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UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

Case No. C09-05418

CARIN and EDWARD MILLIGAN, California residents, on behalf of themselves and all others similarly situated,

Plaintiffs,

v.

TOYOTA MOTOR SALES, U.S.A., INC., a California corporation and TOYOTA MOTOR NORTH AMERICA, INC., a New York corporation,

Defendants.

CLASS ACTION COMPLAINT FOR DAMAGES, INJUNCTIVE RELIEF AND RESTITUTION

1) Violation of California's Consumers Legal Remedies Act (*Cal. Civil Code §§ 1750 et seq.)*

2) Violation of California's Unfair Competition Law (Unlawful Business Practice *Cal. Bus. &Prof. Code §§* 17200 et. seq.)

3) Violation of California's Unfair Competition Law (Unfair Business Practice *Cal. Bus. &Prof. Code §§* 17200, et seq.) (Unfair Business Practice);

4) Violation of California's Unfair Competition Law Fraudulent Business Practices (Fraudulent Business Practice *Cal. Bus. &Prof. Code §§* 17200 et. seq.)

5) Unjust Enrichment

DEMAND FOR A JURY TRIAL

I. INTRODUCTION

1. Plaintiffs Carin and Edward Milligan ("Plaintiffs"), bring this action for themselves and on behalf of all similarly situated persons who purchased or leased RAV4 sport utility vehicles manufactured and sold by Toyota Motor North America, Inc., and Toyota Motor Sales, U.S.A., Inc. ("Toyota").

2. Toyota designed, manufactured, distributed, sold and leased RAV4 sport utility vehicles of model years 2001 to 2003 (the "RAV4s") to Plaintiffs and proposed Class Members.

3. At the time of sale or lease, the RAV4s contained a dangerous safety defect that causes the Engine Control Modules (or "ECMs") and/or automatic transmissions to fail prematurely.

4. Toyota knows that the RAV4s' ECMs and/or transmissions fail prematurely, and fail in a manner that threatens the safety of RAV4 drivers and those on the road with them. Nevertheless, Toyota has actively concealed and failed to disclose this defect to Plaintiffs and the proposed Class Members at the time of purchase or lease and thereafter.

5. Despite notice of the defect from numerous customer complaints, Toyota has not recalled the RAV4s to repair the safety defect, has not offered its customers a suitable repair or replacement free of charge, and has not offered to reimburse RAV4 owners and leaseholders who incurred costs relating to transmission repair or replacement.

6. As a result of the defect in the RAV4s' ECMs and/or transmissions, Plaintiffs and the Members of the proposed Class have been exposed to dangerous driving conditions and have suffered damages.

II. PARTIES

A. Plaintiffs

7. Plaintiffs Carin and Ed Milligan are California citizens who reside in Alameda County, California. The Milligans purchased a new Toyota RAV4 from the Dublin, California Toyota dealership in 2003. The Milligans had previously owned Toyota vehicles. The vehicle warranty covered defects manifesting within 100,000 miles or six years. Carin

Milligan is the primary driver of the RAV4 and typically commutes to and from the Milligan home in Pleasanton, California to Palo Alto, California five times per week.

8. On November 4, 2008, Carin was commuting home from work when the RAV4 experienced severe forward and backward movement as the car's automatic transmission attempted to shift from second gear to third gear. This occurred for the first time as Carin was attempting to drive onto the freeway from an on-ramp. The vehicle wouldn't accelerate and the spasmodic motion of the RAV4 was so severe she feared being struck by another vehicle and she pulled off the road. On or around November 5, 2008, Carin took the RAV4 to the Dublin Toyota dealership where she had purchased the vehicle. The dealership diagnosed the problem as "harsh engagement and slipping from 2-3rd" and recommended replacement of the ECM and transmission. Although the vehicle was within the temporal limit on the warranty, the RAV4 had 106,467 miles on it – that is 6,467 miles over the warranty's 100,000 mile limit – therefore the Milligans had to pay for the repairs.

