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13 UNITED STATES DISTRICT COURT
14 CENTRAL DISTRICT OF CALIFORNIA
15 WESTERN DIVISION

16 RICHARD DRAEGER, LAIMA
17 ZBOJNIEWICZ, STANLEY AND
JANET NEILL, ZORAN AND
18 DOREEN BAISCH, BERNICE
WIMLEY, JASON SHAPIRO,
19 HOWARD REE, DANIEL CHESLER,
ESTHER MYAPE REYES, NEIL
20 STEVENS, MATTHEW KANG,
JORDON MIKELAITIS, BRUCE
21 GOLDSTONE, SCOTT GOLDSTONE,
TIMOTHY SCHOENFELD,
22 NICHOLAS MESSINA, JOHNNY
HERNANDEZ , KEVIN SISTI, JR.,
23 JEFFREY SANDLER, MICHELLE
SMITH, JANINE LOVUOLO, HELEN
24 CIANGIULLI, JUDITH SHANE,
JOHANA GARCIA, MARK
25 PASTARNACK, and JOHN LEE, on
behalf of themselves and those similarly
26 situated

Case No.:
CLASS ACTION COMPLAINT

DEMAND FOR JURY TRIAL

27 Plaintiffs,

28 vs.

1 TOYOTA MOTOR SALES, U.S.A.,
2 INC.; CALTY DESIGN RESEARCH
3 INC.; FORD MOTOR COMPANY;
4 NISSAN NORTH AMERICA, INC.;
5 NISSAN DESIGN AMERICA INC.;
6 AMERICAN HONDA MOTOR CO.,
7 INC.; HONDA R&D AMERICAS
8 INC.; FCA US LLC; GENERAL
9 MOTORS COMPANY; BMW OF
10 NORTH AMERICA, LLC;
11 DESIGNWORKS USA, INC.;
12 VOLKSWAGEN GROUP OF
13 AMERICA, INC.; BENTLEY
14 MOTORS, INC.; MERCEDES-BENZ
15 USA, LLC; MERCEDES-BENZ
16 RESEARCH & DEVELOPMENT
17 NORTH AMERICA, INC.; HYUNDAI
18 MOTOR AMERICA, INC.; HYUNDAI
19 AMERICA TECHNICAL CENTER,
20 INC.; and KIA MOTORS AMERICA,
21 INC.,
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Defendants.

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1 The above-captioned plaintiffs (collectively, “Plaintiffs”), individually and
2 on behalf of all other owners of vehicles designed, manufactured, distributed,
3 and/or sold by the defendant vehicle manufacturers and design studios (the “Class”
4 or “Class Members”), allege the following as their Complaint and Demand for Jury
5 Trial:

6 I. INTRODUCTION

7 1. This Complaint seeks redress for a deadly defect associated with the
8 remote-control electronic keyless fob system¹ (collectively, “Keyless Fobs”)
9 implemented by ten different auto manufacturing groups and their associated
10 research and design companies² (collectively, the “Automakers”).

11 2. Keyless Fobs are marketed as the ultimate driving convenience:
12 drivers can keep the Keyless Fob in their pockets or bags and can use the fob
13 without having to fumble for a traditional physical key. On rainy days or in cold
14 weather, Keyless Fobs serve a convenient, useful purpose for quickly entering a
15 vehicle.

16 3. But, this so-called convenience has produced deadly consequences in
17 the absence of adequate safeguards. Reasonable drivers, including Plaintiffs,
18 misunderstand the role of the Keyless Fob in turning *off* the vehicle. Reasonable
19 drivers mistakenly believe that removing the Keyless Fob from the vehicle turns
20

21
22 ¹ See **Exhibit 1**. Although known by different names by different automakers,
23 Keyless Fobs all work in the same basic manner as it pertains to this suit as
24 described herein. *See id* (listing the various name designations that the Automakers
25 have assigned to their respective Keyless Fobs).

26 **Exhibit 1** is the result of hundreds of hours of research and was compiled based
27 on analysis of thousands of pages of automotive manuals and sales brochures for
28 each of the more than 1,500, models, submodels, and trim levels listed in **Exhibit**
29 **1**. The brochures and sales manuals confirm that: 1) each make representations of
30 safety, and 2) each make no mention of the lack of Auto-Off safety defect as
31 defined and described herein.

² See paragraphs 173-182 (outlining which automotive brands are controlled by
32 which Automaker).

1 off the engine. That confusion is unsurprising given the ever-changing
2 technologies implemented by the Automakers.

3 4. Traditionally, vehicle keys were simple (hereinafter, “Physical
4 Keys”). Drivers inserted a Physical Key into the ignition cylinder to turn on the
5 vehicle engine. Drivers took the physical action of turning the key back counter-
6 clockwise to remove the Physical Key, thereby turning the engine off. When a
7 Physical Key was removed from the vehicle, the engine could no longer operate.
8 Drivers took comfort in knowing that if they removed the Physical Key from the
9 vehicle, the engine was off.

10 5. Over the course of decades, drivers have associated the presence of
11 the Physical Key with the operation of the vehicle’s engine.

12 6. The Keyless Fob operates very differently than traditional Physical
13 Keys. Critically, the Keyless Fob *has nothing to do with turning off the engine*. In
14 today’s modern vehicles that have implemented Keyless Fobs, engines do not turn
15 off simply because the Keyless Fob is removed from the vehicle. For all of the
16 vehicles listed in **Exhibit 1**, a driver can stop the vehicle, put it in park, exit with
17 the Keyless Fob, and the vehicles’ engine will still be running no matter how far
18 away the driver goes from the car, and no matter how long the engine is running.
19 (hereinafter, the “Affected Vehicles”).³

20 7. Keyless Fobs were first introduced into the market approximately a
21 decade ago and are becoming an increasingly common feature in modern cars. A
22 picture of a Keyless Fob is below:

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27 ³ A list of the Affected Vehicles is attached as **Exhibit 1**. The number of
28 Affected Vehicles is in excess of 5,000,000 vehicles.

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8. In many vehicles, the Keyless Fob is offered as part of an optional upgrade package, costing the consumer additional money.

9. A Keyless Fob allows the driver to start the vehicle's ignition by sending an electronic signal to the vehicle's computer. Once the electronic signal is transmitted, and the vehicle senses the presence of the Keyless Fob, the driver can press a button to start the engine (the "Start/Stop Button"). A picture of a Start/Stop Button is below:



10. The Keyless Fob never needs to come into physical contact with the vehicle in order to start the engine. Instead, a Keyless Fob can remain in the driver's pocket, purse, jacket, or even on the passenger seat or elsewhere in the car and still be used in conjunction with the start/stop button to start the engine.

1 11. However, the presence of the Keyless Fob is irrelevant to whether the
2 engine is turned off. To turn off the engine, a driver still must press the Start/Stop
3 Button, regardless of whether the Keyless Fob is still in the vehicle.

4 12. In the name of convenience, and often at an increased purchase price,
5 the Automakers created Keyless Fobs without instituting adequate safeguards,
6 warnings, or other safety features. The Automakers failed to properly consider the
7 ramifications of eliminating the physical and psychological connection between the
8 vehicle and Physical Keys.

9 13. Upon information and belief, the Automakers similarly failed to
10 undertake proper human factors analyses to understand the hazards associated with
11 replacing the Physical Key with a Keyless Fob.

12 14. There is a risk that drivers who grew accustomed to using a Physical
13 Key to turn off a vehicle—which traditionally was a simple and predictable task—
14 fail to appreciate that the Keyless Fob plays no role in turning off a Keyless Fob-
15 equipped vehicle’s engine. The Keyless Fob could be miles away from the Keyless
16 Fob-equipped vehicle, and the engine still would not automatically turn off.

17 15. Put simply, the Affected Vehicles are defective and unsafe because
18 the Automakers have failed to include a basic safety mechanism whereby the
19 Affected Vehicles, if left unattended with the engine still running, would
20 automatically turn off after a certain period of time (hereinafter, “Auto-Off”).
21 Affected Vehicles that necessarily lack such an Auto-Off system are also
22 necessarily dangerous and defective for the reasons described herein. (Hereinafter,
23 the “Defect”).

24 16. Despite this significant change in human interaction with vehicles to
25 start and stop the vehicle engine when using Keyless Fobs, drivers may continue to
26 equate Keyless Fobs with Physical Keys. This confusion can have deadly
27 consequences as described in detail below.
28

1 17. In a number of incidents, drivers have parked their Affected Vehicles
2 inside their garages and removed the Keyless Fobs, only to later discover that the
3 engines never actually turned off. As a result, deadly carbon monoxide—often
4 referred to as the “silent killer” because it is a colorless, odorless gas—can fill
5 enclosed spaces and spread to the attached homes. The results have been at least 13
6 documented deaths and many more serious injuries requiring hospitalization—all
7 from carbon monoxide poisoning. Those injured by carbon monoxide poisoning
8 caused by the Defect include drivers, their families, other occupants of the
9 residence where the vehicle is left running in a garage, neighbors, and first
10 responders.

11 18. Symptoms of carbon monoxide poisoning include headaches,
12 weakness, dizziness, nausea, vomiting, shortness of breath, confusion, blurred
13 vision, and loss of consciousness. Additionally, a victim may suffer irreversible
14 brain damage or death. Vehicles in an enclosed environment, such as garages, can
15 easily exceed 200 parts per million (“ppm”) of carbon monoxide and rise rapidly.
16 Once levels rise to 1,600 ppm, persons suffer increased heart rates, dizziness, and
17 nausea within 20 minutes and death in less than 2 hours. Over thirty-percent of
18 U.S. homes have garages attached to the home.

19 19. Individuals have filed personal injury lawsuits against the Automakers
20 seeking recovery for death or injuries caused because of the Defect. Perhaps
21 unsurprisingly, many of those lawsuits have been resolved in confidential
22 settlements.

23 (a) An example of one lawsuit concerning death resulting from the
24 Defect is the case of Chastity Glisson. On June 14, 2011, Kimberlin Nickles filed a
25 wrongful death action against Toyota for the death of her daughter, Chastity
26 Glisson, who died on August 26, 2010 at the age of 29 as a result of carbon
27 monoxide poisoning from her 2006 Lexus IS 250, which was equipped with a
28

1 Keyless Fob.⁴ Chastity Glisson parked her Lexus in the garage to make room for
2 her boyfriend, Timothy Maddock's, vehicle. Chastity collapsed in the third-floor
3 bathroom later that night. Later, Timothy found her body, but then he too
4 succumbed to carbon monoxide and lost consciousness. Neither Ms. Glisson nor
5 Mr. Maddock were found until the next day. By then, 29-year-old Chastity Glisson
6 had died, and Timothy Maddock was critically injured and required hospitalization
7 for ten days. An investigation revealed that the carbon monoxide that killed Ms.
8 Glisson and severely injured Mr. Maddock came from the Lexus in the garage,
9 which was equipped with a Keyless Fob, and unbeknownst to the occupants of the
10 come, continued to run after the driver exited the vehicle.^{5,6}

11 (b) Another example of personal injuries and related deaths caused
12 by carbon monoxide poisoning caused by Keyless Fobs is described in the suit
13 filed on October 29, 2010 by Mary Rivera against Toyota.⁷ The amended
14 complaint alleges that Ms. Rivera collapsed and was found barely breathing as a
15 result of carbon monoxide poisoning caused by her 2008 Lexus EX 350, which
16 was equipped with a Keyless Fob and continued to run after the driver left the
17 vehicle.⁸ Ms. Rivera is a former college professor who now suffers from permanent
18 brain damage as a result of the carbon monoxide poisoning. Though Ms. Rivera
19 survived the incident, her partner Ernest Cordelia, Jr., died with 65 percent carbon
20 monoxide poisoning in his blood, according to an autopsy report.⁹

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24 ⁴ Case No. 11-13565 (Circuit Court of the Seventeenth Judicial Circuit,
Broward County, Florida).

25 ⁵ *Id.*

26 ⁶ *See* paragraph 208(d), *infra*.

27 ⁷ Case 1:10-cv-04998 (E.D.N.Y. 2010), Docket No. 1.

28 ⁸ *Id.* at Docket No. 13.

⁹ *See* paragraph 208(a)-(b), *infra*.

1 20. Consumers have also filed complaints with the National Highway
2 Traffic Safety Administration (“NHTSA”),¹⁰ but the Automakers have taken no
3 action in response to complaints filed with NHTSA.

4 21. A detailed patent search has also revealed that the two largest U.S.
5 Automakers—Ford and GM—have openly recognized the dangerous consequences
6 associated with Keyless Fobs. At least one of those patent applications included
7 language about preventing carbon monoxide poisoning in the event that the vehicle
8 engine continued to run without the presence of the Keyless Fob. But the
9 Automakers have failed to implement necessary safeguards in the Affected
10 Vehicles.

11 22. For years the Automakers have known about the deadly consequences
12 that can result when a driver exits a vehicle with or without the Keyless Fob and
13 without having depressed the Start/Stop button. Nevertheless, even though an
14 Auto-Off feature can be implemented without significant effort or cost, the
15 Automakers have refused to act.

16 23. Auto-Off is not only feasible; it has *already* been implemented by
17 some of the Automakers to prevent the very tragedies described here.

18 24. The Keyless-Fob incidents described throughout this Complaint are
19 unsurprising given modern-day engine technologies. First, the Affected Vehicles
20 lack the tell-tale signs that the vehicle engine is turned on. The Automakers
21 designed the Affected Vehicles to operate quietly with advanced engine vibration
22 mounts, noise and harness reduction engineering, and exhaust baffling. Indeed, the
23 Automakers have promoted the fact that their vehicle engines run quietly and
24 smoothly as a marketing feature.¹¹ Second, hybrid and plug-in hybrid vehicles lack
25

26 ¹⁰ See paragraph 200, *infra*; see also **Exhibit 41**.

27 ¹¹ See, e.g., **Exhibit 2** (The Buick “LaCrosse is engineered using a QuietTuning
28 process. It’s a carefully orchestrated application of sound-reducing, sound-
blocking and sound-absorbing measures, including a windshield shaped to

1 any tell-tale sign that the “engine” is running.¹² In either case, consumers,
2 including all Plaintiffs, are left without any clear sign that an Affected Vehicle’s
3 engine remains running even after parking the vehicle and removing the Keyless
4 Fob (hereinafter, “Undetected Engine Activity”).

5 25. In addition to the Automakers’ failure to implement Auto-Off in the
6 Affected Vehicles, the Automakers have also failed to take any other adequate
7 precautions to prevent against Undetected Engine Activity: Counsel have collected
8 and analyzed relevant vehicle documents for each of the Affected Vehicles, and
9 there are *no warnings* whatsoever in the Affected Automobiles’ auto manuals or
10 sales brochures that carbon monoxide poisoning is a risk in the event that the
11 driver removes the Keyless Fob without turning off the engine. Also, there are no
12 adequate external audible alerts to warn drivers that the engine continues to operate
13 even though the Keyless Fob has been removed.

14 26. The resulting carbon monoxide risk is deadly. Affected Vehicles
15 allow colorless and odorless carbon monoxide—the silent killer—to be emitted
16 continually and unabated. Those continuous noxious carbon monoxide emissions
17 accumulate, especially in enclosed environments, and are dangerous to human
18 health and potentially fatal.

19 27. Because the Automakers have failed to recall, warn of the Defect in
20 their auto manuals or sales brochures, or otherwise rectify Affected Vehicles and
21

22 *(continued)*
23 minimize turbulence, triple door seals, optimized engine mounts and special
24 sealants.”)

24 ¹² There are multiple variations on hybrid and plug-in hybrid designs. Hybrid
25 vehicles, generally, can run just the engine, just the batteries, or a combination of
26 both. When at a standstill, hybrid vehicles run solely on battery power to conserve
27 gasoline. Plug-in hybrid vehicles are also known as gas-optional vehicles. Plug-in
28 hybrid vehicles run on and rely on the hybrid battery pack more of the time and run
on the gasoline engine far less of the time. The gasoline engine of the plug-in
hybrid vehicles only kicks on, generally, if the battery is nearly diminished. In
some variations of plug-in hybrid vehicles, the gasoline engine is used solely as an
internal generator to replenish the plug-in battery pack.

1 institute Auto-Off, the Defect has caused carbon monoxide poisoning that has
2 caused at least 13 documented deaths and many more serious injuries resulting in
3 hospitalizations.

4 28. The Automakers have failed to take any remedial actions in the
5 Affected Vehicles despite the fact that the Keyless Fob is merely a convenience
6 feature. Keyless Fobs remain optional equipment on many makes and models, and
7 the feature is seen as (and usually part of) expensive upgrade packages on many
8 vehicles.¹³

9 29. Careful review of over 1,500 Affected Vehicle sales brochures reveals
10 that, without exception, the Automakers have misrepresented the Affected
11 Vehicles as safe even though they are not safe due to the Defect that is a direct
12 result of the lack of Auto-Off.

13 30. Because of their design, the Affected Vehicles are, by the very nature
14 of Undetected Engine Activity, susceptible to repeated failures. Each use of an
15 Affected Vehicle may endanger the vehicle occupants, family members, innocent
16 bystanders, and first responders.

17 31. The Defect impairs Class Members' proper and safe use of their
18 vehicles, endangers Class Members and persons near the Affected Vehicle. Class
19 Members have no way to mitigate or change the Affected Vehicle's Keyless
20 Ignition functionality to render the vehicles safe. Only the Automakers have the
21 ability to institute a readily-available fix to remedy the Defect.

22 32. Upon information and belief, and as described more fully below, the
23 Automakers have known of the Defect at all relevant times, yet repeatedly failed to
24 disclose the Defect to Class Members and the public, and continue to conceal the
25 Defect, including through confidential personal injury settlements while continuing
26

27 ¹³ See **Exhibit 1** (delineating which makes and models have Keyless Fobs as
28 standard equipment and in which makes, models and trims Keyless Fobs are optional).

1 to market and advertise the Affected Vehicles as “safe.” As documented by the
2 deaths and injuries caused by the Defect and as shown throughout this Complaint,
3 the Affected Vehicles are not safe.

4 33. Shockingly, and as described below, while some Automakers have
5 instituted Auto-Off in *new* vehicles, they have not recalled or rectified *older* model
6 vehicles with a basic software update that would provide a permanent Auto-Off
7 remedy for this Defect. Nor have the Automakers warned owners and drivers of
8 the Affected Vehicles of the deadly safety risk of the Defect.

9 34. As a result of the Automakers’ material omissions and misstatements
10 regarding the Defect, Plaintiffs were harmed and suffered actual damages.
11 Plaintiffs have purchased or leased Affected Vehicles that they would not
12 otherwise have purchased or leased or would have paid less for had they known of
13 the Defect. Plaintiffs believed the Automakers’ repeated promises that the Affected
14 Vehicles were safe, when in fact they are not.

15 35. Additionally, due to the Defect, all Affected Vehicles’ values have
16 diminished.

17 36. Absent relief from the Court, Plaintiffs and Class Members who drive
18 their Affected Vehicles must also risk injury or death associated with the Defect.

19 37. Due to the technological nature of the Affected Vehicles, Plaintiffs
20 and Class Members have no ability to rectify the Defect by any means through
21 independent auto repair shops. The programing of the Affected Vehicles and the
22 Keyless Fobs are based on the Automakers’ proprietary software. In short,
23 Plaintiffs and Class Members are unable on their own to cure the Defect. Only the
24 Automakers can institute Auto-Off in the Affected Vehicles.

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II. PARTIES

A. Plaintiffs

1. California

a. Plaintiff Richard Draeger

38. Plaintiff Richard Draeger is, and at all times relevant to this Complaint was, a citizen and resident of California. Plaintiff purchased a 2011 Toyota Prius, a Toyota Group vehicle, without knowledge of the Defect. Plaintiff’s vehicle is an Affected Vehicle.

39. Plaintiff purchased the Toyota Prius primarily for personal, family, and household use. Prior to purchasing the vehicle, Plaintiff read and relied on marketing brochures and sales materials in deciding to make the purchase. For example, the sales brochure states that “Prius is as concerned with your well-being as it is with the planet’s. That’s why it offers the Toyota Star Safety System™ as standard equipment. This integration of innovative safety technologies is designed to help drivers avoid accidents. The Star Safety System™ in the Toyota Prius includes Enhanced Vehicle Stability Control (VSC), Traction Control (TRAC), Anti-lock Brake System (ABS), Electronic Brake-force Distribution (EBD), Brake Assist (BA) and Smart Stop Technology (SST).” The sales brochure makes no mention that the vehicle lacks Auto-Off, nor does it state and/or warn of the Defect. A true and accurate representation of the 2011 Toyota Prius’ sales brochure is attached as **Exhibit 3**.

40. On two occasions, Plaintiff inadvertently left the vehicle running even after removing the Keyless Fob. On the first occasion, Plaintiff parked the vehicle in the driveway in the evening and removed the Keyless Fob, only to discover that the engine was still running the next morning. On the second occasion, Plaintiff parked the vehicle in the garage and removed the Keyless Fob, only to discover

1 that the engine was still running two hours later. For both incidents, Plaintiff could
2 not hear the engine running given the quiet nature of the Prius.

3 41. Plaintiff Richard Draeger has been concerned about the Defect ever
4 since this incident.

5 42. Plaintiff Richard Draeger would not have purchased or would have
6 paid less for the vehicle had he known of the Defect prior to purchase.

7 b. **Plaintiff Laima Zbojniewicz**

8 43. Plaintiff Laima Zbojniewicz is, and at all times relevant to this
9 Complaint was, a citizen and resident of California. Plaintiff purchased a 2013
10 BMW X3, a BMW Group vehicle, without knowledge of the Defect. Plaintiff's
11 vehicle is an Affected Vehicle.

12 44. Plaintiff purchased the BMW X3 primarily for personal, family, and
13 household use. Prior to purchasing the vehicle, Plaintiff read and relied on
14 marketing brochures and sales materials in deciding to make the purchase. For
15 example, the sales brochure touts that "[t]he The BMW X3 integrates the latest
16 active and passive safety features to deliver the most pleasure out of every drive.
17 You'll feel secure and protected, no matter where your journey takes you." The
18 sales brochure goes onto list numerous advanced safety features of the vehicle. The
19 sales brochure makes no mention that the vehicle lacks Auto-Off, nor does it state
20 and/or warn of the Defect. A true and accurate representation of the 2013 BMW
21 X3's sales brochure is attached as **Exhibit 4**.

22 45. Plaintiff removed the Keyless Fob and left the vehicle in a parking lot
23 for over two hours only to discover that the engine was still running when she
24 returned. On a separate occasion, Plaintiff removed the Keyless Fob and parked
25 the vehicle in her garage, only to later discover that the engine was still running
26 when she returned.

1 46. Plaintiff Laima Zbojniewicz has been concerned about the Defect
2 ever since this incident, including about her child’s safety.

3 47. Plaintiff Laima Zbojniewicz would not have purchased or would have
4 paid less for the vehicle had she known of the Defect prior to purchase.

5 c. **Plaintiffs Stanley and Janet Neill**

6 48. Plaintiffs Stanley and Janet Neill are, and at all times relevant to this
7 Complaint were, citizens and residents of California. Plaintiffs jointly purchased a
8 2014 Lexus RX350, a Toyota Group vehicle, without knowledge of the Defect.
9 Plaintiffs’ vehicle is an Affected Vehicle.

10 49. Plaintiffs purchased the Lexus RX350 primarily for personal, family,
11 and household use. Prior to purchasing the vehicle, Plaintiffs read and relied on
12 marketing brochures and sales materials in deciding to make the purchase. For
13 example, the sales brochure touts an “innovative approach to safety in the RX
14 include a class-leading standard 10 airbags and active front headrests.” The sales
15 brochure makes no mention that the vehicle lacks Auto-Off, nor does it state and/or
16 warn of the Defect. A true and accurate representation of the Lexus 2014 RX350’s
17 sales brochure is attached as **Exhibit 5**.

18 50. Plaintiffs removed the Keyless Fob from the vehicle on many
19 occasions only to discover that the engine was still running when they returned to
20 the vehicle. This has occurred in their garage and in parking lots.

21 51. Plaintiffs Stanley and Janet Neill have been concerned about the
22 Defect ever since these incidents.

23 52. Plaintiffs Stanley and Janet Neill would not have purchased or would
24 have paid less for the vehicle had they known of the Defect prior to purchase.

25 d. **Plaintiffs Zoran and Doreen Baisch**

26 53. Plaintiffs Zoran and Doreen Baisch are, and at all times relevant to
27 this Complaint were, citizens and residents of California. Plaintiffs purchased a
28

1 2014 BMW 750i, a BMW Group vehicle, without knowledge of the Defect.
2 Plaintiffs' vehicle is an Affected Vehicle.

3 54. Plaintiffs purchased the BMW 750i primarily for personal, family,
4 and household use. Prior to purchasing the vehicle, Plaintiffs read and relied on
5 marketing brochures and sales materials in deciding to make the purchase. For
6 example, the sales brochure touts that "The BMW 7 Series is one of the most
7 advanced cars on the road today when it comes to active and passive safety
8 features." The sales brochure then goes on to list numerous safety mechanisms
9 built into the car. The sales brochure makes no mention that the vehicle lacks
10 Auto-Off, nor does it state and/or warn of the Defect. A true and accurate
11 representation of the 2014 BMW 7 Series sales brochure is attached as **Exhibit 6**.

12 55. Plaintiffs removed the Keyless Fob from the vehicle on several
13 occasions only to discover that the engine was still running when they returned to
14 the vehicle.

15 56. Plaintiffs Zoran and Doreen Baisch have been concerned about the
16 Defect, including the possibility of additional occurrences, ever since these
17 incidents.

18 57. Plaintiffs Zoran and Doreen Baisch would not have purchased or
19 would have paid less for the vehicle had they known of the Defect prior to
20 purchase.

21 e. **Plaintiff Bernice Wimley**

22 58. Plaintiff Bernice Wimley is, and at all times relevant to this Complaint
23 was, a citizen and resident of California. Plaintiff purchased a 2011 Dodge
24 Durango, an FCA Group vehicle, without knowledge of the Defect. Plaintiff's
25 vehicle is an Affected Vehicle.

26 59. Plaintiff purchased the Dodge Durango primarily for personal, family,
27 and household use. Prior to purchasing the vehicle, Plaintiff read and relied on
28

1 marketing brochures and sales materials in deciding to make the purchase. For
2 example, the sales brochure touts a bullet-pointed list of no less than thirteen safety
3 features. The sales brochure makes no mention that the vehicle lacks Auto-Off, nor
4 does it state and/or warn of the Defect. A true and accurate representation of the
5 2011 Dodge Durango’s sales brochure is attached as **Exhibit 7**.

6 60. Plaintiff removed the Keyless Fob and parked the vehicle in her
7 enclosed garage, only to later discover that the engine was still running.

8 61. Plaintiff Bernice Wimley has been concerned about the Defect ever
9 since this incident.

10 62. Plaintiff Bernice Wimley would not have purchased or would have
11 paid less for the vehicle had she known of the Defect prior to purchase.

12 f. **Plaintiff Jason Shapiro**

13 63. Plaintiff Jason Shapiro is, and at all times relevant to this Complaint
14 was, a citizen and resident of California. Plaintiff leased a 2013 Ford Explorer
15 Sport, a Ford Group vehicle, without knowledge of the Defect. Plaintiff’s vehicle
16 is an Affected Vehicle.

17 64. Plaintiff leased the Ford Explorer Sport primarily for personal, family,
18 and household use. Prior to leasing the vehicle, Plaintiff read and relied on
19 marketing brochures and sales materials in deciding to lease the vehicle. For
20 example, the sales brochure touts that the vehicle is “a 2012 IIHS ‘Top Safety
21 Pick.’” The sales brochure adds that “No wonder Explorer has earned ‘Top Safety
22 Pick’ – the highest possible rating from the Insurance Institute for Highway Safety
23 (IIHS) – 2 years in a row (2011–2012).” The sales brochure makes no mention that
24 the vehicle lacks Auto-Off, nor does it state and/or warn of the Defect. A true and
25 accurate representation of the 2013 Ford Explorer’s sales brochure is attached as
26 **Exhibit 8**.

1 65. On two occasions, Plaintiff inadvertently left the vehicle running even
2 after removing the Keyless Fob, each time in the grocery store parking lot.

3 66. Plaintiff Jason Shapiro has been concerned about the Defect ever
4 since this incident.

5 67. Plaintiff Jason Shapiro would not have leased or would have paid less
6 for the lease had he known of the Defect prior to his lease.

7 g. **Plaintiff Howard Ree**

8 68. Plaintiff Howard Ree is, and at all times relevant to this Complaint
9 was, a citizen and resident of California. Plaintiff purchased a 2008 Mercedes
10 S550, an MB Group vehicle, without knowledge of the Defect. Plaintiff's vehicle
11 is an Affected Vehicle.

12 69. Plaintiff purchased the Mercedes S550 primarily for personal, family,
13 and household use. Prior to purchasing the vehicle, Plaintiff read and relied on
14 marketing brochures and sales materials in deciding to make the purchase. For
15 example, the sales brochure touts that the vehicle has "safety systems that can
16 anticipate and prepare for an accident." The sales brochure adds that "Our position
17 remain[s] as it was originally: that safety always comes first." The sales brochure
18 makes no mention that the vehicle lacks Auto-Off, nor does it state and/or warn of
19 the Defect. A true and accurate representation of the 2008 Mercedes S-Class sales
20 brochure is attached as **Exhibit 9**.

21 70. Plaintiff inadvertently left the vehicle running even after removing the
22 Keyless Fob, and returned later to the vehicle to find that the engine was still
23 running.

24 71. Plaintiff Howard Ree has been concerned about the Defect ever since
25 this incident.

