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9

10 UNITED STATES DISTRICT COURT
11 CENTRAL DISTRICT OF CALIFORNIA

12 ROY JONES and ALYCE
13 RUBINFELD, individually, and on
14 behalf of a class of similarly situated
individuals,

15 Plaintiffs,

16 v.

17 PORSCHE CARS NORTH
18 AMERICA, INC., a Delaware
corporation, and DOES 1-10,
19 inclusive,

20 Defendants.
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Case No.: 2:15-CV_05766

**FIRST AMENDED CLASS ACTION
COMPLAINT FOR:**

- (1) Violations of California Consumer
Legal Remedies Act
- (2) Violations of Unfair Competition
Law
- (3) Breach of Implied Warranty pursuant
to Song-Beverly Consumer Warranty
Act
- (4) Breach of Implied Warranty under
the Magnuson-Moss Warranty Act
- (5) Unjust Enrichment

DEMAND FOR JURY TRIAL

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INTRODUCTION

1. Plaintiffs Roy Jones and Alyce Rubinfeld (“Plaintiffs”) bring this action for themselves and on behalf of all persons in California who purchased or leased any vehicle designed, manufactured, marketed, distributed, sold, warranted, leased, and serviced by Porsche Cars North America, Inc. (“Porsche” or “Defendant”) equipped with the same or substantially identical beige-colored dashboards (collectively, “Class Vehicles”).

2. This action arises out of a uniform problem in the Class Vehicles and their beige-colored dashboards, including, but not limited to, Luxor Beige, Sand Beige, or any other beige dashboard (collectively, “Beige Dashboards”), which interferes with the ability of drivers to see the road. This condition, caused by the reflection of light from the unusually light colored dashboards into the windshield, and then into the drivers’ eyes, can momentarily blind drivers or impair their ability to see the roadway (the “Windshield Glare”)¹. This Windshield Glare poses a clear, unreasonable safety risk.

3. On information and belief, Defendant designed, manufactured, distributed, marketed, sold, and leased vehicles equipped with the same or substantially identical Beige Dashboards, and the Windshield Glare problem is the same for all Class Vehicles.

4. Porsche has been aware of the Windshield Glare since 2011, based on consumer complaints made to Porsche, including directly to its CEO. In 2011, one class member wrote to Porsche’s CEO complaining that the Windshield Glare made it “very difficult to drive” and that other class members were spending \$5,000 to replace their Beige Dashboards with black colored dashes in order to remedy the condition. *See Exhibit 2.*

¹ The problem can also manifest as a “blackout effect” on the windshield in shady locations.

1 5. Owners of the affected vehicles have a reasonable expectation that
2 they should be able to see clearly through their windshields during normal and
3 routine use of their vehicles. They do not expect Porsche to sell them a product
4 that Porsche knew to cause an unsafe reflection of sunlight into the drivers' eyes.

5 6. Because the Dashboard Glare only manifests under certain
6 conditions, for example, when the sun is at a certain angle relative to the
7 dashboard and windshield, Plaintiffs and class members were not aware of the
8 Dashboard Glare problem prior to purchase.

9 7. Over a period of several years, various owners of the Class Vehicles
10 have posted their complaints on the National Highway Traffic Safety
11 Administration ("NHTSA") website illustrating that the defect is widespread and
12 dangerous. The following incident report is a typical example:

13 (2014 Porsche Cayenne 09/05/2014) LUXOR BEIGE
14 DASHBOARD IS TOO BRIGHT AND REFLECTS IN
15 THE WINDSHIELD CREATING BLIND SPOTS IN
16 **BRIGHT SUNLIGHT. A NEAR MISS HAPPENED**
17 **BECAUSE OF THE TEMPORARY BLIND SPOT.**
18 DEPENDING ON THE GEOMETRY OF THE SUN
19 AND THE CAR THE BLIND SPOT IN THE
20 WINDOW FROM THE REFLECTION CAN BE
21 ALMOST OPAQUE. IF ANOTHER VEHICLE IS
22 SHADED IN THE REFLECTION BLIND SPOT THEN
23 THE SHADED VEHICLE CAN BE ALMOST
24 INVISIBLE. (Emphasis added)²

25 8. On information and belief, prior to sale of the Class Vehicles,
26 Defendant knew, or should have known, about the Windshield Glare problem
27 through their exclusive knowledge of non-public, internal data about the Beige
28 Dashboards and the Windshield Glare, including, without limitation, early
consumer complaints about the Windshield Glare problem to Defendant's

² All consumer quotations posted on the NHTSA website and elsewhere online are reproduced with spelling and grammatical errors as found in the original.

1 dealers who are their agents for vehicle repairs; consumer complaints to NHTSA
2 and resulting notice from NHTSA; early consumer complaints on websites and
3 internet forums; dealership repair orders; testing conducted in response to owner
4 or lessee complaints; and/or other internal sources of aggregate information
5 about the problem. Nevertheless, Defendant has actively concealed and failed to
6 disclose the Windshield Glare problem to Plaintiffs and Class Members at the
7 time of their purchase or lease of the Class Vehicles and thereafter.

8 9. On information and belief, Defendant's corporate officers, including
9 its CEO, and/or directors, or managers knew about the Windshield Glare
10 problem and failed to disclose it to Plaintiffs and Class Members, at the time of
11 sale, lease, repair, and thereafter. *See* Exhibit 2.

12 10. Plaintiffs and Class Members reasonably relied on the material
13 information regarding the Windshield Glare that was omitted and not disclosed
14 to Plaintiffs and Class Members. Porsche had exclusive knowledge and was
15 aware of the Windshield Glare problem. For example, a warning printed in a
16 German-language sales brochure for the Porsche Boxster, states: "Bei dieser
17 Interieurfarbe können abhängig vom Lichteinfall Spiegelungen auf der
18 Frontscheibe auftreten." Approximately translated, the statement means:
19 "depending on the lighting condition, this [lighter] interior may cause reflections
20 on the windshield to occur." On information and belief, this warning does not
21 appear on any American sales brochures for the Class Vehicles.

