were rendered inoperable when 3G was phased out.

PARTIES

3. Plaintiff Angela Kilkenny ("Kilkenny") is a resident of the State of New York who purchased a 2015 Toyota Camry LE.

4. Plaintiff William Bolton ("Bolton") is a resident of the State of New York who purchased a 2014 Sienna XLE.

5. Plaintiff Tara Williams ("Williams") is a resident of the State of Connecticut who purchased a 2017 Prius.

6. Plaintiff Monglyn T. Utidjian ("Utidjian") is a resident of the State of California who purchased a Toyota Prius.

7. Plaintiff David Shugerman ("Shugerman") is a resident of the State of Kentucky who purchased a 2014 Toyota Camry.

8. Plaintiff Lindsay L. Clegett ("Clegett") is a resident of the State of Kentucky who purchased a 2015 Camry 4D.

9. Plaintiff Timothy Englert ("Englert") is a resident of the State of Kentucky who purchased a 2016 4 Runner truck.

10. Plaintiff Marcus Stubbins ("Stubbins") is a resident of the State of Indiana who purchased a 2016 4 Toyota Camry 4S.

DEFENDANTS

A. Toyota Motor Corporation

11. Defendant Toyota Motor Corporation ("TMC") is a Japanese corporation located at 1 Toyota-Cho, Toyota City, Aichi Prefecture, 471-8571, Japan. TMC is the parent corporation of Defendant Toyota Motor North America, Inc. a California corporation. TMC has substantial control over TMNA, and TMNA acts for the benefit of TMC.

12. At all relevant times, TMC acted in the United States by itself and through TMNA and its other various entities, including in New York. TMC, itself and through TMNA and its other various entities, is in the business of designing, engineering, testing, validating, manufacturing, marketing, and selling Toyota and Lexus branded vehicles throughout the United States, including within New York.

13. According to Toyota' website, as of 2022, Toyota has 79 Toyota and Lexus branded dealerships in New York, has approximately 5,407 employees in New York and has spent approximately $1.34 billion in New York.

14. Toyota, itself and/or through its subsidiaries or agents, maintains an interactive website that is accessible in New York and from which it solicits business in New York, including by directing consumers to Toyota and Lexus dealerships in New York and throughout the United States, and markets its brand and sells its products in New York.

15. Toyota, itself and/or through its subsidiaries or agents, has also availed itself of the privilege of submitting to the jurisdiction of New York courts, including in *PixFusion LLC v. Toyota Motor North America, Inc.*, 1:10-cv-08176-JFK (S.D.N.Y.).

B. Toyota Motor North America, Inc.

16. Defendant Toyota Motor North America, Inc. ("TMNA") is incorporated in California, with its primary address at 6565 Headquarters Dr., Plano, Texas 75024. TMNA has significant and ongoing operations in New York. TMNA is a holding company of sales, manufacturing, engineering, and research and development subsidiaries of Toyota Motor Corporation located in the United States. TMNA is in the business of designing, engineering, testing, validating, manufacturing, marketing, and selling Toyota and Lexus branded vehicles throughout the United States, including within New York. TMNA was established in 2017 as a consolidation of TMNA, which housed Toyota's corporate functions in the USA, Toyota Motor Sales USA, Inc. which handled marketing, sales and distribution in the United States and Toyota Motor Engineering & Manufacturing North America which oversees all assembly plan operations in the USA.

17. TMNA is registered to do business in New York and, according to its website, operates an office in New York; TMC is foreign listed on the NYSE and has major assembly operations in, *inter alia*, Buffalo, New York and Princeton, New Jersey.

18. Lexus and Toyota are wholly owned brands and/or divisions of TMNA.

19. Toyota employs engineering, legal, compliance, and regulatory personnel to make decisions regarding these brand vehicles. These employees, on behalf of TMC and TMNA, ultimately made or ratified the decisions that allowed the subject Lexus and Toyota vehicles to be designed, manufactured, marketed, and sold with 3G only telematics systems.

FACTUAL ALLEGATIONS

20. Toyota is the world's second largest manufacturer of automotive vehicles and sells its vehicles across the United States through a network of over 1,200 dealers, including those in Plaintiffs' states.

21. Toyota designs, manufacturers, markets and sells its Toyota and Lexus branded vehicles across the United States, including in Plaintiffs' states.

22. In 2021, Toyota sold over 2.3 million Toyota and Lexus branded vehicles in the U.S.[1]

23. Toyota has branded itself as the maker of safe and dependable vehicles and has spent millions, if not billions, of dollars on extensive marketing and advertising campaigns to cement the association of safety, reliability and durability with its Toyota and Lexus brand automobiles, including the Class Vehicles.

24. The Defendants collectively designed, engineered, tested, validated, manufactured and placed in the stream of commerce the Class Vehicles equipped with the defective 3G only telematics, thereby overcharging Plaintiffs and class members for the Class Vehicles and subjecting Plaintiffs and Class Members to safety risks, increased costs and damaging the value of Plaintiffs and Class Members vehicles as further detailed below.

JURISDICTION

25. This Court has jurisdiction pursuant to 28 U.S.C. §§ 1332(d) and 1453, because (1) this action is a "class action," which contains class allegations and expressly seeks certification of a proposed class of individuals; (2) the putative Class consists of more than one hundred proposed class members; (3) the citizenship of at least one class member is different

[1] https://pressroom.toyota.com/toyota-motor-north-america-reports-u-s-december-year-end-2021-sales/ (last visited August 15, 2022).

from one Defendant's citizenship (Japan);[2] and (4) the aggregate amount in controversy by the claims of Plaintiffs and the putative Class exceeds $5,000,000, exclusive of interest and costs.

26. Venue is proper in this jurisdiction pursuant to 28 U.S.C. § 1391 because Defendants are subject to personal jurisdiction in this District, and the actions of the Defendants' that give rise to the claims against them in this action took place in part at least in this District.

CLASS ACTION ALLEGATIONS

27. Plaintiffs re-allege and incorporate the allegations contained in the paragraphs above.

28. Plaintiffs bring this action pursuant to Rule 23(b)(3) of the Federal Rules of Civil Procedure, on behalf of themselves and a Class and state subclasses consisting of:

> All persons who purchased or leased, anywhere in the United States, Toyota vehicles (collectively the "Class Vehicles") as follows:
>
> Lexus

2010-2017	All models
2018	6x

> Toyota

2011-2017	Toyota Sienna
2012-2016	Toyota Prius
2013-2018	Toyota Avalon/HV
2012-2018	Toyota RAV 4 EV
2012-2015	Toyota Plug-in Prius

[2] Because jurisdiction is based on the Class Action Fairness Act, 28 U.S.C. § 1332(d), even though Defendants are limited liability companies, each Defendant is a citizen of the states "where it has its principal place of business and ... under whose laws it is organized." 28 U.S.C. § 1332(d). That is, the rules applicable in traditional non-class diversity cases, under which the citizenship of limited liability companies would be determined by the citizenship of those companies' members, do **not** apply to this case. *Erie Ins. Exch. v. Erie Indemn. Co.*, 722 F.3d 154, 161 n.7 (3d Cir. 2013) (explaining that the Class Action Fairness Act "evinces an intent that suits by unincorporated associations be treated like suits by corporations in that the citizenship of the association for diversity purposes is determined by the entity's principal place of business and not by the citizenship of its members").

2013-2017	Toyota Camry/HV
2016-2017	Mirai
2010-2016	Prius
2012-2014	Toyota RAV4 EV
2012-2015	Toyota Prius Plug-in
2011-2017	Toyota Sienna
2012-2016	Toyota Avalon/HV
2012-2014	Toyota RAV4 EV
2012-2015	Toyota Prius Plug-in
2013-2017	Toyota Camry/HV
2016-2017	Toyota Mirai
2010-2016	Toyota Prius
2014-2018	Toyota Highlander/HV
2011-2017	Toyota Land Cruiser
2010-2019	Toyota 4Runner

and separate subclasses for purchasers who purchase class vehicles in New York, Connecticut, California, Indiana and Kentucky.

29. Plaintiffs reserve the right to amend the definition of the Class and subclasses.

30. This action is properly maintainable as a class action.

31. There could be over one million members of the Class based upon Toyota's own public sales figures of vehicles manufactured and sold in the USA sold with 3G only telematics. Accordingly, joinder of all members is impractical.

32. Common questions of law and fact exist as to all members of the Class and predominate over any questions solely affecting individual members of the Class. Among questions of law and fact in common to the Class are:

a. Whether Defendants misrepresented the 3G Only Limitations features of Class Vehicles;

b. The extent of the features which are inoperative when 3G is phased out;

c. Whether Defendants in their marketing and sale of the Cars violated the various state laws of New York, California, Connecticut, Kentucky and Indiana;

d. Whether Defendants breached express and/or implied warranties when they designed, manufactured and sold Cars with telematics systems with the 3G Only Limitations;

e. The extent of damages/diminution in value/overcharges resulting from the 3G Only Limited Telematics in the Cars.

33. Plaintiffs' claims are typical of the claims of each member of each of the Class in that Plaintiffs allege a common course of conduct by Defendants toward each member of the Class. Specifically, Defendants violated the federal law, warranty law, the NYGBL and similar laws of other states and breached its warranties with each member of the Class. Plaintiffs and the other members of the Class seek identical remedies under identical legal theories. There is no antagonism or material factual variation between Plaintiffs' claims and those of the Class.

34. Plaintiffs will fairly and adequately protect the interests of the members of the Class and has retained counsel who have extensive experience prosecuting class actions and who, with Plaintiffs are fully capable of, and intent upon, vigorously pursuing this action. Plaintiffs have no interest adverse to the Classes.

35. A class action is superior to all other available methods for the fair and efficient adjudication of this controversy. Furthermore, the damage that has been suffered by any individual Class member is likely not enough to sustain the expense and burden of individual litigation. Hence it would be impracticable for all members of the Class to redress the wrongs done to them individually. There will be no difficulty in the management of this action as a class action.

