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FIRST CIRCUIT COURT
 STATE OF HAWAII
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IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAI'I

STATE OF HAWAI'I, by its Office of
 Consumer Protection,

Plaintiff,

vs.

TOYOTA MOTOR CORPORATION,
 TOYOTA MOTOR SALES, U.S.A., INC.,
 TOYOTA MOTOR ENGINEERING &
 MANUFACTURING NORTH AMERICA,
 INC., NISSAN MOTOR COMPANY, LTD.,
 NISSAN NORTH AMERICA, INC., FORD
 MOTOR COMPANY, and DOE
 DEFENDANTS 1-100,

Defendants.

CIVIL NO. 17-1-0841-05 GWBC

(Other Civil Action)

COMPLAINT; SUMMONS TO
 ANSWER CIVIL COMPLAINT

I do hereby certify that this is a full, true, and
 correct copy of the original on file in this office.

Clerk, First Circuit, State of Hawaii

COMPLAINT

Plaintiff STATE OF HAWAI'I, by its Office of Consumer Protection (hereinafter "State" or "Plaintiff"), for cause of action against the above-named Defendants, alleges and avers upon information and belief as follows:

JURISDICTION AND VENUE

1. The Office of Consumer Protection is a division of the State of Hawai'i Department of Commerce and Consumer Affairs that is charged with the enforcement of Hawaii's consumer protection laws, including those statutes prohibiting unfair or deceptive acts or practices in the conduct of any trade or commerce.

2. In its enforcement of the aforementioned laws, the Office of Consumer Protection is authorized by law to bring this suit in the name of the State of Hawai'i.

3. This action is brought by the Office of Consumer Protection pursuant to Chapters 480 and 487, Hawai'i Revised Statutes ("HRS"), and other applicable Hawai'i law, seeking declaratory and injunctive relief, restitution, disgorgement, non-compensatory civil penalties, and other additional relief against the above-named Defendants, as warranted.

4. This Court has jurisdiction over this case pursuant to HRS §§ 480-21 and 603-21.5. This Court is also the appropriate venue for this action pursuant to HRS § 480-21 because the seat of government of the State of Hawai'i, the plaintiff in this action, is situated within the City and County of Honolulu, State of Hawai'i.

5. This Court has jurisdiction over the above-named Defendants pursuant to HRS§ 634-35, which extends this Court's *in personam* jurisdiction over foreign

defendants to the fullest extent permitted by the United States Constitution, because, among other things, at all times material herein Defendants were registered to do business in the City and County of Honolulu, State of Hawai'i and/or were doing business in the State of Hawai'i, and/or Defendants placed the products which are the subject of this action into the stream of commerce with the knowledge and intent that their products would be widely disseminated throughout the United States, including the State of Hawai'i, and that the adverse effects of the unsafe condition of their products would likely be felt in the State of Hawai'i, and/or Defendants otherwise directed their activities toward the State of Hawai'i and/or otherwise availed themselves of the benefits and protections of the laws of the State of Hawai'i.

6. Toyota Motor Corporation, Toyota Motor Sales, U.S.A., Inc., and Toyota Motor Engineering & Manufacturing North America, Inc. placed their products into the stream of commerce with the knowledge and intent that their products would be disseminated throughout the State of Hawai'i, as demonstrated in part by the seven dedicated Toyota dealerships located in Hawai'i.

7. Nissan Motor Company, Ltd. and Nissan North America, Inc. placed their products into the stream of commerce with the knowledge and intent that their products would be disseminated throughout the State of Hawai'i, as demonstrated in part by the seven dedicated Nissan dealerships located in Hawai'i.

8. Ford Motor Company placed its products into the stream of commerce with the knowledge and intent that its products would be disseminated throughout the State of Hawai'i, as demonstrated in part by the two dedicated Ford dealerships located in Hawai'i.

NO FEDERAL REMOVAL JURISDICTION

9. The State of Hawai'i, as a sovereign governmental entity, is not a citizen of any State within the meaning of 28 U.S.C. § 1332 and/or 28 U.S.C. § 1441 *et seq.*

10. This action is not a class action or mass action under Hawai'i law, 28 U.S.C. § 1332(d) and/or 28 U.S.C. § 1441 *et seq.*, and Plaintiff expressly disavows any intent to bring this action as a class action or mass action.

11. This action does not arise under the Constitution, laws, or treaties of the United States within the meaning of 28 U.S.C. § 1331 and/or 28 U.S.C. § 1441 *et seq.* All claims asserted herein are based exclusively upon the laws of the State of Hawai'i.

THE PARTIES

12. Plaintiff STATE OF HAWAII is, and was at all times material herein, a sovereign body politic formed under the Constitution and laws of the State of Hawai'i, with its principal place of business in the City and County of Honolulu, State of Hawai'i.

13. Defendant Toyota Motor Corporation ("Toyota Corp.") is, and was at all times material herein, a for profit corporation engaged in the manufacture and sale of automobiles through independent retail dealers, outlets, distributors and authorized dealerships throughout the United States, including Hawai'i.

14. Defendant Toyota Motor Sales, U.S.A., Inc. ("Toyota U.S.A.") is, and was at all times material herein, a subsidiary of Defendant Toyota Corp. that conducts the marketing activities for Toyota Corp. cars, trucks, and other sport utility vehicle automobiles in the United States, including in Hawai'i.

15. Defendant Toyota Motor Engineering & Manufacturing North America, Inc. ("TEMA") is, and was at all times material herein, a subsidiary of Toyota Corp. responsible for

designing, developing and evaluating Toyota Corp. vehicles for distribution within the United States, including Hawai'i.

16. Hereinafter, Toyota Corp., Toyota U.S.A., and TEMA may be referred to collectively as "Toyota" or "Toyota Defendants."

17. Defendant Nissan Motor Company, Ltd. ("Nissan Co.") is, and was at all times material herein, a for profit corporation engaged in the manufacture and sale of automobiles through independent retail dealers, outlets, and authorized dealerships throughout the United States, including Hawai'i.

