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19  
20 **UNITED STATES DISTRICT COURT**  
**CENTRAL DISTRICT OF CALIFORNIA**

21  
22 HEATHER FLOYD, individually  
and on behalf of all others similarly  
23 situated,

Plaintiff,

24 v.

25 AMERICAN HONDA MOTOR CO.,  
26 INC., a California Corporation, and  
HONDA NORTH AMERICA, INC.,  
27 a Delaware Corporation,  
28 Defendants.

Case No.: 17-cv-8744

**CLASS ACTION  
COMPLAINT AND  
COMPLAINT FOR  
DAMAGES**

**(Demand for Jury Trial)**

1 Plaintiff Heather Floyd (“Plaintiff”), acting individually and on behalf of all  
2 others similarly situated, brings this action for damages and equitable relief against  
3 Defendants American Honda Motor Co., Inc. and Honda North America, Inc.  
4 (collectively, “Honda” or “Defendants”).

### 5 I. INTRODUCTION

6 1. One of the most basic safety features in every car is its implementation  
7 of a system that allows the driver to easily take the vehicle out of gear and place the  
8 vehicle in “Park,” with the knowledge and confidence that their vehicle will not  
9 inadvertently roll away after the driver exits the vehicle.

10 2. Honda broke this minimum safety standard obligation. Its 2016, 2017  
11 and, upon information and belief, its 2018 Honda Civic vehicles equipped with CVT  
12 transmissions (“Class Vehicles”) have a common defect such that their drivers are  
13 unable to determine whether the Class Vehicles are properly placed in “Park” before  
14 exiting the vehicles. The Class Vehicles fail to provide notice to drivers that their  
15 Vehicle is out-of-gear, they fail to automatically activate the Electric Parking Brake  
16 in certain situations (such as when the driver exits the vehicle or when the driver’s  
17 door is opened), and they are prone to—and actually do—unintentionally roll away  
18 (the “Rollaway Defect”), often causing crashes or injuries.

19 3. The Defective Shifter’s sole reliance on visual feedback to convey gear  
20 selection has been dangerous and ineffective. Complaints on NHSTA and online  
21 indicate that Class Vehicle owners and lessees are unable to determine whether the  
22 vehicle is put into the desired gear, resulting in a multitude of rollaways, accidents,  
23 and injuries.

24 4. Honda recalled approximately 350,000 2016 Honda Civic Models with  
25 the defect at issue here.<sup>1</sup> Specifically, the recall was initiated because “if the EPB  
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28 <sup>1</sup> <http://www.autoguide.com/auto-news/2016/10/2016-honda-civic-recalled-for-electric-parking-brake-issue.html>.

1 (electric parking brake) isn't properly set and a parking gear is not selected by the  
2 driver, the vehicle could potentially roll away, increasing risk of a crash.”<sup>2</sup>

3 5. Honda attempted to fix the Rollaway Defect in its 2016 model year  
4 (MY) Class Vehicles via a software update to the Vehicle Stability Assist system  
5 such that the Electronic Parking Brake would—or at least should—engage when the  
6 vehicle is parked and before the driver leaves the car. Upon information and belief,  
7 however, this software update did not resolve or repair the Rollaway Defect.

8  
9 **WARRANTY CLAIM INFORMATION**

Operation Number	Description	Flat Rate Time	Defect Code	Symptom Code	Template ID	Failed Part Number
4135A6	Update the VSA modulator control unit and do the VSA sensor neutral position memorization, TPMS calibration, and clutch pedal stroke sensor zero point (if applicable), then clear any stored DTCs	0.4 hr	6EP00	KC600	16-090A	57100-TBA-A14

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14 6. Despite the 2016 MY recall, Honda manufactured, marketed, and sold  
15 its substantially similar—virtually identical—2017 MY, and is or will be selling its  
16 2018 MY Civic Class Vehicles in the same defective condition with the same  
17 Rollaway Defect.

18 7. Since and despite its 2016 MY Class Vehicle recall, Honda has received  
19 consumer complaints and reports of accidents regarding the Rollaway Defect in  
20 Class Vehicles, including through the National Highway Traffic Safety  
21 Administration (“NHTSA”). To-date, Honda has not recalled any 2017 MY Class  
22 Vehicles for the Rollaway Defect.

23 8. Honda’s failure to fix the Rollaway Defect, despite its knowledge of  
24 the problem, caused Plaintiff Heather Floyd (“Plaintiff”) and other owners of Class  
25 Vehicles (“Class Members”) to suffer damages and be placed at risk due to this  
26 serious safety issue.  
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28 \_\_\_\_\_  
<sup>2</sup> *Id.*



1 **III. PARTIES**

2 15. Plaintiff Heather Floyd is a citizen and resident of Bluff City (Sullivan  
3 County), Tennessee. Plaintiff purchased a brand new 2017 Honda Civic from Honda  
4 Kingsport, located in Kingsport, Tennessee in October 2016.

5 16. Defendant American Honda Motor Co., Inc. (“AHM”) is a corporation  
6 organized under the laws of the State of California and has its principal place of  
7 business in Torrance, California. AHM operates, maintains offices, and/or conducts  
8 business in all fifty states.

9 17. Defendant Honda North America, Inc. is a Delaware corporation with  
10 its principal place of business in Torrance, California.

11 18. Defendants (collectively referred to as “Honda”) are the developers,  
12 designers, manufacturers, assemblers, testers, inspectors, marketers, advertisers,  
13 distributors, sellers, and/or warrantors of the Class Vehicles.

14 **IV. FACTUAL ALLEGATIONS**

15 **Plaintiff Heather Floyd**

16 19. Plaintiff Heather Floyd was shopping for a reliable and safe car to  
17 transport herself and her daughter. As a result of her research, in October 2016  
18 Plaintiff purchased a 2017 Honda Civic EX hatchback from Honda Kingsport (an  
19 authorized Honda dealership) located in Kingsport, Tennessee. Plaintiff’s vehicle  
20 had a 1.5 L 4-cylinder engine with a CVT automatic transmission. Plaintiff paid  
21 \$32,849.53 for the 2017 Civic.

22 20. At the time of Plaintiff’s purchase, Honda knew that the Rollaway  
23 Defect could lead to vehicle rollaway incidents but did not disclose this defect to  
24 Plaintiff. Plaintiff purchased—then operated—the vehicle on the reasonable but  
25 mistaken belief that her Class Vehicle was safe to operate as designed.

26 21. On July 14, 2017, Plaintiff had been driving her vehicle, returned home,  
27 drove up the top of her driveway, shifted the vehicle into park, pushed the ignition  
28 button to turn off the car, and stepped out of the car. Immediately afterwards, as

1 Plaintiff was cleaning out the rear seat of her vehicle to prepare for an upcoming  
2 trip, the vehicle started rolling backwards. With Plaintiff sitting in the rear seat, the  
3 vehicle unexpectedly rolled into a neighbor's tree.

