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10 UNITED STATES DISTRICT COURT
11 EASTERN DISTRICT OF CALIFORNIA
12 SACRAMENTO DIVISION

13 JOHN WADE, DAVID PERILSTEIN, MING
14 CHAO, KATHRYN SCHAUBERGER,
15 FRANKLIN HUFFMAN, DANIELLE BULS,
16 MICHELLE ATKINS, CLAUDIA DIEZ,
17 MATTHEW KULL, AND JOSEPH GILL

18 Plaintiffs,

19 v.

20 TOYOTA MOTOR NORTH AMERICA INC.;
21 TOYOTA MOTOR ENGINEERING &
22 MANUFACTURING NORTH AMERICA,
23 INC.; TOYOTA MOTOR SALES, U.S.A.,
24 INC.; AND SUBARU OF NORTH AMERICA,
25 INC.;

26 Defendants.

No. 2:25-cv-01071-TLN-CKD

AMENDED COMPLAINT

CLASS ACTION

JURY TRIAL DEMANDED

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I. INTRODUCTION

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2 1. Plaintiffs Franklin Huffman, Danielle Buls, Claudia Diez, Matthew Kull, Michelle
3 Atkins, John Wade, David Perilstein, Ming Chao, Kathryn Schauburger, and Joseph Gill (collectively,
4 “Plaintiffs”), by and through their undersigned counsel, bring this action on behalf of themselves and all
5 others similarly situated against Defendants Toyota Motor North America, Inc., Toyota Motor
6 Engineering & Manufacturing North America, Inc., Toyota Motor Sales, U.S.A., Inc., (collectively,
7 “Toyota”) and Subaru of America, Inc. (“Subaru”). All allegations made in this complaint are based on
8 investigation of counsel and information and belief, except those allegations that pertain to Plaintiffs’
9 vehicles, which are based on personal knowledge.
10

11 2. This putative class action arises from Toyota’s and Subaru’s failure to disclose and then
12 adequately repair a uniform and widespread defect in the battery charging systems of certain electric
13 vehicles that causes the 12-volt batteries to repeatedly lose their charge completely. This defect renders
14 the vehicles unable to start and drive, and also damages the 12-volt batteries and causes them to die
15 completely and require premature replacement. The result is that Plaintiffs and Class members are left
16 with vehicles that are not fit for ordinary use: the batteries die without warning, potentially stranding
17 their drivers and passengers. This defect—hereinafter referred to as the Battery Defect—also results in a
18 considerable expenditure of time and out-of-pocket funds by Plaintiffs and Class members, who must
19 jumpstart their vehicles or arrange for them to be towed, wait for dealerships to charge or replace
20 batteries, arrange separate transportation to school, work, medical appointments, and so on.
21

22 3. While some Plaintiffs and some Class members have had their 12-volt batteries replaced
23 under warranty to date, Defendants have not made any permanent fix available, which means the
24 problem persists: the 12-volt batteries will simply die and require replacement yet again, indefinitely,
25 because the charging systems in the vehicles are inherently defective. Many Class members have been
26 through multiple 12-volt batteries in mere months and at 10,000 or fewer miles, even though 12-volt
27 batteries ordinarily last several years and tens or hundreds of thousands of miles.
28

1 4. Had the true nature of the Battery Defect been made known to Plaintiffs and Class
2 members at the time of purchase, they would not have purchased or leased the vehicles, or would have
3 paid much less for them than they did.

4 5. The vehicles at issue (hereinafter “Class Vehicles” or “Vehicles”) are the 2023-25 model
5 year Subaru Solterra and Toyota bZ4x. These vehicles are plug-in electric crossovers that were
6 developed together, and are based on the same platform and powertrain. They are manufactured by
7 Toyota in Japan, but are sold in the United States by both Toyota (as the bZ4x model) and Subaru (as
8 the Solterra model). There are slight differences between the models, but they are largely cosmetic; on
9 information and belief, the systems at issue in this Complaint are essentially identical and both models
10 suffer from the Battery Defect.
11

12 **II. JURISDICTION AND VENUE**

13 **A. Subject Matter Jurisdiction**

14 6. This Court has subject matter jurisdiction pursuant to the Class Action Fairness Act, 28
15 U.S.C. § 1332(d), because this is a class action in which the aggregate amount in controversy exceeds
16 \$5,000,000, exclusive of interests and costs, and there are 100 or more class members who are citizens
17 of different states than Defendants.
18

19 7. This Court has supplemental jurisdiction over Plaintiffs’ state law claims under 28 U.S.C.
20 § 1367.
21

22 **B. Personal Jurisdiction**

23 8. This Court has general personal jurisdiction over Defendants because each of them
24 conducted substantial business in this judicial district and intentionally and purposefully placed Class
25 Vehicles into the stream of commerce within the state of California and throughout the United States.

26 9. There are numerous authorized Toyota and Subaru dealerships in this District and
27 throughout the state of California. Together, these authorized dealers sold a significant number of Class
28 Vehicles. California leads the nation in electric vehicle sales, including sales of the Class Vehicles.

1 10. While Toyota’s primary places of business are in Texas and Kentucky, they conduct
2 substantial operations in California. Toyota Motor North America, Inc., is a California corporation and
3 has offices in Torrance, California. Toyota Motor Engineering & Manufacturing North America, Inc.,
4 operates Toyota Auto Body California, a manufacturing plant located in Long Beach, California. And
5 Toyota Motor Sales U.S.A., Inc., is a California corporation that conducts considerable business in
6 California, as it markets, distributes, and oversees warranty service of the many thousands of Toyota
7 vehicles that are sold, leased, and operated in California.
8

9 11. Additionally, while Subaru’s primary places of business in the United States are in New
10 Jersey and Indiana, it conducts substantial operations in California. Subaru of America, Inc., is
11 registered to do business in California and has Field Offices and Regional Distribution Centers in
12 California, and, on information and belief, imports vehicles and parts manufactured abroad, via ports
13 located in California, for distribution throughout the United States. Subaru conducts considerable
14 business in California, as it markets, distributes, and oversees warranty service of the many thousands of
15 Subaru vehicles that are sold, leased, and operated in California.
16

17 **C. Venue**

18 12. Venue is proper in this District pursuant to 28 U.S.C. § 1391 because a substantial part of
19 the events or omissions giving rise to Plaintiffs’ claims occurred in this District. Defendants have
20 marketed, advertised, and sold the affected vehicles in this District, and otherwise conducted extensive
21 business in this District.
22

23 **D. Divisional Assignment**

24 13. Because Plaintiff Wade resides in San Joaquin County and a substantial part of the events
25 or omissions giving rise to Plaintiff Wade’s claims occurred there, this action is commenced in the
26 Sacramento Division.
27
28

1 14. Additionally, because Plaintiff Huffman resides in El Dorado County and a substantial
2 part of the events or omissions giving rise to Plaintiff Huffman's claims occurred there, this action is
3 commenced in the Sacramento Division.

4 **III. PARTIES**

5 **A. Plaintiffs**

6 15. Franklin Huffman is a citizen of the State of California and resides in Placerville,
7 California. Placerville is located in El Dorado County, California.

8 16. John Wade is a citizen of the State of California and resides in Lanthrop, California.
9 Lanthrop is located in San Joaquin County, California.

10 17. Ming Chao is a citizen of the State of Washington and resides in Bellevue, Washington.
11 Bellevue is located in King County, Washington.

12 18. Danielle Buls is a citizen of the State of Washington and resides in Brush Prairie,
13 Washington. Brush Prairie is located in Clark County, Washington.

14 19. Michelle Atkins is a citizen of the State of Washington and resides in Seattle,
15 Washington. Seattle is located in King County, Washington.

16 20. Claudia Diez is a citizen of the State of New York and resides in New York City, New
17 York. New York City is located in the county of New York.

18 21. David Perilstein is a citizen of the State of New York and resides in Castleton, New
19 York. Castleton is located in Rensselaer County, New York.

20 22. Matthew Kull is a citizen of the State of New Jersey and resides in West Orange, New
21 Jersey. West Orange is located in Essex County, New Jersey.

22 23. Kathryn Schauburger is a citizen of the State of Wisconsin and resides in Onalaska,
23 Wisconsin. Onalaska is located in La Crosse County, Wisconsin.

24 24. Joseph Gill is a citizen of the State of Pennsylvania and resides in Washington,
25 Pennsylvania. Washington is located in Washington County, Pennsylvania.

1 **B. Defendants**

2 25. Toyota Motor North America, Inc. is a California corporation with its principal place of
3 business located at 6565 Headquarters Drive, Plano, Texas. It has additional offices in Torrance,
4 California; Georgetown, Kentucky; Washington, DC; Ann Arbor, Michigan; New York City, New
5 York; and San Ramon, California. Toyota Motor North America, Inc. is a wholly owned subsidiary of
6 Toyota Motor Corporation, a Japanese corporation. Toyota North America, Inc., is the holding company
7 for the North American operations of Toyota Motor Corporation and its other corporate affiliates and
8 subsidiaries. Toyota North America's activities include advertising, marketing, distributing, leasing,
9 warranting, and servicing Toyota vehicles through Toyota's approximately 1,800 dealerships throughout
10 the United States.
11

12 26. Toyota Motor Engineering & Manufacturing North America, Inc. is a Kentucky
13 corporation with its principal place of business located at 25 Atlantic Avenue, Erlanger, Kentucky. Like
14 Toyota Motor North America, it is a wholly-owned subsidiary of Toyota Motor Corporation. In addition
15 to Kentucky, it also has major operations in Arizona, California, and Michigan. Toyota Motor
16 Engineering & Manufacturing North America, Inc. provides support to Toyota's North American
17 manufacturing plants in areas including purchasing, production control, production engineering, quality
18 control, and administration. It shares responsibility for Toyota's engineering, design, research and
19 development, and manufacturing activities with Toyota's fourteen manufacturing plants in North
20 America.
21

22 27. Toyota Motor Sales, U.S.A., Inc. is a California corporation with its primary place of
23 business in Plano, Texas. From its founding in 1957 until 2017, its principal place of business was
24 located in Torrance, California. It is a wholly owned subsidiary of Toyota Motor Corporation and
25 engages in the marketing, sales, and distribution of Toyota cars through Toyota's approximately 1,800
26 authorized dealers throughout the United States.
27
28

1 33. The resulting electric SUV came to market for the 2023 model year. It was and is sold by
2 Subaru as the Solterra, and by Toyota as the bZ4X.

3 34. As noted above, these two vehicles have some minor differences, such as very slightly
4 different exterior and interior styling to match each brand's other models, and some different options
5 intended to appeal to their respective customers. For example, the Solterra has slightly higher ground
6 clearance and comes with all-wheel drive as the standard, along with Subaru's proprietary traction
7 management system, consistent with Subaru's outdoors-focused brand identity. Meanwhile, the bZ4x is
8 optimized more for city driving and commuting, so all-wheel drive is an optional extra.
9

10 35. But other than those minor differences, the two vehicles are, on information and belief,
11 substantially identical. They use the same chassis architecture, the same EV battery, the same EV
12 motors, and so on.
13

14 36. They also use the same electrical and charging systems. The Class Vehicles are wholly
15 electric, so drivers must plug them in to recharge the EV battery. The EV batteries in the Class Vehicles
16 are lithium-ion battery packs consisting of numerous rechargeable battery cells that store electricity to
17 power the electric motors.
18

19 **B. The Battery Defect**

20 37. In addition to the EV batteries that are an integral part of their powertrain, the Class
21 Vehicles are equipped with the type of battery that drivers of cars with traditional internal combustion
22 engines are more familiar with: a 12-volt lead-acid battery.

23 38. The 12-volt battery in the Class Vehicles, even though they are EVs, operates many of
24 the same functions that a 12-volt battery in an internal combustion vehicle does: accessories like
25 windshield wipers, lights, powered windows and seats, heating and cooling fans, and the radio. This
26 makes sense: an EV can be equipped with the same accessory systems as a manufacturer's internal
27 combustion vehicles are, and there is no need to reengineer these systems to work differently in an EV if
28 the EV is equipped with a 12-volt battery.

1 39. Also like a traditional internal combustion vehicle, the 12-volt battery is involved in
2 starting the motor. Rather than power a starter motor that begins rotating the moving parts of an internal
3 combustion engine, the 12-volt battery in the Class Vehicles instead operates a switch between the EV
4 battery and the drive motors that allows electricity to begin flowing to the motors.
5

6 40. Much like in a traditional internal combustion vehicle, if the 12-volt battery does not
7 have an adequate charge to operate that starting switch, the Class Vehicles cannot start their motors.
8 Thus, the Class Vehicles must charge their 12-volt batteries while driving.

9 41. However, the 12-volt charging and battery systems in the Class Vehicles are defective,
10 and as a result, the 12-volt batteries: (i) are not adequately recharged while driving; and (ii) drain until
11 empty prematurely when the vehicle is not in operation.
12

13 42. Consumers report online that their Class Vehicles' (specifically, the Toyota bZ4x's) 12-
14 volt batteries drain in as quickly as a few weeks, even on days with little to no driving. Toyota itself, in
15 its Technical Service Bulletin ("TSB") No. 0095-23², mentions the dangers of so-called 'parasitic draw'
16 (wherein a vehicle's 12-volt battery drains when the car is seemingly otherwise not in use), noting that
17 Toyota disables some functions at the factory in order "to reduce parasitic current draw in transit and
18 storage" and requires dealership staff to re-enable certain functions before the multimedia systems in a
19 vehicle can be used.
20

21 43. Similarly, consumers report online that their Class Vehicles' 12-volt batteries drain in as
22 quickly as a few weeks, even on days with little to no driving. Subaru itself mentions the dangers of so-
23 called 'parasitic draw' (wherein a vehicle's 12-volt battery drains when the car is seemingly otherwise
24 not in use), noting that Subaru disables some functions at the factory in order "to reduce parasitic current
25
26
27

28 ² 2024 bZ4X Pre-Delivery Service (PDS), TOYOTA (Nov. 21, 2023),
<https://static.nhtsa.gov/odi/tsbs/2023/MC-10247827-9999.pdf>.

1 draw during transit” and storage and requires dealership staff to re-enable certain functions before the
2 multimedia systems in a vehicle can be used.³

3 44. Toyota, in a different TSB (TSB-0026-23), provides a Long Term Storage Guideline that
4 instructs dealerships that “[i]f a hybrid vehicle or battery electric vehicle is put into storage, the State-
5 Of-Charge (SOC) of its battery and auxiliary battery will gradually decrease” and “[t]o reduce battery
6 drain during long-term storage, remove the battery ground (-) cable of each vehicle and reinstall it just
7 before delivery to the customer. When the battery ground (-) cable is reconnected, check and reset
8 electrical components, such as the clock, radio, etc., and reinitialize ALL applicable systems/functions.”⁴

9
10 45. The Battery Defect has four deleterious effects:

11 A. First, the 12-volt batteries often lack sufficient charge to start the vehicle when
12 needed, rendering the Class Vehicles inert because even if the EV battery is charged, it cannot be
13 connected to the drive motors to begin the flow of electricity without the 12-volt battery. This is
14 similar to the experience a driver of an internal combustion vehicle would have if their 12-volt
15 battery were discharged and unable to start the vehicle.
16

17 B. The second problem the Battery Defect causes is unlike an internal combustion
18 vehicle, however. Because EVs use electric motors that directly drive the axles or wheels rather
19 than routing their power through a transmission that can easily be physically placed in neutral,
20 allowing the wheels to rotate freely, the electric system of the Class Vehicles is necessary to
21 engage or disengage the drive motors and allow the vehicle to move. This means that if it cannot
22 be started, it also cannot roll freely, which means that Plaintiffs and Class members whose Class
23 Vehicles require towing because they cannot start—because the 12-volt battery is discharged—
24 must arrange for specialized tow equipment. In combination with the first problem—the too-
25
26

27 ³ *Service Information Bulletin*, SUBARU (June 14, 2022), <https://static.nhtsa.gov/odi/tsbs/2023/MC-10231294-0001.pdf>.

28 ⁴ *Long-Term Vehicle Storage Guidelines*, TOYOTA (May 26, 2023), <https://static.nhtsa.gov/odi/tsbs/2023/MC-10244122-9999.pdf>.

1 frequent situation in which the Class Vehicles cannot start—Plaintiffs and Class members may
2 be stranded when, without warning, they are unable to start their vehicle because the 12-volt
3 batteries are discharged.

4 C. The third problem is that because the 12-volt batteries operate many of the
5 accessory systems in the Class Vehicles—including the computer systems required to manage
6 the EV battery and drive motors—the Class Vehicles may shut down suddenly, even while
7 driving, when the 12-volt battery is discharged. This presents an unreasonable safety risk.

8 D. The fourth problem is that repeated cycles of inadequate charging ultimately
9 destroy the 12-volt batteries, requiring their premature replacement. Ultimately, fully discharging
10 a 12-volt lead-acid battery causes the lead-acid medium to crystallize, such that it can no longer
11 hold a charge. As noted above, 12-volt batteries typically have an expected useful life of several
12 years and hundreds or thousands of charge cycles over tens or hundreds of thousands of miles.
13 The Battery Defect shortens that useful life.

14
15
16 46. It is possible to jump-start a Class Vehicle. Just like an internal combustion vehicle, an
17 external power source can be connected to the 12-volt battery to provide power to the 12-volt electrical
18 system, and the vehicle can then be started. However, jump-starting requires carrying the proper
19 equipment, may require the presence of another vehicle, and can itself damage the 12-volt battery.

20
21 47. If a Plaintiff or Class Member jump-starts their vehicle rather than tows the car, a dealer
22 may be unwilling to test or replace the 12-volt battery, either because the battery is not dead upon arrival
23 to the dealer, or because the 12-volt battery could theoretically have been damaged by jump-starting
24 rather than by the defective charging system. This imposes a further burden, and a difficult and unfair
25 choice, on a driver who has just been stranded by their vehicle—they can engage in self-help in order to
26 get the vehicle to their destination or the dealer, only to be told that the dealer cannot or will not help, or
27 they can arrange and wait for specialized towing, fail to reach their destination, and be left without an
28 even semi-functional vehicle.

1 48. To Plaintiffs' knowledge, neither Toyota nor Subaru have ever acknowledged the
2 existence of the Battery Defect, and have not offered any permanent or effective fix. Defendants failed
3 to disclose it at the time of purchase and have concealed it, or at least failed to disclose it, at any point
4 thereafter.

5
6 49. At best, dealers may replace failed 12-volt batteries under warranty, but without a
7 permanent repair for the defective charging system, those batteries will inevitably fail prematurely
8 again. That is not a tenable solution.

9 50. As discussed below, Plaintiffs have experienced numerous battery failures and have had
10 to prematurely replace their 12-volt batteries. Even if those batteries are replaced under warranty, the
11 defective charging system means that the new batteries will simply fail again after another few thousand
12 miles, potentially stranding Plaintiffs or Class members yet again.

13
14 **C. Defendants Knew About the Battery Defect**

15 51. Both Toyota and Subaru are aware of the Battery Defect. They learned of the Battery
16 Defect through pre-release testing including with respect to the battery charging systems, as they are an
17 integral part of any vehicle. Defendants' pre-sale testing of the Class Vehicles would have necessary
18 revealed the Battery Defect to them.

19 52. Toyota's and Subaru's knowledge of the Battery Defect is also confirmed by numerous
20 consumer complaints about the issue. Instances of the battery failures are widespread, and Defendants
21 are aware of them, not only because Plaintiffs and Class members brought them to Defendants' notice
22 by bringing their vehicles to Defendants' authorized dealers but also because of the many complaints
23 lodged by consumers with the National Highway Transportation Safety Agency ("NHTSA"), with
24 Defendants directly, and in online fora that Defendants, on information and belief, monitor.

25
26 NHTSA maintains a database of motor-vehicle consumer complaints submitted since January 2000.
27 Consumers are able to submit complaints online or by phone in which they provide information that
28 includes the make, model, and model year of the vehicle, the approximate incident date, the mileage at

1 which the incident occurred, and a description of the incident. Below are examples and excerpts from
2 NHTSA, Subaru’s online forums, and YouTube videos that illustrate consumers’ experiences with the
3 Battery Defect in the Subaru Solterra, and the severity and safety risk of the defect:

4 NHTSA ID Number: 11644322

5 Incident Date: February 22, 2025

6 Consumer Location: VALLEY STREAM, NY

7 **Report to NHTSA – 12-Volt Battery Issue in Toyota BZ4X** **Vehicle

8 Information:** - **Make & Model:** Toyota BZ4X - **Issue:** 12-Volt Battery Drain

9 **Description of the Problem:** I have been experiencing repeated issues with the 12-

10 volt battery in my Toyota BZ4X. If the vehicle is not driven for one or two days, the

11 battery depletes, requiring a jump-start to operate. I have taken the car to the dealership

12 for inspection on two separate occasions—once in November and again recently. On both

13 visits, the dealer was unable to identify any issues. However, despite these inspections,

14 the problem persists. Most recently, after taking the vehicle to the dealership, the car once

15 again failed to start the following day and required another jump-start. **Safety

16 Concern:** This recurring battery failure presents a significant safety risk, particularly if

17 the vehicle becomes inoperable in a remote location or in an emergency situation. The

18 inability to start the car reliably raises concerns about potential hazards, especially in

19 extreme weather conditions or areas with limited access to assistance. **Request for

20 Investigation:** I urge the NHTSA to investigate this issue further, as it affects the

21 reliability and safety of the vehicle. A resolution is necessary to ensure that the 12-volt

22 battery functions as intended without leaving drivers stranded.

23 NHTSA ID NUMBER: 11642584

24 Incident Date: February 3, 2025

25 Consumer Location: ATLANTA, GA

26 The contact owns a 2024 Toyota BZ4X. The contact stated that the battery failed to retain

27 a charge, resulting in the doors not unlocking as needed. The contact stated that the dealer

28 had previously replaced the battery, but the failure persisted. The vehicle was towed back

to the dealer, who determined that the battery had failed again. The vehicle was not

repaired and remained at the dealer. The manufacturer was not made aware of the failure.

The failure mileage was approximately 12,389.

NHTSA ID NUMBER: 11618908

Incident Date: October 9, 2024

Consumer Location ANTHEM, AZ

On two occasions in the last month, when attempting to start the car, it doesn’t start, the

interior dash lights start flickering, and a notification displays stating, “Parking brake

cannot be applied”. I then have to “jump” the 12-volt battery. The main issue is the

notification stating the parking brake cannot be applied because before shutting off the

car the night before, I make sure the parking brake IS applied. However, it seems like the

12-volt battery is dead when I attempt to start it the following day; it automatically turns

off the parking brake or at least notifies me that it is in error based on the message I

receive.

1 NHTSA ID NUMBER: 11596203

2 Incident Date: June 22, 2024

3 Consumer Location: VALLEJO, CA

4 For the 6th time, the car is without power. It will not start although the starter battery was changed by the dealer on 5/28/24. The EV battery does not show any power. This is the 6th time that car will not start and without power. It was bought brand new on 1/1/2023.

5 NHTSA ID NUMBER: 11590882

6 Incident Date May 26, 2024

7 Consumer Location VALLEJO, CA

8 On October 11, 2023 at 7:35 am, the 2023 BZ4X all electric car did not start and a message on the dashboard read “parking brake unavailable.” The brake lights were flashing. Car was towed to the dealer, City Toyota. No diagnosis or explanation was offered. 2) On May 6, 2024 @ 7:08 am, the 2023 BZ4X did not start. Car was 80% charged. Headlights flashed for a few seconds, dashboard displayed time (7:08 am) and mileage (17734), and message “parking brake unavailable.” Toyota roadside service was called; the tow truck driver jump-started the car, and stated “the car battery was at 4%. It should be a minimum-of 12%. It is the battery that starts the car.” BZ4X was dropped off at the dealer, Toyota Vallejo. I asked if the battery can be replaced, service manager (SM) reported only if the diagnostics warrant it. Per SM, starter battery was charged.” Dealer unable to reproduce what was causing the electrical problem and what was “draining the battery.” 3) On May 20, 2024 @ 6:28 am, the car had a total black-out. The car did not start and there was no electrical power. Roadside service was called. Per tow-truck driver, “battery was less than 4%.” The car was towed to the dealer, Toyota Vallejo. Tow truck driver gave warm hand-off to Assistant Service Manager (ASM) that “car was dead and battery was less than 4%. Toyota BZ4X was kept overnight by the dealer service dept. Toyota Vallejo was in possession of car from 5/20/24 to 5/21/24. Per ASM, “we could not find anything wrong.” I asked if the battery that starts the car can be replaced, he denied and stated, “only if it fails the diagnostics.” A copy of the thorough checklist was not provided to client upon pick-up of vehicle. Miles was 18878. 4) On May 26, 2024 a[t] 8:31 am, the car did not start and had a complete black-out. No electricity. The car battery was charged at 80% as is customary and in prior events. It is the Memorial Day weekend and service dept hours are limited. Car always parked in garage.

21 Complaint from a 2023 Subaru Solterra Driver, January 2, 2025⁵

22
23 I finally got completely fed up with the 12V aux battery on my 2023 (post-recall build that didn’t sit for long). It was obvious that the battery was toast. Charge it on a 4.5A charger from 12.11V and after 90 minutes it’s “completely” charged. Wait a day and the battery drops from 12.6-ish (full charge) back to the 12.11-ish range. So obviously it’s no longer a 45AH actual capacity.

28 ⁵ Kwebberplank, SOLTERRA FORUM (Jan 2, 2025), <https://www.solterraforum.com/threads/12v-battery-questions.2668/>.

1
2 Complaint from a 2023 Subaru Solterra Driver, April 23, 2024⁶

3 Hey guys quick question, my Subaru SOLTERRA 2023, its battery died for the first time.
4 If I jump start it should I drive it after the jump start ? Is that under warranty? Should I go
5 to the dealer? Can anyone tell me

6 Complaint from a 2024 Subaru Solterra Driver, March 8, 2025⁷

7 I have had the car since December of 2024, the car was a new lease. The battery has
8 failed twice once in January, and again last week. This has left me stranded twice, the
9 battery failure occurs with no warning, it is running one hour, and the next it is dead.
10 When I took it to the dealership, they said they replaced the battery, the new battery is
11 now doing the same thing. The car also misleads the driver - upon putting the car on the
12 charger, the car notifies how many hours it will take to charge, the data is wrong, it takes
13 many hours longer that what the car says it will take to reach a full charge.

14 Complaint from a 2024 Subaru Solterra Driver, April 2, 2025⁸

15 The detailed story...I recently took my Solterra to my local Subaru dealership for service
16 due to my 12-volt battery being discharged to failure 3 times since January when I first
17 took my car in for service for this issue. The result of that service visit in January was
18 that they replaced the factory battery with a new battery. They did not identify or address
19 the excessive current draw that was causing the battery to drain so fast. When I took my
20 Solterra to the dealership the second time, I presented them with data that I collected by
21 using a Ancel BM300 Pro battery voltage monitor. With this data in hand, they took me
22 seriously. After two weeks trying to investigate the problem, they returned the car to me
23 with an acknowledgement that there is a known issue with Solterra Connect causing
24 excessive current draw from the 12 volt battery. They deleted my Solterra Connect
25 account and reset the Solterra Connect configuration in my car. They told me to install
26 the V 2.0.0 version of the app and start from scratch. They were told by a higher tier of
27 support that this should correct the issue and they passed that on to me. It did not correct
28 the issue.

Complaint from a 2024 Subaru Solterra Driver, May 18, 2024⁹

After 8 months 12 volt battery went dead, 31 % battery life left. Got warning alert take to
dealer...Replacing battery, but they don't have one, getting a SOLTERRA loaner.

⁶ Nazir Ra, FACEBOOK (Apr. 23, 2024),

<https://www.facebook.com/groups/subarusolterra/posts/1847689062371375/>.

⁷ NHTSA (Mar. 13, 2025), <https://www.nhtsa.gov/?nhtsaId=11648175>.

⁸ Seattlepaul, SOLTERRA FORUM (Apr. 2, 2025) <https://www.solterraforum.com/threads/solterra-connect-and-12-volt-battery-drain.2955/>.

⁹ Distinct_Trash_2902, REDDIT,

https://www.reddit.com/r/Solterra/comments/11e9ai2/12v_battery_issues_has_anyone_had_to/.

