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*Counsel for Plaintiffs and the Proposed Class*

[Additional Counsel Listed on Signature Page]

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

COLE COLEMAN, BRUCE COLETTA,  
DAVID DIORIO, ROBERT JACOBSON-  
DUTEIL, BRIANNA LEE, CRISTIN  
TROSIEN, and MICHELE WILLIAMS,  
individually, and on behalf of all others  
similarly situated,

Plaintiff,

v.

TOYOTA MOTOR SALES, U.S.A., INC.,  
a Texas corporation; and TOYOTA  
MOTOR NORTH AMERICA, INC., a  
Texas corporation,

Defendants.

Case No.: 3:20-cv-01663

CLASS ACTION

**CLASS ACTION COMPLAINT**

DEMAND FOR JURY TRIAL

1 Plaintiffs Cole Coleman, Bruce Coletta, David DiOrio, Robert Jacobson-Duteil, Brianna  
2 Lee, Cristin Trosien, and Michele Williams (“Plaintiffs”), individually and on behalf of all  
3 others similarly situated, bring this class action against Toyota Motor Sales, U.S.A., Inc. and  
4 Toyota Motor North America, Inc. (collectively, “Toyota” or “Defendants”), and allege as  
5 follows based on investigation of counsel and information and belief:

6 **NATURE OF THE CASE**

7 1. Toyota manufactures a vehicle called the RAV4 Hybrid (the “RAV4”). 2019 and  
8 2020 model year RAV4 Hybrids (the “Class Vehicles”) are equipped with a defective fuel tank  
9 system. In the standard promotional and marketing materials that it distributes in California and  
10 throughout the United States, Toyota advertises the fuel tank as having a capacity of 14.5  
11 gallons. But the fuel tank on each Class Vehicle cannot be safely filled with more than nine to  
12 ten gallons, even when the fuel light indicates that the tank is not full. This is due to a fuel tank  
13 system defect. The shape of the tank causes the fuel pump to shut off before reaching a full 14.5  
14 gallons.

15 2. The defect severely diminishes the total driving distance of the Class Vehicles.  
16 Toyota advertises that the RAV4 can travel 580 miles on a single “full” tank and specifically  
17 tells customers in national advertising campaigns that they will need fewer trips to the gas pump.  
18 Toyota also advertises that the RAV4 travels an estimated 41 miles per gallon when driving in  
19 city conditions, 38 miles per gallon on the highway, and 40 miles per gallon combined. In reality,  
20 because the defect prevents drivers from safely filling the tank with more than ten gallons of  
21 fuel, drivers can only travel about 400 miles on a “full” tank, leaving consumers without the  
22 promised benefits of Toyota’s best-selling hybrid. The smaller tank size also necessarily requires  
23 more stops and starts, affecting mileage and materially limiting driving range.

24 3. Each Class Vehicle has been designed, manufactured, distributed, sold, and  
25 leased by Defendants, and each Class Vehicle’s fuel tank system is defective. Toyota has known  
26 or should have known of this defect due to numerous complaints by consumers, pre-release  
27 testing, as well as feedback from dealerships. Toyota, however, does not inform purchasers  
28

1 about the fuel tank system defect, and it continues to conceal material facts while its efforts to  
2 advertise, market, and sell the RAV4 in California and throughout the United States remain  
3 ongoing. Without the superior knowledge Toyota possesses about the defect, unsuspecting  
4 consumers continue to purchase the RAV4, expecting to be able to fill their vehicles with 14.5  
5 gallons of fuel and to travel the mileage range Toyota advertises. Defendants' representations  
6 have induced Plaintiffs, and continue to induce Class members, to purchase and lease vehicles  
7 that do not perform as promised.

8 4. To date, Toyota has not offered a repair or replacement option that cures the fuel  
9 tank system defect. Had Defendants disclosed the defective nature of the RAV4 to Plaintiffs,  
10 they would not have purchased it or would have paid substantially less for one.

11 5. Plaintiffs therefore bring this action, individually, and on behalf of all similarly  
12 situated owners and lessees of 2019 and 2020 Toyota RAV4 Hybrids. Plaintiffs seek damages  
13 and injunctive relief for Defendants' violations of California consumer protection statutes and  
14 for fraudulent concealment.

## 15 PARTIES

### 16 **A. Plaintiffs**

17 6. Plaintiff Cole Coleman is a citizen and resident of Missouri. He purchased a new  
18 2019 RAV4 Hybrid on September 2, 2019 from Bommarito Toyota in Hazelwood, Missouri,  
19 for approximately \$31,889 (less a \$900 rebate). Mr. Coleman purchased the RAV4 primarily  
20 for personal, family, or household use and has used the vehicle for regular everyday activities.  
21 Before purchasing his RAV4, Mr. Coleman saw Toyota's standard advertisements and  
22 marketing materials, including content on Toyota's website, in promotional brochures, and on  
23 vehicle Monroney stickers, about the RAV4's fuel tank capacity, fuel economy, and total driving  
24 distance. Based on Toyota's reported 14.5-gallon fuel tank capacity and estimated mileage of  
25 forty miles per gallon, Mr. Coleman believed that his RAV4 could travel over five hundred miles  
26 on one full tank of gas. Since purchasing the RAV4, however, he has never been able to fill the  
27 gas tank to the advertised 14.5-gallon capacity. At most, the tank will take about eight to ten  
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1 gallons, even when the fuel light indicates that the tank is not full. Anything more than that  
2 amount causes the tank to overflow. After repeated failed attempts to fill the gas tank to capacity,  
3 Mr. Coleman contacted a local Toyota dealership only to be told there is nothing they can do  
4 until Toyota releases a solution. The defective fuel tank remains installed on his RAV4, and  
5 Toyota has not offered a repair or replacement that eliminates the problems with the fuel tank  
6 system. As a result, Mr. Coleman must refuel more frequently than he would have to if the fuel  
7 tank system were defect-free, and the vehicle has never achieved the mileage range Toyota  
8 represented. At the time of purchase, Mr. Coleman was unaware of the defective nature of the  
9 RAV4's fuel tank system. Had Toyota disclosed the defect, Mr. Coleman would not have  
10 purchased a RAV4 or would have paid substantially less for it.

11 7. Plaintiff Bruce Coletta is a citizen and resident of New Jersey. He purchased a  
12 new 2019 RAV4 Hybrid on October 3, 2019 from Dayton Toyota in Dayton, New Jersey, for  
13 \$31,793.49. Mr. Coletta purchased the RAV4 primarily for personal, family, or household use  
14 and has used the vehicle for regular everyday activities. Before purchasing his RAV4, Mr.  
15 Coletta saw Toyota standard advertisements and marketing materials, including content on  
16 Toyota's website, in promotional brochures, and on vehicle Monroney stickers, about the  
17 RAV4's fuel tank capacity, fuel economy, and total driving distance. Based on Toyota's reported  
18 14.5-gallon fuel tank capacity and estimated mileage of forty miles per gallon, Mr. Coletta  
19 believed that his RAV4 could travel over five hundred miles on one full tank of gas. Since  
20 purchasing the RAV4, however, he has never been able to fill the gas tank to the advertised 14.5-  
21 gallon capacity, even when the fuel light indicates that the tank is not full. The tank will take no  
22 more than ten gallons. Anything more than that amount causes the tank to overflow. After  
23 repeated failed attempts to fill the gas tank to capacity, Mr. Coletta visited a local Toyota  
24 dealership. The dealership installed a replacement tank, but the replacement tank has the same  
25 defect. Toyota has not offered a repair or replacement that eliminates the problems with the fuel  
26 tank system. As a result, Mr. Coletta must refuel more frequently than he would have to if the  
27 fuel tank system were defect-free, and the vehicle has never achieved the mileage range Toyota  
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1 represented. At the time of purchase, Mr. Coletta was unaware of the defective nature of the  
2 RAV4's fuel tank system. Had Toyota disclosed the defect, Mr. Coletta would not have  
3 purchased a RAV4 or would have paid substantially less for it.

