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8 Attorneys for Plaintiffs

9 UNITED STATES DISTRICT COURT

10 CENTRAL DISTRICT OF CALIFORNIA

11 DENNIS AND DEBORAH
 12 MURPHY, SHARON AND BRETT
 PAGE, TONY LANDER, AND JOEL
 13 TILSON, individually, and on behalf
 of a class of similarly situated
 individuals,

14 Plaintiffs,

15 v.

16 TOYOTA MOTOR SALES, U.S.A.,
 17 INC., a California corporation,
 TOYOTA MOTOR NORTH
 18 AMERICA, INC., a California
 corporation, and TOYOTA MOTOR
 19 CORPORATION, a Japanese
 corporation,

20 Defendants.

Case No.: 2:20-cv-5892-VAP-ADSx _

FIRST AMENDED CLASS ACTION COMPLAINT FOR:

- (1) Breach of Implied Warranty under California, Colorado, Florida, and Washington law;
- (2) Violation of California’s Song-Beverly Consumer Warranty Act;
- (3) Violation of California’s Consumers Legal Remedies Act;
- (4) Violation of the Florida Deceptive and Unfair Trade Practices Act;
- (5) Violation of the Washington Consumer Protection Act, Wash. Rev. Code §§ 19.86.010, *et seq.*
- (6) Fraudulent Omission

DEMAND FOR JURY TRIAL

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1 Toyota in a joint venture with Aisin AW, a third-party transmission
2 manufacturer. As noted in Aisin’s June 2019 summary of its major powertrain
3 products, this high torque capacity transmission is for use in Toyota Highlander
4 and Sienna vehicles.³

5 7. Plaintiffs are informed and believe, and based thereon allege, that
6 the Class Vehicles’ Direct Shift-8AT Transmission is defective in its design
7 and/or manufacture in that, among other problems, it causes harsh or delayed
8 shifting and engagement, delayed acceleration, hesitation, jerking, unintended
9 acceleration, lurching, excessive revving before upshifting (also known as
10 excessively high RPM shift points), and lack of power when needed (such as
11 from a stop) (the “8AT Transmission Defect”).

12 8. The 8AT Transmission Defect is inherent in each Class Vehicle and
13 was present at the time of sale.

14 9. Toyota developed the Direct Shift 8AT in a joint venture with Aisin
15 AW, a third-party transmission manufacturer. On information and belief, in
16 response to heightened consumer demand and governmental pressure to reach
17 unprecedented miles-per-gallon ratings, Toyota attempted to create an 8-speed
18 transmission for a compact, transverse application by using a single axis and
19 only two planetary gears, rather than the typical four. Unfortunately, while
20 Toyota touted the resulting Direct Shift 8AT transmission as “achieving one of
21 the world’s best transmission efficiencies” that “lower[] a vehicle’s fuel
22 requirements” and even improving “straight driving” and “cornering stability,”⁴
23 in practice, the new transmission design causes harsh and delayed shifting,
24 delayed and unpredictable acceleration, jerking forward, lack of power, and other
25 symptoms listed *supra*.

26 _____
27 ³ Available at <https://www.aisin-aw.co.jp/en/corporate/module/pdf/corporate/summary/index/data.pdf>

28 ⁴ Available at <https://global.toyota/en/powertrain/transmission/>

1 10. Despite these widespread and well-known problems, Toyota
2 continued to market the Direct Shift 8AT Transmission not only as a fuel-
3 efficient model, but one that would achieve “quick and smooth response to
4 accelerator pedal operation” which would “create[] an ‘as desired’ direct driving
5 feel...”⁵

6 11. Although Defendants were sufficiently aware of the 8AT
7 Transmission Defect from pre-production testing, design failure mode analysis,
8 calls to the customer service hotline, and customer complaints made to dealers,
9 this knowledge and information was exclusively in the possession of Defendants
10 and their network of dealers and, therefore, unavailable to consumers.

11 12. Despite access to aggregate internal data, Defendants have actively
12 concealed the existence of the defect.

13 13. The 8AT Transmission Defect is material because it poses a serious
14 safety concern. For example, delayed acceleration, unpredictable engagement
15 and shifting, jerking, lurching, unintended acceleration, excessive revving, and
16 lack of power severely affect the driver’s ability to control the car’s speed,
17 acceleration, and deceleration, and can make it difficult to safely operate the
18 vehicle, including safely drive on a highway, merge into traffic or to turn left
19 across incoming traffic.

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⁵ *Id.*

1 14. For example, one owner of a 2019 Toyota Highlander complained to
2 the National Highway Traffic Safety Administration (“NHTSA”) as follows
3 (NHTSA ID No. 11242822)⁶:

4 2019 Highlander XLE loses power, unable to accelerate,
5 & jerks and stalls in traffic. Bought at 200 miles,
certified preowned. it is a nightmare vehicle.

6 Accelerator has been touchy and jumpy at times,
7 intermittently at slow speeds. First time it stalled it
8 started to lose power put -put and chug like jerking and
9 all dash and electrical on dash went out, unable to
10 accelerate, then stalled on in road, unable to steer or
11 control vehicle. This occurrence was after a longer
12 period of driving. Second time it stalled out began to lose
13 power, putter and chug, unable to accelerate applying gas
14 pedal, getting no gas, vehicle dies out, unable to steer or
15 control vehicle. This occurrence was after a longer
16 period of driving. Third time was yesterday 8-8-19. Left
17 work and about 5-7 minutes into my drive, started
18 hesitating, losing all dash and electrical power and will
19 not accelerate when gas pedal applied, then stalls out,
20 unable to control the steering wheel again! Almost got
21 hit this time, man behind me coming fast and had to
22 swerve into lane over to miss me. **This car is going to
kill me or someone by causing an accident if they do
not get it fixed right.** After the second stall it was towed
into dealership and they were not sure but said fuel
pressure was reading 22 and was supposed to be in the
mid to high 50's. They replaced the fuel pump and it
drove ok for a little while but I noticed the average fuel
mileage going down from an approx in city 19.1--20 to
17.1-17.3. has never been so low so obviously the
stalling and the replacing or the fuel pump are not the
real issue. Fuel economy going down since replacement
of the fuel pump and now another dangerous stalling
issue. Car is at toyota dealer now. **They need to dive
much deeper & resolve this very dangerous safety
issue! i bought this car to feel safe and have reliable
transportation and have neither. it really scares me.**
*dt*jb.

23 (emphasis added).

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27 ⁶ Spelling and grammatical errors in consumer complaints reproduced
28 herein remain as found in the original.

1 22. On or around September 27, 2018, with approximately 2,000 miles
2 on the odometer, Mr. Murphy took their vehicle to Peterson Toyota of Sarasota
3 (formerly Germain Toyota of Sarasota), reporting that the vehicle was exhibiting
4 severe hesitation and surging while driving at residential speeds. The dealership
5 ran diagnostic tests and produced a diagnostic report, advising that the vehicle
6 was operating normally and no anomalies could be found.

7 23. Thereafter, on or around January 21, 2019 with approximately 8,730
8 miles on the odometer, Mr. Murphy took their vehicle to Toyota of Sarasota,
9 complaining that the vehicle demonstrated erratic throttle responses at low
10 speeds, stumbling (*i.e.*, hesitating) and exhibiting surges when lightly applying
11 the throttle at parking lot speeds. The dealership again did not make any repairs,
12 determining that “no problem [was] found at this time. Normal operation.” On or
13 around April 3, 2019, Mr. Murphy returned the vehicle to Toyota of Sarasota,
14 reiterating that the vehicle was demonstrating erratic throttle responses,
15 stumbling and surging at low speeds. Although the dealership reported no
16 problems with the vehicle, a senior technical service adviser informed Mr.
17 Murphy that the problems complained of were common to Highlanders and other
18 Toyota models and were well-known to Toyota and its dealers.

19 24. On or around May 29, 2019, Mr. Murphy returned to Toyota of
20 Sarasota, complaining of the continuing problems with his vehicle and requested
21 that the vehicle be repaired or that Toyota buy back the vehicle. The dealership
22 did not perform any diagnostics or repair services, but instead scheduled an
23 inspection by a Toyota representative. On or around May 31, 2019, with
24 approximately 11,930 miles on the odometer, Mr. Murphy took the vehicle to
25 Toyota of Sarasota to have it inspected by a Toyota District 2 Fixed Operations
26 Manager. The Operations Manager test drove the vehicle but made no repairs,
27 reporting that he “found it to perform like a known good vehicle” and did “not
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1 exhibit any warrantable concern.” The Operations Manager went on to explain
2 that “today’s vehicles . . . are driven by wire which means they do not have a
3 throttle cable so they may exhibit very slight lag due to the ECM processing. The
4 current eight speeds transmissions are gear to keep the engine in an optimum
5 operating condition which may not meet the customers desired performance but
6 in every case, a little extra pressure on the gas pedal improves responsiveness
7 and customer satisfaction can usually be obtained.”

8 25. On or around October 11, 2019, with approximately 22,005 miles on
9 the odometer, Mr. Murphy took their vehicle to Pinehurst Toyota in Southern
10 Pines, North Carolina, again complaining that the vehicle continued to exhibit
11 erratic throttle responses at low speeds, stumbling, and exhibiting surges when
12 lightly applying the throttle at low speeds. The dealership service technician
13 noted that the transmission problems were “caused by: internal failure on
14 transaxle assembly” and consequently “replaced [the] transaxle assembly and
15 associated parts per bulletin T-SB-0160-18.”

16 26. Following the dealership visits, Plaintiffs’ vehicle has continued to
17 exhibit the 8AT Transmission Defect including hesitation and surging when
18 driving at low speeds, in stop-and-go traffic and when accelerating to join a
19 traffic flow. In particular, after the October 2019 transmission transaxle
20 assembly replacement, Plaintiffs’ vehicle has performed even more poorly than
21 before the replacement.