1 Complaint from a 2024 Subaru Solterra Driver, January 2, 2025¹⁰

2 I have 2024 Solterra touring that I purchased in July. We were out of town over
3 Christmas week and I left car in garage and plugged in (programmed to charge to 80%).
4 When we got home I used the car the next morning for quick errands without issue but
5 then plugged car back in for a short road trip. While it was plugged in and I was finishing
6 up packing I turned car on to preheat and thus conserve battery. When I was ready to go I
7 got error message on dash "Parking break unavailable" and in general the car just seemed
8 confused and wouldn't turn on/allow me to put car into Drive/neutral. Eventually the
9 headlights started flashing and 12V battery clearly dead despite traction battery being
10 charged to 100%. Does anybody understand how the 12v is charged? Is it when driving
11 only and that's why I had issue after car sitting for a week?? It wasn't particularly cold
12 and while I understand it isn't ideal for a car to sit not being used I hope I don't need to
13 plan for a 'car sitter' to take it for spin every few days anytime we go away for a week.
14 would love any insight folks have!! thanks

15 ps first tow truck attempted to jump battery but it wouldn't take any charge. Few days
16 later 2nd tow truck was able to successfully jump 12V and car is now at dealership and
17 everything looks fine on their end. Plan is for them to keep it few more days to make sure
18 battery doesn't do anything weird...

19 Complaint from a 2024 Subaru Solterra Driver, January 1, 2025¹¹

20 I signed the lease for this car in April 2024 and I am quickly nearing full regret. Today
21 marks the third time my 12v has died in the short time I've had this car. What am I doing
22 wrong? I charge at home overnight when my battery is down to 50-80 miles depending
23 on where I'm going the next day. I do frequently use the remote start, but not when the
24 battery is low. I have been using it daily since it's cold af out here in NJ. It was 8° F this
25 morning.

26 Complaint from a 2025 Subaru Solterra Driver, April 2, 2025¹²

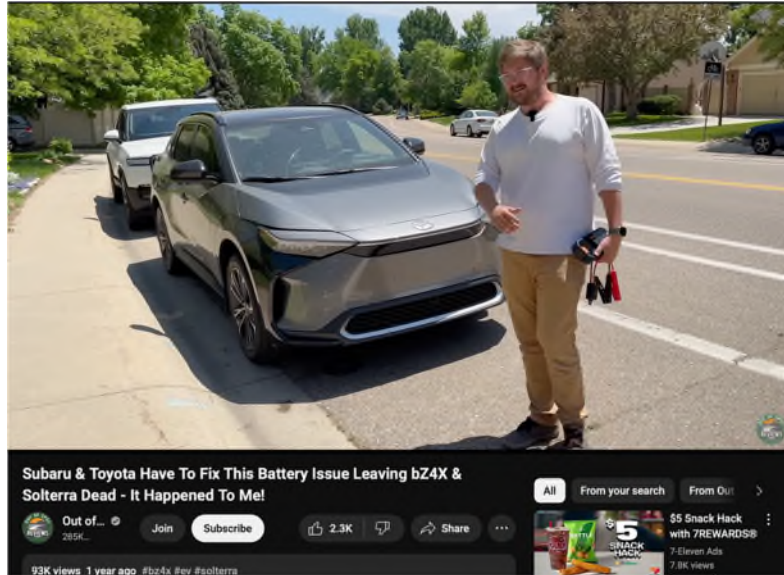
27 Our Solterra sat for 3 weeks no problem. Checked the battery with Carscanner and the 12
28 volt was fine. Traction battery at 96%. I went out to hook up the internet in the garage
and then disconnected the internet. I think the Solterra kept looking to talk to the router. I
had connected the car to the router in the settings. I had turned the car off I was pretty
sure. A week later the 12 volt is dead. Took it out and noticed one cell is a little low on
fluid. Charged it up and the battery is ok. I will have to watch to see how much data is
being used with the car talking to the fob or the phone. We typically do not use the
remote on the phone at all.

¹⁰ Kwebberplank, SOLTERRA FORUM (Jan. 2, 2025) <https://www.solterraforum.com/threads/12v-battery-questions.2668/>.

¹¹ jmousley2, REDDIT, https://www.reddit.com/r/Solterra/comments/li6mfwp/2024_12v_keeps_dying/#.

¹² Kathclark315, SOLTERRA FORUM (Feb. 14, 2024), <https://www.solterraforum.com/threads/5-months-and-dead-battery.1960/>.

1 Video, @Out Of Spec Reviews, YouTube, May 27, 2023¹³



12 53. Despite knowing about these problems with the battery charging system, Defendants
13 continued to include the defective charging systems in the Class Vehicles and continued to sell and lease
14 these vehicles without eliminating the Battery Defect and without disclosing it to Plaintiffs and Class
15 members in warranty manuals, on Defendants' websites, in advertisements, on Monroney stickers, or
16 elsewhere.

17 **D. Plaintiffs' Experiences**

18 **1. John Wade**

19 54. In or around March 2023, Plaintiff Wade purchased a 2023 Toyota BZ4X LTD from
20 Modesto Toyota in Modesto, California.

21
22 55. Based on Toyota's representations touting the quality of its vehicles, Plaintiff Wade
23 considered Toyota to be a quality company with a strong reputation for producing reliable vehicles. In
24 addition to Toyota's reputation, Plaintiff Wade decided on the Toyota bZ4x because he believed, based
25 on Toyota's marketing, that it was a high-quality and highly reliable vehicle.
26
27

28 ¹³ OUT OF SPEC REVIEWS, *Subaru & Toyota Have To Fix This Battery Issue Leaving bz4x & Solterra Dead – It Happened To Me!*, (YouTube), <https://www.youtube.com/watch?v=scnQuiWfxdU>.

1 56. The 12-volt battery in Plaintiff Wade’s vehicle died just a few weeks following his
2 purchase in late April 2023. The vehicle had displayed warning signs on the dashboard before the
3 battery died. Plaintiff Wade promptly contacted his roadside assistance service who jumpstarted Plaintiff
4 Wade’s vehicle.

5
6 57. Plaintiff Wade experienced the Battery Defect again in late 2023, after approximately
7 2,000 miles of driving the vehicle. Plaintiff Wade could not jumpstart his vehicle and it needed to be
8 towed to the Toyota dealership in order to address the Battery Defect. The Toyota dealership did not
9 provide Plaintiff Wade with a loaner vehicle during this time. After a few days, Plaintiff Wade contacted
10 the dealership to see what the issue with his vehicle was, at which point the dealership indicated that the
11 12-volt battery needed to be replaced. Following the replacement of the battery, Plaintiff Wade picked
12 up his vehicle from the dealership.

13
14 58. The 12-volt battery died again in Plaintiff Wade’s car in December 2024, exhibiting the
15 same warning signs on the dashboard. Toyota Customer Care confirmed that the battery was dead when
16 they arrived to tow the vehicle to the dealership. Once again, the Toyota dealership did not provide
17 Plaintiff Wade with a loaner vehicle and did not contact Plaintiff Wade about his vehicle for three
18 weeks. After those three weeks had passed, Plaintiff Wade called the dealership himself and discovered
19 that the battery needed to be replaced again, but was not told why.

20
21 59. The 12-volt battery equipped in Plaintiff Wade’s Class Vehicle has failed three times
22 after only about 5,000 miles of driving the vehicle. The 12-volt battery in Plaintiff Wade’s vehicle has
23 been replaced twice since March 2023.

24 60. Due to the Battery Defect, Plaintiff Wade purchased and installed a Level 2 battery
25 charger—the same as those used at the Toyota dealership—because he believed the reason his vehicle
26 was experiencing these issues was a result of not using a sufficient EV battery charger, incurring
27 approximately \$4,800 in out-of-pocket expenses.

1 61. Plaintiff Wade has never been informed of any recalls or defects related to his vehicle's
2 battery by anyone affiliated with Toyota but has discovered and reviewed similar claims and complaints
3 of the Battery Defect plaguing Class Vehicles on social media and vehicle forums.

4 62. Plaintiff Wade has visited his dealership and Toyota on multiple occasions in order to
5 address the Battery Defect, and the dealer has consistently indicated that there is no issue with the Class
6 Vehicle's battery, or that the failures experienced by Plaintiff Wade are normal. Plaintiff Wade has
7 similarly contacted corporate Toyota concerning the Battery Defect. Toyota has likewise offered no
8 recourse to Plaintiff Wade.

9
10 63. Due to the Defect and Defendant Toyota's failure to disclose the true nature of its Class
11 Vehicles and their components, namely the defective 12-volt battery, Plaintiff Wade and similarly
12 situated consumers have spent time and money addressing the Battery Defect without sufficient redress,
13 compensation, or concern from Toyota. Had he been aware of the Battery Defect before purchasing his
14 vehicle, Plaintiff Wade would not have done so or would have paid significantly less for it than he did.

15
16 **2. David Perilstein**

17 64. In or around January 2025, Plaintiff Perilstein leased a 2024 Toyota BZ4X from
18 Kinderhook Toyota in Hudson, NY.

19 65. Based on Toyota's representations touting the quality of its vehicles, Plaintiff Perilstein
20 considered Toyota to be a quality company with a strong reputation for producing reliable vehicles. In
21 addition to Toyota's reputation, Plaintiff Perilstein decided on the Toyota bZ4x because he believed,
22 based on Toyota's marketing, that it was a high-quality and highly reliable vehicle.

23
24 66. The 12-volt battery in Plaintiff Perilstein's vehicle died in May 2025 after approximately
25 1,900 miles of driving. Plaintiff Perilstein attempted to drive his vehicle and discovered that the vehicle
26 would not start. Plaintiff Perilstein promptly contacted his roadside assistance service who jumpstarted
27 Plaintiff Perilstein's vehicle. Plaintiff Perilstein delivered his vehicle to his dealership to address the
28

1 battery drain. After several days, the Toyota dealership returned the vehicle to Plaintiff with the battery
2 recharged, but was unable to determine the cause of the Battery Defect.

3 67. Plaintiff Perilstein experienced the Battery Defect again in June 2025. Plaintiff Perilstein
4 jumpstarted the 12-volt battery in his vehicle and drove the vehicle to his Toyota dealership. The Toyota
5 dealership indicated that the battery drain his vehicle's 12-volt battery had experienced was a result of a
6 "phantom drain" stemming from the Toyota App, and the Toyota dealership recommended he deactivate
7 the app.
8

9 68. As of the filing of his Complaint, the 12-volt battery equipped in Plaintiff Perilstein's
10 Class Vehicle has failed twice after only about 5,000 miles of driving.

11 69. Plaintiff Perilstein has never been informed of any recalls or defects related to his
12 vehicle's battery by anyone affiliated with Toyota but has subsequently discovered and reviewed similar
13 claims and complaints of the Battery Defect plaguing Class Vehicles on social media and vehicle
14 forums.
15

16 70. Plaintiff Perilstein has visited his dealership and Toyota on multiple occasions in order to
17 address the Battery Defect, and the dealer only recently determined that the battery drain may stem from
18 a "phantom drain" and recommended removing the Toyota App from his smartphone. Plaintiff Perilstein
19 has similarly contacted Toyota Customer Care concerning the Battery Defect, but it has offered no
20 recourse to Plaintiff Perilstein.
21

22 71. Due to the Defect and Defendant Toyota's failure to disclose the true nature of its Class
23 Vehicles and their components, namely the defective 12-volt battery, Plaintiff Perilstein and similarly
24 situated consumers have spent time addressing the Battery Defect without sufficient redress,
25 compensation, or concern from Toyota. Had he been aware of the Battery Defect before purchasing his
26 vehicle, Plaintiff Perilstein would not have done so or would have paid significantly less for it than he
27 did.
28

1 **3. Ming Chao**

2 72. In or around April 2024, Plaintiff Chao purchased a 2024 Toyota BZ4X from Toyota of
3 Renton in Renton, Washington.

4 73. Based on Toyota's representations touting the quality of its vehicles, Plaintiff Chao
5 considered Toyota to be a quality company with a strong reputation for producing reliable vehicles. In
6 addition to Toyota's reputation, Plaintiff Chao decided on the Toyota bZ4x because he believed, based
7 on Toyota's marketing, that it was a high-quality and highly reliable vehicle.

8 74. The 12-volt battery in Plaintiff Chao's vehicle died in October 2024. Plaintiff Chao
9 promptly contacted his roadside assistance service, who jumpstarted Plaintiff Chao's vehicle.
10

11 75. Following the initial incident, Plaintiff Chao experienced the Battery Defect twice more.
12 When the 12-volt battery died a second time, Plaintiff Chao purchased a jumpstart kit and jumpstarted
13 the battery himself. After the third time, Plaintiff Chao was unable to recharge the 12-volt battery
14 equipped in his vehicle, and Plaintiff delivered his vehicle to his Toyota Dealership who replaced the
15 12-volt battery in December 2024.
16

17 76. Following the battery replacement, Plaintiff has continued to experience problems
18 resulting from the Battery Defect.

19 77. In January 2025, the 12-volt battery in Plaintiff Chao's vehicle died once again. Plaintiff
20 was once again required to jumpstart his vehicle before delivering it to the Toyota dealership. The
21 Toyota dealership did not provide Plaintiff Chao with a loaner vehicle during this time. After a few
22 days, Plaintiff's Toyota dealership recharged the 12-volt battery and instructed him to remove his profile
23 from the Toyota App servers and to delete the Toyota App connected to Plaintiff's Class Vehicle.
24

25 78. All told, the 12-volt battery equipped in Plaintiff Chao's Class Vehicle has failed
26 approximately six times after only about 8,100 miles of driving the vehicle. The 12-volt battery in
27 Plaintiff Chao's vehicle has been replaced once since December 2024.
28

1 79. Due to the Battery Defect, Plaintiff Chao purchased a jumpstart kit for his vehicle's 12-
2 volt battery, incurring approximately \$60 in out-of-pocket expenses.

3 80. Plaintiff Chao has never been informed of any recalls or defects related to his vehicle's
4 battery by anyone affiliated with Toyota but has discovered and reviewed similar claims and complaints
5 of the Battery Defect plaguing Class Vehicles on social media and vehicle forums.

6 81. Plaintiff Chao has visited his dealership and Toyota on multiple occasions in order to
7 address the Battery Defect, and the dealer has consistently indicated that there is no issue with the Class
8 Vehicle's battery, or that the failures experienced by Plaintiff Chao are normal. Plaintiff Chao has
9 similarly contacted Toyota Customer Support concerning the Battery Defect. Toyota has likewise
10 offered no recourse to Plaintiff Chao.
11

12 82. Due to the Defect and Defendant Toyota's failure to disclose the true nature of its Class
13 Vehicles and their components, namely the defective 12-volt battery, Plaintiff Chao and similarly
14 situated consumers have spent time and money addressing the Battery Defect without sufficient redress,
15 compensation, or concern from Toyota. Had he been aware of the Battery Defect before purchasing his
16 vehicle, Plaintiff Chao would not have done so or would have paid significantly less for it than he did.
17

18 **4. Kathryn Schauberger**

19 83. In or around April 2024, Plaintiff Schauberger purchased a 2024 Toyota BZ4X from
20 LeadCar Toyota La Crosse in La Crosse, Wisconsin.
21

22 84. Based on Toyota's representations touting the quality of its vehicles, Plaintiff
23 Schauberger considered Toyota to be a quality company with a strong reputation for producing reliable
24 vehicles. In addition to Toyota's reputation, Plaintiff Schauberger decided on the Toyota bZ4x because
25 she believed, based on Toyota's marketing, that it was a high-quality and highly reliable vehicle.

26 85. The 12-volt battery in Plaintiff Schauberger's vehicle died in or around September 2024,
27 after approximately 3,000 miles of driving the Class Vehicle. The vehicle had experienced some
28 malfunctions before completely dying. Plaintiff Schauberger was able to jumpstart her vehicle's 12-volt
AMENDED COMPLAINT - 21

1 battery and promptly visited an auto parts store to have her battery checked. Plaintiff Schauberger was
2 notified by a store representative that her 12-volt battery contained a bad cell, so Plaintiff delivered her
3 vehicle to her Toyota dealership who replaced the battery.

4 86. Plaintiff Schauberger experienced the Battery Defect again in October 2024. Plaintiff
5 Schauberger's vehicle was already with her Toyota dealership for a rear-collision service visit when the
6 dealership contacted Plaintiff to communicate that while in their possession, the 12-volt battery
7 experienced the Battery Defect. The dealership was able to jumpstart the vehicle and Plaintiff
8 Schauberger was able to pick up her vehicle from the dealership with the battery recharged.

9 87. Plaintiff Schauberger experienced the Battery Defect again in January 2025. Similar to
10 the Battery Defect incident in October 2024, Plaintiff Schauberger's vehicle was with her Toyota
11 dealership for a separate AC compressor issue when the dealership contacted Plaintiff to communicate
12 that while in their possession, the 12-volt battery died again, and they once again had to replace the
13 battery.
14

15 88. Plaintiff Schauberger experience the Battery Defect three more times, approximately in
16 March and July of 2025, as well as on September 3, 2025. Plaintiff was able to jumpstart her vehicle all
17 three times using a jumpstart kit she purchased and carries in her Class Vehicle.
18

19 89. All told, the 12-volt battery equipped in Plaintiff's Schauberger Class Vehicle has failed
20 approximately six times after only about 17,500 miles of driving the vehicle. The 12-volt battery in
21 Plaintiff Schauberger's vehicle has been replaced twice since September 2024.
22

23 90. Due to the Battery Defect, Plaintiff Schauberger purchased a jumpstart kit for her
24 vehicle's 12-volt battery, incurring approximately \$79 in out-of-pocket expenses.

25 91. Plaintiff Schauberger has never been informed of any recalls or defects related to her
26 vehicle's battery by anyone affiliated with Toyota but has discovered and reviewed similar claims and
27 complaints of the Battery Defect plaguing Class Vehicles on social media and vehicle forums.
28

1 92. Plaintiff Schauberger has visited her dealership and Toyota on multiple occasions in
2 order to address the Battery Defect, and the dealer has consistently indicated that there is no issue with
3 the Class Vehicle's battery, or that the failures experienced by Plaintiff Schauberger are normal. Toyota
4 has likewise offered no recourse to Plaintiff Schauberger.

5
6 93. Due to the Defect and Defendant Toyota's failure to disclose the true nature of its Class
7 Vehicles and their components, namely the defective 12-volt battery, Plaintiff Schauberger and similarly
8 situated consumers have spent time and money addressing the Battery Defect without sufficient redress,
9 compensation, or concern from Toyota. Had she been aware of the Battery Defect before purchasing her
10 vehicle, Plaintiff Schauberger would not have done so or would have paid significantly less for it than
11 she did.

12
13 **5. Franklin Huffman**

14 94. In July 2024, Plaintiff Huffman leased a 2024 Subaru Solterra from Shingle Springs
15 Nissan Subaru Inc. in Shingle Springs, California.

16 95. Based on Subaru's representations touting the quality of its vehicles, Plaintiff Huffman
17 considered Subaru to be a quality company with a strong reputation for producing reliable vehicles. In
18 addition to Subaru's marketing and promotion, Plaintiff Huffman decided on the Subaru Solterra
19 because he believed it was a high-quality and highly reliable vehicle.

20 96. The 12-volt battery equipped in Plaintiff Huffman's Subaru Solterra died for the first
21 time approximately three months after the beginning of his lease, and three more times over the next
22 month. Plaintiff Huffman jumpstarted or charged the battery with a home charger after each occurrence.

23
24 97. After the third time the battery died, Plaintiff Huffman contacted his Subaru dealership
25 and was told that if the battery died again, he should contact the dealership. A few days later, Plaintiff
26 Huffman's battery died again, and again he contacted his Subaru dealership. At that time, Plaintiff
27 Huffman had driven the car only about 3,500 miles.

1 98. After the fourth time his 12-volt battery died, the dealership replaced the battery. Plaintiff
2 Huffman drove a loaner car from the dealership for several days while they diagnosed the issue.

3 99. After the Battery replacement, Plaintiff Huffman's battery died twice more. In total, the
4 12-volt battery equipped in Plaintiff Huffman's 2024 Subaru Solterra has died 6 times after only
5 approximately 7,000 miles of driving the vehicle. The 12-volt battery in Plaintiff Huffman's vehicle has
6 been replaced once since the start of the lease.
7

8 100. Plaintiff Huffman has never been informed of any recalls or defects related to his
9 vehicle's battery by anyone affiliated with Subaru but has discovered and reviewed similar claims and
10 complaints of the Battery Defect plaguing Class Vehicles on social media and vehicle forums.

11 101. Plaintiff Huffman has visited his dealership on multiple occasions in order to address the
12 Battery Defect. To date, Plaintiff's dealership has been unable to identify the issue with the Battery.
13

14 102. Due to the Defect and Defendant Subaru's failure to disclose the true nature of its
15 Vehicles and their components, namely the defective 12-volt battery and charging system, Plaintiff
16 Huffman and similarly situated consumers have spent time and money addressing the Battery Defect
17 without sufficient redress, compensation, or concern from Subaru. Had Plaintiff Huffman been aware of
18 the Battery Defect before entering into the lease, he would not have done so or would have paid
19 significantly less for it than he did.
20

21 **6. Danielle Buls**

22 103. In or around November 2024, Plaintiff Danielle Buls leased a 2024 Subaru Solterra from
23 Dick Hannah Subaru in Vancouver, Washington.

24 104. Based on Subaru's representations touting the quality of its vehicles, Plaintiff Buls
25 considered Subaru to be a quality company with a strong reputation for producing reliable vehicles. Also
26 based on Subaru's marketing and promotion, Plaintiff Buls decided on the Subaru Solterra because she
27 believed it was a high-quality and highly reliable vehicle.
28

1 105. The 12-volt battery in Plaintiff Buls’s vehicle died approximately three weeks after the
2 start of her lease, in December 2024. Plaintiff Buls then had to use a different vehicle to take her son to
3 school and go to work. It was not until Plaintiff Buls’s husband used jumper cables to trickle charge the
4 battery—which took approximately four hours—that Plaintiff Buls resumed driving the vehicle.

5
6 106. Plaintiff Buls experienced the Battery Defect again later the same month, December
7 2024. Plaintiff Buls contacted her Subaru dealership, who directed her to have the vehicle towed to the
8 dealership. The tow company had to jumpstart the vehicle to place it on the tow truck. Plaintiff’s Subaru
9 dealership replaced the battery with an upgraded battery. The dealership returned Plaintiff Buls’s vehicle
10 the following day.

11 107. Plaintiff Buls experienced the Battery Defect again approximately one month later, in
12 January 2025. Plaintiff Buls again contacted her Subaru dealership, who told her to trickle charge or
13 jumpstart her vehicle.

14
15 108. The 12-volt battery in Plaintiff Buls’s vehicle died yet again approximately two weeks
16 later, in February 2025. Plaintiff Buls had started her vehicle to warm it up before using it, and when she
17 went back to the vehicle, it was off. When Plaintiff Buls restarted the vehicle, various warning lights
18 flashed, including an indicator that she needed to press the brake and push the start button, another
19 indicating that the brakes were not available, and another stating Plaintiff Buls needed to press the park
20 button before exiting the vehicle. Plaintiff Buls again had to use a different vehicle to take her son to
21 school and go to work. When Plaintiff Buls returned home, she had the vehicle towed to her Subaru
22 dealership.

23
24 109. Plaintiff Buls’s dealership refused to perform work on the vehicle until she deleted the
25 Subaru application from her phone. Plaintiff Buls then contacted Subaru regarding the Battery Defect.
26 Subaru informed her that it opened an internal case regarding the issue.

27
28 110. Plaintiff Buls deleted the Subaru application from her phone so that her Subaru
dealership would work on her vehicle. The dealership replaced the battery again and, after testing, found
AMENDED COMPLAINT - 25

1 that there was still a power draw on the battery. After approximately nine days, the dealership told
2 Plaintiff Buls that she could pick up her vehicle.

3 111. Defendant Subaru at first advised Plaintiff Buls to leave her vehicle at the dealership
4 while the internal case was pending. Defendant Subaru later advised her to use her vehicle, claiming it
5 had been fixed. Plaintiff Buls picked up her vehicle that day.

6 112. The 12-volt battery equipped in Plaintiff Buls's 2024 Subaru Solterra has failed four
7 times after only about 3,800 miles of driving the vehicle. The 12-volt battery in Plaintiff Buls's vehicle
8 has also been replaced twice since November 2024.

9 113. Plaintiff Buls has never been informed of any recalls or defects related to her vehicle's
10 battery by anyone affiliated with Subaru but has discovered and reviewed similar claims and complaints
11 of the Battery Defect plaguing Class Vehicles on social media and vehicle forums.

12 114. Plaintiff Buls has visited her dealership on multiple occasions in order to address the
13 Battery Defect. To date, Plaintiff's dealership has been unable to identify the underlying issue with the
14 Battery. Plaintiff Buls has similarly contacted Defendant Subaru directly concerning the Battery Defect,
15 who has likewise to date has been unable to identify the issue with Plaintiff's battery.

16 115. Due to the Defect and Defendant Subaru's failure to disclose the true nature of its
17 Vehicles and their components, namely the defective 12-volt battery and charging system, Plaintiff Buls
18 and similarly situated consumers have spent time and money addressing the Battery Defect without
19 sufficient redress, compensation, or concern from Subaru. Had she been aware of the Battery Defect
20 before leasing her vehicle, Plaintiff would not have done so or would have paid significantly less for it
21 than she did.

22
23
24
25 **7. Michelle Atkins**

26 116. In or around January 2025, Plaintiff Michelle Atkins leased a 2024 Subaru Solterra from
27 Carter Subaru Ballard in Seattle, Washington.

1 117. Based on Subaru's representations touting the quality of its vehicles, Plaintiff Atkins
2 considered Subaru to be a quality company with a strong reputation for producing reliable vehicles. In
3 addition to Subaru's marketing and promotion, Plaintiff Atkins decided on the Subaru Solterra because
4 she believed it was a high-quality and highly reliable vehicle.
5

6 118. The 12-volt battery died for the first time less than 30 days after Plaintiff Atkins leased
7 the car. At that time, the vehicle had less than 500 miles on the odometer. Plaintiff Atkins had stayed
8 overnight at a friend's home and was planning on driving to an early appointment and then work.
9 Because Plaintiff did not know what had happened to her brand new vehicle, she tried to bicycle to her
10 destination but realizing that she would be late or miss her appointment entirely, turned around and
11 utilized her friend's portable battery charger to start her Solterra.
12

13 119. The 12-volt battery died for the second time a few weeks after the first occurrence. The
14 car had no more than 1,000 miles on the odometer at the time. Plaintiff Atkins was leaving one job site
15 to drive to another, and was forced to utilize her client's vehicle to jumpstart the Solterra.
16

17 120. Approximately one week after the second 12-volt battery failure, Plaintiff Atkins's
18 battery died for a third time. Due to previous experiences with the Battery Defect, Plaintiff Atkins had
19 double checked that the Solterra was starting as normal the night prior. This time, due to the location in
20 which her Solterra was parked, Plaintiff Atkins was not able to quickly jumpstart her Solterra, and as a
21 result had to request emergency time off from work.
22

23 121. Plaintiff Atkins contacted the Subaru dealership on April 11, 2025, and asked for a
24 portable battery charger, as she was getting stranded due to the Battery Defect, as the battery seems to
25 die any time the vehicle was not driven for a few days. The sales associate denied the existence of any
26 Battery Defect, but told Plaintiff Atkins to bring the vehicle in for testing as the 12-volt battery was still
27 under warranty.
28

122. On April 14, 2025, Plaintiff Atkins left her Solterra with the dealership to have the 12-
volt battery tested. The dealership conducted several tests and ultimately replaced the 12-volt battery.

1 She picked up the Solterra on the following day. Plaintiff Atkins was not provided with any explanation
2 as to the nature of the defect by the dealership or technicians.

3 123. On July 4, 2025, less than three months after the 12-volt battery replacement, Plaintiff
4 Atkins again experienced a battery failure. Plaintiff Atkins bicycled to a store to purchase a portable
5 battery charger and back in order to jumpstart her Solterra, resulting in a two-hour delay and a missed
6 appointment.
7

8 124. The 12-volt battery in Plaintiff Atkins's car has died four times since the beginning of her
9 lease in January 2025—a period, as of the filing of her Complaint, of less than eight months.

