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8 Attorneys for Plaintiff
9 Justin Bauer, and all others similarly situated

10
11 CALIFORNIA SUPERIOR COURT
12 COUNTY OF LOS ANGELES

13 JUSTIN BAUER, on behalf of himself and
14 all others similarly situated,

15 Plaintiff,

16 vs.

17 TOYOTA MOTOR SALES USA, INC., and
18 DOES 1-10, inclusive,

19 Defendants.

No. _____

CLASS ACTION

**COMPLAINT FOR DAMAGES AND
EQUITABLE RELIEF**

JURY TRIAL DEMANDED

1 Plaintiff Justin Bauer brings this action on behalf of himself and all others
2 similarly situated, pursuant to Code of Civil Procedure Section 382 and Civil Code
3 section 1781.

4
5 **PARTIES**

6 1. Plaintiff Justin Bauer is a resident of Riverside, California, County of Los
7 Angeles, who owns a 2006 Scion xB. Mr. Bauer purchased his xB new, in California,
8 from an authorized dealer.

9
10 2. Defendant Toyota Motor Sales, USA, Inc., ("TMS") is a California
11 Corporation with its principal place of business and headquarters in Torrance, in the
12 County of Los Angeles. Plaintiff is informed and believes that TMS is the sales and
13 marketing arm for Toyota U.S., which oversees sales and other operations in the United
14 States, and that "Scion" is a registered marque of Toyota Motor Sales. Plaintiff is also
15 informed and believes that TMS regional offices coordinate Toyota and Scion vehicle
16 sales, parts, and service, for dealers in approximately 10 regional areas, with
17 approximately two additional regions being served by private distributors. Of the
18 approximately 1,212 Toyota dealers located throughout the United States, Plaintiff is
19 informed and believes that approximately 854 are authorized to sell Scion vehicles.

20
21 3. Plaintiff does not know the true names or capacities of the persons sued as
22 Defendants Does 1 through 10, and therefore sue those Defendants by fictitious names.
23 Plaintiff believes that each of the Doe Defendants was in some manner legally
24 responsible for the wrongdoing alleged in this Complaint. Plaintiff will amend this
25 Complaint to set forth the true names and capacities of these Defendants when they
26 have been ascertained, along with appropriate additional allegations as may be
27 required.

1 8. Plaintiff is informed and believes that Class Members began complaining
2 about cracked windshields shortly after the first Scion xBs were sold, and that their
3 complaints are remarkably consistent: Again, Scion xB windshields crack for no
4 apparent reason or under circumstances that would not cause non-defective
5 windshields to crack. For example, the following consumer complaints were taken
6 directly from a website maintained by the National Highway Traffic Safety
7 Administration ("NHTSA") (grammatical and typographical errors, as well as capital
8 letters, in original):

- 9
- 10 • THE CONTACT OWNS A 2006 SCION XB WITH A CURRENT
11 ODOMETER READING OF 7,000 MILES. THE CONTACT
12 STATED THAT WHILE THE VEHICLE WAS PARKED THE
13 CONTACT CAME OUT AND FOUND THAT THE WINDSHIELD
14 WAS CRACKED FROM THE BOTTOM WHERE THE
15 WINDSHIELD WIPERS REST ON THE PASSENGER'S SIDE
16 ABOUT 12 INCHES TO THE TOP DRIVERS SIDE. THE
17 CONTACT STATED THAT NOTHING HIT THE WINDSHIELD TO
18 CAUSE THIS PROBLEM. THE FAILURE MILEAGE WAS 6,000.
 - 19 • WINDSHIELD CRACKED FOR NO REASON. I PULLED UP IN
20 THE GARAGE NOTICE THIS 15 INCHES CRACK COMING
21 FROM LOWER PASSENGER SIDE WINDOW. NO IMPACT IS
22 VISIBLE TO CAUSE THE CRACK. I CALLED THE DEALERSHIP
23 IN LANCASTER THEY TOLD ME IT WAS A ROCK THAT
24 CAUSES IT, I ADVISED TO LOOK IN TO A POSSIBLE SAFETY
25 PROBLEM ON THE GLASS OR DESIGN THEY SAID NEVER
26 HEARD OF IT BEFORE SO I SAID TO DO A SEARCH IN THE
27 INTERNET. I DON'T MIND REPLACING IT BUT NOT EVERY
28 FEW WEEKS. LIKE OTHERS DID. SOMEONE NEED TO LOOK
IN TO THIS POSSIBLE SAFETY PROBLEM WITH OUT BEING
THROWN OUT.
 - THE CONTACT STATED THAT THE WINDSHIELD CRACKED
WHILE SITTING AT A STOP SIGN. THE WEATHER WAS
SUNNY WITH TEMPERATURE IN LOW 30'S. THE CONTACT
STATED THAT THE CRACK STARTED IN THE LOWER DRIVER
SIDE OF THE WINDSHIELD AND CONTINUED TO THE
PASSENGER SIDE OF THE VEHICLE. HE CONTACTED THE
MANUFACTURER AND FILED A COMPLAINT, # 200701301072.
 - SCION XB SITTING IN ATLANTA AIRPORT PARKING LOT.
LEFT FOR 12 DAYS, WINDSHIELD NOTED AS CRACKED UPON
RETURN. VEHICLE WAS NOT/HAD NOT MOVED WHEN THE
WINDSHIELD CRACKED.
 - I OWN A 2006 SCION XB AND I BELIEVE THERE IS
SOMETHING WRONG WITH THE STRUCTURE OF THE