36. The prosecution of separate actions against Defendants would create a risk of inconsistent or varying adjudications with respect to the individual Class members, which

could establish incompatible standards of conduct for Defendants. In addition, adjudications with respect to individual members of the Classes could, as a practical matter, be dispositive of the interests of the other members of the Classes not parties to such adjudications, or could substantially impede or impair their ability to protect their interests.

37. The members of the Class are readily identifiable through Defendants' records.

38. Defendants have acted on grounds generally applicable to the Classes with respect to the matters complained of herein, thereby making appropriate the relief sought herein with respect to the Classes as a whole.

SUBSTANTIVE ALLEGATIONS

39. The effect on 3G only cars of the 3G phase out has been the subject of much critical commentary.

40. Consumer Reports succinctly described the situation:

> "As wireless carriers shut down their 3G networks over the coming months, millions of cars are losing the ability to automatically contact first responders after a crash…
> Automatic crash notification, which alerts first responders via a built-in cellular connection, often relies on aging 3G cellular networks to connect drivers with emergency services and share a vehicle's location. Even though automakers have been aware that these networks are shutting down permanently between February and July, many manufacturers still relied on it until as recently as the 2021 model year.
> "Shutting down the 3G network to prioritize newer technologies is positive in the long run," says Alex Knizek, an automotive engineer at CR. "But it is disappointing that some automakers have failed to offer a solution to owners of 3G-connected vehicles, leaving them unable to take advantage of proven and valuable safety features, as well as other beneficial connectivity functions."
>
> The reason is cost savings, according to Roger Lanctot, director of automotive connected mobility at Strategy Analytics, a consulting firm. "It's the last chapter of the automakers adopting the least-expensive connectivity module they can find," he says. Only recently did automakers start future-proofing newer models. "It's a

> challenge for the industry, but going forward, automakers recognize that they need to put the latest connectivity in."
>
> In addition to crash notification, many vehicles also have an SOS button to contact emergency services, and a lot of those buttons still use a 3G network. It's usually red and located near the vehicle's dome light or rearview mirror. Some cars may also use 3G connectivity for convenience features such as remote unlocking, remote start, emergency roadside assistance, navigation map updates, and vehicle diagnostics. These and other features will no longer work without an upgrade to newer 4G or 5G technology. But because of the way many of these vehicles are designed, it can be difficult or even impossible to upgrade the technology to work with the newer networks, Lanctot says.
>
> "What a mess," says William Wallace, CR's manager of safety policy. "Wireless carriers, federal regulators, and some automakers seem content to leave people out to dry, even if it means they lose access to a potentially lifesaving technology. Every automaker should deliver to its customers the services they've been promised—without charging them extra—and lawmakers should get ahead of the game to keep this from ever happening again in the future."

41. Historically, sometime around 2009, As the public became increasingly aware of the capabilities and benefit of telematics, car buyers began to demand the connectivity feature from car makers. The benefits are tangible and can be valued and include, *inter alia*, reduced insurance premiums and vehicle diagnosing capabilities which reduce service costs, and fuel expenses. *See* https://www.incartelematics.com/faq-items/what-cars-have-telematics (March 2021) last accessed August 27, 2022.

42. As mobile carriers seek to upgrade their networks to use the latest technologies, they periodically shut down older outdated services, such as 3G, to free up spectrum and infrastructure to support new services, such as 5G. Similar transitions have happened before. For example, some mobile carriers shut down their 2G networks when they upgraded their networks to support 4G services. Mobile carriers have the flexibility to choose the types of

technologies and services they deploy, including when they decommission older services in favor of newer services to meet consumer demands.

43. When 3G became available, Toyota installed 3G capable telematics in it vehicles but refused and failed to have the 3G telematics adaptable to the next "generation" of wireless. In the field of mobile connections, a "generation" generally refers to a change in the fundamental nature of the service, non-backwards compatible transmission technology, higher peak bit rates, new frequency bands. Cellular connectivity has characteristic of technology, speed, frequency and spectral capabilities which are constantly being improved upon.

44. All manufacturers of 3G devices have long known that 3G was "spectrally inefficient" and would be phased out as early as possible. In January 2008, the FCC auction for 700 MHZ spectrum began with Version Wireless and AT&T winning the biggest share after having stated their intentions to support LTE a/k/a 4G LTE.

45. As early as August 2009, carriers supporting 3G began planning their upgrade to 4G LTE. On December 14, 2009 Telia Sonera became the first carrier to offer customers 4G services. *See* "First in the World with 4G Services," Telia Sonera Press Release December 14, 2009. Accordingly, Defendants knew of the imminent obsolescence of 3G and that industry standards were rapidly advancing.

46. In 2009, Toyota introduced its subscription-based telematics system, "Safety Connect," which provides services, including but not limited to, communication, roadside assistance, safety, and remote diagnostics.

47. In 2009, Lexus announced the introduction of "Lexus Enform," its all-new proprietary telematics system which offered services in addition to Safety Connect.[3]

[3] *Toyota Motor Sales Announces Lexus Enform With Safety Connect,* **Lexus** Newsroom (July 28, 2009), https://pressroom.lexus.com/toyota-motor-sales-announces-lexus-enform-with-safety-connect/.

48. Lexus Enform and Safety Connect operate only through the factory installed telematics in the class vehicle and provide critical safety functions that include Automatic Collision Notification, Stolen Vehicle Location, Emergency Assistance Button, and Enhanced Roadside Assistance.

49. The Class Vehicles were factory equipped with 3G only telematics devices but by 2014 3G was already being replaced by 4G LTE.

50. The sunsetting of 3G was long foreseeable. For example, Verizon first introduced and expanded to national scale its 3G network in 2002-2004. This was followed by the launch of its 4G LTE service on December 5, 2010. In or around 2016, Verizon publicly announced 2019 as the deadline to sunset 3G, yet later extended that to 2020 and most recently to 2022.[4] On March 30, 2021, Verizon finally announced that their 3G wireless network would be shut down at the end of 2022 in order to make way for the deployment of its 5G network.[5]

51. The 3G phase out does not necessarily automatically disable all devices working on that protocol as it has in the Class Vehicles. For example, the iPhone 3GS can connect to Wi-Fi to access internet applications even after the 3G phase out. *See* https://www.zdnet.com/google-amp/home-and-office/_____/3g-is-shutting-down-here-are-the-gadgets-that-still-rely-on-it-do-you-have-one/ ZDNET, June Wan, April 8, 2022. Last accessed August 27, 2022. Software upgrades have been developed to extend the connectivity life of 3G driven devices. *Id.* Google's Pixel 2 was released in October 2017 with hardware/software that could support 4G LTE and had been pre-armed as early as March 2017. In addition, AT&T connected iPhone 6 and Galaxy S4 Mini and later Samsung Galaxy modes

[4] Mike Haberman, *3G CDMA Network Shut off date set for December 31, 2022, Verizon News Center,* https://www.verizon.com/about/news/3g-cdma-network-shut-date-set-december-31-2022.

[5] *Id.*

and Pixel 2 Goggle models will all continue to work after the 3G phase out as will older phones from Motorola and LG.

52. While Toyota continued to install, promote and sell the 3G only devices, though the end of the Class Period, the major cellular providers have been preparing for years and hence most mobile/smartphone customers are on the 4G and/or 5G network. *See* https://www.verify-this.com/article/mews/verify/technology-verify/you-will-have-to upgrade-replace-phone-to4g-5g-in 2022-if-you-have-3gVerizon-att-T-Mobile-all-phasing-out-3g/635-e733678c-clcd-485d-9793-7f97c003bcb9 last accessed August 28, 2022.

53. Even after designing and installing the 3G Only Telematics, a technology "fix" for the 3G phase out was not impossible, or even difficult. It would have been costly however, but Defendants could have done it, or planned in advance by recalling cars and installing upgrades to add 4G and/or 5G capabilities.

54. Defendants also could have integrated a swappable SIM card into its telematics module which could have allowed the system to upgrade itself to 4G LTD or 5G, but they did not do that.

55. Defendants did not design, build or install the "Devices" to be able to transition to successors to 3G due to a desire to save on manufacturing costs. *Id*. quoting Ruger Lanfot, Director of Automotive Connected Mobility at Strategy Analytics.

56. By contrast, General Motors, whose 2015 and later models of Chevrolet, Buick, GMC and Cadillac all had the proprietary "OnStar" hardware, which was also affected adversely by the 3G sunsetting, announced to its customers:

> In 2021, OnStar began working with AT&T on network updates and started executing over-the-air software updates to ensure Members were not impacted by the network transition.

GM committed to automatically send "over-the-air" software updates free of charge to address the 3G phase-out.

57. Moreover, the obsolescence issue was entirely foreseeable. Jeremy Barnes, a spokesperson for Mitsubishi, was quoted in Consumer Reports about the 3G phase out:

"We foresaw this time coming and designed around it"

58. There was no disclosure or even suggestion that Toyota's telematics would be rendered obsolete once 3G was phased out or that the features were only temporary or had only a limited life. As to the later model years after 4G became prevalent, Defendants never disclosed that its equipment was one generation behind the standard! To the contrary, Defendant marketed the features as a permanent features of the Class Vehicles.

SUNSETTING OF 3G AND LOSS OF FEATURES IN THE CARS

59. In February 2019, AT&T announced a plan to "sunset" its 3G network. *See* http://www.business.ATT.com/explore/make-the-switch.html last accessed August 27, 2022. 3G "sunsetting" means that a mobile network operator (or carriers) shuts off the cellular infrastructure required to operate devices based on 3G technology. Verizon announced that its 3G shutdown would occur on December 31, 2022.