22 27. At all times, Plaintiffs, like all Class Members, have driven their
23 vehicle in a foreseeable manner in the sense that Mr. and Mrs. Murphy have not
24 abused their vehicle or used it for purposes unintended by Toyota such as drag
25 racing, for example. However, despite this normal and foreseeable driving, the
26 8AT Transmission Defect has rendered their vehicle unsafe and unfit to be used
27 as intended.

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1 **Plaintiffs Sharon and Brett Page**

2 28. Sharon and Brett Page are California citizens who reside in
3 Sebastopol, California.

4 29. In or around June 2019, Plaintiffs purchased a new 2019 Highlander
5 from Freeman Toyota, an authorized Toyota dealer in Santa Rosa, California.

6 30. Plaintiffs purchased their vehicle for personal, family, or household
7 use.

8 31. In January 2018, Plaintiffs began researching the 2019 Toyota
9 Highlander. At the dealership, they reviewed the vehicle's Monroney sticker
10 (a.k.a. window sticker) before purchase, test drove the vehicle, and spoke with an
11 employee of the authorized Toyota dealership regarding the 2019 Toyota
12 Highlander. The Toyota dealership employee told Plaintiffs the Highlander was
13 an excellent vehicle. Plaintiffs believed that the Highlander would be a safe and
14 reliable vehicle.

15 32. Toyota's omissions were material to Plaintiffs. Had Toyota
16 disclosed its knowledge of the 8AT Transmission Defect before Plaintiff
17 purchased their Highlander, Plaintiffs would have seen and been aware of the
18 disclosures. Furthermore, had they known of the 8AT Transmission Defect,
19 Plaintiffs would not have purchased their vehicle or would have paid less for it.

20 33. Within approximately one to two months after purchase, Plaintiffs'
21 vehicle was hesitating, lurching and surging forward when accelerating from a
22 stop and when driving at low speeds, in stop-and-go traffic, when driving up
23 hills, and when accelerating to join a traffic flow. These symptoms occur with or
24 without "eco" mode engaged.

25 34. Frustrated, Ms. Page called Freeman Toyota and complained that
26 the vehicle was hesitating and surging in the manner described above. The
27 dealership advised Ms. Page to disengage the "eco" mode, but despite doing so,
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1 the symptoms continued unabated.

2 35. With her symptoms worsening, Ms. Page brought her vehicle to
3 Freeman Toyota, again complaining of the symptoms listed above. The
4 dealership told her, falsely, that there was nothing wrong with her vehicle and
5 that, therefore, no repair would be provided.

6 36. On or around January 22, 2020, Plaintiff again returned to Freeman
7 Toyota, complaining of the symptoms listed above, which continued to steadily
8 worsen. On this visit, Plaintiff insisted that she be allowed to accompany the
9 dealership technician on a test drive. This time, the dealership verified, as
10 recorded on her repair order, that “there is a transmission delay at slow speeds.
11 Tech 14 was able to verify on test drive, diag and report / customer is leaving
12 vehicle with us for a few days so we have time to properly diagnose this.”
13 Accordingly, Ms. Page left her vehicle in the care of the Toyota dealership.

14 37. When Ms. Page returned after the prescribed diagnostic period, the
15 dealership told her that Toyota was unable to fix the problem the dealership had
16 verified. Instead, they advised Ms. Page to contact Toyota Motor Sales, U.S.A.,
17 Inc., to report the problem and seek resolution.

18 38. Ms. Page therefore contacted TMS by phone and requested that they
19 either fix her vehicle or provide her with a non-defective replacement. In
20 response, TMS admitted to Ms. Page that a problem exists with her transmission,
21 but that they were unable to fix the problem, and unwilling to provide any further
22 assistance.

23 39. Ms. Page attempted to sell her vehicle back to an authorized Toyota
24 dealership, but the price they quoted her was very low and would have resulted
25 in a massive loss to the Pages.

26 40. Following the dealership visits, Plaintiffs’ vehicle has continued to
27 exhibit the 8AT Transmission Defect, including hesitation and surging when
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1 accelerating from a stop, when driving at low speeds, in stop-and-go traffic,
2 when driving up hill, and when accelerating to join a traffic flow. Indeed, the
3 hesitation and delayed acceleration have only worsened over time.

4 41. At all times, Plaintiffs, like all Class Members, have driven their
5 vehicle in a foreseeable manner in the sense that Plaintiffs have not abused their
6 vehicle or used it for purposes unintended by Toyota such as drag racing, for
7 example. However, despite this normal and foreseeable driving, the 8AT
8 Transmission Defect has rendered their vehicle unsafe and unfit to be used as
9 intended.

10 **Plaintiff Tony Lander**

11 42. Tony Lander is a Florida citizen who resides in Alachua, Florida.

12 43. On December 28, 2018, Mr. Lander purchased a new 2019 Toyota
13 Highlander XLE from Gatorland Toyota, an authorized Toyota dealer in
14 Gainesville, Florida.

15 44. Mr. Lander purchased his vehicle for personal, family, or household
16 use.

17 45. Before purchase, Mr. Lander saw several commercials regarding the
18 Toyota Highlander. He researched the vehicle online, on both Toyota's website
19 and a local authorized Toyota dealership's website. At Gatorland Toyota, Mr.
20 Lander test drove the 2019 Highlander and reviewed the vehicle's Monroney
21 sticker (a.k.a. window sticker). Mr. Lander believed that the Highlander would
22 be a safe and reliable vehicle.

23 46. Toyota's omissions were material to Mr. Lander. Had Toyota
24 disclosed its knowledge of the 8AT Transmission Defect before Mr. Lander
25 purchased his Highlander, Mr. Lander would have seen and been aware of the
26 disclosures. Furthermore, had he known of the 8AT Transmission Defect, Mr.
27 Lander would not have purchased his vehicle or would have paid less for it.

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1 47. Shortly after purchase, Mr. Lander’s vehicle exhibited hesitation
2 and delayed acceleration when driving at low speeds, in stop-and-go traffic and
3 when accelerating to join a traffic flow.

4 48. On or around May 16, 2019, with approximately 6,529 miles on the
5 odometer, Mr. Lander brought his vehicle back to Gatorland Toyota,
6 complaining of the hesitation and delayed acceleration he was experiencing. The
7 dealership recorded his complaints on his repair order as “THE FIRST 2 GEARS
8 FEEL SLUGGISH.” In response, dealership told Mr. Lander, falsely, that there
9 was nothing wrong with his vehicle and that, therefore, no repair would be
10 provided.

11 49. On or around September 27, 2019, with 10,940 miles on the
12 odometer, Mr. Lander brought his vehicle back to Gatorland Toyota,
13 complaining of the hesitation and delayed acceleration he was experiencing. In
14 response, the dealership told Mr. Lander, falsely, that there was nothing wrong
15 with his vehicle and thus failed to perform any repairs.

16 50. On or around June 17, 2020, with 22,095 miles on the odometer,
17 Mr. Lander brought his vehicle back to Gatorland Toyota, complaining of the
18 hesitation and delayed acceleration he was experiencing. In response, the
19 dealership told Mr. Lander, falsely, that there was nothing wrong with his
20 vehicle and thus failed to perform any repairs.

21 51. On or around August 21, 2020, with 27,180 miles on the odometer,
22 Mr. Lander brought his vehicle back to Gatorland Toyota, complaining of the
23 hesitation and delayed acceleration he was experiencing. In response, the
24 dealership told Mr. Lander, falsely, that there was nothing wrong with his
25 vehicle and thus therefore failed to perform any repairs.

26 52. Following the dealership visits, Mr. Lander’s vehicle has continued
27 to exhibit the 8AT Transmission Defect, including hesitation and surging when
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1 driving at low speeds, in stop-and-go traffic, and when accelerating to join a
2 traffic flow.

3 53. At all times, Mr. Lander, like all Class Members, has driven his
4 vehicle in a foreseeable manner, in the sense that Mr. Lander has not abused his
5 vehicle or used it for purposes unintended by Toyota, such as drag racing, for
6 example. However, despite this normal and foreseeable driving, the 8AT
7 Transmission Defect has rendered his vehicle unsafe and unfit to be used as
8 intended.

9 **Plaintiff Joel Tilson**

10 54. Joel Tilson is a Wyoming citizen who resides in Cheyenne,
11 Wyoming.

12 55. On or around April 21, 2017, Plaintiff Tilson purchased a new 2017
13 Highlander from Toyota of Tacoma, an authorized Toyota dealer in Tacoma,
14 Washington.

15 56. Plaintiff Tilson purchased his vehicle for personal, family, or
16 household use.

17 57. Before purchase, Plaintiff Tilson researched the vehicle online
18 extensively, including on the Consumer Reports website. He also test drove the
19 vehicle with the sales representative, asked the dealership specifically about the
20 8-speed transmission, and reviewed the vehicle's Monroney sticker (a.k.a.
21 window sticker). Plaintiff Tilson believed that the Highlander would be a safe
22 and reliable vehicle.

23 58. Toyota's omissions were material to Plaintiff Tilson. Had Toyota
24 disclosed its knowledge of the 8AT Transmission Defect before Plaintiff Tilson
25 purchased his Highlander, Plaintiff Tilson would have seen and been aware of
26 the disclosures. Furthermore, had Plaintiff Tilson known of the 8AT
27 Transmission Defect, he would not have purchased his vehicle or would have
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1 paid less for it.

2 59. Within a week after purchase, Plaintiff Tilson’s vehicle exhibited
3 jerking and abrupt shifting of gears when driving at low speeds.

