

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

Dr. David Yu & Chu-hua Kang,	:	Civil Action No.:
Individually and on behalf of	:	
all others similarly situated,	:	
	:	
Plaintiffs,	:	
	:	
v.	:	
	:	
Lexus of Englewood, Lexus	:	COMPLAINT AND JURY DEMAND
U.S.A.; Toyota Motor Sales	:	
U.S.A., Inc.; Toyota North	:	
America, Inc.; Toyota Motor	:	
Corporation; ABC Entities	:	
1-20,	:	
	:	
Defendants	:	

David Yu and Chu-hua Kang, residing in Edgewater, New Jersey, individually and on behalf of all others similarly situated, by way of Complaint against the defendants, Lexus of Englewood, Lexus U.S.A., Toyota Motor Sales, U.S.A., Inc., Toyota North America, Inc., Toyota Motor Corporation, and ABC Entities 1-20 (collectively "Defendants") say:

FACTUAL OVERVIEW

1. Between 2006 and the present, Plaintiffs and the Plaintiff Class (as defined below) purchased or leased the Class Vehicles, defined as including, but not limited to: Lexus, and all other Toyota models that have defective HVAC evaporators.

2. Upon information and belief, the HVAC evaporator is present in the Class Vehicles to stop mold and mildew from forming in the air ventilation system. The evaporators utilized a coating consisting of aluminum hydroxide.

3. Due to corrosion, the aluminum hydroxide coating in the HVAC evaporators began to peel off and was emitted into the cabins of the Class of Vehicles through the vehicles' ventilation system as a white particulate.

4. The Class Vehicles were negligently designed and/or manufactured by Defendants because the Class Vehicles have defective HVAC evaporators. The Class Vehicles were designed and/or manufactured in such a way as to allow the HVAC evaporators to be defective and/or damaged and contain other defects as may appear during the course of discovery. Specifically, the Class Vehicles' defects allow and allowed the aluminum hydroxide coating in the HVAC evaporators to peel off and to be emitted into the Class Vehicles' cabins as a white particulate through the air ventilation system causing extensive property damage to the vehicles, as well as respiratory and related medical problems for passengers who inhaled the aluminum hydroxide particulate.

5. If the Plaintiffs and the members of the Plaintiff Class had known about the above-described defect(s) at the time of sale or lease, Plaintiffs would not have purchased or leased the Class Vehicles, or would have demanded that the price or cost be reduced.

6. The Class Vehicles, containing these common design and/or manufacturing defect(s), violates Lexus and Toyota internal standards for vehicle design and manufacture. The Class Vehicles, containing this common design and/or manufacturing defect(s), also violate accepted engineering and/or automobile industry principles, standards, and guidelines.

JURISDICTION AND VENUE

7. The United States District Court for the District of New Jersey has jurisdiction over the subject matter of this action pursuant to; (a) the Class Action Fairness Act of 2005, 28 U.S.C. §1332; (b) diversity jurisdiction pursuant to 28 U.S.C. §1332(d)(2); and (c) supplemental jurisdiction pursuant to 28 U.S.C. § 1367.

8. While Plaintiffs are citizens of New Jersey, many other members of the Plaintiff Class are citizens of states different than that of one or more defendants and the matter in controversy exceeds the sum of \$5,000,000.00, exclusive of interest and costs.

9. In addition, venue is proper in this District pursuant to 28 U.S.C. §1391(b) because defendants transact business in this District, are subject to personal jurisdiction in this District, and many of the transactions alleged herein occurred in this District.

THE PARTIES

10. Plaintiffs Dr. David Yu and Chu-hua Kang are citizens of the State of New Jersey and reside in the town of Edgewater, County of Bergen, and State of New Jersey. In or around 2007 David Yu purchased a 2007 Lexus RX 350.

11. Upon information and belief, Defendant Lexus of Englewood sells and leases cars and trucks under the brand name "Lexus", sells and leases Lexus RX 350's and other Lexus vehicles with the defect described above, and operates under the laws of New Jersey with a principal place of business located at 53-59 Engle Street, Englewood, New Jersey, 07631. In 2007, Plaintiffs leased a 2007 Lexus RX 350 from Lexus of Englewood.