1 VEHICLE. I HAD TO REPLACE THE WINDSHIELD OF THE CAR
2 AFTER A 6 INCH CRACK APPEARED IN IT INSTANTLY AND
3 THEN DEVELOPED INTO A 12 INCH CRACK BY THE NEXT
4 MORNING. I TOOK IT TO THE DEALERSHIP BECAUSE THERE
5 WAS NO SIGN OF TRAUMA THAT WOULD CAUSE A CRACK
6 AND THE GUY TOOK A PEN AND RAN IT UP THE CRACK AND
7 SAID THERE WAS A CHIP THAT CAUSED THIS CRACK. THE
8 "CHIP" IN NO WAY SHOULD HAVE CAUSED THIS DAMAGE
9 SEEING AS THE CAR WAS IN THE DEALERSHIP ON FRIDAY
10 AND THEY DID NOT DETECT ANY FLAWS IN THE GLASS AND
11 FOR THIS "CHIP" TO HAVE HAPPENED WITHIN THE NEXT
12 TWO DAYS AND LEAD TO A CRACK IS UNHEARD OF AS I
13 HAVE EXPERIENCED CHIPS IN OTHER WINDSHIELDS AND
14 THEY LEAD TO NO SUCH DAMAGE IN SUCH A SHORT TIME.

- 9 • I PURCHASED A BRAND NEW 2006 SCION XB IN DECEMBER
10 OF 2006. I GOT A CRACK IN MY WINDSHIELD
11 APPROXIMATELY TWO WEEKS AGO. THERE ARE NO CHIPS
12 FROM BEING HIT BY A ROCK. THERE ARE MESSAGE BOARDS
13 POSTING SIMILAR SITUATIONS FROM OTHER SCION
14 OWNERS AND NEITHER SCION NOR TOYOTA WANT TO DO
15 ANYTHING TO FIX THE PROBLEM. THIS IS A
16 MANUFACTURING ISSUE AND NOT A CAUSE OF A ROCK
17 CHIP.
- 18 • WINDSHIELD DEVELOPED A CRACK APPROXIMATELY 4
19 INCHES IN LENGTH WHILE VEHICLE WAS NOT BEING
20 DRIVEN. CRACK INCREASED IN LENGTH TO
21 APPROXIMATELY 1 1/2 FEET IN LENGTH THE FOLLOWING
22 DAY. VEHICLE HAD BEEN DRIVEN BUT WAS PARKED WHEN
23 THE CRACK INCREASED IN LENGTH. THERE WAS NEVER
24 ANY IMPACT FROM ROCKS OR ANY DEBRIS. THE
25 WINDSHIELD WAS NOT TOUCHED IN ANY WAY THAT COULD
26 HAVE CAUSED DAMAGE. WINDSHIELD WAS REPAIRED BY
27 SAFELITE GLASS, REPAIR WAS COVERED BY INSURANCE
28 CLAIM.
- PURCHASED CAR IN SEPTEMBER 2006 IN NORTH
HOLLYWOOD. SITTING AT GAS STATION EARLY MORNING
NEAR MT SHASTA (NORTH CALIFORNIA, TEMPERATURE
JUST ABOVE FREEZING) WITH HEATER RUNNING. WHILE
PUMPING GAS HEARD A CRACKING NOISE, CAME AROUND
TO FRONT OF CAR AND FOUND CRACK RUNNING
HORIZONTALLY FROM LOWER DRIVER SIDE OF
WINDSHIELD. WITHIN TWO HOURS CRACK HAD GROWN
ALMOST SEVEN INCHES, CURVING UP FIRST THEN
RUNNING HORIZONTALLY TOWARDS THE PASSENGER SIDE.
THE NEXT MORNING (AGAIN VERY COLD TEMPERATURES)
THE CRACK HAD GROWN ALMOST A FULL FOOT FURTHER.
BY THE TIME I GOT THE CAR TO THE DEALERSHIP THE
"SERVICE MANAGER" RAN A PEN ALONG THE CRACK AND
DECLARED THAT A GRAIN OF SAND HAD STRUCK THE
WINDSHIELD AND THAT THE DEALERSHIP REFUSED TO
COVER THE REPAIR. I CONTACTED TOYOTA, THEY SAID
THAT THEY WOULD DEFER TO THE DEALERSHIPS

1 "EXPERTS," EVEN THOUGH I POINTED OUT THE MANY,
2 MANY POSTINGS ON THIS FAULT ON THIS WEBSITE. THERE
3 IS DEFINITELY A RECALLABLE FAULT IF A GRAIN OF SAND
4 TRAVELING AT FREEWAY VELOCITIES CAN CAUSE A
5 FAILURE OF THE WINDSHIELD; WERE THAT EXPLANATION
6 TRUE NO TOYOTA COULD SAFELY BE ON THE ROAD. THE
7 FACT THAT I WAS AT A DEAD STOP WHEN THE "IMPACT"
8 HAPPENED MAKES IT EVEN MORE RIDICULOUS.

- 9 • WHILE THE CAR WAS PARKED IN THE DRIVEWAY DURING
10 THE DAY I CAME OUTSIDE TO FIND A 12 INCH CRACK THAT
11 STARTED AT THE TOP NEAR THE REARVIEW MIRROR AND
12 CURVED TOWARDS THE 'SIDE.THERE WAS NO IMPACT FROM
13 ANY ROAD ELEMENTS.THE CRACK WASN'T THERE WHEN
14 WE DROVE THE CAR HOME THAT DAY.APEARED WHILE
15 SITTING OUTSIDE.
- 16 • WE HAVE A 2005 SCION XB WE HAVE HAD TO HAVE THE
17 WINDSHIELD REPLACED TWICE SO FAR DUE TO CRACKS
18 CAUSED BY ROCKS. IN ADDITION WE HAVE HAD TO HAVE
19 CHIPS REPAIRED SEVERAL TIMES. I HAVE HEARD THAT
20 THIS SEEMS TO BE A COMMON ISSUE WITH SCION XB'S BUT
21 EVEN THOUGH SCION IS NO HELP. IN ALL MY YEARS OF
22 HAVING CARS I HAVE NEVER HAD ANY TYPE OF PROBLEM
23 LIKE THIS AND HAVE NEVER HAD TO HAVE A WINDSHEILD
24 REPLACED. THIS CAR SEEMS LIKE YOU HAVE TO REPLACE A
25 WINDSHIELD LIKE YOU REPLACE YOUR OIL !! I HAVE
26 CONTACTED SCION WITH NO LUCK OR NO REMENDY.

