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others similarly situated
17

18 UNITED STATES DISTRICT COURT
19 CENTRAL DISTRICT OF CALIFORNIA

20 LUKE HOOPER, CHARLOTTE
WHITEHEAD, and MELINDA
21 TINGLE, individually and on behalf
of all others similarly situated,
22

23 Plaintiffs,

24 v.

25 AMERICAN HONDA MOTOR
CO., INC., HONDA MOTOR CO.,
26 LTD., TAKATA CORPORATION,
TK HOLDINGS, INC., HIGHLAND
27 INDUSTRIES, INC.,
28

Defendants.

Case No.

CLASS ACTION COMPLAINT

JURY TRIAL DEMANDED

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TABLE OF CONTENTS

	Page
NATURE OF THE CASE	1
JURISDICTION AND VENUE	1
PARTIES	1
FACTUAL BACKGROUND	3
TOLLING OF THE STATUTE OF LIMITATIONS FRAUDULENT CONCEALMENT	9
ESTOPPEL	10
DISCOVERY RULE	10
CLASS ACTION ALLEGATIONS	11
NATIONWIDE CLASS	11
NUMEROSITY AND ASCERTAINABILITY	11
TYPICALITY	12
ADEQUATE REPRESENTATION	12
PREDOMINANCE OF COMMON ISSUES	12
SUPERIORITY	13
CHOICE OF LAW ALLEGATIONS	14
CLAIMS FOR RELIEF	16
<u>FIRST CLAIM FOR RELIEF</u> Violation of the Magnuson-Moss Warranty Act 15 U.S.C. §§ 2301 <i>et seq.</i> (Brought on behalf of the Nationwide Class)	16
<u>SECOND CLAIM FOR RELIEF</u> Fraudulent Concealment (Brought on behalf of the Nationwide Class)	20
<u>THIRD CLAIM FOR RELIEF</u> Fraud, Deceit, and Concealment Cal. Civil Code §§ 1709, 1710, 1711 (Brought on behalf of the Nationwide Class)	22
<u>FOURTH CLAIM FOR RELIEF</u> Violation of the Consumer Legal Remedies Act Cal. Civil Code § 1750 <i>et seq.</i> (Brought on behalf of the Nationwide Class)	23
<u>FIFTH CLAIM FOR RELIEF</u> Violations of the California Unfair Competition Law Cal. Bus. & Prof. Code § 17200, <i>et seq.</i> (Brought on behalf of the Nationwide Class)	30

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27
28

TABLE OF CONTENTS
(continued)

	Page
<u>SIXTH CLAIM FOR RELIEF</u> Violation of the California False Advertising Law Cal. Bus. & Prof. Code § 17500, <i>et seq.</i> (Brought on behalf of the Nationwide Class)	33
<u>SEVENTH CLAIM FOR RELIEF</u> Negligent Failure to Recall (Brought on behalf of the Nationwide Class)	35
PRAYER FOR RELIEF	36
DEMAND FOR JURY TRIAL	37

1 **NATURE OF THE CASE**

2 1. Plaintiffs Luke Hooper, Charlotte Whitehead, and Melinda Tingle
3 bring this action individually and on behalf of all persons similarly situated in the
4 United States who purchased or leased certain vehicles manufactured, distributed,
5 and/or sold by HONDA MOTOR CO. LTD., AMERICAN HONDA MOTOR CO.,
6 INC., and/or its related subsidiaries, successors, or affiliates (“Honda”) with
7 defective airbags manufactured by TAKATA CORPORATION, TK HOLDINGS,
8 INC., HIGHLAND INDUSTRIES, INC., and/or its related subsidiaries, successors,
9 or affiliates (“Takata”), as described below.

10 2. To date, more than 14 million cars with Takata-manufactured airbags
11 have been recalled due to defect(s) described herein (“Defective Airbags”). Among
12 those 14 million vehicles are over 5 million Honda vehicles. Plaintiffs seek redress
13 individually and on behalf of those similarly-situated for losses stemming from the
14 Defendants’ manufacture and use of defective airbags in those Honda vehicles.

15 **JURISDICTION AND VENUE**

16 3. Jurisdiction is proper in this Court pursuant to the Class Action
17 Fairness Act, 28 U.S.C. § 1332(d), because members of the proposed Plaintiff Class
18 are citizens of states different from Defendants’ home states, and the aggregate
19 amount in controversy exceeds \$5,000,000, exclusive of interest and costs.

20 4. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(a) because
21 Defendants conduct substantial business in this District, have caused harm to Class
22 Members residing in this District.

23 **PARTIES**

24 5. Plaintiff Luke Hooper is a resident and citizen of New Orleans,
25 Louisiana. Plaintiff Hooper acquired a 2006 Honda Accord, VIN
26 JHMCM564X6C000229, which, unknown at the time of acquisition, contained
27 Defective Airbags that could injure and/or kill.

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1 6. Plaintiff Charlotte Whitehead is a resident and citizen of Eufaula,
2 Alabama. Plaintiff Whitehead acquired a 2003 Honda Civic, VIN
3 2HGES16513H513574, which, unknown at the time of acquisition, contained
4 Defective Airbags that could injure and/or kill.

5 7. Plaintiff Melinda Tingle is a resident and citizen of Macon Georgia.
6 Plaintiff Tingle acquired a 2004 Honda CRV, VIN SHSRD78844U219509, which,
7 unknown at the time of acquisition, contained Defective Airbags that could injure
8 and/or kill.

9 8. Defendant American Honda Motor Co., Inc., is a California
10 corporation with its headquarters in Torrance, CA. It is the North American
11 subsidiary of Honda Motor Co., Ltd., for which it conducts the sales, marketing,
12 manufacture, assembly and operational activities in North America, including the
13 manufacture of the Class Vehicles at issue here.

14 9. Defendant Honda Motor Co., Ltd., is a foreign, for-profit corporation
15 with its principal place of business in Tokyo, Japan, that designs, markets,
16 manufactures and sells automobiles through independent retail dealers, outlets, and
17 authorized dealerships primarily in Japan, North America, Europe and Asia.

18 10. Defendant Takata Corporation is a foreign for-profit corporation with
19 its principal place of business in Tokyo, Japan. It is a specialized supplier of
20 automotive safety systems that it designs, manufactures, tests, markets, distributes
21 and sells. It is a vertically-integrated company, and manufactures component parts
22 in its own facilities.

23 11. Defendant TK Holdings, Inc., is a Delaware corporation with its
24 headquarters in Auburn Hills, Michigan. As the American subsidiary of the
25 Japanese company Takata Corporation, TK Holdings, Inc., sells, designs,
26 manufactures, tests, markets, and distributes airbags in the United States. Directly
27 or through its subsidiaries, TK Holdings, Inc. owns and operates 56 manufacturing
28

1 plants in 20 countries. TK Holdings, Inc. manufactured the Defective Airbags at
2 issue in this litigation.

3 12. Highland Industries, Inc., a subsidiary of Takata Corporation, is a
4 Delaware corporation with its headquarters in Greensboro, North Carolina. It
5 manufactures industrial and automotive textile products, including airbag fabrics
6 used in the Defective Airbags.

7 13. Defendants American Honda Motor Co., Inc., Honda Motor Co., Ltd.,
8 Takata Corporation, TK Holdings, Inc., and Highland Industries, Inc. are
9 collectively referred to in this Complaint as “Defendants.”