22 11. Further, Porsche made no mention of the Windshield Glare in any
23 purchase or lease agreements presented to Plaintiffs and Class Members prior to
24 sale or lease. Had Plaintiffs and Class Members known about the Windshield
25 Glare, they would not have purchased or leased the Class Vehicles, or would
26 have paid less for them. However, Plaintiffs and Class Members had no access,
27 and could not reasonably gain access, to the information that Porsche concealed
28 regarding the Windshield Glare problem.

1 12. On information and belief, despite notice of the defect from
2 consumer complaints and dealership repair orders, Porsche has not recalled the
3 Class Vehicles to repair the Windshield Glare problem, has not offered their
4 customers a suitable repair or replacement free of charge, and has not offered to
5 reimburse the Class Vehicles' owners and leaseholders in full for any costs they
6 may have incurred in diagnosing and repairing the Windshield Glare problem.

7 13. Because Porsche will not notify Class Members of the defective
8 nature of the Beige Dashboards, Plaintiffs and Class Members, and members of
9 the general public, are subjected to unreasonable safety risks from the vehicles.

10 14. The Windshield Glare problem is inherent in the Class Vehicles and
11 was present in each Class Vehicle at the time of sale, unbeknownst to the
12 Plaintiffs and Class Members.

13 15. Porsche knew about the Windshield Glare problem that was present
14 in every Class Vehicle, along with the attendant safety concerns, and concealed
15 them from Plaintiffs and Class Members, at the time of sale, lease, and repair and
16 thereafter.

17 16. As a result of their reliance on Defendant's omissions, owners and
18 lessees of the Class Vehicles suffered an ascertainable loss of money, property,
19 and/or value of their Class Vehicles, including, but not limited to, out-of-pocket
20 costs related to repairs or replacements to alleviate the Windshield Glare
21 associated with the Beige Dashboards. Additionally, as a result of the
22 Windshield Glare problem, Plaintiffs and Class Members were harmed and
23 suffered actual damages in that the Class Vehicles continue to, and will continue
24 to, experience the Windshield Glare problem throughout the life of the Class
25 Vehicles, unless the Windshield Glare problem is resolved.

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PARTIES

PLAINTIFF ROY JONES

17. Plaintiff Roy Jones is a California citizen who resides in Lake Sherwood, California.

18. On or about March 20, 2014, Plaintiff purchased a used 2013 Porsche Panamera equipped with a Beige Dashboard from Pacific Porsche, an authorized Porsche dealer in Los Angeles County.

19. Plaintiff purchased his vehicle primarily for personal, family, or household use. Porsche manufactured, sold, distributed, advertised, marketed, and warranted the vehicle.

20. Passenger safety and reliability were factors in Plaintiff's decision to purchase his vehicle. Prior to purchasing his vehicle, Plaintiff reviewed specific features and options for the Porsche Panamera on Porsche's official website.,

21. Soon after purchasing his vehicle, the Windshield Glare manifested in Plaintiffs' vehicle. Plaintiff continues to experience the Windshield Glare.

22. Had Porsche disclosed the Windshield Glare problem before Plaintiff purchased his vehicle, Plaintiff would have seen such disclosures and been aware of them. Indeed, Porsche's omissions were material to Plaintiff. Plaintiff would not have purchased his Class Vehicle equipped with a beige or light colored dashboard had he known of the Windshield Glare.

23. At all times, Plaintiff, like all Class Members, has driven his vehicle in a foreseeable manner and in the manner in which it was intended to be used.

PLAINTIFF ALYCE RUBINFELD

24. Plaintiff Alyce Rubinfeld is a California citizen who resides in Westlake Village, California.

1 25. On or about August 25, 2013, Plaintiff purchased a new 2013
2 Porsche Cayenne equipped with a Beige Dashboard from Rusnak Westlake
3 Porsche, an authorized Porsche dealer in Ventura County.

4 26. Plaintiff purchased her vehicle primarily for personal, family, or
5 household use. Porsche manufactured, sold, distributed, advertised, marketed,
6 and warranted the vehicle.

7 27. Passenger safety and reliability were factors in Plaintiff's decision
8 to purchase her vehicle. Prior to purchasing her vehicle, Plaintiff reviewed
9 automotive magazine advertisements and compared the Porsche Cayenne with
10 similar vehicles from other manufacturers. She also test drove the Porsche
11 Cayenne vehicle equipped with the Beige Dashboard, specifically, the Luxor
12 Beige interior, prior to her purchase.

13 28. Within the first three months of purchase, the Windshield Glare
14 manifested in Plaintiffs' vehicle. Plaintiff continues to experience the
15 Windshield Glare on sunny days and a "blackout effect" on the windshield in
16 shady locations.

17 29. Had Porsche disclosed the Windshield Glare problem before
18 Plaintiff purchased her vehicle, Plaintiff would have seen such disclosures and
19 been aware of them. Indeed, Porsche's omissions were material to Plaintiff.
20 Plaintiff would not have purchased her Class Vehicle equipped with a beige or
21 light colored dashboard had she known of the Windshield Glare.

22 30. At all times, Plaintiff, like all Class Members, has driven her vehicle
23 in a foreseeable manner and in the manner in which it was intended to be used.

24 **DEFENDANT**

25 31. Defendant Porsche Cars North America, Inc. is a corporation
26 organized and in existence under the laws of the State of Delaware and registered
27 to do business in the State of California. Porsche Cars North America Inc.'s
28 Corporate Headquarters are located at One Porsche Dr., Atlanta, GA 30354.

1 Porsche Cars North America Inc. designs, manufactures, markets, distributes,
2 services, repairs, sells, and leases passenger vehicles, including the Class
3 Vehicles, nationwide and in California. Porsche Cars North America Inc. is the
4 warrantor and distributor of the Class Vehicles in the United States.

5 32. At all relevant times herein, Defendant is and has been engaged in
6 the business of designing, manufacturing, constructing, assembling, marketing,
7 distributing, and selling automobiles, other motor vehicles, and motor vehicle
8 components in Los Angeles County and throughout the United States of
9 America.

10 **JURISDICTION AND VENUE**

11 33. This class action is brought pursuant to Rule 23 of the Federal Rules
12 of Civil Procedure. This Court has original jurisdiction over this action pursuant
13 to 28 U.S.C. § 1332(d)(2) and based on 28 U.S.C. §§ 1441 and 1453.

