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25 **UNITED STATES DISTRICT COURT**
26 **CENTRAL DISTRICT OF CALIFORNIA**

27 JAMES CARROLL, MD ULLAH, and
28 ELDON PAINTER, on behalf of
themselves and all others similarly
situated,

Plaintiffs,

v.

AMERICAN HONDA MOTOR
COMPANY, INC., HONDA MOTOR

Case No. _____

**CLASS ACTION COMPLAINT
AND DEMAND FOR JURY
TRIAL**

Airbag Control Unit Class Action Lawsuit

CLASS ACTION COMPLAINT AND DEMAND FOR JURY TRIAL
CASE NO. _____

1 CO. LTD., HYUNDAI MOTOR
2 AMERICA, HYUNDAI MOTOR
3 COMPANY, TOYOTA MOTOR
4 SALES, U.S.A., INC., TOYOTA
5 MOTOR CORPORATION, ZF TRW
6 AUTOMOTIVE HOLDINGS CORP.,
7 and ZF FRIEDRICHSHAFEN AG,

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Defendants.

1 Plaintiffs James Carroll, Md Ullah, and Eldon Painter, on behalf of
2 themselves and all others similarly situated, allege the following:

3 **SUMMARY OF THE CASE**

4 1. Tens of thousands of people owe their survival to airbags that operated as
5 designed during a crash. Many thousands more were spared life-altering injuries.
6 Airbags save lives—or at least they do when they work as intended. Over ten
7 million vehicles on the road today have defective airbag systems that fail to deploy
8 in crashes. Drivers have died as a consequence and there will be more fatalities and
9 injuries until the problem is rectified.

10 2. The affected vehicles' airbag and seatbelt pretensioners (which pull
11 seatbelts tight during a crash) are deployed by an airbag control unit. This unit must
12 instantaneously detect collisions, trigger the seatbelts, and deploy the airbags. But as
13 ZF-TRW (the manufacturer of the control unit) and various vehicle manufacturers
14 all know, the airbag control unit in these vehicles fails to reliably deploy the vehicles'
15 airbags during collisions. Instead, the units frequently experience "electrical
16 overstress," with the electrical signals exceeding system capacity, causing the
17 systems to fail when they are needed most.

18 3. Defendants have known about this defect for years. ZF-TRW began
19 reporting problems as early as 2013 and vehicle manufacturers have been notified of
20 numerous collisions involving failed airbag systems with ZF-TRW airbag control
21 units. Some have even conducted safety recalls—but on a far too limited scale. For
22 the most part, despite the known safety risk, Defendants have issued no warnings
23 and drivers around the country continue to drive their vehicles unaware that their
24 airbags may not deploy in a crash.

25 4. This suit seeks to force Defendants to fix the problem in *all* impacted
26 vehicles. Plaintiffs also seek appropriate compensation for all those affected.

1 **PARTIES**

2 **Plaintiffs**

3 5. Plaintiff James Carroll is a citizen and resident of Crofton, Maryland,
4 located in Anne Arundel County.

5 6. Plaintiff Md Ullah is a citizen and resident of Pittsburg, California,
6 located in Contra Costa County.

7 7. Plaintiff Eldon Painter is a citizen and resident of Kansas City, Missouri,
8 located in Jackson County.

9 **ZF-TRW Defendants**

10 8. Defendant ZF TRW Automotive Holdings Corp., is a Delaware
11 corporation with its headquarters and principal place of business in Livonia,
12 Michigan.

13 9. Defendant ZF Friedrichshafen AG is a German corporation and the
14 parent company of ZF TRW Automotive Holdings Corp. The two defendants are
15 referred to collectively in this complaint as “ZF-TRW.”

16 10. ZF-TRW was formed in May 2015 following the acquisition of
17 predecessor entity TRW Automotive Holdings Corp. by German multinational
18 parts supplier ZF Friedrichshafen AG. All references to ZF-TRW include the
19 actions of TRW Automotive Holdings Corp. prior to the acquisition.

20 **Vehicle Manufacturer Defendants**

21 11. Defendant American Honda Motor Company, Inc. is a California
22 corporation with its headquarters and principal place of business in Torrance,
23 California.

24 12. Defendant Honda Motor Co., Ltd., is a Japanese corporation and the
25 parent company of American Honda Motor Company. The two defendants are
26 referred to collectively in this complaint as “Honda.”

27 13. Defendant Hyundai Motor America is a California corporation with its
28 headquarters and principal place of business in Fountain Valley, California.

1 14. Defendant Hyundai Motor Company is a South Korean corporation and
2 the parent company of Hyundai Motor America, Inc. The two defendants are
3 referred to collectively in this complaint as “Hyundai.”

4 15. Defendant Toyota Motor Sales, U.S.A., Inc. is a California corporation
5 with its corporate headquarters in Plano, Texas. Until spring 2017, Toyota Motor
6 Sales, USA, Inc. had its headquarters in Torrance, California.

7 16. Defendant Toyota Motor Corporation is a Japanese corporation and the
8 parent company of Toyota Motor Sales, USA, Inc. The two defendants are referred
9 to collectively in this complaint as “Toyota.”

10 **JURISDICTION AND VENUE**

11 17. This Court has jurisdiction over this action under the Class Action
12 Fairness Act, 28 U.S.C. § 1332(d). There are at least 100 members in the proposed
13 class and the aggregated claims of the individual class members exceed the sum or
14 value of \$5,000,000, exclusive of interest and costs. There is adequate diversity
15 between the class of Plaintiffs and Defendants. Plaintiffs include citizens of
16 California and other states, Defendant ZF TRW Automotive Holdings Corp. is a
17 citizen of Michigan, and Defendants American Honda Motor Company, Hyundai
18 Motor America, and Toyota Motor Sales, U.S.A., Inc. are citizens of California.
19 Defendants ZF Friedrichshafen AG, Honda Motor Co., Ltd., Hyundai Motor
20 Company, and Toyota Motor Corporation are citizens of a foreign state. Finally,
21 more than two-thirds of the proposed plaintiff classes are citizens of states other than
22 California. This Court has jurisdiction over supplemental state law claims pursuant
23 to 28 U.S.C. § 1367.

24 18. This Court may exercise jurisdiction over Defendants because they are
25 registered to conduct business in California; have sufficient minimum contacts in
26 California; and intentionally avail themselves of the markets within California
27 through the promotion, sale, marketing, and distribution of their products and
28 vehicles, thus rendering the exercise of jurisdiction by this Court proper and

1 necessary. In addition, Honda and Hyundai have located their American
2 headquarters in California.

3 19. Venue is proper in this District under 28 U.S.C. § 1391 because
4 Defendants' contacts are sufficient to subject them to personal jurisdiction in this
5 District, and therefore Defendants reside in this district for purposes of venue; and
6 because a substantial part of the events or omissions giving rise to Plaintiffs' claims
7 occurred in this District. In addition, venue is proper because Defendants Honda
8 and Hyundai currently have their American headquarters in this District, and
9 Toyota had its American headquarters in this District during much of the relevant
10 timeframe.

11 **SUBSTANTIVE ALLEGATIONS**

12 **Airbag Systems are a Critical Safety Feature**

13 20. Airbags are designed to save lives and reduce injuries by minimizing the
14 force felt by drivers and passengers during a crash. Frontal airbags reduce driver
15 fatalities by 29% and front-seat passenger fatalities by 32%. In combination with a
16 seatbelt, frontal airbags reduce the risk of death by 61%. The National Highway
17 Transportation Safety Administration (NHTSA) estimates that in a driver-side
18 crash, side airbags reduce the driver's risk of death by 37% in a car and 52% in an
19 SUV.

20 21. Modern vehicles are now all equipped with airbag systems. The airbag
21 system is designed to operate without any input or control from the driver or
22 passengers.

