FIRST CAUSE OF ACTION

(Breach of the Implied Warranty of Merchantability,

Tex. Bus. & Comm. Code § 2.313)

(Against all Defendants)

40. Plaintiffs incorporate by reference and reallege all paragraphs previously alleged herein.

41. At all times herein mentioned, Defendants impliedly warranted that Toyota and Lexus vehicles equipped with ETCS-i and/or ETC were not unreasonably dangerous and were safe when used as designed by Defendants.

42. Defendants breached their implied warranty and the product was not safe for its expected use and was not merchantable.

43. As a legal result of said breach of the implied warranties, plaintiffs and the members of the Texas Class have been damaged in an amount to be proven at trial. However, Plaintiffs, individually and as representatives of the class have damages each in excess of $75,000.00, including damages for the value of vehicle, loss of use, mental anguish, attorneys' fees, and punitive damages.

SECOND CAUSE OF ACTION

(Breach of the Implied Warranty of Fitness for a Particular purpose by

Tex. Bus. & Comm. Code §2.315)

(Against all Defendants)

44. Plaintiffs incorporate by reference and reallege all paragraphs previously alleged herein.

45. The Toyota Defendants are a leader in the business of designing and manufacturing motor vehicles for many decades and for more than l0 years have sold

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