

**POMERANTZ LLP**

Jordan L. Lurie, State Bar No. 130013

jllurie@pomlaw.com

Ari Y. Basser, State Bar No. 272618

abasser@pomlaw.com

1100 Glendon Avenue, 15<sup>th</sup> Floor

Los Angeles, CA 90024

Telephone: (310) 432-8492

*Attorneys for Plaintiff and the Putative Class*

**UNITED STATES DISTRICT COURT  
FOR THE CENTRAL DISTRICT OF CALIFORNIA**

LINDA DRAKE, on behalf of herself and all  
others similarly situated,

Plaintiff,

v.

TOYOTA MOTOR CORP., TOYOTA  
MOTOR NORTH AMERICA, INC., and  
TOYOTA MOTOR SALES, U.S.A., INC.,

Defendants.

Case No.:

**CLASS ACTION COMPLAINT**

1. Breach of Express Warranty;
2. Breach of Implied Warranty;
3. Breach of Written Warranty Under the Magnuson-Moss Warranty Act, 15 U.S.C. § 2301, *et seq.*;
4. Violations of California Unfair Competition Law, Cal. Bus. & Prof. Code § 17200;
5. Violations of California’s Consumer Legal Remedies Act (“CLRA”), Cal. Civ. Code § 1750, *et seq.*;
6. The Song-Beverly Act – Breach of Implied Warranty Violations, Cal. Civ. Code §§ 1792, 1791.1, *et seq.*;
7. Fraudulent Concealment; and
8. Unjust Enrichment

**JURY TRIAL DEMANDED**

1 Plaintiff Linda Drake (“Plaintiff”), brings this action against Defendants Toyota Motor  
2 Corporation, Toyota Motor North America, Inc., and Toyota Motor Sales, U.S.A., Inc., (collectively  
3 “Defendants” or “Toyota”), by and through her attorneys, individually and on behalf of all others similarly  
4 situated, and alleges as follows:

5 **INTRODUCTION**

6 1. This is a class action lawsuit brought by Plaintiff on behalf of herself and a class of current  
7 and former owners and lessees of both new and pre-owned 2008-2013 Toyota Highlander vehicles (“Class  
8 Vehicles”).<sup>1</sup>

9 2. At all times relevant hereto, Defendants designed, manufactured, distributed, marketed,  
10 sold and warranted Class Vehicles containing one or more manufacturing and/or design defects that cause  
11 the Vehicles’ intermediate drive shaft to fail, thereby creating a clunk, pop, or knock-type noise when  
12 turning the steering wheel left or right (the “Steering Wheel Defect” or “Defect”). The Steering Wheel  
13 Defect can manifest at any time, while Class Vehicles are parked or operated at highway speeds, and  
14 requires repair to ensure Class members can safely operate Class Vehicles.

15 3. The Steering Wheel Defect presents a substantial safety risk. The noise caused by the  
16 Defect is distracting to drivers of Class Vehicles because it takes their attention off the road. Moreover,  
17 as Plaintiff and some Class members have experienced, one side effect of the Defect is that Class Vehicles  
18 are unable to shift gears. Other Class members have reported that the power steering has failed due to the  
19 Defect. This fundamental inability to operate could result in perilous situations, thereby placing both the  
20 driver of the Class Vehicle and fellow motorists in serious danger.

21 4. Defendants have sold thousands of Class Vehicles without disclosing the Steering Wheel  
22 Defect to Class members, despite Defendants’ longstanding knowledge of its existence. Even when Class  
23 members submit their vehicles to Defendants for routine maintenance or to fix the Steering Wheel Defect,  
24 Defendants authorized service technicians deny that the Defect exists and assert that the sounds created  
25 by the Steering Wheel Defect are from normal wear and tear, despite the fact that Defendants’ Powertrain  
26

27 \_\_\_\_\_  
28 <sup>1</sup> Plaintiff reserves the right to amend or add to the vehicle models included in the definition of Class  
vehicles after conducting discovery.

1 Coverage Warranty covers all issues related to a Class Vehicle’s “engine, transmission/transaxle, front-  
2 wheel-drive system, rear-wheel drive, seatbelts and airbags” for sixty months or 60,000 miles.

3 5. Defendants have known about the Steering Wheel Defect since at least 2013, when they  
4 began to issue Technical Service Bulletins (“TSBs”) informing dealers of the Steering Wheel Defect, and  
5 proposing “fixes” at the customer’s expense. But Defendants never communicated the TSBs directly to  
6 their customers.

7 6. Despite notice and knowledge of the Steering Wheel Defect from the numerous complaints  
8 they have received from customers, repair data provided by their dealers, National Highway Traffic Safety  
9 Administration (“NHTSA”) complaints, and their own internal records—including pre-sale durability  
10 testing—Defendants have concealed the Steering Wheel Defect’s existence, have not recalled Class  
11 Vehicles to repair the Steering Wheel Defect, have not offered customers a suitable repair or replacement  
12 free of charge, and have not offered to reimburse customers who incurred out-of-pocket costs to repair the  
13 Steering Wheel Defect.

14 7. In short, as a result of Defendants’ unfair, deceptive, and/or fraudulent business practices,  
15 current and former owners and/or lessees of Class Vehicles, including Plaintiff, have suffered an  
16 ascertainable loss of money, property, and/or loss in value. The unfair and deceptive trade practices  
17 Defendants committed were undertaken in a manner giving rise to substantial aggravating circumstances.

18 8. Had Plaintiff and Class members known of the Steering Wheel Defect at the time of  
19 purchase, including the safety hazard posed by the Steering Wheel Defect and the cost of repair, as well  
20 as the strong likelihood that the Steering Wheel Defect would again manifest following repair, they would  
21 not have purchased Class Vehicles, would have paid much less for them and would have avoided the  
22 expense of repairing their intermediate drive shafts (and, often, on more than one occasion). As such,  
23 Plaintiff and Class members have not received the value for which they bargained when they purchased  
24 their Class Vehicles.

25 9. Accordingly, Plaintiff brings this action to redress Defendants’ violations of various state  
26 consumer fraud statutes and the Magnuson-Moss Warranty Act, and Defendants’ breach of express and  
27 implied warranties.

28 ///

1 **JURISDICTION & VENUE**

2 10. This Court has subject matter jurisdiction of this action pursuant to 28 U.S.C. § 1332 of  
3 the Class Action Fairness Act of 2005 because: (i) there are 100 or more Class members, (ii) there is an  
4 aggregate amount in controversy exceeding \$5,000,000, exclusive of interest and costs, and (iii) there is  
5 minimal diversity because at least one plaintiff and one defendant are citizens of different States. This  
6 Court has supplemental jurisdiction over the state law claims pursuant to 28 U.S.C. § 1367.

7 11. This Court has personal jurisdiction over Defendants because they have conducted  
8 substantial business in this judicial district, and intentionally and purposefully placed Class Vehicles into  
9 the stream of commerce within this judicial district and throughout the United States.

10 12. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391 because Defendants  
11 transact business in this district, are subject to personal jurisdiction in this district, and therefore are  
12 deemed to be citizens of this district. Additionally, there are one or more authorized Toyota dealers within  
13 this district, and Defendants have advertised in this district and have received substantial revenue and  
14 profits from their sales and/or leasing of Class Vehicles in this district, including to members of the Class;  
15 therefore, a substantial part of the events and/or omissions giving rise to the claims occurred, in part,  
16 within this district.

17 **PARTIES**

18 **Plaintiff Linda Drake**

19 13. Plaintiff Linda Drake is a citizen of the State of California, and currently resides in Harbor  
20 City, California.

21 14. In 2012, Plaintiff purchased a used 2009 Toyota Highlander from DCH Toyota/Scion  
22 Torrance (“DCH Toyota”), an authorized Toyota dealer in Torrance, California, with approximately  
23 37,000 miles on it, for personal, family and/or household uses. Vehicle Identification Number (“VIN”):  
24 JTEDS41A992081104.

25 15. Prior to purchasing her vehicle, Plaintiff test drove the vehicle, viewed advertisements for  
26 the vehicle, reviewed the vehicle’s window sticker, and spoke with Toyota sales representatives  
27 concerning the vehicle’s features, including standard safety features. Neither the test drive, the  
28 advertisements, the window sticker nor the sales representatives disclosed or revealed that the intermediate

1 drive shaft was defective and susceptible to breaking down, and unable to withstand the wear and tear of  
2 operating an automobile under normal conditions.

3 16. In March 2013, Plaintiff noticed a harsh noise when shifting gears, and in some cases, her  
4 vehicle failing to shift entirely.

