59. As alleged above, Defendants actually knew or should have known of and intentionally concealed the defective nature of the subject vehicles from Plaintiffs. Defendants failed to warn Plaintiffs about the common defect in the vehicles.

60. Defendants were on notice of the common defect in the subject vehicles, which Defendants are unable and/or have refused to repair, replace, and/or adjust.

61. As a direct and proximate result of Defendants' breach of the implied warranty of merchantability, Plaintiffs have suffered actual damages in the form of substantial diminution in the fair market value of their subject vehicles. The diminution in fair market value would not have occurred but for the inherent defect in the vehicles.

62. Plaintiffs demand judgment against Defendants for compensatory damages in an amount to be determined at trial, together with reasonable attorneys' fees.

COUNT 3 – VIOLATION OF THE MAGNUSON-MOSS WARRANTY ACT

63. Each preceding paragraph is realleged and incorporated in full as though fully set forth herein.

64. Members of Plaintiff Subclass One, including representatives of the Subclass, are "consumers" as defined by 15 U.S.C. § 2301(3).

65. Defendants are "supplier[s]," "warrantor[s]," and "service contractor[s]" as defined by 15 U.S.C. §§ 2301(4), 2301(5), and 2301(8), respectively.

66. The Toyota, Lexus, and Scion vehicles equipped with ETCS-i, but without BPS installed, which were purchased by members of Plaintiff Subclass One and Subclass representatives, are "consumer products" as defined by 15 U.S.C. § 2301(1).

67. The Magnuson-Moss Warranty Act provides: "a consumer who is damaged by the failure of a supplier, warrantor, or service contractor to comply with any obligation under this