17 9. Plaintiff is informed and believes that reasonable consumers do not
18 expect their windshields to crack without impact or under the other circumstances
19 that cause Scion xB windshields to crack.

20
21 10. Scion introduced the 2004 model-year xB for sale in the latter part of
22 calendar-year 2003. The xB was designed to target members of "Generation Y," a new
23 generation of young vehicle buyers born between 1977 and 1994 who have active
24 lifestyles. Plaintiff is informed and believes that, due to their large numbers, this
25 group of car buyers is extremely important to the Defendant. Plaintiff is also
26 informed and believes that TMS hoped to use the xB to lure these buyers by offering
27 them an affordable car designed specifically to appeal to young drivers who had
28 previously viewed Toyota cars and trucks as "their parents'" vehicles.

1 11. The xB's warranty booklet welcomes these young buyers, promising them
2 a quality, reliable vehicle that will set them apart from the crowd. Specifically, the
3 section of the xB's warranty book titled "We've Got You Covered," says this:

4
5 You've joined a swank and select group of car buyers: People who want a
6 vehicle that sets them apart from the crowd. We created the car, but you
7 made it your own – reflecting your life and your own sense of style.

8 Of course, quality and reliability are just as important as a stylish ride.
9 After all, if the ride doesn't go, what's the point? Which is the point of
10 Scion's excellent warranty coverage. We stand behind the quality of our
11 vehicles. This booklet tells you just how much. . . .

12 We want you to be confident that your ride will keep you on the road –
13 and that Scion will keep you covered when you need it.

14 12. Plaintiff is informed and believes that Toyota's marketing strategy
15 worked: The xB is a popular vehicle. As Toyota acknowledges in its 2006 annual
16 report to its shareholders, even as sales of its SUV's declined, the "Scion-marque
17 vehicles, targeting the younger generation, . . . achieved steep increases in sales."

18 13. According to a Scion press release, "Scion is 'about providing buyers with
19 a personalized dealership experience, a personalized ordering experience and
20 personalized vehicles.'"

21 14. The "personalized service" that Scion touts in its press releases and other
22 advertising does not, however, include advising its customers of the existence of the
23 Cracking Defect, which is very expensive to repair and constitutes a safety hazard. To
24 the contrary, Plaintiff is informed and believes that, while TMS has been aware of the
25 Cracking Defect prior to selling the first xBs, TMS has sold or leased thousands of
26 Class Vehicles without disclosing, and while actively concealing, the existence of that
27 defect. Plaintiff is also informed and believes that the Defendant's conduct is due, in
28 part, to its unwillingness to tarnish the image of this popular gateway vehicle.

1 15. Plaintiff is informed and believes that TMS acquired its knowledge of the
2 Cracking Defect through sources not available to Class Members, including but not
3 limited to, pre-release testing, experience with other vehicles, early consumer
4 complaints about windshield cracking in Class Vehicles, testing conducted in response
5 to those complaints, aggregate data from Scion dealers, and from other internal
6 sources.

7
8 16. Scion's new-car warranty specifically states that, for three years or
9 36,000 miles (whichever comes first), the warranty covers repairs or adjustments
10 needed to correct defects in materials or workmanship of any part supplied by Scion.
11 Because the Cracking Defect constitutes a defect, the Defendant's new-car warranty
12 obligates it to repair windshields that crack while Class Vehicles are under warranty.
13 Instead of fulfilling the terms of its new-car warranty, however, TMS routinely refuses
14 to replace windshields that crack while under warranty for all but those consumers
15 who complain the loudest and longest.

16
17 17. To escape liability for windshield cracks that occur under warranty, TMS
18 relies on a provision it inserted in its new-car warranty that purports to exempt, from
19 warranty coverage, windshield cracks "caused directly or indirectly from . . . road
20 debris (including stone chips) . . . and other environmental conditions."

21
22 18. In other words, in addition to knowingly equipping Class Vehicles with
23 defective windshields and concealing the existence of the Cracking Defect from
24 consumers, TMS went further and consciously attempted to limit its liability to Class
25 Members for its wrongful conduct by inserting an unconscionable provision in its new-
26 car warranty that purports to relieve it from having to provide cost-free replacement
27 windshields that have cracked as a result of TMS's decision to sell and lease Class
28 Vehicles with the Cracking Defect.

1 19. TMS purported to rely on this provision of the Scion xB's new-car
2 warranty to deny Plaintiff Justin Bauer's warranty claim. TMS also relied on this
3 provision to deny Mr. Bauer's pre-filing request that TMS agree to "correct, repair,
4 replace, or otherwise rectify the Cracking Defect in [all] 2004 through 2006 model-
5 year Scion xBs."

6
7 20. Mr. Bauer's xB was covered by Scion's new-car warranty when he
8 presented his vehicle to an authorized dealer for warranty repair the day he noticed
9 that his windshield had cracked. The dealership used what is referred to as the "pen
10 test" to reject Mr. Bauer's warranty claim, leaving him responsible for the cost of
11 replacing his cracked windshield.