10 125. Plaintiff Atkins has never been informed of any recalls or defects related to her vehicle's
11 battery by anyone affiliated with Subaru but has discovered and reviewed similar complaints about the
12 Battery Defect plaguing Class Vehicles on social media and vehicle forums.
13

14 126. Plaintiff Atkins has visited her dealership in order to attempt to address the Battery
15 Defect. To date, Plaintiff's dealership has been unable or unwilling to identify the nature of the Defect.
16

17 127. Due to the Defect and Defendant Subaru's failure to disclose the true nature of its
18 Vehicles and their components, namely the defective 12-volt battery and charging system, Plaintiff
19 Atkins and similarly situated consumers have spent time and money addressing the Battery Defect
20 without sufficient redress, compensation, or concern from Subaru, and have experienced significant
21 personal and professional inconvenience. Had she been aware of the Battery Defect before leasing her
22 vehicle, Plaintiff Atkins would not have done so or would have paid significantly less for it than she did.
23

23 **8. Claudia Diez**

24 128. In or around August 2024, Plaintiff Claudia Diez leased a 2024 Subaru Solterra from
25 Brewster Subaru in Brewster, New York.

26 129. Based on Subaru's representations touting the quality of its vehicles, Plaintiff Diez
27 considered Subaru to be a quality company with a strong reputation for producing reliable vehicles. In
28

1 addition to Subaru's marketing and promotion, Plaintiff Diez decided on the Subaru Solterra because
2 she believed it was a high-quality and highly reliable vehicle.

3 130. The 12-volt battery in Plaintiff Diez's vehicle died approximately four months following
4 the commencement of her lease. Plaintiff Diez had to wait approximately eight hours for roadside
5 assistance to arrive and jumpstart the vehicle. Plaintiff Diez is a doctor and had to cancel four patients'
6 appointments throughout the day while monitoring her vehicle and waiting for roadside assistance.
7

8 131. Plaintiff Diez experienced the Battery Defect again the following day. Plaintiff Diez
9 contacted roadside assistance, who again came and jumpstarted the vehicle and advised Plaintiff to drive
10 it for service herself. Plaintiff Diez took her vehicle to Koepfel's Subaru Service Center in Queens, New
11 York, who told Plaintiff that the battery charge was low, and charged it up while Plaintiff Diez waited.
12 Plaintiff Diez again had to cancel patient appointments.
13

14 132. Plaintiff Diez experienced the Battery Defect yet again approximately two months later,
15 in February 2025. Plaintiff Diez again contacted roadside assistance, who again jumpstarted her vehicle.
16 Plaintiff Diez was late to and missed patients' appointments.
17

18 133. Two days after that incident, Plaintiff Diez experienced the Battery Defect yet again.
19 Plaintiff Diez called roadside assistance but was able to jumpstart the vehicle herself. Plaintiff Diez
20 made an appointment at her Subaru dealership to have the battery checked, which was scheduled for
21 three days later.

22 134. Plaintiff Diez took her vehicle to her Subaru dealership and received a loaner car. After
23 Plaintiff asked the dealership to check the 12-volt battery, the dealership replaced the battery.

24 135. After the Battery replacement, Plaintiff Diez's battery died again on May 9, 2025. The
25 12-volt battery equipped in Plaintiff Diez's 2024 Subaru Solterra has failed five times, after only
26 approximately 5,000 miles of driving the brand new vehicle. The 12-volt battery in Plaintiff Diez's
27 vehicle has already been replaced once since August 2024.
28

1 136. Plaintiff Diez has never been informed of any recalls or defects related to her vehicle's
2 battery by anyone affiliated with Subaru but has discovered and reviewed similar complaints about the
3 Battery Defect plaguing Class Vehicles on social media and vehicle forums.

4 137. Plaintiff Diez has visited her dealership on multiple occasions in order to attempt to
5 address the Battery Defect. To date, Plaintiff's dealership has been unable to identify the underlying
6 issue with the Battery. Plaintiff Diez has also contacted Defendant Subaru directly concerning the
7 Battery Defect. Subaru has to date been unable to identify or disclose the issue affecting Plaintiff's
8 battery.

9 138. Due to the Defect and Defendant Subaru's failure to disclose the true nature of its
10 Vehicles and their components, namely the defective 12-volt battery and charging system, Plaintiff Diez
11 and similarly situated consumers have spent time and money addressing the Battery Defect without
12 sufficient redress, compensation, or concern from Subaru. Had she been aware of the Battery Defect
13 before leasing her vehicle, Plaintiff Diez would not have done so or would have paid significantly less
14 for it than she did.

15
16
17 **9. Matthew Kull**

18 139. In or around April 2024, Plaintiff Kull leased a 2024 Subaru Solterra from Open Road
19 Subaru in Union, New Jersey.

20 140. Based on Subaru's representations touting the quality of its vehicles, Plaintiff Kull
21 considered Subaru to be a quality company with a strong reputation for producing reliable vehicles. In
22 addition to Subaru's marketing and promotion, Plaintiff Kull decided on the Subaru Solterra because he
23 believed it was a high-quality and highly reliable vehicle.

24 141. The 12-volt battery in Plaintiff Kull's vehicle died approximately seven months
25 following the start of his lease. Plaintiff jumpstarted his vehicle and took it to his dealership for
26 assessment, but was told there were no problems with the Battery.

1 142. Plaintiff Kull experienced the Battery Defect again in early December 2024. Plaintiff
2 Kull jumpstarted his vehicle and drove it to his Subaru dealership in order to address the Battery Defect.
3 The Subaru dealership replaced Plaintiff's Battery and told Plaintiff that if the battery died again, not to
4 jumpstart the vehicle. Plaintiff Kull waited for approximately three hours for the battery replacement,
5 and drove his vehicle home.
6

7 143. The battery died again in Plaintiff Kull's car in January 2025. Plaintiff Kull contacted
8 roadside assistance to have his car towed to his Subaru dealership because he was told not to jumpstart
9 it. Plaintiff Kull's car remained at the dealership, and he was unable to drive it for over one month.

10 144. The 12-volt battery equipped in Plaintiff Kull's 2024 Subaru Solterra has failed three
11 times after only approximately 5,500 miles of driving the vehicle, and it has been replaced once since
12 April 2024.
13

14 145. Plaintiff Kull has never been informed of any recalls or defects related to his vehicle's
15 battery by anyone affiliated with Subaru but has discovered and reviewed similar claims and complaints
16 of the Battery Defect plaguing Class Vehicles on social media and vehicle forums.

17 146. Plaintiff Kull has visited his dealership on multiple occasions in order to address the
18 Battery Defect. To date, Plaintiff Kull's dealership has been unable to identify the issue with the Battery.
19 Plaintiff has similarly contacted Defendant Subaru directly concerning the Battery Defect, who has
20 likewise to date been unable to identify the issue with Plaintiff's battery.
21

22 147. Due to the Defect and Defendant Subaru's failure to disclose the true nature of its
23 Vehicles and their components, namely the defective 12-volt battery, Plaintiff Kull and similarly
24 situated consumers have spent time and money addressing the Battery Defect without sufficient redress,
25 compensation, or concern from Subaru. Had he been aware of the Battery Defect before leasing his
26 vehicle, Plaintiff Kull would not have done so or would have paid significantly less for it than he did.
27
28

1 **10. Joseph Gill**

2 148. In or around April 2024, Plaintiff Gill leased a 2024 Toyota bZ4X XLE AWD from
3 Washington Automobiles Inc in Canonsburg, Pennsylvania.

4 149. Based on Toyota's active and persistent promotions touting the quality of its vehicles,
5 Plaintiff Gill considered Toyota to be a quality company with a strong reputation for producing reliable
6 vehicles.

7
8 150. In addition to Toyota's reputation through its marketing and promotion, Plaintiff Gill
9 decided on the Toyota bZ4X because he believed it was a high-quality and highly reliable vehicle.

10 151. The 12-volt battery in Plaintiff Gill's vehicle died approximately eleven months
11 following his lease. Plaintiff Gill had to have his vehicle towed to a Toyota dealership for service
12 because according to the Toyota phone application, his vehicle had a faulty battery. The Toyota
13 dealership replaced the 12-volt battery in Plaintiff's Gill's vehicle.

14
15 152. At that time, Plaintiff Gill no longer believed his vehicle was safe and terminated his
16 lease prematurely, incurring a net loss of approximately \$5,300.

17 153. The 12-volt battery equipped in Plaintiff Gill's 2024 Toyota bZ4X failed after only
18 approximately 9,800 miles of driving the vehicle. The 12-volt battery in Plaintiff Gill's vehicle was
19 replaced once.

20 154. Plaintiff, and similarly situated Class Members, spent time, effort and money to transport
21 himself and his defective Class Vehicle to a Toyota dealership.

22 155. Plaintiff has never been informed of any recalls or defects related to his vehicle's battery
23 by anyone affiliated with Toyota, but has discovered and reviewed similar claims and complaints of the
24 Battery Defect plaguing Class Vehicles on social media and vehicle forums.

25
26 156. Plaintiff visited his dealership in order to address the Battery Defect. To date, Plaintiff's
27 dealership has been unable to identify the underlying issue with the Battery. Plaintiff has similarly
28

1 contacted Defendant Toyota directly concerning the Battery Defect, who has likewise to date been
2 unable to identify the issue with Plaintiff's battery.

3 157. Plaintiff Gill notified Defendant Toyota of the defects in the Class Vehicles within a
4 reasonable time after Plaintiff discovered them.

5 158. Due to Defendant Toyota's lack of transparency in the quality of its Vehicles and its
6 components, namely the defective 12-volt battery, Plaintiff and similarly situated consumers have spent
7 time and money addressing the Battery Defect without sufficient redress, compensation, or concern from
8 Toyota. Had he been aware of the Battery Defect before leasing his vehicle, Plaintiff would not have
9 done so or would have paid significantly less for it than he did.
10

11 V. CLASS ACTION ALLEGATIONS

12 159. Plaintiffs bring this action as a class action under Rule 23 of the Federal Rules of Civil
13 Procedure, on behalf of a proposed nationwide class (the "Class"), defined as:
14

15 Any person in the United States who purchased or leased, other than for resale, a Class
16 Vehicle.

17 160. Class Vehicle is defined as follows:

18 2023, 2024, and 2025 model year Toyota bZ4x and Subaru Solterra.

19 161. In addition, state subclasses are defined as follows:

20 **California Subclass:** All persons in the state of California who bought or leased,
21 other than for resale, a Class Vehicle.

22 **New Jersey Subclass:** All persons in the state of New Jersey who bought or
23 leased, other than for resale, a Class Vehicle.

24 **New York Subclass:** All persons in the state of New York who bought or leased,
25 other than for resale, a Class Vehicle.

26 **Pennsylvania Subclass:** All persons in the state of Pennsylvania who bought or
27 leased, other than for resale, a Class Vehicle.

28 **Washington Subclass:** All persons in the state of Washington who bought or
leased, other than for resale, a Class Vehicle.

1 **Wisconsin Subclass:** All persons in the state of Wisconsin who bought or leased,
2 other than for resale, a Class Vehicle.

3 162. The Class and these Subclasses satisfy the prerequisites of Federal Rule of Civil
4 Procedure 23(a) and the requirements of Rule 23(b)(3).

5 163. **Numerosity and Ascertainability:** Plaintiffs do not know the exact size of the Class or
6 identity of the Class members, since such information is in the exclusive control of Defendants.
7 Nevertheless, the Class encompasses tens of thousands of individuals dispersed throughout the United
8 States. The number of Class members is so numerous that joinder of all Class members is impracticable.
9 The names, addresses, and phone numbers of Class members are identifiable through documents
10 maintained by Defendants.

11 164. **Commonality and Predominance:** This action involves common questions of law and
12 fact which predominate over any question solely affecting individual Class members. These common
13 questions include:
14 questions include:

- 15 i. whether Defendants engaged in the conduct alleged herein;
- 16 ii. whether Defendants had knowledge of the Battery Defect in the Class Vehicles when
17 they placed Class Vehicles into the stream of commerce in the United States;
- 18 iii. whether Defendants should have had knowledge of the Battery Defect in the Class
19 Vehicles when they placed Class Vehicles into the stream of commerce in the United
20 States;
- 21 iv. when Defendants became aware of the Battery Defect in the Class Vehicles;
- 22 v. whether Defendants knowingly failed to disclose the existence and cause of this
23 defect in the Class Vehicles;
- 24 vi. whether Defendants knowingly concealed the defect in the Class Vehicles;
- 25 vii. whether Defendants' conduct as alleged herein violates consumer protection laws;
- 26 viii. whether Defendants' conduct as alleged herein violates warranty laws;
- 27
- 28

- ix. whether Defendants' conduct as alleged herein violates other laws asserted herein;
- x. whether Plaintiffs and Class members overpaid for their Class Vehicles as a result of the defect;
- xi. whether Plaintiffs and Class members have suffered an ascertainable loss as a result of the defect;
- xii. and whether Plaintiffs and Class members are entitled to damages and equitable relief.

165. **Typicality:** Plaintiffs' claims are typical of the other Class members' claims because all Class members were comparably injured through Defendants' substantially uniform misconduct as described above. The Plaintiffs representing the Class are advancing the same claims and legal theories on behalf of themselves and all other members of the Class that they represent, and there are no defenses that are unique to Plaintiffs. The claims of Plaintiffs and Class members arise from the same operative facts and are based on the same legal theories.

166. **Adequacy:** Plaintiffs are adequate Class representatives because their interests do not conflict with the interests of the other members of the Class they seek to represent; Plaintiffs have retained counsel competent and experienced in complex class action litigation; and Plaintiffs intend to prosecute this action vigorously. The Class's interest will be fairly and adequately protected by Plaintiffs and their counsel.

167. **Superiority:** A class action is superior to any other available means for the fair and efficient adjudication of this controversy, and no unusual difficulties are likely to be encountered in the management of this class action. The damages and other detriment suffered by Plaintiffs and the other Class members are relatively small compared to the burden and expense that would be required to individually litigate their claims against Defendants, so it would be virtually impossible for the Class members to individually seek redress for Defendants' wrongful conduct. Even if Class members could afford individual litigation, the court system could not; individualized litigation creates a potential for

1 inconsistent or contradictory judgments, increases the delay and expense to the parties, and increases the
2 expense and burden to the court system. By contrast, the class action device presents far fewer
3 management difficulties and provides the benefits of single adjudication, economy of scale, and
4 comprehensive supervision by this Court.

5
6 **VI. ANY APPLICABLE STATUTES OF LIMITATION ARE TOLLED**

7 **A. Discovery Rule**

8 168. Plaintiffs and Class members did not discover, and could not have discovered through the
9 exercise of reasonable diligence, that the Class Vehicles had one or more design and/or manufacturing
10 defects that caused the Class Vehicle batteries to lose charge and/or require premature replacement.

11 169. Plaintiffs and Class members had no realistic ability to discover the extent of the design
12 and/or manufacturing defects until their Class Vehicles' 12-volt batteries suddenly died, potentially
13 leaving them stranded, and requiring jump-starting, towing, and/or battery replacement. Plaintiffs and
14 Class members would have had no reason to individually believe that the problems with their Vehicles
15 were the result of a widespread design and/or manufacturing defect. Any statutes of limitation otherwise
16 applicable to any claims asserted herein have thus been tolled by the discovery rule.

17
18 **B. Equitable Estoppel**

19 170. Defendants are equitably estopped from asserting the statutes of limitations. Defendants
20 misrepresented that the Class Vehicles were safe and free from defects. Defendants knew that the Class
21 Vehicles were unsafe and unable to perform as advertised without risking battery failures. Plaintiffs and
22 Class members, by contrast, were unaware of the true nature of the Class Vehicles and relied upon
23 Defendants' misrepresentations and omissions. Plaintiffs and Class members will be prejudiced if
24 Defendants are not estopped.
25
26
27
28

VII. CAUSES OF ACTION

A. Claims Brought on Behalf of the Nationwide Class

COUNT ONE — COMMON LAW FRAUD – FRAUD BY OMISSION - TOYOTA

171. Plaintiffs and the Class incorporate by reference each preceding and succeeding paragraph as though fully set forth at length herein.

172. Plaintiffs Wade, Perilstein, Gill, Chao, and Schauberger assert this claim on behalf of themselves and the Nationwide Class or, in the alternative, on behalf of the California, New York, Pennsylvania, Washington, and Wisconsin State Subclasses, respectively, against the Toyota Defendants.

173. The Class Vehicles that Plaintiffs and Class members purchased or leased were defective because the charging system inadequately charges the 12-volt batteries, leading to sudden and premature battery failures.

174. Defendants failed to disclose the Battery Defect and acted with reckless disregard for the truth when they failed to disclose that the Battery Defect would render the Class Vehicles prone to sudden and premature battery failures. Further, even after Defendants became aware of the Battery Defect, they still failed to disclose it.

175. Defendants had a duty to disclose this material information to Plaintiffs and Class members because Defendants were in a superior position to know about the existence, nature, cause, and results of the Battery Defect; Plaintiffs and Class members could not reasonably have been expected to learn or discover the Battery Defect; and Defendants knew that Plaintiffs and Class members could not reasonably have been expected to learn about or discover the Battery Defect.

176. Plaintiffs and Class members did not know about the Battery Defect and could not have discovered it through reasonably diligent investigation.

177. But for Defendants' fraudulent omissions of material information, Plaintiffs and Class members would not have purchased or leased the Class Vehicles, or would have paid less for them.

1 Plaintiffs and Class members have sustained damage because they purchased or leased Vehicles that
2 were not as represented. Accordingly, Defendants are liable to Plaintiffs and Class members for
3 damages in an amount to be proven at trial for their lost benefit of the bargain and overpayment at the
4 time of purchase or lease, and/or for the diminished value of the Class Vehicles.

5
6 178. Defendants' acts were done wantonly, deliberately, with intent to defraud, in reckless
7 disregard of the rights of Plaintiffs and Class members, and for Defendants to enrich themselves.
8 Defendants' misconduct warrants an assessment of punitive damages in an amount sufficient to deter
9 such conduct in the future, that amount shall be determined according to proof at trial.

10 **COUNT TWO — COMMON LAW FRAUD – FRAUD BY OMISSION - SUBARU**

11 179. Plaintiffs and the Class incorporate by reference each preceding and succeeding
12 paragraph as though fully set forth at length herein.

13
14 180. Plaintiffs Huffman, Kull, Diez, Atkins, and Buls assert this claim on behalf of themselves
15 and the Nationwide Class or, in the alternative, on behalf of the California, New Jersey, New York, and
16 Washington State Subclasses, against Defendant Subaru.

17 181. The Class Vehicles that Plaintiffs and Class members purchased or leased were defective
18 because the charging system inadequately charges the 12-volt batteries, leading to sudden and premature
19 battery failures.

20 182. Defendant failed to disclose the Battery Defect and acted with reckless disregard for the
21 truth when it failed to disclose that the Battery Defect would render the Class Vehicles prone to sudden
22 and premature battery failures. Further, even after Defendant became aware of the Battery Defect, it still
23 failed to disclose it.

24
25 183. Defendant had a duty to disclose this material information to Plaintiffs and Class
26 members because Defendant was in a superior position to know about the existence, nature, cause, and
27 results of the Battery Defect; Plaintiffs and Class members could not reasonably have been expected to
28

1 learn about or discover the Battery Defect; and Defendant knew that Plaintiffs and Class members could
2 not reasonably have been expected to learn about or discover the Battery Defect.

3 184. Plaintiffs and Class members did not know about the Battery Defect and could not have
4 discovered it through reasonably diligent investigation.

5 185. But for Defendant's fraudulent omissions of material information, Plaintiffs and Class
6 members would not have purchased or leased the Class Vehicles, or would have paid less for them.
7 Plaintiffs and Class members have sustained damage because they purchased or leased Vehicles that
8 were not as represented. Accordingly, Defendant is liable to Plaintiffs and Class members for damages
9 in an amount to be proven at trial for their lost benefit of the bargain and overpayment at the time of
10 purchase or lease, and/or for the diminished value of the Class Vehicles.

11 186. Defendant's acts were done wantonly, deliberately, with intent to defraud, in reckless
12 disregard of the rights of Plaintiffs and Class members, and to enrich itself. Defendant's misconduct
13 warrants an assessment of punitive damages in an amount sufficient to deter such conduct in the future,
14 which amount shall be determined according to proof at trial.

15
16
17 **COUNT THREE — UNJUST ENRICHMENT – TOYOTA**

18 187. Plaintiffs and the Class incorporate by reference each preceding and succeeding
19 paragraph as though fully set forth at length herein.

20 188. Plaintiffs Wade, Perilstein, Gill, Chao, and Schauberger assert this claim on behalf of
21 themselves and the Nationwide Class or, in the alternative, on behalf of the California, New York,
22 Pennsylvania, Washington, and Wisconsin Subclasses, respectively, against the Toyota Defendants.

23 189. Plaintiffs and Class members paid Defendants the value of non-defective, fully
24 operational Class Vehicles with the ability to operate without fear of premature battery failure. In
25 exchange, Defendants provided Plaintiffs and Class members with defective Vehicles that are prone to
26 battery failures that leave them unable to start, may cause them to suddenly stop while driving, and
27 require premature battery replacements.
28

1 **B. Claims Brought on Behalf of the California Subclass**

2 **COUNT FIVE — VIOLATION OF THE CONSUMER LEGAL REMEDIES ACT**
3 **(“CLRA”)**
4 **(CAL. CIV. CODE § 1750, ET SEQ.) – TOYOTA**

5 197. Plaintiffs and the Class incorporate by reference each preceding and succeeding
6 paragraph as though fully set forth at length herein.

7 198. Plaintiff Wade (for purposes of this section, “California Plaintiff”) brings this claim on
8 behalf of himself and on behalf of the members of the California Subclass against the Toyota
9 Defendants.

10 199. Defendants are each a “person” as that term is defined in California Civil Code § 1761(c).

11 200. California Plaintiff and the California Subclass members are “consumers” as that term is
12 defined in California Civil Code §1761(d).

13 201. Defendants engaged in unfair and deceptive acts in violation of the CLRA by the
14 practices described above, and by knowingly and intentionally concealing from California Plaintiff and
15 California Subclass members that the Class Vehicles suffer from a defect(s) (and the costs, risks, and
16 diminished value of the vehicles as a result of this problem).

17 202. Defendants’ acts and practices violated the CLRA by: (i) representing that goods or
18 services have sponsorships, characteristics, uses, benefits, or quantities which they do not have; (ii)
19 representing that goods or services are of a particular standard, quality, or grade, or that goods are of a
20 particular style or model, if they are of another; (iii) advertising goods and services with the intent not to
21 sell them as advertised; and (iv) representing that the subject of a transaction has been supplied in
22 accordance with a previous representation when it has not.

23 203. Defendants’ unfair or deceptive acts or practices occurred repeatedly in its trade or
24 business, were capable of deceiving a substantial portion of the purchasing public, and imposed a
25 serious safety risk on the public.
26
27
28

1 204. Defendants knew that the charging systems were defectively designed or manufactured,
2 would fail prematurely, and were not suitable for their intended use.

3 205. Defendants had a duty to California Plaintiff and the California Subclass members to
4 disclose the Battery Defect and the defective nature of the Class Vehicles because:

5 A. Defendants were in a superior position to know the true state of facts
6 about the Defect and its associated costs;

7 B. California Plaintiff and the California Subclass members could not
8 reasonably have been expected to learn or discover that the Class Vehicles had defects
9 until those defects became manifest;

10 C. Defendants knew that California Plaintiff and the California Subclass
11 members could not reasonably have been expected to learn about or discover the Battery
12 Defect and the effect it would have on the Class Vehicles' operability.
13

14 206. In failing to disclose the Battery Defect, Defendants have knowingly and intentionally
15 concealed material facts and breached their duty to disclose.
16

17 207. The facts Defendants concealed or did not disclose to California Plaintiff and the
18 California Subclass members are material in that a reasonable consumer would have considered them to
19 be important in deciding whether to purchase the Class Vehicles or pay a lesser price for them. Had
20 California Plaintiff and the California Subclass members known the Class Vehicles were defective, they
21 would not have purchased the Class Vehicles or would have paid less for them.
22

23 208. Plaintiff Wade provided Toyota with notice of its CLRA violations on April 7, 2025.

24 209. Defendants' fraudulent and deceptive business practices proximately caused injuries to
25 California Plaintiff and the members of the California Subclass.

26 210. Pursuant to Cal. Civ. Code § 1780, Plaintiffs seek injunctive and declaratory relief,
27 monetary damages in an amount to be proven at trial, and reasonable attorneys' fees and costs.
28

**COUNT SIX — VIOLATION OF THE CONSUMER LEGAL REMEDIES ACT
 (“CLRA”)
 (CAL. CIV. CODE § 1750, *ET SEQ.*) – SUBARU**

1
2
3 211. Plaintiffs and the Class incorporate by reference each preceding and succeeding
4 paragraph as though fully set forth at length herein.

5
6 212. Plaintiff Huffman (for purposes of this section, “California Plaintiff”) brings this claim
7 on behalf of himself and on behalf of the members of the California Subclass against Defendant Subaru.

8 213. Defendant is a “person” as that term is defined in California Civil Code § 1761(c).

9 214. California Plaintiff and the California Subclass members are “consumers” as that term is
10 defined in California Civil Code §1761(d).

11 215. Defendant engaged in unfair and deceptive acts in violation of the CLRA by the practices
12 described above, and by knowingly and intentionally concealing from California Plaintiff and California
13 Subclass members that the Class Vehicles suffer from a defect(s) (and the costs, risks, and diminished
14 value of the vehicles as a result of this problem).

15
16 216. Defendant’s acts and practices violated the CLRA by: (i) representing that goods or
17 services have sponsorships, characteristics, uses, benefits, or quantities which they do not have; (ii)
18 representing that goods or services are of a particular standard, quality, or grade, or that goods are of a
19 particular style or model, if they are of another; (iii) advertising goods and services with the intent not to
20 sell them as advertised; and (iv) representing that the subject of a transaction has been supplied in
21 accordance with a previous representation when it has not.

22
23 217. Defendant’s unfair or deceptive acts or practices occurred repeatedly in its trade or
24 business, were capable of deceiving a substantial portion of the purchasing public, and imposed a
25 serious safety risk on the public.

26 218. Defendant knew that the charging systems were defectively designed or manufactured,
27 would fail prematurely, and were not suitable for their intended use.

1 219. Defendant had a duty to California Plaintiff and the California Subclass members to
2 disclose the Battery Defect and the defective nature of the Class Vehicles because:

3 D. Defendant was in a superior position to know the true state of facts about
4 the Defect and its associated costs;

5 E. California Plaintiff and the California Subclass members could not
6 reasonably have been expected to learn or discover that the Class Vehicles had defects
7 until those defects became manifest;

8 F. Defendant knew that California Plaintiff and the California Subclass
9 members could not reasonably have been expected to learn about or discover the Battery
10 Defect and the effect it would have on the Class Vehicles' operability.
11

12 220. In failing to disclose the Battery Defect, Defendant has knowingly and intentionally
13 concealed material facts and breached its duty to disclose.
14

15 221. The facts Defendant concealed or did not disclose to California Plaintiff and the
16 California Subclass members are material in that a reasonable consumer would have considered them to
17 be important in deciding whether to purchase the Class Vehicles or pay a lesser price for them. Had
18 California Plaintiff and the California Subclass members known the Class Vehicles were defective, they
19 would not have purchased the Class Vehicles or would have paid less for them.
20

21 222. Plaintiff Huffman provided Subaru with notice of its CLRA violations on May 21, 2025.

22 223. Defendant's fraudulent and deceptive business practices proximately caused injuries to
23 California Plaintiff and the members of the California Subclass.

24 224. Pursuant to Cal. Civ. Code § 1780, Plaintiffs seek injunctive and declaratory relief,
25 monetary damages in an amount to be proven at trial, and reasonable attorneys' fees and costs.
26
27
28

**COUNT SEVEN — VIOLATION OF THE CALIFORNIA UNFAIR
COMPETITION LAW (CAL. BUS. & PROF. CODE § 17200) - TOYOTA**

1
2
3 225. Plaintiffs and the Class incorporate by reference each preceding and succeeding
4 paragraph as though fully set forth at length herein.

5 226. Plaintiff Wade brings this claim on behalf of himself and on behalf of the members of the
6 California Subclass against the Toyota Defendants.

