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9 UNITED STATES DISTRICT COURT
10 CENTRAL DISTRICT OF CALIFORNIA

11 Yandery Sanchez, Louise Knudson,
12 Andrea Reiher-Odom, Amber Witt, Mark
13 Treston, Margaret Ritzler, Hank Herber,
14 Linda Wilbur, Jennifer Rocco, Jerry
15 Dubose, April Fisher, and Tewana Nelson,
16 *on behalf of themselves and all others
similarly situated,*

17 Plaintiffs,

18 vs.

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20 Kia America, Inc. f/k/a Kia Motors
21 America, Inc.,

22 Defendant.
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Case No.: 8:20-cv-01604-JLS-KES

**CONSOLIDATED CLASS ACTION
COMPLAINT**

DEMAND FOR JURY TRIAL

1 Plaintiffs, Yandery Sanchez, Louise Knudson, Andrea Reiher-Odom, Amber
2 Witt, Mark Treston, Margaret Ritzler, Hank Herber, Linda Wilbur, Jennifer Rocco,
3 Jerry Dubose, April Fisher, and Tewana Nelson (collectively, “Plaintiffs”), by
4 undersigned counsel, bring the following Consolidated Class Action Complaint against
5 Defendant Kia America, Inc., and allege, on their own behalf and on behalf of all those
6 similarly situated, as follows:
7

8
9 **INTRODUCTION**

10
11 1. Plaintiffs bring this lawsuit on behalf of themselves and proposed classes
12 of California, Georgia, Indiana, Iowa, New Mexico, New York, North Carolina,
13 Pennsylvania, Tennessee, Texas, and Virginia purchasers and lessees of defective
14 2020-2023 Kia Telluride vehicles (collectively, the “Class Vehicles”) designed,
15 manufactured, marketed, distributed, sold, warranted, and serviced by Defendant Kia
16 America, Inc. (“Kia” or “Defendant”).
17

18
19 2. Plaintiffs and the Classes were damaged because the Class Vehicles
20 contain defective windshields which cause the windshields to crack, chip and/or
21 fracture under normal driving conditions (the “Windshield Defect” or the “Defect”).
22

23 3. The Windshield Defect poses an extreme safety hazard to drivers,
24 passengers, and pedestrians because the spontaneously cracking Class Vehicle
25 windshields impair the driver’s view, distract the driver, and can result in dislodged
26 glass that can injure drivers, passengers and pedestrians.
27

28 4. Kia learned about the Defect immediately after it began selling the Class

1 Vehicles in 2019 via, *inter alia*, its daily review of NHTSA complaints where Class
2 Vehicle owners have submitted hundreds of complaints concerning the Windshield
3 Defect, Kia's review of complaints and inquiries about the Windshield Defect made
4 directly to Kia by Class Vehicle owners and Kia dealerships, and other internal
5 sources not available to the public including Kia's review of windshield part sales
6 data, warranty data, and internal testing.
7

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9 5. However, despite its knowledge of the Defect, Kia failed to disclose and
10 conceals the Windshield Defect from purchasers and lessees.
11

12 6. Had Plaintiffs and the Class Members known about the Windshield
13 Defect, they would not have purchased the Class Vehicles or would have paid
14 substantially less for them.
15

16 7. Moreover, Kia refuses to replace the defective windshields under its
17 warranty, forcing Class Vehicle owners to pay approximately \$1,000 for each
18 replacement windshield.
19

20 8. Further, Kia's replacement windshields are also defective, resulting in
21 Class Vehicle owners repeatedly replacing their windshields at their own expense.
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23 9. Kia has not recalled the Class Vehicles to repair the Windshield Defect,
24 has not offered its customers a suitable repair or non-defective replacement
25 windshield free of charge, and has not offered to reimburse all Class Vehicle owners
26 and leaseholders the costs they incurred relating to diagnosing and repairing the
27 Windshield Defect.
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1 10. Kia’s conduct set forth in this Complaint is in violation of the California
2 Consumers Legal Remedies Act, Cal. Civil Code §§ 1750, *et seq.*, California’s Unfair
3 Competition Law, Cal. Bus. & Prof. Code §§ 17200, *et seq.*, the Georgia Fair
4 Business Practices Act, Ga. Code Ann. § 10-1-390, *et seq.*, the Iowa Private Right of
5 Action for Consumer Frauds Act, the Indiana Deceptive Consumer Sales Act, Ind.
6 Code § 24-5-0.5-1, *et seq.*, the Iowa Code § 714H, New York General Business Law,
7 N.Y. Gen. Bus. Law § 349, the North Carolina Unfair and Deceptive Trade Practices
8 Act, N.C. Gen. Stat. § 75.1.1, *et seq.*, New Mexico Unfair Trade Practices Act, N.M.
9 Stat. Ann. § 57-12-2, *et seq.*, Pennsylvania Unfair Trade Practices and Consumer
10 Protection Law, 73 Pa. Stat. § 201-1, *et seq.*, Tennessee Consumer Protection Act of
11 1977, Tenn. Code Ann. § 47-18-101, *et seq.*, the Texas Deceptive Practices Act, Tex.
12 Bus. & Com. Code § 17.41, *et seq.*, the Virginia Consumer Protection Act, Va. Code
13 Ann. §§ 59.1-196, *et seq.*, and constitutes a breach of express and implied warranties
14 and the Magnuson-Moss Warranty Act.

15
16 11. Kia has and will continue to benefit from its unlawful conduct – by
17 selling more vehicles, at a higher price, and avoiding warranty obligations – while
18 consumers are harmed at the point of sale as their vehicles continue to suffer from the
19 unremedied Windshield Defect.

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21 12. To remedy Kia’s unlawful conduct, Plaintiffs, on behalf of the proposed
22 class members, seek damages and restitution from Kia, as well as notification to class
23 members about the defect.
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PARTIES

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13. Plaintiff Yandery Sanchez (“Ms. Sanchez”), is an adult individual residing in Houston, Texas.

14. Plaintiff Louise Knudson (“Ms. Knudson”), is an adult individual residing in Athens, Pennsylvania.

15. Plaintiff Andrea Reiher-Odom (“Ms. Reiher-Odom”), is an adult individual residing in Cedar Falls, Iowa.

16. Plaintiff Amber Witt (“Ms. Witt”), is an adult individual residing in Statesville, North Carolina.

17. Plaintiff Mark Treston (“Mr. Treston”), is an adult individual residing in Sugar Land, Texas.

18. Plaintiff Margaret Ritzler (“Ms. Ritzler”), is an individual residing in Thoreau, New Mexico.

19. Plaintiff Hank Herber (“Mr. Herber”), is an individual residing in Madisonville, Tennessee.

20. Plaintiff Linda Wilbur (“Ms. Wilbur”), is an individual residing in Indianapolis, Indiana.

21. Plaintiff Jennifer Rocco (“Ms. Rocco”), is an individual residing in Linwood, New Jersey.

22. Plaintiff Jerry Dubose (“Mr. Dubose”), is an individual residing in Webster, Texas.

1 or more class members, (ii) there is an aggregate amount in controversy exceeding
2 \$5,000,000, exclusive of interest and costs, and (iii) there is minimal diversity because
3 Plaintiffs and Class Members, and Kia are citizens of different states.
4

5 29. This Court also has subject matter jurisdiction over this action pursuant
6 to 28 U.S.C. § 1331 because Plaintiffs present a claim under the federal Magnuson-
7 Moss Warranty Act, 15 U.S.C. § 2301, et seq. As to the state law claims, this Court
8 has supplemental jurisdiction pursuant to 28 U.S.C. §1367.
9

10 30. Personal jurisdiction and venue are proper in this District as Defendant is
11 headquartered in this District.
12

13 **YANDERY SANCHEZ’S INDIVIDUAL ALLEGATIONS**

14 31. On November 14, 2019, Ms. Sanchez purchased a new 2020 Kia
15 Telluride, Vehicle Identification Number 5XYP64HC2LG056944 (hereafter the
16 “Sanchez Vehicle”) from Fredy Kia in Houston, Texas, an authorized dealership of
17 the Defendant.
18

19 32. Prior to the sale, Fredy Kia assured Ms. Sanchez that the vehicle was
20 accompanied by Kia’s New Vehicle Limited Warranty¹ and was free from defects of
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23 _____
24 ¹ A copy of the New Vehicle Limited Warranty is available at
25 [https://www.kia.com/us/content/dam/kia/us/en/images/warranty/manual/general-warranty-and-](https://www.kia.com/us/content/dam/kia/us/en/images/warranty/manual/general-warranty-and-consumer-info/2020_warranty.pdf)
26 [consumer-info/2020_warranty.pdf](https://www.kia.com/us/content/dam/kia/us/en/images/warranty/manual/general-warranty-and-consumer-info/2020_warranty.pdf) (last visited July 30, 2020). The warranty provides, *inter alia*,
27 that “all components of your new Kia Vehicle are covered for 60 months/60,000 miles from the Date
28 of First Service, whichever comes first (Basic Limited Warranty Coverage).” *Id.* The “Date of First Service” “means the first date the Kia Vehicle is delivered to the first retail purchaser, is leased or is placed into service as a company vehicle use (e.g., as a demonstrator, rental or fleet vehicle), whichever is earliest.” *Id.*

1 workmanship. Fredy Kia additionally assured Ms. Sanchez that the car was safe and
2 reliable.
3

4 33. However, in or around January 2020, the Sanchez Vehicle suffered from
5 the Windshield Defect.

6 34. Specifically, after parking her car at home, Ms. Sanchez went out to her
7 car and noticed for the first time that the Sanchez Vehicle’s windshield contained a
8 small crack even though she did not observe anything impact the windshield. The
9 crack quickly expanded to a much larger area and additional cracks have formed on
10 the Sanchez Vehicle’s windshield.
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13 35. Thereafter, Ms. Sanchez researched online to determine if Kia had issued
14 a recall regarding the Windshield Defect. As part of her research, Ms. Sanchez came
15 across a copy of a November 4, 2019 letter that Kia had sent to some but not all
16 owners of the Class Vehicles (Kia did not send the letter to Plaintiff), where Kia stated
17 that it had “identified that in some instances, customers have reported windshield
18 chipping following by extensive cracking within a short period of time, thereby
19 preventing repair of the chip” (the “Goodwill Letter”). The Goodwill Letter further
20 stated that “[i]n an effort to ensure customer satisfaction, Kia will replace your
21 Telluride’s windshield as a goodwill gesture should it chip and crack thereby
22 preventing repair of the chip while we continue to investigate this issue” and advised
23 that customers should “contact your local authorized Kia dealer and schedule an
24 appointment” and “[b]ring this letter to the appointment and provide it to the dealer
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1 for reference.”²

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36. On or about January 29, 2020 – well within the New Vehicle Limited Warranty period – Ms. Sanchez physically brought the Sanchez Vehicle to Kia Fredy to get it to repair the Windshield Defect. During the visit, Ms. Sanchez mentioned the Goodwill Letter and asked Fredy Kia to replace the windshield because of the Windshield Defect.

37. In response, Fredy Kia told Ms. Sanchez (1) the Goodwill Letter did not apply to her; (2) she would have to pay approximately \$1,000 out-of-pocket to get a new replacement windshield; and (3) Fredy Kia did not currently have any replacement windshields. Fredy Kia did not repair the Windshield Defect.

38. Thereafter, on or about March 3, 2020, Ms. Sanchez placed a follow-up telephone call to Fredy Kia and again asked it to replace her vehicle’s Windshield Defect. Fredy Kia once again told Ms. Sanchez that she would have to pay out-of-pocket for a replacement windshield.

39. On June 2, 2020, Ms. Sanchez, through her counsel, sent a letter to Kia advising it that the Sanchez Vehicle suffered from the Windshield Defect and still had not been repaired.

40. At all times, Ms. Sanchez has driven her vehicle in a foreseeable manner and in the manner in which it was intended to be used.

² A copy of the letter is attached as Exhibit A.

1 41. As can be seen in the below picture, the crack on Ms. Sanchez’s vehicle
2
3 is spread across a significant and large portion of the driver’s side windshield:



15
16 42. Further, Ms. Sanchez reports that when she has driven her vehicle during
17 certain hours of the day with the cracked windshield, sunlight reflects off of the cracks
18 in her windshield and creates a significant glare which makes it difficult for Ms.
19 Sanchez to see through her windshield while driving.
20

21 **LOUISE KNUDSON’S INDIVIDUAL ALLEGATIONS**

22 43. On October 22, 2020, Ms. Knudson purchased a new 2021 Kia
23 Telluride, Vehicle Identification Number 5XYP5DHC7MG122800 (hereafter the
24 “Knudson Vehicle”) from Williams Kia of Elmira (“Williams Kia”) in Elmira, New
25 York, an authorized dealership of the Defendant.
26
27

28 44. Prior to the sale, Williams Kia assured Ms. Knudson that the Knudson

1 Vehicle was accompanied by Kia’s New Vehicle Limited Warranty and was free from
2 defects of workmanship and that the car was safe and reliable.

3
4 45. Thereafter, Ms. Knudson drove the Knudson Vehicle to her home and
5 parked it in her garage. The following day she drove the Knudson Vehicle
6 approximately two miles to a store and then parked it in her garage.
7

8 46. However, on or about October 24, 2020 – *two days* after purchasing the
9 Knudson Vehicle – Ms. Knudson went to her garage and observed a large crack across
10 the Knudson Vehicle’s windshield, i.e., that the Knudson Vehicle suffered from the
11 Windshield Defect.
12

13 47. Ms. Knudson did not observe any impact damage to the Knudson
14 Vehicle’s windshield prior to observing the crack.
15

16 48. On or about October 24, 2020, Ms. Knudson placed a call to Williams
17 Kia, complained that her vehicle suffered from the Windshield Defect, and requested
18 that Williams Kia replace her defective windshield at no cost to her and under Kia’s
19 warranty.
20

21 49. In response, Williams Kia told Ms. Knudson that a small rock must have
22 hit her windshield and that the issue was not covered by Kia’s warranty. Williams Kia
23 refused to provide her with a replacement windshield under Kia’s warranty.
24

25 50. In light of Williams Kia’s refusal to repair or replace her defective
26 windshield, Ms. Knudson was forced to submit a claim to her insurance company and
27 paid a \$500 deductible to get a replacement windshield. The total cost of the
28

1 replacement windshield was \$1,131.75. Ms. Knudson seeks, inter alia, reimbursement
2 of these costs.
3

4 51. Ms. Knudson never received a copy of Kia’s Goodwill Letter.

5 52. On December 10, 2020, Ms. Knudson, through her counsel, sent a letter
6 to Kia advising it that the Knudson Vehicle suffered from the Windshield Defect and
7 that Ms. Knudson was denied a replacement windshield.
8

9 53. At all times, Ms. Knudson has driven her vehicle in a foreseeable manner
10 and in the manner in which it was intended to be used.
11

12 **ANDREA REIHER-ODOM’S INDIVIDUAL ALLEGATIONS**

13 54. On September 5, 2020, Ms. Reiher-Odom purchased a new 2021 Kia
14 Telluride, Vehicle Identification Number 5XYP5DHC8MG106458 (hereafter the
15 “Reiher-Odom Vehicle”) from Witham Kia (“Witham Kia”) in Waterloo, Iowa, an
16 authorized dealership of the Defendant.
17
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19 55. Prior to the sale, Witham Kia assured Ms. Reiher-Odom that the Reiher-
20 Odom Vehicle was accompanied by Kia’s New Vehicle Limited Warranty and was
21 free from defects of workmanship and that the car was safe and reliable.
22

23 56. However, in October 2020, approximately one month after purchasing
24 the Reiher-Odom Vehicle, the Reiher-Odom suffered from the Windshield Defect.
25

26 57. Specifically, while Ms. Reiher-Odom was driving the Reiher-Odom
27 Vehicle in a state park, a small pebble hit the Reiher-Odom Vehicle’s windshield and
28 immediately caused a small chip. However, the following morning the small chip

1 expanded to an approximately two-foot long crack.

2
3 58. On or about October 23, 2020, Ms. Reiher-Odom brought her vehicle to
4 Witham Kia, presented the vehicle for repair, and requested that Witham Kia repair or
5 replace her defective windshield at no cost to her pursuant to Kia's warranty.

6
7 59. In response, Witham Kia told Ms. Reiher-Odom that Kia's warranty did
8 not cover a replacement windshield. Witham Kia directed Ms. Reiher-Odom to
9 contact her insurance company for a replacement windshield. Further, Witham Kia
10 provided Ms. Reiher-Odom with a repair order quoting the price of new windshield at
11 \$806.99.
12

13 60. Ms. Reiher-Odom never received a copy of Kia's Goodwill Letter.

14
15 61. On November 18, 2020, Ms. Reiher-Odom, through her counsel, sent a
16 letter to Kia advising it that the Reiher-Odom Vehicle suffered from the Windshield
17 Defect and that Ms. Reiher-Odom was denied a replacement windshield.
18

19 62. At all times, Ms. Reiher-Odom has driven her vehicle in a foreseeable
20 manner and in the manner in which it was intended to be used.
21

22 63. As can be seen in the below image, after Ms. Reiher-Odom's windshield
23 suffered the above chip and crack, the crack further expanded across approximately
24 forty-inches of the driver's side and center of her windshield. The size and extent of
25 the crack has negatively impacted Ms. Reiher-Odom's ability to view the road and
26 oncoming traffic through her windshield.
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64. Moreover, as with other Plaintiffs, during certain times of the day sunlight has reflected off of the crack on her windshield, creating a significant glare which in turn makes it difficult for Ms. Reiher-Odom to see through her windshield while driving.

AMBER WITT’S INDIVIDUAL ALLEGATIONS

65. On November 14, 2020, Ms. Witt purchased a new 2021 Kia Telluride, Vehicle Identification Number 5XYP5DHC1MG134733 (hereafter the “Witt Vehicle”) from Keffer Kia in Mooresville, North Carolina, an authorized dealership of the Defendant.

1 66. Prior to the sale, Keffer Kia assured Ms. Witt that the Witt Vehicle was
2 accompanied by Kia's New Vehicle Limited Warranty and was free from defects of
3 workmanship and that the car was safe and reliable.

5 67. On November 15, 2020 – one day after purchasing the Witt Vehicle –
6 Ms. Witt observed a small crack on the Witt Vehicle's windshield which quickly grew
7 significantly larger, i.e., that the Witt Vehicle suffered from the Windshield Defect.

9 68. Ms. Witt did not observe any impact damage to the Witt Vehicle's
10 windshield prior to observing the crack.

12 69. On November 16, 2020, Ms. Witt brought the Witt Vehicle to Keffer Kia,
13 presented the vehicle for repair, and requested that Keffer Kia repair or replace the
14 defective windshield at no cost to her pursuant to Kia's warranty.

16 70. In response, Keffer Kia told Ms. Witt that it would not repair or replace
17 her windshield under Kia's warranty because the crack was purportedly caused by
18 impact damage. Keffer Kia directed Ms. Witt to contact her insurance company for a
19 repair or replacement windshield.

21 71. Ms. Witt then contacted her insurance company and on November 17,
22 2020, was given a quote of \$827.26 to replace the defective windshield. Ms. Witt
23 seeks, inter alia, reimbursement of these costs.

25 72. Thereafter, Ms. Witt continued to contact Keffer Kia in an attempt to
26 get Keffer Kia to replace the defective windshield under her warranty. Keffer Kia
27 never agreed to repair or replace the windshield under Kia's warranty.
28

1 73. On November 20, 2020, Ms. Witt contacted Defendant directly and
2 complained about the Windshield Defect and Keffer Kia's refusal to repair or replace
3 her defective windshield pursuant to Kia's warranty.
4

5 74. On December 1, 2020, Defendant directed Ms. Witt to bring the Witt
6 Vehicle back to Keffer Kia so that Keffer Kia could take pictures of the Witt
7 Vehicle's cracked windshield.
8

9 75. On December 8, 2020, Defendant advised Ms. Witt that it would not
10 repair or replace the Witt Vehicle's defective windshield pursuant to its warranty
11 because, according to Defendant, the crack was caused by impact damage. Ms. Witt
12 explained to Defendant, once again, that she observed no impact damage prior to the
13 Witt Vehicle's windshield cracking, which occurred within one day of Ms. Witt
14 purchasing the vehicle.
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17 76. On December 9, 2020, Defendant again advised Ms. Witt that it would
18 not repair or replace the Witt Vehicle's windshield pursuant to its warranty.
19

20 77. Ms. Witt never received a copy of Kia's Goodwill Letter.
21

22 78. On December 18, 2020, Ms. Witt, through her counsel, sent a letter to
23 Kia advising it that the Witt Vehicle suffered from the Windshield Defect and that Ms.
24 Witt was denied a replacement windshield.
25

26 79. At all times, Ms. Witt has driven her vehicle in a foreseeable manner and
27 in the manner in which it was intended to be used.
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80. As can be seen in the below images, the crack in Ms. Witt's vehicle was

1 spread across a significant portion of the driver's side of the windshield; the size and
2 extent of the crack negatively impacted Ms. Witt's view through her windshield.
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81. As with other Plaintiffs, when Ms. Witt drove her vehicle with the cracked windshield sunlight would sometimes reflect off of the crack in her windshield and create a significant glare which made it difficult for Ms. Witt to see through her windshield while driving.