10 **FACTUAL BACKGROUND**

11 14. As used in this Complaint, the “Class Vehicles” refer to the Honda
12 vehicles sold in the United States, equipped at the time of sale with Takata airbags
13 sharing a common, uniform, and defective design and/or production, including the
14 following makes and model years:

- 15 • 2001- 2007 Honda Accord
- 16 • 2001 - 2005 Honda Civic
- 17 • 2002 - 2006 Honda CR-V
- 18 • 2003 - 2011 Honda Element
- 19 • 2002 - 2004 Honda Odyssey
- 20 • 2003 - 2007 Honda Pilot
- 21 • 2006 Honda Ridgeline
- 22 • 2003 - 2006 Acura MDX
- 23 • 2002 - 2003 Acura TL/CL
- 24 • 2005 Acura RL

25 15. All persons in the United States who have purchased or leased a Class
26 Vehicle equipped with the Defective Airbags are herein referred to as Class
27 Members (“Class Members”).
28

1 16. All Class Members were placed at risk by the Defective Airbags from
2 the moment they first drove their vehicles. The Defective Airbags preclude all
3 Class Members from proper and safe use of their vehicles, reduces vehicle occupant
4 protection, and endangers Class Members and other vehicle occupants. However,
5 none of the Class Members knew, or could reasonably have discovered, the
6 Defective Airbag, prior to it manifesting in a sudden and dangerous failure.

7 17. Upon information and belief, prior to the sale of most Class Vehicles,
8 Honda knew of the Defective Airbags. Yet, despite this knowledge, Honda and
9 Takata failed to disclose – and actively concealed – the Defective Airbags from
10 Class Members, the public, and federal regulators, and continued to market and
11 advertise the Class Vehicles as reliable and safe vehicles, which they are not.

12 18. As a result of Honda’s alleged misconduct, Plaintiffs and Class
13 Members were harmed and suffered actual damages, in that the Class Vehicles are
14 unsafe, unfit for their ordinary and intended use, and have manifested, or are at
15 unreasonable risk of manifesting, the Defective Airbags by way of a sudden and
16 dangerous failure that puts them and others at serious risk of injury or death.
17 Plaintiffs and the Class did not receive the benefit of their bargain as purchasers and
18 lessees, received vehicles that were of a lesser standard, grade, and quality than
19 represented, and did not receive vehicles that met ordinary and reasonable
20 consumer expectations. Plaintiffs and Class Members did not receive vehicles that
21 would reliably operate with reasonable safety, and that would not place drivers and
22 occupants in danger of encountering an ongoing and undisclosed risk of harm,
23 which could have been avoided, as Honda knew but did not disclose, through the
24 use of non-defective airbag parts. A car purchased or leased under the reasonable
25 assumption that it is “safe” as advertised is worth more than a car – such as the
26 Class Vehicles – that is known to contain a safety defect such as the Defective
27 Airbags.

1 19. As a result, all purchasers of the Class Vehicles overpaid for their cars
2 at the time of purchase. Furthermore, Honda's public disclosure of the Defective
3 Airbags has further caused the value of the Class Vehicles to materially diminish.
4 Purchasers or lessees of the Class Vehicles paid more, either through a higher
5 purchase price or higher lease payments, than they would have had the Defective
6 Airbags been disclosed.

7 20. Airbags are meant to inflate rapidly during an automobile collision to
8 cushion occupants during a collision. This protects the occupants' bodies when
9 they strike the parts of the vehicle, such as the steering wheel, dash board, or
10 windshield. When people operate a motor vehicle or ride in one as a passenger,
11 they trust and rely on the manufacturers of those vehicles to make those vehicles
12 safe for their ordinary use and purpose. One of those central safety features is the
13 airbag, which is deployed by what should be a small, controlled explosion of
14 propellants in a metal canister. These metal canisters are also known as inflators.

15 21. The first manifestation of the Defective Airbags dates back as early as
16 April 2002, when a Takata airbag exploded in a Toyota Corolla. Shortly thereafter,
17 Takata made certain changes and/or upgrades to its production facility in Moses
18 Lake, changes it claims are unrelated to the 2002 incident but should have fixed
19 stopped the factory from producing airbags with a defect.

20 22. In 2004, a Defective Airbag exploded in a Honda Accord in Alabama.
21 Honda and Takata investigated the incident, and both concluded that the incident
22 was an "anomaly" when reporting it to the National Highway Traffic Safety
23 Administration, or "NHTSA."

24 23. By 2007, at least three more incidents of Defective Airbags exploding
25 were reported to Honda. Honda then reported the incidents to Takata. Towards the
26 end of the year, Takata told Honda that it thought the airbags were defective
27 because workers at Takata's Mexican production facility had left moisture-sensitive
28

1 explosives on the floor and in the open, making them prone to overly energetic
2 combustion.

3 24. Takata assured Honda that the problem had been fixed by late 2002;
4 however, despite these assurances that had remedied the cause of the problem,
5 Takata and Honda jointly continued to monitor and investigate the Defective
6 Airbags without notifying owners of Honda vehicles that their airbag may be lethal.

7 25. To continue secretly investigating the Defective Airbags, Honda began
8 collecting inflators from Defective Airbags in cars returned to Honda dealerships
9 for unrelated warranty claims. Honda then sent the secretly-culled inflators to
10 Takata.

11 26. After studying the secretly-culled inflators, Takata determined by
12 November 2008 that the Defective Airbags were rendered defective by excess
13 moisture getting into the inflator. At this time, Honda decided to recall 4,200
14 Civics and Accords. In the recall and in its report to federal regulators, Honda and
15 Takata failed to disclose knowledge of four incidents in which the Defective
16 Airbags caused bodily injury.

17 27. In April 2009 the airbag of Jennifer Griffin's 2005 Honda Civic
18 exploded after a minor traffic accident in Orlando, Florida. State troopers
19 investigating the incident were baffled by the fact that such a minor accident could
20 cause a 2" piece of metal shrapnel to tear through Ms. Griffin's neck.

21 28. One month later, 18 year old Ashley Parham was killed in Midwest
22 City, Oklahoma, when the airbag in her 2001 Honda Accord exploded out of her
23 steering wheel in a minor crash.

24 29. By July 2009, Takata told Honda that it believed that its airbags were
25 defective because of a flaw in the machinery that compressed the explosives in the
26 inflator. Rather than normally burning down and generating nitrogen to inflate the
27 airbag, the explosive wafers made by the defective machinery burn aggressively
28

1 and cause the inflator canister of the Defective Airbags to burst, sending hot
2 fragments tearing through the fabric airbags.

3 30. Around the same time, Honda issued its second recall for Defective
4 Airbags, this time for 510,000 more Honda and Acura models. The recall
5 contained no information from Honda or Takata about known injuries and death
6 caused by the Defective Airbags.

7 31. In December 2009 Gurgit Rathore collided with a mail truck in
8 Richmond, Virginia in her Honda Accord. The airbag exploded, propelling
9 shrapnel into her neck and chest. The injuries caused by the shrapnel caused her to
10 bleed to death in front of her three children.

11 32. Three months later, Honda recalled an additional 438,000 Accord,
12 Civic, CR-V, Odyssey, Pilot and Acura models, its third recall for the same defect.
13 Despite knowing about the grizzly deaths of Ms. Rathore and Ms. Parham, Honda
14 and Takata said nothing about the risk of injury or death that the Defective Airbags
15 may cause.

16 33. Takata, though, had not been producing airbags only for Honda. For
17 years, Takata had grown as an airbag manufacturer, now producing 20% of airbags
18 sold worldwide. One of its many customers was BMW, which wrote to Takata in
19 March 2010 and pressed for an explanation as to why Defective Airbags in Honda
20 vehicles were defective and those Takata airbags in BMW vehicles were safe.
21 Takata falsely reassured BMW that the defect in the Honda-installed airbags was
22 not present in the airbags in its vehicles.

23 34. The next month, in April 2010, Kristy Williams stopped at a red light
24 in Georgia. Her airbags spontaneously deployed, and the inflator canister exploded,
25 sending metal shards through the airbag. The shards punctured her neck and
26 carotid artery.

