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9  
10 **UNITED STATES DISTRICT COURT**  
11 **CENTRAL DISTRICT OF CALIFORNIA**

12 MATTHEW AQUINO, individually and on  
13 behalf of all others similarly situated,

14 **Plaintiff,**

15 v.

16 TOYOTA MOTOR SALES, U.S.A., INC., a  
17 California corporation; ZF TRW  
18 AUTOMOTIVE HOLDINGS CORP.,  
a Delaware corporation,

19 **Defendants.**  
20

Case No. 2:19-cv-06200

**CLASS ACTION COMPLAINT AND  
COMPLAINT FOR DAMAGES AND  
EQUITABLE RELIEF**

**Demand for Jury Trial**

1 Plaintiffs Matthew Aquino (“Plaintiff”), acting on behalf of himself and all others  
2 similarly situated, brings this action for damages and equitable relief against Toyota Motor  
3 Sales, U.S.A., Inc. (“Toyota”) and ZF TRW Automotive Holdings Corp. (“ZF TRW”)  
4 (collectively, “Defendants”), and alleges as follows:

5 **NATURE OF THE CASE**

6 1. This is a class action arising from vehicle manufacturers knowingly concealing  
7 a defect in vehicles’ airbag control unit (“ACU”) manufactured by ZF TRW that, due to  
8 excess electrical energy, becomes “over stressed” and seizes up at the moment of impact  
9 and failing to deploy the airbags and lock the seatbelts during a crash (the “Defect”).  
10 Consequently, not only are the affected vehicles extremely dangerous and unsafe in the  
11 event of a crash, but their value to the customer is significantly diminished now that the  
12 manufacturers’ concealment of the Defect has been exposed.

13 2. Toyota designed, manufactured, distributed, marketed, sold, and leased the  
14 following vehicles with the Defect: Toyota Avalon (model years 2012-2018), Toyota Avalon  
15 Hybrid (model years 2013-2018), Toyota Corolla (model years 2011-2019), Toyota Corolla  
16 IM (model years 2017-2018), Toyota Corolla Matrix (model years 2011-2013), Toyota  
17 Sequoia (model years 2012-2017), Toyota Tacoma (model years 2012-2019), and Toyota  
18 Tundra (model years 2012-2017) (collectively, the “Class Vehicles”) to Plaintiff and Class  
19 Members.

20 3. Defendants knew about the Defect since at least 2011, when Toyota was  
21 already engaged in communications with ZF TRW regarding the Defect. Defendants  
22 knowingly concealed the Defect for years despite federal standards requiring a vehicle recall  
23 within five days of learning of a defect.

24 4. The National Highway Safety Traffic Administration (“NHTSA”) launched  
25 an investigation in 2018 after numerous reports of serious injuries and even some deaths.  
26 The NHTSA investigation has linked the Defect to at least four deaths and many other  
27 reports of death and serious injury are under investigation, which continues to the present.  
28

1           5.     Plaintiff and Class Members reasonably expected that their Class Vehicles  
2 would not suffer from a dangerous defect that could cause the Class Vehicles to fail to  
3 deploy airbags and lock seatbelts during a collision, creating the potential for serious  
4 injuries and deaths. These are the reasonable and objective expectations of consumers.

5           6.     Prior to purchasing the Class Vehicles, Plaintiff and Class Members did not  
6 know that the Class Vehicles suffered from the Defect and did not contemplate that the  
7 Class Vehicles would be significantly diminished in value had such a Defect been known.

8           7.     Defendants knew or should have known that the Class Vehicles are defective  
9 and are not fit for their intended purpose of providing consumers with safe and reliable  
10 transportation. Nevertheless, Defendants actively concealed and failed to disclose the  
11 Defect to Plaintiff and Class Members at the time they purchased or leased their Class  
12 Vehicles and thereafter. Had Plaintiff and Class Members known at the time of sale or lease  
13 about the Defect and the associated safety hazards and loss of value described herein,  
14 Plaintiff and Class Members would not have purchased the Class Vehicles at all, or would  
15 have paid substantially less for them.

16           8.     Every Class Vehicle was sold or leased pursuant to express and implied  
17 warranties, including a Limited Warranty that begins on the date in which the purchaser  
18 first put the vehicle into service. The limited warranty transfers automatically with vehicle  
19 ownership during the warranty period.

