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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF ORANGE

ROGER HOGAN, an individual, HOGAN SRK, INC., (d/b/a CAPISTRANO TOYOTA/SCION), a California corporation, and R&C MOTOR CORPORATION (d/b/a CLAREMONT TOYOTA), a California corporation, Plaintiffs, v. TOYOTA MOTOR SALES, U.S.A., INC., a California corporation, Defendant.	**CASE NO.** **COMPLAINT FOR:** **(1) FRAUD BY CONCEALMENT;** **(2) BREACH OF THE IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING.** **<u>DEMAND FOR JURY</u>**

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Plaintiffs ROGER HOGAN ("Hogan"), HOGAN SRK, INC. (d/b/a CAPISTRANO TOYOTA/SCION) and R&C MOTOR CORPORATION (d/b/a CLAREMONT TOYOTA) (collectively, "Plaintiffs") allege in their Complaint against TOYOTA MOTOR SALES, U.S.A. INC. ("Toyota"), as follows:

INTRODUCTION

1. This action is based on Toyota's nefarious scheme to oust one of its most loyal and successful dealers for illegal and improper reasons, to the harm and detriment of the dealer and at great peril to the safety and health of the dealer's and Toyota's customers, *i.e.*, buyers/drivers of Toyota's vehicles.

2. In 2009-2014, Toyota was forced to recall millions of vehicles for safety issues. The defects that led to these recalls (e.g., unintended acceleration caused by "sticky pedals" and/or "floor mat entrapment") were linked to dozens of injuries and deaths, were the subject of Congressional hearings and regulatory enforcement actions against Toyota, and led to a number of class-action lawsuits and a criminal charge of wire fraud against Toyota and a $1.2 billion fine by the U.S. Department of Justice. Toyota concealed its unintended acceleration issues from the public and from the government for years. The recalls severely tarnished Toyota's reputation and cost it billions of dollars.

3. For a long time, many Toyota customers did not even know their cars had serious safety defects because Toyota hid them from the public and regulators. Even when Toyota finally issued some safety recalls, many customers did not know their cars had open safety recalls. Toyota sent only one recall notice, and the antiquated system Toyota put in place for its dealers made it difficult, if not impossible, for dealers to identify open recalls. To save money and preserve its bottom line, Toyota concealed the safety hazards and was not repairing thousands of recalled vehicles with grave safety concerns, greatly jeopardizing customer safety.

4. Plaintiff Roger Hogan, a self-made businessman with 40 years of auto industry experience, came up with a solution. He created a technology that enabled Toyota dealers to identify customers with uncompleted recalls and send them letters directly offering a fix. Hogan implemented the technology at his two dealerships, Claremont Toyota and Capistrano Toyota (the

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"Dealerships"), and he sold it to other Toyota dealers.

5. The program, known as Autovation, was wildly successful. The Dealerships and other Toyota dealers using Autovation were able to identify and notify thousands of customers with open recalls who otherwise would have been missed. This generated significant recall repair work for Toyota dealerships and made Toyota vehicles safer to drive.

6. It also meant that Toyota dealerships brought in new customers who were previously being serviced at non-dealership facilities. The dealerships were able to fix customers' cars and turn these new customers into additional sales, trade-ins, and service and parts.

7. At the same time Hogan was developing and implementing Autovation, Toyota was trying to keep its unintended acceleration issues under wraps. For years, Toyota covered up the problems and made misleading statements to the public and to the government regarding its unintended acceleration issues; and it did not want Autovation to get in the way of its cover-up.

8. Toyota was required to pay for the additional recall work that Hogan's program was generating. Even though Autovation was helping to identify and fix defective Toyota vehicles, Toyota wanted to end Hogan's program and thereby avoid having to spend millions fixing the recalls.

9. Toyota eventually succeeded. It destroyed Hogan's recall program, leaving Toyota customers in jeopardy and Hogan and other Toyota dealers unable to identify open recalls and service them accordingly.

10. Toyota did not want Hogan's program. So while Hogan was trying to protect Toyota customers and ensure their safety, Toyota was creating a plan to kill Autovation and get rid of Hogan as a dealer. To Toyota, Hogan was a problem and a threat to Toyota's multi-billion dollar profit machine.

11. After Hogan notified Toyota about Autovation's ability to identify open recalls, Toyota decided upon, and commenced, retaliatory acts against Hogan to harm his Dealerships and make them more difficult to operate and less profitable, all to coerce Hogan and squeeze him out:

- Toyota sabotaged the recall program (Autovation), preventing Hogan from making recall fixes and shutting off the Dealerships from the stream of new and repeat customers that the program was generating.

- Toyota instructed Hogan to purchase additional land for his Capistrano Toyota facility (which he did for $2.5 million), only to later deny him the additional vehicles the new land entitled him to.
- Toyota claimed Claremont Toyota was not "sales efficient," but Toyota refused to allocate the cars Claremont Toyota needed to reach Toyota's view of sales efficiency.
- Toyota discriminated against the Dealerships by failing to allocate vehicles fairly and in good faith by, among other things, favoring Hogan's competitors in vehicle allocation through Toyota's secretive "General Manager's Pool."
- Toyota unreasonably refused to approve Hogan's son, Roger Hogan, Jr., as General Manager of Capistrano Toyota. Toyota also unreasonably refused to approve Hogan's son, Stephen Hogan, as an AAO—a manager for multiple Toyota locations.
- Toyota directed its financing arm to change the structure of its loan to Capistrano Toyota from "interest only" to "principal plus interest," tripling Capistrano Toyota's monthly payments and diminishing its value.
- Toyota extended the Capistrano Toyota franchise agreement for two years only and often only for months at a time, contrary to its customary practice, to pressure Hogan.
- Toyota unfairly distributed its best inventory to favored dealers in the region, and not to Hogan's Dealerships.
- Toyota diverted Hogan's customers to competing dealerships.
- Toyota forced Hogan to use its oil company and then failed to maintain the Dealerships' oil supplies, preventing the Dealerships from servicing customers.
- Eventually, Toyota came right out and told Hogan to sell.