82. Likewise, as a result of the crack on Ms. Witt's windshield, lights from oncoming cars would appear brighter than normal, which distracted Ms. Witt.

83. Further, due to the size and location of the crack on Ms. Witt's windshield, which was near sensors that automatically detected rain and operated the windshield wipers accordingly, the sensors malfunctioned and did not work when it rained.

MARK TRESTON’S INDIVIDUAL ALLEGATIONS

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84. On December 18, 2021, Mr. Treston purchased a new 2022 Kia Telluride, Vehicle Identification Number 5XYP64HC9NG241642 (hereafter the “Treston Vehicle”) from Kia of Temecula, in Temecula, California, an authorized dealership of the Defendant.

85. Prior to the sale, Kia of Temecula assured Mr. Treston that the Treston Vehicle was accompanied by Kia’s New Vehicle Limited Warranty and was free from defects of workmanship and that the car was safe and reliable. In addition, Mr. Treston paid an additional amount for an extended warranty.

86. However, Kia of Temecula did not disclose the Windshield Defect to Mr. Treston at or before the time of sale.

87. On or about December 23, 2021 – less than a week after Mr. Treston purchased his vehicle – the Treston Vehicle suffered from the Windshield Defect.

88. Specifically, Mr. Treston went to his indoor garage where the Treston Vehicle had been parked and he discovered a small chip on the Treston Vehicle’s windshield despite Mr. Treston not observing anything impact the Treston Vehicle’s windshield.

89. Within one day the chip spread to a much larger, approximate 2 foot crack across the center of the Treston Vehicle’s windshield.

90. On or about January 3, 2022, Mr. Treston brought his vehicle to Fort Bend Kia, an authorized Kia dealership located in Rosenberg, Texas, and requested

1 that Fort Bend Kia repair or replace his defective windshield at no cost to him
2 pursuant to Kia’s warranty.
3

4 91. In response, Fort Bend Kia told Mr. Treston that Kia’s warranty did not
5 cover a replacement windshield and it declined to attempt a repair on the defective
6 windshield or replace the windshield under Kia’s warranty.
7

8 92. As a result, Mr. Treston was required to pay more than \$1,000 to replace
9 the Treston Vehicle’s windshield.
10

11 93. Prior to obtaining a replacement windshield, when Mr. Treston drove his
12 vehicle the windshield crack obscured his view of the road and negatively impacted
13 his visibility.
14

15 94. Mr. Treston never received a copy of Kia’s Goodwill Letter.

16 95. On January 18, 2022, Mr. Treston, through his counsel, sent a letter to
17 Kia advising it that the Treston Vehicle suffered from the Windshield Defect and that
18 Mr. Treston was denied a replacement windshield under Kia’s warranty.
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20 96. At all times, Mr. Treston has driven his vehicle in a foreseeable manner
21 and in the manner in which it was intended to be used.
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23 **MARGARET RITZLER’S INDIVIDUAL ALLEGATIONS**

24 97. On July 13, 2021, Ms. Ritzler purchased a new 2022 Kia Telluride,
25 Vehicle Identification Number 5XYP5DHC8NG194087 (hereafter the “Ritzler
26 Vehicle”) from Fiesta Kia, an authorized Kia dealership located in Albuquerque, New
27 Mexico.
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1 98. Prior to the sale, Ms. Ritzler spoke with Fiesta Kia, who assured Ms.
2 Ritzler that the Ritzler Vehicle was reliable and accompanied by Kia's New Vehicle
3 Limited Warranty and was free from defects of workmanship and that the car was safe
4 and reliable.
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6 99. In or around August 2021, Ms. Ritzler went out to her vehicle in the
7 morning and observed a crack across the middle of the Ritzler Vehicle's windshield.
8 Ms. Ritzler did not observe any impact damage to the Ritzler Vehicle's windshield
9 prior to observing the crack.
10

11 100. Below is a picture of the cracked windshield:
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1 101. On or about August 26, 2021, Ms. Ritzler presented her vehicle to Fiesta
2 Kia, complained that her vehicle suffered from the Windshield Defect and described
3 the circumstances of her windshield crack, and requested that Fiesta Kia replace her
4 defective windshield at no cost to her and under Kia’s warranty.
5

6 102. In response, Fiesta Kia told Ms. Ritzler that a replacement windshield
7 was not covered by Kia’s warranty. Fiesta Kia refused to provide her with a
8 replacement windshield under Kia’s warranty.
9

10 103. In light of Fiesta Kia’s refusal to repair or replace her defective
11 windshield, Ms. Ritzler was forced to pay Fiesta for a windshield replacement. The
12 total cost of the replacement windshield, including recalibration, was \$1,064.70. She
13 submitted submit a claim to her insurance company, paid a \$500 deductible and the
14 insurance company covered the difference.
15

16 104. Moreover, despite Ms. Ritzler seeking a replacement windshield in
17 August 2021, the replacement windshield was on backorder and was not available for
18 installation until January 13, 2022, five months later. By the time the cracked
19 windshield was replaced, the crack had spread across the entire length of the
20 windshield. During this time period the size and location of the crack negatively
21 impacted Ms. Ritzler’s ability to view the road.
22

23 105. Unfortunately, on February 14, 2022, within weeks of the replacement
24 windshield being installed, the replacement windshield suffered from the Windshield
25 Defect and cracked once again even though Ms. Ritzler did not observe anything
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1 impact the windshield.

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106. Below are pictures of the second cracked windshield:

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107. With respect to the second cracked windshield, Fiesta again declined to cover the replacement windshield under Kia's warranty, Ms. Ritzler was forced to pay out-of-pocket for the second replacement windshield, and the windshield was not installed until April 15, 2022. In total, the cost of the second replacement windshield was \$860.

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108. When Ms. Ritzler's windshields cracked, the cracks were extensive, within her line of sight, and impaired her ability to drive. For instance, Ms. Ritzler had

1 to peek above or below the crack to see the road and oncoming traffic, and the cracks
2 exacerbated sunlight.

3
4 109. Ms. Ritzler never received a copy of Kia’s letter announcing a “customer
5 satisfaction initiative” (the “Goodwill Letter”).

6
7 110. Ms. Ritzler, through her counsel, sent a letter to Kia advising it that the
8 Ritzler Vehicle suffered from the Windshield Defect and that Ms. Ritzler was denied a
9 replacement windshield.

10
11 111. At all times, Ms. Ritzler has driven her vehicle in a foreseeable manner
12 and in the manner in which it was intended to be used.

13 **HANK HERBER’S INDIVIDUAL ALLEGATIONS**

14
15 112. On September 21, 2021, Mr. Herber purchased a new 2022 Kia Telluride,
16 Vehicle Identification Number 5XYP54HC4NG217395 (hereafter the “Herber
17 Vehicle”) from Rusty Wallace Kia Alcoa (“Wallace”), an authorized Kia dealership
18 located in Louisville, Tennessee.

19
20 113. Prior to the sale, Wallace assured Mr. Herber that the Herber Vehicle was
21 a safe vehicle and accompanied by Kia’s New Vehicle Limited Warranty and was free
22 from defects of workmanship and that the car was safe and reliable.

23
24 114. In addition, prior to purchasing the vehicle Mr. Heber reviewed Kia’s
25 brochures concerning the Class Vehicles.

26
27 115. Approximately two months after Mr. Herber purchased his vehicle, Mr.
28 Herber observed a crack across the Herber Vehicle’s windshield. Mr. Herber did not

1 observe any impact damage to the Herber Vehicle's windshield prior to observing the
2 crack.

3
4 116. The cracked windshield distracted Mr. Herber and increased sun glare.
5 Additionally, Mr. Herber was concerned that driving with the cracked windshield was
6 not safe and the vehicle lacked adequate protection in the event of a collision.
7

8 117. On November 30, 2021, Mr. Herber presented his vehicle to Wallace,
9 complained that his vehicle suffered from the Windshield Defect, and requested that
10 Wallace replace his defective windshield at no cost to him and under Kia's warranty.
11

12 118. In response, Wallace told Mr. Herber that the windshield must have
13 cracked due to impact damage and was not covered by Kia's warranty
14 notwithstanding that Mr. Herber overserved no such outside impact. Wallace refused
15 to provide him with a replacement windshield under Kia's warranty.
16

17
18 119. In light of Wallace's refusal to repair or replace his defective windshield,
19 Mr. Herber was forced to pay Wallace \$1,016.54 for a replacement windshield.
20

21 120. Mr. Herber never received a copy of Kia's Goodwill Letter.

22 121. Mr. Herber, through his counsel, sent a letter to Kia advising it that the
23 Herber Vehicle suffered from the Windshield Defect and that Ms. Herber was denied
24 a replacement windshield.
25

26 122. At all times, Mr. Herber has driven his vehicle in a foreseeable manner
27 and in the manner in which it was intended to be used.
28

LINDA WILBUR’S INDIVIDUAL ALLEGATIONS

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123. On February 17, 2022, Ms. Wilbur purchased a new 2022 Kia Telluride Vehicle Identification Number 5XYP34HC9NG261916 (hereafter the “Wilbur Vehicle”) from Ray Killman GMC Truck, Inc. (“Killman”), an authorized Kia dealership in Indianapolis, Indiana.

124. Prior to the sale, Killman assured Ms. Wilbur that the Wilbur Vehicle was safe and accompanied by Kia’s New Vehicle Limited Warranty and was free from defects of workmanship and that the car was safe and reliable.

125. Additionally, Ms. Wilbur reviewed Kia’s brochures concerning the Class Vehicles.

126. In or around March 2022, Ms. Wilbur observed a crack across the Wilbur Vehicle’s windshield even though Ms. Wilbur did not observe any impact damage to the Wilbur Vehicle’s windshield prior to observing the crack.

127. The cracked windshield impaired Ms. Wilbur’s visibility. For instance, at night the windshield crack resulted in significant glare from oncoming headlights.

128. On or about April 1, 2022, Ms. Wilbur presented her vehicle to Killman, complained that her vehicle suffered from the Windshield Defect, and requested that Killman replace her defective windshield at no cost to her and under Kia’s warranty.

129. In response, Killman failed to provide a replacement windshield under Kia’s warranty.

130. In light of Killman’s refusal to repair or replace her defective windshield

1 under Kia’s warranty, Ms. Wilbur was forced to pay Killman \$841.32 for a
2 replacement windshield. She submitted the claim to her insurance company and paid
3 a \$500 deductible.
4

5 131. Ms. Wilbur never received a copy of Kia’s Goodwill Letter.

6 132. Ms. Wilbur, through her counsel, sent a letter to Kia advising it that the
7 Wilbur Vehicle suffered from the Windshield Defect and that Ms. Wilbur was denied
8 a replacement windshield.
9

10 133. At all times, Ms. Wilbur has driven her vehicle in a foreseeable manner
11 and in the manner in which it was intended to be used.
12

13 **JENNIFER ROCCO’S INDIVIDUAL ALLEGATIONS**

14 134. On August 14, 2020, Ms. Rocco purchased a new 2021 Kia Telluride
15 Vehicle Identification Number 5XYP5DHCXMG100516 (hereafter the “Rocco
16 Vehicle”) from Matthews Planet Kia (“Matthews”), an authorized Kia dealership
17 located in Blakely, Pennsylvania.
18

19 135. Prior to the sale, Matthews assured Ms. Rocco that the Rocco Vehicle
20 was accompanied by Kia’s New Vehicle Limited Warranty and was free from defects
21 of workmanship and that the car was safe and reliable.
22

23 136. Ms. Rocco also reviewed Kia’s brochure for the Class Vehicles prior to
24 purchasing her vehicle.
25

26 137. In May 2022, Ms. Rocco observed a chip on the Rocco Vehicle’s
27 windshield even though Ms. Rocco did not observe any impact damage to the Rocco
28

1 Vehicle's windshield prior to observing the crack. Over time the chip spread to a
2 crack across the windshield.
3

4 138. The windshield crack was in Ms. Rocco's line of sight and impaired Ms.
5 Rocco's visibility. The crack also exacerbated sun glare and oncoming headlights.
6

7 139. On or about May 11, 2022, Ms. Rocco's husband, at Ms. Rocco's
8 direction, presented the Rocco vehicle to Matthews, complained that the vehicle
9 suffered from the Windshield Defect, and requested that Matthews replace the
10 defective windshield at no cost to him and under Kia's warranty.
11

12 140. In response, Matthews told Ms. Rocco's husband that a replacement
13 windshield was not covered by Kia's warranty. Matthews refused to provide him with
14 a replacement windshield under Kia's warranty and referred him to Safelite.
15

16 141. In light of Matthews Planet Kia's refusal to repair or replace the defective
17 windshield, the Rocco Vehicle remains unrepaired.
18

19 142. Ms. Rocco never received a copy of Kia's Goodwill Letter.
20

21 143. Ms. Rocco, through her counsel, sent a letter to Kia advising it that the
22 Rocco Vehicle suffered from the Windshield Defect and was denied a replacement
23 windshield.
24

25 144. At all times, Ms. Rocco has driven her vehicle in a foreseeable manner
26 and in the manner in which it was intended to be used.
27

28 **JERRY DUBOSE INDIVIDUAL ALLEGATIONS**

145. On November 28, 2020, Mr. Dubose purchased a new 2021 Kia Telluride

1 Vehicle Identification Number 5XYP3DHC1MG133068 (hereafter the “Dubose
2 Vehicle”) from Fredy Kia (“Fredy”), an authorized Kia dealership located in Houston,
3 Texas.
4

5 146. Prior to the sale, Fredy assured Mr. Dubose that the Dubose Vehicle was
6 accompanied by Kia’s New Vehicle Limited Warranty and was free from defects of
7 workmanship and that the car was safe and reliable.
8

9 147. In or around August of 2021, Mr. Dubose observed a crack across the
10 Dubose Vehicle’s windshield even though Mr. Dubose did not observe any impact
11 damage to the Dubose Vehicle’s windshield prior to observing the crack. Over time
12 the crack continued to spread across the windshield.
13

14 148. The cracked windshield negatively impaired Mr. Dubose’s visibility and
15 exacerbated sun glare.
16

17 149. Shortly thereafter, Mr. Dubose presented his vehicle to Fredy,
18 complained that his vehicle suffered from the Windshield Defect, and requested that
19 Fredy replace his defective windshield at no cost to him and under Kia’s warranty.
20

21 150. In response, Fredy Kia told Mr. Dubose that there was a point of impact
22 on the windshield and the issue was not covered by Kia’s warranty even though Mr.
23 Dubose did not observe any such impact. Fredy Kia refused to provide him with a
24 replacement windshield under Kia’s warranty.
25

26 151. In light of Fredy’s refusal to repair or replace his defective windshield,
27 Mr. Dubose requested that Safelite replace his windshield on or about August 5,
28

1 2021. As a result of part unavailability, Safelite did not replace the windshield until
2 December 13, 2021. The total cost of the replacement windshield was \$1,116.40.
3

4 152. Unfortunately, within months the replacement windshield cracked as
5 well. Specifically, on or about April 11, 2022, the replacement windshield cracked
6 even though Mr. Dubose did not observe anything impact the windshield.
7

8 153. Mr. Dubose never received a copy of Kia's Goodwill Letter.

9 154. Mr. Dubose, through his counsel, sent a letter to Kia advising it that the
10 Dubose Vehicle suffered from the Windshield Defect and that Mr. Dubose was denied
11 a replacement windshield.
12

13 155. At all times, Mr. Dubose has driven his vehicle in a foreseeable manner
14 and in the manner in which it was intended to be used.
15

16 **APRIL FISHER INDIVIDUAL ALLEGATIONS**

17 156. In May 2022, Ms. Fisher purchased a new 2022 Kia Telluride Vehicle
18 Identification Number 5XYP6DHC1NG275414 (hereafter the "Fisher Vehicle") from
19 Kia of Lynchburg, an authorized Kia dealership located in Lynchburg, Virginia.
20

21 157. Prior to the sale, the Kia dealership assured Ms. Fisher that the Fisher
22 Vehicle was safe and accompanied by Kia's New Vehicle Limited Warranty and was
23 free from defects of workmanship and that the car was safe and reliable.
24

25 158. Additionally, Ms. Fisher reviewed the window sticker affixed to the
26 Class Vehicles which emphasized their safety.
27

28 159. On or about July 27, 2022, a small pebble impacted the Fisher Vehicle's

1 windshield and quickly resulted in a crack across the entire length of the windshield.

2
3 160. The windshield crack impaired Ms. Fisher’s visibility, especially during
4 the rain. It also exacerbated sun glare and oncoming headlights.

5
6 161. Ms. Fisher contacted Kia of Lynchburg, described the circumstances of
7 her windshield crack and sought a replacement windshield under Kia’s warranty. In
8 response, the dealership informed Ms. Fisher the windshield replacement was not
9 covered under warranty.

10
11 162. As a result of the dealership’s refusal to replace the windshield under
12 Kia’s warranty, on August 2, 2022, Ms. Fisher requested that Safelite Auto Glass to
13 replace the windshield. The total cost of repair was \$937; Ms. Fisher submitted the
14 bill to her insurance company and paid a \$500 deductible.

15
16 163. However, the following day, August 3, 2022, the replacement windshield
17 cracked even though Ms. Fisher did not observe anything hit the windshield. Ms.
18 Fisher again contacted Kia of Lynchburg to request that it replace the cracked
19 windshield however the dealer again refused to cover the replacement windshield
20 under Kia's warranty.
21

22
23 164. As a result of the dealership’s refusal to replace the cracked windshield
24 under Kia’s warranty, on August 11, 2022, Ms. Fisher again had Safelite Auto Glass
25 replace the windshield and she paid another \$500 deductible.
26

27 165. Unfortunately, the second replacement windshield has already cracked
28 once again.

1 166. Ms. Fisher never received a copy of Kia’s Goodwill Letter.

2 167. Ms. Fisher, through her counsel, sent a letter to Kia advising it that the
3 Fisher Vehicle suffered from the Windshield Defect and that Ms. Fisher was denied a
4 replacement windshield.
5

6 168. Due to the Windshield Defect and resulting cracks, the Fisher Vehicle’s
7 Advanced Driving Assistance Systems have not been operating correctly.
8

9 169. At all times, Ms. Fisher has driven her vehicle in a foreseeable manner
10 and in the manner in which it was intended to be used.
11

12 **TEWANA NELSON INDIVIDUAL ALLEGATIONS**

13 170. On February 19, 2022, Ms. Nelson purchased a new 2022 Kia Telluride
14 Vehicle Identification Number 5XYP5DHC8NG261500 (hereafter the “Nelson
15 Nelson”) from Kia Autosport of Columbus, an authorized Kia dealership located in
16 Columbus, Georgia.
17

18 171. Prior to the sale, Kia Autosport of Columbus assured Ms. Nelson that the
19 Fisher Vehicle was accompanied by Kia’s New Vehicle Limited Warranty and was
20 free from defects of workmanship and that the car was safe and reliable.
21

22 172. Additionally, Ms. Nelson reviewed Kia’s brochure concerning the Class
23 Vehicles prior to the sale.
24

25 173. In July 2022, Ms. Nelson observed a small pebble impact her vehicle’s
26 windshield resulting in a chip which quickly spread to a crack across the entire length
27 of the windshield.
28

1 174. The windshield cracking became so extensive that Ms. Nelson
2 temporarily ceased driving the vehicle until the windshield was replaced out of
3 concern that it was unsafe to drive.
4

5 175. Ms. Nelson immediately thereafter presented her vehicle to an authorized
6 Kia dealership, described the circumstances of the windshield crack, and requested
7 that the dealership replace the windshield under Kia’s warranty. In response, the
8 dealership informed Ms. Nelson the windshield replacement was not covered under
9 warranty.
10
11

12 176. As a result, on July 28, 2022, Ms. Nelson had Allstate Glass in
13 Fayetteville, North Carolina replace her windshield. The total cost of repair was
14 \$1,167.84. Ms. Nelson submitted the bill to her insurance company and paid a \$500
15 deductible.
16

17 177. Ms. Nelson never received a copy of Kia’s Goodwill Letter.
18

19 178. Ms. Nelson, through her counsel, sent a letter to Kia advising it that the
20 Fisher Vehicle suffered from the Windshield Defect and that Ms. Fisher was denied a
21 replacement windshield.
22

23 179. At all times, Ms. Nelson has driven her vehicle in a foreseeable manner
24 and in the manner in which it was intended to be used.
25

26 **FACTUAL ALLEGATIONS**
27 **The Windshield Defect and Kia’s “Customer Satisfaction Initiative” / Goodwill**
28 **Letter**

180. In the spring of 2019 Kia released the brand-new Telluride, a mid-size

1 crossover SUV, as a 2020 model.