18. Defendant Nissan North America, Inc. ("Nissan NA") is, and was at all times material herein, a subsidiary of Defendant Nissan Co. that conducts the sales, marketing, and distribution activities for Nissan Co. cars, trucks, and other sport utility vehicle automobiles in the United States, including Hawai'i. At all times material herein, Nissan NA was registered to do business and doing business in the State of Hawai'i, including the City and County of Honolulu.

19. Hereinafter, Nissan Co. and Nissan NA may be referred to collectively as "Nissan" or "Nissan Defendants."

20. Defendant Ford Motor Company ("Ford") is, and was at all times material herein, a for profit corporation engaged in the development, manufacture, and distribution of automobiles through independent retail dealers, outlets, and authorized dealerships throughout the United States, including Hawai'i. At all times material herein, Ford was registered to do business and doing business in the State of Hawai'i, including the City and County of Honolulu.

21. DOE DEFENDANTS 1-100 are sued herein under fictitious names for the reason that after diligent and good faith efforts to ascertain their names and identities, their true names and identities are presently unknown to Plaintiff except that they are connected in some manner with the named Defendants and/or were the agents, servants, employees, employers, representatives, co-venturers, associates, vendors, suppliers, manufacturers, governmental entities, sub-contractors or contractors and/or owners, lessees, assignees, licensees, and designers of the named Defendants; and/or were in some manner presently unknown to Plaintiff engaged in the activities alleged herein; and/or were in some manner responsible for the statutory violations and or other wrongful acts and/or omissions alleged herein; and/or manufactured and/or designed and/or placed on the market a product which was unsafe and concealed and/or misrepresented or failed to adequately disclose its risks, which affected the safety of the motor vehicle airbags discussed herein and/or created an unreasonable risk of harm to persons or property; and/or inspected and/or maintained and/or controlled some object or product in an unfair or deceptive or otherwise wrongful manner; and/or were in some manner related to the named Defendants; and Plaintiff prays for leave to insert herein their true names, identities, capacities, activities and/or responsibilities when the same are ascertained.

ALLEGATIONS APPLICABLE TO ALL DEFENDANTS

22. Airbags are critical safety features that protect drivers and passengers from injury in the event of an accident. Airbag systems contain, among other things, an inflator and an airbag. Airbag systems are designed so that, in the event of a vehicle collision, the airbag is deployed.

23. When a collision occurs and an airbag system is deployed, a propellant inside the inflator quickly burns, generating a concentrated amount of gas. This gas is then expelled into the airbag, causing the airbag to inflate.

24. Properly inflated airbags reduce the likelihood that a vehicle occupant will be injured or killed. In a collision, an airbag typically inflates within a fraction of a second. Improperly inflated airbags create a risk that a vehicle occupant could be injured or killed.

25. Takata Corporation ("Takata Corp.") is, and was at all times material herein, a company engaged in the development, manufacture, and sale of airbag systems.

26. TK Holdings, Inc. ("TK Holdings") is, and was at all times material herein, a subsidiary of Takata Corp. primarily responsible for the development, testing, and production of airbag inflators that Takata sold in the United States, including Hawai'i.

27. Hereinafter, Takata Corp. and TK Holdings may be referred to collectively as "Takata."

28. Defendants are automobile Original Equipment Manufacturers ("OEMs") which are, and were at all times material herein, companies that purchased airbags and their component parts from Takata and installed them in vehicles that they manufactured and sold or leased throughout the United States, including Hawai'i.

29. OEMs were responsible for providing to Takata the specific safety and performance specifications for airbag inflators, including both the environmental aging tests Takata needed to perform and the sequence in which to perform them.

30. The OEMs that provided specifications to, and purchased airbags from, Takata included Toyota, Nissan, and Ford.

31. The airbags that Defendants provided specifications for and purchased from Takata, and installed in their respective vehicles, have made those vehicles and their occupants less safe.

32. As used herein with respect to Takata airbags, the term “unsafe” means that the airbags fail to operate as safely as an ordinary user or consumer would expect.

33. In the late 1990s, Takata began developing inflators that relied upon ammonium nitrate as their primary propellant. Ammonium nitrate is a highly combustible and unstable chemical compound.

34. Takata created and distributed in its inflators a purportedly safe and stable propellant variation of ammonium nitrate known as “phase-stabilized” ammonium nitrate (“PSAN”), but phase-stabilization of ammonium nitrate did not completely eliminate ammonium nitrate’s dangerous, unstable, and explosive properties or make Takata’s inflators safe.

35. Over time, foreseeable environmental factors such as heat and humidity result in the deterioration of PSAN, making the PSAN unpredictably susceptible to explosion when an airbag is deployed.

36. Such an explosion can result in the body of the inflator erupting, sending metal fragments through the airbag and into the vehicle's occupants at lethal velocities.

37. Hawaii’s geography and location create precisely the kinds of temperature and humidity conditions that adversely affect the stability of PSAN.

38. Hawai'i is surrounded by warm ocean water, which contributes to a much higher absolute humidity than in most regions in the United States. Given the persistent condition of high absolute humidity and high temperatures in Hawai'i, Hawai'i residents

have always been at a significantly greater risk of overly aggressive combustion, rupture, and injury and/or death caused by Takata's unsafe PSAN airbags.

39. In or before 2003, PSAN airbags in OEM vehicles began injuring and killing motor vehicle occupants.

40. As of the latest count, with hundreds of confirmed field ruptures, PSAN airbags in OEM vehicles have killed eleven people in the United States and have injured more than 150 people, with injuries ranging from severe lacerations, puncture wounds, broken bones and burns, to permanent disfigurement, blindness, traumatic brain injury, and quadriplegia.

41. With the most recent fatality in September 2016 and severe injury in March 2017, PSAN airbags continue to place occupants at substantial risk.

