



Plaintiffs Richard Hock, Carlos Collado, Bill Urban, Enrique Cantu, Paul Bigbie, William Askew, Jacek Pawlowicz, and James Freeman, on behalf of themselves and all others similarly situated, allege as follows:

**NATURE OF THE CASE**

1. Plaintiffs and the class members they propose to represent are owners or lessees of 2006-2009 Toyota Prius vehicles equipped with an optional high-intensity discharge (“HID”) headlight system. Because of a defect in the HID Headlight System, the vehicles’ headlights appear to function normally when first turned on, but will sporadically shut off while the vehicle is driven. Prius drivers thus temporarily lose illumination from one or both headlights at recurring and unpredictable intervals, exposing them and others on the road to significant and unreasonable danger.

2. Toyota has long known that Prius vehicles equipped with its optional HID Headlight System suffer from intermittent headlight failures, but rather than alerting Prius owners to this safety hazard, Toyota has concealed the problem from its customers. Indeed, to avoid the legal implications of the HID Headlight System defect, Toyota has attempted to characterize class members’ problems as isolated issues of prematurely burned-out bulbs and argued that it has no legal obligation to disclose that light bulbs can burn out.

3. The truth is that the symptoms experienced and reported by thousands of Prius drivers—where headlights suddenly shut off while the vehicle is on the road, then appear to be working fine for a while, only to shut off again at repeated and unexpected intervals in the future—is far different from the routine case of a burned-out bulb. Plaintiffs and class members’ problem is not a burned-out bulb, but instead an inherent defect in the HID Headlight System, stemming from the Electronic Control Unit (ECU) and related circuitry, which do not properly control and interface with the bulbs to produce consistent headlight illumination.

4. Because Toyota will not tell Prius owners that the HID Headlight Systems in their vehicles are defective, Plaintiffs and class members are subjected to a dangerous condition that, unlike a burned-out bulb, cannot be reliably detected or prevented through routine inspections

and maintenance. And because Toyota's practice is to address class member concerns by replacing the HID Headlight System with equally defective parts, Toyota continues to profit while Plaintiffs and class members are continually subjected to dangerous driving conditions and further repair expenses.

5. Plaintiffs therefore bring this action on behalf of a proposed nationwide class of Prius owners who purchased the optional HID Headlight System, or in the alternative, on behalf of separate statewide classes of consumers who purchased their Prius vehicles in California, New York, Texas, Arizona, Massachusetts, Ohio, and Oregon. Plaintiffs seek a judgment requiring Toyota to, among other things, inform all class members of the Prius's HID Headlight System defect and make appropriate restitution to class members.

#### **PARTIES**

6. Plaintiff Richard Hock is a citizen and resident of San Mateo, California.
7. Plaintiff Carlos Collado is a citizen and resident of Kent, New York.
8. Plaintiff Bill Urban is a citizen and resident of Mineola, Texas.
9. Plaintiff Enrique Cantu is a citizen and resident of Casa Grande, Arizona.
10. Plaintiff Paul Bigbie is a citizen and resident of Albuquerque, New Mexico.
11. Plaintiff William Askew is a citizen and resident of Marlborough, Massachusetts.
12. Plaintiff Jacek Pawlowicz is a citizen and resident of Mason, Ohio.
13. Plaintiff James Freeman is a citizen and resident of Gleneden Beach, Oregon.
14. Defendant Toyota Motor Sales, U.S.A., Inc. ("Toyota") is a corporation organized under the laws of the State of California and headquartered in Torrance, California. Toyota is responsible for the sales, marketing, and distribution of Prius vehicles in the United States.

#### **JURISDICTION AND VENUE**

15. This Court has jurisdiction over this action under the Class Action Fairness Act, 28 U.S.C. § 1332(d). The aggregated claims of the individual class members exceed the sum value of \$5,000,000, exclusive of interests and costs, and this is a class action in which more than two-thirds of the proposed plaintiff class, on the one hand, and Defendant Toyota, on the

other, are citizens of different states.

16. This Court has jurisdiction over Toyota because Toyota has sufficient minimum contacts in New York, or otherwise intentionally avails itself of the markets within New York, through promotion, sale, marketing and distribution of its vehicles in New York, to render the exercise of jurisdiction by this Court proper and necessary.

17. Venue is proper in this District under 28 U.S.C. § 1391 because Toyota resides in this District. This action was previously transferred to this District from the Central District of California pursuant to 28 U.S.C. § 1404(a).

**FACTUAL ALLEGATIONS COMMON TO ALL CLAIMS**

18. Toyota promotes, sells, markets, and distributes automobiles in the United States sold under the “Toyota” brand name. These vehicles include the “Prius” brand which is the world’s first mass-produced hybrid. In total, Toyota has sold more than 700,000 Prius vehicles in the U.S.

19. This lawsuit concerns 2006-2009 model year Prius vehicles that were factory installed with an optional (and more expensive) HID headlight system rather than the standard halogen headlight system (“Class Vehicles”). The HID headlight system includes an Electronic Control Unit (ECU), a power circuit, bulbs and ballasts, switch assembly, and associated wiring and connectors (“HID Headlight System”).

20. HID stands for high-intensity discharge, a technical term for the electric arc that produces the light. According to Toyota, HID headlights are superior to halogen headlights (a less expensive headlight option for the Prius) because the light emitted is closer in color to sunlight; because the light shines ahead over a broader area of the road, as well as farther forward, to help increase driver visibility; and because HID headlights consume less power and last longer than halogen headlights.

21. The HID Headlight System factory installed in Class Vehicles is defective in that one or both headlights repeatedly stop working while the vehicle is being driven. The headlights will properly illuminate when they are first turned on, but sporadically shut off while the vehicle

is in use; the lights will then appear to be functioning normally again a short time later, typically after the driver toggles the lights off and back on again. These intermittent headlight failures are repeated and unpredictable, resulting in a great deal of confusion and concern for Prius owners.