20           9.     Moreover, despite notice of the Defect from various internal sources, Toyota  
21 has not recalled the Class Vehicles to repair the Defect, has not offered all of its customers  
22 a suitable repair or replacement free of charge, and has not offered to reimburse all Class  
23 Vehicle owners and leaseholders who incurred costs relating to the Defect, including, but  
24 not limited to, costs related to inspections, diagnosis, repairs, and/or replacements.

25           10.    As a result of their reliance on Defendants' omissions and/or affirmative  
26 misrepresentations, owners and/or lessees of the Class Vehicles have suffered ascertainable  
27 losses of money, property, and/or of value of their Class Vehicles.

28

**PARTIES**

1  
2 11. Plaintiff is a California citizen who resides in Long Beach, California.  
3 Plaintiff purchased a new 2016 Toyota Tundra from West Coast Toyota in Long Beach,  
4 California in or around 2017, and he uses it for personal, family, or household purposes.  
5 Plaintiff's Class Vehicle has been diminished as a result of the Defect. If Plaintiff had  
6 known about the Defect, he would not have purchased his Class Vehicle at all, or would  
7 not have paid as much for it.

8 12. Defendant Toyota is a California corporation, with its corporate headquarters  
9 located at 6565 Headquarters Drive, Plano, Texas 75024. Toyota, through its various  
10 entities, designs, manufactures, markets, distributes, and sells its vehicles in this District  
11 and multiple other locations in the United States and worldwide. Toyota and/or its agents  
12 designed, manufactured, and installed the defective ACU manufactured by ZF TRW in  
13 the Class Vehicles. Toyota also developed and disseminated the owner's manuals, warranty  
14 booklets, advertisements, and other promotional materials pertaining to the Class  
15 Vehicles, and makes decisions concerning warranty coverage of customer vehicles when  
16 problems arise.

17 13. Defendant ZF TRW is a Delaware corporation, with its corporate  
18 headquarters located at 12001 Tech Center Drive, Livonia, Michigan 48150. ZF TRW  
19 designs, manufactures, and sells automotive systems, modules, and components, including  
20 airbag systems, to automotive original equipment manufacturers. ZF TRW markets, leases,  
21 warrants, and oversees regulatory compliance and warranty servicing of ZF TRW products  
22 from its headquarters. ZF TRW also creates and distributes the warranties and other  
23 written materials that accompany the sale of ZF TRW products throughout the United  
24 States, and makes decisions concerning warranty coverage when problems arise.

**JURISDICTION AND VENUE**

25  
26 14. This Court has jurisdiction over this action under the Class Action Fairness  
27 Act ("CAFA"), 28 U.S.C. § 1332(d). There are at least 100 members in the proposed class,  
28 the aggregated claims of the individual Class Members exceed the sum or value of

1 \$5,000,000.00 exclusive of interest and costs, and Members of the Proposed Class are  
2 citizens of states different from Defendant.

3 15. In addition, under 28 U.S.C. § 1367, this Court may exercise supplemental  
4 jurisdiction over the state law claims because all the claims are derived from a common  
5 nucleus of operative facts and are such that Plaintiff ordinarily would expect to try them in  
6 one judicial proceeding.

7 16. This Court may exercise jurisdiction over Defendants because, by engaging in  
8 business in California and within this District, they have established sufficient contacts in  
9 this District such that personal jurisdiction is appropriate.

10 17. Venue is proper in this District under 28 U.S.C. § 1391(a) because a  
11 substantial part of the events or omissions giving rise to Plaintiffs' claims occurred in this  
12 District. Specifically, Plaintiff's Class Vehicle was purchased in this District and Plaintiff  
13 resides in this District. Plaintiffs' counsel's declaration under California Civil Code section  
14 1780(d) is also attached hereto.

15 **FACTUAL ALLEGATIONS**

16 18. The defective ACU at issue contains an application-specific integrated circuit  
17 ("ASIC"), is the specific part at-issue in this matter. The ACU monitors signals from crash  
18 sensors on the vehicle from vehicle's passenger compartment, connecting to sensors in the  
19 front of the vehicle.

20 19. The ACU is supposed to detect a collision and signal the vehicle's safety  
21 features to spring into action in the milliseconds following a collision, including airbag  
22 inflation and engaging the seatbelt pretensioner, which removes slack from the seatbelt to  
23 secure a passenger's body firmly into the seat, then releases the passenger milliseconds later  
24 to receive the maximum protective benefit the airbag can provide. If the ASIC fails, then  
25 the ACU may fail to engage the vehicle's safety features, greatly increasing the risk of serious  
26 injury and death to vehicle occupants in the event of a crash.

