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11 *Counsel for Plaintiff*

12 **UNITED STATES DISTRICT COURT**
13 **NORTHERN DISTRICT OF CALIFORNIA**
14 **SAN FRANCISCO DIVISION**

15 ANAN SAID, individually and on behalf of all
16 others situated;

17 Plaintiff,

18 v.

19 TOYOTA MOTOR SALES, U.S.A., INC.,

20 Defendant.

Case No.

CLASS ACTION COMPLAINT

DEMAND FOR JURY TRIAL

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1 Upon personal knowledge as to his own acts, and based upon his investigation, the
2 investigation of counsel, and information and belief as to all other matters, Plaintiff Anan Said, on
3 behalf of himself and all others similarly situated, alleges as follows:

4
5 **INTRODUCTION**

6 1. This is a class action brought on behalf of purchasers and lessees of 2020 Toyota
7 Highlander Hybrid vehicles (the “Highlanders”).

8 2. Defendant Toyota Motor Sales, U.S.A., Inc. (“Toyota”) is a manufacturer and
9 distributor of new motor vehicles. Toyota markets and advertises the Highlanders, oversees Toyota
10 dealers, and develops the company’s nationwide marketing and informational materials.

11 3. As alleged herein, Toyota advertises and represents in its promotional materials,
12 specifications, and owner’s manual that the Highlander’s fuel tank capacity is 17.1 gallons. Toyota
13 further represents and warrants that the Highlander’s total mileage range is 616 miles. However,
14 Toyota failed to disclose that the Highlanders will not accept a full tank of fuel. Customer
15 complaints on online forums, car review websites, and YouTube indicates that the Highlander falls
16 *several gallons* short of the 17.1 gallon capacity promised by Toyota. As a result, Toyota’s
17 representations regarding the Highlander’s fuel tank capacity and mileage range are misleading.
18 Despite this widespread defect, Toyota has not announced a recall of the Highlander vehicles and
19 continues to sell them to the public.

20 4. In deciding to purchase his Highlander, Plaintiff Said believed and relied on
21 statements made by Toyota regarding the Highlander’s fuel tank capacity. However, Plaintiff’s
22 vehicle will not accept a full tank of fuel, even when the fuel gauge indicates that the tank is nearly
23 empty. Furthermore, according to the calculations provided by Plaintiff’s vehicle, the vehicle’s
24 mileage range on a full tank of fuel is approximately 430-500 miles— significantly less than the
25 estimated 616 mileage range advertised by Toyota.

26 5. Plaintiff and the Class (as defined below) have suffered diminished market value of
27 their Highlander vehicles as a direct result of Toyota withholding material information and/or
28 making misleading statements regarding the Highlander’s fuel tank capacity and mileage range.
Plaintiff herein seeks relief under the laws of Maryland.

PARTIES

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2 6. Anan Said is a citizen of Pennsylvania. Plaintiff Said purchased a 2020 Toyota
3 Highlander Hybrid around April of 2020 from Heritage Toyota Owings Mills located at 9801
4 Reisterstown Road, Owings Mills, Maryland 21117. In deciding to purchase his Highlander
5 vehicle, Plaintiff Said believed and relied upon Toyota's representations on Toyota's website
6 (www.toyota.com) under the Specifications section of the 2020 Toyota Highlander Hybrid
7 webpage. Specifically, on Toyota's specifications webpage, Plaintiff Said saw and relied upon
8 Toyota's representations that the Highlander's fuel tank capacity is 17.1 gallons. On Toyota's
9 specifications webpage, Plaintiff Said also saw and relied upon Toyota's representation that the
10 Highlander's MPG mileage estimate is "35/35/35" for "city/highway/combined," and that
11 therefore the Highlander had a mileage range of approximately 600 miles.¹ Prior to his purchase,
12 Plaintiff Said also saw and relied on these exact same specifications on other Toyota dealership
13 websites, like Heritage Toyota Owings Mills in Maryland. Before purchasing his vehicle, Plaintiff
14 Said extensively researched and relied on representations on Kelley Blue Book, MotorTrend,
15 YouTube, and other websites that stated the fuel tank capacity was 17.1 gallons and mileage range
16 was approximately 616 miles. Plaintiff Said is informed and believes that these representations
17 were based on information published or otherwise provided by Toyota. At the time of sale,
18 Plaintiff Said relied on and was further aware of the Highlander's mileage range because the MPG
19 ratings were displayed on a Monroney Sticker located on a 2020 Toyota Highlander Hybrid at
20 Heritage Toyota Owings Mills. Toyota's representations were material to Plaintiff Said and an
21 important factor in his decision to purchase the Highlander. Plaintiff Said purchased his
22 Highlander in part because of the long distances he expected to be able to travel on a single tank of
23 fuel. Since Plaintiff Said travels between Pennsylvania, D.C., and Massachusetts, Plaintiff Said
24 purchased his Highlander with the expectation that the Highlander had great fuel efficiency with a
25 fuel tank capacity of 17.1 gallons as advertised. Shortly after purchasing his Highlander, however,
26 Plaintiff Said discovered that the vehicle will only accept approximately 12-13 gallons of fuel

27 ¹ As shown below, Toyota represents that the Highlander AWD has a "mpg
28 city/highway/combined" of "35/35/35" on its website. However, the U.S. Department of Energy
shows that the Toyota Highlander Hybrid non-AWD is "36/35/36," with a mileage range of
approximately 616 miles.

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1 when the tank is nearly empty, far less than the advertised 17.1 gallon tank should accept. As a
2 result, Plaintiff Said's mileage range is approximately 430-500 miles – significantly less than the
3 advertised range of approximately 616 miles. This causes Plaintiff Said to make more frequent
4 trips to refuel his Highlander than he should have been required to based on Toyota's
5 misrepresentation that his Highlander fuel tank can hold 17.1 gallons of fuel. As a result of the fuel
6 tank defect, Plaintiff Said has suffered actual damages in the form of the diminished value of his
7 Highlander. Plaintiff Said has suffered an ascertainable loss as a result of Toyota's omissions
8 and/or misrepresentations regarding the Highlander fuel tank, including but not limited to more
9 frequent fueling, anticipated future repairs, and diminished value of his Highlander. Neither
10 Toyota, nor its agents, dealers, or other representatives informed Plaintiff Said of the Highlander's
11 true mileage range or fuel tank capacity prior to purchase. Plaintiff Said has reported the issue to
12 Toyota. Toyota has not offered to repair or replace Plaintiff Said's Highlander, or otherwise
13 offered any refund or other remedy. Had Plaintiff Said known the actual fuel tank capacity and
14 mileage range prior to his purchase, he would either not have purchased the Highlander or would
15 have paid less for it. Plaintiff Said remains interested in being a Toyota customer and would
16 consider purchasing or leasing a Highlander in the future if Toyota provided a vehicle that met its
17 advertised fuel tank capacity and mileage range.