12. Toyota told Hogan to create a succession plan, but then Toyota rejected Hogan's sons for ownership and management positions, even though his sons are his succession plan and

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have been managing the Dealerships for years. As part of its plan to force Hogan out, Toyota is seeking to prevent the Hogan family from continuing to own and operate the Dealerships in the future.

13. Hogan had no way of knowing and did not know that his safety concerns and his attempts to improve vehicle safety would lead to his forced ouster. This is not the brand that Hogan has known and been dedicated to for 40 years. Hogan had no way of knowing about, and did not know about, Toyota's scheme to squeeze him out until Toyota told him to sell and denied his succession plan in 2016.

14. Toyota did not want to pay the millions required to fix the safety defects that Hogan's recall program was identifying. Toyota put corporate profits over customer safety. Toyota's conduct not only threatens the safety of drivers, it violates its franchise agreements with Hogan and is contrary to Toyota's own policies relating to its supposed commitment to customer safety.

15. As a result of Toyota's actions, millions of vehicles still have unrepaired recalls, and Hogan and his Dealerships have lost millions in revenue and value due to Toyota's retaliatory actions. Hogan was trying to do the right thing for Toyota drivers. Toyota thwarted Hogan's efforts and is now pushing him out in order to silence and eliminate him.

PARTIES/JURISDICTION/VENUE

16. Plaintiff Roger Hogan ("Hogan") is a resident of Orange County, California. He owns and operates two Toyota dealerships pursuant to franchise agreements entered with Toyota.

17. Hogan SRK, Inc. is a California corporation that owns Hogan's Toyota dealership in San Juan Capistrano, California ("Capistrano Toyota"), in Orange County.

18. R&C Motor Corporation is a California corporation that owns Hogan's Toyota dealership in Claremont, California ("Claremont Toyota"), in Los Angeles County.

19. Defendant Toyota Motor Sales, U.S.A., Inc. ("Toyota") is a California corporation with its principal place of business in Los Angeles County. It engages in sales, marketing and distribution of Toyota and Lexus brand vehicles in the United States.

20. Venue is proper in this Court because the wrongdoing alleged herein occurred, in

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part, in Orange County and because plaintiff Roger Hogan resides in Orange County. Subject matter jurisdiction is proper in this Court because the amount in controversy exceeds the jurisdictional requirement. Personal jurisdiction is also proper because the defendant, Toyota Motor Sales, U.S.A., Inc., is incorporated in and is located in California.

FACTS COMMON TO ALL CAUSES OF ACTION

A. Roger Hogan

21. After starting as a salesman at Toyota of Orange in 1977, Hogan worked his way up in the automotive industry. He became general sales manager of Toyota of Orange. Then in 1985, Hogan became a minority partner at Elmore Toyota, built a new facility and turned around the underperforming dealership.

22. Hogan acquired Toyota of Pomona in 1994 and built it into a flourishing business. In 1997, he bought land by the freeway in Claremont and relocated the Pomona store to the Claremont Auto Center. In 2005, Claremont Toyota was ranked as the Number 3 Toyota dealership in the United States, and Toyota honored Hogan with its "President's Cabinet" award, a recognition achieved by only a handful of Toyota dealers nationwide.

23. Hogan also acquired a Ford dealership in Claremont. In 2006, Hogan sold his Ford dealership so that he could focus on Toyota. Hogan used the 5.25-acre lot the Ford dealership was located on to expand Claremont Toyota. The new facility totaled over 12 acres.

24. In 2008, after more than three decades as a Toyota dealer, Toyota, through its then-Vice President Jeff Bracken, asked Hogan to acquire a Toyota dealership in San Juan Capistrano. Hogan bought Capistrano Toyota for approximately $30 million and immediately improved its performance. Claremont Toyota and Capistrano Toyota are hereafter referred to as the "Dealerships."

25. Over his 40-plus year career with Toyota, Hogan has been very active in Toyota associations and committees. Hogan was on the Toyota Dealers Advertising Association ("TDA") Board of Directors for 17 years and served as the Board's President several times. From 2005 to 2007, he was selected as one of twelve dealers in the country to serve on the Toyota Tundra Steering Committee. Toyota also invited Hogan on an all-expenses-paid trip to Japan and gave

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him the honor of delivering the farewell address to the Japanese host and staff.

26. Hogan grew the Dealerships into a family business, with his three sons working alongside him. Roger Hogan, Jr. is the General Sales Manager at Capistrano Toyota. Stephen Hogan is the General Manager of Claremont Toyota. Kyle Hogan is a manager at Capistrano Toyota. All three of Hogan's sons graduated from the National Automobile Dealers Association (NADA) Academy, an intensive year-long management program.