4 8. Plaintiff David DiOrio is a citizen and resident of Connecticut. He purchased a  
5 new 2019 RAV4 Hybrid on July 31, 2019 from Girard Toyota in New London, Connecticut, for  
6 approximately \$39,000. Mr. DiOrio purchased the RAV4 primarily for personal, family, or  
7 household use and has used the vehicle for regular everyday activities. Before purchasing his  
8 RAV4, Mr. DiOrio saw Toyota standard advertisements and marketing materials, including  
9 content on Toyota's website, in promotional brochures, and on vehicle Monroney stickers, about  
10 the RAV4's fuel tank capacity, fuel economy, and total driving distance. Based on Toyota's  
11 reported 14.5-gallon fuel tank capacity and estimated mileage of forty miles per gallon, Mr.  
12 DiOrio believed that his RAV4 could travel over five hundred miles on one full tank of gas.  
13 Since purchasing the RAV4, however, he has never been able to fill the gas tank to the advertised  
14 14.5-gallon capacity, even when the fuel light indicates that the tank is not full. At most, the  
15 tank will take seven to eight gallons. Anything more than that amount causes the tank to  
16 overflow. Mr. DiOrio has experienced repeated failed attempts to fill the gas tank to capacity.  
17 The defective fuel tank remains installed on his RAV4, and Toyota has not offered a repair or  
18 replacement that eliminates the problems with the fuel tank system. As a result, Mr. DiOrio must  
19 refuel more frequently than he would have to if the fuel tank system were defect-free, and the  
20 vehicle has never achieved the mileage range Toyota represented. At the time of purchase, Mr.  
21 DiOrio was unaware of the defective nature of the RAV4's fuel tank system. Had Toyota  
22 disclosed the defect, Mr. DiOrio would not have purchased a RAV4 or would have paid  
23 substantially less for it.

24 9. Plaintiff Robert Jacobson-Duteil is a citizen and resident of Arizona. He  
25 purchased a new 2020 RAV4 Hybrid on February 9, 2020 from Big Two Toyota in Chandler,  
26 Arizona, for approximately \$31,000. Mr. Jacobson-Duteil purchased the RAV4 primarily for  
27 personal, family, or household use and has used the vehicle for regular everyday activities.  
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1 Before purchasing his RAV4, Mr. Jacobson-Duteil saw standard Toyota advertisements and  
2 marketing materials, including content on Toyota's website, in promotional brochures, and on  
3 vehicle Monroney stickers, about the RAV4's fuel tank capacity, fuel economy, and total driving  
4 distance. Based on Toyota's reported 14.5-gallon fuel tank capacity and estimated mileage of  
5 forty miles per gallon, Mr. Jacobson-Duteil believed that his RAV4 could travel over five  
6 hundred miles on one full tank of gas. Since purchasing the RAV4, however, he has never been  
7 able to fill the gas tank to the advertised 14.5-gallon capacity, even when the fuel light indicates  
8 that the tank is not full. At most, the tank will take ten to eleven gallons. Anything more than  
9 that amount causes the tank to overflow. After repeated failed attempts to fill the gas tank to  
10 capacity, Mr. Jacobson-Duteil visited a local Toyota dealership, but the dealership offered no  
11 solution. The defective fuel tank remains installed on his RAV4, and Toyota has not offered a  
12 repair or replacement that eliminates the problems with the fuel tank system. As a result, Mr.  
13 Jacobson-Duteil must refuel more frequently than he would have to if the fuel tank system were  
14 defect-free, and the vehicle has never achieved the mileage range Toyota represented. At the  
15 time of purchase, Mr. Jacobson-Duteil was unaware of the defective nature of the RAV4's fuel  
16 tank system. Had Toyota disclosed the defect, Mr. Jacobson-Duteil would not have purchased a  
17 RAV4 or would have paid substantially less for it.

18 10. Plaintiff Brianna Lee is a citizen and resident of California. She purchased a new  
19 2019 RAV4 Hybrid on May 3, 2019 in Dublin, California, for \$35,524. She purchased the  
20 vehicle primarily for personal, family, or household use and has used the vehicle for regular  
21 everyday activities. Before purchasing her RAV4, Ms. Lee saw Toyota advertisements and  
22 marketing materials, including on Toyota's website, in brochures, and on vehicle Monroney  
23 stickers, about the vehicle's fuel tank capacity, fuel economy, and total driving distance. Based  
24 on Toyota's reported 14.5-gallon fuel tank capacity and estimated mileage of forty miles per  
25 gallon, Ms. Lee believed that the Toyota RAV4 could travel over five hundred miles on one full  
26 tank of gas. This was the primary reason why Ms. Lee purchased a RAV4, as she drives 100  
27 miles every day for work. Since purchasing her RAV4, Ms. Lee has never been able to fill the  
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1 gas tank to the advertised 14.5-gallon capacity, even when the fuel light indicates that the tank  
2 is not full. At most, the fuel tank will take nine gallons. Anything more than that amount causes  
3 the tank to overflow. After repeated failed attempts to fill the gas tank to capacity, Ms. Lee  
4 visited a local Toyota dealership, but the dealership offered no solution. The defective fuel tank  
5 remains installed on her RAV4, and Toyota has not offered a repair or replacement that  
6 eliminates the problems with the fuel tank system. As a result, Ms. Lee must refuel more  
7 frequently than she would have to if the fuel tank system were defect-free, and the vehicle has  
8 never achieved the total driving distance Toyota represented. At the time of purchase, Ms. Lee  
9 was unaware of the defective nature of the RAV4's fuel tank system. Had Toyota disclosed the  
10 defect, Ms. Lee would not have purchased a RAV4 or would have paid substantially less for it.

11 11. Plaintiff Cristin Trosien is a citizen and resident of Michigan. She purchased a  
12 new 2020 RAV 4 Hybrid on January 30, 2020 from Suburban Toyota in Farmington Hills,  
13 Michigan, for approximately \$40,000. She purchased the vehicle primarily for personal, family,  
14 or household use and has used the vehicle for regular everyday activities. Before purchasing her  
15 RAV4, Ms. Trosien saw Toyota standard advertisements and marketing materials, including  
16 content on Toyota's website, in promotional brochures, and on vehicle Monroney stickers, about  
17 the vehicle's fuel tank capacity, fuel economy, and total driving distance. Based on Toyota's  
18 reported 14.5-gallon fuel tank capacity and estimated mileage of forty miles per gallon, Ms.  
19 Trosien believed that the Toyota RAV4 could travel over five hundred miles on one full tank of  
20 gas. Since purchasing her RAV4, however, Ms. Trosien has never been able to fill the gas tank  
21 to the advertised 14.5 gallon capacity, even when the fuel light indicates that the tank is not full.  
22 At most, the fuel tank will take about nine to ten gallons. Anything more than that amount causes  
23 the tank to overflow. Ms. Trosien has experienced repeated failed attempts to fill the gas tank to  
24 capacity. The defective fuel tank remains installed on her RAV4, and Toyota has not offered a  
25 repair or replacement that eliminates the problems with the fuel tank system. As a result, Ms.  
26 Trosien must refuel more frequently than she would have to if the fuel tank system were defect-  
27 free, and the vehicle has never achieved the total driving distance Toyota represented. At the  
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1 time of purchase, Ms. Trosien was unaware of the defective nature of the RAV4's fuel tank  
2 system. Had Toyota disclosed the defect, Ms. Trosien would not have purchased a RAV4 or  
3 would have paid substantially less for it.

4 12. Plaintiff Michele Williams is a citizen and resident of Florida. She purchased a  
5 new 2019 RAV4 Hybrid on October 10, 2019 from Miracle Toyota in Haines City, Florida, for  
6 \$37,890. Ms. Williams purchased the RAV4 primarily for personal, family, or household use  
7 and has used the vehicle for regular everyday activities. Before purchasing her RAV4, Ms.  
8 Williams saw Toyota standard advertisements and marketing materials, including content on  
9 Toyota's website, in promotional brochures, and on vehicle Monroney stickers, about the  
10 RAV4's fuel tank capacity, fuel economy, and total driving distance. Based on Toyota's reported  
11 14.5-gallon capacity and estimated mileage of forty miles per gallon, Ms. Williams believed that  
12 the Toyota RAV4 could travel over five hundred miles on one full tank of gas. Since purchasing  
13 the RAV4, however, Ms. Williams has never been able to fill the gas tank to the advertised 14.5-  
14 gallon capacity, even when the fuel light indicates that the tank is not full. At most, the tank will  
15 take nine to ten gallons. Anything more than that amount causes the tank to overflow. After  
16 repeated failed attempts to fill the gas tank to capacity, Ms. Williams visited a local Toyota  
17 dealership, but the dealership offered no solution. The defective fuel tank remains installed on  
18 Ms. Williams' RAV4, and Toyota has not offered a repair or replacement that eliminates the  
19 problems with the fuel tank system. As a result, Ms. Williams must refuel more frequently than  
20 she would have to if the fuel tank system were defect-free, and her RAV4 has never achieved  
21 the mileage range Toyota represented. At the time of purchase, Ms. Williams was unaware of  
22 the defective nature of the RAV4's fuel tank system. Had Toyota disclosed the defect, Ms.  
23 Williams would not have purchased a RAV4 or would have paid substantially less for it.