14 34. Venue is proper in this Court because this case was originally filed
15 in the Superior Court of California for the County of Los Angeles, which is
16 within the Central District of California. Venue properly lies in the United
17 States District Court for the Central District of California pursuant to 28 U.S.C.
18 §§ 84(a), 1391(a) and (c) and 1441(a). In addition, under 28 U.S.C. § 1367, this
19 Court may exercise supplemental jurisdiction over the state law claims because
20 all of the claims are derived from a common nucleus of operative facts and are
21 such that plaintiffs would ordinarily expect to try them in one judicial
22 proceeding.,

23 35. In addition, Plaintiff Jones resides in the County of Ventura,
24 California, and purchased his Porsche Panamera in the County of Los Angeles,
25 California, both of which are within the Central District of California.
26 Plaintiffs' Declarations, as required under Cal. Civ. Code section 1780(d), which
27 reflect that Defendant is doing business in Los Angeles County, California, are
28 filed concurrently herewith as Exhibit 1.

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FACTUAL ALLEGATIONS

36. For years, Porsche has designed, manufactured, distributed, sold, and leased the Class Vehicles. Porsche has sold, directly or indirectly, through dealers and other retail outlets, hundreds or thousands of Class Vehicles in California.

37. The Class Vehicles contain one or more design and/or manufacturing defects that lead to a distracting and unsafe glare or reflection of the Beige Dashboard in the windshield, which significantly impairs a driver’s ability to see through the windshield.

38. On information and belief, the Class Vehicles have the same or substantially identical Beige Dashboards, and the Windshield Glare problem is the same for all Class Vehicles.

39. Dating back to at least 2011, Porsche was aware of the Windshield Glare problems in the Class Vehicles equipped with Beige Dashboards. Porsche has a duty to disclose the Windshield Glare problem and the associated out-of-pocket repair costs to Class Vehicle owners because, among other reasons, the defect poses an unreasonable safety hazard, and because Porsche had and has exclusive knowledge or access to material facts about the Class Vehicles and their Beige Dashboards that were and are not known or reasonably discoverable by its customers. Further, as further alleged herein, Porsche actively concealed the Windshield Glare problem.

40. On information and belief, Defendant’s corporate officers, directors, or managers knew about the Windshield Glare problem and failed to disclose it to Plaintiffs and Class Members, at the time of sale, lease, repair, and thereafter.

41. Plaintiffs and Class Members reasonably relied on the material information regarding the Windshield Glare that was omitted and not disclosed to Plaintiffs and Class Members.

1 42. On information and belief, German-language brochures for the
2 Porsche Boxster state: “Bei dieser Interieurfarbe können abhängig vom
3 Lichteinfall Spiegelungen auf der Frontscheibe auftreten,” which approximately
4 translated, indicates “depending on the lighting condition, this [lighter] interior
5 may cause reflections on the windshield to occur.” These warnings are nowhere
6 to be seen on American brochures for the Class Vehicles.

7 43. Through customer complaints, dealership repair orders, and data
8 regarding the Windshield Glare, among other internal sources, Defendant knew
9 or should have known that the Class Vehicles contained one or more design
10 and/or manufacturing defects that adversely affect the drivability of the Class
11 Vehicles and pose safety hazards.

12 44. Nevertheless, Defendant has actively concealed and failed to
13 disclose these known problems to consumers at the time of purchase or lease and
14 thereafter. As a result of this failure, Plaintiffs and Class Members have been
15 damaged.

16 **The Windshield Glare Problem Poses an Unreasonable Safety Risk**

17 45. The Windshield Glare problem renders the Class Vehicles unsafe,
18 because it obstructs driver visibility and interferes with the driver’s ability to
19 see out of the windshield, including seeing other vehicles, pedestrians, or other
20 objects in the roadway in front of the Class Vehicles.

21 46. The existence of the Windshield Glare problem actually renders the
22 Class Vehicles unsafe and unfit to be driven on public roads pursuant to
23 California state law. California Vehicle Code section 26708(a)(2) provides:

24 A person shall not drive any motor vehicle with any
25 object or material placed, displayed, installed, affixed, or
26 applied in or upon the vehicle that obstructs or reduces
27 the driver’s clear view through the windshield or side
28 windows.

1 47. In violation of California Vehicle Code section 26708(a)(2), the
2 resulting glare or reflection obstructs and reduces the driver’s view through the
3 windshield.

4 48. Many purchasers and lessees of the Class Vehicles have experienced
5 problems with the Windshield Glare from the Beige Dashboards. Complaints
6 filed by consumers with the National Highway Traffic Safety Administration
7 (“NHTSA”) and posted on the internet demonstrate that the defect is widespread.
8 The complaints also indicate Defendant’s awareness of the problems with the
9 Beige Dashboards and how potentially dangerous the defective condition is for
10 consumers. The following are some examples of safety-related complaints
11 regarding the Windshield Glare problem caused by the Beige Dashboards
12 (spelling and grammar mistakes remain as found in the original):

13 **NHTSA Complaints** (Safecar.gov, *Search for Complaints* (May 27,
14 2015), <http://www-odi.nhtsa.dot.gov/complaints/>):

- 15 (a). (2011 PORSCHE CAYENNE S 07/21/2011) TL* THE CONTACT
16 OWNS A 2011 PORSCHE CAYENNE S. THE CONTACT
17 STATED THAT AN EXTREME GLARE WAS REFLECTING
18 FROM THE DASHBOARD ONTO THE WINDSHIELD,
19 OBSTRUCTING HIS VISION. THE DEALER OFFERED TO
20 PLACE A BLANKET OVER THE DASHBOARD AND
21 ADVISED THE CONTACT TO NOTIFY THE
22 MANUFACTURER. THE MANUFACTURER WAS MADE
23 AWARE OF THE FAILURE. THE VEHICLE WAS NOT
24 REPAIRED. THE APPROXIMATE FAILURE MILEAGE WAS
25 400 AND THE CURRENT MILEAGE WAS 1,000.
- 26 (b). (2012 PORSCHE CAYENNE 09/03/2013) TL* THE CONTACT
27 OWNS A 2012 PORSCHE CAYENNE. THE CONTACT STATED
28 THAT HE NOTICED AN ABNORMAL GLARE FROM THE
WINDSHIELD WHILE ENTERING A RESIDENTIAL GARAGE.
THE VEHICLE WAS NOT REPAIRED AND THE
MANUFACTURER WAS NOTIFIED. THE APPROXIMATE
FAILURE MILEAGE WAS 50.