42. Toyota, Nissan, and Ford knew or should have known even before they began equipping their vehicles with PSAN airbags that PSAN was too unstable to be suitable for use in motor vehicle airbags, particularly in areas of the country with high heat and/or high humidity, like Hawai'i. Among other things, Takata's initial PSAN patents and patent applications acknowledged the risks inherent in PSAN by describing the chemical as "problematic," "thermally unstable," and noted the option to use "desiccants" (water-absorbing substances used to remove nearby moisture) as a phase stabilizer. These PSAN patents and patent applications were publicly available and could have been obtained from Takata and should have been of interest to any manufacturers conducting due diligence on a new form of airbag propellant. Although safer alternative inflator propellants were available, and had been used by OEMs, including Toyota, Nissan, and Ford, PSAN was much cheaper.

COUNT I — TOYOTA DEFENDANTS
UNFAIR OR DECEPTIVE ACTS OR PRACTICES

43. Plaintiff reasserts and realleges, as if fully set forth herein, the allegations of all preceding paragraphs.

44. Upon information and belief, at all times material herein Toyota knew that the airbags it was purchasing from Takata and installing in its vehicles sold throughout the United States, including in Hawai'i, used PSAN as a propellant.

45. At all times material herein, Toyota and its engineers knew or should have known that PSAN was too unstable to be suitable for use in motor vehicle airbags, particularly in areas of the country with high heat and/or high humidity, like Hawai'i.

46. In or about the early- to mid-2000s, Toyota and its engineers knew or should have known that the testing specifications Toyota developed and required Takata to perform were insufficient to ensure the PSAN propellant was protected from environmental exposure and would perform safely in areas of high heat and humidity.

47. In or before 2008 when the first PSAN airbag recall occurred, Toyota knew or should have known that there was a problem with the airbags that could cause them to unexpectedly explode and injure or kill vehicle occupants and/or Toyota was put on notice of that fact and turned a blind eye toward it.

48. Upon information and belief, in or around May 2009, Toyota became aware of a PSAN airbag field rupture in a Toyota vehicle but did not thoroughly investigate the cause of the incident or recall any vehicles in the US market. In fact, although PSAN airbag recalls by other automakers continued to expand, Toyota's first US recall of PSAN airbags was not until 2013.

49. To date, Toyota vehicles have experienced many known PSAN airbag field ruptures.

50. It was not until after April 2013 that Toyota began slowly notifying vehicle owners that the airbags in some of its vehicles should be replaced. But it did so in small increments, apparently in the hope of avoiding widespread publicity regarding the problem. In April 2013, Toyota indicated that there was a problem in only approximately 170,000 vehicles in the United States. In June 2014, Toyota revealed that more vehicles were involved, but claimed that it was only approximately 844,000 of the many millions of vehicles Toyota had sold. In October 2014, Toyota revealed that approximately another 247,000 vehicles were involved. Only in 2015 did Toyota reveal that more than 3 million Toyota vehicles were involved, and only in 2016 did Toyota reveal that approximately another 1.5 million Toyota vehicles were implicated. As recently as January 2017, Toyota revealed that approximately another 543,000 Toyota vehicles were added to the PSAN airbag recall in the United States.

51. Despite its knowledge and expanding recalls, Toyota continued to install unsafe PSAN airbags in Toyota automobiles until model year 2016, and continued to sell and/or lease such vehicles to the public in the United States.

52. From 1999 to the present, many makes and models of motor vehicle were available for sale or lease with airbags that did not use PSAN as a propellant. During that time, Toyota concealed, misrepresented, and/or failed to disclose to the public material information regarding the hazards of its airbags, thereby depriving the public of the opportunity to purchase vehicles containing airbags that did not use the volatile, unstable PSAN as a propellant.

53. Toyota concealed and misrepresented material information about its airbags through marketing that promoted the safety of its vehicles, and their airbag systems, while failing to disclose that its airbags contained dangerous PSAN propellant.

54. For example, for the 2002 Toyota Sequoia, Toyota represented in brochures: "It's big on safety too, offering a wide range of passive and active safety features to help protect you."

55. For the 2003 Toyota Camry, Toyota represented in brochures: "LOOKING GOOD. BEING SAFE. IT'S NOT EITHER/OR. Corolla offers both. New features, like multi-stage air bags SRS that deploy differently depending on the strength of impact, provide added peace of mind. Also available are side-impact air bags SRS. And, of course, you'll still find our impressive list of regular Corolla safety features. It's a beautiful thing, safety and fun coexisting harmoniously."

56. For the 2008 Lexus SC, Toyota represented in brochures: "Front airbags, as well as the knee airbags, are Supplemental Restraint Systems (SRS) designed to help protect the driver and front passenger in the event of a severe frontal collision."

57. For the 2016 Toyota 4Runner, Toyota represented in brochures: "While your many adventures have earned you a bold reputation, you're not a danger seeker. Neither are we. That's why we've equipped 4Runner with an array of active and passive safety features...Our rigorous crash testing has helped us develop a comprehensive occupant protection system that features eight standard airbags, should trouble prove unavoidable."

58. Toyota did so in order to increase its own profits and market share.

59. In order to maintain its market share and to avoid the expense and negative publicity from a wider recall, Toyota continued to make such representations even after it received clear notice that PSAN airbags were unsafe.

60. The aforementioned acts and omissions of Toyota were unfair and deceptive.

61. The aforementioned acts and omissions of Toyota constituted continuing violations of HRS Chapter 480 and other applicable Hawai'i law, and constituted a continuing violation of HRS § 480-2's prohibition against unfair or deceptive acts or practices in the conduct of any trade or business.

62. Specifically, the aforementioned acts and omissions of Toyota constituted unfair trade practices, in that Toyota, by misrepresenting and withholding material information from the public, offended established public policy and acted immorally, unethically, unscrupulously, and substantially injured consumers by subjecting them to serious injury, death and/or the risk of serious injury and death. Toyota also took advantage of consumer ignorance and exercised oppressive power over consumers because consumers were not in a position to investigate, or to recognize the need to investigate, the unsafe condition of PSAN airbags for themselves.