26 72. Plaintiff Howard Ree would not have purchased or would have paid
27 less for the vehicle had he known of the Defect prior to purchase.
28

1 h. **Plaintiff Daniel Chesler**

2 73. Plaintiff Daniel Chesler is, and at all times relevant to this Complaint
3 was, a citizen and resident of California. Plaintiff leased a 2015 Hyundai Sonata, a
4 Hyundai/Kia Group vehicle, without knowledge of the Defect. Plaintiff’s vehicle
5 is an Affected Vehicle.

6 74. Plaintiff leased the Hyundai Sonata primarily for personal, family, and
7 household use. Prior to leasing the vehicle, Plaintiff read and relied on marketing
8 brochures and sales materials in deciding to lease the vehicle. For example, the
9 sales brochure touts that the vehicle has “industry-leading safety systems,” listing a
10 great number of them. The sales brochure makes no mention that the vehicle lacks
11 Auto-Off, nor does it state and/or warn of the Defect. A true and accurate
12 representation of the 2015 Hyundai Sonata’s sales brochure is attached as **Exhibit**
13 **10**.

14 75. Plaintiff inadvertently left the vehicle running even after removing the
15 Keyless Fob, and returned later to the vehicle to find the engine running.

16 76. Plaintiff Daniel Chesler has been concerned about the Defect ever
17 since this incident.

18 77. Plaintiff Daniel Chesler would not have leased or would have paid
19 less for the lease had he known of the Defect prior to the lease.

20 i. **Plaintiff Esther Myape Reyes**

21 78. Plaintiff Esther Myape Reyes is, and at all times relevant to this
22 Complaint was, a citizen and resident of California. Plaintiff purchased a 2015
23 Audi A4, a VW Group vehicle, without knowledge of the Defect. Plaintiff’s
24 vehicle is an Affected Vehicle.

25 79. Plaintiff purchased the Audi A4 primarily for personal, family, and
26 household use. Prior to purchasing the vehicle, Plaintiff read and relied on
27 marketing brochures and sales materials in deciding to make the purchase. For
28

1 example, the sales brochure touts a bullet-pointed list of no less than eleven
2 standard-equipment safety features. The sales brochure makes no mention that the
3 vehicle lacks Auto-Off, nor does it state and/or warn of the Defect. A true and
4 accurate representation of the 2015 Audi A4's sales brochure is attached as

5 **Exhibit 11.**

6 80. Plaintiff removed the Keyless Fob and parked the vehicle in her
7 enclosed garage, only to discover later that the engine was still running.

8 81. Plaintiff Esther Myape Reyes has been concerned about the Defect
9 ever since this incident.

10 82. Plaintiff Esther Myape Reyes would not have purchased or would
11 have paid less for the vehicle had she known of the Defect prior to purchase.

12 j. **Plaintiff Neil Stevens**

13 83. Plaintiff Neil Stevens is, and at all times relevant to this Complaint
14 was, a citizen and resident of California. Plaintiff leased a 2012 Toyota Prius, a
15 Toyota Group vehicle, without knowledge of the Defect. Plaintiff's vehicle is an
16 Affected Vehicle.

17 84. Plaintiff leased the Toyota Prius primarily for personal, family, and
18 household use. Prior to lease of the vehicle, Plaintiff read and relied on marketing
19 brochures and sales materials in deciding to lease the vehicle. For example, the
20 sales brochure touts that "The 2012 Prius comes standard with the Star Safety
21 System,TM a suite of advanced safety features designed to help keep you out of
22 harm's way. On Prius, the system includes Enhanced Vehicle Stability Control
23 (VSC), Traction Control (TRAC), Anti-lock Brake System (ABS), Electronic
24 Brake-force Distribution (EBD), Brake Assist (BA) and Smart Stop Technology
25 (SST)." The sales brochure makes no mention that the vehicle lacks Auto-Off, nor
26 does it state and/or warn of the Defect. A true and accurate representation of the
27 2012 Toyota Prius' sales brochure is attached as **Exhibit 12.**

1 85. Plaintiff removed the Keyless Fob and parked the vehicle in his
2 driveway. Because the vehicle was silent (as a hybrid running on battery power
3 while stationary) when parked, there was no noticeable “engine” sound. He did not
4 realize the vehicle was left running until he later received a phone call from his
5 neighbors telling him that the vehicle was still running.

6 86. Plaintiff Neil Stevens has been concerned about the Defect ever since
7 this incident.

8 87. Plaintiff Neil Stevens would not have leased or would have paid less
9 for the lease had he known of the Defect prior to the lease.

10 k. **Plaintiff Matthew Kang**

11 88. Plaintiff Matthew Kang is, and at all times relevant to this Complaint
12 was, a citizen and resident of California. Plaintiff leased a 2014 Hyundai Sonata
13 2.0T SE vehicle, without knowledge of the Defect. Plaintiff’s vehicle is an
14 Affected Vehicle.

15 89. Plaintiff leased the Hyundai Sonata primarily for personal, family, and
16 household use. Prior to leasing the vehicle, Plaintiff read and relied on marketing
17 brochures and sales materials in deciding to lease the vehicle. For example, the
18 sales brochure touts that the vehicle “earned a top five-star rating in government
19 safety testing, as well as being named a Top Safety Pick by the Insurance Institute
20 for Highway Safety.” The sales brochure makes no mention that the vehicle lacks
21 Auto-Off, nor does it state and/or warn of the Defect. A true and accurate
22 representation of the 2014 Hyundai Sonata sales brochure is attached as **Exhibit**
23 **13**.

24 90. Plaintiff removed the Keyless Fob and parked the vehicle in his
25 driveway only to later discover that the vehicle was still running.

26 91. Plaintiff Matthew Kang has been concerned about the Defect ever
27 since this incident.
28

1 92. Plaintiff Matthew Kang would not have leased or would have paid
2 less for the lease had he known of the Defect prior to the lease.

3 **2. Arizona**

4 a. **Plaintiff Jordon Mikelaitis**

5 93. Plaintiff Jordon Mikelaitis is, and at all times relevant to this
6 Complaint was, a citizen and resident of Arizona. Plaintiff purchased a 2015
7 Dodge Charger SXT, an FCA Group vehicle, without knowledge of the Defect.
8 Plaintiff's vehicle is an Affected Vehicle.

9 94. Plaintiff purchased the Dodge Charger SXT primarily for personal,
10 family, and household use. Prior to purchasing the vehicle, Plaintiff read and
11 relied on marketing brochures and sales materials in deciding to make the
12 purchase. For example, the sales brochure touts that the vehicle comes with "80+"
13 safety and security features. The sales brochure makes no mention that the vehicle
14 lacks Auto-Off, nor does it state and/or warn of the Defect. A true and accurate
15 representation of the 2015 Dodge Charger's sales brochure is attached as **Exhibit**
16 **14.**

17 95. Plaintiff removed the Keyless Fob and parked the vehicle at his house,
18 only to later discover that the engine was still running.

19 96. Plaintiff Jordon Mikelaitis has been concerned about the Defect ever
20 since this incident.

21 97. Plaintiff Jordon Mikelaitis would not have purchased or would have
22 paid less for the vehicle had he known of the Defect prior to purchase.

23 **3. Colorado**

24 a. **Plaintiff Bruce Goldstone**

25 98. Plaintiff Bruce Goldstone is, and at all times relevant to this
26 Complaint was, a citizen and resident of Colorado. Plaintiff purchased a 2015
27
28

1 Mercedes C300, an MB Group vehicle, without knowledge of the Defect.

2 Plaintiff's vehicle is an Affected Vehicle.

3 99. Plaintiff purchased the Mercedes C300 primarily for personal, family,
4 and household use. Prior to purchasing the vehicle, Plaintiff read and relied on
5 marketing brochures and sales materials in deciding to make the purchase. For
6 example, the sales brochure touts that the vehicle comes with "exclusive safety
7 innovations," and that "[f]or more than 60 years, Mercedes-Benz engineers have
8 been predicting the future of driving safety by inventing it." The sales brochure
9 makes no mention that the vehicle lacks Auto-Off, nor does it state and/or warn of
10 the Defect. A true and accurate representation of the 2015 Mercedes C-Class sales
11 brochure is attached as **Exhibit 15**.

12 100. Plaintiff, on multiple occasions, parked the vehicle and removed the
13 Keyless Fob during various errands and restaurant visits, only to later discover that
14 the engine was still running.

15 101. Plaintiff Bruce Goldstone has been concerned about the Defect ever
16 since this incident.

17 102. Plaintiff Bruce Goldstone would not have purchased or would have
18 paid less for the vehicle had he known of the Defect prior to purchase.

19 **b. Plaintiff Scott Goldstone**

20 103. Plaintiff Scott Goldstone is, and at all times relevant to this Complaint
21 was, a citizen and resident of Colorado. Plaintiff purchased a 2015 Nissan Rogue
22 SL, a Nissan Group vehicle, without knowledge of the Defect. Plaintiff's vehicle
23 is an Affected Vehicle.

24 104. Plaintiff purchased the Nissan Rogue primarily for personal, family,
25 and household use. Prior to purchasing the vehicle, Plaintiff read and relied on
26 marketing brochures and sales materials in deciding to make the purchase. For
27 example, the sales brochure touts that the vehicle comes with "NISSAN SAFETY
28

1 SHIELD® PHILOSOPHY,” which is “INNOVATION THAT LOOKS OUT FOR
2 YOU.” The Nissan Group describes “[t]he Nissan Safety Shield® [a]s a
3 comprehensive approach to safety that guides the engineering and development of
4 every vehicle we make.” The sales brochure makes no mention that the vehicle
5 lacks Auto-Off, nor does it state and/or warn of the Defect. A true and accurate
6 representation of the 2015 Nissan Rogue sales brochure is attached as **Exhibit 16**.

7 105. Plaintiff, on at least three occasions, removed the Keyless Fob and
8 parked the vehicle in his garage, in an outdoor parking lot, and outside of his
9 office, only to later discover that the engine was still running.

10 106. Plaintiff Scott Goldstone has been concerned about the Defect ever
11 since this incident.

12 107. Plaintiff Scott Goldstone would not have purchased or would have
13 paid less for the vehicle had he known of the Defect prior to purchase.

14 **4. Connecticut**

15 a. **Plaintiff Timothy Schoenfeld**

16 108. Plaintiff Timothy Schoenfeld is, and at all times relevant to this
17 Complaint was, a citizen and resident of Connecticut. Plaintiff leased a 2014 Ford
18 Fusion Hybrid, a Ford Group vehicle, without knowledge of the Defect. Plaintiff’s
19 vehicle is an Affected Vehicle.

20 109. Plaintiff leased the Ford Fusion Hybrid primarily for personal, family,
21 and household use. Prior to leasing the vehicle, Plaintiff read and relied on
22 marketing brochures and sales materials in deciding to lease the vehicle. For
23 example, the sales brochure touts that “each vehicle in the Fusion lineup earned a
24 5-star safety rating from the National Highway Traffic Safety Administration
25 (NHTSA) the government’s highest-possible vehicle safety rating. In addition,
26 Ford Fusion has earned a 2013 ‘Top Safety Pick+’ from the Insurance Institute for
27 Highway Safety (IIHS).” The sales brochure makes no mention that the vehicle
28

1 lacks Auto-Off, nor does it state and/or warn of the Defect. A true and accurate
2 representation of the 2014 Ford Fusion’s sales brochure is attached as **Exhibit 17**.

3 110. On multiple occasions, Plaintiff removed the Keyless Fob and parked
4 the vehicle at his house, only to later discover that the engine was still running
5 when he returned to the vehicle. On at least one occasion, he returned several hours
6 later to find the engine still running.

7 111. Plaintiff Timothy Schoenfeld has been concerned about the Defect
8 ever since this incident.

9 112. Plaintiff Timothy Schoenfeld would not have leased or would have
10 paid less for the lease had he known of the Defect prior to the lease.

11 **b. Plaintiff Nicholas Messina**

12 113. Plaintiff Nicholas Messina is, and at all times relevant to this
13 Complaint was, a citizen and resident of Connecticut. Plaintiff’s wife Christine
14 Messina purchased a 2014 Kia Cadenza, a Hyundai/Kia Group vehicle, without
15 knowledge of the Defect. Plaintiff’s vehicle is an Affected Vehicle.

16 114. Plaintiff purchased the Kia Cadenza primarily for personal, family,
17 and household use. Prior to purchasing the vehicle, Plaintiff read and relied on
18 marketing brochures and sales materials in deciding to make the purchase. For
19 example, the sales brochure touts that “[t]he Cadenza features advanced active
20 safety systems designed to help give you peace of mind every time you drive.” The
21 sales brochure makes no mention that the vehicle lacks Auto-Off, nor does it state
22 and/or warn of the Defect. A true and accurate representation of the 2014 Kia
23 Cadenza’s sales brochure is attached as **Exhibit 18**.

24 115. On at least one occasion, Plaintiff removed the Keyless Fob and
25 parked the vehicle at his house, only to later discover that the engine was still
26 running when he returned to the vehicle.

1 116. Plaintiff Nicholas Messina has been concerned about the Defect ever
2 since this incident.

3 117. Plaintiff Nicholas Messina would not have purchased or would have
4 paid less for the vehicle had he known of the Defect prior to purchase.

5 c. **Plaintiff Johnny Hernandez**

6 118. Plaintiff Johnny Hernandez is, and at all times relevant to this
7 Complaint was, a citizen and resident of Connecticut. Plaintiff purchased a 2012
8 Acura TL, a Honda Group vehicle, without knowledge of the Defect. Plaintiff's
9 vehicle is an Affected Vehicle.

10 119. Plaintiff purchased the Acura TL primarily for personal, family, and
11 household use. Prior to purchasing the vehicle, Plaintiff read and relied on
12 marketing brochures and sales materials in deciding to make the purchase. For
13 example, the sales brochure touts a bullet-pointed list of no less than sixteen
14 standard safety features. The sales brochure makes no mention that the vehicle
15 lacks Auto-Off, nor does it state and/or warn of the Defect. A true and accurate
16 representation of the 2012 Acura TL sales brochure is attached as **Exhibit 19**.

17 120. On at least one occasion, Plaintiff removed the Keyless Fob and
18 parked the vehicle at his house, only to later discover that the engine was still
19 running when he returned to the vehicle.

20 121. Plaintiff Johnny Hernandez has been concerned about the Defect ever
21 since this incident.

22 122. Plaintiff Johnny Hernandez would not have purchased or would have
23 paid less for the vehicle had he known of the Defect prior to purchase.

24 d. **Plaintiff Kevin Sisti, Jr.**

25 123. Plaintiff Kevin Sisti, Jr. is, and at all times relevant to this Complaint
26 was, a citizen and resident of Connecticut. Plaintiff leased a 2014 Jeep Grand
27
28

1 Cherokee, an FCA Group vehicle, without knowledge of the Defect. Plaintiff's
2 vehicle is an Affected Vehicle.

3 124. Plaintiff leased the Jeep Grand Cherokee primarily for personal,
4 family, and household use. Prior to leasing the vehicle, Plaintiff read and relied on
5 marketing brochures and sales materials in deciding to lease the vehicle. For
6 example, the sales brochure touts that the vehicle gives consumers "Peace of Mind,
7 Delivered 60 ways. Grand Cherokee surrounds you with more than 60 standard and
8 available safety and security features" The sales brochure makes no mention that
9 the vehicle lacks Auto-Off, nor does it state and/or warn of the Defect. A true and
10 accurate representation of the 2014 Jeep Grand Cherokee sales brochure is attached
11 as **Exhibit 20**.

12 125. On more than one occasion, Plaintiff removed the Keyless Fob and
13 parked the vehicle at his house, only to later discover that the engine was still
14 running when he returned to the vehicle.

15 126. Plaintiff Kevin Sisti, Jr. has been concerned about the Defect ever
16 since these incidents.

17 127. Plaintiff Kevin Sisti, Jr. would not have leased or would have paid
18 less for the lease had he known of the Defect prior to leasing.

19 **5. Florida**

20 **a. Plaintiff Jeffrey Sandler**

21 128. Plaintiff Jeffrey Sandler is, and at all times relevant to this Complaint
22 was, a citizen and resident of Florida. Plaintiff purchased a 2010 Infiniti FX35, a
23 Nissan Group vehicle, without knowledge of the Defect. Plaintiff's vehicle is an
24 Affected Vehicle.

25 129. Plaintiff purchased the Infiniti FX35 primarily for personal, family,
26 and household use. Prior to purchasing the vehicle, Plaintiff read and relied on
27 marketing brochures and sales materials in deciding to make the purchase. For
28

1 example, the sales brochure touts a bullet-pointed list of no less than thirteen safety
2 features. The sales brochure makes no mention that the vehicle lacks Auto-Off, nor
3 does it state and/or warn of the Defect. A true and accurate representation of the
4 2010 Infiniti FX35's sales brochure is attached as **Exhibit 21**.

5 130. Plaintiff removed the Keyless Fob and parked the vehicle, only to
6 later discover that the engine was still running.

7 131. Plaintiff Jeffrey Sandler has been concerned about the Defect ever
8 since this incident.

9 132. Plaintiff Jeffrey Sandler would not have purchased or would have paid
10 less for the vehicle had he known of the Defect prior to purchase.

11 **b. Plaintiff Michelle Smith**

12 133. Plaintiff Michelle Smith is, and at all times relevant to this Complaint
13 was, a citizen and resident of Florida. Plaintiff purchased a 2012 Nissan Altima, a
14 Nissan Group vehicle, without knowledge of the Defect. Plaintiff's vehicle is an
15 Affected Vehicle.

16 134. Plaintiff purchased the Nissan Altima primarily for personal, family,
17 and household use. Prior to purchasing the vehicle, Plaintiff read and relied on
18 marketing brochures and sales materials in deciding to make the purchase. For
19 example, the sales brochure touts that "[w]e're not just looking out for your safety,
20 we're taking a stand – incorporating Brake Override Technology across our lineup
21 ahead of others in the industry, and offering an industry-first guide to help ensure
22 the correct installation of child safety seats. That, along with features like six
23 standard air bags and a rigorous durability testing program, should help you feel
24 confident whenever you're in your Altima." The sales brochure makes no mention
25 that the vehicle lacks Auto-Off, nor does it state and/or warn of the Defect. A true
26 and accurate representation of the 2012 Nissan Altima's sales brochure is attached
27 as **Exhibit 22**.

1 135. Plaintiff removed the Keyless Fob, parked the vehicle in her driveway
2 and then left the house to run an errand. Plaintiff’s husband discovered the car in
3 the driveway with the engine running. Her husband panicked because the car was
4 idling but Plaintiff Michelle Smith was nowhere to be found.

5 136. Plaintiff Michelle Smith has been concerned about the Defect ever
6 since this incident.

7 137. Plaintiff Michelle Smith would not have purchased or would have
8 paid less for the vehicle had she known of the Defect prior to purchase.

9 **6. Massachusetts**

10 **c. Plaintiff Janine LoVuolo**

11 138. Plaintiff Janine LoVuolo is, and at all times relevant to this Complaint
12 was, a citizen and resident of Massachusetts. Plaintiff leased a 2015 Kia Optima
13 EX, a Hyundai/Kia Group vehicle, without knowledge of the Defect. Plaintiff’s
14 vehicle is an Affected Vehicle.

15 139. Plaintiff leased the Kia Optima EX primarily for personal, family, and
16 household use. Prior to leasing the vehicle, Plaintiff read and relied on marketing
17 brochures and sales materials in deciding to lease the vehicle. For example, the
18 sales brochure touts that the vehicle has “advanced safety systems” such as
19 “[a]dvanced safety systems to help handle unexpected conditions,” and adds,
20 “[s]afety systems help add peace of mind in certain situations. That’s why all
21 Optima models are equipped with advanced safety systems engineered to help you
22 maintain control, even in challenging road conditions and in some emergency
23 situations. They function automatically, leaving you free to focus on the road.”
24 The sales brochure makes no mention that the vehicle lacks Auto-Off, nor does it
25 state and/or warn of the Defect. A true and accurate representation of the 2015 Kia
26 Optima’s sales brochure is attached as **Exhibit 23**.

1 140. On two occasions, Plaintiff removed the Keyless Fob, parked the
2 vehicle, and then returned later to discover that the engine was still running –once
3 in her driveway after unloading groceries, and once in a parking lot at the local
4 mall after coming back from shopping.

5 141. Plaintiff Janine LoVuolo has been concerned about the Defect ever
6 since these incidents.

7 142. Plaintiff Janine LoVuolo would not have leased or would have paid
8 less for the leased had she known of the Defect prior to the lease.

9 **7. New Jersey**

10 a. **Plaintiff Helen Ciangiulli**

11 143. Plaintiff Helen Ciangiulli is, and at all times relevant to this
12 Complaint was, a citizen and resident of New Jersey. Plaintiff purchased a 2007
13 Toyota Avalon, a Toyota Group vehicle, without knowledge of the Defect.
14 Plaintiff's vehicle is an Affected Vehicle.

15 144. Plaintiff purchased the Toyota Avalon primarily for personal, family,
16 and household use. Prior to purchasing the vehicle, Plaintiff read and relied on
17 marketing brochures and sales materials in deciding to make the purchase. For
18 example, the sales brochure touts a bullet-pointed list of no less than eleven
19 standard safety features. The sales brochure makes no mention that the vehicle
20 lacks Auto-Off, nor does it state and/or warn of the Defect. A true and accurate
21 representation of the 2007 Toyota Avalon's sales brochure is attached as **Exhibit**
22 **24.**

23 145. On one occasion, Plaintiff drove the vehicle to work, parked the
24 vehicle in the parking lot, and removed the Keyless Fob. When Plaintiff returned to
25 her vehicle approximately eight hours later, the vehicle engine was still running.

26 146. Plaintiff Helen Ciangiulli has been concerned about the Defect ever
27 since this incident.
28

1 147. Plaintiff Helen Ciangiulli would not have purchased or would have
2 paid less for the vehicle had she known of the Defect prior to purchase.

3 **b. Plaintiff Judith Harr Shane**

4 148. Plaintiff Judith Harr Shane is, and at all times relevant to this
5 Complaint was, a citizen and resident of New Jersey. Plaintiff purchased a 2015
6 Lexus RX450h, a Toyota Group vehicle, without knowledge of the Defect.
7 Plaintiff's vehicle is an Affected Vehicle.

8 149. Plaintiff purchased the Lexus RX 450h primarily for personal, family,
9 and household use. Prior to purchasing the vehicle, Plaintiff read and relied on
10 marketing brochures and sales materials in deciding to make the purchase. For
11 example, the sales brochure touts an "innovative approach to safety in the RX
12 include a class-leading standard 10 airbags and active front headrests." The sales
13 brochure makes no mention that the vehicle lacks Auto-Off, nor does it state and/or
14 warn of the Defect. A true and accurate representation of the 2015 Lexus
15 RX450h's sales brochure is attached as **Exhibit 25**.

16 150. In one incident, Plaintiff parked the vehicle, removed the Keyless
17 Fob, and then later discovered that the engine was still running when she returned
18 to the vehicle.

19 151. Plaintiff Judith Harr Shane has been concerned about the Defect ever
20 since this incident.

21 152. Plaintiff Judith Harr Shane would not have purchased or would have
22 paid less for the vehicle had she known of the Defect prior to purchase.

23 **c. Plaintiff Steven Green**

24 153. Plaintiff Steven Green is, and at all times relevant to this Complaint
25 was, a citizen and resident of New Jersey. Plaintiff purchased a 2014 Lexus
26 GX470, a Toyota Group vehicle, without knowledge of the Defect. Plaintiff's
27 vehicle is an Affected Vehicle.
28

1 154. Plaintiff purchased the Lexus GX470 primarily for personal, family,
2 and household use. Prior to purchasing the vehicle, Plaintiff read and relied on
3 marketing brochures and sales materials in deciding to make the purchase. For
4 example, the sales brochure touts a myriad of safety features, including at least five
5 cutting-edge safety features that come as standard. The sales brochure makes no
6 mention that the vehicle lacks Auto-Off, nor does it state and/or warn of the
7 Defect. A true and accurate representation of the 2014 Lexus GX470's sales
8 brochure is attached as **Exhibit 26**.

9 155. Plaintiff parked the vehicle, removed the Keyless Fob, and then later
10 discovered that the engine was still running when he returned to the vehicle.

11 156. Plaintiff Steven Green has been concerned about the Defect ever since
12 this incident.

13 157. Plaintiff Steven Green would not have purchased or would have paid
14 less for the vehicle had he known of the Defect prior to purchase.

15 **8. New York**

16 a. **Plaintiff Johana Garcia**

17 158. Plaintiff Johana Garcia is, and at all times relevant to this Complaint
18 was, a citizen and resident of New York. Plaintiff purchased a 2011 Nissan Rogue,
19 a Nissan Group vehicle, without knowledge of the Defect. Plaintiff's vehicle is an
20 Affected Vehicle.

21 159. Plaintiff purchased the Nissan Rogue primarily for personal, family,
22 and household use. Prior to purchasing the vehicle, Plaintiff read and relied on
23 marketing brochures and sales materials in deciding to make the purchase. For
24 example, the sales brochure touts a bullet-pointed list of no less than sixteen
25 standard safety features. The sales brochure makes no mention that the vehicle
26 lacks Auto-Off, nor does it state and/or warn of the Defect. A true and accurate
27
28

1 representation of the 2011 Nissan Rogue’s sales brochure is attached as **Exhibit**
2 **27**.

3 160. On one occasion, Plaintiff parked the vehicle in her garage and
4 believed she had turned off the vehicle. When she later returned to the vehicle, she
5 discovered that the engine was still running.

6 161. Plaintiff Johana Garcia has been concerned about the Defect ever
7 since this incident.

8 162. Plaintiff Johana Garcia would not have purchased or would have paid
9 less for the vehicle had she known of the Defect prior to purchase.

10 b. **Plaintiff Mark Pastarnack**

11 163. Plaintiff Mark Pastarnack is, and at all times relevant to this
12 Complaint was, a citizen and resident of New York. Plaintiff leased a 2013 Dodge
13 Journey, an FCA Group vehicle, without knowledge of the Defect. Plaintiff’s
14 vehicle is an Affected Vehicle.

15 164. Plaintiff leased the Dodge Journey primarily for personal, family, and
16 household use. Prior to leasing the vehicle, Plaintiff read and relied on marketing
17 brochures and sales materials in deciding to lease the vehicle, with special concern
18 for the safety of his family. For example, the sales brochure touts that “[w]e tend
19 to be overprotective with the things that matter most. That’s why we put over 50
20 standard and available safety and security features on Dodge Journey.” The sales
21 brochure makes no mention that the vehicle lacks Auto-Off, nor does it state and/or
22 warn of the Defect. A true and accurate representation of the 2013 Dodge
23 Journey’s sales brochure is attached as **Exhibit 28**.

24 165. Plaintiff parked the vehicle on at least four occasions believing he had
25 turned the vehicle off because of lack of engine noise or any other indication that
26 the engine remained on. After the first two times this occurred, plaintiff became
27 concerned and began to double or even triple-check that the engine was off,
28

1 including feeling the hood of the vehicle. Nevertheless, because of the quiet
2 engine, on at least two additional occasions, the engine was left running after he
3 exited the vehicle with the Key Fob, due to the Defect. On at least one occasion,
4 the engine remained running for at least three hours.

5 166. Plaintiff Mark Pastarnack has been concerned about the Defect ever
6 since these incidences.

7 167. Plaintiff Mark Pastarnack would not have leased or would have paid
8 less for the lease of the vehicle had he known of the Defect prior to the lease.

9 **9. Pennsylvania**

10 **a. Plaintiff John Lee**

11 168. Plaintiff John Lee is, and at all times relevant to this Complaint was, a
12 citizen and resident of Pennsylvania. Plaintiff purchased a 2013 BMW 335Xi, a
13 BMW Group vehicle, without knowledge of the Defect. Plaintiff's vehicle is an
14 Affected Vehicle.

15 169. Plaintiff purchased the BMW 335Xi primarily for personal, family,
16 and household use. Prior to purchasing the vehicle, Plaintiff read and relied on
17 marketing brochures and sales materials in deciding to make the purchase. For
18 example, the sales brochure touts that "[t]he 3 Series Sedan is designed with
19 BMW's full range of standard state-of-the-art active and passive safety
20 technologies. Active safety features, such as Xenon Adaptive Headlights, powerful
21 engines and large brakes, help you see and respond to potentially dangerous
22 situations. Should an accident prove unavoidable, passive safety features, such as
23 airbags, are designed to help protect you and your passengers. After a severe
24 impact, a host of features spring into action: the doors automatically unlock,
25 headlights and taillights flash, the starter cable is disconnected from the battery and
26 the fuel supply is cut off. If your vehicle is equipped with BMW Assist,TM should
27 any airbags deploy, response specialists are automatically alerted and notified of
28

1 your location.” The sales brochure makes no mention that the vehicle lacks Auto-
2 Off, nor does it state and/or warn of the Defect. A true and accurate representation
3 of the 2013 BMW 3-Series sales brochure is attached as **Exhibit 29**.

4 170. On two occasions, Plaintiff removed the Keyless Fob and parked the
5 vehicle in his garage, only to later discover that the engine was still running.

6 171. Plaintiff John Lee has been concerned about the Defect ever since this
7 incident.

8 172. Plaintiff John Lee would not have purchased or would have paid less
9 for the vehicle had he known of the Defect prior to purchase.

10 **B. Defendants**

11 173. Toyota Group

12 a. Toyota

13 (i) Defendant Toyota Motor Sales, U.S.A., Inc. (“TMS”) is a
14 Delaware corporation whose principal place of business is 19001 South Western
15 Avenue, Department WC11, Torrance, CA 90501. TMS’s address for customer
16 complaints is 19001 South Western Avenue, Department WC11, Torrance, CA
17 90501. TMS’s registered agent for service of process is Toyota Motor Sales,
18 U.S.A., Inc., c/o CT Corporation System, 818 W. Seventh St. 2nd Fl., Los Angeles,
19 CA 90017.