22. Toyota has a duty to disclose the HID Headlight System defect to Prius owners, among other reasons, because the defect poses an unreasonable safety hazard; because Toyota had and has exclusive knowledge of and access to material facts about the Prius's HID Headlight System that were and are not known or reasonably discoverable by Plaintiffs and class members; and because Toyota has actively concealed the HID Headlight System defect from its customers.

**The HID Headlight System Defect Poses An Unreasonable Safety Hazard.**

23. The defective HID Headlight System poses an unreasonable safety risk for class members as well as the drivers, passengers, and pedestrians sharing the road with Class Vehicles. Headlights are critical safety features that function to both illuminate the road for the driver and to notify other vehicles and pedestrians of the vehicle's presence. A defect that causes one or both of a vehicle's headlights to intermittently shut off unreasonably increases the risk of automobile accidents and moving-violation penalties.

24. Toyota has refused to acknowledge the HID Headlight System defect publicly, and has instead taken the position that headlight bulbs can and do fail, and that headlight bulb failure is a known and inevitable risk that every vehicle operator accepts when operating any vehicle.

25. The symptoms experienced and reported by thousands of Prius drivers—where headlights suddenly shut off while the vehicle is on the road, then appear to be working fine for a while, only to shut off again at repeated and unexpected intervals in the future—is far different from the routine case of a burned-out bulb. The root cause of intermittent headlight failures in class vehicles is not in the bulbs at all, but rather in the headlight system's Electronic Control Unit (ECU) and related circuitry, which does not properly control and interface with the bulbs to produce consistent headlight illumination.

26. Unlike a headlight failure from a burned-out bulb, the headlight failures

experienced by class members as a result of the HID Headlight System defect are much more frequent; they occur repeatedly; they cannot be reliably detected or prevented through routine inspections or maintenance; and they persist even after a new bulb is installed. Headlight failures from the HID Headlight System defect are also much more likely to affect both headlights, resulting in a total loss of headlight illumination.

27. Prius owners know what a burned-out bulb is, but they do not know what is wrong with their Prius's headlights. Whereas a routine inspection will often reveal a burned-out bulb, the Prius's headlights work normally when switched on but occasionally shut off while the vehicle is in use. A Prius owner or lessee can suffer from these intermittent headlight failures for days, weeks, or months without being aware of the dangerous condition. Even after Prius owners or lessees notice that one or both of their headlights have shut off, it often takes several occurrences before they are certain that something is wrong. In between, the headlights appear to be functioning normally, both to consumers and to trained technicians.

28. When Prius owners complain of intermittent headlight problems at a Toyota dealership, the dealerships either do nothing (because they cannot duplicate the customer's experience) or simply replace all or part of the HID Headlight System with equally defective parts. Replacing the HID Headlight System is expensive—typically amounting to between \$300 and \$1,800 depending on how much of the system is replaced—and ultimately ineffective. Many Prius owners have had all or part of their HID Headlight Systems replaced multiple times, only to have the intermittent headlight failures reoccur each time.

29. Whereas few if any consumers have complained to the National Highway Safety Administration (NHTSA) concerning burned-out bulbs, over a thousand consumers have complained to NHTSA about their Prius's intermittent headlight failures—over two hundred of whom reported simultaneous failure of both headlights. Hundreds more have contacted Plaintiffs' counsel or posted their complaints on the internet.

30. The complaints lodged with NHTSA confirm that class members' experiences are not simply about burned-out bulbs, as Toyota characterizes the issue publicly. Rather,

consumers are confused as to why their headlights work only intermittently, concerned about their safety, and upset that they are often charged hundreds of dollars for “repairs,” only to have the problems recur only a short time later.

- Headlight on 2006 Toyota Prius intermittently go on and off. The computer and bulb have both been replaced twice, but the problem continues to occur. This has been continuous for two years, despite the constant replacement of parts.
- I own a 2006 Toyota Prius. The front headlight on the drivers side, which is an HID lamp, works only intermittently. There is no pattern as to when it works and doesn't, and often I do not know when the problem is occurring because I can't see the headlamp (unless I can see the reflection on the back of another car). Obviously, this is a safety concern. I took the car in for service at my dealer and they said that Toyota knows about the problem but refuses to fix it as a defect in the headlamp.
- I have owned a 2006 Prius since February, 2006. I noticed (and so did the police who stopped me on three separate occasions!) the headlights working intermittently. This started in Oct. 2007. Since then I have had to replace 3 of the headlights and 2 of the headlight modules at a cost of \$1589.35 total. The headlights stop with no warning. This is a safety issue, as I drive at night with my children and grandchild. The lights have only stopped one at a time, never at the same time, and I pray that they never do. I have contacted Toyota headquarters and they are reviewing my case to see if they can refund some of my out of pocket expenses for this. I would like them to replace my lights with reliable lights, but they are unwilling to do that. They have replaced my lights and module with the same kind of part as the original. Thank you for your attention.
- The contact owns a 2006 Toyota Prius. While driving approximately 65 mph at night, the headlights suddenly failed without warning. The driver experienced extremely limited visibility. Immediately, the vehicle was pulled over to the side of the road. The contact made several attempts to engage the headlight switch before they began functioning properly again. The vehicle was able to resume normal operation; however, the failure occurred intermittently. The vehicle was taken to an authorized dealer for diagnostic testing, but they could not duplicate the failure. The driver's side headlight was replaced. The failure occurred twenty five additional times. The vehicle was taken to an authorized dealer on three separate occasions for identical failures, but there were no resolutions. The failure mileage was 22,000 and current mileage was 58,000.
- The contact owns a 2007 Toyota Prius. The contact is experiencing failure with the high intensity headlight system. While driving, the headlights would shut off unexpectedly and cause dangerous driving conditions. Initially, after activating the headlight switch, the headlights would illuminate again. However, after two months, the headlights stopped working completely. The vehicle has been to the

dealer numerous times. The first time, the dealer could not find any failures. Eventually, the dealer was able to duplicate the failure and stated that the light bulbs needed to be replaced. The failure has been repaired and the contact has found numerous complaints regarding the same failure and feels that the issue needs to be addressed by the manufacturer. The repairs were not covered in his warranty; therefore, the manufacturer did not hold themselves responsible for the failure. The failure mileage was 42,000 and current mileage is 53,790.

