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5 *Attorneys for Plaintiffs*  
6 *and the Proposed Class or Sub-classes*

7  
8 **UNITED STATES DISTRICT COURT**  
9 **NORTHERN DISTRICT OF CALIFORNIA**

11 YAN MEI ZHENG-LAWSON,  
12 YUANTENG PEI, and JOANNE E.  
13 FERRARA, on behalf of themselves and  
all others similarly situated,

14 Plaintiffs,

15 vs.

17 TOYOTA MOTOR CORPORATION,  
18 TOYOTA NORTH AMERICA, INC., and  
TOYOTA MOTOR SALES U.S.A., INC.,

19 Defendants.

Case No.:

**CLASS ACTION COMPLAINT**

**DEMAND FOR JURY TRIAL**

21 Plaintiffs, Yan Mei Zheng-Lawson (“Zheng-Lawson”), Yuanteng Pei (“Pei”), and  
22 Joanne E. Ferrara (“Ferrara”, collectively with Zheng-Lawson and Pei, “Plaintiffs”), on behalf  
23 of themselves and all others similarly situated, by their undersigned counsel, allege, against  
24 Defendants Toyota Motor Corporation (“Toyota Motor” or “TMC”), Toyota North America,  
25 Inc. (“Toyota North America” or “TNA”), and Toyota Motor Sales U.S.A., Inc. (“Toyota Sales”  
26 or “TMS”, collectively, with TMC and TNA, “Toyota” or “Defendants”), the following upon  
27 personal knowledge as to their own acts, and upon information and belief, based on the  
28 investigation conducted by their counsel, as to all other allegations:

**INTRODUCTION**

1  
2 1. Plaintiffs bring this class action complaint (“Complaint”) on behalf of themselves  
3 and all other persons who purchased and/or leased a model year (“MY”) 2016 Toyota Rav 4  
4 model XLE, XLE Hybrid or SE vehicle (“Rav 4” or “Class Vehicle”) that was not equipped  
5 with an “auto on/off” feature (the “auto on/off feature”) for the vehicle’s projector-beam  
6 headlights (collective purchasers and lessees, “Class Members”, the “Class”), based upon false  
7 and deceptive advertising by Toyota, as further described in paragraphs 7-13, *et. seq., infra*.

8 2. Alternatively, each Plaintiff asserts claims on behalf of a subclass consisting of  
9 the citizens of California, New York and Pennsylvania respectively, who purchased Class  
10 Vehicles that were not equipped with the “auto on/off” feature, based upon false and deceptive  
11 advertising by Toyota, as further set forth in paragraphs 7-13, *et seq., infra* (the “Sub-classes”,  
12 “Sub-class members”).

13 3. Plaintiffs and Class Members purchased their 2016 Rav 4 vehicles based upon  
14 representations by Defendants that those vehicles had a mechanism and were wired such that the  
15 vehicle’s projector-beam headlights would automatically turn on and off and adjust to ensure  
16 proper lighting given the outside lighting conditions in which they were driving.

17 4. In addition to the added luxury and convenience provided by this feature, the  
18 “auto on/off” headlight setting is necessary to ensure the safety of the driver, eliminating the  
19 need for the driver to consciously turn on his headlights given the outside lighting conditions.  
20 With regard to both daytime and nighttime vehicle light settings, the “auto on/off” feature  
21 ensures proper lighting and vehicle visibility even under circumstances where the driver of the  
22 Class Vehicle forgets or is unable, due to a sudden change of the lighting environment (e.g.,  
23 entrance into a dark tunnel) to turn the switch to the proper lighting position given the darker or  
24 changed outside environment. Moreover, because drivers must affirmatively turn on the Class  
25 Vehicle’s daytime running lights (“DRL”) without any clear indication that without doing so,  
26 their car is in a less safe setting, Defendants have placed Rav 4 drivers and in confusing and  
27 unsafe position and created an unrealistic expectation that they do not have to take those steps in  
28 order to create a proper lighting environment.

1           5.       Because of its automatic adjustment to the proper light setting, the “auto on/off”  
2 feature allows a driver of a Class Vehicle to experience optimal lighting conditions, durability,  
3 fuel economy, and vehicle visibility to other drivers on the road without requiring him to  
4 manually turn on or adjust vehicle lights to any specific light setting.

5           6.       Plaintiffs were misled by Defendants’ advertising literature, among other things,  
6 that represented that the “auto on/off” mechanisms was a feature in Class Vehicles, and thereby  
7 were caused to purchase a higher end Rav4 model, the Class Vehicles, because of Defendants’  
8 misrepresentations that such Vehicles contained that feature.

9           7.       The 2016 Rav 4 brochure (“Brochure”) available at Toyota dealerships, and on  
10 the internet, however, was false and deceptive. It misleadingly provides that 2016 Rav 4 XLE  
11 (and XLE Hybrid) models are equipped with the following features in addition to or in  
12 replacement of the exterior features offered on the 2016 Rav 4 LE models:

13                   ***Halogen projector-beam headlights with auto on/off feature***

- 14                   • Integrated fog lights
- 15                   • Silver-highlighted lower grille
- 16                   • 17-in. 5-spoke alloy wheels with P225/65R17 tires
- 17                   • Power tilt/slide moonroof with sunshade
- 18                   • Height-adjustable power liftgate with jam protection
- 19                   (Emphasis added).

20           8.       The Brochure further misleadingly provides that 2016 Rav 4 SE models contain  
21 the following features in addition to or in replacement of the exterior features offered on the  
22 2016 Rav 4 XLE models (emphasis added):

23                   ***LED projector-beam headlights with auto on/off feature***

- 24                   • LED Daytime Running Lights (DRL)
- 25                   • 18-in. 5-spoke sport alloy wheels with P235/55R18 tires
- 26                   • Black-painted heated power outside mirrors with turn signal indicators  
27 and folding feature
- 28                   (Emphasis added).

1 9. To the extent there were disclaimers, if any, they were not of a size, type, and  
2 location that would adequately inform a reasonable consumer that Toyota's representations  
3 alleged herein were not as represented.

4 10. As detailed below, standard versions of the MY 2016 Toyota Rav 4, XLE (and  
5 XLE Hybrid) and SE models, were not equipped with the automatic on/off feature or setting for  
6 the vehicle's lights as marketed, advertised, and/or represented by Defendants.

7 11. Toyota's advertisements concerning the Class Vehicles were false and  
8 misleading, and were directed at inducing and caused Plaintiffs and Class Members to purchase  
9 the Class Vehicles at higher prices than they would otherwise have paid and/or to have  
10 purchased higher end models that they believed contained this feature.

11 12. Moreover, Defendants knew that Class Vehicles sold and leased in the United  
12 States did not contain the "auto on/off" feature as part of the package of features that they had  
13 marketed, advertised and/or represented, and that the Brochure and other advertising material  
14 was false and deceptive. Despite this knowledge, they nonetheless continued to actively  
15 misrepresent the Class Vehicles' quality and features in the Brochure and/or written materials.

16 13. Despite knowing and admitting that their advertising was false, Defendants  
17 refused and failed to issue any recalls to add the promised feature, fix or add the feature when  
18 requested by owners and/or lessees, or to uniformly reimburse Class Members, thereby causing  
19 them damage.

20 14. Defendants' acts, including their false and deceptive marketing, were directed at  
21 consumers, and were part of a warranty made by Defendants to Plaintiffs and Class Members  
22 that the Class Vehicles would conform to Defendants' advertising and representations and were  
23 part of the bargain and agreement made by Defendants to Plaintiffs and Class Members.

24 **PARTIES**

25 15. Plaintiffs bring this action in their individual capacities and on behalf of all  
26 others similarly situated, as described herein.

1           16. Plaintiff Zheng-Lawson at all relevant times is and was a resident of the  
2 Richmond Hill, New York. In or about May 2016, Plaintiff Zheng-Lawson purchased a 2016  
3 Rav 4 from a Toyota dealership in Greenvale, New York.

4           17. Plaintiff Pei, at all relevant times is and was a resident of Morgan Hill,  
5 California. In or about March 2016, Plaintiff Pei purchased a 2016 Rav 4 from a Toyota  
6 dealership in San Jose, California.

7           18. Plaintiff Ferrara at all relevant times is and was a resident of Langhorne,  
8 Pennsylvania. In or about August 2016, Plaintiff Ferrara purchased a 2016 Rav 4 from a Toyota  
9 dealership in Langhorne, Pennsylvania.

10           19. At the time of their respective purchases, Plaintiff Zheng-Lawson was a citizen  
11 of the State of New York, Plaintiff Pei was a citizen of California, and Plaintiff Ferrara was a  
12 citizen of Pennsylvania. Upon their respective purchases of a Class Vehicle, each vehicle was  
13 registered and insured in its respective state of purchase.

14           20. Defendant Toyota Motor is a foreign corporation with its headquarters in Toyota,  
15 Aichi, Japan. At all relevant times, TMS and TNA acted as the domestic alter egos and/or agents  
16 of TMC. TMC has engaged in continuous and systematic activity in the United States and,  
17 specifically, in the State of California. It trades ADRs on the New York Stock Exchange, and  
18 sells and produces over 2 million cars per year in the United States through its wholly owned  
19 subsidiaries. TMC boasts that it has had the best-selling car in the United States for the past 15  
20 consecutive years. In 2016, it sold over 350,000 RAV 4 cars in the United States.

21           21. Defendant Toyota North America is a holding company for the sales and  
22 manufacturing subsidiaries of Toyota Motor in the United States, and is a California corporation  
23 with its principal executive office located at all relevant times in Torrance, California. Toyota  
24 North America operates as a wholly owned subsidiary of Toyota Motor.

25           22. TNA is responsible for, among other things, corporate advertising and corporate  
26 communications in the United States, including upon information and belief, the Brochure. Its  
27 president is Akio Toyoda, who is also the President of TMC.

28

1 23. Defendant Toyota Sales is a California corporation with its principal executive  
2 office located in the same place as TNA, which at all relevant times was in Torrance, California.  
3 Toyota Sales is a wholly owned subsidiary of Toyota Motor.

4 24. TMS is the warrantor for the limited warranties offered by Toyota which apply to  
5 all 2016 model year RAV4 vehicles distributed by Toyota that were originally sold by  
6 authorized Toyota dealers in the United States and were operated in the United States, its  
7 territories or Canada. The warranty coverage is automatically transferred at no cost to  
8 subsequent vehicle owners.