5 17. Plaintiff subsequently contacted DCH Toyota to secure warranty coverage for her vehicle.  
6 DCH Toyota refused her request, and instead claimed that the noise she heard could not be replicated and  
7 was simply caused by a “breaking in period” that would eventually pass.

8 18. After Plaintiff’s warranty had run out and her vehicle was officially out of warranty,  
9 Plaintiff brought her vehicle into DCH Toyota again, with the harsh noise continuing in her vehicle.

10 19. At this point, DCH Toyota told Plaintiff that her intermediate drive shaft was, in fact,  
11 defective and that it would need to be fixed.

12 20. DCH Toyota then quoted Plaintiff a cost to replace the intermediate drive shaft of \$800.

13 21. The Defendants, their agents, dealers, or other representatives did not inform Plaintiff  
14 Drake of the Defect’s existence at any time either prior to or following her purchase.

15 22. Plaintiff has suffered an ascertainable loss as a result of Defendants’ omissions and  
16 misrepresentations in connection with the Defect, including, but not limited to, out of pocket loss  
17 associated with repair or replacement of the Defect and the diminished value of her vehicle. Had Toyota  
18 refrained from making the misrepresentations and omissions alleged herein, Plaintiff would not have  
19 purchased a Class Vehicle, would have paid much less for it and would have avoided the expense of  
20 repairing her intermediate drive shaft.

21 **The Defendants**

22 23. Defendants are automobile design, manufacturing, distribution, and/or service corporations  
23 doing business within the United States, and design, develop, manufacture, distribute, market, sell, lease,  
24 warrant, service, and repair passenger vehicles, including Class Vehicles.

25 24. Defendant Toyota Motor Corporation (“TMC”) is a Japanese corporation. TMC is the  
26 parent corporation of Toyota Motor Sales, U.S.A., Inc. TMC, through its various subsidiaries and  
27 affiliates, designs, manufactures, markets, distributes and warrants Toyota automobiles through the fifty  
28 States.

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

6 26. Defendant Toyota Motor Sales, U.S.A., Inc. (“TMS”) is a California corporation  
7 headquartered in Plano, Texas. TMS is TMC and TMNA’s U.S. sales and marketing division, which  
8 oversees sales and other operations across the United States. TMS distributes Toyota parts and vehicles,  
9 which are then sold through Defendants’ network of dealers. Money received from the purchase of a  
10 Toyota vehicle from a dealership flows from the dealer to TMS.

11 27. TMC, TMNA and TMS are collectively referred to in this complaint as “Defendants” or  
12 “Toyota” unless identified separately.

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

18 29. For example, upon information and belief, Defendants TMNA and TMS communicate with  
19 Defendant TMC concerning virtually all aspects of the Toyota products TMNA and TMS distribute within  
20 the United States, including appropriate repairs for pervasive defects, and whether Toyota will cover  
21 repairs to parts and assemblies customers claim to be defective. Toyota’s decision not to disclose the  
22 Defect to Plaintiff or the Class, or to cover repairs to the same pursuant to an extended warranty or  
23 goodwill program, was a decision made jointly by TMC, TMNA and TMC.

24 30. TMS also oversees Toyota’s National Warranty Operations (NWO), which, among other  
25 things, reviews and analyzes warranty data submitted by Toyota’s dealerships and authorized technicians  
26 in order to identify defect trends in vehicles. Upon information and belief, Toyota dictates that when a  
27 repair is made under warranty (or warranty coverage is requested), service centers must provide  
28 Defendants with detailed documentation of the problem and the fix that describes the complaint, cause,

1 and correction, and also save the broken part in the event Defendants decide to audit the dealership. NWO  
2 collects this information, makes it available to other Toyota divisions, and assists Toyota in determining  
3 whether particular repairs—such as those made to Plaintiff and the Class’ Steering Wheel Defect—are  
4 covered by an applicable Toyota warranty or are indicative of a pervasive defect.

5 31. Toyota also jointly designs, determines the substance of, and affixes to its vehicles the  
6 window stickers visible on every new Toyota vehicle offered for sale at its authorized dealerships,  
7 including those omitting mention of the Defect and reviewed by Plaintiff prior to purchasing Class  
8 Vehicles. Toyota controls the content of these window stickers; its authorized dealerships have no input  
9 with respect to their content. Vehicle manufacturers like Toyota are legally required to affix a window  
10 sticker to every vehicle offered for sale in the United States pursuant to the Automobile Information  
11 Disclosure Act of 1958, 15 U.S.C. §§ 1231-1233, et seq. In fact, the Act specifically prohibits the removal  
12 or alteration of the sticker by anyone other than the ultimate purchaser prior to the sale of the car, including  
13 the dealership at which the vehicle is offered for sale.

14 32. Toyota developed the marketing materials to which Plaintiff and the Class were exposed,  
15 owner’s manuals, informational brochures, warranty booklets and information included in maintenance  
16 recommendations and/or schedules for the Class Vehicles, all of which fail to disclose the Defect.

17 33. Toyota also employs a Customer Experience Center, the representatives of which are  
18 responsible for fielding customer complaints and monitoring customer complaints posted to Toyota or  
19 third-party Web sites, data which informs NWO’s operations, and through which Toyota acquires  
20 knowledge of defect trends in its vehicles.

### 21 **TOLLING OF STATUTES OF LIMITATIONS**

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

26 35. In addition, even after Plaintiff and Class members contacted Toyota and/or its authorized  
27 dealers for vehicle repairs concerning the Defect, they were routinely told by Toyota and/or through its  
28 dealers that the Class Vehicles were not defective and the Steering Wheel Defect is a normal “wear”

1 condition, despite the propensity of the intermediate drive shafts installed in Class Vehicles to break down  
2 from ordinary or non-existent stresses.

3 36. Toyota was and remains under a continuing duty to disclose to Plaintiff and the members  
4 of the Class the true character, quality, and nature of the Class Vehicles, that the Defect is based on a poor  
5 design, that it will require costly repairs, poses a safety concern, and diminishes the resale value of the  
6 Class Vehicles. As a result of Toyota's active concealment, any and all applicable statutes of limitations  
7 otherwise applicable to the allegations herein have been tolled.

8 **FACTUAL ALLEGATIONS**

9 **The Steering Wheel Defect within Class Vehicles**

10 37. Toyota is a multinational corporation with hundreds of thousands of employees worldwide.

11 38. The Toyota Highlander is one of Defendants' most popular U.S. offerings. From 2008  
12 through the present, Toyota has sold almost 630,000 Toyota Highlander vehicles, composed of Model  
13 Years 2008-13, all of which come equipped with the same intermediate drive shaft.

14 39. Like many of its vehicles, Toyota emphasizes the Highlander's safety features, and  
15 Toyota's brand-wide focus on vehicle safety, in marketing and promotional materials. For instance, a  
16 brochure for the 2019 Highlander<sup>2</sup> touts the vehicle's comprehensive safety systems to provide "peace of  
17 mind for the journey ahead."

18 40. Toyota also emphasizes that, for customers of Toyota Pre-Owned Vehicles, their Pre-  
19 Owned vehicles are subject to a 160-point Quality Assurance Inspection that certifies the vehicles as of  
20 good quality.

21 41. Due to a manufacturing and/or design defect, however, the intermediate drive shaft  
22 installed in Class Vehicles breaks down during normal operation, often for no discernible reason.

23 42. The Defect causes the intermediate drive shaft to break down and fail in Class Vehicles,  
24 causing the Class Vehicles to make a clunking, popping, and/or rattling noise when drivers turn the  
25 steering wheel.

26  
27  
28 <sup>2</sup> See Toyota's MY2019 Highlander E-Brochure at p. 8,  
[https://www.toyota.com/content/ebrochure/2019/highlander\\_ebrochure.pdf](https://www.toyota.com/content/ebrochure/2019/highlander_ebrochure.pdf) (last visited February 12,  
2020).



1 43. Some drivers have further complained that the Defect in Class Vehicles will not only cause  
2 noises, but also prevent Class Vehicles from shifting gears properly, or result in power steering failure.

3 44. The Steering Wheel Defect renders the intermediate drive shaft installed in Class Vehicles  
4 weaker and more vulnerable to normal wear and tear when operating an automobile. Intermediate drive  
5 shafts are not manufactured or designed to break down from normal vehicle operation, particularly at the  
6 rate at which Class members report intermediate drive shaft failures in Class Vehicles.

7 45. Many Class members have had to replace their intermediate drive shafts for amounts  
8 ranging in excess of \$700 to upwards of \$3000.

9 46. Adding insult to injury, many Toyota dealerships, despite knowing of the Defect, require  
10 Class members to first pay for a diagnostic assessment, often costing hundreds of dollars, before they will  
11 even acknowledge the existence of the intermediate drive shaft failure, not to mention repair it.