- My passenger side HID headlight began to go out intermittently. Flicking the light off and on restarted it. On one occasion both went out at once while on the freeway in the rain---very scary. The dealer just changed the bulbs yesterday. The passenger side went out with in 10 minutes. When I flicked the lights on and off, it only stayed on for a few seconds. Then today, it was dusk driving home, and the drivers side went out. I now have no light. This is a safety issue, especially since they go out so fast, are hard to replace and not readily available. I see from posts on the internet that many 2006 Prius with HID lights are having similar problems. My dealer is clueless on the cause.
- 2007 Prius. ~43k miles noticed intermittent outages on passenger side head light. Mentioned this to dealer, who said he could change the bulb, but it could be the computer, and that was an expensive repair. A few months later, now at 53k miles, both headlights went out without warning. Could turn them off and on again, and they would work for about 90 seconds before one or both of them would fail again. Driving down the highway and being caught in pitch black for the few seconds necessary to turn my lights off then on again was not sustainable. I was 2 hours from home at 9:30 pm. Had to find alternative lodging, and continue trip in daylight.

31. In response to the numerous complaints it received, NHTSA opened a preliminary investigation. NHTSA representatives met privately with Toyota executives and—after receiving assurances that Toyota would conduct a customer service campaign to address consumer dissatisfaction—NHTSA opted not to order a formal recall campaign. NHTSA stated that its decision not to implement a recall should not be considered a finding that the headlight problems were not a safety-related defect, and in fact, NHTSA has previously stated that wiring system problems that result in a loss of lighting *are* considered safety-related defects.

**Toyota Has Exclusive Knowledge Of The HID Headlight System Defect.**

32. Toyota had superior and exclusive knowledge of the HID Headlight System defect, and knew that the defect was not known or reasonably discoverable by the Plaintiffs and class members prior to their purchase or lease of a Prius vehicle with an HID Headlight System.

33. Only Toyota had access to information about the significant risk of intermittent headlight failure in Prius vehicles equipped with HID Headlight System through its dealerships, pre-release testing data, warranty data, customer complaint data, and replacement part sales data, among other sources of aggregate information about the problem.

34. The existence of the HID Headlight System defect is a fact that would be considered material by a reasonable consumer deciding whether to purchase or lease a Prius vehicle. Had Plaintiffs and other class members known that the Prius's HID headlights shut off intermittently, they would not have paid extra to purchase the optional (and defective) HID Headlight System.

35. Reasonable consumers, like Plaintiffs, expect and assume that a vehicle's headlights are safe and will not suddenly and repeatedly shut off during use. Plaintiffs and class members further expect and assume Toyota will not sell or lease vehicles with known safety defects, such as the HID Headlight System defect, and will disclose any such defect to its consumers when it learns of the defect. They do not expect Toyota to fail to disclose the HID Headlight System defect to them, to continually deny the defect publicly and attempt to characterize it as nothing more than a burned-out bulb, and to charge them hundreds of dollars to replace all or part of their HID Headlight Systems with equally defective parts.

**Toyota Has Actively Concealed The HID Headlight System Defect.**

36. Toyota has actively concealed the HID Headlight System defect from Plaintiffs and class members. Even when Prius owners and lessees call Toyota directly and ask whether the company knows anything about intermittent headlight failures, Toyota denies knowledge of problems or a defect. Toyota has even attempted to characterize the failures as nothing more than burned-out bulbs, no different than what drivers might experience with any vehicle.

37. In addition to its failure to notify Prius owners and lessees of the defect, and its failure to implement a recall, Toyota has also kept the truth from consumers by keeping its dealerships uninformed. As a result, when Prius owners and lessees complained that their headlights were shutting off, Toyota dealerships were often unaware that the headlight failures

were a common and systemic problem and were often unable to replicate the problem.

38. Toyota has also concealed the defect from consumers by providing equally defective HID Headlight System parts to its dealers for use in repairing Prius owners' and lessees' headlight problems. Toyota has thus tried to give consumers the impression that their headlight problems are unique cases rather than part of a systemic defect. Had Toyota informed Plaintiffs and class members that their intermittent headlight problems were the result of a systemic defect, they would not have paid for diagnoses or for repairs that did not address the root cause of the intermittent headlight failures.

39. When consumers present their vehicles to an authorized Toyota dealer for repair of the HID Headlight System, consumers are typically told that they must pay for the repair. The cost of replacing just one HID headlight bulb costs hundreds of dollars, while replacing the entire HID Headlight System costs about \$1,800. Because class members' HID Headlight Systems are "repaired" with equally defective parts, class members continue to suffer from the HID Headlight System defect and continue to be exposed to the risk associated with headlights that unexpectedly shut off while the vehicle is being driven. Many class members have paid for multiple "repairs" to their vehicles' HID Headlight System, only to have their headlight problems recur a short time later.

40. To quiet the most vocal Prius owners, Toyota has implemented a secret policy whereby it will cover all or part of the cost of HID Headlight System replacements—but only for consumers who call Toyota's corporate customer assistance center to complain about intermittent headlight failures. Even then, Toyota still does not disclose that the intermittent headlight failure is a result of an inherent defect in the HID Headlight System and that the problems are likely to recur in the future.

41. To this day, Toyota still has not notified Plaintiffs and class members that their vehicles suffer from a systemic defect that causes intermittent headlight failures, implemented a reliable fix for the defect, or offered to reimburse these consumers for their previous "repairs."