9 25. TMC has had its United States headquarters in Torrance, California since 1967,  
10 and upon information and belief, maintained its U.S. headquarters there while selling Class  
11 Vehicles. Upon information and belief, the Brochure was available for download on the Toyota  
12 Global Website at [http://www.toyota-global.com/select\\_region](http://www.toyota-global.com/select_region), such that its statements and  
13 advertising emanated from TMS or Toyota Global.

14 26. The warranty applicable to Class Vehicles provides an Emission Control  
15 Warranty, as well as a New Vehicle Limited Warranty which consists of a basic warranty for 36  
16 months or 36,000 miles, whichever occurs first; a powertrain warranty for 60 months or 60,000  
17 miles, whichever occurs first; a restraint systems warranty for 60 months or 60,000 miles,  
18 whichever occurs first; and a Corrosion Perforation Warranty for 60 months, regardless of  
19 mileage.

20 27. Defendants design, manufacture, market, sell and/or warranty automobiles,  
21 including model Rav 4s, under their Toyota brand name throughout the United States. Rav 4s  
22 are advertised, distributed, and sold through dealers throughout the United States, including  
23 dealers in New York, California, and Pennsylvania. These locations were, and are, maintained  
24 by Defendants' dealers. Defendants and their agents sold Class Vehicles to the Plaintiffs at the  
25 respective dealerships noted above.

26 **JURISDICTION AND VENUE**

27 28. This Court may assert diversity jurisdiction of this matter under the Class Action  
28 Fairness Act, 28 U.S.C.S. § 1332(d), in that at least two of the named Plaintiffs are citizens of

1 states different from the Defendants, one of whom is foreign, and the aggregate amount in  
2 controversy for all Class Members exceeds \$5,000,000, exclusive of interest and costs.

3 29. This Court may exercise personal jurisdiction over Defendants because either  
4 they are incorporated in the state of California or own subsidiaries that are incorporated in the  
5 state of California, and these subsidiaries act as alter egos. Defendants maintain sufficient  
6 minimum contacts with the United States and the State of California, making each Defendant at  
7 home in California. In addition, each Defendant intentionally avails itself of the markets within  
8 California for the promotion, sale, marketing, and distribution of its vehicles, including the  
9 Class Vehicles, and the claims in this action arise from their availment of such markets in  
10 California. The exercise of jurisdiction would comport with notions of fair play and substantial  
11 justice. Further, certain of the acts complained of occurred in California, thus rendering  
12 jurisdiction by this Court proper. Jurisdiction comports with Cal. Code Civ. Pro. §410.10.

13 30. Venue is proper in this District under 28 U.S.C. § 1391 because the Defendants  
14 transact business in this District, and a substantial part of the events and/or misrepresentations  
15 giving rise to Plaintiff Pei's and the proposed nationwide ("Nationwide") and California Sub-  
16 class members' claims occurred in this District, including the dissemination of false advertising  
17 and the sale of a Class Vehicle to Plaintiff Pei. This District also has a distinct nexus to Plaintiff  
18 Pei and Class Members who reside in and purchased Class Vehicles in this jurisdiction.  
19 Accordingly, a substantial amount of the alleged harm occurred here, and the revenue and  
20 profits Toyota received from sales of the Class Vehicles were earned in this District, thereby  
21 subjecting Toyota to *in personam* jurisdiction and venue in this District.

22 31. Toyota has also marketed and sold vehicles in this District, as well as maintained  
23 sales and service authorized dealers in the District.

24 **FACTUAL BACKGROUND AND SUBSTANTIVE ALLEGATIONS**

25 32. Defendants design and manufacture the Class Vehicles, which they market, sell  
26 and warranty throughout the United States under the Toyota brand name.

27

28

1 The Automatic On/Off Feature is a Safety Feature

2 33. The 2016 Rav 4 models that are the subject of this Complaint are the 2016 MY  
3 XLE (and XLE Hybrid) and SE models. These Class Vehicles were marketed by Defendants as  
4 safe and reliable and as containing a number of desirable interior and exterior standard vehicle  
5 features that provided drivers with additional convenience and/or safety. Plaintiffs and Class  
6 Members paid additional fees for these features.

7 34. One of those features was an automatic on/off feature that was supposed to  
8 enable the vehicles' projector beam headlights to automatically turn on and off in accordance  
9 with outside lighting conditions. This feature increases the safety of the vehicle by allowing the  
10 headlights to turn on without a conscious action by the driver, and is particularly useful when a  
11 vehicle experiences a sudden change in lighting conditions, such as when the vehicle is driven  
12 through a tunnel.

13 35. The absence of an "auto on/off" feature is particularly dangerous at night or in  
14 dark environments when a driver forgets or is unable to change the vehicle headlight switch  
15 setting to full headlights (from the Daytime Running Lights ("DRLs") or no lights at all),  
16 diminishing a driver's ability to see and the vehicle's visibility to other drivers on the road,  
17 thereby creating an unsafe and dangerous driving condition. Moreover, drivers of Class  
18 Vehicles without the "auto on/off" feature who are driving with their DRLs may fail to realize  
19 the vehicle's full headlights are not on, and therefore neglect to adjust the headlight switch  
20 setting at dusk or in the dark.

21 36. During daytime travel, the "auto on/off" feature is particularly useful as drivers  
22 of Class Vehicles periodically need to change headlight settings from "DRL" to full  
23 "headlights" when they enter dark tunnels or encounter stormy conditions. The "auto on/off"  
24 feature makes the appropriate headlight setting adjustments obviating the need for the driver to  
25 do so and losing focus on the road.

26 37. Without the "auto on/off" feature, daytime drivers of Class Vehicles must  
27 consciously change to change the vehicle headlight switch setting to "DRL" from the "off"  
28 setting, and, if they do not, lose out on the added safety benefits and visibility which DRLs

1 offer. Moreover, drivers of Class Vehicles who leave their vehicle headlight switch setting at  
2 full headlights at all times lose out on the greater durability and improved fuel economy which  
3 the DRL setting offers drivers in environments with more light.

4 **The Class Vehicles Lack the Automatic On/Off**  
5 **Feature Despite Defendants' Representations Otherwise**

6 38. Commencing at some point in 2015, about the time that the Class Vehicles  
7 became available for purchase, Defendants disseminated a misleading Brochure concerning the  
8 Class Vehicles, representing that all Class Vehicles were equipped with the automatic on/off  
9 feature.

10 39. Specifically, the Brochure stated that the “projector-beam headlights with auto  
11 on/off feature” would be included as one of the “Exterior Features” in the XLE (and XLE  
12 Hybrid), SE, and Limited (and Limited Hybrid) model Rav 4s. XLE models were represented to  
13 be equipped with “Halogen projector-beam headlights with auto on/off feature” and SE and  
14 Limited models were represented to be equipped with “LED projector-beam headlights with  
15 auto on/off feature.”

16 40. These representations were particularly important as Toyota generally markets  
17 Rav 4 XLE, SE, and Limited models as higher end versions of the Rav 4, because they contain  
18 additional or enhanced features beyond those available in the more basic Rav 4 model LE. For  
19 instance, the Brochure notes that the basic Rav 4 model contains only “projector-beam  
20 headlights with auto-off feature” – but not the “auto on/off” feature that the Brochure expressly  
21 identifies in the XLE, SE, and Limited models. *Id.*

22 41. In fact, page 15 of the Brochure specifically lists a number of “Options” for  
23 model XLE, XLE Hybrid, and SE Rav 4s, but does not include the “auto on/off” feature in that  
24 list. The “auto on/off” feature is instead listed under the list of standard “Exterior Features.”

25 42. Thus, after reviewing these representations in the Brochure, a reasonable  
26 consumer seeking to purchase a vehicle would be deceived into believing that all 2016 XLE,  
27 XLE Hybrid, and SE Rav 4 models came equipped with the “auto on/off” feature as a standard  
28

1 feature and would be led into paying more for that feature by buying a higher end model Rav 4.  
2 The Brochure fails to provide any adequate disclaimers.

3 43. In fact, standard versions of 2016 XLE, XLE Hybrid, and SE Rav 4 models did  
4 not actually come equipped with the “auto on/off” projector-beam headlights as a standard  
5 feature as indicated in the Brochure. Rather, the standard versions of 2016 XLE, XLE Hybrid,  
6 and SE Rav 4 vehicles were equipped with only “Type B”, “Type C” or “Type D”<sup>1</sup> headlight  
7 switches which require the driver to affirmatively adjust the headlight setting by manually  
8 turning the end of the lever to the desired light setting (*see* settings below). The “auto on/off”  
9 feature was only offered as part of an option package, for additional cost, but not as a standard  
10 feature as consumers who viewed the 2016 Rav 4 brochure were led to believe.

11 44. In the 2016 Rav 4 U.S. versions *with* the “auto on/off” feature (the non-Class  
12 Vehicles), the vehicle contains four vehicle headlight switch settings, which include: 1) a setting  
13 whereby the side marker, parking, tail, license plate, and instrument panel lights (“auxiliary  
14 lights”) turn on; 2) the headlights and all auxiliary lights turn on; 3) the headlights, all auxiliary  
15 lights, and the daytime running lights<sup>2</sup> turn on and off automatically; 4) all lights turn off (“Type  
16 A”).

17 45. In the 2016 Rav 4 U.S. versions *without* the “auto on/off” feature, the vehicle  
18 contains three or four vehicle headlight switch settings, which include: 1) a setting whereby the  
19 side marker, parking, tail, license plate, and instrument panel lights (“auxiliary lights”) turn on;  
20 2) the headlights and all auxiliary lights turn on; 3) the daytime running lights turn on; and 4) all  
21 lights turn off (“Type B”), OR 1) a setting whereby auxiliary lights turn on; 2) the headlights  
22

23 <sup>1</sup> Upon information and belief, “Type D” headlight settings do not appear in any 2016 Toyota  
Rav 4 manual.

24 <sup>2</sup> As explained in the 2016 Rav 4 Owner Manual, the daytime running light (“DRL”) system is a  
25 safety feature that makes the vehicle more visible to other drivers during the daytime. In the  
26 United States, the Rav 4s’ DRLs turn on when the engine is started and the parking brake is  
released, when the headlight switch is in the DRL or AUTO position (depending on whether the  
Rav 4 contains the “auto on/off” feature).