12 47. The Steering Wheel Defect imposes significant, and unexpected, safety risks on Class  
13 Vehicle owners. The intermediate drive shaft's failure can not only cause distracting and disturbing noises  
14 from the vehicle, but also cause the vehicle to fail operating properly—including the failure of the vehicle  
15 to shift gears, and power steering failure—as some consumers have reported. Toyota's refusal to disclose  
16 the Defect to Class members at the point-of-sale or otherwise is unconscionable and unacceptable.

17 **Toyota's Warranty-Related Practices**

18 48. Toyota issues a "Powertrain Warranty" to each individual who purchases a Class Vehicle,  
19 as well as part-specific limited warranties.

20 49. In its Powertrain Warranty, Toyota agrees to repair defects reported within the earlier of  
21 sixty months or 60,000 miles, so long as the vehicle owner tenders the vehicle to a Toyota authorized  
22 dealer for repair. The Warranty Information Booklet included with all Class Vehicles provides that:

23 This warranty covers repairs needed to correct defects in materials or  
24 workmanship of [components listed in the warranty]...<sup>3</sup>

25  
26  
27  
28 <sup>3</sup> See Toyota Highlander 2013 Warranty & Maintenance Guide at p. 13,  
[https://www.toyota.com/t3Portal/document/omms-s/T-MMS-13Highlander/pdf/2013\\_Toyota\\_Highlander\\_WMG.pdf](https://www.toyota.com/t3Portal/document/omms-s/T-MMS-13Highlander/pdf/2013_Toyota_Highlander_WMG.pdf) (last visited February 12, 2020).

1 The Powertrain Warranty does not limit Toyota's obligations thereunder only to defects present at the  
2 time of delivery, nor does it specifically exclude coverage for intermediate drive shaft repair or  
3 replacement.<sup>4</sup>

4 50. Indeed, Toyota explicitly covers the drive shaft in its warranty to both new and pre-owned  
5 Class Vehicles.<sup>5</sup>

6 51. Due to Toyota's knowledge of the Defect's existence, Toyota knows that the intermediate  
7 cracking experienced by Highlander owners is the result of a defect in materials and/or workmanship.  
8 Nevertheless, Toyota refuses to repair at no cost Class Vehicles that still are within the Powertrain  
9 Warranty period, or shortly outside it.

10 **Toyota's Knowledge of the Defect**

11 52. Toyota has known since at least 2013, if not earlier, that the intermediate drive shafts  
12 installed in the Class Vehicles were defective. Indeed, the Internet is replete with examples of blogs and  
13 other Websites where consumers have complained of the exact same Steering Wheel Defect within the  
14 Class Vehicles. Moreover, Defendants themselves sent out a Technical Service Bulletin ("TSB") that  
15 acknowledged the Defect and detailed potential repairs. Upon information and belief, Toyota, through (1)  
16 records from the National Highway Traffic Safety Administration ("NHTSA"), (2) their own records of  
17 customers' complaints, (3) dealership repair records, (4) warranty and post-warranty claims, (5) internal  
18 durability testing, and (6) other various sources, was well aware of the Defect but failed to notify  
19 consumers of the nature and extent of the problems with the intermediate drive shafts installed in all  
20 models Class Vehicles, or provide any adequate remedy.

21 **A. Complaints Lodged with NHTSA.**

22 53. There exist a large number of relevant customer complaints, many of which indicate  
23 Toyota was made aware of the Steering Wheel Defect when affected vehicles were submitted for service,  
24 on the NHTSA Office of Defect Investigations ("ODI") Website, [www.safercar.gov](http://www.safercar.gov), as well as other  
25 customer forums and blogs addressing car defect and safety issues. Yet, Toyota has neither taken any  
26

27 \_\_\_\_\_  
28 <sup>4</sup> *Id.* at 14-16.

<sup>5</sup> *Id.* at 13; <https://www.toyotacertified.com/warranty> (last visited February 12, 2020).

1 steps to recall the Class Vehicles and repair the Steering Wheel Defect, nor to reimburse customers who  
2 have incurred expenses in connection with repairing the Steering Wheel Defect.

3 54. Federal law requires automakers like Toyota to be in close contact with NHTSA regarding  
4 potential auto defects, including imposing a legal requirement (backed by criminal penalties) compelling  
5 the confidential disclosure of defects and related data by automakers to NHTSA, including field reports,  
6 customer complaints, and warranty data. See TREAD Act, Pub. L. No. 106-414, 114 Stat. 1800 (2000).

7 55. Automakers have a legal obligation to identify and report emerging safety-related defects  
8 to NHTSA under the Early Warning Report requirements. *Id.* Similarly, automakers should and do  
9 monitor NHTSA databases for consumer complaints regarding their automobiles as part of their ongoing  
10 obligation to identify potential defects in their vehicles, including safety-related defects. *Id.* Thus, Toyota  
11 knew or should have known of the many complaints about the Steering Wheel Defect logged by NHTSA  
12 ODI, and the content, consistency, and large number of those complaints that alerted, or should have  
13 alerted, Toyota to the Steering Wheel Defect.

14 56. The following are but a few examples of the many complaints concerning the Steering  
15 Wheel Defect available through NHTSA ODI's Website, [www.safercar.gov](http://www.safercar.gov). The complaints reveal that  
16 Defendants, through their network of dealers and repair technicians, were made aware of the Defect. In  
17 addition, the complaints indicate that despite having knowledge of the Steering Wheel Defect and the  
18 exact vehicles affected thereby, Defendants and their agents continue to neither disclose the Steering  
19 Wheel Defect nor agree to make repairs under warranty, as required by Toyota's New Vehicle Limited  
20 Warranty. The comments reproduced below are but a sampling of available complaints:

Model Year	Complaint Date	Comments
2009	9/5/2019	About eighty miles/two days prior to the failure, an intermittent whine/humming noise was heard in the vicinity of the driver side dash area while turning at slow speeds. I was told this was not unusual as the power steering is electrically assisted and the electric motor was likely making the noise. Two days after the first sounds, the power steering failed upon engine start. The steering wheel is nearly impossible to turn now.
2010	6/28/2018	Poor intermediate steering shaft assembly! Popping noise with clunking feel in steering wheel when turning at slow

		speeds and hitting bumps. Began around 60,000 miles and has progressively gotten worse (now at about 102,000 miles) took in at onset and told it's the intermediate steering shaft assembly. As it's getting worse, it's starting to feel very unsafe. This looks to be a very frequent issue when looking into it online. Don't understand how this is not a recall! My family is trusting Toyota and NHTSA to make correct decisions for our safety!
2010	2/1/2019	Defective intermediate steering shaft. Clunking, etc. Seems dangerous, no recall.... This is one complaint to add to the numerous others. Toyota, When are you going to do something about this?
2010	1/2/2018	Steering has popping and clicking when turning from a stopped position. The steering has always sounded like it's straining/hard to turn. Popping gets worse and more frequently. It should be recalled like it has on other Toyota models that have resulted in steering failure. Intermediate shaft is faulty on many Toyota Highlanders but no recall has been issued. For 2010 model year.
2010	10/25/2017	When turning steering wheel a clicking noise is heard. There is a TSB out on this problem. While vehicle is in motion a noise was heard, and a loud humming noise is coming from the rear. Vehicle was inspected to find problem and differential assembly need to be replaced. There is a TSB out on this problem.
2010	6/4/2017	I bought my Highlander used in March 2016. The car has had a clunking noise since I bought it but I didn't know it was a known issue with Toyota. I bought an extended warranty but of course it doesn't cover the defect. I am very upset because I have paid for a warranty that doesn't fix what is wrong with the car. I also feel like it falls on the dealership and they should have fixed it before selling. Even though it is not considered a safety issue I don't want it to become a safety issue in the future. I don't feel like I should have to come out of pocket \$650 to fix an issue that is known with the manufacturer.
2011	5/27/2015	When making a right hand turn the steering system has a significant "bump" [or] "thump". This appears to be a problem with a part of the steering sector shaft that Toyota is well aware of but will not acknowledge there is a problem with design. Toyota will only correct problem if customer is willing to pay cost of approximately \$1200. Not sure what will happen if correction is not made, but I believe it could lead to failure of the steering system to function appropriately.