60. Other carriers soon followed with their own announcements of phase-outs.

61. Notwithstanding that announcement, Defendants sold hundreds of thousands of 3G Only Telematics equipped vehicles.

62. Toyota's inoperable features include Toyota Safety Connect, affected Safety Connect services include Automatic Collision Notification, Enhanced Roadside Assistance, Emergency Assistance Button and Stolen Vehicle Locator. The Lexus' inoperable features are similar to Safety Connect. Most insurers offer preferential rates for cars with these features.

63. In The Prius Plug-in, Rav4 EV and Mirai, the Charge Management, ECO Dashboard, Remote Climate and Vehicle Finder capabilities included in the Entune App Suite were no longer supported as of November 1, 2022.

64. For electric and hydrogen fuel cell vehicles, the Mobile Apps allow the owner to check the vehicle's battery charge level and total range, and to schedule the time of day the vehicle charges its battery in order to take advantage of when electricity prices are at their lowest.

65. Due to the termination of services that provide critical safety features, Plaintiffs and class members are stripped of safety measures and precautions.

66. Defendants refused to make available a 4G upgrade kit installation as a warranty repair or otherwise cover all costs associated with the upgrade of the 3G modem.

DEFENDANTS' CONCEALMENT AND OMISSIONS OR OBSOLETE TELEMATICS, CAUSED LOSS AND DAMAGE TO PLAINTIFFS AND CLASS MEMBERS

67. Had the Defendants truthfully disclosed and reported that its telematics for the Class Vehicles were 3G only, consumers would have been less likely to purchase the cars, would have abstained outright or sought substantial discounts and/or upgrades. As a proximate cause of Defendants' misrepresentations and warrant breaches detailed in this complaint, Plaintiffs and class members purchased Class Vehicles.

68. Plaintiffs and the class members who purchased Class Vehicles did not get the benefit of the bargain they struck. Instead, they received cars whose telematics had planned obsolescence and were therefore of lesser value because the telematics was destined for obsolescence as soon as the models were issued. The cars that Plaintiffs and the class members paid for and bargained to receive, while marketed as products with the most advanced

technologies, were of lesser value than as advertised. Accordingly, purchasers of the Cars, including Plaintiffs and class members, have suffered and will continue to suffer injury, ascertainable losses of money or property, and monetary and non-monetary damages, including from not receiving the benefit of their bargain in purchasing the Cars.

69. The Defendants' misrepresentations and other conduct in designing, manufacturing and selling cars with obsolete telematics and failing to truthfully disclose to prospective buyers that the cars were 3G Only caused Plaintiffs and class members substantial injury in the form of price premiums and overpayments for products and diminished resale value and loss of telematics benefits described herein.

TOLLING

70. **Tolling of the Limitations Period** The Defendants had actual knowledge for several years that the marketing and advertising of its Cars was deceptive and misleading.

71. **Continuing Act Tolling** Beginning in or around 2014, Defendants continuously marketed and sold the Cars to unsuspecting car buyers. The Defendants continuously represented these vehicles could adapt to technology. By continuously repeating these false representations and failing to disclose that the Cars were 3G only the Defendants engaged in a continuing wrong sufficient to render inapplicable any statute of limitations that Audi might seek to apply.

72. At all relevant times, the Defendants knew that they were concealing and misrepresenting material facts, but continued to misrepresent and conceal information in its marketing and sales materials. Plaintiffs and class members' claims are not time barred.

73. **Fraudulent Concealment Tolling** State consumer protection laws, together with the doctrine of equitable tolling and/or the discovery rule, toll the applicable statutes of

limitations for all class members because of Defendants' conduct, including but not limited to concealment and omission of material facts.

74. This duty to disclose arose, among other things, due to the Defendants' control over manufacturing, marketing and representations about the cars.

75. The Defendants knew about the 3G Only Limitations of the cars ever since they started selling the Cars.

76. Despite their knowledge, the Defendants actively concealed this material information from the Plaintiffs and other class members.

77. The Defendants actively concealed the information to continue to profit from their sale and prevent Plaintiffs and other class members from bringing suit or otherwise seeking redress.

THE WARRANTIES

78. Toyota provide warranties directly to Plaintiffs and other purchases of Class Vehicles which covered the Class Vehicles 3G Telematics as more fully set forth herein.

79. Defendants' New Vehicle Limited Warranty provides that "This warranty covers repairs and adjustments needed to correct defects in materials or workmanship of any part supplied by Lexus, subject to the exceptions indicated under 'What Is Not Covered....'"[6] General Warranty Provisions indicate that "[r]epairs and adjustments covered by these warranties are made at no charge for parts and labor."[7]

[6] Items listed within What Is Not Covered do not include defects alleged in this Complaint. See, 2017 Lexus NX 200t Warrant and Services Guide, https://assets.sia.toyota.com/publications/en/omms-s/L-MMS-17NX200T/pdf/L-MMS-17NX20TH.pdf.

[7] *Id.*

80. Plaintiffs' and the other class members' Class Vehicles did not perform as promised and contained a flawed or inadequate modem which was nonfunctional after the decommissioning of the outdated 3G network. This issue was and should have been covered under the New Vehicle Limited Warranty.

81. Defendants breached the terms of the express warranties with Plaintiffs and other class members by not providing the Class Vehicles with properly functioning modems and failing to repair or remedy the issue at Defendants' cost.

82. A warranty that the Class Vehicles, and their telematics equipment, were in merchantable condition and fit for the ordinary purposes for which they were sold is implied by law.

83. Plaintiffs and the other class members purchased the Class Vehicles manufactured and sold by Defendants in consumer transactions.

84. The Class Vehicles, when sold and at all times, thereafter, were not in merchantable condition and were not fit for the ordinary purpose for which cars with installed telematics equipment are used because the inevitable decommissioning of the 3G networks would render the vehicle modem nonfunctional. The Class Vehicles left Defendants' possession and control with a modem of such a quality that rendered the Vehicles unmerchantable and unfit for ordinary use. Plaintiffs and the other class members used their Class Vehicles in the normal and ordinary manner for which Class Vehicles were designed and advertised.

85. Defendants knew before the time of sale to Plaintiffs and the other class members, or earlier, that the Class Vehicles were produced with a modem that was unfit for ordinary use and that would be decommissioned, which falls well short of an objective minimum standard of quality. This knowledge was based on Defendants' own knowledge of the decommissioning of

3G network their modems relied on, its decision to include an alternate 4G modem in other vehicle models produced around the same time, the industry standard practice of making vehicle features that would not be affected by the 3G network shutdown, and Defendants' general knowledge regarding the manufacture of their vehicle modems and integrated systems and software.

86. Toyota knew of imminent new generations of wireless technology and could have manufactured telematics adaptable to the next generation.

87. Defendants could have but chose not to design, build or install telematics with downloadable software or physical spare parts which could allow the devices to continue to connect to next wireless "generations" following 3G. Defendants had the capability to retrofit its 3G telematics and did so once 3G became the prevalent technology, but refused to design the 3G telematics to be retrofitted.

88. Plaintiffs and class members justifiably relied on the Defendants to disclose the true nature of the Cars they purchased, because the truth was not discoverable by Plaintiffs and the other class members through reasonable efforts. Any applicable statute of limitations has been tolled by the Defendants' knowledge, active concealment, and denial of the facts alleged herein, which behavior is ongoing.

89. Defendants are estopped from asserting that statutes of limitations were running for the duration of time Class Members were unaware of Defendants' misrepresentations.

90. Defendants are equitably estopped from asserting the statutes of limitations ran against the claims of class members.

91. Additional information supporting allegations of misrepresentations is in the control of the Defendants.

92. Material information concealed and/or actively suppressed by the Defendants includes but is not limited to the 3G Only Limitations, described in the preceding paragraphs.

93. Defendants had a duty to disclose to Class members the 3G Only Limitations.

94. Defendants breached express and implied warranties and actively and affirmatively misrepresented, concealed and suppressed, both pre-sale and post-sale, the existence of the 3G Only Limitation.

DEFENDANTS' CONDUCT

95. The warranties accompanying Class Vehicles were procedurally and substantively unconscionable under applicable state warranty laws because of the disparity in bargaining power of the parties and the purchasers' lack of knowledge that Class Vehicles had 3G only limitations.

96. The contractual terms were unreasonably favorable to the Defendants since the Defendants were fully aware of the 3G only limitations but proposed class representative and class members were unaware. Thus that information imbalance rendered the bargaining position of the Defendants for the sale of Class Vehicles grossly disproportionate and vastly superior to that of individual vehicle purchasers, including the proposed class representative and class members.

97. The Defendants' conduct renders the Class Vehicles purchase contract so one-sided as to be unconscionable under the circumstances existing at the formation of the vehicle purchase contract.

98. The durational limitation of the warranties accompanying the Class Vehicles is unreasonable and unconscionable since the Defendants actively concealed the 3G only

limitations. The proposed class representatives and class members had no notice of or ability to detect the issue.

99. Defendants engaged in materially misleading and consumer oriented practices.

100. Defendants' unconscionable conduct precludes any exclusion of incidental and consequential damages or any other limitation of remedies. The Defendants' upper-level management orchestrated this wrongful conduct.

101. The proposed class representative and class members operated and maintained their Class Vehicles in conformity with the respective owner's manual and Service and Warranty requirements.

102. The Defendants violated the consumer protection laws of the various stakes noted herein with their unconscionable conduct described in this complaint including but not limited to their failure to disclose material information that caused ascertainable financial harm to the proposed class representative and class members.

103. Car owners have sustained an ascertainable financial loss. Individuals who own or have owned Class Vehicles also sustained diminution of the resale value of their Class Vehicles.

104. The proposed class representative and class members have not received the benefit of their bargain concerning their respective purchase of Class Vehicles.

105. If the proposed class representative and class members had been made aware of the 3G Only limitations in their respective Class Vehicles and the attendant ramifications of value, safety and care, they would not have purchased the Class Vehicles or would have paid less for their vehicles.