12
13 21. Plaintiff is informed and believes that the "pen test" is a ploy the
14 Defendant relies on as an excuse to deny warranty coverage, to actively conceal the
15 existence of the Cracking Defect by making it appear as though Scion windshield
16 cracks are caused by something other than a defect, and to foist the cost of repairing
17 or replacing defective windshields on Class Members and their insurers. Indeed,
18 Plaintiff is informed and believes that, rather than pay to repair or replace cracked
19 windshields, TMS urges many Class Members to have their insurance companies bear
20 the cost.

21
22 22. The pen test involves tracing a crack up the windshield with a pen.
23 Plaintiff is informed and believes that, if the pen hangs up on the slightest pit or other
24 blemish on the windshield, it is deemed ostensible evidence of an impact and the
25 dealer is instructed by the Defendant to refuse coverage under warranty. Plaintiff is
26 informed and believes that this is so despite the fact that the Defendant is acutely
27 aware that (a) the pen test can, and frequently does, produce false positives, and (b)
28 the pen test is wholly inadequate to evaluate cracks caused by the Cracking Defect.

1 23. As a result of the Defendant's wrongful conduct, when Class Vehicles'
2 windshields crack, all but a few Class Members (or their insurers) bear the cost of the
3 repair. This is so even though the majority of Class Vehicles are still covered by the
4 Defendant's new-car warranty.

5
6 24. The Defendant's conduct has caused each class member to lose money or
7 property. For example, each class member has owned or leased a vehicle that suffers
8 from the Cracking Defect, an inherently defective condition that will require Class
9 Members to bear the cost of replacing affected windshields, even if the Cracking
10 Defect has not yet manifested itself in a broken windshield. Many Class Members,
11 including Mr. Bauer, have also had at least one windshield crack, resulting in, among
12 other things, the loss of a functional windshield and/or the loss of funds spent to
13 replace the windshield.

14
15 25. Windshield replacement is not cheap: Plaintiff is informed and believes
16 that it can cost approximately \$675 to buy replacement glass made by or for Scion
17 ("OEM windshield"), and can cost another \$175 for the labor to replace the windshield,
18 for a total of \$850.00, a significant percentage of the Scion xB's less-than-\$15,000
19 initial base retail sales price. And because the Cracking Defect is the result of
20 multiple defects that are not cured by simply replacing one defective windshield with
21 another defective windshield, Class Members have replaced, and will continue to
22 replace, their windshields more than once. To the extent a class member purchases
23 an OEM windshield, the Defendant profits from the sale of that replacement
24 windshield glass. And the Defendant continues to sell OEM windshield glass knowing
25 that the replacement glass is just as likely to crack as was the windshield that the
26 new glass replaced.

1 26. Because the Defendant systematically fails to replace cracked
2 windshields under warranty, it has been and continues to be futile for Class members
3 to bring their Class Vehicles to Scion dealerships to have their cracked windshields
4 replaced under warranty.

5
6 27. Windshield cracking is not simply an aesthetic or expensive economic
7 concern; it is also a serious safety hazard. The windshield is a vital component of a
8 vehicle's safety restraint system ("SRS"), which also includes air bags and seat belts.
9 Safety experts rank the windshield as the third most important safety component in
10 today's cars and trucks, following closely behind seatbelts and airbags. All three
11 components of the SRS are designed to work together to keep vehicle occupants within
12 the relative safety of the passenger compartment during a collision or roll-over.

13
14 28. For example, the windshield provides virtually all the support a
15 passenger-side airbag needs to deploy properly. If the windshield is compromised,
16 that air bag can be useless in a collision. Similarly, the windshield provides much of
17 the roof support for most vehicles. As a result, the windshield is a crucial component
18 in preserving the structural integrity of the vehicle's passenger compartment during
19 roll-overs in that the windshield supports the roof, thereby keeping it from collapsing
20 and crushing the driver and passengers.

21
22 29. Plaintiff is informed and believes that if a Class Vehicle's windshield is
23 cracked, it can become dislodged from the vehicle during a roll-over, compromising
24 roof-crush resistance. The result could be serious head and neck injuries; failure of
25 the passenger side airbag to deploy properly; or the ejection of occupants from the
26 vehicle onto the roadway where they have no protection whatsoever.

1 30. In addition to the foregoing, a cracked or broken windshield might not do
2 its job in protecting occupants from a frontal penetration.

3
4 31. Plaintiff is informed and believes that, although a cracked windshield
5 can be replaced, a replaced windshield cannot provide the same level of occupant
6 protection as does an original, factory-installed windshield. That is in part because
7 the conditions inside the factory for installing a windshield are optimal, so the
8 confidence level in the factory seal between windshield and vehicle is highest. These
9 conditions, and the original factory seal, cannot be duplicated in an aftermarket repair
10 facility. As a result, many replaced windshields cannot provide appropriate support in
11 the event of a roll-over; nor can they withstand the force of passenger-side airbag
12 deployment, which puts additional stress on the windshield in an accident.

13
14 32. Plaintiffs are also informed and believe that 70 to 80 percent of
15 windshield replacements are performed incorrectly, regardless of the cause of the
16 replacement. As a result, experts describe becoming involved in a collision in a vehicle
17 with a replaced windshield as being akin to playing Russian roulette.

18
19 33. For all of the reasons set forth above, the existence of the Cracking Defect
20 is material information, which Defendant is obligated to disclose.