7 227. The California Unfair Competition Law (“UCL”) prohibits acts of “unfair competition,”
8 including any “unlawful, unfair or fraudulent business act or practice” and “unfair, deceptive, untrue or
9 misleading advertising.” Cal. Bus. & Prof. Code § 17200.
10

11 228. Defendants have engaged in unfair competition and unfair, unlawful, or fraudulent
12 business practices by the conduct, statements, and omissions described above, and by knowingly and
13 intentionally concealing the Battery Defect from California Plaintiff and other California Subclass
14 members. Defendants should have disclosed this information because they were in a superior position to
15 know the true facts related to the defect, and California Plaintiff and California Subclass members could
16 not have been reasonably expected to learn or discover these true facts.
17

18 229. The Battery Defect constitutes a safety issue for automobile owners, drivers, and
19 passengers, thus requiring Defendants to disclose its existence to past and future owners and lessees.

20 230. By its acts and practices, Defendants have deceived Plaintiffs and are likely to have
21 deceived the public. In failing to disclose the Battery Defect and suppressing other material facts,
22 Defendants breached their duty to disclose these facts, violated the UCL, and caused injuries to
23 California Plaintiff and the California Subclass members. Defendants’ omissions and acts of
24 concealment pertained to information material to California Plaintiff and other California Subclass
25 members, as it would have been to all reasonable consumers.
26
27
28

1 238. The Battery Defect constitutes a safety issue for automobile owners, drivers, and
2 passengers, thus requiring Defendant to disclose its existence to past and future owners and lessees.

3 239. By its acts and practices, Defendant has deceived Plaintiffs and is likely to have deceived
4 the public. In failing to disclose the Battery Defect and suppressing other material facts, Defendant
5 breached its duty to disclose these facts, violated the UCL, and caused injuries to California Plaintiff and
6 the California Subclass members. Defendant’s omissions and acts of concealment pertained to
7 information material to California Plaintiff and other California Subclass members, as it would have
8 been to all reasonable consumers.
9

10 240. The injuries California Plaintiff and the California Subclass members suffered outweigh
11 any potential countervailing benefit to consumers or to competition, and they are not injuries that
12 California Plaintiff and the California Subclass members could or should have reasonably avoided.
13

14 241. Defendant’s acts and practices are unlawful because they violate California Civil Code
15 §§ 1668, 1709, 1710, and 1750 *et seq.*, and California Commercial Code § 2313.

16 242. Plaintiffs seek to enjoin Defendant from further unlawful, unfair, and/or fraudulent acts
17 or practices, to obtain restitutionary disgorgement of all monies and revenues Defendant has generated
18 as a result of such practices, and all other relief allowed under California Business & Professions Code §
19 17200.
20

21 **COUNT NINE — VIOLATION OF THE CALIFORNIA FALSE ADVERTISING**
22 **LAW**
23 **(CAL. BUS. & PROF. CODE § 17500, *ET SEQ.*) - TOYOTA**

24 243. Plaintiffs and the Class incorporate by reference each preceding and succeeding
25 paragraph as though fully set forth at length herein.

26 244. Plaintiff Wade (for the purposes of this section, “California Plaintiff”) brings this claim
27 on behalf of himself and on behalf of the members of the California Subclass against the Toyota
28 Defendants.

1 245. California Business & Professions Code § 17500 states: “It is unlawful for any . . .
2 corporation . . . with intent directly or indirectly to dispose of real or personal property . . . to induce the
3 public to enter into any obligation relating thereto, to make or disseminate or cause to be made or
4 disseminated . . . from this state before the public in any state, in any newspaper or other publication, or
5 any advertising device, . . . or in any other manner or means whatever, including over the Internet, any
6 statement . . . which is untrue or misleading, and which is known, or which by the exercise of reasonable
7 care should be known, to be untrue or misleading.”
8

9 246. Defendants caused to be made or disseminated through California and the United States,
10 through advertising, marketing, and other publications, statements that were untrue or misleading, and
11 which were known, or which by the exercise of reasonable care Defendants should have known to be
12 untrue and misleading to consumers, including California Plaintiff and other California Subclass
13 members.
14

15 247. Defendants violated Section 17500 because their misrepresentations and omissions
16 regarding the safety, reliability, and functionality of the Class Vehicles were material and likely to
17 deceive a reasonable consumer.

18 248. California Plaintiff and the other California Subclass members have suffered injuries in
19 fact, including the loss of money or property, resulting from Defendants’ unfair, unlawful, and/or
20 deceptive practices. In purchasing or leasing their Class Vehicles, California Plaintiff and the other
21 California Subclass members relied on Defendants’ misrepresentations and/or omissions with respect to
22 the Class Vehicles’ safety and reliability. Defendants’ representations were untrue because they
23 distributed the Class Vehicles with the Battery Defect. Had California Plaintiff and the other California
24 Subclass members known this, they would not have purchased or leased the Class Vehicles or would not
25 have paid as much for them. Accordingly, California Plaintiff and the California Subclass members did
26 not receive the benefit of their bargain.
27
28

1 249. All of the wrongful conduct alleged herein occurred, and continues to occur, in the
2 conduct of Defendants’ business. Defendants’ wrongful conduct is part of a pattern or generalized
3 course of conduct that is still perpetuated and repeated, both in the state of California and nationwide.

4 250. California Plaintiff, individually and on behalf of the other California Subclass members,
5 requests that the Court enter such orders or judgments as may be necessary to enjoin Defendants from
6 continuing their unfair, unlawful, and/or deceptive practices, and restore to California Plaintiff and the
7 other California Subclass members any money Defendants acquired by unfair competition, including
8 restitution and/or restitutionary disgorgement, and for such other relief set forth below.

9
10 **COUNT TEN — VIOLATION OF THE CALIFORNIA FALSE ADVERTISING**
11 **LAW**
12 **(CAL. BUS. & PROF. CODE § 17500, ET SEQ.) - SUBARU**

13 251. Plaintiffs and the Class incorporate by reference each preceding and succeeding
14 paragraph as though fully set forth at length herein.

15 252. Plaintiff Huffman (for the purposes of this section, “California Plaintiff”) brings this
16 claim on behalf of himself and on behalf of the members of the California Subclass against Defendant
17 Subaru.

18 253. California Business & Professions Code § 17500 states: “It is unlawful for any . . .
19 corporation . . . with intent directly or indirectly to dispose of real or personal property . . . to induce the
20 public to enter into any obligation relating thereto, to make or disseminate or cause to be made or
21 disseminated . . . from this state before the public in any state, in any newspaper or other publication, or
22 any advertising device, . . . or in any other manner or means whatever, including over the Internet, any
23 statement . . . which is untrue or misleading, and which is known, or which by the exercise of reasonable
24 care should be known, to be untrue or misleading.”

25
26 254. Defendant caused to be made or disseminated through California and the United States,
27 through advertising, marketing, and other publications, statements that were untrue or misleading, and
28 which were known, or which by the exercise of reasonable care Defendant should have known to be

1 untrue and misleading to consumers, including California Plaintiff and other California Subclass
2 members.

3 255. Defendant violated Section 17500 because their misrepresentations and omissions
4 regarding the safety, reliability, and functionality of the Class Vehicles were material and likely to
5 deceive a reasonable consumer.
6

7 256. California Plaintiff and the other California Subclass members have suffered injuries in
8 fact, including the loss of money or property, resulting from Defendant's unfair, unlawful, and/or
9 deceptive practices. In purchasing or leasing their Class Vehicles, California Plaintiff and the other
10 California Subclass members relied on Defendant's misrepresentations and/or omissions with respect to
11 the Class Vehicles' safety and reliability. Defendant's representations were untrue because they
12 distributed the Class Vehicles with the Battery Defect. Had California Plaintiff and the other California
13 Subclass members known this, they would not have purchased or leased the Class Vehicles or would not
14 have paid as much for them. Accordingly, California Plaintiff and the California Subclass members did
15 not receive the benefit of their bargain.
16

17 257. All of the wrongful conduct alleged herein occurred, and continues to occur, in the
18 conduct of Defendant's business. Defendant's wrongful conduct is part of a pattern or generalized
19 course of conduct that is still perpetuated and repeated, both in the state of California and nationwide.
20

21 258. California Plaintiff, individually and on behalf of the other California Subclass members,
22 requests that the Court enter such orders or judgments as may be necessary to enjoin Defendant from
23 continuing its unfair, unlawful, and/or deceptive practices, and restore to California Plaintiff and the
24 other California Subclass members any money Defendant acquired by unfair competition, including
25 restitution and/or restitutionary disgorgement, and for such other relief set forth below.
26
27
28

**COUNT ELEVEN — BREACH OF EXPRESS WARRANTY
(CAL. COM. CODE §§ 2313 AND 10210) - TOYOTA**

1
2
3 259. Plaintiffs and the Class incorporate by reference each preceding and succeeding
4 paragraph as though fully set forth at length herein.

5 260. Plaintiff Wade (for the purposes of this section, “California Plaintiff”) brings this claim
6 on behalf of himself and on behalf of the members of the California Subclass against the Toyota
7 Defendants.

8 261. Each Defendant is and was at all relevant times a “merchant” with respect to motor
9 vehicles under California Commercial Code §§ 2104(1) and 10103(c), and a “seller” of motor vehicles
10 under § 2103(1)(d).
11

12 262. The Class Vehicles are and were at all relevant times “goods” within the meaning of
13 California Commercial Code §§ 2105(1) and 10103(a)(8).

14 263. Defendants provided all purchasers and lessees of the Class Vehicles with the express
15 warranties described herein, which became part of the basis of the parties’ bargain. Accordingly,
16 Defendants’ warranties are express warranties under state law.
17

18 264. Specifically, the Class Vehicles are covered by Defendants’ new vehicle limited
19 warranties and the powertrain warranty on electric propulsion components, including the battery
20 components, charging systems, and electric drive components.

21 265. Furthermore, Defendants expressly warranted—through statements and advertisements—
22 that the vehicles were of high quality, and at a minimum, would work properly and safely.

23 266. Defendants distributed the defective parts causing the Battery Defect in the Class
24 Vehicles, and those parts are covered by Defendants’ warranties granted to all Class Vehicle purchasers
25 and lessors.
26

27 267. Defendants breached these warranties by selling and leasing Class Vehicles with the
28 Battery Defect, requiring repair or replacement within the applicable warranty periods, and refusing to

1 honor the warranties by providing free repairs or replacements during the applicable warranty periods
2 sufficient for the Class Vehicles to be restored to their advertised qualities within a reasonable time.

3 268. California Plaintiff notified Defendants of their breach within a reasonable time, and/or
4 was not required to do so because affording Defendants a reasonable opportunity to cure their breaches
5 would have been futile. In any event, Defendants knew about the defect but have concealed it as a means
6 of avoiding compliance with their warranty obligations. Moreover, Defendants were given notice of
7 these issues within a reasonable amount of time by the complaints they received directly from customers
8 and became aware of online.

10 269. Any attempt to disclaim or limit these express warranties vis-à-vis consumers is
11 unconscionable and unenforceable under the circumstances here. Specifically, Defendants' warranty
12 limitations are unenforceable because Defendants knowingly sold a defective product to California
13 Plaintiff and the California Subclass.

15 270. The time limits contained in Defendants' warranty period were also unconscionable and
16 inadequate to protect California Plaintiff and California Subclass members. Among other things,
17 California Plaintiff and the California Subclass members had no meaningful choice in determining these
18 time limitations, the terms of which unreasonably favored Defendants. A gross disparity in bargaining
19 power existed between Defendants and the Class members because Defendants knew or should have
20 known that the Class Vehicles were defective at the time of sale and would experience battery failures
21 well before the end of their useful lives.

23 271. Furthermore, the limited warranty promising to repair and/or correct a manufacturing
24 defect fails in its essential purpose because the contractual remedy is insufficient to make California
25 Plaintiff and the other California Subclass members whole and because Defendants have failed and/or
26 refused to adequately provide a permanent repair within a reasonable time.

1 272. California Plaintiff and the California Subclass members have complied with all
2 obligations under the warranty or otherwise have been excused from performance of said obligations as
3 a result of Defendants' conduct.

4 273. As a direct and proximate cause of Defendants' breach, California Plaintiff and the
5 California Subclass members bought or leased Class Vehicles they otherwise would not have, overpaid
6 for their vehicles, did not receive the benefit of their bargain, and their Class Vehicles suffered a
7 diminution in value.
8

9 **COUNT TWELVE — BREACH OF EXPRESS WARRANTY**
10 **(CAL. COM. CODE §§ 2313 AND 10210) - SUBARU**

11 274. Plaintiffs and the Class incorporate by reference each preceding and succeeding
12 paragraph as though fully set forth at length herein.

13 275. Plaintiff Huffman (for the purposes of this section, "California Plaintiff") brings this
14 claim on behalf of himself and on behalf of the members of the California Subclass against Defendant
15 Subaru.

16 276. Defendant is and was at all relevant times a "merchant" with respect to motor vehicles
17 under California Commercial Code §§ 2104(1) and 10103(c), and a "seller" of motor vehicles under §
18 2103(1)(d).
19

20 277. The Class Vehicles are and were at all relevant times "goods" within the meaning of
21 California Commercial Code §§ 2105(1) and 10103(a)(8).

22 278. Defendant provided all purchasers and lessees of the Class Vehicles with the express
23 warranties described herein, which became part of the basis of the parties' bargain. Accordingly,
24 Defendant's warranties are express warranties under state law.
25

26 279. Specifically, the Class Vehicles are covered by Defendant's new vehicle limited
27 warranties and the powertrain warranty on electric propulsion components, including the battery
28 components, charging systems, and electric drive components.

1 280. Furthermore, Defendant expressly warranted—through statements and advertisements—
2 that the vehicles were of high quality, and at a minimum, would work properly and safely.

3 281. Defendant distributed the defective parts causing the Battery Defect in the Class
4 Vehicles, and those parts are covered by Defendant’s warranties granted to all Class Vehicle purchasers
5 and lessors.

6 282. Defendant breached these warranties by selling and leasing Class Vehicles with the
7 Battery Defect, requiring repair or replacement within the applicable warranty periods, and refusing to
8 honor the warranties by providing free repairs or replacements during the applicable warranty periods
9 sufficient for the Class Vehicles to be restored to their advertised qualities within a reasonable time.
10

11 283. California Plaintiff notified Defendant of its breach within a reasonable time, and/or was
12 not required to do so because affording Defendant a reasonable opportunity to cure its breaches would
13 have been futile. In any event, Defendant knew about the defect but have concealed it as a means of
14 avoiding compliance with its warranty obligations. Moreover, Defendant was given notice of these
15 issues within a reasonable amount of time by the complaints it received directly from customers and
16 became aware of online.
17

18 284. Any attempt to disclaim or limit these express warranties vis-à-vis consumers is
19 unconscionable and unenforceable under the circumstances here. Specifically, Defendant’s warranty
20 limitations are unenforceable because Defendant knowingly sold a defective product to California
21 Plaintiff and the California Subclass.
22

23 285. The time limits contained in Defendant’s warranty period were also unconscionable and
24 inadequate to protect California Plaintiff and California Subclass members. Among other things,
25 California Plaintiff and the California Subclass members had no meaningful choice in determining these
26 time limitations, the terms of which unreasonably favored Defendant. A gross disparity in bargaining
27 power existed between Defendant and the Class members because Defendant knew or should have
28

1 known that the Class Vehicles were defective at the time of sale and would experience battery failures
2 well before the end of their useful lives.

3 286. Furthermore, the limited warranty promising to repair and/or correct a manufacturing
4 defect fails in its essential purpose because the contractual remedy is insufficient to make California
5 Plaintiff and the other California Subclass members whole and because Defendant has failed and/or
6 refused to adequately provide a permanent repair within a reasonable time.
7

8 287. California Plaintiff and the California Subclass members have complied with all
9 obligations under the warranty or otherwise have been excused from performance of said obligations as
10 a result of Defendants' conduct.

11 288. As a direct and proximate cause of Defendant's breach, California Plaintiff and the
12 California Subclass members bought or leased Class Vehicles they otherwise would not have, overpaid
13 for their vehicles, did not receive the benefit of their bargain, and their Class Vehicles suffered a
14 diminution in value.
15

16 **COUNT THIRTEEN — BREACH OF THE IMPLIED WARRANTY OF**
17 **MERCHANTABILITY**
18 **(CAL. COM. CODE §§ 2314 AND 10212) - TOYOTA**

19 289. Plaintiffs and the Class incorporate by reference each preceding and succeeding
20 paragraph as though fully set forth at length herein.

21 290. Plaintiff Wade (for the purposes of this section, "California Plaintiff") brings this claim
22 on behalf of himself and the California Subclass against the Toyota Defendants.

23 291. Each Defendant is and was at all relevant times a "merchant" with respect to motor
24 vehicles under California Commercial Code §§ 2104(1) and 10103(c), and a "seller" of motor vehicles
25 under § 2103(1)(d).

26 292. With respect to leases, each Defendant is and was at all relevant times relevant a "lessor"
27 of motor vehicles under Cal. Com. Code § 10103(a)(16).
28

1 293. The Class Vehicles are and were at all relevant times “goods” within the meaning of
2 California Commercial Code §§ 2105(1) and 10103(a)(8).

3 294. Defendants were at all relevant times the manufacturer, distributor, warrantor, and/or
4 seller of the Class Vehicles. Defendants knew or had reason to know of the specific use for which the
5 Class Vehicles were purchased.
6

7 295. A warranty that the Class Vehicles were in merchantable condition and fit for the
8 ordinary purpose for which vehicles are used is implied by law pursuant to California Commercial Code
9 §§ 2314 and 10212.

10 296. Defendants provided California Plaintiff and the members of the California Subclass with
11 an implied warranty that the Class Vehicles, and any parts thereof, are merchantable and fit for the
12 ordinary purposes for which they were sold. Defendants impliedly warranted that the Class Vehicles
13 were of merchantable quality and fit for such use. This implied warranty included, among other things:
14 (i) a warranty that the vehicles Defendants manufactured, supplied, distributed, and/or sold were safe
15 and reliable for providing transportation, and would not experience premature failure; and (ii) a warranty
16 that the Class Vehicles would be fit for their intended use while being operated.
17

18 297. However, the Class Vehicles at the time of sale and thereafter were and are not vehicles
19 fit for their ordinary purpose of providing reasonably reliable and safe transportation at the time of sale
20 or thereafter because the Battery Defect can manifest and result in spontaneous failure to start,
21 spontaneous shutdown, and the premature and permanent failure of 12-volt batteries equipped in the
22 Class Vehicles.
23

24 298. Therefore, the Class Vehicles are not fit for their particular purpose of providing safe and
25 reliable transportation.

26 299. California Plaintiff notified Defendants of their breach within a reasonable time, and/or
27 was not required to do so because affording Defendants a reasonable opportunity to cure their breaches
28 would have been futile. In any event, Defendants knew about the defect but instead chose to conceal it

1 as a means of avoiding compliance with their warranty obligations. Moreover, Defendants were
2 provided notice of these issues within a reasonable amount of time by the numerous complaints they
3 received from various sources, including through the NHTSA database, other online sources, and
4 directly from consumers.

5
6 300. California Plaintiff and the California Subclass members have had sufficient dealings
7 with Defendants or their agents to establish privity of contract. Privity is not required in this case,
8 however, because California Plaintiff and the California Subclass members are intended third-party
9 beneficiaries of contracts between Defendants and their authorized dealers and are intended beneficiaries
10 of Defendants' implied warranties. The dealers were not intended to be the ultimate consumers of Class
11 Vehicles, and the warranties were designed for and intended to benefit the ultimate consumers only.

12
13 301. As a direct and proximate result of the breach of said implied warranty, California
14 Plaintiff and the California Subclass sustained the damages herein set forth.

15
16 302. California Plaintiff and the California Subclass members are, therefore, entitled to
damages in an amount to be proven at trial.

17
18 **COUNT FOURTEEN — BREACH OF THE IMPLIED WARRANTY OF**
MERCHANTABILITY
19 **(CAL. COM. CODE §§ 2314 AND 10212) - SUBARU**

20
21 303. Plaintiffs and the Class incorporate by reference each preceding and succeeding
22 paragraph as though fully set forth at length herein.

23
24 304. Plaintiff Huffman (for the purposes of this section, "California Plaintiff") brings this
25 claim on behalf of himself and the California Subclass against Defendant Subaru.

26
27 305. Defendant is and was at all relevant times a "merchant" with respect to motor vehicles
28 under California Commercial Code §§ 2104(1) and 10103(c), and a "seller" of motor vehicles under §
2103(1)(d).

306. With respect to leases, Defendant is and was at all relevant times relevant a "lessor" of
motor vehicles under Cal. Com. Code § 10103(a)(16).

1 307. The Class Vehicles are and were at all relevant times “goods” within the meaning of
2 California Commercial Code §§ 2105(1) and 10103(a)(8).

3 308. Defendant was at all relevant times the manufacturer, distributor, warrantor, and/or seller
4 of the Class Vehicles. Defendant knew or had reason to know of the specific use for which the Class
5 Vehicles were purchased.
6

7 309. A warranty that the Class Vehicles were in merchantable condition and fit for the
8 ordinary purpose for which vehicles are used is implied by law pursuant to California Commercial Code
9 §§ 2314 and 10212.

10 310. Defendant provided California Plaintiff and the members of the California Subclass with
11 an implied warranty that the Class Vehicles, and any parts thereof, are merchantable and fit for the
12 ordinary purposes for which they were sold. Defendant impliedly warranted that the Class Vehicles were
13 of merchantable quality and fit for such use. This implied warranty included, among other things: (i) a
14 warranty that the vehicles Defendant manufactured, supplied, distributed, and/or sold were safe and
15 reliable for providing transportation, and would not experience premature failure; and (ii) a warranty
16 that the Class Vehicles would be fit for their intended use while being operated.
17

18 311. However, the Class Vehicles at the time of sale and thereafter were and are not vehicles
19 fit for their ordinary purpose of providing reasonably reliable and safe transportation at the time of sale
20 or thereafter because the Battery Defect can manifest and result in spontaneous failure to start,
21 spontaneous shutdown, and the premature and permanent failure of 12-volt batteries equipped in the
22 Class Vehicles.
23

24 312. Therefore, the Class Vehicles are not fit for their particular purpose of providing safe and
25 reliable transportation.

26 313. California Plaintiff notified Defendant of its breach within a reasonable time, and/or was
27 not required to do so because affording Defendant a reasonable opportunity to cure its breaches would
28 have been futile. In any event, Defendant knew about the defect but instead chose to conceal it as a

1 means of avoiding compliance with its warranty obligations. Moreover, Defendant was provided notice
2 of these issues within a reasonable amount of time by the numerous complaints they received from
3 various sources, including through the NHTSA database, other online sources, and directly from
4 consumers.

5
6 314. California Plaintiff and the California Subclass members have had sufficient dealings
7 with Defendant or its agents to establish privity of contract. Privity is not required in this case, however,
8 because California Plaintiff and the California Subclass members are intended third-party beneficiaries
9 of contracts between Defendant and its authorized dealers and are intended beneficiaries of Defendant's
10 implied warranties. The dealers were not intended to be the ultimate consumers of Class Vehicles, and
11 the warranties were designed for and intended to benefit the ultimate consumers only.

12
13 315. As a direct and proximate result of the breach of said implied warranty, California
14 Plaintiff and the California Subclass sustained the damages herein set forth.

15
16 316. California Plaintiff and the California Subclass members are, therefore, entitled to
damages in an amount to be proven at trial.

17
18 **COUNT FIFTEEN — VIOLATIONS OF THE SONG-BEVERLY ACT –**
BREACH OF EXPRESS WARRANTY
19 **(CAL. CIV. CODE §§ 1791.2 & 1793.2(D)) - TOYOTA**

20
21 317. Plaintiffs and the Class incorporate by reference each preceding and succeeding
22 paragraph as though fully set forth at length herein.

23
24 318. Plaintiff Wade (for the purposes of this section, "California Plaintiff") brings this claim
25 on behalf of himself and the California Subclass against the Toyota Defendants.

26
27 319. California Plaintiff and the California Subclass members are "buyers" within the meaning
28 of Cal. Civ. Code § 1791(b).

319. The Class Vehicles are "consumer goods" within the meaning of Cal. Civ. Code §
1791(a).

1 321. Each Defendant is a “manufacturer” of the Class Vehicles within the meaning of Cal.
2 Civ. Code § 1791(j).

3 322. California Plaintiff and the other California Subclass members bought/leased new motor
4 vehicles manufactured by Defendants. Defendants made express warranties to California Plaintiff and
5 the other California Subclass members within the meaning of Cal. Civ. Code §§ 1791.2 and 1793.2, as
6 described above. These warranties became part of the basis of the parties’ bargain. Accordingly,
7 Defendants’ warranties are express warranties under state law.
8

9 323. Specifically, the Class Vehicles are covered by Defendants’ new vehicle and powertrain
10 warranties, including electric propulsion components, the battery components, charging system, and
11 electric drive components.
12

13 324. Furthermore, Defendants expressly warranted—through statements and advertisements—
14 that the vehicles were of high quality, and at a minimum, would work properly and safely.

15 325. California Plaintiff and California Subclass members experienced defects within the
16 warranty period. Despite the existence of warranties, Defendants failed or refused to permanently fix the
17 Battery Defect.

18 326. California Plaintiff and California Subclass members gave Defendants or their authorized
19 repair facilities opportunities to fix the defects unless only one repair attempt was possible, and
20 Defendants or their authorized repair facility refused to attempt any permanent repair. Defendants did
21 not promptly replace or buy back the Class Vehicles of California Plaintiff and the other Class members.
22

23 327. Pursuant to Cal. Civ. Code §§ 1793.2 & 1794, California Plaintiff and the other
24 California Subclass members are entitled to damages and other legal and equitable relief including, at
25 their election, the purchase price of their Class Vehicles, or the overpayment or diminution in value of
26 their Class Vehicles.
27
28

**COUNT SIXTEEN — VIOLATIONS OF THE SONG-BEVERLY ACT –
BREACH OF EXPRESS WARRANTY
(CAL. CIV. CODE §§ 1791.2 & 1793.2(D)) - SUBARU**

328. Plaintiffs and the Class incorporate by reference each preceding and succeeding paragraph as though fully set forth at length herein.

329. Plaintiff Huffman (for the purposes of this section, “California Plaintiff”) brings this claim on behalf of himself and the California Subclass against Defendant Subaru.

330. California Plaintiff and the California Subclass members are “buyers” within the meaning of Cal. Civ. Code § 1791(b).

331. The Class Vehicles are “consumer goods” within the meaning of Cal. Civ. Code § 1791(a).

332. Defendant is a “manufacturer” of the Class Vehicles within the meaning of Cal. Civ. Code § 1791(j).

333. California Plaintiff and the other California Subclass members bought/leased new motor vehicles manufactured by Defendant. Defendant made express warranties to California Plaintiff and the other California Subclass members within the meaning of Cal. Civ. Code §§ 1791.2 and 1793.2, as described above. These warranties became part of the basis of the parties’ bargain. Accordingly, Defendant’s warranties are express warranties under state law.

334. Specifically, the Class Vehicles are covered by Defendant’s new vehicle and powertrain warranties, including electric propulsion components, the battery components, charging system, and electric drive components.

335. Furthermore, Defendant expressly warranted—through statements and advertisements—that the vehicles were of high quality, and at a minimum, would work properly and safely.

336. California Plaintiff and California Subclass members experienced defects within the warranty period. Despite the existence of warranties, Defendant failed or refused to permanently fix the Battery Defect.

1 337. California Plaintiff and California Subclass members gave Defendant or its authorized
2 repair facilities opportunities to fix the defects unless only one repair attempt was possible, and
3 Defendant or their authorized repair facility refused to attempt any permanent repair. Defendant did not
4 promptly replace or buy back the Class Vehicles of California Plaintiff and the other Class members.
5

6 338. Pursuant to Cal. Civ. Code §§ 1793.2 & 1794, California Plaintiff and the other
7 California Subclass members are entitled to damages and other legal and equitable relief including, at
8 their election, the purchase price of their Class Vehicles, or the overpayment or diminution in value of
9 their Class Vehicles.