4 60. Thereafter, when Plaintiff Tilson took his vehicle to Toyota
5 dealerships for periodic service visits, he reported that the vehicle was jerking
6 and shifting abruptly while driving at low speeds. In response, dealership told
7 Plaintiff Tilson, falsely, that there was nothing wrong with his vehicle and that
8 therefore, no repair would be provided.

9 61. In or around January 2019, with approximately 25,000 miles on the
10 odometer, the transmission in Plaintiff Tilson’s vehicle failed completely.
11 Plaintiff Tilson was stopped at a stoplight, and, upon the light turning green,
12 released his foot from the brake pedal and pressed the accelerator pedal. Plaintiff
13 Tilson could hear the engine revving, but the vehicle did not move. With the
14 assistance of bystanders, Plaintiff Tilson was forced to push his vehicle, through
15 halted traffic, out of the intersection to the side of the road.

16 62. Plaintiff Tilson’s vehicle was towed to Spradley Barr Toyota, an
17 authorized Toyota dealership and service center in Cheyenne, Wyoming.
18 According to the repair order, Plaintiff Tilson reported that the "VEHICLE
19 STARTS AND RUNS BUT WILL NOT DRIVE AT ALL. NO FORWARD OR
20 REVERSE." The technician’s notes confirmed an "INTERNAL FAILURE, TSB
21 0160-18 ~|~25030 369011Q CONFIRMED CUSTOMER CONCERN.
22 PERFORMED T-SB-0160-18. R&R TRANSMISSION. PERFORMED FLUID
23 ADJUSTMENT. AND RESET MEMORY. TEST DROVE VEHICLE AND
24 CONFIRMED PROPER OPERATIONS."

25 63. However, following the transmission replacement, Plaintiff Tilson’s
26 vehicle has continued to exhibit the 8AT Transmission Defect by jerking and
27 abruptly shifting gears when driving at low speeds.

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1 64. At all times, Plaintiff Tilson, like all Class Members, has driven his
2 vehicle in a foreseeable manner in the sense that Plaintiff Tilson has not abused
3 his vehicle or used it for purposes unintended by Toyota such as drag racing, for
4 example. However, despite this normal and foreseeable driving, the 8AT
5 Transmission Defect has rendered his vehicle unsafe and unfit to be used as
6 intended.

7 **Defendants**

8 65. Defendant Toyota Motor Sales, U.S.A., Inc. (“TMS”), is a
9 corporation organized and in existence under the laws of the State of California
10 and registered to do business in the State of California. TMS is headquartered at
11 6565 Headquarters Dr, Plano, TX 75024. TMS designs and manufactures motor
12 vehicles, parts, and other products for sale in California, in the United States, and
13 throughout the world. TMS is the warrantor and distributor of the Class Vehicles
14 in California.

15 66. Defendant Toyota Motor North America, Inc. (“TMNA”), is a
16 corporation organized and in existence under the laws of the State of California
17 and registered to do business in the State of California. TMNA is headquartered
18 at 6565 Headquarters Dr, Plano, TX 75024. According to Toyota’s official
19 website, TMNA “brings together Toyota’s marketing, sales, engineering and
20 manufacturing arms in North America on one shared, state-of-the-art campus.”

21 67. Founded in 1937 and headquartered in Toyota City, Japan,
22 Defendant Toyota Motor Corporation (“TMC”) is a corporation organized under
23 the laws of Japan. TMC manufactures and distributes automobiles and is the
24 parent company.

25 68. Defendants, through their various entities, design, manufacture,
26 market, distribute, service, repair, sell, and lease passenger vehicles, including
27 the Class Vehicles, nationwide and in California, Colorado, Florida, and
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1 Washington.

2 69. At all relevant times, Defendants were and are engaged in the
3 business of designing, manufacturing, constructing, assembling, marketing,
4 distributing, and selling automobiles and motor vehicle components in Riverside
5 County and throughout the United States of America.

6 **JURISDICTION**

7 70. This is a class action.

8 71. Members of the proposed Class, which includes citizens of
9 Colorado, are citizens of states other than Texas, where TMS and TMNA are
10 headquartered, and California, where TMS and TMNA are incorporated.

11 72. On information and belief, aggregate claims of individual Class
12 Members exceed \$5,000,000.00 in value, exclusive of interest and costs.

13 73. This Court has personal jurisdiction over Defendants because at
14 least one of them is a California corporation registered to conduct business in
15 California, and/or they all have sufficient minimum contacts with California, and
16 otherwise intentionally avail themselves of the markets within California,
17 through the promotion, sale, marketing and distribution of its vehicles in
18 California, so as to render the exercise of jurisdiction by this Court proper and
19 necessary.

20 74. Accordingly, jurisdiction is proper in this Court pursuant to 28
21 U.S.C. § 1332(d).

22 **VENUE**

23 75. Toyota, through its business of distributing, selling, and leasing the
24 Class Vehicles, has established sufficient contacts in this district such that
25 personal jurisdiction is appropriate. Toyota is deemed to reside in this district
26 pursuant to 28 U.S.C. § 1391(a).

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FACTUAL ALLEGATIONS

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2 76. Since 2016, Toyota has designed, manufactured, distributed, sold,
3 and leased the Class Vehicles. Toyota has sold, directly or indirectly, through
4 dealers and other retail outlets, thousands of Class Vehicles in California,
5 Colorado, Florida, Washington, and nationwide. Toyota warrants and services
6 the Class Vehicles through its nationwide network of authorized dealers and
7 service providers.

8 77. Plaintiffs and Class members are intended third-party beneficiaries
9 of contracts between Toyota and its dealerships; specifically, they are the
10 intended beneficiaries of Toyota’s implied warranties. The dealerships are
11 Defendant’s agents for sales and repairs. The dealers were not intended to be the
12 ultimate consumers of the Class Vehicles, and the warranty agreements were
13 designed for and intended to benefit the ultimate consumers only.

14 78. The Class Vehicles are equipped with Toyota’s Direct Shift-8AT, a
15 transverse, eight-speed transmission, which Toyota developed in a joint venture
16 with Aisin AW, a third-party transmission manufacturer. As noted in Aisin’s
17 June 2019 summary of its major powertrain products, this high torque capacity
18 transmission is for use in Toyota Highlander and Sienna vehicles.⁷

19 79. In 2016, Toyota touted the Direct Shift-8AT transmission as a new
20 technology that would provide customers with “quick and smooth response to
21 accelerator pedal operation” which would “create[] an ‘as desired’ direct driving
22 feel..”⁸ In practice, however, Toyota’s Direct Shift-8AT Transmission is plagued
23 by numerous problems and safety concerns.

24 80. On information and belief, in response to heightened consumer
25 demand and governmental pressure to reach unprecedented miles-per-gallon

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27 ⁷ Available at <https://www.aisin-aw.co.jp/en/corporate/module/pdf/corporate/summary/index/data.pdf>

28 ⁸ Available at <https://global.toyota/en/powertrain/transmission/>

1 ratings, Toyota attempted to create an 8-speed transmission for a compact,
2 transverse application by using a single axis and only two planetary gears, rather
3 than the typical four. Unfortunately, while Toyota touted the resulting Direct
4 Shift 8AT transmission as “achieving one of the world’s best transmission
5 efficiencies” that “lower[] a vehicle’s fuel requirements” and even improving
6 “straight driving” and “cornering stability,”⁹ in practice, the new transmission
7 design causes harsh and delayed shifting, delayed and unpredictable and
8 unintended acceleration, jerking, lurching forward, lack of power, and other
9 symptoms listed *supra*.

10 81. For years, and since the Class Vehicles were first released or shortly
11 thereafter, scores of class members have complained of the defect to the NHTSA
12 and elsewhere. For example, the 2017 Highlander owner below reported in
13 NHTSA ID 11129582:

14 2017 HIGHLANDER LIMITED. 11,800 MILES. OVER
15 THE LAST 30 DAYS THE VEHICLE HAS HAD 3
16 SIMILAR EVENTS OF VEHICLE HESITATION OR
17 STUMBLING FROM A FULL STOP, WHEN
18 APPLYING FULL ACCELERATOR PEDAL
19 TRAVEL. THE VEHICLE SEEMS TO ACCELERATE
20 NORMALLY FOR A SECOND OR TWO, THEN JUST
21 SEEMS TO HANG AT 5-10 MPH. PUMPING THE
22 ACCELERATOR PEDAL QUICKLY FULL UP, FULL
23 DOWN MAY HAVE FIXED THE PROBLEM, I'M
24 NOT REALLY SURE, BUT THAT IS WHAT I
25 DID.THE VEHICLE OPERATES NORMALLY
26 AFTER THAT.IN THE LAST AND MOST
27 FRIGHTENING EPISODE, I WAS AT A STOP,ON A
28 SIDE STREET WAITING TO TURN ONTO A
FRONTAGE ROAD WHERE TYPICAL SPEEDS ARE
60 MPH. I PRESSED THE ACCELERATOR PEDAL
FULL DOWN TO THE FLOOR AND TURNED ONTO
THE FRONTAGE ROAD. THE VEHICLE SEEMED
TO ACCELERATE NORMALLY FOR 1-2 SECONDS,
THEN AS BEFORE, JUST STAYED AT 5-10 MPH
WITH A CAR COMING UPON MY REAR AT 60
MPH. FORTUNATELY FOR ME HE WAS ABLE TO
CHANGE LANES AND AVOID RUNNING INTO
ME. I PUMPED THE ACCELERATOR PEDAL AS
DESCRIBED. THE VEHICLE THAN RESPONDED

⁹ *Id.*

1 NORMALLY. I DON'T REMEMBER IF THE
2 VEHICLE WAS IN POWER OR ECONOMY MODE. I
3 TYPICALLY PUT IT INTO POWER MODE BEFORE
4 ENTERING THE HIGHWAY (WHICH I WAS
5 ABOUT TO DO ON THE FAR SIDE OF THE
6 FRONTAGE ROAD) IF I REMEMBER. AS YOU
7 MAY IMAGINE THIS LAST EPISODE LEFT ME
8 QUITE DISTURBED. I ALWAYS USE REGULAR
9 GRADE GASOLINE FROM TOP NAME GAS
10 STATIONS. THESE EVENTS HAPPENED WITH
11 DIFFERENT TANKS OF GAS FROM DIFFERENT
12 STATIONS. I TOOK THE VEHICLE TO THE
13 DEALERSHIP. THEY WERE NOT ABLE TO READ
14 ANY ERROR CODES FROM THE COMPUTER, AND
15 WERE UNABLE TO REPEAT THE PROBLEM IN A
16 TEST DRIVE. THEY HAVE ESCALATED THE CASE
17 TO THE TOYOTA ENGINEERING TEAM.