23 22. The brain of the airbag system is the airbag control unit. The unit is
24 installed centrally in the vehicle, generally in the dashboard area. The system also
25 features sensors installed in the front and sides of the vehicle. In a crash, the airbag
26 control unit receives electrical signals from the vehicle's crash sensors, which allow
27 the airbag control unit to respond to a collision in thousandths of a second by
28 deploying the airbags.

1 23. The airbag control unit is also responsible for reacting to signals from the
2 crash sensors and reacting by activating vehicles' safety belt pretensioners. Seatbelts
3 are most effective when a passenger's torso and pelvis are held firmly against the
4 seat, allowing the passenger's body to slow down at the same speed as the car's
5 frame. Modern seatbelt pretensioners use a pyrotechnic charge to quickly tighten the
6 seatbelt in an emergency, improving passenger safety.

7 24. According to the National Highway Traffic Safety Administration, by the
8 2008 model year all new cars and light trucks and vans sold in the United States
9 were equipped with seatbelt pretensioners at the driver and front passenger seats.
10 NHTSA's analysis showed that seatbelt pretensioners, along with load limiters built
11 into the seatbelts, reduced the risk of death by 12.8%.

12 25. In modern vehicles, the airbag control unit not only deploys these safety
13 features, but also adjusts them in real time. For example, around 30 milliseconds
14 after a collision, the airbag system will release a small amount of slack from the
15 seatbelt to help control the passenger's impact with the airbag. The control unit runs
16 self diagnostics on the airbag system and is supposed to illuminate a dashboard
17 indicator to warn drivers if the system is not working.

18 **Airbag Systems in the Class Vehicles Have a Known Safety Defect**

19 26. The vehicles at issue in this case (the "Class Vehicles") are equipped with
20 an airbag control unit manufactured by ZF-TRW.

21 27. Class Vehicles include the 2014-2019 Acura RLX and RLX Hybrid;
22 2012-2014 Acura TL; 2015-2017 Acura TLX; 2012-2014 Acura TSX and TSX
23 Sportswagon; 2013-2015 Honda Accord; 2012-2015 Honda Civic, Civic GX, and
24 Civic SI; 2013-2015 Honda Civic Hybrid; 2012-2016 Honda CR-V; 2012-2017
25 Honda Fit; 2013-2014 Honda Fit EV; 2012-2014 Honda Ridgeline; 2013-2019
26 Hyundai Sonata and Sonata Hybrid; 2012-2018 Toyota Avalon; 2013-2018 Toyota
27 Avalon Hybrid; 2011-2019 Toyota Corolla; 2011-2013 Toyota Corolla Matrix; 2012-
28 2017 Toyota Sequoia; 2012-2019 Toyota Tacoma; and 2012-2017 Toyota Tundra.

1 28. As both the Vehicle Manufacturer Defendants and ZF-TRW have long
2 known, the vehicles' airbag systems are defective. In a number of instances, Class
3 Vehicles have been involved in collisions where the airbags should have deployed
4 but did not. Post-accident reports indicate that the airbag control unit malfunctioned
5 after experiencing electrical overstress, which effectively disabled the system during
6 the collision.

7 29. This defect has resulted in many injuries and at least eight reported
8 fatalities:

- 9 a. In September 2016, Fiat-Chrysler, another automaker, reported three
10 fatalities and five injuries resulting from crashes involving vehicles
11 using airbag control units manufactured by ZF-TRW.
- 12 b. In March 2018, NHTSA reported four additional fatalities and six
13 injuries resulting from crashes involving defective Hyundai or Kia
14 vehicles using airbag control units manufactured by ZF-TRW.
- 15 c. In April 2019, NHTSA reported two more crashes, one fatal,
16 involving defective Toyota vehicles using airbag control units
17 manufactured by ZF-TRW.

18 30. Because Defendants have concealed the defect from dealerships, repair
19 shops, and the public at large, it is likely that the defect is responsible for still more
20 fatalities and injuries that have not yet been attributed to it.

21 31. On March 16, 2018, NHTSA formally opened a preliminary investigation
22 into the airbag system failures in 2012-2013 Kia Forte and 2011 Hyundai Sonata
23 vehicles. When it initiated the investigation, NHTSA described the problem as
24 failure of the airbag control unit, resulting in nondeployment of the frontal airbags in
25 the event of a crash. NHTSA explained that Hyundai's post-collision inspection of
26 four crashes showed electrical overstress of the airbag control unit in three crashes,
27 and that the fourth crash was under evaluation for the same concern. While the
28 investigation was initially constrained to the Sonata and Forte models, NHTSA said

1 it would “determine if any other vehicle manufacturers used the same or similar
2 ACUs, as supplied by ZF-TRW, and if so, evaluate whether the field experience of
3 these vehicles indicates potentially related crash events.”

4 32. By April 19, 2019, NHTSA had ratcheted up the investigation from the
5 preliminary phase to the next stage—known as the engineering analysis stage. In
6 addition to advancing the investigation, NHTSA widened its scope to include all the
7 Class Vehicles, which are all equipped with airbag control units manufactured by
8 ZF-TRW.

9 33. In explaining its shift into the engineering analysis phase, NHTSA
10 explained that Class Vehicles were equipped with “an airbag control unit produced
11 by [ZF-TRW], which could fail during a crash event These control units may
12 suffer electrical overstress due to harmful signals (electrical transients) produced by
13 the crash event, causing the unit to stop working during the crash.” NHTSA
14 explained that “a crash event may, in and of itself, produce harmful signals on the
15 sensor wiring capable of damaging [an internal electronic component within the
16 airbag control unit].”

17 **The Auto Industry Has Long Known of the Defect**

18 34. At least once in 2013 and again in 2015, ZF-TRW warned vehicle
19 manufacturers of the potential for electrical overstress causing airbag systems to
20 malfunction. In addition, as detailed in chronologies below, since 2011, ZF-TRW
21 has assisted Fiat-Chrysler, Kia, and Defendant Hyundai in investigating numerous
22 crashes involving airbag system failures, frequently finding electrical overstress of
23 the airbag control unit. Since 2011, numerous complaints of crashes involving Class
24 Vehicles with airbag system failure have been reported to NHTSA.

25 **ZF-TRW’s Statements**

26 35. In May 2013, ZF-TRW reported a misconfiguration of the airbag system
27 in certain Fiat-Chrysler vehicles that may result in electrical overstress of the ACU.
28 ZF-TRW recommended countermeasures to prevent this damage.

1 36. In summer 2015, ZF-TRW reported that NHTSA was investigating
2 airbag non-deployment issues in a wide range of Kia models using the ZF-TRW
3 ACU.

4 **Hyundai and Kia Investigations**

5 37. Hyundai and Kia have known of the defect for years and have frequently
6 enlisted ZF-TRW's assistance in investigating airbag system failures in crashes
7 involving their vehicles:

8
9 August 2011. ZF-TRW analyzed the airbag control unit in a Kia Forte
10 involved in a crash with reported non-deployment of airbags. ZF-TRW
11 reported damage on the airbag control unit consistent with electrical
12 overstress. Despite ZF-TRW's report, Kia recorded the incident as a
13 "commanded nondeployment," meaning that the airbag system was triggered
14 by the crash, but the system concluded no airbag deployment was necessary.

14 February 2012. ZF-TRW inspected the airbag control unit of a 2011 Hyundai
15 Sonata following a crash in which airbags failed to deploy and concluded
16 there had been electrical overstress. Hyundai nevertheless claimed the airbag
17 nondeployment had resulted from aftermarket accessories installed in the
18 vehicle.

18 March 2012. ZF-TRW analyzed a Kia Forte crash involving reported non-
19 deployment of airbags. ZF-TRW again found damage consistent with
20 electrical overstress, but Kia again reported the incident as a "commanded
21 nondeployment."

21 May 2012. ZF-TRW communicated with Hyundai and Kia regarding
22 investigations of events involving electrical overstress of the airbag control
23 unit.