2
3 181. Since then it has sold tens of thousands of Telluride vehicles for model
4 years 2020, 2021, 2022 and 2023.

5
6 182. The Class Vehicles – which include 2020-2023 Kia Tellurides – suffer
7 from the Windshield Defect, which causes the Class Vehicles’ front windshield to
8 crack, chip and/or fracture for no reason at all and/or under circumstances that would
9 not cause non-defective windshields to similarly fail. As Plaintiffs allege above, and
10 as set forth in the NHTSA complaints attached hereto as Exhibits B, C and D and
11 reproduced below, Class Vehicle owners report that their windshields crack
12 spontaneously where there was no observed impact or under otherwise normal driving
13 conditions that would not cause a non-defective windshield to crack and fail (as
14 opposed to merely chip), such as following impact from minor road debris.

15
16
17 183. The Windshield Defect presents a safety hazard that renders the Class
18 Vehicles unreasonably dangerous to consumers due to, *inter alia*, the impact of the
19 Defect on visibility, the distracting nature of the resulting cracks, as well as the Class
20 Vehicles’ structural integrity, and the potential for injury.

21
22
23 184. Plaintiffs each allege the Windshield Defect and resulting cracks
24 impaired their visibility, was distracting and/or otherwise prevented them from safely
25 and reliably using their vehicles.

26
27 185. Other Class Vehicle owners have made similar complaints. *See, e.g.:*

28

- 1 • “I just recently bought a 2022 Kia Telluride 7 days ago and while driving on the
2 freeway the windshield shattered in the lower corner of driver side. There was no
3 car in front of me (not a close distance) or near me for that matter and there was
4 no overpass for a rock to have fallen from. **My windshield shattered and glass**
5 **landed in my face, eyes, and mouth, and all over the inside of my car. Luckily**
6 **I was able to maintain some control as there were no other vehicles in close**
7 **proximity. I’ve had rocks hit my windshield before but never to the point of**
8 **causing this kind of damage.”** (2022 Telluride, No. 11432080, September 8,
9 2021);
- 10 • “This will be **third time** replacing the windshield in just over a year due to the
11 same type of incident. **My families safety was at risk due to the obstruction**
12 **caused by the windshield cracking due to the impact of the small stone.”**
13 (2020 Telluride, No. 11427612, August 3, 2021);
- 14 • “MY WINDSHIELD HAS TWO CRACKS IN THAT **IMPAIRS**
15 **VISIBILITY.”** (2020 Telluride, No. 11310546, February 21, 2020);
- 16 • “The windshield cracked spontaneously on its own. There is no chip in the
17 windshield and no object hit it. The crack is over twenty inches long and curved.
18 **I fear for my safety driving the car now.”** (2021 Telluride, No. 11431157,
19 August 31, 2021);
- 20 • “**It affects safety because it is directly in drivers vision and is blinding when**
21 **the sun reflects and refracts through the crack.”** (2021 Telluride, No.
22 11435493, October 5, 2021).

18 186. Given the inherent safety risks associated with driving a vehicle with a
19 cracked windshield, many states make it illegal to operate a vehicle with a cracked
20 windshield where the windshield is defective such that it impairs the driver’s vision.

21 *See, e.g.*, Georgia Code: § 40-8-73(e) (“No motor vehicle shall be operated with a
22 windshield or rear window having a starburst or spider webbing effect greater than
23 three inches by three inches.”);

24 <https://law.lis.virginia.gov/admincode/title19/agency30/chapter70/section210/>

25 (Virginia vehicles will fail a vehicle inspection if “There is a pit, chip, or star crack
26
27
28

1 larger than 1-1/2 inches in diameter at any location in the windshield above the three-
2 inch line at the bottom” or “At any location in the windshield above the three-inch line
3
4 at the bottom (as measured from the junction of the dash board and the windshield)
5 there is more than one crack from the same point if at least one of the cracks is more
6
7 than 1-1/2 inches in length. There is any crack that weakens the windshield so that one
8 piece may be moved in relation to the other. (If there is more than one crack running
9
10 from a star crack that extends above the three-inch line, the windshield shall be
11 rejected.)”) (last visited April 10, 2023); 75 Pa. Stat. and Cons. Stat. Ann. § 4524
12 (“No person shall drive any motor vehicle with any sign, poster or other
13
14 nontransparent material upon the front windshield which materially obstructs,
15
16 obscures or impairs the driver's clear view of the highway or any intersecting highway
17
18 except an inspection certificate, sticker identification sign on a mass transit vehicle or
19
20 other officially required sticker”); [https://www.dps.texas.gov/section/vehicle-](https://www.dps.texas.gov/section/vehicle-inspection/faq/faq-items-inspection)
21
22 inspection/faq/faq-items-inspection (Texas vehicles may fail a state required
23
24 inspection if “a damaged windshield creates a significant visibility issue for the
25
26 driver.”) (last visited April 10, 2023); California Vehicle Code 26710 (“It is unlawful
27
28 to operate any motor vehicle upon a highway when the windshield or rear window is
in such a defective condition as to impair the driver’s vision either to the front or
rear.”); Iowa Code Ann. § 321.438 (“1. A person shall not drive a motor vehicle
equipped with a windshield, sidewings, or side or rear windows which do not permit
clear vision.”); N.Y. VAT § 375(22) (“It shall be unlawful to operate a motor vehicle

1 upon the public highways of this state which is equipped with any glass which is so
2 broken, fractured or discolored as to distort visibility.”); 75 Pa. Stat. and Cons. Stat.
3 Ann. § 4524 (“No person shall drive any motor vehicle with any sign, poster or other
4 nontransparent material upon the front windshield which materially obstructs,
5 obscures or impairs the driver's clear view of the highway or any intersecting highway
6 except an inspection certificate, sticker identification sign on a mass transit vehicle or
7 other officially required sticker”);
8
9

10
11 187. Moreover, in the event a vehicle is involved in a collision, an intact
12 windshield assists in transferring the force of a front-end impact down to the chassis,
13 which reduces the effect of the impact felt inside the vehicle and helps protect the
14 passengers. However, where a vehicle’s windshield is cracked and then subsequently
15 shatters during a collision, the vehicle occupants are at greater risk of sustaining
16 injuries.
17
18

19 188. In addition, the windshield is a vital component of a vehicle’s safety
20 restraint system, which also includes airbags and seatbelts. These safety features,
21 including the windshield, are all part of a safety network. Each individual component
22 of this network is dependent on the others functioning properly. Thus, if there is a
23 compromise or weakness in just one aspect of the network, the likelihood of other
24 parts not working properly is increased. All components of a vehicle’s safety restraint
25 system are designed to work together to keep vehicle occupants within the relative
26 safety of the passenger compartment during collision or roll over. To that end, the
27
28

1 windshield provides support that a passenger-side airbag needs to deploy properly. If
2 the windshield is compromised, the airbag may be useless in a collision. Similarly,
3 the windshield provides much of the roof support for most vehicles. As a result, the
4 windshield is a crucial component in preserving the structural integrity of the vehicle's
5 passenger compartment during roll-overs in that the windshield supports the roof,
6 thereby keeping the roof from collapsing and crushing the driver and passengers.
7

8
9 189. The Defect can also jeopardize the functioning of Class Vehicle
10 “Advanced Driving Assistance Systems,” which rely on an intact and properly
11 functioning windshield to operate. For instance, the “Lane Keeping Assist” system “is
12 designed to detect the lane markers on the road with a front view camera on the
13 windshield.”³ However, the Windshield Defect and resulting windshield cracks
14 prevent these safety systems from properly functioning. In addition, the front cameras
15 often need to be recalibrated when windshields are replaced, further increasing the
16 costs of replacing the defective windshields.
17
18

19
20 **The Customer Satisfaction Initiative and Kia’s Failure to Repair the Defect**
21 **Under Its Warranty**

22 190. On or about November 14, 2019, Kia sent a letter (the Goodwill Letter)
23 to some but not all owners of the Class Vehicles advertising its “Customer
24 Satisfaction Initiative” and stating that in some scenarios it would replace defective
25
26

27
28

³ <https://www.kia.com/us/content/dam/kia/us/en/images/technology/Kia-Advanced-Driving-Assistance-Systems.pdf> (last visited April 10, 2023).

1 windshields as a “goodwill gesture.”

2
3 191. In the letter, Kia admitted that “as part of our ongoing monitoring of
4 Telluride performance, we have identified that in some instances, customers have
5 reported windshields chipping followed by extensive cracking within a short period of
6 time, thereby preventing repair of the chip.”
7

8 192. A copy of the letter is attached as Exhibit A.

9
10 193. However, the Goodwill Letter is a wholly inadequate and illusory sham
11 remedy for the Windshield Defect.

12 194. First, the Customer Satisfaction Initiative is underinclusive, limited to
13 certain 2020 Telluride vehicles, and does not apply to the vast majority of Class
14 Vehicle owners, including the Plaintiffs, who purchase or leased 2021-2023 Telluride
15 vehicles and were not provided a copy of the Goodwill Letter. Indeed, each of the
16 Plaintiffs were denied warranty repairs regarding their vehicles’ defective
17 windshields. Other owners have likewise complained to NHTSA that they are denied
18 repairs under the Customer Satisfaction Initiative because it excludes 2021-2023
19 Tellurides. *See, e.g.:*
20
21
22

- 23 • NHTSA Complaint, September 15, 2022, ID No. 11484682: “**While driving**
24 **at approximately 35 MPH, with no vehicles, pedestrians, lawnmowers,**
25 **trees, road hazards, etc., near, the windshield spontaneously cracked**
26 **near the passenger side pillar. The initial crack was circular with spider-**
27 **webbing, the longest of which was approximately 6 inches (not exact due**
28 **to being measured with a hand as reference). The vehicle was**
immediately parked, and upon return to the vehicle 1 hour and 45
minutes later, the spider-webbing had spread to approximately half the
length of the windshield from the initial crack at the passenger side, to

1 **the driver side.** My wife confirmed that there were no vehicles traveling the
2 opposite direction, no pedestrians, overpasses, trees, vehicles, or other logical
3 causes near the vehicle immediately following the initial crack. It seemed to
4 occur spontaneously, my wife stated she heard what she could best describe
5 as "the sound of glass cracking like in a horror movie" and observed the initial
6 crack. Due to the rate of the spreading, and fear of further integrity failures,
7 the vehicle is parked. **I contacted Kia due to the 2020 good will letter**
8 **concerning windshields, and was told this did not apply to the 2022 due**
9 **to it not being the appropriate year, and would have to cover the**
10 **replacement of the window out of pocket or through insurance.** No
11 warnings, no noise indicative of something striking the windshield, no
12 damage to any other components including the paint, etc. It just seemingly
13 cracked, the only reason I could deduce is due to the temperature today being
14 approximately 85 degrees, and the vehicle was parked in the sunlight due to
15 the parking not being shaded. Perhaps the exposure resulted in the initial
16 failure and subsequent spider-webbing. This vehicle was purchased brand
17 new on 12 June, 2022.”

18 195. Second, the Letter falsely suggests that the Windshield Defect is not
19 covered under the New Vehicle Limited Warranty and is caused by an outside
20 influence, rather than an inherent manufacturing and/or design defect with the
21 windshield, where it says “Your vehicle’s 2020 warranty specifically excludes
22 coverage for broken, chipped, scratched or damaged glass due to outside influence.”
23 Goodwill Letter (emphasis supplied). Indeed, it claims that Kia “will replace your
24 Telluride’s windshield as a goodwill gesture should it chip and crack thereby
25 preventing repair of the chip while we continue to investigate this issue,” not pursuant
26 to its warranty. *Id.* (emphasis supplied).

27 196. Third, in practice Kia refuses to repair or replace the Windshield Defect
28 when given a reasonable opportunity to do so – including 2020 Kia Tellurides that are
purportedly covered by Kia’s Customer Satisfaction Initiative. For instance, NHTSA

1 complaints detail 2020 Telluride owners complaining that they were denied repairs
2 under the CSI:
3

- 4 • NHTSA Complaint, July 12, 2021, ID No. 11424335: “My wife and I
5 purchased a 2020 KIA Telluride in November of 2019. A few weeks after we
6 took delivery we received the attached letter dated 12-9-2019 from KIA
7 stating there may be an issue with the windshield cracking and that they
8 would replace the windshield if this happened. **This did happen and KIA**
9 **replaced the windshield on 03-26-2020 at no charge as they had stated in**
10 **the letter we received. On the morning of 6-5-2021 I moved the Telluride**
11 **out of the garage to the driveway, when I went to move it back in a couple**
12 **of hours later the windshield was cracked across the drivers field of**
13 **vision. We called the dealership (Moritz) and made an appointment for 6-22-**
14 **2021 (we were on vacation from 6-9-2021 until 6-19-2021) to have the**
15 **windshield replaced. After the windshield was replaced we were told it would**
16 **be \$868.31 (invoice attached), the MORITZ KIA service manager (Joby**
17 **Spradley) told the service advisor (Trai Chavez) to inform us that he had**
18 **checked with a ‘KIA representative’ and KIA would not pay for**
19 **replacing the cracked windshield even though the windshield cracked**
20 **while the vehicle was sitting in our driveway. The letter we received did**
21 **not state that KIA would only replace the windshield one time. We**
22 **shouldn’t have had to pay a for manufacturing / quality issue.”**

17 197. Further, upon information and belief when vehicles are brought in for
18 repair, Defendant’s dealers search for any excuse to deny coverage, often claiming
19 that an impact caused the failure, notwithstanding the fact that the customer witnessed
20 no impact, there is no visual evidence of an impact, or that any impact was so slight it
21 should not have caused the windshield to fail. On information and belief,
22 Defendant’s dealers’ systematic denial of valid coverage claims is part of a concerted
23 effort orchestrated by Defendant to minimize the cost of warranty claims and its
24 “Customer Satisfaction Initiative.”
25
26
27
28

198. Moreover, on information and belief, when windshield repairs are

1 performed by Defendant's dealers (for charge, or free of charge under the New
2 Vehicle Limited Warranty, or under goodwill, as the case may be), defective
3 windshields are merely replaced with similarly defective windshields. See the
4 following representative NHTSA complaints:
5

- 6
7 • NHTSA Complaint, September 7, 2019, ID No. 11253922: **THIS IS MY
8 SECOND REPORT. MY WINDSHIELD ON MY 2020 KIA
9 TELLURIDE IS CRACKED AGAIN. THIS TIME IT'S ON THE
10 PASSENGER SIDE OF THE WINDSHIELD. IT'S A LONG CRACK
11 THAT STARTS AT THE A PILLAR AND TRAVELS ACROSS THE
12 WINDSHIELD. WHEN I GOT IN MY CAR TO GO SOMEWHERE I SAW
13 THE CRACK. I AM THE ONLY DRIVER. I NEVER SAW OR HEARD
14 ANYTHING HIT THE WINDSHIELD THIS TIME. IT COST 1500
15 DOLLARS TO REPAIR IT LAST TIME, WHICH WAS FOUR MONTHS
16 AGO.ITS GOING TO GET EXPENSIVE IF THIS KEEPS UP. I HAVE NO
17 IDEA HOW THIS OCCURRED.**
- 18 • NHTSA Complaint, March 29, 2020, ID No. 11326531: **WE PURCHASED
19 THE NEW TELLURIDE IN DECEMBER, 2019. THE WINDSHIELD
20 CRACKED AND THE CRACK RAN ACROSS HALF OF THE
21 WINDSHIELD. KIA DID REPLACE THE WINDSHIELD WITHOUT A
22 CHARGE. THIS WAS ONE IN FEBRUARY 2020. OUR NEW
23 WINDSHIELD NOW AND A BIG CHIP IN IT, ABOUT THE SIZE OF
24 A PENCIL ERASER. THERE IS LESS THAN 7000 MILES ON IT.
25 THERE MUST BE A DEFECT OR QUALITY ISSUE IN THE
26 WINDSHIELD GLASS THEY ARE USING. WE ARE IN OUR LATE
27 60'S. NO OFF READING OR RISKY DRIVING. WE WERE DRIVING
28 ON THE INTERSTATE WHEN THE NEW CHIP HAPPENED.**
- NHTSA Complaint, June 23, 2020, ID No. 11330351: **WINDSHIELD
CRACKED FROM CHIP THAT I HEARD HAPPEN ON THE HIGHWAY
3/6/2020. THIS WINDOW IS AN OEM REPLACEMENT WINDOW
FROM KIA. THE FIRST WINDSHIELD HAD THE EXACT SAME
THING HAPPEN IN JULY 2019 WITHIN THE FIRST MONTH OF
PURCHASING THE CAR.**

1 • NHTSA Complaint, June 30, 2020, ID No. 11331695: I HAVE HAD MY
2 KIA TELLURIDE EX 2020 FOR THE PAST 4 MONTHS. ON MONTH 3
3 ITS WINDSHIELD CRACKED WHILE DRIVING ON RIGHT LOWER
4 SIDE AND CRACKS STARTED TO QUICKLY EXPAND NEEDING TO
5 REPLACE THE WINDSHIELD THROUGH INSURANCE AND PAID
6 500\$ DEDUCTIBLE. I NEVER ANYTHING HITTING THE
7 WINDSHIELD AT THAT TIME. **AGAIN JUST A FEW DAYS AGO IN**
8 **MONTH 4 OF OWNERSHIP WINDSHIELD GLASS HAS CHIPPED**
9 **FROM TWO PLACES.** I NEVER SAW OR HEARD ANYTHING
10 HITTING THE GLASS WHILE DRIVING AND I AM THE ONLY
11 DRIVER.

12 • NHTSA Complaint, January 3, 2021, ID No. 11386171: HAVE NOT EVEN
13 MADE MY FIRST PAYMENT ON MY NÉE **2021 TELLURIDE AND**
14 **HAVE HAD TO REPLACE THE WINDSHIELD TWICE.** BOTH
15 TIMES THE DAMAGE WAS CAUSE BY ROAD DEBRIS HITTING THE
16 WINDSHIELD, BUT THE CRACK QUICKLY SPREADS ACROSS THE
17 WINDSHIELD.

18 IT JUST SEEMS A LITTLE QUESTIONABLE WHETHER OR NOT THE
19 WINDSHIELDS ARE DEFECTIVE SOMEHOW.

20 **THE TIME BETWEEN THE FIRST AND SECOND OCCURRENCE**
21 **IS APPROXIMATELY 5 WEEKS (TWO WEEKS BETWEEN THE**
22 **FIRST REPLACEMENT AND SECOND CRACK.)**

23 I RESEARCHED ONLINE AND FOUND FORUMS WHERE OTHER
24 TELLURIDE OWNERS HAD SIMILAR EXPERIENCES.

25 NOT SURE WHAT THE CAUSE IS, THIS IS MY FIRST TIME EVER
26 HAVING A WINDSHIELD REPLACED MUCH LESS TWICE ALMOST
27 IN THE SAME MONTH.

28 • NHTSA Complaint, March 7, 2022, ID No. 11455583: Windshield was
repaired September 2020 after a rock chip spread immediately after impact.
The recall covered the expense of that replacement. However, **the new
windshield has the same defect and another rock chip spread
immediately** and was quite large on impact March 2022. I was driving in a
parking lot when it happened, so not a high enough speed to have the rock

1 have much velocity to it. Kia needs to fix the issue when they have a recall,
2 not replace it with the same issue.

3 • NHTSA Complaint, April 6, 2022, ID No. 11459810: **We have repaired the**
4 **windshield several times and replaced it, and even the new windshield is**
5 **cracked with the smallest of pebbles.** We have never had problems like this
6 on our other vehicles. We have gone 15+ years without a windshield claim
7 on insurance, and now we have ½ dozen on one car that is less than 2 years
8 old.

9 • NHTSA Complaint, May 17, 2022, ID No. 11465032: I have owned this
10 vehicle since July 2021. **In that time I have had to have two different**
11 **windshields put in due to large unexpected cracks.**

12 • NHTSA Complaint, July 18, 2022, ID No. 11474458: **We have had the**
13 **vehicle for less than a year and the windshield has already broken twice**
14 **from very small/light pebbles.** The star caused by the most recent one was
15 so small we didn't even hear it and has now spread to a 30"+ crack across
16 windshield. We learned through researching that the windshields on these
17 cars are becoming notorious for easy breakage and we do not feel safe having
18 such a weak windshield. I have been driving for 18 years and have only ever
19 once before had a windshield need replacement. The crack is so large I am
20 afraid the glass will fall through while driving and it distorts the view. Should
21 not have to keep replacing the windshield for every grain of sand that strikes
22 it!

