UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA

MARC S. RAIKEN and MICHAEL WALKER, JR., individually and on behalf of all others similarly situated,

Plaintiffs,

v.

TAKATA CORPORATION,
TK HOLDINGS, INC.,
HIGHLAND INDUSTRIES, INC.,
TOYOTA MOTOR CORPORATION,
TOYOTA MOTOR SALES, U.S.A., INC.,
TOYOTA MOTOR ENGINEERING & MANUFACTURING NORTH AMERICA, INC.,
SUBARU OF AMERICA, INC.,
and FUJI HEAVY INDUSTRIES, LTD.

Defendants.

CASE NO. _____

JURY TRIAL DEMANDED

CLASS ACTION COMPLAINT

NATURE OF CLAIM

1. Plaintiffs Marc S. Raiken and Michael Walker, Jr. (collectively, "Plaintiffs") bring this action for themselves and on behalf of all persons similarly situated who purchased or leased the Defective Vehicles (defined below) manufactured, distributed, or sold by the Vehicle Manufacturer Defendants (defined below) that contain airbags manufactured by Defendant Takata (defined below), for claims under of federal and state law, as described below.

2. To date, more than 14 million cars with Takata-manufactured airbags have been recalled due to defect(s) described herein ("Defective Airbags"). Plaintiffs seeks redress individually and on behalf of those similarly-situated for losses stemming from the Defendants' manufacture and use of Defective Airbags in Defective Vehicles.

PARTIES

Plaintiffs

3. Plaintiff Marc S. Raiken is a resident of Pennsylvania. Mr. Raiken owns a 2004 Toyota Corolla, which was manufactured, sold, distributed, advertised, marketed, and warranted by Defendant Toyota (defined below), which has been recalled due to the Defective Airbags. Mr. Raiken purchased his vehicle primarily for his personal, family, and household use. Mr. Raiken is concerned about the risks of driving his vehicle with the Defective Airbags, and he is upset that Defendants have allowed and continue to allow the Defective Vehicles to remain on the road.

4. Plaintiff Michael Walker, Jr. is a resident and citizen of Florida. Mr. Walker owns a 2005 Subaru Legacy, which was manufactured, sold, distributed, advertised, marketed, and warranted by Defendant Toyota (defined below), which has been recalled due to the Defective Airbags. Mr. Walker purchased his vehicle primarily for his personal, family, and household use. Mr. Walker paid more than $9,900.00 to purchase his vehicle. Mr. Walker

would not have paid this amount had he known about the potentially dangerous and defective airbags that were installed in his car. Mr. Walker refrained from using his Subaru vehicle for more than two months due to his concerns about the risks of driving his vehicle with the Defective Airbags, and he is upset that Defendants have allowed and continue to allow the Defective Vehicles to remain on the road.

Defendants

5. Defendant Takata Corporation ("Takata") is a foreign for-profit corporation with its principal place of business in Tokyo, Japan. Takata is a specialized supplier of automotive safety systems that designs, manufactures, tests, markets, distributes, and sells airbags. Takata is a vertically-integrated company and manufactures component parts in its own facilities.

6. Defendant TK Holdings Inc. ("TK Holdings") is a subsidiary of Takata Corporation headquartered in Auburn Hills, Michigan. TK Holdings sells, designs, manufactures, tests, markets, and distributes airbags in the United States. TK Holdings both directly and through subsidiaries, owns and operates 56 manufacturing plants in twenty countries. TK Holdings manufactures airbags in the United States, including airbags at issue in this litigation.

7. Defendant Highland Industries, Inc. ("Highland") is a subsidiary of Takata Corporation and is headquartered in Greensboro, North Carolina. Highland manufactures industrial and automotive textile product solutions including airbag fabrics for the automotive airbag industry. Highland manufactures airbags in the United States, including airbags at issue in this litigation.

8. Defendants Takata, TK Holdings, and Highland are collectively referred to as "Takata" or "Takata Defendants." Takata is the manufacturer of all the Defective Airbags

recalled by the NHTSA that are the subject of this Complaint.

9. Defendant Toyota Motor Corporation ("Toyota") is the world's largest automaker and the largest seller of automobiles in the United States. Toyota is a Japanese Corporation headquartered in Toyota City, Aichi Prefecture, Japan.

10. Defendant Toyota Motor Sales, U.S.A., Inc. ("Toyota U.S.A.") is a wholly-owned subsidiary of Toyota Motor Corporation and is responsible for the marketing, sales, and distribution in the United States of automobiles manufactured by Toyota. Toyota U.S.A. is headquartered in Torrance, California and is a subsidiary of Toyota.

11. Toyota Motor Engineering & Manufacturing North America, Inc. ("TEMA") is headquartered in Erlanger, Kentucky with major operations in Arizona, California, and Michigan. TEMA is responsible for Toyota's engineering design and development, research and development, and manufacturing activities in the U.S., Mexico, and Canada. TEMA is a subsidiary of Toyota.

12. Defendants Toyota, Toyota U.S.A., and TEMA are collectively referred to as "Toyota" or "Toyota Defendants." Toyota vehicles sold in the United States contain airbags manufactured by the Takata Defendants. The NHTSA has recalled to date the following Toyota vehicles for having faulty Takata airbags, totaling 877,000 vehicles: 2002-2005 Lexus SC; 2002-2005 Toyota Corolla; 2003-2005 Toyota Corolla Matrix; 2002-2005 Toyota Sequoia; and 2003-2005 Toyota Tundra.

13. Defendant Fuji Heavy Industries Ltd. ("Fuji") is a Japanese corporation located at The Subaru Building, 1-7-2 Nishishinjuku, Shinjuku-ku, Tokyo, 160-8316, Japan.

14. Defendant Fuji is responsible for the design, manufacturing, distribution, marketing sales and service of Subaru vehicles, including the Vehicles, around the world,

including in the United States.

15. Defendant Subaru of America, Inc. ("SAI") is a New Jersey corporation with its principal place of business located in Cherry Hill, New Jersey. SAI is the U.S. sales and marketing subsidiary of Fuji and wholly owned subsidiary responsible for distribution, marketing, sales and service of Subaru vehicles in the United States. Fuji and SAI are collectively referred to as "Subaru."

16. Subaru vehicles sold in the United States contain airbags manufactured by the Takata Defendants. NHTSA has recalled to date the following Subaru vehicles for having faulty Takata airbags, totaling 17,516 vehicles: 2003-2005 Baja, 2003-2005 Legacy, 2003-2005 Outback, 2004-2005 Impreza.

17. Toyota and Subaru are referred to collectively as the "Vehicle Manufacturer Defendants."

JURISDICTION AND VENUE

18. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §1332(d), because this action is between citizens of different states, a class action has been pled, and the matter in controversy exceeds the sum or value of $5,000,000, exclusive of interest and costs.

19. Venue is proper in this District under 28 U.S.C. §1391 because Defendants transact business in Eastern District of Pennsylvania, are subject to personal jurisdiction in this District, and therefore are deemed to be citizens of this District. Additionally, Defendants have advertised in this District and have received substantial revenue and profits from selling and leasing the Defective Vehicles in this District; therefore, a substantial part of the events and omissions giving rise to the claims occurred within this District.