21
22 34. Rather than doing so, however, Plaintiff is informed and believes that
23 TMS actively conceals the existence of the Cracking Defect by, *inter alia*, purposefully
24 refusing to publicly take any corrective measures that would reveal the existence of
25 the Cracking Defect (such as initiating a campaign to correct the Cracking Defect); by
26 denying the existence of the Cracking Defect; by instructing its dealers to use the pen
27 test to make it appear as though windshield cracks are caused by something other
28

1 than the Cracking Defect; by telling consumers to have their cracked windshields
2 replaced by their insurance companies (thereby perpetuating the myth that
3 windshield cracks are caused by something other than the Cracking Defect); by
4 trading on Toyota's reputation for building quality vehicles (a reputation the
5 Defendant counted on to help conceal the existence of the Cracking Defect and sell the
6 xB); by selectively offering warranty coverage to only those consumers who complain
7 the loudest in order to silence them; and by allowing consumers whose cracked
8 windshields have been replaced to believe that the replacements have taken care of
9 the problem, without advising them that replacement windshields are equally prone
10 to cracking.

11
12 35. TMS has a duty to disclose information about the existence and nature of
13 the Cracking Defect to Class Members who purchased their Class Vehicles new or
14 used. That duty arises, regardless of the existence of privity (*see, e.g., Cal. Civ. Code §*
15 *1711*), by virtue of, *inter alia* (a) TMS's knowledge that Class Members were not
16 reasonably likely to discover the facts about the Cracking Defect because those facts
17 were known by and accessible only to TMS; (b) TMS's active concealment of those facts
18 from Class Members; (c) TMS's statutory and common-law obligations to disclose
19 product defects to the consumers of those products; (d) affirmative statements made by
20 TMS, including statements about the nature and scope of its warranty coverage; and
21 (e) because the Cracking Defect jeopardizes Class Members' safety.

22
23 36. For the same reasons, TMS also has a duty to disclose the existence of
24 the Cracking Defect to Class Members who purchased OEM windshields (which,
25 Plaintiff believes to be just as defective as the glass it is intended to replace) as
26 replacements for the windshields that have cracked.

1 37. Because TMS had a duty to disclose information about the Cracking
2 Defect to Class Members, TMS was obligated to take reasonable and appropriate steps
3 to effectively communicate to prospective purchasers and lessees of Class Vehicles
4 that, *inter alia*, the windshields installed in these vehicles are likely to crack from
5 little or no physical contact, under circumstances that would not cause non-defective
6 windshields to crack; that the Cracking Defect could lead to situations that create a
7 safety risk; that replacement windshields constitute a significant percentage of a
8 Class Vehicle's purchase price; that windshields installed in Class Vehicles are likely
9 to crack more than once; and that, TMS did not intend to cover the windshield under
10 its new-car warranty.

11
12 38. TMS was also obligated to take reasonable and appropriate steps to
13 effectively communicate to purchasers of replacement OEM windshields that these
14 windshields are as defective as those they are being purchased to replace.

15
16 39. By engaging in the conduct described herein, TMS has concealed and
17 continues to conceal, the Cracking Defect from Class Members. If Class Members had
18 knowledge of the information TMS has concealed, they would have had, among other
19 things, the opportunity to factor the existence of the Cracking Defect into their
20 decision to purchase (or not to purchase) a Class Vehicle. Class Members who have
21 sustained cracked windshields would also have had the opportunity to present their
22 windshields to TMS for warranty repairs.

23
24 40. By engaging in the conduct described above and by selling the Class
25 Vehicles while concealing the existence, nature, and scope of the Cracking Defect from
26 Plaintiff and members of the class he proposes to represent in this action, TMS has
27 engaged in unconscionable conduct, has violated the Consumers Legal Remedies Act
28

1 (“CLRA”), Civ. Code §§ 1750-1784; the Unfair Competition Law (“UCL”), Bus. & Prof.
2 Code §§ 17200-17209; the Song-Beverly Consumer Warranty Act, Civ. Code §§ 1790 *et*
3 *al. seq.*; and TMS has breached its express warranty.

4
5 **CLASS ALLEGATIONS**

6 41. Plaintiff brings this class action on behalf of himself and all other persons
7 similarly situated pursuant to the provisions of Code of Civil Procedure section 382 and
8 Civil Code section 1781.

9
10 42. Plaintiff seeks to represent a class composed of (a) all California residents
11 who currently own or lease a 2004 through 2006 model-year Scion xB vehicle and (b) all
12 California residents who formerly owned or leased a 2004 through 2006 model-year
13 Scion xB vehicle and who paid to replace or repair a cracked windshield in that vehicle.

14
15 43. Excluded from the class are the following:

- 16
17 a. Defendant, its subsidiaries, affiliates, officers, directors, and
18 employees;
- 19
20 b. Persons who have claims for personal injuries as a result of the
21 Cracking Defect;
- 22
23 c. Persons who have filed separate, non-class legal actions against
24 Defendant asserting consumer-fraud claims based on the Cracking
25 Defect in Class Vehicles; and
- 26
27
28

1 d. Persons who have pursued a claim against, and reached a verdict
2 against or settled with and validly released Defendant from
3 individual claims substantially similar to those alleged in this
4 Complaint with respect to Class Vehicles.
5

6 44. Plaintiff is informed and believes that the proposed class comprises
7 thousands of persons throughout California who own or lease, or have owned or leased,
8 one or more Class Vehicles. The class is, therefore, so numerous and geographically
9 dispersed that joinder of all members in one action is impracticable.
10

11 45. As alleged more fully in paragraph Nos. 5 through 40, above, Defendant
12 has acted with respect to Plaintiff and Class Members in a manner generally applicable
13 to each of them. There is a well-defined community of interest in the questions of law
14 and fact involved, which affect all Class Members. The questions of law and fact
15 common to the class predominate over the questions that may affect individual Class
16 Members include, but are not limited to, the following:
17