27. Hogan has earned a reputation for honesty, integrity and leadership in the industry. He and his family and the Dealerships are committed to customer service and safety.

B. <u>Toyota's Safety Recall Crisis</u>

28. As the economy fell into a recession in 2008, the auto industry was hit hard. Toyota saw its sales in the United States plummet; laid off thousands of workers; and drastically cut back vehicle production. In 2009, Toyota reported a loss of $4.8 billion for fiscal year 2008.

29. As the economic crisis (and car sales, in particular) worsened, Toyota was faced with another impending financial disaster—the 2009-2014 safety recall crisis. Despite becoming aware of dangerous defects that caused its vehicles to accelerate unexpectedly, Toyota knowingly concealed the problems, hoping not to be discovered.

30. Former Toyota executive, Irv Miller, finally told other Toyota executives that "the time to hide on this one is over"; and "we are not protecting our customers by keeping this quiet." The defects and accidents relating thereto were widespread and horrific—people were badly injured and lives were lost. Toyota's cover-up was later discovered, and it was charged by the U.S. Department of Justice with the crime of wire fraud under 18 U.S. Code § 1343.

31. The damage to Toyota's brand was severe. Toyota recalled millions of vehicles for serious, life-threatening safety issues. Toyota withdrew millions of cars globally, mainly over problems with sticking accelerator pedals, floor mat entrapment and braking flaws.

32. By 2011, Toyota's worldwide recalls had reached approximately 11 million cars. Over 6 million of these recalled vehicles were in the United States. Regulators linked dozens of deaths to crashes caused by unintended acceleration. Toyota recalls were the subject of Congressional hearings.

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33. The recalls tarnished Toyota's image, costing it billions of dollars in lost sales and repair bills, a reduction in Toyota's credit rating, and leading to a multitude of lawsuits. By mid-2011, more than 90 class-action lawsuits had been filed against Toyota, exposing the company to billions of dollars of liability. Toyota was fined over a billion dollars by the U.S. Department of Justice and additional multi-millions by federal regulators for knowingly hiding dangerous defects, lying to the public and government officials about defects and failing to timely notify regulators as required under federal law.

34. During this time, Hogan was on the Board of the TDA. Amidst the negative publicity, lawsuits and Congressional hearings, a majority of the TDA supported a public relations campaign that would splinter off the dealers from Toyota (the manufacturer). But Hogan refused to do so. He remained loyal to Toyota and convinced the dealer association to not pursue their anti-manufacturer public relations campaign. His loyalty to Toyota was unwavering.

35. In March 2011, Japan was hit by a powerful earthquake followed by a tsunami. Significant damage from the earthquake and tsunami affected Toyota's vehicle production. Toyota was reeling and was desperate to preserve its bottom line.

C. <u>Hogan Presents Toyota With A Breakthrough Solution: Autovation</u>

36. Hogan had a great relationship with Toyota for many years until he became critical of Toyota's failure to address and fix open safety recalls.

37. When a manufacturer recalls a vehicle, that is just the first step. The problem is not solved until the safety issue is actually fixed. Before the creation of Hogan's Autovation, it was often impossible for Toyota owners to know their cars had safety recalls pending, because recall notices were based on DMV registrations. Toyota often could not reach owners of cars whose DMV records were out of date, who had transferred ownership one or more times, and owners who moved out of state or lent their vehicles to relatives or others.

38. Making matters worse, the operating system Toyota used at its dealerships was antiquated and required a manual search to identify open recalls, causing dealerships to miss hundreds of open recall issues each month.

39. Many owners of Toyota vehicles with open safety recall issues were not being

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notified of dangerous defects with their cars. These recall issues were bound to cause accidents and injuries; lives were at stake. Toyota knew many safety recalls were being missed.

40. When a customer leaves a Toyota dealership with a recalled vehicle that has not been fixed, the dealership also could be exposed to legal liability. Hogan saw the significant problems with the system Toyota used to address outstanding safety recalls. Hogan worried that Toyota customers were driving unsafe vehicles and that dealers, like him, would be exposed to liability because of Toyota's antiquated system.

41. In the interest of keeping customers safe, and to protect dealers and the Toyota brand, Hogan developed Autovation, a software technology. Once installed in a dealer's operating system, Autovation automatically cross-referenced a Toyota vehicle's VIN number against the Toyota recall database while it was in the dealership's possession. This process, called the technology's "passive system," easily and immediately identified all open recall issues on a vehicle.

42. The software also had an "active system," which allowed dealers to mail a "safety recall information" letter directly to any customer in their area who owns a Toyota car with an outstanding safety recall. The letter often notified customers of multiple open recalls on their cars. It explained the safety risk to the customer in layman's terms and offered repair at no charge.

43. Hogan implemented the Autovation technology at his Dealerships. The technology revealed an alarming number of missed recalls for cars that came to the Dealerships' service department. For example, the results over the first three months at Capistrano Toyota are below:

- In November 2010, the old operating system identified 222 outstanding safety recalls that needed repair. Hogan's Autovation technology identified an additional 165 vehicles—35 of which involved unintended acceleration issues.
- In December 2010, the old operating system identified 240 outstanding safety recalls that needed repair. Hogan's Autovation technology identified an additional 135 vehicles—31 of which involved unintended acceleration issues.
- By mid-January 2011, the old operating system identified 271 outstanding safety recalls that needed repair. Hogan's Autovation technology identified an additional

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82 vehicles—14 of which involved unintended acceleration issues.