12. Upon information and belief, Lexus U.S.A. ("Lexus") is a wholly owned subsidiary of Toyota Motor Sales, U.S.A., Inc., which is a California corporation with offices in Torrance, California, but which does business through its agents and representatives across the United States. Lexus operates and conducts business throughout the United States, and specifically Bergen County, New Jersey. Lexus's mailing address is P.O. Box 2991-Mail Drop L202, Torrance, California. Lexus has authorized agents in every state who sell defective vehicles.

13. Lexus has placed defective vehicles in the stream of commerce. The acts upon which this action is based occurred in this jurisdiction, and nationwide, where Lexus's agents sold and

leased thousands of defective vehicles in violation of express and implied warranties. Defendant Lexus sells and leases its new passenger cars and trucks, as well as many of its used automobiles, through dealers across the United States.

14. Upon information and belief, in promoting, selling, and repairing its defective vehicles, Lexus acts through numerous authorized dealers who act, and represent themselves to the public, as exclusive Lexus representatives and agents. That the dealers act as Lexus's agents is demonstrated by the fact that: the warranties provided by Lexus for the defective vehicles expressly direct consumers to take their vehicles to authorized dealerships for repairs and or services, (2) Lexus dictates the nature and terms of the purchase contracts entered into between its authorized dealers and consumers, (3) Lexus directs its authorized dealers as to the manner in which they can respond to complaints and inquiries concerning defective vehicles, and (4) Lexus has entered into agreements and understandings with its authorized dealers pursuant to which it authorizes and exercises substantial control over the operations of its dealers and the dealers' interaction with the public.

15. Upon information and belief, Toyota Motor Sales U.S.A., Inc. ("TMSUSA") is a California corporation, with offices in Torrance, California. TMSUSA operates and conducts business throughout the United States and specifically in Bergen

County, New Jersey. TMSUSA's principal place of business is 19001 South Western Ave., Torrance, California, 90501, and its Eastern Regional Office located at 205 Jefferson Road, Parsippany-Troy Hills, New Jersey, 07054. TMSUSA owns Defendant Lexus. TMSUSA has authorized agents in every state who sell their defective vehicles. TMSUSA is an automobile design, manufacturing, distribution, and servicing corporation which designs, manufactures, distributes, markets, services, repairs, sells and leases passenger vehicles, including the Class Vehicles, nationwide. TMSUSA has leased and sold thousands of defective vehicles in violation of express and implied warranties in this jurisdiction and across the United States.

16. Upon information and belief, defendant Toyota North America, Inc. ("TNA"), is an automobile design, manufacturing, sale, leasing, distribution, and servicing corporation doing business in all fifty states in the United States, with their principal place of business located at 9 West 57th Street, Suite 4900, New York, New York, 10019, which designs, manufactures, distributes, markets, services, repairs, sells and leases passenger vehicles, including the Class Vehicles, nationwide. TNA is the holding company in the United States of Lexus and TMSUSA, and all other Toyota entities in the United States.

17. Upon information and belief, Toyota Motor Corporation ("Toyota"), 1, Toyota-cho, Toyota City, Aichi Prefecture 471-

8571, Japan, is an automobile design, manufacturing, sale, leasing, distribution, and servicing corporation organized under the laws of Japan and doing business in all fifty states in the United States. Toyota Motor Corporation is the parent company of Lexus, TMSUSA and TNA. These defendants design, manufacture, distribute, market, service, repair, sell and lease passenger vehicles, including the Class Vehicles, nationwide.

18. The "Plaintiff Class" is defined as and consists of:

All individuals who purchased or leased a Lexus RX 350, and any other Lexus or Toyota models ("Class Vehicles") with the same or similar defect(s) to the HVAC evaporator described herein, from 2006 through the present.

SPECIFIC FACTUAL ALLEGATIONS AS TO PLAINTIFF YU

19. Plaintiffs repeat and restate the foregoing allegations as if set forth at length herein.

20. In or about 2007, Plaintiff David Yu leased a 2007 Lexus RX 350 automobile designed, manufactured and sold by Defendants. This vehicle was new at the time of the purchase.