27 20. The Class Vehicles' ASIC is prone to experiencing electrical over stress  
28 ("EOS") as a result of excess electrical signals generated during a vehicle collision. This

1 EOS causes the ASIC and ACU to fail, thereby leading to failure of the vehicle's safety  
2 features, including the airbag deployment and seatbelt locking features.

3 21. ZF TRW designed, engineered and manufactured the ACUs defectively, with  
4 both design and manufacturing flaws. The Defect causes failure of the airbags and seatbelt  
5 restraints in a crash. By designing, manufacturing, assembling, inspecting, distributing, or  
6 selling Class Vehicles equipped with airbag systems containing the Defect, Defendants  
7 rendered the Class Vehicles unsafe for their intended use and purpose.

8 22. Defendants knew of the Defect for years but failed to alert affected consumers  
9 or issue proper recalls. Other vehicle manufacturers, such as FCA (manufacturer of Dodge,  
10 Jeep, and Ram vehicles), Hyundai, and KIA, issued partial recalls for their vehicles  
11 equipped with the defective ACUs manufactured by ZF TRW.

12 23. On March 16, 2018, NHTSA opened its initial investigation into the Defect.  
13 At that time, at least six injuries and four deaths resulted from the failure of vehicle features  
14 such as airbags and seatbelt pretensioners. The initial investigation linked Kia and Hyundai  
15 vehicles to the defective ZF TRW ACUs.

16 24. On April 19, 2019, NHTSA upgraded its investigation of the Defect to an  
17 Engineering Analysis, which entails "a more detailed and complete analysis of the character  
18 and scope of the alleged defect," than the initial investigation. An Engineering Analysis,  
19 unlike the initial investigation, may recommend a safety recall.

20 25. Internal NHTSA documents reveal that Defendants knew of the problems  
21 with the ASIC as early as August of 2011. Defendants could have taken steps to ensure the  
22 safety of the public in August of 2011, but instead chose to conceal the Defect and its safety  
23 problems.

24 26. While Toyota, along with other vehicle manufacturers Acura, FCA, Honda,  
25 Hyundai, Kia, and Mitsubishi, were secretly discussing the Defect with ZF TRW, many  
26 affected consumers lodged complaints about their vehicle airbags not deploying and  
27 seatbelt locks not working during major collisions, resulting in death and serious injury.  
28 Below are some examples of Class Vehicle owners' complaints to NHTSA:

Vehicle	Date	NHTSA ID	Text of complaint
2011 Toyota Corolla	1/17/13	10493277	I was hit by a big rig traveling at approximately 20mph while stopped on the highway, the big rigs impact forced me into the back of an FL50XL, causing significant damage to the front and rear of the vehicle. The air bags did not deploy. *TR
2011 Toyota Corolla	2/26/13	10500195	While traveling on a highway, a vehicle struck the Toyota Corolla automobile on the front, passenger side. This collision caused the Corolla to then strike a median wall. After the second impact, the Corolla flipped at least two (2) times. The airbag never deployed. The entire front side was damaged in this accident. *TR
2012 Toyota Corolla	4/28/19	11204250	My air bags did not deploy during an accident where a construction truck hit my car causing me to hit a tree and roll. My father died as a result of this accident. Now that a problem with the air bags not deploying in this type car I wonder if this is what happened.  Toyota did not inspect vehicle.  Lawyers Engineer said because of occupants bouncing around car couldn't tell where everyone was and therefore air bag deployment was not commanded. Consumer stated 'Don't believe Toyota was ever notified of incident. Consumer stated air bag deployed when the fireman cut the roof off the car to get her parents, who were at the bottom of the car.  Crush Report [XXX], Case #[XXX]  Traffic Homicide Investigation Case #[XXX]  Information Redacted Pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. 552(B)(6). *TT *DT *DT *JB

27. Defendants failed to inform or notify consumers, Plaintiff, and Class Members of the Defect, while at the same time marketing and representing that the Class Vehicles were safe and reliable. Plaintiff was exposed to and consumed Toyota's advertisements and marketing materials prior to purchasing or leasing the Class Vehicles. The misleading representations and omissions about Class Vehicles' safety in the Toyota's advertising and marketing materials influenced Plaintiff's decision to purchase his Class Vehicles, including, without limitation, Toyota's prominent slogan, "Designed for safety":



Designed for safety.