27 The DRLs are dimmer than regular headlight lights, and are not designed for use at night. In  
28 comparison to headlights, DRLs are more durable and consume less electricity, thereby  
improving a vehicle’s fuel economy.

1 and all auxiliary lights turn on; and 3) the daytime running lights turn on (“Type C”), OR 1) a  
2 setting whereby the headlights and all auxiliary lights turn on; 2) the daytime running lights and  
3 all auxiliary lights turn on; 3) the daytime running lights turn on; and 4) all lights turn off  
4 (“Type D”).

5 46. Standard 2016 XLE, XLE Hybrid, and SE Rav 4 models came equipped with  
6 Type B or Type C or Type D vehicle headlight switch settings, but not the Type A switch  
7 settings which contain the “auto on/off” feature.

8 47. Only after purchasing the Class Vehicle (and paying for the automatic on/off  
9 feature) did Class Members discover that this material feature was not standard and thus not  
10 installed in their Class Vehicles.

11 48. Plaintiffs and Class Members relied upon Defendants’ representations and  
12 deceptions and were misled into believing that Class Vehicles would contain the “auto on/off”  
13 feature.

14 49. Because of Defendants’ misrepresentations and deception, Class Members paid a  
15 premium for their Class Vehicles, and more than they would have paid had they known the  
16 “auto on/off” feature was not a standard feature on their respective Class Vehicle. Had Plaintiffs  
17 and Class Members known that the auto “on/off” feature was not included in their purchase or  
18 lease, they would not have purchased and/or leased their Class Vehicles or would have paid  
19 significantly less for their purchase and/or lease of such Rav 4 models.

20 50. In purchasing and/or leasing their Class Vehicles, Plaintiffs and Class Members  
21 did not receive the full value that they were led to believe they would receive in their purchase  
22 or lease of their Class Vehicle.

23 **Defendants Knew and Admitted that Their Advertising was Deceptive**

24 51. Defendants were on notice that Class Vehicles provided to purchasers within the  
25 United States did not come equipped with the “auto on/off” feature contrary to what they had  
26 represented in their marketing materials. Owners of Class Vehicles filed complaints with Toyota  
27 and posted complaints on various internet bulletin boards and complaint forum-type websites  
28 monitored by Toyota, which complained of the missing feature. Defendants actively monitor

1 internet posts concerning their vehicles and maintain a quality division to collect such data.  
2 Moreover, upon information and belief, the feature is included in Canadian versions of the Class  
3 Vehicles, indicating that Toyota made a conscious decision to sell the same vehicle in the  
4 United States without the represented feature, thereby tacitly admitting to Class Members that  
5 the Brochure, which touted the feature, contained deceptive or false advertising.

6 52. There are a number of active bulletin boards on the internet on which Rav 4  
7 owners, and owners of the Class Vehicles post complaints and have posted their efforts to  
8 contact Toyota about this issue

9 53. Postings as early as January 2016, indicate that Class Members had contacted  
10 Toyota to inform it of the discrepancy between the Brochure and the Class Vehicles. Many of  
11 those online messages indicate that Toyota either was unresponsive to the Class Member's  
12 complaints, or admitted to Class Members that the Brochure was wrong. For example, in one  
13 attached January 2016 posting, Toyota admitted that the website information was incorrect and  
14 that the Brochure (at least online) did not accurately reflect the correct features of the Class  
15 Vehicles.

16 54. Toyota's admission and failure to adequately respond was confirmed by Plaintiff  
17 Ferrara. Upon discovering that her Class Vehicle did not have the automatic on/off feature,  
18 Plaintiff Ferrara contacted her dealership, and its service department. There, the service  
19 representative admitted that the Brochure was wrong. Thereafter, Plaintiff Ferrara contacted  
20 Toyota's national customer service representatives who admitted that the Brochure was  
21 incorrect but directed Plaintiff Ferrara to the window sticker, which was silent on the issue, and  
22 thus was of little relevance.

23 55. Although effectively admitting that the Brochure was misleading and deceptive,  
24 Toyota refused to take any steps to return Plaintiff Ferrara's money, replace her Class Vehicle  
25 with a car containing the missing "auto on/off" feature or take any other adequate steps.

26 56. Defendants thus were on notice and admitted that the Class Vehicles sold in the  
27 United States did not come equipped with the "auto on/off" feature as they received multiple  
28 complaints and correspondence from Class Members regarding the missing feature and the

1 misstatements in the Brochure. Toyota even conceded the absence of the promised feature in the  
2 Class Vehicles, when it discretely offered a \$500 refund to some purchasers of the Class  
3 Vehicles who actively complained, but did not make that offer to all Class Members.

4 57. Despite knowing and effectively admitting that their advertising was deceptive  
5 and misleading, Defendants did not correct the Brochure and other false advertising, nor did  
6 they take steps to repair or replace Plaintiffs' and Class Members' Class Vehicles, thereby  
7 causing member of the Class damage, as further alleged below.

8 58. Defendants' misrepresentations to Plaintiffs and Class Members that the standard  
9 form of Class Vehicle contained the "auto on/off" feature caused damages as Plaintiffs and  
10 Class Members would not have purchased and/or leased their Class Vehicles or would have  
11 insisted upon a significantly lower purchase and/or lease price. Thus, because of Defendants'  
12 misrepresentations, Plaintiffs and Class Members paid higher purchase and/or lease prices, and  
13 did not receive the full value of their purchases or leases, including the use of the "auto on/off"  
14 feature and its benefits.

15 **Plaintiff Zheng-Lawson's Factual Allegations**

16 59. In or about May 2016, Plaintiff Zheng-Lawson purchased a new 2016 Toyota  
17 Rav 4 model XLE from Penn Toyota, a Toyota dealership in Greenvale, New York (the  
18 "Greenvale Dealership"), based upon Defendants' misrepresentations and deceptions contained  
19 in both the online version and hard copy of the Brochure.

20 60. Plaintiff Zheng-Lawson purchased her Class Vehicle after her husband had  
21 reviewed the online version of the Brochure, which touted the automatic on/off feature as  
22 included in all Class Vehicles. Plaintiff Zheng-Lawson and her husband confirmed that the  
23 automatic on/off feature was standard, when they reviewed the hard copy Brochure during  
24 discussions about the Class Vehicle at the Greenvale Dealership. Based upon those  
25 misrepresentations, and believing that the Class Vehicle contained the automatic on/off feature  
26 as standard, Plaintiff Zheng-Lawson and her husband determined to and did purchase their Class  
27 Vehicle.

28

1           61. Plaintiff Zheng-Lawson paid a higher price for the upgraded XLE model under  
2 the mistaken belief that the upgraded Class Vehicle would be equipped with, *inter alia*, the  
3 represented “auto on/off” feature as standard. After receiving their Class Vehicle, however, they  
4 discovered that it only came equipped with the “Type D” vehicle headlight switch settings,  
5 which did not include the “auto on/off” feature. Although they complained, Toyota refused to  
6 cure the defect.

7 **Plaintiff Pei’s Factual Allegations**

8           62. In or about March 2016, Plaintiff Pei purchased a new 2016 Toyota Rav 4 model  
9 XLE from Capitol Toyota, a dealership in San Jose, California.

10           63. Prior to and/or at the time of purchase, Toyota represented to Plaintiff Pei in its  
11 advertising and the Brochure that the car in which he was interested, the 2016 Toyota Rav 4  
12 model XLE, contained projector-beam headlights that were equipped with the “auto on/off”  
13 feature as a standard feature.

14           64. Thus, Plaintiff Pei, relying on Defendants’ representations, agreed to and did pay  
15 an increased price for the upgraded XLE model so that his Rav 4 would contain certain added  
16 features, including the “auto on/off” feature. After obtaining his Class Vehicle, Plaintiff Pei  
17 discovered that it came equipped with vehicle headlight switch settings that did not include the  
18 “auto on/off” feature for which he had paid, thereby causing him damage.

19 **Plaintiff Ferrara’s Factual Allegations**

20           65. In or about August 2016, Plaintiff Ferrara and her husband purchased a new 2016  
21 Toyota Rav 4 model XLE from Team Toyota, a Toyota dealership in Langhorne, Pennsylvania.  
22 Plaintiff Ferrara and her husband purchased the Class Vehicle primarily for use by their college  
23 aged daughter, such that the Class Vehicle’s safety features were of particular importance to  
24 them.

25           66. Prior to and at the time of purchase, Plaintiff Ferrara and her husband reviewed  
26 the features to be included in Class Vehicles. Specifically, while considering various vehicle  
27 options, Plaintiff Ferrara and her husband reviewed the Brochure for the Class Vehicle available  
28

1 at the dealership, including that portion of the Brochure that represented that the Class Vehicle  
2 was equipped with the automatic on/off feature.

3 67. Plaintiff Ferrara and her husband specifically paid a greater price for an upgraded  
4 XLE model based upon Defendants' representation that the Class Vehicle was equipped with an  
5 automatic "auto on/off" feature, which they consider a critical vehicle safety feature. After  
6 obtaining their Class Vehicle, however, Plaintiff Ferrara and her husband discovered that Class  
7 Vehicle they had purchased failed to contain the represented "auto on/off" feature.

8 68. Thereafter, Plaintiff Ferrara and her husband contacted the salesman at Team  
9 Toyota who had arranged their purchase, notifying him of the missing "auto on/off" feature and  
10 requesting an installation of that feature. Plaintiff Ferrara and her husband were directed to the  
11 Team Toyota service department, which admitted that the Brochure upon which they had relied  
12 contained a deceptive and misleading representation about the Class Vehicle. The service  
13 department representative stated, however, that since her Rav 4 was properly built to its design,  
14 and despite Toyota's misrepresentation in the Brochure, it would not repair, fix, or upgrade her  
15 vehicle.

16 69. Plaintiff Ferrara and her husband were later contacted by a representative from  
17 Team Toyota who explained that installing new headlights with the "auto on/off" feature would  
18 be a difficult, costly, and technically inadvisable project. Accordingly, Toyota was not willing  
19 to repair, fix, or upgrade Plaintiff Ferrara's Class Vehicle or provide her with another Rav 4 that  
20 was equipped with that feature. Team Toyota offered Plaintiff Ferrara compensation of \$300 to  
21 \$500 or an auto starter, which she refused as inadequate.

