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**UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA**

Case No.: _____

**Vincent Brandt, individually
and on behalf of all others
similarly situated,**

Plaintiff,

vs.

KIA AMERICA, INC.

Defendant.

**CLASS ACTION
COMPLAINT FOR:**

- (1) Breach of Implied Warranty of Merchantability**
- (2) Fraud by Omission or Fraudulent Concealment**
- (3) Unjust Enrichment**
- (4) Strict Liability: Design Defect**
- (5) Strict Liability: Manufacturing Defect**
- (6) Violation of the Magnuson-Moss Warranty Act (15 U.S.C. § 2301 Et Seq.**
- (7) Declaratory Judgment**

DEMAND FOR JURY TRIAL

1 **CLASS ACTION COMPLAINT**

2 Plaintiff Vincent Brandt, (“Plaintiff”), individually and on behalf of all
3 others similarly situated, respectfully submits the following for his Complaint
4 against Defendant Kia America, Inc. ("Kia" or "Defendant"). Plaintiff makes the
5 following allegations, except as to allegations specifically pertaining to Plaintiff,
6 upon information and belief based on, among other things, the investigation of
7 counsel, and review of public documents.

8 **PRELIMINARY STATEMENT**

9 1. Vehicle manufacturers have certain basic rules and procedures that
10 must be followed. When a vehicle manufacturer sells a vehicle, it has a duty to
11 ensure that the vehicle functions properly and safely for its advertised use and is
12 free from defects. When a vehicle manufacturer discovers a defect, it must
13 explicitly disclose the defect and make it right or cease selling the vehicle. When
14 a vehicle manufacturer provides a warranty, it must stand by that warranty. This
15 case arises from Defendant’s breach of these listed duties and rules.

16 2. Plaintiff brings this action on behalf of himself, and all similarly
17 situated persons who purchased or leased any 2020-2024 Kia Telluride
18 manufactured between January 9, 2020, and May 29, 2024 ("Class Vehicles").

1 and Defendant, on the other, are citizens of different states.

2 8. This Court has personal jurisdiction over Defendant because
3 Defendant has purposefully availed itself to this District's jurisdiction and
4 authority, given Defendant's minimum contacts within this District through
5 Defendant's extensive marketing, advertising, and sale of Class Vehicles
6 throughout this District.

7 9. Venue is proper in this District under 28 U.S.C. §1391 because a
8 substantial part of the events or omissions giving rise to Plaintiffs' claims
9 occurred in this District, given that Defendant sells and distributes their vehicles
10 throughout the United States and within this District.

11 **PARTIES**

12 10. Vincent Brandt is a citizen of the State of Michigan and resides in
13 Burton, Michigan. Burton is located within Genesee County, Michigan.

14 11. In July of 2020, Plaintiff purchased his 2020 Kia Telluride from Kia
15 of Jackson, Michigan.

16 12. Based on Kia's active and persistent promotions touting the quality
17 of its vehicles and his admiration of Kia vehicles, Plaintiff considered Kia a
18 quality company with a strong reputation for producing reliable and safe vehicles.

13. In addition to Kia's reputation through its marketing and promotion,

1 Plaintiff decided on the 2020 Kia Telluride because he believed it was a
2 high-quality vehicle after a salesman convinced him that the vehicle was safe,
3 highly reliable and came with great technological features.

4 14. Since purchasing his 2020 Kia Telluride, Plaintiff has only taken the
5 vehicle to Kia dealerships for its routine maintenance as recommended by both
6 the vehicle alert system and the Service Department at Kia of Jackson, Michigan.

7 15. However, through Plaintiff's consistent visits to Kia dealerships, he
8 has never been told of any recalls or defects related to his seat motors, or that said
9 motors posed a risk of overheating and fire.

10 16. Defendant is a corporation organized and in existence under the laws
11 of the State of California and registered to do business in the State of California.
12 Defendant's Corporate Headquarters are located at 111 Peters Canyon Road,
13 Irvine, California 92606.

14 17. Defendant designs, manufactures, markets, distributes, services,
15 repairs, sells, and leases vehicles, including the Class Vehicles, nationwide and in
16 South Carolina. Defendant is the warrantor and distributor of the Class Vehicles
17 in the United States.