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9 28. Defendants have not recalled the Class Vehicles to repair the Defect, and have  
10 not offered to reimburse Class Vehicle owners and lessees for costs relating to the Defect.

11 29. Plaintiffs and Class Members are reasonable consumers who do not  
12 reasonably expect their Class Vehicles to contain the Defect, which can lead to significant  
13 injuries and even death in the event of a collision.

14 30. Plaintiffs and Class Members reasonably expected that Defendants would not  
15 sell or lease Class Vehicles with known defects, such as the Defect, and that they would  
16 disclose any such defects to its consumers before they purchased or leased Class Vehicles.  
17 Plaintiffs and Class Members did not expect Defendants to conceal the Defect, or to  
18 continually deny its existence.

19 31. Consequently, Plaintiff and Class Members have not received the value for  
20 which they bargained when they purchased or leased the Class Vehicles. As a result of the  
21 Defect, the value of the Class Vehicles has diminished, including, without limitation, the  
22 resale value of the Class Vehicles. Further, the Defect exposes Plaintiff, Class Members,  
23 and their passengers to unreasonable safety risks every time they operate their Class  
24 Vehicles.

25 **TOLLING OF THE STATUTE OF LIMITATIONS**

26 32. Because the Defect cannot be detected until the Class Vehicles are in a  
27 collision and suffer an airbag or seatbelt failure, Plaintiff and Class Members were not  
28



1 reasonably able to discover the problem until after purchasing or leasing the Class Vehicles,  
2 despite their exercise of due diligence.

3 33. In addition, even after Class Members contacted Defendants and/or their  
4 authorized dealers concerning the Defect, Defendants concealed the Defect and failed to  
5 alert consumers of the severe safety risk associated with operating the Class Vehicles.

6 34. Therefore, any applicable statute of limitation has therefore been tolled by  
7 Defendants' knowledge, active concealment, and denial of the facts alleged herein.  
8 Defendants are further estopped from relying on any statute of limitation because of their  
9 concealment of the defective nature of the Class Vehicles and their airbag systems.

10 **CLASS ACTION ALLEGATIONS**

11 35. Plaintiff brings this lawsuit individually and as a class action on behalf all  
12 others similarly situated pursuant to Federal Rules of Civil Procedure ("Rule") 23(a), (b)(2),  
13 and/or (b)(3). This action satisfies the numerosity, commonality, typicality, adequacy,  
14 predominance, and superiority requirements of Rule 23.

15 36. The Class and Sub-Class are defined as:

16 Nationwide Class:

17 All current and former owners or lessees of Class Vehicles ("the Nationwide  
18 Class").

19 California Sub-Class:

20 All Members of the Nationwide Class who reside in the state of California and  
21 who purchased or leased their vehicles in the state of California ("the California  
22 Sub-Class").

23 37. Excluded from the Class and Sub-Classes are: (1) Defendants, any entity or  
24 division in which Defendants have a controlling interest, and its legal representatives,  
25 officers, directors, assigns, and successors; (2) the Judge to whom this case is assigned and  
26 the Judge's staff; and (3) those persons who have suffered personal injuries as a result of  
27 the facts alleged herein. Plaintiff reserves the right to amend the Class and Sub-Class  
28 definitions if discovery and further investigation reveal that the Class and Sub-Class should  
be expanded or otherwise modified.

1           38. Numerosity: Although the exact number of Class Members is uncertain and  
2 can only be ascertained through appropriate discovery, the number is great enough such  
3 that joinder is impracticable. The disposition of the claims of these Class Members in a  
4 single action will provide substantial benefits to all parties and to the Court. The Class  
5 Members are readily identifiable from information and records in Defendants' possession,  
6 custody, or control, as well as from records kept by the Department of Motor Vehicles of  
7 various states.

8           39. Typicality: Plaintiff's claims are typical in that Plaintiff, like all Class  
9 Members, purchased and/or leased a Class Vehicle designed, manufactured, and  
10 distributed by Toyota with the Defect in the airbag system manufactured by ZF TRW.  
11 Plaintiff, like all Class Members, has been damaged by Defendants' misconduct in that,  
12 *inter alia*, he has purchased a Class Vehicle that is diminished in value and prone to  
13 dangerous safety failures. Furthermore, the factual bases of Defendants' misconduct are  
14 common to all Class Members and represent a common thread of fraudulent, deliberate,  
15 and negligent misconduct resulting in injury to all Class Members.