106. As a direct result of these knowing misrepresentations and omissions, the proposed class representative and class members purchased Class Vehicles and sustained economic harm since they purchased vehicles worth considerably less than represented. These misrepresentations diminish the value and increased cost of vehicle ownership.

107. The wrongful conduct of the Defendants in violation of the consumer protection laws of the states noted herein occurred within the limitations period set out in the respective statutes and/or the limitations period as tolled by the Defendants' conduct.

THE INJURIES SUFFERED BY PLAINTIFFS AND OTHER CLASS MEMBERS

108. Plaintiffs and all purchasers and lessees of the Class Vehicles (who, as detailed below are the members of the putative Classes) have suffered injury and been damaged by Defendants' unconscionable practices and breaches of its warranties. Specifically, Plaintiffs and all members of the putative Class paid for Class Vehicles that was represented and warranted to be operable for as long as the car was operable but the cars they received had 3G Only Limitations which eventually rendered the features inoperable.

109. Plaintiffs and all members of the putative Classes received vehicles that were substantially less valuable than the vehicles that Defendants represented and warranted to them, due to the failure of Defendants to deliver a specific, bargained-for characteristic.

CAUSES OF ACTION

COUNT I

Breach of Express Warranty
Cal. Com. Code §§ 2313 And 10210
(On Behalf Of A National Class And/Or California Subclass)

110. Plaintiff Utidjian ("CA Plaintiff") realleges and incorporates by reference the preceding paragraphs as if fully set forth herein.

111. This claim is brought on behalf of the Nationwide Class and the California Subclass.

112. Defendants' New Vehicle Limited Warranty provides that "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 General Warranty Provisions indicate that "[r]epairs and adjustments covered by these warranties are made at no charge for parts and labor. The Toyota warranty is substantially similar.

113. Defendants are and were at all relevant times "merchant[s]" with respect to motor vehicles under Cal. Com. Code §§ 2104(1) and 10103(c), and "sellers" motor vehicles under § 2103(1)(d).

114. With respect to leases, Defendants are and were at all relevant times "lessors" of motor vehicles under Cal. Com. Code §§ 2105(1) and 10103(a)(8).

115. In connection with the purchase of lease of each one of its new vehicles, Defendants provide an express warranty for a period of four years or 50,000 miles, whichever occurs first. This warranty exists to repair the vehicle "if it fails to function properly as designed during normal use."

116. Defendants also made numerous representations, descriptions, and promises to California State Class members regarding the performance and emission controls of their vehicles.

117. Plaintiffs' and the other class members' Class Vehicles did not perform as promised and contained a flawed or inadequate modem which was nonfunctional after the

decommissioning of the outdated 3G network. This issue was and should have been covered under the New Vehicle Limited Warranty.

118. Defendants breached the terms of the express warranties with Plaintiffs and other class members by not providing the Class Vehicles with properly functioning modems and failing to repair or remedy the issue at Defendants' cost.

119. As the foreseeable and actual result of Defendants' breaches of express warranty, Plaintiffs and the other class members were damaged in an amount that is the difference between the value of the Class Vehicles if they had possessed a modem capable of functioning without a 3G network and performed as represented and the value of the vehicles they actually received.

120. Plaintiffs and the other class members suffered diminution in the value of the Class Vehicles, out-of-pocket losses related to repairing, maintaining, and servicing their Class Vehicles, costs associated with arranging and obtaining alternative means of transportation, and other incidental and consequential damages recoverable under the law.

COUNT II

Breach of Implied Warranty of Merchantability
Cal. Com. Code §§ 2314 And 10212
(On Behalf of Plaintiffs and the Nationwide Class and/or California Subclass)

121. Plaintiff Utidjian realleges and incorporates by reference the preceding paragraphs as if fully set forth herein.

122. This claim is brought by Plaintiff Utidjian (the CA Plaintiff) on behalf of the Nationwide Class and the California Subclass.

123. Defendants are and were at all relevant times "merchant[s]" with respect to motor vehicles under Cal. Com. Code §§ 2104(1) and 10103(c), and "sellers" of motor vehicles under § 2103(1)(d).

124. With respect to leases, Defendants are and were at all relevant times "lessors" of motor vehicles under Cal. Com. Code § 10103(a)(16).

125. The Class Vehicles are and were at all relevant times "goods" within the meaning of motor vehicles under Cal. Com. Code §§ 2105(a) and 10103(a)(8).

126. A warranty that the Class Vehicles were in merchantable condition and fit for the ordinary purpose of which vehicles are uses is implied by law pursuant to Cal. Com. Code §§ 2314 and 10212.

127. Defendants are and was at all relevant times a merchant with respect to the Class Vehicles, and manufactured, distributed, warranted and sold the Class Vehicles.

128. A warranty that the Class Vehicles, and their telematics equipment, were in merchantable condition and fit for the ordinary purposes for which they were sold is implied by law.

129. Plaintiffs and the other class members purchased the Class Vehicles manufactured and sold by Defendants in consumer transactions.

130. The Class Vehicles, when sold and at all times, thereafter, were not in merchantable condition and were not fit for the ordinary purpose for which cars with installed telematics equipment are used because the inevitable decommissioning of the 3G networks would render the vehicle modem nonfunctional. The Class Vehicles left Defendants' possession and control with a modem of such a quality that it rendered the Vehicles unmerchantable and unfit for ordinary use. Plaintiffs and the other class members used their

Class Vehicles in the normal and ordinary manner for which Class Vehicles were designed and advertised.

131. Defendants knew before the time of sale to Plaintiffs and the other class members, or earlier, that the Class Vehicles were produced with a modem that was unfit for ordinary use and that would be decommissioned, which falls well short of an objective minimum standard of quality. This knowledge was based on Defendants' own knowledge of the decommissioning of 3G network their modems relied on, its decision to include an alternate 4G modem in other vehicle models produced around the same time, the industry standard practice of making vehicle features that would not be affected by the 3G network shutdown, and Defendants' general knowledge regarding the manufacture of their vehicle modems and integrated systems and software.

132. Plaintiff's and other class members' modems and the Class Vehicles are, and at all times were, not of fair or average quality, nor would they pass without objection.

133. All conditions precedent have occurred or been performed.

134. Defendants' warranty disclaimers, exclusions, and limitations, to the extent that they may be argued to apply, were, at the time of sale, and continue to be, unconscionable and unenforceable to disclaim liability for a known issue with the 3G modems. Defendants knew when they first made these warranties and their limitations that the issue existed, and the warranties might expire before a reasonable consumer would notice or observe that the outdated 3G network was decommissioned. Defendants also failed to take necessary actions to adequately disclose or cure the issue after it came to the public's attention and sat on their reasonable opportunity to cure or remedy the problem, their breaches of warranty, and consumers' losses. Under these circumstances, it would be futile to enforce any

informal resolution procedures or give Defendants any more time to cure the issue or cure their breaches of warranty.

135. Plaintiff's and the other class members had sufficient direct dealings with Defendants and their agents (dealers) to establish privity of contract between themselves and Defendants. As alleged supra, Plaintiff and class members purchased their Class Vehicles from Toyota and Lexus dealerships. The Class Vehicles were purchased with the New Vehicle Limited Warranty. Defendants and Plaintiff and the other class members are in privity because of the existence of the New Vehicle Limited Warranty, which Defendants extend to Plaintiffs and the other class members as end users.

136. Privity, nevertheless, is not required in this case because Plaintiffs and the other class members are intended third-party beneficiaries of the agreements between Defendants and their dealers; specifically, they are the intended beneficiaries of Defendants' warranties. The dealers were not intended to be the ultimate consumers of the Class Vehicles; the warranty agreements were designed for, and intended to benefit, only the ultimate consumers-such as Plaintiff and the other class members.

137. Plaintiff and the other class members suffered and will suffer diminution in the value of their Vehicles, out-of-pocket losses related to repairing, maintaining, and servicing their Vehicles, costs associated with arranging and obtaining alternative means of transportation, and other incidental and consequential damages recoverable under the law.

COUNT III

Unjust Enrichment
(On Behalf Of The Nationwide Class)

138. Plaintiffs incorporates the foregoing paragraphs as if set forth fully in this count.

139. The Defendants benefited financially from their breaches of warranty and misrepresentations as described in this complaint.

140. The proposed class representative and class members sustained monetary damages as described in this complaint.

141. Allowing the Defendants to retain their monetary enrichment from their wrongful and unlawful acts would be unjust and inequitable.

142. The proposed class representative and class members request that the Defendants disgorge their profits from their wrongful and unlawful conduct and that the Court establish a constructive trust funded by the benefits conferred upon the Defendants as a result of their wrongful conduct. The proposed class representative and class members should be designated beneficiaries of the trust and obtain restitution for their out-of-pocket expenses caused by the Defendants' conduct.

143. Wherefore, the proposed class representative and class members demand judgment against defendant for multiple damages, interest, costs and attorneys' fees.

COUNT IV

Violation of California's Consumers Legal Remedies Act
Cal. Civ. Code §§ 1750, et seq. ("CLRA")
(On Behalf of the Nationwide Class and California Sub Class)

144. Plaintiffs reallege and incorporate by reference the preceding paragraphs as if fully set forth herein.

145. This claim is brought on behalf of the California Sub Class.

146. Defendants are a "person," under Cal. Civ. Code § 1761(c).

147. Plaintiffs are "consumers," as defined by Cal. Civ. Code § 1761(d), who purchased or leased a Class Vehicle.

148. Defendants' conduct, as described herein, in misrepresenting the characteristics, qualities, benefits and capabilities of the Class Vehicles, or omitting material information, violates the CLRA. Specifically, Defendants violated the CLRA by omitting material facts and failing to disclose known issues with the 3G modem, engaging in the following practices proscribed by Civil Code § 1770(a) in transactions that were intended to result in, and did result in, the sale or lease of the Class Vehicles:

- representing that the Class Vehicles have approval, characteristics, ingredients, uses, benefits, or quantities which they do not have;
- representing that the Class Vehicles are of a particular standard, quality, or grade if they are of another;
- advertising the Class Vehicles with intent not to sell them as advertised; and
- representing that the Class Vehicles have been supplied in accordance with previous representations when they have not.