10 **COUNT SEVENTEEN — VIOLATIONS OF THE SONG-BEVERLY ACT –**
11 **BREACH OF THE IMPLIED WARRANTY OF MERCHANTABILITY**
12 **(CAL. CIV. CODE §§ 1792, 1791.1, ET SEQ.) - TOYOTA**

13 339. Plaintiffs and the Class incorporate by reference each preceding and succeeding
14 paragraph as though fully set forth at length herein.

15 340. Plaintiff Wade (for the purposes of this section, “California Plaintiff”) brings this claim
16 on behalf of themselves and on behalf of the members of the California Subclass against the Toyota
17 Defendants.

18 341. At all relevant times hereto, each Defendant was a manufacturer, distributor, warrantor,
19 and/or seller of the Class Vehicles. Defendants knew or should have known of the specific use for which
20 the Class Vehicles were purchased.

21 342. Defendants provided California Plaintiff and the California Subclass members with an
22 implied warranty that the Class Vehicles, and any parts thereof, are merchantable and fit for the ordinary
23 purposes for which they were sold. The Class Vehicles, however, are not fit for their ordinary purpose
24 because, inter alia, the Class Vehicles suffered from an inherent Battery Defect at the time of sale.
25

26 343. The Class Vehicles are not fit for the purpose of providing safe and reliable transportation
27 because of the defect.
28

1 344. Defendants impliedly warranted that the Class Vehicles were of merchantable quality and
2 fit for such use. This implied warranty included, inter alia, the following: (i) a warranty that the Class
3 Vehicles manufactured, supplied, distributed, and/or sold by Defendants were safe and reliable for
4 providing transportation and would not prematurely fail; and (ii) a warranty that the Class Vehicles
5 would be fit for their intended use—i.e., providing safe and reliable transportation—while the Class
6 Vehicles were being operated.

8 345. Contrary to the applicable implied warranties, the Class Vehicles were not fit for their
9 ordinary and intended purpose. Instead, the Class Vehicles are defective.

10 346. Defendants’ actions, as complained of herein, breached the implied warranty that the
11 Class Vehicles were of merchantable quality and fit for such use in violation of California Civil Code
12 §§ 1792 and 1791.1.

13
14 **COUNT EIGHTEEN — VIOLATIONS OF THE SONG-BEVERLY ACT –**
15 **BREACH OF THE IMPLIED WARRANTY OF MERCHANTABILITY**
(CAL. CIV. CODE §§ 1792, 1791.1, ET SEQ.) - SUBARU

16 347. Plaintiffs and the Class incorporate by reference each preceding and succeeding
17 paragraph as though fully set forth at length herein.

18 348. Plaintiff Huffman (for the purposes of this section, “California Plaintiff”) brings this
19 claim on behalf of themselves and on behalf of the members of the California Subclass against
20 Defendant Subaru.

21 349. At all relevant times hereto, Defendant was a manufacturer, distributor, warrantor, and/or
22 seller of the Class Vehicles. Defendant knew or should have known of the specific use for which the
23 Class Vehicles were purchased.

24 350. Defendant provided California Plaintiff and the California Subclass members with an
25 implied warranty that the Class Vehicles, and any parts thereof, are merchantable and fit for the ordinary
26 purposes for which they were sold. The Class Vehicles, however, are not fit for their ordinary purpose
27 because, inter alia, the Class Vehicles suffered from an inherent Battery Defect at the time of sale.
28

1 358. Defendants were under a duty to disclose these omitted facts, because where one does
2 speak one must speak the whole truth and not conceal any facts which materially qualify those facts
3 stated. One who volunteers information must be truthful, and the telling of a half-truth calculated to
4 deceive is fraud.

5
6 359. In addition, Defendants had a duty to disclose these omitted material facts because they
7 were known and/or accessible only to Defendants, who had superior knowledge and access to the facts,
8 and Defendants knew they were not known to or reasonably discoverable by California Plaintiff and the
9 California Subclass members. These omitted facts were material because they directly impact the safety
10 and reliability of the Class Vehicles.

11 360. Defendants were in exclusive control of the material facts and such facts were not known
12 to the public or the California Subclass members. Defendants also possessed exclusive knowledge of the
13 Battery Defect and the fact that it rendered the Class Vehicles inherently more dangerous and unreliable
14 than similar vehicles.

15
16 361. Defendants actively concealed and/or suppressed these material facts, in whole or in part,
17 with the intent to induce California Plaintiff and the California Subclass members to purchase the Class
18 Vehicles at a price higher than their true value.

19 362. California Plaintiff and the California Subclass members were unaware of these omitted
20 material facts and would not have acted as they did if they had known of the concealed and/or
21 suppressed facts. The actions of California Plaintiff and the California Class members were justified.

22 363. California Plaintiff and the California Subclass members reasonably relied on
23 Defendants' omissions and suffered damages as a result.

24 364. As a result of these omissions and concealments, California Plaintiff and the California
25 Subclass members incurred damages including, but not limited to, their lost benefit of the bargain and
26 overpayment at the time of purchase or lease and/or the diminished intrinsic value of their Class
27 Vehicles.
28

1 365. Defendants' acts were done maliciously, oppressively, deliberately, with intent to
2 defraud, and in reckless disregard of the rights of California Plaintiff and the California Class members.
3 Defendants' conduct warrants an assessment of punitive damages in an amount sufficient to deter such
4 conduct in the future.

5
6 **COUNT TWENTY — FRAUD BY CONCEALMENT - SUBARU**

7 366. Plaintiffs and the Class incorporate by reference each preceding and succeeding
8 paragraph as though fully set forth at length herein.

9 367. Plaintiff Huffman (for the purposes of this section, "California Plaintiff") brings this
10 claim on behalf of himself and on behalf of the members of the California Subclass against Defendant
11 Subaru.

12 368. Defendant made material omissions concerning a presently existing or past fact in that,
13 for example, Defendant did not fully and truthfully disclose to its customers the true nature of the
14 Battery Defect, which was not readily discoverable by California Plaintiff or California Subclass
15 members until well after purchase or lease of the Class Vehicles. These facts, and other facts as set forth
16 above, were material because reasonable people attach importance to their existence or nonexistence in
17 deciding which vehicle to purchase.

18
19 369. Defendant was under a duty to disclose these omitted facts, because where one does
20 speak one must speak the whole truth and not conceal any facts which materially qualify those facts
21 stated. One who volunteers information must be truthful, and the telling of a half-truth calculated to
22 deceive is fraud.

23
24 370. In addition, Defendant had a duty to disclose these omitted material facts because they
25 were known and/or accessible only to Defendant, who had superior knowledge and access to the facts,
26 and Defendant knew they were not known to or reasonably discoverable by California Plaintiff and the
27 California Subclass members. These omitted facts were material because they directly impact the safety
28 and reliability of the Class Vehicles.

1 371. Defendant was in exclusive control of the material facts and such facts were not known to
2 the public or the California Subclass members. Defendant also possessed exclusive knowledge of the
3 Battery Defect and the fact that it rendered the Class Vehicles inherently more dangerous and unreliable
4 than similar vehicles.

5 372. Defendant actively concealed and/or suppressed these material facts, in whole or in part,
6 with the intent to induce California Plaintiff and the California Subclass members to purchase the Class
7 Vehicles at a price higher than their true value.

8 373. California Plaintiff and the California Subclass members were unaware of these omitted
9 material facts and would not have acted as they did if they had known of the concealed and/or
10 suppressed facts. The actions of California Plaintiff and the California Class members were justified.

11 374. California Plaintiff and the California Subclass members reasonably relied on
12 Defendant's omissions and suffered damages as a result.

13 375. As a result of these omissions and concealments, California Plaintiff and the California
14 Subclass members incurred damages including, but not limited to, their lost benefit of the bargain and
15 overpayment at the time of purchase or lease and/or the diminished intrinsic value of their Class
16 Vehicles.

17 376. Defendant's acts were done maliciously, oppressively, deliberately, with intent to
18 defraud, and in reckless disregard of the rights of California Plaintiff and the California Class members.
19 Defendants' conduct warrants an assessment of punitive damages in an amount sufficient to deter such
20 conduct in the future.

21
22
23
24 **C. Claims Brought on Behalf of the New Jersey Subclass**

25 **COUNT TWENTY-ONE — VIOLATION OF NEW JERSEY CONSUMER**
26 **FRAUD ACT (N.J. STAT. ANN. § 56:8-1, *ET SEQ.*) - SUBARU**

27 377. Plaintiffs and the Class incorporate by reference each preceding and succeeding
28 paragraph as though fully set forth at length herein.

1 378. Plaintiff Kull (for purposes of this section, “New Jersey Plaintiff”) brings this claim on
2 behalf of himself and on behalf of the New Jersey Subclass against Defendant Subaru.

3 379. Defendant is a “person” within the meaning of N.J. Stat. Ann. § 56:8-1(d).

4 380. The Class Vehicles are “merchandise” within the meaning of N.J. Stat. Ann. § 56:8-1(c).

5 381. Defendant violated the New Jersey CFA by engaging in the practices described above,
6 and by knowingly and intentionally misrepresenting, omitting, concealing, and/or failing to disclose
7 material facts regarding the reliability, safety, and performance of the Class Vehicles.
8

9 382. Defendant had the duty to New Jersey Plaintiff and New Jersey Subclass members to
10 disclose the Battery Defect and the defective nature of the Class Vehicles and to refrain from unfair or
11 deceptive practices under the New Jersey CFA because:

12 G. Defendant was in a superior position to know the true state of facts about
13 the Defect and its associated costs;
14

15 H. New Jersey Plaintiff and New Jersey Subclass members could not
16 reasonably have been expected to learn or discover that the Class Vehicles had defects
17 until those defects became manifest;

18 I. Defendant knew that New Jersey Plaintiff and New Jersey Subclass
19 members could not reasonably have been expected to learn about or discover the Battery
20 Defect and the effect it would have on the Class Vehicles’ operability.
21

22 383. In failing to disclose the Battery Defect, Defendant knowingly and intentionally
23 concealed material facts and breached its duty to disclose.

24 384. By misrepresenting the Class Vehicles as safe and reliable and by failing to disclose the
25 Battery Defect and the defective nature of the Class Vehicles, Defendant engaged in one or more of the
26 following unfair or deceptive business practices prohibited by N.J. Stat. Ann. § 56:8-2: using or
27 employing deception, fraud, false pretense, false promise or misrepresentation, or the concealment,
28

1 suppression, or omission of a material fact with intent that others rely upon such concealment,
2 suppression, or omission, in connection with the advertisement and sale/lease of the Class Vehicles.

3 385. The facts Defendant concealed or did not disclose to New Jersey Plaintiff and New Jersey
4 Subclass members are material in that a reasonable consumer would have considered them to be
5 important in deciding whether to purchase the Class Vehicles or pay a lesser price. Had New Jersey
6 Plaintiff and New Jersey Subclass members known the Class Vehicles were defective, they would not
7 have purchased the Class Vehicles or would have paid less for them.

8 386. New Jersey Plaintiff and New Jersey Subclass members suffered ascertainable losses and
9 actual damages through their overpayment at the time of purchase and lease for Class Vehicles with an
10 undisclosed Battery Defect as a direct and proximate result of Defendant's concealment,
11 misrepresentations, and/or failure to disclose material information,
12

13 387. Defendant's violations present a continuing risk to New Jersey Plaintiff and New Jersey
14 Subclass members, as well as to the general public, because the Class Vehicles remain unsafe due to the
15 Battery Defect. Additionally, their unlawful acts and practices complained of herein affect the public
16 interest.
17

18 388. Pursuant to N.J. Stat. Ann. § 56:8-19, New Jersey Plaintiff and New Jersey Subclass
19 members seek an order enjoining Defendant's unfair or deceptive acts or practices and awarding
20 damages and any other just and proper relief available under the New Jersey CFA.
21

22 **COUNT TWENTY-TWO — BREACH OF EXPRESS WARRANTY (N.J. STAT.
ANN. §§ 12A:2-313, 12A:2-305, *ET SEG*) - SUBARU**

23 389. Plaintiffs and the Class incorporate by reference each preceding and succeeding
24 paragraph as though fully set forth at length herein.
25

26 390. New Jersey Plaintiff brings this claim on behalf of himself and on behalf of the New
27 Jersey Subclass against Defendant Subaru.
28

1 391. Defendant is and was at all relevant times a merchant with respect to motor vehicles
2 under N.J. Stat. Ann. §§ 12A:2-104(1) and 12A:2A-103(3), and a “seller” of motor vehicles under §
3 12A:2-103(1)(d).

4 392. With respect to leases, Defendant is and was at all relevant times a “lessor” of motor
5 vehicles under N.J. Stat. Ann. § 12A:2A-103(1)(p).

6 393. All New Jersey Subclass members who purchased Class Vehicles in New Jersey are
7 “buyers” within the meaning of N.J. Stat. Ann. § 12A:2-103(1)(a).

8 394. All New Jersey Subclass members who leased Class Vehicles in New Jersey are
9 “lessees” within the meaning of N.J. Stat. Ann. § 12A:2A-103(1)(n).

10 395. The Class Vehicles are and were at all relevant times “goods” within the meaning of N.J.
11 Stat. Ann. §§ 12A:2-105(1) and 2A-103(1)(h).

12 396. New Jersey Plaintiff and the other New Jersey Class members bought and/or leased new
13 motor vehicles manufactured by Defendant. Defendant made express warranties to New Jersey Plaintiff
14 and New Jersey Subclass members within the meaning of N.J. Stat. Ann. § 12A:2-313, as described
15 above. These warranties became part of the basis of the parties’ bargain. Accordingly, Defendant’s
16 warranties are express warranties under state law.

17 397. Specifically, the Class Vehicles are covered by Defendant’s new vehicle and powertrain
18 warranties, including electric propulsion components, the battery components, charging system, and
19 electric drive components.

20 398. Furthermore, Defendant expressly warranted—through statements and advertisements—
21 that the vehicles were of high quality, and at a minimum, would work properly and safely.

22 399. Defendant distributed the defective parts causing the Battery Defect in the Class
23 Vehicles, and those parts are covered by Defendant’s warranties granted to all Class Vehicle purchasers
24 and lessors.

1 400. New Jersey Plaintiff and New Jersey Subclass members experienced defects within the
2 warranty period. Despite the existence of warranties, Defendant failed or refused to permanently fix the
3 Battery Defect which is covered by Defendant's warranties granted to all Class Vehicle purchasers and
4 lessors.

5
6 401. New Jersey Plaintiff and New Jersey Subclass members gave Defendant or its authorized
7 repair facilities opportunities to fix the defects, unless only one repair attempt was possible, and
8 Defendant or its authorized repair facility refused to attempt any permanent repair. Defendant did not
9 promptly replace or buy back the Class Vehicles of New Jersey Plaintiff and New Jersey Subclass
10 members.

11 402. New Jersey Plaintiff notified Defendant of its breach within a reasonable time, and/or
12 was not required to do so because affording Defendant a reasonable opportunity to cure its breaches
13 would have been futile. Moreover, Defendant was provided notice of these issues within a reasonable
14 amount of time by the numerous complaints it received from various sources, including through the
15 NHTSA database, other online sources, and directly from consumers.

16
17 403. Any attempt to disclaim or limit these express warranties vis-à-vis consumers is
18 unconscionable and unenforceable under the circumstances here. Specifically, Defendant's warranty
19 limitations are unenforceable because it knowingly sold a defective product without giving notice of the
20 Battery Defect to New Jersey Plaintiff or members of the New Jersey Subclass.

21
22 404. The time limits contained in Defendant's warranty period were also unconscionable and
23 inadequate to protect New Jersey Plaintiff or New Jersey Subclass members. Among other things,
24 neither New Jersey Plaintiff nor New Jersey Subclass members had a meaningful choice in determining
25 these time limitations, the terms of which unreasonably favored Defendant. A gross disparity in
26 bargaining power existed between Defendant and the Class members because Defendant knew or should
27 have known that the Class Vehicles were defective at the time of sale and would fail well before their
28 useful lives.

1 405. Furthermore, the limited warranty promising to repair and/or correct a manufacturing
2 defect fails in its essential purpose because the contractual remedy is insufficient to make New Jersey
3 Plaintiff and New Jersey Subclass members whole and because Defendant has failed and/or refused to
4 adequately provide the promised remedies within a reasonable time.

5
6 406. New Jersey Plaintiff and New Jersey Subclass members have complied with all
7 obligations under the warranty or otherwise have been excused from performance of said obligations as
8 a result of Defendant's conduct.

9 407. As a direct and proximate cause of Defendant's breach, New Jersey Plaintiff and the
10 other New Jersey Subclass members bought or leased Class Vehicles they otherwise would not have,
11 overpaid for their vehicles, did not receive the benefit of their bargain, and their Class Vehicles suffered
12 a diminution in value.

13
14 **COUNT TWENTY-THREE — BREACH OF IMPLIED WARRANTY OF**
15 **MERCHANTABILITY (N.J. STAT. ANN. §§ 12A:2-314 AND 12A:2A-212) -**
16 **SUBARU**

17 408. Plaintiffs and the Class incorporate by reference each preceding and succeeding
18 paragraph as though fully set forth at length herein.

19 409. New Jersey Plaintiff brings this claim on behalf of himself and on behalf of the New
20 Jersey Subclass against Defendant Subaru.

21 410. Defendant is and was at all relevant times a merchant with respect to motor vehicles
22 under N.J. Stat. Ann. §§ 12A:2-104(1) and 12A:2A-103(3), and a "seller" of motor vehicles under §
23 12A:2-103(1)(d).

24 411. With respect to leases, Defendant is and was at all relevant times a "lessor" of motor
25 vehicles under N.J. Stat. Ann. § 12A:2A-103(1)(p).

26 412. All New Jersey Subclass members who purchased Class Vehicles in New Jersey are
27 "buyers" within the meaning of N.J. Stat. Ann. § 12A:2-103(1)(a).

1 413. All New Jersey Subclass members who leased Class Vehicles in New Jersey are
2 “lessees” within the meaning of N.J. Stat. Ann. § 12A:2A-103(1)(n).

3 414. The Class Vehicles are and were at all relevant times “goods” within the meaning of N.J.
4 Stat. Ann. §§ 12A:2-105(1) and 2A-103(1)(h).

5 415. At all relevant times hereto, Defendant was a manufacturer, distributor, warrantor, and/or
6 seller of the Class Vehicles. Defendant knew or should have known of the specific use for which the
7 Class Vehicles were purchased.

8 416. Defendant provided New Jersey Plaintiff and New Jersey Subclass members with an
9 implied warranty that the Class Vehicles, and any parts thereof, are merchantable and fit for the ordinary
10 purposes for which they were sold.

11 417. However, the Class Vehicles at the time of sale and thereafter were and are not vehicles
12 fit for their ordinary purpose of providing reasonably reliable and safe transportation at the time of sale
13 or thereafter because the Battery Defect can manifest and result in spontaneous failure to start,
14 spontaneous shutdown, and the premature and permanent failure of 12-volt batteries equipped in the
15 Class Vehicles.

16 418. Therefore, the Class Vehicles are not fit for their particular purpose of providing safe and
17 reliable transportation.

18 419. Defendant impliedly warranted that the Class Vehicles were of merchantable quality and
19 fit for such use. This implied warranty included, inter alia, the following: (i) a warranty that the Class
20 Vehicles manufactured, supplied, distributed, and/or sold by Defendant were safe and reliable for
21 providing transportation and would not prematurely fail; and (ii) a warranty that the Class Vehicles
22 would be fit for their intended use—i.e., providing safe and reliable transportation—while the Class
23 Vehicles were being operated.

24 420. Contrary to the applicable implied warranties, the Class Vehicles were not fit for their
25 ordinary and intended purpose. Instead, the Class Vehicles are defective.

1 421. New Jersey Plaintiff and New Jersey Subclass members gave the Defendant or its
2 authorized repair facilities opportunities to fix the defects, unless only one repair attempt was possible,
3 and Defendant or its authorized repair facility refused to attempt any permanent repair. Defendant did
4 not promptly replace or buy back the Class Vehicles of New Jersey Plaintiff and the other Class
5 members.

6
7 422. New Jersey Plaintiff notified Defendant of their breach within a reasonable time, and/or
8 was not required to do so because affording Defendant a reasonable opportunity to cure its breaches
9 would have been futile. Moreover, Defendant was provided notice of these issues within a reasonable
10 amount of time by the numerous complaints it received from various sources, including through the
11 NHTSA database, other online sources, and directly from consumers.

12
13 423. As a direct and proximate cause of Defendant's breach, New Jersey Plaintiff and New
14 Jersey Subclass members bought or leased Class Vehicles they otherwise would not have, overpaid for
15 their vehicles, did not receive the benefit of their bargain, and their Class Vehicles suffered a diminution
16 in value.

17 **COUNT TWENTY-FOUR — FRAUD BY OMISSION AND CONCEALMENT -**
18 **SUBARU**

19 424. Plaintiffs and the Class incorporate by reference each preceding and succeeding
20 paragraph as though fully set forth at length herein.

21 425. New Jersey Plaintiff brings this claim on behalf of himself and on behalf of the New
22 Jersey Subclass against Defendant Subaru.

23 426. Defendant is liable for both fraudulent concealment and non-disclosure. *See, e.g.,*
24 Restatement (Second) of Torts §§ 550-51 (1977).

25
26 427. Defendant made material omissions concerning a presently existing or past fact in that,
27 for example, Defendant did not fully and truthfully disclose to its customers the true nature of the
28 Battery Defect, which was not readily discoverable by New Jersey Plaintiff or New Jersey Subclass

1 members until well after purchase or lease of the Class Vehicles. These facts, and other facts as set forth
2 above, were material because reasonable people attach importance to their existence or nonexistence in
3 deciding which vehicle to purchase.

4 428. Defendant was under a duty to disclose these omitted facts, because where one does
5 speak one must speak the whole truth and not conceal any facts which materially qualify those facts
6 stated. One who volunteers information must be truthful, and the telling of a half-truths calculated to
7 deceive is fraud.
8

9 429. In addition, Defendant had a duty to disclose these omitted material facts because they
10 were known and/or accessible only to Defendant, who had superior knowledge and access to the facts
11 and Defendant knew that those facts were not known to or reasonably discoverable by New Jersey
12 Plaintiff and New Jersey Subclass members. These omitted facts were material because they directly
13 impact the safety and reliability of the Class Vehicles.
14

15 430. Defendant was in exclusive control of the material facts and such facts were not known to
16 the public or New Jersey Subclass members. Defendant also possessed exclusive knowledge of the
17 Battery Defect that renders Class Vehicles inherently more dangerous and unreliable than similar
18 vehicles.
19

20 431. Defendant actively concealed and/or suppressed these material facts, in whole or in part,
21 with the intent to induce New Jersey Plaintiff and New Jersey Subclass members to purchase the Class
22 Vehicles at a higher price for the vehicles, which did not match the vehicles' true value.

23 432. New Jersey Plaintiff and New Jersey Subclass members were unaware of these omitted
24 material facts and would not have acted as they did if they had known of the concealed and/or
25 suppressed facts. The actions of New Jersey Plaintiff and New Jersey Subclass members were justified.
26

27 433. New Jersey Plaintiff and New Jersey Subclass members reasonably relied on these
28 omissions and suffered damages as a result.

1 434. As a result of these omissions and concealments, New Jersey Plaintiff and New Jersey
2 Subclass members incurred damages including, but not limited to, their lost benefit of the bargain and
3 overpayment at the time of purchase or lease and/or the diminished intrinsic value of their Class
4 Vehicles.

5 435. Defendant's acts were done maliciously, oppressively, deliberately, with intent to
6 defraud, and in reckless disregard of the rights of New Jersey Plaintiff and New Jersey Subclass
7 members. Defendant's conduct warrants an assessment of punitive damages in an amount sufficient to
8 deter such conduct in the future, that amount is to be determined according to proof.

9
10 **COUNT TWENTY-FIVE — UNJUST ENRICHMENT - SUBARU**

11 436. Plaintiffs and the Class incorporate by reference each preceding and succeeding
12 paragraph as though fully set forth at length herein.

13 437. New Jersey Plaintiff brings this claim on behalf of himself and on behalf of the New
14 Jersey Subclass against Defendant Subaru.

15 438. New Jersey Plaintiff and New Jersey Subclass members paid Defendant the value of non-
16 defective, fully operational Class Vehicles with the ability to operate without fear of premature battery
17 failure. In exchange, Defendant provided New Jersey Plaintiff and New Jersey Subclass members with
18 defective Vehicles that are prone to battery failures that leave them unable to start, may cause them to
19 suddenly stop while driving, and require premature battery replacements.

20 439. As such, New Jersey Plaintiff and New Jersey Subclass members conferred value upon
21 Defendant which would be unjust for Defendant to retain.

22 440. As a direct and proximate result of Defendant's unjust enrichment, Plaintiff and New
23 Jersey Subclass members have suffered and continue to suffer various injuries. Thus, they are entitled to
24 damages, including but not limited to restitution of all amounts by which Defendant were enriched
25 through their misconduct.
26
27
28

1 **D. Claims Brought on Behalf of the New York Subclass**

2 **COUNT TWENTY-SIX — VIOLATIONS OF NEW YORK GENERAL**
3 **BUSINESS LAW § 349**
4 **(N.Y. GEN. BUS. LAW § 349) - TOYOTA**

5 441. Plaintiffs and the Class incorporate by reference each preceding and succeeding
6 paragraph as though fully set forth at length herein.

7 442. Plaintiff Perilstein (for purposes of this section, “New York Plaintiff”) brings this claim
8 on behalf of himself and on behalf of the New York Subclass against Defendant Toyota.

9 443. Plaintiff and Defendant are both “persons” within the meaning of the New York General
10 Business Law (“GBL”). N.Y. Gen. Bus. Law § 349(h).

11 444. Under GBL section 349, “[d]eceptive acts or practices in the conduct of any business,
12 trade or commerce” are unlawful. N.Y. Gen. Bus. Law § 349.

13 445. In the course of Defendant’s business, they willfully failed to disclose and actively
14 concealed the Battery Defect with the intent that consumers rely on that concealment in deciding
15 whether to purchase a Class Vehicle.

16 446. By concealing the Battery Defect while advertising the Class Vehicles as capable,
17 reliable and safe, Defendant engaged in deceptive acts or practices in violation of GBL section 349.

18 447. Defendant’s deceptive acts or practices were materially misleading. Defendant’s conduct
19 was likely to and did deceive reasonable consumers, including New York Plaintiff and the New York
20 Subclass members, about the Class Vehicles’ true performance and value.

21 448. New York Plaintiff and New York Subclass members were unaware of, and lacked a
22 reasonable means of discovering, the material facts Defendant suppressed.

23 449. Defendant’s misleading conduct concerns the safety of widely purchased consumer
24 products and affects the public interest.

25 450. Defendant’s actions set forth above occurred in the conduct of its business, trade, or
26 commerce.
27
28

1 451. New York Plaintiff and New York Subclass members suffered ascertainable loss as a
2 direct and proximate result of Defendant’s GBL violations. New York Plaintiff and New York Subclass
3 members overpaid for their Class Vehicles, and their Class Vehicles suffered a diminution in value
4 resulting from the Defective Batteries. These injuries are the direct and natural consequence of
5 Defendant’s material misrepresentations and omissions.
6

7 452. New York Plaintiff and New York Subclass members request that this Court enter such
8 orders or judgments as may be necessary to enjoin Defendant from continuing its unfair and deceptive
9 practices. Under the GBL, New York Plaintiff and New York Subclass members are entitled to recover
10 their actual damages or \$50, whichever is greater. Additionally, because Defendant acted willfully or
11 knowingly, New York Plaintiff and New York Subclass members are entitled to recover three times
12 their actual damages. New York Plaintiff is also entitled to reasonable attorneys’ fees. N.Y. Gen. Bus.
13 Law § 349(h).
14

15 **COUNT TWENTY-SEVEN — VIOLATIONS OF NEW YORK GENERAL**
16 **BUSINESS LAW § 349**
17 **(N.Y. GEN. BUS. LAW § 349) - SUBARU**

18 453. Plaintiffs and the Class incorporate by reference each preceding and succeeding
19 paragraph as though fully set forth at length herein.

20 454. Plaintiff Diez (for purposes of this section, “New York Plaintiff”) brings this claim on
21 behalf of herself and on behalf of the New York Subclass against Defendant Subaru.