20 (ii) TMS maintains a design research center in California:
21 Defendant Calt Design Research Inc. (“CDR”), located at 2810 Jamboree Rd.,
22 Newport Beach, CA 92660. CDR is a Delaware corporation whose principal place
23 of business is 2810 Jamboree Rd., Newport Beach, CA 92660. CDR’s registered
24 agent for service of process is Calt Design Research Inc., c/o Shinichi Yamaji,
25 2810 Jamboree Rd., Newport Beach, CA 92660.

1 b. Lexus

2 (i) Though Lexus – brand vehicles are sold under a different
3 brand name in the United States, and are generally sold as more luxurious vehicles,
4 Lexus vehicles are universally manufactured, marketed, and distributed by TMS.

5 (ii) Moreover, Lexus has the same registered agent for
6 service of process in the United States as TMS.

7 c. The Toyota Group

8 (i) TMS and CDR, through their various entities, design,
9 manufacture, market, distribute and sell Toyota and Lexus automobiles in
10 California and multiple other locations in the United States and worldwide.

11 (ii) Collectively, the Defendants TMS and CDR are herein
12 referred to as the “Toyota Group.”

13 174. Ford Group

14 a. Ford

15 (i) Defendant Ford Motor Company (“Ford”) is a Delaware
16 company with its principal place of business at 1 American Road, Suite 1026,
17 Dearborn, MI 48126. Ford’s address for customer complaints is Ford Motor
18 Company, Customer Relationship Center, P.O. Box 6248, Dearborn, MI 48126.
19 Ford’s registered agent for service of process is Ford Motor Company, c/o CT
20 Corporation System, 818 W. Seventh St., Suite 930, Los Angeles, CA 90017.

21 (ii) Moreover, Ford maintains a design research center in
22 California: Global Advanced Design Studio (“GADS”), 3 Glen Bell Way #110,
23 Irvine, CA 92618.

24 b. Lincoln

25 (i) Though Lincoln–brand vehicles are sold under a different
26 brand name in the United States, and are generally sold as more luxurious vehicles,
27 they are universally manufactured, marketed, and distributed by Ford. Lincoln
28

1 utilizes the same California design studio as Ford and the customer complaint
2 address is identical as well.

3 (ii) Moreover, Lincoln has the same registered agent for
4 service of process in the United States as Ford.

5 c. The Ford Group

6 (i) Ford, through its various entities, designs, manufactures,
7 markets, distributes and sells Ford and Lincoln automobiles in California and
8 multiple other locations in the United States and worldwide.

9 (ii) Collectively, Ford (including its Lincoln brand models)
10 and GADS design studio are herein referred as the “Ford Group.”

11 175. Nissan Group

12 a. Nissan

13 (i) Defendant Nissan North America, Inc. (“NNA”) is a
14 California corporation whose principal place of business is 1 Nissan Way,
15 Franklin, TN 37067. NNA’s address for customer complaints is Nissan Consumer
16 Affairs, P.O. Box 685003, Franklin, TN 37068-5003. NNA’s registered agent for
17 service of process is Nissan North America, Inc., c/o Corporation Service
18 Company which will do business in California as CSC - Lawyers Incorporating
19 Service, 2710 Gateway Oaks Dr., Ste. 150n, Sacramento, CA 95833.

20 (ii) NNA maintains a design research center in California:
21 Defendant Nissan Design America Inc. (“NDI”), 9800 Campus Point Drive, San
22 Diego, CA 92121. NDI is a Delaware corporation whose principal place of
23 business is 9800 Campus Point Drive, San Diego, CA 92121. NDI’s registered
24 agent for service of process is Nissan Design America, Inc., c/o LexisNexis
25 Document Solutions Inc., 2711 Centerville Road, Suite 400, Wilmington, DE
26 19808.

1 b. Infiniti

2 (i) Though Infiniti-brand vehicles are sold under a different
3 brand name in the United States, and are generally sold as more luxurious vehicles,
4 Infiniti vehicles are universally manufactured, marketed, and distributed by NNA.

5 (ii) Moreover, Infiniti has the same registered agent for
6 service of process in the United States as NNA and utilizes the same NDI design
7 research center.

8 c. The Nissan Group

9 (i) NNA and NDI through their various entities, design,
10 manufacture, market, distribute and sell Nissan and Infiniti automobiles in
11 California and multiple other locations in the United States and worldwide.

12 (ii) Collectively, the Defendants NNA and NDI are herein
13 referred to as the “Nissan Group.”

14 176. Honda Group

15 a. Honda

16 (i) Defendant American Honda Motor Co., Inc. (“HMC”) is
17 a California corporation whose principal place of business is 1919 Torrance
18 Boulevard, Torrance, CA 90501. HMC’s address for customer complaints is
19 Honda Automobile Customer Service, Mail Stop: 500 - 2N - 7A, 1919 Torrance
20 Blvd., Torrance, CA 90501. HMC’s registered agent for service of process is
21 American Honda Motor Co., Inc., c/o CT Corporation System, 818 W. Seventh St.,
22 Suite 930, Los Angeles, CA 90017.

23 (ii) HMC maintains a design research center in California:
24 Defendant Honda R&D Americas Inc. (“HRD”), 1900 Harpers Way, Torrance, CA
25 90501-2746. HRD is a California corporation whose principal place of business is
26 1900 Harpers Way, Torrance, CA 90501-2746. HRD’s registered agent for service
27
28

1 of process is Honda R&D Americas, Inc., c/o CT Corporation System, 818 W.
2 Seventh St., Suite 930, Los Angeles, CA 90017.

3 b. Acura

4 (i) Though Acura-brand vehicles are sold under a different
5 brand name in the United States, and are generally sold as more luxurious vehicles,
6 Acura vehicles are universally manufactured, marketed, and distributed by HMC.

7 (ii) Moreover, Acura has the same registered agent for
8 service of process in the United States as HMC.

9 (iii) Only Acura's customer service complaint is different
10 from HMC's contact information, at Acura Client Relations, 1919 Torrance Blvd.,
11 M/S 500-2N7E, Torrance, CA 90501-2746.

12 c. The Honda Group

13 (i) HMC and HRD, through its various entities, design,
14 manufacture, market, distribute and sell Honda and Acura automobiles in
15 California and multiple other locations in the United States and worldwide.

16 (ii) Collectively, the Defendants HMC and HRD are herein
17 referred to as the "Honda Group."

18 177. FCA Group

19 a. FCA's Umbrella of Brands

20 (i) Defendant FCA US LLC ("FCA") is a Delaware Limited
21 Liability Corporation whose principal place of business is 1000 Chrysler Drive,
22 Auburn Hills, MI 48326. FCA's registered agent for service of process is The
23 Corporation Trust Company, Corporation Trust Center, 1209 Orange St,
24 Wilmington, DE, 19801.

25 (ii) FCA universally manufactures, markets, and distributes
26 Affected Vehicles sold under a variety of different brand names: Chrysler, Jeep,
27
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1 Dodge, and RAM. The principal places of business and registered agent for service
2 of process for any of these four brands is identical to that of FCA's.

3 b. The FCA Group

4 (i) FCA, through its various entities, designs, manufactures,
5 markets, distributes and sells Chrysler, Jeep, Dodge, and RAM-brand automobiles
6 in California and multiple other locations in the United States and worldwide.

7 (ii) Defendant FCA (including its Chrysler, Jeep, Dodge, and
8 RAM-branded vehicles) is herein referred to as the "FCA Group."

9 c. Suit Allegations Pertaining to FCA

10 (i) This suit is seeking relief only as to vehicles
11 manufactured on or after June 10, 2009, the date, upon information and belief, that
12 FCA's predecessor companies emerged from bankruptcy.

13 (ii) To the extent that any claim could be interpreted as
14 including any claims relating to any vehicles pre-bankruptcy-resolution, those
15 claims are expressly *not* brought here.

16 178. GM Group

17 a. GM's Umbrella of Brands

18 (i) Defendant General Motors Company ("GM") is a
19 Delaware corporation whose principal place of business is 300 Renaissance Ctr.,
20 Detroit, MI 48243-1402. GM's address for customer complaints is General Motors
21 Company, Customer Service Resources, P.O. Box 33170, Detroit, MI 48232-5170.
22 GM's registered agent for service of process is Corporation Service Company,
23 2711 Centerville Rd, Suite 400, Wilmington, DE, 19808.

24 (ii) GM universally manufactures, markets, and distributes
25 Affected Vehicles sold under a variety of different brand names: GMC, Chevrolet,
26 Cadillac, and Buick. The principal places of business and registered agent for
27 service of process for any of these four brands is identical to that of GM's.

28

1 (iii) For all of its vehicle brands, GM maintains a design
2 research center in California: General Motors Design Studio (“GMDS”), 5350
3 Biloxi Ave, North Hollywood, CA 91601.

4 b. The GM Group

5 (i) GM, through its various entities, designs, manufactures,
6 markets, distributes and sells GMC, Chevrolet, Cadillac, and Buick–brand
7 automobiles in California and multiple other locations in the United States and
8 worldwide.

9 (ii) Collectively, the GM brands of (and GMDS designed and
10 engineered) vehicles are herein referred to as the “GM Group.”

11 c. Suit Allegations Pertain to the “New” GM Only

12 (i) This suit is seeking relief only as to vehicles
13 manufactured on or after July 20, 2009, the date, upon information and belief, that
14 GM’s predecessor companies emerged from bankruptcy.

15 (ii) To the extent that any claim could be interpreted as
16 including any claims relating to any vehicles pre-bankruptcy-resolution, those
17 claims are expressly *not* brought here.

18 179. BMW Group

19 a. BMW

20 (i) Defendant BMW of North America, LLC (“BMW”) is a
21 Delaware limited liability corporation whose principal place of business is 300
22 Chestnut Ridge Road, Woodcliff Lake, NJ 07677-7731. BMW’s address for
23 customer complaints is Customer Relations Dept., P.O. Box 1227, Westwood, NJ
24 07675. BMW’s registered agent for service of process is The Corporation Trust
25 Company, Corporation Trust Center, 1209 Orange St., Wilmington, DE, 19801.

26 (ii) BMW maintains a design research center in California:
27 Defendant Designworks USA, Inc. (“DW”), 2201 Corporate Center Drive,
28

1 Newbury Park, CA 91320. DW is a California corporation whose principal place
2 of business is 2201 Corporate Center Drive, Newbury Park, CA 91320. DW's
3 registered agent for service of process is Designworks USA, Inc., c/o Laurenz
4 Schaffer, 2201 Corporate Center Dr., Newbury Park, CA 91320.

5 b. Mini

6 (i) Though Mini-brand vehicles are sold under a different
7 brand name in the United States, and are generally sold as quirky, small-niche
8 vehicles, Mini vehicles are universally manufactured, marketed, and distributed by
9 BMW.

10 (ii) Moreover, Mini has the same registered agent for service
11 of process in the United States as BMW.

12 c. The BMW Group

13 (i) BMW and DW, through their various entities, design,
14 manufacture, market, distribute and sell BMW and Mini-brand automobiles in
15 California and multiple other locations in the United States and worldwide.

16 (ii) Collectively, the Defendants BMW and DW are herein
17 referred to as the "BMW Group."

18 180. VW Group

19 a. Volkswagen

20 (i) Defendant Volkswagen Group of America, Inc. ("VW")
21 is a New Jersey Corporation whose principal place of business is 2200 Ferdinand
22 Porsche Drive, Herndon, VA 20171. VW's address for customer complaints is the
23 same address. VW's registered agent for service of process is Volkswagen Group
24 of America, Inc., c/o Corporation Service Company which will do business in
25 California as CSC - Lawyers Incorporating Service, 2710 Gateway Oaks Dr., Ste.
26 150n, Sacramento, CA 95833.

1 (ii) VW maintains a design research center in California:
2 Volkswagen Audi Design Center (“VADC”), 2772 Donald Douglas Loop North,
3 Santa Monica, CA 90405.

4 b. Audi

5 (i) Though Audi-brand vehicles are sold under a different
6 brand name in the United States, and are generally sold as more luxurious vehicles,
7 Audi vehicles are universally manufactured, marketed, and distributed by VW.

8 (ii) Moreover, Audi has the same registered agent for service
9 of process in the United States as VW and utilizes the same VADC California
10 design studio.

11 c. Bentley

12 (i) VW is the parent corporation of Defendant Bentley
13 Motors, Inc. (“Bentley”). Bentley is a Delaware corporation whose principal place
14 of business is 75 Arlington Street, 5th Floor, Boston, MA 02116. Bentley’s address
15 for customer complaints is the same address as for VW. Bentley’s registered agent
16 for service of process is Bentley Motors, Inc., c/o Corporation Service Company
17 which will do business in California as CSC - Lawyers Incorporating Service, 2710
18 Gateway Oaks Dr., Ste. 150n, Sacramento, CA 95833.

19 (ii) Though Bentley-brand vehicles are sold under a different
20 brand name in the United States, and are generally sold as highly luxurious
21 vehicles, Bentley-brand vehicles are universally manufactured, marketed, and
22 distributed by VW.

23 (iii) Moreover, Bentley has the same registered agent for
24 service of process in the United States as VW and utilizes the same VADC
25 California design studio.

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1 d. The VW Group

2 (i) VW, VADC, and Bentley, through their various entities,
3 design, manufacture, market, distribute and sell Volkswagen, Audi, and Bentley–
4 brand automobiles in California and multiple other locations in the United States
5 and worldwide.

6 (ii) Collectively, the Defendants VW, VADC, and Bentley
7 are herein referred to as the “VW Group.”

8 181. MB Group

9 (a) Defendant Mercedes-Benz USA, LLC (“MB”) is a Delaware
10 limited liability corporation whose principal place of business is 1 Mercedes Drive,
11 Montvale, NJ 07645. MB’s address for customer complaints is 3 Mercedes Drive,
12 Montvale, NJ 07645. MB’s registered agent for service of process is The
13 Corporation Trust Company, Corporation Trust Center, 1209 Orange St,
14 Wilmington, DE, 19801.

15 (b) MB maintains a design research center in California: Defendant
16 Mercedes-Benz Research & Development North America, Inc. (“MBRD”), 309
17 North Pastoria Avenue, Sunnyvale, CA 94085. MBRD is a Delaware corporation
18 whose principal place of business is 3953 Research Park Dr., Ann Arbor, MI
19 48108. MBRDs’ registered agent for service of process is Mercedes-Benz
20 Research & Development North America, Inc., c/o CT Corporation System, 818
21 W. Seventh St., Suite 930, Los Angeles, CA 90017.

22 (c) MB and MBRD, through their various entities, design,
23 manufacture, market, distribute and sell Mercedes-Benz automobiles in California
24 and multiple other locations in the United States and worldwide.

25 (d) Collectively, the Defendants MB and MBRD are herein
26 referred to as the “MB Group.”

27 182. Hyundai/Kia Group

28

1 a. Hyundai

2 (i) Defendant Hyundai Motor America, Inc. (“HMA”) is a
3 California corporation whose principal place of business is 10550 Talbert Avenue,
4 Fountain Valley, CA 92708. HMA’s address for customer complaints is P.O. Box
5 20850, Fountain Valley, CA 92728-0850. HMA’s registered agent for service of
6 process is National Registered Agents, Inc., 818 W. Seventh St., Ste. 930, Los
7 Angeles, CA 90017.

8 (ii) HMA maintains a design research center in California:
9 Defendant Hyundai America Technical Center, Inc. (“HATC”), 81 Bunsen, Irvine,
10 CA 92618. HATC is a Michigan corporation whose principal place of business is
11 6800 Geddes Road, Superior Township, MI 48198. HATC’s registered agent for
12 service of process is Hyundai America Technical Center, Inc., c/o National
13 Registered Agents, Inc., 818 W. Seventh St., Suite 930, Los Angeles, CA 90017.

14 b. Kia

15 (i) HMA is the parent corporation and/or sister company of
16 Defendant Kia Motors America, Inc. (“Kia”). Kia is a California corporation
17 whose principal place of business is 111 Peters Canyon Road, Irvine, CA 92606.

18 (ii) Though Kia vehicles are sold under a different brand
19 name in the United States, upon information and belief, Kia vehicles are
20 universally manufactured, marketed, and distributed by HMA.

21 (iii) Moreover, Kia has the same registered agent for service
22 of process in the United States as HMA (c/o CT Corporation System, 818 W.
23 Seventh St., Suite 930, Los Angeles, CA 90017).

24 (iv) Only Kia’s customer service complaint department has
25 an address that is different from HMA’s contact information. Kia’s customer
26 service complaint address is Kia Motors America Consumer Affairs Dept., P.O.
27 Box 52410, Irvine, CA 92619-2410.

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1 (v) Moreover, Kia uses the same design and research center,
2 HATC.

3 c. The Hyundai/Kia Group

4 (i) HMA, HATC, and Kia, through their various entities,
5 design, manufacture, market, distribute and sell Hyundai and Kia automobiles in
6 California and multiple other locations in the United States and worldwide.

7 (ii) Collectively, the Defendants HMA, HATC, and Kia are
8 herein referred to as the “Hyundai/Kia Group.”

9 **III. JURISDICTION**

10 183. Jurisdiction is proper in this Court pursuant to the Class Action
11 Fairness Act, 28 U.S.C. § 1332(d).

12 184. This is a class action. Some of the members of the proposed Plaintiff
13 Class are citizens of states different from the Automakers’ home states.

14 185. Upon information and belief, aggregate claims of individual Class
15 Members exceed \$5,000,000, exclusive of interest and costs.

16 **IV. VENUE**

17 186. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(a).

18 187. Each of the Automakers are deemed to reside in this district pursuant
19 to 28 U.S.C. § 1391(c), so personal jurisdiction is appropriate.

20 188. In addition, a substantial part of the events or omissions giving rise to
21 these claims occurred in this district.

22 189. The California-resident plaintiffs’ Venue Declarations pursuant to
23 Cal. Civ. Code § 1780(d) are attached hereto as **Exhibits 30 through 40**.

24 **V. FACTUAL ALLEGATIONS**

25 190. Plaintiffs bring this action for themselves and on behalf of all Class
26 Members. Plaintiffs are informed and believe that, because of the Defect—the
27 lack of Auto-Off in the Affected Vehicles—all such Affected Vehicles have a
28

1 dangerous propensity to cause carbon monoxide poisoning, placing Plaintiffs and
2 the Class Members at undue risk of suffering physical injury and death due to
3 carbon monoxide poisoning. This risk of imminent injury is caused by the Defect
4 in conjunction with the Automakers' failure to recall, buy back, provide warnings
5 about, and/or supply funds to retrofit and/or repair the dangerously defective
6 Affected Vehicles.

7 191. Affected Vehicles at issue in this action are described in detail in
8 **Exhibit 1**. The Automakers can readily ascertain and identify all Affected
9 Vehicles by Vehicle Identification Number ("VIN") and/or specification sheets to
10 discern which Affected Vehicles were optioned with or had the Keyless Fob as
11 standard equipment. Department of Motor Vehicle registries readily identify those
12 with Affected Vehicles.

13 192. Plaintiffs reserve the right to amend the definition and list of
14 "Affected Vehicles" should further discovery reveal that additional models, model-
15 years, and model variations and trim levels are affected by the Defect.

16 **A. The Keyless Fob**

17 193. Over the past decade, an increasing number of vehicles in the United
18 States are being sold with Keyless Fobs. Keyless Fobs function without ever
19 touching the vehicle (e.g., the Keyless Fob can remain in the driver's pocket or
20 purse throughout operation of the vehicle).

21 194. Vehicles with Keyless Fobs have several features that differentiate
22 them from vehicles that use Physical Keys. First, vehicles with Keyless Fobs have
23 a "Start/Stop" button on the dashboard, center console, or shifter mechanism,
24 rather than an ignition slot that accepts a Physical Key that is used to start the
25 engine. Second, the Affected Vehicles have a transponder (the Keyless Fob) that
26 contains the circuitry that sends an electronic signal, rather than a conventional
27 Physical Key with teeth.
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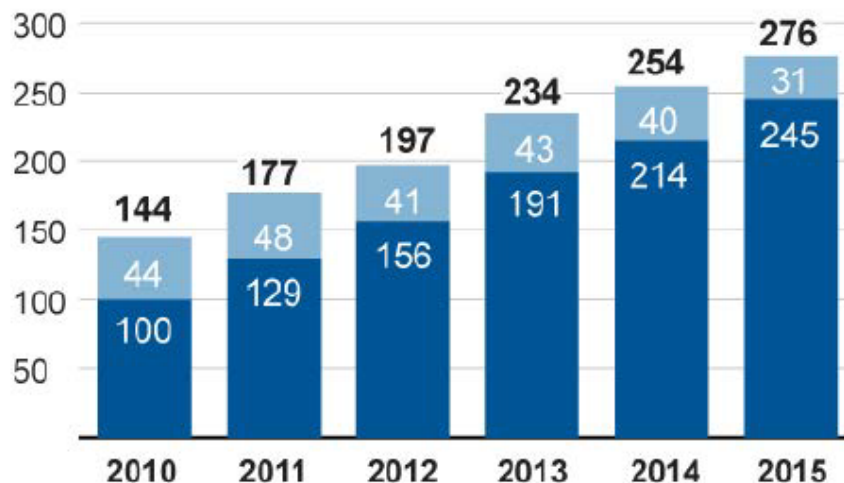
1 195. All named Automakers sell vehicles in the United States that are
 2 equipped with Keyless Fobs. As noted in **Exhibit 1**, though the Automakers name
 3 the Keyless Fobs using various catch-phrases such as “Intelligent Keys” and
 4 “SmartAccess”, the Keyless Fobs are functionally the same when it comes to this
 5 Complaint’s allegations regarding the Defect and a lack of Auto-Off.

6 196. Over the years, the makes and models of automobiles with Keyless
 7 Fobs have risen dramatically:

8 **Number of models with keyless start**

9 *By model year*

10 ■ Standard ■ Optional



19 Sources: Edmunds.com

20 **B. The Keyless Fobs Lead to Carbon Monoxide Poisoning Without Automatic Shut-off**

21 197. Unfortunately and inexplicably, the Automakers have failed to
 22 implement an updated safety feature to prevent the Defect in the Affected
 23 Vehicles. In these vehicles, a driver may place the car into park but due to
 24 Undetected Engine Activity, may not turn off the Affected Vehicle’s engine. Thus,
 25 the Defect exists because the Affected Vehicle can emit dangerous (if not deadly)
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1 levels of carbon monoxide, especially if left running in an enclosed environment,
2 such as a garage.

3 198. In some instances, the engine may continue to run *even if the driver*
4 *pushes the Start/Stop button*. For example, in a recent recall, the Ford Group
5 recalled 432,096 vehicles, including the 2015 model year Escape, Focus, and C-
6 Max models equipped with Keyless Fobs because, according to the official recall
7 report:¹⁴

8 Description of the Noncompliance : On your vehicle, it may be possible for the engine to continue to run after
9 turning the ignition key to the “off” position and removing the key
10 (vehicles with standard ignition keys), or after pressing the Engine Start/
Stop button (vehicles with push-button start and intelligent access keys).

11 In other words, because of software glitches that affected nearly one-half of one-
12 million vehicles, depressing the “Start/Stop” button failed to turn off the engine as
13 the manufactures had intended.

14 199. Although all of the makes/models of automobiles listed in **Exhibit 1**
15 have Keyless Fobs, upon information and belief (and based on counsel’s review of
16 the thousands of pages of over 1,500 auto manuals and sales brochures), *none* have
17 Auto-Off. As a result, in just the past five years, at least 13 people have died and
18 many more have been injured, requiring hospitalization due to carbon monoxide
19 poisoning.

20 200. Attached as **Exhibit 41** is a list of 27 complaints lodged with the
21 NHTSA by consumers about Defect incidents associated with Keyless Fobs. For
22 example, and as listed in chronological order:

23 (a) On April 6, 2009, a person with a Toyota Group vehicle, a 2008
24 Lexus LS460, filed NHTSA complaint number 10264229, stating:

25 COMPLAINT REGARDING DANGER OF DEATH
26 DUE TO CARBON MONOXIDE. THIS CAR IS

27 ¹⁴ Non-Compliance Notice, July 1, 2015, available at: [http://www-
28 odi.nhtsa.dot.gov/acms/cs/jaxrs/download/doc/UCM481952/RCLRPT-15V436-
2235.PDF](http://www-odi.nhtsa.dot.gov/acms/cs/jaxrs/download/doc/UCM481952/RCLRPT-15V436-2235.PDF)

1 KEYLESS WHICH OFTEN RESULTS IN THE
2 FAILURE OF THEIR DRIVER SHUTTING OFF THE
3 ENGINE WHICH IS AT TIMES PARKED INSIDE AN
4 ENCLOSED GARAGE OF A HOME. THIS
5 OCCURRED ON THREE DIFFERENT OCCASIONS
6 AT MY HOME. THANK GOD I HAD A CARBON
7 MONOXIDE ALARM IN MY HOME WHICH
8 ALERTED ME OF THIS PROBLEM. LEXUS
9 SHOULD HAVE INSTALLED SOME SORT OF
10 SWITCH WHICH WOULD AUTOMATICALLY
11 SHUT OFF THE ENGINE WHEN THE DRIVER SEAT
12 HAS BEEN UNOCCUPIED FOR FIFTEEN MINUTES.
13 **LEXUS STATES THEY HAVE RECEIVED MANY
14 COMPLAINTS THROUGHOUT THE COUNTRY,
15 HOWEVER THERE IS NOTHING THEY CAN DO
16 ABOUT THIS PROBLEM AND DANGER.
17 EXISTING CARS SHOULD BE RECALLED AND
18 REPAIRED AND THIS SHOULD BE
19 MANDATORY FOR ALL FUTURE CARS WITH A
20 KEYLESS SYSTEM.¹⁵**

21 (b) On May 4, 2009, a person with a Nissan Group vehicle, a 2009
22 Nissan Murano S, filed NHTSA complaint number 10267647, stating:

23 [MY CAR] COMES WITH PUSH BUTTON
24 "START/STOP" ENGINE [...] THE DANGER IS
25 WHEN YOU PARK THE CAR IN YOUR
26 GARAGE...AND FORGET TO PUSH THE
27 START/STOP BUTTON TO TURN THE ENGINE
28 OFF... BECAUSE THIS TECHNOLOGY IS NEW, THE
INSTINCT IS TO PULL THE KEY FOB OUT AND
GET OUT OF THE CAR... THE ENGINE REMAINS
ON AND IT IS QUIET ENOUGH THAT YOU DO
NOT NOTICE THE ENGINE RUNNING... THE
DANGER IS THAT CARBON MONOXIDE CAN FILL
UP YOUR GARAGE AND HOUSE AND KILL THE
INHABITANTS... I CONTACTED NISSAN VIA
EMAIL. THEY HAD A TECH. REVIEW MY
COMPLAINT AND RESPONDED AS FOLLOWS
"DON'T FORGET TO PUSH THE BUTTON TO TURN
THE ENGINE OFF"... **OBVIOUSLY [NISSAN]
DO[ES] NOT GET THE DANGER.¹⁶**

¹⁵ Exhibit 41 at 25 (emphasis added).

¹⁶ *Id.* at 26 (emphasis added).

1 (c) On February 3, 2010, a person with a Nissan Group vehicle, a
2 Nissan Altima, filed NHTSA complaint number 10304356, stating:

3 [I] WOULD LIKE TO BRING TO YOUR ATTENTION
4 A DEFECT THAT I BELIEVE NEEDS TO BE
5 CORRECTED IN AT LEAST SOME, IF NOT ALL, OF
6 NISSAN, LATEST ALTIMA VEHICLES. THE
7 PROBLEM OCCURS WHEN THE CAR IS LEFT
8 RUNNING AND THE VEHICLE DOORS ARE
9 CLOSED WITH THE REMOTE "KEYLESS". THIS
10 PROBLEM COULD CREATE A SERIOUS SAFETY &
11 HEALTH ISSUE IF A DRIVER FORGETS TO SHUT
12 OFF THE ENGINE BEFORE USING THE REMOTE
13 KEY TO CLOSE THE VEHICLE DOORS.¹⁷

14 (d) On February 9, 2010, a person with a Toyota Group vehicle, a
15 2009 Toyota Camry Hybrid, filed NHTSA complaint number 10308004, stating:

16 SAFETY HAZARD!. 2009 TOYOTA CAMRY
17 (LIKELY ALL HYBRID AUTOMOBILES) WILL
18 CONTINUOUSLY RESTART THE GAS ENGINE TO
19 RECHARGE THE BATTERY IF THE IGNITION
20 SYSTEM IS NOT TURNED OFF WHEN DEPARTING
21 THE VEHICLE. IF THE AUTO IS IN AN ATTACHED
22 GARAGE THIS COULD RESULT IN ACCIDENTAL
23 CO POISONING TO OCCUPANTS WITHIN THE
24 DWELLING. I HAVE OBSERVED A HYBRID
25 CONTINUOUSLY RESTARTING WHILE PARKED
26 IN THE DRIVEWAY. THIS CAR IS USUALLY KEPT
27 IN AN ATTACHED GARAGE. THE OWNER
28 FORGOT TO TURN OFF THE IGNITION UPON
LEAVING THE CAR. THIS IS LIKELY A COMMON
EVENT. THIS WILL EVENTUALLY RESULT IN
SERIOUSLY INJURY OR DEATH, AND MAY HAVE
ALREADY HAPPENED AND NOT BEEN
PROPERLY IDENTIFIED AND REPORTED.¹⁸

(e) On April 28, 2010, a person with a Toyota Group vehicle, a
2007 Lexus LS460, filed NHTSA complaint number 10326861, stating:

¹⁷ *Id.* at 24.

¹⁸ *Id.* at 5.

