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14 UNITED STATES DISTRICT COURT
15 CENTRAL DISTRICT OF CALIFORNIA

16
17
18 *In re ZF-TRW Airbag Control Units*
Products Liability Litigation

19 ALL CASES

MDL No. 2905

Case No. 2:19-ml-02905-JAK-FFM

**VOLUME ONE OF CONSOLIDATED
AMENDED CLASS ACTION
COMPLAINT (FACTUAL
ALLEGATIONS)**

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1 For their complaint against Defendants,¹ Plaintiffs,² individually and on
2 behalf of all others similarly situated, allege as follows:

3 **I. NATURE OF THE ACTION**

4 1. Motor vehicles are a fixture of modern life in the United States. Every
5 day, millions of Americans drive automobiles. They drive their children to school,
6 they drive themselves to work, they drive to purchase essentials like food and
7 medicine, and they sometimes drive just to enjoy a sunny day.

8 2. For most Americans, the purchase or lease of a motor vehicle is their
9 second largest financial investment, following only the purchase or lease of a home.

10 3. While cars are a common feature of our daily lives, they also are
11 potentially dangerous. Car crashes kill tens of thousands of people every year.
12 Many more suffer serious injuries.

13
14 ¹ Defendants are ZF Active Safety and Electronics US LLC; ZF Passive Safety
15 Systems US Inc.; ZF Automotive USA; ZF TRW Corp.; ZF Friedrichshafen AG;
16 STMicroelectronics, S.r.l.; STMicroelectronics SDN BHD; STMicroelectronics
17 Inc.; Hyundai Motor Co., Ltd.; Hyundai Motor America, Inc.; Hyundai Mobis Co.,
18 Ltd.; Kia Corporation; Kia Corp.; FCA US LLC; Toyota Motor North America
19 Inc., Toyota Motor Engineering & Manufacturing North America, Inc.; Toyota
20 Motor Sales, U.S.A., Inc.; Honda Motor Co., Ltd.; American Honda Motor Co.,
21 Inc.; Honda Development and Manufacturing of America, LLC; Mitsubishi Motors
22 Corporation; and Mitsubishi Motors North America, Inc.

23 ² Plaintiffs are Alejandra Renteria; Amanda Swanson; Angela Bowens; Bobbi Jo
24 Birk-LaBarge; Bonnie Dellatorre; Brent DeRouen; Brian Chaiken; Brian Collins;
25 Burton Reckles; Carl Paul Maurilus; Constanza Gonzalez; Dan Sutterfield; Danny
26 Hunt; Dee Roberts; Desiree Meyer; Diana King; Dylan DeMoranville; Eric Fishon;
27 Evan Green; Fredericka McPherson; Gary Samouris; Gaylynn Sanchez; Gersen
28 Damens; James Dean; James Kneup; John Colbert; John Sancomb; Joseph Fuller;
Joy Davis; Kenneth Ogorek; Kevin Burns; Kinyata Jones; Larae Angel; Lawrence
Graziano; Lore Van Houten; Mark Altier; Maximillian Accetta; Michael
Hernandez; Michael Hines; Michael Nearing; Moises Senti; Paul Huitzil;
Ravichandran Namakkal; Remigiusz Rundzio; Richard Kintzel; Samuel Choc;
Sigfredo Rubio; Steve Keister; Steve Laveaux; Tatiana Gales; Tiffany Ecklor; Tina
Fuller; Tonya McNeely.

1 4. Because of these dangers, every automobile in the United States must
2 include passive restraint systems with several important features. The two most
3 recognized safety features are seatbelts and airbags. When a car crashes, these life-
4 saving pieces of equipment should automatically restrain drivers and passengers
5 (the seatbelts) and buffer against impact with hard surfaces in the vehicle (the
6 airbags). Properly functioning airbags and seatbelts have been an absolute,
7 minimum safety requirement for new vehicles in the United States since 1997. *See*
8 49 U.S.C. § 30127. And 49 out of 50 states have laws that require drivers to wear
9 seatbelts.

10 5. While these passenger safety features are required, they also reflect a
11 basic and commonly understood fact: consumers care deeply about automotive
12 safety. All automakers and suppliers know this. As ZF Automotive US Inc. (“ZF
13 Automotive USA”)—one of the key safety system supplier defendants in this
14 case—admitted in a written presentation from 2008: “Safety is important to . . .
15 consumers[.] . . . J.D. Power lists safety as *the most desired aspect* of vehicle
16 features,” and “consumers regularly look for vehicle safety information before
17 making their purchase decision.” (emphasis added). The same presentation
18 confirms that all automakers know about, and regularly aim to capitalize on,
19 consumers’ desire for safe vehicles. As ZF Automotive USA explained: “safety
20 products and features help differentiate vehicles” in a competitive market, and
21 “advertising and marketing heavily focus[] on safety.” All participants in the
22 automotive industry (including suppliers) know that advertisements that stress
23 automobile safety are ubiquitous.

24 6. The ZF Defendants—ZF Friedrichshafen AG (“ZF Germany”), ZF
25 TRW Automotive Holdings Corp. (“ZF TRW Corp.”), ZF Automotive USA, ZF
26 Active Safety and Electronics US LLC (“ZF Electronics USA”), and ZF Passive
27 Safety Systems US Inc. (“ZF Passive Safety USA”)—make Airbag Control Units,
28 or “ACUs,” for motor vehicles. ACUs are effectively computers that control the

1 car’s safety systems. To do so, ACUs constantly receive and interpret signals from
2 crash sensors in the front of the vehicle. When the sensors detect a moderate or
3 severe crash, they notify the ACU, and the ACU directs the safety system to deploy
4 the airbags and tighten the seatbelts. When an ACU malfunctions, the airbags and
5 seatbelts (even if buckled) can fail to perform their core function to restrain and
6 protect drivers and passengers.

7 7. This case concerns one of the ZF Defendants’ most widely distributed
8 products: an ACU with a unique application-specific integrated circuit (“ASIC”)
9 called the DS84. Upon information and belief, Defendants STMicroelectronics, Inc.
10 (“ST USA”) and STMicroelectronics, S.r.l. (“ST Italy”) designed the DS84 chip
11 with input from ZF Electronics USA and ZF Passive Safety USA. Defendant
12 STMicroelectronics SDN BHD (“ST Malaysia”) then made millions of DS84
13 ASICs in Malaysia and shipped them to ST USA in Los Angeles, California. ST
14 USA then sold and shipped them to ZF Electronics USA in Illinois, where ZF
15 Electronics USA made the ACUs that contain the DS84 ASIC (“the DS84 ACUs”).
16 The particularities of these companies’ respective roles are explained in Sections
17 IV.C.

18 8. Plaintiffs estimate that at least 30 million vehicles across the globe
19 have these DS84 ACUs. At least 15 million (and possibly as many as 19 million) of
20 them were sold or leased in the United States. The proposed classes in this case
21 consist of consumers that purchased or leased vehicles with a DS84 ACU (i.e., the
22 Class Vehicles).

23 9. The Class Vehicles brandish some of this country’s most popular
24 vehicle brands, including several Toyota, Honda, Acura, Hyundai, Kia, Chrysler,
25 Jeep, Dodge, Fiat, and Mitsubishi models. The model years for these vehicles span
26 a decade of time—from 2009 to 2019.

27 10. Every vehicle with a DS84 ACU has a dangerous safety defect.
28 Specifically, the DS84 ASIC in these ACUs malfunctions due to electrical

1 overstress (“EOS”) when exposed to a relatively small burst of stray electricity
2 called a “transient” (the “ACU Defect”). As explained in Sections IV.A.3. and
3 IV.A.4., this ACU Defect poses serious risks to vehicle occupants.

4 a. First, the defect can cause airbags and seatbelts not to activate
5 during a crash. This happens because crashes sometimes release
6 electrical transients, which cause the DS84 ACU to fail. When
7 this happens, people can die or suffer serious injuries. At least
8 nine people have already died due to this defect. Many more
9 were injured.

10 b. Second, the defect can cause airbags to deploy when the vehicle
11 has not crashed. This is dangerous because it is shocking and
12 difficult for the driver to operate a vehicle when the airbag
13 deploys without warning.

14 c. Third, the defect can also cause failures of other important post-
15 crash operations of the safety system. These operations include
16 unlocking doors to facilitate escape or extraction of drivers and
17 passengers by emergency personnel, and shutting off a crashed
18 vehicle’s fuel or power supply. These operations also include
19 maintenance and communication of crash data, which can be
20 important to inspection by crash victims and law enforcement.

21 11. By 2015, several people had already been killed or injured as a result
22 of the ACU Defect, and the National Highway Traffic Safety Administration
23 (“NHTSA”) began to investigate the DS84 ACUs. In short order, ZF Germany, ZF
24 TRW Corp., ZF Automotive USA, ZF Electronics USA, and ZF Passive Safety
25 USA alerted the Vehicle Manufacturer Defendants and ST Defendants about this
26 investigation. As the regulator’s investigation began to heat up, many of these
27 Defendants began to meet regularly to coordinate among themselves about the
28 issue. They recognized the investigation posed a common threat because NHTSA

1 could uncover the defect, require expensive recalls, and halt the sale of Class
2 Vehicles with the defective ACUs and ASICs (and relatedly, the sale of the
3 defective ACUs and ASICs themselves).

4 12. In 2016, ZF Germany, ZF TRW Corp., ZF Automotive USA, ZF
5 Electronics USA, and ZF Passive Safety USA began to make misleading statements
6 to NHTSA to obscure and downplay the ACU Defect. To coordinate their efforts to
7 conceal the Defect, they shared copies of these misleading statements to NHTSA
8 with companies from each Vehicle Manufacturer Defendant group and the ST
9 Defendants. Soon, companies within several other Defendant groups—including
10 FCA US LLC (“FCA”), Kia America, Inc. (“Kia USA”), Hyundai Motor America,
11 Inc. (“Hyundai USA”), Toyota Motor North America, Inc. (“Toyota USA”), and
12 Toyota Motor Engineering & Manufacturing North America, Inc. (“Toyota
13 Engineering USA”)—joined the effort to mislead NHTSA about the nature and
14 scope of the ACU Defect.

15 13. In April 2019, after nearly four years of investigating the DS84 ACUs
16 and ASICs, NHTSA publicly announced that it was scrutinizing over twelve
17 million vehicles that include them to determine “whether an unreasonable risk
18 exists that requires further field action.” ZF Germany, ZF TRW Corp., ZF
19 Automotive USA, ZF Electronics USA, and ZF Passive Safety USA stopped
20 making the DS84 ACU that very same year. NHTSA’s investigation is still ongoing
21 now, seven years after it first began, and more than 3 years after its public
22 announcement.

23 14. Even the limited discovery produced to date in this case has already
24 revealed several new suspicious crashes with airbag failures apparently related to
25 the ACU Defect, including dozens of crashes in FCA, Honda, and Hyundai-Kia
26 vehicles. Several of these crashes apparently have not been disclosed to NHTSA.
27 Section IV.D discusses the history of suspicious crashes and crash tests with
28 hallmarks of the ACU Defect and the Defendants’ knowledge of the same.

1 15. Between September 2016 and the present, three Vehicle Manufacturers
2 recalled 5.4 million Class Vehicles in response to NHTSA’s investigation. But two
3 or three times as many Class Vehicles with the ACU Defect remain unrecalled and
4 on the roads today. Moreover, *none* of the recalls actually fix the ACU Defect,
5 because the purported “remedies” do not involve removal and replacement of the
6 defective DS84 ASIC, which is the root cause of the ACU Defect.

7 16. Each Defendant in this case has known about this ACU Defect for
8 several years from internal testing and numerous crashes with airbag and seatbelt
9 failures. Even so, they pushed and continued to push the defective Class Vehicles,
10 ACUs, and ASICs to market. To sell the Class Vehicles to U.S. consumers, several
11 companies within the Defendant Vehicle Manufacturer groups distributed
12 misleading, consumer-facing statements about the Class Vehicles, including:
13 Toyota USA; Toyota Motor Sales USA, Inc. (“Toyota Sales USA”); Kia Corp.
14 (“Kia Korea”); Kia USA; Hyundai Motor Co., Ltd. (“Hyundai Korea”); Hyundai
15 USA; Honda Japan; Honda Development and Manufacturing of America, LLC
16 (“Honda Engineering USA”); American Honda Motor Co., Inc. (“Honda USA”);
17 FCA; Mitsubishi Motors Corp. (“Mitsubishi Japan”); and Mitsubishi Motors North
18 America, Inc. (“Mitsubishi USA”).

19 17. For example, Toyota USA, Toyota Sales USA, Hyundai USA, Honda
20 USA, FCA, and Mitsubishi USA placed window stickers with misleading
21 assurances about airbags and seatbelts on every new Class Vehicle in the United
22 States. These same companies also controlled the nationwide advertising campaigns
23 that repeatedly touted the safety of the Class Vehicles. Sections IV.E.1.a. and
24 IV.E.2.a. describe the particularities of the Defendants’ misleading Monroney
25 stickers and advertising.

26 18. Similarly, Kia Korea, Hyundai Korea, Honda Japan, FCA, and
27 Mitsubishi Japan designed the Class Vehicles to include several misleading in-
28 vehicle representations that similarly assured consumers that the vehicles had

1 properly functioning airbags. For example, on the side of the driver’s door, each
2 Class Vehicle had a permanent label that certifies compliance with federal safety
3 standards. Similarly, the steering wheel will typically feature a permanent imprint
4 that identifies the airbag. These often read in big, capitalized letters “SRS” (Safety
5 Restraint System) and “AIRBAG.” For many Class Vehicles, these companies
6 created and applied the labels when they manufactured the vehicles. And for the
7 rest, these same companies bear responsibility based on their control of the
8 mandatory design specifications for all Class Vehicles, which required the
9 manufacturing plants in North America to place the same misleading labels in the
10 Class Vehicles. Sections IV.E.1.b. and IV.E.1.d. describe the details of these
11 misleading certification and airbag labels.

12 19. Mitsubishi Japan, Hyundai Korea, Kia Korea, Honda Japan, and FCA
13 also each worked with ZF Electronics USA, ZF Passive Safety USA, and ZF
14 Automotive USA to design and include airbag warning lamps (a.k.a. readiness
15 indicators) in the Class Vehicles. When consumers turned Class Vehicles on at the
16 point of sale or lease (including during test drives), these lamps illuminated during
17 ignition of the engine and turned off shortly afterwards. When airbag warning
18 lamps in Class Vehicles turned off after ignition like this, they misleadingly
19 communicated to Plaintiffs and other consumers that the airbags and seatbelts in
20 Class Vehicles were ready to deploy in a crash, when in fact they are not ready to
21 deploy in crashes with transients. Section IV.E.1.c. describes the details of these
22 misleading readiness indicators.

23 20. The Supplier Defendants—ZF Germany, ZF TRW Corp., ZF
24 Automotive USA, ZF Electronics USA, ZF Passive Safety USA, ST USA, ST
25 Malaysia, ST Italy, and Hyundai Mobis Co., Ltd. (“Hyundai Mobis”)—all knew the
26 Vehicle Manufacturer Defendants would make these misleading statements when
27 the Supplier Defendants designed, made, and shipped/or the defective ACUs and/or
28 ASICs. Instead of publicly disclosing the defect, informing NHTSA, or fixing the

1 problem, they coordinated with the Vehicle Manufacturer Defendants to conceal the
2 ACU Defect, because continued distribution of the DS84 ACU and ASIC and sale
3 of the Class Vehicles that contain them was profitable for all Defendants.

4 21. Although Defendants should recall and replace the defective DS84
5 ACUs in the Class Vehicles, Defendants' fraud has done harm to Plaintiffs that no
6 recall (or fine by NHTSA) can remedy. When they purchased or leased vehicles
7 with the defective DS84 ACUs, Plaintiffs reasonably believed—based on
8 Defendants' misleading statements—that the airbag and seatbelt systems in their
9 vehicles functioned properly and had no safety defects. Had Defendants disclosed
10 the ACU Defect at the point of sale or lease, Plaintiffs would have seen such
11 disclosures and would not have bought or leased the Class Vehicles, or they would
12 have paid a significantly lower price to purchase or lease them.

13 22. This lawsuit seeks redress on behalf of Plaintiffs, and all other
14 similarly-situated purchasers and lessees of Class Vehicles with defective DS84
15 ACUs, for the harm they suffered when they paid for vehicles with a safety system
16 they cannot rely on to protect them in the moment they need it most.

17 **II. THE PARTIES**

18 **A. Defendants**

19 23. Defendants are companies from nine different corporate groups:
20 (1) ZF, (2) STMicro, (3) Kia, (4) Hyundai, (5) Hyundai Mobis,³ (6) Fiat Chrysler,
21 (7) Toyota, (8) Honda, and (9) Mitsubishi.

22 24. Defendants are some of the largest companies in the global automotive
23 industry. Collectively, they reported more than \$880 billion in revenue in 2019
24 alone. The below chart shows Defendants' reported revenue for 2019.⁴

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26 ³ Although separate corporate groups, Kia, Hyundai, and Hyundai Mobis are
affiliates that own large blocks of each other's stock.

27 ⁴ Some groups report revenue in foreign currencies. Plaintiffs converted foreign
28 currencies to USD using recent exchange rates.

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Defendant Group	Revenue
ZF	\$39 billion
ST	\$9 billion
Kia	\$47 billion
Hyundai	\$86 billion
Hyundai Mobis	\$31 billion
Toyota	\$272 billion
Honda	\$143 billion
Fiat Chrysler	\$118 billion
Mitsubishi	\$137 billion

2. The Supplier Defendants

25. The Supplier Defendants are companies that make and sell the DS84 ACU and/or component parts for the Class Vehicles. The Supplier Defendants are: ZF Active Safety and Electronics US LLC; ZF Passive Safety Systems US Inc.; ZF Automotive US Inc.; ZF TRW Automotive Holdings Corp.; ZF Friedrichshafen AG, STMicroelectronics, Inc.; STMicroelectronics, S.r.l.; STMicroelectronics SDN BHD; and Hyundai Mobis Co., Ltd.

a. The ZF Defendants

26. The ZF Defendants are ZF Active Safety and Electronics US LLC; ZF Passive Safety Systems US Inc.; ZF Automotive US Inc.; ZF TRW Automotive Holdings Corp.; and ZF Friedrichshafen AG. Plaintiffs refer to these Defendants collectively as the “ZF Defendants.” Plaintiffs refer to ZF Active Safety and Electronics US LLC, ZF Passive Safety Systems US Inc., ZF Automotive US Inc., ZF TRW Automotive Holdings Corp. as the “Domestic ZF Defendants.”

27. ZF Active Safety and Electronics US LLC (referred to herein as “ZF Electronics USA”) is a Delaware LLC headquartered in Michigan. It formerly

1 operated under the name “TRW Automotive U.S. LLC.” ZF Electronics USA
2 designed, manufactured, and sold the DS84 ACUs used in the vast majority of
3 Class Vehicles.

4 28. ZF Passive Safety Systems US Inc. (referred to herein as “ZF Passive
5 Safety USA”) is a Delaware Corporation headquartered in Michigan. It previously
6 operated under the name “TRW Vehicle Safety Systems, Inc.” ZF Passive Safety
7 USA worked closely with ZF Electronics USA to design the DS84 ACUs. During
8 the relevant period, it issued paychecks to the vast majority of the ZF engineers and
9 technical specialists who were responsible for the core design of the DS84 ACU,
10 the adaptation of the DS84 ACU to the various makes and models of the Class
11 Vehicles, and the investigation of DS84 ACUs that malfunctioned due to EOS.

12 29. ZF Automotive US Inc. (referred to herein as “ZF Automotive USA”) is a Delaware Corporation headquartered in Michigan and the direct parent and
13 100% owner of ZF Passive Safety USA and ZF Active Safety and Electronics US
14 LLC. It formerly operated under the name “TRW Automotive Inc.” It shares
15 responsibility with ZF Electronics USA for the design and manufacture of the DS84
16 ACU. For example:

- 18 a. Specifications for the DS84 ACU and written communications
19 with several Vehicle Manufacturer Defendants about the DS84
20 ACUs have copyright marks attributing ownership of the
21 materials to ZF Automotive USA.
- 22 b. ZF Automotive USA admitted in a filing with NHTSA from
23 2018 that it is a manufacturer of the ACUs at issue in this
24 litigation. In an attachment to that filing, ZF Automotive USA
25 took responsibility for investigations of DS84 ACUs in
26 Hyundai-Kia vehicles. Moreover, according to documents
27 produced in discovery, ZF Automotive USA holds copyright
28 interests in design specifications for the DS84 ACUs.

1 30. ZF TRW Automotive Holdings Corp. (referred to herein as “ZF TRW
2 Corp.”) is a Delaware Corporation headquartered in Michigan and the direct parent
3 and 100% owner of ZF Automotive USA. ZF TRW Corp. is also the entity that
4 contracted with several of the Vehicle Manufacturer Defendants on behalf of itself
5 and all its subsidiaries.⁵ ZF Passive Safety USA, ZF Electronics USA, and ZF
6 Automotive USA designed, made, and sold the DS84 ACUs pursuant to these ZF
7 TRW Corp. contracts.

8 31. Although ZF Passive Safety USA, ZF Electronics USA, ZF
9 Automotive USA, and ZF TRW Corp. claim they are independent companies, even
10 the limited discovery that has occurred in this case to date suggests otherwise. In
11 their dealings with NHTSA and their judicial submissions, individuals who
12 received paychecks from ZF Passive Safety USA alone have also held themselves
13 out as representatives of ZF Electronics USA and ZF TRW Corp. For example, in
14 2016, Marc Bolitho received his paychecks from ZF Passive Safety USA, but
15 described himself to NHTSA as the Director of Passive Safety Engineering for ZF
16 TRW Corp. and Vice President of Passive Safety Engineering for ZF Electronics
17 USA. Similarly, Emanuel Goodman, a Technical Specialist who frequently
18 observed evidence of EOS in DS84 ACUs, received paychecks from ZF Passive
19 Safety USA between 2012 and 2019, but has identified himself as an employee of
20 ZF Electronics USA and ZF Automotive USA in testimony in judicial proceedings.
21 Moreover, based on contracts produced in this litigation, ZF TRW Corp. (and its
22 predecessor, TRW Inc.) regularly bound ZF Passive Safety USA, ZF Electronics
23 USA, and ZF Automotive USA to written contracts using signatures from ZF TRW
24 Corp. (or TRW Inc.) executives and without any separate signature from ZF

25 ⁵ Some of these contracts predated the existence of ZF TRW Corp. and were signed
26 by TRW Inc., its corporate predecessor. In 2004, ZF TRW Corp. assumed
27 substantially all of TRW Inc.’s contractual obligations and other liabilities relating
28 to TRW Inc.’s automotive business, when ZF TRW Corp. spun out from a privately
owned company.

1 Passive Safety USA, ZF Electronics USA, and ZF Automotive USA. Accordingly,
2 these companies share personnel and frequently operate jointly as one unit, and
3 their knowledge and actions are imputed to each other.

4 32. ZF Friedrichshafen AG is a German corporation headquartered in
5 Germany and the parent owner of the Domestic ZF Defendants.

6 33. The origins of the relevant business line of the ZF Defendants traces
7 back to an automotive supplier from the early 1900s named the Cleveland Cap
8 Screw Company.

9 34. During the relevant time period prior to May 15, 2015, ZF Electronics
10 USA, ZF Passive Safety USA, and ZF Automotive USA operated as subsidiaries of
11 the ultimate parent company ZF TRW Corp. (then called TRW Automotive
12 Holdings Corp.), which was a publicly traded company listed on the New York
13 Stock Exchange.

14 **b. The ST Defendants**

15 35. The ST Defendants include STMicroelectronics, Inc.,
16 STMicroelectronics, S.r.l., and STMicroelectronics SDN BHD.

17 36. ST is a multinational group of companies that manufacturers and sells
18 semiconductors and electronic chips. ST's automotive integrated circuit and
19 discrete and power transistor line of products is one of its three most important lines
20 of business.

21 37. STMicroelectronics, Inc. (referred to herein as "ST USA") is a
22 Delaware Corporation headquartered in Coppel, Texas. ST USA also has a
23 permanent office in Livonia, Michigan. The office is within a fifteen-minute drive
24 from an office shared by ZF Automotive USA, ZF Passive Safety USA, and ZF
25 Electronics USA. Personnel in this shared ZF office performed work relating to the
26 DS84 ACUs.
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1 38. When ZF Automotive USA filed a defect report with NHTSA in 2018
2 relating to the DS84 ACUs in some of the Hyundai-Kia Class Vehicles, ZF
3 Automotive USA identified ST USA’s Michigan office as the address for the
4 manufacturer of the DS84 ASIC contained in the ZF ACUs at issue in this
5 litigation.

6 39. STMicroelectronics, S.r.l. (referred to herein as “ST Italy”) is an
7 Italian company based in Italy. Upon information and belief, ST Italy and ST USA
8 jointly designed the DS84 chip with the input of ZF Electronics USA and ZF
9 Passive Safety USA.

10 40. STMicroelectronics SDN BHD (referred to herein as “ST Malaysia”) is
11 a manufacturer of semiconductor devices based in Muar, Johor, Malaysia. ST
12 Malaysia manufactured and shipped the DS84 ASIC for vehicles sold in the United
13 States.

14 **3. The Vehicle Manufacturer Defendants**

15 41. The Vehicle Manufacturer Defendants are companies that make and
16 sell completed vehicles and their affiliates. The Vehicle Manufacturer Defendants
17 are Hyundai Motor Co., Ltd.; Hyundai Motor America, Inc.; Kia Corp.; Kia
18 America, Inc.; FCA US LLC; Toyota Motor North America Inc., Toyota Motor
19 Engineering & Manufacturing North America, Inc.; Toyota Motor Sales, U.S.A.,
20 Inc.; Honda Motor Co., Ltd.; American Honda Motor Co., Inc.; Honda
21 Development and Manufacturing of America, LLC; Mitsubishi Motors
22 Corporation; and Mitsubishi Motors North America, Inc.

23 42. Defendant Hyundai Mobis Co., Ltd. (referred to herein as “Hyundai
24 Mobis”) is an affiliate of Hyundai Motor Co., Ltd.; Hyundai Motor America, Inc.;
25 Kia Corp.; and Kia America, Inc. Hyundai Mobis makes auto parts for Hyundai and
26 Kia vehicles. Although Hyundai Mobis is a Supplier Defendant and not a Vehicle
27 Manufacturer Defendant, Plaintiffs discuss this defendant in this section given its
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1 close relationship with Hyundai Motor Co., Ltd.; Hyundai Motor America, Inc.;
2 Kia Corp.; and Kia America, Inc.

3 **a. The Hyundai-Kia Defendants**

4 43. The Hyundai Defendants are Hyundai Motor Co., Ltd. and Hyundai
5 Motor America, Inc. The Kia Defendants are Kia Corp. and Kia America, Inc. The
6 Hyundai-Kia Defendants are Hyundai, Kia, and Hyundai Mobis.

7 44. Hyundai Motor Co., Ltd. (referred to herein as “Hyundai Korea”) is a
8 foreign corporation headquartered in Seoul, South Korea. Hyundai Korea is one of
9 the largest automobile manufacturers in the world. It designs, develops,
10 manufactures, markets, and sells automobiles around the world, including in the
11 United States.

12 45. Hyundai Motor America, Inc. (referred to herein as “Hyundai USA”) is
13 a California corporation doing business throughout the United States and
14 headquartered in Fountain Valley, California. Hyundai Korea is the parent company
15 of Hyundai USA. Hyundai USA makes and/or sells automobiles in the United
16 States.

17 46. Kia Corp. (referred to herein as “Kia Korea”) is a foreign corporation
18 headquartered in Seoul, South Korea. Kia Korea’s largest shareholder is Hyundai
19 Korea, which owns roughly 34% of Kia Korea. Kia Korea also has a large stake in
20 several Hyundai Korea companies. Kia Korea is one of the largest automobile
21 manufacturers in the world. It designs, develops, manufactures, markets, and sells
22 automobiles around the world, including in the United States.

23 47. Kia America, Inc. (referred to herein as “Kia USA”) is a subsidiary of
24 Kia Korea and was incorporated in the state of California on October 21, 1992 as
25 the American sales, marketing, and distribution arm of Kia Korea, with its principal
26 place of business in Irvine, California. Kia USA makes and/or sells automobiles in
27 the United States.
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1 48. Hyundai Mobis is a foreign corporation headquartered in Seoul, South
2 Korea. Kia Korea and several Hyundai affiliates own more than 20% of Hyundai
3 Mobis’s stock. Hyundai Mobis’s largest shareholder is Kia Korea, which owns
4 approximately 16.88% of the shares. Hyundai Mobis owns approximately 21% of
5 Hyundai Korea. Hyundai Mobis manufactures, supplies, and distributes automotive
6 parts to the Hyundai-Kia Defendants, including some of the defective DS84
7 ACUs.⁶

8 **b. FCA**

9 49. FCA US LLC (referred to herein as “FCA”) is a Delaware limited
10 liability company with its principal place of business and headquarters located at
11 1000 Chrysler Drive, Auburn Hills, Michigan. FCA is in the business of designing,
12 developing, manufacturing, marketing, and selling automobiles in the United
13 States.

14 **c. The Toyota Defendants**

15 50. The Toyota Defendants (together, “Toyota”) are Toyota Motor North
16 America Inc.; Toyota Motor Engineering & Manufacturing North America, Inc.;
17 and Toyota Motor Sales, U.S.A., Inc.

18 51. Toyota Motor North America, Inc. (referred to herein as “Toyota
19 USA”) is a California corporation and wholly owned U.S. subsidiary of the
20 Japanese company Toyota Motor Corporation. Toyota Motor Corporation is a non-
21 party to this lawsuit and is referred to herein as “Toyota Japan”. Toyota USA’s
22 principal place of business located at 6565 Headquarters Drive, Plano, Texas. It has
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24 ⁶ Hyundai Mobis manufactured the DS84 ACUs, using ZF Automotive USA, ZF
25 Electronics USA, and ZF Passive Safety USA’s designs, for some of the Hyundai
26 and Kia Class Vehicles. The ZF-designed ACUs manufactured by Hyundai Mobis
27 contain the same defective DS84 ASIC as all of the Class Vehicles. Upon
28 information and belief, ST Malaysia made the DS84 ASICs used by Hyundai
Mobis in the DS84 ACUs it made.

1 additional offices in Torrance, California; Georgetown, Kentucky; Washington,
2 DC; Ann Arbor, Michigan; New York City, New York; and San Ramon, California.
3 Toyota USA is the holding company for Toyota Japan's North American operations
4 and engages in business activities in furtherance of the interests of Toyota Japan,
5 including Toyota Japan's sales in all 50 states and the District of Columbia.

6 52. Toyota Motor Engineering & Manufacturing North America, Inc.
7 (referred to herein as "Toyota Engineering USA") is a Kentucky corporation doing
8 business throughout the United States. It is a wholly owned subsidiary of Toyota
9 Japan, with its principal place of business at 25 Atlantic Avenue, Erlanger,
10 Kentucky 41018. It also has major operations in Arizona, California, and Michigan.
11 Toyota Engineering USA provides centralized support to Toyota's North American
12 manufacturing plants in several key areas such as purchasing, production control,
13 production engineering, quality control, environmental, and administration. It
14 served as the purchasing agent for many (perhaps all) of the DS84 ACUs installed
15 in the Toyota Class Vehicles.

16 53. Toyota Engineering USA shares responsibility for Toyota's
17 engineering, design, research and development, and manufacturing activities with
18 Toyota's fourteen plants in the United States, Canada, and Mexico. Some of those
19 manufacturing plants across the United States and North America include Toyota
20 Motor Manufacturing Alabama, Toyota Motor Manufacturing Indiana, Toyota
21 Motor Manufacturing Kentucky, Toyota Motor Manufacturing Texas, Toyota
22 Motor Manufacturing West Virginia, Toyota Motor Manufacturing de Baja
23 California, and Toyota Auto Body Company, Inc. in Long Beach, California.

24 54. Toyota Motor Sales, U.S.A., Inc. (referred to herein as "Toyota Sales
25 USA") is a California corporation and wholly owned American subsidiary of
26 Toyota Motor Corporation that engages in business activities in furtherance of the
27 interests of its parent, including marketing, sales, and distribution of Toyota
28 automobiles in all 50 states and the District of Columbia. From the time it was

1 founded in 1957 through 2017, Toyota Sales USA’s former principal place of
2 business was located in Torrance, California. In 2017, Toyota Sales USA moved to
3 a new campus facility in Plano, Texas. Toyota Sales USA currently has
4 approximately 8,900 employees and sells its vehicles through a network of 1,800
5 authorized dealerships throughout the United States.

6 **d. The Honda Defendants**

7 55. The Honda Defendants (together, “Honda”) are Honda Motor Co.,
8 Ltd.; American Honda Motor Co., Inc.; and Honda Development and
9 Manufacturing of America, LLC.

10 56. Honda Motor Co., Ltd. (referred to herein as “Honda Japan”) is a
11 Japanese corporation with its principal place of business in Tokyo, Japan. It is one
12 of the largest automobile manufacturers in the world, and it is in the business of
13 designing, developing, manufacturing, marketing, and selling automobiles around
14 the world, including in the United States.

15 57. American Honda Motor Co., Inc. (referred to herein as “Honda USA”)
16 is a California corporation doing business throughout the United States. Its
17 headquarters are located in Torrance, California. Honda USA is a wholly owned
18 U.S. subsidiary of Honda Japan, and it engages in business activities in furtherance
19 of the interests of Honda Japan, including the advertising, marketing, lease, and sale
20 of Honda automobiles in all 50 states and the District of Columbia. It has
21 approximately 31,000 employees in the United States and sells its vehicles through
22 its authorized dealership network.

23 58. Honda Development and Manufacturing of America, LLC (referred to
24 herein as “Honda Engineering USA”) is an Ohio corporation with its principal
25 place of business in Marysville, Ohio. It is a wholly owned subsidiary of Honda
26 Japan and is the successor of several of Honda Japan’s prior engineering and
27 manufacturing domestic subsidiaries, including American Honda Mfg., Inc. and
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1 Honda R&D Americas, LLC. Honda Engineering USA performs various
2 engineering functions for Honda Japan, including the design, development,
3 prototyping, testing, and manufacturing of Honda vehicles in the United States.

4 **e. The Mitsubishi Defendants**

5 59. The Mitsubishi Defendants (together, “Mitsubishi”) are Mitsubishi
6 Motors North America, Inc. and Mitsubishi Motors Corporation.

7 60. Mitsubishi Motors Corporation (referred to herein as “Mitsubishi
8 Japan”) is a Japanese corporation with its principal place of business located at 1-
9 21, Shibaura 3chome, Minato-ku, Tokyo, Japan. Mitsubishi Japan, along with its
10 subsidiaries, develops, manufactures, and sells automobiles, parts, and powertrains
11 worldwide, including in the United States.

12 61. Defendant Mitsubishi Motors North America, Inc. (referred to herein
13 as “Mitsubishi USA”) is incorporated in California and has its administrative
14 headquarters located at 3401 Mallory Lane, Franklin, Tennessee 37067. In a June
15 2019 press release, Mitsubishi USA touted its roots going back to 1988 in Cypress
16 and Fountain Valley, California before it moved its headquarters to Tennessee in
17 2019.

18 62. Mitsubishi USA is a wholly owned subsidiary of Mitsubishi Japan, and
19 it engages in business activities in furtherance of the interests of Mitsubishi Japan.
20 Mitsubishi USA is responsible for the research and development, marketing, sale,
21 and customer service of Mitsubishi-branded vehicles in the United States.

22 63. Until 2015, Mitsubishi USA had a manufacturing plant located in
23 Normal, Illinois. At the direction of Mitsubishi Japan, that plant has since closed.

24 **B. Plaintiffs**

25 64. For ease of reference, the following chart identifies the representative
26 Plaintiffs and the state(s) in which they reside and purchased or leased their Class
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	Class Representative	State of Purchase/ Lease	State of Residence	Model Year	Make & Model
1	Sigfredo Rubio	AL	AL	2015	Acura TLX
2	James Kneup	AZ	AZ	2013	Jeep Wrangler
3	Remigiusz Rundzio	CA	CA	2012	Jeep Wrangler
4	Steve Laveaux	CA	CA	2014	Jeep Wrangler
5	Kevin Burns	CA	CA	2013	Honda Civic Hybrid
6	Michael Hernandez	CA	CA	2019	Hyundai Sonata
7	Bonnie Dellatorre	CA	CA	2013	Kia Optima Hybrid
8	Lore Van Houten	CA	CA	2018	Kia Optima
9	Tiffany Ecklor	CA	CA	2013	Mitsubishi Outlander
10	Gaylynn Darling (Sanchez)	CA	CA	2015	Mitsubishi Lancer
11	Mark Altier	CA	CA	2014	Toyota Tacoma
12	Alejandra Renteria	CA	CA	2013	Toyota Corolla Matrix
13	Michael Nearing	CO	CO	2014	Mitsubishi Lancer
14	Paul Huitzil	CT	CT	2013	Honda Accord
15	Moises Senti	FL	FL	2016	Jeep Wrangler
16	Maximillian Accetta	FL	FL	2015	Jeep Compass
17	Fredericka McPherson	FL	FL	2013	Honda Accord
18	Brian Chaiken	FL	FL	2013	Honda CR-V
19	Carl Paul Maurilus	FL	FL	2017	Hyundai Sonata Hybrid
20	John Colbert	FL	FL	2016	Kia Optima
21	Lawrence Graziano	FL	FL	2018	Kia Optima
22	Samuel Choc	FL	FL	2013	Toyota Tacoma
23	Tatiana Gales	FL	FL	2015	Toyota Corolla
24	Amanda Swanson	IL	IL	2017	Kia Optima

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	Class Representative	State of Purchase/ Lease	State of Residence	Model Year	Make & Model
25	Brian Collins	IL	IL	2018	Kia Optima
26	Kenneth Ogorek	IN	IN	2014	Kia Sedona
27	Joseph Fuller	MD	MD	2014	Hyundai Sonata
28	Tina Fuller	MD	MD	2014	Hyundai Sonata
29	Diana King	MD	MD	2014	Kia Sedona
30	Dylan DeMoranville	MA	MA	2013	Kia Optima
31	Kinyata Jones	MI	MI	2013	Kia Optima
32	Steve Keister	MN	WI	2010	Dodge Nitro
33	Bobbi Jo Birk-LaBarge	MN	WI	2015	Kia Optima
34	Dan Sutterfield	MO	MO	2013	Kia Forte
35	Gary Samouris	NV	NV	2018	Toyota Tacoma
36	Gerson Damens	NJ	NJ	2015	Kia Optima
37	Eric Fishon	NY	NY	2014	Jeep Wrangler
38	Ravichandran Namakkal	NY	NY	2014	Honda Civic
39	Constanza Gonzalez	NC	NC	2012	Jeep Wrangler
40	Tonya McNeely	NC	NC	2012	Honda Civic
41	James Dean	OK	OK	2015	Fiat 500
42	Larae Angel	PA	PA	2013	Hyundai Sonata Hybrid
43	Richard Kintzel	PA	PA	2016	Kia Optima
44	Michael Hines	SC	FL	2012	Toyota Tundra
45	Desiree Meyer	SD	WY	2012	Jeep Liberty
46	Angela Bowens	TX	TX	2015	Honda Civic
47	Burton Reckles	TX	TX	2013	Hyundai Sonata
48	Brent DeRouen	TX	TX	2016	Toyota Tundra

	Class Representative	State of Purchase/ Lease	State of Residence	Model Year	Make & Model
49	Danny Hunt	TX	TX	2014	Toyota Tacoma
50	Evan Green	TX	TX	2015	Toyota Tacoma
51	Joy Davis	TX	OR	2014	Toyota Corolla
52	Dee Roberts	WA	WA	2013	Toyota Avalon
53	John Sancomb	WI	WI	2013	Mitsubishi Lancer Sportback

1. Hyundai-Kia Plaintiffs

a. Michael Hernandez

65. Plaintiff Michael Hernandez (“Plaintiff”) is an individual residing in Aliso Viejo, California. In or around March 2019, Plaintiff leased a new 2019 Hyundai Sonata (the “Class Vehicle”) from Tuttle-Click Hyundai, an authorized Hyundai dealership located in Irvine, California. At the time Plaintiff acquired the Class Vehicle, Plaintiff had a reasonable expectation that the Class Vehicle had properly-functioning airbags and seatbelts, and Plaintiff had no way of knowing that the Class Vehicle contained a defective ACU and ASIC that could cause the airbags and seatbelts to fail during a crash.

66. In the weeks leading up to his lease of the Class Vehicle, Plaintiff reviewed and relied on numerous statements and representations about it.

a. On the day he leased the Class Vehicle, Plaintiff spoke with and relied on statements about the Class Vehicle made by a salesperson at Tuttle-Click Hyundai. Plaintiff had conversations with the salesperson about the Class Vehicle’s features, including its safety features.

b. On the day he visited Tuttle-Click Hyundai to lease the Class Vehicle, Plaintiff saw a Hyundai brochure, which touted the

1 Class Vehicle's features, including its various safety features.
2 These representations and statements indicated that the Class
3 Vehicle was safe and had properly-functioning airbags and
4 seatbelts. Based upon the investigation of Plaintiffs' counsel,
5 Hyundai USA was responsible for the content of Hyundai
6 brochures distributed in the United States.

7 c. Plaintiff conducted online research, including reviewing
8 Consumer Reports to understand the safety features offered for
9 the Class Vehicle, and its safety ratings. Because Defendants
10 failed to disclose the ACU Defect, Plaintiff's research did not
11 show that the Class Vehicle contained the Defect, and instead
12 indicated that the Class Vehicle was safe and had properly-
13 functioning airbags and seatbelts.

14 d. Plaintiff reviewed the Monroney sticker and in-vehicle airbag
15 label safety language immediately prior to his lease. The sticker
16 and label indicated the Class Vehicle was safe and had properly-
17 functioning airbags and seatbelts. Based upon the investigation
18 of Plaintiffs' counsel, Hyundai USA was responsible for the
19 content of the Monroney sticker, and Hyundai Korea was
20 responsible for the in-vehicle airbag label safety language.

21 e. Plaintiff test drove the Class Vehicle before leasing it. At no
22 time prior to or at the time of his lease did the airbag warning
23 light on the Class Vehicle's dashboard illuminate or flash to
24 indicate any issue with the Class Vehicle's airbag system. By
25 not illuminating or flashing, the airbag warning light conveyed
26 there were no problems with the system and that the airbag
27 system would function properly during a crash. Based upon the
28 investigation of Plaintiffs' counsel, Hyundai Korea, ZF

1 Electronics USA, ZF Passive Safety USA, and ZF Automotive
2 USA had joint responsibility for the failure of the airbag
3 warning light to warn about the ACU Defect.

4 67. Hyundai USA, Hyundai Korea, Hyundai Mobis, ZF Electronics USA,
5 ZF Passive Safety USA, ZF Automotive USA, ZF TRW Corp., ZF Germany, ST
6 USA, ST Malaysia, and ST Italy concealed the existence of the ACU Defect from
7 consumers like Plaintiff and NHTSA. Had they instead disclosed it before Plaintiff
8 acquired the Class Vehicle, Plaintiff would have learned of the concealed
9 information through, for example, the advertising channels described above or
10 through discussions with the salesperson. Plaintiff has suffered a concrete injury in
11 the form of an overpayment for the Class Vehicle as a result of Hyundai USA,
12 Hyundai Korea, Hyundai Mobis, ZF Electronics USA, ZF Passive Safety USA, ZF
13 Automotive USA, ZF TRW Corp., ZF Germany, ST USA, ST Malaysia, and ST
14 Italy's misconduct, and did not receive the full benefit of the bargain in acquiring
15 the Class Vehicle. Plaintiff would not have leased the Class Vehicle, or would have
16 paid less for it, if Hyundai USA, Hyundai Korea, Hyundai Mobis, ZF Electronics
17 USA, ZF Passive Safety USA, ZF Automotive USA, ZF TRW Corp., ZF Germany,
18 ST USA, ST Malaysia, and ST Italy did not conceal material information regarding
19 the Class Vehicle's safety and reliability, or the fact that it was equipped with a
20 defective ACU and ASIC.

21 **b. Bonnie Dellatorre**

22 68. Plaintiff Bonnie Dellatorre ("Plaintiff") is an individual residing in
23 Lake Forest, California. On or around October 14, 2013, Plaintiff purchased a new
24 2013 Kia Optima Hybrid (the "Class Vehicle") from Kia of Irvine, an authorized
25 Kia dealership located in Irvine, California. At the time Plaintiff acquired the Class
26 Vehicle, Plaintiff had a reasonable expectation that the Class Vehicle had properly-
27 functioning airbags and seatbelts, and Plaintiff had no way of knowing that the
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1 Class Vehicle contained a defective ACU and ASIC that could cause the airbags
2 and seatbelts to fail during a crash.

3 69. In the weeks leading up to her purchase of the Class Vehicle, Plaintiff
4 reviewed and relied on numerous statements and representations about it.

5 a. On the day she visited Kia of Irvine to purchase the Class
6 Vehicle, Plaintiff spoke with and relied on statements about the
7 Class Vehicle made by a salesperson at Kia of Irvine. Plaintiff
8 discussed with the salesperson the Class Vehicle's safety
9 features and its warranty.

10 b. Plaintiff reviewed the Monroney sticker and in-vehicle airbag
11 label safety language immediately prior to her purchase. The
12 sticker and label indicated the Class Vehicle was safe and had
13 properly-functioning airbags and seatbelts. Based upon the
14 investigation of Plaintiffs' counsel, Kia USA was responsible
15 for the content of the Monroney sticker, and Kia Korea was
16 responsible for the in-vehicle airbag label safety language.

17 c. Plaintiff test drove the Class Vehicle before purchasing it. At no
18 time prior to or at the time of her purchase did the airbag
19 warning light on the Class Vehicle's dashboard illuminate or
20 flash to indicate any issue with the Class Vehicle's airbag
21 system. By not illuminating or flashing, the airbag warning light
22 conveyed there were no problems with the system and that the
23 airbag system would function properly during a crash. Based
24 upon the investigation of Plaintiffs' counsel, Kia Korea, ZF
25 Electronics USA, ZF Passive Safety USA, and ZF Automotive
26 USA had joint responsibility for the failure of the airbag
27 warning light to warn about the ACU Defect.

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1 70. Kia Korea, Kia USA, Hyundai Mobis, ZF Electronics USA, ZF
2 Passive Safety USA, ZF Automotive USA, ZF TRW Corp., ST USA, ST Malaysia,
3 and ST Italy concealed the existence of the ACU Defect from consumers like
4 Plaintiff and NHTSA. Had they instead disclosed it before Plaintiff acquired the
5 Class Vehicle, Plaintiff would have learned of the concealed information through,
6 for example, the advertising channels described above or through discussions with
7 the salesperson. Plaintiff has suffered a concrete injury in the form of an
8 overpayment for the Class Vehicle as a result of Kia Korea, Kia USA, Hyundai
9 Mobis, ZF Electronics USA, ZF Passive Safety USA, ZF Automotive USA, ZF
10 TRW Corp., ST USA, ST Malaysia, and ST Italy’s misconduct, and did not receive
11 the full benefit of the bargain in acquiring the Class Vehicle. Plaintiff would not
12 have purchased the Class Vehicle, or would have paid less for it, if Kia Korea, Kia
13 USA, Hyundai Mobis, ZF Electronics USA, ZF Passive Safety USA, ZF
14 Automotive USA, ZF TRW Corp., ST USA, ST Malaysia, and ST Italy did not
15 conceal material information regarding the Class Vehicle’s safety and reliability, or
16 the fact that it was equipped with a defective ACU and ASIC.

17 **c. Lore Van Houten**

18 71. Plaintiff Lore Van Houten (“Plaintiff”) is an individual residing in
19 Murrieta, California. On or around September 9, 2018, Plaintiff leased a new 2018
20 Kia Optima (the “Class Vehicle”) from North County Kia, an authorized Kia
21 dealership located in Escondido, California. At the time Plaintiff acquired the Class
22 Vehicle, Plaintiff had a reasonable expectation that the Class Vehicle had properly-
23 functioning airbags and seatbelts, and Plaintiff had no way of knowing that the
24 Class Vehicle contained a defective ACU and ASIC that could cause the airbags
25 and seatbelts to fail during a crash.

26 72. In the weeks leading up to her lease of the Class Vehicle, Plaintiff
27 reviewed and relied on numerous statements and representations about it.
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- 1 a. Plaintiff saw representations and statements on Kia’s website
2 indicating that the Class Vehicle was safe and had properly-
3 functioning airbags and seatbelts. The Class Vehicle’s safety
4 features were important to her lease decision. Plaintiff is not
5 personally aware of which particular Kia entity is responsible
6 for these representations and statements because Plaintiff
7 interfaces with Kia as a brand. Based upon the investigation of
8 Plaintiffs’ counsel, Kia USA was responsible for the content of
9 the website.
- 10 b. At North County Kia on the day she leased the Class Vehicle,
11 Plaintiff saw a Kia brochure, which included among other
12 things, representations and statements indicating that the Class
13 Vehicle was safe and had properly-functioning airbags and
14 seatbelts. Based upon the investigation of Plaintiffs’ counsel,
15 Kia USA was responsible for the content of Kia brochures
16 distributed in the United States. The brochure was given to
17 Plaintiff by a salesperson at North County Kia.
- 18 c. Plaintiff saw Kia television commercials that touted the safety of
19 Kia-branded vehicles, among other things. Plaintiff is not
20 personally aware of which particular Kia entity is responsible
21 for the Kia commercials she saw. Based upon the investigation
22 of Plaintiffs’ counsel, Kia USA was responsible for the content
23 of the television advertising.
- 24 d. On the day she leased the Class Vehicle, Plaintiff spoke with
25 and relied on statements about the Class Vehicle made by a
26 salesperson at North County Kia. The salesperson told Plaintiff
27 prior to her deciding to lease the Class Vehicle that the Class
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1 Vehicle was safe, reliable, had good fuel economy, and that Kia
2 offered a good warranty for it.

3 e. Plaintiff recalls reviewing the Monroney sticker and in-vehicle
4 airbag label safety language immediately prior to her lease. The
5 sticker and label indicated the Class Vehicle was safe and had
6 properly-functioning airbags and seatbelts. Based upon the
7 investigation of Plaintiffs' counsel, Kia USA was responsible
8 for the content of the Monroney sticker, and Kia Korea was
9 responsible for the in-vehicle airbag label safety language.

10 f. Plaintiff test drove the Class Vehicle before leasing it. At no
11 time prior to or at the time of her lease did the airbag warning
12 light on the Class Vehicle's dashboard illuminate or flash to
13 indicate any issue with the Class Vehicle's airbag system. By
14 not illuminating or flashing, the airbag warning light conveyed
15 there were no problems with the system and that the airbag
16 system would function properly during a crash. Based upon the
17 investigation of Plaintiffs' counsel, Kia Korea, ZF Electronics
18 USA, ZF Passive Safety USA, and ZF Automotive USA had
19 joint responsibility for the failure of the airbag warning light to
20 warn about the ACU Defect.

21 73. Kia Korea, Kia USA, Hyundai Mobis, ZF Electronics USA, ZF
22 Passive Safety USA, ZF Automotive USA, ZF TRW Corp., ZF Germany, ST USA,
23 ST Malaysia, and ST Italy concealed the existence of the ACU Defect from
24 consumers like Plaintiff and NHTSA. Had they instead disclosed it before Plaintiff
25 acquired the Class Vehicle, Plaintiff would have learned of the concealed
26 information through, for example, the advertising channels described above or
27 through discussions with the salesperson. Plaintiff has suffered a concrete injury in
28 the form of an overpayment for the Class Vehicle as a result of Kia Korea, Kia

1 USA, Hyundai Mobis, ZF Electronics USA, ZF Passive Safety USA, ZF
2 Automotive USA, ZF TRW Corp., ZF Germany, ST USA, ST Malaysia, and ST
3 Italy's misconduct, and did not receive the full benefit of the bargain in acquiring
4 the Class Vehicle. Plaintiff would not have leased the Class Vehicle, or would have
5 paid less for it, if Kia Korea, Kia USA, Hyundai Mobis, ZF Electronics USA, ZF
6 Passive Safety USA, ZF Automotive USA, ZF TRW Corp., ZF Germany, ST USA,
7 ST Malaysia, and ST Italy did not conceal material information regarding the Class
8 Vehicle's safety and reliability, or the fact that it was equipped with a defective
9 ACU and ASIC.

10 **d. Carl Paul Maurilus**

11 74. Plaintiff Carl Paul Maurilus ("Plaintiff") is an individual residing in
12 Orlando, Florida. On or around March 19, 2017, Plaintiff purchased a new 2017
13 Hyundai Sonata Hybrid (the "Class Vehicle") from Rick Case Hyundai, an
14 authorized Hyundai dealership located in Davie, Florida. At the time Plaintiff
15 acquired the Class Vehicle, Plaintiff had a reasonable expectation that the Class
16 Vehicle had properly-functioning airbags and seatbelts, and Plaintiff had no way of
17 knowing that the Class Vehicle contained a defective ACU and ASIC that could
18 cause the airbags and seatbelts to fail during a crash.

19 75. In the weeks leading up to his purchase of the Class Vehicle, Plaintiff
20 reviewed and relied on numerous statements and representations about it.

- 21 a. Plaintiff conducted online research. Plaintiff looked up the Class
22 Vehicle online at Kelly Blue Book, and compared Hyundai to
23 other brands in terms of options, performance, and safety.
24 Because Defendants failed to disclose the ACU Defect,
25 Plaintiff's research did not show that the Class Vehicle
26 contained the ACU Defect, and instead indicated that the Class
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Vehicle was safe and had properly-functioning airbags and seatbelts.

b. Plaintiff saw representations and statements on Hyundai’s website indicating that the Class Vehicle was safe and had properly-functioning airbags and seatbelts. The Class Vehicle’s safety features were important to his purchase decision. Plaintiff familiarized himself with the safety features that came equipped on the Class Vehicle, and saw advertisements on Hyundai’s website about safety awards that Hyundai vehicles have won. Plaintiff is not personally aware of which particular Hyundai entity is responsible for these representations and statements because Plaintiff interfaces with Hyundai as a brand. Based upon the investigation of Plaintiffs’ counsel, Hyundai USA was responsible for the content of the website.

c. On the day he purchased the Class Vehicle, Plaintiff spoke with and relied on statements about the Class Vehicle made by a salesperson at Rick Case Hyundai. Plaintiff had conversations with the salesperson about the safety features the Class Vehicle came with, and how safe the Class Vehicle was generally.

d. On the day he visited Rick Case Hyundai to purchase the Class Vehicle, Plaintiff saw a Hyundai brochure, which touted the Class Vehicle’s features, including its various safety features. These representations and statements indicated that the Class Vehicle was safe and had properly-functioning airbags and seatbelts. Based upon the investigation of Plaintiffs’ counsel, Hyundai USA was responsible for the content of Hyundai brochures distributed in the United States. The brochure was given to Plaintiff by a salesperson at Rick Case Hyundai.

1 e. Plaintiff recalls reviewing the Monroney sticker and in-vehicle
2 airbag label safety language immediately prior to his purchase.
3 The sticker and label indicated the Class Vehicle was safe and
4 had properly-functioning airbags and seatbelts. Based upon the
5 investigation of Plaintiffs' counsel, Hyundai USA was
6 responsible for the content of the Monroney sticker, and
7 Hyundai Korea was responsible for the in-vehicle airbag label
8 safety language.

9 f. Plaintiff test drove the Class Vehicle before purchasing it. At no
10 time prior to or at the time of his purchase did the airbag
11 warning light on the Class Vehicle's dashboard illuminate or
12 flash to indicate any issue with the Class Vehicle's airbag
13 system. By not illuminating or flashing, the airbag warning light
14 conveyed there were no problems with the system and that the
15 airbag system would function properly during a crash. Based
16 upon the investigation of Plaintiffs' counsel, Hyundai Korea, ZF
17 Electronics USA, ZF Passive Safety USA, and ZF Automotive
18 USA had joint responsibility for the failure of the airbag
19 warning light to warn about the ACU Defect.

20 76. Hyundai Korea, Hyundai USA, Hyundai Mobis, ZF Electronics USA,
21 ZF Passive Safety USA, ZF Automotive USA, ZF TRW Corp., ZF Germany, ST
22 USA, ST Malaysia, and ST Italy concealed the existence of the ACU Defect from
23 consumers like Plaintiff and NHTSA. Had they instead disclosed it before Plaintiff
24 acquired the Class Vehicle, Plaintiff would have learned of the concealed
25 information through, for example, the advertising channels described above or
26 through discussions with the salesperson. Plaintiff has suffered a concrete injury in
27 the form of an overpayment for the Class Vehicle as a result of Hyundai Korea,
28 Hyundai USA, Hyundai Mobis, ZF Electronics USA, ZF Passive Safety USA, ZF

1 Automotive USA, ZF TRW Corp., ZF Germany, ST USA, ST Malaysia, and ST
2 Italy's misconduct, and did not receive the full benefit of the bargain in acquiring
3 the Class Vehicle. Plaintiff would not have purchased the Class Vehicle, or would
4 have paid less for it, if Hyundai Korea, Hyundai USA, Hyundai Mobis, ZF
5 Electronics USA, ZF Passive Safety USA, ZF Automotive USA, ZF TRW Corp.,
6 ZF Germany, ST USA, ST Malaysia, and ST Italy did not conceal material
7 information regarding the Class Vehicle's safety and reliability, or the fact that it
8 was equipped with a defective ACU and ASIC.

9 **e. John Colbert**

10 77. Plaintiff John Colbert ("Plaintiff") is an individual residing in
11 Crestview, Florida. On or around May 16, 2016, Plaintiff purchased a new 2016
12 Kia Optima (the "Class Vehicle") from Kia Fort Walton Beach, an authorized Kia
13 dealership located in Fort Walton Beach, Florida. At the time Plaintiff acquired the
14 Class Vehicle, Plaintiff had a reasonable expectation that the Class Vehicle had
15 properly-functioning airbags and seatbelts, and Plaintiff had no way of knowing
16 that the Class Vehicle contained a defective ACU and ASIC that could cause the
17 airbags and seatbelts to fail during a crash.

18 78. In the weeks leading up to his purchase of the Class Vehicle, Plaintiff
19 reviewed and relied on numerous statements and representations about it.

20 a. Plaintiff saw Kia television commercials that touted the safety of
21 the Class Vehicle, among other things. Plaintiff is not personally
22 aware of which particular Kia entity is responsible for the Kia
23 commercials he saw. Based upon the investigation of Plaintiffs'
24 counsel, Kia USA was responsible for the content of the
25 television advertising.

26 b. On the day he purchased the Class Vehicle, Plaintiff spoke with
27 and relied on statements about the Class Vehicle made by a
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1 salesperson at Kia Fort Walton Beach. Plaintiff had
2 conversations with the salesperson about the features, including
3 the safety features, the Class Vehicle came with, and how safe
4 the Class Vehicle was generally.

5 c. Plaintiff recalls reviewing the Monroney sticker and in-vehicle
6 airbag label safety language immediately prior to his purchase.
7 The sticker and label indicated the Class Vehicle was safe and
8 had properly-functioning airbags and seatbelts. Based upon the
9 investigation of Plaintiffs' counsel, Kia USA was responsible
10 for the content of the Monroney sticker, and Kia Korea was
11 responsible for the in-vehicle airbag label safety language.

12 d. At no time prior to or at the time of his purchase did the airbag
13 warning light on the Class Vehicle's dashboard illuminate or
14 flash to indicate any issue with the Class Vehicle's airbag
15 system. By not illuminating or flashing, the airbag warning light
16 conveyed there were no problems with the system and that the
17 airbag system would function properly during a crash. Based
18 upon the investigation of Plaintiffs' counsel, Kia Korea, ZF
19 Electronics USA, ZF Passive Safety USA, and ZF Automotive
20 USA had joint responsibility for the failure of the airbag
21 warning light to warn about the ACU Defect.

22 79. Kia Korea, Kia USA, Hyundai Mobis, ZF Electronics USA, ZF
23 Passive Safety USA, ZF Automotive USA, ZF TRW Corp., ZF Germany, ST USA,
24 ST Malaysia, and ST Italy concealed the existence of the ACU Defect from
25 consumers like Plaintiff and NHTSA. Had they instead disclosed it before Plaintiff
26 acquired the Class Vehicle, Plaintiff would have learned of the concealed
27 information through, for example, the advertising channels described above or
28 through discussions with the salesperson. Plaintiff has suffered a concrete injury in

1 the form of an overpayment for the Class Vehicle as a result of Kia Korea, Kia
2 USA, Hyundai Mobis, ZF Electronics USA, ZF Passive Safety USA, ZF
3 Automotive USA, ZF TRW Corp., ZF Germany, ST USA, ST Malaysia, and ST
4 Italy's misconduct, and did not receive the full benefit of the bargain in acquiring
5 the Class Vehicle. Plaintiff would not have purchased the Class Vehicle, or would
6 have paid less for it, if Kia Korea, Kia USA, Hyundai Mobis, ZF Electronics USA,
7 ZF Passive Safety USA, ZF Automotive USA, ZF TRW Corp., ZF Germany, ST
8 USA, ST Malaysia, and ST Italy did not conceal material information regarding the
9 Class Vehicle's safety and reliability, or the fact that it was equipped with a
10 defective ACU and ASIC.

11 **f. Lawrence Graziano**

12 80. Plaintiff Lawrence Graziano ("Plaintiff") is an individual residing in
13 Windermere, Florida. On or around April 10, 2018, Plaintiff leased a new 2018 Kia
14 Optima (the "Class Vehicle") from Greenway Kia, an authorized Kia dealership
15 located in Orlando, Florida. At the time Plaintiff acquired the Class Vehicle,
16 Plaintiff had a reasonable expectation that the Class Vehicle had properly-
17 functioning airbags and seatbelts, and Plaintiff had no way of knowing that the
18 Class Vehicle contained a defective ACU and ASIC that could cause the airbags
19 and seatbelts to fail during a crash.

20 81. In the weeks leading up to his lease of the Class Vehicle, Plaintiff
21 reviewed and relied on numerous statements and representations about it.

22 a. Plaintiff saw Kia commercials on television touting the features
23 of the Class Vehicle. These commercials represented the Class
24 Vehicle as a safe vehicle. Plaintiff is not personally aware of
25 which particular Kia entity is responsible for television
26 advertising. Based upon the investigation of Plaintiffs' counsel,
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1 Kia USA, Inc. was responsible for the content of the television
2 advertising.

3 b. At Greenway Kia on the day he leased the Class Vehicle,
4 Plaintiff saw advertisements in the dealership publicizing a JD
5 Power award that the 2018 Kia Optima had won.

6 c. On the day he leased the Class Vehicle, Plaintiff spoke with and
7 relied on statements about the Class Vehicle made by a
8 salesperson at Greenway Kia. Plaintiff discussed the safety
9 features of the Class Vehicle with the salesperson. Safety was an
10 important factor in Plaintiff's decision to lease the Class Vehicle
11 because he has a young child. Plaintiff specifically recalls the
12 salesperson pointing out the various airbags the Class Vehicle
13 came equipped with.

14 d. Plaintiff recalls reviewing the Monroney sticker and in-vehicle
15 airbag label safety language immediately prior to his lease. The
16 sticker and label indicated the Class Vehicle was safe and had
17 properly-functioning airbags and seatbelts. Based upon the
18 investigation of Plaintiffs' counsel, Kia USA was responsible
19 for the content of the Monroney sticker, and Kia Korea was
20 responsible for the in-vehicle airbag label safety language.

21 e. Plaintiff test drove the Class Vehicle before leasing it. At no
22 time prior to or at the time of his lease did the airbag warning
23 light on the Class Vehicle's dashboard illuminate or flash to
24 indicate any issue with the Class Vehicle's airbag system. By
25 not illuminating or flashing, the airbag warning light conveyed
26 there were no problems with the system and that the airbag
27 system would function properly during a crash. Based upon the
28 investigation of Plaintiffs' counsel, Kia Korea, ZF Electronics

1 USA, ZF Passive Safety USA, and ZF Automotive USA had
2 joint responsibility for the failure of the airbag warning light to
3 warn about the ACU Defect.

4 82. Kia Korea, Kia USA, Hyundai Mobis, ZF Electronics USA, ZF
5 Passive Safety USA, ZF Automotive USA, ZF TRW Corp., ZF Germany, ST USA,
6 ST Malaysia, and ST Italy concealed the existence of the ACU Defect from
7 consumers like Plaintiff and NHTSA. Had they instead disclosed it before Plaintiff
8 acquired the Class Vehicle, Plaintiff would have learned of the concealed
9 information through, for example, the advertising channels described above or
10 through discussions with the salesperson. Plaintiff has suffered a concrete injury in
11 the form of an overpayment for the Class Vehicle as a result of Kia Korea, Kia
12 USA, Hyundai Mobis, ZF Electronics USA, ZF Passive Safety USA, ZF
13 Automotive USA, ZF TRW Corp., ZF Germany, ST USA, ST Malaysia, and ST
14 Italy's misconduct, and did not receive the full benefit of the bargain in acquiring
15 the Class Vehicle. Plaintiff would not have leased the Class Vehicle, or would have
16 paid less for it, if Kia Korea, Kia USA, Hyundai Mobis, ZF Electronics USA, ZF
17 Passive Safety USA, ZF Automotive USA, ZF TRW Corp., ZF Germany, ST USA,
18 ST Malaysia, and ST Italy did not conceal material information regarding the Class
19 Vehicle's safety and reliability, or the fact that it was equipped with a defective
20 ACU and ASIC.

21 **g. Amanda Swanson**

22 83. Plaintiff Amanda Swanson ("Plaintiff") is an individual residing in
23 Romeoville, Illinois. On or around October 21, 2017, Plaintiff purchased a new
24 2017 Kia Optima (the "Class Vehicle") from World Kia Joliet, an authorized Kia
25 dealership located in Joliet, Illinois. At the time Plaintiff acquired the Class
26 Vehicle, Plaintiff had a reasonable expectation that the Class Vehicle had properly-
27 functioning airbags and seatbelts, and Plaintiff had no way of knowing that the
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1 Class Vehicle contained a defective ACU and ASIC that could cause the airbags
2 and seatbelts to fail during a crash.

3 84. In the weeks leading up to her purchase of the Class Vehicle, Plaintiff
4 reviewed and relied on numerous statements and representations about it.

5 a. On the day she purchased the Class Vehicle, Plaintiff spoke with
6 and relied on statements about the Class Vehicle made by a
7 salesperson at World Kia Joliet. The salesperson told Plaintiff
8 about the Class Vehicle's features, including its safety features,
9 prior to her deciding to purchase the Class Vehicle.

10 b. Plaintiff reviewed and relied on documents about the Class
11 Vehicle. These documents about the Class Vehicle were
12 provided to her by a salesperson at World Kia Joliet. Plaintiff is
13 not personally aware of which particular Kia entity is
14 responsible for written materials she reviewed at World Kia
15 Joliet about the Class Vehicle. Based upon the investigation of
16 Plaintiffs' counsel, Kia USA, Inc. was responsible for
17 distributing materials about the Class Vehicle.

18 c. Plaintiff saw, heard, and relied on Kia commercials through
19 radio, television, and the internet that touted the safety, quality,
20 and reliability of the Class Vehicle. Plaintiff is not personally
21 aware of which particular Kia entity is responsible for
22 advertising. Based upon the investigation of Plaintiffs' counsel,
23 Kia USA was responsible for the content of the advertising.

24 d. Plaintiff recalls reviewing the Monroney sticker and in-vehicle
25 airbag label safety language immediately prior to her purchase.
26 The sticker and label indicated the Class Vehicle was safe and
27 had properly-functioning airbags and seatbelts. Based upon the
28 investigation of Plaintiffs' counsel, Kia USA was responsible

1 for the content of the Monroney sticker, and Kia Korea was
2 responsible for the in-vehicle airbag label safety language.

3 e. At no time prior to or at the time of her purchase did the airbag
4 warning light on the Class Vehicle’s dashboard illuminate or
5 flash to indicate any issue with the Class Vehicle’s airbag
6 system. By not illuminating or flashing, the airbag warning light
7 conveyed there were no problems with the system and that the
8 airbag system would function properly during a crash. Based
9 upon the investigation of Plaintiffs’ counsel, Kia Korea, ZF
10 Electronics USA, ZF Passive Safety USA, and ZF Automotive
11 USA had joint responsibility for the failure of the airbag
12 warning light to warn about the ACU Defect.

13 85. Kia Korea, Kia USA, Hyundai Mobis, ZF Electronics USA, ZF
14 Passive Safety USA, ZF Automotive USA, ZF TRW Corp., ZF Germany, ST USA,
15 ST Malaysia, and ST Italy concealed the existence of the ACU Defect from
16 consumers like Plaintiff and NHTSA. Had they instead disclosed it before Plaintiff
17 acquired the Class Vehicle, Plaintiff would have learned of the concealed
18 information through, for example, the advertising channels described above or
19 through discussions with the salesperson. Plaintiff has suffered a concrete injury in
20 the form of an overpayment for the Class Vehicle as a result of Kia Korea, Kia
21 USA, Hyundai Mobis, ZF Electronics USA, ZF Passive Safety USA, ZF
22 Automotive USA, ZF TRW Corp., ZF Germany, ST USA, ST Malaysia, and ST
23 Italy’s misconduct, and did not receive the full benefit of the bargain in acquiring
24 the Class Vehicle. Plaintiff would not have purchased the Class Vehicle, or would
25 have paid less for it, if Kia Korea, Kia USA, Hyundai Mobis, ZF Electronics USA,
26 ZF Passive Safety USA, ZF Automotive USA, ZF TRW Corp., ZF Germany, ST
27 USA, ST Malaysia, and ST Italy did not conceal material information regarding the
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1 Class Vehicle’s safety and reliability, or the fact that it was equipped with a
2 defective ACU and ASIC.

3 **h. Brian Collins**

4 86. Plaintiff Brian Collins (“Plaintiff”) is an individual residing in Carol
5 Stream, Illinois. On or around July 2, 2018, Plaintiff purchased a new 2018 Kia
6 Optima (the “Class Vehicle”) from Gerald Kia, an authorized Kia dealership
7 located in Naperville, Illinois. At the time Plaintiff acquired the Class Vehicle,
8 Plaintiff had a reasonable expectation that the Class Vehicle had properly-
9 functioning airbags and seatbelts, and Plaintiff had no way of knowing that the
10 Class Vehicle contained a defective ACU and ASIC that could cause the airbags
11 and seatbelts to fail during a crash.

12 87. In the weeks leading up to his purchase of the Class Vehicle, Plaintiff
13 reviewed and relied on numerous statements and representations about it.

- 14 a. Plaintiff saw representations and statements on Kia’s website
15 indicating that the Class Vehicle was safe and had properly-
16 functioning airbags and seatbelts. The Class Vehicle’s safety
17 features were important to his purchase decision. Plaintiff is not
18 personally aware of which particular Kia entity is responsible
19 for these representations and statements because Plaintiff
20 interfaces with Kia as a brand. Based upon the investigation of
21 Plaintiffs’ counsel, Kia USA, Inc. was responsible for the
22 content of the website.
- 23 b. On the day he purchased the Class Vehicle, Plaintiff spoke with
24 and relied on statements about the Class Vehicle made by a
25 salesperson at Gerald Kia. The salesperson told Plaintiff prior to
26 him deciding to purchase the Class Vehicle that the 2018 Kia
27 Optima was safe. Plaintiff recalls the salesperson touting the fact
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- 1 that the 2018 Kia Optima had a five star crash rating and
2 numerous airbags.
- 3 c. Plaintiff conducted online research, including reviewing Kia
4 dealership websites to understand the safety features offered for
5 the Class Vehicle, and read reviews from Car and Driver. The
6 Car and Driver reviews touted the safety of the Class Vehicle.
7 Because Defendants failed to disclose the ACU Defect,
8 Plaintiff's research did not show that the Class Vehicle
9 contained the ACU Defect, and instead indicated that the Class
10 Vehicle was safe and had properly-functioning airbags and
11 seatbelts.
- 12 d. Plaintiff recalls reviewing the Monroney sticker and in-vehicle
13 airbag label safety language immediately prior to his purchase.
14 The sticker and label indicated the Class Vehicle was safe and
15 had properly-functioning airbags and seatbelts. Based upon the
16 investigation of Plaintiffs' counsel, Kia USA was responsible
17 for the content of the Monroney sticker, and Kia Korea was
18 responsible for the in-vehicle airbag label safety language.
- 19 e. Plaintiff sat inside a 2018 Kia Optima at Gerald Kia prior to his
20 purchase of his Class Vehicle. When his Class Vehicle was
21 delivered to him, the airbag warning light on its dashboard was
22 not illuminated nor did it flash to indicate any issue with the
23 Class Vehicle's airbag system. By not illuminating or flashing,
24 the airbag warning light conveyed there were no problems with
25 the system and that the airbag system would function properly
26 during a crash. Based upon the investigation of Plaintiffs'
27 counsel, Kia Korea, ZF Electronics USA, ZF Passive Safety
28 USA, and ZF Automotive USA had joint responsibility for the

1 failure of the airbag warning light to warn about the ACU
2 Defect.

3 88. Kia Korea, Kia USA, Hyundai Mobis, ZF Electronics USA, ZF
4 Passive Safety USA, ZF Automotive USA, ZF TRW Corp., ZF Germany, ST USA,
5 ST Malaysia, and ST Italy concealed the existence of the ACU Defect from
6 consumers like Plaintiff and NHTSA. Had they instead disclosed it before Plaintiff
7 acquired the Class Vehicle, Plaintiff would have learned of the concealed
8 information through, for example, the advertising channels described above or
9 through discussions with the salesperson. Plaintiff has suffered a concrete injury in
10 the form of an overpayment for the Class Vehicle as a result of Kia Korea, Kia
11 USA, Hyundai Mobis, ZF Electronics USA, ZF Passive Safety USA, ZF
12 Automotive USA, ZF TRW Corp., ZF Germany, ST USA, ST Malaysia, and ST
13 Italy's misconduct, and did not receive the full benefit of the bargain in acquiring
14 the Class Vehicle. Plaintiff would not have purchased the Class Vehicle, or would
15 have paid less for it, if Kia Korea, Kia USA, Hyundai Mobis, ZF Electronics USA,
16 ZF Passive Safety USA, ZF Automotive USA, ZF TRW Corp., ZF Germany, ST
17 USA, ST Malaysia, and ST Italy did not conceal material information regarding the
18 Class Vehicle's safety and reliability, or the fact that it was equipped with a
19 defective ACU and ASIC.

20 **i. Kenneth Ogorek**

21 89. Plaintiff Kenneth Ogorek ("Plaintiff") is an individual residing in
22 Indianapolis, Indiana. On or around July 26, 2013, Plaintiff purchased a new 2014
23 Kia Sedona ("Class Vehicle") from Napleton Kia of Fishers, an authorized Kia
24 dealership located in Fishers, Indiana. At the time Plaintiff acquired the Class
25 Vehicle, Plaintiff had a reasonable expectation that the Class Vehicle had properly-
26 functioning airbags and seatbelts, and Plaintiff had no way of knowing that the
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1 Class Vehicle contained a defective ACU and ASIC that could cause the airbags
2 and seatbelts to fail during a crash.

3 90. In the weeks leading up to his purchase of the Class Vehicle, Plaintiff
4 reviewed and relied on numerous statements and representations about it.

5 a. Plaintiff saw representations and statements on Kia's website
6 indicating that the Class Vehicle was safe and had properly-
7 functioning airbags and seatbelts. The Class Vehicle's safety
8 features were important to his purchase decision. Plaintiff is not
9 personally aware of which particular Kia entity is responsible
10 for these representations and statements because Plaintiff
11 interfaces with Kia as a brand. Based upon the investigation of
12 Plaintiffs' counsel, Kia USA, Inc. was responsible for the
13 content of the website.

14 b. On the day he purchased the Class Vehicle, Plaintiff spoke with
15 and relied on statements about the Class Vehicle made by a
16 salesperson at Napleton Kia of Fishers. Plaintiff recalls that the
17 salesperson told Plaintiff prior to him deciding to purchase the
18 Class Vehicle about the Class Vehicle's safety features.

19 c. Plaintiff recalls reviewing the Monroney sticker and in-vehicle
20 airbag label safety language immediately prior to his purchase.
21 The sticker and label indicated the Class Vehicle was safe and
22 had properly-functioning airbags and seatbelts. Based upon the
23 investigation of Plaintiffs' counsel, Kia USA was responsible
24 for the content of the Monroney sticker, and Kia Korea was
25 responsible for the in-vehicle airbag label safety language.

26 d. Plaintiff test drove the Class Vehicle before purchasing it. At no
27 time prior to or at the time of his purchase did the airbag
28 warning light on the Class Vehicle's dashboard illuminate or

1 flash to indicate any issue with the Class Vehicle’s airbag
2 system. By not illuminating or flashing, the airbag warning light
3 conveyed there were no problems with the system and that the
4 airbag system would function properly during a crash. Based
5 upon the investigation of Plaintiffs’ counsel, Kia Korea, ZF
6 Electronics USA, ZF Passive Safety USA, and ZF Automotive
7 USA had joint responsibility for the failure of the airbag
8 warning light to warn about the ACU Defect.

9 91. Kia Korea, Kia USA, Hyundai Mobis, ZF Electronics USA, ZF
10 Passive Safety USA, ZF Automotive USA, ZF TRW Corp., ST USA, ST Malaysia,
11 and ST Italy concealed the existence of the ACU Defect from consumers like
12 Plaintiff and NHTSA. Had they instead disclosed it before Plaintiff acquired the
13 Class Vehicle, Plaintiff would have learned of the concealed information through,
14 for example, the advertising channels described above or through discussions with
15 the salesperson. Plaintiff has suffered a concrete injury in the form of an
16 overpayment for the Class Vehicle as a result of Kia Korea, Kia USA, Hyundai
17 Mobis, ZF Electronics USA, ZF Passive Safety USA, ZF Automotive USA, ZF
18 TRW Corp., ST USA, ST Malaysia, and ST Italy’s misconduct, and did not receive
19 the full benefit of the bargain in acquiring the Class Vehicle. Plaintiff would not
20 have purchased the Class Vehicle, or would have paid less for it, if Kia Korea, Kia
21 USA, Hyundai Mobis, ZF Electronics USA, ZF Passive Safety USA, ZF
22 Automotive USA, ZF TRW Corp., ST USA, ST Malaysia, and ST Italy did not
23 conceal material information regarding the Class Vehicle’s safety and reliability, or
24 the fact that it was equipped with a defective ACU and ASIC.

25 **j. Joseph Fuller**

26 92. Plaintiff Joseph Fuller (“Plaintiff”) is an individual residing in Middle
27 River, Maryland. On or around April 28, 2014, Plaintiff purchased a new 2014
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1 Hyundai Sonata (“Class Vehicle”) from Thompson Hyundai, an authorized
2 Hyundai dealership located in Dundalk, Maryland. At the time Plaintiff acquired
3 the Class Vehicle, Plaintiff had a reasonable expectation that the Class Vehicle had
4 properly-functioning airbags and seatbelts, and Plaintiff had no way of knowing
5 that the Class Vehicle contained a defective ACU and ASIC that could cause the
6 airbags and seatbelts to fail during a crash.

7 93. In the weeks leading up to his purchase of the Class Vehicle, Plaintiff
8 reviewed and relied on numerous statements and representations about it.

9 a. On the day he purchased the Class Vehicle, Plaintiff spoke with
10 and relied on statements about the Class Vehicle made by a
11 salesperson at Thompson Hyundai. The salesperson told
12 Plaintiff prior to him deciding to purchase the Class Vehicle
13 about the Class Vehicle’s safety features.

14 b. Plaintiff recalls reviewing the Monroney sticker and in-vehicle
15 airbag label safety language immediately prior to his purchase.
16 The sticker and label indicated the Class Vehicle was safe and
17 had properly-functioning airbags and seatbelts. Based upon the
18 investigation of Plaintiffs’ counsel, Hyundai USA was
19 responsible for the content of the Monroney sticker, and
20 Hyundai Korea was responsible for the in-vehicle airbag label
21 safety language.

22 c. Plaintiff test drove the Class Vehicle before purchasing it. At no
23 time prior to or at the time of his purchase did the airbag
24 warning light on the Class Vehicle’s dashboard illuminate or
25 flash to indicate any issue with the Class Vehicle’s airbag
26 system. By not illuminating or flashing, the airbag warning light
27 conveyed there were no problems with the system and that the
28 airbag system would function properly during a crash. Based

1 upon the investigation of Plaintiffs’ counsel, Hyundai Korea, ZF
2 Electronics USA, ZF Passive Safety USA, and ZF Automotive
3 USA had joint responsibility for the failure of the airbag
4 warning light to warn about the ACU Defect.

5 94. Hyundai Korea, Hyundai USA, Hyundai Mobis, ZF Electronics USA,
6 ZF Passive Safety USA, ZF Automotive USA, ZF TRW Corp., ST USA, ST
7 Malaysia, and ST Italy concealed the existence of the ACU Defect from consumers
8 like Plaintiff and NHTSA. Had they instead disclosed it before Plaintiff acquired
9 the Class Vehicle, Plaintiff would have learned of the concealed information
10 through, for example, the advertising channels described above or through
11 discussions with the salesperson. Plaintiff has suffered a concrete injury in the form
12 of an overpayment for the Class Vehicle as a result of Hyundai Korea, Hyundai
13 USA, Hyundai Mobis, ZF Electronics USA, ZF Passive Safety USA, ZF
14 Automotive USA, ZF TRW Corp., ST USA, ST Malaysia, and ST Italy’s
15 misconduct, and did not receive the full benefit of the bargain in acquiring the Class
16 Vehicle. Plaintiff would not have purchased the Class Vehicle, or would have paid
17 less for it, if Hyundai Korea, Hyundai USA, Hyundai Mobis, ZF Electronics USA,
18 ZF Passive Safety USA, ZF Automotive USA, ZF TRW Corp., ST USA, ST
19 Malaysia, and ST Italy did not conceal material information regarding the Class
20 Vehicle’s safety and reliability, or the fact that it was equipped with a defective
21 ACU and ASIC.

22 **k. Tina Fuller**

23 95. Plaintiff Tina Fuller (“Plaintiff”) is an individual residing in Middle
24 River, Maryland. On or around April 29, 2014, Plaintiff purchased a new 2014
25 Hyundai Sonata (the “Class Vehicle”) from Thompson Hyundai, an authorized
26 Hyundai dealership located in Dundalk, Maryland. At the time Plaintiff acquired
27 the Class Vehicle, Plaintiff had a reasonable expectation that the Class Vehicle had
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1 properly-functioning airbags and seatbelts, and Plaintiff had no way of knowing
2 that the Class Vehicle contained a defective ACU and ASIC that could cause the
3 airbags and seatbelts to fail during a crash.

4 96. In the weeks leading up to her purchased of the Class Vehicle, Plaintiff
5 reviewed and relied on numerous statements and representations about it.

6 a. On the day she purchased the Class Vehicle, Plaintiff spoke with
7 and relied on statements about the Class Vehicle made by a
8 salesperson at Thompson Hyundai. The salesperson told
9 Plaintiff prior to her deciding to purchase the Class Vehicle
10 about the Class Vehicle's safety features.

11 b. Plaintiff recalls reviewing the Monroney sticker and in-vehicle
12 airbag label safety language immediately prior to her purchase.
13 The sticker and label indicated the Class Vehicle was safe and
14 had properly-functioning airbags and seatbelts. Based upon the
15 investigation of Plaintiffs' counsel, Hyundai USA was
16 responsible for the content of the Monroney sticker, and
17 Hyundai Korea was responsible for the in-vehicle airbag label
18 safety language.

19 c. Plaintiff test drove the Class Vehicle before purchasing it. At no
20 time prior to or at the time of her purchase did the airbag
21 warning light on the Class Vehicle's dashboard illuminate or
22 flash to indicate any issue with the Class Vehicle's airbag
23 system. By not illuminating or flashing, the airbag warning light
24 conveyed there were no problems with the system and that the
25 airbag system would function properly during a crash. Based
26 upon the investigation of Plaintiffs' counsel, Hyundai Korea, ZF
27 Electronics USA, ZF Passive Safety USA, and ZF Automotive
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1 USA had joint responsibility for the failure of the airbag
2 warning light to warn about the ACU Defect.

3 97. Hyundai Korea, Hyundai USA, Hyundai Mobis, ZF Electronics USA,
4 ZF Passive Safety USA, ZF Automotive USA, ZF TRW Corp., ST USA, ST
5 Malaysia, and ST Italy concealed the existence of the ACU Defect from consumers
6 like Plaintiff and NHTSA. Had they instead disclosed it before Plaintiff acquired
7 the Class Vehicle, Plaintiff would have learned of the concealed information
8 through, for example, the advertising channels described above or through
9 discussions with the salesperson. Plaintiff has suffered a concrete injury in the form
10 of an overpayment for the Class Vehicle as a result of Hyundai Korea, Hyundai
11 USA, Hyundai Mobis, ZF Electronics USA, ZF Passive Safety USA, ZF
12 Automotive USA, ZF TRW Corp., ST USA, ST Malaysia, and ST Italy's
13 misconduct, and did not receive the full benefit of the bargain in acquiring the Class
14 Vehicle. Plaintiff would not have purchased the Class Vehicle, or would have paid
15 less for it, if Hyundai Korea, Hyundai USA, Hyundai Mobis, ZF Electronics USA,
16 ZF Passive Safety USA, ZF Automotive USA, ZF TRW Corp., ST USA, ST
17 Malaysia, and ST Italy did not conceal material information regarding the Class
18 Vehicle's safety and reliability, or the fact that it was equipped with a defective
19 ACU and ASIC.

20 **I. Diana King**

21 98. Plaintiff Diana King ("Plaintiff") is an individual residing in Sparrows
22 Point, Maryland. On or around July 17, 2013, Plaintiff purchased a new 2014 Kia
23 Sedona (the "Class Vehicle") from Bob Bell Nissan, located in Baltimore,
24 Maryland. At the time Plaintiff acquired the Class Vehicle, Plaintiff had a
25 reasonable expectation that the Class Vehicle had properly-functioning airbags and
26 seatbelts, and Plaintiff had no way of knowing that the Class Vehicle contained a
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1 defective ACU and ASIC that could cause the airbags and seatbelts to fail during a
2 crash.

3 99. In the weeks leading up to her purchase of the Class Vehicle, Plaintiff
4 reviewed and relied on numerous statements and representations about it.

5 a. On the day she purchased the Class Vehicle, Plaintiff spoke with
6 and relied on statements about the Class Vehicle made by a
7 salesperson at Bob Bell. The salesperson told Plaintiff prior to
8 her deciding to purchase the Class Vehicle about the Class
9 Vehicle's safety features.

10 b. Plaintiff recalls reviewing the Monroney sticker and in-vehicle
11 airbag label safety language immediately prior to her purchase.
12 The sticker and label indicated the Class Vehicle was safe and
13 had properly-functioning airbags and seatbelts. Based upon the
14 investigation of Plaintiffs' counsel, Kia USA was responsible
15 for the content of the Monroney sticker, and Kia Korea was
16 responsible for the in-vehicle airbag label safety language.

17 c. Plaintiff test drove the Class Vehicle before purchasing it. At no
18 time prior to or at the time of her purchase did the airbag
19 warning light on the Class Vehicle's dashboard illuminate or
20 flash to indicate any issue with the Class Vehicle's airbag
21 system. By not illuminating or flashing, the airbag warning light
22 conveyed there were no problems with the system and that the
23 airbag system would function properly during a crash. Based
24 upon the investigation of Plaintiffs' counsel, Kia Korea, ZF
25 Electronics USA, ZF Passive Safety USA, and ZF Automotive
26 USA had joint responsibility for the failure of the airbag
27 warning light to warn about the ACU Defect.
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1 100. Kia Korea, Kia USA, Hyundai Mobis, ZF Electronics USA, ZF
2 Passive Safety USA, ZF Automotive USA, ZF TRW Corp., ST USA, ST Malaysia,
3 and ST Italy concealed the existence of the ACU Defect from consumers like
4 Plaintiff and NHTSA. Had they instead disclosed it before Plaintiff acquired the
5 Class Vehicle, Plaintiff would have learned of the concealed information through,
6 for example, the advertising channels described above or through discussions with
7 the salesperson. Plaintiff has suffered a concrete injury in the form of an
8 overpayment for the Class Vehicle as a result of Kia Korea, Kia USA, Hyundai
9 Mobis, ZF Electronics USA, ZF Passive Safety USA, ZF Automotive USA, ZF
10 TRW Corp., ST USA, ST Malaysia, and ST Italy’s misconduct, and did not receive
11 the full benefit of the bargain in acquiring the Class Vehicle. Plaintiff would not
12 have purchased the Class Vehicle, or would have paid less for it, if Kia Korea, Kia
13 USA, Hyundai Mobis, ZF Electronics USA, ZF Passive Safety USA, ZF
14 Automotive USA, ZF TRW Corp., ST USA, ST Malaysia, and ST Italy did not
15 conceal material information regarding the Class Vehicle’s safety and reliability, or
16 the fact that it was equipped with a defective ACU and ASIC.

17 **m. Dylan DeMoranville**

18 101. Plaintiff Dylan DeMoranville (“Plaintiff”) is an individual residing in
19 East Freetown, Massachusetts. On or around April 14, 2017, Plaintiff purchased a
20 used 2013 Kia Optima (the “Class Vehicle”) from Route 44 Hyundai located in
21 Raynham, Massachusetts. The Class Vehicle was totaled in an accident where the
22 airbags did not deploy on or around February 7, 2020. At the time Plaintiff acquired
23 the Class Vehicle, Plaintiff had a reasonable expectation that the Class Vehicle had
24 properly-functioning airbags and seatbelts, and Plaintiff had no way of knowing
25 that the Class Vehicle contained a defective ACU and ASIC that could cause the
26 airbags and seatbelts to fail during a crash.

1 102. In the weeks leading up to his purchase of the Class Vehicle, Plaintiff
2 reviewed and relied on numerous statements and representations about it.

3 a. On the day he purchased the Class Vehicle, Plaintiff spoke with
4 and relied on statements about the Class Vehicle made by a
5 salesperson at Route 44 Hyundai. Plaintiff discussed with the
6 salesman the features, price, and overall safety ratings of the
7 Class Vehicle.

8 b. Plaintiff recalls reviewing the Monroney sticker and in-vehicle
9 airbag label safety language immediately prior to his purchase.
10 The sticker and label indicated the Class Vehicle was safe and
11 had properly-functioning airbags and seatbelts. Based upon the
12 investigation of Plaintiffs' counsel, Kia USA was responsible
13 for the content of the Monroney sticker, and Kia Korea was
14 responsible for the in-vehicle airbag label safety language.

15 c. Plaintiff test drove the Class Vehicle before purchasing it. At no
16 time prior to or at the time of his purchase did the airbag
17 warning light on the Class Vehicle's dashboard illuminate or
18 flash to indicate any issue with the Class Vehicle's airbag
19 system. By not illuminating or flashing, the airbag warning light
20 conveyed there were no problems with the system and that the
21 airbag system would function properly during a crash. Based
22 upon the investigation of Plaintiffs' counsel, Kia Korea, ZF
23 Electronics USA, ZF Passive Safety USA, and ZF Automotive
24 USA had joint responsibility for the failure of the airbag
25 warning light to warn about the ACU Defect.

26 103. Kia Korea, Kia USA, Hyundai Mobis, ZF Electronics USA, ZF
27 Passive Safety USA, ZF Automotive USA, ZF TRW Corp., ST USA, ST Malaysia,
28 and ST Italy concealed the existence of the ACU Defect from consumers like

1 Plaintiff and NHTSA. Had they instead disclosed it before Plaintiff acquired the
2 Class Vehicle, Plaintiff would have learned of the concealed information through,
3 for example, the advertising channels described above or through discussions with
4 the salesperson. Plaintiff has suffered a concrete injury in the form of an
5 overpayment for the Class Vehicle as a result of Kia Korea, Kia USA, Hyundai
6 Mobis, ZF Electronics USA, ZF Passive Safety USA, ZF Automotive USA, ZF
7 TRW Corp., ST USA, ST Malaysia, and ST Italy’s misconduct, and did not receive
8 the full benefit of the bargain in acquiring the Class Vehicle. Plaintiff would not
9 have purchased the Class Vehicle, or would have paid less for it, if Kia Korea, Kia
10 USA, Hyundai Mobis, ZF Electronics USA, ZF Passive Safety USA, ZF
11 Automotive USA, ZF TRW Corp., ST USA, ST Malaysia, and ST Italy did not
12 conceal material information regarding the Class Vehicle’s safety and reliability, or
13 the fact that it was equipped with a defective ACU and ASIC.

14 **n. Kinyata Jones**

15 104. Plaintiff Kinyata Jones (“Plaintiff”) is an individual residing in Saint
16 Joseph, Michigan. On or around March 16, 2015, Plaintiff purchased a used 2013
17 Kia Optima (the “Class Vehicle”) from Signature Toyota located in Benton Harbor,
18 Michigan. At the time Plaintiff acquired the Class Vehicle, Plaintiff had a
19 reasonable expectation that the Class Vehicle had properly-functioning airbags and
20 seatbelts, and Plaintiff had no way of knowing that the Class Vehicle contained a
21 defective ACU and ASIC that could cause the airbags and seatbelts to fail during a
22 crash.

23 105. In the weeks leading up to her purchase of the Class Vehicle, Plaintiff
24 reviewed and relied on numerous statements and representations about it.

- 25 a. On the day she purchased her Class Vehicle, Plaintiff spoke with
26 the salesperson at Signature Toyota. The salesperson told her
27 that the Class Vehicle was safe and reliable.
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- 1 b. Plaintiff saw Kia television commercials that touted, among
2 other things, the safety of Kia-branded vehicles. Based upon the
3 investigation of Plaintiffs' counsel, Kia USA, Inc. was
4 responsible for the content of the television advertising.
- 5 c. Plaintiff recalls reviewing the Monroney sticker immediately
6 prior to her purchase. The sticker indicated the Class Vehicle
7 was safe and had properly-functioning airbags and seatbelts.
8 Based upon the investigation of Plaintiffs' counsel, Kia USA
9 was responsible for the content of the Monroney sticker.
- 10 d. Plaintiff test drove the Class Vehicle before purchasing it. At no
11 time prior to or at the time of her purchase did the airbag
12 warning light on the Class Vehicle's dashboard illuminate or
13 flash to indicate any issue with the Class Vehicle's airbag
14 system. By not illuminating or flashing, the airbag warning light
15 conveyed there were no problems with the system and that the
16 airbag system would function properly during a crash. Based
17 upon the investigation of Plaintiffs' counsel, Kia Korea, ZF
18 Electronics USA, ZF Passive Safety USA, and ZF Automotive
19 USA had joint responsibility for the failure of the airbag
20 warning light to warn about the ACU Defect.

21 106. Kia Korea, Kia USA, Hyundai Mobis, ZF Electronics USA, ZF
22 Passive Safety USA, ZF Automotive USA, ZF TRW Corp., ST USA, ST Malaysia,
23 and ST Italy concealed the existence of the ACU Defect from consumers like
24 Plaintiff and NHTSA. Had they instead disclosed it before Plaintiff acquired the
25 Class Vehicle, Plaintiff would have learned of the concealed information through,
26 for example, the advertising channels described above or through discussions with
27 the salesperson. Plaintiff has suffered a concrete injury in the form of an
28 overpayment for the Class Vehicle as a result of Kia Korea, Kia USA, Hyundai

1 Mobis, ZF Electronics USA, ZF Passive Safety USA, ZF Automotive USA, ZF
2 TRW Corp., ST USA, ST Malaysia, and ST Italy’s misconduct, and did not receive
3 the full benefit of the bargain in acquiring the Class Vehicle. Plaintiff would not
4 have leased the Class Vehicle, or would have paid less for it, if Kia Korea, Kia
5 USA, Hyundai Mobis, ZF Electronics USA, ZF Passive Safety USA, ZF
6 Automotive USA, ZF TRW Corp., ST USA, ST Malaysia, and ST Italy did not
7 conceal material information regarding the Class Vehicle’s safety and reliability, or
8 the fact that it was equipped with a defective ACU and ASIC.

9 **o. Bobbi Jo Birk-LaBarge**

10 107. Plaintiff Bobbi Jo Birk-LaBarge (“Plaintiff”) is an individual residing
11 in Merrill, Wisconsin. On or around October 24, 2014, Plaintiff purchased a new
12 2015 Kia Optima (the “Class Vehicle”) from Luther Nissan Kia, an authorized Kia
13 dealership located in Inver Grove Heights, Minnesota. At the time Plaintiff acquired
14 the Class Vehicle, Plaintiff had a reasonable expectation that the Class Vehicle had
15 properly-functioning airbags and seatbelts, and Plaintiff had no way of knowing
16 that the Class Vehicle contained a defective ACU and ASIC that could cause the
17 airbags and seatbelts to fail during a crash.

18 108. In the weeks leading up to her purchase of the Class Vehicle, Plaintiff
19 reviewed and relied on numerous statements and representations about it.

20 a. Plaintiff saw representations and statements on Kia’s website
21 indicating that the Class Vehicle was safe and had properly-
22 functioning airbags and seatbelts. The Class Vehicle’s safety
23 features were important to her purchase decision. Plaintiff is not
24 personally aware of which particular Kia entity is responsible
25 for these representations and statements because Plaintiff
26 interfaces with Kia as a brand. Based upon the investigation of
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Plaintiffs' counsel, Kia USA, Inc. was responsible for the content of the website.

b. Plaintiff conducted online research, including reviewing Luther Nissan Kia's website to understand the Class Vehicle's features, including its safety features. Plaintiff also researched the Class Vehicle's safety features on Google Reviews and Kelley Blue Book. Plaintiff searched online for information regarding the reliability of the Class Vehicle, and for any negative information that might affect her purchasing decision. Further, Plaintiff searched Consumer Reports online for information on customer satisfaction, safety, and reviews. Plaintiff also searched online for recalls, particularly any safety recalls, and recalls that there were none at that time. Because Defendants failed to disclose the ACU Defect, Plaintiff's research did not show that the Class Vehicle contained the ACU Defect, and instead indicated that the Class Vehicle was safe and had properly-functioning airbags and seatbelts.

c. On the day she purchased the Class Vehicle, Plaintiff spoke with and relied on statements about the Class Vehicle made by a salesperson at Luther Nissan Kia. The salesperson touted the Class Vehicle's safety features to Plaintiff prior to her deciding to purchase the Class Vehicle.

d. Plaintiff recalls reviewing the Monroney sticker and in-vehicle airbag label safety language immediately prior to her purchase. The sticker and label indicated the Class Vehicle was safe and had properly-functioning airbags and seatbelts. The salesperson at Luther Nissan Kia also walked Plaintiff through each safety feature on the Monroney Sticker. Based upon the investigation

1 of Plaintiffs' counsel, Kia USA was responsible for the content
2 of the Monroney sticker, and Kia Korea was responsible for the
3 in-vehicle airbag label safety language.

4 e. Plaintiff test drove the Class Vehicle before purchasing it. At no
5 time prior to or at the time of her purchase did the airbag
6 warning light on the Class Vehicle's dashboard illuminate or
7 flash to indicate any issue with the Class Vehicle's airbag
8 system. By not illuminating or flashing, the airbag warning light
9 conveyed there were no problems with the system and that the
10 airbag system would function properly during a crash. Based
11 upon the investigation of Plaintiffs' counsel, Kia Korea, ZF
12 Electronics USA, ZF Passive Safety USA, and ZF Automotive
13 USA had joint responsibility for the failure of the airbag
14 warning light to warn about the ACU Defect.

15 109. Kia Korea, Kia USA, Hyundai Mobis, ZF Electronics USA, ZF
16 Passive Safety USA, ZF Automotive USA, ZF TRW Corp., ST USA, ST Malaysia,
17 and ST Italy concealed the existence of the ACU Defect from consumers like
18 Plaintiff and NHTSA. Had they instead disclosed it before Plaintiff acquired the
19 Class Vehicle, Plaintiff would have learned of the concealed information through,
20 for example, the advertising channels described above or through discussions with
21 the salesperson. Plaintiff has suffered a concrete injury in the form of an
22 overpayment for the Class Vehicle as a result of Kia Korea, Kia USA, Hyundai
23 Mobis, ZF Electronics USA, ZF Passive Safety USA, ZF Automotive USA, ZF
24 TRW Corp., ST USA, ST Malaysia, and ST Italy's misconduct, and did not receive
25 the full benefit of the bargain in acquiring the Class Vehicle. Plaintiff would not
26 have purchased the Class Vehicle, or would have paid less for it, if Kia Korea, Kia
27 USA, Hyundai Mobis, ZF Electronics USA, ZF Passive Safety USA, ZF
28 Automotive USA, ZF TRW Corp., ST USA, ST Malaysia, and ST Italy did not

1 conceal material information regarding the Class Vehicle’s safety and reliability, or
2 the fact that it was equipped with a defective ACU and ASIC.

3 **p. Dan Sutterfield**

4 110. Plaintiff Dan Sutterfield (“Plaintiff”) is an individual residing in
5 Newburg, Missouri. On or around September 27, 2013, Plaintiff purchased a used
6 2013 Kia Forte (the “Class Vehicle”) from Kia of Rolla, an authorized Kia
7 dealership located in Rolla, Missouri. At the time Plaintiff acquired the Class
8 Vehicle, Plaintiff had a reasonable expectation that the Class Vehicle had properly-
9 functioning airbags and seatbelts, and Plaintiff had no way of knowing that the
10 Class Vehicle contained a defective ACU and ASIC that could cause the airbags
11 and seatbelts to fail during a crash.

12 111. In the weeks leading up to his purchase of the Class Vehicle, Plaintiff
13 reviewed and relied on numerous statements and representations about it.

- 14 a. Plaintiff conducted online research about the Class Vehicle,
15 including research on its reliability, whether it had problems,
16 and its gas mileage. Because Defendants failed to disclose the
17 ACU Defect, Plaintiff’s research did not show that the Class
18 Vehicle contained the ACU Defect, and instead indicated that
19 the Class Vehicle was safe and had properly-functioning airbags
20 and seatbelts.
- 21 b. Plaintiff recalls reviewing the Monroney Sticker immediately
22 prior to his purchase. The sticker indicated the Class Vehicle
23 was safe and had properly-functioning airbags and seatbelts.
24 Based upon the investigation of Plaintiffs’ counsel, Kia USA
25 was responsible for the content of the Monroney sticker.
- 26 c. Plaintiff test drove the Class Vehicle before purchasing it. At no
27 time prior to or at the time of his purchase did the airbag
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1 warning light on the Class Vehicle’s dashboard illuminate or
2 flash to indicate any issue with the Class Vehicle’s airbag
3 system. By not illuminating or flashing, the airbag warning light
4 conveyed there were no problems with the system and that the
5 airbag system would function properly during a crash. Based
6 upon the investigation of Plaintiffs’ counsel, Kia Korea, ZF
7 Electronics USA, ZF Passive Safety USA, and ZF Automotive
8 USA had joint responsibility for the failure of the airbag
9 warning light to warn about the ACU Defect.

10 112. Kia Korea, Kia USA, Hyundai Mobis, ZF Electronics USA, ZF
11 Passive Safety USA, ZF Automotive USA, ZF TRW Corp., ST USA, ST Malaysia,
12 and ST Italy concealed the existence of the ACU Defect from consumers like
13 Plaintiff and NHTSA. Had they instead disclosed it before Plaintiff acquired the
14 Class Vehicle, Plaintiff would have learned of the concealed information through,
15 for example, the advertising channels described above or through discussions with
16 the salesperson. Plaintiff has suffered a concrete injury in the form of an
17 overpayment for the Class Vehicle as a result of Kia Korea, Kia USA, Hyundai
18 Mobis, ZF Electronics USA, ZF Passive Safety USA, ZF Automotive USA, ZF
19 TRW Corp., ST USA, ST Malaysia, and ST Italy’s misconduct, and did not receive
20 the full benefit of the bargain in acquiring the Class Vehicle. Plaintiff would not
21 have purchased the Class Vehicle, or would have paid less for it, if Kia Korea, Kia
22 USA, Hyundai Mobis, ZF Electronics USA, ZF Passive Safety USA, ZF
23 Automotive USA, ZF TRW Corp., ST USA, ST Malaysia, and ST Italy did not
24 conceal material information regarding the Class Vehicle’s safety and reliability, or
25 the fact that it was equipped with a defective ACU and ASIC.

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q. Gerson Damens

113. Plaintiff Gerson Damens (“Plaintiff”) is an individual residing in Moorestown, New Jersey. On or around June 30, 2015, Plaintiff leased a new 2015 Kia Optima (the “Class Vehicle”) from Cherry Hill Kia, an authorized Kia dealership located in Cherry Hill, New Jersey. Plaintiff purchased the Class Vehicle at the end of the lease term on or around January 2, 2019. At the time Plaintiff acquired the Class Vehicle, Plaintiff had a reasonable expectation that the Class Vehicle had properly-functioning airbags and seatbelts, and Plaintiff had no way of knowing that the Class Vehicle contained a defective ACU and ASIC that could cause the airbags and seatbelts to fail during a crash.

114. In the weeks leading up to his lease of the Class Vehicle, Plaintiff reviewed and relied on numerous statements and representations about it.

- a. Plaintiff conducted online research about the Class Vehicle, which included reviewing Consumer Reports’ website and him checking for open recalls and other reported concerns that pertained to the Class Vehicle. Plaintiffs visited the Kia website, and saw information about the vehicle’s warranty and specifications. In his online research, he did not see any open recalls or reported concerns on the Class Vehicle in his research. Because Defendants failed to disclose the ACU Defect, Plaintiff’s research did not show that the Class Vehicle was affected by the Defect, and instead indicated that the Class Vehicle was safe and had properly-functioning airbags and seatbelts. Based upon the investigation of Plaintiffs’ counsel, Kia USA, Inc. was responsible for the content of the Kia website.

- 1 b. On the day he leased the Class Vehicle, Plaintiff spoke with and
2 relied on statements about the Class Vehicle made by a
3 salesperson at Cherry Hill Kia. Plaintiff discussed with the
4 salesman the Class Vehicle's warranty and quality.
- 5 c. Plaintiff recalls reviewing the in-vehicle airbag label safety
6 language at the dealership and prior to his lease, including
7 during his test drive. The label indicated the Class Vehicle was
8 safe and had properly-functioning airbags and seatbelts. Based
9 upon the investigation of Plaintiffs' counsel, Kia Korea was
10 responsible for the in-vehicle airbag label safety language.
- 11 d. Plaintiff test drove the Class Vehicle for a full day before
12 leasing it. At no time prior to or at the time of his lease did the
13 airbag warning light on the Class Vehicle's dashboard
14 illuminate or flash to indicate any issue with the Class Vehicle's
15 airbag system. By not illuminating or flashing, the airbag
16 warning light conveyed there were no problems with the system
17 and that the airbag system would function properly during a
18 crash. Based upon the investigation of Plaintiffs' counsel, Kia
19 Korea, ZF Electronics USA, ZF Passive Safety USA, and ZF
20 Automotive USA had joint responsibility for the failure of the
21 airbag warning light to warn about the ACU Defect.

22 115. Kia Korea, Kia USA, Hyundai Mobis, ZF Electronics USA, ZF
23 Passive Safety USA, ZF Automotive USA, ZF TRW Corp., ST USA, ST Malaysia,
24 and ST Italy concealed the existence of the ACU Defect from consumers like
25 Plaintiff and NHTSA. Had they instead disclosed it before Plaintiff acquired the
26 Class Vehicle, Plaintiff would have learned of the concealed information through,
27 for example, the advertising channels described above or through discussions with
28 the salesperson. Plaintiff has suffered a concrete injury in the form of an

1 overpayment for the Class Vehicle as a result of Kia, Hyundai Mobis, ZF TRW,
2 and STMicro’s misconduct, and did not receive the full benefit of the bargain in
3 acquiring the Class Vehicle. Plaintiff would not have leased the Class Vehicle, or
4 would have paid less for it, if Kia, Hyundai Mobis, ZF TRW, and/or STMicro did
5 not conceal material information regarding the Class Vehicle’s defective ACU and
6 ASIC.

7 **r. Larae Angel**

8 116. Plaintiff Larae Angel (“Plaintiff”) is an individual residing in
9 Smithfield, Pennsylvania. On or around May 4, 2013, Plaintiff purchased a new
10 2013 Hyundai Sonata Hybrid (the “Class Vehicle”) from Auto Land Hyundai of
11 Uniontown, an authorized Hyundai dealership located in Uniontown, Pennsylvania.
12 At the time Plaintiff acquired the Class Vehicle, Plaintiff had a reasonable
13 expectation that the Class Vehicle had properly-functioning airbags and seatbelts,
14 and Plaintiff had no way of knowing that the Class Vehicle contained a defective
15 ACU and ASIC that could cause the airbags and seatbelts to fail during a crash.

16 117. In the weeks leading up to her purchase of the Class Vehicle, Plaintiff
17 reviewed and relied on numerous statements and representations about it.

18 a. Plaintiff saw representations and statements on Hyundai’s
19 website indicating that the Class Vehicle was safe and had
20 properly-functioning airbags and seatbelts. The Class Vehicle’s
21 safety features were important to her purchase decision. Plaintiff
22 is not personally aware of which particular Hyundai entity is
23 responsible for these representations and statements because
24 Plaintiff interfaces with Hyundai as a brand. Based upon the
25 investigation of Plaintiffs’ counsel, Hyundai USA was
26 responsible for the content of the website.
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- 1 b. On the day she purchased the Class Vehicle, Plaintiff spoke with
2 and relied on statements about the Class Vehicle made by a
3 salesperson at Auto Land Hyundai of Uniontown. Plaintiff
4 discussed the safety of the Class Vehicle with the salesperson
5 prior to her deciding to purchase the Class Vehicle.
- 6 c. Plaintiff recalls reviewing the Monroney sticker and in-vehicle
7 airbag label safety language immediately prior to her purchase.
8 The sticker and label indicated the Class Vehicle was safe and
9 had properly-functioning airbags and seatbelts. Based upon the
10 investigation of Plaintiffs' counsel, Hyundai USA was
11 responsible for the content of the Monroney sticker, and
12 Hyundai Korea was responsible for the in-vehicle airbag label
13 safety language.
- 14 d. Plaintiff and her husband took the Class Vehicle for a test drive
15 before purchasing it. At no time prior to or at the time of her
16 purchase did the airbag warning light on the Class Vehicle's
17 dashboard illuminate or flash to indicate any issue with the
18 Class Vehicle's airbag system. By not illuminating or flashing,
19 the airbag warning light conveyed there were no problems with
20 the system and that the airbag system would function properly
21 during a crash. Based upon the investigation of Plaintiffs'
22 counsel, Hyundai Korea, ZF Electronics USA, ZF Passive
23 Safety USA, and ZF Automotive USA had joint responsibility
24 for the failure of the airbag warning light to warn about the
25 ACU Defect.

26 118. Hyundai Korea, Hyundai USA, Hyundai Mobis, ZF Electronics USA,
27 ZF Passive Safety USA, ZF Automotive USA, ZF TRW Corp., ST USA, ST
28 Malaysia, and ST Italy concealed the existence of the ACU Defect from consumers

1 like Plaintiff and NHTSA. Had they instead disclosed it before Plaintiff acquired
2 the Class Vehicle, Plaintiff would have learned of the concealed information
3 through, for example, the advertising channels described above or through
4 discussions with the salesperson. Plaintiff has suffered a concrete injury in the form
5 of an overpayment for the Class Vehicle as a result of Hyundai Korea, Hyundai
6 USA, Hyundai Mobis, ZF Electronics USA, ZF Passive Safety USA, ZF
7 Automotive USA, ZF TRW Corp., ST USA, ST Malaysia, and ST Italy's
8 misconduct, and did not receive the full benefit of the bargain in acquiring the Class
9 Vehicle. Plaintiff would not have purchased the Class Vehicle, or would have paid
10 less for it, if Hyundai Korea, Hyundai USA, Hyundai Mobis, ZF Electronics USA,
11 ZF Passive Safety USA, ZF Automotive USA, ZF TRW Corp., ST USA, ST
12 Malaysia, and ST Italy did not conceal material information regarding the Class
13 Vehicle's safety and reliability, or the fact that it was equipped with a defective
14 ACU and ASIC.

15 **s. Richard Kintzel**

16 119. Plaintiff Richard Kintzel ("Plaintiff") is an individual residing in
17 Tremont, Pennsylvania. On or around December 30, 2015, Plaintiff purchased a
18 new 2016 Kia Optima (the "Class Vehicle") from Savage Kia, an authorized Kia
19 dealership located in Reading, Pennsylvania. At the time Plaintiff acquired the
20 Class Vehicle, Plaintiff had a reasonable expectation that the Class Vehicle had
21 properly-functioning airbags and seatbelts, and Plaintiff had no way of knowing
22 that the Class Vehicle contained a defective ACU and ASIC that could cause the
23 airbags and seatbelts to fail during a crash.

24 120. In the weeks leading up to his purchase of the Class Vehicle, Plaintiff
25 reviewed and relied on numerous statements and representations about it.

- 26 a. On the day he purchased the Class Vehicle, Plaintiff spoke with
27 and relied on statements about the Class Vehicle made by a
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1 salesperson at Savage Kia. Plaintiff and the salesperson spoke
2 about the Class Vehicle's safety features, including its front and
3 passenger side airbags, in-door airbags, and reinforced doors,
4 and the Class Vehicle's warranties.

5 b. Plaintiff recalls reviewing the Monroney sticker and in-vehicle
6 airbag label safety language immediately prior to his purchase.
7 The sticker and label indicated the Class Vehicle was safe and
8 had properly-functioning airbags and seatbelts. Based upon the
9 investigation of Plaintiffs' counsel, Kia USA was responsible
10 for the content of the Monroney sticker, and Kia Korea was
11 responsible for the in-vehicle airbag label safety language.

12 c. Plaintiff test drove the Class Vehicle before purchasing it. At no
13 time prior to or at the time of his purchase did the airbag
14 warning light on the Class Vehicle's dashboard illuminate or
15 flash to indicate any issue with the Class Vehicle's airbag
16 system. By not illuminating or flashing, the airbag warning light
17 conveyed there were no problems with the system and that the
18 airbag system would function properly during a crash. Based
19 upon the investigation of Plaintiffs' counsel, Kia Korea, ZF
20 Electronics USA, ZF Passive Safety USA, and ZF Automotive
21 USA had joint responsibility for the failure of the airbag
22 warning light to warn about the ACU Defect.

23 121. Kia Korea, Kia USA, Hyundai Mobis, ZF Electronics USA, ZF
24 Passive Safety USA, ZF Automotive USA, ZF TRW Corp., ST USA, ST Malaysia,
25 and ST Italy concealed the existence of the ACU Defect from consumers like
26 Plaintiff and NHTSA. Had they instead disclosed it before Plaintiff acquired the
27 Class Vehicle, Plaintiff would have learned of the concealed information through,
28 for example, the advertising channels described above or through discussions with

1 the salesperson. Plaintiff has suffered a concrete injury in the form of an
2 overpayment for the Class Vehicle as a result of Kia Korea, Kia USA, Hyundai
3 Mobis, ZF Electronics USA, ZF Passive Safety USA, ZF Automotive USA, ZF
4 TRW Corp., ST USA, ST Malaysia, and ST Italy's misconduct, and did not receive
5 the full benefit of the bargain in acquiring the Class Vehicle. Plaintiff would not
6 have purchased the Class Vehicle, or would have paid less for it, if Kia Korea, Kia
7 USA, Hyundai Mobis, ZF Electronics USA, ZF Passive Safety USA, ZF
8 Automotive USA, ZF TRW Corp., ST USA, ST Malaysia, and ST Italy did not
9 conceal material information regarding the Class Vehicle's safety and reliability, or
10 the fact that it was equipped with a defective ACU and ASIC.

11 **t. Burton Reckles**

12 122. Plaintiff Burton Reckles ("Plaintiff") is an individual residing in Sugar
13 Land, Texas. On or around August 16, 2012, Plaintiff purchased a new 2013
14 Hyundai Sonata (the "Class Vehicle") from Texan Hyundai, an authorized Hyundai
15 dealership located in Rosenberg, Texas. At the time Plaintiff acquired the Class
16 Vehicle, Plaintiff had a reasonable expectation that the Class Vehicle had properly-
17 functioning airbags and seatbelts, and Plaintiff had no way of knowing that the
18 Class Vehicle contained a defective ACU and ASIC that could cause the airbags
19 and seatbelts to fail during a crash.

20 123. In the weeks leading up to his purchase of the Class Vehicle, Plaintiff
21 reviewed and relied on numerous statements and representations about it.

- 22 a. On the day he visited Texan Hyundai to purchase the Class
23 Vehicle, Plaintiff spoke with and relied on statements about the
24 Class Vehicle made by a salesperson at Kia of Irvine. Plaintiff
25 discussed with the salesperson the Class Vehicle's safety
26 features. The salesperson made statements that the Class Vehicle
27 was a safe vehicle.
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- 1 b. On the day he visited Texan Hyundai to purchase the Class
2 Vehicle, Plaintiff saw a Hyundai marketing materials, which
3 touted the Class Vehicle's features, including its safety features.
4 These representations and statements indicated that the Class
5 Vehicle was safe and had properly-functioning airbags and
6 seatbelts. Based upon the investigation of Plaintiffs' counsel,
7 Hyundai USA was responsible for the content of Hyundai
8 marketing materials distributed in the United States. The
9 marketing materials were given to Plaintiff by a salesperson at
10 Texan Hyundai.
- 11 c. Plaintiff viewed and heard Hyundai commercials through radio,
12 television, and internet that touted the quality and reliability of
13 the Class Vehicle. Plaintiff is not personally aware of which
14 particular Hyundai entity is responsible for the Hyundai
15 commercials he saw and heard. Based upon the investigation of
16 Plaintiffs' counsel, Hyundai USA was responsible for the
17 content of the advertising.
- 18 d. Plaintiff recalls reviewing the Monroney sticker and in-vehicle
19 airbag label safety language immediately prior to his purchase.
20 The sticker and label indicated the Class Vehicle was safe and
21 had properly-functioning airbags and seatbelts. Based upon the
22 investigation of Plaintiffs' counsel, Hyundai USA was
23 responsible for the content of the Monroney sticker, and
24 Hyundai Korea was responsible for the in-vehicle airbag label
25 safety language.
- 26 e. Plaintiff test drove the Class Vehicle before purchasing it. At no
27 time prior to or at the time of his purchase did the airbag
28 warning light on the Class Vehicle's dashboard illuminate or

1 flash to indicate any issue with the Class Vehicle's airbag
2 system. By not illuminating or flashing, the airbag warning light
3 conveyed there were no problems with the system and that the
4 airbag system would function properly during a crash. Based
5 upon the investigation of Plaintiffs' counsel, Hyundai Korea, ZF
6 Electronics USA, ZF Passive Safety USA, and ZF Automotive
7 USA had joint responsibility for the failure of the airbag
8 warning light to warn about the ACU Defect.

9 124. Hyundai Korea, Hyundai USA, Hyundai Mobis, ZF Electronics USA,
10 ZF Passive Safety USA, ZF Automotive USA, ZF TRW Corp., ST USA, ST
11 Malaysia, and ST Italy concealed the existence of the ACU Defect from consumers
12 like Plaintiff and NHTSA. Had they instead disclosed it before Plaintiff acquired
13 the Class Vehicle, Plaintiff would have learned of the concealed information
14 through, for example, the advertising channels described above or through
15 discussions with the salesperson. Plaintiff has suffered a concrete injury in the form
16 of an overpayment for the Class Vehicle as a result of Hyundai Korea, Hyundai
17 USA, Hyundai Mobis, ZF Electronics USA, ZF Passive Safety USA, ZF
18 Automotive USA, ZF TRW Corp., ST USA, ST Malaysia, and ST Italy's
19 misconduct, and did not receive the full benefit of the bargain in acquiring the Class
20 Vehicle. Plaintiff would not have purchased the Class Vehicle, or would have paid
21 less for it, if Hyundai Korea, Hyundai USA, Hyundai Mobis, ZF Electronics USA,
22 ZF Passive Safety USA, ZF Automotive USA, ZF TRW Corp., ST USA, ST
23 Malaysia, and ST Italy did not conceal material information regarding the Class
24 Vehicle's safety and reliability, or the fact that it was equipped with a defective
25 ACU and ASIC.

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2. FCA Plaintiffs

a. James Kneup

125. Plaintiff James Kneup (“Plaintiff”) is an individual residing in Tucson, Arizona. On or around May 30, 2013, Plaintiff purchased a new 2013 Jeep Wrangler (the “Class Vehicle”) from Larry H. Miller Chrysler Jeep Tucson, an authorized FCA dealership located in Tucson, Arizona. At the time Plaintiff acquired the Class Vehicle, Plaintiff had a reasonable expectation that the Class Vehicle had properly-functioning airbags and seatbelts, and Plaintiff had no way of knowing that the Class Vehicle contained a defective ACU and ASIC that could cause the airbags and seatbelts to fail during a crash.

126. In the weeks leading up to his purchase of the Class Vehicle, Plaintiff reviewed and relied on numerous statements and representations about it.

- a. Plaintiff reviewed NHTSA crash test videos online.
- b. On the day he purchased the Class Vehicle, Plaintiff spoke with and relied on statements about the Class Vehicle made by a salesperson at Larry H. Miller Chrysler Jeep Tucson. The salesperson described the Class Vehicle to Plaintiff prior to him deciding to purchase it as a fine automobile and discussed the NHTSA crash test results with him. The NHTSA crash test results were good, which the sales representative identified as an indication of the Class Vehicle’s high degree of safety.
- c. Plaintiff recalls reviewing the Monroney sticker and in-vehicle airbag label safety language immediately prior to his purchase. The sticker and label indicated the Class Vehicle was safe and had properly-functioning airbags and seatbelts. Based upon the investigation of Plaintiffs’ counsel, FCA was responsible for the

1 content of the Monroney sticker, and FCA was responsible for
2 the in-vehicle airbag label safety language.

3 d. Plaintiff test drove the Class Vehicle before purchasing it. At no
4 time prior to or at the time of his purchase did the airbag
5 warning light on the Class Vehicle's dashboard illuminate or
6 flash to indicate any issue with the Class Vehicle's airbag
7 system. By not illuminating or flashing, the airbag warning light
8 conveyed there were no problems with the system and that the
9 airbag system would function properly during a crash. Based
10 upon the investigation of Plaintiffs' counsel, FCA, ZF
11 Electronics USA, ZF Passive Safety USA, and ZF Automotive
12 USA had joint responsibility for the failure of the airbag
13 warning light to warn about the ACU Defect.

14 127. FCA, ZF Electronics USA, ZF Passive Safety USA, ZF Automotive
15 USA, ZF TRW Corp., ST USA, ST Malaysia, and ST Italy concealed the existence
16 of the ACU Defect from consumers like Plaintiff and NHTSA. Had they instead
17 disclosed it before Plaintiff acquired the Class Vehicle, Plaintiff would have learned
18 of the concealed information through, for example, the advertising channels
19 described above or through discussions with the salesperson. Plaintiff has suffered a
20 concrete injury in the form of an overpayment for the Class Vehicle as a result of
21 FCA, ZF Electronics USA, ZF Passive Safety USA, ZF Automotive USA, ZF TRW
22 Corp., ST USA, ST Malaysia, and ST Italy's misconduct, and did not receive the
23 full benefit of the bargain in acquiring the Class Vehicle. Plaintiff would not have
24 purchased the Class Vehicle, or would have paid less for it, if FCA, ZF Electronics
25 USA, ZF Passive Safety USA, ZF Automotive USA, ZF TRW Corp., ST USA, ST
26 Malaysia, and ST Italy did not conceal material information regarding the Class
27 Vehicle's safety and reliability, or the fact that it was equipped with a defective
28 ACU and ASIC.

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b. Remigiusz Rundzio

128. Plaintiff Remigiusz Rundzio (“Plaintiff”) is an individual residing in Westminster, California. On or around July 22, 2012, Plaintiff purchased a new 2012 Jeep Wrangler (the “Class Vehicle”) from Huntington Beach Chrysler Dodge Jeep Ram, an authorized FCA dealership located in Huntington Beach, California. At the time Plaintiff acquired the Class Vehicle, Plaintiff had a reasonable expectation that the Class Vehicle had properly-functioning airbags and seatbelts, and Plaintiff had no way of knowing that the Class Vehicle contained a defective ACU and ASIC that could cause the airbags and seatbelts to fail during a crash.

129. In the weeks leading up to his purchase of the Class Vehicle, Plaintiff reviewed and relied on numerous statements and representations about it.

a. Plaintiff saw representations and statements on Jeep’s website indicating that the Class Vehicle was safe and had properly-functioning airbags and seatbelts. The Class Vehicle’s safety features were important to his purchase decision. Plaintiff is not personally aware of which particular FCA entity is responsible for these representations and statements because Plaintiff interfaces with FCA as a brand. Based upon the investigation of Plaintiffs’ counsel, FCA was responsible for the content of the website. Plaintiff also reviewed Huntington Beach Chrysler Dodge Jeep Ram’s website to learn more about the Class Vehicle’s safety features.

b. On the day he visited Huntington Beach Chrysler Dodge Jeep Ram to purchase the Class Vehicle, Plaintiff spoke with and relied on statements about the Class Vehicle made by a salesperson at Huntington Beach Chrysler Dodge Jeep Ram. The

1 salesperson and Plaintiff had conversations about the Class
2 Vehicle's safety features.

3 c. Plaintiff recalls reviewing the Monroney sticker and in-vehicle
4 airbag label safety language immediately prior to his purchase.
5 The sticker and label indicated the Class Vehicle was safe and
6 had properly-functioning airbags and seatbelts. Based upon the
7 investigation of Plaintiffs' counsel, FCA was responsible for the
8 content of the Monroney sticker, and FCA was responsible for
9 the in-vehicle airbag label safety language.

10 d. Plaintiff test drove the Class Vehicle before purchasing it. At no
11 time prior to or at the time of his purchase did the airbag
12 warning light on the Class Vehicle's dashboard illuminate or
13 flash to indicate any issue with the Class Vehicle's airbag
14 system. By not illuminating or flashing, the airbag warning light
15 conveyed there were no problems with the system and that the
16 airbag system would function properly during a crash. Based
17 upon the investigation of Plaintiffs' counsel, FCA, ZF
18 Electronics USA, ZF Passive Safety USA, and ZF Automotive
19 USA had joint responsibility for the failure of the airbag
20 warning light to warn about the ACU Defect.

21 130. FCA, ZF Electronics USA, ZF Passive Safety USA, ZF Automotive
22 USA, ZF TRW Corp., ST USA, ST Malaysia, and ST Italy concealed the existence
23 of the ACU Defect from consumers like Plaintiff and NHTSA. Had they instead
24 disclosed it before Plaintiff acquired the Class Vehicle, Plaintiff would have learned
25 of the concealed information through, for example, the advertising channels
26 described above or through discussions with the salesperson. Plaintiff has suffered a
27 concrete injury in the form of an overpayment for the Class Vehicle as a result of
28 FCA, ZF Electronics USA, ZF Passive Safety USA, ZF Automotive USA, ZF TRW

1 Corp., ST USA, ST Malaysia, and ST Italy’s misconduct, and did not receive the
2 full benefit of the bargain in acquiring the Class Vehicle. Plaintiff would not have
3 purchased the Class Vehicle, or would have paid less for it, if FCA, ZF Electronics
4 USA, ZF Passive Safety USA, ZF Automotive USA, ZF TRW Corp., ST USA, ST
5 Malaysia, and ST Italy did not conceal material information regarding the Class
6 Vehicle’s safety and reliability, or the fact that it was equipped with a defective
7 ACU and ASIC.

8 **c. Steve Laveaux**

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10 131. Plaintiff Steve Laveaux (“Plaintiff”) is an individual residing in
11 Palmdale, California. In or around May 2017, Plaintiff purchased a used 2014 Jeep
12 Wrangler (the “Class Vehicle”) from Crown Dodge Chrysler Jeep Ram, an
13 authorized FCA dealership located in Ventura, California. At the time Plaintiff
14 acquired the Class Vehicle, Plaintiff had a reasonable expectation that the Class
15 Vehicle had properly-functioning airbags and seatbelts, and Plaintiff had no way of
16 knowing that the Class Vehicle contained a defective ACU and ASIC that could
17 cause the airbags and seatbelts to fail during a crash.

18 132. In the weeks leading up to his purchase of the Class Vehicle, Plaintiff
19 reviewed and relied on numerous statements and representations about it.

20 a. On the day he visited Crown Dodge Chrysler Jeep Ram to
21 purchase the Class Vehicle, Plaintiff spoke with and relied on
22 statements about the Class Vehicle made by a salesperson at
23 Crown Dodge Chrysler Jeep Ram. Plaintiff discussed with the
24 salesperson the safety features of the Class Vehicle. Plaintiff
25 was concerned about the Takata airbag recall and wanted
26 confirmation that the Class Vehicle did not have a defective
27 airbag system. The salesperson assured Plaintiff that the airbag
28 system in the Class Vehicle was safe.

1 b. Plaintiff recalls reviewing the Monroney sticker and in-vehicle
2 airbag label safety language immediately prior to his purchase.
3 The sticker and label indicated the Class Vehicle was safe and
4 had properly-functioning airbags and seatbelts. Based upon the
5 investigation of Plaintiffs' counsel, FCA was responsible for the
6 content of the Monroney sticker, and FCA was responsible for
7 the in-vehicle airbag label safety language.

8 c. Plaintiff test drove the Class Vehicle before purchasing it. At no
9 time prior to or at the time of his purchase did the airbag
10 warning light on the Class Vehicle's dashboard illuminate or
11 flash to indicate any issue with the Class Vehicle's airbag
12 system. By not illuminating or flashing, the airbag warning light
13 conveyed there were no problems with the system and that the
14 airbag system would function properly during a crash. Based
15 upon the investigation of Plaintiffs' counsel, FCA, ZF
16 Electronics USA, ZF Passive Safety USA, and ZF Automotive
17 USA had joint responsibility for the failure of the airbag
18 warning light to warn about the ACU Defect.

19 133. FCA, ZF Electronics USA, ZF Passive Safety USA, ZF Automotive
20 USA, ZF TRW Corp., ZF Germany, ST USA, ST Malaysia, and ST Italy concealed
21 the existence of the ACU Defect from consumers like Plaintiff and NHTSA. Had
22 they instead disclosed it before Plaintiff acquired the Class Vehicle, Plaintiff would
23 have learned of the concealed information through, for example, the advertising
24 channels described above or through discussions with the salesperson. Plaintiff has
25 suffered a concrete injury in the form of an overpayment for the Class Vehicle as a
26 result of FCA, ZF Electronics USA, ZF Passive Safety USA, ZF Automotive USA,
27 ZF TRW Corp., ZF Germany, ST USA, ST Malaysia, and ST Italy's misconduct,
28 and did not receive the full benefit of the bargain in acquiring the Class Vehicle.

1 Plaintiff would not have purchased the Class Vehicle, or would have paid less for it,
2 if FCA, ZF Electronics USA, ZF Passive Safety USA, ZF Automotive USA, ZF
3 TRW Corp., ZF Germany, ST USA, ST Malaysia, and ST Italy did not conceal
4 material information regarding the Class Vehicle’s safety and reliability, or the fact
5 that it was equipped with a defective ACU and ASIC.

6 **d. Moises Senti**

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8 134. Plaintiff Moises Senti (“Plaintiff”) is an individual residing in Ocala,
9 Florida. On or around April 19, 2016, Plaintiff purchased a new 2016 Jeep
10 Wrangler (the “Class Vehicle”) from Potamkin Jeep (now known as Miami Lakes
11 Automall), an authorized FCA dealership located in Miami Lakes, Florida. At the
12 time Plaintiff acquired the Class Vehicle, Plaintiff had a reasonable expectation that
13 the Class Vehicle had properly-functioning airbags and seatbelts, and Plaintiff had
14 no way of knowing that the Class Vehicle contained a defective ACU and ASIC
15 that could cause the airbags and seatbelts to fail during a crash.

16 135. In the weeks leading up to his purchase of the Class Vehicle, Plaintiff
17 reviewed and relied on numerous statements and representations about it.

18 a. Plaintiff saw representations and statements on Jeep’s website
19 indicating that the Class Vehicle was safe and had properly-
20 functioning airbags and seatbelts. The Class Vehicle’s safety
21 features were important to his purchase decision. Plaintiff is not
22 personally aware of which particular FCA entity is responsible
23 for these representations and statements because Plaintiff
24 interfaces with FCA as a brand. Based upon the investigation of
25 Plaintiffs’ counsel, FCA was responsible for the content of the
26 website.

27 b. Plaintiff recalls reviewing the Monroney sticker and in-vehicle
28 airbag label safety language immediately prior to his purchase.

1 The sticker and label indicated the Class Vehicle was safe and
2 had properly-functioning airbags and seatbelts. Based upon the
3 investigation of Plaintiffs' counsel, FCA was responsible for the
4 content of the Monroney sticker, and FCA was responsible for
5 the in-vehicle airbag label safety language.

6 c. Plaintiff test drove the Class Vehicle before purchasing it. At no
7 time prior to or at the time of his purchase did the airbag
8 warning light on the Class Vehicle's dashboard illuminate or
9 flash to indicate any issue with the Class Vehicle's airbag
10 system. By not illuminating or flashing, the airbag warning light
11 conveyed there were no problems with the system and that the
12 airbag system would function properly during a crash. Based
13 upon the investigation of Plaintiffs' counsel, FCA, ZF
14 Electronics USA, ZF Passive Safety USA, and ZF Automotive
15 USA had joint responsibility for the failure of the airbag
16 warning light to warn about the ACU Defect.

17 136. FCA, ZF Electronics USA, ZF Passive Safety USA, ZF Automotive
18 USA, ZF TRW Corp., ZF Germany, ST USA, ST Malaysia, and ST Italy concealed
19 the existence of the ACU Defect from consumers like Plaintiff and NHTSA. Had
20 they instead disclosed it before Plaintiff acquired the Class Vehicle, Plaintiff would
21 have learned of the concealed information through, for example, the advertising
22 channels described above or through discussions with the salesperson. Plaintiff has
23 suffered a concrete injury in the form of an overpayment for the Class Vehicle as a
24 result of FCA, ZF Electronics USA, ZF Passive Safety USA, ZF Automotive USA,
25 ZF TRW Corp., ZF Germany, ST USA, ST Malaysia, and ST Italy's misconduct,
26 and did not receive the full benefit of the bargain in acquiring the Class Vehicle.
27 Plaintiff would not have purchased the Class Vehicle, or would have paid less for it,
28 if FCA, ZF Electronics USA, ZF Passive Safety USA, ZF Automotive USA, ZF

1 TRW Corp., ZF Germany, ST USA, ST Malaysia, and ST Italy did not conceal
2 material information regarding the Class Vehicle’s safety and reliability, or the fact
3 that it was equipped with a defective ACU and ASIC.

4 **e. Maximillian Accetta**

5 137. Plaintiff Maximillian Accetta (“Plaintiff”) is an individual residing in
6 Fort Lauderdale, Florida. On or around August 25, 2015, Plaintiff purchased a used
7 2015 Jeep Compass (the “Class Vehicle”) from Off Lease Only, located in Lake
8 Worth, Florida. At the time Plaintiff acquired the Class Vehicle, Plaintiff had a
9 reasonable expectation that the Class Vehicle had properly-functioning airbags and
10 seatbelts, and Plaintiff had no way of knowing that the Class Vehicle contained a
11 defective ACU and ASIC that could cause the airbags and seatbelts to fail during a
12 crash.

13 138. In the weeks leading up to his purchase of the Class Vehicle, Plaintiff
14 reviewed and relied on numerous statements and representations about it.

15 a. Plaintiff saw representations and statements on Jeep’s website
16 indicating that the Class Vehicle was safe and had properly-
17 functioning airbags and seatbelts. The Class Vehicle’s safety
18 features were important to his purchase decision. Based on his
19 research, Plaintiff believed the Class Vehicle was not only safe,
20 but also safer than other vehicles. Plaintiff is not personally
21 aware of which particular FCA entity is responsible for these
22 representations and statements because Plaintiff interfaces with
23 FCA as a brand. Based upon the investigation of Plaintiffs’
24 counsel, FCA was responsible for the content of the website.

25 b. Plaintiff also conducted online research on the Class Vehicle’s
26 safety features. Because Defendants failed to disclose the ACU
27 Defect, Plaintiff’s research did not show that the Class Vehicle
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1 contained the ACU Defect, and instead indicated that the Class
2 Vehicle was safe and had properly-functioning airbags and
3 seatbelts.

4 c. Plaintiff recalls reviewing the Monroney sticker immediately
5 prior to his purchase. The sticker indicated the Class Vehicle
6 was safe and had properly-functioning airbags and seatbelts.
7 Based upon the investigation of Plaintiffs' counsel, FCA was
8 responsible for the content of the Monroney sticker.

9 d. Plaintiff test drove the Class Vehicle before purchasing it. At no
10 time prior to or at the time of his purchase did the airbag
11 warning light on the Class Vehicle's dashboard illuminate or
12 flash to indicate any issue with the Class Vehicle's airbag
13 system. By not illuminating or flashing, the airbag warning light
14 conveyed there were no problems with the system and that the
15 airbag system would function properly during a crash. Based
16 upon the investigation of Plaintiffs' counsel, FCA, ZF
17 Electronics USA, ZF Passive Safety USA, and ZF Automotive
18 USA had joint responsibility for the failure of the airbag
19 warning light to warn about the ACU Defect.

20 139. FCA, ZF Electronics USA, ZF Passive Safety USA, ZF Automotive
21 USA, ZF TRW Corp., ST USA, ST Malaysia, and ST Italy concealed the existence
22 of the ACU Defect from consumers like Plaintiff and NHTSA. Had they instead
23 disclosed it before Plaintiff acquired the Class Vehicle, Plaintiff would have learned
24 of the concealed information through, for example, the advertising channels
25 described above or through discussions with the salesperson. Plaintiff has suffered a
26 concrete injury in the form of an overpayment for the Class Vehicle as a result of
27 FCA, ZF Electronics USA, ZF Passive Safety USA, ZF Automotive USA, ZF TRW
28 Corp., ST USA, ST Malaysia, and ST Italy's misconduct, and did not receive the

1 full benefit of the bargain in acquiring the Class Vehicle. Plaintiff would not have
2 purchased the Class Vehicle, or would have paid less for it, if FCA, ZF Electronics
3 USA, ZF Passive Safety USA, ZF Automotive USA, ZF TRW Corp., ST USA, ST
4 Malaysia, and ST Italy did not conceal material information regarding the Class
5 Vehicle's safety and reliability, or the fact that it was equipped with a defective
6 ACU and ASIC.

7 **f. Steve Keister**

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9 140. Plaintiff Steve Keister ("Plaintiff") is an individual residing in
10 Hayward, Wisconsin. On or around August 30, 2011, Plaintiff purchased a used
11 2010 Dodge Nitro (the "Class Vehicle") from McKay's Family Dodge, an
12 authorized FCA dealership located in Waite Park, Minnesota. At the time Plaintiff
13 acquired the Class Vehicle, Plaintiff had a reasonable expectation that the Class
14 Vehicle had properly-functioning airbags and seatbelts, and Plaintiff had no way of
15 knowing that the Class Vehicle contained a defective ACU and ASIC that could
16 cause the airbags and seatbelts to fail during a crash.

17 141. In the weeks leading up to his purchase of the Class Vehicle, Plaintiff
18 reviewed and relied on numerous statements and representations about it.

19 a. Plaintiff conducted online research on the Class Vehicle's safety
20 features. Because Defendants failed to disclose the ACU Defect,
21 Plaintiff's research did not show that the Class Vehicle
22 contained the ACU Defect, and instead indicated that the Class
23 Vehicle was safe and had properly-functioning airbags and
24 seatbelts.

25 b. On the day he purchased the Class Vehicle, Plaintiff spoke with
26 and relied on statements about the Class Vehicle made by a
27 salesperson at McKay's Family Dodge. Plaintiff and the
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1 salesperson spoke about the Class Vehicle's price, mileage,
2 condition, and remaining warranty.

3 c. Plaintiff test drove the Class Vehicle before purchasing it. At no
4 time prior to or at the time of his purchase did the airbag
5 warning light on the Class Vehicle's dashboard illuminate or
6 flash to indicate any issue with the Class Vehicle's airbag
7 system. By not illuminating or flashing, the airbag warning light
8 conveyed there were no problems with the system and that the
9 airbag system would function properly during a crash. Based
10 upon the investigation of Plaintiffs' counsel, FCA, ZF
11 Electronics USA, ZF Passive Safety USA, and ZF Automotive
12 USA had joint responsibility for the failure of the airbag
13 warning light to warn about the ACU Defect.

14 142. FCA, ZF Electronics USA, ZF Passive Safety USA, ZF Automotive
15 USA, ZF TRW Corp., ST USA, ST Malaysia, and ST Italy concealed the existence
16 of the ACU Defect from consumers like Plaintiff and NHTSA. Had they instead
17 disclosed it before Plaintiff acquired the Class Vehicle, Plaintiff would have learned
18 of the concealed information through, for example, the advertising channels
19 described above or through discussions with the salesperson. Plaintiff has suffered a
20 concrete injury in the form of an overpayment for the Class Vehicle as a result of
21 FCA, ZF Electronics USA, ZF Passive Safety USA, ZF Automotive USA, ZF TRW
22 Corp., ST USA, ST Malaysia, and ST Italy's misconduct, and did not receive the
23 full benefit of the bargain in acquiring the Class Vehicle. Plaintiff would not have
24 purchased the Class Vehicle, or would have paid less for it, if FCA, ZF Electronics
25 USA, ZF Passive Safety USA, ZF Automotive USA, ZF TRW Corp., ST USA, ST
26 Malaysia, and ST Italy did not conceal material information regarding the Class
27 Vehicle's safety and reliability, or the fact that it was equipped with a defective
28 ACU and ASIC.

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g. Eric Fishon

143. Plaintiff Eric Fishon (“Plaintiff”) is an individual residing in Happauge, New York. On or around May 12, 2017, Plaintiff purchased a used 2014 Jeep Wrangler (the “Class Vehicle”) from Westbury Jeep Chrysler Dodge, an authorized FCA dealership located in Jericho, New York. At the time Plaintiff acquired the Class Vehicle, Plaintiff had a reasonable expectation that the Class Vehicle had properly-functioning airbags and seatbelts, and Plaintiff had no way of knowing that the Class Vehicle contained a defective ACU and ASIC that could cause the airbags and seatbelts to fail during a crash.

144. In the weeks leading up to his purchase of the Class Vehicle, Plaintiff reviewed and relied on numerous statements and representations about it.

- a. Plaintiff saw Jeep advertising for the Jeep Wrangler touting its features and highlighting that Jeeps are manufactured in the United States. Plaintiff is not personally aware of which particular FCA entity is responsible for Jeep advertising. Based upon the investigation of Plaintiffs’ counsel, FCA was responsible for the content of the advertising.
- b. Plaintiff test drove the Class Vehicle before purchasing it. At no time prior to or at the time of his purchase did the airbag warning light on the Class Vehicle’s dashboard illuminate or flash to indicate any issue with the Class Vehicle’s airbag system. By not illuminating or flashing, the airbag warning light conveyed there were no problems with the system and that the airbag system would function properly during a crash. Based upon the investigation of Plaintiffs’ counsel, FCA, ZF Electronics USA, ZF Passive Safety USA, and ZF Automotive

1 USA had joint responsibility for the failure of the airbag
2 warning light to warn about the ACU Defect.

3 145. FCA, ZF Electronics USA, ZF Passive Safety USA, ZF Automotive
4 USA, ZF TRW Corp., ZF Germany, ST USA, ST Malaysia, and ST Italy concealed
5 the existence of the ACU Defect from consumers like Plaintiff and NHTSA. Had
6 they instead disclosed it before Plaintiff acquired the Class Vehicle, Plaintiff would
7 have learned of the concealed information through, for example, the advertising
8 channels described above or through discussions with the salesperson. Plaintiff has
9 suffered a concrete injury in the form of an overpayment for the Class Vehicle as a
10 result of FCA, ZF Electronics USA, ZF Passive Safety USA, ZF Automotive USA,
11 ZF TRW Corp., ZF Germany, ST USA, ST Malaysia, and ST Italy's misconduct,
12 and did not receive the full benefit of the bargain in acquiring the Class Vehicle.
13 Plaintiff would not have purchased the Class Vehicle, or would have paid less for it,
14 if FCA, ZF Electronics USA, ZF Passive Safety USA, ZF Automotive USA, ZF
15 TRW Corp., ZF Germany, ST USA, ST Malaysia, and ST Italy did not conceal
16 material information regarding the Class Vehicle's safety and reliability, or the fact
17 that it was equipped with a defective ACU and ASIC.

18 **h. Constanza Gonzalez**

19 146. Plaintiff Constanza Gonzalez ("Plaintiff") is an individual residing in
20 Charlotte, North Carolina. On or around February 2, 2019, Plaintiff purchased a
21 used 2012 Jeep Wrangler (the "Class Vehicle") from Bob Mayberry Hyundai
22 located in Monroe, North Carolina. At the time Plaintiff acquired the Class Vehicle,
23 Plaintiff had a reasonable expectation that the Class Vehicle had properly-
24 functioning airbags and seatbelts, and Plaintiff had no way of knowing that the
25 Class Vehicle contained a defective ACU and ASIC that could cause the airbags
26 and seatbelts to fail during a crash.
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1 147. In the weeks leading up to her purchase of the Class Vehicle, Plaintiff
2 reviewed and relied on numerous statements and representations about it.

3 a. Plaintiff conducted online research about the Class Vehicle,
4 which included research for reviews, reports, and information
5 about the Class Vehicle. Because Defendants failed to disclose
6 the ACU Defect, Plaintiff's research did not show that the Class
7 Vehicle was affected by the Defect, and instead indicated that
8 the Class Vehicle was safe and had properly-functioning airbags
9 and seatbelts.

10 b. On the day she purchased the Class Vehicle, Plaintiff spoke with
11 and relied on statements about Jeep Wranglers made by a
12 salesperson at Keffer Chrysler Jeep Dodge Ram in Charlotte,
13 North Carolina.

14 c. Plaintiff recalls reviewing the in-vehicle airbag label safety
15 language immediately prior to her purchase, including during
16 her test drive. The label indicated the Class Vehicle was safe
17 and had properly-functioning airbags and seatbelts. Based upon
18 the investigation of Plaintiffs' counsel, FCA was responsible for
19 the in-vehicle airbag label safety language.

20 d. Plaintiff test drove the Class Vehicle before purchasing it. At no
21 time prior to or at the time of her purchase did the airbag
22 warning light on the Class Vehicle's dashboard illuminate or
23 flash to indicate any issue with the Class Vehicle's airbag
24 system. By not illuminating or flashing, the airbag warning light
25 conveyed there were no problems with the system and that the
26 airbag system would function properly during a crash. Based
27 upon the investigation of Plaintiffs' counsel, FCA, ZF
28 Electronics USA, ZF Passive Safety USA, and ZF Automotive

1 USA had joint responsibility for the failure of the airbag
2 warning light to warn about the ACU Defect.

3 148. FCA, ZF Electronics USA, ZF Passive Safety USA, ZF Automotive
4 USA, ZF TRW Corp., ZF Germany, ST USA, ST Malaysia, and ST Italy concealed
5 the existence of the ACU Defect from consumers like Plaintiff and NHTSA. Had
6 they instead disclosed it before Plaintiff acquired the Class Vehicle, Plaintiff would
7 have learned of the concealed information through, for example, the advertising
8 channels described above or through discussions with the salesperson. Plaintiff has
9 suffered a concrete injury in the form of an overpayment for the Class Vehicle as a
10 result of FCA, ZF Electronics USA, ZF Passive Safety USA, ZF Automotive USA,
11 ZF TRW Corp., ZF Germany, ST USA, ST Malaysia, and ST Italy's misconduct,
12 and did not receive the full benefit of the bargain in acquiring the Class Vehicle.
13 Plaintiff would not have purchased the Class Vehicle, or would have paid less for it,
14 if FCA, ZF Electronics USA, ZF Passive Safety USA, ZF Automotive USA, ZF
15 TRW Corp., ZF Germany, ST USA, ST Malaysia, and ST Italy did not conceal
16 material information regarding the Class Vehicle's safety and reliability, or the fact
17 that it was equipped with a defective ACU and ASIC.

18 **i. James Dean**

19 149. Plaintiff James Dean ("Plaintiff") is an individual residing in
20 Oklahoma City, Oklahoma. On or around March 15, 2015, Plaintiff purchased a
21 used 2015 Fiat 500 (the "Class Vehicle") from David Stanley Chrysler Dodge Jeep
22 Ram, an authorized FCA dealership located in Midwest City, Oklahoma. At the
23 time Plaintiff acquired the Class Vehicle, Plaintiff had a reasonable expectation that
24 the Class Vehicle had properly-functioning airbags and seatbelts, and Plaintiff had
25 no way of knowing that the Class Vehicle contained a defective ACU and ASIC
26 that could cause the airbags and seatbelts to fail during a crash.
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1 150. In the weeks leading up to his purchase of the Class Vehicle, Plaintiff
2 reviewed and relied on numerous statements and representations about it.

3 a. On the day he purchased the Class Vehicle, Plaintiff spoke with
4 and relied on statements about the Class Vehicle made by a
5 salesperson at David Stanley Chrysler Dodge Jeep Ram. The
6 salesperson told Plaintiff prior to him deciding to purchase the
7 Class Vehicle that the Class Vehicle was durable, safe, and got
8 good gas mileage.

9 b. Plaintiff recalls reviewing the Monroney sticker immediately
10 prior to his purchase. The sticker indicated the Class Vehicle
11 was safe and had properly-functioning airbags and seatbelts.
12 Based upon the investigation of Plaintiffs' counsel, FCA was
13 responsible for the content of the Monroney sticker.

14 c. Plaintiff test drove the Class Vehicle before purchasing it. At no
15 time prior to or at the time of his purchase did the airbag
16 warning light on the Class Vehicle's dashboard illuminate or
17 flash to indicate any issue with the Class Vehicle's airbag
18 system. By not illuminating or flashing, the airbag warning light
19 conveyed there were no problems with the system and that the
20 airbag system would function properly during a crash. Based
21 upon the investigation of Plaintiffs' counsel, FCA, ZF
22 Electronics USA, ZF Passive Safety USA, and ZF Automotive
23 USA had joint responsibility for the failure of the airbag
24 warning light to warn about the ACU Defect.

25 151. FCA, ZF Electronics USA, ZF Passive Safety USA, ZF Automotive
26 USA, ZF TRW Corp., ST USA, ST Malaysia, and ST Italy concealed the existence
27 of the ACU Defect from consumers like Plaintiff and NHTSA. Had they instead
28 disclosed it before Plaintiff acquired the Class Vehicle, Plaintiff would have learned

1 of the concealed information through, for example, the advertising channels
2 described above or through discussions with the salesperson. Plaintiff has suffered a
3 concrete injury in the form of an overpayment for the Class Vehicle as a result of
4 FCA, ZF Electronics USA, ZF Passive Safety USA, ZF Automotive USA, ZF TRW
5 Corp., ST USA, ST Malaysia, and ST Italy’s misconduct, and did not receive the
6 full benefit of the bargain in acquiring the Class Vehicle. Plaintiff would not have
7 purchased the Class Vehicle, or would have paid less for it, if FCA, ZF Electronics
8 USA, ZF Passive Safety USA, ZF Automotive USA, ZF TRW Corp., ST USA, ST
9 Malaysia, and ST Italy did not conceal material information regarding the Class
10 Vehicle’s safety and reliability, or the fact that it was equipped with a defective
11 ACU and ASIC.

12 **j. Desiree Meyer**

13 152. Plaintiff Desiree Meyer (“Plaintiff”) is an individual residing in
14 Douglas, Wyoming. On or around May 14, 2012, Plaintiff purchased a new 2012
15 Jeep Liberty (the “Class Vehicle”) from Aberdeen Chrysler Center, an authorized
16 FCA dealership located in Aberdeen, South Dakota. At the time Plaintiff acquired
17 the Class Vehicle, Plaintiff had a reasonable expectation that the Class Vehicle had
18 properly-functioning airbags and seatbelts, and Plaintiff had no way of knowing
19 that the Class Vehicle contained a defective ACU and ASIC that could cause the
20 airbags and seatbelts to fail during a crash.

21 153. In the weeks leading up to her purchase of the Class Vehicle, Plaintiff
22 reviewed and relied on numerous statements and representations about it.

23 a. Plaintiff conducted online research on the Class Vehicle’s safety
24 ratings. Because Defendants failed to disclose the ACU Defect,
25 Plaintiff’s research did not show that the Class Vehicle
26 contained the ACU Defect, and instead indicated that the Class
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1 Vehicle was safe and had properly-functioning airbags and
2 seatbelts.

3 b. Before she purchased the Class Vehicle, Plaintiff spoke with and
4 relied on statements about the Class Vehicle made by a
5 salesperson at Aberdeen Chrysler Center. Plaintiff discussed the
6 Class Vehicle's safety with the salesperson. The salesperson
7 represented that the Class Vehicle's safety rating was superior to
8 that of other Jeep vehicles due to improvements in the design of
9 the Class Vehicle.

10 c. Plaintiff recalls reviewing the Monroney sticker and in-vehicle
11 airbag label safety language immediately prior to her purchase.
12 The sticker and label indicated the Class Vehicle was safe and
13 had properly-functioning airbags and seatbelts. Based upon the
14 investigation of Plaintiffs' counsel, FCA was responsible for the
15 content of the Monroney sticker, and FCA was responsible for
16 the in-vehicle airbag label safety language.

17 d. Plaintiff test drove a 2012 Jeep Liberty at another Jeep
18 dealership prior to her purchase of the Class Vehicle. When her
19 Class Vehicle was delivered to her, the airbag warning light on
20 its dashboard was not illuminated nor did it flash to indicate any
21 issue with the Class Vehicle's airbag system. By not
22 illuminating or flashing, the airbag warning light conveyed there
23 were no problems with the system and that the airbag system
24 would function properly during a crash. Based upon the
25 investigation of Plaintiffs' counsel, FCA, ZF Electronics USA,
26 ZF Passive Safety USA, and ZF Automotive USA had joint
27 responsibility for the failure of the airbag warning light to warn
28 about the ACU Defect.

1 154. FCA, ZF Electronics USA, ZF Passive Safety USA, ZF Automotive
2 USA, ZF TRW Corp., ST USA, ST Malaysia, and ST Italy concealed the existence
3 of the ACU Defect from consumers like Plaintiff and NHTSA. Had they instead
4 disclosed it before Plaintiff acquired the Class Vehicle, Plaintiff would have learned
5 of the concealed information through, for example, the advertising channels
6 described above or through discussions with the salesperson. Plaintiff has suffered a
7 concrete injury in the form of an overpayment for the Class Vehicle as a result of
8 FCA, ZF Electronics USA, ZF Passive Safety USA, ZF Automotive USA, ZF TRW
9 Corp., ST USA, ST Malaysia, and ST Italy’s misconduct, and did not receive the
10 full benefit of the bargain in acquiring the Class Vehicle. Plaintiff would not have
11 purchased the Class Vehicle, or would have paid less for it, if FCA, ZF Electronics
12 USA, ZF Passive Safety USA, ZF Automotive USA, ZF TRW Corp., ST USA, ST
13 Malaysia, and ST Italy did not conceal material information regarding the Class
14 Vehicle’s safety and reliability, or the fact that it was equipped with a defective
15 ACU and ASIC.

16 **3. Toyota Plaintiffs**

17 **a. Mark Altier**

18 155. Plaintiff Mark Altier (“Plaintiff”) is an individual residing in San
19 Diego, California. On or around April 24, 2014, Plaintiff purchased a new 2014
20 Toyota Tacoma (the “Class Vehicle”) from Toyota San Diego (now known as
21 Norm Reeves Toyota San Diego), an authorized Toyota dealership located in San
22 Diego, California. At the time Plaintiff acquired the Class Vehicle, Plaintiff had a
23 reasonable expectation that the Class Vehicle had properly-functioning airbags and
24 seatbelts, and Plaintiff had no way of knowing that the Class Vehicle contained a
25 defective ACU and ASIC that could cause the airbags and seatbelts to fail during a
26 crash.
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1 156. In the weeks leading up to his purchase of the Class Vehicle, Plaintiff
2 reviewed and relied on numerous statements and representations about it.

3 a. On the day he purchased the Class Vehicle, Plaintiff spoke with
4 and relied on statements about the Class Vehicle made by a
5 salesperson at Toyota San Diego (now known as Norm Reeves
6 Toyota San Diego). Prior to his deciding to purchase the Class
7 Vehicle, Plaintiff and the salesperson spoke about the Class
8 Vehicle's safety and reputation.

9 b. At Toyota San Diego on the day he purchased the Class Vehicle,
10 Plaintiff reviewed and relied on marketing documents provided
11 to him by a salesperson at Toyota San Diego, which included
12 among other things, representations and statements indicating
13 that the Class Vehicle was safe and had properly-functioning
14 airbags and seatbelts. Based upon the investigation of Plaintiffs'
15 counsel, Toyota Sales USA was responsible for the content of
16 Toyota marketing materials distributed in the United States.

17 c. Plaintiff saw and heard Toyota commercials through the radio,
18 television, and the internet that touted the safety, quality, and
19 reliability of the Class Vehicle. Plaintiff is not personally aware
20 of which particular Toyota entity is responsible for the Toyota
21 commercials he saw. Based upon the investigation of Plaintiffs'
22 counsel, Toyota Sales USA was responsible for the content of
23 the television advertising.

24 d. Plaintiff reviewed Consumer Reports and read about the Class
25 Vehicle. Because Defendants failed to disclose the ACU Defect,
26 Plaintiff's research did not show that the Class Vehicle
27 contained the ACU Defect, and instead indicated that the Class
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1 Vehicle was safe and had properly-functioning airbags and
2 seatbelts.

3 e. Plaintiff recalls reviewing the Monronev sticker and in-vehicle
4 airbag label safety language immediately prior to his purchase.
5 The sticker and label indicated the Class Vehicle was safe and
6 had properly-functioning airbags and seatbelts. Based upon the
7 investigation of Plaintiffs' counsel, Toyota USA and Toyota
8 Sales USA were jointly responsible for the content of the
9 Monronev sticker, and Toyota Japan was responsible for the in-
10 vehicle airbag label safety language.

11 f. At no time prior to or at the time of his purchase did the airbag
12 warning light on the Class Vehicle's dashboard illuminate or
13 flash to indicate any issue with the Class Vehicle's airbag
14 system. By not illuminating or flashing, the airbag warning light
15 conveyed there were no problems with the system and that the
16 airbag system would function properly during a crash. Based
17 upon the investigation of Plaintiffs' counsel, Toyota Japan, ZF
18 Electronics USA, ZF Passive Safety USA, and ZF Automotive
19 USA had joint responsibility for the failure of the airbag
20 warning light to warn about the ACU Defect.

21 157. Toyota Japan, Toyota USA, Toyota Engineering USA, Toyota Sales
22 USA, ZF Electronics USA, ZF Passive Safety USA, ZF Automotive USA, ZF
23 TRW Corp., ST USA, ST Malaysia, and ST Italy concealed the existence of the
24 ACU Defect from consumers like Plaintiff and NHTSA. Had they instead disclosed
25 it before Plaintiff acquired the Class Vehicle, Plaintiff would have learned of the
26 concealed information through, for example, the advertising channels described
27 above or through discussions with the salesperson. Plaintiff has suffered a concrete
28 injury in the form of an overpayment for the Class Vehicle as a result of Toyota

1 Japan, Toyota USA, Toyota Engineering USA, Toyota Sales USA, ZF Electronics
2 USA, ZF Passive Safety USA, ZF Automotive USA, ZF TRW Corp., ST USA, ST
3 Malaysia, and ST Italy’s misconduct, and did not receive the full benefit of the
4 bargain in acquiring the Class Vehicle. Plaintiff would not have purchased the
5 Class Vehicle, or would have paid less for it, if Toyota Japan, Toyota USA, Toyota
6 Engineering USA, Toyota Sales USA, ZF Electronics USA, ZF Passive Safety
7 USA, ZF Automotive USA, ZF TRW Corp., ST USA, ST Malaysia, and ST Italy
8 did not conceal material information regarding the Class Vehicle’s safety and
9 reliability, or the fact that it was equipped with a defective ACU and ASIC.

10 **b. Alejandra Renteria**

11 158. Plaintiff Alejandra Renteria (“Plaintiff”) is an individual residing in
12 Rialto, California. On or around August 4, 2013, Plaintiff purchased a new 2013
13 Toyota Corolla Matrix (the “Class Vehicle”) from John Elway’s Crown Toyota, an
14 authorized Toyota dealership located in Ontario, California. At the time Plaintiff
15 acquired the Class Vehicle, Plaintiff had a reasonable expectation that the Class
16 Vehicle had properly-functioning airbags and seatbelts, and Plaintiff had no way of
17 knowing that the Class Vehicle contained a defective ACU and ASIC that could
18 cause the airbags and seatbelts to fail during a crash.

19 159. In the weeks leading up to her purchase of the Class Vehicle, Plaintiff
20 reviewed and relied on numerous statements and representations about it.

21 a. On the day she purchased the Class Vehicle, Plaintiff spoke with
22 and relied on statements about the Class Vehicle made by a
23 salesperson at John Elway’s Crown Toyota.

24 b. Plaintiff recalls reviewing the Monroney sticker and in-vehicle
25 airbag label safety language immediately prior to her purchase.
26 The sticker and label indicated the Class Vehicle was safe and
27 had properly-functioning airbags and seatbelts. Based upon the
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1 investigation of Plaintiffs' counsel, Toyota USA and Toyota
2 Sales USA were jointly responsible for the content of the
3 Monroney sticker, and Toyota Japan was responsible for the in-
4 vehicle airbag label safety language.

5 c. Plaintiff test drove the Class Vehicle before purchasing it. At no
6 time prior to or at the time of her purchase did the airbag
7 warning light on the Class Vehicle's dashboard illuminate or
8 flash to indicate any issue with the Class Vehicle's airbag
9 system. By not illuminating or flashing, the airbag warning light
10 conveyed there were no problems with the system and that the
11 airbag system would function properly during a crash. Based
12 upon the investigation of Plaintiffs' counsel, Toyota Japan, ZF
13 Electronics USA, ZF Passive Safety USA, and ZF Automotive
14 USA had joint responsibility for the failure of the airbag
15 warning light to warn about the ACU Defect.

16 160. Toyota Japan, Toyota USA, Toyota Engineering USA, Toyota Sales
17 USA, ZF Electronics USA, ZF Passive Safety USA, ZF Automotive USA, ZF
18 TRW Corp., ST USA, ST Malaysia, and ST Italy concealed the existence of the
19 ACU Defect from consumers like Plaintiff and NHTSA. Had they instead disclosed
20 it before Plaintiff acquired the Class Vehicle, Plaintiff would have learned of the
21 concealed information through, for example, the advertising channels described
22 above or through discussions with the salesperson. Plaintiff has suffered a concrete
23 injury in the form of an overpayment for the Class Vehicle as a result of Toyota
24 Japan, Toyota USA, Toyota Engineering USA, Toyota Sales USA, ZF Electronics
25 USA, ZF Passive Safety USA, ZF Automotive USA, ZF TRW Corp., ST USA, ST
26 Malaysia, and ST Italy's misconduct, and did not receive the full benefit of the
27 bargain in acquiring the Class Vehicle. Plaintiff would not have purchased the
28 Class Vehicle, or would have paid less for it, if Toyota Japan, Toyota USA, Toyota

1 Engineering USA, Toyota Sales USA, ZF Electronics USA, ZF Passive Safety
2 USA, ZF Automotive USA, ZF TRW Corp., ST USA, ST Malaysia, and ST Italy
3 did not conceal material information regarding the Class Vehicle’s safety and
4 reliability, or the fact that it was equipped with a defective ACU and ASIC.

5 **c. Samuel Choc**

6 161. Plaintiff Samuel Choc (“Plaintiff”) is an individual residing in Miami,
7 Florida. On or around October 18, 2012, Plaintiff purchased a new 2013 Toyota
8 Tacoma (the “Class Vehicle”) from South Dade Toyota, an authorized Toyota
9 dealership located in Homestead, Florida. At the time Plaintiff acquired the Class
10 Vehicle, Plaintiff had a reasonable expectation that the Class Vehicle had properly-
11 functioning airbags and seatbelts, and Plaintiff had no way of knowing that the
12 Class Vehicle contained a defective ACU and ASIC that could cause the airbags
13 and seatbelts to fail during a crash.

14 162. In the weeks leading up to his purchase of the Class Vehicle, Plaintiff
15 reviewed and relied on numerous statements and representations about it.

16 a. Plaintiff saw representations and statements on Toyota’s website
17 indicating that the Class Vehicle was safe and had properly-
18 functioning airbags and seatbelts. The Class Vehicle’s safety
19 features were important to his purchase decision. Plaintiff is not
20 personally aware of which particular Toyota entity is
21 responsible for these representations and statements because
22 Plaintiff interfaces with Toyota as a brand. Based upon the
23 investigation of Plaintiffs’ counsel, Toyota Sales USA was
24 responsible for the content of the website.

25 b. At South Dade Toyota on the day he purchased the Class
26 Vehicle, Plaintiff saw Toyota marketing materials, which
27 included among other things, representations and statements
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1 indicating that the Class Vehicle was safe and had properly-
2 functioning airbags and seatbelts. Based upon the investigation
3 of Plaintiffs' counsel, Toyota Sales USA was responsible for the
4 content of the Toyota marketing materials distributed in the
5 United States. The brochure was given to Plaintiff by a
6 salesperson at South Dade Toyota.

7 c. Plaintiff recalls reviewing the Monroney sticker and in-vehicle
8 airbag label safety language immediately prior to his purchase.
9 The sticker and label indicated the Class Vehicle was safe and
10 had properly-functioning airbags and seatbelts. Based upon the
11 investigation of Plaintiffs' counsel, Toyota USA and Toyota
12 Sales USA were jointly responsible for the content of the
13 Monroney sticker, and Toyota Japan was responsible for the in-
14 vehicle airbag label safety language.

15 d. Plaintiff test drove the Class Vehicle before purchasing it. At no
16 time prior to or at the time of his purchase did the airbag
17 warning light on the Class Vehicle's dashboard illuminate or
18 flash to indicate any issue with the Class Vehicle's airbag
19 system. By not illuminating or flashing, the airbag warning light
20 conveyed there were no problems with the system and that the
21 airbag system would function properly during a crash. Based
22 upon the investigation of Plaintiffs' counsel, Toyota Japan, ZF
23 Electronics USA, ZF Passive Safety USA, and ZF Automotive
24 USA had joint responsibility for the failure of the airbag
25 warning light to warn about the ACU Defect.

26 163. Toyota Japan, Toyota USA, Toyota Engineering USA, Toyota Sales
27 USA, ZF Electronics USA, ZF Passive Safety USA, ZF Automotive USA, ZF
28 TRW Corp., ST USA, ST Malaysia, and ST Italy concealed the existence of the

1 ACU Defect from consumers like Plaintiff and NHTSA. Had they instead disclosed
2 it before Plaintiff acquired the Class Vehicle, Plaintiff would have learned of the
3 concealed information through, for example, the advertising channels described
4 above or through discussions with the salesperson. Plaintiff has suffered a concrete
5 injury in the form of an overpayment for the Class Vehicle as a result of Toyota
6 Japan, Toyota USA, Toyota Engineering USA, Toyota Sales USA, ZF Electronics
7 USA, ZF Passive Safety USA, ZF Automotive USA, ZF TRW Corp., ST USA, ST
8 Malaysia, and ST Italy's misconduct, and did not receive the full benefit of the
9 bargain in acquiring the Class Vehicle. Plaintiff would not have purchased the
10 Class Vehicle, or would have paid less for it, if Toyota Japan, Toyota USA, Toyota
11 Engineering USA, Toyota Sales USA, ZF Electronics USA, ZF Passive Safety
12 USA, ZF Automotive USA, ZF TRW Corp., ST USA, ST Malaysia, and ST Italy
13 did not conceal material information regarding the Class Vehicle's safety and
14 reliability, or the fact that it was equipped with a defective ACU and ASIC.

15 **d. Tatiana Gales**

16 164. Plaintiff Tatiana Gales ("Plaintiff") is an individual residing in Miami,
17 Florida. On or around July 18, 2015, Plaintiff purchased a new 2015 Toyota Corolla
18 (the "Class Vehicle") from South Dade Toyota, an authorized Toyota dealership
19 located in Homestead, Florida. At the time Plaintiff acquired the Class Vehicle,
20 Plaintiff had a reasonable expectation that the Class Vehicle had properly-
21 functioning airbags and seatbelts, and Plaintiff had no way of knowing that the
22 Class Vehicle contained a defective ACU and ASIC that could cause the airbags
23 and seatbelts to fail during a crash.

24 165. In the weeks leading up to her purchase of the Class Vehicle, Plaintiff
25 reviewed and relied on numerous statements and representations about it.
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- 1 a. On the day she purchased the Class Vehicle, Plaintiff spoke with
2 and relied on statements about the Class Vehicle made by a
3 salesperson at South Dade Toyota.
- 4 b. At South Dade Toyota on the day she purchased the Class
5 Vehicle, Plaintiff saw a Toyota brochure, which included among
6 other things, representations and statements indicating that the
7 Class Vehicle was safe and had properly-functioning airbags
8 and seatbelts. Based upon the investigation of Plaintiffs'
9 counsel, Toyota Sales USA was responsible for the content of
10 Toyota brochures distributed in the United States. The brochure
11 was given to Plaintiff by a salesperson at South Dade Toyota.
- 12 c. Plaintiff saw representations and statements on Toyota's website
13 indicating that the Class Vehicle was safe and had properly-
14 functioning airbags and seatbelts. The Class Vehicle's safety
15 features were important to her purchase decision. Plaintiff is not
16 personally aware of which particular Toyota entity is
17 responsible for these representations and statements because
18 Plaintiff interfaces with Toyota as a brand. Based upon the
19 investigation of Plaintiffs' counsel, Toyota Sales USA was
20 responsible for the content of the website.
- 21 d. Plaintiff viewed and heard commercials for the Class Vehicle.
22 Plaintiff is not personally aware of which particular Toyota
23 entity is responsible for advertising. Based upon the
24 investigation of Plaintiffs' counsel, Toyota Sales USA was
25 responsible for the content of the advertising.
- 26 e. Plaintiff recalls reviewing the Monroney sticker and in-vehicle
27 airbag label safety language immediately prior to her purchase.
28 The sticker and label indicated the Class Vehicle was safe and

1 had properly-functioning airbags and seatbelts. Based upon the
2 investigation of Plaintiffs' counsel, Toyota USA and Toyota
3 Sales USA were jointly responsible for the content of the
4 Monroney sticker, and Toyota Japan was responsible for the in-
5 vehicle airbag label safety language.

6 f. Plaintiff test drove the Class Vehicle before purchasing it. At no
7 time prior to or at the time of her purchase did the airbag
8 warning light on the Class Vehicle's dashboard illuminate or
9 flash to indicate any issue with the Class Vehicle's airbag
10 system. By not illuminating or flashing, the airbag warning light
11 conveyed there were no problems with the system and that the
12 airbag system would function properly during a crash. Based
13 upon the investigation of Plaintiffs' counsel, Toyota Japan, ZF
14 Electronics USA, ZF Passive Safety USA, and ZF Automotive
15 USA had joint responsibility for the failure of the airbag
16 warning light to warn about the ACU Defect.

17 166. Toyota Japan, Toyota USA, Toyota Engineering USA, Toyota Sales
18 USA, ZF Electronics USA, ZF Passive Safety USA, ZF Automotive USA, ZF
19 TRW Corp., ST USA, ST Malaysia, and ST Italy concealed the existence of the
20 ACU Defect from consumers like Plaintiff and NHTSA. Had they instead disclosed
21 it before Plaintiff acquired the Class Vehicle, Plaintiff would have learned of the
22 concealed information through, for example, the advertising channels described
23 above or through discussions with the salesperson. Plaintiff has suffered a concrete
24 injury in the form of an overpayment for the Class Vehicle as a result of Toyota
25 Japan, Toyota USA, Toyota Engineering USA, Toyota Sales USA, ZF Electronics
26 USA, ZF Passive Safety USA, ZF Automotive USA, ZF TRW Corp., ST USA, ST
27 Malaysia, and ST Italy's misconduct, and did not receive the full benefit of the
28 bargain in acquiring the Class Vehicle. Plaintiff would not have purchased the

1 Class Vehicle, or would have paid less for it, if Toyota Japan, Toyota USA, Toyota
2 Engineering USA, Toyota Sales USA, ZF Electronics USA, ZF Passive Safety
3 USA, ZF Automotive USA, ZF TRW Corp., ST USA, ST Malaysia, and ST Italy
4 did not conceal material information regarding the Class Vehicle’s safety and
5 reliability, or the fact that it was equipped with a defective ACU and ASIC.

6 **e. Gary Samouris**

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8 167. Plaintiff Gary Samouris (“Plaintiff”) is an individual residing in Las
9 Vegas, Nevada. On or around July 28, 2018, Plaintiff purchased a new 2018 Toyota
10 Tacoma (the “Class Vehicle”) from Findlay Toyota, an authorized Toyota
11 dealership located in Henderson, Nevada. At the time Plaintiff acquired the Class
12 Vehicle, Plaintiff had a reasonable expectation that the Class Vehicle had properly-
13 functioning airbags and seatbelts, and Plaintiff had no way of knowing that the
14 Class Vehicle contained a defective ACU and ASIC that could cause the airbags
15 and seatbelts to fail during a crash.

16 168. In the weeks leading up to his purchase of the Class Vehicle, Plaintiff
17 reviewed and relied on numerous statements and representations about it.

18 a. Plaintiff saw representations and statements on Toyota’s website
19 indicating that the Class Vehicle was safe and had properly-
20 functioning airbags and seatbelts. The Class Vehicle’s safety
21 features were important to his purchase decision. Plaintiff is not
22 personally aware of which particular Toyota entity is
23 responsible for these representations and statements because
24 Plaintiff interfaces with Toyota as a brand. Based upon the
25 investigation of Plaintiffs’ counsel, Toyota Sales USA was
26 responsible for the content of the website.

27 b. On the day he purchased the Class Vehicle, Plaintiff spoke with
28 and relied on statements about the Class Vehicle made by a

- 1 salesperson at Findlay Toyota. Prior to him deciding to purchase
2 the Class Vehicle, Plaintiff and the salesperson spoke about the
3 Class Vehicle and its safety features.
- 4 c. At Findlay Toyota on the day he purchased the Class Vehicle,
5 Plaintiff reviewed and relied on marketing documents provided
6 to him by a salesperson at Findlay Toyota, which included
7 among other things, representations and statements indicating
8 that the Class Vehicle was safe and had properly-functioning
9 airbags and seatbelts. Based upon the investigation of Plaintiffs'
10 counsel, Toyota Sales USA was responsible for the content of
11 Toyota marketing materials distributed in the United States.
- 12 d. Plaintiff saw and heard Toyota commercials through radio,
13 television, and the internet that touted the safety, quality, and
14 reliability of the Class Vehicle. Plaintiff is not personally aware
15 of which particular Toyota entity is responsible for the Toyota
16 commercials he saw. Based upon the investigation of Plaintiffs'
17 counsel, Toyota Sales USA was responsible for the content of
18 the television advertising.
- 19 e. Plaintiff recalls reviewing the Monroney sticker and in-vehicle
20 airbag label safety language immediately prior to his purchase.
21 The sticker and label indicated the Class Vehicle was safe and
22 had properly-functioning airbags and seatbelts. Based upon the
23 investigation of Plaintiffs' counsel, Toyota USA and Toyota
24 Sales USA were jointly responsible for the content of the
25 Monroney sticker, and Toyota Japan was responsible for the in-
26 vehicle airbag label safety language.
- 27 f. At no time prior to or at the time of his purchase did the airbag
28 warning light on the Class Vehicle's dashboard illuminate or

1 flash to indicate any issue with the Class Vehicle’s airbag
2 system. By not illuminating or flashing, the airbag warning light
3 conveyed there were no problems with the system and that the
4 airbag system would function properly during a crash. Based
5 upon the investigation of Plaintiffs’ counsel, Toyota Japan, ZF
6 Electronics USA, ZF Passive Safety USA, and ZF Automotive
7 USA had joint responsibility for the failure of the airbag
8 warning light to warn about the ACU Defect.

9 169. Toyota Japan, Toyota USA, Toyota Engineering USA, Toyota Sales
10 USA, ZF Electronics USA, ZF Passive Safety USA, ZF Automotive USA, ZF
11 TRW Corp., ST USA, ST Malaysia, and ST Italy concealed the existence of the
12 ACU Defect from consumers like Plaintiff and NHTSA. Had they instead disclosed
13 it before Plaintiff acquired the Class Vehicle, Plaintiff would have learned of the
14 concealed information through, for example, the advertising channels described
15 above or through discussions with the salesperson. Plaintiff has suffered a concrete
16 injury in the form of an overpayment for the Class Vehicle as a result of Toyota
17 Japan, Toyota USA, Toyota Engineering USA, Toyota Sales USA, ZF Electronics
18 USA, ZF Passive Safety USA, ZF Automotive USA, ZF TRW Corp., ST USA, ST
19 Malaysia, and ST Italy’s misconduct, and did not receive the full benefit of the
20 bargain in acquiring the Class Vehicle. Plaintiff would not have purchased the
21 Class Vehicle, or would have paid less for it, if Toyota Japan, Toyota USA, Toyota
22 Engineering USA, Toyota Sales USA, ZF Electronics USA, ZF Passive Safety
23 USA, ZF Automotive USA, ZF TRW Corp., ST USA, ST Malaysia, and ST Italy
24 did not conceal material information regarding the Class Vehicle’s safety and
25 reliability, or the fact that it was equipped with a defective ACU and ASIC.

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f. Michael Hines

170. Plaintiff Michael Hines (“Plaintiff”) is an individual residing in Gainesville, Florida. On or around October 11, 2013, Plaintiff purchased a used 2012 Toyota Tundra (the “Class Vehicle”) from Scenic Chevrolet located in West Union, South Carolina. At the time Plaintiff acquired the Class Vehicle, Plaintiff had a reasonable expectation that the Class Vehicle had properly-functioning airbags and seatbelts, and Plaintiff had no way of knowing that the Class Vehicle contained a defective ACU and ASIC that could cause the airbags and seatbelts to fail during a crash.

171. In the weeks leading up to his purchase of the Class Vehicle, Plaintiff reviewed and relied on numerous statements and representations about it.

- a. Plaintiff saw representations and statements on Toyota’s website indicating that Toyota-branded vehicles, including the Tundra are safe and had properly-functioning airbags and seatbelts. The Class Vehicle’s safety features were important to his purchase decision. Plaintiff is not personally aware of which particular Toyota entity is responsible for these representations and statements because Plaintiff interfaces with Toyota as a brand. Based upon the investigation of Plaintiffs’ counsel, TMS was responsible for the content of the website.
- b. On the day he purchased the Class Vehicle, Plaintiff spoke with and relied on statements about the Class Vehicle made by a salesperson at Scenic Chevrolet. Plaintiff spoke with the salesperson about the safety and reliability of the Class Vehicle.
- c. On the day he purchased the Class Vehicle, Plaintiff was given Toyota marketing materials, which included among other things, representations and statements indicating that the Class Vehicle

- 1 was safe and had properly-functioning airbags and seatbelts.
2 Based upon the investigation of Plaintiffs' counsel, TMS was
3 responsible for the content of Toyota brochures distributed in
4 the United States. The Toyota marketing materials were given to
5 him by a salesperson at Scenic Chevrolet.
- 6 d. Plaintiff conducted online research on the Class Vehicle,
7 including on Edmunds, Car & Driver, and Google. Plaintiff read
8 reviews about the Class Vehicle. Because Defendants failed to
9 disclose the ACU Defect, Plaintiff's research did not show that
10 the Class Vehicle was affected by the Defect, and instead
11 indicated that the Class Vehicle was safe and had properly-
12 functioning airbags and seatbelts.
- 13 e. Plaintiff saw and heard Toyota commercials for the Class
14 Vehicle that touted the safety of the Class Vehicle, among other
15 things. Plaintiff is not personally aware of which particular
16 Toyota Entity is responsible for advertising. Based upon the
17 investigation of Plaintiffs' counsel, TMS was responsible for the
18 content of the television advertising.
- 19 f. Plaintiff recalls reviewing in-vehicle airbag label safety
20 language immediately prior to his purchase. The label indicated
21 the Class Vehicle was safe and had properly-functioning airbags
22 and seatbelts. Based upon the investigation of Plaintiffs'
23 counsel, TMC was responsible for the in-vehicle airbag label
24 safety language.
- 25 g. At no time prior to or at the time of his purchase did the airbag
26 warning light on the Class Vehicle's dashboard illuminate or
27 flash to indicate any issue with the Class Vehicle's airbag
28 system. By not illuminating or flashing, the airbag warning light

1 conveyed there were no problems with the system and that the
2 airbag system would function properly during a crash. Based
3 upon the investigation of Plaintiffs' counsel, TMC, ZF ASE, ZF
4 PSS, and ZF Automotive US Inc. had joint responsibility for the
5 failure of the airbag warning light to warn about the ACU
6 Defect.

7 172. TMC, TMNA, TEMA, TMS, ZF ASE, ZF PSS, ZF Automotive US
8 Inc., ZF TRW Automotive Holdings Corp., ST Inc., ST SDN BHD, and ST S.r.l.
9 concealed the existence of the ACU Defect from consumers like Plaintiff and
10 NHTSA. Had they instead disclosed it before Plaintiff acquired the Class Vehicle,
11 Plaintiff would have learned of the concealed information through, for example, the
12 advertising channels described above or through discussions with the salesperson.
13 Plaintiff has suffered a concrete injury in the form of an overpayment for the Class
14 Vehicle as a result of TMC, TMNA, TEMA, TMS, ZF ASE, ZF PSS, ZF
15 Automotive US Inc., ZF TRW Automotive Holdings Corp., ST Inc., ST SDN BHD,
16 and ST S.r.l.'s misconduct, and did not receive the full benefit of the bargain in
17 acquiring the Class Vehicle. Plaintiff would not have purchased the Class Vehicle,
18 or would have paid less for it, if TMC, TMNA, TEMA, TMS, ZF ASE, ZF PSS, ZF
19 Automotive US Inc., ZF TRW Automotive Holdings Corp., ST Inc., ST SDN BHD,
20 and ST S.r.l. did not conceal material information regarding the Class Vehicle's
21 safety and reliability, or the fact that it was equipped with a defective ACU and
22 ASIC.

23 **g. Brent DeRouen**

24 173. Plaintiff Brent DeRouen ("Plaintiff") is an individual residing in
25 Spring, Texas. On or around June 7, 2016, Plaintiff purchased a new 2016 Toyota
26 Tundra (the "Class Vehicle") from Philpott Toyota, an authorized Toyota
27 dealership located in Nederland, Texas. At the time Plaintiff acquired the Class
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1 Vehicle, Plaintiff had a reasonable expectation that the Class Vehicle had properly-
2 functioning airbags and seatbelts, and Plaintiff had no way of knowing that the
3 Class Vehicle contained a defective ACU and ASIC that could cause the airbags
4 and seatbelts to fail during a crash.

5 174. In the weeks leading up to his purchase of the Class Vehicle, Plaintiff
6 reviewed and relied on numerous statements and representations about it.

7 a. On the day he purchased the Class Vehicle, Plaintiff spoke with
8 and relied on statements about the Class Vehicle made by a
9 salesperson at Philpott Toyota.

10 b. Plaintiff also had positive experiences with Toyota-branded
11 vehicles in the past and relied on those experiences in deciding
12 to purchase the Class Vehicle.

13 c. Plaintiff recalls reviewing the Monroney sticker and in-vehicle
14 airbag label safety language immediately prior to his purchase.
15 The sticker and label indicated the Class Vehicle was safe and
16 had properly-functioning airbags and seatbelts. Based upon the
17 investigation of Plaintiffs' counsel, Toyota USA and Toyota
18 Sales USA were jointly responsible for the content of the
19 Monroney sticker, and Toyota Japan was responsible for the in-
20 vehicle airbag label safety language.

21 d. Plaintiff test drove the Class Vehicle before purchasing it. At no
22 time prior to or at the time of his purchase did the airbag
23 warning light on the Class Vehicle's dashboard illuminate or
24 flash to indicate any issue with the Class Vehicle's airbag
25 system. By not illuminating or flashing, the airbag warning light
26 conveyed there were no problems with the system and that the
27 airbag system would function properly during a crash. Based
28 upon the investigation of Plaintiffs' counsel, Toyota Japan, ZF

1 Electronics USA, ZF Passive Safety USA, and ZF Automotive
2 USA had joint responsibility for the failure of the airbag
3 warning light to warn about the ACU Defect.

4 175. Toyota Japan, Toyota USA, Toyota Engineering USA, Toyota Sales
5 USA, ZF Electronics USA, ZF Passive Safety USA, ZF Automotive USA, ZF
6 TRW Corp., ZF Germany, ST USA, ST Malaysia, and ST Italy concealed the
7 existence of the ACU Defect from consumers like Plaintiff and NHTSA. Had they
8 instead disclosed it before Plaintiff acquired the Class Vehicle, Plaintiff would have
9 learned of the concealed information through, for example, the advertising channels
10 described above or through discussions with the salesperson. Plaintiff has suffered a
11 concrete injury in the form of an overpayment for the Class Vehicle as a result of
12 Toyota Japan, Toyota USA, Toyota Engineering USA, Toyota Sales USA, ZF
13 Electronics USA, ZF Passive Safety USA, ZF Automotive USA, ZF TRW Corp.,
14 ZF Germany, ST USA, ST Malaysia, and ST Italy's misconduct, and did not
15 receive the full benefit of the bargain in acquiring the Class Vehicle. Plaintiff would
16 not have purchased the Class Vehicle, or would have paid less for it, if Toyota
17 Japan, Toyota USA, Toyota Engineering USA, Toyota Sales USA, ZF Electronics
18 USA, ZF Passive Safety USA, ZF Automotive USA, ZF TRW Corp., ZF Germany,
19 ST USA, ST Malaysia, and ST Italy did not conceal material information regarding
20 the Class Vehicle's safety and reliability, or the fact that it was equipped with a
21 defective ACU and ASIC.

22 **h. Danny Hunt**

23 176. Plaintiff Danny Hunt ("Plaintiff") is an individual residing in Mathis,
24 Texas. On or around January 1, 2018, Plaintiff purchased a used 2014 Toyota
25 Tacoma (the "Class Vehicle") from Mike Shaw Toyota, an authorized Toyota
26 dealership located in Robstown, Texas. At the time Plaintiff acquired the Class
27 Vehicle, Plaintiff had a reasonable expectation that the Class Vehicle had properly-
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1 functioning airbags and seatbelts, and Plaintiff had no way of knowing that the
2 Class Vehicle contained a defective ACU and ASIC that could cause the airbags
3 and seatbelts to fail during a crash.

4 177. In the weeks leading up to his purchase of the Class Vehicle, Plaintiff
5 reviewed and relied on numerous statements and representations about it.

6 a. On the day he purchased the Class Vehicle, Plaintiff spoke with
7 and relied on statements about the Class Vehicle made by a
8 salesperson at Mike Shaw Toyota. Plaintiff spoke with the
9 salesperson about the Class Vehicle's safety features.

10 b. Plaintiff conducted online research about the Class Vehicle.
11 Plaintiff read reviews online about it. Plaintiff also specifically
12 ran internet searches about the Class Vehicle's airbag system. It
13 was his first time purchasing a vehicle with side airbags, so
14 Plaintiff wanted to know more about all of the airbags that came
15 equipped in the Class Vehicle. Because Defendants failed to
16 disclose the ACU Defect, Plaintiff's research did not show that
17 the Class Vehicle contained the ACU Defect, and instead
18 indicated that the Class Vehicle was safe and had properly-
19 functioning airbags and seatbelts.

20 c. Plaintiff recalls reviewing the in-vehicle airbag label safety
21 language immediately prior to his purchase. The label indicated
22 the Class Vehicle was safe and had properly-functioning airbags
23 and seatbelts. Based upon the investigation of Plaintiffs'
24 counsel, Toyota Japan was responsible for the in-vehicle airbag
25 label safety language.

26 d. Plaintiff test drove the Class Vehicle before purchasing it. At no
27 time prior to or at the time of his purchase did the airbag
28 warning light on the Class Vehicle's dashboard illuminate or

1 flash to indicate any issue with the Class Vehicle’s airbag
2 system. By not illuminating or flashing, the airbag warning light
3 conveyed there were no problems with the system and that the
4 airbag system would function properly during a crash. Based
5 upon the investigation of Plaintiffs’ counsel, Toyota Japan, ZF
6 Electronics USA, ZF Passive Safety USA, and ZF Automotive
7 USA had joint responsibility for the failure of the airbag
8 warning light to warn about the ACU Defect.

9 178. Toyota Japan, Toyota USA, Toyota Engineering USA, Toyota Sales
10 USA, ZF Electronics USA, ZF Passive Safety USA, ZF Automotive USA, ZF
11 TRW Corp., ZF Germany, ST USA, ST Malaysia, and ST Italy concealed the
12 existence of the ACU Defect from consumers like Plaintiff and NHTSA. Had they
13 instead disclosed it before Plaintiff acquired the Class Vehicle, Plaintiff would have
14 learned of the concealed information through, for example, the advertising channels
15 described above or through discussions with the salesperson. Plaintiff has suffered a
16 concrete injury in the form of an overpayment for the Class Vehicle as a result of
17 Toyota Japan, Toyota USA, Toyota Engineering USA, Toyota Sales USA, ZF
18 Electronics USA, ZF Passive Safety USA, ZF Automotive USA, ZF TRW Corp.,
19 ZF Germany, ST USA, ST Malaysia, and ST Italy’s misconduct, and did not
20 receive the full benefit of the bargain in acquiring the Class Vehicle. Plaintiff would
21 not have purchased the Class Vehicle, or would have paid less for it, if Toyota
22 Japan, Toyota USA, Toyota Engineering USA, Toyota Sales USA, ZF Electronics
23 USA, ZF Passive Safety USA, ZF Automotive USA, ZF TRW Corp., ZF Germany,
24 ST USA, ST Malaysia, and ST Italy did not conceal material information regarding
25 the Class Vehicle’s safety and reliability, or the fact that it was equipped with a
26 defective ACU and ASIC.

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i. Evan Green

179. Plaintiff Evan Green (“Plaintiff”) is an individual residing in Dallas, Texas. On or around September 15, 2015, Plaintiff purchased a used 2015 Toyota Tacoma (the “Class Vehicle”) from Toyota of Dallas, an authorized Toyota dealership located in Dallas, Texas. At the time Plaintiff acquired the Class Vehicle, Plaintiff had a reasonable expectation that the Class Vehicle had properly-functioning airbags and seatbelts, and Plaintiff had no way of knowing that the Class Vehicle contained a defective ACU and ASIC that could cause the airbags and seatbelts to fail during a crash.

180. In the weeks leading up to his purchase of the Class Vehicle, Plaintiff reviewed and relied on numerous statements and representations about it.

a. Plaintiff saw representations and statements on Toyota’s website indicating that the Class Vehicle was safe and had properly-functioning airbags and seatbelts. When visiting Toyota’s website, Plaintiff utilized the “Build Your Own” feature. When building his Class Vehicle, Plaintiff reviewed and relied on the description of the Class Vehicle’s specifications and options, including its safety options. The ACU Defect was not disclosed as part of the Class Vehicle’s specifications and options. The Class Vehicle’s safety features were important to his purchase decision. Plaintiff is not personally aware of which particular Toyota entity is responsible for these representations and statements because Plaintiff interfaces with Toyota as a brand. Based upon the investigation of Plaintiffs’ counsel, Toyota Sales USA was responsible for the content of the website.

b. Plaintiff saw and heard Toyota commercials that touted the Class Vehicle as safe, dependable, and reliable. Plaintiff is not

1 personally aware of which particular Toyota entity is
2 responsible for the Toyota commercials he saw. Based upon the
3 investigation of Plaintiffs' counsel, Toyota Sales USA was
4 responsible for the content of the television advertising.

5 c. On the day he purchased the Class Vehicle, Plaintiff spoke with
6 and relied on statements about the Class Vehicle made by a
7 salesperson at Toyota of Dallas. Prior to deciding to purchase
8 the Class Vehicle, the salesperson informed Plaintiff that the
9 Class Vehicle was safe and reliable.

10 d. Plaintiff recalls reviewing the Monroney sticker immediately
11 prior to his purchase. The sticker indicated the Class Vehicle
12 was safe and had properly-functioning airbags and seatbelts.
13 Based upon the investigation of Plaintiffs' counsel, Toyota USA
14 and Toyota Sales USA were jointly responsible for the content
15 of the Monroney sticker.

16 e. Plaintiff test drove the Class Vehicle before purchasing it. At no
17 time prior to or at the time of his purchase did the airbag
18 warning light on the Class Vehicle's dashboard illuminate or
19 flash to indicate any issue with the Class Vehicle's airbag
20 system. By not illuminating or flashing, the airbag warning light
21 conveyed there were no problems with the system and that the
22 airbag system would function properly during a crash. Based
23 upon the investigation of Plaintiffs' counsel, Toyota Japan, ZF
24 Electronics USA, ZF Passive Safety USA, and ZF Automotive
25 USA had joint responsibility for the failure of the airbag
26 warning light to warn about the ACU Defect.