149. Defendants violated the CLRA by selling and leasing Class Vehicles that they knew were equipped with a modem incapable of performing as advertised, unable to deliver the benefits, qualities, and characteristics described in advertisements and promotional materials because the inevitable decommissioning of cellular providers' outdated 3G network would render the vehicle modems nonfunctional. Defendants omitted from Plaintiff and other class members the material fact that Class Vehicles were sold with inadequate modems. This is a fact that a reasonable consumer would consider important in selecting a vehicle to purchase or lease.

150. Defendants knew, at the time they sold Plaintiff his vehicle, of the material fact that the vehicles were equipped with a modem that would fail in the ways described above, and that the realities about the modem's capabilities substantially diminished the quality, performance, safety, and lifespan of Plaintiff's and other class members' vehicles. Defendants knew that the loss of viability of the modems was inevitable and certain based on pre-sale knowledge of planned obsolescence relating to the 3G network. Defendants' conduct in selling the Class Vehicles with a 3G-enabled modem knowing that it would be phased out, and omitting information about the same, was fraudulent, wanton, and malicious.

151. Defendants' unfair and deceptive acts or practices were the foreseeable and actual cause of Plaintiff and other class members suffering actual damage on account of receiving a car that lacked modems that would not be rendered useless through phasing out of 3G network support.

152. Plaintiffs and the other class members paid for a car that was supposed to meet certain specifications. When they received a vehicle that did not conform to these specifications, and which fell below the standards set by and described in Defendants' representations, Plaintiff and the other class members were damaged on account of receiving a car worth less than as represented. Plaintiffs and the other class members suffered diminution in the value of Class Vehicles, out-of-pocket losses related to repairing, maintaining, and servicing their Class Vehicles, costs associated with arranging and obtaining alternative means of transportation, and other incidental and consequential damages recoverable under the law.

153. Pursuant to § 1782 of the CLRA, on November 7, 2022, Plaintiff notified Defendants in writing by certified mail of the particular violations of § 1770 of the CLRA 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.

154. Plaintiffs do not seek damages by this claim at the present. However, if Defendants fail to rectify or agree to rectify the problems associated with the actions detailed above and give notice to all affected consumers within 30 days of the date of written notice pursuant to § 1782 of the Act, Plaintiffs will amend this Complaint to add claims for actual, punitive, and statutory damages, as appropriate.

COUNT V

Violation of California's Unfair Competition Law
California Business & Professions Code § 17200, et seq. ("UCL")
(On Behalf of the Nationwide Class California Sub Class)

155. Plaintiffs reallege and incorporate by reference the preceding paragraphs as if fully set forth herein.

156. This claim is brought by on behalf of the Nationwide Class and California Sub Class.

157. The UCL prohibits any "unlawful," "fraudulent," or "unfair" business act or practice and any false or misleading advertising.

158. In the course of conducting business, Defendants committed "unlawful" business practices by, among other things, making the representations and omissions of material facts, as set forth more fully herein, refusing to repair or replace the Class Vehicle's nonoperational 3G modem, and violating Civil Code §§ 1572, 1573, 1709, 1711, 1770(a)(5), (6), (7), (9), and (16), and Business & Professions Code §§ 17200, et seq., 17500, et seq., and the common law.

159. In the course of conducting business, Defendants committed "unfair" business practices by, among other things, misrepresenting and omitting material facts regarding the

characteristics, capabilities, and benefits of Class Vehicles. There is no societal benefit from such false and misleading representations and omissions, only harm. While Plaintiff and other class members were harmed by this conduct, Defendants were unjustly enriched. As a result, Defendants' conduct is "unfair" as it has offended an established public policy. Further, Defendants engaged in immoral, unethical, oppressive, and unscrupulous activities that are substantially injurious to consumers.

160. Defendants knew when Class Vehicles were first sold and leased that they were equipped with a modem that substantially diminished the quality, performance, and safety and lifespan of the vehicles. Through pre-sale communications with cellular providers regarding the eventual decommissioning of their 3G network, and Defendants' general knowledge of the telecommunications industry's upgrade to 4G and 5G technology, before the Class Vehicles were introduced to the market Defendants knew of the planned decommissioning of the Class Vehicles' modem—i.e., that the inevitable decommissioning of the outdated 3G networks would render the vehicle modems nonfunctional.

161. Plaintiffs allege violations of consumer protection, unfair competition, and truth in advertising laws in California, resulting in harm to consumers. Defendants' acts and omissions also violate and offend the public policy against engaging in false and misleading advertising, unfair competition, and deceptive conduct towards consumers. This conduct constitutes violations of the UCL's "unfair" prong. There were reasonably available alternatives to further Defendants' legitimate business interests other than the conduct described herein.

162. The UCL also prohibits any "fraudulent business act or practice." In the course of conducting business, Defendants committed "fraudulent business act[s] or practices" by, among other things, prominently making the representations (which also constitute advertising within

the meaning of § 17200) and omissions of material facts regarding the safety, characteristics, and production quality of the Class Vehicles.

163. Defendants' actions, claims, omissions, and misleading statements were also false, misleading, and likely to deceive the consuming public within the meaning of the UCL.

164. Plaintiffs were deceived as a result of their reliance on Defendants' material representations and omissions, which are described above. Plaintiffs suffered injury in fact and lost money as a result of purchasing a deceptively advertised Class Vehicle by paying more than they should have and expending time, effort, and money to attempt to repair or replace their Class Vehicle's modem and incurring other consequential inconvenience, aggravation, damages, and loss of money and time.

165. Unless restrained and enjoined, Defendants will continue to engage in the above-described conduct. Accordingly, injunctive relief is appropriate.

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

COUNT VI

Violations of Connecticut Unlawful Trade Practice Act
Conn. Gen. Stat. § 42-110a, et seq.
(By Plaintiff Williams On Behalf of the Connecticut State Sub Class)

167. Plaintiff Williams incorporates by reference all allegations in this Complaint as though fully set forth herein.

168. Plaintiff Williams (for the purposes of this count, "CA Plaintiff") brings this claim

on behalf of herself and the Connecticut State Sub Class against all Defendants.

169. The Connecticut Unfair Trade Practices Act ("Connecticut UTPA") provides: "No person shall engage in unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce." Conn. Gen. Stat. § 42-110b(a).

170. Defendants are "person[s]" within the meaning of Conn. Gen. Stat. § 42-110a(3).

171. Defendants engaged in "trade" or "commerce" within the meaning of Conn. Gen. Stat. § 42-110a(4).

172. Defendants participated in deceptive trade practices that violated the Connecticut UTPA as described herein.

173. In the course of their business, Defendants concealed and suppressed material facts concerning the Class Vehicles.

174. Plaintiff and Connecticut State Sub Class members had no way of discerning that Defendants' representations were false and misleading.

175. Defendants thus violated the Connecticut UTPA by, at minimum: employing deception, deceptive acts or practices, fraud, misrepresentations, or concealment, suppression or omission of any material fact with intent that others rely upon such concealment, suppression or omission, in connection with the sale of Class Vehicles.

176. Defendants intentionally and knowingly misrepresented material facts regarding the Class Vehicles with intent to mislead Plaintiff and the Connecticut State Sub Class.

177. Defendants knew or should have known that their conduct violated the Connecticut UTPA.

178. Defendants owed Connecticut Plaintiff and the Connecticut State Sub Class a duty to disclose the illegality and public health risks, the true nature of the Class Vehicles.

179. Defendants' concealment of the Class Vehicles' planned obsolescence was material to CT Plaintiff and the Connecticut State Sub Class.

180. Defendants' unfair or deceptive acts or practices were likely to and did in fact deceive reasonable consumers, including CT Plaintiff and the Connecticut State Sub Class.

181. CT Plaintiff and the Connecticut State Sub Class suffered ascertainable loss and actual damages as a direct and proximate result of Defendants' misrepresentations and concealment of and failure to disclose material information.

182. CT Plaintiff and the Connecticut State Sub Class seek monetary relief against Defendants in an amount to be determined at trial. CT Plaintiff and the Connecticut State Class also seek punitive damages because Defendants engaged in aggravated and outrageous conduct.

183. CT Plaintiff and the Connecticut State Sub Class also seek an order enjoining Defendants' unfair, unlawful, and/or deceptive practices, attorneys' fees, and any other just and proper relief available under the Connecticut CFA.

184. Defendants had an ongoing duty to all their customers to refrain from unfair and deceptive practices under the Connecticut UTPA. All owners of Class Vehicles suffered ascertainable loss as a result of Defendants' deceptive and unfair acts and practices made in the course of Defendants' business.

185. Defendants' violations present a continuing risk to CT Plaintiff and the Connecticut State Sub Class, as well as to the general public. Defendants' unlawful acts and practices complained of herein affect the public interest.

186. As a direct and proximate result of Defendants' violations of the Connecticut UTPA, Plaintiff and the Connecticut State Sub Class have suffered injury-in-fact and/or actual damage.

187. Class members are entitled to recover their actual damages, punitive damages, and attorneys' fees pursuant to Conn. Gen. Stat. § 42-110g. Defendants acted with a reckless indifference to another's rights or wanton or intentional violation to another's rights and otherwise engaged in conduct amounting to a particularly aggravated, deliberate disregard of the rights of others.

COUNT VII

Breach of Express Warranty
Conn. Gen. Stat. Ann. § 42A-2-313
(By Williams On Behalf of the Connecticut State Sub Class)

188. Plaintiff Williams re-alleges and incorporates by reference all preceding allegations as though fully set forth herein.

189. Plaintiff Williams (for the purposes of this count, "CT Plaintiff") brings this claim on behalf of himself and the Connecticut State Class against all Defendants.

