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21 **UNITED STATES DISTRICT COURT**

22 **CENTRAL DISTRICT OF CALIFORNIA**

23 VICTOR MORENO, on behalf of
24 himself and all others similarly
25 situated,

26 Plaintiff,

27 v.

28 TOYOTA MOTOR SALES, U.S.A,
INC., a California Corporation, and
TOYOTA MOTOR CORPORATION,

Defendants.

Case No. 2:14-cv-7636

CLASS ACTION COMPLAINT

DEMAND FOR JURY TRIAL

CLASS ACTION COMPLAINT

CASE NO. 2:14-CV-7636

1 **NATURE OF THE CASE**

2 1. Plaintiff Victor Moreno brings this proposed class action on behalf of
3 himself and other owners of 2007 through 2009 Toyota Camry and 2006 through 2008
4 Lexus IS and ES vehicles. Toyota sold the vehicles without first telling consumers that
5 Toyota had opted to install dashboards in the vehicles that do not withstand exposure to
6 sunlight, melt, emit a noxious chemical smell, and take on a reflective quality. When the
7 dashboards become reflective, drivers trying to see through the windshield must struggle
8 to see past the reflection of the dashboard in the windshield. And when the sun or
9 another bright light catches the dashboard at the right angle, light shoots unexpectedly
10 into drivers' eyes, temporarily blinding them and endangering everyone on the road.

11 2. As a result of the defect, many drivers have told Toyota and the National
12 Highway Traffic Safety Administration ("NHTSA") that they feel unsafe driving their
13 vehicles. Because the replacement of the dashboard can cost several thousand dollars,
14 however, and because Toyota refuses to help with the cost of repairs, many drivers are
15 not in a position to replace the dashboard when they learn of the problem. On top of that,
16 Toyota fails to assure consumers that replacement dashboards will not suffer from the
17 same problems.

18 3. Toyota's conduct violates multiple state consumer protection statutes. On
19 behalf of himself and the proposed class, Plaintiff seeks to compel Toyota to warn drivers
20 about the known defect and to bear the expense of replacing dashboards that should never
21 have been placed in the stream of commerce in the first place.

22 **PARTIES**

23 4. Plaintiff Victor Moreno is a citizen and resident of Bell, California, located
24 in Los Angeles County, California.

25 5. Defendant Toyota Motor Sales, U.S.A., Inc. is a corporation organized under
26 the laws of the State of California and headquartered in Torrance, California. Toyota
27 Motor Sales, U.S.A., Inc. is the U.S. sales, marketing, and distribution arm of its Japanese
28 parent company, Defendant Toyota Motor Corporation, and oversees both the Toyota and

1 Lexus vehicle divisions in the United States. All decisions regarding the conduct of the
2 affairs of the Toyota Motor Corporation in the United States are made out of Toyota's
3 headquarters in Torrance, California. Toyota Motor Sales, U.S.A., Inc. and Toyota
4 Motor Corporation shall be collectively referred to as "Toyota."

5 **JURISDICTION AND VENUE**

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

11 7. This Court has jurisdiction over Toyota because Toyota is registered to
12 conduct business in California and has sufficient minimum contacts in California; or
13 otherwise intentionally avails itself of the markets within California through the
14 promotion, sale, marketing, and distribution of its vehicles to render the exercise of
15 jurisdiction by this Court proper and necessary.

16 8. Venue is proper in this District under 28 U.S.C. § 1391(b) because a
17 substantial part of the events or omissions giving rise to Plaintiff's claims occurred in this
18 District.

19 **SUBSTANTIVE ALLEGATIONS**

20 9. Toyota manufactures, markets, distributes, and warrants automobiles in the
21 United States, under both the Toyota and Lexus brand names. This lawsuit concerns the
22 2007-09 Toyota Camry and 2006-08 Lexus IS and ES models.

23 **Toyota and Lexus Dashboard Defects**

24 10. 2007 through 2009 Toyota Camry and 2006 through 2008 Lexus IS and ES
25 vehicles (the "Class Vehicles") have defective dashboards that melt and crack when
26 exposed to sunlight.

27 11. When the dashboards melt they produce a noxious chemical smell and ooze
28 a chemical compound that is sticky to the touch. The dashboards also melt, deform,

1 crack, and tear.

2 12. The degradation of the factory installed dashboards in Class Vehicles causes
3 the dashboards to become reflective, resulting in unpredictable glare being cast onto the
4 windshield and directly into drivers' eyes, making it difficult and sometimes impossible
5 to see and safely operate the vehicle, putting drivers, passengers, and others on the road at
6 risk. Even when a driver's vision is obstructed for just a moment, the driver cannot see
7 and respond to hazards, such as children running in front of the vehicle or pedestrians
8 trying to cross the road.

9 13. In addition, the Class Vehicles are equipped with a passenger side airbag
10 that deploys through precisely designed perforations in the dashboard. The parts
11 affecting airbag release are designed with great attention to detail, with the recognition
12 that in an accident it is essential that they deploy as designed. Thus, the spacing and size
13 of the perforations designed to facilitate the properly timed and located airbag release are
14 subject to precise specifications. As the dashboards in Class Vehicles degrade, however,
15 they commonly become visibly misshapen, increasing the likelihood that in a collision
16 the airbag will not release as designed.