4 22. Plaintiff was traumatized and suffered severe bruising to her arm and  
5 hip. She went to the Emergency Room immediately after the accident, and was  
6 examined, treated, then released.

7 23. The condition of Plaintiff's Honda Civic after the incident is accurately  
8 depicted in the following photo, which was taken shortly after the rollaway incident.



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26 24. The damage caused by Plaintiff's Honda Civic to trees and brush across  
27 the street from her driveway is accurately depicted in the following photo, taken  
28 soon after the incident:



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25. On July 17, 2017, three days after the rollaway incident, Plaintiff contacted Honda's corporate customer service department. At first, the Honda representative was apologetic and offered to conduct expert testing on the vehicle and cover her damages. Further, the Honda corporate representative told Plaintiff they had heard of similar incidents from other drivers. However, Honda failed to disclose the nature of the Rollaway Defect to Plaintiff at this time.

26. Plaintiff conveyed to Honda that she was terrified of the vehicle given the Rollaway defect and politely requested Honda buy back the vehicle from her.

1 After Plaintiff requested Honda buy back her vehicle and reimburse her for any  
2 increase in her insurance premiums, Honda changed its position. In a follow-up call  
3 during which Honda denied her claim, she was told that Honda would not buy back  
4 her vehicle.

5 27. Neither Honda nor any of its agents, dealers, or representatives  
6 informed Plaintiff of the Rollaway Defect prior to the purchase of her vehicle or after  
7 the vehicle's Rollaway Defect manifested.

8 28. Had Plaintiff been advised of the Rollaway Defect at or before the point  
9 of sale, she would not have purchased her Class Vehicle or she would have paid less  
10 for the vehicle than she did. She did not receive the benefit of her bargain.

11 **Honda knew that the shifter was defective and unreasonably dangerous.**

12 29. Since 2016, complaints to NHSTA and through its online reporting, as  
13 well as other online forums indicate that Class Vehicle owners and lessees are  
14 unable to determine whether the vehicle in the desired gear, which has resulted in a  
15 multitude of rollaways, accidents, and injuries.

16 30. Upon reasonable inspection and testing of the Class Vehicles and each  
17 of their components, Honda knew or should have known the Class Vehicles were  
18 prone to the Rollaway Defect.

19 31. Honda knew or should have known of the Rollaway Defect, but failed  
20 to take reasonable corrective steps to prevent or cure the Defect.

21 32. Honda had sufficient knowledge, expertise, availability, and resources  
22 to inspect the Class Vehicles for defects prior to placing them on the market.

23 33. Honda had a duty to reasonably inspect the Class Vehicles for defects  
24 prior to placing them on the market.

25 34. Honda failed properly to inspect and confirm the safety of the Class  
26 Vehicles before their entry into the stream of commerce and before their sale to  
27 unsuspecting consumers.

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1           35. Honda failed to complete reasonable tests and inspections of the Class  
2 Vehicles, which would have revealed the Rollaway Defect.

3           36. The shifter cannot and does not perform as intended, because neither  
4 Honda, nor any reasonable car designer, would design a gear shifter that only shifts  
5 into the intended gear some of the time, or randomly shifts to gears other than the  
6 one selected. Honda has provided no information to buyers or lessees to inform them  
7 that the shifters within the Class Vehicles are unreliable (*i.e.* that the vehicles have  
8 the Rollaway Defect).

9           37. Upon information and belief, Honda's knowledge about the problems  
10 with the shifter as described in this complaint is reflected in: its internal  
11 communications, including memoranda and e-mails related to the Rollaway Defect;  
12 reports of other incidents—including those compiled in the NHTSA database, which  
13 Honda regularly reviews—involving Honda's vehicles with this defective shifter  
14 design; Honda's compilations and analyses of crash data; and the tests conducted by  
15 Honda and others, including but not limited to failure mode and effects analyses  
16 (FMEA), human factors simulations, pre-release vehicle evaluation tests, computer  
17 simulations, and cost/benefit analyses.

18           38. Despite knowledge of the Rollaway Defect, Honda failed to warn  
19 members of the Class and the Subclass of the Defect. Specifically, none of the  
20 members of the Class and the Subclass received a warning that the gear shifter in  
21 their Class Vehicles may not perform properly and as warranted, or that as a result  
22 drivers may experience a rollaway or similar occurrence due to the Rollaway Defect.

23           39. Honda, through its own research and development, would have known  
24 that reasonable alternative designs are available to prevent rollaway incidents like  
25 those involving this shifter design. Such alternative designs of electronic shifters,  
26 which include safeguards like automatically putting the vehicle in park when the  
27 driver's door opens or when the ignition is turned off, prevent rollaways and are used  
28 by other manufacturers, including but not limited to BMW.

1                                    **Reports to NHTSA recount incidents of vehicle rollaway.**

2                    40.    NHTSA has received reports of rollaway incidents involving the Class  
3 Vehicles, including the reports copied verbatim below:

4                    NHSTA Complaint on April 24, 2017 for 2017 Civic: MY NEW CAR  
5 WILL LET YOU TURN OFF (PUSH BUTTON) AND GET OUT  
6 AND WALK AWAY WHILE STILL BEING IN GEAR. I EXITED  
7 MY VEHICLE IN THIS SITUATION AND IT ROLLED DOWN  
8 THE DRIVE AND HIT A TREE. IT WAS 3 FEET FROM ROLLING  
9 INTO A HIGHWAY THAT COULD HAVE RESULTED IN  
10 SERIOUS INJURY OR DEATH. OLDER CARS YOU CANNOT  
11 REMOVE THE KEY. YOU SHOULD NOT BE ABLE TO TURN  
12 OFF THE CAR WITHOUT SOME OTHER SAFETY FEATURE TO  
13 KEEP THIS FROM HAPPENING.

14                    NHSTA Complaint on August 11, 2017 for 2017 Civic: WHEN  
15 PULLING INTO A PARKING SPOT I PUT THE CAR INTO PARK  
16 BUT THE CAR KEPT MOVING FORWARD, OVER A SIDEWALK  
17 AND INTO A BUILDING. I PUT THE CAR IN REVERSE AND  
18 COULD NOT STOP THE CAR UNTIL IT HIT ANOTHER OBJECT.  
19 HAD DAMAGE TO THE FRONT BUMPER AND GRILL.

20                    NHSTA Complaint on August 17, 2017 for 2017 Civic: I WAS  
21 TURNING INTO A PARKING LOT WHERE I THEN PROCEEDED  
22 TO PARK MY CAR INTO A PARKING SPOT. I PUT THE CAR IN  
23 PARK AND THE CAR CONTINUED TO MOVE FORWARD. THE  
24 CAR ENDED UP HITTING THE BUILDING THAT WAS 2 FEET  
25 IN FRONT OF ME. THE CAR THEN REVERSED ON IT'S OWN  
26 AND CHARGED FORWARD TO HIT THE BUILDING AGAIN.  
27 THE SECOND TIME IT HIT THE BUILDING THE AIR BAG  
28 WENT OFF. I TRIED TO PUT THE CAR IN REVERSE  
MANUALLY TO PREVENT IT FROM HITTING THE BUILDING.  
WHEN I DID THIS, THE CAR ACCELERATED BACKWARDS.