27 181. Toyota Japan, Toyota USA, Toyota Engineering USA, Toyota Sales
28 USA, ZF Electronics USA, ZF Passive Safety USA, ZF Automotive USA, ZF

1 TRW Corp., ST USA, ST Malaysia, and ST Italy concealed the existence of the
2 ACU Defect from consumers like Plaintiff and NHTSA. Had they instead disclosed
3 it before Plaintiff acquired the Class Vehicle, Plaintiff would have learned of the
4 concealed information through, for example, the advertising channels described
5 above or through discussions with the salesperson. Plaintiff has suffered a concrete
6 injury in the form of an overpayment for the Class Vehicle as a result of Toyota
7 Japan, Toyota USA, Toyota Engineering USA, Toyota Sales USA, ZF Electronics
8 USA, ZF Passive Safety USA, ZF Automotive USA, ZF TRW Corp., ST USA, ST
9 Malaysia, and ST Italy's misconduct, and did not receive the full benefit of the
10 bargain in acquiring the Class Vehicle. Plaintiff would not have purchased the
11 Class Vehicle, or would have paid less for it, if Toyota Japan, Toyota USA, Toyota
12 Engineering USA, Toyota Sales USA, ZF Electronics USA, ZF Passive Safety
13 USA, ZF Automotive USA, ZF TRW Corp., ST USA, ST Malaysia, and ST Italy
14 did not conceal material information regarding the Class Vehicle's safety and
15 reliability, or the fact that it was equipped with a defective ACU and ASIC.

16 **j. Joy Davis**

17 182. Plaintiff Joy Davis ("Plaintiff") is an individual residing in Salem,
18 Oregon. On or around May 15, 2014, Plaintiff purchased a new 2014 Toyota
19 Corolla (the "Class Vehicle") from Universal Toyota, an authorized Toyota
20 dealership located in San Antonio, Texas. At the time Plaintiff acquired the Class
21 Vehicle, Plaintiff had a reasonable expectation that the Class Vehicle had properly-
22 functioning airbags and seatbelts, and Plaintiff had no way of knowing that the
23 Class Vehicle contained a defective ACU and ASIC that could cause the airbags
24 and seatbelts to fail during a crash.

25 183. In the weeks leading up to her purchase of the Class Vehicle, Plaintiff
26 reviewed and relied on numerous statements and representations about it.
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- a. Plaintiff saw representations and statements on Toyota’s website about the Class Vehicle. Plaintiff is not personally aware of which particular Toyota entity is responsible for these representations and statements because Plaintiff interfaces with Toyota as a brand. Based upon the investigation of Plaintiffs’ counsel, Toyota Sales USA was responsible for the content of the website.
- b. Plaintiff also researched the Class Vehicle on Universal Toyota’s website. Because Defendants failed to disclose the ACU Defect, Plaintiff’s research did not show that the Class Vehicle contained the ACU Defect, and instead indicated that the Class Vehicle was safe and had properly-functioning airbags and seatbelts.
- c. Plaintiff also had positive experiences with Toyota-branded vehicles in the past and relied on those experiences in deciding to purchase the Class Vehicle.
- d. Plaintiff recalls reviewing the Monroney sticker immediately prior to her purchase. The sticker indicated the Class Vehicle was safe and had properly-functioning airbags and seatbelts. Based upon the investigation of Plaintiffs’ counsel, Toyota USA and Toyota Sales USA were jointly responsible for the content of the Monroney sticker.
- e. Plaintiff test drove the Class Vehicle before purchasing it. At no time prior to or at the time of her purchase did the airbag warning light on the Class Vehicle’s dashboard illuminate or flash to indicate any issue with the Class Vehicle’s airbag system. By not illuminating or flashing, the airbag warning light conveyed there were no problems with the system and that the

1 airbag system would function properly during a crash. Based
2 upon the investigation of Plaintiffs’ counsel, Toyota Japan, ZF
3 Electronics USA, ZF Passive Safety USA, and ZF Automotive
4 USA had joint responsibility for the failure of the airbag
5 warning light to warn about the ACU Defect.

6 184. Toyota Japan, Toyota USA, Toyota Engineering USA, Toyota Sales
7 USA, ZF Electronics USA, ZF Passive Safety USA, ZF Automotive USA, ZF
8 TRW Corp., ST USA, ST Malaysia, and ST Italy concealed the existence of the
9 ACU Defect from consumers like Plaintiff and NHTSA. Had they instead disclosed
10 it before Plaintiff acquired the Class Vehicle, Plaintiff would have learned of the
11 concealed information through, for example, the advertising channels described
12 above or through discussions with the salesperson. Plaintiff has suffered a concrete
13 injury in the form of an overpayment for the Class Vehicle as a result of Toyota
14 Japan, Toyota USA, Toyota Engineering USA, Toyota Sales USA, ZF Electronics
15 USA, ZF Passive Safety USA, ZF Automotive USA, ZF TRW Corp., ST USA, ST
16 Malaysia, and ST Italy’s misconduct, and did not receive the full benefit of the
17 bargain in acquiring the Class Vehicle. Plaintiff would not have purchased the
18 Class Vehicle, or would have paid less for it, if Toyota Japan, Toyota USA, Toyota
19 Engineering USA, Toyota Sales USA, ZF Electronics USA, ZF Passive Safety
20 USA, ZF Automotive USA, ZF TRW Corp., ST USA, ST Malaysia, and ST Italy
21 did not conceal material information regarding the Class Vehicle’s safety and
22 reliability, or the fact that it was equipped with a defective ACU and ASIC.

23 **k. Dee Roberts**

24 185. Plaintiff Dee Roberts (“Plaintiff”) is an individual residing in
25 Raymond, Washington. On or around September 27, 2013, Plaintiff purchased a
26 new 2013 Toyota Avalon (the “Class Vehicle”) from Toyota of Olympia, an
27 authorized Toyota dealership located in Olympia, Washington. At the time Plaintiff
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1 acquired the Class Vehicle, Plaintiff had a reasonable expectation that the Class
2 Vehicle had properly-functioning airbags and seatbelts, and Plaintiff had no way of
3 knowing that the Class Vehicle contained a defective ACU and ASIC that could
4 cause the airbags and seatbelts to fail during a crash.

5 186. In the weeks leading up to her purchase of the Class Vehicle, Plaintiff
6 reviewed and relied on numerous statements and representations about it.

- 7 a. On the day she purchased the Class Vehicle, Plaintiff spoke with
8 and relied on statements about the Class Vehicle made by a
9 salesperson at Toyota of Olympia. Plaintiff spoke with the
10 salesperson about the Class Vehicle's safety features.
- 11 b. Plaintiff saw and heard Toyota commercials that touted the
12 safety of Toyota-branded vehicles. Plaintiff is not personally
13 aware of which particular Toyota entity is responsible for the
14 Toyota commercials she saw. Based upon the investigation of
15 Plaintiffs' counsel, Toyota Sales USA was responsible for the
16 content of the television advertising.
- 17 c. Plaintiff recalls reviewing the Monroney sticker and in-vehicle
18 airbag label safety language immediately prior to her purchase.
19 The sticker and label indicated the Class Vehicle was safe and
20 had properly-functioning airbags and seatbelts. Based upon the
21 investigation of Plaintiffs' counsel, Toyota USA and Toyota
22 Sales USA were jointly responsible for the content of the
23 Monroney sticker, and Toyota Japan was responsible for the in-
24 vehicle airbag label safety language.
- 25 d. Plaintiff test drove the Class Vehicle before purchasing it. At no
26 time prior to or at the time of her purchase did the airbag
27 warning light on the Class Vehicle's dashboard illuminate or
28 flash to indicate any issue with the Class Vehicle's airbag

1 system. By not illuminating or flashing, the airbag warning light
2 conveyed there were no problems with the system and that the
3 airbag system would function properly during a crash. Based
4 upon the investigation of Plaintiffs' counsel, Toyota Japan, ZF
5 Electronics USA, ZF Passive Safety USA, and ZF Automotive
6 USA had joint responsibility for the failure of the airbag
7 warning light to warn about the ACU Defect.

8 187. Toyota Japan, Toyota USA, Toyota Engineering USA, Toyota Sales
9 USA, ZF Electronics USA, ZF Passive Safety USA, ZF Automotive USA, ZF
10 TRW Corp., ST USA, ST Malaysia, and ST Italy concealed the existence of the
11 ACU Defect from consumers like Plaintiff and NHTSA. Had they instead disclosed
12 it before Plaintiff acquired the Class Vehicle, Plaintiff would have learned of the
13 concealed information through, for example, the advertising channels described
14 above or through discussions with the salesperson. Plaintiff has suffered a concrete
15 injury in the form of an overpayment for the Class Vehicle as a result of Toyota
16 Japan, Toyota USA, Toyota Engineering USA, Toyota Sales USA, ZF Electronics
17 USA, ZF Passive Safety USA, ZF Automotive USA, ZF TRW Corp., ST USA, ST
18 Malaysia, and ST Italy's misconduct, and did not receive the full benefit of the
19 bargain in acquiring the Class Vehicle. Plaintiff would not have purchased the
20 Class Vehicle, or would have paid less for it, if Toyota Japan, Toyota USA, Toyota
21 Engineering USA, Toyota Sales USA, ZF Electronics USA, ZF Passive Safety
22 USA, ZF Automotive USA, ZF TRW Corp., ST USA, ST Malaysia, and ST Italy
23 did not conceal material information regarding the Class Vehicle's safety and
24 reliability, or the fact that it was equipped with a defective ACU and ASIC.

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4. Honda Plaintiffs

a. Sigfredo Rubio

188. Plaintiff Sigfredo Rubio (“Plaintiff”) is an individual residing in Birmingham, Alabama. On or around May 4, 2015, Plaintiff purchased a new 2015 Acura TLX (the “Class Vehicle”) from McConnell Honda, an authorized Honda dealership located in Montgomery, Alabama. At the time Plaintiff acquired the Class Vehicle, Plaintiff had a reasonable expectation that the Class Vehicle had properly-functioning airbags and seatbelts, and Plaintiff had no way of knowing that the Class Vehicle contained a defective ACU and ASIC that could cause the airbags and seatbelts to fail during a crash.

189. In the weeks leading up to his purchase of the Class Vehicle, Plaintiff reviewed and relied on numerous statements and representations about it.

a. Plaintiff saw representations and statements on Honda’s website indicating that the Class Vehicle was safe and had properly-functioning airbags and seatbelts. The Class Vehicle’s safety features were important to his purchase decision. Plaintiff is not personally aware of which particular Honda entity is responsible for these representations and statements because Plaintiff interfaces with Honda as a brand. Based upon the investigation of Plaintiffs’ counsel, Honda USA was responsible for the content of the website.

b. Plaintiff saw and heard Acura television and radio commercials that touted the the Class Vehicle’s safety, among other things. Plaintiff is not personally aware of which particular Honda entity is responsible for television advertising. Based upon the investigation of Plaintiffs’ counsel, Honda USA was responsible for the content of the television and radio advertising.

- 1 c. At McConnell Honda on the day he purchased the Class
2 Vehicle, Plaintiff saw a Honda brochure, which included among
3 other things, representations and statements indicating that the
4 Class Vehicle was safe and had properly-functioning airbags
5 and seatbelts. Based upon the investigation of Plaintiffs'
6 counsel, Honda USA was responsible for the content of Honda
7 brochures distributed in the United States. The brochure was
8 given to Plaintiff by a salesperson at McConnell Honda.
- 9 d. On the day he visited McConnell Honda to purchase the Class
10 Vehicle, Plaintiff spoke with and relied on statements about the
11 Class Vehicle made by a salesperson at McConnell Honda. The
12 salesperson and Plaintiff specifically spoke about the safety of
13 the Class Vehicle.
- 14 e. Plaintiff recalls reviewing the Monroney sticker and in-vehicle
15 airbag label safety language immediately prior to his purchase.
16 The sticker and label indicated the Class Vehicle was safe and
17 had properly-functioning airbags and seatbelts. Based upon the
18 investigation of Plaintiffs' counsel, Honda USA was responsible
19 for the content of the Monroney sticker, and Honda Japan was
20 responsible for the in-vehicle airbag label safety language.
- 21 f. Plaintiff test drove the Class Vehicle before purchasing it. At no
22 time prior to or at the time of his purchase did the airbag
23 warning light on the Class Vehicle's dashboard illuminate or
24 flash to indicate any issue with the Class Vehicle's airbag
25 system. By not illuminating or flashing, the airbag warning light
26 conveyed there were no problems with the system and that the
27 airbag system would function properly during a crash. Based
28 upon the investigation of Plaintiffs' counsel, Honda Japan, ZF

1 Electronics USA, ZF Passive Safety USA, and ZF Automotive
2 USA had joint responsibility for the failure of the airbag
3 warning light to warn about the ACU Defect.

4 190. Honda Japan, Honda USA, Honda Engineering USA, ZF Electronics
5 USA, ZF Passive Safety USA, ZF Automotive USA, ZF TRW Corp., ST USA, ST
6 Malaysia, and ST Italy concealed the existence of the ACU Defect from consumers
7 like Plaintiff and NHTSA. Had they instead disclosed it before Plaintiff acquired
8 the Class Vehicle, Plaintiff would have learned of the concealed information
9 through, for example, the advertising channels described above or through
10 discussions with the salesperson. Plaintiff has suffered a concrete injury in the form
11 of an overpayment for the Class Vehicle as a result of Honda Japan, Honda USA,
12 Honda Engineering USA, ZF Electronics USA, ZF Passive Safety USA, ZF
13 Automotive USA, ZF TRW Corp., ST USA, ST Malaysia, and ST Italy's
14 misconduct, and did not receive the full benefit of the bargain in acquiring the Class
15 Vehicle. Plaintiff would not have purchased the Class Vehicle, or would have paid
16 less for it, if Honda Japan, Honda USA, Honda Engineering USA, ZF Electronics
17 USA, ZF Passive Safety USA, ZF Automotive USA, ZF TRW Corp., ST USA, ST
18 Malaysia, and ST Italy did not conceal material information regarding the Class
19 Vehicle's safety and reliability, or the fact that it was equipped with a defective
20 ACU and ASIC.

21 **b. Kevin Burns**

22 191. Plaintiff Kevin Burns ("Plaintiff") is an individual residing in Antioch,
23 California. On or around June 14, 2013, Plaintiff purchased a new 2013 Honda
24 Civic Hybrid (the "Class Vehicle") from Walnut Creek Honda, an authorized
25 Honda dealership located in Walnut Creek, California. At the time Plaintiff
26 acquired the Class Vehicle, Plaintiff had a reasonable expectation that the Class
27 Vehicle had properly-functioning airbags and seatbelts, and Plaintiff had no way of
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1 knowing that the Class Vehicle contained a defective ACU and ASIC that could
2 cause the airbags and seatbelts to fail during a crash.

3 192. In the weeks leading up to his purchase of the Class Vehicle, Plaintiff
4 reviewed and relied on numerous statements and representations about it.

5 a. Plaintiff saw representations and statements on Honda's website
6 indicating that the Class Vehicle was safe and had properly-
7 functioning airbags and seatbelts. The Class Vehicle's safety
8 features were important to his purchase decision. Plaintiff recalls
9 reviewing information about the Class Vehicle's driver and front
10 passenger airbags, front collision warning, and a backup camera.
11 The Class Vehicle's safety features were important to his
12 purchase decision. Plaintiff is not personally aware of which
13 particular Honda entity is responsible for these representations
14 and statements because Plaintiff interfaces with Honda as a
15 brand. Based upon the investigation of Plaintiffs' counsel,
16 Honda USA was responsible for the content of the website.

17 b. On the day he visited Walnut Creek Honda to purchase the Class
18 Vehicle, Plaintiff spoke with and relied on statements about the
19 Class Vehicle made by a salesperson at Walnut Creek Honda.
20 The salesperson and Plaintiff spoke prior to him deciding to
21 purchase the Class Vehicle about the Class Vehicle's safety
22 features, its warranty, and its fuel efficiency. Plaintiff also
23 visited other authorized Honda dealerships while researching the
24 Class Vehicle.

25 c. Plaintiff recalls reviewing the Monroney sticker and in-vehicle
26 airbag label safety language immediately prior to his purchase.
27 The sticker and label indicated the Class Vehicle was safe and
28 had properly-functioning airbags and seatbelts. Based upon the

1 investigation of Plaintiffs' counsel, Honda USA was responsible
2 for the content of the Monroney sticker, and Honda Japan was
3 responsible for the in-vehicle airbag label safety language.

4 d. Plaintiff test drove the Class Vehicle before purchasing it. At no
5 time prior to or at the time of his purchase did the airbag
6 warning light on the Class Vehicle's dashboard illuminate or
7 flash to indicate any issue with the Class Vehicle's airbag
8 system. By not illuminating or flashing, the airbag warning light
9 conveyed there were no problems with the system and that the
10 airbag system would function properly during a crash. Based
11 upon the investigation of Plaintiffs' counsel, Honda Japan, ZF
12 Electronics USA, ZF Passive Safety USA, and ZF Automotive
13 USA had joint responsibility for the failure of the airbag
14 warning light to warn about the ACU Defect.

15 193. Honda Japan, Honda USA, Honda Engineering USA, ZF Electronics
16 USA, ZF Passive Safety USA, ZF Automotive USA, ZF TRW Corp., ST USA, ST
17 Malaysia, and ST Italy concealed the existence of the ACU Defect from consumers
18 like Plaintiff and NHTSA. Had they instead disclosed it before Plaintiff acquired
19 the Class Vehicle, Plaintiff would have learned of the concealed information
20 through, for example, the advertising channels described above or through
21 discussions with the salesperson. Plaintiff has suffered a concrete injury in the form
22 of an overpayment for the Class Vehicle as a result of Honda Japan, Honda USA,
23 Honda Engineering USA, ZF Electronics USA, ZF Passive Safety USA, ZF
24 Automotive USA, ZF TRW Corp., ST USA, ST Malaysia, and ST Italy's
25 misconduct, and did not receive the full benefit of the bargain in acquiring the Class
26 Vehicle. Plaintiff would not have purchased the Class Vehicle, or would have paid
27 less for it, if Honda Japan, Honda USA, Honda Engineering USA, ZF Electronics
28 USA, ZF Passive Safety USA, ZF Automotive USA, ZF TRW Corp., ST USA, ST

1 Malaysia, and ST Italy did not conceal material information regarding the Class
2 Vehicle’s safety and reliability, or the fact that it was equipped with a defective
3 ACU and ASIC.

4 **c. Paul Huitzil**

5 194. Plaintiff Paul Huitzil (“Plaintiff”) is an individual residing in
6 Bridgeport, Connecticut. On or around October 19, 2015, Plaintiff purchased a used
7 2013 Honda Accord (the “Class Vehicle”) from Honda of Westport, an authorized
8 Honda dealership located in Westport, Connecticut. The Class Vehicle was totaled
9 in an accident where the airbags did not deploy on or around June 3, 2019. At the
10 time Plaintiff acquired the Class Vehicle, Plaintiff had a reasonable expectation that
11 the Class Vehicle had properly-functioning airbags and seatbelts, and Plaintiff had
12 no way of knowing that the Class Vehicle contained a defective ACU and ASIC
13 that could cause the airbags and seatbelts to fail during a crash.

14 195. In the weeks leading up to his purchase of the Class Vehicle, Plaintiff
15 reviewed and relied on numerous statements and representations about it.

- 16 a. In the days prior to, and on the day he visited Honda of
17 Westport to purchase the Class Vehicle, Plaintiff spoke with and
18 relied on statements about the Class Vehicle’s quality and
19 features, made by a salesperson there.
- 20 b. Plaintiff conducted online research about the Class Vehicle. He
21 reviewed Consumer Reports, brochures, and information from
22 J.D. Power that the vehicle was safe, reliable, and cost efficient
23 for repairs. Because Defendants failed to disclose the ACU
24 Defect, Plaintiff’s research did not show that the Class Vehicle
25 was affected by the Defect, and instead indicated that the Class
26 Vehicle was safe and had properly-functioning airbags and
27 seatbelts.
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1 c. Plaintiff recalls reviewing the Monroney sticker and in-vehicle
2 airbag label safety language immediately prior to his purchase.
3 The Monroney sticker and label indicated the Class Vehicle was
4 safe and had properly-functioning airbags and seatbelts. Based
5 upon the investigation of Plaintiffs' counsel, Honda USA was
6 responsible for the content of the Monroney sticker, and Honda
7 Japan was responsible for the in-vehicle airbag label safety
8 language.

9 d. Plaintiff test drove the Class Vehicle before purchasing it.
10 During that test drive, Plaintiff saw the in-vehicle airbag
11 labeling. At no time prior to or at the time of his purchase did
12 the airbag warning light on the Class Vehicle's dashboard
13 illuminate or flash to indicate any issue with the Class Vehicle's
14 airbag system. By not illuminating or flashing, the airbag
15 warning light conveyed there were no problems with the system
16 and that the airbag system would function properly during a
17 crash. Based upon the investigation of Plaintiffs' counsel,
18 Honda Japan, ZF Electronics USA, ZF Passive Safety USA, and
19 ZF Automotive USA had joint responsibility for the failure of
20 the airbag warning light to warn about the ACU Defect.

21 196. Honda Japan, Honda USA, Honda Engineering USA, ZF Electronics
22 USA, ZF Passive Safety USA, ZF Automotive USA, ZF TRW Corp., ST USA, ST
23 Malaysia, and ST Italy concealed the existence of the ACU Defect from consumers
24 like Plaintiff and NHTSA. Had they instead disclosed it before Plaintiff acquired
25 the Class Vehicle, Plaintiff would have learned of the concealed information
26 through, for example, the advertising channels described above or through
27 discussions with the salesperson. Plaintiff has suffered a concrete injury in the form
28 of an overpayment for the Class Vehicle as a result of Honda Japan, Honda USA,

1 Honda Engineering USA, ZF Electronics USA, ZF Passive Safety USA, ZF
2 Automotive USA, ZF TRW Corp., ST USA, ST Malaysia, and ST Italy’s
3 misconduct, and did not receive the full benefit of the bargain in acquiring the Class
4 Vehicle. Plaintiff would not have purchased the Class Vehicle, or would have paid
5 less for it, if Honda Japan, Honda USA, Honda Engineering USA, ZF Electronics
6 USA, ZF Passive Safety USA, ZF Automotive USA, ZF TRW Corp., ST USA, ST
7 Malaysia, and ST Italy did not conceal material information regarding the Class
8 Vehicle’s safety and reliability, or the fact that it was equipped with a defective
9 ACU and ASIC.

10 **d. Fredericka McPherson**

11 197. Plaintiff Fredericka McPherson (“Plaintiff”) is an individual residing
12 in Riverview, Florida. On or around December 10, 2015, Plaintiff purchased a used
13 2013 Honda Accord (the “Class Vehicle”) from Westshore Honda (previously
14 known as Kuhn Honda), an authorized Honda dealership located in Tampa, Florida.
15 At the time Plaintiff acquired the Class Vehicle, Plaintiff had a reasonable
16 expectation that the Class Vehicle had properly-functioning airbags and seatbelts,
17 and Plaintiff had no way of knowing that the Class Vehicle contained a defective
18 ACU and ASIC that could cause the airbags and seatbelts to fail during a crash.

19 198. In the weeks leading up to her purchase of the Class Vehicle, Plaintiff
20 reviewed and relied on numerous statements and representations about it.

21 a. On the day she visited Westshore Honda to purchase the Class
22 Vehicle, Plaintiff spoke with and relied on statements about the
23 Class Vehicle made by a salesperson at Westshore Honda.
24 Plaintiff and the salesperson had conversations about the Class
25 Vehicle and the Class Vehicle’s safety features. The salesperson
26 did not mention any problems or service issues reported by other
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1 customers related to the Class Vehicle's airbags, seatbelt, or
2 ACU.

3 b. Plaintiff recalls reviewing the Monroney sticker and in-vehicle
4 airbag label safety language immediately prior to her purchase.
5 The sticker and label indicated the Class Vehicle was safe and
6 had properly-functioning airbags and seatbelts. Based upon the
7 investigation of Plaintiffs' counsel, Honda USA was responsible
8 for the content of the Monroney sticker, and Honda Japan was
9 responsible for the in-vehicle airbag label safety language.

10 c. Plaintiff test drove the Class Vehicle before purchasing it. At no
11 time prior to or at the time of her purchase did the airbag
12 warning light on the Class Vehicle's dashboard illuminate or
13 flash to indicate any issue with the Class Vehicle's airbag
14 system. By not illuminating or flashing, the airbag warning light
15 conveyed there were no problems with the system and that the
16 airbag system would function properly during a crash. Based
17 upon the investigation of Plaintiffs' counsel, Honda Japan, ZF
18 Electronics USA, ZF Passive Safety USA, and ZF Automotive
19 USA had joint responsibility for the failure of the airbag
20 warning light to warn about the ACU Defect.

21 199. Honda Japan, Honda USA, Honda Engineering USA, ZF Electronics
22 USA, ZF Passive Safety USA, ZF Automotive USA, ZF TRW Corp., ST USA, ST
23 Malaysia, and ST Italy concealed the existence of the ACU Defect from consumers
24 like Plaintiff and NHTSA. Had they instead disclosed it before Plaintiff acquired
25 the Class Vehicle, Plaintiff would have learned of the concealed information
26 through, for example, the advertising channels described above or through
27 discussions with the salesperson. Plaintiff has suffered a concrete injury in the form
28 of an overpayment for the Class Vehicle as a result of Honda Japan, Honda USA,

1 Honda Engineering USA, ZF Electronics USA, ZF Passive Safety USA, ZF
2 Automotive USA, ZF TRW Corp., ST USA, ST Malaysia, and ST Italy’s
3 misconduct, and did not receive the full benefit of the bargain in acquiring the Class
4 Vehicle. Plaintiff would not have purchased the Class Vehicle, or would have paid
5 less for it, if Honda Japan, Honda USA, Honda Engineering USA, ZF Electronics
6 USA, ZF Passive Safety USA, ZF Automotive USA, ZF TRW Corp., ST USA, ST
7 Malaysia, and ST Italy did not conceal material information regarding the Class
8 Vehicle’s safety and reliability, or the fact that it was equipped with a defective
9 ACU and ASIC.

10 **e. Brian Chaiken**

11 200. Plaintiff Brian Chaiken (“Plaintiff”) is an individual residing in
12 Palmetto Bay, Florida. On or around March 15, 2015, Plaintiff purchased a used
13 2013 Honda CR-V (the “Class Vehicle”) from Braman Honda, an authorized
14 Honda dealership located in Miami, Florida. At the time Plaintiff acquired the Class
15 Vehicle, Plaintiff had a reasonable expectation that the Class Vehicle had properly-
16 functioning airbags and seatbelts, and Plaintiff had no way of knowing that the
17 Class Vehicle contained a defective ACU and ASIC that could cause the airbags
18 and seatbelts to fail during a crash.

19 201. In the weeks leading up to his purchase of the Class Vehicle, Plaintiff
20 reviewed and relied on numerous statements and representations about it.

21 a. Plaintiff saw representations and statements on Honda’s website
22 indicating that Honda-branded vehicles are safe and have
23 properly-functioning airbags and seatbelts. The Class Vehicle’s
24 safety features were important to his purchase decision. Plaintiff
25 is not personally aware of which particular Honda entity is
26 responsible for these representations and statements because
27 Plaintiff interfaces with Honda as a brand. Based upon the
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investigation of Plaintiffs' counsel, Honda USA was responsible for the content of the website. Plaintiff also reviewed Braman Honda's website, which offered brochures regarding new and used Honda vehicles.

b. At Braman Honda on the day he purchased the Class Vehicle, Plaintiff saw a Honda brochure, which included among other things, representations and statements indicating that the Class Vehicle was safe and had properly-functioning airbags and seatbelts. Based upon the investigation of Plaintiffs' counsel, Honda USA was responsible for the content of Honda brochures distributed in the United States. The brochure was given to Plaintiff by a salesperson at Braman Honda.

c. On the day he visited Braman Honda to purchase the Class Vehicle, Plaintiff spoke with and relied on statements about the Class Vehicle made by a salesperson at Braman Honda. Plaintiff and the salesperson discussed the airbags as a safety feature. Plaintiff relied on these statements, as he needed this vehicle to drive around his four kids, and as such safety was a top priority for Plaintiff.

d. Plaintiff conducted online research on Kelly Blue Book's website and other websites that had information regarding the quality, safety, and value of the Class Vehicle. Because Defendants failed to disclose the ACU Defect, Plaintiff's research did not show that the Class Vehicle contained the ACU Defect, and instead indicated that the Class Vehicle was safe and had properly-functioning airbags and seatbelts.

e. Plaintiff saw and heard Honda commercials that touted the features of the Class Vehicle. Plaintiff is not personally aware of

1 which particular Honda entity is responsible for the Honda
2 commercials he saw. Based upon the investigation of Plaintiffs'
3 counsel, Honda USA was responsible for the content of the
4 television advertising.

5 f. Plaintiff recalls reviewing the Monroney sticker and in-vehicle
6 airbag label safety language immediately prior to his purchase.
7 The sticker and label indicated the Class Vehicle was safe and
8 had properly-functioning airbags and seatbelts. Based upon the
9 investigation of Plaintiffs' counsel, Honda USA was responsible
10 for the content of the Monroney sticker, and Honda Japan was
11 responsible for the in-vehicle airbag label safety language.

12 g. Plaintiff test drove the Class Vehicle before purchasing it. At no
13 time prior to or at the time of his purchase did the airbag
14 warning light on the Class Vehicle's dashboard illuminate or
15 flash to indicate any issue with the Class Vehicle's airbag
16 system. By not illuminating or flashing, the airbag warning light
17 conveyed there were no problems with the system and that the
18 airbag system would function properly during a crash. Based
19 upon the investigation of Plaintiffs' counsel, Honda Japan, ZF
20 Electronics USA, ZF Passive Safety USA, and ZF Automotive
21 USA had joint responsibility for the failure of the airbag
22 warning light to warn about the ACU Defect.

23 202. Honda Japan, Honda USA, Honda Engineering USA, ZF Electronics
24 USA, ZF Passive Safety USA, ZF Automotive USA, ZF TRW Corp., ST USA, ST
25 Malaysia, and ST Italy concealed the existence of the ACU Defect from consumers
26 like Plaintiff and NHTSA. Had they instead disclosed it before Plaintiff acquired
27 the Class Vehicle, Plaintiff would have learned of the concealed information
28 through, for example, the advertising channels described above or through

1 discussions with the salesperson. Plaintiff has suffered a concrete injury in the form
2 of an overpayment for the Class Vehicle as a result of Honda Japan, Honda USA,
3 Honda Engineering USA, ZF Electronics USA, ZF Passive Safety USA, ZF
4 Automotive USA, ZF TRW Corp., ST USA, ST Malaysia, and ST Italy's
5 misconduct, and did not receive the full benefit of the bargain in acquiring the Class
6 Vehicle. Plaintiff would not have purchased the Class Vehicle, or would have paid
7 less for it, if Honda Japan, Honda USA, Honda Engineering USA, ZF Electronics
8 USA, ZF Passive Safety USA, ZF Automotive USA, ZF TRW Corp., ST USA, ST
9 Malaysia, and ST Italy did not conceal material information regarding the Class
10 Vehicle's safety and reliability, or the fact that it was equipped with a defective
11 ACU and ASIC.

12 **f. Ravichandran Namakkal**

13 203. Plaintiff Ravichandran Namakkal ("Plaintiff") is an individual residing
14 in Ozone Park, New York. On or around May 31, 2014, Plaintiff purchased a new
15 2014 Honda Civic (the "Class Vehicle") from Hillside Honda, an authorized Honda
16 dealership located in Queens, New York. At the time Plaintiff acquired the Class
17 Vehicle, Plaintiff had a reasonable expectation that the Class Vehicle had properly-
18 functioning airbags and seatbelts, and Plaintiff had no way of knowing that the
19 Class Vehicle contained a defective ACU and ASIC that could cause the airbags
20 and seatbelts to fail during a crash.

21 204. In the weeks leading up to his purchase of the Class Vehicle, Plaintiff
22 reviewed and relied on numerous statements and representations about it.

23 a. Plaintiff saw representations and statements on Honda's website
24 indicating that the Class Vehicle was safe and had properly-
25 functioning airbags and seatbelts. The Class Vehicle's safety
26 features were important to his purchase decision. Plaintiff is not
27 personally aware of which particular Honda entity is responsible
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1 for these representations and statements because Plaintiff
2 interfaces with Honda as a brand. Based upon the investigation
3 of Plaintiffs' counsel, Honda USA was responsible for the
4 content of the website.

5 b. Plaintiff conducted online research on the Class Vehicle.
6 Because Defendants failed to disclose the ACU Defect,
7 Plaintiff's research did not show that the Class Vehicle
8 contained the ACU Defect, and instead indicated that the Class
9 Vehicle was safe and had properly-functioning airbags and
10 seatbelts.

11 c. On the day he visited Hillside Honda to purchase the Class
12 Vehicle, Plaintiff spoke with and relied on statements about the
13 Class Vehicle made by a salesperson there. Plaintiff and the
14 salesperson discussed the features of the Class Vehicle,
15 including its safety features and technology in the dashboard
16 that would indicate with the light if there was an issue with the
17 airbags or tire pressure in the Class Vehicle.

18 d. Plaintiff recalls reviewing the Monroney sticker immediately
19 prior to his purchase. The sticker indicated the Class Vehicle
20 was safe and had properly-functioning airbags and seatbelts.
21 Based upon the investigation of Plaintiffs' counsel, Honda USA
22 was responsible for the content of the Monroney sticker.

23 e. At no time prior to or at the time of his purchase did the airbag
24 warning light on the Class Vehicle's dashboard illuminate or
25 flash to indicate any issue with the Class Vehicle's airbag
26 system. By not illuminating or flashing, the airbag warning light
27 conveyed there were no problems with the system and that the
28 airbag system would function properly during a crash. Based

1 upon the investigation of Plaintiffs’ counsel, Honda Japan, ZF
2 Electronics USA, ZF Passive Safety USA, and ZF Automotive
3 USA had joint responsibility for the failure of the airbag
4 warning light to warn about the ACU Defect.

5 205. Honda Japan, Honda USA, Honda Engineering USA, ZF Electronics
6 USA, ZF Passive Safety USA, ZF Automotive USA, ZF TRW Corp., ST USA, ST
7 Malaysia, and ST Italy concealed the existence of the ACU Defect from consumers
8 like Plaintiff and NHTSA. Had they instead disclosed it before Plaintiff acquired
9 the Class Vehicle, Plaintiff would have learned of the concealed information
10 through, for example, the advertising channels described above or through
11 discussions with the salesperson. Plaintiff has suffered a concrete injury in the form
12 of an overpayment for the Class Vehicle as a result of Honda Japan, Honda USA,
13 Honda Engineering USA, ZF Electronics USA, ZF Passive Safety USA, ZF
14 Automotive USA, ZF TRW Corp., ST USA, ST Malaysia, and ST Italy’s
15 misconduct, and did not receive the full benefit of the bargain in acquiring the Class
16 Vehicle. Plaintiff would not have purchased the Class Vehicle, or would have paid
17 less for it, if Honda Japan, Honda USA, Honda Engineering USA, ZF Electronics
18 USA, ZF Passive Safety USA, ZF Automotive USA, ZF TRW Corp., ST USA, ST
19 Malaysia, and ST Italy did not conceal material information regarding the Class
20 Vehicle’s safety and reliability, or the fact that it was equipped with a defective
21 ACU and ASIC.

22 **g. Tonya McNeely**

23 206. Plaintiff Tonya McNeely (“Plaintiff”) is an individual residing in
24 Mooresville, North Carolina. On or around August 6, 2015, Plaintiff purchased a
25 used 2012 Honda Civic (the “Class Vehicle”) from Honda of Concord, an
26 authorized Honda dealership located in Concord, North Carolina. At the time
27 Plaintiff acquired the Class Vehicle, Plaintiff had a reasonable expectation that the
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1 Class Vehicle had properly-functioning airbags and seatbelts, and Plaintiff had no
2 way of knowing that the Class Vehicle contained a defective ACU and ASIC that
3 could cause the airbags and seatbelts to fail during a crash.

4 207. In the weeks leading up to her purchase of the Class Vehicle, Plaintiff
5 reviewed and relied on numerous statements and representations about it.

6 a. Plaintiff recalls reviewing the Monroney sticker immediately
7 prior to her purchase. The sticker indicated the Class Vehicle
8 was safe and had properly-functioning airbags and seatbelts.
9 Based upon the investigation of Plaintiffs' counsel, Honda USA
10 was responsible for the content of the Monroney sticker.

11 b. Plaintiff test drove the Class Vehicle before purchasing it. At no
12 time prior to or at the time of her purchase did the airbag
13 warning light on the Class Vehicle's dashboard illuminate or
14 flash to indicate any issue with the Class Vehicle's airbag
15 system. By not illuminating or flashing, the airbag warning light
16 conveyed there were no problems with the system and that the
17 airbag system would function properly during a crash. Based
18 upon the investigation of Plaintiffs' counsel, Honda Japan, ZF
19 Electronics USA, ZF Passive Safety USA, and ZF Automotive
20 USA had joint responsibility for the failure of the airbag
21 warning light to warn about the ACU Defect.

22 208. Honda Japan, Honda USA, Honda Engineering USA, ZF Electronics
23 USA, ZF Passive Safety USA, ZF Automotive USA, ZF TRW Corp., ST USA, ST
24 Malaysia, and ST Italy concealed the existence of the ACU Defect from consumers
25 like Plaintiff and NHTSA. Had they instead disclosed it before Plaintiff acquired
26 the Class Vehicle, Plaintiff would have learned of the concealed information
27 through, for example, the advertising channels described above or through
28 discussions with the salesperson. Plaintiff has suffered a concrete injury in the form

1 of an overpayment for the Class Vehicle as a result of Honda Japan, Honda USA,
2 Honda Engineering USA, ZF Electronics USA, ZF Passive Safety USA, ZF
3 Automotive USA, ZF TRW Corp., ST USA, ST Malaysia, and ST Italy’s
4 misconduct, and did not receive the full benefit of the bargain in acquiring the Class
5 Vehicle. Plaintiff would not have purchased the Class Vehicle, or would have paid
6 less for it, if Honda Japan, Honda USA, Honda Engineering USA, ZF Electronics
7 USA, ZF Passive Safety USA, ZF Automotive USA, ZF TRW Corp., ST USA, ST
8 Malaysia, and ST Italy did not conceal material information regarding the Class
9 Vehicle’s safety and reliability, or the fact that it was equipped with a defective
10 ACU and ASIC.

11 **h. Angela Bowens**

12 209. Plaintiff Angela Bowens (“Plaintiff”) is an individual residing in
13 Dallas, Texas. On or around May 17, 2015, Plaintiff purchased a new 2015 Honda
14 Civic (the “Class Vehicle”) from John Eagle Honda of Dallas, an authorized Honda
15 dealership located in Dallas, Texas. At the time Plaintiff acquired the Class Vehicle,
16 Plaintiff had a reasonable expectation that the Class Vehicle had properly-
17 functioning airbags and seatbelts, and Plaintiff had no way of knowing that the
18 Class Vehicle contained a defective ACU and ASIC that could cause the airbags
19 and seatbelts to fail during a crash.

20 210. In the weeks leading up to her purchase of the Class Vehicle, Plaintiff
21 reviewed and relied on numerous statements and representations about it.

22 a. On the day she visited John Eagle Honda of Dallas to purchase
23 the Class Vehicle, Plaintiff spoke with and relied on statements
24 about the Class Vehicle made by a salesperson there.

25 b. Plaintiff saw and heard Honda commercials that touted the
26 safety of Honda-branded vehicles, among other things. Plaintiff
27 is not personally aware of which particular Honda entity is
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1 responsible for advertising. Based upon the investigation of
2 Plaintiffs' counsel, Honda USA was responsible for the content
3 of the commercials.

4 c. Plaintiff test drove the Class Vehicle before purchasing it. At no
5 time prior to or at the time of her purchase did the airbag
6 warning light on the Class Vehicle's dashboard illuminate or
7 flash to indicate any issue with the Class Vehicle's airbag
8 system. By not illuminating or flashing, the airbag warning light
9 conveyed there were no problems with the system and that the
10 airbag system would function properly during a crash. Based
11 upon the investigation of Plaintiffs' counsel, Honda Japan, ZF
12 Electronics USA, ZF Passive Safety USA, and ZF Automotive
13 USA had joint responsibility for the failure of the airbag
14 warning light to warn about the ACU Defect.

15 211. Honda Japan, Honda USA, Honda Engineering USA, ZF Electronics
16 USA, ZF Passive Safety USA, ZF Automotive USA, ZF TRW Corp., ST USA, ST
17 Malaysia, and ST Italy concealed the existence of the ACU Defect from consumers
18 like Plaintiff and NHTSA. Had they instead disclosed it before Plaintiff acquired
19 the Class Vehicle, Plaintiff would have learned of the concealed information
20 through, for example, the advertising channels described above or through
21 discussions with the salesperson. Plaintiff has suffered a concrete injury in the form
22 of an overpayment for the Class Vehicle as a result of Honda Japan, Honda USA,
23 Honda Engineering USA, ZF Electronics USA, ZF Passive Safety USA, ZF
24 Automotive USA, ZF TRW Corp., ST USA, ST Malaysia, and ST Italy's
25 misconduct, and did not receive the full benefit of the bargain in acquiring the Class
26 Vehicle. Plaintiff would not have purchased the Class Vehicle, or would have paid
27 less for it, if Honda Japan, Honda USA, Honda Engineering USA, ZF Electronics
28 USA, ZF Passive Safety USA, ZF Automotive USA, ZF TRW Corp., ST USA, ST

1 Malaysia, and ST Italy did not conceal material information regarding the Class
2 Vehicle’s safety and reliability, or the fact that it was equipped with a defective
3 ACU and ASIC.

4 **5. Mitsubishi Plaintiffs**

5 **a. Tiffany Ecklor**

6 212. Plaintiff Tiffany Ecklor (“Plaintiff”) is an individual residing in
7 Hesperia, California. On or around July 5, 2013, Plaintiff leased a new 2013
8 Mitsubishi Outlander (the “Class Vehicle”) from Victorville Mitsubishi, an
9 authorized Mitsubishi dealership located in Victorville, California. Plaintiff
10 purchased the Class Vehicle at the end of the lease term in or around February 7,
11 2018. At the time Plaintiff acquired the Class Vehicle, Plaintiff had a reasonable
12 expectation that the Class Vehicle had properly-functioning airbags and seatbelts,
13 and Plaintiff had no way of knowing that the Class Vehicle contained a defective
14 ACU and ASIC that could cause the airbags and seatbelts to fail during a crash.

15 213. In the weeks leading up to her lease of the Class Vehicle, Plaintiff
16 reviewed and relied on numerous statements and representations about it.

- 17 a. On the day she visited Victorville Mitsubishi to lease the Class
18 Vehicle, Plaintiff spoke with a salesperson about the Class
19 Vehicle’s features, including its safety features.
20 b. Plaintiff recalls reviewing the in-vehicle airbag label safety
21 language immediately prior to her lease. The label indicated the
22 Class Vehicle was safe and had properly-functioning airbags
23 and seatbelts. Based upon the investigation of Plaintiffs’
24 counsel, Mitsubishi Japan was responsible for the in-vehicle
25 airbag label safety language.
26 c. Plaintiff test drove the Class Vehicle before leasing it. At no
27 time prior to or at the time of her lease did the airbag warning
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1 light on the Class Vehicle’s dashboard illuminate or flash to
2 indicate any issue with the Class Vehicle’s airbag system. By
3 not illuminating or flashing, the airbag warning light conveyed
4 there were no problems with the system and that the airbag
5 system would function properly during a crash. Based upon the
6 investigation of Plaintiffs’ counsel, Mitsubishi Japan, ZF
7 Electronics USA, ZF Passive Safety USA, and ZF Automotive
8 USA had joint responsibility for the failure of the airbag
9 warning light to warn about the ACU Defect.

10 214. Mitsubishi USA, Mitsubishi Japan, ZF Electronics USA, ZF Passive
11 Safety USA, ZF Automotive USA, ZF TRW Corp., ST USA, ST Malaysia, and ST
12 Italy concealed the existence of the ACU Defect from consumers like Plaintiff and
13 NHTSA. Had they instead disclosed it before Plaintiff acquired the Class Vehicle,
14 Plaintiff would have learned of the concealed information through, for example, the
15 advertising channels described above or through discussions with the salesperson.
16 Plaintiff has suffered a concrete injury in the form of an overpayment for the Class
17 Vehicle as a result of Mitsubishi USA, Mitsubishi Japan, ZF Electronics USA, ZF
18 Passive Safety USA, ZF Automotive USA, ZF TRW Corp., ST USA, ST Malaysia,
19 and ST Italy’s misconduct, and did not receive the full benefit of the bargain in
20 acquiring the Class Vehicle. Plaintiff would not have leased the Class Vehicle, or
21 would have paid less for it, if Mitsubishi USA, Mitsubishi Japan, ZF Electronics
22 USA, ZF Passive Safety USA, ZF Automotive USA, ZF TRW Corp., ST USA, ST
23 Malaysia, and ST Italy did not conceal material information regarding the Class
24 Vehicle’s safety and reliability, or the fact that it was equipped with a defective
25 ACU and ASIC.

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b. Gaylynn Sanchez

215. Plaintiff Gaylynn Darling (Sanchez)⁷ (“Plaintiff”) is an individual residing in La Mirada, California. On or around July 31, 2015, Plaintiff leased a new 2015 Mitsubishi Lancer (the “Class Vehicle”) from Cerritos Mitsubishi, an authorized Mitsubishi dealership located in Cerritos, California. Plaintiff purchased the Class Vehicle at the end of the lease term on or around July 25, 2019. At the time Plaintiff acquired the Class Vehicle, Plaintiff had a reasonable expectation that the Class Vehicle had properly-functioning airbags and seatbelts, and Plaintiff had no way of knowing that the Class Vehicle contained a defective ACU and ASIC that could cause the airbags and seatbelts to fail during a crash.

216. In the weeks leading up to her lease of the Class Vehicle, Plaintiff reviewed and relied on numerous statements and representations about it.

- a. Plaintiff saw representations and statements on Mitsubishi’s website indicating that the Class Vehicle was safe and had properly-functioning airbags and seatbelts. The Class Vehicle’s safety features were important to her lease decision. Plaintiff is not personally aware of which particular Mitsubishi entity is responsible for these representations and statements because Plaintiff interfaces with Mitsubishi as a brand. Based upon the investigation of Plaintiffs’ counsel, Mitsubishi USA was responsible for the content of the website.
- b. On the day she leased the Class Vehicle, Plaintiff spoke with and relied on statements about the Class Vehicle made by a salesperson at Cerritos Mitsubishi. Plaintiff and the salesperson discussed the Class Vehicle’s safety features.

⁷ Plaintiff Gaylynn Darling was previously known as Gaylynn Sanchez. Plaintiff’s last name has changed due to marriage.

1 c. Plaintiff recalls reviewing the Monroney sticker and in-vehicle
2 airbag label safety language immediately prior to her lease. The
3 sticker and label indicated the Class Vehicle was safe and had
4 properly-functioning airbags and seatbelts. Based upon the
5 investigation of Plaintiffs' counsel, Mitsubishi USA was
6 responsible for the content of the Monroney sticker, and
7 Mitsubishi Japan was responsible for the in-vehicle airbag label
8 safety language.

9 d. Plaintiff test drove the Class Vehicle before leasing it. At no
10 time prior to or at the time of her lease did the airbag warning
11 light on the Class Vehicle's dashboard illuminate or flash to
12 indicate any issue with the Class Vehicle's airbag system. By
13 not illuminating or flashing, the airbag warning light conveyed
14 there were no problems with the system and that the airbag
15 system would function properly during a crash. Based upon the
16 investigation of Plaintiffs' counsel, Mitsubishi Japan, ZF
17 Electronics USA, ZF Passive Safety USA, and ZF Automotive
18 USA had joint responsibility for the failure of the airbag
19 warning light to warn about the ACU Defect.

20 217. Mitsubishi USA, Mitsubishi Japan, ZF Electronics USA, ZF Passive
21 Safety USA, ZF Automotive USA, ZF TRW Corp., ST USA, ST Malaysia, and ST
22 Italy concealed the existence of the ACU Defect from consumers like Plaintiff and
23 NHTSA. Had they instead disclosed it before Plaintiff acquired the Class Vehicle,
24 Plaintiff would have learned of the concealed information through, for example, the
25 advertising channels described above or through discussions with the salesperson.
26 Plaintiff has suffered a concrete injury in the form of an overpayment for the Class
27 Vehicle as a result of Mitsubishi USA, Mitsubishi Japan, ZF Electronics USA, ZF
28 Passive Safety USA, ZF Automotive USA, ZF TRW Corp., ST USA, ST Malaysia,

1 and ST Italy’s misconduct, and did not receive the full benefit of the bargain in
2 acquiring the Class Vehicle. Plaintiff would not have leased and then purchased the
3 Class Vehicle, or would have paid less for it, if Mitsubishi USA, Mitsubishi Japan,
4 ZF Electronics USA, ZF Passive Safety USA, ZF Automotive USA, ZF TRW
5 Corp., ST USA, ST Malaysia, and ST Italy did not conceal material information
6 regarding the Class Vehicle’s safety and reliability, or the fact that it was equipped
7 with a defective ACU and ASIC.

8 **c. Michael Nearing**

9
10 218. Plaintiff Michael Nearing (“Plaintiff”) is an individual residing in
11 Parker, Colorado. On or around September 23, 2013, Plaintiff purchased a new
12 2014 Mitsubishi Lancer (the “Class Vehicle”) from Quality Mitsubishi, an
13 authorized Mitsubishi dealership located in Littleton, Colorado. At the time
14 Plaintiff acquired the Class Vehicle, Plaintiff had a reasonable expectation that the
15 Class Vehicle had properly-functioning airbags and seatbelts, and Plaintiff had no
16 way of knowing that the Class Vehicle contained a defective ACU and ASIC that
17 could cause the airbags and seatbelts to fail during a crash.

18 219. In the weeks leading up to his purchase of the Class Vehicle, Plaintiff
19 reviewed and relied on numerous statements and representations about it.

20 a. Plaintiff saw representations and statements on Mitsubishi’s
21 website indicating that the Class Vehicle was safe and had
22 properly-functioning airbags and seatbelts. The Class Vehicle’s
23 safety features were important to his purchase decision. Plaintiff
24 is not personally aware of which particular Mitsubishi entity is
25 responsible for these representations and statements because
26 Plaintiff interfaces with Mitsubishi as a brand. Based upon the
27 investigation of Plaintiffs’ counsel, Mitsubishi USA was
28 responsible for the content of the website.

- 1 b. On the day he purchased the Class Vehicle, Plaintiff spoke with
2 and relied on statements about the Class Vehicle made by a
3 salesperson at Quality Mitsubishi. Plaintiff and the salesperson
4 discussed the Class Vehicle’s safety features.
- 5 c. Plaintiff recalls reviewing the Monroney sticker and in-vehicle
6 airbag label safety language immediately prior to his purchase.
7 The sticker and label indicated the Class Vehicle was safe and
8 had properly-functioning airbags and seatbelts. Based upon the
9 investigation of Plaintiffs’ counsel, Mitsubishi USA was
10 responsible for the content of the Monroney sticker, and
11 Mitsubishi Japan was responsible for the in-vehicle airbag label
12 safety language.
- 13 d. Plaintiff test drove the Class Vehicle before purchasing it. At no
14 time prior to or at the time of his purchase did the airbag
15 warning light on the Class Vehicle’s dashboard illuminate or
16 flash to indicate any issue with the Class Vehicle’s airbag
17 system. By not illuminating or flashing, the airbag warning light
18 conveyed there were no problems with the system and that the
19 airbag system would function properly during a crash. Based
20 upon the investigation of Plaintiffs’ counsel, Mitsubishi Japan,
21 ZF Electronics USA, ZF Passive Safety USA, and ZF
22 Automotive USA had joint responsibility for the failure of the
23 airbag warning light to warn about the ACU Defect.

24 220. Mitsubishi USA, Mitsubishi Japan, ZF Electronics USA, ZF Passive
25 Safety USA, ZF Automotive USA, ZF TRW Corp., ST USA, ST Malaysia, and ST
26 Italy concealed the existence of the ACU Defect from consumers like Plaintiff and
27 NHTSA. Had they instead disclosed it before Plaintiff acquired the Class Vehicle,
28 Plaintiff would have learned of the concealed information through, for example, the

1 advertising channels described above or through discussions with the salesperson.
2 Plaintiff has suffered a concrete injury in the form of an overpayment for the Class
3 Vehicle as a result of Mitsubishi USA, Mitsubishi Japan, ZF Electronics USA, ZF
4 Passive Safety USA, ZF Automotive USA, ZF TRW Corp., ST USA, ST Malaysia,
5 and ST Italy's misconduct, and did not receive the full benefit of the bargain in
6 acquiring the Class Vehicle. Plaintiff would not have purchased the Class Vehicle,
7 or would have paid less for it, if Mitsubishi USA, Mitsubishi Japan, ZF Electronics
8 USA, ZF Passive Safety USA, ZF Automotive USA, ZF TRW Corp., ST USA, ST
9 Malaysia, and ST Italy did not conceal material information regarding the Class
10 Vehicle's safety and reliability, or the fact that it was equipped with a defective
11 ACU and ASIC.

12 **d. John Sancomb**

13 221. Plaintiff John Sancomb ("Plaintiff") is an individual residing in West
14 Bend, Wisconsin. On or around September 19, 2014, Plaintiff purchased a used
15 2013 Mitsubishi Lancer Sportback (the "Class Vehicle") from Heiser Chevrolet
16 West Bend located in West Bend, Wisconsin. At the time Plaintiff acquired the
17 Class Vehicle, Plaintiff had a reasonable expectation that the Class Vehicle had
18 properly-functioning airbags and seatbelts, and Plaintiff had no way of knowing
19 that the Class Vehicle contained a defective ACU and ASIC that could cause the
20 airbags and seatbelts to fail during a crash.

21 222. In the weeks leading up to his purchase of the Class Vehicle, Plaintiff
22 reviewed and relied on numerous statements and representations about it.

23 a. Plaintiff saw representations and statements on Mitsubishi's
24 website indicating that the Class Vehicle was safe and had
25 properly-functioning airbags and seatbelts. The Class Vehicle's
26 safety features were important to his purchase decision. Plaintiff
27 is not personally aware of which particular Mitsubishi entity is
28

- 1 responsible for these representations and statements because
2 Plaintiff interfaces with Mitsubishi as a brand. Based upon the
3 investigation of Plaintiffs' counsel, Mitsubishi USA was
4 responsible for the content of the website.
- 5 b. Plaintiff conducted online research by looking up the Class
6 Vehicle online at Kelly Blue Book and Carfax. Because
7 Defendants failed to disclose the ACU Defect, Plaintiff's
8 research did not show that the Class Vehicle contained the ACU
9 Defect, and instead indicated that the Class Vehicle was safe and
10 had properly-functioning airbags and seatbelts.
- 11 c. Plaintiff recalls reviewing the Monroney sticker and in-vehicle
12 airbag label safety language immediately prior to his purchase.
13 The sticker and label indicated the Class Vehicle was safe and
14 had properly-functioning airbags and seatbelts. Based upon the
15 investigation of Plaintiffs' counsel, Mitsubishi USA was
16 responsible for the content of the Monroney sticker, and
17 Mitsubishi Japan was responsible for the in-vehicle airbag label
18 safety language.
- 19 d. Plaintiff test drove the Class Vehicle before purchasing it. At no
20 time prior to or at the time of his purchase did the airbag
21 warning light on the Class Vehicle's dashboard illuminate or
22 flash to indicate any issue with the Class Vehicle's airbag
23 system. By not illuminating or flashing, the airbag warning light
24 conveyed there were no problems with the system and that the
25 airbag system would function properly during a crash. Based
26 upon the investigation of Plaintiffs' counsel, Mitsubishi Japan,
27 ZF Electronics USA, ZF Passive Safety USA, and ZF
28

1 Automotive USA had joint responsibility for the failure of the
2 airbag warning light to warn about the ACU Defect.

3 223. Mitsubishi USA, Mitsubishi Japan, ZF Electronics USA, ZF Passive
4 Safety USA, ZF Automotive USA, ZF TRW Corp., ST USA, ST Malaysia, and ST
5 Italy concealed the existence of the ACU Defect from consumers like Plaintiff and
6 NHTSA. Had they instead disclosed it before Plaintiff acquired the Class Vehicle,
7 Plaintiff would have learned of the concealed information through, for example, the
8 advertising channels described above or through discussions with the salesperson.
9 Plaintiff has suffered a concrete injury in the form of an overpayment for the Class
10 Vehicle as a result of Mitsubishi USA, Mitsubishi Japan, ZF Electronics USA, ZF
11 Passive Safety USA, ZF Automotive USA, ZF TRW Corp., ST USA, ST Malaysia,
12 and ST Italy's misconduct, and did not receive the full benefit of the bargain in
13 acquiring the Class Vehicle. Plaintiff would not have purchased the Class Vehicle,
14 or would have paid less for it, if Mitsubishi USA, Mitsubishi Japan, ZF Electronics
15 USA, ZF Passive Safety USA, ZF Automotive USA, ZF TRW Corp., ST USA, ST
16 Malaysia, and ST Italy did not conceal material information regarding the Class
17 Vehicle's safety and reliability, or the fact that it was equipped with a defective
18 ACU and ASIC.

19 **III. JURISDICTION AND VENUE**

20 **A. Subject Matter Jurisdiction**

21 224. This Court has subject matter jurisdiction over this case pursuant to the
22 Class Action Fairness Act, 28 U.S.C. § 1332(d), because members of the proposed
23 Plaintiff Classes are citizens of states different from Defendants' home states, and
24 the aggregate amount in controversy exceeds \$5,000,000, exclusive of interest and
25 costs.

26 225. This Court also has federal question jurisdiction under 28 U.S.C.
27 § 1331 because Plaintiffs have claims under 18 U.S.C. § 1964 (RICO).
28

1 226. Furthermore, this Court has supplemental jurisdiction over Plaintiffs’
2 state law claims under 28 U.S.C. § 1367.

3 **B. Personal Jurisdiction over Domestic Defendants**

4 227. The domestic Defendants are Hyundai USA, Kia USA, Toyota USA,
5 Toyota Sales USA, Toyota Engineering USA, Honda USA, Honda Engineering
6 USA, Mitsubishi USA, ZF Electronics USA, ZF Passive Safety USA, ZF
7 Automotive USA, ZF TRW Corp., FCA, and ST USA.

8 228. As explained below, this Court has personal jurisdiction over all of
9 these domestic Defendants for two basic reasons:

- 10 a. The domestic Defendants are based in California or a transferor
11 jurisdiction and therefore general jurisdiction exists; and/or
12 b. California or a transferor jurisdiction has specific jurisdiction.

13 **1. California Defendants**

14 229. This Court has general jurisdiction over Hyundai USA, Kia USA,
15 Toyota USA, Toyota Sales USA, Honda USA, and Mitsubishi USA because they
16 are all California corporations. As the Court already ruled in its Order on
17 Defendants’ Motions to Dismiss (ECF 396 at 15, 28-29, 33, 35), the Court has
18 general personal jurisdiction over these Defendants.
19

20 **2. Michigan Defendants**

21 230. This Court has general jurisdiction over ZF Passive Safety USA, ZF
22 Automotive USA, ZF Electronics USA, ZF TRW Corp., and FCA because
23 Michigan has general jurisdiction over each of these Defendants (due to the
24 location of their headquarters in Michigan) and because the Judicial Panel for
25 Multidistrict Litigation has transferred (and will continue to transfer in the future)
26 all related cases from Michigan to this Court.

27 231. As the Court already ruled in its Order on Defendants’ Motions to
28 Dismiss (ECF 396 at 37, 45), the Domestic ZF Defendants and FCA are subject to

1 general jurisdiction in Michigan, and the Court can therefore exercise personal
2 jurisdiction over these Defendants based on Plaintiffs' claims against them in a
3 member case in the Eastern District of Michigan, including the recently amended
4 member case of *Barry Adams, et al. v. ZF Active Safety and Elecs. US LLC, et al.*,
5 No. 20-cv-09668-JAK (C.D. Cal.), which was previously transferred to this MDL.

6 **3. ST USA**

7
8 232. This Court has specific jurisdiction over ST USA because Michigan
9 has specific jurisdiction over ST USA and because the Judicial Panel for
10 Multidistrict Litigation has transferred related cases from Michigan to this Court.
11 As the Court already ruled in its Order on Defendants' Motions to Dismiss (ECF
12 396 at 51-56), the Court can exercise specific personal jurisdiction over ST USA
13 for Plaintiffs' claims against ST USA in Michigan, which applies to member cases
14 filed in the Eastern District of Michigan, including the recently amended member
15 case of *Barry Adams, et al. v. ZF Active Safety and Elecs. US LLC, et al.*, No. 20-
16 cv-09668-JAK (C.D. Cal.), which was previously transferred to this MDL.

17 233. Michigan has specific jurisdiction over ST USA because Plaintiffs'
18 claims arise out of, or relate to, ST USA's conduct in Michigan. For example:

- 19 a. According to ZF Automotive USA, the Michigan office of ST
20 USA was responsible for manufacturing the DS84 ASICs that
21 are part of the defective DS84 ACUs. The address for this office
22 is 19111 Victor Parkway, Livonia, Michigan 48150. Because the
23 DS84 ASIC—including its vulnerability to EOS—is a critical
24 part of the defective ZF ACU design, Plaintiffs' claims arise out
25 of, or relate to, ST USA's Michigan activities.
- 26 b. Upon information and belief, employees of the ST USA
27 Michigan office served as liaisons with ZF Electronics USA, ZF
28 Passive Safety USA, and ZF Automotive USA on behalf of its

1 affiliates. Because the DS84 ASIC was a custom chip used only
2 by these ZF companies and their affiliates, these liaison ST USA
3 employees were responsible for providing customer support
4 relating to the DS84 ASIC.

5 c. Several ST USA employees met with ZF Electronics USA, ZF
6 Passive Safety USA, and ZF Automotive USA between 2005
7 and 2007 to discuss and establish the design of the DS84 ASICs.

8 These ST USA employees included [REDACTED]
9 [REDACTED]

10 [REDACTED] At the time, these
11 employees worked for ST USA out of ST USA's Michigan
12 office.

13 d. [REDACTED]
14 [REDACTED]
15 [REDACTED]
16 [REDACTED]
17 [REDACTED]
18 [REDACTED]
19 [REDACTED]
20 [REDACTED]

21 **4. Toyota Engineering USA**

22 234. This Court has specific jurisdiction over Toyota Engineering USA
23 based on its operation of the manufacturing plant Toyota Auto Body Company, Inc.
24 (TABC) in Long Beach, California. Upon information and belief, Toyota vehicles
25 with the defective DS84 ACUs were manufactured at this California facility. As the
26 Court already found in its Order on Defendants' Motions to Dismiss (ECF 396 at
27 29), the Court can exercise personal jurisdiction over Toyota Engineering USA.
28

1 235. This Court also has specific jurisdiction over Toyota Engineering USA
2 because consumers in California and the transferor jurisdictions bought Toyota
3 vehicles equipped with DS84 ACUs that were made at other facilities operated by
4 Toyota Engineering USA. Toyota Engineering USA intended for automobiles made
5 in its other facilities to be sold in California and the transferor jurisdictions.

6 236. Furthermore, this Court has specific jurisdiction because Toyota
7 Engineering USA placed orders for all DS84 ACUs for Toyota Class Vehicles with
8 the Michigan-based ZF Electronics USA. Accordingly, Toyota Engineering USA's
9 Michigan-direct conduct relates to Plaintiffs' claims, and the Michigan transferor
10 courts have jurisdiction.

11 **5. Honda Engineering USA**

12 237. This Court has specific jurisdiction over Honda Engineering USA
13 because consumers in California and the transferor jurisdictions bought Honda
14 vehicles equipped with DS84 ACUs that were made by Honda Engineering USA.
15 The company intended for its automobiles to be sold in California and the transferor
16 jurisdictions. Indeed, the Court's Order on Defendants' Motions to Dismiss (ECF
17 396 at 33-34) already found that there is personal jurisdiction over two of Honda
18 Engineering USA's predecessor companies that made the Honda Class Vehicles,
19 Honda of America Mfg., Inc. and Honda R&D Americas, LLC.

20 238. This Court also has specific jurisdiction over Honda Engineering USA
21 because Honda Engineering USA placed orders for all DS84 ACUs for Honda
22 Class Vehicles with the Michigan-based ZF Electronics USA. Accordingly, Honda
23 Engineering USA's Michigan-direct conduct relates to Plaintiffs' claims, and the
24 Michigan transferor courts have jurisdiction.

25 **C. Personal Jurisdiction Over Foreign Defendants**

26 239. The foreign Defendants are ZF Germany, ST Italy, ST Malaysia,
27 Hyundai Korea, Kia Korea, Hyundai Mobis, Honda Japan, and Mitsubishi Japan.
28

1 240. This Court has specific personal jurisdiction over these foreign
2 Defendants pursuant to the long-arm statutes of California (Cal. Code Civ. Proc.
3 § 410.10), Florida (Fla. Stat. §§ 48.193(1)), Alabama (Ala. R. Civ. P. 4.2),
4 Michigan (Mich. Comp. Laws § 600.705), New York (N.Y. CPLR § 302),
5 Washington (RCW § 4.28.185(1)(a)) and any other applicable jurisdiction.

6 241. In the alternative, should the Court find that any of the foreign
7 Defendants did not have minimum contacts with any states sufficient for specific
8 jurisdiction, the Court has personal jurisdiction under Rule 4(k) of the Federal
9 Rules of Civil Procedure because Plaintiffs have pled a federal RICO claim and
10 exercising jurisdiction is consistent with the United States Constitution, given the
11 foreign Defendants' pervasive contacts with the United States and the fact that
12 Plaintiffs' claims arise from, or relate to, transactions in the United States involving
13 vehicles and vehicle parts designed and distributed by the foreign Defendants.

14 242. Furthermore, the Court has specific jurisdiction over each foreign
15 Defendant pursuant to 18 U.S.C. 1965(a)-(b). First, each Plaintiff has alleged
16 damages arising out of a single multidistrict RICO conspiracy implicating his or her
17 Vehicle Manufacturer Defendant and the Supplier Defendants. Second, the court
18 has personal jurisdiction over at least one of the participants in each alleged
19 multidistrict conspiracy, because, as described above, the Court has jurisdiction
20 over, *at the very least*, the Domestic ZF Defendants, ST USA, and the Domestic
21 Vehicle Manufacturer Defendants. Third, there is no other district in which a court
22 will have personal jurisdiction over all of the alleged co-conspirators in each
23 multidistrict RICO conspiracy. *See* ECF 396 at 17.

24 243. As explained below, the foreign Defendants targeted consumers in
25 each of the fifty states with advertising for the Class Vehicles; purposely availed
26 themselves of commerce in the fifty states; controlled the design, distribution, and
27 sale of either vehicles with defective DS84 ACUs or the ACUs themselves; and
28 communicated with each other regarding the defective DS84 ACUs using mail and

1 wire in the United States. These contacts with the United States, California, and the
2 transferor jurisdictions establish personal jurisdiction.

3 **1. ZF Germany**

4 244. Although ZF Germany is based in Europe, it is subject to the Court’s
5 specific jurisdiction because it has pervasive contacts with the United States and
6 exerts substantial control over its domestic subsidiaries. ZF Germany had contacts
7 with the United States to sell DS84 ACUs for vehicles in the U.S. market, and these
8 contacts give rise, or relate, to Plaintiffs’ claims.

9 **a. ZF Germany’s forum-related activities support the exercise**
10 **of jurisdiction over ZF Germany.**

11 245. As detailed further in Sections IV.F.2., IV.F.4., and IV.F.14, ZF
12 Germany reviewed and approved several misleading presentations and written
13 statements to NHTSA in the U.S. regarding the ACU Defect and crashes involving
14 the Defect. ZF Germany gave approval necessary for the transmittal of these
15 presentations and statements to NHTSA in the U.S., including those dated February
16 5, 2016, July 19, 2016, and March 8, 2018, all as part of a scheme to conceal the
17 ACU Defect from NHTSA and the American public. These misleading statements
18 to NHTSA in the U.S. give rise, or relate, to Plaintiffs’ claims.

19 246. Furthermore, on information and belief, ZF Germany reviewed and
20 approved several reports regarding ACU failures which were transmitted to at least
21 one domestic vehicle manufacturer. For example, ZF Germany had a proprietary
22 interest in the information contained in several reports transmitted to Toyota USA
23 and Toyota Japan dated July 2, 2018, August 10, 2018, and September 18, 2018,
24 regarding an ACU failure in a 2016 Toyota Auris that crashed in Portugal. These
25 reports analyzed the malfunction of the DS84 ACU due to EOS and contain a
26 legend that states: “© ZF Friedrichshafen AG, 2018.” Given ZF Germany’s
27
28

1 ownership interest in these reports, ZF Germany was aware of the contents of the
2 reports and approved transmittal of the reports to Toyota USA and Toyota Japan.

3 247. Similarly, on November 14, 2018, ZF Electronics USA, ZF Passive
4 Safety USA, and ZF Automotive USA created an “Analysis Report” about a DS84
5 ACU retrieved from a Toyota Auris that crashed in Morocco with no airbag
6 deployment, which was then transmitted to Toyota USA and Toyota Japan. The
7 November 14, 2018 Analysis Report has a legend attributing the copyright interest
8 in the memo to ZF Friedrichshafen AG. Given ZF Germany’s ownership interest in
9 this report, ZF Germany was aware of the contents of the report and approved
10 transmittal of the report to Toyota USA and Toyota Japan.

11 **b. ZF AG exerts control over the Domestic ZF Defendants.**

12 248. ZF Germany is a parent company that exerts substantial control over
13 its U.S. subsidiaries headquartered in Michigan (ZF Electronics USA; ZF Passive
14 Safety USA; ZF Automotive USA; and ZF TRW Corp.), collectively referred to
15 herein as the “Domestic ZF Defendants.” These domestic subsidiaries have forum-
16 related contacts in the United States that give rise to the claims in this action, and
17 those contacts are properly imputed onto ZF Germany for the purposes of
18 establishing personal jurisdiction.

19 249. On information and belief, ZF Germany has authority over the
20 Domestic ZF Defendants because it directly or indirectly owns and controls the
21 voting power over the Domestic ZF Defendants.

22 250. On or around May 15, 2015, ZF Germany and its subsidiaries acquired
23 ZF TRW Corp. (then known as TRW Automotive Holdings Corp.) and its
24 subsidiaries. The purchase price was approximately \$12 billion. ZF TRW Corp.
25 was (and remains) an American corporation, headquartered in Michigan. The
26 merger was the largest acquisition in ZF Germany’s 100-year history. At the time,
27 ZF Germany reported that “TRW Automotive Holdings Corp. . . . is almost as big
28

1 as ZF.” Upon information and belief, ZF Germany’s primary reasons for acquiring
2 ZF TRW Corp. included its ties to the United States, its history and standing in the
3 United States automotive industry, and the know-how of its United States
4 personnel. ZF Germany’s sales in North America make up a significant portion of
5 the company’s business. According to ZF Germany’s 2021 annual report, North
6 America accounted for 27% of the company’s sales.

7 251. Upon information and belief, since the merger, ZF Germany has had
8 the power to appoint board members to all the Domestic ZF Defendants. It has
9 exercised this power to appoint board members to these subsidiaries that it believes
10 will manage the subsidiaries with the principal goal of benefiting ZF Germany. For
11 example, after ZF Germany acquired ZF TRW Corp. and its subsidiaries, Dr. Franz
12 Kleiner, a member of ZF Germany’s Board of Management, took over
13 responsibility for the acquired company. After Dr. Kleiner retired, ZF Germany
14 appointed Dr. Martin Fischer as his replacement on the ZF Board of Management,
15 who took over responsibilities including active and passive safety systems and the
16 North America Region.

17 252. Following the May 15, 2015 acquisition of ZF TRW Corp., ZF
18 Germany exercised significant control over the day-to-day operations of the
19 Domestic ZF Defendants in the United States. ZF Germany’s control over the day-
20 to-day operations of the domestic subsidiaries is evident from the fact that, Dr.
21 Fischer—the member of ZF Germany’s Board of Management who is also the
22 president of ZF North America, Inc.—is permanently based in Michigan.

23 253. ZF Germany’s 2015 Annual Report describes its efforts to integrate
24 TRW:

25 To ensure the top quality of our products and services at
26 economic costs, ZF is generating new synergies through the
27 integration of ZF TRW: Knowledge sharing and the further
28 development of common standards will improve the quality of
our products even further. Materials procurement of the two

1 companies is also being merged – with positive repercussions
2 for the cost structure. . . .

3 A common objective of the Supervisory Board and the Board
4 of Management to ensure long-term success is the sustainable
5 further development of the ZF Group based on the
6 requirements for new technologies in an increasingly dynamic
7 market. The pooling of the Group’s e-mobility activities in the
8 new E-Mobility Division, ZF’s acquisition of Bosch Rexroth’s
9 industrial drives segment and, above all, the successful
10 integration of ZF TRW play a major role here. The
11 Supervisory Board will closely follow the further development
12 of these activities. The know-how of ZF TRW, incorporated
13 into the new Active & Passive Safety Technology Division,
14 opens up new opportunities for ZF to actively shape both the
15 safety and automated driving megatrends. The process and
16 structure of ZF TRW’s integration as well as the adapted ZF
17 management concept were regularly deliberated by the Board
18

19 The members of the Board of Management are assigned
20 directly to the six divisions as well as to the ZF Services
21 Business Unit. The same applies to the responsibilities with
22 regard to the Regions of North America, South America and
23 Asia-Pacific. The Group structure with six divisions is aligned
24 with the market and customers. . . .

25 The Active & Passive Safety Technology Division has been
26 managing the business activities of the acquired company
27 TRW Automotive Holdings Corp. since May 15, 2015. It
28 includes the following business units: Braking Systems,
Steering Systems, Commercial Steering Systems, Occupant
Safety Systems, Electronics, Body Control Systems,
Engineered Fasteners & Components and Parts & Service.

254. ZF Germany integrated its physical locations with ZF TRW Corp. and
its subsidiaries. For example, in the year after ZF Germany acquired ZF TRW
Corp., ZF Germany’s CEO Stefan Sommer stated in an interview that the company
was re-aligning its North American activities and bringing the businesses together

1 “under one roof” in the former TRW headquarters in Livonia, Michigan. ZF
2 Germany already had a significant presence in the United States before acquiring
3 TRW Automotive Holdings Corp. and its subsidiaries. As of 2013, ZF Germany
4 and its subsidiaries had about 3,700 employees in the United States, including
5 roughly 1,000 employees at three facilities in Michigan.

6 255. ZF Germany has a common pattern and practice of describing itself,
7 ZF TRW Corp., and ZF TRW Corp.’s subsidiaries as a single, unified entity. After
8 the 2015 acquisition, for example, TRW Automotive’s business activities were
9 described as continuing as a “division” of ZF—the ZF Active and Passive Safety
10 Technology division. In 2017, Dr. Kleiner reiterated the unified nature of the
11 companies while explaining that the TRW name would be retired because
12 integration was complete: “Now we believe the public, and employees, understand
13 and identify with this organization as a combined company under ZF.” A March
14 2018 letter from ZF Germany CEO Wolf-Henning Scheider similarly highlights the
15 unified nature of ZF Germany, ZF TRW Corp., and ZF TRW Corp.’s subsidiaries:
16 “An important operational highlight to mention is the integration of TRW into the
17 ZF Group. The new ZF brand image unveiled for the first time at IAA 2017 makes
18 the merging of the two companies also apparent to the public. ZF is now ‘one
19 company’.”

20 256. A March 2018 letter from Franz-Josef Paefgen, Chairman of the ZF
21 Germany supervisory board states:

22 A key component of [the ZF 2025 Strategy], namely the
23 integration of TRW Automotive Holding Corp, acquired in
24 May 2015, was essentially complete by the end of the fiscal
25 year [2017] with merged corporate functions, a unified identity
26 and the remaining activities transferred into the line
27 organization. Since the beginning of 2017, the service activities
28 of ZF and TRW have been successfully brought together into
one organization, ‘ZF Aftermarket’.

This statement further exemplifies ZF Germany’s common pattern and practice of

1 describing itself, ZF TRW Corp., and ZF TRW Corp.'s other U.S. affiliates as a
2 single, unified entity.

3 257. ZF Germany's 2017 Annual Report states:

4 In order to ensure the company's long-term success, corporate
5 social responsibility has to be assumed and business activities
6 must be managed responsibly, sustainably and with integrity.
7 With its effective Compliance Management System (CMS)
8 that was further developed in 2017, ZF has taken this
9 responsibility to heart. The ZF and ZF TRW compliance areas
10 were merged on July 1, 2017. In the course of the integration,
11 the legal and compliance organizations of the ZF Group were
12 also merged. The Board Member for Human Resources and
13 Governance is now responsible for them.

14 Based on this statement and upon information and belief, ZF Germany controls and
15 develops the policies for the senior executives of the merged compliance, human
16 resources, and governance functions of all the Domestic ZF Defendants.

17 258. ZF Germany's companywide compliance guide dated July 2018 states:

18 Product compliance is an important priority for ZF. ZF holds
19 itself to the highest standards of legal and ethical conduct and
20 is committed to making high quality products that are safe and
21 comply with applicable laws, regulations, and standards. These
22 principles are implemented through ZF's policies, processes
23 and structures, and all ZF employees are held to these
24 standards.

25 Upon information and belief, ZF Germany distributed the compliance guide to all
26 the Domestic ZF Defendants and was responsible for enforcing (and failing to
27 enforce) it.

28 259. Based on these statements by ZF Germany and upon information and
belief, ZF Germany was actively involved in monitoring the global field incidents
involving EOS in DS84 ACUs, whether the DS84 ACUs complied with safety
standards in the United States, and the legal risks arising from those ACUs.

1 260. Furthermore, upon information and belief, ZF Germany controlled all
2 ZF-branded company communications relating to the defective DS84 ACUs
3 following its acquisition of TRW in 2015. For example, in connection with the
4 partial recalls of the defective ACUs between 2016 and 2020 and NHTSA’s
5 investigation into the ACUs, ZF Germany, along with other ZF Defendants,
6 prepared various slide deck presentations for NHTSA and the Vehicle
7 Manufacturer Defendants, which all contain copyright marks identifying ZF
8 Germany as the owner of the materials. Based on this copyright mark, ZF
9 Germany’s consent was required to send the presentations to NHTSA in the U.S.
10 and/or the Vehicle Manufacturer Defendants, and ZF Germany provided consent.
11 Accordingly, ZF Germany had final approval over the statements contained in those
12 presentations.

13 **c. Because of ZF Germany’s control over the Domestic ZF**
14 **Defendants, the forum-related activities of the Domestic ZF**
15 **Defendants support the exercise of jurisdiction over ZF**
16 **Germany.**

17 261. The Domestic ZF Defendants—which were substantially controlled by
18 ZF Germany—were actively involved in the activities at issue in this litigation.

19 262. ZF Electronics USA placed the DS84 ACUs in the stream of
20 commerce with the expectation and intent that it would benefit from the use and
21 sale in the transferor jurisdiction, and it reaped the benefits of selling millions of
22 units in these jurisdictions. Indeed, a Senior Technical Specialist for ZF Electronics
23 USA admitted that ZF Electronics USA designed, manufactured, and distributed the
24 DS84 ACUs. *See* ECF 209-4, ¶ 4.

25 263. Furthermore, ZF Automotive USA (formerly TRW Automotive Inc.)
26 is a manufacturer of the DS84 ACUs at issue in this litigation and a direct parent of
27 ZF Passive Safety USA and ZF Electronics USA. On information and belief, ZF
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1 Passive Safety USA was also directly involved in the manufacture and design of the
2 DS84 ACU.

3 264. Additionally, the Domestic ZF Defendants had an active role in the
4 Vehicle Manufacturer Defendants’ and NHTSA’s investigation of the ACU defect,
5 as well as the concealment of that defect in every state. A Senior Technical
6 Specialist for ZF Electronics USA confirmed that the Domestic ZF Defendants “are
7 responsible for communicating with NHTSA concerning purported electrical
8 overstress issues in the ACUs,” and “have also made certain filings with NHTSA
9 related to the ACUs,” including a Part 573 Safety Recall Report that was part of a
10 recall targeted at Class Vehicles in every state.

11 265. As alleged throughout this Complaint, the Domestic ZF Defendants
12 were also directly involved in investigating crashes in Class Vehicles throughout
13 the U.S., including in California, Florida, and Arizona. Despite the nationwide
14 scope of ACU Defect, the Domestic ZF Defendants concealed this dangerous defect
15 from consumers and NHTSA in the U.S. and conspired with the Vehicle
16 Manufacturer Defendants to exclude Class Vehicles from recalls and provide
17 inadequate recall remedies.

18 266. The existence of the ACU defect is a material fact that would have
19 affected each Plaintiff’s decision to acquire the Class Vehicle in each jurisdiction.
20 The Domestic ZF Defendants’ concealment of the ACU Defect therefore gives rise,
21 or relates, to Plaintiffs’ claims.

22 **2. ST Italy**

23 267. Although based in Italy, ST Italy has substantial activities directed at
24 the United States, and those activities give rise, or relate, to Plaintiffs’ claims.

25 268. For the reasons explained below, the transferor court in the Eastern
26 District of Michigan has specific jurisdiction over ST Italy.
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1 269. During the relevant period, ST Italy purposefully availed itself of the
2 United States’ legal protections by registering and maintaining registrations with
3 the United States government for trademarks associated with its semiconductors
4 and electronic chips, which ST Italy used to identify and distinguish its parts in the
5 United States, this District, and the transferor jurisdictions.

6 270. During the relevant period, ST Italy also purposefully availed itself of
7 the United States’ legal protections by filing numerous patents with the United
8 States Patent and Trademark Office associated with its semiconductors and
9 electronic chips.

10 271. Upon information and belief, ST Italy participated in the preparation of
11 a response to a Request for Quotation that ZF Electronics USA sent to several chip
12 manufacturers in December 2004. This response led to the selection of the DS84
13 ASIC as the ASIC that would be installed in ZF ACUs in vehicles in the United
14 States. When ST Italy participated in the preparation of this response, it knew and
15 intended that the response would be sent to ZF Electronics USA employees in
16 Michigan.

17 272. Following this solicitation of business from Michigan, ST Italy invited
18 several Michigan-based employees to Italy for meetings about the design of the
19 DS84 ASIC. Between 2005 and 2008, Michigan-based employees met with well
20 over a dozen technical specialists employed by ST Italy. The two companies agreed
21 on a design for the DS84 ASIC. Based on the agreed design, ST Italy knew the
22 DS84 ASIC was a custom chip made only for ZF Electronics USA and other
23 affiliates owned by ZF TRW Corp. Accordingly, ST Italy purposely directed its
24 engineering and design expertise with the intention of affecting commerce in the
25 United States—specifically, the shipment of ASICs and the manufacture of ACUs.

26 273. Between 2004 and 2008, ST Italy worked closely with ST USA’s
27 Michigan-based employees, who served as liaisons for ST Italy’s relationship with
28 ZF Electronics USA and ZF Passive Safety USA.

1 274. ST Italy did not just have an incidental role in placing the DS84 ASIC
2 into the stream of commerce. Instead, ST Italy designed the DS84 ASIC as a
3 custom chip for ZF Electronics USA. Upon information and belief, when ST Italy
4 performed this work, it knew the DS84 ASIC was designed exclusively for the use
5 in ACUs designed by ZF Electronics USA, and would be used in vehicles sold in
6 the United States.

7 275. [REDACTED]
8 [REDACTED]
9 [REDACTED]
10 [REDACTED]
11 [REDACTED]
12 [REDACTED]
13 [REDACTED]
14 [REDACTED]
15 [REDACTED]
16 [REDACTED]
17 [REDACTED]
18 [REDACTED]

19 277. Because ST Italy’s design and quality assurance work for the DS84
20 ASICs centered on Michigan—the headquarters of the only company that used the
21 DS84 ASIC—this work had the necessary minimum contact with Michigan and
22 gives rise, or relates, to Plaintiffs’ claims.

23 **3. ST Malaysia**

24 278. Although based in Malaysia, ST Malaysia has substantial activities
25 directed at the United States, and those activities give rise, or relate, to Plaintiffs’
26 claims.
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1 279. As explained below, ST Malaysia directly shipped millions of DS84
2 ASICs to the Los Angeles area. Because Plaintiffs’ claims arise out of, or relate, to
3 these shipments (which were essential to the delivery of Class Vehicles with the
4 ACU Defect), the transferor courts in this District have specific jurisdiction over ST
5 Malaysia.

6 280. During the relevant period, ST Malaysia purposefully availed itself of
7 the United States’ legal protections by filing patents with the United States Patent
8 and Trademark Office associated with its semiconductors and electronic chips.

9 281. According to hundreds of invoices produced by ST USA, the DS84
10 ASICs are “assembled in Malaysia.” Upon information and belief, ST Malaysia
11 manufactured the DS84 ASIC for vehicles sold in the United States.

12 282. Upon information and belief, ST Malaysia shipped the vast majority of
13 the DS84 ASICs installed in the Class Vehicles to ST USA’s distribution center in
14 the Los Angeles area, also known as the “STMicro LAX HUB.” During part of the
15 relevant time period, the STMicro LAX HUB was located at 18120 Bishop Ave,
16 Carson, California. For the remainder of the relevant period, the STMicro LAX
17 HUB was located at 19600 Western Avenue, Torrance, California.

18 283. After ST Malaysia shipped the DS84 ASICs to ST USA in California,
19 ST USA shipped them to ZF Electronics USA’s plant in Marshall, Illinois, where
20 ZF Electronics USA manufactured the DS84 ACUs.

21 284. Upon information and belief, ST Malaysia knew that all DS84 ASICs
22 were made exclusively for ZF Electronics USA because the DS84 ASIC was a
23 custom ASIC not used by any other ACU manufacturer.

24 [REDACTED]
25 [REDACTED]
26 [REDACTED]
27 [REDACTED]
28 [REDACTED]

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[REDACTED]

4. Hyundai Korea, Kia Korea, and Hyundai Mobis

288. Although Hyundai Korea, Kia Korea, and Hyundai Mobis are based in South Korea, the Court has specific jurisdiction over them based on their pervasive contacts with the United States. These foreign Defendants’ contacts with the United States are all in furtherance of sales and leases of Hyundai-Kia vehicles in the United States, which gives rise, or relates, to Plaintiffs’ claims.

289. The Hyundai-Kia Defendants are an intertwined group of entities with overlapping roles and responsibilities. Hyundai Korea and Kia Korea are tightly affiliated, so much so that they often hold themselves out to be part of the same joint entity—the Hyundai-Kia Motor Company. Hyundai Mobis is the primary parts supplier and manufacturer for the Hyundai-Kia Motor Company, and forms the third leg of the “Hyundai Motor Group.” As relevant for this litigation, each of these Defendants was involved with the issues related to the defective DS84 ACUs in Hyundai and Kia Class Vehicles.

290. Hyundai Korea and Kia Korea share many key executives. For example, Eui-Sun Chung is the Chairman of both Hyundai Korea and Kia Korea, as well as the chairman of Hyundai Motor Group.

1 291. The services rendered by Hyundai USA and Kia America for the
2 foreign Hyundai-Kia Defendants are so important to the foreign Hyundai-Kia
3 Defendants that they would perform those services themselves if Hyundai USA and
4 Kia America did not exist. Hyundai Korea controls the public name and brand of
5 Hyundai USA, whereas Kia Korea controls the public name and brand of Kia
6 America. In consumer transactions, like those with Plaintiffs, Hyundai Korea’s and
7 Kia Korea’s unified brands and logos serve as their and their subsidiaries’ official
8 seal and signature as to consumers. Additional allegations specifically regarding
9 each of the foreign Hyundai-Kia Defendants are below.

10 **a. Hyundai Korea**

11 292. As this Court already ruled in its Order on Defendants’ motions to
12 dismiss (ECF 396 at 15-24), the Court has personal jurisdiction over Hyundai
13 Korea through the federal long-arm statute, Fed. R. Civ. P. 4(k)(2), based on
14 Hyundai Korea’s forum-related activities from which this case arises, and the
15 forum-related activities of Hyundai Korea’s primary domestic subsidiary, Hyundai
16 USA, which Hyundai Korea substantially controls.

17 **i. Hyundai Korea’s forum-related activities support the**
18 **exercise of jurisdiction over Hyundai Korea.**

19 293. Although a South Korea-based company, Hyundai Korea has
20 substantial activities directed at the United States that give rise, or relate, to
21 Plaintiffs’ claims.

22 294. In a recent complaint to enforce its trademark rights, Hyundai Korea
23 represented that it “currently designs, manufactures, markets, distributes, and sells a
24 wide range of automobile and related automobile parts to over 190 countries
25 throughout the world, including the United States, under the trademark ‘Hyundai.’”

26 295. During the relevant period, Hyundai Korea purposefully availed itself
27 of the United States’ legal protections by registering and maintaining registrations
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1 with the United States government for trademarks associated with its vehicles and
2 parts, which Hyundai Korea used to identify and distinguish its vehicles and parts
3 in the United States, this District, and transferor jurisdictions.

4 296. Hyundai Korea purposely availed itself of markets in the United
5 States, selling more than 500,000 vehicles per year in this market through its
6 domestic subsidiary, Hyundai USA. Specific to this litigation, Hyundai Korea
7 coordinated with ZF Electronics USA and ZF Passive Safety USA to adapt the
8 general design of the ACU with the DS84 for use in Hyundai Class Vehicles.
9 Hyundai Korea signed off on the design of the DS84 ACUs used in the Hyundai
10 Class Vehicles, granting their express approval to the faulty design.

11 297. Hyundai Korea manufactured over 1.75 million of the Class Vehicles,
12 vehicles manufactured abroad and delivered to Hyundai USA for sale in the United
13 States of America. Although Hyundai Korea made these Hyundai Class Vehicles in
14 Korea, it specifically segregated them from other Hyundai vehicles that were
15 intended for sale in other countries, placed certification labels on them that assured
16 compliance with U.S. federal safety requirements, and ensured those Hyundai Class
17 Vehicles shipped to the United States, with full knowledge that Hyundai USA
18 would then distribute them across the United States. These certification labels give
19 rise, or relate, to Plaintiffs' claims because they misleadingly suggested the Class
20 Vehicles were safe and had properly-functioning airbags and seatbelts.

21 298. These Class Vehicles were not merely placed into a stream of
22 commerce—they were directly targeted for the United States market. Hyundai USA
23 certified that the vehicles complied with US safety requirements and ensured that
24 they shipped directly to a wholly owned subsidiary responsible for distribution in
25 the United States.

26 299. To enable access to this market, Hyundai Korea regularly submits
27 applications to the EPA to obtain certification necessary for the sale of its vehicles
28 in the United States.

1 300. In addition to obtaining emissions certifications, Hyundai Korea
2 certified that the Hyundai Class Vehicles it designed and made met federal safety
3 standards for sale in the United States.

4 301. Hyundai Korea affixed federal safety certification labels to the
5 Hyundai Class Vehicles manufactured in Korea, and directly approved the same
6 labels for Hyundai Class Vehicles manufactured in the United States, in each case
7 knowing that they would be sold in the United States. The certification labels
8 represented that the Hyundai Class Vehicles conformed to U.S. federal safety
9 standards, thereby enabling the vehicles to be sold in all 50 states. These misleading
10 certification labels give rise, or relate, to Plaintiffs' claims.

11 302. Hyundai Korea designed the Hyundai Class Vehicles to have clearly
12 visible airbag readiness indicators, as required under 49 C.F.R. § 571.208 (S4.5.2),
13 to communicate with vehicle occupants about the safety and operating status of the
14 airbag system. These readiness indicators give rise, or relate to, Plaintiffs' claims
15 because the readiness indicators in Hyundai-Kia Class Vehicles misleadingly
16 communicated to consumers that the vehicles' passive safety system was "ready" to
17 deploy during crashes.

18 303. While Hyundai Korea is South Korean company, it designed the
19 Hyundai Class Vehicles to target U.S. consumers, and included prominent English
20 language labels within the car cabin to alert the driver and passengers to the
21 vehicle's airbag system. These misleading labels give rise, or relate, to Plaintiffs'
22 claims.

23 304. Hyundai Korea played a key role in the Hyundai-Kia Defendants'
24 analysis and decision-making relating to the defective DS84 ACUs in the United
25 States. Multiple documents produced to NHTSA in the U.S. by the Hyundai-Kia
26 Defendants are written in Korean. Upon information and belief, the use of Korean
27 was necessary because employees of the Korean companies needed to review the
28 information and approve the responses of the American subsidiaries.

1 305. Between October 2015 and July of 2016, the Domestic ZF Defendants
2 met with Hyundai Korea, Kia Korea, and Hyundai Mobis in Korea at least four
3 times to discuss the problems with DS84 ACUs in Hyundai-Kia Class Vehicles and
4 what to tell NHTSA.

5 306. According to a document produced by ZF Automotive US Inc.,
6 Hyundai Korea returned a Hyundai Class Vehicle—specifically a 2016 Hyundai
7 Sonata—due to a faulty ZF ACU that experienced EOS. This demonstrates
8 Hyundai Korea’s continuing interest in Class Vehicles after delivery to its primary
9 domestic subsidiary, Hyundai USA.

10 **ii. Hyundai Korea exerts control over Hyundai USA.**

11 307. Hyundai Korea established a fully owned subsidiary, Hyundai USA, in
12 the United States to target consumers in the United States. Hyundai Korea exercises
13 control over Hyundai USA through several formal and informal mechanisms.

14 308. Upon information and belief, Hyundai Korea has the power to appoint
15 board members to Hyundai USA. It has exercised this power to appoint board
16 members to its subsidiaries that it believes will manage the subsidiaries with the
17 principal goal of benefiting it.

18 309. Hyundai Korea reportedly maintains a “Global Command and Control
19 Center” at its headquarters in Seoul, Korea. It has been reported that the Global
20 Command and Control Center was modeled after the CNN newsroom in Atlanta,
21 Georgia, with dozens of computer screens relaying video and data. From the Global
22 Command and Control Center, Hyundai Korea controls Hyundai operations around
23 the world, including those in the United States.

24 310. The Global Command and Control Center monitors every operating
25 line at more than 27 plants in the world, in real time, 24 hours a day, 365 days a
26 year. The production data is generated on the assembly lines and displayed on
27 boards where team members can see it, and headquarters can see the same data at
28

1 the same time. If the quality monitors spot errors or problems, they call the factory
2 immediately.

3 311. Employees of Hyundai USA report on quality issues to Hyundai
4 Korea. One of the Hyundai plants monitored at the Global Command and Control
5 Center is located in Alabama. That plant's production chief was quoted as saying,
6 "if there's a hiccup at any of those boards, headquarters wants to know what needs
7 to be done about it – right now."

8 312. Senior Korean executives at Hyundai Korea visit Hyundai plants in the
9 United States to monitor and assess their operations.

10 313. Some Senior Korean executives at Hyundai Korea are directly
11 responsible for supervising Hyundai manufacturing plants worldwide. For instance,
12 Byung Mo Ahn worked for Hyundai Korea as an executive vice president and
13 COO, before transitioning to work for Kia. According to a press release issued by
14 KMA, while serving as a Hyundai Korea executive, Mr. Ahn was responsible for
15 "overseas business operations, including supervising the production activities of
16 nine factories worldwide."

17 314. Upon information and belief, Korean speaking "coordinators" work at
18 Hyundai USA and report on their activities to Korean executives at Hyundai Korea
19 every business day.

20 315. Hyundai Korea exercises control over its domestic subsidiary through
21 the executive leadership and board members of Hyundai USA. Hyundai Korea
22 appoints board members for Hyundai USA, exercising this power to appoint board
23 members that it believes will manage the its subsidiary with the principal goal of
24 benefitting Hyundai Korea.

25 316. Hyundai Korea and Hyundai USA share common executives. For
26 example, Jose Munoz is the current Global Chief Operating Officer of Hyundai
27 Korea as well as the President and CEO of Hyundai Motors North America and the
28 President and CEO of Hyundai USA.

1 317. Hyundai Korea controls the public name and brand of Hyundai Motor
2 America, Inc. In consumer transactions, like those with Plaintiffs, Hyundai Korea’s
3 brands and logos serve as its and its subsidiaries’ official seal and signature to
4 consumers.

5 **iii. Because of Hyundai Korea’s control over its**
6 **subsidiary Hyundai USA, the forum-related activities**
7 **of Hyundai USA support the exercise of jurisdiction**
8 **over Hyundai Korea.**

9 318. Hyundai Motor America is a California corporation, subject to general
10 jurisdiction in this state. Indeed, as the Court already ruled in the Order on
11 Defendants’ motions to dismiss (ECF 396 at 15), the Court can exercise personal
12 jurisdiction over Hyundai USA.

13 319. Hyundai USA sells, leases, and markets Hyundai-branded automobiles
14 in the United States, including the Hyundai Class Vehicles, at the direction of
15 Hyundai Korea.

16 320. Hyundai USA participated in the creation of Monroney labels that
17 misleadingly stated that the Hyundai Class Vehicles were equipped with Occupant
18 Restraint Systems but did not disclose the related defects in the DS84 ACU and
19 ASIC. These Monroney labels give rise, or relate, to Plaintiffs’ claims.

20 321. Hyundai USA caused the Class Vehicles to ship to automobile dealers
21 with misleading Monroney labels, airbag labels and imprints, certification labels,
22 readiness indicators, and owner’s manuals. These shipments give rise, or relate, to
23 Plaintiffs’ claims.

24 322. Hyundai USA participated in the creation of misleading advertising for
25 the Hyundai Class Vehicles that stressed the safety of those vehicles and omitted
26 material facts. These misleading advertisements give rise, or relate, to Plaintiffs’
27 claims.
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1 323. Hyundai USA has engaged in extensive efforts to conceal the ACU
2 Defect from American consumers and NHTSA, including concealing incidents of
3 observed EOS in certain Hyundai Class Vehicles involved in suspicious accidents.
4 These efforts to conceal the ACU Defect give rise, or relate, to Plaintiffs’ claims.

5 324. Hyundai USA also made misleading statements to NHTSA in the U.S.
6 that give rise, or relate, to Plaintiffs’ claims.

7 **b. Kia Korea**

8 325. Although a South Korea-based company, Kia Korea it is subject to the
9 Court’s specific jurisdiction because it has pervasive contacts with the United States
10 and exerts substantial control over its domestic subsidiaries. Kia Korea’s contacts
11 with the United States are all in furtherance of sales and leases of Kia vehicles in
12 the United States, and these contacts give rise, or relate, to Plaintiffs’ claims.

13 **i. Kia Korea’s forum-related activities support the**
14 **exercise of jurisdiction over Kia Korea.**

15 326. Kia Korea designs, manufactures, markets, distributes, and sells a wide
16 range of automobiles and automobile parts to over 190 countries throughout the
17 world, including the United States, under the trademark “Kia.”

18 327. Upon information and belief, Kia Korea is involved in the design,
19 manufacture, marketing, distribution, and sale of Kia vehicles in the United States
20 to a similar extent as Hyundai Korea is involved in the design, manufacture,
21 marketing, distribution, and sale of Hyundai vehicles in the United States.

22 328. Kia Korea has comparable sales volume in the United States to
23 Hyundai Korea. In 2010, Kia Korea sold approximately 355,000 vehicles in the
24 United States through its domestic subsidiary, Kia America. By 2016, Kia Korea
25 sold approximately 655,000 vehicles in the United States. During that seven-year
26 span, Kia Korea sold approximately 3,839,520 vehicles in the United States.
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1 329. During the relevant period, Kia Korea purposefully availed itself of the
2 United States’ legal protections, registering and maintaining registrations with the
3 United States government for trademarks associated with its vehicles and parts,
4 which it used to identify and distinguish its vehicles and parts in the United States,
5 this District, and transferor jurisdictions.

6 330. Kia Korea purposely availed itself of markets in the United States,
7 selling hundreds of thousands of vehicles per year in this market for each of the last
8 ten years, through its domestic subsidiary. To enable access to this market, Kia
9 Korea regularly submits applications to the EPA to obtain certification necessary
10 for the sale of its vehicles in the United States.

11 331. In addition to obtaining emissions certifications, Kia Korea also
12 designed and manufactured the Kia Class Vehicles to meet federal safety standards
13 for sale in the United States.

14 332. Kia Korea affixed federal safety certification labels to the Kia Class
15 Vehicles manufactured in Korea, and directly approved the same labels for Kia
16 Class Vehicles manufactured in the United States, in each case knowing that they
17 would be sold in the United States. The certification labels represented that the Kia
18 Class Vehicles conformed to United States federal safety standards, thereby
19 enabling the vehicles to be sold in all 50 states. These misleading certification
20 labels give rise, or relate, to Plaintiffs’ claims.

21 333. Kia Korea designed the Kia Class Vehicles to have clearly visible
22 airbag readiness indicators, as required under 49 C.F.R. § 571.208 (S4.5.2), to
23 communicate with vehicle occupants about the safety and operating status of the
24 airbag system. These readiness indicators give rise, or relate to, Plaintiffs’ claims
25 because the readiness indicators in Hyundai-Kia Class Vehicles misleadingly
26 communicated to consumers that the vehicles’ passive safety system was “ready” to
27 deploy during crashes.

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1 334. While Kia Korea is a South Korean company, it designed the Kia
2 Class Vehicles to target U.S. consumers, and included prominent English language
3 labels within the car cabin to alert the driver and passengers to the vehicle’s airbag
4 system. These misleading labels give rise, or relate, to Plaintiffs’ claims.

5 335. Kia Korea played a key role in the Hyundai-Kia Defendants’ analysis
6 and decision-making relating to the defective ZF TRW ACUs in the United States.
7 Multiple documents produced to NHTSA in the U.S. by the Hyundai-Kia
8 Defendants are written in Korean. Upon information and belief, the use of Korean
9 language was necessary because employees of the Korean companies needed to
10 review the information and approve the responses of the American subsidiaries.

11 336. Between October 2015 and July of 2016, the Domestic ZF Defendants
12 met with Hyundai Korea, Kia Korea (then known as Kia Motors Corporation), and
13 Hyundai Mobis in Korea at least four times to discuss the problems with ZF TRW
14 ACUs in Hyundai-Kia Class Vehicles and what to tell NHTSA.

15 **ii. Kia Korea exerts control over Kia USA.**

16 337. Kia Korea established a fully owned subsidiary, Kia USA, in the
17 United States to target consumers in the United States.

18 338. Upon information and belief, Kia Korea has the power to appoint
19 board members to Kia USA. It has exercised this power to appoint board members
20 to its subsidiaries that it believes will manage the subsidiaries with the principal
21 goal of benefiting it.

22 339. Kia Korea’s control over its domestic subsidiary is reflected at the very
23 top of Kia USA. The President & CEO of Kia USA from 2018 to the present,
24 SeungKyu (Sean) Yoon, previously served as the America’s Group Leader at Kia
25 Korea from June 2012 to October 2015. After serving in Seoul as Kia Korea’s
26 “America Group Leader” for three years, Mr. Yoon was promoted to President &
27 CEO of Kia Canada, Inc., a sibling entity of Kia USA. In 2018, he was promoted
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1 not only to the position of President & CEO at Kia USA, but also to a concurrent
2 position of Senior Managing Director at Kia Korea, where he is the President &
3 CEO of the Kia North America Region team.

4 340. Additional high-level executives overlap between Kia USA and Kia
5 Korea. The sole director listed on Kia America's 2020 Statement of Information
6 filed with the California Secretary of State is Han Woo Park, the then-President and
7 Co-CEO of Kia Korea.

8 341. Furthermore, during much of the relevant time period, Byung Mo Ahn
9 directed the operations of Kia USA while serving as a Vice Chairman for Kia
10 Korea.⁸ Mr. Ahn worked from 2001 to 2008 as the president and CEO of Kia USA,
11 expanding his leadership role in the United States to be group president and CEO of
12 both Kia USA and the domestic manufacturing subsidiary, Kia Georgia, Inc.
13 (formerly Kia Motor Manufacturing Georgia, Inc.), from 2008 until 2014. In 2014,
14 Mr. Ahn was promoted to Vice Chairman of Kia Korea. A Kia Korea press release
15 made clear, however, that Mr. Ahn would "continue to lead the implementation of
16 the brand's long-term strategy in the U.S."

17 342. Yet another shared executive is Suk Won (Scott) Hahn, who originally
18 joined Kia Korea in January 2006 before going on to become the Chief Financial
19 Officer of Kia America in February 2015.

20 343. On information and belief, the Global Command and Control Center in
21 Seoul, Korea, monitors Kia operations around the world in addition to Hyundai
22 operations. Chung Mong Koo, the former Chairman of Hyundai Motor Group and
23 former Chairman & CEO of Hyundai Korea & Kia Korea, who is credited for
24 creating the Global Command and Control Center, began homing in on the
25 oversight of the manufacturing process for Kia and Hyundai automobiles after
26 visiting Kia's United States production plants.

27

28 ⁸ Mr. Ahn previously worked for Hyundai Korea, as detailed above.

1 344. On information and belief, Kia and Hyundai have integrated their
2 manufacturing process to build “flexible factories” in the United States that can
3 produce models for either brand. Given the shared leadership at the related
4 Hyundai-Kia defendants, the control that Hyundai exerts over its domestic
5 subsidiary’s automobile manufacturing extends to Kia’s control over its domestic
6 subsidiary’s automobile manufacturing.

7 345. Employees of Kia USA report on quality issues to Kia Korea.

8 346. Korean speaking “coordinators” reportedly work at Kia America, and
9 regularly report on their activities to Korean executives at Kia Korea.

10 347. Senior Korean executives at Kia Korea visit Kia plants in the United
11 States. On information and belief, Kia Korea selected Troup County, Georgia as the
12 location of its \$1 billion U.S. manufacturing plant in part because it was a
13 convenient site for Kia Korea executives to visit.

14 348. Kia Korea controls the public name and brand of Kia USA. For
15 instance, Kia Korea’s recent redesign and rebranding, changing its name from “Kia
16 Motor Corporation” to “Kia Corporation” led to a similar change in the domestic
17 subsidiary, as “Kia Motor America” became “Kia America, Inc.” In consumer
18 transactions, like those with Plaintiffs, Kia Korea’s brands and logos serve as its
19 and its subsidiaries’ official seal and signature to consumers.

20 **iii. Because of Kia Korea’s control over its subsidiary Kia**
21 **USA, the forum-related activities of Kia USA support**
22 **the exercise of jurisdiction over Kia Korea.**

23 349. Kia USA is a California corporation, subject to general jurisdiction in
24 this state. Indeed, as the Court already ruled in Order on Defendants’ motions to
25 dismiss (ECF 396 at 15), the Court can exercise personal jurisdiction over Kia
26 USA.

1 350. Under the direction and supervision of Kia Korea, Kia USA sold,
2 leased, and marketed the Kia Class Vehicles. These transactions give rise, or relate,
3 to Plaintiffs' claims.

4 351. Kia USA participated in the creation of Monroney labels that
5 misleadingly stated that the Kia Class Vehicles were equipped with Occupant
6 Restraint Systems without disclosing the related defect in the DS84 ACU. These
7 Monroney labels give rise, or relate, to Plaintiffs' claims.

8 352. Kia USA caused the Kia Class Vehicles to ship to automobile dealers
9 with misleading Monroney labels, airbag labels and imprints, certification labels,
10 readiness indicators, and owner's manuals. These shipments give rise, or relates, to
11 Plaintiffs' claims.

12 353. Kia USA participated in the creation of misleading advertising for the
13 Kia Class Vehicles that stressed the safety of those vehicles and omitted material
14 facts regarding the defective DS84 ACU in the Kia Class Vehicles. This advertising
15 gives rise, or relates, to Plaintiffs' claims.

16 354. Kia USA has engaged in extensive efforts to conceal the ACU Defect
17 from American consumers and NHTSA, including concealing incidents of observed
18 EOS in certain Kia Class Vehicles involved in suspicious accidents. These efforts
19 to conceal the ACU Defect give rise, or relates, to Plaintiffs' claims.

20 355. Kia USA also made misleading statements to NHTSA in the U.S. that
21 give rise, or relate, to Plaintiffs' claims.

22 **c. Hyundai Mobis, Ltd.**

23 356. Although Hyundai Mobis is based in South Korea, the Court has
24 specific jurisdiction over it based on its pervasive contacts with the United States,
25 which give rise, or relate, to Plaintiffs' claims.
26
27
28

1 **i. Hyundai Mobis’s forum-related activities support the**
2 **exercise of jurisdiction over Hyundai Mobis.**

3 357. Hyundai Mobis has substantial activities directed at the United
4 States—both in the manufacture and inadequate response to the defective DS84
5 ACUs. Specifically, Hyundai Mobis was involved in post-crash investigations,
6 strategic decisions regarding the ACU defect, returning vehicles to ZF entities due
7 to observed EOS, and iterating with regard to additional protective components due
8 to EOS findings in crash investigations and warranty returns.

9 358. Hyundai Mobis makes auto parts for Hyundai Kia vehicles, including
10 airbag control devices, and supplies parts for the Hyundai and Kia Class Vehicles in
11 the United States.

12 359. Hyundai Mobis operates two major manufacturing and production
13 sites in the United States, one in Montgomery, Alabama and the other in West
14 Point, Georgia.

15 360. Hyundai Mobis also operates three production sites, in Toledo, Ohio;
16 Detroit, Michigan; and McCalla, Alabama.

17 361. Hyundai Mobis maintains and operates a major research and
18 development center, the Mobis Technical Center of North America (“MTCA”), in
19 Plymouth Michigan. At MTCA, Hyundai Mobis researches, *inter alia*, development
20 of North America-specific specifications for Hyundai and Kia vehicles.

21 362. Hyundai Mobis operates a main distribution branch and office in
22 Fountain Valley, California; a quality control center in Ontario, California; and
23 after-sale parts centers in Florida and California.

24 363. Hyundai Mobis’s North American Research Institute provides original
25 equipment order-taking support and fulfilment, as well as product specification
26 support, for Hyundai USA and Kia USA.

27 364. Hyundai Mobis participated in the manufacture of the ACU that gives
28 rise to this litigation, specifically manufacturing hundreds of thousands of the faulty

1 DS84 ACUs for Kia and Hyundai Class Vehicles through its domestic
2 manufacturing subsidiary, Mobis Parts America. Accordingly, these activities by
3 Hyundai Mobis give rise, or relate, to Plaintiffs' claims.

4 365. After Hyundai Korea and Kia Korea approved of ZF Electronics
5 USA's design of the DS84 ACU's, Hyundai Mobis executed a manufacturing
6 agreement with ZF Electronics USA as to that design. Hyundai Mobis delivered
7 those faulty units to Kia and Hyundai manufacturing facilities for inclusion in the
8 Class Vehicles. These ACUs give rise, or relate, to Plaintiffs' claims.

9 366. Further, Hyundai Mobis contracted with ZF Electronics USA to
10 procure DS84 ACUs manufactured by ZF Electronics USA. At the direction of
11 Hyundai Mobis, ZF Electronics USA delivered many of those units to Hyundai
12 Motor Manufacturing Alabama, LLC. There, according to the mandatory designs
13 issued by Hyundai Korea, the DS84 ACUs were installed in Hyundai Class
14 Vehicles destined for sale in the United States. These shipments that Hyundai
15 Mobis caused within the United States give rise, or relate, to Plaintiffs' claims.

16 367. Hyundai Mobis directed other DS84 ACUs manufactured by ZF
17 Electronics USA to be delivered to Kia Georgia, Inc. (formerly Kia Motor
18 Manufacturing Georgia, Inc.), where, according to mandatory designs issued by Kia
19 Korea, the units were installed in Kia Class Vehicles built in Georgia, destined for
20 sale in the United States. These shipments that Hyundai Mobis caused within the
21 United States give rise, or relate, to Plaintiffs' claims.

22 368. Hyundai Mobis played a key role in the Hyundai-Kia Defendants'
23 analysis and decision-making relating to the defective DS84 ACUs in the United
24 States. One of the primary points of contact for issues regarding the DS84 ACU in
25 Hyundai-Kia Class Vehicles was Taewon Park, an employee of Hyundai Mobis.
26 Hyundai Mobis' investigation of the DS84 ACUs in the United States relates to
27 Plaintiffs' claims.

28

1 369. Between 2010 and 2018, the Domestic ZF Defendants met with
2 Hyundai Korea, Kia Korea, and Hyundai Mobis in Korea many times to discuss the
3 ACU Defect and coordinate their efforts to conceal it from NHTSA and consumers.
4 Hyundai Mobis’s coordination with these Defendants gives rise, or relates, to
5 Plaintiffs’ claims.

6 370. Hyundai Mobis engaged in extensive efforts to conceal the ACU
7 Defect from American consumers and NHTSA, including concealing incidents of
8 observed EOS in certain Hyundai-Kia Class Vehicles involved in suspicious
9 accidents. These efforts to conceal give rise, or relate, to Plaintiffs’ claims.

10 **5. Honda Motor Co., Ltd.**

11 371. Although Honda Japan is based in Japan, it is subject to the Court’s
12 specific jurisdiction because it has pervasive contacts with the United States and
13 exerts substantial control over its domestic subsidiaries. Honda Japan’s contacts
14 with the United States are all in furtherance of sales and leases of Honda vehicles in
15 the United States, and these contacts give rise, or relate, to Plaintiffs’ claims.

16 **a. Honda Japan’s forum-related activities support the exercise**
17 **of jurisdiction over Honda Japan.**

18 372. Honda Japan designs, manufactures, markets, distributes, and sells a
19 wide range of automobiles and automobile parts throughout the world, including
20 the United States, under the trademark “Honda.”

21 373. During the relevant period, Honda Japan purposefully availed itself of
22 the United States’ legal protections, including registering and maintaining
23 registrations with the United States government for trademarks associated with its
24 vehicles and parts, which it uses to identify and distinguish its vehicles and parts in
25 the United States, this District, and the transferor jurisdictions. Honda Japan is
26 recognized in the registrations as the owner of the Honda trademarks.
27
28

1 374. Honda Japan has brought litigation in United States courts to protect
2 its trademarks from infringement and counterfeiting. The protection afforded to
3 Honda Japan’s trademarks and patents under United States law enabled Honda
4 Japan to sell the Honda Class Vehicles in the United States, this District, and the
5 transferor jurisdictions.

6 375. In a recent complaint to enforce its trademark rights, Honda Japan
7 represented that it “obtained registrations in the United States for designs for the
8 HONDA and ACURA trademarks, used in connection with automobiles and
9 automobile parts.”

10 376. Honda Japan designs and manufactures Honda vehicles for sale in the
11 United States, including Honda Class Vehicles.

12 377. Honda Japan purposely avails itself of markets in the United States.
13 For example, Honda Japan regularly submits applications to the EPA to obtain
14 certification necessary for the sale of its vehicles in the United States.

15 378. In addition to obtaining emissions certifications, Honda Japan also
16 designed and manufactured Honda Class Vehicles to meet federal safety standards
17 for sale in the United States.

18 379. Owners’ manuals for Honda vehicles with the defective DS84 ACUs
19 state: “Honda Motor Co., Ltd. reserves the right . . . to discontinue or change
20 specifications or design at any time.” Based on these statements, and upon
21 information and belief, Honda Japan has the ultimate responsibility for the design
22 and specifications for all Honda vehicles with the defective DS84 ACUs, including
23 the Honda Class Vehicles.

24 380. Indeed, upon information and belief, Honda Japan required its
25 manufacturing subsidiaries to install DS84 ACUs in the Honda Class Vehicles.

26 381. Although Honda Japan made Honda Class Vehicles in Japan, it
27 specifically segregated them from other Honda vehicles that were intended for sale
28 in other countries, placed certification labels on them that assured compliance with

1 U.S. federal safety requirements, and ensured those Honda Class Vehicles shipped
2 to the United States, with full knowledge that Honda USA would then distribute
3 them across the United States. These certification labels give rise, or relate, to
4 Plaintiffs' claims because they misleadingly suggested the Class Vehicles were safe
5 and had properly-functioning airbags and seatbelts. Honda Japan also required its
6 U.S. manufacturing subsidiaries to include the same certification in the Honda
7 Class Vehicles those subsidiaries manufactured, pursuant to the design and
8 direction of Honda Japan.

9 382. Accordingly, Honda Japan did not merely place the Honda Class
10 Vehicles it made into a stream of commerce that brought them to the United States.
11 Instead, it made them for shipment to the United States, certified they complied
12 with U.S. safety and other requirements, and ensured that they shipped directly to a
13 wholly owned subsidiary responsible for distribution in the United States.

14 383. Honda Japan affixed federal safety certification labels to the Honda
15 Class Vehicles manufactured in Japan, and directly approved the same labels for
16 Honda Class Vehicles manufactured in the United States, in each case knowing that
17 they would be sold in the United States. The certification labels represented that the
18 Honda Class Vehicles conformed to United States federal safety standards, thereby
19 enabling the vehicles to be sold in all 50 states. These misleading certification
20 labels give rise, or relate, to Plaintiffs' claims.

21 384. Honda Japan designed the Honda Class Vehicles to have clearly
22 visible airbag readiness indicators, as required under 49 C.F.R. § 571.208 (S4.5.2),
23 to communicate with vehicle occupants about the safety and operating status of the
24 airbag system. These readiness indicators give rise, or relate to, Plaintiffs' claims
25 because the readiness indicators in the Honda Class Vehicles misleadingly
26 communicated to consumers that the vehicles' passive safety system was "ready" to
27 deploy during crashes.
28

1 385. While Honda Japan is a Japanese company, it designed the Honda
2 Class Vehicles to target U.S. consumers, and included prominent English language
3 labels within the car cabin to alert the driver and passengers to the vehicle’s airbag
4 system. These misleading labels give rise, or relate, to Plaintiffs’ claims.

5 **b. Honda Japan exerts control over its domestic subsidiaries.**

6 386. Honda Japan established subsidiaries in the United States to target
7 consumers in the United States. Honda USA and Honda Engineering USA are
8 wholly owned subsidiaries of Honda Japan.

9 387. For decades, Honda Japan has continuously engaged in business in the
10 United States by, among other things, interacting with its wholly owned
11 subsidiaries in the United States. The services rendered by Honda USA and Honda
12 Engineering USA for Honda Japan are so important to Honda Japan that it would
13 perform those services itself if Honda USA and Honda Engineering USA did not
14 exist.

15 388. Honda Japan controls the “Honda” public name and brand. In
16 consumer transactions, like those with Plaintiffs, Honda Japan’s unified brand and
17 logo serve as Honda Japan’s and its domestic subsidiaries’ official seal and
18 signature as to consumers.

19 389. Honda Japan derives more revenue from the United States than any
20 other country. For fiscal year ending March 31, 2018 alone, Honda Japan reported
21 \$65 billion in sales in the United States, a little under half of its revenue.

22 390. Honda Japan and its U.S. subsidiaries share common executives. For
23 example:

- 24 a. Shinji Aoyama was the President, CEO, and Director of Honda
25 USA and the Chief Officer of Regional Operations (North
26 America) for Honda Japan until October 2021, when Noriya
27 Kaihara took over those positions.
28

- 1 b. Mitsugu Matsukawa, current President of Honda Engineering
2 USA, previously served as President of Honda of America Mfg.,
3 Inc. where he was responsible for manufacturing operations at
4 Honda's four Ohio plants. Matsukawa is also on Honda Japan's
5 North American Regional Operating Board and serves as a
6 managing officer of Honda Japan.
- 7 c. James A. Keller is the executive vice president of Honda
8 Engineering USA. He oversees all of the company's research &
9 development operations in North America and serves as a
10 member of Honda USA's Board of Directors as well as a
11 member of Honda Japan's North American Regional Operating
12 Board. Keller trained for at least two years at Honda R&D Co.,
13 Ltd. in Japan.
- 14 d. Takashi Sekiguchi originally joined Honda Japan in 1982 and
15 worked there for years before becoming the Executive Vice
16 President and Director of Honda USA in April 2008.
- 17 e. Takanobu Ito, the CEO of Honda Japan from 2009 to 2015, was
18 previously President and Director of Honda R&D Co., Ltd. and
19 Executive Vice President of Honda R&D Americas, Inc.
- 20 f. Toshiaki Mikoshiba, served as Chairman and Director of the
21 board for Honda Japan until April 2022, and he previously
22 served as the CEO and director for Honda USA.

23 391. In 2021, several of the domestic Honda subsidiaries, including Honda
24 of American Honda Mfg., Inc. and Honda R&D Americas, LLC restructured and
25 consolidated into Honda Engineering USA. The restructuring of these U.S.
26 subsidiaries was similar to the restructuring in Japan. At a press conference in 2020
27 announcing the restructuring plans in the United States, Shinji Aoyama announced
28

1 the decision was part of the continued journey to become a “unified company in
2 North America.”

3 392. Upon information and belief, Honda Japan has the power to appoint
4 board members to Honda USA and Honda Engineering USA. Honda Japan has
5 exercised this power to appoint board members that Honda Japan believes will
6 manage the subsidiaries with the principal goal of benefiting Honda Japan.

7 393. Indeed, Honda Japan recently noted in its 2022 Corporate Governance
8 report that:

9 [p]ersons responsible for the supervision of each subsidiary have been
10 appointed from among the Executive Officers or other executives with
11 jurisdiction over the area related to the business of the relevant subsidiary.
12 These persons responsible regularly receive reports regarding business plans
13 and management conditions from the subsidiaries for which they are
14 responsible and supervise those subsidiaries in cooperation with business
15 management departments and other related departments. [Honda Japan]
16 requires subsidiaries to obtain prior approval from or make reports to the
17 [Honda Japan] regarding material matters of the management of the
18 subsidiary in accordance with the [Honda Japan’s] rules of procedure, and
19 each subsidiary has developed its own approval rules that include the
20 requirements of the [Honda Japan].

21 394. Honda Japan acknowledges that it develops human resource mandates
22 for all its subsidiaries, including Honda USA and Honda Engineering USA. For
23 example, Honda Japan admits in its 2017 Sustainability Report: “the Human
24 Resources and Associate Relations Division at the corporate headquarters in Tokyo
25 draws up global human resources strategies from the mid- to long-term perspective
26 in coordination with operations in *each* region.” (emphasis added).

27 395. In part because of the importance of United States markets to its
28 business, Honda Japan decided in 2015 to change its official language for
international communications to English by 2020. Under this policy, documents
used in Honda Japan meetings that involve regional operation bases and any
communication for information sharing across regions will also be in English.

1 Honda Japan will require English proficiency for associates to be promoted to
2 managerial positions in the future.

3 396. To ensure its control and involvement over its U.S. subsidiaries,
4 Honda Japan established a “Leadership Resources” document in 2015 and
5 distributed this document on its in-house intranet worldwide, including to Honda
6 USA and Honda Engineering USA. By distributing these resources, Honda Japan
7 provides specific guidelines regarding decision making and management judgment
8 to the employees of Honda USA and Honda Engineering USA.

9 397. Since at least as early as 2003, Honda Japan has had a code of conduct
10 called the “Honda Conduct Guidelines.” Honda Japan distributes these guidelines
11 to its subsidiaries, including Honda USA and Honda Engineering USA, and claims
12 to take steps to ensure that they comply with the guidelines. Once per year, each of
13 Honda Japan’s U.S. subsidiaries claims to check the status of activities to ensure
14 awareness of the guidelines, and reports to Honda Japan’s Compliance Committee,
15 Executive Council and the Board of Directors.

16 398. Honda Japan also adopted the “Honda Corporate Governance Basic
17 Policies,” which further illustrates that Honda Japan has substantial control of its
18 subsidiaries operations in the United States. For example, the policies provide that
19 Honda Japan “shall provide incumbent outside directors with opportunities
20 including the visits to subsidiaries located in regions in order to deepen their
21 understanding of the Company Group’s business.”

22 399. The Honda Corporate Governance Basic Policies further provides that
23 Honda Japan, “[i]n order to strengthen business operations in each region and field,
24 and to make timely and appropriate business decisions, . . . shall place Executive
25 Officers and other executives who have been delegated the business execution
26 authority from the Representative Executive Officers to being responsible for
27 business operations in their respective area of responsibility, in each area
28

1 headquarters, business headquarters and functional headquarters, and other main
2 organizations.”

3 400. Honda Japan’s Audit Division also “provides supervision and
4 guidance to internal audit departments of the major subsidiaries and when
5 necessary, audits subsidiaries directly to enhance the internal audit system of the
6 Honda group.”

7 401. Upon information and belief, Honda Japan has the power to control
8 recall decisions for vehicles in the United States, and was responsible for the
9 decision not to recall any Honda vehicles with the DS84 ACUs or warn consumers
10 in the United States about the ACUs.

11 **c. Because of Honda Japan’s control over its subsidiaries**
12 **Honda USA and Honda Engineering USA, the forum-related**
13 **activities of those subsidiaries support the exercise of**
14 **jurisdiction over Honda Japan.**

15 402. Honda USA is a California corporation, subject to general jurisdiction
16 in this state. Indeed, as the Court already ruled in the Order on Defendants’ motions
17 to dismiss (ECF 396 at 33), the Court can exercise personal jurisdiction over Honda
18 USA.

19 403. As discussed above, Honda Engineering USA is likewise subject to the
20 Court’s jurisdiction because consumers in California and the transferor jurisdictions
21 bought Honda vehicles equipped with DS84 ACUs that were made by Honda
22 Engineering USA.

23 404. Under the direction and supervision of Honda Japan, Honda USA sold,
24 leased, and marketed the Honda Class Vehicles equipped with DS84 ACUs made
25 by Honda Engineering USA. These transactions give rise, or relate, to Plaintiffs’
26 claims.

27 405. Honda USA participated in the creation of Monroney labels that
28 misleadingly stated that the Honda Class Vehicles were equipped with Occupant

1 Restraint Systems without disclosing the related defect in the DS84 ACU. These
2 Monroney labels give rise, or relate, to Plaintiffs' claims.

3 406. Honda USA caused the Honda Class Vehicles to ship to automobile
4 dealers with misleading Monroney labels, airbag labels and imprints, certification
5 labels, readiness indicators, and owner's manuals. These shipments give rise, or
6 relates, to Plaintiffs' claims.

7 407. Honda USA participated in the creation of misleading advertising for
8 the Honda Class Vehicles that stressed the safety of those vehicles and omitted
9 material facts regarding the defective DS84 ACU in the Honda Class Vehicles. This
10 advertising gives rise, or relates, to Plaintiffs' claims.

11 408. Honda Engineering USA manufactured many of the Honda Class
12 Vehicles pursuant to Honda Japan's mandatory designs.

13 409. Honda Engineering USA manufactured the Honda Class Vehicles to
14 have clearly visible airbag readiness indicators, as required under 49 C.F.R.
15 § 571.208 (S4.5.2), to communicate with vehicle occupants about the safety and
16 operating status of the airbag system. These readiness indicators give rise, or relate
17 to, Plaintiffs' claims because the readiness indicators in the Honda Class Vehicles
18 misleadingly communicated to consumers that the vehicles' passive safety system
19 was "ready" to deploy during crashes. Honda Engineering USA also manufactured
20 the Honda Class Vehicles to have certification labels, readiness indicators, and
21 airbag labels and imprints to be placed within the Honda Class Vehicles. These in-
22 vehicle representations give rise, or relate to, Plaintiffs' claims.

23 **6. Mitsubishi Motors Corporation**

24 **a. Mitsubishi Japan's forum-related activities support the**
25 **exercise of jurisdiction over Mitsubishi Japan.**

26 410. Although Mitsubishi Japan is based in Japan, the Court has specific
27 jurisdiction over it based on its pervasive contacts with the United States.
28 Mitsubishi Japan's contacts with the United States are all in furtherance of sales and

1 leases of Mitsubishi vehicles in the United States. These sales and leases give rise
2 to Plaintiffs' claims.

3 411. During the relevant period, Mitsubishi Japan purposefully availed
4 itself of the United States' legal protections, including registering and maintaining
5 registrations with the United States government for trademarks associated with its
6 vehicles and parts, which it used to identify and distinguish its vehicles and parts in
7 the United States, this District, and transferor jurisdictions.

8 412. Mitsubishi Japan purposefully availed itself of markets in the United
9 States by designing, engineering, manufacturing, marketing, and/or selling vehicles
10 under the Mitsubishi brand with the knowledge and intent to market, sell, and lease
11 them throughout the United States. Sales of Mitsubishi vehicles in the United States
12 steadily grew every year from 2012-2019. In 2019 alone, Mitsubishi Japan, together
13 with Mitsubishi USA, sold 121,046 vehicles in the United States.

14 413. Additionally, Mitsubishi Japan worked with its other American
15 subsidiary, Mitsubishi Motors R&D of America, Inc., to develop "global
16 technologies and products adapted to the market characteristics of each region."

17 414. To enable access to the U.S. market, Mitsubishi Japan regularly
18 submits applications to the EPA to obtain certification necessary for the sale of its
19 vehicles in the United States.

20 415. Aside from EPA regulations, Mitsubishi Japan purposefully targeted
21 California, Connecticut, Delaware, Maine, Maryland, Massachusetts, New Jersey,
22 Oregon, Pennsylvania, Rhode Island, Vermont, and Washington, by designing,
23 manufacturing, and equipping a portion of its Mitsubishi-branded vehicles with
24 California Certified Emission Control Systems necessary to meet the anti-smog
25 standards adopted by those states.

26 416. To enable access to these state markets, Mitsubishi Japan regularly
27 submits applications to the California Air Resources Board ("CARB") to obtain
28 certification necessary for the sale of its vehicles in California, Connecticut,

1 Delaware, Maine, Maryland, Massachusetts, New Jersey, Oregon, Pennsylvania,
2 Rhode Island, Vermont, and Washington.

3 417. During the relevant period, Mitsubishi Japan designed and
4 manufactured approximately 100,000 Mitsubishi Class Vehicles for sale or lease in
5 the United States.

6 418. In addition to obtaining emissions certifications, Mitsubishi Japan
7 certified that the Mitsubishi Class Vehicles it designed and manufactured meet
8 federal safety standards for sale in the United States.

9 419. Although Mitsubishi made these Mitsubishi Class Vehicles in Japan, it
10 specifically segregated them from other Mitsubishi vehicles that were intended for
11 sale in other countries, placed certification labels on them that assured compliance
12 with U.S. federal safety requirements on the Mitsubishi Class Vehicles, and ensured
13 those Mitsubishi Class Vehicles shipped to the United States, with full knowledge
14 that Mitsubishi USA would then distribute them across the United States. These
15 certification labels give rise, or relate, to Plaintiffs' claims because they
16 misleadingly suggested the Class Vehicles were safe and had properly-functioning
17 airbags and seatbelts.

18 420. Accordingly, Mitsubishi Japan did not merely place the Mitsubishi
19 Class Vehicles it made into a stream of commerce that brought them to the United
20 States. Instead, it made them for shipment to the United States, certified they
21 complied with U.S. safety and other requirements, and ensured they shipped
22 directly to a wholly owned subsidiary responsible for distribution in the United
23 States.

24 421. Mitsubishi Japan affixed federal safety certification labels to the
25 Mitsubishi Class Vehicles knowing that they would be sold in the United States.
26 The certification labels represented that the Mitsubishi Class Vehicles conformed to
27 United States federal safety standards, thereby enabling the vehicles to be sold in all
28

1 50 states. These misleading certification labels give rise, or relate, to Plaintiffs’
2 claims.

3 422. Mitsubishi Japan designed the Mitsubishi Class Vehicles to have
4 clearly visible airbag readiness indicators, as required under U.S. federal
5 regulations (49 C.F.R. § 571.208 (S4.5.2)), to communicate with vehicle occupants
6 about the safety and operating status of the airbag system. These readiness
7 indicators give rise, or relate to, Plaintiffs’ claims because the readiness indicators
8 in Mitsubishi Class Vehicles misleadingly communicated to consumers that the
9 vehicles’ passive safety system was “ready” to deploy during crashes.

10 423. While Mitsubishi Japan is a Japanese company, it designed the
11 Mitsubishi Class Vehicles to target U.S. consumers, and included prominent
12 English language labels within the car cabin to alert the driver and passengers to the
13 vehicle’s airbag system. These misleading labels give rise, or relate, to Plaintiffs’
14 claims.

15 424. Mitsubishi Japan also developed and distributed owner’s manuals that
16 were specifically intended to—and did in fact—reach United States consumers in
17 conjunction with their purchases of Mitsubishi-branded vehicles, including the
18 Mitsubishi Class Vehicles. None of these owner’s manuals disclosed that the
19 Mitsubishi Class Vehicles were equipped with the defective DS84 ACUs.

20 **b. Mitsubishi Japan exerts control over its domestic subsidiary,**
21 **Mitsubishi USA.**

22 425. Mitsubishi Japan established a wholly owned subsidiary, Mitsubishi
23 USA, in the United States to engage in business activities on behalf of Mitsubishi
24 Japan. Mitsubishi Japan exercises control over Mitsubishi USA through several
25 formal and informal mechanisms.

26 426. Mitsubishi USA renders essential services on behalf of Mitsubishi
27 Japan—such as the lease and sale of vehicles in the United States—which are
28

1 important enough to Mitsubishi Japan that Mitsubishi Japan would perform those
2 services itself if Mitsubishi USA did not exist.

3 427. Mitsubishi Japan, together with its American subsidiaries Mitsubishi
4 USA and Mitsubishi Motors R&D of America, Inc., operates and holds itself out to
5 the public as a single entity known as “Mitsubishi Motors” that caters to American
6 consumers and purposefully avails itself of the United States market for Mitsubishi-
7 branded vehicles.

8 428. Mitsubishi Japan exerts control over the activities of Mitsubishi USA
9 that far exceed the normal oversight exercised in a parent-subsiary relationship.
10 For instance, in July 2015, Mitsubishi Japan issued a press release announcing that
11 it had decided to close Mitsubishi USA’s vehicle manufacturing plant in Normal,
12 Illinois and consolidate production at its Okazaki plant in Japan. Thereafter,
13 Mitsubishi Japan began manufacturing and exporting all Mitsubishi-branded
14 vehicles to the United States from its production facilities in Japan, Thailand,
15 China, Indonesia, the Philippines, and Russia.

16 429. In 2019, Mitsubishi USA appeared to be in the midst of independently
17 selecting a city to relocate its own headquarters. However, subsequent reporting on
18 the topic revealed that Tennessee Governor Bill Lee and Tennessee’s Economic
19 Development Chief, Bob Rolfe, traveled to Japan on June 20, 2019 to pitch to
20 *Mitsubishi Japan* that Mitsubishi USA should relocate to Franklin, Tennessee. This
21 pitch was directed at Mitsubishi Japan’s global executives, including Susumu
22 Noguchi, Mitsubishi Japan’s Division General Manager, North America and
23 Oceania at the time. A couple of days later, Mitsubishi Japan’s Board of
24 Directors—and not Mitsubishi USA’s Board of Directors—convened to decide the
25 issue. This serves as further evidence that Mitsubishi Japan substantially controls
26 the activities of its wholly owned subsidiary, Mitsubishi USA.

27 430. In its Annual Reports, Mitsubishi Japan describes the strict control it
28 exercises over its subsidiaries. For example, its 2020 Annual Report (which

1 includes the same or similar language to other Annual Reports during the relevant
2 period) stated:

3 MMC [Mitsubishi Japan] stipulates the supervisory
4 organization of each of its subsidiaries, and the responsibilities
5 and authority, management method and other matters related to
6 management of its subsidiaries through its internal regulations
7 and other rules. In compliance with the internal regulations and
8 other rules, each of the subsidiaries gives prior or subsequent
9 explanations or reports that should be made to MMC
10 concerning its business, results, financial condition and other
11 important information to the supervisory organization and
12 other internal dedicated organizations in accordance with its
13 size, business conditions, and other factors. MMC also
14 provides guidance and management in accordance with
15 regulations and rules through the supervisory organizations.
16 Moreover, the Internal Audit Dept. conducts systematic
17 operation audits of each subsidiary, auditing the status of
18 appropriate business execution and compliance with MMC's
19 code of conduct, and providing countermeasures as needed.

20 431. In that same document, Mitsubishi Japan states that it shall “establish
21 and strengthen its subsidiaries’ risk management systems” and “strengthen, develop
22 and streamline its subsidiaries’ business operations.”

23 432. Mitsubishi Japan also monitors its markets overseas and exerts
24 oversight to improve its domestic subsidiaries. For example, in its 2016 Corporate
25 Social Responsibility Report, Mitsubishi Japan states: “MMC [Mitsubishi Japan]
26 cooperates closely with not only domestic dealers, but also distributors around the
27 world in order to satisfy overseas customers. We provide our distributors with
28 sufficient product information, and then collect local market information. Requests
are then made for an improvement.”

433. As an additional control measure, Mitsubishi Japan’s Audit &
Supervisory Board conducts on-site surveys of each of its subsidiaries and, based
on the results of its surveys, “hold discussions at Audit & Supervisory Board

1 meetings, regularly report to the Board of Directors, and exchange opinions with
2 the CEO and COO.”

3 434. Mitsubishi Japan conducts additional audits of Mitsubishi USA
4 through its Internal Audit Department and Quality Audit Department, the results of
5 which are reported directly to the CEO.

6 435. Mitsubishi Japan and Mitsubishi USA share employees. Indeed, in its
7 March 31, 2020 Financial Statement, Mitsubishi Japan disclosed that it maintains
8 concurrent corporate officers with both Mitsubishi USA and Mitsubishi Motors
9 R&D of America, Inc. For example, Mitsubishi Japan’s General Manager for North
10 America A Department is a Director of Mitsubishi USA. Further, in March 2020,
11 Mitsubishi Japan named Yoichi Yokozawa, who previously held senior-level
12 positions throughout Mitsubishi Japan, as Mitsubishi USA’s President and Chief
13 Executive Officer. Mr. Yokozawa served as Mitsubishi USA’s President and CEO
14 from 2011-2014 after serving as a Corporate General Manager with Mitsubishi
15 Japan since 2006. Upon information and belief, Mitsubishi Japan engaged in this
16 practice of sharing employees throughout the relevant period.

17 436. Mitsubishi Japan and Mitsubishi USA share a common logo, which
18 Mitsubishi Japan permits Mitsubishi USA to use along with the “Mitsubishi
19 Motors” name under a contract agreement between the entities. Mitsubishi Japan
20 and Mitsubishi USA’s common logo includes Mitsubishi Japan’s Global Tagline,
21 “Drive Your Ambition.”

22 437. Mitsubishi Japan’s website promotes Mitsubishi USA as part of its
23 “Global Network,” and one of its “major affiliates.” Mitsubishi Japan’s website
24 actively promotes its Mitsubishi-branded line of vehicles, which it represents are
25 “produced by Mitsubishi Motors,” and Mitsubishi Japan describes Mitsubishi USA
26 as one of its distributors of Mitsubishi Japan’s products.

27 438. Mitsubishi USA’s website states that Mitsubishi USA is a part of the
28 “Renault-Nissan-Mitsubishi Alliance,” which is a strategic alliance between

1 Mitsubishi Japan and automobile manufacturers Renault and Nissan. In the
2 “History” section of its website, Mitsubishi USA presents its history and the history
3 of Mitsubishi Japan together as a unified history that it refers to as “Mitsubishi
4 Company History.” Additionally, Mitsubishi USA’s website includes Mitsubishi
5 Japan press releases.

6 439. Mitsubishi Japan instituted a Global Code of Conduct and a Global
7 Anti-Bribery Policy, in which it requires all “Mitsubishi Motors Group” (a term
8 used to describe the Mitsubishi corporate entities globally) executives, employees,
9 subsidiaries, and affiliates to follow. Mitsubishi Japan also distributes pamphlets
10 and other materials reflecting its global policies to its subsidiaries and implements
11 training on legal risks for its subsidiaries’ executives and employees prior to their
12 appointment.

13 **c. Because of Mitsubishi Japan’s control over its subsidiary**
14 **Mitsubishi USA, the forum-related activities of Mitsubishi**
15 **USA support the exercise of jurisdiction over Mitsubishi**
16 **Japan.**

17 440. Mitsubishi USA is a California corporation, subject to general
18 jurisdiction in this state. Indeed, as the Court already ruled in its Order on
19 Defendants’ motions to dismiss (ECF 396 at 35), the Court can exercise personal
20 jurisdiction over Mitsubishi USA.

21 441. Mitsubishi USA is a wholly owned subsidiary of Mitsubishi Japan that
22 marketed, sold, and provided customer service for Mitsubishi-branded vehicles in
23 the United States, including the Mitsubishi Class Vehicles.

24 442. Mitsubishi USA has maintained its headquarters in Franklin,
25 Tennessee since April 2020. Prior to that, its headquarters were located in Cypress,
26 California. Mitsubishi USA also maintains three regional offices in Irving, Texas,
27 Swedesboro, New Jersey, and Lake Mary, Florida, as well as three warehouses in
28 Riverside, California, Swedesboro, New Jersey, and Lithia Springs, Georgia.

1 443. Mitsubishi USA participated in the creation of Monroney labels that
2 misleadingly stated that the Mitsubishi Class Vehicles were equipped with
3 Occupant Restraint Systems but did not disclose the related defects in the DS84
4 ACU and ASIC. These Monroney labels give rise, or relate, to Plaintiffs' claims.

5 444. Mitsubishi USA caused the Class Vehicles to ship to automobile
6 dealers with misleading Monroney labels, airbag labels and imprints, certification
7 labels, readiness indicators, and owner's manuals. These shipments give rise, or
8 relate, to Plaintiffs' claims.

9 445. Until its closure in 2015, Mitsubishi USA manufactured select
10 Mitsubishi-branded vehicles at a plant in Normal, Illinois for North America,
11 Russia, Middle East, and Latin America markets.

12 446. Mitsubishi USA operates through a network of over 350 authorized
13 dealerships that sell, lease, and service Mitsubishi-branded vehicles in the United
14 States, including in this District and the transferor jurisdictions. Mitsubishi USA-
15 authorized dealerships facilitated the sale, lease, and service of Mitsubishi Class
16 Vehicles throughout all 50 states and the District of Columbia.

17 447. Mitsubishi USA provided warranties directly to consumers in
18 connection with their purchases of Mitsubishi-branded vehicles, including the
19 Mitsubishi Class Vehicles. These warranties did not disclose that Plaintiffs'
20 vehicles or the Mitsubishi Class Vehicles were equipped with the defective DS84
21 ACUs.

22 448. Mitsubishi USA advertised and promoted the alleged safety of the
23 Mitsubishi Class Vehicles. Mitsubishi-branded vehicles, including Plaintiffs'
24 vehicles and the Mitsubishi Class Vehicles, were the subject of nationwide
25 advertising campaigns that were intended to reach and did reach this District and
26 transferor jurisdictions. For example, Mitsubishi USA developed and distributed a
27 brochure for the 2015 Mitsubishi Lancer that stated: "When it comes to safety, our
28 goal is simple: Continue to improve. Using this approach, we've armed Lancer with

1 a host of advanced safety equipment, including active safety equipment to help you
2 avoid trouble and passive safety equipment should a collision prove unavoidable.”
3 None of these advertisements or marketing materials disclosed that the Mitsubishi
4 Class Vehicles were equipped with the defective DS84 ACUs. Mitsubishi USA
5 participated in the creation this and similar misleading advertising for the
6 Mitsubishi Class Vehicles that misleadingly stressed the safety of the Class
7 Vehicles. This advertising gives rise, or relates, to Plaintiffs’ claims.

8 449. Mitsubishi USA collects revenue from the sale and lease of the
9 Mitsubishi Class Vehicles and the sale of Mitsubishi Genuine Parts and
10 Accessories.

11 450. Mitsubishi USA has engaged in extensive efforts to conceal the
12 defective DS84 ACU from American consumers and NHTSA, including concealing
13 incidents of observed EOS in certain Mitsubishi Class Vehicles involved in
14 suspicious accidents.

15 451. Mitsubishi USA concealed and continues to conceal that the
16 Mitsubishi Class Vehicles contain defective DS84 ACUs that provide insufficient
17 circuit protection, rendering the ACUs in the vehicles susceptible to EOS.

18 **D. Venue**

19 452. Venue is proper in this District under 28 U.S.C. § 1391(b) because a
20 substantial part of the events and/or omissions giving rise to the claims occurred in
21 this District, and because Defendants have caused harm to Plaintiffs and Class
22 members residing in this District. Furthermore, this Complaint is related to the *In*
23 *Re: ZF-TRW Airbag Control Units Products Liability Litigation* MDL No. 2905
24 proceedings, which the Judicial Panel on Multidistrict Litigation has consolidated
25 before Judge John A. Kronstadt presiding in this District (ECF 1).
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IV. GENERAL FACTUAL ALLEGATIONS

A. The Class Vehicles, DS84 ACUs, and DS84 ASICs are defective.

453. The Class Vehicles suffer from a common, uniform defect (referred to throughout this Complaint as the “ACU Defect”) that makes them vulnerable to EOS. The DS84 ASIC within the DS84 ACUs is the root cause of this Defect. The ASIC’s and ACU’s vulnerability to EOS can prevent deployment of the airbags and seatbelts when they are needed during a crash. EOS can also cause other malfunctions of the ACU, including inadvertent airbag deployments, partial or incomplete airbag and seatbelt deployments, the failure to generate or record data about a crash, the failure to unlock doors automatically after a crash, and the failure to turn off a fuel supply or high-voltage battery after a crash.

1. A properly functioning ACU is supposed to detect crashes and activate important safety features, including airbags and seatbelts.

454. The system of safety features in motor vehicles is known as the Occupant Restraint System (a.k.a., the passive safety system or the safety restraint system). Its purpose is to protect drivers and passengers during collisions.

455. For decades, Occupant Restraint Systems have included systems that automatically tighten seatbelts during a crash to secure the occupants.

456. Also for decades, Occupant Restraint Systems have included devices that rapidly inflate a padded cushion (the “airbag”) from the steering wheel and other areas of the vehicle during certain types of crashes. Airbags protect occupants by buffering or preventing impact between occupants and hard surfaces within the vehicle.

457. Seatbelt and airbag systems are “passive” Occupant Restraint Systems because they operate automatically without being triggered by the occupants.

458. The ACU is a critical part of every passive Occupant Restraint System. It is a type of electronic control unit—a small electronic device consisting of

1 semiconductors and a circuit board that controls a specific electrical function of a
2 vehicle. The core function of the ACU is to control the operation of the Occupant
3 Restraint System, including to interpret signals from crash sensors and activate the
4 safety restraints (e.g., deploying airbags and tightening seatbelts when it detects a
5 crash). Because it controls the occupant restraints, like seatbelts, the ACU is
6 sometimes referred to as an “Occupant Restraint Controller” (ORC) or an
7 “Automotive Restraint Controller” (ARC).

8 459. Typically, the ACU is physically located in the vehicle’s passenger
9 compartment, where the front-seat passenger sits.

10 460. At a minimum, an Occupant Restraint Controller must deploy front
11 airbags in crashes of “up to 26 km/h (16 mph)” into a barrier. *See* 49 C.F.R.
12 § 571.208 at S4.11(d), S22.4.4, S24.4.4, S26.4. Airbags should also deploy in
13 crashes exceeding that threshold because those crashes are more dangerous. An
14 ACU is responsible for ensuring the airbags and seatbelts activate consistent with
15 these minimum requirements.

16 461. According to NHTSA’s website, frontal air bags are generally
17 designed to deploy in moderate to severe frontal or near-frontal crashes, which are
18 defined as crashes that are equivalent to hitting a solid, fixed barrier at 8 to 14 mph
19 or higher. This would be equivalent to striking a parked car of similar size at about
20 16 to 28 mph or higher. An ACU is responsible for ensuring the airbags and
21 seatbelts activate in crashes that meet these thresholds.

22 462. According to federal regulations, an ACU also must keep a record of a
23 crash, including any non-deployment “event” as long as the “trigger threshold”
24 (longitudinal change velocity of 5 miles per hour within 150 millisecond interval)
25 was met. 49 C.F.R. 563. When functioning properly, an ACU stores a crash record
26 on the so-called Event Data Recorder (or “EDR”), which is the automotive
27 equivalent of a “black box” in airplanes. For DS84 ACUs, the EDR is located in an
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1 Electrically Erasable Programmable Read-Only Memory chip (sometimes
2 abbreviated “EEPROM”).

3 463. Normally, a complete EDR crash record will show whether the ACU
4 commanded the safety system to activate during a crash, as well as the information
5 sent to the ACU about the crash (such as the speed of the vehicle, timing of the
6 application of the brakes, etc.). This data enables investigators to determine if a
7 crash was severe enough to trigger the airbags. When a crash is not severe enough
8 to trigger the airbags, the nondeployment of the airbags is “commanded” by the
9 ACU’s normal operations, and the crash data will show records of the ACU
10 “commanding” nondeployment during the crash. Accordingly, a “commanded
11 nondeployment” is automotive industry jargon for a crash where the airbags did not
12 deploy because they were not supposed to deploy given the crash severity, and the
13 ACU properly told them not to deploy.

14 464. In addition to airbags, seatbelts, and Event Data Recorders, ACUs
15 activate other important safety features when a crash is detected. For example, in
16 many vehicles, the ACU sends signals to the automatic door locks and fuel system
17 after detecting a crash.

18 a. By unlocking automatic doors when a crash is detected, ACUs
19 facilitate a quick escape from a vehicle by passengers who
20 would otherwise have to first disengage the locks themselves.
21 Moreover, when a crash renders passengers unconscious,
22 automatically unlocking the doors allows rescuers to reach the
23 passengers more easily.

24 b. By turning off the fuel system automatically when a crash is
25 detected, ACUs help reduce the risk of a fire. In gasoline-
26 powered vehicles, ACUs accomplish this by automatically
27 turning off the fuel supply line when a crash is detected. In
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1 hybrid vehicles, ACUs accomplish this by automatically turning
2 off a high-voltage battery.

3 **2. A properly-designed ACU can withstand transient electricity.**

4 465. Large positive and negative transients are among the most severe
5 disturbances that threaten the operation of automotive electronics. Transients are
6 short duration, high magnitude voltage peaks, commonly referred to as surges or
7 bursts. Transients are also referred to as “transient electricity,” “electrical
8 transients,” “transient voltage,” and “transient overvoltage.”

9 466. For decades, participants in the automotive industry—including all the
10 Defendants in this litigation—have known that transients can be generated inside
11 and outside a motor vehicle and cause degradation, malfunction, or destruction of
12 critical electronic equipment. Transients can cause this damage in many ways. One
13 common way is by initiating an electrical phenomenon called “latch-up effect,”
14 which can cause parts within a microchip to draw overcurrent power and lead to
15 burnout. The term “overcurrent” refers to an electrical current that exceeds the
16 normal electrical load in a circuit. As Toyota Engineering USA noted in a recall
17 filing with NHTSA in 2013 concerning another type of ACU made by ZF
18 Automotive USA, “latch-up . . . is well known in the electronic component industry
19 as one potential cause of thermal damage in an integrated circuit” and “could cause
20 ASIC damage.”

21 467. Severe events like vehicular crashes and collisions can cause
22 transients. But even with no collision or crash, transients can occur within a vehicle,
23 reach onboard electronics, and damage electronic control units. Defendants have
24 known about these risks for decades.

25 468. Transients can cause degradation, malfunction, and/or destruction of
26 all electronic control units. An ACU is no exception. Transients can reach an ACU
27 in a variety of ways, including by travelling up the connection between the ACU
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1 and the crash sensors on the vehicle, known as communication (or satellite) lines,
2 because they are the lines through which the crash sensors “communicate”
3 information to the ACU. These crash sensors are connected to the ACU because
4 ACUs are designed to detect crashes by reading electrical signals from the sensors
5 to determine when a crash has occurred. The crash sensors detect activity in the
6 front of the vehicle and send corresponding electrical signals to the ACU. The ACU
7 receives and interprets these signals and activates the airbags and seatbelts when
8 certain thresholds are met.

9 469. Transients can also sometimes reach ASICs on the ACU that are not
10 connected directly to the front-end crash sensors. For example, transients can reach
11 ASICs that operate airbag “squibs,” which is the term for the igniter that physically
12 causes airbags to inflate. Depending on the ACU design, these ASICs sometimes
13 have no connection to the crash sensors.

14 470. When transients reach squib ASICs with no connection to the front-
15 end crash sensors, the transient typically originates from some source other than
16 those sensors. Vulnerability to these types of transients is a well-known problem,
17 and has prompted recalls of vehicles previously. For example, as explained more
18 fully below, other ACUs, including TRW ACUs recalled between 2012 and 2015,
19 were recalled due to EOS caused by transients that reach squib ASICs.

20 471. Regardless of its source, transient electricity is dangerous because it
21 can damage important circuits, including the circuits the ACU uses to trigger the
22 airbags and seatbelts during a crash. Because the core function of any ACU is to
23 activate safety restraints in a crash, properly designed ACUs and ASICs can
24 withstand transient electricity, including any transients that could result from a car
25 accident.

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1 **3. The DS84 ACUs are defective because they contain a defective**
2 **DS84 ASIC that makes the DS84 ACUs much less resistant to**
3 **transient electricity than other ACUs.**

4 472. The DS84 ACUs are defective because they contain a custom ASIC
5 called the DS84 ASIC. This ASIC is defective because it is particularly vulnerable
6 to EOS.

7 473. The DS84 ASIC performs two critical functions: (1) receiving and
8 interpreting information from the crash sensors and (2) issuing the command that
9 triggers the airbags and seatbelt pretensioners after a crash is detected. ZF
10 Automotive USA's prior generation of ACUs used two separate ASICs for these
11 functions.

12 474. Because the DS84 ASIC combines into one ASIC the typically
13 separate functions of handling sensor signals and activating safety restraints, the
14 impact of an ASIC malfunction is greater and can lead DS84 ACUs to fail to
15 activate the airbags and tighten seatbelts at the time of a crash.

16 475. Upon information and belief, the DS84 ASIC is also responsible for
17 commanding the Event Data Recorder on the DS84 ACU to record crash data.

18 476. Upon information and the belief, the DS84 ASIC is also responsible
19 for issuing commands to disengage automatic locks and shut-off the fuel supply
20 after a crash.

21 477. The defective DS84 ACUs installed in the Class Vehicles all suffer
22 from the same basic vulnerability to transient electricity and EOS because they all
23 have the same DS84 ASIC, which stops working when exposed to a relatively small
24 electrical surge. The same vulnerability defect exists in all Class Vehicles,
25 regardless of their level of circuit protection.

26 478. ACUs made by other manufacturers do not have the same
27 vulnerabilities to transient electricity as the defective DS84 ACUs. For example,
28 Honda Japan found that competing ACUs manufactured by Continental

1 Automotive and DENSO Corporation can withstand much stronger electrical surges
2 than the defective DS84 ACUs.

3 479. TRW’s predecessor ACU to the DS84 ACU, which used two different
4 ASICs to perform the jobs performed by one DS84 ASIC, can also withstand much
5 stronger electrical surges than the defective DS84 ACUs. This predecessor ACU
6 used Freescale ASICs. Testing for Toyota Japan in 2019 found this ASIC could
7 withstand approximately ten times as much voltage as the DS84 ASIC could.

8 480. Moreover, other contemporaneous ACUs that do not use the DS84
9 ASIC are also more resistant to electrical surges than the defective DS84 ACUs that
10 do. Testing by ZF Automotive USA, ZF Electronics USA, and ZF Passive Safety
11 USA in the fall of 2015 showed that the MS84 ASIC reset when exposed to a
12 transient of -8 volts for 500 microseconds, whereas the DS84 ASIC reset and
13 suffered EOS at a much lower level of between -1.5 volts to -2.8 volts over the
14 much shorter time period of 50 – 70 microseconds.⁹ In other words, the DS84 ASIC
15 failed between 7 to 10 times more quickly than the MS84 ASIC, and was 2.8 to 5.3
16 times less robust against transients.

17 481. In 2016, FCA found that the DS84 “ASIC design is less robust against
18 certain electrical overstress (i.e., surges).” For the DS84 ASIC, EOS started at -1.2
19 volts for 50 microseconds. By contrast, FCA found the prior design used by ZF
20 Automotive USA (which used Freescale ASICs) did not experience an anomaly
21 until exposed to -19.0 volts for 500 microseconds. Accordingly, the DS84 ASIC
22 failed 10 times faster than this predecessor ASIC, and was approximately 1/15 as
23 robust against transients as the predecessor ASIC.

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26 ⁹ These other, stronger ZF ACUs use a different ASIC called the MS84. For crash
27 sensor communication, the MS84 uses so-called “PSI-5” technology whereas the
28 DS84 uses “DSI” technology. ZF Automotive USA, ZF Electronics USA, and ZF
Passive Safety USA have suggested that this difference may explain the relative
weakness of ACUs with the DS84 ASIC.

1 482. In 2016, FCA also found that ACUs made by other suppliers,
2 including Continental and Bosch, did not suffer resets when exposed to transients
3 of -28 volts and -20 volts, respectively, for 50-70 microseconds. In other words,
4 these other ASICs were between 16 and 24 times more resistant to transients than
5 the DS84 ASIC. For this reason, FCA concluded the “Subject ORC [(i.e.,
6 ACU)]/ASIC is more susceptible to Electrical Overstress.”

7 483. Similarly, testing for Toyota Japan showed that a negative surge of
8 less than 2 volts damaged the DS84 ASIC in the Toyota ACUs with .12 ampere
9 diodes and caused them to reset, whereas prior generations of Toyota ACUs with
10 ASICs made by NXP semiconductor could withstand surges of more than 25 volts
11 (i.e., more than 12 times the volts for the DS84 ACUs). That analysis also found
12 ACUs made by Denso with ASICs made by NXP semiconductor could withstand
13 surges between 12 and 19 volts (i.e., between 6 and 10 times more volts than the
14 DS84 ACUs) without a reset.

15 484. In 2019, testing was also performed on new ZF ACUs for Toyota
16 vehicles that no longer used the DS84 ASIC. These ACUs instead used an ASIC
17 made by Infineon. This ASIC could withstand nearly ten times the amount of
18 voltage that the DS84 ASIC could withstand before resetting.

19 **4. The defective DS84 ASIC is the root cause of the defect in the**
20 **DS84 ACUs and Class Vehicles.**

21 485. The Class Vehicles and DS84 ACUs are defective because they use the
22 defective DS84 ASICs as the “brains” of the passive safety system. When the ASIC
23 fails due to its vulnerability to transient electricity, the DS84 ACUs and the Class
24 Vehicles malfunction in very dangerous ways.

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1 **a. Due to its vulnerability to transients and EOS, the defective**
2 **DS84 ASIC can stop working during a car crash, which can**
3 **cause the defective DS84 ACUs and Class Vehicles not to**
4 **activate the airbags and seatbelts.**

5 486. As explained above, car crashes themselves can generate electrical
6 transients in a variety of ways. When this happens, the defective DS84 ACU and
7 ASIC can fail at the very moment they are needed most: during a car crash.

8 487. As the Defendants knew, at least two scenarios can generate negative
9 transients that reach the DS84 ASIC during car crashes.

10 a. First, a crash can cause three phenomena: (1) the vehicle’s
11 electrical ground can “shift,” which affects the resistance
12 between the ACU circuit board and the vehicle ground (i.e., the
13 vehicle’s body, typically the chassis), (2) the current flow of the
14 battery can be disrupted, which leads to an in-rush of additional
15 current upon recovery, and (3) electrical signals on the crash
16 sensor lines can short, meaning they travel along an unintended
17 path, perhaps due to damage to wiring. When combined, these
18 conditions can cause the ASIC’s so-called parasitic transistors¹⁰
19 to turn on, which draws a large current into the ASIC.

20 b. Second, a crash can cause the crash sensors to short at the same
21 time another powerline unrelated to the ACU shorts to the
22 chassis (i.e. the vehicle frame), which again causes the parasitic
23 transistor within the ASIC to draw a large current into the ASIC.

24 488. Regardless of how a crash generates the negative transient, however,
25 the DS84 ASIC can fail from electronic overstress whenever exposed to a transient

26 ¹⁰ In electrical engineering jargon, a structure on a circuit board is considered
27 “parasitic” when it has the potential to behave in ways contrary to its intended
28 function after exposure to excessive positive or negative current or some other
 triggering electrical event.

1 of 1 or 2 volts. Defendants have observed evidence of EOS damage (such as visible
2 burn marks) on DS84 ASICs in over 35 crashes or crash tests, including at least
3 nine *fatal* incidents. Upon information and belief, these crashes ranged from
4 moderate to severe. And none of the suspicious crashes appear to have involved
5 vehicles travelling at speeds far above highway speed limits in the United States.
6 These crashes and crash tests are discussed in Section V.D. below.

7 489. EOS during a crash can cause any combination of the following
8 failures of a DS84 ACU and Class Vehicle safety system:

- 9 a. the front (also called “first stage”) airbags can fail to deploy (or
10 deploy too late) in crashes that merit airbag deployment;
- 11 b. the side curtain (also called “second stage”) airbags can fail to
12 deploy in crashes that merit airbag deployment;
- 13 c. the seatbelts can fail to tighten to restrain the passenger;
- 14 d. the ACU can fail to unlock the automatic door locks after the
15 crash, thereby increasing the impediments to passenger escape
16 or rescue;
- 17 e. the ACU can fail to turn off the fuel supply or high-voltage
18 battery, thereby increasing the risk of a fire; and
- 19 f. the ACU can fail to save a complete record of the crash on the
20 Event Data Recorder.

21 490. The first three problems render all DS84 ASICs, DS84 ACUs, and
22 Class Vehicles defective because properly-designed vehicles, ACUs, and ACU
23 ASICs are able to engage all passive safety restraints (i.e., seatbelts, front airbags,
24 and side airbags) during any crash that merits deployment—including crashes that
25 generate transients. Passive safety systems, ACUs, and ACU ASICs that fail to
26 reliably deploy safety restraints do not serve their most basic function: protecting
27 the lives and physical well-being of drivers and passengers during a crash.
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1 491. The fourth and fifth problems are also serious safety defects, because
2 they increase the likelihood that victims of car accidents suffer further harm after
3 the crash. Upon information and belief, a properly functioning ACU sends
4 commands to unlock automatic door locks and switch off the fuel supply,
5 regardless of whether the car accident happened to generate electrical transients.

6 492. The failure to save a complete crash record is another defect aside
7 from the failure to activate passive safety restraints, because all passive safety
8 systems are required to save a crash record. *See* 49 CFR § 563. Accordingly, the
9 Class Vehicles, ACUs, and DS84 ASIC are defective because they do not reliably
10 perform this minimum function. This defect is important because complete and
11 accurate crash data is critical to post-hoc investigations of a vehicle's response to a
12 crash. ASIC EOS makes it difficult or impossible for crash investigators to reliably
13 determine whether airbags should not have deployed.

14 493. All the Class Vehicles, DS84 ACUs, and DS84 ASICs were defective
15 at the point of sale and lease because they are particularly vulnerable to failure due
16 to EOS in certain types of crashes. The ACU Defect is inherent in all Class
17 Vehicles regardless of whether a crash occurs.

18 **b. The defective DS84 ASIC can also fail from EOS outside a**
19 **crash event, which can cause the Class Vehicle and DS84**
20 **ACU to require service or, at worst, airbags to deploy when**
21 **the vehicle is not crashing.**

22 494. Transient electricity can also occur underneath the hood of a Class
23 Vehicle outside of a collision. For example, according to slide deck presentation
24 that ZF Electronics USA, ZF Passive Safety USA, and ZF Automotive USA shared
25 with FCA in June 2013, a transient surge can flow through the DS84 ASIC when a
26 line connecting an airbag squib ASIC to the DS84 ASIC shorts and the vehicle
27 ignition causes a current spike.
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1 495. But regardless of how a transient reaches the DS84 ASIC outside of a
2 collision, it can cause the ASIC to malfunction when the transient reaches it. This in
3 turn can cause airbags to inflate during normal driving conditions, when the vehicle
4 has not crashed. These so-called “inadvertent airbag deployments” are a safety risk
5 because it is difficult to maintain control of a vehicle when the airbag goes off
6 while the driver is trying to watch the road and operate the steering wheel,
7 acceleration, and brakes. As of April 2016, ZF Automotive USA, ZF Electronics
8 USA, ZF Passive Safety USA, ZF TRW Corp., and ZF Germany were aware of at
9 least 9 cases of inadvertent airbag deployment in vehicles with the DS84 ASIC.
10 This number increased to at least 10 cases by March 2018.

11 496. Transient electricity outside of a crash can also cause the passive
12 safety system to shut down and the airbag warning lamp to turn on. This type of
13 failure is another safety risk because it is not safe to drive a vehicle in this
14 condition. Moreover, fixing the disabled condition requires taking the vehicle to a
15 dealer. Warranty claims showing vehicles returned to ZF Automotive USA indicate
16 that this type of EOS failure has occurred in dozens of Class Vehicles.

17 497. The risk of these two types of failures outside a car crash are
18 independent reasons why the Class Vehicles, DS84 ACUs, and DS84 ASICs are
19 defective.

20 **5. Several types of evidence show when EOS caused a DS84 ASIC to**
21 **malfunction.**

22 498. Several types of evidence show when a DS84 ASIC has suffered from
23 EOS.

24 499. The most common first sign that ASIC EOS has occurred is a
25 malfunction of the passive safety system. This can include, but is not limited to, any
26 of the following symptoms, which are each an independent sign of EOS, and can
27 happen without the other failures occurring:
28

- 1 a. A complete or partial failure to deploy airbags in a crash that
- 2 merited deployment;¹¹
- 3 b. A complete or partial failure of the seatbelts to tighten;
- 4 c. An inadvertent airbag deployment (i.e. outside of a crash); or
- 5 d. Activation of an airbag warning lamp (also known as a
- 6 “readiness indicator”).

7 500. The limited discovery in this case has identified over forty crashes
8 where airbags did not deploy in vehicles with DS84 ACUs and there was evidence
9 of ASIC EOS. Moreover, hundreds of consumers have reported hundreds of
10 additional instances where airbags failed during crashes in Class Vehicles, which
11 Defendants apparently never inspected.

12 501. Upon information and belief, suspicious inadvertent airbag
13 deployments resulting from EOS have occurred in at least 10 vehicles with DS84
14 ACUs, including 2 Honda vehicles, 1 FCA vehicle, 1 Kia vehicle, 2 vehicles made
15 by Chinese manufacturer SAIC, and 4 vehicles made by Chinese manufacturer
16 Great Wall.

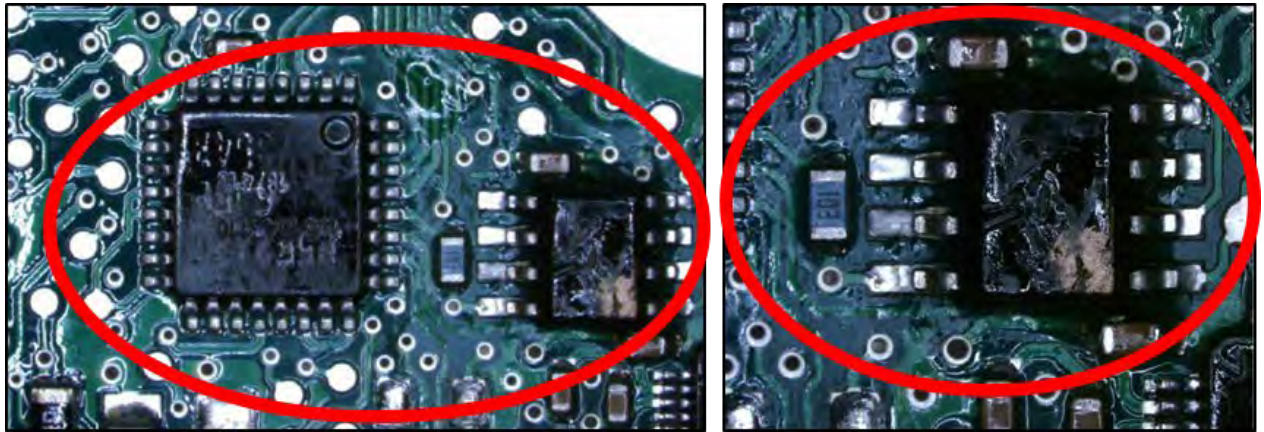
17 502. Another sign of ASIC EOS is a so-called “non-communicative ACU.”
18 This occurs when the ACU fails to communicate with the software typically used to
19 extract crash data from an Event Data Recorder on an ACU. This type of failure
20 indicates that the ACU black box that is supposed to continue working after a crash
21 is no longer working.

22 503. Another sign of ASIC EOS in ACUs is the complete or partial absence
23 of recorded crash data on the vehicle’s Event Data Recorder. An incomplete or
24

25 _____
26 ¹¹ As explained above, airbags have multiple deployment stages, known as first and
27 second stage, which are meant to correspond with accident severity. Suspicious
28 partial deployment occurs when airbags do not completely deploy, or some airbags
deploy and others do not, in an accident that merited complete deployment.

1 absent crash record is evidence that the normal operation of the ASIC (i.e., writing
2 crash data) was interrupted by EOS during the crash.

3 504. Another sign of ASIC EOS is visible burn marks on the ACU circuit
4 board. For example, the below images of a defective DS84 ACU recovered from a
5 wrecked Toyota Corolla in Northern California depict these kinds of burn marks.
6 The DS84 ASIC is the square shaped chip on the left with visible signs of distress.
7 Upon information and belief, the rectangular chip to its right is a power supply
8 circuit also damaged by the electrical current that caused overstress. The Corolla's
9 airbags failed to deploy during a crash in 2018. The crash killed the driver.



17 505. Another sign of ASIC EOS can be distress to the interior of the DS84
18 ASIC, which is revealed through a special kind of investigation. Specifically, to
19 take an image of the interior of the microchip, the chip manufacturer often needs to
20 “decapsulate” or “decap” the chip—meaning the very small black packaging
21 material around the microchip is removed to expose the silicon chip inside. Once
22 this is done, special tools can be used to take an image of the details that are not
23 visible to the naked eye. X-rays can also be used to take a visual image of an
24 ASIC's interior. When either analysis identifies damage to the hardware of the
25 chips—such as burns, fatigued metal, soldering (i.e. fused metal), or damaged
26 pins—it supports a finding that the chip suffered from EOS. As to the damaged
27 pins, ASICs, including the DS84, are packaged with an array of small pins placed
28

1 on the underside of the ASIC. The pins serve as electrical contacts to connect the
2 device to the circuit board. Thus, when transients travel to the ASIC, the pins serve
3 as a point of contact that can suffer physical damage and reveal signs of EOS.

4 506. Another way to test whether an ASIC has suffered from EOS is to
5 replace the chip that appears to be compromised with a new chip of the same type.
6 If the ACU works after replacing the chip, it tends to confirm the ASIC was broken
7 by EOS.

8 507. Another way to test whether ASIC EOS occurred on a malfunctioning
9 DS84 ACU is to measure the resistance at test points on the circuit board. The
10 purpose of this test is to identify if there are shorts in components connected to the
11 test points by looking for high versus low impedance values. Abnormal resistance
12 measurements relative to another non-malfunctioning DS84 ACU can evidence
13 EOS.

14 508. These methods for detecting ASIC EOS are identified based on the
15 limited discovery that has occurred to date, and are likely not an exhaustive list.

16 **6. Toyota Engineering USA, FCA, Hyundai USA, and Kia USA have**
17 **admitted the DS84 ACUs in 5,406,228 Class Vehicles are defective.**

18 509. Toyota Engineering USA, FCA, Hyundai USA, and Kia USA have
19 admitted that the DS84 ACUs in 5,406,228 Class Vehicles are defective by
20 recalling them.

21 510. None of the recall remedies these Defendants have offered for these
22 Class Vehicles address the root cause of the ACU Defect because the Class
23 Vehicles continue to use defective DS84 ACUs with the defective DS84 ASIC even
24 after receiving the recall remedy. The underlying vulnerability to EOS continues to
25 exist even in these “fixed” vehicles.

26 511. Plaintiffs estimate that between 10 and 15 million Class Vehicles with
27 the same defective DS84 ASICs and similarly defective DS84 ACUs remain
28

1 unrecalled. Upon information and belief, no Defendant has taken any steps to
2 address the safety defect in these vehicles.

3 **a. FCA recalled 1,425,627 Class Vehicles because of the**
4 **defective DS84 ACUs and defective DS84 ASICs.**

5 512. On September 13, 2016, FCA submitted a 573 Defect Report to
6 NHTSA announcing its intention to recall 1,425,627 vehicles based on an admitted
7 defect with the DS84 ACUs. A 573 Defect Report is a written report that
8 automobile and parts manufacturers must submit to NHTSA in connection with an
9 automobile recall. When filed, these reports are publicly available on NHTSA's
10 website.¹²

11 513. FCA's recall announcement expressly acknowledges that 100% of the
12 population of 1,425,627 vehicles had the ACU Defect.

13 514. FCA's September 13, 2016 573 Defect Report states:

14 2010–2014 MY Chrysler 200, Chrysler Sebring and Dodge
15 Avenger ('JS'), 2010–2014 MY Jeep Compass and Jeep Patriot
16 ('MK') and 2010–2012 MY Dodge Caliber ('PM') vehicles
17 may experience loss of air bag and seat belt pretensioner
deployment capability in certain crash events due to a shorting

18
19 ¹² In its February 9, 2022 decision on Defendants' motions to dismiss, the Court
20 reasoned that access to Defendants' books and records may not be necessary to
21 obtain information about uses of mail and wire because "Plaintiffs had access to a
22 number of 'Part 573' reports . . . to NHTSA." ECF 396 at 73. Respectfully, Part
23 573 Reports do not permit such an inference. Although 573 Defect Reports provide
24 some limited information about automobile defects, they never provide information
25 about shipments of particular vehicles to dealers (such as the dates of shipments),
26 the timing and place of advertising, or other particular details of the distribution
27 process. Moreover, 573 Defect Reports are only filed when a manufacturer admits a
28 defect or voluntarily conducts a recall, or when NHTSA formally finds a defect and
orders a recall to take place. Because Defendants continue to deny the ACU Defect,
there are no 573 Defect Reports about the ACU Defect in most of the Class
Vehicles (i.e., the ones that have not been recalled). Moreover, the Honda and
Mitsubishi Defendants have never submitted a 573 Defect Report about the ACU
Defect in any of their Class Vehicles.

1 condition resulting in a negative voltage transient that travels
2 to the Occupant Restraint Controller (“ORC”)¹³ via the front
3 impact sensor wires damaging an Application Specific
4 Integrated Circuit (“ASIC”) in the ORC. The root cause of the
5 failure was determined to be a combination of the relative
6 susceptibility of the subject ORC ASIC to negative transients
7 and the front acceleration sensor signal cross-car wire routing
8 in certain crash events. . . . The potential loss of air bag and
9 seat belt pretensioner deployment capability in such crash
10 events may increase the risk of injury in a crash.

11 515. FCA’s recall did not rectify the ACU Defect or the economic harm
12 caused by the Defect at the point of purchase and lease.

- 13 a. First, the recall occurred years after consumers purchased or
14 leased the defective FCA Class Vehicles and provided no
15 monetary compensation at all. Accordingly, it did not remedy
16 the overpayment damages suffered by consumers.
- 17 b. Second, when FCA announced the recall in September 2016, it
18 also admitted “FCA US has not defined a recall remedy at this
19 time.” Due to a lack of parts, FCA would not even begin to
20 recall and repair vehicles pursuant to this recall for
21 approximately *11 months*. During this time period, consumers
22 continued to report airbag and seatbelt failures in several of the
23 vehicles subject to the recall. *See, e.g.*, Exhibit 1 (ODI nos.
24 10920626, 10926236, 11006561, 11006731, 11022674,
25 10917305, 10926700, 11019118, 10915978, 10993562,
26 11192853).
- 27 c. Third, for years after FCA began conducting its partial recall in
28 August 2017, consumers continued to report airbags and
seatbelts failures in FCA Class Vehicles subject to the recall.

¹³ As explained above, “ORC” is another term for ACU.

1 See Exhibit 1 (ODI nos. 11164588, 11183650, 11203283,
2 11204387, 11219085, 11301047). This suggests an ongoing
3 problem with these vehicles. Upon information and belief,
4 FCA's recall remedy involves replacing the DS84 ACUs with
5 another version of the same ACU and the same defective DS84
6 ASIC, but with some additional circuit protection. These
7 replacement DS84 ACUs appear to have the same level of
8 circuit protection as the DS84 ACUs in several unrecalled FCA
9 Class Vehicles. NHTSA's investigation into the unrecalled FCA
10 Class Vehicles with DS84 ACUs with the same level of circuit
11 protection as the replacement DS84 ACU used as the recall
12 remedy strongly indicates the agency now doubts the adequacy
13 of the remedy.

14 d. Fourth, FCA's September 13, 2016 recall has not remedied most
15 of the recall population. According to FCA's most recent recall
16 report, FCA had only repaired 550,005 of the 1,435,625 vehicles
17 with defective DS84 ACUs as of January 16, 2019. After this
18 date, FCA apparently stopped conducting the recall.

19 **b. Hyundai USA and Kia USA recalled 1,088,625 Class**
20 **Vehicles because of the defective DS84 ACUs and defective**
21 **DS84 ASICs.**

22 516. Between February 27, 2018 and October 5, 2018, Hyundai USA made
23 three recall announcements concerning 2011-2013 Hyundai Sonatas and 2011-2012
24 Hyundai Sonata Hybrids, all of which are Class Vehicles equipped with the DS84
25 ACUs.

26 517. The final recall announcement expressly acknowledges that 100% of
27 the population of 581,038 vehicles had the defect.

28

1 518. Hyundai USA’s final 573 Defect Report admitted that the DS84 ACUs
2 in these vehicles were defective and describes the ACU Defect as follows:

3 The subject vehicles are equipped with an original equipment
4 airbag control unit (“ACU”) which detects a crash signal and
5 commands deployment of the Advanced Airbag System
6 (“AAS”) and seat belt pretensioners when necessary. The
7 subject ACU’s contain a certain application-specific integrated
8 circuit (“ASIC”) that, in the absence of circuit protecting
9 diodes, could be susceptible to electrical overstress (“EOS”) resulting in the inability to properly deploy the AAS and seat belt pretensioners during certain frontal crash events. . . .

10 Hyundai believes that the ASIC used in the subject ACUs
11 could be susceptible to EOS because it lacks adequate circuit
12 protection. In at least one crash test, damage to the DS84 ASIC
13 from EOS could have caused the loss of the AAS and seat belt
14 pretensioner deployment. At the request of Hyundai, ZF-TRW
15 is continuing their analysis of the source of EOS and
16 noncommunication of the DS84 ASICs from other related
17 crash-test ACUs. Hyundai USA notes that this defect appears
18 substantially similar to the defect in Recall No. 16V-668 where
19 EOS appeared to be a root cause of AAS non-deployment in
20 significant frontal crashes involving certain Fiat Chrysler
21 vehicles. As such, Hyundai reasonably believes that this is a
22 defect in original equipment installed in the vehicles of more
23 than one manufacturer.

24 519. On June 1, 2018, Kia USA announced a recall of 507,587 Class
25 Vehicles, including the 2010-2013 Kia Forte, the 2011-2012 Kia Optima Hybrid,
26 the 2010-2013 Kia Forte Koup, the 2011-2013 Kia Optima, and the 2011-2012 Kia
27 Sedona.

28 520. Kia USA’s recall announcement expressly acknowledges that 100% of
the population of 507,587 vehicles had the defect.

 521. Kia USA’s 573 Defect Report admitted that the DS84 ACUs in these
vehicles were defective and describes the ACU Defect as follows:

 The Airbag Control Unit (“ACU”) detects crash severity and

1 commands deployment of the advanced airbags and seatbelt
2 pretensioners when necessary. The recalled vehicles are
3 equipped with an ACU which contain a certain application-
4 specific integrated circuit (“ASIC”) that may be susceptible to
5 electrical overstress (“EOS”) during certain frontal crash
6 events. . . .

7 If the ASIC becomes damaged, the front airbags and seatbelt
8 pretensioners may not deploy in certain frontal crashes where
9 deployment may be necessary, thereby increasing the risk of
10 injury. . . .

11 The ASIC component within the subject ACUs may be
12 susceptible to EOS due to inadequate circuit protection.

13 522. Hyundai USA’s and Kia USA’s recalls did not rectify the ACU Defect
14 or the economic harm caused to consumers by the Defect at the point of purchase
15 and lease.

16 a. First, the recalls of the Hyundai-Kia Class Vehicles provided no
17 monetary compensation at all. Accordingly, they did not remedy
18 the overpayment damages suffered by consumers.

19 b. Second, Hyundai USA’s and Kia USA’s respective limited
20 recalls occurred multiple *years* after they and their parent
21 companies first knew about the ACU Defect, during which they
22 avoided incurring the costs associated with recalls and installing
23 replacement parts for almost a decade for some Class Vehicles.
24 Throughout this time, consumers continued to buy, lease, and
25 drive vehicles that Hyundai USA and Kia USA knew to be
26 unsafe every day.

27 c. Third, when Hyundai USA first announced its limited recall for
28 some of the Hyundai Class Vehicles in February 2018, it also
admitted that it did not have a solution to fix the defective ACU.
Hyundai USA first mailed notice of an available repair to

- 1 owners *eight months* after announcing the recall, in mid-
2 October 2018, while Kia USA first mailed notice of an available
3 repair to owners two months after announcing its recall, on or
4 about July 28, 2018.
- 5 d. Fourth, the recall repair eventually offered by Hyundai USA and
6 Kia USA did not provide an adequate remedy to the problem.
7 The “fix” involved installing an extension wire harness kit for
8 additional circuit protection. However, by simply installing a
9 separate wire harness kit called a noise filter outside of the
10 ACU—and even then, only “if necessary” in Kia Sedonas—
11 Hyundai USA’s and Kia USA’s recalls did not remedy the
12 defective DS84 ACUs, which continued to use the defective
13 DS84 ASICs. Moreover, noise filters have a history of failing as
14 remedies for recalls involving ACU ASIC malfunctions due to
15 transients and EOS. In 2012 and 2013, for example, FCA and
16 Toyota Engineering USA conducted recalls of earlier ACUs
17 made by ZF Automotive USA because the ASICs inside were
18 failing due to EOS and causing inadvertent deployments. As
19 purported remedies, Toyota Engineering USA and FCA
20 installed noise filters. Both remedies failed to cure the defect,
21 and Toyota Engineering USA and FCA had to recall the
22 vehicles again in 2015 when NHTSA launched a second
23 investigation into the EOS problem in these ACUs.
- 24 e. Fifth, as of the most recent reports from January 2020, the
25 Hyundai-Kia Defendants’ recalls have remedied just over half of
26 the recall population since they were announced over two years
27 ago. According to Hyundai USA’s most recent recall report,
28 Hyundai USA had repaired 338,604 of the 580,058 vehicles

1 with defective DS84 ACUs as of January 31, 2020. According
2 to Kia USA's most recent recall report, Kia USA had repaired
3 201,060 of the 507,587 vehicles with defective DS84 ACUs as
4 of January 13, 2020. During this time period, and in the years
5 that have followed, consumers reported airbag and seatbelt
6 failures in the Recalled Hyundai and Kia Class Vehicles.¹⁴

7 **c. Toyota Engineering USA recalled 2,891,976 Class Vehicles**
8 **because of the defective DS84 ACUs and defective DS84**
9 **ASICs**

10 523. On January 17, 2020, Toyota Engineering USA recalled 2,891,976
11 vehicles equipped with the defective DS84 ACUs. The recalled vehicles included
12 the 2011-2019 Corolla, 2011-2013 Corolla Matrix, 2012-2018 Avalon, and 2013-
13 2018 Toyota Avalon HV.

14 524. Toyota Engineering USA's 573 Defect Report admitted that DS84
15 ACUs with the DS84 ASIC are defective and described the ACU Defect as follows:

16 The ECU [(a term used by Toyota for ACU)] contains a model
17 DS84 application-specific integrated circuit (ASIC) which
18 controls the communication of the crash sensor signals, firing
19 commands (i.e., when to deploy airbag(s) and/or [seatbelt]
20 pretensioners), and fault information (e.g., diagnostic trouble
21 codes).

22 This ASIC does not have sufficient protection against negative
23 electrical transients that can be generated in certain severe
24 crashes, such as an underride frontal crash where there is a
25 large engine compartment intrusion before significant
26 deterioration. In these cases, the crash sensor and other
27 powered wiring can be damaged and shorted so as to create a

28 ¹⁴ See Hyundai reports, Exhibit 2 (ODI Nos. 11160781, 11140564, 11156730, 11232616, 11208091, 11208630, 11291530, 11301138, 11111515, 11109647, 11153247, 11182813, 11307272); Kia reports, Exhibit 3 (ODI Nos. 10781050, 11018775, 11105328, 11129933, 11130355, 11142259, 11131971, 11174482, 11150286).

1 negative electrical transient of sufficient strength and duration
2 to damage the ASIC before the deployment signal is received
3 in the [Safety Restraint System] ECU. This can lead to
4 incomplete or nondeployment of the airbags and/or
pretensioners.

5 525. Toyota Engineering USA’s recall did not rectify the ACU Defect or
6 the economic harm caused by the Defect at the point of purchase and lease.

- 7 a. First, the recall provided no monetary compensation at all.
8 Accordingly, it did not remedy the overpayment damages
9 suffered by consumers.
- 10 b. Second, Toyota Engineering USA’s recall occurred multiple
11 *years* after Toyota Engineering USA, Toyota USA, Toyota
12 Sales USA, and Toyota Japan knew about the ACU Defect.
13 Throughout this time, consumers continued to buy, lease, and
14 drive vehicles that Toyota Engineering USA, Toyota USA,
15 Toyota Sales USA, and Toyota Japan knew to be unsafe.
- 16 c. Third, the recall repair eventually offered by Toyota
17 Engineering USA did not provide an adequate remedy to the
18 problem. The “fix” involved installing an extension wire harness
19 kit for additional circuit protection. However, by simply
20 installing a separate wire harness kit called a noise filter outside
21 of the ACU—and even then, only “if necessary”—Toyota
22 Engineering USA’s recall did not remedy the defective DS84
23 ACUs, which continued to use the defective DS84 ASICs.
24 Moreover, as noted above, noise filters have a history of failing
25 as recall remedies for recalls involving ACU ASIC malfunctions
26 due to transients and EOS. In 2012 and 2013, for example, FCA
27 and Toyota Engineering USA previously conducted recalls of
28 ACUs made by ZF Automotive USA because the ASICs inside

1 were failing due to EOS and causing inadvertent deployments.
2 As purported remedies, Toyota Engineering USA and FCA
3 installed noise filters. Both remedies failed to cure the defect,
4 and Toyota Engineering USA and FCA had to recall the
5 vehicles again in 2015 when NHTSA launched a second
6 investigation into the EOS problem in these ACUs.

7 d. Fourth, as of the most recent reports, Toyota Engineering USA's
8 recall has remedied just over half of the recalled Toyota Class
9 Vehicles. According to Toyota Engineering USA's most recent
10 recall report, Toyota Engineering USA had repaired 1,625,024
11 of the 2,891,976 vehicles with defective ACUs as of January 20,
12 2022.

13 **7. Hundreds of consumer complaints report that airbags have failed**
14 **in Class Vehicles during serious collisions.**

15 526. Publicly available consumer complaints confirm that airbags and
16 seatbelts in Class Vehicles are failing during serious crashes when airbags should
17 deploy and seatbelts should pretension.

18 527. Between 2014 and the present, more than 30 consumers reported to
19 NHTSA that their airbags and/or seatbelts had failed in Hyundai Class Vehicles.
20 Examples of such complaints are attached hereto as Exhibit 2. Illustrative examples
21 of these complaints are quoted below.

22 a. A publicly available complaint with NHTSA dated January 28,
23 2014 reported a January 3, 2014 accident involving a 2013
24 Hyundai Sonata in Westminster, California. The complaint
25 states: "I START THE VEHICLE TO TURN RIGHT THEN
26 GOT HIT ON THE DRIVER SIDE UP TO THE FRONT END.
27 THE OTHER VEHICLE RAN THE RED LIGHT AND HIS
28 SPEED WAS ABOUT 45-50 MPH. MY CAR GOT HIT HARD

1 AT THE FRONT AND TURNED 180 DEGREE, NONE OF
2 THE AIRBAGS WAS DEPLOYED. AS A SAFETY
3 CONCERN, I WOULD LIKE TO FILE A COMPLAINT AS I
4 AM GONNA HAVE A BABY SOON THIS YEAR 2014.
5 WHAT IF THAT ANOTHER ACCIDENT OCCUR AND THE
6 BABY OR MY SPOUSE [WERE] IN THE CAR WITH ME?
7 *TR.”

8 b. A publicly available complaint with NHTSA dated August 4,
9 2014 reported a September 6, 2011 accident involving a 2012
10 Hyundai Sonata in Bossier City, Louisiana. The complaint
11 states: “TL* THE CONTACT OWNS A 2012 HYUNDAI
12 SONATA. THE CONTACT STATED THAT WHILE
13 DRIVING 45 MPH, THE BRAKING SYSTEM FAILED TO
14 ENGAGE. THE CONTACT APPLIED THE EMERGENCY
15 BRAKE AND THE VEHICLE SKIDDED. AS A RESULT,
16 THE CONTACT CRASHED INTO A MEDIAN. THE
17 DRIVER SIDE AIR BAG FAILED TO DEPLOY. THE
18 CONTACT SUSTAINED BRAIN AND BACK INJURIES
19 AND THE REAR PASSENGER SUSTAINED INJURIES TO
20 THE HANDS AND SHOULDER, WHO BOTH REQUIRED
21 MEDICAL ATTENTION. A POLICE REPORT WAS FILED.
22 THE VEHICLE WAS DESTROYED. THE
23 MANUFACTURER WAS MADE AWARE OF THE
24 FAILURE. THE APPROXIMATE FAILURE MILEAGE WAS
25 50,000.”

26 c. A publicly available complaint with NHTSA dated December
27 20, 2019 reported an October 10, 2019 accident involving a
28 2019 Hyundai Sonata in Casco, Wisconsin. The complaint

1 states: “TL* THE CONTACT OWNED A 2019 HYUNDAI
2 SONATA. WHILE THE CONTACT WAS PULLING INTO
3 AN INTERSECTION, A SECOND VEHICLE CRASHED
4 INTO THE FRONT DRIVER SIDE OF HIS VEHICLE. THE
5 FRONT END OF THE VEHICLE WAS SEVERELY
6 DAMAGED; HOWEVER, THE AIR BAGS DID NOT
7 DEPLOY. THE DRIVER SUSTAINED BROKEN RIBS, AND
8 INJURIES TO THE LEG, HEAD, AND ARM. MEDICAL
9 ATTENTION WAS RECEIVED AND POLICE REPORT
10 NUMBER: [XXX] WAS FILED. THE VEHICLE WAS
11 DESTROYED AND TOWED FROM THE SCENE.
12 BROADWAY AUTOMOTIVE (1010 S. MILITARY AVE,
13 GREEN BAY, WI) AND THE MANUFACTURER WERE
14 NOTIFIED OF THE FAILURE. THE FAILURE MILEAGE
15 WAS 3,500. *DT.”

16 528. Between 2012 and the present, more than 20 consumers reported to
17 NHTSA that their airbags and/or seatbelts had failed in Kia Class Vehicles.
18 Examples of such complaints are attached hereto as Exhibit 3. Illustrative examples
19 of these complaints are quoted below.

20 a. A publicly available complaint with NHTSA dated September
21 16, 2013 reported a September 10, 2013 accident involving a
22 2011 Forte in Sharpsburg, Georgia. The complaint states: “TL*
23 THE CONTACT OWNS A 2011 KIA FORTE. THE
24 CONTACT STATED THAT WHILE SITTING AT A
25 COMPLETE STOP, ANOTHER VEHICLE TRAVELING 60
26 MPH CRASHED INTO THE REAR OF THE CONTACTS
27 VEHICLE. THE IMPACT CAUSED THE CONTACTS
28 VEHICLE TO BE PUSHED FORWARD AT

1 APPROXIMATELY TWO HUNDRED FEET AND INTO
2 THE REAR OF ANOTHER VEHICLE. THE DRIVERS SIDE
3 HEAD REST AND METAL BAR BECAME SEPARATED
4 UPON IMPACT. THE CONTACT SUFFERED FROM
5 WHIPLASH, NECK STRAINS, AND LACERATIONS TO
6 THE LOWER BACK AND RIGHT LEG. A POLICE REPORT
7 WAS FILED. IN ADDITION, THE DRIVER AND
8 PASSENGERS SIDE AIR BAGS FAILED TO DEPLOY. THE
9 VEHICLE WAS DESTROYED. THE MANUFACTURER
10 WAS MADE AWARE OF THE FAILURE. THE FAILURE
11 AND CURRENT MILEAGE WAS 35,000.”

12 b. A publicly available complaint with NHTSA dated February 6,
13 2015 reported a February 3, 2015 accident involving a 2010
14 Forte in Saint John, Indiana. The complaint states: “2010 KIA
15 FORTE REAR ENDED A 2012 TOYOTA VENZA WHILE
16 TRAVELING AT APPROXIMATELY 40 MPH ON WET
17 ASPHALT PAVEMENT. UPON COLLISION, THE AIR BAG
18 FAILED TO DEPLOY AND SEAT BELT RESTRAINT
19 FAILED TO HOLD BACK DRIVER OF THE KIA. DRIVERS
20 FOREHEAD HIT AND BENT STEERING WHEEL AND
21 CAUSED MAJOR FRONT END DAMAGE TO THE KIA
22 AND CONSIDERABLY LESS DAMAGE TO THE TOYOTA
23 VENZA. KIA WAS NOT DRIVABLE, SO IT WAS TAKEN
24 TO A SALVAGE YARD OF A FLAT BED TRUCK. DRIVER
25 OF KIA WAS TAKEN TO HOSPITAL FOR X-RAYS AND
26 EVALUATION. DRIVER OF KIA SUFFER NECK\BACK
27 PAIN, BRUISED FOREHEAD AND HEAD ACHE AND
28 WAS PRESCRIBED PAIN PILLS & ANTI

1 INFLAMMATORY MEDICATION. MY GREATEST
2 CONCERN IS THAT I OWN TWO KIA'S, ONE FOR EACH
3 OF MY COLLAGE [sic] AGE KIDS AND FEAR THAT THE
4 SAME OUTCOME MAY OCCUR AGAIN WITH DIRE
5 CONSEQUENCES. FAILURE OF THE AIR BAG
6 DEPLOYMENT AND SEAT BELT RESTRAINT MUST BE
7 ADDRESSED AND CORRECTED BY KIA BEFORE MORE
8 INJURIES OCCUR. . UPDATED 02/19/15 *BF UPDATED
9 3/30/2016 *JS UPDATED 9/20/2017*CN.”