18 18. Defendant, through various entities, markets, distributes, warrants,
and sells Kia automobiles and parts for those automobiles, including the Class

1 Vehicles, in multiple locations across the United States, including California.

2 **FACTUAL ALLEGATIONS**

3 19. Since 2020, Defendant has designed, manufactured, distributed, sold,
4 and leased the Class Vehicles. Defendant has sold, directly or indirectly, through
5 dealers and other retail outlets, over four hundred thousand Class Vehicles in
6 California and nationwide.³

7 20. As discussed earlier and in more detail below, the Class Vehicles
8 contain a design defect that causes a serious safety concern. The design defect
9 with the Class Vehicles is contained in the front power seat motor ("Power Seat
10 Motor Defect").

11 21. In more detail, the Class Vehicle's "problem stems from a slide knob
12 in the front power seat motor that may get stuck and overheat, creating a risk of
13 fire while the car is parked or being driven."⁴ Strong external impact to the front
14 power seat side cover or seat slide knob can result in internal misalignment, and
15 with continuous operation, can cause overheating. People driving the Class
16 Vehicle may find they can't adjust the power seat, may notice a burning or
17 melting smell or see smoke rising from underneath the seat.⁵

18 22. Power seat components on Class Vehicles are intended to last the

³ <https://www.npr.org/2024/06/07/nx-s1-4996584/kia-telluride-recall-fire-risk>

⁴ *Id.*

⁵ *Id.*

1 lifetime of a vehicle and have no regular replacement interval.⁶

2 23. As demonstrated by the facts above, there is no foreseeable reason
3 for any of the individual parts to fail. Rather, the failure is caused by Defendant's
4 improper engineering, design, or manufacturing.

5 24. Over 400,000 of the Class Vehicles with defective front seat power
6 motors have been sold in America.⁷

7 25. The result of Defendant's recall, which includes a free fix and repair
8 clause in which Defendant will repair and replace the faulty parts, will cost
9 Plaintiff hours of her time.

10 26. Defendant's Recall is concerning because it does not offer any
11 foreseeable guarantee that the Power Seat Motor Defect will go away
12 permanently. Rather, the Recall mentions installing a bracket for the power seat
13 switch back covers and replacing the seat slide knobs.⁸ The Recall does not give
14 any detail on what causes the front power seat motor to get stuck and overheat in
15 the first place.⁹

16 27. Even if one was to presume that the Recall was effective and offered
17 a true fix, which is by no means a fair presumption, Plaintiff is still burdened with

18 ⁶ <https://repairpal.com/estimator/kia/telluride/power-seat-motor-replacement-cost>

⁷ [npr.org/2024/06/07/nx-s1-4996584/kia-telluride-recall-fire-risk](https://www.npr.org/2024/06/07/nx-s1-4996584/kia-telluride-recall-fire-risk)

⁸ *Id.*

⁹ *Id.*

1 a vehicle that has been devalued by Defendant's actions because the value of a car
2 with a known history of faulty power seat motors and a potential fire hazard is
3 worth much less than a car with properly working power seat motors, or at least
4 not having a history of defects with risks of the car catching on fire.

5 28. Given the information above, there is a cognizable risk inherent
6 within this Recall. Unless Defendant is to issue a more comprehensive recall to
7 truly fix the root cause of the Power Seat Motor Defect, it is foreseeable, and
8 should be expected, that the Class Vehicles' power seat motors will fail once
9 again. Defendant's Recall is no more than a repeatedly ineffective waste of time
10 as there is no true fix for the Power Seat Motor Defect.

11 29. In all, Defendant's Recall leaves more questions than answers
12 regarding the Class Vehicles' safety and power seat motor system and as such
13 results in a diminution in value for the vehicles in question.

14 30. Transitioning back to the repair itself, at a bare minimum, a
15 thirty-minute repair time means that it will take Defendant 231,500 hours to
16 repair the Class Vehicles. In a more comprehensible term, 231,500 hours amounts
17 to a little more than twenty-six years.

18 31. In addition to the sheer amount of time spent in repair, Plaintiff, like
every other Class Member, must spend time and money to transport himself and

1 his defective Class Vehicle to a Kia certified mechanic. For Plaintiff, this service
2 center is Kia of Grand Blanc, Michigan and his commute begins at his home in
3 Burton, Michigan. Plaintiff's repair-related commute is roughly a 9 mile, 20
4 minute trip.

5 32. Given the math above, Plaintiff may spend up to 2 hours, but no less
6 than 1 hours, in repairing her Class Vehicle.