NHSTA Complaint on February 17, 2017 for 2016 Civic- THERE ARE  
THREE ISSUES WITH THIS 2016 HONDA CIVIC. HOWEVER  
ONE OF THESE ISSUES MUST BE ADDRESSED  
"IMMEDIATELY". WHEN YOU GO TO PARK YOUR  
CAR,(HAVING IT IN A STATIONARY POSITION) YOU PUSH  
THE PUSH BUTTON TO TURN IT OFF. HOWEVER IF YOUR

1 VEHICLE IS STILL IN DRIVE WHEN YOU TURN IT OFF, IT  
2 "TURNS OFF" AND GIVES YOU A WARNING TONE. BUT!!!! IF  
3 YOUR HARD OF HEARING, AND YOU DON'T HEAR THIS  
4 TONE, YOU GO TO GET OUT OF YOUR VEHICLE AND IT  
5 EITHER ROLLS BACKWARDS (KNOCKING YOU DOWN WITH  
6 THE DOOR) AS IT ROLLS AWAY FROM YOU (AND  
7 HOPEFULLY NOT OVER YOU), "OR" IT ROLLS FORWARD,  
8 RUNNING COMPLETELY AWAY FROM YOU. THERE IS NO  
9 SAFETY FEATURE, SUCH AS THE ACURA. THE ACURA  
10 AUTOMATICALLY LOCKS YOUR CARS POSITION SO IT  
11 DOESN'T ROLL AWAY FROM YOU OR OVER YOU... MY  
12 BOYFRIEND HAS BEEN HURT TWICE DUE TO THIS UNSAFE  
13 FEATURE. AND I MYSELF HAVE BEEN SURPRISED BY IT  
14 ONCE. THIS CAR ONLY HAS 5,000 MILES ON IT. QUESTION IS?  
15 HOW MANY MORE MILES WILL IT BE ABLE TO  
16 ACCUMULATE BEFORE KILLING ONE OF US, OR SOMEONE  
17 ELSE? IF THERE WAS A WAY FOR ME TO SEND YOU A VIDEO  
18 OF THIS I WOULD. BUT I DO NOT KNOW HOW TO UPLOAD  
19 FROM MY PHONE.

20 NHSTA Complaint on December 12, 2016 for 2016 Civic-CAR  
21 ALLOWED ITSELF TO BE TURNED OFF WHILE STILL IN  
22 DRIVE. UPON LEAVING CAR IT ROLLED DOWN INCLINE  
23 INTO ANOTHER CAR. MY HUSBANDS HONDA (2011 CRV)  
24 DOES NOT ALLOW THE CAR TO TURNED OFF IN DRIVE NOR  
25 DOES IT ALLOW THE KEY TO BE REMOVED FROM THE  
26 IGNITION WHILE STILL IN GEAR/DRIVE. \*TR

27 NHSTA Complaint on December 06, 2016, for 2016 Civic-TL\* THE  
28 CONTACT OWNS A 2016 HONDA CIVIC. WHILE THE VEHICLE  
WAS PARKED WITH THE PARKING BRAKE APPLIED, IT  
ROLLED AWAY AND CRASHED INTO A HANDICAP PARKING  
POLE. THERE WERE NO INJURIES AND A POLICE REPORT  
WAS NOT FILED. THE VEHICLE WAS TAKEN TO THE DEALER  
WHERE IT WAS DIAGNOSED THAT THE APPLICATION OF  
THE ELECTRICAL CONTROL UNIT FAILED. THE VEHICLE  
WAS NOT REPAIRED. THE VIN WAS INCLUDED IN NHTSA  
CAMPAIGN NUMBER: 16V725000 (PARKING BRAKE). THE  
MANUFACTURER WAS MADE AWARE OF THE FAILURE. THE  
FAILURE MILEAGE WAS 4,050. UPDATED 01/25/17\*LJ

1 NHSTA Complaint on November 02, 2016, for 2016, Civic-THE  
2 ELECTRIC EMERGENCY BRAKE FAILED. THE CAR WAS  
3 PARKED, IGNITION TURNED OFF, EMERGENCY BRAKE  
4 APPLIED, AND LEFT THE VEHICLE. WHEN I RETURNED, THE  
5 CAR HAD ROLLED BACKWARDS DOWN A ROAD AND  
6 SLAMMED INTO ANOTHER PARKED CAR CAUSING DAMAGE  
7 TO BOTH VEHICLES. NO INJURIES RELATED TO THE  
8 ACCIDENT. POLICE REPORT IS NOT AVAILABLE YET. WE  
9 FOUND ABOUT THE RECALL THAT WAS ISSUED IN MID-  
10 OCTOBER BUT WE HAVE NOT BEEN NOTIFIED/CONTACTED  
11 YET.

12 NHSTA Complaint on October 14, 2016, for 2016, Civic-I PARKED  
13 MY 2016 HONDA CIVIC IN MY GARAGE AND SET THE  
14 PARKING BRAKE. I EXITED THE VEHICLE AND WALKED  
15 INTO THE HOUSE. THE VEHICLE MUST HAVE ROLLED OUT  
16 OF THE GARAGE (GARAGE SURFACE IS RATHER FLAT,  
17 PROBABLY WHY I DIDN'T SEE THIS HAPPEN) DOWN MY  
18 SLOPED DRIVEWAY ENDED UP IN THE NEIGHBORS YARD.  
19 VEHICLE SUSTAINED DAMAGE TO THE EXHAUST, BUMPER,  
20 UNDERSIDE OF TRUNK AND RIGHT REAR TIRE. THANK  
21 GOODNESS THAT NOBODY WAS INJURED. AT THE TIME I  
22 THOUGHT MAYBE I MADE A MISTAKE BUT NOW THAT  
23 HONDA HAS ISSUED A RECALL ON THE PARKING BRAKE I  
24 UNDERSTAND WHAT REALLY HAPPENED. I DID SET THE  
25 PARKING BRAKE BUT IT APPEARS THAT IT DID NOT EVER  
26 SET. I HAVE SINCE SEEN THIS HAPPEN AGAIN WHEN I HAVE  
27 PARKED ON OTHER SOMEWHAT FLAT SURFACES AND  
28 RETURNED TO MY VEHICLE AND IT APPEARS AS THOUGH  
IT HAD MOVED A SMALL AMOUNT. WITH THE RELEASE OF  
DETAILS IN THE SAFETY RECALL (NHTSA CAMPAIGN  
NUMBER: 16V725000) I NOW UNDERSTAND MORE ABOUT  
WHAT HAPPENED.

### CLASS ACTION ALLEGATIONS

41. Pursuant to Rules 23(b)(2), and/or 23(b)(3) of the Federal Rules of Civil Procedure, Plaintiff will seek certification of a nationwide class preliminarily defined as follows:

**All persons who purchased or leased a 2016 to 2018 MY Honda Civic equipped with a CVT transmission in the United States (the**

1           **“Class”**).