1 I ARRIVED HOME AFTER DINNER [...] CLOSED
2 THE GARAGE DOOR AND, LEAVING THE KEY
3 FOB INSIDE THE VEHICLE, I ENTERED MY HOME
4 AND EVENTUALLY WENT TO SLEEP. I WAS
5 AWOKEN AT APPROX. 2:15AM BY A CARBON
6 MONOXIDE ALARM LOCATED IN THE FOYER
7 INSIDE MY HOME ADJACENT TO THE ENTRANCE
8 TO THE GARAGE. I ENTERED THE GARAGE TO
9 DISCOVER THAT THE CAR'S ENGINE WAS STILL
10 RUNNING, THE GARAGE FILLED WITH NOXIOUS
11 FUMES, AND THE ENTIRE VEHICLE EXTREMELY
12 HOT TO TOUCH, INSIDE AND OUT. I OPENED THE
13 GARAGE DOOR AND WAS EVENTUALLY ABLE
14 TO SHUT DOWN THE ENGINE AND CLEAR OUT
15 THE FUMES. AS I SEE IT, THE FAILURE HERE
16 WAS TWO-FOLD: (1) WHEN I OPENED MY DOOR
17 TO EXIT THE CAR, NO ALARM OR OTHER SOUND
18 ALERTED ME THAT THE ENGINE WAS STILL
19 RUNNING, AS IS THE CASE WITH IGNITIONS
20 REQUIRING KEYS. THIS IS PARTICULARLY
21 PROBLEMATIC BECAUSE THE **CAR'S ENGINE
22 RUNS IN VIRTUAL SILENCE**; AND (2) EVEN
23 AFTER THE CAR WAS UNWITTINGLY LEFT
24 IDLING WHILE IN PARK, **THE ENGINE DID NOT
25 CUT OFF AFTER SOME PREDETERMINED
26 PERIOD OF TIME**. I SPOKE TO MY LOCAL
27 LEXUS DEALER, WHO SUGGESTED THAT I
28 CONTACT LEXUS USA DIRECTLY. [...] AFTER
BEING TOLD BY LEXUS THAT THEY SEE NO
PROBLEMS WITH THEIR KEYLESS IGNITION
SYSTEM, I ELECTED TO TAKE ANOTHER
APPROACH AND CONTACT NHTSA. [...] LEXUS
HAS TAKEN NO RESPONSIBILITY FOR THIS
INCIDENT WHICH NEARLY KILLED ME AND
WHICH COULD KILL OTHERS, AND OFFERS
NO SOLUTIONS OR FIXES TO THIS PROBLEM.¹⁹

(f) On May 28, 2010, a person with a Toyota Group vehicle, a 2009 Toyota Highlander Hybrid, filed NHTSA complaint number 10332639, stating:

OUR GARAGE IS ATTACHED TO OUR HOUSE WITH OUR BEDROOM ABOVE THE GARAGE. WITH 3 KIDS, BOTH MY WIFE AND I HAVE BEEN

¹⁹ *Id.* at 23 (emphasis added).

1 DISTRACTED LEAVING THE CAR IN THE
2 GARAGE TO UNLOAD GROCERIES OR HELP THE
3 CHILDREN. WHEN ON ELECTRIC POWER WE
4 HAVE NEGLECTED TO TURN OFF THE IGNITION
5 **SINCE THE [HYBRID] CAR IS SILENT [WHILE**
6 **PARKED].** ONLY WHEN THE CARBON-
7 MONOXIDE DETECTOR SOUNDED IN OUR
8 GARAGE DID WE REALIZE THE ENGINE HAD
9 STARTED WHILE WE WERE IN THE HOUSE. WE
10 THINK THIS COULD BE DEADLY TO OTHER
11 FAMILIES WITHOUT CARBON MONOXIDE
12 ALARMS WHO MAY ALSO FORGET TO TURN OFF
13 THE ENGINE WHEN PARKED IN AN ATTACHED
14 GARAGE WHILE ON ELECTRIC POWER.²⁰

15 (g) One death was associated with a Toyota Group vehicle,
16 described in NHTSA complaint number 10375730, filed on January 5, 2011:

17 ON THE EVENING OF DECEMBER 13, 2010,
18 VICTIM LEFT HIS CAR RUNNING IN HIS GARAGE.
19 THE CAR HAS A "SMART KEY" WHICH IS A
20 REMOTE KEY-FOB. THIS MEANS THAT HE DOES
21 NOT HAVE TO TURN A KEY TO TURN THE
22 IGNITION ON AND OFF. INSTEAD, THE CAR
23 TURNS ON AND OFF BY PRESSING THE SAME
24 BUTTON ON THE DASH BOARD. HE MUST HAVE
25 FORGOTTEN TO TURN THE CAR OFF. HE THEN
26 WENT TO SLEEP AND SUFFERED CARBON
27 MONOXIDE POISONING DURING THE NIGHT. HE
28 WAS FOUND UNCONSCIOUS ON THE FLOOR THE
NEXT MORNING. THE CAR WAS STILL RUNNING.
THE VICTIM WAS TAKEN TO THE HOSPITAL,
WHERE HE IS IN THE ICU AND SEDATED.²¹

29 (h) One injury and one death associated with a Toyota Group
30 vehicle, a 2006 Lexus IS 250, was described in NHTSA complaint number
31 10380153, filed on February 3, 2011:

32 A YOUNG LADY PARKED HER 2006 IS 250 LEXUS,
33 EQUIPPED WITH A "SMART KEY" SYSTEM, IN
34 HER ATTACHED GARAGE WHICH WAS ON THE
35 GROUND FLOOR OF HER THREE STORY

36 ²⁰ *Id.* at 22 (emphasis added).

37 ²¹ *Id.* at 21.

1 TOWNHOUSE. SHE EXITED THE VEHICLE WITH
2 THE "KEY FOB" ON HER PERSON, BUT EITHER
3 INADVERTENTLY FORGOT TO SHUT DOWN THE
4 ENGINE OR PUSHED THE START BUTTON IN AN
5 EFFORT TO DO SO BUT WAS UNSUCCESSFUL.
6 THE YOUNG LADY DID NOT REALIZE THE
7 VEHICLE WAS RUNNING AND AFTER ENTERING
8 HER TOWNHOUSE FROM THE GARAGE PLACED
9 THE "KEY FOB" ON A TABLE ON THE SECOND
10 FLOOR. THE YOUNG LADY REMAINED IN HER
11 TOWNHOUSE WITH THE VEHICLE RUNNING IN
12 THE GARAGE UNTIL IT RAN OUT OF GASOLINE
13 AND STOPPED. THE YOUNG LADY WAS
14 SUBSEQUENTLY FOUND DEAD IN HER
15 BATHROOM ON THE THIRD FLOOR. THE DEATH
16 WAS DETERMINED TO HAVE BEEN CAUSED BY
17 CARBON MONOXIDE POISONING AS A RESULT
18 OF THE VEHICLE HAVING BEEN LEFT RUNNING
19 IN THE GARAGE. THE VEHICLE LACKED A
20 "SHUT-DOWN" SWITCH TO SHUT THE ENGINE
21 OFF WHEN UNOCCUPIED AND INERT FOR AN
22 INTERVAL OF TIME AND/OR LACKED AN
23 ADEQUATE AURAL WARNING THAT THE "KEY
24 FOB" WAS BEING REMOVED FROM THE VEHICLE
25 WHILE IT WAS RUNNING OR THE OPERATOR
26 HAD EXITED THE VEHICLE WHILE THE ENGINE
27 WAS RUNNING.²²

17 (i) Two injuries were associated with a person with a Toyota
18 Group vehicle, a 2011 Toyota Camry XLE, described in NHTSA complaint
19 number 10394590, filed on March 20, 2011:

20 MY WIFE AND I ARE RETIRED IN FLORIDA. WE
21 PARKED OUR 2011 TOYOTA CAMRY XLE WITH
22 KEYLESS IGNITION IN OUR GARAGE AND
23 BROUGHT THE KEY FOB WITH US INTO OUR
24 HOME. MY WIFE EITHER DID NOT PUSH THE
25 ENGINE OFF BUTTON HARD ENOUGH OR
26 FORGOT TO PUSH THE ENGINE OFF BUTTON TO
27 TURN OFF THE ENGINE. WE DID NOT HEAR THE
28 3 SHORT BEEPS TELLING US THE ENGINE WAS
RUNNING AND THE KEY FOB WAS REMOVED
FROM THE VEHICLE. THE GARAGE IS
ATTACHED TO OUR HOME. THE VEHICLE WAS

²² *Id.* at 20.

1 LEFT RUNNING IN OUR CLOSED GARAGE.
2 CARBON MONOXIDE FUMES ENTERED OUR
3 HOME CAUSING HEADACHES, NAUSEA, AND
4 LETHARGY. OUR HOME CARBON MONOXIDE
5 DETECTOR SOUNDED AN ALARM. WE
6 INVESTIGATED AND FOUND THAT WE LEFT THE
7 VEHICLE RUNNING IN THE GARAGE FOR 90
8 MINUTES. THE GARAGE TEMPERATURE WAS
9 OVER 100(F) DEGREES. [...] WE WERE SICKENED
10 BY THE CARBON MONOXIDE FUMES AND CAME
11 CLOSE TO LOSING OUR LIVES. THE KEYLESS
12 IGNITION OPTION IS TOO DANGEROUS. **THERE
13 NEEDS TO BE A CHANGE IN DESIGN THAT
14 TURNS OFF THE ENGINE WHEN THE KEY FOB
15 LEAVES THE VEHICLE AND THE ENGINE OFF
16 BUTTON IS NOT DEPRESSED.**²³

17 (j) On June 10, 2011, a person with a GM Group vehicle, a 2011
18 Cadillac SRX, filed NHTSA complaint number 10405921, stating:

19 ON THE 2011 CADILLAC SRX THERE IS NO
20 WARNING SOUNDED IF YOU LEAVE YOUR
21 KEYLESS IGNITION RUNNING AND LEAVE THE
22 VEHICLE. YESTERDAY, I INADVERTENTLY LEFT
23 THE VEHICLE RUNNING AND **THE CAR DID NOT
24 BEEP OR GIVE ME ANY INDICATION THAT I
25 HAD DONE SO.** THESE KEYLESS IGNITION
26 SYSTEMS ARE VERY DANGEROUS BECAUSE IF
27 YOU ACCIDENTALLY LEAVE THE CAR RUNNING
28 IN THE GARAGE YOU COULD INADVERTENTLY
CAUSE A CARBON MONOXIDE POISONING
SITUATION. IT IS A VERY UNSAFE FEATURE
THAT COULD BE CORRECTED WITH A SIMPLE
WARNING SIGNAL. THERE NEEDS TO BE SOME
TYPE OF WARNING, A CAR HORN BEEP OR
SOMETHING TO LET THE DRIVER KNOW THAT
THE VEHICLE IS RUNNING WHEN THE DRIVER
LEAVES THE VEHICLE.²⁴

(k) On November 29, 2011, a person with a Toyota Group vehicle,
a 2010 LEXUS RX450h, filed NHTSA complaint number 10437757, stating:

²³ *Id.* at 19 (emphasis added).

²⁴ *Id.* at 18 (emphasis added).

1 HYBRID VEHICLE + KELSEY [sic, KEYLESS]
2 IGNITION = DEADLY COMBINATION. WE
3 ACCIDENTALLY LEFT OUR 2010 LEXUS RX450H
4 IN THE GARAGE WITH THE IGNITION "ON" AND
5 TURNED IN FOR THE NIGHT. **SINCE IT IS A**
6 **HYBRID, IT MAKES NO SOUND - EVEN WHEN**
7 **"RUNNING"**. SO WE WERE UNAWARE THE
8 IGNITION WAS STILL ON. MUCH LATER IN THE
9 EVENING, AFTER THE BATTERY HAD DEPLETED,
10 THE GAS ENGINE CAME ON, FILLING OUR
11 GARAGE WITH CARBON MONOXIDE. HAD I NOT
12 GONE BACK OUT TO RETRIEVE SOMETHING
13 FROM THE GARAGE AND NOTICED THAT BY
14 THIS TIME THE CAR'S GAS ENGINE WAS
15 RUNNING, I LIKELY WOULDN'T BE WRITING
16 THIS E-MAIL. THIS IS A VERY DANGEROUS
17 FLAW IN AN OTHERWISE GREAT CAR. THE TINY
18 RED VS. GREEN LED ON THE IGNITION BUTTON
19 IS NOT ENOUGH INDICATION THAT THE CAR IS
20 RUNNING. AN AUDIBLE ALARM OR SOME TYPE
21 OF POSITIVE INTERLOCK IS NEEDED.²⁵

22 (l) On August 17, 2012, a person with a GM Group vehicle, a
23 Chevrolet Volt, filed NHTSA complaint number 10471278, stating:

24 THERE IS AN APPARENT DESIGN FLAW IN THE
25 CHEVY VOLT RELATED TO AN INDIVIDUAL
26 EXITING THE VEHICLE WITHOUT POWERING
27 DOWN THE SYSTEMS WHICH COULD RESULT IN
28 CO POISONING OR DEATH AND POSSIBLE FIRE
HAZARDS IN THE RIGHT SITUATION. THE VOLT
USES A KEY FOB SYSTEM AND PUSH BUTTON
START. KEY FOBS ARE ALREADY PROVING TO
BE A SAFETY ISSUE. WITH THE VOLT, THE
SITUATION IS EXACERBATED. SINCE THE CAR IS
VIRTUALLY SILENT, IT IS VERY EASY FOR A
PERSON TO FORGET TO TURN OFF THE CAR,
AND WHEN THEY EXIT, **THE LACK OF ANY**
ENGINE NOISE WILL OFTEN NOT GIVE THEM
THE CUES NECESSARY TO REALIZE THEIR
MISTAKE. WHEN THE INDIVIDUAL LEAVES THE
CAR POWERED ON, THE BATTERY WILL DRAIN.
WHEN THE BATTERY IS SUFFICIENTLY
DRAINED, AN ENGINE WILL TURN ON AND

²⁵ *Id.* at 17 (emphasis added).

1 CHARGE THE BATTERIES. THIS IS SIGNIFICANT,
2 BECAUSE THIS WILL LIKELY HAPPEN
3 SOMETIME AFTER A PERSON HAS PARKED
4 THEIR CAR. THE RESULT WILL BE A GARAGE
5 FILLING WITH CO FUMES. THE VOLT WILL
6 CONTINUE TO RUN THE ENGINE, IN CYCLES,
7 UNTIL THERE IS NO MORE GAS IN THE TANK.
8 WHILE THERE HAVE ALREADY BEEN DEATHS
9 ASSOCIATED WITH NON-ELECTRIC VEHICLES
10 EQUIPPED WITH KEY FOBS AND CO POISONING
11 AS THE RESULT OF THE DRIVER FORGETTING
12 TO TURN THE CAR, THIS IS GOING TO BE MUCH
13 MORE COMMON IN ELECTRIC HYBRID
14 VEHICLES. IN AN UNSCIENTIFIC POLL
15 CONDUCTED ON GM-VOLT.COM, OF 100
16 RESPONDENTS, 30% ADMITTED TO FORGETTING
17 TO TURN THEIR VEHICLE OFF. ONE USER ON
18 THE SITE FORGOT TO TURN THE VEHICLE OFF,
19 AND ENTERED THE GARAGE SOMETIME LATER
20 TO FIND IT FILLED WITH FUMES. THERE NEEDS
21 TO BE PASSIVE (HORN SIGNALS UPON EXIT) OR
22 ACTIVE (WELL ENGINEERED AUTO SHUTOFF)
23 SYSTEMS PUT IN PLACE TO PREVENT A
24 TRAGEDY.²⁶

25 (m) One injury was reported associated with a person with a
26 Toyota Group vehicle, a 2011 Lexus ES350, described in NHTSA complaint
27 number 10458009, filed on May 10, 2012:

28 CONTACT OWNS A ...2011 LEXUS ES350. THE
CONTACT STATED THAT THE DRIVER EXITED
THE VEHICLE AND FORGOT TO SHUT THE
IGNITION OFF. THE VEHICLE WAS EQUIPPED
WITH A PUSH TO START AND STOP FEATURE.
THE ENGINE CONTINUED TO RUN UNTIL A
CARBON MONOXIDE DETECTOR SOUNDED. THE
DRIVER SUFFERED CARBON MONOXIDE
POISONING AND AS A RESULT, WAS TAKEN TO
A HOSPITAL TO TREAT THE CONDITION.²⁷

²⁶ *Id.* at 4 (emphasis added).

²⁷ *Id.* at 16.

1 (n) One death was reported associated with a person with a Toyota
2 Group vehicle, a 2006 Toyota Avalon, described in NHTSA complaint number
3 10497402, filed on February 11, 2013:

4 CONSUMER STATED HER PARENTS PURCHASED
5 A NEW VEHICLE BACK IN 2006. THE VEHICLE
6 CAME EQUIPPED WITH A KEYLESS REMOTE
7 STARTING SYSTEM. ALL IT TOOK, WAS TO HAVE
8 THE DEVICE IN ONES POCKET AND HER FATHER
9 COULD GET IN THE VEHICLE, PRESS A BUTTON
10 AND THE VEHICLE WOULD START UP. WHEN
11 HER FATHER ARRIVED AT HIS DESTINATION,
12 ALL HE HAD TO DO WAS, PUT THE VEHICLE IN
13 PARK, PRESS THE REMOTE BUTTON AND THE
14 ENGINE WOULD SHUT OFF. ON JUNE 28, 2012,
15 WHEN THE CONSUMERS FATHER RETURNED
16 HOME, HE PARKED THE VEHICLE IN THE
17 GARAGE AND WENT IN THE HOUSE. HOURS
18 LATER, THE CONSUMERS FATHER WAS FOUND
19 DECEASED IN THE HOUSE FROM CARBON
20 MONOXIDE POISONING. [...] AFTER HER DAD
21 TOOK HIS PACKAGES OUT OF THE CAR AND
22 INTO THE HOUSE, HE CLOSED THE GARAGE,
23 AND NEVER SHUT OFF THE REMOTE STARTER
24 BUTTON. FROM MORNING ALL THROUGH THE
25 DAY, CARBON MONOXIDE SLOWLY SEEPED IN
26 THE KITCHEN WHERE THE GARAGE WAS
27 ATTACHED, THROUGH THE KITCHEN AND INTO
28 THE DEN WHERE HER DAD WAS SITTING. **THE
CONSUMER STATED HAD THERE BEEN AN
AUTOMATIC SHUT OFF SYSTEM THAT
ACTIVATED AFTER A PRESET TIME, WHEN
THERE WAS NO WEIGHT IN THE DRIVER'S
SEAT, MUCH LIKE THE AIR BAGS ON THE
PASSENGER SIDE, THIS SENSELESS TRAGEDY
WOULD HAVE NEVER OCCURRED.**²⁸

23 (o) On April 5, 2013, a person with a Nissan Group vehicle, a
24 Nissan Altima, filed NHTSA complaint number 10507204, stating:

25 I WAS DRIVING A BRAND-NEW, NISSAN ALTIMA
26 RENTAL CAR ON A BUSINESS TRIP. AFTER I
27 RETURNED TO MY HOTEL ONE AFTERNOON, I

28 ²⁸ *Id.* at 14 (emphasis added).

1 FORGOT TO TURN THE ENGINE OFF. THIS
2 VEHICLE HAS A KEY FOB AND A "START/STOP"
3 BUTTON ONLY. THERE IS NO METAL KEY.
4 AFTER I EXITED THE VEHICLE, I NOTICED THAT
5 THE HORN DID NOT HONK WHEN I LOCKED THE
6 VEHICLE WITH THE KEY FOB. THE TRUNK
7 RELEASE DID NOT AUTOMATICALLY OPEN
8 WHEN I USED THE KEY FOB. I MANUALLY
9 PRESSED A BUTTON UNDER THE TRUNK LID TO
10 RETRIEVE MY BAG. THE NEXT MORNING, I
11 NOTICED STEAM AND WATER COMING OUT OF
12 THE EXHAUST TAILPIPES. (IT WAS APP. 34
13 DEGREES THAT MORNING.) I DISCOVERED THAT
14 THE ENGINE WAS STILL RUNNING, AND THE
15 CAR USED APP[ROXIMATELY] 3/8S OF A TANK
16 OF GASOLINE OVERNIGHT. MY CONCERN IS
17 THAT A CAR LIKE THIS COULD BE DRIVEN INTO
18 A GARAGE WITH THE ENGINE LEFT ON, AND
19 THEN THE OCCUPANTS OF THE RESIDENCE
20 COULD GET CARBON MONOXIDE POISONING
21 FROM THE EXHAUST FUMES. THIS VEHICLE
22 NEEDS SOME TIME [sic, KIND] OF WARNING
23 BELL, CHIME, ETC. TO REMIND THE DRIVER
24 THAT THE ENGINE IS STILL RUNNING IF THEY
25 OPEN THE DRIVER'S SIDE DOOR AND/OR EXIT
26 THE VEHICLE.²⁹

27 (p) On July 19, 2013, a person with a Toyota Group vehicle, a 2012
28 Toyota Camry, filed NHTSA complaint number 10525838, stating:

29 AT LEAST FOUR OCCASIONS THE MOTOR HAS
30 REMAINED RUNNING AFTER I LEFT THE
31 CAR...THIS CAR HAS PUSH BUTTON
32 IGNITION...DID I NOT TURN IF OFF PROPERLY
33 OR IS THERE A SYSTEM MALFUNCTION...I PARK
34 MY CAR IN AN ATTACHED GARAGE TO OUR
35 HOUSE AND THE DOOR TO OUR HOUSE FROM
36 THE GARAGE IS LEFT OPEN IN THE SUMMER
37 FOR VENTILATION.....IF THE CAR REMAINED
38 RUNNING UNKNOWN TO US DURING THE NIGHT
39 WE WOULD PERISH FROM THE CARBON
40 MONOXIDE FUMES...I FEEL THIS IS A SAFETY
41 ISSUE THAT NEEDS TO BE ADDRESSED BY
42 TOYOTA, IF NOT ONLY FOR US BUT OTHER

43 ²⁹ *Id.* at 13.

1 TOYOTA CAMRY OWNERS....SO FAR TOYOTA
 2 HAS NOT ADDRESSED THIS ISSUE TO OUR
 3 SATISFACTION....**IN FACT THE OWNER OF THE**
 4 **DEALERSHIP WHERE WE PURCHASED THE**
 5 **CAR LAUGHED AT OUR SAFETY**
 6 **CONCERN....**THE ALARM SYSTEM +ON THE CAR
 7 IS USELESS AS THE ALARM IS THE SAME WHEN I
 8 START THE CAR AS WHEN I STOP THE CAR AND
 9 HAVE THE DOOR OPEN OR IF DO NOT TURN OFF
 10 THE ENGINE AND GET OUT OF THE CAR AND
 11 CLOSE THE DOOR....ALL THESE ALARMS SOUND
 12 THE SAME AND MAKE THEM INEFFECTIVE...I
 13 HAVE A HEARING PROBLEM RELATED TO EAR
 14 SURGERY REPLACING MY BONES OF HEARING
 15 BY AN IMPLANT IN MY RIGHT EAR WHICH ALSO
 16 MAKES IT HARD FOR ME TO HEAR IF THE
 17 ENGINE IS RUNNING OR TURNED OFF....THE
 18 ALARM SYSTEM ON THIS CAR NEEDS TO BE
 19 MODIFIED TO ENSURE NOTIFICATION TO THE
 20 DRIVER IF THE ENGINE IS RUNNING. ...³⁰

21 (q) On July 31, 2014, a person with a Nissan Group vehicle filed
 22 NHTSA complaint number 10617949, stating:

23 THIS VEHICLE HAS A PUSH BUTTON ENGINE
 24 SHUT OFF BUTTON. I WENT TO A SHOPPING
 25 MALL AND FORGOT TO SHUT OFF THE ENGINE.
 26 WHEN I RETURNED APPROX. 1 HOUR LATER,
 27 THE ENGINE WAS STILL RUNNING. I AM
 28 CONCERNED SHOULD THIS HAPPEN WHEN I
 PARK THE AUTO IN MY CLOSED GARAGE
 WHICH IS LOCATED DIRECTLY BELOW A
 BEDROOM. THE ENGINE WILL BE RUNNING ALL
 NIGHT AND THE BEDROOM WILL BE FILLED
 WITH CARBON MONOXIDE RESULTING IN
 DEATH TO THE OCCUPANTS. **THE VEHICLE**
NEEDS A TIME DELAY SHUT OFF SHOULD THE
DRIVER FORGET TO SHUT OFF THE ENGINE.
THE TIME DELAY COULD BE SET BY THE
MANUFACTURER AND SHOULD BE
APPROXIMATELY 15 TO 20 MINUTES
OTHERWISE THE ENGINE WILL RUN
FOREVER.³¹

³⁰ *Id.* at 12 (emphasis added).

³¹ *Id.* at 11 (emphasis added).

1 (r) On August 12, 2014, a person with a FCA Group vehicle filed
2 NHTSA complaint number 10694821, stating:

3 THIS IS A SAFETY CONCERN REGARDING THE
4 ENGINE STARTING/STOP BUTTON WHEN
5 OPERATING THE VEHICLE USING THE
6 START/STOP BUTTON YOU CAN EXIT THE
7 VEHICLE WITH THE ENGINE RUNNING WITHOUT
8 ANY TYPE OF WARNING SIGNAL THAT THE
9 ENGINE IS STILL RUNNING SUCH AS A
10 WARNING [sic, WARNING] CHIME HORN BEEP OR
11 A VIBRATION ON THE KEY FOB. IT IS EASY TO
12 FORGET TO PRESS THE STOP BUTTON WHEN
13 LEAVING THE VEHICLE. AS WE HAVE
14 EXPERIENCED SEVERAL TIMES. THE
15 DANGEROUS CONCERN WITH THIS LACK OF A
16 SAFETY NOTIFICATION IS THE CAR CAN BE
17 LEFT RUNNING IN AN ENCLOSED GARAGE
18 SPREADING DEADLY CARBON MONOXIDE
19 THROUGH A HOME.³²

20 (s) Two injuries were reported associated with a person with a GM
21 Group vehicle, a Chevrolet Volt, described in NHTSA complaint number
22 10658921, filed on November 18, 2014:

23 THE INCIDENT OCCURRED ON 8/27/14, AND
24 RESULTED IN MY WIFE [AND] ME [BEING]
25 TAKEN TO THE HOSPITAL AND TREATED FOR
26 CARBON MONOXIDE POISONING. THE INCIDENT
27 OCCURRED AT OUR HOME. THE VOLT WAS
28 PARKED IN THE ENCLOSED GARAGE ON 8/26
AROUND 7PM. THE 240 VOLT CHARGER WAS
PLUGGED IN AS USUAL. I DID NOT NOTICE
ANYTHING UNUSUAL AFTER PLUGGING IN THE
CHARGER, AND THE VOLT WAS LEFT
UNATTENDED UNTIL THE EMS ARRIVED
AROUND 11AM THE FOLLOWING DAY. THE EMS
PERSONNEL FOUND THE ENGINE RUNNING,
VERY HIGH LEVELS OF CO UPON ENTERING THE
GARAGE AND EVEN HIGHER LEVELS INSIDE
THE CAR. THE INSIDE OF THE PASSAGE
COMPARTMENT WAS DESCRIBED AS HOT. THE
FRONT EXTERIOR OF THE CAR WAS TOO HOT TO

³² *Id.* at 3.

1 TOUCH AND THE CAR REAR WARM. THE
2 TEMPERATURE UNDER THE CAR HOOD WAS
3 DESCRIBED AS "RED HOT". THE ENGINE HAD
4 CONSUMED AROUND 5 GALLONS OF GAS
5 DURING THIS TIME PERIOD. DISTRIBUTION OF
THE CO THROUGHOUT THE HOUSE WAS
PROBABLY CAUSED BY THE A/C AIR HANDLER
WHICH IS LOCATED INSIDE THE GARAGE. ...³³

6 (t) Two injuries were reported associated with a person with a
7 Toyota Group vehicle, a 2009 Toyota Camry, described in NHTSA complaint
8 number 10654360, filed on December 2, 2014:

9 CONSUMER STATED ENGINE DID NOT TURN OFF
10 EVEN AFTER PUSHING THE POWER OFF
11 BUTTON. THE CAR WAS PARKED IN THE
12 GARAGE OVER A PERIOD OF TIME.
13 CONSEQUENTLY, CARBON MONOXIDE
14 ENTERED THE CONSUMER'S HOME. SHE AND
15 HER HUSBAND WENT TO THE HOSPITAL FOR
16 CARBON MONOXIDE POISONING. CONSUMER
17 STATED ENGINE DID NOT TURN OFF EVEN
18 AFTER PUSHING THE POWER OFF BUTTON. THE
19 CAR WAS PARKED IN THE GARAGE OVER A
20 PERIOD OF TIME. CONSEQUENTLY, CARBON
21 MONOXIDE ENTERED THE CONSUMER'S HOME.
22 SHE AND HER HUSBAND WENT TO THE
23 HOSPITAL FOR CARBON MONOXIDE POISONING.
24 ...³⁴

25 (u) Three injuries were reported associated with a person with a
26 GM Group vehicle, a Chevrolet Volt, as described in NHTSA complaint number
27 10694821, filed on March 17, 2015:

28 ON MARCH 2, 2015, THREE PEOPLE WENT TO AN
EMERGENCY DEPARTMENT (ED) FOR CO
POISONING. A 40 YEAR OLD MALE PARKED HIS
2012 CHEVROLET VOLT IN THE GARAGE TO
CHARGE (PLUGGED INTO THE OUTLET) AND
ACCIDENTALLY LEFT THE CAR RUNNING
OVERNIGHT. IN THE MORNING, HE NOTICED

³³ *Id.* at 9.

³⁴ *Id.* at 10.

