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15 *Attorneys for Plaintiff*

16
17 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**
18 **IN AND FOR THE COUNTY OF MARICOPA**

19 *iiii*

20 MELISSA VARELA, individually and as the
21 statutory beneficiary of VIVIAN VARELA,
22 deceased,

23 Plaintiff,

24 vs.

25 FCA US LLC, A DELAWARE
26 CORPORATION, F/N/A CHRYSLER
27 GROUP, LLC; LVN MOTORS, LLC, A
28 DELAWARE CORPORATION, D/B/A
AIRPARK DODGE CHRYSLER JEEP; PV
HOLDING CORP., a Delaware corporation;
KRISTINA SCHOECK AND JOHN DOE
SCHOECK, wife and husband; TOYOTA
MOTOR CORPORATION, a Japanese
corporation; TOYOTA MOTOR SALES,
U.S.A., INC., a California corporation; and
DOES 1-100, inclusive,

Defendants.

No. CV 2015-008635

**FOURTH AMENDED
COMPLAINT**

(Tort: Motor Vehicle; Wrongful Death)

1 For her Complaint against Defendants, Plaintiff MELISSA VARELA alleges as
2 follows:

3 **PARTIES**

4 1. Plaintiff MELISSA VARELA is a resident of the County of Maricopa, State
5 of Arizona. Plaintiff MELISSA VARELA is the Mother of VIVIAN VARELA, deceased.
6 Plaintiff MELISSA VARELA brings this action on behalf of herself individually and as
7 statutory beneficiary of VIVIAN VARELA.

8 2. VIVIAN VARELA passed away on August 7, 2015 and MELISSA VARELA
9 sustained serious injuries as a proximate result of a 2014 Jeep Grand Cherokee rear ending,
10 at high speed, the Lexus in which she was a rear seat passenger and the failure of the
11 subject Lexus driver seatback to retain properly seat belted Melissa Varela in the front
12 driver seat during the subject collision.

13 3. Plaintiff is informed and believes, and thereupon alleges, that at all times
14 relevant herein, Defendant FCA US LLC is and has been a foreign corporation organized and
15 formed under the laws of Delaware, doing business in Arizona. Upon information and
16 belief FCA US LLC is a successor entity of CHRYSLER GROUP, LLC. FCA US LLC is and has
17 been engaged in the design, manufacture and sale of automobiles through a nationwide
18 network of subsidiaries and dealerships doing business in the State of Arizona. FCA US LLC
19 is the current name of a company more commonly known as "Chrysler."

20 4. Defendant LVN MOTORS, LLC is a foreign corporation organized and formed
21 under the laws of Delaware, doing business in Arizona as AIRPARK DODGE CHRYSLER JEEP.
22 AIRPARK DODGE CHRYSLER JEEP is in the business of selling new and used automobiles to
23 the consuming public, including automobiles manufactured by Defendant FCA US LLC.
24 Defendant LVN MOTORS, LLC placed the vehicle at issue into the stream of commerce in its
25 ordinary course of business at that time.

26 5. Defendant PV HOLDING CORP. is a foreign corporation organized and formed
27 under the laws of Delaware, doing business in Arizona. PV HOLDING CORP. is the parent
28 company of Avis Budget Group and in addition to renting vehicles, is in the business of

1 selling new and used automobiles to the consuming public, including automobiles
2 manufactured by Defendant FCA US LLC. Defendant PV HOLDING CORP. placed the vehicle
3 at issue into the stream of commerce in its ordinary course of business at that time.

4 6. Defendant KRISTINA SCHOECK was a resident of the County of Maricopa,
5 State of Arizona.

6 7. At all relevant times, Defendant TOYOTA MOTOR CORPORATION
7 (hereinafter "TMC") was and is a corporation organized and existing under the laws of the
8 nation of Japan with its principal place of business in Japan. Defendant TMC transacts
9 business in the State of Arizona and is a resident of the State of Arizona for purposes of
10 personal jurisdiction, and is subject to the jurisdiction and venue of this Court.

11 8. Toyota Motor Corporation designed the subject 2004 Lexus for sale and use
12 in the state of Arizona as well as in the other states of the United States.

13 9. Toyota Motor Corporation met specific minimum design standards in the
14 design of the subject vehicle to enable it to sell 2004 Lexus RX330s in the state of
15 Arizona.

16 10. Toyota Motor Corporation ran extensive testing of the 2004 Lexus RX330
17 design to allow it to certify those vehicles for sale and use in the State of Arizona.

18 11. At all relevant times, Defendant TOYOTA MOTOR SALES, U.S.A., INC.
19 (hereinafter "TMS") was and is a corporation organized and existing under the laws of the
20 State of California with its principal place of business in Torrance, California. Upon
21 information and belief, Defendant TMS merged with Toyota Motor Distributors, Inc. in
22 1995, and TMS is the surviving company. Defendant TMS transacts business in the State
23 of Arizona and maintains a registered agent in the State of Arizona. Defendant TMS
24 transacts business in the State of Arizona, is a resident of the State of Arizona for purposes
25 of persona jurisdiction, and is subject to the jurisdiction and venue of this Court. TMS
26 may be served with process through its registered agent, CT Corporation System, 123 East
27 Marc, Santa Fe, Arizona 87501.

1 12. At all relevant times, Defendant TOYOTA MOTOR NORTH AMERICA,
2 INC. (hereinafter "TMA") was and is a corporation organized and existing under the laws
3 of the State of California with its principal place of business in Torrance, California.
4 Defendant TMA transacts business in the State of Arizona and is a resident of the State of
5 Arizona for purposes of personal jurisdiction, and is subject to the jurisdiction and venue
6 of this Court.

7 13. At all relevant times, Defendants TOYOTA MOTOR CORPORATION,
8 TOYOTA MOTOR SALES, U.S.A INC. and TOYOTA MOTOR NORTH AMERICA,
9 INC. (hereinafter collectively "TOYOTA" or "the TOYOTA DEFENDANTS") designed,
10 engineered, developed, manufactured, fabricated, assembled, equipped, tested or failed to
11 test, inspected or failed to inspect, approved, repaired, labeled, advertised, promoted,
12 marketed, supplied, distribute, wholesaled, and sold Toyota vehicles to the consuming
13 public in the State of Arizona and throughout the world, including the vehicle operated by
14 Melissa Varela at the time of the accident giving rise to this lawsuit.

15 14. Plaintiff is unaware of the true identity, nature and capacity of each of the
16 Defendants designed herein as DOES 1-100. Plaintiff is informed, believes and alleges that
17 each of the Defendants designated herein as a DOE, is or may be in some manner,
18 responsible for the damage and injuries as alleged in this Complaint. Upon learning the
19 true identity, nature and capacity of the doe Defendants, Plaintiff will amend this
20 Complaint to allege their true names and capacities.

21 15. Whenever reference is made in this Complaint to any act of the corporate
22 Defendants, such allegation shall mean that each Defendant acted individually and jointly
23 with the other corporate Defendants named in that cause of action.

24 16. Whenever reference is made in this Complaint to any act of any corporate or
25 other business Defendant, such allegation shall mean that such corporation or other
26 business did the acts alleged in the Complaint through its officers, director, employees,
27 agent and/or representatives while they were acting within the actual or ostensible scope of
28 their authority.

1 **17.** The amount in controversy related to this Complaint exceeds the minimum
2 jurisdictional limits of this Court.

3 **18.** All model year 2014 Chrysler or FCA US LLC passenger vehicles and light
4 trucks sold in the United States are equipped with “crash avoidance” systems.

5 **19.** For model year 2014 vehicles, FCA US LLC and its predecessors chose to add
6 or not add crash avoidance features to their crash avoidance systems based in part on
7 governmental regulatory requirements.

8 **20.** For model year 2014 vehicles, FCA US LLC and its predecessors chose to add
9 or not add crash avoidance features to their crash avoidance systems based in part on risk,
10 cost and benefits related to the features.

11 **21.** For model year 2014 vehicles, FCA US LLC and its predecessors chose to add
12 or not add crash avoidance features to their crash avoidance systems based on the
13 individual feature’s effectiveness in preventing fatalities.

14 **22.** Forward Collision Warning Plus was offered as an “optional” feature on
15 some 2014 Jeep Grand Cherokee Limiteds.

16 **23.** 2014 Jeep Grand Cherokee Summits were equipped with standard Forward
17 Collision Warning Plus.