9. The dealership advised the Milligans that Toyota no longer manufactured either the ECM or the transmission for their RAV4 and as a result they would need to install used or remanufactured parts. The dealership installed a remanufactured transmission in an attempt to address the problem. Unfortunately, the first remanufactured transmission that the dealer installed in the Milligan's RAV4 was "defective – has internal malfunction." As a result, the dealership had to order and install a second remanufactured transmission before the Milligans had even picked up the RAV4. The Milligans were charged and paid $3,010.31 for the second remanufactured ECM and transmission. The remanufactured ECM and transmission came with a one-year limited warranty.

10. On or about December 2008, and continuing sporadically through the present day the "new" transmission started experiencing harsh shifting, causing the vehicle to jerk spasmodically, once again causing Carin to fear for her own safety and that of other drivers near her. On November 10, 2009, the Milligans took the RAV4 back to Dublin Toyota for repair. First the Milligans were advised that Toyota couldn't duplicate the complaint, then

were advised Toyota did duplicate the problem. Toyota technicians were unable to ascertain the cause of the malfunction, but did offer to replace the transmission.

B. Defendants

11. Defendant Toyota Motor Sales, U.S.A., Inc. ("TMS"), is the sales, distribution, and marketing unit for Toyota Motor's Toyota, Lexus, and Scion automobile brands. TMS is incorporated and has its principal place of business in California. TMS markets, sells and leases RAV4s to consumers in California and throughout the United States.

12. Defendant Toyota North America, Inc. ("TNA"), is the holding company for all of Toyota Motor's North American operations, including sales, engineering, and manufacturing. TNA also oversees functions relating to government and regulatory affairs, advertising, corporate communications, and investor relations. TNA is headquartered in New York and is involved in the marketing, sale and lease of RAV4s to consumers in California and throughout the United States.

III. JURISDICTION

13. This is a proposed class action.

14. Members of the proposed Plaintiffs' Class are citizens of California and the United States, including states different from the home states of Toyota.

15. On information and belief, the aggregate claims of individual Class Members exceed $5,000,000, exclusive of interest and costs.

16. Jurisdiction is proper in this Court pursuant to 28 U.S.C. § 1332(d).

IV. VENUE

17. Toyota, through their business of distributing, selling and leasing the RAV4s, has established sufficient contacts in this district such that they are subject to personal jurisdiction here. Toyota is deemed to reside in this district pursuant to 28 U.S.C. § 1391(c).

18. In addition, a substantial part of the events or omissions giving rise to these claims and a substantial part of the property that is the subject of this action are in this district.

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

V. APPLICABLE LAW

20. California state law applies to all claims in this action.

VI. FACTUAL ALLEGATIONS

21. For years, Toyota has designed, manufactured, distributed, sold and leased the RAV4s. Upon information and belief, it has sold – directly or indirectly through dealers and other retail outlets – hundreds of thousands of RAV4s in California and nationwide.

22. The RAV4s contain a defect that causes the ECMs and/or transmissions to experience harsh shifting which manifests while the vehicle is being driven, often at high speeds, and causes the vehicles to jerk violently, often moving forward or backwards.

23. Toyota is aware of this defect because it has issued at least two technical service bulletins ("TSBs") to its dealers describing this defect. In the March 15, 2006 TSB, Toyota admitted that the 2001-2003 RAV4s equipped with automatic transmissions suffered from a condition described as "harsh shift" caused by the Engine Control Module ("ECM"). The TSB also indicates that [i]mprovements have been made to the [ECM] . . . manufacturing process to reduce the possibility of this condition occurring." Finally, the TSB acknowledges that replacing the ECM may not solve the problem. In that case, the "automatic transaxle assembly may also require replacement." Toyota never issued a general recall or otherwise notified consumers of the defect.

24. The RAV4 defects present a clear and unassailable safety hazard, exposing the vehicle occupants to significant risk of injury. Regardless of any particular warranty period. Toyota has an obligation and duty to advise the public of the potential danger, and take appropriate action to remedy the defects. Plaintiffs and objective reasonable consumers expected that Toyota would disclosed a known safety defect such as this one.