18 82. The Direct Shift 8AT is comprised of two planet gear sets. The first
19 set from the input side is a conventional planetary, followed by a Ravigneau
20 (double) planetary. When this arrangement is used, it creates what is termed a
21 “LePelletier” gear set. Typically, a LePelletier gear set will achieve six forward
22 speeds and one reverse. In the Class Vehicles, the transmission utilizes holds on
23 some of the rotating elements, thus creating a “modified LePelletier” gear set
24 with eight forward speeds.

25 83. The 8AT Transmission Defect exposes Plaintiffs and Class
26 Members to a safety hazard and renders their vehicles unreasonably dangerous
27 due to the unsafe conditions the Defect causes, including hesitation, delayed and
28 unpredictable and unintended acceleration, jerking and lurching, harsh and
29 delayed engagement, and lack of power.

30 84. The 8AT Transmission Defect affects the vehicles’ safety because,
31 among other reasons, there are situations that require the ability to accelerate
32 rapidly (e.g., merging onto the highway and changing lanes) in which the
33 vehicles’ delayed response poses a serious safety risk.

34 85. The Class Vehicles’ 8AT Transmission utilizes high fluid pressure
35 to actuate shifts. The pressure is produced by a hydraulic pump regulated by a

1 pressure relief valve. The valve body, in turn, is electronically controlled by the
2 PCM. In order to engage the clutch packs and actuate shifts in response to driver
3 input, the valve body applies pressure by activating solenoids at precise times to
4 open hydraulic valves inside the valve body at varying pressure ramp-up rates.
5 However, improper calibration between the PCM and transmission prevents the
6 valve body from applying appropriately timed pressure, which in turn prevents
7 the various gears' clutch packs from being actuated in time. On information and
8 belief, this causes the symptoms of "shift shock" and delays before engagement
9 of gears, as well as other symptoms of the 8AT Transmission defect.

10 86. The 8AT Transmission Defect alleged is inherent in and the same
11 for all Class Vehicles.

12 87. The 8AT Transmission Defect is material to consumers because it
13 presents a serious safety concern. For example, delayed and unintended
14 acceleration, unpredictable engagement and shifting, jerking, lurching, and lack
15 of power severely affect the driver's ability to control the car's speed,
16 acceleration, and deceleration, and can make it difficult to safely merge into
17 traffic or to turn left across incoming traffic.

18 88. Class Member complaints to NHTSA, cited *infra*, demonstrate the
19 unsafe and widespread nature of the 8AT Transmission Defect.

20 **I. Toyota Had Superior and Exclusive Knowledge of the 8AT**
21 **Transmission Defect**

22 89. Toyota had superior and exclusive knowledge of the 8AT
23 Transmission Defect and knew or should have known that the defect was not
24 known or reasonably discoverable by Plaintiffs and Class Members before they
25 purchased or leased the Class Vehicles.

26 90. Plaintiffs are informed and believe, and based thereon allege that
27 before Plaintiffs purchased their Class Vehicle, and since 2016, if not earlier,
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1 Toyota knew about the 8AT Transmission Defect through sources not available
2 to consumers, including pre-release testing data, early consumer complaints to
3 Toyota and its dealers, testing conducted in response to those complaints, high
4 failure rates and replacement part sales data, and other aggregate data from
5 Toyota dealers about the problem. Publicly available facts set forth *infra* further
6 confirm Toyota's knowledge.

7 91. Toyota is experienced in the design and manufacture of consumer
8 vehicles. As an experienced manufacturer, Toyota conducts tests, including pre-
9 sale durability testing, on incoming components, including the Direct Shift-8AT
10 Transmissions, to verify the parts are free from defect and align with Toyota's
11 specifications. Thus, Toyota knew or should have known that the subject Direct
12 Shift-8AT Transmissions were defective and prone to put drivers in a dangerous
13 position due to the inherent risk of the defect.

14 92. Additionally, Toyota should have learned of this widespread defect
15 from the sheer number of reports received from dealerships and from customer
16 complaints directly to Toyota. Toyota's customer relations department collects
17 and analyzes field data including, but not limited to, repair requests made at
18 dealerships, technical reports prepared by engineers who have reviewed vehicles
19 for which warranty coverage is being requested, parts sales reports, and warranty
20 claims data.

21 93. Toyota's warranty department similarly analyzes and collects data
22 submitted by its dealerships in order to identify trends in its vehicles. It is
23 Toyota's policy that when a repair is made under warranty the dealership must
24 provide Toyota with detailed documentation of the problem and the fix
25 employed to correct it in order to be reimbursed. Dealerships have an incentive
26 to provide detailed information to Toyota, because they will not be reimbursed
27 for any repairs unless the justification is sufficiently detailed.

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1 **A. Toyota’s Technical Service Bulletins Concerning the Class**
2 **Vehicles and Attempted Ineffectual Fixes**

3 94. Toyota quietly issues notifications to its dealerships – but not
4 consumers – called Technical Service Bulletins (“TSBs.”) Through TSBs,
5 Toyota provides directions to its authorized dealerships for how to respond to
6 customer complaints and requests for repairs.

7 95. Shortly after release of the 2017 model year Highlander and Sienna
8 vehicles in 2016, Consumer Reports tested them and noted that:

9 The transmission made the engine rev before upshifting,
10 especially from second to third gear, even under light
11 acceleration. This delayed shifting increased engine
12 noise and made driving rather unpleasant.¹⁰

13 96. When Consumer Reports’ staff members test drove the vehicles
14 “they routinely asked ‘What’s wrong with this transmission?’” *Id.* As a result, in
15 December of 2016 Consumer Reports shared its experience with Toyota.
16 According to Consumer Reports, “[t]he company re-evaluated the transmission
17 and agreed with our finding.”

18 97. On February 20, 2017, Toyota issued T-SB-0187-17, titled “High
19 RPM Shift Point” that applied to the 2017 Sienna. This TSB is attached as
20 **Exhibit 1**. The TSB stated that “Some 2017 model year Sienna vehicles may
21 exhibit the following conditions: • Lack of power from stop • High RPM shift
22 points at 2 – 3 shift • Hesitation in lower gears • Holds gear too long.” This TSB
23 called for a software update to modify the PCM logic for the Sienna. On
24 information and belief, this TSB failed to resolve the 8AT Transmission Defect.
25 This TSB was not issued as part of a formal recall or service campaign.

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27 ¹⁰ See <https://www.consumerreports.org/toyota/2017-toyota-highlander-sienna-transmissions-updated-to-shift-smoother/>.

1 98. On March 2, 2017, Toyota issued T-SB-0194-17, titled “Lack of
2 Power/High RPM Shift Point/Hesitation” that applied to the 2017 Highlander.
3 This TSB is attached as **Exhibit 2**. The TSB stated that “Some 2017 model year
4 Highlander vehicles may exhibit the following conditions: • Lack of power. •
5 High RPM shift point at the 2 – 3 shift. • Hesitation in low gears.” This TSB
6 called for a software update to modify the PCM logic for the Highlander. On
7 information and belief, this TSB failed to resolve the 8AT Transmission Defect.
8 This TSB was not issued as part of a formal recall or service campaign.

9 99. Although Consumer Reports noted the software update made a
10 difference, it concluded “[u]nfortunately, we found that shifting remains less
11 smooth for both compared with the previous six-speed automatic in pre-2017
12 models, even after the update.” On information and belief, any improvement was
13 inadequate and temporary at best, and these software updates failed to resolve
14 transmission issues which continue to plague both the Highlander and Sienna.
15 Indeed, both vehicles have been the subject of additional service bulletins
16 regarding similar transmission issues (*e.g.*, harsh shifting, reduced power, etc).

17 100. On December 17, 2018, Toyota issued TSB 0160-18, “Transaxle
18 Whine Noise, Harsh Shift, MIL ON, or Reduced Power” that applied to the
19 2017-2018 Toyota Highlander and Toyota Sienna. This TSB is attached as
20 **Exhibit 3**. Toyota issued this TSB in response to those vehicles exhibiting a
21 harsh shift, reduced power, a whine noise while driving, and a malfunction
22 indicator lamp illuminating. In this TSB, Toyota directed its authorized
23 dealerships to replace the transmissions with a “remanufactured” transmission
24 where applicable. On information and belief, this TSB failed to resolve the 8AT
25 Transmission Defect. This TSB was not issued as part of a formal recall or
26 service campaign.