23 • NHTSA Complaint, August 7, 2022, ID No. 11478027: **I have experienced**
24 **3 windshield cracks within the visual field since purchasing the vehicle**
25 **new.** Each time the pebbles are small and the crack is requiring complete
26 windshield replacements.

27 199. Kia had and has a duty to fully disclose the true nature of the Windshield
28 Defect and the associated repair costs to Class Vehicle owners, among other reasons,
because the Defect poses an unreasonable safety hazard; because Kia had and has
exclusive knowledge or access to material facts about the Class Vehicles' front
windshield that were and are not known to or reasonably discoverable by Plaintiffs

1 and the other Class Members; and because Kia has actively concealed the Windshield
2 Defect from its customers. Because the windshield contained in each Class Vehicle is
3 defective, each Class Vehicle windshield should be replaced by Kia free of charge
4 regardless of whether the windshield has failed, or the facts and circumstances
5 surrounding any failure.
6
7

8 **Kia's Knowledge of the Defect**

9 200. Kia became aware of the Windshield Defect in early 2019 through
10 sources not available to Plaintiffs and Class Members, including, but not limited to,
11 pre-production testing, pre-production design failure mode and analysis data,
12 production design failure mode and analysis data, early internal reports from Kia
13 dealerships describing the Windshield Defect, early consumer complaints made
14 directly to Kia and its dealerships describing the Windshield Defect, NHTSA
15 complaints describing the Windshield Defect which Kia monitored on a daily basis
16 and circulated internally, early consumer complaints made on Telluride enthusiast
17 websites and social media that Kia actively monitors, aggregate warranty data
18 compiled from Kia's network of dealers, aggregate windshield part sales data, testing
19 and investigations conducted by Kia in response to consumer complaints, and repair
20 order and parts data received by Kia from Kia's network of dealers.
21
22
23
24
25

26 201. During the pre-release process of designing, manufacturing, engineering,
27 and testing the Class Vehicles which would necessarily have taken place prior to
28 2019, Kia, directly and/or through its agents or affiliated companies in the supply

1 chain, necessarily would have gained comprehensive and exclusive knowledge about
2 the Class Vehicles' windshields: the types and properties of materials used to make
3 them, including their durability and whether those materials would weaken over time
4 regardless of wear and use; the basic engineering principles behind their construction;
5 the forces and stresses the windshields would face; when and how the windshields
6 would fail; and the cumulative and specific impacts on the windshields caused by
7 wear and use, the passage of time, and environmental factors.

10
11 202. An adequate pre-release analysis of the design, engineering, and
12 manufacture of the windshields used for the Class Vehicles would have revealed to
13 Kia that the windshields were insufficiently strong and durable for the intended use.
14 Thus, during the pre-release design stage of the Class Vehicles, Kia would have
15 known that the windshield chosen for the Class Vehicles was defective and would
16 pose a safety risk to owners/lessees and the motoring public.

17
18
19 203. Kia also learned about the Windshield Defect because of the higher than
20 expected number of replacement windshields ordered from Kia, which alerted Kia that
21 this was a defective part. Kia service centers use Kia replacement parts that they order
22 directly from Kia and Kia maintains records of the number of windshields sold by its
23 dealers – including windshields sold by Kia dealers to third party repair facilities.
24 Therefore, Kia has detailed and accurate data regarding the number and frequency of
25 replacement part orders, including replacement windshields. The ongoing sales of
26 replacement windshields was known to Kia and the volume of such sales alerted Kia
27
28

1 that the Class Vehicle windshields were defective and posed a safety risk early on.

2
3 204. Kia also knew about the Windshield Defect because numerous
4 complaints regarding windshield failure were made directly to Kia when Class
5 Vehicle owners submitted complaints to Kia’s Consumer Affairs Department and Kia
6 dealers reported the Windshield Defect to Kia via internal Techline Assistance Center
7 Case Reports. Kia had begun receiving these internal complaints and reports by at
8 least March 2019 and circulated them internally. The large number of complaints, and
9 the consistency of their descriptions of windshield failures, alerted Kia to the
10 Windshield Defect affecting the Class Vehicles. At all relevant times, the full
11 universe of complaints made directly to Kia about the Windshield Defect is and was in
12 the exclusive custody and control of Kia.
13

14
15
16 205. Kia’s own Goodwill Letter – which was dated November 4, 2019, before
17 all Plaintiffs purchased or leased their vehicles – acknowledges that by that point Kia
18 had already performed an investigation regarding the Windshield Defect and had
19 already received numerous complaints from Class Vehicle owners about their
20 windshields chipping and then cracking. *See Exhibit A.*
21

22
23 206. Further, Kia also learned about the Windshield Defect via its review of
24 warranty and customer pay data detailing instances where Class Vehicle owners
25 sought repairs concerning the Class Vehicles’ Windshield Defect.
26

27 **The NHTSA Complaints and Online Discussions of the Defect:**

28 207. From the moment that Kia began selling the Class Vehicles, Kia

1 monitored NHTSA on a daily basis for complaints concerning the Class Vehicles to
2 detect quality issues and defects. When NHTSA complaints were submitted, Kia
3 immediately circulated the complaint internally.
4

5 208. More than 200 Class Vehicle owners have complained about the
6 Windshield Defect to NHTSA.
7

8 209. The volume and frequency of the NHTSA Complaints put Kia on notice
9 of the Windshield Defect.
10

11 210. Attached as Exhibit B to the Complaint are more than 100 NHTSA
12 complaints submitted by owners of 2020 Kia Telluride vehicles.
13

14 211. Attached as Exhibits C and D are more than 100 additional, near-
15 identical NHTSA complaints submitted by owners of 2021 and 2022 Kia Telluride
16 vehicles, respectively, which Kia actively monitored during the relevant time period,
17 and which likewise demonstrate that the Defect is widespread and dangerous, that Kia
18 has known about the defect at all relevant times, and the Windshield Defect impacts
19 2021-2022 Tellurides in exactly the same way it impacts 2020 Kia Telluride vehicles.
20

21 212. Further, although Kia only recently began selling the 2023 Kia Telluride
22 vehicles, owners of those Class Vehicles have already begun submitting NHTSA
23 complaints describing the Windshield Defect that are identical to the complaints
24 submitted by 2020-2022 Class Vehicle owners and support that the Class Vehicles
25 suffer from the common Windshield Defects. *See, e.g.:*
26
27
28

- 1 • NHTSA Complaint No. 11500342, January 5, 2023 (Incident Date December
2 19, 2023): “Driving home from purchasing vehicle heard a pop like squeezing
3 an empty water bottle. Did not know what it came from. Eventually noticed a
4 fine line crack in lower corner of passenger side of windshield extending from
5 edge of glass towards center and curving up. Length approximately 9-10 inches.
6 Contacted dealer to be told they can't help us.”
- 7 • NHTSA Complaint No. 11505361, February 3, 2023: “While driving on
8 highway my new Kia Telluride’s suddenly made a very loud and scary popping
9 noise. I pulled off at next exit to find a large chip and crack in the top of
10 windshield. I did not see a rock hit it so I’m not sure how it cracked.
11 Completely unacceptable and a safety concern if the windshield cracks this
12 easily.”
- 13 • NHTSA Complaint No. 11510884, March 8, 2023 (Incident Date January 15,
14 2023): “Windshield failed on the way home from the dealership after small
15 impact. Passenger side window developed cracks at 486 odometer miles. The
16 windshield chip spread beyond repair during the 6-week warranty claim process
17 in which the claim was denied on 3/8/2023. The side window never took an
18 impact. As shown in the photo's the crack is covered by the sideview mirror and
19 just behind the window molding. Claim was denied as Kia claims it took an
20 impact based on the photos.”
- 21 • NHTSA Complaint No. 11511038, March 9, 2023 (Incident Date March 8,
22 2023): “Driving down the road and I heard a crack/pop and noticed a dime
23 sized chip in the windshield on the passenger side. No other vehicles nearby to
24 attribute to a rock or something similar.”
- 25 • NHTSA Complaint No. 11516892, April 13, 2023 (Incident Date February 8,
26 2023): “My car was sitting in driveway and not moved for 4 days. The
27 windshield broke and cracked completely
- 28 • NHTSA Complaint No. 11519896, May 1, 2023 (Incident Date March 5, 2023):
“UNKNOWN-crack in windshield began and spread with out cause. Crack
began,noticed within first 1000 miles.”
- NHTSA Complaint No. 11519863, May 1, 2023 (Incident Date April 25, 2023):
“My windshield failed. I have 2401 miles on the car and out of nowhere it had a
huge crack the next day when I went to take my kids to school. It puts us at risk
of shattering at any moment. It gets bigger as the days past. Yes I have reported
it. It has been happening to a lot of 23 Telluride owners. No warning light or
anything came on.”

1 213. In addition to the above NHTSA complaints, consumers were discussing
2 the Windshield Defect online on Telluride-enthusiast websites as early as May 22,
3 2019.⁴ Owners made similar such complaints in early 2019 on Kia Telluride
4 Facebook groups and other social media. Kia regularly monitored these websites and
5 social media for the specific purpose of identifying emerging issues with its new
6 vehicles, and learned about the Windshield Defect from these sources.
7

8
9 214. Although Kia was aware of the widespread nature of the Windshield
10 Defect in the Class Vehicles, and that it posed grave safety risks, Kia did not disclose
11 the Defect to Class Vehicle purchasers at the time of sale and has failed to take
12 adequate steps to notify all Class Vehicle owners of the Defect and provide relief.
13

14
15 215. Customers have reported the Windshield Defect in the Class Vehicles to
16 Kia directly and through its dealers. Defendant is fully aware of the Windshield
17 Defect contained in the Class Vehicles. Nevertheless, Defendant actively concealed
18 the existence and nature of the Defect from Plaintiffs and the other Class Members at
19 the time of purchase or repair and thereafter. Specifically, Defendant:
20
21

22
23 _____
24 ⁴ See <https://www.kiatelluride.org/threads/is-there-really-a-problem-with-the-windshields-on-the-telluride.662/> (discussions and complaints about Windshield Defect was topic of conversation as of May 22, 2019) (last visited April 10, 2023); <https://tellurideforum.org/threads/the-ultimate-telluride-windshield-chip-cracking-discussion.2341/> (discussions and complaints about Windshield Defect was topic of conversation as of June 9, 2019 with over 520 separate posts) (last visited April 10, 2023); <https://www.kiatelluride.org/threads/windshield-chips-and-cracks.904/> (issues and complaints about Windshield Defect was topic of conversation as of July 10, 2019) (last visited April 10, 2023); <https://www.kiatelluride.org/threads/windshield-on-back-order-not-happy.994/> (issues and complaints about Windshield Defect was topic of conversation as of August 19, 2019) (last visited April 10, 2023).
25
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- 1 a. failed to disclose, at the time of purchase or repair and thereafter, any and
- 2 all known material defects or material nonconformities of the Class
- 3 Vehicles' windshields, including the Windshield Defect;
- 4
- 5 b. failed to disclose, at the time of purchase or repair and thereafter, that the
- 6 Class Vehicles and their front windshield were not in good working order,
- 7 were defective, and were not fit for their intended purpose; and,
- 8
- 9 c. failed to disclose and/or actively concealed the fact that the Class Vehicles
- 10 and their front windshield were defective, despite the fact that Defendant
- 11 learned of the Windshield Defect as early as 2019, if not before.
- 12

13 216. Defendant has deprived Class Members of the benefit of their bargain,

14

15 exposed them all to a dangerous safety Defect, and caused them to expend money at

16 its dealerships or other third-party repair facilities and/or take other remedial measures

17 related to the Windshield Defect contained in the Class Vehicles.

18

19 217. Defendant has not recalled the Class Vehicles to repair the Windshield

20 Defect, has not offered to its customers a suitable repair or replacement of parts

21 related to the Windshield Defect free of charge, and has not reimbursed all Class

22 Vehicle owners and leaseholders who incurred costs for repairs related to the

23 Windshield Defect.

24

25

26 218. Class Members have not received the value for which they bargained

27 when they purchased or leased the Class Vehicles.

28

219. As a result of the Windshield Defect, the value of the Class Vehicles has

1 diminished, including without limitation, the resale value of the Class Vehicles.
2 Reasonable consumers, like Plaintiffs, expect and assume that a vehicle’s front
3 windshield is not defective and will not crack, chip and/or fracture for no reason at all
4 or under circumstances that would not cause non-defective windshields to similarly
5 fail. Plaintiffs and Class Members further expect and assume that Kia will not sell or
6 lease vehicles with known safety defects, such as the Windshield Defect, and will
7 fully disclose any such defect to consumers prior to purchase or offer a suitable non-
8 defective repair. They do not expect that Kia would fail to disclose the Windshield
9 Defect to them, and then purport to remedy the defect with an underinclusive and
10 inadequate Customer Satisfaction Initiative.
11
12
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14

15 CLASS ACTION ALLEGATIONS

16 A. The Classes

17 220. Plaintiffs seek to represent the following state classes pursuant to Fed.
18 R. Civ. P. 23(a), 23(b)(2), 23(b)(3), and/or Fed. R. Civ. P. 23(c)(5):
19

20 **California Class:** All persons who purchased or leased any 2020-2023 Kia
Telluride vehicle in the State of California (the “California Class”)
21

22 **Georgia Class:** All persons who purchased or leased any 2020-2023 Kia
Telluride vehicle in the State of Georgia (the “Georgia Class”)
23

24 **Indiana Class:** All persons who purchased or leased any 2020-2023 Kia
Telluride vehicle in the State of Indiana (the “Indiana Class”)
25

26 **Iowa Class:** All persons who purchased or leased any 2020-2023 Kia
Telluride vehicle in the State of Iowa (the “Iowa Class”)
27
28

1 **New Mexico Class:** All persons who purchased or leased any 2020-2023
2 Kia Telluride vehicle in the State of New Mexico (the “New Mexico
3 Class”)

4 **New York Class:** All persons who purchased or leased any 2020-2023 Kia
5 Telluride vehicle in the State of New York (the “New York Class”)

6 **North Carolina Class:** All persons who purchased or leased any 2020-
7 2023 Kia Telluride vehicle in the State of North Carolina (the “North
8 Carolina Class”)

9 **Pennsylvania Class:** All persons who purchased or leased any 2020-2023
10 Kia Telluride vehicle in the State of Pennsylvania (the “Pennsylvania
11 Class”)

12 **Tennessee Class:** All persons who purchased or leased any 2020-2023 Kia
13 Telluride vehicle in the State of Tennessee (the “Tennessee Class”)

14 **Texas Class:** All persons who purchased or leased any 2020-2023 Kia
15 Telluride vehicle in the State of Texas (the “Texas Class”)

16 **Virginia Class:** All persons who purchased or leased any 2020-2023 Kia
17 Telluride vehicle in the State of Virginia (the “Virginia Class”)

18 221. Defendant and its employees or agents are excluded from the Classes.

19 **B. Numerosity**

20 222. Upon information and belief, the Classes are each so numerous that
21 joinder of all members is impracticable. While the exact number and identities of
22 individual members of the Classes are unknown at this time, such information being
23 in the sole possession of Defendant and obtainable by Plaintiffs only through the
24 discovery process, Plaintiffs believe, and on that basis allege, that hundreds of
25 thousands of Class Vehicles have been sold and leased across the United States and
26 thousands of Class Vehicles have been sold and leased in California, Georgia, Indiana,
27 and
28 thousands of Class Vehicles have been sold and leased in California, Georgia, Indiana,

1 Iowa, New Mexico, New York, North Carolina, Pennsylvania, Tennessee, Texas and
2 Virginia.
3

4 **C. Common Questions of Law and Fact**

5 223. There are questions of law and fact common to the Class that
6 predominate over any questions affecting only individual Class members. These
7 questions include:
8

- 9 a. whether the Class Vehicles suffer from the Windshield Defect;
- 10 b. whether the Windshield Defect constitutes an unreasonable safety hazard;
- 11 c. whether Defendant knows about the Windshield Defect and, if so, how
12 long Defendant has known of the Defect;
- 13 d. whether the defective nature of the Class Vehicles' front windshield
14 constitutes a material defect;
- 15 e. whether Defendant had and has a duty to disclose the defective nature of
16 the Class Vehicles' front windshield to Plaintiffs and the other Class
17 Members;
- 18 f. whether Plaintiffs and the other Class Members are entitled to equitable
19 relief, including, but not limited to, a preliminary and/or permanent
20 injunction;
- 21 g. whether Defendant knew or reasonably should have known of the
22 Windshield Defect contained in the Class Vehicles before it sold or leased
23 them to Class Members; and
24
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28

1 h. Whether Defendant breached its express warranty and the implied
2 warranties of merchantability and whether Defendant violated the Texas
3 Deceptive Practices Act, Tex. Bus. & Com. Code § 17.41, *et seq.*, New
4 York General Business Law, N.Y. Gen. Bus. Law § 349, the Iowa Private
5 Right of Action for Consumer Frauds Act, Iowa Code § 714H, the
6 California Consumers Legal Remedies Act, Cal. Civil Code §§ 1750, *et*
7 *seq.*, California’s Unfair Competition Law, Cal. Bus. & Prof. Code §§
8 17200, *et seq.*, the North Carolina Unfair and Deceptive Trade Practices
9 Act, N.C. Gen. Stat. § 75.1.1, *et seq.*, Georgia Fair Business Practices Act,
10 Ga. Code Ann. § 10-1-390, *et seq.*, Indiana Deceptive Consumer Sales Act,
11 Ind. Code § 24-5-0.5-1, *et seq.*, New Mexico Unfair Trade Practices Act,
12 N.M. Stat. Ann. § 57-12-2, *et seq.*, Pennsylvania Unfair Trade Practices
13 and Consumer Protection Law, 73 Pa. Stat. § 201-1, *et seq.*, Tennessee
14 Consumer Protection Act of 1977, Tenn. Code Ann. § 47-18-101, *et seq.*,
15 and the Virginia Consumer Protection Act, Va. Code Ann. §§ 59.1-196, *et*
16 *seq.*, as alleged in this Complaint.
17
18
19
20
21
22

23 **D. Typicality**

24 224. The Plaintiffs’ claims are typical of the claims of the Classes since
25 Plaintiffs purchased defective Class Vehicles, as did each member of the Classes.
26 Furthermore, Plaintiffs and all members of the Classes sustained economic injuries
27 arising out of Defendant’s wrongful conduct. Plaintiffs are advancing the same claims
28

1 and legal theories on behalf of themselves and all absent Class members.

2
3 **E. Protecting the Interests of the Class Members**

4 225. Plaintiffs will fairly and adequately protect the interests of the Class and
5 have retained counsel experienced in handling class actions and claims involving
6 unlawful business practices. Neither Plaintiffs nor their counsel has any interest
7 which might cause them not to vigorously pursue this action.
8

9 **F. Proceeding Via Class Action is Superior and Advisable**

10 226. A class action is the superior method for the fair and efficient
11 adjudication of this controversy. The injury suffered by each individual Class
12 member is relatively small in comparison to the burden and expense of individual
13 prosecution of the complex and extensive litigation necessitated by Defendant's
14 conduct. It would be virtually impossible for members of the Class individually to
15 redress effectively the wrongs done to them. Even if the members of the Class could
16 afford such individual litigation, the court system could not. Individualized litigation
17 presents a potential for inconsistent or contradictory judgments. Individualized
18 litigation increases the delay and expense to all parties, and to the court system,
19 presented by the complex legal and factual issues of the case. By contrast, the class
20 action device presents far fewer management difficulties, and provides the benefits of
21 single adjudication, an economy of scale, and comprehensive supervision by a single
22 court. Upon information and belief, members of the Class can be readily identified
23 and notified based on, *inter alia*, Defendant's vehicle identification numbers, warranty
24
25
26
27
28

1 claims, registration records, and database of complaints.

2 227. Defendant has acted, and refused to act, on grounds generally applicable
3 to the Classes, thereby making appropriate final equitable relief with respect to the
4 Classes as a whole.
5

6
7 **FIRST CAUSE OF ACTION**
8 **Breach of Implied and Express Warranties Pursuant to the Magnuson-Moss**
9 **Warranty Act, 15 U.S.C. §2301, et seq.**
10 **(Plaintiffs individually)**

11 228. Plaintiffs incorporate by reference all of the above paragraphs of this
12 Complaint as though fully stated herein.

13 229. Plaintiffs are each a “consumer” as defined in 15 U.S.C. § 2301(3).

14 230. Defendant is a “supplier” and “warrantor” as defined in 15 U.S.C. §
15 2301(4) and (5).