16           40. Commonality: There are numerous questions of law and fact common to  
17 Plaintiff and Class Members that predominate over any individual questions. These  
18 common legal and factual issues include the following:

- 19           a) whether the Class Vehicles and their engines are defectively designed or  
20           manufactured such that they are not suitable for their intended use;  
21           b) whether the fact that the Class Vehicles suffer from the Defect would be  
22           considered material by a reasonable consumer;  
23           c) whether, as a result of Defendants' concealment or failure to disclose material  
24           facts, Plaintiff and Class Members acted to their detriment by purchasing  
25           Class Vehicles;  
26           d) whether Defendants were aware of the Defect;  
27           e) whether the Defect constitutes an unreasonable safety risk;

- 1 f) whether Defendants breached express warranties with respect to the Class  
2 Vehicles;
- 3 g) whether Defendants had a duty to disclose the defective nature of the Class  
4 Vehicles and the Defect to Plaintiff and Class Members;
- 5 h) whether Plaintiff and Class Members are entitled to equitable relief, including  
6 but not limited to a preliminary and/or permanent injunction; and
- 7 i) Whether Defendants violated the consumer protection statutes of California  
8 when it sold to consumers Class Vehicles that suffered from the Defect.

9 41. Adequate Representation: Plaintiff will fairly and adequately protect the  
10 interests of Class Members. Plaintiff has retained attorneys experienced in the prosecution  
11 of class actions, including consumer and product defect class actions, and Plaintiff intends  
12 to prosecute this action vigorously.

13 42. Predominance and Superiority: Plaintiff and Class Members have all suffered  
14 and will continue to suffer harm and damages as a result of Defendants' unlawful and  
15 wrongful conduct. A class action is superior to other available methods for the fair and  
16 efficient adjudication of the controversy. Absent a class action, Class Members would likely  
17 find the cost of litigating their claims prohibitively high and would therefore have no  
18 effective remedy at law. Because of the relatively small size of Class Members' individual  
19 claims, it is likely that few Class Members could afford to seek legal redress for Defendants'  
20 misconduct. Absent a class action, Class Members will continue to incur damages, and  
21 Defendants' misconduct will continue without remedy. Class treatment of common  
22 questions of law and fact would also be a superior method to multiple individual actions  
23 or piecemeal litigation in that class treatment will conserve the resources of the courts and  
24 the litigants and will promote consistency and efficiency of adjudication.

FIRST CAUSE OF ACTION

Breach of Written Warranties under the Magnuson-Moss Warranty Act

15 U.S.C. § 2301, *et seq.*

(On behalf of the proposed Nationwide Class)

43. Plaintiff incorporates by reference the preceding allegations.

44. Plaintiff brings this cause of action individually and on behalf of the Nationwide Class against Defendants.

45. Plaintiff and Class Members are “consumers” within the meaning of the Magnuson-Moss Warranty Act (“MMWA”), 15 U.S.C. § 2301(3).

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

47. The Class Vehicles are “consumer products” within the meaning of 15 U.S.C. § 2301(1).

48. Defendants’ express warranties are each a “written warranty” within the meaning of 15 U.S.C. § 2301(6).

49. Defendants breached these express warranties by:

- a) Selling and leasing Class Vehicles with airbag systems that were defective in material and workmanship, requiring repair or replacement within the warranty period; and
- b) Refusing and/or failing to honor the express warranties by repairing or replacing, free of charge, any defective component parts.

50. Defendants’ breach of express warranty has deprived Plaintiff and Class members of the benefit of their bargain.

51. Defendants have been afforded a reasonable opportunity to cure its breach of written warranties but have failed to do so – Plaintiff has provided Defendants with notice of his breach of warranty claims.

52. As a direct and proximate cause of Defendants’ breach of written warranties, Plaintiff and Class members sustained damages and other losses in an amount to be determined at trial. Defendants’ conduct damaged Plaintiff and Class Members, who are

1 entitled to recover actual damages, consequential damages, specific performance,  
2 diminution in value, costs, including statutory attorneys' fees and/or other relief as  
3 appropriate.