1	2011	1/24/2018	I had a clunking noise whenever I turned the steering wheel left or right at slow speeds. I checked on line and found this site which noted fault to be the intermediate steering shaft, as the issue. I took my vehicle into a Toyota dealership for repair. They confirmed that this was the issue and because it is not considered a safety issue, no recall has been issued. Toyota would not cover any of the cost which was \$684. It started when I had 80,000 miles on the vehicle and I took it in for repair at 94,000 miles when noise became louder. Disappointed Toyota did not help with the repair cost.
2	2011	1/25/2018	Every time I turn my wheel I have a thumping sound (worse when I am turning right)
3	2011	12/4/2018	Clunking or tapping noise when turning left or right that can be felt in the steering wheel. Diagnosed by Toyota as "steering intermediate shaft binding." This is a known issue with the 2008-2013 highlander. Advised by Toyota mechanic that it doesn't need to be fixed unless I prefer it not to knock or clunk when turning.
4	2012	5/25/2014	The vehicle developed a clicking feel in the steering system about a year and 9 months from manufacture date. Toyota dealership diagnosed problem as a failed intermediate steering shaft and recommend indicate replacement. I contacted Toyota as I feel repair should be covered by company due to nature of failure and age of vehicle. They haven't offered anything in way if assistance and have no recall pending even though this seems to be a serious problem across the whole Toyota vehicle line up.
5	2012	8/23/2014	Our car makes a clicking noise in the steering column when u turn to the right. It is very noticeable and loud. This concerns me as the safety of my family is very important.
6	2012	11/7/2015	Klunk sound and feeling in steering wheel started around 48,000 mile at 51,000 told by dealer the intermediate steering shaft needed replacing. This seems to be and ongoing problem with Toyota cars
7	2012	5/5/2016	Clunking in steering at slow speed when making sharp left or right turns. Diagnosed as intermediate steering shaft needing replacement. Repaired at Toyota dealership.
8	2013	9/7/2016	Steering TSB by Toyota: while driving vehicle and turning corners, I felt popping clunking noise in steering wheel. Sometimes made steering wheel vibrate. Instead of just a service bulletin, this should be a recall since Toyota has re-designed the failing component. Took vehicle into dealer to have fixed. Would have paid full repair price but was able to negotiate a discounted price for vehicle with only 52,000 miles. Component should have easily lasted over 125,000 miles. May be the same as your 10075792 record.

2013	8/1/2017	Knocking sound and vibration felt on steering wheel when turning right. It only occurs in motion.
2013	9/15/2017	When turning right the steering was making a clicking/knocking sound. I only have 30000 miles on the car, which I have had 100000 plus miles on cars and never had this issue. Apparently Toyota has diagnosed this with a bad u-joint in the steering intermediate shaft with a hefty price tag to fix. This seems like a complaint from multiple people and on multiple sites. I think this should be looked into by Toyota and considered a recall item. Very disappointed in my Toyota right now.
2013	2/12/2018	There is a clunking noise when turning at low speeds. My mechanic says there is a defect in the design of the steering shaft. He said this commonly occurs with this model highlander, something supported by numerous complaints about the same issue. Toyota denies responsibility and won't issue a recall, though it is a safety risk.

#### B. Other Customer Complaints

57. In addition to complaints made directly to Toyota by customers who tendered their vehicles to Toyota's authorized dealers for repair, Toyota routinely monitors the Internet, including vehicle-defect and Toyota-specific forums, for complaints similar in substance to those quoted below. Upon information and belief, Toyota's Customer Service carries out this function and regularly receives and responds to customer calls concerning, *inter alia*, product defects. Through these sources, Toyota was made aware of the Steering Wheel Defect. The complaints from carcomplaints.com, some of which are included below, also indicate Toyota's awareness of the defect and its potential danger, and many evidence Class members' efforts to contact Toyota directly concerning the Steering Wheel Defect.

Model Year	Complaint Date	Comments
2008	05/04/2009	My steering wheel it making noise all the time when you turn left or right its clicking when I went to Toyota dealer they asked for \$3000 for repair and I have that clicking the year after I buy this car.
2008	07/05/2018	Steering wheel is making clunky noises when turning the wheel right or left.
2008	07/25/2016	The contact owns a 2008 Toyota Highlander. Every time a turn was made, the steering shaft made a noise. The failure has occurred ever since the vehicle was purchased in July of

		2016. The dealer diagnosed that the shaft assembly failed and needed replacement. The vehicle was not repaired. The manufacturer was notified of the failure, but the vehicle exceeded the mileage to be repaired under technical service bulletin: 0034-13. The approximate failure mileage was 106,000.
2008	08/01/2014	The contact owns a 2008 Toyota Highlander. While turning the steering when in either direction, a popping noise emitted from the steering column. The vehicle was taken to the dealer who diagnosed that the intermediate steering shaft was faulty and needed to be replaced. The vehicle was repaired and the failure was remedied. The manufacturer was notified of the failure. The failure mileage was 70,000.
2009	09/05/2019	A clunking or thumping noise comes from the lower steering column as you make a left or right hand turn. The thumping noise has been steadily increasing over the past weeks.
2010	9/1/2013	Turning when the road is bumpy causes a noise in the steering, and it can be felt in the hands at the same time. I tried researching, found pictures of a pin, possibly breaking later and causing failure. I had the Main Toyota guy Cameron test drive with me and of course, we couldn't duplicate it then, at the 3 year mark. But its 5 years and it's getting a little more annoying.
2011	2/26/2014	Took SUV to Florida Toyota dealer to report the noise while on vacation. Dealer said everything tight. August 2016 noise is more frequent and noticeable. Will have my Ohio dealer look at vehicle. Other owners suggest that the intermediate shaft is suspect.
2011	6/1/2014	Took it to the dealer repair shop and asked them what was causing the noise while it was still under warranty. Repair manager said he couldn't find anything wrong. Took it back around 85,000 – louder and more noticeable, manager crossed through complaint, again, didn't know what I was talking about. Took it in this week at 106,000 and guess what? YEP, discovered the problem and want \$700 to fix it. I showed him the ALL DATA TSB and I was told since it isn't a recall, they won't fix it unless I pay for it.
2011	12/28/2016	Clicking sound when turning left and clunking sound in steering when driving over bumpy road. Not a mechanic here but based on my research on YouTube and Toyota nation, I'm thinking the issue is a failing CV joint. Now I'm looking for a mechanic who specializes in this type of work. Leaning toward a local tire store who also does brakes and shocks.
2012	8/18/2015	Progressively worsening clunking/clicking noise/feel in the steering when you turn the steering wheel to the right or left. Notice at all speeds but more pronounced at lower speeds.



1		Dealer noted that Toyota has an internal memo on this issue, but to date has not issued a recall. According to the dealer, the memo identifies the problem as the intermediate steering shaft and that Toyota has corrected the issue with a new/replacement part. Estimated cost from dealer is approximately \$500.	
2			
3			
4			
5	2012	11/20/2015	There is a noise in the steering column when I turned left or right and something the steering shake. Toyota should have make a recall on this problem because it must be potentially dangerous. I have to bring in to repair soon and the cost gone be probably clause to 700\$.
6			
7			
8	2012	1/17/2019	When turning the steering wheel, especially on an incline, I feel a "pop" in my 2012 Toyota Highlander steering wheel. It appears I have a problem with the intermediate steering shaft as my experience directly relates to similar comments made by others. I am taking the car to a repair shop to get this fixed although I agree with others that this recurring problem should have been subject of a recall by Toyota given its frequency and potential for significant injury.
9			
10			
11			
12			
13	2013	04/02/2018	Steering wheel vibrates and hearing knocking or clicking noise when turning right usually at higher speed (in motion). Slower right turn may not have this issue. As of now it only knocks or clicks once or twice during the turn. Not experiencing the issue when making a left turn.
14			
15			
16	2013	12/14/2012	While turning the suv at slow speeds, I can feel a light klunk in the steering. It feels like a rotating part keeps running into an obstruction, so it goes klunk klunk klunk... a couple of times as long as the steering is rotated.
17			
18			
19			This happens mostly when the car is cold and the road is uneven, for e.g. turning while coming out of a subdivision in the morning.
20			
21			Showned the car to 2 different dealers but both did not find anything and sent me back. I even drove around with one of the service techs and he did not feel any klunk. Perhaps the car was warm by the time I got to the dealership (25mi away). The service tech said that reporting to him has added a record of the problem and in case there is a TSB, they will let me know. He did not find anything wrong with the steering assembly (visual inspection) and suggested returning if it got worse or repeatable.
22			
23			
24			
25			
26			
27			Have heard this from many other people on toyota forums but no fix from toyota. I had a corolla and have a camry and
28			