- 1 (c). (2012 PORSCHE PANAMERA 03/19/2012) TL* THE CONTACT
2 OWNS A 2012 PORSCHE PANAMERA. WHILE DRIVING
3 APPROXIMATELY 30 MPH, THE REFLECTION OF THE SUN
4 ON THE INSTRUMENT PANEL AND DASHBOARD AREAS
5 BLINDED THE CONTACT. THE MANUFACTURER WAS
6 MADE AWARE OF THE FAILURE AND ADVISED THE
7 CONTACT THAT THE LIGHTER COLORED DASHBOARD
8 COULD BE REPLACED WITH A BLACK DASHBOARD. THE
9 VEHICLE WAS NOT REPAIRED.THE APPROXIMATE
10 FAILURE MILEAGE WAS 50. UPDATED 04/19/12*LJ
11 UPDATED 04/25/12
- 12 (d). (2012 PORSCHE PANAMERA 11/10/2011) 2012 PORSCHE
13 PANAMERA. CONSUMER WRITES IN REGARDS TO
14 VEHICLE DASHBOARD REFLECTION IN THE WINDSHIELD
15 WHILE DRIVING *TGW THE VEHICLE HAS A BEIGE
16 DASHBOARD THAT REFLECTS OFF THE WINDSHIELD,
17 WHICH MAKES IT VERY DIFFICULT TO SEE ON A SUNNY
18 DAY. *JB
- 19 (e). (2014 PORSCHE 911 11/12/2014) THIS MODEL, IF IT COMES
20 WITH ONE OF THE TWO LIGHT COLORED DASHBOARDS
21 AVAILABLE (MINE IS ONEBEIGE), HAS SEVERE GLARE
22 PROBLEMS, CAUSED BY THE NUMBER OF VENTS,
23 SPEAKER, AND OTHER OPENINGS ON THE UPPER DASH,
24 ALL OF WHICH REFLECT IN THE WINDOW. PORSCHE
25 NORTH AMERICA HAS VERIFIED THE PROBLEM, DEEMING
26 IT A "CHARACTERISTIC", NOT A DEFECT. THE DEALER,
27 THE AUTOGALLERY HAS ACKNOWLEDGED THE
28 PROBLEM, ONE OF IT'S SALESMEN DEEMING IT SO MUCH
GLARE AS TO BE "UNDRIVABLE". BEVERLY HILLS
PORSCHE HAS VERIFIED THE PROBLEM AND TOLD ME OF
NUMEROUS COMPLAINTS. A PERUSAL OF THE INTERNET
REVEALS MANY OTHER OWNER COMPLAINTS. AT
VARIOUS TIMES, PORSCHE AND THE DEALER HAVE
OFFERED TO HAVE SOMETHING MADE FOR THE DASH,
BUT THEY HAVE RENEGED ON THAT OFFER (THEY
INDUCED ONE CUSTOMER WHO WAS COMPLAINING TO
TRADE THE CAR FOR A MORE EXPENSIVE MODEL WITH
DARK DASH). THEY HAVE MADE OTHER OFFERS E.G
SUNGLASSES, BUT THEY HAVE FAILED TO TAKE ANY
STEPS TO REMEDY THE PROBLEM. A CASUAL REVIEW OF
DASHES IN OTHER CARS, BY WALKING THROUGH

1 PARKING LOTS, REVEALS THAT NO OTHER CAR HAS
2 NEARLY AS MANY VENTS AND OPENINGS ON UPPER
3 DASH, OR GLARE EVEN APPROACHING THAT OF THIS
4 MODEL. IN SHORT, THE CAR IS VERY DANGEROUS TO
5 DRIVE PARTICULARLY IN SUNLIGHT AND SHOULD BE
6 RECALLED OR THE GLARE PROBLEM REMEDIED. I ASK
7 THAT YOU VIEW MY CAR, OR SIMILAR MODEL, DRIVE
8 THE CAR IN SUNLIGHT AND EVALUATE THIS HAZARDOUS
9 CONDITION. I WOULD BE HAPPY TO MAKE THE CAR
10 AVAILABLE TO NHTSA AT ANY REASONABLE TIME.

11 (f). (2014 PORSCHE 911 CARRERA 04/21/2014) TL* THE
12 CONTACT OWNS A 2014 PORSCHE 911 CARRERA. THE
13 CONTACT STATED THAT THE SUNLIGHT EXHIBITED AN
14 EXCESSIVE GLARE THROUGH THE FRONT WINDSHIELD,
15 WHICH OBSTRUCTED HIS VISION. THE VEHICLE WAS
16 TAKEN TO AN AUTHORIZED DEALER WHERE THEY
17 STATED THAT THE VEHICLE WAS FUNCTIONING AS
18 DESIGNED. THE MANUFACTURER WAS NOT NOTIFIED OF
19 THE PROBLEM. THE APPROXIMATE FAILURE MILEAGE
20 WAS 10.

21 (g). (2015 PORSCHE MACAN 10/08/2014) TL* THE CONTACT
22 OWNS A 2015 PORSCHE MACAN. THE CONTACT STATED
23 THAT THE BEIGE COLOR ON THE DASHBOARD CREATED
24 A GLARE ON THE WINDSHIELD DUE TO THE SUN.
25 ADDITIONALLY, THE CONTACT'S VISION WOULD
26 BECOME IMPAIRED DUE TO THE FAILURE. THE VEHICLE
27 WAS NOT DIAGNOSED OR REPAIRED. THE
28 MANUFACTURER WAS NOTIFIED OF THE FAILURE. THE
APPROXIMATE FAILURE MILEAGE WAS 20.

49. The Windshield Glare poses an unreasonable safety risk for Class Members, other drivers, passengers, and pedestrians alike. A driver's ability to see clearly through the windshield is one of the most important factors for vehicle control and safe driving. Having the driver's view obstructed can have serious consequences on the handling, control, and maneuvering of Class Vehicles while in operation, thereby contributing to car accidents and potentially causing personal injury or death. A design and/or manufacturing defect that

1 causes one or more of these negative characteristics poses a safety hazard to the
2 general public and increases the risk of automobile accidents.