25. Hundreds, if not thousands, of purchasers and lessees of the RAV4s have experienced problems with the defective RAV4 ECMs and/or transmissions. Complaints filed by consumers with the NHTSA and posted on the Internet demonstrate that the defect is widespread and dangerous, and that it manifests without warning. The complaints also

demonstrate Toyota's awareness of the defect and how potentially dangerous the defective condition is:

- NHTSA Complaint: "... When starting from a stopped position or getting onto a freeway the car will lose its power. The transmission slips, jerks, and engine speeds up without car property accelerating. Very dangerous situation because you cannot merge with traffic, can't get out of the way of other vehicles once the car enters an intersections, or could get rear ended by other vehicles..."[1]

- NHTSA Complaint: "2001 Toyota RAV4 has transmission slippage/harsh shifting...if it happens at speed, there will be death/injury incurred...Toyota issued a technical service bulletin TC002-06 on March 3, 2006 advising service managers to replace ECM/Transmissions "only if customer complains." This is a devious way of avoiding an outright notification/recall...help owners like me who are endangering their families/themselves & the general public on our roads..."

- NHTSA Complaint: "Somewhere around the later part of June 2009, my car began hesitating...Several times my family and I were endangered because someone almost hit my vehicle from the back because of the hesitation. As of today, I have not been successful at getting Toyota to offer any assistance in getting this repair[ed]."

- NHTSA Complaint: "I have not been injured, but believe the issue with my transmission is not only a manufacturer's defect, but poses a safety issue depending on the severity...There are hundreds of others experiencing this same issue with their Toyota RAV4s that were produced between 2001-2003. A defective computer part is causing damage to the transmission, ultimately destroying them...You never know how severe the lurching and skipping of the transmission will be. It can come out of nowhere and that certainly creates the potential for accidents..."

- NHTSA Complaint: "My '01 Toyota RAV4 began experience[ing] shifting problems in Aug 07. It would not shift properly, and would suddenly slam into gear...due to this problem, it made it very dangerous to merge onto highways. As

[1] Posted on the NHTSA website were found at: http:// www-odi.nhtsa.dot.gov/complaints/complaintresults.cfm?start=1&SearchType=Drill, last accessed September 18, 2009.

I'm trying to accelerate and the car won't go beyond 1st gear, and then once I'm running, it slams into gear, almost causing me to hit the car in front of me…"

- NHTSA Complaint: "I own a 2002 Toyota RAV4. On August 22[], 2009 I noticed that when I would come to a complete stop, it would take a while for the car to accelerate and pick up speed. Once it did get moving, the car would jerk forward and eventually pick up speed. Everytime [sic] I would come to a stoplight, I would be deathly afraid that my car wouldn't start up again and that I would be hit from behind. When driving on the highway, it would slow down all of a sudden and then jerk violently forward. This happened everytime [sic] I drove…"

- NHTSA Complaint: "During a recent rain I was transporting my grandkids from school when I noticed that my car seemed to slip and jolt forward each time I accelerated. Each time the car would hesitate and the slipping and jolting was significant. I was afraid that my car would stall in traffic. I was very glad to get my grandkids home safely…I also called Toyota headquarters and was told that there was nothing they could do for me…I am retired and cannot afford $4000 for a new transmission at this time."

- NHTSA Complaint: "2002 RAV4 that I will need to replace the transmission and ECM on – despite the fact that this is a known issue with these cars…Although there were no injuries associated with this there very well could have been, as transmission went out as I was merging onto a very busy interstate highway…"

- NHTSA Complaint: "I have a 2002 RAV4 and the transmission is slipping gears. The car stalls upon takeoff and it is very dangerous. I pulled out into traffic with my son in the car and the car wouldn't take off. We were almost hit in the side."

- NHTSA Complaint: "2002 RAV4 that I will need to replace the transmission and ECM on – despite the fact that this is a known issue with these cars…Although there were no injuries associated with this there very well could have been, as transmission went out as I was merging onto a very busy interstate highway…"

- NHTSA Complaint: "I have a 2002 RAV4 and the transmission is slipping gears. The car stalls upon takeoff and it is very dangerous. I pulled out into traffic with my son in the

car and the car wouldn't take off. We were almost hit in the side."