1 THE CAR WAS RUNNING AND HAD SWITCHED
2 TO GASOLINE USE. HE AND HIS TWO CHILDREN
3 COMPLAINED OF HEADACHE, WEAKNESS,
4 CHEST PAIN, PALPITATION, AND DIZZINESS.
5 CARBOXYHEMOGLOBIN (COHB) LEVELS WERE
6 >15% FOR ALL THREE INDIVIDUALS. ON MARCH
7 12, 2015, SEVERAL NEWS MEDIA OUTLETS
8 REPORTED THAT GM IS RECALLING ALL 2011-
9 2013 CHEVROLET VOLTS (ABOUT 64,000) TO
10 INSTALL UPDATES TO PREVENT CO POISONING
11 WHEN THE DRIVER FORGETS TO SHUT OFF THE
12 VEHICLE.³⁵

13 (v) On March 19, 2015, a person with a Nissan Group vehicle filed
14 NHTSA complaint number 10695250, stating:

15 SINCE I LEASED MY CAR IN MAY[]2014[.] I
16 FORGOT TO TURN THE ENGINE OFF 4 TIMES.
17 TWICE IT RAN ALL NIGHT IN MY GARAGE BUT
18 FORTUNATELY THE GAS FUMES DID NOT ENTER
19 MY HOUSE WHILE I WAS SLEEPING. [...] I AM
20 **ELDERLY AND HARD OF HEARING AND CAN**
21 **HARDLY HEAR THE ENGINE RUNNING, I**
22 **WEAR A HEARING AID. IT RUNS VERY**
23 **QUIETLY.** ONCE I LOANED MY DAUGHTER THE
24 CAR AND SHE ENCOUNTERED THE SAME
25 PROBLEM OF NOT TURNING OFF THE ENGINE, I
26 LEARN FROM INTERNET POST THAT
27 COUNTLESS REPORTS HAVE BEEN MADE AND
28 SEVERAL DEATHS BY CARBON MONOXIDE
ENTERING HOMES HAVE OCCURRED DUE TO
THIS PROBLEM, I UNDERSTAND THE KEYLESS
IGNITION SYSTEM HAS BEEN AROUND FOR
MANY YEARS AND IS INSTALLED IN MANY
DIFFERENT VEHICLES, I WAS NOT AWARE OF IT
UNTIL I GOT MY CAR. I FEEL A SAFETY RECALL
SHOULD BE ISSUED TO CORRECT THE PROBLEM
BEFORE MORE PEOPLE GET KILLED, THE
PUBLIC SHOULD BE MADE AWARE OF IT
WITHOUT FURTHER DELAY SINCE COUNTLESS
REPORTS HAVE ALREADY BEEN MADE.³⁶

³⁵ *Id.* at 2 (emphasis added).

³⁶ *Id.* at 8.

1 (w) On April 28, 2015, a person with a FCA Group vehicle filed
2 NHTSA complaint number 10713276, stating:

3 ON THE KEYLESS START SYSTEM THERE IS NO
4 WARNING THAT THE ENGINE IS RUNNING
5 WHEN YOU OPEN THE DOOR. THE DOOR CAN BE
6 LOCKED AND YOU WALK AWAY WITH THE
7 VERY QUIET ENGINE RUNNING. HAD THIS
8 HAPPENED WITH THE VEHICLE PARKED IN MY
9 GARAGE THE HOUSE WOULD FILL WITH
10 CARBON MONOXIDE AND SOMEONE COULD
11 DIE.³⁷

12 (x) On June 9, 2015, a person with a Nissan Group vehicle filed
13 NHTSA complaint number 10724386, stating:

14 I NEGLECTED TO PUSH THE START/STOP
15 BUTTON UPON EXITING THE CAR.
16 CONSEQUENTLY, THE CAR CONTINUED TO RUN.
17 AT 10:30 PM, NEEDING A TOOL, I WENT BACK
18 AND OPENED THE GARAGE DOOR. A RUSH OF
19 HOT AIR HIT ME IN THE FACE. TO MY HORROR, I
20 REALIZED THAT I DID NOT SHUT THE CAR OFF.
21 GARAGE TEMPERATURE HAD TO BE ABOUT 120
22 DEGREES. WHO KNOWS WHAT COULD HAVE
23 HAPPENED, HAD THE CAR RUN ALL NIGHT. **I
24 THINK THERE'S A SIMPLE EASY INEXPENSIVE
25 FIX TO THIS. SOLUTION: REQUIRE ALL AUTO
26 MANUFACTURERS, UTILIZING THE KEYLESS
27 IGNITION OPTION, TO, MANDATORILY, EQUIP
28 ALL VEHICLES WITH AN AUTOMATIC SHUT
OFF IF A CAR IDLES IN PARK (TRANSMISSION
SELECTION) FOR MORE THAN 20 MINUTES.
THIS SAFETY OPTION SHOULD NOT BE ABLE TO
BE OVER RIDDEN BY CUSTOMER. I'M JUST
THANKFUL THAT MY GARAGE WAS DETACHED.
CARBON MONOXIDE DEATHS VIA KEYLESS
IGNITION ARE EASILY AVOIDABLE.**³⁸

37 *Id.* at 7.

38 *Id.* at 6 (emphasis added).

1 201. These consumer complaints and reports to NHTSA are consistent.
2 They all outline the Defect, and many of the filings put the Automakers on notice
3 of the exact, simple, and basic remedy sought here: Auto-Off.

4 202. A detailed investigation by counsel has uncovered scattered news
5 reports over the past few years describing deaths and injuries from the Defect.

6 203. To date in 2015 alone, several people have died or have been
7 seriously injured from carbon monoxide poisoning caused by the Defect:

8 (a) Just two months ago, a Highland Park, Illinois couple died of
9 carbon monoxide poisoning when their Affected Vehicle continued to run in the
10 garage;³⁹

11 (b) An elderly man was found unconscious in his townhome from
12 carbon monoxide poisoning caused by an Affected Vehicle. Fortunately, his
13 neighbor discovered and rescued him and was able to prevent his untimely death;⁴⁰

14 (c) A Berkley Heights, New Jersey man died and his wife was left
15 unconscious after their Affected Vehicle continued to run;⁴¹ and

16 (d) In Mooresville, North Carolina, several household members
17 woke up vomiting and had to be hospitalized for carbon monoxide poisoning after
18
19
20

21 ³⁹ Associate Press. (June 22, 2015). Carbon Monoxide Death Prompts
22 Questions About Keyless Auto Ignitions. [online] Northernpublicradio.org.
23 Available at: <http://northernpublicradio.org/post/carbon-monoxide-death-prompts-questions-about-keyless-auto-ignitions> [Accessed 5 Aug. 2015].

24 ⁴⁰ Sun-Sentinel, (April 24, 2015). *Carbon monoxide detector saves lives in*
25 *apartment complex*. [online] Sun-Sentinel.com. Available at: <http://www.sun-sentinel.com/local/broward/fort-lauderdale/fl-lauderdale-carbon-monoxide-rescue-20150424-story.html> [Accessed 5 Aug. 2015].

26 ⁴¹ Suzanne Russell, (June 18, 2015). Carbon monoxide fumes kill Berkeley
27 Heights man. [online] MY CENTRAL JERSEY. Available at:
28 <http://www.mycentraljersey.com/story/news/local/union-county/2015/06/18/elderly-berkeley-heights-man-dies-apparent-exposure-co-fumes/28925991/> [Accessed 5 Aug. 2015].

1 a Keyless Fob-equipped Nissan Murano continued to run for over 10 hours in the
2 garage.⁴²

3 204. More deaths and injuries were also reported between 2010 and 2014:

4 (a) A woman was found dead in her townhome and her boyfriend
5 was found “clinging to life” when the woman’s Lexus with a Keyless Fob
6 continued to run in the garage of the woman’s home;⁴³

7 (b) An elderly couple were found dead as a result of Anoxic brain
8 injuries (carbon monoxide poisoning) when their Toyota Avalon continued to run
9 in their garage;⁴⁴

10 (c) A Weymouth, Massachusetts couple and their two
11 grandchildren all became ill and had to be hospitalized after their Keyless Fob-
12 equipped Lexus ES350 caused carbon monoxide poisoning;⁴⁵

13 (d) A couple from Manchester, Missouri died after their Keyless
14 Fob-equipped vehicle continued to run in their garage;⁴⁶

15 (e) A Lancaster Township, Pennsylvania couple died from carbon
16 monoxide poisoning after their Affected Vehicle continued to run in their garage;⁴⁷

18 ⁴² WBTV, (April 12, 2015). *Keyless ignition cars linked to carbon monoxide*
19 *poisoning*. [online] Available at: <http://www.wbvtv.com/story/28473481/keyless-ignition-cars-linked-to-co-poisoning> [Accessed 5 Aug. 2015].

20 ⁴³ WMAR, (June 27, 2011). *A warning about keyless ignitions*. [online]
21 Available at: <http://www.abc2news.com/news/local-news/investigations/a-warning-about-keyless-ignitions> [Accessed 5 Aug. 2015].

22 ⁴⁴ TheState, (June 19, 2013). *Accident likely caused Greenville couple’s deaths,*
police say. [online] Available at:
23 <http://www.thestate.com/news/local/article14434898.html> [Accessed 5 Aug.
2015].

24 ⁴⁵ WCVB, (April 22, 2014). *Couple, kids hospitalized after car left running in*
Weymouth garage. [online] Available at: <http://www.wcvb.com/news/couple-kids-hospitalized-after-car-left-running-in-weymouth-garage/25597062> [Accessed 5
25 Aug. 2015].

26 ⁴⁶ Bruce, Betsey. (May 17, 2014). *Elderly couple found dead in Manchester*
home. [online] FOX2now.com. Available at:
27 <http://fox2now.com/2014/05/17/elderly-couple-found-dead-in-manchester-home/>
28 [Accessed 5 Aug. 2015].

1 (f) In Boca Raton, Florida, a 29-year-old woman died of carbon
2 monoxide poisoning caused by her Keyless Fob-equipped 2006 Lexus;⁴⁸ and

3 (g) In Boca Raton, Florida, a couple died when their Keyless Fob-
4 equipped Mercedes-Benz continued to run.^{49, 50}

5 205. While counsel uncovered the above-referenced news stories
6 concerning the Defect during their pre-suit investigation, counsel believe that the
7 number of deaths and injuries are likely greater than reported because only some
8 deaths are reported in the media, and even when deaths are reported, a cause of
9 death is often not given or known.

10 **C. The Automakers had Actual Knowledge of the Dangerous Carbon**
11 **Monoxide Poisoning Consequences of Vehicles with Keyless Fobs that**
12 **lack an Automatic Shut-off**

13 206. Both the GM Group and the Ford Group have patented or have sought
14 to patent the very Auto-Off systems that would prevent the Defect.

15 (a) On May 20, 2013, the GM Group filed for a patent (issued on
16 March 17, 2015 under patent number 8,983,720), to address the Defect.⁵¹ GM's

17 (continued)

18 ⁴⁷ Stauffer, Cindy. (May 7, 2014). *Forgetting to turn off your car: Carbon*
19 *monoxide deaths happen in Lancaster County, and across the country.* [online]
20 Lancasteronline.com Available at:

21 [http://lancasteronline.com/news/local/forgetting-to-turn-off-your-car-carbon-](http://lancasteronline.com/news/local/forgetting-to-turn-off-your-car-carbon-monoxide-deaths-happen/article_40e8f97e-d602-11e3-a66e-0017a43b2370.html)
22 [monoxide-deaths-happen/article_40e8f97e-d602-11e3-a66e-0017a43b2370.html](http://lancasteronline.com/news/local/forgetting-to-turn-off-your-car-carbon-monoxide-deaths-happen/article_40e8f97e-d602-11e3-a66e-0017a43b2370.html)
23 [Accessed 5 Aug. 2015].

24 ⁴⁸ Sun-Sentinel, (September 1, 2010). *Investigation into carbon monoxide death*
25 *near Boca Raton includes keyless car.* [online] Available at: [http://articles.sun-](http://articles.sun-sentinel.com/2010-09-01/news/fl-carbon-monoxide-keyless-20100831_1_carbon-monoxide-electronic-fob-auto-safety-experts)
26 [sentinel.com/2010-09-01/news/fl-carbon-monoxide-keyless-20100831_1_carbon-](http://articles.sun-sentinel.com/2010-09-01/news/fl-carbon-monoxide-keyless-20100831_1_carbon-monoxide-electronic-fob-auto-safety-experts)
27 [monoxide-electronic-fob-auto-safety-experts](http://articles.sun-sentinel.com/2010-09-01/news/fl-carbon-monoxide-keyless-20100831_1_carbon-monoxide-electronic-fob-auto-safety-experts) [Accessed 5 Aug. 2015].

28 ⁴⁹ Sun-Sentinel, (March 16, 2012). *Keyless Mercedes linked to carbon*
29 *monoxide poisoning in West Boca, authorities say.* [online] Available at:
30 [http://articles.sun-sentinel.com/2012-03-16/news/fl-carbon-monoxide-cars-](http://articles.sun-sentinel.com/2012-03-16/news/fl-carbon-monoxide-cars-20120313_1_carbon-monoxide-keyless-ignition-keyless-systems)
31 [20120313_1_carbon-monoxide-keyless-ignition-keyless-systems](http://articles.sun-sentinel.com/2012-03-16/news/fl-carbon-monoxide-cars-20120313_1_carbon-monoxide-keyless-ignition-keyless-systems) [Accessed 5
32 Aug. 2015].

33 ⁵⁰ See also, Factual Allegations, Section C, *infra* (discussing personal injury and
34 wrongful death lawsuits filed against various Automakers for failing to institute an
35 Auto-Off mechanism in Affected Vehicles).

36 ⁵¹ See **Exhibit 42.**

1 granted patent explicitly addressed the concerns (and relief requested) that
2 Plaintiffs and the Class seek here. Specifically, the patent seeks to avoid the
3 situation wherein the “engine may have been errantly left running, in which case
4 the vehicle sends a notice to the user[, and i]f no response [from the user] is
5 received [then] the vehicle can activate the engine kill device and stop the
6 engine.”⁵² The patent acknowledges that a “vehicle operator may unintentionally
7 leave a motor vehicle engine running ... [which can] even contribute to an
8 accumulation of exhaust gas if not properly ventilated, such as in some garages.”
9 Moreover, the patent includes “one or more carbon monoxide (CO) sensors” so
10 that the vehicle can “indicate [if] exhaust fumes are present at dangerous levels.”⁵³
11 The GM Group had actual knowledge of the inherent dangers of not including
12 Auto-Off (and the Defect that would otherwise result) well in advance of its May
13 20, 2013 patent application filing.

14 (b) Similarly, on November 1, 2011, the Ford Group filed for a
15 patent, application number 2013/0110374, to address the Defect.⁵⁴ The patent
16 application explicitly addresses the concerns (and relief requested) that Plaintiffs
17 and the Class seek here. Specifically, the patent application seeks to avoid the
18 situation wherein “a vehicle operator may unintentionally leave the vehicle with
19 the engine idling,” which is common because “engine technology that have made
20 vehicle engines quieter further increase the likelihood that a vehicle operator may
21 leave the vehicle with the engine running.”⁵⁵ Thus, the patent application proposes
22 a method whereby the “vehicle control systems may be configured to automatically
23 shut down an idling engine, for example, upon the elapse of a specified duration of
24

25 ⁵² *Id.*

26 ⁵³ *Id.*

27 ⁵⁴ *See Exhibit 43.*

28 ⁵⁵ *Id.*

1 idling time.”⁵⁶ Moreover, the patent application anticipates a situation in which the
2 vehicle is left “in a substantially enclosed space, such as an indoor garage, [then]
3 the vehicle control system may automatically shut down the idling engine in
4 anticipation of the operator not returning to the vehicle imminently.”⁵⁷ Thus, the
5 Ford Group had actual knowledge of the inherent dangers of not including Auto-
6 Off (and the Defect that would otherwise result) well in advance of its November
7 1, 2011 patent application filing.

8 (c) Upon information and belief, *all* of the named Automakers
9 regularly review patents by competitor Automakers, and thus they too had actual
10 knowledge (or constructive knowledge, at the very least) of the Defect that exists
11 in the absence of Auto-Off.

12 207. The Automakers, and the GM Group especially, know the dangers of
13 the Affected Automobiles and the Defects that result. On Friday, March 13, 2015,
14 Chevrolet, a GM Group vehicle brand, issued an official recall of all 2011, 2012
15 and 2013 model year Chevrolet Volt range-extended electric cars to address an
16 issue with the car’s on-board software that allowed its gasoline engine to operate
17 for extended periods of time while parked but unintentionally left powered on.
18 According to official NHTSA recall documents, the GM Group itself estimated
19 that “100%” of the 50,236 Chevrolet Volts were plagued by this defect, noting that
20 when the vehicle’s gas engine continues to run after the battery is depleted:

21 Description of the Safety Risk : If the gas engine runs for long periods of time within an enclosed space, such as
22 a garage, carbon monoxide could build up in the enclosed space and potentially
cause injury.

23 Description of the Cause : The 2011-2013 MY Volt vehicles were not equipped with software that
24 automatically shuts off a vehicle after a predetermined amount of time. This
software was deployed starting with the 2014 MY Volt vehicles and beyond. . . .

27 ⁵⁶ *Id.*

28 ⁵⁷ *Id.*

1 ⁵⁸ The recall itself was not a prolonged, difficult process. To the contrary, vehicle
2 dealers simply had to reprogram the cars via a software update taking
3 approximately 30 minutes per vehicle. U.S. dealers were reimbursed by the GM
4 Group \$4.78 per vehicle for the reprogramming.⁵⁹

5 (a) In other words, the GM Group admitted in its recall of the
6 2011-2013 Chevrolet Volts that: 1) Keyless Fobs pose a safety risk because
7 “carbon monoxide could build up in [an] enclosed space”⁶⁰, and 2) the vehicles
8 could be modified to cure the Defect with a simple software update costing less
9 than \$5.00 per vehicle and taking just 30 minutes of dealership time.

10 (b) Despite the fact that the GM Group implemented this remedy to
11 the Defect for the 2011-2013 Chevrolet Volts, it has failed to do so for *any* of its
12 other Affected Vehicles that have the *exact same* Defect.

13 208. Many of the Automakers have faced personal injury and wrongful
14 death lawsuits as a result of the Defect, but instead of instituting Auto-Off across
15 the board, the Automakers have quietly settled the suits behind confidentiality
16 agreements, thereby concealing the risks of the Defect. Thus, the Defect has yet to
17 see the full light of day. For example:

18 (a) On November 1, 2010, Myrna and Donato Pastore filed a
19 wrongful death lawsuit against Toyota for the death of Ernest Codelia, Jr..⁶¹ The
20 amended complaint states that Ernest Codelia, Jr. died of carbon monoxide
21 poisoning as a result of his 2008 Lexus EX 350, which was equipped with a

22 _____
23 ⁵⁸ NHTSA Safety Recall 14617; *Defect Notice report*; Available at: <http://www-odi.nhtsa.dot.gov/acms/cs/jaxrs/download/doc/UCM474874/RCLRPT-15V145-6748.PDF>.

24 ⁵⁹ NHTSA Safety Recall 14617; *Remedy Instructions and TSB*; Available at:
25 <http://www-odi.nhtsa.dot.gov/acms/cs/jaxrs/download/doc/UCM476093/RCRIT-15V145-6506.pdf>.

26 ⁶⁰ NHTSA Safety Recall 14617; *Defect Notice report*; Available at: <http://www-odi.nhtsa.dot.gov/acms/cs/jaxrs/download/doc/UCM474874/RCLRPT-15V145-6748.PDF>.

27 _____
28 ⁶¹ Case 1:10-cv-05020 (E.D.N.Y. 2010), Docket No. 1.

1 Keyless Fob.⁶² The case was settled under seal.⁶³ Toyota insisted that the
2 settlement be under seal, and thus there are no public documents or information as
3 a result of this suit.⁶⁴

4 (b) In a related suit, filed by Mary Rivera on October 29, 2010
5 against Toyota, she alleges that she collapsed and was found barely breathing as a
6 result of carbon monoxide poisoning caused by her 2008 Lexus EX 350, which
7 was equipped with a Keyless Fob and continued to run after the driver left the
8 vehicle.⁶⁵ Ms. Rivera is a former college professor who now suffers from
9 permanent brain damage as a result of the carbon monoxide poisoning. Though
10 Ms. Rivera survived the incident, her partner Ernest Cordelia, Jr., died—as noted
11 in the paragraph immediately above—with 65 percent carbon monoxide poisoning
12 in his blood, according to an autopsy report. This case was settled and closed on
13 October 1, 2014; the settlement was also done under seal.⁶⁶

14 (c) On April 1, 2011, Linda Bloom and Rachelle Brown filed a
15 wrongful death action against Toyota for the death of their father, Meyer Michael
16 Yaffe, who died on December 30, 2010, as a result of carbon monoxide poisoning
17 from his 2009 Lexus EX 350, which was equipped with a Keyless Fob.⁶⁷

18 (d) On June 14, 2011, Kimberlin Nickles filed a wrongful death
19 action against Toyota for the death of her daughter, Chastity Glisson, who died on
20 August 26, 2010 at the age of 29 as a result of carbon monoxide poisoning from
21 her 2006 Lexus IS 250, which was equipped with a Keyless Fob.⁶⁸ Chastity

22 _____
⁶² *Id.* at Docket No. 11.

23 ⁶³ *Id.* at Docket No. 55.

24 ⁶⁴ *See id.*, at Docket Nos. 53, 54 (joint letter stating that Toyota insisted on full
25 confidentiality, even though safety concerns were at issue).

26 ⁶⁵ Case 1:10-cv-04998 (E.D.N.Y. 2010), Docket No. 13.

27 ⁶⁶ *Id.* at Docket Nos. 64 & 65.

28 ⁶⁷ Case No. BC458715 (Cal. Sup. Ct., County of Los Angeles).

⁶⁸ Case No. 11-13565 (Circuit Court of the Seventeenth Judicial Circuit,
Broward County, Florida).

1 Glisson parked her Lexus in the garage to make room for her boyfriend, Timothy
2 Maddock's, vehicle. Chastity collapsed in the third-floor bathroom later that night.
3 Later, Timothy found her body, but then he too succumbed to carbon monoxide
4 and lost consciousness. Neither Ms. Glisson nor Mr. Maddock were found until the
5 next day. By then, 29-year-old Chastity Glisson had died, and Timothy Maddock
6 was critically injured and required hospitalization for ten days. An investigation
7 revealed that the carbon monoxide that killed Ms. Glisson and severely injured Mr.
8 Maddock came from the Lexus in the garage, which was equipped with a Keyless
9 Fob, and unbeknownst to the occupants of the home, continued to run after the
10 driver exited the vehicle.⁶⁹

11 (e) On December 30, 2014, William Thomason, Jr. filed a
12 wrongful death action against Toyota for the death of his wife, Eugenia McCuen
13 Thomason, who died on June 17, 2013, as a result of carbon monoxide poisoning
14 from her 2005 Toyota Avalon, which was equipped with a Keyless Fob.⁷⁰ The
15 married couple parked their car in their garage. Both were killed by carbon
16 monoxide poisoning.⁷¹

17 **D. The Automakers Should Have Known of the Dangerous Carbon**
18 **Monoxide Poisoning Consequences of Vehicles with Keyless Fobs but**
without an Automatic Shut-off

19 209. Even if some of the Automakers were not parties to lawsuits
20 concerning the Defects, *all* of the Automakers *should* have known of the dangers
21 that the Defect poses for the Affected Vehicles through other industry recalls and
22 industry modifications.

23 210. The Automakers readily have access to all NHTSA complaints
24 pertaining to both their own manufactured vehicles as well as any other
25

26 ⁶⁹ *Id.*

27 ⁷⁰ Case No. 6:14-cv-04895 (D.S.C. (Greenville Division)).

28 ⁷¹ *Id.*

1 manufacturers' automobiles. Upon information and belief, the Automakers do (or
2 should) regularly review NHTSA complaints to ensure internal quality and safety
3 compliance. As noted above, there have been, at minimum, 27 formally-filed
4 NHTSA complaints about the Defect.⁷²

5 211. Upon information and belief, *all* of the named Automakers regularly
6 review patents pertaining to the automotive industry and safety. There are, at
7 minimum, four issued or pending patents for "Auto-Off" systems or mechanisms
8 dating back to November 16, 2007, not including the applications submitted by the
9 Ford Group and the GM Group. For example:

10 (a) Patent number 7,650,864, applied for on November 16, 2007 by
11 Magna Electronics Inc. and issued on January 26, 2010 concerns remote starting
12 systems on cars and a built-in Auto-Off system to prevent the Defect. Magna
13 Electronics instituted such a technology in its patent "[s]ince vehicles typically
14 exhaust carbon monoxide and carbon dioxide emissions during operation of the
15 engine, and since such emission buildup in an enclosed environment can be
16 dangerous, the remote starter control module preferably provides one or more
17 safety measures or features to reduce or mitigate any potential CO/CO2 buildup in
18 situations where the vehicle may be parked in an enclosed environment."⁷³

19 (b) Patent application number 2012/0130604, filed on November
20 21, 2011 by Michael W. Kirshon, *et al.*, is for "a series of sensors installed within a
21 vehicle to monitor functions to determine if a vehicle engine is running and there is
22 a potential for toxic exhaust gases to accumulate, creating a toxic environment."⁷⁴

23 In other words, this patent describes an Auto-Off system to prevent the Defect.

24 Patent application number 2012/0130604 describes the Defect associated with the
25 Affected Vehicles as follows:

26 ⁷² See **Exhibit 41.**

27 ⁷³ See **Exhibit 44.**

28 ⁷⁴ See **Exhibit 45.**

1 Combustion engines discharge an exhaust that includes toxic
2 gases, such as carbon monoxide. It is well known that elevated
3 levels of carbon monoxide gases contained within a closed
4 space can have harmful and even fatal effects on individuals
5 exposed to higher concentrations thereof.

6 Numerous occurrences have been noted where residential
7 occupants have succumbed to toxic exhaust gases discharged
8 by a running vehicle engine, where the vehicle was parked
9 within an attached garage. Several advancements in vehicle
10 technology are aggravating the potential issue. For example,
11 keyless engine control systems allow an operator to leave the
12 vehicle while the engine remains running. Until recently, all
13 vehicle engines would initiate operation by inserting a key into
14 an ignition switch, whereby removing the key causes the engine
15 to cease operating. The vehicle key would commonly be stored
16 on a key ring used to hold a series of keys. The operator
17 commonly uses other keys to access buildings, offices, desks,
18 residence, etc. An operator who forgets to remove the keys
19 from the vehicle would be reminded the next time a key stored
20 on the same key ring would be needed. Furthermore, vehicle
21 engines are now much quieter, making people less aware that
22 the engine is running. In addition, vehicles now commonly
23 include remote starters, where an individual can start a vehicle's
24 engine remotely. This can occur by accidentally depressing the
25 remote start button, thereby starting the vehicle engine
26 unbeknownst to the individual.⁷⁵

27 Patent application 2012/0130604 thus proposes to patent a system whereby sensors
28 "automatically disables or turns off the ignition of the vehicle engine to cease the
generation of the toxic exhaust gases."⁷⁶

(c) Patent number 8,825,224, applied for on March 26, 2012 by
Directed, LLC and issued on September 2, 2014, concerns "[a]n automated vehicle

⁷⁵ *Id.*

⁷⁶ *Id.*

1 shutdown and user notification method and device for shutting down an engine in a
 2 vehicle having a passive keyless entry and start ignition system where the engine
 3 has unintentionally been left running by the user is disclosed.”⁷⁷ In the relevant
 4 part, patent number 8,825,224 describes the Defect associated with the Affected
 5 Vehicles as follows: to prevent “[l]ong term idling of the engine within a confined
 6 space, such as as within a garage attached to a dwelling, can lead to a rise in carbon
 7 monoxide levels that might potentially cause asphyxiation, brain damage or death
 8 to individuals exposed to high concentrations of carbon monoxide inside the
 9 dwelling.”⁷⁸

10 (d) Patent number 8,977,476, applied for on August 14, 2012 by
 11 Safety Shutdown, LLC and issued on March 10, 2015 concerns “[a] system for
 12 automatically shutting down an engine of a motor vehicle” taking into account
 13 multiple variables, including an Auto-Off timer, carbon monoxide sensing ability,
 14 and dependent on driver override request.⁷⁹ In the background section of Safety
 15 Shutdown, LLC’s patent, it duplicated, in full, Michael W. Kirshon, *et al.*’s patent
 16 application number 2012/0130604 regarding why such a safety mechanism is
 17 paramount. Safety Shutdown, LLC’s patent simply attempted to address the same
 18 problem through different technological means.⁸⁰ In short, Safety Shutdown,
 19 LLC’s patent covers the exact Defect as described herein.

20 **E. An “Auto-Off” Mechanism or System is Feasible**

21 212. “Auto-Off” is feasible for each of the Automakers to implement—
 22 immediately—through a simple recall campaign.

23 213. Auto-Off is not only feasible; it has *already* been implemented by
 24 several auto manufacturers to prevent the very Defect described herein.

25 ⁷⁷ See **Exhibit 46.**

26 ⁷⁸ *Id.*

27 ⁷⁹ See **Exhibit 47.**

28 ⁸⁰ *Id.*

1 214. For example, and as noted above,⁸¹ the GM Group has not only
 2 instituted an Auto-Off in its 2014-2015 model year Chevrolet Volts, due to safety
 3 concerns, it *recalled* all of its prior model year (2011-2013) Chevrolet Volts due to
 4 the lack of such a system because “carbon monoxide could build up in [an]
 5 enclosed space.”⁸²

6 215. Additionally, the 2014 and 2015 Lincoln MKS vehicles, manufactured
 7 and designed by the Ford Group, are equipped with a Keyless Fob but are *not*
 8 Affected Vehicles because they have instituted a clear Auto-Off system that: 1)
 9 shuts down the vehicle after 30-minutes of running if there is no user intervention,
 10 and 2) there is no “defeat” mechanism to override this important Auto-Off safety
 11 function. See:

12 **Automatic Engine Shutdown**

13 Your vehicle has a feature that automatically shuts down the engine if it
 14 has been idling for an extended period. The ignition also turns off in
 15 order to save battery power. Before the engine shuts down, a message
 16 appears in the information display showing a timer counting down from
 30 seconds. If you do not intervene within 30 seconds, the engine shuts
 17 down. Another message appears in the information display to inform you
 18 that the engine has shut down in order to save fuel. Start your vehicle as
 19 you normally do.