3 **Porsche Has Exclusive Knowledge of the Windshield Glare**

4 50. Porsche had superior and exclusive knowledge of the Windshield
5 Glare problem, and knew or should have known that the defect was not known or
6 reasonably discoverable by Plaintiffs and Class Members before they purchased
7 or leased the Class Vehicles.

8 51. Plaintiffs are informed and believe and based thereon allege that
9 before Plaintiffs purchased their Class Vehicles, Porsche knew about the
10 Windshield Glare through sources not available to consumers, including: early
11 consumer complaints about the Windshield Glare to Defendant's dealers who are
12 their agents for vehicle repairs; consumer complaints to NHTSA and resulting
13 notice from NHTSA; early consumer complaints on websites and internet
14 forums; dealership repair orders; testing conducted in response to owner or
15 lessee complaints; and/or other internal sources of aggregate information about
16 the problem.

17 52. On information and belief, Porsche was aware of the Windshield
18 Glare problem, as evidenced by a warning printed in the German-language sales
19 brochure for the Porsche Boxster, which states: "Bei dieser Interieurfarbe können
20 abhängig vom Lichteinfall Spiegelungen auf der Frontscheibe auftreten."
21 Approximately translated, the statement means: "depending on the lighting
22 condition, this [lighter] interior may cause reflections on the windshield to
23 occur." On information and belief, these warnings do not appear on any
24 American sales brochures for the Class Vehicles.

25 53. The alleged Windshield Glare problem was inherent in each Class
26 Vehicle and was present in each Class Vehicle at the time of sale.

27 54. The existence of the Windshield Glare is a material fact that a
28 reasonable consumer would consider when deciding whether to purchase or lease

1 a vehicle. Had Plaintiffs and other Class Members known that the Class
2 Vehicles had the Windshield Glare problem, they would not have purchased or
3 leased the Class Vehicles or would have paid less for them.

4 55. Reasonable consumers, like Plaintiffs, expect that they will be able
5 to see without significant obstruction out of the windshield and that their vehicle
6 will function in a manner that will not pose a safety hazard, and is free from
7 defects. Plaintiffs and Class Members further reasonably expect that Porsche
8 will not sell or lease vehicles with known safety defects, such as the Windshield
9 Glare, and will disclose any such defects to its consumers when it learns of them.
10 Plaintiffs and Class Members did not expect Porsche to fail to disclose the
11 Windshield Glare to them and to continually conceal the defect.

12 **Porsche Has Actively Concealed the Windshield Glare Problem**

13 56. While Porsche has been fully aware of the Windshield Glare
14 problem in the Class Vehicles, it actively concealed the existence and nature of
15 the defect from Plaintiffs and Class Members at the time of purchase, lease, or
16 repair and thereafter. Specifically, Porsche failed to disclose or actively
17 concealed at and after the time of purchase, lease, or repair:

- 18 (a) any and all known material defects or material nonconformity of the
19 Class Vehicles, including the defects relating to the Beige
20 Dashboards;
- 21 (b) that the Class Vehicles were subject to the Windshield Glare
22 problem, which renders them defective and not fit for their intended
23 purposes; and
- 24 (c) that the Class Vehicles and their Beige Dashboards were defective,
25 despite the fact that Porsche learned of such defects through
26 customer complaints, and other internal sources, as early as 2011, if
27 not before.
- 28

1 57. When consumers present the Class Vehicles to an authorized
2 Porsche dealer for repair of the Windshield Glare, rather than repair or replace
3 the problem causing the Windshield Glare, consumers are typically told that
4 there is nothing wrong with their vehicles. When the Windshield Glare is
5 acknowledged, Porsche dealers may also suggest that consumers purchase
6 aftermarket dashboard covers or purchase polarized sunglasses in an effort to
7 reduce the glare, rather than addressing the source of the problem. In addition,
8 Porsche has failed to implement a reliable fix for the defect or to reimburse
9 consumers for any costs they may have incurred to resolve the problem.

10 58. To this day, Porsche still has not notified Plaintiffs and Class
11 Members that the Class Vehicles suffer from the Windshield Glare that can
12 severely and dangerously limit the driver's visibility through the windshield.

13 59. On information and belief, Porsche has caused Plaintiffs and/or
14 Class Members to expend money at its dealerships and/or other retail service
15 stores to diagnose, repair, and/or replace the Class Vehicles' Beige Dashboards
16 or related components, despite Porsche's knowledge of the Windshield Glare
17 problem.

18 **TOLLING OF THE STATUTE OF LIMITATIONS**

19 60. Because the defects in the design or manufacturing of the Class
20 Vehicles, and specifically the Windshield Glare, cannot be detected until the
21 defect manifests itself, Plaintiffs and Class Members were not reasonably able to
22 discover the problem until after purchasing or leasing the Class Vehicles, despite
23 their exercise of due diligence.

24 61. Plaintiffs and Class Members had no realistic ability to discover the
25 Windshield Glare problem until after taking possession of the vehicle, and would
26 have no reason to believe that problems they encountered were caused by a
27 widespread, systemic defect. Therefore, the discovery rule is applicable to the
28 claims asserted by Plaintiffs and Class Members.

1 whom this case is assigned and the Judge's staff; (3) any Judge sitting in the
2 presiding state or federal court system who may hear an appeal of any judgment
3 entered; and (4) those persons who have suffered personal injuries as a result of
4 the facts alleged herein. Plaintiffs reserve the right to amend the Class and Sub-
5 Class definitions if discovery and further investigation reveal that the Class and
6 Sub-Classes should be expanded or otherwise modified.

7 67. There is a well-defined community of interest in the litigation and
8 each subclass is readily ascertainable.

9 68. Numerosity: Although the exact number of prospective class
10 members is uncertain and can only be ascertained through appropriate discovery,
11 the number is great enough such that joinder is impracticable. The disposition of
12 prospective class members' claims in a single action will provide substantial
13 benefits to all parties and to the Court. The prospective class members are
14 readily identifiable from information and records in Defendant's possession,
15 custody, or control, as well as from records kept by the Department of Motor
16 Vehicles.