18 a. whether Class Vehicles are affected by the Cracking Defect;;
19

20 b. whether TMS knew or reasonably should have known of the
21 Cracking Defect in Class Vehicles before it sold or leased them to
22 Class Members;
23

24 c. whether TMS knew or reasonably should have known that the
25 Cracking Defect is a potential safety hazard;
26

27 d. whether TMS actively concealed the Cracking Defect from Plaintiff
28 and proposed Class Members;

- 1 e. whether the information TMS concealed is material;
- 2
- 3 f. whether TMS wrongfully profited from causing the distribution and
- 4 sale or lease of Class Vehicles under false pretenses, by failing to
- 5 inform Class Members about the Cracking Defect;
- 6
- 7 g. whether, under the circumstances alleged herein, TMS wrongfully
- 8 profited from the sale of replacement windshield glass;
- 9
- 10 h. whether TMS has sought to purposefully exclude the Cracking
- 11 Defect from warranty coverage;
- 12
- 13 i. whether excluding the Cracking Defendant from warranty coverage
- 14 is unconscionable;
- 15
- 16 j. whether TMS has breached the terms of its new-car warranty by
- 17 refusing to provide coverage for cracked windshields ;
- 18
- 19 k. whether TMS's conduct, as alleged in this Complaint, constitutes
- 20 violations of the CLRA;
- 21
- 22 l. whether TMS's conduct, as alleged in this Complaint, has violated
- 23 the Song-Beverly Consumer warranty Act;
- 24
- 25 m. whether TMS's conduct, as alleged in this Complaint, has violated
- 26 the UCL;
- 27
- 28

- 1 n. whether TMS's conduct, as alleged in this Complaint, has led to its
2 unjust enrichment;
- 3
- 4 o. whether TMS should be required to provide an extended warranty
5 to cover the Cracking Defect on all affected Class Vehicles;
- 6
- 7 p. whether TMS should be required to reimburse those Class Members
8 who have paid to repair or replace cracked windshields in Class
9 Vehicles;
- 10
- 11 q. whether Class Members are entitled to recover statutory damages
12 under the CLRA;
- 13
- 14 r. whether TMS's willful, fraudulent conduct warrants the imposition
15 of punitive damages.
- 16

17 46. Plaintiff is asserting claims that are typical of the class in that Plaintiff
18 owns a Class Vehicle; Plaintiff is a "consumer" and "buyer" as those terms are defined in
19 the CLRA and the Song-Beverly Consumer Warranty Act, respectively; the windshield
20 installed in Plaintiff's Class Vehicle has cracked; Defendant has denied Plaintiff
21 warranty coverage; and Plaintiff has lost money or property as a result of the
22 Defendant's conduct.

23

24 47. Plaintiff will fairly and adequately represent and protect the interests of
25 the Class, and he has no interests that are antagonistic to or in conflict with those he
26 seeks to represent.

27

28

1 48. Plaintiff has retained counsel who have considerable experience and
2 success in the prosecution of class actions and other forms of complex litigation.

3
4 49. In view of the complexity of the issues and the expense that an individual
5 class member would incur if he or she attempted to obtain relief from a large
6 corporation such as TMS, the claims of individual Class Members do not involve
7 monetary amounts that are sufficient to support separate actions. Because of the size of
8 individual Class Member's claims, few, if any, Class Members could afford to seek legal
9 redress for the wrongs complained of in this Complaint.

10
11 50. The class is readily ascertainable, and prosecution as a class action will
12 eliminate the possibility of repetitious litigation and will provide redress for claims too
13 small to support the expense of individual, complex litigation. Absent a class action, the
14 Class Members will continue to suffer losses, TMS's violations of law will be allowed to
15 proceed without remedy, and TMS will retain revenue as a result of its wrongdoing. A
16 class action, therefore, provides a fair and efficient method for adjudicating this
17 controversy.

18
19 51. The prosecution of separate claims by individual Class Members would
20 create a risk of inconsistent or varying adjudications with respect to at least thousands
21 of individual Class Members, which would, as a practical matter, dispose of the interests
22 of the Class Members not parties to those separate actions or would substantially
23 impair or impede their ability to protect their interests and enforce their rights.

24
25 52. The proposed class fulfills the requirements of Code of Civil Procedure
26 section 382, Civil Code section 1781 and the cases construing and applying those
27 statutes. Accordingly, class certification is appropriate.

28

1 **FIRST CLAIM FOR RELIEF**

2 **(Declaratory Relief)**

3
4 53. Plaintiff realleges and incorporates by reference the allegations set forth in
5 each of the preceding paragraphs of this Complaint.

6
7 54. The Scion new-car warranty is a contract of adhesion, drafted by TMS
8 and presented in its entirety to Plaintiff and the other persons who comprise the
9 proposed class. TMS is a large corporation and Plaintiff is an individual. Plaintiff
10 and members of the proposed class do not possess anywhere near the economic power
11 that TMS possesses.

12
13 55. Pursuant to Code of Civil Procedure section 1060, Plaintiff seeks a
14 declaration of the parties' rights and duties.

15
16 56. Among the unfair, fraudulent, and unlawful conduct Plaintiff has alleged
17 in Paragraphs 5 through 40, above, is TMS's decision to force Plaintiff and those he
18 seeks to represent in this action to bear the costs associated with the Cracking Defect,
19 including the cost of replacing cracked windshields, by inserting provisions in the Scion
20 new-car warranty that purport to exempt cracked windshields from warranty coverage,
21 notwithstanding that the Cracking Defect constitutes a defect in material or
22 workmanship.

23
24 57. Specifically, page 11 of the 2006 Scion xBs new-car warranty states that
25 "[t]his warranty does not cover damage or failures resulting directly or indirectly from
26 any of the following . . . road debris (including stone chips)[.]"