20 **Automatic Engine Shutdown Override**

21 **Note:** You cannot permanently switch off the automatic engine shutdown
 22 feature. When you switch it off temporarily, it turns on at the next
 23 ignition cycle.

24 You can stop the engine shutdown, or reset the timer, at any point before
 25 the 30-second countdown has expired by doing any of the following:

- 26 • You can reset the timer by interacting with your vehicle (such as
 27 pressing the brake pedal or accelerator pedal).
- 28 • You can temporarily switch off the shutdown feature any time
 the ignition is on (for the current ignition cycle only). Use the
 information display to do so.

Exhibit 48(2014 Lincoln MKS Auto Manual), at 152.

⁸¹ See paragraph 207, *supra*.

⁸² NHTSA Safety Recall 14617; *Defect Notice report*; Available at: <http://www-odi.nhtsa.dot.gov/acms/cs/jaxrs/download/doc/UCM474874/RCLRPT-15V145-6748.PDF>.

1 216. Other 2013, 2014, and 2015 Model year Ford Group vehicles have
2 similarly instituted Auto-Off and are therefore not listed as Affected Vehicles. Yet,
3 despite the fact that the Ford Group has instituted Auto-Off in *some* of its most
4 recent cars, it has left *older* model year vehicles with the Defect and without any
5 software update or recall to institute a similar (or identical) Auto-Off system, and it
6 has not issued a warning for its Affected Vehicles.⁸³

7 217. Given the prevalence of the Defect, the Automakers' failure to
8 immediately implement (and to have previously implemented prior to sale) Auto-
9 Off is a material and unreasonable safety defect. As a result, the Automakers'
10 nondisclosure of the Defect in Plaintiffs' and Class Members' automotive manuals
11 and sales brochures was (and remains) unreasonable.

12 VI. FRAUDULENT CONCEALMENT ALLEGATIONS

13 218. Absent discovery, Plaintiffs are unaware of, and unable through
14 reasonable investigation to obtain, the true names and identities of those
15 individuals associated with the Automakers responsible for disseminating false and
16 misleading marketing materials (and marketing materials with material omissions)
17 regarding the Affected Vehicles. The Automakers are necessarily in possession of
18 all of this information. Plaintiffs' claims arise out of the Automakers' fraudulent
19 concealment of the Defect and the safety hazard it poses, and its representations
20 about the safety of the Affected Vehicles. To the extent that Plaintiffs' claims arise
21 from the Automakers' fraudulent concealment, there is no one document or
22 communication, and no one interaction, upon which Plaintiffs base their claims.
23 Plaintiffs allege that at all relevant times, including specifically at the time they
24 purchased their Affected Vehicles, the Automakers knew, or were reckless in not

25
26 ⁸³ See, e.g., **Exhibit 1** (for Ford models and model years *not* listed because they
27 have instituted Auto-Off versus Ford models and model years that remain on the
28 list because they did not implement Auto-Off. For example, Ford/Lincoln did not
retroactively cure the Defect in the 2009-2014 MKS even though it instituted
Auto-Off in the 2014-2015 MKS).

1 knowing, of the Defect when combined with the lack of Auto-Off. The automakers
2 were under a duty to disclose the Defect based upon their exclusive knowledge of
3 the Defect; the Automakers never disclosed the Defect to the Plaintiffs or the
4 public at any time or place or in any manner.

5 219. Plaintiffs make the following specific fraud allegations with as much
6 specificity as possible absent access to the information necessarily available only
7 to the Automakers:

8 (a) **Who:** Automakers actively concealed the Defect from
9 Plaintiffs and the Class while simultaneously touting the safety of the Affected
10 Vehicles.⁸⁴ Plaintiffs are unaware of, and therefore unable to identify, the true
11 names and identities of those specific individuals and the Automakers responsible
12 for such decisions.

13 (b) **What:** The Automakers knew, or were reckless or negligent in
14 not knowing, that the Affected Vehicles contain the Defect. The Automakers
15 concealed the Defect and made express representations about safety of the
16 Affected Vehicles.⁸⁵ Moreover, the Automakers knew of or prepared patent
17 applications, defended and confidentially settled personal injury lawsuits, and
18 reviewed NHTSA complaints about the Defect.⁸⁶

19 (c) **When:** The Automakers concealed material information
20 regarding the Defect at all times and made representations about the Affected
21 Vehicles, starting no later than 2007, or at the subsequent introduction of certain
22 models of Affected Vehicles to the market, continuing through the time of sale,
23 and on an ongoing basis, and continuing to this day. The Automakers have,
24 universally, not disclosed the truth about the Defect in the Affected Vehicles to
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26 ⁸⁴ See paragraphs 38-172 (Plaintiffs' specific allegations with reference to
attached exhibits touting safety of Plaintiffs' Affected Vehicles), *supra*.

27 ⁸⁵ *Id.*

28 ⁸⁶ See Factual Allegations, Sections C and D, *supra*.

1 anyone. In fact, in the only two instances in which Automakers have done anything
2 about the Defect, the Automakers have failed to implement Auto-Off on other
3 vehicle models or brands.⁸⁷ Moreover, and as a representative example, the 2014-
4 2015 Lincoln MKS, instead of stating that Auto-Off was implemented to prevent
5 the carbon monoxide poisoning, the Ford Group misleadingly stated that such a
6 change was implemented “to save battery power.”⁸⁸ Such a claim is disingenuous
7 or a half-truth at best. Thus, none of the Automakers have ever taken any action to
8 inform consumers about the true nature of the Defect in Affected Vehicles.

9 (d) **Where:** The Automakers concealed material information
10 regarding the true nature of the Defect in every communication they had with
11 Plaintiffs and the Class and made representations about the safety of the Affected
12 Vehicles. Despite counsel’s review and analysis of marketing materials, sales
13 brochures, and auto manuals for each of the Affected Vehicles, Plaintiffs are aware
14 of no document, communication, or other place or thing, in which the Automakers
15 disclosed the truth about the Defect in the Affected Vehicles to anyone outside of
16 each individual Automakers’ group. Such information is not adequately disclosed
17 in any sales documents, displays, advertisements, warranties, owner’s manual, or
18 on the Automakers’ websites.

19 (e) **How:** The Automakers concealed the Defect from Plaintiffs
20 and Class Members and made representations about the safety of the Affected
21 Vehicles.⁸⁹ The Automakers actively concealed the truth about the existence and
22 nature of the Defect from Plaintiffs and Class Members at all times, even though
23 they knew about the Defect and knew that information about the Defect would be
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26 ⁸⁷ See paragraphs 213-216, *supra*.

27 ⁸⁸ See paragraph 215, *supra*.

28 ⁸⁹ See paragraphs 38-172 (Plaintiffs’ specific allegations with reference to
attached exhibits touting safety of Plaintiffs’ Affected Vehicles), *supra*.

1 important to a reasonable consumer. The Automakers promised in their marketing
2 materials that Affected Vehicles have qualities that they do not have.⁹⁰

3 (f) **Why:** The Automakers actively concealed material information
4 about the Defect in the Affected Vehicles for the purpose of inducing Plaintiffs and
5 Class Members to purchase the Affected Vehicles rather than purchasing
6 competitors' vehicles, and made representations about the safety of the Affected
7 Vehicles.⁹¹ Had the Automakers disclosed the truth, Plaintiffs and Class Members
8 (and reasonable consumers) would not have bought the Affected Vehicles or would
9 have paid less for them.

10 VII. TOLLING OF THE STATUTE OF LIMITATIONS

11 A. Fraudulent Concealment Tolling

12 220. Upon information and belief, the Automakers have known of the
13 Defect in the Affected Vehicles since at least 2007,⁹² if not earlier, and have
14 concealed from or failed to notify Plaintiffs, Class Members, and the public of the
15 full and complete nature of the Defect.

16 221. Any applicable statute of limitation has therefore been tolled by the
17 Automakers' knowledge, active concealment, and denial of the facts alleged
18 herein, which behavior is ongoing.

19 B. Estoppel

20 222. The Automakers were and are under a continuous duty to disclose to
21 Plaintiffs and Class Members the true character, quality, and nature of the Affected
22 Vehicles. The Automakers actively concealed the true character, quality, and
23 nature of the Affected Vehicles and knowingly made representations about the
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25 ⁹⁰ See Factual Allegations, Sections C and D, *supra*.

26 ⁹¹ See paragraphs 38-172 (Plaintiffs' specific allegations with reference to
27 attached exhibits touting safety of Plaintiffs' Affected Vehicles), *supra*.

28 ⁹² This is the date of the first patent application for technology to implement
Auto-Off. See paragraph 210(a), *supra*.

1 safety of the Affected Vehicles. Plaintiffs and Class Members reasonably relied
2 upon the Automakers' knowing and affirmative representations and/or active
3 concealment of these facts.⁹³ Based on the foregoing, the Automakers are estopped
4 from relying on any statutes of limitation in defense of this action.

5 **C. Discovery Rule**

6 223. The causes of action alleged herein did not accrue until Plaintiffs and
7 Class Members discovered that their Affected Vehicles had the Defect.

8 224. However, Plaintiffs and Class Members had no realistic ability to
9 discern that the Affected Vehicles were defective until—at the earliest—after the
10 manifestation of the Defect. Even then, Plaintiffs and Class Members had no
11 reason to know the Defect was caused by the Automakers' active concealment of
12 same. Not only did the Automakers fail to notify Plaintiffs or Class Members
13 about the Defect, the Automakers in fact, in the above-referenced personal injury
14 cases, have denied any knowledge of or responsibility for the Defect. Thus,
15 Plaintiffs and Class Members were not reasonably able to discover the Defect until
16 after they had purchased or leased the Affected Vehicles, despite their exercise of
17 due diligence, and their causes of action did not accrue until they personally
18 discovered that the Defect can lead to carbon monoxide poisoning.

19 **VIII. CLASS ACTION ALLEGATIONS**

20 225. Plaintiffs bring this lawsuit as a class action on behalf of themselves
21 and all other Class Members similarly situated as members of the proposed Class
22 pursuant to Federal Rules of Civil Procedure 23(a) and (b)(2) and (b)(3). This
23 action satisfies the numerosity, commonality, typicality, adequacy, predominance,
24 and superiority requirements of those provisions. If, in any instance, the Court
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27 ⁹³ See paragraphs 38-172 (Plaintiffs' specific allegations with reference to
28 attached exhibits touting safety of Plaintiffs' Affected Vehicles), *supra*.

1 finds (b)(3) requirements are not met, Plaintiffs and Class Members alternatively
2 seek certification under Federal Rules of Civil Procedure 23(a) and 23(c)(4).

3 226. The Class is defined as:

4 (a) All persons in the United States who purchased or leased an
5 Affected Vehicle (the “Nationwide Class”);

6 (b) All persons in the State of California who purchased or leased
7 an Affected Vehicle (the “California Class”);

8 (c) All persons in the State of Arizona who purchased or leased an
9 Affected Vehicle (the “Arizona Class”);

10 (d) All persons in the State of Colorado who purchased or leased an
11 Affected Vehicle (the “Colorado Class”);

12 (e) All persons in the State of Connecticut who purchased or leased
13 an Affected Vehicle (the “Connecticut Class”);

14 (f) All persons in the State of Florida who purchased or leased an
15 Affected Vehicle (the “Florida Class”);

16 (g) All persons in the State of Massachusetts who purchased or
17 leased an Affected Vehicle (the “Massachusetts Class”);

18 (h) All persons in the State of New Jersey who purchased or leased
19 an Affected Vehicle (the “New Jersey Class”);

20 (i) All persons in the State of New York who purchased or leased
21 an Affected Vehicle (the “New York Class”);

22 (j) All persons in the State of Pennsylvania who purchased or
23 leased an Affected Vehicle (the “Pennsylvania Class”);

24 (k) Excluded from all of the Classes are: (1) the Automakers, any
25 entity or division in which the Automakers have a controlling interest, and their
26 legal representatives, officers, directors, assignees, and successors; (2) the Judge to
27 whom this case is assigned and the Judge’s staff; (3) governmental entities; and (4)

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1 those persons who have suffered personal injuries as a result of the facts alleged
2 herein.

3 227. In the alternative, pursuant to Federal Rules of Civil Procedure 23(a)
4 and 23(c)(5), Plaintiffs and Class members reserve the right to propose class
5 groupings of states that do not have materially different bodies of state law.

6 228. Plaintiffs reserve the right to amend the Class and the in-the-
7 alternative class if discovery and further investigation reveal that the Class should
8 be expanded, otherwise divided into subclasses, or modified in any other way.

9 **A. Numerosity & Ascertainability**

10 229. Although the exact number of Class Members is uncertain and can
11 only be ascertained through appropriate discovery, the number is great enough
12 such that joinder is impracticable. Upon information and belief, the number of
13 Affected Automobiles as outlined in **Exhibit 1** is in excess of 5,000,000 vehicles.
14 The disposition of the claims of these Class Members in a single action will
15 provide substantial benefits to all parties and to the Court.

16 230. Class Members are readily identifiable from information and records
17 in the Automakers' possession, custody, or control, including the VIN and/or
18 specifications sheets, as well as from records maintained by the various states'
19 Department of Motor Vehicles.

20 **B. Typicality**

21 231. The claims of the representative Plaintiffs are typical of the claims of
22 the Class in that the representative Plaintiffs, like all Class Members, purchased or
23 leased an Affected Vehicle designed, manufactured, and distributed by the same
24 Automaker (or Automaker's family of brands). The representative Plaintiffs, like
25 all Class Members, have been damaged by each respective Automakers'
26 misconduct in that they have, among other reasons, 1) incurred a diminution in the
27 value of his/her Affected Vehicle as a result of the Defect, and 2) incurred
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1 substantial risk as a result of the Defect and the Automakers have refused to act to
2 rectify the Defect that apply generally to the Class. Furthermore, the factual bases
3 of the Automakers' misconduct are common to all Class Members and represent a
4 common thread of misconduct resulting in injury to all Class Members.

5 **C. Adequate Representation**

6 232. Plaintiffs will fairly and adequately represent and protect the interests
7 of the Class. Plaintiffs have retained counsel with substantial experience in
8 prosecuting consumer class actions, including actions involving defective vehicles.

9 233. Plaintiffs and their counsel are committed to vigorously prosecuting
10 this action on behalf of the Class, and have the financial resources to do so.

11 Neither Plaintiffs nor their counsel have interests adverse to those of the Class.

12 **D. Predominance of Common Issues**

13 234. There are numerous questions of law and fact common to Plaintiffs
14 and Class Members that predominate over any question affecting only individual
15 Class Members, the answer to which will advance resolution of the litigation as to
16 all Class Members. These common legal and factual issues include:

- 17 (a) whether the Affected Vehicles suffer from the Defect;
18 (b) whether the Defect constitutes an unreasonable safety risk;
19 (c) whether the Automakers knew or should have known about the
20 Defect, and, if yes, how long each of the Automakers has known of the Defect;
21 (d) whether the defective nature of the Affected Vehicles
22 constitutes a material fact reasonable consumers would have considered in
23 deciding whether to purchase an Affected Vehicle;
24 (e) whether the Automakers have a duty to disclose the defective
25 nature of the Affected Vehicles to Plaintiffs and Class Members;
26 (f) whether the Automakers omitted and failed to disclose material
27 facts about the Affected Vehicles;
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1 (g) whether the Automakers' concealment of the true defective
2 nature of the Affected Vehicles induced Plaintiffs and Class Members to act to
3 their detriment by purchasing Affected Vehicles;

4 (h) whether the Automakers represented, through their words and
5 conduct, that the Affected Vehicles had characteristics, uses, or benefits that they
6 did not actually have, in violation of California's Consumer Legal Remedies Act
7 ("CLRA") § 1770(a)(5);

8 (i) whether the Automakers represented, through their words and
9 conduct, that the Affected Vehicles were of a particular standard, quality, or grade
10 when they were of another, in violation of the CLRA § 1770(a)(7);

11 (j) whether the Automakers advertised the Affected Vehicles with
12 the intent not to sell them as advertised, in violation of the CLRA § 1770(a)(9);

13 (k) whether the Automakers' affirmative misrepresentations about
14 the true defective nature of the Affected Vehicles were likely to mislead or
15 deceive, and therefore were fraudulent, within the meaning of Cal. Bus. & Prof.
16 Code §§ 17200, *et seq.*;

17 (l) whether the Automakers' affirmative misrepresentations about
18 the true defective nature of the Affected Vehicles were and are unfair within the
19 meaning of Cal. Bus. & Prof. Code §§ 17200, *et seq.*;

20 (m) whether the Automakers intended to sell Affected Vehicles via
21 publications and/or statements that were untrue or misleading, and which were
22 known, or which by the exercise of reasonable care should have been known to the
23 Automakers, to be untrue and misleading to consumers, Plaintiffs, and Class
24 Members within the meaning of Cal. Bus. & Prof Code § 17500 *et seq.*;

25 (n) whether Plaintiffs are "persons" as defined by Ariz. Rev. Stat. §
26 44-1521(6);

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1 (o) whether the Automakers are “persons” as defined by Ariz. Rev.
2 Stat. § 44-1521(6);

3 (p) whether the Affected Vehicles are “merchandise” as defined by
4 Ariz. Rev. Stat. § 44-1521(5);

5 (q) whether the Automakers failed to disclose and/or actively
6 concealed the Defect in the Affected Vehicles under the Arizona Consumer Fraud
7 Act, Ariz. Rev. Stat. § 44-1522(A) by representing that the Affected Vehicles have
8 characteristics, uses, benefits, and qualities which they do not have;

9 (r) whether the Automakers failed to disclose and/or actively
10 concealed the Defect in the Affected Vehicles under the Arizona Consumer Fraud
11 Act, Ariz. Rev. Stat. § 44-1522(A) by representing that the Affected Vehicles are
12 of a particular standard, quality, and grade when they are not;

13 (s) whether the Automakers failed to disclose and/or actively
14 concealed the Defect in the Affected Vehicles under the Arizona Consumer Fraud
15 Act, Ariz. Rev. Stat. § 44-1522(A) by advertising the Affected Vehicles with the
16 intent not to sell them as advertised;

17 (t) whether the Automakers failed to disclose and/or actively
18 concealed the Defect in the Affected Vehicles under the Arizona Consumer Fraud
19 Act, Ariz. Rev. Stat. § 44-1522(A) by engaging in acts or practices which are
20 otherwise unfair, misleading, false, or deceptive to the consumer;

21 (u) whether Plaintiffs and the Class are entitled to costs and
22 attorneys’ fees as a result of the Automakers’ violation of the Arizona Consumer
23 Fraud Act as provided in Ariz. Rev. Stat. § 12-341.01;

24 (v) whether the Automakers are and were at all relevant times a
25 merchant with respect to motor vehicles under Ariz. Rev. Stat. § 47-2014;

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1 (w) whether the warranty that the Affected Vehicles were in
2 merchantable condition was implied by law in the instant transactions, pursuant to
3 Ariz. Rev. Stat. § 47-2314;

4 (x) whether the Automakers are each a “person” within the
5 meaning of Colo. Rev. Stat. § 6-1-102(6);

6 (y) whether the Automakers failed to disclose and/or actively
7 concealed the Defect in the Affected Vehicles under Colo. Rev. Stat. § 6-1-
8 105(1)(b) by “a false representation as to the source, sponsorship, approval, or
9 certification of goods”;

10 (z) whether the Automakers failed to disclose and/or actively
11 concealed the Defect in the Affected Vehicles under Colo. Rev. Stat. § 6-1-
12 105(1)(e) by “a false representation as to the characteristics, ingredients, uses,
13 benefits, alterations, or quantities of goods”;

14 (aa) whether the Automakers failed to disclose and/or actively
15 concealed the Defect in the Affected Vehicles under Colo. Rev. Stat. § 6-1-
16 105(1)(g) by “represent[ing] that goods ... are of a particular standard, quality, or
17 grade ... if he knows or should know that they are of another”;

18 (bb) whether the Automakers failed to disclose and/or actively
19 concealed the Defect in the Affected Vehicles under Colo. Rev. Stat. § 6-1-
20 105(1)(i) by “advertis[ing] goods ... with intent not to sell them as advertised”;

21 (cc) whether Plaintiffs and the Automakers are each “persons” as
22 defined by Conn. Gen. Stat. Ann. § 42-110a(3);

23 (dd) whether the Automakers failed to disclose and/or actively
24 concealed the Defect in the Affected Vehicles under Conn. Gen. Stat. Ann. § 42-
25 110g(a) by (1) representing that Affected Vehicles have characteristics, uses,
26 benefits, and qualities which they do not have, (2) representing that Affected
27 Vehicles are of a particular standard, quality, and grade when they are not, (3)
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1 advertising Affected Vehicles with the intent not to sell them as advertised, or (4)
2 engaging in acts or practices which are otherwise unfair, misleading, false, or
3 deceptive to the consumer;

4 (ee) whether Plaintiffs and the Class are entitled to costs and
5 attorneys' fees as a result of the Automakers' violation of the Connecticut Unfair
6 Trade Practices Act as provided in Conn. Gen. Stat. Ann. § 42-110g(d);

7 (ff) whether the Automakers are and were at all relevant times
8 merchants with respect to motor vehicles under Conn. Gen. Stat. Ann. § 42a-2-
9 104(1);

10 (gg) whether the Automakers failed to disclose and/or actively
11 concealed the Defect in the Affected Vehicles under Florida's Deceptive and
12 Unfair Trade Practices Act, Fla. Stat. § 501.204(1) by representing that Affected
13 Vehicles have characteristics, uses, benefits, and qualities which they do not have,
14 representing that Affected Vehicles are of a particular standard and quality when
15 they are not, advertising Affected Vehicles with the intent not to sell them as
16 advertised, or otherwise engaging in conduct likely to deceive;

17 (hh) whether the Automakers failed to disclose and/or actively
18 concealed the Defect in the Affected Vehicles under the Massachusetts Consumer
19 Protection Act, Mass. Gen. Laws Ch. 93A by failing to adequately investigate,
20 disclose, and remedy, and their misrepresentations and omissions regarding the
21 safety, reliability, and functionality of their Affected Vehicles;

22 (ii) whether the Automakers failed to disclose and/or actively
23 concealed the Defect in the Affected Vehicles under the New Jersey Consumer
24 Fraud Act, N.J. Stat. Ann. §§ 56:8-1, *et seq.* by representing that Affected Vehicles
25 have characteristics, uses, benefits, and qualities which they do not have,
26 representing that Affected Vehicles are of a particular standard and quality when
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1 they are not, advertising Affected Vehicles with the intent not to sell them as
2 advertised, and otherwise engaging in conduct likely to deceive;

3 (jj) whether the Automakers failed to disclose and/or actively
4 concealed the Defect in the Affected Vehicles under New York’s General Business
5 Law § 349 by representing that Affected Vehicles have characteristics, uses,
6 benefits, and qualities which they do not have, representing that Affected Vehicles
7 are of a particular standard and quality when they are not, advertising Affected
8 Vehicles with the intent not to sell them as advertised, and otherwise engaging in
9 conduct likely to deceive;

10 (kk) whether the Affected Automobiles are a commodity as defined
11 by N.Y. Gen. Bus. Law § 350-a;

12 (ll) whether the Automakers failed to disclose and/or actively
13 concealed the Defect in the Affected Vehicles under N.Y. Gen. Bus. Law § 350 by
14 representing in advertising, including labeling, of a commodity and whether those
15 misrepresentations were material;

16 (mm) whether Plaintiffs and the Class are entitled to recover their
17 actual damages or \$500, whichever is greater under N.Y. Gen. Bus. Law § 350

18 (nn) whether Plaintiffs and the Class are entitled to recover three
19 times actual damages, up to \$10,000, because the Automakers acted willfully or
20 knowingly with respect to the Defect;

21 (oo) whether the Automakers failed to disclose and/or actively
22 concealed the Defect in the Affected Vehicles under the Pennsylvania Unfair Trade
23 Practices and Consumer Protection Law, Pa. Stat. Ann. §§ 201-1, *et seq.*, by
24 “[r]epresenting that goods or services have ... characteristics, [b]enefits or
25 qualities that they do not have;” (ii) “[r]epresenting that goods or services are of a
26 particular standard, quality or grade ... if they are of another;” (iii) “[a]dvertising
27 goods or services with intent not to sell them as advertised;” and (iv) “[e]ngaging
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1 in any other fraudulent or deceptive conduct which creates a likelihood of
2 confusion or misunderstanding.” 73 P.S. § 201-2(4);

3 (pp) whether the Automakers were unjustly enriched by a benefit
4 conferred on them by Plaintiffs and other Class Members such that it would be
5 inequitable, unconscionable and unjust for the Automakers to retain that benefit;

6 (qq) whether Plaintiffs and the other Class Members are entitled to a
7 declaratory judgment stating that the Affected Vehicles are defective and/or not
8 merchantable;

9 (rr) whether Plaintiffs and the other Class Members are entitled to
10 equitable relief, including, but not limited to, a preliminary and/or permanent
11 injunction;

12 (ss) whether the Automakers have acted or refused to act on
13 grounds generally applicable to the Plaintiffs and Class, thereby making
14 appropriate final and injunctive relief with respect to the Class as a whole; and

15 (tt) whether the Automakers should be declared financially
16 responsible for notifying all Class Members with the Affected Vehicles of the
17 Defect and for the costs and expenses of permanently remedying the Defect in the
18 Affected Vehicles.

19 **E. Superiority**

20 235. Plaintiffs and Class Members have all suffered and will continue to
21 suffer harm and damages as a result of the Automakers’ unlawful and wrongful
22 conduct. A class action is superior to other available methods for the fair and
23 efficient adjudication of this controversy.

24 236. Absent a class action, most Class Members would likely find the cost
25 of litigating their claims prohibitively high and would therefore have no effective
26 remedy at law. Because of the relatively small size of the individual Class
27 Members’ claims, it is likely that only a few Class Members could afford to seek
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1 legal redress for the Automakers' misconduct. Absent a class action, Class
2 Members will continue to incur damages, and the Automakers' misconduct will
3 continue without remedy.

4 237. Class treatment of common questions of law and fact would also be a
5 superior method to multiple individual actions or piecemeal litigation in that class
6 treatment will conserve the resources of the courts and the litigants, and will
7 promote consistency and efficiency of adjudication.

8 IX. CAUSES OF ACTION

9 A. Claims Brought on Behalf of the Nationwide Class

10 FIRST CAUSE OF ACTION

11 Negligent Failure to Recall

12 238. Plaintiffs hereby incorporate by reference the allegations contained in
13 the preceding paragraphs of this Complaint.

14 239. Plaintiffs bring this cause of action for themselves and on behalf of
15 the Nationwide Class.

16 240. The Automakers knew or reasonably should have known that the
17 Affected Vehicles were dangerous and/or were likely to be dangerous when used
18 in a reasonably foreseeable manner due to the Defect.

19 241. The Automakers either knew of the dangers posed by the Defect
20 before the vehicles were sold, or became aware of them and their attendant risks
21 after the vehicles were sold.

22 242. The Automakers continued to gain information further corroborating
23 the Defect-related dangers, risks and defects from at least 2007 until the present.⁹⁴

24 243. The Automakers failed to adequately recall the Affected Vehicles in a
25 timely manner, despite doing so in a limited number of other makes and models
26 with the *precise same* Defect.

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28 ⁹⁴ See Factual Allegations, Sections C and D, *supra*.

1 252. Plaintiffs and the Class members, having been damaged by the
2 Automakers' conduct are entitled to recover or recoup damages as a result of the
3 unjust enrichment of the Automakers to their detriment.

4 253. Alternatively, Plaintiffs and the Class members seek to recover for the
5 Automakers' unjust enrichment under the substantially similar laws of the states of
6 purchase.

7 **B. Claims Brought on Behalf of the California Class**

8 **THIRD CAUSE OF ACTION**

9 **Violation of California's Consumer Legal Remedies Act ("CLRA")**
10 **(Cal. Civ. Code § 1750, *et seq.* – INJUNCTIVE RELIEF ONLY)**

11 254. Plaintiffs hereby incorporate by reference the allegations contained in
12 the preceding paragraphs of this Complaint.

13 255. Plaintiffs bring this cause of action for themselves and on behalf of
14 the California Class.

15 256. Each of the Automakers is a "person" as defined by the CLRA. Cal.
16 Civ. Code § 1761(c).

17 257. Plaintiffs and Class Members are "consumers" within the meaning of
18 the CLRA. Cal. Civ. Code § 1761(d).

19 258. By failing to disclose the defective nature of the Affected Vehicles to
20 Plaintiffs and Class Members, the Automakers violated Cal. Civ. Code § 1770(a),
21 because the Automakers represented that the Affected Vehicles had characteristics
22 and benefits (i.e. reliability, durability, etc.) that they do not have, and represented
23 that the Affected Vehicles were of a particular standard, quality, or grade (i.e.
24 rugged, durable, etc.) when they were of another. *See* Cal. Civ. Code §§
25 1770(a)(5) & (7).

26 259. The Automakers' unfair and deceptive acts or practices occurred
27 repeatedly in the Automakers' course of trade or business, were material, were
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1 capable of deceiving a substantial portion of the purchasing public, and imposed a
2 safety risk on the public.

3 260. The Automakers knew that the Affected Vehicles suffered from an
4 inherent defect due to the Defect and thus were defectively designed or
5 manufactured and were not suitable for their intended use.