- Internet Posting: "I have had the same issues with the ECU as you all manifesting with the transmission suddenly slipping, literally an overnight phenomenon…there are some massive safety issues related to this situation - my wife & two young children were nearly rammed by other vehicles several times at traffic lights because of transmission suddenly slipping…"

- Internet Posting: "…I started having transmission problems. I took it to the dealer and they charged me $150 to check it out. They said I needed a new computer ($1,300). I then took it to a transmission specialist to check out ($85.00). He said it was not my transmission but the computer (EMC)… Being a single mother with two children and on a very tight budget, this is my only transportation, which I do not consider safe until this gets fixed. I was having this shifting problem in a very busy intersection and was very upset with the fact that Toyota would not stand behind their product and fix the EMC at no cost to the consumer."[2]

- Internet Posting: "…[W]e've experience[d] the jerking mentioned ... Exactly the same for my model 2003 RAV4… There were occasions where me and my wife almost got hit due to the jerking. Basically, the jerking slows you down and [you are] unable to pick up speed in time. When we were about to turn, we went so slow that almost got hit by another car."[3]

- Internet Posting: "I believe that Toyota is responsible for this because I agree with some of the reports I've read, this is a safety issue. When I was driving on the highway, [m]y car jerked and I couldn't pick up any speed. I, myself, almost got into an accident with an infant inside the car due to this problem…"[4]

- Internet Posting: "Our 2002 RAV4 is doing the same shifting or not shifting thing. It is getting scary for my daughter because she worries about pulling out into traffic and getting t-boned and killed because the transmission doesn't shift. It is

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[2] Posted on June 26, 2008 at www.motorsm.com/complaints/2008-07.asp, last accessed November 6, 2009.

[3] Posted on August 1, 2008 at http://www.carcomplaints.com/Toyota/RAV4/2002/transmission/jerking_and_hesitating.shtml, last accessed November 6, 2009.

[4] Posted on June 28, 2008 at http://www.carcomplaints.com/Toyota/RAV4/2002/transmission/problems_shifting.shtml, last accessed November 6, 2009.

> more than [a]n inconvenience, it is a safety issue and needs some attention from Toyota..."[5]

26. Customers have reported the defect in the RAV4s' ECMs and/or transmissions to Toyota directly and through its dealers. Toyota is fully aware of the defect in the RAV4s. Despite this, Toyota has actively concealed the existence and nature of the defect from Plaintiffs and the Members of the Class at the time of purchase or lease and thereafter. Specifically, Toyota has:

a. Failed to disclose, at and after the time of purchase or lease and repair, any and all known material defects or material nonconformity of the RAV4s, including the ECMs and/or transmissions of the RAV4s;

b. Failed to disclose at the time of purchase or lease that the RAV4s, including the ECMs and/or transmissions of the RAV4s, were not in good working order, were defective and were not fit for their intended purpose; and

c. Failed to disclose or actively concealed the fact that the RAV4s' ECMs and/or transmissions were defective, despite the fact that Toyota learned of such defects through consumer complaints as early as 2003, if not before.

27. Toyota has caused Plaintiffs and proposed Members of the Class to expend money at its dealerships to repair or replace the RAV4s' ECMs and/or transmissions, despite Toyota's knowledge of the defect.

28. Where Toyota replaced the RAV4s' ECMs and/or transmissions pursuant to warranty provisions, Toyota utilized equally defective ECMs and/or transmissions such that the defect was not corrected even though Toyota informed consumers that the defect was corrected.

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[5] Posted on June 10, 2007 at http://www.carcomplaints.com/Toyota/RAV4/2002/transmission/problems_shifting.shtml, last accessed November 6, 2009.

29. Toyota has not recalled the RAV4s to repair the defect, has not offered to its customers a suitable repair or replacement free of charge, and has not offered to reimburse RAV4 owners and leaseholders who incurred costs relating to transmission repairs.

VII. TOLLING OF THE STATUTE OF LIMITATIONS

30. Since the defects in the design or manufacture of the RAV4s and their ECMs and/or transmissions cannot be detected until the defect manifests, Plaintiffs and the Class were not reasonably able to discover the problem until long after purchasing or leasing the RAV4s, despite their exercise of due diligence.

31. Plaintiffs and the Class Members had no realistic ability to discern that the ECM and/or transmission was defective until it failed. In addition, despite their due diligence, Plaintiffs and the Class Members could not reasonably have been expected to learn or discover that they were deceived and that material information concerning the ECM and/or transmission was concealed from them, until manifestation of the failure. Therefore, the discovery rule is applicable to the claims asserted by Plaintiffs and the Class Members.