7 33. In addition to the sheer amount of time spent in repairing his vehicle,
8 Plaintiff is faced with another difficult expense, the price of towing his vehicle.
9 The average cost of towing, per mile, is \$4.75 per mile.¹⁰ Given Plaintiff's
10 roughly 9 mile commute, this cost amounts to \$43 taken from Plaintiff for his
11 own Class Vehicle to be safely repaired.

12 34. Given the additional time it takes for a tow truck to arrive, roughly
13 thirty minutes, Plaintiff's total time spent on his vehicle amounts to three hours,
14 unless of course, one is to assume that Plaintiff drives his potentially flammable
15 Class Vehicle to the dealership.

16 35. In all, Defendant's Recall amounts to tens of thousands of hours and
17 dollars needlessly taken from Plaintiff and other Class Vehicle owners.

18 CLASS ACTION ALLEGATIONS

¹⁰ <https://www.thezebra.com/resources/driving/how-much-does-towing-a-car-cost/#:~:text=The%20average%20cost%20per%20mile,mile%20on%20the%20high%20end.&text=Many%20towing%20companies%20may%20also,miles%20you%20need%20to%20go.>

1 36. Plaintiff brings this action on behalf of himself and as a class action,
2 pursuant to Fed. R. Civ. P. 23(a), 23(b)(2), and/or 23(b)(3). Specifically, the class
3 and subclass are defined as follows:

4 **Nationwide Class:** All persons in the United States who purchased or
5 leased any 2020-2024 Kia Telluride manufactured between January 9,
6 2019, and May 29, 2024.

7 **California Subclass:** All persons from California who purchased or leased
8 any 2020-2024 Kia Telluride manufactured between January 9, 2019, and
9 May 29, 2024.

10 37. Together, the Nationwide Class and California Subclass will be
11 collectively referred to as the "Class" or "Classes". Members of these Classes will
12 be referred to as "Class Members".

13 38. Plaintiff qualifies as a member of each of the proposed classes in the
14 preceding paragraphs.

15 39. Excluded from each of the putative classes are any person who falls
16 within the definitions if the person is: (i) an employee or independent contractor
17 of Defendant; (ii) a relative of an employee or independent contractor of
18 Defendant; (iii) an employee of the Court where this action is pending.

 40. The proposed class definitions in ¶ 39 as limited by ¶ 40 may be
amended or modified from time to time.

 41. The particular members of the (i) Nationwide Class, and (ii)

1 California Subclass are capable of being described without difficult managerial or
2 administrative problems. The members of the putative classes are also readily
3 identifiable from the information and records in the possession or control of
4 Defendant or its affiliates and agents and from public records.

5 42. Certification of Plaintiff's claims for class-wide treatment is
6 appropriate because Plaintiff can prove the elements of his claims on a class-wide
7 basis using the same evidence as would be used to prove those elements in
8 individual actions alleging the same claims.

9 43. The Proposed Classes are so numerous that the joinder of all
10 members is impracticable.

11 44. This action has been brought and may be properly maintained on
12 behalf of the classes proposed herein under Federal Rule of Civil Procedure 23.

13 **Numerosity: Fed. R. Civ. P. 23(a)(1)**

14 45. Upon information and belief, the Class is so numerous that the
15 joinder of all members is impracticable. While the exact number and identities of
16 individual members of the Class are unknown at this time, such information is in
17 the sole possession of Defendant and obtainable by Plaintiff only through the
18 discovery process. Members of the Class may be notified of the pendency of this
action by recognized, Court-approved notice dissemination methods, which may

1 include U.S. Mail, Electronic Mail, internet postings, social media, and/or
2 published notice.

3 **Typicality: Fed R. Civ. P. 23(a)(3)**

4 46. Plaintiff's claims are typical of the claims of the Class because
5 Plaintiff purchased a Class Vehicle that contained the same Power Seat Motor
6 Defect found in all other Class Vehicles.

7 **Adequacy: Fed. R. Civ. P. 23(a)(4)**

8 47. Plaintiff is an adequate class representative because his interests do
9 not conflict with the interests of the Class he seeks to represent. Plaintiff has
10 retained counsel competent and highly experienced in complex and class action
11 litigation, and he intends to prosecute this action vigorously. The interests of the
12 Class will be fairly and adequately protected by Plaintiff and his counsel.

13 **Predominance and Superiority: Fed. R. Civ. P. 23(b)(3)**

14 48. A class action is superior to all other available means for the fair and
15 efficient adjudication of the claims of Plaintiff and Class members and questions
16 of law and fact common to all class members predominate over questions
17 affecting only individual class members. Class members can be readily identified
18 and notified based on, inter alia, Defendant's business records or other sources
including those from the state of California.