16 231. Plaintiffs’ vehicles are each a “consumer product” as defined in 15
17 U.S.C. § 2301(6). 15 U.S.C. § 2310(d)(1) provides a cause of action for any
18 consumer who is damaged by the failure of a warrantor to comply with the written and
19 implied warranties.
20

21 232. 15 U.S.C. § 2304(a)(1) requires Defendant, as a warrantor, to remedy any
22 defect, malfunction or nonconformance of the Plaintiffs’ vehicles within a reasonable
23 time and without charge to the Plaintiffs.
24

25 233. The Defendant’s sale of the defective vehicles to Plaintiffs and its failure
26 and/or refusal to repair the Plaintiffs’ vehicles’ Windshield Defect within the
27 applicable warranty period constitutes a breach of the written and implied warranties
28

1 applicable to the Plaintiffs’ vehicles.

2 234. Despite repeated demands, Defendant has failed to remedy the Plaintiffs’
3 vehicles’ defects within a reasonable time, and/or a reasonable number of attempts,
4 thereby breaching the written and implied warranties applicable to Plaintiffs’ vehicles.
5

6 235. As a result of Defendant’s breaches of the written and implied warranties,
7 and Defendant’s failure to remedy the same within a reasonable time, Plaintiffs have
8 suffered damages.
9

10 **CALIFORNIA CLASS**

11 **SECOND CAUSE OF ACTION**

12 **Violation of the Consumers Legal Remedies Act,**
13 **Cal. Civil Code §§ 1750, *et seq.***
14 **(Plaintiff Treston on behalf of the California Class)**

15 236. Plaintiff Treston incorporates by reference all of the above paragraphs of
16 this complaint as though fully stated herein.
17

18 237. The California Consumers Legal Remedies Act, Cal. Civil Code §§ 1750,
19 et seq. (“CLRA”) prohibits various deceptive practices in connection with the conduct
20 of a business providing goods, property, or services to consumers primarily for
21 personal, family, or household purposes. The self-declared purposes of the CLRA are
22 to protect consumers against unfair and deceptive business practices and to provide
23 efficient and economical procedures to secure such protection. Cal. Civil Code §
24 1760.
25

26 238. Defendant is a “person” as defined in Cal. Civil Code § 1761(c).
27
28

1 239. Plaintiff Treston and Class Members are “consumers” as defined in Cal.
2 Civil Code § 1761(d).

3
4 240. The Class Vehicles constitute “goods” and “services,” as defined by Cal.
5 Civ. Code § 1761(a) and (b).

6
7 241. Plaintiff Treston and Class Members’ purchases or leases of the Class
8 Vehicles constitute “transactions,” as defined by Cal. Civ. Code § 1761(e).

9
10 242. Plaintiff Treston and Class Members purchased or leased the Class
11 Vehicles for personal, family, and household purposes, as defined by Cal. Civ. Code §
12 1761(d).

13 243. Venue is proper under Cal. Civ. Code § 1780(d) because a substantial
14 portion of the conduct at issue occurred in this District.

15
16 244. Defendant violated California Civil Code § 1770(a)(5), (7), (14), and (16)
17 when it sold or leased Plaintiff Treston and Class Members the Class Vehicles with
18 knowledge that they contained the Windshield Defect and knowingly concealed said
19 defects from Plaintiff Treston and Class Members with the intent that they rely upon
20 Defendant’s concealment.
21

22
23 245. The Class Vehicles’ Windshield Defect poses an unreasonable safety risk
24 to consumers and other members of the public with whom they share the road.
25 Defendant had exclusive knowledge of the defect and has actively concealed it from
26 consumers.
27

28 246. In the course of Defendant’s business, Defendant willfully failed to

1 disclose and actively concealed that the Class Vehicles are defective. The existence of
2 the Windshield Defect, which manifests in all or substantially all of the Class
3 Vehicles, is material to a reasonable consumer in that it poses an unreasonable risk to
4 their safety, may lead to thousands of dollars in repair expenses, and causes the Class
5 Vehicles to be worth substantially less than they would otherwise be valued.
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8 247. In purchasing or leasing the Class Vehicles, Plaintiff Treston and Class
9 Members were deceived by Defendant's failure to disclose that the Class Vehicles
10 suffered from the Windshield Defect as described above, or that Defendant would not
11 repair or replace such defect as required under applicable warranties.
12

13 248. In purchasing or leasing the Class Vehicles, Plaintiff Treston and Class
14 Members were deceived by Defendant's failure to disclose that the Class Vehicles'
15 windshields are substantially likely to fail and crack in the course of ordinary use of
16 the Class Vehicles.
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18

19 249. Defendant owed Plaintiff Treston and Class Members a duty to disclose
20 the truth about the Windshield Defect because:
21

- 22 a. Defendant was in a superior position to know the true state of facts
23 about the safety defect in the Class Vehicles' windshields;
- 24 b. Defendant knew that the Class Vehicles and their windshields suffered
25 from an inherent defect, were defectively designed or manufactured,
26 and were not suitable for their intended use;
27
28

- 1 c. Defendant made partial disclosures about the quality of the Class
- 2 Vehicles without revealing the defective nature of the Class Vehicles
- 3 and their windshields; and
- 4
- 5 d. Defendant actively concealed the defective nature of the Class Vehicles
- 6 and their windshields from Plaintiff Treston and California Class
- 7 Members.
- 8

9 250. Defendant intentionally and knowingly concealed material facts
10 regarding the Class Vehicles with an intent to mislead Plaintiff Treston and California
11 Class Members.
12

13 251. Plaintiff Treston and Class Members reasonably relied upon Defendant's
14 false misrepresentations. They had no way of knowing that Defendant's
15 representations were false and gravely misleading.
16

17 252. Plaintiff Treston and Class Members were unaware of the Windshield
18 Defect and would not have purchased the Class Vehicles, or would have paid less for
19 the Class Vehicles, had they known, prior to their respective time of purchase or lease,
20 of such defects in the Class Vehicles.
21

22 253. As a result of Defendant's acts, Plaintiff Treston and Class Members
23 have suffered damages. Plaintiff Treston and Class Members would not have
24 purchased or leased Class Vehicles had the Windshield Defect and associated risks
25 been disclosed to them. They are left with vehicles of diminished value and utility
26 because of such defect, which continues to pose a safety risk.
27
28

1 Defendant had exclusive knowledge of the defect and has actively concealed it from
2 consumers.
3

4 259. In the course of Defendant’s business, Defendant willfully failed to
5 disclose and actively concealed that the Class Vehicles are defective. The existence of
6 the Windshield Defect, which manifests in all or substantially all of the Class
7 Vehicles, is material to a reasonable consumer in that it poses an unreasonable risk to
8 their safety, may lead to thousands of dollars in repair expenses, and causes the Class
9 Vehicles to be worth substantially less than they would otherwise be valued.
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12 260. In purchasing or leasing the Class Vehicles, Plaintiff Treston and Class
13 Members were deceived by Defendant’s failure to disclose that the Class Vehicles
14 suffer from the Windshield Defect as described above, or that Defendant would not
15 cure such defect as required under applicable warranties.
16
17

18 261. In purchasing or leasing the Class Vehicles, Plaintiff Treston and Class
19 Members were deceived by Defendant’s failure to disclose that the Class Vehicles’
20 windshield is substantially likely to fail in the course of ordinary vehicle operation.
21

22 262. Defendant owed Plaintiff Treston and Class Members a duty to disclose
23 the truth about the Windshield Defect because:

- 24 a. Defendant was in a superior position to know the true state of
25 facts about the safety defect in the Class Vehicles’ windshields;
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- b. Defendant knew that the Class Vehicles and their windshields suffered from an inherent defect, were defectively designed or manufactured, and were not suitable for their intended use;
- c. Defendant made partial disclosures about the quality of the Class Vehicles without revealing the defective nature of the Class Vehicles and their windshields; and
- d. Defendant actively concealed the defective nature of the Class Vehicles and their windshields from Plaintiff Treston and Class Members.

263. Defendant intentionally and knowingly concealed material facts regarding the Class Vehicles with the intent to mislead Plaintiff Treston and Class Members.

264. Plaintiff Treston and Class Members reasonably relied upon Defendant’s false misrepresentations. They had no way of knowing that Defendant’s representations were false and gravely misleading.

265. Plaintiff Treston and Class Members were unaware of the Windshield Defect and that the Class Vehicles’ windshields are substantially likely to fail in the course of normal everyday driving conditions and would not have purchased the Class Vehicles, or would have paid less for the Class Vehicles, had they known, prior to their respective time of purchase or lease, of such defects in the Class Vehicles.

266. Plaintiff Treston and Class Members are reasonable consumers who do

1 not expect their vehicles to suffer from the Windshield Defect.

2
3 267. Defendant knew the Class Vehicles and their windshields suffered from
4 inherent defects, were defectively designed or manufactured, would fail prematurely,
5 and were not suitable for their intended use.

6
7 268. In failing to disclose the defects with the Class Vehicles' windshields,
8 Defendant has knowingly and intentionally concealed material facts and breached its
9 duty not to do so.

10
11 269. The facts Defendant concealed from or failed to disclose to Plaintiff
12 Treston and Class Members are material in that a reasonable person would have
13 considered them to be important in deciding whether to purchase or lease the Class
14 Vehicles. Had Plaintiff Treston and Class Members known that the Class Vehicles
15 suffered from the Windshield Defect and posed a safety hazard, then they would not
16 have purchased or leased the Class Vehicles, or would have paid less for them.

17
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19 270. Defendant continued to conceal the defective nature of the Class Vehicles
20 and the Windshield Defect even after the Class Members began to report problems.

21
22 271. Defendant's conduct was and is likely to deceive consumers.

23 272. Defendant's acts, conduct and practices were unlawful, in that they

24 constituted:

- 25
26 a. Violations of the California Consumer Legal Remedies Act;
27 b. Violations of the Song-Beverly Consumer Warranty Act; and
28

1 c. Violations of the express warranty provisions of California
2 Commercial Code section 2313.

3
4 273. By its conduct, Defendant has engaged in unfair competition and
5 unlawful, unfair, and fraudulent business practices.

6
7 274. Defendant's unfair or deceptive acts or practices occurred repeatedly in
8 Defendant's trade or business, and were capable of deceiving a substantial portion of
9 the purchasing public.

10
11 275. As a direct and proximate result of Defendant's unfair and deceptive
12 practices, Plaintiff Treston and Class Members have suffered and will continue to
13 suffer actual damages.

14
15 276. The Class Vehicles are worth less with the Windshield Defect.

16
17 277. Defendant has been unjustly enriched and should be required to make
18 restitution to Plaintiff Treston and Class Members pursuant to §§ 17203 and 17204 of
19 the Business & Professions Code.

20
21 278. Further, Plaintiff Treston seeks an order enjoining Defendant from
22 committing such unlawful, unfair, and fraudulent business practices, and seek the full
23 amount of money Plaintiff Treston and Class Members paid for the Class Vehicles
24 and/or restitutionary disgorgement of profits from Defendant. Plaintiffs also seek
25 attorneys' fees and costs under Cal Code Civ. Proc. § 1021.5.

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FOURTH CAUSE OF ACTION
**Breach of Implied Warranty Pursuant to Song-Beverly
Consumer Warranty Act – Cal. Civ. Code §§ 1792 and 1791.1, *et seq.***
(Plaintiff Treston on behalf of the California Class)

279. Plaintiff Treston incorporate by reference all of the above paragraphs of this Complaint as though fully stated herein.

280. Defendant is a merchant with respect to motor vehicles.

281. The Class Vehicles were subject to implied warranties of merchantability running from the Defendant to Plaintiff Treston and Class Members.

282. An implied warranty that the Class Vehicles were merchantable arose by operation of law as part of the sale or lease of the Class Vehicles.

283. Defendant breached the implied warranty of merchantability in that the Class Vehicles suffer from the above-described Windshield Defect and thus were not in merchantable condition when Plaintiff Treston and Class Members purchased or leased them, or at any time thereafter, and the Class Vehicles are unfit for the ordinary purposes for which such vehicles are used.

284. Defendant has breached the implied warranty of merchantability because the Class Vehicles when sold or leased would not pass without objection in the trade.

285. As a result of Defendant’s breach of the applicable implied warranties, owners and lessees of the Class Vehicles suffered an ascertainable loss of money, property, and/or value of their Class Vehicles.

286. Additionally, as a result of the Display Defect, Plaintiff Treston and

1 Class Members were harmed and suffered actual damages.

2 287. Defendant's actions, as complained of herein, breached the implied
3 warranty that the Class Vehicles were of merchantable quality and fit for such use in
4 violation of California Civil Code §§ 1792 and 1791.1.
5

6
7 **FIFTH CAUSE OF ACTION**
8 **Breach of Express Warranty under Cal. Comm. Code § 2313**
9 **(Plaintiff Treston on behalf of the California Class)**

10 288. Plaintiff Treston incorporates by reference all of the above paragraphs of
11 this Complaint as though fully stated herein.

12 289. In connection with the sale or lease of the Class Vehicles to Plaintiff
13 Treston and members of the Class, Defendant provided Plaintiff Treston and Class
14 Members with a New Vehicle Limited Warranty, under which it agreed to repair
15 original components found to be defective in material or workmanship under normal
16 use and maintenance, including the windshield.
17

18 290. Plaintiff Treston and Class Members relied on Defendant's warranties
19 when they agreed to purchase or lease the Class Vehicles, and Defendant's warranties
20 were part of the basis of the bargain.
21

22 291. Defendant breached these express warranties in that the Class Vehicles
23 suffer from the above-described defects with the Windshield, which substantially
24 impair the Class Vehicles' use, safety, and value to Plaintiff Treston and Class
25 Members.
26
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28 292. Specifically, as a result of a defect in the manufacturing process and/or

1 the use of defective materials, each of the California Class Vehicles came off the
2 assembly line in substandard condition and were manufactured in such a way that
3 their Windshields do not function or perform as designed and result in the Windshield
4 Defect, and the Class Vehicles differ from the vehicles that Defendant intended to sell.
5

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7 293. Plaintiff Treston and Class Members have given Defendant reasonable
8 opportunities to cure said defects, but Defendant has been unable to do so within a
9 reasonable time.

10
11 294. As a result of said nonconformities, Plaintiff Treston and Class Members
12 cannot reasonably rely on the Class Vehicles for the ordinary purpose of safe,
13 comfortable, and efficient transportation.

14
15 295. Plaintiff Treston and Class Members could not reasonably have
16 discovered said nonconformities with the Class Vehicles prior to their acceptance of
17 the Class Vehicles.

18
19 296. Plaintiff Treston and Class Members would not have purchased the Class
20 Vehicles, or would have paid less for the Class Vehicles, had they known, prior to
21 their respective time of purchase or lease, that the Windshield did not function as
22 advertised and warranted.

23
24 297. As a result of Defendant's breach of express warranties, Plaintiff Treston
25 and Class Members have been damaged in an amount that is the difference between
26 the value of Class Vehicles if they had possessed the qualities and attributes
27 represented and the value of the Class Vehicles Plaintiff Treston and Class Members
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1 actually received.

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SIXTH CAUSE OF ACTION

**Breach of Express Warranty Pursuant to Song-Beverly
Consumer Warranty Act – Cal. Civ. Code §§ 1793 and 1791.2, *et seq.*
(Plaintiff Treston on behalf of the California Class)**

298. Plaintiff Treston incorporates by reference all of the above paragraphs of this Complaint as though fully stated herein.

299. Plaintiff Treston and Class Members are each a “buyer” as defined in Cal. Civ. Code § 1791(b).

300. Defendant is a “manufacturer” as defined in Cal. Civ. Code § 1791(j).

301. The Class Vehicles are each a “consumer good” as defined in Cal. Civ. Code § 1791(a).

302. Cal. Civ. Code § 1794 provides a cause of action for any consumer who is damaged by the failure of a manufacturer to comply with an express warranty.

303. In connection with the sale or lease of the Class Vehicles to Plaintiff Treston and Class Members, Defendant provided Plaintiff Treston and Class Members with express warranties within the meaning of Cal. Civ. Code §§ 1791.2 and 1793.2.

304. Specifically, in connection with the sale or lease of the Class Vehicles to Plaintiff Treston and Class Members, Defendant provided Plaintiff Treston and Class Members with a New Vehicle Limited Warranty, under which it agreed to repair original components found to be defective in material or workmanship under normal use and maintenance, including the Windshield.

1 305. Plaintiff Treston and Class Members relied on Defendant’s warranties
2 when they agreed to purchase or lease the Class Vehicles and Defendant’s warranties
3 were part of the basis of the bargain.
4

5 306. Defendant breached these express warranties in that the Class Vehicles
6 suffer from the above-described defects with the Windshield, which substantially
7 impair the Class Vehicles’ use, safety, and value to Plaintiff Treston and Class
8 Members.
9

10 307. Plaintiff Treston and Class Members have given Defendant reasonable
11 opportunities to cure said defects, but Defendant has been unable to do so within a
12 reasonable time.
13

14 308. As a result of said nonconformities, Plaintiff Treston and Class Members
15 cannot reasonably rely on the Class Vehicles for the ordinary purpose of safe,
16 comfortable, and efficient transportation.
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18 309. Plaintiff Treston and Class Members could not reasonably have
19 discovered said nonconformities with the Class Vehicles prior to Plaintiff Treston’s
20 and Class Members’ acceptance of the Class Vehicles.
21

22 310. Plaintiff Treston and Class Members would not have purchased the Class
23 Vehicles, or would have paid less for the Class Vehicles, had they known, prior to
24 their respective time of purchase or lease, that the Windshield did not function as
25 advertised and warranted.
26

27 311. As a result of Defendant’s breach of express warranties, Plaintiff Treston
28

1 and Class Members have been damaged in an amount that is the difference between
2 the value of Class Vehicles if they had possessed the qualities and attributes
3 represented and the value of the Class Vehicles Plaintiff Treston and Class Members
4 actually received.
5

6
7 **GEORGIA CLASS**

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9 **SEVENTH CAUSE OF ACTION**

10 **Violation of the Georgia Fair Business Practices Act, Ga. Code Ann. § 10-1-390 *et***
11 ***seq.***

12 **(Plaintiff Nelson on Behalf of the Georgia Class)**

13 312. Plaintiffs incorporate by reference all allegations contained in this
14 Complaint as though fully stated herein.

15 313. The Georgia Fair Business Practices Act (“Georgia FBPA”) declares
16 “[u]nfair or deceptive acts or practices in the conduct of consumer transactions and
17 consumer acts or practices in trade or commerce” to be unlawful, Ga. Code Ann. §
18 101-393(b), including, but not limited to, “representing that goods or services have
19 sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities that
20 they do not have,” “[r]epresenting that goods or services are of a particular standard,
21 quality, or grade ... if they are of another,” and “[a]dvertising goods or services with
22 intent not to sell them as advertised,” Ga. Code Ann. § 10-1-393(b).
23
24
25

26 314. Plaintiff Nelson and Georgia Class members are “consumers” within the
27 meaning of Ga. Code Ann. § 10-1-393(b).
28

315. Defendant engaged in “trade or commerce” within the meaning of Ga.

1 Code Ann. § 10-1-393(b).

2 316. Defendant violated the Georgia FBPA by misrepresenting and concealing
3 and failing to disclose the Windshield Defect. Defendant had an ongoing duty to
4 Plaintiff Nelson and the Georgia Class to refrain from unfair and deceptive practices
5 under the Georgia FBPA in the course of its business.
6
7

8 317. Plaintiff Nelson and the Georgia Class suffered ascertainable loss and
9 actual damages as a direct and proximate result of Defendant’s concealments,
10 misrepresentations, and/or failure to disclose material information.
11

12 318. Plaintiff Nelson’s counsel provided Defendant with a written demand for
13 relief.
14

15 319. Plaintiff Nelson and the Georgia Class are entitled to recover actual and
16 treble damages and treble damages per Ga. Code Ann. § 10-1-399(a).
17

18 320. Plaintiff Nelson also seeks an order enjoining Defendant’s unfair,
19 unlawful, and/or deceptive practices, attorneys’ fees, and any other just and proper
20 relief available under the Georgia FBPA per GA Code Ann. § 10-1-399.
21

22 **EIGHTH CAUSE OF ACTION**
23 **Breach of Implied Warranty of Merchantability Pursuant to Ga. Code. Ann. §§**
24 **11-2-314 and 11-2A-212**
(Plaintiff Nelson on Behalf of the Georgia Class)

25 321. Plaintiffs incorporates by reference all of the above paragraphs of this
26 Complaint as though fully stated herein.
27

28 322. Defendant was at all relevant times a “merchant” with respect to motor

1 vehicles under Ga. Code Ann. §§ 11-2-104(1) and 11-2A-103(3), and a “seller” of
2 motor vehicles under § 11-2-103(1)(d).
3

4 323. The Class Vehicles are and were at all relevant times “goods” within the
5 meaning of Ga. Code Ann. §§ 11-2-105(1) and 11-2A-103(1)(h).
6

7 324. A warranty that the Class Vehicles were in merchantable condition and
8 fit for the ordinary purpose for which vehicles are used is implied by law pursuant to
9 Ga. Code Ann. §§ 11-2-314 and 11-2A-212.
10

11 325. Defendant breached the implied warranty of merchantability in that the
12 Class Vehicles suffer from the defects referenced herein and thus were not in
13 merchantable condition when Plaintiff Nelson and the Georgia class members
14 purchased or leased the Class Vehicles, or at any time thereafter, and the Class
15 Vehicles are unfit for the ordinary purposes for which such vehicles are used.
16 Specifically, the Class Vehicles were and are not fit for their ordinary purpose of
17 providing reasonably reliable and safe transportation because the Class Vehicles suffer
18 from a Windshield Defect that makes driving unreasonably dangerous.
19
20

21 326. As a result of Defendant’s breach of the applicable implied warranties,
22 owners and lessees of the Class Vehicles suffered an ascertainable loss of money,
23 property, and/or value of their Class Vehicles. Defendant’s actions, as complained of
24 herein, breached the implied warranty that the Class Vehicles were of merchantable
25 quality and fit for such use.
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NINTH CAUSE OF ACTION
Breach of Express Warranties Pursuant to Ga. Code Ann. § 11-2-313
(Plaintiff Nelson on Behalf of the Georgia Class)

327. Plaintiffs incorporate by reference all of the above paragraphs of this Complaint as though fully stated herein.

328. In connection with the sale or lease of the Class Vehicles to Plaintiff Nelson and the Georgia Class members, Defendant provided Plaintiff Nelson and class members with a New Vehicle Limited Warranty, under which it agreed to repair or replace original components found to be defective in material or workmanship within the first 60 months or 60,000 miles in service, whichever comes first.