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1 101. On April 18, 2019, Toyota issued “Customer Support Program ZJC”
2 as part of Toyota’s “continuing efforts to ensure the best in customer
3 satisfaction.” Under the Program, Toyota agreed to provide additional warranty
4 coverage for the transmission on 2017-2018 Model Year Toyota Sienna and
5 Highlander vehicles for damage caused by an insufficiently bent washer tab
6 within the transmission. Toyota acknowledged that it “has received reports about
7 potential symptoms, such as a whine noise from the transmission while driving,
8 harsh shifting, reduced power, and master warning light/check engine light
9 illumination....”

10 102. On information and belief, neither the TSBs nor the Customer
11 Support Program resolved the 8AT Transmission Defect.

12 **B. Toyota’s TSBs for Other Non-Class Vehicles Equipped With the**
13 **Direct Shift-8AT Transmission**

14 103. The TSBs listed *supra*, all of which are specific to the Class
15 Vehicles, demonstrate and establish Toyota’s pre-sale knowledge of the Defect.
16 As a supplement and for further context, Plaintiffs also list below the TSBs that
17 Toyota issued for *other* Toyota-made vehicles equipped with the same or
18 substantially similar UA80 / UB80 Direct Shift-8AT Transmission. These TSBs
19 further indicate that Toyota was aware of the problem inherent in this
20 transmission.

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1 104. On February 8, 2017, Toyota issued a TSB regarding the 2016 to
2 2017 Lexus RX 350. In the TSB, entitled “ECM Calibration: Hesitation
3 Concerns,” No. L-SB-0109-17, Toyota notified its dealerships that the 2016-
4 2017 RX 350 Vehicles were exhibiting “a hesitation in one or more of the
5 following conditions:

- 6 • Accelerating from a stop.
- 7 • Passing during freeway/city driving.
- 8 • Low speed reacceleration.”

9 105. In the TSB, consistent with Plaintiffs’ description of the 8AT
10 Transmission Defect, Toyota advises dealerships that the “Engine Control
11 Module (ECM, SAE term: Powertrain Control Module/PCM) calibration has
12 been revised to address these conditions.” As noted in the TSB, Toyota uses the
13 terms Powertrain Control Module and Engine Control Module interchangeably.

14 106. On February 8, 2019, Toyota issued a TSB regarding the 2019
15 Lexus RX350 entitled “Harsh Engagement Into Drive.” In the TSB, Toyota
16 informed its dealerships that the 2019 RX 350 vehicles were exhibiting “harsh
17 engagement when shifting into drive” and that the vehicles’ computers were
18 indicating “Pressure Control Solenoid “A” Actuator Stuck off.” Consumers often
19 describe harsh engagement when shifting into gear as “jerking” or “jerking into
20 gear.” In response, Toyota directed its dealerships to update the vehicles’
21 Powertrain Control Module software, which Toyota had again modified to
22 address the 8AT Transmission Defect.

23 107. On July 2, 2019, Toyota issued a TSB to its dealerships specific to
24 the 2016-2019 Lexus RX 350. The TSB was entitled “Vehicle Bucking on 1 – 2
25 and/or 2-3 Upshifts and Surge Between 0 – 46 mph.” In the TSB, Toyota notified
26 its dealerships that the 2016-2019 RX 350 vehicles were exhibiting “one or both
27 of the following conditions:
28

- 1 • A bucking feeling (back and forth jerking that comes right after a
- 2 shift but then dissipates quickly after 1-2 and/or 2-3 upshifts)
- 3 • A surge feeling (back and forth rocking that is not associated with
- 4 transmission shifts) when the vehicle is traveling between 0 – 46
- 5 mph, transmission is in 3rd – 8th gear, and torque converter is in full
- 6 lock-up.”

7 108. On information and belief, these TSBs have been ineffective. For
8 example, RX 350 Vehicle owners discussing TSB L-SB-0109-17 online
9 complained of its inefficacy. Below is an example of such a complaint, and
10 others appear *infra* (spelling / grammar errors corrected):

11 “Doesn’t hurt to try the TSB, but it has also NOT worked for some,
12 including me. I’ve had it applied correctly, and it's not a permanent
13 fix. I consider the TSB a failure.”¹¹

14 109. In response, Toyota directed its dealerships to update the Powertrain
15 Control Module software, which Toyota had again modified to address the 8AT
16 Transmission Defect.

17 110. On December 11, 2017, Toyota issued TSB 0330-17, “SHIFT
18 SHOCK ON INITIAL STARTUP OR REACCELERATION.” Toyota issued
19 this TSB to address customer complaints regarding the Direct Shift-8AT
20 Transmission. The TSB provided that “some 2018 model year Camry vehicles
21 may exhibit a shift shock from Park to Reverse on initial startup or delay/shock
22 when reaccelerating quickly after slowing down to a stop or near stop. The
23 Engine Control Module (ECM) (SAE term: Powertrain Module [PCM]) logic has
24 been updated to address this condition.” On information and belief, this TSB
25 failed to resolve the 8AT Transmission Defect. This TSB was not issued as part
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27 ¹¹ [https://www.clubexus.com/forums/rx-4th-gen-2016-present/808183-](https://www.clubexus.com/forums/rx-4th-gen-2016-present/808183-hesitation-problem-at-various-speeds-tsb-info-post-159-a-28.html#post9877542)
28 [hesitation-problem-at-various-speeds-tsb-info-post-159-a-28.html#post9877542](https://www.clubexus.com/forums/rx-4th-gen-2016-present/808183-hesitation-problem-at-various-speeds-tsb-info-post-159-a-28.html#post9877542)

1 of a formal recall or service campaign.

2 111. On January 8, 2018, Toyota issued TSB 00001-18. Toyota issued
3 this TSB to address concerns of “harsh shift or shift flare” after transmission
4 replacements due to a software mismatch.

5 112. On February 2, 2018, Toyota released T-SB-0010-18 that address
6 concerns of “harsh shift or shift flare” after transmission replacements in 2018
7 Camrys due to a software mismatch and acknowledges that mismatched Engine
8 Control Module (ECM), also called the Power Control Module (PCM), software
9 and transaxle assembly combinations may result in a harsh shift or shift flare.
10 While this TSB purports to provide a method for correctly matching the PCM
11 calibration and transaxle, on information and belief there are no PCMs for the
12 Class Vehicles that are correctly calibrated for the Class Vehicles’ transaxle
13 assemblies. This TSB was also not issued as part of a formal recall or service
14 campaign.

15 **C. Consumer Complaints Reported to NHTSA and on Third-Party**
16 **Websites**

17 113. In addition, Toyota monitors customers’ complaints made to the
18 National Highway Traffic Safety Administration (“NHTSA.”) Federal law
19 requires automakers like Toyota to be in close contact with NHTSA regarding
20 potential auto defects, including imposing a legal requirement (backed by
21 criminal penalties) compelling the confidential disclosure of defects and related
22 data by automakers to NHTSA, including field reports, customer complaints, and
23 warranty data. *See TREAD Act*, Pub. L. No. 106-414, 114 Stat.1800 (2000).

24 114. Automakers have a legal obligation to identify and report emerging
25 safety-related defects to NHTSA under the Early Warning Report requirements.
26 *Id.* Similarly, automakers monitor NHTSA databases for consumer complaints
27 regarding their automobiles as part of their ongoing obligation to identify
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1 potential defects in their vehicles, including safety-related defects. *Id.* Thus,
2 Toyota knew or should have known of the many complaints about the 8AT
3 Transmission Defect logged by NHTSA Office of Defect Investigation (ODI),
4 and the content, consistency, and large number of those complaints alerted, or
5 should have alerted, Toyota to the 8AT Transmission Defect.

6 115. Attached as **Exhibit 4** are some examples of the complaints that
7 owners and lessees of the Class Vehicles have made to NHTSA concerning the
8 8AT Transmission Defect:

9 116. Class Vehicle owners also reported the 8AT Transmission Defect in
10 online forums, examples of which are attached as **Exhibit 5**.

11 117. The existence of the 8AT Transmission Defect is a material fact that
12 a reasonable consumer would consider when deciding whether to purchase or
13 lease a Class Vehicle. Had Plaintiffs and other Class Members known of the 8AT
14 Transmission Defect, they would have paid less for the Class Vehicles or would
15 not have purchased or leased them.

16 118. Reasonable consumers, like Plaintiffs, reasonably expect that a
17 vehicle's Direct Shift-8AT Transmissions are safe, will function in a manner that
18 will not pose a safety risk, and are free of defects, all of which was not true with
19 respect to the Direct Shift-8AT Transmissions in the Class Vehicles. They also
20 expected that the Class Vehicles would be fit for the ordinary purpose of driving
21 their Class Vehicles with normal and reliable acceleration and deceleration, and
22 without harsh or delayed shifting and engagement, delayed acceleration,
23 hesitation, jerking, unintended acceleration, lurching, and excessive revving
24 before upshifting which they were not due to the 8AT Transmission Defect.
25 Plaintiffs and Class Members further reasonably expect that Toyota will not sell
26 or lease vehicles with known safety defects, such as the 8AT Transmission
27 Defect, and will disclose any such defects to its consumers when it learns of
28

1 them. They did not expect Toyota to fail to disclose the 8AT Transmission
2 Defect to them and to continually deny it.

3 **II. Toyota Has Actively Concealed the 8AT Transmission Defect**

4 119. Despite its knowledge of the 8AT Transmission Defect in the Class
5 Vehicles, Toyota actively concealed the existence and nature of the defect from
6 Plaintiffs and Class Members. Specifically, Toyota failed to disclose or actively
7 concealed at and after the time of purchase, lease, or repair:

- 8 (a) any and all known material defects or material nonconformity
9 of the Class Vehicles, including the defects pertaining to the
10 Direct Shift-8AT Transmissions;
- 11 (b) that the Class Vehicles, including the Direct Shift-8AT
12 Transmissions, were unsafe, not in good in working order,
13 were defective, were in need of repair and possibly
14 recalibration or other software mechanisms, and were not fit
15 for their intended purposes; and
- 16 (c) that the Class Vehicles and the Direct Shift-8AT
17 Transmissions were defective, despite the fact that Toyota
18 learned of such defects as early as 2017.