1 **Common Questions of Fact and Law: Fed. R. Civ. P. 23(b)(4)**

2 49. Common Questions of law and fact exist as to all members of the
3 Class. These questions predominate over the questions affecting individual Class
4 Members. These common legal and factual questions include, but are not limited
5 to:

- 6 a. Whether Class Vehicles contain the alleged Power Seat Motor
7 System
8 Defect;
- 9 b. Whether the Power Seat Motor System Defect would be considered
10 material by a reasonable consumer;
- 11 c. Whether the Power Seat Motor System Defect would constitute an
12 unreasonable safety risk;
- 13 d. Whether Defendant had a duty to disclose the Power Seat Motor
14 System Defect to Plaintiff and other Class Members;
- 15 e. Whether Defendant knew or reasonably should have known of the
16 Power Seat Motor System Defect before it sold and leased Class
17 Vehicles to Plaintiff and Class Members;
- 18 f. Whether the Power Seat Motor System Defect has diminished the
value of the Class Vehicles;

- 1 g. Whether the Power Seat Motor System Defect is capable of being
- 2 repaired;
- 3 h. Whether Defendant should be declared financially responsible for
- 4 notifying all Class Members of the problems with the Class Vehicles
- 5 and for the costs and expenses of repairing, replacing, or otherwise
- 6 remedying the Power Seat Motor System Defect;
- 7 i. Whether Defendant is obligated to inform Class Members of their
- 8 right to seek reimbursement for having paid to diagnose, repair, or
- 9 replace their defective power seat motor parts;
- 10 j. Whether Defendant breached the implied warranty of
- 11 merchantability pursuant to state law and/or the UCC;
- 12 k. Whether Defendant is liable for fraudulent omission;
- 13 l. Whether Defendant was unjustly enriched;
- 14 m. Whether Plaintiff and the other Class Members are entitled to
- 15 damages and other monetary relief.

14 **CAUSES OF ACTION**

15 **COUNT 1**

16 **BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY**

16 50. Plaintiff incorporates Paragraphs 1-49 as if fully set forth herein.

17 51. Plaintiff brings this count on behalf of himself and the Classes.

1 52. Defendant is a merchant and was at all relevant times involved in the
2 distributing, warranting, and/or selling of the Class Vehicles.

3 53. The Class Vehicles are “goods” under the relevant laws, and
4 Defendant knew or had reason to know of the specific use for which the Class
5 Vehicles, as goods, were purchased.

6 54. Defendant entered into agreements with consumers to sell the Class
7 Vehicles to be used by Plaintiff and Class Members for personal use.

8 55. The implied warranty of merchantability included with the sale of
9 each Class Vehicle means that Defendant guaranteed that the Class Vehicles
10 would be fit for the ordinary purposes for which cars are used and sold and were
11 not otherwise injurious to consumers. The implied warranty of merchantability is
12 a critical part of the basis for the benefit of the bargain between Defendant,
13 Plaintiff, and the Class Members.

14 56. Defendant breached the implied warranty of merchantability because
15 the Class Vehicles are not fit for their ordinary purpose of providing reasonably
16 reliable and safe transportation. After all, Defendant did not indicate that the
17 Class Vehicles would contain the Power Seat Motor Defect.

18 57. Given that Plaintiff and Class Members are unable to safely drive the
19 Class Vehicles without risk of the Class Vehicles catching on fire- the Class

1 Vehicles are not fit for their particular purpose of legal transportation and usage.
2 Defendant's Recall does nothing to truly address this risk, given that there is no
3 explanation on the cause of the Defect. Rather, the Recall places Plaintiff in a
4 much worse bargaining position compared to if Defendant had properly
5 manufactured, designed, produced, distributed, and advertised Class Vehicles.

6 58. Defendant's warranty expressly applies to the purchaser of the Class
7 Vehicles, creating privity between Defendant and Plaintiff and Class Members.

8 59. Privity is not required because Plaintiff and Class Members are the
9 intended beneficiaries of Defendant's warranties and sales. Defendant's
10 warranties were designed for and intended to benefit the consumer only, including
11 Plaintiff and Class Members.

12 60. Defendant provided sufficient notice of its breaches of implied
13 warranties associated with the Class Vehicles. Defendant was put on actual notice
14 of its breach through the contract between Plaintiff and Class Members and
15 Defendant, and its review of consumer complaints.