22 455. Plaintiff and Defendant are both “persons” within the meaning of the New York General
23 Business Law (“GBL”). N.Y. Gen. Bus. Law § 349(h).

24 456. Under GBL section 349, “[d]eceptive acts or practices in the conduct of any business,
25 trade or commerce” are unlawful. N.Y. Gen. Bus. Law § 349.

26 457. In the course of Defendant’s business, they willfully failed to disclose and actively
27 concealed the Battery Defect with the intent that consumers rely on that concealment in deciding
28 whether to purchase a Class Vehicle.

1 458. By concealing the Battery Defect while advertising the Class Vehicles as capable,
2 reliable, and safe, Defendant engaged in deceptive acts or practices in violation of GBL section 349.

3 459. Defendant's deceptive acts or practices were materially misleading. Defendant's conduct
4 was likely to and did deceive reasonable consumers, including New York Plaintiff and the New York
5 Subclass members, about the Class Vehicles' true performance and value.
6

7 460. New York Plaintiff and New York Subclass members were unaware of, and lacked a
8 reasonable means of discovering, the material facts Defendant suppressed.

9 461. Defendant's misleading conduct concerns the safety of widely purchased consumer
10 products and affects the public interest.

11 462. Defendant's actions set forth above occurred in the conduct of its business, trade, or
12 commerce.
13

14 463. New York Plaintiff and New York Subclass members suffered ascertainable loss as a
15 direct and proximate result of Defendant's GBL violations. New York Plaintiff and New York Subclass
16 members overpaid for their Class Vehicles, and their Class Vehicles suffered a diminution in value
17 resulting from the Defective Batteries. These injuries are the direct and natural consequence of
18 Defendant's material misrepresentations and omissions.

19 464. New York Plaintiff and New York Subclass members request that this Court enter such
20 orders or judgments as may be necessary to enjoin Defendant from continuing its unfair and deceptive
21 practices. Under the GBL, New York Plaintiff and New York Subclass members are entitled to recover
22 their actual damages or \$50, whichever is greater. Additionally, because Defendant acted willfully or
23 knowingly, New York Plaintiff and New York Subclass members are entitled to recover three times
24 their actual damages. New York Plaintiff is also entitled to reasonable attorneys' fees. N.Y. Gen. Bus.
25 Law § 349(h).
26
27
28

**COUNT TWENTY-EIGHT — VIOLATIONS OF NEW YORK GENERAL
BUSINESS LAW § 350
(N.Y. GEN. BUS. LAW § 350) – TOYOTA**

1
2
3 465. Plaintiffs and the Class incorporate by reference each preceding and succeeding
4 paragraph as though fully set forth at length herein.

5 466. New York Plaintiff Perilstein brings this claim on behalf of himself and on behalf of the
6 New York Subclass against Defendant Toyota.

7 467. GBL section 350 makes unlawful “[f]alse advertising in the conduct of any business,
8 trade or commerce....” N.Y. Gen. Bus. Law § 350. False advertising includes “advertising, including
9 labeling, of a commodity...if such advertising is misleading in a material respect,” taking into account
10 “not only representations made by statement, word, design, device, sound or any combination thereof,
11 but also the extent to which the advertising fails to reveal facts material in the light of such
12 representations with respect to the commodity...to which the advertising relates under the conditions
13 prescribed in said advertisement, or under such conditions as are customary or usual.” N.Y. Gen. Bus.
14 Law § 350-a.

15 468. Defendant caused or made to be disseminated through New York, through advertising,
16 marketing, and other publications, statements that were untrue or misleading, and which were known, or
17 which by the exercise of reasonable care should have been known to Defendant, to be untrue and
18 misleading to consumers, including New York Plaintiff and New York Subclass members.

19 469. Defendant violated GBL Section 350 because the misrepresentations and omissions
20 regarding the safety, reliability, and functionality of the Class Vehicles were material and deceived
21 reasonable consumers, including New York Plaintiff and New York Subclass members, about the true
22 performance and value of the Class Vehicles.

23 470. New York Plaintiff and New York Subclass members suffered ascertainable loss as a
24 direct and proximate result of Defendant’s violations. In purchasing or leasing their Class Vehicles, New
25 York Plaintiff and New York Subclass members relied on Defendant’s representations and omissions

1 with respect to safety, performance, reliability, and value of the Class Vehicles. Defendant’s
2 representations turned out to be untrue because they distributed the Class Vehicles with the Battery
3 Defect. Had New York Plaintiff or New York Subclass members known this, they would not have
4 purchased or leased their Class Vehicles or would have paid less money for them.
5

6 471. New York Plaintiff and New York Subclass members overpaid for their Class Vehicles
7 and their Class Vehicles suffered a diminution in value resulting from the Battery Defect. These injuries
8 are the direct and natural consequence of Defendant’s material misrepresentations and omissions.

9 472. New York Plaintiff and New York Subclass members request that this Court enter such
10 orders or judgments as may be necessary to enjoin Defendant from continuing its unfair, unlawful, and
11 deceptive practices of false advertising. Under the GBL, New York Plaintiff and New York Subclass
12 members are entitled to recover their actual damages or \$500, whichever is greater. Additionally,
13 because Defendant acted willfully or knowingly, New York Plaintiff and New York Subclass members
14 are entitled to recover three times their actual damages, up to \$10,000. New York Plaintiff is also
15 entitled to reasonable attorneys’ fees. N.Y. Gen. Bus. Law § 350-e.
16

17 **COUNT TWENTY-NINE — VIOLATIONS OF NEW YORK GENERAL**
18 **BUSINESS LAW § 350**
19 **(N.Y. GEN. BUS. LAW § 350) – SUBARU**

20 473. Plaintiffs and the Class incorporate by reference each preceding and succeeding
21 paragraph as though fully set forth at length herein.

22 474. New York Plaintiff Diez brings this claim on behalf of herself and on behalf of the New
23 York Subclass against Defendant Subaru.

24 475. GBL Section 350 makes unlawful “[f]alse advertising in the conduct of any business,
25 trade or commerce” N.Y. Gen. Bus. Law § 350. False advertising includes “advertising, including
26 labeling, of a commodity . . . if such advertising is misleading in a material respect,” taking into account
27 “not only representations made by statement, word, design, device, sound, or any combination thereof,
28 but also the extent to which the advertising fails to reveal facts material in the light of such
AMENDED COMPLAINT - 81

1 representations with respect to the commodity . . .to which the advertising relates under the conditions
2 prescribed in said advertisement, or under such conditions as are customary or usual.” N.Y. Gen. Bus.
3 Law § 350-a.

4 476. Defendant caused or made to be disseminated through New York, through advertising,
5 marketing, and other publications, statements that were untrue or misleading, and which were known, or
6 which by the exercise of reasonable care should have been known to Defendant, to be untrue and
7 misleading to consumers, including New York Plaintiff and New York Subclass members.
8

9 477. Defendant violated GBL Section 350 because the misrepresentations and omissions
10 regarding the safety, reliability, and functionality of the Class Vehicles were material and deceived
11 reasonable consumers, including New York Plaintiff and New York Subclass members, about the true
12 performance and value of the Class Vehicles.
13

14 478. New York Plaintiff and New York Subclass members suffered ascertainable loss as a
15 direct and proximate result of Defendant’s violations. In purchasing or leasing their Class Vehicles, New
16 York Plaintiff and New York Subclass members relied on Defendant’s representations and omissions
17 with respect to safety, performance, reliability, and value of the Class Vehicles. Defendant’s
18 representations turned out to be untrue because they distributed the Class Vehicles with the Battery
19 Defect. Had New York Plaintiff or New York Subclass members known this, they would not have
20 purchased or leased their Class Vehicles or would have paid less money for them.
21

22 479. New York Plaintiff and New York Subclass members overpaid for their Class Vehicles
23 and their Class Vehicles suffered a diminution in value resulting from the Battery Defect. These injuries
24 are the direct and natural consequence of Defendant’s material misrepresentations and omissions.

25 480. New York Plaintiff and New York Subclass members request that this Court enter such
26 orders or judgments as may be necessary to enjoin Defendant from continuing its unfair, unlawful, and
27 deceptive practices of false advertising. Under the GBL, New York Plaintiff and New York Subclass
28 members are entitled to recover their actual damages or \$500, whichever is greater. Additionally,
AMENDED COMPLAINT - 82

1 because Defendant acted willfully or knowingly, New York Plaintiff and New York Subclass members
2 are entitled to recover three times their actual damages, up to \$10,000. New York Plaintiff is also
3 entitled to reasonable attorneys' fees. N.Y. Gen. Bus. Law § 350-e.
4

5 **COUNT THIRTY — BREACH OF EXPRESS WARRANTY**
6 **(N.Y. U.C.C. LAW §§ 2-313 AND 2A-210) - TOYOTA**

7 481. Plaintiffs and the Class incorporate by reference each preceding and succeeding
8 paragraph as though fully set forth at length herein.

9 482. New York Plaintiff Perilstein brings this claim on behalf of himself and on behalf of the
10 members of the New York Subclass against Defendant Toyota.

11 483. Defendant is, and was, at all relevant times a “merchant” with respect to motor vehicles
12 under N.Y. UCC Law § 2-104(1) and “seller” of motor vehicles under § 2-103(1)(d).

13 484. The Class Vehicles are and were at all relevant times “goods” within the meaning of N.Y.
14 UCC Law §§ 2-105(1) and 2A-103(1)(h).

15 485. Defendant provided all purchasers and lessees of the Class Vehicles with the express
16 warranties described herein, which became part of the basis of the parties' bargain. Accordingly,
17 Defendant's warranties are express warranties under state law.
18

19 486. Specifically, the Class Vehicles are covered by Defendant's new vehicle limited
20 warranties, the powertrain warranty on electric propulsion components, including the battery
21 components, charging systems, and electric drive components.

22 487. Furthermore, Defendant expressly warranted—through statements and advertisements—
23 that the vehicles were of high quality, and at a minimum, would work properly and safely.
24

25 488. Defendant distributed the defective parts causing the Battery Defect in the Class
26 Vehicles, and those parts are covered by Defendant's warranties granted to all Class Vehicle purchasers
27 and lessors.
28

1 489. New York Plaintiff and New York subclass members experienced defects within the
2 warranty period. Despite the existence of warranties, Defendant failed or refused to permanently fix the
3 Battery Defect which is covered by Defendant's warranties granted to all Class Vehicle purchasers and
4 lessors.

5 490. Defendant breached these warranties by selling and leasing Class Vehicles with the
6 Battery Defect, requiring repair or replacement within the applicable warranty periods, and refusing to
7 honor the warranties by providing free repairs or replacements during the applicable warranty periods
8 sufficient for the Class Vehicles to be restored to their advertised qualities within a reasonable time.

9 491. New York Plaintiff notified Defendant of their breach within a reasonable time, and/or
10 was not required to do so because affording Defendant a reasonable opportunity to cure its breaches
11 would have been futile. Moreover, Defendant was provided notice of these issues within a reasonable
12 amount of time by the numerous complaints it received from various sources, including through the
13 NHTSA database, other online sources, and directly from consumers.

14 492. Any attempt to disclaim or limit these express warranties vis-à-vis consumers is
15 unconscionable and unenforceable under the circumstances here. Specifically, Defendant's warranty
16 limitations are unenforceable because it knowingly sold a defective product without giving notice of the
17 Battery Defect to New York Plaintiff or New York Subclass members.

18 493. The time limits contained in Defendant's warranty period were also unconscionable and
19 inadequate to protect New York Plaintiff or New York Subclass members. Among other things, neither
20 New York Plaintiff nor New York Subclass members had a meaningful choice in determining these time
21 limitations, the terms of which unreasonably favored Defendant. A gross disparity in bargaining power
22 existed between Defendant and the Class members because Defendant knew or should have known that
23 the Class Vehicles were defective at the time of sale and would fail well before their useful lives.

24 494. Furthermore, the limited warranty promising to repair and/or correct a manufacturing
25 defect fails in its essential purpose because the contractual remedy is insufficient to make New York
26 AMENDED COMPLAINT - 84

1 Plaintiff and New York Subclass members whole and because Defendant have failed and/or have
2 refused to adequately provide the promised remedies within a reasonable time.

3 495. New York Plaintiff and New York Subclass members have complied with all obligations
4 under the warranty, or otherwise have been excused from performance of said obligations as a result of
5 Defendant's conduct.

6 496. As a direct and proximate cause of Defendant's breach, New York Plaintiff and New
7 York Subclass members bought or leased Class Vehicles they otherwise would not have, overpaid for
8 their vehicles, did not receive the benefit of their bargain, and their Class Vehicles suffered a diminution
9 in value.
10

11 **COUNT THIRTY-ONE — BREACH OF EXPRESS WARRANTY**
12 **(N.Y. U.C.C. LAW §§ 2-313 AND 2A-210) - SUBARU**

13 497. Plaintiffs and the Class incorporate by reference each preceding and succeeding
14 paragraph as though fully set forth at length herein.

15 498. New York Plaintiff Diez brings this claim on behalf of herself and on behalf of the
16 members of the New York Subclass against Defendant Subaru.

17 499. Defendant is, and was, at all relevant times a "merchant" with respect to motor vehicles
18 under N.Y. UCC Law § 2-104(1) and "seller" of motor vehicles under § 2-103(1)(d).
19

20 500. The Class Vehicles are and were at all relevant times "goods" within the meaning of N.Y.
21 UCC Law §§ 2-105(1) and 2A-103(1)(h).

22 501. Defendant provided all purchasers and lessees of the Class Vehicles with the express
23 warranties described herein, which became part of the basis of the parties' bargain. Accordingly,
24 Defendant's warranties are express warranties under state law.
25

26 502. Specifically, the Class Vehicles are covered by Defendant's new vehicle limited
27 warranties and the powertrain warranty on electric propulsion components, including the battery
28 components, charging systems, and electric drive components.

1 503. Furthermore, Defendant expressly warranted—through statements and advertisements—
2 that the vehicles were of high quality, and at a minimum, would work properly and safely.

3 504. Defendant distributed the defective parts causing the Battery Defect in the Class
4 Vehicles, and those parts are covered by Defendant’s warranties granted to all Class Vehicle purchasers
5 and lessors.

6
7 505. New York Plaintiff and New York subclass members experienced defects within the
8 warranty period. Despite the existence of warranties, Defendant failed or refused to permanently fix the
9 Battery Defect which is covered by Defendant’s warranties granted to all Class Vehicle purchasers and
10 lessors.

11 506. Defendant breached these warranties by selling and leasing Class Vehicles with the
12 Battery Defect, requiring repair or replacement within the applicable warranty periods, and refusing to
13 honor the warranties by providing free repairs or replacements during the applicable warranty periods
14 sufficient for the Class Vehicles to be restored to their advertised qualities within a reasonable time.

15 507. New York Plaintiff notified Defendant of their breach within a reasonable time, and/or
16 was not required to do so because affording Defendant a reasonable opportunity to cure its breaches
17 would have been futile. Moreover, Defendant was provided notice of these issues within a reasonable
18 amount of time by the numerous complaints it received from various sources, including through the
19 NHTSA database, other online sources, and directly from consumers.

20 508. Any attempt to disclaim or limit these express warranties vis-à-vis consumers is
21 unconscionable and unenforceable under the circumstances here. Specifically, Defendant’s warranty
22 limitations are unenforceable because it knowingly sold a defective product without giving notice of the
23 Battery Defect to New York Plaintiff or New York Subclass members.

24 509. The time limits contained in Defendant’s warranty period were also unconscionable and
25 inadequate to protect New York Plaintiff or New York Subclass members. Among other things, neither
26 New York Plaintiff nor New York Subclass members had a meaningful choice in determining these time
27
28

1 limitations, the terms of which unreasonably favored Defendant. A gross disparity in bargaining power
2 existed between Defendant and the Class members because Defendant knew or should have known that
3 the Class Vehicles were defective at the time of sale and would fail well before their useful lives.

4
5 510. Furthermore, the limited warranty promising to repair and/or correct a manufacturing
6 defect fails in its essential purpose because the contractual remedy is insufficient to make New York
7 Plaintiff and New York Subclass members whole and because Defendant have failed and/or have
8 refused to adequately provide the promised remedies within a reasonable time.

9 511. New York Plaintiff and New York Subclass members have complied with all obligations
10 under the warranty or otherwise have been excused from performance of said obligations as a result of
11 Defendant's conduct.

12
13 512. As a direct and proximate cause of Defendant's breach, New York Plaintiff and New
14 York Subclass members bought or leased Class Vehicles they otherwise would not have, overpaid for
15 their vehicles, did not receive the benefit of their bargain, and their Class Vehicles suffered a diminution
16 in value.

17 **COUNT THIRTY-TWO — BREACH OF THE IMPLIED WARRANTY OF**
18 **MERCHANTABILITY - TOYOTA**
19 **(N.Y. U.C.C. LAW §§ 2-314 AND 2A-212)**

20 513. Plaintiffs and the Class incorporate by reference each preceding and succeeding
21 paragraph as though fully set forth at length herein.

22 514. New York Plaintiff Perilstein brings this claim on behalf of himself and on behalf of the
23 members of the New York Subclass against Defendant Toyota.

24 515. Defendant is, and was, at all relevant times a "merchant" with respect to motor vehicles
25 under N.Y. UCC Law § 2-104(1) and "sellers" of motor vehicles under § 2-103(1)(d).

26 516. The Class Vehicles are and were at all relevant times "goods" within the meaning of N.Y.
27 UCC Law §§ 2-105(1) and 2A-103(1)(h).
28

1 517. A warranty that the Class Vehicles were in merchantable condition and fit for the
2 ordinary purpose for which vehicles are used is implied by law pursuant to N.Y. UCC Law §§ 2-314 and
3 2A-212.

4 518. Defendant impliedly warranted that the Class Vehicles were of merchantable quality and
5 fit for such use. This implied warranty included, among other things: (i) a warranty that the vehicles
6 Defendant manufactured, supplied, distributed, and/or sold were safe and reliable for providing
7 transportation, and would not experience premature failure; and (ii) a warranty that the Class Vehicles
8 would be fit for their intended use while being operated.

9 519. However, the Class Vehicles at the time of sale and thereafter were and are not vehicles
10 fit for their ordinary purpose of providing reasonably reliable and safe transportation at the time of sale
11 or thereafter because the Battery Defect can manifest and result in spontaneous failure to start,
12 spontaneous shutdown, and the premature and permanent failure of 12-volt batteries equipped in the
13 Class Vehicles.

14 520. Therefore, the Class Vehicles are not fit for their particular purpose of providing safe and
15 reliable transportation.

16 521. Defendant breached the implied warranty of merchantability in that the Class Vehicles
17 were not in merchantable condition when they were sold or leased to New York Plaintiff and New York
18 Subclass members and said vehicles were and are unfit for the ordinary purposes for which such
19 vehicles are used because they pose a serious safety risk to the occupants and are an unreliable means of
20 transportation.

21 522. Defendant has been provided notice of these issues by numerous complaints, as alleged
22 herein.

23 523. As a direct and proximate result of breaches of the implied warranty of merchantability,
24 New York Plaintiff and New York Subclass members have suffered damages, including but not limited
25 to incidental and consequential damages.

**COUNT THIRTY-THREE — BREACH OF THE IMPLIED WARRANTY OF
MERCHANTABILITY - SUBARU
(N.Y. U.C.C. LAW §§ 2-314 AND 2A-212)**

1
2
3 524. Plaintiffs and the Class incorporate by reference each preceding and succeeding
4 paragraph as though fully set forth at length herein.

5
6 525. New York Plaintiff Diez brings this claim on behalf of herself and on behalf of the
7 members of the New York Subclass against Defendant Subaru.

8 526. Defendant is, and was, at all relevant times a “merchant” with respect to motor vehicles
9 under N.Y. UCC Law § 2-104(1) and “sellers” of motor vehicles under § 2-103(1)(d).

10 527. The Class Vehicles are and were at all relevant times “goods” within the meaning of N.Y.
11 UCC Law §§ 2-105(1) and 2A-103(1)(h).

12 528. A warranty that the Class Vehicles were in merchantable condition and fit for the
13 ordinary purpose for which vehicles are used is implied by law pursuant to N.Y. UCC Law §§ 2-314 and
14 2A-212.

15 529. Defendant impliedly warranted that the Class Vehicles were of merchantable quality and
16 fit for such use. This implied warranty included, among other things: (i) a warranty that the vehicles
17 Defendant manufactured, supplied, distributed, and/or sold were safe and reliable for providing
18 transportation, and would not experience premature failure; and (ii) a warranty that the Class Vehicles
19 would be fit for their intended use while being operated.

20 530. However, the Class Vehicles at the time of sale and thereafter were and are not vehicles
21 fit for their ordinary purpose of providing reasonably reliable and safe transportation at the time of sale
22 or thereafter because the Battery Defect can manifest and result in spontaneous failure to start,
23 spontaneous shutdown, and the premature and permanent failure of 12-volt batteries equipped in the
24 Class Vehicles.

25 531. Therefore, the Class Vehicles are not fit for their particular purpose of providing safe and
26 reliable transportation.
27
28

1 532. Defendant breached the implied warranty of merchantability in that the Class Vehicles
2 were not in merchantable condition when they were sold or leased to New York Plaintiff and New York
3 Subclass members and said vehicles were and are unfit for the ordinary purposes for which such
4 vehicles are used because they pose a serious safety risk to the occupants and are an unreliable means of
5 transportation.
6

7 533. Defendant has been provided notice of these issues by numerous complaints, as alleged
8 herein.

9 534. As a direct and proximate result of breaches of the implied warranty of merchantability,
10 New York Plaintiff and New York Subclass members have suffered damages, including but not limited
11 to incidental and consequential damages.
12

13 **COUNT THIRTY-FOUR — FRAUD BY CONCEALMENT – TOYOTA**

14 535. Plaintiffs and the Class incorporate by reference each preceding and succeeding
15 paragraph as though fully set forth at length herein.

16 536. New York Plaintiff Perilstein brings this claim on behalf of himself and on behalf of the
17 members of the New York Subclass against Defendant Toyota.

18 537. Defendant made material omissions concerning a presently existing or past fact in that,
19 for example, Defendant did not fully and truthfully disclose to its customers the true nature of the
20 Battery Defect, which was not readily discoverable by New York Plaintiff or New York Subclass
21 members until well after purchase or lease of the Class Vehicles. These facts, and other facts as set forth
22 above, were material because reasonable people attach importance to their existence or nonexistence in
23 deciding which vehicle to purchase.
24

25 538. Defendant was under a duty to disclose these omitted facts, because where one does
26 speak one must speak the whole truth and not conceal any facts which materially qualify those facts
27 stated. One who volunteers information must be truthful, and the telling of a half-truth calculated to
28 deceive is fraud.

1 539. In addition, Defendant had a duty to disclose these omitted material facts because they
2 were known and/or accessible only to Defendant, who had superior knowledge and access to the facts
3 and Defendant knew that those facts were not known to or reasonably discoverable by New York
4 Plaintiff and New York Subclass members. These omitted facts were material because they directly
5 impact the safety and reliability of the Class Vehicles.
6

7 540. Defendant was in exclusive control of the material facts and such facts were not known to
8 the public or New York Subclass members. Defendant also possessed exclusive knowledge of the
9 Battery Defect and that it renders Class Vehicles inherently more dangerous and unreliable than similar
10 vehicles.
11

12 541. Defendant actively concealed and/or suppressed these material facts, in whole or in part,
13 with the intent to induce New York Plaintiff and New York Subclass members to purchase the Class
14 Vehicles at a higher price for the vehicles, which did not match the vehicles' true value.
15

16 542. New York Plaintiff and New York Subclass members were unaware of these omitted
17 material facts and would not have acted as they did if they had known of the concealed and/or
18 suppressed facts. The actions of New York Plaintiff and New York Subclass members were justified.
19

20 543. New York Plaintiff and New York Subclass members reasonably relied on these
21 omissions and suffered damages as a result.
22

23 544. As a result of these omissions and concealments, New York Plaintiff and New York
24 Subclass members incurred damages including, but not limited to, their lost benefit of the bargain and
25 overpayment at the time of purchase or lease and/or the diminished intrinsic value of their Class
26 Vehicles.
27

28 545. Defendant's acts were done maliciously, oppressively, deliberately, with intent to
defraud, and in reckless disregard of the rights of New York Plaintiff and New York Subclass members.
Defendant's conduct warrants an assessment of punitive damages in an amount sufficient to deter such
conduct in the future, which amount is to be determined according to proof.

COUNT THIRTY-FIVE — FRAUD BY CONCEALMENT – SUBARU

1
2 546. Plaintiffs and the Class incorporate by reference each preceding and succeeding
3 paragraph as though fully set forth at length herein.

4 547. New York Plaintiff Diez brings this claim on behalf of herself and on behalf of the
5 members of the New York Subclass against Defendant Subaru.

6
7 548. Defendant made material omissions concerning a presently existing or past fact in that,
8 for example, Defendant did not fully and truthfully disclose to its customers the true nature of the
9 Battery Defect, which was not readily discoverable by New York Plaintiff or New York Subclass
10 members until well after purchase or lease of the Class Vehicles. These facts, and other facts as set forth
11 above, were material because reasonable people attach importance to their existence or nonexistence in
12 deciding which vehicle to purchase.

13
14 549. Defendant was under a duty to disclose these omitted facts, because where one does
15 speak one must speak the whole truth and not conceal any facts which materially qualify those facts
16 stated. One who volunteers information must be truthful, and the telling of a half-truth calculated to
17 deceive is fraud.

18 550. In addition, Defendant had a duty to disclose these omitted material facts because they
19 were known and/or accessible only to Defendant, who had superior knowledge and access to the facts
20 and Defendant knew that those facts were not known to or reasonably discoverable by New York
21 Plaintiff and New York Subclass members. These omitted facts were material because they directly
22 impact the safety and reliability of the Class Vehicles.

23
24 551. Defendant was in exclusive control of the material facts and such facts were not known to
25 the public or New York Subclass members. Defendant also possessed exclusive knowledge of the
26 Battery Defect and that it renders Class Vehicles inherently more dangerous and unreliable than similar
27 vehicles.

1 552. Defendant actively concealed and/or suppressed these material facts, in whole or in part,
2 with the intent to induce New York Plaintiff and New York Subclass members to purchase the Class
3 Vehicles at a higher price for the vehicles, which did not match the vehicles' true value.

4 553. New York Plaintiff and New York Subclass members were unaware of these omitted
5 material facts and would not have acted as they did if they had known of the concealed and/or
6 suppressed facts. The actions of New York Plaintiff and New York Subclass members were justified.

7 554. New York Plaintiff and New York Subclass members reasonably relied on these
8 omissions and suffered damages as a result.

9 555. As a result of these omissions and concealments, New York Plaintiff and New York
10 Subclass members incurred damages including, but not limited to, their lost benefit of the bargain and
11 overpayment at the time of purchase or lease and/or the diminished intrinsic value of their Class
12 Vehicles.

13 556. Defendant's acts were done maliciously, oppressively, deliberately, with intent to
14 defraud, and in reckless disregard of the rights of New York Plaintiff and New York Subclass members.
15 Defendant's conduct warrants an assessment of punitive damages in an amount sufficient to deter such
16 conduct in the future, that amount is to be determined according to proof.

17
18
19 **COUNT THIRTY-SIX — UNJUST ENRICHMENT – TOYOTA**

20 557. Plaintiffs and the Class incorporate by reference each preceding and succeeding
21 paragraph as though fully set forth at length herein.

22 558. New York Plaintiff Perilstein brings this cause of action on behalf of himself and the
23 New York Subclass against Defendant Toyota.

24 559. New York Plaintiff and New York Subclass members paid Defendant the value of non-
25 defective, fully operational Class Vehicles with the ability to operate without fear of premature battery
26 failure. In exchange, Defendant provided New York Plaintiff and New York Subclass members with
27
28

1 defective Vehicles that are prone to battery failures that leave them unable to start, may cause them to
2 suddenly stop while driving, and require premature battery replacements.

3 560. As such, New York Plaintiff and New York Subclass members conferred value upon
4 Defendant which would be unjust for Defendant to retain.