63. As a result of the aforementioned unfair or deceptive acts and omissions, Toyota was able to continue distributing its vehicles to dealers who sold and/or leased Toyota vehicles to unsuspecting members of the public, including members of the Hawai'i public, with unsafe PSAN airbags inside.

64. Many thousands of Toyota vehicles containing PSAN airbags were sold or leased in the State of Hawai'i.

65. Toyota's continued sale and distribution of its vehicles containing airbags with dangerous PSAN propellant, which it failed to ensure was adequately tested and appropriately manufactured, and which yielded a widening toll of injuries and deaths that

only confirmed its risks, resulted in enormous profits to Toyota, including profits from vehicles sold or leased in the State of Hawai'i.

66. Toyota's concealment, misrepresentations, and omissions with regard to the nature and scope of the unsafe condition of PSAN airbags were also unfair and deceptive in that they delayed and minimized the extent of Toyota's recalls, thereby delaying and minimizing Toyota's own lost profits and the expense of replacing unsafe airbags containing PSAN.

67. Due to the widespread nature of the unsafe condition of PSAN airbags, the demand for replacement airbags and/or replacement airbag inflators has allegedly been overwhelming, resulting in long delays before unsafe airbags have been or will be replaced. To date, less than one-half of the PSAN airbags in Toyota vehicles have been replaced nationwide, and the number of vehicles being recalled continues to increase at an alarming rate. At last report, 42 million vehicles are affected in the United States alone.

68. Moreover, many of the replacement airbags offered by Toyota still use PSAN as the propellant for its inflator, making the replacement parts, upon information and belief, as unreliable and dangerous as the original parts.

69. Due to the foregoing, members of the Hawai'i public were placed in an untenable position by Toyota's misconduct — they had to either: (1) continue to operate their vehicles with their existing airbags, and thereby face exposure to a risk of serious injury or death on a daily basis; (2) disable their airbags and thereby face potentially serious injury or death due to the lack of a functioning airbag; or (3) stop using their vehicles altogether, and face the cost of securing a replacement vehicle or other means of transportation until their PSAN airbag was replaced.

70. None of these solutions was satisfactory, and two of them were potentially life-threatening. Even the safest alternative of not using the vehicle would have imposed an intolerable financial hardship on most Hawai'i residents and businesses.

71. Plaintiff therefore, pursuant to HRS § 480-15, other applicable Hawai'i law, and the equitable authority of the court, seeks the relief laid out below.

72. Plaintiff requests that this Court enter an order:

a. enjoining the Toyota Defendants from engaging in their unfair and deceptive conduct;

b. compelling Toyota to engage in a robust public education effort to ensure that affected Hawai'i consumers are aware of the potential hazards of their PSAN airbags;

c. compelling Toyota to promptly, on an ongoing basis, reimburse and/or otherwise provide restitution to all affected vehicles owners and to assume the cost of distributing such restitution;

d. compelling Toyota to disgorge to Plaintiff all ill-gotten gains unjustly obtained; and

e. assessing and awarding all additional remedies available under HRS Chapters 480 and other applicable Hawai'i law.

73. Plaintiff further seeks a declaration by this Court that:

a. Toyota engaged in unfair or deceptive acts or practices in violation of HRS § 480-2 by installing PSAN airbags in its vehicles while concealing material information from, misrepresenting, and/or failing to disclose material information to, the public regarding the hazards of PSAN airbags and/or while inaccurately downplaying the

significance, severity and/or widespread nature of the hazards posed to the public by PSAN airbags and the appropriate scope of a proper recall;

b. Toyota's acts and/or omissions constitute a continuing violation of HRS Chapter 480 from at least 2000—the time it first began selling vehicles containing unsafe airbags with PSAN propellant—through the present, in that, during all material times herein, Toyota engaged in a course of unfair and deceptive conduct that included and depended upon: (i) manufacturing, marketing and selling automobiles with unsafe airbags; and (ii) actively concealing from, misrepresenting, and/or failing to disclose to the public the source and scope of the unsafe condition of its airbags; and

c. Toyota's sale and/or distribution of each PSAN airbag in a Toyota vehicle sold or leased in the State of Hawai'i, or later transported to the State of Hawai'i, constituted multiple, separate violations of HRS § 480-2.

74. Plaintiff further requests that this Court impose civil penalties of up to \$10,000 per defendant for each violation of Chapter 480. Plaintiff asserts that Toyota's acts and/or omissions and Toyota's sale and/or other distribution of each PSAN airbag in each Toyota-affiliated vehicle sold or leased in Hawai'i, or transported to Hawai'i after its original purchase, constitutes a violation of Chapter 480 by Toyota. Due to the aggravated nature of Toyota's misconduct, Plaintiff asserts that imposition of the maximum civil penalty is warranted for each violation.

COUNT II — NISSAN DEFENDANTS
UNFAIR OR DECEPTIVE ACTS OR PRACTICES

75. Plaintiff reasserts and realleges, as if fully set forth herein, the allegations of all preceding paragraphs.

76. Upon information and belief, at all times material herein Nissan knew that the airbags it was purchasing from Takata and installing in its vehicles sold throughout the United States, including Hawai'i, used PSAN as a propellant.

77. At all times material herein, Nissan and its engineers knew or should have known that PSAN was too unstable to be suitable for use in motor vehicle airbags, particularly in areas of the country with high heat and/or high humidity, like Hawai'i.

78. In or about the early- to mid-2000s, Nissan and its engineers knew or should have known that the testing specifications Nissan developed and required Takata to perform were insufficient to ensure the PSAN propellant was protected from environmental exposure and would perform safely in areas of high heat and humidity.

79. In or before 2005, Nissan began investigating adding a desiccant to PSAN propellant because of concerns that moisture would destabilize the existing propellant. Nissan nonetheless continued to install non-desiccated PSAN propellants in its vehicles sold throughout the United States, including Hawai'i, without disclosing its concerns.