16 61. Had Plaintiff, Class Members, and the consuming public known that
17 the Class Vehicles would have defective power seat motor systems that created a
18 fire hazard that could engulf the Class Vehicles in flames at any time, they would
not have purchased the Class Vehicles or would have paid less for them. To

1 reiterate, had Plaintiff and Class Members known of the Power Seat Motor
2 System Defect, they would not have purchased Class Vehicles.

3 62. As a direct and proximate result of the foregoing, Plaintiff and the
4 Class suffered and continue to suffer financial damage and injury, and are entitled
5 to all damages, in addition to costs, interest, and fees, including attorneys' fees, as
6 allowed by law.

7 63. Plaintiff suffered injury in that he purchased a vehicle that is
8 worthless. For all intents and purposes, Plaintiff's vehicle is now a notoriously
9 unsafe vehicle which could catch fire at any time, while in park or while driving.

10 64. Plaintiff also suffered economic loss in reference to the value of his
11 vehicle. As a result of Defendant's Recall, Plaintiff's vehicle resale value is now
12 diminished. When Plaintiff intends to sell his Vehicle, the reputation of being a
13 faulty vehicle will harm the resale value and place Plaintiff in a much worse
14 bargaining position compared to if Defendant had properly manufactured,
15 designed, produced, distributed, and advertised Class Vehicles.

16 65. Plaintiff has suffered damages in that Plaintiff has been
17 inconvenienced by Defendant's Recall and accompanying required repairs. As
18 discussed above, Plaintiff will spend hours upon hours tending to Defendant's
recall. Had Defendant produced a vehicle that was roadworthy and reliable,

1 Plaintiff would not have had to spend hours upon hours of his life tending to this
2 Recall. Plaintiff did not bargain for, or pay for, a vehicle that could catch on fire
3 in park or while driving and which he has to park outside due to the risk of fire to
4 other structures such as his garage or home.

COUNT II

FRAUD BY OMISSION OR FRAUDULENT CONCEALMENT

6 66. Plaintiff incorporates Paragraphs 1-49 as if fully set forth herein.

7 67. Plaintiff brings this count on behalf of himself and the Classes.

8 68. Plaintiff brings this count under California law, individually and on
9 behalf of the Classes.

10 69. Defendant had actual knowledge that the Class Vehicles suffered
11 from an inherent defective Power Seat Motor System, was defectively designed
12 and/or manufactured, and was not suitable for their intended use prior to their
13 sale.

14 70. Having been aware of the Power Seat Motor System Defect and
15 knowing that Plaintiff and Class members could not have reasonably been
16 expected to know of the Defect, Defendant had a duty to disclose the Power Seat
17 Motor System Defect to Plaintiff and Class Members in connection with the sale
18 of the Class Vehicle. Defendant had a further duty to disclose the Defect because:

- 1 a. Defendant was in a superior position to know the true state of facts
2 about the Power Seat Motor System Defect contained in the Class
3 Vehicles, and Defendant knew these facts were not known or
4 reasonably discoverable by Plaintiff or Class Members;
- 5 b. Given the Power Seat Motor System Defect’s technical and hidden
6 nature, Plaintiff and Class Members lack the sophistication and
7 expertise in vehicle components that would be necessary to discover
8 the Power Seat Motor System Defect on their own;
- 9 c. Defendant knew that the Power Seat Motor System Defect gave rise
10 to safety concerns for the consumers who use the Class Vehicles,
11 and the omitted facts relating to the Defect were material because
12 they directly impact the safety of the Class Vehicles and would have
13 been part of the decision to buy or lease the Class Vehicles;
- 14 d. Defendant made incomplete representations about the safety and
15 reliability of the Class Vehicles while actively withholding and
16 concealing the material facts about the known defective nature of
17 the Class Vehicles from Plaintiff and Class Members. In uniform
18 advertising and materials provided with each Class Vehicle,
Defendant intentionally concealed, suppressed, and failed to

1 disclose to the consumers that the Class Vehicles contained the
2 Power Seat Motor System Defect. Because it volunteered to provide
3 information about the Class Vehicles that it marketed and offered for
4 sale and lease to consumers, Defendant had the duty to disclose the
5 whole truth.

6 71. Defendant concealed from and failed to disclose to Plaintiff and
7 Class Members the defective nature of the Class Vehicles, in direct breach of its
8 duties.