22 70. Plaintiff Ferrara and her husband subsequently contacted Toyota's National  
23 Customer Service, which further refused to provide a repair, fix, or upgrade of Plaintiff  
24 Ferrara's Class Vehicle, and refused to provide Plaintiff Ferrara with a refund of her purchase.

25 71. All Toyota representatives with whom Plaintiff Ferrara communicated on this  
26 matter did not deny that Toyota had misrepresented the Class Vehicle's features in the  
27 Brochure, but nonetheless failed to repair, fix, or upgrade Plaintiff Ferrara's Class Vehicle to  
28 conform to Toyota's representations, thereby causing her damage.

**CLASS ACTION ALLEGATIONS**

72. Plaintiff Pei brings this action on his own behalf and on behalf of all other persons similarly situated, pursuant to Federal Rules of Civil Procedure 23(a), (b)(2) and (b)(3), on behalf of a class consisting of: All United States citizens who purchased and/or leased a MY 2016 Toyota Rav 4 XLE, XLE Hybrid or SE model vehicle that did not contain the “auto on/off” feature for the vehicle’s projector-beam headlights. The term “persons” includes individuals as well as profit and not-for-profit corporations, partnerships, limited liability companies, limited liability partnerships, joint ventures, sole proprietorships, associations, firm, trust and other business and governmental entities. Excluded from this Class are any persons or other entities related to or affiliated with Defendants; any person, firm, trust, corporation, or other entity who purchased a Class Vehicle for resale (i.e. as a dealer) from Defendants, or any entity related to or affiliated with Toyota, or any person who has an action for damages for personal injury or death or property damage against Defendant arising from a Class Vehicle.

73. In the alternative, Plaintiffs assert that they respectively are bringing this action on behalf of the following Sub-classes:

**A New York Subclass: By Plaintiff Zheng-Lawson**

All persons who are citizens of the State of New York who purchased and/or leased a model year 2016 Toyota Rav 4 XLE, XLE Hybrid or SE model vehicle that did not contain the “auto on/off” feature for the vehicle’s projector-beam headlights. The term “persons” includes individuals as well as profit and not-for-profit corporations, partnerships, limited liability companies, limited liability partnerships, joint ventures, sole proprietorships, associations, firm, trust and other business and governmental entities.

Excluded from this Class are any persons or other entity related to or affiliated with Defendants; any person, firm, trust, corporation, or other entity who purchased a Class Vehicle for resale (i.e. as a dealer) from Defendants, or any entity related to or affiliated with Toyota, or any person who has an action for damages for personal injury or death or property damage against Defendant arising from a Class Vehicle.

**A California Subclass: By Plaintiff Pei**

All persons who are citizens of the State of California who purchased and/or leased a MY2016 Toyota Rav 4 XLE, XLE Hybrid or SE

1 model vehicle that did not contain the “auto on/off” feature for the  
2 vehicle’s projector-beam headlights. The term “persons” includes  
3 individuals as well as profit and not-for-profit corporations,  
4 partnerships, limited liability companies, limited liability partnerships,  
5 joint ventures, sole proprietorships, associations, firm, trust and other  
6 business and governmental entities.

7 Excluded from this Class are any persons or other entities related to  
8 or affiliated with Defendants; any person, firm, trust, corporation, or  
9 other entity who purchased a Class Vehicle for resale (i.e. as a dealer)  
10 from Defendants, or any entity related to or affiliated with Toyota, or  
11 any person who has an action for damages for personal injury or death  
12 or property damage against Defendant arising from a Class Vehicle.

13 **A Pennsylvania Subclass: By Plaintiff Ferrara**

14 All persons who are citizens of the State of Pennsylvania who  
15 purchased and/or leased aMY 2016 Toyota Rav 4 XLE, XLE Hybrid  
16 or SE model vehicle that did not contain the “auto on/off” feature for  
17 the vehicle’s projector-beam headlights. The term “persons” includes  
18 individuals as well as profit and not-for-profit corporations,  
19 partnerships, limited liability companies, limited liability partnerships,  
20 joint ventures, sole proprietorships, associations, firm, trust and other  
21 business and governmental entities.

22 Excluded from this Class are any persons or other entity related to or  
23 affiliated with Defendants; any person, firm, trust, corporation, or  
24 other entity who purchased a Class Vehicle for resale (i.e. as a dealer)  
25 from Defendants, or any entity related to or affiliated with Toyota, or  
26 any person who has an action for damages for personal injury or death  
27 or property damage against Defendant arising from a Class Vehicle.

28 **NUMEROSITY**

74. The members of the Class are so numerous that joinder of all members is impracticable. The Class is made up of thousands of members. The precise number of Class Members can only be ascertained through discovery, which includes Defendants’ sales, service, maintenance and complaint records, and Defendants’ registration records. The disposition of Class Members’ claims through a class action will benefit the parties and the Court.

**COMMON QUESTIONS OF LAW AND FACT**

75. There is a well-defined community of interests in the questions of law and fact affecting the Plaintiffs and Class Members.

1           76.     The questions of law and fact common to the Class predominate over questions  
2 which may affect individual members, and include the following:

3                   (a)     Whether Toyota knowingly or intentionally deceived Class Members  
4 and/or disseminated false advertising and uniform marketing materials relating to the Class  
5 Vehicles, or whether Defendants knew or should have known that their advertising material was  
6 false and deceptive;

7                   (b)     Whether Toyota misrepresented or omitted material information that  
8 Class Vehicles did not contain a material feature which Plaintiffs and Class Members  
9 reasonably believed it would contain;

10                  (c)     Whether Defendants' misrepresentations regarding the Class Vehicles'  
11 "auto on/off" feature was material;

12                   (d)     Whether Defendants violated New York's General Business Law § 349;

13                   (e)     Whether Defendants violated New York's General Business Law § 350;

14                   (f)     Whether Defendants violated Pennsylvania's Unfair Trade Practices and  
15 Consumer Protection Law (73 P.S. § 201-1 *et seq.*);

16                   (g)     Whether Defendants violated Pennsylvania's Trade Practice and  
17 Consumer Protection Law (73 P.S. 201-1, *et seq.*);

18                   (h)     Whether Defendants violated California's Unfair Competition Law (Cal.  
19 Bus. & Prof. Code § 17200, *et seq.*);

20                   (i)     Whether Defendants violated California's Consumer Legal Remedies Act  
21 (Cal. Civ. Code §1750, *et seq.*);

22                   (j)     Whether Defendants violated California's Song-Beverly Consumer  
23 Warranty Act (Cal. Civ. Code §1790, *et seq.*);

24                   (k)     Whether Defendants were unjustly enriched;

25                   (l)     Whether Defendants' failure to equip Class Vehicles with the "auto  
26 on/off" feature constitutes a breach of express warranty; and

27                   (m)     Whether Class Members were damaged, and if so, the appropriate amount  
28 thereof.

1 **TYPICALITY**

2 77. Plaintiffs' claims and defenses are typical of the claims and defenses of the Class  
3 because Plaintiffs and Class members all purchased and/or leased Class Vehicles that failed to  
4 contain the "auto on/off" feature. All of their vehicles were designed, manufactured, marketed  
5 and sold by Defendants. Plaintiffs, like all Class Members, purchased their Class Vehicles,  
6 based upon Defendants misrepresentations and deceptive advertising indicating that Class  
7 Vehicles were equipped with the "auto on/off feature" and omissions of material fact that the  
8 feature did not exist, thereby causing Plaintiffs and Class Members damage when they  
9 purchased their Class Vehicles. Each Plaintiff is also typical of the respective Sub-class that  
10 he/she seeks to represent.

11 **ADEQUACY OF REPRESENTATION**

12 78. Plaintiffs will fairly and adequately assert and protect the interests of the Class  
13 as:

14 (a) Plaintiffs have hired attorneys who are experienced in prosecuting class  
15 action claims and will adequately represent the interests of the Class; and

16 (b) Plaintiffs have no conflicts of interest that will interfere with the  
17 maintenance of this class action.

18 **PREDOMINANCE**

19 79. With respect to the Class or, in the alternative, the Sub-classes, questions  
20 common to the Class predominate over those which only affect individual owners. This case  
21 involves 2016 MY Rav 4s which all lack the same "auto on/off" feature and were purchased  
22 based upon the same deceptive and false advertising. Because this feature is lacking, the value  
23 of the Class Vehicles have been reduced accordingly, regardless of who purchased or drove the  
24 vehicle, or how they were driven. Liability will primarily be predicated upon the jury's  
25 evaluation of Defendants' representations and/or advertisements regarding the "auto on/off"  
26 feature, the materiality of the feature, and the reduced value of a vehicle which lacks that  
27 feature.

**SUPERIORITY**

1  
2 80. A class action provides a fair and efficient method for the adjudication of  
3 controversy for the following reasons:

4 (a) The common questions of law and fact set forth above predominate over  
5 any questions affecting only individual Class Members;

6 (b) The Class is so numerous as to make joinder impracticable. The Class,  
7 however, is not so numerous as to create manageability problems. There are no unusual legal or  
8 factual issues which would create manageability problems;

9 (c) Prosecution of a separate action by individual members of the Class  
10 would create a risk of inconsistent and varying adjudications against Defendants when  
11 confronted with incompatible standards of conduct;

12 (d) The claims of the individual Class Members are small in relation to the  
13 expenses of litigation, making a class action the only procedure in which Class Members can, as  
14 a practical matter, recover; and

15 (e) A class action would be superior to and more efficient than adjudicating  
16 thousands of individual lawsuits.

17 **COUNT I**

18 **(Deceptive Trade Practices)**  
19 **(Violation of General Business Law§ 349: Deceptive Acts and Practices)**  
20 **(Brought by Plaintiff Zheng-Lawson on behalf of the New York Sub-class)**

21 81. Plaintiff Zheng-Lawson hereby incorporates by reference the allegations  
22 contained in all preceding and subsequent paragraphs of this Complaint as though set forth fully  
23 herein.

24 82. Plaintiff Zheng-Lawson asserts this cause of action on behalf of the New York  
25 Sub-class.

26 83. Defendants’ practices, acts, policies and courses of conduct, including their  
27 representations that the Class Vehicles would be equipped with the “auto on/off” feature as  
28 described above, and omissions that Class Vehicles did not contain this feature, were aimed at

1 consumers, were consumer oriented, and intended to induce, and did induce, Plaintiff Zheng-  
2 Lawson and members of the New York Sub-class to purchase and/or lease Class Vehicles.