18 7. Defendant Toyota is a California corporation, with its corporate headquarters
19 located at 6565 Headquarters Drive, Plano, Texas 75024. Toyota also maintains an office within
20 this District at 2451 Bishop Drive, San Ramon, California 94583. Toyota is a manufacturer and
21 distributor of new motor vehicles under the Toyota brand. Toyota markets and advertises
22 Highlanders and oversees Toyota dealers, regulatory compliance, and warranty services of Toyota-
23 brand vehicles through a network of dealers throughout the United States. Toyota develops the
24 company's nationwide marketing materials and supervises deal marketing. Toyota also creates and
25 distributes the warranties, owner manuals, and other written materials that accompany the sale and
26 lease of Highlanders and other Toyota-branded vehicles throughout the United States.

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JURISDICTION AND VENUE

8. This Court has original jurisdiction over this action pursuant to the Class Action Fairness Act, 28 U.S.C. § 1332(d), because at least one class member is a citizen of a state other than that of Toyota, and the aggregate amount in controversy exceeds \$5,000,000, exclusive of interest and costs.

9. This Court has personal jurisdiction over Toyota pursuant 18 U.S.C. § 1965(a) because Toyota is a California corporation and resides, is found, has an agent, and transacts its affairs in this District.

10. This Court has personal jurisdiction over Plaintiff because Plaintiff submits to the Court’s jurisdiction.

11. Venue is proper in this District under 28 U.S.C. § 1391 because Toyota maintains an office in this District, Toyota conducts substantial business in this District, Toyota has intentionally availed itself of the laws and markets of this District, and Toyota is subject to personal jurisdiction in this District.

INTRADISTRICT ASSIGNMENT

12. Toyota maintains a corporate office in the County of Contra Costa. As such, this action may be properly assigned to the San Francisco/Oakland division of this Court pursuant to Civil Local Rule 3-2(d).

FACTUAL BACKGROUND

Toyota’s Marketing and Warranty of the Highlander

13. Toyota markets, advertises, warrants, and represents that the Highlander’s fuel tank capacity is 17.1 gallons.²

14. On its website, Toyota represents and states that the Highlander’s fuel tank capacity

² https://www.toyota.com/highlander/features/mileage_estimates/6964/6965/6966

is 17.1 gallons.³

<input checked="" type="checkbox"/> Standard <input type="checkbox"/> Available — Not Available	Hybrid LE AWD 2.5L 4-Cyl. ECVT Hybrid	Hybrid XLE AWD 2.5L 4-Cyl. ECVT Hybrid	Hybrid Limited AWD 2.5L 4-Cyl. ECVT Hybrid
— COLLAPSE ALL	CHANGE MODEL BUILD	CHANGE MODEL BUILD	CHANGE MODEL BUILD
Fuel tank (gal.)	17.1	17.1	17.1

15. Toyota further markets, advertises, warrants, and represents that the Highlander’s mileage estimate is 35 miles per gallon (“MPG”) for city driving and 35 MPG for highway driving, for a combined rating of 35 MPG.⁴

16. On its website, Toyota represents and states that the Highlander’s MPG mileage estimate is “35/35/35” for “city/highway/combined.”⁵

<input checked="" type="checkbox"/> Standard <input type="checkbox"/> Available — Not Available	Hybrid LE AWD 2.5L 4-Cyl. ECVT Hybrid	Hybrid XLE AWD 2.5L 4-Cyl. ECVT Hybrid	Hybrid Limited AWD 2.5L 4-Cyl. ECVT Hybrid
— COLLAPSE ALL	CHANGE MODEL BUILD	CHANGE MODEL BUILD	CHANGE MODEL BUILD
MPG/Other/Price			—
Mileage estimates (mpg city/highway/combined)			
Hybrid FWD ⁷⁶	—	—	—
V6 FWD ⁷⁶	—	—	—
V6 AWD ⁷⁶	MPG/Other/Price	—	—
Hybrid AWD ⁷⁶	35/35/35	35/35/35	35/34/35

17. According to Toyota’s Owner’s Manual, the fuel tank capacity for the Highlander is 17.1 gallons.⁶ Additionally, according to the Owner’s Manual, when the low fuel level warning

³ *Id.*

⁴ *Id.*

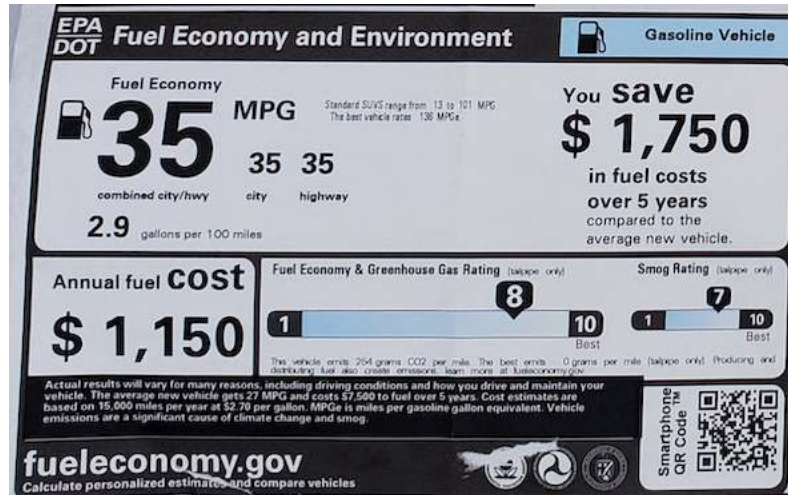
⁵ *Id.*

⁶ <https://www.toyota.com/t3Portal/document/om-s/OM0E037U/pdf/OM0E037U.pdf>. As noted above, Toyota represents that the Highlander AWD has a “mpg city/highway/combined” of “35/35/35” on its website. However, the U.S. Department of Energy shows that the Toyota Highlander Hybrid non-AWD is “36/35/36.”