9 72. The fact that Defendant's Class Vehicles contained the Power Seat
10 Motor System Defect is a material fact as any system defect that could potentially
11 cause the vehicle to catch on fire is a critical defect, and a reasonable person
12 would find it important when deciding the purchase or lease a new or used motor
13 vehicle and because it directly impacts both the value and safety of the Class
14 Vehicles purchased or leased by the Plaintiff and Class Members.

15 73. Defendant was knowledgeable of the falsity of the safety of the
16 Power Seat Motor System Defect and/or recklessly disregarded the truth or falsity
17 of the dangerous nature of the Power Seat Motor System Defect.

18 74. Defendant intended for Plaintiff and Class Members to rely and act
upon such falsity as part of Defendant's commercial operations to sell vehicles –

1 which they did by purchasing and leasing the Class Vehicles at the prices they
2 paid while believing that their vehicles would not have a Power Seat Motor
3 System Defect that would affect the quality, reliability, and safety of the Class
4 Vehicles.

5 75. Plaintiff and Class Members' reliance was reasonable, as they had no
6 way of discerning and learning the facts that Defendant had concealed or failed to
7 disclose. Plaintiff and Class Members did not, and could not, unravel Defendant's
8 deception on their own.

9 76. Plaintiff and Class Members would not have purchased the Class
10 Vehicles had they known of such Power Seat Motor System Defect, or would
11 have paid less for them. Plaintiff and the Class Members did not know of such
12 Power Seat Motor System Defect and relied upon the false presentation of safety
13 in their purchases of Class Vehicles.

14 77. The facts concealed or not disclosed by Defendant to Plaintiff and
15 the other Class Members are material in that a reasonable person would have
16 considered them to be important in deciding whether to purchase or lease
17 Defendant's Class Vehicles or pay a lesser price for them. Whether a vehicle
18 catches fire when the Power Seat Motor System fails is a material safety concern.
Had Plaintiff and Class Members known about the defective nature of the Class

1 Vehicles, they would not have purchased or leased the Class Vehicles or would
2 have paid less for them.

3 78. Defendant actively concealed and suppressed these material facts, in
4 whole or in part, in order to maintain a market for the Class Vehicles, to protect
5 profits, and to avoid costly recalls that would expose them to liability for those
6 expenses and harm the commercial reputations of Defendant and their products.
7 They did so at the expense of Plaintiff and Class Members.

8 79. If Defendant had fully and adequately disclosed the Power Seat
9 Motor System Defect to consumers, Plaintiff and Class Members would have
10 seen such a disclosure.

11 80. Through Defendant's omissions and concealment regarding the
12 Power Seat Motor System Defect within the Class Vehicles, Defendant intended
13 to induce, and did induce, Plaintiff and Class Members to either purchase a Class
14 Vehicle that they otherwise would not have purchased or pay more for a Class
15 Vehicle than they otherwise would have paid.

16 81. Plaintiff and other Class Members justifiably relied on Defendant's
17 omissions to their detriment. This detriment is evident from Plaintiff's and Class
18 Members' purchase or lease of Defendant's defective Class Vehicles.

82. As a direct and proximate result of Defendant's misconduct, Plaintiff

1 and Class Members have suffered and will continue to suffer actual damages.
2 Plaintiff and the Class Members reserve their right to elect either to: (a) rescind
3 their purchase or lease of the Defective Vehicles and obtain restitution or (b)
4 affirm their purchase or lease of the Defective Vehicles and recover damages.

5 83. Defendant's acts were done maliciously, oppressively, deliberately,
6 with intent to defraud, and in reckless disregard of Plaintiff's and the Class
7 Members' rights and well-being to enrich Defendant. Defendant's conduct
8 warrants an assessment of punitive damages in an amount sufficient to deter such
9 conduct in the future, which amount is to be determined according to proof.

10 84. Plaintiff suffered injury through Defendant's conduct in that he
11 suffered economic loss and purchased a vehicle that is now worthless and unsafe.

12 85. Plaintiff also suffered economic loss in reference to the value of his
13 vehicle. As a result of Defendant's Recall, Plaintiff's Vehicle's resale value is
14 now diminished. When Plaintiff intends to sell his Vehicle, the reputation of
15 being a faulty vehicle will harm the resale value and place Plaintiff in a much
16 worse bargaining position compared to if Defendant had properly manufactured,
17 designed, produced, distributed, and advertised Class Vehicles.

18 86. Plaintiff also suffered damages in that Plaintiff has spent hours, and
will spend hours more, tending to Defendant's Recall. Plaintiff has been greatly

1 inconvenienced by Defendant's Recall.