24 March 2014. A driver filed a lawsuit against Kia, alleging non-deployment of
25 the front airbags in a 2012 Kia Forte in a collision. ZF-TRW assisted Kia in
26 analyzing the crash, but Kia and ZF-TRW were unable to download data
27 from the airbag control unit. Despite being unable to download the data from
28 the airbag control unit, Kia attributed the airbag nondeployment to
compromised front impact sensors.

1 February 2015. ZF-TRW analyzed the airbag control unit of a Hyundai
2 Sonata involved in a crash with non-deployment of airbags. ZF-TRW found
3 damage consistent with electrical overstress, but Hyundai claimed the airbag
4 nondeployment resulted from a “commanded nondeployment.”

5 May 2015. Hyundai received notification of another collision in which the
6 airbags in a 2011 Sonata failed to deploy. In October 2015, Hyundai inspected
7 the vehicle and found internal damage to the airbag control unit potentially
8 caused by electrical overstress. No later than this point, Hyundai began
9 monitoring for similar crashes with airbag nondeployments likely due to the
 same defect.

10 February 2016 to July 2016. ZF-TRW met with Hyundai and Kia to discuss
11 ZF-TRW’s continued investigation of crashes involving airbag
12 nondeployments.

13 July to November 2016. Hyundai received two more collision reports
14 involving 2011 Sonatas in which airbags failed to deploy. Further inspection
15 showed that the damage attributable to airbag control unit electrical overstress
16 in at least one of these vehicles.

17 38. Since summer 2016, Hyundai and Kia, along with ZF-TRW, have
18 continued to investigate numerous reported crashes involving airbag system failure.
19 Despite their ongoing knowledge of the defect in the airbag system, neither Hyundai
20 nor Kia issued any recalls until 2018.

21 **Fiat-Chrysler Investigations Involving ZF-TRW**

22 39. Between April 2015 and September 2016, Fiat-Chrysler investigated 11
23 crashes involving 2011 to 2014 model year vehicles with airbag control units made
24 by ZF-TRW. Airbags failed to deploy in 9 of the 11 crashes, and airbag control unit
25 electrical overstress was confirmed or suspected in 10 of the 11 crashes.

26 40. Fiat-Chrysler worked closely with ZF-TRW in investigating the airbag
27 nondeployment in these 11 crashes. It conducted tests to identify what conditions
28 would cause airbag control unit electrical overstress. In June 2015, Fiat-Chrysler

1 received results showing that it took less than 100 microseconds for electrical
2 overstress to occur. ZF-TRW's testing showed that a "microcontroller reset
3 occur[ed] at the same instant a negative transient creates an [electrical overstress]
4 event."

5 41. By December 2015, Fiat-Chrysler determined that based on ZF-TRW's
6 testing, airbag systems using a ZF-TRW airbag control unit could experience
7 electrical overstress at negative voltage transients of only -1.2 volts, while airbag
8 systems in vehicles outside the subject population could withstand negative voltage
9 transients up to ten times as powerful – approximately -14 volts.

10 42. Even after this detailed investigation with ZF-TRW's cooperation, Fiat-
11 Chrysler failed to issue a recall until September 2016.

12 **NHTSA Reports**

13 43. At least since 2011, NHTSA has received numerous reports of Class
14 Vehicles' airbags failing to deploy in crashes when they should have. Vehicle
15 manufacturers monitor complaints to NHTSA in the regular course of their business
16 to evaluate potential defects and were thus aware of the potential problem with the
17 airbag control unit:

18 2011 Toyota Corolla: The driver owns a 2011 Toyota corolla. The contact
19 stated that the driver was involved in a rear end crash in which she crashed
20 into a stopped vehicle at an unknown speed. None of the air bags deployed.
21 The driver suffered minor injuries. The contact stated that the entire front end
22 of the vehicle was severely damaged.
(NHTSA ID 10457661, Report Date May 7, 2012)

23 2011 Toyota Corolla: While traveling on a highway, a vehicle struck the
24 toyota corolla automobile on the front, passenger side. This collision caused
25 the corolla to then strike a median wall. After the second impact, the corolla
26 flipped at least two (2) times. The airbag never deployed. The entire front side
27 was damaged in this accident.
(NHTSA ID 10500195, Report Date February 26, 2013)

28 2012 Acura TSX: Front end damage both sides damaged air bags did not

1 come on wife died, dealer say bags ok but didn't know why they didn't come
2 on.
3 (NHTSA ID 10502566, Report Date March 12, 2013)

4 2012 Honda Civic: I was trying to back into a parking space with my 8 month
5 old, 2012 Honda Civic. As I took my foot off the gas pedal to put the car into
6 reverse and before I could step on the brake, the car surged forward at a
7 tremendous rate of speed, jumped a curb and went straight into a brick
8 building. The car bounced backwards onto the parking lot and I was able to
9 step on the brake and regain control. This happened in a matter of a split
10 second with no time to jam the brake on as the car lurched forward. Even
11 though the car jolted tremendously, the air bag did not go off, but a service
12 light came on the dash board indicating "check airbag system."
13 (NHTSA ID 1042086, Report Date June 18, 2012)

14 2012 Honda Civic: I was driving home from work and was making a turn
15 from coming off a stop light and the cars in front of me were stopped to merge
16 onto the highway, I went to press the brake and my foot went to the floor and
17 the brakes never kicked in. I swerved to try and miss the suv in front of me but
18 was not able to miss the suv and rear ended him. I got out of the car and did
19 not notice any ice or any fluid on the road that would cause me to loose
20 traction. I hit mostly on the passenger side which saved the air bags from
21 going off, had I hit front on I am positive the air bags would have gone off as
22 upon impact the screens on the inside of the car turned red and read "check
23 airbags" and then my car shut off and hazard lights turned on. This accident
24 happened 2/1 and am waiting to get an estimate from my insurance company
25 as to the total damage amount if my car will be totaled out or not.
26 (NHTSA ID 10496475, Report Date February 5, 3013)

27 2012 Honda Civic: As I was driving to work at 4:30 am in heavy fog I hit a
28 deer that was standing in the road. I noticed as I got out of the vehicle the car
said something about the airbag sensor, well I didn't think nothing of it as I
was worried about the condition my car was in at the time. Well the body
shop that fixed my car stated the airbag should have 100% deployed due to the
fact the sensor was busted and the wire was completely into.
(NHTSA ID 10532231, Report Date July 28, 2013)

2012 Honda CR-V: My wife who was driving our Honda CR-V 2012 had an
accident on the freeway off ramp. When the car in front of her ran over some
wire that was left on the road, the driver made a sudden stop. My wife was

1 unable to stop in time and hit the vehicle with our Honda. There was
2 considerable damage on both cars. Since the airbags did not deploy and the
3 safety belt in our 2012 Honda CR-V did not restrain my wife from hitting the
4 steering wheel, she was seriously hurt.
(NHTSA ID 10479504, Report Date October 9, 2012)

5 2012 Honda CR-V: The contact owns a 2012 Honda CR-V. The contact stated
6 that while traveling 55 mph the vehicle collided with a deer and the driver's
7 air bag and passenger side air bags failed to deploy.
(NHTSA ID 10481537, Report Date October 23, 2012)

8
9 2012 Toyota Corolla: The driver fell asleep at the wheel, awoke and tried to
10 correct his lane position. Upon his attempt, the car could not be stabilized or
11 controlled. This was a front end crash at a speed of approximately 50 - 55 mph
12 going through a chain link fence, hitting hundreds of stacked lobster crates
13 (like hitting a brick wall). The car was completely totaled, the driver had seat
14 belt on. Not one air bag deployed. The driver side mirror smashed through the
15 driver side window and a piece of wooden lobster crate with nails came
16 through the front windshield and into the vehicle. This caused serious injury
to the driver, severe facial and elbow lacerations, and major amounts of glass
fragments in his body. The driver was the only individual in the vehicle.
(NHTSA ID 10465299, Report Date July 11, 2012)