80. In or before 2006, when Nissan began receiving reports from another OEM that Takata's PSAN propellant was unstable and unsafe, Nissan knew or should have known that there was a problem with the airbags that could cause them to unexpectedly explode and injure or kill vehicle occupants and/or Nissan was put on notice of that fact and turned a blind eye toward it.

81. In or before 2008 when the first PSAN airbag recall occurred, Nissan again knew or should have known that there was a problem with the airbags that could cause them to unexpectedly explode and injure or kill vehicle occupants and/or Nissan was put on notice of that fact and turned a blind eye toward it.

82. To date, Nissan vehicles have experienced many known PSAN airbag field ruptures.

83. It was not until after April 2013 that Nissan began slowly notifying vehicle owners that the airbags in some of its vehicles should be replaced. But it did so in small increments, apparently in the hope of avoiding widespread publicity regarding the problem. In April 2013, Nissan indicated that there was a problem in only approximately 265,000 vehicles. In July 2014, Nissan revealed that more vehicles were involved, but claimed that it was only approximately 660,000 of the many millions of vehicles Nissan had sold. In October 2014, Nissan revealed that approximately another 50,000 vehicles were involved. Only in 2015 did Nissan reveal that more than 1 million Nissan vehicles were involved, and again in 2016 Nissan revealed that another 402,000 Nissan vehicles were implicated. As recently as January 2017, Nissan revealed that approximately another 152,000 Nissan vehicles were added to the PSAN airbag recall in the United States.

84. From 1999 to the present, many makes and models of motor vehicle were available for sale or lease with airbags that did not use PSAN as a propellant. During that time, Nissan concealed, misrepresented, and/or failed to disclose to the public material information regarding the hazards of its airbags, thereby depriving the public of the opportunity to purchase vehicles containing airbags that did not use the volatile, unstable PSAN as a propellant.

85. Nissan concealed and misrepresented material information about its airbags through marketing that promoted the safety of its vehicles, and their airbag systems, while failing to disclose that its airbags contained dangerous PSAN propellant.

86. For example, for the 2008 Nissan Maxima, Nissan represented in brochures that the “Maxima Features” included “Safety/Security...Nissan Advanced Air Bag System with dual-stage supplemental front air bags with seat belt sensors and occupant-classification sensor.”

87. For the 2011 Nissan Versa, Nissan represented in brochures: “2011 Nissan Versa comes in 2 fun flavors...[e]njoy effortless power...[a]nd the security of six standard air bags.”

88. In 2015, Nissan represented on its website: “Nissan is committed to its position as a leader in the world of automotive safety. This dedication to comprehensive safety goes into the engineering and design of every vehicle we make...”

89. Nissan did so in order to increase its own profits and market share.

90. In order to maintain its market share and to avoid the expense and negative publicity from a wider recall, Nissan continued to make such representations even after it received clear notice that PSAN airbags were unsafe.

91. The aforementioned acts and omissions of Nissan were unfair and deceptive.

92. The aforementioned acts and omissions of Nissan constituted continuing violations of HRS Chapter 480 and other applicable Hawai'i law, and constituted a continuing violation of HRS § 480-2's prohibition against unfair or deceptive acts or practices in the conduct of any trade or business.

93. Specifically, the aforementioned acts and omissions of Nissan constituted unfair trade practices, in that Nissan, by misrepresenting and withholding material information from the public, offended established public policy and acted immorally,

unethically, unscrupulously, and substantially injured consumers by subjecting them to serious injury, death and/or the risk of serious injury and death. Nissan also took advantage of consumer ignorance and exercised oppressive power over consumers because consumers were not in a position to investigate, or to recognize the need to investigate, the unsafe condition of PSAN airbags for themselves.

94. As a result of the aforementioned unfair or deceptive acts and omissions, Nissan was able to continue distributing its vehicles to dealers who sold and/or leased Nissan vehicles to unsuspecting members of the public, including members of the Hawai'i public, with unsafe PSAN airbags inside.

95. Many thousands of Nissan vehicles containing PSAN airbags were sold or leased in the State of Hawai'i.

96. Nissan's continued sale and distribution of its vehicles containing airbags with dangerous PSAN propellant, which it failed to ensure was adequately tested and appropriately manufactured, and which yielded a widening toll of injuries in deaths that only confirmed its risks, resulted in enormous profits to Nissan, including profits from vehicles sold or leased in the State of Hawai'i.

97. Nissan's concealment, misrepresentations, and omissions with regard to the nature and scope of the unsafe condition of PSAN airbags were also unfair and deceptive in that they delayed and minimized the extent of Nissan's recalls, thereby delaying and minimizing Nissan's own lost profits and the expense of replacing unsafe airbags containing PSAN.

98. Due to the widespread nature of the unsafe condition of PSAN airbags, the demand for replacement airbags and/or replacement airbag inflators has allegedly been

overwhelming, resulting in long delays before unsafe airbags have been or will be replaced. To date, less than one fourth of the PSAN airbags in Nissan vehicles have been replaced nationwide, and the number of vehicles being recalled continues to increase at an alarming rate. At last report, 42 million vehicles are affected in the United States alone.

99. Moreover, many of the replacement airbags offered by Nissan still used PSAN as the propellant for its inflator, making the replacement parts, upon information and belief, as unreliable and dangerous as the original parts.

100. Due to the foregoing, members of the Hawai'i public were placed in an untenable position by Nissan's misconduct — they had to either: (1) continue to operate their vehicles with their existing airbags, and thereby face exposure to a risk of serious injury or death on a daily basis; (2) disable their airbags and thereby face potentially serious injury or death due to the lack of a functioning airbag; or (3) stop using their vehicles altogether, and face the cost of securing a replacement vehicle or other means of transportation until their PSAN airbag is replaced.