## **PLAINTIFFS' EXPERIENCES**

### **Plaintiff Richard Hock**

42. Plaintiff Richard Hock bought his 2007 Prius from Putnam Toyota in Burlingame, California, in December 2006, paying extra for the optional HID Headlight System.

43. In 2008, Mr. Hock noticed that his driver-side headlight was not functioning properly. The headlight worked only intermittently, shutting off without warning while Mr. Hock was driving the vehicle.

44. Mr. Hock took the vehicle to a Toyota dealership, who advised him that the driver-side HID bulb needed to be replaced and charged him \$232.38 for the repair.

45. In May 2009, Mr. Hock noticed that the passenger-side headlight had also begun to work only intermittently. However, when Mr. Hock presented the vehicle to the dealership for repair, the dealership could not replicate the problem.

46. Mr. Hock had believed that the trouble with his driver-side headlight was an anomaly, so the problems with the passenger-side headlight made him concerned that the problem was more pervasive than he had been led to believe. Mr. Hock researched the issue online and discovered that many other Prius owners were also reporting intermittent headlight failures.

47. Because the dealership had not been forthright about the nature of the problem, and because the dealership had been of no help in May 2009, Mr. Hock took his Prius to another mechanic where he paid to have the passenger-side bulb replaced at a cost of approximately \$120.

48. Safe and reliable headlights were and are important to Mr. Hock. Had Toyota informed him that the headlights in the optional HID Headlight System shut off intermittently, he would not have purchased a Prius with the HID Headlight System. Information about the HID Headlight System defect, including that it is a widespread problem and that Toyota's repairs do not address the root cause of the intermittent headlight failures, would also have been material to Mr. Hock's decision of whether to pay for diagnoses and repairs for his vehicle.

**Plaintiff Carlos Collado**

49. In March 2007, Plaintiff Carlos Collado purchased a 2007 model year Prius, paying extra for the HID Headlight System.

50. In April 2008, Mr. Collado realized that his headlights had not been functioning properly. He noticed that his passenger-side headlight was not working, although a short time later it was working again.

51. Concerned, Mr. Collado promptly took his vehicle to a Toyota dealership for repair. The Toyota dealership checked his Prius's HID Headlight System, but stated that they could not duplicate the headlight failure, could not repair it, and did not know of any problems with the HID Headlight System and/or its component parts.

52. One week later, Mr. Collado returned to the same dealership because he continued to notice that his passenger-side headlight was not working on an intermittent basis. This time the dealership told Mr. Collado that the passenger-side HID ballast was sporadically inoperative and needed replacing at a total cost of over \$650.

53. Shocked at the price and concerned that the dealership had not diagnosed the problem in the first instance, Mr. Collado took his vehicle to an independent mechanic for repair. The Toyota dealership charged Mr. Collado \$85 for its diagnoses. The independent mechanic replaced the HID ballast with the Toyota part for a total cost of \$487.68. The mechanic did not replace the HID bulb because it still worked.

54. Approximately one year later, in April 2009, Mr. Collado again had to pay to repair his HID Headlight System after he noticed, once again, that one of his headlights was not working. Mr. Collado took his Prius to an independent mechanic, who replaced the HID bulb at a total cost of \$227.66.

55. So far, Mr. Collado, has spent \$800 to diagnose and repair his Prius's HID Headlight System, which Toyota knew to be defective when it sold him the vehicle.

56. Safe and reliable headlights were and are important to Mr. Collado. Had Toyota informed him that the headlights in the optional HID Headlight System shut off intermittently, he

would not have purchased a Prius with the HID Headlight System. Information about the HID Headlight System defect, including that it is a widespread problem and that Toyota's repairs do not address the root cause of the intermittent headlight failures, would also have been material to Mr. Collado's decision of whether to pay for diagnoses and repairs for his vehicle.

**Plaintiff Bill Urban**

57. Plaintiff Bill Urban bought his 2007 Prius from John Eagle Sports City Toyota in Dallas, Texas, on April 6, 2007, paying extra for the optional HID Headlight System.

58. In mid-2008, Mr. Urban noticed that his vehicle's passenger-side headlight would intermittently stop working while he was driving.

59. Mr. Urban presented his vehicle for repair at a Toyota dealership, where the passenger-side HID bulb and covered the costs under warranty.

60. In May 2009, however, Mr. Urban noticed that his vehicle's driver-side headlight would also intermittently stop working while he was driving. Mr. Urban brought the vehicle back to the Toyota dealership on May 21, 2009, at which time Mr. Urban was told that he would have to pay \$228.62 of the \$569.92 it would cost to replace the driver-side headlight. Mr. Urban paid the \$228.62 to the dealership and had the driver-side headlight replaced.

61. Safe and reliable headlights were and are important to Mr. Urban. Had Toyota informed him that the headlights in the optional HID Headlight System shut off intermittently, he would not have purchased a Prius with the HID Headlight System. Information about the HID Headlight System defect, including that it is a widespread problem and that Toyota's repairs do not address the root cause of the intermittent headlight failures, would also have been material to Mr. Urban's decision of whether to pay for diagnoses and repairs for his vehicle.

**Plaintiff Enrique Cantu**

62. Plaintiff Enrique Cantu bought his 2007 Prius from Big Two Toyota in Arizona in March 2007, paying extra for the optional HID Headlight System.

63. In early 2009, Mr. Cantu noticed that his passenger-side headlight was not functioning properly. The headlight worked only intermittently, shutting off without warning

while Mr. Cantu was driving the vehicle.

64. Mr. Cantu took the vehicle to a Toyota dealership for repair, but the dealership was unable to replicate the problem. In April 2009, Mr. Cantu returned to the dealership at which time the dealer determined that the HID bulb needed to be replaced. Mr. Cantu paid over \$250 to have the HID bulb replaced.