2           42. Plaintiff also seeks certification of a Subclass defined as follows:

3           **A Tennessee Subclass consisting of: All persons who purchased or**  
4           **leased a 2016 to 2018 Honda Civic equipped with a CVT**  
5           **transmission in Tennessee.**

6           43. The Class and Subclass definitions specifically exclude: (a) all persons  
7 who have had their Class Vehicle re-purchased or “bought back” by Honda  
8 (whether the buy-back was required by law or was solely by agreement), or who  
9 previously signed a release of the defect claims alleged in this Complaint; (b)  
10 Defendants and any of their current officers or executives; (c) any person, firm,  
11 trust, corporation, or other entity who purchased a Class Vehicle solely for resale;  
12 and (e) any Judge presiding over this action.

13           44. The scope of this class action neither seeks to include nor extinguish  
14 any personal injury, death, or property damage claims arising from or relating to  
15 rollaway incidents regarding any Class Vehicle.

16           45. The proposed classes meet the requirements of Federal Rule of Civil  
17 Procedure 23(a) and 23(b)(3).

18           46. *Numerosity and Ascertainability*: The Class and Subclass are  
19 comprised of tens of thousands of Class Vehicle owners throughout the United  
20 States, making joinder impractical. Moreover, the Class and Subclass are composed  
21 of an easily ascertainable, readily identifiable set of individuals and entities who  
22 purchased Class Vehicles. The members of the Class and Subclass are so numerous  
23 that joinder of all members is impracticable. The precise number of Class and  
24 Subclass Members can be ascertained only through discovery, which includes  
25 Honda’s network sales, service, and complaint records. The disposition of their  
26 claims through a class action will benefit both the parties and this Court.  
27 Furthermore, members of the Class and Subclass may be identified from records  
28 maintained by Honda and its agents, and may be notified of the pendency of this



1 action by mail, or other appropriate means, using a form of notice customarily used  
2 in consumer class actions.

3 47. *Commonality*: The critical questions of law and fact common to the  
4 Class and Subclass that will materially advance the litigation include, but are not  
5 limited to, the following:

- 6 a. Whether Honda engaged in the conduct alleged herein;
- 7 b. Whether the Class Vehicles contain a safety defect;
- 8 c. Whether Honda knew about the Rollaway Defect and, if so, how long  
9 Honda has known of it;
- 10 d. Whether Honda defectively designed or manufactured the Class  
11 Vehicles;
- 12 e. Whether Plaintiff and Class members were exposed to the same  
13 omissions of fact or misleading advertising regarding the Rollaway  
14 Defect;
- 15 f. Whether Honda's conduct violates consumer protection statutes, false  
16 advertising laws, sales contracts, warranty laws, and other laws  
17 associated herein;
- 18 g. Whether Plaintiff and Class members overpaid for their Class  
19 Vehicles;
- 20 h. Whether Plaintiff and Class members are entitled to equitable relief,  
21 including, but not limited to, restitution or injunctive relief, and
- 22 i. Whether Plaintiff and Class members are entitled to damages and other  
23 monetary relief and, if so, in what amount.

24 48. *Typicality*: Plaintiff's claims are typical of the claims of the members  
25 of the Class and Subclass, as all such claims arise out of Honda's conduct in  
26 designing, manufacturing, warranting, and selling the Class Vehicles with the  
27 Rollaway Defect.

28 49. *Adequate Representation*: Plaintiff will fairly and adequately protect

1 the interests of Class Members and have no interests antagonistic to those of the  
2 Class. Plaintiff has retained counsel experienced in the prosecution of complex  
3 class actions including, but not limited to, consumer class actions involving, *inter*  
4 *alia*, breach of warranties, product liability, and product design defects.

5 50. *Predominance*: This class action is appropriate for certification  
6 because questions of law and fact common to Class and Subclass Members  
7 predominate over questions affecting only individual members.

8 51. *Superiority*: A class action is superior to other available methods for  
9 the fair and efficient adjudication of this controversy. Requiring individual Class  
10 and Subclass Members to bring separate actions would create a multiplicity of  
11 lawsuits burdening the court system and the risks of inconsistent rulings and of  
12 contradictory judgments. Alternatively, the diminution in value attributable to the  
13 defect may not be sufficient to economically justify individual litigation of these  
14 claims. Because the damages suffered by each Class and Subclass Member are  
15 relatively small compared to the expense and burden of prosecuting this compelling  
16 case against a well-financed, multibillion-dollar corporation, this class action is the  
17 only way each Class and Subclass Member can redress the harm that Honda caused.

18 52. This lawsuit is also maintainable as a class action under Federal Rule  
19 of Civil Procedure 23(b)(2) because Defendants have acted or refused to act on  
20 grounds that are generally applicable to the Class and Subclass Members, thereby  
21 making final injunctive relief appropriate with respect to the Class and Subclasses.

### 22 **TOLLING OF STATUTES OF LIMITATIONS**

23 53. *Discovery Rule*. Plaintiff's claims accrued upon discovery that the  
24 shifter system that Honda designed, manufactured, and installed into the Class  
25 Vehicles suffered from the Rollaway Defect, and that the Rollaway Defect could  
26 not be repaired. While Honda knew of and omitted the Rollaway Defect, Plaintiff,  
27 Class Members, and Subclass Members could not and did not discover this fact  
28 through reasonable diligent investigation until after they experienced rollaway

1 incidents, and reasonably excluded other potential causes of the failures.

2       54. *Active Concealment Tolling.* Any statutes of limitations are tolled by  
3 Honda's knowing and active concealment of the Rollaway Defect. Honda kept  
4 Plaintiff and all Class and Subclass Members ignorant of vital information essential  
5 to the pursuit of their claims, without any fault or lack of diligence on the part of  
6 Plaintiff. The details of Honda's efforts to conceal its above-described unlawful  
7 conduct are in its possession, custody, and control, to the exclusion of Plaintiff and  
8 the Class and Subclass Members. Plaintiff and Class Members could not reasonably  
9 have discovered the Rollaway Defect.

10       55. *Estoppel.* Honda was and is under a continuous duty to disclose to  
11 Plaintiff, as well as Class and Subclass Members, the true character, quality, and  
12 nature of the Class Vehicles' shifter system. At all relevant times, and continuing  
13 to this day, Honda knowingly, affirmatively, and actively misrepresents and omits  
14 the true character, quality, and nature of the Class Vehicles' shifters. The details of  
15 Honda's efforts to conceal its above-described unlawful conduct are in its  
16 possession, custody, and control, to the exclusion of Plaintiff and Class and  
17 Subclass Members. Plaintiff and Class and Subclass Members reasonably relied  
18 upon Honda's knowing and/or active omissions. Based on the foregoing, Honda is  
19 estopped from relying upon any statutes of limitation in defense of this action.