27 35. Following this incident, Takata reported another explanation for the
28 Defective Airbags to Honda. This time around, Takata said that the defect could

1 have been caused when machine operators in its Moses Lake facility inadvertently
2 switched off an “auto reject” button that weeded out poorly made explosives that
3 could become unstable. Takata reassured Honda, though, that it had locked the
4 “auto reject” switch in the “on” position by September, 2002.

5 36. Throughout this whole process, knowing of the issues with its
6 Defective Airbags, Takata allowed its production facilities to keep crucial safety
7 records in unreliable, hand-written notes. This practice made it difficult to know
8 which batches of airbags have a defective component, compounding even further
9 the difficult of knowing which cars to recall.

10 37. In April 2011 Honda issued its fourth recall. Despite four rounds of
11 recalls all for the same defect, Honda and Takata fail to notify consumers or
12 government regulators that the Defective Airbags can cause injury and/or death.

13 38. Finally, in December 2011 when it recalled a fifth round of cars for the
14 same defect, Honda reported its first tally of injuries and deaths to federal
15 regulators, a list it had been tracking since at least 2004.

16 39. Takata’s poor record keeping continued to plague the recall effect for
17 this defect and, in the Spring of 2013, Honda issued its sixth recall for the same
18 defect. Shortly thereafter, NHTSA began in investigation into whether Honda
19 should have alerted regulators earlier about the defect and whether Honda should
20 have recalled the cars sooner.

21 40. Other car manufacturers followed suit: Nissan, Mazda, Ford, Chrysler
22 and BMW all announced recalls due to the Defective Airbags. Around the same
23 time, a Honda spokesman said that Honda knew of 30 injuries and 2 deaths caused
24 by the Defective Airbags.

25 41. Due to the deadly nature of the Defective Airbags, NHTSA has taken
26 the extreme step of warning owners of 4.7 million vehicles in states with high
27 humidity that they should “act immediately” to have the Defective Airbags
28

1 repaired. This NHTSA warning followed a report from Takata that Defective
2 Airbags are more likely to explode in humid climates.

3 42. To make matters worse, Honda's and Takata's actions to hide the
4 explosive nature of the Defective Airbags from 2004 onward from consumers and
5 government regulators has resulted in a parts shortage; there are simply not enough
6 replacement airbags to replace the Defective Airbags in older model cars. To
7 address this problem, Toyota has gone so far as to get regulatory permission to
8 disable a driver's side airbag until a replacement part can be found and installed.
9 On the passenger side, Toyota now puts a sticker warning that no one should sit in
10 the seat until the Defective Airbag can be removed and a replacement part installed.

11 43. In addition, some manufacturers are not sending out recall letters for
12 these potentially deadly Defective Airbags until they have replacement parts,
13 leaving innocent and unknowing drivers and passengers continuing to use cars with
14 safety equipment that can maim and kill.

15 44. Further, and in spite of Honda's belated recall of the Class Vehicles,
16 litigation is necessary in order to ensure that Class Members receive full and fair
17 compensation, under the auspices of court order, for their injuries.

18 **TOLLING OF THE STATUTE OF LIMITATIONS**

19 **Fraudulent Concealment**

20 45. Upon information and belief, Defendants have known of the Defective
21 Airbags in the vehicles since at least 2004 – and possibly earlier – and certainly
22 well before Plaintiffs and Class Members purchased the Class Vehicles, and have
23 concealed from or failed to notify Plaintiffs, Class Members, and the public of the
24 full and complete nature of the Defective Airbags.

25 46. Although Defendants now acknowledge that they know of the serious
26 and possibly deadly defect, Defendants did not fully disclose the Defective Airbags
27 and in fact downplayed the widespread prevalence of the problem.
28

1 Class Members are readily identifiable from information and records in Honda's
2 possession, custody, or control.

3 **Typicality**

4 58. The claims of the representative Plaintiffs are typical of the claims of
5 the Class in that the representative Plaintiffs, like all Class Members, purchased or
6 leased a Honda Class Vehicle designed, manufactured, and distributed by
7 Defendants. The representative Plaintiffs, like all Class Members, have been
8 damaged by Defendants' misconduct in that they have incurred losses relating to
9 the Defective Airbags. Furthermore, the factual bases of Defendants' misconduct
10 are common to all Class Members and represent a common thread of misconduct
11 resulting in injury to all Class Members.

12 **Adequate Representation**

13 59. Plaintiffs will fairly and adequately represent and protect the interests
14 of the Class. Plaintiffs have retained counsel with substantial experience in
15 prosecuting consumer class actions, including actions involving defective products.

16 60. Plaintiffs and their counsel are committed to vigorously prosecuting
17 this action on behalf of the Class and have the financial resources to do so. Neither
18 Plaintiffs nor their counsel have interests adverse to those of the Class.

19 **Predominance of Common Issues**

20 61. There are numerous questions of law and fact common to Plaintiffs
21 and Class Members that predominate over any question affecting only individual
22 Class Members, the answers to which will advance resolution of the litigation as to
23 all Class Members. These common legal and factual issues include:

- 24 a. whether the Class Vehicles suffer from problems with Defective
25 Airbags;
- 26 b. whether Defendants knew or should have known about the
27 Defective Airbags, and, if so, how long Defendants have known of the Defect;
- 28

1 c. whether the defective nature of the Class Vehicles constitutes a
2 material fact reasonable consumers would have considered in deciding whether to
3 purchase a Honda Vehicle;

4 d. whether Defendants had a duty to disclose the defective nature
5 of the Vehicles to Plaintiffs and Class Members;

6 e. whether Defendants omitted and failed to disclose material facts
7 about the Vehicles;

8 f. whether Defendants' concealment of the true defective nature of
9 the Class Vehicles induced Plaintiffs and Class Members to act to their detriment
10 by purchasing the Vehicles;

11 g. whether the Class Vehicles were fit for their ordinary and
12 intended use, in violation of the implied warranty of merchantability;

13 h. whether Plaintiffs and Class Members are entitled to a
14 declaratory judgment stating that the airbags in the Class Vehicles are defective
15 and/or not merchantable;

16 i. whether Plaintiffs and Class Members are entitled to equitable
17 relief, including, but not limited to, a preliminary and/or permanent injunction; and,

18 j. whether Defendants should be declared responsible for notifying
19 all Class Members of the Defect and ensuring that all Honda vehicles with the
20 Defective Airbags are recalled and repaired.

21 **Superiority**

22 62. Plaintiffs and Class Members have all suffered and will continue to
23 suffer harm and damages as a result of Defendants' unlawful and wrongful conduct.
24 A class action is superior to other available methods for the fair and efficient
25 adjudication of this controversy.

26 63. Absent a class action, most Class Members would likely find the cost
27 of litigating their claims prohibitively high and would therefore have no effective
28 remedy at law. Because of the relatively small size of the individual Class

1 Members' claims, it is likely that only a few Class Members could afford to seek
2 legal redress for Defendants' misconduct. Absent a class action, Class Members
3 will continue to incur damages, and Defendants' misconduct will continue without
4 remedy.

5 64. Class treatment of common questions of law and fact would also be a
6 superior method to multiple individual actions or piecemeal litigation in that class
7 treatment will conserve the resources of the courts and the litigants, and will
8 promote consistency and efficiency of adjudication.

9 65. Defendants have acted in a uniform manner with respect to the
10 Plaintiffs and Class Members as all Class Members have been sent for all intents
11 and purposes the identical Important Safety Recall Notice letters from Honda in
12 accordance with the National Traffic and Motor Vehicle Safety Act.