19 **CLASS ACTION ALLEGATIONS**

20 120. Plaintiffs bring this lawsuit as a class action on behalf of themselves
21 and all others similarly situated as members of the proposed Class pursuant to
22 Federal Rules of Civil Procedure 23(a) and 23(b)(3). This action satisfies the
23 numerosity, commonality, typicality, adequacy, predominance, and superiority
24 requirements of those provisions.

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1 121. The Class and Sub-Class are defined as:

2 **Class:** all persons in the United States who purchased any 2017 to
3 present Toyota Highlander or any 2017 to present Toyota Sienna
4 (“the Class Vehicles”).

4 **California Sub-Class:** All persons who purchased any 2017 to
5 present Toyota Highlander or any 2017 to present Toyota Sienna in
6 the State of California.

6 **CLRA Sub-Class:** All members of the California Sub-Class who are
7 “consumers” within the meaning of California Civil Code § 1761(d).

8 **Colorado Sub-Class:** All persons who purchased any 2017 to
9 present Toyota Highlander or any 2017 to present Toyota Sienna in
10 the State of Colorado.

10 **Florida Sub-Class:** All persons who purchased any 2017 to present
11 Toyota Highlander or any 2017 to present Toyota Sienna in the
12 State of Florida.

12 **Washington Sub-Class:** All persons who purchased any 2017 to
13 present Toyota Highlander or any 2017 to present Toyota Sienna in
14 the State of Washington.

14 122. Excluded from the Class and Sub-Class are: (1) Defendants, any
15 entity or division in which Defendants has a controlling interest, and their legal
16 representatives, officers, directors, assigns, and successors; (2) the Judge to
17 whom this case is assigned and the Judge’s staff; (3) any Judge sitting in the
18 presiding state and/or federal court system who may hear an appeal of any
19 judgment entered; and (4) those persons who have suffered personal injuries as a
20 result of the facts alleged herein. Plaintiffs reserve the right to amend the Class
21 and Sub-Class definitions if discovery and further investigation reveal that the
22 Class and Sub-Class should be expanded or otherwise modified.

23 123. **Numerosity:** Although the exact number of Class Members is
24 uncertain and can only be ascertained through appropriate discovery, the number
25 is great enough such that joinder is impracticable. The disposition of the claims
26 of these Class Members in a single action will provide substantial benefits to all
27 parties and to the Court. The Class Members are readily identifiable from
28

1 information and records in Defendants' possession, custody, or control, as well
2 as from records kept by the Department of Motor Vehicles.

3 124. Typicality: Plaintiffs' claims are typical of the claims of the Class in
4 that Plaintiffs, like all Class Members, purchased or leased a Class Vehicle
5 designed, manufactured, and distributed by Toyota. The representative Plaintiffs,
6 like all Class Members, have been damaged by Defendants' misconduct in that
7 they have incurred or will incur the cost of repairing or replacing the defective
8 Transmissions. Furthermore, the factual bases of Toyota's misconduct are
9 common to all Class Members and represent a common thread resulting in injury
10 to the Class.

11 125. Commonality: There are numerous questions of law and fact
12 common to Plaintiffs and the Class that predominate over any question affecting
13 Class Members individually. These common legal and factual issues include the
14 following:

- 15 (a) Whether Class Vehicles suffer from defects relating to the
16 Direct Shift-8AT Transmissions;
- 17 (b) Whether the defects relating to the Direct Shift-8AT
18 Transmissions constitute an unreasonable safety risk;
- 19 (c) Whether Defendants knows about the defects pertaining to the
20 Direct Shift-8AT Transmissions and, if so, how long
21 Defendants has known of the defect;
- 22 (d) Whether the defective nature of the Direct Shift-8AT
23 Transmissions constitutes a material fact;
- 24 (e) Whether Defendants has a duty to disclose the defective
25 nature of the Direct Shift-8AT Transmissions to Plaintiffs and
26 Class Members;
- 27 (f) Whether Defendants knew or reasonably should have known
28

1 of the defects pertaining to the Direct Shift-8AT
2 Transmissions before they sold and leased Class Vehicles to
3 Class Members;

4 (g) Whether Defendants should be declared financially
5 responsible for notifying the Class Members of problems with
6 the Class Vehicles and for the costs and expenses of repairing
7 and replacing the defective Direct Shift-8AT Transmissions;

8 (h) Whether Defendants are obligated to inform Class Members
9 of their right to seek reimbursement for having paid to
10 diagnose, repair, or replace their defective Direct Shift-8AT
11 Transmissions;

12 (i) Whether Defendants breached the consumer protection
13 statutes under the laws of the states of California, Florida, and
14 Washington;

15 (j) Whether Defendants breached the implied warranty of
16 merchantability under the laws of the states of Colorado,
17 California, Florida, and Washington;

18 126. Adequate Representation: Plaintiffs will fairly and adequately
19 protect the interests of the Class Members. Plaintiffs have retained attorneys
20 experienced in the prosecution of class actions, including consumer and product
21 defect class actions, and he intends to prosecute this action vigorously.

22 127. Predominance and Superiority: Plaintiffs and Class Members have
23 all suffered and will continue to suffer harm and damages as a result of
24 Defendants' unlawful and wrongful conduct. A class action is superior to other
25 available methods for the fair and efficient adjudication of the controversy.
26 Absent a class action, most Class Members would likely find the cost of
27 litigating their claims prohibitively high and would therefore have no effective
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1 remedy. Because of the relatively small size of the individual Class Members’
2 claims, it is likely that only a few Class Members could afford to seek legal
3 redress for Defendants’ misconduct. Absent a class action, Class Members will
4 continue to incur damages, and Defendants’ misconduct will continue without
5 remedy or relief. Class treatment of common questions of law and fact would
6 also be a superior method to multiple individual actions or piecemeal litigation in
7 that it will conserve the resources of the courts and the litigants and promote
8 consistency and efficiency of adjudication.

9
10 **FIRST CAUSE OF ACTION**

11 **(Breach of Implied Warranty)**

12 **On Behalf of the Class or, Alternatively, the California, Colorado, Florida,**
13 **and Washington Sub-Classes and Their Named Representatives**

14 128. Plaintiffs incorporate by reference the allegations contained in the
15 preceding sections of the complaint.

16 129. Plaintiffs Dennis Murphy, Deborah Murphy, Sharon Page, Brett
17 Page, Tony Lander, and Joel Tilson bring this Count individually, and for the
18 Class or, in the alternative, the California, Colorado, Florida and Washington
19 Sub-Classes.

20 130. Toyota impliedly warranted that the Class Vehicles were
21 merchantable, fit and safe for their ordinary use, not otherwise injurious to
22 consumers, and equipped with adequate safety warnings.

23 131. Privity of contract is not required in this case, because Plaintiffs and
24 Class Members are intended third-party beneficiaries of contracts between TMS
25 and its dealerships; specifically, they are the intended beneficiaries of
26 Defendants’ implied warranties. Toyota’s vehicles are sold to consumers through
27 a network of TMS’s authorized dealerships, who are TMS’s agents for sales and
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1 repairs. The dealers were not intended to be the ultimate consumers of the Class
2 Vehicles, and the warranty agreements were designed for and intended to benefit
3 the ultimate consumers only.

4 132. Because the Class Vehicles are equipped with a defective Direct
5 Shift-8AT Transmission, the vehicles purchased or leased and used by Plaintiffs
6 and the Colorado Sub-Class are unsafe, unfit for their ordinary use when sold,
7 and not merchantable. Toyota breached the implied warranty of merchantability,
8 as stated in the Uniform Commercial Code, by selling or leasing Class Vehicles
9 to Plaintiffs and the Colorado Sub-Class.

10 133. Plaintiffs and the Colorado Sub-Class seek full compensatory
11 damages allowable by law, attorneys' fees, costs, punitive damages, and any
12 other relief to which Plaintiffs and the Colorado Sub-Class may be entitled.

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14

SECOND CAUSE OF ACTION

15

(Breach of Implied Warranty Pursuant to Song-Beverly Consumer

16

Warranty Act, California Civil Code §§ 1792 and 1791.1, et seq.)

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On Behalf of Plaintiffs Sharon and Brett Page and the California Sub-Class

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134. Plaintiffs incorporate by reference the allegations contained in the
19 preceding sections of the complaint.

20

135. Plaintiffs Sharon and Brett Page bring this cause of action against
21 Defendants on behalf of themselves and the California Sub-Class.

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136. Toyota was at all relevant times the manufacturer, distributor,
23 warrantor, and/or seller of the Class Vehicles. Toyota knew or had reason to
24 know of the specific use for which the Class Vehicles were purchased or leased.

25

137. Toyota provided the Page Plaintiffs and Class Members with an
26 implied warranty that the Class Vehicles and their components and parts are
27 merchantable and fit for the ordinary purposes for which they were sold.

28

1 However, the Class Vehicles are not fit for their ordinary purpose of providing
2 reasonably reliable and safe transportation because, *inter alia*, the Class Vehicles
3 and their Direct Shift-8AT Transmissions suffered from an inherent defect at the
4 time of sale and thereafter and are not fit for their particular purpose of providing
5 safe and reliable transportation.

6 138. Toyota impliedly warranted that the Class Vehicles were of
7 merchantable quality and fit for their intended use. This implied warranty
8 included, among other things: (i) a warranty that the Class Vehicles and their
9 Direct Shift-8AT Transmissions, which were manufactured, supplied,
10 distributed, and/or sold by Toyota, would provide safe and reliable
11 transportation; and (ii) a warranty that the Class Vehicles and their Direct Shift-
12 8AT Transmissions would be fit for their intended use.