190. Defendants are and were at all relevant times "merchant[s]" with respect to motor vehicles under Conn. Gen. Stat. Ann. § 42a-2-104(1).

191. In connection with the purchase or lease of each one of its new vehicles, Defendants provide an express warranty for a period of four years or 50,000 miles, whichever occurs first. This warranty exists to repair the vehicle "if it fails to function properly as designed during normal use."

192. Defendants also made numerous representations, descriptions, and promises to CT Plaintiff and Connecticut State Subclass members regarding the performance and emission controls of their vehicles.

193. Defendants' warranties formed the basis of the bargain that was reached when consumers purchased or leased Class Vehicles.

194. Despite the existence of warranties, Defendants failed to inform Plaintiff and Connecticut State Class members that the Class Vehicles were defective and were intentionally designed and manufactured.

195. Defendants breached the express warranty promising to repair and correct Defendants' defect in materials and workmanship. Defendants have not repaired or adjusted, and have been unable to repair or adjust, the Class Vehicles' materials and workmanship defects.

196. Affording Defendants a reasonable opportunity to cure their breach of written warranties would be unnecessary and futile here.

197. Furthermore, the limited warranty promising to repair and correct Defendants' defect in materials and workmanship fails in its essential purpose because the contractual remedy is insufficient to make Plaintiff and Connecticut State Class members whole and because Defendants have failed and/or have refused to adequately provide the promised remedies within a reasonable time.

198. Accordingly, recovery by Plaintiff and Connecticut State Class members is not restricted to the limited warranty promising to repair and correct Defendants' defect in materials and workmanship, and they seek all remedies as allowed by law.

199. Also, as alleged in more detail herein, at the time Defendants warranted and sold or leased the Class Vehicles, they knew that the Class Vehicles were inherently defective and did

not conform to their warranties; further, Defendants had wrongfully and fraudulently concealed material facts regarding the Class Vehicles. Plaintiff and Connecticut State Class members were therefore induced to purchase or lease the Class Vehicles under false and/or fraudulent pretenses.

200. Moreover, many of the injuries flowing from the Class Vehicles cannot be resolved through the limited remedy of repairing and correcting Defendants' defect in materials and workmanship as many incidental and consequential damages have already been suffered because of Defendants' fraudulent conduct as alleged herein, and because of its failure and/or continued failure to provide such limited remedy within a reasonable time, and any limitation on Plaintiff's and Connecticut State Class members' remedies would be insufficient to make them whole.

201. Finally, because of Defendants' breach of warranty as set forth herein, Plaintiff and Connecticut State Class members assert, as additional and/or alternative remedies, the revocation of acceptance of the goods and the return to them of the purchase or lease price of all Class Vehicles currently owned or leased, and for such other incidental and consequential damages as allowed.

202. As a direct and proximate result of Defendants' breach of express warranties, Plaintiff and Connecticut State Class members have been damaged in an amount to be determined at trial.

COUNT VIII

Breach of Implied Warranty of Merchantability
Conn. Gen. Stat. Ann. § 42A-2-314
(By Williams On Behalf of the Connecticut State Sub Class)

203. Plaintiff Williams re-alleges and incorporates by reference all paragraphs as though fully set forth herein.

204. Plaintiff Williams (the "CT Plaintiff") brings this claim on behalf of herself and the Connecticut State Subclass against all Defendants.

205. Defendants are and were at all relevant times "merchant[s]" with respect to motor vehicles under Conn. Gen. Stat. Ann. § 42a-2-104(1).

206. A warranty that the Class Vehicles were in merchantable condition and fit for the ordinary purpose for which vehicles are used is implied by law pursuant to Conn. Gen. Stat. Ann. § 42a-2-314.

207. These Class Vehicles were not fit for the ordinary purpose for which vehicles are used.

208. As a direct and proximate result of Defendants' breach of the implied warranty of merchantability, Plaintiff and Connecticut State Class members have been damaged in an amount to be proven at trial.

COUNT IX

Violations of the Indiana Deceptive Consumer Sales Act
Ind. Code § 24-5-0.5-3
(By Plaintiff Stubbins On Behalf of the Indiana State Sub Class)

209. Plaintiff Stubbins (the "Indiana Plaintiff") incorporates by reference all paragraphs as though fully set forth herein.

210. This count is brought on behalf of the Indiana State Sub Class against all Defendants.

211. In the course of their business, Defendants concealed and suppressed material facts concerning the Class Vehicles.

212. Indiana State Class members had no way of discerning that Defendants' representations were false and misleading.

213. Defendants thus violated the Act by, at minimum: representing that Class Vehicles have characteristics, uses, benefits, and qualities which they do not have; representing that Class Vehicles are of a particular standard, quality, and grade when they are not; advertising Class Vehicles with the intent not to sell or lease them as advertised; and representing that the subject of a transaction involving Class Vehicles has been supplied in accordance with a previous representation when it has not.

214. Defendants intentionally and knowingly misrepresented material facts regarding the Class Vehicles with intent to mislead the Indiana State Class.

215. Defendants knew or should have known that their conduct violated the Indiana DCSA.

216. Defendants owed the Indiana State Class a duty to disclose the true nature of the Class Vehicles.

217. Defendants' concealment of the Class Vehicles' obsolete 3G was material to the Indiana State Class.

218. Defendants' unfair or deceptive acts or practices were likely to and did in fact deceive regulators and reasonable consumers, including the Indiana State Class.

219. Defendants' violations present a continuing risk to the Indiana State Class as well as to the general public. Defendants' unlawful acts and practices complained of herein affect the public interest.

220. The Indiana State Class suffered ascertainable loss and actual damages as a direct and proximate result of Defendants' misrepresentations and concealment of and failure to disclose material information.

221. As a direct and proximate result of Defendants' violations of the Indiana DCSA, members of the Indiana State Class have suffered injury-in-fact and/or actual damage.

222. Pursuant to Ind. Code § 24-5-0.5-4, the Indiana State Class seeks monetary relief against Defendants measured as the greater of (a) actual damages in an amount to be determined at trial and (b) statutory damages in the amount of $500 for each Indiana State Class member, including treble damages up to $1,000 for Defendants' willfully deceptive acts.

223. The Indiana State Class also seeks punitive damages based on the outrageousness and recklessness of the Defendants' conduct and Defendants' high net worth.

COUNT X

Breach of Express Warranty
Ind. Code §§ 26-1-3-313 and 26-1-2.1-210
(By Plaintiff Stubbins On Behalf of the Indiana State Sub Class)

224. Plaintiff Stubbins re-alleges and incorporates by reference all preceding allegations as though fully set forth herein.

225. This count is brought by Stubbins (the "Indiana Plaintiff") on behalf of the Indiana State Class against all Defendants.

226. Defendants are and were at all relevant times "merchant[s]" with respect to motor vehicles under Ind. Code §§ 26-1-2-104(1) and 26-1-2.1-103(3), and "sellers" of motor vehicles under § 26-1-2-103(1)(d).

227. With respect to leases, Defendants are and were at all relevant times "lessors" of motor vehicles under Ind. Code § 26-1-2.1-103(1)(p).

228. The Class Vehicles are and were at all relevant times "goods" within the meaning of Ind. Code §§ 26-1-2-105(1) and 26-1-2.1-103(1)(h).

229. As manufacturers of vehicles, Defendants were required to provide these warranties to purchasers or lessees of Class Vehicles.

230. Defendants' warranties formed a basis of the bargain that was reached when consumers purchased or leased the Class Vehicles.

231. Despite the existence of warranties, Defendants failed to inform Indiana State Class members that the Class Vehicles were defective.

232. Defendants breached the express warranty promising to repair and correct Defendants' defect in materials and workmanship. Defendants have not repaired or adjusted, and have been unable to repair or adjust, the Class Vehicles' materials and workmanship defects.

233. Affording Defendants a reasonable opportunity to cure their breach of written warranties would be unnecessary and futile here.

234. Furthermore, the limited warranty promising to repair and correct Defendants' defect in materials and workmanship fails in its essential purpose because the contractual remedy is insufficient to make Indiana State Class members whole and because Defendants have failed and/or have refused to adequately provide the promised remedies within a reasonable time.

235. Accordingly, recovery by Indiana State Class members is not restricted to the limited warranty promising to repair and correct Defendants' defect in materials and workmanship, and they seek all remedies as allowed by law.

236. Also, as alleged in more detail herein, at the time Defendants warranted and sold or leased the Class Vehicles, they knew that the Class Vehicles were inherently defective and did not conform to their warranties; further, Defendants had wrongfully and fraudulently concealed material facts regarding the Class Vehicles. Indiana State Class members were therefore induced to purchase or lease the Class Vehicles under false and/or fraudulent pretenses.

237. Moreover, many of the injuries flowing from the Class Vehicles cannot be resolved through the limited remedy of repairing and correcting Defendants' defect in materials and workmanship as many incidental and consequential damages have already been suffered because of Defendants' fraudulent conduct as alleged herein, and because of its failure and/or continued failure to provide such limited remedy within a reasonable time, and any limitation on the Indiana State Class members' remedies would be insufficient to make them whole.

238. Finally, because of Defendants' breach of warranty as set forth herein, Indiana State Class members assert, as additional and/or alternative remedies, the revocation of acceptance of the goods and the return to them of the purchase or lease price of all Class Vehicles currently owned or leased, and for such other incidental and consequential damages as allowed.

239. As a direct and proximate result of Defendants' breach of express warranties, Indiana State Class members have been damaged in an amount to be determined at trial.

COUNT XI

Breach of Implied Warranty of Merchantability
Ind. Code §§ 26-1-3-314 and 26-1-2.1-212
(By Stubbins On Behalf of the Indiana State Sub Class)

240. Plaintiff Stubbins (the "Indiana Plaintiff") re-alleges and incorporate by reference all paragraphs as though fully set forth herein.