4 **SECOND CAUSE OF ACTION**  
5 **Violations of the California Consumers Legal Remedies Act**  
6 **Cal. Civ. Code § 1750, *et seq.***  
7 **(On behalf of the proposed California Sub-Class)**

8 53. Plaintiff incorporates by reference the preceding allegations.

9 54. Plaintiff brings this cause of action individually and on behalf of the  
10 California Sub-Class against Defendants.

11 55. Defendants are "persons" as defined by Cal. Civ. Code § 1761(c).

12 56. Plaintiff and Class Members are "consumers" within the meaning of Cal. Civ.  
13 Code § 1761(d).

14 57. The Class Vehicles that Toyota marketed and sold constitute "goods" as  
15 defined by Cal. Civ. Code § 1761(a) and (b).

16 58. Plaintiff's and Class Members' purchases of the Class Vehicles constituted  
17 "transactions," as defined by Cal. Civ. Code § 1761(e).

18 59. Plaintiff's and Class Members' purchases of the Class Vehicles were for  
19 personal, family, and household purposes as meant by Cal. Civ. Code § 1761(d).

20 60. Venue is proper under Cal. Civ. Code § 1780(d) because a substantial portion  
21 of the transactions at issue occurred in this District. (*See* attached declaration.)

22 61. Defendants deceived consumers in that they misrepresented that the Class  
23 Vehicles were free of defects as alleged above, when in fact they had the Defect. Further,  
24 Defendants knew of the Defect prior to selling the Class Vehicles and actively concealed  
25 this Defect from consumers.

26 62. Defendants' misrepresentations, active concealment, and failures to disclose  
27 violated the California Consumers Legal Remedies Act ("CLRA") in the following manner:  
28

1 a. In violation of Section 1770(a)(5), Defendants misrepresented that the  
2 Class Vehicles had characteristics, benefits, or uses that they did not have (free of defects  
3 when in fact they contained the Defect);

4 b. In violation of Section 1770(a)(7), Defendants misrepresented that the  
5 Class Vehicles were of a particular standard, quality, and/or grade when they were of  
6 another (free of defects when in fact they contained the Defect);

7 c. In violation of Section 1770(a)(9), Defendants advertised the Class  
8 Vehicles with an intent not to sell them as advertised (free of defects when in fact they  
9 contained the Defect);

10 d. In violation of Section 1770(a)(14), Defendants misrepresented that  
11 the Class Vehicles conferred or involved rights, remedies, or obligations that they did not  
12 have (free of defects when in fact they contained Defect); and

13 e. In violation of Section 1770(a)(16), Defendants misrepresented that  
14 the Class Vehicles were supplied in accordance with previous representations when they  
15 were not (free of defects when in fact they contained the Defect).

16 63. Defendants' misrepresentations and nondisclosures regarding the Class  
17 Vehicles never disclosed at the time of purchase were material to Plaintiff and Class  
18 Members because a reasonable person would have considered them important in deciding  
19 whether or not to purchase the Class Vehicles and because Defendants had a duty to  
20 disclose the truth about the Defect.

21 64. Plaintiff and Class Members relied upon Defendants' material  
22 misrepresentations and nondisclosures, and had Plaintiff and Class Members known the  
23 truth about the Defect they would not have purchased the Class Vehicles or not have paid  
24 as much for the Class Vehicles.

25 65. As a direct and proximate result of Defendants' material misrepresentations  
26 and nondisclosures, Plaintiff and Class Members have been irreparably harmed.

27 66. On behalf of the California Sub-Class, Plaintiff seeks injunctive relief in the  
28 form of an order enjoining Defendants from making such material misrepresentations and

1 failing to disclose or actively concealing its aforementioned practices. Plaintiff also seeks  
2 attorneys' fees and costs.

3 67. In accordance with Cal. Civ. Code § 1782(a), Plaintiff's counsel served  
4 Defendants with notice of the CLRA violations by certified mail, return receipt requested.

5 68. If Defendants fail to provide appropriate relief for their CLRA violations  
6 within 30 days of receipt of Plaintiff's notification letter, Plaintiff also will seek  
7 compensatory and exemplary damages as permitted by Cal. Civ. Code §§ 1780 and  
8 1782(b).

9 **THIRD CAUSE OF ACTION**  
10 **Violations of the California Unfair Competition Law**  
11 **Cal. Bus. & Prof. Code § 17200, *et seq.***  
12 **(On behalf of the proposed California Sub-Class)**

13 69. Plaintiff incorporates by reference the preceding allegations.