44. The results of Autovation at other Toyota dealerships also demonstrated that many open recalls were being missed. In January 2011, Toyota still faced millions of outstanding recalls. Hogan knew that, without implementation of his technology, the safety of millions of Toyota customers was at risk. Thus, Hogan met with Toyota executives to discuss implementation of his technology across the country.

45. He emailed Bob Daly, Toyota's national customer service manager, regarding the impending safety issues and the breakthrough technology he created to resolve them. Hogan explained that his recall mailer program would not only improve service but would also eliminate or greatly reduce Toyota's and its dealerships' liability exposure. Moreover, it would put Toyota's reputation for its commitment to customer safety back to the position it once enjoyed. Hogan stressed to Daly that lives were at stake and that Toyota has an obligation to do the right thing and take care of its customers.

46. Hogan thereafter presented his Autovation technology to Ellen Farrell, a Toyota attorney, and David VandeLinde, Toyota's Customer Services Operations Manager for the Los Angeles region. Hogan explained that dealerships were missing many open recalls, including for dangerous unintended acceleration, and that Toyota customers who rely on Toyota and its dealers to ensure safety are being let down.

47. Hogan told the Toyota people that he had used Autovation at his Dealerships and compiled data from other Toyota dealers using Autovation to determine the high number of missed recalls. Hogan described how the implementation of Autovation at his Dealerships had successfully resolved hundreds of recalls that would have been missed under the current Toyota system. Hogan told Toyota that the failure of Toyota to address these open recalls was a ticking time bomb.

48. If a dealership serviced a car but missed an open recall due to Toyota's antiquated system, and that customer was subsequently in a car accident due to a vehicle defect that should have been fixed, the dealership and Toyota would be exposed to substantial liability, and Toyota's credibility would be further tarnished. Toyota's and Hogan's reputation (and Hogan's livelihood)

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was in issue.

49. Hogan followed up with Farrell, VandeLinde and other Toyota executives to address these safety issues. Toyota responded that it already had the same technology, which would be released in the first quarter of 2012. This was a lie. To this day, Toyota has not released an "active system" for recall mailers, which would allow dealers to affirmatively notify customers of open recalls.

50. Instead of welcoming Hogan's innovative program, Toyota rejected it and refused to notify customers about unfixed safety recalls. Toyota buried its head in the sand. As a result, nothing changed—recalls continued to be missed, and Toyota drivers and their families continued to be in danger.

51. In 2011, at a District Council meeting attended by Toyota dealers from Orange County and the Inland Empire, VandeLinde told the dealers in attendance that there was no system available to automatically identify Toyota vehicles with uncompleted recall campaigns while such vehicles are in the dealership for other service. This statement was false. Hogan had presented him with his Autovation technology earlier.

52. Hogan later learned that Toyota already had such "passive system" technology for its higher-priced Lexus brand but was not using it for its lower-priced Toyota branded vehicles.

53. The Dealerships used Autovation from 2010 through 2014. In addition to identifying missed recalls and improving customer safety, Autovation also became the Dealerships' best marketing tool. By explaining to car owners the risks associated with their vehicles and offering to fix the safety issues without charge, the Dealerships were able to bring in new customers as well as "orphaned" Toyota customers who had been servicing their cars at non-dealership locations. These customers were much more likely to buy or lease their next car from the Dealerships, and also to service their vehicles at the Dealerships in the future.

54. The Dealerships' best years were when they were using the Autovation technology. The Dealerships' growth in the recall field fueled a corresponding growth in sales, service and parts. The Dealerships' customers were extremely appreciative of the recall mailer and expressed this to Hogan; without it, many of them would not have known their cars were unsafe to drive.

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Hogan's customer retention for service during this period was one of the best in the region.

D. Toyota Defrauds Customers And Congress

55. Around the same time Hogan implemented his Autovation technology, and against the backdrop of intense public scrutiny over the safety of its vehicles, Toyota made misleading statements to consumers and gave inaccurate facts to Congress and regulators about defects that caused unintended sudden-acceleration—sticking gas pedals and floor mats trapping the pedals.

56. Toyota made public statements assuring customers that it had "addressed the root cause of unintended acceleration" in its vehicles through a limited recall of eight models for floor mat entrapment. At the time Toyota made these statements, Toyota knew it had not recalled other models that were equally susceptible to floor mat entrapment.

57. A few weeks before Toyota made these statements, Toyota had also taken steps to hide another type of unintended acceleration from the National Highway Traffic Safety Administration ("NHTSA")—a problem with accelerators getting stuck, known as "sticky pedal." Toyota did not inform regulators of the sticky pedal problem or conduct a recall and, instead, quietly directed the pedal manufacturer to change the pedals in new productions of affected models.

58. In furtherance of its cover-up and efforts to save money, Toyota suspended the pedal design changes and instructed its employees to alert the pedal manufacturer orally—and not in writing—to prevent NHTSA from learning about the sticky pedal problem.

59. In 2014, Toyota was charged criminally for its misleading statements to the public, regulators and Congress. In conjunction with the criminal charge, the Department of Justice ("DOJ") and Toyota entered into a deferred prosecution agreement ("DPA") under which Toyota conceded that it misled regulators and consumers and that it avoided recalling vehicles to fix the problems.