329. Plaintiff Nelson and Georgia Class members relied on Defendant's warranties when they agreed to purchase or lease the Class Vehicles and Defendant's warranties were part of the basis of the bargain.

330. Plaintiff Nelson and the Georgia Class members submitted their Vehicles for warranty repairs as referenced herein. Defendant failed to comply with the terms of the express written warranty provided to each Class member, by failing and/or refusing to repair the Windshield Defect under the vehicle's warranty as described herein.

331. Plaintiff Nelson and Georgia Class members have given Defendant reasonable opportunities to cure said defect, but Defendant has been unable and/or has refused to do so within a reasonable time under its warranty.

332. As a result of said nonconformities, Plaintiff Nelson and Georgia Class

1 members cannot reasonably rely on the Class Vehicles for the ordinary purpose of
2 safe, reliable, comfortable, and efficient transportation.
3

4 333. Plaintiff Nelson and Georgia Class members could not reasonably have
5 discovered said nonconformities with the Class Vehicles prior to Plaintiff Nelson’s
6 and Georgia Class members’ acceptance of the Class Vehicles.
7

8 334. As a direct and proximate result of the willful failure of Defendant to
9 comply with its obligations under the express warranties, Plaintiff Nelson and Georgia
10 Class members have suffered actual and consequential damages. Such damages
11 include, but are not limited to, the loss of the use and enjoyment of their vehicles, and
12 a diminution in the value of the vehicles containing the defects identified herein.
13
14

15 **INDIANA CLASS**

16 **TENTH CAUSE OF ACTION**

17 **Violation of the Indiana Deceptive Consumer Sales Act, Ind. Code § 24-5-0.5-1, et**
18 **seq.**
19 **(Plaintiff Wilbur on Behalf of the Indiana Class)**

20 335. Plaintiffs incorporate by reference all allegations contained in this
21 Complaint as though fully stated herein.

22 336. Defendant is a “supplier” under Ind. Code. § 24-5-0.5-2(a)(3) by
23 advertising, offering for sale, selling, leasing, and/or distributing the Class Vehicles in
24 the United States, including Indiana.
25

26 337. Plaintiff Wilbur and Indiana class members are consumers under Ind
27 Code § 24-5-0.5-1, et seq. because they sought or acquired the Class Vehicles by and
28

1 through a “consumer transaction.”

2
3 338. Under the Indiana Deceptive Consumer Sales Act (“IDCSA”), suppliers,
4 such as Defendant, are prohibited from engaging in unfair, abusive, or deceptive acts,
5 omissions, or practices in connection with a consumer transaction. Such acts,
6 omissions, or practices by suppliers such as Defendant are in violation of the IDCSA
7 whether they occur before, during, or after the transaction at issue, and include both
8 implicit and explicit misrepresentations.
9

10
11 339. The allegations set forth herein constitute deceptive sales practices in
12 violation of Ind Code § 24-5-0.5-1, et seq.

13
14 340. As described above, Defendant sold vehicles to class members even
15 though the vehicles are defective and pose a safety hazard, and failed to disclose its
16 knowledge of the Windshield Defect and its attendant risks at the point of sale or
17 otherwise. Further, Defendant has refused to repair or replace the vehicles’ defective
18 windshields pursuant to the terms of its warranty despite being provided a reasonable
19 opportunity to do so.
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22 341. Defendant knew that the Class Vehicles’ front windshields suffered from
23 an inherent defect, were defectively manufactured or made, would fail prematurely,
24 and were not suitable for their intended use.
25

26 342. Defendant was under a duty to Plaintiff Wilbur and the Indiana Class
27 Members to disclose the defective nature of the Class Vehicles’ front windshields
28 and/or the associated repair costs because:

- 1 a. Defendant was in a superior position to know the true state of facts about
- 2 the safety defect contained in the Class Vehicles' front windshields;
- 3
- 4 b. Plaintiff Wilbur and the Indiana Class Members could not reasonably have
- 5 been expected to learn or discover that their front windshields have a
- 6 dangerous safety defect until after they purchased the Class Vehicles; and,
- 7
- 8 c. Defendant knew that Plaintiff Wilbur and the Indiana Class Members
- 9 could not reasonably have been expected to learn about or discover the
- 10 Windshield Defect.
- 11

12 343. The facts concealed or not disclosed by Defendant to Plaintiff Wilbur and
13 the Indiana Class Members are material in that a reasonable person would have
14 considered them to be important in deciding whether or not to purchase the Class
15 Vehicles.
16

17 344. Plaintiff Wilbur and the Indiana Class relied on Defendant to disclose
18 material information it knew, such as the defective nature of the windshields in the
19 Class Vehicles, and not to induce them into a transaction they would not have entered
20 had the Defendant disclosed this information.
21

22 345. By failing to disclose the Windshield Defect, Defendant knowingly and
23 intentionally concealed material facts and breached its duty not to do so.
24

25 346. The facts concealed or not disclosed by Defendant to Plaintiff Wilbur and
26 the Indiana Class Members are material because a reasonable consumer would have
27 considered them to be important in deciding whether or not to purchase the Class
28

1 Vehicles, or to pay less for them.

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3 347. Had Plaintiff Wilbur and the Indiana Class Members known that the
4 Class Vehicles' front windshields were defective, they would not have purchased the
5 Class Vehicles or would have paid less for them.

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7 348. Defendant's failure to disclose this information was misleading in a
8 material respect because a reasonable consumer would have been misled by
9 Defendant's conduct.

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11 349. Defendant's deceptive acts and practices were consumer-oriented
12 because they had a broad range impact on consumers at large, affecting all owners and
13 lessees of Class Vehicles.

14
15 350. As a direct and proximate result of Defendant's unlawful methods, acts,
16 and practices, Plaintiff Wilbur and the proposed Indiana members lost money or
17 property because they have purchased and leased vehicles that they otherwise would
18 not have, or in the alternative, would have paid less for. Meanwhile, Defendant has
19 sold more Class Vehicles than it otherwise could have and charged inflated prices for
20 the vehicles, unjustly enriching itself thereby.

21
22
23 351. Defendant's deceptive acts and practices were willful and knowing
24 because Defendant knew that the Class Vehicles' windshields were defective before it
25 began selling Class Vehicles and chose not to disclose the problem to consumers.

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27 352. Plaintiff Wilbur and other members of the proposed Indiana Class seek
28 appropriate injunctive relief, recovery of actual damages, treble damages, and their

1 reasonable costs and attorneys' fees.

2

ELEVENTH CAUSE OF ACTION

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Breach of Implied Warranty of Merchantability Pursuant to Ind. Code § 26-1-2-314

4

(Plaintiff Wilbur on Behalf of the Indiana Class)

5

6 353. Plaintiffs incorporates by reference all of the above paragraphs of this

7

Complaint as though fully stated herein.

8

9

354. Defendant is a merchant with respect to motor vehicles.

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355. The Class Vehicles were subject to implied warranties of merchantability, as defined in Ind. Code § 26-1-2-314, running from the Defendant to Plaintiff Wilbur and the Indiana Class members.

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356. An implied warranty that the subject vehicle was merchantable arose by operation of law as part of the sale or lease of the Class Vehicles.

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357. Defendant breached the implied warranty of merchantability in that the Class Vehicles suffer from the defects referenced herein and thus were not in merchantable condition when Plaintiff Wilbur and the Indiana class members purchased or leased the Class Vehicles, or at any time thereafter, and the Class Vehicles are unfit for the ordinary purposes for which such vehicles are used. Specifically, the Class Vehicles were and are not fit for their ordinary purpose of providing reasonably reliable and safe transportation because the Class Vehicles suffer from a Windshield Defect that makes driving unreasonably dangerous.

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358. As a result of Defendant's breach of the applicable implied warranties,

1 owners and lessees of the Class Vehicles suffered an ascertainable loss of money,
2 property, and/or value of their Class Vehicles. Defendant's actions, as complained of
3 herein, breached the implied warranty that the Class Vehicles were of merchantable
4 quality and fit for such use.
5

6
7 **TWELFTH CAUSE OF ACTION**

8 **Breach of Express Warranties Pursuant to Ind. Code § 26-1-2-313**
9 **(Plaintiff Wilbur on Behalf of the Indiana Class)**

10 359. Plaintiffs incorporate by reference all of the above paragraphs of this
11 Complaint as though fully stated herein.

12 360. In connection with the sale or lease of the Class Vehicles to Plaintiff
13 Wilbur and the Indiana Class members, Defendant provided Plaintiff Wilbur and class
14 members with a New Vehicle Limited Warranty, under which it agreed to repair or
15 replace original components found to be defective in material or workmanship within
16 the first 60 months or 60,000 miles in service, whichever comes first.
17

18 361. Plaintiff Wilbur and Indiana Class members relied on Defendant's
19 warranties when they agreed to purchase or lease the Class Vehicles and Defendant's
20 warranties were part of the basis of the bargain.
21

22 362. Plaintiff Wilbur and the Indiana Class members submitted their Vehicles
23 for warranty repairs as referenced herein. Defendant failed to comply with the terms
24 of the express written warranty provided to each Class member, by failing and/or
25 refusing to repair the Windshield Defect under the vehicle's warranty as described
26 herein.
27
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1 363. Plaintiff Wilbur and Indiana Class members have given Defendant
2 reasonable opportunities to cure said defect, but Defendant has been unable and/or has
3 refused to do so within a reasonable time under its warranty.
4

5 364. As a result of said nonconformities, Plaintiff Wilbur and Indiana Class
6 members cannot reasonably rely on the Class Vehicles for the ordinary purpose of
7 safe, reliable, comfortable, and efficient transportation.
8

9 365. Plaintiff Wilbur and Indiana Class members could not reasonably have
10 discovered said nonconformities with the Class Vehicles prior to Plaintiff Wilbur's
11 and Indiana Class members' acceptance of the Class Vehicles.
12

13 366. As a direct and proximate result of the willful failure of Defendant to
14 comply with its obligations under the express warranties, Plaintiff Wilbur and Indiana
15 Class members have suffered actual and consequential damages. Such damages
16 include, but are not limited to, the loss of the use and enjoyment of their vehicles, and
17 a diminution in the value of the vehicles containing the defects identified herein.
18
19

20 **IOWA CLASS**

21 **THIRTEENTH CAUSE OF ACTION**

22 **Iowa Private Right of Action for Consumer Frauds Act,**
23 **Iowa Code § 714H**
24 **(Plaintiff Reiher-Odom on behalf of the proposed Iowa Class)**

25 367. Plaintiff Reiher-Odom incorporates by reference all allegations contained
26 in this Complaint as though fully stated herein.
27

28 368. Plaintiff Reiher-Odom brings this claim on behalf of herself and the

1 proposed Iowa Class.

2 369. Defendant is a “person” as defined by Iowa Code § 714H.2(7).

3 370. Plaintiff Reiher-Odom and proposed members of the Iowa Class are
4 “consumers” as defined by Iowa Code § 714H.2(3).

5 371. Defendant’s conduct described above related to the “sale” or
6 “advertisement” of “merchandise” as defined by Iowa Code §§ 714H.2(2), (6), and
7 (8).

8 372. Defendant engaged in unfair, deceptive, and unconscionable trade
9 practices, in violation of the Iowa Private Right of Action for Consumer Frauds Act
10 because Defendant failed to disclose information that was material to Plaintiff Reiher-
11 Odom and proposed Iowa Class Members before they purchased or leased Class
12 Vehicles. Specifically, Defendant sold and leased vehicles to class members with a
13 known safety defect, i.e., the Windshield Defect, and Defendant chose not to disclose
14 its knowledge of the Windshield Defect and its attendant risks at the point of sale or
15 otherwise, realizing that warning about the Defect would dissuade class members
16 from purchasing and leasing the vehicles. Further, Defendant has refused to repair or
17 replace the vehicles’ defective windshields pursuant to the terms of its warranty
18 despite being provided a reasonable opportunity to do so.

19 373. Defendant had ample means and opportunities to disclose these facts to
20 Plaintiff Reiher-Odom and proposed Iowa class members before they purchased or
21 leased Class Vehicles. Defendant knew that Plaintiff Reiher-Odom and proposed
22

1 Iowa Class Members reasonably relied on Defendant's omissions. It also intended to
2 mislead Plaintiff Reiher-Odom and proposed Iowa Class Members and induce them to
3 rely on its omissions. Plaintiff Reiher-Odom and proposed class members had no way
4 of knowing that Defendant's omissions were false and misleading and that their
5 vehicles contained the Windshield Defect.
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8 374. Defendant acted intentionally, knowingly, and maliciously, to violate
9 Iowa's Private Right of Action for Consumer Frauds Act, and recklessly disregarded
10 the rights of Plaintiff Reiher-Odom and members of the proposed Iowa Class.
11

12 375. As a direct and proximate result of Defendant's omissions, Plaintiff
13 Reiher-Odom and the proposed class members have suffered actual damages. Had
14 Defendant not misleadingly omitted material facts concerning the Windshield Defect
15 in Class Vehicles, Plaintiff Reiher-Odom and proposed class members would not have
16 purchased their vehicles or would have paid substantially less for them. In the
17 meantime, Defendant generated more revenue than it otherwise would have.
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20 376. Plaintiff Reiher-Odom has provided the requisite notice to the Iowa
21 Attorney General, whose office approved the filing of this class action lawsuit
22 complaint pursuant to Iowa Code § 714H.7.
23

24 377. Plaintiff Reiher-Odom and the members of the proposed Iowa Class seek
25 all monetary and non-monetary relief allowed by law, including injunctive relief,
26 damages, punitive damages, and reasonable attorney's fees and costs.
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FOURTEENTH CAUSE OF ACTION
Breach of the Implied Warranty of Merchantability Pursuant to the
Iowa Code § 554.2314
(Plaintiff Reiher-Odom on behalf of the proposed Iowa Class

378. Plaintiff Reiher-Odom incorporates by reference all of the above paragraphs of this Complaint as though fully stated herein.

379. Plaintiff Reiher-Odom brings this claim on behalf of herself and the proposed Iowa Class.

380. Class Vehicles are “goods” and Defendant is a “seller” and “merchant” within the meaning of Iowa Code §§ 554.2103-554.2105.

381. The implied warranty of merchantability included with the sale of each Class Vehicle means that Defendant warranted that each Class Vehicle (a) would pass without objection in trade under the contract description; (b) was fit for the ordinary purposes for which the Class Vehicle would be used; and (c) conformed to the promises or affirmations of fact made on the container or label.

382. The Class Vehicles would not pass without objection in the automotive trade because they contain the above-described Windshield Defect, which also makes them unfit for the ordinary purpose for which a Class Vehicle would be used.

383. The Class Vehicles are not adequately labeled because their labeling fails to disclose the Windshield Defect and does not advise the members of the proposed Iowa Class of the existence of the danger prior to experiencing failure firsthand.

384. Defendant’s actions have deprived Plaintiff Reiher-Odom and the

1 members of the proposed Iowa Class of the benefit of their bargains and have caused
2 Class Vehicles to be worth less than what Plaintiff Reiher-Odom and other members
3 of the proposed Iowa Class paid.
4

5 385. As a direct and proximate result of Defendant's breach of implied
6 warranty, members of the proposed Iowa Class received goods whose condition
7 substantially impairs their value. Plaintiff Reiher-Odom and members of the proposed
8 Iowa Class have been damaged by the diminished value of their Class Vehicles.
9

10 386. Plaintiff Reiher-Odom notified Defendant of its breach within a
11 reasonable time.
12

13 387. Plaintiff Reiher-Odom and members of the proposed Iowa Class are
14 entitled to damages and all incidental and consequential damages resulting from
15 Defendant's breach.
16

17 **FIFTEENTH CAUSE OF ACTION**

18 **Breach of Express Warranty Pursuant to Iowa Code § 554.2313**
19 **(Plaintiff Reiher-Odom on behalf of the proposed Iowa Class)**

20 388. Plaintiff Reiher-Odom incorporates by reference all of the above
21 paragraphs of this Complaint as though fully stated herein.
22

23 389. In connection with the sale or lease of the Class Vehicles to Plaintiff
24 Reiher-Odom and Iowa Class members, Defendant provided Plaintiff Reiher-Odom
25 and class members with a New Vehicle Limited Warranty, under which it agreed to
26 repair or replace original components found to be defective in material or
27 workmanship within the first 60 months or 60,000 miles in service, whichever comes
28

1 first.

2 390. Plaintiff Reiher-Odom and Iowa Class members relied on Defendant's
3 warranties when they agreed to purchase or lease the Class Vehicles and Defendant's
4 warranties were part of the basis of the bargain.
5

6 391. Plaintiff Reiher-Odom and the Iowa Class members submitted their
7 Vehicles for warranty repairs as referenced herein. Defendant failed to comply with
8 the terms of the express written warranty provided to each Class member, by failing
9 and/or refusing to repair the Windshield Defect under the vehicle's warranty as
10 described herein.
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13 392. Plaintiff Reiher-Odom and Iowa Class members have given Defendant
14 reasonable opportunities to cure said defect, but Defendant has been unable and/or has
15 refused to do so within a reasonable time.
16

17 393. As a result of said nonconformities, Plaintiff Reiher-Odom and Iowa
18 Class members cannot reasonably rely on the Class Vehicles for the ordinary purpose
19 of safe, reliable, comfortable, and efficient transportation.
20

21 394. Plaintiff Reiher-Odom and Iowa Class members could not reasonably
22 have discovered said nonconformities with the Class Vehicles prior to Plaintiff
23 Reiher-Odom's and Iowa Class members' acceptance of the Class Vehicles.
24

25 395. Plaintiff Reiher-Odom and Iowa Class members would not have
26 purchased or leased the Class Vehicles, or would have paid less for the Class
27 Vehicles, had they known, prior to their respective time of purchase or lease, that
28

1 Class Vehicles contained the Windshield Defect.

2

3 396. As a direct and proximate result of the willful failure of Defendant to
4 comply with its obligations under the express warranties, Plaintiff Reiher-Odom and
5 Iowa Class members have suffered actual and consequential damages. Such damages
6 include, but are not limited to, the loss of the use and enjoyment of their vehicles, and
7 a diminution in the value of the vehicles containing the defects identified herein.
8

9

NEW MEXICO CLASS

10

SIXTEENTH CAUSE OF ACTION

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12

Violation of the New Mexico Unfair Trade Practices Act, N.M. Stat. Ann. § 57-12-2, et seq.

13

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(Plaintiff Ritzler on Behalf of the New Mexico Class)

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16

397. Plaintiffs incorporate by reference all allegations contained in this
Complaint as though fully stated herein.

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398. The New Mexico Unfair Trade Practices Act declares “unfair or
deceptive trade practices and unconscionable trade practices in the conduct of any
trade or commerce” to be “unlawful.” N.M. Stat. Ann. § 57-12-3, including, but not
limited to, “representing that goods or services have sponsorship, approval,
characteristics, ingredients, uses, benefits or quantities that they do not have or that a
person has a sponsorship, approval, status, affiliation or connection that the person
does not have,” “representing that goods or services are of a particular standard,
quality or grade or that goods are of a particular style or model if they are of another,”
“using exaggeration, innuendo or ambiguity as to a material fact or failing to state a

1 material fact if doing so deceives or tends to deceive,” and acts or practices that to a
2 person’s detriment “takes advantage of the lack of knowledge, ability, experience or
3 capacity of a person to a grossly unfair degree” or “results in a gross disparity between
4 the value received by a person and the price paid.” N.M. Stat. Ann. § 57-12-2.
5

6
7 399. Defendant engaged in “trade or commerce” within the meaning of N.M.
8 Stat. Ann. § 57-12-2(C).