1 58. TMS provided a warranty whose duration and terms are inadequate to
2 cover costs resulting from the Cracking Defect that TMS knew were likely to occur, but
3 did not disclose that information to prospective purchasers and lessees of Class Vehicles.
4 Plaintiff alleges that, under these circumstances, such an attempt to limit its
5 contractual obligations violates the public policy of the State of California for the
6 reasons set forth in California Civil Code section 1668. Plaintiff also alleges that such a
7 limitation is unconscionable because the warranty agreements at issue in this lawsuit
8 are contracts of adhesion, and because they are unduly oppressive, particularly when
9 considered in light of the parties' radically and grossly unequal bargaining power.

10
11 59. Plaintiff advised TMS of the allegations underlying this lawsuit in a letter
12 dated May 15, 2007, and offered TMS the opportunity to resolve this matter prior to the
13 filing of this lawsuit. TMS responded to Plaintiff's letter by speculating (erroneously)
14 that Mr. Bauer's "windshield cracked as a result of a chip, which presumably was
15 caused by some impact to the windshield and thus not covered under warranty" (citing
16 the provision of the xB's warranty set forth in paragraph 11, above). TMS relied on this
17 provision as the basis for declining to comply with Mr. Bauer's settlement demand.

18
19 60. Therefore, an actual controversy has arisen and now exists between TMS
20 and Plaintiff and the class he proposes to represent in this action. Accordingly,
21 Plaintiff hereby requests a judicial declaration of the rights and duties of the parties
22 with respect to each of the foregoing issues in controversy.

1 **SECOND CAUSE OF ACTION**

2 **(Unlawful, Unfair, Fraudulent, and Deceptive Practices in Violation of the UCL)**

3
4 61. Plaintiff realleges and incorporates by reference the allegations set forth in
5 each of the preceding paragraphs of this Complaint.

6
7 62. By committing the acts and practices alleged in this Complaint, TMS has
8 violated the UCL, Bus. & Prof. Code §§ 17200-17209.

9
10 63. Specifically, TMS has violated the UCL's provisions against unlawful,
11 unfair, and fraudulent business practices by engaging in the acts and practices
12 described in paragraph Nos. 5 through 40, above. Additionally, TMS's unlawful conduct
13 is predicated on its violations of the CLRA, breach of its express warranty, and
14 violations of the Song-Beverly Consumer Warranty Act, as alleged in the Third, Fourth,
15 and Fifth Causes of Action.

16
17 64. Plaintiff and Class Members have suffered injury in fact and have lost
18 money and functional property as a result of the Defendant's actions as alleged herein.

19
20 65. Plaintiff seeks an order of this Court pursuant to § 17203 of the UCL, as
21 follows: (a) enjoining TMS from continuing to engage in the unlawful, unfair and
22 fraudulent business practices described in this Complaint; (b) requiring TMS to make
23 full restitution of all monies wrongfully obtained as a result of the conduct described in
24 this Complaint; (c) requiring TMS to disgorge all ill-gotten gains flowing from the
25 conduct described in this Complaint; (d) requiring TMS to provide public notice of the
26 true nature and scope of the Cracking Defect; (e) requiring TMS to abide by the terms of
27 its warranty and replace Class Vehicle windshields that crack or break as a result of the
28 Cracking Defect; and (f) requiring TMS to provide extended warranty coverage that

1 ensures the replacement of Class Vehicle windshields that crack or break as a result of
2 the Cracking Defect.

3
4 **THIRD CAUSE OF ACTION**

5 **(Deceptive Business Practices in Violation of the CLRA)**

6
7 66. Plaintiff realleges and incorporates by reference the allegations set forth in
8 each of the preceding paragraphs of this Complaint.

9
10 67. The acts and practices described in this Complaint were undertaken by the
11 Defendants in connection with a "transaction" which was intended to and did result in
12 the sale or lease of a motor vehicle to Plaintiff, a "consumer," as those terms are defined
13 in Civil Code sections 1761(d) (defining "consumer"), 1761(e) (defining "transaction") and
14 1770(a) (describing "list of proscribed practices"). Motor Vehicles are "goods" as that
15 term is defined in Civil Code section 1761(a). TMS's acts and practices, as alleged in
16 particular in paragraph Nos. 5 through 40 of this Complaint, violated, and continue to
17 violate, the CLRA in at least the following respects:

18
19 a. representing that Class Vehicles have characteristics, uses or
20 benefits that they do not have, in violation of § 1770(a)(5) of the
21 CLRA;

22
23 b. representing that Class Vehicles are of a particular standard,
24 quality or grade when they are of another, in violation of §
25 1770(a)(7) of the CLRA; and
26
27
28

- 1 c. representing that a transaction confers or involves rights, remedies,
2 or obligations which it does not have or involve, or which are
3 prohibited by law in violation § 1770(a)(14) of the CLRA;
4
5 d. representing that OEM windshields have characteristics, uses or
6 benefits that they do not have, in violation of § 1770(a)(5) of the
7 CLRA; and
8
9 e. representing that OEM windshields are of a particular standard,
10 quality or grade when they are of another, in violation of §
11 1770(a)(7) of the CLRA

12
13 68. Plaintiff seeks and is entitled to equitable relief in the form of an order (a)
14 enjoining TMS from continuing to engage in the deceptive business practices described
15 in this Complaint; (b) requiring TMS to make full restitution of all monies wrongfully
16 obtained as a result of the conduct described in this Complaint; (c) requiring TMS to
17 disgorge all ill-gotten gains flowing from the conduct described in this Complaint; (d)
18 requiring TMS to provide public notice of the true nature and scope of the Cracking
19 Defect; (e) requiring TMS to abide by the terms of its warranty and replace Class
20 Vehicle windshields that crack or break as a result of the Cracking Defect; and (f)
21 requiring TMS to provide extended warranty coverage that ensures the replacement of
22 Class Vehicle windshields that crack or break as a result of the Cracking Defect.