18 **24.** 2014 Jeep Grand Cherokee SRTs were equipped with standard Forward
19 Collision Warning Plus.

20 **25.** FCA US LLC and/or its predecessors’ chose not to make Forward Collision
21 Warning Plus a standard feature in the 2014 Jeep Grand Cherokee Limited vehicles based
22 in part on the actions of competitors.

23 **26.** FCA US LLC and/or its predecessors chose not to make Forward Collision
24 Warning Plus a standard feature in their 2014 Jeep Grand Cherokee Limited vehicles was
25 not based on the cost of adding Forward Collision Warning Plus.

26 **27.** FCA US LLC and/or its predecessors chose not to make Forward Collision
27 Warning Plus a standard feature in their 2014 Jeep Grand Cherokee Limited vehicles.
28

1 **28.** FCA US LLC and/or its predecessors chose not to make Forward Collision
2 Warning Plus available in their 2014 Jeep Grand Cherokee Laredo vehicles.

3 **29.** Due care considerations sometimes require automobile manufacturers to add
4 to their vehicles collision avoidance features or functions even when it is not required by
5 governmental regulation.

6 **30.** All model year 2014 FCA US LLC passenger vehicles and light trucks sold in
7 the United States are equipped with Electronic Stability Control.

8 **31.** Electronic Stability Control is part of all 2014 Jeep Grand Cherokees'
9 collision avoidance systems.

10 **32.** 2014 Jeep Grand Cherokee collision avoidance systems would be
11 unreasonably dangerous and defective under Arizona law if they did not have Electronic
12 Stability Control incorporated into those systems.

13 **33.** Electronic Stability Control systems on the 2014 Jeep Grand Cherokee
14 collision avoidance systems used automatic computer-controlled braking of individual
15 wheels to assist the driver in maintaining control in critical driving situations in which the
16 vehicle is beginning to lose directional stability at the rear wheels or directional control at
17 the front wheels.¹

18 **34.** Each driver of a 2014 Jeep Grand Cherokee is a component of that 2014 Jeep
19 Grand Cherokee's collision avoidance system.

20 **35.** Some drivers of 2014 Jeep Grand Cherokees will fail to effectively brake the
21 2014 Jeep Grand Cherokees that they are driving and as a result of those failures, 2014
22 Jeep Grand Cherokees not equipped with Forward Collision Warning Plus will collide into
23 the rear of other vehicles stopped in traffic.

24 **36.** The rate of 2014 Jeep Grand Cherokees not equipped with Forward Collision
25 Warning Plus rear ending vehicles traveling slower than them is higher than the rate of the
26

27 _____
28 ¹ 49 CFR Parts 571 and 585, Docket No. NHTSA-2007-27662, RIN:2127-AJ77.

1 2014 Jeep Grand Cherokees equipped with Forward Collision Warning Plus rear ending
2 vehicles traveling slower than them.

3 37. The rate of 2014 Jeep Grand Cherokees not equipped with Forward Collision
4 Warning Plus rear ending stopped vehicles in the lane ahead of them is higher than the rate
5 of 2014 Jeep Grand Cherokees equipped with Forward Collision Warning Plus.

6 38. Forward Collision Warning Plus has been available since before the
7 manufacture and sale of the first 2014 Jeep Grand Cherokee.

8 39. Forward Collision Warning Plus has been financially feasible to use in all
9 Jeep Grand Cherokee vehicles since prior to the manufacture of the first 2014 Jeep Grand
10 Cherokees.

11 40. Autonomous Emergency Braking, including the 2014 Jeep Grand Cherokee
12 Collision Mitigation Function, used on the 2014 Jeep Grand Cherokees equipped with that
13 function use automatic computer-controlled braking of the vehicle's wheels to stop the
14 vehicle when that action is necessary to avoid or mitigate the severity of a collision with
15 another vehicle moving slower or stopped in the 2014 Jeep Grand Cherokee's lane of
16 forward travel.

17 41. Collision Mitigating Systems used on the 2014 Jeep Grand Cherokees
18 equipped with that function assist the driver in safely stopping the vehicle or mitigating the
19 severity of rear end collisions when the 2014 Jeep Grand Cherokee is approaching a slower
20 moving or stopped vehicle in the Jeep Grand Cherokee's lane of travel when the Jeep
21 Grand Cherokee's driver is failing to act to avoid a collision.

22 42. Forward Collision Warning was available as an optional feature for some
23 Jeep Grand Cherokees by model year 2011.

24 43. Forward Collision Warning Plus systems available for use in model year
25 2014 vehicles are effective in preventing the vehicles they are installed in from rear ending
26 other vehicles moving slower or stopped in the vehicle's lane of travel under some
27 circumstances.

1 44. Forward Collision Warning Plus systems available for use in model year
2 2014 vehicles are effective in helping the vehicles they are installed in reduce the severity
3 of rear end collisions into other vehicles moving slower or stopped in the vehicle's lane of
4 travel under some circumstances.

5 45. Forward Collision Warning Plus systems available for use in model year
6 2014 vehicles are not effective in helping the vehicles they are installed in reduce the
7 severity of rear end collisions into other vehicles moving slower or stopped in the vehicle's
8 lane of travel under some circumstances.

9 46. On August 7, 2015, as a result of a collision at the base of the Cave Creek
10 off-ramp, traffic began to back up in the exit lane of State Route 101, a multi-lane
11 controlled access highway in north Phoenix. Traffic on the Cave Creek off-ramp came to a
12 complete stop in the Cave Creek exit lane on State Route 101.

13 47. At that time of the event described in the last paragraph above, Plaintiff
14 MELISSA VARELA was driving her Lexus westbound in the Cave Creek exit lane of State
15 Route 101, with her four-year-old daughter, VIVIAN VARELA, belted into a car seat in the
16 backseat of the Lexus when she properly brought her vehicle to a stop because of the
17 stopped traffic ahead of her in the Cave Creek exit lane of State Route 101 as referenced in
18 paragraph 46 above.

19 48. After MELISSA Varela had stopped her Lexus, a 2014 Jeep Grand Cherokee,
20 VIN 1C4RJFBG3EC182865 (the "subject 2014 Jeep Grand Cherokee"), driven by
21 Defendant KRISTINA SCHOECK, collided into the rear of MELISSA VARELA's Lexus.

22 49. In the time period 1.8 to .5 seconds before the subject 2014 Jeep Grand
23 Cherokee impacted the rear of the Varela Lexus the 2014 Jeep Grand Cherokee's
24 accelerator pedal was being applied from 5 to 6 percent of full.

25 50. Approximately .4 seconds before the subject 2014 Jeep Grand Cherokee
26 impacted the rear of the Varela Lexus the percentage of accelerator pedal application went
27 to 0 percent.
28

1 51. The brake on the subject 2014 Jeep Grand Cherokee was applied by the
2 vehicle's driver approximately .3 seconds before the subject vehicle impacted the rear of
3 the Varela Lexus.

4 52. During the approximately 3 tenths of a second before the subject 2014 Jeep
5 Grand Cherokee impacted the rear of the Varela Lexus the subject vehicle's forward speed
6 was reduced from 68 mph to 62 mph.

7 53. During the last 2 tenths of a second before the subject 2014 Jeep Grand
8 Cherokee impacted the rear of the Varela Lexus the subject vehicle's forward speed was
9 reduced from 66 mph to 62 mph.

10 54. During the last 1 tenth of a second before the subject 2014 Jeep Grand
11 Cherokee impacted the Varela Lexus the subject vehicle's forward speed was reduced to a
12 speed less than 62 mph.

13 55. During the collision event between the subject 2014 Jeep Grand Cherokee
14 and the Varela Lexus the speed of the subject 2014 Jeep Grand Cherokee changed by 36
15 mph in 164 milliseconds.

16 56. At between .3 and .5 seconds before the subject Jeep Grand Cherokee
17 collided into the rear of the Varela Lexus the Jeep Grand Cherokee driver began an attempt
18 to steer around the Varela Lexus.

19 57. The presence of Forward Collision Warning Plus on the subject Jeep Grand
20 Cherokee would have alerted Kristina Schoeck to have begun steering maneuvers earlier
21 than she did during the subject incident.

22 58. Vivian Varela's skull fractures happened during the 200 milliseconds
23 following the initial impact of the subject 2014 Jeep Grand Cherokee into the Verela
24 Lexus.