17 69. Typicality: The claims of the representative Plaintiffs are typical of
18 the claims of the all prospective class members in that the representative
19 Plaintiffs and the prospective class members purchased and leased a Class
20 Vehicle designed, manufactured, and distributed by Porsche. The representative
21 Plaintiffs, like all prospective class members, have been damaged by
22 Defendant's misconduct in that they have incurred or will incur expenses as a
23 result of the Windshield Glare. Furthermore, the factual bases of Porsche's
24 misconduct are common to all prospective class members and represent a
25 common thread resulting in injury to all prospective class members.

26 70. Commonality: There are numerous questions of law and fact
27 common to Plaintiffs and the prospective class members that predominate over
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1 any question affecting individual prospective class members. These common
2 legal and factual issues include the following:

- 3 (a). Whether Class Vehicles suffer from the Windshield Glare;
- 4 (b). Whether the Windshield Glare constitutes an unreasonable safety
5 risk;
- 6 (c). Whether Defendant knew about the Windshield Glare and, if so,
7 how long Defendant has known of the defect;
- 8 (d). Whether the Windshield Glare constitutes a material fact;
- 9 (e). Whether Defendant has a duty to disclose the Windshield Glare to
10 Plaintiffs and prospective class members;
- 11 (f). Whether Plaintiffs and the prospective class members are entitled to
12 equitable relief, including but not limited to a preliminary and/or
13 permanent injunction;
- 14 (g). Whether Defendant knew or reasonably should have known of the
15 Windshield Glare before they sold and leased Class Vehicles to
16 prospective class members;
- 17 (h). Whether Defendant should be declared financially responsible for
18 notifying all prospective class members of the problems with the
19 Class Vehicles and for the costs and expenses of repairing and
20 replacing components causing the Windshield Glare with a suitable
21 alternative product;
- 22 (i). Whether Defendant is obligated to inform prospective class
23 members of their right to seek reimbursement for having paid to
24 diagnose, repair, or replace the Windshield Glare; and
- 25 (j). Whether Defendant breached the implied warranty of
26 merchantability pursuant to the Song-Beverly Act.

27 71. Adequate Representation: Plaintiffs will fairly and adequately
28 protect prospective class members' interests. Plaintiffs have retained attorneys

1 experienced in prosecuting class actions, including consumer and product defect
2 class actions, and Plaintiffs intend to prosecute this action vigorously.

3 72. Predominance and Superiority: Plaintiffs and the Class Members
4 have all suffered and will continue to suffer harm and damages as a result of
5 Defendant's unlawful and wrongful conduct. A class action is superior to other
6 available methods for the fair and efficient adjudication of the controversy.
7 Absent a class action, most Class Members would likely find the cost of
8 litigating their claims prohibitively high and would therefore have no effective
9 remedy at law. Because of the relatively small size of the individual Class
10 Members' claims, it is likely that only a few Class Members could afford to seek
11 legal redress for Defendant's misconduct. Absent a class action, Class Members
12 will continue to incur damages, and Defendant's misconduct will continue
13 without remedy. Class treatment of common questions of law and fact would
14 also be a superior method to multiple individual actions or piecemeal litigation in
15 that class treatment will conserve the resources of the courts and the litigants,
16 and will promote consistency and efficiency of adjudication.

17 73. In the alternative, this action is certifiable under the provisions of
18 Federal Rule of Civil Procedure 23(b)(1) and/or (b)(2) because:

- 19 (a) The prosecution of separate actions by individual members of
20 the Class would create a risk of inconsistent or varying
21 adjudications with respect to individual members of the Class
22 which would establish incompatible standards of conduct for
23 Porsche;
- 24 (b) The prosecution of separate actions by individual members of
25 the Class would create a risk of adjudications as to them
26 which would, as a practical matter, be dispositive of the
27 interests of the other members of the Class not parties to the
28 adjudications, or substantially impair or impede their ability

1 to protect their interests; and
2 (c) Porsche has acted or refused to act on grounds generally
3 applicable to the Class, thereby making appropriate final
4 injunctive relief or corresponding declaratory relief with
5 respect to the Class as a whole and necessitating that any such
6 relief be extended to members of the Class on a mandatory,
7 class-wide basis.

8 113. Plaintiffs are not aware of any difficulty which will be encountered
9 in the management of this litigation which should preclude its maintenance as a
10 class action.

11 **FIRST CAUSE OF ACTION**
12 **(Violation of California’s Consumer Legal Remedies Act,**
13 **California Civil Code § 1750, et seq.)**

14 74. Plaintiffs incorporate by reference the allegations contained in the
15 preceding paragraphs of this Complaint.

16 75. Plaintiffs bring this cause of action on behalf of themselves and on
17 behalf of the members of the CLRA Sub-Class.

18 76. Defendant is a “person” as defined by California Civil Code
19 § 1761(c).

20 77. Plaintiffs and CLRA Sub-Class Members are “consumers” within
21 the meaning of California Civil Code § 1761(d) because they purchased their
22 Class Vehicles primarily for personal, family, or household use.

23 78. By failing to disclose and concealing the Windshield Glare from
24 Plaintiffs and prospective Class Members, Defendant violated California Civil
25 Code § 1770(a), as they represented that the Class Vehicles and their Beige
26 Dashboards had characteristics and benefits that they do not have, and
27 represented that the Class Vehicles and their Beige Dashboards were of a
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1 particular standard, quality, or grade when they were of another. *See* Cal. Civ.
2 Code §§ 1770(a)(5) & (7).

3 79. Defendant’s unfair and deceptive acts or practices occurred
4 repeatedly in Defendant’s trade or business, were capable of deceiving a
5 substantial portion of the purchasing public, and imposed a safety risk on the
6 public.

7 80. Defendant knew that the Class Vehicles were subject to the
8 Windshield Glare, were defectively designed or manufactured, and were not
9 suitable for their intended use.

10 81. As a result of their reliance on Defendant’s omissions and/or
11 misrepresentations, owners and/or lessees of the Class Vehicles suffered an
12 ascertainable loss of money, property, and/or value of their Class Vehicles.

13 82. Defendant was under a duty to Plaintiffs and Class Members to
14 disclose the Windshield Glare and/or the associated repair costs because:

- 15 (a). Defendant was in a superior position to know the true state of facts
16 about the safety concerns of the Windshield Glare;
17 (b). Plaintiffs and Class Members could not reasonably have been
18 expected to learn or discover the Windshield Glare until it
19 manifested; and

20 83. Defendant knew that Plaintiffs and Class Members could not
21 reasonably have been expected to learn of or discover the safety defect.