13 139. Contrary to the applicable implied warranties, the Class Vehicles
14 and their Direct Shift-8AT Transmissions at the time of sale and thereafter were
15 not fit for their ordinary and intended purpose of providing the Page Plaintiffs
16 and Class Members with reliable, durable, and safe transportation. Instead, the
17 Class Vehicles are defective, including the defective Direct Shift-8AT
18 Transmissions.

19 140. The alleged 8AT Transmission Defect is inherent and was present in
20 each Class Vehicle at the time of sale.

21 141. Because of Toyota's breach of the applicable implied warranties,
22 owners and/or lessees of the Class Vehicles suffered an ascertainable loss of
23 money, property, and/or value of their Class Vehicles. Additionally, because of
24 the 8AT Transmission Defect, the Page Plaintiffs and Class Members were
25 harmed and suffered actual damages in that the Class Vehicles' Direct Shift-8AT
26 Transmissions are substantially certain to fail before their expected useful life
27 has run.

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1 142. Toyota’s actions, as complained of herein, breached the implied
2 warranty that the Class Vehicles were of merchantable quality and fit for such
3 use in violation of California Civil Code §§ 1792 and 1791.1.

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THIRD CAUSE OF ACTION
(Violation of California’s Consumers Legal Remedies Act,
California Civil Code §§ 1750, *et seq.*)

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8 **On Behalf of Plaintiffs Sharon and Brett Page and the CLRA Sub-Class**

9 143. Plaintiffs incorporate by reference the allegations contained in the
10 preceding sections of the complaint.

11 144. Plaintiffs Sharon and Brett Page bring this cause of action on behalf
12 of themselves and the Class, or, alternatively, the CLRA Sub-Class.

13 145. Defendants are “persons” as defined by California Civil Code
14 § 1761(c).

15 146. The Page Plaintiffs and CLRA Sub-class Members are “consumers”
16 within the meaning of California Civil Code § 1761(d) because they purchased
17 their Class Vehicles primarily for personal, family, or household use.

18 147. By failing to disclose and concealing the defective nature of the
19 Direct Shift-8AT Transmissions from The Page Plaintiffs and prospective Class
20 Members, Toyota violated California Civil Code § 1770(a), as it represented that
21 the Class Vehicles and their Direct Shift-8AT Transmissions had characteristics
22 and benefits that they do not have and represented that the Class Vehicles and
23 their Direct Shift-8AT Transmissions were of a particular standard, quality, or
24 grade when they were of another. *See* Cal. Civ. Code §§ 1770(a)(5) & (7).

25 148. Toyota’s unfair and deceptive acts or practices occurred repeatedly
26 in Toyota’s trade or business, were capable of deceiving a substantial portion of
27 the purchasing public and imposed a serious safety risk on the public.

28

1 149. Toyota knew that the Class Vehicles and their Direct Shift-8AT
2 Transmissions suffered from an inherent defect, were defectively designed, and
3 were not suitable for their intended use.

4 150. Because of their reliance on Toyota's omissions, owners and/or
5 lessees of the Class Vehicles, including the Page Plaintiffs, suffered an
6 ascertainable loss of money, property, and/or value of their Class Vehicles.
7 Additionally, because of the 8AT Transmission Defect, the Page Plaintiffs and
8 Class Members were harmed and suffered actual damages in that the Class
9 Vehicles' Direct Shift-8AT Transmissions are substantially certain to fail before
10 their expected useful life has run.

11 151. Toyota was under a duty to the Page Plaintiffs and Class Members
12 to disclose the defective nature of the Direct Shift-8AT Transmissions and/or the
13 associated repair costs because:

- 14 (a) Toyota was in a superior position to know the true state of
15 facts about the safety defect in the Class Vehicles' Direct
16 Shift-8AT Transmissions;
- 17 (b) the Page Plaintiffs and Class Members could not reasonably
18 have been expected to learn or discover that their Direct Shift-
19 8AT Transmissions had a dangerous safety defect until it
20 manifested; and
- 21 (c) Toyota knew that the Page Plaintiffs and Class Members
22 could not reasonably have been expected to learn of or
23 discover the safety defect.

24 152. In failing to disclose the defective nature of Direct Shift-8AT
25 Transmissions, Toyota knowingly and intentionally concealed material facts and
26 breached its duty not to do so.

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1 153. The facts Toyota concealed from or failed to disclose to the Page
2 Plaintiffs and Class Members are material in that a reasonable consumer would
3 have considered them to be important in deciding whether to purchase or lease
4 the Class Vehicles or pay less. Had the Page Plaintiffs and Class Members
5 known that the Class Vehicles' Direct Shift-8AT Transmissions were defective,
6 they would not have purchased or leased the Class Vehicles or would have paid
7 less for them.

8 154. The Page Plaintiffs and Class Members are reasonable consumers
9 who do not expect the Direct Shift-8AT Transmissions installed in their vehicles
10 to exhibit problems such as the 8AT Transmission Defect. This is the reasonable
11 and objective consumer expectation relating to a vehicle's Direct Shift-8AT
12 Transmissions.

13 155. Because of Toyota's conduct, the Page Plaintiffs and Class
14 Members were harmed and suffered actual damages in that, on information and
15 belief, the Class Vehicles experienced and will continue to experience problems
16 such as the 8AT Transmission Defect.

17 156. As a direct and proximate result of Defendants' unfair or deceptive
18 acts or practices, the Page Plaintiffs and Class Members suffered and will
19 continue to suffer actual damages.

20 157. The Page Plaintiffs and other Class Members and 8-AT
21 Transmission owners provided Toyota with notice of its violations of the CLRA
22 pursuant to California Civil Code § 1782(a). Throughout the course of the
23 litigation and continuing at present, Toyota has failed to provide appropriate
24 relief for its violations of the CLRA. Therefore, the Page Plaintiffs seek
25 monetary, compensatory, and punitive damages.
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FOURTH CAUSE OF ACTION

**(Violation of the Florida Deceptive and Unfair Trade Practices Act,
Fla. Stat. §§ 501.201, et seq.)**

On Behalf of Plaintiff Tony Lander and the Florida Sub-Class

158. Plaintiffs incorporate by reference the allegations contained in the preceding sections of the complaint.

159. Plaintiff Tony Lander brings this cause of action on behalf of himself and the Class, or, alternatively, the Florida Sub-Class.

160. The Florida Deceptive and Unfair Trade Practices Act (“FDUTPA”) prohibits “[u]nfair methods of competition, unconscionable acts or practices, and unfair or deceptive acts or practices in the conduct of any trade or commerce.” Fla. Stat. § 501.204(1). Defendants engaged in unfair and deceptive practices that violated the FDUTPA as described above.

161. Defendants engaged in “trade or commerce” in Florida within the meaning of the FDUTPA. See Fla. Stat. § 501.203(8).

162. At all relevant times, Plaintiff Lander and the Florida Sub-Class Members were "consumers" within the meaning of the FDUTPA. F.S.A. § 501.203(7).

163. The practices of Toyota, described above, violate the FDUTPA for, *inter alia*, one or more of the following reasons:

- a) Toyota represented that goods or services have sponsorship, approval, characteristics, uses, and benefits that they do not have;
- b) Toyota provided, disseminated, marketed, and otherwise distributed uniform false and misleading advertisements, technical data and other information to consumers regarding the performance, reliability, quality and nature of the Direct Shift-8AT Transmission;
- c) Toyota represented that goods or services were of a particular

- 1 standard, quality, or grade, when they were of another;
- 2 d) Toyota engaged in unconscionable commercial practices in failing
- 3 to reveal material facts and information about the Direct Shift-8AT
- 4 Transmission, which did, or tended to, mislead the Florida Plaintiffs
- 5 and the Florida Sub-Class Members about facts that could not
- 6 reasonably be known by the consumer;
- 7 e) Toyota failed to reveal facts that were material to the transactions in
- 8 light of representations of fact made in a positive manner;
- 9 f) Toyota caused the Florida Plaintiffs and the Florida Sub-Class
- 10 Members to suffer a probability of confusion and a
- 11 misunderstanding of legal rights, obligations, and/or remedies by
- 12 and through its conduct;
- 13 g) Toyota failed to reveal material facts to the Florida Plaintiffs and the
- 14 Florida Class with the intent that the Florida Plaintiffs and the
- 15 Florida Sub-Class Members rely upon the omission;
- 16 h) Toyota made material representations and statements of fact to the
- 17 Florida Plaintiffs and the Florida Sub-Class Members that resulted
- 18 in the Florida Plaintiffs and the Florida Sub-Class Members
- 19 reasonably believing the represented or suggested state of affairs to
- 20 be other than what they actually were;
- 21 i) Toyota intended that the Florida Plaintiffs and the Florida Sub-Class
- 22 Members rely on their misrepresentations and omissions, so that the
- 23 Florida Plaintiffs and the Florida Sub-Class Members would
- 24 purchase vehicles equipped with the Direct Shift-8AT Transmission.

25 164. Toyota's actions impact the public interest because the Florida
26 Plaintiffs and the Florida Sub-Class Members were injured in exactly the same
27 way as thousands of others purchasing and/or leasing the vehicles with defective
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1 Direct Shift-8AT Transmission as a result of and pursuant to Toyota’s
2 generalized course of deception.

3 165. Had the Florida Plaintiffs and the Florida Sub-Class Members
4 known of the defective nature of the Direct Shift-8AT Transmission, they would
5 not have purchased or leased vehicles equipped with the Direct Shift-8AT
6 Transmission or would have paid less for them.