32. Upon information and belief, Toyota has known of the defect in the RAV4s and their ECMs and/or transmissions since at least 2003, if not earlier, and has concealed from or failed to alert owners and lessees of the RAV4s of the defective nature of the ECMs and/or transmissions.

33. Any applicable statutes of limitation have therefore been tolled by Toyota's concealment and denial of the facts alleged here. Toyota is further estopped from relying on any statutes of limitation because of its concealment of the defective nature of the RAV4s and their ECMs and/or transmissions.

VIII. CLASS ACTION ALLEGATIONS

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

35. The Class is defined as:

> All persons in the United States who purchased or leased a Toyota RAV4 for the model years 2001 - 2003. Excluded from the Class are Defendants, any entity in which Defendants have a controlling interest or which has a controlling interest of Defendants and Defendants' legal representatives, assigns and successors. Also excluded are the judge to whom this case is assigned and any member of the judge's immediate family.

Claims for personal injury are specifically excluded from the Class.

36. Numerosity: Although the exact number of Class Members is uncertain and can only be ascertained through appropriate discovery, the number is in the thousands (if not tens of thousands) and great enough such that joinder is impracticable. The disposition of the claims of these Class Members in a single class action will provide substantial benefits to all parties and to the Court.

37. Typicality: The claims of the representative Plaintiffs are typical of the claims of the Class in that the representative Plaintiffs, like all Class Members, own a RAV4 designed and manufactured by Toyota in which the ECMs and/or transmissions have failed or will fail prematurely. The representative Plaintiffs, like all Class Members, have been damaged by Toyota's misconduct in that they have incurred or will incur the cost of replacing the ECMs and/or transmissions or repairing damage caused by the defective RAV4s and their ECMs and/or transmissions. Furthermore, the factual bases of Toyota's misconduct are common to all Class Members and represent a common thread of misconduct resulting in injury to all Members of the Class.

38. Commonality: There are numerous questions of law and fact common to Plaintiffs and the Class which predominate over any questions affecting only individual Class Members. These common legal and factual issues include the following:

a. Whether Toyota knew or should have known of the inherent design or manufacturing defect in its RAV4s;

b. Whether the RAV4s and ECMs and/or transmissions manufactured by Toyota are defectively designed or manufactured such that they are not suitable for their intended use;

c. Whether Toyota fraudulently concealed from or failed to disclose to Plaintiffs and the Class the inherent problems with its RAV4s;

d. Whether Toyota had a duty to Plaintiffs and the Class to disclose the inherent problems with its RAV4s;

e. Whether the facts concealed or not disclosed by Toyota to Plaintiffs and the Class are material;

f. Whether as a result of Toyota's concealment of or failure to disclose material facts, Plaintiffs and the Class acted to their detriment by purchasing RAV4s manufactured by Toyota;

g. Whether Toyota failed to adequately warn Plaintiffs and the Class regarding the limitations of its RAV4s;

h. Whether Toyota engaged in unfair competition or unfair deceptive acts or practices when it concealed the limitations and failed to warn Plaintiffs and proposed Class Members of the defects in its RAV4s;

i. Whether Toyota's conduct in marketing, selling and leasing its RAV4s constitutes a violation of the Consumers Legal Remedies Act, California Civil Code section 1750 et seq.;

j. Whether Toyota's conduct in marketing, selling and leasing its RAV4s constitutes a violation of the Unfair Business Practices Act, California Business & Professions Code section 17200 et seq.;

k. Whether Toyota should be declared financially responsible for notifying all Class Members of the problems with its RAV4s and for the costs and expenses of repair and replacement of RAV4s and their ECMs and/or transmissions;

l. Whether Plaintiffs and the Class are entitled to compensatory, exemplary and statutory damages and the amount of such damages as a result of the defect;

m. Whether Plaintiffs and the Class are entitled to replacement of their defective ECMs and/or transmissions with non-defective ECMs and/or transmissions; and

n. Whether Toyota should be ordered to disgorge, for the benefit of the Class, all or part of the ill-gotten profits it received from the sale of defective RAV4s and ECMs and/or transmissions, or to make full restitution to Plaintiffs and the Members of the Class.