25 59. The force of the collision caused extensive damage to Plaintiff's Lexus, as
26 demonstrated in the two pictures below:
27
28



60. The force of the subject 2014 Jeep Grand Cherokee impact pushed the rear structures of the Lexus so deep into the Lexus that some of those structures pushed against the rear seat seat back during the collision.

61. The force of the subject 2014 Jeep Grand Cherokee impact pushed the rear structures of the Lexus so deep into the Lexus that some of those structures pushed against the rear seat seat-back during the collision.

62. Structures of the Varela Lexus, that were being pushed forward by the impact from the subject 2014 Jeep Grand Cherokee, pushed against the Lexus rear seat seat-back during the subject collision.

63. A structure or structures of the Varela Lexus, that was or were being pushed forward by the impact from the subject 2014 Jeep Grand Cherokee, made contact with Vivian Varela during the subject collision.

64. The Varela Lexus rear seat seat-back was pushed forward during the subject collision by structures of the Varela Lexus that were being pushed forward in the Lexus by the impact from the subject 2014 Jeep Grand Cherokee.

65. The Varela Lexus driver seat seat-back and headrest were pushed into the Vivian Varela survival space during the subject collision as a result of the subject 2014 Jeep Grand Cherokee rear ending the Varela Lexus.

1 66. The Varela Lexus driver was moved into the Vivian Varela survival space
2 during the subject collision as a result of the subject 2014 Jeep Grand Cherokee rear-
3 ending the Varela Lexus.

4 67. The Varela Lexus driver seat head rest interacted with Vivian Varela's head
5 during the subject collision.

6 68. The Varela Lexus driver's head or one of her shoulders interacted with
7 Vivian Varela's head during the subject collision.

8 69. As a result of forces from the collision of the subject 2014 Jeep Grand
9 Cherokee into the VARELA Lexus, Plaintiff's daughter, VIVIAN VARELA, was killed and
10 Plaintiff MELISSA VARELA was injured.

11 70. VIVIAN VARELA died as a result of injuries caused by the force of the subject
12 2014 Jeep Grand Cherokee colliding into the VARELA Lexus.

13 71. Vivian Verela died as a proximate result of the rearward collapse of the
14 Varela Lexus driver seat-back during the subject collision.

15 72. The 2014 Jeep Grand Cherokee Forward Collision Warning Plus system
16 utilizes radar and video input to detect whether the vehicle is approaching another vehicle
17 or large obstacle in its path too rapidly and warn/assist the driver in avoiding the incident.

18 73. The 2014 Jeep Grand Cherokee Forward Collision Warning Plus system
19 operates down to 0 mph and provides audible closing/proximity warnings as well as brake
20 pedal vibration.

21 74. CMS (Collision Mitigation System) is a component or function of the 2014
22 Jeep Grand Cherokee Forward Collision Warning Plus system.

23 75. It was technologically and financially feasible for Toyota to make forward
24 collision warning standard on almost all of its model year 2017 passenger cars and SUVs.

25 76. It was technologically and financially feasible for Toyota to make forward
26 collision warning standard on almost all of its model year 2014 passenger cars and SUVs.
27
28

1 77. It was technologically and financially feasible for Toyota to make its
2 automatic emergency braking design standard on almost all of its model year 2017
3 passenger cars and SUVs.

4 78. It was technologically and financially feasible for Toyota to make its
5 automatic emergency braking design standard on all of its model year 2014 Jeep Grand
6 Cherokees.

7 79. The 2014 Jeep Grand Cherokee Forward Collision Warning Plus system
8 provides significantly less pre-impact warmings/alert times to drivers traveling 70 mph
9 compared to the warning/alert time it supplies to drivers traveling at 45 mph.

10 80. It is important to note the 2014 Jeep Grand Cherokee Forward Collision
11 Warning Plus system will use "mitigated" braking to avoid accidents.

12 81. The CMS in 2014 Jeep Grand Cherokee Forward Collision Warning Plus
13 assists braking operation by automatically applying an appropriate amount of braking force
14 to help avoid or minimize the chances of hitting a vehicle.

15 82. When CMS in 2014 Jeep Grand Cherokee Forward Collision Warning Plus
16 systems activates its automatic brake, it also turns the brake lights on.

17 83. The 2014 Jeep Grand Cherokee Forward Collision Warning Plus pre-fill
18 process prepares the brakes for emergency braking by engaging the pump and applying a
19 small amount of pressure to the brakes.

20 84. The 2014 Jeep Grand Cherokee Forward Collision Warning Plus Forward
21 Facing Camera, in conjunction with the radar sensor, is used to detect whether the vehicle
22 is approaching another vehicle or large obstacle in its path too rapidly and will assist the
23 driver in mitigating the incident.

24 85. The 2014 Jeep Grand Cherokee Forward Collision Warning Plus system
25 reduces the frequency of collision caused injuries in 2014 Jeep Grand Cherokees equipped
26 with that system compared to 2014 Jeep Grand Cherokees not so equipped.

1 86. The 2014 Jeep Grand Cherokee Forward Collision Warning Plus system
2 reduces the severity of some injuries in 2014 Jeep Grand Cherokees equipped with that
3 system compared to 2014 Jeep Grand Cherokees not so equipped.

4 87. The 2014 Jeep Grand Cherokee Forward Collision Warning Plus system
5 reduces risk of fatal injuries resulting from 2014 Jeep Grand Cherokees equipped with that
6 system compared to 2014 Jeep Grand Cherokees not so equipped.

7 88. If systems with the collision avoidance and mitigating capabilities of the
8 2014 Jeep Grand Cherokee Forward Collision Warning Plus were appropriately installed
9 in all 2014 model year vehicles there would be a decrease in the risk of injuries and
10 fatalities caused by model year 2014 automobiles colliding into the rear of other
11 automobiles.

12 89. The 2014 Jeep Grand Cherokee Forward Collision Warning Plus system has
13 benefits that outweigh its harmful characteristic.

14 90. The 2014 Jeep Grand Cherokee Forward Collision Warning Plus system has
15 benefits that outweigh harmful consequences.

16 91. The 2014 Jeep Grand Cherokee Forward Collision Warning Plus system has
17 benefits that outweigh its harmful characteristics and consequences.

18 92. The 2014 Jeep Grand Cherokee Forward Collision Warning Plus system has
19 benefits that do not outweigh its harmful characteristics and consequences.

20 93. The presence of the Forward Collision Warning Plus design provides
21 benefits to users of 2014 Jeep Grand Cherokees equipped with that design that outweigh
22 the harmful characteristics and consequences of having Forward Collision Warning Plus
23 on 2014 Jeep Grand Cherokees.

24 94. The 2014 Jeep Grand Cherokee Forward Collision Warning Plus is a safe,
25 reliable and effective safety system.

26 95. The higher the forward speed of a 2014 Jeep Grand Cherokee in its approach
27 to a vehicle stopped in front of it in its lane of travel the more opportunity there is for 2014
28

1 Jeep Grand Cherokee Forward Collision Warning Plus system to assist in avoiding a fatal
2 injury.

3 **96.** FCA's employees' decision not to make Forward Collision Warning Plus a
4 standard feature on 2014 Jeep Grand Cherokees was not based on cost of the Forward
5 Collision Warning Plus system.

6 **97.** FCA's employees' decision not to make Forward Collision Warning Plus a
7 standard feature on 2014 Jeep Grand Cherokees was based, at least in part, on evaluation
8 of its competitors' practices in offering as standard or optional features forward collision
9 warning and autonomous emergency braking systems on their vehicles.

10 **98.** The Forward Collision Warning Plus system designed for 2014 Jeep Grand
11 Cherokees could have been set to provide alerts to drivers of such vehicles 2.5 seconds
12 before a potential collision into the rear of a vehicle stopped in the lane in front of the 2014
13 Jeep Grand Cherokee when it is traveling at 69 mph.

14 **99.** The Forward Collision Warning Plus system designed for 2014 Jeep Grand
15 Cherokees could have been set to apply autonomous braking for 2014 Jeep Grand
16 Cherokees up to at least 2.5 seconds before a potential collision into the rear of a vehicle
17 stopped in the lane in front of the 2014 Jeep Grand Cherokee when the Jeep Grand
18 Cherokee is traveling at 69 mph.