17
18 2012 Toyota Corolla: The contact rented a 2012 Toyota Corolla. The contact
19 stated that while driving 35 mph the vehicle in the left lane proceeded to enter
20 the right lane, the contact swerved off the road to avoid a crash. As a result,
21 she crashed head on into a pole and the driver frontal air bag failed to deploy
22 causing the contact head to hit the steering wheel. The contact sustained
injuries to the head, face, left shoulder, ribs, legs, and abdomen. The vehicle
was destroyed. A police report was filed.
(NHTSA ID 10475007, Report Date September 11, 2012)

23
24 2012 Toyota Corolla: I believe there is a serious safety issue related to the
25 placement of the air bag sensor. My wife and a co-worker's wife were involved
26 in an accident that severely deformed the front of a 2012 Toyota Corolla
27 without triggering the airbag sensor. Upon inspection, it appears that the
28 portion of the car that the airbag sensor is attached to, moved over a foot and
a half without triggering the air bag sensor. As a former ASE master
technician and technical expert for the better business bureau, this may be a
serious design flaw that could endanger the health and safety of other 2012

1 Corolla owners. I file a complaint with Toyota USA and I am waiting for their
2 response.

3 (NHTSA ID 10501008, Report Date March 2, 2013)

4 2012 Toyota Corolla: I was involved in accident where I was t-boned on the
5 driver side and pushed from the traffic lane onto sidewalk into telegram pole.
6 The impact was so forceful that the driver side window exploded but was held
7 together due to tine on window. Outside mirror shattered and glass came into
8 car. I had seat belt on but somehow managed to bump my head on the
9 windshield which was cracked. Suffered a mild concussion from ct scan. So
10 from the front driver side, bumper and passenger side received extensive
11 damage which made the car undrivable. During the course of the forceful hit
12 and being pushed onto the sidewalk into the telegram pole, none of the air
13 bags deployed. In this vehicle there are side curtain airbags which I feel should
14 have deployed due to the impact of the other vehicle. Would like some
15 research done before I take further civil action in regards to the defective air
16 bags. The car has been totaled due to the extensive damage and the bending of
17 the frame on the car.

18 (NHTSA ID 10549469, Report Date October 25, 2013)

19 2012 Toyota Corolla: The contact owns a 2012 Toyota Corolla. The contact
20 was driving approximately 25 mph and lost control of the vehicle, crashing
21 into another vehicle. The front driver's side air bag did not deploy. There was
22 a police report filed of the incident but no injuries were reported.

23 (NHTSA ID 10555956, Report Date December 13, 2013)

24 2012 Toyota Tacoma: The contact owns a 2012 Toyota Tacoma. The contact
25 stated that while driving 40 mph, he crashed into a tree and the air bags failed
26 to deploy. The contact stated that the vehicle was destroyed but there were no
27 injuries. The vehicle was towed to a body shop. The cause of the failure was
28 unknown.

(NHTSA ID 10483711, Report Date November 8, 2012)

2012 Toyota Tacoma: Driver side airbag not deploy when truck hit telephone
pole truck totaled.

(NHTSA ID 10528164, Report Date June 26, 2013)

2013 Honda Civic: Vehicle rear-ended a stopped vehicle and significant
property damage occurred to vehicle's front end. But driver, wearing seat belt,
was thrown forward because air bag did not open.

1 (NHTSA ID 10534339, Report Date August 8, 2013)

2 2013 Toyota Corolla: The contact owns a 2013 Toyota Corolla. The contact
3 stated that while driving 20 mph, another vehicle crashed into the rear driver's
4 side door. The air bags did not deploy. The contact sustained a dislocated
5 shoulder.

6 (NHTSA ID 10515547, Report Date June 6, 2013)

7 2013 Toyota Corolla: I rear ended a Chevy Tahoe, at around 20-35 mph, the
8 vehicle received heavy damage in the front of the vehicle. The vehicle was
9 declared total loss. I the driver received a concussion. My faced manage to hit
10 the steering wheel, the air bags from this vehicle did not deploy.

11 (NHTSA ID 1053498, Report Date September 13, 2013)

12 2013 Toyota Corolla: The contact owns a 2013 Toyota Corolla. The contact
13 stated while driving 45 mph a vehicle crashed into the contact and caused the
14 contact to crash into a wall. During the crash the air bags did not deploy and
15 the seat belts did not lock. The contact suffered injuries to the back and the
16 passenger suffered injuries to the back and arm.

17 (NHTSA ID 10550513, Report Date November 1, 2013)

18 **Only Some Automakers Have Issued Recalls, and**
19 **Those Recalls Have Been Inadequate**

20 44. Despite their investigations and knowing of numerous crashes, no
21 Automaker issued a recall until September 2016. Even then, the recalls have been
22 insufficient.

23 45. On September 13, 2016, Fiat-Chrysler recalled approximately 1.4 million
24 vehicles involving ZF-TRW airbag control units. This recall acknowledged that the
25 airbags and seatbelt pretensioners could fail to deploy in the event of a crash, “due to
26 a shorting condition resulting in a negative voltage transient that travels to the
27 [airbag control unit] via the front impact sensor wires damaging [the airbag control
28 unit].” Fiat-Chrysler required affected vehicle owners to bring their vehicles into an
authorized dealer to have the airbag control unit replaced. As of January 28, 2019,
Fiat-Chrysler reports that just 550,000 of the recalled vehicles have been repaired—
fewer than half of the recalled vehicles.

1 46. On June 1, 2018, Kia recalled the 2010-2013 Forte and Forte Koup, 2011-
2 2012 Optima Hybrid, 2011-2013 Optima, and 2011-2012 Sedona. Kia’s recall
3 affected approximately 500,000 vehicles involving ZF-TRW airbag control units.

4 47. Like Fiat-Chrysler, Kia acknowledged that its vehicles had been equipped
5 with airbag control units susceptible to electrical overstress, risking airbag
6 nondeployment in the event of a collision: the “[airbag control units] may be
7 susceptible to [electrical overstress] due to inadequate circuit protection.” Kia asked
8 owners of affected vehicles to present their vehicles to dealerships for installation of
9 an extension wire harness kit. As of April 15, 2019, Kia reports that fewer than
10 150,000 vehicles have been repaired—fewer than half of those recalled.

11 48. On October 5, 2018, Hyundai recalled the 2011-2013 Sonata and 2011-
12 2012 Sonata Hybrid. Hyundai’s recall affected approximately 600,000 vehicles.
13 Class vehicles manufactured by Hyundai that are absent from this recall are the
14 2014-2019 Sonata and 2013-2019 Sonata Hybrid.

15 49. In issuing the recall, Hyundai stated that “the subject [airbag control
16 units] could be susceptible to [electrical overstress] because [they] lack[] adequate
17 circuit protection,” resulting in the failure of the airbags and seat belt pretensioners
18 to deploy in certain frontal crash events. Hyundai asked owners to present their
19 vehicles to dealerships to have an external wire filter kit installed. As of April 30,
20 2019, Hyundai reports that fewer than 210,000 recalled cars have been remedied.

21 **Defendants Concealed the Defect and Represented the Class Vehicles as Safe**

22 50. All of the Defendants recognize the importance that the car-buying public
23 places on safety features, including properly functioning airbag systems.

24 51. Despite knowing that Class Vehicles’ airbag systems are dangerously
25 defective, Defendants marketed their vehicles as safe and concealed the defect.
26 Defendants did not warn prospective customers at the point of sale or lease about
27 the defect. And except for the partial recalls by some Defendants described above,
28 Defendants have made no effort to alert drivers to the risk.