20       56. *Equitable Tolling.* Honda took active steps to omit the fact that it  
21 wrongfully, improperly, illegally, and repeatedly manufactured, marketed,  
22 distributed, sold, and/or leased the Class Vehicles with the Rollaway Defect. The  
23 details of Honda's efforts to conceal its above-described unlawful conduct are in its  
24 possession, custody, and control, to the exclusion of the Plaintiff and Class and  
25 Subclass Members. When Plaintiff learned about this material information, she  
26 exercised due diligence by thoroughly investigating the situation, retaining counsel,  
27 and pursuing her claims. Honda wrongfully omitted its deceitful acts described  
28 above. Should it be necessary, therefore, all applicable statutes of limitation are

1 tolled under the doctrine of equitable tolling.

2  
3 **FIRST CLAIM FOR RELIEF**  
4 **Breach of Express Warranty**  
5 **(On behalf of the National Class)**

6 57. Plaintiff incorporates by reference the allegations contained in the  
7 preceding paragraphs of this complaint.

8 58. Plaintiff brings this claim individually and on behalf of the National  
9 Class, or, in the alternative, on behalf of the Tennessee Subclass against Honda.

10 59. Honda expressly warranted that it would cover the cost of all parts and  
11 labor to repair any item on the vehicle when it left the manufacturing plant that is  
12 defective in material or workmanship.

13 60. Further, Honda advertised the Class vehicles as “safe” and “reliable”  
14 while failing to disclose to Plaintiff and Class Members any hint of the risks posed  
15 by the Rollaway Defect, which renders the Class vehicles dangerous and unreliable.

16 61. Honda materially breached its expressed warranties by selling and  
17 leasing Class Vehicles that contained the Rollaway Defect, which rendered the  
18 Class vehicles unsafe or unfit for use as warranted. Thus, at the point of sale, the  
19 written warranties were breached by Honda as the Class Vehicles were  
20 unreasonably dangerous and contained an inherent design defect.

21 62. Honda breached the express warranty because it did not promptly  
22 replace or buy back the Class Vehicle of Plaintiff and the other Class members.

23 63. Honda was put on notice of the breach by Class member’s online  
24 complaints available on NHSTA, and other online public websites.

25 64. In addition, Honda’s express warranty has failed its essential purpose  
26 due to the Rollaway defect not being covered under either the Powertrain or Limited  
27 warranties that accompanied each Class Vehicle. Specifically, the Electric Parking  
28 Break and any update to the Vehicle Stability Assistance software within the Class  
Vehicles are not covered by either the Powertrain or Limited warranties.





1 purposes for which they were sold.

2 73. Honda, through its agent dealership, sold a Class Vehicle to Plaintiff.

3 74. Plaintiff was a person whom Honda reasonably might have expected  
4 to purchase and use a Class Vehicle.

5 75. Plaintiff relied upon Honda's implied warranties that the Class Vehicle  
6 she purchased was of merchantable quality and fit for its intended purposes. The  
7 Rollaway Defect rendered it unreasonably dangerous and, as a result, caused her  
8 Class Vehicle to fail to move into park, fail to provide a positive indication to the  
9 driver that it had not properly been placed in park, and rolled away causing injury  
10 to Plaintiff and the vehicle itself.

11 76. Honda placed the Class Vehicles in the stream of commerce and  
12 expected them to reach consumers without substantial change in the condition in  
13 which they were sold. Indeed, a Class Vehicle reached Plaintiff—someone who  
14 would reasonably be expected to use, consume, or be affected by the performance  
15 of a Class Vehicle—without substantial change in the condition in which it was  
16 sold.

17 77. The Class Vehicles are defective, and their Rollaway Defect is outlined  
18 throughout this Complaint. Generally, their design includes a dangerous, defective  
19 shifter system. Despite knowledge of the Rollaway Defect, Honda failed to warn  
20 consumers about the defect.

21 78. In situations such as Plaintiff's—where the driver used the Class  
22 Vehicle as intended and in a foreseeable and reasonable manner—the vehicle  
23 should not fail.

24 79. Nevertheless, Plaintiff's Class Vehicle failed, and it did so because of  
25 the Rollaway Defect that existed in the Class Vehicle at the time it left the  
26 manufacturer's control.

27 80. Honda knew or should have known of the defective design of the Class  
28 Vehicles and that, as a result, they were unreasonably dangerous.

1 81. Honda did not warn or alert purchasers or users of the foregoing  
2 dangers, despite knowledge of them.

3 82. As a direct and proximate result of the Rollaway Defect in the Class  
4 Vehicle's design and manufacture and Honda's failures to warn, Plaintiff has  
5 sustained injuries, damages, and loss.

6 83. Honda is liable to Plaintiff and Class members for damages caused by  
7 the above defects and inadequacies in the design and manufacture of the Class  
8 Vehicles.

9 **THIRD CLAIM FOR RELIEF**  
10 **Violation of the Magnuson-Moss Warranty Act**  
11 **15 U.S.C. § 2301, *et seq.***  
12 **(On behalf of the National Class)**

13 84. Plaintiff incorporates by reference the allegations contained in the  
14 preceding paragraphs of this complaint.

15 85. Plaintiff brings this claim individually and on behalf of the National  
16 Class against Honda.

17 86. Plaintiff and Class Members are "consumers" within the meaning of  
18 the Magnuson-Moss Act, 15 U.S.C. § 2301(3).

19 87. Honda is a "supplier" and "warrantor" within the meaning of the  
20 Magnuson-Moss Act, 15 U.S.C. § 2301(4) and (5).

21 88. The Class Vehicles at issue are "consumer products" within the  
22 meaning of the Magnuson-Moss Act, 15 U.S.C. § 2301(6).

23 89. Honda's express warranties are written warranties within the meaning  
24 of the Magnuson-Moss Warranty Act, 15 U.S.C. § 2301(6). The Class Vehicles'  
25 implied warranties are covered under 15 U.S.C. § 2301(7).

26 90. Honda breached these warranties as described in more detail above.  
27 Without limitation, the Class Vehicles fail to notify the driver when the vehicle is  
28 not properly in park, and fail to activate the Electric Parking Brake to prevent the

1 vehicle from rolling away if the vehicle is not fully placed in park. The Class  
2 Vehicles share a common design defect in that the Class vehicles fail to operate as  
3 represented by Honda, specifically, that they are safe for ordinary use.

4 91. Plaintiff and other Nationwide Class members have had sufficient  
5 direct dealings with Honda or its agents (dealerships or corporate representatives)  
6 to establish privity of contract between Honda, on one hand, and Plaintiff and each  
7 of the other Class members on the other hand. Nonetheless, privity is not required  
8 here because Plaintiff and each of the other Class members are intended third-party  
9 beneficiaries of contracts between Honda and its dealers and, specifically, of  
10 Honda's implied warranties. The dealers were not intended to be the ultimate  
11 consumers of the Class Vehicles and have no rights under the warranty agreements  
12 provided with the Class Vehicles; the warranty agreements were designed for and  
13 intended to benefit the consumers only.