24 **B. Defendants**

25 13. Defendants Toyota Motor Sales, U.S.A., Inc. and Toyota Motor North America,  
26 Inc. are Texas corporations and maintain their principal place of business in that state. At all  
27 times relevant herein, Defendants engaged in the business of designing, manufacturing,  
28



1 marketing, warranting, distributing, selling, and leasing automobiles, including the Class  
2 Vehicles, in California and throughout the United States.

3 **JURISDICTION AND VENUE**

4 14. This Court has jurisdiction under the Class Action Fairness Act, 28 U.S.C.  
5 § 1332, because this is a proposed class action in which there are at least 100 Class members,  
6 the combined claims of Class members exceed \$5,000,000, exclusive of interest, attorneys' fees,  
7 and costs, and Plaintiffs and Defendants are domiciled in different states.

8 15. This Court has personal jurisdiction over Defendants because they regularly  
9 conduct business throughout California, including within this judicial District, and have  
10 sufficient minimum contacts in the state to render the exercise of jurisdiction by this Court  
11 proper and necessary.

12 16. Venue is proper in this District because a substantial part of the events or  
13 omissions giving rise to Plaintiffs' claims occurred here, and Defendants caused harm to Class  
14 members residing within this judicial District.

15 **INTRADISTRICT ASSIGNMENT**

16 17. Pursuant to Civil Local Rule 3-2(d), this action may be assigned to the San  
17 Francisco or the Oakland Division, as the events giving rise to the causes of action alleged herein  
18 occurred in Alameda County.

19 **COMMON FACTUAL ALLEGATIONS**

20 **A. Toyota's Hybrid Vehicles**

21 18. Toyota launched the RAV4 model in 1995 and introduced the first RAV4 Hybrid  
22 in 2016.<sup>1</sup> The RAV4 Hybrid's gas engine works in combination with an electric motor for  
23 increased fuel economy. As described by Toyota:

24 The Hybrid Synergy Drive System utilizes a computer-controlled gasoline  
25 engine and electric motor to provide the most efficient combination of power for  
26 the vehicle. To conserve energy, when the brakes are applied the braking force

27 <sup>1</sup> See <https://www.trucks.com/2019/03/08/5-things-to-know-about-toyotas-2019-rav4-hybrid/>  
28 (last visited Mar. 6, 2020).

1 generates electricity which is then sent to the traction battery. In addition, the  
2 engine shuts off when the vehicle is stopped. The benefits are better fuel economy  
and reduced vehicle emissions.<sup>2</sup>

3 19. Hybrids' fuel efficiency attracts consumers interested in saving in fuel costs or  
4 reducing the environmental impact of fully gas-powered engines.

5 20. Toyota has successfully appealed to this group of consumers with a number of  
6 "Alternative Fuel Vehicles," including 2020 RAV4 Hybrid, which Toyota touts "as the most  
7 powerful yet fuel-efficient RAV4 in the lineup."<sup>3</sup>

8 21. Other vehicles in Toyota's "green" fleet include the Camry Hybrid, Avalon  
9 Hybrid, and Corolla Hybrid, and Prius.<sup>4</sup>

10 22. Toyota identifies environmental responsibility as a priority. It developed the  
11 Alternative Fuel Vehicle line to "make the best possible use of our natural resources."<sup>5</sup> Toyota  
12 promises its customers that it "focus[es] on environmentally sustainable solutions in everything  
13 [it] do[es] and every vehicle [it] make[s]."<sup>6</sup> The company strategically positions its products as  
14 "world-changing vehicles" to entice buyers, in California and throughout the country, who wish  
15 to be environmentally-conscious or who seek to reduce fuel costs:<sup>7</sup>

16 **Cars drivers love—for a planet we all do**

17 How do you balance a passion for performance with a love for the planet?  
18 It's a question our engineers answer every day. We're creating vehicles that  
19 are safe, practical and fun to drive – while at the same time working to  
20 ensure our cars and trucks are at the forefront of environmental  
21 engineering. Today, with more than 2 million Toyota hybrid vehicles on U.S.  
22 roads – more than any other manufacturer – and new breakthroughs in  
23 plug-in, electric, and hydrogen fuel cell technologies, we're building better  
cars for the road and for the Earth.

24 <sup>2</sup> See <https://www.toyota.com/t3Portal/document/om-s/OM20V4QRG/pdf/OM20V4QRG.pdf>  
(last visited Mar. 6, 2020).

25 <sup>3</sup> See <https://www.toyota.com/alternative-fuel/> (last visited Mar. 6, 2020).

26 <sup>4</sup> See *id.*

27 <sup>5</sup> See <https://www.toyota.com/usa/our-story#!/toyota-way> (last visited Mar. 6, 2020).

28 <sup>6</sup> See <https://www.toyota.com/usa/environment/index.html> (last visited Mar. 6, 2020).

<sup>7</sup> See *id.*

1           23.     Some consumers, like Plaintiffs and Class members, are willing to pay more for  
2 a hybrid vehicle that offers better gas mileage and is easier on the environment than its gas-only  
3 counterpart. Toyota capitalizes on this consumer preference in its nation-wide advertising and  
4 marketing campaigns:<sup>8</sup>



### Fueling

Hybrids have a fuel tank just like every other vehicle. The only difference is the number of times you need to visit the pump.

11     **B.     The RAV4 Hybrid**

12           24.     Of Toyota's Alternative Fuel Vehicles, the RAV4 is Toyota's best-seller.<sup>9</sup>  
13 Toyota has sold hundreds of thousands of 2019 and 2020 RAV4 Hybrids. The base price for this  
14 model ranges from \$27,850 to \$36,880 depending on the style of the vehicle (e.g., LE, XLE,  
15 XSE, Limited).<sup>10</sup>


16           25.     According to Toyota's nationally-distributed standard advertising and marketing  
17 materials, including its website, informational brochures, and Monroney stickers, each 2019 and  
18 2020 RAV4 Hybrid is equipped with a 14.5-gallon fuel tank.<sup>11</sup>

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21  
22  
23     <sup>8</sup> See <https://www.toyota.com/alternative-fuel/> (last visited Mar. 6, 2020).

24     <sup>9</sup> See <https://www.thetruthaboutcars.com/2019/12/the-toyota-rav4-hybrid-is-now-by-far-toyotas-best-selling-hybrid-in-america-easily-outselling-the-prius-in-2019/> (last visited Mar. 6, 2020).

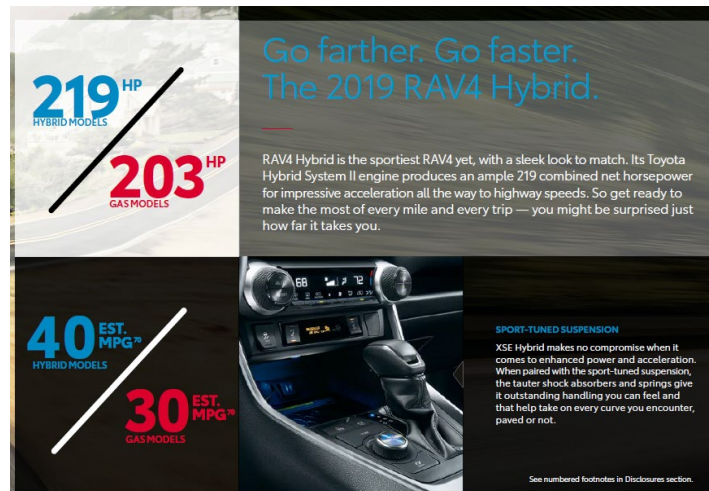
25     <sup>10</sup> See <https://www.toyota.com/rav4hybrid/2019/>; <https://www.toyota.com/rav4hybrid/> (last visited Mar. 6, 2020).