1 52. As Defendants know, the defect is not reasonably discoverable by
2 consumers. There are no indicator lights or other signals to alert drivers to the
3 problem. Drivers only discover the defect when they experience it firsthand and
4 suffer the attendant safety risks. As a result, drivers are unaware their vehicles are
5 unsafe and consumers are deprived of their ability to make informed purchasing
6 decisions. Despite having extensive knowledge of industry reports and NHTSA
7 investigations, Defendants have continued to withhold information about the defect.

8 53. Given the severity and the safety risks posed by the defect, Defendants
9 either should not have sold or leased Plaintiffs and class members their vehicles, or
10 they should have prominently disclosed—both in a written disclosure to be
11 acknowledged in writing by Plaintiffs and class members and through an oral
12 disclosure to be given by Defendants’ authorized dealerships—that the vehicles
13 airbag systems were defective and may fail to deploy in the event of a collision.

14 **PLAINTIFFS’ EXPERIENCES**

15 **James Carroll**

16 54. James Carroll purchased a new 2013 Honda Civic EX Sedan from
17 O’Donnell Honda, an authorized Honda dealership located in Ellicott City,
18 Maryland. Mr. Carroll researched the vehicle online, including on Honda’s website,
19 and also spoke with dealership personnel about the vehicle before making his
20 purchase.

21 55. Mr. Carroll has not been notified of a recall due to electrical overstress of
22 the airbag control unit.

23 56. Vehicle safety is important to Mr. Carroll and was when he bought his
24 vehicle. Had Honda adequately disclosed the airbag system defect, Mr. Carroll
25 would not have purchased his vehicle, or he would have paid substantially less for it.

26 **Md Ullah**

27 57. Md Ullah purchased a new 2019 Toyota Corolla from Antioch Toyota,
28 an authorized Toyota dealership located in Antioch, California. Mr. Ullah

1 researched the vehicle online, including on Toyota’s website, and also spoke with
 2 dealership personnel about the vehicle before making his purchase.

3 58. Mr. Ullah has not been notified of a recall due to electrical overstress of
 4 the airbag control unit.

5 59. Vehicle safety is important to Mr. Ullah and was when he bought his
 6 vehicle. Had Toyota adequately disclosed the airbag system defect, Mr. Ullah would
 7 not have purchased his vehicle, or he would have paid substantially less for it.

8 **Eldon Painter**

9 60. Eldon Painter purchased a new 2017 Hyundai Sonata from Northtowne
 10 Hyundai, an authorized Hyundai dealership located in Kansas City, Missouri. Mr.
 11 Painter researched the vehicle online, including on Hyundai’s website, and also
 12 spoke with dealership personnel about the vehicle before making his purchase.

13 61. Mr. Painter has not been notified of a recall due to electrical overstress of
 14 the airbag control unit.

15 62. Vehicle safety is important to Mr. Painter and was when he bought his
 16 vehicle. Had Hyundai adequately disclosed the airbag system defect, Mr. Painter
 17 would not have purchased his vehicle, or he would have paid substantially less for it.

18 **CLASS ACTION ALLEGATIONS**

19 63. Pursuant to Rule 23 of the Federal Rules of Civil Procedure, Plaintiffs bring
 20 this action on behalf of themselves and the following proposed nationwide class,
 21 within which the term “Class Vehicle” is defined to include all of the models below:
 22

| Model Year | Make | Model |
|------------|-------|-------------------------|
| 2014-2019 | Acura | RLX and RLX Hybrid |
| 2012-2014 | Acura | TL |
| 2015-2017 | Acura | TLX |
| 2012-2014 | Acura | TSX and TSX Sportswagon |
| 2013-2015 | Honda | Accord |

| | | | |
|----|-----------|---------|-------------------------------|
| 1 | 2012-2015 | Honda | Civic, Civic GX, and Civic SI |
| 2 | 2013-2015 | Honda | Civic Hybrid |
| 3 | 2012-2016 | Honda | CR-V |
| 4 | 2012-2017 | Honda | Fit |
| 5 | 2013-2014 | Honda | Fit EV |
| 6 | 2012-2014 | Honda | Ridgeline |
| 7 | 2013-2019 | Hyundai | Sonata and Sonata Hybrid |
| 8 | 2012-2018 | Toyota | Avalon |
| 9 | 2013-2018 | Toyota | Avalon Hybrid |
| 10 | 2011-2019 | Toyota | Corolla |
| 11 | 2011-2013 | Toyota | Corolla Matrix |
| 12 | 2012-2017 | Toyota | Sequoia |
| 13 | 2012-2019 | Toyota | Tacoma |
| 14 | 2012-2017 | Toyota | Tundra |

15
16 Nationwide Class:

17 *All persons who purchased or leased a Class Vehicle in the United States.*

18 64. Plaintiffs also seek to represent state classes defined as follows:

19 California Class:

20 *All persons who purchased or leased a Class Vehicle in California.*

21 Maryland Class:

22 *All persons who purchased or leased a Class Vehicle in Maryland.*

23 Missouri Class:

24 *All persons who purchased or leased a Class Vehicle in Missouri.*

25 65. Excluded from the proposed class(es) are Defendants; any affiliate, parent,
26 or subsidiary of Defendants; any entity in which Defendants have a controlling
27 interest; any officer, director, or employee of Defendants; any successor or assign of
28 Defendants; anyone employed by counsel in this action; any judge to whom this case

1 is assigned, his or her spouse; members of the judge's staff; and anyone who purchased
2 a Class Vehicle for the purpose of resale.

3 66. Members of the proposed class(es) are readily ascertainable because the
4 class definition is based upon objective criteria.

5 67. **Numerosity.** Vehicle Manufacturer Defendants sold many millions of
6 Class Vehicles, including a substantial number in California, Maryland, and Missouri.
7 Members of the proposed class(es) likely number in the millions and are thus too
8 numerous to practically join in a single action. Class members may be notified of the
9 pendency of this action by mail, supplemented by published notice (if deemed
10 necessary or appropriate by the Court).

11 68. **Commonality and Predominance.** Common questions of law and fact
12 exist as to all proposed class members and predominate over questions affecting only
13 individual class members. These common questions include:

- 14 a. Whether the airbag systems in Class Vehicles are defective such that they
15 will not reliably activate the airbags and seatbelt pretensioners in the event
16 of a collision;
- 17 b. Whether Defendants knew or should have known of the defect, and if so,
18 when they discovered this;
- 19 c. Whether the existence of the defect is material because, among other
20 things, the defect poses an unreasonable safety hazard and affects the
21 central functionality of the vehicles;
- 22 d. Whether Vehicle Manufacturer Defendants failed to disclose and
23 concealed the existence of the defect from potential customers;
- 24 e. Whether the Court may enter an injunction requiring Defendants to
25 notify owners and lessees about the airbag systems' propensity to fail in
26 the event of a crash;
- 27 f. Whether the Court may enter an injunction requiring Defendants to
28 remedy the defect;

- 1 g. Whether Defendants' conduct, as alleged herein, violates state consumer
2 protection laws of California, Maryland, and Missouri;
- 3 h. Whether Vehicle Manufacturer Defendants have breached their implied
4 warranty obligations; and
- 5 i. Whether Defendants' conduct, as alleged herein, entitles Plaintiffs and
6 the proposed classes they represent to restitution.

7 69. **Typicality.** Plaintiffs' claims are typical of the claims of the proposed
8 class(es). Plaintiffs and the members of the proposed classes all purchased or leased
9 Class Vehicles with the same defective airbag systems, giving rise to substantially the
10 same claims. As illustrated by class member complaints, some of which have been
11 excerpted above, each vehicle model included in the proposed class definition has
12 suffered from the same airbag system defect that Plaintiffs are complaining about.

13 70. **Adequacy.** Plaintiffs are adequate representatives of the proposed classes
14 because their interests do not conflict with the interests of the members of the classes
15 they seek to represent. Plaintiffs have retained counsel who are competent and
16 experienced in complex class action litigation, and will prosecute this action
17 vigorously on class members' behalf.