6 261. The Automakers were under a duty to Plaintiffs and Class Members to
7 disclose the Defect and rectify it through Auto-Off prior to the Affected Vehicles'
8 sale. Additionally:

9 (a) the Defect is a safety hazard;

10 (b) the Automakers were in a superior position to know the true
11 state of facts about the Defect in the Affected Vehicles;

12 (c) Plaintiffs and Class Members could not reasonably have been
13 expected to learn or discover that the Affected Vehicles had the Defect until, at the
14 earliest, the manifestation of the Defect; and

15 (d) the Automakers knew that Plaintiffs and Class Members could
16 not reasonably have been expected to learn or discover the Affected Vehicles'
17 Defect prior to its manifestation.

18 262. In failing to disclose the defective nature of the Affected Vehicles, the
19 Automakers knowingly and intentionally concealed material facts and breached
20 their duty not to do so.

21 263. The facts concealed or not disclosed by the Automakers to Plaintiffs
22 and Class Members are material in that a reasonable consumer would have
23 considered them to be important in deciding whether or not to purchase an
24 Affected Vehicle. Had Plaintiffs and other Class Members known that the
25 Affected Vehicles had the Defect, they would not have purchased an Affected
26 Vehicle.

1 fact, they are not.⁹⁵ The Defect presents a safety hazard for occupants of the
2 Affected Vehicles.

3 272. The Automakers committed unfair business acts and practices in
4 violation of Cal. Bus. & Prof. Code § 17200, *et seq.*, when they failed to provide a
5 permanent remedy to fix the Defect once and for all in the Affected Vehicles.

6 273. The Automakers committed fraudulent business acts and practices in
7 violation of Cal. Bus. & Prof. Code § 17200, *et seq.*, when they concealed the
8 existence and nature of the Defect, while representing in their marketing,
9 advertising, and other broadly disseminated representations that the Affected
10 Vehicles were “safe” (or words found in the Automakers’ advertising to similar
11 effect) when, in fact, they are not.⁹⁶ The Automakers’ representations and active
12 concealment of the Defect is likely to mislead the public with regard to the true
13 defective nature of the Affected Vehicles.

14 274. The Automakers disseminated unfair, deceptive, untrue and/or
15 misleading advertising in violation of Cal. Bus. & Prof. Code § 17200, *et seq.* and
16 § 17500, *et seq.* when they concealed the existence and nature of the Defect, while
17 stating in their marketing, advertising, and other broadly disseminated
18 representations that the Affected Vehicles are “safe” (or words found in the
19 Automakers’ advertising to similar effect) when, in fact, they are not.⁹⁷ These
20 representations and active concealment of the Defect are likely to deceive the
21 public.

22 275. The Automakers’ unfair or deceptive acts or practices occurred
23 repeatedly in the course of their trade or business, and were capable of deceiving a
24 substantial portion of the purchasing public.

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26 ⁹⁵ See paragraphs 38-172 (Plaintiffs’ specific allegations with reference to
attached exhibits touting safety of Plaintiffs’ Affected Vehicles), *supra*.

27 ⁹⁶ *Id.*

28 ⁹⁷ *Id.*

1 were safe when, in fact, the Affected Vehicles contained the Defect that
2 compromised the Affected Vehicles' safety.⁹⁸

3 284. The Automakers knew or were reckless in not knowing that their
4 representations were untrue. The Automakers either had actual knowledge of the
5 fact that the Affected Vehicles contained the Defect or they were reckless or
6 negligent in not knowing.⁹⁹

7 285. The Automakers intended for consumers to rely on their
8 representations regarding the safety of the Affected Vehicles. The Automakers
9 knew that representations regarding Affected Vehicles' safety would induce
10 consumers to buy their products.

11 286. Plaintiffs and the California Class were unaware of the fact that the
12 Affected Vehicles had the Defect.

13 287. Plaintiffs and the California Class reasonably relied on the
14 Automakers' misrepresentations regarding the safety of the Affected Vehicles.

15 288. Plaintiffs and the California Class have been proximately damaged as
16 a result of their reliance on the Automakers' misrepresentations in that they
17 purchased Affected Vehicles that do not have the safety as promised.

18 289. The safety of the Affected Vehicles is a primary selling point to
19 Plaintiffs and the California Class. Had Plaintiffs and the California Class known
20 that the Affected Vehicles did not have these attributes, they would not have
21 purchased them.

22 **Deceit Based on Fraudulent Concealment/Nondisclosure**

23 290. The Automakers fraudulently concealed from and/or intentionally
24 failed to disclose to Plaintiffs, the California Class, and all others in the chain of
25 distribution (e.g., concealments and omissions in the Automakers' communications
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27 ⁹⁸ *Id.*

28 ⁹⁹ *See Factual Allegations, Sections C and D, supra.*

1 with wholesalers, retailers, and others in the chain of distribution that were
2 ultimately passed on to Plaintiffs and the California Class) the true nature of the
3 Affected Vehicles, which is that they contain the Defect.

4 291. Under California law, a duty to disclose arises in four circumstances:
5 (1) when the defendant is in a fiduciary relationship with the plaintiff; (2) when the
6 defendant has exclusive knowledge of material facts not known to the plaintiff; (3)
7 when the defendant actively conceals a material fact from the plaintiff; and (4)
8 when the defendant makes partial representations but also suppresses some
9 material facts.

10 292. The Automakers had a duty to disclose material facts regarding the
11 true nature of the Affected Vehicles pursuant to the second, third, and fourth
12 prongs set forth in the above paragraph:

13 (a) The Automakers had and have a duty to disclose material facts
14 about the Affected Vehicles because the Automakers had exclusive knowledge of
15 the true properties of the Affected Vehicles at the time of sale. The Defect is latent
16 and not something that Plaintiffs or Class Members could, in the exercise of
17 reasonable diligence, have discovered independently prior to purchase.

18 (b) The Automakers had and have a duty to disclose material facts
19 about the Affected Vehicles because the Automakers undertook active steps to
20 conceal them. Plaintiffs are aware of nothing in any of the Automakers'
21 advertising, publicity, or marketing materials that discloses the truth about the
22 Defect in the Affected Vehicles, despite ample evidence that the Automakers were
23 aware of the problem by virtue of, if nothing else, numerous consumer
24 complaints.¹⁰⁰

25 (c) The Automakers had and have a duty to disclose material facts
26 about the Affected Vehicles because the Automakers made and make partial

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28 ¹⁰⁰ *See id.*

1 representations about the Affected Vehicles but also suppresses some material
2 facts. These partial representations give rise to a duty to disclose the full story—
3 that the Affected Vehicles contain the Defect—despite the Automakers’ promises
4 to the contrary.

5 293. The facts concealed and/or not disclosed by the Automakers to
6 Plaintiffs and Class Members are material facts in that a reasonable person would
7 have considered them important in deciding whether to purchase an Affected
8 Vehicle.

9 294. The Automakers intentionally concealed and/or failed to disclose the
10 fact that the Affected Vehicles contain the Defect for the purpose of inducing
11 Plaintiffs and Class Members to act thereon.

12 295. Plaintiffs and the Class Members justifiably acted or relied to their
13 detriment upon the concealed and/or non-disclosed facts as evidenced by their
14 purchase of the Affected Vehicles.

15 296. Had Plaintiffs and Class Members known that the Affected Vehicles
16 contained the Defect, they would not have purchased an Affected Vehicle.

17 297. As a direct and proximate cause of the Automakers’ misconduct,
18 Plaintiffs and Class Members have suffered actual damages in that they bought and
19 own Affected Vehicles that do not perform as promised, and they are now left with
20 vehicles with reduced and diminished value in the marketplace.

21 298. The Automakers’ conduct has been and is wanton and/or reckless
22 and/or shows a reckless indifference to the interests of others.

23 299. The Automakers have acted with “malice” as that term is defined in
24 Civ. Code § 3294(c)(1) by engaging in conduct that was and is intended by the
25 Automakers to cause injury to the Plaintiffs and Class Members.
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1 306. The Automakers caused to be made or disseminated throughout the
2 United States, through advertising, marketing and other publications, statements
3 that were untrue or misleading, and which were known, or which by the exercise of
4 reasonable care should have been known to the Automakers, to be untrue and
5 misleading to consumers, Plaintiffs, and Class Members.

6 307. Defendants violated section 17500 because the misrepresentations and
7 omissions regarding the safety and reliability of their vehicles as set forth in this
8 Complaint were material and likely to deceive a reasonable consumer. In short, the
9 Automakers publically disseminated advertising that was either misleading or
10 untrue, or with an intent to not sell the Affected Automobiles as advertised.¹⁰¹

11 308. Plaintiffs and Class Members have suffered injuries in fact, including
12 the loss of money or property (namely, the diminution in value of their Affected
13 Vehicles), as a result of the Automakers' unfair, unlawful, and/or deceptive
14 practices. In purchasing or leasing their Affected Vehicles, Plaintiffs and Class
15 Members relied on the misrepresentations and/or omissions of the Automakers
16 with respect to the safety of their vehicles. Defendants' representations turned out
17 not to be true. Had Plaintiffs and Class Members known this, they would not have
18 purchased or leased the Affected Vehicles and/or paid as much for them.¹⁰²

19 309. Accordingly, Plaintiffs and Class Members overpaid for the Affected
20 Vehicles and did not receive the benefit of their bargain. One way to measure this
21 overpayment, or lost benefit of the bargain, at the moment of purchase is by the
22 value consumers place on the vehicles now that the truth has been exposed. Both
23 trade-in prices and auction prices for the Affected Vehicles have declined as a
24 result of the Automakers' misconduct. This decline in value measures the

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27 ¹⁰¹ See paragraphs 38-172 (Plaintiffs' specific allegations with reference to
attached exhibits touting safety of Plaintiffs' Affected Vehicles), *supra*.

28 ¹⁰² *Id.*; see also Factual Allegations, Sections C and D, *supra*.

1 overpayment, or lost benefit of the bargain, at the time that Plaintiffs and Class
2 Members acquired the Affected Vehicles.

3 310. All of the wrongful conduct alleged herein occurred, and continues to
4 occur, in the conduct of the Automakers' businesses. The Automakers' wrongful
5 conduct is part of a pattern or generalized course of conduct that is still perpetuated
6 and repeated nationwide.

7 311. Plaintiffs and Class Members request that this Court enter such orders
8 or judgments as may be necessary to enjoin Defendants from continuing their
9 unfair, unlawful, and/or deceptive practices, and for such other relief set forth
10 herein.

11 **C. Claims Brought on Behalf of the Arizona Class**

12 **SEVENTH CAUSE OF ACTION**

13 **Violations of the Consumer Fraud Act,**
14 **(Ariz. Rev. Stat. §§ 44-1521, *et seq.*)**

15 312. Plaintiffs incorporate by reference all preceding allegations as though
16 fully set forth herein.

17 313. Plaintiffs bring this Count on behalf of the Arizona Class.

18 314. Plaintiffs and the Automakers are each "persons" as defined by Ariz.
19 Rev. Stat. § 44-1521(6). The Affected Vehicles are "merchandise" as defined by
20 Ariz. Rev. Stat. § 44-1521(5).

21 315. The Arizona Consumer Fraud Act proscribes "[t]he act, use or
22 employment by any person of any deception, deceptive act or practice, fraud, false
23 pretense, false promise, misrepresentation, or concealment, suppression or
24 omission of any material fact with intent that others rely upon such concealment,
25 suppression or omission, in connection with the sale or advertisement of any
26 merchandise whether or not any person has in fact been misled, deceived or
27 damaged thereby." Ariz. Rev. Stat. § 44-1522(A).
28

1 316. By failing to disclose and actively concealing the Defect in the
2 Affected Vehicles, the Automakers engaged in deceptive business practices
3 prohibited by the Arizona Consumer Fraud Act, Ariz. Rev. Stat. § 44-1522(A),
4 including (1) representing that the Affected Vehicles have characteristics, uses,
5 benefits, and qualities which they do not have, (2) representing that the Affected
6 Vehicles are of a particular standard, quality, and grade when they are not, (3)
7 advertising the Affected Vehicles with the intent not to sell them as advertised, and
8 (4) engaging in acts or practices which are otherwise unfair, misleading, false, or
9 deceptive to the consumer.

10 317. As alleged above, the Automakers made numerous material
11 statements about the benefits and characteristics of the Affected Vehicles that were
12 either false or misleading. Each of these statements contributed to the deceptive
13 context of the Automakers' unlawful advertising and representations as a whole.

14 318. The Automakers knew that the Keyless Fobs in the Affected Vehicles
15 were defectively designed or manufactured, would cause the Defect without
16 warning, and were not suitable for their intended use. The Automakers
17 nevertheless failed to warn Plaintiffs about these defects despite having a duty to
18 do so.

19 319. The Automakers owed Plaintiffs a duty to disclose the defective
20 nature of the Keyless Fobs, because the Automakers:

21 (a) Possessed exclusive knowledge of the Defect rendering the
22 Affected Vehicles more unreliable than similar vehicles;

23 (b) Intentionally concealed the defects associated with Keyless
24 Fobs; and/or

25 (c) Made incomplete representations about the characteristics and
26 performance of Keyless Fobs generally, while purposefully withholding material
27 facts from Plaintiffs that contradicted these representations.
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1 are inherently defective in that there are defects in the Keyless Fobs which causes
2 the Defect.

3 328. The Automakers were provided notice of these issues by numerous
4 complaints filed against them, including the instant Complaint, and by numerous
5 individual letters and communications sent by Plaintiffs and the Class.

6 329. As a direct and proximate result of the Automakers' breach of the
7 warranties of merchantability, Plaintiffs and the Class have been damaged in an
8 amount to be proven at trial.

9 **NINTH CAUSE OF ACTION**

10 **Fraudulent Concealment Based on Arizona Law**

11 330. Plaintiffs incorporate by reference all preceding allegations as though
12 fully set forth herein.

13 331. Plaintiffs bring this Count on behalf of the Arizona Class.

14 332. The Automakers intentionally concealed the above-described material
15 safety and functionality information, or acted with reckless disregard for the truth,
16 and denied Plaintiffs and the other Class members information that is highly
17 relevant to their purchasing decision.

18 333. The Automakers further affirmatively misrepresented to Plaintiffs in
19 advertising and other forms of communication, including standard and uniform
20 material provided with each car, that the Affected Vehicles it was selling were
21 new, had no significant defects, and would perform and operate properly when
22 driven in normal usage.

23 334. The Automakers knew these representations were false when made.

24 335. The Affected Vehicles purchased or leased by Plaintiffs and the other
25 Class members were, in fact, defective, unsafe, and unreliable because the Affected
26 Vehicles contained defective Keyless Fobs, as alleged herein.

1 336. The Automakers had a duty to disclose that these Affected Vehicles
2 were defective, unsafe, and unreliable in that the Keyless Fobs result in the Defect,
3 because Plaintiffs and the other Class members relied on the Automakers' material
4 representations that the Affected Vehicles they were purchasing were safe and free
5 from defects.

6 337. The aforementioned concealment was material because if it had been
7 disclosed, Plaintiffs and the other Class members would not have bought or leased
8 the Affected Vehicles, or would not have bought or leased those Vehicles at the
9 prices they paid.

10 338. The aforementioned representations were material because they were
11 facts that would typically be relied on by a person purchasing or leasing a new
12 motor vehicle. The Automakers knew or recklessly disregarded that their
13 representations were false because they knew that people had experienced the
14 Defect while using the Keyless Fobs. The Automakers intentionally made the false
15 statements in order to sell Affected Vehicles.

16 339. Plaintiffs and the other Class members relied on the Automakers'
17 reputation – along with the Automakers' failure to disclose the faulty and defective
18 nature of the Keyless Fobs and the Automakers' affirmative assurance that their
19 Affected Vehicles were safe and reliable, and other similar false statements – in
20 purchasing or leasing the Affected Vehicles.

21 340. As a result of their reliance, Plaintiffs and the other Class members
22 have been injured in an amount to be proven at trial, including, but not limited to,
23 their lost benefit of the bargain and overpayment at the time of purchase or lease
24 and/or the diminished value of their Affected Vehicles.

25 341. The Automakers' conduct was knowing, intentional, with malice,
26 demonstrated a complete lack of care, and was in reckless disregard for the rights
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1 of Plaintiffs and the other Class members. Plaintiffs and the other Class members
2 are therefore entitled to an award of punitive damages.

3 **D. Claims Brought on Behalf of the Colorado Class**

4 **TENTH CAUSE OF ACTION**

5 **Violations of the Colorado Consumer Protection Act**
6 **(Colo. Rev. Stat. §§ 6-1-101, *et seq.*)**

7 342. Plaintiffs incorporate by reference all preceding allegations as though
8 fully set forth herein.

9 343. Plaintiffs bring this Count on behalf of the Colorado Class.

10 344. Colorado’s Consumer Protection Act (the “CCPA”) prohibits a person
11 from engaging in a “deceptive trade practice,” which includes knowingly making
12 “a false representation as to the source, sponsorship, approval, or certification of
13 goods,” or “a false representation as to the characteristics, ingredients, uses,
14 benefits, alterations, or quantities of goods.” Colo. Rev. Stat. § 6- 1-105(1)(b), (e).
15 The CCPA further prohibits “represent[ing] that goods ... are of a particular
16 standard, quality, or grade ... if he knows or should know that they are of another,”
17 and “advertis[ing] goods ... with intent not to sell them as advertised.” Colo. Rev.
18 Stat. § 6-1-105(1)(g), (i).

19 345. The Automakers are each a “person” within the meaning of Colo.
20 Rev. Stat. § 6-1-102(6).

21 346. In the course of the Automakers’ business, they willfully
22 misrepresented and failed to disclose, and actively concealed, the dangerous risk of
23 the Keyless Fobs in Affected Vehicles as described above. Accordingly, the
24 Automakers engaged in unlawful trade practices, including representing that
25 Affected Vehicles have characteristics, uses, benefits, and qualities which they do
26 not have; representing that Affected Vehicles are of a particular standard and
27 quality when they are not; advertising Affected Vehicles with the intent not to sell
28 them as advertised; and otherwise engaging in conduct likely to deceive.

1 347. The Automakers' actions as set forth above occurred in the conduct of
2 trade or commerce.

3 348. The Automakers' conduct proximately caused injuries to Plaintiffs
4 and the other Class members.

5 349. Plaintiffs and the other Class members were injured as a result of the
6 Automakers' conduct in that Plaintiffs and the other Class members overpaid for
7 their Affected Vehicles and did not receive the benefit of their bargain, and their
8 Affected Vehicles have suffered a diminution in value. These injuries are the direct
9 and natural consequence of the Automakers' misrepresentations and omissions.

10 **ELEVENTH CAUSE OF ACTION**

11 **Breach of Implied Warranty of Merchantability**
12 **(Colo. Rev. Stat. § 4-2-314)**

13 350. Plaintiffs incorporate by reference all preceding allegations as though
14 fully set forth herein.

15 351. Plaintiffs bring this Count on behalf of the Colorado Class.

16 352. The Automakers are and were at all relevant times merchants with
17 respect to motor vehicles.

18 353. A warranty that the Affected Vehicles were in merchantable condition
19 is implied by law in the instant transactions.

20 354. These Affected Vehicles, when sold and at all times thereafter, were
21 not in merchantable condition and are not fit for the ordinary purpose for which
22 cars are used. Specifically, the Affected Vehicles are inherently defective in that
23 there are defects in the Affected Vehicles' Keyless Fobs that cause the Defect.

24 355. The Automakers were provided notice of these issues by numerous
25 complaints filed against them, including the instant Complaint, and by numerous
26 individual letters and communications sent by Plaintiffs and other Class members
27 before or within a reasonable amount of time after the Keyless Fob defects became
28 public.

1 364. The aforementioned concealment was material because if it had been
2 disclosed Plaintiffs and the other Class members would not have bought or leased
3 the Affected Vehicles, or would not have bought or leased those Vehicles at the
4 prices they paid.

5 365. The aforementioned representations were material because they were
6 facts that would typically be relied on by a person purchasing or leasing a new
7 motor vehicle. The Automakers knew or recklessly disregarded that their
8 representations were false because they knew that people had experienced the
9 Defect. The Automakers intentionally made the false statements in order to sell
10 Affected Vehicles.

11 366. Plaintiffs and the other Class members relied on the Automakers’
12 reputation – along with the Automakers’ failure to disclose the faulty and defective
13 nature of the Keyless Fobs and the Automakers’ affirmative assurance that their
14 Affected Vehicles were safe and reliable, and other similar false statements – in
15 purchasing or leasing the Affected Vehicles.

16 367. As a result of their reliance, Plaintiffs and the other Class members
17 have been injured in an amount to be proven at trial, including, but not limited to,
18 their lost benefit of the bargain and overpayment at the time of purchase or lease
19 and/or the diminished value of their Affected Vehicles.

20 368. The Automakers’ conduct was knowing, intentional, with malice,
21 demonstrated a complete lack of care, and was in reckless disregard for the rights
22 of Plaintiffs and the other Class members. Plaintiffs and the other Class members
23 are therefore entitled to an award of punitive damages.

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1 **E. Claims Brought on Behalf of the Connecticut Class**

2 **THIRTEENTH CAUSE OF ACTION**

3 **Violations of the Unfair Trade Practices Act**
4 **(Conn. Gen. Stat. Ann. §§ 42-110A, *et seq.*)**

5 369. Plaintiffs incorporate by reference all preceding allegations as though
6 fully set forth herein.

7 370. Plaintiffs bring this Count on behalf of the Connecticut Class.

8 371. Plaintiffs and the Automakers are each “persons” as defined by Conn.
9 Gen. Stat. Ann. § 42-110a(3).

10 372. The Connecticut Unfair Trade Practices Act (“CUTPA”) provides that
11 “[n]o person shall engage in unfair methods of competition and unfair or deceptive
12 acts or practices in the conduct of any trade or commerce.” Conn. Gen. Stat. Ann.
13 § 42-110b(a). The CUTPA further provides a private right of action under Conn.
14 Gen. Stat. Ann. § 42-110g(a).

15 373. By failing to disclose and actively concealing the defects in the
16 Keyless Fobs in the Affected Vehicles, the Automakers engaged in deceptive
17 business practices prohibited by the CUTPA, including (1) representing that
18 Affected Vehicles have characteristics, uses, benefits, and qualities which they do
19 not have, (2) representing that Affected Vehicles are of a particular standard,
20 quality, and grade when they are not, (3) advertising Affected Vehicles with the
21 intent not to sell them as advertised, and (4) engaging in acts or practices which are
22 otherwise unfair, misleading, false, or deceptive to the consumer.

23 374. As alleged above, the Automakers made numerous material
24 statements about the benefits and characteristics of the Keyless Fobs that were
25 either false or misleading. Each of these statements contributed to the deceptive
26 context of the Automakers’ unlawful advertising and representations as a whole.

27 375. The Automakers knew that the Keyless Fobs in the Affected Vehicles
28 were defectively designed or manufactured, would cause the Defect, and were not

1 suitable for their intended use. The Automakers nevertheless failed to warn
2 Plaintiffs about these defects despite having a duty to do so.

3 376. The Automakers owed Plaintiffs a duty to disclose the defective
4 nature of the Keyless Fobs in the Affected Vehicles, because the Automakers:

5 (a) Possessed exclusive knowledge of the defects rendering the
6 Affected Vehicles more unreliable than similar vehicles;

7 (b) Intentionally concealed the defects associated with Keyless
8 Fobs through their deceptive marketing campaign; and/or

9 (c) Made incomplete representations about the characteristics and
10 performance of the Keyless Fobs generally, while purposefully withholding
11 material facts from Plaintiffs that contradicted these representations.

12 377. The Automakers' unfair or deceptive acts or practices were likely to
13 and did in fact deceive reasonable consumers, including Plaintiffs, about the true
14 safety and characteristics of the Keyless Fobs.

15 378. As a result of their violations of the CUTPA detailed above, the
16 Automakers caused actual damage to Plaintiffs and, if not stopped, will continue to
17 harm Plaintiffs. Plaintiffs currently own or lease, or within the class period have
18 owned or leased, an Affected Vehicle that is defective. Defects associated with the
19 Keyless Fobs have caused the value of Affected Vehicles to decrease.

20 379. Plaintiffs and the Class sustained damages as a result of the
21 Automakers' unlawful acts and are, therefore, entitled to damages and other relief
22 as provided under the CUTPA.

23 380. Plaintiffs also seek court costs and attorneys' fees as a result of the
24 Automakers' violation of the CUTPA as provided in Conn. Gen. Stat. Ann. § 42-
25 110g(d). Upon filing, a copy of this Complaint will be mailed to the Attorney
26 General and the Commissioner of Consumer Protection of the State of Connecticut
27 in accordance with Conn. Gen. Stat. Ann. § 42-110g(c).
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FOURTEENTH CAUSE OF ACTION

**Breach of the Implied Warranty of Merchantability
(Conn. Gen. Stat. Ann. § 42A-2-314)**

381. Plaintiffs incorporate by reference all preceding allegations as though fully set forth herein.

382. Plaintiffs bring this Count on behalf of the Connecticut Class.

383. The Automakers are and were at all relevant times merchants with respect to motor vehicles under Conn. Gen. Stat. Ann. § 42a-2-104(1).

384. A warranty that the Affected Vehicles were in merchantable condition was implied by law in the instant transactions, pursuant to Conn. Gen. Stat. Ann. § 42a-2-314. These vehicles and the Keyless Fobs in the Affected Vehicles, when sold and at all times thereafter, were not in merchantable condition and are not fit for the ordinary purpose for which they are used. Specifically, the Affected Vehicles are inherently defective in that there are defects in the Keyless Fobs which cause the Defect.

385. The Automakers were provided notice of these issues by numerous complaints filed against them, including the instant Complaint, and by numerous individual letters and communications sent by Plaintiffs and the Class.

386. As a direct and proximate result of the Automakers' breach of the warranties of merchantability, Plaintiffs and the Class have been damaged in an amount to be proven at trial.

FIFTEENTH CAUSE OF ACTION

**Fraudulent Concealment
(Based on Connecticut Law)**

387. Plaintiffs incorporate by reference all preceding allegations as though fully set forth herein.

388. Plaintiffs bring this Count on behalf of the Connecticut Class.

1 389. The Automakers intentionally concealed the above-described material
2 safety and functionality information, or acted with reckless disregard for the truth,
3 and denied Plaintiffs and the other Class members information that is highly
4 relevant to their purchasing decision.

5 390. The Automakers further affirmatively misrepresented to Plaintiffs in
6 advertising and other forms of communication, including standard and uniform
7 material provided with each car, that the Affected Vehicles they were selling were
8 new, had no significant defects, and would perform and operate properly when
9 driven in normal usage.

10 391. The Automakers knew these representations were false when made.

11 392. The Affected Vehicles purchased or leased by Plaintiffs and the other
12 Class members were, in fact, defective, unsafe, and unreliable because the Affected
13 Vehicles contained faulty and defective Keyless Fobs, as alleged herein.

14 393. The Automakers had a duty to disclose that these Affected Vehicles
15 were defective, unsafe, and unreliable in that the Keyless Fobs caused the Defect,
16 because Plaintiff and the other Class members relied on the Automakers' material
17 representations that the Affected Vehicles they were purchasing were safe and free
18 from defects.

19 394. The aforementioned concealment was material because if it had been
20 disclosed, Plaintiffs and the other Class members would not have bought or leased
21 the Affected Vehicles, or would not have bought or leased those Vehicles at the
22 prices they paid.

23 395. The aforementioned representations were material because they were
24 facts that would typically be relied on by a person purchasing or leasing a new
25 motor vehicle. The Automakers knew or recklessly disregarded that their
26 representations were false because they knew that people had experienced the
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1 Defect. The Automakers intentionally made the false statements in order to sell
2 Affected Vehicles.

3 396. Plaintiffs and the other Class members relied on the Automakers’
4 reputation – along with the Automakers’ failure to disclose the faulty and defective
5 nature of the Keyless Fobs and the Automakers’ affirmative assurance that their
6 Affected Vehicles were safe and reliable, and other similar false statements – in
7 purchasing or leasing the Affected Vehicles.

8 397. As a result of their reliance, Plaintiffs and the other Class members
9 have been injured in an amount to be proven at trial, including, but not limited to,
10 their lost benefit of the bargain and overpayment at the time of purchase or lease
11 and/or the diminished value of their Affected Vehicles.

12 398. The Automakers’ conduct was knowing, intentional, with malice,
13 demonstrated a complete lack of care, and was in reckless disregard for the rights
14 of Plaintiffs and the other Class members. Plaintiffs and the other Class members
15 are therefore entitled to an award of punitive damages.

16 **F. Claims Brought on Behalf of the Florida Class**

17 **SIXTEENTH CAUSE OF ACTION**

18 **Violations of the Florida Deceptive & Unfair Trade Practices Act**
19 **(Fla. Stat. §§ 501.201, *et seq.*)**

20 399. Plaintiffs incorporate by reference all preceding allegations as though
21 fully set forth herein.

22 400. Plaintiffs bring this Count on behalf of the Florida Class.

23 401. Florida’s Deceptive and Unfair Trade Practices Act prohibits “[u]nfair
24 methods of competition, unconscionable acts or practices, and unfair or deceptive
25 acts or practices in the conduct of any trade or commerce.” Fla. Stat. § 501.204(1).

26 402. In the course of the Automakers’ business, they willfully failed to
27 disclose and actively concealed the dangerous risk of the Keyless Fobs in Affected
28 Vehicles as described above. Accordingly, the Automakers engaged in unfair

1 methods of competition, unconscionable acts or practices, and unfair or deceptive
2 acts or practices as defined in Fla. Stat. § 501.204(1), including representing that
3 Affected Vehicles have characteristics, uses, benefits, and qualities which they do
4 not have; representing that Affected Vehicles are of a particular standard and
5 quality when they are not; advertising Affected Vehicles with the intent not to sell
6 them as advertised; and otherwise engaging in conduct likely to deceive.