23
24 69. Pursuant to section 1782 of the CLRA, Plaintiff has notified TMS in
25 writing of the particular violations of section 1770 of the CLRA (the "Notice") and has
26 demanded that TMS correct, repair, or replace the defectively-designed windshields in
27 Class Vehicles, or otherwise rectify the Cracking Defect. Plaintiffs sent the Notice on or
28

1 about May 15, 2007, by certified mail, return-receipt requested to TMS's principal place
2 of business at Torrance, California.

3
4 70. TMS responded on June 18, 2007, by refusing to comply with Plaintiff's
5 demands.

6
7 71. Accordingly, Plaintiff hereby seeks statutory damages and actual damages
8 sustained as a result of the Cracking Defect, in amounts to be proven at trial, including,
9 but not limited to; costs incurred in connection with the replacement or repair of
10 windshields in Class Vehicles.

11
12 72. The conduct described herein, including but not limited to (a) TMS's
13 deliberate placing of a vehicle with a material, safety-related defect into the stream of
14 commerce, (b) TMS's doing so with the intention of causing consumers to bear the cost of
15 correcting that defect to protect its own profits, and (c) the lengths to which TMS has
16 gone to conceal the existence of that defect from the public and to misrepresent the
17 scope of its warranty coverage is oppressive, fraudulent and malicious, and entitles
18 Plaintiff and the class to an award of punitive damages.

19
20 **FOURTH CAUSE OF ACTION**

21 **(Breach of Express Warranty)**

22
23 73. Plaintiff realleges and incorporates by reference the allegations set forth in
24 each of the preceding paragraphs of this Complaint.

25
26 74. In the xB new-car warranty book, TMS pledges to "stand behind the
27 quality of our vehicles" and promises that "Scion will keep you covered when you need
28 it." The xB's new-car warranty further states that it "covers repairs and adjustments

1 needed to correct defects in materials or workmanship of any part supplied by Scion . .
2 . for 36 months or 36,000 miles, whichever occurs first.” TMS’s new-car warranty is
3 an express warranty under California law.
4

5 75. TMS provides all purchasers and lessees of Class Vehicles with the
6 express warranty described herein, which became part of the basis of the bargain.
7

8 76. The windshields installed in Class Vehicles are components originally
9 supplied by Scion/TMS.
10

11 77. The windshields installed in Class Vehicles are defective and fail under
12 normal use.
13

14 78. TMS breached its express warranty when it concealed the nature and
15 scope of the Cracking Defect, charged for the repair of cracked windshields, and
16 refused to repair or replace cracked windshields free of charge. Plaintiff, on behalf of
17 himself and the class, has notified TMS of the breach within a reasonable time.
18

19 79. Plaintiff and Class Members have been and continue to be damaged by
20 TMS’s breach of its express warranty because. As a result of TMS’s breach of its
21 express warranty, Plaintiff and the class have suffered damages in an amount to be
22 determined at trial.
23

24 80. Therefore, Plaintiff and the other Class Members are entitled to legal
25 and equitable relief against TMS, including damages, specific performance, rescission,
26 attorneys’ fees, costs of suit, and other relief as appropriate.
27
28

1 **FIFTH CAUSE OF ACTION**

2 **(Violation of Song-Beverly Consumer Warranty Act California Civil**
3 **Code Sections 1790 *et seq.*)**

4
5 81. Plaintiff realleges and incorporates by reference the allegations set forth in
6 each of the preceding paragraphs of this Complaint.

7
8 82. Class Vehicles are “consumer goods” under Civil Code § 1791(a).

9
10 83. Plaintiffs is a “buyer” under Civil Code § 1791(b).

11
12 84. As described above, TMS’s new-car warranty is an “express warranty”
13 under Civil Code § 1791.2. The windshields installed in Class Vehicles, including
14 Plaintiff’s Class Vehicle, are defective and fail under normal use.

15
16 85. TMS breached its express warranty when it concealed the true nature
17 and scope of the Cracking Defect, charged to replace cracked windshields, and refused
18 to replace cracked windshields free of charge. Plaintiff and Class Members notified
19 TMS of the breach within a reasonable time.

20
21 86. Plaintiff and Class Members have been and continue to be damaged by
22 TMS’s breach of its express warranty.

23
24 87. Plaintiff and Class Members have been and are damaged by TMS’s
25 failure to comply with its express obligations under its express warranty. As a result
26 of TMS’s breach of its express warranty, Plaintiffs and Class Members have suffered
27 damages in an amount to be determined at trial.

28

1 under warranty, of Class Vehicle windshields that crack or break as a result of the
2 Cracking Defect; and (g) rescission.

3
4 4. For damages sustained as a result of the Cracking Defect in amounts to be
5 proven at trial, including, but not limited to, costs incurred in connection with the
6 replacement or repair of windshields in Class Vehicles.

7
8 5. For an award of statutory damages.

9
10 6. For an award of punitive damages.

11
12 7. For an award of attorney fees pursuant to, *inter alia*, § 1780(d) of the
13 CLRA and Code of Civil Procedure § 1021.5.


14
15 8. For an award of costs.

16
17 9. For pre- and post-judgment interest on any amounts awarded.

18
19 10. For such other relief as the Court deems just and proper.

20
21 DATED: July 25, 2007

FAZIO | MICHELETTI LLP

22
23 
24 Dina E. Micheletti

25 Attorneys for Plaintiff
26 Justin Bauer, on behalf of himself and all
27 others similarly situated
28