10 c. A publicly available complaint with NHTSA dated May 29,
11 2019 reported a March 24, 2019 accident involving a 2015
12 Optima in Naperville, Illinois. The complaint states: “I WAS
13 TRAVELING EAST ON A 4 LANE ROAD AT 45 MPH. AS I
14 WAS PASSING THRU A GREEN LIGHT, A WESTBOUND
15 VEHICLE MADE AN ILLEGAL LEFT TURN IN FRONT OF
16 ME, CAUSING ME TO ‘T-BONE’ HIS VEHICLE. ALL OF
17 HIS AIRBAGS DEPLOYED.....NONE OF MINE DID. THE
18 CAR WAS REPAIRED, SURPRISINGLY; YET I DO NOT
19 FEEL SAFE DRIVING IT. I SUSTAINED CERVICAL AND
20 LUMBAR SPINE INJURIES, AS WELL AS A SEVERE
21 WHIPLASH AND CONCUSSION. I AM UNABLE TO
22 WORK, DUE TO SURGERY THAT WAS NECESSARY. I
23 JUST NEED TO KNOW IF THIS CAR IS SAFE?? I WAS
24 ALSO IN A SIDE COLLISION THAT WAS NOT MY
25 FAULT; TWO YEARS AGO, WHERE SOMEONE HIT ME,
26 AND NO AIRBAGS DEPLOYED. AT THAT PARTICULAR
27 ACCIDENT, I WAS STATIONARY; AT A STOP LIGHT.”

28

1 529. Between 2010 and the present, dozens of consumers reported to
2 NHTSA that their airbags and/or seatbelts had failed in FCA Class Vehicles.
3 Approximately 100 examples of such complaints are attached hereto as Exhibit 1.
4 Illustrative examples of these complaints are quoted below.

5 a. A September 29, 2010 complaint concerning a September 7,
6 2010 crash involving a 2010 Dodge Ram states: “TL* THE
7 CONTACT OWNS A 2010 DODGE RAM 1500. THE
8 CONTACT WAS RUN OFF THE ROAD WHILE DRIVING
9 65 MPH INTO A DITCH. THE FRONTAL AIR BAGS DID
10 NOT DEPLOY AND THE SEAT BELT DID NOT LOCK.
11 THE CONTACT HIT AND BROKE THE STEERING WHEEL
12 AND STEERING COLUMN BECAUSE OF THE SEAT BELT
13 FAILURE; HE WAS INJURED. THE VEHICLE WAS
14 TOWED TO A REPAIR SHOP. THE MECHANIC (AND
15 POLICE OFFICER ON THE SCENE) STATED THAT THE
16 AIR BAGS SHOULD HAVE DEPLOYED. THE CURRENT
17 AND FAILURE MILEAGES WERE APPROXIMATELY
18 3,600.”

19 b. A July 18, 2016 complaint concerning a July 13, 2016 crash
20 involving a 2009 Dodge Ram states: “AIR BAG FAILURE--ON
21 WEDNESDAY JULY 13 2016 THE VEHICLE (2009 DODGE
22 RAM 1500) WAS INVOLVED IN A FRONT END
23 COLLISION WHILE TRAVELING ON A CITY OWNED
24 ROAD. THE DRIVER WHO WAS THE ONLY PERSON IN
25 THE VEHICLE LOST CONTROL OF THE VEHICLE WHEN
26 TAKING A SHARP RIGHT TURN ON A DIRT ROAD IN
27 THE DARK. AS A RESULT THE VEHICLE CRASHED
28 INTO A DITCH, COMPLETELY SMASHING IN THE

1 FRONT END AND DAMAGED MOST OF THE REST OF
2 THE TRUCK AS WELL. UPON IMPACT THE DRIVER’S
3 AIR BAG DID NOT DEPLOY. THE DRIVER SUSTAINED
4 INJURIES TO HIS ENTIRE UPPER BODY AS WELL AS
5 SUFFERING FROM A CONCUSSION UPON IMPACT
6 BECAUSE OF THE AIR BAG MALFUNCTION. HE
7 REQUIRED EMERGENCY MEDICAL ATTENTION AND
8 WAS TRANSPORTED TO THE HOSPITAL BY
9 AMBULANCE. WE HAVE MORE PICTURES INCLUDING
10 PICTURES OF THE FRONT END OF THE TRUCK
11 HOWEVER THE FILE IS TO BIG TO UPLOAD ON THIS
12 REPORT.”

13 c. A September 19, 2017 complaint concerning an October 2, 2015
14 crash involving a 2012 Jeep Wrangler states: “I WAS
15 INVOLVED IN A SINGLE VEHICLE ACCIDENT ON
16 10/2/2015 INVOLVING 2012 JEEP WRANGLER, MY
17 VEHICLE JERKED TO THE RIGHT SUDDENLY CAUSING
18 ME TO LOSE CONTROL. THE JEEP WAS JERKED OFF
19 THE ROAD INTO A DITCH ON THE RIGHT, HIT THE
20 FRONT END OF THE DITCH AND WAS LAUNCHED
21 AIRBORNE, THEN CRASHED ON THE CEMENT WALL
22 OF A SECOND DITCH, BOUNCING TWICE BEFORE
23 LANDING IN THE DITCH AND HITTING THE FRONT
24 END OF THAT DITCH. I REPEATEDLY SLAMMED ON
25 MY BRAKES BUT THEY DID NOT ENGAGE. MY
26 AIRBAGS DID NOT DEPLOY. MY SEAT BELT
27 TENSIONER DID NOT ENGAGE, CAUSING ME TO BE
28 THROWN FORWARD AND BACKWARDS REPEATEDLY.

1 I SUFFERED A CLOSED HEAD INJURY AND
2 HERNIATIONS TO MULTIPLE DISCS IN MY NECK AS
3 WELL AS TRAUMA TO THE FACET JOINTS IN MY
4 NECK, RESULTING IN SEVERE FORAMINAL STENOSIS
5 AT MULTIPLE LEVELS THAT REQUIRES
6 NEUROSURGICAL INTERVENTION. I SLAMMED MY
7 HEAD ON THE STEERING WHEEL 4 TIMES, MY CHEST
8 ONCE. THIS ACCIDENT FOREVER CHANGED MY LIFE. I
9 HAVE REPEATEDLY CALLED FCA TO FILE A FORMAL
10 COMPLAINT, AM ALWAYS TOLD SOMEONE WILL
11 CALL ME BACK. IT'S BEEN ALMOST TWO YEARS AND
12 NO ONE HAS CALLED ME BACK. I WAS GIVEN A CASE
13 NUMBER AND TOLD SOMEONE WOULD COME LOOK
14 AT MY VEHICLE TO INSPECT IT, NEVER HAPPENED. AS
15 I FACE URGENT SURGERY TO MY SPINE WITH PAIN TO
16 MY NECK RADIATING DOWN MY RIGHT ARM, ALL I
17 CAN THINK ABOUT IS CHRYSLER. THEY RECALLED
18 2016-2017 JEEP WRANGLERS FOR FAULTY WIRING OF
19 THE OCCUPANT RESTRAINT CONTROL MODULE, AS
20 WELL AS JEEP PATRIOTS AND COMPASSES MADE THE
21 SAME YEAR AS MY VEHICLE ALONG WITH MILLIONS
22 OF OTHER CHRYSLER VEHICLES. FCA REFUSES TO
23 RETURN MY PHONE CALLS, HOW MANY MORE
24 PEOPLE ARE THEY IGNORING? THEY NEED SEE WHAT
25 HAPPENS WHEN THEY DON'T RECALL ALL VEHICLES
26 BUILT WITH THE SAME COMPONENTS, KNOWING
27 THERE ARE MORE VEHICLES NOT INCLUDED IN THE
28 RECALL THAT POSE A SAFETY RISK.”

1 d. A February 28, 2019 complaint concerning a collision involving
2 a 2016 Jeep Wrangler states: “DURING A ROLLOVER
3 CRASH WHICH INITIATED AT 40 MILES PER HOUR, THE
4 FRONTAL AIRBAGS FAILED TO DEPLOY. THE
5 VEHICLE ROLLED AND AN ADEQUATE AMOUNT OF
6 FORCE TO DEPLOY THE AIR BAGS SHOULD HAVE
7 BEEN TRIGGERED. AS A RESULT THE OCCUPANTS
8 EXPERIENCE EXTENSIVE INJURIES CONSISTENT WITH
9 SUDDEN DECELERATION.”

10 530. Since at least as early as 2012, dozens of consumers have reported to
11 NHTSA that airbags and seatbelts in Toyota Class Vehicles failed to activate during
12 serious accidents. Over 70 examples of such complaints are attached hereto as
13 Exhibit 4. Three illustrative examples of these complaints are quoted below.

14 a. A March 2, 2013 complaint reported a February 20, 2013
15 accident involving a 2012 Toyota Corolla in Herndon, Virginia.
16 The complaint states: “I BELIEVE THERE IS A SERIOUS
17 SAFETY ISSUE RELATED TO THE PLACEMENT OF THE
18 AIR BAG SENSOR. MY WIFE AND A CO-WORKERS WIFE
19 WERE INVOLVED IN AN ACCIDENT THAT SEVERELY
20 DEFORMED THE FRONT OF A 2012 TOYOTA COROLLA
21 WITHOUT TRIGGERING THE AIRBAG SENSOR. UPON
22 INSPECTION, IT APPEARS THAT THE PORTION OF THE
23 CAR THAT THE AIRBAG SENSOR IS ATTACHED TO,
24 MOVED OVER A FOOT AND A HALF WITHOUT
25 TRIGGERING THE AIR BAG SENSOR. AS A FORMER
26 ASE MASTER TECHNICIAN AND TECHNICAL EXPERT
27 FOR THE BETTER BUSINESS BUREAU, THIS MAY BE A
28 SERIOUS DESIGN FLAW THAT COULD ENDANGER THE

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HEALTH AND SAFETY OF OTHER 2012 COROLLA OWNERS. I FILE [sic] A COMPLAINT WITH TOYOTA USA AND I AM WAITING FOR THEIR RESPONSE. *TR.”

b. A May 8, 2014 complaint reported an April 2, 2014 accident involving a 2011 Toyota Corolla in Graham, Texas. The complaint states: “I REAR ENDED A TRUCK FULL BUMPER TO FULL BUMPER COLLISION GOING ABOUT 25-30MPH. MY ENTIRE FRONT END WAS CRUSHED, RADIATOR AND TRANSMISSION BUSTED, AND FRONT BUMPER PULLED OFF, AND INSIDE CAR UNDER STEERING WHEEL HAD BEEN SLIGHTLY PUSHED OUT TOWARDS DRIVER SEAT. MY CAR WAS TOTALED. I BUSTED THE WINDSHIELD WITH MY HEAD WHEN I HIT IT GIVING ME A CONCUSSION AND HAD CONTUSIONS TO MY CHEST FROM HITTING STEERING WHEEL, AND CONTUSION AND SPRAIN TO MY RIGHT HAND. NO ONE INCLUDING POLICE, FIREMEN, AMBULANCE, AND WRECKING YARD COULD BELIEVE MY AIR BAGS DID NOT DEPLOY. MY HUSBAND AND I CONTACTED TOYOTA ABOUT THIS AND THEY ASSURED ME IT SHOULD NOT HAVE DEPLOYED AND SENT ME AN EMAIL LINK TO READ DESCRIBING WHEN AIR BAGS SHOULD DEPLOY. WHEN I CALLED BACK AFTER READING THE EMAIL AND TOLD THE MAN WHAT THE EMAIL SAID AND THAT MY AIR BAG SHOULD HAVE DEPLOYED HE CALLED ME A LIAR, AND SAID THAT WAS NOT WHAT THE EMAIL SAID. MY HUSBAND THEN CALLED AND REQUESTED

1 INFORMATION FROM EDR BE DOWNLOADED AND
2 READ. TOYOTA NEVER RETURNED OUR PHONE CALL
3 AND NEVER RETRIEVED INFORMATION FROM EDR,
4 AND NOW INSURANCE HAS TAKEN POSSESSION OF
5 THE VEHICLE AND IT IS GONE. A MONTH LATER WE
6 STILL HAVE NEVER RECEIVED A RETURN PHONE
7 CALL OR EXPLANATION FROM TOYOTA. *TR.”

8 c. An August 21, 2014 complaint with NHTSA reported an August
9 7, 2014 accident involving a 2013 Toyota Avalon Hybrid in
10 Indiana, Pennsylvania. The complaint states: “TL* THE
11 CONTACT OWNED A 2013 TOYOTA AVALON HYBRID.
12 THE CONTACT’S VEHICLE WAS STRUCK BY A DRUNK
13 DRIVER, WHICH CAUSED THE CONTACT TO CRASH
14 THE VEHICLE INTO AN EMBANKMENT. THE VEHICLE
15 ROLLED OVER SEVERAL TIMES. THE AIR BAGS
16 FAILED TO DEPLOY. THE CONTACT AND FRONT
17 PASSENGER WERE INJURED AND RECEIVED MEDICAL
18 ATTENTION. THE DRIVER FROM THE OTHER VEHICLE
19 ALSO SUSTAINED INJURIES. A POLICE REPORT WAS
20 FILED AND THE VEHICLE WAS DESTROYED. THE
21 MANUFACTURER WAS NOTIFIED. THE FAILURE
22 OCCURRED WHILE DRIVING 40 MPH. THE
23 APPROXIMATE FAILURE MILEAGE WAS 9,500.”

24 531. Between 2012 and the present, dozens of consumers reported to
25 NHTSA that airbags and/or seatbelts had failed in Honda Class Vehicles.
26 Approximately 40 examples of such complaints are attached hereto as Exhibit 5.
27 Three examples of these complaints are quoted below.
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- a. A November 28, 2014 complaint reported an October 21, 2014 accident involving a 2013 Honda Civic. The complaint states: “TL* THE CONTACT OWNS A 2013 HONDA CIVIC. THE CONTACT STATED THAT WHILE MAKING A LEFT TURN, ANOTHER VEHICLE DROVE THROUGH A RED LIGHT AND CRASHED INTO THE FRONT OF THE CONTACTS VEHICLE. THE AIR BAG WARNING LIGHT ILLUMINATED AND THE AIR BAGS FAILED TO DEPLOY. A POLICE REPORT WAS FILED. THE CONTACT SUSTAINED INJURIES TO THE CHEST, THE BACK, ABDOMEN AND SHOULDER PAINS THAT REQUIRED MEDICAL ATTENTION. THE VEHICLE WAS NOT DIAGNOSED OR REPAIRED. THE MANUFACTURER WAS NOTIFIED OF THE FAILURE. THE APPROXIMATE FAILURE MILEAGE WAS 10,000.”

- b. A May 20, 2015 complaint reported an April 23, 2014 accident involving a 2013 Honda Accord. The complaint states: “MY VEHICLE STRUCK ANOTHER VEHICLE IN FRONT OF ME FROM BEHIND. AIRBAG LIGHTS CAME ON YET DID NOT DEPLOY. IMPACT CAUSED DAMAGE TO MY CHEST BY THE SEATBELT. IT CAUSED A TISSUE EXPANDER IMPLANTED IN MY RIGHT BREAST TO BE DAMAGED AND RIPPED OUT THE PLACES STITCHED TO ME. THE TE WAS THERE AS PART OF A BREAST CANCER RECONSTRUCTION PROCESS. SURGERY WAS REQUIRED TO REMOVE AND REPLACE THE TE. THE FRONT END OF THE VEHICLE WAS DAMAGED,

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SENSORS NEEDED REPLACEMENT, AND SEATBELT
STRUCTURE ALSO NEEDED REPLACEMENT.”

c. A September 5, 2016 complaint reported an August 30, 2016
accident involving a 2015 Honda Civic. The complaint states:
“THE VEHICLE (V-2) WAS INVOLVED IN A COLLISION
AT THE 1-5 NB CYPRESS OFF RAMP IN REDDING
CALIFORNIA IN EVENING PEAK HOUR TRAFFIC (AT
1810). V-2 WAS STRUCK BY V-1, WHICH IN TURN
PUSHED V-2 INTO V-3. BOTH V-1 AND V-2 WERE
STATIONARY AT THE TIME OF COLLISION. V-1, A
ISUZA TROOPER SUSTAINED MINOR FRONT END
DAMAGE. V-2 RECEIVED MINOR FRONT END DAMAGE,
AND MAJOR REAR END DAMAGE. V-3, A KIA SOUL
RECEIVED MINOR REAR END DAMAGE. THE ISSUE IS
THAT THE V-2 AIRBAG DID NOT DEPLOY OR THE
SEATBELT RESTRAIN THE DRIVER IN THE VEHICLE.
THE DRIVER STRUCK THE STEERING WHEEL
RECEIVING A MAJOR BRAIN CONCUSSION AND
BROKEN NOSE UPON BEING PUSHED BY V-1 INTO V-3.
SEVERAL ON THE SCENE QUESTIONED THE LACK OF
AIRBAG DEPLOYMENT OR THE SEAT-BELT NOT
PROVIDING THE RESTRAINT NECESSARY TO PREVENT
THE INJURY. MY CONCERN IS THIS IS A FAILURE OF
THE SAFETY SYSTEMS NECESSARY TO RESTRAIN THE
DRIVER. REPORTING PARTY IS THE FATHER OF THE
DRIVER OF V-2, A TEEN DRIVER.”

1 532. Since at least 2014, dozens of consumers have reported to Mitsubishi
2 or NHTSA that the airbags in their Mitsubishi Class Vehicle failed to deploy after a
3 crash. Examples of such complaints are attached hereto as Exhibit 6. For example:

- 4 a. On December 30, 2014, a consumer contacted Mitsubishi's
5 Customer Relations hotline to inquire why the airbags in her
6 2013 Outlander did not deploy after she rear-ended the car in
7 front of her at 40 miles per hour.
- 8 b. On January 27, 2015, a consumer contacted Mitsubishi's
9 Customer Relations hotline to report a severe accident where the
10 airbags in his 2014 Lancer Evolution did not deploy and he was
11 ejected from the vehicle. Mitsubishi's internal notes indicate that
12 the consumer suffered extensive injuries, including "BROKEN
13 COLLAR BONE[,] HEAD LACERATION WITH STAPLES[,]
14 BOTH WRIST AND PELVIS."
- 15 c. On May 16, 2016, a consumer contacted Mitsubishi's Customer
16 Relations hotline to report that his son was in a four-car freeway
17 collision where the airbags in his 2013 Lancer Sportback did not
18 deploy and the seatbelt restraints failed to lock. The vehicle
19 sustained a frontal impact and was traveling at approximately
20 50-60 miles per hour at the time of collision.
- 21 d. A publicly available complaint with NHTSA dated October 21,
22 2016 reported a September 13, 2016 accident involving a 2015
23 Mitsubishi Lancer in Centralia, Washington. The complaint
24 states: "I WAS TRAVELING ALONG 20 MILES BELOW
25 THE SPEED LIMIT HAD A DEER JUMPED OUT IN FRONT
26 OF ME I SWEAR TO MISS IT MY FRONT PASSENGER
27 SIDE TIRE WENT OFF THE ASPHALT AND INTO SOFT
28 DIRT AND MY CAR HIGH CENTERED ON THE RAISED

1 LIP OF THE ROAD AND SLID DOWN THE HILLSIDE
2 LANDING INTO TREES BOTH GOING FORWARD AND
3 TOWARDS THE RIGHT SIDE OF THE CAR STOPPING
4 BECAUSE OF TREES IT DESTROYED THE FRONT END
5 THE ENTIRE UNDERCARRIAGE THE ENTIRE
6 PASSENGER SIDE OF THE CAR POPPED OPEN THE
7 SUNROOF TRIED PUSHING THE ROOF OFF THE BACK
8 DRIVER SIDE OF THE CAR AND NO AIRBAGS WENT
9 OFF NO SAFETY FEATURES OTHER THAN THE SEAT
10 BELT WORK.”

11 e. A publicly available complaint with NHTSA dated June 8, 2017
12 reported a May 13, 2017 accident involving a 2015 Mitsubishi
13 Lancer in Kent, Washington. The complaint states: “SON WAS
14 DRIVING VEHICLE REAR ENDED A VEHICLE, AT 35
15 MPH, ROLLED MITSUBISHI 8 TO 9 TIMES, SLED ON
16 ROOF ABOUT 50 FEET BEFORE COMING TO A STOP UP
17 SIDE DOWN. AIRBAGS NEVER DEPLOYED. NOT EVEN
18 WHEN THE TOW TRUCK FLIPPED CAR RIGHT SIDE UP.”

19 f. A publicly available complaint with NHTSA dated November
20 14, 2017 reported a November 12, 2017 accident involving a
21 2015 Mitsubishi Lancer in Boyers, Pennsylvania. The complaint
22 states: “DRIVING ON INTERSTATE AT 1130 AT NIGHT NO
23 RAIN OR ANYTHING. I HIT A DEER AT 72 MPH LOTS OF
24 DAMAGE TO THE FRONT AND DRIVERSIDE. MY SEAT
25 BELT WAS LOCKED BUT NOT ONE OF MY AIR BAGS
26 COME OUT...”

27 g. A publicly available complaint with NHTSA dated January 16,
28 2020 reported a January 11, 2020 accident involving a 2016

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Mitsubishi Lancer in Lake Havasu City, Arizona. The complaint states: “ACCIDENT THAT RESULTED IN THE CAR BEING DECLARED TOTAL LOSS. THE CAR WAS HIT IN THE UPPER FRONT AND SIDE AREA OF DRIVERS SIDE. DURING THE ACCIDENT THE AIR BAGS DID NOT DEPLOY. RESULTED IN INJURIES, OF COURSE. THE CAR WAS MAKING LEFT HANDED TURN FROM RESIDENTIAL AREA ONTO A BUSY MAIN STREET. AND THE OTHER VEHICLE WAS NOT PAYING ATTENTION AND HIT THE CAR WHILE IT WAS TRYING TO TURN. THE CAR WAS GOING APPROXIMATELY 15-20 MPH. THE OTHER VEHICLE WAS GOING 40-45 MPH. WHAT WOULD CAUSE THE AIR BAGS TO MALFUNCTION?? BECAUSE I WOULD LOVE TO KNOW WHY INJURIES HAD TO EVEN OCCUR SINCE THEY ONLY HAPPENED DUE TO THE MALFUNCTION OF THE AIR BAGS.”

8. The abandonment of the DS84 ASIC by all Defendants confirms the ACU Defect.

533. Upon information and belief, ZF Electronics USA, ZF Passive Safety USA, and ZF Automotive USA stopped using the DS84 ASIC in any ACUs intended for the United States vehicles in or around 2019. The complete abandonment of the DS84 ASIC after NHTSA announced its investigation of all unrecalled vehicles with the ASIC is further evidence that each of the Defendants know the DS84 ASIC was and is defective.

534. The next generation of ACUs rolled out by ZF Electronics USA in 2019 used an ASIC made by Infineon instead of the DS84 ASIC made by the ST Defendants.

1 **9. Defendants’ statements blaming DS84 ACU malfunctions on**
2 **vehicle-specific features, such as wire harnesses, are misleading.**

3 535. Many of the Defendants try to downplay the danger posed by the ACU
4 Defect by claiming that some Class Vehicles have additional components to protect
5 the DS84 ASIC. However, these arguments fail because those additional
6 components do not fix the ACU’s vulnerability to EOS. Adding protective
7 components as a band-aid to restrain the flow of electricity to the defective DS84
8 ACU does not fix the ACU Defect. Indeed, airbag failures in multiple crashes have
9 been linked to EOS in defective DS84 ACUs with a range of different protective
10 components. For example, the DS84 ACUs in Hyundai, Kia, Toyota, and FCA
11 Class Vehicles had various levels of ostensible component protection (characterized
12 by NHTSA as ranging from “low” to “mid-level” to “high”), but these Vehicle
13 Manufacturers each determined that the defective DS84 ACUs were dangerously
14 vulnerable to EOS even with their protective components, and decided to recall
15 them. For example, Toyota Engineering USA recalled Toyota Corollas with a
16 purportedly high level of circuit protection (two .12 ampere Schottky diodes), FCA
17 recalled Chrysler 200s with a purportedly mid-level of circuit protection (one .12
18 ampere Schottky diode), and Kia recalled Kia Fortes with a low level of circuit
19 protection (no Schottky diodes).

20 536. The most common protective component added to the defective DS84
21 ACUs is the so-called “Schottky” diode, which is added on the crash sensor
22 communication line.¹⁵ These diodes are not part of the ASIC and are not an
23 absolute shield against transients and EOS. Instead, they may offer some protection
24 against certain levels of transient electricity moving up the crash sensor lines. But

25 _____
26 ¹⁵ The crash sensor communication on the DS84 ACU is a line on the ACU circuit
27 board that carries the electrical signals sent by the crash sensor wires in the front of
28 the vehicle. The DS84 ACU’s communication line uses a so-called DSI protocol,
which refers to the technology used to manage the flow of these signals.

1 when a transient's power level exceeds the diode's thresholds, the diode(s) can fail,
2 and EOS can still occur in the ASIC. Comparative testing summarized in
3 documents produced by Toyota USA show that DS84 ACUs with the highest level
4 of diode protection (i.e., 1-ampere Schottky diodes) are still 3-4 times less resistant
5 to transients than three earlier ACU models made by ZF Electronics USA, and at
6 least 2-3 times weaker to transients than ACUs made by Denso.

7 537. Moreover, FCA has acknowledged that it cannot rule out the ACU
8 Defect as the cause of nondeployments in six crashes involving FCA Class
9 Vehicles with 1-ampere Schottky diodes and a resistor. These incidents include a
10 2016 crash involving a 2016 Jeep Patriot in South Dakota, a 2017 crash involving a
11 2017 Jeep Compass in Michigan, a 2017 crash involving a 2016 Jeep Patriot in
12 Kentucky, a 2017 crash involving a 2017 Jeep Compass in Kentucky, a 2018 crash
13 involving a 2017 Jeep Patriot in Kentucky, and a 2018 crash involving a 2016 Jeep
14 Wrangler in Oklahoma. The vast majority of Class Vehicles have an even lower
15 level of circuit protection than these FCA vehicles had.

16 538. Apart from pointing to varying levels of protection for the DS84
17 ASICs, Defendants have also attempted to downplay the scope of the ACU Defect
18 by blaming observed cases of ASIC EOS on purported vehicle-specific variations
19 in the physical layout of the wires around the ACU and crash sensors. But wiring
20 layouts don't cause non-defective ACUs to fail. The defective DS84 ACU and
21 ASIC is the root cause of the airbag and seatbelt failures. The millions of vehicles
22 that have been recalled have various different wiring layouts, but all still have the
23 same vulnerability to EOS in a crash. The implausible defense of "vehicle-specific"
24 wiring layout, which the ZF Defendants, Toyota Defendants, and FCA have
25 asserted in communications with NHTSA, assumes (without evidence) that the
26 wiring layout in these dozens of different vehicles, each of which was recalled due
27 to the confirmed ACU Defect, did not vary meaningfully:

- 28 a. 2012–2018 Toyota Avalon;

- 1 b. 2013–2018 Toyota Avalon Hybrid;
- 2 c. 2011–2019 Toyota Corolla;
- 3 d. 2011–2013 Toyota Matrix;
- 4 e. 2010–2014 Chrysler 200;
- 5 f. 2010 Chrysler Sebring;
- 6 g. 2010–2014 Jeep Patriot;
- 7 h. 2010–2014 Jeep Compass;
- 8 i. 2010–2014 Jeep Compass;
- 9 j. 2010–2014 Dodge Avenger;
- 10 k. 2010–2012 Dodge Caliber;
- 11 l. 2011–2013 Hyundai Sonata;
- 12 m. 2011–2012 Hyundai Sonata Hybrid;
- 13 n. 2010–2013 Kia Forte;
- 14 o. 2010–2013 Kia Forte Koup; and
- 15 p. 2011–2013 Kia Optima.

16 The more plausible explanation for the common observed vulnerability to ASIC
17 EOS across all these various vehicles is the one common feature they indisputably
18 share: a DS84 ACU with a DS84 ASIC.

19 539. No wiring is immune to transients. For this reason, any vehicle with
20 the DS84 ACU and ASIC can have its airbags and seatbelts fail in crashes in which
21 they should deploy and pretension, regardless of the type of wiring used. Insofar as
22 the ZF Defendants, Toyota Defendants, and FCA have asserted that the DS84 ACU
23 Defect poses a danger only in vehicles with “cross-car” crash sensor wiring, they
24 are wrong for several reasons.

- 25 a. First, upon information and belief, many of the recalled
26 Hyundai-Kia Class Vehicles did not have this type of cross-car
27 wiring, but Hyundai USA and Kia USA nonetheless had to
28 recall the vehicles due to the observed cases where airbags and

- 1 seatbelts failed due to EOS in real-world crashes and crash tests.
2 These vehicles had crash sensor damage and EOS even without
3 cross-car wiring.
- 4 b. Second, EOS has been confirmed on several DS84 ASICs
5 retrieved from Jeep Wranglers, which also did not have cross-
6 car wiring. At least one of these Jeep Wranglers experienced an
7 inadvertent airbag deployment.
- 8 c. Third, FCA acknowledged to NHTSA in September 2019 that it
9 cannot rule out the ACU Defect in at least fifteen crashes
10 involving nondeployments in Class Vehicles without cross-car
11 wiring, including eight Dodge Rams, five Jeep Wranglers, one
12 Jeep Liberty, and one Fiat 500.¹⁶
- 13 d. Furthermore, Toyota Japan has stated that the wire harness did
14 not sever in at least one crash without airbag deployment that
15 occurred in Turkey. The DS84 ASIC retrieved from this Toyota
16 vehicle nonetheless had EOS damage. Similarly, in a Hyundai
17 Sonata crash test from March 2018, the ACU had signs of EOS
18 damage even though there was no observed abnormality (such
19 as cut wires) that could have caused EOS.
- 20 e. Finally, cross-car wiring does not appear to explain away dozens
21 of warranty returns from the Vehicle Manufacturers with signs
22 of EOS, or the incidents of inadvertent deployment due to EOS
23 in DS84 ACUs, because these incidents occurred without any

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25 ¹⁶ The Dodge Ram crashes occurred in 2010 in Texas, in 2011 in Georgia, in 2012
26 in North Carolina, in 2014 in West Virginia and Arkansas, and in 2015 in Maine,
27 Pennsylvania, and Connecticut. The Jeep Wrangler crashes occurred in 2011 in
28 West Virginia, in 2014 in California, in 2015 in Georgia and Iowa, and in 2014 in
New York. The Jeep Liberty crashed in 2017 in Pennsylvania, whereas the Fiat 500
crashed in 2015 in California.

1 crash to damage front-end crash sensor wiring. Accordingly,
2 that wiring is not the sole culprit for the types of transients that
3 can occur in crash vehicles.

4 **B. There are millions of Class Vehicles equipped with defective DS84**
5 **ACUs.**

6 540. The Class Vehicles are vehicles equipped with DS84 ACUs that
7 contain a DS84 ASIC.

8 541. Discovery remains ongoing. Based on the incomplete information
9 available at this time, Plaintiffs understand the Class Vehicles are as follows:

- 10 a. 2011–2019 Hyundai Sonata;
- 11 b. 2011–2019 Hyundai Sonata Hybrid;
- 12 c. 2010–2013 Kia Forte;
- 13 d. 2010–2013 Kia Forte Koup;
- 14 e. 2011–2020 Kia Optima;
- 15 f. 2011–2016 Kia Optima Hybrid;
- 16 g. 2011–2012, 2014 Kia Sedona;
- 17 h. 2010–2014 Chrysler 200;
- 18 i. 2010 Chrysler Sebring;
- 19 j. 2010–2014 Dodge Avenger;
- 20 k. 2010–2017 Jeep Compass;
- 21 l. 2010–2013 Jeep Liberty;
- 22 m. 2010–2017 Jeep Patriot;
- 23 n. 2010–2018 Jeep Wrangler;
- 24 o. 2010–2012 Dodge Caliber;
- 25 p. 2009–2012 Dodge Ram 1500;
- 26 q. 2010–2012 Dodge Ram 2500/3500;
- 27 r. 2011–2012 Dodge Ram 3500/4500/5500 Cab-Chassis;
- 28 s. 2010–2012 Dodge Nitro;

- 1 t. 2012–2019 Fiat 500;
- 2 u. 2013–2015 Honda Accord;
- 3 v. 2012–2015 Honda Civic (including GX, SI and Hybrid models);
- 4 w. 2012–2016 Honda CR-V;
- 5 x. 2013–2014 Honda Fit EV;
- 6 y. 2012–2017 Honda Fit;
- 7 z. 2012–2014 Honda Ridgeline;
- 8 aa. 2014–2019 Acura RLX (and the Hybrid model);
- 9 bb. 2012–2014 Acura TL;
- 10 cc. 2015–2017 Acura TLX;
- 11 dd. 2012–2014 Acura TSX (and the TSX Sport Wagon model);
- 12 ee. 2011–2019 Toyota Corolla;
- 13 ff. 2011–2013 Toyota Corolla Matrix;
- 14 gg. 2012–2018 Toyota Avalon;
- 15 hh. 2013–2018 Toyota Avalon HV;
- 16 ii. 2012–2019 Toyota Tacoma;
- 17 jj. 2012–2017 Toyota Tundra;
- 18 kk. 2012–2017 Toyota Sequoia;
- 19 ll. 2013–2017 Mitsubishi Lancer;
- 20 mm. 2013–2015 Mitsubishi Lancer Evolution;
- 21 nn. 2013–2015 Mitsubishi Lancer Ralliart;
- 22 oo. 2013–2016 Mitsubishi Lancer Sportback; and
- 23 pp. 2013 Mitsubishi Outlander.

24 542. Information produced by Defendants to date indicates there are over
25 19 million Class Vehicles.

- 26 a. Information produced by the domestic Toyota Defendants
- 27 indicates that there are 5,177,854 Toyota Class Vehicles.

28

- 1 b. Information produced by the domestic Honda Defendants
- 2 indicates that there are 3,593,499 Honda Class Vehicles.
- 3 c. Information produced by Kia USA indicates that there are
- 4 approximately 1,454,847 Kia Class Vehicles.
- 5 d. Information produced by Hyundai USA indicates that there are
- 6 approximately 1,866,060 Hyundai Class Vehicles.
- 7 e. Information produced by the domestic ZF Defendants indicates
- 8 that over 7,100,651 DS84 ACUs shipped for use in FCA's U.S.
- 9 vehicles. Based on this information, Plaintiffs allege there are
- 10 approximately 7,100,651 FCA Class Vehicles.
- 11 f. Information produced by Mitsubishi USA indicates that there
- 12 are approximately 97,565 Mitsubishi Class Vehicles.

13 **C. Installation of the DS84 ASIC and ACU in the Class Vehicles was the**
14 **result of a joint effort that involved every Defendant group.**

15 543. As explained more fully below, Defendants are jointly responsible for
16 including the DS84 ACU and DS84 ASIC in the Class Vehicles.

17 **1. Between 2005 and 2008, ZF Electronics USA, ZF Passive Safety**
18 **USA, ZF Automotive USA, ST USA, and ST Italy jointly designed**
19 **the DS84 ASIC.**

20 544. Upon information and belief, on December 15, 2004, ZF Electronics
21 USA sent a Request for Quotation to several ASIC suppliers, including ST USA.
22 The Request sought proposals for an ASIC that could fire the squibs (i.e., trigger
23 the airbag inflators) for use in some of ZF Electronics USA's ACUs.

24 545. Upon information and belief, ZF Passive Safety USA employed the
25 vast majority of the engineers and other technical personnel that assisted with the
26 preparation of the Request for Quotation.

27 546. On January 3, 2005, ST USA responded to the Request for Quotation.
28 Upon information and belief, ST Italy assisted ST USA with that response by

1 providing its expertise on chip design to inform the proposal. In doing so, ST Italy
2 knew and intended that its expertise would be used to make a design proposal to a
3 U.S.-based company (ZF Electronics USA) for the manufacture of an ACU in the
4 U.S. ST Italy also intended for its design proposals to ultimately be used for a key
5 component of the passive safety systems in U.S. vehicles.

6 547. The January 3, 2005 written response from ST USA and ST Italy
7 proposed a family of devices based on an existing design, the UT48, which ZF
8 Electronics USA and ZF Passive Safety USA had not previously used. The UT48
9 combined the squib drivers (i.e. the output channel to trigger the airbag inflators)
10 and satellite channels (i.e., the input signal from the crash sensors on the front end
11 of the vehicle). These two different functions previously required two chips.

12 548. After several months of communications about the proposal, ZF
13 Electronics USA, ZF Passive Safety USA, ST USA, and ST Italy met on March 24,
14 2005 to develop an agenda for a meeting to be held in early April 2005 at ST Italy's
15 facility in Castelletto, Italy. Although they were employees of ZF Passive Safety
16 USA, George Backos and Keith Miciuda also attended on behalf of ZF Electronics
17 USA. Johannes Konle, an employee of TRW Automotive GmbH, also attended on
18 behalf of ZF Electronics USA and ZF Passive Safety USA. Frank Battaglia, [REDACTED]
19 [REDACTED], Roger Forchhammer, [REDACTED]
20 Joseph Notaro, [REDACTED] and Christopher Thibeault attended on behalf of
21 ST Italy and ST USA.¹⁷ At this meeting, ZF Electronics USA, ZF Passive Safety
22 USA, ST Italy, and ST USA discussed the specifications, schedule, and other
23 details about the development of the DS84 ASIC for use in DS84 ACUs.

24 _____
25 ¹⁷ The domestic ZF Defendants provided interrogatory responses that identify all of
26 these individuals as employees of ST USA. These interrogatory responses were
27 verified by Emmanuel Goodman, an employee of ZF Passive Safety USA who has
28 also held himself out as a technical specialist working for ZF Electronics USA.
Based on ZF's interrogatory responses, these individuals were the joint agents of
ST Italy and ST USA

1 549. On April 5, 6, and 7, 2005, ZF Electronics USA and ZF Passive Safety
2 USA met with ST USA and ST Italy at one of ST Italy's facilities in Castelletto,
3 Italy. George Backos, Keith Miciuda,¹⁸ Johannes Konle, Tom VanDamme,
4 Matthias Goebel, Martin Mayer, and Armin Schmidt attended on behalf of ZF
5 Passive Safety USA and ZF Electronics USA.¹⁹ [REDACTED] Antonella Grimald,
6 [REDACTED]
7 [REDACTED] Joseph Notaro, [REDACTED]
8 [REDACTED]
9 [REDACTED] Christopher Thibeault, and [REDACTED] attended on behalf of
10 ST USA and ST Italy.²⁰

11 550. This meeting between ZF Passive Safety USA, ZF Electronics USA,
12 ST USA, and ST Italy took place over the course of three days. The comprehensive
13 meetings included review of specifications, laboratory tours, and discussions of the
14 DS84 ASIC, technical requirements the DS84 ASIC had to meet, tests to run,
15 potential features to include, and a timeline for design and production, among
16 potentially other items. The third day of meetings was held at an ST USA
17 manufacturing site in Agrate, Italy.

18 551. Beginning in or around 2005 or 2006, technical employees at ZF
19 Passive Safety USA and ZF Electronics USA began to design the DS84 ACUs with
20 the assumption that they would contain the DS84 ASIC. Upon information and

21 _____
22 ¹⁸ Mr. Miciuda was an employee of ZF Passive Safety USA.

23 ¹⁹ Although Konle, Goebel, Mayer, and Schmidt may have been employees of a
24 German ZF subsidiary, they represented the interests of ZF Electronics USA in
25 these discussions and their acts are attributable to ZF Electronics USA.

26 ²⁰ The domestic ZF Defendants provided interrogatory responses that identify all of
27 these individuals as employees of ST USA. These interrogatory responses were
28 verified by Emanuel Goodman, an employee of ZF Passive Safety USA who has
also held himself out as a technical specialist working for ZF Electronics USA.
Based on ZF's interrogatory responses, these individuals were the joint agents of
ST Italy and ST USA.

1 belief, this assumption was based on at least an agreement in principle about the
2 DS84 ASIC development and design between ST USA, ST Italy, ZF Passive Safety
3 USA, and ZF Electronics USA. The ZF Passive Safety USA employees responsible
4 for designing the DS84 ACUs included Rich Guyon, Keith Miciuda, Niyant Patel,
5 and potentially others. Upon information and belief, these employees also worked
6 on behalf of ZF Electronics USA on this project. All the Domestic ZF Defendants
7 refer to this team of technical employees as the “core” team responsible for the
8 design of the DS84 ACU.

9 552. Throughout 2005, 2006, and 2007, ST USA and ST Italy designed,
10 tested, and modified the DS84 ASIC with ZF Electronics USA’s and ZF Passive
11 Safety USA’s input. ZF Electronics USA, ZF Passive Safety USA, ST USA and ST
12 Italy communicated by regular conference calls on a weekly cadence. According to
13 verified interrogatory responses, ZF Electronics USA spoke with “at least certain of
14 its customers concerning the development of the DS84” ASIC during this time.
15 Upon information and belief, these “certain” customers included the Vehicle
16 Manufacturer Defendants.

17 553. From on or about January 30 to February 2, 2007, ZF Electronics
18 USA, ZF Passive Safety USA, ST USA, and ST Italy held a design review meeting
19 at one of ST Italy’s facilities in Castelleto, Italy. Attendees on behalf of ZF Passive
20 Safety USA and ZF Electronics USA included Matthias Goebel, Keith Miciuda,
21 Holger Sradnick, and Tom VanDamme.²¹ At this design review meeting, ZF
22 Electronics USA, ZF Passive Safety USA, ST USA and ST Italy discussed the
23 project timelines and the DS84 ASIC’s specifications, among potentially other
24

25 _____
26 ²¹ Although Goebel and Sradnick may have been employees of a German ZF
27 subsidiary, they represented the interests of ZF Electronics USA and ZF Passive
28 Safety USA in these discussions and their acts are attributable to ZF Electronics
USA and ZF Passive Safety USA.

1 items. The parties also discussed ST USA and ST Italy's final testing plan and the
2 results from the testing conducted on the DS84 ASIC to that date.

3 554. From on or about March 27 to March 29, 2007, ZF Passive Safety
4 USA, ZF Electronics USA, ST USA, and ST Italy met at a ST Italy facility in
5 Castelletto, Italy for a design review. Rich Guyon and Keith Miciuda, among
6 potentially others, attended for ZF Passive Safety USA and ZF Electronics USA.

7 [REDACTED]
8 [REDACTED] Christopher Thibeault, and several other program
9 managers attended on behalf of ST USA and ST Italy.²² On the first day, ZF
10 Electronics USA, ST USA, and ST Italy discussed the DS84 ASIC's schedule and
11 reviewed technical items. On the second and third days, ZF Electronics USA, ZF
12 Passive Safety USA, ST USA, and ST Italy discussed various technical aspects of
13 the DS84 ASIC and the engineering and design plan moving forward. This included
14 discussions about the testing plan for the DS84 ASIC, a review of the DS84 ASIC's
15 specifications, and potential action items for the companies moving forward.

16 555. On or about May 2 and May 3, 2007, Keith Miciuda and Holger
17 Sradnick travelled on behalf of ZF Electronics USA and ZF Passive Safety USA to
18 ST Italy's facility in Castelletto, Italy, to meet with ST Italy and ST USA for a
19 design review. [REDACTED] Richard Mont, [REDACTED] Christopher
20 Thibeault, and [REDACTED] attended on behalf of ST Italy and ST USA.²³ During

21 _____
22 ²² The domestic ZF Defendants provided interrogatory responses that identify all
23 these individuals as employees of ST USA. These interrogatory responses were
24 verified by Emanuel Goodman, an employee of ZF Passive Safety USA who has
25 also held himself out as a technical specialist for ZF Electronics USA. Based on
26 ZF's interrogatory responses, these individuals were the joint agents of ST Italy and
27 ST USA.

28 ²³ The domestic ZF Defendants provided interrogatory responses that identify all
these individuals as employees of ST USA. These interrogatory responses were
verified by Emanuel Goodman, an employee of ZF Passive Safety USA who has
also held himself out as a technical specialist for ZF Electronics USA. Based on

Footnote continued on next page

1 the first day, the companies reviewed the schedule for all devices to be provided by
2 ST USA and ST Italy, conducted a technical review of the devices, including the
3 DS84 ASIC, and reviewed design-testing results for the DS84 ASIC, among other
4 topics. During the second day, the parties continued to review design-testing results
5 for the DS84 ASIC, including testing methodologies for thermal simulation, and
6 continued the technical review of the DS84 ASIC, among other topics.

7 556. In 2008, ZF Passive Safety USA, ZF Electronics USA, ZF Automotive
8 USA, ST USA, and ST S.r.l. reached an agreement on the final design of the DS84
9 ASIC. ZF Automotive USA's involvement is based on documents attributing
10 ownership over design specifications to ZF Automotive USA. Upon information
11 and belief, ZF Automotive USA's ownership of these specifications and other
12 intellectual property associated with the design allowed other regional subsidiaries
13 outside the United States to make the DS84 ACU for vehicles sold in foreign
14 markets.

15 **2. Pursuant to agreements between ZF Passive Safety USA, ZF**
16 **Electronics USA, ST USA, and ST Italy, ST Malaysia**
17 **manufactured DS84 ASICs and shipped them to ST USA in**
18 **California.**

19 557. Upon information and belief, after ZF Passive Safety USA, ZF
20 Electronics USA, ST USA, and ST Italy agreed upon the design for DS84 ASICs,
21 ZF Electronics USA placed orders for DS84 ASICs with ST USA.

22 558. Upon information and belief, pursuant to an agreement between ST
23 USA and ZF Electronics USA, ST USA then directed ST Malaysia to manufacture
24 the DS84 ASICs covered by any order.

25 559. ST Malaysia then shipped DS84 ASICs ordered by ZF Electronics
26 USA to ST USA's distribution center in the Los Angeles Area, also known as the

27 *Footnote continued from previous page*

28 ZF's interrogatory responses, these individuals were the joint agents of ST Italy and ST USA.

1 “STMicro LAX HUB.” Upon information and belief, ST Malaysia made these
2 shipments with full knowledge that all of the DS84 ASICs shipped to California
3 would then be shipped to ZF Electronics USA in Illinois.

4 560. ST USA then shipped the DS84 ASICs received from ST Malaysia at
5 the Los Angeles distribution center to a ZF Electronics USA facility in Illinois.

6 561. ZF Electronics USA then manufactured the DS84 ACUs for use in
7 Class Vehicles in Illinois, and incorporated into the ACUs the DS84 ASICs it had
8 received from ST USA and ST Malaysia.

9 **3. Between 2006 and 2012, ZF Electronics USA reached separate**
10 **agreements with each of the Vehicle Manufacturer Defendant**
11 **groups regarding the use of the defective DS84 ACUs.**

12 562. Upon information and belief, ZF Electronics USA reached an
13 agreement with each Vehicle Manufacturer Defendant group concerning the DS84
14 ACUs by responding to written Requests for Quotation. These Requests for
15 Quotation sent by each Vehicle Manufacturer Defendant group contained the
16 Vehicle Manufacturer’s specifications, which set forth the requirements that an
17 ACU must meet for use in that group’s vehicles. For each Vehicle Manufacturer
18 Defendant group, ZF Electronics USA responded with a proposal to use the DS84
19 ACUs, which succeeded in winning a competitive bid for the supply of DS84
20 ACUs for each Class Vehicle make and model.

21 563. Upon information and belief, ZF Passive Safety USA provided all the
22 technical support and know-how for ZF Electronics USA’s preparation of responses
23 to Requests for Quotation issued by the Vehicle Manufacturer Defendant groups.
24 While ZF Electronics USA has previously claimed it was the sole entity responsible
25 for the design of the DS84 ACU, discovery has confirmed that the vast majority of
26 the engineers who designed the DS84 ACU received paychecks from ZF Passive
27 Safety USA throughout the relevant time period. Accordingly, ZF Passive Safety
28 USA also was responsible for the design of the DS84 ACU.

1 564. Upon information and belief, ZF Automotive USA and ZF TRW Corp.
2 knew of and approved ZF Electronics USA’s agreements with each Vehicle
3 Manufacturer Defendant group concerning the DS84 ACU.

4 565. Upon information and belief, the DS84 ACU’s low price was an
5 important factor to the Vehicle Manufacturers – including FCA, Hyundai Korea,
6 Kia Korea, Hyundai Mobis, Toyota Engineering USA,²⁴ Honda Japan, Honda
7 Engineering USA, and Mitsubishi Japan – when they decided which ACUs to
8 purchase and place in the Class Vehicles.

9 **a. ZF TRW Corp., ZF Automotive USA, and ZF Electronics**
10 **USA marketed the DS84 ACU to the Vehicle Manufacturer**
11 **Defendants as a scalable ACU designed for “low-cost vehicle**
12 **markets.”**

13 566. Between 2006 and 2014, ZF Automotive USA made “[r]elentlessly
14 driv[ing] down costs” one of four key strategic priorities for itself and its
15 subsidiaries, including ZF Electronics USA. Several publicly available documents
16 published by ZF Automotive USA during this time period expressly list driving
17 down costs as a key priority.

18 567. Upon information and belief, the relatively low cost of the DS84
19 ACUs was a significant reason for ZF Electronics USA’s success in the bidding
20 process with each of the Vehicle Manufacturer Defendant groups. Shortly before
21 ZF Electronics USA began high volume production-level shipments for use in
22 Class Vehicles in 2008 and 2009, ZF Electronics USA and ZF TRW Corp. issued
23 press releases under their former names that touted the low cost of the DS84 ACUs.
24 For example, one press release about the DS84 ACUs dated May 22, 2008 reads:

25 The TRW Automotive Holdings Corp. (NYSE: TRW)
26 subsidiary, TRW Automotive U.S. LLC, has developed a
27 scalable airbag control unit (ACU) designed for the growing

28 ²⁴ While non-party Toyota Japan made the selection of the DS84 ACU, Toyota Engineering USA procured the ACU for use in Toyota Class Vehicles.

1 low-cost vehicle markets. The intelligent solution allows the
2 ACU to be adapted within a platform to offer two options –
3 standard and enhanced – for models sold within emerging
4 territories and for those exported to developed markets.

5 Ed Carpenter, vice president, TRW Electronics, said: “This
6 scalable ACU allows cost driven manufacturers to equip their
7 vehicles with safety electronics while maintaining their
8 competitiveness, and offers emerging safety electronics
9 markets the opportunity to fit their vehicles with advanced
10 safety equipment. This flexibility is essential for OEMs
11 looking for a single solution to satisfy both the emerging and
12 export markets.”

13 The standard system is configured for cost effective
14 applications of one to four squibs with no satellite interface,
15 but provides the flexibility to be used in an enhanced system,
16 designed to handle additional capability requirements of up to
17 eight squibs and four satellite interfaces. The standard and
18 enhanced options can be offered within the same base unit.

19 TRW’s standard ACU supports front and side crash detection
20 with the additional option of rear crash detection and can
21 support the interface of up to four satellite sensor modules or
22 can be configured for no satellite interface.

23 The metal housing design of the standard ACU meets cost,
24 packaging and reliability requirements while maintaining the
25 mechanical performance necessary for reliable crash sensing.

26 TRW is leading the way in the performance/price ratio with
27 this airbag controller, fulfilling the need for a cost effective
28 ACU not only for value oriented manufacturers, but also for
emerging crash sensor markets such as Brazil, Russia, India
and China.

568. Upon information and belief, the DS84 ACUs in the Class Vehicles
were the “enhanced version” of the ACU described in the May 22, 2008 press
release. Both the enhanced and standard versions used the DS84 ASIC.

1 569. In 2008 and 2009 in particular, around the time of launch of the DS84
2 ACU, the Vehicle Manufacturer Defendants had significant incentives to cut costs.
3 During these years, the automotive industry experienced one of its most significant
4 financial crises in history. Two of the largest automakers in the world, FCA's
5 predecessor and General Motors, filed for bankruptcy as a result of this crisis.

6 **b. ZF Electronics USA reached an agreement with FCA**
7 **regarding the design of the DS84 ACUs to be used in FCA**
8 **Class Vehicles.**

9 570. In 2006, ZF Electronics USA and ZF Passive Safety USA began to
10 adapt the general design of the ACU with the DS84 ASIC for use in FCA Class
11 Vehicles. To complete this adaptation, ZF Electronics USA and ZF Passive Safety
12 USA obtained the express approval of FCA for the design of DS84 ACUs used in
13 all FCA Class Vehicles other than the 2009 Dodge Ram. Chrysler LLC, the
14 predecessor company that filed for bankruptcy in 2009, provided the express
15 approval for the 2009 Dodge Ram. FCA nonetheless assumed the warranty and
16 statutory recall obligations relating to the 2009 Dodge Ram after Chrysler LLC
17 filed for bankruptcy.

18 571. Between 2006 and 2008, ZF Electronics USA and Chrysler LLC
19 reached an agreement that the 2009 Dodge Ram would use the DS84 ACUs.

20 572. In July 2008, ZF Electronics USA made its first high-volume
21 production-level shipment of DS84 ACUs for use in the 2009 Dodge Ram.

22 573. In April 2009, Chrysler LLC filed for bankruptcy.

23 574. In June 2009, ZF Automotive USA and FCA (then operating under the
24 name Chrysler Group LLC), Chrysler LLC's successor, agreed to continue the
25 supplier relationship with ZF Automotive USA and its subsidiaries.

26 575. As part of this continued arrangement, ZF Electronics USA continued
27 to supply DS84 ACUs for installation in FCA Class Vehicles until in or around
28

1 2019, and ZF Passive Safety USA continued to provide support for the design and
2 quality assurance of the DS84 ACUs.

3 576. Upon information and belief, following the June 2009 agreement with
4 ZF Automotive USA and before the DS84 ACUs were installed in the vehicles,
5 FCA agreed to and approved the design of the DS84 ACUs used in FCA Class
6 Vehicles. After reaching this agreement, FCA placed orders for the DS84 ACUs
7 from ZF Electronics USA.

8 577. In 2013, FCA and ZF Electronics USA agreed to some limited changes
9 to the design of DS84 ACUs to be used in certain Jeep vehicles. These design
10 changes did not cure the ACU Defect because the ACUs still contained the DS84
11 ASIC, which is uniquely vulnerable to transient electricity.

12 578. Between 2008 and 2019, ZF Electronics USA made the DS84 ACUs
13 for FCA Class Vehicles in Illinois and shipped them to FCA facilities in Michigan,
14 Illinois, Ohio, and Mexico.

15 579. Upon information and belief, ZF Electronics USA knew the DS84
16 ACUs shipped to FCA's manufacturing sites would be installed in FCA Class
17 Vehicles marketed to United States consumers, among other reasons because it was
18 obligated to ensure they complied with U.S. Federal safety standards.

19 580. Upon information and belief, ZF Electronics USA's, ZF Passive Safety
20 USA's, and ZF Automotive USA's primary point of contact for issues regarding the
21 DS84 ACUs in FCA Class Vehicles was Kevin Plante, a Lead Product Investigator
22 for FCA.

23 **c. ZF Electronics USA reached an agreement with Hyundai**
24 **Korea, Kia Korea, and Hyundai Mobis regarding the design**
25 **of the DS84 ACUs to be used in Hyundai and Kia Class**
26 **Vehicles.**

27 581. In 2007, ZF Electronics USA and ZF Passive Safety USA began to
28 adapt the general design of the ACU with the DS84 ASIC for use in Hyundai-Kia

1 Class Vehicles. To complete this adaptation, ZF Electronics USA and ZF Passive
2 Safety USA obtained the express approval of Hyundai Korea for the design of
3 DS84 ACUs used in Hyundai Class Vehicles and the express approval of Kia Korea
4 for the design of DS84 ACUs used in Kia Class Vehicles.

5 582. After Hyundai Korea and Kia Korea approved of the design of the
6 DS84 ACUs, Hyundai Mobis agreed to manufacture many DS84 ACUs for them.
7 To achieve this goal, Hyundai Mobis required its wholly owned subsidiary, Mobis
8 Parts America, to enter into a licensing agreement with ZF Electronics USA. This
9 agreement permitted Hyundai Mobis to manufacture hundreds of thousands of
10 DS84 ACUs for use in Hyundai-Kia Class Vehicles in South Korea. In doing so,
11 Mobis Part America and Hyundai Mobis reached an agreement with ZF Electronics
12 USA regarding the design of the DS84 ACUs to be used in Hyundai-Kia Class
13 Vehicles.

14 583. Hyundai Mobis also executed its own agreement with ZF Automotive
15 USA in September 2009. This agreement was signed by Dong-Jin Kim, the CEO of
16 Hyundai Mobis and Frank Mueller, who, upon information and belief, was the
17 executive vice president of ZF Automotive USA. Upon information and belief, this
18 agreement allowed Hyundai Mobis to place orders for the DS84 ACUs, and it
19 required ZF Electronics USA to deliver them to any place designated by Hyundai
20 Mobis.

21 584. In 2012, Hyundai Korea, Kia Korea, Hyundai Mobis, and ZF
22 Electronics USA agreed to some limited changes to the design of the DS84 ACU
23 that was to be installed in Hyundai-Kia Class Vehicles going forward. These design
24 changes did not cure the ACU Defect because the ACUs still contained the DS84
25 ASIC, which is uniquely vulnerable to transient electricity.

26 585. Between 2009 and 2019, Hyundai Mobis manufactured hundreds of
27 thousands of DS84 ACUs and shipped them to Hyundai Korea in South Korea.
28 Hyundai Korea then installed these DS84 ACUs in thousands of Hyundai Class

1 Vehicles. Although Hyundai Korea made these Hyundai Class Vehicles in South
2 Korea, it specifically segregated them from other Hyundai vehicles that were
3 intended for sale in other countries, placed certification labels assuring compliance
4 with U.S. Federal safety requirements on the Hyundai Class Vehicles, and ensured
5 those Hyundai Class Vehicles shipped to the United States, with full knowledge
6 Hyundai USA would then distribute them across the United States.

7 586. Between 2009 and 2019, Hyundai Mobis manufactured thousands of
8 DS84 ACUs and shipped them to Kia Korea in South Korea. Kia Korea then
9 installed these DS84 ACUs in thousands of Kia Class Vehicles. Although Kia
10 Korea made these Kia Class Vehicles in South Korea, it segregated them from other
11 Kia vehicles that were intended for sale in other countries, placed certification
12 labels assuring compliance with U.S. Federal safety requirements on the Kia Class
13 Vehicles, and ensured those Kia Class Vehicles shipped to the United States, with
14 full knowledge Kia USA would then distribute them across the United States.

15 587. Between 2009 and 2019, ZF Electronics USA made thousands of
16 DS84 ACUs for Hyundai Class Vehicles in Illinois and shipped them to Hyundai
17 Motor Manufacturing Alabama, LLC in Alabama. Upon information and belief, ZF
18 Electronics USA shipped the DS84 ACUs to Hyundai Motor Manufacturing
19 Alabama, LLC because Hyundai Mobis instructed ZF Electronics USA to do so.
20 Hyundai Motor Manufacturing Alabama, LLC then followed the mandatory designs
21 issued by Hyundai Korea to build Hyundai Class Vehicles. These mandatory
22 designs required Hyundai Motor Manufacturing Alabama, LLC to install DS84
23 ACUs in the Hyundai Class Vehicles built in Alabama. Upon information and
24 belief, ZF Electronics USA knew the DS84 ACUs shipped to Hyundai Motor
25 Manufacturing Alabama, LLC would be installed in Hyundai Class Vehicles
26 marketed to United States consumers.

27 588. Between 2009 and 2019, ZF Electronics USA made thousands of
28 DS84 ACUs for Kia Class Vehicles in Illinois and shipped them to Kia Georgia,

1 Inc. in Georgia. Upon information and belief, ZF Electronics USA shipped the
2 DS84 ACUs to Kia Georgia, Inc. because Hyundai Mobis instructed ZF Electronics
3 USA to do so. Kia Georgia, Inc. then followed the mandatory designs issued by Kia
4 Korea to build Kia Class Vehicles. These mandatory designs required Kia Georgia,
5 Inc. to install DS84 ACUs in the Kia Class Vehicles built in Georgia. Upon
6 information and belief, ZF Electronics USA knew the DS84 ACUs shipped to Kia
7 Georgia, Inc. would be installed in Kia Class Vehicles marketed to United States
8 consumers.

9 589. Upon information and belief, ZF Electronics USA knew the DS84
10 ACUs shipped to Hyundai's and Kia's U.S. manufacturing subsidiaries would be
11 installed in Hyundai-Kia Class Vehicles marketed to United States consumers,
12 because it was obligated to ensure they complied with Federal safety standards
13 applicable to passive safety systems.

14 590. Upon information and belief, ZF Electronics USA's, ZF Passive Safety
15 USA's, and ZF Automotive USA's primary points of contact for issues regarding
16 the DS84 ACUs in Hyundai-Kia Class Vehicles were SK Choi, a senior design
17 engineer for both Hyundai Korea and Kia Korea, and Taewon Park, an employee of
18 Hyundai Mobis.

19 **d. ZF Electronics USA reached an agreement with Toyota**
20 **Japan regarding the design of the DS84 ACUs.**

21 591. In 2008, ZF Electronics USA began to adapt the design of the ACU
22 with the DS84 ASIC for use in Toyota Class Vehicles. To complete this adaptation,
23 ZF Electronics USA obtained the express approval of Toyota Japan for the design
24 of DS84 ACUs used in Toyota Class Vehicles.

25 592. Upon information and belief and based on a written contract produced
26 by the domestic Toyota Defendants, Toyota Engineering USA has a contractual
27 relationship with ZF TRW Corp., ZF Automotive USA, ZF Electronics USA, and
28 ZF Passive Safety USA. According to this contract, Toyota Japan and all its

1 worldwide affiliates are express third-party beneficiaries to the contract. The
2 contract names Toyota Japan; Toyota Motor Manufacturing, Kentucky, Inc.;
3 Toyota Motor Manufacturing, Indiana, Inc.; Toyota Motor Manufacturing Canada,
4 Inc.; and Toyota Sales USA as beneficiaries.

5 593. Between 2009 and 2019, ZF Electronics USA made millions of DS84
6 ACUs for Toyota Class Vehicles in Illinois and shipped them to Toyota Motor
7 Manufacturing, Texas, Inc. in Texas; Toyota Motor Manufacturing Canada Inc. in
8 Canada; Toyota Motor Manufacturing, Indiana, Inc. in Indiana; Toyota Motor
9 Manufacturing de Baja California S. de R.L. de C.V. in Mexico; Toyota Motor
10 Manufacturing, Mississippi, Inc. in Mississippi; and Toyota Motor Manufacturing,
11 Kentucky, Inc. in Kentucky. These Toyota subsidiaries then followed the
12 mandatory designs issued by Toyota Japan to build Toyota Class Vehicles. These
13 mandatory designs required the Toyota manufacturing subsidiaries to install DS84
14 ACUs in the Toyota Class Vehicles.

15 594. Upon information and belief, between 2009 and 2019, ZF Electronics
16 USA also shipped some DS84 ACUs to Toyota Japan in Japan. Toyota Japan then
17 installed these DS84 ACUs in thousands of Toyota Class Vehicles. Although
18 Toyota Japan made these Toyota Class Vehicles in Japan, it segregated them from
19 Toyota vehicles that were intended for sale in other countries, placed certification
20 labels assuring compliance with U.S. safety requirements on the Toyota Class
21 Vehicles, and ensured those Toyota Class Vehicles shipped to the United States,
22 with full knowledge Toyota Sales USA would then distribute them across the
23 United States.

24 595. Upon information and belief, ZF Electronics USA knew the DS84
25 ACUs shipped to Toyota Japan and Toyota's manufacturing subsidiaries would be
26 installed in Toyota Class Vehicles marketed to United States consumers, because it
27 was supposed to ensure they complied with Federal safety standards applicable to
28 passive safety systems.

1 596. Upon information and belief, ZF Electronics USA's, ZF Passive Safety
2 USA's, and ZF Automotive USA's primary point of contact for issues regarding the
3 DS84 ACUs in Toyota Class Vehicles was Tsutomu Kondo, a group manager for
4 Toyota Japan based in Japan.

5 **e. ZF Electronics USA reached an agreement with Honda**
6 **Japan regarding the design of the DS84 ACUs.**

7 597. In 2009, ZF Electronics USA and ZF Passive Safety USA adapted the
8 general design of the ACU with the DS84 ASIC for use in Honda Class Vehicles.
9 To complete this adaptation, ZF Electronics USA and ZF Passive Safety USA
10 obtained the express approval of Honda Japan for the design of DS84 ACUs used
11 Honda Class Vehicles.

12 598. In 2014, Honda Japan and ZF Electronics USA agreed to some limited
13 changes to the design of DS84 ACUs used in some, but not all, Honda Class
14 Vehicles going forward. These design changes did not cure the ACU Defect
15 because the ACUs still contained the DS84 ASIC, which is uniquely vulnerable to
16 transient electricity.

17 599. Between 2009 and 2019, ZF Electronics USA made millions of DS84
18 ACUs for Honda Class Vehicles in Illinois and shipped them to Honda Canada Inc.
19 in Canada; Honda De México S.A. de C.V. in Mexico; Honda Manufacturing of
20 Indiana, LLC in Indiana; and Honda Engineering USA in Ohio. These Honda
21 subsidiaries then followed the mandatory designs issued by Honda Japan to build
22 Honda Class Vehicles. These mandatory designs required the Honda manufacturing
23 subsidiaries to install DS84 ACUs in the Honda Class Vehicles.

24 600. Upon information and belief, between 2009 and 2019, ZF Electronics
25 USA also shipped some DS84 ACUs to Honda Japan in Japan. Honda Japan then
26 installed these DS84 ACUs in thousands of Honda Class Vehicles. Although Honda
27 Japan made these Honda Class Vehicles in Japan, it segregated them from Honda
28 vehicles that were intended for sale in other countries, placed certification labels

1 assuring compliance with U.S. safety requirements on the Honda Class Vehicles,
2 and ensured those Honda Class Vehicles shipped to the United States, with full
3 knowledge Honda USA would then distribute them across the United States.

4 601. Upon information and belief, ZF Electronics USA knew the DS84
5 ACUs shipped to Honda Japan and Honda's manufacturing subsidiaries would be
6 installed in Honda Class Vehicles marketed to United States consumers, because it
7 was obliged to ensure they complied with U.S. safety standards.

8 602. Upon information and belief, ZF Electronics USA's, ZF Passive Safety
9 USA's, and ZF Automotive USA's primary point of contact for issues regarding the
10 DS84 ACUs in Honda Class Vehicles was Nobuhiro Koyoto, a Chief Engineer for
11 Honda Japan in Japan.

12 **f. ZF Electronics USA reached an agreement with Mitsubishi**
13 **Japan regarding the design of the DS84 ACUs.**

14 603. In 2012, ZF Electronics USA and ZF Passive Safety USA adapted the
15 general design of the ACU with the DS84 ASIC for use in Mitsubishi Class
16 Vehicles. To complete this adaptation, ZF Electronics USA and ZF Passive Safety
17 USA obtained the express approval of Mitsubishi Japan for the design of DS84
18 ACUs used in Mitsubishi Class Vehicles.

19 604. Between 2012 and 2019, ZF Electronics USA made tens of thousands
20 of DS84 ACUs for Mitsubishi Class Vehicles in Illinois and shipped them to
21 Mitsubishi Japan in Japan. Mitsubishi Japan then installed DS84 ACUs in the
22 Mitsubishi Class Vehicles. Although Mitsubishi Japan made these Mitsubishi Class
23 Vehicles in Japan, it segregated them from Mitsubishi vehicles that were intended
24 for sale in other countries, placed certification labels assuring compliance with U.S.
25 safety requirements on the Mitsubishi Class Vehicles, and ensured those Mitsubishi
26 Class Vehicles shipped to the United States.

27 605. Upon information and belief, ZF Electronics USA knew the DS84
28 ACUs shipped to Mitsubishi Japan would be installed in Mitsubishi Class Vehicles

1 marketed to United States consumers, because it was supposed to ensure they
2 complied with U.S. safety standards.

3 606. Upon information and belief, ZF Electronics USA's, ZF Passive Safety
4 USA, and ZF Automotive USA's primary point of contact for issues regarding the
5 DS84 ACUs in Mitsubishi Class Vehicles was Mikuni Fukutaro, who worked in
6 Mitsubishi Japan's Vehicle Engineering Development Division in Japan.

7 **D. Defendants have known the DS84 ACUs and ASICs were defective for**
8 **many years.**

9 607. As explained in more detail below, Defendants collectively learned
10 that the defective DS84 ACUs and ASICs are uniquely vulnerable to EOS years
11 ago.

12 **1. By no later than January and February 2008, ZF Electronics USA,**
13 **ZF Passive Safety USA, ST USA, and ST Italy learned about the**
14 **defective DS84 ASIC's vulnerability to transient electricity.**

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23 609. In January 2008, ZF Passive Safety USA's and ZF Electronics USA's
24 core DS84 ACU design team, including Rich Guyon, Keith Miciuda, and Niyant
25 Patel, reviewed the test results concerning the thermal shutdown performance of the
26 DS84 ASIC.

27 610. In February 2008, ZF Electronics USA, ZF Passive Safety USA, ST
28 USA, and ST Italy also had several meetings regarding the DS84 ASIC. For

1 example, on February 15, 18, and 19, 2008, ST USA, ST Italy, ZF Electronics
2 USA, and ZF Passive Safety USA held conference calls and meetings regarding the
3 DS84 ASIC. During these discussions, the four companies discussed test results,
4 other engineering test results, and technical aspects of the DS84 ASIC.

5 611. Following these test results, ST USA and ST Italy recommended to ZF
6 Passive Safety USA's and ZF Electronics USA's core design team that protective
7 diodes be added to certain points of contact with the DS84 ASIC on the ACU.
8 Upon information and belief, this recommendation was predicated on the
9 recognition that the DS84 ASIC was vulnerable to transients and EOS.

10 612. In response to these 2008 thermal shutdown test results and the
11 conversations with ST USA and ST Italy, ZF Passive Safety USA and ZF
12 Electronics USA decided to add .12 ampere Schottky diodes to the crash sensor
13 communication lines on the DS84 ACUs for Toyota and Honda Class Vehicles but
14 did not add the .12 ampere diodes to the Hyundai-Kia or FCA Class Vehicles from
15 the 2009-2012 model years. ZF Electronics USA and ZF Passive Safety USA later
16 admitted to Toyota Japan that Toyota Class Vehicles were updated because the
17 design change occurred "in time" for the development of Toyota's next generation
18 ACU, known internally as Gen. 6.7, in 2009.

19 613. Upon information and belief, ZF Passive Safety USA and ZF
20 Electronics USA made this change because they foresaw a risk that a negative
21 transient could travel up the crash sensor lines. An analysis prepared by ZF
22 Electronics USA and ZF Passive Safety USA in 2008 (described more fully below)
23 specifically noted this risk. The addition of .12 ampere Schottky diodes, however,
24 did not fix the underlying problem with the ZF ACUs and Honda and Toyota Class
25 Vehicles because the ACUs still contain the DS84 ASIC, which is still vulnerable
26 to any transient that surpasses the diodes (either due to diode failure or the strength
27 of the current) or travels to the ACU from a source other than the DSI lines on
28 which the diodes were added (such as the squib power supply circuits).

1 614. In or around July 23, 2008, ZF Passive Safety USA and ZF Electronics
2 USA, including ZF Passive Safety USA employees Niyant Patel and Tom Wilson,
3 prepared a spreadsheet discussing the “Design Review Based on Failure Mode” for
4 the DS84 ASIC. The document acknowledged that the DS84 ASIC could only
5 sustain a maximum voltage of 5.5 volts from the power supply for a nearby
6 microcontroller and that exceeding that voltage could cause “possible damage to”
7 the DS84 ASIC and nondeployment of the front and/or side airbags. Upon
8 information and belief and based upon the metadata of a version of a document
9 produced by Toyota USA to NHTSA, Toyota Japan received and reviewed a copy
10 of this document in 2008. Accordingly, Toyota Japan was specifically aware of
11 these risks as well.

12 615. In or around October 30, 2008, ZF Electronics USA and ZF Passive
13 Safety USA, including ZF Passive Safety USA employee Tom Wilson, prepared a
14 spreadsheet discussing the “Design Review Based on Failure Mode” for the DS84
15 ACUs designed for Toyota Class Vehicles. Upon information and belief and the
16 metadata of a version of a document produced by Toyota USA to NHTSA, Toyota
17 Japan also received and reviewed a copy of this document in 2008. The document
18 noted: “ST ASIC is design [sic] to shutdown the channel automatically due to
19 overcurrent/overthermal If there is a negative transient on the DSI [(i.e., the
20 crash sensor)] line, it could potentially damage the ASIC permanently,” which in
21 turn could “disable of [sic] frontside airbag,” resulting in the airbag warning lamp
22 turning on, “[n]on deployment, or late deployment of frontal airbags”, and “[n]on
23 deployment of side airbags.” According to the document, the .12 ampere diode on
24 the crash sensor for Toyota Class Vehicles would not protect against a transient, if
25 either the “[d]iode has a short condition” or an “un-correct value of diode is
26 selected” (i.e., if the .12 ampere was too weak). Because it received the
27 spreadsheet, Toyota Japan was specifically aware of these risks as well.
28

1 616. Upon information and belief, it is ZF Electronics USA’s practice to
2 send these types of documents discussing the known risks of ACU failures to all its
3 customers. Accordingly, ZF Electronics USA and ZF Passive Safety USA likely
4 disclosed the same basic risks to the Honda, FCA, Hyundai-Kia, and Mitsubishi
5 Defendants. This is particularly true for the Hyundai-Kia, FCA, and Mitsubishi
6 Class Vehicles, which had even lower levels of circuit protection than the
7 insufficient .12 ampere diodes added on Honda and Toyota Class Vehicles.

8 **2. Between 2008 and the present, ZF Automotive USA, ZF**
9 **Electronics USA, ZF Passive Safety USA, ST USA, ST Italy, and**
10 **ST Malaysia learned of dozens of DS84 ACU and DS84 ASIC**
11 **failures in vehicles around the globe.**

12 617. Between 2008 and the present, the vulnerability of DS84 ACUs with
13 the DS84 ASIC to EOS became increasingly apparent based on serious safety
14 system failures in several crash tests and real-world crashes as well as warranty
15 claims noting failures in both devices.

16 618. When the Vehicle Manufacturer Defendants received warranty claims
17 and other consumer reports of unexplained illumination of airbag warning lamps
18 (which are controlled by the ACU) and dangerous safety systems failures (such as
19 airbag and seatbelt failures), they routinely referred the issue to ZF Automotive
20 USA, ZF Electronics USA, and ZF Passive Safety USA.

21 619. When ZF Automotive USA, ZF Electronics USA, and ZF Passive
22 Safety USA observed troubling signs of EOS on the DS84 ASIC (such as a
23 noncommunicative ACU, burn marks, missing crash data, or reports of the failures
24 of airbags or seatbelts), they routinely asked ST USA, ST Italy, and ST Malaysia
25 for assistance analyzing the DS84 ASICs retrieved from the malfunctioning DS84
26 ACUs.

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3. ZF Automotive USA, ZF Electronics USA, ZF Passive Safety USA, ST USA, ST Italy, ST Malaysia, Hyundai USA, Hyundai Korea, Hyundai Mobis, Kia Korea, and Kia USA knew the Hyundai-Kia Class Vehicles, as well as the DS84 ACUs and DS84 ASICs installed therein, were defective.

626. For many years, ZF Automotive USA, ZF Electronics USA, ZF Passive Safety USA, ST USA, ST Italy, ST Malaysia, Hyundai USA, Hyundai Korea, Hyundai Mobis, Kia Korea, and Kia USA knew that the defective DS84 ACUs and ASICs in Hyundai-Kia Class Vehicles were vulnerable to EOS.

a. Between June 2010 and August 2015, Hyundai Mobis and Hyundai Korea returned 17 Hyundai-Kia vehicles with signs of EOS on DS84 ACUs to ZF Automotive USA, ZF Passive Safety USA, and ZF Electronics USA.

627. According to a document produced by ZF Automotive USA to NHTSA in connection with NHTSA's investigation of the ACU Defect, Hyundai Mobis and Hyundai Korea returned seventeen Hyundai and Kia Class Vehicles to ZF Automotive USA, ZF Passive Safety USA, and/or ZF Electronics USA that showed signs of EOS damage to the DS84 ASIC. These warranty returns began as early as June 24, 2010, confirming Hyundai Korea's, Hyundai Mobis's, and ZF Automotive USA's knowledge of EOS issues in the DS84 ASIC at this early juncture. Further, these warranty returns proceeded up through August 2015, demonstrating knowledge of the potential for EOS damage to the DS84 ASIC in ACUs across multiple vehicle model years. Relevant excerpts of this document are included in the chart below:³⁰

³⁰ This excerpt excludes some columns to make the table readable.

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Component	Analysis Category	Supplier Name	Receipt Date	Short Description Verbatim	Reason for Return	Customer	Vehicle
DS84	EOS	ST Micro	25-Aug-15	SR2016102609, RMA (FR-16-03982), partially shorted to VFIREvoltage	Airbag warning lamp on	Hyundai	Sonata
DS84	EOS	ST Micro	24-Jun-10	U501 is short to GND, pin44 is only 87ohm	Airbag warning lamp on	MOBIS	Unknown
DS84	EOS	ST Micro	11-Feb-11	Car crash, airbag isn't deployment [Crash records indicate commanded non deployment]	Airbag warning lamp on	MOBIS	Forte
DS84	EOS	ST Micro	16-Jan-12	AR49655, RMA34289, a fire supply open squib2 powered	Airbag warning lamp on	MOBIS	Sonata
DS84	EOS	ST Micro	3-May-12	pin7&44 of US01 short-circuit to GND	Airbag warning lamp on	MOBIS	Forte
DS84	EOS	ST Micro	5-May-12	pin7 of U501 short-circuit to GND.	Airbag warning lamp on	MOBIS	Forte
DS84	EOS	ST Micro	25-Jul-12	Pin7 output signal abnormal	Airbag warning lamp on	MOBIS	Sonata
DS84	EOS	ST Micro	8-Dec-11	Mobis 43369km return (bad U501)	Airbag warning lamp on	MOBIS	Sonata
DS84	EOS	ST Micro	22-Oct-11	warranty return from Mobis 8938km	Airbag warning lamp on	MOBIS	Sonata
DS84	EOS	ST Micro	13-Oct-11	warranty return from Mobis 5068km	Airbag warning lamp on	MOBIS	Sonata
DS84	EOS	ST Micro	3-Oct-13	AR55575, RMA36366, B556E1700, pins 6 & 7 out of circuit & around 5.5 ohms B556E1700	Airbag warning lamp on	MOBIS	Sonata
DS84	EOS	ST Micro	20-Apr-13	Burnt (ic)	Airbag warning lamp on	MOBIS	Sonata
DS84	EOS	ST Micro	20-Jan-13	SR2014111008, RMA, Short between pins 19 and 20 B706E2337	Airbag warning lamp on	MOBIS	Optima

Component	Analysis Category	Supplier Name	Receipt Date	Short Description Verbatim	Reason for Return	Customer	Vehicle
DS84	EOS	ST Micro	21-Nov-14	two current fault:PAB 1st Stg Batt.	Airbag warning lamp on	MOBIS	Sonata
DS84	EOS	ST Micro	30-Nov-14	This is Warranty return U501 and U601 were burnt	Airbag warning lamp on	MOBIS	Sonata
DS84	EOS	ST Micro	11-Dec-14	link to ECU-30-E181	Airbag warning lamp on	MOBIS	Sonata
DS84	EOS	ST Micro	14-Feb-15	link to 2308-ECU-30-F024	Airbag warning lamp on	MOBIS	Sonata

b. Between 2010 and May 17, 2012, ZF Electronics USA, ZF Passive Safety USA, ZF Automotive USA, Hyundai Korea, Kia Korea, and Hyundai Mobis learned that two DS84 ASICs retrieved from Hyundai Sonata durability tests showed signs of EOS.

628. In 2010, nonparty MGA Research Corporation, a US-based safety testing vendor, ran durability tests for Hyundai Sonatas. Although Defendants have produced very little information about these tests to Plaintiffs, a document produced by Kia USA indicates these tests involved frontal impact collisions of at least two Hyundai Sonatas.

629. Upon information and belief, in or around June 2010, Hyundai Korea and Hyundai Mobis alerted ZF Electronics USA, ZF Passive Safety USA, and ZF Automotive USA that two DS84 ACUs retrieved from two Hyundai Sonatas subject to these durability tests were noncommunicative. This was a sign of EOS.

630. Upon information and belief, in or around June 2010, Hyundai Korea and Hyundai Mobis sent the two DS84 ACUs to ZF Electronics USA, ZF Passive Safety USA, and ZF Automotive USA in Farmington Hills, Michigan, with a request to analyze the malfunctioning DS84 ACUs.

1 631. Upon information and belief, on June 22, 2010, ZF Electronics USA,
2 ZF Passive Safety USA, and ZF Automotive USA sent a memorandum to Hyundai
3 Korea and Hyundai Mobis concerning these two malfunctioning DS84 ACUs.

4 632. As to both malfunctioning DS84 ACUs from these durability tests, the
5 June 22, 2010 memorandum noted:

- 6 a. The resistance measurements from a power supply chip to the
7 DS84 ASIC was “very low”;
- 8 b. The EDR data could only be retrieved after replacing the
9 malfunctioning DS84 ASIC with a new DS84 ASIC; and
- 10 c. The EDR data contained incomplete crash records.

11 633. All of the observations noted in the prior paragraph were characteristic
12 signs of ASIC EOS.

13 634. Upon information and belief, by no later than May 17, 2012, ZF
14 Automotive USA, ZF Electronics USA, and ZF Passive Safety USA informed
15 Hyundai Korea, Kia Korea, and Hyundai Mobis that the DS84 ASICs from these
16 two Hyundai Sonata crash tests had EOS damage.

- 17 c. **Between 2010 and May 17, 2012, ZF Automotive USA, ZF**
18 **Electronics USA, ZF Passive Safety USA, Hyundai Korea,**
19 **Kia Korea, and Hyundai Mobis learned of a Kia Forte crash**
20 **in Weihai, China with no airbag deployment due to ASIC**
21 **EOS.**

22 635. In 2010, a Kia Forte with a DS84 ACU crashed in Weihai, a city in the
23 Chinese province of Shandong. The airbags failed to deploy in this crash.

24 636. On June 12, 2010, non-party Dongfeng Yueda Kia, Kia Korea’s
25 Chinese affiliate, prepared a report on this crash, which, upon information and
26 belief, was shared with Kia Korea. The report noted: “The end customer came to
27 report an [sic] crash accident without airbag deployment. The man injured was
28 being rescued [sic] in hospital. The vehicle was removed from accident spot. The
pics indicates [sic] there was damaged [sic] heavily in front, side and back of the

1 car. The end customer though [sic] the airbag should have been deployed to protect
2 passengers. But it didnot [sic] so the customer asked for investigation and
3 compensation.” Pictures from an inspection of the vehicle are reproduced below.



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11 637. After the June 12, 2010 report, non-party Dongfeng Yueda Kia sent
12 the DS84 ACU from this Kia Forte to ZF Electronics USA, ZF Passive Safety
13 USA, and ZF Automotive USA’s office in Farmington Hills, Michigan.

14 638. Upon information and belief, ZF Electronics USA, ZF Passive Safety
15 USA, and ZF Automotive USA then analyzed the DS84 ACU and prepared a
16 written analysis, which was shared with Kia Korea in September 2010. The written
17 analysis noted the DS84 ACU had “[s]everal [a]ctive/[h]istory [diagnostic trouble
18 codes] . . . , including . . . VSAT_Fault[,] LLSE_Failure[,] Various squib faults[,]
19 Driver/Passenger [front impact sensor] no comm[unication][,] Other internal faults
20 associated with squib ASIC.” Upon information and belief, the ASIC described in
21 these trouble codes was the DS84 ASIC, and these codes were signs of EOS.

22 639. Upon information and belief, by no later than May 17, 2012, ZF
23 Automotive USA, ZF Electronics USA, and ZF Passive Safety USA informed
24 Hyundai Korea, Kia Korea, and Hyundai Mobis that the DS84 ASIC from this Kia
25 Forte had EOS damage.

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a. **Between August 2010 and May 17, 2012, ZF Automotive USA, ZF Passive Safety USA, ZF Electronics USA, Hyundai Korea, Kia Korea, and Hyundai Mobis confirmed EOS damage on a DS84 ASIC from another Hyundai Sonata crash test.**

640. Upon information and belief, in 2010, Hyundai Korea and Hyundai Mobis requested that ZF Automotive USA, ZF Passive Safety USA, and ZF Electronics USA analyze a DS84 ACU recovered from a Hyundai Sonata crash test conducted by MGA Research, a US-based non-party safety testing vendor.

641. Upon information and belief, ZF Automotive USA, ZF Passive Safety USA, and ZF Electronics USA prepared a written report in response to this request and sent it to Hyundai Korea and Hyundai Mobis on or around August 19, 2010.

642. Upon information and belief, by no later than May 17, 2012, ZF Automotive USA, ZF Electronics USA, and ZF Passive Safety USA informed Hyundai Korea, Kia Korea, and Hyundai Mobis that the DS84 ASIC from this Hyundai Sonata crash test had EOS damage.

b. **Between 2011 and May 17, 2012, ZF Electronics USA, ZF Automotive USA, ZF Passive Safety USA, Hyundai Mobis, Hyundai Korea, and Kia Korea learned the airbags had not deployed in a Kia Forte crash in Xinyang, China with signs of ASIC EOS.**

643. In 2010 or early 2011, a Kia Forte with a DS84 ACU crashed in Xinyang, a city in the Chinese province of Henan. The airbags failed to deploy in this crash. The damage to the front end of the vehicle was substantial, as shown by the below pictures from an inspection of the vehicle.



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644. On or around January 31, 2011, Hyundai Mobis and non-party Dongfeng Yueda Kia sent the ACU from this vehicle to ZF Electronics USA, ZF Automotive USA, and ZF Passive Safety USA.

645. On February 11, 2011, ZF Electronics USA, ZF Automotive USA, and ZF Passive Safety USA sent a written analysis to Kia Korea, non-party Dongfeng Yueda Kia, and Hyundai Mobis. The analysis noted the following independent signs of EOS from that crash:

- a. “Measuring resistance from” two power supply chips to the DS84 ASIC “indicated low resistance.”
- b. The EDR data could not be retrieved from the ACU without replacing the malfunctioning DS84 ASIC with a new DS84 ASIC.
- c. Part of the EDR record was missing.

646. Although the February 11, 2011 analysis claimed the EDR data indicated the airbags should not have deployed, this speculation was unreliable because part of the crash record was missing.

647. Upon information and belief, by no later than May 17, 2012, ZF Automotive USA, ZF Electronics USA, and ZF Passive Safety USA informed Hyundai Korea, Kia Korea, and Hyundai Mobis that the DS84 ASIC from this Kia Forte had EOS damage.

1 c. **Between August 2011 and May 17, 2012, ZF Automotive**
2 **USA, ZF Electronics USA, ZF Passive Safety USA, Hyundai**
3 **Korea, Kia Korea, and Hyundai Mobis observed EOS-**
4 **consistent damage in an ACU retrieved from a Kia Forte**
 that crashed in Ganzhou, China.

5 648. On July 22, 2011 in Ganzhou, a city in the Chinese province of
6 Jiangxi, a Kia Forte with a DS84 ACU crashed in China and its airbags failed to
7 deploy.

8 649. In August 2011, Hyundai Mobis asked non-party TRW Automotive
9 Components (Shanghai), ZF Automotive USA, ZF Electronics USA, and ZF
10 Passive Safety USA to analyze the ACU retrieved from the Chinese Kia Forte.

11 650. TRW Automotive Components (Shanghai)'s attempts to download the
12 EDR from this vehicle's ACUs were unsuccessful, because the ACU was "without
13 communication functions." This was a sign of ASIC EOS.

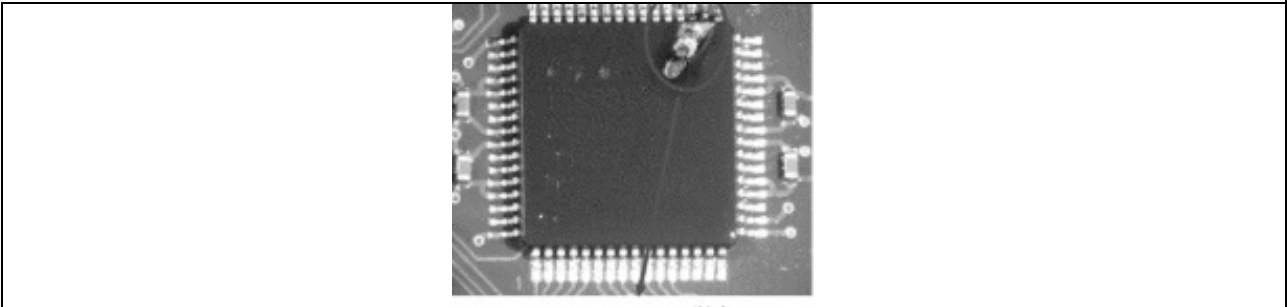
14 651. TRW Automotive Components (Shanghai) then sent the ACU to ZF
15 Electronics USA, ZF Passive Safety USA, and ZF Automotive USA in Farmington
16 Hill, Michigan.

17 652. ZF Automotive USA, ZF Electronics USA, and ZF Passive Safety
18 USA analyzed the ACU in August 2011 and observed damage to the DS84 ASIC
19 that was "consistent with EOS."

20 653. Upon information and belief, on December 9, 2011, ZF Automotive
21 USA, ZF Electronics USA, ZF Passive Safety USA, ZF TRW Corp., and non-party
22 TRW Automotive Components (Shanghai) sent Kia Korea, Hyundai Korea, and
23 Hyundai Mobis a written slide deck presentation that described the analysis
24 confirming EOS damage to the DS84 ASIC from this Kia Forte. The presentation
25 identified the following independent signs of ASIC EOS:

- 26 a. The DS84 ASIC was "burnt over" two pins.
27 b. There was a visible burn mark to the top right-hand corner of the
28 DS84 ASIC (pictured below).

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- c. “Resistance Measurements of Power Supply found” two power supply chips “shorted to ground and each other internal to” the DS84 ASIC.
- d. The ACU was noncommunicative and special efforts had to be taken to extract the EDR data.
- e. The recovered EDR data was incomplete.

654. The December 9, 2011 written presentation admitted there was “[p]ossible internal damage to the squib ASIC [i.e., the DS84 ASIC] at the time of impact causing the Reset line pulled to low, which in turn resetting [sic] the Microcontroller operation resulting in partial EDR1 and non deployment.”

655. By no later than May 17, 2012, ZF Automotive USA, ZF Electronics USA, and ZF Passive Safety USA communicated their observation that this Kia Forte’s ACU had damage to the DS84 ASIC that was consistent with EOS to Hyundai Korea, Kia Korea, and Hyundai Mobis.

- d. Between October 2011 and May 17, 2012, ZF Automotive USA, ZF Passive Safety USA, ZF Electronics USA, Hyundai Korea, Kia Korea, and Hyundai Mobis learned of a Kia Forte crash with no airbag deployment in Hangzhou, China with signs of ASIC EOS.**

656. On October 8, 2011 in Hangzhou, a city in the Chinese province of Zhejiang, a Kia Forte with a DS84 ACU crashed into a truck that suddenly stopped in front of it. The Kia Forte’s airbags did not deploy.

1 657. The crash did substantial frontal damage to the Kia Forte, as shown by
2 the below pictures from the vehicle inspection.



11 658. Analysis of the ACU captured 11 diagnostic trouble codes, including
12 codes relating to front impact sensor communications errors, low resistance, and
13 shorts to ground. These were signs of ASIC EOS. By no later than December 7,
14 2011, ZF Electronics USA, ZF Automotive USA, ZF Passive Safety USA, Hyundai
15 Korea, Kia Korea, and Hyundai Mobis learned about these diagnostic trouble
16 codes.

17 659. Although ZF Electronics USA, ZF Passive Safety USA, and ZF
18 Automotive USA claimed the EDR data from the ACU indicated the airbags should
19 not have deployed, they did not analyze the ACU.

20 660. Upon information and belief, by no later than May 17, 2012, Hyundai
21 Korea and Hyundai Mobis learned of this crash.

22 e. **In February 2012, ZF Automotive USA, ZF Electronics**
23 **USA, ZF Passive Safety USA, and Kia Korea learned the**
24 **airbags had not deployed in a Kia K5 crash in Zhenjiang,**
25 **China with signs of EOS in the DS84 ASIC.**

26 661. On or around September 2011 in Zhenjiang, a city in the Chinese
27 province of Jiangsu, a Kia K5 with a DS84 ACU crashed into a pole. The impact
28

1 broke the pole and K5 was badly damaged, as the below pictures from an inspection
2 confirm. Despite this, the airbags failed to deploy.



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9 662. Upon information and belief, the Kia K5 was the Chinese and South
10 Korean version of the Kia Optima, a Class Vehicle. The two models share a
11 common or very similar platform for the purposes of the passive safety system.

12 663. Upon information and belief, in February 2012, Kia Korea and
13 nonparty Dongfeng Yueda Kia sent the ACU from this vehicle to ZF Electronics
14 USA, ZF Passive Safety USA, and ZF Automotive USA for analysis.

15 664. Upon information and belief, in February 2012, ZF Electronics USA,
16 ZF Passive Safety USA, and ZF Automotive USA sent a written analysis of the
17 ACU to Kia Korea and nonparty Dongfeng Yueda Kia. The written analysis noted
18 the following independent signs of ASIC EOS:

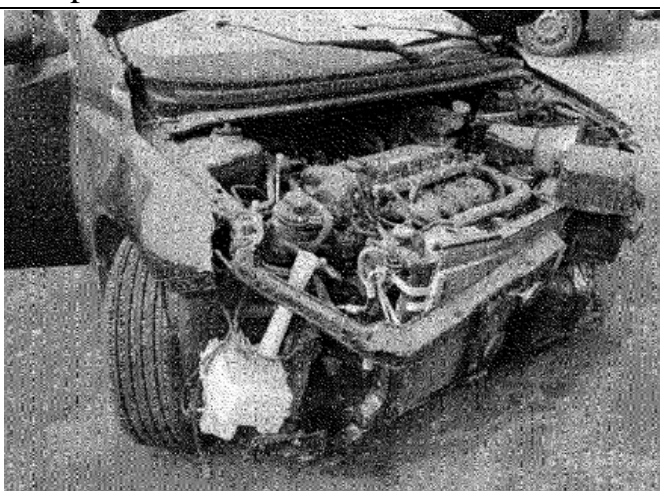
- 19 a. The ACU had “low resistance” from two power supply circuits.
20 b. The ECU had the following diagnostic trouble codes stored:
21 “Internal Fault”, “SR Warning Lamp Failure”, “[front impact
22 sensor] Driver Communication Error”, and “[front impact
23 sensor] Passenger Communication Error.”
24 c. EDR data was recovered only after the malfunctioning DS84
25 ASIC was replaced with a new chip.

26 665. Upon information and belief, by no later than May 17, 2012, ZF
27 Automotive USA, ZF Electronics USA, and ZF Passive Safety USA informed
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1 Hyundai Korea, Kia Korea, and Hyundai Mobis that the DS84 ASIC from this Kia
2 K5 had EOS damage.

3 **f. In March and May 2012, ZF Automotive USA, ZF**
4 **Electronics USA, ZF Passive Safety USA, Hyundai Korea,**
5 **Kia Korea, and Hyundai Mobis learned of a Kia Forte crash**
6 **with no airbag deployment in Quinan, China.**

7 666. On March 9, 2012 in Quinan, a city in the Chinese province of Heibei,
8 a Kia Forte with a DS84 ACU crashed but the airbags did not deploy. The crash did
9 significant damage to the front end of the Kia Forte, as shown by the below picture
10 from the vehicle inspection.



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18 667. In April 2012, ZF Automotive USA, ZF Passive Safety USA, ZF
19 Electronics USA, and a non-party ZF subsidiary then called TRW Automotive
20 Components (Shanghai) Co., Ltd. provided a written analysis of this crash to Kia
21 Korea and nonparty Dongfeng Yueda Kia. Although the written analysis claimed
22 the airbags in this vehicle should not have deployed, the underlying investigation
23 did not include any inspection of the ACU or the DS84 ASIC. Without such an
24 inspection, the conclusion that deployment was not necessary was unsupported.

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26 668. Upon information and belief, by no later than May 17, 2012, ZF
27 Automotive USA, ZF Electronics USA, ZF Passive Safety USA, Hyundai Korea
28 and Hyundai Mobis learned of this Kia Forte crash.

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g. Between March and May 2012, ZF Automotive USA, ZF Electronics USA, ZF Passive Safety USA, Kia Korea, Hyundai Korea, and Hyundai Mobis learned of a Kia Forte crash with no airbag deployment in Baoding, China.

669. On March 23, 2012 in Baoding, a city in the Chinese province of Heibei, a Kia Forte with a DS84 ACU crashed but the airbags did not deploy. The crash did significant damage to the front end of the Kia Forte, as shown by the below picture.



670. In April 2012, ZF Automotive USA, ZF Passive Safety USA, ZF Electronics USA, and a non-party ZF subsidiary then called TRW Automotive Components (Shanghai) Co., Ltd. provided a written analysis of this crash to Kia Korea and nonparty Dongfeng Yueda Kia. Although the analysis claimed the airbags in this vehicle should not have deployed, the underlying investigation did not include any inspection of the ACU or the DS84 ASIC.

671. Upon information and belief, by no later than May 17, 2012, ZF Passive Safety USA, ZF Electronics USA, ZF Automotive USA, Hyundai Korea and Hyundai Mobis learned of this crash.

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h. In 2012, ZF Automotive USA, ZF Electronics USA, ZF Passive Safety USA and Kia Korea learned the airbags in a Kia K5 with a DS84 ASIC inadvertently deployed without a crash in Liuzhou, China.

672. On March 13, 2012, a Kia K5 with a DS84 ACU experienced an inadvertent airbag deployment, i.e., the airbags in the vehicle deployed even though the vehicle did not crash. This incident took place in Liuzhou, a city in the Chinese province of Guangxi.

673. Upon information and belief, the Kia K5 was the Chinese and South Korean version of the Kia Optima, a Class Vehicle. The two models share a common or very similar platform for the purposes of the passive safety system.

674. Upon information and belief, by no later than May 17, 2012, ZF Automotive USA, ZF Electronics USA, and ZF Passive Safety USA informed Hyundai Korea, Kia Korea, and Hyundai Mobis that the DS84 ASIC from this Kia K5 had EOS damage.

675. On June 13, 2012, a non-party ZF subsidiary then called TRW Automotive Components (Shanghai) Co., Ltd., ZF Automotive USA, ZF Electronics USA, and ZF Passive Safety USA provided a written slide deck presentation to Kia Korea analyzing this incident. According to the document, “[t]he unit was internally visually inspected. Signs of over heating of Squib ASIC U501 [i.e., the DS84 ASIC] could be observed on the top [particle circuit board] assembly.” The ACU had no EDR data and recorded 11 diagnostic trouble codes relating to, among other things, “Airbag short to battery,” “Driver [front impact sensor] communication,” and “ACU Internal fault.”

[REDACTED]

1 [REDACTED]
2 [REDACTED]

3 676. The analysis from the Kia K5 incident specifically concluded: “The
4 failure was induced by an electrical overstress exceeding the absolute maximum
5 ratings of the device: EOS.”

- 6 **i. Between February and June 2012, Hyundai USA, ZF**
7 **Automotive USA, ZF Passive Safety USA, and ZF**
8 **Electronics USA learned of a 2011 Hyundai Sonata that**
9 **crashed in Iowa with no airbag deployment and other signs**
10 **of ASIC EOS.**

11 677. On December 16, 2011, Thomas Twohill and Janan Twohill were
12 driving their 2011 Hyundai Sonata in Fairfield, Iowa. Their vehicle crashed head on
13 into a Ford Contour that swerved into their lane. The accident was very serious. The
14 driver of the Ford Contour died. Nonetheless, the airbags and seatbelts in the
15 Twohill’s Sonata failed to activate, even though they should have given the crash
16 dynamics. The Twohills suffered severe facial injuries. A picture of the Twohill’s
17 Sonata is below.



1 678. Hyundai USA learned of this crash in February 2012.

2 679. Hyundai USA inspected the vehicle four months later, in June 2012,
3 and was not able to communicate with the ACU to obtain a crash record. This was a
4 sign of ASIC EOS. Hyundai USA, ZF Automotive USA, ZF Electronics USA, and
5 ZF Passive Safety USA communicated about the event. The inspector for Hyundai
6 USA identified 11 diagnostic trouble codes associated with the passive safety
7 system. This was further evidence of ASIC EOS.

8 680. On May 8, 2013, the Twohills sued Hyundai USA, alleging that the
9 failure of the seatbelts and airbags in their vehicle had caused them personal
10 injuries. Upon information and belief, Hyundai Korea learned of this lawsuit
11 shortly thereafter.

12 681. On February 25, 2014, ZF Electronics USA, ZF Passive Safety USA,
13 and ZF Automotive USA downloaded information from the DS84 ACU from the
14 Twohill's Hyundai Sonata. The downloaded information included 14 indicators of
15 "fault." This was a sign of ASIC EOS.

16 682. On February 15, 2015, ZF Electronics USA, ZF Passive Safety USA,
17 and ZF Automotive USA retrieved some Event Data Recorder data by removing the
18 chip from the malfunctioning ACU on the Twohills' vehicle and transplanting it
19 onto a working ACU. The retrieved data had no record of the crash, which was
20 another sign of ASIC EOS.

21 683. On April 25, 2016, ZF Electronics USA, ZF Passive Safety USA, and
22 ZF Automotive USA analyzed this ACU and observed damage on the ASIC that is
23 consistent with EOS. Sihn Kwang Cheol, the Senior Research Engineer of Hyundai
24 Korea; Changbeom You, the Deputy General Manager of Hyundai Korea's Quality
25 Strategy Team; Kim Seong Hwan, the Assistant Manager of Hyundai Korea's
26 Electronic Improvement Team; Eric Sim, the Senior Manager of Hyundai USA's
27 Engineering and Design Analysis; and Park Chul Hong, the Manager of Hyundai
28 Mobis's NTF Analysis Team attended this inspection, which took place at a ZF

1 facility in Farmington Hills, Michigan. The inspection confirmed further evidence
2 of EOS, including abnormal resistance readings, “observations” that “the conformal
3 coating on the DS84 was disturbed (likely from localized heating of the ASIC),
4 discolorations near one mounting hole, [and] air bubble in one corner of the pcb.”
5 Bill Herndon of ZF Electronics USA made these observations. Afterwards, he
6 shared pictures of these observations with each of the other attendees at the
7 inspection.

8 684. [REDACTED]
9 [REDACTED]
10 [REDACTED]
11 [REDACTED]
12 [REDACTED]
13 [REDACTED]
14 [REDACTED]
15 [REDACTED]
16 [REDACTED]

17 685. [REDACTED]
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j. Between March and May 2012, ZF Electronics USA, ZF Automotive USA, ZF Passive Safety USA, Hyundai Korea, Kia Korea, and Hyundai Mobis learned that EOS damage had been observed on a DS84 ACU from a Kia Forte that crashed in Egypt with no airbag deployment.

687. In or before March 2012, a Kia Forte with an ACU containing a DS84 ASIC crashed in Egypt, and its airbags failed to deploy.

688. In March of 2012, Hyundai Mobis requested that ZF Automotive USA, ZF Electronics USA, and ZF Passive Safety USA perform a post-crash analysis related to this failed airbag deployment. The Forte was severely damaged, as shown by the picture of the vehicle from an inspection.



1 689. In March 2012, Hyundai Mobis asked ZF Automotive USA, ZF
2 Passive Safety USA, and ZF Electronics USA to analyze the ACU retrieved from
3 the Egyptian Kia Forte.

4 690. ZF Automotive USA, ZF Electronics USA, and ZF Passive Safety
5 USA analyzed the ACU in March 2012 and observed damage to the DS84 ASIC
6 that was “consistent with EOS.”

7 691. Upon information and belief, on May 15, 2012, ZF Electronics USA,
8 ZF Automotive USA, and ZF Passive Safety USA sent a written analysis of the
9 ACU retrieved from the Forte to Kia Korea and Hyundai Mobis. The analysis noted
10 the following independent signs of EOS.

- 11 a. An electrical check confirmed abnormally low resistance.
- 12 b. To access the EDR data, special steps had to be taken because
13 the ACU would not communicate with the crash data tool as
14 designed.
- 15 c. The ACU recorded the following diagnostic trouble codes:
16 “[front impact sensor] Driver communication error”, “[front
17 impact sensor] Passenger communication error”, and “[i]nternal
18 fault-replace ECU.” Upon information and belief, these codes
19 were signs of ASIC EOS.
- 20 d. The analysis noted the EDR data was only “partial.”

21 692. The analysis described above also noted: “[i]t is not possible to
22 determine whether ACU attempted to deploy, or would have recorded a near
23 deployment event, since no EDR was fully recorded.”

24 693. By no later than May 17, 2012, ZF Automotive USA, ZF Electronics
25 USA, and ZF Passive Safety USA communicated its observation that the Egyptian
26 Kia Forte’s ACU had damage to the DS84 ASIC that was consistent with EOS to
27 Hyundai Korea, Kia Korea, and Hyundai Mobis.

28

1 **k. Kia Korea, ZF Electronics USA, ZF Passive Safety USA, and**
2 **ZF Automotive USA observed evidence of DS84 ASIC EOS**
3 **during a Kia Optima crash test on April 2012.**

4 694. On April 20, 2012, Kia Korea performed a 30-mph frontal impact test
5 on a Kia Optima Hybrid for European market certification. This Optima had a
6 DS84 ACU.

7 695. During this test, the Event Data Recorder on the Optima’s ACU failed
8 to record information about the crash.

9 696. To investigate the cause of the missing data, Kia Korea immediately
10 sent the malfunctioning ACU to ZF Automotive USA, ZF Passive Safety USA, and
11 ZF Electronics USA for analysis.

12 697. ZF Automotive USA, ZF Passive Safety USA, and ZF Electronics
13 USA found EOS damage on the ACU’s DS84 ASIC and reported its conclusions to
14 Kia Korea.

15 **i. Between April 30, 2012 and May 17, 2012, ZF Automotive**
16 **USA, ZF Passive Safety USA, ZF Electronics USA, Hyundai**
17 **Korea, Kia Korea, and Hyundai Mobis confirmed EOS**
18 **damage on a DS84 ASIC from a Hyundai Sonata crash test.**

19 698. Upon information and belief, some time in 2011 or early 2012,
20 Hyundai Korea and/or Hyundai Mobis requested that ZF Automotive USA, ZF
21 Passive Safety USA, and ZF Electronics USA analyze a DS84 ACU recovered
22 from a Hyundai Sonata crash test conducted by MGA Research.

23 699. Upon information and belief, ZF Automotive USA, ZF Passive Safety
24 USA, and ZF Electronics USA prepared a written report in response to this request
25 and sent it to Hyundai Korea and/or Hyundai Mobis on or around April 30, 2012.

26 700. Upon information and belief, by no later than May 17, 2012, ZF
27 Automotive USA, ZF Electronics USA, and ZF Passive Safety USA informed
28 Hyundai Korea, Kia Korea, and Hyundai Mobis that the DS84 ASIC from this
 Hyundai Sonata crash test had EOS damage.

1 **m. Between May 17, 2012 and June 2016, ZF Automotive USA,**
2 **ZF Electronics USA, ZF Passive Safety USA, Kia Korea,**
3 **Hyundai Korea, and Hyundai Mobis discussed seven**
4 **additional suspicious field reports that they did not**
 meaningfully investigate.

5 701. Upon information and belief, on or around May 17, 2012, ZF
6 Automotive USA, ZF Electronics USA, and ZF Passive Safety USA finalized a
7 written slide deck presentation on a root cause analysis and design robustness
8 improvement plan for the DS84 ACUs in Kia Fortes, Kia Optimas, Kia K5s, and
9 Hyundai Sonatas.

10 702. Upon information and belief, this slide deck presentation was then sent
11 to Kia Korea, Hyundai Korea, and Hyundai Mobis on May 17, 2012, with ZF
12 Automotive USA's, ZF Electronics USA's, and ZF Passive Safety USA's approval.

13 703. The May 17, 2012 slide deck presentation identifies seven additional
14 field incidents involving Chinese Kia Fortes, including incidents in Rugao, Jiansu;
15 Jinan, Shangdong; Zhengshou, Henan; Nanyang, Henan; Jinhua, Zhejiang;
16 Yangcheng, Jiangsu; and Anhui, Wuhu.

17 704. Upon information and belief, between May 2012 and the present, Kia
18 Korea, Hyundai Korea, and Hyundai Mobis never sent ACUs, ASICs, or EDR data
19 retrieved from these Kia Fortes to any ZF company.

20 705. Based on a document produced by Kia USA and upon information and
21 belief, ZF Automotive USA, ZF Electronics USA, ZF Passive Safety USA, Kia
22 Korea, Hyundai Korea, and Hyundai Mobis knew that no ACUs, ASICs, or EDR
23 data for these Fortes was sent to any ZF company as of June 2016.

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n. After observing evidence of ASIC EOS, ZF Automotive USA, ZF Passive Safety USA, ZF Electronics USA, Hyundai Mobis, Hyundai Korea, and Kia Korea agreed to inadequate design changes to the DS84 ACU.

706. In mid-2012, various personnel of ZF Automotive USA, ZF Electronics USA, ZF Passive Safety USA, Hyundai Korea, Kia Korea, and Hyundai Mobis discussed incidents involving Hyundai and Kia vehicles containing ACUs with DS84 ASICs. During these meetings, ZF Automotive USA, ZF Electronics USA, ZF Passive Safety USA, Hyundai Korea, Kia Korea, Hyundai Mobis, ST USA, and ST Italy discussed whether the DS84 ASIC could be damaged in ways that would affect airbag deployment.

707. For example, on May 2, 2012, Hyundai Korea, Kia Korea, Hyundai Mobis, ZF Electronics USA, ZF Passive Safety USA, ZF Automotive USA, ST USA and ST Italy met to discuss ST USA's and ST Italy's tests of DS84 ACUs for whether voltage exceeding internal device specifications could damage the DS84 ASIC, and whether transients on vehicle wiring could raise voltage above device specifications. In this meeting, SK Choi represented both Hyundai Korea and Kia Korea; YS Hwang and SH Lee represented Hyundai Mobis; Ed Wampuszyc represented ZF Automotive USA, ZF Passive Safety USA, and ZF Electronics USA; and [REDACTED] represented ST USA and ST Italy.

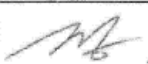


708. On May 17, 2012, Hyundai Korea, Kia Korea, Hyundai Mobis, ZF Electronics USA, ZF Passive Safety USA, and ZF Automotive USA discussed approximately 20 field incidents and crash tests involving the DS84 ASIC and potential design changes to ACUs containing the DS84 ASIC. During this discussion, SK Choi represented Hyundai Korea and Kia Korea; MH Cho, YS Hwang, MC Jeon, and CH Park represented Hyundai Mobis; and SH Han, SJ Hong,

1 Farad Khairallah, M. Kim, and Sharath Reddy represented ZF Automotive USA,
2 ZF Passive Safety USA, and ZF Electronics USA.

3 709. During the summer of 2012, ZF Automotive USA, ZF Passive Safety
4 USA, ZF Electronics USA, Hyundai Korea, Kia Korea, and Hyundai Mobis agreed
5 to add Schottky diodes to DS84 ACUs for future Hyundai and Kia Class Vehicles.

6 710. Around July 23, 2012, ZF Electronics USA, ZF Passive Safety USA,
7 ZF Automotive USA, Kia Korea, Hyundai Mobis, and Kia Korea began testing
8 ACUs with additional protective components on or around July 23, 2012.

9 711. On July 23, 2012, Hyundai Mobis sent a report to Kia Korea and
10 Hyundai Korea that called for a change to the DS84 ACU. The subject of the report
11 was “Hardware addition for internal ACU damage of . . . GEN6.0 ACU.” The
12 report described the following “Reason of Design change:” “Hardware addition for
13 improving damage of internal ACU by [front impact sensor] cut & power change
14 during collision.” The report is signed by three Hyundai Mobis employees.

MOBIS		
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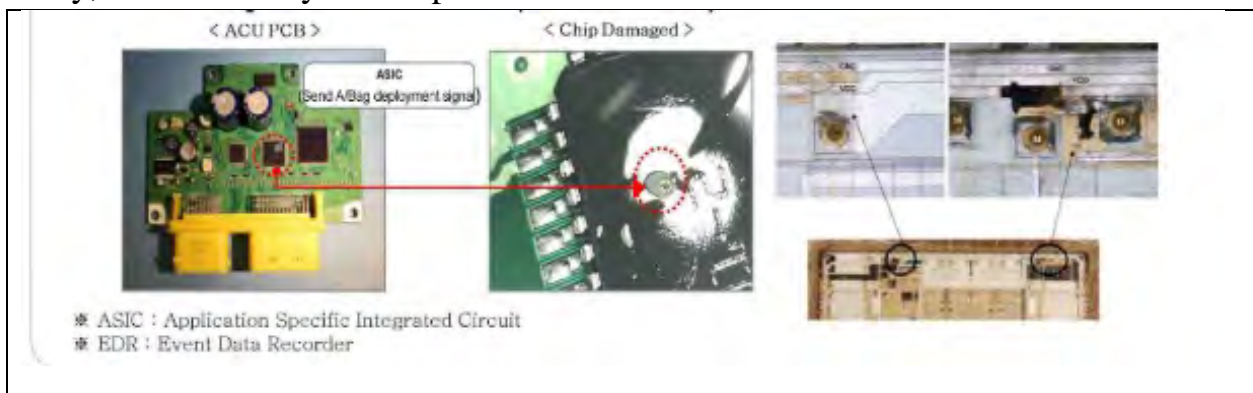
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18 Plaintiffs do not presently know the identities of the employees responsible for
19 these signatures, but Hyundai Mobis does know that information.

20 712. A July 24, 2012 Hyundai Korea test report created by the Hyundai
21 Korea Chassis & Safety Design Team based in South Korea noted that a design
22 change was being made to address “the GEN6 ASIC internal ACU burnout in
23 actual collision.” Upon information and belief, this refers to an actual crash of a
24 Hyundai Sonata instead of a crash test. The report was written by Hyundai Korea
25 employees Chang Beom You and also approved by Hyundai Korea employees Woo
26 Geun Cho and Dae Gyun Kim.

27 713. Between July 29, 2012 and August 5, 2012, Kia Korea, Hyundai
28 Korea, Hyundai Mobis, ZF Electronics USA, ZF Passive Safety USA, and ZF

1 Automotive USA met in Burlington, Wisconsin at an office of MGA Research. Se
2 Kyung Choi and Chang Beom You, two experts specializing in Chassis and Safety
3 Control Design, attended on behalf of Hyundai Korea and Kia Korea. Cheol Hong
4 Park attended on behalf of Hyundai Mobis. Ki Myeong Kim attended on behalf of
5 ZF Automotive USA, ZF Electronics USA, and ZF Passive Safety USA. The
6 purpose of the meeting was to run tests on purported improvements “related with
7 ASIC damage.”

8 714. Upon information and belief, ST USA and ST Italy provided ZF
9 Automotive USA, ZF Electronics USA, and ZF Passive Safety USA with images of
10 observed ASIC damage in Hyundai-Kia vehicles during 2012, and ZF Automotive
11 USA then provided the same images to Kia Korea, Hyundai Korea, and Hyundai
12 Mobis. These images appear in a Hyundai Korea and Kia Korea document that
13 Hyundai USA produced to NHTSA, and are reproduced below. Upon information
14 and belief, the images are the type of decapsulation analysis that only ST USA, ST
15 Italy, and ST Malaysia can perform on DS84 ASICs.



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23 715. The same Hyundai Korea and Kia Korea document from 2012,
24 described in the preceding paragraph, acknowledges there was a “Problem
25 Occurring” with the “TRW Gen 6.0 ACU” fitted on Hyundai Sonatas, Kia Fortes,
26 and Kia Optimas. The document describes the “Cause” this way: “When the [front
27 impact sensor] ground short circuit due to engine room deformation/damage in the
28 event of a collision, failure of ignition ASIC due to internal inrush current in case of

1 ACU supply → Insufficient design of internal element (ASIC) protection circuit.”
2 The document defines “inrush current” as “[t]ransient current that increases
3 momentarily when powering on electronic parts but immediately returns to normal
4 state.”

5 716. In August 2012, following the tests described in the preceding
6 paragraph, Hyundai Korea changed the engineering plans for future productions of
7 the Sonata to “apply the Schottky diodes for ASIC damage problems.” A Schottky
8 diode does not strengthen the ASIC itself; instead, it can add external protection on
9 a particular line (i.e., a wire) that connects to the ASIC. Upon information and
10 belief, the Schottky diodes were placed on the communication lines linking the
11 crash sensors to the DS84 ASIC, which means the squib lines (the communication
12 lines to deploy the airbags) were still unprotected. Moreover, an electrical surge can
13 still overwhelm a Schottky diode and cause EOS in the ASIC.

14 717. Likewise, Kia Korea began to include DS84 ACUs with the same
15 inadequate changes in the Sedona beginning August 15, 2012, and other Kia Class
16 Vehicles with defective DS84 ACUs beginning September 1, 2012.

17 718. Because these changes affected hundreds of thousands of Kia and
18 Hyundai Class Vehicles sold in the United States, Kia USA and Hyundai USA
19 would have known about the change as well.

20 719. The addition of Schottky diodes to certain Hyundai-Kia Class Vehicles
21 was insufficient to remedy the ACU Defect, but demonstrates that Kia USA,
22 Hyundai USA, Kia Korea, Hyundai Korea, Hyundai Mobis, Ltd., ZF Electronics
23 USA, ZF Passive Safety USA, and ZF Automotive USA knew that the defective
24 ACU was a serious safety concern that required action.³¹

25 ³¹ As explained above, the use of two Schottky diodes does not appear to fix the
26 defect. Many FCA Class Vehicles have one Schottky diode, but still had confirmed
27 cases of ASIC EOS in the ACUs in crashes. Similarly, Toyota Class Vehicles have
28 two Schottky diodes, but the same pattern of ASIC EOS emerged. FCA and Toyota
Engineering USA recalled many of these vehicles.

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- o. Between July 2012 and December 2015, Kia USA, Kia Korea, Hyundai Mobis, ZF Electronics USA, ZF Automotive USA, and ZF Passive Safety USA observed evidence that EOS had caused airbag and seatbelts to fail in a 2010 Kia Forte crash in Tallahassee, Florida.**

720. On the night of March 21, 2011, Joy King drove her 2010 Kia Forte Koup on U.S. Highway 19/27 in Tallahassee, Florida. A logging truck cut Ms. King’s vehicle off after it entered the highway. Her Kia Forte collided into the rear end of the truck. The police report for the incident estimated that Ms. King’s Forte was travelling at 65 miles per hour at the time of collision. The front airbag did not deploy. Upon information and belief, the airbag should have deployed given the severity and speed of the crash.

721. Ms. King’s accident was very serious. She suffered a closed head injury, a fractured jaw, a fractured left shoulder, a fractured left arm, and a fractured lower back. All of her teeth had to be pulled out, and she had to have at least two surgeries.

722. Photos of Ms. King’s wrecked Kia Forte show serious damage to the vehicle.



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723. On June 3, 2011, an accident reconstruction specialist called Kia USA’s customer assistance center about this accident and informed Kia USA that the airbags did not deploy. He provided Kia USA with the vehicle information.

724. On July 28, 2011, per its Consumer Assistance Center Case Report, Kia USA reviewed the photos from this incident and decided “no further assistance can be provided at this time.” “Case closed.”

725. On September 26, 2011, Heath King, Joy King’s husband, called Kia USA and requested “somebody to go out and look at the car, to see why the airbags did not deploy.” He noted the severe injuries suffered by Ms. King and stated: “I don’t understand why nothing has been done.” The representative at Kia USA then falsely stated: “Kia has never received police report or pictures.” This was false because Kia USA had received and reviewed pictures from the accident.

1 726. On October 6, 2011, an attorney representing Ms. King had another
2 phone call with Kia USA. He again informed Kia USA that the airbags in her
3 vehicle did not deploy and that Ms. King sustained serious injuries.

4 727. On November 28, 2011, Kia USA received a traffic accident report
5 and three additional color photos of Ms. King's Forte.

6 728. On July 18, 2012, Kia USA received a copy of a complaint by Ms.
7 King initiating a personal injury lawsuit against Kia USA.

8 729. Upon information and belief, Kia USA informed Kia Korea of Ms.
9 King's accident in 2012 because it had prompted a lawsuit and Kia USA reported
10 the incident to NHTSA in September 2012 as part of its Early Warning obligations
11 under the Transportation Recall Enhancement, Accountability and Documentation
12 ("TREAD") Act.

13 730. Between December 1 and 3, 2015, in response to a request from Kia
14 USA, ZF Automotive USA, ZF Passive Safety USA, and ZF Electronics USA
15 analyzed the DS84 ACU from Ms. King's vehicle. They observed damage on the
16 DS84 ASIC that was consistent with EOS, and advised Kia USA that EOS
17 prevented creation of an EDR crash record.

18 731. On December 14 and 15, 2015, ZF Automotive USA, ZF Passive
19 Safety USA, ZF Electronics USA, Kia Korea, Kia USA, and Hyundai Mobis
20 attended a joint inspection of Ms. King's vehicle in the United States.

21 732. [REDACTED]
22 [REDACTED]
23 [REDACTED]
24 [REDACTED]
25 [REDACTED]
26 [REDACTED]
27 [REDACTED]
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- a. [REDACTED]

733. By no later than January 14, 2016, ZF Electronics USA, ZF Passive Safety USA, and ZF Automotive USA prepared a written analysis of the DS84 ACU from Ms. King’s Kia Forte. The report concluded:

- a. “Resistance to ground measurements identified anomaly on the DS84 squib asic. After replacing the DS84, the resistance to ground measurements were consistent with measurements on an exemplar ACU.”
- b. “An ACU download was performed. There is no crash record recorded.”
- c. “Analysis performed by ST Micro confirmed the presence of electrical overstress on the DS84.”

734. On May 24 and 25, 2016, ZF Electronics USA, ZF Passive Safety USA, and ZF Automotive USA met with Hyundai Korea, Kia Korea, and Hyundai Mobis in South Korea. During this meeting, these Defendants reviewed and discussed the January 14, 2016 report on the King crash, which confirmed EOS damage on the DS84 ASIC.

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p. Between March 2014 and January 2016, Kia USA, Kia Korea, Hyundai Mobis, ZF Automotive USA, ZF Passive Safety USA, and ZF Electronics USA learned of evidence that EOS had caused airbags and seatbelts to fail in a fatal accident involving a 2012 Kia Forte in San Leandro, California.

735. On July 28, 2013 a 2012 Kia Forte Sedan was hit head-on by a drunk driver at approximately 2 am in San Leandro, California. The drunk driver drove his vehicle towards the Forte at 67 miles per hour. Although both drivers swerved near impact, the front-ends of the vehicles collided.

736. The driver of the Kia Forte was named Ronald Hill. His wife, Lomia Faumuina, was riding in the passenger seat. Both Mr. Hill and Ms. Faumuina were wearing their seatbelts.

737. The crash involved a massive amount of force. The crush energy experienced by the Kia Forte was the equivalent of 302,000 foot-lbs. The force of the crash moved the dashboard of the Kia Forte 2.6 inches forward and displaced the airbag sensors.

738. The crash destroyed the front end of the Forte, as demonstrated by the below picture of the wreckage.



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14 739. Despite the high speed and force of the collision, the airbags in the Kia
15 Forte did not deploy, and the seatbelt pretensioners failed to activate. By contrast,
16 the airbags in the vehicle that collided with the Kia Forte did deploy.

17 740. Upon information and belief, the airbags in the Kia Forte should have
18 deployed during this crash due to its severity and speed.

19 741. As a result of this accident, Ms. Faumuina died from blunt force
20 trauma and Mr. Hill suffered a brain bleed, a fractured pelvis, and a fractured right
21 leg.

22 742. On or about July 2, 2014, NHTSA sent Kia USA a letter requesting
23 information about this crash.

24 743. In March 2014, Kia USA was served with a complaint alleging the
25 non-deployment of the airbags in this crash had killed Ms. Faumuina and seriously
26 injured Mr. Hill.

27 744. On April 7, 2015, a Kia USA engineer attempted to download a crash
28 record from the DS84 ACU in Mr. Hill's and Ms. Faumuina's Forte. The attempt

1 failed because the download tool could not communicate with the ACU. This was a
2 sign of EOS.

3 745. On June 15, 2015, ZF Automotive USA, ZF Passive Safety USA and
4 ZF Electronics USA also attempted to download a crash record from the ACU at
5 their shared facility in Michigan. The attempt again failed. This was further
6 confirmation of EOS.

7 746. On October 9, 2015, an unknown individual submitted a Vehicle
8 Owner Questionnaire to NHTSA about this incident. The Questionnaire stated:
9 “THE CAR WAS INVOLVED IN A SERIOUS FRONTAL IMPACT AND THE
10 FRONT SEAT AIRBAGS DID NOT GO OFF. THE PASSENGER WAS KILLED
11 AND THE DRIVER WAS SERIOUSLY INJURED. KIA WAS INFORMED AND
12 THE AIRBAG CONTROL MODULE WAS TESTED AND FOUND TO BE NOT
13 WORKING.” The reporting individual is unknown because the public record
14 version of this questionnaire redacts his or her name.

15 747. On October 11, 2015, the same individual provided an update to the
16 questionnaire stating: “THIS IS A CORRECTION TO A COMPLAINT FILED
17 LAST WEEK. I CHECKED NO ON THE FATALITIES QUESTION. THE KIA
18 WAS IN A SERIOUS FATAL FRONTAL IMPACT BUT THE AIRBAGS DID
19 NOT DEPLOY. KIA TESTED THE AIRBAG CONTROL MODULE AND IT
20 HAD NO FAULT CODES AND DID NOT RECORD ANY CRASH DATA. KIA
21 HAS THE MODULE NOW. THE OTHER CARS AIRBAGS WORKED AND
22 THE DRUNK DRIVER SURVIVED...UPDATED 10/15/15 *BF ...UPDATED
23 12/29/15 *BF THE DATA SHOWED THAT THERE WERE NO STORED OR
24 DIAGNOSTIC FAULT CODES. THERE WAS NO CRASH RECORD
25 RECORDED BY THE ACU.” Again, the reporting individual is unknown because
26 the public record version of this questionnaire redacts his or her name.

27 748. Between December 1 and 3, 2015, in response to a request from Kia
28 USA, ZF Automotive USA, ZF Passive Safety USA, and ZF Electronics USA

1 analyzed the DS84 ACU from Mr. Hill's and Ms. Faumuina's Forte. ZF
2 Automotive USA, ZF Passive Safety USA, and ZF Electronics USA observed
3 damage on the DS84 ASIC that was consistent with EOS, and advised Kia USA
4 that EOS prevented creation of an EDR crash record.

5 749. On December 9, 2015, ZF Automotive USA, ZF Passive Safety USA,
6 and ZF Electronics USA prepared a report for the 2012 Forte concerning Mr. Hill's
7 and Ms. Faumuina's crash and sent it to Kia USA. Emanuel Goodman, a longtime
8 employee of ZF Passive Safety USA who also served as a Senior Technical
9 Specialist for ZF Electronics USA, prepared the report. The report found:
10 "Resistance to ground measurements identified an anomaly on the DS84 squib
11 ASIC. After replacing the DS84, resistance to ground measurements were
12 consistent with measurements on exemplar ACU." This was a sign of EOS.

13 750. [REDACTED]
14 [REDACTED]
15 [REDACTED]
16 [REDACTED]
17 [REDACTED]
18 [REDACTED]
19 [REDACTED]
20 [REDACTED]
21 [REDACTED]

22 751. On December 14 and 15, 2015, ZF Automotive USA, ZF Electronics
23 USA, ZF Passive Safety USA, Kia Korea, Kia USA, and Hyundai Mobis attended a
24 joint inspection of Mr. Hill's and Ms. Faumuina's vehicle in Irwindale, California.
25 Part of the inspection included running tests with a new ACU. With a new ACU,
26 there were "no issues," aside from the sensor wiring being disconnected, which is a
27 clear sign an ACU issue was the cause of the failure.

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1 752. On May 24 and 25, 2016, ZF Electronics USA, ZF Passive Safety
2 USA, and ZF Automotive USA met with Hyundai Korea, Kia Korea, and Hyundai
3 Mobis in South Korea. During this meeting, these Defendants reviewed and
4 discussed the updated January 14, 2016 report on the Faumuina crash.

5 **q. Between May 2015 and August 2017, Hyundai USA,**
6 **Hyundai Korea, ZF Automotive USA, ZF Passive Safety**
7 **USA, and ZF Electronics USA learned that ASIC EOS had**
8 **occurred in another fatal accident involving a 2011 Hyundai**
 Sonata that crashed with no airbag deployment.

9 753. On September 27, 2014, Millard Johnson was driving a 2011 Hyundai
10 Sonata with his wife, Mary Johnson, in the passenger seat. A pickup truck
11 travelling at a speed higher than 65 miles per hour crashed into the Johnsons'
12 Sonata. The collision caused catastrophic damage to both vehicles. The below
13 picture of the Johnson's Sonata after the wreck confirms the serious nature of the
14 collision. The airbags in the pickup truck deployed. None of the airbags in the
15 Johnson's Sonata deployed, despite considerable damage to both the front and
16 driver's side. Upon information and belief, the airbags in the Johnsons' Sonata
17 should have deployed during the crash.

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754. Because of the crash, Mary Johnson suffered major injuries, including head trauma resulting in bleeding and blood pooling on the brain, multiple spinal cord injuries, dislocation of her right elbow, and a fractured right wrist.

755. Millard Johnson died from injuries he sustained in the crash.

756. On April 17, 2015, Hyundai USA inspected the Johnsons' Sonata. It sent the DS84 ACU from the vehicle to ZF Electronics USA, ZF Passive Safety USA, and ZF Automotive USA

757. In May 2015, Mary Johnson filed a lawsuit against Hyundai USA and Hyundai Korea. The complaint contained the information about this crash pled in the above paragraphs. Hyundai USA answered the complaint on June 15, 2015.

758. On November 3, 2016, ZF Electronics USA, ZF Passive Safety USA, and ZF Automotive USA attempted to recover a readout from the EDR, but found the ACU to be noncommunicative. This was a sign of DS84 ASIC EOS.

759. On August 24-25, 2017, ZF Automotive USA, ZF Passive Safety USA, and ZF Electronics USA analyzed the ACU retrieved from this incident.

1 They observed damage on the DS84 ASIC that was consistent with EOS. They
2 reported their findings to Hyundai Korea and Hyundai USA.

3 **r. In March 2016, ZF Electronics USA, ZF Passive Safety USA,**
4 **and ZF Automotive USA informed Kia Korea of test results**
5 **showing that a transient of -1.5 volts for 30 microseconds**
6 **would cause EOS of the DS84 ASIC.**

7 760. Upon information and belief, in 2015 or 2016, Kia Korea asked ZF
8 Electronics USA, ZF Passive Safety USA, and ZF Automotive USA to perform
9 negative transient tests and measure transient voltage, duration, and current
10 required to cause EOS damage to the DS84 ASIC.

11 761. ZF Electronics USA, ZF Passive Safety USA, and ZF Automotive
12 USA then performed a test on a Kia Forte DS84 ACU.

13 762. Upon information and belief, on or around March 24, 2016, ZF
14 Electronics USA, ZF Passive Safety USA, and ZF Automotive USA provided a
15 written report to Kia Korea summarizing the test results. The conclusion states:
16 “Transient . . . flowing through ASIC satellite channel caused electrical overstress
17 of ASIC.” Accordingly, these tests showed ZF Electronics USA, ZF Passive Safety
18 USA, ZF Automotive USA, and Kia Korea that the DS84 ASIC suffers EOS at a
19 relatively low voltage.

20 **s. Between May 2017 and August 2017, Kia USA, Kia Korea,**
21 **Hyundai Mobis, ZF Automotive USA, ZF Passive Safety**
22 **USA, and ZF Electronics USA observed evidence that EOS**
23 **had caused the airbags to fail in a fatal accident involving a**
24 **2013 Kia Forte in Canada.**

25 763. On the morning of March 18, 2017 in Canada, a man named Julian
26 Dufort drove his 2013 Kia Forte. His vehicle crossed into an oncoming lane on a
27 two-lane rural road and collided with a Volkswagen Rabbit. The left fronts of the
28 two vehicles collided.

1 764. The Forte's airbags failed to deploy, whereas the Volkswagen's
2 airbags deployed. Mr. Dufort died from the crash.

3 765. Pictures of the wreckage confirm that the damage to Mr. Dufort's Kia
4 Forte was extreme and should have caused airbag deployment under any rational
5 deployment strategy.



15 766. Transport Canada (a Canadian government agency) received a
16 customer report and removed the ACU from the Forte.

17 767. After Transport Canada contacted Kia Canada, Inc. about the incident,
18 Kia Canada, Inc. contacted Kia USA for assistance. Kia USA then contacted ZF
19 Automotive USA, ZF Passive Safety USA, and ZF Electronics USA for assistance.
20 Kia Canada, Inc. shipped the ACU to ZF Automotive USA, ZF Passive Safety
21 USA, and ZF Electronics USA's shared office in Michigan.

22 768. On August 24, 2017, ZF Automotive USA, ZF Electronics USA, ZF
23 Passive Safety USA, Kia Korea, and Hyundai Mobis jointly inspected the DS84
24 ACU retrieved from Mr. Dufort's Forte. The joint inspection found internal damage
25 to the DS84 ASIC on the ACU and that the ACU had failed to maintain a crash
26 record. Both of these findings are signs of EOS.

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t. **Between August 2016 and August 2017, Hyundai Korea, Kia Korea, Hyundai USA, Kia USA, ZF Automotive USA, ZF Passive Safety USA, and ZF Electronics USA confirmed ASIC EOS had occurred in another fatal crash where a 2011 Hyundai Sonata’s airbags failed to deploy in Omaha, Nebraska.**

769. On March 16, 2016, Carl Gauff drove his 2011 Hyundai Sonata on U.S. highway 275 (also called “L Street”) in Omaha, Nebraska. His 15-year-old grandson was in the passenger seat. A drunk driver crashed a 2000 Ford Expedition head-on into Mr. Gauff’s vehicle. According to the Omaha Police Department’s accident re-constructionist, the drunk driver drove eastbound in the westbound lanes on the same highway at a high speed, over 40 miles per hour.

770. The airbags in the drunk driver’s 16-year-old Ford Expedition went off. But the airbags in Mr. Gauff’s 2011 Hyundai Sonata failed to deploy. The crash killed Mr. Gauff and knocked his grandson unconscious. His grandson was hospitalized.

771. Upon information and belief, the airbags in Mr. Gauff’s Sonata should have deployed in this crash.

772. Video footage of Mr. Gauff’s wrecked Sonata shows that the crash completely destroyed the front of the vehicle.



1 773. Hyundai USA inspected Mr. Gauff's Sonata on May 24, 2016. A
2 photograph taken during the inspection confirms the severe damage to the front-end
3 of the Sonata.



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15 774. In February 2017, Hyundai USA requested ZF Electronics USA, ZF
16 Passive Safety USA, and ZF Automotive USA to download the crash data from Mr.
17 Gauff's Sonata. They tried, but failed, because the EDR tool could not establish
18 communication with the DS84 ACU. This was a sign of EOS.

19 775. On August 24 or 25, 2017, ZF Automotive USA, ZF Passive Safety
20 USA, and ZF Electronics USA analyzed the DS84 ACU from Mr. Gauff's Sonata.
21 They observed damage consistent with EOS on the DS84 ASIC.³²

22 776. [REDACTED]
23 [REDACTED]
24 [REDACTED]

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26 ³² On August 23, 2016 and March 3, 2017, ZF Electronics USA and ZF Automotive
27 USA also downloaded data from ACUs retrieved from other Kia Forte crashes with
28 no airbag deployment. They have not disclosed whether they found evidence of
EOS on these ACUs.

1 [REDACTED]
2 [REDACTED]
3 [REDACTED]

4 777. On September 21, 2018, NHTSA sent a letter to Hyundai USA
5 attaching a Vehicle Owner Questionnaire submitted to NHTSA concerning Mr.
6 Gauff’s incident. The letter stated regarding this Questionnaire: “The Office of
7 Defects Investigation (ODI) has received (1) Vehicle Owner Questionnaire (VOQ)
8 report alleging the front airbag did not deploy in a frontal crash, due to an electrical
9 overstress condition (EOS) of the ACU.”

- 10 **u. Between August 2016 and March 2018, Hyundai Korea, Hyundai USA, ZF Electronics USA, ZF Passive Safety USA, and ZF Automotive USA confirmed ASIC EOS in another Hyundai Sonata that crashed with no airbag deployment in California.**

14 778. On August 24, 2016, a 2011 Hyundai Sonata crashed into another
15 vehicle in California. The below photograph of the Sonata after the wreck indicates
16 that the crash was severe. The driver of the Sonata, Cayla Collins, suffered a broken
17 pelvis. She was hospitalized for a week.



1 779. Upon information and belief, Hyundai USA learned of this crash in
2 November 2016.

3 780. On February 9, 2017, Hyundai USA inspected Ms. Collins' vehicle.
4 The inspector found nine diagnostic trouble codes on the safety system, which was
5 a sign of DS84 ASIC EOS.

6 781. Upon information and belief, on March 27, 2018, ZF Electronics USA,
7 ZF Passive Safety USA, and ZF Automotive USA downloaded available data from
8 the DS84 ACU in Ms. Collins' Sonata and analyzed the ACU for signs of EOS.
9 They observed damage on the DS84 ASIC that was consistent with EOS.

10 782. Upon information and belief, in March or April 2018, ZF Electronics
11 USA, ZF Passive Safety USA, and ZF Automotive USA reported their findings
12 related to EOS to Hyundai USA and Hyundai Korea.

13 **v. Kia USA has received notice of at least two other accidents**
14 **where airbags failed in Kia Class Vehicles.**

15 783. According to a complaint filed on October 23, 2015 against Kia USA
16 and ZF TRW Corp., a driver named Luis John Hernandez suffered serious injuries
17 when his 2012 Kia Forte crashed into a fence and dumpster in Puerto Rico and the
18 airbags failed to deploy.³³

19 784. In June 2018, Kia USA received another consumer complaint alleging
20 a fatal accident involving a 2012 Kia Forte that crashed in Perry, Georgia with no
21 airbag or seatbelt deployment.

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27 ³³ The complaint alleges the driver suffered a cerebral contusion, subarachnoid
28 hemorrhage, traumatic brain injury, and permanent disabilities impeding the ability
to perform daily tasks, communicate, and remember things.

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w. In March 2018, three more Sonatas experienced DS84 ACU ASIC EOS during crash tests developed by Hyundai Korea and conducted by Hyundai USA.

785. Between March 19 and 28, 2018, Hyundai USA conducted seven crash tests developed by Hyundai Korea and a third-party engineering firm. At this point NHTSA’s investigation for DS84 ACUs in Hyundai-Kia Class Vehicles was open for over two years. NHTSA supervised these crash tests.

786. In three of the seven crash tests developed by Hyundai Korea and executed by Hyundai USA, the DS84 ACU in the Hyundai Sonata suffered EOS damage. In two of these tests, the vehicles with ACU failures had observable wire harness damage which may have contributed to EOSs. The third such vehicle, however, had no observable wire damage that could have caused EOS. The presence of EOS damage in the third vehicle indicates that EOS can occur even without damage to the vehicle wiring.

787. In two of these crash tests, Hyundai Sonatas crashed at 70 miles per hour into another car. No airbags deployed and the ACUs failed to save a crash record. Hyundai USA’s investigation of the Ds84 ACU confirmed that ASIC EOS likely occurred, finding, “DS84 ASIC damage suspected.” The below pictures of the crashed Sonatas from these tests show damage that strongly indicates the airbags should have deployed.



788. On April 11-12, 2018, Hyundai USA, NHTSA, ZF Automotive USA, ZF Passive Safety USA, and ZF Electronics USA analyzed three DS84 ACUs from

1 the March 18-28 crash tests at ZF Automotive USA, ZF Electronics USA, and ZF
2 Passive Safety USA's shared office in Farmington Hills, Michigan. The analysis
3 showed that, in all three ACUs, an internal electrical short occurred on the 5-volt
4 VCC line of the DS84 ASIC. Upon information and belief, this refers to a
5 connection between the DS84 ASIC and a power supply chip.

6 789. [REDACTED]
7 [REDACTED]
8 [REDACTED]
9 [REDACTED]
10 [REDACTED]
11 [REDACTED]
12 [REDACTED]
13 [REDACTED]

- 14 x. **In May 2018, Kia Korea, Kia USA, Hyundai Mobis, ZF**
15 **Automotive USA, ZF Electronics USA, and ZF Passive**
16 **Safety USA discovered another Kia Forte crash with signs of**
17 **EOS.**

18 790. In early May 2018, NHTSA identified two Kia Fortes with DS84
19 ACUs and ASICs in salvage yards for further evaluation and asked Kia USA to
20 conduct an ACU download.

21 791. On May 15-16, 2018, Kia USA tried and failed to download crash data
22 from one of the vehicles, a 2012 Kia Forte.

23 792. On May 24, 2018, ZF Automotive USA, ZF Passive Safety USA, ZF
24 Electronics USA, Kia Korea, Kia USA, and Hyundai Mobis attended a joint
25 inspection of the ACU retrieved from the 2012 Kia Forte. The inspection took place
26 at a ZF facility in the United States—presumably where other inspections had taken
27 place: ZF Electronics USA, ZF Passive Safety USA, and ZF Automotive USA's
28 shared office in Michigan. Part of the crash record was missing, which is a sign of

1 ASIC EOS. Resistance measurements on the circuit board were also consistent with
 2 previous EOS events. Based on these results, NHTSA requested that Kia conduct a
 3 recall of 2010 to 2013 Kia Fortes.

4 **4. ZF Automotive USA, ZF Electronics USA, ZF Passive Safety USA,**
 5 **FCA, ST USA, ST Italy, and ST Malaysia knew the FCA Class**
 6 **Vehicles, as well as the DS84 ACUs and DS84 ASICs installed**
 7 **therein, were defective.**

8 793. For many years, FCA, ZF Automotive USA, ZF Electronics USA, ZF
 9 Passive Safety USA, ST USA, ST Italy, and ST Malaysia have known that the
 10 defective DS84 ACUs and ASICs in FCA Class Vehicles are uniquely vulnerable to
 11 EOS.

12 **a. Between September 25, 2009 and September 6, 2016, FCA**
 13 **returned over twenty DS84 ACUs with signs of EOS on**
 14 **DS84 ACUs to ZF Automotive USA, ZF Passive Safety USA,**
 15 **and ZF Electronics USA.**

16 794. According to a document produced by the ZF Defendants to NHTSA
 17 in connection with NHTSA’s investigation of vehicles equipped with defective
 18 DS84 ACUs, FCA returned over twenty ACUs that showed signs of EOS in the
 19 DS84 ASIC to ZF Electronics USA, ZF Passive Safety USA, and ZF Automotive
 20 USA between September 25, 2009 and September 6, 2016. Excerpts of this
 21 document with relevant dates of warranty returns are collected below. Each of these
 22 warranty returns indicates observations that the DS84 ACU malfunctioned due to
 23 EOS.

Component	Analysis Category	Supplier Name	Receipt Date	Short Description Verbatim	Reason for Return	Customer	Vehicle
DS84	EOS	ST Micro	25-Sep-09	AR45062, RMA31574, SQUIB FAULTS, PART BURNED	Airbag warning lamp on	Chrysler	200/ Sebring/ Avenger
DS84	EOS	ST Micro	19-Nov-09	AR46093, RMA 32032, VSAT SHORT TO GROUND	Airbag warning lamp on	Chrysler	200/ Sebring/ Avenger

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Component	Analysis Category	Supplier Name	Receipt Date	Short Description Verbatim	Reason for Return	Customer	Vehicle
DS84	EOS	ST Micro	7-Oct-08	AR47049, RMA32522, VDD SHORTED TO GROUND	Airbag warning lamp on	Chrysler	200/ Sebring/ Avenger
DS84	EOS	ST Micro	1-May-10	AR47619, RMA32729, VDD SHORTED TO GND, PIN 7	Airbag warning lamp on	Chrysler	200/ Sebring/ Avenger
DS84	EOS	ST Micro	9-Jun-11	AR49585, RMA34205, pulling down VUPP_Out(VRES) voltage	Airbag warning lamp on	Chrysler	Caliber
DS84	EOS	ST Micro	4-Jan-10	AR49609, RMA34284, return Squib to ST Micro analysis	Airbag warning lamp on	Chrysler	Wrangler
DS84	EOS	ST Micro	4-Apr-12	AR50384, RMA34495, internally shorted pins 61 to 62	Airbag warning lamp on	Chrysler	200/ Sebring/ Avenger
DS84	EOS	ST Micro	15-Jan-12	AR51945, RMA34838, Squib short to ground for squib 0	Airbag warning lamp on	Chrysler	Wrangler
DS84	EOS	ST Micro	14-Sep-11	AR51952, RMA34848, Drivers seat belt is not working	Airbag warning lamp on	Chrysler	Wrangler
DS84	EOS	ST Micro	13-May-11	AR52298, RMA34986, US01 has an internal VDD-GNDshort	Airbag warning lamp on	Chrysler	Caliber
DS84	EOS	ST Micro	29-Nov-11	EOS Customer Caused VOIDING QCCAR AR53218, RMA35467	Airbag warning lamp on	Chrysler	Ram
DS84	EOS	ST Micro	11-Oct-11	EOS Customer Caused VOIDING QCCAR AR53245, RMA35578	Airbag warning lamp on	Chrysler	Caliber
DS84	EOS	ST Micro	28-Aug-11	AR53251, RMA35671, No communication	Airbag warning lamp on	Chrysler	Ram
DS84	EOS	ST Micro	26-Mar-11	RMA 35626 Part was EOS VOIDING	Airbag warning lamp on	Chrysler	Fiat 500

Component	Analysis Category	Supplier Name	Receipt Date	Short Description Verbatim	Reason for Return	Customer	Vehicle
DS84	EOS	ST Micro	18-Mar-12	AR53893, RMA35948, hot to the touch unit powered up B220E700	Airbag warning lamp on	Chrysler	200/ Sebring/ Avenger
DS84	EOS	ST Micro	25-Sep-12	AR54077 RMA36007, pulling down Sys_Reset line on pin5 B323E972	Airbag warning lamp on	Chrysler	Fiat 500
DS84	EOS	ST Micro	11-Sep-12	AR54343, RMA36059, SQ5 appear shorted to battery voltage	Airbag warning lamp on	Chrysler	Fiat 500
DS84	EOS	ST Micro	9-Aug-13	AR55344, RMA36223, Internal short between pins 29 & 30 B462E1418	Airbag warning lamp on	Chrysler	200/ Sebring/ Avenger
DS84	EOS	ST Micro	3-Jun-13	AR55568, RMA36358, 3 volts & should be around 22 volts B546E1664	Airbag warning lamp on	Chrysler	Compass / Patriot
DS84	EOS	ST Micro	2-Sep-13	SR2014072201, RMA, causing abnormal squib output signals B623E1930	Airbag warning lamp on	Chrysler	Compass / Patriot
DS84	EOS	ST Micro	11-Dec-15	SR2016020310, RMA (B1009E3749), U501 has an internal short	Airbag warning lamp on	Chrysler	Wrangler
DS84	EOS	ST Micro	29-Jan-16	SR2016100401, RMA (FR-16-03608), measure 17vdc instead of 23vdc.	Airbag warning lamp on	Chrysler	Wrangler
DS84	EOS	ST Micro	6-Sep-16	SR2017110503, RMA (FR-17-05688), short from pin 34 to Gnd on pin 6	Airbag warning lamp on	Chrysler	Wrangler

795. FCA has also produced a document dated September 14, 2012 that analyzes the number of warranty returns for certain Jeep vehicles related to DS84 ACUs and ASICs as of that date. The document identified 11 total DS84 ASIC

1 returns and provided detailed information on failure symptoms for three Jeep
2 Wranglers. The failure symptoms for each of these three Jeep Wranglers identified
3 burnt metal on the DS84 ASIC, which is a sign of EOS. [REDACTED]

4 [REDACTED]
5 [REDACTED]
6 [REDACTED]
7 [REDACTED]
8 [REDACTED]
9 [REDACTED]

10 **b. In May 2011, FCA learned of airbag and seatbelt failures in**
11 **a 2009 Dodge Ram crash with signs of ASIC EOS.**

12 796. On May 6, 2011, John Brannon drove his 2009 Dodge Ram 1500 in
13 Hephzibah, Georgia. Although he was wearing his seatbelt when he crashed into a
14 vehicle that had stopped in front of him, the airbags failed to deploy, and the
15 seatbelts failed to lock. As a result, Mr. Brannon injured his head.

16 797. Mr. Brannon complained to FCA on May 9, 2011.

17 798. On May 11, 2011, an FCA representative inspected Mr. Brannon's
18 Ram 1500. Pictures from this inspection showed serious damage to the truck. The
19 impact severely deformed the front-end of the Ram 1500, pushing the frame on the
20 driver's side forward several inches. This type of damage indicates the seatbelts and
21 airbags should have deployed.

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10 799. The FCA inspector could not determine if the DS84 ACU recorded
11 any diagnostic trouble codes “due to an electrical issue.” Upon information and
12 belief, this meant the crash data retrieval tool could not communicate with the
13 Ram’s DS84 ACU. This was a sign of ASIC EOS.

14 800. Nonetheless, FCA misleadingly concluded internally: “there is no
15 indication that this accident or the injuries were the result of a design or
16 manufacturing defect.” Upon information and belief, FCA sent a letter denying the
17 claim for compensation on May 16, 2011 and closed the case.

18 801. When FCA produced documents to NHTSA in 2019 in response to
19 NHTSA’s investigation of the ACU Defect, however, FCA acknowledged it could
20 not rule out the ACU Defect for this crash.

21 c. **Between 2011 and 2012, FCA, ZF Automotive USA, ZF**
22 **Electronics USA, and ZF Passive Safety USA confirmed**
23 **EOS damage on a DS84 ASIC in a 2010 Jeep Wrangler with**
24 **an inadvertent deployment.**

25 802. Upon information and belief, the airbags in a 2010 Jeep Wrangler in
26 Glenview, Illinois deployed on August 22, 2011 even though the Wrangler did not
27 crash into anything.

28 803. Upon information and belief, an FCA dealer serviced this Wrangler in
early September 2011, and replaced a module, presumably the DS84 ACU.

1 804. Upon information and belief, applicable FCA policies and procedures
2 in this circumstance would have called for the dealer to send the DS84 ACU to
3 FCA. Accordingly, FCA likely received this DS84 ACU in 2011 or 2012.

4 805. Upon information and belief, ZF Automotive USA, ZF Passive Safety
5 USA, and ZF Electronics USA analyzed the DS84 ACU from this Wrangler and
6 confirmed EOS on the DS84 ASIC. Based on the timing of a 2012 warranty
7 analysis relating to Jeep Wranglers (discussed above) and a 2013 design review
8 relating to Jeep Wranglers that noted issues with EOS (discussed below), this
9 confirmation occurred in 2012 and likely precipitated the warranty analysis and
10 design review.

11 **d. Between 2013 and April 2015, ZF Electronics USA, ZF**
12 **Passive Safety USA, ZF Automotive USA and FCA learned**
13 **that the driver-side curtain airbag and seatbelt in a 2012**
14 **Jeep Patriot failed during a September 2012 crash test due**
 to EOS.

15 806. On September 12, 2012, the driver side airbag and seatbelt failed to
16 activate in a 2012 Jeep Patriot crash test conducted by the Insurance Institute for
17 Highway Safety. The Jeep crashed into a rigid barrier at 40 miles per hour in the
18 test. A bird's eye view of the test shows the severity of this crash:

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807. All of the airbags in the 2012 Jeep Patriot should have deployed given the severity of the crash into the rigid barrier.

808. The crash completely destroyed the vehicle's front end on the driver's side, as shown by the below image.

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809. The Insurance Institute for Highway Safety rated this test result as “Poor” and specifically noted airbag and seatbelt failures: “The dummy’s head barely contacted the frontal airbag before sliding off the left side as the steering column moved 21 cm upward and 15 cm to the right, resulting in little airbag cushioning for the chest and leaving the head vulnerable to contact with forward side structure. . . . Additionally, the seat belt allowed excessive forward excursion of the dummy’s head and torso, and the driver’s seat tipped forward and toward the B-pillar. The side curtain airbag did not deploy, leaving the dummy’s head vulnerable to contacts with side structure and outside objects.” Upon information and belief, the ACU Defect caused the side curtain airbag and seatbelt failure in this crash test.

810. Upon information and belief, FCA engineers learned of this incident no later than 2013.

1 811. Sometime between 2013 and April 8, 2015, the following events
2 occurred, each of which was a sign of EOS.

- 3 a. FCA engineers obtained the ACU from this crash test and found
4 it did not communicate with the Crash Data Recovery (“CDR”)
5 tool;
- 6 b. ZF Electronics USA, ZF Passive Safety USA, and ZF
7 Automotive USA analyzed the ACU during this time and
8 retrieved only a partial crash record; and
- 9 c. ZF Electronics USA, ZF Automotive USA, ZF Passive Safety
10 USA, and FCA concluded the DS84 ASIC in the 2012 Jeep
11 Patriot crash test sustained EOS damage.

12 812. On April 8, 2015, FCA engineers informed FCA’s compliance
13 department that the engineers observed EOS in the ACU from the 2012 Jeep Patriot
14 after the crash test.

- 15 e. **Between 2012 and April 2015, FCA, ZF Electronics USA, ZF**
16 **Automotive USA, ZF Passive Safety USA, ST USA, ST**
17 **Malaysia, and ST Italy confirmed the DS84 ACU in a 2012**
18 **Dodge Avenger had failed due to DS84 ASIC EOS during a**
crash in the United States.

19 813. On December 30, 2011, the front-end of a 2012 Dodge Avenger
20 crashed into a Ford F150 pickup truck somewhere in the United States. The crash
21 merited full airbag deployment, but the airbags in the Avenger failed to deploy. The
22 DS84 ACU also failed to save a crash record. Both of these failures were signs of
23 EOS.

24 814. Although Defendants have produced limited information about this
25 crash, the pictures of the wrecked Avenger confirm the accident was devastating.
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15 815. Upon information and belief, FCA learned of this crash in 2012.

16 816. Well prior to April 2015, FCA's U.S. Office of General Counsel had
17 learned of this crash.

18 817. Prior to April 2015, FCA's engineers had performed an analysis of the
19 DS84 ACU retrieved from the 2012 Dodge Avenger involved in this crash and
20 found the ACU did not communicate with the crash data retrieval tool. This was a
21 sign of EOS. FCA's compliance department learned about this analysis by no later
22 than April 6, 2015.

23 818. In April 2015, FCA's engineers informed FCA's compliance
24 department that ASIC EOS had occurred in the DS84 ACU retrieved from the 2012
25 Dodge Avenger. Upon information and belief, this confirmation was based on an
26 earlier analysis of the same ACU by ZF Electronics USA, ZF Passive Safety USA,
27 and ZF Automotive USA.
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819. [REDACTED]

f. In March 2013, ZF Automotive USA, ZF Passive Safety USA, ZF Electronics USA, and FCA began to discuss the need for design changes because they knew the DS84 ASIC was vulnerable to transients.

820. Six months after the September 14, 2012 warranty analysis identified three Jeep Wranglers with burnt metal on the DS84 ASIC, ZF Automotive USA, ZF Electronics USA, ZF Passive Safety USA, and FCA began reviewing “EOS Design” proposals for Jeep Wranglers. Upon information and belief, these Defendants began to discuss these proposals at least in part based on the warranty analysis from September 14, 2012.

821. On April 5, 2013, ZF Automotive USA, ZF Passive Safety USA, and ZF Electronics USA sent FCA a written update titled “JK [FCA’s codename for Jeep Wranglers] EOS Robustness Update.” The document discussed potential design changes, all of which fell short of replacing the DS84 ASIC with another ASIC with a stronger level of resistance to EOS, a strength possessed by competing ACU ASICs.

822. On April 15, 2013, ZF Automotive USA, ZF Passive Safety USA, and ZF Electronics USA sent FCA a written presentation titled “Chrysler JK [(Jeep

1 Wrangler)] and D-Segment [(Dodge rams)] Squib ASIC EOS Design Proposal
2 Evaluation results.”

- 3 a. The presentation states: “Dedicated team is continuing to work
4 comprehensive FTA/5P analysis of EOS occurrences observed
5 with ST DS84/MS84 ASICs to identify the system conditions
6 resulting in EOS.”
- 7 b. Upon information and belief, “FTA/5P analysis” refers to a type
8 of failure analysis called a “Fault Tree Analysis” and a type of
9 root cause analysis consisting of an analysis of 5 P’s (parts,
10 position, paper, people, and paradigms). ZF Automotive USA’s,
11 ZF Passive Safety USA’s and ZF Electronics USA’s dedication
12 of an entire team to this problem confirms that FCA, ZF
13 Automotive US. Inc., ZF Passive Safety USA, and ZF
14 Electronics USA were aware of signs of a very serious defect.
- 15 c. The presentation states that EOS had been observed in an “EOS
16 Design evaluation based on **Shorted Squib** high to Ground +
17 ORC Ground shift test.” Upon information and belief, this test
18 simulated a failure mode that can lead to inadvertent airbag
19 deployments with no crash event.
- 20 d. The presentation states that EOS had been observed in an “EOS
21 Design evaluation based on **Shorted Satellite** high to Ground +
22 ORC Ground shift test.” Upon information and belief, this test
23 simulated a failure mode that can lead to the nondeployment of
24 seatbelt and airbags during a crash.
- 25 e. The presentation discusses potential design changes, all of
26 which fell short of replacing the DS84 ASIC with another ASIC
27 with a stronger level of resistance to EOS possessed by
28 competing ACU ASICs. But the discussion of design changes

1 shows that FCA, ZF Automotive USA, and ZF Electronics USA
2 knew the current design was insufficient to protect against EOS.

3 823. Upon information and belief, FCA stopped using DS84 ASICs in
4 Dodge Rams starting with model year 2013.

5 824. On or around May 30, 2013, FCA received a document from ZF
6 Automotive USA, ZF Passive Safety USA, and ZF Electronics USA addressing a
7 potential warranty concern regarding the defective DS84 ACUs. The document
8 described a risk that the wire connecting the crash sensor to the DS84 ACU could
9 cause EOS and recommended that further circuit protection be added to the
10 defective DS84 ACUs in light of this risk.

11 825. In June 2013, ZF Electronics USA, ZF Passive Safety USA, and ZF
12 Automotive USA sent a written slide deck presentation to FCA. The presentation
13 was titled “TRW [Occupant Restraint Controller][:] ST Octal ASIC EOS
14 Countermeasures.” The “ST Octal ASIC” is another name for the DS84 ASIC. The
15 document described two “EOS Modes of failure.”

16 a. The first mode of failure occurred when a “[s]horted sensor line
17 to chassis ground,” a “[g]round shift,” and intermittent
18 “[b]attery supply” were combined. Upon information and belief,
19 ZF Passive Safety USA, ZF Electronics USA, ZF Automotive
20 USA, and FCA knew that a foreseeable crash event can cause
21 this combination of conditions. The document identified two
22 “[p]otential result[s]” from this failure mode. At a minimum, the
23 airbag warning lamp could turn on. At worst, however, the three
24 conditions could send the “Micro in reset during a crash event.”
25 In other words, the DS84 ASIC could malfunction and stop
26 working during a crash. This could lead to the failure to activate
27 airbags and seatbelts.
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1 b. The second mode of failure occurred when a squib line (i.e., the
2 electrical line connecting the DS84 ASIC to the airbag triggers)
3 shorting to chassis ground was combined with a ground shift.
4 Upon information and belief, ZF Electronics USA, ZF Passive
5 Safety USA, ZF Automotive USA, and FCA knew that this type
6 of failure mode can occur during normal driving, without a
7 crash. The document identified two “[p]otential result[s]” from
8 this failure mode. At a minimum, the airbag warning lamp could
9 turn on. At worst, however, an “[i]nadvertent deployment” could
10 occur.

11 826. At least as early as 2014, FCA, ZF Passive Safety USA, ZF
12 Automotive USA, and ZF Electronics USA began to make changes to the DS84
13 ACUs used on new Jeep Patriots, Compasses, and Wranglers based on concerns
14 regarding EOS. Upon information and belief, ST Italy and ST USA were involved
15 in the testing and analysis that led this decision. Based on ST USA’s and ST Italy’s
16 analysis and input, ZF Electronics USA, ZF Passive Safety USA, and ZF
17 Automotive USA altered the DS84 ACUs for these FCA Class Vehicles for the
18 2015 model year by adding some additional protective components to the
19 communication lines between the crash sensors and the DS84 ASIC but otherwise
20 leaving the design flaws of the DS84 ACUs unfixed. This inadequate stopgap
21 measure did not fix the ACU Defect (*see* Section IV.A.9. above) but does
22 demonstrate FCA’s, ZF Automotive USA’s, ZF Passive Safety USA’s, ZF
23 Electronics USA’s, ST USA’s and ST Italy’s knowledge that the original DS84
24 ACU was vulnerable to EOS.

25 827. Although FCA made these minor changes to certain Jeep vehicles,
26 FCA continued to distribute other new vehicles with defective DS84 ACUs that had
27 the same lower levels of circuit protection, including the 2015 and 2016 Fiat 500,
28 among others.

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g. Between 2014 and April 2015, FCA, ZF Automotive USA, ZF Electronics USA, ZF Passive Safety USA, ST USA, ST Malaysia, and ST Italy confirmed ASIC EOS in a 2012 Jeep Patriot that crashed with no airbag deployment in the United States.

828. On December 20, 2013, the front end of a 2012 Jeep Patriot crashed into a Ford Expedition SUV. The Jeep was travelling at approximately 35 miles per hour. The crash merited full airbag deployment, but the airbags in the Jeep failed to deploy, and the DS84 ACU failed to record a crash record, both of which are indications of EOS. The pictures of the Jeep from an inspection show very serious damage to the front of the vehicle.



829. Upon information and belief, FCA learned of this crash in 2014.

830. Well prior to April 2015, FCA's U.S. Office of General Counsel had learned of this crash.

1 831. Prior to April 2015, FCA’s engineers had performed an analysis of the
2 DS84 ACU retrieved from the 2012 Jeep Patriot involved in this crash and found
3 the ACU did not communicate with the crash data retrieval tool. This was a sign of
4 EOS. FCA’s compliance department learned about this analysis by no later than
5 April 6, 2015.

6 832. In April 2015, FCA’s engineers informed FCA’s compliance
7 department that ASIC EOS had occurred in the DS84 ACU retrieved from the 2012
8 Jeep Patriot. Upon information and belief, this confirmation was based on an earlier
9 written analysis of the same DS84 ACU by ZF Electronics USA, ZF Passive Safety
10 USA, and ZF Automotive USA

11 833. [REDACTED]
12 [REDACTED]
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14 [REDACTED]
15 [REDACTED]
16 [REDACTED]
17 [REDACTED]
18 [REDACTED]
19 [REDACTED]

20 **h. In April 2014, FCA learned of airbag failures in a 2012**
21 **Dodge Ram crash with signs of EOS.**

22 834. On April 15, 2014, Allen Corbin drove a 2012 Dodge Ram in West
23 Virginia. He rear-ended another vehicle that was stopped at the top of a hill. The
24 Dodge Ram’s airbags failed to deploy. The crash broke Mr. Corbin’s sternum. An
25 ambulance took him to the emergency room.

26 835. On April 21, 2014, Mr. Corbin reported this crash to FCA.
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1 836. In May 2014, FCA inspected Mr. Corbin’s Dodge Ram. The inspector
2 was unable to establish a connection between the DS84 ACU and a diagnostic tool,
3 which is a sign of EOS.

4 837. FCA’s records of the inspection confirmed: “There was front impact
5 damage. The bumper and core support were pushed in. Core support was kinked on
6 top, and pushed in on bottom. Left frame rail was bent. The support that goes from
7 bulk head to core support was kinked.” The below photograph confirms this
8 damage.



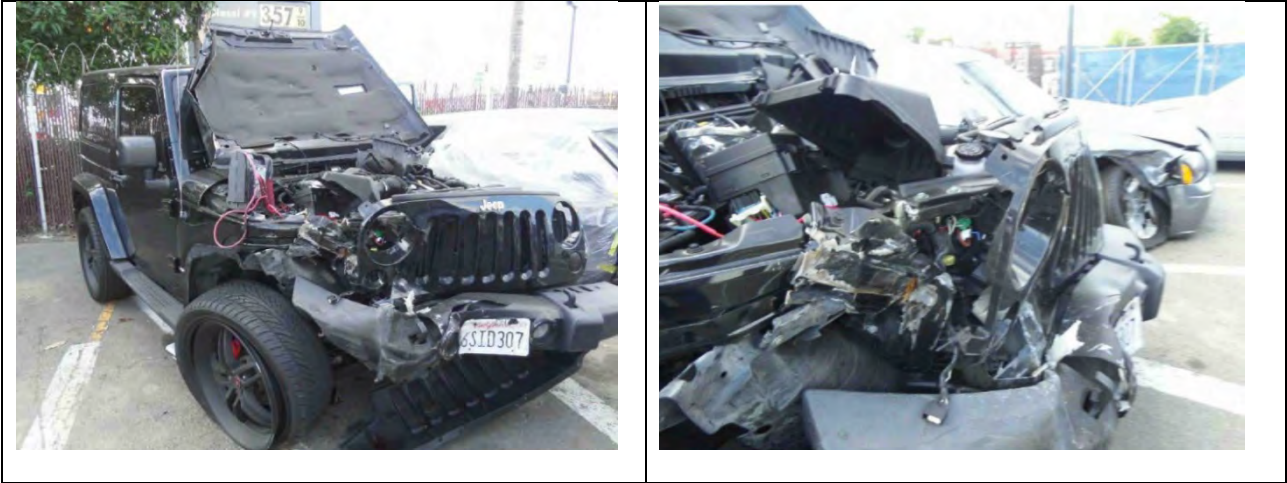
18 838. Nonetheless, FCA concluded internally: “there is no indication that
19 this accident or the injuries were the result of a design or manufacturing defect.”
20 Upon information and belief, FCA sent a letter denying the claim for compensation
21 in May 2014 and closed the case.

22 839. When FCA produced documents to NHTSA in 2019 in response to
23 NHTSA’s investigation of the ACU Defect, however, FCA acknowledged it could
24 not rule out the ACU Defect for this crash.
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1 **i. In October 2014, FCA learned of airbag failures in a 2014**
2 **Jeep Wrangler crash with signs of EOS.**

3 840. On October 19, 2014, Timothy Harris drove a 2011 Jeep Wrangler. He
4 was travelling at 50 miles per hour when he took his eyes off the road. When he
5 looked back, he saw a semitruck approaching, swerved off the road, and crashed
6 into a pole. None of the airbags deployed in the crash, and Mr. Harris was injured
7 as a result.

8 841. The Wrangler was declared a total loss from damage from the crash.
9 Pictures from an inspection of the vehicle showed the impact with the pole had
10 deformed the center and passenger side of the front end of the vehicle, pushing the
11 frame of the vehicle forward and warping the passenger-side wheel.



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19 842. FCA sent an inspector to look at the Jeep Wrangler in November 2014.
20 The inspector was unable to establish communication with the DS84 ACU. This
21 was a sign of ASIC EOS.
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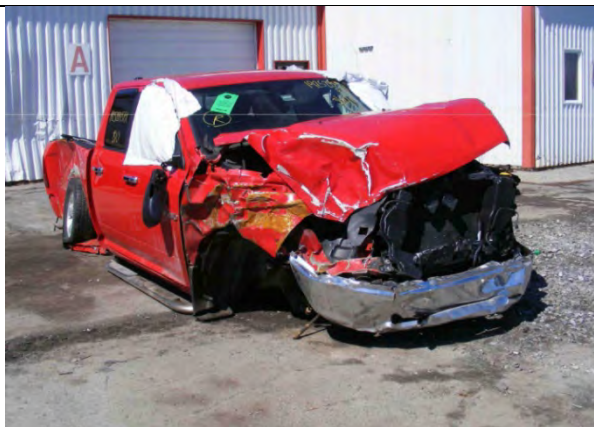
23 843. Nonetheless, FCA concluded internally: “there is no indication that
24 this accident or the injuries were the result of a design or manufacturing defect.”
25 Upon information and belief, FCA sent a letter denying the claim for compensation
26 on November 25, 2014, and closed the case.
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1 844. When FCA produced documents to NHTSA in 2019 in response to
2 NHTSA’s investigation of the ACU Defect, however, FCA acknowledged it could
3 not rule out the ACU Defect for this crash.

4 **j. In April 2015, FCA learned of airbag failures in a 2011**
5 **Dodge Ram.**

6 845. On or around February 27, 2015, Shirley Voisine drove her 2011
7 Dodge Ram in Maine in snowy conditions. She crashed the vehicle in a large pile-
8 up reportedly involving dozens of vehicles. None of the airbags in her Ram
9 deployed.

10 846. She reported the incident to FCA in April 2015, and FCA inspected the
11 vehicle shortly thereafter. The below photographs from the inspection confirmed
12 catastrophic damage to her Dodge Ram. Based on these photographs, the airbags
13 should have deployed.



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1 847. When FCA produced documents to NHTSA in 2019 in response to
2 NHTSA’s investigation of the ACU Defect, FCA acknowledged it could not rule
3 out the ACU Defect for this crash.

4 **k. Between April 15, 2015 and October 14, 2015, FCA, ZF**
5 **Automotive USA, ZF Passive Safety USA, ZF Electronics**
6 **USA, ST USA, ST Malaysia, and ST Italy confirmed ASIC**
7 **EOS in a 2012 Jeep Patriot that crashed with a partial**
8 **airbag failure.**

8 848. On or around November 28, 2013, the right frontend of a 2012 Jeep
9 Patriot crashed at approximately 30 miles per hour into a mid-sized sedan in
10 Wisconsin. The 1st stage front airbags in the Jeep deployed but the second stage
11 airbags failed, even though the crash merited full airbag deployment.

12 849. The crash did serious damage to the front-end of the Jeep Patriot, as
13 demonstrated by the below pictures of the wrecked vehicle.



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1 850. FCA's compliance department learned about this incident by no later
2 than April 15, 2015. FCA's office of general counsel knew of the incident before
3 then.

4 851. The police attempted to download the crash record from this Patriot's
5 DS84 ACU, but were unable to do so. This was a sign of ASIC EOS. FCA, ZF
6 Electronics USA, ZF Passive Safety USA, and ZF Automotive USA learned of this
7 issue in or before 2015.

8 852. Sometime prior to October 13, 2015, FCA sent the DS84 ACU from
9 this Jeep Patriot to ZF Passive Safety USA, ZF Electronics USA, and ZF
10 Automotive USA ZF Passive Safety USA, ZF Electronics USA, and ZF
11 Automotive USA observed a visible burn mark on the DS84 ASIC from this ACU.
12 This was a sign of ASIC EOS. ZF Passive Safety USA, ZF Electronics USA, and
13 ZF Automotive USA also observed abnormally low resistance measurements,
14 which was a further sign of ASIC EOS.

15 853. Upon information and belief, ZF Passive Safety USA, ZF Electronics
16 USA, and ZF Automotive USA analyzed the EEPROM from the Patriot's DS84
17 ACU and found the EDR had an incomplete crash record. This was another sign of
18 EOS.

19 854. [REDACTED]
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23 [REDACTED]
24 [REDACTED]
25 [REDACTED]

26 855. [REDACTED]
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856. By no later than October 13, 2015, ZF Passive Safety USA, ZF Automotive USA, and ZF Electronics USA finalized this written report on the DS84 ACU from this Jeep Patriot. The conclusion of this report states:

- Visible EOS on DS84 ASIC
- EOS confirmed via resistance measurements and supplier analysis.
- Confirmed the near deploy flag was not set – default values present.

857. On October 14, 2015, FCA received this written report from ZF Electronics USA, ZF Passive Safety USA, and ZF Automotive USA that confirmed an DS84 ASIC EOS failure had occurred on the ACU retrieved from the 2012 Jeep Patriot involved in this crash.

858. On March 9, 2016, FCA completed an analysis of the crash event timing when ASIC EOS occurred in the 2012 Jeep Patriot. According to FCA, “the data proved that the ASIC EOS occurred before the second stage deployment command was given by the [ACU], inhibiting passenger second stage airbag deployment and potentially inhibiting driver second stage airbag deployment.” In other words, the second stage airbags in the Jeep Patriot failed due to ASIC EOS.

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I. Between April 15, 2015 and October 28, 2015, FCA, ZF Automotive USA, ZF Electronics USA, ZF Passive Safety USA, ST USA, ST Malaysia, and ST Italy confirmed ASIC EOS in a 2012 Chrysler 200 convertible that crashed with no airbag deployment.

859. In or around August 2014, a 2012 Chrysler 200 convertible crashed in Maryland. The left side, front end of the Chrysler 200 crashed into an unknown vehicle at approximately 40 miles per hour. The airbags in the Chrysler 200 failed to deploy and the DS84 ACU failed to record any crash data, which are signs of EOS.

860. The crash completely destroyed the front end of the Chrysler, as demonstrated by the below images from the vehicle inspection.



861. Upon information and belief, this crash merited full airbag deployment.

1 862. FCA’s compliance department learned about this incident by no later
2 than April 15, 2015. FCA’s office of general counsel knew of the incident before
3 then.

4 863. On August 28, 2015, FCA provided ZF Automotive USA, ZF Passive
5 Safety USA, and ZF Electronics USA with the DS84 ACU retrieved from the 2012
6 Chrysler 200 convertible involved in this crash.

7 864. Between August 28, 2015 and October 25, 2015, ZF Automotive USA,
8 ZF Electronics USA, and ZF Passive Safety USA analyzed the ACU. The
9 companies found the ACU had abnormal resistance measurements, which was a
10 sign of ASIC EOS. The companies also had to remove the EEPROM memory chip
11 and transplant it onto a working ACU to establish communication and attempt to
12 download a crash record. This was a further sign of EOS. After doing so, the
13 companies found no crash record. This was a further sign of ASIC EOS.

14 865. [REDACTED]
15 [REDACTED]
16 [REDACTED]
17 [REDACTED]
18 [REDACTED]
19 [REDACTED]
20 [REDACTED]
21 [REDACTED]

22 866. By no later than October 26, 2015, ZF Electronics USA, ZF Passive
23 Safety USA, and ZF Automotive USA prepared a report on the DS84 ACU
24 received from the 2012 Chrysler 200 convertible. The report describes the project
25 as: “Download and inspection of ORC [Chrysler’s term for ACU]. Airbags did not
26 deploy in crash.” The conclusion of the report states: “No crash record present.
27 Measurements indicative of possible EOS damage to DS84.” The report also states:
28

1 “Findings consistent with prior testing shared with FCA indicating EOS caused by
2 out of specification transients.”

3 867. [REDACTED]
4 [REDACTED]
5 [REDACTED]
6 [REDACTED]

7 868. On October 28, 2015, FCA received this report from ZF Automotive
8 USA, ZF Passive Safety USA, and ZF Electronics USA. FCA concluded the report
9 confirmed the ACU retrieved from the 2012 Chrysler 200 convertible had
10 malfunctioned due to EOS and failed to trigger the airbags in the crash.

11 **m. Between June 2015 and November 2015, FCA, ZF**
12 **Electronics USA, ZF Passive Safety USA, and ZF**
13 **Automotive USA tests replicated two EOS failure modes.**

14 869. In June 2015, ZF Electronics USA, ZF Passive Safety USA, ZF
15 Automotive USA, and FCA communicated regarding the vulnerability of the DS84
16 ASIC to EOS. ZF Electronics USA, ZF Passive Safety USA, and ZF Automotive
17 USA acknowledged to FCA that, “ASIC EOS failure could be caused by an
18 electrical transient generated during the crash under conditions of a front sensor
19 signal wire and high current power feed simultaneously shorted to vehicle chassis
20 and subsequent the power feed short opens.” During this time, ZF Electronics USA,
21 ZF Passive Safety USA, and ZF Automotive USA also demonstrated in testing that
22 a transient of 1.2 Volts to -2.0 Volts with duration of less than 100 microseconds
23 could create an ASIC EOS failure in its defective DS84 ACUs. Other, non-DS84
24 ACUs can withstand far greater voltage.

25 870. On July 29, 2015, FCA simulated the conditions of a simultaneous
26 shorted sensor signal wire and shorted high current power feed to vehicle chassis on
27 a Jeep Patriot. The simulation determined that even when the shorted power feed
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1 condition was removed, transients of 1 to 2 Volts were generated and could cause
2 an ASIC EOS failure.

3 871. On September 15, 2015, ZF Electronics USA, ZF Passive Safety USA,
4 and ZF Automotive USA sent a lab report to FCA confirming that the DS84 ACU
5 resets when a negative transient creates an ASIC EOS event. As this indicated, the
6 ACU could fail to trigger the airbags and seatbelts when a transient creates an EOS
7 event.

8 872. Between October 13, 2015 and November 17, 2015, ZF Electronics
9 USA, ZF Passive Safety USA, and ZF Automotive USA continued to perform
10 transient testing for FCA. This testing found that the DS84 ASIC was
11 approximately 1/3rd to 3/16th as resistant to transients as the MS84 ASIC used by
12 other ACUs contemporaneously sold by ZF Electronics USA, ZF Passive Safety
13 USA, and/or ZF Automotive USA, and that the DS84 ASIC experienced resets at a
14 much faster rate than the MS84 ASIC did. Upon information and belief, ZF TRW
15 Corp. and ZF Germany were aware of these findings before ZF Automotive USA
16 and ZF Electronics USA shared them with FCA in fall 2015.³⁴

17 **n. Between April 15, 2015 and November 15, 2015, FCA, ZF**
18 **Electronics USA, ZF Passive Safety USA, ZF Automotive**
19 **USA, ST USA, ST Malaysia, and ST Italy confirmed ASIC**
20 **EOS failure in a 2012 Chrysler 200 that crashed with a**
partial airbag failure.

21 873. On September 18, 2013, left side, front end of a 2012 Chrysler 200
22 crashed at approximately 40 miles per hour into a Ford F150 pickup truck in
23

24 ³⁴ The results of these tests are contained in a PowerPoint presentation produced by
25 FCA US LLC. The title page of the presentation says, “ZF Friedrichshafen AG”
26 under the title. Each other page of the document states: “This document is the
27 property of ZF TRW Automotive and is disclosed in confidence. It may not be
28 copied, disclosed to others, or used for manufacturing, without the prior written
consent of ZF TRW Automotive.” The phrase “ZF TRW Automotive” denotes ZF
TRW Corp.

1 Tennessee. The crash merited full airbag deployment but none of the airbags
2 deployed and the ACU failed to save a crash record.

3 874. The crash did serious damage to the front-end of the Chrysler 200, as
4 demonstrated by the below pictures of the wrecked vehicle.



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20 875. In or before October 2015, FCA sent ZF Automotive USA, ZF
21 Electronics USA, and ZF Passive Safety USA the DS84 ACU retrieved from this
22 2012 Chrysler 200. FCA informed ZF Automotive USA, ZF Electronics USA, and
23 ZF Passive Safety USA that the airbags did not deploy in the Chrysler 200 during a
24 crash and requested a download and inspection of the DS84 ACU.

25 876. On October 22, 2015, ZF Automotive USA, ZF Electronics USA, and
26 ZF Passive Safety USA attempted to download the crash record, but found there
27 was no crash record. This was a sign of ASIC EOS. The diagnostic tool found
28 active communication faults on the DS84 ACU, which stopped after replacing the

1 ACU with a new one. This was a further sign of ASIC EOS. The companies also
2 found abnormally low resistance measurements on the ACU, which is yet another
3 sign of ASIC EOS.

4 877. [REDACTED]
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6 [REDACTED]
7 [REDACTED]
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9 [REDACTED]
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15 [REDACTED]
16 [REDACTED]
17 [REDACTED]
18 [REDACTED]

19 878. On or around November 17, 2015, ZF Electronics USA, ZF Passive
20 Safety USA, and ZF Automotive USA finalized a report on the DS84 ACU
21 received from the 2012 Chrysler 200. The conclusion of the report states: “No crash
22 record present. Supplier analysis confirmed electrical overstress on DS84.” The
23 report also states: “Findings consistent with prior testing shared with FCA
24 indicating EOS caused by out of specification transients.”

25 879. On or around November 17, 2015, FCA received a report from ZF
26 Automotive USA, ZF Passive Safety USA, and ZF Electronics USA of this report.

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o. Between May 16, 2012 and September 2016, FCA, ZF Automotive USA, ZF Passive Safety USA, and ZF Electronics USA learned of a 2011 Dodge Avenger with suspected EOS that crashed with no airbag deployment.

880. On May 16, 2012, the right side, front end of a 2011 Dodge Avenger crashed with a Ford F150 pickup truck. The Avenger was travelling at approximately 25 miles per hour. The crash merited full airbag deployment, but none of the airbags deployed in the Avenger.

881. Photos of the wrecked 2011 Dodge Avenger confirm that the crash destroyed the front end of the vehicle.



882. FCA’s compliance department learned about this incident by no later than April 15, 2015. FCA’s office of general counsel knew of the incident before then.

883. By no later than February 5, 2016, ZF Automotive USA knew the DS84 ACU from the 2011 Dodge Avenger did not communicate, which is a sign of EOS.

884. In September 2016, FCA concluded that EOS was “strongly suspected” in this incident.

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p. In December 2015, FCA learned of airbag failures in a 2012 Jeep Wrangler crash with signs of EOS.

885. On November 29, 2015, Melissa Koenig drove a 2012 Jeep Wrangler in South Wales, New York. Her Wrangler crashed into a telephone pole. The airbags in her vehicle failed to deploy. Although she was wearing a seatbelt, she suffered head injuries and memory loss. These injuries indicate the seatbelt did not restrain her.

886. Ms. Koenig notified FCA of this incident on December 4, 2015.

887. On or around December 14, 2015, FCA sent an inspector to look at the Wrangler. The inspector's crash diagnostic tool could not communicate with the DS84 ACU. This was a sign of ASIC EOS.

888. When the inspector turned on the Wrangler, the airbag warning lamp was illuminated. This was another sign of ASIC EOS.

889. The pictures taken by the inspector confirm the crash had severely damaged the front end of the Wrangler, bending the frame on the driver's side.





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890. Despite the severity of the crash, the apparent failure of the seatbelts to prevent a serious head injury, and failure of the ACU to communicate, FCA concluded internally: “there is no indication that this accident or the injuries were the result of a design or manufacturing defect.” Upon information and belief, FCA sent a letter denying the claim for compensation on December 30, 2015, and closed the case.

891. When FCA produced documents to NHTSA in 2019 in response to NHTSA’s investigation of the ACU Defect, however, FCA acknowledged it could not rule out the ACU Defect for this crash.

q. Between December 15, 2015 and March 31, 2016, FCA, ZF Automotive USA, ZF Passive Safety USA, and ZF Electronics USA learned of another case of suspected EOS and failed airbags involving a 2013 Chrysler 200.

892. On December 15, 2015, FCA’s compliance department learned of airbag deployment failure in a 2013 Chrysler 200 that crashed into a sport utility vehicle.

893. The pictures of the wrecked 2013 Chrysler 200 show severe front end damage.

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894. On February 18, 2016, a representative from FCA inspected the 2013 Chrysler 200 and found the ACU did not communicate, which is a sign of EOS.

895. On March 31, 2016, ZF Automotive USA, ZF Passive Safety USA, and ZF Electronics USA transferred the DS84 ASIC from the noncommunicative DS84 ACU to a new ACU and found the DS84 ASIC did not have a crash record. This was another sign of EOS.

896. In September 2016, FCA concluded that EOS was “strongly suspected” in this incident.

r. In March and April 2015, FCA learned of airbag failures in a 2012 Fiat 500 crash with signs of ASIC EOS.

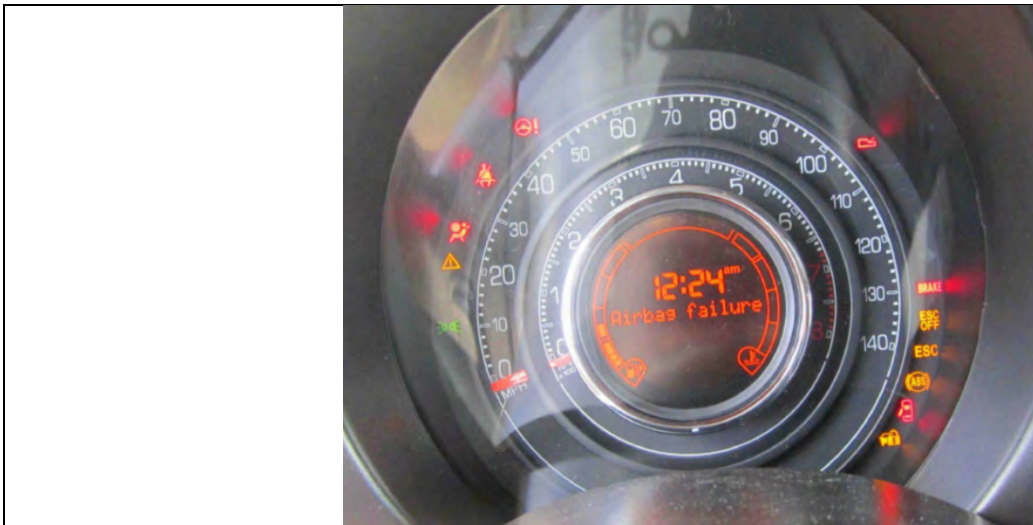
897. On January 7, 2015, Wanda Ashby drove her 2012 Fiat 500 on a neighborhood street in Mission Viejo, California. Her vehicle crashed into a sport utility vehicle that stopped suddenly in front of her. The airbag failed to deploy in

1 the crash even though the crash was severe enough to fracture Ms. Ashby’s sternum
2 and hospitalize her for five days. Ms. Ashby’s insurer declared the Fiat 500 a total
3 loss based on the damage from the accident.

4 898. On March 7, 2015, Ms. Ashby notified FCA of the accident and sought
5 compensation based on the failure of the airbags to deploy.

6 899. In March or April 2015, FCA inspected Ms. Ashby’s Fiat 500. The
7 inspector could not establish communication with the DS84 ACU. The diagnostic
8 tool reported: “The ecu required to identify the vehicle (TIPMCGW) is non-
9 responsive. This condition must be corrected before the diagnostic session can
10 continue.” This was a sign of ASIC EOS.

11 900. Based on photographs produced by FCA, the inspector powered up the
12 vehicle and the dashboard stated, “airbag failure,” as confirmed by the below
13 picture. Upon information and belief, this was a sign of ASIC EOS.



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22 901. Despite the inability to communicate with the DS84 ACU and the
23 warning “airbag failure” on the vehicle’s dashboard, FCA concluded internally
24 “there is no indication that this accident or the injuries were the result of a design or
25 manufacturing defect.” Based on FCA’s records, FCA sent a letter to Ms. Ashby
26 denying any defect and the case was closed in April 2015.
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1 902. When FCA produced documents to NHTSA in 2019 in response to
2 NHTSA’s investigation of the ACU Defect, however, FCA acknowledged it could
3 not rule out the ACU Defect for this crash.

4 **s. In August 2015, FCA learned that airbag had not deployed**
5 **in a 2014 Jeep Compass with signs of ASIC EOS.**

6 903. In April 2015, FCA’s compliance department identified a suspicious
7 crash where the airbags failed to deploy in a 2014 Jeep Compass that had crashed
8 into a garbage truck. Although the crash destroyed the front end of the Jeep (as the
9 below pictures confirm), no airbags deployed.



23 904. On August 31, 2015, FCA examined the data obtained from the EDR
24 for this Compass. It found no crash data recorded and an internal ASIC fault noted
25 in the diagnostic record. These were signs of ASIC EOS.

26 905. By no later than September 2016, FCA concluded ASIC EOS was
27 “strongly suspected” in this crash.
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t. In September 2015, FCA learned of airbag failures in a 2012 Dodge Ram crash with signs of ASIC EOS.

906. On August 15, 2015, Michael Attardo drove a 2012 Ram 1500 in Mansfield, Connecticut. He drifted across the eastbound travel lane on Route 89, and collided with a westbound vehicle before leaving the highway. After this collision, Mr. Attardo's truck continued travelling west off the roadway, collided with several trees and a stone wall, where it finally stopped. Mr. Attardo broke his neck and shoulder bone and suffered head injuries.

907. This accident was an extremely serious head-on collision on a highway. Pictures of Mr. Attardo's wrecked Ram confirm complete destruction of the front end of the vehicle. The crash severely deformed the front-end of the Ram 1500, shattered the windshield, and mangled the engine block.



1 908. The crash also moved the steering wheel several inches, as the below
2 the image from an inspection confirms.



10 909. Given these facts about the crash, the Dodge Ram's airbags should
11 have deployed.

12 910. In 2015, FCA inspected this vehicle. The inspector could not access
13 the crash diagnostics due to electrical system damage, which upon information and
14 belief, meant the ACU was noncommunicative. This was a sign of ASIC EOS.

15 911. Nonetheless, FCA concluded internally: "there is no indication that
16 this accident or the injuries were the result of a design or manufacturing defect."
17 Upon information and belief, FCA sent a letter denying the claim for compensation.
18 FCA closed the case in 2016.

19 912. When FCA produced documents to NHTSA in 2019 in response to
20 NHTSA's investigation of the ACU Defect, however, FCA acknowledged it could
21 not rule out the ACU Defect for this crash.

22 u. **By no later than July 19, 2016, FCA, ZF Automotive USA,**
23 **ZF Electronics USA, and ZF Passive Safety USA knew of a**
24 **September 11, 2015 crash where the airbags failed to deploy**
 in a 2013 Dodge Avenger and there were signs of EOS.

25 913. On September 11, 2015, the front end of a 2013 Dodge Avenger
26 crashed into a Jeep Grand Cherokee. The airbags in the 2013 Dodge Avenger failed
27 to deploy. The ACU in the 2013 Dodge Avenger failed to save a crash record. The
28 ACU failed to communicate, which is a sign of EOS.

1 914. Upon information and belief, FCA learned about this crash in 2015 or
2 2016.

3 915. ZF Automotive USA, ZF Electronics USA, and ZF Passive Safety
4 USA knew of this crash by no later July 19, 2016.

5 **v. By September 2016, FCA concluded EOS had likely**
6 **occurred in another 2012 Chrysler 200 that crashed with no**
7 **airbag deployment.**

8 916. In September 2016, FCA concluded EOS was “strongly suspected” in
9 a crash where a 2012 Chrysler 200 collided with a full-size sports utility vehicle
10 and the airbags did not deploy. The EDR from this vehicle had not recorded any
11 crash record, which was a sign of ASIC EOS. Pictures of the wrecked Chrysler 200
12 are below.



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18 **w. In December 2016, FCA learned of airbag failures in a 2016**
19 **Jeep Patriot crash with signs of ASIC EOS.**

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21 917. On December 10, 2016, Carmen Zimmer drove her 2016 Jeep Patriot
22 in South Dakota. She was travelling at 70 miles per hour in the right lane of a road
23 when the car in front of her suddenly changed lanes, which revealed a stopped
24 vehicle ahead. It was too late to avoid a collision. Despite the high speed of the
25 crash, the airbags in her Patriot failed to deploy, and Ms. Zimmer suffered chest
26 injuries.

27 918. On December 14, 2016, Ms. Zimmer notified FCA of the crash.
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1 919. In January 2017, FCA inspected Ms. Zimmer’s Patriot. The inspector
2 found several cuts in the battery cables. He attempted to connect to the ACU with a
3 jumper box but failed. This was sign of ASIC EOS.

4 920. Pictures of Ms. Zimmer’s wrecked Patriot confirm the crash had
5 severely deformed the passenger-side, front-end of the vehicle.



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14 921. Nonetheless, FCA concluded internally: “there is no indication that
15 this accident or the injuries were the result of a design or manufacturing defect.”
16 FCA sent a letter denying the claim for compensation in January 2017, and closed
17 the case.

18 922. When FCA produced documents to NHTSA in 2019 in response to
19 NHTSA’s investigation of the ACU Defect, however, FCA acknowledged it could
20 not rule out the ACU Defect for this crash.

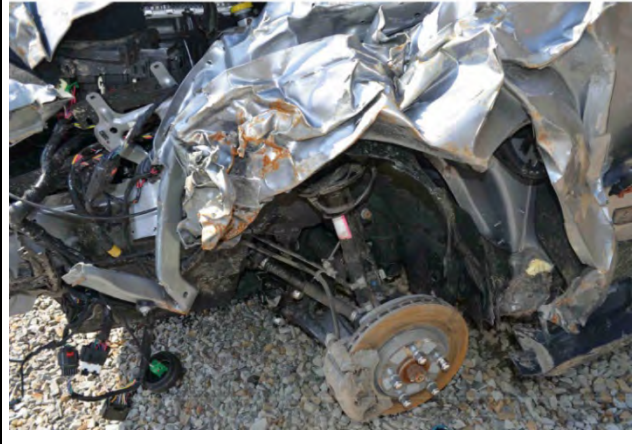
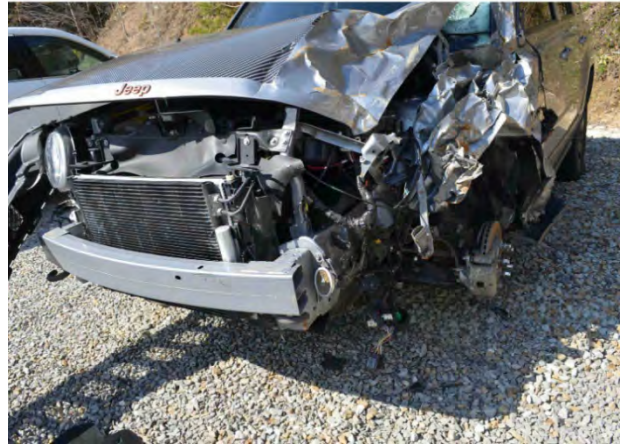
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22 **x. In March 2018, FCA learned of airbag failures in a 2017
23 Jeep Patriot crash with signs of ASIC EOS.**

24 923. On March 12, 2018, Austin Kidd drove his 2017 Jeep Patriot in
25 Kentucky. He was driving along a curve when an oncoming vehicle collided with
26 the driver’s side of his Jeep. The airbags in Mr. Kidd’s Jeep failed to deploy.