14 92. Affording Honda a reasonable opportunity to cure its breach of written  
15 warranties would be unnecessary and futile here. Indeed, Plaintiff and many others  
16 already alerted Honda of the defect, and Honda has failed to cure the Rollaway  
17 Defect. At the time of sale or lease of each Class Vehicle, Honda knew, or should  
18 have known, or was reckless in not knowing of its misrepresentations and omissions  
19 concerning the Class Vehicle's inability to perform as warranted, but nonetheless  
20 failed to rectify the situation and/or disclose the defective design. Under the  
21 circumstances, the remedies available under any informal settlement procedure  
22 would be inadequate and any requirement that Plaintiffs resort to an informal  
23 dispute resolution procedure and/or afford Ford a reasonable opportunity to cure its  
24 breach of warranties is excused and thereby deemed satisfied.

25 93. Honda has breached and continues to breach its written and implied  
26 warranties of future performance, thereby damaging Plaintiff and Class Members,  
27 because the Class Vehicles fail to perform as represented due to the undisclosed  
28 Rollaway Defect. Honda failed to fully cover or pay for necessary inspections,

1 repairs and/or vehicle replacements for Plaintiff and the Class.

2 94. Honda is under a continuing duty to inform its customers of the nature  
3 and existence of potential safety related defects in the Class Vehicles.

4 95. Such irreparable harm includes, but is not limited to, likely injuries and  
5 crashes as a result of the Rollaway Defect in the Class Vehicles.

6 96. Plaintiff and the Class seek full compensatory damages allowable by  
7 law, the diminished value of the Class Vehicles, the repair or replacement of all  
8 Class Vehicles, the refund of money paid to own or lease all Class Vehicles, and  
9 punitive damages, and appropriate equitable relief including injunctive relief,  
10 restitution, a declaratory judgment, a court order enjoining Honda's wrongful acts  
11 and practices, and any other relief to which Plaintiff and the Class may be entitled,  
12 including attorneys' fees and costs.

13  
14 **FOURTH CLAIM FOR RELIEF**  
15 **Breach of Implied Warranty of Merchantability**  
16 **Tenn. Code §§ 47-2-314 and 47-2a-212, et seq.**  
17 **(On behalf of the Tennessee Subclass)**

18 97. Plaintiff incorporates by reference the allegations contained in the  
19 preceding paragraphs of this complaint.

20 98. Plaintiff brings this claim individually and on behalf of the Tennessee  
21 Subclass against Honda.

22 99. Honda was at all relevant times "merchants" with respect to motor  
23 vehicles under Tenn. Code §§ 47-2-104(1) and 47-2A-103(1)(t), and "sellers" of  
24 motor vehicles under § 47-2-103(1)(d).

25 100. With respect to leases, Honda is and was at all relevant times "lessors"  
26 of motor vehicles under Tenn. Code § 47-2A-103(1)(p).

27 101. The Class Vehicles are and were at all relevant times "goods" within  
28 the meaning of Tenn. Code §§ 47-2-105(1) and 47-2A-103(1)(h). A warranty that

1 the Class Vehicles were in merchantable condition and fit for the ordinary purpose  
2 for which vehicles are used is implied by law pursuant to Tenn. Code §§ 47-2314  
3 and 47-2A-212.

4 102. Honda sold and/or leased Class Vehicles that were not in merchantable  
5 condition and/or fit for their ordinary purpose in violation of the implied warranty.  
6 The Class Vehicles were not in merchantable condition because their defective  
7 design violated state and federal laws. The Class Vehicles were not fit for their  
8 ordinary purpose because their Rollaway Defect is unreasonably dangerous.

9 103. Honda's breaches of the implied warranty of merchantability caused  
10 damage to the Plaintiff and the Tennessee State Subclass. The amount of damages  
11 due will be proven at trial.

12  
13 **FIFTH CLAIM FOR RELIEF**  
14 **Breach of Express Warranty**  
15 **Tenn. Code §§ 47-2-313 and 47-2A-210, et seq.**  
16 **(On behalf of the Tennessee Subclass)**

17 104. Plaintiff incorporates by reference the allegations contained in the  
18 preceding paragraphs of this complaint.

19 105. Honda is defined as Defendants for the purposes of this section and  
20 solely this section.

21 106. Plaintiff brings this claim individually and on behalf of the Tennessee  
22 Subclass against Honda.

23 107. Defendants were at all relevant times "merchants" with respect to  
24 motor vehicles under Tenn. Code §§ 47-2-104(1) and 47-2A-103(1)(t), and  
25 "sellers" of motor vehicles under § 47-2-103(1)(d).

26 108. With respect to leases, Defendants were at all relevant times "lessors"  
27 of motor vehicles under Tenn. Code § 47-2A-103(1)(p).

28 109. The Class Vehicles are and were at all relevant times "goods" within



1 the meaning of Tenn. Code §§ 47-2-105(1) and 47-2A-103(1)(h).

2 110. Defendants expressly warranted that it would cover the cost of all parts  
3 and labor to repair any item on the vehicle when it left the manufacturing plant that  
4 is defective in material or workmanship. Upon information and belief, the exact  
5 nature of the Rollaway Defect-and whether it is included in Honda's express written  
6 warranty-will be clarified through discovery.

7 111. Honda materially breached its expressed warranties by selling and  
8 leasing Class Vehicles that contained the Rollaway Defect, which rendered the  
9 Class Vehicles unsafe or unfit for use as warranted. Thus, at the point of sale, the  
10 written warranties were breached by Defendants as the Class Vehicles were  
11 unreasonably dangerous and contained an inherent design defect.

12 112. Defendants was put on notice of the breach by Class members' online  
13 complaints available on NHSTA and other online public websites.

14 113. In addition, Defendants' express warranty has failed its essential  
15 purpose due to the Rollaway defect not being covered under either the Powertrain  
16 or Limited warranties that accompanied each Class Vehicle. Specifically, upon  
17 information and belief, the Electric Parking Break and any update to the Vehicle  
18 Stability Assistance software within the Class Vehicles are not covered by either  
19 the Powertrain or Limited warranties.

20 114. As a result of Honda's breach of its express warranties, Plaintiff and  
21 the other Class members received goods whose goods whose dangerous condition  
22 substantially impairs their value to Plaintiff and the other Class members. Plaintiff  
23 and the other Class members have been damaged as a result of the diminished value  
24 of the Class Vehicles and the inability to use their Class Vehicles.

25 115. Plaintiff and Class members are entitled to recover all damages as a  
26 result of said breach of warranties, and any other relief to which Plaintiff and the  
27 Class may be entitled, including attorneys' fees and costs.  
28

**SIXTH CLAIM FOR RELIEF**  
**Violation of the California Consumers Legal Remedies Act**  
**Cal. Civ. Code § 1750, *et seq.* (“CLRA”)**  
**(On behalf of the National Class)**

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4 116. Plaintiff incorporates by reference the allegations contained in the  
5 preceding paragraphs of this complaint.

6 117. Plaintiff brings this claim individually and on behalf of the National  
7 Class against Honda.