26     <sup>11</sup> See [https://www.toyota.com/rav4/features/mechanical\\_performance/4444/4456/4454/F426](https://www.toyota.com/rav4/features/mechanical_performance/4444/4456/4454/F426;);  
27 [https://monroneylab.com/cars/1140109-2019-toyota-rav4-hybrid?hide\\_frame=false&ref=https%3A%2F%2Fwww.dallastruckworld.com%2Fused-inventory%2Findex.htm%3Fstart%3D16%26&v=dallastruckworld](https://monroneylab.com/cars/1140109-2019-toyota-rav4-hybrid?hide_frame=false&ref=https%3A%2F%2Fwww.dallastruckworld.com%2Fused-inventory%2Findex.htm%3Fstart%3D16%26&v=dallastruckworld) (last visited Mar. 6, 2020).

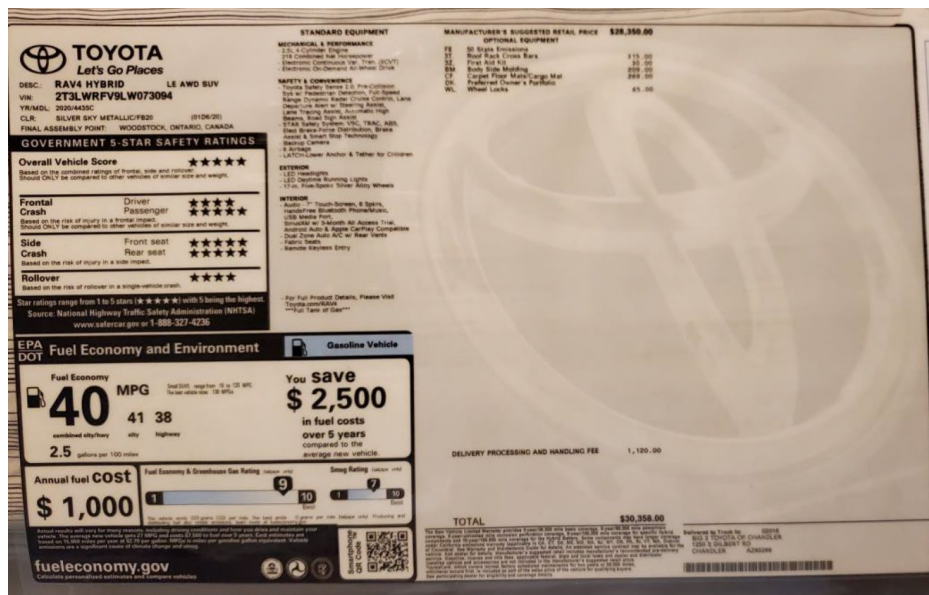
<p>Year: 2019                  Make: Toyota                  Model: RAV4 Hybrid XSE                  VIN: JTMWRFV1KD515242</p>	<p>Engine: 4 Cylinder Engine                  Transmission: CVT                  Exterior: Blizzard Pearl/midni                  Interior: Black</p>																						
<p><b>MECHANICAL</b></p> <ul style="list-style-type: none"> <li>· Axle Ratio: TBD</li> <li>· GVWR: 4,920 lbs</li> <li>· Electronic Transfer Case</li> <li>· Automatic Full-Time All-Wheel Drive</li> <li>· 550CCA Maintenance-Free Battery w/Run Down Protection</li> <li>· Hybrid Electric Motor</li> <li>· Towing Equipment -inc: Trailer Sway Control</li> <li>· 1165# Maximum Payload</li> <li>· Gas-Pressurized Shock Absorbers</li> <li>· Front And Rear Anti-Roll Bars</li> <li>· Sport Tuned Suspension</li> <li>· Electric Power-Assist Speed-Sensing Steering</li> <li>· 14.5 Gal. Fuel Tank</li> <li>· Quasi-Dual Stainless Steel Exhaust w/Chrome Tailpipe Finisher</li> <li>· Permanent Locking Hubs</li> <li>· Strut Front Suspension w/Coil Springs</li> <li>· Double Wishbone Rear Suspension w/Coil Springs</li> <li>· Regenerative 4-Wheel Disc Brakes w/4-Wheel ABS, Front Vented Discs, Brake Assist, Hill Hold Control and Electric Parking Brake</li> <li>· Mechanical Limited Slip Differential</li> <li>· Nickel Metal Hydride Traction Battery</li> </ul> <p><b>EXTERIOR</b></p> <ul style="list-style-type: none"> <li>· Wheels: 18" x 7.0J Black-Painted Aluminum Alloy</li> <li>· Tires: 225/60R18 AS</li> <li>· Aluminum Spare Wheel</li> <li>· Compact Spare Tire Mounted Inside Under Cargo</li> <li>· Clearcoat Paint</li> <li>· Body-Colored Front Bumper w/Black Rub Strip/Fascia Accent and Metal-Look Bumper Insert</li> <li>· Black Rear Bumper w/Metal-Look Rub Strip/Fascia Accent</li> <li>· Black Bodyside Cladding and Black Wheel Well Trim</li> <li>· Chrome Side Windows Trim and Black Front Windshield Trim</li> <li>· Body-Colored Door Handles</li> <li>· Black Power Heated Side Mirrors w/Manual Folding and Turn Signal Indicator</li> <li>· Fixed Rear Window w/Fixed Interval Wiper and Defroster</li> <li>· Deep Tinted Glass</li> <li>· Fully Galvanized Steel Panels</li> <li>· Lip Spoiler</li> <li>· Black Grille w/Body-Color Surround</li> <li>· Roof Rack Rails Only</li> <li>· LED Brake/Lights</li> <li>· Fully Automatic Projector Beam Led Low/High Beam Daytime Running Auto High-Beam Headlamps</li> <li>· Laminated Glass</li> </ul> <p><b>ENTERTAINMENT</b></p> <ul style="list-style-type: none"> <li>· Radio w/Seek-Scan, Clock, Speed Compensated Volume Control, Steering Wheel Controls, Voice Activation and Radio Data System</li> <li>· Integrated Roof Antenna</li> <li>· 3 LCD Monitors In The Front</li> </ul> <p><b>INTERIOR</b></p> <ul style="list-style-type: none"> <li>· Heated Front Seats -inc: 8-way power driver w/lumbar and 4-way adjustable passenger seats</li> <li>· Driver Seat</li> <li>· Passenger Seat</li> <li>· 60-40 Folding Split-Bench Front Facing Manual Reclining Fold Forward Seatback Rear Seat</li> <li>· Manual Tilt/Telescoping Steering Column</li> <li>· Wi-Fi Connect Mobile Hotspot Internet Access</li> <li>· Front Cupholder</li> </ul>	<p><b>CITY MPG</b> <b>41</b></p> <p><b>HIGHWAY MPG</b> <b>38</b></p> <p><small>Actual mileage will vary with options, driving conditions, driving habits and vehicle condition.</small></p>																						
	<p><b>New</b></p> <table border="1"> <tr> <td><b>MSRP</b></td> <td><b>\$33,850.00</b></td> </tr> <tr> <td colspan="2"><b>INSTALLED OPTIONS</b></td> </tr> <tr> <td>[FE0] 50 State Emissions</td> <td>\$0</td> </tr> <tr> <td>[SZ] Xse Package</td> <td>\$0</td> </tr> <tr> <td>[AT] Xse Advanced Technology Package</td> <td>\$640</td> </tr> <tr> <td>[CV] Xse Weather Package</td> <td>\$375</td> </tr> <tr> <td>[PC] Special Color</td> <td>\$395</td> </tr> <tr> <td>[SR] Panoramic Sunroof</td> <td>\$200</td> </tr> <tr> <td>[EN0] Radio: Entune 3.0 Premium JBL Audio W/Navigation</td> <td>\$1,620</td> </tr> <tr> <td>Original Shipping Charge</td> <td>\$1,120</td> </tr> <tr> <td><b>RETAIL PRICE (ORIGINALLY NEW)</b></td> <td><b>\$38,200.00</b></td> </tr> </table> <p><b>Get more information on your smartphone:</b></p>  <p><b>Southwest Kia</b>                  southwestkia.com                  888-272-1978</p>	<b>MSRP</b>	<b>\$33,850.00</b>	<b>INSTALLED OPTIONS</b>		[FE0] 50 State Emissions	\$0	[SZ] Xse Package	\$0	[AT] Xse Advanced Technology Package	\$640	[CV] Xse Weather Package	\$375	[PC] Special Color	\$395	[SR] Panoramic Sunroof	\$200	[EN0] Radio: Entune 3.0 Premium JBL Audio W/Navigation	\$1,620	Original Shipping Charge	\$1,120	<b>RETAIL PRICE (ORIGINALLY NEW)</b>	<b>\$38,200.00</b>
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1 26. The RAV4's fuel economy is also a focal point of Toyota's national marketing  
 2 and advertising strategy:<sup>12</sup>