		have zero issues with those cars. I expected more from a 33000 car.
2013	07/07/2019	Clunking noise from front end when turning wheels, appeared at approximately 60,000 miles. Took to shop for repairs, and was diagnosed as intermediate steering shaft. Mechanic said it was so loose he could manipulate it with his hand and was close to catastrophic failure.
2013	11/07/2018	I started hearing a popping noise in the steering column under the steering wheel. The noise became louder as time went on especially when I made turns. On 11/07/18 Toyota recently diagnosed the problem as an intermediate steering shaft and I made an appointment to get it fixed at the dealer for \$584.92. There's 57,665 miles on the vehicle. I can visibly see there's slack in the steering shaft where it connects to the rack and pinion. I am a 65 year old woman who bought the vehicle new and drove it very gently. I understand the new shaft may have an improved design I hope so it does not occur again. It's very concerning if I lost control while driving. I would think there should be a recall before someone get's hurt.
2013	09/01/2018	There is a clucking noise in the steering when turning. It seems like the steering wheel mechanism is falling apart.
2013	02/26/2018	The vehicle has around 37K miles and started to get a bump or thud sound when turning to right and turning over all begin to get sluggish. I took it to the dealership fred haas in houston and it was diagnosed with a drive shaft problem and required an expensive repair and front end alignment. I questioned the service rep as it seemed to be very low mileage for an issue with the drive shaft. He advised that it was not covered as my 36K 3 year standard warranty had run out. After researching it seems that this is a Highlander defect and should be covered by a recall. If this car had 80K or more miles I might be of a different opinion but this car is way too new to have an issue like this especially on such an important element like steering. This is an obvious engineering and manufacturing problem and a replacement part that will only have a 1 year warranty is not good enough.
2013	02/05/2015	The steering column is making a thumping-type of noise when turning, usually at low speeds, around corners (not slight turns, such as when the road changes on the freeway). It's been documented in my records at least since 30,000 miles, just out of Toyota's warranty period. The car dealer reported that they were unable to duplicate the issue at the 30,000 service, as documented. It wasn't happening as frequently then, but now at 60,000 miles, it's constant. It

		seems to be related to the steering shaft/intermediate steering shaft. There appears to be a service bulletin from the manufacturer, but no further investigation/research presented. Since I am aware of what part is failing, I want to get it fixed, as I've read that this part, if it fails, could cause the car to fail, but don't want to pay money for a part that is considered defective.
2013	02/08/2016	Toyota 2013 Highlander with 31237 miles had to replace the steering shaft due to thud-thud noise when turning right or left. I bought car new from dealership. Car still under warranty but was told it will probably happen again. Parts and labor estimated to be \$500+ each time in the future. According to information on internet this is not a random issue with Highlanders and has been going on for some time. This appears to be a design flaw that is being ignored with the owner being required to foot the bill. Never had a steering shaft issue in the cars I have previously owned some for over 100,000 miles, U.S. made or non-U.S. made models. The new part is guaranteed for one year...that is not acceptable for a known reoccurring issue of which Toyota is aware. I called Toyota national customer relations in torrance, ca and spoke with representative who was very polite but offered no recourse for this issue. Very disappointed.

### C. Other sources of Knowledge

58. Toyota is experienced in the design and manufacture of consumer vehicles. As an experienced manufacturer, Toyota likely conducts testing on incoming batches of components, including intermediate drive shafts, to verify that the parts are free from defects and comply with Toyota's specifications. According, Toyota knew or should have known that the intermediate drive shafts used in Class Vehicles are defective and likely to break down, costing Plaintiff and Class members thousands of dollars in repair or replacement.

59. For all certified pre-owned vehicles, Toyota conducts a "160-point minimum Quality Assurance Inspection, which includes mechanical, detailing and appearance standards. The inspection requires that factor-trained technicians complete any necessary repairs and reconditioning" before all

1 certified pre-owned vehicles are sold.<sup>6</sup> Consequently, Toyota knew or should have known that the  
2 intermediate drive shafts used in Class Vehicles are defective and likely to break down, costing Plaintiff  
3 and Class members thousands of dollars in repair or replacement.

4 60. Moreover, Toyota also should have known of the Steering Wheel Defect due to the sheer  
5 number of reports of damaged intermediate drive shafts in Class Vehicles and the high number of  
6 replacement intermediate drive shafts being ordered from Toyota.

7 61. On information and belief, Toyota also interacts with its authorized service technicians in  
8 order to identify potentially widespread vehicle problems and assist in the diagnosis of vehicle issues.  
9 Toyota collects and analyzes field data including, but not limited to, repair requests made at dealerships  
10 and service centers, technical reports prepared by engineers that have reviewed vehicles for which  
11 warranty coverage is requested, parts sales reports, and warranty claims data, all of which alerted it to the  
12 Defect's existence.

13 62. The timing of the aforementioned complaints, coupled with the other means through which  
14 Toyota monitors vehicle performance, clearly establishes that Toyota had knowledge of the Steering  
15 Wheel Defect prior to the time of sale of all the Class Vehicles.

16 63. Despite its longstanding knowledge of the Steering Wheel Defect, Toyota did not disclose  
17 the Defect's existence to Plaintiff or Class members, either in advertising, at the point-of-sale, or  
18 subsequent to purchase. Toyota has not recalled Class Vehicle or even informed Class members of the  
19 Defect's existence and the serious and unjustifiable safety risks it imposes upon them.

#### 20 **CLASS ALLEGATIONS**

21 64. Plaintiff bring this action on her own behalf, and on behalf of two nationwide classes  
22 (collectively, the "Nationwide Classes") pursuant to Federal Rule of Civil Procedure, Rule 23(a), 23(b)(2),  
23 and/or 23(b)(3).

#### 24 **New Vehicle Nationwide Class:**

25 All persons or entities in the United States who are current or former owners and/or lessees  
26 of a 2008-2013 Toyota Highlander purchased new.

27  
28  

---

<sup>6</sup> <https://www.toyotacertified.com/160-point-inspection> (last visited February 12, 2020).

1           **Pre-Owned Nationwide Class:**

2           All persons or entities in the United States who are current or former owners and/or lessees  
3           of a Pre-Owned 2008-2013 Toyota Highlander.

4           65.     In the alternative to the Nationwide Class, and pursuant to Fed. R. Civ. P. 23(c)(5), Plaintiff  
5           seeks to represent the following state class only in the event that the Court declines to certify the  
6           Nationwide Class above. Specifically, the California Class consists of:

7           **California Class:**

8           All persons or entities in California who are current or former owners and/or lessees of a  
9           Pre-Owned 2008-2013 Toyota Highlander for primarily personal, family or household  
10          purposes, as defined by California Civil Code § 1791(a).

11          66.     The Nationwide Classes and California Class shall be collectively referred to herein as the  
12          “Class.” Excluded from the Class are Defendants, their affiliates, employees, officers and directors,  
13          persons or entities that purchased the Class Vehicles for resale, and the Judge(s) assigned to this case.  
14          Plaintiff reserves the right to modify, change, or expand the various class definitions set forth above based  
15          on discovery and further investigation.

16          67.     Numerosity: Upon information and belief, the Class is so numerous that joinder of all  
17          members is impracticable. While the exact number and identities of individual members of the Class are  
18          unknown at this time, such information being in the sole possession of Toyota and obtainable by Plaintiff  
19          only through the discovery process, Plaintiff believes, and on that basis alleges, that hundreds of thousands  
20          of Class vehicles have been sold and leased in each of the States that are the subject of the Class.

21          68.     Existence and Predominance of Common Questions of Fact and Law: Common questions  
22          of law and fact exist as to all members of the Class. These questions predominate over the questions  
23          affecting individual Class members. These common legal and factual questions include, but are not  
24          limited to whether

- 25               a. The Class Vehicles were sold with a Steering Wheel Defect;
- 26               b. Toyota knew of the Steering Wheel Defect but failed to disclose the problem and its  
27               consequences to its customers;
- 28

- 1 c. A reasonable consumer would consider the Steering Wheel Defect or its consequences to  
2 be material;
- 3 d. Toyota has failed to provide free repairs as required by its New Vehicle Limited warranty;
- 4 e. Toyota's conduct violates California Legal Remedies Act, California Unfair Competition  
5 Law, and the other statutes asserted herein.

6 69. Typicality: All of the Plaintiff's claims are typical of the claims of the Class since each  
7 Plaintiff purchased a Class Vehicle with the Steering Wheel Defect, as did each member of the Class.  
8 Furthermore, Plaintiff and all members of the Class sustained monetary and economic injuries including,  
9 but not limited to, ascertainable losses arising out of Toyota's wrongful conduct. Plaintiff is advancing  
10 the same claims and legal theories on behalf of themselves and all absent Class members.