101. None of these solutions was satisfactory, and two of them were potentially life-threatening. Even the safest alternative of not using the vehicle would have imposed an intolerable financial hardship on most Hawai'i residents and businesses.

102. Plaintiff therefore, pursuant to HRS § 480-15, other applicable Hawai'i law, and the equitable authority of the court, seeks the relief laid out below.

103. Plaintiff requests that this Court enter an order:

a. enjoining the Nissan Defendants from engaging in their unfair and deceptive conduct;

b. compelling Nissan to engage in a robust public education effort to ensure that affected Hawai'i consumers are aware of the potential hazards of their PSAN airbags;

c. compelling Nissan to promptly, on an ongoing basis, reimburse and/or otherwise provide restitution to all affected vehicle owners and to assume the cost of distributing such restitution;

d. compelling Nissan to disgorge to Plaintiff all ill-gotten gains unjustly obtained; and

e. assessing and awarding all additional remedies available under HRS Chapters 480 and other applicable Hawai'i law.

104. Plaintiff further seeks a declaration by this Court that:

a. Nissan engaged in unfair or deceptive acts or practices in violation of HRS § 480-2 by installing PSAN airbags in its vehicles while concealing material information from, misrepresenting, and/or failing to disclose material information to, the public regarding the hazards of PSAN airbags and/or while inaccurately downplaying the significance, severity and/or widespread nature of the hazards posed to the public by PSAN airbags and the appropriate scope of a proper recall;

b. Nissan's acts and/or omissions constitute a continuing violation of HRS Chapter 480 from at least 2000—the time it first began selling vehicles containing unsafe airbags with PSAN propellant—through the present, in that, during all material times herein, Nissan engaged in a course of unfair and deceptive conduct that included and depended upon: (i) manufacturing, marketing and selling automobiles with unsafe airbags; and (ii) actively concealing from, misrepresenting, and/or failing to disclose to the public the source and scope of the unsafe condition of its airbags; and

c. Nissan's sale and/or distribution of each PSAN airbag in a Nissan vehicle sold or leased in the State of Hawai'i, or later transported to the State of Hawai'i, constituted multiple, separate violations of HRS § 480-2 for which a civil penalty shall be imposed.

105. Plaintiff further requests that this Court impose civil penalties of up to \$10,000 per defendant for each violation of Chapter 480. Plaintiff asserts that Nissan's acts and/or omissions and Nissan's sale and/or other distribution of each PSAN airbag in each Nissan-affiliated vehicle sold or leased in Hawai'i, or transported to Hawai'i after its original purchase, constitutes a violation of Chapter 480 by Nissan. Due to the aggravated nature of Nissan's misconduct, Plaintiff asserts that imposition of the maximum civil penalty is warranted for each violation.

COUNT III — FORD DEFENDANT
UNFAIR OR DECEPTIVE ACTS OR PRACTICES

106. Plaintiff reasserts and realleges, as if fully set forth herein, the allegations of all preceding paragraphs.

107. Upon information and belief, at all times material herein Ford knew that the airbags it was purchasing from Takata and installing in its vehicles sold throughout the United States, including Hawai'i, used PSAN as a propellant.

108. At all times material herein, Ford and its engineers knew or should have known that PSAN was too unstable to be suitable for use in motor vehicle airbags, particularly in areas of the country with high heat and/or high humidity, like Hawai'i. Moreover, Ford ignored the objections of its own inflator expert and approved the use of PSAN inflators.

109. In or about the early- to mid-2000s, Ford and its engineers knew or should have known that the testing specifications Ford developed and required Takata to perform were insufficient to ensure the PSAN propellant was protected from environmental exposure and would perform safely in areas of high heat and humidity.

110. In or before 2004, when Ford learned several of its PSAN airbags ruptured during testing, Ford knew or should have known that there was a problem with the airbags that could cause them to unexpectedly explode and injure or kill vehicle occupants and/or Ford was put on notice of that fact and turned a blind eye toward it.

111. In or before 2005, Ford began investigating adding a desiccant to PSAN propellant because of concerns that moisture would destabilize the existing propellant. Ford nonetheless continued to install non-desiccated PSAN propellants in its vehicles sold throughout the United States, including Hawai'i, without disclosing its concerns.

112. In or before 2008 when the first PSAN airbag recall occurred, Ford again knew or should have known that there was a problem with the airbags that could cause them to unexpectedly explode and injure or kill vehicle occupants and/or Ford was put on notice of that fact and turned a blind eye toward it.

113. It was not until 2014 that Ford, at the request of the National Highway Traffic Safety Administration, began notifying vehicle owners that the airbags in some of its vehicles should be replaced. But it did so in small increments, apparently in the hope of avoiding widespread publicity regarding the problem. In June 2014, Ford indicated that there was a potential problem in only approximately 58,000 vehicles. In December 2014, Ford revealed that more vehicles were involved, but claimed that it was only approximately 462,000 of the many millions of vehicles Ford had sold. In February

2015, Ford revealed that approximately another 23,000 vehicles were involved. Not until May 2015 did Ford reveal that more than 1.3 million Ford vehicles were involved, and again in 2016 Ford revealed that roughly another 1.6 million Ford vehicles were implicated. As recently as January 2017, Ford revealed that approximately another 654,000 Ford vehicles were added to the PSAN airbag recall.

114. From 2002 to the present, many makes and models of motor vehicle were available for sale or lease with airbags that did not use PSAN as a propellant. During that time, Ford concealed, misrepresented, and/or failed to disclose to the public material information regarding the hazards of its airbags, thereby depriving the public of the opportunity to purchase vehicles containing airbags that did not use the volatile, unstable PSAN as a propellant.

115. Ford concealed and misrepresented material information about its airbags through marketing that promoted the safety of its vehicles, and their airbag systems, while failing to disclose that its airbags contained dangerous PSAN propellant.