17 14. Experts in automotive safety defects and Toyota cars recognize that
18 Toyota's melting dashboards are a manufacturing defect, and pose a safety hazard to
19 consumers. Clarence Ditlow with the Center for Auto Safety stated that melting
20 dashboards are "a safety concern," and "a safety defect," and that "[t]here should be a
21 recall nationwide."¹ He stated in regards to Toyota's melting dashboards, "the cause of it
22 is real simple. It's poor engineering." *Id.* Mr. Ditlow also stated, "there is just no excuse
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24
25 ¹ Jenn Strathman, *The Center for Auto Safety thinks Melting Dashboards are a Safety*
26 *Defect and Should be Recalled*, WPTV West Palm Beach (July 24, 2014),
27 [http://www.wptv.com/money/consumer/the-center-for-auto-safety-thinks-melting-](http://www.wptv.com/money/consumer/the-center-for-auto-safety-thinks-melting-dashboards-are-a-safety-defect-and-should-be-recalled)
28 [dashboards-are-a-safety-defect-and-should-be-recalled](http://www.wptv.com/money/consumer/the-center-for-auto-safety-thinks-melting-dashboards-are-a-safety-defect-and-should-be-recalled)

1 for dashes that melt or crack." *Id.* Earl Stewart, owner of a Toyota dealership in North
2 Palm Beach, Florida, called Toyota's melting dashboards a "defective part" and stated
3 that drivers "should be compensated 100 percent."² Mr. Stewart also stated that
4 Toyota's melting dashboards are a safety issue and said that, "because this dashboard has
5 the airbag inside on the passenger side I wouldn't feel safe in a car with a cracked dash."
6 *Id.* He also stated that, "anything that would make an airbag go off too soon or go off too
7 late would be very serious." *Id.*

8 15. To show the severity of the glare from their melting dashboards, owners of
9 Class Vehicles have submitted photos to news organizations investigating the problem.
10 The investigations have resulted in hundreds of complaints. To demonstrate the hazard,
11 owners submitted the following photos of a 2007 and 2008 Toyota Camry respectively.³
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21 ² Jenn Strathman, *Toyota Dealer Wants Auto Makers to Pay for Melting Dashboard*
22 *because the Parts are Defective*, WPTV West Palm Beach (May 1, 2014),
23 [http://www.wptv.com/money/consumer/toyota-dealer-calls-melting-dashboards-a-](http://www.wptv.com/money/consumer/toyota-dealer-calls-melting-dashboards-a-defective-product-and-wants-auto-makers-to-pay-for-repairs)
24 [defective-product-and-wants-auto-makers-to-pay-for-repairs](http://www.wptv.com/money/consumer/toyota-dealer-calls-melting-dashboards-a-defective-product-and-wants-auto-makers-to-pay-for-repairs)

25 ³ See Jenn Stratham Facebook Page,
26 [https://www.facebook.com/photo.php?fbid=10203807311894961&set=p.1020380731189](https://www.facebook.com/photo.php?fbid=10203807311894961&set=p.10203807311894961&type=1)
27 [4961&type=1](https://www.facebook.com/photo.php?fbid=10203807311894961&set=p.10203807311894961&type=1) ;

28 John Rogers, *Venice Man Says he has Melting Dashboard in his Toyota Camry*, WFLA
NBC (August 26, 2014), [http://www.wfla.com/story/26373541/venice-man-says-he-has-](http://www.wfla.com/story/26373541/venice-man-says-he-has-melting-dashboard-in-his-toyota-camry)
[melting-dashboard-in-his-toyota-camry](http://www.wfla.com/story/26373541/venice-man-says-he-has-melting-dashboard-in-his-toyota-camry)

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16. As seen above, drivers' views are obstructed by the glare from melting dashboards. The dashboards' shiny surfaces create a reflection on the windshield making it difficult for drivers to see.

17. According to news reports, at least four drivers have reported car accidents resulting from the glare from the melting dashboards in vehicles manufactured by Toyota

1 and other car manufacturers. At least one Toyota and one Lexus driver have reported
2 such accidents to the NHSTA.⁴ A defective dashboard caused an accident on December
3 1, 2012, according to the driver of a 2007 Toyota Camry. The driver stated in his
4 NHTSA complaint:

5
6 I own a Toyota Camry 2007 and the dashboard is melting and has created
7 shiny dashboard. I have cleaned with plain water/damp cloth but it is not
8 getting better. I have a friend who also owns Camry 2007 and is facing same
9 problem. I have maintained my car very well and this is surely
10 manufacturing defect. On December 1st this year and I met with
11 an accident because of melting dashboard and shiny dashboard that created
12 glare in my eyes. Thank God, no one was injured. I have also read online
13 that many people who own Toyota Camry 2007 are facing same problem.
14 *TR (date of incident: 12/1/12, date of complaint: 12/21/12).⁵

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16 18. Below are further examples of complaints lodged with NHTSA reflecting
17 drivers' safety concerns:

- 18 • 2007 Lexus IS 250: The dashboard of my 07 Lexus IS 250 has been oozing
19 a greasy unknown chemical. Aside from being unsightly and dirty, this
20 sticky dashboard poses a severe safety issue. On sunny days, very common
21 in S. Florida, the chemical ooze produces a glare on the windshield that
22 impairs the driver from having a clear unobstructed view of the road. I
23 almost struck a pedestrian due to the fact that he was unseen by me due to
24 a blind spot created by the glare. Luckily, I was able to stop in time. Being
25 able to clearly view the road is essential in conducting a vehicle safely.
26 Research needs to be conducted to see if the defective dashboards will
27 have an impact on the effective and safe deployment of the passenger
28 airbags if a slight graze by a fingernail on the dashboard causes it to break
off, how will the it react with the speed and power that an airbag
deployment will have. Another safety concern, that needs to be

26 ⁴ NHTSA ID Numbers: 10489475, 10617174.