22 84. In failing to disclose the Windshield Glare, Defendant knowingly
23 and intentionally concealed material facts and breached its duty not to do so.

24 85. The facts Defendant concealed from or failed to disclose to
25 Plaintiffs and Class Members are material in that a reasonable consumer would
26 have considered them to be important in deciding whether to purchase or lease
27 the Class Vehicles or pay less. Had Plaintiffs and Class Members known that the
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1 Class Vehicles' suffered from the Windshield Glare, they would not have
2 purchased or leased the Class Vehicles or would have paid less for them.

3 86. Plaintiffs and Class Members are reasonable consumers who do not
4 expect the vehicle's dashboard to cause a dangerous and distracting reflection or
5 glare onto the vehicle's windshield. This is the reasonable and objective
6 consumer expectation relating to vehicle dashboards and windshields.

7 87. As a result of Defendant's conduct, Plaintiffs and Class Members
8 were harmed and suffered actual damages in that, on information and belief, the
9 Class Vehicles experienced and may continue to experience problems such as the
10 unsafe glare or reflection of the Beige Dashboards onto the vehicle's windshield.

11 88. As a direct and proximate result of Defendant's unfair or deceptive
12 acts or practices, Plaintiffs and Class Members suffered and will continue to
13 suffer actual damages.

14 89. Plaintiffs and the Class are entitled to equitable relief.

15 90. Plaintiffs provided Defendant with notice of its violations of the
16 CLRA pursuant to California Civil Code § 1782(a). Defendant failed to provide
17 appropriate relief for their violations of the CLRA within 30 days. Therefore,
18 Plaintiffs now seek monetary, compensatory, and punitive damages, in addition
19 to injunctive and equitable relief they sought before.

20 **SECOND CAUSE OF ACTION**

21 **(Violation of California Business & Professions Code § 17200, et seq.)**

22 91. Plaintiffs incorporate by reference the allegations contained in the
23 preceding paragraphs of this Complaint.

24 92. Plaintiffs bring this cause of action on behalf of themselves and on
25 behalf of the Class.

26 93. As a result of their reliance on Defendant's omissions and/or
27 misrepresentations, owners and/or lessees of the Class Vehicles suffered an
28 ascertainable loss of money, property, and/or value of their Class Vehicles.

1 Additionally, as a result of the Windshield Glare, Plaintiffs and Class Members
2 were harmed and suffered actual damages.

3 94. California Business & Professions Code § 17200 prohibits acts of
4 “unfair competition,” including any “unlawful, unfair or fraudulent business act
5 or practice” and “unfair, deceptive, untrue or misleading advertising.”

6 95. Plaintiffs and Class Members are reasonable consumers who do not
7 expect the vehicle’s dashboard to cause a dangerous and distracting reflection or
8 glare onto the vehicle’s windshield.

9 96. Defendant knew the Class Vehicles suffered from the Windshield
10 Glare, were defectively designed or manufactured, and were not suitable for their
11 intended use.

12 97. In failing to disclose the Windshield Glare problem, Defendant has
13 knowingly and intentionally concealed material facts and breached their duty not
14 to do so.

15 98. Defendant was under a duty to Plaintiffs and Class Members to
16 disclose the Windshield Glare:

- 17 (a). Defendant was in a superior position to know the true state of facts
18 about the safety concerns of the Windshield Glare;
- 19 (b). Defendant made partial disclosures about the quality of the Class
20 Vehicles without revealing the defective nature of the Class
21 Vehicles due to the Windshield Glare; and

22 99. Defendant actively concealed the defective nature of the Class
23 Vehicles and the Windshield Glare from Plaintiffs and the Class.

24 100. The facts Defendant concealed from or not disclosed to Plaintiffs
25 and Class Members are material in that a reasonable person would have
26 considered them to be important in deciding whether to purchase or lease Class
27 Vehicles. Had Plaintiffs and other Class Members known about the Windshield
28 Glare and that it posed a significant safety hazard, then Plaintiffs and the other

1 Class Members would not have purchased or leased Class Vehicles equipped
2 with the Beige Dashboards, or would have paid less for them.

3 101. Defendant continued to conceal the defective nature of the Class
4 Vehicles and the Windshield Glare even after Class Members began to report
5 problems. Indeed, Defendant continues to cover up and conceal the true nature
6 of the problem.

7 102. Defendant's conduct was and is likely to deceive consumers.

8 103. Defendant's acts, conduct and practices were unlawful, in that they
9 constituted:

10 (a). Violations of the California Consumer Legal Remedies Act;

11 (b). Violations of the Song-Beverly Consumer Warranty Act; and

12 (c). Violations of the express warranty provisions of California
13 Commercial Code section 2313.

14 104. By its conduct, Defendant has engaged in unfair competition and
15 unlawful, unfair, and fraudulent business practices.

16 105. Defendant's unfair or deceptive acts or practices occurred
17 repeatedly in Defendant's trade or business, and were capable of deceiving a
18 substantial portion of the purchasing public.

19 106. As a direct and proximate result of Defendant's unfair and deceptive
20 practices, Plaintiffs and the Class have suffered and will continue to suffer actual
21 damages.

22 107. Defendant has been unjustly enriched and should be required to
23 make restitution to Plaintiffs and the Class pursuant to §§ 17203 and 17204 of
24 the Business & Professions Code.

THIRD CAUSE OF ACTION

**(Breach of Implied Warranty Pursuant to Song-Beverly Consumer
Warranty Act, California Civil Code §§ 1792 and 1791.1, et seq.)**

108. Plaintiffs incorporate by reference the allegations contained in the preceding paragraphs of this Complaint.

109. Plaintiffs bring this cause of action against Defendant on behalf of themselves and on behalf of the members of the Implied Warranty Sub-Class.

110. Defendant was at all relevant times the manufacturer, distributor, warrantor, and/or seller of the Class Vehicles. Defendant knew or had reason to know of the specific use for which the Class Vehicles were purchased or leased.