20. This Court has personal jurisdiction over Defendants to this action because Defendants do substantial business in this District, and a substantial portion of the wrongdoing alleged took place in this District.

FACTUAL BACKGROUND

21. As used in this complaint, the term "Defective Vehicles" refers to the Vehicles sold or leased in the United States that were equipped at the time of sale with Defective Airbags manufactured by Defendant Takata and have been subject to an airbag-related recall, including the following makes and model years:

Subaru 2003 – 2005 Baja 2003 – 2005 Legacy 2003 – 2005 Outback 2004 – 2005 Impreza	Toyota 2002 – 2005 Lexus SC 2002 – 2005 Toyota Corolla 2003 – 2005 Toyota Corolla Matrix 2002 – 2005 Toyota Sequoia 2003 – 2005 Toyota Tundra
BMW 2000 – 2005 3 Series Sedan 2000 – 2006 3 Series Coupe 2000 – 2005 3 Series Sports Wagon 2000 – 2006 3 Series Convertible 2001 – 2006 M3 Coupe 2001 – 2006 M3 Convertible	Chrysler 2003 – 2008 Dodge Ram 1500 2005 – 2008 Dodge Ram 2500 2006 – 2008 Dodge Ram 3500 2006 – 2008 Dodge Ram 4500 2008 – Dodge Ram 5500 2005 – 2008 Dodge Durango 2005 – 2008 Dodge Dakota 2005 – 2008 Chrysler 300 2007 – 2008 Chrysler Aspen
Ford 2004 – Ranger 2005 – 2006 GT 2005 – 2007 Mustang	General Motors 2003 – 2005 Pontiac Vibe 2005 – Saab 9-2X
Honda 2001 – 2007 Honda Accord 2001 – 2005 Honda Civic 2002 – 2006 Honda CR-V 2003 – 2011 Honda Element 2002 – 2004 Honda Odyssey 2003 – 2007 Honda Pilot 2006 – Honda Ridgeline 2003 – 2006 Acura MDX	Mazda 2003 – 2007 Mazda6 2006 – 2007 MazdaSpeed6 2004 – 2008 Mazda RX-8 2004 – 2005 MPV 2004 – B-Series Truck

2002 – 2003 Acura TL/CL 2005 – Acura RL	
Mitsubishi 2004 – 2005 Lancer 2006 – 2007 Raider	Nissan 2001 – 2003 Nissan Maxima 2001 – 2004 Nissan Pathfinder 2002 – 2004 Nissan Sentra 2001 – 2004 Infiniti I30/I35 2002 – 2003 Infiniti QX4 2003 – 2005 Infiniti FX35/FX45

22. Automotive airbags, also called supplemental inflatable restraints, are designed to protect vehicle occupants by rapidly inflating during an automobile collision. Properly functioning airbags are supposed to cushion vehicle occupants during a crash and prevent them from striking interior objects such as the steering wheel, dashboard or a window.

23. Rather than protecting vehicle occupants from injury in the event of a collision, the Defective Airbags manufactured by Takata (which were installed in the Defective Vehicles), turns a life-saving device into one that explodes and sprays metal and plastic shrapnel at vehicle occupants.

24. The manufacturing defect in Takata's airbags (the "Airbag Defect") dates back to at least April 2000, when, according to one recall notice, some Takata airbags produced between April 2000 and September 2002, contained manufacturing defects. Takata became aware of the defect at least as early as 2001 when the first recall was issued relating to the exploding Takata airbags in Isuzu vehicles.

25. In 2004, a Takata airbag in a Honda Accord exploded in Alabama, shooting out metal shrapnel and injuring the car's driver. Honda and Takata deemed the incident "an anomaly," and failed to issue a recall or seek involvement of federal safety regulators.

26. Despite the warnings raised by the 2001 Isuzu and 2004 Honda exploding airbag incidents, it was not until November 2008, that Honda belatedly informed U.S. authorities that it

had a problem with some of the Takata airbags installed in its vehicles. However, Honda then recalled only 4,205 Accords and Civics, reporting to regulators that it had identified all "possible vehicles that could potentially experience the problem."

27. Just six months after the 2008 recall, a Takata airbag in 26-year-old Jennifer Griffin's Honda Civic (which was not among the recalled vehicles) violently exploded after a minor accident in Florida. The airbag explosion sent a two-inch piece of shrapnel flying. When highway troopers found Ms. Griffin, she had blood gushing from a gash in her neck. Ms. Griffin was fortunate to survive the ordeal.

28. However, 18-year-old Ashley Parham was not so fortunate. In May 2009, she was killed while driving a 2001 Honda Accord when a Takata airbag exploded out of her steering wheel after a minor collision in a Midwest City, Oklahoma parking lot. Ms. Parham's vehicle was not among those recalled in 2008.

29. In July 2009 – two months after Ms. Parham's death – Honda recalled 510,000 more Honda and Acura vehicles, including the model driven by Ms. Parham. In its recall documents, Honda did not mention injuries or deaths, referring only to cases of "unusual driver air bag deployment."

30. However, Takata airbags kept exploding. And, the number of victims of the Defective Airbags continued to grow.

31. In December 2009, a Honda Accord driven by 33-year-old Gurjit Rathore hit a mail truck in Richmond, Virginia. The Takata airbag installed in her car exploded, shooting shrapnel into her neck and chest, and she bled to death in front of her three children.

32. In February 2010, Honda ordered the recall of an additional 438,000 Accord, Civic, CR-V, Odyssey, Pilot and Acura models, but, again, it failed to acknowledge past injuries or deaths.

33. Foot-dragging by Takata prompted other automakers to inquire about the safety of Takata airbags they installed in their vehicles. For instance, in a March 2010 letter, BMW asked Takata "as to why they believe BMW vehicles were not affected" by the air bag explosion risks posed to Honda vehicles. Takata responded with assurances that BMW's air bags were manufactured on a different production schedule from Honda's, and were unaffected. This was untrue.

34. In April 2010, a 2001 Honda Civic driven by 24-year-old Kristy Williams exploded as she was stopped at a traffic light in Morrow, Georgia. Metal shards punctured her neck, causing profuse bleeding.

35. Despite this shocking record, Takata has been slow to report the full extent of the danger to drivers and passengers and failed to issue appropriate recalls. Both Honda and Takata provided contradictory and inconsistent explanations to regulators for the defects in Takata's airbags, leading to more confusion and delay. Indeed, the danger of exploding airbags and the number of vehicles affected was not disclosed for years after it became apparent there was a potentially lethal problem. Instead, Takata and Honda repeatedly failed to fully investigate the problem and issue proper recalls, allowing the problem to proliferate and cause numerous injuries and at least four deaths over the last 13 years.

36. It was not until 2013, four years after Honda first reported the problem to U.S. regulators, that a more detailed recounting of Takata's safety failures was revealed. The full

scope of the defects has yet to be determined. More information about Takata's Defective Airbags continues to be uncovered today.

37. In addition to Honda, the Vehicle Manufacturer Defendants were on notice as early as 2008 when Honda first notified regulators of a problem with its Takata airbags. Other car manufacturers with Takata airbags in their vehicles knew or should have known at that time that there might be a safety problem with their airbags and should have launched their own investigations and notified customers.