11 70. Adequacy: Plaintiff is an adequate representative because her interests do not conflict with  
12 the interests of the Class that they seek to represent, they have retained counsel competent and highly  
13 experienced in complex class action litigation, and they intend to prosecute this action vigorously. The  
14 interests of the Class will be fairly and adequately protected by Plaintiff and her counsel.

15 71. Superiority: A class action is superior to all other available means of fair and efficient  
16 adjudication of the claims of Plaintiff and members of the Class. The injury suffered by each individual  
17 Class member is relatively small in comparison to the burden and expense of individual prosecution of  
18 the complex and extensive litigation necessitated by Toyota's conduct. It would be virtually impossible  
19 for members of the Class individually to redress effectively the wrongs done to them. Even if the members  
20 of the Class could afford such individual litigation, the court system could not. Individualized litigation  
21 increases the delay and expense to all parties, and to the court system, presented by the complex legal and  
22 factual issues of the case. By contrast, the class action device presents far fewer management difficulties,  
23 and provides the benefits of single adjudication, an economy of scale, and comprehensive supervision by  
24 a single court. Upon information and belief, members of the Class can be readily identified and notified  
25 based on, *inter alia*, Toyota's vehicle identification numbers, warranty claims, registration records, and  
26 database of complaints.

27 72. Toyota has acted, and refused to act, on grounds generally applicable to the Class, thereby  
28 making appropriate final equitable relief with respect to the Class as a whole.

**FIRST CAUSE OF ACTION**

**BREACH OF EXPRESS WARRANTY  
(By Plaintiff on Behalf of the Nationwide Classes  
or, Alternatively, the California Class)**

1  
2  
3  
4  
5 73. Plaintiff and the Class incorporate by reference each preceding and succeeding paragraph  
6 as though fully set forth herein.

7 74. Plaintiff bring this claim on behalf of herself and Class members.

8 75. Defendants provided all purchasers and lessees of the Class Vehicles with the express  
9 warranties described herein, which became part of the basis of the bargain. Accordingly, Defendants'  
10 warranties are express warranties under state law.

11 76. The parts affected by the Steering Wheel Defect were manufactured and incorporated into  
12 Class Vehicles by Defendants, and covered by the warranties Defendants provided all purchasers and  
13 lessors of Class Vehicles.

14 77. Defendants breached these warranties by selling and leasing Class Vehicles with the  
15 Steering Wheel Defect, requiring repair or replacement within the applicable warranty periods, and  
16 refusing to honor the warranties by providing free repairs or replacements during the applicable warranty  
17 periods.

18 78. Plaintiff notified Defendants of the breach within a reasonable time, and/or were not  
19 required to do so because affording Defendants a reasonable opportunity to cure its breach of written  
20 warranty would have been futile. Defendants also know of the Steering Wheel Defect and yet have chosen  
21 to conceal it while refusing to comply with their warranty obligations.

22 79. As a direct and proximate cause of Defendants' breach, Plaintiff and the other Class  
23 members incurred substantial repair costs for which Defendants should have borne responsibility pursuant  
24 to the terms of their express warranties.

25 80. Plaintiff and members of the Class have complied with all obligations under the warranties,  
26 or otherwise have been excused from performance of said obligations as a result of Defendants' conduct  
27 described herein.

28 ///

1 **SECOND CAUSE OF ACTION**

2 **BREACH OF IMPLIED WARRANTY**  
3 **(By Plaintiff on Behalf of the Nationwide Classes**  
4 **or, Alternatively, the California Class)**

5 81. Plaintiff and the Class incorporate by reference each preceding and succeeding paragraph  
6 as though fully set forth herein.

7 82. Defendants were at all relevant times the manufacturer, distributor, warrantor, and/or seller  
8 of Class Vehicles. Defendants knew or had reason to know of the ordinary purpose for which Class  
9 Vehicles were purchased.

10 83. Defendants provided Plaintiff and the other Class members with an implied warranty that  
11 Class Vehicles and any components thereof are merchantable and fit for the ordinary purposes for which  
12 they were sold. However, Class Vehicles are not fit for their ordinary purpose of providing reasonably  
13 reliable and safe transportation either at the time of sale or thereafter because, *inter alia*, Class Vehicles  
14 suffered from the Steering Wheel Defect at the time of sale. Class Vehicles cannot be safely operated  
15 without an intermediate drive shaft that is free from defects, thus Class Vehicles are not fit for their  
16 ordinary purpose of providing safe and reliable transportation.

17 84. Defendants impliedly warranted that Class Vehicles were of merchantable quality and fit  
18 for such use. This implied warranty included, among other things: (i) a warranty that Class Vehicles were  
19 manufactured, supplied, distributed, and/or sold by Defendants were safe and reliable for providing  
20 transportation; and (ii) a warranty that the Class Vehicles would be fit for their ordinary use while the  
21 Class Vehicles were being operated.

22 85. Defendants' actions, as complained of herein, thus breached the implied warranty that the  
23 Class Vehicles were of merchantable quality and fit for ordinary use.

24 86. Plaintiff and Class members are intended third-party beneficiaries of contracts, including  
25 express warranties, between Defendants and their authorized dealerships, representatives and agents. On  
26 information and belief, Defendants' authorized dealerships, representatives, and agents purchased Class  
27 Vehicles from Defendants pursuant to valid and enforceable agreements. Because Plaintiff and Class  
28 members—rather than Defendants' authorized dealerships, representatives, and agents—were the

1 intended end users of Class Vehicles, Plaintiff and Class members were the intended (and not incidental)  
2 third party beneficiaries of the agreements entered into among Defendants and authorized dealerships,  
3 representatives, and agents, and any warranties, express or implied, flowing therefrom. Indeed,  
4 Defendants' authorized dealerships, representatives, and agents did not and would not purchase Class  
5 Vehicles for personal use, therefore the implied warranties flowing to them actually are intended to protect  
6 their customers from the losses Class Products have and will continue to cause them. Accordingly,  
7 Defendants are estopped from limiting claims for common law and statutory violations based on a defense  
8 of lack of privity.

9 **THIRD CAUSE OF ACTION**

10 **BREACH OF WRITTEN WARRANTY UNDER THE MAGNUSON-MOSS**  
11 **WARRANTY ACT**

12 **15 U.S.C. § 2301, *et seq.***

13 **(By Plaintiff on Behalf of the Nationwide Classes**  
14 **or, Alternatively, the California Class)**

15 87. Plaintiff and the Class incorporate by reference each preceding and succeeding paragraph  
16 as though fully set forth herein.

17 88. Plaintiff and the Class are "consumers" within the meaning of the Magnuson-Moss  
18 Warranty Act, 15 U.S.C. § 2301(3).

19 89. Defendants are "supplier[s]" and "warrantor[s]" within the meaning of 15 U.S.C. §§  
20 2301(4)-(5).

21 90. Class Vehicles are "consumer products" within the meaning of 15 U.S.C. § 2301(1).

22 91. Toyota's sixty month/60,000 miles Powertrain Coverage Warranty is a "written warranty"  
23 within the meaning of 15 U.S.C. § 2301(6).

24 92. Defendants breached these written warranties as set forth above.

25 93. Defendants' breach of the express warranty has deprived the Plaintiff and the other Class  
26 members of the benefit of their bargain.

27 94. The amount in controversy of Plaintiff's individual claims meet or exceed the sum or value  
28 of \$25. In addition, the amount in controversy meets or exceed the sum or value of \$50,000 (exclusive of  
interests and costs) computed on the basis of all claims to be determined in this suit.



1 95. Defendants have been afforded a reasonable opportunity to cure their breach of the written  
2 warranty and/or Plaintiff and the other Class members were not required to do so because affording  
3 Defendants a reasonable opportunity to cure its breaches would have been futile. Defendants were also  
4 on notice of the Steering Wheel Defect from the complaints and service requests it received from Class  
5 members, as well as from its own warranty claims, customer complaint data, and/or parts sales data, and  
6 the results of internal pre- and post-sale quality and durability testing.

7 96. At the time they issued written warranties for Class Vehicles, Defendants also knew and  
8 had notice that Class Vehicles suffered from the Defect alleged herein. Defendants' continued  
9 misrepresentations and omissions concerning Class Vehicles and the Defect, as well as Defendants' failure  
10 to abide by their own written and implied warranties, are "[u]nfair methods of competition in or affecting  
11 commerce, and [are] unfair or deceptive acts or practices in or affecting commerce." Accordingly,  
12 Defendants' behavior is unlawful under 15 U.S.C. §§ 2310(b), 45(a)(1).