65. Safe and reliable headlights were and are important to Mr. Cantu. Had Toyota informed him that the headlights in the optional HID Headlight System shut off intermittently, he would not have purchased a Prius with the HID Headlight System. Information about the HID Headlight System defect, including that it is a widespread problem and that Toyota's repairs do not address the root cause of the intermittent headlight failures, would also have been material to Mr. Cantu's decision of whether to pay for diagnoses and repairs for his vehicle.

**Plaintiff Paul Bigbie**

66. Plaintiff Paul Bigbie bought his 2006 Prius from Camel Back Toyota in Arizona, paying extra for the optional HID Headlight System.

67. In July 2009, Mr. Bigbie noticed that his passenger-side HID headlight was not functioning properly. The headlight would shut off unexpectedly while he was driving, only to later appear to be working properly.

68. In November 2009, Mr. Bigbie was pulled over for driving without an operating passenger-side headlight. As a result, he was issued a citation to appear in court.

69. By conducting internet research, Mr. Bigbie learned that the cost of repairing the headlights would be prohibitively expensive at a Toyota dealership. Based on the research, Mr. Bigbie concluded that despite the high cost of repairs at a dealership, there would be no guarantee that the HID headlight problems would not return and, to date, has not paid to repair his vehicle's HID headlight.

70. Safe and reliable headlights were and are important to Mr. Bigbie. Had Toyota informed him that the headlights in the optional HID Headlight System shut off intermittently, he would not have purchased a Prius with the HID Headlight System. Information about the HID

Headlight System defect, including that it is a widespread problem and that Toyota's repairs do not address the root cause of the intermittent headlight failures, would also have been material to Mr. Bigbie's decision of whether to pay for diagnoses and repairs for his vehicle.

**Plaintiff William Askew**

71. Plaintiff William Askew bought his 2006 Prius from Bernardi Toyota in Framingham, Massachusetts, in April 2006, paying extra for the optional HID Headlight System.

72. Toward the end of 2008, Mr. Askew noticed that his driver-side headlight was not functioning properly. The headlight worked only intermittently, shutting off without warning while Mr. Askew was driving the vehicle.

73. In January 2009, Mr. Askew took the vehicle to a Toyota dealership where he was advised that the HID bulb needed to be replaced. Mr. Askew paid \$252.18 to have the HID bulb replaced.

74. Less than six months later, Mr. Askew noticed that the passenger-side headlight had also begun to work only intermittently, shutting off without warning while Mr. Askew was driving. Upset that additional headlight problems were appearing on such a new vehicle, Mr. Askew called Toyota's customer service center. After asking Mr. Askew a number of questions, Toyota agreed to fully reimburse Mr. Askew for repairing the cost of replacing the passenger-side headlight only.

75. Safe and reliable headlights were and are important to Mr. Askew. Had Toyota informed him that the headlights in the optional HID Headlight System shut off intermittently, he would not have purchased a Prius with the HID Headlight System. Information about the HID Headlight System defect, including that it is a widespread problem and that Toyota's repairs do not address the root cause of the intermittent headlight failures, would also have been material to Mr. Askew's decision of whether to pay for diagnoses and repairs for his vehicle.

**Plaintiff Jacek Pawlowicz**

76. Plaintiff Jacek Pawlowicz bought his 2008 Prius from Kings Toyota in Cincinnati, Ohio, in December 2007, paying extra for the optional HID Headlight System.

77. In March 2009, Mr. Pawlowicz learned from a friend that his passenger-side HID headlight was not functioning properly. The headlight would shut off unexpectedly while he was driving, only to later appear to be working properly. Mr. Pawlowicz had not noticed the problem immediately because there was no indicator on the dashboard alerting him to the problem.

78. Mr. Pawlowicz took his Prius to the Toyota dealership to have the headlight repaired. The dealership replaced the passenger-side HID bulb, charging Mr. Pawlowicz \$234.02. Although Mr. Pawlowicz was surprised by the high cost, he agreed to pay for the repair because he did not want to take the risk of driving without properly functioning headlights.

79. A few months later, Mr. Pawlowicz noticed that his driver-side HID headlight was malfunctioning. As had happened with the passenger-side headlight, the driver-side headlight would shut off without warning while Mr. Pawlowicz was driving. Mr. Pawlowicz returned to the Toyota dealership and again paid approximately \$230 to have the HID bulb replaced.

80. Safe and reliable headlights were and are important to Mr. Pawlowicz. Had Toyota informed him that the headlights in the optional HID Headlight System shut off intermittently, he would not have purchased a Prius with the HID Headlight System. Information about the HID Headlight System defect, including that it is a widespread problem and that Toyota's repairs do not address the root cause of the intermittent headlight failures, would also have been material to Mr. Pawlowicz's decision of whether to pay for diagnoses and repairs for his vehicle.

**Plaintiff James Freeman**

81. Plaintiff James Freeman bought his 2006 Prius from the Toyota dealership in Newport, Oregon, paying extra for the optional HID Headlight System.

82. In June 2007, Mr. Freeman noticed that his driver-side HID headlight was not functioning properly. The headlight would shut off unexpectedly while he was driving, only to later appear to be working properly. Shortly thereafter, Mr. Freeman discovered that the passenger-side HID headlight was also shutting off intermittently. At one point, both the driver-

side and passenger-side headlights shut off simultaneously, leaving Mr. Freeman in complete darkness while traveling at highway speed.

83. Mr. Freeman took his vehicle to a Toyota dealership for repairs, and both HID bulbs were replaced under warranty.

84. In September 2009, Mr. Freeman again noticed that his headlights were not functioning properly. The headlights would shut off unexpectedly while he was driving, only to later appear to be working properly.

85. On October 30, 2009, Mr. Freeman contacted Toyota's customer service center. After asking Mr. Freeman several questions, Toyota offered to pay half of the cost of replacing the HID headlights on Mr. Freeman's Prius.

86. On November 9, 2009, Mr. Freeman took his vehicle to McMinnville Toyota where he paid a total of \$175.50 for the replacement of both of his HID headlights.