19 **100.** Toyota Motor Corporation sold production vehicles in model year 2006 to
20 current models that are equipped with systems that monitor the movements of human
21 driver eyelids to evaluate the attention of the driver.

22 **101.** Since at least model year 2006 it was technologically feasible to equip Jeep
23 Grand Cherokees with driver attention monitoring systems.

24 **102.** FCA US LLC has knowledge of the Toyota Driver Attention Monitoring
25 system or systems that Toyota has put in some of its production vehicles.

26 **103.** FCA US LLC is not aware of any harmful characteristics of Toyota's Driver
27 Attention Monitoring systems that Toyota has sold in some production vehicles.
28

1 **104.** FCA US LLC is not aware of any harmful consequences of Toyota's Driver
2 Attention Monitoring systems that Toyota has sold in some production vehicles.

3 **105.** Toyota Defendants are not aware of any harmful consequences of Toyota's
4 Driver Attention Monitoring systems that Toyota has sold in production vehicles.

5 **106.** Toyota's production Driver Attention Monitoring systems used in model
6 year 2012 model year Toyota and or Lexus vehicles provide benefits to consumers that
7 outweigh their harmful characteristics and consequences.

8 **107.** Prior to sale of the subject 2014 Jeep Grand Cherokee FCA US LLC and its
9 predecessors had not evaluated anything about driver attention monitoring systems that
10 monitor the movement of driver eyes or driver eyelids.

11 **108.** Inputs from systems that monitor driver attention can reduce the number of
12 alerts that are given to drivers by Forward Collision Warning systems.

13 **109.** Inputs from a system that effectively monitors driver attention could reduce
14 the number of alerts that are given to drivers by the 2014 Jeep Grand Cherokees with
15 Forward Collision Warning Plus systems.

16 **110.** Inputs from systems that monitor driver attention can allow the autonomous
17 emergency braking systems to engage earlier when the driver attention monitoring system
18 detects that the driver's attention is not focused on the road in front of the driver.

19 **111.** FCA had the ability to adjust the time before collision that the 2014 Jeep
20 Grand Cherokee Forward Collision Warning Plus system would give audible alerts to
21 drivers of vehicles stopped in lanes ahead of them when the 2014 Jeep Grand Cherokee is
22 traveling.

23 **112.** The subject 2014 Jeep Grand Cherokee was manufactured and placed into
24 the stream of commerce by Defendant FCA US LLC.

25 **113.** The subject 2014 Jeep Grand Cherokee was placed into the stream of
26 commerce by LVN MOTORS, LLC, AND PV HOLDING CORP. and/or their legal predecessors in
27 interest.
28

1 **114.** The subject 2014 Jeep Grand Cherokee's crash avoidance system was not
2 equipped, excluding the drivers, with any forward collision warning or collision mitigating
3 automatic braking technology, including Forward Collision Warning Plus.

4 **115.** Improving profits for FCA US LLC was one reason Forward Collision
5 Warning Plus was not standard on the 2014 Jeep Grand Cherokee Limited.

6 **116.** Forward Collision Warning Plus was a standard feature on 2014 Jeep Grand
7 Cherokee Summits to increase the sales volume of 2014 Jeep Grand Cherokee Summits.

8 **117.** FCA US LLC limited the availability of Forward Collision Warning Plus on
9 2014 Jeep Grand Cherokees to higher trim levels of the 2014 Jeep Grand Cherokees to
10 improve overall profits from the sale of 2014 Jeep Grand Cherokees.

11 **118.** Defendant FCA US LLC packaged Forward Collision Warning Plus with other
12 non-collision avoidance system upgrade options, to maximize profits at the expense of
13 providing Forward Collision Warning Plus safety benefits on the subject 2014 Jeep Grand
14 Cherokee.

15 **119.** Collision warning systems paired with autonomous braking can, in model
16 year 2014 vehicles, reduce the frequency of rear-end crashes.

17 **120.** Collision warning systems paired with autonomous braking can, in model
18 year 2014 vehicles, reduce the severity of some rear-end crashes.

19 **121.** Broad deployment of forward collision avoidance systems into passenger
20 vehicles, motor coaches, singe-unit trucks, and trucks-tractors would reduce the frequency
21 of rear-end crashes.

22 **122.** Broad deployment of forward collision avoidance systems into passenger
23 vehicles, motor coaches, singe-unit trucks, and trucks-tractors would reduce the severity of
24 some rear-end crashes.

25 **123.** FCA US LLC's FWP for its 2014 Jeep Grand Cherokee Laredo 4x2 was
26 \$29,081.

27 **124.** FCA US LLC's FWP for its 2014 Jeep Grand Cherokee Limited 4x2 was
28 \$34,931.

1 **125.** FCA US LLC's FWP for the package that added Forward Collision Warning
2 Plus to the 2014 Jeep Grand Cherokee Limited was \$1,776.

3 **126.** FCA US LLC's FWP for its 2014 Jeep Grand Cherokee 4x2 SRT was
4 \$51,195.

5 **127.** FCA US LLC's FWP for its 2014 Jeep Grand Cherokee 4x4 SRT was
6 \$61,191.

7 **128.** FCA US LLC's FWP for its 2014 Jeep Grand Cherokee Summit 4x2 was
8 \$45,695.

9 **129.** FCA US LLC's FWP for its 2014 Jeep Grand Cherokee Summit 4x4 was
10 \$48,540.

11 **130.** A 2015 NTSB study finding states: "New vehicles equipped with vehicle-
12 based forward collision avoidance systems would obtain immediate safety benefits...."

13 **131.** FCA US LLC is not aware of any collisions that have been caused by alerts
14 or warnings from Forward Collision Warning or Forward Collision Warning Plus like
15 systems in any FCA vehicles.

16 **132.** FCA US LLC is aware of one or more incidents where collisions were likely
17 avoided by the presence of Forward Collision Warning Plus on its vehicles.

18 **133.** FCA US LLC is aware of incidents where the severity of collisions was
19 likely reduced by the presence of Forward Collision Warning Plus on its vehicles.

20 **134.** FCA US LLC's testing of Forward Collision Warning Plus on its vehicles
21 shows that adding Forward Collision Warning Plus to FCA US LLC's 2014 model year
22 vehicles provides benefits that outweighed the harmful characteristics and consequences of
23 adding Forward Collision Warning Plus.

24 **135.** It would not be reasonable for FCA US LLC, with knowledge of what its
25 subject 2014 Jeep Grand Cherokee did to Vivian Varela, to put the subject 2014 Jeep
26 Grand Cherokee on the market without adding Forward Collision Warning Plus to the
27 subject 2014 Jeep Grand Cherokee.
28

1 **136.** Forward Collision Warning Plus constitutes a small fraction of the overall
2 cost to FCA of 2014 Jeep Grand Cherokee Limiteds equipped with Forward Collision
3 Warning Plus.

4 **137.** Defendant FCA US LLC's and/or its predecessors' decision to make Forward
5 Collision Warning Plus optional, rather than standard, on its 2014 Jeep Grand Cherokee
6 Limiteds was intended to improve FCA US LLC profits.

7 **138.** If a Forward Collision Warning Plus system had been installed on the subject
8 2014 Jeep Grand Cherokee, the subject 2014 Jeep Grand Cherokee would not have
9 collided into the VARELA Lexus.

10 **139.** If a Forward Collision Warning Plus system had been designed into the
11 subject 2014 Jeep Grand Cherokee, the subject 2014 Jeep Grand Cherokee would not have
12 collided into the VARELA Lexus with as much force as it did during the subject collision.

13 **140.** If Collision Mitigation and Advanced Brake Assist function had been
14 incorporated into the subject 2014 Jeep Grand Cherokee, the subject 2014 Jeep Grand
15 Cherokee would not have collided into the VARELA Lexus.

16 **141.** If Collision Mitigation and Advanced Brake Assist functions had been
17 incorporated into the subject 2014 Jeep Grand Cherokee, the subject 2014 Jeep Grand
18 Cherokee would not have collided into the VARELA Lexus with as much force as it did
19 during the subject collision.

20 **142.** If a Forward Collision Warning Plus system had been incorporated into the
21 collision avoidance system on the subject 2014 Jeep Grand Cherokee, VIVIAN VARELA
22 would not have been killed.

23 **143.** If Collision Mitigation and Advanced Brake Assist functions had been
24 incorporated into the subject 2014 Jeep Grand Cherokee, VIVIAN VARELA would not have
25 been killed.