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1 light illuminates on the Highlander, the remaining fuel in the vehicle is approximately 2.6 gallons
 2 or less.⁷

3 18. The Highlander’s “Monroney” sticker—the new car sticker displayed in the
 4 Highlander’s window prior to purchase—prominently lists the 2020 Highlander AWD’s MPG
 5 estimates as 35 combined city/hwy:



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 14 19. According to www.fueleconomy.gov, the U.S. Department of Energy’s official
 15 source for fuel economy information, the total combined mileage range for the 2020 Highlander is
 16 616 miles (36 MPG x 17.1 gallons) and 598 miles (35 MPG x 17.1 gallons) for the 2020
 17 Highlander AWD:⁸

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 28 ⁷ *Id.*

⁸ <https://www.fueleconomy.gov/feg/Find.do?action=sbs&id=42477>

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20. The total city range for the Highlander is 616 miles (36 MPG x 17.1 gallons), and the total highway range for the Highlander is 598.5 miles (35 MPG x 17.1 gallons).

21. Toyota recognizes that consumers will pay a premium for hybrid and electric vehicles that are energy efficient with increased mileage range, and Toyota advertises and markets its Highlanders as providing these benefits over its similar gas-only Highlander model.

22. In its 2020 Highlander brochure, Toyota prominently advertises that the Highlander’s estimated MPG is 35 MPG, accompanied by the statement, “best-in-class” and “[e]ven everyday commutes have been designed with fuel efficiency in mind.”⁹

⁹ Available at <https://cdn.dealereprocess.org/cdn/brochures/toyota/2020-highlander.pdf>

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23. Further, in the specifications section of the Highlander brochure, Toyota represents that the fuel tank is 17.1 gallons and the mileage estimates are 36/35/36 and 35/35/35 for the Highlander Hybrid.¹⁰

Fuel Tank (gal.)	17.9	17.9	17.9	17.9	17.9	17.1	17.1	17.1	17.1
Seating capacity (standard/optional)	8	8	7/8	7/8	7	8	7/8	7 / 8	7
TOWING									
Towing capacity (lb.) ³⁴	5,000	5,000	5,000	5,000*	5,000*	3,500	3,500	3,500*	3,500*
Trailer Sway Control (TSC) ³⁵	Standard	Standard	Standard	Standard	Standard	Standard	Standard	Standard	Standard
TIRES									
TYPE									
All-Season steel-belted radials	Standard	Standard	Standard	Standard	Standard	Standard	Standard	Standard	Standard
Spare — temporary spare tire	Standard	Standard	Standard	Standard	Standard	Standard	Standard	Standard	Standard
MILEAGE ESTIMATES (mpg city/highway)									
FWD	21/29/24 ³⁶	21/29/24 ³⁵	21/29/24 ³⁶	21/29/24 ³⁵	21/29/24 ³⁶	36/35/36 ³⁷	36/35/36 ³⁷	36/35/36 ³⁷	36/35/36 ³⁷
AWD	20/27/23 ³⁶	20/27/23 ³⁵	20/27/23 ³⁶	20/27/23 ³⁵	20/27/23 ³⁶	35/35/35 ³⁷	35/35/35 ³⁷	35/34/35 ³⁷	35/34/35 ³⁷

24. Additionally, Toyota boasts that the 2020 Highlander’s fuel efficiency: “Leave it to Toyota to again raise the bar for hybrid SUV functionality by making the 2020 model the most fuel-efficient Highlander Hybrid ever.”¹¹

25. In its video advertisements, Toyota also touts that drivers can “[g]o the extra mile” in the Highlander.¹²

26. According to www.fueleconomy.gov, the U.S. Department of Energy’s official source for fuel economy information, the total combined mileage range for the non-hybrid version of the Highlander is 412 miles — significantly less than the 616 miles promised by the hybrid model.¹³

¹⁰ *Id.*

¹¹ <https://pressroom.toyota.com/toyotas-fourth-generation-2020-highlander-redesigned-from-the-ground-up/>

¹² <https://www.youtube.com/watch?v=rtJ98KAfmbU>

¹³ <https://www.fueleconomy.gov/feg/Find.do?action=sbs&id=42477&id=42379>

1 27. As a result of the superior driving range and efficiency that Toyota claims the
2 Highlander Hybrid has over the non-hybrid model, Toyota’s MSRP for the Highlander Hybrid is
3 nearly \$4000 higher than the non-hybrid model.

4 **Toyota’s New Vehicle Limited Warranty**

5 28. As a basis of the bargain, Toyota provides Highlander purchasers with an express
6 warranty, which includes a “New Vehicle Limited Warranty” for a period of 36 months or 36,000
7 miles, whichever occurs first.¹⁴

8 29. The New Vehicle Limited Warranty covers “repairs and adjustments needed to
9 correct defects in materials or workmanship of any part supplied by Toyota.”¹⁵

10 **Customer Complaints Regarding the Highlander Fuel Tank Capacity**

11 30. Plaintiff’s Highlander fuel tank will not fill to capacity, and falls several gallons
12 short of the 17.1 gallon tank promised by Toyota. Although Toyota promised a 616-mileage range,
13 the range that the Plaintiff has actually experienced is approximately 430-500 miles, at least 100
14 miles less than advertised.

15 31. The actual mileage range of Plaintiff’s Highlander is similar to or in some instances
16 significantly less than the mileage range of the non-hybrid Highlander models, despite the fact the
17 Plaintiff paid a premium for the Highlander’s superior driving range and efficiency, as advertised
18 by Toyota.

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¹⁴ Available at <https://www.toyota.com/t3Portal/document/omms-s/T-MMS-20HighlanderHV/pdf/T-MMS-20HighlanderHV.pdf>

¹⁵ *Id.*

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	Fuel Tank Capacity	Mileage Range	MSRP (2020)
Highlander Hybrid (advertised)	17.1 gallons	616 miles	\$38,200 - \$48,250 ¹⁶
Highlander Hybrid (actual)	12-13 gallons	430 miles	
Highlander Non-Hybrid	17.9 gallons	412 miles	\$34,600 - \$46,850 ¹⁷

32. As a result of the reduced mileage range, Plaintiff spends more time refueling at the pump, despite Toyota’s promises otherwise.