87. Safe and reliable headlights were and are important to Mr. Freeman. Had Toyota informed him that the headlights in the optional HID Headlight System shut off intermittently, he would not have purchased a Prius with the HID Headlight System. Information about the HID Headlight System defect, including that it is a widespread problem and that Toyota's repairs do not address the root cause of the intermittent headlight failures, would also have been material to Mr. Freeman's decision of whether to pay for diagnoses and repairs for his vehicle.

### **CHOICE OF LAW ALLEGATIONS**

88. The State of California has sufficient contacts to the conduct alleged herein such that California law may be uniformly applied to the claims of the proposed nationwide class.

89. Toyota does substantial business in California, its principal offices are located in California, and a significant portion (approximately 25%) of the proposed National Class is located in California. In addition, the conduct that forms the basis for each and every class members' claims against Toyota emanated from Toyota's headquarters in Torrance, California.

90. Toyota personnel responsible for customer communications are located at Toyota's California headquarters and the core decision not to disclose the HID Headlight System

to consumers was made and implemented from there.

91. Toyota personnel responsible for managing Toyota's customer service division are located at Toyota's California headquarters. Those personnel implemented Toyota's decision to deny the existence of a systemic defect with the HID Headlight System when customers called to complain, but to agree to cover all or part of their repair costs.

92. Toyota personnel responsible for communicating with dealers regarding known problems with Toyota vehicles are located at Toyota's California headquarters and the decision not to inform Toyota dealers of the HID Headlight System defect was made from there.

93. Toyota personnel responsible for managing the distribution of replacement HID Headlight System parts to Toyota dealerships are located at Toyota's California headquarters. The decision to supply equally defective parts for use in HID Headlight System replacements, which do not address the systemic defect that causes intermittent headlight failure, was made from Toyota's California headquarters.

94. The State of California also has the greatest interest in applying its law to class members' claims. Its governmental interests include not only an interest in compensating resident consumers under its consumer protection laws, but also what the State has characterized as a "compelling" interest in using its laws to regulate a resident corporation and preserve a business climate free of fraud and deceptive practices. *Diamond Multimedia Sys. v. Sup. Ct.*, 19 Cal. 4th 1036, 1064 (1999).

95. Were other states' laws applied to class members' claims, California's interest in discouraging resident corporations from engaging in the sort of unfair and deceptive practices alleged in this complaint would be significantly impaired. California could not effectively regulate a company like Toyota, who does business throughout the United States, if it can only ensure that consumers from *one* of the fifty states affected by conduct that runs afoul of its laws are compensated.

#### **CLASS ACTION ALLEGATIONS**

96. Plaintiffs bring this action on behalf of themselves and behalf of a proposed

Nationwide Class, initially defined as:

All persons in the United States who own or lease a 2006-2009 model year Prius factory installed with HID headlights.

97. In the alternative, if the Court finds that California law should not be uniformly applied to the claims of the proposed Nationwide Class, Plaintiffs propose the following Statewide Classes.

a. Plaintiff Richard Hock proposes to represent a California Class, initially defined as:

All persons who purchased or leased a 2006-2009 model year Prius factory installed with HID headlights from an authorized Toyota dealer in California.

b. Plaintiff Carlos Collado proposes to represent a New York Class, initially defined as:

All persons who purchased or leased a 2006-2009 model year Prius factory installed with HID headlights from an authorized Toyota dealer in New York.

c. Plaintiff Bill Urban proposes to represent a Texas Class, initially defined as:

All persons who purchased or leased a 2006-2009 model year Prius factory installed with HID headlights from an authorized Toyota dealer in Texas.

d. Plaintiffs Enrique Cantu and Paul Bigbie propose to represent an Arizona Class, initially defined as:

All persons who purchased or leased a 2006-2009 model year Prius factory installed with HID headlights from an authorized Toyota dealer in Arizona.

e. Plaintiff William Askew proposes to represent a Massachusetts Class, initially defined as:

All persons who purchased or leased a 2006-2009 model year Prius factory installed with HID headlights from an authorized Toyota dealer in Massachusetts.

f. Plaintiff Jacek Pawlowicz proposes to represent an Ohio Class, initially defined

as:

All persons who purchased or leased a 2006-2009 model year Prius factory installed with HID headlights from an authorized Toyota dealer in Ohio.

g. Plaintiff James Freeman proposes to represent an Oregon Class, initially defined

as:

All persons who purchased or leased a 2006-2009 model year Prius factory installed with HID headlights from an authorized Toyota dealer in Oregon.

98. Excluded from all Classes are Toyota; any affiliate, parent, or subsidiary of Toyota; any entity in which Toyota has a controlling interest; any officer, director, or employee of Toyota; any successor or assign of Toyota; anyone employed by counsel for Plaintiffs in this action; and any Judge to whom this case is assigned as well as his or her immediate family.

99. This action has been brought and may properly be maintained on behalf of the Nationwide Class or Statewide Classes proposed above under the criteria of Rule 23 of the Federal Rules of Civil Procedure.

100. Numerosity. Members of the proposed Nationwide Class are so numerous that their individual joinder herein is impracticable. Toyota has sold or leased over one hundred thousand Prius vehicles in the United States that were equipped with the optional HID Headlight System. In addition, since at least several hundred, if not thousands of these sales or leases occurred in each of the relevant states, the members of each of the proposed Statewide Classes are also too numerous for individual joinder to be practicable.

101. Existence and predominance of common questions. Common questions of law and fact exist as to all members of the Nationwide Class or Statewide Classes and predominate over questions affecting only individual Class members. These common questions include the following:

- a. whether Class Vehicles suffer from the HID Headlight System defect;
- b. whether the HID Headlight System defect constitutes an unreasonable safety risk;

- c. whether Toyota knows about the HID Headlight System defect and, if so, how long Toyota has known of the defect;
- d. whether the HID Headlight System defect would be considered a material fact by a reasonable consumer;
- e. whether Toyota has a duty to disclose the defective nature of the HID Headlight System to Plaintiffs and Class members;
- f. whether Plaintiffs and the other class members are entitled to equitable relief, including but not limited to a preliminary and/or permanent injunction.