9
10 400. Defendant violated the New Mexico Unfair Trade Practices Act by
11 misrepresenting and concealing and failing to disclose the Windshield Defect.
12 Defendant had an ongoing duty to Plaintiff Ritzler and the New Mexico Class to
13 refrain from unfair and deceptive practices under the New Mexico Unfair Trade
14 Practices Act in the course of its business.
15

16
17 401. Plaintiff Ritzler and the New Mexico Class suffered ascertainable loss
18 and actual damages as a direct and proximate result of Defendant’s concealments,
19 misrepresentations, and/or failure to disclose material information.

20
21 402. Plaintiff Ritzler’s counsel provided Defendant with a written demand for
22 relief.

23
24 403. Plaintiff Ritzler and the New Mexico Class are entitled to recover actual
25 and treble damages per N.M. Stat. Ann. § 57-12-10.

26
27 404. Plaintiff Ritzler also seeks an order enjoining Defendant’s unfair,
28 unlawful, and/or deceptive practices, attorneys’ fees, and any other just and proper
relief available under the New Mexico Unfair Trade Practices Act per N.M. Stat. Ann.

1 § 57-12-10.

2

3 **SEVENTEENTH CAUSE OF ACTION**
4 **Breach of Implied Warranty of Merchantability Pursuant to N.M. Stat. Ann. §**
5 **55-2-314**
6 **(Plaintiff Ritzler on Behalf of the New Mexico Class)**

7

8 405. Plaintiffs incorporates by reference all of the above paragraphs of this
9 Complaint as though fully stated herein.

10

11 406. Defendant is a merchant with respect to motor vehicles.

12

13 407. The Class Vehicles were subject to implied warranties of
14 merchantability, as defined in N.M. Stat. Ann. § 55-2-314, running from the
15 Defendant to Plaintiff Ritzler and the New Mexico Class members.

16 408. An implied warranty that the subject vehicle was merchantable arose by
17 operation of law as part of the sale or lease of the Class Vehicles.

18

19 409. Defendant breached the implied warranty of merchantability in that the
20 Class Vehicles suffer from the defects referenced herein and thus were not in
21 merchantable condition when Plaintiff Ritzler and the New Mexico class members
22 purchased or leased the Class Vehicles, or at any time thereafter, and the Class
23 Vehicles are unfit for the ordinary purposes for which such vehicles are used.
24 Specifically, the Class Vehicles were and are not fit for their ordinary purpose of
25 providing reasonably reliable and safe transportation because the Class Vehicles suffer
26 from a Windshield Defect that makes driving unreasonably dangerous.

27

28 410. As a result of Defendant's breach of the applicable implied warranties,

1 owners and lessees of the Class Vehicles suffered an ascertainable loss of money,
2 property, and/or value of their Class Vehicles. Defendant's actions, as complained of
3 herein, breached the implied warranty that the Class Vehicles were of merchantable
4 quality and fit for such use.
5

6 **EIGHTEENTH CAUSE OF ACTION**

7 **Breach of Express Warranties Pursuant to N.M. Stat. Ann. § 55-2-313**
8 **(Plaintiff Ritzler on Behalf of the New Mexico Class)**

9 411. Plaintiffs incorporate by reference all of the above paragraphs of this
10 Complaint as though fully stated herein.
11

12 412. In connection with the sale or lease of the Class Vehicles to Plaintiff
13 Ritzler and the New Mexico Class members, Defendant provided Plaintiff Ritzler and
14 class members with a New Vehicle Limited Warranty, under which it agreed to repair
15 or replace original components found to be defective in material or workmanship
16 within the first 60 months or 60,000 miles in service, whichever comes first.
17

18 413. Plaintiff Ritzler and New Mexico Class members relied on Defendant's
19 warranties when they agreed to purchase or lease the Class Vehicles and Defendant's
20 warranties were part of the basis of the bargain.
21

22 414. Plaintiff Ritzler and the New Mexico Class members submitted their
23 Vehicles for warranty repairs as referenced herein. Defendant failed to comply with
24 the terms of the express written warranty provided to each Class member, by failing
25 and/or refusing to repair the Windshield Defect under the vehicle's warranty as
26 described herein.
27
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1 415. Plaintiff Ritzler and New Mexico Class members have given Defendant
2 reasonable opportunities to cure said defect, but Defendant has been unable and/or has
3 refused to do so within a reasonable time under its warranty.
4

5 416. As a result of said nonconformities, Plaintiff Ritzler and New Mexico
6 Class members cannot reasonably rely on the Class Vehicles for the ordinary purpose
7 of safe, reliable, comfortable, and efficient transportation.
8

9 417. Plaintiff Ritzler and New Mexico Class members could not reasonably
10 have discovered said nonconformities with the Class Vehicles prior to Plaintiff
11 Ritzler's and New Mexico Class members' acceptance of the Class Vehicles.
12

13 418. As a direct and proximate result of the willful failure of Defendant to
14 comply with its obligations under the express warranties, Plaintiff Ritzler and New
15 Mexico Class members have suffered actual and consequential damages. Such
16 damages include, but are not limited to, the loss of the use and enjoyment of their
17 vehicles, and a diminution in the value of the vehicles containing the defects identified
18 herein.
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22 **NEW YORK CLASS**

23 **NINETEENTH CAUSE OF ACTION**

24 **Violation of the New York General Business Law**

25 **N.Y. Gen. Bus. Law § 349**

26 **(Plaintiff Knudson on behalf of the proposed New York Class)**

27 419. Plaintiff Knudson incorporates by reference all allegations contained in
28 this Complaint as though fully stated herein.

1 420. Defendant is a “person,” “firm,” “corporation” or “association” under
2 N.Y. Gen. Bus. Law § 349(g).
3

4 421. Plaintiff Knudson and the New York Class Members are “persons” under
5 N.Y. Gen. Bus. Law § 349(g).
6

7 422. The allegations set forth herein constitute false, misleading, or deceptive
8 trade acts or practices in violation of N.Y. Gen. Bus. Law § 349, *et seq.*
9

10 423. As described above, Defendant sold vehicles to class members even
11 though the vehicles are defective and pose a safety hazard and failed to disclose its
12 knowledge of the Windshield Defect and its attendant risks at the point of sale or
13 otherwise. Further, Defendant has refused to repair or replace the vehicles’ defective
14 windshields pursuant to the terms of its warranty despite being provided a reasonable
15 opportunity to do so.
16

17 424. Defendant was under a duty to Plaintiff Knudson and the New York
18 Class Members to disclose the defective nature of the Class Vehicles’ front
19 windshields and/or the associated repair costs because:
20

- 21 a. Defendant was in a superior position to know the true state of facts
22 about the safety defect contained in the Class Vehicles’ front
23 windshields;
24
25 b. Plaintiff Knudson and the New York Class Members could not
26 reasonably have been expected to learn or discover that their front
27 windshields have a dangerous safety defect until after they
28

1 purchased the Class Vehicles; and

2
3 c. Defendant knew that Plaintiff Knudson and the New York Class
4 Members could not reasonably have been expected to learn about or
5 discover the Windshield Defect.

6
7 425. Defendant's failure to disclose this information was misleading in a
8 material respect because a reasonable consumer would have been misled by
9 Defendant's conduct.

10
11 426. Defendant's deceptive acts and practices were consumer-oriented
12 because they had a broad range impact on consumers at large, affecting all owners and
13 lessees of Class Vehicles.

14
15 427. As a direct and proximate result of Defendant's unlawful methods, acts,
16 and practices, Plaintiff Knudson and the proposed New York Class Members lost
17 money or property because they have purchased and leased vehicles that they
18 otherwise would not have, or in the alternative, would have paid less for. Meanwhile,
19 Defendant has sold more Class Vehicles than it otherwise could have and charged
20 inflated prices for the vehicles, unjustly enriching itself thereby.

21
22
23 428. Defendant's deceptive acts and practices were willful and knowing
24 because Defendant knew that the windshields contained in the Class Vehicles were
25 defective before it began selling Class Vehicles and chose not to disclose the problem
26 to consumers.

27
28 429. Pursuant to N.Y. Gen. Bus. Law § 349(h), Plaintiff Knudson and other

1 members of the proposed New York class seek appropriate injunctive relief, recovery
2 of actual damages, treble damages, and their reasonable costs and attorneys' fees.
3

4 **TWENTIETH CAUSE OF ACTION**
5 **Breach of Express Warranty under N.Y. UCC § 2-313**
6 **(Plaintiff Knudson on behalf of the proposed New York Class)**

7 430. Plaintiff Knudson incorporates by reference all of the above paragraphs
8 of this Complaint as though fully stated herein.

9 431. In connection with the sale or lease of the Class Vehicles to Plaintiff
10 Knudson and New York Class members, Defendant provided Plaintiff Knudson and
11 class members with a New Vehicle Limited Warranty, under which it agreed to repair
12 or replace original components found to be defective in material or workmanship
13 within the first 60 months or 60,000 miles in service, whichever comes first.
14

15 432. Plaintiff Knudson and New York Class members relied on Defendant's
16 warranties when they agreed to purchase or lease the Class Vehicles and Defendant's
17 warranties were part of the basis of the bargain.
18

19 433. Plaintiff Knudson and the New York Class members submitted their
20 Vehicles for warranty repairs as referenced herein. Defendant failed to comply with
21 the terms of the express written warranty provided to each Class member, by failing
22 and/or refusing to repair the Windshield Defect under the vehicle's warranty as
23 described herein.
24
25

26 434. Plaintiff Knudson and New York Class members have given Defendant
27 reasonable opportunities to cure said defect, but Defendant has been unable and/or has
28

1 refused to do so within a reasonable time.

2
3 435. As a result of said nonconformities, Plaintiff Knudson and New York
4 Class members cannot reasonably rely on the Class Vehicles for the ordinary purpose
5 of safe, reliable, comfortable, and efficient transportation.

6
7 436. Plaintiff Knudson and New York Class members could not reasonably
8 have discovered said nonconformities with the Class Vehicles prior to Plaintiff
9 Knudson’s and New York Class members’ acceptance of the Class Vehicles.

10
11 437. Plaintiff Knudson and New York Class members would not have
12 purchased or leased the Class Vehicles, or would have paid less for the Class
13 Vehicles, had they known, prior to their respective time of purchase or lease, that
14 Class Vehicles contained the Windshield Defect.

15
16 438. As a direct and proximate result of the willful failure of Defendant to
17 comply with its obligations under the express warranties, Plaintiff Knudson and New
18 York Class members have suffered actual and consequential damages. Such damages
19 include, but are not limited to, the loss of the use and enjoyment of their vehicles, and
20 a diminution in the value of the vehicles containing the defects identified herein.
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22

23 **NORTH CAROLINA CLASS**

24 **TWENTY-FIRST CAUSE OF ACTION**

25 **Violation of North Carolina’s Unfair and Deceptive Trade Practices Act,**
26 **(“NCUDTPA”) N.C. Gen. Stat. § 75.1.1, et seq.**
27 **(Plaintiff Amber Witt on behalf of the proposed North Carolina Class)**

28 439. Plaintiff Witt incorporates by reference all allegations contained in this

1 Complaint as though fully stated herein.

2
3 440. Plaintiff Witt brings this claim on behalf of herself and the proposed
4 North Carolina Class.

5 441. North Carolina’s Unfair and Deceptive Trade Practices Act, N.C. Gen.
6 Stat §§ 75.1.1, prohibits a person from engaging in “[u]nfair methods of competition
7 in or affecting commerce, and unfair or deceptive acts or practices in or affecting
8 commerce[.]” The NCUOTPA provides right of action for any person injured “by
9 reason of any act or thing done by any other person, firm or corporation in violation of
10 the NCUOTPA. N.C. Gen. Stat. §§ 75-16.
11
12

13 442. As described above, Defendant sold vehicles to class members even
14 though the vehicles are defective and pose a safety hazard, and failed to disclose its
15 knowledge of the Windshield Defect and its attendant risks at the point of sale or
16 otherwise. Further, Defendant has refused to repair or replace the vehicles’ defective
17 windshields pursuant to the terms of its warranty despite being provided a reasonable
18 opportunity to do so. Defendant’s conduct occurred in the course of its trade or
19 business and thus occurred in or affected “commerce.” As defined in N.C. Gen. Stat. §
20 75-1.1(b).
21
22
23

24 443. Defendant’s failure to disclose this information was misleading in a
25 material respect because a reasonable consumer would have been misled by
26 Defendant’s conduct.
27

28 444. Defendant’s deceptive acts and practices were consumer-oriented

1 because they had a broad range impact on consumers at large, affecting all owners and
2 lessees of Class Vehicles.

3
4 445. As a direct and proximate result of Defendant's unlawful methods, acts,

5 446. and practices, Plaintiff Witt and the proposed North Carolina members
6 lost money or property because they have purchased and leased vehicles that they
7 otherwise would not have, or in the alternative, would have paid less for. Meanwhile,
8 Defendant has sold more Class Vehicles than it otherwise could have and charged
9 inflated prices for the vehicles, unjustly enriching itself thereby.
10
11

12 447. Defendant's deceptive acts and practices were willful and knowing
13 because Defendant knew that the Class Vehicles' windshields were defective before it
14 began selling Class Vehicles and chose not to disclose the problem to consumers.
15

16 448. Pursuant to N.C. Gen. Stat. § 75-16 and § 75-16.1., Plaintiff Witt and
17 other members of the proposed North Carolina Class seek appropriate injunctive
18 relief, recovery of actual damages, treble damages, and their reasonable costs and
19 attorneys' fees.
20
21

22 **TWENTY-SECOND CAUSE OF ACTION**
23 **Breach of Express Warranty Pursuant to N.C. Gen. Stat. § 25-2-313, et. seq.**
24 **(Plaintiff Witt on behalf of the proposed North Carolina)**

25 449. Plaintiff Witt incorporates by reference all of the above paragraphs of
26 this Complaint as though fully stated herein.

27 450. In connection with the sale or lease of the Class Vehicles to Plaintiff Witt
28 and North Carolina Class members, Defendant provided Plaintiff Witt and North

1 Carolina class members with a New Vehicle Limited Warranty, under which it agreed
2 to repair or replace original components found to be defective in material or
3 workmanship within the first 60 months or 60,000 miles in service, whichever comes
4 first.
5

6 451. Plaintiff Witt and North Carolina Class members relied on Defendant's
7 warranties when they agreed to purchase or lease the Class Vehicles and Defendant's
8 warranties were part of the basis of the bargain.
9

10 452. Plaintiff Witt and the North Carolina Class members submitted their
11 Vehicles for warranty repairs as referenced herein. Defendant failed to comply with
12 the terms of the express written warranty provided to each Class member, by failing
13 and/or refusing to repair the Windshield Defect under the vehicle's warranty as
14 described herein.
15
16

17 453. Plaintiff Witt and North Carolina Class members have given Defendant
18 reasonable opportunities to cure said defect, but Defendant has been unable and/or has
19 refused to do so within a reasonable time.
20

21 454. As a result of said nonconformities, Plaintiff Witt and North Carolina
22 Class members cannot reasonably rely on the Class Vehicles for the ordinary purpose
23 of safe, reliable, comfortable, and efficient transportation.
24

25 455. Plaintiff Witt and North Carolina Class members could not reasonably
26 have discovered said nonconformities with the Class Vehicles prior to Plaintiff Witt's
27 and North Carolina Class members' acceptance of the Class Vehicles.
28

1 they do not have or that a person has a sponsorship, approval, status, affiliation or
2 connection that he does not have,” “(vii) Representing that goods or services are of a
3 particular standard, quality or grade, or that goods are of a particular style or model, if
4 they are of another,” “(ix) Advertising goods or services with intent not to sell them as
5 advertised,” “(xiv) Failing to comply with the terms of any written guarantee or
6 warranty given to the buyer at, prior to or after a contract for the purchase of goods or
7 services is made,” and “(xxi) Engaging in any other fraudulent or deceptive conduct
8 which creates a likelihood of confusion or of misunderstanding,” 73 Pa. Stat. Ann. §
9 201-2(4).
10
11
12

13 460. Defendant engaged in “trade or commerce” within the meaning of 73 Pa.
14 Stat. Ann. § 201-2(3).
15

16 461. Defendant violated the Pennsylvania Unfair Trade Practices and
17 Consumer Protection law by misrepresenting and concealing and failing to disclose
18 the Windshield Defect, and failing to repair the Defect under Defendant’s warranty.
19 Defendant had an ongoing duty to Plaintiff Rocco and the Pennsylvania Class to
20 refrain from unfair and deceptive practices under the Pennsylvania Unfair Trade
21 Practices and Consumer Protection law in the course of its business.
22
23

24 462. Plaintiff Rocco and the Pennsylvania Class suffered ascertainable loss
25 and actual damages as a direct and proximate result of Defendant’s concealments,
26 misrepresentations, failure to disclose material information, and/or failure to repair the
27 Defect.
28

1 463. Plaintiff Rocco’s counsel provided Defendant with a written demand for
2 relief.
3

4 464. Plaintiff Rocco and the Pennsylvania Class are entitled to recover actual
5 and treble damages per 73 Pa. Stat. Ann. § 201-9.2.
6

7 465. Plaintiff Rocco also seeks an order enjoining Defendant’s unfair,
8 unlawful, and/or deceptive practices, attorneys’ fees, and any other just and proper
9 relief available under the Pennsylvania Unfair Trade Practices and Consumer
10 Protection Law.
11

12 **TWENTY-FOURTH CAUSE OF ACTION**
13 **Breach of Implied Warranty of Merchantability Pursuant to 13 Pa. Stat. § 2314**
14 **(Plaintiff Rocco on Behalf of the Pennsylvania Class)**

15 466. Plaintiffs incorporates by reference all of the above paragraphs of this
16 Complaint as though fully stated herein.
17

18 467. Defendant is a merchant with respect to motor vehicles.

19 468. The Class Vehicles were subject to implied warranties of
20 merchantability, as defined in 13 Pa. Stat. § 2314, running from the Defendant to
21 Plaintiff Rocco and the Pennsylvania Class members.
22

23 469. An implied warranty that the subject vehicle was merchantable arose by
24 operation of law as part of the sale or lease of the Class Vehicles.
25

26 470. Defendant breached the implied warranty of merchantability in that the
27 Class Vehicles suffer from the defects referenced herein and thus were not in
28 merchantable condition when Plaintiff Rocco and the Pennsylvania class members

1 purchased or leased the Class Vehicles, or at any time thereafter, and the Class
2 Vehicles are unfit for the ordinary purposes for which such vehicles are used.
3
4 Specifically, the Class Vehicles were and are not fit for their ordinary purpose of
5 providing reasonably reliable and safe transportation because the Class Vehicles suffer
6 from a Windshield Defect that makes driving unreasonably dangerous.
7

8 471. As a result of Defendant's breach of the applicable implied warranties,
9 owners and lessees of the Class Vehicles suffered an ascertainable loss of money,
10 property, and/or value of their Class Vehicles. Defendant's actions, as complained of
11 herein, breached the implied warranty that the Class Vehicles were of merchantable
12 quality and fit for such use.
13
14

15 **TWENTY-FIFTH CAUSE OF ACTION**
16 **Breach of Express Warranties Pursuant to 13 Pa. Stat. § 2313**
17 **(Plaintiff Rocco on Behalf of the Pennsylvania Class)**

18 472. Plaintiffs incorporate by reference all of the above paragraphs of this
19 Complaint as though fully stated herein.

20 473. In connection with the sale or lease of the Class Vehicles to Plaintiff
21 Rocco and the Pennsylvania Class members, Defendant provided Plaintiff Rocco and
22 class members with a New Vehicle Limited Warranty, under which it agreed to repair
23 or replace original components found to be defective in material or workmanship
24 within the first 60 months or 60,000 miles in service, whichever comes first.
25

26 474. Plaintiff Rocco and Pennsylvania Class members relied on Defendant's
27 warranties when they agreed to purchase or lease the Class Vehicles and Defendant's
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1 warranties were part of the basis of the bargain.

2
3 475. Plaintiff Rocco and the Pennsylvania Class members submitted their
4 Vehicles for warranty repairs as referenced herein. Defendant failed to comply with
5 the terms of the express written warranty provided to each Class member, by failing
6 and/or refusing to repair the Windshield Defect under the vehicle's warranty as
7 described herein.
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10 476. Plaintiff Rocco and Pennsylvania Class members have given Defendant
11 reasonable opportunities to cure said defect, but Defendant has been unable and/or has
12 refused to do so within a reasonable time under its warranty.

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14 477. As a result of said nonconformities, Plaintiff Rocco and Pennsylvania
15 Class members cannot reasonably rely on the Class Vehicles for the ordinary purpose
16 of safe, reliable, comfortable, and efficient transportation.