38. In June 2014, NHTSA announced that BMW, Chrysler, Ford, Honda, Mazda, Nissan, and Toyota were conducting limited regional recalls to address a possible safety defect involving Takata brand airbag inflators. The action was influenced by a NHTSA investigation into six reports of airbag inflator ruptures, which occurred in Florida and Puerto Rico.

39. To date, over 14 million vehicles with Takata's airbags have been recalled worldwide, and there are reports that additional vehicles that have not yet been disclosed by the Defendants could join the list of recalls. The large majority of those recalls have come only within the last year despite the fact that many of the vehicles were manufactured with a potentially defective and dangerous airbag over a decade ago.

40. U.S. federal prosecutors have taken notice of Takata's failure to properly report the problem with its airbags and are trying to determine whether Takata misled U.S. regulators about the number of defective airbags it sold to automakers.

41. As a result of Takata's and the Vehicle Manufacturer Defendants' misconduct, Plaintiffs and Class Members (defined below) were harmed and suffered actual damages in that the Defective Vehicles have potentially deadly airbags that pose an ongoing threat to drivers and passengers and have drastically diminished the value of the cars in which they are installed.

Plaintiffs and the Classes did not receive the benefit of their bargain as purchasers and lessees received vehicles that were of a lesser standard, grade, and quality than represented, and did not receive vehicles that met ordinary and reasonable consumer expectations. Class Members did not receive vehicles that would reliably operate with reasonable safety, and that would not place drivers and occupants in danger of encountering an ongoing and undisclosed risk of harm, which could have been avoided. A vehicle purchased or leased under the reasonable assumption that it is "safe" as advertised is worth more than a car—such as the Defective Vehicles—that is known to contain a Takata airbag. All purchasers of the Defective Vehicles overpaid for their vehicles. Furthermore, the public disclosure of the defective Takata airbags has caused the value of the Defective Vehicles to materially diminish. Purchasers or lessees of the Defective Vehicles paid more, either through a higher purchase price or higher lease payments, than they would have had the defects been disclosed.

42. Worse still, the current recalls have done little to protect owners and lessees of Defective Vehicles from the urgent and ongoing threat posed by Takata airbags because there are not enough new airbags to replace the millions of recalled airbags.

43. All owners or lessees of the Defective Vehicles have been strongly urged by NHTSA "to act immediately" on the recall notices to replace Takata airbags. NHTSA reiterated that its recall message comes with "urgency" and that "[r]esponding to these recalls, whether old or new, is essential to personal safety."

44. However, Takata is unable to manufacture enough new, safe airbags quickly enough to replace the faulty airbags in the nearly eight million vehicles that are the subject of the most recent recall. "There's simply not enough parts to repair every recalled single car immediately," said Chris Martin, a spokesman for Honda.

45. Even if there were enough airbags, dealers are unable to keep up with the volume of customers rushing to get their Takata airbags replaced. Some dealers have reported receiving up to 900 calls per day about the recalls and are telling customers that they may have to wait months before airbags can be replaced.

46. Instead of replacing the airbags, some dealers are either disabling airbags and leaving customers with vehicles that are unsafe to drive, or are advising customers to not drive vehicles with Takata airbags until the airbags can be replaced.

47. Toyota has taken the extreme step of disabling passenger airbags entirely and putting a "Do Not Sit Here" decal in the vehicle until proper repairs can be made. In the alternative, Toyota is advising customers to not drive their vehicles with Takata airbags until the airbags can be replaced. Toyota has not explained how drivers who rely on these vehicles for work and school are to cope without means for transportation.

48. Plaintiffs and Class Members are either left with unsafe vehicles or no vehicle at all. At this time, automakers are not offering customers the use of loaner vehicles.

49. Takata and the Vehicle Manufacturer Defendants knew or should have known that the Takata airbags installed in millions of vehicles were defective. Both Takata and the Vehicle Manufacturer Defendants, who concealed their knowledge of the nature and extent of the defects from the public, have shown a blatant disregard for public welfare and safety.

TOLLING OF THE STATUTE OF LIMITATIONS

FRAUDULENT CONCEALMENT

50. Upon information and belief, Defendant Takata has known of the defects in its airbags since at least 2001. The Vehicle Manufacturer Defendants have known or should have known of the defects in Takata's airbags since 2008. Defendants knew well before Plaintiffs and

Class Members purchased the Defective Vehicles, and have concealed from or failed to notify Plaintiffs, Class Members, and the public of the full and complete nature of the defects.

51. Although Defendants have now acknowledged to safety regulators that Takata's airbags are defective, for years, Defendants did not fully investigate or disclose the seriousness of the issue and in fact downplayed the widespread prevalence of the problem.

52. Any applicable statute of limitation has therefore been tolled by Defendants' knowledge, active concealment, and denial of the facts alleged herein, which behavior is ongoing.

CLASS ALLEGATIONS

53. The Classes' claims all derive directly from a single course of conduct by Takata and the Vehicle Manufacturer Defendants. This case is about the responsibility of Takata and the Vehicle Manufacturer Defendants, at law and in equity, for their knowledge, their conduct, and their products. Takata and the Vehicle Manufacturer Defendants have engaged in uniform and standardized conduct toward the Classes. They did not differentiate, in degree of care or candor, their actions or inactions, or in the content of their statements or omissions, among individual Class members. The objective facts on these subjects are the same for all Class members. Within each Claim for Relief asserted by the respective Classes, the same legal standards govern. Additionally, many states share the same legal standards and elements of proof, facilitating the certification of multistate classes for some or all claims. Accordingly, Plaintiffs bring this lawsuit as a class action on their own behalf and on behalf of all other persons similarly situated as members of the proposed Class pursuant to Federal Rules of Civil Procedure 23(a) and (b)(3) and/or (b)(2) and/or (c)(4). This action satisfies the numerosity, commonality, typicality, adequacy, predominance, and superiority requirements of those provisions.

A. The Nationwide Class

54. Plaintiffs bring this action and seek to certify and maintain it as a class action under Rules 23(a); (b)(1) and/or (b)(2); and (b)(3) of the Federal Rules of Civil Procedure on behalf of themselves and a Nationwide Class defined as follows:

> All persons who entered into a lease or purchased one or more Defective Vehicles in the United States.

B. The State Classes

55. Plaintiffs allege statewide class action claims on behalf of the following classes in the following states. Each of these State Classes is defined as follows:

> All persons in the Commonwealth of Pennsylvania who entered into a lease or purchased one or more of the Defective Vehicles.
>
> All persons in the State of Florida who entered into a lease or purchased one or more of the Defective Vehicles.

56. Excluded from each Class are Takata and the Vehicle Manufacturer Defendants, their employees, officers, directors, legal representatives, heirs, successors and wholly or partly owned subsidiaries or affiliates of Takata and the Vehicle Manufacturer Defendants; Class Counsel and their employees; and the judicial officers and their immediate family members and associated court staff assigned to this case.

C. Numerosity and Ascertainability

57. This action satisfies the requirements of Fed. R. Civ. P. 23(a)(1). Plaintiffs are informed and believe that there are millions of Defective Vehicles nationwide, and thousands of Defective Vehicles in each of the States. Individual joinder of all Class members is impracticable.