241. This count is brought on behalf of the Indiana State Class against all Defendants.

242. Defendants are and were at all relevant times "merchant[s]" with respect to motor vehicles under Ind. Code §§ 26-1-2-104(1) and 26-1-2.1-103(3), and "sellers" of motor vehicles under § 26-1-2-103(1)(d).

243. With respect to leases, Defendants are and were at all relevant times "lessors" of motor vehicles under Ind. Code § 26-1-2.1-103(1)(p).

244. The Class Vehicles are and were at all relevant times "goods" within the meaning of Ind. Code §§ 26-1-2-105(1) and 26-1-2.1-103(1)(h).

245. A warranty that the Class Vehicles were in merchantable condition and fit for the ordinary purpose for which vehicles are used is implied by law pursuant to Ind. Code §§ 26-1-2-314 and 26-1-2.1-212.

246. Defendants were provided reasonable notice of these issues by way of a letter sent by Plaintiffs as well as the regulators' investigations.

247. As a direct and proximate result of Defendants' breach of the implied warranty of merchantability, Indiana State Class members have been damaged in an amount to be proven at trial.

COUNT XII

By Plaintiffs Shugerman, Clegett and Englert ("KY Pltfs.") For Violations of the Kentucky Consumer Protection Act
Ky. Rev. Stat. Ann.§ 367.110 *et seq.*
(On Behalf of the Kentucky State Sub Class)

248. Plaintiffs incorporate by reference all paragraphs as though fully set forth herein.

249. This count is brought on behalf of the Kentucky State Class against Defendants.

250. Defendant, Plaintiffs, and the Kentucky State Class are "persons" within the meaning of the Ky. Rev. Stat. § 367.110(1).

251. Defendant engaged in "trade" or "commerce" within the meaning of Ky. Rev. Stat. § 367.110(2).

252. The Kentucky Consumer Protection Act ("Kentucky CPA") makes unlawful "[u]nfair, false, misleading, or deceptive acts or practices in the conduct of any trade or commerce

...."Ky. Rev. Stat.§ 367.170(1). Defendant participated in misleading, false, or deceptive acts that violated the Kentucky CPA. By failing to disclose and by actively concealing the defects identified herein, Defendant engaged in deceptive business practices prohibited by the Kentucky CPA.

253. In the course of their business, Defendant concealed and suppressed material facts concerning the Class Vehicles.

254. Kentucky State Class members had no way of discerning that Defendants' representations were false and misleading.

255. Defendant thus violated the Act by, at minimum: representing that Class Vehicles have characteristics, uses, benefits, and qualities which they do not have; representing that Class Vehicles are of a particular standard, quality, and grade when they are not; advertising Class vehicles with the intent not to sell or lease them as advertised; and representing that the subject of a transaction involving Class Vehicles has been supplied in accordance with a previous representation when it has not.

256. Defendant intentionally and knowingly misrepresented material facts regarding the Class Vehicles with intent to mislead the Kentucky State Sub-Class.

257. Defendant knew or should have known that their conduct violated the Kentucky CPA.

258. Defendant owed the Kentucky State Sub-Class a duty to disclose the illegality and public health risks, the true nature of the Class Vehicles, because Defendant:

A. possessed exclusive knowledge that they were manufacturing, selling, and distributing vehicles throughout the United States that did not perform as advertised;

B. intentionally concealed the foregoing from Kentucky State Class members; and/or

C. made incomplete representations about the Class Vehicles' while purposefully withholding material facts that contradicted these representations.

259. Defendant's fraudulent concealment of the Class Vehicles' true facts were material to the Kentucky State Sub-Class.

260. Defendant's unfair or deceptive acts or practices were likely to and did in fact deceive regulators and reasonable consumers, including the Kentucky State Sub-Class.

261. Defendant's violations present a continuing risk to the Kentucky State Sub-Class as well as to the general public. Defendant's unlawful acts and practices complained of herein affect the public interest.

262. Members of the Kentucky State Sub-Class suffered ascertainable loss and actual damages as a direct and proximate result of Defendant's misrepresentations and concealment of and failure to disclose material information. Defendant had an ongoing duty to all their customers to refrain from unfair and deceptive practices under the Kentucky CPA. All owners of Class Vehicles suffered ascertainable loss as a result of Defendant's deceptive and unfair acts and practices made in the course of Defendant's business.

263. As a direct and proximate result of Defendant's violations of the Kentucky CPA, Kentucky State Sub-Class members have suffered injury-in-fact and/or actual damage.

264. Pursuant to Ky. Rev. Stat. Ann.§ 367.220, the Kentucky State Class seeks to recover actual damages in an amount to be determined at trial; an order enjoining Defendant's unfair, unlawful, and/or deceptive practices; declaratory relief; attorneys' fees; and any other just and proper relief available under Ky. Rev. Stat. Ann. § 367 .220.

COUNT XIII

BY Kentucky Plaintiffs For Breach of Express Warranty
Ky. Rev. Stat.§§ 335.2-313 and 355.2A-210
(On Behalf of the Kentucky State Sub Class)

265. Plaintiffs re-allege and incorporate by reference all preceding allegations as though fully set forth herein.

266. This count is brought on behalf of the Kentucky State Sub- Class against all Defendants.

267. Defendant is and was at all relevant times "merchant[s]" with respect to motor vehicles under Ky. Rev. Stat.§§ 355.2-104(1) and 355.2A-103(3), and "sellers" of motor vehicles under $ 355.2-103(1)(d).

268. With respect to leases, Defendant are and were at all relevant times "lessors" of motor vehicles under Ky. Rev. Stat. § 355.2A-103(1)(p).

269. The Class Vehicles are and were at all relevant times "goods" within the meaning of Ky. Rev. Stat. §§ 355.2-105(1) and 355.2A-103(1)(h).

270. In connection with the purchase or lease of each one of its new vehicles, Defendant provide an express warranty for a period of four years or 50,000 miles, whichever occurs first. This warranty exists to repair the vehicle "if it fails to function properly as designed during normal use."

271. As manufacturers of vehicles, Defendant was required to provide these warranties to purchasers or lessees of Class Vehicles.

272. Defendant's warranties formed a basis of the bargain that was reached when consumers purchased or leased Class Vehicles.

273. Despite the existence of warranties, Defendant’s failed to inform Kentucky State Sub-Class members that the Class Vehicles were defective and intentionally designed and

manufactured to be obsolete and represented to consumers who purchased or leased them, and Defendants failed to fix the defective components free of charge.

274. Defendant breached the express warranty promising to repair and correct Defendant's defect in materials and workmanship. Defendant has not repaired or adjusted, and have been unable to repair or adjust, the Class Vehicles' materials and workmanship defects.

275. Affording Defendant a reasonable opportunity to cure their breach of written warranties would be unnecessary and futile here.

276. Furthermore, the limited warranty promising to repair and correct Defendant's defect in materials and workmanship fails in its essential purpose because the contractual remedy is insufficient to make Kentucky State Sub-Class members whole and because Defendant has failed and/or have refused to adequately provide the promised remedies within a reasonable time.

277. Accordingly, recovery by Kentucky State Sub-Class members is not restricted to the limited warranty promising to repair and correct Defendant's defect in materials and workmanship, and they seek all remedies as allowed by law.

278. Also, as alleged in more detail herein, at the time Defendant warranted and sold or leased the Class Vehicles, they knew that the Class Vehicles were inherently defective and did not conform to their warranties; further, Defendant had wrongfully concealed material facts regarding the Class Vehicles. Kentucky State Sub-Class members were therefore induced to purchase or lease the Class Vehicles under false pretenses.

279. Moreover, many of the injuries flowing from the Class Vehicles cannot be resolved through the limited remedy of repairing and correcting Defendant's defect in materials and workmanship as many incidental and consequential damages have already been suffered because of Defendant's fraudulent conduct as alleged herein, and because of its failure and/or continued

failure to provide such limited remedy within a reasonable time, and any limitation on Kentucky State Class members' remedies would be insufficient to make them whole.

280. Finally, because of Defendant's breach of warranty as set forth herein, Kentucky State Sub-Class members assert, as additional and/or alternative remedies, the revocation of acceptance of the goods and the return to them of the purchase or lease price of all Class Vehicles currently owned or leased, and for such other incidental and consequential damages as allowed.

281. As a direct and proximate result of Defendant's breach of express warranties, Kentucky State Sub-Class members have been damaged in an amount to be determined at trial.

COUNT XIV

By The Kentucky Plaintiffs For Breach of Implied Warranty of Merchantability
Ky. Rev. Stat.§§ 335.2-314 and 355.2A-212
(On Behalf of the Kentucky State SubClass)

282. Plaintiffs re-allege and incorporate by reference all paragraphs as though fully set forth herein.

283. This count is brought on behalf of the Kentucky State Sub-Class against all Defendant.

284. Defendant is and was at all relevant times "merchant[s]" with respect to motor vehicles under Ky. Rev. Stat.§§ 355.2-104(1) and 355.2A-103(3), and "sellers" of motor vehicles under§ 355.2-103(1)(d).

285. With respect to leases, Defendant is and was at all relevant times "lessors" of motor vehicles under Ky. Rev. Stat. $ 355.2A-103(1)p).

286. The Class Vehicles are and were at all relevant times "goods" within the meaning of Ky. Rev. Stat. $$ 355.2-105(1) and 355.2A-103(1)(h).

287. A warranty that the Class Vehicles were in merchantable condition and fit for the ordinary purpose for which vehicles are used is implied by law pursuant to Ky. Rev. Stat. §§ 335.2-314 and 355.2A-212.

288. These Class Vehicles, when sold or leased and at all times, thereafter, were not fit for the ordinary purpose for which vehicles are used.

289. As a direct and proximate result of Defendant's breach of the implied warranty of merchantability, Kentucky State Sub-Class members have been damaged in an amount to be proven at trial.