13 97. As a direct and proximate cause of the conduct alleged herein, Plaintiff and the other Class  
14 members sustained damages and other losses in an amount to be determined at trial. Defendants' conduct  
15 damaged Plaintiff and other Class members, who are entitled to recover actual damages, consequential  
16 damages, specific performance, and costs, including statutory attorneys' fees and/or other relief as deemed  
17 appropriate.

18 **FOURTH CAUSE OF ACTION**

19 **VIOLATIONS OF THE CALIFORNIA BUSINESS AND PROFESSIONS CODE**

20 **CAL. BUS. & PROF. CODE § 17200**

21 **(By Plaintiff on Behalf of the California Class)**

22 98. Plaintiff and the Class incorporate by reference each preceding and succeeding paragraph  
23 as though fully set forth at herein.

24 99. Plaintiff brings this claim on behalf of herself and the California Class.

25 100. The California Unfair Competition Law ("UCL") prohibits acts of "unfair competition,"  
26 including any "unlawful, unfair or fraudulent business act or practice" and "unfair, deceptive, untrue or  
27 misleading advertising." Cal. Bus. & Prof. Code § 17200.  
28

1 101. Defendants have engaged in unfair competition and unfair, unlawful and/or fraudulent  
2 business practices by the conduct, statements, and omissions described above, and by knowingly and  
3 intentionally concealing from Plaintiff and Class members that Class Vehicles suffer from the Steering  
4 Wheel Defect (and the costs, safety risks, and diminished value of the vehicles associated therewith).  
5 Defendants should have disclosed this information because they were in a superior position to know the  
6 true facts related to the Steering Wheel Defect, and Plaintiff and Class members could not reasonably have  
7 been expected to learn or discover the true facts related to the Defect.

8 102. The Steering Wheel Defect constitutes a safety issue that triggered Defendants' duty to  
9 disclose the safety issue to consumers as set forth above.

10 103. These acts and practices are fraudulent because they have deceived Plaintiff and are likely  
11 to deceive the public. In failing to disclose the Defect and suppressing other material facts from Plaintiff  
12 and the Class members, Defendants breached their duties to disclose these facts, violated the UCL, and  
13 caused injuries to Plaintiff and the Class members. The omissions and acts of concealment by Defendants  
14 pertained to information that was material to Plaintiff and Class members, as it would have been to all  
15 reasonable consumers.

16 104. The injuries suffered by Plaintiff and the Class members are greatly outweighed by any  
17 potential countervailing benefit to consumers or to competition, nor are they injuries that Plaintiff and the  
18 Class members should have reasonably avoided. Therefore, Defendants also have engaged in unfair  
19 practices.

20 105. Defendants' acts and practices also are unlawful because they violate California Civil Code  
21 sections 1668, 1709, 1710, and 1750 *et seq.*, and California Commercial Code section 2313.

22 106. Plaintiff seeks to enjoin further unlawful, unfair, and/or fraudulent acts or practices by  
23 Defendants, to obtain restitution and disgorgement of all monies and revenues generated as a result of  
24 such practices, and all other relief allowed under California Business and Professions Code section 17200.

25 ///

26 ///

27 ///

28 ///

**FIFTH CAUSE OF ACTION**

**VIOLATIONS OF CALIFORNIA’S CONSUMER LEGAL REMEDIES ACT (“CLRA”)**

**Cal. Civ. Code § 1750, *et seq.***

**(By Plaintiff on Behalf of the California Class)**

107. Plaintiff and the Class incorporate by reference each preceding and succeeding paragraph as though fully set forth herein.

108. Plaintiff brings this cause of action for herself and on behalf of the California Class members.

109. Toyota is a “person” as defined by the CLRA. Cal. Civ. Code § 1761(c).

110. Plaintiff and Class members are “consumers” within the meaning of the CLRA. Cal. Civ. Code § 1761(d).

111. The purchases and leases of Class Vehicles by Plaintiff and Class members constitute “transactions” as defined by the CLRA. Cal. Civ. Code § 1761(e).

112. The Class Vehicles constitute “goods” or “services” as defined by the CLRA. Cal. Civ. Code § 1761(a) and (b).

113. Plaintiff and Class members purchased or leased the Class Vehicles primarily for personal, family, and household purposes as meant by the CLRA. Cal. Civ. Code § 1761(d).

114. Toyota’s representations, active concealment, failures to disclose, and omissions regarding the Class Vehicles violated the CLRA in the following ways:

- a. Toyota misrepresented that the Class Vehicles had characteristics, benefits, or uses that they did not have (Cal. Civ. Code § 1770(a)(5));
- b. Toyota misrepresented that the Class Vehicles were of a particular standard, quality, or grade when they were of another (Cal. Civ. Code § 1770(a)(7));
- c. Toyota advertised the Class Vehicles with an intent not to sell/lease them as advertised (Cal. Civ. Code § 1770(a)(9));
- d. Toyota misrepresented that the Class Vehicles and the warranties conferred or involved rights, remedies, or obligations that they did not (Cal. Civ. Code § 1770(a)(14)); and

1 e. Toyota misrepresented that the Class Vehicles were supplied in accordance with previous  
2 representations when they were not (Cal. Civ. Code § 1770(a)(16)).

3 115. Toyota's unfair and deceptive acts or practices occurred repeatedly in Toyota's course of  
4 trade or business, were material, were capable of deceiving a substantial portion of the purchasing public,  
5 and as a result, caused economic harm to purchasers and lessees of the Class Vehicles.

6 116. Toyota knew, by 2013 at the latest, and certainly before the sale or lease of the Class  
7 Vehicles, that the Class Vehicles' intermediate drive shafts suffered from an inherent defect, were  
8 defectively designed or manufactured, would fail repeatedly, and were not suitable for their intended use.

9 117. By 2013 at the latest, Toyota had exclusive knowledge of material facts concerning the  
10 existence of the Defect in its Class Vehicles. Furthermore, Toyota actively concealed the Defect from  
11 consumers by denying the existence of the Defect to Class members who contacted Toyota about their  
12 intermediate drive shaft failures and failing to provide an effective remedy for the Defect within a  
13 reasonable time under warranty (thereby causing Toyota's warranty to fail of its essential purpose).

14 118. Toyota was under a duty to Plaintiff and Class members to disclose the defective nature of  
15 the intermediate drive shafts, as well as the associated costs that would have to be repeatedly expended in  
16 order to temporarily address the failures caused by the Defect, because:

- 17 a. Toyota was in a superior position to know the true state of facts about the Defect in the  
18 Class Vehicles;
- 19 b. Plaintiff and Class members could not reasonably have been expected to learn or discover  
20 that the Class Vehicles had the Defect until, at the earliest, the manifestation of the Defect;  
21 and
- 22 c. Toyota knew that Plaintiff and Class members could not reasonably have been expected to  
23 learn or discover the Defect prior to its manifestation.

24 119. In failing to disclose the defective nature of the Class Vehicles, Toyota knowingly and  
25 intentionally concealed material facts and breached its duty not to do so.

26 120. The facts concealed or not disclosed by Toyota to Plaintiff and Class members are material  
27 in that a reasonable consumer would have considered them to be important in deciding whether or not to  
28 purchase or lease a Class Vehicle. Moreover, a reasonable consumer would consider the Defect to be an

1 undesirable quality, as Plaintiff and Class members did. Had Plaintiff and other Class members known  
2 that the Class Vehicles had the Defect, they would not have purchased or leased a Class Vehicle, or would  
3 have paid less for it.

4 121. Plaintiff and Class members are reasonable consumers who did not expect their Class  
5 Vehicles to contain a defective intermediate drive shaft. It is a reasonable and objective consumer  
6 expectation for consumers to expect the intermediate drive shaft not to fail, thereby causing disruptive and  
7 disturbing noises to emanate from the vehicle, and in some cases, causing the vehicle to be unable to shift  
8 gears.

9 122. As a result of Toyota's misconduct, Plaintiff and Class members have been harmed and  
10 have suffered actual damages in that the Class Vehicles contain defective intermediate drive shafts that  
11 repeatedly fail to function due to the Defect, causing inconvenience, creating an uncomfortable and  
12 unhealthy environment for vehicle occupants, and causing Class members to spend money to attempt to  
13 remedy the Defect.

14 123. As a direct and proximate result of Toyota's unfair or deceptive acts or practices, Plaintiff  
15 and Class members have suffered and will continue to suffer actual damages in that they have a Vehicle  
16 with a defective intermediate drive shaft and they have experienced.

17 124. Plaintiff and the Class seek an order enjoining Toyota's unfair or deceptive acts or practices  
18 and equitable relief under Cal. Civ. Code § 1780(e), and any other just and proper relief available under  
19 the CLRA.