58. Each of the Classes is ascertainable because its members can be readily identified using registration records, sales records, production records, and other information kept

by Takata and the Vehicle Manufacturer Defendants or third parties in the usual course of business and within their control. Plaintiffs anticipate providing appropriate notice to each certified Class, in compliance with Fed. R. Civ. P. 23(c)(1)(2)(A) and/or (B), to be approved by the Court after class certification, or pursuant to court order under Fed. R. Civ. P. 23(d).

D. Commonality and Predominance

59. This action satisfies the requirements of Fed. R. Civ. P. 23(a)(2) and 23(b)(3) because questions of law and fact that have common answers that are the same for each of the respective Classes predominate over questions affecting only individual Class members. These include, without limitation, the following:

a. Whether the Defective Vehicles suffer from airbag defects;

b. Whether the Defective Vehicles have suffered a diminution of value as a result of the installation of the airbags at issue;

c. Whether Defendants knew or should have known about the airbag defects, and, if so, how long Defendants have known of the defects;

d. Whether the of the Defective Airbags constitute a material fact reasonable consumers would have considered in deciding whether to purchase a Defective Vehicle;

e. Whether Defendants had a duty to disclose the Defective Airbags to Plaintiffs and Class Members;

f. Whether Defendants omitted and failed to disclose material facts about the Defective Vehicles;

g. Whether Defendants' concealment of the true defective nature of the Defective Vehicles induced Plaintiffs and Class Members to act to their detriment by purchasing the Defective Vehicles;

h. Whether Defendants' conduct tolls any or all applicable limitations periods by acts of fraudulent concealment, application of the discovery rule, or equitable estoppel;

i. Whether Defendants misrepresented that the Defective Vehicles were safe;

j. Whether Defendants engaged in unfair, deceptive, unlawful and/or fraudulent acts or practices in trade or commerce by failing to disclose that the Defective Vehicles were designed, manufactured, and sold with defective airbag inflators;

k. Whether Defendants' conduct, as alleged herein, likely to mislead a reasonable consumer;

l. Whether Defendants' statements and omissions regarding the Defective Vehicles were material, in that a reasonable consumer could consider them important in purchasing, selling, maintaining, or operating such vehicles;

m. Whether Defendants violated each of the States' consumer protection statutes, and if so, what remedies are available under those statutes;

n. Whether the Defective Vehicles were unfit for the ordinary purposes for which they were used, in violation of the implied warranty of merchantability;

o. Whether Plaintiffs and the Classes are entitled to a declaratory judgment stating that the airbag inflators in the Defective Vehicles are defective and/or not merchantable;

p. Whether Defendants' unlawful, unfair, and/or deceptive practices have harmed Plaintiffs and the Classes;

q. Whether Plaintiffs and the Classes are entitled to equitable relief, including, but not limited to, a preliminary and/or permanent injunction;

r. Whether Defendants should be declared responsible for notifying all Class members of the defects and ensuring that all vehicles with the airbag inflator defect are promptly recalled and repaired;

s. What aggregate amounts of statutory penalties are sufficient to punish and deter Defendants and to vindicate statutory and public policy; and

t. How such penalties should be most equitably distributed among Class members.

E. Typicality

60. This action satisfies the requirements of Fed. R. Civ. P. 23(a)(3) because Plaintiffs' claims are typical of the claims of the Class members, and arise from the same course of conduct by Takata and the Vehicle Manufacturer Defendants. The relief Plaintiffs seek is typical of the relief sought for the absent Class members.

F. Adequate Representation

61. Plaintiffs will fairly and adequately represent and protect the interests of the Classes. Plaintiffs have retained counsel with substantial experience in prosecuting consumer class actions, including actions involving defective products.

62. Plaintiffs and their counsel are committed to vigorously prosecuting this action on behalf of the Classes, and have the financial resources to do so. Neither Plaintiffs nor their counsel have interests adverse to those of the Classes.

G. Superiority

63. This action satisfies the requirements of Fed. R. Civ. P. 23(b)(1) because the prosecution of separate actions by the individual Class members on the claims asserted herein would create a risk of inconsistent or varying adjudications for individual Class members, which would establish incompatible standards of conduct for Takata and the Vehicle Manufacturer Defendants; and because adjudication with respect to individual Class members would, as a practical matter, be dispositive of the interests of other Class members, or impair substantially or impede their ability to protect their interests.

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

65. This action satisfies the requirements of Fed. R. Civ. P. 23(b)(2) because Defendants Takata and the Vehicle Manufacturer Defendants have acted and refused to act on grounds generally applicable to each Class, thereby making appropriate final injunctive and/or corresponding declaratory relief with respect to each Class as a whole.

66. This action satisfies the requirements of Fed. R. Civ. P. 23(b)(3) because a class action is superior to other available methods for the fair and efficient adjudication of this controversy. The common questions of law and of fact regarding Takata and the Vehicle Manufacturer Defendants' conduct and responsibility predominate over any questions affecting only individual Class members.

67. Because the damages suffered by each individual Class member may be relatively small, the expense and burden of individual litigation would make it difficult if not impossible for individual Class members to redress the wrongs done to each of them individually, such that most or all class members would have no rational economic interest in individually controlling the prosecution of specific actions, and the burden imposed on the judicial system by individual litigation by even a small fraction of the Class would be enormous, making class adjudication the superior alternative under Fed. R. Civ. P. 23(b)(3)(A).

68. The conduct of this action as a class action presents fewer management difficulties, better conserves judicial resources and the parties' resources, and more effectively protects the rights of each Class member than would individualized litigation. Compared to the expense, burdens, inconsistencies, economic infeasibility, and inefficiencies of individualized litigation, the challenges of managing this action as a class action are substantially outweighed by the benefits to the legitimate interests of the parties, the court, and the public of class treatment in this court, making class adjudication superior to other alternatives, under Fed. R. Civ. P. 23(b)(3)(D).

69. Plaintiffs are not aware of any obstacles likely to be encountered in the management of this action that would preclude its maintenance as a class action. Rule 23 provides the Court with authority and flexibility to maximize the efficiencies and benefits of the class mechanism and reduce management challenges. The Court may, on motion of Plaintiffs or on its own determination, certify nationwide, statewide and/or multistate classes for claims sharing common legal questions; utilize the provisions of Rule 23(c)(4) to certify any particular claims, issues, or common questions of fact or law for class-wide adjudication; certify and adjudicate bellwether class claims; and utilize Rule 23(c)(5) to divide any Class into subclasses.

70. The Classes expressly disclaim any recovery in this action for physical injury resulting from the airbag inflator defects without waiving or dismissing such claims. Plaintiffs are informed and believe that injuries suffered in crashes as a result of the defective airbags implicate the Defective Vehicles and are continuing to occur because of Defendants' delays and inaction regarding the commencement and completion of recalls. The increased risk of injury from the airbag defects serves as an independent justification for the relief sought by Plaintiffs and the Classes.

CAUSES OF ACTION

Count I
Violation of the Magnuson-Moss Warranty Act, 15 U.S.C. § 2301, *et. seq.*
(On Behalf of the Nationwide Class)

71. Plaintiffs hereby incorporate by reference the allegations contained in the preceding paragraphs of this Complaint as if set forth here.

72. Plaintiffs bring this Claim for Relief on behalf of members of the Nationwide Class who are residents of the following States: Pennsylvania and Florida. In the event a nationwide class cannot be maintained on this Claim, this Claim is asserted by each statewide class asserting claims related to a breach of warranty.