27 924. On March 12, 2018, Mr. Kidd and his mother reported the incident to
28 FCA.

1 925. On March 14, 2018, FCA sent an inspector to look at the vehicle with
2 the instruction “EDR REQUIRED.” Based on photographs of the inspection, the
3 inspector’s crash data retrieval tool could not communicate with the DS84 ACU.
4 This was a sign of ASIC EOS.

5 926. The inspection confirmed very severe damage to the driver’s side of
6 the vehicle, including deformation of the front-end frame. These pictures indicate
7 the airbags in the Patriot should have deployed.



23 927. Despite the failure to obtain the required EDR, FCA sent a denial letter
24 to Mr. Kidd and closed the case in May 2018.

25 928. When FCA produced documents to NHTSA in 2019 in response to
26 NHTSA’s investigation of the ACU Defect, however, FCA acknowledged it could
27 not rule out the ACU Defect for this crash.
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1 y. **In December 2018, FCA learned of airbag failures in a 2016**
2 **Jeep Wrangler crash with signs of ASIC EOS.**

3 929. On December 20, 2018, Marissa Monroe drove her 2016 Jeep
4 Wrangler westbound on Highway 70 at Ranchette Road in Durant, Oklahoma. Her
5 daughter was in the passenger seat. The vehicle was travelling at approximately 55
6 miles per hour when a Chevy pickup suddenly stopped in front of her with no brake
7 lights. She crashed into the pickup. Despite the high speed of this collision, the
8 airbags in the Wrangler failed to deploy. She suffered contusions and abrasions
9 from hitting her head on the steering wheel. The crash hospitalized her daughter
10 with a concussion.

11 930. On December 21, 2018, Ms. Monroe notified FCA of this crash.

12 931. On or around January 4, 2019, FCA inspected Ms. Monroe’s
13 Wrangler. According to FCA’s records of the inspection: “EDR data collection was
14 attempted, but was unsuccessful due to damage to the subject vehicle’s electrical
15 system.” Upon information and belief, the inspector’s crash data retrieval tool could
16 not communicate with the DS84 ACU, which was a sign of ASIC EOS.

17 932. Pictures of Ms. Monroe’s wrecked Wrangler confirm the crash
18 severely deformed the passenger-side, front-end of the vehicle.



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933. Nonetheless, FCA concluded internally: “there is no indication that this accident or the injuries were the result of a design or manufacturing defect.” FCA sent a letter denying the claim for compensation on January 11, 2019, and closed the case.

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934. When FCA produced documents to NHTSA in 2019 in response to NHTSA’s investigation of the ACU Defect, however, FCA acknowledged it could not rule out the ACU Defect for this crash.

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5. ZF Automotive USA, ZF Electronics USA, ZF Passive Safety USA, ST USA, ST Italy, ST Malaysia, Toyota Japan, Toyota Engineering USA, Toyota Sales USA, and Toyota USA knew the Toyota Class Vehicles, as well as the DS84 ACUs and DS84 ASICs installed therein, were defective.

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935. For many years, Toyota Japan, Toyota Sales USA, Toyota Engineering USA, Toyota USA, ZF Electronics USA, ZF Passive Safety USA, Automotive US Inc., ST USA, ST Italy, and ST Malaysia have known that the defective DS84 ACUs and ASICs in Toyota Class Vehicles are uniquely vulnerable to EOS.

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a. Between 2010 and 2016, the Toyota Defendants returned several Toyota vehicles with DS84 ACUs that malfunctioned due to EOS.

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936. According to a document produced by ZF Defendants to NHTSA in connection with NHTSA’s investigation of vehicles equipped with the DS84 ASIC,

1 Toyota Japan and Toyota Engineering USA returned multiple vehicles to ZF
 2 Automotive USA, ZF Electronics USA, and ZF Passive Safety USA that showed
 3 signs of EOS in the DS84 ASIC between May 20, 2010 and October 25, 2016.
 4 Relevant excerpts of this document are reproduced below. Upon information and
 5 belief, Toyota Japan, Toyota Engineering USA, ZF Automotive USA, ZF Passive
 6 Safety USA, and ZF Electronics USA had access to all the information in the below
 7 chart.

Component	Analysis Category	Supplier Name	Receipt Date	Short Description Verbatim	Reason for Return	Customer	Vehicle
DS84	EOS	ST Micro	20-May-10	Component Damaged	Airbag warning lamp on	Toyota	Corolla
DS84	EOS	ST Micro	4-Jun-12	AR54218, RMA36039, shorted internally between pins 6&7 B317E941	Airbag warning lamp on	Toyota	Unknown
DS84	EOS	ST Micro	16-Dec-13	AR55622, RMA36414, shorted out of circuit B593E1800	Airbag warning lamp on	Toyota	Corolla
DS84	EOS	ST Micro	12-Dec-13	SR2015120208, RMA (B984E3583), Pin 36 measures 95ohms to ground	Airbag warning lamp on	Toyota	Avalon
DS84	EOS	ST Micro	20-Sep-14	SR2016060601, RMA (FR-16-01359), shorted between pins 6 & 7 outcircuit	Airbag warning lamp on	Toyota	Avalon
DS84	EOS	ST Micro	5-Aug-16	SET-334 U600 pin7 is short to pin6	Airbag warning lamp on	Toyota	Corolla
DS84	EOS	ST Micro	25-Oct-16	Defective squib ASIC	Airbag warning lamp on	Toyota	Augo
DS84	EOS	ST Micro	1-Feb-16	SFT-116 waveform of U600 pin51 abnormal	Airbag warning lamp on	Toyota	Corolla

26 937. According to a document produced by Toyota USA to NHTSA,
 27 Toyota Engineering USA made a warranty claim relating to an ACU with a DS84
 28 ASIC on or around January 2014. Toyota Engineering USA made this claim

1 because the airbag warning lamp was on in a recently sold Toyota Class Vehicle.
2 Toyota Engineering USA returned the part to ZF Automotive USA, ZF Passive
3 Safety USA, and ZF Electronics USA's office in Marshall, Illinois. ZF Automotive
4 USA, ZF Passive Safety USA, and ZF Electronics USA examined the DS84 ACU
5 and found "severe damage was noted on one of the internal devices, U600" which
6 is another name for the DS84 ASIC. ZF Automotive USA, ZF Passive Safety USA,
7 and ZF Electronics USA concluded "[t]he most likely source of this damage is
8 customer induced EOS (electrical overstress)." The unit "[f]ailed multiple tests,"
9 including an "[i]nitial [f]unctional [t]est." ZF Automotive USA, ZF Passive Safety
10 USA, and ZF Electronics USA noted this DS84 ASIC failure in a report dated
11 January 16, 2014, which it sent back to Toyota Engineering USA. The document
12 included pictures of visible EOS damage on the DS84 ASIC, which are reproduced
13 below. Upon information and belief, Toyota Japan had access to this document.



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20 **b. In 2015, ZF Automotive USA, ZF Electronics USA, and ZF**
21 **Passive Safety USA added further diodes to European**
22 **Toyota vehicles after EOS occurred in vehicles made by**
23 **other manufacturers.**

24 938. In or around 2015, ZF Electronics USA added 1 ampere Schottky
25 diodes to DS84 ACUs made for European Toyota vehicles.

26 939. ZF Automotive USA, ZF Electronics USA, and ZF Passive Safety
27 USA later explained this decision to Toyota Japan as follows: "ZF core
28 development team decided to upgrade the Schottky Di[ode] and updated core

1 design after learning about vehicle noise (negative surge) during a crash from cases
2 of other [Original Equipment Manufacturers]” – i.e., other Vehicle Manufacturers.
3 Accordingly, ZF Automotive USA, ZF Electronics USA, and ZF Passive Safety
4 USA knew the .12 ampere diodes used in Toyota Class Vehicles were insufficient
5 to protect against these types of observed negative surges.

6 940. Despite this knowledge, ZF Electronics USA did not make the same
7 design change from European Toyota vehicles to the DS84 ACUs made for Toyota
8 Class Vehicles.

9 **c. In or around February 2016, ZF Automotive USA, ZF**
10 **Electronics USA, and ZF Passive Safety USA informed**
11 **Toyota Japan that EOS had been observed on DS84 ASICs**
12 **in field events involving vehicles made by two other**
13 **manufacturers.**

14 941. Upon information and belief, in February 2016, ZF Automotive USA,
15 ZF Electronics USA, and ZF Passive Safety USA shared a slide deck presentation
16 dated February 5, 2016 with Toyota Japan. Upon information and belief, ZF
17 Automotive USA, ZF Electronics USA, ZF Passive Safety USA, ZF TRW Corp.,
18 and ZF Germany all had a role in drafting, editing, and/or approving the slide deck
19 before ZF Automotive USA, ZF Electronics USA, and ZF Passive Safety USA
20 shared it with Toyota Japan.³⁵

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23 ³⁵ This allegation is based on ZF Automotive USA’s acknowledgment in a 573
24 Defect Report filed in 2018 that it “communicate[d] with customers regarding EOS
25 and contact with NHTSA” in January 2016. Marc Bolitho, the Director of Passive
26 Safety Electronics and Engineering for ZF TRW Corp., also signed a declaration
27 dated March 14, 2016 acknowledging that portions of a February 5, 2016 slide deck
28 presented to NHTSA was “shared with customers or the applicable component
supplier under circumstances that the shared information is retained as confidential
by them.” Toyota USA produced a copy of the February 5, 2016 presentation that
contained Japanese notes.

1 942. The February 5, 2016 slide deck presentation informed Toyota Japan
2 that two other vehicle manufacturers had field incidents in the United States with
3 confirmed EOS on DS84 ACUs.

4 943. The February 5, 2016 slide deck presentation also informed Toyota
5 Japan that bench testing had replicated two types of failures in DS84 ASICs due to
6 EOS, and that “[t]hese multipoint failure modes can cause EOS to the ASIC that
7 may impact ACU function during a crash event.”

8 **d. Between June 29, 2016 and November 18, 2016, Toyota**
9 **Japan, Toyota USA, ZF Automotive USA, ZF Electronics**
10 **USA, ZF Passive Safety USA, ST USA, ST Italy, and ST**
11 **Malaysia learned that a DS84 ACU had malfunctioned due**
12 **to EOS in a Toyota vehicle that crashed in Turkey with no**
13 **airbag deployment.**

14 944. In early to mid-June 2016, a 2013 Toyota Auris equipped with a DS84
15 ACU crashed in Turkey and the airbag failed to deploy.

16 945. Upon information and belief, the Toyota Auris is the European version
17 of the Toyota Corolla, a Class Vehicle, and the two models share a common or very
18 similar platform for the purposes of the passive safety system.

19 946. One week after the crash, the customer took the vehicle to a dealer,
20 which referred the issue to a nonparty Turkish entity, Toyota Türkiye Pazarlama ve
21 Satış A.Ş.

22 947. A technical service engineer named Orhan Oguzhan inspected the
23 vehicle on July 25, 2016 and authored a field technical report. The ACU data
24 included diagnostic trouble codes detected in the ACU and the airbag warning lamp
25 was on. He concluded: “the probable cause is the IC [(integrated circuit)] failure
26 inside the ECU.”

27 948. On August 16, 2016, Toyota Motors U.K. shipped the DS84 ACU
28 from the Turkish incident and the accompanying field technical report describing
the crash to the ZF Peterlee Laboratory located in the United Kingdom. Non-party

1 TRW Systems Ltd., another subsidiary of ZF Germany, operated the lab.
2 Accordingly, TRW Systems Ltd. received notice of the crash and nondeployment
3 event.

4 949. An engineer named Glenn Casamayor authored a report originally
5 dated August 25, 2016 on behalf of TRW Systems Ltd. This report was
6 subsequently revised by Steven Youmans, an analysis engineer at TRW Systems
7 Ltd., as well as another TRW Systems Ltd. employee identified as “K Taylor.” The
8 last revision to the memo is dated November 18, 2016.

9 950. Using the term “U600” to refer to the DS84 ASIC, the TRW Systems
10 Ltd. report concluded: “The returned unit has damaged U600 from electrical
11 overstress most likely caused by a beyond specification transient from the vehicle.”
12 This conclusion was based on the following evidence of EOS on the DS84 ASIC.

- 13 a. “An internal visual inspection was carried out on the returned
14 unit. The unit was checked under x-ray and stereo microscope.
15 A damaged U600 was noted. X-Ray inspection revealed broken
16 pin 44 wire bond.”
- 17 b. Pictures identified a “Burnt U600 Package.”
- 18 c. “ASIC U600 was removed and replaced with a known good
19 device. On retest it was then possible to communicate and no
20 faults were logged.”
- 21 d. “External Visual Inspection: Burnt marks was [sic] observed on
22 the external package”
- 23 e. “X-ray; Fused wire at Pin 44(VSATS) was observed during X-
24 ray analysis.”
- 25 f. “Internal visual inspection; Burnt mark was observed on the die
26 surface at area A, B and C.”

27 951. The TRW Systems Ltd. report included a “supplier analysis” that
28 confirmed images of EOS with a decapsulation analysis, among other analyses.

1 Upon information and belief, the supplier analysis reflected the contents of a
2 separate failure analysis developed by and distributed among ST USA, ST Italy, ST
3 Malaysia. Upon information and belief, ST USA, ST Italy, and ST Malaysia also
4 sent this report to ZF Electronics USA, ZF Passive Safety USA, and ZF
5 Automotive USA.

6 952. Although the lab that employed the authors of this report was operated
7 by non-party TRW Systems Ltd., upon information and belief, ZF Automotive
8 USA, ZF Passive Safety USA, and ZF Electronics USA had access to the report
9 described above. The ZF Defendants' production of warranty data to NHTSA
10 confirms this access because the data includes warranty claims listing Peterlee as
11 the relevant plant.

12 953. After receiving the TRW Systems Ltd. report, Toyota Motors Europe
13 received a report from Sally Humbert, a Quality Assurance function engineer
14 working for Toyota Motor UK. Ms. Humbert's report stated under the header:
15 "Overstress possible [sic] related to crash impact one week before [illegible] lamp
16 on. Beyond negative transient." Ms. Humbert hand-signed the report and dated her
17 signature November 18, 2016.

18 954. Non-party Toyota Motor Europe received a copy of the TRW Systems
19 Ltd. report by no later than November 29, 2016. Upon information, Toyota Japan
20 and Toyota USA had access to and were aware of this report. This is a reasonable
21 inference because Toyota USA later produced a copy of it to NHTSA.

22 955. Upon information and belief, Toyota Japan, Toyota USA, ZF Passive
23 Safety USA, ZF Electronics USA, and ZF Automotive USA knew that problems
24 with the Toyota Auris would likely translate to problems with the Toyota Corolla,
25 because they each knew Toyota Auris is the European version of the Toyota
26 Corolla and the two vehicles are very similar.

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e. In July 2016, Toyota USA learned that the airbags had failed to deploy in a crash in New Haven, Vermont with signs of ASIC EOS in a DS84 ACU.

956. On July 9, 2016, a 2014 Corolla was travelling at 50 miles per hour on a highway in New Haven, Vermont, when it crashed into the rear of another vehicle that stopped suddenly in front of the Corolla.

957. The crash was severe. The collision knocked the driver unconscious. She suffered serious injuries to her lungs, forehead, sternum, shoulder, and hip that required hospitalization.

958. The front end of the Corolla showed signs of damage to the vehicle's electrical system. The inspector reported that the battery was severely damaged and its case was broken, the electrical wiring harness was destroyed, and many of the wires in the electrical harness were severed.

959. The driver complained to Toyota USA on July 9, 2016.

960. On July 29, 2016, an inspector retained by Toyota USA attempted to perform an investigation of the Corolla's Event Data Recorder, but was unable to obtain a crash record. This was a sign of ASIC EOS, particularly when coupled with the failure of the airbags, the highspeed of the collision, and the signs of disruption to the electrical system that could contribute to EOS.

961. Despite this evidence, Toyota USA legal claims administrator Delve Caballero mailed a letter to the customer on August 16, 2016 that denied any defect in the vehicle. This letter stated: "The Supplemental Restraint System (SRS) front airbags will deploy in response to abrupt frontal deceleration from severe frontal impacts and help prevent fatal injuries or reduce the extent of serious head or chest injuries. They do not deploy in every collision involving frontal impact. This accident did not meet the criteria for front airbag deployment."

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962. Upon information and belief, no Defendant performed a physical analysis of the DS84 ACU and ASIC from this vehicle despite the signs of EOS described above, as no Defendant has produced any documents showing that a physical analysis was performed.

f. In August and September 2017, ZF Electronics USA, ZF Passive Safety USA, ZF Automotive USA, ST Italy, ST USA, and ST Malaysia discussed three DS84 ASICs from Toyota Corollas that had been damaged by EOS.

963. [REDACTED]

964. [REDACTED]

965. [REDACTED]

³⁶ [REDACTED] employment relationship with ST Italy is evidenced by the fact that he assigned a patent for one of his inventions to ST Italy.

1 966. [REDACTED]

2 [REDACTED]

3 967. [REDACTED]

4 [REDACTED]

5 [REDACTED]

6 [REDACTED]

7 [REDACTED]

8 968. [REDACTED]

9 [REDACTED]

10 [REDACTED]

11 969. [REDACTED]

12 [REDACTED]

13 [REDACTED]

14 g. Between August 2, 2017 and August 10, 2018, Toyota Japan,
15 Toyota USA, ZF Electronics USA, ZF Passive Safety USA,
16 ZF Automotive USA, ST USA, ST Italy, and ST Malaysia
17 learned that a DS84 ACU had malfunctioned due to EOS in
18 a Toyota vehicle that crashed in Portugal with no front
19 airbag deployment.

19 970. On July 13, 2017, a 2016 Toyota Auris with a DS84 ACU crashed into
20 a Mazda pickup truck in Portugal.

21 971. According to a memorandum produced by Toyota USA, this crash was
22 a “[h]eavy frontal accident.” The knee airbags deployed, but the frontal driver and
23 passenger airbags did not. This was a sign of ASIC EOS because driver and
24 passenger airbags should deploy when knee airbags deploy, particularly during a

25 _____
26 ³⁷ [REDACTED]

27 ³⁸ [REDACTED]
28 [REDACTED]

1 serious accident. The below photograph of the wreckage confirms this was a serious
2 accident. The crash seriously injured the driver of the Auris.



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972. By no later than August 2, 2017, non-party Toyota Motor Europe received a report about a product liability case concerning this crash.

973. Between August 2, 2017 and July 2, 2018, the following events occurred:

- a. Toyota Motor Europe attempted to retrieve crash data from the Auris's ACU but could not do so, which is a sign of EOS.
- b. Toyota Motor Europe sent the retrieved DS84 ACU to ZF Passive Safety USA, ZF Electronics USA, and ZF Automotive USA and requested a further investigation.
- c. ZF Electronics USA, ZF Passive Safety USA, and ZF Automotive USA found damage consistent with a damaged DS84 ASIC on the ACU and sent the retrieved DS84 ASIC to ST USA or ST Italy for analysis.
- d. ZF Electronics USA, ZF Passive Safety USA, and ZF Automotive USA retrieved a partial crash record from the DS84

1 ACU by placing the crash record chip into a working ACU. The
2 partial crash record showed the frontal airbags were commanded
3 to deploy. The fact that the airbags did not deploy despite this
4 record was strong evidence that the DS84 ACU had
5 malfunctioned during the crash and failed to execute the
6 command to deploy the airbags.

7 e. ZF Electronics USA, ZF Passive Safety USA, and ZF
8 Automotive USA observed a visible abnormality on the external
9 packaging of the DS84 ASIC, called the “conformal coating,”
10 which is a sign of EOS.

11 974. On July 2, 2018, ZF Electronics USA, ZF Passive Safety USA, and ZF
12 Automotive USA created an engineering report describing an analysis of the ACU
13 from the Toyota Auris that crashed in Portugal, which includes numerous signs of
14 EOS listed immediately below.

- 15 a. The report’s summary states: “Analysis findings are consistent
16 with a damaged DS84 ASIC.”
- 17 b. The report states: “ZF transplanted the eeprom [(i.e., the crash
18 memory component)] to a recipient ECU [(i.e., a new ACU)]
19 and downloaded the crash record. The CDR report indicated the
20 frontal airbags were commanded to deploy.” The analysis of the
21 crash data also found “[o]ne reset recorded.” Both of these
22 findings were signs of EOS.
- 23 c. The report included a picture of a “[d]isturbance in DS84
24 conformal coating.”
- 25 d. The report included a picture of discolored pins.
- 26 e. The report included an analysis of resistance measurements,
27 which indicated the ASIC suffered from EOS. This analysis
28 stated: “The DS84 ASIC likely has an internal short on Vcc as

1 indicated by the 3.3 [Ohm] measurement.” Upon information
2 and belief, “Vcc” is a reference to a power supply connected to
3 the DS84 ASIC.

4 975. On August 6, 2018, ZF Electronics USA, ZF Passive Safety USA, and
5 ZF Automotive USA sent the July 2, 2018 report to a quality engineer at Toyota
6 USA by email. The quality engineer then forwarded the memo to several of his
7 colleagues at Toyota USA, and wrote to a Toyota USA compliance employee:
8 “Attachments include TRW Portugal case of improper Airbag Non deployment
9 seen to the DS84 ASIC chip. . . . Could you confirm with your counterpart at
10 Toyota Japan if they are aware of the Portugal case?” Upon information and belief,
11 Toyota USA then communicated with Toyota Japan about the Portugal case.

12 976. [REDACTED]
13 [REDACTED]
14 [REDACTED]
15 [REDACTED]

16 977. [REDACTED]
17 [REDACTED]
18 [REDACTED]
19 [REDACTED]
20 [REDACTED]
21 [REDACTED]
22 [REDACTED]
23 [REDACTED]

24 978. Between July 2, 2018 and August 10, 2018, ZF Electronics USA, ZF
25 Passive Safety USA, and ZF Automotive USA received a copy of the ST failure
26 analysis of the DS84 ASIC from the Portugal crash.

27 979. [REDACTED]
28 [REDACTED]

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[REDACTED]

a. [REDACTED]

b. [REDACTED]

c. [REDACTED]

d. [REDACTED]

980. Upon information and belief, ZF Electronics USA, ZF Passive Safety USA, and ZF Automotive USA sent a copy of the August 10, 2018 updated report to Toyota Japan and Toyota USA in August 2018.

981. On or around September 12, 2018, ZF Electronics USA, ZF Passive Safety USA, and ZF Automotive USA provided a document entitled “Electrical Overstress Hypothesis” to Toyota Japan and Toyota USA. The document explained how EOS occurred in the Portugal crash. The document states: “Likely initiation point is an out of specification negative transient introduced due to an external Short of DSI Channel.” The DSI channel is the communication line connecting the crash sensors to the ACU.

1 982. In other words, the likely cause of the DS84 ACU failure in the
2 Portugal crash was transient current flowing from the crash sensors to the ACU.
3 This was the same failure mode that had caused recalls of FCA and Hyundai-Kia
4 vehicles.

5 983. On September 18, 2018, ZF Electronics USA, ZF Passive Safety USA,
6 and ZF Automotive USA updated the report on the Portugal case again to include
7 this conclusion: “After review of the ASIC by ST Micro, the hypothesis is
8 confirmed. EOS was caused by a beyond specification transient on the DSI_OH
9 satellite input” (i.e., a transient on the crash sensor communication line).

10 984. Upon information and belief, ZF Electronics USA, ZF Passive Safety
11 USA, and ZF Automotive USA sent a copy of the September 18, 2018 updated
12 report to Toyota Japan and Toyota USA in September 2018.

13 985. The July 2, 2018; August 10, 2018; and September 18, 2018 reports by
14 ZF Electronics USA, ZF Automotive USA, and ZF Passive Safety USA all have a
15 legend that states “© ZF Friedrichshafen AG, 2018.” Based on this legend, ZF
16 Friedrichshafen AG was aware of the contents of the memo and approved
17 transmittal of the memo to Toyota USA and Toyota Japan.

18 986. On October 16, 2018, ZF Electronics USA, ZF Passive Safety USA,
19 and ZF Automotive USA informed Toyota Japan and Toyota USA that the fused
20 wires observed on the DS84 ASIC from the Portugal crash were similar to fused
21 wires on DS84 ASIC that suffered damage from transient testing.

22 987. A July 2019 slide deck presentation shared between Toyota Japan and
23 Toyota USA stated that the wire harness from the Auris that crashed in Portugal
24 was collected and “there was no trace” of “wire disconnection and connecting with
25 the other part.” Accordingly, there was evidence that issues with the wire harness
26 were not the cause of the EOS damage suffered by the DS84 ASIC.

27 988. Upon information and belief, Toyota Japan, Toyota USA, ZF Passive
28 Safety USA, ZF Electronics USA, and ZF Automotive USA knew that problems

1 with the Toyota Auris would likely translate to problems with the Toyota Corolla,
2 because they each knew the Toyota Auris is the European version of the Toyota
3 Corolla and the two vehicles are very similar.

4 **h. Between December 19, 2017 and November 2018, Toyota**
5 **Japan, Toyota USA, ZF Passive Safety USA, ZF Electronics**
6 **USA, and ZF Automotive USA learned a DS84 ACU had**
7 **malfunctioned due to EOS in a Toyota vehicle that crashed**
8 **in Morocco with no airbag deployment.**

8 989. On November 27, 2017, a 2015 Toyota Auris with a DS84 ACU
9 crashed in Morocco. The airbags failed to deploy despite the very severe nature of
10 the crash. The crash seriously injured the driver of the Auris.

11 990. On December 19, 2017, Toyota's Moroccan subsidiary received a
12 complaint reporting a head-on collision in Morocco involving a 2015 Auris with a
13 DS84 ACU in which the airbags did not deploy. A later memorandum summarizes
14 the complaint as follows:

15 [The driver] was severely injured on her way to work while
16 driving under the speed limit when another car from the
17 opposite direction diverged to her line and caused a head-on
18 collision. [The driver] instantly lost consciousness due to the
19 force of the impact as none of her car's airbags deployed, then
20 was transported to the hospital via ambulance. . . . Immediately
21 after [the driver's] arrival at the hospital, doctors told her
22 family that her situation is highly critical and urgent brain
23 surgery essential to save her life. Not only had she suffered
24 serious brain, lung, and liver injuries, but she also had been
25 admitted in severe Coma for several weeks. . . .

26 Based on the doctors' notes, here are [the driver's] injuries
27 caused by the accident and the defective airbag:

- 28 ●Diplopia
- Cranial impact with PCI tutorage
- Epistaxis Otorrhagia
- Traumatic brain injury (hemispheric subdural hematoma)

- 1 ● Temporal Bone Fracture
- 2 ● Fracture of the right mastoiditis
- 3 ● Fracture sinus sphenoidal
- 4 ● Fayeks lung contusion
- 5 ● Liver subcapsular hematoma
- 6 ● Right surrehale hematoma

After the accident she does not remember anything.

7 991. On April 27, 2018, a technical specialist working for Toyota's
8 Moroccan subsidiary submitted a field report to several other non-party Toyota
9 subsidiaries and to Toyota Japan. Toyota's Moroccan subsidiary shipped the
10 recovered parts, including the DS84 ACU recovered from the Auris, to Toyota
11 Japan.

12 992. Following receipt of the parts, Toyota Japan determined there was no
13 crash record present on the ACU, which is a sign of EOS on the DS84 ASIC.

14 993. On November 14, 2018, ZF Electronics USA, ZF Passive Safety USA,
15 and ZF Automotive USA created an "Analysis Report" about the DS84 ACU
16 retrieved from the Auris that crashed in Morocco with no airbag deployment.
17 Emanuel Goodman, a long-time employee of ZF Passive Safety USA who also
18 served as a technical specialist for ZF Electronics USA, authored the memo. The
19 memo describes multiple signs of EOS, listed below:

- 20 a. The memo included an analysis of resistance measurements that
21 found "[l]ow impedance on Vcc and Vsat measurements." Upon
22 information and belief, "Vcc" and "Vsat" refers to the
23 connections between two power supplies and the DS84 ASIC.
- 24 b. The memo noted that "four (4) resets" had occurred.
- 25 c. The memo also noted that no crash record was present..
- 26 d. The memo noted two "[P]ossible burn mark[s]" on the DS84
27 ASIC." Although the report is written in English, the version of
28 the memo produced by Toyota has Japanese translations that,

1 upon information and belief, were used by Toyota Japan
2 employees to understand the report. Later written materials sent
3 by ZF Electronics USA, ZF Passive Safety USA, and ZF
4 Automotive USA to Toyota Japan would state regarding this
5 November 2018 analysis: “EOS damage visible on the DS84
6 ASIC” without any suggestion that EOS damage was merely
7 “possible.”

8 994. Upon information and belief, ZF Electronics USA, ZF Passive Safety
9 USA, and ZF Automotive USA sent a copy of the November 14, 2018 report to
10 Toyota Japan and Toyota USA in November 2018.

11 995. The November 14, 2018 Analysis Report has a legend attributing the
12 copyright interest in the Report to ZF Friedrichshafen AG. Based on this legend, ZF
13 Germany was aware of the contents of the memo and approved transmittal of the
14 memo to Toyota Japan.

15 996. Upon information and belief, Toyota Japan, Toyota USA, ZF Passive
16 Safety USA, ZF Electronics USA, and ZF Automotive USA knew that problems
17 with the Toyota Auris would likely translate to problems with the Toyota Corolla,
18 because they each knew Toyota Auris is the European version of the Toyota
19 Corolla and the two vehicles are very similar.

20 **i. Between April 12, 2018 and July 16, 2018, Toyota Japan and**
21 **Toyota USA learned a DS84 ACU had malfunctioned with**
22 **significant signs of EOS in a Toyota vehicle that crashed in**
23 **Spain with no driver-side front airbag deployment.**

24 997. On April 12, 2018, a 2015 Toyota Auris equipped with a DS84 ACU
25 crashed in Spain. The incident involved a high-speed frontal collision with a tractor
26 and semi-trailer, which was travelling at approximately 35 miles per hour. The knee
27 airbag deployed but the driver airbag in the Auris failed to deploy. The crash killed
28 the driver of the Auris. The crash completely destroyed the front end of the Auris,

1 as demonstrated by the below image of the wreckage. Based on these facts, the
2 airbags should have deployed during this crash.



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14 998. On April 26, 2018, non-party Toyota España S.L.U. retrieved the crash
15 record, but found no events (i.e., no crashes) recorded. This was a sign of EOS.

16 999. Afterwards, non-party Toyota Motor Europe attempted to read the
17 crash record, but experienced the same problem.

18 1000. On July 16, 2018, Toyota Motor Europe informed quality engineers at
19 Toyota Japan about details of the crash, including the failure of the front driver
20 airbags: that, on April 23, 2018, the Spanish police had requested assistance with
21 downloading data from the DS84 ACU in the Auris that crashed with no airbag
22 deployment; and that the April 26, 2018 effort to obtain crash data had failed.
23 Sometime between July 16, 2018 and September 17, 2018, Toyota USA learned
24 this information as well.

25 1001. On February 7, 2019, Toyota Japan Project Manager Michiteru Kato
26 further discussed by email the missing crash data from the Spanish Auris that
27 crashed with no airbag deployment with a Toyota Motor Europe employee. On the
28

1 same day, Toyota Japan employee Daisuke Uchida forwarded an email confirming
2 the same issue to Toyota USA employee Matt Begley.

3 1002. The inability to obtain crash data from this Auris was a sign of EOS.

4 1003. Upon information and belief, Toyota Japan and Toyota USA knew that
5 problems with the Toyota Auris would likely translate to problems with the Toyota
6 Corolla, because they each knew Toyota Auris is the European version of the
7 Toyota Corolla and the two vehicles are very similar.

8 **j. In 2017, Toyota Sales USA learned that a Toyota Avalon's**
9 **airbags had failed to deploy during a crash in Florida and**
10 **observed signs of ASIC EOS during an inspection.**

11 1004. On May 20, 2017, a Toyota Avalon was travelling at approximately 70
12 miles per hour on a highway in Florida behind a semi-truck when it crashed into the
13 truck. The pictures of the wreckage show severe damage to the Avalon. The airbags
14 in the Avalon did not deploy.



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19 1005. Toyota Sales USA inspected the vehicle on June 20, 2017. The
20 inspector observed five airbag diagnostic trouble codes in the system. Moreover,
21 the data retrieved from the Event Data Recorder had no record of the crash. These
22 were signs of ASIC EOS.

23 **k. Between May 10, 2017 and September 2018, Toyota USA,**
24 **ZF Electronics USA, ZF Passive Safety USA, and ZF**
25 **Automotive USA observed signs of EOS in a 2012 Corolla**
26 **that crashed in California with no airbag deployment.**

27 1006. On May 10, 2017, a 2012 Toyota Corolla traveled on I-15 northbound
28 in California at an estimated speed of 70 miles per hour. The Corolla crashed into a

1 three-axle tank truck. The crash completely destroyed the front-end of the Corolla,
2 as the below images of the wreckage show. The driver's airbags did not deploy
3 despite the very severe nature of this crash. The crash killed the driver.



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13 1007. After two attempts to retrieve crash data from the DS84 ACU in the
14 2012 Corolla failed – both of which are signs of EOS – the ACU was shipped to ZF
15 Electronics USA, ZF Passive Safety USA, and ZF Automotive USA at Farmington
16 Hills, Michigan. Upon information and belief, Toyota USA arranged for this
17 shipment.

18 1008. On September 6, 2018, ZF Electronics USA, ZF Passive Safety USA,
19 and ZF Automotive USA inspected the DS84 ACU retrieved from the 2012
20 Corolla. The Event Data Recorder chip was removed and placed into a working
21 ACU. This allowed ZF Electronics USA, ZF Passive Safety USA, and ZF
22 Automotive USA to retrieve data from the chip. The fact that this step was
23 necessary to retrieve the data was a sign of ASIC EOS.

24 1009. Because the crash data retrieved from the DS84 ACU was not
25 consistent with information known about the crash (such as the impact speed),
26 Toyota USA speculated that the crash data may relate to an earlier crash from 2015
27 and that the earlier crash may have turned off the Event Data Recorder. This
28 conclusion, however, did not explain the two unsuccessful attempts to extract the

1 crash data and the need to re-install the Event Data Recorder chip into a working
2 ACU to extract the data. EOS of the ASIC, by contrast, would explain those
3 problems.

4 1010. Upon information and belief, no Defendant checked the interior of the
5 DS84 ACU or DS84 ASIC for burn marks. Defendants have produced no
6 documents or information showing that anyone took these important steps.

7 **I. Between May 2018 and October 2018, Toyota USA, Toyota**
8 **Japan, ZF Electronics USA, ZF Passive Safety USA, and ZF**
9 **Automotive USA learned that the airbags failed in a fatal**
10 **Toyota Corolla crash in California with several signs of**
11 **DS84 ASIC EOS.**

12 1011. On May 21, 2018, a 2018 Toyota Corolla was travelling at 60-70 miles
13 per hour on I-15 in Perry, California. The Corolla crashed into a stationary Ford
14 Expedition. Pictures of the wrecked Corolla confirm the crash was very serious.
15 Given the damage sustained to the front of the Toyota, and the fact it impacted a
16 vehicle nearly twice as heavy, the airbags should have deployed. None of the
17 airbags deployed in the Corolla. The crash killed the driver of the Corolla.



18 *Figure 1. Front of the Toyota.*



19 *Figure 2. Front and right side of the Toyota.*

20 1012. On May 30, 2018, the California Highway Patrol asked Toyota USA
21 how to read and download the crash data from a 2018 Corolla DS84 ACU.

22 1013. On May 31, 2018, the California Highway Patrol emailed Toyota USA
23 pictures of the wrecked Toyota Corolla.

1 1014. On June 6, 2018, Toyota USA attempted to retrieve the crash data
2 from the DS84 ACU in the Corolla. Toyota USA’s field technician could not
3 retrieve the data, despite several attempts. This was a sign of ASIC EOS.

4 1015. Prior to July 11, 2018, the California Highway Patrol was able to
5 obtain data from the Corolla’s Event Data Recorder by removing the chip from the
6 malfunctioning DS84 ACU in the Corolla and transplanting the chip into a working
7 ACU. The retrieved data, however, had no record of the crash. This was a sign of
8 EOS.

9 1016. On July 11, 2018, the California Highway Patrol informed Toyota
10 USA: “it appears the subject airbag ECU did not see the collision, as it reported no
11 events recovered or recorded. . . . At this time, we have a high level of concern
12 regarding the functionality of the supplemental restraint system at the time of
13 collision.”

14 1017. On July 17, 2018, Toyota USA held a conference call with Toyota
15 Japan concerning this crash and the California Highway Patrol’s questions. Upon
16 information and belief and an email from Toyota USA employee Nicholas Evans,
17 Toyota USA reviewed the EDR data with the missing crash record during this call.

18 1018. On September 17, 2018, NHTSA sent Toyota USA an information
19 request about fatal accidents involving non-deployment events in Toyota vehicles
20 with DS84 ACUs.

21 1019. On September 20, 2018, NHTSA, ZF Electronics USA, ZF Passive
22 Safety USA, ZF Automotive USA, Toyota USA and Toyota Japan attended an
23 inspection of the 2018 Corolla at ZF Electronics USA, ZF Passive Safety USA, and
24 ZF Automotive USA’s shared facility at Farmington Hills, Michigan. Emanuel
25 Goodman, a longtime employee of ZF Passive Safety USA who also served as a
26 technical specialist for ZF Electronics USA, identified burn marks on the EDR
27 chip. He also measured the resistance of certain points on the DS84 ACU’s circuit
28

1 board and found one location with abnormal resistance. Mr. Goodman identified an
2 electrical short related to the DS84 ASIC, which is a sign of ASIC EOS.

3 1020. The information retrieved from the EDR during the September 20,
4 2018 inspection confirmed that there was no crash record and that the DS84 ACU
5 had reset. Both were signs of EOS.

6 1021. Below are pictures of the burned chips observed during the September
7 20, 2018 inspection. Upon information and belief, the distressed square circuit is
8 the DS84 ASIC, and the burned rectangular circuit to the right is a power supply
9 circuit connected to the DS84 ASIC.



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16 1022. On September 27, 2018, ZF Electronics USA, ZF Passive Safety USA,
17 ZF Automotive USA, Toyota Japan and Toyota USA held a conference call. ZF
18 Electronics USA, ZF Passive Safety USA, and ZF Automotive USA told Toyota
19 Japan and Toyota USA that the ACU had short-circuited during resistance testing
20 and there was no crash record on the ACU.

21 1023. On or shortly before October 8, 2018, ZF Electronics USA, ZF Passive
22 Safety USA, and ZF Automotive USA sent a written presentation to Toyota USA
23 and Toyota Japan that discussed the data retrieved from the September 20, 2018
24 inspection.

25 1024. California Highway Patrol investigators authored a report regarding
26 the Toyota Corolla from the crash described in the preceding paragraph that states:

27 The ACM [(i.e., "Airbag Control Module," another term for
28 ACU)] in the Toyota did not command deployment of any

1 supplemental restraints, nor did it record a non-deployment
2 event as a result of this collision. Per 49 CFR 563, the ACM
3 installed in the Toyota was required, at a minimum; to record a
4 non-deployment ‘event’ as long as the ‘trigger threshold’
5 (longitudinal change velocity of 5 miles per hour within 150
6 millisecond interval) was met. Given the damage sustained to
7 the front of the Toyota, and the fact it impacted a vehicle
8 nearly twice as heavy, it would be expected that at the very
9 least, a non-deployment event would have been recorded by
10 the ACM installed in the Toyota. . . . Due to this apparent
11 failure of the ACM installed in the Toyota to comply with
12 federal regulations, on September 11, [2018], NHTSA
13 Investigator Perry took custody of the surrogate ACM and the
14 ACM removed from the Toyota for testing and analysis.

15 Toyota USA received a copy of this report on November 27, 2018.

16 1025. Based on documents produced by Toyota USA, and on information,
17 and belief, members of a Toyota Japan research and development team called 23J
18 held a conference call on October 11, 2018 with ZF Passive Safety USA, ZF
19 Electronics USA, and ZF Automotive USA. Notes to this call record a discussion of
20 the May 2018 California crash. Based on these notes, and on information and
21 belief, ZF Passive Safety USA, ZF Electronics USA, and ZF Automotive USA told
22 Toyota Japan that there was “[a]bsolutely no EDR data” (i.e., crash data) and that
23 “[u]nexpected reset occurred once.” Both were signs of EOS.

24 **m. Between March and April 2019, Toyota USA, Toyota Sales**
25 **USA, ZF Electronics USA, ZF Passive Safety USA, and ZF**
26 **Automotive USA learned of signs of EOS in a 2019 Corolla**
27 **that crashed in Chicago with no airbag deployment.**

28 1026. On January 25, 2019, a 2019 Toyota Corolla crashed into a stationary
school bus in Chicago, Illinois. The airbags in the Corolla did not deploy. The crash
injured the driver and passenger in the Corolla, and caused severe damage to the
vehicle, as demonstrated by the below picture of the wreckage.

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1027. On March 11, 2019, NHTSA notified ZF Electronics USA, ZF Automotive USA, ZF Electronics USA, and Toyota USA that NHTSA had been monitoring salvage yards for other vehicles with signs of DS84 ASIC EOS damage and had identified the 2019 Corolla from the crash in Chicago. NHTSA requested a time to test the vehicle.

1028. When NHTSA attempted to recover the crash data from the ACU's EDR, the crash data retrieval tool could not communicate with the ACU, which is a sign of ASIC EOS.

1029. On March 30, 2019, ZF Electronics USA, ZF Passive Safety USA, and ZF Automotive USA removed the EDR chip from the malfunctioning DS84 ACU and transplanted the chip to a working ACU. This allowed recovery of the EDR data. During the inspection, ZF Electronics USA, ZF Passive Safety USA, and ZF Automotive USA observed abnormal resistance measurements on the ACU circuit board, which indicated a short. These were all signs of ASIC EOS.

1030. On April 15, 2019, an inspector investigated the Corolla for Toyota Sales USA or Toyota USA and found wires in the crash sensors had severed.

1 1031. Upon information and belief, the Chicago incident is one of the two
2 Toyota Corolla crashes for which NHTSA's opening resume for the 2019
3 Engineering Analysis claimed, "EOS is suspected as the likely cause of the non-
4 deployments."

5 **n. In late May 2019, Toyota USA, Toyota Japan, ZF**
6 **Electronics USA, ZF Automotive USA, and ZF Passive**
7 **Safety USA learned that the DS84 ACUs reset in more than**
8 **1/5 of the Toyota Class Vehicles that were subject to direct**
transient testing.

9 1032. On May 29-31, 2019, several employees of ZF Electronics USA, ZF
10 Automotive USA, ZF Passive Safety USA, Toyota USA, and Toyota Japan
11 attended transient testing performed on Toyota Class Vehicles.

12 1033. During this testing, direct transients were applied to 49 vehicles: 16
13 MY 2018 Corollas, 19 MY 2012 Corollas and 14 MY 2016 Tacomas. 13 of these
14 49 vehicles experienced ACU resets; 2 of the 13 that experienced resets were
15 Tacomas, while the rest were Corollas.

16 **o. In late May 2019, Toyota USA, Toyota Japan, ZF**
17 **Automotive USA, ZF Passive Safety USA, and ZF**
18 **Electronics USA learned that a DS84 ACU in a 2018 Toyota**
19 **Corolla malfunctioned and failed to deploy the second stage**
airbags during a crash test due to ASIC EOS.

20 1034. In late May 2019, the second stage front airbags in a 2018 Toyota
21 Corolla failed to deploy in a crash test where the Corolla crashed into a stationary
22 Ford Expedition at 70 miles per hour. All the airbags should have deployed.

23 1035. The Corolla was fixed with instruments to measure transients and
24 detected transients of -1.52 volts and -.47 volts.

25 1036. The DS84 ACU in the Corolla lost communication during the crash,
26 which is a sign of ASIC EOS.

27 1037. The DS84 ACU in the Corolla reset, which is a sign of ASIC EOS.
28

1 1038. Upon information and belief, ZF Electronics USA, ZF Passive Safety
2 USA, ZF Automotive USA, Toyota Japan, and Toyota USA attended this crash test
3 and were aware of the evidence of EOS.

4 **p. In the first week of June 2019, Toyota USA, Toyota Japan,**
5 **ZF Automotive USA, ZF Passive Safety USA, and ZF**
6 **Electronics USA learned that a crash test generated a**
7 **transient surge in a Toyota Tacoma.**

8 1039. In the first week of June 2019, three more Toyota Class Vehicle crash
9 tests were conducted. In one of these tests, a 2017 Toyota Tacoma crashed into the
10 rear of a stationary Ford Expedition while travelling at 70 miles per hour.

11 1040. Although the airbags deployed and the DS84 ACU did not reset, the
12 test measured a transient surge that went through the DS84 ASIC.

13 1041. Upon information and belief, ZF Electronics USA, ZF Automotive
14 USA, ZF Passive Safety USA, Toyota Japan, and Toyota USA attended this crash
15 test and were aware of the transient surge.

16 **q. By the summer of 2019, Toyota USA had learned of signs of**
17 **DS84 ASIC EOS in a 2014 Toyota Avalon that crashed in**
18 **Kansas with no airbag deployment.**

19 1042. On January 25, 2019 in Wichita, Kansas, a 2014 Toyota Avalon
20 crashed into a vehicle stopped in the road while it waited to turn left. The Avalon
21 was travelling at approximately 40 miles per hour on Ridge Road. The crash was
22 severe, based on the images of the wrecked Avalon below. No airbags deployed in
23 the Avalon, despite the severe nature of the crash. The crash hospitalized the driver
24 of the Avalon.
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1043. On April 10, 2019, an inspector for Toyota USA inspected the wreckage of this vehicle. The EDR data recovered from the Avalon had no record of the crash. This was a sign of ASIC EOS.

1044. By the summer of 2019, Toyota USA confirmed that the ACU had abnormal resistance measurements and that the DS84 ASIC had visible burn marks. Both observations were signs of ASIC EOS in the Avalon.

r. Between April and the summer of 2019, Toyota USA and Toyota Japan learned that a 2013 Toyota Avalon had crashed with no airbag deployment and several other signs of ACU ASIC EOS in Pittsburgh, Pennsylvania.

1045. On March 28, 2019, a 2013 Toyota Avalon traveled at 35 to 40 miles per hour on Ingomar Road in Pennsylvania, when it crashed into the rear end of a vehicle stopped in front of its path. The driver reportedly suffered whiplash and neck pain.

1046. On April 1, 2019, the driver reported to Toyota USA that the airbags had failed to deploy in the Avalon. A photograph of the wreckage is below.

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1047. Toyota USA inspected the vehicle on April 11, 2019 and, by its own account, “identified two locations on the DS84 [ASIC] with evidence of possible damage.” Toyota USA found “[c]onformal coating appears to have abnormality in multiple locations.” These were signs of EOS. Toyota USA also found the crash data was missing, which is another sign of ASIC EOS. Toyota USA then “sent the ECU [(i.e., ACU)] to Japan for further investigation.” Upon information and belief and based on this statement by Toyota USA, Toyota Japan received and analyzed the damaged ACU.

1048. Sometime in the summer of 2019, Toyota USA confirmed damage to the front sensor wiring harness of this Avalon and a burn mark on the surface of the DS84 ASIC. Both were signs that ASIC EOS had occurred in this vehicle.

s. In December 2019, Toyota Japan, Toyota Sales USA, and Toyota USA learned that two airbags failed to deploy in two Toyota Corolla crash tests with signs of DS84 ASIC EOS.

1049. On December 11, 2019, Toyota Japan conducted a crash test on a 2017 Toyota Corolla in Japan. For this test, a 2017 Toyota Corolla crashed into the rear of a stationary 2017 Ford Expedition at 60 miles per hour. The airbags should have deployed in this crash test, but no airbags deployed in the Corolla. Toyota Japan could not initially communicate with the EDR. The failure of the airbags and the

1 inability to communicate with the Event Data Recorder were signs that DS84 ASIC
2 EOS had occurred.

3 1050. On December 11, 2019, non-party Toyota Technical Center conducted
4 a very similar crash test in Ann Arbor, Michigan. In this crash test, a 2017 Toyota
5 Corolla crashed into the rear of a stationary 2017 Ford Expedition while travelling
6 at 60 miles per hour. All the airbags should have deployed in this crash test, but the
7 passenger side seat cushion airbag did not deploy. Toyota Technical Center was
8 unable to communicate with the Event Data Recorder. The failure of the passenger
9 side seat cushion airbag and the inability to communicate with the Event Data
10 Recorder were signs that DS84 ASIC EOS had occurred.

11 1051. In early January 2020, Toyota USA confirmed that the DS84 ASIC
12 from the ACU from one of these crash tests was damaged. This was further proof
13 that DS84 ASIC EOS had occurred.

14 **6. ZF Electronics USA, ZF Passive Safety USA, ZF Automotive USA,**
15 **ST USA, ST Italy, ST Malaysia, Honda USA, Honda Japan, and**
16 **Honda Engineering USA have known the Honda Class Vehicles, as**
17 **well as the DS84 ACUs and DS84 ASICs installed therein, were**
defective.

18 1052. For many years, Honda Japan, Honda USA, Honda Engineering USA,
19 ZF Electronics USA, ZF Passive Safety USA, ZF Automotive USA, ST USA, ST
20 Italy, and ST Malaysia have known that the defective DS84 ACUs in Honda Class
21 Vehicles are uniquely vulnerable to EOS.

22 **a. Between 2012 and 2015, ZF Electronics USA, ZF Passive**
23 **Safety USA, and ZF Automotive USA received at least 17**
24 **warranty claims for Honda vehicles with DS84 ASICs that**
25 **showed signs of EOS.**

26 1053. According to a document produced by ZF Defendants to NHTSA in
27 connection with NHTSA's investigation of vehicles equipped with the DS84 ASIC,
28 ZF Electronics USA, ZF Passive Safety USA, and ZF Automotive USA received at

1 least 17 warranty claims for Honda vehicles that showed signs of EOS in the DS84
 2 ASIC between July 29, 2012 and January 4, 2015. The relevant portions of the
 3 document have been reproduced below.

Component	Analysis Category	Supplier Name	Receipt Date	Short Description Verbatim	Reason for Return	Customer	Vehicle
DS84	EOS	ST Micro	29-Jul-12	EOS, Voiding	Airbag warning lamp on	Honda	CRV
DS84	EOS	ST Micro	30-May-12	AR54020, RMA35988, abnormal comm.pins42&43 B264E840	Airbag warning lamp on	Honda	Civic
DS84	EOS	ST Micro	17-Nov-12	WARRANTY return from HONDA 4823KM	Airbag warning lamp on	Honda	Fit
DS84	EOS	ST Micro	5-Oct-12	AR55451, RMA36275, High Side FET fault pins18 & 19at-40C B489E1511	Airbag warning lamp on	Honda	Civic
DS84	EOS	ST Micro	10-Aug-13	SR2014061122, RMA, Short to Battery faults quib 5 B602E1846	Airbag warning lamp on	Honda	Civic
DS84	EOS	ST Micro	19-Jun-14	SR2014102301, RMA (B695E2253), short to battery fault Squib3, pin51	Airbag warning lamp on	Honda	Civic
DS84	EOS	ST Micro	2-Jan-15	link to ecu-11-f010	Airbag warning lamp on	Honda	Fit
DS84	EOS	ST Micro	14-Nov-13	SR2015042902, RMA (B826E2881), short to battery fault on squib	Airbag warning lamp on	Honda	CRV
DS84	EOS	ST Micro	7-Jan-15	SR2015060311, RMA (B842E2966), low resistance between VDD pins 7&6	Airbag warning lamp on	Honda	CRV
DS84	EOS	ST Micro	24-Oct-14	SR2015092359, RMA (B926E3327), Asic faults for all DSI lines	Airbag warning lamp on	Honda	FIT
DS84	EOS	ST Micro	7-Sep-14	SR2015092807, RMA (B930E3351), appears to have overheated	Airbag warning lamp on	Honda	Civic

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Component	Analysis Category	Supplier Name	Receipt Date	Short Description Verbatim	Reason for Return	Customer	Vehicle
DS84	EOS	ST Micro	14-Jan-15	SR2015100110, RMA (B930E3347), U700 has a short to battery	Airbag warning lamp on	Honda	CRV
DS84	EOS	ST Micro	19-Oct-14	SR2015122301, RMA (B995E3634), No signals present at U700	Airbag warning lamp on	Honda	Acura TL
DS84	EOS	ST Micro	23-Apr-15	SR2016011404, RMA (B999E3655), losing communication on its DSI_3	Airbag warning lamp on	Honda	CRV
DS84	EOS	ST Micro	24-Nov-15	SR2016020806, RMA (B1007E3708), pulling down the VUPP_Out voltage	Airbag warning lamp on	Honda	Civic
DS84	EOS	ST Micro	12-Sep-14	SR2016030205, RMA (FR-16-00155), short to battery fault	Airbag warning lamp on	Honda	Acura TL
DS84	EOS	ST Micro	3-Dec-14	SR2016041401, RMA (FR-16-00628), Fire Supply Open faults	Airbag warning lamp on	Honda	Civic
DS84	EOS	ST Micro	25-Mar-16	link305-The waveform is different	Airbag warning lamp on	Honda	Fit
DS84	EOS	ST Micro	1-Oct-16	SR2016101209, RMA (FR-16-03652), battery fault pins 54 and 55	Airbag warning lamp on	Honda	CRV
DS84	EOS	ST Micro	17-Mar-15	SR2016121101, RMA (FR-16-05070), internally shorted SQ HI 6 pin 6 & 7	Airbag warning lamp on	Honda	Civic
DS84	EOS	ST Micro	4-Jan-15	SR2017012612, RMA (FR-17-00108), EOS - VOIDING	Airbag warning lamp on	Honda	CRV
DS84	EOS	ST Micro	6-Jan-16	All the failed suibs configured at the ASIC0 U700	Airbag warning lamp on	Honda	K-Car
DS84	EOS	ST Micro	8-Jun-15	found U700 pin2 and pin14 abnormal	Airbag warning lamp on	Honda	Unknown

Component	Analysis Category	Supplier Name	Receipt Date	Short Description Verbatim	Reason for Return	Customer	Vehicle
DS84	EOS	ST Micro	2-May-17	SFT-136 waveform of pin48(AOUT) abnormal	Airbag warning lamp on	Honda	K-Car

1054. Upon information and belief, Honda Japan and Honda Engineering USA knew about these warranty returns, because it has access to all warranty claims made by its subsidiaries.

b. Between 2012 and the present, Honda USA received over 300 consumer complaints about airbag failures in Honda Class Vehicles.

1055. Between 2012 and the present, Honda USA received over 300 consumer complaints involving the Honda Class Vehicles, nondeployment of airbags, and serious injury. Honda USA produced a chart to NHTSA tracking these complaints in the second half of 2019. Relevant portions of this chart are reproduced below.

	Model	Model Year	A Owner/Fleet Reports	G Lawsuits	
Acura	RLX	2014	1		
		2015			
		2016			
		2017			
		2018			
		2019			
	RLX Hybrid	2014			
		2015			
		2016			
		2017			
		2018			
		2019			
	TL	2012		3	2

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		2013	2	
		2014	1	
	TLX	2015	4	
		2016	1	
		2017		
	TSX	2012	5	1
		2013	1	
		2014		
	TSX Sport Wagon	2012		
		2013		
		2014		
Honda	Accord (2 Dr)	2013	2	
		2014	2	
		2015	4	
	Civic (4 Dr)	2012	37	4
		2013	42	
		2014	32	
		2015	39	
	Civic GX (4 Dr)	2012	1	
		2013		
		2014		
		2015		
	Civic Hybrid (4 Dr)	2013		
		2014		1
		2015		
	Civic Si (4 Door)	2012		
		2013		
		2014		
		2015		
	CR-V	2012	8	
		2013	14	
		2014	21	
		2015	28	
		2016	15	
	Fit	2012	6	
		2013	4	
		2014		

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		2015	13	
		2016	3	
		2017		
	Fit EV	2013		
		2014		
	Ridgeline	2012	2	
		2013	1	
		2014	1	

1056. Records produced by Honda USA indicate that it did not inspect the DS84 ACUs from these crashes to rule out EOS as a cause for the nondeployments. Two illustrative examples are described below.

- a. On February 10 and 13, 2017, the brother of the driver of a 2013 Accord TSX reported to Honda USA that his sister died when the Accord’s airbags failed to deploy. The Accord crashed into a barrier and his sister broke her back and suffered a hyperextension of the artery in her neck. She died in the hospital shortly after the crash. The brother reported that the vehicle had travelled around 50 miles per hour. Honda USA’s record of the investigation history does not indicate that it retrieved the crash data or the DS84 ACU from this accident to determine whether EOS prevented airbag deployment.
- b. On or around December 19, 2018, Honda USA received a complaint that the driver of a 2016 Honda CR-V fell asleep while driving on a highway, veered off the road, hit a guard rail, and crashed into a tree. The airbags failed to deploy. The driver ejected from the vehicle and died. Honda USA’s record of the investigation history does not indicate that it retrieved the crash data or the DS84 ACU from this accident to confirm whether EOS prevented airbag deployment.

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c. **In 2012 and 2013, ZF Electronics USA, ZF Automotive USA, ZF Passive Safety USA, Honda Japan, ST Italy, ST USA, and ST Malaysia observed EOS damage to a DS84 ASIC in a Honda Accord that experienced an DS84 ACU failure and second stage airbag failure during a crash test in Japan.**

1057. On or around December 3, 2012, Honda Japan conducted a crash test in Japan of a 2013 Honda Accord intended for sale in Australia. The Accord was equipped with a DS84 ACU.

1058. In the test, the Accord crashed into a deformable barrier while traveling at approximately 35 miles per hour. Upon information and belief, all the airbags should have deployed during this crash. Instead, only a partial deployment occurred, in that the first stage front airbags deployed but the second stage airbags did not.

1059. Honda Japan observed the DS84 ACU from the Accord after the crash test and found the following evidence of ASIC EOS:

- a. The EDR did not record any operation for the second stage airbag ignitor;
- b. The ACU had abnormal heat during analysis, which indicated “[o]vercurrent energizing condition” and “[i]nternal failure in the unit”; and
- c. A transistor on the ACU “had burnout.”

1060. After the crash test, Honda Japan asked ZF Electronics USA, ZF Passive Safety USA, and ZF Automotive USA to analyze the ACU. ZF Electronics USA, ZF Passive Safety USA, and ZF Automotive USA identified failures in the DS84 ASIC and transistor.

1061. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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[REDACTED]

1062. ZF Electronics USA, ZF Passive Safety USA, and ZF Automotive USA then provided Honda Japan with a theory for why the DS84 ASIC and DS84 ACU failure occurred: (1) the crash caused a ground shift in the chassis (i.e. the vehicle frame), (2) the crash caused interruptions in the supply from the car battery, which resulted in an in-rush of current upon recovery, and (3) the crash caused the front crash sensors to sever and short to ground. These three phenomena resulted in a flow of transient electricity to the DS84 ASIC, which caused the ASIC to fail due to EOS.

1063. Throughout 2013, following this analysis of the Accord crash test (and the below Canadian incident), ZF Electronics USA, ZF Passive Safety USA, ZF Automotive USA, and Honda Japan discussed whether to modify the design of the DS84 ACU in light of the risks of EOS.

d. In 2013, ZF Electronics USA, ZF Passive Safety USA, ZF Automotive USA, and Honda Japan learned that another DS84 ACU in a 2012 Honda Civic malfunctioned due to EOS during a crash on a Canadian highway.

1064. On or around March 15, 2013, a 2012 Honda Civic vehicle crashed on a Canadian highway.

1065. Although airbags may have deployed in the crash, which is not clear from the limited information produced in discovery, Honda Japan encountered issues with downloading crash data from the DS84 ACU installed in Civic. Honda Japan then asked for ZF Passive Safety USA's, ZF Electronics USA's and ZF Automotive USA's assistance with the DS84 ACU.

1 1066. ZF Electronics USA, ZF Passive Safety USA, and ZF Automotive
2 USA downloaded data from the ACU, but found only a partial crash record. It
3 could not communicate with the supplemental restraint system through the ACU.
4 These were signs of EOS.

5 1067. ZF Electronics USA, ZF Passive Safety USA, and ZF Automotive
6 USA concluded that the partial crash record occurred due to internal damage to the
7 DS84 ASIC that was similar to the December 2012 Accord crash test. The
8 companies shared this conclusion with Honda Japan.

9 **e. In 2014, ZF Electronics USA, ZF Passive Safety USA, ZF**
10 **Automotive USA, Honda Japan, ST Italy, ST USA, and ST**
11 **Malaysia observed EOS damage to a DS84 ASIC in a Honda**
12 **City that experienced a DS84 ACU failure during a crash**
13 **test in Japan.**

14 1068. On January 13, 2014, Honda Japan conducted a crash test in Japan on
15 a 2014 Honda City intended for sale in Japan.

16 1069. Upon information and belief, the Honda City is very similar to the
17 Honda Fit, a Class Vehicle. Both types of vehicles were equipped with DS84
18 ACUs. According to the ZF Defendants, the vehicles use the same “platform”—i.e.,
19 they are effectively the same for the purposes of ACU design.

20 1070. In the crash test, the Honda City crashed into a barrier at
21 approximately 40 miles per hour.

22 1071. Although some airbags may have deployed in this crash test,³⁹ the
23 DS84 ACU in the Honda City stopped communicating afterwards and failed to shut
24 off the vehicle’s high voltage battery or disengage the door locks. This was a sign
25 of EOS.

26 ³⁹ The limited number of documents produced about this crash test state that some
27 airbags deployed but are silent as to whether the passenger second-stage airbag
28 deployed. The crash data for the operation of the passenger airbags was missing
from the EDR.

1 1072. The DS84 ACU was missing some crash data for the wreck, including
2 the activity of the left-side airbag. This was another sign of EOS.

3 1073. Following this crash test, ZF Electronics USA, ZF Passive Safety
4 USA, and ZF Automotive USA conducted tests on the malfunctioning ACU.

5 1074. [REDACTED]
6 [REDACTED]
7 [REDACTED]
8 [REDACTED]
9 [REDACTED]
10 [REDACTED]
11 [REDACTED]

12 1075. The DS84 ASIC and DS84 ACU failure in the Honda City crash test
13 occurred only 87 microseconds after the impact occurred – meaning barely any
14 time separated the failure from the point at which deployment signals for the
15 airbags are sent by the ASIC.

16 1076. ZF Electronics USA, ZF Passive Safety USA, and ZF Automotive
17 USA proposed the following explanation for the failure to Honda Japan: The front
18 crash sensors shorted to ground during the crash and released a negative transient
19 that exceeding the protection of a Schottky and Zenner diode. This caused the DS84
20 ASIC to suffer EOS. ZF Electronics USA, ZF Passive Safety USA, and ZF
21 Automotive USA informed Honda Japan of this.

22 **f. Prior to February 27, 2014, ZF Automotive USA, ZF**
23 **Electronics USA, ST USA, ST Italy, and ST Malaysia ran a**
24 **bench test that replicated ASIC EOS damage on a DS84**
25 **ACU, and shared their findings with Honda Japan**

26 1077. In or around February 27, 2014, ZF Automotive USA, ZF Passive
27 Safety USA, and ZF Electronics USA sent Honda Japan a written analysis
28 discussing “TRW Bench Test Results.” Upon information and belief, the bench test

1 involved transient testing on the configuration of the DS84 ACU used in Honda
2 Class Vehicles (and other Honda global vehicles) in a laboratory environment—i.e.,
3 outside of a vehicle. The written analysis of the results reported to Honda Japan
4 included: “Damage isolated to DS84. Electrical bench measurements show same
5 internal short to VDD as seen on crash test unit. Part sent to ST Micro for analysis.”
6 Upon information and belief, the phrase “crash test unit” refers to the DS84 ACU
7 that suffered EOS in the Honda Civic crash test in Japan that Honda Japan
8 conducted. Upon information and belief, VDD refers to a power supply component
9 connected to the DS84 ASIC. When EOS occurs on the DS84 ASIC, it can also
10 short.

11 1078. [REDACTED]
12 [REDACTED]
13 [REDACTED]
14 [REDACTED]
15 [REDACTED]
16 [REDACTED]

17 1079. [REDACTED]
18 [REDACTED]
19 [REDACTED]
20 [REDACTED]

21 **g. Honda Japan, ZF Electronics USA, ZF Electronics US LLC,**
22 **ST USA, ST Italy, and STMicroelectronics, SDN BHD are**
23 **withholding documents and information concerning**
24 **additional Honda Civic Field Events with signs of DS84**
ASIC EOS in DS84 ACUs from prior to February 27, 2014.

25 1080. Honda USA has produced a document dated February 27, 2014,
26 which, upon information and belief, ZF Automotive USA and ZF Electronics USA
27 prepared for Honda Japan.
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1 1081. The document identified ZF Automotive USA as the copyright holder
2 of the information discussed therein.

3 1082. [REDACTED]
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5 [REDACTED]
6 [REDACTED]
7 [REDACTED]
8 [REDACTED]
9 [REDACTED]

10 1083. [REDACTED]
11 [REDACTED]
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19 [REDACTED]
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21 [REDACTED]

22 **h. Between 2014 and February 5, 2016, Honda Japan, ZF**
23 **Electronics USA, ZF Passive Safety USA, ZF Automotive**
24 **USA, ZF TRW Corp., and ZF Germany learned that a**
25 **Honda Jazz with a DS84 ACU in Asia experienced an**
inadvertent airbag deployment.

26 1084. Upon information and belief, in 2014, the airbags in a Honda Jazz with
27 a DS84 ACU deployed while the car was driving, without any crash event. The
28 ACU is the component that controls with airbags deploy, and should never

1 command deployment without a crash event. As evidenced by the prior recalls of
2 TRW ACUs due to EOS and other DS84 ASICs with observed EOS in vehicles that
3 experienced inadvertent deployments, an inadvertent airbag deployment without a
4 crash event can be a sign of ASIC EOS.

5 1085. Although this incident occurred in Asia, the Honda Jazz is part of the
6 same vehicle “platform” as the Honda Fit, a Class Vehicle. Upon information and
7 belief, this means they share common design, engineering, and production efforts,
8 and therefore observed ACU malfunctions in one platform are evidence of a defect
9 in another platform.

10 1086. ZF Germany was aware of this incident because it is the copyright
11 holder of a February 5, 2016 slide deck presentation with a chart which that listed
12 an inadvertent deployment event for Honda vehicles.⁴⁰ The document identifies ZF
13 Germany as the author of the slide deck by listing its corporate name immediately
14 under the title of the deck on the first page.

15 1087. Upon information and belief, ZF Passive Safety USA and ZF
16 Electronics USA knew about this incident because they designed the DS84 ACU
17 and provided quality assurance to Honda Japan, and its affiliates, which include
18 assisting with the analysis of ACU malfunctions.

19 1088. Upon information and belief, ZF Automotive USA was aware of this
20 incident because it attended the meeting where the February 5, 2016 slide deck
21 presentation was used.

22 1089. Upon information and belief, ZF TRW Corp. was aware of this
23 incident because, Marc Bolitho, a longtime employee of ZF Passive Safety USA
24 who held himself out as the Director of Passive Safety Engineering for ZF TRW
25 Corp., is one of several authors of the slide deck presentation.

26 1090. Upon information and belief, Honda Japan was aware of this incident.

27 ⁴⁰ Although this slide deck refers to Honda Japan as “OEM B,” other information
28 produced by the ZF Defendants confirms that “OEM B” refers to Honda Japan

1 1091. The Honda and ZF Defendants have not produced any documents
2 reflecting their analysis of the DS84 ACU and DS84 ASIC from this incident with a
3 Honda Jazz.

- 4 **i. On or around February 27, 2014, ZF Electronics USA, ZF**
5 **Passive Safety USA, and ZF Automotive USA informed**
6 **Honda Japan that the standard used to test for an electrical**
7 **phenomenon related to EOS were not sufficient to simulate**
8 **“actual vehicle condition[s].”**

9 1092. In early 2014, Honda Japan asked ZF Automotive USA, ZF Passive
10 Safety USA, and ZF Electronics USA to provide test results for the DS84 ACUs
11 under an electrical engineering standard called AECQ100. This standard tests the
12 results for latch-up effect, an electrical phenomenon in microchips that can lead to
13 EOS.

14 1093. ZF Automotive USA, ZF Passive Safety USA, and ZF Electronics
15 USA provided Honda Japan with a written response on around February 27, 2014.
16 The response stated that the DS84 ASIC was tested under this standard at plus or
17 minus 100 milli-Amps. But the response also stated: “However, actual vehicle
18 condition can supply large amount of current to the ASIC when negative transient
19 occurs. Therefore, results seen for [the Honda City] crash test could not be observed
20 during ACEQ100 testing.” In other words, the latch-up test did not simulate the
21 type of latch-up effect that could occur under real world conditions during a 40
22 mile-per-hour crash with a barrier.

- 23 **j. Following these three global incidents, Honda Japan, ZF**
24 **Electronics USA, ZF Passive Safety USA, and ZF**
25 **Automotive USA agreed to inadequate design changes to**
26 **some, but not all, Class Vehicles.**

27 1094. After the three DS84 ACU malfunctions in Honda vehicles described
28 above, Honda Japan, ZF Electronics USA, ZF Passive Safety USA, and ZF
Automotive USA agreed to change the design of the DS84 ACUs for some of the

1 following Class Vehicles going forward: Accords, CRVs, and Fits.⁴¹ These changes
2 confirmed an agreement by Honda Japan, ZF Electronics USA, ZF Passive Safety
3 USA, and ZF Automotive USA that the three DS84 ACU malfunctions abroad were
4 relevant to ACUs in the United States, and that the observed malfunctions were
5 serious enough to necessitate design changes.

6 1095. The remaining Class Vehicles were not altered. No Defendant took
7 any steps to fix the Accords, CRVs and Fits that had already been sold.

8 1096. Upon information and belief, the DS84 ACU design change involved
9 increasing the strength of Schottky diodes and adding a resistor on the crash sensor
10 communication lines. This change did not address the root cause of the defect: the
11 relative vulnerability of the DS84 ASIC to transients. NHTSA's investigation into
12 the models with this design change and numerous public consumer complaints
13 regarding failed airbags in these same vehicles further indicates an uncured defect
14 in the Unrecalled Honda Class Vehicles with the DS84 ACUs. *See* Exhibit 5
15 (10606730, 10904988, 10904991, 11006304, 11006609, 11209214, 11230881,
16 11232553, 11297555). Honda USA has also received over 70 complaints that
17 airbags failed to deploy in these model vehicles during accidents with serious
18 injuries.

19 1097. [REDACTED]
20 [REDACTED]

- 21 a. [REDACTED]
22 [REDACTED]
23 [REDACTED]
24 [REDACTED]
25 [REDACTED]

26 _____
27 ⁴¹ Based on the incomplete, limited-discovery information available at this time,
28 these changes may apply to some 2015 Honda Accords, 2015–2017 Honda CR-Vs,
and 2016–2017 Honda Fits with DS84 ACUs.

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[REDACTED]

b.

1098. Upon information and belief, Honda USA knew about this design change because Honda Japan informs Honda USA when changes to American vehicle designs are made.

k. In or around February 2016, ZF Electronics USA, ZF Passive Safety USA, and ZF Automotive USA informed Honda Japan that EOS had been observed on DS84 ASICs in field events involving vehicles made by two other manufacturers.

1099. Upon information and belief, in February 2016,⁴² ZF Automotive USA shared a slide deck presentation dated February 5, 2016 with Honda Japan. Upon information and belief, ZF Automotive USA, ZF Passive Safety USA, ZF

⁴² This allegation is based on ZF Automotive USA’s acknowledgment in a 573 Defect Report filed in 2018 that it “communicate[d] with customers regarding EOS and contact with NHTSA” in January 2016. Marc Bolitho, the Director of Passive Safety Electronics and Engineering for ZF TRW Corp., also signed a declaration dated March 14, 2016 acknowledging that portions of a February 5, 2016 slide deck presented to NHTSA were “shared with customers or the applicable component supplier under circumstances that the shared information is retained as confidential by them.”

1 Electronics USA, ZF TRW Corp., and ZF Germany all had a role in drafting,
2 editing, and/or approving the slide deck presentation before ZF Automotive USA
3 shared it with Honda Japan.

4 1100. The February 5, 2016 slide deck presentation informed Honda Japan
5 that two other vehicle manufacturers had field incidents in the United States with
6 confirmed EOS on DS84 ACUs.

7 1101. The February 5, 2016 slide deck presentation also informed Honda
8 Japan that bench testing had replicated two types of failures in DS84 ASICs due to
9 EOS, and that “[t]hese multipoint failure modes can cause EOS to the ASIC that
10 may impact ACU function during a crash event.”

11 **I. Defendants are presently withholding information about two**
12 **additional investigations into incidents that involved Honda**
13 **vehicles and potential EOS in DS84 ACUs.**

14 1102. Upon information and belief and based upon joint interrogatory
15 answers by the domestic ZF Defendants, ZF Electronics USA, ZF Passive Safety
16 USA, and ZF Automotive USA have investigated two other global incidents for
17 potential EOS. One involved a Honda Civic with an “incident” that occurred in
18 Brazil on November 18, 2016. Another involved a Honda City with an “incident”
19 that occurred in Thailand on April 6, 2017.

20 1103. Upon information and belief, Honda Japan and its affiliates would not
21 have involved ZF Electronics USA, ZF Passive Safety USA, and ZF Automotive
22 USA in an investigation that did not have troubling signs of EOS, because Honda
23 Japan and other vehicle manufacturers know how to obtain and interpret EDR data
24 from an ACU when the ACU is working properly. When an EDR has complete
25 information, there is no need to involve the supplier, which suggests a more
26 complex investigation and analysis was required.

27 1104. Upon information and belief, one of these two incidents involved an
28 inadvertent deployment. This belief is based upon the fact that a presentation dated

1 March 8, 2018 produced by the ZF Defendants (described in more detail below)
2 confirms the existence of two inadvertent deployments in Honda vehicles with
3 DS84 ASICs. This is an increase of one incident relative to those identified in the
4 February 5, 2016 presentation described above.

5 1105. Defendants have produced no other information about the
6 investigation into the Brazil and Thailand incidents.

7 **m. Based on the Toyota recall, Hyundai Korea, Hyundai USA,**
8 **ZF Electronics USA, ZF Passive Safety USA, ZF Automotive**
9 **USA, Honda Japan, and Honda USA knew that even**
10 **relatively “high levels” of circuit protection around the DS84**
11 **ASIC are insufficient to cure the defect.**

11 1106. On April 19, 2019, NHTSA filed a public document describing the
12 investigation into the DS84 ACU Defect. The document noted that the recalled
13 Hyundai and Kia Class Vehicles included “the lowest levels of ASIC protection”
14 and the recalled FCA vehicles used “a mid-level form of ASIC protection.” The
15 document also noted: “ODI has identified two substantial frontal crash events (one
16 fatal) involving Toyota products where EOS is suspected as the likely cause of the
17 non-deployments. The crashes involved a MY 2018 and a MY 2019 Corolla
18 equipped with the subject ACU that incorporated higher levels of ASIC protection.
19 Additionally, both ACUs were found to be non-communicative (meaning the
20 ACU’s Event Data Recorder could not be read) after the crash, a condition found in
21 other cases where EOS occurred with other [vehicle manufacturers].” Upon
22 information and belief, Honda USA, Honda Japan, Honda Engineering USA, ZF
23 Electronics USA, ZF Passive Safety USA, ZF Automotive USA, ZF TRW Corp.,
24 and ZF Germany all read this document.

25 1107. On January 17, 2020, Toyota submitted a 573 Defect Report to
26 NHTSA that announced its intention to recall 2,891,976 vehicles based on an
27 admitted defect with the DS84 ACU. The recalled Toyota vehicles were equipped
28 with versions of the ACU with same level of circuit protection as most Honda Class

1 Vehicles. Upon information and belief, Honda USA, Honda Japan, Honda
2 Engineering USA, ZF Electronics USA, ZF Passive Safety USA, ZF Automotive
3 USA, ZF TRW Corp., and ZF Germany all read this document and knew that the
4 DS84 ACUs in the majority of Honda Class Vehicles had the same levels of circuit
5 protection as the DS84 ACUs that prompted the recall of Toyota Class Vehicles.

6 **n. In March 2020, Honda USA, Honda Japan, and ZF**
7 **Electronics USA analyzed a DS84 ACU from a Honda Civic**
8 **that crashed in Florida and found signs of DS84 ASIC EOS.**

9 1108. On or around February 24, 2018, a 2012 Honda Civic crashed in
10 Florida. Upon information and belief, the airbags in the vehicle did not deploy.

11 1109. Upon information and belief, Honda USA learned of this crash and
12 asked ZF Electronics USA, ZF Passive Safety USA, and ZF Automotive USA to
13 investigate the DS84 ACU. According to an EDR analysis produced by Honda
14 USA, ZF Passive Safety USA, ZF Electronics USA, and ZF Automotive USA had
15 to transplant the Event Data Recorder chip into another ACU to download the
16 information. This would only have been done if the DS84 ACU from the Honda
17 Civic was noncommunicative. Upon information and belief, the DS84 ACU
18 retrieved from the 2012 Honda Civic was noncommunicative, which is a sign of
19 EOS.

20 1110. On March 12, 2020, ZF Electronics USA downloaded the information
21 on the Event Data Recorder chip retrieved from the 2012 Honda Civic. There was
22 no data for the crash event. This is a further sign of EOS.

23 1111. ZF Electronics USA, ZF Passive Safety USA, and ZF Automotive
24 USA shared the Event Data Recorder analysis with Honda USA. Upon information
25 and belief, Honda USA shared the analysis with Honda Japan.

26 1112. Aside from the EDR analysis, no Defendant has produced any
27 information about this crash or any further analysis thereof.
28

1 **7. ZF Electronics USA, ZF Passive Safety USA, ZF Automotive USA,**
2 **ST USA, ST Italy, ST Malaysia, Mitsubishi Japan, and Mitsubishi**
3 **USA knew the Mitsubishi Class Vehicles, as well as the DS84**
4 **ACUs and DS84 ASICs installed therein, were defective.**

5 1113. For many years, ZF Electronics USA, ZF Passive Safety USA, ZF
6 Automotive USA, ST USA, ST Italy, ST Malaysia, Mitsubishi Japan, and
7 Mitsubishi USA were aware of the risk of EOS in the DS84 ACUs in Mitsubishi
8 Class Vehicles.

9 **a. Between 2014 and 2019, Mitsubishi USA received over 50**
10 **consumer complaints about non-deployment events in**
11 **Mitsubishi Class Vehicles.**

12 1114. Between 2014 and 2019, Mitsubishi USA received over 50 consumer
13 complaints about non-deployment events in Mitsubishi Class Vehicles.

14 1115. The documents produced by Mitsubishi USA in discovery indicate its
15 practice was to close consumer complaints without sending an inspector to
16 investigate the vehicle for an ACU malfunction. Virtually none of the customer
17 complaint records produced by Mitsubishi USA indicate that Mitsubishi USA took
18 this basic step to confirm its DS84 ACUs were functioning properly and not
19 defective.

20 **b. In or around February 2016, ZF Passive Safety USA, ZF**
21 **Electronics USA, and ZF Automotive USA informed**
22 **Mitsubishi Japan and Mitsubishi USA that EOS had been**
23 **observed on DS84 ASICs in field events involving vehicles**
24 **made by two other manufacturers.**

25 1116. Upon information and belief, in February 2016, ZF Automotive USA
26 shared a slide deck presentation dated February 5, 2016 with Mitsubishi USA and
27 Mitsubishi Japan. Upon information and belief, ZF Automotive USA, ZF
28 Electronics USA, ZF Passive Safety USA, ZF TRW Corp., and ZF Germany all had

1 a role in drafting, editing, and/or approving the slide deck before ZF Automotive
2 USA shared it with Mitsubishi USA and Mitsubishi Japan.⁴³

3 1117. The February 5, 2016 slide deck presentation informed Mitsubishi
4 USA and Mitsubishi Japan that two other vehicle manufacturers had field incidents
5 in the United States with confirmed EOS on DS84 ACUs.

6 1118. The February 5, 2016 slide deck presentation also informed Mitsubishi
7 USA and Mitsubishi Japan that bench testing had replicated two types of failures in
8 DS84 ASICs due to EOS, and that “[t]hese multipoint failure modes can cause EOS
9 to the ASIC that may impact ACU function during a crash event.”

10 **c. In 2017, Mitsubishi USA, ZF Automotive USA, ZF Passive**
11 **Safety USA, ZF Electronics USA, ST USA, ST Malaysia, and**
12 **ST Italy confirmed that EOS occurred in a DS84 ACU in a**
13 **Mitsubishi Class Vehicle.**

14 1119. In May of 2017, Mitsubishi USA shipped the DS84 ACU recovered
15 from a 2017 Mitsubishi Lancer to ZF Automotive USA, ZF Passive Safety USA,
16 and ZF Electronics USA. Upon information and belief, Mitsubishi USA sent them
17 the device for analysis because a consumer took the car to a dealer when the ACU
18 had malfunctioned.

19 1120. On May 25, 2017, ZF Automotive USA, ZF Passive Safety USA, and
20 ZF Electronics USA received the ACU.

21 1121. ZF Electronics USA, ZF Passive Safety USA, and ZF Automotive
22 USA performed an initial analysis and found the DS84 ACU failed three separate

23 ⁴³ This allegation is based on ZF Automotive USA’s acknowledgment in a 573
24 Report filed in 2018 that it “communicate[d] with customers regarding EOS and
25 contact with NHTSA” in January 2016. Marc Bolitho, a longtime employee of ZF
26 Passive Safety USA who also served as the Director of Passive Safety Electronics
27 and Engineering for ZF TRW Corp., also signed a declaration dated March 14,
28 2016 acknowledging that portions of a February 5, 2016 slide deck presented to
NHTSA were “shared with customers or the applicable component supplier under
circumstances that the shared information is retained as confidential by them.”
Mitsubishi USA produced a copy of the February 5, 2016 presentation in discovery.

1 tests. Upon information and belief, they then sent the malfunctioning DS84 ACU or
2 component parts thereof to ST USA, ST Italy, and ST Malaysia.

3 1122. [REDACTED]
4 [REDACTED]
5 [REDACTED]
6 [REDACTED]
7 [REDACTED]
8 [REDACTED]
9 [REDACTED]
10 [REDACTED]
11 [REDACTED]
12 [REDACTED]
13 [REDACTED]

14 1123. Upon information and belief and based on written materials prepared
15 by ZF Electronics USA, ZF Passive Safety USA and ZF Automotive USA from
16 2013, EOS failures on the DS84 ASIC can occur when a squib ASIC shorts, and the
17 ignition generates a spike. The SD40 is one of the squib ASICs on the DS84 ACU.

18 1124. Because the SD40 ASIC is physically near the DS84 ASIC on the
19 particle board, the SD40 ASIC is part of the DS84 ASIC's family of chips, the
20 NHTSA investigation has touched upon the SD40 ASIC, and the chip suffered
21 similar EOS failures, it is further evidence of the ACU Defect at issue in this
22 litigation.

23 **d. Based on the Toyota recall, Mitsubishi Japan, Mitsubishi**
24 **USA, ZF Automotive USA, ZF Passive Safety USA, and ZF**
25 **Electronics USA knew that even relatively "high levels" of**
26 **circuit protection around the DS84 ASIC are insufficient to**
cure the defect.

27 1125. On April 19, 2019, NHTSA upgraded its preliminary investigation
28 concerning DS84 ACUs to a type of investigation called an "Engineering

1 Analysis.” In connection with this decision, NHTSA expanded the scope of the
2 investigation to include the Mitsubishi Class Vehicles.

3 1126. Also on April 19, 2019, NHTSA filed a public document describing
4 the investigation. The document noted that the recalled Hyundai and Kia Class
5 Vehicles included “the lowest levels of ASIC protection” and the recalled FCA
6 vehicles used “a mid-level form of ASIC protection.” The document also noted:
7 “ODI has identified two substantial frontal crash events (one fatal) involving
8 Toyota products where EOS is suspected as the likely cause of the non-
9 deployments. The crashes involved a MY 2018 and a MY 2019 Corolla equipped
10 with the subject ACU that incorporated higher levels of ASIC protection.
11 Additionally, both ACUs were found to be non-communicative (meaning the ACU
12 could not be read with an Event Data Recorder) after the crash, a condition found in
13 other cases where EOS occurred with other [vehicle manufacturers].”

14 1127. Upon information and belief, Mitsubishi USA, Mitsubishi Japan, ZF
15 Electronics USA, ZF Passive Safety USA, and ZF Automotive USA all read this
16 document, and understood that Mitsubishi Class Vehicles were equipped with, at
17 best, a mid-level form of ASIC protection described by NHTSA.

18 1128. On January 17, 2020, Toyota submitted a 573 Defect Report to
19 NHTSA announcing its intention to recall 2,891,976 vehicles based on an admitted
20 defect with the DS84 ACU. The recalled Toyota vehicles were equipped with
21 versions of the ACU with same level of circuit protection as most Honda Class
22 Vehicles. Upon information and belief, Mitsubishi USA, Mitsubishi Japan, ZF
23 Electronics USA, and ZF Automotive USA all read this document and knew that
24 the DS84 ACUs in Mitsubishi Class Vehicles had lower levels of circuit protection
25 than the DS84 ACUs that prompted the recall of Toyota Class Vehicles.

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1 **E. Defendants schemed to defraud Plaintiffs and other similarly situated**
2 **consumers by making misleading statements about Class Vehicle safety,**
3 **airbags, and seatbelts.**

4 **1. Each Class Vehicle has several “in-vehicle” safety labels that**
5 **misleadingly assured consumers that the airbags and seatbelts**
6 **would function properly during a crash.**

7 1129. Defendants know, and have known, that properly functioning airbags
8 and seatbelts, and vehicle safety in general, are important attributes to consumers in
9 deciding to purchase or lease a vehicle. This collective understanding informed the
10 Vehicle Manufacturer Defendants’ marketing strategy for and representations to
11 consumers about the Class Vehicles, as reflected throughout the informational
12 labels and representations included in every Class Vehicle.

13 1130. As described in detail below, these safety representations include
14 window stickers affixed to each Class Vehicle at the point of sale or lease and made
15 available online; certification labels that uniformly communicate compliance with
16 motor vehicle safety standards in every Class Vehicle; and in-vehicle safety
17 information about airbags and their location within the vehicles. On the whole,
18 these window stickers, safety labels, and information uniformly and misleadingly
19 communicated to consumers prior to their decision to purchase or lease a Class
20 Vehicle that the Class Vehicles were safe and had properly-functioning airbags and
21 seatbelts when in fact, they did not.

22 **a. With their co-conspirators’ knowledge, Honda USA, Toyota**
23 **USA, Toyota Sales USA, Mitsubishi USA, FCA, Hyundai**
24 **USA, and Kia USA distributed Class Vehicles with**
25 **Monroney labels that had misleading assurances regarding**
26 **safety.**

27 1131. In the United States, automobile dealers must sell or lease new
28 vehicles with window stickers that provide important information about a vehicle’s
features, including its safety features, and performance characteristics. *See* 15 U.S.
Code § 1232. These window stickers are commonly called “Monroney labels.”

1 Every Class Vehicle had a Monroney label affixed to it at the point of its original
2 sale or lease at a dealership. The labels are large—approximately the size of a
3 standard sheet of paper—and prominently displayed on the vehicles, typically taped
4 to a window.

5 1132. Monroney labels are also important resources for used vehicle
6 purchasers because they can also be affixed to used cars at the point of sale, and
7 they are readily available online, including at <https://monroneylabels.com>. Upon
8 information and belief, used car dealers often provide printed Monroney labels to
9 consumers when offering the vehicles for sale or lease. Given this common
10 practice, Monroney labels informed the sale or lease of used Class Vehicles as well.

11 1133. Although dealers displayed the Class Vehicles with Monroney labels
12 prior to sale and lease, they did not author the labels and had no control over, or
13 input in, the contents of the Monroney labels. Instead, the domestic subsidiaries
14 within the Defendant Vehicle Manufacturer groups control the contents of the
15 Monroney labels for their respective Class Vehicles. Specifically:

- 16 a. Honda USA was responsible for drafting and approving the
17 content of the Monroney labels for all Honda Class Vehicles.
- 18 b. Toyota USA and Toyota Sales USA were jointly responsible for
19 drafting and approving the content of the Monroney labels for
20 Toyota Class Vehicles.
- 21 c. Mitsubishi USA was responsible for drafting and approving the
22 contents of the Monroney labels for Mitsubishi Class Vehicles.
- 23 d. FCA was responsible was responsible for drafting and
24 approving the content of the Monroney labels for FCA Class
25 Vehicles that shipped after June 10, 2009.⁴⁴

27 ⁴⁴ FCA's bankrupt predecessor, Chrysler LLC, drafted and approved Monroney
28 labels for vehicles shipped prior to this date.

1 e. Hyundai USA was responsible for drafting and approving the
2 contents of the Monroney labels for Hyundai Class Vehicles.

3 f. Kia USA was responsible for drafting and approving the
4 contents of the Monroney labels for Kia Class Vehicles.

5 1134. Nor did the dealers themselves affix the labels to Class Vehicles.

6 Instead, domestic subsidiaries within the Defendant Vehicle Manufacturer groups
7 affixed the Monroney labels to their respective Class Vehicles before shipping them
8 across the United States to the dealers. Specifically, upon information and belief:

9 a. Honda USA affixed Monroney labels to all Honda Class
10 Vehicles prior to shipping them to Honda dealers.

11 b. Toyota Sales USA affixed Monroney labels to all Toyota Class
12 Vehicles prior to shipping them to Toyota dealers.

13 c. Mitsubishi USA affixed Monroney labels to all Mitsubishi Class
14 Vehicles prior to shipping them to Mitsubishi dealers.

15 d. FCA affixed Monroney labels to all FCA Class Vehicles
16 shipped after June 10, 2009,⁴⁵ prior to shipping them to FCA
17 dealers.

18 e. Hyundai USA affixed Monroney labels to all Hyundai Class
19 Vehicles prior to shipping them to Hyundai dealers.

20 f. Kia USA affixed Monroney labels to all Kia Class Vehicles
21 prior to shipping them to Kia dealers.

22 1135. When Honda USA, Toyota Sales USA, Mitsubishi USA, FCA,
23 Hyundai USA, and Kia USA shipped their Class Vehicles with Monroney labels to
24 dealers, they knew that U.S. law prohibited automobile dealers from removing the
25 Monroney labels from the Class Vehicles, and that only consumers are allowed to
26 remove the labels.

27 ⁴⁵ FCA's bankrupt predecessor, Chrysler LLC, affixed Monroney labels to vehicles
28 shipped prior to this date.

1 1136. Upon information and belief, Honda USA, Toyota USA, Toyota Sales
2 USA, Mitsubishi USA, FCA, Hyundai USA, and Kia USA tell automobile dealers
3 to display Class Vehicles with Monroney labels approved by the respective
4 domestic entities, as described in the preceding paragraph. Upon information and
5 belief, this instruction is part of written policies or contracts that Honda USA,
6 Toyota USA, Toyota Sales USA, Mitsubishi USA, FCA, Hyundai USA, and Kia
7 USA provide to the authorized dealers who sell or lease their respective vehicle
8 models.

9 1137. Exhibit 7 contains a compendium of Monroney labels for the Class
10 Vehicles, including both images of original Monroney labels and versions of the
11 labels publicly available on monroneylabels.com. On information and belief, the
12 original printed Monroney labels for the Class Vehicles included the same content
13 as pertains to safety and airbags as the exemplar Monroney labels from
14 monroneylabels.com.

15 1138. Although no law required them to do so, Honda USA, Toyota USA,
16 Toyota Sales USA, Mitsubishi USA, FCA, Hyundai USA, and Kia USA voluntarily
17 chose to include information about airbags or seatbelts on all Monroney labels for
18 Class Vehicles, typically under a heading for “SAFETY” or “STANDARD
19 FEATURES.” Representative examples are detailed below.

- 20 a. On the Monroney label for the 2013 Chrysler 200, FCA featured
21 “Advanced Multistage Front Airbags” and “Supplemental”
22 Front Seat and Side Curtain Airbags amongst the included
23 “SAFETY FEATURES.” Exhibit 7 at 5. FCA also used
24 identical language on the Monroney labels for the 2014 and
25 2015 Chrysler 200. Exhibit 7 at 6-7.
- 26 b. Likewise, on the Monroney label for the 2013 Fiat 500, FCA
27 again touted the “Advanced Multistage Front Airbags” and
28

- 1 “Supplemental” Front Seat and Side Curtain Airbags amongst
2 the “SAFETY FEATURES” in the vehicle. Exhibit 7 at 29.
- 3 c. On the Monroney label for the 2016 Hyundai Sonata Sport,
4 Hyundai USA listed the included “ADVANCED SAFETY
5 TECHNOLOGY” such as “Front, Front Side Impact, Side
6 Curtain & Driver Knee Airbags” and “Front Seatbelt Pre-
7 Tensioners.” Exhibit 7 at 53.
- 8 d. Hyundai USA also featured the “Dual Stage Driver And
9 Passenger Front Airbags” and “Dual Stage Driver And
10 Passenger Seat-Mounted Side Airbags” along with “Outboard
11 Front Lap And Shoulder Safety Belts” with “pretensioners” on
12 the Monroney label for the 2018 Hyundai Sonata. Exhibit 7 at
13 55.
- 14 e. Likewise, Kia USA featured “Dual Front Advanced Airbags &
15 Driver's Knee Airbag” and the “Dual Front Seat-Mounted Side
16 & Full-Length Curtain Airbags” under the header SAFETY on
17 the Monroney label for the 2020 Kia Optima SX Turbo. Exhibit
18 7 at 103.
- 19 f. Kia USA also listed the “Dual Stage Driver And Passenger Seat-
20 Mounted Side Airbags” and “Outboard Front Lap And Shoulder
21 Safety Belts” with “Pretensioners” as amongst the “SAFETY”
22 features on the Monroney label for the 2014 Kia Sedona. Exhibit
23 7 at 109.
- 24 g. On the Monroney label for the 2014 Mitsubishi Lancer,
25 Mitsubishi USA included “ADVANCED DUAL FRONT
26 AIRABGS,” “FRONT SEAT MOUNTED SIDE AIRBAGS,”
27 “SIDE CURTAIN AIRBAGS” and a “DRIVER’S SIDE KNEE
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AIRBAG” amongst the featured “SAFETY & SECURITY FEATURES” in the vehicle. Exhibit 7 at 110.

- h. Similarly, as to the 2016 Mitsubishi Lancer ES, Mitsubishi USA touted the “Advanced dual-stage front airbags with occupant seat position sensors” as well as the “Height-adjustable front shoulder belts with pretensioner” as a “Safety & Security” feature on the Monroney label. Exhibit 7 at 112.
- i. On its Monroney label for the 2012 Honda Civic Sedan, Honda USA lists “SAFETY” equipment including “Front & rear side curtain airbags” and “3-point seat belts in all seating positions” with a “front automatic tensioning system.” Exhibit 7 at 35.
- j. As to the 2016 Honda CR-V, Honda USA noted “Dual Stage Driver And Passenger Front Airbags,” “Dual Stage Driver And Passenger Seat-Mounted Side Airbags,” and “Outboard Front Lap And Shoulder Safety Belts - inc: Rear Center 3 Point, Height Adjusters and Pretensioners” on its label regarding the “SAFETY” attributes of the vehicle. Exhibit 7 at 43.
- k. Toyota USA and Toyota Sales USA featured “SAFETY” equipment on the Monroney label for the 2013 Toyota Sequoia, listing “Driver & front passenger advanced airbags w/occupant classification sensor” and “Driver & front passenger seatbelt pretensioners & force limiters.” Exhibit 7 at 148.
- l. Similarly, Toyota USA and Toyota Sales USA described “Driver & front passenger advanced airbags w/passenger airbag cut-off switch,” “Driver & front passenger seat-mounted side airbags” and “Front & rear side curtain airbags - 3-point seat belts w/emergency locking retractor at all seating positions -inc: front seat belt pretensioners, force limiters & adjustable shoulder

1 anchors, automatic/emergency locking retractor for front
2 passenger & rear seat belts” on the Monroney label for the 2012
3 Toyota Tacoma. Exhibit 7 at 152.

4 m. Additional examples of Monroney labels with the same or
5 similar representations about vehicle airbags, seatbelts, and
6 safety are attached hereto as Exhibit 7.

7 1139. These descriptions of airbags and seatbelts in Class Vehicles on
8 Monroney labels were false and misleading because they conveyed to any
9 reasonable consumer that the Class Vehicles had properly functioning airbags and
10 seatbelts that would protect occupants during a crash, when, in fact, the Class
11 Vehicles have defective safety systems that can fail or malfunction during crashes
12 due to EOS.

13 1140. Upon information and belief, Honda USA, Toyota USA, Toyota Sales
14 USA, Mitsubishi USA, FCA, Hyundai USA, and Kia USA chose to include
15 misleading descriptions of the airbags and seatbelts on their Monroney labels
16 because they wanted to encourage Class Members to purchase or lease the Class
17 Vehicles and knew that airbags, seatbelts, and vehicle safety are critically important
18 to consumers when deciding to purchase or lease a vehicle.

19 1141. In addition, the Monroney labels for all Class Vehicles featured the
20 “Government 5-Star Safety Ratings” and include a star rating in the crash
21 categories “Front Crash – Driver” and “Front Crash – Passenger.” These
22 statements on every Monroney label were misleading because they suggested to any
23 reasonable consumer that the vehicle’s passenger safety system did not suffer from
24 a defect and would perform its intended function to protect them during a crash.
25 Because of the defective DS84 ACUs and ASICs in the Class Vehicles, this was not
26 true.

27 1142. All Defendants knew that dealers sold or leased Class Vehicles with
28 Monroney labels with these kinds of misrepresentations about airbags, seatbelts,

1 and vehicle safety, because every major participant in the automotive industry is
2 familiar with the standard practice of including this type of information on
3 Monroney labels.

- 4 a. As sophisticated and well-funded corporate entities that derive
5 billions of dollars in revenue from the sale of vehicles to U.S.-
6 based dealers Honda Japan, Hyundai Korea, Kia Korea, Toyota
7 Japan, and Mitsubishi Japan were each specifically aware that
8 their subsidiaries distributed the Class Vehicles with Monroney
9 labels that included information about safety and safety features.
- 10 b. As sophisticated and well-funded corporate entities that generate
11 billions of dollars in annual revenue from work in the U.S.
12 automotive industry, Hyundai Mobis Co., Ltd., ST USA, ST
13 Italy, ST Malaysia, ZF Automotive USA, ZF Electronics USA,
14 ZF Passive Safety USA, ZF TRW Corp., and ZF Germany were
15 each specifically aware that the Vehicle Manufacturer
16 Defendants distributed the Class Vehicles with Monroney labels
17 that included information about safety and safety features. For
18 example, in a June 14, 2010 press release from ZF TRW Corp.,
19 the company boasted that its airbag systems and components
20 help vehicles “earn the highest rating” in the NHTSA crash test
21 rating featured on Monroney labels, which it described as
22 evidence of its capacity to provide “competitive solutions” to
23 manufacturers.

24 1143. As the above examples make clear, the Monroney labels for the Class
25 Vehicles uniformly, and wrongly, assured Plaintiffs and Class members that the
26 Class Vehicles were safe. The statements and information on the labels suggested to
27 any reasonable consumer that the Occupant Restraint System did not suffer from a
28 defect and would perform its intended function of activating the seatbelts and

1 airbags when necessary during a crash. This was false and misleading because the
2 DS84 ACUs and ASICs installed in the Class Vehicles were, in fact, defective and
3 posed an unreasonable risk to the safety of vehicle occupants. Had Defendants
4 disclosed the defective nature of the DS84 ACUs and ASICs, or that seatbelts and
5 airbags may fail to activate in some moderate to severe crashes, on the Monroney
6 labels of the Class Vehicles, Plaintiffs would have seen such a disclosure.

7 **b. With their co-conspirators' full knowledge, Honda Japan, Honda Engineering USA, Hyundai Korea, Kia Korea, FCA, Toyota Japan, and Mitsubishi Japan affixed misleading safety certification labels to many Class Vehicles and approved similar labels in the remainder.**

11 1144. To sell the Class Vehicles in the United States, the Vehicle
12 Manufacturer Defendants certified “that the vehicle or equipment complies with
13 applicable motor vehicle safety standards prescribed.” 49 U.S.C. § 30115. Vehicle
14 manufacturers make this representation through a label “permanently fixed to the
15 vehicle[s]” that they make, sell and/or distribute. They “may not issue the
16 certificate if, in exercising reasonable care,” they have “reason to know the
17 certificate is false or misleading in a material respect.” 49 U.S.C. § 30115; *see also*
18 49 U.S.C. § 30112.

19 1145. Because they could not have been lawfully sold or leased without it,
20 ***all*** Class Vehicles have a permanent label that certifies compliance with the safety
21 regulations prescribed by NHTSA under Chapter 301. As passenger vehicles, the
22 permanent label on each Class Vehicle must state: “This vehicle conforms to all
23 applicable Federal motor vehicle safety, bumper, and theft prevention standards in
24 effect on the date of manufacture shown above.” 49 CFR § 567.4(g)(5).

25 1146. As described further below, the false and misleading certification
26 labels in the Class Vehicles were drafted and placed—or directly approved for
27 placement—in the Class Vehicles by the following Defendants and non-parties:
28 Honda Japan, Honda Engineering USA, Hyundai Korea, Kia Korea, FCA, Toyota

1 Japan, and Mitsubishi Japan. Without these entities placing or approving the
2 misleading certifications in the Class Vehicles, Plaintiffs and Class members could
3 not have purchased or leased them.

4 a. Kia Korea placed this certification in all Kia Class Vehicles
5 manufactured in South Korea. For these Kia Class Vehicles, the
6 certification expressly identified Kia Korea as the certifying
7 manufacturer, as demonstrated by the below picture of a
8 certification from a Kia Class Vehicle made in South Korea.



20 b. Upon information and belief, Kia Korea also directly approved
21 the placement of this same certification in Kia Class Vehicles
22 manufactured in the United States, including by Kia Georgia,
23 Inc., its U.S. manufacturing plant located in West Point,
24 Georgia. Although Kia Georgia, Inc.'s name would have likely
25 appeared on certifications placed on Kia Class Vehicles made
26 there, Kia Georgia, Inc. has no discretion as to the design of the
27 Kia Class Vehicles. Instead, Kia Korea required Kia Georgia,
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1 Inc. and all its subsidiaries to manufacture Kia models strictly in
2 accordance with Kia Korea’s design.

3 c. Hyundai Korea placed this certification in Hyundai Class
4 Vehicles manufactured in South Korea. For these Hyundai Class
5 Vehicles, the certification expressly identified Hyundai Korea as
6 the certifying manufacturer.

7 d. Upon information and belief, Hyundai Korea also directly
8 approved the placement of this same certification in Hyundai
9 Class Vehicles manufactured in the United States by Hyundai
10 Motor Manufacturing Alabama Inc., its U.S. manufacturing
11 plant located in Montgomery, Alabama. Although Hyundai
12 Motor Manufacturing Alabama Inc.’s name would have likely
13 appeared on certifications placed on Hyundai Class Vehicles
14 made there, Hyundai Motor Manufacturing Alabama Inc. has no
15 discretion as to the design of the Hyundai Class Vehicles.
16 Instead, Hyundai Korea required Hyundai Motor Manufacturing
17 Alabama Inc. and all its subsidiaries to manufacture Hyundai
18 models strictly in accordance with Hyundai Korea’s design.

19 e. FCA placed this certification in FCA Class Vehicles
20 manufactured in the United States after June 10, 2009.⁴⁶ For
21 Class Vehicles manufactured on or after April 1, 2014, the
22 certification label would identify “FCA US LLC.” For Class
23 Vehicles manufactured between June 10, 2009 and March 31,
24 2014, the certification label would identify “Chrysler Group
25 LLC.” This is FCA’s old name for the same corporate entity.
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27 ⁴⁶ For Class Vehicles manufactured prior to June 10, 2009, FCA’s bankrupt
28 predecessor Chrysler LLC, was responsible for the certification label.

- 1 f. Upon information and belief, FCA also directly approved the
2 placement of this same certification in FCA Class Vehicles
3 manufactured in Mexico by FCA Mexico on or after June 1,
4 2009.⁴⁷ Although FCA Mexico would have likely appeared on
5 certifications placed on FCA Class Vehicles made there, FCA
6 Mexico has no discretion as to the design of the FCA Class
7 Vehicles. Instead, FCA required FCA Mexico to manufacture
8 FCA models strictly in accordance with FCA’s design.
- 9 g. Toyota Japan placed this certification in Toyota Class Vehicles
10 manufactured in Japan. For these Toyota Class Vehicles, the
11 certification expressly identified Toyota Japan as the certifying
12 manufacturer.
- 13 h. Upon information and belief, Toyota Japan also directly
14 approved the placement of this same certification in Toyota
15 Class Vehicles manufactured in the United States by production
16 plants, including in Indiana by Toyota Motor Manufacturing
17 Indiana, Inc.; Kentucky by Toyota Motor Manufacturing
18 Kentucky, Inc.; Texas by Toyota Motor Manufacturing Texas,
19 Inc.; and Mississippi by Toyota Motor Manufacturing
20 Mississippi, Inc., and in Toyota Class Vehicles manufactured in
21 Mexico by Toyota Motor Manufacturing de Baja California, and
22 in Canada by Toyota Motor Manufacturing Canada, Inc.
23 Although the name of the manufacturing subsidiary would have
24 likely appeared on certifications placed on Toyota Class
25 Vehicles, none of these Toyota subsidiaries have any discretion
26 as to the design of the Toyota Class Vehicles. Instead, Toyota

27 ⁴⁷ For Class Vehicles manufactured prior to June 10, 2009, FCA’s bankrupt
28 predecessor Chrysler LLC, was responsible for the certification label.

1 Japan required its manufacturing subsidiaries to manufacture
2 Toyota models strictly in accordance with Toyota Japan's
3 design.

4 i. Honda Japan placed this certification in Honda Class Vehicles
5 manufactured in Japan. For these Honda Class Vehicles, the
6 certification expressly identified Honda Japan as the certifying
7 manufacturer. Honda Engineering USA placed this certification
8 in Honda Class Vehicles manufactured in Ohio. For these
9 Honda Class Vehicles, the certification expressly identified
10 Honda Engineering USA as the certifying manufacturer.

11 j. Upon information and belief, Honda Japan also directly
12 approved the placement of this same certification in Honda
13 Class Vehicles manufactured in the United States, by its
14 manufacturing entities, including in Alabama by Honda
15 Manufacturing of Alabama, Indiana by Honda Manufacturing of
16 Indiana, LLC, and in Canada, by Honda of Canada Mfg.
17 Although the name of the manufacturing subsidiary would have
18 likely appeared on certifications placed on Honda Class
19 Vehicles, none of these Honda subsidiaries have any discretion
20 as to the design of the Honda Class Vehicles. Instead, Honda
21 Japan required its manufacturing subsidiaries to manufacture
22 Honda models strictly in accordance with Honda Japan's design.

23 k. Upon information and belief, Mitsubishi Japan placed this
24 certification in Mitsubishi Class Vehicles manufactured in
25 Japan. For all Mitsubishi Class Vehicles, the certification
26 identified Mitsubishi Japan as the certifying company.

27 1147. Upon information and belief, all major participants in the automotive
28 industry know that automobile manufacturers include certifications of compliance

1 with federal safety standards in every vehicle sold or leased in the United States,
2 because the inclusion of such certifications is standard practice in the industry.

3 a. As sophisticated and well-funded corporate entities whose
4 primary activities focused on the sale and/or manufacture of
5 vehicles in the U.S., Mitsubishi USA, Toyota USA, Toyota
6 Sales USA, Hyundai USA, Kia USA, Honda USA, and Honda
7 Engineering USA each knew that their parent companies placed
8 permanent labels certifying conformance to safety standards on
9 many Class Vehicles, and approved their manufacturing
10 subsidiaries' placement of similar certifications on the
11 remaining Honda, Toyota, Kia, Hyundai, and Mitsubishi Class
12 Vehicles.

13 b. As sophisticated and well-funded corporate entities that generate
14 billions of dollars in annual revenue from work in the U.S.
15 automotive industry, Hyundai Mobis Co., Ltd., ST USA, ST
16 Italy, ST Malaysia, ZF Automotive USA, ZF Electronics USA,
17 ZF Passive Safety USA, ZF TRW Corp., and ZF Germany were
18 each specifically aware that the Vehicle Manufacturer
19 Defendants placed permanent labels with assurances about
20 conformance to safety standards on every Class Vehicle.

21 1148. These certification labels on the Class Vehicles were misleading
22 because they indicated to any reasonable consumer that the Occupant Restraint
23 System would perform its intended function during a crash and did not suffer from
24 a defect. *See* 49 C.F.R. § 571.208 (S4.1.5.4, S4.1.5.5) (Federal motor vehicle safety
25 standards requiring Occupant Restraint Systems with airbags and seatbelts). This
26 was not true because of the defective DS84 ACUs and ASICs and the risk of EOS
27 during a crash.

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c. With their co-conspirators’ knowledge, Mitsubishi Japan, Hyundai Korea, Kia Korea, Toyota Japan, Honda Japan, Honda Engineering USA, and FCA installed airbag readiness indicators that misled vehicle occupants about the actual readiness of the safety systems in the Class Vehicles.

1149. The Class Vehicles contain “readiness indicator[s]” meant to provide vehicle drivers and occupants with important notice of the airbag system’s current operating condition. They are often referred to as an “airbag warning lamp.” The lamp is supposed to “monitor [the occupant protection system’s] own readiness.” 49 C.F.R. § 571.208 (S4.5.2). Indeed, as NHTSA has expressly recognized, real-time monitoring and indication of readiness for the “electrical circuitry” responsible for airbag deployment is necessary because they are some of the “most critical elements” to ensure proper function of the passenger safety system. *See* 35 Fed. Reg. 16928 (1970).

1150. Upon vehicle ignition, the ACU is supposed to conduct a self-check of the airbag system’s electrical components for malfunctions. During this self-check, the readiness indicator will momentarily blink on and then off to indicate normal operation of the system. Conversely, if there is a problem with the system, the lamp will remain illuminated. An illuminated readiness indicator is designed to inform the driver and vehicle occupants of a problem that may interfere with the intended performance of airbags. Accordingly, when not illuminated, the vehicle’s readiness indicator communicates that the airbags are ready to deploy during a crash.

1151. Typically, the icon used for this light resembles a driver wearing a seatbelt, being hit with an airbag.

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1152. The Vehicle Manufacturers Defendants worked jointly with ZF Electronics USA, ZF Passive Safety USA, and ZF Automotive USA to design and include the readiness indicators in the Class Vehicles. Specifically, the entities responsible for vehicle design—Mitsubishi Japan, Hyundai Korea, Kia Korea, Toyota Japan, Honda Japan, and FCA—worked with ZF Electronics USA, ZF Passive Safety USA, and ZF Automotive USA to develop, test, and implement the readiness indicator systems in the Class Vehicles, including setting the inputs that will cause it to illuminate to warn vehicle occupants of a malfunction. Honda Engineering USA, for its part, installed the readiness indicator in the vehicles it manufactured in the United States.

1153. As each of these Defendants knew, the readiness indicator is, by its very nature, designed to *communicate* with vehicle occupants about the safety and operating status of the airbag system. Further illustrating that purpose, the indicator is required to be placed in a position that is “*clearly visible from the driver’s designated seating position*” in order to communicate a problem with the system without impediment. 49 C.F.R. § 571.208 (S4.5.2) (emphasis added).

1154. The Vehicle Manufacturer Defendants manufactured and shipped each Class Vehicle with a readiness indicator that falsely assured Plaintiffs and Class Members that the Occupant Restraint System would function properly in a crash. Because of the defective DS84 ACUs and ASICs in all Class Vehicles, the safety systems in Class Vehicles are not ready to operate in all crashes where they should.

1 Accordingly, the airbag warning lamp should have illuminated at or prior to the
2 point of sale or lease.

3 1155. Upon information and belief, all major participants in the automotive
4 industry know that all vehicles sold or leased in the U.S. will have readiness
5 indicators, because the inclusion of readiness indicators is standard practice in the
6 U.S. market.

7 a. As sophisticated and well-funded corporate entities that
8 exclusively participate in the North American automobile
9 industry, Mitsubishi USA, Toyota USA, Toyota Sales USA,
10 Hyundai USA, Kia USA, Honda USA, and Honda Engineering
11 USA were each specifically aware that the Class Vehicles were
12 manufactured with readiness indicators to communicate the
13 “readiness” of the passenger safety system to vehicle occupants
14 as described above.

15 b. As sophisticated and well-funded corporate entities that generate
16 billions of dollars in annual revenue from work in the
17 automotive industry, ST USA, ST Italy, ST Malaysia, ZF
18 Automotive USA, ZF Electronics USA, ZF Passive Safety USA,
19 ZF TRW Corp., and ZF Germany were each specifically aware
20 that the Vehicle Manufacturer Defendants placed readiness
21 indicators that would assure functioning safety systems to
22 vehicle occupants in each Class Vehicle. Indeed, as alleged
23 above, ZF Automotive USA, ZF Electronics USA, and ZF
24 Passive Safety USA, worked directly on the feature with the
25 Vehicle Manufacturers.
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d. With their co-conspirators’ knowledge, Honda Japan, Honda Engineering USA, Hyundai Korea, Kia Korea, FCA, Toyota Japan, and Mitsubishi Japan equipped the Class Vehicles with misleading in-vehicle labeling.

1156. The interiors of the Class Vehicles also contain prominent labels that alert the driver and passengers to the vehicle’s airbag system. For example, steering wheels and passenger dashboards typically have imprinted labels identifying the airbag and safety restraint system (or “SRS”). They usually look like the below labels from the 2015 Mitsubishi Lancer:



1157. Further, the Class Vehicles each had a label permanently affixed to the sun visor in the vehicles, which depicted a deployed airbag and a prominent yellow header stating “WARNING.” These sun visor labels provide information about

1 where the airbags are located in the vehicle, and about the dangers of placing young
2 children in the front seats due to the risks of airbag deployment for small occupants.

3 1158. These in-vehicle labels that communicate the inclusion and placement
4 of airbags in the vehicles are misleading because consumers reasonably understand
5 what an airbag is and why it is installed in vehicle. By definition, an airbag system
6 has only one purpose: to deploy to protect vehicle occupants during a crash. By
7 informing consumers with these imprints and labels that the vehicle has an airbag
8 system, these labels misled consumers to believe that the Class Vehicles had
9 *working and safe* airbag systems instead of defective ones that sometimes fail,
10 including during severe frontal collisions.

11 1159. Finally, as the manufacturers, Honda Japan, Honda Engineering USA,
12 Hyundai Korea, Kia Korea, FCA, Mitsubishi Japan, and Toyota Japan were also
13 specifically required to include in their Class Vehicles warning labels that alerted
14 consumers of the need to perform airbag maintenance. For example, S4.5.1 of 49
15 C.F.R. § 571.208 states:

16 Air bag maintenance or replacement information. If the vehicle
17 manufacturer recommends periodic maintenance or
18 replacement of an inflatable restraint system, as that term is
19 defined in S4.1.5.1(b) of this standard, installed in a vehicle,
20 that vehicle shall be labeled with the recommended schedule
21 for maintenance or replacement. The schedule shall be
22 specified by month and year, or in terms of vehicle mileage, or
23 by intervals measured from the date appearing on the vehicle
24 certification label provided pursuant to 49 CFR Part 567. The
25 label shall be permanently affixed to the vehicle within the
26 passenger compartment and lettered in English in block capital
27 and numerals not less than three thirty-seconds of an inch high.
28 This label may be combined with the label required by
S4.5.1(b) of this standard to appear on the sun visor. If some
regular maintenance or replacement of the inflatable restraint
system(s) in a vehicle is recommended by the vehicle
manufacturer, the owner's manual shall also set forth the
recommended schedule for maintenance or replacement.

1 1160. The airbag maintenance labels included in Class Vehicles were
2 misleading because all Class Vehicles required maintenance and repair of the DS84
3 ACU at the point of sale or lease, due to the existence of a defect. None of the
4 labels accurately described that immediate maintenance or repair was necessary.

5 1161. As designers and manufacturers of Class Vehicles, Honda Japan,
6 Hyundai Korea, Kia Korea, FCA, Mitsubishi Japan, and Toyota Japan placed or
7 directed the placement of these labels in the Class Vehicles that notified Plaintiffs
8 and Class members about the airbag systems in their Class Vehicles.

9 a. Kia Korea placed these labels on all Kia Class Vehicles
10 manufactured in South Korea. For Kia Class Vehicles made by
11 Kia Georgia in the United States, Kia Korea authored the
12 vehicle designs that required the inclusion of these labels. Kia
13 Georgia had no discretion or input as to the placement of the
14 labels or the design of the vehicle safety systems.

15 b. Hyundai Korea placed these labels on all Hyundai Class
16 Vehicles manufactured in South Korea. For Hyundai Class
17 Vehicles made by Hyundai Motor Manufacturing Alabama Inc.
18 in the United States, Hyundai Korea authored the vehicle
19 designs that required inclusion of these labels. Hyundai Motor
20 Manufacturing Alabama Inc. had no discretion or input as to the
21 placement of the labels or the design of the vehicle safety
22 systems.

23 c. FCA placed these labels on all FCA Class Vehicles
24 manufactured in the United States on or after June 10, 2009. For
25 FCA Class Vehicles made by FCA Mexico on or after June 10,
26 2009, FCA authored the vehicle designs that required inclusion
27 of these labels. FCA Mexico had no discretion or input as to the
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1 placement of the labels or the design of the vehicle safety
2 systems.⁴⁸

3 d. Toyota Japan placed these labels in Toyota Class Vehicles
4 manufactured in Japan. For Toyota Class Vehicles manufactured
5 in the North America, Toyota subsidiaries⁴⁹ added the labels but
6 Toyota Japan authored the designs that required inclusion of
7 them. None of these Toyota subsidiaries had any discretion or
8 input ass to the placement of the labels or the design of the
9 vehicle safety systems.

10 e. Honda Japan placed these labels in Honda Class Vehicles
11 manufactured in Japan. Honda Engineering USA placed these
12 labels in Honda Class Vehicles it manufactured in Ohio. For
13 other Honda Class Vehicles manufactured in the North America,
14 Honda subsidiaries⁵⁰ added the labels but Honda Japan authored
15 the designs that required inclusion of them. None of these
16 Honda subsidiaries had any discretion or input ass to the
17 placement of the labels or the design of the vehicle safety
18 systems.

19 f. Mitsubishi Japan placed these labels in all Mitsubishi Class
20 Vehicles.

21 _____
22 ⁴⁸ FCA's bankrupt predecessor Chrysler LLC was responsible for labels on Class
23 Vehicles made prior to June 10, 2009.

24 ⁴⁹ The Toyota manufacturing subsidiaries include Toyota Motor Manufacturing
25 Indiana, Inc.; Toyota Motor Manufacturing Kentucky, Inc.; Toyota Motor
26 Manufacturing Texas, Inc.; Toyota Motor Manufacturing Mississippi, Inc.; Toyota
27 Motor Manufacturing de Baja California; and Toyota Motor Manufacturing
28 Canada, Inc.

⁵⁰ The Honda manufacturing subsidiaries include Honda Manufacturing of
Alabama, Honda of America Mfg. Inc., Honda Manufacturing of Indiana, LLC, and
Honda of Canada Mfg.

1 1162. Upon information and belief, all major participants in the automotive
2 industry know that automobile manufacturers include certifications of compliance
3 with federal safety standards in every vehicle sold or leased in the United States.
4 The inclusion of permanent labels identifying the location of airbags in vehicles
5 sold in the United States is a basic fact known to every major participant
6 automotive industry.

7 a. As sophisticated and well-funded corporate entities that
8 exclusively participate in the North American automobile
9 industry, Mitsubishi USA, Toyota USA, Toyota Sales USA,
10 Hyundai USA, Kia USA, Honda USA, and Honda Engineering
11 USA were each specifically aware that their parent companies
12 placed permanent labels identifying the location of airbags in
13 every Class Vehicle.

14 b. As sophisticated and well-funded corporate entities that generate
15 billions of dollars in annual revenue from work in the
16 automotive industry, ST USA, ST Italy, ST Malaysia, ZF
17 Automotive USA, ZF Electronics USA, ZF Passive Safety USA,
18 ZF TRW Corp., and ZF Germany were each specifically aware
19 that the Vehicle Manufacturer Defendants placed permanent
20 labels identifying the location of airbags in every Class Vehicle.

21 **2. Each of the Vehicle Manufacturer Defendants also made false and**
22 **misleading statements about the Class Vehicles' safety in their**
23 **consumer-facing marketing.**

24 1163. The Vehicle Manufacturer Defendants also touted the Class Vehicles
25 as safe in national advertising directed at consumers through multiple marketing
26 channels. This advertising uniformly indicated to any reasonable consumer that the
27 Class Vehicles were safe and had airbags and seatbelts that would function properly
28 and reliably in a crash. These representations about the Class Vehicles were false

1 and misleading because of the DS84 ACU Defect in the Class Vehicles and the
2 risks of EOS and airbag and seatbelt failure due to that defect.

3 1164. As sophisticated and well-funded corporate entities that generate
4 billions of dollars in annual revenue from work in the automotive industry, ST
5 USA, ST Italy, ST Malaysia, ZF Automotive USA, ZF Electronics USA, and ZF
6 Passive Safety USA, ZF TRW Corp., and ZF Germany were each aware that the
7 Vehicle Manufacturer Defendants advertised the safety of the Class Vehicles to
8 consumers.

9 1165. Indeed, on February 3, 2004, ZF TRW Corp. filed a prospectus for the
10 sale of common stock with the SEC. This prospectus confirmed ZF TRW Corp.'s
11 specific awareness of consumer reliance on statements by vehicle manufacturers
12 about the safety of vehicles. Specifically, the prospectus stated:

- 13 a. "85 percent of recent auto purchasers stated that they look for
14 vehicle safety information before making their final decision –
15 up from 68 percent in 1999."
16 b. "More than half of recent purchasers looked for information
17 about the safety features of prospective vehicles such as air bags
18 or anti-lock brakes. Nearly one in five respondents sought crash
19 test results."
20 c. "Based on a recent TRW Automotive-sponsored survey, 74
21 percent of respondents indicated that vehicle safety features and
22 options are more important to them today than 5 years ago."

23 1166. Similarly, in a presentation copyright to ZF Automotive USA and
24 dated 2008, ZF Automotive USA observed that "Safety is important to . . .
25 consumers," that "J.D. Power lists safety as the most desired aspect of vehicle
26 features," and that "consumers regularly look for vehicle safety information before
27 making their purchase decision." As such, "safety products and features help
28 differentiate vehicles" and "advertising and marketing heavily focus[] on safety."

1 Likewise, in a presentation copyright to TRW Automotive in 2012, TRW repeated
2 these same observations from the 2008 presentation, and added that “NCAP/IIHS
3 safety ratings” are ‘Important factors in studies on buying behavior.’” As with the
4 prospectus, these presentations affirm ZF Automotive USA’s focus and
5 understanding of the importance of vehicle safety to consumers.

6 **a. Brochures and marketing for the Class Vehicles**
7 **misrepresented the vehicles as safe with reliable airbags and**
8 **seatbelts.**

9 1167. The Vehicle Manufacturer Defendants communicated information
10 about the Class Vehicles directly to consumers in brochures. These vehicle
11 brochures were made available to consumers through authorized dealerships,
12 online, and through the mail. In general, brochures for the Class Vehicles were
13 replete with representations about airbags, seatbelts, and passenger safety systems,
14 as well as general representations that the Class Vehicles were safe. All of these
15 representations were false and misleading for the reasons explained herein.

16 1168. As sophisticated and well-resourced members of the automotive
17 industry, all of the Defendants were aware of the ubiquitous practice of printing and
18 distributing vehicle brochures, and that vehicle safety and safety systems would
19 feature prominently therein.

20 **i. Brochures and marketing for the Toyota Class**
21 **Vehicles.**

22 1169. Toyota Sales USA authored and then distributed misleading brochures
23 and other marketing for the Toyota Class Vehicles via mail and wire.

24 1170. As a sophisticated and well-resourced member of the automotive
25 industry, Toyota Japan was aware that vehicle safety, including airbags, is an
26 important feature for consumers, and that its subsidiary conducted consumer
27 marketing that reassured consumers about the safety of the Toyota Class Vehicles.
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1 1171. Toyota Sales USA distributed the brochures to Toyota dealerships
2 throughout the United States, and also made them available to consumers online
3 and through the mail. The brochures misrepresented the safety of the Class
4 Vehicles, including as to the functionality, reliability, and performance of their
5 airbags and seatbelts.

6 1172. In a brochure from the 2012 Toyota Avalon, Toyota Sales USA
7 specifically noted the vehicle’s “Seven Airbags... Avalon’s advanced Supplemental
8 Restraint System (SRS) is a marvel of safety technology. Employing sophisticated
9 sensors, the system includes seven airbags: driver and front passenger airbags, front
10 and rear side curtain airbags, front seat-mounted side airbags for the driver and
11 front passenger, and a driver knee airbag.” These statements were false and/or
12 misleading because they assured consumers that the Avalon had working and
13 reliable airbags and seatbelts, and therefore would have suggested to any reasonable
14 consumer that the Occupant Restraint System would perform its intended function
15 of activating the seatbelts and airbags during a collision. This was false because the
16 Avalon was equipped with a defective DS84 ACU and ASIC, both of which had a
17 defect, and continue to have a defect, that can cause the vehicle’s airbags and
18 seatbelts to fail.

19 1173. In a brochure for the 2013 Sequoia, Toyota Sales USA highlighted the
20 “Comprehensive airbag system that senses impact severity, adjusting airbag
21 deployment accordingly.” These statements were false and/or misleading because
22 they assured consumers that the Sequoia had working and reliable airbags and
23 seatbelts, and therefore would have suggested to any reasonable consumer that the
24 Occupant Restraint System would perform its intended function of activating the
25 seatbelts and airbags during a collision. This was false because the Sequoia was
26 equipped with a defective DS84 ACU and ASIC, both of which had a defect, and
27 continue to have a defect, that can cause the vehicle’s airbags and seatbelts to fail.

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1 1174. In the brochure for the 2011 Toyota Corolla Matrix, Toyota Sales USA
2 described the “Advanced Airbag System –Standard on every Matrix, the system
3 senses impact severity in certain types of frontal collisions and adjusts airbag
4 deployment accordingly.” These statements were false and/or misleading because
5 they assured consumers that the Matrix had working and reliable airbags and
6 seatbelts, and therefore would have suggested to any reasonable consumer that the
7 Occupant Restraint System would perform its intended function of activating the
8 seatbelts and airbags during a collision. This was false because the Matrix was
9 equipped with a defective DS84 ACU and ASIC, both of which had a defect, and
10 continue to have a defect, that can cause the vehicle’s airbags and seatbelts to fail.

11 1175. A brochure from Toyota Sales USA for the 2012 Toyota Tacoma
12 boasted of the “Comprehensive Airbag System – Should trouble prove unavoidable,
13 Tacoma provides a comprehensive airbag system that includes driver and front
14 passenger airbags with the Advanced Airbag System, driver and front passenger
15 seat-mounted side airbags and front and rear side curtain airbags.” These statements
16 were false and/or misleading because they assured consumers that the Tacoma had
17 working and reliable airbags and seatbelts, and therefore would have suggested to
18 any reasonable consumer that the Occupant Restraint System would perform its
19 intended function of activating the seatbelts and airbags during a collision. This was
20 false because the Tacoma was equipped with a defective DS84 ACU and ASIC,
21 both of which had a defect, and continue to have a defect, that can cause the
22 vehicle’s airbags and seatbelts to fail.

23 1176. In a brochure for the 2012 Toyota Tundra, Toyota Sales USA said
24 “There’s Only One Way To Work: Safety First – You don’t take chances on the job
25 site, and you don’t have to take chances on the way there either. In four crash tests
26 conducted by the Insurance Institute for Highway Safety (IIHS) — front, side, rear
27 and roof strength — Tundra Double Cab earned the top rating. In fact, Tundra was
28 the first full-size pickup truck ever named a Top Safety Pick by the IIHS. And no

1 wonder: Tundra comes equipped with driver and front outboard passenger airbags,
2 side curtain and front seat-mounted side airbags, and driver and front outboard
3 passenger knee airbags.” These statements were false and/or misleading because
4 they assured consumers that the Tundra had working and reliable airbags and
5 seatbelts, and therefore would have suggested to any reasonable consumer that the
6 Occupant Restraint System would perform its intended function of activating the
7 seatbelts and airbags during a collision. This was false because the Tundra was
8 equipped with a defective DS84 ACU and ASIC, both of which had a defect, and
9 continue to have a defect, that can cause the vehicle’s airbags and seatbelts to fail.

10 1177. In addition to the brochures, similarly misleading marketing for the
11 Toyota Class Vehicles was distributed through the Toyota website (maintained by
12 and copyrighted to Toyota Sales USA), and press releases, print media including
13 magazines and newspapers, television and radio advertisements, and internet and
14 social media. This advertising, the dates and authors of which are identified in the
15 attached exhibit, likewise misrepresented the safety of the Class Vehicles, including
16 as to the functionality, reliability, and performance of airbags and seatbelts. *See*
17 Exhibit 8 (collecting exemplars).⁵¹ This advertising was false and misleading

18 ⁵¹ For this and similar Complaint exhibits submitted for other Defendants, Plaintiffs
19 note that courts commonly accept charts and compendia attached to pleadings with
20 representative examples as sufficient to plead fraud with the requisite particularity
21 under Fed. R. Civ. P. 9(b). *See, e.g., Bay City Surgery Ctr., Inc. v. ILWU-PMA*
22 *Welfare Plan Bd. of Trustees*, No. CV 156209 MWF AFMX, 2018 WL 1942379, at
23 *5 (C.D. Cal. Mar. 28, 2018) (describing conclusion that plaintiff “adequately
24 stated its fraud claims based on representative examples of the types of fraud
25 alleged”); *State Farm Mut. Ins. Co. v. Elite Health Centers Inc.*, 2017 WL 877396,
26 at *7 (E.D. Mich. 2017) (finding that the complaint's allegations and exhibits,
27 including a chart detailing the fraudulent services purportedly rendered, put the
28 defendants on sufficient notice at the pleading stage); *State Farm Mut. Auto. Ins.*
Co. v. Lewin, 535 F. Supp. 3d 1247, 1258 (M.D. Fla. 2021) (“the chart attached as
an exhibit to the complaint lists the various allegedly fraudulent claims . . . [t]his is
sufficient”).

1 because it assured any reasonable consumer that the Toyota Class Vehicles’
2 passenger safety systems would function properly and reliably, which was not true
3 because the Toyota Class Vehicles were equipped with a defective DS84 ACU and
4 ASIC, both of which had a defect, and continue to have a defect, that can cause the
5 vehicles’ airbags and seatbelts to fail.

6 1178. For example, in an October 2015 press release about the 2016 Toyota
7 Avalon Hybrid, Toyota Sales USA wrote “Safety In All Directions. The Avalon
8 comes equipped with 10 standard airbags.” These statements were false and/or
9 misleading because they assured consumers that the Avalon had working and
10 reliable airbags and seatbelts, and therefore would have suggested to any reasonable
11 consumer that the Occupant Restraint System would perform its intended function
12 of activating the seatbelts and airbags during a collision. This was false because the
13 Avalon was equipped with a defective DS84 ACU and ASIC, both of which had a
14 defect, and continue to have a defect, that can cause the vehicle’s airbags and
15 seatbelts to fail.

16 1179. A September 26, 2014 press release about the 2016 Toyota Sequoia
17 from Toyota Sales USA, described the Sequoia’s safety features, stating, in part:
18 “The 2015 Sequoia is equipped with a dual stage advanced front air bag system,
19 seat-mounted side airbags for the driver and front passenger, roll-sensing side
20 curtain airbags for all three seating rows, plus driver and front passenger knee
21 airbags.” These statements were false and/or misleading because they assured
22 consumers that the Sequoia had working and reliable airbags and seatbelts, and
23 therefore would have suggested to any reasonable consumer that the Occupant
24 Restraint System would perform its intended function of activating the seatbelts and
25 airbags during a collision. This was false because the Sequoia was equipped with a
26 defective DS84 ACU and ASIC, both of which had a defect, and continue to have a
27 defect, that can cause the vehicle’s airbags and seatbelts to fail.

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ii. Brochures and marketing for the Hyundai and Kia Class Vehicles.

1180. Hyundai USA and Kia USA authored and then distributed misleading brochures and other marketing for the Hyundai and Kia Class Vehicles via mail and wire.

1181. As sophisticated and well-resourced members of the automotive industry, Kia Korea and Hyundai Korea were aware that vehicle safety, including airbags, is an important feature for consumers, and that their subsidiaries conducted consumer marketing that reassured consumers about the safety of the Hyundai-Kia Class Vehicles.

1182. Hyundai USA and Kia USA distributed the brochures to Hyundai and Kia dealerships throughout the United States, and also made them available to consumers online and through the mail. The brochures misrepresented the safety of the Hyundai-Kia Class Vehicles, including as to the functionality, reliability, and performance of airbags and seatbelts.

1183. For example, Hyundai USA stated that in a brochure for the 2012 Hyundai Sonata that “an intelligent airbag system deploys and inflates front airbags in relation to driver/passenger height, weight and impact speed.” These statements were false and/or misleading because they assured consumers that the Sonata had working and reliable airbags and seatbelts, and therefore would have suggested to any reasonable consumer that the Occupant Restraint System would perform its intended function of activating the seatbelts and airbags during a collision. This was false because the Sonata was equipped with a defective DS84 ACU and ASIC, both of which had a defect, and continue to have a defect, that can cause the vehicle’s airbags and seatbelts to fail.

1184. In the brochure for the 2014 Sonata, Hyundai USA stated the vehicles were equipped with a “6-airbag safety system with advanced dual front airbags and Occupant Classification System.” These statements were false and/or misleading

1 because they assured consumers that the Sonata had working and reliable airbags
2 and seatbelts, and therefore would have suggested to any reasonable consumer that
3 the Occupant Restraint System would perform its intended function of activating
4 the seatbelts and airbags during a collision. This was false because the Sonata was
5 equipped with a defective DS84 ACU and ASIC, both of which had a defect, and
6 continue to have a defect, that can cause the vehicle's airbags and seatbelts to fail.

7 1185. Hyundai USA's 2016 Sonata brochure stated that "Sonata's safety
8 features not only include seven airbags, but technologies that help drivers avoid
9 accidents in the first place." These statements were false and/or misleading because
10 they assured consumers that the Sonata had working and reliable airbags and
11 seatbelts, and therefore would have suggested to any reasonable consumer that the
12 Occupant Restraint System would perform its intended function of activating the
13 seatbelts and airbags during a collision. This was false because the Sonata was
14 equipped with a defective DS84 ACU and ASIC, both of which had a defect, and
15 continue to have a defect, that can cause the vehicle's airbags and seatbelts to fail.

16 1186. In the brochure for the 2012 Forte, which includes the Forte sedan,
17 hatchback and the Forte Koup, Kia USA promised a "comprehensive list of
18 advanced safety systems" that were "standard equipment in every Forte" including
19 an "advanced system" that "monitors the severity of an impact, the presence of a
20 front passenger and seat-belt use, and then controls airbag inflation accordingly." It
21 further touted that "Forte's safety systems are designed to help minimize injury
22 when a traffic accident is unavoidable," because, in addition to front seat seat-belt
23 pretensioners, the "[d]ual front airbags, front-seat mounted side airbags and side
24 curtain airbags for both front and rear seating positions are managed by an
25 advanced sensor system." These statements were false and/or misleading because
26 they assured consumers that the Kia Forte had working and reliable airbags and
27 seatbelts, and therefore would have suggested to any reasonable consumer that the
28 Occupant Restraint System would perform its intended function of activating the

1 seatbelts and airbags during a collision. This was false because the Forte was
2 equipped with a defective DS84 ACU and ASIC, both of which had a defect, and
3 continue to have a defect, that can cause the vehicle's airbags and seatbelts to fail.

4 1187. As to the 2014 Kia Sedona, Kia USA assured consumers "Six airbags
5 placed throughout the cabin are designed to help protect occupants in certain
6 collisions. They include dual front advanced, dual front seat-mounted side, and full-
7 length side-curtain airbags. The advanced front airbag system monitors the severity
8 of a frontal impact, the presence of a front passenger and seat-belt use, and then
9 controls airbag inflation accordingly." These statements were false and/or
10 misleading because they assured consumers that the Kia Sedona had working and
11 reliable airbags and seatbelts, and therefore would have suggested to any reasonable
12 consumer that the Occupant Restraint System would perform its intended function
13 of activating the seatbelts and airbags during a collision. This was false because the
14 Sedona was equipped with a defective DS84 ACU and ASIC, both of which had a
15 defect, and continue to have a defect, that can cause the vehicle's airbags and
16 seatbelts to fail.

17 1188. In a brochure for the 2015 Optima, Kia USA assured that its
18 "advanced system monitors the severity of certain impacts, the presence of a front
19 passenger and seat-belt use, and then controls airbag inflation accordingly." It
20 further boasted that the Optima is equipped with "[a]n advanced airbag system
21 helps protect driver and passenger with dual front, front seat-mounted side, and
22 full-length side curtain airbags." These statements were false and/or misleading
23 because they assured consumers that the Kia Optima had working and reliable
24 airbags and seatbelts, and therefore would have suggested to any reasonable
25 consumer that the Occupant Restraint System would perform its intended function
26 of activating the seatbelts and airbags during a collision. This was false because the
27 Optima was equipped with a defective DS84 ACU and ASIC, both of which had a
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1 defect, and continue to have a defect, that can cause the vehicle's airbags and
2 seatbelts to fail.

3 1189. In the brochure for the 2012 Optima and Optima Hybrid, Kia USA
4 lauded its "Advanced Safety Systems – All Optimas have a long list of standard
5 safety features, including . . . Dual front airbags, front-seat-mounted side airbags
6 and side curtain airbags are managed by an advanced sensor system," and
7 specifically pointed out the "Airbag & Seat-Belt Sensors – This advanced system
8 monitors the severity of an impact, the presence of a front passenger and seat-belt
9 use, and then controls airbag inflation accordingly." These statements were false
10 and/or misleading because they assured consumers that both the Kia Optima and
11 the Optima Hybrid had working and reliable airbags and seatbelts, and therefore
12 would have suggested to any reasonable consumer that the Occupant Restraint
13 System would perform its intended function of activating the seatbelts and airbags
14 during a collision. This was false because the Optima and Optima Hybrid were
15 equipped with a defective DS84 ACU and ASIC, both of which had a defect, and
16 continue to have a defect, that can cause the vehicles' airbags and seatbelts to fail.

17 1190. In addition to the brochures, similarly misleading marketing for the
18 Hyundai-Kia Class Vehicles was distributed through the Hyundai and Kia websites,
19 maintained by, and copyrighted to Hyundai USA and Kia USA, press releases, print
20 media including magazines and newspapers, television and radio advertisements,
21 and internet and social media. This advertising, the dates, and authors of which are
22 identified in the attached exhibit, likewise misrepresented the safety of the
23 Hyundai-Kia Class Vehicles, including as to the functionality, reliability, and
24 performance of airbags and seatbelts. *See* Exhibit 9 (collecting exemplars). This
25 advertising was false and misleading because it assured any reasonable consumer
26 that the Hyundai-Kia Class Vehicles' passenger safety systems would function
27 properly and reliably, which was not true because of the defective DS84 ACU and
28 ASIC in the Hyundai-Kia Class Vehicles.

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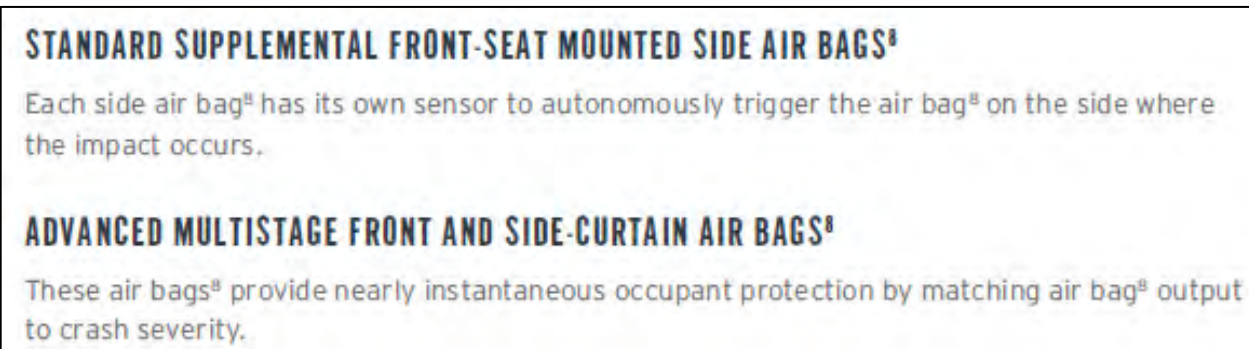
iii. Brochures and marketing for the FCA Class Vehicles.

1191. FCA (formerly known as Chrysler Group LLC) authored and then distributed misleading brochures and other marketing for the FCA Class Vehicles via mail and wire.

1192. As a sophisticated and well-resourced member of the automotive industry, Stellantis was aware that vehicle safety, including airbags, is an important feature for consumers, and that their subsidiaries conducted consumer marketing that reassured consumers about the safety of the FCA Class Vehicles.

1193. FCA disseminated the brochures through FCA dealerships throughout the United States, and also made them available to consumers online and through the mail. The brochures misrepresented the safety of the FCA Class Vehicles, including as to the functionality, reliability, and performance of airbags and seatbelts.

1194. For example, in the brochure for the 2015 Jeep Compass, FCA states:



The brochure also includes this image of the airbags deploying to suggest that they will work during a crash. These statements were false and/or misleading because they assured consumers that the 2015 Jeep Compass had working and reliable airbags and seatbelts, and therefore would have suggested to any reasonable consumer that the Occupant Restraint System would perform its intended function of activating the seatbelts and airbags during a collision. This was false because the

1 2015 Jeep Compass was equipped with a defective DS84 ACU and ASIC, both of
2 which had a defect, and continue to have a defect, that can cause the vehicle's
3 airbags and seatbelts to fail.



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27 1195. FCA's brochure for the 2016 Jeep Compass similarly states:
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1 Peace of mind will take you far – Supplemental front-seat-
2 mounted side air bags: Each side has its own sensor to
3 autonomously trigger the air bags on the side where the impact
4 occurs. Standard on all models.

5 Advanced multistage front and side-curtain air bags: Provide
6 nearly instantaneous occupant protection by matching air bag
7 output to crash severity. Standard on all models.

8 Advanced multistage driver and front passenger air bags.

9 These statements were false and/or misleading because they assured consumers that
10 the 2016 Jeep Compass had working and reliable airbags and seatbelts, and
11 therefore would have suggested to any reasonable consumer that the Occupant
12 Restraint System would perform its intended function of activating the seatbelts and
13 airbags during a collision. This was false because the 2016 Jeep Compass was
14 equipped with a defective DS84 ACU and ASIC, both of which had a defect, and
15 continue to have a defect, that can cause the vehicle’s airbags and seatbelts to fail.

16 1196. FCA’s brochure for the 2012 Jeep Patriot similarly states:

17 Advanced multi stage front and side curtain air bags. These air
18 bags provide nearly instantaneous occupant protection by
19 matching air bag output to crash severity. Standard.

20 Standard advanced multistage front and side-curtain air bags
21 and available supplemental side air bags help protect your most
22 important cargo. These systems all work together to help keep
23 you moving safely forward in all types of weather.

24 These statements were false and/or misleading because they assured consumers that
25 the 2012 Jeep Patriot had working and reliable airbags and seatbelts, and therefore
26 would have suggested to any reasonable consumer that the Occupant Restraint
27 System would perform its intended function of activating the seatbelts and airbags
28 during a collision. This was false because the 2012 Jeep Patriot was equipped with
a defective DS84 ACU and ASIC, both of which had a defect, and continue to have
a defect, that can cause the FCA Class Vehicle’s airbags and seatbelts to fail.

1 1197. In a brochure for the 2016 Jeep Wrangler, FCA touted “ADVANCED
2 MULTISTAGE FRONT AIR BAGS: Provide nearly instantaneous occupant
3 protection by matching air bag output to crash severity. Standard.” The brochure
4 continued by noting that each trim level came equipped with “[a]dvanced
5 multistage driver and front-passenger air bags.” These statements were false and/or
6 misleading because they assured consumers that the 2016 Jeep Wrangler had
7 working and reliable airbags and seatbelts, and therefore would have suggested to
8 any reasonable consumer that the Occupant Restraint System would perform its
9 intended function of activating the seatbelts and airbags during a collision. This was
10 false because the 2016 Jeep Wrangler was equipped with a defective DS84 ACU
11 and ASIC, both of which had a defect, and continue to have a defect, that can cause
12 the vehicle’s airbags and seatbelts to fail.

13 1198. In a brochure for the 2012 Jeep Liberty, FCA boasted: “HEAD OUT
14 WITH CONFIDENCE, KNOWING LIBERTY’S ROBUST SET OF SAFETY
15 AND SECURITY SYSTEMS CAN GIVE YOU AND YOUR PASSENGERS
16 PEACE OF MIND ON THE ROAD AND ON THE TRAIL.” The brochure
17 continued by touting the vehicle’s “AIR BAG SYSTEMS” and explained in detail
18 that “[y]ou and your passengers gain all-around security with Liberty’s side-curtain
19 and advanced multistage driver and front-passenger air bags. Supplemental side-
20 curtain air bags with roll-sensing technology add to the safety of outboard
21 occupants.” These statements were false and/or misleading because they assured
22 consumers that the 2012 Jeep Liberty had working and reliable airbags and
23 seatbelts, and therefore would have suggested to any reasonable consumer that the
24 Occupant Restraint System would perform its intended function of activating the
25 seatbelts and airbags during a collision. This was false because the 2012 Jeep
26 Liberty was equipped with a defective DS84 ACU and ASIC, both of which had a
27 defect, and continue to have a defect, that can cause the vehicle’s airbags and
28 seatbelts to fail.

1 1199. In addition to the brochures, FCA distributed similarly misleading
2 marketing for the FCA Class Vehicles through the FCA website, maintained by and
3 copyrighted to FCA, press releases, print media including magazines and
4 newspapers, television and radio advertisements, and internet and social media.
5 This advertising, the dates, and authors of which are identified in the attached
6 exhibit, likewise misrepresented the safety of the Class Vehicles, including as to the
7 functionality, reliability, and performance of airbags and seatbelts. *See* Exhibit 10
8 collecting exemplars). This advertising was false and misleading because it assured
9 any reasonable consumer that the FCA Class Vehicles' passenger safety systems
10 would function properly and reliably, which was not true because of the defective
11 DS84 ACU and ASIC in the FCA Class Vehicles.

12 **iv. Brochures and marketing for the Honda Class**
13 **Vehicles.**

14 1200. Honda USA authored and then distributed misleading brochures and
15 other marketing for the Honda Class Vehicles via mail and wire.

16 1201. As a sophisticated and well-resourced member of the automotive
17 industry, Honda Japan was aware that vehicle safety, including airbags, is an
18 important feature for consumers, and that their subsidiaries conducted consumer
19 marketing that reassured consumers about the safety of the Honda Class Vehicles.

20 1202. Honda USA disseminated the brochures through Honda dealerships
21 throughout the United States, and also made them available to consumers online
22 and through the mail. The brochures misrepresented the safety of the Honda Class
23 Vehicles, including as to the functionality, reliability, and performance of airbags
24 and seatbelts.

25 1203. In a brochure for the 2014 Honda CR-V, Honda USA, Inc., boasted
26 that "Airbags Abound" as "The CR-V is equipped with dual -stage, multiple -
27 threshold front airbags, side - curtain airbags with rollover sensor, and front side
28 airbags with passenger-side Occupant Position Detection System (OPDS). And they

1 all come standard.” In that same brochure, it continued, “[w]herever you’re headed
2 in your CR-V, nothing’s more important than arriving there safely. That’s why
3 safety features come standard, *no exceptions*. And we’re proud to say the CR-V
4 achieved a 5-Star Overall Vehicle Score from the National Highway Traffic Safety
5 Administration (NHTSA). So when you’re out there chasing down everything you
6 always wanted to do, know you’ve got Honda’s unwavering commitment to safety
7 around you.” (emphasis added). These statements were false and misleading
8 because they assured consumers that the CR-V had functioning and reliable airbags
9 and seatbelts, and therefore would have suggested to any reasonable consumer that
10 the Occupant Restraint System would perform its intended function of activating
11 the seatbelts and airbags during a collision. This was false because the CR-V was
12 equipped with a defective DS84 ACU and ASIC, both of which had a defect, and
13 continue to have a defect, that can cause the vehicle’s airbags and seatbelts to fail.

14 1204. In a brochure for the 2015 Accord, Honda USA, similarly expressed
15 that it was “Always thinking about safety –Because, of all the things you need the
16 Accord to do, nothing’s more important than getting you where you need to go
17 safely.” As the brochure continued, the 2015 Accord came equipped with dual-
18 stage, multiple-threshold front airbags (SRS), Smartvent Side airbags, and side
19 curtain airbags with rollover sensor, to provide protection in the event of a crash.
20 These statements were false and misleading because they suggested to any
21 reasonable consumer that the passenger safety systems and airbags would function
22 properly, which was not true because of the defect and the risks of airbag and
23 seatbelt failures that occur due to EOS.

24 1205. In a vehicle brochure for the 2018 Acura RLX, Honda USA, touted the
25 vehicle’s safety as follows: “Never compromise safety. We always put safety first,
26 so when it comes to helping to protect our passengers, we ask ourselves one simple
27 question: ‘Is it safe enough for our own families to ride in?’ It’s our greatest goal to
28 one day drive in a zero-collision society, and the RLX was designed and engineered

1 with that goal in mind. For us, safety is personal.” In the same brochure, Honda
2 noted the “Advanced Front Airbags” system. These statements were false and
3 misleading because they suggested to any reasonable consumer that the airbags
4 would function properly, which was not true because of the defect and the risks of
5 airbag and seatbelt failures that occur due to EOS. Honda repeated these same
6 statements in the brochure for the 2019 Acura RLX.

7 1206. In a brochure for the 2013 Honda Civic (and Civic Hybrid), Honda
8 USA, stated that “[w]ith its impressive array of standard safety features, every
9 Civic is designed to help protect you and your passengers, no matter what model or
10 trim.” In that same brochure, Honda noted “SIX AIRBAGS—Every 2013 Civic
11 features front, front side and side curtain airbags with a rollover sensor.” The
12 brochure continued that the 2013 Civic (and Civic Hybrid) came equipped with an
13 “AUTOMATIC TENSIONING SYSTEM—The front seat belts are equipped with
14 an automatic tensioning system that is designed to tighten the seat belts in a
15 moderate-to-severe frontal impact.” These statements were false and misleading
16 because they suggested to any reasonable consumer that the Civic (and Civic
17 Hybrid) had working and reliable airbags and seat belts that would perform their
18 intended function during a collision. This was false because the Civic (and Civic
19 Hybrid) was equipped with a defective DS84 ACU and ASIC, both of which had a
20 defect, and continue to have a defect, that can cause the vehicle’s airbags and
21 seatbelts to fail.

22 1207. In a brochure for the 2015 Honda Civic (and Civic Hybrid), Honda
23 USA, boasted “Your safety is our priority. When it comes to safety, we never stop
24 improving. The Civic earned the highest possible score of “Good” across all five
25 safety tests from the Insurance Institute for Highway Safety (IIHS), making it a
26 2015 TOP SAFETY PICK” In that same brochure, Honda noted “Six Airbags –
27 Every 2015 Civic features front, front side and side curtain airbags with a rollover
28 sensor. Side airbags include SmartVent® technology, which is designed to vent the

1 airbag if it encounters an out-of-position occupant.” These statements were false
2 and misleading because they suggested to any reasonable consumer that the 2015
3 Civic (and Civic Hybrid) had working and reliable airbags that would perform their
4 intended function during a collision. This was false because the 2015 Civic (and
5 Civic Hybrid) was equipped with a defective DS84 ACU and ASIC, both of which
6 had a defect, and continue to have a defect, that can cause the vehicle’s airbags to
7 fail.

8 1208. In addition to the brochures, similarly misleading marketing for the
9 Honda Class Vehicles was distributed through the Honda website, maintained by,
10 and copyrighted to Honda USA, press releases, print media including magazines
11 and newspapers, television and radio advertisements, and internet and social media.
12 This advertising, the dates, and authors of which are identified in the attached
13 exhibit, likewise misrepresents the safety of the Honda Class Vehicles, including as
14 to the functionality, reliability, and performance of airbags and seatbelts. *See*
15 Exhibit 11 (collecting exemplars). This advertising was false and misleading
16 because it assured any reasonable consumer that the Honda Class Vehicles’
17 passenger safety systems would function properly and reliably, which was not true
18 because of the defective DS84 ACU and ASIC in the Honda Class Vehicles.

19 **v. Brochures and marketing for the Mitsubishi Class**
20 **Vehicles.**

21 1209. Mitsubishi USA authored and then distributed misleading brochures
22 and other marketing for the Mitsubishi Class Vehicles via mail and wire.

23 1210. As a sophisticated and well-resourced member of the automotive
24 industry, Mitsubishi Japan was aware that vehicle safety, including airbags, is an
25 important feature for consumers, and that its subsidiary conducted consumer
26 marketing that reassured consumers about the safety of the Mitsubishi Class
27 Vehicles.
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1 1211. Mitsubishi USA disseminated the brochures through Mitsubishi
2 dealerships throughout the United States, and also made them available to
3 consumers online and through the mail. The brochures misrepresented the safety of
4 the Mitsubishi Class Vehicles, including as to the functionality, reliability, and
5 performance of airbags and seatbelts.

6 1212. In a brochure for the 2014 Mitsubishi Lancer, Mitsubishi USA touted
7 the vehicle's "Seven-Airbag Safety" and explained in detail that "Lancer's
8 Supplemental Restraint System (SRS) consists of seven airbags, including a dual-
9 stage front, a front-seat side, and side impact curtain airbags. Lancer also features a
10 standard driver-side knee airbag, which helps stabilize the driver's legs and lower
11 body in the event of a collision." These statements were false and/or misleading
12 because they assured consumers that the Lancer had working and reliable airbags
13 and seatbelts, and therefore would have suggested to any reasonable consumer that
14 the Occupant Restraint System would perform its intended function of activating
15 the seatbelts and airbags during a collision. This was false because the Lancer was
16 equipped with a defective DS84 ACU and ASIC, both of which had a defect, and
17 continue to have a defect, that can cause the vehicle's airbags and seatbelts to fail.

18 1213. In a brochure for the 2013 Mitsubishi Outlander, Mitsubishi USA
19 touted the vehicle's "Dual Advanced Front Airbags—Dual advanced front airbags
20 with seat position and occupant sensors help protect the driver and front passenger
21 by sensing the severity of the impact, the position of the driver's seat and the
22 weight of the front passenger's seat to provide the appropriate level of front airbag
23 deployment. In the event of a crash in which the passenger seat is unoccupied, the
24 passenger airbag will not deploy." This statement was false and/or misleading
25 because it assured consumers that the Outlander had working and reliable airbags,
26 and therefore would have suggested to any reasonable consumer that the vehicle's
27 airbags would perform their intended function of activating during a collision. This
28 was false because the 2013 Outlander was equipped with a defective DS84 ACU

1 and ASIC, both of which had a defect, and continue to have a defect, that can cause
2 the vehicle's airbags to fail.

3 1214. In a brochure for the 2013 Mitsubishi Lancer, Mitsubishi USA touted
4 the vehicle's "Seven-Airbag Safety" and explained in detail that "Lancer's
5 Supplemental Restraint System consists of seven airbags, including a dual-stage
6 front, a front-seat side, and side-impact curtain airbags. Lancer also features a
7 standard driver's-side knee airbag. In an accident, it helps cushion the blow and
8 stabilizes the legs and lower body of the driver." These statements were false and/or
9 misleading because they assured consumers that the Lancer had working and
10 reliable airbags and seatbelts, and therefore would have suggested to any reasonable
11 consumer that the Occupant Restraint System would perform its intended function
12 of activating the seatbelts and airbags during a collision. This was false because the
13 Lancer was equipped with a defective DS84 ACU and ASIC, both of which had a
14 defect, and continue to have a defect, that can cause the vehicle's airbags and
15 seatbelts to fail.

16 1215. In a brochure for the 2015 Mitsubishi Lancer, Mitsubishi USA touted
17 the vehicle's "Seven-Airbag Safety" and explained in detail that "Lancer's
18 Supplemental Restraint System (SRS) consists of seven airbags, including a dual-
19 stage front, a front-seat side, and side curtain airbags. Lancer also features a
20 standard driver-side knee airbag, which helps stabilize the legs and lower body of
21 the driver in the event of a collision." These statements were false and/or
22 misleading because they assured consumers that the Lancer had working and
23 reliable airbags and seatbelts, and therefore would have suggested to any reasonable
24 consumer that the Occupant Restraint System would perform its intended function
25 of activating the seatbelts and airbags during a collision. This was false because the
26 Lancer was equipped with a defective DS84 ACU and ASIC, both of which had a
27 defect, and continue to have a defect, that can cause the vehicle's airbags and
28 seatbelts to fail.

1 1216. In a brochure for the 2016 Mitsubishi Lancer, Mitsubishi USA touted
2 the vehicle’s “Seven-Airbag Safety” and explained in detail that “Lancer’s
3 Supplemental Restraint System (SRS) consists of seven airbags, including a dual-
4 stage front, a front-seat side, and side curtain airbags. Lancer also features a
5 standard driver-side knee airbag, which helps stabilize the legs and lower body of
6 the driver in the event of a collision.” These statements were false and/or
7 misleading because they assured consumers that the Lancer had working and
8 reliable airbags and seatbelts, and therefore would have suggested to any reasonable
9 consumer that the Occupant Restraint System would perform its intended function
10 of activating the seatbelts and airbags during a collision. This was false because the
11 Lancer was equipped with a defective DS84 ACU and ASIC, both of which had a
12 defect, and continue to have a defect, that can cause the vehicle’s airbags and
13 seatbelts to fail.

14 1217. In addition to the brochures, Mitsubishi USA provided consumers with
15 similarly misleading marketing for the Mitsubishi Class Vehicles through the
16 Mitsubishi website, maintained by and copyrighted to Mitsubishi USA, press
17 releases, print media including magazines and newspapers, television and radio
18 advertisements, and internet and social media. This advertising, the dates, and
19 authors of which are identified in the attached exhibit, likewise misrepresented the
20 safety of the Mitsubishi Class Vehicles, including as to the functionality, reliability,
21 and performance of airbags and seatbelts. *See* Exhibit 12 (collecting exemplars).
22 This advertising was false and misleading because it assured any reasonable
23 consumer that the Mitsubishi Class Vehicles’ passenger safety systems would
24 function properly and reliably, which was not true because of the defective DS84
25 ACU and ASIC in the Mitsubishi Class Vehicles.

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b. Manuals for the Class Vehicles present detailed information on the passenger safety systems that misled consumers to think the vehicles were safe.

1218. The Vehicle Manufacturer Defendants also distributed owners' manuals for each of the Class Vehicles. These manuals contain affirmative statements about ACUs, airbags, and seatbelts and their intended functions during a crash. These statements are misleading or untrue in light of the defective DS84 ACUs and ASICs in the Class Vehicles.

1219. As sophisticated and well-funded corporate entities that generate billions of dollars in annual revenue from work in the automotive industry, ST USA, ST Italy, ST Malaysia, ZF Automotive USA, ZF Electronics USA, ZF Passive Safety USA, ZF TRW Corp., and ZF Germany were aware the Vehicle Manufacturer Defendants distributed the Class Vehicles with manuals containing information about the vehicles' passenger safety systems.

i. Toyota Manuals.

1220. Toyota Japan and Toyota Sales USA authored and then distributed numerous manuals for the Toyota Class Vehicles via mail and wire. These manuals for the Toyota Class Vehicles are available on Toyota's website, for which Toyota Sales USA is responsible and holds the copyright. The versions of the manuals on Toyota Sales USA website do not themselves list copyright information, which is typically placed on the inside cover page of the physical manuals. Other publicly available manuals include these pages and identify Toyota Japan as the copyright holder. As such, Plaintiffs allege on information and belief that both Toyota Sales USA, which makes the manuals available to consumers on its website, and Toyota Japan, the copyright holder for the manuals, are responsible for the content and approval of the manuals. In addition, given their role in the distribution, marketing, and sale of the Class Vehicles, Toyota Sales USA and Toyota USA knew that

1 Toyota Japan’s manuals included information about the passenger safety systems
2 and airbags in Toyota Class Vehicles.

3 1221. These manuals contain affirmatively misleading statements that
4 assured consumers that the Toyota Class Vehicles had working and reliable airbags
5 and seatbelts, and therefore would have suggested to any reasonable consumer that
6 the Occupant Restraint System did not suffer from a defect and would perform its
7 intended function of activating the seatbelts and airbags during a collision. This was
8 false because the Toyota Class Vehicles were equipped with a defective DS84 ACU
9 and ASIC, both of which had a defect, and continue to have a defect, that can cause
10 the vehicle’s airbags and seatbelts to fail. Manuals for the Toyota Class Vehicles
11 are available on Toyota’s website, for which Toyota Sales USA is responsible and
12 holds the copyright. They are also typically included in the Toyota Class Vehicles
13 at the time of sale or lease. A chart summarizing misleading statements in manuals
14 for the Toyota Class Vehicles is attached hereto at Exhibit 13. Each of the
15 statements in the attached chart is misleading for the same reasons stated
16 immediately above.

17 1222. In the manual for the 2012 Toyota Avalon, Toyota Japan and Toyota
18 Sales USA explained: “Your vehicle is equipped with “ADVANCED AIRBAGS”
19 designed based on US motor vehicle safety standards (FMVSS208). The airbag
20 system controls airbag deployment power for the driver and front passenger . . . In
21 certain types of severe frontal or side impacts, the SRS airbag system triggers the
22 airbag inflators. A chemical reaction in the inflators quickly fills the airbags with
23 non-toxic gas to help restrain the motion of the occupants.” It further stated “The
24 SRS airbags inflate when the vehicle is subjected to certain types of severe impacts
25 that may cause significant injury to the occupants. They work together with the seat
26 belts to help reduce the risk of death or serious injury,” and “Driver airbag/front
27 passenger airbag can help protect the head and chest of the driver and front
28 passenger from impact with interior components.” These statements were false and

1 misleading because they would have suggested to any reasonable consumer that the
2 Occupant Restraint System did not suffer from a defect and would perform its
3 intended function of activating the seatbelts and airbags during a collision, when in
4 fact the Toyota Class Vehicles included a defective DS84 ACU and ASIC that can
5 cause the airbags and seatbelts to fail.

6 1223. Toyota Japan and Toyota Sales USA described in the manual for the
7 2011 Toyota that “The SRS airbag system is controlled by the airbag sensor
8 assembly. The airbag sensor assembly consists of a safing sensor and an airbag
9 sensor. In certain types of severe frontal or side impacts, the SRS airbag system
10 triggers the airbag inflators.” The manual further added “The SRS front airbags will
11 deploy in the event of an impact that exceeds the set threshold level (the level of
12 force corresponding to an approximately 12 - 18 mph [20 - 30 km/h] frontal
13 collision with a fixed wall that does not move or deform).” These statements were
14 false and misleading because they would have suggested to any reasonable
15 consumer that the Occupant Restraint System did not suffer from a defect and
16 would perform its intended function of activating the seatbelts and airbags during a
17 collision, when in fact the Toyota Class Vehicles included a defective DS84 ACU
18 and ASIC that can cause the airbags and seatbelts to fail.

19 1224. Toyota Japan and Toyota Sales USA stated in the 2012 Toyota
20 Sequoia manual “Your vehicle is equipped with ADVANCED AIRBAGS designed
21 based on US motor vehicle safety standards (FMVSS208). The airbag system
22 controls airbag deployment power for the driver and front passenger.” It explained
23 that “The main SRS airbag system components are shown above. The SRS airbag
24 system is controlled by the airbag sensor assembly. The airbag sensor assembly
25 consists of a safing sensor and an airbag sensor. In certain types of severe frontal or
26 side impacts, the SRS airbag system triggers the airbag inflators.” (emphasis
27 added). These statements were false and misleading because they would have
28 suggested to any reasonable consumer that the Occupant Restraint System did not

1 suffer from a defect and would perform its intended function of activating the
2 seatbelts and airbags during a collision, when in fact the Class Vehicles included a
3 defective DS84 ACU and ASIC that can cause the airbags and seatbelts to fail.

4 **ii. Hyundai and Kia Manuals.**

5 1225. Hyundai USA and Kia USA also authored and then distributed via
6 mail and wire numerous manuals for the Hyundai and Kia Class Vehicles. Given
7 their role in the distribution, marketing, and sale of the Hyundai and Kia Class
8 Vehicles, Hyundai Korea and Kia Korea knew that their subsidiaries' vehicle
9 manuals included information about the passenger safety systems and airbags.

10 1226. These manuals contain affirmatively misleading statements that
11 assured consumers that the Hyundai and Kia Class Vehicles had working and
12 reliable airbags and seatbelts, and therefore would have suggested to any reasonable
13 consumer that the Occupant Restraint System did not suffer from a defect and
14 would perform its intended function of activating the seatbelts and airbags during a
15 collision. This was false because the Hyundai and Kia Class Vehicles were
16 equipped with a defective DS84 ACU and ASIC, both of which had a defect, and
17 continue to have a defect, that can cause the vehicle's airbags and seatbelts to fail.
18 Manuals for the Hyundai and Kia Class Vehicles are available on Hyundai's and
19 Kia's websites. They are also typically included in the Hyundai and Kia Class
20 Vehicles at the time of sale. Charts summarizing misleading statements in manuals
21 for the Hyundai and Kia Class Vehicles are attached hereto at Exhibits 14 and 15.
22 Each of the statements in the attached chart is misleading for the same reasons
23 stated immediately above.

24 1227. The manual for the 2012 Hyundai Sonata by Hyundai USA explained
25 that "your vehicle is equipped with a Supplemental Restraint (Air Bag) System and
26 lap/shoulder belts at both the driver and passenger seating positions," and that
27 "[t]he purpose of the SRS is to provide the vehicle's driver and/or the front
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1 passenger with additional protection than that offered by the seat belt system alone
2 in case of a frontal impact of sufficient severity. The SRS uses sensors to gather
3 information about the driver's seat position, the driver's and front passenger's seat
4 belt usage and impact severity." The manual continues, "[f]ront airbags are
5 designed to inflate in a frontal collision depending on the intensity, speed or angles
6 or impact of the front collision." These statements were false and misleading
7 because they would have suggested to any reasonable consumer that the Occupant
8 Restraint System did not suffer from a defect and would perform its intended
9 function of activating the seatbelts and airbags during a collision, when in fact the
10 Hyundai Class Vehicles included a defective DS84 ACU and ASIC that can cause
11 the airbags and seatbelts to fail.

12 1228. In the manual for the 2014 Sonata, Hyundai USA included the
13 information above, and also detailed that "[g]enerally, air bags are designed to
14 inflate by the severity of a collision and its direction. These two factors determine
15 whether the sensors send out an electronic deployment/inflation signal." It
16 continued, "[f]ront airbags will completely inflate and deflate in an instant. It is
17 virtually impossible for you to see the air bags inflate during an accident. It is much
18 more likely that you will simply see the deflated air bags hanging out of their
19 storage compartments after the collision. The SRSCM continually monitors all SRS
20 components while the ignition switch is ON to determine if a crash impact is severe
21 enough to require air bag deployment or pre-tensioner seat belt deployment. A fully
22 inflated airbag, in combination with a properly worn seat belt, slows the driver's or
23 the passenger's forward motion, reducing the risk of head and chest injury. After
24 complete inflation, the air bag immediately starts deflating, enabling the driver to
25 maintain forward visibility and the ability to steer or operate other controls." These
26 statements were false and misleading because they would have suggested to any
27 reasonable consumer that the Occupant Restraint System did not suffer from a
28 defect and would perform its intended function of activating the seatbelts and

1 airbags during a collision, when in fact the Hyundai Class Vehicles included a
2 defective DS84 ACU and ASIC that can cause the airbags and seatbelts to fail.

3 1229. In the manual for the 2015 Hyundai Sonata, Hyundai USA explained
4 that “your vehicle is equipment with an Advanced Supplemental Restraint System
5 (SRS) and lap/shoulder belts at both the driver and passenger seating positions. The
6 purpose of the SRS is to provide the vehicle’s driver and front passengers with
7 additional protection than that offered by the seat belt system alone. The SRS uses
8 sensors to gather information about the driver’s and front passenger’s’ seat belt
9 usage and impact severity.” It continued “the advanced SRS offers the ability to
10 control the air bag inflation within two levels. A first stage level is provided for
11 moderate-severity impacts. A second stage level is provided for more severe
12 impacts. According to the impact severity, the seat belt usage, the SRS Control
13 Module (SRSCM) controls the air bag inflation.” These statements were false and
14 misleading because they would have suggested to any reasonable consumer that the
15 Occupant Restraint System did not suffer from a defect and would perform its
16 intended function of activating the seatbelts and airbags during a collision, when in
17 fact the Hyundai Class Vehicles included a defective DS84 ACU and ASIC that can
18 cause the airbags and seatbelts to fail.

19 1230. In the manual for the 2017 Hyundai Sonata, Hyundai USA explained
20 that “The front air bags are designed to supplement the three-point seat belts. For
21 these air bags to provide protection, the seat belts must be worn at all times when
22 driving. Your vehicle is equipped with an Advanced Supplemental Restraint
23 System (SRS) and lap/shoulder belts at both the driver and passenger seating
24 positions. The purpose of the SRS is to provide the vehicle’s driver and front
25 passenger with additional protection than that offered by the seat belt system alone.
26 . . According to the impact severity, and seat belt usage, the SRS control Module
27 (SRSCM) controls the air bag inflation.” It continued “The SRSCM continually
28 monitors all SRS components while the Engine start/stop button is in the ON

1 position to determine if a crash impact is severe enough to require air bag
2 deployment or pre-tensioner seat belt deployment. During a frontal collision,
3 sensors will detect the vehicle's deceleration. If the deceleration rate (measured in
4 g-force) is high enough, the control unit will inflate the front air bags. The front air
5 bags help protect the driver and front passenger by responding to frontal impacts in
6 which seat belts alone cannot provide adequate restraint. Air bag deployment
7 depends on a number of factors including vehicle speed, angles of impact and the
8 density and stiffness of the vehicles or objects which your vehicle impacts during a
9 collision. The front air bags will completely inflate and deflate in an instant . . .
10 When the SRSCM detects a sufficiently severe impact to the front of the vehicle, it
11 will automatically deploy the front air bags.” These statements were false and
12 misleading because they would have suggested to any reasonable consumer that the
13 Occupant Restraint System did not suffer from a defect and would perform its
14 intended function of activating the seatbelts and airbags during a collision, when in
15 fact the Hyundai Class Vehicles included a defective DS84 ACU and ASIC that can
16 cause the airbags and seatbelts to fail.

17 1231. In the manual for the 2010 Kia Forte, Kia USA explained that in its
18 models “[a]dvanced air bags are combined with pre-tensioner seat belts to help
19 provide enhanced occupant protection in frontal crashes,” and that “[t]he SRSCM
20 continually monitors all SRS components while the ignition is ON to determine if a
21 crash impact is severe enough to require air bag deployment or pre-tensioner seat
22 belt deployment.” The manual further explained that “[f]ront air bags are designed
23 to inflate in a frontal collision depending on the intensity, speed or angles of impact
24 of the front collision,” and that “[t]he advanced SRS offers the ability to control the
25 air bag inflation with two levels. A first stage level is provided for moderate-
26 severity impacts. A second stage level is provided for more severe impact.” These
27 statements were false and misleading because they would have suggested to any
28 reasonable consumer that the Occupant Restraint System did not suffer from a

1 defect and would perform its intended function of activating the seatbelts and
2 airbags during a collision, when in fact the Kia Class Vehicles included a defective
3 DS84 ACU and ASIC that can cause the airbags and seatbelts to fail.

4 1232. In the manual for the 2014 Kia Optima Hybrid, Kia USA included the
5 information above, and also detailed that “[t]he retractor pre-tensioner is a
6 supplemental system of the seat belts. The purpose of the retractor pre-tensioner is
7 to tighten the shoulder belt against the occupant’s upper body in certain frontal
8 collisions” and that “[t]he pretensioner seat belts may be activated together with the
9 air bags upon a severe enough collision.” These statements were false and
10 misleading because they would have suggested to any reasonable consumer that the
11 Occupant Restraint System did not suffer from a defect and would perform its
12 intended function of activating the seatbelts and airbags during a collision, when in
13 fact the Kia Class Vehicles included a defective DS84 ACU and ASIC that can
14 cause the airbags and seatbelts to fail.

15 1233. In the manual for the 2020 Kia Optima, Kia USA explained the
16 “vehicle is equipped with driver’s and front passenger’s pre-tensioner seat belts
17 (retractor pretensioner and EFD (Emergency Fastening Device)). The pre-tensioner
18 seat belts may be activated when a frontal collision is severe enough, together with
19 the air bags” and “[w]hen the SRSCM detects a sufficiently severe impact to the
20 front of the vehicle, it will automatically deploy the front air bags.” As in earlier
21 manuals, the 2020 Optima owner’s manual also assured that “[t]he purpose of the
22 SRS is to provide the vehicle’s driver and/or the front passenger with additional
23 protection than that offered by the seat belt system alone in case of a frontal impact
24 of sufficient severity,” and that “[a] fully inflated air bag, in combination with a
25 properly worn seat belt, slows the driver’s or the passenger’s forward motion,
26 reducing the risk of head and chest injury.” These statements were false and
27 misleading because they would have suggested to any reasonable consumer that the
28 Occupant Restraint System did not suffer from a defect and would perform its

1 intended function of activating the seatbelts and airbags during a collision, when in
2 fact the Kia Class Vehicles included a defective DS84 ACU and ASIC that can
3 cause the airbags and seatbelts to fail.

4 **iii. FCA Manuals.**

5 1234. FCA (formerly known as Chrysler Group LLC) also authored and then
6 distributed numerous manuals via mail and wire for the FCA Class Vehicles. These
7 manuals contain affirmatively misleading statements that assured consumers that
8 the FCA Class Vehicles had working and reliable airbags and seatbelts, and
9 therefore would have suggested to any reasonable consumer that the Occupant
10 Restraint System did not suffer from a defect and would perform its intended
11 function of activating the seatbelts and airbags during a collision. This was false
12 because the FCA Class Vehicles were equipped with a defective DS84 ACU and
13 ASIC, both of which had a defect, and continue to have a defect, that can cause the
14 FCA Class Vehicle's airbags and seatbelts to fail. Manuals for the FCA Class
15 Vehicles are available on FCA's website. They are also typically included in the
16 FCA Class Vehicles at the time of sale. A chart summarizing misleading statements
17 in manuals for the FCA Class Vehicles is attached hereto at Exhibit 16. Each of the
18 statements in the attached chart is misleading for the same reasons stated
19 immediately above.

20 1235. In a manual for the 2015 Jeep Compass, FCA explained that "[t]his
21 vehicle has Advanced Front Air Bags for both the driver and front passenger as a
22 supplement to the seat belt restraint systems. The driver's Advanced Front Air Bag
23 is mounted in the center of the steering wheel. The passenger's Advanced Front Air
24 Bag is mounted in the instrument panel, above the glove compartment. The words
25 SRS AIRBAG are embossed on the air bag covers." As the manual continues,
26 "[t]he Advanced Front Air Bag system has multistage driver and front passenger air
27 bags. This system provides output appropriate to the severity and type of collision
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1 as determined by the Occupant Restraint Controller (ORC), which may receive
2 information from the front impact sensors. The first stage inflator is triggered
3 immediately during an impact that requires air bag deployment. This low output is
4 used in less severe collisions. A higher energy output is used for more severe
5 collisions.” These statements are false and misleading because they would have
6 suggested to any reasonable consumer that the Occupant Restraint System did not
7 suffer from a defect and would perform its intended function of activating the
8 seatbelts and airbags during a collision, when in fact the FCA Class Vehicles
9 included a defective DS84 ACU and ASIC that can cause the airbags and seatbelts
10 to fail.

11 1236. In a manual for the 2016 Jeep Compass, FCA explained that “[t]his
12 vehicle has Advanced Front Air Bags for both the driver and front passenger as a
13 supplement to the seat belt restraint systems. The driver’s Advanced Front Air Bag
14 is mounted in the center of the steering wheel. The passenger’s Advanced Front Air
15 Bag is mounted in the instrument panel, above the glove compartment. The words
16 ‘SRS AIRBAG’ or ‘AIRBAG’ are embossed on the air bag covers.” As the manual
17 continues, “[t]he Advanced Front Air Bag system has multistage driver and front
18 passenger air bags. This system provides output appropriate to the severity and type
19 of collision as determined by the Occupant Restraint Controller (ORC), which may
20 receive information from the front impact sensors or other system components. The
21 first stage inflator is triggered immediately during an impact that requires air bag
22 deployment. A low energy output is used in less severe collisions. A higher energy
23 output is used for more severe collisions.” These statements are false and
24 misleading because they would have suggested to any reasonable consumer that the
25 Occupant Restraint System did not suffer from a defect and would perform its
26 intended function of activating the seatbelts and airbags during a collision, when in
27 fact the FCA Class Vehicles included a defective DS84 ACU and ASIC that can
28 cause the airbags and seatbelts to fail.

1 1237. In a manual for the 2012 Jeep Patriot, FCA explained that “[t]his
2 vehicle has Advanced Front Air Bags for both the driver and front passenger as a
3 supplement to the seat belt restraint systems. The driver’s Advanced Front Air Bag
4 is mounted in the center of the steering wheel. The passenger’s Advanced Front Air
5 Bag is mounted in the instrument panel, above the glove compartment. The words
6 SRS AIRBAG are embossed on the air bag covers. The Driver and Front Passenger
7 Advanced Front Air Bags are certified to the new Federal regulations for Advanced
8 Air Bags.” The manual continues, “[a]long with seat belts and pretensioners,
9 Advanced Front Air Bags work with the knee bolsters to provide improved
10 protection for the driver and front passenger. Side air bags also work with seat belts
11 to improve occupant protection.” These statements are false and misleading because
12 they would have suggested to any reasonable consumer that the Occupant Restraint
13 System did not suffer from a defect and would perform its intended function of
14 activating the seatbelts and airbags during a collision, when in fact the FCA Class
15 Vehicles included a defective DS84 ACU and ASIC that can cause the airbags and
16 seatbelts to fail.

17 1238. In a manual for the 2016 Jeep Wrangler, FCA explained that “[t]his
18 vehicle has Advanced Front Air Bags for both the driver and front passenger as a
19 supplement to the seat belt restraint systems. The driver’s Advanced Front Air Bag
20 is mounted in the center of the steering wheel. The passenger’s Advanced Front Air
21 Bag is mounted in the instrument panel, above the glove compartment. The words
22 “SRS AIRBAG” or “AIRBAG” are embossed on the air bag covers.” As the
23 manual continues, “[t]he Advanced Front Air Bag system has multistage driver and
24 front passenger air bags. This system provides output appropriate to the severity
25 and type of collision as determined by the Occupant Restraint Controller (ORC),
26 which may receive information from the front impact sensors or other system
27 components. The first stage inflator is triggered immediately during an impact that
28 requires air bag deployment. A low energy output is used in less severe collisions.

1 A higher energy output is used for more severe collisions.” These statements are
2 false and misleading because they would have suggested to any reasonable
3 consumer that the Occupant Restraint System did not suffer from a defect and
4 would perform its intended function of activating the seatbelts and airbags during a
5 collision, when in fact the FCA Class Vehicles included a defective DS84 ACU and
6 ASIC that can cause the airbags and seatbelts to fail.

7 1239. In a manual for the 2012 Jeep Liberty, Chrysler Group LLC explained
8 that “[t]his vehicle has Advanced Front Air Bags for both the driver and front
9 passenger as a supplement to the seat belt restraint systems. The driver’s Advanced
10 Front Air Bag is mounted in the steering wheel. The passenger’s Advanced Front
11 Air Bag is mounted in the instrument panel, above the glove compartment. The
12 words SRS/ AIRBAG are embossed on the air bag covers. These air bags are
13 certified to the new Federal regulations for Advanced Air Bags.” The manual
14 continues, “[a]long with seat belts and pretensioners, Advanced Front Air Bags
15 work with the knee bolsters to provide improved protection for the driver and front
16 passenger. Side air bags also work with seat belts to improve occupant protection.”
17 These statements are false and misleading because they would have suggested to
18 any reasonable consumer that the Occupant Restraint System did not suffer from a
19 defect and would perform its intended function of activating the seatbelts and
20 airbags during a collision, when in fact the FCA Class Vehicles included a
21 defective DS84 ACU and ASIC that can cause the airbags and seatbelts to fail.

22 **iv. Mitsubishi Manuals.**

23 1240. Mitsubishi Japan also authored and then distributed numerous manuals
24 for the Mitsubishi Class Vehicles via mail and wire. The manuals are copyright to
25 Mitsubishi Japan and are stamped “printed in Japan.” Given its role in the
26 distribution, marketing, and sale of the Class Vehicles, Mitsubishi USA also knew
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1 that Mitsubishi Japan’s manuals included information about the passenger safety
2 systems and airbags in Mitsubishi Class Vehicles.

3 1241. These manuals contain affirmatively misleading statements that
4 assured consumers that the Mitsubishi Class Vehicles had working and reliable
5 airbags and seatbelts, and therefore would have suggested to any reasonable
6 consumer that the Occupant Restraint System did not suffer from a defect and
7 would perform its intended function of activating the seatbelts and airbags during a
8 collision. This was false because the Mitsubishi Class Vehicles were equipped with
9 a defective DS84 ACU and ASIC, both of which had a defect, and continue to have
10 a defect, that can cause the vehicle’s airbags and seatbelts to fail. Manuals for the
11 Mitsubishi Class Vehicles are available on Mitsubishi USA’s website. They are
12 also typically included in the Mitsubishi Class Vehicles at the time of sale and
13 lease. A chart summarizing misleading statements in manuals for the Mitsubishi
14 Class Vehicles is attached hereto at Exhibit 17. Each of the statements in the
15 attached chart is misleading for the same reasons stated immediately above.

16 1242. In a manual for the 2013 Outlander, Mitsubishi Japan explained that
17 “[t]his vehicle is equipped with a Supplemental Restraint System (SRS), which
18 includes airbags for the driver and passengers. The SRS front airbags are designed
19 to supplement the primary protection of the driver and front passenger seat belt
20 systems by providing those occupants with protection against head and chest
21 injuries in certain moderate to severe frontal collisions. The SRS front airbags,
22 together with sensors at the front of the vehicle and sensors attached to the front
23 seats, form an advanced airbag system. The SRS side airbags and the curtain
24 airbags are also designed to supplement the seat belts. The SRS side airbags
25 provide the driver and front passenger with protection against chest injuries by
26 deploying the bag on the side impacted in moderate to severe side impact
27 collisions.” As the manual continues, “[t]he front airbags are designed to deploy
28 when the vehicle suffers a moderate to severe frontal impact.” These statements are

1 false and misleading because they would have suggested to any reasonable
2 consumer that the Occupant Restraint System did not suffer from a defect and
3 would perform its intended function of activating the seatbelts and airbags during a
4 collision, when in fact the Mitsubishi Class Vehicles included a defective DS84
5 ACU and ASIC that can cause the airbags and seatbelts to fail.

6 1243. In a manual for the 2013 Lancer, Mitsubishi Japan explained that
7 “[t]his vehicle is equipped with a Supplemental Restraint System (SRS), which
8 includes airbags for the driver and passengers. The SRS front airbags are designed
9 to supplement the primary protection of the driver and front passenger seat belt
10 systems by providing those occupants with protection against head and chest
11 injuries in certain moderate to severe frontal collisions. The SRS front airbags,
12 together with sensors at the front of the vehicle and sensors attached to the front
13 seats, form an advanced airbag system.” As the manual continues, “[t]he front
14 airbags and driver’s knee airbag are designed to deploy when the vehicle suffers a
15 moderate to severe frontal impact.” These statements are false and misleading
16 because they would have suggested to any reasonable consumer that the Occupant
17 Restraint System did not suffer from a defect and would perform its intended
18 function of activating the seatbelts and airbags during a collision, when in fact the
19 Mitsubishi Class Vehicles included a defective DS84 ACU and ASIC that can
20 cause the airbags and seatbelts to fail.

21 1244. In a manual for the 2014 Lancer, Mitsubishi Japan explained that
22 “[t]his vehicle is equipped with a Supplemental Restraint System (SRS), which
23 includes airbags for the driver and passengers. The SRS front airbags are designed
24 to supplement the primary protection of the driver and front passenger seat belt
25 systems by providing those occupants with protection against head and chest
26 injuries in certain moderate to severe frontal collisions. The SRS front airbags,
27 together with sensors at the front of the vehicle and sensors attached to the front
28 seats, form an advanced airbag system.” As the manual continues, “[t]he front

1 airbags and driver’s knee airbag are designed to deploy when the vehicle suffers a
2 moderate to severe frontal impact.” These statements are false and misleading
3 because they would have suggested to any reasonable consumer that the Occupant
4 Restraint System did not suffer from a defect and would perform its intended
5 function of activating the seatbelts and airbags during a collision, when in fact the
6 Mitsubishi Class Vehicles included a defective DS84 ACU and ASIC that can
7 cause the airbags and seatbelts to fail.

8 1245. In a manual for the 2015 Lancer, Mitsubishi Japan explained that
9 “[t]his vehicle is equipped with a Supplemental Restraint System (SRS), which
10 includes airbags for the driver and passengers. The SRS front airbags are designed
11 to supplement the primary protection of the driver and front passenger seat belt
12 systems by providing those occupants with protection against head and chest
13 injuries in certain moderate to severe frontal collisions. The SRS front airbags,
14 together with sensors at the front of the vehicle and sensors attached to the front
15 seats, form an advanced airbag system.” As the manual continues, “[t]he front
16 airbags and driver’s knee airbag are designed to deploy when the vehicle suffers a
17 moderate to severe frontal impact.” These statements are false and misleading
18 because they would have suggested to any reasonable consumer that the Occupant
19 Restraint System did not suffer from a defect and would perform its intended
20 function of activating the seatbelts and airbags during a collision, when in fact the
21 Mitsubishi Class Vehicles included a defective DS84 ACU and ASIC that can
22 cause the airbags and seatbelts to fail.

23 1246. In a manual for the 2016 Lancer, Mitsubishi Japan explained that
24 “[f]or added protection during a severe frontal collision, your vehicle has a
25 Supplemental Restraint System (SRS) with airbags for the driver and passengers.
26 The seats, head restraints, and door locks also are safety equipment, which must be
27 used correctly.” As the manual continues, “[t]his vehicle is equipped with a
28 Supplemental Restraint System (SRS), which includes airbags for the driver and

1 passengers. The SRS front airbags are designed to supplement the primary
2 protection of the driver and front passenger seat belt systems by providing those
3 occupants with protection against head and chest injuries in certain moderate to
4 severe frontal collisions. The SRS front airbags, together with sensors at the front
5 of the vehicle and sensors attached to the front seats, form an advanced airbag
6 system.” These statements are false and misleading because they would have
7 suggested to any reasonable consumer that the Occupant Restraint System did not
8 suffer from a defect and would perform its intended function of activating the
9 seatbelts and airbags during a collision, when in fact the Mitsubishi Class Vehicles
10 included a defective DS84 ACU and ASIC that can cause the airbags and seatbelts
11 to fail.

12 **v. Honda Manuals.**

13 1247. Honda USA and Honda Japan, also authored and then distributed via
14 mail and wire numerous manuals for the Honda Class Vehicles.

15 1248. The information available to Plaintiffs indicates that both Honda USA
16 and Honda Japan held responsibility to prepare or approve the owners’ manuals.
17 Honda USA, published the manuals because that entity holds the copyright for their
18 contents. In addition, on information and belief, Honda Japan also reviewed and
19 approved the contents of the manuals from Honda USA. This allegation is based on
20 the following language in many of the manuals for the Honda Class Vehicles: “The
21 information and specifications included in this publication were in effect at the time
22 of approval for printing. Honda Japan reserves the right, however, to discontinue or
23 change specifications or design at any time without notice and without incurring
24 any obligation.” The reference to “approval for printing” and related reservation of
25 rights indicates Honda Japan’s role in approving the contents, at least as of the time
26 of printing.
27
28

1 1249. These manuals contain affirmatively misleading statements that
2 assured consumers that the Honda Class Vehicles had working and reliable airbags
3 and seatbelts, and therefore would have suggested to any reasonable consumer that
4 the Occupant Restraint System did not suffer from a defect and would perform its
5 intended function of activating the seatbelts and airbags during a collision. This was
6 false because the Honda Class Vehicles were equipped with a defective DS84 ACU
7 and ASIC, both of which had a defect, and continue to have a defect, that can cause
8 the Honda Class Vehicle’s airbags and seatbelts to fail. Manuals for the Honda
9 Class Vehicles are available on Honda USA’s website. They are also typically
10 included in the Honda Class Vehicles at the time of sale and lease. A chart
11 summarizing misleading statements in manuals for the Honda Class Vehicles is
12 attached hereto at Exhibit 18. Each of the statements in the attached chart is
13 misleading for the same reasons stated immediately above.

14 1250. In the manual for the 2013 Honda Accord, Honda USA, with the
15 approval of Honda Japan, explained that “your vehicle is equipped with three types
16 of airbags” and “[t]he front SRS airbags inflate in a moderate-to-severe frontal
17 collision to help protect the head and chest of the driver and/or front passenger.
18 SRS (Supplemental Restraint System) indicates that that the airbags are designed to
19 supplement seat belts, not replace them. Seat belts are the occupant's primary
20 restraint system.” As the manual continues, “[f]ront airbags are designed to inflate
21 during moderate-to-severe frontal collisions. When the vehicle decelerates
22 suddenly, the sensors send information to the control unit which signals one or both
23 front airbags to inflate.” These statements are false and misleading because they
24 would have suggested to any reasonable consumer that the Occupant Restraint
25 System did not suffer from a defect and would perform its intended function of
26 activating the seatbelts and airbags during a collision, when in fact the Honda Class
27 Vehicles included a defective DS84 ACU and ASIC that can cause the airbags and
28 seatbelts to fail.

1 1251. In a manual for the 2014 Honda Civic, Honda USA, with the approval
2 of Honda Japan, included the information above, and also detailed that “[t]he front
3 SRS airbags inflate in a moderate-to-severe frontal collision to help protect the head
4 and chest of the driver and/or front passenger. SRS (Supplemental Restraint
5 System) indicates that that the airbags are designed to supplement seat belts, not
6 replace them. Seat belts are the occupant's primary restraint system.” As the manual
7 continues “Front airbags are designed to inflate during moderate-to-severe frontal
8 collisions. When the vehicle decelerates suddenly, the sensors send information to
9 the control unit which signals one or both front airbags to inflate.” These statements
10 are false and misleading because they would have suggested to any reasonable
11 consumer that the Occupant Restraint System did not suffer from a defect and
12 would perform its intended function of activating the seatbelts and airbags during a
13 collision, when in fact the Honda Class Vehicles included a defective DS84 ACU
14 and ASIC that can cause the airbags and seatbelts to fail.

15 1252. In a manual for the 2014 Honda CRV, Honda USA, with the approval
16 of Honda Japan, explained that “[t]he front SRS airbags inflate in a moderate-to-
17 severe frontal collision to help protect the head and chest of the driver and/or front
18 passenger. SRS (Supplemental Restraint System) indicates that that the airbags are
19 designed to supplement seat belts, not replace them. Seat belts are the occupant's
20 primary restraint system.” As the manual continues, “[f]ront airbags are designed to
21 inflate during moderate-to-severe frontal collisions. When the vehicle decelerates
22 suddenly, the sensors send information to the control unit which signals one or both
23 front airbags to inflate.” These statements are false and misleading because they
24 would have suggested to any reasonable consumer that the Occupant Restraint
25 System did not suffer from a defect and would perform its intended function of
26 activating the seatbelts and airbags during a collision, when in fact the Honda Class
27 Vehicles included a defective DS84 ACU and ASIC that can cause the airbags and
28 seatbelts to fail.

1 1253. In a manual for the 2015 Honda Civic, Honda USA, with the approval
2 of Honda Japan, explained that “[t]he front SRS airbags inflate in a moderate-to-
3 severe frontal collision to help protect the head and chest of the driver and/or front
4 passenger. SRS (Supplemental Restraint System) indicates that that the airbags are
5 designed to supplement seat belts, not replace them. Seat belts are the occupant's
6 primary restraint system.” As the manual continues, “[f]ront airbags are designed to
7 inflate during moderate-to-severe frontal collisions. When the vehicle decelerates
8 suddenly, the sensors send information to the control unit which signals one or both
9 front airbags to inflate.” These statements are false and misleading because they
10 would have suggested to any reasonable consumer that the Occupant Restraint
11 System did not suffer from a defect and would perform its intended function of
12 activating the seatbelts and airbags during a collision, when in fact the Honda Class
13 Vehicles included a defective DS84 ACU and ASIC that can cause the airbags and
14 seatbelts to fail.

15 1254. In a manual for the 2016 Acura RLX, Honda USA, with the approval
16 of Honda Japan, explained that “[t]he front SRS airbags inflate in a moderate-to-
17 severe frontal collision to help protect the head and chest of the driver and/or front
18 passenger. SRS (Supplemental Restraint System) indicates that that the airbags are
19 designed to supplement seat belts, not replace them. Seat belts are the occupant's
20 primary restraint system.” As the manual continues, “[f]ront airbags are designed to
21 inflate during moderate-to-severe frontal collisions. When the vehicle decelerates
22 suddenly, the sensors send information to the control unit which signals one or both
23 front airbags to inflate.” These statements are false and misleading because they
24 would have suggested to any reasonable consumer that the Occupant Restraint
25 System did not suffer from a defect and would perform its intended function of
26 activating the seatbelts and airbags during a collision, when in fact the Honda Class
27 Vehicles included a defective DS84 ACU and ASIC that can cause the airbags and
28 seatbelts to fail.