13 66. Classwide declaratory, equitable, and injunctive relief is appropriate
14 under Rule 23(b)(1) and/or (b)(2) because Defendants have acted on grounds that
15 apply generally to the class, and inconsistent adjudications with respect to the
16 Defendants' liability would establish incompatible standards and substantially
17 impair or impede the ability of Class Members to protect their interests. Classwide
18 relief assures fair, consistent, and equitable treatment and protection of all Class
19 Members, and uniformity and consistency in Defendants' discharge of their duties
20 to perform corrective action regarding the Defective Airbags.

21 **CHOICE OF LAW ALLEGATIONS**

22 67. At all relevant times, Defendants performed substantial business in the
23 state of California.

24 68. Defendant American Honda Motor Co., Inc. is headquartered in
25 Torrance, California.

26 69. The following Honda facilities are based in California: U.S. Corporate
27 Headquarters, U.S. Sales and Marketing, Automobile Customer Service, the
28

1 Advanced Styling Center, three Parts Centers, and the Research and Development
2 Test Track.

3 70. In addition, the conduct that forms the basis for Plaintiffs' and each
4 and every Class Member's claims against Defendants emanated from Defendant
5 American Honda's corporate headquarters in Torrance, California.

6 71. On information and belief, Defendant American Honda's personnel
7 responsible for customer communications are located at its California headquarters,
8 and the core decision not to disclose the Takata airbag safety defects to consumers
9 was made and implemented from there.

10 72. On information and belief, at all relevant times, Defendant American
11 Honda, in concert with their California-based advertising agencies, failed to
12 properly disclose the existence of the Defective Airbags.

13 73. On information and belief, marketing campaigns falsely promoting the
14 Class Vehicles as safe and reliable were conceived and designed in California.

15 74. On information and belief, Defendant American Honda's personnel
16 responsible for managing the customer service division are and were located at the
17 California headquarters. The "Honda Automobile Customer Service" directs
18 customers to call or fax the following numbers: Call: 1-800-999-1009 and Fax: 1-
19 310-783-3023, which are landlines in Torrance, California. Customers are directed
20 to send correspondence to American Honda Motor Co., Inc., Honda Automobile
21 Customer Service, Mail Stop: 500 - 2N - 7A, 1919 Torrance Blvd., Torrance, CA
22 90501-2746. In addition, personnel from American Honda in Torrance, California,
23 also communicate via Twitter ("@HondaCustSvc") with customers about Honda
24 automobiles and services.

25 75. On information and belief, Defendant American Honda's personnel
26 responsible for communicating with dealers regarding known problems with Class
27 Vehicles are and were also located at the California headquarters.

28

1 86. The Magnuson-Moss Warranty Act, 15 U.S.C. § 2310(d)(1), provides
2 a claim for relief for any consumer who is damaged by the failure of a warrantor to
3 comply with a written or implied warranty.

4 87. Defendants provided Plaintiffs and Class Members with an implied
5 warranty of merchantability in connection with the purchase or lease of their
6 vehicles that is an “implied warranty” within the meaning of the Magnuson-Moss
7 Warranty Act, 15 U.S.C. § 2301(7). As a part of the implied warranty of
8 merchantability, Defendants warranted that the Class Vehicles were fit for their
9 ordinary purpose as safe passenger motor vehicles, would pass without objection in
10 the trade as designed, manufactured and marketed, and were adequately contained,
11 packaged and labeled.

12 88. Defendants breached these implied warranties, as described in more
13 detail above, and are therefore liable to Plaintiffs and the Class pursuant to 15
14 U.S.C. § 2310(d)(1). Without limitation, the Class Vehicles share common design
15 or manufacturing defects in that they are equipped with defective airbags that can
16 explode, leaving occupants of the Class Vehicles vulnerable to serious injury and
17 death. Defendants have admitted that the Class Vehicles are defective by issuing
18 recalls, but the recalls are woefully insufficient to address each of the defects.

19 89. In their capacity as warrantors, Defendants had knowledge of the
20 inherent defects in the Class Vehicles; any efforts to limit the implied warranties in
21 a manner that would exclude coverage of the Class Vehicles are unconscionable,
22 and any such effort to disclaim, or otherwise limit, liability for the Class Vehicles is
23 null and void.

24 90. The limitations on the warranties are procedurally unconscionable.
25 There was unequal bargaining power between Defendants and Plaintiffs and Class
26 Members as, at the time of purchase and lease, Plaintiffs and Class Members had no
27 other options for purchasing warranty coverage other than directly from
28 Defendants.

1 91. The limitations on the warranties are substantively unconscionable.
2 Defendants knew that the Class Vehicles were defective and would continue to
3 pose safety risks after the warranties purportedly expired. Defendants failed to
4 disclose these defects to Plaintiffs and Class Members. Thus, Defendants'
5 enforcement of the durational limitations on those warranties is harsh and shocks
6 the conscience.

7 92. Plaintiffs and each of the other Class Members have had sufficient
8 direct dealings with Defendants or their agents (dealerships) to establish privity of
9 contract. Nonetheless, privity is not required here because Plaintiffs and each of the
10 other Class Members are intended third-party beneficiaries of contracts between
11 Defendants and their dealers, and specifically, of the implied warranties. The
12 dealers were not intended to be the ultimate consumers of the Class Vehicles and
13 have no rights under the warranty agreements provided with the Class Vehicles.
14 Instead, the warranty agreements were designed for and intended to benefit
15 consumers. Finally, privity is also not required because the Class Vehicles are
16 dangerous instrumentalities because of the aforementioned defects and
17 nonconformities.

18 93. Pursuant to 15 U.S.C. § 2310(e), Plaintiffs are entitled to bring this
19 class action and are not required to give Defendants notice and an opportunity to
20 cure until such time as the Court determines the representative capacity of Plaintiffs
21 pursuant to Rule 23 of the Federal Rules of Civil Procedure.

22 94. Furthermore, affording Defendants an opportunity to cure their breach
23 of written warranties would be unnecessary and futile here. At the time of sale or
24 lease of each Class Vehicle, Defendants knew, should have known, or were reckless
25 in not knowing of their misrepresentations concerning the Class Vehicles' inability
26 to perform as warranted, but nonetheless failed to rectify the situation and/or
27 disclose the defective design. Under the circumstances, the remedies available
28 under any informal settlement procedure would be inadequate and any requirement

1 that Plaintiffs resort to an informal dispute resolution procedure and/or affords
2 Defendants a reasonable opportunity to cure their breach of warranties is excused
3 and thereby deemed satisfied.

4 95. Plaintiffs and Class Members would suffer economic hardship if they
5 returned their Class Vehicles but did not receive the return of all payments made by
6 them. Because Defendants are refusing to acknowledge any revocation of
7 acceptance and return immediately any payments made, Plaintiffs and Class
8 Members have not re-accepted their Class Vehicles by retaining them.

9 96. Pursuant to 15 U.S.C. § 2310(d)(3), the amount in controversy of
10 Plaintiffs' individual claims meet or exceed the sum of \$25. The amount in
11 controversy of this action exceeds the sum of \$50,000, exclusive of interest and
12 costs, computed on the basis of all claims to be determined in this lawsuit.
13 Plaintiffs, individually and on behalf of the other Class Members, seek all damages
14 permitted by law, including diminution in value of their vehicles, in an amount to
15 be proven at trial.

16 97. In addition, pursuant to 15 U.S.C. § 2310(d)(2), Plaintiffs and Class
17 Members are entitled to recover a sum equal to the aggregate amount of costs and
18 expenses (including attorneys' fees based on actual time expended) determined by
19 the Court to have reasonably been incurred by Plaintiffs and Class Members in
20 connection with the commencement and prosecution of this action.