21. At the time of sale, Yu's vehicle, as with the Class Vehicles of all the class members, contained an HVAC evaporator that failed to conform to Lexus's warranty. Thereafter, in October, 2009, Yu first noticed a white particulate was emitted into the cabin of the vehicle whenever the air conditioning or heat was turned on.

22. In or around December 17, 2009, Yu brought his vehicle in for service at Lexus of Englewood to fix the problem that was causing the white particulate to be emitted into the cabin of his vehicle.

23. At that time, Yu was told that other vehicles were experiencing the same problem, and that Lexus had conducted its own study of the white particulate and had determined that it posed no harm to the vehicles' occupants. Yu was later informed that the HVAC evaporator in his vehicle was causing the white particulate to be emitted, that the HVAC evaporator in his vehicle had been replaced, and that the white particulate would no longer be emitted into the cabin of his vehicle.

24. Subsequent to the replacement of his car's HVAC evaporator, Yu continued to notice that the white particulate was emitted into the vehicle's cabin.

25. On or about December 28, 2009, Yu contacted Lexus again and requested that Lexus replace the new HVAC evaporator, or otherwise fix his vehicle so that the white particulate would no longer be emitted into the cabin of his vehicle. Lexus refused to replace the HVAC evaporator and the problem persisted.

26. On March 25, 2010, Lexus sent out a letter that stated in part: "Due to unexpected corrosion of HVAC evaporators, some owners of Lexus vehicles may experience aluminum hydroxide emitting from the ventilation system. Aluminum hydroxide is

widely used in digestive medicines as antacid. Our understanding is that aluminum is not accumulated in the human body so that aluminum excess intake does not produce any harmful effects on the body." The letter further stated that: "Aluminum hydroxide is widely used in digestive medicines as antacid. Our understanding is that aluminum is not accumulated in the human body so that aluminum excess intake does not produce any harmful effects on the body."

27. As a proximate result of the aforesaid negligence, Yu's vehicle sustained severe damage which has resulted in a greatly diminished loss of value.

28. Furthermore, as a proximate result of the aforesaid negligence which allowed the white particulate to be emitted into the vehicle's cabin and inhaled by the vehicle's occupants, Yu suffered severe and permanent injuries, pain and suffering, emotional anguish, loss of enjoyment of life, disability, and economic damages.

SPECIFIC FACTUAL ALLEGATIONS AS TO PLAINTIFF KANG

29. At all relevant times, Chu-hua Kang was the lawful wife of David Yu.

30. On numerous occasions from 2007 to the present, Kang either drove the aforementioned vehicle with the air conditioning or heat on, or was a passenger in the vehicle when the air conditioning or heat was being used.

31. Beginning in or around May, 2009, Kang began to suffer from dry and sore throat, tightness and dryness of the chest, and chest pain.

32. These symptoms continued and became exacerbated whenever Kang was in the vehicle and the air conditioning or heat was used.

33. On or around October 17, 2009, after being in the vehicle with the air conditioning on, Kang suffered from tightness in her chest, was unable to breathe, and went to the emergency room at Englewood Hospital.

34. On October 21, 2009, a laryngoscopy was performed and revealed swollen arytenoids. A second laryngoscopy was performed on December 14, 2009, which revealed swelling of the arytenoids bilateral and swelling of the posterior upper esophageal inlet.

35. As a proximate result of the aforesaid negligence which allowed the white particulate to be emitted into the vehicle's cabin and inhaled by the vehicle's occupants, Kang suffered and will continue to suffer severe and permanent injuries, pain and suffering, emotional anguish, loss of enjoyment of life, disability, and economic damages.

REASONS FOR CERTIFICATION

36. Numerosity. This action is brought by Plaintiffs and all other persons similarly situated whose joinder in this action is impracticable because the class is so numerous. Defendants have sold hundreds of thousands of Class Vehicles in the United

States, a substantial portion of those occurring in New Jersey. Class members therefore number in the thousands, and are far too numerous to be individually joined in this lawsuit.