60. The DPA required that Toyota pay a $1.2 billion penalty—the largest fine that had ever been imposed on an automaker in the United States. The DOJ's March 19, 2014 press release announcing the criminal charge and DPA is attached hereto as **Exhibit A**. The DPA is attached hereto as **Exhibit B**. The Statement of Facts filed along with and incorporated into the DPA is

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attached hereto as **Exhibit C**.

61. Toyota had been working furiously to keep the lid on its safety issues and its failure to notify the government and the public about these issues. Toyota was desperate to protect its reputation, and Autovation was getting in the way of its cover-up.

E. <u>Unbeknownst to Hogan, Toyota Plots To Oust Hogan</u>

62. Through the use of Autovation between 2010 and 2014, the Dealerships completed tens of thousands of recall repairs for Toyota vehicles. These repairs cost Toyota millions of dollars for Hogan's Dealerships alone. In addition, Hogan licensed the Autovation "passive system" technology to other Toyota dealers, which cost Toyota millions more to fix safety recalls.

63. Following the recession, the recall crisis and the tsunami in Japan, Toyota's main objective was to preserve and enhance its bottom line—even at the expense of customer safety. Hogan's innovative recall solution had become a thorn in Toyota's side, costing Toyota millions and reducing its profits accordingly.

64. As Hogan confronted Toyota executives about their seeming lack of concern for customer safety, unbeknownst to Hogan, Toyota's senior management initiated a plan to oust Hogan as a franchised dealer. Toyota commenced a series of acts to punish Hogan, harm his business and drive him out; and Toyota continues on with its campaign to this day.

65. After the unintended acceleration recall debacle, Toyota claimed that it was setting a new standard of responsiveness to customers and was going to prioritize customer safety. That was public relations lip service. Hogan presented a technology that was making his customers safer and would have made millions more safer, and Toyota rejected it and then went after Hogan.

F. <u>Toyota Retaliates Against Hogan</u>

(i) Toyota Blocks The Recall Program

66. Toyota took action to block Hogan's recall program. Toyota initially removed the codes from its internal website that made it possible for Autovation to run VIN numbers against open recalls.

67. Toyota also pressured dealers not to use Hogan's program. Hogan met with other Toyota dealers to demonstrate and sell them his Autovation software. Toyota knew about these

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meetings and did not want the software to be disseminated. When one Toyota dealership called Toyota about the recall mailing program, he was told by Toyota not to use it.

68. As for dealers who were already using Autovation, Toyota sent threatening cease-and-desist letters, stating (falsely) that they were violating their franchise agreements and National Highway Traffic Safety Administration (NHTSA) requirements. Toyota directed these dealerships to stop using Autovation.

69. Toyota's threatening letters were a lie. Dealers using Hogan's mailer program were not violating any Toyota policies or NHTSA requirements. In fact, NHTSA does not regulate dealers, only manufacturers like Toyota. Toyota was trying to strong-arm dealers to save money on fixing recalls; and it worked. Dealers refused to use the Autovation program.

70. When Hogan was able to reprogram the software to identify open recalls without the codes listed on Toyota's system, Toyota found another way to block the recall program. In 2014, around the same time Toyota was charged with criminal wire fraud in connection with its falsification and concealment of unintended acceleration, Toyota shut down the Dealerships' user profile on "Dealer Daily," Toyota's website that the Dealerships used to run VIN numbers against open recalls.

71. Toyota claimed the Dealerships had exceeded the number of VIN numbers that could be run on each user profile. Of course, the Dealerships were running a high volume of VIN numbers because they were identifying open safety recalls. Many of these open safety recalls involved unintended acceleration resulting from sticky pedals and floor mat entrapment.

72. Despite knowing that the Dealerships were trying to enhance customer safety, Toyota put an end to it. Toyota actively and purposefully shut down Hogan's ability to run the recall information mailers at his Dealerships. Toyota blocked a program intended to make customers safe.

73. After Toyota's interference with his recall program, Hogan was forced to succumb to Toyota's pressure. This not only left Toyota drivers in jeopardy; it also cost the Dealerships thousands of new customers and tens of millions in revenue.

74. As a result, the Dealerships lost thousands of new customers each year. According

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to Toyota's own figures, a new customer is worth more than $15,000 per year to a Toyota dealership. Therefore, Toyota's blocking of the recall mailing program has cost the Dealerships over $30 million of revenue per year and has caused millions in losses in the Dealerships' value.

75. Today, there are millions of Toyota cars on the road with outstanding safety recall issues that the Dealerships can no longer identify and notify customers about.

76. Toyota has deliberately hidden other safety issues by refusing to issue recalls for life-threatening defects. Hogan's wife, Cathie Hogan, was driving at 60 miles per hour on a major road when the engine in her Toyota Prius suddenly shut off. She lost power to the power steering and the power assist on her brakes. Hogan immediately reported this serious defect to Toyota. Toyota explained that it was aware of this safety issue, which was due to a faulty smart key on certain Prius models.