20 125. In accordance with section 1782(a) of the CLRA, Plaintiff's counsel, on behalf of Plaintiff,  
21 has served Toyota with notice of their alleged violations of Cal. Civ. Code § 1770(a) relating to the Class  
22 Vehicles purchased by Plaintiff and Class members, and demanded that Toyota, within thirty (30) days of  
23 such notice, corrects or agrees to correct the actions described therein and agrees to reimburse Plaintiff  
24 and Class members' associated out-of-pocket costs. If Toyota fails to do so, Plaintiff will amend this  
25 Complaint as of right (or otherwise seek leave to amend the Complaint) to seek compensatory and  
26 monetary damages and attorneys' fees to which Plaintiff and Class members are entitled under the CLRA.

27 126. Toyota received proper notice of its alleged violations of the CLRA pursuant to Cal. Civ.  
28 Code § 1782(a), via letters sent to Toyota on behalf of Plaintiff and all others similarly situated.

1 127. Plaintiff has requested that Toyota timely respond to the CLRA demand notice and  
2 presently seeks only injunctive relief pursuant to the CLRA. If Toyota fails to fully, completely and timely  
3 comply with Plaintiff's demand letter, Plaintiff will amend this complaint to seek damages under the  
4 CLRA. Under California Civil Code § 1782(d), after the commencement of an action for injunctive relief,  
5 and after compliance with the provisions of Section 1782(a), Plaintiff may amend her complaint without  
6 leave of court to include a request for damages.

7 **SIXTH CAUSE OF ACTION**

8 **VIOLATIONS OF THE SONG-BEVERLY ACT**  
9 **CALIFORNIA CIVIL CODE §§ 1792, 1791.1, *et seq.***  
10 **(By Plaintiff on Behalf of the California Class)**

11 128. Plaintiff and the Class incorporate by reference each preceding and succeeding paragraph  
12 as though fully set forth herein.

13 129. Plaintiff brings this claim on behalf of herself and the California Class.

14 130. At all times relevant hereto, Defendants were the manufacturers, distributors, warrantors,  
15 and/or sellers of Class Vehicles. Defendants knew or should have known of the ordinary and intended  
16 purpose for which Class Vehicles are purchased.

17 131. Defendants impliedly warranted to Plaintiff and the Class that Class Vehicles, and any  
18 components thereof, are merchantable and fit for their ordinary and intended purpose: providing safe and  
19 reliable transportation.

20 132. Defendants impliedly warranted that Class Vehicles were of merchantable quality and fit  
21 for such use. This implied warranty included, *inter alia*, the following: (i) a warranty that Class Vehicles,  
22 including their intermediate drive shafts, were manufactured, supplied, distributed, and/or sold by Toyota,  
23 were safe and reliable, and able to withstand the typical and ordinary stresses to which Vehicles are  
24 exposed during operation; and (ii) a warranty that the Class Vehicles were fit for their ordinary and  
25 intended use, i.e., providing safe and reliable transportation while in operation.

26 133. Contrary to the applicable implied warranties, however, Class Vehicles are not fit for their  
27 ordinary purpose of providing safe and reliable transportation because of the Defect.  
28

1 134. Defendants breached the implied warranties applicable to Class Vehicles at the time of sale  
2 because the Defect was latent at the time Plaintiff and Class members purchased their vehicles.

3 135. Through the actions complained of herein, Defendants breached their implied warranty that  
4 Class Vehicles were of merchantable quality and fit for such use in violation of CAL. CIV. CODE §§ 1792  
5 and 1791.1.

6 **SEVENTH CAUSE OF ACTION**  
7 **FRAUDULENT CONCEALMENT**  
8 **(By Plaintiff on Behalf of the Nationwide Classes**  
9 **or, Alternatively, the California Class)**

9 136. Plaintiff incorporates by reference all preceding allegations as though fully set forth herein.

10 137. This claim is brought on behalf of the Nationwide Class under California law, or,  
11 alternatively, under the laws of the all states, as there is no material difference in the law of fraudulent  
12 concealment as applied to the claims and questions in this case.

13 138. Defendants concealed and suppressed material facts concerning the Class Vehicles.

14 139. As described above, Defendants made material omissions and affirmative  
15 misrepresentations regarding the Class Vehicles.

16 140. Defendants knew these representations were false when made.

17 141. The vehicle purchased or leased by Plaintiff was, in fact, defective, unsafe and unreliable,  
18 because the vehicle was subject to the intermediate drive shaft failing.

19 142. Defendants had a duty to disclose that these vehicles were defective, unsafe and unreliable  
20 in that the vehicles were subject to the intermediate drive shaft failing, because Plaintiff relied on  
21 Defendants' representations that the vehicles they were purchasing and retaining were safe and free from  
22 defects.

23 143. The aforementioned concealment was material, because if it had been disclosed, Plaintiff  
24 would not have bought, leased, or retained her vehicle.

25 144. The aforementioned representations were also material because they were facts that would  
26 typically be relied on by a person purchasing, leasing or retaining a new or used motor vehicle. Defendants  
27 intentionally made the false statements in order to sell vehicles and avoid the expense and public relations  
28 nightmare of a recall.

1 145. Plaintiff relied on Defendants' reputation-along with their failure to disclose the  
2 intermediate drive shaft problems and Defendants' affirmative assurances that their vehicles were safe  
3 and reliable and other similar false statements – in purchasing, leasing or retaining the Class Vehicles.

4 146. However, Defendants each concealed and suppressed material facts concerning the culture  
5 of Defendants – a culture that emphasized cost-cutting, avoidance of dealing with safety issues and a  
6 shoddy design process.

7 147. Further, Defendants had a duty to disclose the true facts about the Class Vehicles because  
8 they were known and/or accessible only to Defendants, who had superior knowledge and access to the  
9 facts, and the facts were not known to or reasonably discoverable by Plaintiff and the Class. As stated  
10 above, these omitted and concealed facts were material because they directly impact the safety, reliability  
11 and value of the Class Vehicles. Whether a manufacturer's products are safe and reliable, and whether  
12 that manufacturer stands behind its products, is of material concern to a reasonable consumer.

13 **EIGHTH CAUSE OF ACTION**  
14 **UNJUST ENRICHMENT**  
15 **(By Plaintiff on Behalf of the Nationwide Classes**  
16 **or, Alternatively, the California Class)**

17 148. Plaintiff incorporates by reference all preceding allegations as though fully set forth herein.

18 149. This claim for unjust enrichment is brought on behalf of the Nationwide Class under  
19 California law, or alternatively, under the laws of all states as there is no material difference in the law of  
20 unjust enrichment as it applies to the claims and questions in this case.

21 150. Defendants have received and retained a benefit from the Plaintiff and the Nationwide  
22 Class, and inequity has resulted.

23 151. Defendants benefitted while Plaintiff, who originally overpaid for her Class Vehicle, was  
24 forced to pay additional out-of-pocket costs and incur additional expense and losses in connection with  
25 repairs.

26 152. It is inequitable for Defendants to retain the benefits of its misconduct.

27 153. As a result of Defendants' conduct, the amount of Defendants' unjust enrichment should  
28 be disgorged, in an amount according to proof.

///



**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff, on behalf of herself and members of the Class, respectfully requests that this Court:

- A. determine that the claims alleged herein may be maintained as a class action under Rule 23 of the Federal Rules of Civil Procedure, and issue an order certifying one or more Classes as defined above;
- B. appoint Plaintiff as the representative of the Class and her counsel as Class counsel;
- C. grant appropriate injunctive and/or declaratory relief, including, without limitation, an order that requires Defendants to repair, recall, and/or replace the Class Vehicles and to extend the applicable warranties to a reasonable period of time, or, at a minimum, to provide Plaintiff and Class members with appropriate curative notice regarding the existence and cause of the Steering Wheel Defect;
- D. award reasonable attorneys' fees and costs; and
- E. grant such further relief that this Court deems appropriate.

**DEMAND FOR JURY TRIAL**

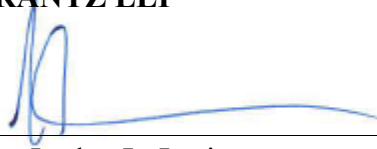
Pursuant to Federal Rules of Civil Procure, Rule 38(b), Plaintiff hereby demands a trial by jury as to all claims so triable.

Dated: February 12, 2020

Respectfully submitted,

**POMERANTZ LLP**

By: \_\_\_\_\_



Jordan L. Lurie  
Ari Y. Basser

*Attorneys for Plaintiff*

# ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Toyota Hit with Class Action Over Alleged Drive Shaft Defect in 2008-2013 Highlander SUVs](#)

---