7 166. The foregoing acts, omissions and practices proximately caused the
8 Florida Plaintiffs and the Florida Sub-Class Members to suffer actual damages in
9 the form of, inter alia, overpaying for the vehicles, as well as diminution in value
10 of the vehicles equipped with Direct Shift-8AT Transmission, and they are
11 entitled to recover such damages, together with all other appropriate damages,
12 attorneys' fees and costs of suit.

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FIFTH CAUSE OF ACTION

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(Violation of the Washington Consumer Protection Act

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(WASH. REV. CODE §§ 19.86.010, *et seq.*)

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On Behalf of Plaintiff Joel Tilson and the Washington Sub-Class

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167. Plaintiffs incorporate by reference the allegations contained in the
19 preceding sections of the complaint.

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168. Plaintiff Joel Tilson brings this cause of action on his own behalf
21 and on behalf of members of the Class, or alternatively, the Washington Sub-
22 Class.

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169. Plaintiff Tilson, the Washington Sub-Class Members, and Toyota
24 are “persons” within the meaning of WASH. REV. CODE § 19.86.010(2).

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170. Defendants committed the acts complained of herein in the course of
26 “trade” or “commerce” within the meaning of WASH. REV. CODE § 19.96.010.

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1 171. The WCPA broadly prohibits “[u]nfair methods of competition and
2 unfair or deceptive acts or practices in the conduct of any trade or commerce.”
3 WASH. REV. CODE § 19.86.020.

4 172. Toyota participated in deceptive trade practices that violated the
5 WPCA as described below and alleged throughout the Complaint. By failing to
6 disclose the Defect, by concealing the Defect, by marketing its vehicles as safe,
7 reliable, well-engineered, and of high quality, and by presenting itself as a
8 reputable manufacturer that valued safety, performance and reliability, and stood
9 behind its vehicles after they were sold, Toyota knowingly and intentionally
10 misrepresented and omitted material facts in connection with the sale or lease of
11 the Class Vehicles. Toyota systematically misrepresented, concealed,
12 suppressed, or omitted material facts relating to the Class Vehicles and the
13 Defect in the course of its business.

14 173. Toyota also engaged in unlawful trade practices by employing
15 deception, deceptive acts or practices, fraud, misrepresentations, or concealment,
16 suppression or omission of any material fact with intent that others rely upon
17 such concealment, suppression or omission, in connection with the sale of the
18 Class Vehicles.

19 174. Toyota’s unfair and deceptive acts or practices occurred repeatedly
20 in Toyota’s trade or business, were capable of deceiving a substantial portion of
21 the purchasing public and imposed a serious safety risk on the public.

22 175. Toyota knew that the Class Vehicles suffered from an inherent
23 defect, were defectively designed or manufactured, and were not suitable for
24 their intended use.

25 176. Toyota knew or should have known that its conduct violated the
26 WCPA.

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1 177. Defendants were under a duty to Plaintiffs and the Washington Sub-
2 Class Members to disclose the defective nature of the Class Vehicles because:

- 3 a) Defendants were in a superior position to know the true state of
4 facts about the safety defect in the Class Vehicles;
5 b) Defendants made partial disclosures about the quality of the Class
6 Vehicles without revealing the defective nature of the Class
7 Vehicles; and
8 c) Defendants actively concealed the defective nature of the Class
9 Vehicles from Plaintiffs and the Washington Sub-Class Members
10 at the time of sale and thereafter.
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12 178. In failing to disclose the defective nature of the Direct Shift-8AT
13 Transmissions, Toyota knowingly and intentionally concealed material facts and
14 breached its duty not to do so.

15 179. The facts about the 8AT Transmission Defect that the Toyota
16 concealed from, or failed to disclose to, Plaintiffs and other members of the
17 Washington Sub-Class are material in that a reasonable consumer would have
18 considered them to be important in deciding whether to purchase or lease the
19 Class Vehicles or pay less. Had Plaintiffs and other members of the Washington
20 Sub-Class known that the Class Vehicles' transmissions were defective, they
21 would not have purchased or leased the Class Vehicles or would have paid less
22 for them.

23 180. Plaintiffs and other members of the Washington Sub-Class are
24 reasonable consumers who do not expect the transmissions installed in their
25 vehicles to exhibit problems such as: rough, delayed, or sudden shifting or
26 failure to shift; grinding or other loud noises during shifting; harsh engagement
27 of gears; sudden or harsh accelerations/decelerations; sudden loss of power;
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1 premature transmission wear; and eventually, transmission failure. This is the
2 reasonable and objective consumer expectation relating to vehicle transmissions.

3 181. As a result of Toyota's conduct, Plaintiffs and other members of the
4 Washington Sub-Class were harmed and suffered actual damages in that, on
5 information and belief, the Class Vehicles experienced and may continue to
6 experience problems such as: harsh or delayed shifting and engagement, delayed
7 acceleration, hesitation, jerking, unintended acceleration, lurching, excessive
8 revving before upshifting (also known as excessively high RPM shift points),
9 and lack of power when needed, premature transmission wear; and eventually,
10 transmission failure.

11 182. As a result of their reliance on Toyota's omissions, owners and/or
12 lessees of the Class Vehicles suffered an ascertainable loss of money, property,
13 and/or value of their Class Vehicles. Additionally, as a result of the 8AT
14 Transmission Defect, Plaintiffs and other members of the Washington Sub-Class
15 were harmed and suffered actual damages in that the Class Vehicles'
16 transmission components are substantially certain to fail before their expected
17 useful life has run and Class Members have incurred or will incur the cost of
18 repairing or replacing the defective transmission.

19 183. As a direct and proximate result of Toyota's unfair or deceptive acts
20 or practices alleged herein, Plaintiffs and other members of the Washington Sub-
21 Class suffered and will continue to suffer actual damages and are entitled to
22 recover actual damages to the extent permitted by law, including class action
23 rules, in an amount to be proven at trial.

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1 **SIXTH CAUSE OF ACTION**

2 **(Fraudulent Omission)**

3 **On Behalf of the Class or, Alternatively, the California, Colorado, Florida,**
4 **and Washington Sub-Classes and Their Named Representatives**

5 184. Plaintiffs incorporate by reference the allegations contained in the
6 preceding sections of the complaint.

7 185. Plaintiffs Dennis Murphy, Deborah Murphy, Sharon Page, Brett
8 Page, Tony Lander, and Joel Tilson bring this Count individually, and for the
9 Class or, in the alternative, the California, Colorado, Florida and Washington
10 Sub-Classes.

11 Toyota knew that the Class Vehicles' transmissions suffered from an
12 inherent defect, were defectively designed and/or manufactured and were not
13 suitable for their intended use.

14 186. Toyota concealed from and failed to disclose to Plaintiffs and
15 Class Members the defective nature of the Class Vehicles and their
16 transmissions.

17 187. Toyota was under a duty to Plaintiffs and Class Members to
18 disclose the defective nature of the Class Vehicles' transmissions because:

- 19 a) Toyota was in a superior position to know the true state of facts
20 about the safety defect contained in the Class Vehicles'
21 transmissions;
- 22 b) Toyota made partial disclosures about the quality of the Class
23 Vehicles without revealing the defective nature of the
24 transmissions; and
- 25 c) Toyota actively concealed the defective nature of the Class
26 Vehicles' transmissions from Plaintiffs and Class Members.
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1 188. The facts concealed or not disclosed by Toyota to Plaintiffs and
2 the other Class Members are material in that a reasonable person would have
3 considered them to be important in deciding whether to purchase or lease
4 the Class Vehicles or pay a lesser price for them. Had Plaintiffs and Class
5 Members known about the defective nature of the Class Vehicles’
6 transmissions, they would not have purchased or leased the Class Vehicles or
7 would have paid less for them.

8 189. Toyota concealed or failed to disclose the true nature of the
9 design and/or manufacturing defects contained in the Class Vehicles’
10 transmissions in order to induce Plaintiffs and Class Members to act thereon.
11 Plaintiffs and the other Class Members justifiably relied on Toyota’s
12 omissions to their detriment. This detriment is evident from Plaintiffs’ and Class
13 Members’ purchase or lease of defective Class Vehicles.

14 190. Toyota continued to conceal the defective nature of the Class
15 Vehicles’ transmissions even after Class Members began to report the problems.
16 Indeed, Toyota continues to cover up and conceal the true nature of the problem
17 today.

18 191. As a direct and proximate result of Toyota’s misconduct, Plaintiffs
19 and Class Members have suffered and will continue to suffer actual damages.

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RELIEF REQUESTED

192. Plaintiffs, on behalf of themselves and all others similarly situated,
request the Court to enter judgment against Toyota, as follows:

- (a) An order certifying the proposed Class and Sub-class,
designating Plaintiffs as named representatives of the Class,
and designating the undersigned as Class Counsel;

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- (a) An award to Plaintiffs and the Class for compensatory, exemplary, and statutory damages, including interest, in an amount to be proven at trial;
- (b) Any and all remedies provided pursuant to a breach of implied warranty under California, Colorado, Florida, and Washington law;
- (c) An award of attorneys’ fees and costs, as allowed by law;
- (d) An award of pre-judgment and post-judgment interest, as provided by law;
- (e) Leave to amend the Complaint to conform to the evidence produced at trial; and
- (f) Such other relief as may be appropriate under the circumstances.

DEMAND FOR JURY TRIAL

193. Pursuant to Federal Rule of Civil Procedure 38(b) and Central District of California Local Rule 38-1, Plaintiffs demand a trial by jury of all issues in this action so triable.

Dated: December 15, 2020

Respectfully submitted,
Capstone Law APC

By: /s/ Cody R. Padgett

Steven R. Weinmann
Tarek H. Zohdy
Cody R. Padgett

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