77. But instead of issuing a safety recall to notify customers of this dangerous defect and fix it, as it should have done, Toyota only sent a "technical service bulletin" to Toyota dealers. Customers are not notified about technical service bulletins; only dealers are notified. And Toyota specifically instructs dealers not to notify customers about technical service bulletins unless a customer comes into the dealership and complains about that condition. Therefore, Toyota customers with this serious defect on their cars were not directly notified of the problem and will obtain the necessary fix only if the defect happens to surface on their cars and they happen to bring their car into a Toyota dealership for service. Toyota misclassified this and other safety hazards as technical service bulletins to avoid fixing recalls. This is the exactly the same type of misleading conduct that Toyota engaged in with the unintended accelerator defects and is another example of Toyota prioritizing its bottom line over the safety of its customers.

78. To this day, Toyota continues to block technology intended to keep its customers safe. Reynolds and Reynolds ("Reynolds"), a company that provides operational software to auto dealers and car manufacturers, including Toyota, recently developed a technology that is similar to Autovation. Reynolds' program allows dealers to identify vehicles in their area with open recalls and send letters to owners of those vehicles. Other manufacturers—Honda, Chevrolet, Cadillac, Buick and others—allow Reynolds to access their master database of VIN numbers and recall

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repair codes so that their dealers can notify customers in their area about outstanding safety recalls. Honda even gives awards to its dealers with the most completed safety recalls.

79. Toyota, on the other hand, has denied Reynolds access to its master database of VIN numbers and recall repair codes, making it impossible for Toyota dealers to notify customers about safety issues. Unlike other manufacturers, Toyota is actively preventing its dealers from fixing open safety recalls.

(ii) Toyota Delays Capistrano Vehicles

80. Toyota's Vehicle Supplemental Support ("VSS") policy provides that, when a dealer adds land to his or her facility, that addition entitles the dealership to a special allocation of additional VSS cars. Once Toyota decided to oust Hogan from the Toyota franchise, Toyota violated its own policy to punish Hogan.

81. Pursuant to the Dealer Agreement, Toyota required that Hogan purchase additional land at Capistrano Toyota. Beginning in 2011, in compliance with Toyota's instructions and in reliance on the promise of additional vehicles under the VSS policy, Hogan spent $2.5 million to add land and make improvements to Capistrano Toyota. The site approval was received in July 2013, which triggered Hogan's right to approximately 300 additional cars.

82. Despite continuous requests from Hogan, Toyota did not provide Capistrano Toyota the additional cars until June 2015—almost two years later; and the cars eventually provided, in large part, were not suited for sale in Capistrano Toyota's particular market.

(iii) Toyota Improperly Refuses To Allocate Cars To Claremont Toyota

83. Claremont Toyota was a top dealer in light truck sales. Claremont Toyota was ranked Number 10 in total sales of Tacomas. Despite this success, Toyota claimed Claremont Toyota did not meet Toyota's standard for what it calls "sales efficiency."

84. In 2014, Toyota pushed Hogan to perform a refurbishment—what Toyota calls an "Image II"—at Claremont Toyota. Hogan complied, spending $3.5 million on a state of the art remodel of the facility.

85. Stephen Hogan, General Manager at Claremont Toyota, asked Douglas Eroh, Toyota's former Assistant General Manager for the Los Angeles region, for more trucks since

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sales were brisk and since Toyota was allocating more trucks to other operators in the area. Toyota refused. For years, Stephen Hogan pleaded for Toyota's support and for additional allocation of trucks to increase Claremont Toyota's "sales efficiency" and enhance revenues. Toyota denied his requests.

86. While hamstringing sales at Claremont Toyota, Toyota criticized Claremont Toyota for its lack of "sales efficiency." When Hogan tried to get additional vehicles—the only way to increase sales efficiency—Toyota refused to allocate them. Toyota itself thus caused the sales inefficiency; and also caused Claremont Toyota to lose other streams of revenue, including service and parts.

87. Hogan asked Toyota for information regarding allocation to other dealers in his region. Toyota refused. Toyota is providing preferred and best-selling cars and light trucks to its favored dealers in close proximity to Hogan's Dealerships (such as John Elway's Crown Toyota, Longo Toyota and Tustin Toyota), to punish Hogan and force him out as a franchisee.

(iv) Toyota Unfairly Rejects Hogan's Sons For Leadership Positions

88. Like their father, Hogan's sons have devoted their careers to the Toyota brand and to the Dealerships; and they have performed successfully as managers of the business. As General Sales Manager of Capistrano Toyota, Roger Hogan, Jr. boosted the dealership's profits and Customer Satisfaction Index ("CSI") and increased sales efficiency by over 35%. Toyota has praised Stephen Hogan's performance as General Manager of Claremont Toyota.

89. But to punish Hogan for developing the recall program, Toyota unreasonably refused to approve Roger Hogan, Jr. as General Manager of Capistrano Toyota. Toyota also refused to approve Stephen Hogan as an AAO—a manager for multiple Toyota locations—because of Claremont Toyota's supposed "sales inefficiency" which was caused by Toyota itself.

90. By rejecting Roger Hogan, Jr. and Stephen Hogan for these positions, Toyota, as part of its efforts to force out Hogan, blocked Hogan's ability for a succession plan at his dealerships.

(v) Toyota Plays Favorites With Its Allocation of Vehicles

91. Toyota's General Manager's Pool ("GMP") is a pool of vehicles that Toyota's

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regional manager skims off the total vehicle allocation for the region and assigns to whomever he or she deems appropriate. Toyota operates the GMP program in its discretion to reward favored dealers and punish those not in favor—like Hogan.