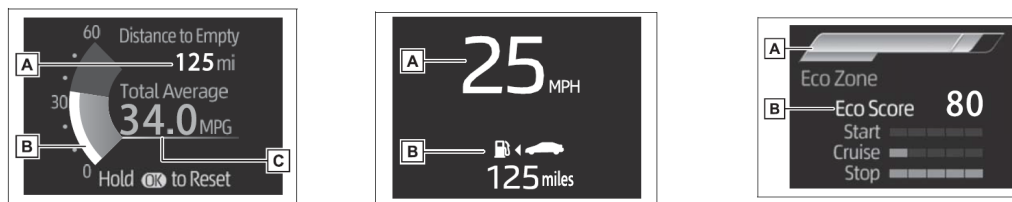


12 27. With an estimated 41 miles per gallon in city driving, 38 miles per gallon on the  
 13 highway, and 40 miles per gallon overall, Toyota represents that its RAV4 can travel 580 miles  
 14 on one "full" tank of gas (or 100 miles for every 2.5 gallons as stated under the estimated mpg  
 15 numbers pictured below). This is a key selling point for Toyota, and a primary reason why  
 16 Plaintiffs and Class members purchase the RAV4.



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 27 <sup>12</sup> See [https://www.toyota.com/content/ebrochure/2019/rav4\\_ebrochure.pdf](https://www.toyota.com/content/ebrochure/2019/rav4_ebrochure.pdf) (last visited Mar.  
 28 6, 2020).

1  
2 28. Knowing that fuel economy is a primary reason why a consumer may purchase  
3 a hybrid vehicle, Toyota not only emphasizes the fuel economy and mileage range of its vehicles  
4 in its marketing and advertising campaigns, but also in the design of the vehicle itself. Each  
5 Class Vehicle’s interior Multi-Informational Display shows drivers various metrics for gauging  
6 performance and maximizing fuel efficiency, including “Distance to Empty” and “Total  
7 Average Fuel Economy.”<sup>13</sup>



12 29. Toyota also offers RAV4 drivers “ECO drive mode.” The RAV4’s Quick  
13 Reference Guide instructs owners to use this function “to help achieve low fuel consumption  
14 during trips that involve frequent accelerating.”<sup>14</sup>

15 **C. The 2019 Fuel Tank Redesign**

16 30. In 2019, Toyota undertook a complete redesign of the RAV4 Hybrid, including  
17 the fuel tank.<sup>15</sup> Toyota eliminated the “Native America papoose shape” fuel tank installed in  
18 earlier RAV4 models, pictured below:<sup>16</sup>

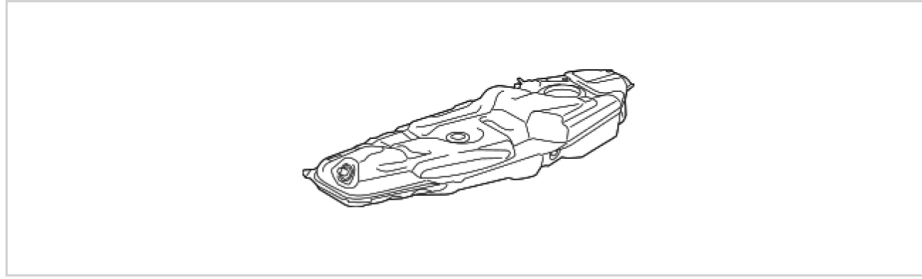
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22 <sup>13</sup> See <https://www.toyota.com/t3Portal/document/om-s/OM0R025U/pdf/OM0R025U.pdf> (last  
23 visited Mar. 6, 2020).

24 <sup>14</sup> See <https://www.toyota.com/t3Portal/document/om-s/OM20V4QRG/pdf/OM20V4QRG.pdf>  
(last visited Mar. 6, 2020)

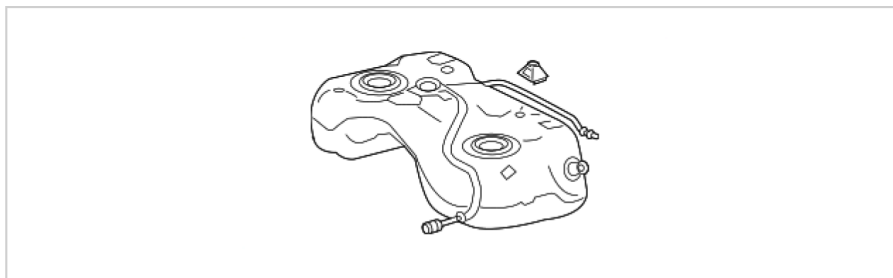
25 <sup>15</sup> See <https://www.trucks.com/2019/03/08/5-things-to-know-about-toyotas-2019-rav4-hybrid/>;  
26 [https://www.autoblog.com/2019/12/23/2019-toyota-rav4-hybrid-fuel-gas-tank-shape-  
27 problem/](https://www.autoblog.com/2019/12/23/2019-toyota-rav4-hybrid-fuel-gas-tank-shape-problem/)(last visited Mar. 6, 2020).

28 <sup>16</sup> See [https://toyotaparts.bochtoyotasouth.com/oem-parts/toyota-fuel-tank-  
7700142280?origin=pla&gclid=EAIaIQobChMInZrOqa6G6AIVDMpkCh0gBQ6MEAQYAi  
ABEgJdZfD\\_BwE](https://toyotaparts.bochtoyotasouth.com/oem-parts/toyota-fuel-tank-7700142280?origin=pla&gclid=EAIaIQobChMInZrOqa6G6AIVDMpkCh0gBQ6MEAQYAiABEgJdZfD_BwE) (last visited Mar. 6, 2020).

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31. Instead, the 2019 and 2020 RAV4 Hybrid feature a new “latitudinal, saddle-shaped design,” which appears to have been designed, unlike its predecessor, to fit over some other vehicle component.<sup>17</sup>



32. This saddle-shaped design, however, cannot be safely filled with 14.5 gallons—the number Toyota advertises as the capacity of the fuel tank. Consumers can only fill the tank with nine to eleven gallons before the tank overflows, even when the fuel light indicates that the tank is not full.

#### **D. Consumer Reports of RAV4 Fuel Tank System Issues**

33. Since Toyota’s redesign of the RAV4 fuel tank, consumers located across the country have filed complaints with the National Highway Traffic Safety Administration (“NHTSA”), reporting similar stories of being unable to safely fill the gas tanks on their vehicles.<sup>18</sup>

<sup>17</sup> See [https://parts.longotoyota.com/oem-parts/toyota-fuel-tank-770010r100?origin=pla&gclid=EAIaIQobChMIiYvsmqaC6AIVjeNkCh1DxAoLEAQYASABEgKpI\\_D\\_BwE](https://parts.longotoyota.com/oem-parts/toyota-fuel-tank-770010r100?origin=pla&gclid=EAIaIQobChMIiYvsmqaC6AIVjeNkCh1DxAoLEAQYASABEgKpI_D_BwE) (last visited Mar. 6, 2020).

<sup>18</sup> See <https://www.nhtsa.gov/vehicle/2019/TOYOTA/RAV4%252520HYBRID#complaints> (last visited Mar. 6, 2020).