3 84. Defendants sold and/or leased the Class Vehicles misrepresenting materials facts  
4 by claiming the Class Vehicles did contain the “auto on/off” feature and by knowingly omitting  
5 the fact that they did not contain the “auto on/off” feature as Toyota represented, marketed,  
6 and/or advertised.

7 85. Defendants’ practices, acts, policies and course of conduct are actionable in that:

8 (a) Defendants actively, knowingly and deceptively misrepresented to  
9 Plaintiff and the Sub-class members at the time of purchase or lease that the Class Vehicles sold  
10 or leased in the United States included automatic on/off headlights in said vehicles, when in  
11 fact, said Class Vehicles did not have this feature;

12 (b) Defendants failed to disclose the lack of such a feature to consumers  
13 who purchased or leased said Class Vehicles, despite the fact that Defendants were aware that  
14 such a feature would not come standard in Class Vehicles and that the Brochure and other  
15 advertising material, including its online statements, were deceptive in stating it did;

16 (c) Defendants’ actions, representations, advertisements and/or omissions  
17 caused Plaintiffs and the Sub-class members to expend additional sums of money at its  
18 dealerships and elsewhere to purchase or lease Class Vehicles believing that they were obtaining  
19 a vehicle with the represented “auto on/off” headlight feature, thereby causing them damage.  
20

21 (d) Defendants’ marketing, advertising and promotion of Class Vehicles  
22 was deceptive because it failed to reveal the true type of headlights which purchasers or lessees  
23 would receive in their Class Vehicles.  
24

25 (e) Defendant, through its agents and representatives, admitted to some  
26 Class Vehicle owners or lessees by its words and actions that its advertising was false and  
27 deceptive and did not conform to or adequately describe the features with which the Class  
28

1 Vehicles were equipped, and that the Class Vehicles did not conform to Toyota's  
2 representations in the Brochure. Defendants discretely offered partial compensation to some  
3 Class Vehicle owners or lessees for the reduction in value of their vehicle, thereby maintaining a  
4 secret, unfair, deceptive, arbitrary and unconscionable warranty practice for some, while not  
5 disclosing and applying it to all Class and Sub-class members.  
6

7 86. Each and all of the aforementioned conduct is and was deceptive, false,  
8 fraudulent, and constitutes an unconscionable commercial practice in that Defendants have, by  
9 the use of false or deceptive statements and/or knowing intentional material omissions,  
10 circulated false and deceptive advertising and misrepresented and/or omitted the true nature of  
11 Class Vehicles and their headlight features.

12 87. In making these misrepresentations of fact and/or material omissions to  
13 prospective customers while knowing such representations to be false, Defendants  
14 misrepresented and/or knowingly and intentionally omitted material facts.

15 88. Plaintiffs and members of the public were deceived by Defendant's affirmative  
16 misrepresentations and failures to properly disclose the material fact that Class Vehicles did not  
17 have the "auto on/off" feature.

18 89. Such acts by Defendant are and were deceptive acts or practices which are and/or  
19 were, likely to mislead a reasonable consumer purchasing the vehicle. Said deceptive acts and  
20 practices aforementioned are material. The sale and distribution in New York of the Class  
21 Vehicles was a consumer-oriented act and thereby falls under the New York consumer fraud  
22 statute, General Business Law § 349.

23 90. As a direct and proximate result of these unfair, deceptive and unconscionable  
24 commercial practices, Plaintiff Zheng-Lawson and the Sub-class members have been injured as  
25 alleged herein, and are entitled to recover actual and/or statutory and/or punitive damages and/or  
26 trebled damages to the extent permitted by law, including class action rules, in an amount to be  
27 proven at trial.  
28

1 91. Moreover, the Class Vehicles without the “auto on/off” feature are of lesser value  
2 than if they had included this feature and Plaintiff Zheng-Lawson and Sub-class members have  
3 lost the benefit of their bargain by Defendants’ failure to include the feature in their Class  
4 Vehicles.

5 92. As a result, Plaintiff Zheng-Lawson and the Sub--class members seek restitution  
6 and/or disgorgement of revenues that Toyota received as a result of selling Class Vehicles to  
7 Plaintiff Zheng-Lawson and Sub-class members, and/or the cost to repair, fix, and/or upgrade  
8 their Class Vehicles so as to conform to Toyota’s representations regarding their headlights’  
9 “auto on/off” feature. Plaintiff Zheng-Lawson is informed and believes that the amount of said  
10 restitution is unknown at this time, but will seek relief to amend this Complaint at the time of  
11 trial, when the same has been ascertained. In addition, or alternatively, Plaintiff Zheng-Lawson  
12 seeks to recover the diminution of value she experienced as a result of the Defendants’ violation  
13 of GBL § 349.

14 93. In addition, Plaintiff Zheng-Lawson seeks punitive damages, statutory damages  
15 and reasonable attorneys’ fees. Plaintiff also seek a declaration that Class Vehicles lack the  
16 promised “auto on/off” feature, and owners and lessees of Class Vehicles must be compensated,  
17 refunded, and/or have their vehicle replaced with others containing the represented feature.

18 **COUNT II**

19 **(Deceptive Trade Practices)**  
20 **(Violation of General Business Law § 350 Deceptive Acts and Practices)**  
21 **(Brought by Plaintiff Zheng-Lawson on behalf of the New York Subclass)**

22 94. Plaintiff Zheng-Lawson hereby incorporates by reference the allegations  
23 contained in all preceding and subsequent paragraphs of this Complaint as though set forth fully  
24 herein.

25 95. Plaintiff Zheng-Lawson asserts this cause of action on behalf of herself and the  
26 New York Sub-class.

27 96. Defendants knowingly advertised in a manner that misled consumers, including  
28 Class Members and members of the New York Sub-class, into the false belief that all Class  
Vehicles would come equipped with the “auto on/off” feature as described above.

1           97.     Such advertisements and marketing practices by Defendant are and were  
2 materially misleading and likely to mislead a reasonable consumer purchasing the vehicle. The  
3 sale and distribution in New York of the Class Vehicles was a consumer-oriented act and  
4 thereby falls under the New York consumer fraud statute, General Business Law § 350.

5           98.     As a direct and proximate result of these misleading advertisements and  
6 marketing materials, and/or the concealment of the true and accurate facts in the false materials  
7 disseminated, Plaintiff Zheng-Lawson and the Sub-class members have been injured as alleged  
8 herein, and are entitled to recover actual and/or statutory and/or punitive damages and/or trebled  
9 damages to the extent permitted by law, including class action rules, in an amount to be proven  
10 at trial.

11           99.     As a result, Plaintiff Zheng-Lawson and the New York Sub-class members seek  
12 restitution or disgorgement of all increased revenues that Toyota received as a result of selling  
13 Class Vehicles to Plaintiff Zheng-Lawson and the New York Sub-class members, and/or the  
14 cost to repair, fix, and/or upgrade their Class Vehicles so as to conform to Toyota's  
15 representations regarding their headlights' "auto on/off" feature. Plaintiff Zheng-Lawson is  
16 informed and believes that the amount of said restitution is unknown at this time, but will seek  
17 relief to amend this Complaint at the time of trial, when the same has been ascertained. In  
18 addition, or alternatively, Plaintiff Zheng-Lawson seeks to recover the diminution of value of  
19 her Class Vehicle as a result of the Defendants' violation of GBL § 350.

20           100.    In addition, Plaintiff Zheng-Lawson seeks punitive damages, statutory damages  
21 and reasonable attorneys' fees. Plaintiff Zheng-Lawson also seeks a declaration that Class  
22 Vehicles lack the advertised "auto on/off" feature, and owners and lessees of Class Vehicles  
23 must be compensated, refunded, and/or have their vehicles replaced with others containing the  
24 represented feature.

**COUNT III**

**(Breach of Express Warranty)  
(Violation of Cal. Com. Code § 2313)  
(Brought by Plaintiff Pei on behalf of the National Class, or, alternatively, Plaintiff Pei on behalf of the California Sub-class)**

101. Plaintiff Pei hereby incorporates by reference the allegations contained in all preceding and subsequent paragraphs of this Complaint as though set forth fully herein.

102. Plaintiff Pei asserts this cause of action on behalf of himself and the National Class under Cal. Com. Code §2313. Alternatively, this cause of action is asserted by Plaintiff Pei on behalf of the California Sub-class under Cal. Com. Code §2313.

103. Defendants provided a uniform affirmative description of the Class Vehicles in the Brochure that stated that the “auto on/off” feature was an included exterior feature in the Class Vehicles. This uniform affirmative description of the Class Vehicles was made part of the basis of the bargain and thereby created an express warranty that the Class Vehicles conformed to the description pursuant to the UCC express warranty provisions adopted by California under Cal. Com. Code § 2313. Plaintiff Pei and Class Members (or alternatively, California Sub-class members) thereby relied upon such warranty. By law, Plaintiff Pei and Class Members, or alternatively, California Sub-class members have entered into certain express warranty agreements with Toyota.

104. Despite this uniform affirmative misrepresentation, Defendants breached their express warranty Plaintiff Pei and Class Members, or alternatively, California Sub-class members, when they delivered to them Class Vehicles that did not contain the “auto on/off feature” and did not conform to the description of the vehicles provided to them as consumers.

105. As a result of the foregoing, Plaintiff Pei and the National Class, or alternatively, California Sub-class members, are entitled to compensatory damages for breach of express warranty in an amount to be proven at trial, and punitive damages because Defendants acted in a manner contrary to public purpose and with intent to exclude such “auto on/off” headlight feature.

**COUNT IV**

**(Breach of Express Warranty)  
(Violation of New York Uniform Commercial Code, § 2-313)  
(Brought by Plaintiff Zheng-Lawson on behalf of the New York Sub-Class)**

106. Plaintiff Zheng-Lawson hereby incorporates by reference the allegations contained in all preceding and subsequent paragraphs of this Complaint as though set forth fully herein.

107. Plaintiff Zheng-Lawson asserts this cause of action on behalf of herself and the New York Sub-class under N.Y.U.C.C. § 2-313(1)(b).