73. This Court has jurisdiction to decide claims brought under 15 U.S.C. § 2301 by virtue of 28 U.S.C. § 1332 (a)-(d).

74. The Defective Vehicles are "consumer products" within the meaning of the Magnuson-Moss Warranty Act, 15 U.S.C. § 2301(1).

75. Defendants are "supplier[s]" and "warrantor[s]" within the meaning of the Magnuson-Moss Warranty Act, 15 U.S.C. § 2301(4)-(5).

76. Plaintiffs are "consumers" within the meaning of the Magnuson-Moss Warranty Act, 15 U.S.C. § 2301(3), because they are persons entitled under applicable state law to enforce against the warrantor the obligations of its express and implied warranties.

77. The Magnuson-Moss Warranty Act, 15 U.S.C. § 2310(d)(1), provides a claim for relief for any consumer who is damaged by the failure of a warrantor to comply with a written or implied warranty.

78. Defendants provided Plaintiffs and the other Class Members with an implied warranty of merchantability in connection with the purchase or lease of their vehicles that is an "implied warranty" within the meaning of the Magnuson-Moss Warranty Act, 15 U.S.C. § 2301(7). As a part of the implied warranty of merchantability, Defendants warranted that the Defective Vehicles were fit for their ordinary purpose as safe passenger motor vehicles, would pass without objection in the trade as designed, manufactured and marketed, and were adequately contained, packaged and labeled.

79. Defendants breached these implied warranties, as described in more detail above, and are therefore liable to Plaintiffs and the Class pursuant to 15 U.S.C. § 2310(d)(1). Without limitation, the Defective Vehicles share common design or manufacturing defects in that they are equipped with defective airbags that can explode, leaving occupants of the Defective Vehicles vulnerable to serious injury and death. Defendants have admitted that the Defective Vehicles are defective by issuing recalls, but the recalls are woefully insufficient to address each of the defects.

80. In their capacity as warrantors, Defendants had knowledge of the inherent defects in the Defective Vehicles; any efforts to limit the implied warranties in a manner that would

exclude coverage of the Defective Vehicles are unconscionable, and any such effort to disclaim, or otherwise limit, liability for the Defective Vehicles is null and void.

81. The limitations on the warranties are procedurally unconscionable. There was unequal bargaining power between Defendants and Plaintiffs and the other Class Members as, at the time of purchase and lease, Plaintiffs and the other Class Members had no other options for purchasing warranty coverage other than directly from Defendants.

82. The limitations on the warranties are substantively unconscionable. Defendants knew that the Defective Vehicles were defective and would continue to pose safety risks after the warranties purportedly expired. Defendants failed to disclose these defects to Plaintiffs and the other Class Members. Thus, Defendants' enforcement of the durational limitations on those warranties is harsh and shocks the conscience.

83. Plaintiffs and each of the other Class Members have had sufficient direct dealings with Defendants or their agents (dealerships) to establish privity of contract. Nonetheless, privity is not required here because Plaintiffs and each of the other Class Members are intended third-party beneficiaries of contracts between Defendants and their dealers, and specifically, of the implied warranties. The dealers were not intended to be the ultimate consumers of the Defective Vehicles and have no rights under the warranty agreements provided with the Defective Vehicles. Instead, the warranty agreements were designed for and intended to benefit consumers. Finally, privity is also not required because the Defective Vehicles are dangerous instrumentalities because of the aforementioned defects and nonconformities.

84. Pursuant to 15 U.S.C. § 2310(e), Plaintiffs are entitled to bring this class action and are not required to give Defendants notice and an opportunity to cure until such time as the

Court determines the representative capacity of Plaintiffs pursuant to Rule 23 of the Federal Rules of Civil Procedure.

85. Furthermore, affording Defendants an opportunity to cure their breach of written warranties would be unnecessary and futile here. At the time of sale or lease of each Defective Vehicle, Defendants knew, should have known, or were reckless in not knowing of their misrepresentations concerning the Defective Vehicles' inability to perform as warranted, but nonetheless failed to rectify the situation and/or disclose the defective design. Under the circumstances, the remedies available under any informal settlement procedure would be inadequate and any requirement that Plaintiffs resort to an informal dispute resolution procedure and/or affords Defendants a reasonable opportunity to cure their breach of warranties is excused and thereby deemed satisfied.

86. Plaintiffs and the other Class Members would suffer economic hardship if they returned their Defective Vehicles but did not receive the return of all payments made by them. Because Defendants are refusing to acknowledge any revocation of acceptance and return immediately any payments made, Plaintiffs and the other Class Members have not re-accepted their Defective Vehicles by retaining them.

87. Pursuant to 15 U.S.C. § 2310(d)(3), the amount in controversy of Plaintiffs' individual claims meets or exceeds the sum of $25. The amount in controversy of this action exceeds the sum of $50,000, exclusive of interest and costs, computed on the basis of all claims to be determined in this lawsuit. Plaintiffs, individually and on behalf of the other Class Members, seek all damages permitted by law, including diminution in value of their vehicles, in an amount to be proven at trial.

88. In addition, pursuant to 15 U.S.C. § 2310(d)(2), Plaintiffs and the other Class Members are entitled to recover a sum equal to the aggregate amount of costs and expenses (including attorneys' fees based on actual time expended) determined by the Court to have reasonably been incurred by Plaintiffs and the other Class Members in connection with the commencement and prosecution of this action.

89. Further, Plaintiffs and the Class are also entitled to equitable relief under 15 U.S.C. § 2310(d)(1). Based on Defendants' continuing failures to fix the known, dangerous defects, Plaintiffs seek a declaration that Defendants have not adequately implemented their recall commitments and requirements and general commitments to fix their failed processes, and injunctive relief in the form of judicial supervision over the recall process is warranted. Plaintiffs also seek the establishment of a Defendant-funded program for Plaintiffs and Class Members to recover out-of-pocket costs incurred.

90. Plaintiffs also request, as a form of equitable monetary relief, re-payment of the out-of-pocket expenses and costs they have incurred in attempting to rectify the airbags in their vehicles. Such expenses and losses will continue as Plaintiffs and Class members must take time off from work, pay for rental cars or other transportation arrangements, child care, and the myriad expenses involved in going through the recall process.

91. The right of Class Members to recover these expenses as an equitable matter to put them in the place they would have been but for Defendants' conduct presents common questions of law. Equity and fairness requires the establishment by Court decree and administration under Court supervision of a program funded by the Defendants, using transparent, consistent, and reasonable protocols, under which such claims can be made and paid.

COUNT II
Fraud by Concealment
(On Behalf of the Nationwide Class or in the alternative, the Florida Class and the Pennsylvania Class)

92. Plaintiffs hereby incorporate by reference the allegations contained in the preceding paragraphs of this Complaint as if set forth here.

93. This Claim is brought on behalf of the Nationwide Class or in the alternative, the Florida Class and the Pennsylvania Class.

94. As set forth above, Defendants concealed and/or suppressed material facts and made material misrepresentations concerning the safety of their vehicles and/or the Takata airbags contained in those vehicles. Defendants knew that drivers had been killed or had been injured as the result of the vehicles' Takata airbags and, thus, that their representations regarding the safety of their vehicles were false. Defendants were in exclusive control of the material facts concerning the Airbag Defect and such facts were not known to the public or the members of the Nationwide Class, the Florida Class or the Pennsylvania Class.