21 98. Further, Plaintiffs and Class Members are also entitled to equitable
22 relief under 15 U.S.C. § 2310(d)(1). Based on Defendants' continuing failures to
23 fix the known, dangerous defects, Plaintiffs seek a declaration that Defendants have
24 not adequately implemented their recall commitments and requirements and general
25 commitments to fix their failed processes, and injunctive relief in the form of
26 judicial supervision over the recall process is warranted. Plaintiffs also seek the
27 establishment of a Defendant-funded program for Plaintiffs and Class Members to
28 recover out-of-pocket costs incurred.

1 99. Plaintiffs also request, as a form of equitable monetary relief, re-
2 payment of the out-of-pocket expenses and costs Plaintiffs have incurred in
3 attempting to rectify the airbags in Plaintiffs' vehicle. Such expenses and losses
4 will continue as Plaintiffs and Class Members must take time off from work, pay
5 for rental cars or other transportation arrangements, child care, and the myriad
6 expenses involved in going through the recall process.

7 100. The right of Class Members to recover these expenses as an equitable
8 matter to put them in the place they would have been but for Defendants' conduct
9 presents common questions of law. Equity and fairness requires the establishment
10 by Court decree and administration under Court supervision of a program funded
11 by the Defendants, using transparent, consistent, and reasonable protocols, under
12 which such claims can be made and paid.

13 **SECOND CLAIM FOR RELIEF**
14 **Fraudulent Concealment**
(Brought on behalf of the Nationwide Class)

15 101. Plaintiffs hereby incorporate by reference the allegations contained in
16 the preceding paragraphs of this Complaint, as if fully set forth herein.

17 102. As set forth above, Defendants concealed and/or suppressed material
18 facts concerning the safety of their vehicles. Defendants knew that the Class
19 Vehicles were designed and manufactured with airbag defects, but Defendants
20 concealed those material facts. Defendants recklessly manufactured and distributed
21 the Class Vehicles to consumers in the United States, even though Defendants
22 knew, or should have known, at the time of distribution, that the Class Vehicles
23 contained material airbag defects. Plaintiffs and Class Members had no knowledge
24 of these defects at the time that they purchased or leased the Class Vehicles.

25 103. Defendants made material omissions and/or affirmative
26 misrepresentations regarding the safety of their vehicles.

27 104. Defendants each knew these representations were false when they
28 were made.

1 105. The Class Vehicles purchased or leased by Plaintiffs and Class
2 Members were, in fact, defective, unsafe, and unreliable, because the vehicles
3 contained dangerous airbag defects.

4 106. Defendants had a duty to disclose these safety issues to Plaintiffs,
5 Class Members, the public, and NHTSA, but failed to do so.

6 107. Defendants had a duty to disclose the true facts about the safety of the
7 Class Vehicles because Defendants had superior knowledge and access to those
8 facts, and the facts were not known to or reasonably discoverable by Plaintiffs and
9 Class Members. Defendants knew that Plaintiffs and Class Members had no
10 knowledge of dangerous airbag defects in the Class Vehicles, and that neither
11 Plaintiffs nor the other Class Members had an equal opportunity to discover the
12 facts to inform them of those defects. Indeed, Plaintiffs and Class Members trusted
13 Defendants not to sell or lease them vehicles that were defective or that violated
14 federal law governing motor vehicle safety.

15 108. Defendants had a duty to disclose that the Class Vehicles were
16 defective, unsafe, and unreliable in that it contained dangerous airbag defects,
17 because Plaintiffs and Class Members relied on Defendants' representations that the
18 vehicles they were purchasing, leasing, and/or retaining were safe and free from
19 defects.

20 109. The aforementioned concealment was material, because if it had been
21 disclosed, Plaintiffs and Class Members would not have bought, leased or retained
22 their vehicles.

23 110. The aforementioned representations were also material because they
24 were facts that would typically be relied on by a person purchasing, leasing or
25 retaining a new or used motor vehicle. Defendants each knew or recklessly
26 disregarded that their representations and/or statements on the safety of the Class
27 Vehicles were false.

28

1 111. By misrepresenting and/or failing to disclose these material facts,
2 Defendants intended to induce Plaintiffs and Class Members to purchase or lease
3 the Class Vehicles.

4 **THIRD CLAIM FOR RELIEF**
5 **Fraud, Deceit, and Concealment**
6 **Cal. Civil Code §§ 1709, 1710, 1711**
7 **(Brought on behalf of the Nationwide Class)**

8 112. Plaintiffs incorporate by reference all preceding paragraphs of this
9 Complaint, as if fully set forth herein.

10 113. This Claim for Relief is brought on behalf of Plaintiffs and Class
11 Members.

12 114. At all relevant times, Defendants willfully deceived, fraudulently
13 concealed, and/or failed to disclose to or warn Plaintiffs and Class Members of the
14 true facts concerning the safety of the Class Vehicles and Takata airbags, which the
15 Defendants had a duty to disclose.

16 115. Defendants were under a duty to Plaintiffs and Class Members to
17 disclose and warn of the defective nature of the Class Vehicle and/or Takata airbags
18 because: (1) Defendants were in a superior position to know the true state of the
19 facts about the hidden defects in the Class Vehicles and/or Takata airbags, and
20 those defects were latent; (2) Defendants made incomplete representations about
21 the safety and quality of the Class Vehicles and/or Takata airbags while not
22 revealing their true defective nature; and (3) Defendants fraudulently and
23 affirmatively concealed the defective nature of the Class Vehicles and/or Takata
24 airbags from Plaintiffs and Class Members.

25 116. The facts concealed and/or not disclosed by Defendants to Plaintiffs
26 and Class members were material facts that a reasonable person would have
27 considered to be important in deciding whether or not to purchase and/or operate
28 the Class Vehicles.

1 117. At all times relevant hereto, Defendants, and each of them, conducted
2 a sales and marketing campaign to promote the sale of the Class Vehicles and/or
3 Takata airbags. Defendants willfully deceived Plaintiffs, Class Members, NHTSA,
4 and the general public, of the dangers and risks posed by the Class Vehicles and/or
5 Takata airbags, and of the propensity for the Takata airbags to release shrapnel
6 upon deployment or otherwise malfunction.

7 118. Defendants intentionally concealed and suppressed the true facts
8 concerning the Class Vehicles and/or Takata airbags with the intent to defraud
9 Plaintiffs and Class Members in that Defendants knew that Plaintiffs and Class
10 Members likely would not have purchased the Class Vehicles and/or Takata airbags
11 if they knew of the true facts.

12 119. As a result of the foregoing fraudulent and deceitful conduct by
13 Defendants, Plaintiffs and Class Members suffered injuries in fact, and actual
14 damages.

15 120. By reason of the foregoing, Plaintiffs and Class Members are entitled
16 to judgment against each Defendant, individually, jointly and severally for general,
17 compensatory, and special damages in a sum according to proof at the time of trial
18 as well as punitive damages, together with interest, costs of suit, attorneys' fees and
19 all such other and further relief as the Court deem proper.

20 **FOURTH CLAIM FOR RELIEF**
21 **Violation of the Consumer Legal Remedies Act**
22 **Cal. Civil Code § 1750 *et seq.***
(Brought on behalf of the Nationwide Class)

23 121. This claim is brought on behalf of Plaintiffs and Class Members to
24 seek injunctive relief against Defendants under the California Legal Remedies Act
25 (“CLRA”), Cal. Civ. Code § 1750, *et seq.*

26 122. Plaintiffs hereby incorporate by reference the allegations contained in
27 the preceding paragraphs of this Complaint, as if fully set forth herein.

28 123. Defendants are “persons” under Cal. Civ. Code § 1761(c).