37. Common Questions of Law and Fact. There are questions of law or fact common to the members of the class that predominate over questions of law or fact affecting only individual members. The questions of law or fact common to all members include but are not limited to:

(a) Whether the Class Vehicles contain a defective HVAC evaporator;

(b) Whether Defendants have failed to properly service, repair, correct or address the alleged defect(s) and provide consumers with a non-defective vehicle;

(c) Whether Defendants have breached their warranty due to the existence of the alleged defect(s);

(d) Whether Plaintiffs and the Plaintiff Class are entitled to revoke acceptance and/or rescind its contracts of sale and/or lease, as appropriate;

(e) Whether Defendants have concealed and/or misrepresented information concerning the defect(s) inherent in the HVAC evaporators of the Class Vehicles;

(f) Whether the Class Vehicles' HVAC evaporators are inherently defective and not of merchantable quality;

(g) Whether the Plaintiffs and the Plaintiff Class, as a result of Defendants' breach and misconduct, are entitled to injunctive relief and other relief, and the amount of such relief.

38. Typicality. The claims of the Plaintiffs are substantially similar to the claims of the entire class and are typical of the claims of the class.

39. Adequacy of Representation. Plaintiffs will fairly and adequately protect the interests of the class. They have retained attorneys experienced in the prosecution of complex civil litigation in general, and class actions in particular.

40. Superiority. The maintenance of this action as a class action is superior to all other available methods of adjudication in achieving a fair and efficient adjudication of the controversy in this matter because:

(a) The prosecution of separate actions by individual members of the class would create a risk of inconsistent or varying adjudications with respect to individual members of the class;

(b) The action is manageable as a class action because notice of the pendency of this action can readily be furnished to all prospective members of the class because their identities are known to Defendants;

(c) In view of the complexity of the issues and the expense of litigation, the separate claims of the individual class members are insufficient in amount to support the prosecution of separate actions because such members would lack the economic incentive to prosecute such actions;

(d) It is probable that the amount that may be recovered by individual class members as a group will be large enough in relation to the expense and effort of administering the action to justify a class action;

(e) The class members have a common and undivided interest to ensure that owners and lessees of Class Vehicles will be compensated for the costly repairs to their vehicles as well as the consequent depreciation and diminution in the value of their vehicles and that Defendants do not continue to economically damage and defraud consumers through unscrupulous and unconscionable business practices.

THE CLAIMS OF THE PLAINTIFF AND THE CLASS

FIRST COUNT

(Breach of Express Warranty)

41. Plaintiffs repeat and restate the foregoing allegations as if set forth at length herein.

42. At all relevant times, Defendants have continuously designed, manufactured, distributed, marketed, sold and leased the Class Vehicles and warranted that each vehicle was free of defects.

Moreover, Defendants expressly warranted to the general public and to Plaintiffs and Plaintiff Class that the Class Vehicles were safe and properly designed and manufactured. Defendants expressly warranted that these vehicles were safe to use for ordinary and, expected uses for a passenger vehicle. Defendants warranted to the general public and to Plaintiffs and Plaintiff Class that the construction, design and manufacture of the Class Vehicles were appropriate and safe.

43. Despite Defendants' express warranties, however, the Class Vehicles were sold or leased to Plaintiffs and members of the Plaintiff Class in a defective condition in that each Class Vehicle contained a defective HVAC evaporator that over time caused the evaporator's aluminum hydroxide coating to peel off and enter the class vehicles' cabins as a white particulate and to be inhaled by the vehicles' passengers.

44. Unbeknownst to Plaintiffs and members of the Plaintiff Class at the time they purchased or leased the Class Vehicles, Defendants designed and sold vehicles that were defective in workmanship, material and manufacturing.

45. By reason of the foregoing, Defendants have breached their express warranties to Plaintiffs and members of the Plaintiff Class and is liable to Plaintiffs and members of the Plaintiff Class for such breach.