2 **COUNT III**

3 **UNJUST ENRICHMENT**

4 87. Plaintiff incorporates paragraphs 1-49 as if fully set forth herein.

5 88. Plaintiff brings this count on behalf of himself and the Classes.

6 89. Under California Law, because the parties had an express contract
7 which was procured by fraud, it is equitable for Defendant to provide Plaintiff
8 and Class Members with restitution.

9 90. Plaintiff, and the other members of the Classes, conferred benefits on
10 Defendant in the form of monies paid to purchase Defendant's worthless Class
11 Vehicles.

12 91. Defendant voluntarily accepted and retained this benefit. Defendant
13 has knowledge and appreciation of this benefit, which was conferred upon it by
14 and at the expense of Plaintiff and the Class Members.

15 92. Because this benefit was obtained unlawfully, namely by selling and
16 accepting compensation for the Class Vehicles without providing working power
17 seat motors in the Class Vehicles, it would be unjust and inequitable for
18 Defendant to retain the benefit without paying the value thereof.

93. The circumstances, as described herein, are such that it would be

1 inequitable for Defendant to retain the ill-gotten benefit without paying the value
2 thereof to Plaintiff and the Class Members.

3 94. Defendant manufactured, marketed, and sold the Class Vehicles
4 under the guise of these Vehicles being safe, operable, and not subject to catching
5 fire at any moment. Instead, Defendant sold vehicles with an inherent fire hazard
6 that could engulf the car in flames at any moment. Rather than refunding or
7 reimbursing Plaintiff and Class Members the difference in value related to the
8 diminished resale value, Defendant has offered to simply fix the Class Vehicles
9 with a fix that appears to do no more than replace the defective systems with no
10 guarantee that the root cause of the problem is solved.

11 95. Because Defendant's retention of the non-gratuitous benefits
12 conferred on them by Plaintiff and members of the Classes is unjust and
13 inequitable, Defendant must pay restitution to Plaintiff and members of the
14 Classes for its unjust enrichment, as ordered by the Court.

15 **COUNT IV**
16 **STRICT LIABILITY: DESIGN DEFECT**

17 96. Plaintiff incorporates paragraphs 1-49 as if fully set forth herein.

18 97. At all times relevant, Defendant was engaged in the business of
designing, manufacturing, marketing, testing, selling, distributing, and supplying
the Class Vehicles and otherwise placed the Class Vehicles in the market and

1 stream of commerce for sale to the consuming public.

2 98. Plaintiff and Class Members used the Class Vehicles in a reasonably
3 foreseeable manner.

4 99. At all times, Defendant held final design approval authority for the
5 subject Class Vehicles.

6 100. The Power Seat Motor System Defect could happen at any time
7 when the sliding knob gets stuck, causing it to overheat and potentially engulf the
8 vehicle in flames.

9 101. The Class Vehicles' design is excessively dangerous. The risk of
10 danger inherent in the Class Vehicles' design and manufacture outweighs any
11 benefit of the design.

12 102. Defendant knew or should have known that Plaintiff and the Class
13 Members would purchase and use the Class Vehicles without inspection for
14 defect. Aside from being entirely uncommon for a consumer to disassemble and
15 inspect a vehicle, it is also unlikely to be permitted by Defendant's dealerships
16 and/or other resellers.

17 103. As a direct and proximate result of Defendant's conduct, including
18 actions, omissions, and misrepresentations, Plaintiff and the Class Members have
sustained damages:

- 1 a. Economic damages due to this Defect as they are now stuck with
2 vehicles that are unsafe and relatively worthless when compared to
3 the purchase price; and
- 4 b. Noneconomic damages including emotional distress, inconvenience,
5 loss of enjoyment, past and future.

6 **COUNT V**
STRICT LIABILITY: MANUFACTURING DEFECT

7 104. Plaintiff incorporates paragraphs 1-49 as if fully set forth herein.

8 105. This Count is pled in the alternative to the above count of design
9 defect.

10 106. At all times relevant, Defendant was engaged in the business of
11 designing, manufacturing, marketing, testing, selling, distributing, and supplying
12 the Class Vehicles and otherwise placed the Class Vehicles in the market and
13 stream of commerce for sale to the consuming public.

14 107. Along with Class Vehicles, Defendant designs, manufactures, and
15 produces all sorts of other vehicles. Given Defendant's other vehicles are capable
16 of having a Power Seat Motor System that doesn't overheat and catch fire, it
17 logically follows that the Class Vehicles would share the same fate.