95. The vehicles purchased or leased by the Nationwide Class, the Florida Class and the Pennsylvania Class contained the Airbag Defect; that is, they had a propensity to expel shrapnel upon deployment or otherwise malfunction, rendering them dangerous, defective, unsafe and unreliable.

96. Defendants had a duty to disclose the Airbag Defect and that their vehicles were dangerous, defective, unsafe and unreliable because they consistently marketed their vehicles as reliable and safe and proclaimed that Defendants maintain the highest safety standards. Once Defendants made representations to the public about the safety of their vehicles, Defendants were under a duty to disclose these omitted facts, because where one does speak one must speak the whole truth and not conceal any facts which materially qualify those facts stated.

97. In addition, Defendants had a duty to disclose these omitted material facts because they were known and/or accessible only to Defendants who have superior knowledge and access to the facts, and Defendants knew they were not known to or reasonably discoverable by Plaintiffs and Class Members. These omitted facts were material because they directly impact the safety of the Class Vehicles. Whether or not a vehicle airbag would malfunction or deploy and release shrapnel is a material safety concern. Defendants possessed exclusive knowledge of the defects rendering the Class Vehicles inherently dangerous.

98. Defendants actively and intentionally concealed and/or suppressed these material facts, in whole or in part, with the intent to induce Plaintiffs and Class Members to purchase, lease, retain and operate Class Vehicles.

99. The Nationwide Class, the Florida Class and the Pennsylvania Class relied on Defendants' representations concerning the reliability and safety of the vehicles in making their decisions to purchase, lease, and retain those vehicles.

100. Plaintiffs and Class Members were unaware of these omitted material facts and would not have acted as they did if they had known of the concealed and/or suppressed facts. Had the Nationwide Class, the Florida Class and the Pennsylvania Class known the truth, they would not have purchased, leased, and retained those vehicles.

101. As a result of the concealment and/or suppression of facts, Plaintiffs and Class Members have sustained and will continue to sustain damages arising from, inter alia: the difference between the actual value of that which Plaintiffs and the Class Members paid and the actual value of that which they received; loss of use of the vehicle; utilizing other modes of transportation and other consequential damages arising as a result of the Airbag Defect.

102. Defendants' acts were done maliciously, oppressively, deliberately, with intent to defraud, and in reckless disregard of Plaintiffs' and Class Members' rights and well-being to enrich Defendants. Defendants' 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 III
Breach of Implied Warranties
(On Behalf of the Nationwide Class or in the alternative, the Pennsylvania Class and the Florida Class)

103. Plaintiffs hereby incorporate by reference the allegations contained in the preceding paragraphs of this Complaint as if set forth here.

104. This Claim is brought on behalf of the Nationwide Class and the Pennsylvania Class under Pennsylvania law.

105. This Claim is brought on behalf of the Florida Class under Florida law.

106. At all times relevant hereto, there was in full force and effect the Pennsylvania Uniform Commercial Code ("PA U.C.C."), 13 Pa. C.S.A. §1101, *et seq*. and the Florida Uniform Commercial Code ("FL U.C.C."), Fla. Stat. §671 *et seq*.

107. Defendant Takata is a "merchant" as to the Defective Vehicles within the meaning PA U.C.C., 13 Pa. C.S.A. §2104 and FL U.C.C., Fla. Stat. §672.2-104. Takata manufactured and sold the Defective Airbags that were installed in the Defective Vehicles, which are "goods" within the meaning of these statutory provisions. Consequently, pursuant to PA U.C.C., 13 Pa. C.S.A. §2314 and FL U.C.C., Fla. Stat. §672.314, Takata impliedly warranted that the Takata Airbags were merchantable, including that they were fit for their ordinary purposes as safe for use in passenger vehicles, that they could pass without objection in the trade,

that they were adequately contained, packaged, and labeled, and that they conform to the promises or affirmations of fact made.

108. The Vehicle Manufacturer Defendants are each a "merchant" as to the Class Vehicles within the meaning PA U.C.C., 13 Pa C.S.A. §2104 and FL U.C.C, Fla. Stat. §672.2-104. They manufactured and sold the Class Vehicles containing the Defective Airbags, which are "goods" within the meaning of these statutory provisions. Consequently, pursuant to PA. U.C.C., 13 Pa. C.S.A. §2314 and FL U.C.C., Fla. Stat. §672.314, the Vehicle Manufacturer Defendants impliedly warranted that the Class Vehicles were merchantable, including that they were fit for their ordinary purposes for use as passenger vehicles, that they could pass without objection in the trade, that they were adequately contained, packaged, and labeled, and that they conform to the promises or affirmations of fact made.

109. The Vehicle Manufacturer Defendants breached their implied warranty of merchantability to Plaintiffs and the Nationwide Class, Florida Class, and Pennsylvania Class because the Class Vehicles were not fit for the ordinary purposes for which they are used—a safe passenger vehicle. PA U.C.C. 13 Pa. C.S.A. §2314(b)(3); FL U.C.C., Fla. Stat. §672.314(2)(c). Specifically, the Defective Vehicles contain the Airbag Defect, which makes the Defective Vehicles unfit for their ordinary purpose of providing safe transportation.

110. Defendants further breached the implied warranty of merchantability to Plaintiffs and the Nationwide, Florida and Pennsylvania Class because the Defective Vehicles would not pass without objection in the trade, as they contained the Airbag Defect. PA U.C.C., 13 Pa. C.S.A. §2314(b)(1); FL U.C.C., Fla. Stat. §672.314(2)(a).

111. Defendants further breached their implied warranty of merchantability to Plaintiffs and the Nationwide, Florida and Pennsylvania Class because the Defective Vehicles

were not adequately contained, packaged, and labeled in that the directions and warnings that accompanied the Defective Vehicles did not adequately instruct Plaintiffs on the proper use of the Defective Vehicles in light of the Airbag Defect. PA U.C.C., 13 Pa. C.S.A. §2314(b)(5); FL U.C.C., Fla. Stat. §672.314(2)(e).

112. As a proximate result of Defendants' breach of the implied warranty of merchantability, Plaintiffs and the Nationwide, Florida, and Pennsylvania Classes were damaged in the amount of, and entitled to recover, the difference in value between the Class Vehicles as warranted (their sales price) and the Class Vehicles as actually delivered (*i.e.*, a total refund of the full or partial purchase and/or lease price of the Class Vehicles), plus loss of use and other consequential damages arising as a result of the Airbag Defect.

113. It was not necessary for Plaintiffs and each Nationwide, Florida, and Pennsylvania Class Member to give Defendants notice of Defendants' breach of the implied warranty of merchantability because Defendants had actual notice of the Airbag Defect. Prior to the filing of this action, Defendants issued a safety recall for the Defective Vehicles acknowledging the Airbag Defect. In addition to the above, the filing of this action is sufficient to provide Defendants notice of their breaches of the implied warranty of merchantability with respect to the Defective Vehicles.

COUNT IV
Violation of Pennsylvania Unfair Trade Practices and Consumer Protection Law, ("Pa.UPT"), 73 P.S. §201-1, *et seq.*
On Behalf of the Pennsylvania Class

114. Plaintiffs hereby incorporate by reference the allegations contained in the preceding paragraphs of this Complaint as if set forth here.