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34. One consumer from Kentucky complained:<sup>19</sup>

I'VE ONLY FILLED THE TANK 4 TIMES SO FAR BUT I CAN NEVER GET IT FULL. THE MOST IT WILL TAKE IS ABOUT 10 GALLONS AND THAT IS ONLY IF I STAND THERE AND FORCE FEED IT MORE GAS VERY SLOWLY WHILE PULLING THE NOZZLE OUT A LITTLE AT A TIME. I HAVE TO FILL IT WAY TOO FREQUENTLY, AND IN THE WINTER IT IS ESPECIALLY INCONVENIENT.

35. A RAV4 owner from Livermore, California reported:<sup>20</sup>

WHEN FILLING UP, THE GAS CUTS OFF VERY EARLY; THE GAS GAUGE WILL ONLY READ 3/4 TO 7/8 FULL. THIS LEADS TO "TOPPING OFF" WHICH IS AN ENVIRONMENTAL AND SAFETY ISSUE.

36. A Toyota customer from Illinois had the same experience:<sup>21</sup>

FUEL TANK DOES NOT FILL UP TO FULL. RANGE ADVERTISED AS WELL OVER 500 MILES BUT USUAL RANGE AFTER FILL UP IN 400S.

37. Complaints available on consumer online forums are similar. One person reported:<sup>22</sup>

I just had my first fill-up on a new 2019 XSE Hybrid. I was able to get it full according to the gauge but the tank only took 9.5 gallons. Made in Japan 4/2019 model.

38. Another consumer shared:<sup>23</sup>

We are having the same problem, with the light on and 20 miles left to go ( according to the monitor) I can only put 8 1/2 gallons.

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<sup>19</sup> See *id.*

<sup>20</sup> See *id.*

<sup>21</sup> See *id.*

<sup>22</sup> See <https://www.toyotanation.com/threads/cant-seem-get-a-full-tank-of-gas.1654530/> (last visited Mar. 6, 2020).

<sup>23</sup> See *id.*



1           39. As these consumer complaints illustrate, Toyota has not delivered a RAV4  
2 Hybrid with the 14.5-gallon fuel tank it advertised, and the vehicle cannot travel the 580-mile  
3 driving distance its drivers reasonably expected based on the representations Toyota made.

4 **E. Toyota’s Knowledge of the Defect**

5           40. Whether from industry standard pre-release testing, post-release feedback from  
6 consumers and dealerships, warranty data, or complaint analysis, Toyota knew or should have  
7 known that the saddle-shaped fuel tank system installed on its 2019 and 2020 RAV4 Hybrids is  
8 defective.

9           41. In fact, in November 2019, Toyota published a “Tech Tip,” referring to what the  
10 company termed a “Fuel Gauge Concern.”<sup>24</sup> Toyota acknowledged that “[s]ome 2019 model  
11 year RAV4 H[ybrid] customers may be experiencing some concern related to fuel gauge[s]  
12 reading less than full.”<sup>25</sup> Consistent with the customer complaints reported online and to the  
13 NHTSA, the Tech Tip alerted vehicle technicians that “The meter may display somewhere  
14 around 3/4 to 7/8 full at the time of gas station auto stop.”<sup>26</sup> Toyota recommended “no repairs”  
15 at the time, stating that the “[c]oncern is under investigation,” and instructing technicians to  
16 “contact TAS for further assistance.”<sup>27</sup>

17           42. As of December 22, 2019, Toyota is no closer to curing the defect affecting the  
18 Plaintiffs and Class members who have collectively purchased hundreds of thousands of these  
19 vehicles. Toyota is simply telling customers they “should refuel before or when the low fuel  
20 light illuminates, to prevent running out of fuel.”<sup>28</sup>

21           43. Toyota has, however, admitted that the fuel tank system is flawed. In a trade  
22 publication, Toyota is quoted as having confirmed that it is “investigating a fuel tank shape issue

23 \_\_\_\_\_  
24 <sup>24</sup> See <https://static.nhtsa.gov/odi/tsbs/2019/MC-10169408-9999.pdf> (last visited Mar. 6,  
2020).

25 <sup>25</sup> See *id.*

26 <sup>26</sup> See *id.*

27 <sup>27</sup> See *id.*

28 <sup>28</sup> See <https://www.autoblog.com/2019/12/23/2019-toyota-rav4-hybrid-fuel-gas-tank-shape-problem/> (last visited Mar. 6, 2020).

1 on certain RAV4 Hybrid vehicles . . . [that] may prevent a full refill by up to several gallons  
2 [and . . .] may impact the vehicle’s total available driving distance.”<sup>29</sup>

3 44. As the consumer complaints quoted above show, the fuel tank system defect is a  
4 safety and environmental hazard. Despite the potential for the unreasonable harm that may be  
5 caused by the defect, Toyota continues to conceal material facts about it, even though it has  
6 superior knowledge of the problem. Its sustained misrepresentations and omissions continue to  
7 induce consumers to purchase vehicles that Toyota knows are not in the condition or equipped  
8 with the features that are advertised. As a result, relying on Toyota’s partial representations,  
9 consumers continue to purchase vehicles that they would not have, or would have paid less for,  
10 had Toyota disclosed the fuel tank system defect.

### 11 **CLASS ACTION ALLEGATIONS**

12 45. Plaintiffs bring this class action on behalf of themselves and other similarly  
13 situated individuals. Pursuant to Rules 23(a), (b)(1), (b)(2) and (b)(3) of the Federal Rules of  
14 Civil Procedure, Plaintiffs seek to certify a class (the “Nationwide Class”) of:

15 All persons and entities in the United States who purchased (other than for resale) or  
16 leased a model year 2019 through 2020 Toyota RAV4 Hybrid.

17 In the alternative, Plaintiffs seek certification of the following California Class:

18 California Class: All persons and entities in the state of California who purchased (other  
19 than for resale) or leased a model year 2019 through 2020 Toyota RAV4 Hybrid.

20 46. Excluded from the Class are Defendants, any entity in which any Defendant has  
21 a controlling interest, and its legal representatives, officers, directors, employees, assigns and  
22 successors. Also excluded from the Class is any judge, justice or judicial officer presiding over  
23 this matter and the members of their immediate families and judicial staff.

24 47. Numerosity. Toyota sold at least hundreds of thousands of 2019 and 2020 RAV4  
25 Hybrid vehicles. Members of the Class are located throughout the United States and are so

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28 <sup>29</sup> *See id.*

1 numerous that joinder is practicable. The precise number of Class members can be determined  
2 through discovery, including discovery of Defendants' business records.

3 48. Common Questions of Law and Fact Predominate. There are questions of law  
4 and fact common to Plaintiffs and Class members, and those questions predominate over any  
5 questions that may affect any individual Class member. Such common questions of law and fact  
6 include, but are not limited to:

7 a. Whether the Toyota RAV4 Hybrid was defective at the time of sale;

8 b. Whether the defective fuel tank system substantially impairs the value of the  
9 RAV4 Hybrid;

10 c. Whether Toyota knew about the defect, but continued to advertise, market, and  
11 sell the RAV4 Hybrid to consumers without disclosing the defective nature of the vehicle's fuel  
12 tank system to consumers;

13 d. Whether a reasonable consumer would consider the defective nature of the fuel  
14 tank system and the consequences of the defect important to the decision to purchase a RAV4  
15 Hybrid;

16 e. Whether Toyota breached implied warranties associated with the RAV4 Hybrid;

17 f. Whether Toyota's affirmative representations and omissions regarding the fuel  
18 tank system installed on its RAV4 Hybrid vehicles (and their defects) were likely to deceive a  
19 reasonable consumer;

20 g. Whether Toyota's conduct violated California's Unfair Competition Law, Cal.  
21 Bus. & Prof. Code § 17200, *et seq.*;

22 h. Whether Plaintiffs and members of the Class overpaid for their RAV4 Hybrid  
23 vehicles;

24 i. Whether Plaintiffs and Class members are entitled to equitable relief, including  
25 restitution and injunctive relief; and

26 j. Whether Plaintiffs and Class members are entitled to damages or other monetary  
27 relief, and if so, in what amount.  
28

1           49.    Typicality. Plaintiffs' claims are typical of the claims of all members of the Class.  
2 Their claims arise from the same practices and conduct that give rise to the claims of all Class  
3 members and are based on the same legal theories. Plaintiffs, like all Class members, purchased  
4 Toyota RAV4 vehicles that contain a defective fuel tank system. Plaintiffs and the members of  
5 the Class would not have purchased, or would have paid substantially less for, their RAV4  
6 vehicles had they known of the defect or the fact that Toyota would not adequately respond  
7 when the defect manifested.