27 ⁵ NHTSA ID Number: 10489475.

1 investigated is the toxic impact that this chemical creates, especially after
2 being exposed to the heat of a parked car in the sun. Is anybody
3 investigating the impact that this defective material may have on the health
4 of my family and myself, after being exposed to this unknown substance
5 on a daily basis? This material is reacting so unexpectedly by falling apart,
6 how do we know it is not toxic? I'm the original owner of this luxury
7 vehicle who has less than 60,500 miles. Lexus and the dealer, offered 25%
8 off to repair the defective dashboard and doors. It is disappointing and
9 troublesome to realize that Lexus does not acknowledge that this safety
10 and quality issue is due to defective materials and not caused by regular
11 wear and tear. What criteria does Lexus use to decide who gets this
12 manufacturer defect repaired for free and who pays \$3000? How is it
13 possible that my floor mats have outlived my dashboard and door panels?
14 (date of incident: 8/18/14, date of complaint: 08/22/14).⁶

- 15 • 2007 Toyota Camry: In my 2007 Toyota Camry, at first (approx. 2011) the
16 dashboard would feel sticky, as if something had spilled on it. However the
17 stickiness could not be cleaned up. It was in fact the material of the
18 dashboard melting. It continues to get worse and spreads across a larger
19 area, to the point that now (2014) the dash cannot be touched without a
20 mark being left in the melted material. It looks wet and is so glossy that the
21 glare is impossible to see through most of the day. This is clearly a
22 manufacturers defect and should be recalled as it is a safety hazard, not just
23 with the blinding glare which impairs vision, but because the passenger
24 airbag is contained inside of the dashboard and the dashboard being melted
25 may affect its deployment. (date of incident: 08/01/2011, date of
26 complaint: 09/02/2014).⁷
- 27 • 2008 Lexus IS: Affected Parts: -- Dashboard & all 4 interior door panels --
28 My 2008 Lexus IS suffers from a well known issue among Lexus owners
in southern states. The dashboard and interior door panels become almost
PlayDoh like under normal use of the car. My dashboard is extremely
melted to the point that it becomes mirror-like in direct sunlight. This
produces a white glare on the windshield, severely impairs daytime

⁶ NHTSA ID Number: 10627352.

⁷ NHTSA ID Number: 10630216.

1 driving, and makes the car liability to myself and others. Door panels that
2 leave sticky residue on my clothing have to be babied so that they don't
3 crumble or become even more marred than they already are. Since I'm just
4 outside their warranty, the dealer declined to assist me financially and as of
5 today, corporate refuses to help other than to allow me to pay them out of
6 pocket for something that should not even be an issue. I am the second
7 owner of this car as of last year and a Toyota customer since I began
8 driving in 2007. I just want Toyota to own up to this defective product and
do the right thing. This is neglect on their part, not mine. I didn't make the
melting dashboard, they made it when they chose to use sub-par materials
to cut costs. (date of incident: 6/11/13, date of complaint: 07/08/2014).⁸

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- 10 • 2008 Toyota Camry: I bought my 2008 Toyota Camry in September 2012
11 and shortly after the dashboard started melting. It is now very sticky and
12 continues to melt. Because of the melting, the windshield produces a glare
13 and makes driving very difficult during the day. I cannot drive unless I am
14 wearing polarized sunglasses which helps minimize the glare. I do not feel
15 safe driving this vehicle because of the constant glare on the windshield
16 from the reflection of the melting dashboard. I am especially nervous when
17 I have to drive my 10 month old niece around! Nothing will clean the
18 dashboard and it continues to melt becoming stickier which in turns causes
every little particle of lint, dust, grime, etc. to stick to the dashboard. I even
use a sunshade daily to keep my car cooler and I also park in the garage at
home, but the dash still melts and is sticky. Absolutely disgusted with
Toyota's quality! (date of incident: 6/13/14, date of complaint: 6/13/14).⁹
 - 19 • 2008 Toyota Camry: I'm reporting on my 08 Toyota Camry. The
20 dashboard has a shine to it and is sticky. It has been getting worst over the
21 past 2 years. It has gotten to the point where I can't even wipe the
22 dashboard off to clean it. I have to be extremely careful about the
23 dashboard or bits and pieces of the vinyl will come off exposing the foam
24 layer underneath. This has already happened by my driver side AC vent
while cleaning the dash over a year ago. The shine of the dashboard causes

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26 ⁸ NHTSA ID Number: 10608972.

27 ⁹ NHTSA ID Number: 10598009.