18 71. **Superiority.** A class action is superior to other available means for the fair
19 and efficient adjudication of this dispute. The injury suffered by each class member,
20 while meaningful on an individual basis, is not of such magnitude as to make the
21 prosecution of individual actions against Defendants economically feasible. Even if
22 class members themselves could afford such individualized litigation, the court system
23 could not. In addition to the burden and expense of managing many actions arising
24 from the defective airbag systems, individualized litigation presents a potential for
25 inconsistent or contradictory judgments. Individualized litigation increases the delay
26 and expense to all parties and the court system presented by the legal and factual issues
27 of the case. By contrast, a class action presents far fewer management difficulties and
28 provides the benefits of single adjudication, economy of scale, and comprehensive

1 supervision by a single court.

2 72. In the alternative, the proposed class(es) may be certified because:

- 3 a. the prosecution of separate actions by the individual members of the
4 proposed class(es) would create a risk of inconsistent adjudications,
5 which could establish incompatible standards of conduct for Defendants;
6 b. the prosecution of individual actions could result in adjudications, which
7 as a practical matter, would be dispositive of the interests of non-party
8 class members or which would substantially impair their ability to protect
9 their interests; and
10 c. Defendants have acted or refused to act on grounds generally applicable
11 to the proposed class(es), thereby making appropriate final and injunctive
12 relief with respect to the members of the proposed class(es) as a whole.

13 **TOLLING OF STATUTES OF LIMITATIONS**

14 73. **Discovery Rule.** Plaintiffs' and class members' claims accrued upon
15 discovery that the airbag system installed in their Class Vehicles was prone to failure
16 in the event of a crash. While Defendants knew and concealed the fact that the airbag
17 system installed in the Class Vehicles has a defect that causes failures, including airbag
18 nondeployment in a crash, Plaintiffs and class members could not and did not
19 discover this fact through reasonable diligent investigation.

20 74. **Active Concealment Tolling.** Any statutes of limitations are tolled by
21 Vehicle Manufacturer Defendants' knowing and active concealment of the fact that
22 the airbag system installed in the Class Vehicles suffered from an inherent defect.
23 Defendants kept Plaintiffs and class members ignorant of vital information essential
24 to the pursuit of their claim, without any fault or lack of diligence on the part of
25 Plaintiffs. The details of Defendants' efforts to conceal their above-described unlawful
26 conduct are in their possession, custody, and control, to the exclusion of Plaintiffs and
27 class members, and await discovery. Plaintiffs could not reasonably have discovered
28 the fact that the airbag system installed in their Class Vehicle was defective and that

1 such airbag systems may fail to deploy in a crash.

2 75. **Estoppel.** Vehicle Manufacturer Defendants were and are under a
3 continuous duty to disclose to Plaintiffs and all class members the true character,
4 quality, and nature of the airbag system installed in the Class Vehicles. At all relevant
5 times, and with limited exceptions continuing to this day, Vehicle Manufacturer
6 Defendants knowingly, affirmatively, and actively concealed the true character,
7 quality, and nature of the airbag system installed in the Class Vehicles. The details of
8 Vehicle Manufacturer Defendants' efforts to conceal their above-described unlawful
9 conduct are in their possession, custody, and control, to the exclusion of Plaintiffs and
10 class members, and await discovery. Plaintiffs reasonably relied upon Vehicle
11 Manufacturer Defendants' active concealment. Based on the foregoing, Vehicle
12 Manufacturer Defendants are estopped from relying upon any statutes of limitation
13 in defense of this action.

14 76. **Equitable Tolling.** Vehicle Manufacturer Defendants took active steps to
15 conceal the fact that they wrongfully, improperly, illegally, and repeatedly
16 manufactured, marketed, distributed, sold, and leased Class Vehicles with defective
17 airbag systems. The details of Vehicle Manufacturer Defendants' efforts to conceal
18 their above-described unlawful conduct are in their possession, custody, and control,
19 to the exclusion of Plaintiffs and class members, and await discovery. When Plaintiffs
20 learned about this material information, they exercised due diligence by thoroughly
21 investigating the situation, retaining counsel, and pursuing their claims. Vehicle
22 Manufacturer Defendants fraudulently concealed their above-described wrongful
23 acts. Should such tolling be necessary, therefore, all applicable statutes of limitation
24 are tolled under the doctrine of equitable tolling.

FIRST CAUSE OF ACTION

Unlawful, Unfair, and Fraudulent Business Practices

Cal. Bus. & Prof. Code § 17200, *et seq.*

**(Plaintiff Ullah individually and on behalf of the proposed California Class,
Against Toyota)**

77. Plaintiff Ullah re-alleges the paragraphs above as if fully set forth herein.

78. Toyota has violated and continue to violate California’s Unfair Competition Law, Cal. Bus. & Prof. Code § 17200, *et seq.*, which prohibits unlawful, unfair, and fraudulent business acts or practices.

79. Toyota’s acts and practices, as alleged in this complaint, constitute unlawful, unfair, and fraudulent business practices, in violation of the Unfair Competition Law. In particular, Toyota sold vehicles to class members even though the airbag systems installed in those vehicles are defective and pose a safety hazard, and failed to disclose their knowledge of the airbag system defect and its attendant risks at the point of sale or otherwise.

80. Toyota’s business acts and practices are unlawful in that they violate the Consumers Legal Remedies Act, Cal. Civil Code § 1750, *et seq.*, and the Song-Beverly Consumer Warranty Act for Breach of Implied Warranty, Cal. Civ. Code § 1790, *et seq.*, for the reasons set forth below.

81. Toyota’s acts and practices also constitute fraudulent practices in that they are likely to deceive a reasonable consumer. As described above, Toyota knowingly concealed and failed to disclose at the point of sale and otherwise that Class Vehicles’ airbag systems have a propensity to fail to deploy in a crash, endangering the personal safety of drivers and passengers. Had Toyota disclosed this fact, Plaintiff Ullah, class members, and reasonable consumers would not have purchased Class Vehicles or would have paid significantly less for them.

82. Toyota’s conduct also constitutes unfair business practices for at least the following reasons:

- 1 a. The gravity of harm to Plaintiff Ullah and the proposed class from
2 Toyota’s acts and practices far outweigh any legitimate utility of that
3 conduct;
- 4 b. Toyota’s conduct is immoral, unethical, oppressive, unscrupulous, or
5 substantially injurious to Plaintiff Ullah and the members of the
6 proposed class; and
- 7 c. Toyota’s conduct undermines or violates the stated policies underlying
8 the Consumers Legal Remedies Act and the Song-Beverly Consumer
9 Warranty Act—to protect consumers against unfair and sharp business
10 practices and to promote a basic level of honesty and reliability in the
11 marketplace.

12 83. As a direct and proximate result of Toyota’s business practices, Plaintiff
13 Ullah and the proposed class members suffered injury in fact and lost money or
14 property, because they purchased and paid for vehicles and upgrades that they
15 otherwise would not have, or in the alternative, would have paid less for.

16 84. Plaintiff Ullah and the proposed California Class members are entitled to
17 equitable relief, including an order directing Toyota to disclose the existence of the
18 defect to drivers and consumers and to provide restitution and disgorgement of all
19 profits paid to Toyota as a result of their unfair, deceptive, and fraudulent practices,
20 reasonable attorneys’ fees and costs, and a permanent injunction enjoining such
21 practices.

22 **SECOND CAUSE OF ACTION**

23 **Violation of the Consumers Legal Remedies Act**

24 **Cal. Civ. Code § 1750, *et seq.***

25 **(Plaintiff Ullah individually and on behalf of the proposed California Class,**
26 **Against Toyota)**

27 85. Plaintiff Ullah re-alleges the paragraphs above as if fully set forth herein.

28 86. Toyota is a “person” within the meaning of Civil Code §§ 1761(c) and

1 1770, and has provided “goods” within the meaning of Civil Code §§ 1761(a) and
2 1770.