46. Defendants knew of the aforesaid defects - as evidenced by the aforementioned March 25, 2010 letter issued by Lexus, as well as comments posted by owners of Lexus and other Toyota vehicles Lexus website bulletin boards as early as 2006 - and continue to have knowledge of the defect(s) and breach of its express warranty, yet have intentionally failed to notify Plaintiffs and members of the Plaintiff Class in a timely manner, and has failed to inform Plaintiffs and members of the Plaintiff class of the potential dangers of inhaling the aluminum hydroxide emitted by Plaintiffs' vehicles.

47. This intended failure to disclose known defect(s) in the class of vehicles as well as the potential danger of inhaling aluminum hydroxide is malicious, and with willful and wanton disregard of the rights and economic interests of Plaintiffs and members of the Plaintiff Class.

48. As a result of the Defendants' actions, Plaintiffs and members of the Plaintiff Class have suffered economic damages including but not limited to costly repairs, loss of use of the vehicles, substantial loss in value and resale value of the vehicles, as well as medical illness, and other damage.

WHEREFORE, Plaintiffs and members of the Plaintiff Class demand judgment against the Defendants for compensatory damages, punitive damages, attorneys' fees, interest, costs of suit, and such other relief as the Court deems equitable and just.

SECOND COUNT
(Breach Of Implied Warranty)

49. Plaintiffs repeat and restate the foregoing allegations as if set forth at length herein.

50. The purchase or lease of the Class Vehicles by Plaintiffs and members of the Plaintiff Class with defective HVAC evaporators from Defendants' authorized dealers and agents is governed by the warranty provision of the Uniform Commercial Code ("UCC").

51. The UCC has been adopted in every state in the United States of America.

52. Defendants are "merchants" as defined by the UCC.

53. The Class Vehicles are "goods" as defined by the UCC.

54. Defendants' express warranty does not and cannot exclude the Uniform Commercial Code's implied warranty of merchantability.

55. Plaintiffs and members of the Plaintiff Class are provided with an implied warranty of merchantability by the UCC.

56. Pursuant to the provisions of the UCC, the Class Vehicles are not "merchantable" because their defective condition does not pass without objection in the trade.

57. The Class Vehicles, at the time they left Defendants' control, had defect(s) which over time caused the aluminum hydroxide coating to peel off the vehicles' HVAC evaporators and enter the Class Vehicles' cabins as a white particulate causing damage to the

vehicles, and to be breathed in by the class vehicles' occupants.

58. Defendants knew and continue to have knowledge of the defect(s) and breach of their warranty, yet have intentionally failed to notify Plaintiffs and members of the Plaintiff Class.

59. This intended failure to disclose known defect(s) is malicious, and with willful and wanton disregard of the rights and economic interests of Plaintiffs and members of the Plaintiff Class.

60. As a result of the Defendants' actions, Plaintiffs and members of the Plaintiff Class have suffered economic damages including but not limited to costly repairs, loss of use of the vehicles, substantial loss in value and resale value of the vehicles, as well as medical illness, and other damage.

WHEREFORE, Plaintiffs and members of the Plaintiff Class demand judgment against the defendants for, compensatory damages, punitive damages, attorneys fees, interest, costs of suit; and such other relief as the Court deems equitable and just.

THIRD COUNT

(Improper Repair and Breach of Warranty)

61. Plaintiffs repeat and restate the foregoing allegations as if set forth at length herein.

62. Defendants had a duty, both in tort and warranty, to properly repair the defect(s) in the Class Vehicles at defendants' sole and exclusive expense.

63. Defendants also had a duty, both in tort and under warranty, to properly repair all damage resulting to other components and parts of the Class Vehicles, as a result of the defect(s) in the Class Vehicles at Defendants' sole and exclusive expense.

64. Defendants breached their duty and its warranties by failing to properly repair the aforesaid defect(s) and resulting damage in all Class Vehicles, and to do so at Defendants' sole and exclusive expense.

65. As a result of the Defendants' actions, Plaintiffs and members of the Plaintiff Class have suffered economic damages including but not limited to costly repairs, loss of use of the vehicles, substantial loss in value and resale value of the vehicles, as well as medical illness, and other damage.