39. Adequate Representation: Plaintiffs will fairly and adequately protect the interests of the Class. Plaintiffs have retained counsel with substantial experience in prosecuting consumer class actions - specifically actions involving defective products. Plaintiffs and their counsel are committed to prosecuting this action vigorously on behalf of the Class and have the financial resources to do so. Neither Plaintiffs nor their counsel have any interests adverse to those of the Class.

40. Predominance and Superiority: Plaintiffs and the Members of the Class have all suffered and will continue to suffer harm and damages as a result of Toyota's unlawful and wrongful conduct. A class action is superior to other available methods for the fair and efficient adjudication of the controversy. Absent a class action, most Members of the Class would likely find the cost of litigating their claims prohibitively high and would therefore have no effective remedy at law. Because of the relatively small size of the individual Class Member's claims, it is likely that only a few Class Members could afford to seek legal redress for Toyota's misconduct. Absent a class action, Class Members will continue to incur damages and Toyota's misconduct will continue without remedy. Class treatment of common questions of law and fact would also be superior to multiple individual actions or piecemeal litigation in that class treatment will conserve the resources of the courts and the litigants, and will promote consistency and efficiency of adjudication.

IX. FIRST CLAIM FOR RELIEF
(Violation of California's Consumers Legal Remedies Act, California Civil Code Section 1750, *et seq.)*

41. Plaintiffs hereby incorporate by reference the allegations contained in the preceding paragraphs of this Complaint.

42. Defendant is a "person" as defined by Civil Code section 1761(c).

43. Plaintiffs and Class Members are consumers who purchased or leased the RAV4s.

44. By failing to disclose and concealing the ECM and/or transmission defect, Toyota violated Civil Code section 1770(a), as it represented that its RAV4s and ECMs and/or transmissions in its RAV4s had characteristics and benefits that they do not have, and represented that its RAV4s and ECMs and/or transmissions in its RAV4s were of a particular standard, quality or grade when they were of another. (*See* Civ. Code §§ I 770(a)(5, 7).)

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

46. Toyota knew that its RAV4s and ECMs and/or transmissions were defectively designed or manufactured, would fail prematurely and were not suitable for their intended use.

47. Toyota was under a duty to Plaintiffs and the Class to disclose the defective nature of the ECMs and/or transmissions because:

a. Toyota was in a superior position to know the true state of facts about the safety defect in the ECMs and/or transmissions;

b. Plaintiffs and the Class Members could not reasonably have been expected to learn or discover that the ECMs and/or transmissions had a dangerous safety defect until manifestation of the failure; and

c. Toyota knew that Plaintiffs and the Class Members could not reasonably have been expected to learn or discover the safety defect.

48. In failing to disclose the ECM and/or transmission defect, Toyota knowingly and intentionally concealed material facts and breached its duty not to do so.

49. The facts concealed or not disclosed by Toyota to Plaintiffs and the Class are material in that a reasonable consumer would have considered them to be important in deciding whether to purchase Toyota's RAV4s or pay a lesser price. Had Plaintiffs and the Class known of the defective nature of the ECMs and/or transmissions, they would not have purchased the RAV4s or would have paid less for them.

50. Plaintiffs and the Class reasonably expected the ECMs and/or transmissions to function properly for the life of their vehicles. That is the reasonable and objective consumer expectation for vehicle ECMs and/or transmissions.

51. As a direct and proximate result of Toyota's unfair or deceptive acts or practices, Plaintiffs and the Class have suffered and will continue to suffer actual damages.

52. Plaintiffs and the Class are entitled to injunctive relief.

53. Plaintiffs have provided Toyota with notice of its alleged violations of the CLRA pursuant to Civil Code section 1782(a). If, within 30 days of the date of the notification letter, Toyota fails to provide appropriate relief for its violation of the CLRA, Plaintiffs will amend this Complaint to seek compensatory, monetary, and punitive damages, in addition to equitable and injunctive relief.