1 a glare on the windshield from the sun and oncoming cars at night. I
2 contacted Toyota's customer service and also my local Toyota dealership
3 both which refused to admit that it was a manufacturing defect and would
4 not replace or discount any repairs. Hopefully this will be fixed and anyone
5 else who is experiencing these problem and myself can have piece of mind
6 of our safety and the safety of our passengers not to mention our
7 investment. (date of incident: 05/01/12, date of complaint: 06/21/14).¹⁰

- 8 • 2008 Toyota Camry: Began noticing the dashboard was beginning to feel
9 very sticky & could not be wiped off. It progressively got worse, bugs
10 sticking to it & not able to wipe off. Couldn't use sun shades as the bottom
11 would rip from being stuck. The worst, however, is the glare that causes
12 almost blindness while driving. You just can't hardly see & I believe that
13 is a danger & something should have been done years ago about this
14 problem. Mine has been in this shape for the last 3 years or more. (date of
15 incident: 06/01/10, date of complaint: 08/13/14).¹¹

13 **TOYOTA'S KNOWLEDGE OF THE DEFECT AND THE DANGERS POSED**

14 19. Toyota knew or should have known when it sold the Class Vehicles that the
15 dashboards would not hold up to exposure to sunlight and present an unsafe condition for
16 drivers.

17 20. Toyota has known for decades that dashboard reflections can impair
18 drivers' vision and make it harder to see pedestrians and objects on the road. For
19 instance, a paper published in 1996 by researchers at the University of Michigan
20 Transportation Research Institute found that when a dashboard casts a reflection in the
21 windshield it can impair the drivers' vision. *See* Schumann, Josef, Daytime Veiling and
22 Driver Visual Performance: Influence of Windshield Rake Angle and Dashboard
23 Reflectance, *The University of Michigan Transportation Research Institute* (1996).

24 Toyota itself supported research resulting in a similar 2003 report. *See* Mefford, Mary

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26 ¹⁰ NHTSA ID Number: 10604906.

27 ¹¹ NHTSA ID Number: 10622076.

1 Lynn, et al., Daytime Veiling Luminance from Windshields: Effects of Scattering and
2 Reflection, *The University of Michigan Transportation Research Institute* (2003).

3 21. Likewise, product defects that obstruct the vision of drivers pose a severe
4 safety hazard, and there have been many recalls related to obstructions of the driver's
5 vision. In 2013, Toyota announced that it was voluntarily recalling 267,000 Lexus IS
6 vehicles due to a windshield wiper defect that causes wipers to become inoperative,
7 affecting visibility. Toyota underwent a similar recall in 1993, affecting 76,000 vehicles.
8 Other automotive manufacturers, such as Ford, have had recalls because of bubbles that
9 form on the windshield in higher temperatures, which could obstruct drivers' vision. Like
10 prior recalls, the Class Vehicles' melting dashboards pose a severe safety hazard to
11 drivers because they can obstruct a driver's vision.

12 22. Toyota has also had extensive experience working with the materials used in
13 dashboards. It employs personnel to specifically evaluate the durability of new vehicle
14 parts, including the dashboards. Given the composition of the dashboards in Class
15 Vehicles, Toyota knew or should have known that the dashboards would melt and crack
16 with exposure to sunlight.

17 23. Toyota acknowledged the presence of a defect in 2006-2008 Lexus IS 250
18 and IS 350 models through a technical service information bulletin issued on December
19 2, 2011. The bulletin states that "[s]ome 2006 – 2008 model year IS 250/350 vehicles
20 may exhibit sticky interior panels that have a shiny/degraded appearance." The technical
21 service bulletin did not acknowledge the safety hazard posed by melting dashboards.
22 Toyota sent the Lexus technical service bulletin to dealers only, and did not notify Lexus
23 owners that their cars have a dangerous safety defect that should be remedied. Toyota
24 also has refused to pay for replacement dashboards for Lexus owners who are out of
25 warranty. Toyota knew from NHTSA complaints that the melting dashboard defect
26 usually does not present itself until the cars are out of warranty. Toyota, however, has
27 refused to provide replacement dashboards for Lexus vehicles that are out of warranty,
28

1 even though the dashboards have a manufacturing defect that Lexus owners could not
2 have learned of before they purchased their vehicles.

3 24. The Lexus technical service bulletin also does not help Toyota Camry
4 drivers with defective dashboards, since the bulletin only applies to Lexus cars. There
5 are far more melting dashboard complaints by Toyota Camry drivers than Lexus drivers
6 on NHTSA. Toyota has chosen to provide repairs to drivers of luxury Lexus vehicles
7 which are under warranty, while refusing to provide the same relief to drivers of the less
8 expensive Camry vehicles, despite the fact that Camry and Lexus cars have the same
9 melting dashboard defect.

10 25. Throughout the duration of the period of Class Vehicle sales, and despite
11 knowledge that the vehicles were having problems, Toyota nonetheless decided to sell
12 Class Vehicles without altering the dashboards. Toyota's decision put drivers,
13 passengers, and others on the road at risk. Toyota did not tell customers or dealers that
14 the dashboards would melt and crack with exposure to sunlight. Toyota thus had
15 exclusive and superior knowledge of the dashboard defect and actively concealed the
16 defect and corresponding danger from consumers, who had no way to reasonably
17 discover the problem before buying and driving their vehicles.