8           50.    Adequacy. Plaintiffs will fairly and adequately protect the interests of the Class.  
9 They have no interests antagonistic to those of the other Class members and are committed to  
10 vigorously prosecuting this case. Plaintiffs have retained counsel experienced in consumer class  
11 actions and complex litigation involving defective automobiles.

12           51.    Superiority. A class action is superior to other available methods for the fair and  
13 efficient adjudication of this controversy. Given that the relative amount of each Class member's  
14 is small relative to the expense of litigating those claims, and given Defendants' financial  
15 resources, no Class member is likely to seek legal redress on an individual basis for the violations  
16 alleged in this complaint. Individual actions would significantly increase the expense to all  
17 parties, burden the court with duplicative litigation, and create a risk of inconsistent or varying  
18 adjudications that would establish incompatible standards of conduct for Defendants. Separate  
19 actions by individual Class members would also risk adjudications that would, as a practical  
20 matter, be dispositive of the interests of the other members not parties to the individual  
21 adjudications or would substantially impair or impede their ability to protect their interests. A  
22 class action, however, promotes an orderly and expeditious adjudication of the Class claims,  
23 presents fewer management difficulties, and ensures comprehensive supervision in a single  
24 forum.

25           52.    Defendants acted and refused to act on grounds generally applicable to the Class,  
26 thereby making appropriate final injunctive relief with respect to the members of the Class as a  
27 whole.

28

1           53. All members of the Class are ascertainable by reference to objective criteria.  
2 Defendants have, or have access to, address information for Class members which may be used  
3 for the purpose of providing notice of the pendency of this class action.

4   **CAUSES OF ACTION**

5   **COUNT I**  
6   **VIOLATION OF CALIFORNIA’S CONSUMER LEGAL REMEDIES ACT,**  
7   **Cal. Civ. Code § 1750, *et seq.*, (“CLRA”)**

8           54. Plaintiff Lee brings this claim on behalf of herself and the members of the Class,  
9 or alternatively, the California Class, under the laws of that state, against Defendants.

10           55. Plaintiffs re-allege and incorporate by reference the allegations contained in the  
11 paragraphs above as if fully set forth herein.

12           56. California’s Consumers Legal Remedies Act (“CLRA”), Cal. Civ. Code § 1750,  
13 *et seq.*, prohibits “unfair methods of competition and unfair or deceptive acts or practices  
14 undertaken by any person in a transaction intended to result or which results in the sale or lease  
15 of goods or services to any consumer.”

16           57. Each Defendant is a “person” as defined by Cal. Civ. Code § 1761(c).

17           58. Plaintiffs and Class members are “consumers” within the meaning of Cal. Civ.  
18 Code § 1761(d).

19           59. Defendants provide “goods” or “services” within the meaning of Cal. Civ. Code  
20 §§ 1761(a), 1761(b) and 1770. The sale or lease of the Toyota RAV4 constitutes sale or lease of  
21 such goods or services.

22           60. Plaintiffs and Class members engaged in “transactions” under Cal. Civ. Code  
23 § 1761(e), including the purchase and lease of Defendants’ vehicles.

24           61. Toyota made misleading representations or omissions concerning the  
25 characteristics of the RAV4, including the vehicle’s fuel tank capacity and total driving distance.

26           62. Plaintiffs and Class members were deceived into purchasing or leasing the  
27 vehicle by Toyota’s failure to disclose knowledge of the defect.

1           63.     The facts, which Defendants misrepresented and concealed as alleged in the  
2 preceding paragraphs, were material to Plaintiffs' and Class members' decisions about whether  
3 to purchase the RAV4.

4           64.     In violation of Cal. Civ. Code § 1770(a)(5), Defendants represented that the  
5 RAV4 had characteristics, uses, and benefits that it does not have.

6           65.     Additionally, by the conduct described in this complaint, Defendants have  
7 violated Cal. Civ. Code § 1770(a)(7), (9), and (16) by representing that the RAV4 is of a  
8 standard, quality, or grade that it is not; by advertising the RAV4 with intent not to sell the laptop  
9 as advertised; by representing that the vehicle was supplied in accordance with a previous  
10 representation when it was not.

11           66.     Defendants had a duty to disclose the omitted facts because it had exclusive  
12 knowledge of material facts not known to Plaintiffs and Class members (that the fuel tank system  
13 was defective), because they actively concealed material facts, and because they did not provide  
14 Plaintiffs and Class members proper notice of the defect, and because they otherwise suppressed  
15 true material facts.

16           67.     Plaintiffs and members of the Class have suffered harm as a result of these  
17 violations of the CLRA because they have paid money to Defendants that they otherwise would  
18 not have paid.

19           68.     Under Cal. Civ. Code § 1780, Plaintiffs and Class members seek appropriate  
20 equitable relief, including an order enjoining Defendants from the unlawful practices described  
21 herein, as well as recovery of attorneys' fees and costs of litigation.

22           69.     Pursuant to Cal. Civ. Code § 1782, Plaintiffs mailed Defendants a CLRA demand  
23 letter via certified mail. If Defendants fail to provide the relief demanded within the time allowed  
24 by law, Plaintiffs will amend their complaint to seek actual and punitive damages for violation  
25 of the CLRA.

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1 70. Attached hereto is the venue declaration required by CLRA, Cal. Civ. Code  
2 § 1780(d).<sup>30</sup>

3 **COUNT II**  
4 **VIOLATION OF THE CALIFORNIA UNFAIR COMPETITION LAW,**  
5 **Cal. Bus. & Prof. Code § 17200, et seq. (“UCL”)**

6 71. Plaintiff Lee brings this claim on behalf of herself and the members of the Class,  
7 or alternatively, the California Class, under the laws of that state, against Defendants.

8 72. Plaintiffs re-allege and incorporate by reference the allegations contained in the  
9 paragraphs above as if fully set forth herein.

10 73. California Bus. & Prof. Code § 17200, et seq., prohibits acts of unfair  
11 competition, including any “unlawful, unfair or fraudulent business act or practice.”

12 74. Defendants have engaged in a pattern and practice of acts of unfair competition  
13 in violation of California’s UCL, including the practices alleged herein.

14 75. By violating the Plaintiffs’ and other Class members’ rights, and engaging in the  
15 activity recited above, Defendants have committed and continue to commit and engage in  
16 “unlawful, unfair or fraudulent business acts or practices” as defined in Bus. & Prof. Code  
17 § 17200, et seq.

18 76. Cal. Bus. & Prof. Code § 17204 provides that an action for violation of  
19 California’s unfair competition law may be brought by persons who have suffered injury in fact  
20 and have lost money or property as a result of such unfair competition, and Cal. Bus. & Prof.  
21 Code § 17203 provides that a court may grant injunctive and equitable relief to such persons.

22 77. The unlawful conduct of Defendants alleged herein, are acts of unfair  
23 competition under Cal. Bus. & Prof. Code § 17200, et seq., for which Defendants are liable and  
24 for which the court should issue equitable and injunctive relief, including restitution, pursuant  
25 to Cal. Bus. & Prof. Code § 17203.

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28 <sup>30</sup> A declaration may be used in lieu of an affidavit. Cal. Civ. Code § 2015.5.

1           78. Through their conduct, Defendants have engaged in unfair business practices in  
2 California by employing and utilizing the practices complained of herein. Defendants’ use of  
3 such unfair business practices constitutes unfair competition that has provided and continues to  
4 provide Defendants with an unfair advantage over their competitors.

5           79. Defendants’ conduct as alleged herein is unlawful, unfair, and fraudulent.

6           80. Defendants’ conduct as alleged herein is “unlawful” in that, among other things,  
7 it violates the California Consumer Legal Remedies Act, the Song-Beverly Warranty Act, and  
8 constitutes fraudulent concealment.