33. Plaintiff is not alone in his complaint. As of the date of this Class Action Complaint, several complaints have been filed with the National Highway Traffic Safety Administration (“NHTSA”) regarding “fuel/propulsion system” issues with the 2020 Highlanders. Each of these complaints alleges facts similar to Plaintiff’s allegations herein. For example, in NHTSA ID Number: 11322170, the consumer states:

TOYOTA ADVERTISES AND REPRESENTS THAT THE HIGHLANDER HYBRID’S FUEL TANK CAPACITY IS 17.1 GALLONS, AND BASED ON ITS 35 MPG RATING, THE RANGE SHOULD BE ABOUT 600 MILES. HOWEVER, I AM NOT ABLE TO FILL THE TANK BY MORE THAN 12 GALLONS THUS REDUCING MY RANGE TO 420 MILES. I BELIEVE THERE IS A DEFECT IN THE NEWLY DESIGNED SADDLE TANK WHICH

¹⁶ Pricing reflects manufacturer’s suggested retail price (MSRP) for 2020 Toyota Highlander Hybrid model without options, according to U.S. Department of Energy, *available at* www.fueleconomy.gov

¹⁷ Pricing reflects manufacturer’s suggested retail price (MSRP) for 2020 Toyota Highlander Non-Hybrid model with 3.5 L, 6 cyl, Automatic (S8) option, according to U.S. Department of Energy, *available at* www.fueleconomy.gov

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PROHIBITS THE TANK FROM BEING FILLED COMPLETELY THUS CHEATING ME OUT OF ABOUT 180 MILES OF DRIVING RANGE.¹⁸

34. In NHTSA ID Number: 11323593, the consumer states:

MY NEW 2020 HIGHLANDER HYBRID HAS A BIG ISSUE WITH THE GAS TANK. I GET ONLY 460 MILES, EVEN IF I TOP IT OFF WITH THE GAS SPEWING OUT. TOYOTA ADVERTISED A 600 MILE RANGE TO THE HIGHLANDER HYBRID. THE 600 MILE FUEL RANGE SEEMS VERY OFF WITH THE 2020 HIGHLANDER HYBRID. I HAVE THE XLE AND ALWAYS HAVE KEPT IT IN ECO MODE. I'VE DRIVEN OVER A THOUSAND MILES ON THE CAR, BUT THE MILE RANGE ESTIMATE ON THE CAR IS INACCURATE AND SEEMS TO BE OFF A LOT IF IT'S SUPPOSED TO GET 600 MILES TO A TANK. MORE IMPORTANTLY, WHEN THE TANK IS EMPTY (THE DASH SAYS I HAD 5 MILES LEFT TO EMPTY), THE GAS TANK ONLY HOLDS AROUND 13 GALLONS EVEN THOUGH THE FUEL TANK CAPACITY IS SUPPOSEDLY 17.1 GALLONS. THOSE 4 GALLONS MAKE FOR 140 MILES LESS DISTANCE ON A TANK. IF I WAIT AND KEEP ON FORCING THE GAS IN SLOWLY, I CAN GET 15 GALLONS BUT I DON'T LIKE THE IDEA OF HAVING TO KEEP ON PUSHING THE GAS NOZZLE UNTIL THE GAS SPEWS OUT OF THE TANK JUST TO GET 15 GALLONS IN. I KNOW TOYOTA HAS BEEN HAVING GAS TANK ISSUES IN OTHER MODELS RECENTLY. ONE OF THE MAIN REASONS I BOUGHT THE CAR WAS FOR THE FUEL TANK CAPACITY AND RANGE. A VIDEO EXPLANATION OF THE PROBLEM IS BELOW:
[HTTPS://WWW.YOUTUBE.COM/WATCH?V=HUU649ZRL-G&T=245S](https://www.youtube.com/watch?v=HUU649ZRL-G&t=245s). *TR¹⁹

35. In NHTSA ID Number: 11378393, the consumer states:

THE GAS TANKS HOLDS 17 GALLONS OR ~570 MILES TO EMPTY. THE MOST I CAN FILL IT IS ~14 GALLONS OR ~470 MILES TO EMPTY. IT ALWAYS CLICKS OFF LIKE IT'S FULL. I'VE TRIED GENTLY TOPPING OFF, SLIGHTLY PULLING OUT FUEL MODEL ETC. NOTHING HAS WORKED. THIS HAS HAPPENED SINCE THE VEHICLE WAS NEW AND DRIVEN OFF THE LOT. THIS IS ALL WHILE THE VEHICLE IS PARKED AT A GAS PUMP.²⁰

36. In NHTSA ID Number 11388566, the consumer states:

THE FUEL TANK CAPACITY LISTED AS 17.1 GALLONS BUT ONLY TAKE BETWEEN 12-12.5 GALLON WHEN FILLED UP, EVEN WHEN THE RESERVE HAS RAN DOWN WHERE MILE TO EMPTY IS NEAR ZERO.

¹⁸ Available at <https://www.nhtsa.gov/vehicle/2020/TOYOTA/HIGHLANDER/SUV/AWD#complaints>

¹⁹ *Id.*

²⁰ *Id.*

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TOTAL MILES RANGE BETWEEN FILL UPS IS UNDER 500 MILES, FAR LESS THAN THE 616 MILES RANGE CLAIMED BY TOYOTA.²¹

37. In NHTSA ID Number 11388861, the consumer states:

2020 TOYOTA HIGHLANDER HYBRID PLATINUM AWD CANNOT FILL UP FUEL TANK ALL THE WAY. MAX CAN FILL IT UP WHEN IT SHOWS 0 MILES LEFT OF FUEL IS LESS THAN 13 GALLON AND CAR HAS OVER 17 GALLONS. TOYOTA IS SAYING THEY DON'T KNOW WHAT THE ISSUE IS. NO SOLUTION AT THIS TIME FOR A \$50K CAR.²²

38. In NHTSA ID Number 11389803, the consumer states:

WHEN RE-FUELING THE VEHICLE WITH DTE OF LESS THAN 30 MILES, THE FUEL SHUTS OFF AROUND 12 GAL. 2ND CLICK FOR FUEL STOPPAGE MAY YIELD ANOTHER 0.5 GAL. NOTHING ADDS UP TO 17.1 GAL OF FUEL IN THE TANK. GOING BEYOND THE 1ST CLICK IS BAD FOR THE SYSTEM, YET ONLY FILLS THE CAR UP TO 7/8 FULL ON THE FUEL GAUGE.²³