115. This Count is brought on behalf of Plaintiff Marc S. Raiken and the Pennsylvania Class against Defendants Takata and Toyota (collectively, for the purposes of this Count, "Defendants").

116. Plaintiff is a "person" within the meaning of Pa.UTP, 73 P.S. §201-2(2).

117. Defendants are "persons" "within the meaning of Pa.UTP, 73 P.S. §201-2(2).

118. The Pa.UTP prohibits engaging in any "unfair methods of competition" or "unfair or deceptive acts or practices" either at, prior to, or subsequent to a consumer transaction. 73 P.S. §201-2(4) and §201-3. The prohibited acts include, inter alia: representing that goods have characteristics, uses, or benefits that they do not have, §201-4(v); representing that goods are of a particular standard, quality, or grade if they are of another, §201-2(4)(vii); advertising goods with intent not to sell them as advertised, §201-2(4)(ix); failing to comply with the terms of any written guarantee or warranty given to the buyer at, prior to, or after a contract for the purchase of goods is made, §201-2(4)(xiv); and engaging in any other fraudulent or deceptive conduct which creates a likelihood of confusion or misunderstanding, §201-2(4)(xxi). Defendants' conduct, as described above, constitutes "unfair or deceptive acts or practices" within the meaning of this statute.

119. Defendants violated the Pa.UTP when they represented, through advertising, warranties, and other express representations, that the Defective Vehicles had characteristics and benefits that they did not actually have.

120. Defendants violated the Pa.UTP when they falsely represented, through advertising, warranties, and other express representations, that the Defective Vehicles were of certain quality or standard when they were not.

121. Defendants violated the Pa.UTP by fraudulently concealing from and/or failing to disclose to Plaintiff and the Pennsylvania Class the defects associated with the Defective Vehicles, including the Airbag Defect.

122. Defendants violated the Pa.+-UTP by actively misrepresenting in, and/or concealing and omitting from, their advertising, marketing, and other communications, material information regarding the Airbag Defect.

123. Defendants engaged in deceptive trade practices when they failed to disclose material information concerning the Defective Vehicles and dangerous Takata airbags, which they knew at the time of the sale. Defendants deliberately withheld the information about the vehicles' Takata airbags' propensity to release shrapnel upon deployment or otherwise malfunction. To protect their profits and to avoid remediation costs and a public relations disaster, Defendants concealed the Takata airbag dangers and defects and their tragic consequences and allowed unsuspecting new and used car purchasers and lessors to continue to buy and lease the Defective Vehicles and allowed all Defective Vehicle owners/lessors to continue driving highly dangerous vehicles.

124. Defendants each owed the Pennsylvania Class a duty to disclose the dangerous and risky nature of Defective Vehicles and the Takata airbags, including the deadly risk that the Takata airbag would release shrapnel upon deployment, because they:

a. Possessed exclusive knowledge of the defects rendering the Defective Vehicles and/or the Takata airbags inherently more dangerous and unreliable than similar vehicles and/or airbags;

b. Intentionally concealed the hazardous situation with Defective Vehicles through their deceptive marketing campaign and recall program that they designed to hide the life-threatening problems from the Pennsylvania Class; and/or

c. Made incomplete representations about the safety and reliability of Defective Vehicles generally, and the Takata airbags in particular, while purposefully withholding material facts from the Pennsylvania Class that contradicted these representations.

125. The Defective Vehicles and the Takata airbags posed and/or pose an unreasonable risk of death or serious bodily injury to the Pennsylvania Class passengers, other motorists, pedestrians, and the public at large, because they are susceptible to expelling shrapnel upon deployment or otherwise malfunctioning.

126. The Defendants unfair or deceptive acts or practices were likely to deceive reasonable consumers, including the Pennsylvania Class, about the true safety and reliability of Defective Vehicles and/or Takata airbags. The Defendants intentionally and knowingly misrepresented material facts regarding the Defective Vehicles and/or Takata airbags with an intent to mislead the Pennsylvania Class.

127. The propensity of the Defective Vehicles and Takata airbags to expel shrapnel upon deployment or otherwise malfunction was material to the Pennsylvania Class. Had the Pennsylvania Class known that their vehicles had these serious safety defects, they would either not have purchased their Defective Vehicles with Takata airbags, or would have paid less for them than they did.

128. The Pennsylvania Class suffered ascertainable loss caused by the Defendants' failures to disclose material information. The Pennsylvania Class overpaid for their vehicles with

Takata airbags and did not receive the benefit of their bargain – vehicles containing airbags that did not pose safety risks and worked properly. As the result of the existence of, the concealment of and the failure to remedy the dangers and risks posed by the Takata airbags and Defective Vehicles, and the piecemeal and serial nature of the recalls, the value of their Defective Vehicles was, has and continues to be diminished. This is particularly true now that the safety issues with the Takata airbags in the Defective Vehicles have come to light, and the Pennsylvania Class owns and leases unsafe vehicles.

129. Members of the Pennsylvania Class have been damaged by Defendants' misrepresentations, concealment, and non-disclosure of the dangers and risks posed by the Takata airbags in the Defective Vehicles. They own and lease vehicles whose value has greatly diminished. The already diminished value of the Defective Vehicles was further diminished by the Defendants' failure to timely disclose and remedy the dangers and risks posed by the Takata airbags. Defendants' egregious and widely-publicized conduct and the never-ending and piecemeal nature of Defendants' recalls have so tarnished the Defective Vehicles that no reasonable consumer would purchase them—let alone pay what would otherwise be fair market value for the vehicles.

130. Members of the Pennsylvania Class risk irreparable injury as a result of the Defendants' acts and omissions in violation of the Pa.UTP, and these violations present a continuing risk to Plaintiff, the Pennsylvania Class as well as to the general public. The Defendants' unlawful acts and practices complained of herein affect the public interest.

131. The recalls and repairs instituted by Defendants have not been adequate. The recall is not an effective remedy and is not offered for all Defective Vehicles and vehicles containing Takata airbags.

132. As a direct and proximate cause of Defendants' violations of the Pa.UTP, Plaintiff and members of the Pennsylvania Class have suffered and continue to suffer ascertainable losses and damages, in that they purchased a Class Vehicle that contains inherent defects about which Defendants knew prior to the sale of the Class Vehicles.

133. The Pennsylvania Class is entitled to recover three times their actual damages, costs and reasonable attorneys' fees under 73 P.S. §201-9.2.

134. Plaintiff also seeks an order enjoining Defendants' unfair and/or deceptive acts or practices, treble damages, punitive damages, attorneys' fees, filing fees, reasonable costs of suit and any other just and proper relief available under the Pa. UTP.

Count V
Violation of the Florida Deceptive and Unfair Trade Practices Act,
Fla. Stat. § 501.201, *et. seq.*
(On Behalf of the Florida Class)

135. Plaintiff hereby incorporates by reference the allegations contained in the preceding paragraphs of this Complaint as if set forth here.

136. This Count is brought on behalf of Plaintiff Michael Walter, Jr. and the Florida Class against the Takata and Subaru Defendants (collectively, for the purposes of this Count, "Defendants").