9           81. Defendants’ conduct as alleged herein is also “unfair.” Defendants’ policy of  
10 misrepresenting that their products are not defective and inducing individuals to buy their  
11 products by providing these misrepresentations, constitutes an unfair business act or practice  
12 within the meaning of Cal. Bus. & Prof. Code § 17200, *et seq.*, in that the justification for  
13 Defendants’ conduct is outweighed by the gravity of the consequences to the general public.  
14 There were reasonable available alternatives for Defendants to further their business interests  
15 other than misleading the public. Indeed, the burden and expense of disclosing accurate  
16 information about the RAV4’s fuel tank system would be minimal while the negative impact on  
17 the general public in the aggregate is significant. Such conduct is also contrary to public policy,  
18 immoral, unethical, oppressive, unscrupulous or substantially injurious to consumers.

19           82. Further, Defendants’ conduct constitutes “unfair” business acts and practices  
20 because Defendants’ practices are “likely to cause substantial injury” to Plaintiffs and members  
21 of the general public, which are not “reasonably avoidable” by Plaintiffs and members of the  
22 general public and the injury is “not outweighed” by the practice’s benefits to Plaintiffs and  
23 members of the general public. Such conduct is ongoing and continues to this date.

24           83. Plaintiffs and members of the general public relied upon Defendants’ unfair  
25 business acts and practices—the material representations, omissions, and non-disclosures—to  
26 their detriment.



1           84. Plaintiffs and members of the general public have suffered injury in fact and have  
2 lost money as a result of Defendants’ unfair business acts and practices.

3           85. Defendants’ scheme, as alleged herein, is also “fraudulent,” in that it is  
4 knowingly calculated and likely to mislead.

5           86. As more fully described above, Defendants knowingly and intentionally  
6 concealed from Plaintiffs and Class members that the Toyota RAV4 has a defective fuel tank  
7 system that reduces a vehicle’s total driving distance.

8           87. Defendants knew, recklessly disregarded, or should have known that their  
9 representations, omissions, and non-disclosures were false, misleading, untrue, deceptive, or  
10 likely to deceive or mislead the public.

11           88. Plaintiffs and members of the Class relied upon Defendants’ material  
12 representations, omissions, and non-disclosures to their detriment.

13           89. Plaintiffs and members of the Class have suffered injury in fact and have lost  
14 money as a result of Defendants’ fraudulent business acts and practices. This injury was directly  
15 and substantially caused by Defendants’ intentional acts, as alleged above.

16           90. Defendants have continued to take steps to perpetuate these deceitful practices  
17 against Plaintiffs, Class members, and the general public. Unless enjoined, Defendants will  
18 continue to harm Plaintiffs, Class members, and the general public.

19           91. As a result of Defendants’ unfair business practices, Defendants have reaped  
20 unfair benefits and illegal profits at the expense of the Plaintiffs and Class members. Defendants  
21 should be made to disgorge its ill-gotten gains and restore such monies to Plaintiffs and Class  
22 members. Defendants’ unfair business practices furthermore entitle Plaintiffs and Class  
23 members herein to obtain preliminary and permanent injunctive relief, including, but not limited  
24 to, orders that Defendants cease its complained-of practices and account for, disgorge, and  
25 restore to Plaintiffs and Class members the compensation unlawfully obtained from them.

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**COUNT III**  
**BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY,**  
**VIOLATION OF THE SONG-BEVERLY ACT,**  
**Cal. Civ. Code § 1790, et seq.**

92. Plaintiff Lee brings this claim on behalf of herself and the members of the Class, or alternatively, the California Class, under the laws of that state, against Defendants.

93. Plaintiffs re-allege and incorporate by reference the allegations contained in the paragraphs above as if fully set forth herein.

94. Plaintiff Lee purchased a Toyota RAV4 equipped with a defective fuel tank system. At the time of purchase, Defendants were in the business of manufacturing and selling these goods.

95. By placing their vehicles in the stream of commerce, Defendants impliedly warranted their vehicles were reasonably fit for their intended use.

96. Defendants' vehicles are not merchantable. The vehicles are unfit for the ordinary purposes for which such goods are used and were not of the same quality of those generally acceptable in the trade. In breach of the implied warranty of merchantability, the RAV4's fuel tank cannot hold the advertised amount of fuel—14.5 gallons, severely reducing the total distance a driver is able to travel, well below the 580-mile driving range Toyota that represents.

97. Defendants' vehicles were not reasonably fit for their intended use when Defendants put the RAV4 on the market.

98. The defects in the vehicles were not open or obvious to consumers.

99. Any purported limitation of the duration and scope of the implied warranty of merchantability given by Defendants is unreasonable, unconscionable and void, because Defendants knew or recklessly disregarded the defect in the fuel tank system, which could not be discovered, if at all, until the vehicles were used for a period of time longer than the period of any written warranty, and Defendants willfully withheld information about the defects from purchasers of the vehicles.

1 100. Moreover, due to the unequal bargaining power between the parties, Plaintiffs  
2 and Class members had no meaningful alternative to accepting Defendants’ attempted pro forma  
3 limitation of the duration of any warranties.

4 101. As a direct and proximate result, Plaintiffs and Class members have been  
5 damaged in that, inter alia, they would not have purchased or would have paid substantially less  
6 for Defendants’ vehicles.

7 102. Defendants’ breach of the implied warranty was a substantial factor in causing  
8 Plaintiffs’ and Class members’ harm.

9 **COUNT IV**  
10 **FRAUDULENT CONCEALMENT**

11 103. Plaintiffs bring this claim against Defendants on behalf of themselves and the  
12 members of the Nationwide Class under the common law of fraudulent concealment. In the  
13 alternative, Plaintiffs bring this claim against Defendants under the laws of the state where  
14 Plaintiffs and Class members purchased the Class Vehicles.

15 104. Plaintiffs re-allege and incorporate by reference the allegations contained in the  
16 paragraphs above as if fully set forth herein.

17 105. Defendants intentionally concealed that the Toyota RAV4 is defective and  
18 further affirmatively misrepresented to Plaintiffs and Class members in advertising and other  
19 forms of communication, including standard and uniform material provided with each car and  
20 on its website, that the Class Vehicles they were selling had no significant defects, that the fuel  
21 tank had a capacity of 14.5 gallons, and that RAV4 drivers could travel 580 miles on a single  
22 “full” tank. Defendants knew about the defect in the fuel tank system when making such  
23 representations.

24 **PRAYER FOR RELIEF**

25 WHEREFORE, Plaintiffs, and each Class member, pray for judgment against  
26 Defendants as follows:  
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28

1 A. That this action and the proposed class be certified and maintained as a class  
2 action, appointing Plaintiffs as representatives of the Class, and appointing the attorneys and law  
3 firms representing Plaintiffs as counsel for the Class;

4 B. For actual damages, restitution, and all other appropriate legal and equitable and  
5 injunctive relief;

6 C. For declaratory relief;

7 D. For pre-judgment and post-judgment interest;

8 E. For civil penalties, as requested herein;

9 F. For punitive and exemplary damages, as requested herein;

10 G. For attorneys’ fees and costs as permitted by law;

11 H. For appropriate injunctive relief; and

12 I. For such other and further relief as this Court may deem just and proper.

13 **DEMAND FOR JURY TRIAL**

14 Pursuant to Federal Rule of Civil Procedure 38(b), Plaintiffs demand a trial by jury on  
15 all causes of action so triable.

16  
17 Dated: March 6, 2020

**BLEICHMAR FONTI & AULD LLP**

18 By: */s/ Lesley E. Weaver*

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**DECLARATION OF LESLEY E. WEAVER FOR CLRA COUNT**

I, Lesley E. Weaver, declare and state as follows:

1. I am over the age of 18 years and counsel for Plaintiffs in this action. I submit this declaration as required by California Civil Code § 1780(d).

2. Venue is proper in this judicial District because Defendants are doing business in the counties comprising the Northern District of California. Further, a substantial portion of the transaction at issue took place in Alameda County. Specifically, Plaintiff Lee purchased her vehicle in Alameda County, which lies within this judicial District.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Executed this 6th day of March, 2020 in San Francisco, California.

/s/ Lesley E. Weaver  
Lesley E. Weaver