26 **144.** Technologically and financially feasible, effective Forward Collision
27 Warning Plus systems that would have reduced the severity of the subject collision were
28

1 available at the time of the design, manufacture and sale of the subject 2014 Jeep Grand
2 Cherokee.

3 **145.** The Forward Collision Warning Plus system that was optional for 2014 Jeep
4 Grand Cherokee Limiteds would have reduced the impact speed of the subject collision by
5 more than 15 mph if that system had been installed on the subject 2014 Jeep Grand
6 Cherokee.

7 **146.** If the impact speed of the subject 2014 Jeep Grand Cherokee had been 46
8 mph or less the severity of the subject collision would not have been high enough to cause
9 the injuries to Vivian Varela that caused her death.

10 **147.** If a Forward Collision Warning system had been present on the subject Jeep
11 Grand Cherokee it would be possible for a driver in the position of Ms. Schoeck to brake
12 and steer in a way to reduce the delta V experienced at the center of gravity in the Varela
13 Lexus to less than 20 mph.

14 **148.** If a Forward Collision Warning system had been present on the subject Jeep
15 Grand Cherokee it would be possible for a driver in the position of Ms. Schoeck to brake
16 and steer in a way to reduce the delta V experienced at the center of gravity in the Varela
17 Lexus to less than 15 mph.

18 **149.** If a Forward Collision Warning system had been present on the subject Jeep
19 Grand Cherokee it would be possible for a driver in the position of Ms. Schoeck to brake
20 and steer in a way to reduce the delta V experienced at the center of gravity in the Varela
21 Lexus to less than 10 mph.

22 **150.** Vivian Varela would have survived the subject collision if the subject 2014
23 Jeep Grand Cherokee had been equipped with Forward Collision Warning Plus.

24 **151.** The benefits related to the design of the 2014 Jeep Grand Cherokee
25 Limited's Forward Collision Warning Plus system outweigh the harmful characteristics
26 and consequences of the design of the 2014 Jeep Grand Cherokee Limited's Forward
27 Collision Warning Plus system.
28

1 **152.** As a direct and proximate result of the subject 2014 Jeep Grand Cherokee's
2 unreasonably dangerous and defectively designed collision avoidance system, VIVIAN
3 VARELA suffered fatal injuries.

4 **153.** As a direct and proximate result of the subject 2014 Jeep Grand Cherokee's
5 unreasonably dangerous and defectively designed collision avoidance system, MELISSA
6 VARELA sustained serious injuries from occurrence of the subject collision.

7 **154.** 2014 Jeep Grand Cherokee Forward Collision Warning Plus systems are
8 effective at alerting/warning drivers in a way that gives drivers reasonable opportunities to
9 avoid or mitigate crashes into the rear of vehicles stopped ahead of the driver.

10 **155.** Defendant FCA US LLC and distributors of the subject vehicles are liable to
11 MELISSA VARELA and VIVIAN VARELA's statutory beneficiaries because of the failure to
12 install Forward Collision Warning Plus in the subject 2014 Jeep Grand Cherokee.

13 **156.** Defendant FCA US LLC is liable to MELISSA VARELA and VIVIAN VARELA's
14 statutory beneficiaries because of its failure to install a Forward Collision Warning Plus
15 type of system in the subject 2014 Jeep Grand Cherokee that would have avoided or
16 mitigated the subject collision.

17 **157.** Defendant FCA US LLC is liable to MELISSA VARELA and VIVIAN VARELA's
18 statutory beneficiaries because of the failure to install a Forward Collision Warning Plus
19 type of system in the subject 2014 Jeep Grand Cherokee that would have reduced the
20 severity of the subject collision to the degree that Vivian Varela would not have been
21 killed or seriously injured in the subject incident.

22 **158.** Defendant FCA US LLC and distributors of the subject vehicles are liable to
23 MELISSA VARELA and VIVIAN VARELA's statutory beneficiaries because of the failure to
24 install a Forward Collision Warning Plus type of system the subject 2014 Jeep Grand
25 Cherokee that would have reduced the severity of the subject collision to the degree that
26 Melissa Varela would not have suffered serious injuries in the subject incident.

27 **159.** The harmful characteristics or consequences of the design of the subject
28 2014 Jeep Grand Cherokee designed without incorporating Forward Collision Warning

1 Plus, outweigh the benefits of excluding Forward Collision Warning Plus from the design
2 of the subject 2014 Jeep Grand Cherokee.

3 **160.** The benefits of the 2014 Jeep Grand Cherokee collision avoidance system
4 equipped with Forward Collision Warning Plus outweigh the harmful characteristics or
5 consequences that come with adding of Forward Collision Warning Plus to model year
6 2014 Jeep Grand Cherokee collision avoidance systems.

7 **161.** With the knowledge that FCA US LLC, LVN MOTORS, LLC and PV HOLDING
8 CORP. now have about the harmful characteristics and consequences of 2014 Jeep Grand
9 Cherokees not equipped with Forward Collision Warning Plus it would not be reasonable
10 for a manufacturer or seller of the subject 2014 Jeep Grand Cherokee to sell an identical
11 vehicle on the current new car market without including Forward Collision Warning Plus
12 in the vehicle.

13 **162.** The subject 2014 Jeep Grand Cherokee was used in a reasonably foreseeable
14 manner during the 5 seconds before the subject collision began to happen.

15 **163.** The subject 2014 Jeep Grand Cherokee was used in a reasonably foreseeable
16 manner during the subject collision.

17 **164.** If Forward Collision Warning Plus had been incorporated into the subject
18 2014 Jeep Grand Cherokee Limited, the collision at issue would either not have happened,
19 or would have occurred with significantly less overlap between the Jeep Grand Cherokee
20 and the Lexus because Ms. Schoeck actually made steering input soon after her actual
21 brake application.

22 **165.** FCA US LLC made a conscious choice that Forward Collision Warning Plus
23 would not be a standard feature on 2014 Jeep Grand Cherokee Limiteds.

24 **166.** When FCA US LLC employees made the conscious choice that Forward
25 Collision Warning Plus would not be standard on 2014 Jeep Grand Cherokee Limiteds
26 those employees knew that 2014 Jeep Grand Cherokee Limiteds not equipped with
27 Forward Collision Plus would rear end other vehicles at a higher speeds than 2014 Jeep
28 Grand Cherokees that are equipped with Forward Collision Warning Plus.

1 167. The usefulness of 2014 Jeep Grand Cherokee Limiteds is enhanced by
2 inclusion of Forward Collision Warning Plus on those vehicles.

3 168. The desirability of 2014 Jeep Grand Cherokee Limiteds is enhanced by the
4 inclusion of Forward Collision Warning Plus on those vehicles.

5 169. 2014 Jeep Grand Cherokee Limiteds that are equipped with Forward
6 Collision Warning Plus meet all of the needs of consumers that are met by 2014 Jeep
7 Grand Cherokee Limiteds that are not equipped with Forward Collision Warning Plus.

8 170. Forward Collision Warning Plus, when installed on 2014 Jeep Grand
9 Cherokee Limiteds, reduces the likelihood of injury and the seriousness of the injuries that
10 are suffered related to rear end collisions the so equipped 2014 Jeep Grand Cherokee
11 Limiteds are involved in as the rear-ending vehicle.

12 171. The dangers related to 2014 Jeep Grand Cherokees rear-ending other
13 vehicles is an obvious danger.

14 172. At the time of the design, development and testing of the 2014 Jeep Grand
15 Cherokee, FCA US LLC and its predecessors knew or should have known, in light of the
16 generally recognized and prevailing scientific and technical knowledge available at the
17 time of the product's distribution, that a foreseeable use of the product may be
18 unreasonably dangerous.

19 173. In light of the knowledge held by FCA US LLC, LVN MOTORS, LLC AND PV
20 HOLDING CORP. at the time they distributed the subject 2014 Jeep Grand Cherokee about
21 the risk of that vehicle being used in the way the subject 2014 Jeep Grand Cherokee was
22 being used when it approached the Varela Lexus, they were obligated to install the
23 warning system that would have alerted Kristina Schoeck in a timely way of the dangerous
24 situation that was being created relating to her and the occupants of the Varela Lexus.