18 26. Had consumers been aware of the dashboard defect in their Class Vehicles,
19 they would not have purchased their vehicles, or would have paid far less than they paid
20 for their vehicles. As Toyota knows, a reasonable person would consider the dashboard
21 defect important, and would not purchase or lease a vehicle with a potentially defective
22 dashboard, or would pay substantially less for the vehicle.

23 27. Although there have been hundreds of complaints about the dashboards
24 through the NHTSA website (which Toyota monitors), posted on Toyota's Facebook
25 page, and made directly to Toyota customer service, Toyota continues to deny the
26 existence of a defect. Additionally, the defect was discussed in an ABC Florida affiliate
27 news segment, which showed pictures of the severe glare that drivers experience from
28 their melting dashboards. In response to the news report about the dashboard defect,

1 Toyota stated: “We are continuing to investigate dashboard issues reported by some
2 customers, which are affecting multiple manufacturers.”

3 **Toyota’s Refusal to Repair the Defective Dashboards**

4 28. Despite the large amount of evidence and warnings that Toyota has had
5 about the safety risk that melting dashboards pose, Toyota has refused to notify its
6 customers of the problem or cover the costs of repairs. The total for parts and labor to
7 replace a dashboard is around \$2,000, depending on where the part is replaced. Labor
8 costs alone may total nearly \$1,000, depending on the location of the Toyota dealership.

9 29. Many customers have made complaints to NHTSA about Toyota’s failure to
10 pay for the full cost to replace defective dashboards:

- 11
- 12 • 2007 Camry: My Toyota Camry has a problem with the dashboard. Its
13 melted and is sticky has a very high shine in the sunlight. At times occludes
14 my vision for safe driving and I feel is very unsafe. Obviously it should be a
15 recall before I have an accident. I contacted a dealer when they were doing a
16 marketing survey which specifically asked if our car has dashboard melting
17 issues. When I called they said the dealer would pay for the part (@ \$1000)
18 and I would have to pay for the instal @ another \$1000. That is too much
19 money (which I don't have) and if they are admitting it is a material fault,
20 then they should do a recall and pay 100% before someone gets killed. Can
21 you help? I need your help. I really like my car, but it is dangerous. (date of
22 incident: 08/16/2013, date of complaint: 09/11/2014).¹²
 - 23 • 2007 Camry: About a year to year and a half after purchasing my Camry
24 the dashboard started becoming sticky and causing a horrible glare on the
25 windshield. Every time I brought it into the dealership I was told it was a
26 manufacture's defect but they would not take care of it and that it would cost
27 me over \$2000.00 to fix it. Even when I switched dealerships I was told the

28 ¹² NHTSA ID Number: 10632612.

1 same thing. Now if it is a manufacturer's defect why is it my responsibility
2 to pay to have it replaced? The glare during the summer in Florida is really
3 bad. The glare has been so bad that I have almost had a few accidents
4 because of it. I used to swear by Toyotas but now I don't think I would ever
5 by one again after this.¹³

- 6 • 2007 Lexus ES 350: Hello, we own a 2007 Lexus sedan and love everything
7 about the car except for the dashboard. It has started to melt and have
8 become sticky. The reason for my complain here is because it has become a
9 driving hazard since the sun is always bright in Texas and the
10 sticky dashboard glares onto my windshield making driving really difficult
11 and wanted to file a complain since I tried to get it fixed from Lexus and
12 they are charging me \$1000 for replacing it. It is manufacturers defect and I
13 am not ready to pay for their mistake. The fact is I still have extended
14 warranty with Lexus but dash is not covered in that. Please look into this
15 matter. (date of incident: 08/26/14, date of complaint: 09/04/14).¹⁴
- 16 • 2006 Lexus IS 350: Interior panel parts (dashboard, door panels) melts in
17 hot, humid climates. During the summer of 2012 my used (purchased in
18 May 2012) Lexus IS 350's dashboard and upper door panel surfaces would
19 glisten and emit a strong chemical odor when parked outside in the sun/heat.
20 The wet dashboard surface would reflect off the windshield and impair
21 vision during driving. It would take less than 30 mins parked in the sun/heat
22 for the panel surfaces to begin glistening. Attempts to clean the surface of
23 the dashboard and door panels did not work, as the material remaining
24 would again melt and glisten. Lexus has issued an internal service bulletin to
25 its dealerships of the problem. I complained to Lexus and they agreed to
26 compensate me for the cost of a new dashboard, but I had to pay for the
27 labor (around \$800). I also had to replace the door panels myself with used
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26 ¹³ NHTSA ID Number: 10618579.

27 ¹⁴ NHTSA ID Number: 10630777.

1 ones sourced from less hot/humid climates (4 at around \$150 each). This is
2 an important safety issue, as vision while driving was significantly impeded
3 by the reflection off the dashboard. In addition to this immediate safety risk,
4 the strong chemical smell in the car could be potentially toxic and pose long-
5 term health risks. *TR (date of incident: 05/31/12, date of complaint:
02/22/14).¹⁵

6 30. Toyota's refusal to pay for the complete cost of dashboard repairs has
7 caused great hardship to class members. Many drivers cannot afford to replace their
8 dashboards, and are forced to continue to drive unsafe cars, and risk getting into an
9 accident. Class Vehicle owners also have difficulty selling their vehicles because of their
10 melted dashboards. Owners who are able to sell their cars with melted dashboards are
11 forced to sell their vehicles at a steep discount due to the dashboard defect.