5 561. As a direct and proximate result of Defendant's unjust enrichment, New York Plaintiff
6 and Class members have suffered and continue to suffer various injuries. As such, they are entitled to
7 damages, including but not limited to restitution of all amounts by which Defendant were enriched
8 through its misconduct.
9

10 **COUNT THIRTY-SEVEN — UNJUST ENRICHMENT – SUBARU**

11 562. Plaintiffs and the Class incorporate by reference each preceding and succeeding
12 paragraph as though fully set forth at length herein.

13 563. New York Plaintiff Diez brings this cause of action on behalf of herself and the New
14 York Subclass against Defendant Subaru.
15

16 564. New York Plaintiff and New York Subclass members paid Defendant the value of non-
17 defective, fully operational Class Vehicles with the ability to operate without fear of premature battery
18 failure. In exchange, Defendant provided New York Plaintiff and New York Subclass members with
19 defective Vehicles that are prone to battery failures that leave them unable to start, may cause them to
20 suddenly stop while driving, and require premature battery replacements.
21

22 565. Thus, New York Plaintiff and New York Subclass members conferred value upon
23 Defendant which would be unjust for Defendant to retain.

24 566. As a direct and proximate result of Defendant's unjust enrichment, New York Plaintiff
25 and Class members have suffered and continue to suffer various injuries and they are entitled to
26 damages, including but not limited to restitution of all amounts by which Defendant was enriched
27 through its misconduct.
28

1 **E. Claims Brought on Behalf of the Washington Subclass**

2 **COUNT THIRTY-EIGHT — VIOLATIONS OF THE**
3 **CONSUMER PROTECTION ACT**
4 **(REV. CODE WASH. ANN. §§ 19.86.010, ET SEQ.) – TOYOTA**

5 567. Plaintiffs and the Class incorporate by reference each preceding and succeeding
6 paragraph as though fully set forth at length herein.

7 568. Plaintiff Chao (for purposes of this section, “Washington Plaintiff”) brings this claim on
8 behalf of himself and on behalf of the members of the Washington Subclass against Defendant Toyota.

9 569. Defendants’ conduct as set forth herein constitutes unfair or deceptive acts or practices,
10 including, but not limited to, by knowingly and intentionally concealing from Washington Plaintiff and
11 Washington Subclass members that the Class Vehicles suffer from a defect(s) (and the costs, risks, and
12 diminished value of the vehicles as a result of this problem), which Defendants failed to adequately
13 investigate, disclose and remedy, and its misrepresentations and omissions regarding the safety,
14 reliability, and range of the Class Vehicles.

15 570. Defendants’ actions as set forth above occurred in the conduct of trade or commerce.

16 571. Defendants’ actions impact the public interest because Washington Plaintiff and
17 Washington Subclass members were injured in the same way as tens of thousands of others purchasing
18 and/or leasing Defendants’ vehicles as a result of Defendants’ generalized course of deception. All of
19 the wrongful conduct alleged herein occurred, and continues to occur, in the conduct of Defendants’
20 business.
21

22 572. Washington Plaintiff and Washington Subclass members were injured as a result of
23 Defendants’ conduct. Washington Plaintiff and Washington Subclass members overpaid for the Class
24 Vehicles and did not receive the benefit of their bargain, and thus the Class Vehicles have suffered a
25 diminution in value.
26

27 573. Defendants’ conduct proximately caused injuries to Washington Plaintiff and
28 Washington Subclass members.

1 574. Defendants are liable to Washington Plaintiff and Washington Subclass Members for
2 damages in amounts to be proven at trial, including attorneys' fees, costs, and treble damages.

3 575. Pursuant to Wash. Rev. Code. Ann. § 19.86.095, Washington Plaintiff will serve the
4 Washington Attorney General with a copy of this complaint as Washington Plaintiff Chao and the
5 Washington Subclass members seek injunctive relief.
6

7 **COUNT THIRTY-NINE — VIOLATIONS OF THE**
8 **CONSUMER PROTECTION ACT**
9 **(REV. CODE WASH. ANN. §§ 19.86.010, ET SEQ.) – SUBARU**

10 576. Plaintiffs and the Class incorporate by reference each preceding and succeeding
11 paragraph as though fully set forth at length herein.

12 577. Plaintiff Buls and Plaintiff Atkins (for purposes of this section, "Washington Plaintiffs")
13 bring this claim on behalf of themselves and on behalf of the members of the Washington Subclass
14 against Defendant Subaru.

15 578. Defendant's conduct as set forth herein constitutes unfair or deceptive acts or practices,
16 including, but not limited to, by knowingly and intentionally concealing from Washington Plaintiffs and
17 Washington Subclass members that the Class Vehicles suffer from a defect(s) (and the costs, risks, and
18 diminished value of the vehicles as a result of this problem), which Defendant failed to adequately
19 investigate, disclose, and remedy, and its misrepresentations and omissions regarding the safety,
20 reliability, and range of the Class Vehicles.
21

22 579. Defendant's actions as set forth above occurred in the conduct of trade or commerce.

23 580. Defendant's actions impact the public interest because Washington Plaintiffs and
24 Washington Subclass members were injured in the same way as tens of thousands of others purchasing
25 and/or leasing Defendant's vehicles as a result of Defendant's generalized course of deception. All of
26 the wrongful conduct alleged herein occurred, and continues to occur, in the conduct of Defendant's
27 business.
28

1 581. Washington Plaintiffs and Washington Subclass members were injured as a result of
2 Defendant's conduct. Washington Plaintiffs and Washington Subclass members overpaid for the Class
3 Vehicles and did not receive the benefit of their bargain, and thus the Class Vehicles have suffered a
4 diminution in value.

5
6 582. Defendant's conduct proximately caused injuries to Washington Plaintiffs and
7 Washington Subclass members.

8 583. Defendant is liable to Washington Plaintiffs and Washington Subclass Members for
9 damages in amounts to be proven at trial, including attorneys' fees, costs, and treble damages.

10 584. Pursuant to Wash. Rev. Code. Ann. § 19.86.095, Washington Plaintiffs will serve the
11 Washington Attorney General with a copy of this complaint as Washington Plaintiffs and the
12 Washington Subclass members seek injunctive relief.

13
14 **COUNT FORTY — BREACH OF EXPRESS WARRANTY**
15 **(REV. CODE WASH. § 62A.2-313 AND 62A.2A-210) - TOYOTA**

16 585. Plaintiffs and the Class incorporate by reference each preceding and succeeding
17 paragraph as though fully set forth at length herein.

18 586. Washington Plaintiff Chao brings this claim on behalf of himself and on behalf of the
19 members of the Washington Subclass against Defendant Toyota.

20 587. Each Defendant is and was at all relevant times a merchant with respect to motor
21 vehicles.

22 588. In the course of selling their vehicles, Defendants expressly warranted in writing that the
23 Class Vehicles were covered by a new vehicle limited warranty.

24 589. Specifically, the Class Vehicles are covered by Defendant's new vehicle limited
25 warranties, the powertrain warranty on electric propulsion components, including the battery
26 components, charging systems, and electric drive components.
27
28

1 590. Washington Plaintiff notified Defendants of their breach within a reasonable time, and/or
2 was not required to do so because affording Defendants a reasonable opportunity to cure its breaches
3 would have been futile. Moreover, Defendants were provided notice of these issues within a reasonable
4 amount of time by the numerous complaints filed against them.

5 591. In addition to this new vehicle limited warranty, Defendants expressly warranted several
6 attributes, characteristics and qualities, as set forth above.

7 592. Furthermore, the limited warranty of repair and/or adjustments to defective parts, fails in
8 its essential purpose because the contractual remedy is insufficient to make the Washington Plaintiff and
9 Washington Subclass members whole and because Defendants have failed and/or have refused to
10 adequately provide the promised remedies within a reasonable time.

11 593. Accordingly, Washington Plaintiff's and Washington Subclass members' recovery is not
12 limited to the limited warranty of repair or adjustments to parts defective in materials or workmanship,
13 and Washington Plaintiff and Washington Subclass Members seek all remedies as allowed by law.

14 594. Also, at the time Defendants warranted and sold the Class Vehicles, Defendants
15 wrongfully and fraudulently misrepresented and/or concealed material facts regarding the Class
16 Vehicles. Washington Plaintiff and Washington Subclass members were therefore induced to purchase
17 the Class Vehicles under false and/or fraudulent pretenses.

18 595. The damages flowing from the Class Vehicles cannot be resolved through the limited
19 remedy of "replacement or adjustments," and any limitation on available remedies would be insufficient
20 to make Washington Plaintiff and Washington Subclass members whole.

21 596. Finally, as a result of Defendants' breach of warranties as set forth herein, Washington
22 Plaintiff and Washington Subclass members assert, as an additional and/or alternative remedy, as set
23 forth in Rev. Code Wash. § 62A.2-608, for a revocation of acceptance of the goods, and for a return to
24 Washington Plaintiff and to Washington Subclass members the purchase price of all Class Vehicles
25 currently owned.

1 606. Accordingly, Washington Plaintiffs’ and Washington Subclass members’ recovery is not
2 limited to the limited warranty of repair or adjustments to parts defective in materials or workmanship,
3 and Washington Plaintiffs and Washington Subclass Members seek all remedies as allowed by law.

4 607. Also, at the time Defendant warranted and sold the Class Vehicles, Defendant wrongfully
5 and fraudulently misrepresented and/or concealed material facts regarding the Class Vehicles.
6 Washington Plaintiffs and Washington Subclass members were therefore induced to purchase the Class
7 Vehicles under false and/or fraudulent pretenses.

8 608. The damages flowing from the Class Vehicles cannot be resolved through the limited
9 remedy of “replacement or adjustments,” and any limitation on available remedies would be insufficient
10 to make Washington Plaintiffs and Washington Subclass members whole.

11 609. Finally, as a result of Defendant’s breach of warranties as set forth herein, Washington
12 Plaintiffs and Washington Subclass members assert, as an additional and/or alternative remedy, as set
13 forth in Rev. Code Wash. § 62A.2-608, for a revocation of acceptance of the goods, and for a return to
14 Washington Plaintiffs and to Washington Subclass members the purchase price of all Class Vehicles
15 currently owned.

16 610. As a direct and proximate result of Defendant’s breach of express warranties,
17 Washington Plaintiffs and Washington Subclass members have been damaged in an amount to be
18 determined at trial.

19
20
21
22 **COUNT FORTY-TWO — BREACH OF THE IMPLIED WARRANTY OF**
23 **MERCHANTABILITY**
24 **(REV. CODE WASH. § 62A.2-314/315) - TOYOTA**

25 611. Plaintiffs and the Class incorporate by reference each preceding and succeeding
26 paragraph as though fully set forth at length herein.

27 612. Washington Plaintiff Chao brings this claim on behalf of himself and on behalf of the
28 members of the Washington Subclass against Defendant Toyota.

1 613. Each Defendant is and was at all relevant times a merchant with respect to motor
2 vehicles.

3 614. A warranty that the Class Vehicles were in merchantable condition is implied by law in
4 the instant transactions.

5 615. Defendants impliedly warranted that the Class Vehicles were of merchantable quality and
6 fit for such use. This implied warranty included, inter alia, the following: (i) a warranty that the Class
7 Vehicles manufactured, supplied, distributed, and/or sold by Defendants were safe and reliable for
8 providing transportation and would not prematurely fail; and (ii) a warranty that the Class Vehicles
9 would be fit for their intended use—i.e., providing safe and reliable transportation—while the Class
10 Vehicles were being operated.

11 616. The Class Vehicles, when sold and at all times thereafter, were not in merchantable
12 condition and are not fit for the ordinary purpose for which cars are used. Specifically, the Class
13 Vehicles are inherently defective in that the Battery Defect can manifest and result in spontaneous
14 failure to start, spontaneous shutdown, and the premature and permanent failure of 12-volt batteries
15 equipped in the Class Vehicles.

16 617. Privity is not required in this case because Washington Plaintiff and Washington Subclass
17 members are intended third-party beneficiaries of contracts between Defendants and its dealers;
18 specifically, they are the intended beneficiaries of Defendants' implied warranties. The dealers were not
19 intended to be the ultimate consumers of the Class Vehicles and have no rights under the warranty
20 agreements provided with the Class Vehicles; the warranty agreements were designed for and intended
21 to benefit the ultimate consumers only.

22 618. As a direct and proximate result of Defendants' breach of the warranties of
23 merchantability, Washington Plaintiff Chao and Washington Subclass members have been damaged in
24 an amount to be proven at trial.

**COUNT FORTY-THREE — BREACH OF THE IMPLIED WARRANTY OF
MERCHANTABILITY
(REV. CODE WASH. § 62A.2-314/315) - SUBARU**

1
2
3 619. Plaintiffs and the Class incorporate by reference each preceding and succeeding
4 paragraph as though fully set forth at length herein.

5
6 620. Washington Plaintiffs Buls and Atkins bring this claim on behalf of themselves and on
7 behalf of the members of the Washington Subclass against Defendant Subaru.

8 621. Defendant is and was at all relevant times a merchant with respect to motor vehicles.

9 622. A warranty that the Class Vehicles were in merchantable condition is implied by law in
10 the instant transactions.

11 623. Defendant impliedly warranted that the Class Vehicles were of merchantable quality and
12 fit for such use. This implied warranty included, inter alia, the following: (i) a warranty that the Class
13 Vehicles manufactured, supplied, distributed, and/or sold by Defendant were safe and reliable for
14 providing transportation and would not prematurely fail; and (ii) a warranty that the Class Vehicles
15 would be fit for their intended use—i.e., providing safe and reliable transportation—while the Class
16 Vehicles were being operated.

17
18 624. The Class Vehicles, when sold and at all times thereafter, were not in merchantable
19 condition and are not fit for the ordinary purpose for which cars are used. Specifically, the Class
20 Vehicles are inherently defective in that the Battery Defect can manifest and result in spontaneous
21 failure to start, spontaneous shutdown, and the premature and permanent failure of 12-volt batteries
22 equipped in the Class Vehicles.

23
24 625. Privity is not required in this case because Washington Plaintiffs and Washington
25 Subclass members are intended third-party beneficiaries of contracts between Defendant and its dealers;
26 specifically, they are the intended beneficiaries of Defendant's implied warranties. The dealers were not
27 intended to be the ultimate consumers of the Class Vehicles and have no rights under the warranty
28

1 agreements provided with the Class Vehicles; the warranty agreements were designed for and intended
2 to benefit the ultimate consumers only.

3 626. As a direct and proximate result of Defendant's breach of the warranties of
4 merchantability, Washington Plaintiffs and Washington Subclass members have been damaged in an
5 amount to be proven at trial.
6

7 **COUNT FORTY-FOUR — FRAUD BY CONCEALMENT - TOYOTA**

8 627. Plaintiffs and the Class incorporate by reference each preceding and succeeding
9 paragraph as though fully set forth at length herein.

10 628. Washington Plaintiff Chao brings this claim on behalf of himself and on behalf of the
11 members of the Washington Subclass against Defendant Toyota.

12 629. As set forth above, Defendants concealed and/or suppressed material facts concerning the
13 safety of the Class Vehicles.
14

15 630. Defendants made material omissions concerning a presently existing or past fact in that,
16 for example, Defendants did not fully and truthfully disclose to its customers the true nature of the
17 Battery Defect, which was not readily discoverable by the Washington Plaintiff or Washington Subclass
18 members until well after purchase or lease of the Class Vehicles. These facts, and other facts as set forth
19 above, were material because reasonable people attach importance to their existence or nonexistence in
20 deciding which vehicle to purchase.
21

22 631. Defendants actively concealed and/or suppressed these material facts, in whole or in part,
23 with the intent to induce Washington Plaintiff and Washington Subclass members to purchase the Class
24 Vehicles at a higher price, which did not match their true value.

25 632. Defendants were under a duty to disclose these omitted facts, because where one does
26 speak one must speak the whole truth and not conceal any facts which materially qualify those facts
27 stated. One who volunteers information must be truthful, and the telling of a half-truth calculated to
28 deceive is fraud.

1 633. In addition, Defendants had a duty to disclose these omitted material facts because they
2 were known and/or accessible only to Defendants, who had superior knowledge and access to the facts,
3 and Defendants knew they were not known to or reasonably discoverable by Washington Plaintiff and
4 Washington Subclass members. These omitted facts were material because they directly impact the
5 safety and reliability of the Class Vehicles.
6

7 634. Defendants still have not made full and adequate disclosure and continue to defraud
8 Washington Plaintiff and Washington Subclass members.

9 635. Washington Plaintiff and Washington Subclass members were unaware of these omitted
10 material facts and would not have acted as they did if they had known of the concealed and/or
11 suppressed facts. Washington Plaintiff and Washington Subclass members' actions were justified.
12

13 636. Defendants were in exclusive control of the material facts and such facts were not known
14 to the public or Washington Subclass members. Defendants also possessed exclusive knowledge of the
15 Battery Defect and the fact that it rendered the Class Vehicles inherently more dangerous and unreliable
16 than similar vehicles.

17 637. As a result of the concealment and/or suppression of the facts, Washington Plaintiff and
18 Washington Subclass members sustained damage. For those Washington Plaintiff and Washington
19 Subclass members who elect to affirm the sale, these damages, include the difference between the actual
20 value of that which Washington Plaintiff and Washington Subclass members paid and the actual value
21 of that which they received, together with additional damages arising from the sales transaction,
22 amounts expended in reliance upon the fraud, compensation for loss of use and enjoyment of the
23 property, and/or lost profits. Any Washington Plaintiff or Washington Subclass member who wants to
24 rescind their purchase is entitled to restitution and consequential damages.
25

26 638. Defendants' acts were done maliciously, oppressively, deliberately, with intent to
27 defraud, and in reckless disregard of Washington Plaintiff Chao's and Washington Subclass members'
28 rights and well-being to enrich Defendants. Defendants' conduct warrants an assessment of punitive
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1 damages in an amount sufficient to deter such conduct in the future, which amount is to be determined
2 according to proof.

3 **COUNT FORTY-FIVE — FRAUD BY CONCEALMENT - SUBARU**

4 639. Plaintiffs and the Class incorporate by reference each preceding and succeeding
5 paragraph as though fully set forth at length herein.

6
7 640. Washington Plaintiffs Buls and Atkins bring this claim on behalf of themselves and on
8 behalf of the members of the Washington Subclass against Defendant Subaru.

9 641. As set forth above, Defendant concealed and/or suppressed material facts concerning the
10 safety of the Class Vehicles.

11 642. Defendant made material omissions concerning a presently existing or past fact in that,
12 for example, Defendant did not fully and truthfully disclose to its customers the true nature of the
13 Battery Defect, which was not readily discoverable by the Washington Plaintiffs or Washington
14 Subclass members until well after purchase or lease of the Class Vehicles. These facts, and other facts as
15 set forth above, were material because reasonable people attach importance to their existence or
16 nonexistence in deciding which vehicle to purchase.

17
18 643. Defendant actively concealed and/or suppressed these material facts, in whole or in part,
19 with the intent to induce Washington Plaintiffs and Washington Subclass members to purchase the Class
20 Vehicles at a higher price, which did not match their true value.

21
22 644. Defendant was under a duty to disclose these omitted facts, because where one does
23 speak one must speak the whole truth and not conceal any facts which materially qualify those facts
24 stated. One who volunteers information must be truthful, and the telling of a half-truth calculated to
25 deceive is fraud.

26 645. In addition, Defendant had a duty to disclose these omitted material facts because they
27 were known and/or accessible only to Defendant, who had superior knowledge and access to the facts,
28 and Defendant knew they were not known to or reasonably discoverable by Washington Plaintiffs and

1 Washington Subclass members. These omitted facts were material because they directly impact the
2 safety and reliability of the Class Vehicles.

3 646. Defendant still has not made full and adequate disclosure and continues to defraud
4 Washington Plaintiffs and Washington Subclass members.

5 647. Washington Plaintiffs and Washington Subclass members were unaware of these omitted
6 material facts and would not have acted as they did if they had known of the concealed and/or
7 suppressed facts. Washington Plaintiffs and Washington Subclass members' actions were justified.

8 648. Defendant was in exclusive control of the material facts and such facts were not known to
9 the public or Washington Subclass members. Defendant also possessed exclusive knowledge of the
10 Battery Defect and the fact that it rendered the Class Vehicles inherently more dangerous and unreliable
11 than similar vehicles.
12

13 649. As a result of the concealment and/or suppression of the facts, Washington Plaintiffs and
14 Washington Subclass members sustained damage. For those Washington Plaintiffs and Washington
15 Subclass members who elect to affirm the sale, these damages include the difference between the actual
16 value of that which Washington Plaintiffs and Washington Subclass members paid and the actual value
17 of that which they received, together with additional damages arising from the sales transaction,
18 amounts expended in reliance upon the fraud, compensation for loss of use and enjoyment of the
19 property, and/or lost profits. Any Washington Plaintiffs or Washington Subclass member who wants to
20 rescind their purchase is entitled to restitution and consequential damages.
21

22 650. Defendant's acts were done maliciously, oppressively, deliberately, with intent to
23 defraud, and in reckless disregard of Washington Plaintiffs' and Washington Subclass members' rights
24 and well-being to enrich Defendant. Defendant's conduct warrants an assessment of punitive damages in
25 an amount sufficient to deter such conduct in the future, which amount is to be determined according to
26 proof.
27
28

COUNT FORTY-SIX — UNJUST ENRICHMENT - TOYOTA

1
2 651. Plaintiffs and the Class incorporate by reference each preceding and succeeding
3 paragraph as though fully set forth at length herein.

4 652. Washington Plaintiff Chao brings this cause of action on behalf of himself and the
5 Washington Subclass against Defendant Toyota.

6
7 653. As a result of Defendants' wrongful and fraudulent acts and omissions, as set forth above,
8 Washington Plaintiff and Washington Subclass members paid Defendants the value of non-defective,
9 fully operational Class Vehicles with the ability to operate without fear of premature battery failure. In
10 exchange, Defendants provided Washington Plaintiff and Washington Subclass members with defective
11 Vehicles that are prone to battery failures that leave them unable to start, may cause them to suddenly
12 stop while driving, and require premature battery replacements.

13
14 654. As such, Washington Plaintiff and Washington Subclass members conferred value upon
15 Defendants which would be unjust for Defendant to retain.

16 655. Defendants enjoyed the benefit of increased financial gains, to the detriment of
17 Washington Plaintiff and Washington Subclass members, who paid a higher price for vehicles which
18 actually had lower values. It would be inequitable and unjust for Defendants to retain these wrongfully
19 obtained profits.

20
21 656. As a direct and proximate result of Defendants' unjust enrichment, Washington Plaintiff
22 and Washington Subclass members have suffered and continue to suffer various injuries. As such, they
23 are entitled to damages, including but not limited to restitution of all amounts by which Defendants were
24 enriched through their misconduct.

25 657. Washington Plaintiff Chao and Washington Subclass members therefore seek an order
26 establishing Defendants as a constructive trustee of the profits unjustly obtained, plus interest.
27
28

COUNT FORTY-SEVEN — UNJUST ENRICHMENT - SUBARU

1
2 658. Plaintiffs and the Class incorporate by reference each preceding and succeeding
3 paragraph as though fully set forth at length herein.

4 659. Washington Plaintiffs Buls and Atkins bring this cause of action on behalf of themselves
5 and the Washington Subclass against Defendant Subaru.

6
7 660. As a result of Defendant's wrongful and fraudulent acts and omissions, as set forth above,
8 Washington Plaintiffs and Washington Subclass members paid Defendant the value of non-defective,
9 fully operational Class Vehicles with the ability to operate without fear of premature battery failure. In
10 exchange, Defendant provided Washington Plaintiffs and Washington Subclass members with defective
11 Vehicles that are prone to battery failures that leave them unable to start, may cause them to suddenly
12 stop while driving, and require premature battery replacements.

13
14 661. As such, Washington Plaintiffs and Washington Subclass members conferred value upon
15 Defendant which would be unjust for Defendant to retain.

16 662. Defendant enjoyed the benefit of increased financial gains, to the detriment of
17 Washington Plaintiffs and Washington Subclass members, who paid a higher price for vehicles which
18 actually had lower values. It would be inequitable and unjust for Defendant to retain these wrongfully
19 obtained profits.

20 663. As a direct and proximate result of Defendant's unjust enrichment, Washington Plaintiffs
21 and Washington Subclass members have suffered and continue to suffer various injuries. Thus, they are
22 entitled to damages, including but not limited to restitution of all amounts by which Defendant was
23 enriched through their misconduct.

24
25 664. Washington Plaintiffs and Washington Subclass members therefore seek an order
26 establishing Defendant as a constructive trustee of the profits unjustly obtained, plus interest.
27
28

1 **F. Claims Brought on Behalf of the Wisconsin Subclass**

2 **COUNT FORTY-EIGHT — BREACH OF EXPRESS WARRANTY**
3 **(WIS. STAT. §§ 402.314 AND 411.210) - SUBARU**

4 665. Plaintiffs and the Class incorporate by reference each preceding and succeeding
5 paragraph as though fully set forth at length herein.

6 666. Wisconsin Plaintiff Schauburger (for purposes of this section, “Wisconsin Plaintiff”)
7 brings this claim on behalf of herself and on behalf of the members of the Wisconsin Subclass against
8 Defendant Toyota.

9 667. Each Defendant is and was at all relevant times a merchant with respect to motor
10 vehicles.

11 668. In the course of selling their vehicles, Defendants expressly warranted in writing that the
12 Class Vehicles were covered by a new vehicle limited warranty.
13

14 669. Specifically, the Class Vehicles are covered by Defendants’ new vehicle limited
15 warranties and the powertrain warranty on electric propulsion components, including the battery
16 components, charging systems, and electric drive components.
17

18 670. Wisconsin Plaintiff notified Defendants of its breach within a reasonable time, and/or
19 was not required to do so because affording Defendants a reasonable opportunity to cure its breaches
20 would have been futile. Moreover, Defendants were provided notice of these issues within a reasonable
21 amount of time by the numerous complaints filed against them.

22 671. In addition to this new vehicle limited warranty, Defendants expressly warranted several
23 attributes, characteristics, and qualities, as set forth above.

24 672. Furthermore, the limited warranty of repair and/or adjustments to defective parts fails in
25 its essential purpose because the contractual remedy is insufficient to make the Wisconsin Plaintiff and
26 the Wisconsin Subclass members whole and because Defendants have failed and/or has refused to
27 adequately provide the promised remedies within a reasonable time.
28

1 673. Accordingly, Wisconsin Plaintiff and the Wisconsin Subclass members' recovery is not
2 limited to the limited warranty of repair or adjustments to parts defective in materials or workmanship,
3 and Wisconsin Plaintiff and the Wisconsin Subclass Members seek all remedies as allowed by law.

4 674. Also, at the time Defendants warranted and sold the Class Vehicles, Defendants
5 wrongfully and fraudulently misrepresented and/or concealed material facts regarding the Class
6 Vehicles. Wisconsin Plaintiff and the Wisconsin Subclass members were therefore induced to purchase
7 the Class Vehicles under false and/or fraudulent pretenses.

8 675. The damages flowing from the Class Vehicles cannot be resolved through the limited
9 remedy of "replacement or adjustments," and any limitation on available remedies would be insufficient
10 to make Wisconsin Plaintiff and the Wisconsin Subclass members whole.

11 676. Finally, as a result of Defendants' breach of warranties as set forth herein, Wisconsin
12 Plaintiff and the Wisconsin Subclass members assert, as an additional and/or alternative remedy, as set
13 forth in Wis. Stat. §§ 411.201, for a revocation of acceptance of the goods, and for a return to Wisconsin
14 Plaintiff and the Wisconsin Subclass members the purchase price of all Class Vehicles currently owned.

15 677. As a direct and proximate result of Defendants' breach of express warranties, Wisconsin
16 Plaintiff and the Wisconsin Subclass members have been damaged in an amount to be determined at
17 trial.

18
19
20
21 **COUNT FORTY-NINE — BREACH OF IMPLIED WARRANTY OF
MERCHANTABILITY (WIS. STAT. §§ 402.314 AND 411.212) – TOYOTA**

22 678. Plaintiffs and the Class incorporate by reference each preceding and succeeding
23 paragraph as though fully set forth at length herein.

24 679. Wisconsin Plaintiff Schauberger brings this claim on behalf of herself and on behalf of
25 the members of the Wisconsin Subclass against Defendant Toyota.

26 680. Each Defendant is and was at all relevant times a merchant with respect to motor
27 vehicles.
28

1 681. A warranty that the Class Vehicles were in merchantable condition is implied by law in
2 the instant transactions.