1 **F. Defendants schemed to defraud NHTSA by making misleading**
2 **statements denying and downplaying the serious safety defect in DS84**
3 **ACUs.**

4 1255. Between 2016 and 2020, several Defendants—including ZF
5 Automotive USA, ZF Electronics USA, ZF Passive Safety USA, ZF TRW Corp.,
6 ZF Germany, Hyundai Korea, Kia Korea, Hyundai USA, Kia USA, FCA, Toyota
7 Japan, and Toyota USA—made (or helped make) misleading statements to NHTSA
8 about the ACU Defect. The remaining Defendants conspired in these efforts by
9 coordinating with ZF Automotive USA, ZF Electronics USA, ZF Passive Safety
10 USA, ZF TRW Corp., and ZF Germany throughout the process.

11 1256. The purpose of the scheme to mislead NHTSA about the DS84 ACU
12 Defect was to avoid, delay, and/or minimize recalls of Class Vehicles. ZF
13 Automotive USA, ZF Electronics USA, ZF Passive Safety USA, ZF TRW Corp.,
14 ZF Germany, ST USA, ST Italy, and ST Malaysia participated in this scheme with
15 the goal of concealing the ACU Defect in all Class Vehicles. The Vehicle
16 Manufacturer Defendants' participation in the scheme was limited to the goal of
17 concealing the ACU Defect in the Class Vehicles made by their group (e.g., the
18 Honda Defendants had the goal of concealing the ACU Defect in Honda Class
19 Vehicles).

20 1257. Avoiding, delaying, and/or minimizing recalls was an important and
21 shared goal for all the Defendants because: (1) recalls are extremely expensive and
22 could cost Vehicle Manufacturers hundreds of millions of dollars; (2) recalls based
23 on defective component parts such as the DS84 ACU and ASIC expose the
24 Supplier Defendants to liability for those expenses; (3) recalls harm the commercial
25 reputations of vehicle manufacturers, parts suppliers, and their products; and (4)
26 recalls threatened to publicly expose the ACU Defect in other unrecalled vehicles
27 with the same defective DS84 ACU and DS84 ASIC, which would have
28 undermined the continued sale and lease of Class Vehicles with these parts.

1 1258. A scheme to mislead NHTSA as to the nature and scope of the ACU
2 Defect was a plausible (and to date, effective) means of avoiding, delaying, and
3 minimizing recalls. NHTSA’s Office of Defect Investigation (“ODI”)—the division
4 responsible for investigating all the potential automotive defects in the country—
5 employs fewer than one hundred people. Moreover, at any given time, it has
6 approximately 50 open investigations, most of which involve complicated and
7 technical issues. By contrast, the Vehicle Manufacturer and Supplier Defendants
8 have vastly more employees and superior knowledge of the inner workings of their
9 products and the problems experienced by customers in the field. In this context,
10 ODI often depends upon the good faith cooperation and fulsome disclosure from
11 vehicle manufacturers and suppliers when conducting its investigations.

12 **1. When NHTSA started to investigate the DS84 ACUs in the**
13 **summer of 2015, ZF Electronics USA, ZF Passive Safety USA, and**
14 **ZF Automotive USA conspired with the Vehicle Manufacturer**
15 **Defendants to avoid expensive recalls.**

16 1259. By no later than the summer of 2015, NHTSA began to investigate
17 airbag non-deployment issues for a wide range of vehicles with DS84 ACUs and
18 ASICs.

19 1260. This development was a disaster scenario for ZF Automotive USA, ZF
20 Electronics USA, ZF Passive Safety USA, and ZF TRW Corp. who had already
21 known about the ACU Defect for years. Upon information and belief, these
22 Defendants knew that the investigation concerned EOS (for which airbag non-
23 deployment is a key indicator) and feared NHTSA would discover the ACU Defect
24 was present in millions of vehicles sold by several of its most important customers.
25 They also knew that recalls of these vehicles would damage their business
26 reputation by costing their vehicle manufacturer customers over a billion dollars
27 collectively. Upon information and belief, recalls due to the defective DS84 ACUs
28

1 and ASICs also exposed ZF TRW Corp., ZF Electronics USA, and ZF Automotive
2 USA to contractual liability for paying for the recall costs.

3 1261. These fears were well-founded, as evidenced by ZF Automotive
4 USA's, ZF Passive Safety USA's, ZF Electronics USA's, and ZF TRW Corp.'s
5 recent experience with an EOS defect in a prior generation of its ACUs.
6 Specifically, between 2012 and 2015, NHTSA investigated millions of ACUs made
7 by ZF Automotive USA, ZF Electronics USA, and ZF Passive Safety USA in the
8 early- to mid-2000s, before they launched the DS84 ACU. These ACUs had a very
9 similar defect to the DS84 ACU and ASIC: a squib ASIC that was vulnerable to
10 EOS. These squib ASICs failed when they suffered EOS and caused inadvertent
11 airbag deployments in dozens of vehicles. NHTSA's investigation prompted Toyota
12 Engineering USA and FCA to recall 1,636,175 vehicles in 2012 and 2013.⁵²

13 1262. The remedy implemented for those recalls, a "noise filter" applied to
14 buffer the ASIC from electricity, did not fix the problem. NHTSA investigated the
15 defective ACUs and ASICs again on May 29, 2014 after receiving additional
16 reports of inadvertent deployments in previously recalled vehicles that had been
17 "repaired" with the noise filter remedy. In 2015, Toyota, Honda USA, and FCA
18 recalled 2,419,291 vehicles, including a re-recall for vehicles that had the deficient
19 noise filter remedy applied.⁵³ ZF Electronics USA, ZF Passive Safety USA, and ZF
20 Automotive USA's ultimate parent company at the time, ZF TRW Corp. knew
21 about this prior experience with EOS in TRW ACUs.

22 ⁵² Specifically, FCA announced a recall of 744,822 vehicles with this defective ZF
23 ACU on November 7, 2012 and 3,644 additional vehicles with the same ACU on
24 February 6, 2013. Toyota Engineering USA announced a recall of 887,709 vehicles
with this defective ZF ACU on January 30, 2013

25 ⁵³ Specifically, FCA announced a recall of 753,176 vehicles with this defective
26 TRW ACU on January 27, 2015, and 285,089 additional vehicles with this
27 defective TRW ACU on October 15, 2015; Honda USA recalled 374,177 vehicles
28 with this defective ZF ACU on January 28, 2015; and Toyota Engineering USA
announced a recall of 1,006,849 vehicles with this defective TRW ACU.

1 1263. NHTSA had also recently, in 2015, demonstrated a firm commitment
2 to protecting consumers from defective safety systems by ordering Takata to recall
3 tens of millions of faulty airbags. By May 2015, Takata was reportedly responsible
4 for the largest auto recall in history. Takata filed for bankruptcy two years later. In
5 this context, ZF Electronics USA, ZF Passive Safety USA, ZF Automotive USA,
6 ZF TRW Corp., and ZF Germany fully understood the risks posed by NHTSA's
7 investigation.

8 1264. To avoid a potentially existential threat to their business and prolong
9 the broader scheme to defraud consumers to overpay for Class Vehicles with a
10 dangerous safety defect, ZF Germany, ZF TRW Corp., ZF Automotive USA, ZF
11 Electronics USA, and ZF Passive Safety USA conspired with ST USA, ST Italy, ST
12 Malaysia, and each of the five Defendant Vehicle Manufacturer Groups to (a)
13 conceal the evidence of the ACU Defect from NHTSA, and (b) mislead NHTSA as
14 to the nature and scope of any problems that NHTSA uncovered.

15 1265. ST USA, ST Italy, and ST Malaysia joined in the conspiracy because
16 they shared the common goal of avoiding recalls that targeted the DS84 ACU and
17 its DS84 ASIC, the part they designed and manufactured for all Class Vehicles.

18 1266. The Vehicle Manufacturer Defendants joined in the conspiracy as it
19 pertained to their own Class Vehicles because it was cheaper to continue using the
20 defective DS84 ASICs and ACUs both because of the lower relative cost of the
21 DS84 ACU, and because of the time and expense that they would necessarily incur
22 for the significant development and design work required to use a different ACU.
23 Further, they shared the goal of avoiding expensive recalls for their Class Vehicles.
24 This was particularly true for Honda USA, Toyota Engineering USA, and FCA,
25 who had just launched an expensive *second* round of recalls in other vehicles due to
26 the earlier generation of TRW ACUs with a defective ASIC.

27 1267. Upon information and belief, in the summer of 2015, ZF Automotive
28 USA, ZF Electronics USA, and ZF Passive Safety USA informed Hyundai Korea,

1 Kia Korea, Kia USA, Hyundai USA, Hyundai Mobis, and FCA that NHTSA was
2 investigating DS84 ACUs.

3 1268. On October 20, 2015, Kia Korea, Kia USA, Hyundai USA, Hyundai
4 Korea, Hyundai Mobis, ZF Automotive USA, ZF Passive Safety USA, and ZF
5 Electronics USA met in South Korea to discuss the issue of the DS84 ACUs and
6 EOS.

7 1269. In December 2015, Kia Korea communicated to ZF Automotive USA,
8 ZF Passive Safety USA, and ZF Electronics USA its “assessment” that Joy King’s
9 Kia Forte (which had crashed in Tallahassee with no airbag deployment) had
10 “commanded non-deployment”—meaning that the airbag’s failure to deploy in the
11 crash was purposeful and consistent with the strategy for deployment in those
12 accident conditions (i.e. not suspicious or defective). Upon information and belief,
13 ZF Automotive USA, ZF Electronics USA, and ZF Passive Safety USA knew this
14 “assessment” was incorrect, because they had observed EOS damage on the DS84
15 ASIC retrieved from Ms. King’s Forte and the ACU had failed to record the crash
16 data necessary to determine that the non-deployment was “commanded” by the
17 DS84 ACU.

18 1270. Upon information and belief, in December 2015, Kia Korea and Kia
19 USA notified ZF Automotive USA, ZF Electronics USA, and ZF Passive Safety
20 USA that NHTSA had asked Kia USA questions about the fatal Kia Forte crash
21 with no airbag deployment that occurred in 2013 in California, and that Kia USA
22 would respond.

23 1271. In January 2016, ZF Automotive USA, ZF Electronics USA, and ZF
24 Passive Safety USA communicated with each of the Vehicle Manufacturer
25 Defendant Groups regarding EOS in the DS84 ACUs, and alerted them that
26 NHTSA was interested in, and asking questions about, the problem. Upon
27 information and belief, ZF Automotive USA, ZF Electronics USA, and ZF Passive
28 Safety USA communicated this information to encourage the companies implicated

1 by NHTSA’s investigation to coordinate their efforts to conceal information about
2 the existence, scope, and severity of the ACU Defect from NHTSA.

3 **2. ZF Automotive USA, ZF Passive Safety USA, ZF Electronics USA,**
4 **ZF Germany, and ZF TRW Corp. jointly made misleading**
5 **statements to NHTSA on February 5, 2016 and then mailed a copy**
6 **of those misleading statements to NHTSA on March 14, 2016.**

7 1272. In the first quarter of 2016, ZF Automotive USA, ZF Passive Safety
8 USA, ZF Electronics USA, ZF Germany, and ZF TRW Corp. used interstate mail
9 and/or wire to prepare and send a written presentation dated February 5, 2016 to
10 NHTSA. This presentation contained several misleading statements about the DS84
11 ACU Defect. Upon information and belief, ZF Automotive USA, ZF Passive Safety
12 USA, ZF Electronics USA, ZF Germany, and ZF TRW Corp. intended the
13 statements to further their conspiracies with the Vehicle Manufacturer and ST
14 Defendants by concealing the DS84 ACU Defect, avoiding recalls of unsafe Class
15 Vehicles, and allowing the continued sale of defective but profitable safety
16 equipment.

17 **a. The February 5, 2016 written presentation to NHTSA**
18 **contained misleading statements.**

19 1273. The February 5, 2016 written presentation jointly prepared by ZF
20 Automotive USA, ZF Passive Safety USA, ZF Electronics USA, ZF Germany, and
21 ZF TRW Corp. contained several misleading statements directed at NHTSA.

22 **i. The presentation misleadingly described the DS84**
23 **ACU malfunction in Joy King’s crash as a**
24 **“commanded non-deployment.”**

25 1274. The presentation stated that a Kia Forte crash called “HKMC A”
26 involved a “commanded non-deployment” and “[d]eployment not commanded . . .
27 consistent with deployment strategy decision.” In other words, the crash did not
28 merit airbag deployment. “HKMC A” describes the crash with a logging truck that
seriously injured Joy King in Tallahassee, Florida. These statements about HKMC

1 A—which Kia Korea encouraged ZF Automotive USA and ZF Electronics USA to
2 make in December 2015—were misleading given the following facts:

- 3 a. ZF Automotive USA, ZF Passive Safety USA, and ZF
4 Electronics USA had observed EOS damage on the DS84 ASIC
5 retrieved from Ms. King’s Kia Forte two months prior to making
6 this presentation to NHTSA.
- 7 b. It is not possible to reliably conclude that a non-deployment was
8 “commanded” by the DS84 ACU when, as was the case with
9 Ms. King’s Forte, the ACU is damaged by EOS. ZF Automotive
10 USA, ZF Electronics USA, and ZF Passive Safety USA knew
11 the ACU was missing a crash record, which deprives
12 investigators of the only tool that can reliably confirm a
13 “commanded non-deployment.” Indeed, ZF Automotive USA,
14 ZF Electronics USA, and ZF Passive Safety USA acknowledged
15 this general limitation in a 2012 report concerning another crash,
16 stating: “[i]t is not possible to determine whether ACU
17 attempted to deploy, or would have recorded a near deployment
18 event, since no EDR was fully recorded.”
- 19 c. The conclusion presented to NHTSA of a commanded non-
20 deployment fails to explain the observed evidence of EOS,
21 which is known to cause airbag deployment failures like that
22 observed in the King crash.
- 23 d. The above pictures of the King crash depict the type of severe
24 head-on collision where an airbag and seatbelt should activate
25 under any reasonable deployment strategy.

26 1275. The misleading statement about the King crash was material because it
27 concealed that the ACU Defect had caused serious injuries to the driver. Upon
28 information and belief, NHTSA would have considered this information important

1 to its decision whether to require a recall or expand its investigation into the DS84
2 ACUs and ASICs.

3 **ii. The presentation misleadingly described the DS84**
4 **ACU malfunction in the Ganzhou Kia Forte crash as a**
5 **“commanded nondeployment.”**

6 1276. The February 2016 presentation refers to the 2011 Kia Forte crash with
7 no airbag deployment that occurred in Ganzhou, China as “HKMC B.” It states that
8 “HKMC B” was a “commanded non-deployment” and that the DS84 ACU was
9 “not made available to ZF TRW.” These statements were false or misleading.

10 1277. First, the statement that the DS84 ACU was not made available to ZF
11 TRW was misleading, because ZF Electronics USA, ZF Passive Safety USA, and
12 ZF Automotive USA received and analyzed the ACU from this crash in 2011.
13 Proving that this statement was false when made in February 2016, ZF Automotive
14 USA later acknowledged in a document filed with NHTSA on August 15, 2018:

15 16 17 18 19 20 21 22 23 24 25 26 27 28 Aug. 2011	At Mobis’ request, ZF analyzes the ACU from a Kia Forte in China involved in an event in which the airbags purportedly did not deploy. ZF observes damage on the ASIC that is consistent with EOS. Hyundai Kia Motors Corporation (HKMC) subsequently communicates its assessment that the incident was a commanded nondeployment.
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2278. This acknowledgement concerned the ACU from the Kia Forte crash
in Ganzhou.

2279. Second, the statement that HKMC B involved a commanded
nondeployment was false, because it squarely contradicted the conclusion in the
December 9, 2011 report on the crash prepared by ZF Automotive USA, ZF
Electronics USA, and ZF Passive Safety USA. That report acknowledged it was
“[p]ossible internal damage to the squib ASIC [i.e., the DS84 ASIC] at the time of
impact causing the Reset line pulled to low, which in turn resetting [sic] the
Microcontroller operation resulting in partial EDR1 and non deployment.” In other
words, ZF Automotive USA, ZF Electronics USA, and ZF Passive Safety USA

1 recognized it was possible that EOS damage to the ASIC caused the airbags to fail
2 in 2011, but told NHTSA nearly 5 years later that the ACU was “not available” and
3 repeated the conclusion of a “commanded nondeployment.”

4 1280. These misleading statements about the Ganzhou Kia Forte crash were
5 material because they concealed evidence that the ACU Defect had caused airbag
6 failures in a crash. Upon information and belief, NHTSA would have considered
7 this information important to its decision whether to require a recall or expand its
8 investigation into the defective DS84 ACUs and ASICs.

9 **iii. The presentation misleadingly described five cases of**
10 **malfunctioning DS84 ACUs in FCA Class Vehicles as**
11 **“commanded non-deployments.”**

12 1281. Regarding five separate incidents with FCA vehicles that crashed with
13 no airbag deployment and “EOS Present” or “likely”, the presentation misleadingly
14 stated: “All non-deployment[s] likely commanded due to customer deployment
15 strategy design.” This statement, which concerned the 2012 Jeep Patriot, the 2012
16 Dodge Avenger, the 2012 Chrysler 200, the 2011 Dodge Avenger, and the 2012
17 Chrysler 200 Convertible discussed in Sections IV.D.4.e., IV.D.4.g., IV.D.4.l.,
18 IV.D.4.o., and IV.D.4.n. above, was misleading for several reasons.

- 19 a. First, all of these FCA Class Vehicles had missing crash records,
20 thereby making it impossible to reliably determine whether any
21 non-deployment was “commanded.” As ZF Automotive USA,
22 ZF Electronics USA, and ZF Passive Safety USA acknowledged
23 in a 2012 report about a Kia Forte crash: “[i]t is not possible to
24 determine whether ACU attempted to deploy, or would have
25 recorded a near deployment event, since no EDR was fully
26 recorded.” This principle applied with equal force to the same
27 EDR technology in these FCA Class Vehicles.
28

1 b. Second, the pictures of the wreckage from these incidents show
2 the type of catastrophic collisions that obviously merit airbag
3 deployment. These pictures are collected in Sections IV.D.4.e.,
4 IV.D.4.g., IV.D.4.i., IV.D.4.o., and IV.D.4.n. above.

5 c. Third, FCA confirmed that these statements were misleading in
6 its 573 Defect Report filed for the September 2016 recall of the
7 vehicle models involved in this incident. That report does not
8 mention deployment strategies as a purported reason for the
9 failures because FCA concluded that its deployment strategies
10 should have commanded deployment.

11 1282. Misleadingly describing these five crashes as “commanded
12 nondeployments” was material because that description concealed evidence that the
13 ACU Defect had caused airbag failures in multiple crashes. Upon information and
14 belief, NHTSA would have considered this information important to its decision
15 whether to require a recall or expand its investigation in the defective DS84 ACUs
16 and ASICs.

17 **iv. The presentation misleadingly suggested that the**
18 **safety restraints deployed properly in two FCA Class**
19 **Vehicle crashes.**

20 1283. The presentation stated that in two incidents involving 2012 Jeep
21 Patriots called “Chrysler A” and “Chrysler B,” “[d]eployment occurred even though
22 there is no or partial crash record.” This statement was misleading because it
23 suggested that Chrysler A and Chrysler B did not involve a failure of the safety
24 system’s restraints.

25 1284. In fact, “Chrysler B” refers to the crash test of a 2012 Jeep Patriot
26 conducted by the Insurance Institute for Highway Safety. In this test, the Institute
27 found in 2012 or 2013 that: “the seat belt allowed excessive forward excursion of
28 the dummy’s head and torso, and the driver’s seat tipped forward and toward the B-

1 pillar. The side curtain airbag did not deploy, leaving the dummy’s head vulnerable
2 to contacts with side structure and outside objects.” As FCA would internally admit
3 just a few months later, the second stage airbags should have deployed in this crash
4 test. Accordingly, it was misleading for this presentation to suggest “[d]eployment
5 occurred” in this crash test, when the truth was that one front airbag deployed but
6 the seatbelts and second stage airbag malfunctioned. These failures are serious
7 shortcomings that caused the Institute to grade this test result as “Poor.”

8 1285. “Chrysler A,” on the other hand, refers to the November 28, 2013
9 crash in Wisconsin of a 2012 Jeep Patriot with partial airbag deployment. FCA
10 concluded from its analysis of crash event timing that ASIC EOS prevented
11 deployment of the second stage airbags. Accordingly, it was misleading to suggest
12 “deployment occurred” when the truth was that the second stage airbags failed.

13 1286. Misleadingly describing these two crashes with “deployment
14 occurred” was material because an assessment of a safety risk posed by the ACU
15 Defect would have required NHTSA to assess the risk posed by the partial
16 deployment of safety restraints. Upon information and belief, NHTSA would have
17 considered this information important to its decision whether to require a recall or
18 expand its investigation in the defective DS84 ACUs and ASICs.

19 **v. The presentation misleadingly understated the**
20 **number of cases of confirmed EOS by excluding ten**
21 **more known incidents.**

22 1287. The presentation states: “this presentation covers global field incidents
23 with confirmed EOS across all customers based on the information currently
24 available to ZF TRW.” This statement was false because the presentation omitted
25 at least 10 confirmed cases of DS84 ASIC EOS known to ZF Automotive USA, ZF
26 Electronics USA, and ZF Passive Safety USA as this time. The known incidents
27 omitted from the presentation include:
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- 1 a. The four Hyundai Sonata crash tests and one Kia Optima crash
- 2 test for which ZF Automotive USA, ZF Electronics USA, and
- 3 ZF Passive Safety USA confirmed ASIC EOS in 2012;
- 4 b. The Honda Accord crash test in Japan with a nondeployment
- 5 event, for which ZF Electronics USA, ZF Passive Safety USA,
- 6 and ZF Automotive USA confirmed ASIC EOS in late 2012 or
- 7 2013;
- 8 c. The Honda City crash test in Japan for which ZF Automotive
- 9 USA, ZF Electronics USA, and ZF Passive Safety USA
- 10 confirmed ASIC EOS in 2014; and
- 11 d. Two Kia Forte crashes and one Kia K5 crashed with
- 12 nondeployments in Wehai, Xinyang, and Zhenjiang for which
- 13 ZF Automotive USA, ZF Electronics USA, and ZF Passive
- 14 Safety USA confirmed ASIC EOS in 2012.

15 1288. The exclusion of these seven crash tests and three real-world crashes
16 from a chart purporting to cover all “global field incidents with confirmed EOS
17 across all customers” materially deflated the count of known suspicious incidents
18 presented to NHTSA. Upon information and belief, NHTSA would have considered
19 an additional ten incidents with confirmed EOS important to its decision whether to
20 require a recall or expand its investigation in the defective DS84 ACUs and ASICs.
21 The exclusion of these incidents was material because NHTSA later asked Kia
22 USA to conduct its recall of vehicles with the DS84 ACU Defect based on fewer
23 than ten suspicious crashes in the field.

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vi. The presentation blamed wire harnesses as the cause of suspicious DS84 ACU malfunctions, which was misleading because the ACU Defect was the true root cause.

1289. The presentation attempted to blame the wiring harness in FCA Class Vehicles as the primary cause of DS84 ACU malfunctions by stating that “[v]ehicle wiring architecture can contribute to EOS.” According to the presentation, the Jeep Liberty, Dodge Avenger, and Chrysler 200 “platforms route front passenger side satellite wire across the front of the vehicle and bundle with the driver side satellite wire. . . . This can cause the wiring for both front crash sensors to get damage[d] in frontal left offset collisions.” This was an issue, it explained, because “[l]oss of signal from a front crash sensor may direct a commanded non-deployment in certain crash scenarios.” In other words, the presentation explained that the wires in certain types of crashes could interfere with airbag deployment due to the placement of the wiring in these vehicles.

1290. This explanation was misleading because ZF Automotive USA, ZF Passive Safety USA, and ZF Electronics USA knew that the DS84 ACUs were inherently defective and vulnerable to EOS irrespective of the presence of cross-car wiring. For example, these entities each knew that Hyundai-Kia vehicles with nondeployments linked to EOS did not have cross-car wiring like this. Moreover, in June 2013, ZF Automotive USA, ZF Passive Safety USA, and ZF Electronics USA prepared a written analysis noting two EOS failure modes (one relating to a shorted crash sensor wire and another relating to a shorted squib communication line) had occurred in Jeep Wranglers, another vehicle model without cross-car wiring. By 2016, FCA had already learned of at least fourteen crashes involving nondeployments and signs of DS84 ASIC EOS in Class Vehicles without cross-car wiring, including eight Dodge Rams, five Jeep Wranglers, and one Fiat 500.⁵⁴

⁵⁴ The Dodge Ram crashes occurred in 2010 in Texas, in 2011 in Georgia, in 2012
Footnote continued on next page

1 1291. Contrary to the above misleading statements that blame wire harnesses
2 for nondeployments, the root cause of these incidents remains the DS84 ACU's and
3 ASIC's vulnerability to transients and EOS. The defect remains in the DS84 ACU
4 irrespective of the placement of car wiring. For example, Hyundai Korea, Kia
5 Korea, Hyundai Mobis, Kia USA, and Hyundai USA sent correspondence to ZF
6 Automotive USA, ZF Electronics USA, and ZF Passive Safety USA in or around
7 April 2016 confirming this: "TRW's presentation identifies that all EOS problems
8 involving all manufacturers have only occurred in the ST Micro DS84 ASIC. *The*
9 *logical inference is that some design flaw or weakness in the DS84 ASIC is the core*
10 *reason for any EOS incidents.*" (emphasis added).

11 1292. ZF Automotive USA's, ZF Passive Safety USA's, and ZF Electronics
12 USA's efforts to blame wire harnesses on nondeployments in FCA Class Vehicles
13 were also misleading because they knew wire harnesses could not have caused at
14 least some observed DS84 ACU malfunctions, including nine inadvertent
15 deployments in vehicles made by five different manufacturers (FCA, Kia Korea,
16 Honda Japan, and two Chinese manufacturers). In these incidents, the vehicles did
17 not crash and therefore a break in the frontal crash sensor wires could not have
18 released a transient. Instead, as ZF Electronics USA, ZF Passive Safety USA, and
19 ZF Automotive USA explained to FCA in 2013, the root cause of inadvertent
20 deployments is likely a transient surge originating from a connection between an
21 airbag squib ASIC and the DS84 ASIC, which is unrelated to the cross-car wiring
22 of front-end crash sensors. Notably, the Jeep Wrangler with an inadvertent
23 deployment and confirmed EOS on the DS84 ASIC did not have the type of cross-

25 *Footnote continued from previous page*
26 in North Carolina, in 2014 in West Virginia and Arkansas, and in 2015 in Maine,
27 Pennsylvania, and Connecticut. The Jeep Wrangler crashes occurred in 2011 in
28 West Virginia, in 2014 in California, in 2015 in Georgia and Iowa, and in 2014 in
New York. The Fiat 500 crashed in 2015 in California.

1 car wiring that ZF Automotive USA, ZF Passive Safety USA, and ZF Electronics
2 USA blamed as a “contribut[or] to EOS.”

3 1293. The presentation’s statements blaming wire harnesses for EOS were
4 material because they obscured the scope of the ACU Defect by suggesting that
5 only vehicles with a particular type of wiring may have a defect. To the contrary,
6 *all* vehicles, with or without cross-car wiring, that use the DS84 ACU and ASIC are
7 defective.

8 **vii. The presentation misleadingly claimed the ACU**
9 **Defect was “vehicle dependent.”**

10 1294. The presentation also stated, “[p]resence and impact of EOS on ACUs
11 is vehicle dependent.” This statement was misleading because ZF Automotive
12 USA, ZF Passive Safety USA, and ZF Electronics USA had previously made
13 common recommendations regarding DS84 ASIC EOS across different vehicle
14 types and manufacturers. For example, in 2013, ZF Electronics USA recommended
15 additional circuit protection for defective Jeep vehicles to FCA and expressly based
16 those recommendations on experience with unrelated vehicles made by other
17 manufacturers. Indeed, one ZF Electronics USA presentation to FCA from 2013
18 stated “Initial EOS Design Proposal based on design experience in response to
19 *other customer specifications*,” and suggest diodes “may mitigate EOS” and that an
20 additional proposal “based on *other customer specifications* and experience”
21 suggested a “[i]n rush limiting circuit” “may mitigate EOS.” In other words, ZF
22 Electronics USA told FCA that the experiences with EOS in other vehicles by other
23 vehicle manufacturers should translate to Jeep vehicles experiencing the same
24 problems.⁵⁵ These recommendations contradict the later statement to NHTSA that

25 ⁵⁵ In a 2019 meeting with Toyota Japan, Toyota Engineering USA, and Toyota
26 USA, ZF Electronics USA, ZF Passive Safety USA, and ZF Automotive USA
27 similarly claimed that a 2015 design change to increase the diode protection on
28 certain European models with the DS84 ASIC was based on “[l]earning made with
other OEMs.” Again, these statements are inconsistent with statements to NHTSA

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1 all EOS is “vehicle dependent.” If this were true, recommendations based on other
2 manufacturers’ experiences with EOS in other vehicles would be irrelevant.

3 1295. This statement was material because it suggested that only vehicles
4 with confirmed DS84 ACU malfunctions were potentially defective. In reality,
5 millions of Class Vehicles were defective, because all vehicles that use the DS84
6 ACU and ASIC are defective.

7 **b. ZF Automotive USA, ZF Passive Safety USA, ZF Electronics**
8 **USA, ZF Germany and ZF TRW Corp. have joint**
9 **responsibility for the content of the misleading February 5,**
10 **2016 presentation.**

11 1296. On February 5, 2016, agents of ZF Automotive USA, ZF Electronics
12 USA, and ZF Passive Safety USA met with NHTSA. During the meeting, ZF
13 Automotive USA, ZF Electronics USA, and ZF Passive Safety USA used the
14 February 5, 2016 written presentation discussed above to mislead NHTSA as to the
15 existence, nature, and scope of the ACU Defect.

16 1297. ZF Electronics USA, ZF Passive Safety USA, and ZF TRW Corp.
17 contributed to the preparation of the contents of the February 5, 2016 presentation.
18 Upon information and belief, Marc Bolitho, who was an employee of ZF Passive
19 Safety USA and also served as Director of Passive Safety Engineering for ZF TRW
20 Corp. and Vice President of Passive Safety Engineering for ZF Electronics USA,
21 authored at least some portions of the presentation.

22 1298. ZF Automotive USA admitted in an attachment to a 573 Defect Report
23 filed with NHTSA in 2018 that it attended the February 5, 2016 meeting with
24 NHTSA. Based on this admission, it approved and adopted the contents of the
25 presentation used during that meeting on its behalf, as well as the delivery of the
26 presentation to NHTSA.

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Footnote continued from previous page
28 that ACU design issues are platform dependent.

1 1299. Upon information and belief, ZF Germany reviewed and approved the
2 contents of the February 5, 2016 presentation before it was used, given its regular
3 involvement in communications with NHTSA by its subsidiaries. Indeed, ZF
4 Germany was also ultimately responsible for (and, in fact, purported to own) the
5 content of this presentation because each page of this presentation states: “© ZF
6 Friedrichshafen AG.” The ZF Passive Safety USA and ZF Electronics USA
7 employees who wrote this presentation would not have identified ZF Germany
8 without ZF Germany’s approval.⁵⁶

9 1300. ZF TRW Corp. also reviewed and approved the contents of this
10 presentation before it was used in a meeting with NHTSA.

11 1301. ZF TRW Corp. also separately sent the presentation to NHTSA via
12 Federal Express on March 14, 2016. The cover letter for this transmittal is signed:
13 “Very truly yours, ZF TRW Corp.” with a signature from Sheri Roberts, the Senior
14 Counsel of the company.

15 1302. Marc Bolitho signed the certificate supporting a request for
16 confidentiality of the February 5, 2016 presentation. The certification states: “I
17 certify the attached information” (i.e., the presentation) regarding “the internal
18 investigation” of ZF TRW Corp. and its subsidiaries was “proprietary
19 information”—meaning that ZF TRW Corp. had a property interest in the
20 information presented in the slide deck. ZF TRW Corp.’s ownership interest in this
21 document is also confirmed by the following language on the footer of every page:
22 “This document is the property of ZF TRW and is disclosed in confidence. It may

23 ⁵⁶ ZF Germany has never denied Plaintiffs’ allegation that “ZF Friedrichshafen
24 AG’s consent was required to send the presentation to NHTSA and/or the Vehicle
25 Manufacturer Defendants, and ZF Friedrichshafen AG provided consent.” Dkt. 120
26 at ¶168. On the contrary, it has relied on declarations that concede: “ZF
27 Friedrichshafen AG . . . exercises only limited control over ZF’s domestic entities
28 communications with NHTSA.” Dkt. 209-4 at ¶10. This vague statement does not
deny that ZF Germany’s consent was required for the domestic ZF companies to
send presentations to NHTSA or that ZF Germany provided that consent.

1 not be copied, disclosed to others, or used for manufacturing without the written
2 consent of ZF TRW.” Because ZF Germany’s 2016 Annual Report identifies ZF
3 TRW Corp. as the only subsidiary with a name containing “ZF TRW,” “ZF TRW”
4 as used in the document must refer to ZF TRW Corp. All of these statements about
5 ZF TRW Corp.’s proprietary interest in the February 5, 2016 presentation confirm
6 its joint responsibility for its content.

7 1303. Upon information and belief, in addition to using mail to send a copy
8 of the February 5, 2016 presentation to NHTSA, ZF Automotive USA, ZF Passive
9 Safety USA, ZF Electronics USA, ZF Germany, and ZF TRW Corp. each used
10 email or other electronic means of communication to exchange, make comments on
11 and convey approval of drafts of the February 5, 2016 presentation. Accordingly,
12 these Defendants used interstate wires to facilitate the preparation of the February
13 5, 2016 presentation.

14 **3. Following the February 5, 2016 meeting with NHTSA, ZF**
15 **Electronics USA, ZF Passive Safety USA, and ZF Automotive USA**
16 **coordinated with their co-conspirators to avoid NHTSA’s**
17 **discovery of the ACU Defect and recalls of Class Vehicles.**

18 1304. Following the February 5, 2016 meeting with NHTSA, ZF Electronics
19 USA, ZF Passive Safety USA, and ZF Automotive USA coordinated with their co-
20 conspirators—Toyota Japan, Toyota Engineering USA, Honda Japan, Mitsubishi
21 Japan, FCA, Hyundai Korea, Kia Korea, Hyundai Mobis, and each ST Defendant—
22 by sending written copies of the February 5, 2016 presentation containing the
23 misleading statements to NHTSA, described above, to those co-conspirators by
24 mail and wire, and by holding meetings with them to discuss NHTSA’s next steps.
25 Upon information and belief, ZF Electronics USA, ZF Passive Safety USA, and ZF
26 Automotive USA took these steps to coordinate a united front in furtherance of
27 their fraudulent scheme to conceal the ACU Defect from NHTSA.
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a. ZF Electronics USA, ZF Passive Safety USA, and ZF Automotive USA sent excerpts of the misleading February 5, 2016 presentation to its co-conspirators for the purpose of coordinating their misrepresentations to NHTSA.

1305. Upon information and belief, in February 2016, ZF Electronics USA, ZF Passive Safety USA, and ZF Automotive USA sent excerpted versions of the February 5, 2016 presentation to Toyota Japan, Toyota Engineering USA, Honda Japan, Mitsubishi Japan, FCA, Hyundai Korea, Kia Korea, Hyundai Mobis, and each ST Defendant.

1306. Upon information and belief, ZF Germany and ZF TRW Corp. reviewed and approved these transmittals of the February 5, 2016 presentation.

1307. Upon information and belief, the excerpted versions of this presentation contained several talking points created by the ZF Defendants designed to downplay the ACU Defect by misleadingly blaming airbag nondeployments on purportedly vehicle-dependent phenomena, such as the layout of wiring in the hood of the car, how grounded the chassis is, or manufacturer deployment strategies.

1308. The version of the presentation sent to Hyundai Korea, Kia Korea, and Hyundai Mobis contained the misleading statements concerning Hyundai-Kia vehicles noted above.

1309. The version of the presentation sent to FCA contained the misleading statements concerning the FCA vehicles.

1310. Upon information and belief, ZF Electronics USA, ZF Passive Safety USA, and ZF Automotive USA circulated the February 5, 2016 presentation to the Vehicle Manufacturer Defendants and ST Defendants to facilitate their scheme to mislead NHTSA as to the nature and scope of the ACU Defect.

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b. Between February 5, 2016 and July 19, 2016, ZF Automotive USA, ZF Electronics USA, and ZF Passive Safety USA repeatedly communicated with the Hyundai-Kia Defendants and FCA about NHTSA’s investigation.

1311. Between February 5, 2016 and July 19, 2016, the Hyundai-Kia Defendants repeatedly communicated with ZF Automotive USA, ZF Electronics USA, and ZF Passive Safety USA to coordinate their positions regarding the ACU Defect. Upon information and belief, the goal of these communications was to avoid any recall of vehicles with DS84 ACUs and enable the continued use of the defective DS84 ACU and DS84 ASIC.

- a. Upon information and belief, on February 11, 2016, ZF Automotive USA, ZF Electronics USA, and ZF Passive Safety USA held a conference call with Kia USA concerning the February 5, 2016 meeting with NHTSA.
- b. Upon information and belief, on February 25, 2016, ZF Automotive USA, ZF Electronics USA, ZF Passive Safety USA, Kia Korea, Hyundai Mobis, Hyundai Korea, Hyundai USA, and Kia USA held a meeting in Korea so that the Hyundai-Kia Defendants could obtain further information from ZF Automotive USA, ZF Electronics USA, and ZF Passive Safety USA about NHTSA’s investigation.
- c. On March 24, 2016, ZF Automotive USA, ZF Electronics USA, and ZF Passive Safety USA re-sent the 2012 written analysis regarding the Kia K5 with a nondeployment in Liuzhou, China to Hyundai Mobis in response to a request from Hyundai Mobis.
- d. Upon information and belief, between April 21, 2016 and June 29, 2016, ZF Automotive USA, ZF Electronics USA, ZF Passive Safety USA, Kia Korea, Hyundai Mobis, Hyundai

1 Korea, Hyundai USA, and Kia USA continued their discussions
2 about their positions with NHTSA about the ACU Defect.

3 e. Upon information and belief, on or around April 21, 2016, Kia
4 Korea, Hyundai Korea, Hyundai Mobis, Hyundai Korea,
5 Hyundai USA, and Kia USA sent a jointly-approved written
6 communication to ZF Automotive USA, ZF Electronics USA,
7 and ZF Passive Safety USA that stated: “TRW’s presentation
8 identifies that all EOS problems involving all manufacturers
9 have only occurred in the ST Micro DS84 ASIC. *The logical
10 inference is that some design flaw or weakness in the DS84
11 ASIC is the core reason for any EOS incidents.*” (emphasis
12 added).

13 f. Upon information and belief, on April 25, 2016, ZF Passive
14 Safety USA, ZF Electronics USA, ZF Automotive USA,
15 Hyundai Korea, Hyundai Mobis, and Hyundai USA attended an
16 inspection of the Twohills’ Hyundai Sonata, discussed below.⁵⁷
17 During this inspection, Hyundai Korea, Hyundai Mobis, and
18 Hyundai USA urged ZF Passive Safety USA, ZF Electronics
19 USA, and ZF Automotive USA to label the Twohill incident a
20 “commanded non-deployment.”

21 g. Upon information and belief, on May 24 and 25, 2016, ZF
22 Automotive USA, ZF Electronics USA, ZF Passive Safety USA,

23 ⁵⁷ Documents produced by Defendants indicate the following individuals attended:
24 Sihng Kwang Cheol, the Senior Research Engineer of Hyundai Korea; Changbeom
25 You, the Deputy General Manager of Hyundai Korea’s Quality Strategy Team;
26 Kim Seong Hwan, the Assistant Manager of Hyundai Korea’s Electronic
27 Improvement Team; Eric Sim, the Senior Manager of Hyundai USA’s Engineering
28 and Design Analysis; and Park Chul Hong, the Manager of Hyundai Mobis’s NTF
Analysis Team; Bill Herndon of ZF Electronics USA and/or ZF Passive Safety
USA.

1 Kia Korea, Hyundai Mobis, Hyundai Korea, Hyundai USA, and
2 Kia USA again met in Korea. During this meeting, ZF
3 Electronics USA, ZF Passive Safety USA, and ZF Automotive
4 USA presented a detailed fault tree analysis concerning the
5 ACU Defect. During this meeting, Hyundai Korea, Hyundai
6 Mobis, and Hyundai USA again urged ZF Passive Safety USA,
7 ZF Electronics USA, and ZF Automotive USA to label the
8 Twohill incident a “commanded non-deployment” in
9 communications with NHTSA.

10 h. Upon information and belief, on or around June 29, 2016, ZF
11 Automotive USA, ZF Electronics USA, and ZF Passive Safety
12 USA informed Kia Korea, Hyundai Korea, Hyundai USA, Kia
13 USA, and Hyundai Mobis that they had not disclosed 17 crashes
14 and crash tests involving potential DS84 ACU malfunctions in
15 Hyundai-Kia vehicles to NHTSA, including eight with
16 confirmed EOS.

17 1312. Upon information and belief, between February 5, 2016 and July 19,
18 2016, FCA regularly communicated with ZF Automotive USA, ZF Electronics
19 USA, and ZF Passive Safety USA regarding NHTSA’s investigation, including on
20 March 31, 2016; June 15, 2016; July 12, 2016; and July 18, 2016. Upon
21 information and belief, the July 18, 2016 communication encouraged FCA to take
22 the position that “wiring and calibration changes . . . may have influenced the
23 occurrence of ASIC EOS and/or airbag and pretensioner deployment” in the FCA
24 Class Vehicle crashes with confirmed EOS.

25 1313. Upon information and belief, between February 2016 and June 2016,
26 ZF Automotive USA, ZF Passive Safety USA, ZF Electronics USA, and ZF TRW
27 Corp. held weekly meetings with ST USA and ST Italy to formulate a position to
28

1 communicate with NHTSA on the root cause of the EOS in DS84 ACUs and
2 ASICs.

- 3 **4. ZF Automotive USA, ZF Passive Safety USA, ZF Electronics USA,**
4 **ZF Germany, and ZF TRW Corp. jointly made misleading**
5 **statements to NHTSA on July 19, 2016 and mailed a copy of those**
6 **misleading statements to NHTSA in July or August 2016.**

7 1314. In summer 2016, ZF Automotive USA, ZF Passive Safety USA, ZF
8 Electronics USA, ZF Germany, and ZF TRW Corp. used interstate mail and/or wire
9 to prepare and send a written presentation dated July 19, 2016 to NHTSA. This
10 presentation contained several misleading statements about the DS84 ACU and
11 ASIC. Upon information and belief, ZF Automotive USA, ZF Passive Safety USA,
12 ZF Electronics USA, ZF Germany, and ZF TRW Corp. intended the statements to
13 further their conspiracies with the Vehicle Manufacturer and ST Defendants by
14 concealing the DS84 ACU Defect to avoid recalls of defective Class Vehicles and
15 allow the continued sale of defective but profitable safety equipment.

- 16 **a. The July 19, 2016 written presentation contained misleading**
17 **statements.**

18 1315. The July 19, 2016 written presentation jointly prepared by ZF
19 Automotive USA, ZF Passive Safety USA, ZF Electronics USA, ZF Germany, and
20 ZF TRW Corp. contains several misleading statements directed at NHTSA,
21 including both affirming earlier misleading statements from the February 5, 2016
22 presentation, and adding separate and new misleading statements.

- 23 **i. The presentation misleadingly suggested that an**
24 **investigation into the 2013 fatal Kia Forte crash in**
25 **California was “ongoing,” when, in fact, ZF**
26 **Electronics USA, ZF Passive Safety USA, and ZF**
27 **Automotive USA had completed their investigation**
28 **and confirmed EOS.**

1316. The presentation states there would be an “[o]ngoing investigation of
event HKMC D,” which refers to the Kia Forte crash in Northern California with no

1 airbag deployment that seriously injured Ronald Hill and killed his wife, Lomia
2 Faumuina. The presentation misleadingly suggested “HKMC and ZF TRW meeting
3 again in Korea on July 29” as part of this ongoing investigation. Upon information
4 and belief, these statements were false because none of the ZF Defendants had
5 further plans to investigate the Faumuina crash. In fact, they had already confirmed
6 EOS on the vehicle’s DS84 ASIC and knew that the ACU had not recorded any
7 crash data, which is a sign of EOS. These conclusions were reached more than six
8 months earlier, in 2015.

9 1317. Two pieces of evidence confirm the absence of Defendants’ genuine
10 intention to further investigate the Faumuina case.

11 a. First, upon information and belief, in or around April 21, 2016,
12 Hyundai Korea, Kia Korea, Hyundai Mobis, Kia USA, and
13 Hyundai USA asked ZF Automotive USA, ZF Electronics USA,
14 and ZF Passive Safety USA to describe “TRW’s thoughts on
15 appropriate future plans how best to analyze the nondeployment
16 in the [Forte] *Faumuina* case, so that HKMC, Mobis, and TRW
17 can coordinate and cooperate to resolve this key issue
18 according.” In a response dated June 29, 2016, ZF Automotive
19 USA, ZF Electronics USA, and ZF Passive Safety USA pointed
20 to a May 2016 “fault tree analysis” but described no intended
21 future steps. This response confirmed there were no plans for
22 further investigation.

23 b. Second, according to a document Kia USA later filed with
24 NHTSA, sometime within the 12-day period between the July
25 19, 2016 meeting with NHTSA and the end of that month, in-
26 house attorneys representing ZF Automotive USA, ZF
27 Electronics USA, and ZF Passive Safety USA informed Kia
28 Korea that “NHTSA is satisfied and no action is to be taken by

1 NHTSA.” The close proximity of this event to July 19, 2016
2 strongly indicates that ZF Automotive USA, ZF Electronics
3 USA, and ZF Passive Safety USA had no further intention to
4 investigate the Faumuina crash.

5 1318. The misleading suggestion that some meaningful “investigation” of the
6 Faumuina crash was still ongoing was material, because if ZF Electronics USA, ZF
7 Passive Safety USA, and ZF Automotive USA had acknowledged that the
8 investigation was closed, NHTSA could have determined that the DS84 ACU had
9 malfunctioned due to EOS, as those Defendants had already done. The Faumuina
10 crash is one of the six Hyundai-Kia crashes and four Hyundai-Kia fatalities that
11 prompted NHTSA to launch a formal investigation (called an Engineering
12 Analysis) on March 16, 2018. This confirms the materiality of information about
13 this crash.

14 **ii. The presentation misleadingly described the DS84**
15 **ACU malfunction in Joy King’s crash a “commanded**
16 **non-deployment.”**

17 1319. The July 2016 presentation states that a Kia Forte crash called “HKMC
18 A” involved a “commanded non-deployment due to under-ride.” As also discussed
19 above, “HKMC A” describes the crash with a logging truck that seriously injured
20 Joy King in Tallahassee, Florida. These statements about HKMC A—which Kia
21 Korea encouraged ZF Automotive USA, ZF Electronics USA, and ZF Passive
22 Safety USA to make in December 2015—were misleading given the following
23 facts.

- 24 a. ZF Automotive USA, ZF Electronics USA, and ZF Passive
25 Safety USA had observed EOS damage on the DS84 ASIC
26 retrieved from Ms. King’s vehicle in December 2015.
- 27 b. It is not possible to reliably conclude that a non-deployment was
28 “commanded” by the DS84 ACU when, as was the case with

1 Ms. King’s vehicle, the ACU is damaged from EOS. ZF
2 Automotive USA, ZF Electronics USA, and ZF Passive Safety
3 USA knew the ACU was missing a crash record, which deprives
4 investigators of the only tool that can reliably confirm a
5 commanded non-deployment. Indeed, ZF Automotive USA, ZF
6 Electronics USA, and ZF Passive Safety USA acknowledged
7 this general limitation in a 2012 report concerning another crash,
8 stating: “[i]t is not possible to determine whether ACU
9 attempted to deploy, or would have recorded a near deployment
10 event, since no EDR was fully recorded.”

- 11 c. The conclusion presented to NHTSA of a commanded non-
12 deployment fails to explain the observed evidence of EOS,
13 which is known to cause airbag deployment failures like that
14 observed in the King crash.
- 15 d. The above pictures of the King crash depict the type of severe
16 head-on collision where an airbag and seatbelt should activate
17 under any reasonable deployment strategy.

18 1320. The misleading statement that the King crash involved a commanded
19 nondeployment was material because it concealed evidence that the ACU Defect
20 had caused airbag failures in a crash. The King crash is one of the six Hyundai-Kia
21 crashes that ultimately prompted NHTSA to launch a formal investigation (called
22 an Engineering Analysis) on March 16, 2018. This confirms the materiality of
23 information about this crash.

24 **iii. The presentation misleadingly described the DS84**
25 **ACU malfunction in the Ganzhou Kia Forte crash as a**
26 **“commanded nondeployment.”**

27 1321. The July 2016 presentation also refers to the 2011 Kia Forte crash with
28 no airbag deployment that occurred in Ganzhou, China as “HKMC B.” The

1 presentation states that “HKMC B” was a “commanded non-deployment” and that
2 the DS84 ACU was “not made available to ZF TRW.” These statements were false
3 or misleading.

4 1322. First, this statement that the DS84 ACU was not made available to ZF
5 TRW was misleading, because ZF Electronics USA, ZF Passive Safety USA, and
6 ZF Automotive USA received and analyzed the ACU from this crash in 2011.
7 Proving that this statement was false when made in July 2016, ZF Automotive USA
8 later acknowledged in a document filed with NHTSA on August 15, 2018:

9 10 11 12 Aug. 2011	At Mobis’ request, ZF analyzes the ACU from a Kia Forte in China involved in an event in which the airbags purportedly did not deploy. ZF observes damage on the ASIC that is consistent with EOS. Hyundai Kia Motors Corporation (HKMC) subsequently communicates its assessment that the incident was a commanded nondeployment.
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13 1323. Second, the statement that HKMC B involved a commanded
14 nondeployment was false, because it squarely contradicted the conclusion in the
15 December 9, 2011 report on the crash prepared by ZF Automotive USA, ZF
16 Electronics USA, and ZF Passive Safety USA. That report acknowledged it was
17 “[p]ossible internal damage to the squib ASIC [i.e., the DS84 ASIC] at the time of
18 impact causing the Reset line pulled to low, which in turn resetting [sic] the
19 Microcontroller operation resulting in partial EDR1 and non deployment.” In other
20 word ZF Automotive USA, ZF Electronics USA, and ZF Passive Safety USA
21 recognized it was possible that EOS damage to the ASIC caused the airbags to fail
22 in 2011, but told NHTSA nearly 5 years later that the ACU was “not available” and
23 repeated the conclusion of a “commanded nondeployment.”

24 1324. These misleading statements were material because they concealed
25 evidence that the ACU Defect had caused airbag failures in a crash. Upon
26 information and belief, NHTSA would have considered this information important
27 to its decision whether to require a recall or expand its investigation in the defective
28 DS84 ACUs and ASICs.

1 **iv. The presentation misleadingly called the Twohill crash**
2 **a “commanded nondeployment” and blamed**
3 **Hyundai-approved wiring modifications for any EOS.**

4 1325. The July 2016 presentation states regarding an incident called “HKMC
5 C”: “HKMC analysis confirmed event as commanded nondeployment” and
6 “[v]ehicle analysis identified aftermarket accessories spliced into ACU power lines
7 as likely contributor to source of EOS.” “HKMC C” refers to the Hyundai Sonata
8 crash in Iowa in 2011 that injured the Twohills. Both statements were misleading.

9 1326. The statement suggesting the Twohill crash involved “commanded
10 nondeployment” was misleading because the DS84 ACU from this vehicle failed to
11 generate a crash record, thereby rendering it impossible to reliably confirm a
12 “commanded nondeployment.” And contrary to the claims in the July 19, 2016
13 presentation, Hyundai USA later did not claim to have confirmed a “commanded
14 nondeployment” when explaining this incident to NHTSA in 2018.

15 1327. The statement blaming “aftermarket accessories” for EOS was
16 misleading because ZF Automotive USA, ZF Electronics USA, and ZF Passive
17 Safety USA knew that the Hyundai-Kia Defendants had approved the modifications
18 to the Twohills’ Sonata. In fact, a written report from May 2016 authored by
19 Emanuel Goodman—one of the authors of the July 19, 2016 presentation for ZF
20 Electronics USA and ZF Passive Safety USA—states: “HKMC communicated that
21 the aftermarket homelink system *was an approved Hyundai kit.*” (emphasis added).
22 The July 19, 2016 presentation misleadingly omitted this fact, which was important
23 for a complete assessment of whether the DS84 ACU and ASIC should have
24 withstood transients purportedly caused by any wiring modifications, including
25 with an approved accessory for the vehicle.

26 1328. Both misleading statements were material because they concealed
27 evidence that the ACU Defect as the root cause of airbag failures in a crash. Upon
28 information and belief, NHTSA would have considered this information important

1 to its decision whether to require a recall or expand its investigation into the
2 defective DS84 ACUs and ASICs.

3 **v. The presentation misleadingly called the airbag**
4 **failures in the Egyptian Kia Forte crash a**
5 **“commanded non-deployment.”**

6 1329. The presentation describes an incident called “HKMC E” as a “Near
7 deploy event” (i.e., a crash that almost triggered deployment thresholds) and
8 “commanded non-deployment.” “HKMC E” refers to the Kia Forte crash in Egypt
9 that occurred in 2011 or early 2012. This characterization was misleading because a
10 written analysis of the crash dated May 15, 2012 by ZF Electronics USA, ZF
11 Passive Safety USA, and ZF Automotive USA states: “[i]t is not possible to
12 determine whether ACU attempted to deploy, or would have recorded a near
13 deployment event, since no EDR was fully recorded.” Accordingly, it was
14 misleading to state with any confidence that this crash was a “near deploy event” or
15 “commanded non-deployment.”

16 1330. This misleading statement was material because it concealed evidence
17 that the ACU Defect had caused airbag failures in a crash. Upon information and
18 belief, NHTSA would have considered this information important to its decision
19 whether to require a recall or expand its investigation into the defective DS84
20 ACUs and ASICs.

21 **vi. The presentation misleadingly called six FCA Class**
22 **Vehicle crashes with airbag failures “commanded non-**
23 **deployments.”**

24 1331. Regarding six separate incidents with FCA vehicles that crashed with
25 no airbag deployment and “EOS Present” (one more than in the February 5, 2016
26 presentation), the presentation misleadingly stated: “All non-deployment[s] likely
27 commanded due to customer deployment strategy design.” This statement, which
28 concerned the 2012 Jeep Patriot, the 2012 Dodge Avenger, the 2012 Chrysler 200,

1 the 2011 Dodge Avenger, the 2012 Chrysler 200 Convertible, and the 2013 Dodge
2 Avenger discussed in Sections IV.D.4.e., IV.D.4.g., IV.D.4.l., IV.D.4.o., IV.D.4.n.,
3 and IV.D.4.o. above, was misleading for several reasons.

- 4 a. All these FCA Class Vehicles had missing crash records,
5 thereby making it impossible to reliably determine whether any
6 nondeployment was “commanded.” As ZF Automotive USA,
7 ZF Electronics USA, and ZF Passive Safety USA acknowledged
8 in a 2012 report about a Kia Forte crash: “[i]t is not possible to
9 determine whether ACU attempted to deploy, or would have
10 recorded a near deployment event, since no EDR was fully
11 recorded.” This principle applied with equal force to the same
12 EDR technology in these FCA Class Vehicles.
- 13 b. The pictures of the wreckage from these incidents show the type
14 of catastrophic collisions that obviously merit airbag
15 deployment. These pictures are collected in Sections IV.D.4.e.,
16 IV.D.4.g., IV.D.4.l., IV.D.4.o., IV.D.4.n., and IV.D.4.o. above.
- 17 c. Moreover, FCA confirmed that these statements were
18 misleading in its 573 Defect Report for the September 2016
19 recall of the vehicles involved in these incidents. That report
20 does not mention deployment strategies as a purported reason
21 for the failures because FCA concluded that its deployment
22 strategies should have commanded deployment.

23 1332. These misleading statements were material because they concealed
24 evidence that the ACU Defect had caused airbag failures in crashes. Upon
25 information and belief, NHTSA would have considered this information important
26 to its decision whether to require a recall or expand its investigation in the defective
27 DS84 ACUs and ASICs.
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vii. The presentation misleadingly suggested that the safety restraints deployed properly in two FCA Class Vehicle crashes.

1333. The presentation stated that in two incidents involving 2012 Jeep Patriots called “Chrysler A” and “Chrysler B”: “Deployment occurred even though there is no or partial crash record.” This statement was intended to suggest that Chrysler B did not involve a failure of the safety system’s restraints. This statement was false.

1334. In fact, “Chrysler B” refers to the crash test of a 2012 Jeep Patriot conducted by the Insurance Institute for Highway Safety. In this test, the Institute found: “the seat belt allowed excessive forward excursion of the dummy’s head and torso, and the driver’s seat tipped forward and toward the B-pillar. The side curtain airbag did not deploy, leaving the dummy’s head vulnerable to contacts with side structure and outside objects.” In fact, on March 9, 2016—four months before the July 19, 2016 presentation—FCA determined EOS occurred in this crash test before the DS84 ACU should have commanded deployment of the second stage airbags, which would explain why they failed to activate. Accordingly, it was misleading for this presentation to suggest “[d]eployment occurred” in this crash test, when the truth was that one front airbag deployed, whereas the seatbelts and second stage airbag failed. These failures are serious shortcomings that caused the Institute to grade this test result as “Poor.”

1335. “Chrysler A,” on the other hand, refers to the November 28, 2013 crash in Wisconsin involving a 2012 Jeep Patriot. In fact, on March 9, 2016—four months before the July 19, 2016 presentation—FCA determined EOS occurred in this crash test before the DS84 ACU should have commanded deployment of the second stage airbags, which would explain why they failed to activate. Accordingly, it was misleading to suggest “deployment occurred” when the truth was that the second stage airbags failed.

1 1336. These misleading statements were material because they concealed
2 evidence that the ACU Defect had caused partial airbag failures in crashes. Upon
3 information and belief, NHTSA would have considered this evidence important to
4 its decision whether to require a recall or expand its investigation in the defective
5 DS84 ACUs and ASICs.

6 **viii. The presentation again misleadingly blamed wire**
7 **harnesses as a cause of suspicious DS84 ACU**
8 **malfunctions, which was misleading because the ACU**
9 **Defect was the true root cause.**

10 1337. The presentation attempted to blame the wiring harness in FCA Class
11 Vehicles for the DS84 ACU malfunctions by stating that “[v]ehicle wiring
12 architecture can contribute to EOS.” According to the presentation, “[l]oss of signal
13 from a front crash sensor may direct a commanded non-deployment in certain crash
14 scenarios” and that the Jeep Liberty, Dodge Avenger, and Chrysler 200 “platforms
15 route front passenger side satellite wire across the front of the vehicle and bundle
16 with the driver side satellite wire. . . . This can cause the wiring for both front crash
17 sensors to get damages in frontal left offset collisions.” In other words, the
18 presentation explained that the wires in certain types of crashes could interfere with
19 airbag deployment due to the placement of the wiring in these vehicles.

20 1338. This statement was misleading because ZF Automotive USA, ZF
21 Passive Safety USA, and ZF Electronics USA knew that the DS84 ACUs were
22 inherently defective and vulnerable to EOS irrespective of the presence of cross-car
23 wiring, including because Hyundai-Kia vehicles with nondeployments linked to
24 EOS did not have cross-car wiring like this. Moreover, in June 2013, ZF
25 Automotive USA, ZF Passive Safety USA, and ZF Electronics USA prepared a
26 written analysis noting that two EOS failure modes (one relating to a shorted crash
27 sensor wire and another relating to a shorted squib communication line) occurred in
28 Jeep Wranglers, another vehicle model without cross-car wiring. By 2016, FCA had

1 already learned of at least fourteen crashes involving nondeployments and signs of
2 DS84 ASIC EOS in Class Vehicles without cross-car wiring, including eight Dodge
3 Rams, five Jeep Wranglers, and one Fiat 500.⁵⁸ Accordingly, it was misleading to
4 suggest cross-car wiring was a likely root cause of the nondeployment events.
5 Instead, as Hyundai Korea, Kia Korea, Hyundai Mobis, Kia USA, and Hyundai
6 USA wrote to ZF Automotive USA, ZF Electronics USA, and ZF Passive Safety
7 USA in or around April 2016: “TRW’s presentation identifies that all EOS
8 problems involving all manufacturers have only occurred in the ST Micro DS84
9 ASIC. *The logical inference is that some design flaw or weakness in the DS84 ASIC*
10 *is the core reason for any EOS incidents.*” (emphasis added).

11 1339. ZF Automotive USA’s, ZF Passive Safety USA’s, and ZF Electronics
12 USA’s efforts to blame the wire harness on nondeployments in FCA Class Vehicles
13 were also misleading because they knew wire harnesses could not have caused at
14 least some observed DS84 ACU malfunctions, including because of nine
15 inadvertent deployments in vehicles made by five different manufacturers (FCA,
16 Kia Korea, Honda Japan, and two Chinese manufacturers). For nondeployment
17 events, the vehicles did not crash and therefore a break in the frontal crash sensor
18 wires could not have released a transient. Instead, as ZF Electronics USA, ZF
19 Passive Safety USA, and ZF Automotive USA explained to FCA in 2013, the root
20 cause of inadvertent deployments is likely a transient surge originating from a
21 connection between an airbag squib ASIC and the DS84 ASIC. The defect remains
22 in the DS84 ACU irrespective of the placement of car wiring. Notably, the Jeep
23 Wrangler with an inadvertent deployment and confirmed EOS on the DS84 ASIC
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25 ⁵⁸ The Dodge Ram crashes occurred in 2010 in Texas, in 2011 in Georgia, in 2012
26 in North Carolina, in 2014 in West Virginia and Arkansas, and in 2015 in Maine,
27 Pennsylvania, and Connecticut. The Jeep Wrangler crashes occurred in 2011 in
28 West Virginia, in 2014 in California, in 2015 in Georgia and Iowa, and in 2014 in
New York. The Fiat 500 crashed in 2015 in California.

1 did not have the type of cross-car wiring that ZF Automotive USA, ZF Passive
2 Safety USA, and ZF Electronics USA blamed as a “contribut[or] to EOS.”

3 1340. The presentation’s statements blaming wire harnesses for EOS were
4 material because they obscured the scope of the ACU Defect by suggesting that
5 only vehicles with a particular type of wiring may have a defect. In reality, millions
6 of other vehicles were defective, because they also used the DS84 ACU and ASIC,
7 which are inherently defective regardless of the configuration of vehicle wiring.

8 **ix. The presentation misleadingly claimed the ACU**
9 **Defect was “vehicle dependent.”**

10 1341. The presentation also stated: “[p]resence and impact of EOS on ACUs
11 is vehicle dependent.” This statement was misleading because ZF Automotive
12 USA, ZF Passive Safety USA, and ZF Electronics USA had previously made
13 common recommendations regarding DS84 ASIC EOS across vehicle types and
14 manufacturers. For example, in 2013, ZF Electronics USA, ZF Passive Safety USA,
15 and ZF Automotive USA recommended additional circuit protection for defective
16 Jeep vehicles to FCA and expressly based those recommendations on experience
17 with vehicles made by other manufacturers. Indeed, one ZF Electronics USA
18 presentation to FCA from 2013 stated, “Initial EOS Design Proposal based on
19 design experience in response to *other customer specifications*,” suggested diodes
20 “may mitigate EOS,” and that an additional proposal “based on *other customer*
21 *specifications* and experience” suggested a “[i]n rush limiting circuit” “may
22 mitigate EOS.” In other words, ZF Electronics USA told FCA that the experiences
23 with EOS in other vehicles by other vehicle manufacturers should translate to Jeep
24 vehicles experiencing the same problems.⁵⁹ These recommendations contradict the

25 ⁵⁹ In a 2019 meeting with Toyota Japan, Toyota Engineering USA, and Toyota
26 USA, ZF Electronics USA, ZF Passive Safety USA, and ZF Automotive USA
27 similarly claimed that a design change to increase the diode protection on certain
28 European models with the DS84 ASIC was based on “[l]earning made with other
OEMs.” Again, these statements are inconsistent with statements to NHTSA that

Footnote continued on next page

1 later statement to NHTSA that all EOS is “vehicle dependent.” If this were true,
2 recommendations based on other manufacturers’ experiences would be irrelevant.

3 1342. This statement was material because it suggested that only vehicles
4 with confirmed DS84 ACU malfunctions were potentially defective. In reality,
5 millions of Class Vehicles were defective, because all vehicles with the DS84 ACU
6 and ASIC are defective.

7 **b. ZF Automotive USA, ZF Passive Safety USA, ZF Electronics**
8 **USA, ZF Germany and ZF TRW Corp. have joint**
9 **responsibility for the content of the misleading July 19, 2016**
10 **presentation.**

11 1343. On July 19, 2016, agents of ZF Automotive USA, ZF Passive Safety
12 USA, and ZF Electronics USA again met with NHTSA. During the meeting, ZF
13 Automotive USA, ZF Passive Safety USA, and ZF Electronics USA used the July
14 19, 2016 written presentation described above.

15 1344. The July 19, 2016 closely resembles the February 5, 2016 presentation
16 discussed above. In fact, much of the language in the July 19 presentation is
17 identical to the language in the February 5 presentation. Accordingly, the
18 presentation likely shared the same authors, including Emanuel Goodman and Marc
19 Bolitho. Mr. Goodman was both an employee of ZF Passive Safety USA and the
20 Senior Technical Specialist of ZF Electronics USA. Mr. Bolitho was an employee
21 of ZF Passive Safety USA and also served as Director of Passive Safety
22 Engineering for ZF TRW Corp. and Vice President of Passive Safety Engineering
23 for ZF Electronics USA.

24 1345. ZF Germany reviewed and approved the contents of this presentation
25 before it was used, given its regular involvement in communications with NHTSA
26 by its subsidiaries. Indeed, ZF Germany was also ultimately responsible for (and, in
27 fact, purported to own) the content of this presentation because each page of this

28 *Footnote continued from previous page*
ACU design issues are platform dependent.

1 presentation states, “© ZF Friedrichshafen AG, 2018.” The employees who wrote
2 this presentation would not have identified ZF Germany without ZF Germany’s
3 approval.⁶⁰

4 1346. ZF TRW Corp. also reviewed and approved the contents of this
5 presentation before it was used in a meeting with NHTSA. ZF TRW Corp.’s
6 ownership interest in this document is confirmed by the following language on the
7 footer of every page: “This document is the property of ZF TRW and is disclosed in
8 confidence. It may not be copied, disclosed to others, or used for manufacturing
9 without the written consent of ZF TRW.” Because ZF Germany’s 2016 Annual
10 Report identifies ZF TRW Corp. as the only subsidiary with a name containing “ZF
11 TRW,” “ZF TRW” must refer to ZF TRW Corp.

12 1347. Upon information and belief, ZF TRW Corp. mailed a copy of the
13 presentation to NHTSA in late July or August 2016.

14 1348. Upon information and belief, in addition to using mail to send a copy
15 of the July 19, 2016 presentation to NHTSA, ZF Automotive USA, ZF Passive
16 Safety USA, ZF Electronics USA, ZF Germany, and ZF TRW Corp. each used
17 email or other electronic means of communications to exchange, make comments
18 on and convey approval of drafts of the July 19, 2016 presentation.

23 ⁶⁰ ZF Germany has never denied Plaintiffs’ allegation that “ZF Friedrichshafen
24 AG’s consent was required to send the presentation to NHTSA and/or the Vehicle
25 Manufacturer Defendants, and ZF Friedrichshafen AG provided consent.” Dkt. 120
26 at ¶168. On the contrary, it has relied on declarations that concede: “ZF
27 Friedrichshafen AG . . . exercises only limited control over ZF’s domestic entities
28 communications with NHTSA.” Dkt. 209-4 at ¶10. This vague statement does not
deny that ZF Germany’s consent was required for the domestic ZF companies to
send presentations to NHTSA or that ZF Germany provided that consent.

1 **5. Shortly after the July 19, 2016 meeting with NHTSA, ZF**
2 **Germany, ZF TRW Corp., ZF Automotive USA, ZF Electronics**
3 **USA, and ZF Passive Safety USA continued to coordinate with**
4 **FCA, Hyundai Korea, Kia Korea, Hyundai USA, Kia USA, and**
5 **Hyundai Mobis regarding their efforts to deny and downplay the**
6 **ACU Defect.**

7 1349. Upon information and belief, shortly after the July 19, 2016, meeting
8 with NHTSA, ZF Automotive USA, ZF Electronics USA, and ZF Passive Safety
9 USA shared excerpted versions of the July 19, 2016 presentation with FCA,
10 Hyundai Korea, Kia Korea, Hyundai USA, Kia USA, and Hyundai Mobis.

11 1350. Upon information and belief, ZF Germany and ZF TRW Corp.
12 reviewed and approved the circulation of these excerpted versions of the July 19,
13 2016 presentation to FCA, Hyundai Korea, Kia Korea, Hyundai USA, and Hyundai
14 Mobis.

15 1351. Upon information and belief, the excerpted versions of this
16 presentation contained several talking points created by the ZF Defendants
17 designed to downplay the ACU Defect by misleadingly blaming airbag
18 nondeployments on purportedly vehicle-dependent phenomena, such as the layout
19 of wiring in the hood of the car, how grounded the chassis is, or manufacturer
20 deployment strategies.

21 1352. The version of the presentation sent to Hyundai Korea, Kia Korea, Kia
22 USA, Hyundai USA, and Hyundai Mobis contained the misleading statements
23 concerning Hyundai-Kia vehicles noted above.

24 1353. The version of the presentation sent to FCA contained the misleading
25 statements concerning the FCA vehicles.

26 1354. Upon information and belief, ZF Electronics USA, ZF Passive Safety
27 USA, and ZF Automotive USA circulated the July 19, 2016 presentation to
28 Hyundai Korea, Kia Korea, Kia USA, Hyundai USA, and Hyundai Mobis, and

1 FCA to facilitate their scheme to mislead NHTSA as to the nature and scope of the
2 ACU Defect.

3 **6. Between July 19, 2016 and September 2016, ZF Electronics USA,**
4 **ZF Automotive USA, and ZF Passive Safety USA continued to**
5 **communicate with FCA, Hyundai Korea, Kia Korea, Hyundai**
6 **USA, Kia USA, and Hyundai Mobis about NHTSA's investigation.**

7 1355. Between July 19, 2016 and September 13, 2016, ZF Electronics USA,
8 ZF Automotive USA, and ZF Passive Safety USA communicated with FCA about
9 NHTSA's investigation of FCA Class Vehicles.

10 a. Upon information and belief, in late July or early August 2016,
11 FCA informed ZF Electronics USA, ZF Automotive USA, and
12 ZF Passive Safety USA that it was considering a partial recall of
13 FCA Class Vehicles, given the mounting pressure of NHTSA's
14 investigation and the overwhelming evidence of airbag and
15 seatbelt failures in severe crashes. By this time, FCA was aware
16 of at least 3 deaths and five injuries linked to the ACU Defect.

17 b. Upon information and belief, on or around August 9, 2016, ZF
18 Electronics USA, ZF Automotive USA, and ZF Passive Safety
19 USA attempted to persuade FCA to take the position that none
20 of the DS84 ACUs and ASICs were defective and that wire
21 harnesses were to blame for any evidence of EOS in crashes
22 with airbag and seatbelt failures.

23 c. Upon information and belief, FCA responded to ZF Electronics
24 USA, ZF Automotive USA, and ZF Passive Safety USA that it
25 would recall Class Vehicles with both cross-car wiring and the
26 DS84 ACU, but that it would not recall any other vehicles with
27 the DS84 ACU. This approach would allow ZF Electronics
28 USA, ZF Automotive USA, and ZF Passive Safety USA to

1 misleadingly blame “vehicle dependent” wire harnesses, while
2 also limiting the scope and expense of FCA’s recall.

3 1356. Between July 19, 2016 and September 13, 2016, ZF Electronics USA,
4 ZF Automotive USA, and ZF Passive Safety USA communicated with Hyundai
5 Korea, Kia Korea, Hyundai USA, Kia USA, and Hyundai Mobis about NHTSA’s
6 investigation of Hyundai-Kia Class Vehicles.

7 a. Between late July and August 2016, Kia Korea, Kia USA, and
8 legal counsel for ZF Automotive USA, ZF Electronics USA, and
9 ZF Passive Safety USA had several communications. During
10 these communications, legal counsel for ZF Automotive USA,
11 ZF Electronics USA, and ZF Passive Safety USA informed Kia
12 Korea and Kia USA that they did not need to take any further
13 action and that NHTSA was “satisfied.” During the last call in
14 August 2016, ZF Automotive USA, ZF Electronics USA, and
15 ZF Passive Safety USA told Kia Korea and Kia USA that FCA
16 had decided to recall certain models of Class Vehicles, but that
17 the recall was due to the design of the wiring harness for the
18 front impact sensors in the vehicles. ZF Automotive USA, ZF
19 Electronics USA, and ZF Passive Safety USA also told Kia
20 Korea and Kia USA that the discussions with FCA and NHTSA
21 did not require any recall by Kia Korea and Kia USA.

22 b. On July 29, 2016, ZF Electronics USA, ZF Automotive USA,
23 and ZF Passive Safety USA met with Hyundai Korea, Kia
24 Korea, and Hyundai Mobis in Korea to discuss NHTSA’s
25 investigation.

26 1357. Upon information and belief, in or around September 2016, ZF
27 Automotive USA, ZF Passive Safety USA, and ZF Electronics USA also contacted
28 Toyota USA and Toyota Japan to encourage Toyota USA and Toyota Japan to

1 adopt the misleading position that only Class Vehicles with particular wire
2 harnesses were defective and that Toyota Class Vehicles were not defective.

3 1358. The communications summarized in this subsection were intended to
4 facilitate the scheme to mislead NHTSA as to the nature and scope of the ACU
5 Defect.

6 **7. On September 13, 2016, FCA filed a misleading 573 Defect Report**
7 **with NHTSA that mischaracterized the nature and scope of the**
8 **ACU Defect for the purpose of reducing the scale of an**
9 **unavoidable recall.**

10 1359. On September 13, 2016, FCA filed a 573 Defect Report with NHTSA
11 using mail and wire. This report admitted that over a million FCA Class Vehicles
12 were defective, but falsely denied that other FCA Class Vehicles with the same
13 DS84 ACU and DS84 ASIC were defective.

14 **a. FCA’s 573 Defect Report dated September 13, 2016**
15 **misleadingly states that FCA Class Vehicles with**
16 **“independently routed” front sensor wiring are not**
17 **defective.**

18 1360. A document attached to FCA’s 573 Defect Report admitted the 2009–
19 2012 Dodge Ram 1500, 2010–2012 Dodge Ram 2500/3500, 2011–2012 Dodge
20 Ram 3500/4500/5500 Cab-Chassis, 2010–2014 Jeep Wrangler, 2010–2012 Dodge
21 Nitro, 2010–2013 Jeep Liberty, and 2012–2016 Fiat 500 were equipped “with the
22 same ORC/ASIC.” FCA, however, denied a defect in these vehicles because the
23 DS84 ASIC’s “front sensor wiring [was] routed independently along the left and
24 right side of the vehicles.”

25 1361. This statement blaming wiring for the Defect was false and misleading
26 because the unrecalled FCA Class Vehicles have the same ACU Defect as the
27 recalled FCA Class Vehicles. Independent wiring does not adequately protect
28 vehicles against the defective DS84 ASIC, as demonstrated by the multiple failures
in Hyundai-Kia Class Vehicles. All of these Hyundai-Kia Class Vehicles had front

1 sensor wiring that “was routed independently along the left and right side of the
2 vehicles,” but the airbags and seatbelts in these vehicles still failed during crashes
3 due to EOS. Moreover, multiple consumers have reported that airbags and seatbelts
4 in the unrecalled FCA Class Vehicles have failed in the field.⁶¹

5 1362. That the ACU Defect existed in FCA Class Vehicles with
6 independently routed wiring is also confirmed by a written analysis from 2012 that
7 FCA produced. This analysis identifies three Jeep Wranglers *with independently*
8 *routed wiring* that had burnt metal on the DS84 ASIC, which is a sign of EOS.

9 1363. When FCA filed this misleading 573 Defect Report in 2016, FCA had
10 already learned of at least fourteen crashes involving nondeployments and signs of
11 EOS in Class Vehicles without cross-car wiring, including eight Dodge Rams, five
12 Jeep Wranglers, and one Fiat 500.⁶²

13 1364. FCA’s misleading excuse about the role of wiring architecture as the
14 root cause of the ACU Defect mimicked the misleading talking point from the
15 February 5, 2016 presentation that ZF Automotive USA, ZF Electronics USA, and
16 ZF Passive Safety USA had shared with all the Vehicle Manufacturer Defendants,
17 including FCA. Upon information and belief, FCA agree to mimic this talking point
18 in furtherance of the conspiracy to mislead NHTSA.

19 1365. FCA’s misleading statements about the 2009–2012 Dodge Ram 1500,
20 2010–2012 Dodge Ram 2500/3500, 2011–2012 Dodge Ram 3500/4500/5500 Cab-

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22 ⁶¹ See Exhibit 1 (ODI Nos. 10358293, 10404435, 10406392, 10431129, 10435172,
23 10473292, 10485943, 10508974, 10511307, 10544054, 10556705, 10560907,
24 10575416, 10614617, 10633640, 10653811, 10671988, 10712093, 10716219,
25 10885546, 10896487, 10907251, 10909641, 10917675, 10981445, 11024190,
26 11166733, 11221179, 11240474).

27 ⁶² The Dodge Ram crashes occurred in 2010 in Texas, in 2011 in Georgia, in 2012
28 in North Carolina, in 2014 in West Virginia and Arkansas, and in 2015 in Maine,
Pennsylvania, and Connecticut. The Jeep Wrangler crashes occurred in 2011 in
West Virginia, in 2014 in California, in 2015 in Georgia and Iowa, and in 2014 in
New York. The Fiat 500 crashed in 2015 in California.

1 Chassis, 2010–2014 Jeep Wrangler, 2010–2012 Dodge Nitro, 2010–2013 Jeep
2 Liberty, and 2012–2016 Fiat 500 were material because these defective Class
3 Vehicles pose an unreasonable safety risk to consumers.

4 **b. FCA’s 573 Defect Report dated September 13, 2016**
5 **misleadingly states that other FCA Class Vehicles with the**
6 **DS84 ASIC were not defective.**

7 1366. The same document attached to FCA’s 573 Defect Report states:
8 “Based on the data and engineering analysis conducted to date, this Issue has the
9 potential to occur when all of the following three conditions are met (1) specific
10 Occupant Restraint Controller (‘ORC’)/Application Specific Integrated Circuit
11 (‘ASIC’) design; (2) front impact sensor cross-car wire routing; and (3) certain
12 crash events.” FCA used the phrase “specific Occupant Restraint
13 Controller/Application ASIC design” to exclude other Class Vehicles with DS84
14 ACUs that include additional circuit protection. This was misleading because these
15 excluded vehicles had the same defective DS84 ASIC, and the circuit protection
16 added to the ACU was insufficient. Accordingly, the same issue had the potential to
17 occur in these excluded Class Vehicles.

18 1367. Upon information and belief, Class Vehicles FCA excluded from its
19 recall based in part on insufficient changes to circuit protection on DS84 ACUs
20 included the 2015-2017 Jeep Wranglers, Jeep Patriots, and Jeep Compasses, among
21 potentially others. The misleading use of the phrase “specific Occupant Restraint
22 Controller (‘ORC’)/Application Specific Integrated Circuit (‘ASIC’) design” to
23 exclude these vehicles was material because they had the same ACU Defect.

24 **8. Shortly after FCA filed its 573 Defect Report, ZF Electronics USA,**
25 **ZF Passive Safety USA, and ZF TRW Corp. sent a misleading**
26 **letter to NHTSA that falsely denied a defect in the DS84 ACUs.**

27 1368. In September 2016, Marc Bolitho, who simultaneously served as a
28 long-time employee of ZF Passive Safety USA, the Vice President of Passive

1 Safety for ZF Electronics USA, and Director of Passive Safety Engineering for ZF
2 TRW Corp., mailed a letter to the Chief of NHTSA’s Recall Management Division.
3 This letter falsely denied that the DS84 ACUs were defective, and misleadingly
4 stated that vehicle wiring—rather than a defective DS84 ACU—was the cause of
5 observed EOS and ACU failures. Specifically, the letter stated: “Although a similar
6 TRW component is installed in vehicles other than those identified in the
7 [September 13, 2016 FCA Defect Information Report], the conditions described in
8 FCA’s [Defect Information Report] are limited to the specific FCA vehicles
9 identified in that report.”

10 1369. This statement to NHTSA was false and misleading because ZF
11 Electronics USA, ZF Passive Safety USA, ZF Automotive USA, and ZF TRW
12 Corp. knew since 2008 (from thermal testing of the DS84 ASIC) that the ASIC was
13 vulnerable to EOS. Moreover, ZF Electronics USA, ZF Passive Safety USA, ZF
14 Automotive USA, and ZF TRW Corp. also knew of other similar DS84 ACU
15 malfunctions during crashes in vehicles made by other manufacturers, including:

- 16 a. Four Hyundai Sonata crash tests and one Kia Optima crash test,
17 for which ZF Electronics USA, ZF Passive Safety USA, and ZF
18 Automotive USA confirmed ASIC EOS by no later than May
19 2012;
- 20 b. The Kia Forte crash with no airbag deployment in Ganzhou,
21 China, for which ZF Electronics USA, ZF Passive Safety USA,
22 and ZF Automotive USA confirmed ASIC EOS in August 2011
23 and May 2012;
- 24 c. The Kia Forte crash with no airbag deployment in Egypt, for
25 which ZF Electronics USA, ZF Passive Safety USA, and ZF
26 Automotive USA confirmed ASIC EOS in December 2011 and
27 May 2012;

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- 1 d. Two Kia Forte crashes and one K5 crash with nondeployments
2 in Wehai, China; Xinyang, China; and Zhenjiang, China; for
3 which ZF Automotive USA, ZF Electronics USA, and ZF
4 Passive Safety USA confirmed ASIC EOS in 2012;
- 5 e. The Honda Accord crash test in Japan with a nondeployment
6 event, for which ZF Electronics USA, ZF Passive Safety USA,
7 and ZF Automotive USA confirmed ASIC EOS in late 2012 or
8 2013;
- 9 f. The Honda Civic crash in Canada with a partial crash record, for
10 which ZF Electronics USA, ZF Passive Safety USA, and ZF
11 Automotive USA confirmed ASIC EOS in or around 2013;
- 12 g. The Honda City crash test in Japan where the ACU shut and lost
13 communication, for which ZF Electronics USA, ZF Passive
14 Safety USA, and ZF Automotive USA confirmed ASIC EOS in
15 2014;
- 16 h. The King crash, where a Kia Forte crashed with no airbag
17 deployment in Florida, for which ZF Electronics USA, ZF
18 Passive Safety USA, and ZF Automotive USA confirmed ASIC
19 EOS in December 2015;
- 20 i. The Faumuina crash, where a Kia Forte crashed with no airbag
21 deployment in California, for which ZF Electronics USA, ZF
22 Passive Safety USA, and ZF Automotive USA confirmed ASIC
23 EOS in December 2015 and January 2016;
- 24 j. The Twohill crash, where a Hyundai Sonata crashed with no
25 airbag deployment in Iowa, for which ZF Electronics USA, ZF
26 Passive Safety USA, and ZF Automotive USA confirmed ASIC
27 EOS in April and May 2016; and
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1 k. The Toyota Auris that crashed with no airbag deployment in
2 Turkey, which TRW Systems Ltd. learned of in August 2016.⁶³
3 1370. The letter also stated: “the placement of the system wiring within these
4 particular vehicle platforms and the reaction of the system in particular crash
5 events, are necessary contributors to the nondeployments giving rise to this recall.”
6 This statement was misleading because the consequences of the DS84 ACU Defect
7 had already occurred in a wide variety of vehicles made by different manufacturers.
8 It is implausible that these different vehicles all shared common faulty wiring.
9 Moreover, at the very least, ZF Passive Safety USA, ZF Electronics USA, and ZF
10 Automotive USA were specifically aware of several incidents where Hyundai-Kia
11 Class Vehicles and Jeep Wranglers had EOS damage on the DS84 ASIC and that
12 none of these models had the type of cross-car wiring that the recalled FCA Class
13 Vehicles had. By 2016, FCA had already learned of at least fourteen crashes
14 involving nondeployments and signs of EOS in Class Vehicles without cross-car
15 wiring, including eight Dodge Rams, five Jeep Wranglers, and one Fiat 500.⁶⁴
16 1371. These misleading statements were material because they obscured the
17 nature of the ACU Defect and downplayed the scope of the defective Class
18 Vehicles. In fact, all Class Vehicles with the DS84 ACU and ASIC are defective.

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23 ⁶³ As explained above, on August 16, 2016, TRW Systems Ltd. received a report
24 from Toyota Motors U.K. stating: “the probable cause is the IC [(integrated
25 circuit)] failure inside the ECU.”

26 ⁶⁴ The Dodge Ram crashes occurred in 2010 in Texas, in 2011 in Georgia, in 2012
27 in North Carolina, in 2014 in West Virginia and Arkansas, and in 2015 in Maine,
28 Pennsylvania, and Connecticut. The Jeep Wrangler crashes occurred in 2011 in
West Virginia, in 2014 in California, in 2015 in Georgia and Iowa, and in 2014 in
New York. The Fiat 500 crashed in 2015 in California.

1 **9. In September 2016, ZF Automotive USA warned Toyota Japan,**
2 **Toyota USA, Toyota Engineering USA, Toyota Sales USA, Honda**
3 **Japan, Honda USA, Mitsubishi Japan, and Mitsubishi USA that**
4 **NHTSA had asked for information that would show that Honda,**
5 **Toyota, and Mitsubishi Class Vehicles contained the DS84 ACU**
6 **and ASIC.**

7 1372. Sometime in or around the middle of September 2016, NHTSA
8 requested that ZF Automotive USA provided detailed information identifying the
9 Vehicle Manufacturers who had designed vehicles for sale in the United States with
10 the DS84 ACU and ASIC.

11 1373. On September 23, 2016, ZF Automotive USA provided NHTSA with
12 data showing that Honda, Toyota, and Mitsubishi Class Vehicles also had the DS84
13 ACU and ASIC. Upon information and belief, this is the first time NHTSA learned
14 that Honda, Toyota, and Mitsubishi vehicles had the DS84 ACU and ASIC.

15 1374. Upon information and belief, following this provision of identifying
16 data to NHTSA, ZF Automotive USA told Toyota Japan, Toyota USA, Toyota
17 Engineering USA, Toyota Sales USA, Honda Japan, Honda USA, Honda
18 Engineering USA, Mitsubishi Japan, and Mitsubishi USA that NHTSA had asked
19 for and received information that would show that Honda, Toyota, and Mitsubishi
20 Class Vehicles had the DS84 ACU and ASIC.

21 1375. Upon information and belief, ZF Automotive USA informed these
22 Defendants about this development to warn them that NHTSA was investigating
23 Honda, Toyota, and Mitsubishi Class Vehicles and to facilitate a coordinated effort
24 to deny or downplay the ACU Defect.

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1 **10. On November 29, 2016, FCA filed an amended 573 Defect Report**
2 **with NHTSA that misleadingly stated that a replacement ACU**
3 **with the same defective DS84 ASIC would “remedy” the defect.**

4 1376. On November 29, 2016, FCA filed an amended 573 Defect Report
5 with NHTSA using mail and wire. This report described the remedy program as
6 follows:

Description of Remedy Program : **2016 11 29 - Occupant Restraint Controller (ORC) will be replaced on all vehicles.
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10 1377. This statement that the replacement ACU would remedy the Class
11 Vehicles was misleading because the replacement ACU included the same
12 defective DS84 ASIC. Because the replacement ACU had insufficient circuit
13 protection and the same defective DS84 ASIC, the replacement ACU had the same
14 ACU Defect.

15 1378. The misleading description of this replacement ACU as a remedy was
16 material because the point of a recall is to fix the defective part, and FCA Class
17 Vehicles with replacement ACUs remain defective in the same way they were
18 defective before the recall.

19 **11. In 2017, NHTSA renewed its investigation of Hyundai-Kia Class**
20 **Vehicles after learning of additional suspicious crashes.**

21 1379. Upon information and belief, in 2017, ZF Electronics USA, ZF Passive
22 Safety USA, and ZF Automotive USA coordinated with Hyundai Korea, Hyundai
23 Mobis, and Hyundai USA to investigate two fatal Hyundai Sonata crashes where
24 the airbags failed to deploy in the U.S. (the Gauff and Johnson crashes). In
25 November 2017, NHTSA contacted Hyundai USA to obtain additional information
26 about one of these incidents.

27 1380. After learning of the fatal Kia Forte crash in Canada with no airbag
28 deployment, NHTSA requested information from Kia USA in September 2017.

1 1381. In January and February 2018, NHTSA also requested further
2 information from Kia USA regarding EOS and airbag failures in Kia vehicles.

3 **12. On February 27, 2018, Hyundai USA filed a 573 Defect Report**
4 **with NHTSA that misleadingly claimed only 2011 Hyundai**
5 **Sonatas had defective DS84 ACUs.**

6 1382. On February 21, 2018, Hyundai USA met with ZF Automotive USA to
7 discuss the defective Hyundai Class Vehicles. During this internal meeting, both ZF
8 Automotive USA and Hyundai USA acknowledged that the circumstances
9 associated with this the ACU Defect bore similarities to those related to recall
10 campaign 16V-668, where EOS appeared to be a root cause of airbag non-
11 deployment in significant frontal crashes in certain FCA Class Vehicles. Upon
12 information and belief, Hyundai USA and ZF Automotive USA knew that some
13 concession to NHTSA was likely necessary to avoid a broad recall.

14 1383. Therefore, on February 27, 2018, Hyundai USA announced a recall of
15 2011 Hyundai Sonatas. Upon information and belief, Hyundai USA only
16 announced this recall after obtaining Hyundai Korea's express approval.

17 1384. On the same day, Hyundai USA filed a 573 Defect Report with
18 NHTSA describing the ACU Defect and the recall, using mail and/or wire.

19 1385. Upon information and belief, Hyundai Korea reviewed a copy of the
20 573 Defect Report before Hyundai USA filed it, and specifically knew when doing
21 so that the report would be filed in the United States with NHTSA.

22 1386. The February 27, 2018 573 Defect Report stated: "As of the date of
23 this filing, Hyundai Motor America ('Hyundai USA') is aware of three airbag non-
24 deployment allegations where Electrical Overstress ('EOS') was observed inside
25 the vehicle's airbag control unit ('ACU'). The allegations are limited to early
26 production Model Year 2011 Sonata vehicles produced by Hyundai Motor
27 Manufacturing Alabama ('HMMA'). . . . The subject vehicles are equipped with an
28 Airbag Control Unit ('ACU') which detects a crash signal and commands

1 deployment of the airbags and seat belt pretensioner. In some airbag non-
2 deployment allegations, electrical overstress ('EOS') was observed on an
3 Application Specific Integrated Circuit ('ASIC') inside the ACU." The report also
4 describes description of the vehicle population:

5 **Population :**

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7 Number of potentially involved : 154,753
8
9 Estimated percentage with defect : 1 %
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12 1387. The above statements about the vehicles were misleading because they
13 suggested only 1% of the model year 2011 vehicles made by HMMA had the ACU
14 Defect. However, all Hyundai Class Vehicles, including those made in Korea by
15 Hyundai Korea, had the defective DS84 ASIC that is particularly vulnerable to
16 EOS.

17 1388. After receiving pressure from NHTSA, Hyundai USA amended its 573
18 Defect Report on April 18, 2018 to add 2012 and 2013 Hyundai Sonatas (including
19 those made in Korea by Hyundai Korea), and acknowledged that 100% of the
20 vehicles included in the expanded recall had the ACU Defect. The amended Report
21 described the vehicle population as follows:

22

23 **Population :**

24
25 Number of potentially involved : 580,058
26
27 Estimated percentage with defect : 100 %
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1 1389. In sum, these vehicles all had the same defective DS84 ACU and
2 DS84 ASIC, and there were no meaningful differences in the safety systems that
3 would explain how a subset of them was less defective. This sudden reversal, only
4 after pressure from a regulator, confirms the original statements were false.

5 **13. Kia USA made misleading statements to NHTSA on a telephone**
6 **call on March 1, 2018.**

7 1390. On March 1, 2018, Kia USA participated in a telephonic conference
8 with NHTSA. NHTSA asked what action Kia USA or Kia Korea would take in
9 light of Hyundai Sonata recall. Kia USA told NHTSA that the “Hyundai Sonata
10 incidents are very different than what Kia has seen in its Forte vehicles.” This
11 statement was false and misleading because all of the incidents involved the same
12 malfunction: the DS84 ASIC in the DS84 ACU stopped working due to EOS as a
13 result of a crash.

14 **14. ZF Automotive USA, ZF Passive Safety USA, ZF Electronics USA,**
15 **ZF Germany, and ZF TRW Corp. jointly made misleading**
16 **statements to NHTSA on March 8, 2018, and then mailed a copy of**
17 **those misleading statements to NHTSA on March 12, 2018.**

18 1391. In March 2018, ZF Automotive USA, ZF Passive Safety USA, ZF
19 Electronics USA, ZF Germany, and ZF TRW Corp., used interstate mail and/or
20 wire to prepare and send a written presentation dated March 8, 2018 to NHTSA.
21 This presentation contained several misleading statements about the DS84 ACU
22 Defect. Upon information and belief, ZF Automotive USA, ZF Passive Safety
23 USA, ZF Electronics USA, ZF Germany, and ZF TRW Corp. intended the
24 statements to further their conspiracies with the Vehicles Manufacturer and ST
25 Defendants by concealing the ACU Defect, avoiding recalls of defective Class
26 Vehicles, and allowing the continued sale of defective but profitable safety
27 equipment.
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1 **a. The March 8, 2018 written presentation contained**
2 **misleading statements.**

3 1392. The March 8, 2018 presentation contains several misleading
4 statements directed at NHTSA.

5 **i. The presentation falsely stated, “ZF has not found**
6 **evidence to link non deployments to EOS.”**

7 1393. The end of the March 2018 presentation includes a “Summary” of its
8 conclusions. This section states: “ZF has not found evidence to link non
9 deployments to EOS.” This statement was false and misleading because ZF
10 Automotive USA, ZF Passive Safety USA, ZF Electronics USA, ZF TRW Corp.,
11 and ZF Germany were aware of—and indeed, had *long* known about— several
12 pieces of evidence linking EOS to nondeployments.

13 a. First, by May 2012, ZF Electronics USA, ZF Passive Safety
14 USA, and ZF Automotive USA had confirmed EOS on DS84
15 ASICs from five Kia Forte and K5 crashes with nondeployments
16 in China⁶⁵ and Egypt.

17 b. Second, in late 2012 or 2013, ZF Electronics USA, ZF Passive
18 Safety USA, and ZF Automotive USA had confirmed EOS on
19 DS84 ASICs from a Honda Accord crash test with a second-
20 stage airbag failure.

21 c. Third, by no later than January 2016, ZF Electronics USA, ZF
22 Passive Safety USA, and ZF Automotive USA had confirmed
23 EOS on DS84 ASICs from two Kia Forte crashes and one
24 Hyundai Sonata crash with airbag failures and/or seatbelt
25 failures in the U.S. (the King, Faumuina, and Twohill crashes).
26

27 ⁶⁵ The Chinese crashes with airbag failures and confirmed EOS occurred in
28 Ganzhou, Wehai, Xinyang, and Zhenjiang.

- 1 d. Fourth, in 2015 and 2016, ZF Automotive USA, ZF Electronics
2 USA, and ZF Passive Safety USA confirmed EOS damage on
3 DS84 ASICs retrieved from at least five FCA Class Vehicles
4 that crashed with airbag and/or seatbelt failures.⁶⁶
- 5 e. Fifth, by November 2016, TRW Systems Ltd. had confirmed
6 EOS damage on a DS84 ASIC retrieved from a Toyota Auris
7 that crashed with no airbag deployment in Turkey.
- 8 f. Sixth, no later than August 2017, ZF Electronics USA, ZF
9 Passive Safety USA, and ZF Automotive USA had confirmed
10 EOS damage on the DS84 ASICs from two more Hyundai
11 Sonata crashes with airbag failures (the Gauff and Johnson
12 crashes).

13 1394. Similarly, the presentation stated, “EOS with non deployment is seen
14 with FCA and HKMC with DS84 ASIC and not with other customers” and “[n]o
15 notice of incidents of non deployments with EOS on Fiat, Honda, Mitsubishi, and
16 Toyota as of today.” These statements were false in light of the Honda and Toyota
17 incidents noted in the preceding paragraph.

18 1395. These misleading statements were material because they concealed
19 evidence of *many* observed airbag failures with confirmed EOS and falsely assured
20 NHTSA that none existed. Upon information and belief, NHTSA would have
21 considered this evidence important to its decision whether to require a recall or
22 expand its investigation in the DS84 ACUs and ASICs.

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26 ⁶⁶ Regarding FCA’s recall, the presentation misleadingly claimed: “No evidence to
27 link electrical overstress and non deployment on FCA vehicles.” This statement
28 was false. FCA’s recall report identified “the relative susceptibility of the subject
ORC ASIC to negative transients” as one of the root causes.

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ii. The presentation misleadingly blamed wire harnesses as a root cause of nondeployments caused by the ACU Defect.

1396. The presentation repeatedly attempted to blame the wiring harness in FCA Class Vehicles for the ACU malfunctions. For example, the presentation stated:

- a. “FCA has recalled vehicle have [sic] cross car wiring and deployment strategy which makes it susceptible to commanded non deployment in certain crash events.”
- b. “FCA non deployment – resulting from cross car wiring and deployment strategy.”
- c. “FCA EOS – cross car wiring and unspecified negative transients damaging DS84 ASIC.”

1397. These statements were misleading because ZF Automotive USA, ZF Passive Safety USA, and ZF Electronics USA knew Hyundai-Kia vehicles with nondeployments linked to EOS did not have cross-car wiring like the some FCA vehicles. Moreover, in June 2013, ZF Automotive USA, ZF Passive Safety USA, and ZF Electronics USA prepared a written analysis noting that two EOS failure modes (one relating to a shorted crash sensor wire and another relating to a shorted squib communication line) applied to Jeep Wranglers, another vehicle model without cross-car wiring. By 2018, FCA had already learned of at least fifteen crashes involving nondeployments and signs of EOS in Class Vehicles without cross-car wiring, including eight Dodge Rams, five Jeep Wranglers, one Jeep Liberty, and one Fiat 500.⁶⁷ Accordingly, it was misleading to suggest cross-car

⁶⁷ The Dodge Ram crashes occurred in 2010 in Texas, in 2011 in Georgia, in 2012 in North Carolina, in 2014 in West Virginia and Arkansas, and in 2015 in Maine, Pennsylvania, and Connecticut. The Jeep Wrangler crashes occurred in 2011 in West Virginia, in 2014 in California, in 2015 in Georgia and Iowa, and in 2014 in New York. The Jeep Liberty crashed in 2017 in Pennsylvania, whereas the Fiat 500

Footnote continued on next page

1 wiring caused the nondeployment events. Instead, as Hyundai Korea, Kia Korea,
2 Hyundai Mobis, Kia USA, and Hyundai USA wrote to ZF Automotive USA, ZF
3 Electronics USA, and ZF Passive Safety USA in or around April 2016: “TRW’s
4 presentation identifies that all EOS problems involving all manufacturers have only
5 occurred in the ST Micro DS84 ASIC. *The logical inference is that some design
6 flaw or weakness in the DS84 ASIC is the core reason for any EOS incidents.*”
7 (emphasis added).

8 1398. ZF Automotive USA’s, ZF Passive Safety USA’s, and ZF Electronics
9 USA’s efforts to blame the wire harness were also misleading because they knew
10 wire harnesses could not have caused many observed ACU malfunctions, including
11 at least nine inadvertent deployments in vehicles made by five different
12 manufacturers (FCA, Kia Korea, Honda Japan, and two Chinese manufacturers).
13 For the nondeployment events, the vehicles did not crash and therefore a break in
14 the frontal crash sensor wires could not have released a transient. Instead, as ZF
15 Electronics USA, ZF Passive Safety USA, and ZF Automotive USA explained to
16 FCA in 2013, the root cause of inadvertent deployments is likely a transient surge
17 originating from a connection between an airbag squib ASIC and the DS84 ASIC.
18 Notably, the Jeep Wrangler with an inadvertent deployment and confirmed EOS on
19 the DS84 ASIC did not have the type of cross-car wiring that ZF Automotive USA,
20 ZF Passive Safety USA, and ZF Electronics USA blamed as a “contribut[or] to
21 EOS.”

22 1399. The presentation’s statements blaming wire harnesses for EOS were
23 material because they obscured the scope of the ACU Defect and suggested that
24 only vehicles with a particular type of wiring may have a Defect. In reality, millions
25 of other vehicles were defective, because all vehicles with the DS84 ACU and
26 ASIC are defective.

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28 *Footnote continued from previous page*
crashed in 2015 in California.

1 **iii. The presentation misleadingly claimed the ACU**
2 **Defect was “vehicle dependent.”**

3 1400. The presentation also stated, “EOS with non deployment is vehicle
4 dependent and platform dependent within customer.” This statement was
5 misleading because ZF Automotive USA, ZF Passive Safety USA, and ZF
6 Electronics USA had observed evidence of nondeployments and partial
7 deployments due to ASIC EOS in various Hyundai, Kia, FCA, Honda, and Toyota
8 vehicles. These cross-manufacturer incidents confirmed EOS with nondeployment
9 was not vehicle dependent.

10 1401. Moreover, ZF Automotive USA, ZF Passive Safety USA, and ZF
11 Electronics USA previously made common recommendations regarding EOS
12 across vehicle types and manufacturers. For example, in 2013, ZF Electronics USA
13 recommended additional circuit protection for defective Jeep vehicles to FCA and
14 expressly based those recommendations on experience with vehicles made by other
15 manufacturers. Indeed, one ZF Electronics USA presentation to FCA from 2013
16 stated, “Initial EOS Design Proposal based on design experience in response to
17 *other customer specifications*” suggest diodes “may mitigate EOS” and that an
18 additional proposal “based on *other customer specifications* and experience”
19 suggested a “[i]n rush limiting circuit” “may mitigate EOS.” In other words, ZF
20 Electronics USA told FCA that the experiences with EOS in other vehicles made by
21 other vehicle manufacturers would translate to Jeep vehicles experiencing the same
22 problems.⁶⁸ These recommendations contradict the later statement to NHTSA that
23 all EOS is “vehicle dependent,” which contradicted the known facts about EOS

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25 ⁶⁸ In a 2019 meeting with Toyota Japan, Toyota Engineering USA, and Toyota
26 USA, ZF Electronics USA, ZF Passive Safety USA, and ZF Automotive USA
27 would similarly claim that a design change to increase the diode protection on
28 certain European models with the DS84 ASIC was based on “[l]earning made with
other OEMs.” Again, these statements are inconsistent with statements to NHTSA
that ACU design issues are platform dependent.

1 incidents in a variety of different makes and models. If the statement were true,
2 recommendations based on other manufacturers' experiences would be irrelevant.

3 1402. The statement that EOS with nondeployments was "vehicle
4 dependent" was material because it suggested that only vehicles with confirmed
5 ACU malfunctions were potentially defective. In reality, millions of Class Vehicles
6 were defective, because all vehicles with the DS84 ACU and ASIC are defective.

7 **iv. The presentation misleadingly stated that all DS84**
8 **ACUs have appropriate levels of protection against**
9 **specified and foreseeable vehicle transients.**

10 1403. The presentation stated: "All ZF ACUs have appropriate levels of
11 protection against specified and foreseeable vehicle transients." This statement was
12 misleading because, due to the DS84 ACU Defect, *none* of the Class vehicles have
13 appropriate levels of protection, as explained in Section IV.A.9 above.

14 **b. ZF Automotive USA, ZF Passive Safety USA, ZF Electronics**
15 **USA, ZF Germany, and ZF TRW Corp. have joint**
16 **responsibility for the content of the misleading March 8,**
17 **2018 written presentation.**

18 1404. On March 8, 2018, ZF Automotive USA, ZF Passive Safety USA, ZF
19 Electronics USA, and ZF TRW Corp. met with NHTSA regarding the mounting
20 evidence that DS84 ACUs were repeatedly failing due to EOS.

21 a. Emanuel Goodman, a longtime employee of ZF Passive Safety
22 USA and the Senior Technical Specialist for ZF Electronics
23 USA, attended this meeting on behalf of ZF Passive Safety USA
24 and ZF Electronics USA.

25 b. Marc Bolitho, a longtime employee of ZF Passive Safety USA
26 and the Vice President of Passive Safety for ZF Electronics
27 USA and Director of Passive Safety Engineering for ZF TRW
28 Corp., attended this meeting on behalf of ZF Passive Safety
USA, ZF Electronics USA, and ZF TRW Corp.

1 c. Upon information and belief, Natalia Medley, who served as
2 counsel for ZF Automotive USA (among other ZF entities),
3 attended this meeting on behalf of ZF Automotive USA

4 1405. During this meeting, ZF Automotive USA, ZF Passive Safety USA,
5 ZF Electronics USA, and ZF TRW Corp. used a presentation that ZF Germany, ZF
6 TRW Corp., ZF Automotive USA, ZF Electronics USA, ZF Passive Safety USA,
7 and ZF TRW Corp. jointly approved.

8 1406. Mr. Goodman’s and Mr. Bolitho’s use of this presentation at the
9 March 8, 2018 meeting with NHTSA evidences the approval of the presentation by
10 ZF Automotive USA, ZF Passive Safety USA, ZF Electronics USA, and ZF TRW
11 Corp.—the corporate entities they directly represented.

12 1407. On March 12, 2018, Ms. Medley, who represented ZF Automotive
13 USA in discussions with NHTSA, mailed the presentation to a senior attorney at
14 NHTSA named Otto Matheke. The cover letter she signed was on letterhead of
15 ZF’s “Active & Passive Safety Technology” business unit. Because this is a
16 reference to ZF TRW Corp.,⁶⁹ ZF TRW Corp. must have reviewed and approved
17 the transmittal of the presentation to NHTSA.

18 1408. ZF Germany was ultimately responsible for the content of the March
19 8, 2018 presentation because each page of this presentation states, “© ZF
20 Friedrichshafen AG, 2018.” The inclusion of the copyright legend evidences ZF
21 Germany’s review and approve of the material. Upon information and belief, ZF
22 Germany did actually review and approve the presentation (or a draft thereof)
23 before its subsidiaries sent it to NHTSA.

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26 ⁶⁹ According to ZF Germany’s 2017 Annual Report, the “Active & Passive Safety
27 Technology Division” was “established by ZF Group to manage the business
28 activities of ZF TRW after its acquisition.” Because ZF TRW Corp. is the only
corporate entity with “ZF TRW” as part of its corporate name, this letter was also
sent on behalf of ZF TRW Corp.

1 **15. Shortly after the March 8, 2018 meeting with NHTSA, ZF**
2 **Germany, ZF TRW Corp., ZF Automotive USA, ZF Electronics**
3 **USA, and ZF Passive Safety USA continued to coordinate with**
4 **FCA, Hyundai Korea, Kia Korea, Hyundai USA, Kia USA, and**
5 **Hyundai Mobis regarding their efforts to deny and downplay the**
6 **ACU Defect.**

7 1409. Upon information and belief, shortly after the July 19, 2016, meeting
8 with NHTSA, ZF Automotive USA, ZF Electronics USA, and ZF Passive Safety
9 USA shared excerpted versions of the March 8, 2018 presentation with Toyota
10 Japan, Honda Japan, and Mitsubishi Japan. Upon information and belief, ZF
11 Electronics USA, ZF Passive Safety USA, and ZF Automotive USA did this to
12 further their scheme to mislead NHTSA as to the nature and scope of the ACU
13 Defect.

14 **16. On March 14, 2018, Kia USA made misleading statements to**
15 **NHTSA regarding field incidents involving Kia vehicles.**

16 1410. Upon information and belief, in March 2018, Kia Korea and Kia USA
17 used interstate mail and/or wire to prepare and send a written presentation dated
18 March 14, 2018 to NHTSA. This presentation contained several misleading
19 statements about the Kia Class Vehicles. Upon information and belief, Kia Korea
20 and Kia USA intended these statements to further their conspiracy with ZF and ST
21 Defendants by concealing the ACU Defect, avoiding recalls of unsafe Kia Class
22 Vehicles, and allowing the continued sale of defective but profitable safety
23 equipment.

24 **a. The March 14, 2018 written presentation to NHTSA**
25 **contained misleading statements.**

26 1411. The March 14, 2018 written presentation contains several misleading
27 statements directed at NHTSA.
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i. The presentation materially misrepresented the number of known crashes with signs of ASIC EOS in Kia vehicles.

1412. The presentation undercounted the number of known crashes where Kia vehicles showed signs of ASIC EOS by only noting the following incidents: (1) an April 20, 2012 Kia Korea crash test of a Kia Optima Hybrid for the European market, (2) the March 21, 2011 crash in Tallahassee, Florida involving a Kia Forte with no airbag deployment that seriously injured Joy King, (3) the July 28, 2013 crash in Northern California involving a Kia Forte with no airbag deployment that killed Lomia Faumuina and seriously injured Ronald Hill, and (4) the March 18, 2017 crash in Canada involving a Kia Forte with no airbag deployment that killed Julian Dufort.

1413. In fact, Kia Korea, Kia USA, and Hyundai Mobis knew of five additional Kia Forte and Kia K5 crashes with nondeployments and confirmed DS84 ASIC EOS in China⁷⁰ and Egypt. Because the presentation affirmatively mentioned four cases implicating three different countries on two continents, it was misleading to conceal known adverse information about these other crashes. The presentation includes no limitation as to the geography of accidents listed, and therefore appears to disclose all relevant global incidents for NHTSA consideration. But it did not do so.

1414. This misleading statement was material because it concealed evidence of many observed airbag nondeployments with confirmed EOS. Upon information and belief, NHTSA would have considered this evidence important to its decision whether to require a recall or expand its investigation into the defective DS84 ACUs and ASICs.

⁷⁰ The Chinese crashes with airbag failures and confirmed EOS occurred in Ganzhou, Wehai, Xinyang, and Zhenjiang.

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ii. The presentation misleadingly blames the failure of airbags in the King crash on “underride” damage from the crash instead of ASIC EOS.

1415. Regarding the airbag failure in Joy King’s Kia Forte during a crash with a logging truck in Tallahassee, the presentation stated: “Kia’s retained expert calculated sensors separated at about 35 milliseconds after first contact” and “[a]irbag non-deployment due to Forte underride.” These statements misleadingly suggested that the underride crash damaged the crash sensors before a crash signal could be sent and the non-deployment of the airbag was not the result of the ACU Defect. Additionally, the misleading suggestion that only this “underride” caused the airbags not to deploy fails to explain the observed EOS damage to the DS84 ASIC, which is a known cause of airbag deployment failure.

1416. The misleading statement that the airbags failed in the King crash due to “underride” was material because it concealed evidence that the ACU Defect had caused airbag failures in a crash.

iii. The presentation misleadingly blamed the airbag failure in the Faumuina crash on the vehicle’s front impact sensors.

1417. Regarding the fatal Faumuina crash in Northern California, the presentation stated: “Kia’s expert concluded the airbag sensors were compromised before an airbag deployment signal could have been sent.” This statement misleadingly suggested that the cause of the non-deployment of the airbag in the Faumuina crash was not the result of the ACU Defect. The assertion that the sensors were compromised and caused airbag nondeployment fails to explain the prior observation of EOS damage on the DS84 ASIC, which is a known cause of airbag deployment failure.

1 1418. The misleading statement that the airbags failed in the Faumuina crash
2 due to a front impact sensor failure was material because it concealed evidence that
3 the ACU Defect had caused airbag failures in a crash.

4 **iv. The presentation misleadingly suggested airbag**
5 **deployment was not warranted in the fatal Kia Forte**
6 **crash in Canada.**

7 1419. Regarding the Kia Forte crash that Killed Julian Dufort in Canada, the
8 presentation stated, “It appears that there would have been insufficient frontal crash
9 energy to general a deployment signal” and “[Kia Korea] unable to identify any
10 facts in limited photographs supporting a commanded airbag deployment” (i.e., that
11 the airbags should have gone off). This statement was misleading because: (1) the
12 crash was severe enough to kill the driver, (2) the airbags in the Volkswagen Rabbit
13 that hit the Forte went off due the force of the same crash, and (3) the pictures of
14 the wrecked Forte plainly showed a devastating crash that completely warped the
15 front-end of the vehicle.



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24 1420. Moreover, the excuse that the airbags were not supposed to deploy
25 again fails to explain the EOS damage observed on the DS84 ASIC retrieved from
26 the crash, which is a known cause of airbag deployment failures, and the loss of a
27 crash record, which is typically caused by EOS.

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1 1421. The misleading statement that the airbag deployment was not
2 warranted in the Canadian Kia Forte crash was material because it concealed
3 evidence that the ACU Defect had caused airbag failures in a crash.

4 **b. Kia USA and Kia Korea had joint responsibility for the May**
5 **14, 2018 presentation to NHTSA.**

6 1422. On March 14, 2018, Kia USA made a presentation to NHTSA using a
7 written slide deck presentation.

8 1423. Because the document describes several actions by Kia Korea and
9 Hyundai Mobis that Kia USA did not perform, Kia Korea and Hyundai Mobis must
10 have assisted Kia USA with the preparation of this slide deck.⁷¹ Upon information
11 and belief, Kia USA, Kia Korea, and Hyundai Mobis all either played a role in
12 editing, reviewing, or drafting the March 14, 2018 presentation.

13 1424. On March 16, 2018, J.S. Park, the Executive Director of Product
14 Litigation & Regulatory Compliance for Kia USA, mailed a copy of the March 14,
15 2018 slide deck to NHTSA.

16 1425. Kia Corp’s active role in overseeing Kia USA’s response to the
17 NHTSA investigation—including its decision to hold multiple meetings with ZF
18 Automotive USA and Kia USA in South Korea about the investigation—
19 demonstrates that Kia USA would not have submitted the presentation to NHTSA
20 without Kia Korea’s express approval.

21 1426. Upon information and belief, Kia Korea and Mobis knew that Kia
22 USA would use this slide deck to make a presentation to NHTSA, and specifically
23 intended for that to happen.

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25 ⁷¹ For example, the slide deck describes the following events that did not involve
26 Kia USA at all: (1) Kia Korea’s April 20, 2012 crash test, where the ACU in an
27 Optima suffered EOS, (2) Kia Korea’s November 4-17, 2015 inspection of ACUs,
28 and (3) Kia Korea’s provision of information to ZF Automotive USA on April 21,
2016 “for sharing information by them with NHTSA.”

1 **17. On March 16, 2018, NHTSA announced its intention to formally**
2 **review all vehicles with DS84 ACUs and ASICs.**

3 1427. On March 16, 2018, NHTSA opened a formal investigation into
4 Hyundai-Kia Class Vehicles. In announcing the investigation, NHTSA publicly
5 stated its ODI, “will evaluate the scope of Hyundai’s recall, confirm Kia’s use of
6 the same or similar ZF TRW ACU, review the root cause analysis of all involved
7 parties, and review and evaluate pertinent vehicle and/or ACU factors that may be
8 contributing to, or causing EOS failures. Additionally, ODI will determine if any
9 other vehicle manufacturers used the same or similar ACUs, as supplied by ZF-
10 TRW, and if so, evaluate whether the field experience of these vehicles indicates
11 potentially related crash events.”

12 1428. Upon information and belief, all Defendants reviewed NHTSA’s
13 announcement and, based on the final sentence quoted in the preceding paragraph,
14 understood that NHTSA would review the risks associates with DS84 ACUs and
15 ASICs in all Class Vehicles.

16 **18. In April and May 2018, Hyundai USA and Kia USA agreed to**
17 **further recalls of Hyundai-Kia Class Vehicles in response to**
18 **pressure from NHTSA.**

19 1429. On March 19 and March 28, 2018, Hyundai USA conducted seven
20 Hyundai Sonata crash tests. NHTSA supervised these crash tests, and Hyundai
21 Korea assisted with the development of the crash test parameters. Hyundai USA
22 was able to replicate EOS damage to the DS84 ACU in three of the seven crash
23 tests, with at least one of the confirmed EOS events resulting in the failure of
24 airbags to deploy. Of the three crash tests that produced DS84 ACUs with evident
25 EOS damage, Hyundai observed wire harness damage in two of these tests. There
26 was no observed vehicle abnormality (such as wiring) that could have caused EOS
27 in the third test.

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1 1430. On April 11-12, 2018, Hyundai Korea, Hyundai USA, ZF Electronics
2 USA, ZF Automotive USA, and ZF Passive Safety USA analyzed the three DS84
3 ACUs with replicated EOS damage at ZF TRW Global Electronics Headquarters in
4 Farmington Hills, Michigan. NHTSA supervised this analysis. The analysis showed
5 that, in all three ACUs, an internal electrical short occurred on the 5-volt VCC line
6 connecting the DS84 ASIC to a power supply. One of the three ACUs contained
7 visible evidence of EOS.

8 1431. [REDACTED]
9 [REDACTED]
10 [REDACTED]
11 [REDACTED]

12 1432. On April 18, 2018, Hyundai USA expanded the scope of its safety
13 recall for Hyundai Sonatas.

14 1433. On May 15 and 16, 2018, Kia USA inspected two new Kia Fortes with
15 DS84 ACUs that had crashed with no airbag deployment. Upon information and
16 belief, NHTSA had identified these vehicles itself and required Kia USA to inspect
17 them. NHTSA supervised the inspection. During this inspection, Kia USA was not
18 able to communicate with or retrieve a crash record from one of the ACUs. Kia
19 USA sent both ACUs from this inspection to ZF Automotive USA, ZF Electronics
20 USA, and ZF Passive Safety USA's shared office in Michigan for inspection.

21 1434. Upon information and belief, on May 24, 2018, ZF Automotive USA,
22 ZF Electronics USA, and ZF Passive Safety USA, Hyundai Mobis, Kia Korea, and
23 Kia USA conducted a joint inspection of the DS84 ACUs at a Michigan-based
24 facility shared by ZF Automotive USA, ZF Electronics USA, and ZF Passive
25 Safety USA. EDR data downloaded from the 2012 Kia Forte showed that a crash
26 record was missing for the most recent crash, which is a sign of EOS. Resistance
27 measurements made on certain circuit board pins of the same ACU were consistent
28 with prior controller measurements that had exhibited an EOS event. Based on

1 these results and available information from other manufacturers, NHTSA
2 requested Kia USA and Kia Korea conduct a recall of the 2010-2013 Kia Forte.

3 1435. On May 28, 2018, in response to NHTSA’s request, Kia Korea agreed
4 to recall the 2010-2013 Kia Forte, 2010-2013 Forte Koup, 2011-2013 Optima,
5 2011-2012 Optima Hybrid, and 2011-2012 Sedona.

6 **19. Hyundai USA and Kia USA filed 573 Defect Reports in April 2018**
7 **and June 2018 that misleadingly downplayed the scope of the ACU**
8 **Defect.**

9 1436. On April 18, 2018, Hyundai USA used mail and/or wire to file a 573
10 Defect Report announcing its expanded recall of Sonatas. In a section of the form
11 requiring Hyundai USA to “Identify How/When Recall Condition was Corrected in
12 Production,” Hyundai USA responded that “[r]edesigned ACU’s were used
13 beginning with model year 2013 Hyundai Sonata vehicle production.” This
14 statement was misleading because the “redesigned ACU” still had the same
15 defective DS84 ASIC as the DS84 ACUs prior to the “redesign.” Upon information
16 and belief, although this “redesigned ACU” included some additional circuit
17 protection by adding diodes, the diodes do not alter the defective design of the
18 DS84 ASIC and can still fail to protect the ASIC when a transient is large enough.
19 Indeed, Toyota and Honda Class Vehicles with confirmed EOS damage on the
20 DS84 ASICs also contained diodes, which failed to prevent EOS. Moreover, public
21 complaints indicate that suspicious airbags failures in 2013 through 2019 Hyundai
22 Sonatas even with the “redesigned ACUs” persist.⁷²

23 1437. On June 1, 2018, Kia USA used mail and/or wire to file a 573 Defect
24 Report defect announcing its recall of Kia Class Vehicles. In a section of the report
25 requiring Hyundai USA to “Identify How/When Recall Condition was Corrected in

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27 ⁷² See Exhibit 2, ODI Nos. 10561845, 10577996, 10690546, 10914378, 10966365,
28 10991216, 11109647, 11110375, 11111515, 11111752, 11113831, 11182813,
11185315, 11207275, 11218278, 11235075, 11290285, 11307272, 11309986.

1 Production,” Kia USA responded that “[t]he ACU implemented into production
2 from August 15, 2012 for the Sedona and from September 1, 2012 for the Forte,
3 Forte Koup, Optima and Optima Hybrid have adequate circuit protection.” This
4 statement was misleading because the DS84 ACUs in later Kia Class Vehicles still
5 had the same defective DS84 ASIC as the ACUs prior to the “redesign.” Upon
6 information and belief, although these later vehicles included some additional
7 circuit protection by adding diodes, the diodes do not alter the defective design of
8 the DS84 ASIC and can still fail to protect the ASIC when a transient is large
9 enough. Indeed, Toyota and Honda Class Vehicles with confirmed EOS damage on
10 the DS84 ASICs also contained diodes, which failed to prevent EOS. Public
11 complaints indicate that suspicious airbags failures in 2014 through 2019 Kia Class
12 Vehicles persist.⁷³

13 **20. In spring 2018, Toyota USA made misleading statements to**
14 **NHTSA denying the existence of known field incidents in which**
15 **EOS was suspected or found.**

16 1438. In March 2018, Toyota Japan began holding weekly conference calls
17 with ZF Electronics USA, ZF Passive Safety USA, and ZF Automotive USA
18 During these calls, Toyota Japan, ZF Electronics USA, ZF Passive Safety USA, and
19 ZF Automotive USA regularly discussed results of transient testing, known failure
20 modes associated with EOS on the DS84 ASIC, and suspicious Toyota crashes with
21 no airbag deployment. These weekly conference calls continued until at least
22 August 2019. Upon information and belief, Toyota Japan, ZF Electronics USA, ZF
23 Passive Safety USA, and ZF Automotive USA held well over 50 of these
24 conference calls. Upon information and belief, participants in the conference calls
25 included Emanuel Goodman, a longtime employee of ZF Passive Safety USA and
26 the Senior Technical Specialist for ZF Electronics USA; Raad Konja, a vice

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28 ⁷³ See Exhibit 3, ODI Nos. 11019598, 11183175, 11210649, 11287036.s

1 president at ZF Passive Safety USA; and members of Toyota Japan design group
2 called “3SJ.”

3 1439. Upon information and belief, in or around March 2018, NHTSA
4 contacted Toyota USA inquiring about the use of DS84 ACUs with the DS84 ASIC
5 and any field experience in Toyota vehicles.

6 1440. Later, in spring 2018, Toyota USA misleadingly responded to NHTSA
7 that Toyota had conducted a U.S. field data review, and reported that no U.S. cases
8 were found at that time based on Toyota’s understanding of the issues.

9 1441. This statement was misleading because Toyota USA, Toyota Sales
10 USA, and Toyota Japan were aware of a suspicious Toyota Corolla crash with no
11 airbag deployment that occurred in July 2016 in New Haven, Vermont. The Corolla
12 was travelling at 50 miles per hour when it crashed into a vehicle that stopped in
13 front of it. The high speed of this collision indicated the airbags should have
14 deployed. Moreover, an inspector was unable to establish communication with the
15 Corolla’s EDR or otherwise download a crash record. These are signs of ASIC
16 EOS.

17 1442. Moreover, by this time, Toyota Japan, Toyota USA, and Toyota
18 Engineering USA knew that a Toyota Auris had crashed with no airbag deployment
19 in Turkey, and that a decapsulation analysis of the DS84 ASIC from this vehicle
20 had confirmed EOS. Toyota Japan, Toyota USA, and Toyota Engineering USA also
21 knew that Toyota Japan was assessing whether EOS had caused suspicious
22 nondeployments in Toyota Aurises in Morocco and Portugal. Because the Toyota
23 Auris is very similar to the Toyota Corolla sold in the United States, it was
24 misleading for Toyota USA to limit its disclosure to NHTSA to “U.S. cases.”

25 1443. Toyota USA’s misleading statement denying suspicious field incidents
26 was material because it concealed evidence that the ACU Defect had caused airbag
27 failures in Toyota vehicles.

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1 **21. Between June 2018 and April 2019, Toyota Japan, Toyota USA,**
2 **ZF Electronics USA, ZF Passive Safety USA, ZF Automotive USA,**
3 **ZF Germany, ST USA, ST Italy, and ST Malaysia coordinated**
4 **with one another to conceal the ACU Defect in Toyota Class**
5 **Vehicles.**

6 1444. Between September 2018 and March 2019, Toyota Japan continued its
7 regular weekly meetings with ZF Electronics USA, ZF Passive Safety USA, and ZF
8 Automotive USA In addition to these meetings, Toyota Japan, Toyota Engineering
9 USA, Toyota USA, ZF Electronics USA, ZF Passive Safety USA, and ZF
10 Automotive USA held an in-person meeting at ZF Electronics USA, ZF Passive
11 Safety USA, and ZF Automotive USA’s shared office in Farmington Hills,
12 Michigan on January 29 and 30, 2019.

13 1445. During all these meetings, Toyota Japan, ZF Electronics USA, ZF
14 Passive Safety USA, and ZF Automotive USA regularly discussed joint testing and
15 analysis on DS84 ACUs and ASICs performed by ZF Electronics USA, ZF Passive
16 Safety USA, ZF Automotive USA, ST USA, ST Italy, and ST Malaysia.

17 1446. During Toyota Japan’s regular weekly meetings with ZF Electronics
18 USA, ZF Passive Safety USA, and ZF Automotive USA, ZF Electronics USA, ZF
19 Passive Safety USA, and ZF Automotive USA typically sent Toyota Japan written
20 slide decks to aid discussions. These slide decks contained copyright legends
21 attributing ownership of the materials to ZF Germany. Based on these copyright
22 legends and information and belief, ZF Germany reviewed and approved the
23 transmittal of these written materials to Toyota Japan.

24 1447. In June and November 2018, ST USA responded to information
25 requests for ST USA’s failure analyses of several DS84 ASICs retrieved from
26 Hyundai and Toyota vehicles.

27 1448. Upon information and belief, in or around November 2018, shortly
28 after responding to NHTSA’s information requests and confirming EOS damage on
a DS84 ASIC retrieved from a Portuguese Toyota Auris that crashed with no front

1 airbag deployment, ST USA, ST Italy, and ST Malaysia grew concerned about
2 NHTSA's investigation and the risk of recalls and lawsuits in the United States
3 based on the defective DS84 ASIC. According to meeting notes produced by
4 Toyota Defendants, Toyota Japan, ZF Electronics USA, ZF Passive Safety USA,
5 and ZF Automotive discussed this concern repeatedly in 2018 and 2019. For
6 example, confidential notes to a November 22, 2018 meeting attended by
7 representatives of ZF Electronics USA, ZF Passive Safety USA, Toyota
8 Engineering USA, and Toyota Japan record a question as to whether the ST
9 companies "are becoming sensitive as NHTSA, etc. are stepping?" Similarly, notes
10 to a February 29, 2019 meeting between Toyota Japan, ZF Electronics USA, ZF
11 Passive Safety USA, and ZF Automotive USA state that ZF had heard that the ST
12 companies "don't want to get involved because it is becoming a dangerous matter
13 including lawsuits, etc. as NHTHA [sic] is also getting involved." (internal brackets
14 omitted)

15 1449. Based on meeting notes produced by Toyota Defendants and
16 information and belief, ST USA, ST Italy, and ST Malaysia informed ZF
17 Electronics USA, ZF Passive Safety USA, ZF Automotive USA, and ZF Germany
18 that they would no longer perform their proprietary analyses on returned DS84
19 ASICs to determine whether they had EOS damage. According to notes of several
20 meetings between Toyota Japan, ZF Electronics USA, ZF Passive Safety USA, and
21 ZF Automotive USA, conversations about this decision by ST USA, ST Italy, and
22 ST Malaysia reached the highest levels of ZF's and ST's corporate structure,
23 including, upon information and belief: (a) in-house counsel at ZF Germany and ST
24 USA, (b) the CEOs of ZF Germany and the ST parent company, and (c) senior vice
25 presidents at ZF Germany or ZF Automotive USA

26 1450. Upon information and belief, ZF Electronics USA, ZF Passive Safety
27 USA, ZF Automotive USA, and Toyota USA did not notify NHTSA of ST USA's,
28 ST Italy's, and ST Malaysia's decision to stop evaluating DS84 ASICs for EOS,

1 even though Toyota USA committed in writing to “update the Agency on the status
2 of its ongoing investigation” at least twice in 2019, including on March 14, 2019
3 and May 28, 2019. ST USA’s, ST Italy’s, and ST Malaysia’s withdrawal from
4 investigating DS84 ASIC EOS was a material development because their
5 proprietary testing methodologies were critical to capturing magnified images of
6 EOS damage.

7 **22. On January 17, 2020, Toyota Engineering USA and Toyota USA**
8 **filed a 573 Defect Report that misleadingly denied the ACU Defect**
9 **in millions of Toyota Class Vehicles.**

10 1451. On January 17, 2020, Toyota Engineering USA and Toyota USA filed
11 a 573 Defect Report with NHTSA that announced its intention to recall Toyota
12 Corollas and Avalons based on the ACU Defect. This announcement occurred only
13 after NHTSA’s investigation had effectively forced Toyota Engineering USA and
14 Toyota USA to inspect several suspicious incidents, most of which NHTSA itself
15 identified.

16 1452. In explaining its decision not to recall other Toyota Class Vehicles
17 with the same defective DS84 ACU and ASIC, Toyota Engineering USA and
18 Toyota USA stated that, “due to a different body construction and other factors,
19 Toyota believes at this time that an occurrence of a sufficient negative transient at a
20 timing that can affect airbag deployment in a crash is unlikely.” This statement was
21 misleading because Toyota Engineering USA and Toyota USA elsewhere
22 acknowledged their inability to assess the likelihood of dangerous negative
23 transients occurring in even the recalled Toyota Class Vehicles, stating: “[D]amage
24 to the application-specific integrated circuit (ASIC) that will affect airbag
25 deployment can occur only under a very narrow set of factors and circumstances in
26 a crash that Toyota believes to be rare. However, *Toyota is unable to estimate the*
27 *likelihood for this to occur in the real world.*” Similarly, Toyota USA and Toyota
28 Engineering USA acknowledged that for some recalled Class Vehicles, “the

1 mechanism that could create a sufficient negative electrical transient in a crash is
2 *not fully understood* and is under investigation.” Given these admissions, Toyota
3 Engineering USA and Toyota USA’s affirmative statement about the purported
4 unlikelihood of a dangerous transient occurring in unrecalled Class Vehicles was
5 misleading because it was unreliably speculative.

6 **G. Defendants’ material omissions and misrepresentations about the**
7 **defective DS84 ACUs injured Plaintiffs and class members.**

8 **1. Defendants’ consumer-facing misleading misrepresentations and**
9 **omissions caused Plaintiffs’ purchases and leases of Class Vehicles.**

10 1453. But for Defendants’ misleading consumer-facing misrepresentations
11 and omissions, Plaintiffs would not have agreed to purchase or lease their Class
12 Vehicles. *See* Section II.B above.

13 1454. But for Defendants’ misleading use of permanent labels certifying
14 compliance with US safety standards, Defendants could not have legally distributed
15 the Class Vehicles for sale and Plaintiffs’ purchases or leases of Class Vehicles
16 could never have taken place.

17 1455. But for Defendants’ misleading consumer-facing misrepresentations
18 and omissions, there would have been no viable market for the defective DS84
19 ACUs and ASICs. The ZF Defendants’ decision to stop making the DS84 ACU in
20 2019—i.e., the same year that NHTSA announced its investigation of all vehicles
21 with the DS84 ACU—evidences a causal connection between the revelation of
22 information about the defect and the elimination of a viable market for the DS84
23 ACUs.

24 **2. But for Defendants’ consumer-facing misleading**
25 **misrepresentations and omissions, Plaintiffs would not have**
26 **overpaid for the Class Vehicles.**

27 1456. Defendants’ misleading misrepresentations about the safety of Class
28 Vehicles also caused Plaintiffs to overpay for their Class Vehicles. *See* Sections

1 II.B., IV.G. above. This overpayment is equal to the difference in value between the
2 Class Vehicles as marketed and the Class Vehicles as purchased or leased. This
3 calculation shows the difference between the amount the Plaintiffs would have
4 spent for the purchase or lease of Class Vehicles with the ACU defect, and what
5 they would have spent on those without it.

6 1457. As an initial matter, the existence of a non-zero value difference
7 between the “as marketed” and “as purchased or leased” Class Vehicles is obvious.
8 Because consumers care deeply about automobile safety, vehicles with less
9 effective safety systems are worth less than comparable vehicles with more
10 effective safety systems. Although this inherently intuitive concept requires no
11 illustration, market evidence confirms that there is a difference in price between
12 two otherwise comparable vehicles with even slightly different safety systems. For
13 example, some vehicles are sold with and without seat-mounted front side airbags.
14 The addition of these extra airbags beyond front airbags makes the cars safer, but
15 costs extra. For the 2011 Jeep Wrangler, for example, this added feature cost
16 approximately \$500.

17 1458. The same principle applies when comparing the value of the “as
18 marketed” and “as delivered” Class Vehicles. Defective safety systems are worth
19 less than the same safety system without a defect because they make the vehicle
20 more dangerous. For example, in the *Takata* airbag litigation, plaintiffs also alleged
21 overpayment damages suffered at the point of sale based on a dangerous airbag
22 defect. Plaintiffs’ experts in that case performed a conjoint analysis using surveys
23 of consumers and found that the overpayment percentage for vehicles with the
24 dangerous airbag defect in that case was at least ten percent of the purchase price.

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1 **3. Defendants’ misrepresentations to NHTSA caused economic harm**
2 **to the Plaintiffs and class members who purchased Class Vehicles**
3 **after the date of those misrepresentations.**

4 1459. But for Defendants’ misleading statements to NHTSA in 2016 and
5 2018, the public would have learned about the dangerous safety defect much earlier
6 than April 2019, when NHTSA first announced an Engineering Analysis covering
7 over twelve million vehicles. For example, if ZF Germany, ZF TRW Corp., ZF
8 Automotive USA, ZF Electronics USA, and ZF Passive Safety USA had not
9 misleadingly denied the defect in 2016 (including by falsely stating several crashes
10 with safety system failures were “commanded nondeployments”), NHTSA would
11 have also launched the same Engineering Analysis much earlier, likely in 2016.
12 Because this Engineering Analysis coincided with ZF Defendants’ abandonment of
13 the DS84 ACU, manufacture of the DS84 ACU would have also occurred much
14 earlier and the 2018 and 2019 Class Vehicle model years would not have had the
15 ACU Defect at all. Plaintiffs Samouris, Hernandez, Van Houten, Collins, and
16 Graziano therefore would not have purchased vehicles with DS84 ACUs in that
17 scenario.

18 1460. Moreover, NHTSA’s 2019 Engineering Analysis was a newsworthy
19 event covered by several major news outlets, including, for example, Newsweek
20 and CNN. Plaintiffs likely would have learned this news, because the
21 announcement of the Engineering Analysis is the event that prompted the filing of
22 the lawsuits in this matter. The Plaintiffs who purchased after 2016, when the news
23 of an earlier investigation likely would have broken, include Plaintiffs Samouris,
24 Hernandez, Swanson, Fishon, Maurilus, Gonzalez, Van Houten, Collins, Graziano,
25 Hunt, Laveaux, and DeMoranville.

26 **4. Plaintiffs are the direct and intended victims of Defendants’ fraud.**

27 1461. Plaintiffs are the direct and intended victims of Defendants’ fraud.
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1 1462. Defendants' ultimate goal was to use the cheap safety system parts (the
2 DS84 ASIC and ACU) for as long as possible. Achieving this goal over several
3 years required continuing purchases and leases of Class Vehicles by consumers,
4 because end-user transactions generate demand from dealers for Class Vehicles.

5 1463. Toyota Japan, Toyota Sales USA, Toyota USA, Hyundai Korea,
6 Hyundai USA, Kia Korea, Kia USA, Honda Japan, Honda Engineering USA,
7 Honda USA, FCA, Mitsubishi Japan, and Mitsubishi USA specifically targeted
8 vehicle purchasers and lessees as the intended audience for misleading advertising,
9 Monroney labels, certification labels, airbag labels, airbag warning lamps, and
10 owner's manuals.

11 1464. Although Defendants also sought to mislead NHTSA as to the
12 existence, nature, and scope of the DS84 ACU Defect, their fraud on NHTSA was
13 merely a means to the end of perpetuating fraud on consumers. Defendants make no
14 money from defrauding NHTSA. And insofar as they saved money from avoiding
15 recalls, consumers are the beneficiaries of those recalls, since they are people most
16 likely to drive the Class Vehicles. Of course, NHTSA does not drive the Class
17 Vehicles or take them to dealers for a recall remedy. Consumers do.

18 **V. TOLLING OF THE STATUTE OF LIMITATIONS**

19 1465. Plaintiffs reallege and incorporate by reference all preceding
20 allegations as though fully set forth herein, including the specific allegations
21 regarding the misrepresentations and omissions in Sections IV.E. – IV.G. above.

22 1466. As explained below, all statutes of limitations applicable to Plaintiffs'
23 claims are subject to tolling under the doctrines of fraudulent concealment tolling,
24 delayed discovery rule, and/or equitable estoppel due to Defendants' ongoing
25 misrepresentations and omissions regarding the safety of the Class Vehicles and the
26 passenger safety systems therein, and their ongoing scheme to knowingly and
27 intentionally conceal the ACU Defect to Plaintiffs, the putative class, and NHTSA.
28

1 1467. The statute of limitations on Plaintiffs’ and putative class members’
 2 claims are also tolled under *American Pipe & Construction Co. v. Utah*, 414 U.S.
 3 538 (1974) and its progeny, which hold that the filing of an initial putative class
 4 action tolls the claims for all individuals that fall within the proposed class
 5 definition until the court in that action rules on class certification. *American Pipe*
 6 tolling applies as follows:

Date Tolling Began	Defendant Groups	Underlying Member Case
April 26, 2019	ZF Defendants Honda Defendants Toyota Defendants	<i>Samouris v. ZF TRW Auto. Holdings Corp.</i> , 2:19-cv-11215 (E.D. Mich.)
April 29, 2019	Hyundai Defendants Kia Defendants	<i>Hernandez v. Hyundai</i> , 8:19-cv-00782 (C.D. Cal.)
May 6, 2019	FCA Hyundai Mobis	<i>Altier v. ZF TRW Auto. Holdings Corp.</i> , 8:19-cv-00846 (C.D. Cal.)
May 21, 2019	Mitsubishi Defendants	<i>Bell v. ZF Friedrichshafen AG</i> , 8:19-cv-00963 (C.D. Cal.)
May 26, 2020	ST Defendants	Consolidated Class Action Complaint (Dkt. 278)

19
 20 1468. Additionally, each Plaintiff’s claims against ST Italy and ST Malaysia
 21 relate back to the date of filing of the Consolidated Class Action Complaint (ECF
 22 278), because the claims asserted against ST Italy and ST Malaysia arose out of the
 23 conduct, transaction, or occurrence set out in the original complaints against the ST
 24 Defendants. ST Italy and ST Malaysia are subsidiaries of STMicroelectronics N.V.
 25 and STMicroelectronics International N.V., both of whom were named as
 26 defendants in the Consolidated Class Action Complaint.

27 1469. [REDACTED]

28 [REDACTED]

- 1 a. [REDACTED]
- 2 [REDACTED]
- 3 [REDACTED]
- 4 [REDACTED]
- 5 b. [REDACTED]
- 6 [REDACTED]
- 7 c. [REDACTED]
- 8 [REDACTED]
- 9 [REDACTED]
- 10 d. [REDACTED]
- 11 [REDACTED]
- 12 [REDACTED]
- 13 [REDACTED]

14 1470. Because Plaintiffs’ claims relate back to the filing of the Consolidated
15 Class Action Complaint, the statute of limitations has not run on Plaintiffs’ claims
16 against ST Italy and ST Malaysia.

17 **A. Fraudulent Concealment Tolling**

18 **1. Defendants knowingly misrepresented and omitted material**
19 **information to Plaintiffs, consumers, and NHTSA regarding the**
20 **safety of the Class Vehicles.**

21 1471. As set forth above in Section IV.E. – IV.G., throughout the relevant
22 period, Defendants actively concealed and failed to disclose the ACU Defect to
23 Plaintiffs, consumers, and NHTSA, which prevented Plaintiffs from learning the
24 true defective nature of the DS84 ACUs and ASICs installed in their Class Vehicles.

25 1472. Defendants have known since at least 2008 that consumers consider
26 properly-functioning airbags and seatbelts to be critical attributes when deciding to
27 purchase or lease a vehicle. Based on that knowledge, each Vehicle Manufacturer
28 Defendant group purposefully and knowingly engaged in, or conspired to engage

1 in, pervasive and ubiquitous marketing and advertising campaigns that portrayed
2 the Class Vehicles as safe and reliable—and that the Class Vehicles’ Occupant
3 Restraint Systems would function properly and reliably in a crash—so they could
4 sell more Class Vehicles and charge a higher price for them.

5 1473. Those marketing campaigns included brochures, press releases, print,
6 media, television and radio advertisements, and promotion on internet and social
7 media. Additionally, each Vehicle Manufacturer Defendant group made, or
8 conspired to make, representations regarding the safety of the Class Vehicles and its
9 functioning airbags and seatbelts through, among other things: window stickers
10 affixed to each Class Vehicle at the point of sale or lease and available online;
11 labels that uniformly communicate compliance with applicable motor vehicle safety
12 standards in every Class Vehicle; and in-vehicle information about airbags. Further,
13 on information and belief, each Vehicle Manufacturer Defendant group provided
14 training and marketing materials regarding Class Vehicles to their authorized
15 dealerships to increase sales and leases of Class Vehicles to consumers.

16 1474. Furthermore, each Vehicle Manufacturer Defendant group, along with
17 the ZF Defendants, were responsible for equipping the Class Vehicles with
18 misleading airbag readiness indicators that misrepresented to consumers the
19 operability of the Class Vehicles’ airbag systems.

20 1475. Moreover, the Vehicle Manufacturer Defendants and the ZF
21 Defendants purposefully and knowingly made statements, helped make statements,
22 and/or conspired to make statements to NHTSA that the Class Vehicles and their
23 Occupant Restraint Systems were safe and reliable, were free from defects, and
24 complied with all applicable safety laws and regulations.

25 1476. The table below summarizes the misrepresentations/misleading
26 statements that the specific Defendants made, helped make, and/or conspired to
27 make, and provides references the relevant sections above that describe the conduct
28 in further detail.

Defendant	Misrepresentations/ Misleading Statements	Reference Sections
FCA	Monroney labels; Certification labels; Airbag readiness indicators; In-vehicle imprints and labels; Brochures and Marketing; Manuals; Communications/reports to NHTSA	IV.E.1.; IV.E.2.a.iii.; IV.E.2.b.iii.; IV.F.7.; IV.F.10.
Honda Japan	Certification labels; Airbag readiness indicators; In-vehicle imprints and labels; Manuals	IV.E.1.b. – d.; IV.E.2.b.v.
Honda Engineering USA	Certification labels; Airbag readiness indicators; In-vehicle imprints and labels	IV.E.1.b. – d.
Honda USA	Monroney labels; Brochures and Marketing; Manuals	IV.E.1.a; IV.E.2.a.iv.; IV.E.2.b.v.
Hyundai Korea	Certification labels; Airbag readiness indicators; In-vehicle imprints and labels; Communications/reports to NHTSA	IV.E.1.b. – d.; VII.A.1.
Hyundai USA	Monroney labels; Brochures and Marketing; Manuals; Communications/reports to NHTSA	IV.E.1.a; IV.E.2.a.ii.; IV.E.2.b.ii.; IV.F.12.; IV.F.19.
Kia Korea	Certification labels; Airbag readiness indicators; In-vehicle imprints and labels; Communications/reports to NHTSA	IV.E.1.b. – d.; VII.A.1

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Defendant	Misrepresentations/ Misleading Statements	Reference Sections
Kia USA	Monroney labels; Brochures and Marketing; Manuals; Communications/reports to NHTSA	IV.E.1.a.; IV.E.2.a.ii.; IV.E.2.b.ii.; IV.F.13.; IV.F.16.; IV.F.19.
Mitsubishi Japan	Certification labels; Airbag readiness indicators; In-vehicle imprints and labels; Manuals	IV.E.1.b. – d.; IV.E.2.b.iv.
Mitsubishi USA	Monroney labels; Brochures and Marketing;	IV.E.1.a.; IV.E.2.a.v.
Toyota USA	Monroney labels; Communications/reports to NHTSA	IV.E.1.a.; IV.F.20.; IV.F.22.
Toyota Sales USA	Monroney labels; Brochures and Marketing; Manuals	IV.E.1.a.; IV.E.2.a.i.; IV.E.2.b.i.
Toyota Engineering USA	Communications/reports to NHTSA	IV.F.22.
ZF Passive Safety USA	Airbag readiness indicators; Communications/reports to NHTSA	IV.E.1.c.; IV.F.2.; IV.F.4.; IV.F.8.; IV.F.14.
ZF Electronics USA	Airbag readiness indicators; Communications/reports to NHTSA	IV.E.1.c.; IV.F.2.; IV.F.4.; IV.F.8.; IV.F.14.

Defendant	Misrepresentations/ Misleading Statements	Reference Sections
ZF Automotive USA	Airbag readiness indicators; Communications/reports to NHTSA	IV.E.1.c.; IV.F.2.; IV.F.4.; IV.F.8.; IV.F.14.
ZF TRW Corp.	Communications/reports to NHTSA	IV.F.2.; IV.F.4.; IV.F.8.; IV.F.14.
ZF Germany	Communications/reports to NHTSA	IV.F.2.; IV.F.4.; IV.F.8.; IV.F.14.

1477. In addition to the misrepresentations and misleading statements, each Defendant omitted material information regarding the safety of the Class Vehicles, as set forth in the Counts in Section VII and summarized in the table below.

Defendant	Fraud By Omission Counts
FCA	Arizona Count 4; California Count 6; Florida Count 5; Minnesota Count 7; New York Count 4; North Carolina Count 4; Oklahoma Count 5; South Dakota Count 5; Nationwide Counts 3 – 4
Honda Japan	Alabama Count 5; California Count 6; Connecticut Count 4; Florida Count 5; New York Count 4; North Carolina Count 4; Texas Count 4; Nationwide Counts 7 – 8

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Defendant	Fraud By Omission Counts
Honda Engineering USA	Alabama Count 5; California Count 6; Connecticut Count 4; Florida Count 5; New York Count 4; North Carolina Count 4; Texas Count 4; Nationwide Counts 7 – 8
Honda USA	Alabama Count 5; California Count 6; Connecticut Count 4; Florida Count 5; New York Count 4; North Carolina Count 4; Texas Count 4; Nationwide Counts 7 – 8
Hyundai Korea	California Count 6; Florida Count 5; Maryland Count 5; Pennsylvania Count 5; Texas Count 4; Nationwide Counts 1 – 2
Hyundai USA	California Count 6; Florida Count 5; Maryland Count 5; Pennsylvania Count 5; Texas Count 4; Nationwide Counts 1 – 2
Kia Korea	California Count 6; Florida Count 5; Illinois Count 6; Indiana Count 5; Maryland Count 5; Massachusetts Count 5; Michigan Count 5; Minnesota Count 7; Missouri Count 5; New Jersey Count 4; Pennsylvania Count 5; Nationwide Counts 1 – 2
Kia USA	California Count 6; Florida Count 5; Illinois Count 6; Indiana Count 5; Maryland Count 5; Massachusetts Count 5; Michigan Count 5; Minnesota Count 7; Missouri Count 5; New Jersey Count 4; Pennsylvania Count 5; Nationwide Counts 1 – 2
Hyundai Mobis	Nationwide Counts 1 – 2
Mitsubishi Japan	California Count 6; Colorado Count 5; Wisconsin Count 4; Nationwide Counts 9 – 10

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Defendant	Fraud By Omission Counts
Mitsubishi USA	California Count 6; Colorado Count 5; Wisconsin Count 4; Nationwide Counts 9 – 10
Toyota USA	California Count 6; Florida Count 5; Nevada Count 5; South Carolina Count 5; Texas Count 4; Washington Count 3; Nationwide Counts 5 – 6
Toyota Sales USA	California Count 6; Florida Count 5; Nevada Count 5; South Carolina Count 5; Texas Count 4; Washington Count 3; Nationwide Counts 5 – 6
Toyota Engineering USA	Nationwide Counts 5 – 6
ST USA	Alabama Count 6; Arizona Count 5; California Count 7; Colorado Count 6; Connecticut Count 5; Florida Count 6; Illinois Count 7; Indiana Count 6; Maryland Count 6; Massachusetts Count 6; Michigan Count 6; Minnesota Count 8; Missouri Count 6; Nevada Count 6; New Jersey Count 5; New York Count 5; North Carolina Count 5; Oklahoma Count 6; Pennsylvania Count 6; South Carolina Count 6; South Dakota Count 6; Texas Count 5; Washington Count 4; Wisconsin Count 5; Nationwide Counts 1 – 10

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Defendant	Fraud By Omission Counts
ST Italy	Alabama Count 6; Arizona Count 5; California Count 7; Colorado Count 6; Connecticut Count 5; Florida Count 6; Illinois Count 7; Indiana Count 6; Maryland Count 6; Massachusetts Count 6; Michigan Count 6; Minnesota Count 8; Missouri Count 6; Nevada Count 6; New Jersey Count 5; New York Count 5; North Carolina Count 5; Oklahoma Count 6; Pennsylvania Count 6; South Carolina Count 6; South Dakota Count 6; Texas Count 5; Washington Count 4; Wisconsin Count 5; Nationwide Count 2; Nationwide Count 4; Nationwide Count 6; Nationwide Count 8; Nationwide Count 10
ST Malaysia	Alabama Count 6; Arizona Count 5; California Count 7; Colorado Count 6; Connecticut Count 5; Florida Count 6; Illinois Count 7; Indiana Count 6; Maryland Count 6; Massachusetts Count 6; Michigan Count 6; Minnesota Count 8; Missouri Count 6; Nevada Count 6; New Jersey Count 5; New York Count 5; North Carolina Count 5; Oklahoma Count 6; Pennsylvania Count 6; South Carolina Count 6; South Dakota Count 6; Texas Count 5; Washington Count 4; Wisconsin Count 5; Nationwide Counts 1 – 10

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Defendant	Fraud By Omission Counts
ZF Passive Safety Systems USA	Alabama Count 6; Arizona Count 5; California Count 7; Colorado Count 6; Connecticut Count 5; Florida Count 6; Illinois Count 7; Indiana Count 6; Maryland Count 6; Massachusetts Count 6; Michigan Count 6; Minnesota Count 8; Missouri Count 6; Nevada Count 6; New Jersey Count 5; New York Count 5; North Carolina Count 5; Oklahoma Count 6; Pennsylvania Count 6; South Carolina Count 6; South Dakota Count 6; Texas Count 5; Washington Count 4; Wisconsin Count 5; Nationwide Count 1 – 10
ZF Electronics USA	Alabama Count 6; Arizona Count 5; California Count 7; Colorado Count 6; Connecticut Count 5; Florida Count 6; Illinois Count 7; Indiana Count 6; Maryland Count 6; Massachusetts Count 6; Michigan Count 6; Minnesota Count 8; Missouri Count 6; Nevada Count 6; New Jersey Count 5; New York Count 5; North Carolina Count 5; Oklahoma Count 6; Pennsylvania Count 6; South Carolina Count 6; South Dakota Count 6; Texas Count 5; Washington Count 4; Wisconsin Count 5; Nationwide Count 1 – 10

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Defendant	Fraud By Omission Counts
ZF Automotive USA	Alabama Count 6; Arizona Count 5; California Count 7; Colorado Count 6; Connecticut Count 5; Florida Count 6; Illinois Count 7; Indiana Count 6; Maryland Count 6; Massachusetts Count 6; Michigan Count 6; Minnesota Count 8; Missouri Count 6; Nevada Count 6; New Jersey Count 5; New York Count 5; North Carolina Count 5; Oklahoma Count 6; Pennsylvania Count 6; South Carolina Count 6; South Dakota Count 6; Texas Count 5; Washington Count 4; Wisconsin Count 5; Nationwide Count 1 – 10
ZF TRW Corp.	Alabama Count 6; Arizona Count 5; California Count 7; Colorado Count 6; Connecticut Count 5; Florida Count 6; Illinois Count 7; Indiana Count 6; Maryland Count 6; Massachusetts Count 6; Michigan Count 6; Minnesota Count 8; Missouri Count 6; Nevada Count 6; New Jersey Count 5; New York Count 5; North Carolina Count 5; Oklahoma Count 6; Pennsylvania Count 6; South Carolina Count 6; South Dakota Count 6; Texas Count 5; Washington Count 4; Wisconsin Count 5; Nationwide Count 1 – 10
ZF Germany	Alabama Count 6; Arizona Count 5; California Count 7; Colorado Count 6; Connecticut Count 5; Florida Count 6; Illinois Count 7; Indiana Count 6; Maryland Count 6; Massachusetts Count 6; Michigan Count 6; Minnesota Count 8; Missouri Count 6; Nevada Count 6; New Jersey Count 5; New York Count 5; North Carolina Count 5; Oklahoma Count 6; Pennsylvania Count 6; South Carolina Count 6; South Dakota Count 6; Texas Count 5; Washington Count 4; Wisconsin Count 5; Nationwide Count 1 – 10

1 **2. Defendants knew that their representations to Plaintiffs,**
2 **consumers, and NHTSA about the safety and reliability of the**
3 **Class Vehicles and that the Occupant Restraint Systems were false**
4 **and misleading.**

5 1478. The above representations to Plaintiffs, consumers, and NHTSA
6 regarding the safety of the Class Vehicles and the functionality of the vehicles’
7 Occupant Restraint Systems were false and misleading because Defendants knew or
8 should have known that the Class Vehicles were equipped with a defective DS84
9 ACU and ASIC, both of which can cause the vehicle’s airbags and seatbelts to
10 malfunction during a collision. As set forth above in Sections IV.E. – IV.F.,
11 Defendants knew that these representations were false and misleading at the time
12 they made, helped to make, or conspired to make these representations to Plaintiffs
13 and NHTSA.

14 1479. Defendants knew that disclosing the ACU Defect in Class Vehicles to
15 consumers and/or NHTSA would have the ultimate effect of reducing the sales and
16 sale prices of the Class Vehicles, as vehicles equipped with passenger safety
17 systems that do not properly function in a crash are less desirable and less valuable
18 than vehicles with properly functioning passenger safety systems.

19 1480. Indeed, when the Vehicle Manufacturer Defendants made, helped
20 make, or conspired to make false and misleading representations to consumers—
21 including Plaintiffs—regarding the safety of the Class Vehicles and their Occupant
22 Restraint Systems, they knew that the ACU Defect was a material fact that would
23 have caused consumers to either not purchase or lease the Class Vehicles or pay less
24 for them.

25 1481. Further, at the time Defendants made, helped make, or conspired to
26 make false and misleading representations to NHTSA regarding the safety of the
27 Class Vehicles and their Occupant Restraint Systems, they knew that disclosing the
28 ACU Defect to NHTSA would ultimately result in, *inter alia*, NHTSA disclosing or

1 requiring Defendants to disclose the defects to the public, thereby causing Plaintiffs
2 and other consumers to not purchase or lease the Class Vehicles or pay less for
3 them.

4 1482. Because the Vehicle Manufacturer Defendants volunteered to provide
5 information about the Class Vehicles that they offered for sale and lease to Plaintiffs
6 and consumers, they had the duty to disclose the whole truth about the Class
7 Vehicles, including the fact that it was plagued by the ACU Defect. Additionally,
8 that duty attached because the Vehicle Manufacturer Defendants knew that the
9 defects were material facts regarding the reliability, safety, and performance of the
10 Class Vehicle that would affect Plaintiffs' and consumers' decisions to purchase or
11 lease Class Vehicles.

12 1483. By knowingly and purposefully suppressing material facts and failing
13 to disclose material facts despite their duty to do so, Defendants engaged in
14 schemes to actively conceal the ACU Defect in the Class Vehicles from consumers,
15 including Plaintiffs, and from NHTSA. These schemes are described with further
16 particularity in the Counts listed in the table above. These schemes are ongoing, as
17 Defendants continue to obfuscate the nature and extent of the ACU Defect in the
18 Class Vehicles.

19 1484. Defendants' schemes to conceal the ACU defect and their knowing,
20 willful, and intentional misrepresentations and omissions to NHTSA and consumers
21 regarding the safety and reliability of the Class Vehicles were specifically designed
22 to prevent Plaintiffs from discovering their causes of action within the relevant
23 limitations period.

24 **3. Plaintiffs justifiably relied on Defendants' fraudulent concealment**
25 **of the ACU Defect, and could not have discovered those defects**
26 **despite their reasonable diligence.**

27 1485. As explained in detail above in Section II.B., the safety and reliability
28 of the Class Vehicles were critical material facts that influenced each Plaintiff's

1 decision to purchase or lease their Class Vehicles. Each Plaintiff conducted diligent
2 research into the safety and reliability of the Class Vehicles shortly before deciding
3 to purchase or lease them by reviewing the Vehicle Manufacturer Defendants’
4 representations about the Class Vehicles’ safety and reliability. Plaintiffs reviewed
5 these representations through various sources, including the Vehicle Manufacturer
6 Defendants’ websites, marketing and advertising materials for the Class Vehicles,
7 labels and certifications on the Class Vehicles, readiness indicators, and by
8 discussing the safety of the Class Vehicles with salespeople at dealerships.

9 1486. The table in Exhibit 19 identifies the paragraphs where each Plaintiff
10 alleged the specific representations that they reviewed and relied upon before
11 acquiring the Class Vehicles. The table also summarizes the dates and states where
12 each Plaintiff acquired their Class Vehicles, the make of each Plaintiff’s Class
13 Vehicle, the dates when Plaintiffs first filed their claims, and the names of their
14 underlying cases.

15 1487. Defendants intended that Plaintiffs rely on the misrepresentations and
16 omissions regarding the safety and reliability of the Class Vehicles described above
17 by actively concealing that the Class Vehicles contained a defective DS84 ACU and
18 ASIC.

19 1488. Plaintiffs’ reliance on the representations described above was
20 justifiable, given Defendants’ scheme to fraudulently conceal the ACU Defect from
21 Plaintiffs, consumers, and NHTSA, and the lack of any available information that
22 would cause a reasonable person to doubt the representations.

23 1489. Even though some Defendants conducted recalls of certain Plaintiffs’
24 Class Vehicles, Defendants misrepresented the existence of the ACU Defect in
25 connection with those recalls, and fraudulently concealed from Plaintiffs and
26 NHTSA that those recalls were inadequate and that the Class Vehicles were still
27 affected by the ACU Defect after the recall remedy. Therefore, those Plaintiffs
28 reasonably—but mistakenly—believed that their Class Vehicles no longer

1 contained defective DS84 ACUs and ASICs, and they could not have independently
2 discovered the true facts about the defects during their limitation's periods until
3 NHTSA's investigation began in April 2019.

4 1490. Plaintiffs could not have independently discovered the ACU Defect in
5 their Class Vehicles—or that the Vehicle Manufacturer Defendants misrepresented
6 the safety and reliability of the Class Vehicles' Occupant Restraint Systems—either
7 before they purchased or leased the Class Vehicles, or during their limitations
8 period, until NHTSA's announcement in April 2019. ACUs and ASICs are highly
9 complex components, and defects in those components require specialized technical
10 knowledge and experience to discover, as demonstrated by NHTSA's lengthy and
11 complex investigation. Therefore, before NHTSA opened its investigation into
12 unrecalled vehicles, Plaintiffs lacked the necessary expertise to analyze the DS84
13 ACUs for signs of EOS or to even identify the Class Vehicles with DS84 ACUs,
14 and their failure to discover the ACU Defect prior to NHTSA's announcement to
15 the world of its investigation was not due to their own lack of diligence or
16 negligence.

17 **4. Had Defendants disclosed that the Class Vehicles contained**
18 **defective DS84 ACUs and ASICs, Plaintiffs would have seen those**
19 **disclosures.**

20 1491. As discussed above, each Plaintiff researched the safety and reliability
21 of their respective Class Vehicles prior to acquiring them, and each Plaintiff was
22 exposed directly or indirectly to the Vehicle Manufacturer Defendants'
23 misrepresentations and omissions regarding the safety and reliability of the Class
24 Vehicles contained on the Vehicle Manufacturer Defendants' websites, in marketing
25 materials and in-vehicle labels, and/or in discussions with dealership personnel,
26 shortly before or at the time of the disclosures. Therefore, had Defendants disclosed
27 rather than conceal that the DS84 ACUs and ASICs in the Class Vehicles were
28 defective, Plaintiffs would have seen those disclosures.

1 1492. Additionally, if Defendants had accurately and completely disclosed
2 the existence, nature, and extent of the ACU Defect to NHTSA, this information
3 would have been made public and would have allowed NHTSA to launch its
4 investigations years earlier, within the original limitations period of Plaintiffs’
5 claims.

6 **5. Plaintiffs were damaged as a result of Defendants’**
7 **misrepresentations and fraudulent concealment.**

8 1493. Defendants’ scheme to fraudulently conceal the material facts
9 regarding the ACU Defect prevented Plaintiffs from learning the truth about the
10 safety and reliability of the Class Vehicles before they purchased or leased them.

11 1494. Had Plaintiffs known the truth about the ACU Defect, they would not
12 have purchased their Class Vehicles or would have paid less for them.

13 1495. Accordingly, Plaintiffs were damaged by Defendants’ false and
14 misleading representations and fraudulent concealment described herein.

15 1496. Moreover, Defendants’ ongoing concealment of the existence, nature,
16 and extent of the DS84 ACUs and ASICs in the Class Vehicles prevented certain
17 Plaintiffs from discovering the defect in their Class Vehicles during the limitations
18 period on their claims, thereby damaging them by preventing them from timely
19 filing those claims.

20 * * *

21 1497. As a result of Defendants’ knowing and purposeful misrepresentations
22 and active concealment described herein, any and all statutes of limitations
23 otherwise applicable to Plaintiffs’ allegations herein have been tolled.

24 1498. Each Plaintiff learned that his or her Class Vehicle may contain a
25 defective DS84 ACU shortly after NHTSA’s investigation began in April 2019.
26 Upon learning this information, Plaintiffs consulted with and retained counsel to
27 conduct further investigation into the issue. As detailed in Exhibit 19 all Plaintiffs
28

1 filed their lawsuits against Defendants on or before May 20, 2020, within one year
2 of learning of the NHTSA investigation.

3 **B. Discovery Rule Tolling**

4 1499. Plaintiffs' claims are further tolled by the discovery rule in the
5 applicable states.

6 1500. As discussed above, Plaintiffs could not have discovered through
7 reasonable diligence that their Class Vehicles were defective at the time of purchase
8 or lease because Defendants actively concealed the defect.

9 1501. Among other things, Plaintiffs did not know and could not have known
10 that the Class Vehicles contained defective DS84 ACUs and ASICs until at least
11 April 2019, when NHTSA announced that it launched an investigation into the
12 serious safety risk presented by the ACU Defect. Therefore, Plaintiffs' claims and
13 the claims of all Class members did not accrue until they discovered ACU Defect.

14 **C. Estoppel**

15 1502. Each Defendant was under a continuous duty to disclose to Plaintiffs
16 and the other Class members the existence of the ACU Defect, which
17 substantially affects the true character, quality, performance, and nature of the Class
18 Vehicles. Each Defendant actively concealed the true character, quality,
19 performance, and nature of the DS84 ACUs and ASICs installed in the Class
20 Vehicles, and Plaintiffs and the other Class members reasonably relied upon
21 Defendants' knowing and active concealment of these facts. Each Defendant is
22 accordingly estopped from relying on any statute of limitations in defense of this
23 action. For these same reasons, each Vehicle Manufacturer Defendant is estopped
24 from relying upon any warranty mileage and age limitations in defense of this
25 action.

26 1503. Even if some Plaintiffs were aware or could have been aware of the
27 facts giving rise to their causes of action within the limitations period of their
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1 claims, their inability to timely file their claims was the direct result of Defendants’
2 willful and intentional misconduct described above. It would be unconscionable to
3 enforce the limitation period against Plaintiffs, and gross injustice would result
4 from doing so.

5 **VI. CLASS ALLEGATIONS**

6 1504. The proposed Classes’ claims all derive directly from a single course
7 of conduct by Defendants. Within each Count asserted by the respective proposed
8 Classes below, the same legal standards govern. Additionally, many—and for
9 some, all—states share the same legal standards and elements of proof, facilitating
10 the certification of multistate or nationwide classes for some or all claims.
11 Accordingly, Plaintiffs bring this lawsuit as a class action on their own behalf, and
12 on behalf of all other persons similarly situated, as members of the following
13 Nationwide Classes and State Classes (collectively, the “Classes”) pursuant to
14 Federal Rules of Civil Procedure 23(a), (b)(2), and/or (b)(3), and/or (c)(4). The
15 Class Vehicles implicated by this Complaint include FCA, Honda, Hyundai, Kia,
16 Mitsubishi, and Toyota vehicles that all were equipped with a DS84 ACU and
17 ASIC and sold in the United States. This action satisfies the numerosity,
18 commonality, typicality, adequacy, predominance, and superiority requirements of
19 those provisions.

20 **B. The Classes**

21 1505. Plaintiffs propose separate Nationwide Classes for the Vehicle
22 Manufacturer Defendant groups, each of which include all persons and entities that
23 purchased or leased a Class Vehicle from that Vehicle Manufacturer Defendant
24 group:
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- 1 a. **The Nationwide Hyundai-Kia Class:** All persons in the United
2 States who purchased or leased a Hyundai-Kia Class Vehicle,
3 including its territories.⁷⁴
4 b. **The Nationwide FCA Class:** All persons in the United States
5 who purchased or leased a FCA Class Vehicle, including its
6 territories.⁷⁵
7 c. **The Nationwide Toyota Class:** All persons in the United States
8 who purchased or leased a Toyota Class Vehicle, including its
9 territories.⁷⁶
10 d. **The Nationwide Honda Class:** All persons in the United States
11 who purchased or leased a Honda Class Vehicle, including its
12 territories.⁷⁷
13 e. **The Nationwide Mitsubishi Class:** All persons in the United
14 States who purchased or leased a Mitsubishi Class Vehicle,
15 including its territories.⁷⁸

16 _____
17 ⁷⁴ Excluded from the Nationwide Hyundai-Kia Class are the ZF, ST, Hyundai, and
18 Kia Defendants; their employees, officers, directors, legal representatives, heirs,
19 and successors; and wholly or partly owned subsidiaries or affiliates of these
20 Defendants.

21 ⁷⁵ Excluded from the Nationwide FCA Class is FCA and the ZF and ST
22 Defendants; their employees, officers, directors, legal representatives, heirs, and
23 successors; and wholly or partly owned subsidiaries or affiliates of these
24 Defendants.

25 ⁷⁶ Excluded from the Nationwide Toyota Class are the ZF, ST, and Toyota
26 Defendants; their employees, officers, directors, legal representatives, heirs, and
27 successors; and wholly or partly owned subsidiaries or affiliates of these
28 Defendants.

29 ⁷⁷ Excluded from the Nationwide Honda Class are the ZF, ST, and Honda
30 Defendants; their employees, officers, directors, legal representatives, heirs, and
31 successors; and wholly or partly owned subsidiaries or affiliates of these
32 Defendants.

33 ⁷⁸ Excluded from the Nationwide Mitsubishi Class are the ZF, ST, and Mitsubishi
34 *Footnote continued on next page*

1 1506. Plaintiffs also propose separate State Classes consisting of all persons
2 who purchased or leased their Class Vehicle in the state.⁷⁹

3 1507. Plaintiffs reserve the right to modify and/or add to the Nationwide
4 and/or State Classes prior to class certification.

5 **C. Numerosity**

6 1508. This action satisfies the requirements of Federal Rule of Civil
7 Procedure 23(a)(1). There are millions of Class Vehicles and class members
8 nationwide. Individual joinder of all class members is impracticable.

9 1509. Each of the proposed Classes (the Nationwide Classes and the State
10 Classes) are ascertainable because their members can be readily identified using
11 information tying the defective DS84 ACUs to particular vehicle identification
12 numbers, vehicle registration records, sales records, production records, and other
13 information kept by the Vehicle Manufacturer Defendants or third parties in the
14 usual course of business and within their control. Plaintiffs anticipate providing
15 appropriate notice to the Classes in compliance with Federal Rules of Civil
16 Procedure 23(c)(1)(2)(A) and/or (B), to be approved by the Court after class
17 certification, or pursuant to court order under Rule 23(d).

18 **D. Predominance of Common Issues**

19 1510. This action satisfies the requirements of Federal Rules of Civil
20 Procedure 23(a)(2) and (b)(3), because questions of law and fact that have common
21

22
23 *Footnote continued from previous page*
24 Defendants; their employees, officers, directors, legal representatives, heirs, and
25 successors; and wholly or partly owned subsidiaries or affiliates of these
26 Defendants.
27 ⁷⁹ Excluded from the State Classes are the ZF and ST Defendants, and the Vehicle
28 Manufacturer group(s) being sued in the state; their employees, officers, directors,
legal representatives, heirs, and successors; and wholly or partly owned subsidiaries
or affiliates of these Defendants.

1 answer and predominate over questions affecting only individual members of the
2 proposed Classes. These include, without limitation, the following:

- 3 a. Whether the Class Vehicles were equipped with defective ACUs
4 and ASICs that were vulnerable to EOS;
- 5 b. Whether and when Defendants knew, or should have known,
6 that the DS84 ACUs and DS84 ASICs installed in Class
7 Vehicles were defective;
- 8 c. Whether Defendants had a duty to disclose the defective nature
9 of the DS84 ACUs and DS84 ASICs in the Class Vehicles to
10 Plaintiffs and Class members;
- 11 d. Whether the defective nature of the Class Vehicles was contrary
12 to material representations made by Defendants;
- 13 e. Whether Defendants omitted and failed to disclose material facts
14 about the Class Vehicles;
- 15 f. Whether Vehicle Manufacturer Defendants' certifications
16 concerning vehicle safety were misleading in light of the risk
17 that EOS can cause DS84 ACUs not to trigger airbags and
18 seatbelts during a collision;
- 19 g. Whether the Vehicle Manufacturer Defendants' descriptions of
20 safety features controlled by the DS84 ACUs and DS84 ASICs
21 in advertising, on Monroney stickers, on in-vehicle labels and
22 indicators, and in owner's manuals were misleading in light of
23 the risk that EOS can cause DS84 ACUs not to trigger airbags
24 and seatbelts during a collision;
- 25 h. Whether the Supplier Defendants made, helped make, or
26 conspired to make misrepresentations regarding the safety
27 features controlled by the DS84 ACUs and DS84 ASICs;
- 28

- 1 i. Whether Defendants’ statements, concealments, and omissions
2 regarding the Class Vehicles, were material, in that a reasonable
3 consumer could consider them important in purchasing, selling,
4 maintaining, retaining, or operating such vehicles;
- 5 j. Whether Defendants engaged in unfair, deceptive, unlawful
6 and/or fraudulent acts or practices, in trade or commerce, by
7 failing to disclose that the Class Vehicles were designed,
8 manufactured, and sold with defective Occupant Restraint
9 System components;
- 10 k. Whether Defendants’ conduct, as alleged herein, was likely to
11 mislead a reasonable consumer;
- 12 l. Whether Defendants’ concealment of the true defective nature
13 of the Class Vehicles induced Plaintiffs and Class members to
14 act to their detriment by purchasing the Class Vehicles;
- 15 m. Whether Defendants’ concealment of the true defective nature
16 of the Class Vehicles caused the market price of the Class
17 Vehicles to incorporate a premium reflecting the assumption by
18 consumers that the Class Vehicles were equipped with fully-
19 functional Occupant Restraint Systems, and, if so, the market
20 value of that premium;
- 21 n. Whether the Class Vehicles have suffered a diminution of value
22 as a result of the Class Vehicles’ incorporation of the defective
23 ACUs at issue;
- 24 o. Whether Defendants’ conduct tolls any or all applicable
25 limitations periods by acts of fraudulent concealment,
26 application of the discovery rule, or equitable estoppel; Whether
27 the Class Vehicles were unfit for the ordinary purposes for
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- 1 which they were used, in violation of the implied warranty of
2 merchantability;
- 3 p. Whether Defendants’ unlawful, unfair, and/or deceptive
4 practices harmed Plaintiffs and the Classes;
- 5 q. Whether Defendants have been unjustly enriched by their
6 conduct;
- 7 r. Whether Defendants violated RICO;
- 8 s. Whether Defendants conspired with others to violate RICO; and
9 t. Whether Defendants associated with any enterprise engaged in,
10 or the activities of which affect, interstate or foreign commerce,
11 to conduct or participate, directly or indirectly, in the conduct of
12 such enterprise’s affairs through a pattern of racketeering
13 activity.

14 **E. Typicality**

15 1511. This action satisfies the requirements of Federal Rule of Civil
16 Procedure 23(a)(3), because Plaintiffs’ claims are typical of the claims of the class
17 members, and arise from the same course of conduct by Defendants. The relief
18 Plaintiffs seek is typical of the relief sought for the absent class members.

19 **F. Adequacy of Representation**

20 21 1512. Plaintiffs will fairly and adequately represent and protect the interests
22 of the Classes. Plaintiffs have retained counsel with substantial experience in
23 prosecuting consumer class actions, including actions involving defective products.

24 1513. Plaintiffs and their counsel are committed to vigorously prosecuting
25 this action on behalf of the Classes, and have the financial resources to do so.
26 Neither Plaintiffs nor their counsel have interests adverse to those of the Classes.

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1 **G. Superiority**

2 1514. This action satisfies the requirements of Federal Rule of Civil
3 Procedure 23(b)(2), because Defendants have acted and refused to act on grounds
4 generally applicable to each Class, thereby making appropriate final relief with
5 respect to each Class as a whole.

6 1515. This action satisfies the requirements of Federal Rule of Civil
7 Procedure 23(b)(3), because a class action is superior to other available methods for
8 the fair and efficient adjudication of this controversy.

9 1516. Because the damages suffered by each individual Class member may
10 be relatively small, the expense and burden of individual litigation would make it
11 very difficult or impossible for individual Class members to redress the wrongs
12 done to each of them individually, such that most or all Class members would have
13 no rational economic interest in individually controlling the prosecution of specific
14 actions; and the burden imposed on the judicial system by individual litigation—by
15 even a small fraction of the Classes—would be enormous, making class
16 adjudication the superior alternative under Federal Rule of Civil Procedure
17 23(b)(3)(A).

18 1517. The conduct of this action as a class action instead of as millions of
19 individual lawsuits presents far fewer management difficulties; far better conserves
20 judicial resources, and the parties' resources; and far more effectively protects the
21 rights of each Class member than would piecemeal litigation. Compared to the
22 expense, burdens, inconsistencies, economic infeasibility, and inefficiencies of
23 individualized litigation, the challenges of managing this action as a class action are
24 substantially outweighed by the benefits to the legitimate interests of the parties, the
25 court, and the public of class treatment in this Court, making class adjudication
26 superior to other alternatives, under Federal Rule of Civil Procedure 23(b)(3)(D).
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1 1518. Plaintiffs are not aware of any obstacles likely to be encountered in the
2 management of this action that would preclude its maintenance as a class action.
3 Federal Rule of Civil Procedure 23 provides the Court with the authority and
4 flexibility to maximize the efficiencies and benefits of the class mechanism, and
5 reduce management challenges. The Court may, on motion of Plaintiffs, or on its
6 own determination, certify nationwide, statewide and/or multistate Classes for
7 claims sharing common legal questions; utilize the provisions of Rule 23(c)(4) to
8 certify any particular claims, issues, or common questions of fact or law, for class-
9 wide adjudication; certify and adjudicate bellwether class claims; and utilize Rule
10 23(c)(5) to divide any Class into subclasses.

11 1519. The Classes expressly disclaim any recovery in this action for physical
12 injury resulting from the defective DS84 ACUs and DS84 ASICs without waiving
13 or dismissing such claims. Plaintiffs are informed and believe that injuries suffered
14 in crashes as a result of defective DS84 ACUs and DS84 ASICs implicate the Class
15 Vehicles; constitute evidence supporting various claims, including overpayment by
16 Class members; and are continuing to occur because of Defendants' delays and
17 inaction regarding the commencement and completion of recalls. The increased risk
18 of injury from the ACU Defect serves as an independent justification for the relief
19 sought by Plaintiffs and the Class and Subclasses.

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21 **[Continued in Volume II]**
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14 UNITED STATES DISTRICT COURT
15 CENTRAL DISTRICT OF CALIFORNIA

17
18 *In re ZF-TRW Airbag Control Units*
Products Liability Litigation
19 ALL CASES

MDL No. 2905
Case No. 2:19-ml-02905-JAK-FFM
**VOLUME TWO OF CONSOLIDATED
AMENDED CLASS ACTION
COMPLAINT (NATIONWIDE
COUNTS)**

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VII. COUNTS560

A. Nationwide Counts.560

1. Nationwide Count 1: Violations of the Racketeer Influenced Corrupt Organizations Act, 18 U.S.C. § 1962(c), on Behalf of the Nationwide Hyundai-Kia Class Against Hyundai Korea, Kia Korea, Hyundai USA, Kia USA, Hyundai Mobis, ZF Electronics USA, ZF Passive Safety USA, ZF Automotive USA, ZF TRW Corp., ZF Germany, ST USA, and ST Malaysia.560

2. Nationwide Count 2: Violations of the Racketeer Influenced Corrupt Organizations Act, 18 U.S.C. § 1962(d), on Behalf of the Nationwide Hyundai-Kia Class Against Kia Korea, Hyundai Korea, Kia USA, Hyundai USA, Hyundai Mobis, ZF Electronics USA, ZF Passive Safety USA, ZF Automotive USA, ZF TRW Corp., ZF Germany, ST USA, ST Italy, and ST Malaysia..... 608

3. Nationwide Count 3: Violations of the Racketeer Influenced Corrupt Organizations Act, 18 U.S.C. § 1962(c), on Behalf of the Nationwide FCA Class Against FCA, ZF Electronics USA, ZF Passive Safety USA, ZF Automotive USA, ZF TRW Corp., ZF Germany, ST USA, and ST Malaysia.....622

4. Nationwide Count 4: Violations of the Racketeer Influenced Corrupt Organizations Act, 18 U.S.C. § 1962(d), on Behalf of the Nationwide FCA Class Against FCA, ZF Electronics USA, ZF Passive Safety USA, ZF Automotive USA, ZF TRW Corp., ZF Germany, ST USA, ST Italy, and ST Malaysia. 658

5. Nationwide Count 5: Violations of the Racketeer Influenced Corrupt Organizations Act, 18 U.S.C. § 1962(c), on Behalf of the Toyota Nationwide Class Against Toyota USA, Toyota Sales USA, Toyota Engineering USA, ZF Electronics USA, ZF Passive Safety USA, ZF Automotive USA, ZF TRW Corp., ZF Germany, ST USA, and ST Malaysia. 668

6. Nationwide Count 6: Violations of the Racketeer Influenced Corrupt Organizations Act, 18 U.S.C. § 1962(d), on Behalf of the Toyota Nationwide Class Against Toyota USA, Toyota Sales USA, Toyota Engineering USA, ZF Electronics USA, ZF Passive Safety USA, ZF Automotive USA, ZF TRW Corp., ZF Germany, ST USA, ST Italy, and ST Malaysia..... 710

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- 7. Nationwide Count 7: Violations of the Racketeer Influenced Corrupt Organizations Act, 18 U.S.C. § 1962(c), on Behalf of the Nationwide Honda Class Against Honda Japan, Honda USA, Honda Engineering USA, ZF Electronics USA, ZF Passive Safety USA, ZF Automotive USA, ZF TRW Corp., ZF Germany, ST USA, and ST Malaysia.723
- 8. Nationwide Count 8: Violations of the Racketeer Influenced Corrupt Organizations Act, 18 U.S.C. § 1962(d), on Behalf of the Honda Nationwide Class Against Honda Japan, Honda USA, Honda Engineering USA, ZF Electronics USA, ZF Passive Safety USA, ZF Automotive USA, ZF TRW Corp., ZF Germany, ST USA, ST Italy, and ST Malaysia.763
- 9. Nationwide Count 9: Violations of the Racketeer Influenced Corrupt Organizations Act, 18 U.S.C. § 1962(c), on Behalf of the Nationwide Mitsubishi Class Against Mitsubishi USA, Mitsubishi Japan, ZF Electronics USA, ZF Passive Safety USA, ZF Automotive USA, ZF TRW Corp., ZF Germany, ST USA, and ST Malaysia.....776
- 10. Nationwide Count 10: Violations of the Racketeer Influenced Corrupt Organizations Act, 18 U.S.C. § 1962(d), on Behalf of the Nationwide Mitsubishi Class Against Mitsubishi Japan, Mitsubishi USA, ZF Electronics USA, ZF Passive Safety USA, ZF Automotive USA, ZF TRW Corp., ZF Germany, ST USA, ST Italy, and ST Malaysia.812

[Continued in Volume III]

1 **VII. COUNTS**

2 **A. Nationwide Counts.**

3 **1. Nationwide Count 1: Violations of the Racketeer Influenced**
4 **Corrupt Organizations Act, 18 U.S.C. § 1962(c), on Behalf of the**
5 **Nationwide Hyundai-Kia Class Against Hyundai Korea, Kia**
6 **Korea, Hyundai USA, Kia USA, Hyundai Mobis, ZF Electronics**
7 **USA, ZF Passive Safety USA, ZF Automotive USA, ZF TRW**
8 **Corp., ZF Germany, ST USA, and ST Malaysia.**

9 1520. Pursuant to 18 U.S.C. § 1962(c): “It shall be unlawful for any person
10 employed by or associated with any enterprise engaged in, or the activities of which
11 affect, interstate or foreign commerce, to conduct or participate, directly or
12 indirectly, in the conduct of such enterprise’s affairs through a pattern of
13 racketeering activity or collection of unlawful debt.” Hyundai Korea, Kia Korea,
14 Hyundai USA, Kia USA, Hyundai Mobis, ZF Electronics USA, ZF Passive Safety
15 USA, ZF Automotive USA, ZF TRW Corp., ZF Germany, ST USA, and ST
16 Malaysia are “persons” under 18 U.S.C. § 1961(3) because each was capable of
17 holding “a legal or beneficial interest in property.”

18 1521. A violation of 18 U.S.C. § 1962(c) has four elements: “(1) conduct (2)
19 of an enterprise (3) through a pattern (4) of racketeering activity.” ECF 396 at 59
20 (quoting *Sedima v. Imrex Co.*, 473 U.S. 479, 496 (1985)).

21 1522. 18 U.S.C. § 1964(c) provides for a civil remedy for any violation of 18
22 U.S.C. § 1962 for “[a]ny person injured in his business or property by reason of a
23 violation of section 1962 of this chapter.” In addition to proving a violation of
24 §1962, this remedy requires proximate cause of a cognizable injury. ECF 396 at 59.

25 1523. Hyundai Korea, Kia Korea, Hyundai USA, Kia USA, Hyundai Mobis,
26 ZF Electronics USA, ZF Passive Safety USA, ZF Automotive USA, ZF TRW
27 Corp., ZF Germany, ST USA, and ST Malaysia, and several nonparties formed the
28 Hyundai-Kia-ZF-ST Enterprise. The members of this Enterprise included
Defendants Hyundai Korea, Kia Korea, Hyundai USA, Kia USA, Hyundai Mobis,

1 ZF Electronics USA, ZF Passive Safety USA, ZF Automotive USA, ZF TRW
2 Corp., ZF Germany, ST USA, ST Italy, and ST Malaysia. The Hyundai-Kia-ZF-ST
3 Enterprise also included several nonparty individuals and corporations—for
4 example, Hyundai Motor Manufacturing Alabama, LLC and Kia Georgia, Inc.
5 Another nonparty conspirator is an individual named Chris Roberts, who was an
6 engineering manager based in Michigan for a ZF company. He played a key role in
7 drafting memoranda about crashes where airbags failed to deploy in Hyundai-Kia
8 vehicles with the DS84 ACUs. Based on discovery to date, this individual
9 apparently did not receive a paycheck from any of the domestic ZF Defendants,
10 which means there is likely another nonparty ZF corporate entity that was a
11 member of the Hyundai-Kia-ZF-ST Enterprise. Discovery will likely reveal several
12 additional members of the Hyundai-Kia-ZF-ST Enterprise that are not currently
13 known to the Hyundai-Kia Plaintiffs.

14 1524. Hyundai Korea, Kia Korea, Hyundai USA, Kia USA, Hyundai Mobis,
15 ZF Electronics USA, ZF Passive Safety USA, ZF Automotive USA, ZF TRW
16 Corp., ZF Germany, ST USA, and ST Malaysia are liable under 18 U.S.C. §
17 1962(c) because they conducted or participated in the conduct of the affairs of an
18 “association-in-fact enterprise”—i.e., the Hyundai-Kia-ZF-ST Enterprise—through
19 a pattern of racketeering activity. In other words, each of these Defendants
20 committed at least two predicate acts in furtherance of the Enterprise’s fraudulent
21 scheme.

22 1525. For reasons explained below, Hyundai Korea, Kia Korea, Hyundai
23 USA, Kia USA, Hyundai Mobis, ZF Electronics USA, ZF Passive Safety USA, ZF
24 Automotive USA, ZF TRW Corp., ZF Germany, ST USA, and ST Malaysia each
25 violated 18 U.S.C. § 1962(c) and injured the business or property of the Hyundai-
26 Kia Plaintiffs and the Nationwide Hyundai-Kia Class. The Hyundai-Kia Plaintiffs
27 claim damages for themselves and the Nationwide Hyundai-Kia Class members
28 under 18 U.S.C. § 1964(c).

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a. **Hyundai Korea, Kia Korea, Hyundai USA, Kia USA, Hyundai Mobis, ZF Electronics USA, ZF Passive Safety USA, ZF Automotive USA, ZF TRW Corp., ZF Germany, ST USA, and ST Malaysia each committed at least two predicate acts of mail and wire fraud in furtherance of the Hyundai-Kia-ZF-ST Enterprise’s fraudulent scheme to affirmatively mislead consumers and NHTSA.**

1526. The members of the Hyundai-Kia-ZF-ST Enterprise devised a scheme to defraud consumers and NHTSA by concealing or minimizing the ACU Defect in Hyundai-Kia Class Vehicles through affirmatively misleading statements.

1527. In the alternative, the Hyundai-Kia-ZF-ST Enterprise members devised an illicit scheme for the purpose of obtaining money by fraudulent pretenses because they had the purpose of maximizing the sale of Hyundai-Kia Class Vehicles, which ultimately provided revenue to the Hyundai-Kia-ZF-ST Enterprise members.

1528. To carry out, or attempt to carry out the schemes, Hyundai Korea, Kia Korea, Hyundai USA, Kia USA, ZF Electronics USA, ZF Passive Safety USA, ZF Automotive USA, ZF TRW Corp., ZF Germany, ST USA, and ST Malaysia—each of whom is a person associated-in-fact with the Enterprise—knowingly conducted or participated, directly or indirectly, in the affairs of the Hyundai-Kia-ZF-ST Enterprise through a pattern of racketeering activity within the meaning of 18 U.S.C. §§ 1961(1), 1961(5), and 1962(c). In furtherance of the schemes, these Hyundai-Kia-ZF-ST Enterprise members each committed *at least* two acts in violation of 18 U.S.C. § 1341 (mail fraud) and § 1343 (wire fraud), as described in the subsections below.

1 **i. Kia Korea violated the mail fraud statute multiple**
2 **times in furtherance of the Hyundai-Kia-ZF-ST**
3 **Enterprise’s fraudulent scheme.**

4 1529. Kia Korea violated the mail fraud statute (18 U.S.C. § 1341) multiple
5 times by causing misleading certification labels, readiness indicators, and airbag
6 labels and imprints to be placed within every Kia Class Vehicle prior to shipment to
7 the dealers that sell or lease the vehicles to consumers. As explained in Section
8 IV.E.1. above, each of these statements misleadingly assured consumers that the
9 Kia Class Vehicles had properly-functioning safety systems, airbags, and seatbelts
10 when, in fact, the safety systems, airbags, and seatbelts had a dangerous safety
11 defect due to the vulnerability of the DS84 ACU and ASIC to EOS. Kia Korea
12 caused the inclusion of these misleading statements within every Kia Class Vehicle
13 with full knowledge and the specific intent that Kia USA would distribute the Kia
14 Class Vehicles to dealers across the United States using private interstate carriers.
15 Accordingly, Kia Korea “knowingly cause[d]” the Kia Class Vehicles with
16 misleading statements “to be delivered by . . . such carrier[s],” in violation of 18
17 U.S.C. § 1341.

18 a. Kia Korea was directly responsible for including all of these
19 misleading statements in all Kia Class Vehicles made in South
20 Korea. The Kia Class Vehicles made in South Korea include Kia
21 Fortes and Kia Sedonas, at the very least. Upon information and
22 belief, Kia Korea placed the misleading certification labels,
23 airbag warning lamps, and airbag labels and imprints in the
24 Korean-made Kia Class Vehicles when Kia Korea manufactured
25 them at the following address: 95 Gajadongcha-ro, Ujeong-eup,
26 Hwaseong-si, Gyeonggi-do, South Korea. The certification
27 labels for these Korean-made vehicles bore Kia Korea’s
28 corporate name, “Kia Motors Corp.” The Kia Class Vehicles

1 made by Kia Korea have vehicle identification numbers that
2 begin with the letter “K.” Plaintiffs Damens, Dellatorre, King,
3 Ogorek, Sutterfield, Swanson, and Van Houten bought or leased
4 Kia Class Vehicles made by Kia Korea. Kia Korea has records
5 in its possession that will identify the dates when it transferred
6 these Class Vehicles to Kia USA, with the purpose of
7 distributing them to the United States for sale to consumers. The
8 Kia Plaintiffs do not have access to these confidential records
9 that provide the precise dates of transfer.

10 b. Although nonparty-Enterprise member Kia Georgia Inc. made
11 the remaining Kia Class Vehicles and placed permanent
12 certification labels on them under its own name, it had no
13 discretion to depart from the mandatory Kia Class Vehicle
14 designs created by Kia Korea. Accordingly, Kia Korea, as the
15 entity responsible for designing these vehicles, was at least
16 jointly responsible for the certifications for these vehicles. Kia
17 Korea was also responsible for the misleading airbag warning
18 lamps and in-vehicle airbag labels and imprints placed within
19 these Kia Class Vehicles because Kia Korea’s designs required
20 the inclusion of these misleading statements within the Kia
21 Class Vehicles. The Kia Class Vehicles made by Kia Georgia,
22 Inc. include Kia Optimas.

23 1530. Although the precise shipment dates for all Kia Class Vehicles are not
24 known to the Kia Plaintiffs, shipments occurred at least in each year from 2010 to
25 2019. Plaintiffs were exposed to in-vehicle misleading statements prior to, and at
26 the point of, sale or lease. The dates and locations of these transactions are alleged
27 above in Section II.B.1.
28

1 1531. Each shipment of a Kia Class Vehicle or Vehicles to a dealer was a
2 violation of the mail fraud statute (18 U.S.C. § 1341) because Kia Korea knew the
3 certification labels, airbag warning labels, and in-vehicle airbag labels and imprints
4 in all Kia Class Vehicles were misleading and would further the scheme to defraud
5 consumers into purchasing or leasing Kia Class Vehicles. Each of these statements
6 misleadingly assured consumers that the Kia Class Vehicles had properly-
7 functioning safety systems, airbags, and seatbelts when, in fact, the safety systems,
8 airbags, and seatbelts had a dangerous safety defect due to the vulnerability of the
9 DS84 ACU and ASIC to EOS.

10 1532. When Kia USA distributed the Kia Class Vehicles to dealers in the
11 United States, it acted as Kia Korea's agent.

12 1533. Kia Korea also gave requisite approval or instruction that caused Kia
13 USA to use mail and/or wire to send several misleading statements to NHTSA
14 about the ACU Defect, including:

- 15 a. a March 1, 2018 phone call with NHTSA using interstate wires
16 (see Section IV.F.13);
- 17 b. a March 16, 2018 mailing of a misleading slide deck dated
18 March 14, 2018 (see Section IV.F.16); and
- 19 c. a June 1, 2018 filing of a misleading 573 Defect Report using
20 mail and/or wire (see Section IV.F.19).

21 1534. Kia Korea intended for each of these misleading statements to NHTSA
22 to further the Hyundai-Kia-ZF-ST Enterprise's fraudulent scheme to defraud
23 consumers and avoid, minimize, and/or delay recalls of Hyundai-Kia Class
24 Vehicles. Avoiding, minimizing, and/or delaying recalls of Hyundai-Kia Class
25 Vehicles enabled the continuation of the scheme to defraud consumers.

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ii. Hyundai Korea violated the mail fraud statute multiple times in furtherance of the Hyundai-Kia-ZF-ST Enterprise’s fraudulent scheme.