1 124. The Plaintiffs and Class Members are “consumers,” as defined by Cal.
2 Civ. Code § 1761(d), who purchased or leased one or more Class Vehicles.

3 125. The CLRA prohibits “unfair or deceptive acts or practices undertaken
4 by any person in a transaction intended to result or which results in the sale or lease
5 of goods or services to any consumer[.]” Cal. Civ. Code § 1770(a). Defendants
6 have engaged in unfair or deceptive acts or practices that violated Cal. Civ. Code
7 § 1750, *et seq.*, as described above and below, by among other things, representing
8 that Class Vehicles and/or Takata airbags have characteristics, uses, benefits, and
9 qualities which they do not have; representing that Class Vehicles and/or Takata
10 airbags are of a particular standard, quality, and grade when they are not;
11 advertising Class Vehicles and/or Takata airbags with the intent not to sell or lease
12 them as advertised; and representing that the subject of a transaction involving
13 Class Vehicles and/or Takata airbags has been supplied in accordance with a
14 previous representation when it has not.

15 126. In the course of their business, Defendants willfully failed to disclose
16 and actively concealed the dangers and risks posed by the Takata airbags in the
17 Class Vehicles as described herein, and otherwise engaged in activities with a
18 tendency or capacity to deceive. Defendants also engaged in unlawful trade
19 practices by employing deception, deceptive acts or practices, fraud,
20 misrepresentations, or concealment, suppression or omission of any material fact
21 with intent that others rely upon such concealment, suppression or omission, in
22 connection with the sale of Class Vehicles. Defendants are directly liable for
23 engaging in unfair and deceptive acts or practices in the conduct of trade or
24 commerce in violation of the CLRA. Defendant parent companies are also liable
25 for their subsidiaries’ violation of the CLRA, because the subsidiaries act and acted
26 as the parent companies’ general agents in the United States for purposes of sales
27 and marketing.
28

1 127. As alleged above, Defendants knew of dangers and risks posed by the
2 Takata airbags, while Plaintiffs and Class Members were deceived by Defendants'
3 omissions into believing the Class Vehicles were safe, and the information could
4 not have reasonably been known by the consumer.

5 128. Defendants knew or should have known that their conduct violated the
6 CLRA.

7 129. As alleged above, Defendants made material statements about the
8 safety and reliability of Class Vehicles that were either false or misleading.

9 130. Defendants engaged in a deceptive trade practice when they failed to
10 disclose material information concerning the Class Vehicles and/or Takata airbags,
11 which they knew at the time of the sale or lease. Defendants deliberately withheld
12 the information about the Takata airbags' propensity to release shrapnel upon
13 deployment or otherwise malfunction, in order to ensure that consumers would
14 purchase their vehicles, and to induce the consumer to enter into a transaction.

15 131. To protect their profits and to avoid remediation costs and a public
16 relations nightmare, Defendants concealed the dangers and risks posed by the
17 Takata airbags and their tragic consequences, and allowed unsuspecting new and
18 used car purchasers to continue to buy/lease the Class Vehicles, and allowed all
19 Class Vehicle owners/lessors to continue driving highly dangerous vehicles.

20 132. Defendants each owed Plaintiffs and Class Members a duty to disclose
21 the defective nature of Class Vehicles, and/or dangers and risks posed by the Takata
22 airbags, including the dangerous risk that the Takata airbags will release shrapnel
23 upon deployment, because they:

24 a. Possessed exclusive knowledge of the defects rendering Class
25 Vehicles and/or Takata airbags inherently more dangerous and unreliable than
26 similar vehicles;

27 b. Intentionally concealed the hazardous situation with Class
28 Vehicles and/or Takata airbags through their deceptive marketing campaign and

1 recall program that they designed to hide the life-threatening problems from
2 Plaintiffs and Class Members; and/or

3 c. Made incomplete representations about the safety and reliability
4 of Class Vehicles and/or Takata airbags, while purposefully withholding material
5 facts from Plaintiffs and Class Members that contradicted these representations.

6 133. The Class Vehicles and/or Takata airbags posed and/or pose an
7 unreasonable risk of death or serious bodily injury to Plaintiffs and Class Members,
8 passengers, other motorists, pedestrians, and the public at large, because the Takata
9 airbags are susceptible to releasing shrapnel upon deployment or other
10 malfunctions.

11 134. The Defendants' unfair or deceptive acts or practices were likely to
12 deceive reasonable consumers, including Plaintiffs and Class Members, about the
13 true safety and reliability of Class Vehicles and/or Takata airbags. The Defendants
14 intentionally and knowingly misrepresented material facts regarding the Class
15 Vehicles with an intent to mislead Plaintiffs and Class Members.

16 135. Defendants has also violated the CLRA by violating the TREAD Act,
17 49 U.S.C. §§ 30101, *et seq.*, and its accompanying regulations by failing to
18 promptly notify vehicle owners, purchases, dealers, and NHTSA of the defective
19 Takata airbags, and remedying the defects.

20 136. Under the TREAD Act and its regulations, if a manufacturer learns
21 that a vehicle contains a defect and that defect is related to motor vehicle safety, the
22 manufacturer must disclose the defect. 49 U.S.C. § 30118(c)(1) & (2).

23 137. Under the TREAD Act, if it is determined that the vehicle is defective,
24 the manufacturer must promptly notify vehicle owners, purchasers and dealers of
25 the defect and remedy the defect. 49 U.S.C. § 30118(b)(2)(A) & (B).

26 138. Under the TREAD Act, manufacturers must also file a report with
27 NHTSA within five working days of discovering "a defect in a vehicle or item of
28 equipment has been determined to be safety related, or a noncompliance with a

1 motor vehicle safety standard has been determined to exist.” 49 C.F.R. § 573.6(a)
2 & (b). At a minimum, the report to NHTSA must include: the manufacturer’s
3 name; the identification of the vehicles or equipment containing the defect,
4 including the make, line, model year and years of manufacturing; a description of
5 the basis for determining the recall population; how those vehicles differ from
6 similar vehicles that the manufacturer excluded from the recall; and a description of
7 the defect. 49 C.F.R. § 276.6(b), (c)(1), (c)(2), & (c)(5).

8 139. The manufacturer must also promptly inform NHTSA regarding: the
9 total number of vehicles or equipment potentially containing the defect; the
10 percentage of vehicles estimated to contain the defect; a chronology of all principal
11 events that were the basis for the determination that the defect related to motor
12 vehicle safety, including a summary of all warranty claims, field or service reports,
13 and other information, with its dates of receipt; and a description of the plan to
14 remedy the defect. 49 C.F.R. § 276.6(b) & (c).

15 140. The TREAD Act provides that any manufacturer who violates 49
16 U.S.C. § 30166 must pay a civil penalty to the U.S. Government. The current
17 penalty “is \$7,000 per violation per day,” and the maximum penalty “for a related
18 series of daily violations is \$17,350,000.” 49 C.F.R. § 578.6(c).

19 141. Defendants engaged in deceptive business practices prohibited by the
20 CLRA, Cal. Civ. Code § 1750, *et seq.* by failing to disclose and by actively
21 concealing dangers and risks posed by the Takata airbags, by selling vehicles while
22 violating the TREAD Act, and by other conduct as alleged herein.

23 142. Defendants knew that the Takata airbags contained a defect that could
24 cause the airbags release shrapnel upon deployment, or otherwise malfunction, but
25 Defendants failed for many years to inform NHTSA of this defect. Consequently,
26 the public, including Plaintiffs and Class Members, received no notice of the
27 defects in the Takata airbags. Defendants failed to inform NHTSA or warn the
28

1 Plaintiffs, Class Members, and the public about these inherent dangers, despite
2 having a duty to do so.

3 143. Defendants' unfair or deceptive acts or practices were likely to and did
4 in fact deceive reasonable consumers, including Plaintiffs and Class Members,
5 about the true safety and reliability of the Class Vehicles and/or Takata airbags.