102. Typicality. Plaintiffs' claims are typical of the claims of the Nationwide Class because, among other things, Plaintiffs purchased Class Vehicles that contain the same HID Headlight System defect found in all other Class Vehicles, and because Plaintiffs are pursuing claims against Toyota for failing to disclose the HID Headlight System defect under California law, which can be properly applied to the claims of each Nationwide Class member.

103. Each of the Plaintiff's claims are typical of the claims of the Statewide Class he or she proposes to represent in the alternative because, among other things, each Plaintiff purchased a Class Vehicle that contains the same HID Headlight System defect found in all other Class Vehicles, and because each Plaintiff purchased or leased his or her Class Vehicle in the same state as members of the proposed Statewide Class he or she proposes to represent.

104. Adequacy. Plaintiffs are adequate representatives of the proposed Nationwide Class and Statewide Classes because their interests do not conflict with the interests of the members of the Class they seek to represent. Plaintiffs have retained counsel competent and experienced in complex class action litigation, and Plaintiffs intend to prosecute this action vigorously. The interests of members of the Class will be fairly and adequately protected by Plaintiffs and their counsel.

105. Superiority. The Class action is superior to other available means for the fair and efficient adjudication of this dispute. The injury suffered by each Class member, while

meaningful on an individual basis, is not of such magnitude as to make the prosecution of individual actions against Toyota economically feasible. Even if Class members themselves could afford such individualized litigation, the court system could not. In addition to the burden and expense of managing myriad actions arising from the HID Headlight System defect, individualized litigation presents a potential for inconsistent or contradictory judgments. Individualized litigation increases the delay and expense to all parties and the court system presented by the legal and factual issues of the case. By contrast, the Class action device presents far fewer management difficulties and provides the benefits of single adjudication, economy of scale, and comprehensive supervision by a single court.

106. In the alternative, the Class may be certified because:

- a. the prosecution of separate actions by the individual members of the Class would create a risk of inconsistent or varying adjudication with respect to individual Class members which would establish incompatible standards of conduct for Toyota;
- b. the prosecution of separate actions by individual Class members would create a risk of adjudications with respect to them which would, as a practical matter, be dispositive of the interests of other Class members not parties to the adjudications, or substantially impair or impede their ability to protect their interests; and
- c. Toyota has acted or refused to act on grounds generally applicable to the Class, thereby making appropriate final and injunctive relief with respect to the members of the Class as a whole.

**FIRST CAUSE OF ACTION**

**(Violation of State Consumer Protection Statutes)**

107. Plaintiffs incorporate the above allegations by reference as if fully set forth herein.

108. Plaintiffs bring this claim under the consumer protection statutes of California, or

in the alternative, under the consumer protection laws of the states in which they purchased their Class Vehicles.

109. Plaintiffs and Class members are consumers who bought or leased Toyota Prius vehicles equipped with an optional HID Headlight System for personal, family, or household purposes.

110. Class Vehicles and the optional HID Headlight Systems installed in Class Vehicles are goods or merchandise, and Plaintiffs' purchases and leases of Prius vehicles with the optional HID Headlight Systems constitute transactions. Toyota's sale and leasing of Class Vehicles and the optional HID Headlight Systems installed in Class Vehicles through its authorized dealers occur in the regular course of Toyota's business.

111. Toyota's replacement parts for the HID Headlight System also constitute goods or merchandise, the installation of those parts in Class Vehicles constitutes a service, and Plaintiffs and Class members' purchase of HID Headlight System replacement parts constitutes a transaction. Toyota's sale of HID Headlight System replacement parts and their installation through Toyota-authorized repair facilities occurred in the regular course of Toyota's business.

112. Toyota has engaged in deceptive, unfair, fraudulent, and misleading acts and practices in connection with consumer transactions. As alleged herein, Toyota has failed to disclose and concealed from Plaintiffs and Class members that the optional HID Headlight System installed in their Prius vehicles is defective and intermittently stops working while the vehicle is being driven. Furthermore, Toyota charges for diagnoses and repairs of Plaintiffs' and Class members' HID Headlight Systems without disclosing that the problem is widespread and that the repairs do not address the root cause of the intermittent headlight failures. Toyota thus represented that its goods, merchandise, and services had characteristics, uses, benefits, or qualities that they did not have, and that they were of a particular standard, quality, or grade when they were not.

113. Toyota concealed, suppressed, or omitted material facts with the intent that Plaintiffs and Class members rely upon such concealment, suppression, or omission. Toyota's

conduct was objectively deceptive and had the capacity to deceive a reasonable consumer. The fact that the optional HID Headlight System installed in Class Vehicles is defective and intermittently stops working while the vehicle is being driven is a material fact that a reasonable consumer would consider important in deciding whether to purchase a Class Vehicle with an optional HID Headlight System. In addition, the fact that intermittent headlight failures in Prius vehicles are widespread and that Toyota's replacement parts are equally defective and do not address the root cause of the intermittent headlight failures, are material facts that a reasonable consumer would consider important in deciding whether to purchase Toyota's replacement parts or otherwise pay for repairs of their HID Headlight System.

114. Toyota's course of conduct had an impact on the public interest because the acts were part of a generalized course of conduct affecting numerous consumers, and because the facts Toyota has concealed involve a matter of public safety.

115. Toyota's conduct, which included deception, fraud, false pretenses, and the knowing concealment, suppression, or omission of material facts, caused and resulted in injury in fact and an ascertainable loss of money or property to Plaintiffs and Class members, which injury was foreseeable by Toyota. Among other things, Plaintiffs and Class members purchased optional HID Headlight Systems they otherwise would not have purchased, paid for unnecessary diagnoses of intermittent headlight failures, and paid for HID Headlight System replacement that did not address the root cause of the intermittent headlight failures.