1535. Hyundai Korea violated the mail fraud statute (18 U.S.C. § 1341) multiple times by causing misleading certification labels, readiness indicators, and airbag labels and imprints to be placed within every Hyundai Class Vehicle prior to shipment to the dealers that sell or lease the vehicles to consumers. As explained in Section IV.E.1. above, each of these statements misleadingly assured consumers that the Hyundai Class Vehicles had properly-functioning safety systems, airbags, and seatbelts when, in fact, the safety systems, airbags, and seatbelts had a dangerous safety defect due to the vulnerability of the DS84 ACU and ASIC to EOS. Hyundai Korea caused the inclusion of these misleading statements within every Hyundai Class Vehicle with full knowledge and the specific intent that Hyundai USA would distribute the Hyundai Class Vehicles to dealers across the United States using private interstate carriers. Accordingly, Hyundai Korea “knowingly cause[d]” the Hyundai Class Vehicles with misleading statements “to be delivered by . . . such carrier[s],” in violation of 18 U.S.C. § 1341.

a. Hyundai Korea was directly responsible for including all of these misleading statements in all Hyundai Class Vehicles made in South Korea. These Hyundai Class Vehicles included Hyundai Sonata Hybrids, at the very least. Upon information and belief, Hyundai Korea placed the misleading certification labels, airbag warning lamps, and airbag labels and imprints in the Korean-made Hyundai Class Vehicles when Hyundai Korea manufactured them at the following address: Hyundai Asan Plant 1077, Hyundai-ro, Inju-myeon Asan-si, Chungcheongnam-do, South Korea. The certification labels for these Japanese-made vehicles bore Hyundai Korea’s corporate

1 name, “Hyundai Motor Co., Ltd.” The Hyundai Class Vehicles
2 made by Hyundai Korea have vehicle identification numbers
3 that begin with the letter “K.” Plaintiff Maurilus bought or
4 leased a Hyundai Class Vehicle made by Hyundai Korea.
5 Hyundai Korea has records in its possession that will identify
6 the dates when it transferred these Class Vehicles to Hyundai
7 USA, with the purpose of distributing them to the United States
8 for sale to consumers. The Hyundai Plaintiffs do not have access
9 to these confidential records that provide the precise dates of
10 transfer.

11 b. Although nonparty-Enterprise member Hyundai Motor
12 Manufacturing Alabama, LLC made the remaining Hyundai
13 Class Vehicles and placed permanent certification labels on
14 them under their own names, it had no discretion to depart from
15 the mandatory Hyundai Class Vehicle designs created by
16 Hyundai Korea. Accordingly, Hyundai Korea, as the entity
17 responsible for designing these vehicles, was at least jointly
18 responsible for the certification for these vehicles. Hyundai
19 Korea was also responsible for the misleading airbag warning
20 lamps and in-vehicle airbag labels and imprints placed within
21 these Hyundai Class Vehicles because Hyundai Korea’s designs
22 required the inclusion of these misleading statements within the
23 Hyundai Class Vehicles. The Hyundai Class Vehicles made by
24 Hyundai Motor Manufacturing Alabama, LLC include Hyundai
25 Sonatas (i.e., non-hybrid Sonatas).

26 1536. Although the precise shipment dates for all Hyundai Class Vehicles
27 are not known to the Hyundai Plaintiffs, shipments occurred at least in each year
28 from 2010 to 2019. Plaintiffs were exposed to in-vehicle misleading statements

1 prior to, and at the point of, sale or lease. The dates and locations of these
2 transactions are alleged above in Section II.B.1.

3 1537. Each shipment of a Hyundai Class Vehicle or Vehicles to a dealer was
4 a violation of the mail fraud statute (18 U.S.C. § 1341) because Hyundai Korea
5 knew the certification labels, airbag warning labels, and in-vehicle airbag labels and
6 imprints in all Hyundai Class Vehicles were misleading and would further the
7 scheme to defraud consumers into purchasing or leasing Hyundai Class Vehicles.
8 Each of these statements misleadingly assured consumers that the Hyundai Class
9 Vehicles had properly-functioning safety systems, airbags, and seatbelts when, in
10 fact, the safety systems, airbags, and seatbelts had a dangerous safety defect due to
11 the vulnerability of the DS84 ACU and ASIC to EOS.

12 1538. When Hyundai USA distributed the Hyundai Class Vehicles to dealers
13 in the United States, it acted as Hyundai Korea's agent.

14 1539. Hyundai Korea also gave requisite approval or instruction to cause
15 Hyundai USA to use mail and/or wire to send several misleading statements to
16 NHTSA about the ACU Defect, including:

- 17 a. a February 27, 2018 filing of a misleading 573 Defect Report
18 using mail and/or wire (*see* Section IV.F.12) and
- 19 b. an April 18, 2018 filing of a misleading 573 Defect Report using
20 mail and/or wire (*see* Section IV.F.19).

21 1540. Hyundai Korea intended for each of these misleading statements to
22 NHTSA to further the Hyundai-Kia-ZF-ST Enterprise's fraudulent scheme to
23 defraud consumers and avoid, minimize, and/or delay recalls of Hyundai-Kia Class
24 Vehicles. Avoiding, minimizing, and/or delaying recalls of Hyundai-Kia Class
25 Vehicles enabled the continuation of the scheme to defraud consumers.

1 **iii. Kia USA violated the mail and wire fraud statutes**
2 **multiple times in furtherance of the Hyundai-Kia-ZF-**
3 **ST Enterprise’s fraudulent scheme.**

4 1541. Kia USA committed mail fraud every time it shipped, or caused to be
5 shipped, a Kia Class Vehicle to dealers in the United States. For every Kia Class
6 Vehicle, Kia USA delivered, or caused delivery of, each vehicle by private or
7 commercial interstate carrier to automobile dealerships across the United States.
8 Kia USA delivered millions of Class Vehicles to execute the Hyundai-Kia-ZF-ST
9 Enterprise’s scheme to defraud consumers and NHTSA.

- 10 a. These deliveries furthered the scheme because Kia USA sent the
11 vehicles to the dealerships where consumers would purchase or
12 lease them and because, prior to shipping the Kia Class
13 Vehicles, Kia Korea had affixed, or caused to be affixed,
14 misleading certification labels (*see* Section IV.E.1.b. above),
15 readiness indicators (*see* Section IV.E.1.c. above), and airbag
16 labels and imprints (*see* Section IV.E.1.d. above).
- 17 b. Moreover, prior to shipping each Kia Class Vehicle, Kia USA
18 created Monroney labels for each make and model and placed
19 the applicable one on each Kia Class Vehicle. As explained
20 above in Section IV.E.1.a., the Monroney labels for the Kia
21 Class Vehicles were misleading because they falsely assured
22 consumers that the Vehicles had properly-functional airbags,
23 seatbelts, and safety systems.
- 24 c. Finally, prior to shipping the vehicles, Kia USA also ensured
25 that each Kia Class Vehicle came with an owner’s manual with
26 misleading statements about the vehicle’s safety system (*see*
27 Section IV.E.2.b.ii above). Kia USA was responsible for the
28 content of these manuals.

1 1542. Kia USA knew the Monroney labels, certification labels, readiness
2 indicators, airbag labels and imprints, and owners' manuals shipped with each
3 Hyundai-Kia Class Vehicle were misleading because the Kia Class Vehicles all
4 contained the ACU Defect. Kia USA also knew consumers would rely upon these
5 misleading statements when deciding to purchase or lease Kia Class Vehicles.

6 1543. Although the precise shipment dates for all Kia Class Vehicles are not
7 known to the Kia Plaintiffs, shipments occurred at least in each year from 2010 to
8 2019. Plaintiffs were exposed to in-vehicle misleading statements prior to, and at
9 the point of, sale or lease. The dates and locations of these transactions are alleged
10 above in Section II.B.1.

11 1544. Starting in 2010, Kia USA also transmitted, or caused to be
12 transmitted, tens (perhaps hundreds) of thousands of advertisements which stressed
13 the safety of Kia Class Vehicles using mail, wire, radio, or television
14 communications in interstate commerce. Kia USA's misleading advertisements are
15 too numerous to recite completely, given the nationwide scope and decade-long
16 duration of the Hyundai-Kia-ZF-ST Enterprise's fraudulent scheme. Examples of
17 these advertisements are collected in Section IV.E.2.a.ii. and Exhibit 9. Each such
18 mailed advertisement—including brochures sent to dealerships for display to
19 consumers or print advertisements in newspapers or magazines—was a violation of
20 the mail fraud statute (18 U.S.C. § 1341). Each such internet-based, radio, and
21 television advertisement was a violation of the wire fraud statute (18 U.S.C. §
22 1343). Each advertisement that directly or indirectly assured consumers that the Kia
23 Class Vehicles had properly-functioning safety systems, airbags, and seatbelts was
24 affirmatively misleading because the safety systems, airbags, and seatbelts in Kia
25 Class Vehicles had a dangerous safety defect due to the vulnerability of the DS84
26 ACU and ASIC to EOS. Kia USA knew advertisements assuring the safety of
27 Hyundai-Kia Class Vehicles were misleading and would further the scheme to
28 defraud consumers into purchasing or leasing Kia Class Vehicles.

1 1545. Kia USA also placed copies of misleading Kia Class Vehicle owner’s
2 manuals on its website. Upon information and belief, the publication of these
3 owner’s manuals occurred at or around the commencement of public sales for each
4 model year. The publication of each these manuals on a website was a violation of
5 the wire fraud statute (18 U.S.C. § 1343) because Kia USA knew the owner’s
6 manuals for all Kia Class Vehicles were misleading and would further the scheme
7 to defraud consumers into purchasing or leasing Kia Class Vehicles. Each of these
8 manuals contained statements that misleadingly assured consumers the Kia Class
9 Vehicles had properly-functioning safety systems, airbags, and seatbelts when, in
10 fact, the safety systems, airbags, and seatbelts had a dangerous safety defect due to
11 the vulnerability of the DS84 ACU and ASIC to EOS.

12 1546. Kia USA also used mail and/or wire to send several misleading
13 statements to NHTSA about the ACU Defect, including:

- 14 a. a March 1, 2018 phone call with NHTSA using interstate wires
15 (see Section IV.F.13);
- 16 b. a March 16, 2018 mailing of a misleading slide deck dated
17 March 14, 2018 (see Section IV.F.16); and
- 18 c. a June 1, 2018 filing of a misleading 573 Defect Report using
19 mail and/or wire (see Section IV.F.19).

20 1547. Kia USA intended for each of these misleading statements to NHTSA
21 to further the Hyundai-Kia-ZF-ST Enterprise’s fraudulent scheme to defraud
22 consumers and avoid, minimize, and/or delay recalls of Hyundai-Kia Class
23 Vehicles. Avoiding, minimizing, and/or delaying recalls of Hyundai-Kia Class
24 Vehicles enabled the continuation of the scheme to defraud consumers.

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iv. Hyundai USA violated the mail and wire fraud statutes multiple times in furtherance of the Hyundai-Kia-ZF-ST Enterprise’s fraudulent scheme.

1548. Hyundai USA committed mail fraud every time it shipped, or caused to be shipped, a Hyundai Class Vehicle to dealers in the United States. For every Hyundai Class Vehicle, Hyundai USA delivered, or caused delivery of, each vehicle by private or commercial interstate carrier to automobile dealerships across the United States. Hyundai USA delivered millions of Class Vehicles to execute the Hyundai-Kia-ZF-ST Enterprise’s scheme to defraud consumers and NHTSA.

- a. These deliveries furthered the scheme because Hyundai USA sent the vehicles to the dealerships where consumers would purchase or lease them and because, prior to shipping the Hyundai Class Vehicles, Hyundai Korea had affixed, or caused to be affixed, misleading certification labels (*see* Section IV.E.1.b. above), readiness indicators (*see* Section IV.E.1.c. above), and airbag labels and imprints (*see* Section IV.E.1.d. above).
- b. Moreover, prior to shipping each Hyundai Class Vehicle, Hyundai USA created Monroney labels for each make and model and placed the applicable one on each Hyundai Class Vehicle. As explained above in Section IV.E.1.a., the Monroney labels for the Hyundai Class Vehicles were misleading because they falsely assured consumers that the Vehicles had properly-functional airbags, seatbelts, and safety systems.
- c. Finally, prior to shipping the vehicles, Hyundai USA also ensured that each Class Vehicle came with an owner’s manual with misleading statements about the vehicle’s safety system

1 (see Section IV.E.2.b.ii. above). Hyundai USA was responsible
2 for the content of these manuals.

3 1549. Hyundai USA knew the Monroney labels, certification labels,
4 readiness indicators, airbag labels and imprints, and owners' manuals shipped with
5 each Hyundai Class Vehicle were misleading because the Hyundai Class Vehicles
6 all contained the ACU Defect. Hyundai USA also knew consumers would rely
7 upon these misleading statements when deciding to purchase or lease Hyundai
8 Class Vehicles.

9 1550. Although the precise shipment dates for all Hyundai Class Vehicles
10 are not known to the Hyundai Plaintiffs, shipments occurred at least in each year
11 from 2011 to 2019. Plaintiffs were exposed to in-vehicle misleading statements
12 prior to, and at the point of, sale or lease. The dates and locations of these
13 transactions are alleged above in Section II.B.1.

14 1551. Starting in 2010, Hyundai USA also transmitted, or caused to be
15 transmitted, tens (perhaps hundreds) of thousands of advertisements which stressed
16 the safety of Hyundai Class Vehicles using mail, wire, radio, or television
17 communications in interstate commerce. Hyundai USA's misleading
18 advertisements are too numerous to recite completely, given the nationwide scope
19 and decade-long duration of the Hyundai-Kia-ZF-ST Enterprise's fraudulent
20 scheme. Examples of these advertisements are collected in Section IV.E.2.a.ii. and
21 Exhibit 9. Each such mailed advertisement—including brochures sent to
22 dealerships for display to consumers or print advertisements in newspapers or
23 magazines—was a violation of the mail fraud statute (18 U.S.C. § 1341). Each such
24 internet-based, radio, and television advertisement was a violation of the wire fraud
25 statute (18 U.S.C. § 1343). Each advertisement that directly or indirectly assured
26 consumers that the Hyundai Class Vehicles had properly-functioning safety
27 systems, airbags, and seatbelts was affirmatively misleading because the safety
28 systems, airbags, and seatbelts in Hyundai Class Vehicles had a dangerous safety

1 defect due to the vulnerability of the DS84 ACU and ASIC to EOS. Hyundai USA
2 knew advertisements assuring the safety of Hyundai-Kia Class Vehicles were
3 misleading and would further the scheme to defraud consumers into purchasing or
4 leasing Hyundai Class Vehicles.

5 1552. Hyundai USA also placed copies of misleading Hyundai Class Vehicle
6 owner's manuals on its website. Upon information and belief, the publication of
7 these owner's manuals occurred at or around the commencement of public sales for
8 each model year. The publication of each these manuals on a website was a
9 violation of the wire fraud statute (18 U.S.C. § 1343) because Hyundai USA knew
10 the owner's manuals for all Hyundai Class Vehicles were misleading and would
11 further the scheme to defraud consumers into purchasing or leasing Hyundai Class
12 Vehicles. Each of these manuals contained statements that misleadingly assured
13 consumers the Hyundai Class Vehicles had properly-functioning safety systems,
14 airbags, and seatbelts when, in fact, the safety systems, airbags, and seatbelts had a
15 dangerous safety defect due to the vulnerability of the DS84 ACU and ASIC to
16 EOS.

17 1553. Hyundai USA also used mail and/or wire to send several misleading
18 statements to NHTSA about the ACU Defect, including:

- 19 a. a February 27, 2018 filing of a misleading 573 Defect Report
20 using mail and/or wire (*see* Section IV.F.12) and
- 21 b. an April 18, 2018 filing of a misleading 573 Defect Report using
22 mail and/or wire (*see* Section IV.F.19).

23 1554. Hyundai USA intended for each of these misleading statements to
24 NHTSA to further the Hyundai-Kia-ZF-ST Enterprise's fraudulent scheme to
25 defraud consumers and avoid, minimize, and/or delay recalls of Hyundai-Kia Class
26 Vehicles. Avoiding, minimizing, and/or delaying recalls of Hyundai-Kia Class
27 Vehicles enabled the continuation of the scheme to defraud consumers.
28

1 v. **ZF Electronics USA violated the mail fraud statute**
2 **multiple times in furtherance of the Hyundai-Kia-ZF-**
3 **ST Enterprise’s fraudulent scheme.**

4 1555. ZF Electronics USA drafted and/or edited the following misleading
5 statements to NHTSA, as discussed in Sections IV.F.2., IV.F.4., IV.F.8., and
6 IV.F.14. above:

- 7 a. The slide deck presentation dated February 5, 2016 (which ZF
8 TRW Corp. mailed to NHTSA on March 14, 2016);
- 9 b. The slide deck presentation dated July 19, 2016 (which, upon
10 information and belief, was mailed to NHTSA in July or August
11 2016);
- 12 c. The September 2016 letter signed by Marc Bolitho¹ (which ZF
13 Electronics USA mailed to NHTSA in September 2016); and
- 14 d. The slide deck presentation dated March 8, 2018 (which ZF
15 TRW Corp. mailed to NHTSA on March 12, 2018).

16 1556. As explained in sections IV.F.2., IV.F.4., IV.F.8., and IV.F.14. above,
17 each of these transmittals contained misleading statements about Hyundai-Kia
18 Class Vehicles and the ACU Defect. ZF Electronics USA specifically approved the
19 transmittal of the final versions of these documents to NHTSA, and intended for the
20 misleading statements contained therein to avoid, minimize, and/or delay recalls of
21 Hyundai-Kia Class Vehicles. Avoiding, minimizing, and/or delaying recalls of
22 Hyundai-Kia Class Vehicles enabled the continuation of the scheme to defraud
23 consumers.

24 1557. ZF Electronics USA caused the delivery of the February 5, 2016 slide
25 deck to NHTSA. ZF Electronics USA’s causal role in the delivery is evidenced by
26 the fact that its Vice President of Passive Safety Marc Bolitho signed an affidavit of

27 ¹ Mr. Bolitho was simultaneously an employee of ZF Passive Safety USA, the Vice
28 President of Passive Safety for ZF Electronics USA, and Director of Passive Safety
Engineering for ZF TRW Corp.

1 confidentiality that was enclosed with the mailing of the February 5, 2016 slide
2 deck.

3 1558. Because the July 19, 2016 slide deck closely resembles the February 5,
4 2016 slide deck, the same personnel and companies were likely responsible for
5 sending it via mail or private interstate carrier to NHTSA. Accordingly, upon
6 information and belief, ZF Electronics USA caused this delivery to NHTSA too.

7 1559. ZF Electronics USA caused the delivery of the March 8, 2018 slide
8 deck to NHTSA. ZF Electronics USA's causal role in the delivery is evidenced by
9 the fact that its Technical Specialist, Emanuel Goodman, signed the affidavit of
10 confidentiality that was enclosed with the mailing of the March 8, 2018 slide deck.
11 ZF Electronics USA's causal role in the delivery is further evidenced by Mr.
12 Goodman's and Mr. Bolitho's attendance at the March 8, 2018 meeting with
13 NHTSA, where this slide deck was used.

14 1560. Moreover, because ZF Electronics USA's affiliates would not have
15 sent or approved the four written communications described above without ZF
16 Electronics USA's contributions and approval, ZF Electronics USA was one of the
17 Defendants who jointly caused the delivery of these four communications to
18 NHTSA. Accordingly, its participation in these communications violated the mail
19 fraud statute at least four times. 18 U.S.C. § 1341.

20 1561. As explained in Section IV.E.1.c. above, ZF Electronics USA worked
21 with ZF Passive Safety USA, ZF Automotive USA, Hyundai Korea, and Kia Korea
22 to design the readiness indicators installed in Hyundai-Kia Class Vehicles.
23 Specifically, ZF Electronics USA assisted with a design of ACUs that would cause
24 the readiness indicator not to illuminate at the point of sale or lease, even though
25 the Hyundai-Kia Class Vehicle's safety systems were not ready to deploy in
26 foreseeable crash events with negative transients due to the ACU Defect. When ZF
27 Electronics USA assisted with this design, it knew Kia USA and Hyundai USA
28 would ship the Hyundai-Kia Class Vehicles to dealers and that consumers would

1 buy Hyundai-Kia Class Vehicles without the airbag warning lamp illuminating at
2 the point of sale or lease. Because Kia USA and Hyundai USA would not have
3 shipped Hyundai-Kia Class Vehicles without ZF Electronics USA's assistance in
4 designing misleading readiness indicators, ZF Electronics USA jointly caused each
5 shipment of a Hyundai-Kia Class Vehicle, in violation of the mail fraud act (18
6 U.S.C. § 1341).

7 1562. Upon information and belief and based on a contract between Hyundai
8 Mobis and ZF TRW Corp., ZF Electronics USA received orders from Hyundai
9 Mobis for the defective DS84 ACUs used in every Hyundai-Kia Class Vehicle and
10 shipped them by private or commercial interstate carrier to the nonparty-Enterprise-
11 members Kia Georgia, Inc. and Hyundai Motor Manufacturing Alabama, LLC.
12 These shipments furthered the Hyundai-Kia-ZF-ST Enterprise's fraudulent scheme
13 because the use of DS84 ACUs in Hyundai-Kia Class Vehicles was essential to the
14 cost-saving goal behind the scheme. When ZF Electronics USA shipped the
15 defective DS84 ACUs to the nonparty-Enterprise-members Kia Georgia, Inc. and
16 Hyundai Motor Manufacturing Alabama, LLC, it knew they would be installed in
17 the Hyundai-Kia Class Vehicles that are marketed to U.S. consumers. ZF
18 Electronics USA was also specifically aware of Hyundai Korea's, Kia Korea's,
19 Hyundai USA's, and Kia USA's practice of making reassuring statements about
20 safety, airbags, and seatbelts in consumer-facing Monroney labels, certification
21 labels, in-vehicle labels, owner's manuals and advertising for all Hyundai-Kia Class
22 Vehicles. ZF Electronics USA knew these statements were false because it knew
23 the Hyundai-Kia Class Vehicles, DS84 ACU, and DS84 ASIC were defective.
24 Accordingly, because ZF Electronics USA shipped each defective DS84 ACU with
25 the purpose of executing a fraudulent scheme with the other Enterprise members,
26 each of ZF Electronics USA's shipments of the defective DS84 ACUs violated the
27 mail fraud statute (18 U.S.C. § 1341). The precise dates and locations of each
28 particular shipment of defective DS84 ACUs is not known to the Hyundai-Kia

1 Plaintiffs because they have no visibility into the shipments to Hyundai Motor
2 Manufacturing Alabama, LLC and Kia Georgia, Inc., and Defendants have not
3 produced documents that show that information. However, a chart produced by the
4 domestic ZF Defendants to NHTSA identifies the precise volume of DS84 ACUs
5 shipped for each year for each model of Hyundai-Kia Class Vehicles, and identifies
6 Marshall, Illinois as the shipping location. Exhibit 20 includes highlighting added
7 by Plaintiffs to identify the particular information about shipping locations,
8 volumes, vehicle makes and models, and shipping years contained in this chart. *See*
9 *Ex. 20 (ZF-MDL-679)* at 699-701. Upon information and belief, the shipping
10 address for each of these shipments by ZF Electronics USA from Marshall, Illinois
11 was 902 South 2nd Street, Marshall, Illinois 62441. The shipments for Kia Optimas
12 identified therein would have gone to Kia Georgia, Inc., whereas the shipments for
13 Hyundai Sonatas identified therein would have gone to Hyundai Motor
14 Manufacturing Alabama, LLC. The address for Kia Georgia, Inc. was 7777 Kia
15 Parkway West Point, Georgia 31833. The address for Hyundai Motor
16 Manufacturing Alabama, LLC is 700 Hyundai Blvd. Montgomery, Alabama 36105.
17 The information available in Exhibit 20 and the facts identified above are sufficient
18 for Defendants to identify the precise dates of shipments because Defendants will
19 have backup information that shows additional details about the underlying
20 shipments.

21 1563. ZF Electronics USA also separately violated the mail fraud act (18
22 U.S.C. § 1341) by placing orders with ST USA that required ST USA to ship
23 millions of defective DS84 ASICs to ZF Electronics USA at a facility with the
24 following address: 902 South 2nd Street, Marshall, Illinois 62441. When ZF
25 Electronics USA placed these orders, it knew it would install these DS84 ASICs
26 into DS84 ACUs, including those that would be installed in the Hyundai-Kia Class
27 Vehicles that are marketed to U.S. consumers. ZF Electronics USA was also
28 specifically aware of Kia Korea's, Hyundai Korea's, Kia USA's, and Hyundai

1 USA's practice of making reassuring statements about safety, airbags, and seatbelts
2 in consumer-facing Monroney labels, certification labels, in-vehicle labels, owner's
3 manuals, and advertising for all Hyundai-Kia Class Vehicles. ZF Electronics USA
4 knew these statements were false because it knew the Hyundai-Kia Class Vehicles,
5 DS84 ACU, and DS84 ASIC were defective. Accordingly, because ZF Electronics
6 USA caused shipments of defective DS84 ASICs with the purpose of executing a
7 fraudulent scheme with the other Enterprise members, each of the DS84 ASIC
8 shipments caused by ZF Electronics USA violated the mail fraud statute (18 U.S.C.
9 § 1341). ST USA has produced approximately 9,700 such invoices from the time
10 period between 2014 and the present alone. Plaintiffs have extracted approximate
11 shipping dates from these invoices, which are presented as exemplars in Exhibit
12 21.²

13 **vi. Hyundai Mobis violated the mail fraud statute**
14 **multiple times in furtherance of the Hyundai-Kia-ZF-**
15 **ST Enterprise's fraudulent scheme.**

16 1564. Upon information and belief and based on a contract between Hyundai
17 Mobis and ZF TRW Corp., Hyundai Mobis caused ZF Electronics USA use
18 interstate private or commercial carrier(s) to deliver thousands of DS84 ACUs to
19 Kia Georgia, Inc. and Hyundai Motor Manufacturing Alabama, LLC between 2009
20 and 2019. Hyundai Mobis caused these shipments by placing orders for the DS84
21 ACU pursuant to its contract with ZF TRW Corp. These shipments furthered the
22 Hyundai-Kia-ZF-ST Enterprise's fraudulent scheme because the use of DS84
23 ACUs in Hyundai-Kia Class Vehicles was essential to the cost-saving goal behind
24 the scheme.

25
26 ² ST USA made similar shipments relevant to the Hyundai-Kia Class Vehicles at
27 least between 2009 and 2014, but ST USA is presently withholding invoices for
28 these shipments from discovery. Upon information and belief, the invoices for this
time period will show similar regularity of shipments.

1 1565. When Hyundai Mobis caused the shipment of the defective DS84
2 ACUs to the nonparty-Enterprise-members Kia Georgia, Inc. and Hyundai Motor
3 Manufacturing Alabama, LLC, it knew they would be installed in the Hyundai-Kia
4 Class Vehicles that are marketed to U.S. consumers. ZF Electronics USA was also
5 specifically aware of Hyundai Korea's, Kia Korea's, Hyundai USA's, and Kia
6 USA's practice of making reassuring statements about safety, airbags, and seatbelts
7 in consumer-facing Monroney labels, certification labels, in-vehicle labels, owner's
8 manuals and advertising for all Hyundai-Kia Class Vehicles. ZF Electronics USA
9 knew these statements were false because it knew the Hyundai-Kia Class Vehicles,
10 DS84 ACU, and DS84 ASIC were defective.

11 1566. Accordingly, because Hyundai Mobis caused shipments of the
12 defective DS84 ACU with the purpose of executing a fraudulent scheme with the
13 other Enterprise members, each of ZF Electronics USA's shipments of the defective
14 DS84 ACUs violated the mail fraud statute (18 U.S.C. § 1341). The precise dates
15 and locations of each particular shipment of defective DS84 ACUs is not known to
16 the Hyundai-Kia Plaintiffs because they have no visibility into the shipments to
17 Hyundai Motor Manufacturing Alabama, LLC and Kia Georgia, Inc., and
18 Defendants have not produced documents that show that information. However, a
19 chart produced by the domestic ZF Defendants to NHTSA identifies the precise
20 volume of DS84 ACUs shipped for each year for each model of Hyundai-Kia Class
21 Vehicles, and identifies Marshall, Illinois as the shipping location. Exhibit 20
22 includes highlighting added by Plaintiffs to identify the particular information about
23 shipping locations, volumes, vehicle makes and models, and shipping years
24 contained in this chart. *See* Ex. 20 (ZF-MDL-679) at 699-701. Upon information
25 and belief, the shipping address for each of these shipments by ZF Electronics USA
26 from Marshall, Illinois was 902 South 2nd Street, Marshall, Illinois 62441. The
27 shipments for Kia Optimas identified therein would have gone to Kia Georgia, Inc.,
28 whereas the shipments for Hyundai Sonatas identified therein would have gone to

1 Hyundai Motor Manufacturing Alabama, LLC. The address for Kia Georgia, Inc.
2 was 7777 Kia Parkway West Point, Georgia 31833. The address for Hyundai Motor
3 Manufacturing Alabama, LLC is 700 Hyundai Blvd. Montgomery, Alabama 36105.

4 1567. The information available in Exhibit 20 and the facts identified above
5 are sufficient for Defendants to identify the precise dates of shipments because
6 Defendants will have backup information that shows additional details about the
7 underlying shipments.

8 **vii. ZF Passive Safety USA violated the mail fraud statute**
9 **multiple times in furtherance of the Hyundai-Kia-ZF-**
10 **ST Enterprise's fraudulent scheme.**

11 1568. ZF Passive Safety USA drafted and/or edited the following misleading
12 statements to NHTSA, as discussed in Sections IV.F.2., IV.F.4., IV.F.8., and
13 IV.F.14. above:

- 14 a. The slide deck presentation dated February 5, 2016 (which ZF
15 TRW Corp. mailed to NHTSA on March 14, 2016);
16 b. The slide deck presentation dated July 19, 2016 (which, upon
17 information and belief, was mailed to NHTSA in July or August
18 2016);
19 c. The September 2016 letter signed by Marc Bolitho³ (which ZF
20 Electronics USA mailed to NHTSA in September 2016); and
21 d. The slide deck presentation dated March 8, 2018 (which ZF
22 TRW Corp. mailed to NHTSA on March 12, 2018).

23 1569. As explained in sections IV.F.2., IV.F.4., IV.F.8., and IV.F.14. above,
24 each of these transmittals contained misleading statements about Hyundai-Kia
25 Class Vehicles and the ACU Defect. ZF Passive Safety USA specifically approved
26

27 ³ Mr. Bolitho was simultaneously an employee of ZF Passive Safety USA, the Vice
28 President of Passive Safety for ZF Electronics USA, and Director of Passive Safety
Engineering for ZF TRW Corp.

1 the transmittal of the final versions of these documents to NHTSA, and intended for
2 the misleading statements contained therein to avoid, minimize, and/or delay recalls
3 of Hyundai-Kia Class Vehicles. Avoiding, minimizing, and/or delaying recalls of
4 Hyundai-Kia Class Vehicles enabled the continuation of the scheme to defraud
5 consumers.

6 1570. ZF Passive Safety USA caused the delivery of the February 5, 2016
7 slide deck. ZF Passive Safety USA's causal role in the delivery is evidenced by the
8 fact that its employee Marc Bolitho signed an affidavit of confidentiality that was
9 enclosed with the mailing of the February 5, 2016 slide deck. Although Mr. Bolitho
10 also simultaneously served as a Vice President for ZF Electronics USA and a
11 Director of Passive Safety Engineering for ZF TRW Corp., ZF Passive Safety USA
12 alone paid his salary.

13 1571. Because the July 19, 2016 slide deck closely resembles the February 5,
14 2016 slide deck, the same personnel and companies were likely responsible for
15 sending it via mail or private interstate carrier to NHTSA. Accordingly, upon
16 information and belief, ZF Passive Safety USA caused this delivery too.

17 1572. ZF Passive Safety USA caused the delivery of the March 8, 2018 slide
18 deck to NHTSA. ZF Passive Safety USA's causal role in the delivery is evidenced
19 by the fact that its longtime employee, Emanuel Goodman, signed the affidavit of
20 confidentiality that was enclosed with the mailing of the March 8, 2018 slide deck.
21 Although Mr. Goodman also served as the Technical Specialist for ZF Electronics
22 USA, ZF Passive Safety USA alone paid his salary. ZF Passive Safety USA's
23 causal role in the delivery is further evidenced by Mr. Goodman's and Mr.
24 Bolitho's attendance at the March 8, 2018 meeting with NHTSA, where this slide
25 deck was used.

26 1573. Moreover, because ZF Passive Safety USA's affiliates would not have
27 sent or approved the four written communications described above without ZF
28 Passive Safety USA's contributions and approval, ZF Passive Safety USA was one

1 of the Defendants who jointly caused the delivery of these four communications to
2 NHTSA. Accordingly, its participation in these communications violated the mail
3 fraud statute at least four times. 18 U.S.C. § 1341.

4 1574. As explained in sections IV.F.2., IV.F.4., IV.F.8., and IV.F.14. above,
5 each of the four documents described above contained misleading statements about
6 Hyundai-Kia Class Vehicles and the ACU Defect. ZF Passive Safety USA
7 specifically approved the transmittal of the final versions of these documents to
8 NHTSA, and intended for the misleading statements contained therein to avoid,
9 minimize, and/or delay recalls of Hyundai-Kia Class Vehicles. Avoiding,
10 minimizing, and/or delaying recalls of Hyundai-Kia Class Vehicles enabled the
11 continuation of the scheme to defraud consumers. Because ZF Passive Safety
12 USA's affiliates would not have sent or approved the written communications
13 noted in the preceding paragraph without ZF Passive Safety USA's contributions
14 and approval, ZF Passive Safety USA was one of the Defendants who caused the
15 delivery of these four communications to NHTSA. Accordingly, its participation in
16 these communications violated the mail fraud statute at least four times. (18 U.S.C.
17 § 1341).

18 1575. As explained in Section IV.E.1.c. above, ZF Passive Safety USA
19 worked with ZF Electronics USA, ZF Automotive USA, Hyundai Korea, and Kia
20 Korea to design the readiness indicators installed in Hyundai-Kia Class Vehicles.
21 Specifically, ZF Passive Safety USA assisted with a design of ACUs that would
22 cause the readiness indicator not to illuminate at the point of sale or lease, even
23 though the Hyundai-Kia Class Vehicle's safety systems were not ready to deploy in
24 crash events with negative transients due to the ACU Defect. When ZF Passive
25 Safety USA assisted with this design, it knew Kia USA and Hyundai USA would
26 ship the Hyundai-Kia Class Vehicles to dealers and that consumers would buy the
27 vehicles without the airbag warning lamp illuminating at the point of sale or lease.
28 Because Kia USA and Hyundai USA would not have shipped Hyundai-Kia Class

1 Vehicles without ZF Passive Safety USA's assistance in designing misleading
2 readiness indicators, ZF Passive Safety USA jointly caused each shipment of
3 Hyundai-Kia Class Vehicle, in violation of the mail fraud act (18 U.S.C. § 1341).

4 **viii. ZF Automotive USA violated the mail fraud statute**
5 **multiple times in furtherance of the Hyundai-Kia-ZF-**
6 **ST Enterprise's fraudulent scheme.**

7 1576. ZF Automotive USA drafted and/or edited the following misleading
8 statements to NHTSA, as discussed in Sections IV.F.2., IV.F.4., IV.F.8., and
9 IV.F.14. above:

- 10 a. The slide deck presentation dated February 5, 2016 (which ZF
11 TRW Corp. mailed to NHTSA on March 14, 2016);
- 12 b. The slide deck presentation dated July 19, 2016 (which, upon
13 information and belief, was mailed to NHTSA in July or August
14 2016);
- 15 c. The September 2016 letter signed by Marc Bolitho (which ZF
16 Electronics USA mailed to NHTSA in September 2016); and
- 17 d. The slide deck presentation dated March 8, 2018 (which ZF
18 TRW Corp. mailed to NHTSA on March 12, 2018).

19 1577. ZF Automotive USA caused the delivery via mail or private interstate
20 carrier of the February 5, 2016 slide deck, the July 19, 2016 slide deck, and the
21 March 8, 2018 slide deck to NHTSA. ZF Automotive USA's role in causing the
22 delivery of these presentations is evidenced by its admission in a 573 Defect Report
23 that it attended the three meetings with NHTSA where these presentations were
24 used on its behalf.

25 1578. Upon information and belief, ZF Automotive USA caused the delivery
26 of the September 2016 letter via mail or private interstate carrier by giving requisite
27 approval prior to the transmittal of the letter.

28

1 1579. As explained in sections IV.F.2., IV.F.4., IV.F.8., and IV.F.14. above,
2 each of these four documents contained misleading statements about Hyundai-Kia
3 Class Vehicles and the ACU Defect. ZF Automotive USA specifically approved the
4 transmittal of the final versions of these documents to NHTSA, and intended for the
5 misleading statements contained therein to avoid, minimize, and/or delay recalls of
6 Hyundai-Kia Class Vehicles. Avoiding, minimizing, and/or delaying recalls of
7 Hyundai-Kia Class Vehicles enabled the continuation of the scheme to defraud
8 consumers. Because ZF Automotive USA's affiliates would not have sent or
9 approved the written communications noted in the preceding paragraph without ZF
10 Automotive USA's contributions and approval, ZF Automotive USA was one of
11 the Defendants who caused the delivery of these four communications to NHTSA.
12 Accordingly, its participation in these communications violated the mail fraud
13 statute at least four times. (18 U.S.C. § 1341).

14 1580. As explained in Section IV.E.1.c. above, ZF Automotive USA worked
15 with ZF Passive Safety USA, ZF Electronics USA, Kia Korea, and Hyundai Korea
16 to design the readiness indicators installed in Hyundai-Kia Class Vehicles.
17 Specifically, ZF Automotive USA assisted with a design of ACUs that would cause
18 the readiness indicator not to illuminate at the point of sale or lease, even though
19 the Hyundai-Kia Class Vehicle's safety systems were not ready to deploy in crash
20 events with negative transients due to the ACU Defect. When ZF Automotive USA
21 assisted with this design, it knew Kia USA and Hyundai USA would ship the
22 Hyundai-Kia Class Vehicles to dealers and that consumers would buy the vehicles
23 without the airbag warning lamp illuminating at the point of sale or lease. Because
24 Hyundai USA and Kia USA would not have shipped Hyundai-Kia Class Vehicles
25 without ZF Automotive USA's affirmative assistance in designing misleading
26 readiness indicators, ZF Automotive USA jointly caused each shipment of
27 Hyundai-Kia Class Vehicle, in violation of the mail fraud act (18 U.S.C. § 1341).

28

1 **ix. ZF TRW Corp. violated the mail fraud statute**
2 **multiple times in furtherance of the Hyundai-Kia-ZF-**
3 **ST Enterprise’s fraudulent scheme.**

4 1581. Prior to their delivery to NHTSA, ZF TRW Corp. reviewed, drafted
5 and/or edited the following misleading statements to NHTSA, as discussed in
6 Sections IV.F.2., IV.F.4., IV.F.8., and IV.F.14. above:

- 7 a. The slide deck presentation dated February 5, 2016 (which ZF
8 TRW Corp. mailed to NHTSA on March 14, 2016);
- 9 b. The slide deck presentation dated July 19, 2016 (which, upon
10 information and belief, was mailed to NHTSA in July or August
11 2016);
- 12 c. The September 2016 letter signed by Marc Bolitho⁴ (which ZF
13 Electronics USA mailed to NHTSA in September 2016); and
- 14 d. The slide deck presentation dated March 8, 2018 (which ZF
15 TRW Corp. mailed to NHTSA on March 12, 2018).

16 1582. ZF TRW Corp. caused the transmittal of the February 5, 2016 slide
17 deck via mail or private interstate carrier. ZF TRW Corp.’s role in the transmittal is
18 confirmed by the cover letter enclosed within the Fed Ex envelope alongside the
19 February 5, 2016 slide deck. This cover letter is signed: “Very truly yours, ZF
20 TRW Automotive Holdings Corp.” with a signature from Sheri Roberts, the Senior
21 Counsel of the company. ZF TRW Corp.’s causal role is further confirmed by a
22 footer on every page of the slide deck itself, which reads: “This document is the
23 property of ZF TRW and is disclosed in confidence. It may not be copied, disclosed
24 to others, or used for manufacturing without the written consent of ZF TRW.”
25 Based on this footer, ZF TRW Corp. gave requisite written consent to the
26 transmittal of the document to NHTSA.

27 ⁴ Mr. Bolitho was simultaneously an employee of ZF Passive Safety USA, the Vice
28 President of Passive Safety for ZF Electronics USA, and Director of Passive Safety
 Engineering for ZF TRW Corp.

1 1583. ZF TRW Corp. caused the transmittal of the July 19, 2016 slide deck
2 to NHTSA via mail or private interstate carrier. ZF TRW Corp.’s causal role is
3 confirmed by a footer on every page of the slide deck itself, which reads: “This
4 document is the property of ZF TRW and is disclosed in confidence. It may not be
5 copied, disclosed to others, or used for manufacturing without the written consent
6 of ZF TRW.” Based on this footer, ZF TRW Corp. gave requisite written consent to
7 the transmittal of the document to NHTSA.

8 1584. Upon information and belief, ZF TRW Corp. also gave requisite prior
9 authorization for the delivery of the September 2016 letter.

10 1585. ZF TRW Corp. caused the transmittal of the March 8, 2018 slide deck
11 to NHTSA via mail or private interstate carrier. ZF TRW Corp.’s causal role is
12 confirmed by the cover letter included with the mailing of the slide deck. The cover
13 letter is on the letter head of an “Active & Passive Safety Technology” business
14 unit. Because this is a reference to ZF TRW Corp.,⁵ ZF TRW Corp. must have
15 reviewed and approved the transmittal of the slide deck to NHTSA.

16 1586. As explained in sections IV.F.2., IV.F.4., IV.F.8., and IV.F.14. above,
17 each of these four documents described above contained misleading statements
18 about Hyundai-Kia Class Vehicles and the ACU Defect. ZF TRW Corp.
19 specifically approved the transmittal of the final versions of these documents to
20 NHTSA, and intended for the misleading statements contained therein to avoid,
21 minimize, and/or delay recalls of Hyundai-Kia Class Vehicles. Avoiding,
22 minimizing, and/or delaying recalls of Hyundai-Kia Class Vehicles enabled the
23 continuation of the scheme to defraud consumers. Because ZF TRW Corp.’s
24 affiliates would not have sent or approved the written communications noted in the

25
26 ⁵ According to ZF AG’s 2017 Annual Report, the “Active & Passive Safety
27 Technology Division” was “established by ZF Group to manage the business
28 activities of ZF TRW after its acquisition.” Because ZF TRW Corp. is the only
corporate entity with “ZF TRW” as part of its corporate name, this letter was also
sent on behalf of ZF TRW Corp.

1 preceding paragraph without ZF TRW Corp.'s contributions and approval, ZF
2 TRW Corp. was one of the Defendants who caused the delivery of these four
3 communications to NHTSA. Accordingly, its participation in these communications
4 violated the mail fraud statute at least four times. (18 U.S.C. § 1341).

5 **x. ZF Germany violated the mail fraud statute multiple**
6 **times in furtherance of the Hyundai-Kia-ZF-ST**
7 **Enterprise's fraudulent scheme.**

8 1587. Prior to their delivery to NHTSA, ZF Germany reviewed and/or edited
9 the following misleading statements to NHTSA, as discussed in Sections IV.F.2.,
10 IV.F.4., IV.F.8., and IV.F.14. above:

- 11 a. The slide deck presentation dated February 5, 2016 (which ZF
12 TRW Corp. mailed to NHTSA on March 14, 2016);
- 13 b. The slide deck presentation dated July 19, 2016 (which, upon
14 information and belief, was mailed to NHTSA in July or August
15 2016);
- 16 c. The September 2016 letter signed by Marc Bolitho (which ZF
17 Electronics USA mailed to NHTSA in September 2016); and
- 18 d. The slide deck presentation dated March 8, 2018 (which ZF
19 TRW Corp. mailed to NHTSA on March 12, 2018).

20 1588. ZF Germany caused the delivery of these communications via mail
21 and wire. The three presentations bear copyright legends attributing ownership to
22 ZF Germany. Accordingly, sending these presentations must have required its
23 involvement and consent. Moreover, the slide decks dated February 5, 2016 and
24 July 19, 2016 identify ZF Germany as the corporate author on the title page.

25 1589. As explained in sections IV.F.2., IV.F.4., IV.F.8., and IV.F.14 above,
26 each of these documents described above contained misleading statements about
27 Hyundai-Kia Class Vehicles and the ACU Defect. ZF Germany specifically
28 approved the transmittal of the final versions of these documents to NHTSA, and

1 intended for the misleading statements contained therein to avoid, minimize, and/or
2 delay recalls of Hyundai-Kia Class Vehicles. Avoiding, minimizing, and/or
3 delaying recalls of Hyundai-Kia Class Vehicles enabled the continuation of the
4 scheme to defraud consumers. Because ZF Germany’s affiliates would not have
5 sent or approved the written communications noted in the preceding paragraph
6 without ZF Germany’s contributions and approval, ZF Germany was one of the
7 Defendants who caused the delivery of these four communications to NHTSA.
8 Accordingly, its participation in these communications violated the mail fraud
9 statute at least four times. (18 U.S.C. § 1341).

10 **xi. ST USA violated the mail fraud statute multiple times**
11 **in furtherance of the Hyundai-Kia-ZF-ST Enterprise’s**
12 **fraudulent scheme.**

13 1590. ST USA regularly received orders from ZF Electronics USA for DS84
14 ASICs, including all the defective DS84 ASICs used in Hyundai-Kia Class
15 Vehicles. In response to these orders ST USA would work with its affiliate, ST
16 Malaysia, to help it manufacture and ship DS84 ASICs to ST USA’s so-called “ST
17 Micro LAX Hub” near Los Angeles, California. Between 2007 and the present, ST
18 USA caused ST Malaysia to ship well over ten million defective DS84 ASICs to
19 this location. In discovery, ST USA has produced approximately 9,700 invoices
20 sent to ZF Electronics USA from the time period between 2014 and the present
21 alone. Each invoice notes the defective DS84 ASICs were made in Malaysia, where
22 ST Malaysia operated. The invoice dates from these documents provide an
23 approximate date for these shipments. Plaintiffs have extracted approximate
24 shipping dates from these invoices, which are presented as exemplars in Exhibit
25 21.⁶

26 _____
27 ⁶ ST USA made similar shipments for Hyundai-Kia Class Vehicles between 2009
28 and 2014, but is withholding invoices for these shipments from discovery. Upon
information and belief, the invoices for this time period will show a similar
regularity of shipments of DS84 ASICs from Malaysia.

1 1591. ST USA also shipped well over ten million defective DS84 ASICs to
2 ZF Electronics USA at a facility with the following address: 902 South 2nd Street,
3 Marshall, Illinois 62441. As explained above, Exhibit 21 provides exemplar
4 approximate shipment dates based on an incomplete set of invoices produced by ST
5 USA.⁷

6 1592. When ST USA required ST Malaysia to make these shipments and
7 then made its own shipments to ZF Electronics USA, it knew ZF Electronics USA
8 would place the DS84 ASICs into DS84 ACUs, including those that would be
9 installed in Hyundai-Kia Class Vehicles that are marketed to U.S. consumers. ST
10 USA was also aware of Kia Korea's, Hyundai Korea's, Kia USA's and Hyundai
11 USA's practice of making reassuring statements about safety, airbags, and seatbelts
12 in consumer-facing Monroney labels, certification labels, in-vehicle labels, owner's
13 manuals and advertising for all Hyundai-Kia Class Vehicles. ST USA knew these
14 statements were false because it knew the Hyundai-Kia Class Vehicles, DS84 ACU,
15 and DS84 ASIC were defective. Accordingly, because ST USA caused shipments
16 of well over ten million defective DS84 ASICs with the purpose of executing a
17 fraudulent scheme with the other Enterprise members, each of the DS84 ASIC
18 shipments caused by ST USA violated the mail fraud statute (18 U.S.C. § 1341).

19 **xii. ST Malaysia violated the mail fraud statute multiple**
20 **times in furtherance of the Hyundai-Kia-ZF-ST**
21 **Enterprise's fraudulent scheme.**

22 1593. Between 2007 and the 2018, ST USA regularly worked with its
23 affiliate, ST Malaysia, to help it manufacture and ship DS84 ASICs to ST USA's
24 so-called "ST Micro LAX Hub" near Los Angeles, California. During that time

25
26 ⁷ ST USA made similar shipments for Hyundai-Kia Class Vehicles between 2009
27 and 2014, but is withholding invoices for these shipments from discovery. Upon
28 information and belief, the invoices for this time period will show a similar
regularity of shipments of DS84 ASICs from the STMicro LAX Hub to the ZF
Electronics USA's manufacturing facility in Illinois.

1 period, ST Malaysia shipped well over ten million defective DS84 ASICs to this
2 location. ST USA has produced approximately 9,700 invoices sent to ZF
3 Electronics USA from the time period between 2014 and the present alone. Each
4 invoice notes the defective DS84 ASICs were made in Malaysia, where ST
5 Malaysia operated. The invoice dates from these documents provide an
6 approximate date for these shipments. Plaintiffs have extracted approximate
7 shipping dates from these invoices, which are presented as exemplars in Exhibit
8 21.⁸

9 1594. When ST Malaysia made these shipments, it knew ZF Electronics
10 USA would place the DS84 ASICs into DS84 ACUs, including those ACUs that
11 would be installed in Hyundai-Kia Class Vehicles that are marketed to U.S.
12 consumers. ST Malaysia was also aware of Kia Korea's, Hyundai Korea's, Kia
13 USA's, and Hyundai USA's practice of making reassuring statements about safety,
14 airbags, and seatbelts in consumer-facing Monroney labels, certification labels, in-
15 vehicle labels, owner's manuals, and advertising for all Hyundai-Kia Class
16 Vehicles. ST Malaysia knew these statements were false because it knew the
17 Hyundai-Kia Class Vehicles, DS84 ACU, and ASIC were defective. Accordingly,
18 because ST Malaysia caused shipments of well over ten million defective DS84
19 ASICs with the purpose of executing a fraudulent scheme with the other Enterprise
20 members, each of the DS84 ASIC shipments made by ST Malaysia violated the
21 mail fraud statute (18 U.S.C. § 1341).

22
23
24
25
26

27 ⁸ ST USA made similar shipments between 2007 and 2014, but is withholding
28 invoices for these shipments from discovery. Upon information and belief, the
invoices for this time period will show a similar regularity of shipments.

1 **b. Kia Korea, Hyundai Korea, Kia USA, Hyundai USA,**
2 **Hyundai Mobis, ZF Electronics USA, ZF Passive Safety**
3 **USA, ZF Automotive USA, ZF TRW Corp., ZF Germany,**
4 **ST USA, and ST Malaysia advanced their fraudulent**
5 **scheme by concealing material information about a serious**
6 **safety defect that they had a duty to disclose.**

7 1595. The uses of mail and wire described in the section above violated the
8 mail and wire fraud statutes because they furthered a fraudulent scheme to
9 affirmatively mislead consumers and NHTSA. In addition, these same uses of mail
10 and wire fraud *also* violated the mail and wire fraud statutes because Kia Korea,
11 Hyundai Korea, Kia USA, Hyundai USA, Hyundai Mobis, ZF Electronics USA, ZF
12 Passive Safety USA, ZF Automotive USA, ZF TRW Corp., ZF Germany, ST USA,
13 and ST Malaysia had duties to disclose the ACU Defect.

14 1596. Kia Korea, Hyundai Korea, Kia USA, Hyundai USA, Hyundai Mobis,
15 ZF Electronics USA, ZF Passive Safety USA, ZF Automotive USA, ZF TRW
16 Corp., ZF Germany, ST USA, and ST Malaysia each knew for years that the
17 defective DS84 ACUs and ASICs in the Hyundai-Kia Class Vehicles are uniquely
18 vulnerable to EOS. *See* Section IV.D.3. above.

19 1597. To further the goals of the Hyundai-Kia-ZF-ST Enterprise and to their
20 mutual gain, Kia Korea, Hyundai Korea, Kia USA, Hyundai USA, Hyundai Mobis,
21 ZF Electronics USA, ZF Passive Safety USA, ZF Automotive USA, ZF TRW
22 Corp., ZF Germany, ST USA, and ST Malaysia concealed what they knew about
23 the existence, scope, and material safety risks of the ACU Defect in the Hyundai-
24 Kia Class Vehicles.

25 1598. Their careful efforts to conceal the ACU Defect in the Hyundai-Kia
26 Class Vehicles were critically important to the viability of their scheme. A decision
27 by any one Defendant or nonparty-Enterprise member to tell the truth about the
28 ACU Defect and its impact of vehicle safety to consumers or to NHTSA would
have been an existential threat to the Hyundai-Kia-ZF-ST Enterprise. Instead, and

1 in pursuit of ill-gotten profits, they each kept key information about the ACU
2 Defect hidden for years. This concealment of material facts about the ACU Defect
3 was grounded in and advanced their scheme to defraud consumers through the
4 continued sale of Hyundai-Kia Class Vehicles, and avoidance of costly recalls and
5 related reputational harms.

6 1599. Kia Korea, Hyundai Korea, Kia USA, Hyundai USA, Hyundai Mobis,
7 ZF Electronics USA, ZF Passive Safety USA, ZF Automotive USA, ZF TRW
8 Corp., ZF Germany, ST USA, and ST Malaysia’s concealment of the ACU Defect
9 violated several independent duties to disclose it.⁹

10 a. Kia Korea, Hyundai Korea, Kia USA, Hyundai USA, Hyundai
11 Mobis, ZF Electronics USA, ZF Passive Safety USA, ZF
12 Automotive USA, ZF TRW Corp., ZF Germany, ST USA, and
13 ST Malaysia each had a duty to disclose the ACU Defect
14 because of their exclusive knowledge and far superior
15 information about the ACU Defect.

17
18 ⁹ As vehicle manufacturers and component parts suppliers, Defendants are also
19 subject to statutory duties to disclose known safety defects to consumers and to
20 NHTSA pursuant to the Safety Act and its attendant regulations. *See, e.g.*, 49
21 U.S.C. § 30118(c) (“A manufacturer of a motor vehicle . . . shall notify the
22 Secretary by certified mail or electronic mail, and the owners, purchasers, and
23 dealers of the vehicle . . . as provided in section 30119(d) of this section, if the
24 manufacturer . . . learns the vehicle . . . contains a defect and decides in good faith
25 that the defect is related to motor vehicle safety.”); 49 U.S.C. §30119(d)
26 (manufacturers must notify “each person registered . . . as the owner and whose
27 name and address are reasonably ascertainable”); 49 C.F.R. §573.6(a) (“Each
28 manufacturer shall furnish a report to the NHTSA for each defect . . . in his items of
original . . . equipment that he . . . determines to be related to motor vehicle
safety.”). Plaintiffs previously pled Defendants had a duty to disclose based on
these provisions of the Safety Act, but the Court dismissed an omissions theory
based these alleged duties. Plaintiffs reserve the right to appeal this decision at a
later date, but do not rely upon the Safety Act as a basis for their omissions theory
in this pleading.

- 1 b. These Defendants knew about the vulnerability of the DS84
2 ACU and ASIC to EOS through their exclusive access to
3 information about their design, development, and testing, and
4 through their confidential and proprietary investigations into
5 suspicious incidents. Given the ACU Defect’s hidden and
6 technical nature, Plaintiffs and consumers lack the sophisticated
7 expertise in vehicle components and electrical phenomena that
8 would be necessary to discover the ACU Defect on their own.
- 9 c. In addition, Kia Korea, Hyundai Korea, Kia USA, Hyundai
10 USA, Hyundai Mobis, ZF Electronics USA, ZF Passive Safety
11 USA, ZF Automotive USA, ZF TRW Corp., ZF Germany, ST
12 USA, and ST Malaysia also each had a duty to disclose because
13 they knew that a defect in the Hyundai-Kia Class Vehicles and
14 their DS84 ACUs and ASICs gave rise to serious safety
15 concerns for the consumers who use the vehicles. As
16 sophisticated and well-funded corporate entities that generate
17 billions of dollars in annual revenue from work in the
18 automotive industry, each of these Defendants knew that this
19 information would have been material to consumers. For
20 example, a February 3, 2004, prospectus filed by ZF TRW Corp.
21 with the SEC observed that “85 percent of recent auto
22 purchasers stated that they look for vehicle safety information
23 before making their final decision.” Nonetheless, these
24 Defendants still did not disclose it.
- 25 d. Kia Korea, Hyundai Korea, Kia USA, Hyundai USA, Hyundai
26 Mobis, ZF Electronics USA, ZF Passive Safety USA, ZF
27 Automotive USA, ZF TRW Corp., ZF Germany, ST USA, and
28 ST Malaysia also each had a duty to disclose the ACU Defect

1 because of the actions they took to conceal the ACU Defect in
2 the Hyundai-Kia Class Vehicles from consumers. Each of these
3 Defendants acted to suppress the truth about the ACU Defect
4 through their misleading representations to NHTSA. *See*
5 Sections IV.F.2., IV.F.4., IV.F.8., IV.F.12., IV.F.13., IV.F.14.,
6 and IV.F.16 above. Because a truthful and accurate disclosure to
7 NHTSA would have been material to NHTSA’s decision
8 whether to require a recall or expand its investigation into the
9 DS84 ACUs and ASICs, the affirmative steps they took to
10 mislead NHTSA about the ACU Defect also precluded
11 Hyundai-Kia Plaintiffs and Nationwide Hyundai-Kia Class
12 members from an opportunity that otherwise have led to their
13 discovery of the truth about the ACU Defect.

14 e. Finally, Kia Korea, Hyundai Korea, Kia USA, and Hyundai
15 USA affirmatively presented reassuring information about the
16 Hyundai-Kia Class Vehicles’ airbags, seatbelts, and overall
17 safety to consumers (*see* section IV.E.1. and I.V.E.2. above).
18 Because they opted to make these representations to consumers
19 about these topics, and because they knew information about the
20 ACU Defect that made those representations misleading or
21 untrue, Kia Korea, Hyundai Korea, Kia USA, and Hyundai USA
22 were under a separate duty to disclose the full truth about the
23 ACU Defect that materially undermined the reassuring
24 information they presented, or caused to be presented, to
25 consumers.

26 1600. Kia Korea, Hyundai Korea, Kia USA, Hyundai USA, Hyundai Mobis,
27 ZF Electronics USA, ZF Passive Safety USA, ZF Automotive USA, ZF TRW
28 Corp., ZF Germany, ST USA, and ST Malaysia knew and intended that NHTSA

1 would rely on their and the other members of the Hyundai-Kia-ZF-ST Enterprise's
2 material omissions about the Hyundai-Kia Class Vehicles to approve them for
3 importation, marketing, and sale to consumers in the United States. And
4 conversely, they also understood that disclosing the ACU Defect would require
5 them to recall and fix the Hyundai-Kia Class Vehicles, which would negatively
6 impact the profits of the Hyundai-Kia-ZF-ST Enterprise.

7 1601. Kia Korea, Hyundai Korea, Kia USA, Hyundai USA, Hyundai Mobis,
8 ZF Electronics USA, ZF Passive Safety USA, ZF Automotive USA, ZF TRW
9 Corp., ZF Germany, ST USA, and ST Malaysia also knew and intended that
10 consumers would rely on their and the other members of the Hyundai-Kia-ZF-ST
11 Enterprise's material omissions when deciding to purchase or lease the Hyundai-
12 Kia Class Vehicles. The Hyundai-Kia Plaintiffs' reliance on this concealment is
13 demonstrated by the fact that they paid money for Hyundai-Kia Class Vehicles that
14 never should have been introduced into the U.S. stream of commerce, and that they
15 overpaid for vehicles with defective safety systems without knowledge of the ACU
16 Defect.

17 **c. The Hyundai-Kia-ZF-ST Enterprise was an association-in-**
18 **fact enterprise with a common purpose of misleading**
19 **consumers and NHTSA as to the ACU Defect in Hyundai-**
20 **Kia Class Vehicles.**

21 1602. The Hyundai-Kia-ZF-ST Enterprise had a common purpose and
22 ongoing organization and functioned as a continuing unit.

23 **i. The Hyundai-Kia-ZF-ST Enterprise had a common**
24 **purpose.**

25 1603. The common purpose of the Hyundai-Kia-ZF-ST Enterprise was to
26 perpetuate a fraudulent scheme to maximize sales and leases of Hyundai-Kia Class
27 Vehicles while hiding the ACU Defect from purchasers and lessees. Because all of
28 the Enterprise members' continued profits from this scheme ultimately depended on

1 consumers purchasing or leasing Hyundai-Kia Class Vehicles, the Enterprise
2 needed to convince consumers of a false premise: that Hyundai-Kia Class Vehicles
3 had properly-functioning safety systems. Toward this end, the Enterprise needed to
4 make misleading statements to consumers. For this scheme to work, it was also
5 essential for the Enterprise to conceal the ACU Defect from NHTSA, because the
6 agency could halt the sale of Hyundai-Kia Class Vehicles and order recalls that
7 necessarily require public notice of a defect. The expense of these recalls would
8 undermine the profitability of the scheme.

9 1604. This common purpose served the interests of all members of the
10 Hyundai-Kia-ZF-ST Enterprise. By concealing and minimizing the ACU Defect,
11 Hyundai Korea, Kia Korea, Hyundai USA, Kia USA, Hyundai Mobis, ZF
12 Electronics USA, ZF Passive Safety USA, ZF Automotive USA, ZF TRW Corp.,
13 ZF Germany, ST USA, ST Italy, ST Malaysia, and the nonparty-Enterprise-
14 members maximized their revenue by selling as many Hyundai-Kia Class Vehicles
15 as possible while avoiding or limiting the substantial costs to recall and repair the
16 Vehicles and their defective DS84 ACUs and ASICs.

17 1605. The common purpose of the Hyundai-Kia-ZF-ST Enterprise is
18 evidenced by Hyundai Korea's, Kia Korea's, Hyundai USA's, Kia USA's, Hyundai
19 Mobis's, ZF Electronics USA's, ZF Passive Safety USA's, and ZF Automotive
20 USA's repeated, confidential consultations with one another about suspicious
21 crashes involving Hyundai-Kia Class Vehicles, problems with the design of the
22 DS84 ACU and ASIC, observations of EOS on DS84 ACUs and ASICs, and
23 dangerous safety system malfunctions in Hyundai-Kia Class Vehicles. As the Court
24 has held, consultations about "observed evidence of EOS in Class Vehicles" among
25 Defendants "support[s] a reasonable inference" of a "common purpose of
26 misleading consumers and NHTSA as to the existence of a defect in the ACUs."
27 ECF 396 at 61.
28

1 1606. The common purpose of the Hyundai-Kia-ZF-ST Enterprise is further
2 evidenced by ST USA, ST Italy, and ST Malaysia’s repeated communications with
3 ZF Electronics USA, ZF Passive Safety USA, and ZF Automotive USA about
4 observations of EOS in Hyundai-Kia Class Vehicles. ZF Electronics USA, ZF
5 Passive Safety USA, and ZF Automotive USA would regularly share this
6 information with Hyundai Korea, Kia Korea, and Hyundai Mobis by copying
7 excerpts of the reports received from ST USA, ST Italy, and ST Malaysia and
8 sending them to Hyundai Korea, Kia Korea, and Hyundai Mobis, who would then
9 share them with Hyundai USA and Kia USA.

10 1607. The common purpose of the Hyundai-Kia-ZF-ST Enterprise is also
11 evidenced by coordinated efforts by Hyundai Korea, Kia Korea, Hyundai USA, Kia
12 USA, Hyundai Mobis, ZF Electronics USA, ZF Passive Safety USA, ZF
13 Automotive USA, and ZF Germany to mislead NHTSA about the existence and
14 scope of the ACU Defect by misleadingly blaming wire harnesses for safety system
15 malfunctions that were caused by the ACU Defect.

16 **ii. The Hyundai-Kia-ZF-ST Enterprise had an ongoing**
17 **organization.**

18 1608. The participation of separate entities or individuals that have an
19 existence outside an alleged enterprise is evidence of an ongoing organization with
20 its own structure, separate and apart from its members. Hyundai Korea, Kia Korea,
21 Hyundai USA, Kia USA, Hyundai Mobis, ZF Electronics USA, ZF Passive Safety
22 USA, ZF Automotive USA, ZF TRW Corp., ZF Germany, ST USA, ST Italy, and
23 ST Malaysia each existed separately from the Hyundai-Kia-ZF-ST Enterprise.

- 24 a. During the relevant period, Hyundai Korea and Kia Korea
25 contemporaneously designed, manufactured, and sold many
26 vehicles that do not contain defective DS84 ACUs and ASICs.
27 b. During the relevant period, Hyundai USA and Kia USA
28 contemporaneously provided services to Hyundai Korea and Kia

- 1 Korea relating to a large volume of vehicles that do not contain
2 defective DS84 ACUs and ASICs.
- 3 c. During the relevant period, Hyundai Mobis manufactured and
4 supplied many parts other than the DS84 ACUs to Hyundai
5 Korea and Kia Korea.
- 6 d. During the relevant period, ST USA, ST Italy, and ST Malaysia
7 contemporaneously sold, designed, and/or manufactured many
8 other products aside from the defective DS84 ASICs used in the
9 defective DS84 ACUs.
- 10 e. During the relevant period, ZF Passive Safety USA, ZF
11 Electronics USA, and ZF Automotive USA contemporaneously
12 designed, made, and/or sold many other automotive parts aside
13 from the defective DS84 ACUs.
- 14 f. ZF TRW Corp. and ZF Germany also engaged in a wide variety
15 of business activities unrelated to the defective DS84 ACUs.

16 1609. Another hallmark of an ongoing organization is members with
17 delineated roles that further the organization's goals. Each member performed
18 important but separate roles within the Hyundai-Kia-ZF-ST Enterprise
19 organization.

- 20 a. Hyundai Korea designed the Hyundai Class Vehicles, and made
21 many of them in South Korea. For the Hyundai Class Vehicles it
22 made itself, Hyundai Korea added permanent labels to each
23 vehicle that certified compliance with U.S. Federal safety
24 standards, as well as readiness indicators and in-vehicle airbag
25 labels and imprints.
- 26 b. Nonparty Hyundai Motor Manufacturing Alabama, LLC made
27 the remaining Hyundai Class Vehicles manufactured outside of
28 South Korea, but had no discretion to depart from Hyundai

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Korea’s mandatory design specifications in the process. Hyundai Korea’s mandatory designs required Hyundai Motor Manufacturing Alabama, LLC to add permanent labels to each vehicle that certified compliance with U.S. Federal safety standards, as well as readiness indicators and in-vehicle airbag labels and imprints.

- c. Kia Korea designed the Kia Class Vehicles, and made many of them in South Korea. For the Kia Class Vehicles it made itself, Kia Korea added permanent labels to each vehicle that certified compliance with U.S. Federal safety standards, as well as readiness indicators and in-vehicle airbag labels and imprints.
- d. Nonparty Kia Georgia, Inc. made the remaining Kia Class Vehicles manufactured outside of South Korea, but had no discretion to depart from Kia Korea’s mandatory design specifications in the process. Kia Korea’s mandatory designs required Kia Georgia, Inc. to add permanent labels to each vehicle that certified compliance with U.S. Federal safety standards, as well as readiness indicators and in-vehicle airbag labels and imprints.
- e. Kia USA received the Kia Class Vehicles made in South Korea from Kia Korea and the Kia Class Vehicles made in the United States from Kia Georgia Inc. It then placed misleading Monroney labels on them and distributed them to dealers. It also was responsible for responding to NHTSA’s investigation into Kia Class Vehicles on behalf of Kia Korea and for all misleading advertising of Kia Class Vehicles to United States consumers.

- 1 f. Hyundai USA received the Hyundai Class Vehicles made in
2 South Korea from Hyundai Korea and the Hyundai Class
3 Vehicles made in the United States from Hyundai Motor
4 Manufacturing Alabama, LLC. It then placed misleading
5 Monroney labels on them and distributed them to dealers. It also
6 was responsible for responding to NHTSA's investigation into
7 Hyundai Class Vehicles on behalf of Hyundai Korea and for all
8 misleading advertising of Hyundai Class Vehicles to United
9 States consumers.
- 10 g. ZF Electronics USA, ZF Passive Safety USA, and ZF
11 Automotive USA jointly designed the defective DS84 ACU for
12 use in the Hyundai-Kia Class Vehicles, with Kia Korea's,
13 Hyundai Korea's, ST Italy's, and ST USA's input. ZF
14 Electronics USA, ZF Passive Safety USA, and ZF Automotive
15 USA also met with, and made misleading statements about the
16 ACU Defect, to NHTSA.
- 17 h. ZF TRW Corp. and ZF Germany approved actions taken by ZF
18 Electronics USA, ZF Passive Safety USA, and ZF Automotive
19 USA, and participated directly in making misleading statements
20 to NHTSA about the ACU Defect.
- 21 i. ZF Electronics USA made and shipped the DS84 ACUs to
22 Hyundai Motor Manufacturing Alabama, LLC and Kia Georgia
23 Inc.
- 24 j. Hyundai Mobis also manufactured DS84 ACUs in South Korea
25 and shipped them to Hyundai Korea and Kia Korea.
- 26 k. ST Italy and ST USA jointly designed the defective DS84 ASIC,
27 with input from ZF Electronics USA, ZF Passive Safety USA,
28 and ZF Automotive USA.

- 1 l. ST Malaysia manufactured the defective DS84 ASICs and
- 2 shipped them to ST USA in California.
- 3 m. ST USA sold and shipped the defective DS84 ASIC to ZF
- 4 Electronics USA.
- 5 n. Each of the Defendants separately ensured that NHTSA and
- 6 consumers did not discover the ACU Defect.

7 1610. The Enterprise members dedicated personnel to the Hyundai-Kia-ZF-

8 ST Enterprise’s scheme, which further evidences the ongoing structure of the

9 Enterprise. For example, ZF Electronics USA, ZF Passive Safety USA, and ZF

10 Automotive USA dedicated an entire applications team to implement the defective

11 DS84 ACUs in Hyundai-Kia Class Vehicles in 2008. This team included ZF

12 Passive Safety USA employees Hiro Kawakubo, Kyle Pellar-Kosbar, and Ed

13 Wampuszyc, potentially among others.

14 1611. When the passenger safety systems in Hyundai-Kia vehicles

15 repeatedly malfunctioned due to the ACU Defect over the course of several years

16 (starting at least as early as 2010), Kia Korea, Hyundai Korea, Hyundai Mobis, Kia

17 USA, and Hyundai USA routinely sought the involvement and assistance of ZF

18 Electronics USA, ZF Passive Safety USA, ZF Automotive USA, ST Italy, ST USA,

19 and ST Malaysia. These Defendants repeatedly coordinated, directly or indirectly,

20 with Kia Korea, Hyundai Korea, Hyundai Mobis, Kia USA, and Hyundai USA on

21 these issues, including by assigning several investigations for Hyundai-Kia Class

22 Vehicles to the same personnel. For example, ZF Electronics USA, ZF Passive

23 Safety USA, and ZF Automotive USA assigned Emanuel Goodman with the task of

24 analyzing DS84 ACUs from Hyundai-Kia Class Vehicles. [REDACTED]

25 [REDACTED]

26 [REDACTED]

27 1612. The Hyundai-Kia-ZF-ST Enterprise held multiple meetings to discuss

28 the ACU Defect and observations of ASIC EOS in Hyundai-Kia vehicles with

1 airbag failures. For example, in May 2012, ZF Automotive USA, ZF Electronics
2 USA, ZF Passive Safety USA, Hyundai Korea, Kia Korea, and Hyundai Mobis held
3 a meeting on this topic.

4 1613. When NHTSA began to investigate the defective DS84 ACUs in 2015,
5 ZF Electronics USA, ZF Passive Safety USA, ZF Automotive USA, ZF Germany,
6 ZF TRW Corp., Kia Korea, Hyundai Korea, Hyundai Mobis, Kia USA, and
7 Hyundai USA repeatedly met to discuss the subject. In 2016, ZF Electronics USA,
8 ZF Passive Safety USA, ZF Automotive USA, ZF Germany, ZF TRW Corp.,
9 shared excerpts of their misleading communications with NHTSA with Kia Korea,
10 Hyundai Korea, and Hyundai Mobis. For the next two years, these companies
11 repeatedly communicated about the ACU Defect and NHTSA investigation with
12 each other, as well as Kia America and Hyundai America. These repeated
13 communications allowed the participants in the Hyundai-Kia-ZF-ST Enterprise to
14 coordinate their efforts to downplay the ACU Defect and avoid and minimize
15 recalls.

16 **iii. The Hyundai-Kia-ZF-ST Enterprise functioned as a**
17 **continuing unit.**

18 1614. The Hyundai-Kia-ZF-ST Enterprise continued for several years, at
19 least during the time period of 2008 to the present. Although Hyundai USA and Kia
20 USA stopped distributing new Class Vehicles with the DS84 ACU in 2018 or 2019,
21 Hyundai-Kia Class Vehicles continue to sell on the used car market with
22 misleading in-vehicle statements and consumer-facing marketing (such as vehicle
23 brochures) made by the Hyundai-Kia-ZF-ST Enterprise.

24 1615. During this protracted time, the members of the Hyundai-Kia-ZF-ST
25 Enterprise remained stable, with Hyundai Korea, Kia Korea, Hyundai Mobis,
26 Hyundai USA, Kia USA, ZF Electronics USA, ZF Passive Safety USA, ZF
27 Automotive USA, ZF TRW Corp., ST USA, ST Malaysia, ST Italy, Hyundai Motor
28 Manufacturing Alabama, LLC and Kia Georgia, Inc. remaining active members for

1 nearly a decade of ongoing production and sales of the Hyundai-Kia Class
2 Vehicles. ZF Germany, on the other hand, participated in the Hyundai-Kia-ZF-ST
3 Enterprise shortly after acquiring ZF TRW Corp. in 2015.

4 **d. The Hyundai-Kia-ZF-ST Enterprise’s pattern of**
5 **racketeering caused Hyundai-Kia Plaintiffs and the**
6 **Nationwide Hyundai-Kia Class members to overpay for**
7 **Hyundai-Kia Class Vehicles at the point of sale or lease.**

8 1616. Hyundai-Kia Plaintiffs and Nationwide Hyundai-Kia Class members
9 are “person[s] injured in his or her business or property” by reason of the Hyundai-
10 Kia-ZF-ST Enterprise’s RICO violations, within the meaning of U.S.C. § 1964(c).
11 These The Hyundai-Kia Plaintiffs and Nationwide Hyundai-Kia Class members are
12 entitled to bring this action for three times their actual damages, as well as
13 injunctive/equitable relief, costs, and reasonable attorneys’ fees pursuant to 18
14 U.S.C. § 1964(c).

15 1617. Because of the Hyundai-Kia-ZF-ST Enterprise’s pattern of
16 racketeering activity, the Hyundai-Kia Plaintiffs and Nationwide Hyundai-Kia
17 Class members have been injured in their business and/or property through their
18 overpayment at the time of purchase or lease for Hyundai-Kia Class Vehicles with
19 an undisclosed safety defect.

20 1618. By making misleading statements and omissions at or before the point
21 of sale or lease, the Hyundai-Kia-ZF-ST Enterprise directly or indirectly obtained
22 money from Hyundai-Kia Plaintiffs and the Nationwide Hyundai-Kia Class
23 members by means of materially false or fraudulent misrepresentations and
24 omissions of material facts. Had they known what the Hyundai-Kia-ZF-ST
25 Enterprise members knew about the ACU Defect, the Hyundai-Kia Plaintiffs and
26 the Nationwide Hyundai-Kia Class members would not have purchased the
27 Hyundai-Kia Class Vehicles, or would not have paid as much as they did for them.
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1 1619. Had Kia Korea, Hyundai Korea, Kia USA, Hyundai USA, Hyundai
2 Mobis, ZF Electronics USA, ZF Passive Safety USA, ZF Automotive USA, ZF
3 TRW Corp., ZF Germany, ST USA, and ST Malaysia not concealed, and instead
4 decided to disclose, the information they knew about the ACU Defect and its
5 impact on vehicle safety, the Hyundai-Kia Plaintiffs and the Nationwide Hyundai-
6 Kia Class members would have learned of the disclosure.

7 a. The Hyundai-Kia Plaintiffs and the Nationwide Hyundai-Kia
8 Class members would have learned about the ACU Defect
9 through any of the channels through the Hyundai-Kia Class
10 Vehicles were marketed to them. In other words, had Kia Korea,
11 Hyundai Korea, Hyundai USA, and Kia USA made a disclosure
12 in *any* of the places in which it otherwise communicated
13 information about the Hyundai-Kia Class Vehicles, Hyundai-
14 Kia Plaintiffs and Nationwide Hyundai-Kia Class members
15 would have seen it. This includes in Hyundai-Kia Class Vehicle
16 brochures and other advertising, on Monroney labels,
17 certification labels, in-vehicle airbag labels, airbag warning
18 lamps, and in owner's manuals.

19 b. Further, Hyundai-Kia Plaintiffs and Nationwide Hyundai-Kia
20 Class members would have learned about the ACU Defect at the
21 times and places that they purchased or leased their Class
22 Vehicles. For example, had Kia USA or Hyundai USA made a
23 disclosure about the ACU Defect to authorized Hyundai and Kia
24 dealerships, sales personnel at the dealerships would have
25 passed on that material information to consumers at the time of
26 the contemplated purchases.

27 c. Had any of the Defendants listed above disclosed the true scope
28 and existence of the ACU Defect to NHTSA, Hyundai-Kia

1 Plaintiffs and Nationwide Hyundai-Kia Class members would
2 have learned of it because NHTSA would have considered this
3 information material to its decision to require a recall, which
4 information would have been made public and passed onto
5 impacted consumers.

6 d. Had any of the Defendants listed above disclosed the true scope
7 and existence of the ACU Defect to consumers or the public,
8 either through press releases, on their websites, or in any other
9 public channel or forum, Hyundai-Kia Plaintiffs and Nationwide
10 Hyundai-Kia Class members would have learned of it due to the
11 materiality of this information about a serious safety defect in
12 millions of vehicles. Given the seriousness of the information
13 and the number of vehicles impacted, the news media and
14 consumer forums and blogs would pick up the story. This is
15 particularly so in the wake of the massive Takata recall and
16 litigation, which confirmed the strong public interest in airbags
17 and vehicle safety. For example, an April 23, 2019 article
18 available on ConsumerReports.com described NHTSA's
19 expanded investigation into the DS84 ACUs to be "the agency's
20 most in-depth look at airbags since the recall of more than 56
21 million airbags made by Takata."

22 1620. The Hyundai-Kia-ZF-ST Enterprise's misleading statements to
23 NHTSA between 2016 and the present were essential to the scheme because
24 NHTSA would not have allowed continued sale of unremedied Hyundai-Kia Class
25 Vehicles with defective DS84 ACUs and ASICs. At the very least, these misleading
26 statements delayed NHTSA's broader investigation of the Hyundai-Kia Class
27 Vehicles until April 2019, when NHTSA launched an Engineering Analysis
28 covering all unrecalled Hyundai-Kia Class Vehicles. Upon information and belief,

1 ZF Electronics USA stopped making DS84 ACUs for the 2020 model year based in
2 large part on this investigation. Accordingly, ZF Electronics USA would have
3 stopped making DS84 ACUs if NHTSA had launched a broader investigation in
4 2016. For this reason, Plaintiffs who purchased and leased Hyundai-Kia Class
5 Vehicles after the first misleading statement to NHTSA by the Hyundai-Kia-ZF-ST
6 Enterprise would have avoided purchasing or leasing their Hyundai-Kia Class
7 Vehicles entirely, or they would have paid less for them.

8 1621. Consumers are the only direct victims of the Hyundai-Kia-ZF-ST
9 Enterprise's alleged fraudulent and misleading statements to NHTSA. NHTSA has
10 not suffered any reported, direct injury as a result of such conduct.

11 1622. Damages will not be difficult to ascertain; the Hyundai-Kia Plaintiffs
12 and the Nationwide Hyundai-Kia Class members' damages are the difference
13 between what they paid for Hyundai-Kia Class Vehicles without an ACU Defect,
14 and the value of the Hyundai-Kia Class Vehicles they actually received. In the
15 similar *Takata* airbag litigation, for example, plaintiffs also alleged overpayment
16 damages suffered at the point of sale based on a dangerous airbag defect. Plaintiffs'
17 experts in that case performed a conjoint analysis using surveys of consumers and
18 found that the price premium paid by class members was at least ten percent of the
19 purchase price. A similar analysis could be performed in this litigation. Other
20 methodologies are also viable.

21 1623. All victims of Defendants' alleged conduct who claim to have
22 overpaid for the purchase or lease of Hyundai-Kia Class Vehicles are within the
23 alleged Nationwide Hyundai-Kia Class. Consequently, there are no issues with
24 respect to reapportionment or multiple recovery.

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1 **2. Nationwide Count 2: Violations of the Racketeer Influenced**
2 **Corrupt Organizations Act, 18 U.S.C. § 1962(d), on Behalf of the**
3 **Nationwide Hyundai-Kia Class Against Kia Korea, Hyundai**
4 **Korea, Kia USA, Hyundai USA, Hyundai Mobis, ZF Electronics**
5 **USA, ZF Passive Safety USA, ZF Automotive USA, ZF TRW**
6 **Corp., ZF Germany, ST USA, ST Italy, and ST Malaysia.**

7 1624. As applicable to this case, it is also unlawful “for any person to
8 conspire to violate” 18 U.S.C. § 1962(c). *See* 18 U.S.C. § 1962(d). To conspire in
9 violation of section 1962(c), the defendant must be “aware of the essential nature
10 and scope of the enterprise.” ECF 396 at 77. Enterprise members conspire to violate
11 section 1962(c) when “two or more people agree[] to commit a crime” and
12 “knowingly and willfully participate[] in the agreement. . . . The illegal agreement
13 need not be express as long as its existence can be inferred from the words, actions,
14 or interdependence of activities and persons involved.” *Id.* A defendant who
15 “agreed to facilitate a scheme” violates section 1962(d) even if he “does not himself
16 commit or agree to commit the two or more predicate acts requisite to the
17 underlying offense.” *Salinas v. United States*, 522 U.S. 52, 65-66 (1997).

18 1625. As explained in the section below, Kia Korea, Hyundai Korea, Kia
19 USA, Hyundai USA, Hyundai Mobis, ZF Electronics USA, ZF Passive Safety
20 USA, ZF Automotive USA, ZF TRW Corp., ZF Germany, ST USA, ST Italy, and
21 ST Malaysia were aware of the essential nature and scope of the Hyundai-Kia-ZF-
22 ST Enterprise. Count 1 describes this Enterprise.

23 1626. As explained in the section below, based on their words, actions,
24 and/or interdependence, Kia Korea, Hyundai Korea, Kia USA, Hyundai USA,
25 Hyundai Mobis, ZF Electronics USA, ZF Passive Safety USA, ZF Automotive
26 USA, ZF TRW Corp., and ZF Germany agreed to facilitate the following acts of
27 mail and wire fraud:

- 28 a. Hyundai USA’s and Kia USA’s interstate shipments between
 2009 and 2019 of millions of Hyundai-Kia Class Vehicles with

1 misleading Monroney labels, readiness indicators, in-vehicle
2 airbag labels and imprints, and owners' manuals; and
3 b. ZF Electronics USA's interstate shipments between 2008 and
4 2019 of millions of DS84 ACUs to Kia Georgia, Inc. and
5 Hyundai Motor Manufacturing Alabama, LLC.

6 1627. As explained in the section below, based on their words, actions,
7 and/or interdependence, ZF Electronics USA, ZF Passive Safety USA, ST USA, ST
8 Italy, and ST Malaysia also agreed to facilitate the following acts of mail fraud:

- 9 a. ZF Electronics USA's interstate shipments between 2009 and
10 2019 of millions of DS84 ACUs to Kia Georgia, Inc. and
11 Hyundai Motor Manufacturing Alabama, LLC;
12 b. ST Malaysia's interstate shipments between 2008 and 2019 of
13 millions of DS84 ASICs to ST USA in California; and
14 c. ST USA's interstate shipments between 2008 and 2019 of
15 millions DS84 ASICs to ZF Electronics USA in Illinois.

16 1628. The words, actions, or interdependence of activities of each of these
17 Defendants support the inference of agreement.

18 1629. Accordingly, Kia Korea, Hyundai Korea, Kia USA, Hyundai USA,
19 Hyundai Mobis, ZF Electronics USA, ZF Passive Safety USA, ZF Automotive
20 USA, ZF TRW Corp., ZF Germany, ST USA, ST Italy, and ST Malaysia each
21 violated 18 U.S.C. § 1962(d).

22 1630. Kia Korea, Hyundai Korea, Kia USA, Hyundai USA, Hyundai Mobis,
23 ZF Electronics USA, ZF Passive Safety USA, ZF Automotive USA, ZF TRW
24 Corp., ZF Germany, ST USA, ST Italy, and ST Malaysia each reached an
25 agreement with certain Enterprise members that one or more of the members of the
26 Hyundai-Kia-ZF-ST Enterprise described in Count 1 above would commit at least
27 two predicate acts of mail and/or wire fraud. Accordingly, each of these Defendants
28 violated 18 U.S.C. § 1962(d).

1 1631. These violations caused the same injuries and damages described in
2 the prior Count. This Count incorporates by reference the allegations as to injury,
3 damages, and causation from the prior Count.

4 a. **Kia Korea, Hyundai Korea, Kia USA, Hyundai USA, ZF**
5 **Electronics USA, Hyundai Mobis, ZF Passive Safety USA,**
6 **ZF Automotive USA, ZF TRW Corp., ZF Germany, ST**
7 **USA, ST Italy, and ST Malaysia were all aware of the**
8 **essential nature and scope of the Hyundai-Kia-ZF-ST**
9 **Enterprise.**

10 1632. For a Defendant to conspire in violation of the RICO Act, it must be
11 aware of the essential nature and scope of the enterprise, even if some details about
12 the enterprise's illegal activities and members are unknown. Each Defendant had
13 this awareness.

14 i. **Kia Korea, Hyundai Korea, Kia USA, and Hyundai**
15 **USA understood the nature and scope of the Hyundai-**
16 **Kia-ZF-ST Enterprise's fraudulent scheme.**

17 1633. Kia Korea, Hyundai Korea, Kia USA, and Hyundai USA were aware
18 of the essential nature and scope of the Hyundai-Kia-ZF-ST Enterprise.

19 1634. Kia Korea, Hyundai Korea, Kia USA, Hyundai USA, and Hyundai
20 Mobis are, and at all relevant times were, closely related corporate parties, given
21 their crossholdings in each other's stock and longstanding business relationships.
22 They monitor and/or are aware of each other's activities.

23 1635. As explained in Section IV.D.3. above, Kia Korea, Hyundai Korea,
24 Kia USA, and Hyundai USA knew about the ACU Defect.

25 1636. When Hyundai Korea and Kia Korea decided to include DS84 ACUs
26 in their mandatory design specifications for each model year of the Hyundai-Kia
27 Class Vehicles, Kia Korea, Hyundai Korea, Kia USA, and Hyundai USA knew that
28 the nonparty-Enterprise members Kia Georgia Inc. and Hyundai Motor
Manufacturing Alabama, LLC would follow Kia Korea's and Hyundai Korea's

1 mandatory design specifications for the Hyundai-Kia Class Vehicles. Because these
2 Hyundai and Kia specifications were available to Hyundai USA and Kia USA,
3 respectively, they have always known precisely which makes and models of the
4 Class Vehicles associated with their brands would have the defective DS84 ACU
5 and DS84 ASIC.

6 1637. Throughout the relevant period, Hyundai Korea, Kia Korea, Hyundai
7 USA, and Kia USA knew that the STMicroelectronics companies were responsible
8 for designing and manufacturing the DS84 ASIC for the DS84 ACUs used in
9 Hyundai-Kia Class Vehicles.

10 1638. Between 2008 and the present, Hyundai Korea, Kia Korea, Hyundai
11 USA, and Kia USA have continuously tracked the volume of sales of Hyundai-Kia
12 vehicle makes and models in the United States. Accordingly, during the relevant
13 time period, Hyundai Korea and Hyundai USA knew roughly how many Hyundai
14 Class Vehicles would likely sell in the United States, and Kia Korea and Kia USA
15 knew roughly how many Kia Class Vehicles would likely sell in the United States.

16 1639. During each year between 2009 and the present, Hyundai Korea, Kia
17 Korea, Hyundai USA, and Kia USA knew that reassuring certification labels, in-
18 vehicle airbag labels and imprints, and readiness indicators would be placed in
19 Hyundai-Kia Class Vehicles prior to the shipment to dealers in the United States.
20 They knew this would occur because Hyundai Korea's and Kia Korea's mandatory
21 designs required these statements to be placed in Hyundai-Kia Class Vehicles.
22 Hyundai Korea, Kia Korea, Hyundai USA, and Kia USA knew that consumers
23 would rely on some or all of these in-vehicle labels when purchasing or leasing
24 Hyundai-Kia Class Vehicles.

25 1640. During each year between 2009 and the present, Hyundai Korea and
26 Kia Korea knew that Hyundai USA and Kia USA would advertise the Hyundai-Kia
27 Class Vehicles as safe vehicles with properly functioning airbags and seatbelts.
28 Hyundai Korea, Kia Korea, Hyundai USA, and Kia USA knew that consumers

1 would rely on such advertisements when purchasing or leasing Hyundai-Kia Class
2 Vehicles.

3 1641. During each year between 2008 and the present, Hyundai Korea and
4 Kia Korea knew that Hyundai USA and Kia USA would ship Hyundai-Kia Class
5 Vehicles with owner's manuals that included misleading statements about the
6 safety systems, airbags, and seatbelts of the Hyundai-Kia Class Vehicles. Hyundai
7 Korea, Kia Korea, Hyundai USA, and Kia USA knew that consumers would rely on
8 such advertisements when purchasing or leasing Hyundai-Kia Class Vehicles.

9 1642. During each year between 2009 and the present, Kia Korea and
10 Hyundai Korea knew that Kia USA and Hyundai USA would create and affix
11 Monroney stickers with misleading statements about airbags and seatbelts to Kia
12 and Hyundai Class Vehicles, respectively. Hyundai Korea, Kia Korea, Kia USA,
13 and Hyundai USA knew that consumers would rely on Monroney labels when
14 purchasing or leasing Hyundai-Kia Class Vehicles.

15 1643. During each year between 2008 and the present, Hyundai Korea, Kia
16 Korea, Kia USA and Hyundai USA knew that Hyundai Mobis would place orders
17 with ZF Electronics USA, and that ZF Electronics USA would use private interstate
18 carriers to ship the defective DS84 ACUs to the plants that manufacture Hyundai-
19 Kia Class Vehicles.

20 1644. During each year between 2008 and the present, Hyundai Korea and
21 Kia Korea knew that Hyundai USA and Kia USA would cause the Hyundai-Kia
22 Class Vehicles to ship from manufacturing plants to automobile dealers across the
23 United States.

24 1645. Hyundai Korea, Kia Korea, Kia USA, and Hyundai USA knew in
25 2016 that ZF Electronics USA, ZF Passive Safety USA, ZF Automotive USA, ZF
26 TRW Corp., and ZF Germany had made misleading statement to NHTSA about the
27 defect because in early 2016 they received copies of the misleading slide deck dated
28 February 5, 2016.

1 **ii. Hyundai Mobis understood the nature and scope of**
2 **the Hyundai-Kia-ZF-ST Enterprise’s fraudulent**
3 **scheme.**

4 1646. Hyundai Mobis was aware of the essential nature and scope of the
5 Hyundai-Kia-ZF-ST Enterprise.

6 1647. As explained in Section IV.D.3. above, Hyundai Mobis knew about
7 the ACU Defect.

8 1648. Hyundai Mobis knew which Hyundai Class Vehicle makes and models
9 would use the DS84 ACU because it needed that information to place the
10 appropriate orders and build the DS84 ACUs for Hyundai Sonata Hybrids, Kia
11 Fortes, and Kia Sedonas.

12 1649. Throughout the relevant period, Hyundai Mobis knew that the
13 STMicroelectronics companies were responsible for designing and manufacturing
14 the DS84 ASIC for the DS84 ACUs used in Hyundai-Kia Class Vehicles. Upon
15 information and belief, Hyundai Mobis received its own shipments of DS84 ASICs
16 from ST Malaysia.

17 1650. Hyundai Mobis knew the volume of Hyundai-Kia Class Vehicles with
18 the DS84 ACUs because it placed the orders for the ACUs for the Hyundai-Kia
19 Class Vehicles built in the United States, and because it built the DS84 ACUs for
20 the remaining Hyundai-Kia Class Vehicles itself.

21 1651. Hyundai Mobis knew ZF Electronics USA would use private or
22 commercial interstate carrier(s) to ship DS84 ACUs to Kia Georgia, Inc. and
23 Hyundai Motor Manufacturing Alabama, LLC because Hyundai Mobis placed the
24 orders that generated these shipments.

25 1652. During each year between 2009 and the present, Hyundai Mobis knew
26 that reassuring certification labels, in-vehicle airbag labels and imprints, and
27 readiness indicators would be placed in Hyundai-Kia Class Vehicles prior to their
28 shipment to dealers in the United States.

1 1653. During each year between 2009 and the present, Hyundai Mobis knew
2 that Hyundai USA and Kia USA would advertise the Hyundai-Kia Class Vehicles
3 as safe vehicles with properly functioning airbags and seatbelts.

4 1654. During each year between 2008 and the present, Hyundai Mobis knew
5 that Hyundai USA and Kia USA would cause the Hyundai-Kia Class Vehicles to
6 ship from manufacturing plants to automobile dealers across the United States.

7 1655. Hyundai Mobis knew in 2016 that ZF Electronics USA, ZF Passive
8 Safety USA, ZF Automotive USA, ZF TRW Corp., and ZF Germany had made
9 misleading statement to NHTSA about the defect because it received copies of the
10 misleading slide deck dated February 5, 2016 in early 2016.

11 **iii. ZF Automotive USA, ZF Electronics USA, ZF Passive**
12 **Safety USA, ZF TRW Corp., and ZF Germany**
13 **understood the nature and scope of the Hyundai-Kia-**
14 **ZF-ST Enterprise’s fraudulent scheme.**

15 1656. ZF Automotive USA, ZF Electronics USA, ZF Passive Safety USA,
16 ZF TRW Corp., and ZF Germany were aware of the essential nature and scope of
17 the Hyundai-Kia-ZF-ST Enterprise.

18 1657. ZF Automotive USA, ZF Electronics USA, ZF Passive Safety USA,
19 ZF TRW Corp., and ZF Germany were aware of the nature and scope of the ACU
20 Defect, because ZF Automotive USA, ZF Electronics USA, and ZF Passive Safety
21 USA designed, manufactured, and/or sold the DS84 ACUs, confirmed the
22 vulnerability of the DS84 ACU to EOS in testing, and investigated dozens of field
23 incidents and crash tests where the vehicle’s safety system malfunctioned due to
24 ASIC EOS. ZF TRW Corp. had access to the information in the possession of these
25 companies because it owned them. ZF Germany gained access to this information
26 in 2015 when it acquired ZF TRW Corp.

27 1658. ZF Automotive USA, ZF Electronics USA, ZF Passive Safety USA,
28 ZF TRW Corp., and ZF Germany knew hundreds of thousands of Hyundai-Kia

1 Class Vehicles had the DS84 ACU because it made the ACUs for hundreds of
2 thousands of Kia Optimas and Hyundai Sonatas, and knew Hyundai Mobis was
3 making DS84 ACUs for Kia Fortes, Kia Sedonas, and Hyundai Sonata Hybrids.

4 1659. ZF Automotive USA, ZF Electronics USA, ZF Passive Safety USA,
5 ZF TRW Corp., and ZF Germany knew that Hyundai Korea, Kia Korea, Hyundai
6 USA, and/or Kia USA would make reassuring statements about the Hyundai-Kia
7 Class Vehicle's safety systems, airbags, and seatbelts.

8 **iv. ST USA, ST Italy, and ST Malaysia understood the**
9 **nature and scope of the Hyundai-Kia-ZF-ST**
10 **Enterprise's fraudulent scheme.**

11 1660. ST USA, ST Italy, and ST Malaysia were aware of the essential nature
12 and scope of the Hyundai-Kia-ZF-ST Enterprise.

13 1661. ST USA, ST Italy, and ST Malaysia were aware of the nature and
14 scope of the ACU Defect, because ST USA, ST Italy, and ST Malaysia sold,
15 designed, and/or manufactured the defective DS84 ASIC. They knew of test results
16 that confirmed the vulnerability of the DS84 ASIC to EOS and confirmed EOS on
17 the DS84 ASICs retrieved from many field incidents and crash tests where the
18 vehicle's safety system malfunctioned due to ASIC EOS.

19 1662. Upon information and belief, ST Italy, ST Malaysia, and ST USA
20 knew the defective DS84 ASICs would be installed in the Hyundai-Kia Class
21 Vehicles. These companies also understood that automakers like the Hyundai-Kia
22 Defendants would advertise their vehicle's safety systems to consumers, and that
23 those safety systems would not work properly as a result of the DS84 ASIC's
24 vulnerability to EOS.

25 1663. ST USA, ST Malaysia, and ST Italy were aware of the large scope of
26 the Hyundai-Kia-ZF-ST Enterprise, among other reasons, because ST Malaysia and
27 ST USA made and sold the DS84 ASICs for the Hyundai-Kia Class Vehicles and
28

1 all these companies had access to records that showed millions of defective DS84
2 ASICs were shipping to Illinois per ZF Electronics USA's instructions.

3 **b. Hyundai Korea, Kia Korea, Hyundai USA, Kia USA,**
4 **Hyundai Mobis, ZF Automotive USA, ZF Electronics USA,**
5 **ZF Passive Safety USA, ZF TRW Corp., and ZF Germany**
6 **agreed that one or more members of the Enterprise would**
7 **commit at least two predicate acts of mail or wire fraud in**
8 **furtherance of the Hyundai-Kia-ZF-ST Enterprise's**
9 **fraudulent scheme.**

10 1664. Hyundai Korea, Kia Korea, and Hyundai Mobis, ZF Passive Safety
11 USA, ZF Electronics USA, and ZF Automotive USA began conspiring in
12 furtherance of the Hyundai-Kia-ZF-ST Enterprise's fraudulent scheme in 2007.

13 1665. ZF TRW Corp. joined the conspiracy by no later than 2009, when its
14 executive signed a contract with Hyundai Mobis that governed the purchases of the
15 DS84 ACU.

16 1666. Hyundai USA and Kia USA joined the conspiracy when they began
17 shipping and advertising Hyundai-Kia Class Vehicles in 2009.

18 1667. ZF Germany joined the conspiracy in or around 2015, when it acquired
19 ZF TRW Corp.

20 1668. When Hyundai Korea and Kia Korea agreed to use the defective DS84
21 ACU and ASIC in Hyundai-Kia Class Vehicles, Hyundai Korea, Kia Korea,
22 Hyundai USA, Kia USA, Hyundai Mobis, ZF Electronics USA, ZF Passive Safety
23 USA, and ZF Automotive USA mutually understood and intended that this
24 agreement would prompt Hyundai Mobis to cause ZF Electronics USA to ship
25 DS84 ACUs across state lines and Kia USA and Hyundai USA to ship the
26 Hyundai-Kia Class Vehicles with misleading statements about the passive safety
27 system, airbags, and seatbelts therein.

28 a. Between 2007 and 2009, Hyundai Korea and Kia Korea agreed
 with ZF Electronics USA, ZF Passive Safety USA, and ZF

1 Automotive USA on the design specifications for the DS84
2 ACU installed in Hyundai-Kia Class Vehicles. Hyundai Korea,
3 Kia Korea, ZF Electronics USA, ZF Passive Safety USA, and
4 ZF Automotive USA continued to agree on specifications for
5 Hyundai-Kia Class Vehicles with the DS84 ACU for every
6 model year until 2019.

7 b. Between 2009 and 2019, Kia USA and Hyundai USA used mail
8 and wire to advertise the Hyundai-Kia Class Vehicles as safe
9 vehicles with properly-functioning airbags and seatbelts, and
10 used private interstate carriers to ship the Hyundai-Kia Class
11 Vehicles with misleading Monroney labels, airbag labels and
12 imprints, certification labels, readiness indicators, and owner's
13 manuals. Kia Korea, Hyundai Korea, ZF Passive Safety USA,
14 ZF Electronics USA, ZF Automotive USA, and Hyundai Mobis
15 all knew that Kia Korea and Hyundai Korea were doing this and
16 would do this.

17 c. When Kia Korea and Hyundai Korea agreed with ZF Electronics
18 USA, ZF Passive Safety USA, and ZF Automotive USA on
19 specifications for the DS84 ACUs in Hyundai-Kia Class
20 Vehicles, Kia Korea, Hyundai Korea, ZF Electronics USA, ZF
21 Passive Safety USA, ZF Automotive USA, ZF TRW Corp. (and
22 ZF Germany after 2015), and Hyundai Mobis each mutually
23 understood and planned for Hyundai Mobis to send orders for
24 hundreds of thousands of DS84 ACUs every year via mail or
25 wire to ZF Electronics USA. They also both knew that ZF
26 Electronics USA would then ship hundreds of thousands of
27 DS84 ACUs via private interstate carrier to the nonparty-
28 Enterprise-members Kia Georgia, Inc. and Hyundai Motor

1 Manufacturing Alabama, LLC. The shipment of the defective
2 ACUs furthered (and was essential to) the scheme because the
3 goal of the scheme was to cause consumers to overpay for
4 vehicles with the defective DS84 ACU.

5 1669. As explained in Count 1 above, the shipments of Hyundai-Kia Class
6 Vehicles by Kia USA and Hyundai USA, the orders by Hyundai Mobis for DS84
7 ACUs for Kia Georgia, Inc. and Hyundai Motor Manufacturing Alabama, LLC, and
8 the shipments by ZF Electronics USA of the DS84 ACUs to the same two
9 manufacturers violated the mail fraud statute because they furthered the Hyundai-
10 Kia-ZF-ST Enterprise's fraudulent scheme to cause consumers to purchase or lease
11 vehicles that contain the ACU Defect. To accomplish this goal, the DS84 ACUs
12 needed to be shipped before they could be installed in the vehicles.

13 a. Kia Korea, Hyundai Korea, ZF Passive Safety USA, ZF
14 Electronics USA, and ZF Automotive USA facilitated these mail
15 fraud act violations by collaborating on the defective design of
16 the ACU, the readiness indicators, and Hyundai-Kia Class
17 Vehicles.

18 b. Kia Korea and Hyundai Kia further facilitated these mail fraud
19 violations by (1) requiring all manufacturers of Hyundai-Kia
20 Class Vehicles to install the DS84 ACUs therein, and (2) placing
21 the misleading certification labels, readiness indicators, and
22 airbag labels and imprints within the Hyundai-Kia Class
23 Vehicles it made in Korea, and requiring the Kia Georgia, Inc.
24 and Hyundai Motor Manufacturing Alabama, LLC to do the
25 same.

26 c. ZF TRW Corp. facilitated the scheme because, upon
27 information and belief, its approval was required for the launch
28

1 of the DS84 ACU, which was one of the company's most
2 popular ACUs.

3 d. ZF Germany facilitated the scheme because, upon information
4 and belief, its approval was required to continue the sales of the
5 DS84 ACU.

6 1670. The conspiracy among Kia Korea, Hyundai Korea, Kia USA, Hyundai
7 USA, Hyundai Mobis, ZF Passive Safety USA, ZF Electronics USA, ZF
8 Automotive USA, ZF TRW Corp., and ZF Germany is further evidenced by their
9 coordinated effort to cover up the ACU Defect.

10 a. For several years, Kia Korea, Hyundai Korea, Kia USA,
11 Hyundai USA, Hyundai Mobis, ZF Automotive USA, ZF
12 Electronics USA, and ZF Passive Safety USA uncovered
13 evidence that DS84 ASICs and DS84 ACUs were failing as a
14 result of EOS, but they maintained the confidentiality of these
15 incidents among each other.

16 b. Kia Korea, Hyundai Korea, Hyundai Mobis, Kia USA, Hyundai
17 USA, ZF Automotive USA, ZF Electronics USA, and ZF
18 Passive Safety USA repeatedly coordinated with each other in
19 response to NHTSA's investigation. In 2016, ZF Electronics
20 USA alerted Hyundai Korea and Kia Korea to NHTSA's
21 investigation of the DS84 ACUs and sent excerpted copies of
22 ZF's misleading February 5, 2016 slide deck to NHTSA as part
23 of an effort to coordinate with Kia Korea and Hyundai Korea to
24 conceal the ACU Defect. In 2015, 2016, 2017, and 2018, Kia
25 Korea, Hyundai Korea, Hyundai Mobis, Kia USA, Hyundai
26 USA, ZF Automotive USA, ZF Electronics USA, and ZF
27 Passive Safety USA repeatedly discussed NHTSA's
28 investigation.

1 1671. The joint activities of ZF Electronics USA, ZF Passive Safety USA,
2 ZF Automotive USA, ZF TRW Corp., and ZF Germany in support of their
3 misleading statements to NHTSA were predicate acts and also show agreement by
4 these Defendants to further the fraudulent scheme.

5 1672. ZF Electronics USA's placement of orders for DS84 ASICs and
6 shipments of DS84 ACUs, with knowledge of the ACU Defect, were predicate acts
7 and also show agreement by ZF Electronics USA to further the fraudulent scheme.

8 1673. The success of the Hyundai-Kia-ZF-ST Enterprise's fraudulent scheme
9 depended upon Kia Korea's, Hyundai Korea's, Kia USA's, Hyundai USA's,
10 Hyundai Mobis's, ZF Passive Safety USA's, ZF Electronics USA's, and ZF
11 Automotive USA's cooperation. All these companies had to maintain strict
12 confidentiality about the ACU Defect for the scheme to continue. Moreover, the
13 Hyundai-Kia companies depended on the ZF companies for the manufacture (and
14 the license to manufacture) of the defective ACUs, whereas the ZF companies
15 could not reach consumers of Hyundai-Kia Class Vehicles without the agreement of
16 Hyundai Korea and Kia Korea. This interdependence further evidences the
17 agreement to further the fraudulent scheme.

18 **i. ST USA, ST Italy, ST Malaysia, ZF Automotive USA,**
19 **ZF Electronics USA, and ZF Passive Safety USA**
20 **agreed on the commission of multiple violations of the**
21 **mail fraud statute in furtherance of the Hyundai-Kia-**
22 **ZF-ST Enterprise's fraudulent scheme.**

23 1674. ST Italy, ST Malaysia, and ST USA began conspiring with ZF Passive
24 Safety USA, ZF Electronics USA, and ZF Automotive USA in 2005, when the two
25 supplier groups began the joint design of an ACU ASIC with unique vulnerability
26 to ASIC EOS. By 2008, all these companies knew about internal thermal testing
27 that confirmed the weakness of the DS84 ASIC.

28 1675. Even after learning that DS84 ACUs and DS84 ASICs had
malfunctioned due to EOS during crashes, ST Italy, ST Malaysia, ST USA, ZF

1 Passive Safety USA, ZF Electronics USA, and ZF Automotive USA continued to
2 sell and send shipments of the parts. When doing so, these companies all knew that
3 Kia Korea, Hyundai Korea, Kia USA, and Hyundai USA would coordinate to cause
4 the Hyundai-Kia Class Vehicles with the defective DS84 ACU and ASIC to be
5 presented to consumers with misleading certification labels, airbag labels and
6 imprints, and readiness indicators.

7 1676. Several actions by ST Italy, ST Malaysia, and ST USA further support
8 an inference of agreements with ZF Passive Safety USA, ZF Electronics USA, and
9 ZF Automotive USA to commit at least two predicate acts in furtherance of the
10 conspiracy:

- 11 a. ST Italy met with Hyundai Korea, Kia Korea, Hyundai Mobis,
12 ZF Automotive USA, ZF Electronics USA, and ZF Passive
13 Safety in May 2012 to discuss the ACU Defect.
- 14 b. Between September 2009 and 2018, ST Italy, ST USA, and ST
15 Malaysia regularly communicated with ZF Automotive USA,
16 ZF Electronics USA, and ZF Passive Safety USA about
17 observations of EOS in DS84 ASICs, including some ASICs
18 from Hyundai-Kia vehicles. ST USA, ST Italy, and ST
19 Malaysia's DS84 ASIC team confirmed EOS damage on ASICs
20 retrieved from at least seven Hyundai-Kia vehicles with ACU
21 malfunctions during crashes.
- 22 c. Upon information and belief, in 2016, ZF Automotive USA, ZF
23 Electronics USA, and ZF Passive Safety USA sent each ST
24 Defendant excerpted copies of its misleading statements from its
25 February 5, 2016 slide deck.
- 26 d. Between 2009 and 2018 at the very least, ST USA and ST
27 Malaysia continuously violated the mail fraud act in furtherance
28 of the Hyundai-Kia-ZF-ST Enterprise by shipping defective

1 DS84 ASICs with a mutual understanding that some of these
2 ASICs would be installed in Hyundai-Kia Class Vehicles, as
3 explained above.

4 e. Between 2009 and 2018 at the very least, ST USA, ST Italy, and
5 ST Malaysia maintained public silence about the ACU Defect,
6 despite the observed evidence of the DS84 ASIC's and ACU's
7 unusual vulnerability to transients.

8 1677. The success of the Hyundai-Kia-ZF-ST Enterprise's fraudulent scheme
9 depended upon ST USA, ST Italy, and ST Malaysia, ZF Passive Safety USA, ZF
10 Electronics USA, and ZF Automotive USA's cooperation. All these companies had
11 to maintain strict confidentiality about the ACU Defect for the scheme to continue.
12 Moreover, the ZF companies depended upon the ST companies for the manufacture
13 of the defective ASICs, whereas the ST companies depended upon the ZF
14 companies for a viable path to profit from the consumers of Hyundai-Kia Class
15 Vehicles. This interdependence further evidences the agreement to further the
16 fraudulent scheme.

17 **3. Nationwide Count 3: Violations of the Racketeer Influenced**
18 **Corrupt Organizations Act, 18 U.S.C. § 1962(c), on Behalf of the**
19 **Nationwide FCA Class Against FCA, ZF Electronics USA, ZF**
20 **Passive Safety USA, ZF Automotive USA, ZF TRW Corp., ZF**
Germany, ST USA, and ST Malaysia.

21 1678. Plaintiffs reallege and incorporate by reference all preceding
22 allegations as though fully set forth herein.

23 1679. Pursuant to 18 U.S.C. § 1962(c): "It shall be unlawful for any person
24 employed by or associated with any enterprise engaged in, or the activities of which
25 affect, interstate or foreign commerce, to conduct or participate, directly or
26 indirectly, in the conduct of such enterprise's affairs through a pattern of
27 racketeering activity or collection of unlawful debt." FCA, ZF Electronics USA, ZF
28 Passive Safety USA, ZF Automotive USA, ZF TRW Corp., ZF Germany, ST USA,

1 and ST Malaysia are “persons” under 18 U.S.C. § 1961(3) because each was
2 capable of holding “a legal or beneficial interest in property.”

3 1680. A violation of 18 U.S.C. § 1962(c) has four elements: “(1) conduct (2)
4 of an enterprise (3) through a pattern (4) of racketeering activity.” ECF 396 at 59
5 (quoting *Sedima v. Imrex Co.*, 473 U.S. 479, 496 (1985)).

6 1681. FCA, ZF Electronics USA, ZF Passive Safety USA, ZF Automotive
7 USA, ZF TRW Corp., ZF Germany, ST USA, and ST Malaysia, and several
8 nonparties formed the FCA-ZF-ST Enterprise. The members of this Enterprise
9 included Defendants FCA, ZF Electronics USA, ZF Passive Safety USA, ZF
10 Automotive USA, ZF TRW Corp., ZF Germany, ST USA, ST Italy, and ST
11 Malaysia. The FCA-ZF-ST Enterprise also included several nonparty individuals
12 and corporations, for example, FCA Mexico Sa. De Cv., a manufacturing
13 subsidiary based in Toluca, Mexico. FCA’s bankrupt predecessor, Chrysler LLC,
14 was also a nonparty-Enterprise member. Discovery will likely reveal several
15 additional members of the FCA-ZF-ST Enterprise that are not currently known to
16 the FCA Plaintiffs.

17 1682. FCA, ZF Electronics USA, ZF Passive Safety USA, ZF Automotive
18 USA, ZF TRW Corp., ZF Germany, ST USA, and ST Malaysia are liable under 18
19 U.S.C. § 1962(c) because they conducted or participated in the conduct of the
20 affairs of an “association-in-fact enterprise”—i.e., the FCA-ZF-ST Enterprise—
21 through a pattern of racketeering activity. In other words, each of these Defendants
22 committed at least two predicate acts in furtherance of the Enterprise’s fraudulent
23 scheme.

24 1683. 18 U.S.C. § 1964(c) provides for a civil remedy for any violation of 18
25 U.S.C. § 1962 for “[a]ny person injured in his business or property by reason of a
26 violation of section 1962 of this chapter.” In addition to proving a violation of
27 § 1962, this remedy requires proximate cause of a cognizable injury. ECF 396 at
28 59.

1 1684. FCA, ZF Electronics USA, ZF Passive Safety USA, ZF Automotive
2 USA, ZF TRW Corp., ZF Germany, ST USA, and ST Malaysia each violated 18
3 U.S.C. § 1962(c) and injured the business or property of the FCA Plaintiffs and the
4 Nationwide FCA Class. The FCA Plaintiffs claim damages for themselves and the
5 Nationwide FCA Class members under 18 U.S.C. § 1964(c).

6 a. **FCA, ZF Electronics USA, ZF Passive Safety USA, ZF**
7 **Automotive USA, ZF TRW Corp., ZF Germany, ST USA,**
8 **and ST Malaysia each committed at least two predicate acts**
9 **of mail and wire fraud in furtherance of the FCA-ZF-ST**
10 **Enterprise’s fraudulent scheme to affirmatively mislead**
11 **consumers and NHTSA.**

12 1685. The members of the FCA-ZF-ST Enterprise devised a scheme for the
13 purpose of defrauding consumers and NHTSA by concealing or minimizing the
14 ACU Defect in FCA Class Vehicles through a pattern of affirmatively misleading
15 statements.

16 1686. In the alternative, the FCA-ZF-ST Enterprise members devised an
17 illicit scheme for the purpose of obtaining money by fraudulent pretenses to
18 maximize the sale of FCA Class Vehicles, which ultimately provided revenue to the
19 FCA-ZF-ST Enterprise members.

20 1687. To carry out, or attempt to carry out, the fraudulent schemes, FCA, ZF
21 Electronics USA, ZF Passive Safety USA, ZF Automotive USA, ZF TRW Corp.,
22 ZF Germany, ST USA, and ST Malaysia—each of whom is a person associated-in-
23 fact with the Enterprise—knowingly conducted or participated, directly or
24 indirectly, in the affairs of the FCA-ZF-ST Enterprise through a pattern of
25 racketeering activity within the meaning of 18 U.S.C. §§ 1961(1), 1961(5), and
26 1962(c). In furtherance of the schemes, these FCA-ZF-ST Enterprise members each
27 committed *at least* two acts in violation of 18 U.S.C. § 1341 (mail fraud) and
28 § 1343 (wire fraud), as described in the subsections below.

1 **i. FCA violated the mail and wire fraud statutes multiple**
2 **times in furtherance of the FCA-ZF-ST Enterprise’s**
3 **fraudulent scheme.**

4 1688. For every FCA Class Vehicle shipped on or after June 10, 2009,¹⁰
5 FCA delivered, or caused delivery of, each vehicle by private or commercial
6 interstate carrier to automobile dealerships across the United States.¹¹ FCA
7 delivered millions of Class Vehicles to execute its scheme to defraud consumers
8 and NHTSA. These deliveries furthered the scheme because FCA sent the vehicles
9 to the dealerships where consumers purchased or leased them and because, prior to
10 shipping the FCA Class Vehicles, FCA affixed, or caused to be affixed, several
11 affirmatively misleading statements on the Vehicles, including:

- 12 a. Misleading Monroney labels in every model year for all FCA
13 Class Vehicles shipped on or after June 10, 2009 (*see* Section
14 IV.E.1.a. above);
- 15 b. Misleading certification labels in every model year for all FCA
16 Class Vehicles made on or after June 10, 2009 (*see* Section
17 IV.E.1.b. above);
- 18 c. Misleading readiness indicators in every model year for all FCA
19 Class Vehicles made on or after June 10, 2009 (*see* Section
20 IV.E.1.c. above); and
- 21 d. Misleading in-vehicle labelling in every model year for all FCA
22 Class Vehicles made on or after June 10, 2009 (*see* Section
23 IV.E.1.d. above).

24
25 _____
26 ¹⁰ Nonparty conspirator Chrysler LLC was responsible for all in-vehicle statements
described below for FCA Class Vehicles that shipped prior to June 10, 2009.

27 ¹¹ In relevant part, the mail fraud statute imposes criminal liability for a person who
28 “deposits or caused to be deposited any matter or thing to be sent or delivered by
any private or commercial interstate carrier.” 18 U.S.C. § 1341.

1 1689. Each instance in which FCA shipped, or caused the shipment of, FCA
2 Class Vehicles to a dealer was a violation of the mail fraud statute (18 U.S.C.
3 § 1341) because FCA knew the four categories of affirmatively misleading
4 statements affixed to each Class Vehicle were misleading and would further the
5 scheme to defraud consumers into purchasing or leasing FCA Class Vehicles. Each
6 of these statements misleadingly assured consumers that the FCA Class Vehicles
7 had properly-functioning safety systems, airbags, and seatbelts when, in fact, the
8 safety systems, airbags, and seatbelts had a dangerous safety defect due to the
9 vulnerability of the DS84 ACU and ASIC to EOS. FCA placed the statements on
10 the FCA Class Vehicles made in the United States. For FCA Class Vehicles made
11 in Mexico, FCA’s mandatory designs for the FCA Class Vehicles required FCA
12 Mexico Sa. De Cv. to do the same.

13 1690. Although the precise shipment dates for all FCA Class Vehicles are
14 not known to the FCA Plaintiffs, shipments occurred at least in each year from
15 2011 to 2019. Plaintiffs were exposed to in-vehicle misleading statements prior to,
16 and at the point of, sale or lease. The dates and locations of these transactions are
17 alleged above in Section II.B.2.

18 1691. Starting on June 10, 2009, FCA also transmitted, or caused to be
19 transmitted, tens (perhaps hundreds) of thousands of advertisements which stressed
20 the safety of FCA Class Vehicles using mail, wire, radio, or television
21 communications in interstate commerce.¹² FCA’s misleading advertisements are
22 too numerous to recite completely, given the nationwide scope and decade-long
23 duration of the FCA-ZF-ST Enterprise’s fraudulent scheme. Examples of these
24 advertisements are collected in Section IV.E.2.a.iii. and Exhibit 10. Each such
25 mailed advertisement—including brochures sent to dealerships for display to
26

27 ¹² Nonparty conspirator Chrysler LLC was responsible for all misleading
28 advertisements about FCA Class Vehicles mailed or transmitted prior to June 10,
2009.

1 consumers or print advertisements in newspapers or magazines—was a violation of
2 the mail fraud statute (18 U.S.C. § 1341). Each such internet-based, radio, and
3 television advertisement was a violation of the wire fraud statute (18 U.S.C.
4 § 1343). Each advertisement that directly or indirectly assured consumers that the
5 FCA Class Vehicles had properly-functioning safety systems, airbags, and seatbelts
6 was affirmatively misleading because the safety systems, airbags, and seatbelts in
7 FCA Class Vehicles had a dangerous safety defect due to the vulnerability of the
8 DS84 ACU and DS84 ASIC to EOS. FCA knew advertisements assuring the safety
9 of FCA Class Vehicles were misleading and would further the scheme to defraud
10 consumers into purchasing or leasing FCA Class Vehicles.

11 1692. FCA deposited, or caused the deposit of, misleading owner’s manuals
12 inside every FCA Class Vehicle that shipped on or after June 10, 2009. These
13 owner’s manuals contain affirmatively misleading statements summarized in
14 Exhibit 16. These statements assured consumers that the FCA Class Vehicles had
15 properly-functioning and reliable airbags and seatbelts, and therefore would have
16 suggested to any reasonable consumer that the Occupant Restraint System did not
17 suffer from the ACU Defect and would perform its intended function of activating
18 the seatbelts and airbags during a collision. This was false because the FCA Class
19 Vehicles were equipped with a DS84 ACU and DS84 ASIC, both of which had a
20 defect that can cause the FCA Class Vehicle’s airbags and seatbelts to fail. FCA
21 knew the owner’s manuals were misleading and would further the scheme to
22 defraud consumers into purchasing or leasing FCA Class Vehicles. Accordingly,
23 each shipment of an owner’s manual was a separate violation of the mail fraud
24 statute (18 U.S.C. § 1341).

25 1693. FCA filed a misleading 573 Defect Report with NHTSA on September
26 13, 2016. Upon information and belief, FCA used mail to send a paper copy to
27 NHTSA on that day and also used wire communications to send an electronic copy
28 to NHTSA that day. These transmittals violated the mail and wire fraud statutes (18

1 U.S.C. §§ 1341, 1343) because, as explained in Section IV.F.7., the 573 Defect
2 Report contained misleading statements denying a defect in the unrecalled FCA
3 Class Vehicles. FCA knew these statements in the 573 Defect Report were
4 misleading and would further the scheme to defraud consumers into purchasing or
5 leasing the unrecalled FCA Class Vehicles by avoiding a recall of these vehicles.
6 FCA also knew these affirmatively misleading statements in the 573 Defect Report
7 would be made publicly available to all consumers. Accordingly, sending the
8 misleading 573 Defect Report to NHTSA violated the mail and wire fraud statutes.
9 (18 U.S.C. §§ 1341, 1343).

10 1694. FCA also filed a misleading amended 573 Defect Report with NHTSA
11 on November 29, 2016. Upon information and belief, FCA used mail to send a
12 paper copy to NHTSA on that day and also used wire communications to send an
13 electronic copy to NHTSA that day. These transmittals violated the mail and wire
14 fraud statutes (18 U.S.C. §§ 1341, 1343) because, as explained in Section IV.F.7.,
15 the amended 573 Defect Report misleadingly described the recall remedy. FCA
16 knew these statements in the 573 Defect Report were affirmatively misleading and
17 would further the scheme to defraud consumers into purchasing or leasing the
18 unrecalled FCA Class Vehicles by avoiding a more expensive remedy for the
19 recalled FCA Class Vehicles and allowing FCA to continue to use the same
20 replacement DS84 ACUs in other unrecalled FCA Class Vehicles. FCA also knew
21 these misleading statements in the 573 Defect Report would be made publicly
22 available to all consumers. Accordingly, sending the misleading 573 Defect Report
23 to NHTSA violated the mail and wire fraud statutes. (18 U.S.C. §§ 1341, 1343).

24 1695. FCA separately violated the mail fraud act (18 U.S.C. § 1341) by
25 placing orders with ZF Electronics USA that caused ZF Electronics USA to ship
26 defective DS84 ACUs by private or commercial interstate carrier to FCA in
27 Michigan, Illinois, Ohio, and Mexico. These shipments furthered the FCA-ZF-ST
28 Enterprise's fraudulent scheme because FCA's use of the defective DS84 ACUs in

1 FCA Class Vehicles was essential to the cost-saving goal behind the scheme. FCA
2 caused ZF Electronics USA to make these deliveries knowing it would install the
3 defective DS84 ACUs in the FCA Class Vehicles and market the vehicles to U.S.
4 consumers as safe. Accordingly, each of FCA's orders and ZF Electronics USA's
5 shipments of the DS84 ACU violated the mail fraud statute (18 U.S.C. § 1341). The
6 precise dates and locations of each particular shipment of DS84 ACUs are not
7 known to the FCA Plaintiffs because they have no visibility into the shipments to
8 dealers and Defendants have not produced documents that show that information.
9 Nonetheless, in lieu of information about precise dates and locations of shipments,
10 Plaintiffs provide the following tracking numbers that are available in limited
11 invoicing information produced by FCA: 9991526125, 9991582883, 9991587074,
12 9991575865, 1000298864, 1000863459, 1000232414, 1000300877, 9991284080,
13 9991365356, 9991283893, 1000283858, 1000622256, 1000298860, 9991365322,
14 1000863500, 9991283895, 9991526119, 9991209614, 1000171634, 1000172125,
15 9991361628, 9991361624, 9991361619, 9991582893, 9991365352, 9991209570,
16 9991408172, 9991209559, 9991284020, 9991284021, 9991209577, 1000221360,
17 1000171630, 9991408409, 9991365324, 9991283898, 9991361629, 9991283896,
18 9991283984, 9991361621, 1000232413, 9991209621, 9991408411, 9991361627,
19 9991361626, 9991575866, 9991365327, 9991408194, 1000232415, 9991365316,
20 9991283897, 1000283863, 1000863575, 9991408406, 9991365354, 9991283900,
21 9991526120, 9991587075, 9991575864, 9991567612, 9991365326, 9991408414,
22 9991361620, 9991209603, 9991361625, 9991365319, 9991365325, and
23 1000622261.¹³ Upon information and belief, FCA can identify precise dates with
24 particularity using these tracking numbers and its information systems.

25 1696. Moreover, a chart produced by the domestic ZF Defendants to NHTSA
26 identifies the precise volume of DS84 ACUs shipped for each year for each model

27 _____
28 ¹³ Plaintiffs allege these tracking numbers as illustrative exemplars based on the
incomplete information presently available to them.

1 of the FCA Class Vehicles, and identifies Marshall, Illinois as the shipping
2 location. Exhibit 20 includes highlighting added by Plaintiffs to identify the
3 particular information about shipping locations, volumes, vehicle makes and
4 models, and shipping years contained in this chart. *See* Ex. 20 (ZF-MDL-679) at
5 705-720. The month and day of each shipment are not known to the FCA Plaintiffs,
6 but Defendants can determine that information using the backup information in
7 their possession.

8 1697. The shipping address for each of these shipments of DS84 ACUs by
9 ZF Electronics USA from Marshall, Illinois was 902 South 2nd Street, Marshall,
10 Illinois 62441. For ACUs shipped to FCA for Jeep Patriots in Illinois, the recipient
11 address was 3000 W Chrysler Drive, Belvidere, Illinois 61008. For ACUs shipped
12 to FCA for Jeep Wranglers in Ohio, the recipient address was 4400 Chrysler Drive,
13 Toledo, Ohio 43608. For ACUs shipped to FCA for Chrysler 200s and Chrysler
14 Sebrings in Michigan, the recipient addresses were 38111 Van Dyke Ave, Sterling
15 Heights, Michigan 48312. For ACUs shipped to FCA for Dodge Rams in Michigan,
16 the recipient address was 21500 Mound Rd, Warren, MI 48091. For ACUs shipped
17 to FCA for Jeep Compasses in Mexico Sa. De Cv., the recipient address was Km
18 60.5, Carr Tolu-a - México, Delegación Sta Ana Tlapaltitlán, 50160 Toluca de
19 Lerdo, Méx., Mexico.

20 **ii. ZF Electronics USA violated the mail and wire fraud**
21 **statutes multiple times in furtherance of the FCA-ZF-**
22 **ST Enterprise's fraudulent scheme.**

23 1698. ZF Electronics USA drafted and/or edited the following misleading
24 statements to NHTSA, as discussed in Sections IV.F.2., IV.F.4., IV.F.8., and
25 IV.F.14. above:

- 26 a. The slide deck presentation dated February 5, 2016 (which ZF
27 TRW Corp. mailed to NHTSA on March 14, 2016);
28

- 1 b. The slide deck presentation dated July 19, 2016 (which, upon
2 information and belief, was mailed to NHTSA in July or August
3 2016);
- 4 c. The September 2016 letter signed by Marc Bolitho¹⁴ (which ZF
5 Electronics USA mailed to NHTSA in September 2016); and
- 6 d. The slide deck presentation dated March 8, 2018 (which ZF
7 TRW Corp. mailed to NHTSA on March 12, 2018).

8 1699. As explained in sections IV.F.2., IV.F.4., IV.F.8., and IV.F.14. above,
9 each of these transmittals contained misleading statements about the FCA Class
10 Vehicles and/or the ACU Defect. ZF Electronics USA specifically approved the
11 transmittal of the final versions of these documents to NHTSA, and intended for the
12 misleading statements contained therein to avoid, minimize, and/or delay recalls of
13 FCA Class Vehicles. Avoiding, minimizing, and/or delaying recalls of FCA Class
14 Vehicles enabled the continuation of the scheme to defraud consumers.

15 1700. ZF Electronics USA caused the delivery of the February 5, 2016 slide
16 deck to NHTSA. ZF Electronics USA's causal role in the delivery is evidenced by
17 the fact that its Vice President of Passive Safety Marc Bolitho signed an affidavit of
18 confidentiality that was enclosed with the mailing of the February 5, 2016 slide
19 deck.

20 1701. Because the July 19, 2016 slide deck closely resembles the February 5,
21 2016 slide deck, the same personnel and companies were likely responsible for
22 sending it via mail or private interstate carrier to NHTSA. Accordingly, upon
23 information and belief, ZF Electronics USA caused this delivery to NHTSA too.

24 1702. ZF Electronics USA caused the delivery of the March 8, 2018 slide
25 deck to NHTSA. ZF Electronics USA's causal role in the delivery is evidenced by

26 _____
27 ¹⁴ Mr. Bolitho was simultaneously an employee of ZF Passive Safety USA, the
28 Vice President of Passive Safety for ZF Electronics USA, and Director of Passive
Safety Engineering for ZF TRW.

1 the fact that its Technical Specialist, Emanuel Goodman, signed the affidavit of
2 confidentiality that was enclosed with the mailing of the March 8, 2018 slide deck.
3 ZF Electronics USA's causal role in the delivery is further evidenced by Mr.
4 Goodman's and Mr. Bolitho's attendance at the March 8, 2018 meeting with
5 NHTSA, where this slide deck was used.

6 1703. Moreover, because ZF Electronics USA's affiliates would not have
7 sent or approved the four written communications described above without ZF
8 Electronics USA's contributions and approval, ZF Electronics USA was one of the
9 Defendants who jointly caused the delivery of these four communications to
10 NHTSA. Accordingly, its participation in these communications violated the mail
11 fraud statute at least four times. 18 U.S.C. § 1341.

12 1704. As explained in Section IV.E.1.c. above, ZF Electronics USA worked
13 with ZF Passive Safety USA, ZF Automotive USA, and FCA to design the
14 readiness indicators installed in FCA Class Vehicles. Specifically, ZF Electronics
15 USA assisted with a design of ACUs that would cause the readiness indicator not to
16 illuminate at the point of sale or lease, even though the FCA Class Vehicle's safety
17 systems were not ready to deploy in foreseeable crash events with negative
18 transients due to the ACU Defect. When ZF Electronics USA assisted with this
19 design, it knew FCA would ship the FCA Class Vehicles to dealers and that
20 consumers would buy FCA Class Vehicles without the airbag warning lamp
21 illuminating at the point of sale or lease. Because FCA would not have shipped
22 FCA Class Vehicles without ZF Electronics USA's assistance in designing
23 misleading readiness indicators, ZF Electronics USA jointly caused each shipment
24 of a FCA Class Vehicle, in violation of the mail fraud act (18 U.S.C. § 1341).

25 1705. ZF Electronics USA received orders from FCA and nonparty Chrysler
26 LLC for the defective DS84 ACUs used in every FCA Class Vehicle and shipped
27 them by private or commercial interstate carrier to FCA and nonparty Chrysler LLC
28 in Michigan, Illinois, Ohio, and Mexico. These shipments furthered the FCA-ZF-

1 ST Enterprise’s fraudulent scheme because Chrysler LLC’s and FCA’s use of the
2 defective DS84 ACUs in FCA Class Vehicles was essential to the cost-saving goal
3 behind the scheme. When ZF Electronics USA shipped the defective DS84 ACUs
4 to FCA, it knew they would be installed in the FCA Class Vehicles that are
5 marketed to U.S. consumers. ZF Electronics USA was also specifically aware of
6 FCA’s practice of making reassuring statements about safety, airbags, and seatbelts
7 in consumer-facing Monroney labels, certification labels, in-vehicle labels, owner’s
8 manuals, and advertising for all FCA Class Vehicles. ZF Electronics USA knew
9 these statements were false because it knew the FCA Class Vehicles, DS84 ACU,
10 and DS84 ASIC were defective. Accordingly, because ZF Electronics USA shipped
11 each defective DS84 ACU with the purpose of executing a fraudulent scheme with
12 its conspirators, each of ZF Electronics USA’s shipments of the defective DS84
13 ACU violated the mail fraud statute (18 U.S.C. § 1341). The particularities of these
14 shipments are discussed above. Exhibit 20 includes highlighting added by Plaintiffs
15 to identify the particular information about shipping locations, volumes, vehicle
16 makes and models, and shipping years contained in this chart. *See* Ex. 20 (ZF-
17 MDL-679) at 705-720.

18 1706. Upon information and belief, ZF Electronics USA can identify precise
19 dates with particularity using these tracking numbers and its information systems.
20 The domestic ZF Defendants’ ability to identify the dates of its prior shipments of
21 DS84 ACUs to FCA for FCA Class Vehicles is also demonstrated by Ex. 20 (ZF-
22 MDL-679). This document, which the domestic ZF Defendants produced to
23 NHTSA in or around 2019, shows the quantity of defective DS84 ACUs for FCA’s
24 U.S. Vehicles for each year. *See* Ex. 20 at ZF-MDL-705-719.

25 1707. ZF Electronics USA also separately violated the mail fraud act (18
26 U.S.C. § 1341) by placing orders with ST USA that required ST USA to ship
27 millions of defective DS84 ASICs to ZF Electronics USA at a facility with the
28 following address: 902 South 2nd Street, Marshall, Illinois 62441. When ZF

1 Electronics USA placed these orders, it knew it would place these DS84 ASICs into
2 DS84 ACUs, including those that would be installed in the FCA Class Vehicles that
3 are marketed to U.S. consumers. ZF Electronics USA was also specifically aware of
4 FCA's practice of making reassuring statements about safety, airbags, and seatbelts
5 in consumer-facing Monroney labels, certification labels, in-vehicle labels, owner's
6 manuals, and advertising for all FCA Class Vehicles. ZF Electronics USA knew
7 these statements were false because it knew the FCA Class Vehicles, DS84 ACU,
8 and DS84 ASIC were defective. Accordingly, because ZF Electronics USA caused
9 shipments of defective DS84 ASICs with the purpose of executing a fraudulent
10 scheme with its conspirators, each of the DS84 ASIC shipments caused by ZF
11 Electronics USA violated the mail fraud statute (18 U.S.C. § 1341). ST USA has
12 produced approximately 9,700 such invoices from the time period between 2014
13 and the present alone. Plaintiffs have extracted approximate shipping dates from
14 these invoices, which are presented as exemplars in Exhibit 21.¹⁵

15 **iii. ZF Passive Safety USA violated the mail and wire**
16 **fraud statutes multiple times in furtherance of the**
17 **FCA-ZF-ST Enterprise's fraudulent scheme.**

18 1708. ZF Passive Safety USA drafted and/or edited the following misleading
19 statements to NHTSA, as discussed in Sections IV.F.2., IV.F.4., IV.F.8., and
20 IV.F.14. above:

- 21 a. The slide deck presentation dated February 5, 2016 (which ZF
22 TRW Corp. mailed to NHTSA on March 14, 2016);

23
24
25
26 ¹⁵ ST USA made similar shipments between 2007 and 2014, but ST USA is
27 presently withholding invoices for these shipments from discovery. Upon
28 information and belief, the invoices for this time period will show similarly
regularity of shipments.

- 1 b. The slide deck presentation dated July 19, 2016 (which, upon
- 2 information and belief, was mailed to NHTSA in July or August
- 3 2016);
- 4 c. The September 2016 letter signed by Marc Bolitho¹⁶ (which ZF
- 5 Electronics USA mailed to NHTSA in September 2016); and
- 6 d. The slide deck presentation dated March 8, 2018 (which ZF
- 7 TRW Corp. mailed to NHTSA on March 12, 2018).

8 1709. As explained in sections IV.F.2., IV.F.4., IV.F.8., and IV.F.14. above,

9 each of these transmittals contained misleading statements about FCA Class

10 Vehicles and/or the ACU Defect. ZF Passive Safety USA specifically approved the

11 transmittal of the final versions of these documents to NHTSA, and intended for the

12 misleading statements contained therein to avoid, minimize, and/or delay recalls of

13 FCA Class Vehicles. Avoiding, minimizing, and/or delaying recalls of FCA Class

14 Vehicles enabled the continuation of the scheme to defraud consumers.

15 1710. ZF Passive Safety USA caused the delivery of the February 5, 2016

16 slide deck to NHTSA. ZF Passive Safety USA's causal role in the delivery is

17 evidenced by the fact that its employee Marc Bolitho signed an affidavit of

18 confidentiality that was enclosed with the mailing of the February 5, 2016 slide

19 deck. Although Mr. Bolitho also simultaneously served as a Vice President for ZF

20 Electronics USA and a Director of Passive Safety Engineering for ZF TRW Corp.,

21 ZF Passive Safety USA alone paid his salary.

22 1711. Because the July 19, 2016 slide deck closely resembles the February 5,

23 2016 slide deck, the same personnel and companies were likely responsible for

24 sending it via mail or private interstate carrier to NHTSA. Accordingly, upon

25 information and belief, ZF Passive Safety USA caused this delivery too.

27 ¹⁶ Mr. Bolitho was simultaneously an employee of ZF Passive Safety USA, the

28 Vice President of Passive Safety for ZF Electronics USA, and Director of Passive

 Safety Engineering for ZF TRW Corp.

1 1712. ZF Passive Safety USA caused the delivery of the March 8, 2018 slide
2 deck to NHTSA. ZF Passive Safety USA's causal role in the delivery is evidenced
3 by the fact that its longtime employee, Emanuel Goodman, signed the affidavit of
4 confidentiality that was enclosed with the mailing of the March 8, 2018 slide deck.
5 Although Mr. Goodman also served as the Technical Specialist for ZF Electronics
6 USA, ZF Passive Safety USA alone paid his salary. ZF Passive Safety USA's
7 causal role in the delivery is further evidenced by Mr. Goodman's and Mr.
8 Bolitho's attendance at the March 8, 2018 meeting with NHTSA, where this slide
9 deck was used.

10 1713. Moreover, because ZF Passive Safety USA's affiliates would not have
11 sent or approved the four written communications described above without ZF
12 Passive Safety USA's contributions and approval, ZF Passive Safety USA was one
13 of the Defendants who jointly caused the delivery of these four communications to
14 NHTSA. Accordingly, its participation in these communications violated the mail
15 fraud statute at least four times. 18 U.S.C. § 1341.

16 1714. As explained in sections IV.F.2., IV.F.4., IV.F.8., and IV.F.14. above,
17 each of the four documents described above contained misleading statements about
18 the ACU Defect. ZF Passive Safety USA specifically approved the transmittal of
19 the final versions of these documents to NHTSA, and intended for the misleading
20 statements contained therein to avoid, minimize, and/or delay recalls of FCA Class
21 Vehicles. Avoiding, minimizing, and/or delaying recalls of FCA Class Vehicles
22 enabled the continuation of the scheme to defraud consumers. Because ZF Passive
23 Safety USA's affiliates would not have sent or approved the written
24 communications noted in the preceding paragraph without ZF Passive Safety
25 USA's contributions and approval, ZF Passive Safety USA was one of the
26 Defendants who caused the delivery of these four communications to NHTSA.
27 Accordingly, its participation in these communications violated the mail fraud
28 statute at least four times. (18 U.S.C. § 1341).

1 1715. As explained in Section IV.E.1.c. above, ZF Passive Safety USA
2 worked with ZF Electronics USA, ZF Automotive USA, and FCA to design the
3 readiness indicators installed in all FCA Class Vehicles. Specifically, ZF Passive
4 Safety USA assisted with a design of ACUs that would cause the readiness
5 indicator not to illuminate at the point of sale or lease, even though the FCA Class
6 Vehicle's safety systems were not ready to deploy in crash events with negative
7 transients due to the ACU Defect. When ZF Passive Safety USA assisted with this
8 design, it knew FCA would ship the FCA Class Vehicles to dealers and that
9 consumers would buy the vehicles without the airbag warning lamp illuminating at
10 the point of sale or lease. Because FCA would not have shipped the FCA Class
11 Vehicles without ZF Passive Safety USA's assistance in designing misleading
12 readiness indicators, ZF Passive Safety USA jointly caused each shipment of FCA
13 Class Vehicle, in violation of the mail fraud act (18 U.S.C. § 1341).

14 **iv. ZF Automotive USA violated the mail and wire fraud**
15 **statutes multiple times in furtherance of the FCA-ZF-**
16 **ST Enterprise's fraudulent scheme.**

17 1716. ZF Automotive USA drafted and/or edited the following misleading
18 statements to NHTSA, as discussed in Sections IV.F.2., IV.F.4., IV.F.8., and
19 IV.F.14. above:

- 20 a. The slide deck presentation dated February 5, 2016 (which ZF
21 TRW Corp. mailed to NHTSA on March 14, 2016);
- 22 b. The slide deck presentation dated July 19, 2016 (which, upon
23 information and belief, was mailed to NHTSA in July or August
24 2016);
- 25 c. The September 2016 letter signed by Marc Bolitho (which ZF
26 Electronics USA mailed to NHTSA in September 2016); and
- 27 d. The slide deck presentation dated March 8, 2018 (which ZF
28 TRW Corp. mailed to NHTSA on March 12, 2018).

1 1717. ZF Automotive USA caused the delivery via mail or private interstate
2 carrier of the February 5, 2016 slide deck, the July 19, 2016 slide deck, and the
3 March 8, 2018 slide deck to NHTSA. ZF Automotive USA's role in causing the
4 delivery of these slide decks is evidenced by its admission in a 573 Defect Report
5 that it attended the three meetings with NHTSA where these slide decks were used
6 on its behalf.

7 1718. Upon information and belief, ZF Automotive USA caused the delivery
8 of the September 2016 letter to NHTSA via mail or private interstate carrier by
9 giving requisite approval prior to the transmittal of the letter.

10 1719. As explained in sections IV.F.2., IV.F.4., IV.F.8., and IV.F.14. above,
11 each of these four documents contained misleading statements about FCA Class
12 Vehicles and the ACU Defect. ZF Automotive USA specifically approved the
13 transmittal of the final versions of these documents to NHTSA, and intended for the
14 misleading statements contained therein to avoid, minimize, and/or delay recalls of
15 FCA Class Vehicles. Avoiding, minimizing, and/or delaying recalls of FCA Class
16 Vehicles enabled the continuation of the scheme to defraud consumers. Because ZF
17 Automotive USA's affiliates would not have sent or approved the written
18 communications noted in the preceding paragraph without ZF Automotive USA's
19 contributions and approval, ZF Automotive USA was one of the Defendants who
20 caused the delivery of these four communications to NHTSA. Accordingly, its
21 participation in these communications violated the mail fraud statute at least four
22 times. (18 U.S.C. § 1341).

23 1720. As explained in Section IV.E.1.c. above, ZF Automotive USA worked
24 with ZF Passive Safety USA, ZF Electronics USA, and FCA to design the readiness
25 indicators installed in FCA Class Vehicles. Specifically, ZF Automotive USA
26 assisted with a design of ACUs that would cause the readiness indicator not to
27 illuminate at the point of sale or lease, even though the FCA Class Vehicle's safety
28 systems were not ready to deploy in crash events with negative transients due to the

1 ACU Defect. When ZF Automotive USA assisted with this design, it knew FCA
2 would ship the FCA Class Vehicles to dealers and that consumers would buy the
3 vehicles without the airbag warning lamp illuminating at the point of sale or lease.
4 Because FCA would not have shipped FCA Class Vehicles without ZF Automotive
5 USA's affirmative assistance in designing misleading readiness indicators, ZF
6 Automotive USA jointly caused each shipment of FCA Class Vehicle, in violation
7 of the mail fraud act (18 U.S.C. § 1341).

8 **v. ZF TRW Corp. violated the mail and wire fraud**
9 **statutes multiple times in furtherance of the FCA-ZF-**
10 **ST Enterprise's fraudulent scheme.**

11 1721. Prior to their delivery to NHTSA, ZF TRW Corp. reviewed, drafted
12 and/or edited the following misleading statements to NHTSA, as discussed in
13 Sections IV.F.2., IV.F.4., IV.F.8., and IV.F.14. above:

- 14 a. The slide deck presentation dated February 5, 2016 (which ZF
15 TRW Corp. mailed to NHTSA on March 14, 2016);
16 b. The slide deck presentation dated July 19, 2016 (which, upon
17 information and belief, was mailed to NHTSA in July or August
18 2016);
19 c. The September 2016 letter signed by Marc Bolitho¹⁷ (which ZF
20 Electronics USA mailed to NHTSA in September 2016); and
21 d. The slide deck presentation dated March 8, 2018 (which ZF
22 TRW Corp. mailed to NHTSA on March 12, 2018).

23 1722. ZF TRW Corp. caused the transmittal of the February 5, 2016 slide
24 deck via mail or private interstate carrier. ZF TRW Corp.'s role in the transmittal is
25 confirmed by the cover letter, which is signed: "Very truly yours, ZF TRW
26

27 ¹⁷ Mr. Bolitho was simultaneously an employee of ZF Passive Safety USA, the
28 Vice President of Passive Safety for ZF Electronics USA, and Director of Passive
Safety Engineering for ZF TRW Corp.

1 Automotive Holdings Corp.” with a signature from Sheri Roberts, the Senior
2 Counsel of the company. ZF TRW Corp.’s causal role is further confirmed by a
3 footer on every page of the slide deck itself, which reads: “This document is the
4 property of ZF TRW and is disclosed in confidence. It may not be copied, disclosed
5 to others, or used for manufacturing without the written consent of ZF TRW” Based
6 on this footer, ZF TRW Corp. gave requisite written consent to the transmittal of
7 the document to NHTSA.

8 1723. ZF TRW Corp. caused the transmittal of the July 19, 2016 slide deck
9 via mail or private interstate carrier. ZF TRW Corp.’s causal role is confirmed by a
10 footer on every page of the slide deck itself, which reads: “This document is the
11 property of ZF TRW and is disclosed in confidence. It may not be copied, disclosed
12 to others, or used for manufacturing without the written consent of ZF TRW.”
13 Based on this footer, ZF TRW Corp. gave requisite written consent to the
14 transmittal of the document to NHTSA.

15 1724. Upon information and belief, ZF TRW Corp. also gave requisite prior
16 authorization for the delivery of the September 2016 letter.

17 1725. ZF TRW Corp. caused the transmittal of the March 8, 2018 slide deck
18 via mail or private interstate carrier to NHTSA. ZF TRW Corp.’s causal role is
19 confirmed by the cover letter included with the mailing of the slide deck. The cover
20 letter is on the letter head of an “Active & Passive Safety Technology” business
21 unit. Because this is a reference to ZF TRW Corp.,¹⁸ ZF TRW Corp. must have
22 reviewed and approved the transmittal of the slide deck to NHTSA.

23 1726. As explained in sections IV.F.2., IV.F.4., IV.F.8., and IV.F.14. above,
24 each of these four documents described above contained misleading statements

25 _____
26 ¹⁸ According to ZF AG’s 2017 Annual Report, the “Active & Passive Safety
27 Technology Division” was “established by ZF Group to manage the business
28 activities of ZF TRW after its acquisition.” Because ZF TRW Corp. is the only
corporate entity with “ZF TRW” as part of its corporate name, this letter was also
sent on behalf of ZF TRW Corp.

1 about FCA Class Vehicles and the ACU Defect. ZF TRW Corp. specifically
2 approved the transmittal of the final versions of these documents to NHTSA, and
3 intended for the misleading statements contained therein to avoid, minimize, and/or
4 delay recalls of FCA Class Vehicles. Avoiding, minimizing, and/or delaying recalls
5 of FCA Class Vehicles enabled the continuation of the scheme to defraud
6 consumers. Because ZF TRW Corp.’s affiliates would not have sent or approved
7 the written communications noted in the preceding paragraph without ZF TRW
8 Corp.’s contributions and approval, ZF TRW Corp. was one of the Defendants who
9 caused the delivery of these four communications to NHTSA. Accordingly, its
10 participation in these communications violated the mail fraud statute at least four
11 times. (18 U.S.C. § 1341).

12 **vi. ZF Germany violated the mail and wire fraud statutes**
13 **multiple times in furtherance of the FCA-ZF-ST**
14 **Enterprise’s fraudulent scheme.**

15 1727. Prior to their delivery to NHTSA, ZF Germany reviewed and/or edited
16 the following misleading statements to NHTSA, as discussed in Sections IV.F.2.,
17 IV.F.4., IV.F.8., and IV.F.14. above:

- 18 a. The slide deck presentation dated February 5, 2016 (which ZF
19 TRW Corp. mailed to NHTSA on March 14, 2016);
20 b. The slide deck presentation dated July 19, 2016 (which, upon
21 information and belief, was mailed to NHTSA in July or August
22 2016);
23 c. The September 2016 letter signed by Marc Bolitho (which ZF
24 Electronics USA mailed to NHTSA in September 2016); and
25 d. The slide deck presentation dated March 8, 2018 (which ZF
26 TRW Corp. mailed to NHTSA on March 12, 2018).

27 1728. ZF Germany caused the delivery of these communications via mail
28 and wire. The three slide decks bear copyright legends attributing ownership to ZF

1 Germany. Accordingly, sending these slide decks must have required its
2 involvement and consent. Moreover, the slide decks dated February 5, 2016 and
3 July 19, 2016 identify ZF Germany as the corporate author on the title page.

4 1729. As explained in sections IV.F.2., IV.F.4., IV.F.8., and IV.F.14. above,
5 each of these documents described above contained misleading statements about
6 FCA Class Vehicles and the ACU Defect. ZF Germany specifically approved the
7 transmittal of the final versions of these documents to NHTSA, and intended for the
8 misleading statements contained therein to avoid, minimize, and/or delay recalls of
9 FCA Class Vehicles. Avoiding, minimizing, and/or delaying recalls of FCA Class
10 Vehicles enabled the continuation of the scheme to defraud consumers. Because ZF
11 Germany's affiliates would not have sent or approved the written communications
12 noted in the preceding paragraph without ZF Germany's contributions and
13 approval, ZF Germany was one of the Defendants who caused the delivery of these
14 four communications to NHTSA. Accordingly, its participation in these
15 communications violated the mail fraud statute at least four times. (18 U.S.C. §
16 1341).

17 **vii. ST USA violated the mail and wire fraud statutes**
18 **multiple times in furtherance of the FCA-ZF-ST**
19 **Enterprise's fraudulent scheme.**

20 1730. ST USA regularly received orders from ZF Electronics USA for DS84
21 ASICs, including all the defective DS84 ASICs used in FCA Class Vehicles. In
22 response to these orders ST USA would work with its affiliate, ST Malaysia, to
23 help it manufacture and ship DS84 ASICs to ST USA's so-called "ST Micro LAX
24 Hub" near Los Angeles, California. Between 2007 and the present, ST USA caused
25 ST Malaysia to ship well over ten million defective DS84 ASICs to this location. In
26 discovery, ST USA has produced approximately 9,700 invoices sent to ZF
27 Electronics USA from the time period between 2014 and the present alone. Each
28 invoice notes the defective DS84 ASICs were made in Malaysia, where ST

1 Malaysia operated. The invoice dates from these documents provide an
2 approximate date for these shipments. Plaintiffs have extracted approximate
3 shipping dates from these invoices, which are presented as exemplars in Exhibit
4 21.¹⁹

5 1731. ST USA also shipped well over ten million defective DS84 ASICs to
6 ZF Electronics USA at a facility with the following address: 902 South 2nd Street,
7 Marshall, Illinois 62441. As explained above, Exhibit 21 provides exemplar
8 approximate shipment dates based on an incomplete set of invoices produced by ST
9 USA²⁰

10 1732. When ST USA required ST Malaysia to make these shipments and
11 then made its own shipments to ZF Electronics USA, it knew ZF Electronics USA
12 would place the DS84 ASICs into DS84 ACUs, including those that would be
13 installed in FCA Class Vehicles that are marketed to U.S. consumers. ST USA was
14 also aware of FCA's practice of making reassuring statements about safety, airbags,
15 and seatbelts in consumer-facing Monroney labels, certification labels, in-vehicle
16 labels, owner's manuals, and advertising for all FCA Class Vehicles. ST USA knew
17 these statements were false because it knew the FCA Class Vehicles, DS84 ACU,
18 and ASIC were defective. Accordingly, because ST USA caused shipments of well
19 over ten million defective DS84 ASICs with the purpose of executing a fraudulent
20 scheme with its conspirators, each of the DS84 ASIC shipments caused by ST USA
21 violated the mail fraud statute (18 U.S.C. § 1341).

22 _____
23 ¹⁹ ST USA made similar shipments between 2007 and 2014, but is withholding
24 invoices for these shipments from discovery. Upon information and belief, the
25 invoices for this time period will show a similar regularity of shipments of DS84
26 ASICs from Malaysia.

26 ²⁰ ST USA made similar shipments between 2007 and 2014, but is withholding
27 invoices for these shipments from discovery. Upon information and belief, the
28 invoices for this time period will show a similar regularity of shipments of DS84
ASICs from the STMICRO LAX Hub to the ZF Electronics USA's manufacturing
facility in Illinois.

1 **viii. ST Malaysia violated the mail and wire fraud statutes**
2 **multiple times in furtherance of the FCA-ZF-ST**
3 **Enterprise’s fraudulent scheme.**

4 1733. Between 2007 and the 2018, ST USA regularly worked with its
5 affiliate, ST Malaysia, to help it manufacture and ship DS84 ASICs to ST USA’s
6 so-called “ST Micro LAX Hub” near Los Angeles, California. During that time
7 period, ST Malaysia shipped well over ten million defective DS84 ASICs to this
8 location. ST USA has produced approximately 9,700 invoices sent to ZF
9 Electronics USA from the time period between 2014 and the present alone. Each
10 invoice notes the defective DS84 ASICs were made in Malaysia, where ST
11 Malaysia operated. The invoice dates from these documents provide an
12 approximate date for these shipments. Plaintiffs have extracted approximate
13 shipping dates from these invoices, which are presented as exemplars in Exhibit
14 21.²¹

15 1734. When ST Malaysia made these shipments, it knew ZF Electronics
16 USA would place the DS84 ASICs into DS84 ACUs, including those ACUs that
17 would be installed in FCA Class Vehicles that are marketed to U.S. consumers. ST
18 Malaysia was also aware of FCA’s practice of making reassuring statements about
19 safety, airbags, and seatbelts in consumer-facing Monroney labels, certification
20 labels, in-vehicle labels, owner’s manuals, and advertising for all FCA Class
21 Vehicles. ST Malaysia knew these statements were false because it knew the FCA
22 Class Vehicles, DS84 ACU, and ASIC were defective. Accordingly, because ST
23 Malaysia caused shipments of well over ten million defective DS84 ASICs with the
24 purpose of executing a fraudulent scheme with its conspirators, each of the DS84
25 ASIC shipments made by ST Malaysia violated the mail fraud statute (18 U.S.C. §
26 1341).

27 ²¹ ST USA made similar shipments between 2007 and 2014, but is withholding
28 invoices for these shipments from discovery. Upon information and belief, the
invoices for this time period will show a similar regularity of shipments.

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b. FCA, ZF Electronics USA, ZF Passive Safety USA, ZF Automotive USA, ZF TRW Corp., ZF Germany, ST USA, and ST Malaysia advanced their fraudulent scheme by concealing material information about a serious safety defect that they had a duty to disclose.

1735. The uses of mail and wire described in the section above violated the mail and wire fraud statutes because they furthered a fraudulent scheme to affirmatively mislead consumers and NHTSA.

1736. In addition, these same uses of the mail and wire *also* violated the mail and wire fraud statutes because, while they sent or caused to be sent these mailings, FCA, ZF Electronics USA, ZF Passive Safety USA, ZF Automotive USA, ZF TRW Corp., ZF Germany, ST USA, and ST Malaysia had duties to disclose the ACU Defect and failed to do so in order to advance their scheme.

1737. FCA, ZF Electronics USA, ZF Passive Safety USA, ZF Automotive USA, ZF TRW Corp., ZF Germany, ST USA, ST Italy, and ST Malaysia each knew for years that the defective DS84 ACUs and ASICs in the FCA Class Vehicles are uniquely vulnerable to EOS. *See* Section IV.D.4. above.

1738. To further the goals of the FCA-ZF-ST Enterprise and to their mutual gain, FCA, ZF Electronics USA, ZF Passive Safety USA, ZF Automotive USA, ZF TRW Corp., ZF Germany, ST USA, ST Italy, and ST Malaysia concealed what they knew about the existence, scope, and material safety risks of the ACU Defect in the FCA Class Vehicles.

1739. Their careful efforts to conceal the ACU Defect in the FCA Class Vehicles were critically important to the viability of their scheme. A decision by any one Defendant or nonparty-Enterprise member to tell the truth about the ACU Defect and its impact of vehicle safety to consumers or to NHTSA would have been an existential threat to the FCA-ZF-ST Enterprise. Instead, and in pursuit of ill-gotten profits, they each kept key information about the ACU Defect hidden for years. This concealment of material facts about the ACU Defect was grounded in

1 and advanced their scheme to defraud consumers through the continued sale of
2 FCA Class Vehicles, and avoidance of costly recalls and their attendant reputational
3 harms.

4 1740. FCA, ZF Electronics USA, ZF Passive Safety USA, ZF Automotive
5 USA, ZF TRW Corp., ZF Germany, ST USA, ST Italy, and ST Malaysia’s
6 concealment of the ACU Defect violated several independent duties to disclose it.²²

7 a. FCA, ZF Electronics USA, ZF Passive Safety USA, ZF
8 Automotive USA, ZF TRW Corp., ZF Germany, ST USA, ST
9 Italy, and ST Malaysia each had a duty to disclose the ACU
10 Defect because of their exclusive knowledge and far superior
11 information about the ACU Defect.

12 b. These Defendants knew about the vulnerability of the DS84
13 ACU and ASIC to EOS through their exclusive access to
14 information about their design, development, and testing, and
15 through their confidential and proprietary investigations into
16 suspicious incidents. Given the ACU Defect’s hidden and

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18 ²² As vehicle manufacturers and component parts suppliers, Defendants are also
19 subject to statutory duties to disclose known safety defects to consumers and to
20 NHTSA pursuant to the Safety Act and its attendant regulations. *See, e.g.*, 49
21 U.S.C. § 30118(c) (“A manufacturer of a motor vehicle . . . shall notify the
22 Secretary by certified mail or electronic mail, and the owners, purchasers, and
23 dealers of the vehicle . . . as provided in section 30119(d) of this section, if the
24 manufacturer . . . learns the vehicle . . . contains a defect and decides in good faith
25 that the defect is related to motor vehicle safety.”); 49 U.S.C. §30119(d)
26 (manufacturers must notify “each person registered . . . as the owner and whose
27 name and address are reasonably ascertainable”); 49 C.F.R. §573.6(a) (“Each
28 manufacturer shall furnish a report to the NHTSA for each defect . . . in his items of
original . . . equipment that he . . . determines to be related to motor vehicle
safety.”). Plaintiffs previously pled Defendants had a duty to disclose based on
these provisions of the Safety Act, but the Court dismissed an omissions theory
based these alleged duties. Plaintiffs reserve the right to appeal this decision at a
later date, but do not rely upon the Safety Act as a basis for their omissions theory
in this pleading.

1 technical nature, Plaintiffs and consumers lack the sophisticated
2 expertise in vehicle components and electrical phenomena that
3 would be necessary to discover the ACU Defect on their own.
4 Had they known what these Defendants knew about the ACU
5 Defect, FCA Plaintiffs and Nationwide FCA Class members
6 would not have purchased the FCA Class Vehicles, or would not
7 have paid as much as they did for them.

8 c. In addition, FCA, ZF Electronics USA, ZF Passive Safety USA,
9 ZF Automotive USA, ZF TRW Corp., ZF Germany, ST USA,
10 ST Italy, and ST Malaysia also each held a duty to disclose
11 because they knew that a defect in the FCA Class Vehicles and
12 their DS84 ACUs and ASICs gave rise to serious safety
13 concerns for the consumers who use the vehicles. As
14 sophisticated and well-funded corporate entities that generate
15 billions of dollars in annual revenue from work in the
16 automotive industry, each of these Defendants knew that this
17 information would have been material to consumers. For
18 example, a February 3, 2004, prospectus filed by ZF TRW Corp.
19 with the SEC observed that “85 percent of recent auto
20 purchasers stated that they look for vehicle safety information
21 before making their final decision.” Nonetheless, these
22 Defendants still did not disclose it.

23 d. FCA, ZF Electronics USA, ZF Passive Safety USA, ZF
24 Automotive USA, ZF TRW Corp., and ZF Germany also each
25 had a duty to disclose because of the actions they took to
26 conceal the ACU Defect in the FCA Class Vehicles from
27 consumers. Each of these Defendants acted to suppress the truth
28 about the ACU Defect through their misleading representations

1 to NHTSA. *See* Sections IV.F.2., IV.F.4., IV.F.7., IV.F.8.,
2 IV.F.10., and IV.F.14. above. Because a truthful and accurate
3 disclosure to NHTSA would have been material to NHTSA’s
4 decision whether to require a recall or expand its investigation
5 into the DS84 ACUs and ASICs, the affirmative steps they took
6 to mislead NHTSA about the ACU Defect also precluded the
7 FCA Plaintiffs and Nationwide FCA Class members from an
8 opportunity that otherwise have led to their discovery of the
9 truth about the ACU Defect.

10 e. Finally, FCA affirmatively disclosed information about the FCA
11 Class Vehicles’ airbags, seatbelts, and overall safety to
12 consumers (*see* Sections IV.E.1 and I.V.E.2. above). Because it
13 opted to make these representations to consumers about these
14 topics, and because it knew other information about the ACU
15 Defect that made those representations misleading or untrue,
16 FCA was under a separate duty to disclose the full truth about
17 the ACU Defect that materially qualified the information it
18 provided.

19 1741. FCA, ZF Electronics USA, ZF Passive Safety USA, ZF Automotive
20 USA, ZF TRW Corp., ZF Germany, ST USA, ST Italy, and ST Malaysia knew and
21 intended that NHTSA would rely on their and the other members of the FCA-ZF-
22 ST Enterprise’s material omissions made about the FCA Class Vehicles to approve
23 them for importation, marketing, and sale to consumers in the United States. And
24 conversely, they also understood that disclosing the ACU Defect would require
25 them to recall and fix the FCA Class Vehicles, which would negatively impact the
26 profits of the FCA-ZF-ST Enterprise.

27 1742. FCA, ZF Electronics USA, ZF Passive Safety USA, ZF Automotive
28 USA, ZF TRW Corp., ZF Germany, ST USA, ST Italy, and ST Malaysia also knew

1 and intended that consumers would rely on their and the other members of the
2 FCA-ZF-ST Enterprise's material omissions when deciding to purchase or lease the
3 FCA Class Vehicles. The FCA Plaintiffs' reliance on this concealment is
4 demonstrated by the fact that they paid money for FCA Class Vehicles that never
5 should have been introduced into the U.S. stream of commerce, and that they
6 overpaid for vehicles with defective safety systems without knowledge of the ACU
7 Defect.

8 **c. The FCA-ZF-ST Enterprise was an association-in-fact**
9 **enterprise with a common purpose of misleading consumers**
10 **and NHTSA as to the ACU Defect in FCA Class Vehicles.**

11 1743. The FCA-ZF-ST Enterprise had a common purpose and ongoing
12 organization and functioned as a continuing unit.

13 **i. The FCA-ZF-ST Enterprise had a common purpose.**

14 1744. The common purpose of the FCA-ZF-ST Enterprise was to perpetuate
15 a fraudulent scheme to maximize sales and leases of FCA Class Vehicles while
16 hiding the ACU Defect from purchasers and lessees. Because all of the Enterprise
17 members' continued profits from this scheme ultimately depended on consumers
18 purchasing or leasing FCA Class Vehicles, the Enterprise needed to convince
19 consumers of a false premise: that FCA Class Vehicles had properly functioning
20 airbags and seatbelts. Toward this end, the Enterprise needed to mislead consumers.
21 For this scheme to work, it was also essential for the Enterprise to conceal the ACU
22 Defect from NHTSA, because the agency could halt the sale of FCA Class Vehicles
23 and require recalls that necessarily require public notice of a defect. The expense of
24 these recalls would undermine the profitability of the scheme.

25 1745. This common purpose served the interests of all members of the FCA-
26 ZF-ST Enterprise. By concealing and minimizing the ACU Defect, FCA, ZF
27 Electronics USA, ZF Passive Safety USA, ZF Automotive USA, ZF TRW Corp.,
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1 ZF Germany, ST USA, ST Italy, ST Malaysia, and the nonparty-Enterprise
2 members maximized their revenue by selling as many FCA Class Vehicles as
3 possible while avoiding or limiting the substantial costs to recall and repair FCA
4 Class Vehicles and their defective DS84 ACUs and ASICs.

5 1746. The common purpose of the FCA-ZF-ST Enterprise is evidenced by
6 FCA, ZF Electronics USA's, ZF Passive Safety USA's, and ZF Automotive USA's
7 repeated, confidential consultations with one another about suspicious crashes
8 involving FCA Class Vehicles, problems with the design of the DS84 ACU and
9 ASIC, observations of EOS on DS84 ACUs and ASICs, and dangerous safety
10 system malfunctions in FCA Class Vehicles. As the Court has held, consultations
11 about "observed evidence of EOS in Class Vehicles" among Defendants
12 "support[s] a reasonable inference" of a "common purpose of misleading
13 consumers and NHTSA as to the existence of a defect in the ACUs." ECF 396 at
14 61.

15 1747. The common purpose of the FCA-ZF-ST Enterprise is further
16 evidenced by ST USA, ST Italy, and ST Malaysia's repeated communications with
17 ZF Electronics USA, ZF Passive Safety USA, and ZF Automotive USA about
18 observations of EOS in FCA Class Vehicles. ZF Electronics USA, ZF Passive
19 Safety USA, and ZF Automotive USA would regularly share this information with
20 FCA by copying excerpts of the reports received from ST USA, ST Italy, and ST
21 Malaysia and sending them to FCA.

22 1748. The common purpose of the FCA-ZF-ST Enterprise is also evidenced
23 by coordinated efforts by FCA, ZF Electronics USA, ZF Passive Safety USA, ZF
24 Automotive USA, and ZF Germany to mislead NHTSA about the existence and
25 scope of the ACU Defect by wrongly blaming wire harnesses for safety system
26 malfunctions that were caused by the ACU Defect.

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ii. The FCA-ZF-ST Enterprise had an ongoing organization.

1749. The participation of separate entities or individuals that have an existence outside an alleged enterprise is evidence of an ongoing organization with its own structure, separate and apart from its members. FCA, ZF Electronics USA, ZF Passive Safety USA, ZF Automotive USA, ZF TRW Corp., ZF Germany, ST USA, ST Italy, and ST Malaysia each existed separately from the FCA-ZF-ST Enterprise.

- a. During the relevant period, FCA manufactured and sold many vehicles that do not contain defective DS84 ACUs and ASICs.
- b. During the relevant period, the FCA manufacturing subsidiaries manufactured FCA vehicles that do not contain defective DS84 ACUs and ASICs.
- c. During the relevant period, ST USA, ST Italy, and ST Malaysia sold, designed, and/or manufactured many other products aside from the defective DS84 ASICs used in the defective DS84 ACUs.
- d. During the relevant period, ZF Passive Safety USA, ZF Electronics USA, and ZF Automotive USA similarly designed, made, and/or sold many other automotive parts aside from the defective DS84 ACUs.
- e. During the relevant period, ZF TRW Corp. and ZF Germany also engaged in a wide variety of business activities unrelated to the defective DS84 ACUs.

1750. Another hallmark of an ongoing organization is members with delineated roles that further the organization's goals. Each Defendant performed important but separate roles within the FCA-ZF-ST Enterprise organization.

- 1 a. ZF Electronics USA, ZF Passive Safety USA, and ZF
- 2 Automotive USA jointly designed the defective DS84 ACU for
- 3 use in the FCA Class Vehicles, with FCA's, ST Italy's, and ST
- 4 USA's input.
- 5 b. ST Italy and ST USA jointly designed the defective DS84 ASIC,
- 6 with input from ZF Electronics USA, ZF Passive Safety USA,
- 7 and ZF Automotive USA
- 8 c. ST Malaysia manufactured the defective DS84 ASICs and
- 9 shipped them to ST USA in California.
- 10 d. ST USA sold and shipped the defective DS84 ASIC to ZF
- 11 Electronics USA.
- 12 e. FCA designed, made, and distributed the FCA Class Vehicles to
- 13 dealers, so they could be sold to consumers with misleading
- 14 statements affixed to the vehicles by FCA. FCA was also
- 15 responsible for all misleading advertising to consumers.
- 16 f. ZF TRW Corp. and ZF Germany approved actions taken by ZF
- 17 Electronics USA, ZF Passive Safety USA, and ZF Automotive
- 18 USA, and knowingly approved, these activities, and participated
- 19 directly in making misleading statements to NHTSA about the
- 20 ACU Defect.
- 21 g. Each of the Defendants separately ensured that NHTSA and
- 22 consumers did not discover the ACU Defect.

23 1751. The Enterprise members dedicated personnel to the FCA-ZF-ST
24 Enterprise's scheme, which further evidences the ongoing structure of the
25 Enterprise. For example, ZF Electronics USA, ZF Passive Safety USA, and ZF
26 Automotive USA dedicated an entire applications team to implement the defective
27 DS84 ACUs in FCA Class Vehicles in 2006, 2007, and 2008. ZF Electronics USA,
28 ZF Passive Safety USA, and ZF Automotive USA also dedicated a separate team to

1 analyze EOS occurrences in FCA Class Vehicles in 2013. Moreover, ZF
2 Electronics USA, ZF Passive Safety USA, ZF Automotive USA, ST USA, and ST
3 Italy held regular meetings in 2016 concerning the EOS issues, just as NHTSA was
4 investigating FCA's Class Vehicles and the defective DS84 ACUs.

5 1752. FCA, on the other hand, dedicated its employee Kevin Plante as its
6 primary point of contact with ZF Electronics USA, ZF Passive Safety USA, ZF
7 Automotive USA relating to the defective DS84 ACU. Establishing a regular point
8 of contact further organized the FCA-ZF-ST Enterprise.

9 1753. As the passenger safety systems in FCA Class Vehicles repeatedly
10 malfunctioned due to the ACU Defect over the course of several years (starting at
11 least as early as 2009), FCA routinely sought the involvement and assistance of ZF
12 Electronics USA, ZF Passive Safety USA, ZF Automotive USA, ST Italy, ST USA,
13 and ST Malaysia. These Defendants repeatedly coordinated, directly or indirectly,
14 with FCA on these issues, including by assigning several investigations for FCA
15 Class Vehicles to the same personnel. For example, ZF Electronics USA, ZF
16 Passive Safety USA, and ZF Automotive USA assigned Emmanuel Goodman with
17 the task of preparing written analyses about DS84 ACU field incidents, and he
18 authored many such analyses over the course of several years. [REDACTED]

19 [REDACTED]
20 [REDACTED]

21 1754. When NHTSA began to investigate the defective DS84 ACUs in 2015,
22 ZF Electronics USA, ZF Passive Safety USA, ZF Automotive USA, ZF Germany,
23 and ZF TRW Corp. maintained the organization of the FCA-ZF-ST Enterprise by
24 sending their joint communications with NHTSA to FCA, ST USA, ST Italy, and
25 ST Malaysia. This allowed the participants in the FCA-ZF-ST Enterprise to
26 coordinate their efforts to downplay the ACU Defect and avoid and minimize
27 recalls.

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iii. The FCA-ZF-ST Enterprise functioned as a continuing unit.

1755. The FCA-ZF-ST Enterprise continued for several years, at least during the time period of 2007 to the present. Although FCA stopped distributing new Class Vehicles with the DS84 ACU in 2018 or 2019, FCA Class Vehicles continue to sell on the used car market with misleading in-vehicle statements and consumer-facing marketing (such as vehicle brochures) made by the FCA-ZF-ST Enterprise.

1756. During this protracted time, the members of the FCA-ZF-ST Enterprise remained stable, with FCA, ZF Electronics USA, ZF Passive Safety USA, ZF Automotive USA, ZF TRW Corp. ST USA, ST Malaysia, and ST Italy remaining active members for at least a decade of ongoing production and sales of the FCA Class Vehicles. ZF Germany, on the other hand, participated in the FCA-ZF-ST Enterprise shortly after acquiring ZF TRW Corp. in 2015.

d. The FCA-ZF-ST Enterprise’s pattern of racketeering caused FCA Plaintiffs and the Nationwide FCA Class members to overpay for FCA Class Vehicles at the point of sale or lease.

1757. FCA Plaintiffs and Nationwide FCA Class members are “person[s] injured in his or her business or property” by reason of the FCA-ZF-ST Enterprise’s RICO violations, within the meaning of U.S.C. § 1964(c). FCA Plaintiffs and Nationwide FCA Class members are entitled to bring this action for three times their actual damages, as well as injunctive/equitable relief, costs, and reasonable attorneys’ fees pursuant to 18 U.S.C. § 1964(c).

1758. Because of the FCA-ZF-ST Enterprise’s pattern of racketeering activity, FCA Plaintiffs and Nationwide FCA Class members have been injured in their business and/or property through their overpayment at the time of purchase or lease for FCA Class Vehicles with an undisclosed safety defect.

1759. By making misleading statements and omissions at or before the point of sale or lease, the FCA-ZF-ST Enterprise directly or indirectly obtained money

1 from FCA Plaintiffs and the Nationwide FCA Class by means of materially false or
2 fraudulent misrepresentations and omissions of material facts. Had the FCA
3 Plaintiffs known what the FCA-ZF-ST Enterprise members knew about the ACU
4 Defect, they and Nationwide FCA Class members would not have purchased the
5 FCA Class Vehicles, or would not have paid as much as they did for them.

6 1760. FCA, ZF Electronics USA, ZF Passive Safety USA, ZF Automotive
7 USA, ZF TRW Corp., ZF Germany, ST USA, or ST Malaysia not concealed, and
8 instead decided to disclose, the information they knew about the ACU Defect and
9 its impact on vehicle safety, the FCA Plaintiffs and Nationwide FCA would have
10 learned of the disclosure.

11 a. FCA Plaintiffs and Nationwide FCA Class members would have
12 learned about the ACU Defect through any of the channels
13 through the FCA Class Vehicles were marketed to them. In
14 other words, had FCA made a disclosure in *any* of the places in
15 which it otherwise communicated information about the FCA
16 Class Vehicles, the FCA Plaintiffs and Nationwide FCA Class
17 members would have seen it. This includes in FCA Class
18 Vehicle brochures and other advertising, on Monroney labels,
19 certification labels, in-vehicle airbag labels, airbag warning
20 lamps, and in owner's manuals.

21 b. Further, the FCA Plaintiffs and Nationwide FCA Class members
22 would have learned about the ACU Defect at the times and
23 places that they purchased or leased their FCA Class Vehicles.
24 For example, had FCA made a disclosure about the ACU Defect
25 to authorized FCA dealerships, sales personnel at the dealerships
26 would have passed on that material information to consumers at
27 the time of the contemplated purchases.
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1 c. Had any of the Defendants listed above disclosed the true scope
2 and existence of the ACU Defect to NHTSA, the FCA Plaintiffs
3 and Nationwide FCA Class members would have learned of it
4 because NHTSA would have considered this information
5 material to its decision to require a recall, which information
6 would have been made public and passed onto impacted
7 consumers.

8 d. Had any of the Defendants listed above disclosed the true scope
9 and existence of the ACU Defect to consumers or the public,
10 either through press releases, on their websites, or in any other
11 public channel or forum, the FCA Plaintiffs and Nationwide
12 FCA Class members would have learned of it due to the
13 materiality of this information about a serious safety defect in
14 millions of vehicles. Given the seriousness of the information
15 and the number of vehicles impacted, the news media and
16 consumer forums and blogs would pick up the story. This is
17 particularly so in the wake of the massive Takata recall and
18 litigation, which confirmed the strong public interest in airbags
19 and vehicle safety. For example, an April 23, 2019 article
20 available on ConsumerReports.com described NHTSA's
21 expanded investigation into the DS84 ACUs to be "the agency's
22 most in-depth look at airbags since the recall of more than 56
23 million airbags made by Takata."

24 1761. The FCA-ZF-ST Enterprise's misleading statements to NHTSA
25 between 2016 and the present were essential to the scheme because NHTSA would
26 not have allowed continued sale of unremedied FCA Class Vehicles with defective
27 DS84 ACUs and ASICs. At the very least, these misleading statements delayed
28 NHTSA's broader investigation of the FCA Class Vehicles until April 2019, when

1 NHTSA launched an Engineering Analysis covering all unrecalled FCA Class
2 Vehicles. Upon information and belief, ZF Electronics USA stopped making DS84
3 ACUs for the 2020 model year based in large part on this investigation.
4 Accordingly, ZF Electronics USA would have stopped making DS84 ACUs if
5 NHTSA had launched a broader investigation in 2016. For this reason, Plaintiffs
6 who purchased and leased FCA Class Vehicles after the first misleading statement
7 to NHTSA by the FCA-ZF-ST Enterprise would have avoided purchasing or
8 leasing their FCA Class Vehicles entirely, or they would have paid less for them.

9 1762. Consumers are the only direct victims of the FCA-ZF-ST Enterprise's
10 alleged fraudulent and misleading statements to NHTSA. NHTSA has not suffered
11 any reported, direct injury as a result of such conduct.

12 1763. Damages will not be difficult to ascertain; the FCA Plaintiffs and the
13 Nationwide FCA Class members' damages are the difference between what they
14 paid for FCA Class Vehicles without an ACU Defect, and the value of the FCA
15 Class Vehicles they actually received. In the similar *Takata* airbag litigation, for
16 example, plaintiffs also alleged overpayment damages suffered at the point of sale
17 based on a dangerous airbag defect. Plaintiffs' experts in that case performed a
18 conjoint analysis using surveys of consumers and found that the price premium paid
19 by class members was at least ten percent of the purchase price. A similar analysis
20 could be performed in this litigation. Other methodologies are also viable.

21 1764. All victims of Defendants' alleged conduct who claim to have
22 overpaid for the purchase or lease of FCA Class Vehicles are within the alleged
23 Nationwide FCA Class. Consequently, there are no issues with respect to
24 reapportionment or multiple recovery.

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1 **4. Nationwide Count 4: Violations of the Racketeer Influenced**
2 **Corrupt Organizations Act, 18 U.S.C. § 1962(d), on Behalf of the**
3 **Nationwide FCA Class Against FCA, ZF Electronics USA, ZF**
4 **Passive Safety USA, ZF Automotive USA, ZF TRW Corp., ZF**
5 **Germany, ST USA, ST Italy, and ST Malaysia.**

6 1765. Plaintiffs reallege and incorporate by reference all preceding
7 allegations as though fully set forth herein.

8 1766. It is unlawful “for any person to conspire to violate” 18 U.S.C.
9 § 1962(c). *See* 18 U.S.C. § 1962(d). To conspire in violation of section 1962(c), the
10 defendant must be “aware of the essential nature and scope of the enterprise.” ECF
11 396 at 77. Enterprise members conspire to violate section 1962(c) when “two or
12 more people agree[] to commit a crime” and “knowingly and willfully participate[]
13 in the agreement. . . . The illegal agreement need not be express as long as its
14 existence can be inferred from the words, actions, or interdependence of activities
15 and persons involved.” *Id.* A defendant who “agreed to facilitate a scheme” violates
16 section 1962(d) even if he “does not himself commit or agree to commit the two or
17 more predicate acts requisite to the underlying offense.” *Salinas v. United States*,
18 522 U.S. 52, 65-66 (1997).

19 1767. As explained in the section below, FCA, ZF Electronics USA, ZF
20 Passive Safety USA, ZF Automotive USA, ZF TRW Corp., ZF Germany, ST USA,
21 ST Italy, and ST Malaysia were aware of the essential nature and scope of the FCA-
22 ZF-ST Enterprise. Count 3 describes this Enterprise.

23 1768. As explained in the section below, based on their words, actions,
24 and/or interdependence, FCA, ZF Electronics USA, ZF Passive Safety USA, ZF
25 Automotive USA, ZF TRW Corp., and ZF Germany agreed to facilitate the
26 following acts of mail and wire fraud:

- 27 a. FCA’s interstate shipments between 2009 and 2019 of millions
28 of FCA Class Vehicles with misleading Monroney labels,

1 readiness indicators, in-vehicle airbag labels and imprints, and
2 owner’s manuals, and
3 b. ZF Electronics USA’s interstate shipments between 2009 and
4 2019 of millions of DS84 ACUs to FCA and its Mexican
5 subsidiary.

6 1769. As explained in the section below, based on their words, actions,
7 and/or interdependence, ZF Electronics USA, ZF Passive Safety USA, ST USA, ST
8 Italy, and ST Malaysia also agreed to facilitate the following acts of mail fraud:

- 9 a. ZF Electronics USA’s interstate shipments between 2008 and
10 2019 of millions of DS84 ACUs to FCA, nonparty FCA Mexico
11 Sa. De Cv., and nonparty Chrysler LLC;
12 b. ST Malaysia’s interstate shipments between 2008 and 2019 of
13 millions of DS84 ASICs to ST USA in California; and
14 c. ST USA’s interstate shipments between 2008 and 2019 of
15 millions DS84 ASICs to ZF Electronics USA in Illinois.

16 1770. The words, actions, or interdependence of activities of each of these
17 Defendants support the inference of agreement.

18 1771. Accordingly, FCA, ZF Electronics USA, ZF Passive Safety USA, ZF
19 Automotive USA, ZF TRW Corp., ZF Germany, ST USA, ST Italy, and ST
20 Malaysia each violated 18 U.S.C. § 1962(d).

21 1772. These violations caused the same injuries and damages described in
22 the prior Count. This Count incorporates by reference the allegations as to injury,
23 damages, and causation from the prior Count.

24 1773. FCA, ZF Electronics USA, ZF Passive Safety USA, ZF Automotive
25 USA, ZF TRW Corp., ZF Germany, ST USA, ST Italy, and ST Malaysia each
26 violated 18 U.S.C. § 1962(c) and injured the business or property of the FCA
27 Plaintiffs and the Nationwide FCA Class. The FCA Plaintiffs claim damages for
28 themselves and the Nationwide FCA Class members under 18 U.S.C. § 1964(c).

1 **a. FCA, ZF Electronics USA, ZF Passive Safety USA, ZF**
2 **Automotive USA, ZF TRW Corp., ZF Germany, ST USA,**
3 **ST Italy, and ST Malaysia were all aware of the essential**
4 **nature and scope of the FCA-ZF-ST Enterprise.**

5 1774. Each Defendant named in this Count was aware of the essential nature
6 and scope of the FCA-ZF-ST Enterprise, even if some specific details about the
7 Enterprise’s illegal activities and members were unknown.

8 **i. FCA understood the nature and scope of the FCA-ZF-**
9 **ST Enterprise’s fraudulent scheme.**

10 1775. FCA was aware of the essential nature and scope of the FCA-ZF-ST
11 Enterprise.

12 1776. As explained in Section IV.D.4. above, FCA knew about the nature
13 and scope of the ACU Defect.

14 1777. Between 2009 and 2019, FCA knew that the STMicroelectronics
15 companies were responsible for designing and manufacturing the DS84 ASIC for
16 the DS84 ACUs used in FCA Class Vehicles.

17 1778. Between 2009 and the present, FCA has continuously tracked the
18 volume of sales of FCA makes and models in the United States. Accordingly,
19 during the relevant time period, it knew roughly how many FCA Class Vehicles
20 would likely sell in the United States.

21 1779. During each year between 2009 and the present, FCA also knew it
22 would place reassuring Monroney stickers, certification labels, in-vehicle airbag
23 labels and imprints, and readiness indicators on FCA Class Vehicles, and then ship
24 those vehicles to dealers in the United States.

25 1780. During each year between 2009 and the present, FCA knew it would
26 advertise the FCA Class Vehicles as safe vehicles with properly functioning airbags
27 and seatbelts. FCA knew that consumers would rely on such advertisements when
28 purchasing or leasing FCA Class Vehicles.

1 1781. During each year between 2009 and the present, FCA knew it would
2 ship FCA Class Vehicles with owner's manuals that include misleading statements
3 about the safety systems, airbags, and seatbelts of the FCA Class Vehicles.

4 1782. FCA knew in 2016 that ZF Electronics USA, ZF Passive Safety USA,
5 ZF Automotive USA, ZF TRW Corp., and ZF Germany had made misleading
6 statements to NHTSA about the defect because in early 2016 it received copies of
7 the misleading slide deck dated February 5, 2016.

8 **ii. ZF Automotive USA, ZF Electronics USA, ZF Passive**
9 **Safety USA, ZF TRW Corp., and ZF Germany**
10 **understood the nature and scope of the FCA-ZF-ST**
11 **Enterprise's fraudulent scheme.**

12 1783. ZF Automotive USA, ZF Electronics USA, ZF Passive Safety USA,
13 ZF TRW Corp., and ZF Germany were aware of the essential nature and scope of
14 the FCA-ZF-ST Enterprise.

15 1784. As explained in Sections IV.D.1., IV.D.2., and IV.D.4. above, ZF
16 Automotive USA, ZF Electronics USA, ZF Passive Safety USA, ZF TRW Corp.,
17 and ZF Germany were aware of the nature and scope of the ACU Defect.

18 1785. ZF Automotive USA, ZF Electronics USA, ZF Passive Safety USA,
19 ZF TRW Corp., and ZF Germany knew the approximate number of FCA Class
20 Vehicles with the DS84 ACU because it made the ACUs for those vehicles.

21 1786. ZF Automotive USA, ZF Electronics USA, ZF Passive Safety USA,
22 ZF TRW Corp., and ZF Germany knew that FCA would, consistent with common
23 practice in the automotive industry, make reassuring statements about the FCA
24 Class Vehicle's safety systems, airbags and seatbelts.

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1 **iii. ST USA, ST Italy, and ST Malaysia understood the**
2 **nature and scope of the FCA-ZF-ST Enterprise’s**
3 **fraudulent scheme.**

4 1787. ST USA, ST Italy, and ST Malaysia were aware of the essential nature
5 and scope of the FCA-ZF-ST Enterprise.

6 1788. As explained in Section IV.D.1., IV.D.2., and IV.D.4. above, ST USA,
7 ST Italy, and ST Malaysia were aware of the nature and scope of the ACU Defect.

8 1789. Upon information and belief, ST Italy, ST Malaysia, and ST USA
9 knew the defective DS84 ASICs would be installed the FCA Class Vehicles. These
10 companies also understood that automakers like FCA would, consistent with
11 common practice in the automotive industry, advertise their safety systems to
12 consumers, and that those safety systems would not work properly as a result of the
13 DS84 ASIC’s vulnerability to EOS.

14 1790. ST USA, ST Malaysia, and ST Italy were aware of the large scope of
15 the FCA-ZF-ST Enterprise, among other reasons because ST Malaysia and ST USA
16 made and sold the DS84 ASICs for the FCA Class Vehicles and all these
17 companies had access to records that showed that millions of defective DS84
18 ASICs were shipping to Illinois per ZF Electronics USA’s instructions.

19 **b. FCA, ZF Automotive USA, ZF Electronics USA, ZF Passive**
20 **Safety USA, ZF TRW Corp., and ZF Germany agreed that**
21 **one or more members of the Enterprise would commit at**
22 **least two predicate acts of mail or wire fraud in furtherance**
 of the FCA-ZF-ST Enterprise’s fraudulent scheme.

23 1791. FCA began conspiring with other members of the FCA-ZF-ST
24 Enterprise immediately upon taking control of Chrysler LLC’s assets and
25 operations on or around June 10, 2009. After taking over these operations, it
26 continued with the FCA Class Vehicle designs that included the DS84 ASIC for the
27 2010 model year. ZF Passive Safety USA, ZF Electronics USA, and ZF
28

1 Automotive USA had previously agreed to these designs, and FCA ratified that
2 agreement by continuing to make FCA Class Vehicles with the DS84 ACU.

3 1792. ZF Germany joined the conspiracy in or around 2015, when it acquired
4 ZF TRW Corp.

5 1793. When FCA agreed to use the defective DS84 ACU and ASIC in FCA
6 Class Vehicles, ZF Electronics USA, ZF Passive Safety USA, and ZF Automotive
7 USA mutually understood and intended that this agreement would result in FCA
8 instructing ZF Electronics USA to ship DS84 ACUs across state lines and FCA
9 shipping the FCA Class Vehicles with misleading statements about the passive
10 safety system, airbags, and seatbelts therein.

11 a. In 2009, FCA agreed with ZF Electronics USA, ZF Passive
12 Safety USA, and ZF Automotive USA on the design
13 specifications for the DS84 ACU installed in FCA Class
14 Vehicles. FCA, ZF Electronics USA, ZF Passive Safety USA,
15 and ZF Automotive USA continued to agree on specifications
16 for FCA Class Vehicles with the DS84 ACU for every model
17 year until 2019.

18 b. Between 2009 and 2019, FCA used mail and wire to advertise
19 the FCA Class Vehicles as safe vehicles with properly-
20 functioning airbags and seatbelts, and used private interstate
21 carriers to ship the FCA Class Vehicles with misleading
22 Monroney labels, airbag labels and imprints, certification labels,
23 readiness indicators, and owner's manuals. ZF Passive Safety
24 USA, ZF Electronics USA, and ZF Automotive USA all knew
25 that FCA was doing this and would do this.

26 c. When FCA agreed with ZF Electronics USA, ZF Passive Safety
27 USA, and ZF Automotive USA on specifications for the DS84
28 ACUs in FCA Class Vehicles, ZF Electronics USA, ZF Passive

1 Safety USA, ZF Automotive USA, and ZF TRW Corp. (and ZF
2 Germany after 2015) had a mutual understanding that this
3 agreement would cause FCA to send orders for hundreds of
4 thousands of DS84 ACUs every year via mail or wire to ZF
5 Electronics USA.

6 d. When FCA agreed with ZF Electronics USA, ZF Passive Safety
7 USA, and ZF Automotive USA on specifications for the DS84
8 ACUs in FCA Class Vehicles, FCA, ZF Electronics USA, ZF
9 Passive Safety USA, ZF Automotive USA, and ZF TRW Corp.
10 (and ZF Germany after 2015) had a mutual understanding that
11 this agreement would cause ZF Electronics USA to ship
12 hundreds of thousands of DS84 ACUs via private interstate
13 carrier to FCA every year.

14 1794. As explained in Count 3 above, the shipments of FCA Class Vehicles
15 by FCA, the orders by FCA for DS84 ACUs, and the shipments by ZF Electronics
16 USA of the DS84 ACUs violated the mail fraud statute because they furthered the
17 FCA-ZF-ST Enterprise's fraudulent scheme to cause consumers to purchase or
18 lease vehicles that contain the ACU Defect. To accomplish this goal, the DS84
19 ACUs needed to be shipped before they could be installed in the vehicles.

20 a. FCA, ZF Passive Safety USA, ZF Electronics USA, and ZF
21 Automotive USA facilitated these mail fraud act violations by
22 collaborating on the defective design of the ACU, the readiness
23 indicators, and FCA Class Vehicles.

24 b. FCA further facilitated these mail fraud violations by requiring
25 (1) all manufacturers of FCA Class Vehicles to install the DS84
26 ACUs therein, and (2) placing the misleading certification
27 labels, readiness indicators, and airbag labels and imprints
28 within the FCA Class Vehicles it made, and requiring the

1 nonparty-Enterprise-member FCA Mexico Sa. De Cv. to do the
2 same.

3 c. FCA also facilitated this scheme by placing misleading
4 Monroney labels on the FCA Class Vehicles it shipped after
5 June 10, 2009.

6 d. ZF TRW Corp. facilitated the scheme because, upon
7 information and belief, its approval was required for the launch
8 of the DS84 ACU, which was one of the company's most
9 popular ACUs.

10 e. ZF Germany facilitated the scheme because, upon information
11 and belief, its approval was required to continue the sales of the
12 DS84 ACU.

13 1795. The conspiracy among FCA, ZF Automotive USA, ZF Electronics
14 USA, ZF Passive Safety USA, ZF TRW Corp., and ZF Germany is further
15 evidenced by their coordinated efforts to cover up the ACU Defect.

16 a. For several years, FCA, ZF Automotive USA, ZF Electronics
17 USA, ZF Passive Safety USA uncovered evidence that DS84
18 ASICs and DS84 ACUs were failing as a result of EOS, but they
19 maintained the confidentiality of these incidents among each
20 other.

21 b. FCA, ZF Automotive USA, ZF Electronics USA, and ZF
22 Passive Safety USA repeatedly coordinated with each other in
23 response to NHTSA's investigation. In 2016, ZF Electronics
24 USA sent FCA excerpted copies of ZF's misleading February 5,
25 2016 slide deck to NHTSA as part of an effort to coordinate
26 with FCA to conceal the ACU Defect. Between 2018 and 2019,
27 FCA, ZF Electronics USA, ZF Passive Safety USA, and ZF
28 Automotive USA met every week to discuss the ACU Defect.

1 1796. The joint activities of ZF Electronics USA, ZF Passive Safety USA,
2 ZF Automotive USA, ZF TRW Corp., and ZF Germany in support of their
3 misleading statements to NHTSA were predicate acts and also show agreement by
4 these Defendants to advance the fraudulent scheme.

5 1797. ZF Electronics USA's placement of orders for DS84 ASICs and
6 shipments of DS84 ACUs were predicate acts and also show agreement by ZF
7 Electronics USA to advance the fraudulent scheme.

8 1798. The success of the FCA-ZF-ST Enterprise's fraudulent scheme
9 depended upon FCA, ZF Passive Safety USA, ZF Electronics USA, and ZF
10 Automotive USA cooperation. All these companies had to maintain strict
11 confidentiality about the ACU Defect for the scheme to continue. Moreover, FCA
12 depended on the ZF companies for the manufacture of the defective ACUs, whereas
13 the ZF companies could not reach consumers of FCA Class Vehicles without the
14 agreement of FCA. This interdependence evidences the agreement to further the
15 fraudulent scheme.

16 1799. The actions detailed above and throughout the Complaint as to each
17 member of the FCA-ZF-ST Enterprise were foreseeable to the other members of the
18 FCA-ZF-ST Enterprise given their direct relationship to and furtherance of the
19 common goals of the scheme.