12 **Tolling and Estoppel of Statutes of Limitation and Fraudulent Concealment**

13 31. The claims alleged in this complaint accrued upon discovery of the defects
14 of the dashboards of the Class Vehicles. Toyota took steps to actively misrepresent and
15 conceal the true character, nature and quality of the material of the dashboard. The defect
16 manifests itself after a period of time and under certain predictable weather conditions,
17 such that Plaintiff and Class Members could not reasonably discover the defect through
18 reasonable and diligent investigation. Furthermore, Plaintiff and Class Members could
19 not have reasonably discovered or known of the safety risks until, under ordinary driving
20 conditions, they were blinded by the sunlight shining on the defective dashboards.

21 32. Any applicable statutes of limitations have been tolled by Toyota's
22 knowledge and actual misrepresentation, concealment and denial of the facts as alleged
23 herein. Toyota's misrepresentations and concealments have been and are ongoing and
24 continue to this day. As a result of Toyota's active concealment of the design and
25

26
27 ¹⁵ NHTSA ID Number: 10565438.
28

1 material defect and/or failure to inform Plaintiff and all members of the Class of the
2 defect, any and all statutes of limitations otherwise applicable to the allegations have
3 been tolled.

4 33. Alternatively, the facts alleged above give rise to an estoppel. Toyota knew
5 of the defect and the serious risks it posed to consumers and has actively concealed it.
6 Toyota was and is under a continuous duty to disclose to Plaintiff and all members of the
7 Class the true character, quality and nature of the Class Vehicles, particularly that their
8 dashboards are not designed to withstand exposure to sunlight and will pose a threat to
9 the safety of the driver and passengers when the dashboard prematurely deteriorates.

10 34. At all relevant times, and continuing to this day, Toyota knowingly,
11 affirmatively and actively misrepresented and concealed the true character, quality and
12 nature of the Class Vehicles and sold the Class Vehicles into the stream of commerce as
13 if they were suitable for their intended use. Given Toyota's failure to disclose this non-
14 public information about the defective nature of the Class Vehicles and risks to the public
15 —information over which Toyota had and continues to have exclusive control—and
16 because Plaintiff and all members of the Class could not reasonably have known that the
17 Class Vehicles were thereby defective, Plaintiff and all members of the Class reasonably
18 relied on Toyota's knowing affirmative and ongoing concealment. Had Plaintiffs and all
19 members of the Class known that the Class Vehicles posed a safety risk to the public,
20 they would not have purchased the Class Vehicles. Therefore, Toyota is estopped from
21 any statute of limitations defense in this action.

22 35. Additionally, Toyota is estopped from raising any defense of laches due to
23 its own conduct as alleged herein.

24 **PLAINTIFF'S EXPERIENCE**

25 **Victor Moreno**

26 36. Victor Moreno purchased a 2009 Toyota Camry new in Downey, CA. He
27 lives in Bell, CA. In the summer of 2014 he started noticing that his dashboard was
28 melting and sticky. He also found that bugs and hair will get stuck in the dashboard. The

1 dashboard is shiny from where it is melting and shines a reflection into his eyes when he
2 is driving, which creates a safety hazard. In approximately August of 2014 he took his
3 car to a Toyota dealership and asked about repairing his melting dashboard. The
4 dealership claimed to not be aware of the problem, and refused to cover any of the cost to
5 fix his melting dashboard.

6 CLASS ACTION ALLEGATIONS

7 37. Plaintiff brings this action on behalf of himself and on behalf of a proposed
8 Nationwide Class, initially defined as:

9 All persons in the United States who purchased or leased a 2007 through 2009
10 Toyota Camry or a 2006 through 2008 Lexus IS and ES vehicle.

11 38. In the alternative, Plaintiff Victor Moreno proposes to represent a California
12 Class, initially defined as:

13 All persons who purchased or leased a 2007 through 2009 Toyota Camry or a 2006
14 through 2008 Lexus IS or ES vehicle in California.

15 39. Excluded from the proposed class is Toyota; any affiliate, parent, or
16 subsidiary of Toyota; any entity in which Toyota has a controlling interest; any officer,
17 director, or employee of Toyota; any successor or assign of Toyota; anyone employed by
18 counsel for Plaintiff in this action; any judge to whom this case is assigned, his or her
19 spouse, and all persons within the third degree of relationship to either of them, as well as
20 the spouses of such persons; and anyone who purchased a Class Vehicle for the purpose
21 of resale.

22 40. This action has been brought and may properly be maintained on behalf of
23 the class proposed above under the criteria of Federal Rule of Civil Procedure Rule 23.