3 682. Defendants impliedly warranted that the Class Vehicles were of merchantable quality and
4 fit for such use. This implied warranty included, inter alia, the following: (i) a warranty that the Class
5 Vehicles manufactured, supplied, distributed, and/or sold by Defendants was safe and reliable for
6 providing transportation and would not prematurely fail; and (ii) a warranty that the Class Vehicles
7 would be fit for their intended use—i.e., providing safe and reliable transportation—while the Class
8 Vehicles were being operated.
9

10 683. The Class Vehicles, when sold and at all times thereafter, were not in merchantable
11 condition and are not fit for the ordinary purpose for which cars are used. Specifically, the Class
12 Vehicles are inherently defective in that the Battery Defect can manifest and result in spontaneous
13 failure to start, spontaneous shutdown, and the premature and permanent failure of 12-volt batteries
14 equipped in the Class Vehicles.
15

16 684. Privity is not required in this case because Wisconsin Plaintiff and the Wisconsin
17 Subclass members are intended third-party beneficiaries of contracts between Defendants and its
18 dealers; specifically, they are the intended beneficiaries of Defendants' implied warranties. The dealers
19 were not intended to be the ultimate consumers of the Class Vehicles and have no rights under the
20 warranty agreements provided with the Class Vehicles; the warranty agreements were designed for and
21 intended to benefit the ultimate consumers only.
22

23 685. As a direct and proximate result of Defendants' breach of the warranties of
24 merchantability, Wisconsin Plaintiff and the Wisconsin Subclass members have been damaged in an
25 amount to be proven at trial.
26
27
28

COUNT FIFTY — VIOLATION OF THE WISCONSIN DECEPTIVE TRADE PRACTICES ACT (WIS. STAT. § 100.18, ET SEQ.) – TOYOTA

1
2
3 686. Plaintiffs and the Class incorporate by reference each preceding and succeeding
4 paragraph as though fully set forth at length herein.

5 687. Plaintiff Schauberger brings this count on behalf of herself and on behalf of the members
6 of the Wisconsin Class against Defendant Toyota.

7 688. Defendants are “person[s], firm[s], corporation[s], or association[s]” within the meaning
8 of Wis. Stat. § 100.18(1).

9 689. Wisconsin Plaintiff and the Wisconsin Subclass are members of “the public” within the
10 meaning of Wis. Stat. § 100.18(1).

11 690. The Class Vehicles are “merchandise” within the meaning of Wis. Stat. § 100.18(1).

12 691. The Wisconsin Deceptive Trade Practices Act (“Wisconsin DTPA”) prohibits any
13 “assertion, representation or statement of fact which is untrue, deceptive or misleading.” Wis. Stat. §
14 100.18(1).

15 692. In the course of their business, Defendants, through their agents, employees, and/or
16 subsidiaries, violated the Wisconsin DTPA by knowingly and intentionally misrepresenting material
17 facts regarding the quality, reliability, and safety of the Class Vehicles and the Battery Defect, as
18 detailed above.

19 693. By misrepresenting the Class Vehicles as safe and reliable and free from defects,
20 Defendants violated the Wisconsin DTPA by making assertions, representations and statements of fact
21 which are untrue, deceptive or misleading, as prohibited by Wis. Stat. § 100.18(1).

22 694. Defendants’ unfair or deceptive acts or practices were designed to mislead and had a
23 tendency or capacity to mislead and create a false impression in consumers that the Class Vehicles had
24 adequate anti-theft protection, and that the Class Vehicles were not affected by the Battery Defect.
25 Indeed, those misrepresentations, concealments, omissions, and suppressions of material facts did in fact
26
27
28

1 deceive reasonable consumers, including Wisconsin Plaintiff and Wisconsin Subclass Members, about
2 the true safety and reliability of Class Vehicles, the quality of the Class Vehicles, and the true value of
3 the Class Vehicles.

4 695. Defendants' misrepresentations of material facts regarding the Battery Defect the Class
5 Vehicles were material to the decisions of Wisconsin Plaintiff and Wisconsin Subclass Members to
6 purchase and lease those vehicles, as Defendants intended. Wisconsin Plaintiff and Wisconsin Subclass
7 Members were exposed to those misrepresentations of material facts, and relied on Defendants'
8 misrepresentations that the Class Vehicles were safe and reliable in deciding to purchase and lease Class
9 Vehicles.
10

11 696. Wisconsin Plaintiff's and Wisconsin Subclass Members' reliance was reasonable, as they
12 had no way of discerning that Defendants representations were false and misleading. Wisconsin Plaintiff
13 and Wisconsin Subclass Members did not, and could not, unravel Defendants' deception on their own.
14

15 697. Had Wisconsin Plaintiff and Wisconsin Subclass Members known the truth about the
16 Battery Defect, Wisconsin Plaintiff and Wisconsin Subclass Members would not have purchased or
17 leased Class Vehicles, or would have paid significantly less for them.

18 698. Wisconsin Plaintiff and Wisconsin Subclass Members suffered ascertainable losses and
19 actual damages as a direct and proximate result of Defendants' concealment, misrepresentations, and/or
20 failure to disclose material information.
21

22 699. Defendants' violations present a continuing risk to Wisconsin Plaintiff and Wisconsin
23 Subclass Members, as well as to the general public, because the Class Vehicles remain unsafe due to the
24 Battery Defect. Defendants' unlawful acts and practices complained of herein affect the public interest.

25 700. Pursuant to Wis. Stat. § 100.18(11)(b)(2), Wisconsin Plaintiff and Wisconsin Subclass
26 Members seek an order enjoining Defendants' unfair or deceptive acts or practices and awarding
27 damages and any other just and proper relief available under the Wisconsin DTPA.
28

COUNT FIFTY-ONE — FRAUD BY CONCEALMENT - TOYOTA

1
2 701. Plaintiffs and the Class incorporate by reference each preceding and succeeding
3 paragraph as though fully set forth at length herein.

4 702. Wisconsin Plaintiff Schauberger brings this claim on behalf of herself and on behalf of
5 the members of the Wisconsin Subclass against Defendant Toyota.

6
7 703. As set forth above, Defendants concealed and/or suppressed material facts concerning the
8 safety of the Class Vehicles.

9 704. Defendants made material omissions concerning a presently existing or past fact in that,
10 for example, Defendants did not fully and truthfully disclose to its customers the true nature of the
11 Battery Defect, which was not readily discoverable by the Wisconsin Plaintiff or Wisconsin Subclass
12 members until well after purchase or lease of the Class Vehicles. These facts, and other facts as set forth
13 above, were material because reasonable people attach importance to their existence or nonexistence in
14 deciding which vehicle to purchase.

15
16 705. Defendants actively concealed and/or suppressed these material facts, in whole or in part,
17 with the intent to induce Wisconsin Plaintiff and Wisconsin Subclass members to purchase the Class
18 Vehicles at a higher price, which did not match their true value.

19 706. Defendants were under a duty to disclose these omitted facts, because where one does
20 speak one must speak the whole truth and not conceal any facts which materially qualify those facts
21 stated. One who volunteers information must be truthful, and the telling of a half-truth calculated to
22 deceive is fraud.

23
24 707. In addition, Defendants had a duty to disclose these omitted material facts because they
25 were known and/or accessible only to Defendants, who had superior knowledge and access to the facts,
26 and Defendants knew they were not known to or reasonably discoverable by Wisconsin Plaintiff and
27 Wisconsin Subclass members. These omitted facts were material because they directly impact the safety
28 and reliability of the Class Vehicles.

1 708. Defendants still have not made full and adequate disclosure and continue to defraud
2 Wisconsin Plaintiff and Wisconsin Subclass members.

3 709. Wisconsin Plaintiff and Wisconsin Subclass members were unaware of these omitted
4 material facts and would not have acted as they did if they had known of the concealed and/or
5 suppressed facts. Wisconsin Plaintiff's and Wisconsin Subclass members' actions were justified.
6

7 710. Defendants were in exclusive control of the material facts and such facts were not known
8 to the public or Wisconsin Subclass members. Defendants also possessed exclusive knowledge of the
9 Battery Defect and the fact that it rendered the Class Vehicles inherently more dangerous and unreliable
10 than similar vehicles.

11 711. As a result of the concealment and/or suppression of the facts, Wisconsin Plaintiff and
12 Wisconsin Subclass members sustained damage. For those Wisconsin Plaintiff and Wisconsin Subclass
13 members who elect to affirm the sale, these damages, include the difference between the actual value of
14 that which Wisconsin Plaintiff and Wisconsin Subclass members paid and the actual value of that which
15 they received, together with additional damages arising from the sales transaction, amounts expended in
16 reliance upon the fraud, compensation for loss of use and enjoyment of the property, and/or lost profits.
17 Any Wisconsin Plaintiff or Wisconsin Subclass member who wants to rescind their purchase is entitled
18 to restitution and consequential damages.
19

20 712. Defendants' acts were done maliciously, oppressively, deliberately, with intent to
21 defraud, and in reckless disregard of Wisconsin Plaintiff's and Wisconsin Subclass members' rights and
22 well-being to enrich Defendants. Defendants' conduct warrants an assessment of punitive damages in an
23 amount sufficient to deter such conduct in the future, which amount is to be determined according to
24 proof.
25

26 **COUNT FIFTY-TWO — UNJUST ENRICHMENT - TOYOTA**

27 713. Plaintiffs and the Class incorporate by reference each preceding and succeeding
28 paragraph as though fully set forth at length herein.

1 714. Wisconsin Plaintiff Schauberger brings this claim on behalf of herself and the Wisconsin
2 Subclass against Defendant Toyota.

3 715. As a result of Defendants' wrongful and fraudulent acts and omissions, as set forth above,
4 Wisconsin Plaintiff and Wisconsin Subclass members paid Defendants the value of non-defective, fully
5 operational Class Vehicles with the ability to operate without fear of premature battery failure. In
6 exchange, Defendants provided Wisconsin Plaintiff and Wisconsin Subclass members with defective
7 Vehicles that are prone to battery failures that leave them unable to start, may cause them to suddenly
8 stop while driving, and require premature battery replacements.

9
10 716. As such, Wisconsin Plaintiff and Wisconsin Subclass members conferred value upon
11 Defendants which would be unjust for Defendants to retain.

12 717. Defendants enjoyed the benefit of increased financial gains, to the detriment of
13 Wisconsin Plaintiff and Wisconsin Subclass members, who paid a higher price for vehicles which
14 actually had lower values. It would be inequitable and unjust for Defendants to retain these wrongfully
15 obtained profits.

16
17 718. As a direct and proximate result of Defendants' unjust enrichment, Wisconsin Plaintiff
18 and Wisconsin Subclass members have suffered and continue to suffer various injuries. As such, they
19 are entitled to damages, including but not limited to restitution of all amounts by which Defendants were
20 enriched through their misconduct.

21
22 719. Wisconsin Plaintiff and Wisconsin Subclass members therefore seek an order
23 establishing Defendants as a constructive trustee of the profits unjustly obtained, plus interest.

24 **G. Claims Brought on Behalf of the Pennsylvania Subclass**

25 **COUNT FIFTY-THREE — VIOLATION OF PENNSYLVANIA UNFAIR**
26 **TRADE PRACTICES AND CONSUMER PROTECTION LAW (73 P.S. § 201-1,**
27 **ET SEQ.) – TOYOTA**

28 720. Plaintiffs and the Class incorporate by reference each preceding and succeeding
paragraph as though fully set forth at length herein.

1 721. Pennsylvania Plaintiff Gill (for purposes of this section, “Pennsylvania Plaintiff”) brings
2 this claim on behalf of himself and the Pennsylvania Subclass against Defendant Toyota.

3 722. Pennsylvania’s Unfair Trade Practices Act § 201-1, et seq. makes unlawful “deceptive
4 representations” and “[r]epresenting that goods or services have sponsorship, approval, characteristics,
5 ingredients, uses, benefits, or qualities that they do not have” in the conduct of any business, trade or
6 commerce.
7

8 723. As set forth above, in the course of Defendants’ business, it willfully failed to disclose
9 and actively concealed and/or suppressed material facts concerning the safety of the Class Vehicles. The
10 existence of the defect, which manifests in all or substantially all of the subject vehicles, is material to a
11 reasonable consumer in that it poses an unreasonable risk to their safety, may lead to thousands of
12 dollars in repair expenses, requires expensive and inconvenient maintenance efforts, and causes the
13 subject vehicles to be worth substantially less than they would otherwise be valued. Defendants’ failure
14 to disclose the defects and their ramifications offends public policy and is unethical, unscrupulous, and
15 substantially injurious to consumers.
16

17 724. Defendants engaged in unfair methods of competition, unconscionable acts or practices,
18 and unfair or deceptive acts or practices, including representing that subject vehicles have
19 characteristics, uses, benefits, and qualities which they do not have and otherwise engaging in conduct
20 capable of and likely to deceive a substantial portion of the purchasing public.
21

22 725. Specifically, and as alleged above, Defendants knew or should have known that the Class
23 Vehicles were affected by the Battery Defect. Indeed, those misrepresentations, concealments,
24 omissions, and suppressions of material facts did in fact deceive reasonable consumers, including
25 Pennsylvania Plaintiff and Pennsylvania Subclass Members, about the true safety and reliability of Class
26 Vehicles, the quality of the Class Vehicles, and the true value of the Class Vehicles.
27

28 726. Defendants’ misrepresentations of material facts regarding the Battery Defect of the
Class Vehicles were material to the decisions of Pennsylvania Plaintiff and Pennsylvania Subclass
AMENDED COMPLAINT - 117

1 Members to purchase and lease those vehicles, as Defendants intended. Pennsylvania Plaintiff and
2 Pennsylvania Subclass Members were exposed to those misrepresentations of material facts, and relied
3 on Defendants' misrepresentations that the Class Vehicles were safe and reliable in deciding to purchase
4 and lease Class Vehicles.

5
6 727. Defendants knew or should have known that its conduct violated the Pennsylvania
7 consumer protection law.

8 728. Had Pennsylvania Plaintiff and the Pennsylvania Subclass Members known the truth
9 about the Battery Defect, they would not have purchased or leased the Class Vehicles. Pennsylvania
10 Plaintiff and the Pennsylvania Subclass Members did not receive the benefit of their bargain as a result
11 of Defendants' misconduct.

12 729. Defendants' owed Pennsylvania Plaintiff and the Pennsylvania Subclass Members a duty
13 to disclose the truth about the Battery Defect because Defendants: (a) possessed exclusive, specific and
14 superior knowledge of the true risks of the Battery Defect; (b) intentionally concealed the foregoing
15 from Pennsylvania Plaintiff and the Pennsylvania Subclass Members; and/or (c) made incomplete
16 representations regarding the Battery Defect, while purposefully withholding material facts from
17 Pennsylvania Plaintiff and the Pennsylvania Subclass Members that contradicted these representations.

18
19 730. Pennsylvania Plaintiff and the Pennsylvania Subclass Members suffered injury in fact to
20 a legally protected interest. As a result of Defendants' conduct, Pennsylvania Plaintiff and the
21 Pennsylvania Subclass Members were harmed and suffered actual damages.

22
23 731. Defendants' violations present a continuing risk to Pennsylvania Plaintiff and the
24 Pennsylvania Subclass Members, as well as to the general public. Defendants' unlawful acts and
25 practices complained of herein affect the public interest.

26
27 732. Defendants are liable to Pennsylvania Plaintiff and the Pennsylvania Subclass Members
28 for treble their actual damages or \$100, whichever is greater, and attorneys' fees and costs under 73 P.S.

§ 201-9.2(a). Pennsylvania Plaintiff and the Pennsylvania Subclass Members are also entitled to an

1 award of punitive damages given that Defendants' conduct was malicious, wanton, willful, oppressive,
2 or exhibited a reckless indifference to the rights of others.

3 **COUNT FIFTY-FOUR — BREACH OF EXPRESS WARRANTY (13 PA. C.S.A. §**
4 **2313) – TOYOTA**

5 733. Plaintiffs and the Class incorporate by reference each preceding and succeeding
6 paragraph as though fully set forth at length herein.

7 734. Pennsylvania Plaintiff Gill brings this claim on behalf of himself and the Pennsylvania
8 Subclass against Defendant Toyota.

9 735. Each Defendant is and was at all relevant times a merchant with respect to motor
10 vehicles.

11 736. In the course of selling their vehicles, Defendants expressly warranted in writing that the
12 Class Vehicles were covered by a new vehicle limited warranty.

13 737. Specifically, the Class Vehicles are covered by Defendants' new vehicle limited
14 warranties, the powertrain warranty on electric propulsion components, including the battery
15 components, charging systems, and electric drive components.

16 738. Pennsylvania Plaintiff notified Defendants of its breach within a reasonable time, and/or
17 was not required to do so because affording Defendants a reasonable opportunity to cure its breaches
18 would have been futile. Moreover, Defendants were provided notice of these issues within a reasonable
19 amount of time by the numerous complaints filed against them.

20 739. In addition to this new vehicle limited warranty, Defendants expressly warranted several
21 attributes, characteristics and qualities, as set forth above.

22 740. Furthermore, the limited warranty of repair and/or adjustments to defective parts, fails in
23 its essential purpose because the contractual remedy is insufficient to make the Pennsylvania Plaintiff
24 and Pennsylvania Subclass members whole and because Defendants have failed and/or has refused to
25 adequately provide the promised remedies within a reasonable time.
26
27
28

1 741. Accordingly, Pennsylvania Plaintiff's and Pennsylvania Subclass Members' recovery is
2 not limited to the limited warranty of repair or adjustments to parts defective in materials or
3 workmanship, and Pennsylvania Plaintiff and Pennsylvania Subclass Members seek all remedies as
4 allowed by law.

5
6 742. Also, at the time Defendants warranted and sold the Class Vehicles, Defendants
7 wrongfully and fraudulently misrepresented and/or concealed material facts regarding the Class
8 Vehicles. Pennsylvania Plaintiff and Pennsylvania Subclass Members were therefore induced to
9 purchase the Class Vehicles under false and/or fraudulent pretenses.

10 743. As a result of the Battery Defect, Pennsylvania Plaintiff and Pennsylvania Subclass
11 Members cannot reasonably rely on the Class Vehicles for the ordinary purpose of safe, comfortable,
12 and efficient transportation.

13
14 744. Pennsylvania Plaintiff and Pennsylvania Subclass Members could not reasonably have
15 discovered the Battery Drain Defect prior to their acceptance of the Class Vehicles.

16 745. The damages flowing from the Class Vehicles cannot be resolved through the limited
17 remedy of "replacement or adjustments," and any limitation on available remedies would be insufficient
18 to make Pennsylvania Plaintiff and Pennsylvania Subclass Members whole.

19 746. Pennsylvania Plaintiff and Pennsylvania Subclass Members would not have purchased or
20 leased the Class Vehicles, or would have paid less for the Class Vehicles, had they known prior to their
21 respective time of purchase or lease that the Class Vehicles contained the Battery Defect.

22 747. As a direct and proximate result of Defendants' breach of express warranties,
23 Pennsylvania Plaintiff Gill and Pennsylvania Subclass Members have suffered actual and consequential
24 damages, in an amount to be determined at trial.

25
26 **COUNT FIFTY-FIVE — BREACH OF THE IMPLIED WARRANTY OF**
27 **MERCHANTABILITY**

28 **(13 Pa. C.S.A. § 2314) – TOYOTA**

1 748. Plaintiffs and the Class incorporate by reference each preceding and succeeding
2 paragraph as though fully set forth at length herein.

3 749. Pennsylvania Plaintiff Gill brings this claim on behalf of himself and on behalf of the
4 members of the Pennsylvania Subclass against Defendant Toyota.

5 750. Each Defendant is and was a merchant with respect to motor vehicles.

6 751. The Class Vehicles are and were at all relevant times subject to implied warranties of
7 merchantability, as defined in 15 U.S.C. § 2308 and 13 Pa. C.S.A. § 2314, running from Defendants to
8 Pennsylvania Plaintiff and Pennsylvania Subclass Members.

9 752. Defendants breached the implied warrant of merchantability in that the Class Vehicles
10 were not in merchantable condition when Pennsylvania Plaintiff and Pennsylvania Subclass Members
11 purchased or leased them, or at any time thereafter, and the Class Vehicles are unfit for the ordinary
12 purposes for which such vehicles are used.

13 753. Indeed, the Class Vehicles each suffered from the Battery Defect, which rendered the
14 Class Vehicles unfit for their ordinary purpose of providing reasonably reliable and safe transportation at
15 the time of sale or thereafter because the Battery Defect can manifest and result in spontaneous failure to
16 start, spontaneous shutdown, and the premature and permanent failure of 12-volt batteries equipped in
17 the Class Vehicles.

18 754. Defendants have been provided notice of these issues by numerous complaints, as alleged
19 herein.

20 755. As a direct and proximate result of breaches of the implied warranty of merchantability,
21 Pennsylvania Plaintiff and Pennsylvania Subclass Members have suffered damages, including but not
22 limited to incidental and consequential damages.

COUNT FIFTY-SIX — FRAUDULENT OMISSION – TOYOTA

1
2
3 756. Plaintiffs and the Class incorporate by reference each preceding and succeeding
4 paragraph as though fully set forth at length herein.

5 757. Pennsylvania Plaintiff Gill brings this claim on behalf of himself and on behalf of the
6 members of the Pennsylvania Subclass against Defendant Toyota.

7 758. As set forth above, Defendants concealed and/or suppressed material facts concerning the
8 safety of the Class Vehicles.

9 759. Defendants made material omissions concerning a presently existing or past fact in that,
10 for example, Defendants did not fully and truthfully disclose to its customers the true nature of the
11 Battery Defect, which was not readily discoverable by the Pennsylvania Plaintiff or Pennsylvania
12 Subclass Members until well after purchase or lease of the Class Vehicles. These facts, and other facts
13 as set forth above, were material because reasonable people attach importance to their existence or
14 nonexistence in deciding which vehicle to purchase.
15

16 760. Defendants actively concealed and/or suppressed these material facts, in whole or in part,
17 with the intent to induce Pennsylvania Plaintiff and Pennsylvania Subclass members to purchase the
18 Class Vehicles at a higher price, which did not match their true value.
19

20 761. Defendants were under a duty to disclose these omitted facts, because where one does
21 speak one must speak the whole truth and not conceal any facts which materially qualify those facts
22 stated. One who volunteers information must be truthful, and the telling of a half-truth calculated to
23 deceive is fraud.

24 762. In addition, Defendants had a duty to disclose these omitted material facts because they
25 were known and/or accessible only to Defendants, who had superior knowledge and access to the facts,
26 and Defendants knew they were not known to or reasonably discoverable by Pennsylvania Plaintiff and
27
28

1 Pennsylvania Subclass Members. These omitted facts were material because they directly impact the
2 safety and reliability of the Class Vehicles.

3 763. Defendants still has not made full and adequate disclosure and continue to defraud
4 Pennsylvania Plaintiff and Pennsylvania Subclass Members.

5 764. The foregoing material facts were intentionally withheld from Pennsylvania Plaintiff and
6 Pennsylvania Subclass Members who purchased the Class Vehicles so that Pennsylvania Plaintiff and
7 Pennsylvania Subclass Members would rely on and purchase the Class Vehicles at a premium price.

8 765. Pennsylvania Plaintiff and Pennsylvania Subclass Members were unaware of these
9 omitted material facts and would not have acted as they did if they had known of the concealed and/or
10 suppressed facts. Pennsylvania Plaintiff and Pennsylvania Subclass Members' actions were justified.

11 766. Defendants were in exclusive control of the material facts and such facts were not known
12 to the public or Pennsylvania Subclass members. Defendants also possessed exclusive knowledge of the
13 Battery Defect and the fact that it rendered the Class Vehicles inherently more dangerous and unreliable
14 than similar vehicles.

15 767. As a result of the concealment and/or suppression of the facts, Pennsylvania Plaintiff and
16 Pennsylvania Subclass Members suffered damages because of their reliance on Defendants'
17 misrepresentations and omissions and purchase of the Class Vehicles.

18 768. Pennsylvania Plaintiff Gill demands judgment against Defendant Toyota for
19 compensatory damages for himself and Pennsylvania Subclass Members, as well as attorneys' fees,
20 interest, costs and any appropriate injunctive relief.

21 769. Defendants' acts were done maliciously, oppressively, deliberately, with intent to
22 defraud, and in reckless disregard of Pennsylvania Plaintiff Gill's and Pennsylvania Subclass Members'
23 rights and well-being to enrich Defendants. Defendants' conduct warrants an assessment of punitive
24 damages in an amount sufficient to deter such conduct in the future, which amount is to be determined
25 according to proof.

COUNT FIFTY-SEVEN — UNJUST ENRICHMENT – TOYOTA

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3
4 770. Plaintiffs and the Class incorporate by reference each preceding and succeeding
5 paragraph as though fully set forth at length herein.

6 771. Pennsylvania Plaintiff Gill brings this claim on behalf of himself and on behalf of the
7 members of the Pennsylvania Subclass against Defendant Toyota.

8 772. Pennsylvania Plaintiff and Pennsylvania Subclass Members conferred a tangible
9 economic benefit upon Defendants by purchasing misrepresented Class Vehicles.
10

11 773. Pennsylvania Plaintiff and Pennsylvania Subclass Members purchased Defendants' Class
12 Vehicles to Defendants' benefit and to their detriment because they paid a premium price expecting the
13 Class Vehicles to conform to Defendants' representations, including, *inter alia*, that they were
14 purchasing fully operational Class Vehicles with the ability to operate without fear of premature battery
15 failure. In exchange, Defendants provided Pennsylvania Plaintiff and Pennsylvania Subclass Members
16 with defective Vehicles that are prone to battery failures that leave them unable to start, may cause them
17 to suddenly stop while driving, and require premature battery replacements.
18

19 774. At the time of Pennsylvania Plaintiff's and Pennsylvania Subclass Members' purchases,
20 Defendants knew of the Battery Defect. Knowing full well that their representations were false,
21 Defendants sold the Class Vehicles to Pennsylvania Plaintiff and Pennsylvania Subclass Members at a
22 premium price. Accordingly, Defendants continue to retain a benefit improperly obtained to the
23 detriment of Pennsylvania Plaintiff and Pennsylvania Subclass Members.
24

25 775. Accordingly, it would be unjust and inequitable for this Court to allow Defendants to
26 retain these benefits. Accordingly, Pennsylvania Plaintiff and Pennsylvania Subclass Members request
27 restitution or disgorgement of monies paid to Defendants, or any such other appropriate equitable and/or
28

1 injunctive remedy to Pennsylvania Plaintiff and Pennsylvania Subclass Members that the Court deems
2 appropriate.

3
4 **VIII. PRAYER FOR RELIEF**

5 WHEREFORE, Plaintiffs, on behalf of themselves and the Class and each of the Subclasses,
6 pray that this Court:

7 A. Determine that the claims alleged herein may be maintained as a class action under Rule
8 23 of the Federal Rules of Civil Procedure, and issue an order certifying the Nationwide Class and State
9 Subclasses as defined above;

10 B. Appoint Plaintiffs as representatives of the Nationwide Class and/or the applicable State
11 Classes and their counsel as Class Counsel;

12 C. Award all actual, general, special, incidental, consequential, punitive, and exemplary
13 damages and restitution to which Plaintiffs and Class members are entitled;

14 D. Award pre- and post-judgment interest on any monetary relief;

15 E. Grant appropriate injunctive relief against all Defendants, including an order requiring
16 Defendants to permanently and completely repair the Class Vehicles pursuant to its obligations under
17 the terms of the Warranty;

18 F. Determine that Defendants are financially responsible for all Class notice and
19 administration of Class relief;

20 G. Award reasonable attorney fees and costs; and

21 H. Grant such further relief that this Court deems appropriate.

22
23 **IX. DEMAND FOR JURY TRIAL**

24 Plaintiffs hereby demand a trial by jury.
25
26
27
28

1 RESPECTFULLY SUBMITTED this 4TH DAY OF SEPTEMBER, 2025.

2
3 **KELLER ROHRBACK L.L.P.**

4
5 By /s/ Ryan McDevitt

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CERTIFICATE OF SERVICE

I certify that on this 4th day of September, 2025, I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system which will send notification of such filing to all counsel of record.

/s/ Ryan McDevitt

RYAN MCDEVITT

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