8 118. Honda is a “person” as defined by California Civil Code § 1761(c).

9 119. Plaintiff and Class Members are “consumers” within the meaning of  
10 California Civil Code §1761(d) because they purchased their Class Vehicles  
11 primarily for personal, family, or household use.

12 120. By failing to disclose and concealing the Rollaway Defect from  
13 Plaintiff and Class Members, Honda violated California Civil Code § 1770(a), as  
14 Honda represented that the Class Vehicles were safe and had characteristics and  
15 benefits that they do not have, and represented that the Class Vehicles were of a  
16 particular standard, quality, or grade when they were of another. See Cal. Civ. Code  
17 § 1770(a)(5), (7), (9), (14), & (16).

18 121. Honda’s unfair and deceptive acts or practices occurred repeatedly in  
19 Honda’s trade or business, were capable of deceiving a substantial portion of the  
20 purchasing public, and imposed a serious safety risk on the public.

21 122. Honda advertised the Class vehicles as “safe” and “reliable” while  
22 failing to disclose to Plaintiff and Class Members any hint of the risks posed by the  
23 Rollaway Defect, which renders the Class vehicles dangerous and unreliable.

24 123. Honda knew that the Class Vehicles suffered from an inherent design  
25 and were not suitable for their intended use. Specifically, the dangers of the design  
26 of the Rollaway Defect, were, or should have been, obvious from the fact that the  
27 shifter violates several basic design principles, and from analysis and testing that  
28

1 Honda conducts on the Class vehicles.

2 124. As a result of their reliance on Honda's omissions and/or  
3 misrepresentations, Class members suffered an ascertainable loss of money,  
4 property, and/or value of their Class Vehicles. Additionally, as a result of the  
5 Rollaway Defect, Plaintiff and Class Members were harmed and suffered actual  
6 damages in that the Class Vehicles had a safety defect that made the vehicles prone  
7 to rollaway when placed in park, with no safeguards to prevent this risk.

8 125. Plaintiff and Class Members were exposed to uniform  
9 misrepresentations and omissions by Honda as nothing in the owners' manual of  
10 the Class Vehicles, or any other advertising material from Honda, made reference  
11 to or warned Class Members of the Rollaway Defect.

12 126. Honda had a duty to Plaintiff and Class Members to disclose the  
13 defective nature of the shifters and/or the associated repair costs because:

- 14 a. Honda was in a superior position to know the true state of facts about  
15 the safety defect in the Class Vehicles' shifters;  
16 b. Plaintiff and Class Members could not reasonably have been  
17 expected to learn or discover that their shifters had a dangerous safety  
18 defect until it manifested; and  
19 c. Honda knew that Plaintiff and Class Members could not reasonably  
20 have been expected to learn of or discover the safety defect; and  
21 d. The Rollaway Defect is a safety issue that creates an unreasonably  
22 dangerous situation for Plaintiff and Class members.

23 127. In failing to disclose the Rollaway Defect, and in advertising the Class  
24 Vehicles as safe and reliable, Honda knowingly and intentionally omitted material  
25 facts and breached its duty not to do so.

26 128. The facts about the Rollaway Defect that Honda concealed from or  
27 failed to disclose to Plaintiff and Class Members are material in that a reasonable  
28 consumer would have considered them to be important in deciding whether to

1 purchase or lease the Class Vehicles or pay less for them. Had Plaintiff and Class  
2 Members known that the Class Vehicles were defective, they would not have  
3 purchased or leased the Class Vehicles or would have paid less for them.

4 129. Plaintiff and Class Members are entitled to equitable relief.

5 130. In accordance with Civil Code § 1780(a), Plaintiffs and the other Class  
6 members seek injunctive and equitable relief for Honda's violations of the CLRA,  
7 including an injunction to enjoin Honda from continuing its deceptive advertising  
8 and sales practices. In addition, after mailing appropriate notice and demand in  
9 accordance with Civil Code § 1782(a) & (d), Plaintiff and the other Class members  
10 will amend this Class Action Complaint to include a request for damages.

11 **SEVENTH CLAIM FOR RELIEF**  
12 **Violation of the California Unfair Competition Law**  
13 **Cal. Bus. & Prof. Code § 17200, *et seq.***  
14 **(On behalf of the National Class)**

15 131. Plaintiff incorporates by reference the allegations contained in the  
16 preceding paragraphs of this complaint.

17 132. Plaintiff brings this claim individually and on behalf of the National  
18 Class against Honda.

19 133. California Business & Professions Code § 17200, *et seq.* ("UCL")  
20 prohibits acts of "unfair competition," including any "unlawful, unfair or fraudulent  
21 business act or practice" and "unfair, deceptive, untrue or misleading advertising."

22 134. Plaintiff and Class Members are reasonable consumers who do not  
23 expect their Class Vehicles to fail to notify them as to whether the car has been  
24 placed into the safe-to-exit "park" gear, nor have a safety override that  
25 automatically puts the car in "park" or applies the parking brake if the driver gets  
26 out of the car.

27 135. Further, Honda advertised the Class vehicles as "safe" and "reliable"  
28 while failing to disclose to Plaintiff and Class Members any hint of the risks posed

1 by the roll away defect-which is dangerously unreliable.

2 136. Honda knew the Class Vehicles suffered from inherent defects, were  
3 defectively designed or manufactured, would fail to operate as intended, and were  
4 not suitable for their intended use.

5 137. In failing to disclose the Rollaway Defect, Honda knowingly and  
6 intentionally concealed material facts and breached its duty not to do so.

7 138. By their conduct, Honda has engaged in unfair competition and  
8 unlawful, unfair, and fraudulent business practices.

9 139. Honda had a duty to Plaintiff and Class Members to disclose the  
10 defective nature of the Class Vehicles because:

- 11 a. Honda was in a superior position to know the true facts about the  
12 Class Vehicles' safety defect;
- 13 b. Honda made partial disclosures about the quality of the Class  
14 Vehicles without revealing the defective nature of the Class  
15 Vehicles; and
- 16 c. Honda actively concealed the defective nature of the Class Vehicles  
17 from Plaintiff and Class Members.

18 140. The facts regarding the Rollaway Defect that Honda concealed from  
19 or failed to disclose to Plaintiff and Class are material in that a reasonable person  
20 would have considered them to be important in deciding whether to purchase or  
21 lease Class Vehicles. Had Plaintiff and Class Members known that the Class  
22 Vehicles were defective and posed a safety hazard, they would not have purchased  
23 or leased Class Vehicles, or would have paid less for them.

24 141. Honda continues to conceal the defective nature of the Class Vehicles,  
25 even after Class Members have reported problems.

26 142. Honda's conduct was and is likely to deceive consumers. Honda's  
27 unfair or deceptive acts or practices occurred repeatedly in Honda's trade or  
28 business, and were capable of deceiving a substantial portion of the purchasing

1 public.