116. For example, for the 2006 Mustang, Ford represented in brochures: "Personal Safety System – Built into every Ford Mustang, this innovative system enhances protection for the driver and front passenger in certain frontal collisions. The system customizes the deployment of the dual-stage front airbags based on several criteria, including the driver's seat position, whether the front safety belts are in use, the amount of pressure exerted on the front-passenger's seat, and the overall severity of the impact."

117. For the 2008 Ranger, Ford represented in brochures: "Ranger is designed to deliver legendary Ford pickup capability and durability – mile after mile – year after year...Personal Safety System – This impressive array of sophisticated technology determines

the severity of the crash, safety belt use, driver-seat position and right-front passenger size to control the deployment force of the airbags.”

118. For the 2010 Fusion, Ford represented in brochures: “Building on its status as a 2009 IIHS ‘TOP SAFETY PICK,’ Fusion has more standard safety features than ever for 2010...[o]f course, you’ll also find 6 airbags standard on every Fusion...[f]usion’s got you covered. All around.”

119. In 2015, Ford represented on its website: “At Ford, we hold ourselves to very high standards for vehicle safety. The fact is, vehicle safety is a critical part of our brand promise to Go Further. We aim to give customers peace of mind and make the world safer by developing advanced safety technologies and making them available across a wide range of vehicles.”

120. Ford did so in order to increase its own profits and market share.

121. In order to maintain its market share and to avoid the expense and negative publicity from a wider recall, Ford continued to make such representations even after it received clear notice that PSAN airbags were unsafe.

122. The aforementioned acts and omissions of Ford were unfair and deceptive.

123. The aforementioned acts and omissions of Ford constituted continuing violations of HRS Chapter 480 and other applicable Hawai’i law, and constituted a continuing violation of HRS § 480-2’s prohibition against unfair or deceptive acts or practices in the conduct of any trade or business.

124. Specifically, the aforementioned acts and omissions of Ford constituted unfair trade practices, in that Ford, by misrepresenting and withholding material information from the public, offended established public policy and acted immorally,

unethically, unscrupulously, and substantially injured consumers by subjecting them to serious injury, death and/or the risk of serious injury and death. Ford also took advantage of consumer ignorance and exercised oppressive power over consumers because consumers were not in a position to investigate, or to recognize the need to investigate, the unsafe condition of PSAN airbags for themselves.

125. As a result of the aforementioned unfair or deceptive acts and omissions, Ford was able to continue distributing its vehicles to dealers who sold and/or leased Ford vehicles to unsuspecting members of the public, including members of the Hawai'i public, with unsafe PSAN airbags inside.

126. Thousands of Ford vehicles containing PSAN airbags were sold or leased in the State of Hawai'i.

127. Ford's continued sale and distribution of its vehicles containing PSAN airbags with dangerous PSAN propellant, which it failed to ensure was adequately tested and appropriately manufactured, and which yielded a widening toll of injuries in deaths that only confirmed its risks, resulted in enormous profits to Ford, including profits from vehicles sold or leased in the State of Hawai'i.

128. Ford's concealment, misrepresentations, and omissions with regard to the nature and scope of the unsafe condition of PSAN airbags were also unfair and deceptive in that they delayed and minimized the extent of Ford's recalls, thereby delaying and minimizing Ford's own lost profits and the expense of replacing unsafe airbags containing PSAN.

129. Due to the widespread nature of the unsafe condition of PSAN airbags, the demand for replacement airbags and/or replacement airbag inflators has allegedly been overwhelming, resulting in long delays before unsafe airbags have been or will be

replaced. To date, about one fourth of the PSAN airbags in Ford vehicles have been replaced nationwide, and the number of vehicles being recalled continues to increase at an alarming rate. At last report, 42 million vehicles are affected in the United States alone.

130. Moreover, many of the replacement airbags offered by Ford still used PSAN as the propellant for its inflator, making the replacement parts, upon information and belief, as unreliable and dangerous as the original parts. Due to the foregoing, members of the Hawai'i public were placed in an untenable position by Ford's misconduct — they had to either: (1) continue to operate their vehicles with their existing airbags, and thereby face exposure to a risk of serious injury or death on a daily basis; (2) disable their airbags and thereby face potentially serious injury or death due to the lack of a functioning airbag; or (3) stop using their vehicles altogether, and face the cost of securing a replacement vehicle or other means of transportation until their PSAN airbag was replaced.

131. None of these solutions was satisfactory, and two of them were potentially life-threatening. Even the safest alternative of not using the vehicle would have imposed an intolerable financial hardship on most Hawai'i residents and businesses.

132. Plaintiff therefore, pursuant to HRS § 480-15, other applicable Hawai'i law, and the equitable authority of the court, seeks the relief laid out below.

133. Plaintiff requests that this Court enter an order:

- a. enjoining Ford from engaging in their unfair and deceptive conduct;
- b. compelling Ford to engage in a robust public education effort to ensure that affected Hawai'i consumers are aware of the potential hazards of their PSAN airbags;

c. compelling Ford to promptly, on an ongoing basis, reimburse and/or otherwise provide restitution to all affected vehicle owners and to assume the cost of distributing such restitution;

d. compelling Ford to disgorge to Plaintiff all ill-gotten gains unjustly obtained; and

e. assessing and awarding all additional remedies available under HRS Chapters 480 and other applicable Hawai'i law.

134. Plaintiff further seeks a declaration by this Court that:

a. Ford engaged in unfair or deceptive acts or practices in violation of HRS § 480-2 by installing PSAN airbags in its vehicles while concealing material information from, misrepresenting, and/or failing to disclose material information to, the public regarding the hazards of PSAN airbags and/or while inaccurately downplaying the significance, severity and/or widespread nature of the hazards posed to the public by PSAN airbags and the appropriate scope of a proper recall;

b. Ford's acts and/or omissions constitute a continuing violation of HRS Chapter 480 from at least 2002—the time it first began selling vehicles containing unsafe airbags with PSAN propellant—through the present, in that, during all material times herein, Ford engaged in a course of unfair and deceptive conduct that included and depended upon: (i) manufacturing, marketing and selling automobiles with unsafe airbags; and (ii) actively concealing from, misrepresenting, and/or failing to disclose to the public the source and scope of the unsafe condition of its airbags; and

c. Ford's sale and/or distribution of each PSAN airbag in a Ford vehicle sold or leased in the State of Hawai'i, or later transported to the State of Hawai'i, constituted multiple, separate violations of HRS § 480-2 for which a civil penalty shall be imposed.