14 70. Plaintiff brings this cause of action individually and on behalf of the  
15 California Sub-Class against Defendants.

16 71. California Business & Professions Code § 17200, *et seq.* ("UCL") prohibits  
17 acts of "unfair competition," including any "unlawful, unfair or fraudulent business act or  
18 practice" and "unfair, deceptive, untrue or misleading advertising."

19 72. Defendants knew that the Class Vehicles suffered from an inherent defect,  
20 were defectively designed and manufactured, and were not suitable for their intended use.

21 73. In failing to disclose the Defect, Defendants knowingly and intentionally  
22 concealed material facts and breached their duty not to do so.

23 74. Defendants were under a duty to Plaintiff and Class Members to disclose the  
24 defective nature of the Class Vehicles because:

- 25 a) Defendants were in a superior position to know the true state of facts about  
26 the Defect in the Class Vehicles;  
27 b) Defendants made disclosures about the safety and quality of the Class  
28 Vehicles without revealing the defective nature of the Class Vehicles; and

1 c) Defendants actively concealed the defective nature of the Class Vehicles from  
2 Plaintiff and Class Members.

3 75. The facts concealed by Defendants to Plaintiff and Class Members are  
4 material in that reasonable persons would have considered them to be important in  
5 deciding whether to purchase the Class Vehicles, or to pay less for them. Had Plaintiff and  
6 Class Members known that the Class Vehicles suffered from Defect, they would not have  
7 purchased the Class Vehicles or would have paid less for them.

8 76. Defendants concealed the Defect even after Class Members began to report  
9 problems, and Defendants continue to cover up and conceal the true nature of the  
10 problem.

11 77. Defendants have violated and continues to violate the UCL's prohibition  
12 against engaging in "unlawful" business acts or practices, by, among other things:

- 13 • Violating the CLRA;
- 14 • Violating the MMWA; and
- 15 • Violating the Song-Beverly Consumer Warranty Act.

16 78. Defendants also violated the unlawful prong of the UCL by failing to honor  
17 the terms of its express and implied warranties with Plaintiff and Class Members, as alleged  
18 herein.

19 79. Defendants' acts, omissions, and conduct also violate the unfair prong of the  
20 UCL because Defendants' acts, omissions, and conduct, as alleged herein, offended public  
21 policy and constitutes immoral, unethical, oppressive, and unscrupulous activities that  
22 caused substantial injury, including to Plaintiff and Class Members. The gravity of  
23 Defendants' conduct outweighs any potential benefits attributable to such conduct and  
24 there were reasonably available alternatives to further Defendants' legitimate business  
25 interests, other than Defendants' conduct described herein.

26 80. By failing to disclose and actively concealing the Defect, Defendants engaged  
27 in a fraudulent business practice that is likely to deceive a reasonable consumer.  
28



1 81. As a direct and proximate result of Defendants' unfair and deceptive  
2 practices, Plaintiff and Class Members have suffered and will continue to suffer actual  
3 damages.

4 82. Defendants have been unjustly enriched and should be required to make  
5 restitution to Plaintiff and the California Sub-Class pursuant to §§ 17203 and 17204 of  
6 the UCL.

7 **FOURTH CAUSE OF ACTION**

8 **Breach of Implied Warranties and Song-Beverly Consumer Warranty Act California**  
9 **Civil Code § 1790, *et seq.***

10 **(On behalf of the proposed California Sub-Class)**

11 83. Plaintiff incorporates by reference the preceding allegations.

12 84. Plaintiff brings this cause of action individually and on behalf of the  
13 California Sub-Class against Defendants.

14 85. Defendants at all relevant times the manufacturer, distributor, warrantor,  
15 and/or seller of the Class Vehicles and/or the defective airbag component. Defendants  
16 knew or had reason to know of the specific use for which the Class Vehicles were  
17 purchased.

18 86. Defendants provided Plaintiff and Class Members with implied warranties  
19 that the Class Vehicles and any parts thereof were merchantable and fit for the ordinary  
20 purposes for which they were sold.

21 87. However, the Class Vehicles are not fit for their ordinary purpose of providing  
22 reasonably reliable and safe transportation because, *inter alia*, the Class Vehicles contained  
23 the Defect. Therefore, the Class Vehicles are not fit for their particular purpose of  
24 providing safe and reliable transportation.