6 144. The propensity of the Takata airbags to release shrapnel upon
7 deployment, or otherwise malfunction in the Class Vehicles was material to
8 Plaintiffs and Class Members. Had Plaintiffs and Class Members known that their
9 vehicles had these serious safety defects, they would either not have purchased or
10 leased their Class Vehicles, or would have paid less for them than they did.

11 145. All Class Members suffered ascertainable loss caused by the
12 Defendants failure to disclose material information. The Class Members overpaid
13 for their vehicles and did not receive the benefit of their bargain. The value of the
14 Class Vehicles has diminished as the result of the safety defects posed by the
15 Takata airbags, and Defendants' concealment of, and failure to remedy the defects.

16 146. The Plaintiffs and Class Members have been proximately and directly
17 damaged by Defendants' misrepresentations, concealment, and non-disclosure of
18 the defects in the Class Vehicles and/or Takata airbags. They own and lease
19 vehicles whose value has greatly diminished. The diminishment of the Class
20 Vehicles' value was only exacerbated by Defendants' failure to timely disclose and
21 remedy the dangers and risks posed by the Takata airbags. Defendants' egregious
22 and widely-publicized conduct, and the piecemeal and serial nature of Defendants'
23 recalls have so tarnished the Class Vehicles that no reasonable consumer would
24 purchase them-let alone pay what would otherwise be fair market value for the
25 vehicles.

26 147. Plaintiffs and Class Members risk irreparable injury as a result of
27 Defendants' acts and omissions in violation of the CLRA, and these violations
28 present a continuing risk to Plaintiffs and Class Members, as well as to the general

1 public. Defendants' unlawful acts and practices complained of herein affect the
2 public interest.

3 148. The recalls and repairs instituted by Defendants have not been
4 adequate. The recall is not an effective remedy and is not offered for all Class
5 Vehicles and other vehicles with Takata airbags susceptible to the malfunctions
6 described herein. Moreover, Defendants' failure to comply with TREAD Act
7 disclosure obligations continues to pose a grave risk to Plaintiffs and Class
8 Members.

9 149. As a direct and proximate result of Defendants' violations of the
10 CLRA, Plaintiffs and Class Members have suffered injury-in-fact and/or actual
11 damage and, if not stopped, will continue to harm Class Members. Plaintiffs and
12 Class Members currently own or lease, or within the class period have owned or
13 leased, Class Vehicles that are defective and inherently unsafe. Plaintiffs and Class
14 Members risk irreparable injury as a result of Defendants' acts and omissions in
15 violation of the CLRA, and these violations present a continuing risk to Plaintiffs
16 and Class Members, as well as to the general public.

17 150. Plaintiffs and Class Members seek an order enjoining Defendants
18 unfair or deceptive acts or practices, restitution, punitive damages, costs of court,
19 attorneys' fees under Cal. Civ. Code § 1780(e), and any other just and proper relief
20 available under the CLRA.

21 151. In accordance with section 1782(a) of the CLRA, Plaintiffs' counsel,
22 on behalf of Plaintiffs, will serve Defendants with notice of their alleged violations
23 of California Civil Code § 1770(a) relating to the Class Vehicles purchased by
24 Plaintiffs and Class Members, and demand that Defendants correct or agree to
25 correct the actions described therein. If Defendants fail to do so, Plaintiffs will
26 amend this Complaint as of right (or otherwise seek leave to amend the Complaint)
27 to include compensatory and monetary damages to which Plaintiffs and Class
28 Members are entitled.

1 **FIFTH CLAIM FOR RELIEF**
2 **Violations of the California Unfair Competition Law**
3 **Cal. Bus. & Prof. Code § 17200, *et seq.***
4 **(Brought on behalf of the Nationwide Class)**

5 152. This Claim for Relief is brought on behalf of Plaintiffs and Class
6 Members.

7 153. Plaintiffs hereby incorporate by reference the allegations contained in
8 the preceding paragraphs of this Complaint, as if fully set forth herein.

9 154. California Business and Professions Code § 17200 prohibits acts of
10 “unfair competition,” including any “unlawful, unfair or fraudulent business act or
11 practice” and “unfair, deceptive, untrue or misleading advertising. . . .” Defendants
12 engaged in conduct that violated each of this statute’s three prongs.

13 155. Defendants committed an unlawful business act or practice in violation
14 of § 17200 by their violations of the Consumer Legal Remedies Act, Cal. Civ. Code
15 § 1750, *et seq.*, as set forth above, by the acts and practices set forth in this
16 Complaint.

17 156. Defendants also violated the unlawful prong because it has engaged in
18 violations of National Traffic and Motor Vehicle Safety Act of 1996, codified at
19 49 U.S.C. § 30101, *et seq.*, and its regulations.

20 157. Federal Motor Vehicle Safety Standard (“FMVSS”) 573 governs a
21 motor vehicle manufacturer’s responsibility to notify the NHTSA of a motor
22 vehicle defect within five days of determining that a defect in a vehicle has been
23 determined to be safety-related. *See* 49 C.F.R. § 573.6.

24 158. Defendants violated the reporting requirements of FMVSS 573
25 requirement by failing to report the airbag defect or any of the other dangers or
26 risks posed by the Takata airbags within five days of determining the defect existed,
27 and failing to recall all affected vehicles.

28 159. Defendants violated the common-law claim of negligent failure to
recall, in that Defendants knew or should have known that the Class Vehicles

1 and/or Takata airbags were dangerous and/or were likely to be dangerous when
2 used in a reasonably foreseeable manner; Defendants became aware of the attendant
3 risks after the Class Vehicles were sold; Defendants continued to gain information
4 further corroborating the defects and dangers posed by the Takata airbags; and
5 Defendants failed to adequately recall the Class Vehicles and/or Takata airbags in a
6 timely manner, which failure was a substantial factor in causing harm to Plaintiffs
7 and Class Members, including diminished value and out-of-pocket costs.

8 160. Defendants committed unfair business acts and practices in violation
9 of § 17200 when it concealed the existence and nature of the defects, dangers, and
10 risks posed by the Takata airbags. Defendants represented that vehicles containing
11 Takata airbags were reliable and safe when, in fact, they are not. The Takata
12 airbags present safety hazards for occupants of vehicles in which they are installed.

13 161. Defendants also violated the unfairness prong of § 17200 by failing to
14 properly administer the numerous recalls of Defendants' vehicles with the Takata
15 airbags. As alleged above, the recalls have proceeded unreasonably slowly in light
16 of the safety-related nature of the defects, and have been plagued with shortages of
17 replacement parts, as well as a paucity of loaner vehicles available for Class
18 Members whose vehicles are in the process of being repaired.

19 162. Defendants violated the fraudulent prong of § 17200 because the
20 misrepresentations and omissions regarding the safety and reliability of their
21 vehicles as set forth in this Complaint were likely to deceive a reasonable
22 consumer, and the information would be material to a reasonable consumer.

23 163. Defendants committed fraudulent business acts and practices in
24 violation of § 17200 when they concealed the existence and nature of the defect,
25 dangers, and risks posed by the Takata airbags, while representing in their
26 marketing, advertising, and other broadly disseminated representations that the
27 vehicles containing Takata airbags were reliable and safe when, in fact, they are
28 not. Defendants' representations and active concealment of the dangers and risks

1 posed by the Takata airbags are likely to mislead the public with regard to the true
2 defective nature of the Class Vehicles and other vehicles with Takata airbags.