7 403. The Automakers' actions as set forth above occurred in the conduct of
8 trade or commerce.

9 404. The Automakers' conduct proximately caused injuries to Plaintiffs
10 and the other Class members.

11 405. Plaintiffs and the other Class members were injured as a result of the
12 Automakers' conduct in that Plaintiffs and the other Class members overpaid for
13 their Affected Vehicles and did not receive the benefit of their bargain, and their
14 Affected Vehicles have suffered a diminution in value. These injuries are the direct
15 and natural consequence of the Automakers' misrepresentations and omissions.

16 **SEVENTEENTH CAUSE OF ACTION**

17 **Breach of Implied Warranty of Merchantability**
18 **(Fla. Stat. § 672.314)**

19 406. Plaintiffs incorporate by reference all preceding allegations as though
20 fully set forth herein.

21 407. Plaintiffs bring this Count on behalf of the Florida Class.

22 408. The Automakers are and were at all relevant times merchants with
23 respect to motor vehicles.

24 409. A warranty that the Affected Vehicles were in merchantable condition
25 is implied by law in the instant transactions.

26 410. These Affected Vehicles, when sold and at all times thereafter, were
27 not in merchantable condition and are not fit for the ordinary purpose for which
28

1 cars are used. Specifically, the Affected Vehicles are inherently defective in that
2 there are defects in the Affected Vehicles' Keyless Fobs that cause the Defect.

3 411. The Automakers were provided notice of these issues by numerous
4 complaints filed against them, including the instant Complaint, and by numerous
5 individual letters and communications sent by Plaintiffs and other Class members
6 before or within a reasonable amount of time after the Keyless Fob defects became
7 public.

8 412. As a direct and proximate result of the Automakers' breach of the
9 warranties of merchantability, Plaintiffs and the Class have been damaged in an
10 amount to be proven at trial.

11 **EIGHTEENTH CAUSE OF ACTION**

12 **Fraudulent Concealment** 13 **(Based on Florida Law)**

14 413. Plaintiffs incorporate by reference all preceding allegations as though
15 fully set forth herein.

16 414. Plaintiffs bring this Count on behalf of the Florida Class.

17 415. The Automakers intentionally concealed the above-described material
18 safety and functionality information, or acted with reckless disregard for the truth,
19 and denied Plaintiffs and the other Class members information that is highly
20 relevant to their purchasing decision.

21 416. The Automakers further affirmatively misrepresented to Plaintiffs in
22 advertising and other forms of communication, including standard and uniform
23 material provided with each car, that the Affected Vehicles they were selling were
24 new, had no significant defects, and would perform and operate properly when
25 driven in normal usage.

26 417. The Automakers knew these representations were false when made.
27
28

1 418. The Affected Vehicles purchased or leased by Plaintiffs and the other
2 Class members were, in fact, defective, unsafe, and unreliable because the Affected
3 Vehicles contained faulty and defective Keyless Fobs, as alleged herein.

4 419. The Automakers had a duty to disclose that these Affected Vehicles
5 were defective, unsafe, and unreliable in that the Keyless Fobs caused the Defect,
6 because Plaintiff and the other Class members relied on the Automakers' material
7 representations that the Affected Vehicles they were purchasing were safe and free
8 from defects.

9 420. The aforementioned concealment was material because if it had been
10 disclosed, Plaintiffs and the other Class members would not have bought or leased
11 the Affected Vehicles, or would not have bought or leased those Vehicles at the
12 prices they paid.

13 421. The aforementioned representations were material because they were
14 facts that would typically be relied on by a person purchasing or leasing a new
15 motor vehicle. The Automakers knew or recklessly disregarded that their
16 representations were false because they knew that people had experienced the
17 Defect. The Automakers intentionally made the false statements in order to sell
18 Affected Vehicles.

19 422. Plaintiffs and the other Class members relied on the Automakers'
20 reputation – along with the Automakers' failure to disclose the faulty and defective
21 nature of the Keyless Fobs and the Automakers' affirmative assurance that their
22 Affected Vehicles were safe and reliable, and other similar false statements – in
23 purchasing or leasing the Affected Vehicles.

24 423. As a result of their reliance, Plaintiffs and the other Class members
25 have been injured in an amount to be proven at trial, including, but not limited to,
26 their lost benefit of the bargain and overpayment at the time of purchase or lease
27 and/or the diminished value of their Affected Vehicles.

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1 424. The Automakers' conduct was knowing, intentional, with malice,
2 demonstrated a complete lack of care, and was in reckless disregard for the rights
3 of Plaintiffs and the other Class members. Plaintiffs and the other Class members
4 are therefore entitled to an award of punitive damages.

5 **G. Claims Brought on Behalf of the Massachusetts Class**

6 **NINETEENTH CAUSE OF ACTION**

7 **Violations of the Massachusetts Consumer Protection Act**
8 **(Mass. Gen. Laws Ch. 93A)**

9 425. Plaintiffs incorporate by reference all preceding allegations as though
10 fully set forth herein.

11 426. Plaintiffs bring this Count on behalf of the Massachusetts Class.

12 427. The conduct of the Automakers as set forth herein constitutes unfair
13 and deceptive acts or practices in violation of the Massachusetts Consumer
14 Protection Act, Mass. Gen. Laws Ch. 93A, including but not limited to the
15 Automakers' design, manufacture, and sale of Affected Vehicles with the defective
16 Keyless Fobs, which the Automakers failed to adequately investigate, disclose, and
17 remedy, and their misrepresentations and omissions regarding the safety,
18 reliability, and functionality of their Affected Vehicles, which misrepresentations
19 and omissions possessed the tendency to deceive.

20 428. The Automakers engage in the conduct of trade or commerce and the
21 misconduct alleged herein occurred in trade or commerce.

22 429. Plaintiffs, individually and on behalf of the other Class members, have
23 made a demand on the Automakers pursuant to Mass. Gen. Laws Ch. 93A, § 9(3).
24 The letter asserted that rights of consumers as claimants had been violated,
25 described the unfair and deceptive acts committed by the Automakers, and
26 specified the injuries the Plaintiffs and the other Class members have suffered and
27 the relief they seek.
28

1 430. Therefore, Plaintiffs seek monetary and equitable relief under the
2 Massachusetts Consumer Protection Act as a result of the Automakers' unfair and
3 deceptive acts and practices.

4 **TWENTIETH CAUSE OF ACTION**

5 **Breach of Implied Warranty of Merchantability**
6 **(Mass. Gen. Laws Ch. 106, § 2-314)**

7 431. Plaintiffs incorporate by reference all preceding allegations as though
8 fully set forth herein.

9 432. Plaintiffs bring this Count on behalf of the Massachusetts Class.

10 433. The Automakers are and were at all relevant times merchants with
11 respect to motor vehicles.

12 434. A warranty that the Affected Vehicles were in merchantable condition
13 is implied by law in the instant transactions.

14 435. These Affected Vehicles, when sold and at all times thereafter, were
15 not in merchantable condition and are not fit for the ordinary purpose for which
16 cars are used. Specifically, the Affected Vehicles are inherently defective in that
17 there are defects in the Affected Vehicles' Keyless Fobs that cause the Defect.

18 436. The Automakers were provided notice of these issues by numerous
19 complaints filed against them, including the instant Complaint, and by numerous
20 individual letters and communications sent by Plaintiffs and the Class.

21 437. As a direct and proximate result of the Automakers' breach of the
22 warranties of merchantability, Plaintiffs and the Class have been damaged in an
23 amount to be proven at trial.

24 **TWENTY-FIRST CAUSE OF ACTION**

25 **Fraudulent Concealment**
26 **(Based on Massachusetts Law)**

27 438. Plaintiffs incorporate by reference all preceding allegations as though
28 fully set forth herein.

1 439. Plaintiffs bring this Count on behalf of the Massachusetts Class.

2 440. The Automakers intentionally concealed the above-described material
3 safety and functionality information, or acted with reckless disregard for the truth,
4 and denied Plaintiffs and the other Class members information that is highly
5 relevant to their purchasing decision.

6 441. The Automakers further affirmatively misrepresented to Plaintiffs in
7 advertising and other forms of communication, including standard and uniform
8 material provided with each car, that the Affected Vehicles they were selling were
9 new, had no significant defects, and would perform and operate properly when
10 driven in normal usage.

11 442. The Automakers knew these representations were false when made.

12 443. The Affected Vehicles purchased or leased by Plaintiffs and the other
13 Class members were, in fact, defective, unsafe, and unreliable because the Affected
14 Vehicles contained faulty and defective Keyless Fobs, as alleged herein.

15 444. The Automakers had a duty to disclose that these Affected Vehicles
16 were defective, unsafe, and unreliable in that the Keyless Fobs caused the Defect,
17 because Plaintiff and the other Class members relied on the Automakers' material
18 representations that the Affected Vehicles they were purchasing were safe and free
19 from defects.

20 445. The aforementioned concealment was material because if it had been
21 disclosed, Plaintiffs and the other Class members would not have bought or leased
22 the Affected Vehicles, or would not have bought or leased those Vehicles at the
23 prices they paid.

24 446. The aforementioned representations were material because they were
25 facts that would typically be relied on by a person purchasing or leasing a new
26 motor vehicle. The Automakers knew or recklessly disregarded that their
27 representations were false because they knew that people had experienced the
28

1 Defect. The Automakers intentionally made the false statements in order to sell
2 Affected Vehicles.

3 447. Plaintiffs and the other Class members relied on the Automakers’
4 reputation – along with the Automakers’ failure to disclose the faulty and defective
5 nature of the Keyless Fobs and the Automakers’ affirmative assurance that their
6 Affected Vehicles were safe and reliable, and other similar false statements – in
7 purchasing or leasing the Affected Vehicles.

8 448. As a result of their reliance, Plaintiffs and the other Class members
9 have been injured in an amount to be proven at trial, including, but not limited to,
10 their lost benefit of the bargain and overpayment at the time of purchase or lease
11 and/or the diminished value of their Affected Vehicles.

12 449. The Automakers’ conduct was knowing, intentional, with malice,
13 demonstrated a complete lack of care, and was in reckless disregard for the rights
14 of Plaintiffs and the other Class members. Plaintiffs and the other Class members
15 are therefore entitled to an award of punitive damages.

16 **H. Claims Brought on Behalf of the New Jersey Class**

17 **TWENTY-SECOND CAUSE OF ACTION**

18 **Violations of the New Jersey Consumer Fraud Act**
19 **(N.J. Stat. Ann. §§ 56:8-1, *et seq.*)**

20 450. Plaintiffs incorporate by reference all preceding allegations as though
21 fully set forth herein.

22 451. Plaintiffs bring this Count on behalf of the New Jersey Class.

23 452. The New Jersey Consumer Fraud Act, N.J. Stat. Ann. §§ 56:8-1, *et*
24 *seq.* (“NJ CFA”), prohibits unfair or deceptive acts or practices in the conduct of
25 any trade or commerce.

26 453. In the course of the Automakers’ business, they willfully failed to
27 disclose and actively concealed the dangerous risk of the Keyless Fobs in Affected
28 Vehicles as described above. Accordingly, the Automakers engaged in unfair and

1 deceptive trade practices, including representing that Affected Vehicles have
2 characteristics, uses, benefits, and qualities which they do not have; representing
3 that Affected Vehicles are of a particular standard and quality when they are not;
4 advertising Affected Vehicles with the intent not to sell them as advertised; and
5 otherwise engaging in conduct likely to deceive. Further, the Automakers' acts and
6 practices described herein offend established public policy because the harm they
7 cause to consumers, motorists, and pedestrians outweighs any benefit associated
8 with such practices, and because the Automakers' fraudulently concealed the
9 defective nature of the Affected Vehicles from consumers.

10 454. The Automakers' actions as set forth above occurred in the conduct of
11 trade or commerce.

12 455. The Automakers' conduct proximately caused injuries to Plaintiffs
13 and the other Class members.

14 456. Plaintiffs and the other Class members were injured as a result of the
15 Automakers' conduct in that Plaintiffs and the other Class members overpaid for
16 their Affected Vehicles and did not receive the benefit of their bargain, and their
17 Affected Vehicles have suffered a diminution in value. These injuries are the direct
18 and natural consequence of the Automakers' misrepresentations and omissions.

19 457. Pursuant to N.J. Stat. Ann. § 56:8-20, Plaintiffs will serve the New
20 Jersey Attorney General with a copy of this Complaint upon filing the same.

21 **TWENTY-THIRD CAUSE OF ACTION**

22 **Breach of Implied Warranty of Merchantability**
23 **(N.J. Stat. Ann. § 12A:2-314)**

24 458. Plaintiffs incorporate by reference all preceding allegations as though
25 fully set forth herein.

26 459. Plaintiffs bring this Count on behalf of the New Jersey Class.

27 460. The Automakers are and were at all relevant times merchants with
28 respect to motor vehicles.

1 469. The Automakers knew these representations were false when made.

2 470. The Affected Vehicles purchased or leased by Plaintiffs and the other
3 Class members were, in fact, defective, unsafe, and unreliable because the Affected
4 Vehicles contained faulty and defective Keyless Fobs, as alleged herein.

5 471. The Automakers had a duty to disclose that these Affected Vehicles
6 were defective, unsafe, and unreliable in that the Keyless Fobs caused the Defect,
7 because Plaintiff and the other Class members relied on the Automakers' material
8 representations that the Affected Vehicles they were purchasing were safe and free
9 from defects.

10 472. The aforementioned concealment was material because if it had been
11 disclosed, Plaintiffs and the other Class members would not have bought or leased
12 the Affected Vehicles, or would not have bought or leased those Vehicles at the
13 prices they paid.

14 473. The aforementioned representations were material because they were
15 facts that would typically be relied on by a person purchasing or leasing a new
16 motor vehicle. The Automakers knew or recklessly disregarded that their
17 representations were false because they knew that people had experienced the
18 Defect. The Automakers intentionally made the false statements in order to sell
19 Affected Vehicles.

20 474. Plaintiffs and the other Class members relied on the Automakers'
21 reputation – along with the Automakers' failure to disclose the faulty and defective
22 nature of the Keyless Fobs and the Automakers' affirmative assurance that their
23 Affected Vehicles were safe and reliable, and other similar false statements – in
24 purchasing or leasing the Affected Vehicles.

25 475. As a result of their reliance, Plaintiffs and the other Class members
26 have been injured in an amount to be proven at trial, including, but not limited to,
27
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1 their lost benefit of the bargain and overpayment at the time of purchase or lease
2 and/or the diminished value of their Affected Vehicles.

3 476. The Automakers' conduct was knowing, intentional, with malice,
4 demonstrated a complete lack of care, and was in reckless disregard for the rights
5 of Plaintiffs and the other Class members. Plaintiffs and the other Class members
6 are therefore entitled to an award of punitive damages.

7 **I. Claims Brought on Behalf of the New York Class**

8 **TWENTY-FIFTH CAUSE OF ACTION**

9 **Violations of New York General Business Law § 349**
10 **(N.Y. Gen. Bus. Law § 349)**

11 477. Plaintiffs incorporate by reference all preceding allegations as though
12 fully set forth herein.

13 478. Plaintiffs bring this Count on behalf of the New York Class.

14 479. New York's General Business Law § 349 makes unlawful
15 "[d]eceptive acts or practices in the conduct of any business, trade or commerce."

16 480. In the course of the Automakers' business, they willfully failed to
17 disclose and actively concealed the dangerous risk of the Keyless Fobs in Affected
18 Vehicles as described above. Accordingly, the Automakers engaged in unfair
19 methods of competition, unconscionable acts or practices, and unfair or deceptive
20 acts or practices as defined in N.Y. Gen. Bus. Law § 349, including representing
21 that Affected Vehicles have characteristics, uses, benefits, and qualities which they
22 do not have; representing that Affected Vehicles are of a particular standard and
23 quality when they are not; advertising Affected Vehicles with the intent not to sell
24 them as advertised; and otherwise engaging in conduct likely to deceive.

25 481. The Automakers' actions as set forth above occurred in the conduct of
26 trade or commerce.

27 482. Because the Automakers' deception takes place in the context of
28 automobile safety, the deception affects the public interest. Further, the

1 Automakers' unlawful conduct constitutes unfair acts or practices that have the
2 capacity to deceive consumers, and that have a broad impact on consumers at
3 large.

4 483. The Automakers' conduct proximately caused injuries to Plaintiffs
5 and the other Class members.

6 484. Plaintiffs and the other Class members were injured as a result of the
7 Automakers' conduct in that Plaintiffs and the other Class members overpaid for
8 their Affected Vehicles and did not receive the benefit of their bargain, and their
9 Affected Vehicles have suffered a diminution in value. These injuries are the direct
10 and natural consequence of the Automakers' misrepresentations and omissions.

11 **TWENTY-SIXTH CAUSE OF ACTION**

12 **Violations of New York General Business Law § 350**
13 **(N.Y. Gen. Bus. Law § 350)**

14 485. Plaintiffs incorporate by reference all preceding allegations as though
15 fully set forth herein.

16 486. Plaintiffs bring this Count on behalf of the New York Class.

17 487. New York's General Business Law § 350 makes unlawful "[f]alse
18 advertising in the conduct of any business, trade or commerce[.]" False advertising
19 includes "advertising, including labeling, of a commodity ... if such advertising is
20 misleading in a material respect," taking into account "the extent to which the
21 advertising fails to reveal facts material in the light of ... representations [made]
22 with respect to the commodity...." N.Y. Gen. Bus. Law § 350-a.

23 488. The Automakers caused to be made or disseminated through New
24 York, through advertising, marketing, and other publications, statements that were
25 untrue or misleading, and which were known, or which by the exercise of
26 reasonable care should have been known to the Automakers, to be untrue and
27 misleading to consumers, including Plaintiffs and the other Class members.
28

1 494. Plaintiffs bring this Count on behalf of the New York Class.

2 495. The Automakers are and were at all relevant times merchants with
3 respect to motor vehicles.

4 496. A warranty that the Affected Vehicles were in merchantable condition
5 is implied by law in the instant transactions.

6 497. These vehicles and the Keyless Fobs in the Affected Vehicles, when
7 sold and at all times thereafter, were not in merchantable condition and are not fit
8 for the ordinary purpose for which they are used. Specifically, the Affected
9 Vehicles are inherently defective in that there are defects in the Keyless Fobs
10 which cause the Defect.

11 498. The Automakers were provided notice of these issues by numerous
12 complaints filed against them, including the instant Complaint, and by numerous
13 individual letters and communications sent by Plaintiffs and the Class.

14 499. As a direct and proximate result of the Automakers' breach of the
15 warranties of merchantability, Plaintiffs and the Class have been damaged in an
16 amount to be proven at trial.

17 **TWENTY-EIGHTH CAUSE OF ACTION**

18 **Fraudulent Concealment**
19 **(Based on New York Law)**

20 500. Plaintiffs incorporate by reference all preceding allegations as though
21 fully set forth herein.

22 501. Plaintiffs bring this Count on behalf of the New York Class.

23 502. The Automakers intentionally concealed the above-described material
24 safety and functionality information, or acted with reckless disregard for the truth,
25 and denied Plaintiffs and the other Class members information that is highly
26 relevant to their purchasing decision.

27 503. The Automakers further affirmatively misrepresented to Plaintiffs in
28 advertising and other forms of communication, including standard and uniform

1 material provided with each car, that the Affected Vehicles they were selling were
2 new, had no significant defects, and would perform and operate properly when
3 driven in normal usage.

4 504. The Automakers knew these representations were false when made.

5 505. The Affected Vehicles purchased or leased by Plaintiffs and the other
6 Class members were, in fact, defective, unsafe, and unreliable because the Affected
7 Vehicles contained faulty and defective Keyless Fobs, as alleged herein.

8 506. The Automakers had a duty to disclose that these Affected Vehicles
9 were defective, unsafe, and unreliable in that the Keyless Fobs caused the Defect,
10 because Plaintiff and the other Class members relied on the Automakers' material
11 representations that the Affected Vehicles they were purchasing were safe and free
12 from defects.

13 507. The aforementioned concealment was material because if it had been
14 disclosed, Plaintiffs and the other Class members would not have bought or leased
15 the Affected Vehicles, or would not have bought or leased those Vehicles at the
16 prices they paid.

17 508. The aforementioned representations were material because they were
18 facts that would typically be relied on by a person purchasing or leasing a new
19 motor vehicle. The Automakers knew or recklessly disregarded that their
20 representations were false because they knew that people had experienced the
21 Defect. The Automakers intentionally made the false statements in order to sell
22 Affected Vehicles.

23 509. Plaintiffs and the other Class members relied on the Automakers'
24 reputation – along with the Automakers' failure to disclose the faulty and defective
25 nature of the Keyless Fobs and the Automakers' affirmative assurance that their
26 Affected Vehicles were safe and reliable, and other similar false statements – in
27 purchasing or leasing the Affected Vehicles.

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1 510. As a result of their reliance, Plaintiffs and the other Class members
2 have been injured in an amount to be proven at trial, including, but not limited to,
3 their lost benefit of the bargain and overpayment at the time of purchase or lease
4 and/or the diminished value of their Affected Vehicles.

5 511. The Automakers' conduct was knowing, intentional, with malice,
6 demonstrated a complete lack of care, and was in reckless disregard for the rights
7 of Plaintiffs and the other Class members. Plaintiffs and the other Class members
8 are therefore entitled to an award of punitive damages.

9 **J. Claims Brought on Behalf of the Pennsylvania Class**

10 **TWENTY-NINTH CAUSE OF ACTION**

11 **Violations of the Unfair Trade Practices and Consumer Protection Law**
12 **(Pa. Stat. Ann. §§ 201-1, *et seq.*)**

13 512. Plaintiffs incorporate by reference all preceding allegations as though
14 fully set forth herein.

15 513. Plaintiffs bring this Count on behalf of the Pennsylvania Class.

16 514. The Pennsylvania Unfair Trade Practices and Consumer Protection
17 Law ("Pennsylvania CPL") prohibits unfair or deceptive acts or practices,
18 including: (i) "[r]epresenting that goods or services have ... characteristics,
19 [b]enefits or qualities that they do not have;" (ii) "[r]epresenting that goods or
20 services are of a particular standard, quality or grade ... if they are of another;"
21 (iii) "[a]dvertising goods or services with intent not to sell them as advertised;" and
22 (iv) "[e]ngaging in any other fraudulent or deceptive conduct which creates a
23 likelihood of confusion or misunderstanding." 73 P.S. § 201-2(4).

24 515. In the course of the Automakers' business, they willfully failed to
25 disclose and actively concealed the dangerous risk of the Keyless Fobs in Affected
26 Vehicles as described above. Accordingly, the Automakers engaged in unfair and
27 deceptive trade practices, including representing that Affected Vehicles have
28 characteristics, uses, benefits, and qualities which they do not have; representing

1 that Affected Vehicles are of a particular standard and quality when they are not;
2 advertising Affected Vehicles with the intent not to sell them as advertised; and
3 otherwise engaging in conduct likely to deceive. Further, the Automakers' acts and
4 practices described herein offend established public policy because the harm they
5 cause to consumers, motorists, and pedestrians outweighs any benefit associated
6 with such practices, and because the Automakers' fraudulently concealed the
7 defective nature of the Affected Vehicles from consumers.

8 516. The Automakers' actions as set forth above occurred in the conduct of
9 trade or commerce.

10 517. The Automakers' conduct proximately caused injuries to Plaintiffs
11 and the other Class members.

12 518. Plaintiffs and the other Class members were injured as a result of the
13 Automakers' conduct in that Plaintiffs and the other Class members overpaid for
14 their Affected Vehicles and did not receive the benefit of their bargain, and their
15 Affected Vehicles have suffered a diminution in value. These injuries are the direct
16 and natural consequence of the Automakers' misrepresentations and omissions.

17 **THIRTIETH CAUSE OF ACTION**

18 **Breach of Implied Warranty of Merchantability**
19 **(13 Pa. Stat. Ann. §2314)**

20 519. Plaintiffs incorporate by reference all preceding allegations as though
21 fully set forth herein.

22 520. Plaintiffs bring this Count on behalf of the Pennsylvania Class.

23 521. The Automakers are and were at all relevant times merchants with
24 respect to motor vehicles.

25 522. A warranty that the Affected Vehicles were in merchantable condition
26 is implied by law in the instant transactions.

27 523. These vehicles and the Keyless Fobs in the Affected Vehicles, when
28 sold and at all times thereafter, were not in merchantable condition and are not fit

1 for the ordinary purpose for which they are used. Specifically, the Affected
2 Vehicles are inherently defective in that there are defects in the Keyless Fobs
3 which cause the Defect.

4 524. The Automakers were provided notice of these issues by numerous
5 complaints filed against them, including the instant Complaint, and by numerous
6 individual letters and communications sent by Plaintiffs and the Class.

7 525. As a direct and proximate result of the Automakers' breach of the
8 warranties of merchantability, Plaintiffs and the Class have been damaged in an
9 amount to be proven at trial.

10 **THIRTY-FIRST CAUSE OF ACTION**

11 **Fraudulent Concealment**
12 **(Based on Pennsylvania Law)**

13 526. Plaintiffs incorporate by reference all preceding allegations as though
14 fully set forth herein.

15 527. Plaintiffs bring this Count on behalf of the Pennsylvania Class.

16 528. The Automakers intentionally concealed the above-described material
17 safety and functionality information, or acted with reckless disregard for the truth,
18 and denied Plaintiffs and the other Class members information that is highly
19 relevant to their purchasing decision.

20 529. The Automakers further affirmatively misrepresented to Plaintiffs in
21 advertising and other forms of communication, including standard and uniform
22 material provided with each car, that the Affected Vehicles they were selling were
23 new, had no significant defects, and would perform and operate properly when
24 driven in normal usage.

25 530. The Automakers knew these representations were false when made.

26 531. The Affected Vehicles purchased or leased by Plaintiffs and the other
27 Class members were, in fact, defective, unsafe, and unreliable because the Affected
28 Vehicles contained faulty and defective Keyless Fobs, as alleged herein.

1 532. The Automakers had a duty to disclose that these Affected Vehicles
2 were defective, unsafe, and unreliable in that the Keyless Fobs caused the Defect,
3 because Plaintiff and the other Class members relied on the Automakers' material
4 representations that the Affected Vehicles they were purchasing were safe and free
5 from defects.

6 533. The aforementioned concealment was material because if it had been
7 disclosed, Plaintiffs and the other Class members would not have bought or leased
8 the Affected Vehicles, or would not have bought or leased those Vehicles at the
9 prices they paid.

10 534. The aforementioned representations were material because they were
11 facts that would typically be relied on by a person purchasing or leasing a new
12 motor vehicle. The Automakers knew or recklessly disregarded that their
13 representations were false because they knew that people had experienced the
14 Defect. The Automakers intentionally made the false statements in order to sell
15 Affected Vehicles.

16 535. Plaintiffs and the other Class members relied on the Automakers'
17 reputation – along with the Automakers' failure to disclose the faulty and defective
18 nature of the Keyless Fobs and the Automakers' affirmative assurance that their
19 Affected Vehicles were safe and reliable, and other similar false statements – in
20 purchasing or leasing the Affected Vehicles.

21 536. As a result of their reliance, Plaintiffs and the other Class members
22 have been injured in an amount to be proven at trial, including, but not limited to,
23 their lost benefit of the bargain and overpayment at the time of purchase or lease
24 and/or the diminished value of their Affected Vehicles.

25 537. The Automakers' conduct was knowing, intentional, with malice,
26 demonstrated a complete lack of care, and was in reckless disregard for the rights
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1 of Plaintiffs and the other Class members. Plaintiffs and the other Class members
2 are therefore entitled to an award of punitive damages.

3 **PRAYER FOR RELIEF**

4 WHEREFORE, Plaintiffs, on behalf of themselves and the Class Members,
5 pray that the Court enter judgment against each of the Automakers, as follows:

6 a. An order certifying the proposed Nationwide Class and State Sub-
7 classes, designating Plaintiffs as named representatives of the relevant Class and/or
8 Sub-classes, and designating the undersigned as Class Counsel;

9 b. A declaration that the Defect in Affected Vehicles is defective;

10 c. A declaration that the Automakers are financially responsible for
11 notifying all Class Members about the defective nature of the Affected Vehicles
12 due to the Defect;

13 d. An order enjoining the Automakers from further deceptive
14 distribution, sales, and lease practices with respect to the Affected Vehicles, and to
15 permanently repair the Affected Vehicles so that they no longer possess the Defect;

16 e. An award to Plaintiffs and Class Members of compensatory,
17 exemplary, and statutory damages, including interest, in an amount to be proven at
18 trial (except under their CLRA claim);

19 f. A declaration that the Automakers must disgorge, for the benefit of
20 Plaintiffs and Class Members, all or part of the ill-gotten profits they received from
21 the sale or lease of the Affected Vehicles, or make full restitution to Plaintiffs and
22 Class Members;

23 g. An award of attorneys' fees and costs, as allowed by law;

24 h. An award of attorneys' fees and costs pursuant to Cal. Code Civ. P. §
25 1021.5;

26 i. An award of pre-judgment and post-judgment interest, as provided by
27 law;

28

1 j. An injunction under Rule 23(b)(2) barring the Automakers from
2 selling future vehicles with the Defect;

3 k. An injunction under Rule 23(b)(2) requiring the Automakers to
4 institute Auto-Off in all Affected Vehicles;

5 l. Leave to amend this Complaint to conform to the evidence produced
6 at trial; and

7 m. Such other relief as may be appropriate under the circumstances.

8 **DEMAND FOR JURY TRIAL**

9 Pursuant to Federal Rule of Civil Procedure 38(b), Plaintiffs demand a trial
10 by jury of any and all issues in this action so triable of right.

11 Dated: August 26, 2015

12 Respectfully submitted,

13
14 HAGENS BERMAN SOBOL SHAPIRO LLP

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