COUNT I

BREACH OF EXPRESS WARRANTY

41. Plaintiff incorporates the foregoing paragraphs as though fully set forth at length herein.

42. Defendants expressly warranted and represented that Toyota automotive vehicles were merchantable and fit for use for particular purposes at the time of the purchase and sale. These warranties became part of the basis of the bargain and Plaintiff and the Proposed Classes' Members did rely on the express warranties of Defendants.

43. Defendants' malfunctioning and/or defective automobiles were unfit for the particular purposes for which they were manufactured, marketed and/or sold at the time of purchase and sale. Such automobiles did not conform to Defendants' express warranties and representations.

44. As a direct and proximate result of Defendants' breach of the express warranty of fitness for a particular purpose, of which Defendants were or should have been aware, Plaintiff and the Proposed Classes have been damaged, estimated at more than $5,000,000, as a result of the diminished value of the Defendants' products, the products' malfunctioning and the non use of their vehicles.

45. Plaintiff and the Classes' Members are entitled to damages, including the diminished value of their automobiles and non use of the vehicles pending successful repair as a result of the defective accelerator pedals and brakes that are affected by the instant safety recall, in addition to any costs associated with purchasing safer vehicles, incidental and consequential damages, and all other damages allowable under law, including such further relief as the Court deems just and proper.

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