20 c. **ST USA, ST Italy, ST Malaysia, ZF Automotive USA, ZF**
21 **Electronics USA, and ZF Passive Safety USA agreed on the**
22 **commission of multiple violations of the mail fraud statute in**
23 **furtherance of the FCA-ZF-ST Enterprise's fraudulent**
24 **scheme.**

25 1800. ST Italy, ST Malaysia, and ST USA began conspiring with ZF Passive
26 Safety USA, ZF Electronics USA, and ZF Automotive USA in 2005, when the two
27 supplier groups began the joint design of the DS84 ACU and DS84 ASIC with
28 unique vulnerability to EOS. By 2008, all these companies knew about internal
thermal testing that confirmed the weakness of the DS84 ASIC. ST Italy, ST

1 Malaysia, ST USA, ZF Passive Safety USA, ZF Electronics USA, and ZF
2 Automotive USA held multiple meetings about this issue.

3 1801. Even after learning that DS84 ACUs and ASICs had malfunctioned
4 due to EOS during crashes, ST Italy, ST Malaysia, ST USA, ZF Passive Safety
5 USA, ZF Electronics USA, and ZF Automotive USA continued to sell and send
6 shipments of the parts. When doing so, these companies all knew that FCA would
7 coordinate to cause the FCA Class Vehicles with the defective DS84 ACU and
8 ASIC to be presented to consumers with misleading certification labels, airbag
9 labels and imprints, and readiness indicators.

10 1802. Several actions by FCA further support an inference of agreements
11 with ZF Passive Safety USA, ZF Electronics USA, and ZF Automotive USA to
12 commit at least two predicate acts in furtherance of the conspiracy:

- 13 a. Between 2009 and 2018, ST USA, ST Italy, and ST Malaysia
14 regularly communicated with ZF Automotive USA., ZF
15 Electronics USA, and ZF Passive Safety USA about
16 observations of EOS in DS84 ASICs, including some ASICs
17 from FCA Class Vehicles. ST USA, ST Italy, and ST Malaysia's
18 DS84 ASIC team confirmed EOS damage on ASICs retrieved
19 from at least five FCA vehicles with airbag failures during
20 crashes.
- 21 b. Upon information and belief, in 2016, ZF Automotive USA, ZF
22 Electronics USA, and ZF Passive Safety USA sent each ST
23 Defendant excerpted copies of its misleading statements from its
24 February 5, 2016 slide deck.
- 25 c. Between 2009 and 2018 at the very least, ST USA and ST
26 Malaysia continuously violated the mail fraud act in furtherance
27 of the FCA-ZF-ST Enterprise by shipping defective DS84
28

1 ASICs with a mutual understanding that some of these ASICs
2 would be installed in FCA Class Vehicles, as explained above.

3 d. Between 2008 and 2018 at the very least, ST USA, ST Italy, and
4 ST Malaysia maintained public silence about the ACU Defect,
5 despite the observed evidence of the DS84 ASIC's and ACU's
6 unusual vulnerability to transients.

7 1803. The actions detailed above and throughout the Complaint as to each
8 member of the FCA-ZF-ST Enterprise were foreseeable to the other members of the
9 FCA-ZF-ST Enterprise given their direct relationship to and furtherance of the
10 common goals of the scheme.

11 1804. The success of the FCA-ZF-ST Enterprise's fraudulent scheme
12 depended upon ST USA, ST Italy, and ST Malaysia, ZF Passive Safety USA, ZF
13 Electronics USA, and ZF Automotive USA's cooperation. All these companies had
14 to maintain strict confidentiality about the ACU Defect for the scheme to continue.
15 Moreover, the ZF companies depended upon the ST companies for the manufacture
16 of the defective ASICs, whereas the ST companies depended upon the ZF
17 companies for a viable path to profit from the consumers of FCA Class Vehicles.
18 This interdependence evidences the agreement to further the fraudulent scheme.

19 **5. Nationwide Count 5: Violations of the Racketeer Influenced**
20 **Corrupt Organizations Act, 18 U.S.C. § 1962(c), on Behalf of the**
21 **Toyota Nationwide Class Against Toyota USA, Toyota Sales USA,**
22 **Toyota Engineering USA, ZF Electronics USA, ZF Passive Safety**
23 **USA, ZF Automotive USA, ZF TRW Corp., ZF Germany, ST**
24 **USA, and ST Malaysia.**

25 1805. Plaintiffs reallege and incorporate by reference all preceding
26 allegations as though fully set forth herein.

27 1806. Pursuant to 18 U.S.C. § 1962(c): "It shall be unlawful for any person
28 employed by or associated with any enterprise engaged in, or the activities of which
affect, interstate or foreign commerce, to conduct or participate, directly or

1 indirectly, in the conduct of such enterprise’s affairs through a pattern of
2 racketeering activity or collection of unlawful debt.” Toyota USA, Toyota Sales
3 USA, Toyota Engineering USA, ZF Electronics USA, ZF Passive Safety USA, ZF
4 Automotive USA, ZF TRW Corp., ZF Germany, ST USA, and ST Malaysia are
5 “persons” under 18 U.S.C. § 1961(3) because each was capable of holding “a legal
6 or beneficial interest in property.”

7 1807. A violation of 18 U.S.C. § 1962(c) has four elements: “(1) conduct (2)
8 of an enterprise (3) through a pattern (4) of racketeering activity.” ECF 396 at 59
9 (quoting *Sedima v. Imrex Co.*, 473 U.S. 479, 496 (1985)).

10 1808. Toyota USA, Toyota Sales USA, Toyota Engineering USA, ZF
11 Electronics USA, ZF Passive Safety USA, ZF Automotive USA, ZF TRW Corp.,
12 ZF Germany, ST USA, ST Malaysia, and several nonparties formed the Toyota-ZF-
13 ST Enterprise. The members of this Enterprise included Defendants Toyota USA,
14 Toyota Sales USA, Toyota Engineering USA, ZF Electronics USA, ZF Passive
15 Safety USA, ZF Automotive USA, ZF TRW Corp., ZF Germany, ST USA, ST
16 Italy, and ST Malaysia. The Toyota-ZF-ST Enterprise also included several
17 nonparty individuals and corporations, including Toyota Japan, the Japanese parent
18 company of Toyota USA, Toyota Sales USA, and Toyota Engineering USA; and
19 the Toyota manufacturing subsidiaries that built vehicles for distribution throughout
20 the United States.²³ Discovery will likely reveal several additional members of the
21 Toyota-ZF-ST Enterprise that are not currently known to the Toyota Plaintiffs.

22 1809. Toyota USA, Toyota Sales USA, Toyota Engineering USA, ZF
23 Electronics USA, ZF Passive Safety USA, ZF Automotive USA, ZF TRW Corp.,
24 ZF Germany, ST USA, and ST Malaysia are liable under 18 U.S.C. § 1962(c)

25
26 ²³ These manufacturing subsidiaries include Toyota Motor Manufacturing Canada
27 Inc.; Toyota Motor Manufacturing, Indiana, Inc.; Toyota Motor Manufacturing de
28 Baja California S. de R.L. de C.V.; Toyota Motor Manufacturing, Mississippi, Inc.;
Toyota Motor Manufacturing, Texas, Inc., and Toyota Motor Manufacturing,
Kentucky, Inc.

1 because they conducted or participated in the conduct of the affairs of an
2 “association-in-fact enterprise”—i.e., the Toyota-ZF-ST Enterprise—through a
3 pattern of racketeering activity. In other words, each of these Defendants committed
4 at least two predicate acts in furtherance of the Enterprise’s fraudulent scheme.

5 1810. 18 U.S.C. § 1964(c) provides for a civil remedy for any violation of 18
6 U.S.C. § 1962 for “[a]ny person injured in his business or property by reason of a
7 violation of section 1962 of this chapter.” In addition to proving a violation of
8 § 1962, this remedy requires proximate cause of a cognizable injury. ECF 396 at
9 59.

10 1811. Toyota USA, Toyota Sales USA, Toyota Engineering USA, ZF
11 Electronics USA, ZF Passive Safety USA, ZF Automotive USA, ZF TRW Corp.,
12 ZF Germany, ST USA, and ST Malaysia each violated 18 U.S.C. § 1962(c) and
13 injured the business or property of the Toyota Plaintiffs and the Nationwide Toyota
14 Class. The Toyota Plaintiffs claim damages for themselves and the Nationwide
15 Toyota Class members under 18 U.S.C. § 1964(c).

16 **a. Toyota USA, Toyota Sales USA, Toyota Engineering USA,**
17 **ZF Electronics USA, ZF Passive Safety USA, ZF Automotive**
18 **USA, ZF TRW Corp., ZF Germany, ST USA, and ST**
19 **Malaysia each committed at least two predicate acts of mail**
20 **and wire fraud in furtherance of the Toyota-ZF-ST**
21 **Enterprise’s fraudulent scheme to affirmatively mislead**
22 **consumers and NHTSA.**

22 1812. The members of the Toyota-ZF-ST Enterprise devised a scheme for
23 the purpose of defrauding consumers and NHTSA by concealing or minimizing the
24 ACU Defect in Toyota Class Vehicles through a pattern of affirmatively misleading
25 statements.

26 1813. In the alternative, the Toyota-ZF-ST Enterprise members devised an
27 illicit scheme for the purpose of obtaining money by fraudulent pretenses to
28

1 maximize the sale of Toyota Class Vehicles, which ultimately provided revenue to
2 the Toyota-ZF-ST Enterprise members.

3 1814. To carry out, or attempt to carry out, the fraudulent schemes, Toyota
4 USA, Toyota Sales USA, Toyota Engineering USA, ZF Electronics USA, ZF
5 Passive Safety USA, ZF Automotive USA, ZF TRW Corp., ZF Germany, ST USA,
6 ST Malaysia, the nonparty Toyota Japan, and the nonparty Toyota manufacturing
7 subsidiaries—each of whom is a person associated-in-fact with the Enterprise—
8 knowingly conducted or participated, directly or indirectly, in the affairs of the
9 Toyota-ZF-ST Enterprise through a pattern of racketeering activity within the
10 meaning of 18 U.S.C. §§ 1961(1), 1961(5), and 1962(c). In furtherance of the
11 schemes, these Toyota-ZF-ST Enterprise members each committed *at least* two acts
12 in violation of 18 U.S.C. § 1341 (mail fraud) and § 1343 (wire fraud), as described
13 in the subsections below.

14 **i. Toyota USA violated the mail and wire fraud statutes**
15 **multiple times in furtherance of the Toyota-ZF-ST**
16 **Enterprise’s fraudulent scheme.**

17 1815. Toyota USA violated the mail fraud statute (18 U.S.C. § 1341)
18 multiple times by overseeing the content of Monroney labels for all Toyota Class
19 Vehicles. Upon information and belief, before Toyota Sales USA could affix
20 Monroney labels to the Toyota Class Vehicles, Toyota USA had to approve the
21 content of each label for the relevant make and model years. Toyota USA gave this
22 approval even though it knew about the ACU Defect in the Toyota Class Vehicles.
23 Accordingly, it knew the reassuring statements about Class Vehicle safety features
24 on Monroney labels were misleading. *See* Section IV.E.1.a. above. Toyota USA
25 approved these misleading Monroney labels with full knowledge and the specific
26 intent that Toyota Sales USA would distribute the Toyota Class Vehicles to dealers
27 across the United States using private interstate carriers. Toyota USA also knew
28 that consumers would rely on Monroney labels when purchasing or leasing Toyota

1 Class Vehicles. Accordingly, Toyota USA “knowingly cause[d]” the Toyota Class
2 Vehicles with misleading Monroney labels “to be delivered by . . . such carrier[s],”
3 in violation of 18 U.S.C. § 1341.

4 1816. On January 17, 2020, Toyota USA authorized Toyota Engineering
5 USA to file a misleading 573 Defect Report with NHTSA. Upon information and
6 belief, Toyota Engineering USA then used mail to send a paper copy of the 573
7 Defect Report to NHTSA and also used wire communications to send an electronic
8 copy to NHTSA, both on that day. These transmittals violated the mail and wire
9 fraud statutes (18 U.S.C. §§ 1341, 1343) because, as explained in Section IV.F.20,
10 the 573 Defect Report contained misleading statements denying the ACU Defect in
11 the unrecalled Toyota Class Vehicles. Toyota USA knew these statements in the
12 573 Defect Report were misleading and would further the scheme to defraud
13 consumers into purchasing or leasing the unrecalled Toyota Class Vehicles by
14 avoiding a recall of these vehicles. Toyota USA also knew these affirmatively
15 misleading statements in the 573 Defect Report would be publicly available to all
16 consumers. Accordingly, Toyota USA’s authorization of the transmittal of the
17 misleading 573 Defect Report to NHTSA violated the mail and wire fraud statutes.
18 (18 U.S.C. §§ 1341, 1343).

19 **ii. Toyota Sales USA violated the mail and wire fraud**
20 **statutes multiple times in furtherance of the Toyota-**
21 **ZF-ST Enterprise’s fraudulent scheme.**

22 1817. Toyota Sales USA committed mail fraud every time it shipped, or
23 caused to be shipped, a Toyota Class Vehicle to dealers in the United States. For
24 every Toyota Class Vehicle, Toyota Sales USA delivered, or caused delivery of,
25 each vehicle by private or commercial interstate carrier to automobile dealerships
26 across the United States. Toyota Sales USA delivered millions of Class Vehicles to
27 execute the Toyota-ZF-ST Enterprise’s scheme to defraud consumers and NHTSA.
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- 1 a. These deliveries furthered the scheme because Toyota Sales
2 USA sent the Toyota Class Vehicles to the dealerships where
3 consumers would purchase or lease them and because, prior to
4 shipping the Toyota Class Vehicles, Toyota Japan had affixed,
5 or caused to be affixed, to the vehicles misleading certification
6 labels (*see* Section IV.E.1.b. above), readiness indicators (*see*
7 Section IV.E.1.c. above), and airbag labels and imprints (*see*
8 Section IV.E.1.d. above).
- 9 b. Moreover, prior to shipping each Toyota Class Vehicle, Toyota
10 Sales USA and Toyota USA agreed upon the content for
11 Monroney labels for each make and model. As explained above
12 in Section IV.E.1.a., the Monroney labels for the Toyota Class
13 Vehicles were misleading because they falsely assured
14 consumers that the Toyota Class Vehicles had properly-
15 functional airbags, seatbelts, and safety systems. Toyota Sales
16 USA would then cause these misleading labels to be placed on
17 the Toyota Class Vehicles prior to shipment to dealers.
18 Shipment of the Toyota Class Vehicles with these misleading
19 Monroney labels furthered the Toyota-ZF-ST Enterprise's
20 scheme because consumers relied upon the labels when
21 purchasing or leasing them.
- 22 c. Finally, prior to shipping the vehicles, Toyota Sales USA also
23 ensured that each Toyota Class Vehicle came with an owner's
24 manual with misleading statements about the vehicle's safety
25 system (*see* Section IV.E.2.b.i. above).

26 1818. Toyota Sales USA knew the Monroney labels, certification labels,
27 readiness indicators, airbag labels and imprints, and owners' manuals shipped with
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1 each Toyota Class Vehicle were misleading because the Toyota Class Vehicles all
2 contained the ACU Defect.

3 1819. Although the precise shipment dates for all Toyota Class Vehicles are
4 not known to the Toyota Plaintiffs, on information and belief, these shipments
5 occurred in all years in or about 2010 to 2019. Plaintiffs were exposed to in-vehicle
6 misleading statements prior to, and at the point of, sale or lease. The dates and
7 locations of these transactions are alleged above in Section II.B.3.

8 1820. Starting in 2010, Toyota Sales USA also transmitted, or caused to be
9 transmitted, tens (perhaps hundreds) of thousands of advertisements which stressed
10 the safety of Toyota Class Vehicles using mail, wire, radio, or television
11 communications in interstate commerce. Toyota Sales USA's misleading
12 advertisements are too numerous to recite completely, given the nationwide scope
13 and decade-long duration of the Toyota-ZF-ST Enterprise's fraudulent scheme.
14 Examples of these advertisements are collected in Section IV.E.2.a.i. and Exhibit
15 13. Each such mailed advertisement—including brochures sent to dealerships for
16 display to consumers or print advertisements in newspapers or magazines—was a
17 violation of the mail fraud statute (18 U.S.C. § 1341). Each such internet-based,
18 radio, and television advertisement was a violation of the wire fraud statute (18
19 U.S.C. § 1343). Toyota Sales USA knew these advertisements assuring consumers
20 of the safety of Toyota Class Vehicles were misleading and would further the
21 scheme to defraud consumers into purchasing or leasing Toyota Class Vehicles.

22 1821. Toyota Sales USA also placed copies of owners' manuals for the
23 Toyota Class Vehicles on its website. Upon information and belief, the publication
24 of these owners' manuals occurred at or around the commencement of public sales
25 for each model year. The publication of each these manuals on a website was a
26 violation of the wire fraud statute (18 U.S.C. § 1343) because Toyota Sales USA
27 knew the owners' manuals for all Toyota Class Vehicles were misleading and
28

1 would further the scheme to defraud consumers into purchasing or leasing Toyota
2 Class Vehicles.

3 **iii. Toyota Engineering USA violated the mail and wire**
4 **fraud statutes multiple times in furtherance of the**
5 **Toyota-ZF-ST Enterprise’s fraudulent scheme.**

6 1822. On January 17, 2020, Toyota Engineering USA authorized the filing of
7 a misleading 573 Defect Report with NHTSA. Upon information and belief, Toyota
8 Engineering USA then used mail to send a paper copy to NHTSA and also used
9 wire communications to send an electronic copy to NHTSA, both on that day.
10 These transmittals violated the mail and wire fraud statutes (18 U.S.C. §§ 1341,
11 1343) because, as explained in Section IV.F.20., the 573 Defect Report contained
12 misleading statements denying the ACU Defect in the unrecalled Toyota Class
13 Vehicles. Toyota Engineering USA knew these statements in the 573 Defect Report
14 were misleading and would further the scheme to defraud consumers into
15 purchasing or leasing the Toyota Class Vehicles by avoiding a recall of these
16 vehicles. Toyota Engineering USA also knew these affirmatively misleading
17 statements in the 573 Defect Report would be made publicly available to all
18 consumers. Accordingly, Toyota Engineering USA’s transmittal of the misleading
19 573 Defect Report to NHTSA violated the mail and wire fraud statutes. (18 U.S.C.
20 §§ 1341, 1343).

21 1823. Toyota Engineering USA separately violated the mail fraud act (18
22 U.S.C. § 1341) by placing orders with ZF Electronics USA that caused ZF
23 Electronics USA to ship defective DS84 ACUs by private or commercial interstate
24 carrier to the nonparty-Enterprise members Toyota manufacturing companies in
25 Canada, Indiana, Mexico, Mississippi, Kentucky, and Texas. These shipments
26 furthered the Toyota-ZF-ST Enterprise’s fraudulent scheme because Toyota
27 Engineering USA’s use of the defective DS84 ACUs in Toyota Class Vehicles was
28 essential to the cost-saving goal behind the scheme. Toyota Engineering USA

1 caused ZF Electronics USA to make these deliveries knowing that the defective
2 DS84 ACUs would be placed in the Toyota Class Vehicles and that Toyota Sales
3 USA would market the vehicles to U.S. consumers as safe. Accordingly, each of
4 Toyota Engineering USA's orders and ZF Electronics USA's shipments of the
5 DS84 ACU violated the mail fraud statute (18 U.S.C. § 1341).

6 1824. The precise dates and locations of each particular order for, and
7 shipment of, DS84 ACUs are not known to the Toyota Plaintiffs because they have
8 no visibility into the shipments to automobile manufacturers and Defendants have
9 not produced documents that show that information. However, a chart produced by
10 the domestic ZF Defendants to NHTSA identifies the precise volume of DS84
11 ACUs shipped for each year for each model of the Toyota Class Vehicles, and
12 identifies Marshall, Illinois as the shipping location. Exhibit 20 includes
13 highlighting added by Plaintiffs to identify the particular information about
14 shipping locations, volumes, vehicle makes and models, and shipping years
15 contained in this chart. *See* Ex. 20 (ZF-MDL-679) at 686-691. The month and day
16 of each shipment are not known to the Toyota Plaintiffs, but Defendants can
17 determine that information using the backup information in their possession.

18 1825. The shipping address for each of these shipments of DS84 ACUs by
19 ZF Electronics USA from Marshall, Illinois was 902 South 2nd Street, Marshall,
20 Illinois 62441. For ACUs shipped to Toyota Motor Manufacturing Canada Inc., the
21 recipient address was 1055 Fountain Street North, Cambridge, Ontario, Canada
22 N3H 5K2. For ACUs shipped to Toyota Motor Manufacturing, Kentucky, Inc., the
23 recipient address was 1001 Cherry Blossom Way Georgetown, KY 40324. For
24 ACUs shipped to Toyota Motor Manufacturing, Mississippi, Inc., the recipient
25 address was 1200 Magnolia Way, Blue Springs, MS 38828. For ACUs shipped to
26 Toyota Motor Manufacturing, Indiana, Inc., the recipient address was 4000 Tulip
27 Tree Dr, Princeton, IN 47670. For ACUs shipped to Toyota Motor Manufacturing
28 de Baja California S. de R.L. de C.V., the recipient address was Carretera Libre

1 Tijuana - Tecate #33143 Tijuana, Baja California, Mexico CP 36102. For ACUs
2 shipped to Toyota Motor Manufacturing, Texas, Inc., the recipient address was 1
3 Lone Star Pass, San Antonio, TX 78264.

4 **iv. Nonparty Toyota Japan violated the mail and wire**
5 **fraud statutes multiple times in furtherance of the**
6 **Toyota-ZF-ST Enterprise’s fraudulent scheme.**

7 1826. While Toyota Japan is not a named Defendant in this litigation, it is a
8 nonparty-Enterprise member that caused misleading certification labels, readiness
9 indicators, airbag labels and imprints, and owners’ manuals to be placed within
10 every Toyota Class Vehicle prior to shipment to the dealers that sell or lease the
11 vehicles to U.S. consumers. As explained in Sections IV.E.1.a. and IV.E.1.b.i.
12 above, each of these statements misleadingly assured consumers that the Toyota
13 Class Vehicles had properly-functioning safety systems, airbags, and seatbelts
14 when, in fact, the safety systems, airbags, and seatbelts had a dangerous safety
15 defect due to the vulnerability of the DS84 ACU and ASIC to EOS. Toyota Japan
16 caused the inclusion of these misleading statements within every Toyota Class
17 Vehicle with full knowledge and the specific intent that Toyota Sales USA would
18 distribute the Toyota Class Vehicles to dealers across the United States using
19 private interstate carriers. Accordingly, Toyota Japan “knowingly cause[d]” the
20 Toyota Class Vehicles with misleading statements “to be delivered by . . . such
21 carrier[s],” in violation of 18 U.S.C. § 1341.

22 a. Toyota Japan was directly responsible for including all of these
23 misleading statements in all Toyota Class Vehicles made in
24 Japan. Upon information and belief, Toyota Japan placed the
25 misleading certification labels, airbag warning lamps, and airbag
26 labels and imprints in the Japanese-made Toyota Class Vehicles
27 when they manufactured them at the following address: 1,
28 Toyota-cho, Toyota-city, Aichi-pref., 471-8571, Japan. The

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certification labels for these Japanese-made vehicles bore Toyota Japan’s corporate name, “Toyota Motor Corp.” The Toyota Class Vehicles made by Toyota Japan have vehicle identification numbers that begin with the letter “J.” Toyota Japan has records in its possession that will identify the dates when it transferred these Class Vehicles to Toyota Sales USA, with the purpose of distributing them to the United States for sale to consumers. The Toyota Plaintiffs do not have access to these confidential records that provide the precise dates of transfer.

b. Although other, nonparty-Enterprise members (Toyota Motor Manufacturing Canada Inc.; Toyota Motor Manufacturing, Indiana, Inc.; Toyota Motor Manufacturing de Baja California S. de R.L. de C.V.; Toyota Motor Manufacturing, Mississippi, Inc.; Toyota Motor Manufacturing, Texas, Inc.; and Toyota Motor Manufacturing, Kentucky, Inc.) made the remaining Toyota Class Vehicles and placed permanent certification labels on them under their own names, they had no discretion to depart from the mandatory Toyota Class Vehicle designs created by Toyota Japan. Accordingly, Toyota Japan, as the entity responsible for designing these vehicles, was at least jointly responsible for the certifications for these vehicles. Toyota Japan was also responsible for the misleading airbag warning lamps and in-vehicle airbag labels and imprints placed within these Toyota Class Vehicles because Toyota Japan’s designs required the inclusion of these misleading statements within the Toyota Class Vehicles.

1 c. Toyota Japan was also responsible for the content of the owners'
2 manuals for Toyota Class Vehicles. It also owns the copyright
3 interest in these manuals. As explained in Section IV.E.2.b.i.
4 above, these owners' manuals contained misleading statements
5 about the vehicles' safety systems. Insofar as Toyota Sales USA
6 effectuated the shipments of the owner's manuals within Toyota
7 Class Vehicles to dealers in the United States, it acted as Toyota
8 Japan's distribution agent for Toyota Japan's copyrighted
9 material.

10 1827. Although the precise shipment dates for all Toyota Class Vehicles are
11 not known to the Toyota Plaintiffs, on information and belief, these shipments
12 occurred in all years in or about 2010 to 2019. Plaintiffs were exposed to in-vehicle
13 misleading statements prior to, and at the point of, sale or lease. The dates and
14 locations of these transactions are alleged above in Section II.B.3.

15 1828. Each shipment of a Toyota Class Vehicle or Vehicles to a dealer was a
16 violation of the mail fraud statute (18 U.S.C. § 1341) because Toyota Japan knew
17 the certification labels, airbag warning labels, in-vehicle airbag labels and imprints,
18 and owner's manuals in all Toyota Class Vehicles were misleading and would
19 further the scheme to defraud consumers into purchasing or leasing Toyota Class
20 Vehicles.

21 1829. When Toyota Sales USA distributed the Toyota Class Vehicles to
22 dealers in the United States, it acted as Toyota Japan's agent.

23 1830. Toyota Japan also provided Toyota Sales USA with authorization to
24 place copies of misleading Toyota Class Vehicle owner's manuals on Toyota Sales
25 USA's website. Upon information and belief, the publication of these owner's
26 manuals in print and on the website occurred at or around the commencement of
27 public sales for each model year. The publication of each of these manuals on a
28 website was a violation of the wire fraud statute (18 U.S.C. § 1343) because Toyota

1 Japan knew the owner's manuals for all Toyota Class Vehicles were misleading and
2 would further the scheme to defraud consumers into purchasing or leasing Toyota
3 Class Vehicles. Toyota Sales USA acted as an agent of Toyota Japan when it
4 published these owner's manuals because Toyota Japan, not Toyota Sales USA,
5 holds the copyright in the manuals.

6 **v. ZF Electronics USA violated the mail fraud statute**
7 **multiple times in furtherance of the Toyota-ZF-ST**
8 **Enterprise's fraudulent scheme.**

9 1831. ZF Electronics USA drafted and/or edited the following misleading
10 statements to NHTSA, as discussed in Sections IV.F.2., IV.F.4., IV.F.8., and
11 IV.F.14. above:

- 12 a. The slide deck presentation dated February 5, 2016 (which ZF
13 TRW Corp. mailed to NHTSA on March 14, 2016);
- 14 b. The slide deck presentation dated July 19, 2016 (which, upon
15 information and belief, was mailed to NHTSA in July or August
16 2016);
- 17 c. The September 2016 letter signed by Marc Bolitho²⁴ (which ZF
18 Electronics USA mailed to NHTSA in September 2016); and
- 19 d. The slide deck presentation dated March 8, 2018 (which ZF
20 TRW Corp. mailed to NHTSA on March 12, 2018).

21 1832. As explained in sections IV.F.2., IV.F.4., IV.F.8., and IV.F.14. above,
22 each of these transmittals contained misleading statements about the ACU Defect.
23 ZF Electronics USA specifically approved the transmittal of the final versions of
24 these documents to NHTSA, and intended for the misleading statements contained
25 therein to avoid, minimize, and/or delay recalls of Toyota Class Vehicles.

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27 ²⁴ Mr. Bolitho was simultaneously an employee of ZF Passive Safety USA, the
28 Vice President of Passive Safety for ZF Electronics USA, and Director of Passive
Safety Engineering for ZF TRW.

1 Avoiding, minimizing, and/or delaying recalls of Toyota Class Vehicles enabled the
2 continuation of the scheme to defraud consumers.

3 1833. ZF Electronics USA caused the delivery of the February 5, 2016 slide
4 deck. ZF Electronics USA's causal role in the delivery is evidenced by the fact that
5 its Vice President of Passive Safety Marc Bolitho signed an affidavit of
6 confidentiality that was enclosed with the mailing of the February 5, 2016 slide
7 deck.

8 1834. Because the July 19, 2016 slide deck closely resembles the February 5,
9 2016 slide deck, the same personnel and companies were likely responsible for
10 sending it via mail or private interstate carrier to NHTSA. Accordingly, upon
11 information and belief, ZF Electronics USA caused this delivery to NHTSA too.

12 1835. ZF Electronics USA caused the delivery of the March 8, 2018 slide
13 deck to NHTSA. ZF Electronics USA's causal role in the delivery is evidenced by
14 the fact that its Technical Specialist, Emanuel Goodman, signed the affidavit of
15 confidentiality that was enclosed with the mailing of the March 8, 2018 slide deck.
16 ZF Electronics USA's causal role in the delivery is further evidenced by Mr.
17 Goodman's and Mr. Bolitho's attendance at the March 8, 2018 meeting with
18 NHTSA, where this slide deck was used.

19 1836. Moreover, because ZF Electronics USA's affiliates would not have
20 sent or approved the four written communications described above without ZF
21 Electronics USA's contributions and approval, ZF Electronics USA was one of the
22 Defendants who jointly caused the delivery of these four communications to
23 NHTSA. Accordingly, its participation in these communications violated the mail
24 fraud statute at least four times. 18 U.S.C. § 1341.

25 1837. As explained in Section IV.E.1.c. above, ZF Electronics USA worked
26 with ZF Passive Safety USA, ZF Automotive USA, and Toyota Japan to design the
27 readiness indicators installed in Toyota Class Vehicles. Specifically, ZF Electronics
28 USA assisted with a design of ACUs that would cause the readiness indicator not to

1 illuminate at the point of sale or lease, even though the Toyota Class Vehicle’s
2 safety systems were not ready to deploy in foreseeable crash events with negative
3 transients due to the ACU Defect. When ZF Electronics USA assisted with this
4 design, it knew Toyota Sales USA would ship the Toyota Class Vehicles to dealers
5 and that consumers would buy Toyota Class Vehicles without the airbag warning
6 lamp illuminating at the point of sale or lease. Because Toyota Sales USA would
7 not have shipped Toyota Class Vehicles without ZF Electronics USA’s assistance
8 in designing misleading readiness indicators, ZF Electronics USA jointly caused
9 each shipment of a Toyota Class Vehicle, in violation of the mail fraud act (18
10 U.S.C. § 1341).

11 1838. ZF Electronics USA received orders from Toyota Engineering USA
12 for the defective DS84 ACUs used in every Toyota Class Vehicle and shipped them
13 by private or commercial interstate carrier to the nonparty-Enterprise-member
14 Toyota manufacturing subsidiaries based in Canada, Indiana, Mexico, Mississippi,
15 Kentucky, and Texas. These shipments furthered the Toyota-ZF-ST Enterprise’s
16 fraudulent scheme because the use of DS84 ACUs in Toyota Class Vehicles was
17 essential to the cost-saving goal behind the scheme. When ZF Electronics USA
18 shipped the defective DS84 ACUs to the nonparty Toyota manufacturing
19 subsidiaries, it knew they would be installed in the Toyota Class Vehicles that are
20 marketed to U.S. consumers. ZF Electronics USA was also specifically aware of
21 Toyota Japan’s, Toyota USA’s, and Toyota Sales USA’s practice of making
22 reassuring statements about safety, airbags, and seatbelts in consumer-facing
23 Monroney labels, certification labels, in-vehicle labels, owner’s manuals, and
24 advertising for all Toyota Class Vehicles. ZF Electronics USA knew these
25 statements were false because it knew the Toyota Class Vehicles, DS84 ACU, and
26 DS84 ASIC were defective. Accordingly, because ZF Electronics USA shipped
27 each defective DS84 ACU with the purpose of executing a fraudulent scheme with
28 the other Enterprise members, each of ZF Electronics USA’s shipments of the

1 defective DS84 ACU violated the mail fraud statute (18 U.S.C. § 1341). The
2 particularities of these shipments are discussed above. Exhibit 20 includes
3 highlighting added by Plaintiffs to identify the particular information about
4 shipping locations, volumes, vehicle makes and models, and shipping years
5 contained in this chart. *See Ex. 20 (ZF-MDL-679) at 686-691.*

6 1839. ZF Electronics USA also separately violated the mail fraud act (18
7 U.S.C. § 1341) by placing orders with ST USA that required ST USA to ship
8 millions of defective DS84 ASICs to ZF Electronics USA at a facility with the
9 following address: 902 South 2nd Street, Marshall, Illinois 62441. When ZF
10 Electronics USA placed these orders, it knew it would install these DS84 ASICs
11 into DS84 ACUs, including those that would be installed in the Toyota Class
12 Vehicles that are marketed to U.S. consumers. ZF Electronics USA was also
13 specifically aware of Toyota Japan's, Toyota USA's, and Toyota Sales USA's
14 practice of making reassuring statements about safety, airbags, and seatbelts in
15 consumer-facing Monroney labels, certification labels, in-vehicle labels, owner's
16 manuals, and advertising for all Toyota Class Vehicles. ZF Electronics USA knew
17 these statements were false because it knew the Toyota Class Vehicles, DS84 ACU,
18 and ASIC were defective. Accordingly, because ZF Electronics USA caused
19 shipments of defective DS84 ASICs with the purpose of executing a fraudulent
20 scheme with the other Enterprise members, each of the DS84 ASIC shipments
21 caused by ZF Electronics USA violated the mail fraud statute (18 U.S.C. § 1341).
22 ST USA has produced approximately 9,700 such invoices from the time period
23 between 2014 and the present alone. Plaintiffs have extracted approximate shipping
24 dates from these invoices, which are presented as exemplars in Exhibit 21.²⁵

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²⁵ ST USA made similar shipments relevant to the Toyota Class Vehicles at least between 2009 and 2014, but ST USA is presently withholding invoices for these shipments from discovery. Upon information and belief, the invoices for this time period will show similar regularity of shipments.

1 **vi. ZF Passive Safety USA violated the mail fraud statute**
2 **multiple times in furtherance of the Toyota-ZF-ST**
3 **Enterprise’s fraudulent scheme.**

4 1840. ZF Passive Safety USA drafted and/or edited the following misleading
5 statements to NHTSA, as discussed in Sections IV.F.2., IV.F.4., IV.F.8., and
6 IV.F.14. above:

- 7 a. The slide deck presentation dated February 5, 2016 (which ZF
8 TRW Corp. mailed to NHTSA on March 14, 2016);
- 9 b. The slide deck presentation dated July 19, 2016 (which, upon
10 information and belief, was mailed to NHTSA in July or August
11 2016);
- 12 c. The September 2016 letter signed by Marc Bolitho²⁶ (which ZF
13 Electronics USA mailed to NHTSA in September 2016); and
- 14 d. The slide deck presentation dated March 8, 2018 (which ZF
15 TRW Corp. mailed to NHTSA on March 12, 2018).

16 1841. As explained in sections IV.F.2., IV.F.4., IV.F.8., and IV.F.14. above,
17 each of these transmittals contained misleading statements about the ACU Defect.
18 ZF Passive Safety USA specifically approved the transmittal of the final versions of
19 these documents to NHTSA, and intended for the misleading statements contained
20 therein to avoid, minimize, and/or delay recalls of Toyota Class Vehicles.
21 Avoiding, minimizing, and/or delaying recalls of Toyota Class Vehicles enabled the
22 continuation of the scheme to defraud consumers.

23 1842. ZF Passive Safety USA caused the delivery of the February 5, 2016
24 slide deck. ZF Passive Safety USA’s causal role in the delivery is evidenced by the
25 fact that its employee Marc Bolitho signed an affidavit of confidentiality that was
26 enclosed with the mailing of the February 5, 2016 slide deck. Although Mr. Bolitho

27 ²⁶ Mr. Bolitho was simultaneously an employee of ZF Passive Safety USA, the
28 Vice President of Passive Safety for ZF Electronics USA, and Director of Passive
Safety Engineering for ZF TRW Corp.

1 also simultaneously served as a Vice President for ZF Electronics USA and a
2 Director of Passive Safety Engineering for ZF TRW Corp., ZF Passive Safety USA
3 alone paid his salary.

4 1843. Because the July 19, 2016 slide deck closely resembles the February 5,
5 2016 slide deck, the same personnel and companies were likely responsible for
6 sending it via mail or private interstate carrier to NHTSA. Accordingly, upon
7 information and belief, ZF Passive Safety USA caused this delivery too.

8 1844. ZF Passive Safety USA caused the delivery of the March 8, 2018 slide
9 deck to NHTSA. ZF Passive Safety USA's causal role in the delivery is evidenced
10 by the fact that its longtime employee, Emanuel Goodman, signed the affidavit of
11 confidentiality that was enclosed with the mailing of the March 8, 2018 slide deck.
12 Although Mr. Goodman also served as the Technical Specialist for ZF Electronics
13 USA, ZF Passive Safety USA alone paid his salary. ZF Passive Safety USA's
14 causal role in the delivery is further evidenced by Mr. Goodman's and Mr.
15 Bolitho's attendance at the March 8, 2018 meeting with NHTSA, where this slide
16 deck was used.

17 1845. Moreover, because ZF Passive Safety USA's affiliates would not have
18 sent or approved the four written communications described above without ZF
19 Passive Safety USA's contributions and approval, ZF Passive Safety USA was one
20 of the Defendants who jointly caused the delivery of these four communications to
21 NHTSA. Accordingly, its participation in these communications violated the mail
22 fraud statute at least four times. 18 U.S.C. § 1341.

23 1846. As explained in sections IV.F.2., IV.F.4., IV.F.8., and IV.F.14. above,
24 each of the four documents described above contained misleading statements about
25 the ACU Defect. ZF Passive Safety USA specifically approved the transmittal of
26 the final versions of these documents to NHTSA, and intended for the misleading
27 statements contained therein to avoid, minimize, and/or delay recalls of Toyota
28 Class Vehicles. Avoiding, minimizing, and/or delaying recalls of Toyota Class

1 Vehicles enabled the continuation of the scheme to defraud consumers. Because ZF
2 Passive Safety USA’s affiliates would not have sent or approved the written
3 communications noted in the preceding paragraph without ZF Passive Safety
4 USA’s contributions and approval, ZF Passive Safety USA was one of the
5 Defendants who caused the delivery of these four communications to NHTSA.
6 Accordingly, its participation in these communications violated the mail fraud
7 statute at least four times. (18 U.S.C. § 1341).

8 1847. As explained in Section IV.E.1.c. above, ZF Passive Safety USA
9 worked with ZF Electronics USA, ZF Automotive USA, and nonparty Toyota
10 Japan to design the readiness indicators installed in all Toyota Class Vehicles.
11 Specifically, ZF Passive Safety USA assisted with a design of ACUs that would
12 cause the readiness indicator not to illuminate at the point of sale or lease, even
13 though the Toyota Class Vehicle’s safety systems were not ready to deploy in crash
14 events with negative transients due to the ACU Defect. When ZF Passive Safety
15 USA assisted with this design, it knew nonparty Toyota Japan would ship the
16 Toyota Class Vehicles to dealers and that consumers would buy the vehicles
17 without the airbag warning lamp illuminating at the point of sale or lease. Because
18 Toyota Sales USA would not have shipped Toyota Class Vehicles without ZF
19 Passive Safety USA’s assistance in designing misleading readiness indicators, ZF
20 Passive Safety USA jointly caused each shipment of Toyota Class Vehicle, in
21 violation of the mail fraud act (18 U.S.C. § 1341).

22 **vii. ZF Automotive USA violated the mail fraud statute**
23 **multiple times in furtherance of the Toyota-ZF-ST**
24 **Enterprise’s fraudulent scheme.**

25 1848. ZF Automotive USA drafted and/or edited the following misleading
26 statements to NHTSA, as discussed in Sections IV.F.2., IV.F.4., IV.F.8., and
27 IV.F.14. above:
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- 1 a. The slide deck presentation dated February 5, 2016 (which ZF
- 2 TRW Corp. mailed to NHTSA on March 14, 2016);
- 3 b. The slide deck presentation dated July 19, 2016 (which, upon
- 4 information and belief, was mailed to NHTSA in July or August
- 5 2016);
- 6 c. The September 2016 letter signed by Marc Bolitho (which ZF
- 7 Electronics USA mailed to NHTSA in September 2016); and
- 8 d. The slide deck presentation dated March 8, 2018 (which ZF
- 9 TRW Corp. mailed to NHTSA on March 12, 2018).

10 1849. ZF Automotive USA caused the delivery via mail or private interstate
11 carrier of the February 5, 2016 slide deck, the July 19, 2016 slide deck, and the
12 March 8, 2018 slide deck to NHTSA. ZF Automotive USA's role in causing the
13 delivery of these presentations is evidenced by its admission in a 573 Defect Report
14 that it attended the three meetings with NHTSA where these presentations were
15 used on its behalf.

16 1850. Upon information and belief, ZF Automotive USA caused the delivery
17 of the September 2016 letter via mail or private interstate carrier by giving requisite
18 approval prior to the transmittal of the letter.

19 1851. As explained in sections IV.F.2., IV.F.4., IV.F.8., and IV.F.14. above,
20 each of these four documents contained misleading statements about Toyota Class
21 Vehicles and the ACU Defect. ZF Automotive USA specifically approved the
22 transmittal of the final versions of these documents to NHTSA, and intended for the
23 misleading statements contained therein to avoid, minimize, and/or delay recalls of
24 Toyota Class Vehicles. Avoiding, minimizing, and/or delaying recalls of Toyota
25 Class Vehicles enabled the continuation of the scheme to defraud consumers.
26 Because ZF Automotive USA's affiliates would not have sent or approved the
27 written communications noted in the preceding paragraph without ZF Automotive
28 USA's contributions and approval, ZF Automotive USA was one of the Defendants

1 who caused the delivery of these four communications to NHTSA. Accordingly, its
2 participation in these communications violated the mail fraud statute at least four
3 times. (18 U.S.C. § 1341).

4 1852. As explained in Section IV.E.1.c. above, ZF Automotive USA worked
5 with ZF Passive Safety USA, ZF Electronics USA, and nonparty Toyota Japan to
6 design the readiness indicators installed in Toyota Class Vehicles. Specifically, ZF
7 Automotive USA assisted with a design of ACUs that would cause the readiness
8 indicator not to illuminate at the point of sale or lease, even though the Toyota
9 Class Vehicle's safety systems were not ready to deploy in crash events with
10 negative transients due to the ACU Defect. When ZF Automotive USA assisted
11 with this design, it knew Toyota Sales USA would ship the Toyota Class Vehicles
12 to dealers and that consumers would buy the vehicles without the airbag warning
13 lamp illuminating at the point of sale or lease. Because Toyota Sales USA would
14 not have shipped Toyota Class Vehicles without ZF Automotive USA's affirmative
15 assistance in designing misleading readiness indicators, ZF Automotive USA
16 jointly caused each shipment of Toyota Class Vehicle, in violation of the mail fraud
17 act (18 U.S.C. § 1341).

18 **viii. ZF TRW Corp. violated the mail fraud statute**
19 **multiple times in furtherance of the Toyota-ZF-ST**
20 **Enterprise's fraudulent scheme.**

21 1853. Prior to their delivery to NHTSA, ZF TRW Corp. reviewed, drafted
22 and/or edited the following misleading statements to NHTSA, as discussed in
23 Sections IV.F.2., IV.F.4., IV.F.8., and IV.F.14. above:

- 24 a. The slide deck presentation dated February 5, 2016 (which ZF
25 TRW Corp. mailed to NHTSA on March 14, 2016);
26 b. The slide deck presentation dated July 19, 2016 (which, upon
27 information and belief, was mailed to NHTSA in July or August
28 2016);

- 1 c. The September 2016 letter signed by Marc Bolitho²⁷ (which ZF
2 Electronics USA mailed to NHTSA in September 2016); and
3 d. The slide deck presentation dated March 8, 2018 (which ZF
4 TRW Corp. mailed to NHTSA on March 12, 2018).

5 1854. ZF TRW Corp. caused the transmittal of the February 5, 2016 slide
6 deck via mail or private interstate carrier. ZF TRW Corp.'s role in the transmittal is
7 confirmed by the cover letter, which is signed: "Very truly yours, ZF TRW
8 Automotive Holdings Corp." with a signature from Sheri Roberts, the Senior
9 Counsel of the company. ZF TRW Corp.'s causal role is further confirmed by a
10 footer on every page of the slide deck itself, which reads: "This document is the
11 property of ZF TRW and is disclosed in confidence. It may not be copied, disclosed
12 to others, or used for manufacturing without the written consent of ZF TRW" Based
13 on this footer, ZF TRW Corp. gave requisite written consent to the transmittal of
14 the document to NHTSA.

15 1855. ZF TRW Corp. caused the transmittal of the July 19, 2016 slide deck
16 via mail or private interstate carrier. ZF TRW Corp.'s causal role is confirmed by a
17 footer on every page of the slide deck itself, which reads: "This document is the
18 property of ZF TRW and is disclosed in confidence. It may not be copied, disclosed
19 to others, or used for manufacturing without the written consent of ZF TRW." Based
20 on this footer, ZF TRW Corp. gave requisite written consent to the
21 transmittal of the document to NHTSA.

22 1856. Upon information and belief, ZF TRW Corp. also gave requisite prior
23 authorization for the delivery of the September 2016 letter.

24 1857. ZF TRW Corp. caused the transmittal of the March 8, 2018 slide deck
25 to NHTSA via mail or private interstate carrier. ZF TRW Corp.'s causal role is
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27 ²⁷ Mr. Bolitho was simultaneously an employee of ZF Passive Safety USA, the
28 Vice President of Passive Safety for ZF Electronics USA, and Director of Passive
Safety Engineering for ZF TRW Corp.

1 confirmed by the cover letter included with the mailing of the slide deck. The cover
2 letter is on the letter head of an “Active & Passive Safety Technology” business
3 unit. Because this is a reference to ZF TRW Corp.,²⁸ ZF TRW Corp. must have
4 reviewed and approved the transmittal of the slide deck to NHTSA.

5 1858. As explained in sections IV.F.2., IV.F.4., IV.F.8., and IV.F.14. above,
6 each of these four documents described above contained misleading statements
7 about Toyota Class Vehicles and the ACU Defect. ZF TRW Corp. specifically
8 approved the transmittal of the final versions of these documents to NHTSA, and
9 intended for the misleading statements contained therein to avoid, minimize, and/or
10 delay recalls of Toyota Class Vehicles. Avoiding, minimizing, and/or delaying
11 recalls of Toyota Class Vehicles enabled the continuation of the scheme to defraud
12 consumers. Because ZF TRW Corp.’s affiliates would not have sent or approved
13 the written communications noted in the preceding paragraph without ZF TRW
14 Corp.’s contributions and approval, ZF TRW Corp. was one of the Defendants who
15 caused the delivery of these four communications to NHTSA. Accordingly, its
16 participation in these communications violated the mail fraud statute at least four
17 times. (18 U.S.C. § 1341).

18 **ix. ZF Germany violated the mail and wire fraud statutes**
19 **multiple times in furtherance of the Toyota-ZF-ST**
20 **Enterprise’s fraudulent scheme.**

21 1859. Prior to their delivery to NHTSA, ZF Germany reviewed and/or edited
22 the following misleading statements to NHTSA, as discussed in Sections IV.F.2.,
23 IV.F.4., IV.F.8., and IV.F.14. above:

24
25 _____
26 ²⁸ According to ZF AG’s 2017 Annual Report, the “Active & Passive Safety
27 Technology Division” was “established by ZF Group to manage the business
28 activities of ZF TRW after its acquisition.” Because ZF TRW Corp. is the only
corporate entity with “ZF TRW” as part of its corporate name, this letter was also
sent on behalf of ZF TRW Corp.

- 1 a. The slide deck presentation dated February 5, 2016 (which ZF
- 2 TRW Corp. mailed to NHTSA on March 14, 2016);
- 3 b. The slide deck presentation dated July 19, 2016 (which, upon
- 4 information and belief, was mailed to NHTSA in July or August
- 5 2016);
- 6 c. The September 2016 letter signed by Marc Bolitho (which ZF
- 7 Electronics USA mailed to NHTSA in September 2016); and
- 8 d. The slide deck presentation dated March 8, 2018 (which ZF
- 9 TRW Corp. mailed to NHTSA on March 12, 2018).

10 1860. ZF Germany caused the delivery of these communications via mail
11 and wire. The three presentations bear copyright legends attributing ownership to
12 ZF Germany. Accordingly, sending these presentations must have required its
13 involvement and consent. Moreover, the slide decks dated February 5, 2016 and
14 July 19, 2016 identify ZF Germany as the corporate author on the title page.

15 1861. As explained in sections IV.F.2., IV.F.4., IV.F.8., and IV.F.14. above,
16 each of these documents described above contained misleading statements about
17 Toyota Class Vehicles and the ACU Defect. ZF Germany specifically approved the
18 transmittal of the final versions of these documents to NHTSA, and intended for the
19 misleading statements contained therein to avoid, minimize, and/or delay recalls of
20 Toyota Class Vehicles. Avoiding, minimizing, and/or delaying recalls of Toyota
21 Class Vehicles enabled the continuation of the scheme to defraud consumers.
22 Because ZF Germany's affiliates would not have sent or approved the written
23 communications noted in the preceding paragraph without ZF Germany's
24 contributions and approval, ZF Germany was one of the Defendants who caused the
25 delivery of these four communications to NHTSA. Accordingly, its participation in
26 these communications violated the mail fraud statute at least four times. (18 U.S.C.
27 § 1341).

28

1 1864. When ST USA required ST Malaysia to make these shipments and
2 then made its own shipments to ZF Electronics USA, it knew ZF Electronics USA
3 would place the DS84 ASICs into DS84 ACUs, including those that would be
4 installed in Toyota Class Vehicles that are marketed to U.S. consumers. ST USA
5 was also aware of Toyota USA's, Toyota Sales USA's, and nonparty Toyota
6 Japan's practice of making reassuring statements about safety, airbags, and
7 seatbelts in consumer-facing Monroney labels, certification labels, in-vehicle labels,
8 owner's manuals, and advertising for all Toyota Class Vehicles. ST USA knew
9 these statements were false because it knew the Toyota Class Vehicles, DS84 ACU,
10 and DS84 ASIC were defective. Accordingly, because ST USA caused shipments
11 of well over ten million defective DS84 ASICs with the purpose of executing a
12 fraudulent scheme with the other Enterprise members, each of the DS84 ASIC
13 shipments caused by ST USA violated the mail fraud statute (18 U.S.C. § 1341).

14 **xi. ST Malaysia violated the mail fraud statute multiple**
15 **times in furtherance of the Toyota-ZF-ST Enterprise's**
16 **fraudulent scheme.**

17 1865. Between 2007 and the 2018, ST USA regularly worked with its
18 affiliate, ST Malaysia, to help it manufacture and ship DS84 ASICs to ST USA's
19 so-called "ST Micro LAX Hub" near Los Angeles, California. During that time
20 period, ST Malaysia shipped well over ten million defective DS84 ASICs to this
21 location. ST USA has produced approximately 9,700 invoices sent to ZF
22 Electronics USA from the time period between 2014 and the present. Each invoice
23 notes the defective DS84 ASICs were made in Malaysia, where ST Malaysia
24 operated. The invoice dates from these documents provide an approximate date for
25 these shipments. Plaintiffs have extracted approximate shipping dates from these
26 invoices, which are presented as exemplars in Exhibit 21.³¹

27 ³¹ ST USA made similar shipments between 2007 and 2014, but is withholding
28 invoices for these shipments from discovery. Upon information and belief, the

1 1866. When ST Malaysia made these shipments, it knew ZF Electronics
2 USA would place the DS84 ASICs into DS84 ACUs, including those ACUs that
3 would be installed in Toyota Class Vehicles that are marketed to U.S. consumers.
4 ST Malaysia was also aware of Toyota USA's, Toyota Sales USA's, and nonparty
5 Toyota Japan's practice of making reassuring statements about safety, airbags, and
6 seatbelts in consumer-facing Monroney labels, certification labels, in-vehicle labels,
7 owner's manuals, and advertising for all Toyota Class Vehicles. ST Malaysia knew
8 these statements were false because it knew the Toyota Class Vehicles, DS84 ACU,
9 and DS84 ASIC were defective. Accordingly, because ST Malaysia caused
10 shipments of well over ten million defective DS84 ASICs with the purpose of
11 executing a fraudulent scheme with the other Enterprise members, each of the DS84
12 ASIC shipments made by ST Malaysia violated the mail fraud statute (18 U.S.C. §
13 1341).

14 **b. Toyota USA, Toyota Sales USA, Toyota Engineering USA,**
15 **ZF Electronics USA, ZF Passive Safety USA, ZF Automotive**
16 **USA, ZF TRW Corp., ZF Germany, ST USA, ST Malaysia,**
17 **and nonparty Toyota Japan advanced their fraudulent**
18 **scheme by concealing material information about a serious**
19 **safety defect that they had a duty to disclose.**

19 1867. The uses of mail and wire described in the section above violated the
20 mail and wire fraud statutes because they furthered a fraudulent scheme to
21 affirmatively mislead consumers and NHTSA.

22 1868. In addition, these same uses of the mail and wire *also* violated the mail
23 and wire fraud statutes because, while they sent or caused to be sent these mailings,
24 Toyota USA, Toyota Sales USA, Toyota Engineering USA, ZF Electronics USA,
25 ZF Passive Safety USA, ZF Automotive USA, ZF TRW Corp., ZF Germany, ST
26 USA, ST Malaysia, and nonparty Toyota Japan had duties to disclose the ACU
27 Defect and failed to do so in order to advance their scheme.

28 _____
invoices for this time period will show a similar regularity of shipments.

1 1869. Toyota USA, Toyota Sales USA, Toyota Engineering USA, ZF
2 Electronics USA, ZF Passive Safety USA, ZF Automotive USA, ZF TRW Corp.,
3 ZF Germany, ST USA, ST Italy, ST Malaysia, and nonparty Toyota Japan each
4 knew for years that the defective DS84 ACUs and ASICs in the Toyota Class
5 Vehicles are uniquely vulnerable to EOS. *See* Section IV.D.5. above.

6 1870. To further the goals of the Toyota-ZF-ST Enterprise and to their
7 mutual gain, Toyota USA, Toyota Sales USA, Toyota Engineering USA, ZF
8 Electronics USA, ZF Passive Safety USA, ZF Automotive USA, ZF TRW Corp.,
9 ZF Germany, ST USA, ST Italy, ST Malaysia, and Toyota Japan concealed what
10 they knew about the existence, scope, and material safety risks of the ACU Defect
11 in the Toyota Class Vehicles.

12 1871. Their careful efforts to conceal the ACU Defect in the Toyota Class
13 Vehicles were critically important to the viability of their scheme. A decision by
14 any one Defendant or nonparty-Enterprise member to tell the truth about the ACU
15 Defect and its impact of vehicle safety to consumers or to NHTSA would have been
16 an existential threat to the Toyota-ZF-ST Enterprise. Instead, and in pursuit of ill-
17 gotten profits, they each kept key information about the ACU Defect hidden for
18 years. This concealment of material facts about the ACU Defect was grounded in
19 and advanced their scheme to defraud consumers through the continued sale of
20 Toyota Class Vehicles, and avoidance of costly recalls and their attendant
21 reputational harms.

22 1872. Toyota USA, Toyota Sales USA, Toyota Engineering USA, ZF
23 Electronics USA, ZF Passive Safety USA, ZF Automotive USA, ZF TRW Corp.,
24 ZF Germany, ST USA, ST Italy, ST Malaysia, and nonparty Toyota Japan's
25 concealment of the ACU Defect violated several independent duties to disclose it.³²

26 _____
27 ³² As vehicle manufacturers and component parts suppliers, Defendants are also
28 subject to statutory duties to disclose known safety defects to consumers and to
NHTSA pursuant to the Safety Act and its attendant regulations. *See, e.g.*, 49

- 1 a. Toyota USA, Toyota Sales USA, Toyota Engineering USA, ZF
2 Electronics USA, ZF Passive Safety USA, ZF Automotive USA,
3 ZF TRW Corp., ZF Germany, ST USA, ST Italy, ST Malaysia,
4 and nonparty Toyota Japan each had a duty to disclose the ACU
5 Defect because of their exclusive knowledge and far superior
6 information about the ACU Defect.
- 7 b. These Defendants and nonparty Toyota Japan knew about the
8 vulnerability of the DS84 ACU and ASIC to EOS through their
9 exclusive access to information about their design, development,
10 and testing, and through their confidential and proprietary
11 investigations into suspicious incidents. Given the ACU
12 Defect’s hidden and technical nature, Plaintiffs and consumers
13 lack the sophisticated expertise in vehicle components and
14 electrical phenomena that would be necessary to discover the
15 ACU Defect on their own.
- 16 c. In addition, Toyota USA, Toyota Sales USA, Toyota
17 Engineering USA, ZF Electronics USA, ZF Passive Safety
18 USA, ZF Automotive USA, ZF TRW Corp., ZF Germany, ST

19 _____
20 U.S.C. § 30118(c) (“A manufacturer of a motor vehicle . . . shall notify the
21 Secretary by certified mail or electronic mail, and the owners, purchasers, and
22 dealers of the vehicle . . . as provided in section 30119(d) of this section, if the
23 manufacturer . . . learns the vehicle . . . contains a defect and decides in good faith
24 that the defect is related to motor vehicle safety.”); 49 U.S.C. §30119(d)
25 (manufacturers must notify “each person registered . . . as the owner and whose
26 name and address are reasonably ascertainable”); 49 C.F.R. §573.6(a) (“Each
27 manufacturer shall furnish a report to the NHTSA for each defect . . . in his items of
28 original . . . equipment that he . . . determines to be related to motor vehicle
safety.”). Plaintiffs previously pled Defendants had a duty to disclose based on
these provisions of the Safety Act, but the Court dismissed an omissions theory
based these alleged duties. Plaintiffs reserve the right to appeal this decision at a
later date, but do not rely upon the Safety Act as a basis for their omissions theory
in this pleading.

1 USA, ST Italy, ST Malaysia, and nonparty Toyota Japan also
2 each had a duty to disclose because they knew that a defect in
3 the Toyota Class Vehicles and their DS84 ACUs and ASICs
4 gave rise to serious safety concerns for the consumers who use
5 the vehicles. As sophisticated and well-funded corporate entities
6 that generate billions of dollars in annual revenue from work in
7 the automotive industry, each of these Defendants and nonparty
8 Toyota Japan knew that this information would have been
9 material to consumers. For example, a February 3, 2004,
10 prospectus filed by ZF TRW Corp. with the SEC observed that
11 “85 percent of recent auto purchasers stated that they look for
12 vehicle safety information before making their final decision.”
13 Nonetheless, Defendants and nonparty Toyota Japan still did not
14 disclose it.

15 d. Toyota USA, Toyota Sales USA, Toyota Engineering USA, ZF
16 Electronics USA, ZF Passive Safety USA, ZF Automotive USA,
17 ZF TRW Corp., ZF Germany, and nonparty Toyota Japan also
18 each had a duty to disclose the ACU Defect because of the
19 actions they took to conceal the ACU Defect in the Toyota Class
20 Vehicles from consumers. Each of these Defendants and
21 nonparty Toyota Japan acted to suppress the truth about the
22 ACU Defect through their misleading representations to
23 NHTSA. *See* Sections IV.F.2., IV.F.4., IV.F.8., IV.F.14.,
24 IV.F.20., and IV.F.22. Because a truthful and accurate
25 disclosure to NHTSA would have been material to NHTSA’s
26 decision whether to require a recall or expand its investigation
27 into the DS84 ACUs and ASICs, the affirmative steps they took
28 to mislead NHTSA about the ACU Defect also precluded the

1 Toyota Plaintiffs and Nationwide Toyota Class members from
2 an opportunity that otherwise have led to their discovery of the
3 truth about the ACU Defect.

4 e. Finally, Toyota USA, Toyota Sales USA, Toyota Engineering
5 USA, and nonparty Toyota Japan affirmatively presented
6 reassuring information about the Toyota Class Vehicles’
7 airbags, seatbelts, and overall safety to consumers (*see* Sections
8 IV.E.1 and I.V.E.2. above). Because they opted to make these
9 representations to consumers about these topics, and because it
10 knew information about the ACU Defect that made those
11 representations misleading or untrue, Toyota USA, Toyota
12 Engineering, Toyota Sales USA, and nonparty Toyota Japan
13 were under a separate duty to disclose the full truth about the
14 ACU Defect that materially undermined the reassuring
15 information they presented, or caused to be presented, to
16 consumers.

17 1873. Toyota USA, Toyota Sales USA, Toyota Engineering USA, ZF
18 Electronics USA, ZF Passive Safety USA, ZF Automotive USA, ZF TRW Corp.,
19 ZF Germany, ST USA, ST Italy, ST Malaysia, and nonparty Toyota Japan knew
20 and intended that NHTSA would rely on their and the other members of the
21 Toyota-ZF-ST Enterprise’s material omissions about the Toyota Class Vehicles to
22 approve them for importation, marketing, and sale to consumers in the United
23 States. And conversely, they also understood that disclosing the ACU Defect would
24 require them to recall and fix the Toyota Class Vehicles, which would negatively
25 impact the profits of the Toyota-ZF-ST Enterprise.

26 1874. Toyota USA, Toyota Sales USA, Toyota Engineering USA, ZF
27 Electronics USA, ZF Passive Safety USA, ZF Automotive USA, ZF TRW Corp.,
28 ZF Germany, ST USA, ST Italy, ST Malaysia, and nonparty Toyota Japan also

1 knew and intended that consumers would rely on their and the other members of the
2 Toyota-ZF-ST Enterprise's material omissions when deciding to purchase or lease
3 the Toyota Class Vehicles. The Toyota Plaintiffs' reliance on this concealment is
4 demonstrated by the fact that they paid money for Toyota Class Vehicles that never
5 should have been introduced into the U.S. stream of commerce, and that they
6 overpaid for vehicles with defective safety systems without knowledge of the ACU
7 Defect.

8 **c. The Toyota-ZF-ST Enterprise was an association-in-fact**
9 **enterprise with a common purpose of misleading consumers**
10 **and NHTSA regarding the ACU Defect in Toyota Class**
11 **Vehicles.**

12 1875. The Toyota-ZF-ST Enterprise had a common purpose and ongoing
13 organization and functioned as a continuing unit.

14 **i. The Toyota-ZF-ST Enterprise had a common purpose.**

15 1876. The common purpose of the Toyota-ZF-ST Enterprise was to
16 perpetuate a fraudulent scheme to maximize sales and leases of Toyota Class
17 Vehicles while hiding the ACU Defect from purchasers and lessees. Because all of
18 the Enterprise members' continued profits from this scheme ultimately depended on
19 consumers purchasing or leasing Toyota Class Vehicles, the Enterprise needed to
20 convince consumers of a false premise: that Toyota Class Vehicles had properly
21 functioning airbags and seatbelts. Toward this end, the Enterprise needed to mislead
22 consumers. For this scheme to work, it was also essential for the Enterprise to
23 conceal the ACU Defect from NHTSA, because the agency could halt the sale of
24 Toyota Class Vehicles and require recalls that necessarily require public notice of a
25 defect. The expense of these recalls would undermine the profitability of the
26 scheme.

27 1877. This common purpose served the interests of all members of the
28 Toyota-ZF-ST Enterprise. By concealing and minimizing the ACU Defect, Toyota

1 USA, Toyota Sales USA, Toyota Engineering USA, ZF Electronics USA, ZF
2 Passive Safety USA, ZF Automotive USA, ZF TRW Corp., ZF Germany, ST USA,
3 ST Italy, ST Malaysia, and the nonparty-Enterprise members (Toyota Japan and the
4 Toyota manufacturing subsidiaries) maximized their revenue by selling as many
5 Toyota Class Vehicles as possible while avoiding or limiting the substantial costs to
6 recall and repair the Toyota Class Vehicles and their defective DS84 ACUs and
7 ASICs.

8 1878. The common purpose of the Toyota-ZF-ST Enterprise is evidenced by
9 Toyota USA's, Toyota Sales USA's, Toyota Engineering USA's, ZF Electronics
10 USA's, ZF Passive Safety USA's, ZF Automotive USA's, and nonparty Toyota
11 Japan's repeated, confidential consultations with one another about suspicious
12 crashes involving Toyota Class Vehicles, problems with the design of the DS84
13 ACU and ASIC, observations of EOS on DS84 ACUs and ASICs, and dangerous
14 safety system malfunctions in Toyota Class Vehicles. As the Court has held,
15 consultations about "observed evidence of EOS in Class Vehicles" among
16 Defendants "support[s] a reasonable inference" of a "common purpose of
17 misleading consumers and NHTSA as to the existence of a defect in the ACUs."
18 ECF 396 at 61.

19 1879. The common purpose of the Toyota-ZF-ST Enterprise is further
20 evidenced by ST USA, ST Italy, and ST Malaysia's repeated communications with
21 ZF Electronics USA, ZF Passive Safety USA, and ZF Automotive USA about
22 observations of EOS in Toyota Class Vehicles. ZF Electronics USA, ZF Passive
23 Safety USA, and ZF Automotive USA would regularly share this information with
24 Toyota Japan, Toyota USA, Toyota Engineering USA, and Toyota Sales USA by
25 copying excerpts of the reports received from ST USA, ST Italy, and ST Malaysia
26 and sending them to Toyota Japan, who would then share them with Toyota USA,
27 Toyota Engineering USA, and Toyota Sales USA.

28

1 1880. The common purpose of the Toyota-ZF-ST Enterprise is also
2 evidenced by coordinated efforts by Toyota Japan, Toyota USA, Toyota
3 Engineering USA, Toyota Sales USA, ZF Electronics USA, ZF Passive Safety
4 USA, ZF Automotive USA, and ZF Germany to mislead NHTSA about the
5 existence and scope of the ACU Defect by wrongly blaming wire harnesses for
6 safety system malfunctions that were caused by the ACU Defect.

7 **ii. The Toyota-ZF-ST Enterprise had an ongoing**
8 **organization.**

9 1881. The participation of separate entities or individuals that have an
10 existence outside an alleged enterprise is evidence of an ongoing organization with
11 its own structure, separate and apart from its members. Toyota USA, Toyota
12 Engineering USA, Toyota Sales USA, ZF Electronics USA, ZF Passive Safety
13 USA, ZF Automotive USA, ZF TRW Corp., ZF Germany, ST USA, ST Italy, ST
14 Malaysia, the nonparty-Enterprise members (Toyota Japan and the Toyota
15 manufacturing subsidiaries) each existed separately from the Toyota-ZF-ST
16 Enterprise.

- 17 a. During the relevant period, Toyota Japan contemporaneously
18 designed, manufactured, and sold many vehicles that do not
19 contain defective DS84 ACUs and ASICs.
- 20 b. During the relevant period, Toyota Engineering USA, Toyota
21 USA, and Toyota Sales USA contemporaneously provided
22 services to Toyota Japan relating to a large volume of vehicles
23 that do not contain defective DS84 ACUs and ASICs.
- 24 c. During the relevant period, the Toyota manufacturing
25 subsidiaries manufactured Toyota vehicles that do not contain
26 defective DS84 ACUs and ASICs.
- 27 d. During the relevant period, ST USA, ST Italy, and ST Malaysia
28 contemporaneously sold, designed, and/or manufactured many

1 other products aside from the defective DS84 ASICs used in the
2 defective DS84 ACUs.

3 e. During the relevant period, ZF Passive Safety USA, ZF
4 Electronics USA, and ZF Automotive USA contemporaneously
5 designed, made, and/or sold many other automotive parts aside
6 from the defective DS84 ACUs.

7 f. During the relevant time period, ZF TRW Corp. and ZF
8 Germany also engaged in a wide variety of business activities
9 unrelated to the defective DS84 ACUs.

10 1882. Another hallmark of an ongoing organization is members with
11 delineated roles that further the organization's goals. Each member performed
12 important and separate roles within the Toyota-ZF-ST Enterprise organization.

13 a. ZF Electronics USA, ZF Passive Safety USA, and ZF
14 Automotive USA jointly designed the defective DS84 ACU for
15 use in the Toyota Class Vehicles, with Toyota Japan's, ST
16 Italy's, and ST USA's input.

17 b. ST Italy and ST USA jointly designed the defective DS84 ASIC,
18 with input from ZF Electronics USA, ZF Passive Safety USA,
19 and ZF Automotive USA.

20 c. ST Malaysia manufactured the defective DS84 ASICs and
21 shipped them to ST USA in California.

22 d. ST USA sold and shipped the defective DS84 ASIC to ZF
23 Electronics USA.

24 e. Nonparty Toyota Japan designed the Toyota Class Vehicles, and
25 made many of them in Japan. Toyota Japan required any
26 company that made Toyota Class Vehicles to strictly follow its
27 designs. For the Toyota Class Vehicles made by Toyota Japan,
28 Toyota Japan added permanent labels to each vehicle that

- 1 certified compliance with U.S. Federal safety standards, as well
2 as readiness indicators and in-vehicle airbag labels and imprints.
- 3 f. The nonparty Toyota manufacturing subsidiaries made Toyota
4 Class Vehicles by strictly following the mandatory design
5 specifications provided by Toyota Japan. For the Toyota Class
6 Vehicles made by these subsidiaries, Toyota Japan's mandatory
7 designs required the manufacturer to add permanent labels to
8 each vehicle that certified compliance with U.S. Federal safety
9 standards, as well as readiness indicators and in-vehicle airbag
10 labels and imprints.
- 11 g. Toyota USA responded to NHTSA's investigation on behalf of
12 Toyota Japan, Toyota Engineering USA, and Toyota Sales USA.
13 Toyota USA also oversaw the content of Monroney labels and
14 shared responsibility for those labels on Toyota Class Vehicles
15 with Toyota Sales USA. Toyota USA also oversaw and
16 approved the content of Monroney labels for the Toyota Class
17 Vehicles.
- 18 h. Toyota Sales USA created the Monroney labels for Toyota Class
19 Vehicles and caused them to be affixed to each Toyota Class
20 Vehicles prior to their shipment to authorized Toyota dealers. It
21 also distributed the Toyota Class Vehicles to dealers, so they
22 could be sold to consumers with misleading Monroney labels
23 and the in-vehicle statements required by Toyota Japan's
24 mandatory design specifications. Toyota Sales USA was also
25 responsible for all misleading advertising to consumers.
- 26 i. Toyota Engineering USA was responsible for procuring the
27 defective DS84 ACUs from ZF Electronics USA. Toyota
28 Engineering USA also filed misleading statements with NHTSA

1 purporting to justify the decision not to recall many of the
2 Toyota Class Vehicles.

3 j. ZF TRW Corp. and ZF Germany approved actions taken by ZF
4 Electronics USA, ZF Passive Safety USA, and ZF Automotive
5 USA, and participated directly in making misleading statements
6 to NHTSA about the ACU Defect.

7 k. Each of the Defendants separately ensured that NHTSA and
8 consumers did not discover the ACU Defect.

9 1883. The Enterprise members dedicated personnel to the Toyota-ZF-ST
10 Enterprise's common goals, which further evidences the ongoing structure of the
11 Toyota-ZF-ST Enterprise. For example, ZF Electronics USA, ZF Passive Safety
12 USA, and ZF Automotive USA dedicated an entire applications team to implement
13 the defective DS84 ACUs in Toyota Class Vehicles in 2008. Tom Wilson, a ZF
14 Passive Safety USA employee, was a member of this team.

15 1884. When the passenger safety systems in Toyota vehicles repeatedly
16 malfunctioned due to the ACU Defect over the course of several years (starting at
17 least as early as 2010), Toyota USA, Toyota Engineering USA, Toyota Sales USA,
18 and nonparty Toyota Japan routinely sought the involvement and assistance of ZF
19 Electronics USA, ZF Passive Safety USA, ZF Automotive USA, ST Italy, ST USA,
20 and ST Malaysia. These Defendants repeatedly coordinated, directly or indirectly,
21 with Toyota USA, Toyota Engineering USA, Toyota Sales USA, and Toyota Japan
22 on the ACU Defect and related malfunctions, including by assigning several
23 investigations for Toyota Class Vehicles to the same personnel. For example, ZF
24 Electronics USA, ZF Passive Safety USA, and ZF Automotive USA assigned
25 Emanuel Goodman with the task of analyzing DS84 ACUs from Toyota Class
26 Vehicles. [REDACTED]

27 [REDACTED]
28 [REDACTED]

1 1885. In 2018 and 2019, in-house lawyers and senior executives for ZF
2 Electronics USA, ZF Passive Safety USA, ZF Automotive USA, ST USA, and ST
3 Italy repeatedly spoke with each other concerning NHTSA’s investigation into the
4 DS84 ACUs and Toyota Class Vehicles.

5 1886. Nonparty Toyota Japan, on the other hand, dedicated members of a
6 Toyota Japan design group called “3SJ” to participate in weekly meetings about the
7 ACU Defect with ZF Electronics USA, ZF Passive Safety USA, and ZF
8 Automotive USA between 2018 and 2019. During those years, this group held
9 approximately weekly conference calls with the ZF team consisting of Emanuel
10 Goodman and Raad Konja, among others. Moreover, although ZF Automotive
11 USA and its subsidiaries contracted with Toyota Engineering USA, ZF Automotive
12 USA treated Toyota Japan’s Group Manager Tsutomu Kondo as its primary point
13 of contact with regards to the ACUs with the DS84 ASIC.

14 1887. When NHTSA began to investigate the defective DS84 ACUs in 2015,
15 ZF Electronics USA, ZF Passive Safety USA, ZF Automotive USA, ZF Germany,
16 and ZF TRW Corp. maintained the organization of the Toyota-ZF-ST Enterprise by
17 sending excerpts of their misleading communications with NHTSA to Toyota
18 Japan, ST USA, ST Italy, and ST Malaysia. Upon information and belief, Toyota
19 Japan would share this information with Toyota Engineering USA, Toyota USA,
20 and Toyota Sales USA. This allowed the participants in the Toyota-ZF-ST
21 Enterprise to coordinate their efforts to downplay the ACU Defect and avoid and
22 minimize recalls.

23 **iii. The Toyota-ZF-ST Enterprise functioned as a**
24 **continuing unit.**

25 1888. The Toyota-ZF-ST Enterprise continued to function for several years,
26 at least during the time period of 2008 to the present. Although Toyota Sales USA
27 stopped distributing new Class Vehicles with the DS84 ACU in 2018 or 2019,
28 Toyota Class Vehicles continue to sell on the used car market with misleading in-

1 vehicle statements and consumer-facing marketing (such as vehicle brochures)
2 made by the Toyota-ZF-ST Enterprise.

3 1889. During this protracted time of ongoing sale and production of the
4 Toyota Class Vehicles, the members of the Toyota-ZF-ST Enterprise remained
5 stable, with Toyota USA, Toyota Engineering USA, Toyota Sales USA, ZF
6 Electronics USA, ZF Passive Safety USA, ZF Automotive USA, ZF TRW Corp.,
7 ST USA, ST Malaysia, ST Italy, and the nonparty-Enterprise members (Toyota
8 Japan and the Toyota Manufacturing subsidiaries) remaining active members of the
9 Toyota-ZF-ST Enterprise. ZF Germany, on the other hand, started to participate in
10 the Toyota-ZF-ST Enterprise shortly after acquiring ZF TRW Corp. in 2015.

11 **d. The Toyota-ZF-ST Enterprise’s pattern of racketeering**
12 **caused Toyota Plaintiffs and the Nationwide Toyota Class**
13 **members to overpay for Toyota Class Vehicles at the point**
14 **of sale or lease.**

15 1890. Toyota Plaintiffs and Nationwide Toyota Class members are
16 “person[s] injured in his or her business or property” by reason of the Toyota-ZF-
17 ST Enterprise’s RICO violations, within the meaning of 18 U.S.C. § 1964. Toyota
18 Plaintiffs and Nationwide Toyota Class members are entitled to bring this action for
19 three times their actual damages, as well as injunctive/equitable relief, costs, and
20 reasonable attorneys’ fees pursuant to 18 U.S.C. § 1964(c).

21 1891. Because of the Toyota-ZF-ST Enterprise’s pattern of racketeering
22 activity, Toyota Plaintiffs and Nationwide Toyota Class members have been injured
23 in their business and/or property through their overpayment at the time of purchase
24 or lease for Toyota Class Vehicles with an undisclosed safety defect.

25 1892. By making misleading statements and omissions at or before the point
26 of sale or lease, the Toyota-ZF-ST Enterprise directly or indirectly obtained money
27 from Toyota Plaintiffs and the Nationwide Toyota Class by means of materially
28 false or fraudulent misrepresentations and omissions of material facts. Had the

1 Toyota Plaintiffs known what the Toyota-ZF-ST Enterprise members knew about
2 the ACU Defect, Toyota Plaintiffs and Nationwide Toyota Class members would
3 not have purchased the Toyota Class Vehicles, or would not have paid as much as
4 they did for them.

5 1893. Had Toyota USA, Toyota Sales USA, Toyota Engineering USA, ZF
6 Electronics USA, ZF Passive Safety USA, ZF Automotive USA, ZF TRW Corp.,
7 ZF Germany, ST USA, ST Malaysia, or nonparty Toyota Japan not concealed, and
8 instead decided to disclose, the information they knew about the ACU Defect and
9 its impact on vehicle safety, Plaintiffs would have learned of the disclosure.

10 a. Toyota Plaintiffs and Nationwide Toyota Class members would
11 have learned about the ACU Defect through any of the channels
12 through the Toyota Class Vehicles were marketed to them. In
13 other words, had Toyota Sales USA, Toyota USA, and/or
14 nonparty Toyota Japan made a disclosure in *any* of the places in
15 which it otherwise communicated information about the Toyota
16 Class Vehicles, Toyota Plaintiffs and Nationwide Toyota Class
17 members would have seen it. This includes in Toyota Class
18 Vehicle brochures and other advertising, on Monroney labels,
19 certification labels, in-vehicle airbag labels, airbag warning
20 lamps, and in owner's manuals.

21 b. Further, Toyota Plaintiffs and Nationwide Toyota Class
22 members would have learned about the ACU Defect at the times
23 and places that they purchased or leased their Toyota Class
24 Vehicles. For example, had Toyota USA or Toyota Sales USA
25 made a disclosure about the ACU Defect to authorized Toyota
26 dealerships, sales personnel at the dealerships would have
27 passed on that material information to consumers at the time of
28 the contemplated purchases.

1 c. Had any of the Defendants listed above or nonparty Toyota
2 Japan disclosed the true scope and existence of the ACU Defect
3 to NHTSA, Toyota Plaintiffs and Nationwide Toyota Class
4 members would have learned of it because NHTSA would have
5 considered this information material to its decision to require a
6 recall, which information would have been made public and
7 passed onto impacted consumers.

8 d. Had any of the Defendants listed above or nonparty Toyota
9 Japan disclosed the true scope and existence of the ACU Defect
10 to consumers or the public, either through press releases, on
11 their websites, or in any other public channel or forum, Toyota
12 Plaintiffs and Nationwide Toyota Class members would have
13 learned of it due to the materiality of this information about a
14 serious safety defect in millions of vehicles. Given the
15 seriousness of the information and the number of vehicles
16 impacted, the news media and consumer forums and blogs
17 would pick up the story. This is particularly so in the wake of
18 the massive Takata recall and litigation, which confirmed the
19 strong public interest in airbags and vehicle safety. For example,
20 an April 23, 2019 article available on ConsumerReports.com
21 described NHTSA’s expanded investigation into the DS84
22 ACUs to be “the agency’s most in-depth look at airbags since
23 the recall of more than 56 million airbags made by Takata.”

24 1894. The Toyota-ZF-ST Enterprise’s misleading statements to NHTSA
25 between 2016 and the present were essential to the scheme because NHTSA would
26 not have allowed continued sale of unremedied Toyota Class Vehicles with
27 defective DS84 ACUs and ASICs. At the very least, these misleading statements
28 delayed NHTSA’s broader investigation of the Toyota Class Vehicles until April

1 2019, when NHTSA launched an Engineering Analysis covering all unrecalled
2 Toyota Class Vehicles. Upon information and belief, ZF Electronics USA stopped
3 making DS84 ACUs for the 2020 model year based in large part on this
4 investigation. Accordingly, ZF Electronics USA would have stopped making DS84
5 ACUs if NHTSA had launched a broader investigation in 2016. For this reason, the
6 Toyota Plaintiffs who purchased and leased Toyota Class Vehicles after the first
7 misleading statement to NHTSA by the Toyota-ZF-ST Enterprise would have
8 avoided purchasing or leasing their Toyota Class Vehicles entirely, or they would
9 have paid less for them.

10 1895. Consumers are the only direct victims of the Toyota-ZF-ST
11 Enterprise's alleged fraudulent and misleading statements to NHTSA. NHTSA has
12 not suffered any reported, direct injury as a result of such conduct.

13 1896. Damages will not be difficult to ascertain; the Toyota Plaintiffs and the
14 Nationwide Toyota Class members' damages are the difference between what they
15 paid for Toyota Class Vehicles without an ACU Defect, and the value of the Toyota
16 Class Vehicles they actually received. In the similar *Takata* airbag litigation, for
17 example, plaintiffs also alleged overpayment damages suffered at the point of sale
18 based on a dangerous airbag defect. Plaintiffs' experts in that case performed a
19 conjoint analysis using surveys of consumers and found that the price premium paid
20 by class members was at least ten percent of the purchase price. A similar analysis
21 could be performed in this litigation. Other methodologies are also viable.

22 1897. All victims of Defendants' alleged conduct who claim to have
23 overpaid for the purchase or lease of Toyota Class Vehicles are within the alleged
24 Nationwide Toyota Class. Consequently, there are no issues with respect to
25 reapportionment or multiple recovery.

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1 **6. Nationwide Count 6: Violations of the Racketeer Influenced**
2 **Corrupt Organizations Act, 18 U.S.C. § 1962(d), on Behalf of the**
3 **Toyota Nationwide Class Against Toyota USA, Toyota Sales USA,**
4 **Toyota Engineering USA, ZF Electronics USA, ZF Passive Safety**
5 **USA, ZF Automotive USA, ZF TRW Corp., ZF Germany, ST**
6 **USA, ST Italy, and ST Malaysia.**

7 1898. Plaintiffs reallege and incorporate by reference all preceding
8 allegations as though fully set forth herein.

9 1899. It is unlawful “for any person to conspire to violate” 18 U.S.C. §
10 1962(c). *See* 18 U.S.C. § 1962(d). To conspire in violation of section 1962(c), the
11 defendant must be “aware of the essential nature and scope of the enterprise.” ECF
12 396 at 77. Enterprise members conspire to violate section 1962(c) when “two or
13 more people agree[] to commit a crime” and “knowingly and willfully participate[]
14 in the agreement. . . . The illegal agreement need not be express as long as its
15 existence can be inferred from the words, actions, or interdependence of activities
16 and persons involved.” *Id.* A defendant who “agreed to facilitate a scheme” violates
17 section 1962(d) even if he “does not himself commit or agree to commit the two or
18 more predicate acts requisite to the underlying offense.” *Salinas v. United States*,
19 522 U.S. 52, 65-66 (1997).

20 1900. As explained in the section below, Toyota USA, Toyota Sales USA,
21 Toyota Engineering USA, ZF Electronics USA, ZF Passive Safety USA, ZF
22 Automotive USA, ZF TRW Corp., ZF Germany, ST USA, ST Italy, ST Malaysia
23 and nonparty Toyota Japan were aware of the essential nature and scope of the
24 Toyota-ZF-ST Enterprise. Count 5 describes this Enterprise.

25 1901. As explained in the section below, based on their words, actions,
26 and/or interdependence, Toyota USA, Toyota Sales USA, Toyota Engineering
27 USA, ZF Electronics USA, ZF Passive Safety USA, ZF Automotive USA, ZF
28 TRW Corp., ZF Germany and nonparty Toyota Japan agreed to facilitate the
 following acts of mail and wire fraud:

- 1 a. Toyota Sales USA's interstate shipments between 2010 and
- 2 2019 of millions of Toyota Class Vehicles with misleading
- 3 Monroney labels, readiness indicators, in-vehicle airbag labels
- 4 and imprints, and owner's manuals, and
- 5 b. ZF Electronics USA's interstate shipments between 2010 and
- 6 2019 of millions of DS84 ACUs to the nonparty-Enterprise-
- 7 member Toyota manufacturing subsidiaries.

8 1902. As explained in the section below, based on their words, actions,
9 and/or interdependence, ZF Electronics USA, ZF Passive Safety USA, ST USA, ST
10 Italy, and ST Malaysia also agreed to facilitate the following acts of mail fraud:

- 11 a. ZF Electronics USA's interstate shipments between 2010 and
- 12 2019 of millions of DS84 ACUs to the nonparty-Enterprise-
- 13 member Toyota manufacturing subsidiaries;
- 14 b. ST Malaysia's interstate shipments between 2010 and 2019 of
- 15 millions of DS84 ASICs to ST USA in California; and
- 16 c. ST USA's interstate shipments between 2010 and 2019 of
- 17 millions DS84 ASICs to ZF Electronics USA in Illinois.

18 1903. The words, actions, or interdependence of activities of each of these
19 Defendants support the inference of agreement.

20 1904. Accordingly, Toyota USA, Toyota Sales USA, Toyota Engineering
21 USA, ZF Electronics USA, ZF Passive Safety USA, ZF Automotive USA, ZF
22 TRW Corp., ZF Germany, ST USA, ST Italy, and ST Malaysia each violated 18
23 U.S.C. § 1962(d).

24 1905. These violations caused the same injuries and damages described in
25 the prior Count. This Count incorporates by reference the allegations as to injury,
26 damages, and causation from the prior Count.

27 1906. Toyota USA, Toyota Sales USA, Toyota Engineering USA, ZF
28 Electronics USA, ZF Passive Safety USA, ZF Automotive USA, ZF TRW Corp.,

1 ZF Germany, ST USA, and ST Malaysia each violated 18 U.S.C. § 1962(c) and
2 injured the business or property of the Toyota Plaintiffs and the Nationwide Toyota
3 Class. The Toyota Plaintiffs claim damages for themselves and the Nationwide
4 Toyota Class members under 18 U.S.C. § 1964(c).

5 **a. Toyota USA, Toyota Sales USA, Toyota Engineering USA,**
6 **ZF Electronics USA, ZF Passive Safety USA, ZF Automotive**
7 **USA, ZF TRW Corp., ZF Germany, ST USA, ST Italy, and**
8 **ST Malaysia were all aware of the essential nature and scope**
 of the Toyota-ZF-ST Enterprise.

9 1907. Each Defendant named in this Count was aware of the essential nature
10 and scope of the Toyota-ZF-ST Enterprise, even if some specific details about the
11 Enterprise’s illegal activities and members were unknown.

12 **i. Toyota Japan, Toyota USA, Toyota Sales USA, and**
13 **Toyota Engineering USA understood the nature and**
14 **scope of the Toyota-ZF-ST Enterprise’s fraudulent**
15 **scheme.**

16 1908. Toyota USA, Toyota Sales USA, Toyota Engineering USA, and
17 nonparty Toyota Japan were aware of the essential nature and scope of the Toyota-
18 ZF-ST Enterprise.

19 1909. Nonparty Toyota Japan always knew of the activities of Toyota Sales
20 USA, Toyota USA, and Toyota Engineering USA and their role in the Enterprise
21 because it owns these companies and monitors their activities. Likewise, Toyota
22 USA knew of the activities of Toyota Sales USA and Toyota Engineering USA and
23 their role in the Enterprise because it owns these companies and monitors their
24 activities.

25 1910. As explained in Section IV.D.5. above, Toyota USA, Toyota
26 Engineering USA, Toyota Sales USA and nonparty Toyota Japan knew about the
27 nature and scope of the ACU Defect.
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1 1911. Between 2008 and 2019, Toyota USA, Toyota Sales USA, Toyota
2 Engineering USA, and nonparty Toyota Japan knew that the STMicroelectronics
3 companies were responsible for designing and manufacturing the DS84 ASIC for
4 the DS84 ACUs used in Toyota Class Vehicles.

5 1912. Between 2008 and the present, Toyota USA, Toyota Sales USA,
6 Toyota Engineering USA, and nonparty Toyota Japan have continuously tracked
7 the volume of sales of Toyota makes and models in the United States. Accordingly,
8 during the relevant time period, they knew roughly how many Toyota Class
9 Vehicles would likely sell in the United States.

10 1913. During each year between 2008 and the present, Toyota USA, Toyota
11 Sales USA, Toyota Engineering USA, and nonparty Toyota Japan knew that
12 reassuring certification labels, in-vehicle airbag labels and imprints, and readiness
13 indicators would be placed in Toyota Class Vehicles prior to the shipment to
14 dealers in the United States. They knew this would occur because Toyota Japan's
15 mandatory designs required these statements to be placed in Toyota Class Vehicles.
16 Toyota USA, Toyota Sales USA, Toyota Engineering USA, and nonparty Toyota
17 Japan knew that consumers would rely on some or all of these in-vehicle labels
18 when purchasing or leasing Toyota Class Vehicles.

19 1914. During each year between 2008 and the present, Toyota USA, Toyota
20 Sales USA, Toyota Engineering USA, and nonparty Toyota Japan knew that
21 Toyota Sales USA would advertise the Toyota Class Vehicles as safe vehicles with
22 properly functioning airbags and seatbelts. Toyota USA, Toyota Sales USA, Toyota
23 Engineering USA, and nonparty Toyota Japan knew that consumers would rely on
24 such advertisements when purchasing or leasing Toyota Class Vehicles.

25 1915. During each year between 2008 and the present, Toyota USA, Toyota
26 Sales USA, Toyota Engineering USA, and nonparty Toyota Japan knew that
27 Toyota Sales USA would ship Toyota Class Vehicles with owner's manuals that
28 include misleading statements about the safety systems, airbags, and seatbelts of the

1 Toyota Class Vehicles. Likewise, each of these Defendants and nonparty Toyota
2 Japan knew that Toyota Sales USA and Toyota USA would create and affix
3 Monroney stickers with misleading statements about airbags and seatbelts to
4 Toyota Class Vehicles. Toyota USA, Toyota Sales USA, Toyota Engineering USA,
5 and nonparty Toyota Japan knew that consumers would rely on the Monroney
6 labels and manuals when purchasing or leasing Toyota Class Vehicles.

7 1916. During each year between 2008 and the present, Toyota USA, Toyota
8 Sales USA, Toyota Engineering USA, and nonparty Toyota Japan knew that
9 complying with Toyota Japan's mandatory design specifications for Toyota Class
10 Vehicles would require Toyota Engineering USA to place orders with ZF
11 Electronics USA, and for ZF Electronics USA to use mail or private interstate
12 carriers to ship the defective DS84 ACUs to the plants that manufacture Toyota
13 Class Vehicles.

14 1917. During each year between 2008 and the present, Toyota USA, Toyota
15 Sales USA, Toyota Engineering USA, and nonparty Toyota Japan knew that
16 Toyota Sales USA would, as a result of its direction to do so, cause the Toyota
17 Class Vehicles to ship from manufacturing plants to automobile dealers across the
18 United States.

19 1918. Nonparty Toyota Japan and Toyota USA knew in 2016 that ZF
20 Electronics USA, ZF Passive Safety USA, ZF Automotive USA, ZF TRW Corp.,
21 and ZF Germany had made misleading statement to NHTSA about the ACU Defect
22 because in early 2016 they received copies of the misleading slide deck dated
23 February 5, 2016.

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1 **ii. ZF Automotive USA, ZF Electronics USA, ZF Passive**
2 **Safety USA, ZF TRW Corp., and ZF Germany**
3 **understood the nature and scope of the Toyota-ZF-ST**
4 **Enterprise’s fraudulent scheme.**

5 1919. ZF Automotive USA, ZF Electronics USA, ZF Passive Safety USA,
6 ZF TRW Corp., and ZF Germany were aware of the essential nature and scope of
7 the Toyota-ZF-ST Enterprise.

8 1920. As explained in Section IV.D.1., IV.D.2., and IV.D.5. above, ZF
9 Automotive USA, ZF Electronics USA, ZF Passive Safety USA, ZF TRW Corp.,
10 and ZF Germany were aware of the nature and scope of the ACU Defect.

11 1921. ZF Automotive USA, ZF Electronics USA, ZF Passive Safety USA,
12 ZF TRW Corp., and ZF Germany knew the approximate number of Toyota Class
13 Vehicles because it made the ACUs for those vehicles.

14 1922. ZF Automotive USA, ZF Electronics USA, ZF Passive Safety USA,
15 ZF TRW Corp., and ZF Germany knew that nonparty Toyota Japan or its
16 subsidiaries would, consistent with common practice in the automotive industry,
17 make reassuring statements about the Toyota Class Vehicle’s safety systems,
18 airbags, and seatbelts.

19 **iii. ST USA, ST Italy, and ST Malaysia understood the**
20 **nature and scope of the Toyota-ZF-ST Enterprise’s**
21 **fraudulent scheme.**

22 1923. ST USA, ST Italy, and ST Malaysia were aware of the essential nature
23 and scope of the Toyota-ZF-ST Enterprise.

24 1924. As explained in Section IV.D.1., IV.D.2., and IV.D.5. above, ST USA,
25 ST Italy, and ST Malaysia were aware of the nature and scope of the ACU Defect.

26 1925. Upon information and belief, ST Italy, ST Malaysia, and ST USA
27 knew the defective DS84 ASICs would be installed the Toyota Class Vehicles.
28 These companies also understood that automakers like the Toyota Defendants

1 would, consistent with common practice in the automotive industry, advertise their
2 safety systems to consumers, and that those safety systems would not work
3 properly as a result of the DS84 ASIC's vulnerability to EOS.

4 1926. ST USA, ST Malaysia, and ST Italy were aware of the large scope of
5 the Toyota-ZF-ST Enterprise, among other reasons because ST Malaysia and ST
6 USA made and sold the DS84 ASICs for the Toyota Class Vehicles and all these
7 companies had access to records that showed that millions of defective DS84
8 ASICs were shipping to Illinois per ZF Electronics USA's instructions.

9 **b. Toyota USA, Toyota Sales USA, Toyota Engineering USA,**
10 **ZF Automotive USA, ZF Electronics USA, ZF Passive Safety**
11 **USA, ZF TRW Corp., ZF Germany, and nonparty Toyota**
12 **Japan agreed that one or more members of the Enterprise**
13 **would commit at least two predicate acts of mail or wire**
14 **fraud in furtherance of the Toyota-ZF-ST Enterprise's**
15 **fraudulent scheme.**

16 1927. ZF Passive Safety USA, ZF Electronics USA, ZF Automotive USA,
17 Toyota USA, Toyota Sales USA, Toyota Engineering USA, and nonparty Toyota
18 Japan began conspiring in furtherance of the Toyota-ZF-ST Enterprise's fraudulent
19 scheme in 2008.

20 1928. ZF Germany joined the conspiracy in or around 2015, when it acquired
21 ZF TRW Corp.

22 1929. When nonparty Toyota Japan agreed to use the defective DS84 ACU
23 and ASIC in Toyota Class Vehicles, Toyota USA, Toyota Sales USA, Toyota
24 Engineering USA, ZF Electronics USA, ZF Passive Safety USA, ZF Automotive
25 USA, and nonparty Toyota Japan mutually understood and intended that this
26 agreement would prompt Toyota Engineering USA to cause ZF Electronics USA to
27 ship DS84 ACUs across state lines and Toyota Sales USA to ship the Toyota Class
28 Vehicles with misleading statements about the passive safety system, airbags, and
seatbelts therein.

- 1 a. In 2008, nonparty Toyota Japan agreed with ZF Electronics
2 USA, ZF Passive Safety USA, and ZF Automotive USA on the
3 design specifications for the DS84 ACU installed in Toyota
4 Class Vehicles. Toyota Japan, ZF Electronics USA, ZF Passive
5 Safety USA, and ZF Automotive USA continued to agree on
6 specifications for Toyota Class Vehicles with the DS84 ACU for
7 every model year until 2019.
- 8 b. Between 2009 and 2019, Toyota Sales USA used mail and wire
9 to advertise the Toyota Class Vehicles as safe vehicles with
10 properly-functioning airbags and seatbelts, and used private
11 interstate carriers to ship the Toyota Class Vehicles with
12 misleading Monroney labels, airbag labels and imprints,
13 certification labels, readiness indicators, and owner’s manuals.
14 ZF Passive Safety USA, ZF Electronics USA, ZF Automotive
15 USA, Toyota USA, Toyota Engineering USA, and nonparty
16 Toyota Japan all knew that Toyota Sales USA was doing this
17 and would do this.
- 18 c. When nonparty Toyota Japan agreed with ZF Electronics USA,
19 ZF Passive Safety USA, and ZF Automotive USA on
20 specifications for the DS84 ACUs in Toyota Class Vehicles,
21 Toyota Japan, ZF Electronics USA, ZF Passive Safety USA, ZF
22 Automotive USA, and ZF TRW Corp. (and ZF Germany after
23 2015) had a mutual understanding that this agreement would
24 cause Toyota Engineering USA to send orders for hundreds of
25 thousands of DS84 ACUs every year via mail or wire to ZF
26 Electronics USA.
- 27 d. When nonparty Toyota Japan agreed with ZF Electronics USA,
28 ZF Passive Safety USA, and ZF Automotive USA on

1 specifications for the DS84 ACUs in Toyota Class Vehicles,
2 Toyota Japan, ZF Electronics USA, ZF Passive Safety USA, ZF
3 Automotive USA, and ZF TRW Corp. (and ZF Germany after
4 2015) had a mutual understanding that this agreement would
5 cause ZF Electronics USA to ship hundreds of thousands of
6 DS84 ACUs via private interstate carrier to the nonparty-
7 Enterprise-member Toyota manufacturing plants every year.

8 1930. As explained in Count 5 above, the shipments of Toyota Class
9 Vehicles by Toyota Sales USA, the orders by Toyota Engineering USA for DS84
10 ACUs, and the shipments by ZF Electronics USA of the DS84 ACUs violated the
11 mail fraud statute because they furthered the Toyota-ZF-ST Enterprise's fraudulent
12 scheme to cause consumers to purchase or lease vehicles that contain the ACU
13 Defect. To accomplish this goal, the DS84 ACUs needed to be shipped before they
14 could be installed in the vehicles.

- 15 a. ZF Passive Safety USA, ZF Electronics USA, ZF Automotive
16 USA, and nonparty Toyota Japan facilitated these mail fraud act
17 violations by collaborating on the defective design of the DS84
18 ACU, the readiness indicators, and Toyota Class Vehicles.
- 19 b. Nonparty Toyota Japan further facilitated these mail fraud
20 violations by (1) requiring all manufacturers of Toyota Class
21 Vehicles to install the DS84 ACUs therein, and (2) placing the
22 misleading certification labels, readiness indicators, and airbag
23 labels and imprints within the Toyota Class Vehicles it made in
24 Japan, and requiring the nonparty-Enterprise-member Toyota
25 manufacturing subsidiaries that made Toyota Class Vehicles in
26 North America to do the same.
- 27 c. ZF TRW Corp. facilitated the scheme because, upon
28 information and belief, its approval was required for the launch

1 of the DS84 ACU, which was one of the company's most
2 popular ACUs.

3 d. ZF Germany facilitated the scheme because, upon information
4 and belief, its approval was required to continue the sales of the
5 DS84 ACU.

6 e. Toyota USA facilitated this scheme by overseeing and
7 approving the misleading Monroney labels that Toyota Sales
8 USA placed, or caused to be placed, on Toyota Class Vehicles.

9 1931. The conspiracy among Toyota USA, Toyota Sales USA, Toyota
10 Engineering, ZF Automotive USA, ZF Electronics USA, ZF Passive Safety USA,
11 ZF TRW Corp., ZF Germany, and nonparty Toyota Japan is further evidenced by
12 their coordinated efforts to cover up the ACU Defect.

13 a. For several years, Toyota USA, Toyota Sales USA, Toyota
14 Engineering, ZF Automotive USA, ZF Electronics USA, ZF
15 Passive Safety USA, and nonparty Toyota Japan uncovered
16 evidence that DS84 ASICs and DS84 ACUs were failing as a
17 result of EOS, but they maintained the confidentiality of these
18 incidents among each other.

19 b. ZF Automotive USA, ZF Electronics USA, ZF Passive Safety
20 USA, and nonparty Toyota Japan repeatedly coordinated with
21 each other in response to NHTSA's investigation. In 2016, ZF
22 Electronics USA alerted Toyota Japan to NHTSA's
23 investigation of the DS84 ACUs and sent excerpted copies of
24 ZF's misleading February 5, 2016 slide deck to NHTSA as part
25 of an effort to coordinate with Toyota Japan to conceal the ACU
26 Defect. Between 2018 and 2019, ZF Electronics USA, ZF
27 Passive Safety USA, ZF Automotive USA, and nonparty Toyota
28 Japan met every week to discuss the ACU Defect.

1 1932. The joint activities of ZF Electronics USA, ZF Passive Safety USA,
2 ZF Automotive USA, ZF TRW Corp., and ZF Germany in support of their
3 misleading statements to NHTSA were predicate acts and also show agreement by
4 these Defendants to advance the fraudulent scheme.

5 1933. ZF Electronics USA's placement of orders for DS84 ASICs and
6 shipments of DS84 ACUs were predicate acts and also show agreement by ZF
7 Electronics USA to advance the fraudulent scheme.

8 1934. The success of the Toyota-ZF-ST Enterprise's fraudulent scheme
9 depended upon ZF Passive Safety USA, ZF Electronics USA, ZF Automotive USA,
10 Toyota USA, Toyota Sales USA, Toyota Engineering USA, and nonparty Toyota
11 Japan's cooperation. All these companies had to maintain strict confidentiality
12 about the ACU Defect for the scheme to continue. Moreover, the Toyota companies
13 depended on the ZF companies for the manufacture of the defective ACUs, whereas
14 the ZF companies could not reach consumers of Toyota Class Vehicles without the
15 agreement of nonparty Toyota Japan. This interdependence evidences the
16 agreement to further the fraudulent scheme.

17 1935. The actions detailed above and throughout the Complaint as to each
18 member of the Toyota-ZF-ST Enterprise were foreseeable to the other members of
19 the Toyota-ZF-ST Enterprise given their direct relationship to and furtherance of
20 the common goals of the scheme.

21 **c. ST USA, ST Italy, ST Malaysia, ZF Automotive USA, ZF**
22 **Electronics USA, and ZF Passive Safety USA agreed on the**
23 **commission of multiple violations of the mail fraud statute in**
24 **furtherance of the Toyota-ZF-ST Enterprise's fraudulent**
25 **scheme.**

26 1936. ST Italy, ST Malaysia, and ST USA began conspiring with ZF Passive
27 Safety USA, ZF Electronics USA, and ZF Automotive USA in 2005, when the two
28 supplier groups began the joint design of an ACU ASIC with unique vulnerability
to EOS. By 2008, all these companies knew about internal thermal testing that

1 confirmed the weakness of the ASIC. They held multiple meetings about this issue.
2 Documents sent to Toyota Japan by ZF Electronics USA and ZF Passive Safety
3 USA in 2008 expressly noted the risk that a negative transient could travel up the
4 front sensor lines, reach the DS84 ASIC, and cause airbag failures during a crash.
5 In spite of this early knowledge, and after the years already sunk into development
6 work for the cheaper ACU, they proceeded to launch and use the DS84 ACU for
7 millions of Class Vehicles for more than a decade.

8 1937. Even after learning that DS84 ACUs and ASICs had malfunctioned
9 due to EOS during crashes, ST Italy, ST Malaysia, ST USA, ZF Passive Safety
10 USA, ZF Electronics USA, and ZF Automotive USA continued to sell and send
11 shipments of the parts. When doing so, these companies all knew that Toyota USA,
12 Toyota Sales USA, and nonparty Toyota Japan would coordinate to cause the
13 Toyota Class Vehicles to be presented to consumers with misleading certification
14 labels, airbag labels and imprints, and readiness indicators.

15 1938. Several actions by ST Italy, ST Malaysia, and ST USA further support
16 an inference of agreements with ZF Passive Safety USA, ZF Electronics USA, and
17 ZF Automotive USA to commit at least two predicate acts in furtherance of the
18 conspiracy:

- 19 a. Between September 2009 and 2018, ST USA, ST Italy, and ST
20 Malaysia regularly communicated with ZF Automotive US Inc.,
21 ZF Electronics USA, and ZF Passive Safety USA about
22 observations of EOS in DS84 ASICs, including some ASICs
23 from Toyota vehicles. ST USA, ST Italy, and ST Malaysia's
24 DS84 ASIC team confirmed EOS damage on ASICs retrieved
25 from at least two Toyota vehicles with airbag failures during
26 crashes.
- 27 b. Upon information and belief, in 2016, ZF Automotive USA, ZF
28 Electronics USA, and ZF Passive Safety USA sent each ST

1 Defendant excerpted copies of its misleading statements from its
2 February 5, 2016 slide deck.

3 c. Between 2009 and 2018 at the very least, ST USA and ST
4 Malaysia continuously violated the mail fraud act in furtherance
5 of the Toyota-ZF-ST Enterprise by shipping defective DS84
6 ASICs with a mutual understanding that some of these ASICs
7 would be installed in Toyota Class Vehicles, as explained above.

8 d. Between 2008 and 2018 at the very least, ST USA, ST Italy, and
9 ST Malaysia maintained public silence about the ACU Defect,
10 despite the observed evidence of the DS84 ASIC's and ACU's
11 unusual vulnerability to transients.

12 1939. The actions detailed above and throughout the Complaint as to each
13 member of the Toyota-ZF-ST Enterprise were foreseeable to the other members of
14 the Toyota-ZF-ST Enterprise given their direct relationship to and furtherance of
15 the common goals of the scheme.

16 1940. The success of the Toyota-ZF-ST Enterprise's fraudulent scheme
17 depended upon ST USA, ST Italy, and ST Malaysia, ZF Passive Safety USA, ZF
18 Electronics USA, and ZF Automotive USA's cooperation. All these companies had
19 to maintain strict confidentiality about the ACU Defect for the scheme to continue.
20 Moreover, the ZF companies depended upon the ST companies for the manufacture
21 of the defective ASICs, whereas the ST companies depended upon the ZF
22 companies for a viable path to profit from the consumers of Class Vehicles. This
23 interdependence evidences the agreement to further the fraudulent scheme.

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1 **7. Nationwide Count 7: Violations of the Racketeer Influenced**
2 **Corrupt Organizations Act, 18 U.S.C. § 1962(c), on Behalf of the**
3 **Nationwide Honda Class Against Honda Japan, Honda USA,**
4 **Honda Engineering USA, ZF Electronics USA, ZF Passive Safety**
5 **USA, ZF Automotive USA, ZF TRW Corp., ZF Germany, ST**
6 **USA, and ST Malaysia.**

7 1941. Plaintiffs reallege and incorporate by reference all preceding
8 allegations as though fully set forth herein.

9 1942. Pursuant to 18 U.S.C. § 1962(c): “It shall be unlawful for any person
10 employed by or associated with any enterprise engaged in, or the activities of which
11 affect, interstate or foreign commerce, to conduct or participate, directly or
12 indirectly, in the conduct of such enterprise’s affairs through a pattern of
13 racketeering activity or collection of unlawful debt.” Honda Japan, Honda USA,
14 Honda Engineering USA, ZF Electronics USA, ZF Passive Safety USA, ZF
15 Automotive USA, ZF TRW Corp., ZF Germany, ST USA, and ST Malaysia are
16 “persons” under 18 U.S.C. § 1961(3) because each was capable of holding “a legal
17 or beneficial interest in property.”

18 1943. A violation of 18 U.S.C. § 1962(c) has four elements: “(1) conduct (2)
19 of an enterprise (3) through a pattern (4) of racketeering activity.” ECF 396 at 59
20 (quoting *Sedima v. Imrex Co.*, 473 U.S. 479, 496 (1985)).

21 1944. Honda Japan, Honda USA, Honda Engineering USA, ZF Electronics
22 USA, ZF Passive Safety USA, ZF Automotive USA, ZF TRW Corp., ZF Germany,
23 ST USA, and ST Malaysia, and several nonparties formed the Honda-ZF-ST
24 Enterprise. The members of this Enterprise included Defendants Honda Japan,
25 Honda USA, Honda Engineering USA, ZF Electronics USA, ZF Passive Safety
26 USA, ZF Automotive USA, ZF TRW Corp., ZF Germany, ST USA, and ST
27 Malaysia. The Honda-ZF-ST Enterprise also included several nonparty individuals
28 and corporations, for example, the Honda manufacturing subsidiaries that built

1 vehicles for distribution throughout the United States.³³ Discovery will likely reveal
2 several additional members of the Honda-ZF-ST Enterprise that are not currently
3 known to the Honda Plaintiffs.

4 1945. Honda Japan, Honda USA, Honda Engineering USA, ZF Electronics
5 USA, ZF Passive Safety USA, ZF Automotive USA, ZF TRW Corp., ZF Germany,
6 ST USA, and ST Malaysia are liable under 18 U.S.C. § 1962(c) because they
7 conducted or participated in the conduct of the affairs of an “association-in-fact
8 enterprise”—i.e. the Honda-ZF-ST Enterprise—through a pattern of racketeering
9 activity. In other words, each of these Defendants committed at least two predicate
10 acts in furtherance of the Enterprise’s fraudulent scheme.

11 1946. 18 U.S.C. § 1964(c) provides for a civil remedy for any violation of 18
12 U.S.C. § 1962 for “[a]ny person injured in his business or property by reason of a
13 violation of section 1962 of this chapter.” In addition to proving a violation of
14 § 1962, this remedy requires proximate cause of a cognizable injury. ECF 396 at
15 59.

16 1947. Honda Japan, Honda USA, Honda Engineering USA, ZF Electronics
17 USA, ZF Passive Safety USA, ZF Automotive USA, ZF TRW Corp., ZF Germany,
18 ST USA, and ST Malaysia each violated 18 U.S.C. § 1962(c) and injured the
19 business or property of the Honda Plaintiffs and the Nationwide Honda Class. The
20 Honda Plaintiffs claim damages for themselves and the Nationwide Honda Class
21 members under 18 U.S.C. § 1964(c).

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27 ³³ These manufacturing subsidiaries include Honda Manufacturing of Alabama;
28 Honda Manufacturing of Indiana, LLC; Honda De México S.A. de C.V. and Honda
of Canada Mfg.

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a. **Honda Japan, Honda USA, Honda Engineering USA, ZF Electronics USA, ZF Passive Safety USA, ZF Automotive USA, ZF TRW Corp., ZF Germany, ST USA, and ST Malaysia each committed at least two predicate acts of mail and wire fraud in furtherance of the Honda-ZF-ST Enterprise’s fraudulent scheme to affirmatively mislead consumers and NHTSA.**

1948. The members of the Honda-ZF-ST Enterprise devised a scheme for the purpose of defrauding consumers and NHTSA by concealing or minimizing the ACU Defect in Honda Class Vehicles through a pattern of affirmatively misleading statements.

1949. In the alternative, the Honda-ZF-ST Enterprise members devised an illicit scheme for the purpose of obtaining money by fraudulent pretenses to maximize the sale of Honda Class Vehicles, which ultimately provided revenue to the Honda-ZF-ST Enterprise members.

1950. To carry out, or attempt to carry out, the fraudulent schemes, Honda Japan, Honda USA, Honda Engineering USA, the nonparty Honda manufacturing subsidiaries, ZF Electronics USA, ZF Passive Safety USA, ZF Automotive USA, ZF TRW Corp., ZF Germany, ST USA, and ST Malaysia—each of whom is a person associated-in-fact with the Honda-ZF-ST Enterprise—knowingly conducted or participated, directly or indirectly, in the affairs of the Honda-ZF-ST Enterprise through a pattern of racketeering activity within the meaning of 18 U.S.C. §§ 1961(1), 1961(5), and 1962(c). In furtherance of the schemes, the Defendant Honda-ZF-ST Enterprise members each committed *at least* two acts in violation of 18 U.S.C. § 1341 (mail fraud) and § 1343 (wire fraud), as described in the subsections below.

1 **i. Honda Japan violated the mail and wire fraud statutes**
2 **multiple times in furtherance of the Honda-ZF-ST**
3 **Enterprise’s fraudulent scheme.**

4 1951. Honda Japan violated the mail fraud statute multiple times by causing
5 misleading certification labels, readiness indicators, airbag labels and imprints, and
6 owner’s manuals to be placed within every Honda Class Vehicle prior to shipment
7 to the dealers that sell or lease the vehicles to U.S. consumers. Honda Japan caused
8 the inclusion of these misleading statements within every Honda Class Vehicle with
9 full knowledge and the specific intent that Honda USA would distribute the Honda
10 Class Vehicles to dealers across the United States using private or commercial
11 interstate carriers. Accordingly, Honda Japan “knowingly cause[d]” the Honda
12 Class Vehicles with misleading statements “to be delivered by . . . such carrier[s],”
13 in violation of 18 U.S.C. § 1341.

14 a. Honda Japan was directly responsible for including these
15 misleading statements in all Honda Class Vehicles made in
16 Japan. Upon information and belief, Honda Japan placed the
17 misleading certification labels, airbag warning lamps, and airbag
18 labels and imprints in the Japanese-made Honda Class Vehicles
19 when Honda Japan manufactured them at and then shipped them
20 from its plants in Japan, including at the following address: 1907
21 Hirata-cho, Suzuka-shi, Mie Pref., Japan. The certification
22 labels for these Japanese-made vehicles bore Honda Japan’s
23 corporate name, “Honda Motor Co., Ltd.” The Honda Class
24 Vehicles made by Honda Japan have vehicle identification
25 numbers that begin with the letter “J.” Honda Japan has records
26 in its possession that will identify the dates when it transferred
27 these Honda Class Vehicles to Honda USA with the purpose of
28 distributing them to the United States for sale to consumers. The

1 Honda Plaintiffs do not have access to these confidential records
2 that provide the precise dates of transfer.

3 b. While the nonparty-Enterprise members (Honda Manufacturing
4 of Alabama; Honda Manufacturing of Indiana, LLC; Honda De
5 México S.A. de C.V. and Honda of Canada Mfg.) also made
6 Honda Class Vehicles and placed permanent certification labels
7 on them under their own names, they had no discretion to depart
8 from the mandatory Honda Class Vehicle designs created by
9 Honda Japan. Accordingly, Honda Japan, as the entity
10 responsible for designing these vehicles, was at least jointly
11 responsible for the certifications for these vehicles. Honda Japan
12 was also responsible for the misleading airbag warning lamps
13 and in-vehicle airbag labels and imprints placed within these
14 Honda Class Vehicles because Honda Japan's designs required
15 the inclusion of these misleading statements within the Honda
16 Class Vehicles.

17 c. Honda Japan was also responsible for the misleading content of
18 the owner's manuals for Honda Class Vehicles. Honda Japan
19 reviewed and approved the contents of the manuals from Honda
20 USA at the time of their publication. Insofar as Honda USA
21 effectuated the shipments of the owner's manuals within Honda
22 Class Vehicles to dealers in the United States, it also acted as
23 Honda Japan's distribution agent.

24 1952. Although the precise shipment dates for all Honda Class Vehicles are
25 not known to the Honda Plaintiffs, on information and belief, these shipments
26 occurred in all years in or about 2012 to 2019. Plaintiffs were exposed to in-vehicle
27 misleading statements prior to, and at the point of, sale or lease. The dates and
28 locations of these transactions are alleged above in Section II.B.4.

1 1953. Each shipment of a Honda Class Vehicle or Vehicles to a dealer was a
2 violation of the mail fraud statute (18 U.S.C. § 1341) because Honda Japan knew
3 the certification labels, airbag warning labels, in-vehicle airbag labels and imprints,
4 and owner’s manuals in all Honda Class Vehicles were misleading and would
5 further the scheme to defraud consumers into purchasing or leasing Honda Class
6 Vehicles.

7 1954. When Honda USA distributed the Honda Class Vehicles to dealers in
8 the United States, it acted as Honda Japan’s agent.

9 1955. Honda Japan separately violated the mail fraud act (18 U.S.C. § 1341)
10 by placing orders with ZF Electronics USA that caused ZF Electronics USA to ship
11 defective DS84 ACUs by private or commercial interstate carrier. This allegation is
12 based on the inclusion of a Japanese address and contact in a chart produced by the
13 domestic ZF Defendants to NHTSA that identifies DS84 ACU shipments for
14 Honda Class Vehicles. *See* Ex. 20 (ZF-MDL-679). These orders for shipments
15 furthered the Honda-ZF-ST Enterprise’s fraudulent scheme because Honda Japan’s
16 use of the defective DS84 ACUs in Honda Class Vehicles was essential to the cost-
17 saving goal behind the scheme. Honda Japan made this orders for ZF Electronics
18 USA to make deliveries knowing that the defective DS84 ACUs would be placed in
19 the Honda Class Vehicles and that Honda USA would market the vehicles to U.S.
20 consumers as safe. Accordingly, each of Honda Japan’s orders and ZF Electronics
21 USA’s shipments of the DS84 ACU violated the mail fraud statute (18 U.S.C. §
22 1341).

23 1956. The precise dates and locations of each particular order for, and
24 shipment of, DS84 ACUs are not known to the Honda Plaintiffs because they have
25 no visibility into the shipments to automobile manufacturers and Defendants have
26 not produced documents that show that information. However, a chart produced by
27 the domestic ZF Defendants to NHTSA identifies the precise volume of DS84
28 ACUs shipped for each year for each model of Honda Class Vehicles, and identifies

1 Marshall, Illinois as the shipping location. Exhibit 20 includes highlighting added
2 by Plaintiffs to identify the particular information about shipping locations,
3 volumes, vehicle makes and models, and shipping years contained in this chart. *See*
4 Ex. 20 (ZF-MDL-679) at 692-698. Upon information and belief, the shipping
5 address for each of these shipments by ZF Electronics USA from Marshall, Illinois
6 was 902 South 2nd Street, Marshall, Illinois 62441. The information available in
7 this chart is sufficient for the Honda Defendants to identify the precise dates of
8 shipments and the recipient addresses because the Honda Defendants will have
9 backup information that shows additional details about the underlying shipments.

10 **ii. Honda Engineering USA violated the mail and wire**
11 **fraud statutes multiple times in furtherance of the**
12 **Honda-ZF-ST Enterprise’s fraudulent scheme.**

13 1957. Honda Engineering USA violated the mail fraud statute multiple times
14 by causing misleading certification labels, readiness indicators, and airbag labels
15 and imprints to be placed within the Honda Class Vehicles it manufactured in Ohio
16 prior to shipment to the dealers that sell or lease the vehicles to U.S. consumers.
17 Honda Engineering USA caused the inclusion of these misleading statements
18 within every Honda Class Vehicle it manufactured with full knowledge and the
19 specific intent that Honda USA would distribute the Honda Class Vehicles to
20 dealers across the United States using private interstate carriers. Accordingly,
21 Honda Engineering USA “knowingly cause[d]” the Honda Class Vehicles with
22 misleading statements “to be delivered by . . . such carrier[s],” in violation of 18
23 U.S.C. § 1341.

24 a. Honda Engineering USA was directly responsible for including
25 all of these misleading statements in the Honda Class Vehicles it
26 made in the United States. Upon information and belief, Honda
27 Engineering USA placed the misleading certification labels,
28 airbag warning lamps, and airbag labels and imprints in the

1 Honda Class Vehicles when it manufactured them at its plant,
2 including at the following address: 24000 Honda Pkwy,
3 Marysville, OH 43040 and 11000 State Route 347, East Liberty,
4 OH 43319-9407. The certification labels for these vehicles bore
5 Honda Engineering USA's previous corporate name, "Honda of
6 America Mfg." The Honda Class Vehicles made by Honda
7 Engineering USA have vehicle identification numbers that begin
8 with a numeric digit, i.e. "1" or "5." Honda Engineering USA
9 has records in its possession that will identify the dates when it
10 transferred these Class Vehicles to Honda USA with the purpose
11 of distributing them throughout the United States for sale to
12 consumers. The Honda Plaintiffs do not have access to these
13 confidential records that provide the precise dates of transfer.

14 1958. Although the precise shipment dates for all Honda Class Vehicles are
15 not known to the Honda Plaintiffs, on information and belief, these shipments
16 occurred in all years in or about 2010 to 2019. The Honda Plaintiffs were exposed
17 to in-vehicle misleading statements prior to, and at the point of, sale or lease. The
18 dates and locations of these transactions are alleged above in Section II.B.4. Honda
19 Engineering USA built the Honda Class Vehicles belonging to Plaintiff Rubio,
20 Plaintiff Huitzil, Plaintiff McPherson, Plaintiff Chaiken, and Plaintiff Namakkal,
21 and was therefore directly responsible for placing these misleading statements in
22 their vehicles.

23 1959. Each shipment of a Honda Class Vehicle or Vehicles to a dealer was a
24 violation of the mail fraud statute (18 U.S.C. § 1341) because Honda Engineering
25 USA knew the certification labels, airbag warning labels, and in-vehicle airbag
26 labels and imprints, in all Honda Class Vehicles were misleading and would further
27 the scheme to defraud consumers into purchasing or leasing Honda Class Vehicles.
28

1 1960. Honda Engineering USA separately violated the mail fraud act (18
2 U.S.C. § 1341) by placing orders with ZF Electronics USA that caused ZF
3 Electronics USA to ship defective DS84 ACUs by private or commercial interstate
4 carrier to Honda Engineering USA at the following address: 24000 Honda Pkwy,
5 Marysville, OH 43040 and 11000 State Route 347, East Liberty, OH 43319-9407,
6 and to the nonparty-Enterprise members Honda manufacturing companies in
7 Canada, Mexico, Alabama, and Indiana, including to the following addresses: 1800
8 Honda Dr, Lincoln, AL 35096; 2755 N Michigan Ave, Greensburg, IN 47240; La
9 Luz Sur, 38140 Celaya, Gto., Mexico; 4700 Industrial Pkwy, Alliston, ON L9R
10 1A2, Canada. These shipments furthered the Honda-ZF-ST Enterprise's fraudulent
11 scheme because Honda Engineering USA's use of the defective DS84 ACUs in
12 Honda Class Vehicles was essential to the cost-saving goal behind the scheme.
13 Honda Engineering USA caused ZF Electronics USA to make these deliveries
14 knowing that the defective DS84 ACUs would be placed in the Honda Class
15 Vehicles and that Honda USA would market the vehicles to U.S. consumers as safe.
16 Accordingly, each of Honda Engineering USA's orders and ZF Electronics USA's
17 shipments of the DS84 ACU violated the mail fraud statute (18 U.S.C. § 1341).

18 1961. The precise dates and locations of each particular order for, and
19 shipment of, DS84 ACUs are not known to the Honda Plaintiffs because they have
20 no visibility into the shipments to automobile manufacturers and Defendants have
21 not produced documents that show that information. However, a chart produced by
22 the domestic ZF Defendants to NHTSA identifies the precise volume of DS84
23 ACUs shipped for each year for each model of Honda Class Vehicles, and identifies
24 Marshall, Illinois as the shipping location. Exhibit 20 includes highlighting added
25 by Plaintiffs to identify the particular information about shipping locations,
26 volumes, vehicle makes and models, and shipping years contained in this chart. *See*
27 Ex. 20 (ZF-MDL-679) at 692-698. Upon information and belief, the shipping
28 address for each of these shipments by ZF Electronics USA from Marshall, Illinois

1 was 902 South 2nd Street, Marshall, Illinois 62441. Honda Engineering USA
2 received shipments to its Ohio plants at the addresses noted above. Likewise, the
3 Honda manufacturing subsidiaries received shipments at the following addresses:
4 1800 Honda Dr, Lincoln, AL 35096; 2755 N Michigan Ave, Greensburg, IN 47240;
5 La Luz Sur, 38140 Celaya, Gto., Mexico; 4700 Industrial Pkwy, Alliston, ON L9R
6 1A2, Canada.

7 1962. The information available in this chart is sufficient for Defendants to
8 identify the precise dates of shipments and the recipient addresses because
9 Defendants will have backup information that shows additional details about the
10 underlying shipments.

11 **iii. Honda USA violated the mail and wire fraud statutes**
12 **multiple times in furtherance of the Honda-ZF-ST**
13 **Enterprise's fraudulent scheme.**

14 1963. Honda USA committed mail fraud every time it shipped, or caused to
15 be shipped, a Honda Class Vehicle to dealers in the United States. For every Honda
16 Class Vehicle, Honda USA delivered, or caused delivery of, each vehicle by private
17 or commercial interstate carrier to automobile dealerships across the United States.
18 Honda USA delivered millions of Class Vehicles to execute the Honda-ZF-ST
19 Enterprise's scheme to defraud consumers and NHTSA.

20 a. These deliveries furthered the scheme because Honda USA sent
21 the vehicles to the dealerships where consumers would purchase
22 or lease them and because, prior to shipping the Honda Class
23 Vehicles, Honda Japan, Honda Engineering USA, and/or the
24 nonparty Honda manufacturing subsidiaries had affixed, or
25 caused to be affixed, to the vehicles misleading certification
26 labels (*see* Section IV.E.1.b. above), readiness indicators (*see*
27 Section IV.E.1.c. above), and airbag labels and imprints (*see*
28 Section IV.E.1.d. above).

1 b. Moreover, Honda USA created the Monroney labels for the
2 Honda Class Vehicles and caused them to be affixed to each
3 Honda Class Vehicle prior to shipment. Shipment of the Honda
4 Class Vehicles with these misleading Monroney labels furthered
5 the Honda-ZF-ST Enterprise’s scheme because consumers relied
6 upon the labels when purchasing or leasing them. Honda USA
7 distributed the Honda Class Vehicles to dealers, so they could be
8 sold to consumers with misleading Monroney labels.

9 c. Finally, prior to shipping the vehicles, also ensured that each
10 Class Vehicle came with an owner’s manual with misleading
11 statements about the vehicle’s safety system (*see* Section
12 IV.E.2.b.v. above). Honda USA owns the copyright interest in
13 these manuals.

14 1964. Honda USA knew the Monroney labels, certification labels, readiness
15 indicators, airbag labels and imprints, and owners’ manuals shipped with each
16 Honda Class Vehicle were misleading because the Honda Class Vehicles all
17 contained the ACU Defect.

18 1965. Although the precise shipment dates for all Honda Class Vehicles are
19 not known to the Honda Plaintiffs, on information and belief, these shipments
20 occurred in all years in or about 2010 to 2019. The Honda Plaintiffs were exposed
21 to in-vehicle misleading statements prior to, and at the point of, sale or lease. The
22 dates and locations of these transactions are alleged above in Section II.B.4.

23 1966. Starting in 2012, Honda USA also transmitted, or caused to be
24 transmitted, tens (perhaps hundreds) of thousands of advertisements which stressed
25 the safety of Honda Class Vehicles using mail, wire, radio, or television
26 communications in interstate commerce. Honda USA’s misleading advertisements
27 are too numerous to recite completely, given the nationwide scope and decade-long
28 duration of the Honda-ZF-ST Enterprise’s fraudulent scheme. Examples of these

1 advertisements are collected in Section IV.E.2.a.iv. and Exhibit 11. Each such
2 mailed advertisement—including brochures sent to dealerships for display to
3 consumers or print advertisements in newspapers or magazines—was a violation of
4 the mail fraud statute (18 U.S.C. § 1341). Each such internet-based, radio, and
5 television advertisement was a violation of the wire fraud statute (18 U.S.C.
6 § 1343). Honda USA knew these advertisements assuring consumers of the safety
7 of Honda Class Vehicles were misleading and would further the scheme to defraud
8 consumers into purchasing or leasing Honda Class Vehicles.

9 **iv. ZF Electronics USA violated the mail fraud statute**
10 **multiple times in furtherance of the Honda-ZF-ST**
11 **Enterprise’s fraudulent scheme.**

12 1967. ZF Electronics USA drafted and/or edited the following misleading
13 statements to NHTSA, as discussed in Sections IV.F.2., IV.F.4., IV.F.8., and
14 IV.F.14. above:

- 15 a. The slide deck presentation dated February 5, 2016 (which ZF
16 TRW Corp. mailed to NHTSA on March 14, 2016);
17 b. The slide deck presentation dated July 19, 2016 (which, upon
18 information and belief, was mailed to NHTSA in July or August
19 2016);
20 c. The September 2016 letter signed by Marc Bolitho³⁴ (which ZF
21 Electronics USA mailed to NHTSA in September 2016); and
22 d. The slide deck presentation dated March 8, 2018 (which ZF
23 TRW Corp. mailed to NHTSA on March 12, 2018).

24 1968. As explained in sections IV.F.2., IV.F.4., IV.F.8., and IV.F.14. above,
25 each of these transmittals contained misleading statements about Honda Class
26

27 ³⁴ Mr. Bolitho was simultaneously an employee of ZF Passive Safety USA, the
28 Vice President of Passive Safety for ZF Electronics USA, and Director of Passive
Safety Engineering for ZF TRW.

1 Vehicles and/or the ACU Defect. ZF Electronics USA specifically approved the
2 transmittal of the final versions of these documents to NHTSA, and intended for the
3 misleading statements contained therein to avoid, minimize, and/or delay recalls of
4 Honda Class Vehicles. Avoiding, minimizing, and/or delaying recalls of Honda
5 Class Vehicles enabled the continuation of the scheme to defraud consumers.

6 1969. ZF Electronics USA caused the delivery of the February 5, 2016 slide
7 deck to NHTSA. ZF Electronics USA's causal role in the delivery is evidenced by
8 the fact that its Vice President of Passive Safety Marc Bolitho signed an affidavit of
9 confidentiality that was enclosed with the mailing of the February 5, 2016 slide
10 deck.

11 1970. Because the July 19, 2016 slide deck closely resembles the February 5,
12 2016 slide deck, the same personnel and companies were likely responsible for
13 sending it via mail or private interstate carrier to NHTSA. Accordingly, upon
14 information and belief, ZF Electronics USA caused this delivery to NHTSA too.

15 1971. ZF Electronics USA caused the delivery of the March 8, 2018 slide
16 deck to NHTSA. ZF Electronics USA's causal role in the delivery is evidenced by
17 the fact that its Technical Specialist, Emanuel Goodman, signed the affidavit of
18 confidentiality that was enclosed with the mailing of the March 8, 2018 slide deck.
19 ZF Electronics USA's causal role in the delivery is further evidenced by Mr.
20 Goodman's and Mr. Bolitho's attendance at the March 8, 2018 meeting with
21 NHTSA, where this slide deck was used.

22 1972. Moreover, because ZF Electronics USA's affiliates would not have
23 sent or approved the four written communications described above without ZF
24 Electronics USA's contributions and approval, ZF Electronics USA was one of the
25 Defendants who jointly caused the delivery of these four communications to
26 NHTSA. Accordingly, its participation in these communications violated the mail
27 fraud statute at least four times. 18 U.S.C. § 1341.
28

1 1973. As explained in Section IV.E.1.c. above, ZF Electronics USA worked
2 with ZF Passive Safety USA, ZF Automotive USA, and Honda Japan to design the
3 readiness indicators installed in Honda Class Vehicles. Specifically, ZF Electronics
4 USA assisted with a design of ACUs that would cause the readiness indicator not to
5 illuminate at the point of sale or lease, even though the Honda Class Vehicle's
6 safety systems were not ready to deploy in foreseeable crash events with negative
7 transients due to the ACU Defect. When ZF Electronics USA assisted with this
8 design, it knew Honda USA would ship the Honda Class Vehicles to dealers and
9 that consumers would buy Honda Class Vehicles without the airbag warning lamp
10 illuminating at the point of sale or lease. Because Honda USA would not have
11 shipped Honda Class Vehicles without ZF Electronics USA's assistance in
12 designing misleading readiness indicators, ZF Electronics USA jointly caused each
13 shipment of a Honda Class Vehicle, in violation of the mail fraud act (18 U.S.C.
14 § 1341).

15 1974. ZF Electronics USA received orders from Honda Japan and Honda
16 Engineering USA for the defective DS84 ACUs used in every Honda Class Vehicle
17 and shipped them by private or commercial interstate carrier to Honda Japan in
18 Japan, Honda Engineering USA in Ohio, and the nonparty-Enterprise-member
19 Honda manufacturing subsidiaries based in Canada, Mexico, Alabama, and Indiana.
20 These shipments furthered the Honda-ZF-ST Enterprise's fraudulent scheme
21 because the use of DS84 ACUs in Honda Class Vehicles was essential to the cost-
22 saving goal behind the scheme. When ZF Electronics USA shipped the defective
23 DS84 ACUs to the nonparty Honda manufacturing subsidiaries, it knew they would
24 be installed in the Honda Class Vehicles that are marketed to U.S. consumers. ZF
25 Electronics USA was also specifically aware of Honda Japan's, Honda Engineering
26 USA's, and Honda USA's practice of making reassuring statements about safety,
27 airbags, and seatbelts in consumer-facing Monroney labels, certification labels, in-
28 vehicle labels, owner's manuals, and advertising for all Honda Class Vehicles. ZF

1 Electronics USA knew these statements were false because it knew the Honda
2 Class Vehicles, DS84 ACU, and DS84 ASIC were defective. Accordingly, because
3 ZF Electronics USA shipped each defective DS84 ACU with the purpose of
4 executing a fraudulent scheme with the other Enterprise members, each of ZF
5 Electronics USA's shipments of the defective DS84 ACU violated the mail fraud
6 statute (18 U.S.C. § 1341). The particularities of these shipments are discussed
7 above. Exhibit 20 includes highlighting added by Plaintiffs to identify the particular
8 information about shipping locations, volumes, vehicle makes and models, and
9 shipping years contained in this chart. *See* Ex. 20 (ZF-MDL-679) at 686-691. Upon
10 information and belief, the shipping address for each of these shipments by ZF
11 Electronics USA from Marshall, Illinois was 902 South 2nd Street, Marshall,
12 Illinois 62441.

13 1975. ZF Electronics USA also separately violated the mail fraud act (18
14 U.S.C. § 1341) by placing orders with ST USA that required ST USA to ship
15 millions of defective DS84 ASICs to ZF Electronics USA at a facility with the
16 following address: 902 South 2nd Street, Marshall, Illinois 62441. When ZF
17 Electronics USA placed these orders, it knew it would install these DS84 ASICs
18 into DS84 ACUs, including those that would be installed in the Honda Class
19 Vehicles that are marketed to U.S. consumers. ZF Electronics USA was also
20 specifically aware of Honda Japan's, Honda Engineering USA's, and Honda USA's
21 practice of making reassuring statements about safety, airbags, and seatbelts in
22 consumer-facing Monroney labels, certification labels, in-vehicle labels, owner's
23 manuals, and advertising for all Honda Class Vehicles. ZF Electronics USA knew
24 these statements were false because it knew the Honda Class Vehicles, DS84 ACU,
25 and ASIC were defective. Accordingly, because ZF Electronics USA caused
26 shipments of defective DS84 ASICs with the purpose of executing a fraudulent
27 scheme with the other Enterprise members, each of the DS84 ASIC shipments
28 caused by ZF Electronics USA violated the mail fraud statute (18 U.S.C. § 1341).

1 ST USA has produced approximately 9,700 such invoices from the time period
2 between 2014 and the present. Plaintiffs have extracted approximate shipping dates
3 from these invoices, which are presented as exemplars in Exhibit 21.³⁵

4 v. **ZF Passive Safety USA violated the mail fraud statute**
5 **multiple times in furtherance of the Honda-ZF-ST**
6 **Enterprise's fraudulent scheme.**

7 1976. ZF Passive Safety USA drafted and/or edited the following misleading
8 statements to NHTSA, as discussed in Sections IV.F.2., IV.F.4., IV.F.8., and
9 IV.F.14. above:

- 10 a. The slide deck presentation dated February 5, 2016 (which ZF
11 TRW Corp. mailed to NHTSA on March 14, 2016);
12 b. The slide deck presentation dated July 19, 2016 (which, upon
13 information and belief, was mailed to NHTSA in July or August
14 2016);
15 c. The September 2016 letter signed by Marc Bolitho³⁶ (which ZF
16 Electronics USA mailed to NHTSA in September 2016); and
17 d. The slide deck presentation dated March 8, 2018 (which ZF
18 TRW Corp. mailed to NHTSA on March 12, 2018).

19 1977. As explained in sections IV.F.2., IV.F.4., IV.F.8., and IV.F.14. above,
20 each of these transmittals contained misleading statements about Honda Class
21 Vehicles and/or the ACU Defect. ZF Passive Safety USA specifically approved the
22 transmittal of the final versions of these documents to NHTSA, and intended for the
23 misleading statements contained therein to avoid, minimize, and/or delay recalls of

24 ³⁵ ST USA made similar shipments relevant to the Honda Class Vehicles at least
25 between 2009 and 2014, but ST USA is presently withholding invoices for these
26 shipments from discovery. Upon information and belief, the invoices for this time
period will show similar regularity of shipments.

27 ³⁶ Mr. Bolitho was simultaneously an employee of ZF Passive Safety USA, the
28 Vice President of Passive Safety for ZF Electronics USA, and Director of Passive
Safety Engineering for ZF TRW.

1 Honda Class Vehicles. Avoiding, minimizing, and/or delaying recalls of Honda
2 Class Vehicles enabled the continuation of the scheme to defraud consumers.

3 1978. ZF Passive Safety USA caused the delivery of the February 5, 2016
4 slide deck to NHTSA. ZF Passive Safety USA's causal role in the delivery is
5 evidenced by the fact that its employee Marc Bolitho signed an affidavit of
6 confidentiality that was enclosed with the mailing of the February 5, 2016 slide
7 deck. Although Mr. Bolitho also simultaneously served as a Vice President for ZF
8 Electronics USA and a Director of Passive Safety Engineering for ZF TRW Corp.,
9 ZF Passive Safety USA alone paid his salary.

10 1979. Because the July 19, 2016 slide deck closely resembles the February 5,
11 2016 slide deck, the same personnel and companies were likely responsible for
12 sending it via mail or private interstate carrier to NHTSA. Accordingly, upon
13 information and belief, ZF Passive Safety USA caused this delivery too.

14 1980. ZF Passive Safety USA caused the delivery of the March 8, 2018 slide
15 deck to NHTSA. ZF Passive Safety USA's causal role in the delivery is evidenced
16 by the fact that its longtime employee, Emanuel Goodman, signed the affidavit of
17 confidentiality that was enclosed with the mailing of the March 8, 2018 slide deck.
18 Although Mr. Goodman also served as the Technical Specialist for ZF Electronics
19 USA, ZF Passive Safety USA alone paid his salary. ZF Passive Safety USA's
20 causal role in the delivery is further evidenced by Mr. Goodman's and Mr.
21 Bolitho's attendance at the March 8, 2018 meeting with NHTSA, where this slide
22 deck was used.

23 1981. Moreover, because ZF Passive Safety USA's affiliates would not have
24 sent or approved the four written communications described above without ZF
25 Passive Safety USA's contributions and approval, ZF Passive Safety USA was one
26 of the Defendants who jointly caused the delivery of these four communications to
27 NHTSA. Accordingly, its participation in these communications violated the mail
28 fraud statute at least four times. 18 U.S.C. § 1341.

1 1982. As explained in sections IV.F.2., IV.F.4., IV.F.8., and IV.F.14. above,
2 each of the four documents described above contained misleading statements about
3 Honda Class Vehicles and/or the ACU Defect. ZF Passive Safety USA specifically
4 approved the transmittal of the final versions of these documents to NHTSA, and
5 intended for the misleading statements contained therein to avoid, minimize, and/or
6 delay recalls of Honda Class Vehicles. Avoiding, minimizing, and/or delaying
7 recalls of Honda Class Vehicles enabled the continuation of the scheme to defraud
8 consumers. Because ZF Passive Safety USA's affiliates would not have sent or
9 approved the written communications noted in the preceding paragraph without ZF
10 Passive Safety USA's contributions and approval, ZF Passive Safety USA was one
11 of the Defendants who caused the delivery of these four communications to
12 NHTSA. Accordingly, its participation in these communications violated the mail
13 fraud statute at least four times. (18 U.S.C. § 1341).

14 1983. As explained in Section IV.E.1.c. above, ZF Passive Safety USA
15 worked with ZF Electronics USA, ZF Automotive USA, and Honda Japan to design
16 the readiness indicators installed in all Honda Class Vehicles. Specifically, ZF
17 Passive Safety USA assisted with a design of ACUs that would cause the readiness
18 indicator not to illuminate at the point of sale or lease, even though the Honda Class
19 Vehicle's safety systems were not ready to deploy in crash events with negative
20 transients due to the ACU Defect. When ZF Passive Safety USA assisted with this
21 design, it knew Honda USA would ship the Honda Class Vehicles to dealers and
22 that consumers would buy the vehicles without the airbag warning lamp
23 illuminating at the point of sale or lease. Because Honda USA would not have
24 shipped Honda Class Vehicles without ZF Passive Safety USA's assistance in
25 designing misleading readiness indicators, ZF Passive Safety USA jointly caused
26 each shipment of Honda Class Vehicle, in violation of the mail fraud act (18 U.S.C.
27 § 1341).

28

1 **vi. ZF Automotive USA violated the mail fraud statute**
2 **multiple times in furtherance of the Honda-ZF-ST**
3 **Enterprise’s fraudulent scheme.**

4 1984. ZF Automotive USA drafted and/or edited the following misleading
5 statements to NHTSA, as discussed in Sections IV.F.2., IV.F.4., IV.F.8., and
6 IV.F.14. above:

- 7 a. The slide deck presentation dated February 5, 2016 (which ZF
8 TRW Corp. mailed to NHTSA on March 14, 2016);
- 9 b. The slide deck presentation dated July 19, 2016 (which, upon
10 information and belief, was mailed to NHTSA in July or August
11 2016);
- 12 c. The September 2016 letter signed by Marc Bolitho (which ZF
13 Electronics USA mailed to NHTSA in September 2016); and
- 14 d. The slide deck presentation dated March 8, 2018 (which ZF
15 TRW Corp. mailed to NHTSA on March 12, 2018).

16 1985. ZF Automotive USA caused the delivery via mail or private interstate
17 carrier of the February 5, 2016 slide deck, the July 19, 2016 slide deck, and the
18 March 8, 2018 slide deck to NHTSA. ZF Automotive USA’s role in causing the
19 delivery of these presentations is evidenced by its admission in a 573 Defect Report
20 that it attended the three meetings with NHTSA where these presentations were
21 used on its behalf.

22 1986. Upon information and belief, ZF Automotive USA caused the delivery
23 of the September 2016 letter via mail or private interstate carrier by giving requisite
24 approval prior to the transmittal of the letter.

25 1987. As explained in sections IV.F.2., IV.F.4., IV.F.8., and IV.F.14. above,
26 each of these four documents contained misleading statements about Honda Class
27 Vehicles and/or the ACU Defect. ZF Automotive USA specifically approved the
28 transmittal of the final versions of these documents to NHTSA, and intended for the

1 misleading statements contained therein to avoid, minimize, and/or delay recalls of
2 Honda Class Vehicles. Avoiding, minimizing, and/or delaying recalls of Honda
3 Class Vehicles enabled the continuation of the scheme to defraud consumers.
4 Because ZF Automotive USA’s affiliates would not have sent or approved the
5 written communications noted in the preceding paragraph without ZF Automotive
6 USA’s contributions and approval, ZF Automotive USA was one of the Defendants
7 who caused the delivery of these four communications to NHTSA. Accordingly, its
8 participation in these communications violated the mail fraud statute at least four
9 times. (18 U.S.C. § 1341).

10 1988. As explained in Section IV.E.1.c. above, ZF Automotive USA worked
11 with ZF Passive Safety USA, ZF Electronics USA, and Honda Japan to design the
12 readiness indicators installed in Honda Class Vehicles. Specifically, ZF Automotive
13 USA assisted with a design of ACUs that would cause the readiness indicator not to
14 illuminate at the point of sale or lease, even though the Honda Class Vehicle’s
15 safety systems were not ready to deploy in crash events with negative transients due
16 to the ACU Defect. When ZF Automotive USA assisted with this design, it knew
17 would ship the Honda Class Vehicles to dealers and that consumers would buy the
18 vehicles without the airbag warning lamp illuminating at the point of sale or lease.
19 Because Honda USA would not have shipped Honda Class Vehicles without ZF
20 Automotive USA’s affirmative assistance in designing misleading readiness
21 indicators, ZF Automotive USA jointly caused each shipment of Honda Class
22 Vehicle, in violation of the mail fraud act (18 U.S.C. § 1341).

23 **vii. ZF TRW Corp. violated the mail fraud statute**
24 **multiple times in furtherance of the Honda-ZF-ST**
25 **Enterprise’s fraudulent scheme.**

26 1989. Prior to their delivery to NHTSA, ZF TRW Corp. reviewed, drafted
27 and/or edited the following misleading statements to NHTSA, as discussed in
28 Sections IV.F.2., IV.F.4., IV.F.8., and IV.F.14. above:

- 1 a. The slide deck presentation dated February 5, 2016 (which ZF
- 2 TRW Corp. mailed to NHTSA on March 14, 2016);
- 3 b. The slide deck presentation dated July 19, 2016 (which, upon
- 4 information and belief, was mailed to NHTSA in July or August
- 5 2016);
- 6 c. The September 2016 letter signed by Marc Bolitho³⁷ (which ZF
- 7 Electronics USA mailed to NHTSA in September 2016); and
- 8 d. The slide deck presentation dated March 8, 2018 (which ZF
- 9 TRW Corp. mailed to NHTSA on March 12, 2018).

10 1990. ZF TRW Corp. caused the transmittal of the February 5, 2016 slide
11 deck via mail or private interstate carrier. ZF TRW Corp.'s role in the transmittal is
12 confirmed by the cover letter, which is signed: "Very truly yours, ZF TRW
13 Automotive Holdings Corp." with a signature from Sheri Roberts, the Senior
14 Counsel of the company. ZF TRW Corp.'s causal role is further confirmed by a
15 footer on every page of the slide deck itself, which reads: "This document is the
16 property of ZF TRW Corp. and is disclosed in confidence. It may not be copied,
17 disclosed to others, or used for manufacturing without the written consent of ZF
18 TRW." Based on this footer, ZF TRW Corp. gave requisite written consent to the
19 transmittal of the document to NHTSA.

20 1991. ZF TRW Corp. caused the transmittal of the July 19, 2016 slide deck
21 via mail or private interstate carrier. ZF TRW Corp.'s causal role is confirmed by a
22 footer on every page of the slide deck itself, which reads: "This document is the
23 property of ZF TRW and is disclosed in confidence. It may not be copied, disclosed
24 to others, or used for manufacturing without the written consent of ZF TRW."
25

27 ³⁷ Mr. Bolitho was simultaneously an employee of ZF Passive Safety USA, the
28 Vice President of Passive Safety for ZF Electronics USA, and Director of Passive
Safety Engineering for ZF TRW

1 Based on this footer, ZF TRW Corp. gave requisite written consent to the
2 transmittal of the document to NHTSA.

3 1992. Upon information and belief, ZF TRW Corp. also gave requisite prior
4 authorization for the delivery of the September 2016 letter.

5 1993. ZF TRW Corp. caused the transmittal of the March 8, 2018 slide deck
6 to NHTSA via mail or private interstate carrier. ZF TRW Corp.’s causal role is
7 confirmed by the cover letter included with the mailing of the slide deck to
8 NHTSA. The cover letter is on the letter head of an “Active & Passive Safety
9 Technology” business unit. Because this is a reference to ZF TRW Corp.,³⁸ ZF
10 TRW Corp. must have reviewed and approved the transmittal of the slide deck to
11 NHTSA.

12 1994. As explained in sections IV.F.2., IV.F.4., IV.F.8., and IV.F.14. above,
13 each of these four documents described above contained misleading statements
14 about Honda Class Vehicles and/or the ACU Defect. ZF TRW Corp. specifically
15 approved the transmittal of the final versions of these documents to NHTSA, and
16 intended for the misleading statements contained therein to avoid, minimize, and/or
17 delay recalls of Honda Class Vehicles. Avoiding, minimizing, and/or delaying
18 recalls of Honda Class Vehicles enabled the continuation of the scheme to defraud
19 consumers. Because ZF TRW Corp.’s affiliates would not have sent or approved
20 the written communications noted in the preceding paragraph without ZF TRW
21 Corp.’s contributions and approval, ZF TRW Corp. was one of the Defendants who
22 caused the delivery of these four communications to NHTSA. Accordingly, its
23 participation in these communications violated the mail fraud statute at least four
24 times. (18 U.S.C. § 1341).

25 _____
26 ³⁸ According to ZF AG’s 2017 Annual Report, the “Active & Passive Safety
27 Technology Division” was “established by ZF Group to manage the business
28 activities of ZF TRW after its acquisition.” Because ZF TRW Corp. is the only
corporate entity with “ZF TRW” as part of its corporate name, this letter was also
sent on behalf of ZF TRW Corp.

1 **viii. ZF Germany violated the mail and wire fraud statutes**
2 **multiple times in furtherance of the Honda-ZF-ST**
3 **Enterprise’s fraudulent scheme.**

4 1995. Prior to their delivery to NHTSA, ZF Germany reviewed and/or edited
5 the following misleading statements to NHTSA, as discussed in Sections IV.F.2.,
6 IV.F.4., IV.F.8., and IV.F.14. above:

- 7 a. The slide deck presentation dated February 5, 2016 (which ZF
8 TRW Corp. mailed to NHTSA on March 14, 2016);
- 9 b. The slide deck presentation dated July 19, 2016 (which, upon
10 information and belief, was mailed to NHTSA in July or August
11 2016);
- 12 c. The September 2016 letter signed by Marc Bolitho (which ZF
13 Electronics USA mailed to NHTSA in September 2016); and
- 14 d. The slide deck presentation dated March 8, 2018 (which ZF
15 TRW Corp. mailed to NHTSA on March 12, 2018).

16 1996. ZF Germany caused the delivery of these communications via mail
17 and wire. The three presentations bear copyright legends attributing ownership to
18 ZF Germany. Accordingly, sending these presentations must have required its
19 involvement and consent. Moreover, the slide decks dated February 5, 2016 and
20 July 19, 2016 identify ZF Germany as the corporate author on the title page.

21 1997. As explained in sections IV.F.2., IV.F.4., IV.F.8., and IV.F.14. above,
22 each of these documents described above contained misleading statements about
23 Honda Class Vehicles and/or the ACU Defect. ZF Germany specifically approved
24 the transmittal of the final versions of these documents to NHTSA, and intended for
25 the misleading statements contained therein to avoid, minimize, and/or delay recalls
26 of Honda Class Vehicles. Avoiding, minimizing, and/or delaying recalls of Honda
27 Class Vehicles enabled the continuation of the scheme to defraud consumers.
28 Because ZF Germany’s affiliates would not have sent or approved the written

1 communications noted in the preceding paragraph without ZF Germany’s
2 contributions and approval, ZF Germany was one of the Defendants who caused the
3 delivery of these four communications to NHTSA. Accordingly, its participation in
4 these communications violated the mail fraud statute at least four times. (18 U.S.C.
5 § 1341).

6 **ix. ST USA violated the mail fraud statute multiple times**
7 **in furtherance of the Honda-ZF-ST Enterprise’s**
8 **fraudulent scheme.**

9 1998. ST USA regularly received orders from ZF Electronics USA for DS84
10 ASICs, including all the defective DS84 ASICs used in Honda Class Vehicles. In
11 response to these orders ST USA would work with its affiliate, ST Malaysia, to
12 help it manufacture and then ship DS84 ASICs to ST USA’s so-called “ST Micro
13 LAX Hub” near Los Angeles, California. Between 2007 and the present, ST USA
14 caused ST Malaysia to ship well over ten million defective DS84 ASICs to this
15 location. In discovery, ST USA has produced approximately 9,700 invoices sent to
16 ZF Electronics USA from the time period between 2014 and the present alone.
17 Each invoice notes the defective DS84 ASICs were made in Malaysia, where ST
18 Malaysia operated. The invoice dates from these documents provide an
19 approximate date for these shipments. Plaintiffs have extracted approximate
20 shipping dates from these invoices, which are presented as exemplars in Exhibit
21 21.³⁹

22 1999. ST USA also shipped well over ten million defective DS84 ASICs to
23 ZF Electronics USA at a facility with the following address: 902 South 2nd Street,
24 Marshall, Illinois 62441. As explained above, Exhibit 21 provides exemplar
25

26 ³⁹ ST USA made similar shipments for Honda Class Vehicles between 2010 and
27 2014, but is withholding invoices for these shipments from discovery. Upon
28 information and belief, the invoices for this time period will show a similar
regularity of shipments of DS84 ASICs from Malaysia.

1 approximate shipment dates based on an incomplete set of invoices produced by ST
2 USA.⁴⁰

3 2000. When ST USA required ST Malaysia to make these shipments and
4 then made its own shipments to ZF Electronics USA, it knew ZF Electronics USA
5 would place the DS84 ASICs into DS84 ACUs, including those that would be
6 installed in Honda Class Vehicles that are marketed to U.S. consumers. ST USA
7 was also aware of Honda Japan's, Honda Engineering USA's, and Honda USA's
8 practice of making reassuring statements about safety, airbags, and seatbelts in
9 consumer-facing Monroney labels, certification labels, in-vehicle labels, owner's
10 manuals, and advertising for all Honda Class Vehicles. ST USA knew these
11 statements were false because it knew the Honda Class Vehicles, DS84 ACU, and
12 ASIC were defective. Accordingly, because ST USA caused shipments of well over
13 ten million defective DS84 ASICs with the purpose of executing a fraudulent
14 scheme with the other Enterprise members, each of the DS84 ASIC shipments
15 caused by ST USA violated the mail fraud statute (18 U.S.C. § 1341).

16 **x. ST Malaysia violated the mail fraud statute multiple**
17 **times in furtherance of the Honda-ZF-ST Enterprise's**
18 **fraudulent scheme.**

19 2001. Between 2007 and the 2018, ST USA regularly worked with its
20 affiliate, ST Malaysia, to help it manufacture and ship DS84 ASICs to ST USA's
21 so-called "ST Micro LAX Hub" near Los Angeles, California. During that time
22 period, ST Malaysia shipped well over ten million defective DS84 ASICs to this
23 location. ST USA has produced approximately 9,700 invoices sent to ZF
24 Electronics USA from the time period between 2014 and the present alone. Each

25
26 ⁴⁰ ST USA made similar shipments between 2007 and 2014, but is withholding
27 invoices for these shipments from discovery. Upon information and belief, the
28 invoices for this time period will show a similar regularity of shipments of DS84
ASICs from the STMicro LAX Hub to the ZF Electronics USA's manufacturing
facility in Illinois.

1 invoice notes the defective DS84 ASICs were made in Malaysia, where ST
2 Malaysia operated. The invoice dates from these documents provide an
3 approximate date for these shipments. Plaintiffs have extracted approximate
4 shipping dates from these invoices, which are presented as exemplars in Exhibit
5 21.⁴¹

6 2002. When ST Malaysia made these shipments, it knew ZF Electronics
7 USA would place the DS84 ASICs into DS84 ACUs, including those ACUs that
8 would be installed in Honda Class Vehicles that are marketed to U.S. consumers.
9 ST Malaysia was also aware of Honda Japan's, Honda Engineering USA's, and
10 Honda USA's practice of making reassuring statements about safety, airbags, and
11 seatbelts in consumer-facing Monroney labels, certification labels, in-vehicle labels,
12 owner's manuals, and advertising for all Honda Class Vehicles. ST Malaysia knew
13 these statements were false because it knew the Honda Class Vehicles, DS84 ACU,
14 and ASIC were defective. Accordingly, because ST Malaysia caused shipments of
15 well over ten million defective DS84 ASICs with the purpose of executing a
16 fraudulent scheme with the other Enterprise members, each of the DS84 ASIC
17 shipments made by ST Malaysia violated the mail fraud statute (18 U.S.C. § 1341).

18 **b. Honda Japan, Honda USA, Honda Engineering USA, ZF**
19 **Electronics USA, ZF Passive Safety USA, ZF Automotive**
20 **USA, ZF TRW Corp., ZF Germany, ST USA, and ST**
21 **Malaysia advanced their fraudulent scheme by concealing**
22 **material information about a serious safety defect that they**
23 **had a duty to disclose.**

24 2003. The uses of mail and wire described in the section above violated the
25 mail and wire fraud statutes because they furthered a fraudulent scheme to
26 affirmatively mislead consumers and NHTSA.

27 ⁴¹ ST USA made similar shipments between 2007 and 2014, but is withholding
28 invoices for these shipments from discovery. Upon information and belief, the
invoices for this time period will show a similar regularity of shipments.

1 2004. In addition, these same uses of the mail and wire *also* violated the mail
2 and wire fraud statutes because, while they sent or caused to be sent these mailings,
3 Honda Japan, Honda USA, Honda Engineering USA, ZF Electronics USA, ZF
4 Passive Safety USA, ZF Automotive USA, ZF TRW Corp., ZF Germany, ST USA,
5 and ST Malaysia had duties to disclose the ACU Defect and failed to do so in order
6 to advance their scheme.

7 2005. Honda Japan, Honda USA, Honda Engineering USA, ZF Electronics
8 USA, ZF Passive Safety USA, ZF Automotive USA, ZF TRW Corp., ZF Germany,
9 ST USA, ST Italy, and ST Malaysia each knew for years that the defective DS84
10 ACUs and ASICs in the Honda Class Vehicles are uniquely vulnerable to EOS. *See*
11 Section IV.D.6. above.

12 2006. To further the goals of the Honda-ZF-ST Enterprise and to their
13 mutual gain, Honda Japan, Honda USA, Honda Engineering USA, ZF Electronics
14 USA, ZF Passive Safety USA, ZF Automotive USA, ZF TRW Corp., ZF Germany,
15 ST USA, ST Italy, and ST Malaysia concealed what they knew about the existence,
16 scope, and material safety risks of the ACU Defect in the Honda Class Vehicles.

17 2007. Their careful efforts to conceal the ACU Defect in the Honda Class
18 Vehicles were critically important to the viability of their scheme. A decision by
19 any one Defendant or nonparty-Enterprise member to tell the truth about the ACU
20 Defect and its impact of vehicle safety to consumers or to NHTSA would have been
21 an existential threat to the Honda-ZF-ST Enterprise. Instead, and in pursuit of ill-
22 gotten profits, they each kept key information about the ACU Defect hidden for
23 years. This concealment of material facts about the ACU Defect was grounded in
24 and advanced their scheme to defraud consumers through the continued sale of
25 Honda Class Vehicles, and avoidance of costly recalls and their attendant
26 reputational harms.

27 2008. Honda Japan, Honda USA, Honda Engineering USA, ZF Electronics
28 USA, ZF Passive Safety USA, ZF Automotive USA, ZF TRW Corp., ZF Germany,

1 ST USA, ST Italy, and ST Malaysia’s concealment of the ACU Defect violated
2 several independent duties to disclose it.⁴²

- 3 a. Honda Japan, Honda USA, Honda Engineering USA, ZF
4 Electronics USA, ZF Passive Safety USA, ZF Automotive USA,
5 ZF TRW Corp., ZF Germany, ST USA, and ST Malaysia each
6 had a duty to disclose the ACU Defect because of their
7 exclusive knowledge and far superior information about the
8 ACU Defect. These Defendants knew about the vulnerability of
9 the DS84 ACU and ASIC to EOS through their exclusive access
10 to information about their design, development, and testing, and
11 through their confidential and proprietary investigations into
12 suspicious incidents. Given the ACU Defect’s hidden and
13 technical nature, Plaintiffs and consumers lack the sophisticated
14 expertise in vehicle components and electrical phenomena that
15 would be necessary to discover the ACU Defect on their own.
16

17
18 ⁴² As vehicle manufacturers and component parts suppliers, Defendants are also
19 subject to statutory duties to disclose known safety defects to consumers and to
20 NHTSA pursuant to the Safety Act and its attendant regulations. *See, e.g.*, 49
21 U.S.C. § 30118(c) (“A manufacturer of a motor vehicle . . . shall notify the
22 Secretary by certified mail or electronic mail, and the owners, purchasers, and
23 dealers of the vehicle . . . as provided in section 30119(d) of this section, if the
24 manufacturer . . . learns the vehicle . . . contains a defect and decides in good faith
25 that the defect is related to motor vehicle safety.”); 49 U.S.C. §30119(d)
26 (manufacturers must notify “each person registered . . . as the owner and whose
27 name and address are reasonably ascertainable”); 49 C.F.R. §573.6(a) (“Each
28 manufacturer shall furnish a report to the NHTSA for each defect . . . in his items of
original . . . equipment that he . . . determines to be related to motor vehicle
safety.”). Plaintiffs previously pled Defendants had a duty to disclose based on
these provisions of the Safety Act, but the Court dismissed an omissions theory
based these alleged duties. Plaintiffs reserve the right to appeal this decision at a
later date, but do not rely upon the Safety Act as a basis for their omissions theory
in this pleading.

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- b. In addition, Honda Japan, Honda USA, Honda Engineering USA, ZF Electronics USA, ZF Passive Safety USA, ZF Automotive USA, ZF TRW Corp., ZF Germany, ST USA, and ST Malaysia also each had a duty to disclose because they knew that a defect in the Honda Class Vehicles and their DS84 ACUs and ASICs gave rise to serious safety concerns for the consumers who use the vehicles. As sophisticated and well-funded corporate entities that generate billions of dollars in annual revenue from work in the automotive industry, each of these Defendants knew that this information would have been material to consumers. For example, a February 3, 2004, prospectus filed by ZF TRW Corp. with the SEC observed that “85 percent of recent auto purchasers stated that they look for vehicle safety information before making their final decision.” Nonetheless, Defendants still did not disclose it.

- c. ZF Electronics USA, ZF Passive Safety USA, ZF Automotive USA, ZF TRW Corp., and ZF Germany also each had a duty to disclose the ACU Defect because of the actions they took to conceal the ACU Defect in the Honda Class Vehicles from consumers. Each of these Defendants acted to suppress the truth about the ACU Defect through their misleading representations to NHTSA. *See* Sections IV.F.2., IV.F.4., IV.F.8., and IV.F.14. above. Because a truthful and accurate disclosure to NHTSA would have been material to NHTSA’s decision whether to require a recall or expand its investigation into the DS84 ACUs and ASICs, the affirmative steps they took to mislead NHTSA about the ACU Defect also precluded Honda Plaintiffs and Nationwide Honda Class members from an opportunity that

1 otherwise have led to their discovery of the truth about the ACU
2 Defect.

3 d. Finally, Honda Japan, Honda USA, and Honda Engineering
4 USA affirmatively presented reassuring information about the
5 Honda Class Vehicles' airbags, seatbelts, and overall safety to
6 consumers (*see* Sections IV.E.1 and I.V.E.2. above). Because
7 they opted to make these representations to consumers about
8 these topics, and because they knew information about the ACU
9 Defect that made those representations misleading or untrue,
10 Honda Japan, Honda USA, and Honda Engineering USA were
11 under a separate duty to disclose the full truth about the ACU
12 Defect that materially undermined the reassuring information
13 they presented, or caused to be presented, to consumers.

14 2009. Honda Japan, Honda USA, Honda Engineering USA, ZF Electronics
15 USA, ZF Passive Safety USA, ZF Automotive USA, ZF TRW Corp., ZF Germany,
16 ST USA, and ST Malaysia knew and intended that NHTSA would rely on their and
17 the other members of the Honda-ZF-ST Enterprise's material omissions about the
18 Honda Class Vehicles to approve them for importation, marketing, and sale to
19 consumers in the United States. And conversely, they also understood that
20 disclosing the ACU Defect would require them to recall and fix the Honda Class
21 Vehicles, which would negatively impact the profits of the Honda-ZF-ST
22 Enterprise.

23 2010. Honda Japan, Honda USA, Honda Engineering USA, ZF Electronics
24 USA, ZF Passive Safety USA, ZF Automotive USA, ZF TRW Corp., ZF Germany,
25 ST USA, and ST Malaysia also knew and intended that consumers would rely on
26 their and the other members of the Honda-ZF-ST Enterprise's material omissions
27 when deciding to purchase or lease the Honda Class Vehicles. The Honda
28 Plaintiffs' reliance on this concealment is demonstrated by the fact that they paid

1 money for Honda Class Vehicles that never should have been introduced into the
2 U.S. stream of commerce, and that they overpaid for vehicles with defective safety
3 systems without knowledge of the ACU Defect.

4 **c. The Honda-ZF-ST Enterprise was an association-in-fact**
5 **enterprise with a common purpose of misleading consumers**
6 **and NHTSA regarding the ACU Defect in Honda Class**
7 **Vehicles.**

8 2011. The Honda-ZF-ST Enterprise had a common purpose and ongoing
9 organization and functioned as a continuing unit.

10 **i. The Honda-ZF-ST Enterprise had a common purpose,**
11 **ongoing organization, and functioned as continuing**
12 **unit.**

13 2012. The common purpose of the Honda-ZF-ST Enterprise was to
14 perpetuate a fraudulent scheme to maximize sales and leases of Honda Class
15 Vehicles while hiding the ACU Defect from purchasers and lessees. Because all of
16 the Enterprise members' continued profits from this scheme ultimately depended on
17 consumers purchasing or leasing Honda Class Vehicles, the Enterprise needed to
18 convince consumers of a false premise: that Honda Class Vehicles had properly
19 functioning airbags and seatbelts. Toward this end, the Enterprise needed to mislead
20 consumers. For this scheme to work, it was also essential for the Enterprise to
21 conceal the ACU Defect from NHTSA, because the agency could halt the sale of
22 Honda Class Vehicles and mandate recalls that necessarily require public notice of
23 a defect. The expense of these recalls would undermine the profitability of the
24 scheme.

25 2013. This common purpose served the interests of all members of the
26 Honda-ZF-ST Enterprise. By concealing and minimizing the ACU Defect, Honda
27 Japan, Honda USA, Honda Engineering USA, ZF Electronics USA, ZF Passive
28 Safety USA, ZF Automotive USA, ZF TRW Corp., ZF Germany, ST USA, ST

1 Italy, ST Malaysia, and the nonparty-Enterprise members maximized their revenue
2 by selling as many Honda Class Vehicles as possible while avoiding or limiting the
3 substantial costs to recall and repair the Vehicles and their defective DS84 ACUs
4 and ASICs.

5 2014. The common purpose of the Honda-ZF-ST Enterprise is evidenced by
6 Honda Japan’s, Honda USA’s, ZF Electronics USA’s, ZF Passive Safety USA’s,
7 and ZF Automotive USA’s repeated, confidential consultations with one another
8 about suspicious crashes and test results involving Honda vehicles with the DS84
9 ACU, problems with the design of the DS84 ACU and ASIC, observations of EOS
10 on DS84 ACUs and ASICs, and dangerous safety system malfunctions in Honda
11 Class Vehicles. As the Court has held, consultations about “observed evidence of
12 EOS in Class Vehicles” among Defendants “support[s] a reasonable inference” of a
13 “common purpose of misleading consumers and NHTSA as to the existence of a
14 defect in the ACUs.” ECF 396 at 61.

15 2015. The common purpose of the Honda-ZF-ST Enterprise is further
16 evidenced by ST USA, ST Italy, and ST Malaysia’s repeated communications with
17 ZF Electronics USA, ZF Passive Safety USA, and ZF Automotive USA about
18 observations of EOS, including in Honda Class Vehicles. ZF Electronics USA, ZF
19 Passive Safety USA, and ZF Automotive USA would regularly share this
20 information with Honda Japan. On information and belief, Honda Japan would
21 share this information with its subsidiaries Honda USA and Honda Engineering
22 USA. This allowed the participants in the Honda-ZF-ST Enterprise to coordinate
23 their efforts to downplay the ACU Defect and avoid and minimize recalls.

24 2016. The common purpose of the Honda-ZF-ST Enterprise is also
25 evidenced by coordinated efforts by Honda Japan, Honda USA, Honda Engineering
26 USA, ZF Electronics USA, ZF Passive Safety USA, ZF Automotive USA, and ZF
27 Germany to implement changes to the DS84 ASIC in some Honda Class Vehicles.
28 These changes confirmed an agreement by Honda Motor Co., Ltd., ZF ASE, ZF

1 PSS, and ZF Automotive US Inc. that observed malfunctions in DS84 ACUs in
2 Honda Class Vehicles were serious enough to necessitate design changes. These
3 changes, while inadequate, did not apply to all Honda Class Vehicles, including
4 those already on the road.

5 **ii. The Honda-ZF-ST Enterprise had an ongoing**
6 **organization.**

7
8 2017. The participation of separate entities or individuals that have an
9 existence outside an alleged enterprise is evidence of an ongoing organization with
10 its own structure, separate and apart from its members. Honda Japan, Honda USA,
11 Honda Engineering USA, ZF Electronics USA, ZF Passive Safety USA, ZF
12 Automotive USA, ZF TRW Corp., ZF Germany, ST USA, ST Italy, and ST
13 Malaysia each existed separately from the Honda-ZF-ST Enterprise.

- 14 a. During the relevant period, Honda Japan contemporaneously
15 designed, manufactured, and sold many vehicles that do not
16 contain defective DS84 ACUs and ASICs.
- 17 b. During the relevant period, Honda Engineering USA
18 contemporaneously manufactured and sold many vehicles that
19 do not contain defective DS84 ACUs and ASICs.
- 20 c. During the relevant period, the Honda manufacturing
21 subsidiaries manufactured Honda vehicles that do not contain
22 defective DS84 ACUs and ASICs.
- 23 d. During the relevant period, Honda USA and Honda Engineering
24 USA contemporaneously provided services to Honda Japan
25 relating to a large volume of vehicles that do not contain
26 defective DS84 ACUs and ASICs.
- 27 e. During the relevant period, ST USA, ST Italy, and ST Malaysia
28 contemporaneously sold, designed, and/or manufactured many

1 other products aside from the defective DS84 ASICs used in the
2 defective DS84 ACUs.

3 f. During the relevant period, ZF Passive Safety USA, ZF
4 Electronics USA, and ZF Automotive USA contemporaneously
5 designed, made, and/or sold many other automotive parts aside
6 from the defective DS84 ACUs.

7 g. ZF TRW Corp. and ZF Germany also engaged in a wide variety
8 of business activities unrelated to the defective DS84 ACUs.

9 2018. Another hallmark of an ongoing organization is members with
10 delineated roles that further the organization's goals. Each member performed
11 important and separate roles within the Honda-ZF-ST Enterprise organization.

12 a. ZF Electronics USA, ZF Passive Safety USA, and ZF
13 Automotive USA jointly designed the defective DS84 ACU for
14 use in the Honda Class Vehicles, with Honda Japan's, ST
15 Italy's, and ST USA's input.

16 b. ST Italy and ST USA jointly designed the defective DS84 ASIC,
17 with input from ZF Electronics USA, ZF Passive Safety USA,
18 and ZF Automotive USA.

19 c. ST Malaysia manufactured the defective DS84 ASICs and
20 shipped them to ST USA in California.

21 d. ST USA sold and shipped the defective DS84 ASIC to ZF
22 Electronics USA.

23 e. Honda Japan designed the Honda Class Vehicles, and made
24 many of them in Japan. Honda Japan required any company that
25 made Honda Class Vehicles to strictly follow its designs. For the
26 Honda Class Vehicles made by Honda Japan, Honda Japan
27 added permanent labels to each vehicle that certified compliance
28

- 1 with U.S. Federal safety standards, as well as readiness
2 indicators and in-vehicle airbag labels and imprints.
- 3 f. Honda Engineering USA made many of the Honda Class
4 Vehicles in the United States; Honda Engineering USA also
5 placed permanent labels in each Honda Class Vehicle it made
6 that certified compliance with U.S. Federal safety standards, as
7 well as readiness indicators and in-vehicle airbag labels and
8 imprints.
- 9 g. The nonparty Honda manufacturing subsidiaries made Honda
10 Class Vehicles by strictly following the mandatory design
11 specifications provided by Honda Japan. For the Honda Class
12 Vehicles made by these subsidiaries, Honda Japan's mandatory
13 designs required the manufacturer to add permanent labels to
14 each vehicle that certified compliance with U.S. Federal safety
15 standards, as well as readiness indicators and in-vehicle airbag
16 labels and imprints.
- 17 h. Honda USA responded to NHTSA's investigation of the Honda
18 Class Vehicles for the Honda Defendants. Honda USA also
19 created the Monroney labels for Honda Class Vehicles and
20 caused them to be affixed to each Honda Class Vehicles prior to
21 their shipment to authorized Honda dealers. It also distributed
22 the Honda Class Vehicles to dealers, so they could be sold to
23 consumers with misleading Monroney labels and the in-vehicle
24 statements required by Honda Japan's mandatory design
25 specifications. Honda USA was also responsible for misleading
26 advertising to consumers.
- 27 i. ZF TRW Corp. and ZF Germany approved actions taken by ZF
28 Electronics USA, ZF Passive Safety USA, and ZF Automotive

1 USA, and participated directly in making misleading statements
2 to NHTSA about the ACU Defect.

3 j. Each of the Defendants separately ensured that NHTSA and
4 consumers did not discover the ACU Defect.

5 2019. When the passenger safety systems in Honda vehicles with the DS84
6 ACU repeatedly malfunctioned due to the ACU Defect over the course of several
7 years (starting at least as early as 2012), Honda Japan sought the involvement and
8 assistance of ZF Electronics USA, ZF Passive Safety USA, ZF Automotive USA,
9 ST Italy, ST USA, and ST Malaysia. These Defendants coordinated, directly or
10 indirectly, with Honda Japan on the ACU Defect and related malfunctions. For
11 example, ZF Electronics USA, ZF Passive Safety USA, and ZF Automotive USA
12 assigned Emanuel Goodman with the task of attending inspections and analyzing
13 DS84 ACUs from multiple Honda Class Vehicles. [REDACTED]

14 [REDACTED]
15 [REDACTED]

16 2020. The Enterprise members dedicated personnel to the Honda-ZF-ST
17 Enterprise's scheme, which further evidences the ongoing structure of the
18 Enterprise. For example, Honda Japan used its Chief Engineer Nobuhiro Koyota as
19 its primary point of contact with ZF Electronics USA, ZF Passive Safety USA, ZF
20 Automotive USA relating to the defective DS84 ACU. Establishing a regular point
21 of contact further organized the Honda-ZF-ST Enterprise.

22 2021. When NHTSA began to investigate the defective DS84 ACUs in 2015,
23 ZF Electronics USA, ZF Passive Safety USA, ZF Automotive USA, ZF Germany,
24 and ZF TRW Corp. maintained the organization of the Honda-ZF-ST Enterprise by
25 sending excerpts of their misleading communications with NHTSA to Honda
26 Japan, ST USA, ST Italy, and ST Malaysia. Upon information and belief, Honda
27 Japan would share this information with Honda Engineering USA and Honda USA.

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1 This allowed the participants in the Honda-ZF-ST Enterprise to coordinate their
2 efforts to downplay the ACU Defect and avoid and minimize recalls.

3 2022. Finally, faced with numerous consumer complaints of malfunctions in
4 the Honda Class Vehicles with known symptoms of the ACU Defect, including
5 airbag non-deployments, Honda USA repeatedly closed consumer complaints about
6 airbag non-deployments in Honda Class Vehicles without inspecting or
7 investigating whether the vehicles had an ACU malfunction. Honda USA's practice
8 of doing so—for more than 300 incidents between 2012 and 2019—avoided
9 further investigation or suspicion into the prevalence of the ACU Defect in Honda
10 Class Vehicles, and further avoided the creation of a written record regarding the
11 same.

12 **iii. The Honda-ZF-ST Enterprise functioned as a**
13 **continuing unit.**

14 2023. The Honda-ZF-ST Enterprise continued to function for several years,
15 at least during the time period of 2009 to the present. Although Honda Japan and
16 Honda USA stopped distributing new Honda Class Vehicles with the DS84 ACU in
17 or about 2019, Honda Class Vehicles continue to sell on the used car market with
18 misleading in-vehicle statements and consumer-facing marketing (such as vehicle
19 brochures) made by the Honda-ZF-ST Enterprise.

20 2024. During this protracted time of ongoing sale and production of the
21 Honda Class Vehicles, the members of the Honda-ZF-ST Enterprise remained
22 stable, with Honda Japan, Honda USA, Honda Engineering USA, ZF Electronics
23 USA, ZF Passive Safety USA, ZF Automotive USA, ZF TRW Corp., ST USA, ST
24 Malaysia, ST Italy, and the nonparty Honda Manufacturing subsidiaries remaining
25 active members of the Enterprise. ZF Germany, on the other hand, started to
26 participate in the Honda-ZF-ST Enterprise shortly after acquiring ZF TRW Corp. in
27 2015.
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d. The Honda-ZF-ST Enterprise’s pattern of racketeering caused Honda Plaintiffs and the Nationwide Honda Class members to overpay for Honda Class Vehicles at the point of sale or lease.

2025. Honda Plaintiffs and Nationwide Honda Class members are “person[s] injured in his or her business or property” by reason of the Honda-ZF-ST Enterprise’s RICO violations, within the meaning of U.S.C. § 1964(c). Honda Plaintiffs and Nationwide Honda Class members are entitled to bring this action for three times their actual damages, as well as injunctive/equitable relief, costs, and reasonable attorneys’ fees pursuant to 18 U.S.C. § 1964(c).

2026. Because of the Honda-ZF-ST Enterprise’s pattern of racketeering activity, Honda Plaintiffs and Nationwide Honda Class members have been injured in their business and/or property through their overpayment at the time of purchase or lease for Honda Class Vehicles with an undisclosed safety defect.

2027. By making misleading statements and omissions at or before the point of sale or lease, the Honda-ZF-ST Enterprise directly or indirectly obtained money from Honda Plaintiffs and the Nationwide Honda Class by means of materially false or fraudulent misrepresentations and omissions of material facts. Had the Honda Plaintiffs known what the Honda-ZF-ST Enterprise members knew about the ACU Defect, Honda Plaintiffs and Nationwide Honda Class members would not have purchased the Honda Class Vehicles, or would not have paid as much as they did for them.

2028. Had Honda Japan, Honda USA, Honda Engineering USA, ZF Electronics USA, ZF Passive Safety USA, ZF Automotive USA, ZF TRW Corp., ZF Germany, ST USA, or ST Malaysia not concealed, and instead decided to disclose, the information they knew about the ACU Defect and its impact on vehicle safety, Plaintiffs would have learned of the disclosure.

- 1 a. Honda Plaintiffs and Nationwide Honda Class members would
2 have learned about the ACU Defect through any of the channels
3 through the Honda Class Vehicles were marketed to them. In
4 other words, had Honda Japan, Honda USA, and/or Honda
5 Engineering USA made a disclosure in *any* of the places in
6 which it otherwise communicated information about the Honda
7 Class Vehicles, Honda Plaintiffs and Nationwide Honda Class
8 members would have seen it. This includes in Honda Class
9 Vehicle brochures and other advertising, on Monroney labels,
10 certification labels, in-vehicle airbag labels, airbag warning
11 lamps, and in owner's manuals.
- 12 b. Further, Honda Plaintiffs and Nationwide Honda Class members
13 would have learned about the ACU Defect at the times and
14 places that they purchased or leased their Class Vehicles. For
15 example, had Honda USA made a disclosure about the ACU
16 Defect to authorized Honda dealerships, sales personnel at the
17 dealerships would have passed on that material information to
18 consumers at the time of the contemplated purchases.
- 19 c. Had any of the Defendants listed above disclosed the true scope
20 and existence of the ACU Defect to NHTSA, Honda Plaintiffs
21 and Nationwide Honda Class members would have learned of it
22 because NHTSA would have considered this information
23 material to its decision to require a recall, which information
24 would have been made public and passed onto impacted
25 consumers.
- 26 d. Had any of the Defendants listed above disclosed the true scope
27 and existence of the ACU Defect to consumers or the public,
28 either through press releases, on their websites, or in any other

1 public channel or forum, Honda Plaintiffs and Nationwide
2 Honda Class members would have learned of it due to the
3 materiality of this information about a serious safety defect in
4 millions of vehicles. Given the seriousness of the information
5 and the number of vehicles impacted, the news media and
6 consumer forums and blogs would pick up the story. This is
7 particularly so in the wake of the massive Takata recall and
8 litigation, which confirmed the strong public interest in airbags
9 and vehicle safety. For example, an April 23, 2019 article
10 available on ConsumerReports.com described NHTSA’s
11 expanded investigation into the DS84 ACUs to be “the agency’s
12 most in-depth look at airbags since the recall of more than 56
13 million airbags made by Takata.”

14 2029. The Honda-ZF-ST Enterprise’s misleading statements to NHTSA
15 between 2016 and the present were essential to the scheme because NHTSA would
16 not have allowed continued sale of unremedied Honda Class Vehicles with
17 defective DS84 ACUs. At the very least, these misleading statements delayed
18 NHTSA’s broader investigation of the Honda Class Vehicles until April 2019,
19 when NHTSA launched an Engineering Analysis covering all unrecalled Honda
20 Class Vehicles. Upon information and belief, ZF Electronics USA stopped making
21 DS84 ACUs for the 2020 model year based in large part on this investigation.
22 Accordingly, ZF Electronics USA would have stopped making DS84 ACUs if
23 NHTSA had launched a broader investigation in 2016. For this reason, Plaintiffs
24 who purchased and leased Honda Class Vehicles after the first misleading statement
25 to NHTSA by the Honda-ZF-ST Enterprise would have avoided purchasing or
26 leasing their Honda Class Vehicles entirely, or they would have paid less for them.

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1 2030. Consumers are the only direct victims of the Honda-ZF-ST
2 Enterprise’s alleged fraudulent and misleading statements to NHTSA. NHTSA has
3 not suffered any reported, direct injury as a result of such conduct.

4 2031. Damages will not be difficult to ascertain; the Honda Plaintiffs and the
5 Nationwide Honda Class members’ damages are the difference between what they
6 paid for Honda Class Vehicles without an ACU Defect, and the value of the Honda
7 Class Vehicles they actually received. In the similar *Takata* airbag litigation, for
8 example, plaintiffs also alleged overpayment damages suffered at the point of sale
9 based on a dangerous airbag defect. Plaintiffs’ experts in that case performed a
10 conjoint analysis using surveys of consumers and found that the price premium paid
11 by class members for class vehicles was at least ten percent of the purchase price. A
12 similar analysis could be performed in this litigation. Other methodologies are also
13 viable.

14 2032. All victims of Defendants’ alleged conduct who claim to have
15 overpaid for the purchase or lease of Honda Class Vehicles are within the alleged
16 Nationwide Honda Class. Consequently, there are no issues with respect to
17 reapportionment or multiple recovery.

18 **8. Nationwide Count 8: Violations of the Racketeer Influenced**
19 **Corrupt Organizations Act, 18 U.S.C. § 1962(d), on Behalf of the**
20 **Honda Nationwide Class Against Honda Japan, Honda USA,**
21 **Honda Engineering USA, ZF Electronics USA, ZF Passive Safety**
22 **USA, ZF Automotive USA, ZF TRW Corp., ZF Germany, ST**
USA, ST Italy, and ST Malaysia.

23 2033. Plaintiffs reallege and incorporate by reference all preceding
24 allegations as though fully set forth herein.

25 2034. It is also unlawful “for any person to conspire to violate” 18 U.S.C.
26 § 1962(c). *See* 18 U.S.C. § 1962(d). To conspire in violation of section 1962(c), the
27 defendant must be “aware of the essential nature and scope of the enterprise.” ECF
28 396 at 77. Enterprise members conspire to violate section 1962(c) when “two or

1 more people agree[] to commit a crime” and “knowingly and willfully participate[]
2 in the agreement. . . . The illegal agreement need not be express as long as its
3 existence can be inferred from the words, actions, or interdependence of activities
4 and persons involved.” *Id.* A defendant who “agreed to facilitate a scheme” violates
5 section 1962(d) even if he “does not himself commit or agree to commit the two or
6 more predicate acts requisite to the underlying offense.” *Salinas v. United States*,
7 522 U.S. 52, 65-66 (1997).

8 2035. As explained in the section below, Honda Japan, Honda USA, Honda
9 Engineering USA, ZF Electronics USA, ZF Passive Safety USA, ZF Automotive
10 USA, ZF TRW Corp., ZF Germany, ST USA, ST Italy, and ST Malaysia were
11 aware of the essential nature and scope of the Honda-ZF-ST Enterprise. Count 7
12 describes this Enterprise.

13 2036. As explained in the section below, based on their words, actions,
14 and/or interdependence, Honda Japan, Honda USA, Honda Engineering USA, ZF
15 Electronics USA, ZF Passive Safety USA, ZF Automotive USA, ZF TRW Corp.,
16 and ZF Germany, agreed to facilitate the following acts of mail and wire fraud:

- 17 a. Honda USA’s interstate shipments between 2012 and 2019 of
18 millions of Honda Class Vehicles with misleading Monroney
19 labels, readiness indicators, in-vehicle airbag labels and
20 imprints, and owner’s manuals, and
21 b. ZF Electronics USA’s interstate shipments between 2012 and
22 2019 of millions of DS84 ACUs to Honda Japan and Honda
23 Engineering USA.

24 2037. As explained in the section below, based on their words, actions,
25 and/or interdependence, ZF Electronics USA, ZF Passive Safety USA, ST USA, ST
26 Italy, and ST Malaysia also agreed to facilitate the following acts of mail fraud:

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- 1 a. ZF Electronics USA’s interstate shipments between 2012 and
- 2 2019 of millions of DS84 ACUs to Honda Japan and Honda
- 3 Engineering USA;
- 4 b. ST Malaysia’s interstate shipments between 2012 and 2019 of
- 5 millions of DS84 ASICs to ST USA in California; and
- 6 c. ST USA’s interstate shipments between 2012 and 2019 of
- 7 millions DS84 ASICs to ZF Electronics USA in Illinois.

8 2038. The words, actions, or interdependence of activities of each of these
9 Defendants support the inference of agreement.

10 2039. ZF TRW Corp. Accordingly, Honda Japan, Honda USA, Honda
11 Engineering USA, ZF Electronics USA, ZF Passive Safety USA, ZF Automotive
12 USA, ZF TRW Corp., ZF Germany, ST USA, ST Italy, and ST Malaysia each
13 violated 18 U.S.C. § 1962(d).

14 2040. These violations caused the same injuries and damages described in
15 the prior Count. This Count incorporates by reference the allegations as to injury,
16 damages, and causation from the prior Count.

17 2041. Honda Japan, Honda USA, Honda Engineering USA, ZF Electronics
18 USA, ZF Passive Safety USA, ZF Automotive USA, ZF TRW Corp., ZF Germany,
19 ST USA, ST Italy, and ST Malaysia each violated 18 U.S.C. § 1962(d) and injured
20 the business or property of the Honda Plaintiffs and the Nationwide Honda Class.
21 The Honda Plaintiffs claim damages for themselves and the Nationwide Honda
22 Class members under 18 U.S.C. § 1964(c).

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1 **a. Honda Japan, Honda USA, Honda Engineering USA, ZF**
2 **Electronics USA, ZF Passive Safety USA, ZF Automotive**
3 **USA, ZF TRW Corp., ZF Germany, ST USA, ST Italy, and**
4 **ST Malaysia were all aware of the essential nature and scope**
5 **of the Honda-ZF-ST Enterprise.**

6 2042. Each Defendant named in this Count was aware of the essential nature
7 and scope of the Honda-ZF-ST Enterprise, even if some specific details about the
8 Enterprise’s illegal activities and members were unknown.

9 **i. Honda Japan, Honda USA, and Honda Engineering**
10 **USA understood the nature and scope of the Honda-**
11 **ZF-ST Enterprise’s fraudulent scheme.**

12 2043. Honda Japan, Honda USA, and Honda Engineering USA were aware
13 of the essential nature and scope of the Honda-ZF-ST Enterprise.

14 2044. Honda Japan always knew of the activities of Honda USA and Honda
15 Engineering USA and their role in the Enterprise because it owns these companies
16 and monitors their activities.

17 2045. As explained in Section IV.D.6. above, Honda Japan, Honda USA,
18 Honda Engineering USA, and knew about the nature and scope of the ACU Defect.

19 2046. Between 2009 and 2019, Honda Japan, Honda USA, and Honda
20 Engineering USA knew that the STMicroelectronics companies were responsible
21 for designing and manufacturing the DS84 ASIC for the DS84 ACUs used in
22 Honda Class Vehicles.

23 2047. Between 2012 and the present, Honda Japan, Honda USA, and Honda
24 Engineering USA have continuously tracked the volume of sales of Honda makes
25 and models in the United States. Accordingly, during the relevant time period, they
26 knew roughly how many Honda Class Vehicles would likely sell in the United
27 States.

28 2048. During each year between 2012 and the present, Honda Japan, Honda
 USA, and Honda Engineering USA knew that reassuring certification labels, in-

1 vehicle airbag labels and imprints, and readiness indicators would be placed in
2 Honda Class Vehicles prior to the shipment to dealers in the United States. They
3 knew this would occur because Honda Japan's mandatory designs required these
4 statements to be placed in Honda Class Vehicles. Honda Japan, Honda USA, and
5 Honda Engineering USA knew that consumers would rely on some or all of these
6 in-vehicle labels when purchasing or leasing Honda Class Vehicles.

7 2049. During each year between 2012 and the present, Honda Japan, Honda
8 USA, and Honda Engineering USA knew that Honda USA would advertise the
9 Honda Class Vehicles as safe vehicles with properly functioning airbags and
10 seatbelts. Honda Japan, Honda USA, and Honda Engineering USA knew that
11 consumers would rely on such advertisements when purchasing or leasing Honda
12 Class Vehicles.

13 2050. During each year between 2012 and the present, Honda Japan, Honda
14 USA, and Honda Engineering USA knew that Honda USA would ship Honda Class
15 Vehicles with owner's manuals that include misleading statements about the safety
16 systems, airbags, and seatbelts of the Honda Class Vehicles. Likewise, each of
17 these Defendants knew that Honda USA would create and affix Monroney stickers
18 with misleading statements about airbags and seatbelts to Honda Class Vehicles.
19 Honda Japan, Honda USA, and Honda Engineering USA knew that consumers
20 would rely on the Monroney labels and manuals when purchasing or leasing Honda
21 Class Vehicles.

22 2051. During each year between 2009 and the present, Honda Japan, Honda
23 USA, and Honda Engineering USA knew that complying with Honda Japan's
24 mandatory design specifications for Honda Class Vehicles would require Honda
25 Japan and Honda Engineering USA to place orders with ZF Electronics USA, and
26 for ZF Electronics USA to use mail or private interstate carriers to ship the
27 defective DS84 ACUs to Honda Japan in Japan, Honda Engineering USA in Ohio,
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1 and the plants that manufacture Honda Class Vehicles in Alabama, Indiana, Mexico
2 and Canada.

3 2052. During each year between 2009 and the present, Honda Japan, Honda
4 USA, and Honda Engineering USA knew that Honda USA would, as a result of its
5 direction to do so, cause the Honda Class Vehicles to ship from manufacturing
6 plants to automobile dealers across the United States.

7 2053. Honda Japan knew in 2016 that ZF Electronics USA, ZF Passive
8 Safety USA, ZF Automotive USA, ZF TRW Corp., and ZF Germany had made
9 misleading statement to NHTSA about the defect because it received copies of the
10 misleading slide deck dated February 5, 2016 in early 2016. On information and
11 belief, Honda Japan shared this information with its subsidiaries.

12 **ii. ZF Automotive USA, ZF Electronics USA, ZF Passive**
13 **Safety USA, ZF TRW Corp., and ZF Germany**
14 **understood the nature and scope of the Honda-ZF-ST**
15 **Enterprise’s fraudulent scheme.**

16 2054. ZF Automotive USA, ZF Electronics USA, ZF Passive Safety USA,
17 ZF TRW Corp., and ZF Germany were aware of the essential nature and scope of
18 the Honda-ZF-ST Enterprise.

19 2055. As explained in Sections IV.D.1., IV.D.2., IV.D.6. above, ZF
20 Automotive USA, ZF Electronics USA, ZF Passive Safety USA, ZF TRW Corp.,
21 and ZF Germany were aware of the nature and scope of the ACU Defect.

22 2056. ZF Automotive USA, ZF Electronics USA, ZF Passive Safety USA,
23 ZF TRW Corp., and ZF Germany knew the approximate number of Honda vehicles
24 with the DS84 ACU because it made the ACUs for those vehicles.

25 2057. ZF Automotive USA, ZF Electronics USA, ZF Passive Safety USA,
26 ZF TRW Corp., and ZF Germany knew that Honda Japan or its subsidiaries would,
27 consistent with common practice in the automotive industry, make reassuring
28 statements about the Honda Class Vehicle’s safety systems, airbags, and seatbelts.

1 **iii. ST USA, ST Italy, and ST Malaysia understood the**
2 **nature and scope of the Honda-ZF-ST Enterprise’s**
3 **fraudulent scheme.**

4 2058. ST USA, ST Italy, and ST Malaysia were aware of the essential nature
5 and scope of the Honda-ZF-ST Enterprise.

6 2059. As explained in Sections IV.D.1., IV.D.2., IV.D.6 above, ST USA, ST
7 Italy, and ST Malaysia were aware of the nature and scope of the ACU Defect.

8 2060. Upon information and belief, ST Italy, ST Malaysia, and ST USA
9 knew the defective DS84 ASICs would be installed in some of Honda’s U.S.
10 vehicles. These companies also understood that automakers like the Honda
11 Defendants would, consistent with common practice in the automotive industry,
12 advertise their safety systems to consumers.

13 2061. ST USA, ST Malaysia, and ST Italy were aware of the scope of the
14 Honda-ZF-ST Enterprise, because ST Malaysia and ST USA made and sold the
15 DS84 ASICs for the Honda Class Vehicles and all these companies had access to
16 records which showed that millions of defective DS84 ASICs shipping to Illinois
17 per ZF Electronics USA’s instructions.

18 **b. Honda Japan, Honda USA, Honda Engineering USA, ZF**
19 **Automotive USA, ZF Electronics USA, ZF Passive Safety**
20 **USA, ZF TRW Corp., and ZF Germany agreed that one or**
21 **more members of the Enterprise would commit at least two**
22 **predicate acts of mail or wire fraud in furtherance of the**
23 **Honda-ZF-ST Enterprise’s fraudulent scheme.**

24 2062. Honda Japan, ZF Passive Safety USA, ZF Electronics USA, ZF
25 Automotive USA, Honda USA, and Honda Engineering USA began conspiring in
26 furtherance of the Honda-ZF-ST Enterprise’s fraudulent scheme in 2009.