116. Toyota willfully and knowingly engaged in the conduct described above.

117. Plaintiffs, on behalf of themselves and class members, seek an order enjoining Toyota from the unlawful practices described herein and requiring Toyota to notify class members that the HID Headlight Systems in their vehicles are defective and intermittently shut off while being driven. Plaintiffs further seek restitution of all money wrongfully acquired by Toyota as a result of its misconduct, attorneys' fees and costs of suit, and other non-monetary relief as appropriate.

118. **California**: Toyota's practices, as alleged, were and are in violation of

California's Unfair Competition Law, Cal. Bus. & Prof. Code § 17200 *et seq.*, and California's Consumers Legal Remedies Act, Cal. Civ. Code § 1750 *et seq.*

119. **New York**: Toyota's practices, as alleged, were and are in violation of New York's Consumer Protection from Deceptive Acts and Practices statute, N.Y. Gen. Bus. Law §§ 349 *et seq.*

120. **Texas**: Toyota's practices, as alleged, were and are in violation of Texas's Deceptive Trade Practices-Consumer Protection Act, Tex. Bus. & Com. Code §§ 17.41 *et seq.*

121. **Arizona**: Toyota's practices, as alleged, were and are in violation of Arizona's Consumer Fraud Statute, A.R.S. §§ 44-1521 *et seq.*

122. **Massachusetts**: Toyota's practices, as alleged, were and are in violation of Massachusetts' Regulation of Business Practice and Consumer Protection Act, Mass. Gen. Laws Ch. 93A *et seq.*

123. **Ohio**: Toyota's practices, as alleged, were and are in violation of Ohio's Consumer Sales Practices Act, O.R.C. Ann. §§ 1345.01 *et seq.*

124. **Oregon**: Toyota's practices, as alleged, were and are in violation of Oregon's Unlawful Trade Practices Act, Or. Rev. Stat. §§ 646.605 *et seq.*

### **PRAYER**

WHEREFORE, Plaintiffs, on Plaintiffs' own behalf and on behalf of the Class, pray for judgment as follows:

- a. For an order certifying the Class and appointing Plaintiffs and their counsel to represent the Class;
- b. For an order awarding Plaintiffs and the members of the Class restitution, or other equitable relief as the Court deems proper;
- c. For an order enjoining Toyota from continuing to engage in unlawful business practices, as alleged herein;
- c. For an order requiring Toyota to notify Class members of the dangerous safety defect alleged herein;

- d. For an order awarding Plaintiffs and the members of the Class pre-judgment and post-judgment interest;
- e. For an order awarding Plaintiffs and the members of the Class reasonable attorneys' fees and costs of suit, including expert witness fees; and
- f. For an order awarding such other and further relief as this Court may deem just and proper.

**DEMAND FOR JURY TRIAL**

Plaintiffs demand a trial by jury on all issues so triable as a matter of right.

DATED: December 8, 2009

Respectfully submitted,

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



Jonathan K. Levine (JL-8390)

**GIRARD GIBBS LLP**

711 Third Avenue, 20th Floor  
New York, New York 10017  
Telephone: (212) 867-1721  
Facsimile: (212) 867-1767

Eric H. Gibbs (*pro hac vice*)  
Dylan Hughes (*pro hac vice*)  
Geoffrey A. Munroe (*pro hac vice*)

**GIRARD GIBBS LLP**

601 California Street, Suite 1400  
San Francisco, California 94104  
Telephone: (415) 981-4800  
Facsimile: (415) 981-4846

Melissa M. Harnett (*pro hac vice*)  
Gregory B. Scarlett (*pro hac vice*)  
**WASSERMAN, COMDEN &  
CASSELMAN, L.L.P.**

5567 Reseda Boulevard, Suite 330  
Post Office Box 7033  
Tarzana, California 91357-7033  
Telephone: (818) 705-6800  
Facsimile: (818) 345-0162

Payam Shahian (*pro hac vice* forthcoming)

**INITIATIVE LEGAL GROUP, APC**

1800 Century Park East, 2nd Floor

Los Angeles, California 90067

Telephone: (310) 556-5637

Facsimile: (310) 861-9051

Mike Arias (*pro hac vice* forthcoming)

**ARIAS, OZZELLO & GIGNAC LLP**

6701 Center Drive West, Suite 1400

Los Angeles, California 90045

Telephone: (310) 670-1600

Facsimile: (310) 670-1231

Attorneys for Plaintiffs

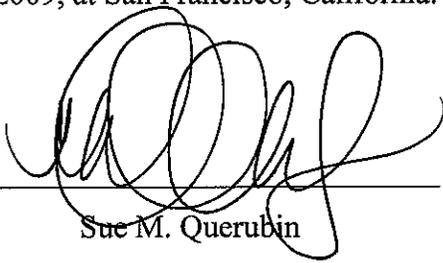
**CERTIFICATE OF SERVICE**

I, Sue M. Querubin, hereby declare as follows:

I am employed by Girard Gibbs, A Limited Liability Partnership, 601 California Street, 14<sup>th</sup> Floor, San Francisco, California 94108. I am over the age of eighteen years and am not a party to this action. On December 8, 2009, I caused a true and correct copy of the foregoing First Amended Complaint and Demand for Jury Trial to be served via U.S. Mail by placing the document for collection and mailing following the firm's ordinary business practice in a sealed envelope with postage thereon fully prepaid for deposit in the United States mail at San Francisco, California addressed as set forth below:

Michael L. Mallow  
Mark D. Campbell  
Darlene M. Cho  
**LOEB & LOEB**  
10100 Santa Monica Blvd., Ste. 2200  
Los Angeles, California 90067  
Telephone: (310) 282-2000  
Facsimile: (310) 282-2200

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on December 8, 2009, at San Francisco, California.

  
\_\_\_\_\_  
Sue M. Querubin