108. Defendants provided a uniform affirmative description of Class Vehicles in the Brochure that stated that the “auto on/off” feature was an included exterior feature of the Class Vehicles. This uniform affirmative description of the Class Vehicles was made part of the basis of the bargain and thereby created an express warranty that the Class Vehicles conformed to the description pursuant to the UCC express warranty provisions as adopted by New York in N.Y.U.C.C. § 2-313(1)(b). Plaintiff Zheng-Lawson and New York Sub-class members relied upon such warranty. By law, Plaintiff Zheng-Lawson and New York Sub-class members have entered into certain express warranty agreements with Toyota.

109. Despite this uniform affirmative misrepresentation, Defendants breached their express warranty with Plaintiff Zheng-Lawson and New York Sub-class members when they delivered to them Class Vehicles that did not contain the “auto on/off” feature and thereby did not conform to the description of the vehicles they provided to consumers.

110. As a result of the foregoing, Plaintiff Zheng-Lawson and the New York Sub-class members are entitled to compensatory damages for Defendants’ breach of express warranty in an amount to be proven at trial, and punitive damages because Defendants acted in a manner contrary to the public purpose and with intent not to provide the “auto on/off headlight feature, and to exclude this feature from the Class Vehicles.

**COUNT V**

**(Breach of Express Warranty)  
(Violation of 13 Pa.C.S.A. § 2313.)  
(Brought by Plaintiff Ferrara on behalf of the Pennsylvania Sub-Class)**

111. Plaintiff Ferrara hereby incorporates by reference the allegations contained in all preceding and subsequent paragraphs of this Complaint as though set forth fully herein.

112. Plaintiff Ferrara asserts this cause of action on behalf of herself and the Pennsylvania Sub-class under 13 Pa. C.S.A. §2313.

113. Defendants provided a uniform affirmative description of the Class Vehicles in the Brochure that stated that the “auto on/off” feature was an included exterior feature of the Class Vehicles. This uniform affirmative description of the Class Vehicles was made part of the basis of the bargain and thereby created an express warranty that the Class Vehicles conformed to the description pursuant to the UCC express warranty provisions were adopted by Pennsylvania under 13 Pa.C.S.A. §2313. Plaintiff and Pennsylvania Sub-class thereby relied upon such warranty. By law, Plaintiff Ferrara and the Pennsylvania Sub-class members have entered into certain express warranty agreements with Toyota.

114. Despite this uniform affirmative misrepresentation, Defendants breached their express warranty with Plaintiff Ferrara and the Pennsylvania Sub-class members when they delivered to them Class Vehicles that did not contain the “auto on/off” feature that did not conform to the description of the vehicles they provided to them as consumers.

115. As a result of the foregoing, Plaintiff Ferrara and the Pennsylvania Sub-class members are entitled to compensatory damages for breach of the express warranty in an amount to be proven at trial, and punitive damages because Defendants acted in a manner contrary to the public purpose and with intent to exclude this feature from the Class Vehicles.

**COUNT VI**

**(Violation of California’s Unfair Competition Law (“UCL”))**

**(Cal. Bus. & Prof. Code 17200, *et seq.*)**

**(Brought by Plaintiff Pei on behalf of the National Class or, alternatively, on behalf of the California Sub-class)**

116. Plaintiff Pei hereby incorporates by reference the allegations contained in all preceding and subsequent paragraphs of this Complaint as though set forth fully herein.

117. Plaintiff Pei asserts this cause of action on behalf of himself, and the National Class or alternatively on behalf of the California Sub-class.

118. California’s Unfair Competition Law (“UCL”) prohibits and makes actionable any unlawful, unfair, or deceptive business practice. Defendants’ actions, as alleged herein, in selling and marketing the Class Vehicles through deceptive marketing that misrepresented whether the Class Vehicles contained the “auto on/off” feature, constitutes an unlawful and deceptive business practice and a violation of the UCL.

119. As set forth in prior Counts, and as alleged previously in this Complaint, Defendants’ actions constitute an unlawful business practice in which Toyota breached its express warranty in violation of Section 2313 of California’s Commercial Code.

120. Defendants’ marketing and sale of Class Vehicles without disclosure of their lack of the “auto on/off feature” as uniformly represented in the Brochure and/or other Toyota marketing materials, amounts to a deceptive business practice within the meaning of the UCL. To the extent there were disclaimers, if any, they were not of a size, type, and location that would adequately inform a reasonable consumer that Toyota’s representations alleged herein were not as so represented. The conduct was deceptive because it was intended to and did materially mislead and deceive Plaintiff Pei and National and/or California Sub-class members. Had Toyota not misrepresented to Plaintiff Pei that the Class Vehicles contained the “auto on/off” feature, he would not have purchased his vehicle or would have insisted upon a significantly lower purchase price. Toyota refused to contact Class or California Sub-class members to cure its misrepresentations because doing so would have caused consumers to forego their purchases of Class Vehicles, or to insist upon lower purchase and/or lease prices.

1 In addition, Toyota intentionally omitted that Class Vehicles did not contain the “auto on/off”  
2 feature.

3 121. As a direct, proximate, and foreseeable result of Defendants’ unlawful and/or  
4 deceptive business practice, Plaintiff Pei and putative National Class or California Sub-class  
5 members have sustained an ascertainable loss and actual damages, in that they received Class  
6 Vehicles of lesser value and quality than they intended to purchase and that they were led to  
7 believe they were purchasing and/or leasing.

8 122. Plaintiff Pei and the National Class and/or California Sub-class members are  
9 entitled to and do seek an order of restitution and disgorgement requiring Toyota to restore to  
10 them the additional benefits and monies that Defendants received in connection with their sale  
11 of the Class Vehicles at a greater sales price than that which would have been paid for Class  
12 Vehicles had Plaintiff Pei and National and California Sub-class members known that the  
13 Vehicles lacked the “auto on/off” feature. Plaintiff Pei and the National Class and/or California  
14 Sub-class members are also entitled to and do seek an injunction enjoining Defendants from  
15 continuing to engage in the alleged materially misleading conduct, as well as penalties for any  
16 such subsequent violations, and for such additional relief authorized under the law.

17 **COUNT VII**

18 **(Violation of California’s Consumers Legal Remedies Act (“CLRA”))**  
19 **(Cal. Civ. Code 1750, *et seq.*)**

20 **(By Plaintiff Pei on behalf of the National Class, and/or on behalf of the California Sub-  
21 class)**

21 123. Plaintiff Pei hereby incorporates by reference the allegations contained in all  
22 preceding and subsequent paragraphs of this Complaint as though set forth fully herein.

23 124. Plaintiff Pei asserts this cause of action on behalf of himself and the National  
24 Class or alternatively, on behalf of the California Sub-class.

25 125. Defendants violated the following provisions of Cal. Civ. Code §1750 *et. seq.*:

26 (a) Cal. Civ. Code §1770(a)(5): by representing that its goods or services  
27 have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities which they  
28 do not have;

1 (b) Cal. Civ. Code §1770(a)(7): by representing that its goods or services are  
2 of a particular standard, quality, or grade, if they are of another;

3 (c) Cal. Civ. Code §1770(a)(9): by advertising goods and services with the  
4 intent not to sell them as advertised;

5 126. Defendants undertook the previously alleged acts and practices in transactions  
6 intended to result, or which did result, in the sale and/or lease of its vehicles to customers for  
7 personal, family, or household use. Plaintiff Pei and the National or California Sub-class  
8 members relied upon Defendants' representations regarding the auto "on/off" feature in  
9 choosing to purchase and/or lease their Class Vehicles and pay the purchase and/or lease price  
10 that they did. Moreover, had Plaintiffs and Class Members known that the material auto  
11 "on/off" feature was not included in Class Vehicles, they would not have purchased and/or  
12 leased such vehicles or would have paid a lower purchase/lease price.

13 127. Defendant has therefore violated the Consumers Legal Remedies Act, and  
14 Plaintiff Pei prays for compensatory equitable and injunctive relief authorized by that Act, and  
15 for such additional relief as is set forth below. Plaintiff Pei currently still owns his Class  
16 Vehicle.

17 128. Pursuant to Cal. Civ. Code §1782, in conjunction with the filing of this action,  
18 Plaintiff Pei's counsel notified Defendants by separate letter of the particular violations of the  
19 CLRA and demanded that Defendants remedy or agree to remedy the non-conforming Class  
20 Vehicles and violations described herein. As Defendants have failed to do so, and more than  
21 thirty (30) days have passed, Plaintiff Pei prays for compensatory and monetary damages to  
22 which Plaintiff Pei and the National Class or the California Subclass are entitled.

23 **COUNT VIII**

24 **(Violation of California's Song-Beverly Consumer Warranty Act)**  
25 **(Cal. Civ. Code 1790, et seq.)**  
26 **(By Plaintiff Pei on behalf of the National Class or, alternatively, the California Sub-class)**

27 129. Plaintiff Pei hereby incorporates by reference the allegations contained in all  
28 preceding and subsequent paragraphs of this Complaint as though set forth fully herein.

1           130. Plaintiff Pei asserts this cause of action on behalf of himself and the National  
2 Class or, alternatively, the California Sub-class.

3           131. As alleged above, Defendants made and then breached an express warranty with  
4 Plaintiff Pei and the National Class or California Sub-class members when they delivered to the  
5 National Class or California Sub-Class, Class Vehicles that did not contain the “auto on/off”  
6 feature as Defendants represented, so that those Class Vehicles failed to conform to the  
7 description of the vehicles that had been provided to National Class or Sub-class members.

8           132. The Song-Beverly Consumer Warranty Act (“SBCWA”) requires that  
9 manufacturers of consumer goods sold in California, for which the manufacturer has made an  
10 express warranty to maintain service and repair facilities (or designate independent repair or  
11 service facilities), maintain those facilities reasonably close to its California consumers in order  
12 to carry out the terms of those warranties and conform non-conforming goods under the  
13 applicable express warranties.

14           133. The SBCWA requires the service or repair of the goods when they do not  
15 conform to applicable express warranties. Under those circumstances, the SBCWA requires  
16 that service and repair shall be commenced by the manufacturer within a reasonable time to  
17 conform the goods to the applicable warranties; and unless the buyer agrees in writing to the  
18 contrary, SBCWA requires that the goods be serviced or repaired to conform to the applicable  
19 warranties within thirty (30) days of notice under the statute. Defendants are therefore required  
20 to service or repair the Class Vehicles purchased in California to make them conform to their  
21 express warranties, including making them conform so that they contain the “auto on/off”  
22 headlight feature.