66. Defendants' breaches of its duties and its warranty, as aforesaid, were intentional, malicious, and with willful and wanton disregard of the rights and economic interests of the Plaintiffs and members of the Plaintiff Class.

WHEREFORE, Plaintiffs and members of the Plaintiff Class demand judgment against the defendants for compensatory damages, punitive damages, attorneys' fees, interest, costs of suit, and such other relief as the Court deems equitable and just.

FOURTH COUNT

(Breach of Duty of Good Faith and Fair Dealing)

67. Plaintiffs repeat and restate the foregoing allegations as if set forth at length herein.

68. Each contract of sale and lease agreement entered by Plaintiffs and members of the Plaintiff Class for the purchase and lease of the Class Vehicles contains an implied term requiring Defendants to adhere to a duty of good faith and fair dealing.

69. Defendants have breached their duty of good faith and fair dealing by, among other things, failing to notify Plaintiffs and members of the Plaintiff Class of the defect(s) in the Class Vehicles, and failing to fully and properly repair the defect(s) and resulting damage to the Class Vehicles, at no expense to Plaintiffs and members of the Plaintiff Class.

70. Defendants' breach of their implied duty of good faith and fair dealing is intentional, malicious, and with willful and wanton disregard of the rights and interests of Plaintiffs and members of the Plaintiff Class.

71. As a direct and proximate result of Defendants' breach of its implied duty of good faith and fair dealing, Plaintiffs and members of the Plaintiff Class have suffered damages including but not limited to costly repairs, loss of use of the vehicles, substantial loss in value and resale value of the

vehicles, as well as medical illness and other damages.

WHEREFORE, Plaintiffs and members of the Plaintiff Class demand judgment against the defendants for compensatory damages, punitive damages, attorneys' fees, interest, costs of suit, and such other relief as the court deems equitable and just.

FIFTH COUNT
(Negligent Misrepresentation)

72. Plaintiffs repeat and restate the foregoing allegations as if set forth at length herein.

73. Defendants negligently failed to disclose defect(s) and continuously made negligent misrepresentations regarding defect(s) in the Class Vehicles to Plaintiffs and members of the Plaintiff Class during the sale, lease, maintenance, and servicing of said vehicles.

74. Defendants negligently advised the Plaintiffs and members of the Plaintiff Class that certain maintenance and servicing was the only maintenance and servicing necessary and appropriate to properly maintain the Class Vehicles.

75. Plaintiffs and members of the Plaintiff Class justifiably relied on Defendants' representations to their detriment, and as a result, suffered damages.

76. By virtue of the foregoing, Defendants have committed negligent misrepresentation.

WHEREFORE, Plaintiffs and members of the Plaintiff Class demand judgment against the defendants for compensatory damages, interest, costs of suit, attorney's fees, and such other relief as the court deems equitable and just.

SIXTH COUNT
(Statutory Consumer Fraud)

77. Plaintiffs repeat and restate the foregoing allegations as if set forth at length herein.

78. The advertisement, promotion, distribution, supply, sale, and lease of the Class Vehicles is a "sale or advertisement" of "merchandise" governed by the New Jersey Consumer Fraud Act, N.J.S.A. 56:8-1 et seq., and implicated and governed by the applicable Consumer Fraud Acts, however titled or described, of every State in the United States of America.

79. By advertising, promoting, distributing, supplying, selling and leasing the Class Vehicles, when Defendants knew or should have known that each of the Class Vehicles' HVAC evaporators were or could be defective, Defendants engaged in an unconscionable commercial practice, deception, fraud, false pretense, false promise, misrepresentation, or the knowing concealment, suppression, or omission of material facts with the intent that others rely upon such concealment, suppression, or omission, in violation of the New Jersey Consumer Fraud Act,

N.J.S.A. 56:8-1 et seq., and the applicable Consumer Fraud Acts, however titled or described, of every State in the United States of America.

80. As a direct and proximate result of Defendants' aforesaid Consumer Fraud violations, Plaintiffs and members of the Plaintiff Class have suffered ascertainable losses.