3 164. Defendants have violated the unfair prong of § 17200 because of the
4 acts and practices set forth in the Complaint, including the manufacture and sale of
5 vehicles with the Takata airbags, and Defendants' failure to adequately investigate,
6 disclose and remedy, offend established public policy, and because of the harm they
7 cause to consumers greatly outweighs any benefits associated with those practices.
8 Defendants' conduct has also impaired competition within the automotive vehicles
9 market and has prevented Plaintiffs and Class Members from making fully
10 informed decisions about whether to purchase or lease Class Vehicles and/or the
11 price to be paid to purchase or lease Class Vehicles.

12 165. Plaintiffs and Class Members have suffered injuries in fact, including
13 the loss of money or property, as a result of Defendants' unfair, unlawful, and/or
14 deceptive practices. As set forth above, each Class Member, in purchasing or
15 leasing their vehicles, relied on the misrepresentations and/or omissions of
16 Defendants with respect of the safety and reliability of the vehicles. Defendants'
17 representations turned out not to be true. Had Plaintiffs and Class Members known
18 this, they would not have purchased or leased their Class Vehicles and/or paid as
19 much for them.

20 166. All of the wrongful conduct alleged herein occurred, and continues to
21 occur, in the conduct of Defendants' businesses. Defendants' wrongful conduct is
22 part of a pattern or generalized course of conduct that is still perpetuated and
23 repeated, both in the State of California and nationwide.

24 167. As a direct and proximate result of Defendants' unfair and deceptive
25 practices, Plaintiffs and Class Members have suffered and will continue to suffer
26 actual damages.

27 168. Plaintiffs and Class Members request that this Court enter such orders
28 or judgments as may be necessary to enjoin Defendants from continuing their

1 unfair, unlawful, and/or deceptive practices, as provided in Cal. Bus. & Prof. Code
2 § 17203; and for such other relief set forth below.

3 169. Plaintiffs and Class Members also request equitable and injunctive
4 relief in the form of Court supervision of Defendants' numerous recalls of the
5 various Class Vehicles, to ensure that all affected vehicles are recalled and that the
6 recalls properly and adequately cure the dangers and risks posed by the Takata
7 airbags.

8 **SIXTH CLAIM FOR RELIEF**
9 **Violation of the California False Advertising Law**
10 **Cal. Bus. & Prof. Code § 17500, *et seq.***
11 **(Brought on behalf of the Nationwide Class)**

12 170. This Claim for Relief is brought on behalf of Plaintiffs and Class
13 Members.

14 171. Plaintiffs hereby incorporate by reference the allegations contained in
15 the preceding paragraphs of this Complaint, as if fully set forth herein.

16 172. California Business and Professions Code § 17500 states: "It is
17 unlawful for any . . . corporation . . . with intent directly or indirectly to dispose of
18 real or personal property . . . to induce the public to enter into any obligation
19 relating thereto, to make or disseminate or cause to be made or disseminated . . .
20 from this state before the public in any state, in any newspaper or other publication,
21 or any advertising device, . . . or in any other manner or means whatever, including
22 over the Internet, any statement . . . which is untrue or misleading, and which is
23 known, or which by the exercise of reasonable care should be known, to be untrue
24 or misleading. . . ."

25 173. Defendants caused to be made or disseminated through California and
26 the United States, through advertising, marketing and other publications, statements
27 that were untrue or misleading, and which were known, or which by the exercise of
28 reasonable care should have been known to the Defendants, to be untrue and
misleading to consumers, Plaintiffs, and Class Members.

1 174. Defendants violated section 17500 because the misrepresentations and
2 omissions regarding the safety and reliability of their vehicles as set forth in this
3 Complaint were material and likely to deceive a reasonable consumer.

4 175. Plaintiffs and Class Members have suffered injuries in fact, including
5 the loss of money or property, as a result of Defendants' unfair, unlawful, and/or
6 deceptive practices. In purchasing or leasing their vehicles, Plaintiffs and Class
7 Members relied on the misrepresentations and/or omissions of Defendants with
8 respect to the safety and reliability of their vehicles. Defendants' representations
9 turned out not to be true. Had Plaintiffs and Class Members known this, they would
10 not have purchased or leased the Class Vehicles and/or paid as much for them.

11 176. Accordingly, Plaintiffs and Class Members overpaid for the Class
12 Vehicles and did not receive the benefit of their bargain. One way to measure this
13 overpayment, or lost benefit of the bargain, at the moment of purchase is by the
14 value consumers place on the vehicles now that the truth has been exposed. Both
15 trade-in prices and auction prices for Class Vehicles have declined as a result of
16 Defendants' misconduct. This decline in value measures the overpayment, or lost
17 benefit of the bargain, at the time that Plaintiffs and Class Members acquired the
18 Class Vehicles.

19 177. All of the wrongful conduct alleged herein occurred, and continues to
20 occur, in the conduct of Defendants' businesses. Defendants' wrongful conduct is
21 part of a pattern or generalized course of conduct that is still perpetuated and
22 repeated, both in the State of California and nationwide.

23 178. Plaintiffs and Class Members request that this Court enter such orders
24 or judgments as may be necessary to enjoin Defendants from continuing their
25 unfair, unlawful, and/or deceptive practices, and for such other relief set forth
26 below.

27
28

PRAYER FOR RELIEF

1
2 Plaintiffs, individually and on behalf of all others similarly situated, request
3 the Court to enter judgment against the Defendants, as follows:

4 A. an order certifying the proposed Nationwide Class, designating
5 Plaintiffs as the named representative of the Nationwide Class, and designating the
6 undersigned as Class Counsel;

7 B. a declaration that the airbags in Class Vehicles are defective;

8 C. a declaration that the Defendants are financially responsible for
9 notifying all Class Members about the defective nature of the Class Vehicles;

10 D. an order enjoining Defendants to desist from further deceptive
11 distribution, sales, and lease practices with respect to the Class Vehicles, and
12 directing Defendants to permanently, expeditiously, and completely repair the Class
13 Vehicles to eliminate the Defective Airbags;

14 E. an award to Plaintiffs and Class Members of compensatory,
15 exemplary, and statutory penalties and damages, including interest, in an amount to
16 be proven at trial;

17 F. an award to Plaintiffs and Class Members for the return of the
18 purchase prices of the Class Vehicles, with interest from the time it was paid, for
19 the reimbursement of the reasonable expenses occasioned by the sale, for damages
20 and for reasonable attorney fees;

21 G. a Defendant-funded program, using transparent, consistent, and
22 reasonable protocols, under which out-of-pocket expenses and damages claims
23 associated with the Defective Airbags in Plaintiffs' and Class Members' Vehicles,
24 can be made and paid, such that Defendants, not the Class Members, absorb the
25 losses and expenses fairly traceable to the recall of the vehicles and correction of
26 the Defective Airbags;

27 H. a declaration that the Defendants must disgorge, for the benefit of
28 Plaintiffs and Class Members, all or part of the ill-gotten profits received from the

1 sale or lease of the Class Vehicles, or make full restitution to Plaintiffs and Class
2 Members;

3 I. an award of attorneys' fees and costs, as allowed by law;

4 J. an award of pre-judgment and post-judgment interest, as provided by
5 law;

6 K. leave to amend this Complaint to conform to the evidence produced at
7 trial; and

8 L. such other relief as may be appropriate under the circumstances.

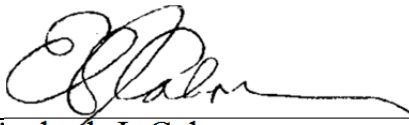
9 **DEMAND FOR JURY TRIAL**

10 Pursuant to Federal Rule of Civil Procedure 38(b), Plaintiffs demand a trial
11 by jury of any and all issues in this action so triable of right.

12
13 Dated: November 4, 2014

Respectfully submitted,

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