25 174. FCA US LLC did not adequately explain to PV Holding Corp. the benefits of
26 adding Forward Collision Warning Plus to 2014 Jeep Grand Cherokee Limiteds.

27 175. FCA US LLC did not adequately warn PV Holding Corp. or LVN Motors,
28 LLC of the unreasonable danger of 2014 Jeep Grand Cherokee Limiteds not equipped with

1 Forward Collision Warning Plus compared to 2014 Jeep Grand Cherokee Limiteds
2 equipped with Forward Collision Warning Plus.

3 176. FCA US LLC, PV Holding Corp. and LVN Motors, LLC did not adequately
4 warn Kristina Schoeck of the unreasonable danger of 2014 Jeep Grand Cherokee Limiteds
5 not equipped with Forward Collision Warning Plus compared to 2014 Jeep Grand
6 Cherokee Limiteds equipped with Forward Collision Warning Plus.

7 177. The Varela Lexus driver seat's seatback flexed rearward during the subject
8 collision.

9 178. The Varela Lexus driver seat's seatback flexion rearward during the subject
10 collision caused the seatback or headrest to press against the front of Vivian Varela's
11 thighs.

12 179. Mellisa Varela's head made contact with Vivian Varela's head during the
13 subject collision.

14 180. FCA US LLC, Toyota Motor Corporation and TMS and their predecessors
15 have known about the risk of seatback bending in rear-end collisions allowing drivers to be
16 thrown into the rear seat seatback since at least 2003.

17 181. FCA US LLC and its predecessors in interest, including but not limited to
18 DaimlerChrysler Corporation, have been defendants in cases where the Plaintiffs claimed
19 that a Dodge minivan was rear-ended in a way that caused the driver's rear-ward travel to
20 cause the driver seatback to flex the seatback rearward allowing the driver's head to strike
21 the head of a child in the rear seat behind the driver.

22 182. At all times material hereto, Toyota Motor Corporation, and its wholly-owned U.S.
23 subsidiary, Toyota Motor Sales, U.S.A., Inc., hereinafter the "Toyota Defendants" were in the
24 business of designing, manufacturing and marketing automobiles and trucks for sale in all 50
25 states,

26 183. Toyota Motor Corporation, and its wholly-owned U.S. subsidiary, Toyota Motor
27 Sales, U.S.A., Inc. designed, developed, manufactured, marketed and distributed the 2004 Lexus
28 RX330, VIN JTJHA31U240063073, the "subject Lexus" in this complaint.

1 **184.** The Defendants are thus the “manufacturer” or “manufacturers” of the subject
2 Lexus within the meaning of Arizona product liability law.

3 **185.** At some point after its manufacture, the Toyota Defendants placed the subject
4 Lexus into the stream of commerce in the United States. By such action, the Defendants became
5 liable under the doctrine of strict liability in tort for injuries or damages caused by unreasonably
6 dangerous defects in the subject Lexus.

7 **186.** The subject Lexus’ front occupant position seat backs are by design unreasonably
8 dangerous for use in the reasonably foreseeable manner, transporting small children in car seats
9 positioned behind the driver seat, without adequate warnings and instructions.

10 **187.** Without warnings and/or instructions adequately placed on or with the subject
11 Lexus its driver seatback that product is unreasonably dangerous and defective.

12 **188.** The subject Lexus’ driver seatback strength as a restraint in moderate to severe rear
13 end collisions is defective and unreasonably dangerous because Toyota Motor Company and/or
14 Toyota Motor Sales, U.S.A., Inc. knew or should have known, in light of the generally recognized
15 and prevailing scientific/technical/medical knowledge available at the time of the product’s
16 distribution, that a foreseeable use of the subject Lexus driver seatback might be unreasonably
17 dangerous to drivers and people, especially children positioned behind the driver seat, and they
18 still did not provide adequate warnings of the danger or instructions for reasonably safe use of the
19 subject Lexus’ driver seatback.

20 **189.** Toyota Motor Corporation provided no warnings to users of the subject Lexus
21 driver seatback of the dangers posed by the possible performance of 2004 Lexus RX330s driver
22 seatbacks about dangers to drivers or rear driver side positioned passengers from driver seatbacks
23 bending rearward during collisions in which a 2004 Lexus RX330 is rear ended.

24 **190.** Toyota Motor Sales U.S.A., Inc. provided no warnings to users of the subject
25 Lexus driver seatback of the dangers posed by the possible performance of 2004 Lexus RX330s
26 driver seatbacks about dangers to drivers or rear driver side positioned passengers from driver
27 seatbacks bending rearward during collisions in which a 2004 Lexus RX330 is rear ended.

28 **191.** At the time the subject Lexus was introduced into the stream of commerce, it
contained a design defect in that the driver seatback strength and driver restraining capacity, of

1 which the seat back and head restraint are primary parts, failed to restrain Mrs. Varela in the front
2 seat area.

3 **192.** This design defect, referenced in the last paragraph above, rendered the subject
4 Lexus unreasonably dangerous as designed, taking into consideration the benefits of the design of
5 the subject Lexus driver seatback and the harmful characteristics and consequences involved in its
6 use.

7 **193.** Safer alternative driver seatback system designs existed in 2003 which, in all
8 reasonable probability, would have prevented or significantly reduced the risk of rearward
9 seatback failure during the subject collision or the collisions that might have occurred if the
10 subject Jeep Grand Cherokee had been equipped with Forward Collision Warning Plus and it had
11 operated properly during the 5 seconds before the subject collision.

12 **194.** Safer alternative driver seat-back system designs existed in 2003 which, in all
13 reasonable probability, would not have substantially impaired the subject Lexus' driver seatback
14 or driver restraint system utility.

15 **195.** The alternative designs referenced in the last paragraph above were economically
16 and technologically feasible at the time the subject Lexus left the control of the defendants by the
17 application of existing or reasonably achievable scientific knowledge. Said design defect was a
18 proximate cause of the injuries in question.

19 **196.** There was a failure by the Toyota Defendants to adequately warn purchasers or
20 users of the unsafe design characteristics of the subject Lexus' driver seat-back system dangers or
21 that the driver seat-back system might not adequately restrain the driver in rear-end impacts.

22 **197.** The defects referenced in this complaint were known or, by the application of
23 reasonably developed human skill and foresight, should have been known to the Toyota
24 Defendants. These defects rendered the subject Lexus unreasonably dangerous as marketed and
25 distributed by the Toyota Defendants.

26 **198.** The harmful characteristics and consequences of the design of the driver seat-back
27 in the subject Lexus outweigh the benefits of that design.

28 **199.** As a direct and proximate cause of the design defect in the lack of strength for
retaining drivers in foreseeable rear end collisions for the subject 2004 Lexus RX330 and failure

1 to warn Plaintiffs about the dangers to children positioned in the seating row behind the driver seat
2 Vivian Varela was killed.

3 **200.** Toyota Motor Corporation and Toyota Motor Sales, U.S.A., Inc. distributed the
4 subject Lexus as joint venturers and are jointly liable for injuries proximately caused by the design
5 and warning defects related to the subject Lexus and its driver seat-back lack of strength.

6 **201.** If the Toyota Defendants had given adequate warnings to Mellissa Varela of the
7 true characteristics and potential consequences of the subject Lexus driver seat-back Mellissa
8 Varela would have transported Vivian in a position not behind an occupied front seat of the
9 subject vehicle during the trip that ended in the subject collision.

10 **202.** If the Toyota Defendants had given adequate instructions to Melisa Varela about
11 the safer seating positions for children in locations other than behind the driver seat in the subject
12 Lexus during the trip that ended in the subject collision Vivian Varela would not have died in the
13 subject collision.

14 **203.** The Toyota Defendants are jointly liable under the doctrine of strict liability and
15 “joint venture” in tort for unsafe and unreasonably dangerous driver seat-back characteristics
16 arising out of the design, manufacture or marketing of the subject Lexus in question, to the extent
17 such defects were a proximate cause of the injuries in question and the Plaintiff’s and the
18 statutory beneficiaries subsequent damages.

19
20 **CLAIMS FOR RELIEF**

21 **COUNT I**

22 **Common Law Negligence**

23 **(Against Defendants FCA US LLC, LVN MOTORS, LLC and PV HOLDING CORP.)**

24 **204.** Plaintiff hereby incorporates by this reference each and every allegation
25 contained in the foregoing paragraphs as though fully set forth herein.