92. To retaliate against Hogan, Toyota systematically gave other dealers in the region—Hogan's competitors—more and better inventory through the GMP. Toyota gave its best products to its favorite dealers, handing them a competitive advantage. Dealers who receive additional GMP inventory have an advantage to maintain higher profit margins and are able to spend less money on advertising to move inventory.

93. Toyota's refusal to fairly distribute vehicles to Hogan and his Dealerships under the GMP has, in turn, affected the Dealerships' sales efficiency figures that Toyota criticizes.

(vi) Toyota Diverts Hogan's Customers To Other Dealers

94. Many Toyota customers use Toyota's website (toyota.com) to determine which Toyota dealership has the vehicle they desire. Because Toyota does not allocate vehicles fairly to Hogan's Dealerships, prospective Toyota buyers are diverted to Hogan's competitors to find the desirable cars they want.

95. Even worse, when a customer enters his or her zip code into Toyota's website to find the nearest Toyota dealership, many customers who reside only a few miles away from Hogan's Dealerships are diverted to Toyota dealerships farther away. Hogan has asked Toyota to fix this issue, but Toyota has refused. Because of this, Hogan's competitors sell a significant amount of vehicles in his Dealerships' primary market area.

96. In addition, Toyota released a hydrogen model called the Mirai in 2015. Toyota made the Mirai available only to a handful of dealers across the country, several of which were in Southern California near Hogan's Dealerships. Toyota did not make the Mirai available at either of Hogan's Dealerships.

97. To solicit sales for the Mirai and to retaliate against Hogan for developing the recall program, Toyota went into Hogan's customer databases and seized his customer lists. Toyota used these lists to target Hogan's customers (especially plug-in Prius drivers who would be receptive to an environmentally-friendly hydrogen vehicle) and divert them to competing

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dealerships in the region (Longo Toyota, Tustin Toyota and Toyota of Orange). Toyota knowingly solicited Hogan's customers in order to send them to other nearby dealers to buy a highly desired new vehicle.

(vii) Toyota Blocks Hogan's Succession Plan; And Tells Him To Sell

98. In 2015, Toyota Regional Executive Eroh was replaced by Alec Hagey. In September 2016, Hagey requested a face-to-face meeting with Hogan. During that meeting, Hogan first learned about Toyota's plan to oust him from the franchise system. Hagey requested that Hogan come to the meeting alone.

99. At the meeting, Hagey told Hogan that he should sell and offered Toyota's services to help identify qualified buyers. Hogan replied that he did not want to sell.

100. Hagey told Hogan at this meeting that, contrary to Toyota's prior representations of creating a stair-step approval program for Roger Hogan Jr., Toyota would not approve him as general manager at Capistrano Toyota and was terminating him completely from Toyota's GM program. Toyota further stated that Stephen Hogan would not be approved as a general manager of both stores, even though Claremont Toyota is one of the most profitable stores in the region, and Toyota does this for other dealers.

101. Toyota knows that Hogan is planning to pass on his Dealerships to his sons. But Toyota is blocking Hogan's succession plan because Toyota wants Hogan out.

102. Hogan was shocked by this meeting. He had been trying to work with Toyota for years and spent millions at Toyota's behest and encouragement, all the while believing that Toyota had his best intentions in mind. But unbeknownst to Hogan, Toyota was already planning the future of the Dealerships without him and his family. The 2016 meeting with Hagey was when Hogan realized Toyota's plan to oust him as a Toyota dealer.

FIRST CAUSE OF ACTION

(Fraud By Concealment – Plaintiffs against Toyota)

103. Plaintiffs repeat and reallege each and every foregoing and subsequent allegation contained in the Complaint, and further allege as follows:

104. Beginning in January 2011 and continuing through September 2016, Toyota

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concealed material information and made numerous, repeated material misrepresentations to Hogan. Specifically, Toyota concealed the fact that it planned to oust Hogan from the Toyota franchise system.

105. Toyota had a duty to disclose that it planned to oust Hogan from the Toyota franchise. Hogan had a long-standing relationship of trust and confidence with Toyota. Hogan was a lifelong member of the Toyota family who devoted his career to the company. Hogan was one of Toyota's top dealers and was a go-to dealer to turn around troubled dealerships.

106. Hogan trusted and relied on Toyota. Hogan sold his Ford dealership so that he could focus on Toyota. Hogan used the 5.25-acre lot the Ford dealership was located on to expand Claremont Toyota. Toyota also encouraged Hogan to expand and improve his Dealerships, and Hogan did so.

107. As Toyota required, Hogan made improvements to Capistrano Toyota's property and invested $2.5 million in additional land for the facility; he also spent $3.5 million to conduct an "Image II" upgrade to Claremont Toyota. Hogan took these steps in trust and confidence of Toyota.

108. Thus, Toyota was required to disclose its true intentions to Hogan because Toyota had been telling Hogan to spend money to grow and expand his Dealerships, and Hogan spent millions in reliance. Unbeknownst to him, Toyota wanted to eliminate him as a franchisee.

109. Toyota wrongfully concealed the critical fact that it planned to force Hogan out as a franchisee. Toyota is seeking to squeeze out Hogan in retaliation for his efforts to increase customer safety and the threat those efforts posed to Toyota's profit margin.

110. Toyota concealed its true intentions and plans from Hogan so that he would complete the improvements on the Dealerships, invest in upgraded facilities and land, and keep the Dealerships in business.