39. In NHTSA ID Number 11394879, the consumer states:

2020 TOYOTA HIGHLANDER HYBRID AWD. WHEN FILLING FROM ALMOST EMPTY (PER LOW FUEL WARNING LIGHT AND DISTANCE TO EMPTY READING ALMOST 0), TANK ONLY ACCEPTS ~12.5 GALLONS BEFORE GAS STATION FUEL NOZZLE AUTO CLICKS OFF. THE FUEL GAGE AT THIS POINT INDICATES THAT THE VEHICLE IS ~7/8 FILLED. THE OWNERS MANUAL WARNS ABOUT NOT ATTEMPTING TO FILL AFTER THE FUEL NOZZLE AUTOMATICALLY CLICKS OFF. BEING UNABLE TO FILL TANK MAY LEAD TO OWNERS ATTEMPTING TO OVERFILL TANKS AND COULD RESULT IN INADVERTENTLY SPILLING FUEL WHICH POSES A SAFETY RISK AND AN ENVIRONMENTAL DAMAGE RISK. IT CAN ALSO LEAD TO MORE EMISSIONS. A SIMILAR PROBLEM EXISTS WITH 2019/2020 TOYOTA RAV4 PER NHTSA RECORDS, TOYOTA HAS PROPOSED A FIX FOR THIS VEHICLE BUT HAS STATED THAT NO OTHER MODELS ARE AFFECTED BY THIS ISSUE. THE PROBLEM DESCRIBED ABOVE IS ALMOST IDENTICAL WITH THE EXCEPTION THAT THE VEHICLES HAVE DIFFERENT FUEL TANK CAPACITIES. TOYOTA HAS INDICATED THAT THIS IS "NORMAL".²⁴

40. In NHTSA ID Number 11397181, the consumer states:

UNABLE TO COMPLETELY FILL FUEL TANK. WHEN FUEL LIGHT COMES ON AND I GO TO FILL IT, I GET NO MORE THAN 13 GALLONS IN

²¹ *Id.*

²² *Id.*

²³ *Id.*

²⁴ *Id.*

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MY TANK. THE FUEL GAUGE ONLY READS 3/4 FULL. NEVER COMPLETELY FULL.²⁵

41. In NHTSA ID Number 11399660, the consumer states:

THE VEHICLE IS SOLD AS HAVING A 17 GALLON FUEL TANK. I'VE DRIVEN THE VEHICLE FOR 5000 PLUS MILES NOW. I HAVE NEVER BEEN ABLE TO GET MORE THAN 13 GALLONS OF FUEL INTO THE TANK. I HAVE WAITED UNTIL THE GAGE SAID THERE WAS ONLY 12 MILE UNTIL EMPTY. STILL COULD ONLY FILL UP WITH ON 13 GALLONS OF FUEL. THE GAGE SAY'S IT'S FULL. I HAVE MADE THE TOYOTA DEALERSHIP AWARE OF THE ISSUE. BUT THEY SAID THERE WAS NOTHING ON THEIR SYSTEM ABOUT A RECALL OR NEEDED REPAIR. IF THE VEHICLE IS ADVERTISED AS HAVING A 17 GALLON TANK I SHOULD BE ABLE TO USE THAT WHALE 17 GALLONS OF FUEL. INSTEAD I CAN ONLY FILL UP TO 13 GALLONS.²⁶

42. In NHTSA ID Number 11405736, the consumer states:

EACH TIME I FILL UP THE CAR WITH GAS I AM UNABLE TO FILL THE TANK TO ITS LISTED CAPACITY. THE VEHICLE HAS A 17 GALLON TANK, BUT WHEN THE VEHICLE IS NEAR EMPTY (1-2 GALLONS REMAINING) I CAN PUMP IN ONLY 12-13 GALLONS OF GAS. THIS GREATLY IMPACTS THE RANGE OF THE VEHICLE. THE DATE SHOWN BELOW IS MY MOST RECENT FILL-UP, BUT IT HAS HAPPENED EACH TIME I FILL UP. I HAVE REPORTED THIS TO MY TOYOTA DEALER.²⁷

43. Several Highlander owners have logged similar complaints on online forums and discussions. For example, on toyotanation.com, one owner states:

Have any other 2020 Highlander Hybrid (AWD) owners having issues with filling the fuel tank all the way or the DTE display showing much less than it should?

When I took delivery of my 2020 Highlander Hybrid last month I was concerned that the "Distance to Empty" display read only 420 miles. I asked the salesman if this was right and she confirmed that the fuel capacity of the vehicle was 17.1 gallons and the MPG is rated at 35 so the range should be about 600 miles. Then she said that it might take a while for the computer to reset and show the correct DTE.

I've only driven the vehicle 725 miles since I got it due to Covid-19 restrictions, and while it's averaging 35.6 miles per gallon (mostly ECO mode), the vehicle only shows about 420 miles DTE when refueled. This week I specifically waited for the low fuel light to go on and drove a few miles past just for good measure. I went to the gas station and only could pump 12 gallons before the pump shut off. I tried

²⁵ *Id.*

²⁶ *Id.*

²⁷ *Id.*

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topping off the tank and eeked 12.5 gallons into the tank and showed DTE of 445 miles – far less than the 609 miles I expected.

I took the vehicle back to the dealership and explained the problem. They checked for error codes, software updates, recalls and TSBs and found nothing. They noted that that were no issues. I called Toyota corporate and was told the same thing - no issues reported.

I did some research (“Google”) and found that 2019/2020 RAV4 Hybrids with the same new “saddle” tank design are having the same problem I’m experiencing. Apparently, the new tank design is required to accommodate the hybrid drivetrain and won’t fill all the way. RAV4 owners can fill about 9 to 10 gallons of the 14.5 gallon tank – pretty consistent with what I’m getting with 12 gallons of the 17 gallon tank capacity.

I’m pretty sure there’s a design defect in the Highlander Hybrid fuel tank preventing the last five gallons of gas being pumped thus cheating me out of 180 miles of range.