25 88. Defendants impliedly warranted that the Class Vehicles were of merchantable  
26 quality and fit for such use. These implied warranties included, among other things: (i) a  
27 warranty that the Class Vehicles and their engines were manufactured, supplied,  
28 distributed, and/or sold by Defendants were safe and reliable for providing transportation;

1 and (ii) a warranty that the Class Vehicles and their engines would be fit for their intended  
2 use while the Class Vehicles were being operated.

3 89. Contrary to the applicable implied warranties, the Class Vehicles and their  
4 engines, at the time of sale and thereafter, were not fit for their ordinary and intended  
5 purpose of providing Plaintiff and Class Members with reliable, durable, and safe  
6 transportation. Instead, the Class Vehicles are defective, including but not limited to their  
7 defective design and/or manufacture related to the Defect alleged herein.

8 90. Defendants' actions, as complained of herein, breached the implied  
9 warranties that the Class Vehicles were of merchantable quality and fit for such use in  
10 violation of Cal. Civ. Code §§ 1791.1 and 1792.

11  
12 **FIFTH CAUSE OF ACTION**  
13 **Common Law Breach of Express Warranties**  
**(On behalf of the proposed Nationwide Class)**

14 91. Plaintiff incorporates by reference the preceding allegations.

15 92. In the course of selling the Class Vehicles, Defendants expressly warranted in  
16 writing that the vehicles and/or applicable components were covered by certain warranties,  
17 including, without limitation, the Class Vehicles' Limited Warranties.

18 93. Defendants breached their express warranties to repair defects in materials  
19 and workmanship of any part supplied by Defendants. Defendants have not repaired, and  
20 has been unwilling to reasonably repair, the Defect in Class Vehicles.

21 94. Furthermore, the express warranties to repair defective parts, fail in their  
22 essential purpose because the contractual remedy is insufficient to make Plaintiff and Class  
23 Members whole and because Defendants have failed and/or has refused to adequately  
24 provide the promised remedies within a reasonable time.

25 95. Accordingly, recovery by Plaintiff is not limited to the express warranties of  
26 repair to parts defective in materials or workmanship, and Plaintiff seeks all remedies as  
27 allowed by law.



- 1 c) An order enjoining Defendants from further deceptive distribution, sales, and  
2 lease practices with respect to their Class Vehicles and the defective airbag  
3 components; to remove and replace Plaintiff and Class Members' airbag  
4 systems with a suitable alternative product; and repair all other damages to  
5 the Class Vehicles caused by the Defect;
- 6 d) A further order enjoining Defendants from the conduct alleged herein,  
7 including an order enjoining Defendants from concealing the existence of the  
8 Defect during distribution, sales, and advertisements, as well as during  
9 customer and warranty service visits for the Class Vehicles;
- 10 e) An award to Plaintiff and Class Members of compensatory, actual, exemplary,  
11 and statutory damages, including interest, in an amount to be proven at trial;
- 12 f) A declaration that Defendants must disgorge, for the benefit of Plaintiff and  
13 Class Members, all or part of the ill-gotten profits it received from the sale or  
14 lease of their Class Vehicles and/or the defective airbag components, or make  
15 full restitution to Plaintiff and Class Members;
- 16 g) An award of attorneys' fees and costs pursuant to California Code of Civil  
17 Procedure § 1021.5 and all other applicable laws;
- 18 h) An award of pre-judgment and post-judgment interest, as provided by law;
- 19 i) Any and all remedies provided pursuant to the Song-Beverly Act, including  
20 California Civil Code § 1794;
- 21 j) Leave to amend this Complaint to conform to the evidence produced at trial;
- 22 k) A recall of all Class Vehicles; and
- 23 l) Such other relief as may be appropriate under the circumstances.
- 24  
25  
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27  
28

1 DEMAND FOR JURY TRIAL

2 Plaintiff, individually and on behalf of all others similarly situated, hereby demands  
3 a trial by jury as to all matters so triable.

4  
5 Dated: July 18, 2019

*/s/ Tina Wolfson* \_\_\_\_\_

6 Robert Ahdoot

7 Tina Wolfson

8 Theodore W. Maya

9 Bradley K. King

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*Counsel for Plaintiff Matthew Aquino*



# ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Toyota, ZF TRW Facing Class Action Over Alleged Concealment of Airbag Control Unit Defect](#)

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