135. Plaintiff further requests that this Court impose civil penalties of up to \$10,000 per defendant for each violation of Chapter 480. Plaintiff asserts that Ford's acts and/or omissions and Ford's sale and/or other distribution of each PSAN airbag in each Ford vehicle sold or leased in Hawai'i, or transported to Hawai'i after its original purchase, constitutes a violation of Chapter 480 by Ford. Due to the aggravated nature of Ford's misconduct, Plaintiff asserts that imposition of the maximum civil penalty is warranted for each violation.

WHEREFORE, the State of Hawai'i, by and through its Office of Consumer Protection, respectfully prays this Court for the following relief against Defendants:

1. A declaration by this Court that the Defendants each engaged in unfair or deceptive acts or practices, in violation of HRS §480-2(a) and other applicable Hawai'i law, by concealing and/or failing to disclose to the public material information regarding the potential hazards of PSAN airbags;

2. A declaration by this Court that each PSAN airbag in a Toyota vehicle that was sold or leased in Hawai'i, or otherwise transported to Hawai'i after purchase, constituted multiple, separate violations of HRS § 480-2(a) and other applicable Hawai'i law by each Toyota Defendant;

3. A declaration by this Court that each PSAN airbag in a Nissan vehicle that was sold or leased in Hawai'i, or otherwise transported to Hawai'i after purchase,

constituted multiple, separate violations of HRS § 480-2(a) and other applicable Hawai'i law by each Nissan Defendant;

4. A declaration by this Court that each PSAN airbag in a Ford vehicle that was sold or leased in Hawai'i, or otherwise transported to Hawai'i after purchase, constituted multiple, separate violations of HRS § 480-2(a) and other applicable Hawai'i law by Ford;

5. A declaration by this Court that the acts and omissions of Defendants described herein and otherwise proved at trial constitute continuing violations of HRS § 480-2;

6. Pursuant to HRS § 480-3.1, an award of civil penalties of \$10,000 against each Toyota Defendant for each unfair or deceptive act or omission and for each PSAN airbag installed in any vehicle ultimately sold or leased in Hawai'i and/or otherwise transported to Hawai'i after purchase, in amounts to be proved at trial;

7. Pursuant to HRS § 480-3.1, an award of civil penalties of \$10,000 against each Nissan Defendant for each unfair or deceptive act or omission and for each PSAN airbag in a Nissan-affiliated vehicle that was sold, leased or otherwise distributed in Hawai'i and/or otherwise transported to Hawai'i after purchase, in amounts to be proved at trial;

8. Pursuant to HRS § 480-3.1, an award of civil penalties of \$10,000 against Ford for each unfair or deceptive act or omission and for each PSAN airbag in a Ford vehicle that was sold, leased or otherwise distributed in Hawai'i and/or otherwise transported to Hawai'i after purchase, in amounts to be proved at trial;

9. Pursuant to HRS § 480-15, an order enjoining each Toyota, Nissan, and Ford Defendant from future violations of the law and compelling Defendants to inform Hawai'i consumers about the potential hazards of their PSAN airbags;

10. An order compelling each Defendant to pay restitution to any purchasers or successor vehicle owners in Hawai'i and to assume the cost of distributing such restitution;

11. An order compelling each Defendant to disgorge to Plaintiff all ill-gotten gains unjustly obtained; and

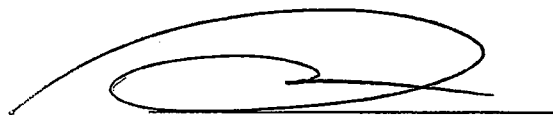
12. An award of:

- a. Plaintiff's cost of investigation and reasonable attorneys' fees,
- b. Interest allowed by law, including pre-judgment interest, and
- c. Such other and further relief as provided by law and/or as the Court

deems just in the premises.

Plaintiff asserts claims herein in excess of the minimum jurisdictional requirements of this Court.

DATED: Honolulu, Hawai'i, May 24, 2017.



L. RICHARD FRIED, JR.
PATRICK F. McTERNAN
Attorneys for Plaintiff

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAI'I

17-1-0841-05

GWBC

STATE OF HAWAI'I, by its Office of
Consumer Protection,

Plaintiff,

vs.

TOYOTA MOTOR CORPORATION,
TOYOTA MOTOR SALES, U.S.A., INC.,
TOYOTA MOTOR ENGINEERING &
MANUFACTURING NORTH AMERICA,
INC., NISSAN MOTOR COMPANY, LTD.,
NISSAN NORTH AMERICA, INC., FORD
MOTOR COMPANY, and DOE
DEFENDANTS 1-100,

Defendants.

) CIVIL NO. _____
) (Other Civil Action)
)
) SUMMONS TO ANSWER CIVIL
) COMPLAINT

) No trial date has been set.
)
)

SUMMONS TO ANSWER CIVIL COMPLAINT

TO THE ABOVE-NAMED DEFENDANT(S):

You are hereby summoned and required to file with the court and serve upon L. Richard Fried, Jr., Esq. and Patrick F. McTernan, Esq., plaintiff's attorneys, whose address is 600 Davies Pacific Center, 841 Bishop Street, Honolulu, Hawai'i 96813, an answer to the Complaint which is herewith served upon you, within twenty (20) days after service of this Summons upon you, exclusive of the date of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the Complaint.

This Summons shall not be personally delivered between 10:00 p.m. and 6:00 a.m. on premises not open to the general public, unless a judge of the above-entitled court permits, in writing to this summons, personal delivery during those hours.