23           134. On or about August 24, 2017, Plaintiff Pei sent a letter to Toyota Motor Sales  
24 formally demanding that Defendants “offer to make all owners and lessees whole by fully  
25 installing the automatic on/off headlight feature promised to consumers free of charge . . . [and]  
26 pay Mr. Pei and owners and lessees for any loss of value and loss of use of their vehicles as a  
27 result of the missing feature and its repair.” As Defendants have indicated their refusal to do so  
28 in their letter to Plaintiffs’ counsel dated October 10, 2017, Plaintiff Pei now seeks

1 compensatory and monetary damages pursuant to the SBCWA to which Plaintiff Pei and the  
2 National Class or California Sub-class members are entitled. Defendants have refused to service  
3 or repair the Class Vehicles purchased in California or to install the promised “auto on/off”  
4 feature on the Class’ or Sub-Class members’ Class Vehicles to make them conform to their  
5 applicable express warranty.

6 135. Under the SBCWA, “if a manufacturer or its representative [in California] does  
7 not service or repair the goods to conform to the applicable express warranties after a reasonable  
8 number of attempts, the manufacturer shall either replace the goods or reimburse the buyer in an  
9 amount equal to the purchase price paid by the buyer, less that amount directly attributable to  
10 use by the buyer prior to the discovery of the nonconformity.” Because Defendants have failed  
11 to service or repair Class Vehicles purchased in California to conform to their express warranty  
12 regarding the “auto on/off” feature, they are obligated to either replace the Class Vehicles with  
13 conforming Rav 4 models, or reimburse members of the National Class or alternatively, the  
14 California Sub-class, for amount equal to the purchase price paid by National Class or Sub-class  
15 members, less that amount directly attributable to their use by National Class or Sub-class  
16 members prior to the discovery of the nonconformity.

17 136. Alternatively, if Defendants are unable to service or repair the Class Vehicles to  
18 conform to the applicable express warranty after a reasonable number of attempts, Defendants  
19 are obligated under the SBCWA to either promptly replace the Class Vehicles with new  
20 vehicles substantially identical to the respective kind of vehicles being replaced to that conform  
21 to the warranty and/or representations, or to promptly make restitution to the members of the  
22 National Class or, alternatively, the California Sub-class in an amount equal to the actual price  
23 that the National Class or California Sub-class members paid for their respective Class Vehicles,  
24 including any the statutorily listed charges. And under the SBCWA, individual Class or Sub-  
25 class members may elect restitution in lieu of replacement, but in no event, are required by the  
26 manufacturer to accept a replacement vehicle.

**COUNT IX**

**(Violation of Pennsylvania’s Unfair Trade Practices and Consumer Protection Law)  
(73 P.S. 201-1, *et seq.*) – Deceptive Acts  
(By Plaintiff Ferrara on behalf of the Pennsylvania Sub-class)**

137. Plaintiff Ferrara hereby incorporates by reference the allegations contained in all preceding and subsequent paragraphs of this Complaint as though set forth fully herein.

138. Plaintiff Ferrara asserts this cause of action on behalf of herself and the Pennsylvania Sub-class.

139. Defendants’ practices, acts, policies and courses of conduct, as described above, were intended to induce, and did induce, Plaintiff Ferrara and the Pennsylvania Sub-class members to purchase and/or lease the Class Vehicles.

140. Defendants sold and/or leased the Class Vehicles knowingly misrepresenting and/or omitting the material fact that the vehicles did not contain the “auto on/off” feature as they had represented.

141. Defendants’ practices, acts, policies and course of conduct are actionable in that:

a. Defendants actively and knowingly misrepresented to Plaintiff Ferrara and the Pennsylvania Sub-class members at the time of their purchase or lease the quality and exterior features to be included in Class Vehicles;

b. Defendants failed to give adequate warnings and notices in the Brochure of the exterior features that would be standard for the Class Vehicles;

c. Defendants’ marketing, advertising and promotion of the Class Vehicles was deceptive because it misled consumers, including Pennsylvania Sub-class members, regarding the material features that would be included in standard versions of Class Vehicles.

d. Defendants, through its agents and representatives, admitted to some Class and Pennsylvania Sub-class members by its words and action, that the “auto on/off” feature should have been included in Class Vehicles as advertised and represented, and that its advertising was deceptive and incorrect. Defendant also maintained a secret warranty practice for some, providing some purchasers with compensation for the missing “auto on/off” feature,

1 while denying and/or failing to notify others, thus constituting an unfair, deceptive, arbitrary and  
2 unconscionable trade practice.

3 142. Defendants' aforementioned conduct is and was deceptive, false, and fraudulent,  
4 and constitutes an unconscionable commercial practice in that Defendants have, by the use of  
5 false or deceptive statements and/or marketing materials, misrepresented the true nature of the  
6 Class Vehicles' headlight system.

7 143. Under Pennsylvania's Unfair Trade Practices Act and Consumer Protection Law  
8 (73 P.S. 201-1, *et seq.*; also referred to herein below as "UTPCPL"), "unfair methods of  
9 competition" and "unfair or deceptive acts or practices" include the following acts or omissions:

10 (v) Representing that goods or services have sponsorship, approval,  
11 characteristics, ingredients, uses, benefits or quantities that they do not have  
12 or that a person has a sponsorship, approval, status, affiliation or connection  
that he does not have;

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

15 (ix) Advertising goods or services with intent not to sell them as advertised;

16 (xiv) Failing to comply with the terms of any written guarantee or warranty  
17 given to the buyer at, prior to or after a contract for the purchase of goods or  
18 services is made;

19 (xxi) Engaging in any other fraudulent or deceptive conduct which creates a  
20 likelihood of confusion or of misunderstanding.

21 144. In addition, under 37 Pa. Code §301.2(6) vehicles dealers are prohibited from  
22 misrepresenting facts in an advertisement or sales presentation if the advertiser or salesperson  
23 knows or should know that the representation or statement is false and misleading. A vehicle  
24 dealer is also prohibited from failing to make material disclosures about a car's status or  
25 qualities. Such acts are considered "unfair methods of competition and unfair or deceptive acts  
26 or practices" under Pennsylvania law.

27 145. In making the alleged misrepresentations of fact and/or material omissions to  
28 prospective customers while knowing such representations to be false and/or misleading,

1 Defendants have misrepresented and/or knowingly and intentionally concealed material facts  
2 and breached their duty not to do so.

3 146. Plaintiff Ferrara and Pennsylvania Sub-class members were deceived by and  
4 relied upon Defendants' affirmative misrepresentations, including but not limited to, the  
5 misrepresentations contained in the Brochure about the vehicle's exterior features.

6 147. There is a causal nexus between Defendants' deceptive and unconscionable  
7 commercial practices and Plaintiff Ferrara's and the Pennsylvania Sub-class members' damage  
8 as alleged herein, and therefore, Plaintiff Ferrara and the Pennsylvania Sub-class members are  
9 entitled to recover actual and/or statutory and/or punitive damages and/or trebled damages to the  
10 extent permitted by law, including class action rules, in an amount to be proven at trial.

11 148. As a result, Plaintiff Ferrara and the Pennsylvania Sub-class members seek  
12 restitution of all monies that Defendants received as a result of selling or leasing the Class  
13 Vehicles to them without the "auto on/off" feature. Plaintiff Ferrara is informed and believes  
14 that the amount of said restitution is unknown at this time, but she will seek relief to amend this  
15 Complaint at the time of trial, when the same has been ascertained.

16 149. In addition, Plaintiff Ferrara and the Pennsylvania Sub-class members seek  
17 punitive damages and reasonable attorneys' fees. Plaintiff Ferrara and the Pennsylvania Sub-  
18 class also seek a declaration that the Class Vehicles lack the advertised "auto on/off" feature,  
19 and that owners and lessees of the Class Vehicles be compensated, refunded, and/or have their  
20 vehicles replaced with others containing the represented feature.

21 **COUNT X**

22 **(Violation of Pennsylvania's Trade Practices and Consumer Protection Law)**  
23 **(73 P.S. 201-1, *et seq.*) – Unfair Conduct Claim**  
24 **(By Plaintiff Ferrara on behalf of the Pennsylvania Sub-class)**

25 150. Plaintiff Ferrara hereby incorporates by reference the allegations contained in all  
26 preceding and subsequent paragraphs of this Complaint as though set forth fully herein.

27 151. Plaintiff Ferrara asserts this cause of action on behalf of herself and the  
28 Pennsylvania Sub-class under the "unfair conduct" branch of the Pennsylvania UTPCPL.

1 152. Defendants’ practices, acts, policies and course of conduct, as described above,  
2 constitute unfair conduct because they (1) offend public policy; (2) are immoral, unethical,  
3 oppressive and unscrupulous; and (3) cause substantial injury to consumers in violation of the  
4 Pa. UTPCPL.

5 153. Defendants concealed, suppressed and omitted to Plaintiff Ferrara and  
6 Pennsylvania Sub-Class members at the time of purchase or lease, that the Class Vehicles did  
7 not contain the “auto on/off” feature, despite the Brochure’s representations to the contrary.

8 154. Even though Defendants had actual knowledge that the Class Vehicles being  
9 manufactured and sold and/or leased to Pennsylvania Sub-Class members did not contain the  
10 promised “auto on/off” feature, they did not correct the manufacturing or fairly disclose the  
11 feature’s absence to Pennsylvania Sub-Class members and the consumer public, and further  
12 concealed this knowledge about Class Vehicles to Pennsylvania Sub-Class members and the  
13 consumer public.

14 155. Defendants’ acts of commission and omission were material.

15 156. Defendants’ conduct was in the course of conduct involving trade or commerce.

16 157. Defendants’ acts of commission and omission caused Plaintiff Ferrara and  
17 Pennsylvania Sub-Class members to suffer ascertainable losses of money and property in that  
18 they were misled into expending additional sums of money at its dealerships and elsewhere in  
19 the purchase or lease of the Class Vehicles after having been misled into believing that such  
20 vehicles contained the promised “auto on/off feature.” Defendants did so despite having prior  
21 knowledge of the missing feature at the time they placed said vehicles into the stream of  
22 commerce. Plaintiff Ferrara also seeks a declaration that Class Vehicles lack the promised “auto  
23 on/off” feature, and owners and lessees of the Class Vehicles must be compensated, refunded,  
24 and/or have their vehicles replaced with others containing the represented feature.