26 **205.** Defendants FCA US LLC, LVN MOTORS, LLC and PV HOLDING CORP. owe and
27 owed a duty of care to individuals driving, riding in or encountering vehicles manufactured
28

1 in whole or in part and/or placed into the stream of commerce by FCA US LLC, LVN
2 MOTORS, LLC, PV HOLDING CORP. and their legal predecessors.

3 **206.** Defendants FCA US LLC, LVN MOTORS, LLC and PV HOLDING CORP. breached
4 this duty of care by, among other things, they or their legal predecessors negligently
5 designed and/or sold the 2014 Jeep Grand Cherokee's collision avoidance system without
6 incorporating readily available and reasonably priced safety features including but not
7 limited to Forward Collision Warning Plus and/or Forward Collision Warning and
8 Autonomous Emergency Braking, that are set to alert drivers in time to avoid collisions
9 like the subject collision and autonomously brake in time to significantly reduce the
10 severity of the collision, in the vehicle's collision avoidance system.

11 **207.** For the reasons specified herein, the subject 2014 Jeep Grand Cherokee and
12 its collision avoidance system were, at the time the vehicle was sold and used as herein
13 alleged, unreasonably dangerous and defective for their intended purposes.

14 **208.** As a direct and proximate result of Defendants FCA US LLC, LVN MOTORS,
15 LLC and PV HOLDING CORP.'s negligence, recklessness and conscious decisions, as alleged
16 herein, VIVIAN VARELA died. Plaintiff and other statutory beneficiaries sustained grief,
17 anguish, emotional distress, loss of enjoyment of life, loss of consortium, and other injuries
18 and losses both consequential and incidental thereto.

19 **209.** As a further direct and proximate result of Defendants FCA US LLC, LVN
20 MOTORS, LLC and PV HOLDING CORP.'s negligence as alleged herein, Plaintiff MELISSA
21 VARELA suffered serious and permanent injury, including physical injury, economic loss,
22 emotional distress and loss of enjoyment of life, some of which may be permanent in
23 nature, all to her general damage in an amount to be proven at the time of trial in this
24 matter.

25 **210.** As a further direct and proximate result of Defendants FCA US LLC, LVN
26 MOTORS, LLC and PV HOLDING CORP.'s negligence as alleged herein, Plaintiff MELISSA
27 VARELA has incurred medical, hospital and related expenses and has suffered a loss of
28

earnings and/or earning capacity, and may continue to incur such expenses and losses in the future, all in an amount to be proven at the time of trial in this matter.

211. In doing the things aforementioned, FCA US LLC acted with an evil mind guiding an evil hand and Plaintiff and the statutory beneficiaries are, therefore, entitled to recover exemplary or punitive damages.

COUNT II

Product Liability – Design Defect

(Against Defendants FCA US LLC, LVN MOTORS, LLC and PV HOLDING CORP.)

212. Plaintiff hereby incorporates by this reference each and every allegation contained in the foregoing paragraphs as though fully set forth herein.

213. Defendants FCA US LLC, LVN MOTORS, LLC and PV HOLDING CORP. are liable to Plaintiff and other statutory beneficiaries because of the defective and unreasonably dangerous design of the subject 2014 Jeep Grand Cherokee's collision avoidance system as alleged in this Complaint.

214. As a direct and proximate result of Defendants FCA US LLC, LVN MOTORS, LLC and PV HOLDING CORP.'s design and distribution that excluded use of available, effective and inexpensive Forward Collision Warning Plus and/or Forward Collision Warning and Autonomous Emergency Braking features with earlier alerts and collision mitigation braking in the subject 2014 Jeep Grand Cherokee's collision avoidance system, VIVIAN VARELA was killed.

215. As a direct and proximate result of FCA US LLC's, LVN MOTORS, LLC and PV HOLDING CORP.'s distribution, negligence, recklessness and conscious decisions, as alleged herein, VIVIAN VARELA died. Plaintiff and other statutory beneficiaries sustained grief, anguish, emotional distress, loss of enjoyment of life, loss of consortium, and other injuries and losses both consequential and incidental thereto.

216. As a further direct and proximate result of Defendants FCA US LLC, LVN MOTORS, LLC and PV HOLDING CORP.'s design and distribution as alleged herein, Plaintiff MELISSA VARELA suffered serious and permanent injury, including physical injury,

217. As a further direct and proximate result of Defendants FCA US LLC, LVN MOTORS, LLC and PV HOLDING CORP.'s design and distribution as alleged herein, Plaintiff MELISSA VARELA has incurred medical, hospital and related expenses and has suffered a loss of earnings and/or earning capacity, and may continue to incur such expenses and losses in the future, all in an amount to be proven at the time of trial in this matter.

218. In doing the things aforementioned, FCA US LLC acted with an evil mind guiding an evil hand and Plaintiff and the statutory beneficiaries are, therefore, entitled to recover exemplary or punitive damages.

COUNT III

Product Liability – Warning Defect

(Against Defendants FCA US LLC, LVN MOTORS, LLC and PV HOLDING CORP.)

219. Plaintiff hereby incorporates by this reference each and every allegation contained in the foregoing paragraphs as though fully set forth herein.

220. Defendants FCA US LLC, LVN MOTORS, LLC and PV HOLDING CORP. are liable to Plaintiff and other statutory beneficiaries because of the defective and unreasonably dangerous design of the subject 2014 Jeep Grand Cherokee's forward collision warning system as alleged in this Complaint.

221. As a direct and proximate result of Defendants FCA US LLC, LVN MOTORS, LLC and PV HOLDING CORP.'s failure to install an effective Forward Collision Warning system in the subject 2014 Jeep Grand Cherokee to timely warn Kristina Schoeck of the stopped Varela Lexus ahead in Ms. Schoeck's lane of travel with available and inexpensive Forward Collision Warning Plus and/or Forward Collision Warning early alerts in the subject 2014 Jeep Grand Cherokee, VIVIAN VARELA was killed.

222. As a direct and proximate result of FCA US LLC's design, failure to warn, distribution, negligence, recklessness and conscious decisions, as alleged herein, VIVIAN

1 VARELA died. Plaintiff and other statutory beneficiaries sustained grief, anguish,
2 emotional distress, loss of enjoyment of life, loss of consortium, and other injuries and
3 losses both consequential and incidental thereto.

4 223. As a further direct and proximate result of Defendants FCA US LLC, LVN
5 MOTORS, LLC and PV HOLDING CORP.'s design, failure to warn and distribution as alleged
6 herein, Plaintiff MELISSA VARELA suffered serious and permanent injury, including
7 physical injury, economic loss, emotional distress and loss of enjoyment of life, some of
8 which may be permanent in nature, all to her general damage in an amount to be proven at
9 the time of trial in this matter.

10 224. As a further direct and proximate result of Defendants FCA US LLC, LVN
11 MOTORS, LLC and PV HOLDING CORP.'s design, failure to warn and distribution as alleged
12 herein, Plaintiff MELISSA VARELA has incurred medical, hospital and related expenses and
13 has suffered a loss of earnings and/or earning capacity, and may continue to incur such
14 expenses and losses in the future, all in an amount to be proven at the time of trial in this
15 matter.

16 225. In doing the things aforementioned, FCA US LLC acted with an evil mind
17 guiding an evil hand and Plaintiff and the statutory beneficiaries are, therefore, entitled to
18 recover exemplary or punitive damages.

19 **COUNT IV**

20 **Negligence**

21 **(Against the SCHOECK Defendants)**

22 226. Plaintiff hereby incorporates by this reference each and every allegation
23 contained in the foregoing paragraphs as though fully set forth herein.

24 227. Defendant KRISTINA SCHOECK owed a duty of care to users of the public
25 roads and highways.

26 228. Defendant KRISTINA SCHOECK breached this duty of care.

27 229. As a result of Defendant SCHOECK's negligence in failing to purchase a
28 vehicle with Forward Collision Warning and Automatic Emergency Braking in its

nature of VIVIAN VARELA's death has further exacerbated Vivian's family's grief and emotional distress.

235. Pursuant to A.R.S. §12-611, *et seq.*, the surviving mother of VIVIAN VARELA is entitled to maintain an action for wrongful death against Defendants in this matter for losses and injuries stemming from the loss of her daughter VIVIAN VARELA.