3 87. Plaintiff Ullah and members of the proposed California Class are
4 “consumers” within the meaning of Civil Code §§ 1761(d) and 1770, and have
5 engaged in a “transaction” within the meaning of Civil Code §§ 1761(e) and 1770.

6 88. Toyota’s acts and practices, which were intended to result and which did
7 result in the sale of Class Vehicles with defective airbag systems, violate § 1770 of the
8 Consumers Legal Remedies Act for at least the following reasons:

- 9 a. Toyota represented that their vehicles and airbag systems had
10 characteristics, uses, or benefits which they do not have;
- 11 b. Toyota advertised their goods with intent not to sell them as advertised;
- 12 c. Toyota represented that their vehicles and airbag systems are of a
13 particular standard, quality, or grade when they are not;
- 14 d. Toyota represented that a transaction conferred or involved rights,
15 remedies, or obligations which they do not; and
- 16 e. Toyota represented that their goods have been supplied in accordance
17 with a previous representation when they have not.

18 89. As described above, Toyota sold vehicles to class members even though
19 the airbag systems installed in those vehicles are defective and pose a safety hazard,
20 and failed to disclose their knowledge of the airbag system defect and its attendant
21 risks at the point of sale or otherwise. Toyota intended that Plaintiff Ullah and the
22 members of the proposed class rely on this omission in deciding to purchase their
23 vehicles and airbag system.

24 90. Had Toyota adequately disclosed the defect, Plaintiff Ullah, members of
25 the proposed class, and reasonable consumers would not have purchased or would
26 have paid less for their vehicles and airbag system.

27 91. Pursuant to the provisions of Cal. Civ. Code § 1782(a), Plaintiff Ullah
28 intends to promptly send a notice letter to Toyota to provide them with the

1 opportunity to correct their business practices, and then will amend this complaint to
2 add a demand for damages should Toyota decline to reform their conduct in response
3 to the demand and this complaint.

4 92. Pursuant to California Civil Code § 1780, Plaintiff seeks an order enjoining
5 Toyota from the unlawful practices described above and a declaration that Toyota's
6 conduct violates the Consumers Legal Remedies Act, as well as attorneys' fees and
7 costs.

8 **THIRD CAUSE OF ACTION**

9 **Violation of Song-Beverly Consumer Warranty Act**

10 **for Breach of Implied Warranty, Cal. Civ. Code § 1790, *et seq.***

11 **(Plaintiff Ullah on behalf of the proposed California Class, Against Toyota)**

12 93. Plaintiff Ullah re-alleges the paragraphs above as if fully set forth herein.

13 94. Class Vehicles are "consumer goods" and Plaintiff Ullah and the proposed
14 California Class are "buyers" within the meaning of Cal. Civ. Code § 1791. Toyota is
15 also a "manufacturer," "distributor," or "retail seller" under Cal. Civ. Code § 1791.

16 95. The implied warranty of merchantability included with the sale of each
17 Class Vehicle means that Toyota warranted that each Class Vehicle (a) would pass
18 without objection in trade under the contract description; (b) was fit for the ordinary
19 purposes for which the Class Vehicle would be used; and (c) conformed to the
20 promises or affirmations of fact made on the container or label.

21 96. The Class Vehicles would not pass without objection in the automotive
22 trade because they contain the above-described defect, which also makes them unfit
23 for the ordinary purpose for which a Class Vehicle would be used.

24 97. The Class Vehicles are not adequately labeled because their labeling fails
25 to disclose the defect and does not advise the members of the proposed California
26 Class of the existence of the danger prior to experiencing failure firsthand.

27 98. Toyota's actions have deprived Plaintiff Ullah and the members of the
28 proposed California Class of the benefit of their bargains and have caused Class

1 Vehicles to be worth less than what Plaintiff Ullah and other members of the proposed
2 California Class paid.

3 99. As a direct and proximate result of Toyota’s breach of implied warranty,
4 members of the proposed California Class received goods whose condition
5 substantially impairs their value. Plaintiff and members of the proposed California
6 Class have been damaged by the diminished value of their Class Vehicles.

7 100. Under Cal. Civ. Code §§ 1791.1(d) and 1794, Plaintiff and members of the
8 proposed California Class are entitled to damages and other legal and equitable relief,
9 including, at their election, the right to revoke acceptance of Class Vehicles or the
10 overpayment or diminution in value of their Class Vehicles. They are also entitled to
11 all incidental and consequential damages resulting from Toyota’s breach, as well as
12 reasonable attorneys’ fees and costs.

13 **FOURTH CAUSE OF ACTION**

14 **Maryland Consumer Protection Act (“MCPA”),**

15 **Md. Code Com. Law § 13-101, *et seq.***

16 **(Plaintiff Carroll individually and on behalf of the proposed Maryland Class,**
17 **Against Honda)**

18 101. Plaintiff Carroll, on behalf of himself and the proposed Maryland
19 Subclass, hereby re-alleges the paragraphs above as if fully set forth herein.

20 102. Honda, Plaintiff Carroll, and the Maryland Subclass are “persons” within
21 the meaning of Md. Code Com. Law § 13-101(h).

22 103. The MCPA provides that a person may not engage in any unfair or
23 deceptive trade practice in the sale of any consumer good. Md. Code Com. Law § 13-
24 303. As set forth herein, Honda participated in misleading, false, or deceptive acts that
25 violated the MCPA.

26 104. Honda has long known the Class Vehicles are defective, including when
27 they developed, manufactured, marketed and sold the Class Vehicles. Furthermore,
28 Honda knew that the defect poses serious safety risks to consumers like Plaintiff

1 Carroll and the Maryland Subclass.

2 105. Nonetheless, Honda concealed its knowledge of the defect from
3 consumers and sold Class Vehicles as safe for normal use.

4 106. The defect created and continues to create serious safety risks, which were
5 hidden from consumers.

6 107. No reasonable consumer would have knowingly bought or leased a Class
7 Vehicle if that consumer had known it was manufactured and distributed with the
8 defect.

9 108. Honda has not recalled the defective Class Vehicles, nor has it notified
10 consumers that the airbag systems in Class Vehicles could fail in the event of a crash,
11 were dangerous to occupants, and should be replaced.

12 109. Honda owed Plaintiff Carroll and the Maryland Subclass a duty to
13 disclose the true safety and reliability of the Class Vehicles because Honda: (1)
14 possessed exclusive knowledge of the dangers and risks posed by the defect; (2)
15 intentionally concealed the dangers and risks posed by the defect; and/or (3) made
16 incomplete representations about the safety and reliability of the Class Vehicles while
17 purposefully withholding material facts from Plaintiff and Class Members that
18 contradicted those representations.

19 110. By concealing the serious safety risk posed by its Class Vehicles,
20 concealing the existence of the defect and by representing that the Class Vehicles were
21 safe, Honda engaged in actionable conduct within the meaning of the MCPA.

22 111. Had Honda disclosed the true quality and defective nature of the Class
23 Vehicles, Plaintiff Carroll and the Maryland Subclass would not have purchased the
24 Class Vehicles or would have paid substantially less for them.

25 112. Honda violated the MCPA when they concealed and/or failed to disclose
26 the serious safety risks to consumers that the Class Vehicles posed, when they
27 concealed and/or failed to disclose the fact that the Class Vehicles were defective as
28 described herein, and when they breached their duty to disclose the safety risks and

1 the defect, instead selling and distributing the Class Vehicles as if they were fit for their
2 ordinary purposes, could be used safely, and did not pose an unreasonable safety risk.

3 113. Honda's violations present a continuing risk to Plaintiff Carroll and the
4 Maryland Subclass as well as to the general public. Honda's unlawful acts and
5 practices complained of herein affect the public interest.

6 114. As a direct and proximate result of Honda's violation of the MCPA,
7 Plaintiff Carroll and the Maryland Subclass were damaged.