24 41. Numerosity. Toyota sold hundreds of thousands of Class Vehicles,
25 including a substantial number in the states covered by the proposed class. Members of
26 the proposed class likely number in the tens or hundreds of thousands and are thus too
27 numerous practically join in a single action. Class members may be notified of the
28 pendency of this action by mail, supplemented (if deemed necessary or appropriate by the

1 Court) by published notice.

2 42. Existence and predominance of common questions. Common questions of
3 law and fact exist as to all members of the proposed class and predominate over questions
4 affecting only individual class members. These common questions include whether:

- 5 a. Class Vehicles were factory equipped with defective dashboards;
- 6 b. Toyota knew or should have known about the dashboard defect and, if
7 so, when Toyota discovered the defect;
- 8 c. The existence of the dashboard defect would be important to a
9 reasonable person, for example, because they pose an unreasonable
10 safety risk;
- 11 d. Toyota disclosed the dashboard defect to potential customers;
- 12 e. Toyota dealerships have failed to provide free dashboard repairs for
13 Class Vehicles.

14 43. Typicality. Plaintiff's claims are typical of the claims of the proposed class.
15 Plaintiff and the class members he proposes to represent purchased a Class Vehicle that
16 contains the same defective dashboard, giving rise to substantially the same state and
17 federal claims.

18 44. Adequacy. Plaintiff is an adequate representative of the proposed class
19 because his interests do not conflict with the interests of the members of the class he
20 seeks to represent. Plaintiff has retained counsel competent and experienced in complex
21 class action litigation, and Plaintiff intends to prosecute this action vigorously. The
22 interests of members of the class will be fairly and adequately protected by Plaintiff and
23 his counsel.

24 45. Superiority. The class action is superior to other available means for the fair
25 and efficient adjudication of this dispute. The injury suffered by each class member,
26 while meaningful on an individual basis, is not of such magnitude as to make the
27 prosecution of individual actions against Toyota economically feasible. Even if class
28 members themselves could afford such individualized litigation, the court system could

1 not. In addition to the burden and expense of managing many actions arising from the
2 Toyota defect, individualized litigation presents a potential for inconsistent or
3 contradictory judgments. Individualized litigation increases the delay and expense to all
4 parties and the court system presented by the legal and factual issues of the case. By
5 contrast, the class action device presents far fewer management difficulties and provides
6 the benefits of single adjudication, economy of scale, and comprehensive supervision by
7 a single court.

8 46. In the alternative, the proposed class may be certified because:

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

21 **FIRST CAUSE OF ACTION**

22 **(Violation of the Consumers Legal Remedies Act,**
23 **Cal. Civ. Code. §§ 1750, *et seq.*)**

24 47. Plaintiff, on behalf of himself and the Nationwide Class, realleges as if fully
25 set forth, each and every allegation set forth herein.

26 48. Toyota is a “person” within the meaning of Civil Code sections 1761(c) and
27 1770, and has provided “goods” within the meaning of California Civil Code section
28 1761(b) and 1770.

1 49. Plaintiff and members of the class are “consumers” within the meaning of
2 Civil Code section 1761(d) and 1770, and have engaged in a “transaction” within the
3 meaning of Civil Code section 1761(e) and 1770.

4 50. Toyota’s acts and practices, undertaken in transactions intended to result and
5 which did result in the sale or lease of Class Vehicles, violate Section 1770 of the
6 Consumers Legal Remedies Act in that:

7 (a) Toyota represents that its goods have sponsorship, approval, characteristics,
8 uses or benefits which they do not have;

9 (b) Toyota advertises its goods with intent not to sell them as advertised;

10 (c) Toyota represents that a transaction confers or involves rights, remedies, or
11 obligations which it does not have or involve; and

12 (d) Toyota represents that its goods have been supplied in accordance with a
13 previous representation when they have not.

14 51. Toyota has violated the Consumers Legal Remedies Act by failing to
15 disclose, at the point of sale or otherwise, that the Class Vehicles’ dashboards are
16 defective and pose a safety hazard.

17 52. Had Toyota adequately disclosed information about the defective
18 dashboards, Plaintiff, Class members, and reasonable consumers would not have
19 purchased or would have paid less for their Class Vehicles.

20 53. Pursuant to the provision of California Civil Code § 1780, Plaintiff seeks an
21 order enjoining Toyota from the unlawful practices described herein, a declaration that
22 Toyota’s conduct violates the Consumers Legal Remedies Act, and attorneys’ fees and
23 costs of litigation.

24 54. Plaintiff, on behalf of himself and California Class members, notified
25 Toyota in writing of the CLRA violations and requested that Toyota cure the violations.
26 Should Toyota not comply with Plaintiff’s request, Plaintiff intend to amend his
27 complaint and seek damages under the CLRA.

28

SECOND CAUSE OF ACTION

**(For unlawful, unfair, and fraudulent business practices under
Cal. Business and Professions Code § 17200 *et seq.*)**

1
2
3
4 55. Plaintiff, on behalf of himself and the Nationwide Class, realleges as if fully
5 set forth, each and every allegation set forth herein.

6 56. Toyota's acts and practices, as alleged in this complaint, constitute unlawful,
7 unfair and/or fraudulent business practices, in violation of the Unfair Competition Law,
8 Cal. Bus. & Prof. Code § 17200, *et seq.*

9 57. The business practices engaged in by Toyota that violate the Unfair
10 Competition Law include failing to disclose, at the point of sale or otherwise, that the
11 Class Vehicles' dashboards are defective and pose a safety hazard.