236. In doing the things aforementioned, Toyota Motor Corporation and Toyota Motor Sales U.S.A., Inc. acted with evil minds guiding an evil hand and Plaintiff is, therefore, entitled to recover exemplary or punitive damages.

COUNT VI

Common Law Negligence

(Against Defendants Toyota Motor Corporation and Toyota Motor Sales U.S.A., Inc.)

237. Plaintiff hereby incorporates by this reference each and every allegation contained in the foregoing paragraphs as though fully set forth herein.

238. Defendants Toyota Motor Corporation and Toyota Motor Sales U.S.A., Inc. owe and owed a duty of care to individuals driving, riding in or encountering vehicles manufactured in whole or in part and/or placed into the stream of commerce by Toyota Motor Corporation and Toyota Motor Sales U.S.A., Inc. and their legal predecessors.

239. Defendants Toyota Motor Corporation and Toyota Motor Sales U.S.A., Inc. breached this duty of care by, among other things, they or their legal predecessors negligently designed and/or sold the subject 2004 Lexus driver seatback system without incorporating readily available and reasonably priced features to give the driver seatback adequate strength to restrain drivers in foreseeable collisions.

240. For the reasons specified herein, the subject Lexus driver seatback system was, at the time the vehicle was sold and used as herein alleged, unreasonably dangerous and defective for its intended purposes.

241. As a direct and proximate result of Defendants Toyota Motor Corporation and Toyota Motor Sales U.S.A., Inc.'s negligence, recklessness and conscious decisions, as alleged herein, VIVIAN VARELA died. Plaintiff and other statutory beneficiaries

COUNT VII

Product Liability – Design Defect

(Against Defendants Toyota Motor Corporation and Toyota Motor Sales U.S.A., Inc.)

245. Plaintiff hereby incorporates by this reference each and every allegation contained in the foregoing paragraphs as though fully set forth herein.

246. Defendants Toyota Motor Corporation and Toyota Motor Sales U.S.A., Inc. are liable to Plaintiff and other statutory beneficiaries because of the defective and unreasonably dangerous design of the subject Lexus driver seatback system as alleged in this Complaint.

247. As a direct and proximate result of Defendants Toyota Motor Corporation and Toyota Motor Sales U.S.A., Inc.'s design and distribution of the subject 2004 Lexus

1 with its unreasonably dangerous and defective driver seatback design VIVIAN VARELA was
2 killed.

3 **248.** As a direct and proximate result of Toyota Motor Corporation and Toyota
4 Motor Sales U.S.A., Inc.'s distribution, negligence, recklessness and conscious decisions,
5 as alleged herein, VIVIAN VARELA died. Plaintiff and other statutory beneficiaries
6 sustained grief, anguish, emotional distress, loss of enjoyment of life, loss of consortium,
7 and other injuries and losses both consequential and incidental thereto.

8 **249.** As a further direct and proximate result of Defendants Toyota Motor
9 Corporation and Toyota Motor Sales U.S.A., Inc.'s design and distribution as alleged
10 herein, Plaintiff MELISSA VARELA suffered serious and permanent injury, including
11 physical injury, economic loss, emotional distress and loss of enjoyment of life, some of
12 which may be permanent in nature, all to her general damage in an amount to be proven at
13 the time of trial in this matter.

14 **250.** As a further direct and proximate result of Defendants Toyota Motor
15 Corporation and Toyota Motor Sales U.S.A., Inc.'s design and distribution as alleged
16 herein, Plaintiff MELISSA VARELA has incurred medical, hospital and related expenses and
17 has suffered a loss of earnings and/or earning capacity, and may continue to incur such
18 expenses and losses in the future, all in an amount to be proven at the time of trial in this
19 matter.

20 **251.** In doing the things aforementioned, Toyota Motor Corporation and Toyota
21 Motor Sales U.S.A., Inc. acted with evil minds guiding an evil hand and Plaintiff is,
22 therefore, entitled to recover exemplary or punitive damages.

23 **COUNT IIV**

24 **Product Liability – Warning Defect**

25 **(Against Defendants Toyota Motor Corporation and Toyota Motor Sales U.S.A., Inc.)**

26 **252.** Plaintiff hereby incorporates by this reference each and every allegation
27 contained in the foregoing paragraphs as though fully set forth herein.
28

1 **253.** Defendants Toyota Motor Corporation and Toyota Motor Sales U.S.A.,
2 Inc. are liable to Plaintiff and other statutory beneficiaries because of the defective and
3 unreasonably dangerous design of the subject 2004 Lexus driver seatback system as
4 alleged in this Complaint.

5 **254.** As a direct and proximate result of Defendants Toyota Motor Corporation
6 and Toyota Motor Sales U.S.A., Inc.'s failure to warn Melissa Varela of the danger of the
7 driver seat collapsing rearward during moderate to severe rear end collisions for the
8 subject Lexus VIVIAN VARELA was killed.

9 **255.** As a direct and proximate result of Toyota Motor Corporation and Toyota
10 Motor Sales U.S.A., Inc.'s design, failure to adequately warn and/or instruct related to the
11 weak driver seatback, distribution, negligence, recklessness and conscious decisions, as
12 alleged herein, VIVIAN VARELA died. Plaintiff and other statutory beneficiaries sustained
13 grief, anguish, emotional distress, loss of enjoyment of life, loss of consortium, and other
14 injuries and losses both consequential and incidental thereto.

15 **256.** As a further direct and proximate result of Defendants Toyota Motor
16 Corporation and Toyota Motor Sales U.S.A., Inc.'s design, failure to warn and instruct as
17 alleged herein, Plaintiff MELISSA VARELA suffered serious and permanent injury, including
18 physical injury, economic loss, emotional distress and loss of enjoyment of life, some of
19 which may be permanent in nature, all to her general damage in an amount to be proven at
20 the time of trial in this matter.

21 **257.** As a further direct and proximate result of Defendants Toyota Motor
22 Corporation and Toyota Motor Sales U.S.A., Inc.'s design, failure to warn and distribution
23 as alleged herein, Plaintiff MELISSA VARELA has incurred medical, hospital and related
24 expenses and has suffered a loss of earnings and/or earning capacity, and may continue to
25 incur such expenses and losses in the future, all in an amount to be proven at the time of
26 trial in this matter.

1 **258.** In doing the things aforementioned, Toyota Motor Corporation and Toyota
2 Motor Sales U.S.A., Inc. acted with evil minds guiding an evil hand and Plaintiff and the
3 statutory beneficiaries are, therefore, entitled to recover exemplary or punitive damages.

4 **PRAYER FOR RELIEF**

5 **WHEREFORE**, Plaintiff MELISSA VARELA prays for damages against FCA US LLC,
6 LVN MOTORS, LLC, PV HOLDING CORP., Toyota Motor Corporation and Toyota Motor Sales
7 U.S.A., Inc. and each of them, on behalf of herself and other statutory beneficiaries, as
8 follows:

9 **1.** For special damages, including but not limited to medical fees and expenses,
10 incurred on behalf of MELISSA VARELA and VIVIAN VARELA.

11 **2.** For other general damages, including lost income, pain and suffering,
12 medical expenses, cost of care, loss of enjoyment of life related to the loss of VIVIAN
13 VARELA and injuries suffered by MELISSA VARELA.

14 **3.** For the loss of love and affection, companionship, care, protection, guidance,
15 as well as the profound grief, sorrow, anguish, stress, shock and mental suffering already
16 experienced and reasonably probable to be experienced in the future.

17 **4.** For the funeral and burial expenses related to the VARELA family's loss of
18 VIVIAN VARELA.

19 **5.** For taxable costs and pre- and post-judgment interest to the extent permitted
20 by law.

21 **6.** For exemplary damages against FCA US LLC, Toyota Motor Corporation and
22 Toyota Motor Sales U.S.A., Inc. to the extent permitted by law.

23 **7.** Against Defendant KRISTINA SCHOECK, Plaintiff prays for any percentage of
24 fault assessed by the jury against KRISTINA SCHOECK, regarding the damages prayed for in
25 1-4 above in this "Prayer For Relief", assessed for her negligent failure to purchase a 2014
26 vehicle with inexpensive and available Forward Collision Warning Plus.

27 **8.** For attorney's fees and expenses to the extent permitted by law.

28 **9.** For other relief as the Court deems just and proper.

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1 DATED this 6th day of January, 2017.

2 SHUMWAY LAW PLLC

3
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