111. Until in or about September 2016—when Toyota told Hogan to sell—Hogan was unaware of Toyota's scheme to get rid of him. If he had known of Toyota's plan to force him out of the franchise, he would not have acted as he did. Hogan would not have invested millions of dollars into the Dealerships, would not have added land to the facilities, and would have sold the

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Dealerships at a time when their value was higher than it is today.

112. Plaintiffs changed their position and relied to their detriment on Toyota's concealment and non-disclosures described herein, and as a proximate result of such conduct, Plaintiffs have suffered damages in excess of $100 million, with the exact amount to be proven at trial.

113. Furthermore, Toyota's conduct was committed with the intent of depriving Plaintiffs of rights and causing Plaintiffs other injury. Toyota's conduct was despicable and subjected Plaintiffs to unjust hardship. Toyota's conduct was malicious, fraudulent and oppressive, and was committed with a conscious disregard of Plaintiffs' rights. Accordingly, Plaintiffs are entitled to an award of punitive or exemplary damages, based on Toyota's net worth, in an amount sufficient to punish Toyota's and make an example of it, and disgorgement of all profits Toyota obtained through its unlawful and intentional conduct.

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SECOND CAUSE OF ACTION

(Breach of the Implied Covenant of Good Faith And Fair Dealing – Capistrano Toyota and Claremont Toyota against Toyota)

114. Plaintiffs repeat and reallege each and every foregoing and subsequent allegation contained in the Complaint, and further allege as follows:

115. Between each of the Dealerships and Toyota there existed valid and enforceable contracts, the Dealer Agreements. The fundamental essence of the Dealer Agreements is to ensure customer confidence and satisfaction and to make sure Toyota vehicles are safe and reliable. The franchise agreements expressly describe their "purposes and objectives" as, among other things, to ensure that "Toyota Products are sold and serviced in a manner which promotes consumer confidence and satisfaction" and to "refrain from conduct which may be detrimental or adversely reflect upon the reputation of [Toyota] or [Toyota Products] in general."

116. Each of the Dealer Agreements included Standard Provision XIII.B. regarding availability and allocation of Toyota products. Under that provision, Toyota agreed to allocate its products among dealers in a fair and equitable manner. Implied in this provision, and the rest of the Dealer Agreement, is the covenant of good faith and fair dealing. The implied covenant

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requires that Toyota exercise its discretion to allocate cars in good faith. Toyota failed to do so, discriminating against Hogan because he was a vocal advocate of improving customer safety.

117. Each of these agreements also included Standard Provision XV.A. regarding customer service standards imposed on the Dealerships. Under that provision, the Dealerships are obligated to ensure that customers are advised of any necessary repairs; to ensure that repairs are promptly and professionally performed; and to ensure that the customer is treated fairly at all times. Implied in this provision, and the rest of the Dealer Agreements, is the covenant of good faith and fair dealing.

118. Each of these agreements also included Standard Provision XXIII.B. regarding termination of the Dealerships. Implied in this provision, and the rest of the Dealer Agreements, is the covenant of good faith and fair dealing.

119. Each of these agreements also included Provision VI. regarding change in management or ownership of the Dealerships. Under that provision, any change in management or ownership requires Toyota's written consent, and Toyota cannot withhold such consent unreasonably. Implied in this provision, and the rest of the Dealer Agreement, is the covenant of good faith and fair dealing.

120. Each of these agreements included a provision whereby the parties agreed to refrain from conduct which may be detrimental to or adversely reflect upon the reputation of Toyota or the Dealerships. Implied in this provision, and the rest of the Dealer Agreement, is the covenant of good faith and fair dealing.

121. Toyota breached the implied covenant of good faith and fair dealing by: (1) actively and purposefully shutting down the recall mailer program intended to protect customers, make vehicles safer, ensure customers are advised of necessary repairs, and ensure that repairs are performed effectively; (2) refusing to allocate vehicles to the Dealerships fairly and in good faith; (3) refusing to allocate the cars Claremont Toyota needed to reach sales efficiency; (4) refusing to issue safety recalls—instead sending only technical service bulletins—for serious vehicle defects; (5) concealing and covering up grave safety concerns on Toyota vehicles from customers and the government; (6) diverting the Dealerships' actual and prospective customers to

nearby, competing dealerships; (7) unreasonably rejecting Hogan's sons for leadership positions and blocking Hogan's succession plan; (8) refusing to timely provide the additional 300 VSS vehicles to Hogan at Capistrano Toyota; (9) taking a series of other retaliatory actions against Hogan to make it more difficult for him to operate the Dealerships; and (10) squeezing Hogan out of the franchises contrary to the Dealer Agreements.

122. As a proximate result of Toyota's conduct, the Dealerships have suffered damages in excess of $100 million, with the exact amount to be proven at trial.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for the following relief:

1. For compensatory and consequential damages in excess of $100 million, to be proven at trial;
2. For pre- and post-judgment interest;
3. For attorneys' fees and costs of suit;
4. For punitive and exemplary damages;
5. For disgorgement of profits; and
6. For such other and further as the Court deems just and proper.

DATED: July 25, 2017

MILLER BARONDESS, LLP

By: [signature]

LOUIS R. MILLER
Attorneys for Plaintiffs

JURY DEMAND

Plaintiffs hereby demand a jury trial on the claims to which they are entitled to trial by jury.

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DATED: July 25, 2017

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