WHEREFORE, Plaintiffs and members of the Plaintiff Class demand judgment against the defendants for compensatory damages, treble damages, attorneys' fees, interest, costs and such other relief as the Court deems equitable and just.

SEVENTH COUNT
(Unjust Enrichment)

81. Plaintiffs repeat and restate the foregoing allegations as if set forth at length herein.

82. As a direct and proximate result of Defendants' failure to disclose known defect(s) and material misrepresentations regarding known defect(s) in the Class Vehicles, Defendants have profited through the sale and lease of said vehicles.

83. Additionally, as a direct and proximate result of Defendants' failure to disclose known defect(s) and material misrepresentations regarding known defect(s) in the Class Vehicles, Plaintiffs and members of the Plaintiff Class have incurred substantial costs to repair the defect(s) and therefore

have conferred an unjust substantial benefit upon Defendants.

84. Moreover, as a direct and proximate result of Defendants' failure to disclose known defect(s) and material misrepresentations regarding known defect(s) in the Class Vehicles, Defendants have profited to the extent that Plaintiffs and members of the Plaintiff Class purchased certified Lexus and/or Toyota parts to repair the defect(s) and/or serviced Class Vehicles at authorized Lexus and/or Toyota dealerships to repair the defect(s).

85. Defendants have therefore been unjustly enriched due to the known defect(s) in the Class Vehicles through the use of funds that earned interest or otherwise added to Defendants' profits when said money should have remained with Plaintiffs and members of the Plaintiff Class.

86. As a result of the Defendants' unjust enrichment, Plaintiffs and members of the Plaintiff Class have suffered damages.

WHEREFORE, Plaintiffs and members of the Plaintiff Class demand judgment against the defendants for compensatory damages, interest, costs of suit, attorney's fees, and such other relief as the Court deems equitable and just.

EIGHTH COUNT
(Common Law Fraud)

87. Plaintiffs repeat and restate the foregoing allegations as if set forth at length herein.

88. Defendants, by and through the continuous misrepresentations and/or omissions falsely represented to Plaintiffs and members of the Plaintiff Class during the sale, lease, maintenance, and servicing, that the Class Vehicles were free of defects. In addition, Defendants made these continuous misrepresentations and/or omissions knowing that they were false and/or misleading.

89. Defendants falsely told the Plaintiffs and members of the Plaintiff Class that the white particulate emitted into the class vehicles' cabins was residue that would remain in the ventilation system, not subject to Defendants' obligations, despite knowing that the white particulate was due to the aforesaid defects.

90. Plaintiffs and members of the Plaintiff Class relied on these representations to their detriment as intended by Defendants and, as a result, suffered damages.

91. By virtue of the foregoing, Defendants have committed fraud.

WHEREFORE, Plaintiffs and members of the Plaintiff Class demand judgment against the defendants for compensatory damages,

punitive damages, interest, costs of suit, attorney's fees, such other relief as the Court deems equitable and just.

NINTH COUNT
(Fictitious Parties)

92. Plaintiffs repeat and restate the foregoing allegations as if set forth at length herein.

93. At all times relevant, ABC Entities 1-20 are companies, corporations, or other entities that are or may be liable for the aforesaid wrongdoing and damages.

94. ABC Entities 1-20 have not been identified.

WHEREFORE, Plaintiffs and members of the Plaintiff Class demand judgment against the defendants for injunctive relief, compensatory damages, punitive damages, interest, attorney's fees, costs of suit, and such other relief as the court deems equitable and just.

DEMAND FOR JURY TRIAL

Plaintiffs hereby demand a trial by jury on all claims and issues so triable.

NAGEL RICE, LLP
Attorneys for Plaintiffs

By: s/ Bruce H. Nagel

Dated: October 14, 2011

BRUCE H. NAGEL

LOCAL CIVIL RULE 11.2 CERTIFICATION

I hereby certify that to the best of my knowledge the matter in controversy is not the subject of any other action pending in any court or of any pending arbitration or administrative proceeding.

NAGEL RICE, LLP
Attorneys for Plaintiffs

By: s/ Bruce H. Nagel

BRUCE H. NAGEL

Dated: October 14, 2011