COUNT XV

Violation of the New York Deceptive Practices Act
N.Y. Gen. Bus. Law §§ 349 and 350 ("GBL")
(On Behalf of the New York Sub Class)

290. Plaintiffs Kilkenny and Bolton re-allege and incorporate by reference the preceding paragraphs.

291. This claim is brought by Plaintiffs Kilkenny and Bolton on behalf of the New York Class.

292. Plaintiffs Kilkenny and Bolton and New York class members are "persons" within the meaning of the GBL. N.Y. Gen. Bus. Law §§ 349 and 350.

293. Each Defendant is a "person, firm, corporation or association or agent or employee thereof" within the meaning of the GBL. N.Y. Gen. Bus. Law §§ 349 and 350.

294. 133. Under GBL sections 349 and 350, "[d]eceptive acts or practices in the conduct of any business, trade or commerce" are unlawful.

295. In the course of Defendants' business, they failed to disclose and actively concealed that Class Vehicles are equipped with 3G compatible modems that would be phased

out and "bricked" or rendered useless through 3G decommissioning. Defendants did so with the intent that consumers rely on its misrepresentation and concealment in deciding whether to purchase the Class Vehicles.

296. By intentionally concealing the foregoing, while advertising Class Vehicles 3G network enabled features as functional, premium services, and fit for their ordinary and intended purpose, Defendants engaged in deceptive acts or practices in violation of GBL §§ 349 and 350.

297. Defendants' deceptive acts or practices were materially misleading. The conduct was likely to and did deceive reasonable consumers, including Plaintiff Welikson, about the true performance and qualities of the Class Vehicles.

298. Plaintiffs Kilkenny and Bolton and New York class members were unaware of, and lacked a reasonable means of discovering, the material facts that Defendants suppressed. Had Plaintiff and New York class members known the truth about the Class Vehicles, they would not have purchased them, or would not have paid as much for them as they did.

299. Defendants' actions set forth above occurred in the conduct of trade or commerce.

300. Defendants' misleading conduct concerns widely purchased consumer products and affects the public interest. Defendants' conduct includes unfair and misleading acts or practices that have the capacity to deceive consumers and are harmful to the public at large.

301. Plaintiffs Kilkenny and Bolton and New York class members suffered ascertainable loss as a direct and proximate result of Defendants' GBL violations. Among other things, Plaintiffs Kilkenny and Bolton and New York class members overpaid for the Class Vehicles; suffered diminution of value of their Class Vehicles; have lost use of safety features; and have suffered other injuries. These injuries are the direct and natural consequence of Defendant's material misrepresentations and omissions.

302. Plaintiffs Kilkenny and Bolton, individually and on behalf of the New York Class, requests that this Court enter such orders or judgments as may be necessary to enjoin Defendants from continuing their unfair and deceptive practices.

303. Under the GBL, Plaintiffs Kilkenny and Bolton and New York class members are entitled to recover their actual damages or $50, whichever is greater. Additionally, because Defendants acted willfully or knowingly, Plaintiffs Kilkenny and Bolton and New York class members are entitled to recover three times their actual damages. Plaintiffs Kilkenny and Bolton are entitled to reasonable attorneys' fees.

COUNT XVI

Breach Of Implied Warranty Of Merchantability N.Y. U.C.C. § 2-314 (Individually and on behalf of the Sub Class)

304. Plaintiffs Kilkenny and Bolton incorporate by reference each allegation as if set forth fully herein.

305. Plaintiffs Kilkenny and Bolton bring this claim individually and on behalf of the New York Subclass ("Class" for purposes of this Count).

306. Toyota is a "merchant" and the Class Vehicles are "goods" as defined in N.Y. U.C.C. §§ 2-104 and 2-105.

307. Pursuant to N.Y. U.C.C. § 2-314, a warranty that the Class Vehicles were in merchantable condition was implied by law in the sale or lease of the product. Toyota impliedly warranted that the Class Vehicles were of a merchantable quality.

308. By placing the Class Vehicles in the stream of commerce, Toyota impliedly warranted that all claims in their advertising and marketing of the Class Vehicles were true.

309. The Class Vehicles did not comply with the implied warranty of merchantability because, at the time of sale or lease and at all times thereafter, the Class Vehicles were defective

and not in merchantable condition, would not pass without objection in the trade, and were not fit for the ordinary purpose for which vehicles were used.

310. Further, Toyota has refused to provide an adequate warranty repair for the 3G only telematics, thus rendering the satisfaction of any notice requirement futile.

311. Plaintiffs Kilkenny and Bolton and the other Class Members suffered loss and injuries due to the defective nature of the Class Vehicles and Toyota's breach of the warranty of merchantability.

312. At all times that Toyota warranted and sold the Class Vehicles, they knew or should have known that their warranties were false, and yet they did not disclose the truth, or stop manufacturing or selling the Class Vehicles, and instead continued to issue false warranties. The Class Vehicles were defective when Toyota delivered them to their resellers, dealers, and distributors which sold the Class Vehicles, and the Class Vehicles were therefore still defective when they reached Plaintiffs and the Class.

313. Toyota's resellers, dealers, and distributors are intermediaries between Toyota and consumers. These intermediaries sell Class Vehicles to consumers and are not, themselves, consumers of Class Vehicles, and therefore have no rights against Toyota with respect to Plaintiffs' and all other Class Members' acquisition of Class Vehicles. Toyota's warranties were designed to influence consumers who purchased and/or owned Class Vehicles.

314. Plaintiffs' Kilkenny and Bolton and each Class member's acquisition of the Class Vehicles suffices to create privity of contract between these Plaintiffs and all other members of the New York subclass, on the one hand, and Toyota, on the other hand; however, privity of contract need not be established nor is it required because these Plaintiffs and the New York

subclass Members are intended third-party beneficiaries of contracts between Toyota and their resellers, authorized dealers, and, specifically, of Toyota's implied warranties.

315. Toyota had notice of its breach as alleged herein.

316. As a direct and proximate result of Toyota's breach of implied warranties of merchantability, Plaintiffs Kilkenny and Bolton and the New York Subclass are entitled to damages in an amount to be determined at trial.

COUNT XVII

Breach Of Express Warranty
N.Y. U.C.C. Law §§ 2-313 and 2A-210
(On Behalf of the New York State Subclass)

317. Plaintiffs Kilkenny and Bolton incorporate by reference each allegation as if set forth fully herein.

318. Plaintiffs Kilkenny and Bolton (for the purposes of this count, "New York Plaintiffs") bring this claim on behalf of themselves and the New York State Subclass against all Defendants.

319. Defendants are and were at all relevant times "merchants[s]" with respect to motor vehicles under N.Y. UCC Law § 2-104(1) and "sellers" of motor vehicles under § 2-103(1)(d).

320. With respect to leases, Defendants are and were at all relevant times "lessors" of motor vehicles under N.Y. UCC Law § 2A-103(1)(p).

321. The Class Vehicles are and were at all relevant times "goods" within the meaning of N.Y. UCC Law §§ 2-105(1) and 2A-103(l)(h).

322. In connection with the purchase or lease of each one of its new vehicles, Defendants provide an express warranty for a period of four years or 50,000 miles, whichever

occurs first. This warranty exists to repair the vehicle "if it fails to function properly as designed during normal use."

323. Defendant also made numerous representations, descriptions, and promises to New York State Subclass members regarding the performance and emission controls of their vehicles.

324. For example, Defendants included in the warranty booklets for some or all of the Class Vehicles the warranty that its vehicles were "designed, built, and equipped to conform at the time of sale with all U.S. emission standards applicable at the time of manufacture, and that it is free from defects in material and workmanship which would cause it not to meet those standards."

325. Defendants' warranties formed the basis of the bargain that was reached when consumers purchased or leased Class Vehicles.

326. Despite the existence of warranties, Defendants failed to inform New York State Class members that the Class Vehicles were defective and intentionally designed and manufactured to be non-operable after 3G was phased out.

327. Defendants breached the express warranty promising to repair and correct Defendants' defect in materials and workmanship. Defendants have not repaired or adjusted, and have been unable to repair or adjust, the Class Vehicles' materials and workmanship defects.

328. Affording Defendants a reasonable opportunity to cure their breach of written warranties would be unnecessary and futile here.

329. Furthermore, the limited warranty promising to repair and correct Defendants' defect in materials and workmanship fails in its essential purpose because the contractual remedy

is insufficient to make New York State Class members whole and because Defendants have failed and/or have refused to adequately provide the promised remedies within a reasonable time.

330. Accordingly, recovery by New York State Class members is not restricted to the limited warranty promising to repair and correct Defendants' defect in materials and workmanship, and they seek all remedies as allowed by law.

331. Also, as alleged in more detail herein, at the time Defendants warranted and sold or leased the Class Vehicles, they knew that the Class Vehicles were inherently defective and did not confirm to their warranties; further, Defendants had wrongfully and fraudulently concealed material facts regarding the Class Vehicles. New York State members were therefore induced to purchase or lease the Class Vehicles under false and/or fraudulent pretenses.

332. Moreover, many of the injuries flowing from the Class Vehicles cannot be resolved through the limited remedy of repairing and correcting Defendants' defect in materials and workmanship as many incidental and consequential damages have already been suffered because of Defendants' fraudulent conduct as alleged herein, and because of its failure and/or continued failure to provide such limited remedy within a reasonable time, and any limitation on New York State members' remedies would be insufficient to make them whole.

PRAYERS FOR RELIEF

WHEREFORE, Plaintiffs prays for relief in the form of an order as follows:

a. Certifying this action as a class action under Federal Rule of Civil Procedure 23, and appointing Plaintiffs as class representative and their attorneys as class counsel;

b. Awarding actual damages to Plaintiffs and the Members of the Class and subclasses;

c. Awarding attorneys' fees, expenses, and the costs of this suit, together with prejudgment and post-judgment interest at the maximum rate allowed by law; and

d. Awarding such other and further relief which the Court finds just and proper.

JURY DEMAND

Plaintiffs demands a trial by jury on all claims so triable.

Dated: December 7, 2023

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