While Toyota has acknowledged an issue with the RAV4 and are working on a fix, they haven’t acknowledged a problem with the Highlander yet. I guess I might have to join the RAV4 class action lawsuit in order to get satisfaction?²⁸

44. The post received 437 responses, with numerous users posting complaints of the same issue. (“I have never gotten over 14 gallons.”)²⁹

45. Similarly, on toyotonation.com, another user responded to the above post:

Yep..... Having issues. I just traded in a RAV4 Hybrid Limited for a 2020 XLE AWD Hybrid Highlander. Although I did have gas filling issues with RAV4 reason for trading in was size (for increase in family). Today went to fill up with tank Until Empty at 77 miles and tank clicked off at 9.2 gallons. I had that same feeling like RAV4. Was able to put in additional 4 gallons to 13 until gas started gushing out. Until Empty until 440 miles ???? Here we go again. I love the highlander by the way. Drives much smoother than RAV4.³⁰

46. Further, on Kelley Blue Book, a consumer posted the following:

My biggest pet peeve and complaint is the range and gas tank size, they specify a 17.1 gallon gas tank which if the mileage is correct would give you a range of around 600 miles. I was only getting 12.5 - 13 gallons in the tank when it said 0 miles to empty and a range of around 450 miles. Thinking something was wrong I brought it to the dealer who checked it out and called Toyota, Toyota said

²⁸ <https://www.toyotonation.com/threads/2020-hybrid-fuel-tank-issue.1677254/>

²⁹ *Id.*

³⁰ *Id.*

1 (according to my dealer) yes, we say 17.1 gallons but you'll only get 14 gallons into
2 it. I haven't been able to get 14 gallons into it. They said it's 17.1 gallons but the
3 configuration of the car only allows you to put 14 gallons at most into. Now I'm not
4 happy. The range is one of the reasons I bought this car, otherwise I might have
5 bought a 3 row KIA or Hyundai. What's next? Lemon law, join a class action like
6 the RAV4 Hybrid, or live with it.³¹

7 47. Highlander owners have even posted videos to youtube.com, filming their refuels.
8 For instance, Plaintiff filmed his refueling when his Highlander fuel gauge indicated the tank was 5
9 miles to empty. His Highlander accepted only 13.13 gallons of fuel, and its distance to empty on
10 the full tank was 462 miles. Additionally, after he slowly filled the tank until 14.5 gallons, gas
11 began to splash out.³²

12 **Toyota Knew About the Fuel Tank Defect And Failed to Warn Purchasers and Lessees**

13 48. At least as early as April 24, 2020, Toyota knew about the Highlander's fuel tank
14 defect. Since Toyota is experienced in the design and manufacture of consumer vehicles, discovery
15 will show that Toyota knew about the fuel tank defect in the Highlanders prior to mid-2020 during
16 the pre-production testing of the 2020 Highlander vehicles and their components.

17 49. As shown above, Toyota also learned or should have learned of the Highlander fuel
18 tank defect from the number of reports received from customer complaints directed towards
19 Toyota.

20 50. Additionally, Toyota is currently experiencing a similar defect resulting from the
21 shape of the fuel tank of the 2019 and 2020 Toyota RAV4 Hybrids, whose 14.5 gallon fuel tank
22 also cannot be filled to capacity. In fact, the RAV4 fuel tank defect is the subject of a consolidated
23 class action lawsuit currently pending in this district, *In Re Toyota RAV4 Hybrid Fuel Tank*
Litigation, No. 3:20-cv-00337.

24 **Toyota Has Actively Concealed the Fuel Tank Defect and Continues to Sell Highlanders**

25 51. Despite Toyota's knowledge of the fuel tank defect, it failed to disclose the known
26 defect to purchasers or lessees prior to their lease or purchase of the vehicles.

27 52. Toyota has and continues to market that the Highlanders have a fuel tank capacity
28 of 17.1 gallons and that the Highlanders have a range of 616 miles per tank.

³¹ <https://www.kbb.com/toyota/highlander-hybrid/2020/>

³² <https://www.youtube.com/watch?v=HuU649ZR1-g>

1 53. Moreover, Toyota has failed to provide a repair for the defect, which is similar to
2 the defect found in the 2019 or later Toyota RAV4 Hybrids.

3 54. Toyota has also failed to issue a Technical Tip or TSB to its dealerships informing
4 them that they should acknowledge the problem, reveal it to prospective buyers, and repair the
5 issue.

6 55. Despite the numerous customer complaints and its knowledge of the fuel tank
7 defect in the Highlanders, Toyota actively concealed the existence and nature of the defect from
8 Plaintiff and Class Members.

9 **CLASS ACTION ALLEGATIONS**

10 56. Plaintiff brings this action pursuant to Federal Rule of Civil Procedure 23(a) on behalf
11 of himself and proposed defined as follows:

12 All persons who purchased or leased a Highlander in Maryland (the “Maryland
13 Class” or the “Class”).

14 57. Excluded from the Class are governmental entities, Toyota, any entity in which
15 Toyota has a controlling interest, and Toyota’s officers, directors, affiliates, legal representatives,
16 employees, co-conspirators, successors, subsidiaries, and assigns. Also excluded from the Class are
17 any judges, justices, or judicial officers presiding over this matter and the members of their
18 immediate families and judicial staff. This action is brought and may be properly maintained as a
19 class action pursuant to Federal Rule of Civil Procedures 23(b)(2) and 23(b)(3), and satisfies the
20 numerosity, commonality, typicality, adequacy, predominance, and superiority requirements of
21 these rules.

22 58. **Numerosity Under Rule 23(a)(1).** The Class is so numerous that the individual
23 joinder of all members is impracticable, and the disposition of the claims of all Class members in a
24 single action will provide substantial benefits to the parties and the Court. Discovery will reveal,
25 through Defendant’s records, the approximate number of the Maryland Class members.

26 59. **Commonality Under Rule 23(a)(2).** Common legal and factual questions exist that
27 predominate over any questions affecting only individual members. These common questions,
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1 which do not vary among Class members and which may be determined without reference to any
2 Class member's individual circumstances, include, but are not limited to:

- 3 a) Whether Toyota owed a duty of care to the Class;
- 4 b) Whether Toyota knew or should have known that the Highlander fuel tank
5 does not fill to the advertised 17.1-gallon capacity;
- 6 c) Whether Toyota knew or should have known that the Highlander's mileage
7 range is less than the advertised 616 miles;
- 8 d) Whether Toyota advertised, represented, or marketed, or continues to
9 advertise, represent, or market, that the Highlander's fuel tank capacity is 17.1 gallons and mileage
10 range is 616 miles;
- 11 e) Whether Toyota's representations and omissions in advertising,
12 specifications, and/or informational materials regarding the Highlander's fuel tank capacity and
13 mileage range are material to a reasonable consumer;
- 14 f) Whether Toyota's representations and omissions in Highlander advertising,
15 specifications, and/or informational materials are false, deceptive, and misleading;
- 16 g) Whether Toyota's representations and omissions in Highlander advertising,
17 specifications, and/or informational materials are likely to deceive a reasonable consumer;
- 18 h) Whether Toyota had knowledge that its representations and omissions in
19 advertising, specifications, and/or informational materials were false, deceptive, and misleading;
- 20 i) Whether Toyota engaged in unlawful, fraudulent, or unfair business
21 practices;
- 22 j) Whether Plaintiff and the Class have been damaged by the wrongs alleged
23 herein and are entitled to compensatory or punitive damages
- 24 k) Whether Plaintiff and the Class are entitled to injunctive or other equitable
25 relief, including restitution.