**COUNT XI**

**(Unjust Enrichment)**

**(By Plaintiff Pei on behalf of the National Class, or alternatively, on behalf of the California Sub-class; Plaintiff Zheng-Lawson on behalf of the New York Sub-class; and Plaintiff Ferrara on behalf of the Pennsylvania Sub-class)**

158. Plaintiffs hereby incorporate by reference the allegations contained in all preceding and subsequent paragraphs of this Complaint as though set forth fully herein.

159. Plaintiff Pei asserts this claim on behalf of the National Class, or alternatively, on behalf of the California Sub-class; Plaintiff Zheng-Lawson asserts this claim on behalf of the New York Sub-class; and Plaintiff Ferrara asserts this claim on behalf of the Pennsylvania Sub-class.

160. Defendants distributed the Class Vehicles into the stream of commerce nationally, and in California, New York and Pennsylvania, with the knowledge that these vehicles would be purchased or leased by consumers based on a reasonable expectation that they would contain the standard “auto on/off” feature as Defendants represented.

161. Defendants received funds for the sale of the Class Vehicles which were sold under Defendants’ exclusive brand name and based on Defendants’ reputation and representations, and sold the Class Vehicles with the intention of receiving and keeping such funds and revenues from the sale of the Class Vehicles.

162. Defendants distributed the Class Vehicles with the knowledge that they were not equipped with the “auto on/off” feature.

163. Defendants received an economic benefit at the expense of the Class and Sub-class members, who received vehicles of lesser value than as represented at the time of sale and/or lease.

164. In these circumstances, principles of equity and good conscience make it unjust for Defendants to retain the benefit conferred on them by the Class and Sub-class members and should be required to compensate Plaintiffs and Class and Sub-class members for these benefits.

**PRAYER FOR RELIEF**

**WHEREFORE**, Plaintiffs, individually and on behalf of all others similarly situated, pray for a judgment against Defendants as follows:

A. For an order certifying the Class and/or Sub-classes, appointing Plaintiffs as representatives of the Class or their respective Sub-classes, and appointing the law firms representing Plaintiffs as counsel for the Class and Sub-classes;

B. For a declaration that the remedial work necessary to correct and install the missing “auto on/off” feature is covered under the Express Warranty provided by Defendants which became part of the basis of the bargain;

C. For compensatory damages sustained by Plaintiffs and Class and/or Sub-class members;

D. For an injunction preventing Defendants from continuing to sell the Class Vehicles pursuant to false and deceptive advertising, and causing them to take steps to correct such advertising;

E. For compensatory damages and/or the restitution or refund of all funds acquired by Defendants from Plaintiffs and Class or Sub-class members as a result of Defendants’ unlawful, unfair, fraudulent, deceptive and unconscionable practices described above under the Consumer Protection Statutes of New York, California, and Pennsylvania, including actual and/or statutory and/or punitive damages and/or trebled damages to the extent permitted by law, including class action rules, in an amount to be proven at trial;

F. For the repair and/or replacement of the Class Vehicles for members of the National Class, or alternatively, the California Subclass, making their Class Vehicles conform to Defendants’ express warranties and/or restitution to fully compensate them for their damages pursuant to the SBCWA;

G. Trebling of damages suffered by the Class and/or appropriate Sub-class, or other punitive damages;

H. Payment of costs and expenses of suit herein incurred;

I. Both pre-and post-judgment interest on any amounts awarded;

- 1 J. Payment of reasonable attorneys' fees and expert fees; and  
2 K. Such other and further relief as the Court may deem proper.

3 **DEMAND FOR JURY TRIAL**

4 Plaintiffs hereby demand a trial by jury on all claims so triable.

5  
6 DATED: November 15, 2017

**GREEN & NOBLIN, P.C.**

7  
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*Attorneys for Plaintiffs  
and the Proposed Class or Sub-classes*

CIVIL COVER SHEET

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

I. (a) PLAINTIFFS DEFENDANTS
(b) County of Residence of First Listed Plaintiff
(c) Attorneys (Firm Name, Address, and Telephone Number)
County of Residence of First Listed Defendant
NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.
Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)
III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)
1 U.S. Government Plaintiff 3 Federal Question (U.S. Government Not a Party)
2 U.S. Government Defendant 4 Diversity (Indicate Citizenship of Parties in Item III)
Citizen of This State PTF DEF 1 1 Incorporated or Principal Place of Business In This State
Citizen of Another State 2 2 Incorporated and Principal Place of Business In Another State
Citizen or Subject of a Foreign Country 3 3 Foreign Nation 6 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)
CONTRACT TORTS FORFEITURE/PENALTY LABOR IMMIGRATION BANKRUPTCY SOCIAL SECURITY FEDERAL TAX SUITS OTHER STATUTES
110 Insurance 310 Airplane 365 Personal Injury - Product Liability
120 Marine 315 Airplane Product Liability 367 Health Care/ Pharmaceutical Personal Injury Product Liability
130 Miller Act 320 Assault, Libel & Slander 368 Asbestos Personal Injury Product Liability
140 Negotiable Instrument 330 Federal Employers' Liability
150 Recovery of Overpayment Of Veteran's Benefits 340 Marine 345 Marine Product Liability
151 Medicare Act 350 Motor Vehicle 355 Motor Vehicle Product Liability
152 Recovery of Defaulted Student Loans (Excludes Veterans) 360 Other Personal Injury 362 Personal Injury -Medical Malpractice
153 Recovery of Overpayment of Veteran's Benefits 370 Other Fraud 371 Truth in Lending
160 Stockholders' Suits 380 Other Personal Property Damage
190 Other Contract 385 Property Damage Product Liability
195 Contract Product Liability
196 Franchise
REAL PROPERTY
210 Land Condemnation
220 Foreclosure
230 Rent Lease & Ejectment
240 Torts to Land
245 Tort Product Liability
290 All Other Real Property
440 Other Civil Rights
441 Voting
442 Employment
443 Housing/ Accommodations
445 Amer. w/Disabilities-Employment
446 Amer. w/Disabilities-Other
448 Education
463 Alien Detainee
510 Motions to Vacate Sentence
530 General
535 Death Penalty
OTHER
540 Mandamus & Other
550 Civil Rights
555 Prison Condition
560 Civil Detainee-Conditions of Confinement
625 Drug Related Seizure of Property 21 USC § 881
690 Other
422 Appeal 28 USC § 158
423 Withdrawal 28 USC § 157
820 Copyrights
830 Patent
835 Patent-Abbreviated New Drug Application
840 Trademark
861 HIA (1395ff)
862 Black Lung (923)
863 DIWC/DIWW (405(g))
864 SSID Title XVI
865 RSI (405(g))
870 Taxes (U.S. Plaintiff or Defendant)
871 IRS-Third Party 26 USC § 7609
375 False Claims Act
376 Qui Tam (31 USC § 3729(a))
400 State Reapportionment
410 Antitrust
430 Banks and Banking
450 Commerce
460 Deportation
470 Racketeer Influenced & Corrupt Organizations
480 Consumer Credit
490 Cable/Sat TV
850 Securities/Commodities/Exchange
890 Other Statutory Actions
891 Agricultural Acts
893 Environmental Matters
895 Freedom of Information Act
896 Arbitration
899 Administrative Procedure Act/Review or Appeal of Agency Decision
950 Constitutionality of State Statutes

V. ORIGIN (Place an "X" in One Box Only)
1 Original Proceeding 2 Removed from State Court 3 Remanded from Appellate Court 4 Reinstated or Reopened 5 Transferred from Another District (specify) 6 Multidistrict Litigation-Transfer 8 Multidistrict Litigation-Direct File

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

VII. REQUESTED IN COMPLAINT: CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, Fed. R. Civ. P. DEMAND \$ CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S), IF ANY (See instructions): JUDGE DOCKET NUMBER

IX. DIVISIONAL ASSIGNMENT (Civil Local Rule 3-2) (Place an "X" in One Box Only) SAN FRANCISCO/OAKLAND SAN JOSE EUREKA-MCKINLEYVILLE

DATE SIGNATURE OF ATTORNEY OF RECORD

## INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS-CAND 44

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

- I. a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
- b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the “defendant” is the location of the tract of land involved.)
- c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section “(see attachment).”
- II. Jurisdiction.** The basis of jurisdiction is set forth under Federal Rule of Civil Procedure 8(a), which requires that jurisdictions be shown in pleadings. Place an “X” in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
- (1) United States plaintiff. Jurisdiction based on 28 USC §§ 1345 and 1348. Suits by agencies and officers of the United States are included here.
  - (2) United States defendant. When the plaintiff is suing the United States, its officers or agencies, place an “X” in this box.
  - (3) Federal question. This refers to suits under 28 USC § 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
  - (4) Diversity of citizenship. This refers to suits under 28 USC § 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS-CAND 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an “X” in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerk(s) in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.
- V. Origin.** Place an “X” in one of the six boxes.
- (1) Original Proceedings. Cases originating in the United States district courts.
  - (2) Removed from State Court. Proceedings initiated in state courts may be removed to the district courts under Title 28 USC § 1441. When the petition for removal is granted, check this box.
  - (3) Remanded from Appellate Court. Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
  - (4) Reinstated or Reopened. Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
  - (5) Transferred from Another District. For cases transferred under Title 28 USC § 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
  - (6) Multidistrict Litigation Transfer. Check this box when a multidistrict case is transferred into the district under authority of Title 28 USC § 1407. When this box is checked, do not check (5) above.
  - (8) Multidistrict Litigation Direct File. Check this box when a multidistrict litigation case is filed in the same district as the Master MDL docket. Please note that there is no Origin Code 7. Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC § 553. Brief Description: Unauthorized reception of cable service.
- VII. Requested in Complaint.** Class Action. Place an “X” in this box if you are filing a class action under Federal Rule of Civil Procedure 23. Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction. Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS-CAND 44 is used to identify related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.
- IX. Divisional Assignment.** If the Nature of Suit is under Property Rights or Prisoner Petitions or the matter is a Securities Class Action, leave this section blank. For all other cases, identify the divisional venue according to Civil Local Rule 3-2: “the county in which a substantial part of the events or omissions which give rise to the claim occurred or in which a substantial part of the property that is the subject of the action is situated.”
- Date and Attorney Signature.** Date and sign the civil cover sheet.