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18 478. Plaintiff Rocco and Pennsylvania Class members could not reasonably
19 have discovered said nonconformities with the Class Vehicles prior to Plaintiff
20 Rocco's and Pennsylvania Class members' acceptance of the Class Vehicles.
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22 479. As a direct and proximate result of the willful failure of Defendant to
23 comply with its obligations under the express warranties, Plaintiff Rocco and
24 Pennsylvania Class members have suffered actual and consequential damages. Such
25 damages include, but are not limited to, the loss of the use and enjoyment of their
26 vehicles, and a diminution in the value of the vehicles containing the defects identified
27 herein.
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TENNESSEE CLASS

TWENTY-SIXTH CAUSE OF ACTION

**Violation of the Tennessee Consumer Protection Act of 1977, Tenn. Code Ann. § 47-18-101, *et seq.*
(Plaintiff Herber on Behalf of the Tennessee Class)**

480. Plaintiffs incorporate by reference all allegations contained in this Complaint as though fully stated herein.

481. The Tennessee Consumer Protection Act (“Tennessee CPA”) prohibits “unfair or deceptive acts or practices affecting the conduct of any trade or commerce.” Tenn. Code § 47-18-104.

482. Defendant engaged in “trade or commerce” within the meaning of Tenn. Code § 47-18-103(9).

483. Defendant violated the Tennessee CPA by misrepresenting and concealing and failing to disclose the Windshield Defect. Defendant had an ongoing duty to Plaintiff Herber and the Tennessee Class to refrain from unfair and deceptive practices under the Tennessee CPA in the course of its business.

484. Plaintiff Herber and the Tennessee Class suffered ascertainable loss and actual damages as a direct and proximate result of Defendant’s concealments, misrepresentations, and/or failure to disclose material information.

485. Plaintiff Herber’s counsel provided Defendant with a written demand for relief.

486. Plaintiff Herber and the Tennessee Class are entitled to recover actual

1 and treble damages per Tenn. Code §§ 47-18-109.

2 487. Plaintiff Herber also seeks an order enjoining Defendant's unfair,
3 unlawful, and/or deceptive practices, attorneys' fees, and any other just and proper
4 relief available under the Tennessee CPA.
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7 **TWENTY-SEVENTH CAUSE OF ACTION**
8 **Breach of Implied Warranty of Merchantability Pursuant to Tenn. Code §§ 47-2-**
9 **314**
10 **(Plaintiff Herber on Behalf of the Tennessee Class)**

11 488. Plaintiffs incorporates by reference all of the above paragraphs of this
12 Complaint as though fully stated herein.

13 489. Defendant is a merchant with respect to motor vehicles.

14 490. The Class Vehicles were subject to implied warranties of
15 merchantability, as defined in Tenn. Code §§ 47-2-314, running from the Defendant to
16 Plaintiff Herber and the Tennessee Class members.
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18 491. An implied warranty that the subject vehicle was merchantable arose by
19 operation of law as part of the sale or lease of the Class Vehicles.
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21 492. Defendant breached the implied warranty of merchantability in that the
22 Class Vehicles suffer from the defects referenced herein and thus were not in
23 merchantable condition when Plaintiff Herber and the Tennessee class members
24 purchased or leased the Class Vehicles, or at any time thereafter, and the Class
25 Vehicles are unfit for the ordinary purposes for which such vehicles are used.
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27 Specifically, the Class Vehicles were and are not fit for their ordinary purpose of
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1 providing reasonably reliable and safe transportation because the Class Vehicles suffer
2 from a Windshield Defect that makes driving unreasonably dangerous.

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4 493. As a result of Defendant's breach of the applicable implied warranties,
5 owners and lessees of the Class Vehicles suffered an ascertainable loss of money,
6 property, and/or value of their Class Vehicles. Defendant's actions, as complained of
7 herein, breached the implied warranty that the Class Vehicles were of merchantable
8 quality and fit for such use.
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11 **TWENTY-EIGHTH CAUSE OF ACTION**
12 **Breach of Express Warranties Pursuant to Tenn. Code §§ 47-2-313)**
13 **(Plaintiff Herber on Behalf of the Tennessee Class)**

14 494. Plaintiffs incorporate by reference all of the above paragraphs of this
15 Complaint as though fully stated herein.

16 495. In connection with the sale or lease of the Class Vehicles to Plaintiff
17 Herber and the Tennessee Class members, Defendant provided Plaintiff Herber and
18 class members with a New Vehicle Limited Warranty, under which it agreed to repair
19 or replace original components found to be defective in material or workmanship
20 within the first 60 months or 60,000 miles in service, whichever comes first.
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22 496. Plaintiff Herber and Tennessee Class members relied on Defendant's
23 warranties when they agreed to purchase or lease the Class Vehicles and Defendant's
24 warranties were part of the basis of the bargain.
25

26 497. Plaintiff Herber and the Tennessee Class members submitted their
27 Vehicles for warranty repairs as referenced herein. Defendant failed to comply with
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1 the terms of the express written warranty provided to each Class member, by failing
2 and/or refusing to repair the Windshield Defect under the vehicle’s warranty as
3 described herein.
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5 498. Plaintiff Herber and Tennessee Class members have given Defendant
6 reasonable opportunities to cure said defect, but Defendant has been unable and/or has
7 refused to do so within a reasonable time under its warranty.
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9 499. As a result of said nonconformities, Plaintiff Herber and Tennessee Class
10 members cannot reasonably rely on the Class Vehicles for the ordinary purpose of
11 safe, reliable, comfortable, and efficient transportation.
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13 500. Plaintiff Herber and Tennessee Class members could not reasonably
14 have discovered said nonconformities with the Class Vehicles prior to Plaintiff
15 Herber’s and Tennessee Class members’ acceptance of the Class Vehicles.
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17 501. As a direct and proximate result of the willful failure of Defendant to
18 comply with its obligations under the express warranties, Plaintiff Herber and
19 Tennessee Class members have suffered actual and consequential damages. Such
20 damages include, but are not limited to, the loss of the use and enjoyment of their
21 vehicles, and a diminution in the value of the vehicles containing the defects identified
22 herein.
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TEXAS CLASS

TWENTY-NINTH CAUSE OF ACTION

**Violation of the Texas Deceptive Practices Act, Tex. Bus. & Com. Code § 17.41,
et seq.
(Plaintiffs Dubose and Sanchez on behalf of the proposed Texas Class)**

502. Plaintiffs incorporate by reference all allegations contained in this Complaint as though fully stated herein.

503. The Dubose Vehicle, the Sanchez Vehicle and the Class Vehicles are “goods” under Tex. Bus. & Com. Code § 17.45(1) because they are tangible chattel that were purchased or leased for use.

504. Defendant is a “person” under Tex. Bus. & Com. Code § 17.45(3) because it is a corporation.

505. Plaintiffs Dubose and Sanchez and the Texas Class Members are “consumers” under Tex. Bus. & Com. Code § 17.45(4) because they sought or acquired their vehicle by purchase.

506. At all relevant times, Defendant has engaged in “trade” and “commerce” under Tex. Bus. & Com. Code § 17.45(6) by advertising, offering for sale, selling, leasing, and/or distributing vehicles in the United States, including Texas, directly or indirectly affecting Texas citizens through that trade and commerce.

507. The allegations set forth herein constitute false, misleading, or deceptive trade acts or practices in violation of Texas’s Deceptive Trade Practices-Consumer Protection Act (“DTPA”), Tex. Bus. & Com. Code § 17.41, et seq.

1 508. Defendant violated the DTPA by misrepresenting and concealing and
2 failing to disclose the Windshield Defect. Defendant had an ongoing duty to Plaintiffs
3 Dubose and Sanchez and the Texas Class to refrain from unfair and deceptive
4 practices under the in the course of its business.
5

6 509. Defendant’s unfair and deceptive acts or practices occurred repeatedly in
7 Defendant’s trade or business, were capable of deceiving a substantial portion of the
8 purchasing public and imposed a serious safety risk on the public.
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10 510. Moreover, Defendant’s intentional concealment of and failure to disclose
11 the Windshield Defect constitutes an “unconscionable action or course of action”
12 under Tex. Bus. & Com. Code § 17.45(5) because, to the detriment of Plaintiffs
13 Dubose and Sanchez and the Texas Class, that conduct took advantage of their lack of
14 knowledge, ability, and experience to a grossly unfair degree. That “unconscionable
15 action or course of action” was a producing cause of the economic damages sustained
16 by Plaintiff Dubose and the Texas Class.
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20 511. In addition, Defendant is also liable under Tex. Bus. & Com. Code §
21 17.50(a) because Defendant’s breach of the implied warranty of merchantability set
22 forth below was a producing cause of economic damages sustained by Plaintiffs
23 Dubose and Sanchez and the Texas Class.
24

25 512. Plaintiffs Dubose and Sanchez and the Texas Class suffered ascertainable
26 loss and actual damages as a direct and proximate result of Defendant’s concealments,
27 misrepresentations, and/or failure to disclose material information.
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1 513. Plaintiffs Dubose and Sanchez and the Texas Class are entitled to recover
2 actual and treble damages. They also seek an order enjoining Defendant's unfair,
3 unlawful, and/or deceptive practices, attorneys' fees, and any other just and proper
4 relief available under the DTPA
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7 **THIRTIETH CAUSE OF ACTION**
8 **Breach of the Implied Warranty of Merchantability Pursuant to Tex. Bus. &**
9 **Com. Code § 2.314**
10 **(Plaintiffs Dubose and Sanchez on behalf of the proposed Texas Class**

11 514. Plaintiffs Dubose and Sanchez incorporate by reference all of the above
12 paragraphs of this Complaint as though fully stated herein.

13 515. Defendant is a merchant with respect to motor vehicles.

14 516. The Class Vehicles were subject to implied warranties of merchantability
15 running from the Defendant to Plaintiffs Dubose and Sanchez and the Texas Class
16 members.
17

18 517. An implied warranty that the Class Vehicles were merchantable arose by
19 operation of law as part of the sale or lease of the Class Vehicles.
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21 518. Defendant breached the implied warranty of merchantability in that the
22 Class Vehicles suffer from the defects referenced herein and thus were not in
23 merchantable condition when Plaintiffs Dubose and Sanchez and Texas class
24 members purchased or leased the Class Vehicles, or at any time thereafter, and the
25 Class Vehicles are unfit for the ordinary purposes for which such vehicles are used.
26 Specifically, the Class Vehicles were and are not fit for their ordinary purpose of
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1 providing reasonably reliable and safe transportation because the Class Vehicles suffer
2 from a Windshield Defect that makes driving unreasonably dangerous.

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4 519. As a result of Defendant’s breach of the applicable implied warranties,
5 owners and lessees of the Class Vehicles suffered an ascertainable loss of money,
6 property, and/or value of their Class Vehicles. Defendant’s actions, as complained of
7 herein, breached the implied warranty that the Class Vehicles were of merchantable
8 quality and fit for such use.
9

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11 **THIRTY-FIRST CAUSE OF ACTION**
12 **Breach of Express Warranty Pursuant to Tex. Bus. & Com. Code Ann. § 2.313**
13 **(Plaintiffs Dubose and Sanchez on behalf of the proposed Texas Class)**

14 520. Plaintiffs Dubose and Sanchez incorporate by reference all of the above
15 paragraphs of this Complaint as though fully stated herein.

16 521. In connection with the sale or lease of the Class Vehicles to Plaintiffs
17 Dubose and Sanchez and Texas Class members, Defendant provided Plaintiffs Dubose
18 and Sanchez and Texas class members with a New Vehicle Limited Warranty, under
19 which it agreed to repair or replace original components found to be defective in
20 material or workmanship within the first 60 months or 60,000 miles in service,
21 whichever comes first.
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23
24 522. Plaintiffs Dubose and Sanchez and Texas Class members relied on
25 Defendant’s warranties when they agreed to purchase or lease the Class Vehicles and
26 Defendant’s warranties were part of the basis of the bargain.
27

28 523. Plaintiffs Dubose and Sanchez and the Texas Class members submitted

1 their Vehicles for warranty repairs as referenced herein. Defendant failed to comply
2 with the terms of the express written warranty provided to each Class member, by
3 failing and/or refusing to repair the Windshield Defect under the vehicle's warranty as
4 described herein.
5

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7 524. Plaintiffs Dubose and Sanchez and Texas Class members have given
8 Defendant reasonable opportunities to cure said defect, but Defendant has been unable
9 and/or has refused to do so within a reasonable time.
10

11 525. As a result of said nonconformities, Plaintiffs Dubose and Sanchez and
12 Texas Class members cannot reasonably rely on the Class Vehicles for the ordinary
13 purpose of safe, reliable, comfortable, and efficient transportation.
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15 526. Plaintiffs Dubose and Sanchez and Texas Class members could not
16 reasonably have discovered said nonconformities with the Class Vehicles prior to their
17 acceptance of the Class Vehicles.
18

19 527. Plaintiffs Dubose and Sanchez and Texas Class members would not have
20 purchased or leased the Class Vehicles, or would have paid less for the Class
21 Vehicles, had they known, prior to their respective time of purchase or lease, that
22 Class Vehicles contained the Windshield Defect.
23

24 528. As a direct and proximate result of the willful failure of Defendant to
25 comply with its obligations under the express warranties, Plaintiffs Dubose and
26 Sanchez and Texas Class members have suffered actual and consequential damages.
27 Such damages include, but are not limited to, the loss of the use and enjoyment of
28

1 their vehicles, and a diminution in the value of the vehicles containing the defects
2 identified herein.
3

4 **VIRGINIA CLASS**

5 **THIRTY- SECOND CAUSE OF ACTION**
6 **Violations of the Virginia Consumer Protection Act,**
7 **Va. Code Ann. §§ 59.1-196, et seq.**
8 **(Plaintiff Fisher on behalf of the Virginia Class)**

9 529. Plaintiffs incorporate by reference all allegations contained in this
10 Complaint as though fully stated herein.

11 530. The Virginia Consumer Protection Act prohibits, inter alia, “(14) using
12 any . . . deception, fraud, false pretense, false promise, or misrepresentation in
13 connection with a consumer transaction[.]” Va. Code Ann. § 59.1-200(A).
14

15 531. Defendant is a “person” as defined by Va. Code Ann. § 59.1-198.
16

17 532. The transactions between Plaintiff Fisher and the other Class members on
18 one hand and Defendant on the other, leading to the purchase or lease of the Vehicles
19 by Plaintiff Fisher and the other Class members, are “consumer transactions” as
20 defined by Va. Code Ann. § 59.1-198, because the Class Vehicles were purchased or
21 leased primarily for personal, family or household purposes.
22
23

24 533. The allegations set forth herein constitute false, misleading, or deceptive
25 trade acts or practices.

26 534. Defendant violated the Virginia Consumer Protection Act by
27 misrepresenting and concealing and failing to disclose the Windshield Defect.
28

1 Defendant had an ongoing duty to Plaintiff Fisher and the Virginia Class to refrain
2 from unfair and deceptive practices under the Virginia Consumer Protection Act in the
3 course of its business.
4

5 535. Plaintiff Fisher and the Virginia Class suffered ascertainable loss and
6 actual damages as a direct and proximate result of Defendant's concealments,
7 misrepresentations, and/or failure to disclose material information.
8

9 536. Plaintiff Fisher's counsel provided Defendant with a written demand for
10 relief.
11

12 537. Plaintiff Fisher and the Virginia Class are entitled to recover actual and
13 treble damages. They also seek an order enjoining Defendant's unfair, unlawful,
14 and/or deceptive practices, attorneys' fees, and any other just and proper relief
15 available under the Virginia Consumer Protection Act.
16

17 **THIRTY- THIRD CAUSE OF ACTION**

18 **Breach of the Implied Warranty of Merchantability Pursuant to V.A. Code Ann.**

19 **§ 8.2-314**

20 **(Plaintiff Fisher on behalf of the proposed Texas Class**

21 538. Plaintiff Fisher incorporates by reference all of the above paragraphs of
22 this Complaint as though fully stated herein.
23

24 539. Defendant is a merchant with respect to motor vehicles.

25 540. The Class Vehicles were subject to implied warranties of merchantability
26 running from the Defendant to Plaintiff Fisher and the Texas Class members.
27

28 541. An implied warranty that the Class Vehicles were merchantable arose by

1 operation of law as part of the sale or lease of the Class Vehicles.

2
3 542. Defendant breached the implied warranty of merchantability in that the
4 Class Vehicles suffer from the defects referenced herein and thus were not in
5 merchantable condition when Plaintiff Fisher and Texas class members purchased or
6 leased the Class Vehicles, or at any time thereafter, and the Class Vehicles are unfit
7 for the ordinary purposes for which such vehicles are used. Specifically, the Class
8 Vehicles were and are not fit for their ordinary purpose of providing reasonably
9 reliable and safe transportation because the Class Vehicles suffer from a Windshield
10 Defect that makes driving unreasonably dangerous.
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13 543. As a result of Defendant's breach of the applicable implied warranties,
14 owners and lessees of the Class Vehicles suffered an ascertainable loss of money,
15 property, and/or value of their Class Vehicles. Defendant's actions, as complained of
16 herein, breached the implied warranty that the Class Vehicles were of merchantable
17 quality and fit for such use.
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20 **THIRTY- FOURTH CAUSE OF ACTION**

21 **Breach of Express Warranty Pursuant to V.A. Code Ann. § 8.2-313**
22 **(Plaintiff Fisher on behalf of the Virginia Class)**

23 544. Plaintiffs incorporate by reference all allegations contained in this
24 Complaint as though fully stated herein.
25

26 545. In connection with the sale or lease of the Class Vehicles, Defendant
27 provided Plaintiff Fisher and the Virginia class members with a New Vehicle Limited
28 Warranty, under which it agreed to repair or replace original components found to be

1 defective in material or workmanship within the first 60 months or 60,000 miles in
2 service, whichever comes first.

3
4 546. Plaintiff Fisher and the Virginia Class members relied on Defendant's
5 warranties when they agreed to purchase or lease the Class Vehicles and Defendant's
6 warranties were part of the basis of the bargain.

7
8 547. Plaintiff Fisher and the Virginia Class members submitted their Vehicles
9 for warranty repairs as referenced herein. Defendant failed to comply with the terms
10 of the express written warranty provided to each Class member, by failing and/or
11 refusing to repair the Windshield Defect under the vehicle's warranty as described
12 herein.

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15 548. Plaintiff Fisher and the Virginia Class members have given Defendant
16 reasonable opportunities to cure said defect, but Defendant has been unable and/or has
17 refused to do so within a reasonable time.

18
19 549. As a result of said nonconformities, Plaintiff Fisher and the Virginia
20 Class members cannot reasonably rely on the Class Vehicles for the ordinary purpose
21 of safe, reliable, comfortable, and efficient transportation.

22
23 550. Plaintiff Fisher and the Virginia Class members could not reasonably
24 have discovered said nonconformities with the Class Vehicles prior to their
25 acceptance of the Class Vehicles.

26
27 551. As a direct and proximate result of the willful failure of Defendant to
28 comply with its obligations under the express warranties, Plaintiff Fisher and the

1 Virginia Class members have suffered actual and consequential damages. Such
2 damages include, but are not limited to, the loss of the use and enjoyment of their
3 vehicles, and a diminution in the value of the vehicles containing the defects identified
4 herein.
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6
7 **PRAYER FOR RELIEF**

8 WHEREFORE, Plaintiffs, on behalf of themselves and all others similarly
9 situated, pray for judgment against Defendant as follows:
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- 11 a. An order certifying the proposed Classes, designating Plaintiffs as
12 named representative of the Classes, and designating the undersigned
13 as Class Counsel;
- 14 b. An order awarding Plaintiffs and class members their actual damages,
15 incidental and consequential damages, punitive damages, and/or other
16 form of monetary relief provided by law;
- 17 c. An order awarding Plaintiffs and the classes restitution, disgorgement,
18 or other equitable relief as the Court deems proper;
- 19 d. Equitable relief including, but not limited to, replacement or repair of
20 the defective Class Vehicles' windshields with an extension of the
21 express warranties and service contracts which are or were applicable
22 to the Class Vehicles;
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- e. A declaration requiring Defendant to comply with the various provisions of the state and federal consumer protection statutes herein alleged and to make all the required disclosures;
- f. Reasonable attorneys’ fees and costs;
- g. Pre-judgment and post-judgment interest, as provided by law;
- h. Plaintiffs demand that Defendant perform a recall, and repair all Class Vehicles; and
- i. Such other and further relief as this Court deems just and proper.

TRIAL BY JURY DEMANDED ON ALL COUNTS

DATED: August 18, 2023

TRINETTE G. KENT

By: /s/ Trinette G. Kent
Trinette G. Kent
Lemberg Law, LLC
Attorneys for Plaintiffs