26 60. **Typicality Under Rule 23(a)(3).** Plaintiff's claims are typical of the Class
27 members' claims. Toyota's course of conduct caused Plaintiff and the Class members the same
28

1 harm, damages, and losses as a result of Toyota’s uniformly unlawful conduct. Likewise, Plaintiff
2 and other Class members must prove the same facts in order to establish the same claims.

3 61. ***Adequacy of Representation Under Rule 23(a)(4)***. Plaintiff is an adequate
4 representative of the Class because he is a member of the Class, and his interests do not conflict
5 with the interests of the Class. Plaintiff has retained counsel competent and experienced in
6 complex litigation and consumer protection class action matters such as this action, and Plaintiff
7 and his counsel intends to vigorously prosecute this action for the Class’s benefit and has the
8 resources to do so. Plaintiff and his counsel have no interests adverse to those of the other
9 members of the Class.

10 62. ***Superiority***. A class action is superior to all other available methods for the fair and
11 efficient adjudication of this controversy because individual litigation of each Class member’s
12 claim is impracticable. The damages, harm, and losses suffered by the individual members of the
13 Class will likely be small relative to the burden and expense of individual prosecution of the
14 complex litigation necessitated by Toyota’s wrongful conduct. Even if each Class member could
15 afford individual litigation, the Court system could not. It would be unduly burdensome if
16 thousands of individual cases proceeded. Individual litigation also presents the potential for
17 inconsistent or contradictory judgments, the prospect of a race to the courthouse, and the risk of an
18 inequitable allocation of recovery among those individuals with equally meritorious claims.
19 Individual litigation would increase the expense and delay to all parties and the Courts because it
20 requires individual resolution of common legal and factual questions. By contrast, the class action
21 device presents far fewer management difficulties and provides the benefit of a single adjudication,
22 economies of scale, and comprehensive supervision by a single court.

23 63. As a result of the foregoing, class treatment is appropriate.
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FIRST CLAIM FOR RELIEF
Violation of the Maryland Consumer Protection Act
MD. CODE, COM. LAW § 13-101, et seq.
On Behalf of Plaintiff Said and the Maryland Class

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64. Plaintiff Said, individually and on behalf of the Maryland Class, incorporates by reference all of the allegations contained in the preceding paragraphs of this Class Action Complaint as if fully set forth herein.

65. Plaintiff Said brings this claim individually and on behalf of the Maryland Class against Toyota.

66. Toyota, Plaintiff, and the Maryland Class are “persons” within the meaning of the Maryland Consumer Protection Act (“Maryland CPA”), Md. Code, Com. Law § 13-101(h).

67. The Maryland CPA provides that a person may not engage in any unfair or deceptive trade practice in the sale of any consumer good. Md. Code, Com. Law § 13-303. Toyota participated in misleading, false, or deceptive acts that violated the Maryland CPA.

68. In the course of its business, Toyota concealed and suppressed material facts concerning the Highlanders. Toyota misrepresented that the Highlander’s fuel tank capacity was 17.1 gallons and that the Highlander’s mileage range was 616 miles. Toyota also engaged in unlawful trade practices by employing deception, deceptive acts or practices, fraud, misrepresentations, or concealment, suppression or omission of any material fact with intent that others rely upon such concealment, suppression or omission, in connection with the sale and lease of Highlanders.

69. Toyota knew about the Highlander’s fuel tank capacity and mileage range at the time of sale and lease. Toyota acquired additional information concerning the Highlander’s fuel tank capacity and mileage range after the Highlanders were sold and leased but continued to conceal information until the true capacity and mileage range of the Highlanders were revealed by Highlander purchasers and lessees.

70. Toyota thus violated the Maryland CPA by, at a minimum: employing deception, deceptive acts or practices, fraud, misrepresentations, or concealment, suppression or omission of any material fact with intent that others rely upon such concealment, suppression or omission, in connection with the sale or lease or Highlanders.

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1 71. Toyota's actions as set forth above occurred in the conduct of trade or commerce.

2 72. Toyota's unfair or deceptive acts or practices were likely to and did in fact deceive
3 reasonable consumers, including Plaintiff Said and members of the Maryland Class, about the true
4 fuel tank capacity and mileage range of the Highlander. Toyota intentionally and knowingly
5 misrepresented material facts regarding the Highlanders with the intent to mislead Plaintiff Said
6 and the Maryland Class.

7 73. Toyota knew or should have known that its conduct violated the Maryland CPA.

8 74. Toyota owed Plaintiff Said and the Maryland Class a duty to disclose the true
9 nature of the Highlanders because Toyota: (a) possessed exclusive knowledge about the
10 Highlanders; (b) intentionally concealed the foregoing from Plaintiff; and (c) made incomplete
11 representations about the Highlander's fuel tank capacity and mileage range, while purposefully
12 withholding material facts from Plaintiff Said and the Maryland Class that contradicted these
13 representations.

14 75. Because Toyota fraudulently concealed these defects in the Highlander, purchasers
15 and lessees of the Highlander were deprived of the benefit of their bargain because the
16 Highlanders they purchased were worth less than they would have been if they were free from
17 defects. Had purchasers and lessees of the Highlanders been aware of the defects in their
18 Highlander, they would either not have purchased or leased the Highlanders or they would have
19 paid less for them.

20 76. Toyota's concealment of the true nature of the Highlanders was material to
21 Plaintiff and the Maryland Class.

22 77. Toyota had an ongoing duty to all Toyota customers to refrain from unfair and
23 deceptive practices under the Maryland CPA. All owners of Highlanders suffered ascertainable
24 loss in the form of the diminished value of their vehicles as a result of Toyota's deceptive and
25 unfair acts and practices made in the course of Toyota's business.

26 78. Toyota's violations present a continuing risk to Plaintiff as well as the general
27 public. Toyota's unlawful acts and practices complained of herein affect the public interest.
28

1 79. As a direct and proximate result of Toyota’s violations of the Maryland CPA,
2 Plaintiff and the Maryland Class have suffered injury-in-fact and/or actual damage.

3 80. Pursuant to Md. Code, Com. Law § 13-408, Plaintiff and the Maryland Class seek
4 actual damages, attorneys’ fees, and any other just and proper relief available under the Maryland
5 CPA.