8 115. Pursuant to Md. Code Com. Law § 13-408, Plaintiff Carroll and the
9 Maryland Subclass seek to recover actual damages in an amount to be determined at
10 trial; attorneys' fees; and any other relief available under the MCPA.

11 **FIFTH CAUSE OF ACTION**

12 **Missouri Merchandising Practices Act, Mo. Rev. Stat. § 407.010, *et seq.***
13 **(Plaintiff Painter individually and on behalf of the proposed Missouri Class,**
14 **Against Hyundai)**

15 116. Plaintiff Painter, on behalf of himself and the proposed Missouri
16 Subclass, hereby re-alleges the paragraphs above as if fully set forth herein.

17 117. Plaintiff Painter, members of the Missouri Subclass, and Vehicle
18 Manufacturer Defendants are "persons" within the meaning of Mo. Rev. Stat. §
19 407.010(5).

20 118. Hyundai's activities constitute the sale of "merchandise" within the
21 meaning of Mo. Rev. Stat. § 407.010(4).

22 119. As set forth herein, Hyundai's acts, practices and conduct violated Mo.
23 Rev. Stat. § 407.020(1) in that, among other things, Hyundai used and/or continues
24 to use unfair practices, concealment, suppression and/or omission of material facts in
25 connection with the advertising, marketing, and offering for sale of Class Vehicles.

26 120. Hyundai's unfair, unlawful and deceptive acts, practices, and conduct
27 includes selling Class Vehicles with a material defect and concealing the existence of
28 that defect, thereby endangering and harming Plaintiffs and the Missouri Subclass.

1 Hyundai's conduct violates the MMPA.

2 121. Hyundai's conduct also violates the enabling regulations for the MMPA
3 because it: (1) offends public policy; (2) is unethical, oppressive, and unscrupulous;
4 (3) causes substantial injury to consumers; (4) was not in good faith; (5) is
5 unconscionable; and (6) is unlawful. *See* Mo. Code Regs. Ann. tit. 15, § 60-8.

6 122. Hyundai has long known the Class Vehicles are defective, including when
7 they developed, manufactured, marketed and sold the Class Vehicles. Furthermore,
8 Hyundai knew the defect poses serious safety risks to consumers like Plaintiff Painter,
9 and the Missouri Subclass.

10 123. Nonetheless, Hyundai concealed its knowledge of the defect from
11 consumers and sold Class Vehicles as safe for normal use.

12 124. The defect created and continues to create serious safety risks, which were
13 hidden from consumers.

14 125. No reasonable consumer would have knowingly bought or leased a Class
15 Vehicle if that consumer had known it was manufactured and distributed with the
16 defect.

17 126. Except for the partial recalls noted above, Hyundai did not recall the
18 defective Class Vehicles, nor did they notify consumers that the Class Vehicles were
19 dangerous to occupants.

20 127. Hyundai owed Plaintiff Painter, and the Missouri Subclass a duty to
21 disclose the true safety and reliability of the Class Vehicles because Hyundai: (1)
22 possessed exclusive knowledge of the dangers and risks posed by the defect; (2)
23 intentionally concealed the dangers and risks posed by the defect; and/or (3) made
24 incomplete representations about the safety and reliability of the Class Vehicles while
25 purposefully withholding material facts from Plaintiffs that contradicted those
26 representations.

27 128. By concealing the serious safety risk posed by its Class Vehicles,
28 concealing the existence of the defect and by representing that the Class Vehicles were

1 safe, Hyundai engaged in actionable conduct within the meaning of the Missouri
2 MPA.

3 129. Had Hyundai disclosed the true quality and defective nature of the Class
4 Vehicles, Plaintiff Painter, and the Missouri Subclass would not have purchased the
5 Class Vehicles or would have paid substantially less for them.

6 130. Hyundai violated the Missouri MPA when they concealed and/or failed
7 to disclose the serious safety risks to consumers that their Class Vehicles posed, when
8 they concealed and/or failed to disclose the fact that the Class Vehicles were defective
9 as described herein, and when they breached their duty to disclose the safety risks and
10 the defect, instead selling and distributing the Class Vehicles as if they were fit for their
11 ordinary purposes, could be used safely, and did not pose an unreasonable safety risk.

12 131. Hyundai's violations present a continuing risk to Plaintiff Painter and the
13 Missouri Subclass as well as to the general public. Hyundai's unlawful acts and
14 practices complained of herein affect the public interest.

15 132. As a direct and proximate result of Hyundai's violation of the Missouri
16 MPA, Plaintiff Painter, and the Missouri Subclass were damaged.

17 133. Plaintiff Painter, and the Missouri Subclass seek actual damages; a
18 declaration that Hyundai's methods, acts and practices violate the Missouri
19 Merchandising Practices Act, Mo. Rev. Stat. § 407.010 *et seq.*; an injunction
20 prohibiting Hyundai from continuing to engage in such unlawful methods, acts, and
21 practices; restitution; rescission; disgorgement of all profits obtained from Hyundai's
22 unlawful conduct; pre and post-judgment interest; punitive damages; reasonable
23 attorney's fees and costs; and any other relief that the Court deems necessary or
24 proper.

SIXTH CAUSE OF ACTION

Unjust Enrichment

(Each Plaintiff individually and on behalf of the proposed Nationwide Class or, alternatively, each Plaintiff’s statewide class, Against All Defendants)

134. Plaintiffs re-allege the paragraphs above as if fully set forth herein.

135. As described above, Defendants sold vehicles to class members even though the airbag systems installed in those vehicles are defective and pose a safety hazard, and failed to disclose their knowledge of the airbag system defect and its attendant risks at the point of sale or otherwise.

136. As a result of their fraudulent acts and omissions related to the defective airbag systems, Defendants obtained monies which rightfully belong to Plaintiffs and the class members to the detriment of Plaintiffs and the proposed class members.

137. Defendants appreciated, accepted, and retained the non-gratuitous benefits conferred by Plaintiffs and the class members, who, without knowledge of the defect, paid a higher price for their vehicles and airbag systems than those vehicles were worth. Defendants also received monies for vehicles and airbag systems that Plaintiffs and the class members would not have otherwise purchased.

138. It would be inequitable and unjust for Defendants to retain these wrongfully obtained profits.

139. Defendants’ retention of these wrongfully-obtained profits would violate the fundamental principles of justice, equity, and good conscience.

140. Plaintiffs and the proposed Nationwide Class or, alternatively, the statewide classes, are entitled to restitution of the profits unjustly obtained, plus interest.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs request that the Court enter a judgment awarding the following relief:

- 1 a. An order certifying the proposed class(es), and appointing Plaintiffs’
- 2 counsel to represent the class(es);
- 3 b. An order awarding Plaintiffs and the class members their actual damages,
- 4 punitive damages, and/or any other form of monetary relief provided by
- 5 law (except that no monetary relief is presently sought for violations of
- 6 the Consumers Legal Remedies Act);
- 7 c. An order awarding Plaintiffs and the class(es) restitution, disgorgement,
- 8 or other equitable relief as the Court deems proper;
- 9 d. An order requiring Defendants to adequately disclose and repair the
- 10 defective airbag systems;
- 11 e. An order awarding Plaintiffs and the class(es) pre-judgment and post-
- 12 judgment interest as allowed under the law;
- 13 f. An order awarding Plaintiffs and the class(es) reasonable attorneys’ fees
- 14 and costs of suit, including expert witness fees; and
- 15 g. An order awarding such other and further relief as this Court may deem
- 16 just and proper.

JURY DEMAND

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18 Pursuant to Fed. R. Civ. P. 38(b), Plaintiffs demand a trial by jury for all
19 issues so triable under the law.
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22 DATED: June 10, 2019

Respectfully submitted,

GIBBS LAW GROUP LLP

By: /s/ Eric H. Gibbs

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