X. SECOND CLAIM FOR RELIEF
(Unlawful Business Practices California Business & Professions Code Section 17200 *et. seq.)*

54. Plaintiffs hereby incorporate by reference the allegations contained in the preceding paragraphs of this Complaint.

55. California Business & Professions Code section 17200 prohibits acts of "unfair competition," which includes any "unlawful" business practices,

56. Toyota engaged in "unlawful" business practices by knowingly and intentionally failing to disclose to Plaintiffs and the Class the defects inherent in the ECM and /or transmission despite the obvious safety concern, failing to repair, replace defective ECM

and/or transmissions, and/or failing to reimburse Plaintiffs and the Class members who did pay for such repairs.

57. Toyota and the Class reasonably expected the ECMs and/or transmissions to function properly for the life of their vehicles. This is the reasonable and objective consumer expectation for vehicle ECMs and/or transmissions.

58. Toyota knew its RAV4s and ECMs and/or transmissions were defectively designed or manufactured, would fail prematurely and were not suitable for their intended use.

59. In failing to disclose the defective ECMs and/or transmissions, Toyota knowingly and intentionally concealed material facts and breached their duty to not conceal material facts.

60. Toyota engaged in unlawful business acts and practices.

61. Toyota's "unlawful" acts or practices occurred repeatedly in Toyota's trade or business, and were capable of deceiving a substantial portion of the purchasing public.

62. As a direct and proximate result of Toyota's unlawful" and deceptive practices, Plaintiffs and the Class have suffered and will continue to suffer actual damages.

63. Toyota has been unjustly enriched and should be required to make restitution to Plaintiff and the Class pursuant to sections 17203 and 17204 of the Business & Professions Code.

XI. THIRD CLAIM FOR RELIEF
(Unfair Business Practices,
California Business & Professions Code Section 17200, *et. seq.*

64. Plaintiffs hereby incorporate by reference the allegations contained in the preceding paragraphs of this Complaint.

65. California Business & Professions Code section 17200 prohibits acts of "unfair competition," which includes any "unfair" business practices.

66. Toyota engaged in "unfair" business practices by knowingly and intentionally failing to disclose to Plaintiffs and the Class the defects inherent in the ECM and/or transmission despite the obvious safety concern, failing to repair, replace defective ECM

and/or transmissions, and/or failing to reimburse Plaintiffs and the Class members who did pay for such repairs.

67. Plaintiffs and the Class reasonably expected the ECMs and/or transmissions to function properly for the life of their vehicles. This is the reasonable and objective consumer expectation for vehicle ECMs and/or transmissions.

68. Toyota knew its RAV4s and ECMs and/or transmissions were defectively designed or manufactured, would fail prematurely and were not suitable for their intended use.

69. In failing to disclose the defective ECMs and/or transmissions, Toyota knowingly and intentionally concealed material facts and breached their duty to not conceal material facts.

70. Toyota engaged in "unfair" competition business acts and practices.

71. Toyota's "unfair" acts or practices occurred repeatedly in Toyota's trade or business, and were capable of deceiving a substantial portion of the purchasing public.

72. As a direct and proximate result of Toyota's "unfair" and deceptive practices, Plaintiffs and the Class have suffered and will continue to suffer actual damages.

73. Toyota has been unjustly enriched and should be required to make restitution to Plaintiff and the Class pursuant to sections 17203 and 17204 of the Business & Professions Code.

XII. FOURTH CLAIM FOR RELIEF
(Fraudulent Business Practices, California Business & Professions Code Section 17200, *et. seq*

74. Plaintiffs hereby incorporate by reference the allegations contained in the preceding paragraphs of this Complaint.

75. California Business & Professions Code section 17200 prohibits "unfair competition" which includes "fraudulent" business practices, or acts.

76. Toyota engaged in "fraudulent" business practices by knowingly and intentionally failing to disclose to Plaintiffs and the Class the defects inherent in the ECM and/or transmission despite the obvious safety concern, failing to repair, replace defective

ECMs and/or transmissions, accepting money via its authorized dealers and/or directly for parts needed to repair defective ECMs and/or transmission notwithstanding Defendant's knowledge the ECMs and transmissions were inherently defective, and/or failing to reimburse Plaintiffs and the Class members who did pay for such repairs.