6 **SECOND CLAIM FOR RELIEF**
7 **Breach of Express Warranty**
8 **MD. CODE, COM. LAW §§ 2-313 and 2A-210**
9 ***On Behalf of Plaintiff Said and the Maryland Class***

10 81. Plaintiff Said, individually and on behalf of the Maryland Class, incorporates by
11 reference all of the allegations contained in the preceding paragraphs of this Class Action
12 Complaint as if fully set forth herein.

13 82. Plaintiff Said brings this claim individually and on behalf of the Maryland Class
14 against Toyota.

15 83. Toyota is and was at all relevant times a “merchant” with respect to motor vehicles
16 under Md. Code, Com. Law § 2-104(1) and “sellers” of motor vehicles under 2-103(1)(d).

17 84. With respect to leases, Toyota is and was at all relevant times a “lessor” of motor
18 vehicles under Md. Code, Com. Law § 2A-103(1)(p).

19 85. The Highlanders are and were at all relevant times “goods” within the meaning of
20 Md. Code, Com. Law §§ 2-105(1) and 2A-103(1)(h).

21 86. In connection with the purchase or lease of one of its new Highlanders, Toyota
22 provides an express “New Vehicle Limited Warranty” (“NVLW”) for a period of 36 months or
23 36,000 miles, whichever occurs first. This NVLW exists to cover “repairs and adjustments needed
24 to correct defects in materials or workmanship of any part supplied by Toyota.” Toyota also
25 warrants and represents in its marketing, specifications, and informational materials that the
26 Highlander’s fuel tank capacity is 17.1 gallons and that the Highlander’s mileage range is 616
27 miles.

28 87. Toyota’s NVLW and warranties regarding the Highlander’s fuel tank capacity and
mileage range formed a basis of the bargain that was breached when Plaintiff Said and the

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1 Maryland Class members purchased or leased the Highlanders with defects in the fuel tank that
2 prevent the Highlander fuel tank from filling to 17.1 gallons and limit the vehicles' mileage range
3 to significantly less than 616 miles.

4 88. Plaintiff Said and the Maryland Class members experienced defects within the
5 warranty period. Despite the existence of the NVLW, Toyota failed to inform Plaintiff Said and the
6 Maryland Class members that Highlanders contain defectively designed fuel tanks that prevent the
7 tank from filling to capacity and prevent the vehicles from reaching the advertised 616 mileage
8 range.

9 89. Toyota breached the express warranty promising to repair or adjust defects in
10 materials or workmanship of any part supplied by Toyota. Toyota has not repaired or adjusted, and
11 has been unable to repair or adjust, the Highlanders materials and workmanship defects.

12 90. Toyota was provided with notice of these issues by numerous NHTSA and
13 consumer complaints filed against it, including the instant Complaint.

14 91. As a direct and proximate result of Toyota's breach of express warranties, Plaintiff
15 Said and the Maryland Class members have been damaged in an amount to be determined at trial.

16 **THIRD CLAIM FOR RELIEF**
17 **Breach of Implied Warranty of Merchantability**
18 **MD. CODE, COM. LAW §§ 2-314 and 2A-212**
19 ***On Behalf of Plaintiff Said and the Maryland Class***

20 92. Plaintiff Said, individually and on behalf of the Maryland Class, incorporates by
21 reference all of the allegations contained in the preceding paragraphs of this Class Action
22 Complaint as if fully set forth herein.

23 93. Plaintiff Said brings this claim individually and on behalf of the Maryland Class
24 against Toyota.

25 94. Toyota is and was at all relevant times a "merchant" with respect to motor vehicles
26 under Md. Code, Com. Law § 2-104(1) and "sellers" of motor vehicles under § 2-103(1)(d).

27 95. With respect to leases, Toyota is and was at all relevant times "lessors" of motor
28 vehicles under Md. Code, Com. Law § 2A-103(1)(p).

96. The Highlanders are and were at all relevant times "goods" within the meaning of
Md. Code, Com. Law §§ 2-105(1) and 2a-103(1)(h).

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1 97. A warranty that the Highlanders were in merchantable condition and fit for the
2 ordinary purpose for which vehicles are used is implied by law pursuant to Md. Code, Com. Law
3 §§ 2-314 and 2A-212.

4 98. The Highlanders, when sold or leased and at all times thereafter, were not in
5 merchantable condition and are not fit for the ordinary purpose for which vehicles are used.
6 Specifically, the Highlanders are inherently defective in that their fuel tanks do not properly fill
7 and their mileage range is significantly diminished.

8 99. Toyota was provided with notice of these issues by numerous NHTSA and
9 consumer complaints filed against it, including the instant Complaint.

10 100. As a direct and proximate result of Toyota's breach of the implied warranty of
11 merchantability Plaintiff Said and the Maryland Class members have been damaged in an amount
12 to be proven at trial.

13 **PRAYER FOR RELIEF**

14 WHEREFORE, Plaintiff, on behalf of himself and the Class, requests that the Court order
15 the following relief and enter judgment against Toyota as follows:

- 16 A. an Order certifying that the action may be maintained as a Class Action and that
17 Plaintiff be appointed as Class Representative and their undersigned counsel as Class
18 Counsel;
- 19 B. a declaration that Toyota engaged in the illegal conduct alleged herein;
- 20 C. an Order that Toyota be permanently enjoined from its improper activities and
21 conduct described herein;
- 22 D. Injunctive and equitable relief in the form of a comprehensive program to repair
23 and/or buyback the Highlander;
- 24 E. a Judgment awarding Plaintiff and the Maryland Class restitution and disgorgement
25 of all compensation obtained by Toyota from its wrongful conduct;
- 26 F. a Judgment awarding Plaintiff and the Maryland Class compensatory damages and
27 punitive damages, where available, in an amount to be proven at trial;
- 28 G. Prejudgment and post-judgment interest at the maximum allowable rate;

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- H. an Order awarding Plaintiff and the Maryland Class reasonable litigation expenses, costs, and attorneys’ fees;
- I. an Order awarding such other injunctive and declaratory relief as is necessary to protect the interests of Plaintiff and the Maryland Class; and
- J. an Order awarding such other and further relief as the Court deems necessary, just, and proper.

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a trial by jury for all claims and issues so triable.

Dated: July 2, 2021

SCHUBERT JONCKHEER & KOLBE LLP
/s/ Noah M. Schubert
NOAH M. SCHUBERT

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