18 108. The Class Vehicles presumably are capable of safe operation as
19 Defendant produces many other vehicles that are capable of such safety and

1 adequate operation. Unfortunately, this presumption is not reality. The Class
2 Vehicles are in danger of overheating and catching fire at any moment due to the
3 defective Power Seat Motor System.

4 109. Plaintiff and Class Members used the Class Vehicles in a reasonably
5 foreseeable manner.

6 110. At all times, Defendant held final manufacture approval authority for
7 the subject Class Vehicles.

8 111. Class Vehicles contain a defect as discussed earlier in which a sliding
9 knob can get stuck and overheat, putting the Class Vehicles in danger of catching
10 on fire. This failure of such sliding knob deviates from the adequate design. But
11 for the failure of the sliding knob and other components of the Power Seat Motor
12 System, due to its improper manufacture, the Power Seat Motor System of the
13 Class Vehicles would work.

14 112. The Class Vehicles' design is excessively dangerous. The risk of
15 danger inherent in the Class Vehicles design and manufacture outweighs any
16 benefit of the design.

17 113. Defendant knew or should have known that Plaintiff and Class
18 Members would purchase and use the Class Vehicles without inspection for
defect. Aside from being entirely uncommon for a consumer to disassemble and

1 inspect a vehicle, it is also unlikely to be permitted by Defendant's dealership
2 and/or other resellers.

3 114. As a result of this faulty manufacture of the Power Seat Motor
4 System, the Class Vehicles are now relatively worthless when compared to their
5 original purchase price and relative value and are unsafe.

6 115. Given the loss of value and lack of safety, Plaintiff and Class
7 Members have been damaged and will continue to suffer damages.

8 **COUNT VI**
9 **VIOLATION OF THE MAGNUSON-MOSS WARRANTY**
10 **ACT (15 U.S.C. § 2301 *ET SEQ.*)**

11 116. Plaintiff incorporates paragraphs 1-49 as if fully set forth herein.

12 117. Plaintiff brings this Count individually and on behalf of the Class.

13 118. Plaintiff is a "consumer" within the meaning of the Magnuson-Moss
14 Warranty Act, 15 U.S.C. § 2301 ET SEQ ("MMWA").

15 119. Defendant is a "supplier" and "warrantor" within the meaning of the
16 MMWA.

17 120. The Class Vehicles are "consumer products" within the meaning of
18 the MMWA.

19 121. 15 U.S.C. § 2301(d)(1) provides a cause of action for any consumer
20 who is damaged by the failure of a warrantor to comply with a written or implied

1 warranty.

2 122. Defendant's express warranties are written warranties within the
3 meaning of the MMWA.

4 123. Defendant breached its warranties by offering for sale and selling the
5 Class Vehicles, which were by design and construction defective and unsafe due
6 to the Power Seat Motor System Recall. Defendant's actions subjected Plaintiff
7 and the Class Members to danger as well as monetary damages in that the Class
8 Vehicles are inherently worth less compared to their value had the Class Vehicles
9 been free of the Power Seat Motor System Defect.

10 124. Additionally, Plaintiff and the Class Members suffered damages in
11 that they have been greatly inconvenienced by this Recall and Defect as Plaintiff
12 and the Class Members have had to collectively spend thousands of hours and
13 thousands of dollars in time and costs related to repairing the Power Seat Motor
14 System Defect.

15 125. Defendant has breached and continues to breach its written and
16 implied warranties of safety and reliability, thereby damaging Plaintiff and the
17 Class, when the Vehicles fail to perform due to the Defect.

18 126. As a result of these breaches, Plaintiff and Class Members have
suffered damages.

1 B. Declaring that Defendant is financially responsible for notifying the
2 Proposed Class Members of the pendency of this action;

3 C. Award all actual, general, special, incidental, statutory, and
4 consequential damages to which Plaintiff and Class Members are
5 entitled;

6 D. Scheduling a trial by jury in this action;

7 E. Awarding pre and post-judgment interest on any amounts awarded,
8 as permitted by law;

9 F. Costs including reasonable attorneys' fees, court costs, and other
10 litigation expenses; and,

11 G. Any other relief the Court may deem just and proper.

12 **DEMAND FOR JURY TRIAL**

13 Plaintiff, individually and on behalf of all those similarly situated, hereby
14 requests a jury trial, pursuant to Federal Rule of Civil Procedure 38, on any and
15 all claims so triable.
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Dated: June 26, 2024

By: /s/ Eric M. Poulin

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