2 143. Honda's acts, conduct, and practices were unlawful in California, in  
3 that they constituted:

- 4 a. Violations of the CLRA;
- 5 b. Violations of the Song-Beverly Consumer Warranty Act; and
- 6 c. Breaches of the express and implied warranties in violation of  
7 California, Tennessee, and federal law.

8 144. As a result of their reliance on Honda's omissions and/or  
9 misrepresentations, owners and/or lessees of the Class Vehicles suffered an  
10 ascertainable loss of money, property, and/or value of their Class Vehicles.  
11 Additionally, as a result of the Rollaway Defect, Plaintiff and Class Members were  
12 harmed and suffered actual damages in that the Class Vehicles' are worth less than  
13 they would be if they were not prone to the Rollaway Defect.

14 145. As a direct and proximate result of Honda's unfair and deceptive  
15 practices, Plaintiff and Class Members have suffered and will continue to suffer  
16 actual damages.

17 146. Honda has been unjustly enriched and should be required to make  
18 restitution to Plaintiff and the Class pursuant to §§ 17203 and 17204 of the  
19 California Business & Professions Code.

20 147. Plaintiff and the Class seek all remedies available pursuant to § 17070,  
21 *et seq.* of the California Business & Professions Code, including full restitutionary  
22 damages allowable by law, the diminished value of the Class Vehicles, the repair  
23 or replacement of all Class Vehicles, the refund of money paid to own or lease all  
24 Class Vehicles, and appropriate equitable relief including injunctive relief,  
25 restitution, a declaratory judgment, a court order enjoining Honda's wrongful acts  
26 and practices, and any other relief to which Plaintiff and the Class may be entitled,  
27 including attorneys' fees and costs.

28



**EIGHTH CLAIM FOR RELIEF**  
**Breach of Implied Warranty Under the Song-Beverly Consumer Warranty Act, California Civil Code §§ 1792 and 1791.1, et seq.**  
**(On behalf of the National Class)**

148. Plaintiff incorporates by reference the allegations contained in the preceding paragraphs of this complaint.

149. Plaintiff brings this claim individually and on behalf of the National Class against Honda.

150. Plaintiff and Class Members are “buyers” within the meaning of the Song-Beverly Consumer Warranty Act, California Civil Code § 1791(a).

151. Honda is a “manufacturer” within the meaning of the Song-Beverly Consumer Warranty Act, California Civil Code § 1791(j).

152. The Class Vehicles at issue are “consumer goods” within the meaning of the Song-Beverly Consumer Warranty Act, California Civil Code § 1791(a).

153. The Powertrain Warranty and Limited Warranty are “express warranties” within the meaning of the Song-Beverly Consumer Warranty Act, California Civil Code § 1791.2.

154. At all relevant times, Honda manufactured, distributed, warranted, and/or sold the Class Vehicles. Honda knew or had reason to know of the specific use for which the Class Vehicles were purchased or leased.

155. Honda provided an implied warranty to Plaintiff and Class Members, which warranted that the Class Vehicles, including the components parts, are merchantable and fit for the ordinary purposes for which they were sold. However, the Class Vehicles suffer from an inherent defect at the time of sale and, thereafter, are not fit for their ordinary purpose of providing reasonably safe and reliable transportation.

156. Honda impliedly warranted that the Class Vehicles are of merchantable quality and fit for such use. The implied warranty includes, among

1 other things: (i) a warranty that the Class Vehicles manufactured, supplied,  
2 distributed, and/or sold by Honda are safe and reliable for providing transportation;  
3 and (ii) a warranty that the Class Vehicles are fit for their intended use.

4 157. Contrary to the applicable implied warranties, the Class Vehicles, at  
5 the time of sale and thereafter, were not fit for their ordinary and intended purpose  
6 of providing Plaintiff and Class Members with reliable, durable, and safe  
7 transportation. Instead, the Class Vehicles are defective and suffer from defects  
8 that compromise their reliability, durability, and safety.

9 158. As a result of Honda's breach of the applicable implied warranties,  
10 owners and/or lessees of the Class Vehicles have suffered an ascertainable loss of  
11 money, property, and/or value of their Class Vehicles. Additionally, as a result of  
12 the Rollaway Defect, Plaintiff and Class Members were harmed and suffered actual  
13 damages in that the Class Vehicles are substantially certain to fail or have failed  
14 before their expected useful life has run. The Rollaway Defect creates a high risk  
15 of accidents, injuries, and even death.

16 159. Honda's actions, as complained of herein, breached the implied  
17 warranty that the Class Vehicles were of merchantable quality and fit for such use,  
18 in violation of California Civil Code §§ 1792 and 1791.1, et seq.

19 160. Plaintiff and the Class seek full compensatory damages allowable by  
20 law, the diminished value of the Class Vehicles, the repair or replacement of all  
21 Class Vehicles, the refund of money paid to own or lease all Class Vehicles, and  
22 any other relief to which Plaintiffs and the Class may be entitled, including  
23 attorneys' fees and costs.

24 **NINTH CLAIM FOR RELIEF**  
25 **Equitable Injunctive and Declaratory Relief**  
26 **(On behalf of the National Class)**

27 161. Plaintiff incorporates by reference the allegations contained in the  
28 preceding paragraphs of this complaint.



- 1 Class Members about the defective nature of the Class Vehicles;
- 2 c. A declaration that both the Basic Limited and Powertrain Limited
- 3 Warranties fail their essential purpose;
- 4 d. An order enjoining Honda from further deceptive distribution, sales,
- 5 and lease practices with respect to their Class Vehicles; to repair all
- 6 other damages to the Class Vehicles caused by the Defect;
- 7 e. A further order enjoining Honda from the conduct alleged herein,
- 8 including an order enjoining Honda from concealing the existence of
- 9 the Defect during distribution, sales, and advertisements, as well as
- 10 during customer and warranty service visits for the Class Vehicles;
- 11 f. An award to Plaintiff and Class Members of compensatory, actual,
- 12 exemplary, and statutory damages, including interest, in an amount to
- 13 be proven at trial;
- 14 g. A declaration that Honda must disgorge, for the benefit of Plaintiff and
- 15 Class Members, all or part of the ill-gotten profits it received from the
- 16 sale or lease of their Class Vehicles, or make full restitution to Plaintiff
- 17 and Class Members;
- 18 h. An award of attorneys' fees and costs pursuant to California Code of
- 19 Civil Procedure § 1021.5 and all other applicable laws;
- 20 i. An award of pre-judgment and post-judgment interest, as provided by
- 21 law;
- 22 j. Any and all remedies provided pursuant to the Song-Beverly Act,
- 23 including California Civil Code § 1794;
- 24 ~~k.~~ Leave to amend the Complaint to conform to the evidence produced
- 25 at trial;
- 26 l. Such other relief as may be appropriate under the circumstances.
- 27 m. An order enjoining Honda to repair or replace the transmissions in the
- 28 Class Vehicles;

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**DEMAND FOR JURY TRIAL**

Plaintiff, individually and on behalf of all others similarly situated, hereby demands a trial by jury as to all matters so triable.

Date: December 4, 2017

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