12 58. Toyota engaged in unlawful business practices by violating the Consumers
13 Legal Remedies Act, Civil Code sections 1750 *et seq.*

14 59. Toyota engaged in unfair business practices by, among other things:

15 60. Engaging in conduct where the utility of that conduct is outweighed by the
16 gravity of the consequences to Plaintiff and other members of the class;

17 61. Engaging in conduct that is immoral, unethical, oppressive, unscrupulous, or
18 substantially injurious to Plaintiff and other members of the class; and

19 62. Engaging in conduct that undermines or violates the stated policies
20 underlying the CLRA, which seeks to protect consumers against unfair and sharp
21 business practices and to promote a basic level of honesty and reliability in the
22 marketplace.

23 63. Toyota engaged in fraudulent business practices by engaging in conduct that
24 was and is likely to deceive a reasonable consumer.

25 64. As a direct and proximate result of Toyota's unlawful, unfair and fraudulent
26 business practices as alleged herein, Plaintiff and Class members have suffered injury in
27 fact and lost money or property, in that they purchased Class Vehicles they otherwise
28 would not have, paid more for Class Vehicles than they otherwise would, paid for

1 defective dashboard diagnoses, repairs, and replacements, and rental cars, and are left
2 with Class Vehicles of diminished value and utility because of the defect. Meanwhile,
3 Toyota has sold more Class Vehicles than it otherwise could have and charged inflated
4 prices for Class Vehicles, unjustly enriching itself thereby.

5 65. Plaintiff and class members are entitled to equitable relief, including
6 restitutionary disgorgement of all profits accruing to Toyota because of its unlawful,
7 unfair, fraudulent, and deceptive practices, attorneys' fees and costs, declaratory relief,
8 and a permanent injunction enjoining Toyota from its unlawful, unfair, fraudulent and
9 deceitful activity.

10 **THIRD CAUSE OF ACTION**
11 **(Negligence)**

12 66. Plaintiff, on behalf of himself and the Nationwide Class, realleges as if fully
13 set forth, each and every allegation set forth herein.

14 67. Toyota owed Plaintiff and Class members a duty, once it discovered the
15 dashboard defect, to ensure that an appropriate repair procedure was made available to
16 drivers.

17 68. Toyota owed a duty to Plaintiff and Class members not to engage in
18 fraudulent or deceptive conduct, including the knowing omission of material information
19 such as the existence of the dashboard defect. This duty is independent of any
20 contractual duties Toyota may owe or have owed.

21 69. A finding that Toyota owed a duty to Plaintiff and Class members would not
22 significantly burden Toyota. Toyota has the means to efficiently notify drivers of Toyota
23 vehicles about dangerous defects. The cost borne by Toyota for these efforts is
24 insignificant in light of the dangers posed to Plaintiff and Class members by Toyota's
25 failure to disclose the dashboard defect and provide an appropriate notice and repair.

26 70. Toyota failed to disclose and deceptively concealed the dashboard defect to
27 Plaintiff, and other drivers of Class Vehicles, and failed to provide appropriate notice of
28 and repair procedures for the dashboard defect. Toyota departed from the reasonable
standard of care and breached its duties to Plaintiff and other drivers of Toyota vehicles.

1 71. Toyota's conduct was morally blameworthy. Toyota knew about the
2 dashboard defect and knew it was dangerous. Yet Toyota concealed the defect, placing
3 drivers of Class Vehicles at unnecessary risk.

4 72. Toyota's conduct was contrary to public policy favoring the disclosure of
5 defects that may affect customer safety and the prevention of accidents and injuries due
6 to defective automobiles.

7 73. As a direct, reasonably foreseeable, and proximate result of Toyota's failure
8 to exercise reasonable care, inform Plaintiff and other Class members of the defect, and
9 provide appropriate repairs for the defect, Plaintiff and Class members have suffered
10 damages in that they spent more money on Class Vehicles and related purchases than
11 they otherwise would have and are left with Class Vehicles that cannot be safely driven
12 and which are of diminished value.

13 74. Plaintiff could not through the exercise of reasonable diligence have
14 prevented the injuries caused by Toyota's negligence. Neither Plaintiff nor other Class
15 members contributed to Toyota's failure to provide appropriate notice and repairs.
16 Plaintiff and the Class seek to recover their damages caused by Toyota.

17 **PRAYER FOR RELIEF**

18 WHEREFORE, Plaintiff prays for judgment as follows:

- 19 a. For an order certifying the proposed class and appointing Plaintiff and his
20 counsel to represent the class;
- 21 b. For an order awarding Plaintiff and the members of the class restitution,
22 disgorgement or other equitable relief provided by and pursuant to the
23 Second Cause of Action, or as the Court deems proper;
- 24 c. For an order requiring Toyota to adequately disclose and repair the
25 dashboard defect;
- 26 d. For an order awarding Plaintiff and the members of the class damages under
27 the Third Cause of Action;
- 28

- 1 e. For an order awarding Plaintiff and the members of the class reasonable
2 attorney fees and costs of suit, including expert witness fees; and
3 f. For an order awarding such other and further relief as this Court may deem
4 just and proper.

5 **DEMAND FOR JURY TRIAL**

6 Plaintiffs hereby demand a trial by jury on all claims so triable.

7
8 DATED: October 1, 2014

Respectfully submitted,

9 **GIRARD GIBBS LLP**

10
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