137. The members of the Florida Class are "consumers" within the meaning of the Florida Unfair and Deceptive Trade Practices Act ("FUDTPA"), Fla. Stat. § 501.203(7).

138. Defendants engaged in "trade or commerce" within the meaning of Fla. Stat. § 501.203(8).

139. FUDTPA prohibits "[u]nfair methods of competition, unconscionable acts or practices, and unfair or deceptive acts or practices in the conduct of any trade or commerce...."

Fla. Stat. § 501.204(1). Defendants participated in unfair and deceptive trade practices that violated the FUDTPA as described herein.

140. In the course of their business, Defendants willfully failed to disclose and actively concealed the dangers and risks posed by the Takata airbags in the Defective Vehicles as described herein and otherwise engaged in activities with a tendency or capacity to deceive. Defendants 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 or lease of Defective Vehicles.

141. Defendants knew of the Takata airbags' dangers and risks, while the Class was deceived by the Defendants' omission into believing the Defective Vehicles and the Takata airbags therein were safe, and the information could not have reasonably been known by the consumer.

142. Defendants knew or should have known that their conduct violated the FUDTPA.

143. Defendants made material statements about the safety and reliability of Defective Vehicles that were either false or misleading.

144. Defendants engaged in deceptive trade practices when they failed to disclose material information concerning the Defective Vehicles and dangerous Takata airbags, which they knew at the time of the sale. Defendants deliberately withheld the information about the vehicles' Takata airbags' propensity to release shrapnel upon deployment or otherwise malfunction. To protect their profits and to avoid remediation costs and a public relations disaster, Defendants concealed the Takata airbag dangers and defects and their tragic consequences and allowed unsuspecting new and used car purchasers and lessors to continue to

buy and lease the Defective Vehicles and allowed all Defective Vehicle owners/lessors to continue driving highly dangerous vehicles.

145. Defendants each owed the Florida Class a duty to disclose the dangerous and risky nature of Defective Vehicles and the Takata airbags, including the deadly risk that the Takata airbag would release shrapnel upon deployment, because they:

a. Possessed exclusive knowledge of the defects rendering the Defective Vehicles and/or the Takata airbags inherently more dangerous and unreliable than similar vehicles and/or airbags;

b. Intentionally concealed the hazardous situation with Defective Vehicles through their deceptive marketing campaign and recall program that they designed to hide the life-threatening problems from the Florida Class; and/or

c. Made incomplete representations about the safety and reliability of Defective Vehicles generally, and the Takata airbags in particular, while purposefully withholding material facts from the Florida Class that contradicted these representations.

146. The Defective Vehicles and the Takata airbags posed and/or pose an unreasonable risk of death or serious bodily injury to the Florida Class passengers, other motorists, pedestrians, and the public at large, because they are susceptible to expelling shrapnel upon deployment or otherwise malfunctioning.

147. The Defendants unfair or deceptive acts or practices were likely to deceive reasonable consumers, including the Florida Class, about the true safety and reliability of Defective Vehicles and/or Takata airbags. The Defendants intentionally and knowingly

misrepresented material facts regarding the Defective Vehicles and/or Takata airbags with an intent to mislead the Florida Class.

148. The propensity of the Defective Vehicles and Takata airbags to expel shrapnel upon deployment or otherwise malfunction was material to the Florida Class. Had the Florida Class known that their vehicles had these serious safety defects, they would either not have purchased their Defective Vehicles with Takata airbags, or would have paid less for them than they did.

149. The Florida Class suffered ascertainable loss caused by the Defendants' failures to disclose material information. The Florida Class overpaid for their vehicles with Takata airbags and did not receive the benefit of their bargain – vehicles containing airbags that did not pose safety risks and worked properly. As the result of the existence of, the concealment of and the failure to remedy the dangers and risks posed by the Takata airbags and Defective Vehicles, and the piecemeal and serial nature of the recalls, the value of their Defective Vehicles was, has and continues to be diminished. This is particularly true now that the safety issues with the Takata airbags in the Defective Vehicles have come to light, and the Florida Class owns and leases unsafe vehicles.

150. Members of the Florida Class have been damaged by Defendants' misrepresentations, concealment, and non-disclosure of the dangers and risks posed by the Takata airbags in the Defective Vehicles. They own and lease vehicles whose value has greatly diminished. The already diminished value of the Defective Vehicles was further diminished by the Defendants' failure to timely disclose and remedy the dangers and risks posed by the Takata airbags. Defendants' egregious and widely-publicized conduct and the never-ending and piecemeal nature of Defendants' recalls have so tarnished the Defective Vehicles that no

reasonable consumer would purchase them—let alone pay what would otherwise be fair market value for the vehicles.

151. Members of the Florida Class risk irreparable injury as a result of the Defendants' acts and omissions in violation of the FUDTPA, and these violations present a continuing risk to the Class as well as to the general public. The Defendants' unlawful acts and practices complained of herein affect the public interest.

152. The recalls and repairs instituted by Defendants have not been adequate. The recall is not an effective remedy and is not offered for all Defective Vehicles and vehicles containing Takata airbags.

153. As a direct and proximate result of the Defendants' violations of the FUDTPA, the Florida Class has suffered injury-in-fact and/or actual damage.

154. The Florida Class are entitled to recover their actual damages under Fla. Stat. § 501.211(2) and attorneys' fees under Fla. Stat. § 501.2105(1).

155. The Florida Class also seeks an order enjoining Defendants' unfair, unlawful, and/or deceptive practices, declaratory relief, attorneys' fees, and any other just and proper relief available under the FUDTPA.

PRAYER FOR RELIEF

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

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

B. a declaration that the airbags in Defective Vehicles are defective;

C. a declaration that the Defendants are financially responsible for notifying all Class Members about the defective nature of the Defective Vehicles;

D. an order enjoining Defendants to desist from further deceptive distribution, sales, and lease practices with respect to the Defective Vehicles, and directing Defendants to permanently, expeditiously, and completely repair the Defective Vehicles to eliminate the defective airbags;

E. an award to Plaintiffs and Class Members of compensatory, exemplary, and statutory penalties, damages, including interest, in an amount to be proven at trial;

F. a declaration that the Defendants must disgorge, for the benefit of Plaintiff and Class Members, all or part of the ill-gotten profits it received from the sale or lease of the Defective Vehicles, or make full restitution to Plaintiffs and Class Members;

G. an award of attorneys' fees and costs, as allowed by law;

H. an award of pre-judgment and post-judgment interest, as provided bylaw;

I. leave to amend this Complaint to conform to the evidence produced at trial; and

J. such other relief as may be appropriate under the circumstances.

DEMAND FOR JURY TRIAL

Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, Plaintiffs demand a jury trial as to all issues triable by a jury.

Respectfully submitted,

DATED: November 5, 2014

BERGER & MONTAGUE, P.C.

By /s/Sherrie R. Savett
Sherrie R. Savett (PA Bar No. 17646)
Russell D. Paul (PA Bar No. 71220)
Eric Lechtzin (PA Bar No. 62096)
1622 Locust Street
Philadelphia, PA 19103
Telephone: 215-875-3000
Facsimile: 215-875-4613
E-mail: ssavett@bm.net
E-mail: rpaul@bm.net
E-mail: elechtzin@bm.net

Kal6887023