111. Defendant provided Plaintiffs and Class Members with an implied warranty that the Class Vehicles and their components and parts are merchantable and fit for the ordinary purposes for which they were sold. However, the Class Vehicles are not fit for their ordinary purpose of providing reasonably reliable and safe transportation because, *inter alia*, the Class Vehicles suffered from the Windshield Glare at the time of sale or lease, and thereafter are not fit for their particular purpose of providing safe and reliable transportation.

112. Defendant impliedly warranted that the Class Vehicles were of merchantable quality and fit for such use. This implied warranty included, among other things: (i) a warranty that the Class Vehicles manufactured, supplied, distributed, and/or sold by Porsche were safe and reliable for providing transportation; and (ii) a warranty that the Class Vehicles would be fit for their intended use while the Class Vehicles were being operated.

113. Contrary to the applicable implied warranties, the Class Vehicles at the time of sale and thereafter were not fit for their ordinary and intended purpose of providing Plaintiffs and Class Members with reliable, durable, and safe transportation. Instead, the Class Vehicles are defective due to the Windshield Glare.

1 120. Contrary to the applicable implied warranties, the Class Vehicles, at
2 the time of sale and thereafter, were not fit for their ordinary and intended
3 purpose of providing Plaintiffs and Class Members with reliable, durable, and
4 safe transportation. Instead, the Class Vehicles are defective, including, but not
5 limited to, the design and/or manufacturing defects causing the Windshield
6 Glare.

7 121. Defendant's breach of implied warranty has deprived Plaintiffs and
8 Class Members of the benefit of their bargain.

9 122. The amount in controversy of Plaintiffs' individual claims meets or
10 exceeds the sum or value of \$25,000. In addition, the amount in controversy
11 meets or exceeds the sum or value of \$50,000 (exclusive of interests and costs)
12 computed on the basis of all claims to be determined in this suit.

13 123. The alleged Windshield Glare problem was inherent in each Class
14 Vehicle and was present in each Class Vehicle at the time of sale.

15 124. Upon information and belief, Defendant has been afforded a
16 reasonable opportunity to cure their breaches, including when owners and lessees
17 of the Class Vehicles brought their vehicles in for diagnoses and repair of the
18 Class Vehicles.

19 125. As a direct and proximate cause of Defendant's breach of implied
20 warranty, Plaintiffs and Class Members sustained damages and other losses in an
21 amount to be determined at trial. Defendant's conduct damaged Plaintiffs and
22 Class Members, who are entitled to recover actual damages, consequential
23 damages, specific performance, diminution in value, costs, attorneys' fees,
24 and/or other relief as appropriate.

25 126. As a result of Defendant's violations of the Magnuson-Moss
26 Warranty Act as alleged herein, Plaintiffs and Class Members have incurred
27 damages.
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FIFTH CAUSE OF ACTION
(For Unjust Enrichment)

127. Plaintiffs incorporate by reference the allegations contained in the preceding paragraphs of this Complaint.

128. Plaintiffs bring this cause of action on behalf of themselves and on behalf of all Class Members against Defendant.

129. As a direct and proximate result of Defendant’s failure to disclose known defects and material misrepresentations regarding known defects, Defendant has profited through the sale and lease of said vehicles. Although these vehicles are purchased through Defendant’s agents, the money from the vehicle sales flows directly back to Defendant.

130. Defendant has therefore been unjustly enriched due to the known defects in the Class Vehicles through the use of funds that earned interest or otherwise added to Defendant’s profits when said money should have remained with Plaintiffs and Class Members.

131. As a result of the Defendant’s unjust enrichment, Plaintiffs and Class Members have suffered damages.

RELIEF REQUESTED

132. Plaintiffs, on behalf of themselves and all others similarly situated, request the Court to enter judgment against Defendant, as follows:

- (a). An order certifying the proposed Class and Sub-Classes, designating Plaintiffs as named representatives of the Class, and designating the undersigned as Class Counsel;
- (b). A declaration that Defendant is financially responsible for notifying all Class Members about the defective nature of Class Vehicles equipped with Beige Dashboards;
- (c). An order enjoining Defendant from further deceptive distribution, sales, and lease practices with respect to Class Vehicles; compelling

1 Defendant to issue a recall for the Class Vehicles pursuant to the
2 applicable NHTSA guidelines; compelling Defendant to remove,
3 repair, and/or replace the Class Vehicles' components causing the
4 Windshield Glare, including the Beige Dashboards, with suitable
5 alternative product(s) that do not contain the defects alleged herein;
6 enjoining Defendant from selling the Class Vehicles with the
7 misleading information; and/or compelling Defendant to reform
8 their warranty, in a manner deemed to be appropriate by the Court,
9 to cover the injury alleged and to notify all Class Members that such
10 warranty has been reformed;

- 11 (d). A declaration requiring Defendant to comply with the various
12 provisions of the Song-Beverly Act alleged herein and to make all
13 the required disclosures;
- 14 (e). An award to Plaintiffs and the Class for compensatory, exemplary,
15 and statutory damages, including interest, in an amount to be proven
16 at trial;
- 17 (f). Any and all remedies provided pursuant to the Song-Beverly Act,
18 including California Civil Code section 1794;
- 19 (g). A declaration that Defendant must disgorge, for the benefit of the
20 Class, all or part of the ill-gotten profits they received from the sale
21 or lease of its Class Vehicles, or make full restitution to Plaintiffs
22 and Class Members;
- 23 (h). An award of attorneys' fees and costs, as allowed by law;
- 24 (i). An award of attorneys' fees and costs pursuant to California Code of
25 Civil Procedure § 1021.5;
- 26 (j). An award of pre-judgment and post-judgment interest, as provided
27 by law;
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- 1 (k). Leave to amend the Complaint to conform to the evidence produced
- 2 at trial; and
- 3 (l). Such other relief as may be appropriate under the circumstances.

4 **DEMAND FOR JURY TRIAL**

5 Plaintiffs demand a trial by jury of any and all issues in this action so
6 triable.

7 Dated: August 14, 2015

Respectfully submitted,

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9
10 By: /s/ Jordan L. Lurie

11 Jordan L. Lurie
12 Robert Friedl
13 Tarek H. Zohdy
14 Cody R. Padgett

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17 Attorneys for Plaintiffs
18 Roy Jones and Alyce Rubinfeld
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