77. Plaintiffs and the Class reasonably expected the ECMs and/or transmissions to function properly for the life of their vehicles. This is the reasonable and objective consumer expectation for vehicle ECMs and/or transmissions.

78. Toyota knew its RAV4s containing ECMs and/or transmissions were defectively designed or manufactured would fail prematurely and were not suitable for their intended use.

79. In failing to disclose the defective ECMs and/or transmissions, Toyota knowingly and intentionally concealed material facts and breached their duty to not conceal material facts.

80. Toyota further engaged in "fraudulent" business acts and practices by failing to disclose to the Plaintiffs and the Class members Toyota's knowledge concerning the defective ECMs and transmissions.

81. Toyota's "fraudulent" acts or practices occurred repeatedly in Toyota's trade or business, and were capable of deceiving a substantial portion of the purchasing public.

82. As a direct and proximate result of Toyota's "fraudulent" practices, Plaintiffs and the Class have suffered and will continue to suffer actual damages.

83. Toyota has been unjustly enriched and should be required to make restitution to Plaintiff and the Class pursuant to sections 17203 and 17204 of the Business & Professions Code.

XIII. FIFTH CLAIM FOR RELIEF
(Unjust Enrichment)

84. Plaintiffs hereby incorporate by reference the allegations contained in the preceding paragraphs of this Complaint.

85. Plaintiffs and Class Members did not receive RAV4s that were free of defects, fit for the ordinary purpose for which they were to be used and safe for that purpose.

86. Plaintiffs and the Class reasonably expected the ECMs and/or transmissions to function properly for the life of the vehicles.

87. Toyota and its dealers received payment from Plaintiffs and Class Members for the purchase and lease of its RAV4s and for repair of the ECMs and/or transmissions, and wrongfully accepted and retained these benefits to the detriment of Plaintiffs and Class Members.

88. Toyota's enrichment at the expense of Plaintiffs and Class Members was unjust.

89. As a direct and proximate result of Toyota's wrongful conduct, Plaintiffs and the proposed Class are entitled to restitution from Toyota and institution of a constructive trust disgorging all profits, benefits and other compensation obtained by Toyota, plus attorneys' fees, costs and interest.

XIV. RELIEF REQUIRED

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

A. An order certifying the proposed Plaintiff Class, designating Plaintiffs as named representatives of the Class and designating the undersigned as Class Counsel;

B. A declaration that Toyota is financially responsible for notifying all Class Members of the problems with its RAV4s' ECMs and/or transmissions;

C. An order enjoining Toyota from further deceptive distribution, sales and lease practices with respect to its RAV4s, and to remove and replace Plaintiffs' and Class Members' ECMs and/or transmissions with a suitable alternative product;

D. An award to Plaintiffs and the Class of compensatory, exemplary and statutory damages, including interest, in an amount to be proven at trial, except that for now, Plaintiffs seek only equitable and injunctive relief with respect to their claims under the California's Consumers Legal Remedies Act, California Civil Code section 1750 *et seq.*;

E. A declaration that Toyota must disgorge, for the benefit of the Class, all or part of the ill-gotten profits it received from the sale or lease of its RAV4s, or to make full restitution to Plaintiffs and the Members of the Class;

F. An award of attorneys' fees and costs, as allowed by law;

G. An award of pre-judgment and post-judgment interest, as provided by law;

H. Leave to amend the Complaint to conform to the evidence produced at trial; and

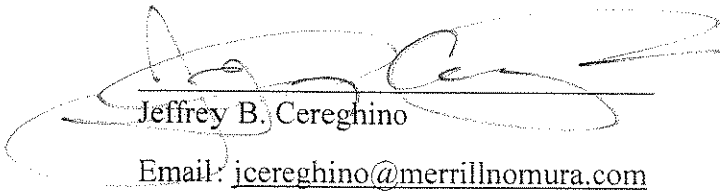
I. Such other or further relief as may be appropriate under the circumstances.

XV. DEMAND FOR JURY TRIAL

Pursuant to Fed. R. Civ. P. 38(b), Plaintiffs demand a trial by jury of any and all issues in this action so triable of right.

Dated: November 16, 2009

MERRILL, NOMURA & MOLINEUX



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