27 2063. ZF Germany joined the conspiracy in or around 2015, when it acquired
28 with ZF TRW Corp.

1 2064. When Honda Japan agreed to use the defective DS84 ACU and ASIC
2 in Honda Class Vehicles, Honda Japan, Honda USA, Honda Engineering USA, ZF
3 Electronics USA, ZF Passive Safety USA, and ZF Automotive USA mutually
4 understood and intended that this agreement would prompt Honda Engineering
5 USA and Honda Japan to cause ZF Electronics USA to ship DS84 ACUs across
6 interstate lines and Honda USA to ship the Honda Class Vehicles with misleading
7 statements about the passive safety system, airbags, and seatbelts therein.

8 a. In 2009, Honda Japan agreed with ZF Electronics USA, ZF
9 Passive Safety USA, and ZF Automotive USA on the design
10 specifications for the DS84 ACU installed in Honda Class
11 Vehicles. Honda Japan, ZF Electronics USA, ZF Passive Safety
12 USA, and ZF Automotive USA continued to agree on
13 specifications for Honda Class Vehicles with the DS84 ACU for
14 every model year until 2019.

15 b. Between 2012 and 2019, Honda USA used mail and wire to
16 advertise the Honda Class Vehicles as safe vehicles with
17 properly-functioning airbags and seatbelts, and used private
18 interstate carriers to ship the Honda Class Vehicles with
19 misleading Monroney labels, airbag labels and imprints,
20 certification labels, readiness indicators, and owner's manuals.
21 Honda Japan, ZF Passive Safety USA, ZF Electronics USA, ZF
22 Automotive USA, and Honda Engineering USA all knew that
23 Honda USA was doing this and would do this.

24 c. When Honda Japan agreed with ZF Electronics USA, ZF
25 Passive Safety USA, and ZF Automotive USA on specifications
26 for the DS84 ACUs in Honda Class Vehicles, Honda Japan, ZF
27 Electronics USA, ZF Passive Safety USA, ZF Automotive USA,
28 and ZF TRW Corp. (and ZF Germany after 2015) they had a

1 mutual understanding that this agreement would cause Honda
2 Japan and Honda Engineering USA to send orders for hundreds
3 of thousands of DS84 ACUs every year via mail or wire to ZF
4 Electronics USA.

5 d. When Honda Japan agreed with ZF Electronics USA, ZF
6 Passive Safety USA, and ZF Automotive USA on specifications
7 for the DS84 ACUs in Honda Class Vehicles, Honda Japan, ZF
8 Electronics USA, ZF Passive Safety USA, ZF Automotive USA,
9 and ZF TRW Corp. (and ZF Germany after 2015) had a mutual
10 understanding that this agreement would cause ZF Electronics
11 USA to ship hundreds of thousands of DS84 ACUs via private
12 interstate carrier to Honda Japan and Honda Engineering USA.

13 2065. As explained in Count 7 above, the shipments of Honda Class
14 Vehicles by Honda USA, the orders by Honda Japan and Honda Engineering USA
15 for DS84 ACUs, and the shipments by ZF Electronics USA of the DS84 ACUs
16 violated the mail fraud statute because they furthered the Honda-ZF-ST
17 Enterprise's fraudulent scheme to cause consumers to purchase or lease vehicles
18 that contain the ACU Defect. To accomplish this goal, the DS84 ACUs needed to
19 be shipped before they could be installed in the vehicles.

20 a. Honda Japan, ZF Passive Safety USA, ZF Electronics USA, and
21 ZF Automotive USA facilitated these mail fraud act violations
22 by collaborating on the defective design of the ACU, the
23 readiness indicators, and Honda Class Vehicles.

24 b. Honda Japan further facilitated these mail fraud violations by
25 requiring (1) all manufacturers of Honda Class Vehicles to
26 install the DS84 ACUs therein, and (2) placing the misleading
27 certification labels, readiness indicators, and airbag labels and
28 imprints within the Honda Class Vehicles it made in Japan, and

1 requiring the nonparty-Enterprise-member Honda
2 manufacturing subsidiaries that made Honda Class Vehicles in
3 North America to do the same.

4 c. ZF TRW Corp. facilitated the scheme because, upon
5 information and belief, its approval was required for the launch
6 of the DS84 ACU, which was one of the company's most
7 popular ACUs.

8 d. ZF Germany facilitated the scheme because, upon information
9 and belief, its approval was required to continue the sales of the
10 DS84 ACU.

11 e. Honda USA facilitated this scheme by overseeing and approving
12 the misleading Monroney labels that it placed, or caused to be
13 placed, on Honda Class Vehicles.

14 f. Honda Engineering USA facilitated this scheme by placing the
15 misleading certification labels, readiness indicators, and airbag
16 labels and imprints within the Honda Class Vehicles it made in
17 the United States.

18 2066. The conspiracy among Honda Japan, Honda USA, Honda Engineering
19 USA, ZF Automotive USA, ZF Electronics USA, ZF Passive Safety USA, ZF
20 TRW Corp., and ZF Germany is further evidenced by their coordinated efforts to
21 cover up the ACU Defect.

22 a. For several years, Honda Japan, ZF Automotive USA, ZF
23 Electronics USA, ZF Passive Safety USA uncovered evidence
24 of ASIC EOS on DS84 ACUs and DS84 ASICs, but they
25 maintained confidentiality of these incidents amongst each
26 other.

27 b. Honda Japan, ZF Automotive USA, ZF Electronics USA, and
28 ZF Passive Safety USA also repeatedly coordinated in response

1 to NHTSA’s investigation. In 2016, ZF Electronics USA alerted
2 Honda Japan to NHTSA’s investigation of the DS84 ACUs and
3 sent excerpted copies of the misleading February 5, 2016 slide
4 deck to NHTSA as part of an effort to coordinate with Honda
5 Japan.

6 2067. The joint activities of ZF Electronics USA, ZF Passive Safety USA,
7 ZF Automotive USA, ZF TRW Corp., and ZF Germany in support of their
8 misleading statements to NHTSA were predicate acts and also show agreement by
9 these Defendants to advance the fraudulent scheme.

10 2068. ZF Electronics USA’s placement of orders for DS84 ASICs and
11 shipments of DS84 ACUs were predicate acts and also show agreement by ZF
12 Electronics USA to advance the fraudulent scheme.

13 2069. The success of the Honda-ZF-ST Enterprise’s fraudulent scheme
14 depended upon Honda Japan, ZF Passive Safety USA, ZF Electronics USA, ZF
15 Automotive USA, Honda USA, and Honda Engineering USA’s cooperation. All
16 these companies had to maintain strict confidentiality about the ACU Defect for the
17 scheme to continue. Moreover, the Honda companies depended on the ZF
18 companies for the manufacture of the defective ACUs, whereas the ZF companies
19 could not reach consumers of Honda Class Vehicles without the agreement of
20 Honda Japan. This interdependence evidences the agreement to further the
21 fraudulent scheme.

22 2070. The actions detailed above and throughout the Complaint as to each
23 member of the Honda-ZF-ST Enterprise were foreseeable to the other members of
24 the Honda-ZF-ST Enterprise given their direct relationship to and furtherance of the
25 common goals of the scheme.

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1 i. **ST USA, ST Italy, ST Malaysia, ZF Automotive USA,**
2 **ZF Electronics USA, and ZF Passive Safety USA**
3 **agreed on the commission of multiple violations of the**
4 **mail fraud statute in furtherance of the Honda-ZF-ST**
5 **Enterprise’s fraudulent scheme.**

6 2071. ST Italy, ST Malaysia, and ST USA began conspiring with ZF Passive
7 Safety USA, ZF Electronics USA, and ZF Automotive USA in 2005, when the two
8 supplier groups began the joint design of an ACU ASIC with unique vulnerability
9 to ASIC EOS. By 2008, all these companies knew about internal thermal testing
10 that confirmed the weakness of the ASIC. They held multiple meetings about this
11 issue. In spite of this early knowledge, and after the years already sunk into
12 development work for the cheaper ACU, they proceeded to launch and use the
13 DS84 ACU for millions of Class Vehicles for more than a decade.

14 2072. Even after learning that DS84 ACUs and ASICs had malfunctioned
15 due to EOS during crashes, ST Italy, ST Malaysia, ST USA, ZF Passive Safety
16 USA, ZF Electronics USA, and ZF Automotive USA continued to sell and send
17 shipments of the parts. When doing so, these companies all knew that Honda Japan,
18 Honda USA, and Honda Engineering USA would coordinate to cause the Honda
19 Class Vehicles with the defective DS84 ACU and ASIC to be presented to
20 consumers with misleading certification labels, airbag labels and imprints, and
21 readiness indicators.

22 2073. Several actions by ST Italy, ST Malaysia, and ST USA further support
23 an inference of agreements with ZF Passive Safety USA, ZF Electronics USA, and
24 ZF Automotive USA to commit at least two predicate acts in furtherance of the
25 conspiracy:

26 a. Between September 2009 and 2018, ST USA, ST Italy and ST
27 Malaysia regularly communicated with ZF Automotive USA,
28 ZF Electronics USA, and ZF Passive Safety USA about
 observations of EOS in DS84 ASICs, including some ASICs

1 from Honda vehicles. ST USA, ST Italy, and ST Malaysia's
2 DS84 ASIC team observed EOS damage on ASICs retrieved
3 from at least two Honda vehicles.

4 b. Upon information and belief, in 2016, ZF Automotive USA, ZF
5 Electronics USA, and ZF Passive Safety USA sent each ST
6 Defendant excerpted copies of its misleading statements from its
7 February 5, 2016 slide deck.

8 c. Between 2009 and 2019 at the very least, ST USA and ST
9 Malaysia continuously violated the mail fraud act in furtherance
10 of the Honda-ZF-ST Enterprise by shipping DS84 ASICs, with a
11 mutual understanding that some of these ASICs would be
12 installed in Honda Class Vehicles, as explained above.

13 d. Between 2008 and 2019 at the very least, ST USA, ST Italy, and
14 ST Malaysia maintained public silence about the ACU Defect,
15 despite the DS84 ASIC's and ACU's unusual vulnerability to
16 transients.

17 2074. The actions detailed above and throughout the Complaint as to each
18 member of the Honda-ZF-ST Enterprise were foreseeable to the other members of
19 the Honda-ZF-ST Enterprise given their direct relationship to and furtherance of the
20 common goals of the scheme.

21 2075. The success of the Honda-ZF-ST Enterprise's fraudulent scheme
22 depended upon ST USA, ST Italy, and ST Malaysia, ZF Passive Safety USA, ZF
23 Electronics USA, and ZF Automotive USA's cooperation. All these companies had
24 to maintain strict confidence about the ACU Defect for the scheme to continue.
25 Moreover, the ZF companies depended upon the ST companies for the manufacture
26 of the defective ASICs, whereas the ST companies depended upon the ZF
27 companies for a viable path to profit from the consumers of Class Vehicles. This
28 interdependence evidences the agreement to further the fraudulent scheme.

1 **9. Nationwide Count 9: Violations of the Racketeer Influenced**
2 **Corrupt Organizations Act, 18 U.S.C. § 1962(c), on Behalf of the**
3 **Nationwide Mitsubishi Class Against Mitsubishi USA, Mitsubishi**
4 **Japan, ZF Electronics USA, ZF Passive Safety USA, ZF**
5 **Automotive USA, ZF TRW Corp., ZF Germany, ST USA, and ST**
6 **Malaysia.**

7 2076. Plaintiffs reallege and incorporate by reference all preceding
8 allegations as though fully set forth herein.

9 2077. Pursuant to 18 U.S.C. § 1962(c): “It shall be unlawful for any person
10 employed by or associated with any enterprise engaged in, or the activities of which
11 affect, interstate or foreign commerce, to conduct or participate, directly or
12 indirectly, in the conduct of such enterprise’s affairs through a pattern of
13 racketeering activity or collection of unlawful debt.” Mitsubishi USA, Mitsubishi
14 Japan, ZF Electronics USA, ZF Passive Safety USA, ZF Automotive USA, ZF
15 TRW Corp., ZF Germany, ST USA, and ST Malaysia are “persons” under 18
16 U.S.C. § 1961(3) because each was capable of holding “a legal or beneficial interest
17 in property.”

18 2078. A violation of 18 U.S.C. § 1962(c) has four elements: “(1) conduct (2)
19 of an enterprise (3) through a pattern (4) of racketeering activity.” ECF 396 at 59
20 (quoting *Sedima v. Imrex Co.*, 473 U.S. 479, 496 (1985)).

21 2079. Mitsubishi USA, Mitsubishi Japan, ZF Electronics USA, ZF Passive
22 Safety USA, ZF Automotive USA, ZF TRW Corp., ZF Germany, ST USA, and ST
23 Malaysia, and several nonparties formed the Mitsubishi-ZF-ST Enterprise. The
24 members of this Enterprise included Defendants Mitsubishi Japan, Mitsubishi USA,
25 ZF Electronics USA, ZF Passive Safety USA, ZF Automotive USA, ZF TRW
26 Corp., ZF Germany, ST USA, ST Italy, and ST Malaysia. Discovery will likely
27 reveal several additional members of the Mitsubishi-ZF-ST Enterprise that are not
28 currently known to the Mitsubishi Plaintiffs.

 2080. Mitsubishi Japan, Mitsubishi USA, ZF Electronics USA, ZF Passive
Safety USA, ZF Automotive USA, ZF TRW Corp., ZF Germany, ST USA, and ST

1 Malaysia are liable under 18 U.S.C. § 1962(c) because they conducted or
2 participated in the conduct of the affairs of an “association-in-fact enterprise”—i.e.,
3 the Mitsubishi-ZF-ST Enterprise—through a pattern of racketeering activity. In
4 other words, each of these Defendants committed at least two predicate acts in
5 furtherance of the Enterprise’s fraudulent scheme.

6 2081. 18 U.S.C. § 1964(c) provides for a civil remedy for any violation of 18
7 U.S.C. § 1962 for “[a]ny person injured in his business or property by reason of a
8 violation of section 1962 of this chapter.” In addition to proving a violation of
9 1962, this remedy requires proximate cause of a cognizable injury. ECF 396 at 59.

10 2082. Mitsubishi Japan, Mitsubishi USA, ZF Electronics USA, ZF Passive
11 Safety USA, ZF Automotive USA, ZF TRW Corp., ZF Germany, ST USA, and ST
12 Malaysia each violated 18 U.S.C. § 1962(c) and injured the business or property of
13 the Mitsubishi Plaintiffs and the Nationwide Mitsubishi Class. The Mitsubishi
14 Plaintiffs claim damages for themselves and the Nationwide Mitsubishi Class
15 members under 18 U.S.C. § 1964(c).

16 a. **Mitsubishi USA, Mitsubishi Japan, ZF Electronics USA, ZF**
17 **Passive Safety USA, ZF Automotive USA, ZF TRW Corp.,**
18 **ZF Germany, ST USA, and ST Malaysia each committed at**
19 **least two predicate acts of mail and wire fraud in**
20 **furtherance of the Mitsubishi-ZF-ST Enterprise’s**
21 **fraudulent scheme to affirmatively mislead consumers and**
22 **NHTSA.**

23 2083. The members of the Mitsubishi-ZF-ST Enterprise devised a scheme
24 for the purpose of defrauding consumers and NHTSA by concealing or minimizing
25 the ACU Defect in Mitsubishi Class Vehicles through a pattern of affirmatively
26 misleading statements.

27 2084. In the alternative, the Mitsubishi-ZF-ST Enterprise members devised
28 an illicit scheme for the purpose of obtaining money by fraudulent pretenses
because they had the purpose of maximizing the sale of Mitsubishi Class Vehicles,
which ultimately provided revenue to the Mitsubishi-ZF-ST Enterprise members.

1 2085. To carry out, or attempt to carry out the fraudulent schemes,
2 Mitsubishi USA, Mitsubishi Japan, ZF Electronics USA, ZF Passive Safety USA,
3 ZF Automotive USA, ZF TRW Corp., ZF Germany, ST USA, ST Italy, and ST
4 Malaysia—each of whom is a person associated-in-fact with the Enterprise—did
5 knowingly conduct or participate, directly or indirectly, in the affairs of the
6 Mitsubishi-ZF-ST Enterprise through a pattern of racketeering activity within the
7 meaning of 18 U.S.C. §§ 1961(1), 1961(5), and 1962(c). In furtherance of the
8 scheme to defraud, the Mitsubishi-ZF-ST Enterprise members each committed *at*
9 *least* two acts in violation of 18 U.S.C. § 1341 (mail fraud) and § 1343 (wire fraud),
10 as described in the subsections below.

11 **i. Mitsubishi Japan violated the mail and wire fraud**
12 **statutes multiple times in furtherance of the**
13 **Mitsubishi-ZF-ST Enterprise’s fraudulent scheme.**

14 2086. Mitsubishi Japan violated the mail fraud statute multiple times by
15 causing misleading certification labels, readiness indicators, airbag labels and
16 imprints, and owner’s manuals to be placed within every Mitsubishi Class Vehicle
17 prior to their shipment to the dealers that sell or lease the vehicles to consumers.
18 Mitsubishi Japan caused the inclusion of these misleading statements within every
19 Mitsubishi Class Vehicle with full knowledge and the specific intent that
20 Mitsubishi USA would distribute the Mitsubishi Class Vehicles to dealers across
21 the United States using private interstate carriers. Accordingly, Mitsubishi Japan
22 “knowingly cause[d]” the Mitsubishi Class Vehicles with misleading statements “to
23 be delivered by . . . such carrier[s],” in violation of 18 U.S.C. § 1341.

24 a. Mitsubishi Japan was directly responsible for including all of
25 these misleading statements in the Mitsubishi Class Vehicles.
26 Upon information and belief, Mitsubishi Japan placed the
27 misleading certification labels, airbag warning lamps, and airbag
28 labels and imprints in the Mitsubishi Class Vehicles when it

1 manufactured them in Japan, including at its manufacturing
2 plant in Mizushima, Japan at following address: 1, Kaigan-dori
3 1-chome, Mizushima, Kurashiki, Okayama Prefecture 712-8501.
4 The certification labels bore Mitsubishi Japan’s corporate name,
5 “Mitsubishi Motors Corporation.” The Mitsubishi Class
6 Vehicles made by Mitsubishi Japan have vehicle identification
7 numbers that begin with the letter “J.” Mitsubishi Japan has
8 records in its possession that will identify the dates (between
9 approximately 2012 and 2017) and locations when it shipped the
10 Mitsubishi Class Vehicles to the United States and to Mitsubishi
11 USA, with the purpose of distributing them in the United States
12 for sale to consumers. Plaintiffs do not have access to these
13 confidential records that provide the precise dates and locations.

14 b. Mitsubishi Japan was also responsible for the content of the
15 owner’s manuals for Mitsubishi Class Vehicles. It owns the
16 copyright interest in these manuals, which state also they were
17 “Printed in Japan.” Insofar as Mitsubishi USA effectuated the
18 shipments of the owner’s manuals within Mitsubishi Class
19 Vehicles to dealers in the United States, it acted as Mitsubishi
20 Japan’s distribution agent for Mitsubishi Japan’s copyright
21 material. Upon information and belief, the publication of these
22 owner’s manuals occurred at or around the commencement of
23 public sales for each model year.

24 2087. Although the precise shipment dates for all Mitsubishi Class Vehicles
25 are not known to the Mitsubishi Plaintiffs, on information and belief, these
26 shipments occurred in all years in or about 2012 to 2017, and originated from
27 Mitsubishi’s production facilities in Japan, including its Mizushima facility at: 1,
28 Kaigan-dori 1-chome, Mizushima, Kurashiki, Okayama Prefecture 712-8501.

1 Plaintiffs were exposed to in-vehicle misleading statements prior to, and at the
2 point of, sale or lease. The dates and locations of these transactions are alleged
3 above in Section II.B.5.

4 2088. Each shipment of a Mitsubishi Class Vehicle or Vehicles to a dealer
5 was a violation of the mail fraud statute (18 U.S.C. § 1341) because Mitsubishi
6 Japan knew the certification labels, airbag warning labels, in-vehicle airbag labels
7 and imprints, and owner's manuals in all Mitsubishi Class Vehicles were
8 misleading and would further the scheme to defraud consumers into purchasing or
9 leasing Mitsubishi Class Vehicles.

10 2089. When Mitsubishi USA distributed the Mitsubishi Class Vehicles to
11 dealers in the United States, it acted as Mitsubishi Japan's agent.

12 2090. Mitsubishi Japan separately violated the mail fraud act (18 U.S.C.
13 § 1341) by placing orders with ZF Electronics USA that caused ZF Electronics
14 USA to ship defective DS84 ACUs by private or commercial interstate carrier to
15 Mitsubishi Japan in Japan. These shipments furthered the Mitsubishi-ZF-ST
16 Enterprise's fraudulent scheme because Mitsubishi Japan's use of the defective
17 DS84 ACUs in Mitsubishi Class Vehicles was essential to the cost-saving goal
18 behind the scheme. Mitsubishi Japan caused ZF Electronics USA to make these
19 deliveries knowing it would install the defective DS84 ACUs in the Mitsubishi
20 Class Vehicles and market the vehicles to U.S. consumers as safe. Accordingly,
21 each of Mitsubishi USA's orders and ZF Electronics USA's shipments of the DS84
22 ACU violated the mail fraud statute (18 U.S.C. § 1341).

23 2091. The precise dates and locations of each particular shipment of DS84
24 ACUs are not known to the Mitsubishi Plaintiffs because they have no visibility
25 into the shipments to from ZF Electronics USA to Mitsubishi Japan as Defendants
26 have not produced documents that show that information. However, a chart
27 produced by the domestic ZF Defendants to NHTSA identifies the precise volume
28 of DS84 ACUs shipped for each year for each model of Mitsubishi Class Vehicles,

1 and identifies Marshall, Illinois as the shipping location. Exhibit 20 includes
2 highlighting added by Plaintiffs to identify the particular information about
3 shipping locations, volumes, vehicle makes and models, and shipping years
4 contained in this chart. *See* Ex. 20 (ZF-MDL-679) at 684. Upon information and
5 belief, the shipping address for each of these shipments by ZF Electronics USA
6 from Marshall, Illinois was 902 South 2nd Street, Marshall, Illinois 62441. Upon
7 information and belief, these ACUs were shipped to Mitsubishi Japan’s production
8 facilities including to the following address in Mizushima, Japan: 1, Kaigan-dori 1-
9 chome, Mizushima, Kurashiki, Okayama Prefecture 712-8501. The information
10 available in this chart is sufficient for Defendants to identify the precise dates of
11 shipments and the recipient addresses because Defendants will have backup
12 information that shows additional details about the underlying shipments.

13 **ii. Mitsubishi USA violated the mail and wire fraud**
14 **statutes multiple times in furtherance of the**
15 **Mitsubishi-ZF-ST Enterprise’s fraudulent scheme.**

16 2092. Mitsubishi USA committed mail fraud every time it shipped, or caused
17 to be shipped, a Mitsubishi Class Vehicle to dealers in the United States. For every
18 Mitsubishi Class Vehicle, Mitsubishi USA delivered, or caused delivery of, each
19 vehicle by private or commercial interstate carrier to automobile dealerships across
20 the United States. Mitsubishi USA delivered these tens of thousands of Class
21 Vehicles to execute the Mitsubishi-ZF-ST Enterprise’s scheme to defraud
22 consumers and NHTSA.

23 a. These deliveries furthered the scheme because Mitsubishi USA
24 sent the vehicles to the dealerships where consumers would
25 purchase or lease them and because, prior to shipping the
26 Mitsubishi Class Vehicles, Mitsubishi Japan had affixed, or
27 caused to be affixed, to the vehicles misleading certification
28 labels (*see* Section IV.E.1.b. above), readiness indicators (*see*

1 Section IV.E.1.c. above), and airbag labels and imprints (*see*
2 Section IV.E.1.d. above).

3 b. Moreover, prior to shipping each Mitsubishi Class Vehicle,
4 Mitsubishi USA approved the content for Monroney labels for
5 each make and model. Mitsubishi USA would then cause these
6 misleading labels to be placed on the Mitsubishi Class Vehicles
7 prior to shipment to dealers. Shipment of the Mitsubishi Class
8 Vehicles with these misleading Monroney labels furthered the
9 Mitsubishi-ZF-ST Enterprise’s scheme because consumers
10 relied upon the labels when purchasing or leasing the Vehicles.

11 2093. Mitsubishi USA knew the Monroney labels, certification labels,
12 readiness indicators, airbag labels and imprints, and owners’ manuals shipped with
13 each Mitsubishi Class Vehicle were misleading because the Mitsubishi Class
14 Vehicles all contained the ACU Defect.

15 2094. Although the precise shipment dates for all Mitsubishi Class Vehicles
16 are not known to the Mitsubishi Plaintiffs, on information and belief, these
17 shipments occurred in all years in or about 2012 to 2017. Plaintiffs were exposed to
18 in-vehicle misleading statements prior to, and at the point of, sale or lease. The
19 dates and locations of these transactions are alleged above in Section II.B.5.

20 2095. Starting in 2012, Mitsubishi USA also transmitted, or caused to be
21 transmitted, thousands of advertisements which stressed the safety of Mitsubishi
22 Class Vehicles using mail, wire, radio, or television communications in interstate
23 commerce. Mitsubishi USA’s misleading advertisements are too numerous to recite
24 completely, given the nationwide scope and years-long duration of the Mitsubishi-
25 ZF-ST Enterprise’s fraudulent scheme. Examples of these advertisements are
26 collected in Section IV.E.2.a.v. and Exhibit 12. Each such mailed advertisement—
27 including brochures sent to dealerships for display to consumers or print
28 advertisements in newspapers or magazines—was a violation of the mail fraud

1 statute (18 U.S.C. § 1341). Each such internet-based, radio, and television
2 advertisement was a violation of the wire fraud statute (18 U.S.C. § 1343).
3 Mitsubishi USA knew advertisements assuring the safety of Mitsubishi Class
4 Vehicles were misleading and would further the scheme to defraud consumers into
5 purchasing or leasing Mitsubishi Class Vehicles.

6 2096. Mitsubishi USA also effectuated shipments of the owner's manuals
7 within Mitsubishi Class Vehicles to dealers in the United States, and acted as
8 Mitsubishi Japan's distribution agent for its copyrighted material in doing so.
9 Mitsubishi USA knew the owner's manuals were misleading and would further the
10 scheme to defraud consumers into purchasing or leasing Mitsubishi Class Vehicles.
11 Accordingly, each shipment of an owner's manual was a separate violation of the
12 mail fraud statute (18 U.S.C. § 1341).

13 **iii. ZF Electronics USA violated the mail and wire fraud**
14 **statutes multiple times in furtherance of the**
15 **Mitsubishi-ZF-ST Enterprise's fraudulent scheme.**

16 2097. ZF Electronics USA drafted and/or edited the following misleading
17 statements to NHTSA, as discussed in Sections IV.F.2., IV.F.4., IV.F.8., and
18 IV.F.14. above:

- 19 a. The slide deck presentation dated February 5, 2016 (which ZF
20 TRW Corp. mailed to NHTSA on March 14, 2016);
- 21 b. The slide deck presentation dated July 19, 2016 (which, upon
22 information and belief, was mailed to NHTSA in July or August
23 2016);
- 24 c. The September 2016 letter signed by Marc Bolitho⁴³ (which was
25 mailed to NHTSA in September 2016); and
- 26 d. The slide deck presentation dated March 8, 2018 (which ZF

27 ⁴³ Mr. Bolitho was simultaneously an employee of ZF Passive Safety USA, the
28 Vice President of Passive Safety for ZF Electronics USA, and Director of Passive
Safety Engineering for ZF TRW Corp.

1 TRW Corp. mailed to NHTSA on March 12, 2018).

2 2098. As explained in sections IV.F.2., IV.F.4., IV.F.8., and IV.F.14. above,
3 each of these transmittals contained misleading statements about the ACU Defect.
4 ZF Electronics USA specifically approved the transmittal of the final versions of
5 these documents to NHTSA, and intended for the misleading statements contained
6 therein to avoid, minimize, and/or delay recalls of Mitsubishi Class Vehicles.
7 Avoiding, minimizing, and/or delaying recalls of Mitsubishi Class Vehicles enabled
8 the continuation of the scheme to defraud consumers.

9 2099. ZF Electronics USA caused the delivery of the February 5, 2016 slide
10 deck to NHTSA. ZF Electronics USA's causal role in the delivery is evidenced by
11 the fact that its Vice President of Passive Safety Marc Bolitho signed an affidavit of
12 confidentiality that was enclosed with the mailing of the February 5, 2016 slide
13 deck.

14 2100. Because the July 19, 2016 slide deck closely resembles the February 5,
15 2016 slide deck, the same personnel and companies were likely responsible for
16 sending it via mail or private interstate carrier to NHTSA. Accordingly, upon
17 information and belief, ZF Electronics USA caused this delivery to NHTSA too.

18 2101. ZF Electronics USA caused the delivery of the March 8, 2018 slide
19 deck to NHTSA. ZF Electronics USA's causal role in the delivery is evidenced by
20 the fact that its Technical Specialist, Emanuel Goodman, signed the affidavit of
21 confidentiality that was enclosed with the mailing of the March 8, 2018 slide deck.
22 ZF Electronics USA's causal role in the delivery is further evidenced by Mr.
23 Goodman's and Mr. Bolitho's attendance at the March 8, 2018 meeting with
24 NHTSA, where this slide deck was used.

25 2102. Moreover, because ZF Electronics USA's affiliates would not have
26 sent or approved the four written communications described above without ZF
27 Electronics USA's contributions and approval, ZF Electronics USA was one of the
28 Defendants who jointly caused the delivery of these four communications to

1 NHTSA. Accordingly, its participation in these communications violated the mail
2 fraud statute at least four times. 18 U.S.C. § 1341.

3 2103. As explained in Section IV.E.1.c. above, ZF Electronics USA worked
4 with ZF Passive Safety USA, ZF Automotive USA, and Mitsubishi Japan to design
5 the readiness indicators installed in Mitsubishi Class Vehicles. Specifically, ZF
6 Electronics USA assisted with a design of ACUs that would cause the readiness
7 indicator not to illuminate at the point of sale or lease, even though the Mitsubishi
8 Class Vehicle's safety systems were not ready to deploy in foreseeable crash events
9 with negative transients due to the ACU Defect. When ZF Electronics USA assisted
10 with this design, it knew Mitsubishi Japan and Mitsubishi USA would ship the
11 Mitsubishi Class Vehicles to dealers and that consumers would buy Mitsubishi
12 Class Vehicles without the airbag warning lamp illuminating at the point of sale or
13 lease. Because Mitsubishi Japan and Mitsubishi USA would not have shipped
14 Mitsubishi Class Vehicles without ZF Electronics USA's assistance in designing
15 misleading readiness indicators, ZF Electronics USA jointly caused each shipment
16 of a Mitsubishi Class Vehicle, in violation of the mail fraud act (18 U.S.C. § 1341).

17 2104. ZF Electronics USA received orders from Mitsubishi Japan for the
18 defective DS84 ACUs used in every Mitsubishi Class Vehicle and shipped them by
19 private or commercial interstate carrier to Mitsubishi Japan in Japan. These
20 shipments furthered the Mitsubishi-ZF-ST Enterprise's fraudulent scheme because
21 Mitsubishi Japan's use of the defective DS84 ACUs in Mitsubishi Class Vehicles
22 was essential to the cost-saving goal behind the scheme. When ZF Electronics USA
23 shipped the defective DS84 ACUs to Mitsubishi Japan, it knew they would be
24 installed in the Mitsubishi Class Vehicles that are marketed to U.S. consumers. ZF
25 Electronics USA was also specifically aware of Mitsubishi Japan and Mitsubishi
26 USA's practices of making reassuring statements about safety, airbags, and
27 seatbelts in consumer-facing Monroney labels, certification labels, in-vehicle labels,
28 owner's manuals, and advertising for all Mitsubishi Class Vehicles. ZF Electronics

1 USA knew these statements were false because it knew the Mitsubishi Class
2 Vehicles, DS84 ACU, and DS84 ASIC were defective. Accordingly, because ZF
3 Electronics USA shipped each defective DS84 ACU with the purpose of executing
4 a fraudulent scheme with its conspirators, each of ZF Electronics USA's shipments
5 of the defective DS84 ACU violated the mail fraud statute (18 U.S.C. § 1341).

6 2105. The particularities of these shipments are discussed above. Exhibit 20
7 includes highlighting added by Plaintiffs to identify the particular information about
8 shipping locations, volumes, vehicle makes and models, and shipping years
9 contained in this chart. *See* Ex. 20 (ZF-MDL-679) at 684. As this same document
10 indicates, the DS84 ASICs were shipped in each year from 2012 to 2017 from
11 Marshall, Illinois. Upon information and belief, the shipping address for each of
12 these shipments by ZF Electronics USA from Marshall, Illinois was 902 South 2nd
13 Street, Marshall, Illinois 62441. Upon information and belief, the receiving address
14 for these shipments was Mitsubishi Japan's production facilities in Japan,
15 including to the following address in Mizushima, Japan: 1, Kaigan-dori 1-chome,
16 Mizushima, Kurashiki, Okayama Prefecture 712-8501.

17 2106. ZF Electronics USA also separately violated the mail fraud act (18
18 U.S.C. § 1341) by placing orders with ST USA that required ST USA to ship
19 millions of defective DS84 ASICs to ZF Electronics USA at a facility with the
20 following address: 902 South 2nd Street, Marshall, Illinois 62441. When ZF
21 Electronics USA placed these orders, it knew it would place these DS84 ASICs into
22 DS84 ACUs, including those that would be installed in the Mitsubishi Class
23 Vehicles that are marketed to U.S. consumers. ZF Electronics USA was also
24 specifically aware of Mitsubishi Japan and Mitsubishi USA's practices of making
25 reassuring statements about safety, airbags, and seatbelts in consumer-facing
26 Monroney labels, certification labels, in-vehicle labels, owner's manuals, and
27 advertising for all Mitsubishi Class Vehicles. ZF Electronics USA knew these
28 statements were false because it knew the Mitsubishi Class Vehicles, DS84 ACU,

1 and ASIC were defective. Accordingly, because ZF Electronics USA caused
2 shipments of defective DS84 ASICs with the purpose of executing a fraudulent
3 scheme with its conspirators, each of the DS84 ASIC shipments caused by ZF
4 Electronics USA violated the mail fraud statute (18 U.S.C. § 1341). ST USA has
5 produced approximately 9,700 such invoices from the time period between 2014
6 and the present alone. Plaintiffs have extracted approximate shipping dates from
7 these invoices, which are presented as exemplars in Exhibit 21.⁴⁴

8 **iv. ZF Passive Safety USA violated the mail and wire**
9 **fraud statutes multiple times in furtherance of the**
10 **Mitsubishi-ZF-ST Enterprise's fraudulent scheme.**

11 2107. ZF Passive Safety USA drafted and/or edited the following misleading
12 statements to NHTSA, as discussed in Sections IV.F.2., IV.F.4., IV.F.8., and
13 IV.F.14. above:

- 14 a. The slide deck presentation dated February 5, 2016 (which ZF
15 TRW Corp. mailed to NHTSA on March 14, 2016);
- 16 b. The slide deck presentation dated July 19, 2016 (which, upon
17 information and belief, was mailed to NHTSA in July or August
18 2016);
- 19 c. The September 2016 letter signed by Marc Bolitho⁴⁵ (which was
20 mailed to NHTSA in September 2016); and
- 21 d. The slide deck presentation dated March 8, 2018 (which ZF
22 TRW Corp. mailed to NHTSA on March 12, 2018).

23
24 _____
25 ⁴⁴ ST USA made similar shipments between 2007 and 2014, but ST USA is
26 presently withholding invoices for these shipments from discovery. Upon
27 information and belief, the invoices for this time period will show similarly
28 regularity of shipments.

⁴⁵ Mr. Bolitho was simultaneously an employee of ZF Passive Safety USA, the
Vice President of Passive Safety for ZF Electronics USA, and Director of Passive
Safety Engineering for ZF TRW Corp.

1 2108. As explained in sections IV.F.2., IV.F.4., IV.F.8., and IV.F.14. above,
2 each of these transmittals contained misleading statements about the ACU Defect.
3 ZF Passive Safety USA specifically approved the transmittal of the final versions of
4 these documents to NHTSA, and intended for the misleading statements contained
5 therein to avoid, minimize, and/or delay recalls of Mitsubishi Class Vehicles.
6 Avoiding, minimizing, and/or delaying recalls of Mitsubishi Class Vehicles enabled
7 the continuation of the scheme to defraud consumers.

8 2109. ZF Passive Safety USA caused the delivery of the February 5, 2016
9 slide deck to NHTSA. ZF Passive Safety USA's causal role in the delivery is
10 evidenced by the fact that its employee Marc Bolitho signed an affidavit of
11 confidentiality that was enclosed with the mailing of the February 5, 2016 slide
12 deck. Although Mr. Bolitho also simultaneously served as a Vice President for ZF
13 Electronics USA and a Director of Passive Safety Engineering for ZF TRW Corp.,
14 ZF Passive Safety USA alone paid his salary.

15 2110. Because the July 19, 2016 slide deck closely resembles the February 5,
16 2016 slide deck, the same personnel and companies were likely responsible for
17 sending it via mail or private interstate carrier to NHTSA. Accordingly, upon
18 information and belief, ZF Passive Safety USA caused this delivery too.

19 2111. ZF Passive Safety USA caused the delivery of the March 8, 2018 slide
20 deck to NHTSA. ZF Passive Safety USA's causal role in the delivery is evidenced
21 by the fact that its longtime employee, Emanuel Goodman, signed the affidavit of
22 confidentiality that was enclosed with the mailing of the March 8, 2018 slide deck.
23 Although Mr. Goodman also served as the Technical Specialist for ZF Electronics
24 USA, ZF Passive Safety USA alone paid his salary. ZF Passive Safety USA's
25 causal role in the delivery is further evidenced by Mr. Goodman's and Mr.
26 Bolitho's attendance at the March 8, 2018 meeting with NHTSA, where this slide
27 deck was used.

28

1 2112. Moreover, because ZF Passive Safety USA’s affiliates would not have
2 sent or approved the four written communications described above without ZF
3 Passive Safety USA’s contributions and approval, ZF Passive Safety USA was one
4 of the Defendants who jointly caused the delivery of these four communications to
5 NHTSA. Accordingly, its participation in these communications violated the mail
6 fraud statute at least four times. 18 U.S.C. § 1341.

7 2113. As explained in sections IV.F.2., IV.F.4., IV.F.8., and IV.F.14. above,
8 each of the four documents described above contained misleading statements about
9 the ACU Defect. ZF Passive Safety USA specifically approved the transmittal of
10 the final versions of these documents to NHTSA, and intended for the misleading
11 statements contained therein to avoid, minimize, and/or delay recalls of Mitsubishi
12 Class Vehicles. Avoiding, minimizing, and/or delaying recalls of Mitsubishi Class
13 Vehicles enabled the continuation of the scheme to defraud consumers. Because ZF
14 Passive Safety USA’s affiliates would not have sent or approved the written
15 communications noted in the preceding paragraph without ZF Passive Safety
16 USA’s contributions and approval, ZF Passive Safety USA was one of the
17 Defendants who caused the delivery of these four communications to NHTSA.
18 Accordingly, its participation in these communications violated the mail fraud
19 statute at least four times. (18 U.S.C. § 1341).

20 2114. As explained in Section IV.E.1.c. above, ZF Passive Safety USA
21 worked with ZF Electronics USA, ZF Automotive USA, and Mitsubishi Japan to
22 design the readiness indicators installed in all Mitsubishi Class Vehicles.
23 Specifically, ZF Passive Safety USA assisted with a design of ACUs that would
24 cause the readiness indicator not to illuminate at the point of sale or lease, even
25 though the Mitsubishi Class Vehicle’s safety systems were not ready to deploy in
26 crash events with negative transients due to the ACU Defect. When ZF Passive
27 Safety USA assisted with this design, it knew that Mitsubishi Japan and Mitsubishi
28 USA would ship the Mitsubishi Class Vehicles to dealers and that consumers would

1 buy the vehicles without the airbag warning lamp illuminating at the point of sale or
2 lease. Because Mitsubishi Sales USA would not have shipped Mitsubishi Class
3 Vehicles without ZF Passive Safety USA's assistance in designing misleading
4 readiness indicators, ZF Passive Safety USA jointly caused each shipment of
5 Mitsubishi Class Vehicle, in violation of the mail fraud act (18 U.S.C. § 1341).

6 **v. ZF Automotive USA violated the mail and wire fraud**
7 **statutes multiple times in furtherance of the**
8 **Mitsubishi-ZF-ST Enterprise's fraudulent scheme.**

9 2115. ZF Automotive USA drafted and/or edited the following misleading
10 statements to NHTSA, as discussed in Sections IV.F.2., IV.F.4., IV.F.8., and
11 IV.F.14. above:

- 12 a. The slide deck presentation dated February 5, 2016 (which ZF
13 TRW Corp. mailed to NHTSA on March 14, 2016);
- 14 b. The slide deck presentation dated July 19, 2016 (which, upon
15 information and belief, was mailed to NHTSA in July or August
16 2016);
- 17 c. The September 2016 letter signed by Marc Bolitho (which was
18 mailed to NHTSA in September 2016); and
- 19 d. The slide deck presentation dated March 8, 2018 (which ZF
20 TRW Corp. mailed to NHTSA on March 12, 2018).

21 2116. ZF Automotive USA caused the delivery via mail or private interstate
22 carrier of the February 5, 2016 slide deck, the July 19, 2016 slide deck, and the
23 March 8, 2018 slide deck to NHTSA. ZF Automotive USA's role in causing the
24 delivery of these presentations is evidenced by its admission in a 573 Defect Report
25 that it attended the three meetings with NHTSA where these presentations were
26 used on its behalf.
27
28

1 2117. Upon information and belief, ZF Automotive USA caused the delivery
2 of the September 2016 letter via mail or private interstate carrier by giving requisite
3 approval prior to the transmittal of the letter.

4 2118. As explained in sections IV.F.2., IV.F.4., IV.F.8., and IV.F.14. above,
5 each of these four documents contained misleading statements about the ACU
6 Defect. ZF Automotive USA specifically approved the transmittal of the final
7 versions of these documents to NHTSA, and intended for the misleading statements
8 contained therein to avoid, minimize, and/or delay recalls of Mitsubishi Class
9 Vehicles. Avoiding, minimizing, and/or delaying recalls of Mitsubishi Class
10 Vehicles enabled the continuation of the scheme to defraud consumers. Because ZF
11 Automotive USA's affiliates would not have sent or approved the written
12 communications noted in the preceding paragraph without ZF Automotive USA's
13 contributions and approval, ZF Automotive USA was one of the Defendants who
14 caused the delivery of these four communications to NHTSA. Accordingly, its
15 participation in these communications violated the mail fraud statute at least four
16 times. (18 U.S.C. § 1341).

17 2119. As explained in Section IV.E.1.c. above, ZF Automotive USA worked
18 with ZF Passive Safety USA, ZF Electronics USA, and Mitsubishi Japan to design
19 the readiness indicators installed in Mitsubishi Class Vehicles. Specifically, ZF
20 Automotive USA assisted with a design of ACUs that would cause the readiness
21 indicator not to illuminate at the point of sale or lease, even though the Mitsubishi
22 Class Vehicle's safety systems were not ready to deploy in crash events with
23 negative transients due to the ACU Defect. When ZF Automotive USA assisted
24 with this design, it knew Mitsubishi USA would ship the Mitsubishi Class Vehicles
25 to dealers and that consumers would buy the vehicles without the airbag warning
26 lamp illuminating at the point of sale or lease. Because Mitsubishi Sales USA
27 would not have shipped Mitsubishi Class Vehicles without ZF Automotive USA's
28 affirmative assistance in designing misleading readiness indicators, ZF Automotive

1 USA jointly caused each shipment of Mitsubishi Class Vehicle, in violation of the
2 mail fraud act (18 U.S.C. § 1341).

3 **vi. ZF TRW Corp. violated the mail and wire fraud**
4 **statutes multiple times in furtherance of the**
5 **Mitsubishi-ZF-ST Enterprise’s fraudulent scheme.**

6 2120. Prior to their delivery to NHTSA, ZF TRW Corp. reviewed, drafted
7 and/or edited the following misleading statements to NHTSA, as discussed in
8 Sections IV.F.2., IV.F.4., IV.F.8., and IV.F.14. above:

- 9 a. The slide deck presentation dated February 5, 2016 (which ZF
10 TRW Corp. mailed to NHTSA on March 14, 2016);
- 11 b. The slide deck presentation dated July 19, 2016 (which, upon
12 information and belief, was mailed to NHTSA in July or August
13 2016);
- 14 c. The September 2016 letter signed by Marc Bolitho⁴⁶ (which was
15 mailed to NHTSA in September 2016); and
- 16 d. The slide deck presentation dated March 8, 2018 (which ZF
17 TRW Corp. mailed to NHTSA on March 12, 2018).

18 2121. ZF TRW Corp. caused the transmittal of the February 5, 2016 slide
19 deck via mail or private interstate carrier. ZF TRW Corp.’s role in the transmittal is
20 confirmed by the cover letter, which is signed: “Very truly yours, ZF TRW
21 Automotive Holdings Corp.” with a signature from Sheri Roberts, the Senior
22 Counsel of the company. ZF TRW Corp.’s causal role is further confirmed by a
23 footer on every page of the slide deck itself, which reads: “This document is the
24 property of ZF TRW and is disclosed in confidence. It may not be copied, disclosed
25 to others, or used for manufacturing without the written consent of ZF TRW.”

26 _____
27 ⁴⁶ Mr. Bolitho was simultaneously an employee of ZF Passive Safety USA, the
28 Vice President of Passive Safety for ZF Electronics USA, and Director of Passive
Safety Engineering for ZF TRW Corp.

1 Based on this footer, ZF TRW Corp. gave requisite written consent to the
2 transmittal of the document to NHTSA.

3 2122. ZF TRW Corp. caused the transmittal of the July 19, 2016 slide deck
4 via mail or private interstate carrier. ZF TRW Corp.’s causal role is confirmed by a
5 footer on every page of the slide deck itself, which reads: “This document is the
6 property of ZF TRW and is disclosed in confidence. It may not be copied, disclosed
7 to others, or used for manufacturing without the written consent of ZF TRW.”

8 Based on this footer, ZF TRW Corp. gave requisite written consent to the
9 transmittal of the document to NHTSA.

10 2123. Upon information and belief, ZF TRW Corp. also gave requisite prior
11 authorization for the delivery of the September 2016 letter.

12 2124. ZF TRW Corp. caused the transmittal of the March 8, 2018 slide deck
13 to NHTSA via mail or private interstate carrier. ZF TRW Corp.’s causal role is
14 confirmed by the cover letter included with the mailing of the slide deck. The cover
15 letter is on the letter head of an “Active & Passive Safety Technology” business
16 unit. Because this is a reference to ZF TRW Corp.,⁴⁷ ZF TRW Corp. must have
17 reviewed and approved the transmittal of the slide deck to NHTSA.

18 2125. As explained in sections IV.F.2., IV.F.4., IV.F.8., and IV.F.14. above,
19 each of these four documents described above contained misleading statements
20 about the ACU Defect. ZF TRW Corp. specifically approved the transmittal of the
21 final versions of these documents to NHTSA, and intended for the misleading
22 statements contained therein to avoid, minimize, and/or delay recalls of Mitsubishi
23 Class Vehicles. Avoiding, minimizing, and/or delaying recalls of Mitsubishi Class
24 Vehicles enabled the continuation of the scheme to defraud consumers. Because ZF

25 _____
26 ⁴⁷ According to ZF AG’s 2017 Annual Report, the “Active & Passive Safety
27 Technology Division” was “established by ZF Group to manage the business
28 activities of ZF TRW after its acquisition.” Because ZF TRW Automotive Holdings
Corp. is the only corporate entity with “ZF TRW” as part of its corporate name, this
letter was also sent on behalf of ZF TRW Corp.

1 TRW Corp.'s affiliates would not have sent or approved the written
2 communications noted in the preceding paragraph without ZF TRW Corp.'s
3 contributions and approval, ZF TRW Corp. was one of the Defendants who caused
4 the delivery of these four communications to NHTSA. Accordingly, its
5 participation in these communications violated the mail fraud statute at least four
6 times. (18 U.S.C. § 1341).

7 **vii. ZF Germany violated the mail and wire fraud statutes**
8 **multiple times in furtherance of the Mitsubishi-ZF-ST**
9 **Enterprise's fraudulent scheme.**

10 2126. Prior to their delivery to NHTSA, ZF Germany reviewed and/or edited
11 the following misleading statements to NHTSA, as discussed in Sections IV.F.2.,
12 IV.F.4., IV.F.8., and IV.F.14. above:

- 13 a. The slide deck presentation dated February 5, 2016 (which ZF
14 TRW Corp. mailed to NHTSA on March 14, 2016);
- 15 b. The slide deck presentation dated July 19, 2016 (which, upon
16 information and belief, was mailed to NHTSA in July or August
17 2016);
- 18 c. The September 2016 letter signed by Marc Bolitho (which was
19 mailed to NHTSA in September 2016); and
- 20 d. The slide deck presentation dated March 8, 2018 (which ZF
21 TRW Corp. mailed to NHTSA on March 12, 2018).

22 2127. ZF Germany caused the delivery of these communications via mail
23 and wire. The three presentations bear copyright legends attributing ownership to
24 ZF Germany. Accordingly, sending these presentations must have required its
25 involvement and consent. Moreover, the slide decks dated February 5, 2016 and
26 July 19, 2016 identify ZF Germany as the corporate author on the title page.

27 2128. As explained in sections IV.F.2., IV.F.4., IV.F.8., and IV.F.14. above,
28 each of these transmittals contained misleading statements about the ACU Defect.

1 ZF Germany specifically approved the transmittal of the final versions of these
2 documents to NHTSA, and intended for the misleading statements contained
3 therein to avoid, minimize, and/or delay recalls of Mitsubishi Class Vehicles.
4 Avoiding, minimizing, and/or delaying recalls of Mitsubishi Class Vehicles enabled
5 the continuation of the scheme to defraud consumers. Because ZF Germany’s
6 affiliates would not have sent or approved the written communications noted in the
7 preceding paragraph without ZF Germany’s contributions and approval, ZF
8 Germany was one of the Defendants who caused the delivery of these four
9 communications to NHTSA. Accordingly, its participation in these communications
10 violated the mail fraud statute at least four times. (18 U.S.C. § 1341).

11 **viii. ST USA violated the mail and wire fraud statutes**
12 **multiple times in furtherance of the Mitsubishi-ZF-ST**
13 **Enterprise’s fraudulent scheme.**

14 2129. ST USA regularly received orders from ZF Electronics USA for DS84
15 ASICs, including all the defective DS84 ASICs used in Mitsubishi Class Vehicles.
16 In response to these orders ST USA would work with its affiliate, ST Malaysia, to
17 help it manufacture and ship DS84 ASICs to ST USA’s so-called “ST Micro LAX
18 Hub” near Los Angeles, California. Between 2007 and the present, ST USA caused
19 ST Malaysia to ship well over ten million defective DS84 ASICs to this location. In
20 discovery, ST USA has produced approximately 9,700 invoices sent to ZF
21 Electronics USA from the time period between 2014 and the present alone. Each
22 invoice notes the defective DS84 ASICs were made in Malaysia, where ST
23 Malaysia operated. The invoice dates from these documents provide an
24 approximate date for these shipments. Plaintiffs have extracted approximate
25 shipping dates from these invoices, which are presented as exemplars in Exhibit
26 21.⁴⁸

27 ⁴⁸ ST USA made similar shipments for Mitsubishi Class Vehicles between 2012
28 and 2014, but is withholding invoices for these shipments from discovery. Upon

1 2130. ST USA also shipped well over ten million defective DS84 ASICs to
2 ZF Electronics USA at a facility with the following address: 902 South 2nd Street,
3 Marshall, Illinois 62441. As explained above, Exhibit 21 provides exemplar
4 approximate shipment dates based on an incomplete set of invoices produced by ST
5 USA.⁴⁹

6 2131. When ST USA required ST Malaysia to make these shipments and
7 then made its own shipments to ZF Electronics USA, it knew ZF Electronics USA
8 would place the DS84 ASICs into DS84 ACUs, including those that would be
9 installed in Mitsubishi Class Vehicles that are marketed to U.S. consumers. ST
10 USA was also aware of Mitsubishi Japan's and Mitsubishi USA's practices of
11 making reassuring statements about safety, airbags, and seatbelts in consumer-
12 facing Monroney labels, certification labels, in-vehicle labels, owner's manuals,
13 and advertising for all Mitsubishi Class Vehicles. ST USA knew these statements
14 were false because it knew the Mitsubishi Class Vehicles, DS84 ACU, and ASIC
15 were defective. Accordingly, because ST USA caused shipments of well over ten
16 million defective DS84 ASICs with the purpose of executing a fraudulent scheme
17 with its conspirators, each of the DS84 ASIC shipments caused by ST USA
18 violated the mail fraud statute (18 U.S.C. § 1341).

19 **ix. ST Malaysia violated the mail and wire fraud statutes**
20 **multiple times in furtherance of the Mitsubishi-ZF-ST**
21 **Enterprise's fraudulent scheme.**

22 2132. Between 2007 and the 2018, ST USA regularly required worked with
23 its affiliate, ST Malaysia, to help it manufacture and ship DS84 ASICs to ST USA's

24 _____
25 information and belief, the invoices for this time period will show a similar
26 regularity of shipments of DS84 ASICs from Malaysia.

27 ⁴⁹ ST USA made similar shipments between 2007 and 2014, but is withholding
28 invoices for these shipments from discovery. Upon information and belief, the
invoices for this time period will show a similar regularity of shipments of DS84
ASICs from the STMico LAX Hub to the ZF Electronics USA's manufacturing
facility in Illinois.

1 so-called “ST Micro LAX Hub” near Los Angeles, California. During that time
2 period, ST Malaysia shipped well over ten million defective DS84 ASICs to this
3 location. ST USA has produced approximately 9,700 invoices sent to ZF
4 Electronics USA from the time period between 2014 and the present alone. Each
5 invoice notes the defective DS84 ASICs were made in Malaysia, where ST
6 Malaysia operated. The invoice dates from these documents provide an
7 approximate date for these shipments. Plaintiffs have extracted approximate
8 shipping dates from these invoices, which are presented as exemplars in Exhibit
9 21.⁵⁰

10 2133. When ST Malaysia made these shipments, it knew ZF Electronics
11 USA would place the DS84 ASICs into DS84 ACUs, including those ACUs that
12 would be installed in Mitsubishi Class Vehicles that are marketed to U.S.
13 consumers. ST Malaysia was also aware of Mitsubishi Japan’s and Mitsubishi
14 USA’s practices of making reassuring statements about safety, airbags, and
15 seatbelts in consumer-facing Monroney labels, certification labels, in-vehicle labels,
16 owner’s manuals, and advertising for all Mitsubishi Class Vehicles. ST Malaysia
17 knew these statements were false because it knew the Mitsubishi Class Vehicles,
18 DS84 ACU, and ASIC were defective. Accordingly, because ST Malaysia caused
19 shipments of well over ten million defective DS84 ASICs with the purpose of
20 executing a fraudulent scheme with its conspirators, each of the DS84 ASIC
21 shipments made by ST Malaysia violated the mail fraud statute (18 U.S.C. § 1341).

22
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26
27 ⁵⁰ ST USA made similar shipments between 2007 and 2014, but is withholding
28 invoices for these shipments from discovery. Upon information and belief, the
invoices for this time period will show a similar regularity of shipments.

1 **b. Mitsubishi USA, Mitsubishi Japan, ZF Electronics USA, ZF**
2 **Passive Safety USA, ZF Automotive USA, ZF TRW Corp.,**
3 **ZF Germany, ST USA, ST Italy, and ST Malaysia advanced**
4 **their fraudulent scheme by concealing material information**
5 **about a serious safety defect that they had a duty to disclose.**

6 2134. The uses of mail and wire described in the sections above violated the
7 mail and wire fraud statutes because they furthered a fraudulent scheme to
8 affirmatively mislead consumers and NHTSA.

9 2135. In addition, these same uses of the mail and wire *also* violated the mail
10 and wire fraud statutes because, when they sent or caused to be sent these mailings,
11 Mitsubishi Japan, Mitsubishi USA, ZF Electronics USA, ZF Passive Safety USA,
12 ZF Automotive USA, ZF TRW Corp., ZF Germany, ST USA, and ST Malaysia had
13 duties to disclose the ACU Defect and failed to do so in order to advance their
14 scheme.

15 2136. Mitsubishi USA, Mitsubishi Japan, ZF Electronics USA, ZF Passive
16 Safety USA, ZF Automotive USA, ZF TRW Corp., ZF Germany, ST USA, and ST
17 Malaysia each knew for years that the defective DS84 ACUs in the Mitsubishi
18 Class Vehicles are uniquely vulnerable to EOS. *See* Section IV.D.7. above.

19 2137. To further the goals of the Mitsubishi-ZF-ST Enterprise and to their
20 mutual gain, Mitsubishi USA, Mitsubishi Japan, ZF Electronics USA, ZF Passive
21 Safety USA, ZF Automotive USA, ZF TRW Corp., ZF Germany, ST USA, ST
22 Italy, and ST Malaysia concealed what they knew about the existence, scope, and
23 material safety risks of the ACU Defect in the Mitsubishi Class Vehicles.

24 2138. Their careful efforts to conceal the ACU Defect in the Mitsubishi
25 Class Vehicles were critically important to the viability of their scheme. A decision
26 by any one Defendant or nonparty-Enterprise member to tell the truth about the
27 ACU Defect and its impact of vehicle safety to consumers or to NHTSA would
28 have been an existential threat to the Mitsubishi-ZF-ST Enterprise. Instead, and in
 pursuit of ill-gotten profits, they each kept key information about the ACU Defect

1 hidden for years. This concealment of material facts about the ACU Defect was
2 grounded in and advanced their scheme to defraud consumers through the
3 continued sale of Mitsubishi Class Vehicles, and avoidance of costly recalls and
4 reputational harms.

5 2139. Mitsubishi USA, Mitsubishi Japan, ZF Electronics USA, ZF Passive
6 Safety USA, ZF Automotive USA, ZF TRW Corp., ZF Germany, ST USA, ST
7 Italy, and ST Malaysia’s concealment of the ACU Defect violated several
8 independent duties to disclose it.⁵¹

9 a. Mitsubishi USA, Mitsubishi Japan, ZF Electronics USA, ZF
10 Passive Safety USA, ZF Automotive USA, ZF TRW Corp., ZF
11 Germany, ST USA, ST Italy, and ST Malaysia each had a duty
12 to disclose the ACU Defect because of their exclusive
13 knowledge and far superior information about the ACU Defect.
14 These Defendants knew about the vulnerability of the DS84
15 ACU and ASIC to EOS through their exclusive access to
16 information about their design, development, and testing, and

17
18 ⁵¹ As vehicle manufacturers and component parts suppliers, Defendants are also
19 subject to statutory duties to disclose known safety defects to consumers and to
20 NHTSA pursuant to the Safety Act and its attendant regulations. *See, e.g.*, 49
21 U.S.C. § 30118(c) (“A manufacturer of a motor vehicle . . . shall notify the
22 Secretary by certified mail or electronic mail, and the owners, purchasers, and
23 dealers of the vehicle . . . as provided in section 30119(d) of this section, if the
24 manufacturer . . . learns the vehicle . . . contains a defect and decides in good faith
25 that the defect is related to motor vehicle safety.”); 49 U.S.C. §30119(d)
26 (manufacturers must notify “each person registered . . . as the owner and whose
27 name and address are reasonably ascertainable”); 49 C.F.R. §573.6(a) (“Each
28 manufacturer shall furnish a report to the NHTSA for each defect . . . in his items of
original . . . equipment that he . . . determines to be related to motor vehicle
safety.”). Plaintiffs previously pled Defendants had a duty to disclose based on
these provisions of the Safety Act, but the Court dismissed an omissions theory
based these alleged duties. Plaintiffs reserve the right to appeal this decision at a
later date, but do not rely upon the Safety Act as a basis for their omissions theory
in this pleading.

- 1 through their confidential and proprietary investigations into
2 suspicious incidents. Given the ACU Defect’s hidden and
3 technical nature, Plaintiffs and consumers lack the sophisticated
4 expertise in vehicle components and electrical phenomena that
5 would be necessary to discover the ACU Defect on their own.
- 6 b. In addition, Mitsubishi USA, Mitsubishi Japan, ZF Electronics
7 USA, ZF Passive Safety USA, ZF Automotive USA, ZF TRW
8 Corp., ZF Germany, ST USA, ST Italy, and ST Malaysia also
9 each held a duty to disclose because they knew that a defect in
10 the Mitsubishi Class Vehicles and their DS84 ACUs gave rise to
11 serious safety concerns for the consumers who use the vehicles.
12 As sophisticated and well-funded corporate entities that generate
13 billions of dollars in annual revenue from work in the
14 automotive industry, each of these Defendants knew that this
15 information would have been material to consumers. For
16 example, a February 3, 2004, prospectus filed by ZF TRW Corp.
17 with the SEC observed that “85 percent of recent auto
18 purchasers stated that they look for vehicle safety information
19 before making their final decision.” Nonetheless, Defendants
20 still did not disclose it.
- 21 c. Mitsubishi USA, ZF Electronics USA, ZF Passive Safety USA,
22 ZF Automotive USA, ZF TRW Corp., and ZF Germany also
23 each had a duty to disclose because of the actions they took to
24 conceal the ACU Defect in the Mitsubishi Class Vehicles from
25 consumers. Each of the ZF Defendants listed here acted to
26 suppress the truth about the ACU Defect through their
27 misleading representations to NHTSA. *See* Sections IV.F.2.,
28 IV.F.4., IV.F.8., and IV.F.14. above. Because a truthful and

1 accurate disclosure to NHTSA would have been material to
2 NHTSA's decision whether to require a recall or expand its
3 investigation into the DS84 ACUs, the affirmative steps they
4 took to mislead NHTSA about the ACU Defect also precluded
5 Mitsubishi Plaintiffs and Nationwide Mitsubishi Class members
6 from an opportunity that otherwise could have led to their
7 discovery of the truth about the ACU Defect. Mitsubishi USA,
8 for its part, engaged in a routine pattern and practice of failing to
9 respond to and investigate crashes reported by consumers with
10 airbag failures, thereby avoiding further investigation and a
11 written record of the ACU Defect in Mitsubishi Class Vehicles.

12 d. Finally, Mitsubishi USA and Mitsubishi Japan affirmatively
13 disclosed information about the Mitsubishi Class Vehicles'
14 airbags, seatbelts, and overall safety to consumer (*see* Sections
15 IV.E.1 and I.V.E.2. above). Because they opted to make these
16 representations to consumers about these topics, and because
17 they knew other information about the ACU Defect that made
18 those representations misleading or untrue, Mitsubishi USA and
19 Mitsubishi Japan were under separate duties to disclose the full
20 truth about the ACU Defect that materially qualified the
21 information they provided.

22 2140. Mitsubishi USA, Mitsubishi Japan, ZF Electronics USA, ZF Passive
23 Safety USA, ZF Automotive USA, ZF TRW Corp., ZF Germany, ST USA, and ST
24 Malaysia knew and intended that NHTSA would rely on their and the other
25 members of the Mitsubishi-ZF-ST Enterprise's material omissions made about the
26 Mitsubishi Class Vehicles to approve them for importation, marketing, and sale to
27 consumers in the United States. And conversely, they also understood that
28 disclosing the ACU Defect would require them to recall and fix the Mitsubishi

1 Class Vehicles, which would negatively impact the profits of the Mitsubishi-ZF-ST
2 Enterprise.

3 2141. Mitsubishi USA, Mitsubishi Japan, ZF Electronics USA, ZF Passive
4 Safety USA, ZF Automotive USA, ZF TRW Corp., ZF Germany, ST USA, and ST
5 Malaysia also knew and intended that consumers would rely on their and the other
6 members of the Mitsubishi-ZF-ST Enterprise's material omissions when deciding
7 to purchase or lease the Mitsubishi Class Vehicles. The Mitsubishi Plaintiffs'
8 reliance on this concealment is demonstrated by the fact that they paid money for
9 Mitsubishi Class Vehicles that never should have been introduced into the U.S.
10 stream of commerce, and that they overpaid for vehicles with defective safety
11 systems without knowledge of the ACU Defect.

12 **c. The Mitsubishi-ZF-ST Enterprise was an association-in-fact**
13 **enterprise with a common purpose of misleading consumers**
14 **and NHTSA regarding the ACU Defect in Mitsubishi Class**
15 **Vehicles.**

16 2142. The Mitsubishi-ZF-ST Enterprise had a common purpose and ongoing
17 organization and functioned as a continuing unit

18 **i. The Mitsubishi-ZF-ST Enterprise had a common**
19 **purpose and ongoing organization and functioned as a**
20 **continuing unit.**

21 2143. The common purpose of the Mitsubishi-ZF-ST Enterprise was to
22 perpetuate a fraudulent scheme to maximize sales and leases of Mitsubishi Class
23 Vehicles while hiding the ACU Defect from purchasers and lessees. Because all of
24 the Mitsubishi-ZF-ST Enterprise members' continued profits from this scheme
25 ultimately depended on consumers choosing to purchase Mitsubishi Class Vehicles,
26 the Mitsubishi-ZF-ST Enterprise needed to convince consumers of a false premise:
27 that Mitsubishi Class Vehicles had properly functioning airbags and seatbelts. For
28 this scheme to work, it was essential for the Mitsubishi-ZF-ST Enterprise to

1 conceal the ACU Defect from NHTSA, because the agency could halt the sale of
2 Mitsubishi Class Vehicles and mandate recalls that necessarily require public notice
3 of a defect. The expense of these recalls would undermine the profitability of the
4 scheme.

5 2144. This common purpose served the interests of all members of the
6 Mitsubishi-ZF-ST Enterprise. By concealing and minimizing the ACU Defect,
7 Mitsubishi USA, Mitsubishi Japan, ZF Electronics USA, ZF Passive Safety USA,
8 ZF Automotive USA, ZF TRW Corp., ZF Germany, ST USA, ST Italy, and ST
9 Malaysia maximized their revenue by selling as many Mitsubishi Class Vehicles as
10 possible while avoiding or limiting the substantial costs to recall and repair the
11 Vehicles and their defective DS84 ACUs.

12 2145. The common purpose of the Mitsubishi-ZF-ST Enterprise is also
13 evidenced by coordinated efforts by Mitsubishi USA, Mitsubishi Japan, ZF
14 Electronics USA, ZF Passive Safety USA, ZF Automotive USA, and ZF Germany
15 avoid NHTSA's discovery of the ACU Defect in the Mitsubishi Class Vehicles and
16 to ensure a united front through sharing information about the ACU Defect that ZF
17 Electronics USA, ZF Passive Safety USA, ZF Automotive USA, and ZF Germany
18 presented to NHTSA.

19 2146. The common purpose of the Mitsubishi-ZF-ST Enterprise is evidenced
20 by Mitsubishi USA's, Mitsubishi Japan's, ZF Electronics USA's, ZF Passive Safety
21 USA's, and ZF Automotive USA's confidential consultations with one another
22 about problems with the design of the DS84 ACU, observations of EOS on DS84
23 ACUs, and dangerous safety system malfunctions in vehicles with DS84 ACUs,
24 including in a Mitsubishi Class Vehicle. As the Court has held, consultations about
25 "observed evidence of EOS in Class Vehicles" among Defendants "support[s] a
26 reasonable inference" of a "common purpose of misleading consumers and NHTSA
27 as to the existence of a defect in the ACUs." ECF 396 at 61.

28 2147. The common purpose of the Mitsubishi-ZF-ST Enterprise is further

1 evidenced by, ST USA, ST Italy, and ST Malaysia’s communications with ZF
2 Electronics USA, ZF Passive Safety USA, and ZF Automotive USA about
3 observations of EOS in a Mitsubishi Class Vehicle, including after recalls for other
4 vehicles with the same DS84 ACUs used in Mitsubishi Class Vehicles had already
5 been initiated. ZF Electronics USA, ZF Passive Safety USA, and ZF Automotive
6 USA shared this information with Mitsubishi USA by copying excerpts of the
7 reports received from ST USA, ST Italy, and ST Malaysia and sending them to
8 Mitsubishi USA.

9 **ii. The Mitsubishi-ZF-ST Enterprise had an ongoing**
10 **organization.**

11 2148. The participation of separate entities or individuals that have an
12 existence outside an alleged enterprise is evidence of an ongoing organization with
13 its own structure, separate and apart from its members. Mitsubishi USA, Mitsubishi
14 Japan, ZF Electronics USA, ZF Passive Safety USA, ZF Automotive USA, ZF
15 TRW Corp., ZF Germany, ST USA, ST Italy, and ST Malaysia each existed
16 separately from the Mitsubishi-ZF-ST Enterprise.

- 17 a. During the relevant period, Mitsubishi Japan contemporaneously
18 designed, manufactured, and sold many vehicles that do not
19 contain defective DS84 ACUs.
- 20 b. During the relevant period, Mitsubishi USA contemporaneously
21 provided services to Mitsubishi Japan relating to a large volume
22 of Mitsubishi vehicles that do not contain defective DS84
23 ACUs.
- 24 c. During the relevant period, ST USA, ST Italy, and ST Malaysia
25 contemporaneously sold, designed, and/or manufactured many
26 other products aside from the defective DS84 ASICs used in the
27 defective DS84 ACUs.
- 28 d. During the relevant period, ZF Passive Safety USA, ZF

1 Electronics USA, and ZF Automotive USA contemporaneously
2 designed, made, and/or sold many other automotive parts aside
3 from the defective DS84 ACUs.

4 e. ZF TRW Corp. and ZF Germany also engaged in a wide variety
5 of business activities unrelated to the defective DS84 ACUs.

6 2149. Another hallmark of an ongoing organization is members with
7 delineated roles that further the organization's goals. Each Defendant performed
8 important but separate roles within the Mitsubishi-ZF-ST Enterprise organization.

- 9 a. ZF Electronics USA, ZF Passive Safety USA, and ZF
10 Automotive USA jointly designed the defective DS84 ACU for
11 use in the Mitsubishi Class Vehicles, with Mitsubishi Japan's,
12 ST Italy's, and ST USA's input.
- 13 b. ST Italy and ST USA jointly designed the defective DS84 ASIC,
14 with input from ZF Electronics USA, ZF Passive Safety USA,
15 and ZF Automotive USA
- 16 c. ST Malaysia manufactured the defective DS84 ASICs and
17 shipped them to ST USA in California.
- 18 d. ST USA sold and shipped the defective DS84 ASIC to ZF
19 Electronics USA.
- 20 e. Mitsubishi Japan designed the Mitsubishi Class Vehicles and
21 made them in Japan, and then shipped them to the United States.
22 Mitsubishi Japan added permanent labels to each vehicle that
23 certified compliance with U.S. Federal safety standards, as well
24 as readiness indicators and in-vehicle airbag labels and imprints,
25 prior to doing so.
- 26 f. Mitsubishi USA responded to NHTSA's investigation on behalf
27 of Mitsubishi Japan. Mitsubishi USA created the Monroney
28 labels for Mitsubishi Class Vehicles and caused them to be

1 affixed to each Mitsubishi Class Vehicles prior to their shipment
2 to authorized Mitsubishi dealers. It also distributed the
3 Mitsubishi Class Vehicles to dealers, so they could be sold to
4 consumers with misleading Monroney labels and the in-vehicle
5 statements. Mitsubishi USA was also responsible for misleading
6 advertising to consumers.

7 g. ZF TRW Corp. and ZF Germany approved actions taken by ZF
8 Electronics USA, ZF Passive Safety USA, and ZF Automotive
9 USA, and knowingly approved and participated directly in
10 making misleading statements to NHTSA about the ACU
11 Defect.

12 h. Each of the Defendants separately ensured that NHTSA and
13 consumers did not discover the ACU Defect.

14 2150. The Enterprise members dedicated to the Mitsubishi-ZF-ST
15 Enterprise's scheme, which further evidences the ongoing structure of the
16 Enterprise. For example, ZF Electronics USA, ZF Passive Safety USA, and ZF
17 Automotive USA dedicated an entire applications team to implement the defective
18 DS84 ACUs in Mitsubishi Class Vehicles in 2012. This included ZF Passive Safety
19 USA employee William Wong, who served on ZF's Mitsubishi applications team,
20 among others. ZF Electronics USA, ZF Passive Safety USA, ZF Automotive USA,
21 ST USA, ST Italy, and ST Malaysia also dedicated personnel and resources to
22 analyze EOS occurrences DS84 ACUs, including in Mitsubishi Class Vehicles.
23 Moreover, ZF Electronics USA, ZF Passive Safety USA, ZF Automotive USA, ST
24 USA, and ST Italy held regular meetings in 2016 concerning the EOS issues, just as
25 NHTSA was investigating the same defective DS84 ACUs used in Mitsubishi Class
26 Vehicles.

27 2151. Mitsubishi Japan, on the other hand, dedicated its employee Mikuni
28 Fukutaro as its primary point of contact with ZF Electronics USA, ZF Passive

1 Safety USA, and ZF Automotive USA relating to the defective DS84 ACU.
2 Establishing a regular point of contact further organized the Mitsubishi-ZF-ST
3 Enterprise.

4 2152. As the passenger safety systems in Mitsubishi Class Vehicles
5 malfunctioned with known symptoms of the ACU Defect, including airbag
6 nondeployments—and with similar malfunctions for other vehicles with the DS84
7 ACU already well-known at the time—Mitsubishi USA *repeatedly* closed
8 consumer complaints about airbag non-deployments in Mitsubishi Class Vehicles
9 without inspecting or investigating whether the vehicles had an ACU malfunction.
10 Mitsubishi USA’s practice of doing so—for more than 50 incidents between 2014
11 and 2019— avoided further investigation into the prevalence of malfunctions due to
12 the ACU Defect in Mitsubishi Class Vehicles, and further avoided the creation of a
13 written record regarding the same. Further, when faced with a suspicious
14 malfunction in a Mitsubishi Class Vehicle in 2017, Mitsubishi USA sought the
15 involvement and assistance of ZF Electronics USA, ZF Passive Safety USA, and
16 ZF Automotive USA.

17 2153. When NHTSA began to investigate the defective DS84 ACUs in 2015,
18 ZF Electronics USA, ZF Passive Safety USA, ZF Automotive USA, ZF Germany,
19 and ZF TRW Corp. maintained the organization of the Mitsubishi-ZF-ST
20 Enterprise by sending their joint communications and other information they
21 presented to NHTSA to Mitsubishi Japan, Mitsubishi USA, ST USA, ST Italy, and
22 ST Malaysia. This allowed the participants in the Mitsubishi-ZF-ST Enterprise to
23 coordinate their efforts to downplay the ACU Defect in Mitsubishi Class Vehicles
24 and avoid and minimize recalls.

25 **iii. The Mitsubishi-ZF-ST Enterprise functioned as a**
26 **continuing unit.**

27 2154. The Mitsubishi-ZF-ST Enterprise continued for several years, at least
28 during the time period of 2012 to the present. Although Mitsubishi USA stopped

1 distributing new Mitsubishi Class Vehicles with the DS84 ACU in or about 2017 or
2 2018, Mitsubishi Class Vehicles continue to sell on the used car market with
3 misleading in-vehicle statements and consumer-facing marketing (such as vehicle
4 brochures) made by the Mitsubishi-ZF-ST Enterprise.

5 2155. During this time, the members of the Mitsubishi-ZF-ST Enterprise
6 remained stable, with Mitsubishi USA, Mitsubishi Japan, ZF Electronics USA, ZF
7 Passive Safety USA, ZF Automotive USA, ZF TRW Corp., ST USA, ST Malaysia,
8 and ST Italy remaining active members for years of ongoing production and sales
9 of the Mitsubishi Class Vehicles. ZF Germany, on the other hand, started to
10 participate in the Mitsubishi-ZF-ST Enterprise shortly after acquiring ZF TRW
11 Corp. in 2015.

12 **d. The Mitsubishi-ZF-ST Enterprise’s pattern of racketeering**
13 **caused Mitsubishi Plaintiffs and the Nationwide Mitsubishi**
14 **Class members to overpay for Mitsubishi Class Vehicles at**
the point of sale or lease.

15 2156. Mitsubishi Plaintiffs and Nationwide Mitsubishi Class members are
16 “person[s] injured in his or her business or property” by reason of the Mitsubishi-
17 ZF-ST Enterprise’s RICO violations, within the meaning of U.S.C. § 1964(c).
18 Mitsubishi Plaintiffs and Nationwide Mitsubishi Class members are entitled to
19 bring this action for three times their actual damages, as well as injunctive/equitable
20 relief, costs, and reasonable attorneys’ fees pursuant to 18 U.S.C. § 1964(c).

21 2157. Because of the Mitsubishi-ZF-ST Enterprise’s pattern of racketeering
22 activity, Mitsubishi Plaintiffs and Nationwide Mitsubishi Class members have been
23 injured in their business and/or property through their overpayment at the time of
24 purchase or lease for Mitsubishi Class Vehicles with an undisclosed safety defect.

25 2158. By making misleading statements and omissions at or before the point
26 of sale or lease, the Mitsubishi-ZF-ST Enterprise directly or indirectly obtained
27 money from Mitsubishi Plaintiffs and the Nationwide Mitsubishi Class by means of
28 materially false or fraudulent misrepresentations and omissions of material facts.

1 Had the Mitsubishi Plaintiffs known what the Mitsubishi-ZF-ST Enterprise
2 members knew about the ACU Defect, Mitsubishi Plaintiffs and Nationwide
3 Mitsubishi Class members would not have purchased the Mitsubishi Class
4 Vehicles, or would not have paid as much as they did for them.

5 2159. Had Mitsubishi USA, Mitsubishi Japan, ZF Electronics USA, ZF
6 Passive Safety USA, ZF Automotive USA, ZF TRW Corp., ZF Germany, ST USA,
7 ST Italy, or ST Malaysia not concealed, and instead decided to disclose, the
8 information they knew about the ACU Defect and its impact on vehicle safety,
9 Mitsubishi Plaintiffs would have learned of the disclosure.

10 a. Mitsubishi Plaintiffs and Nationwide Mitsubishi Class members
11 would have learned about the ACU Defect through any of the
12 channels in which the Mitsubishi Class Vehicles were marketed
13 to them. In other words, had Mitsubishi USA or Mitsubishi
14 Japan made a disclosure in *any* of the places in which they
15 otherwise communicated information about the Mitsubishi Class
16 Vehicles, Mitsubishi Plaintiffs and Nationwide Mitsubishi Class
17 members would have seen it. This includes in Mitsubishi USA's
18 brochures and other advertising, on Monroney labels, and in
19 Mitsubishi Japan's certification labels, in-vehicle airbag labels,
20 airbag warning lamps, and in owner's manuals.

21 b. Further, Mitsubishi Plaintiffs and Nationwide Mitsubishi Class
22 members would have learned about the ACU Defect at the times
23 and places that they purchased or leased their Class Vehicles.
24 For example, had Mitsubishi USA made a disclosure about the
25 ACU Defect to its authorized Mitsubishi USA dealerships, sales
26 personnel at the dealerships would have passed on that material
27 information to consumers at the time of the contemplated
28 purchases.

1 c. Had any of the Defendants listed above disclosed the true scope
2 and existence of the ACU Defect to NHTSA, Mitsubishi
3 Plaintiffs and Nationwide Mitsubishi Class members would
4 have learned of it because NHTSA would have considered this
5 information material to its decision to require a recall, which
6 information would have been made public and passed onto
7 impacted consumers.

8 d. Had any of the Defendants listed above disclosed the true scope
9 and existence of the ACU Defect to consumers or the public,
10 either through press releases, on their websites, or in any other
11 public channel or forum, Mitsubishi Plaintiffs and Nationwide
12 Mitsubishi Class members would have learned of it due to the
13 materiality of this information about a serious safety defect in
14 hundreds of thousands vehicles. Given the seriousness of the
15 information and the number of vehicles impacted, the news
16 media and consumer forums and blogs would pick up the story.
17 This is particularly so in the wake of the massive Takata recall
18 and litigation, which confirmed the strong public interest in
19 airbags and vehicle safety. For example, an April 23, 2019
20 article available on ConsumerReports.com described NHTSA's
21 expanded investigation into the DS84 ACUs to be "the agency's
22 most in-depth look at airbags since the recall of more than 56
23 million airbags made by Takata."

24 2160. The Mitsubishi-ZF-ST Enterprise's misleading statements and
25 omissions to NHTSA between 2016 and the present were essential to the scheme
26 because NHTSA would not have allowed continued sale of Mitsubishi Class
27 Vehicles with defective DS84 ACUs. At the very least, these misleading statements
28 delayed NHTSA's broader investigation of the Mitsubishi Class Vehicles until

1 April 2019, when NHTSA launched an Engineering Analysis covering all
2 Mitsubishi Class Vehicles. Upon information and belief, ZF Electronics USA
3 stopped making DS84 ACUs for the 2020 model year based in large part on this
4 investigation. Accordingly, ZF Electronics USA would have stopped making DS84
5 ACUs if NHTSA had launched a broader investigation in 2016. For this reason,
6 Plaintiffs who purchased and leased Mitsubishi Class Vehicles after the first
7 misleading statement to NHTSA by the Mitsubishi-ZF-ST Enterprise would have
8 avoided purchasing or leasing their Mitsubishi Class Vehicles entirely, or they
9 would have paid less for them.

10 2161. Consumers are the only direct victims of the Mitsubishi-ZF-ST
11 Enterprise's alleged fraudulent and misleading statements to NHTSA. NHTSA has
12 not suffered any reported, direct injury as a result of such conduct.

13 2162. Damages will not be difficult to ascertain; the Mitsubishi Plaintiffs and
14 the Nationwide Mitsubishi Class members' damages are, among others, the
15 difference between what they bargained and paid for – Mitsubishi Class Vehicles
16 without an ACU Defect – and the value of the Mitsubishi Class Vehicles they
17 actually received. In the similar *Takata* airbag litigation, for example, plaintiffs also
18 alleged overpayment damages suffered at the point of sale based on a dangerous
19 airbag defect. Plaintiffs' experts in that case performed a conjoint analysis using
20 surveys of consumers and found that the price premium paid by class members for
21 class vehicles was at least ten percent of the purchase price. A similar analysis
22 could be performed in this litigation. Other methodologies are also viable.

23 2163. All victims of Defendants' alleged conduct who claim to have
24 overpaid for the purchase or lease of Mitsubishi Class Vehicles are within the
25 alleged Nationwide Mitsubishi Class. Consequently, there are no issues with
26 respect to reapportionment or multiple recovery.

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1 **10. Nationwide Count 10: Violations of the Racketeer Influenced**
2 **Corrupt Organizations Act, 18 U.S.C. § 1962(d), on Behalf of the**
3 **Nationwide Mitsubishi Class Against Mitsubishi Japan, Mitsubishi**
4 **USA, ZF Electronics USA, ZF Passive Safety USA, ZF Automotive**
5 **USA, ZF TRW Corp., ZF Germany, ST USA, ST Italy, and ST**
6 **Malaysia.**

7 2164. Plaintiffs reallege and incorporate by reference all preceding
8 allegations as though fully set forth herein.

9 2165. It is also unlawful “for any person to conspire to violate” 18 U.S.C.
10 § 1962(c). *See* 18 U.S.C. § 1962(d). To conspire in violation of section 1962(c), the
11 defendant must be “aware of the essential nature and scope of the enterprise.” ECF
12 396 at 77. Enterprise members conspire to violate section 1962(c) when “two or
13 more people agree[] to commit a crime” and “knowingly and willfully participate[]
14 in the agreement. . . . The illegal agreement need not be express as long as its
15 existence can be inferred from the words, actions, or interdependence of activities
16 and persons involved.” *Id.* A defendant who “agreed to facilitate a scheme” violates
17 section 1962(d) even if he “does not himself commit or agree to commit the two or
18 more predicate acts requisite to the underlying offense.” *Salinas v. United States*,
19 522 U.S. 52, 65-66 (1997).

20 2166. As explained in the section below, Mitsubishi Japan, Mitsubishi USA,
21 ZF Electronics USA, ZF Passive Safety USA, ZF Automotive USA, ZF TRW
22 Corp., ZF Germany, ST USA, ST Italy, and ST Malaysia were aware of the
23 essential nature and scope of the Mitsubishi-ZF-ST Enterprise. Count 9 describes
24 this Enterprise.

25 2167. As explained in the section below, based on their words, actions,
26 and/or interdependence, Mitsubishi Japan, Mitsubishi USA, ZF Electronics USA,
27 ZF Passive Safety USA, ZF Automotive USA, ZF TRW Corp., and ZF Germany
28 agreed to facilitate the following acts of mail and wire fraud:

- 1 a. Mitsubishi's interstate shipments between 2012 and 2017 of
- 2 thousands of Mitsubishi Class Vehicles with misleading
- 3 Monroney labels, readiness indicators, in-vehicle airbag labels
- 4 and imprints, and owners' manuals, and
- 5 b. ZF Electronics USA's interstate shipments between 2012 and
- 6 2017 of tens of thousands of DS84 ACUs to Mitsubishi Japan.

7 2168. As explained in the section below, based on their words, actions,
8 and/or interdependence, ZF Electronics USA, ZF Passive Safety USA, ST USA, ST
9 Italy, and ST Malaysia also agreed to facilitate the following acts of mail fraud:

- 10 a. ZF Electronics USA's interstate shipments between 2012 and
- 11 2017 of thousands of DS84 ACUs to Mitsubishi in Japan;
- 12 b. ST Malaysia's interstate shipments between 2012 and 2017 of
- 13 thousands of DS84 ASICs to ST USA in California; and
- 14 c. ST USA's interstate shipments between 2012 and 2017 of
- 15 thousands of DS84 ASICs to ZF Electronics USA in Illinois.

16 2169. The words, actions, or interdependence of activities of each of these
17 Defendants support the inference of agreement.

18 2170. Accordingly, Mitsubishi Japan, Mitsubishi USA, ZF Electronics USA,
19 ZF Passive Safety USA, ZF Automotive USA, ZF TRW Corp., ZF Germany, ST
20 USA, ST Italy, and ST Malaysia each violated 18 U.S.C. § 1962(d).

21 2171. These violations caused the same injuries and damages described in
22 the prior Count. This Count incorporates by reference the allegations as to injury,
23 damages, and causation from the prior Count.

24 2172. Mitsubishi Japan, Mitsubishi USA, ZF Electronics USA, ZF Passive
25 Safety USA, ZF Automotive USA, ZF TRW Corp., ZF Germany, ST USA, ST
26 Italy, and ST Malaysia each violated 18 U.S.C. § 1962(c) and injured the business
27 or property of the Mitsubishi Plaintiffs and the Nationwide Mitsubishi Class. The
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1 Mitsubishi Plaintiffs claim damages for themselves and the Nationwide Mitsubishi
2 Class members under 18 U.S.C. § 1964(c).

3 **a. Mitsubishi Japan, Mitsubishi USA, ZF Electronics USA, ZF**
4 **Passive Safety USA, ZF Automotive USA, ZF TRW Corp.,**
5 **ZF Germany, ST USA, ST Italy, and ST Malaysia were all**
6 **aware of the essential nature and scope of the Mitsubishi-**
7 **ZF-ST Enterprise.**

8 2173. Each Defendant named in this Count was aware of the essential nature
9 and scope of the Mitsubishi-ZF-ST Enterprise, even if some specific details about
10 the Enterprise’s illegal activities and members were unknown.

11 **i. Mitsubishi Japan and Mitsubishi USA understood the**
12 **nature and scope of the Mitsubishi-ZF-ST**
13 **Enterprise’s fraudulent scheme.**

14 2174. Mitsubishi Japan and Mitsubishi USA were aware of the essential
15 nature and scope of the Mitsubishi-ZF-ST Enterprise.

16 2175. Mitsubishi Japan always knew of the activities of Mitsubishi USA and
17 its role in the Enterprise because it owns the company and monitors its activities.

18 2176. As explained in Section IV.D.7. above, Mitsubishi Japan and
19 Mitsubishi USA knew about the nature and scope of the ACU Defect.

20 2177. Between 2012 and 2017, Mitsubishi Japan and Mitsubishi USA knew
21 that the STMicroelectronics companies were responsible for designing and
22 manufacturing the DS84 ASIC for the DS84 ACUs used in Mitsubishi Class
23 Vehicles.

24 2178. Between 2012 and the present, Mitsubishi Japan and Mitsubishi USA
25 continuously tracked the volume of sales of Mitsubishi makes and models in the
26 United States. Accordingly, during the relevant time period, they knew roughly
27 how many Mitsubishi Class Vehicles would likely sell in the United States.

28 2179. During each year between 2012 and the present, Mitsubishi Japan and
Mitsubishi USA knew that reassuring certification labels, in-vehicle airbag labels

1 and imprints, and readiness indicators would be placed in Mitsubishi Class Vehicles
2 prior to the shipment to dealers in the United States. They knew this would occur
3 because Mitsubishi Japan's mandatory designs required these statements to be
4 placed in Mitsubishi Class Vehicles. Mitsubishi Japan and Mitsubishi USA knew
5 that consumers would rely on some or all of these in-vehicle labels when
6 purchasing or leasing Mitsubishi Class Vehicles.

7 2180. During each year between 2012 and the present, Mitsubishi Japan
8 knew that Mitsubishi USA would advertise the Mitsubishi Class Vehicles as safe
9 vehicles with properly functioning airbags and seatbelts. Mitsubishi Japan and
10 Mitsubishi USA knew that consumers would rely on such advertisements when
11 purchasing or leasing Mitsubishi Class Vehicles.

12 2181. During each year between 2012 and the present, Mitsubishi Japan
13 knew that Mitsubishi USA would ship Mitsubishi Class Vehicles with the owners'
14 manuals that Mitsubishi Japan authored, which include misleading statements about
15 the safety systems, airbags, and seatbelts of the Mitsubishi Class Vehicles.
16 Likewise, Mitsubishi Japan knew that Mitsubishi USA would create and affix
17 Monroney stickers with misleading statements about airbags and seatbelts to
18 Mitsubishi Class Vehicles. Mitsubishi Japan and Mitsubishi USA knew that
19 consumers would rely on the Monroney labels and manuals when purchasing or
20 leasing Mitsubishi Class Vehicles.

21 2182. During each year between 2012 and the present, Mitsubishi USA knew
22 that complying with Mitsubishi Japan's mandatory design specifications for
23 Mitsubishi Class Vehicles would require Mitsubishi Japan to place orders with ZF
24 Electronics USA, and for ZF Electronics USA to use mail or private interstate
25 carriers to ship the defective DS84 ACUs to Mitsubishi Japan in Japan.

26 2183. During each year between 2012 and the present, Mitsubishi Japan
27 knew that Mitsubishi USA would, as a result of its direction to do so, cause the
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1 Mitsubishi Class Vehicles to ship from their port of entry to automobile dealers
2 across the United States.

3 2184. Mitsubishi Japan knew in 2016 that ZF Electronics USA, ZF Passive
4 Safety USA, ZF Automotive USA, ZF TRW Corp., and ZF Germany had made
5 misleading statement to NHTSA about the defect because in early 2016 they
6 received copies of the misleading slide deck dated February 5, 2016.

7 **ii. ZF Automotive USA, ZF Electronics USA, ZF Passive**
8 **Safety USA, ZF TRW Corp., and ZF Germany**
9 **understood the nature and scope of the Mitsubishi-ZF-**
10 **ST Enterprise’s fraudulent scheme.**

11 2185. ZF Automotive USA, ZF Electronics USA, ZF Passive Safety USA,
12 ZF TRW Corp., and ZF Germany were aware of the essential nature and scope of
13 the Mitsubishi-ZF-ST Enterprise.

14 2186. As explained in Sections IV.D.1., IV.D.2., and IV.D.7., above, ZF
15 Automotive USA, ZF Electronics USA, ZF Passive Safety USA, ZF TRW Corp.,
16 and ZF Germany were aware of the nature and scope of the ACU Defect.

17 2187. ZF Automotive USA, ZF Electronics USA, ZF Passive Safety USA,
18 ZF TRW Corp., and ZF Germany knew the approximate number of Mitsubishi
19 Class Vehicles with the DS84 ACU because it made the ACUs for those vehicles.

20 2188. ZF Automotive USA, ZF Electronics USA, ZF Passive Safety USA,
21 ZF TRW Corp., and ZF Germany knew that Mitsubishi Japan or its subsidiaries
22 would, consistent with common practice in the automotive industry, make
23 reassuring statements about the Mitsubishi Class Vehicle’s safety systems, airbags,
24 and seatbelts.

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1 **iii. ST USA, ST Italy, and ST Malaysia understood the**
2 **nature and scope of the Mitsubishi-ZF-ST**
3 **Enterprise’s fraudulent scheme.**

4 2189. ST USA, ST Italy, and ST Malaysia were aware of the essential nature
5 and scope of the Mitsubishi-ZF-ST Enterprise.

6 2190. As explained in Sections IV.D.1., IV.D.2., and IV.D.7. above, ST
7 USA, ST Italy, and ST Malaysia were aware of the nature and scope of the ACU
8 Defect.

9 2191. Upon information and belief, ST Italy, ST Malaysia, and ST USA
10 knew the defective DS84 ASICs would be installed in the Mitsubishi Class
11 Vehicles. These companies also understood that automakers like the Mitsubishi
12 Defendants would, consistent with common practice in the automotive industry,
13 advertise their safety systems to consumers, and that those safety systems would
14 not work properly as a result of the DS84 ASIC’s vulnerability to EOS.

15 2192. ST USA, ST Malaysia, and ST Italy were aware of the large scope of
16 the Mitsubishi-ZF-ST Enterprise, among other reasons because ST Malaysia and
17 ST USA made and sold the DS84 ASICs for the Mitsubishi Class Vehicles and all
18 these companies had access to records that showed that thousands of defective
19 DS84 ASICs were shipping to Illinois per ZF Electronics USA’s instructions.

20 **b. Mitsubishi Japan, Mitsubishi USA, ZF Automotive USA, ZF**
21 **Electronics USA, ZF Passive Safety USA, ZF TRW Corp.,**
22 **and ZF Germany agreed that one or more members of the**
23 **Enterprise would commit at least two predicate acts of mail**
24 **or wire fraud in furtherance of the Mitsubishi-ZF-ST**
25 **Enterprise’s fraudulent scheme.**

26 2193. Mitsubishi Japan, ZF Passive Safety USA, ZF Electronics USA, ZF
27 Automotive USA, and Mitsubishi USA began conspiring in furtherance of the
28 Mitsubishi-ZF-ST Enterprise’s fraudulent scheme in 2012.

1 2194. ZF Germany joined the conspiracy in or around 2015, when it acquired
2 ZF TRW Corp.

3 2195. When Mitsubishi Japan agreed to use the defective DS84 ACU and
4 ASIC in Mitsubishi Class Vehicles in 2012, Mitsubishi Japan, Mitsubishi USA, ZF
5 Electronics USA, ZF Passive Safety USA, and ZF Automotive USA mutually
6 understood and intended that this agreement prompt Mitsubishi Japan to cause ZF
7 Electronics USA to ship DS84 ACUs across state lines and Mitsubishi USA to ship
8 the Mitsubishi Class Vehicles with misleading statements about the passive safety
9 system, airbags, and seatbelts therein.

10 a. In 2012, Mitsubishi Japan agreed with ZF Electronics USA, ZF
11 Passive Safety USA, and ZF Automotive USA on the design
12 specifications for the DS84 ACU installed in Mitsubishi Class
13 Vehicles. Mitsubishi Japan, ZF Electronics USA, ZF Passive
14 Safety USA, and ZF Automotive USA continued to agree on
15 specifications for Mitsubishi Class Vehicles with the DS84
16 ACU for every model year until 2017.

17 b. Between 2012 and 2017, Mitsubishi USA used mail and wire to
18 advertise the Mitsubishi Class Vehicles as safe vehicles with
19 properly-functioning airbags and seatbelts, and used private
20 interstate carriers to ship the Mitsubishi Class Vehicles with
21 misleading Monroney labels, airbag labels and imprints,
22 certification labels, readiness indicators, and owner's manuals.
23 Mitsubishi Japan knew that Mitsubishi USA was doing this and
24 would do this.

25 c. When Mitsubishi Japan agreed with ZF Electronics USA, ZF
26 Passive Safety USA, and ZF Automotive USA on specifications
27 for the DS84 ACUs in Mitsubishi Class Vehicles, Mitsubishi
28 Japan, ZF Electronics USA, ZF Passive Safety USA, ZF

1 Automotive USA, and ZF TRW Corp. (and ZF Germany after
2 2015) had a mutual understanding that this agreement would
3 cause Mitsubishi Japan to send orders for tens of thousands of
4 DS84 ACUs every year via mail or wire to ZF Electronics USA.

5 d. When Mitsubishi Japan agreed with ZF Electronics USA, ZF
6 Passive Safety USA, and ZF Automotive USA on specifications
7 for the DS84 ACUs in Mitsubishi Class Vehicles, Mitsubishi
8 Japan, ZF Electronics USA, ZF Passive Safety USA, ZF
9 Automotive USA, and ZF TRW Corp. (and ZF Germany after
10 2015) had a mutual understanding that this agreement would
11 cause ZF Electronics USA to ship tens of thousands of DS84
12 ACUs via private interstate carrier to Mitsubishi Japan in Japan.

13 2196. As explained in Count 9 above, the shipments of Mitsubishi Class
14 Vehicles by Mitsubishi USA, the orders by Mitsubishi Japan for DS84 ACUs, and
15 the shipments by ZF Electronics USA of the DS84 ACUs violated the mail fraud
16 statute because they furthered the Mitsubishi-ZF-ST Enterprise's fraudulent scheme
17 to cause consumers to purchase or lease vehicles that contain the ACU Defect. To
18 accomplish this goal, the DS84 ACUs needed to be shipped before they could be
19 installed in the vehicles.

20 a. Mitsubishi Japan, ZF Passive Safety USA, ZF Electronics USA,
21 and ZF Automotive USA facilitated these mail fraud act
22 violations by collaborating on the defective design of the ACU,
23 the readiness indicators, and Mitsubishi Class Vehicles.

24 b. Mitsubishi Japan further facilitated these mail fraud violations
25 by, prior to shipment: (1) installing the DS84 ACUs in
26 Mitsubishi Class Vehicles and (2) placing the misleading
27 certification labels, readiness indicators, and airbag labels and
28 imprints within the Mitsubishi Class Vehicles.

- 1 c. ZF TRW Corp. facilitated the scheme because, upon
- 2 information and belief, its approval was required for the launch
- 3 of the DS84 ACU, which was one of the company's most
- 4 popular ACUs.
- 5 d. ZF Germany facilitated the scheme because, upon information
- 6 and belief, its approval was required to continue the sales of the
- 7 DS84 ACU.
- 8 e. Mitsubishi USA facilitated this scheme by authoring and
- 9 affixing misleading Monroney labels on Mitsubishi Class
- 10 Vehicles.

11 2197. The conspiracy among Mitsubishi Japan, Mitsubishi USA, ZF
12 Automotive USA, ZF Electronics USA, ZF Passive Safety USA, ZF TRW Corp.,
13 and ZF Germany is further evidenced by their coordinated efforts to cover up the
14 ACU Defect.

- 15 a. Mitsubishi Japan, Mitsubishi USA, ZF Automotive USA, ZF
- 16 Electronics USA, ZF Passive Safety USA uncovered evidence
- 17 of ASIC EOS on DS84 ACUs and DS84 ASICs and related
- 18 malfunctions, but they maintained confidentiality amongst each
- 19 other.
- 20 b. Mitsubishi Japan, ZF Automotive USA, ZF Electronics USA,
- 21 and ZF Passive Safety USA also coordinated in response to
- 22 NHTSA's investigation. In 2016, ZF Electronics USA alerted
- 23 Mitsubishi Japan to NHTSA's investigation of the DS84 ACUs
- 24 and sent excerpted copies of the misleading February 5, 2016
- 25 slide deck to NHTSA as part of an effort to coordinate with
- 26 Mitsubishi Japan.
- 27 c. Likewise, ZF Automotive USA warned Mitsubishi USA when it
- 28 provided information to NHTSA in September 2016 that would

1 alert NHTSA to the presence of the DS84 ACU in the
2 Mitsubishi Class Vehicles.

3 2198. The joint activities of ZF Electronics USA, ZF Passive Safety USA,
4 ZF Automotive USA, ZF TRW Corp., and ZF Germany in support of their
5 misleading statements to NHTSA were predicate acts and also show agreement by
6 these Defendants to advance the fraudulent scheme.

7 2199. ZF Electronics USA's placement of orders for DS84 ASICs and
8 shipments of DS84 ACUs were predicate acts and also show agreement by ZF
9 Electronics USA to advance the fraudulent scheme.

10 2200. The success of the Mitsubishi-ZF-ST Enterprise's fraudulent scheme
11 depended upon Mitsubishi Japan, ZF Passive Safety USA, ZF Electronics USA, ZF
12 Automotive USA, and Mitsubishi USA. All these companies had to maintain strict
13 confidence about the ACU Defect for the scheme to continue. Moreover, the
14 Mitsubishi companies depended on the ZF companies for the manufacture of the
15 defective ACUs, whereas the ZF companies could not reach consumers of
16 Mitsubishi Class Vehicles without the agreement of Mitsubishi Japan. This
17 interdependence evidences the agreement to further the fraudulent scheme.

18 2201. The actions detailed above and throughout the Complaint as to each
19 member of the Mitsubishi-ZF-ST Enterprise were foreseeable to the other members
20 of the Mitsubishi-ZF-ST Enterprise given their direct relationship to and
21 furtherance of the common goals of the scheme.

22 **i. ST USA, ST Italy, ST Malaysia, ZF Automotive USA,**
23 **ZF Electronics USA, and ZF Passive Safety USA**
24 **agreed on the commission of multiple violations of the**
25 **mail fraud statute in furtherance of the Mitsubishi-**
ZF-ST Enterprise's fraudulent scheme.

26 2202. ST Italy, ST Malaysia, and ST USA began conspiring with ZF Passive
27 Safety USA, ZF Electronics USA, and ZF Automotive USA in 2005, when the two
28 supplier groups began the joint design of an ACU ASIC with unique vulnerability

1 to ASIC EOS. By 2008, all these companies knew about internal thermal testing
2 that confirmed the weakness of the ASIC. They held multiple meetings about this
3 issue. In spite of this early knowledge, and after the years already sunk into
4 development work for the cheaper ACU, they proceeded to launch and use the
5 DS84 ACU for millions of Class Vehicles for more than a decade.

6 2203. Even after learning that DS84 ACUs and ASICs had malfunctioned
7 due to EOS during crashes, ST Italy, ST Malaysia, ST USA, ZF Passive Safety
8 USA, ZF Electronics USA, and ZF Automotive USA continued to sell and send
9 shipments of the parts. When doing so, these companies all knew that Mitsubishi
10 Japan and Mitsubishi USA would coordinate to cause the Mitsubishi Class Vehicles
11 with the defective DS84 ACU and ASIC to be presented to consumers with
12 misleading certification labels, airbag labels and imprints, and readiness indicators.

13 2204. Several actions by ST Italy, ST Malaysia, and ST USA support an
14 inference of agreements with ZF Passive Safety USA, ZF Electronics USA, and ZF
15 Automotive USA to commit at least two predicate acts in furtherance of the
16 conspiracy:

- 17 a. Between September 2009 and 2018, ST USA, ST Italy, and ST
18 Malaysia regularly communicated with ZF Automotive USA,
19 ZF Electronics USA, and ZF Passive Safety USA about
20 observations of EOS in DS84 ASICs. ST USA, ST Italy, and ST
21 Malaysia's DS84 ASIC team confirmed EOS damage on ASICs
22 retrieved from at least one Mitsubishi Class Vehicle.
- 23 b. Upon information and belief, in 2016, ZF Automotive USA, ZF
24 Electronics USA, and ZF Passive Safety USA sent each ST
25 Defendant excerpted copies of its misleading statements from its
26 February 5, 2016 slide deck.
- 27 c. Between 2009 and 2018 at the very least, ST USA and ST
28 Malaysia continuously violated the mail fraud act in furtherance

1 of the Mitsubishi-ZF-ST Enterprise by shipping DS84 ASICs,
2 with a mutual understanding that some of these ASICs would be
3 installed in Mitsubishi Class Vehicles as explained above.

4 d. Between 2009 and 2018 at the very least, ST USA, ST Italy, and
5 ST Malaysia maintained public silence about the ACU Defect,
6 despite the observed evidence of the DS84 ASIC's and ACU's
7 unusual vulnerability to transients.

8 2205. The actions detailed above and throughout the Complaint as to each
9 member of the Mitsubishi-ZF-ST Enterprise were foreseeable to the other members
10 of the Mitsubishi-ZF-ST Enterprise given their direct relationship to and
11 furtherance of the common goals of the scheme.

12 2206. The success of the Mitsubishi-ZF-ST Enterprise's fraudulent scheme
13 depended upon ST USA, ST Italy, and ST Malaysia, ZF Passive Safety USA, ZF
14 Electronics USA, and ZF Automotive USA's cooperation. All these companies had
15 to maintain strict confidence about the ACU Defect for the scheme to continue.
16 Moreover, the ZF companies depended upon the ST companies for the manufacture
17 of the defective ASICs, whereas the ST companies depended upon the ZF
18 companies for a viable path to profit from the consumers of Class Vehicles. This
19 interdependence evidences the agreement to further the fraudulent scheme.

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[Continued in Volume III]

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14 UNITED STATES DISTRICT COURT
15 CENTRAL DISTRICT OF CALIFORNIA

16
17
18 *In re ZF-TRW Airbag Control Units*
Products Liability Litigation

19 ALL CASES

MDL No. 2905

Case No. 2:19-ml-02905-JAK-FFM

**VOLUME THREE OF
CONSOLIDATED AMENDED CLASS
ACTION COMPLAINT (STATE
COUNTS)**

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VII. Counts (Continued from Volume II)

B. State-Specific Claims

1. Alabama

a. Alabama Count 1: Breach of Express Warranty (Ala. Code §§ 7-2-313 and 7-2a-210) Against Honda Japan and Honda USA

2207. Plaintiffs reallege and incorporate by reference all preceding allegations as though fully set forth herein.

2208. Plaintiff Sigfredo Rubio (hereinafter, the “Alabama Plaintiff”) brings this count individually and on behalf of members of the Alabama State Class who purchased or leased Honda Class Vehicles, against Honda Japan and Honda USA.

2209. Honda Japan and Honda USA are and were at all relevant times “merchants” with respect to motor vehicles under Ala. Code §§ 7-2-104(1) and 7-2A-103(3), “sellers” of motor vehicles under § 7-2-103(1)(d).

2210. With respect to leases, Honda Japan and Honda USA are and were at all relevant times “lessors” of motor vehicles under Ala. Code § 7-2A-103(1)(p).

2211. All Alabama State Class members who purchased Honda Class Vehicles in Alabama are “buyers” within the meaning of Ala. Code § 7-2-103(1)(a).

2212. All Alabama State Class Members who leased Honda Class Vehicles in Alabama are “lessees” within the meaning of Ala. Code § 7-2A-103(1)(n).

2213. The Honda Class Vehicles are and were at all relevant times “goods” within the meaning of Ala. Code §§ 7-2-105(1) and 7-2A-103(1)(h).

2214. In connection with the purchase or lease of Honda Class Vehicles, Honda Japan and Honda USA provided the Alabama Plaintiff and Alabama State Class members with warranties in the form of: (a) written express warranties covering the repair or replacement of components that are defective in materials or workmanship, and (b) descriptions of the Honda Class Vehicles as safe and reliable,

1 and that their Occupant Restraint Systems, including their airbags and seatbelt
2 pretensioners, would function properly in the event of a crash

3 2215. However, Honda Japan and Honda USA knew or should have known
4 that the warranties were false and/or misleading. Specifically, Honda Japan and
5 Honda USA were aware of the ACU Defect in the Honda Class Vehicles, which
6 made the vehicles inherently defective and dangerous at the time that they were
7 sold and leased to the Alabama Plaintiff and Alabama State Class members.

8 2216. The Alabama Plaintiff and Alabama State Class members were aware
9 the Honda Class Vehicles were covered by express warranties, and those warranties
10 were an essential part of the bargain between them and Honda Japan and Honda
11 USA when the Alabama Plaintiff and Alabama State Class members unknowingly
12 purchased and leased Honda Class Vehicles that came equipped with defective
13 ACUs and ASICs.

14 2217. Honda Japan and Honda USA misrepresented the Honda Class
15 Vehicles as safe and reliable while concealing that they contained the ACU Defect,
16 the Alabama Plaintiff and Alabama State Class members were exposed to those
17 misrepresentations, and the Alabama Plaintiff and Alabama State Class members
18 had no way of discerning that Honda Japan's and Honda USA's representations
19 were false and misleading or otherwise learning the material facts that Honda Japan
20 and Honda USA had concealed or failed to disclose. Accordingly, the Alabama
21 Plaintiff and Alabama State Class members reasonably relied on Honda Japan's and
22 Honda USA's express warranties when purchasing or leasing their Honda Class
23 Vehicles. Plaintiffs allege the information they relied upon in Section II.B above.
24 To aid review of this information, Exhibit 19 provides paragraph numbers for each
25 Plaintiff.

26 2218. Honda Japan and Honda USA knowingly breached their express
27 warranties to repair defects in materials and workmanship by failing to repair the
28 ACU Defect or replace the defective ACUs and ASICs in the Honda Class

1 Vehicles. Honda Japan and Honda USA also breached their express warranties by
2 selling and leasing Honda Class Vehicles with a defect that was never disclosed to
3 the Alabama Plaintiff and Alabama State Class members.

4 2219. The Alabama Plaintiff and Alabama State Class members have
5 provided Honda Japan and Honda USA with reasonable notice and opportunity to
6 cure the breaches of their express warranties by way of the numerous NHTSA
7 complaints filed against them, and the individual notice letters sent by Alabama
8 State Class members within a reasonable amount of time after the ACU Defect
9 became public. See ECF No. 396 at 121 (“Plaintiffs have alleged that ‘[t]he
10 Alabama Plaintiff and Alabama State Class members have provided Honda Japan
11 and Honda USA with reasonable notice and opportunity to cure the breaches of
12 their express warranties by way of the numerous NHTSA complaints filed against
13 them, and the individual notice letters sent by Alabama State Class members within
14 a reasonable amount of time after the ACU defect became public.’ Dkt. 278 ¶ 744.
15 This is sufficient to satisfy the notice requirement.”). Additionally, on April 24,
16 2020, a notice letter was sent on behalf of the Alabama Plaintiff and Alabama State
17 Class members to Honda Japan and Honda USA.

18 2220. Alternatively, the Alabama Plaintiff and Alabama State Class members
19 were excused from providing Honda Japan and Honda USA with notice and an
20 opportunity to cure the breach, or to present their Honda Class Vehicles for repair,
21 because it would have been futile. As alleged above, Honda Japan and Honda USA
22 have long known that the Honda Class Vehicles contained the ACU Defect, and
23 that the ACU Defect has caused ACUs and ASICs to malfunction in crashes
24 involving Class Vehicles; however, to date, Honda Japan and Honda USA have not
25 instituted a recall or any other repair program, or even acknowledged that the ACU
26 Defect exists—even though Honda Class Vehicles are subject to the NHTSA
27 investigation. Therefore, the Alabama Plaintiff and Alabama State Class members
28 had no reason to believe that Honda Japan and Honda USA would have repaired the

1 ACU Defect if the Alabama Plaintiff and Alabama State Class members presented
2 their Class Vehicles to Honda Japan and Honda USA for repair.

3 2221. As a direct and proximate result of Honda Japan’s and Honda USA’s
4 breach of their express warranties, the Honda Class Vehicles were and are defective
5 and the ACU Defect in the Alabama Plaintiff’s and Alabama State Class members’
6 Kia Class Vehicles was not remedied. Therefore, the Alabama Plaintiff and
7 Alabama State Class members have been damaged, in an amount to be proven at
8 trial, through their overpayment at the time of purchase or lease for Honda Class
9 Vehicles with an undisclosed safety defect that would not be remedied.

10 **b. Alabama Count 2: Breach of Implied Warranty of**
11 **Merchantability (Ala. Code §§ 7-2-314 and 7-2a-212)**
12 **Against Honda USA¹**

13 2222. Plaintiffs reallege and incorporate by reference all preceding
14 allegations as though fully set forth herein.

15 2223. The Alabama Plaintiff brings this count individually and on behalf of
16 members of the Alabama State Class who purchased or leased Honda Class
17 Vehicles, against Honda USA.

18 2224. A warranty that the Honda Class Vehicles were in merchantable
19 condition and fit for the ordinary purpose for which such goods are used is implied
20 by law pursuant to Ala. Code §§ 7-2-314 and 7-2A-212.

21 2225. Honda USA is and was at all relevant times a “merchant” with respect
22 to motor vehicles Ala. Code §§ 7-2-104(1) and 7-2A-103(3), and “seller” of motor
23 vehicles under § 7-2-103(1)(d).

24 2226. With respect to leases, Honda USA is and was at all relevant times a
25 “lessor” of motor vehicles under Ala. Code § 7-2A-103(1)(p).

26
27
28 ¹ The Court held in its February 9, 2022 Order that the Alabama Plaintiff stated a
claim against Honda USA for breach of express warranty. *See* ECF No. 396 at 123.

1 2227. All Alabama State Class members who purchased Honda Class
2 Vehicles in Alabama are “buyers” within the meaning of Ala. Code § 7-2-
3 103(1)(a).

4 2228. All Alabama State Class members who leased Honda Class Vehicles
5 in Alabama are “lessees” within the meaning of Ala. Code 7-2A-103(1)(n).

6 2229. The Honda Class Vehicles were at all relevant times “goods” within
7 the meaning of Ala. Code §§ 7-2-105(1) and 7-2A-103(1)(h).

8 2230. The Honda Class Vehicles did not comply with the implied warranty
9 of merchantability because, at the time of sale and lease and at all times thereafter,
10 they were defective and not in merchantable condition, would not pass without
11 objection in the trade, and were not fit for the ordinary purpose for which vehicles
12 were used. Specifically, at the time they were sold and leased, the Honda Class
13 Vehicles contained the ACU Defect, which may cause the airbags and seatbelt
14 pretensioners to fail to deploy during a crash, the failure to unlock doors
15 automatically after a crash, the failure to turn off a fuel supply or high-voltage
16 battery after a crash, or the airbags to inadvertently deploy, all of which render the
17 Honda Class Vehicles inherently defective and dangerous.

18 2231. The Alabama Plaintiff and Alabama State Class members have
19 provided Honda USA with reasonable notice and opportunity to cure the breaches
20 of its implied warranties by way of the numerous NHTSA complaints filed against
21 it, and the individual notice letters sent by Alabama State Class members within a
22 reasonable amount of time after the ACU Defect became public. Additionally, on
23 April 24, 2020, a notice letter was sent on behalf of the Alabama Plaintiff and
24 Alabama State Class members to Honda USA.

25 2232. Alternatively, the Alabama Plaintiff and Alabama State Class members
26 were excused from providing Honda USA with notice and an opportunity to cure
27 the breach, because it would have been futile. As alleged above, Honda USA has
28 long known that the Honda Class Vehicles contained the ACU Defect, and that the

1 ACU Defect has caused ACUs and ASICs to malfunction in crashes involving
2 Class Vehicles; however, to date, Honda USA has not instituted a recall or any
3 other repair program, or even acknowledged that the ACU Defect exists—even
4 though Honda Class Vehicles are subject to the NHTSA investigation. Therefore,
5 the Alabama Plaintiff and Alabama State Class members had no reason to believe
6 that Honda USA would have repaired the ACU Defect if the Alabama Plaintiff and
7 Alabama State Class members presented their Class Vehicles to Honda USA for
8 repair.

9 2233. As a direct and proximate result of Honda USA’s breach of the
10 implied warranty of merchantability, the Alabama Plaintiff and Alabama State
11 Class members have been damaged through their overpayment at the time of
12 purchase or lease for Honda Class Vehicles with an undisclosed safety defect in an
13 amount to be proven at trial.

14 **c. Alabama Count 3: Violation of the Alabama Deceptive**
15 **Trade Practices Act (Ala. Code §§ 8-19-1, et seq.) Against**
16 **Honda Japan, Honda USA, and Honda Engineering USA**

17 2234. Plaintiffs reallege and incorporate by reference all preceding
18 allegations as though fully set forth herein.

19 2235. The Alabama Plaintiff brings this count individually and on behalf of
20 members of the Alabama State Class who purchased or leased Honda Class
21 Vehicles, against Honda Japan, Honda USA, and Honda Engineering USA.

22 2236. Honda Japan, Honda USA, and Honda Engineering USA, Alabama
23 Plaintiff, and Alabama State Class members are “persons” within the meaning of
24 Ala. Code § 8-19-3(5).

25 2237. The Alabama Plaintiff and Alabama State Class members are
26 “consumers” within the meaning of Ala. Code § 8-19-3(2).

27 2238. The Honda Class Vehicles and ACUs installed in them are “goods”
28 within the meaning of Ala. Code. § 8-19-3(3).

1 2239. Honda Japan, Honda USA, and Honda Engineering USA were and are
2 engaged in “trade or commerce” within the meaning of Ala. Code § 8-19-3(8).

3 2240. The Alabama Deceptive Trade Practices Act (“Alabama DTPA”)
4 prohibits “deceptive acts or practices in the conduct of any trade or commerce[.]”
5 Ala. Code § 8-19-5.

6 2241. In the course of their business, Honda Japan, Honda USA, and Honda
7 Engineering USA, through their agents, employees, and/or subsidiaries, violated the
8 Alabama DTPA by knowingly and intentionally misrepresenting, omitting,
9 concealing, and/or failing to disclose material facts regarding the reliability, safety,
10 and performance of the Honda Class Vehicles, the safety of their Occupant
11 Restraint Systems, and the ACU Defect, as detailed above.

12 2242. Honda Japan, Honda USA, and Honda Engineering USA had an
13 ongoing duty to the Alabama Plaintiff and Alabama State Class members to refrain
14 from unfair or deceptive practices under the Alabama DTPA in the course of their
15 business. Specifically, Honda Japan, Honda USA, and Honda Engineering USA
16 owed the Alabama Plaintiff and Alabama State Class members a duty to disclose all
17 the material facts concerning the ACU Defect in the Honda Class Vehicles because
18 they possessed exclusive knowledge, they intentionally concealed the ACU Defect
19 from the Alabama Plaintiff and Alabama State Class members, and/or they made
20 misrepresentations that were rendered misleading because they were contradicted
21 by withheld facts.

22 2243. By misrepresenting the Honda Class Vehicles as safe and reliable and
23 the defective ACU and ASICs installed in them as properly-functioning and free
24 from defects, and by failing to disclose and actively concealing the dangers and risk
25 posed by the ACU Defect to both consumers and NHTSA, Honda Japan, Honda
26 USA, and Honda Engineering USA engaged in one or more of the following unfair
27 or deceptive business practices prohibited by Ala. Code § 8-19-5:
28

- 1 a. Causing likelihood of confusion or of misunderstanding as to the
- 2 approval or certification of the Honda Class Vehicles;
- 3 b. Representing that the Honda Class Vehicles and/or the defective
- 4 ACUs and ASICs installed in them have characteristics, uses,
- 5 benefits, and qualities which they do not have;
- 6 c. Representing that the Honda Class Vehicles and/or the defective
- 7 ACUs and ASICs installed in them are of a particular standard,
- 8 quality, and grade when they are not;
- 9 d. Advertising the Honda Class Vehicles and/or the defective
- 10 ACUs and ASICs installed in them with the intent not to sell or
- 11 lease them as advertised; and
- 12 e. Engaging in unconscionable, false, misleading, and deceptive
- 13 acts and practices in the conduct of trade or commerce
- 14 pertaining to the Honda Class Vehicles and/or the defective
- 15 ACUs and ASICs installed in them.

16 Ala. Code §§ 8-19-5(2), (5), (7), (9) and (27).

17 2244. Honda Japan's, Honda USA's, and Honda Engineering USA's unfair
18 and deceptive acts or practices, including their misrepresentations, concealments,
19 omissions, and suppressions of material facts, were designed to mislead and had a
20 tendency or capacity to mislead and create a false impression in consumers that the
21 Honda Class Vehicles had properly-functioning and reliable airbags and seatbelts,
22 and that the Occupant Restraint System did not contain the ACU Defect and would
23 perform its intended function of activating the seatbelts and airbags during a
24 collision. Indeed, those misrepresentations, concealments, omissions, and
25 suppressions of material facts did in fact deceive reasonable consumers, including
26 the Alabama Plaintiff and Alabama State Class members, about the true safety and
27 reliability of Honda Class Vehicles and/or the defective ACUs and ASICs installed

28

1 in them, the quality of the Honda Class Vehicles, and the true value of the Honda
2 Class Vehicles.

3 2245. Honda Japan's, Honda USA's, and Honda Engineering USA's
4 misrepresentations, concealments, omissions, and suppressions of material facts
5 regarding the ACU Defect and true characteristics of the Occupant Restraint
6 Systems in the Honda Class Vehicles were material to the decisions of the Alabama
7 Plaintiff and Alabama State Class members to purchase and lease those vehicles, as
8 Honda Japan, Honda USA, and Honda Engineering USA intended. The Alabama
9 Plaintiff and Alabama State Class members were exposed to those
10 misrepresentations, concealments, omissions, and suppressions of material facts,
11 and relied on Honda Japan's, Honda USA's, and Honda Engineering USA's
12 misrepresentations that the Honda Class Vehicles and their Occupant Restraint
13 Systems were safe and reliable in deciding to purchase and lease Honda Class
14 Vehicles. Plaintiffs allege the information they relied upon in Section II.B above.
15 To aid review of this information, Exhibit 19 provides paragraph numbers for each
16 Plaintiff. The Alabama Plaintiff's and Alabama State Class members' reliance was
17 reasonable, as they had no way of discerning that Honda Japan's, Honda USA's,
18 and Honda Engineering USA's representations were false and misleading, or
19 otherwise learning the facts that Honda Japan, Honda USA, and Honda Engineering
20 USA had concealed or failed to disclose. The Alabama Plaintiff and Alabama State
21 Class members did not, and could not, unravel Honda Japan's, Honda USA's, and
22 Honda Engineering USA's deception on their own.

23 2246. Had the Alabama Plaintiff and Alabama State Class members known
24 the truth about the ACU Defect, the Alabama Plaintiff and Alabama State Class
25 members would not have purchased or leased Honda Class Vehicles, or would have
26 paid significantly less for them.

27 2247. The Alabama Plaintiff and Alabama State Class members suffered
28 ascertainable losses and actual damages through their overpayment at the time of

1 purchase and lease for Honda Class Vehicles with an undisclosed safety defect as a
2 direct and proximate result of Honda Japan's, Honda USA's, and Honda
3 Engineering USA's concealment, misrepresentations, and/or failure to disclose
4 material information.

5 2248. Honda Japan's, Honda USA's, and Honda Engineering USA's
6 violations present a continuing risk to the Alabama Plaintiff and Alabama State
7 Class members, as well as to the general public, because the Class Vehicles remain
8 unsafe due to the defective ACUs and ASICs therein. Additionally, Honda Japan's,
9 Honda USA's, and Honda Engineering USA's unlawful acts and practices
10 complained of herein affect the public interest.

11 2249. Honda Japan, Honda USA, and Honda Engineering USA were
12 provided notice of the issues raised in this count and this Complaint by the NHTSA
13 investigations, the numerous complaints filed against them, and the individual
14 notice letters sent by Alabama State Class members within a reasonable amount of
15 time after the ACU Defect became public. Additionally, pursuant to Ala. Code § 8-
16 19-10(e) on April 24, 2020, a notice letter was sent on behalf of the Alabama
17 Plaintiff and Alabama State Class members to Honda Japan, Honda USA, and
18 Honda Engineering USA. Because Honda Japan, Honda USA, and Honda
19 Engineering USA failed to adequately remedy their unlawful conduct within the
20 requisite time period, the Alabama Plaintiff seeks all damages and relief to which
21 the Alabama Plaintiff and Alabama State Class members are entitled. Pursuant to
22 Ala. Code § 8-19-10(e) on May 25, 2022, a notice letter was also sent on behalf of
23 the Alabama Plaintiff and Alabama State Class members to ST Italy and ST
24 Malaysia.

25 2250. Alternatively, the Alabama Plaintiff and Alabama State Class members
26 were excused from providing Honda Japan, Honda USA, and Honda Engineering
27 USA with notice and an opportunity to cure the breach, because it would have been
28 futile. As alleged above, Honda Japan, Honda USA, and Honda Engineering USA

1 have long known that the Honda Class Vehicles contained the ACU Defect, and
2 that the ACU Defect has caused ACUs and ASICs to malfunction in crashes
3 involving Class Vehicles; however, to date, Honda Japan, Honda USA, and Honda
4 Engineering USA have not instituted a recall or any other repair program, or even
5 acknowledged that the ACU Defect exists—even though Honda Class Vehicles are
6 subject to the NHTSA investigation. Therefore, the Alabama Plaintiff and Alabama
7 State Class members had no reason to believe that Honda Japan, Honda USA, and
8 Honda Engineering USA would have repaired the ACU Defect if the Alabama
9 Plaintiff and Alabama State Class members presented their Class Vehicles to
10 Honda Japan, Honda USA, and Honda Engineering USA for repair.

11 2251. Pursuant to Ala. Code § 8-19-10, the Alabama Plaintiff and the
12 Alabama State Class members seek an order enjoining Honda Japan’s, Honda
13 USA’s, and Honda Engineering USA’s unfair or deceptive acts and/or practices and
14 awarding damages and any other just and proper relief available under the Alabama
15 DTPA.

16 **d. Alabama Count 4: Violation of the Alabama Deceptive**
17 **Trade Practices Act (Ala. Code §§ 8-19-1, et seq.) Against ZF**
18 **Electronics USA, ZF Passive Safety USA, ZF Automotive**
USA, ZF TRW Corp., ZF Germany, ST Italy, ST USA, and
ST Malaysia

19 2252. Plaintiffs reallege and incorporate by reference all preceding
20 allegations as though fully set forth herein.

21 2253. The Alabama Plaintiff brings this count individually and on behalf of
22 members of the Alabama State Class against ZF Electronics USA, ZF Passive
23 Safety USA, ZF Automotive USA, ZF TRW Corp., and ZF Germany (collectively,
24 the ZF Defendants’), and ST Italy, ST Malaysia, and ST USA (collectively, the
25 “ST Defendants”).

26 2254. The ZF Defendants, the ST Defendants, the Alabama Plaintiff, and
27 Alabama State Class members are “persons” within the meaning of Ala. Code § 8-
28 19-3(5).

1 2255. The Alabama Plaintiff and Alabama State Class members are
2 “consumers” within the meaning of Ala. Code § 8-19-3(2).

3 2256. The Class Vehicles and ACUs installed in them are “goods” within the
4 meaning of Ala. Code. § 8-19-3(3).

5 2257. The ZF and ST Defendants were and are engaged in “trade or
6 commerce” within the meaning of Ala. Code § 8-19-3(8).

7 2258. The Alabama Deceptive Trade Practices Act (“Alabama DTPA”)
8 prohibits “deceptive acts or practices in the conduct of any trade or commerce[.]”
9 Ala. Code § 8-19-5.

10 2259. The ZF and ST Defendants had an ongoing duty to the Alabama
11 Plaintiff and Alabama State Class members to refrain from unfair or deceptive
12 practices under the Alabama DTPA in the course of their business. Specifically, the
13 ZF and ST Defendants owed the Alabama Plaintiff and Alabama State Class
14 members a duty to disclose all the material facts concerning the ACU Defect in the
15 Class Vehicles because they possessed exclusive knowledge of and intentionally
16 concealed the ACU Defect from the Alabama Plaintiff and Alabama State Class
17 members.

18 2260. In the course of their business, the ZF and ST Defendants, through
19 their agents, employees, and/or subsidiaries, violated the Alabama DTPA by
20 knowingly and intentionally omitting, concealing, and failing to disclose material
21 facts regarding the existence, nature, and scope of the ACU Defect in the Class
22 Vehicles, as detailed above.

23 2261. Additionally, ZF Electronics USA, ZF Passive Safety USA, and ZF
24 Automotive USA through their agents, employees, and/or subsidiaries, violated the
25 Alabama DTPA when they knowingly and intentionally misrepresented the Class
26 Vehicles as safe and reliable and the defective ACU and ASICs installed in them as
27 properly-functioning and free from defects. Specifically, ZF Electronics USA, ZF
28 Passive Safety USA, and ZF Automotive USA worked with the Vehicle

1 Manufacturer Defendants on the design and inclusion of the airbag readiness
2 indicators in the Class Vehicles, which falsely assured Plaintiffs and Class
3 Members that the Occupant Restraint Systems in the Class Vehicles would function
4 properly in a crash.

5 2262. By misrepresenting, failing to disclose, and actively concealing the
6 dangers and risk posed by the Class Vehicles due to the ACU Defect, the ZF and
7 ST Defendants engaged in deceptive acts or practices prohibited by Ala. Code § 8-
8 19-5, including engaging in unconscionable, false, misleading, and/or deceptive
9 acts or practices in the conduct of trade or commerce.

10 2263. The ZF and ST Defendants' unfair or deceptive acts or practices,
11 including their misrepresentations, concealments, omissions, and suppressions of
12 material facts, were designed to mislead and had a tendency or capacity to mislead
13 and create a false impression in consumers that the Class Vehicles had properly-
14 functioning and reliable airbags and seatbelts, and that the Occupant Restraint
15 System did not contain the ACU Defect and would perform its intended function of
16 activating the seatbelts and airbags during a collision. Indeed, those
17 misrepresentations, concealments, omissions, and suppressions of material facts did
18 in fact deceive reasonable consumers, including the Alabama Plaintiff and Alabama
19 State Class members, about the true safety and reliability of Class Vehicles and/or
20 the defective ACUs and ASICs installed in them, the quality of the Class Vehicles,
21 and the true value of the Class Vehicles.

22 2264. The Alabama Plaintiff and Alabama State Class members justifiably
23 relied on the ZF and ST Defendants' misrepresentations, omissions, and
24 concealment, as they had no way of discerning that the Class Vehicles contained
25 the ACU Defect, as alleged above. The Alabama Plaintiff and Alabama State Class
26 members did not, and could not, unravel the ZF and ST Defendants' deception on
27 their own.
28

1 2265. The ZF and ST Defendants’ misrepresentations and concealment of the
2 ACU Defect and true characteristics of the defective ACUs and ASICs in the Class
3 Vehicles were material to the decisions of the Alabama Plaintiff and Alabama State
4 Class members to purchase and lease Class Vehicles, as the ZF and ST Defendants
5 intended. Had they known the truth, the Alabama Plaintiff and Alabama State Class
6 members would not have purchased or leased the Class Vehicles, or would have
7 paid significantly less for them.

8 2266. The Alabama Plaintiff and Alabama State Class members suffered
9 ascertainable losses and actual damages as a direct and proximate result of the ZF
10 and ST Defendants’ misrepresentations, concealment and/or failure to disclose
11 material information.

12 2267. The ZF and ST Defendants’ violations present a continuing risk to the
13 Alabama Plaintiff and Alabama State Class members, as well as to the general
14 public, because the Class Vehicles remain unsafe due to the defective ACUs and
15 ASICs therein. The ZF and ST Defendants’ unlawful acts and practices complained
16 of herein affect the public interest.

17 2268. The ZF and ST Defendants were provided notice of the issues raised in
18 this count and this Complaint by the NHTSA investigations, the numerous
19 complaints filed against them, and the individual notice letters sent by Alabama
20 State Class members within a reasonable amount of time after the allegations of the
21 ACU Defect became public. Additionally, pursuant to Ala. Code § 8-19-10(e) on
22 April 24, 2020, a notice letter was sent on behalf of the Alabama Plaintiff and
23 Alabama State Class members to the ZF Defendants, and on June 5, 2020, notice
24 letter was sent on behalf of the Alabama Plaintiff and Alabama State Class
25 members to ST USA. Because these Defendants failed to adequately remedy their
26 unlawful conduct within the requisite time period, the Alabama Plaintiff seeks all
27 damages and relief to which the Alabama Plaintiff and Alabama State Class
28 members are entitled.

1 2269. Alternatively, any requirement to give notice to the Defendants under
2 Ala. Code § 8-19-10(e) is excused because, *inter alia*, on information and belief the
3 ZF and ST Defendants do not maintain a place of business or do not keep assets
4 within Alabama. Moreover, the Alabama Plaintiff and Alabama State Class
5 members were excused from providing the ZF and ST Defendants with notice and
6 an opportunity to cure the breach, because it would have been futile. As alleged
7 above, the ZF and ST Defendants have long known that the Class Vehicles
8 contained the ACU Defect, and that the ACU Defect has caused ACUs and ASICs
9 to malfunction in crashes involving Class Vehicles; however, to date, the ZF and
10 ST Defendants have not even acknowledged that the ACU Defect exists—even
11 though the Vehicle Manufacturer Defendants Class Vehicles’ are subject to the
12 NHTSA investigation. Therefore, the Alabama Plaintiff and Alabama State Class
13 members had no reason to believe that the ZF and ST Defendants would have
14 repaired the ACU Defect if the Alabama Plaintiff and Alabama State Class
15 members presented their Class Vehicles the ZF and ST Defendants for repair.

16 2270. Pursuant to Ala. Code § 8-19-10, the Alabama Plaintiff and Alabama
17 State Class members seek an order enjoining the ZF and ST Defendants’ unfair or
18 deceptive acts and/or practices and awarding damages and any other just and proper
19 relief available under the Alabama DTPA.

20 e. **Alabama Count 5: Fraud by Omission and Concealment**
21 **Against Honda Japan, Honda USA, and Honda Engineering**
22 **USA**

22 2271. Plaintiffs reallege and incorporate by reference all preceding
23 allegations as though fully set forth herein.

24 2272. The Alabama Plaintiff brings this count individually and on behalf of
25 members of the Alabama State Class who purchased or leased Honda Class
26 Vehicles, against Honda Japan, Honda USA, and Honda Engineering USA.
27
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1 2273. Honda Japan, Honda USA, and Honda Engineering USA are liable for
2 both fraudulent concealment and non-disclosure. *See, e.g.*, Restatement (Second) of
3 Torts §§ 550-51 (1977).

4 2274. As explained in Section IV.A, the ACU Defect in Class Vehicles poses
5 serious risks to vehicle occupants, including that it can cause: (1) airbags and
6 seatbelts not to activate during a crash because crashes can sometimes release
7 electrical transients, which cause the ACU to fail; (2) airbags to deploy when the
8 vehicle has not crashed, which is dangerous because it is shocking and difficult for
9 the driver to operate a vehicle when the airbag deploys without warning; and (3)
10 failures of other important post-crash operations of the safety system, such as
11 unlocking doors to facilitate escape or extraction of drivers and passengers by
12 emergency personnel, and shutting off a crashed vehicle’s fuel or power supply.

13 2275. Honda Japan, Honda USA, and Honda Engineering USA had a duty to
14 disclose the ACU Defect to the Alabama Plaintiff and Alabama State Class
15 members because:

- 16 a. Honda Japan, Honda USA, and Honda Engineering USA had
17 exclusive access to and far superior knowledge about technical
18 facts regarding the ACU Defect;
- 19 b. Given the ACU Defect’s hidden and technical nature, the
20 Alabama Plaintiff and Alabama State Class members lack the
21 sophisticated expertise in vehicle components and electrical
22 phenomena that would be necessary to discover the ACU Defect
23 on their own;
- 24 c. Honda Japan, Honda USA, and Honda Engineering USA knew
25 that the ACU Defect gave rise to serious safety concerns for the
26 consumers who use the vehicles, and the Honda Class Vehicles
27 containing the ACU Defect would have been a material fact to
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1 the Alabama Plaintiff's and Alabama State Class members'
2 decisions to buy or lease Honda Class Vehicles; and
3 d. Honda Japan, Honda USA, and Honda Engineering USA made
4 incomplete representations about the safety and reliability of the
5 Honda Class Vehicles and their Occupant Restraint System,
6 while purposefully withholding material facts about a known
7 safety defect. In uniform advertising and materials provided
8 with each Class Vehicle, Honda Japan, Honda USA, and Honda
9 Engineering USA intentionally concealed, suppressed, and
10 failed to disclose to the Alabama Plaintiff and Alabama State
11 Class members that the Honda Class Vehicles contained the
12 ACU Defect. Because they volunteered to provide information
13 about the Honda Class Vehicles that they marketed and offered
14 for sale and lease to the Alabama Plaintiff and Alabama State
15 Class members, Honda Japan, Honda USA, and Honda
16 Engineering USA had the duty to disclose the whole truth.

17 2276. In breach of their duties, Honda Japan, Honda USA, and Honda
18 Engineering USA failed to disclose that the Honda Class Vehicles were not safe
19 and reliable, and that their Occupant Restraint Systems, including their airbags and
20 seatbelt pretensioners could fail in the event of a crash due to the ACU Defect.

21 2277. Honda Japan, Honda USA, and Honda Engineering USA intended for
22 the Alabama Plaintiff and Alabama State Class members to rely on their
23 omissions—which they did by purchasing and leasing the Honda Class Vehicles at
24 the prices they paid believing that the Occupant Restraint Systems in their Honda
25 Class Vehicles would function properly.

26 2278. That reliance was reasonable, because a reasonable consumer would
27 not have expected that the Honda Class Vehicles contained a safety defect that
28 poses such a serious risk. Honda Japan, Honda USA, and Honda Engineering USA

1 knew that reasonable consumers expect that their vehicle has working airbags and
2 seatbelt pretensioners and would rely on those facts in deciding whether to
3 purchase, lease, or retain a new or used motor vehicle. Whether a manufacturer's
4 products are safe and reliable, and whether that manufacturer stands behind its
5 products, are material concerns to a consumer. Especially here when at least nine
6 people have already died due to the ACU Defect, and many more have been
7 injured.

8 2279. Additionally, Honda Japan, Honda USA, and Honda Engineering USA
9 ensured that the Alabama Plaintiff and Alabama State Class members did not
10 discover this information by actively concealing and misrepresenting the true nature
11 of the Honda Class Vehicles' Occupant Restraint System to consumers and
12 NHTSA.

13 2280. Honda Japan, Honda USA, and Honda Engineering USA actively
14 concealed and suppressed these material facts, in whole or in part, to maintain a
15 market for their Class Vehicles, to protect profits, and to avoid costly recalls that
16 would expose them to liability for those expenses and harm the commercial
17 reputations of Defendants and their products. They did so at the expense of the
18 Alabama Plaintiff and Alabama State Class members.

19 2281. To this day, Honda Japan, Honda USA, and Honda Engineering USA
20 have not fully and adequately disclosed the ACU Defect, and they continue to
21 conceal material information about the defect from consumers and NHTSA. The
22 omitted and concealed facts were material because a reasonable person would find
23 them important in purchasing, leasing, or retaining a new or used motor vehicle,
24 and because they directly impact the value of the Honda Class Vehicles purchased
25 or leased by the Alabama Plaintiff and Alabama State Class members.

26 2282. Had they been aware of the ACU Defect in the Honda Class Vehicles,
27 and Honda Japan's, Honda USA's, and Honda Engineering USA's callous
28 disregard for safety, the Alabama Plaintiff and Alabama State Class members either

1 would not have paid as much as they did for their Class Vehicles, or they would not
2 have purchased or leased them.

3 2283. As alleged in Section V above, if Honda Japan, Honda USA, and
4 Honda Engineering USA had fully and adequately disclosed the ACU Defect to
5 consumers and NHTSA, the Alabama Plaintiff and Alabama State Class members
6 would have seen such a disclosure.

7 2284. Accordingly, Honda Japan, Honda USA, and Honda Engineering USA
8 are liable to the Alabama Plaintiff and Alabama State Class members for their
9 damages in an amount to be proven at trial, including, but not limited to, their lost
10 overpayment for the Honda Class Vehicles at the time of purchase or lease.

11 2285. Honda Japan's, Honda USA's, and Honda Engineering USA's acts
12 were done maliciously, oppressively, deliberately, with intent to defraud; in
13 reckless disregard of the Alabama Plaintiff's and Alabama State Class members'
14 rights and well-being; and to enrich themselves. Honda Japan's, Honda USA's, and
15 Honda Engineering USA's misconduct warrants an assessment of punitive
16 damages, as permitted by law, in an amount sufficient to deter such conduct in the
17 future, which amount shall be determined according to proof at trial.

18 **f. Alabama Count 6: Fraud by Omission and Concealment**
19 **Against ZF Electronics USA, ZF Passive Safety USA, ZF**
20 **Automotive USA, ZF TRW Corp., ZF Germany, ST Italy,**
21 **ST USA, and ST Malaysia**

22 2286. Plaintiffs reallege and incorporate by reference all preceding
23 allegations as though fully set forth herein.

24 2287. The Alabama Plaintiff brings this count individually and on behalf of
25 members of the Alabama State Class who purchased or leased Class Vehicles,
26 against ZF Electronics USA, ZF Passive Safety USA, ZF Automotive USA, ZF
27 TRW Corp., and ZF Germany (collectively, the "ZF Defendants"), and ST Italy, ST
28 Malaysia, and ST USA (collectively, the "ST Defendants").

1 2288. The ZF and ST Defendants are liable for both fraudulent concealment
2 and non-disclosure. *See, e.g.*, Restatement (Second) of Torts §§ 550-51 (1977).

3 2289. As explained in Section IV.A, the ACU Defect in Class Vehicles poses
4 serious risks to vehicle occupants, including that it can cause: (1) airbags and
5 seatbelts not to activate during a crash because crashes can sometimes release
6 electrical transients, which cause the ACU to fail; (2) airbags to deploy when the
7 vehicle has not crashed, which is dangerous because it is shocking and difficult for
8 the driver to operate a vehicle when the airbag deploys without warning; and (3)
9 failures of other important post-crash operations of the safety system, such as
10 unlocking doors to facilitate escape or extraction of drivers and passengers by
11 emergency personnel, and shutting off a crashed vehicle’s fuel or power supply.

12 2290. The ZF and ST Defendants had a duty to disclose the ACU Defect to
13 the Alabama Plaintiff and Alabama State Class members because:

- 14 a. The ZF and ST Defendants had exclusive access to and far
15 superior knowledge about technical facts regarding the ACU
16 Defect;
- 17 b. Given the ACU Defect’s hidden and technical nature, the
18 Alabama Plaintiff and Alabama State Class members lack the
19 sophisticated expertise in vehicle components and electrical
20 phenomena that would be necessary to discover the ACU Defect
21 on their own;
- 22 c. The ZF and ST Defendants knew that the ACU Defect gave rise
23 to serious safety concerns for the consumers who use the
24 vehicles, and the Class Vehicles containing the ACU Defect
25 would have been a material fact to the Alabama Plaintiff’s and
26 Alabama State Class members’ decisions to buy or lease Class
27 Vehicles; and
28

1 d. The ZF Defendants made incomplete representations about the
2 safety and reliability of the Class Vehicles and their Occupant
3 Restraint System, while purposefully withholding material facts
4 about a known safety defect, creating a duty to disclose the
5 whole truth. Specifically, ZF Electronics USA, ZF Passive
6 Safety USA, and ZF Automotive USA worked with the Vehicle
7 Manufacturer Defendants on the design and inclusion of the
8 airbag readiness indicators in the Class Vehicles, which falsely
9 assured Plaintiffs and Class Members that the Occupant
10 Restraint Systems in the Class Vehicles would function properly
11 in a crash.

12 2291. In breach of their duties, the ZF and ST Defendants failed to disclose
13 that the Class Vehicles were not safe and reliable, and that their Occupant Restraint
14 Systems, including their airbags and seatbelt pretensioners could fail in the event of
15 a crash due to the ACU Defect.

16 2292. The ZF and ST Defendants intended for the Alabama Plaintiff and
17 Alabama State Class members to rely on their omissions—which they did by
18 purchasing and leasing the Class Vehicles at the prices they paid believing that the
19 Occupant Restraint Systems in their Class Vehicles would function properly.

20 2293. That reliance was reasonable, because a reasonable consumer would
21 not have expected that the Class Vehicles contained a safety defect that poses such
22 a serious risk. The ZF and ST Defendants knew that reasonable consumers expect
23 that their vehicle has working airbags and seatbelt pretensioners and would rely on
24 those facts in deciding whether to purchase, lease, or retain a new or used motor
25 vehicle. Whether a manufacturer's products are safe and reliable, and whether that
26 manufacturer stands behind its products, are material concerns to a consumer.
27 Especially here when at least nine people have already died due to the ACU Defect,
28 and many more have been injured.

1 2294. Additionally, the ZF and ST Defendants ensured that the Alabama
2 Plaintiff and Alabama State Class members did not discover this information by
3 actively concealing and misrepresenting the true nature of the Class Vehicles’
4 Occupant Restraint Systems to consumers and NHTSA.

5 2295. The ZF and ST Defendants actively concealed and suppressed these
6 material facts, in whole or in part, to maintain a market for the DS84 ACU, to
7 protect profits, and to avoid costly recalls that would expose them to liability for
8 those expenses and harm the commercial reputations of Defendants and their
9 products. They did so at the expense of the Alabama Plaintiff and Alabama State
10 Class members.

11 2296. To this day, the ZF and ST Defendants have not fully and adequately
12 disclosed the ACU Defect, and they continue to conceal material information about
13 the defect from consumers and NHTSA. The omitted and concealed facts were
14 material because a reasonable person would find them important in purchasing,
15 leasing, or retaining a new or used motor vehicle, and because they directly impact
16 the value of the Class Vehicles purchased or leased by the Alabama Plaintiff and
17 Alabama State Class members.

18 2297. Had they been aware of the ACU Defect in the Class Vehicles, and the
19 ZF and ST Defendants’ callous disregard for safety, the Alabama Plaintiff and
20 Alabama State Class members either would not have paid as much as they did for
21 their Class Vehicles, or they would not have purchased or leased them.

22 2298. As alleged in Section V above, if the ZF and ST Defendants had fully
23 and adequately disclosed the ACU Defect to consumers and NHTSA, the Alabama
24 Plaintiff and Alabama State Class members would have seen such a disclosure.

25 2299. Accordingly, the ZF and ST Defendants are liable to the Alabama
26 Plaintiff and Alabama State Class members for their damages in an amount to be
27 proven at trial, including, but not limited to, their lost overpayment for the Class
28 Vehicles at the time of purchase or lease.

1 2300. The ZF and ST Defendants’ acts were done maliciously, oppressively,
2 deliberately, with intent to defraud; in reckless disregard of the Alabama Plaintiff’s
3 and Alabama State Class members’ rights and well-being; and to enrich themselves.
4 The ZF and ST Defendants’ misconduct warrants an assessment of punitive
5 damages, as permitted by law, in an amount sufficient to deter such conduct in the
6 future, which amount shall be determined according to proof at trial.

7 **g. Alabama Count 7: Unjust Enrichment Against Honda**
8 **Japan, Honda Engineering USA, and Honda USA**

9 2301. Plaintiffs reallege and incorporate by reference all allegations in
10 Sections I-VI above as though fully set forth herein.

11 2302. The Alabama Plaintiff brings this count individually and on behalf of
12 members of the Alabama State Class who purchased or leased Honda Class
13 Vehicles, against Honda Japan, Honda Engineering USA, and Honda USA.

14 2303. The Alabama Plaintiff and Alabama State Class members conferred
15 tangible and material monetary benefits upon Honda Japan, Honda USA, and
16 Honda Engineering USA when they purchased or leased the Honda Class Vehicles.
17 Honda Japan, Honda USA, and Honda Engineering USA readily accepted and
18 retained these benefits.

19 2304. The Alabama Plaintiff and Alabama State Class members would not
20 have purchased or leased the Honda Class Vehicles, or would have paid less for
21 them, had they known of the ACU Defect at the time of purchase or lease.
22 Therefore, Honda Japan, Honda USA, and Honda Engineering USA profited from
23 the sale and lease of the Honda Class Vehicles to the detriment and expense of the
24 Alabama Plaintiff and Alabama State Class members.

25 2305. Honda Japan, Honda USA, and Honda Engineering USA appreciated
26 these monetary benefits. These benefits were the expected result of Honda Japan,
27 Honda USA, and Honda Engineering USA acting in their pecuniary interest at the
28 expense of their customers. Honda Japan, Honda USA, and Honda Engineering

1 USA knew of these benefits because they were aware of the ACU Defect, yet they
2 failed to disclose this knowledge and misled the Alabama Plaintiff and Alabama
3 State Class members regarding the nature and quality of the Honda Class Vehicles
4 while profiting from this deception.

5 2306. It would be unjust, inequitable, and unconscionable for Honda Japan,
6 Honda USA, and Honda Engineering USA to retain these monetary benefits,
7 including because they were procured as a result of Honda Japan's, Honda USA's,
8 and Honda Engineering USA's wrongful conduct alleged above.

9 2307. The Alabama Plaintiff and Alabama State Class members are entitled
10 to restitution of the benefits Honda Japan, Honda USA, and Honda Engineering
11 USA unjustly retained and/or any amounts necessary to return the Alabama
12 Plaintiff and Alabama State Class members to the position they occupied prior to
13 dealing with Honda Japan, Honda USA, and Honda Engineering USA, with such
14 amounts to be determined at trial.

15 2308. The Alabama Plaintiff pleads this claim separately as well as in the
16 alternative to his claims for damages under Fed. R. Civ. P. 8(a)(3), because if the
17 Alabama Plaintiff's claims for damages are dismissed or judgment is entered in
18 favor of Honda Japan, Honda USA, and Honda Engineering USA, the Alabama
19 Plaintiff will have no adequate legal remedy.

20 **2. Arizona**

21 **a. Arizona Count 1: Breach of Express Warranty (Ariz. Rev. Stat. Ann. §§ 47-2313 and 47-2A210) Against FCA²**

22
23 2309. Plaintiffs reallege and incorporate by reference all preceding
24 allegations as though fully set forth herein.

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² The Court held in its February 9, 2022 Order that the Arizona Plaintiff stated a claim against FCA for breach of express warranty. *See* ECF No. 396 at 125.

1 2310. Plaintiff James Kneup (hereinafter, “Arizona Plaintiff”) brings this
2 count individually and on behalf of members of the Arizona State Class who
3 purchased or leased FCA Class Vehicles, against FCA.

4 2311. FCA is and was at all relevant times a “merchant” with respect to
5 motor vehicles under Ariz. Rev. Stat. Ann. §§ 47-2104(A) and 47-2A103(C)(11),
6 and a “seller” of motor vehicles under § 47-2103(A)(4).

7 2312. With respect to leases, FCA is and was at all relevant times a “lessor”
8 of motor vehicles under Ariz. Rev. Stat. Ann. § 47-2a103(A)(16).

9 2313. All Arizona State Class members who purchased FCA Class Vehicles
10 in Arizona are “buyers” within the meaning of Ariz. Rev. Stat. Ann. § 47-
11 2103(A)(1).

12 2314. All Arizona State Class members who leased FCA Class Vehicles in
13 Arizona are “lessees” within the meaning of Ariz. Rev. Stat. Ann. § 47-
14 2A103(A)(14).

15 2315. The FCA Class Vehicles are and were at all relevant times “goods”
16 within the meaning of Ariz. Rev. Stat. Ann. §§ 47-2105(A) and 47-2A103(A)(8).

17 2316. In connection with the purchase or lease of FCA Class Vehicles, FCA
18 provided the Arizona Plaintiff and Arizona State Class members with warranties in
19 the form of: (a) written express warranties covering the repair or replacement of
20 components that are defective in materials or workmanship, and (b) descriptions of
21 the FCA Class Vehicles as safe and reliable, and that their Occupant Restraint
22 Systems, including their airbags and seatbelt pretensioners, would function properly
23 in the event of a crash

24 2317. However, FCA knew or should have known that the warranties were
25 false and/or misleading. Specifically, FCA was aware of the ACU Defect in the
26 FCA Class Vehicles, which made the vehicles inherently defective and dangerous
27 at the time that they were sold and leased to the Arizona Plaintiff and Arizona State
28 Class members.

1 2318. The Arizona Plaintiff and Arizona State Class members were aware
2 the FCA Class Vehicles were covered by express warranties, and those warranties
3 were an essential part of the bargain between them and FCA when the Arizona
4 Plaintiff and Arizona State Class members unknowingly purchased and leased FCA
5 Class Vehicles that came equipped with defective ACUs and ASICs.

6 2319. FCA misrepresented the FCA Class Vehicles as safe and reliable while
7 concealing that they contained the ACU Defect, the Arizona Plaintiff and Arizona
8 State Class members were exposed to those misrepresentations, and the Arizona
9 Plaintiff and Arizona State Class members had no way of discerning that FCA's
10 representations were false and misleading or otherwise learning the material facts
11 that FCA had concealed or failed to disclose. Accordingly, the Arizona Plaintiff and
12 Arizona State Class members reasonably relied on FCA's express warranties when
13 purchasing or leasing their FCA Class Vehicles. Plaintiffs allege the information
14 they relied upon in Section II.B above. To aid review of this information, Exhibit
15 19 provides paragraph numbers for each Plaintiff.

16 2320. FCA knowingly breached its express warranties to repair defects in
17 materials and workmanship by failing to repair the ACU Defect or replace the
18 defective ACUs and ASICs in the FCA Class Vehicles. FCA also breached its
19 express warranties by selling and leasing FCA Class Vehicles with a defect that
20 was never disclosed to the Arizona Plaintiff and Arizona State Class members.

21 2321. The Arizona Plaintiff and Arizona State Class members have provided
22 FCA with reasonable notice and opportunity to cure the breaches of its express
23 warranties by way of the numerous NHTSA complaints filed against it, and the
24 individual notice letters sent by Arizona State Class members within a reasonable
25 amount of time after the ACU Defect became public. Additionally, on April 24,
26 2020, a notice letter was sent on behalf of the Arizona Plaintiff and Arizona State
27
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1 Class members to FCA.³ This Court found that Plaintiffs’ allegations regarding
2 notice are sufficient. *See* ECF No. 396 at 124.

3 2322. Alternatively, the Arizona Plaintiff and Arizona State Class members
4 were excused from providing FCA with notice and an opportunity to cure the
5 breach, because it would have been futile. As alleged above, FCA has long known
6 that the FCA Class Vehicles contain the ACU Defect, and that the ACU Defect has
7 caused ACUs and ASICs to malfunction in crashes involving Class Vehicles;
8 however, to date, FCA has not instituted a recall or any other repair program with
9 respect to the unrecalled FCA Class Vehicles, or even acknowledged that the ACU
10 Defect exists in all FCA Class Vehicles, including the recalled FCA Class
11 Vehicles—even though FCA Class Vehicles are subject to the NHTSA
12 investigation. Therefore, the Arizona Plaintiff and Arizona State Class members
13 had no reason to believe that FCA would have repaired the ACU Defect if the
14 Arizona Plaintiff and Arizona State Class members presented their Class Vehicles
15 to FCA for repair.

16 2323. As a direct and proximate result of FCA’s breach of its express
17 warranties, the FCA Class Vehicles were and are defective and the ACU Defect in
18 the Arizona Plaintiff’s and Arizona State Class members’ FCA Class Vehicles was
19 not remedied. Therefore, the Arizona Plaintiff and Arizona State Class members
20 have been damaged, in an amount to be proven at trial, through their overpayment
21 at the time of purchase or lease for FCA Class Vehicles with an undisclosed safety
22 defect that would not be remedied.

23 **b. Arizona Count 2: Violation of the Arizona Consumer Fraud**
24 **Act (Ariz. Rev. Stat. Ann. § 44-1521, *et seq.*) Against FCA**

25 2324. Plaintiffs reallege and incorporate by reference all preceding
26 allegations as though fully set forth herein.

27 _____
28 ³ This Court held that Plaintiffs’ sufficiently alleged that they provided the required
notice. *See* ECF No. 396 at 124.

1 2325. The Arizona Plaintiff brings this count individually and on behalf of
2 members of the Arizona State Class who purchased or leased FCA Class Vehicles,
3 against FCA.

4 2326. FCA, the Arizona Plaintiff, and Arizona State Class members are
5 “persons” within the meaning of Ariz. Rev. Stat. Ann. § 44-1521(6).

6 2327. The FCA Class Vehicles and ACUs installed in them are
7 “merchandise” within the meaning of Ariz. Rev. Stat. Ann § 44-1521(5).

8 2328. The Arizona Consumer Fraud Act (“Arizona CFA”) prohibits unlawful
9 business practices. Ariz. Rev. Stat. Ann § 44-1522(A).

10 2329. In the course of its business, FCA, through its agents, employees,
11 and/or subsidiaries, violated the Arizona CFA by knowingly and intentionally
12 misrepresenting, omitting, concealing, and/or failing to disclose material facts
13 regarding the reliability, safety, and performance of the FCA Class Vehicles and/or
14 the defective ACUs, as detailed above.

15 2330. FCA had an ongoing duty to the Arizona Plaintiff and Arizona State
16 Class members to refrain from unfair or deceptive practices under the Arizona
17 DTPA in the course of its business. Specifically, FCA owed the Arizona Plaintiff
18 and Arizona State Class members a duty to disclose all the material facts
19 concerning the ACU Defect in the FCA Class Vehicles because it possessed
20 exclusive knowledge, it intentionally concealed the ACU Defect from the Arizona
21 Plaintiff and Arizona State Class members, and it made misrepresentations that
22 were rendered misleading because they were contradicted by withheld facts.

23 2331. By misrepresenting the FCA Class Vehicles as safe and reliable and
24 the defective ACU and ASICs installed in them as properly-functioning and free
25 from defects, and by failing to disclose and actively concealing the dangers and risk
26 posed by the ACU Defect to both consumers and NHTSA, FCA engaged in
27 deceptive acts or practices, as outlined in Ariz. Rev. Stat. § 44-1522(A), including
28 using or employing deception, fraud, false pretense, false promise or

1 misrepresentation, or the concealment, suppression or omission of a material fact
2 with intent that others rely upon such concealment, suppression, or omission, in
3 connection with the advertisement and sale or lease of the FCA Class Vehicles.

4 2332. FCA's unfair and deceptive acts or practices, including its
5 misrepresentations, concealments, omissions, and suppressions of material facts,
6 were designed to mislead and had a tendency or capacity to mislead and create a
7 false impression in consumers that the FCA Class Vehicles had properly-
8 functioning and reliable airbags and seatbelts, and that the Occupant Restraint
9 System did not contain the ACU Defect and would perform its intended function of
10 activating the seatbelts and airbags during a collision. Indeed, those
11 misrepresentations, concealments, omissions, and suppressions of material facts did
12 in fact deceive reasonable consumers, including the Arizona Plaintiff and Arizona
13 State Class members, about the true safety and reliability of FCA Class Vehicles
14 and/or the defective ACUs and ASICs installed in them, the quality of the FCA
15 Class Vehicles, and the true value of the FCA Class Vehicles.

16 2333. FCA's misrepresentations, concealments, omissions, and suppressions
17 of material facts regarding the ACU Defect and true characteristics of the Occupant
18 Restraint Systems in the FCA Class Vehicles were material to the decisions of the
19 Arizona Plaintiff and Arizona State Class members to purchase and lease those
20 vehicles, as FCA intended. The Arizona Plaintiff and Arizona State Class members
21 were exposed to those misrepresentations, concealments, omissions, and
22 suppressions of material facts, and relied on the FCA's misrepresentations that the
23 FCA Class Vehicles and their Occupant Restraint Systems were safe and reliable in
24 deciding to purchase and lease FCA Class Vehicles. Plaintiffs allege the
25 information they relied upon in Section II.B above. To aid review of this
26 information, Exhibit 19 provides paragraph numbers for each Plaintiff.

27 2334. The Arizona Plaintiff's and Arizona State Class members' reliance
28 was reasonable, as they had no way of discerning that FCA's representations were

1 false and misleading, or otherwise learning the facts that FCA had concealed or
2 failed to disclose. The Arizona Plaintiff and Arizona State Class members did not,
3 and could not, unravel FCA's deception on their own.

4 2335. Had the Arizona Plaintiff and Arizona State Class members known the
5 truth about the ACU Defect, the Arizona Plaintiff and Arizona State Class members
6 would not have purchased or leased FCA Class Vehicles, or would have paid
7 significantly less for them.

8 2336. The Arizona Plaintiff and Arizona State Class members suffered
9 ascertainable losses and actual damages through their overpayment at the time of
10 purchase and lease for FCA Class Vehicles with an undisclosed safety defect as a
11 direct and proximate result of FCA's concealment, misrepresentations, and/or
12 failure to disclose material information.

13 2337. FCA's violations present a continuing risk to the Arizona Plaintiff and
14 Arizona State Class members, as well as to the general public, because the Class
15 Vehicles remain unsafe due to the defective ACUs and ASICs therein. Additionally,
16 FCA's unlawful acts and practices complained of herein affect the public interest.

17 2338. The Arizona Plaintiff and Arizona State Class members seek an order
18 enjoining FCA's unfair and/or deceptive acts or practices and awarding damages
19 and any other just and proper relief available under the Arizona CFA.

20 c. **Arizona Count 3: Violation of the Arizona Consumer Fraud**
21 **Act (Ariz. Rev. Stat. Ann. § 44-1521, et seq.) Against ZF**
22 **Electronics USA, ZF Passive Safety USA, ZF Automotive**
USA, ZF TRW Corp., ZF Germany, ST Italy, ST USA, and
ST Malaysia

23 2339. Plaintiffs reallege and incorporate by reference all preceding
24 allegations as though fully set forth herein.

25 2340. The Arizona Plaintiff brings this count individually and on behalf of
26 members of the Arizona State Class against ZF Electronics USA, ZF Passive Safety
27 USA, ZF Automotive USA, ZF TRW Corp., and ZF Germany (collectively, the
28

1 “ZF Defendants”), and ST Italy, ST Malaysia, and ST USA (collectively, the “ST
2 Defendants”).

3 2341. The ZF Defendants, ST Defendants, Arizona Plaintiff, and Arizona
4 State Class members are “persons” within the meaning of Ariz. Rev. Stat. Ann.
5 § 44-1521(6).

6 2342. The Class Vehicles and ACUs installed in them are “merchandise”
7 within the meaning of Ariz. Rev. Stat. Ann § 44-1521(5).

8 2343. The Arizona Consumer Fraud Act (“Arizona CFA”) prohibits unlawful
9 business practices. Ariz. Rev. Stat. Ann § 44-1522(A).

10 2344. The ZF and ST Defendants had an ongoing duty to the Arizona
11 Plaintiff and Arizona State Class members to refrain from unfair or deceptive
12 practices under the Arizona CFA in the course of their business. Specifically, the
13 ZF and ST Defendants owed the Arizona Plaintiff and Arizona State Class
14 members a duty to disclose all the material facts concerning the ACU Defect in the
15 Class Vehicles because they possessed exclusive knowledge of and intentionally
16 concealed the ACU Defect from the Arizona Plaintiff and Arizona State Class
17 members.

18 2345. In the course of their business, the ZF and ST Defendants, through
19 their agents, employees, and/or subsidiaries, violated the Arizona CFA by
20 knowingly and intentionally omitting, concealing, and failing to disclose material
21 facts regarding the existence, nature, and scope of the ACU Defect in the Class
22 Vehicles, as detailed above.

23 2346. Additionally, ZF Electronics USA, ZF Passive Safety USA, and ZF
24 Automotive USA through their agents, employees, and/or subsidiaries, violated the
25 Arizona CFA when they knowingly and intentionally misrepresented the Class
26 Vehicles as safe and reliable and the defective ACU and ASICs installed in them as
27 properly-functioning and free from defects. Specifically, ZF Electronics USA, ZF
28 Passive Safety USA, and ZF Automotive USA worked with the Vehicle

1 Manufacturer Defendants on the design and inclusion of the airbag readiness
2 indicators in the Class Vehicles, which falsely assured Plaintiffs and Class
3 Members that the Occupant Restraint Systems in the Class Vehicles would function
4 properly in a crash.

5 2347. By misrepresenting, failing to disclose, and actively concealing the
6 dangers and risk posed by the Class Vehicles due to the ACU Defect, the ZF and
7 ST Defendants engaged in deceptive acts or practices prohibited by Ariz. Rev. Stat.
8 § 44-1522(A), including using or employing deception or fraud, and/or the
9 concealment, suppression and/or omission of a material fact with intent that others
10 rely upon such concealment, suppression, or omission.

11 2348. The ZF and ST Defendants' unfair or deceptive acts or practices,
12 including their misrepresentations, concealments, omissions, and suppressions of
13 material facts, were designed to mislead and had a tendency or capacity to mislead
14 and create a false impression in consumers that the Class Vehicles had properly-
15 functioning and reliable airbags and seatbelts, and that the Occupant Restraint
16 System did not contain the ACU Defect and would perform its intended function of
17 activating the seatbelts and airbags during a collision. Indeed, those
18 misrepresentations, concealments, omissions, and suppressions of material facts did
19 in fact deceive reasonable consumers, including the Arizona Plaintiff and Arizona
20 State Class members, about the true safety and reliability of Class Vehicles and/or
21 the defective ACUs and ASICs installed in them, the quality of the Class Vehicles,
22 and the true value of the Class Vehicles.

23 2349. The Arizona Plaintiff and Arizona State Class members justifiably
24 relied on the ZF and ST Defendants' misrepresentations, omissions, and
25 concealment, as they had no way of discerning that the Class Vehicles contained
26 the ACU Defect, as alleged above. The Arizona Plaintiff and Arizona State Class
27 members did not, and could not, unravel the ZF and ST Defendants' deception on
28 their own.

1 2350. The ZF and ST Defendants’ misrepresentations and concealment of the
2 ACU Defect and true characteristics of the defective ACUs and ASICs in the Class
3 Vehicles were material to the decisions of the Arizona Plaintiff and Arizona State
4 Class members to purchase and lease Class Vehicles, as the ZF and ST Defendants
5 intended. Had they known the truth, the Arizona Plaintiff and Arizona State Class
6 members would not have purchased or leased the Class Vehicles, or would have
7 paid significantly less for them.

8 2351. The Arizona Plaintiff and Arizona State Class members suffered
9 ascertainable losses and actual damages as a direct and proximate result of the ZF
10 and ST Defendants’ misrepresentations, concealment and/or failure to disclose
11 material information.

12 2352. The ZF and ST Defendants’ violations present a continuing risk to the
13 Arizona Plaintiff and Arizona State Class members, as well as to the general public,
14 because the Class Vehicles remain unsafe due to the defective ACUs and ASICs
15 therein. The ZF and ST Defendants’ unlawful acts and practices complained of
16 herein affect the public interest.

17 2353. The Arizona Plaintiff and Arizona State Class members seek an order
18 enjoining the ZF and ST Defendants’ unfair and/or deceptive acts or practices and
19 awarding damages and any other just and proper relief available under the Arizona
20 CFA.

21 **d. Arizona Count 4: Fraud by Omission and Concealment**
22 **Against FCA**

23 2354. Plaintiffs reallege and incorporate by reference all preceding
24 allegations as though fully set forth herein.

25 2355. The Arizona Plaintiff brings this count individually and on behalf of
26 members of the Arizona State Class who purchased or leased FCA Class Vehicles,
27 against FCA.
28

1 2356. FCA is liable for both fraudulent concealment and non-disclosure. *See,*
2 *e.g.*, Restatement (Second) of Torts §§ 550-51 (1977).

3 2357. As explained in Section IV.A, the ACU Defect in Class Vehicles poses
4 serious risks to vehicle occupants, including that it can cause: (1) airbags and
5 seatbelts not to activate during a crash because crashes can sometimes release
6 electrical transients, which cause the ACU to fail; (2) airbags to deploy when the
7 vehicle has not crashed, which is dangerous because it is shocking and difficult for
8 the driver to operate a vehicle when the airbag deploys without warning; and (3)
9 failures of other important post-crash operations of the safety system, such as
10 unlocking doors to facilitate escape or extraction of drivers and passengers by
11 emergency personnel, and shutting off a crashed vehicle’s fuel or power supply.

12 2358. FCA had a duty to disclose the ACU Defect to the Arizona Plaintiff
13 and Arizona State Class members because:

- 14 a. FCA had exclusive access to and far superior knowledge about
15 technical facts regarding the ACU Defect;
- 16 b. Given the ACU Defect’s hidden and technical nature, the
17 Arizona Plaintiff and Arizona State Class members lack the
18 sophisticated expertise in vehicle components and electrical
19 phenomena that would be necessary to discover the ACU Defect
20 on their own;
- 21 c. FCA knew that the ACU Defect gave rise to serious safety
22 concerns for the consumers who use the vehicles, and the FCA
23 Class Vehicles containing the ACU Defect would have been a
24 material fact to the Arizona Plaintiff’s and Arizona State Class
25 members’ decisions to buy or lease FCA Class Vehicles; and
- 26 d. FCA made incomplete representations about the safety and
27 reliability of the FCA Class Vehicles and their Occupant
28 Restraint System, while purposefully withholding material facts

1 about a known safety defect. In uniform advertising and
2 materials provided with each Class Vehicle, FCA intentionally
3 concealed, suppressed, and failed to disclose to the Arizona
4 Plaintiff and Arizona State Class members that the FCA Class
5 Vehicles contained the ACU Defect. Because they volunteered
6 to provide information about the FCA Class Vehicles that they
7 marketed and offered for sale and lease to the Arizona Plaintiff
8 and Arizona State Class members, FCA had the duty to disclose
9 the whole truth.

10 2359. In breach of its duties, FCA failed to disclose that the FCA Class
11 Vehicles were not safe and reliable, and that their Occupant Restraint Systems,
12 including their airbags and seatbelt pretensioners could fail in the event of a crash
13 due to the ACU Defect.

14 2360. FCA intended for the Arizona Plaintiff and Arizona State Class
15 members to rely on its omissions—which they did by purchasing and leasing the
16 FCA Class Vehicles at the prices they paid believing that the Occupant Restraint
17 Systems in their Class Vehicles would function properly.

18 2361. That reliance was reasonable, because a reasonable consumer would
19 not have expected that the FCA Class Vehicles contained a safety defect that poses
20 such a serious risk. FCA knew that reasonable consumers expect that their vehicle
21 has working airbags and seatbelt pretensioners and would rely on those facts in
22 deciding whether to purchase, lease, or retain a new or used motor vehicle. Whether
23 a manufacturer's products are safe and reliable, and whether that manufacturer
24 stands behind its products, are material concerns to a consumer. Especially here
25 when at least nine people have already died due to the ACU Defect, and many more
26 have been injured.

27 2362. Additionally, FCA ensured that the Arizona Plaintiff and Arizona State
28 Class members did not discover this information by actively concealing and

1 misrepresenting the true nature of the FCA Class Vehicles' Occupant Restraint
2 Systems to consumers and NHTSA.

3 2363. FCA actively concealed and suppressed these material facts, in whole
4 or in part, to maintain a market for its Class Vehicles, to protect profits, and to
5 avoid costly recalls that would expose it to liability for those expenses and harm the
6 commercial reputations of Defendants and their products. It did so at the expense of
7 the Arizona Plaintiff and Arizona State Class members.

8 2364. To this day, FCA has not fully and adequately disclosed the ACU
9 Defect, and it continues to conceal material information about the defect from
10 consumers and NHTSA. The omitted and concealed facts were material because a
11 reasonable person would find them important in purchasing, leasing, or retaining a
12 new or used motor vehicle, and because they directly impact the value of the FCA
13 Class Vehicles purchased or leased by the Arizona Plaintiff and Arizona State Class
14 members.

15 2365. Had they been aware of the ACU Defect in the FCA Class Vehicles,
16 and FCA's callous disregard for safety, the Arizona Plaintiff and Arizona State
17 Class members either would not have paid as much as they did for their Class
18 Vehicles, or they would not have purchased or leased them.

19 2366. As alleged in Section V above, if FCA had fully and adequately
20 disclosed the ACU Defect to consumers and NHTSA, the Arizona Plaintiff and
21 Arizona State Class members would have seen such a disclosure.

22 2367. Accordingly, FCA is liable to the Arizona Plaintiff and Arizona State
23 Class members for their damages in an amount to be proven at trial, including, but
24 not limited to, their lost overpayment for the FCA Class Vehicles at the time of
25 purchase or lease.

26 2368. FCA's acts were done maliciously, oppressively, deliberately, with
27 intent to defraud; in reckless disregard of the Arizona Plaintiff's and Arizona State
28 Class members' rights and well-being; and to enrich themselves. FCA's misconduct

1 warrants an assessment of punitive damages, as permitted by law, in an amount
2 sufficient to deter such conduct in the future, which amount shall be determined
3 according to proof at trial.

4 e. **Arizona Count 5: Fraud by Omission and Concealment**
5 **Against ZF Electronics USA, ZF Passive Safety USA, ZF**
6 **Automotive USA, ZF TRW Corp., ZF Germany, ST Italy,**
7 **ST USA, and ST Malaysia**

8 2369. Plaintiffs reallege and incorporate by reference all preceding
9 allegations as though fully set forth herein.

10 2370. The Arizona Plaintiff brings this count individually and on behalf of
11 members of the Arizona State Class who purchased or leased Class Vehicles,
12 against ZF Electronics USA, ZF Passive Safety USA, ZF Automotive USA, ZF
13 TRW Corp., and ZF Germany (collectively, the “ZF Defendants”), and ST Italy, ST
14 Malaysia, and ST USA (collectively, the “ST Defendants”).

15 2371. The ZF and ST Defendants are liable for both fraudulent concealment
16 and non-disclosure. *See, e.g.*, Restatement (Second) of Torts §§ 550-51 (1977).

17 2372. As explained in Section IV.A, the ACU Defect in Class Vehicles poses
18 serious risks to vehicle occupants, including that it can cause: (1) airbags and
19 seatbelts not to activate during a crash because crashes can sometimes release
20 electrical transients, which cause the ACU to fail; (2) airbags to deploy when the
21 vehicle has not crashed, which is dangerous because it is shocking and difficult for
22 the driver to operate a vehicle when the airbag deploys without warning; and (3)
23 failures of other important post-crash operations of the safety system, such as
24 unlocking doors to facilitate escape or extraction of drivers and passengers by
25 emergency personnel, and shutting off a crashed vehicle’s fuel or power supply.

26 2373. The ZF and ST Defendants had a duty to disclose the ACU Defect to
27 the Arizona Plaintiff and Arizona State Class members because:
28

- 1 a. The ZF and ST Defendants had exclusive access to and far
2 superior knowledge about technical facts regarding the ACU
3 Defect;
- 4 b. Given the ACU Defect’s hidden and technical nature, the
5 Arizona Plaintiff and Arizona State Class members lack the
6 sophisticated expertise in vehicle components and electrical
7 phenomena that would be necessary to discover the ACU Defect
8 on their own;
- 9 c. The ZF and ST Defendants knew that the ACU Defect gave rise
10 to serious safety concerns for the consumers who use the
11 vehicles, and the Class Vehicles containing the ACU Defect
12 would have been a material fact to the Arizona Plaintiff’s and
13 Arizona State Class members’ decisions to buy or lease Class
14 Vehicles; and
- 15 d. The ZF Defendants made incomplete representations about the
16 safety and reliability of the Class Vehicles and their Occupant
17 Restraint System, while purposefully withholding material facts
18 about a known safety defect, creating a duty to disclose the
19 whole truth. Specifically, ZF Electronics USA, ZF Passive
20 Safety USA, and ZF Automotive USA worked with the Vehicle
21 Manufacturer Defendants on the design and inclusion of the
22 airbag readiness indicators in the Class Vehicles, which falsely
23 assured Plaintiffs and Class Members that the Occupant
24 Restraint Systems in the Class Vehicles would function properly
25 in a crash.

26 2374. In breach of their duties, the ZF and ST Defendants failed to disclose
27 that the Class Vehicles were not safe and reliable, and that their Occupant Restraint
28

1 Systems, including their airbags and seatbelt pretensioners could fail in the event of
2 a crash due to the ACU Defect.

3 2375. The ZF and ST Defendants intended for the Arizona Plaintiff and
4 Arizona State Class members to rely on their omissions—which they did by
5 purchasing and leasing the Class Vehicles at the prices they paid believing that the
6 Occupant Restraint Systems in their Class Vehicles would function properly.

7 2376. That reliance was reasonable, because a reasonable consumer would
8 not have expected that the Class Vehicles contained a safety defect that poses such
9 a serious risk. The ZF and ST Defendants knew that reasonable consumers expect
10 that their vehicle has working airbags and seatbelt pretensioners and would rely on
11 those facts in deciding whether to purchase, lease, or retain a new or used motor
12 vehicle. Whether a manufacturer's products are safe and reliable, and whether that
13 manufacturer stands behind its products, are material concerns to a consumer.
14 Especially here when at least nine people have already died due to the ACU Defect,
15 and many more have been injured.

16 2377. Additionally, the ZF and ST Defendants ensured that the Arizona
17 Plaintiff and Arizona State Class members did not discover this information by
18 actively concealing and misrepresenting the true nature of the Class Vehicles'
19 Occupant Restraint Systems to consumers and NHTSA.

20 2378. The ZF and ST Defendants actively concealed and suppressed these
21 material facts, in whole or in part, to maintain a market for the DS84 ACU, to
22 protect profits, and to avoid costly recalls that would expose them to liability for
23 those expenses and harm the commercial reputations of Defendants and their
24 products. They did so at the expense of the Arizona Plaintiff and Arizona State
25 Class members.

26 2379. To this day, the ZF and ST Defendants have not fully and adequately
27 disclosed the ACU Defect, and they continue to conceal material information about
28 the defect from consumers and NHTSA. The omitted and concealed facts were

1 material because a reasonable person would find them important in purchasing,
2 leasing, or retaining a new or used motor vehicle, and because they directly impact
3 the value of the Class Vehicles purchased or leased by the Arizona Plaintiff and
4 Arizona State Class members.

5 2380. Had they been aware of the ACU Defect in the Class Vehicles, and the
6 ZF and ST Defendants' callous disregard for safety, the Arizona Plaintiff and
7 Arizona State Class members either would not have paid as much as they did for
8 their Class Vehicles, or they would not have purchased or leased them.

9 2381. As alleged in Section V above, if the ZF and ST Defendants had fully
10 and adequately disclosed the ACU Defect to consumers and NHTSA, the Arizona
11 Plaintiff and Arizona State Class members would have seen such a disclosure.

12 2382. Accordingly, the ZF and ST Defendants are liable to the Arizona
13 Plaintiff and Arizona State Class members for their damages in an amount to be
14 proven at trial, including, but not limited to, their lost overpayment for the Class
15 Vehicles at the time of purchase or lease.

16 2383. The ZF and ST Defendants' acts were done maliciously, oppressively,
17 deliberately, with intent to defraud; in reckless disregard of the Arizona Plaintiff's
18 and Arizona State Class members' rights and well-being; and to enrich themselves.
19 The ZF and ST Defendants' misconduct warrants an assessment of punitive
20 damages, as permitted by law, in an amount sufficient to deter such conduct in the
21 future, which amount shall be determined according to proof at trial.

22 **f. Arizona Count 6: Unjust Enrichment Against FCA**

23 2384. Plaintiffs reallege and incorporate by reference all allegations in
24 Sections 1-VI above as though fully set forth herein.

25 2385. The Arizona Plaintiff brings this count individually and on behalf of
26 members of the Arizona State Class who purchased or leased FCA Class Vehicles,
27 against FCA.
28

1 2386. The Arizona Plaintiff and Arizona State Class members conferred
2 tangible and material economic benefits upon FCA when they purchased or leased
3 the FCA Class Vehicles. FCA readily accepted and retained these benefits.

4 2387. The Arizona Plaintiff and Arizona State Class members would not
5 have purchased or leased the FCA Class Vehicles, or would have paid less for
6 them, had they known of the ACU Defect at the time of purchase or lease.
7 Therefore, FCA profited from the sale and lease of the FCA Class Vehicles to the
8 detriment and expense of the Arizona Plaintiff and Arizona State Class members.

9 2388. FCA appreciated these benefits. These benefits were the expected
10 result of FCA acting in its pecuniary interest at the expense of its customers. FCA
11 knew of these benefits because it was aware of the ACU Defect, yet it failed to
12 disclose this knowledge and misled the Arizona Plaintiff and Arizona State Class
13 members regarding the nature and quality of the FCA Class Vehicles while
14 profiting from this deception.

15 2389. It would be unjust, inequitable, and unconscionable for FCA to retain
16 these benefits, including because they were procured as a result of FCA's wrongful
17 conduct alleged above.

18 2390. The Arizona Plaintiff and Arizona State Class members are entitled to
19 restitution of the benefits FCA unjustly retained and/or any amounts necessary to
20 return the Arizona Plaintiff and Arizona State Class members to the position they
21 occupied prior to dealing with FCA, with such amounts to be determined at trial.

22 2391. The Arizona Plaintiff pleads this claim separately as well as in the
23 alternative to his claims for damages under Fed. R. Civ. P. 8(a)(3), because if the
24 Arizona Plaintiff's claims for damages are dismissed or judgment is entered in
25 favor of Defendants, the Arizona Plaintiff will have no adequate legal remedy.

26
27
28

1 **3. California**

2 **a. California Count 1: Breach of Implied Warranty of**
3 **Merchantability (Cal. Com. Code §§ 2314 and 10212)**
4 **Against FCA, Honda USA, Hyundai USA, Kia USA,**
5 **Mitsubishi USA, and Toyota Sales USA**

6 2392. Plaintiffs reallege and incorporate by reference all preceding
7 allegations as though fully set forth herein.

8 2393. Plaintiffs Remigiusz Rundzio and Steve Laveaux bring this count
9 individually and on behalf of members of the California State Class who purchased
10 or leased FCA Class Vehicles, against FCA.

11 2394. Plaintiff Kevin Burns brings this count individually and on behalf of
12 members of the California State Class who purchased or leased Honda Class
13 Vehicles, against Honda USA.

14 2395. Plaintiff Michael Hernandez brings this count individually and on
15 behalf of members of the California State Class who purchased or leased Hyundai
16 Class Vehicles, against Hyundai USA.

17 2396. Plaintiffs Bonnie Dellatorre and Lore Van Houten bring this count
18 individually and on behalf of members of the California State Class who purchased
19 or leased Kia Class Vehicles, against Kia USA.

20 2397. Plaintiffs Tiffany Ecklor and Gaylynn Sanchez bring this count
21 individually and on behalf of members of the California State Class who purchased
22 or leased Mitsubishi Class Vehicles, against Mitsubishi USA.

23 2398. Plaintiffs Mark Altier and Alejandra Renteria bring this count
24 individually and on behalf of members of the California State Class who purchased
25 or leased Toyota Class Vehicles, against Toyota Sales USA.

26 2399. For purposes of this count, “California Plaintiffs” refers to Plaintiffs
27 Rundzio, Laveaux, Burns, Hernandez, Dellatorre, Van Houten, Ecklor, Sanchez,
28 Altier, and Renteria.

1 2400. For purposes of this count, “Class Vehicles” refers to FCA, Honda,
2 Hyundai, Kia, Mitsubishi, and Toyota Class Vehicles.

3 2401. The California Plaintiffs purchased and leased their Class Vehicles
4 from FCA, Honda, Hyundai, Kia, Mitsubishi, and Toyota authorized dealers, and
5 are therefore in privity with those Defendants. Moreover, the California Plaintiffs
6 were the intended and direct beneficiaries of agreements between the Vehicle
7 Manufacturer Defendants and their dealers regarding sales and leases of the Class
8 Vehicles, because, upon information and belief, the agreements expressly were
9 made for the direct benefit of California State Class members. Moreover, their false
10 and misleading representations found in marketing materials and brochures for each
11 of the Class Vehicles, which were intended for car purchasers, rather than the
12 dealers themselves.

13 2402. A warranty that the Class Vehicles were in merchantable condition and
14 fit for the ordinary purpose for which such goods are used is implied by law
15 pursuant to Cal. Com. Code §§ 2314 and 10212.

16 2403. FCA, Honda USA, Hyundai USA, Kia USA, Mitsubishi USA, and
17 Toyota Sales USA are and were at all relevant times “merchants” with respect to
18 motor vehicles, Cal. Com. Code §§ 2104(1) and 10103(c), and “sellers” of motor
19 vehicles under § 2103(1)(d).

20 2404. FCA, Honda USA, Hyundai USA, Kia USA, Mitsubishi USA, and
21 Toyota Sales USA are and were at all relevant times “lessors” of motor vehicles
22 under Cal. Com. Code § 10103(a)(16).

23 2405. All California State Class members who purchased Class Vehicles in
24 California are “buyers” within the meaning of Cal. Com. Code § 2103(1)(a).

25 2406. All California State Class members who leased Class Vehicles in
26 California are “lessees” within the meaning of Cal. Com. Code § 10103(a)(14).

27 2407. The Class Vehicles were at all relevant times “goods” within the
28 meaning of Cal. Com. Code §§ 2105(1) and 10103(a)(8).

1 2408. The Class Vehicles did not comply with the implied warranty of
2 merchantability because, at the time of sale and at all times thereafter, they were
3 defective and not in merchantable condition, would not pass without objection in
4 the trade, and were not fit for the ordinary purpose for which vehicles were used.
5 Specifically, the Class Vehicles contain the ACU Defect, which may cause the
6 airbags and seatbelt pretensioners to fail to deploy during a crash, the failure to
7 unlock doors automatically after a crash, the failure to turn off a fuel supply or
8 high-voltage battery after a crash, or the airbags to inadvertently deploy, all of
9 which render the Class Vehicles inherently defective and dangerous.

10 2409. The California Plaintiffs and California State Class members have
11 provided FCA, Honda USA, Hyundai USA, Kia USA, Mitsubishi USA, and Toyota
12 Sales USA with reasonable notice and opportunity to cure the breaches of their
13 implied warranties by way of the NHTSA investigations, the numerous complaints
14 filed against them, and the individual notice letters sent by California State Class
15 members within a reasonable amount of time after the ACU Defect became public.
16 Additionally, on May 23, 2019, California State Class members sent a notice letter
17 to them. Moreover, a second notice letter was sent on behalf of the California
18 Plaintiffs and California State Class members to FCA, Honda USA, Hyundai USA,
19 Kia USA, Mitsubishi USA, and Toyota Sales USA on April 24, 2020.

20 2410. Alternatively, the California Plaintiffs and California State Class
21 members were excused from providing FCA, Honda USA, Hyundai USA, Kia
22 USA, Mitsubishi USA, and Toyota Sales USA with notice and an opportunity to
23 cure the breach, because it would have been futile. As alleged above, they have long
24 known that the Class Vehicles contained the ACU Defect, and that the ACU Defect
25 has caused ACUs and ASICs to malfunction in crashes involving Class Vehicles;
26 however, to date, Honda USA and Mitsubishi USA have not instituted a recall or
27 any other repair program with respect to the Honda and Mitsubishi Class Vehicles,
28 or even acknowledged that the ACU Defect exists in all of those Class Vehicles—

1 even though Honda and Mitsubishi Class Vehicles are subject to a NHTSA
2 investigation. Similarly, FCA, Hyundai USA, Kia USA, and Toyota Sales USA
3 have not instituted a recall or any other repair program with respect to the
4 unrecalled FCA, Hyundai, Kia, and Toyota Class Vehicles, or even acknowledged
5 that the ACU Defect exists in all of those Class Vehicles, including the recalled
6 FCA, Hyundai, Kia, and Toyota Class Vehicles. Therefore, they have refused to
7 recall or repair defective vehicles, and for those that were recalled, the repair was
8 inadequate because it did not fix the ACU Defect. As such, the California Plaintiffs
9 and California State Class members had no reason to believe that FCA, Honda
10 USA, Hyundai USA, Kia USA, Mitsubishi USA, and Toyota Sales USA would
11 have repaired the ACU Defect if they presented their Class Vehicles to them for
12 repair.

13 2411. As a direct and proximate result of FCA's, Honda USA's, Hyundai
14 USA's, Kia USA's, Mitsubishi USA's, and Toyota Sales USA's breach of the
15 implied warranty of merchantability, the California Plaintiffs' and California State
16 Class members' Class Vehicles were and are defective, and the ACU Defect in their
17 Class Vehicles were not remedied. Therefore, the California Plaintiffs and
18 California State Class members have been damaged, in an amount to be proven at
19 trial, through their overpayment at the time of purchase or lease for the Class
20 Vehicles with an undisclosed safety defect that would not be remedied.

21 **b. California Count 2: Violations of Song-Beverly Consumer**
22 **Warranty Act For Breach of Implied Warranty of**
23 **Merchantability (Cal. Civ. Code §§ 1791.1 and 1792)**
24 **Against FCA, Honda Japan, Honda USA, Honda**
Engineering USA, Hyundai Korea, Hyundai USA, Kia
Korea, Kia USA, Mitsubishi Japan, Mitsubishi USA, and
Toyota Sales USA⁴

25 2412. Plaintiffs reallege and incorporate by reference all preceding
26 allegations as though fully set forth herein.

27 ⁴ The Court held in its February 9, 2022 Order that Plaintiffs Laveaux, Hernandez,
28 Van Houten and Ronan have stated claims for breach of implied warranty under the

1 2413. Plaintiffs Remigiusz Rundzio and Steve Laveaux bring this count
2 individually and on behalf of members of the California State Class who purchased
3 or leased FCA Class Vehicles, against FCA.

4 2414. Plaintiff Kevin Burns brings this count individually and on behalf of
5 members of the California State Class who purchased or leased Honda Class
6 Vehicles, against Honda Japan, Honda USA, and Honda Engineering USA.

7 2415. Plaintiff Michael Hernandez brings this count individually and on
8 behalf of members of the California State Class who purchased or leased Hyundai
9 Class Vehicles, against Hyundai Korea and Hyundai USA.

10 2416. Plaintiffs Bonnie Dellatorre and Lore Van Houten bring this count
11 individually and on behalf of members of the California State Class who purchased
12 or leased Kia Class Vehicles, against Kia Korea and Kia USA.

13 2417. Plaintiffs Tiffany Ecklor and Gaylynn Sanchez bring this count
14 individually and on behalf of members of the California State Class who purchased
15 or leased Mitsubishi Class Vehicles, against Mitsubishi Japan and Mitsubishi USA.

16 2418. Plaintiffs Mark Altier and Alejandra Renteria bring this count
17 individually and on behalf of members of the California State Class who purchased
18 or leased Toyota Class Vehicles, against Toyota Sales USA.

19 2419. For purposes of this count, “California Plaintiffs” refers to Plaintiffs
20 Rundzio, Laveaux, Burns, Hernandez, Dellatorre, Van Houten, Ecklor, Sanchez,
21 Altier, and Renteria.

22 2420. For purposes of this count, “Class Vehicles” refers to FCA, Honda,
23 Hyundai, Kia, Mitsubishi, and Toyota Class Vehicles.

24 2421. The California Plaintiffs purchased their Class Vehicles from FCA,
25 Honda USA, Hyundai USA, Kia USA, and Toyota Sales USA authorized dealers,
26 and are therefore in privity with those Defendants. Moreover, the California
27 Plaintiffs were the intended and direct beneficiaries of agreements between the

28 _____
Song-Beverly Act. *See* ECF No. 396 at 131.

1 Vehicle Manufacturer Defendants and their dealers regarding sales and leases of the
2 Class Vehicles, as, upon information and belief, the agreements expressly were
3 made for the direct benefit of California State Class members. Moreover, their false
4 and misleading representations found in marketing materials and brochures for each
5 of the Class Vehicles, which were intended for car purchasers, rather than the
6 dealers themselves.

7 2422. FCA, Honda Japan, Honda Engineering USA, Hyundai Korea, Kia
8 Korea, and Mitsubishi Japan are “manufacturer[s]” of the Class Vehicles within the
9 meaning of Cal. Civ. Code § 1791(j).

10 2423. FCA, Honda USA, Hyundai USA, Kia USA, Mitsubishi USA, and
11 Toyota Sales USA are and were at all relevant times “sellers” of motor vehicles
12 under Cal. Civ. Code § 1791(l).

13 2424. FCA, Honda USA, Hyundai USA, Kia USA, Mitsubishi USA, and
14 Toyota Sales USA are and were at all relevant times “lessors” of motor vehicles
15 under Cal. Civ. Code § 1791(i).

16 2425. All California State Class members who purchased Class Vehicles in
17 California are “buyers” within the meaning of Cal. Civ. Code § 1791(b).

18 2426. All California State Class members who leased Class Vehicles in
19 California are “lessees” within the meaning of Cal. Civ. Code § 1791(h).

20 2427. The Class Vehicles are “consumer goods” within the meaning of Cal.
21 Civ. Code § 1791(a).

22 2428. FCA, Honda Japan, Honda USA, Honda Engineering USA, Hyundai
23 Korea, Hyundai USA, Kia Korea, Kia USA, Mitsubishi Japan, Mitsubishi USA,
24 and Toyota Sales USA impliedly warranted to the California Plaintiffs and
25 California State Class members that their Class Vehicles were “merchantable”
26 within the meaning of Cal. Civ. Code §§ 1791.1(a) and 1792.

27
28

1 2429. Cal. Civ. Code § 1791.1(a) states: “Implied warranty of
2 merchantability” or “implied warranty that goods are merchantable” means that the
3 consumer goods meet each of the following:

- 4 a. Pass without objection in the trade under the contract
5 description.
- 6 b. Are fit for the ordinary purposes for which such goods are used.
- 7 c. Are adequately contained, packaged, and labeled.
- 8 d. Conform to the promises or affirmations of fact made on the
9 container or label.

10 2430. The Class Vehicles would not pass without objection in the automotive
11 trade due to the ACU Defect. Because the Class Vehicles contain the ACU Defect,
12 the Class Vehicles are not in merchantable condition and thus not fit for ordinary
13 purposes.

14 2431. The Class Vehicles are not adequately labeled because the labeling
15 fails to disclose the ACU Defect. The Class Vehicles do not conform to the
16 promises and affirmations made by FCA, Honda Japan, Honda USA, Honda
17 Engineering USA, Hyundai Korea, Hyundai USA, Kia Korea, Kia USA, Mitsubishi
18 Japan, Mitsubishi USA, and Toyota Sales USA regarding safety.

19 2432. As a direct and proximate result of the breaches of the implied
20 warranty of merchantability by FCA, Honda Japan, Honda USA, Honda
21 Engineering USA, Hyundai Korea, Hyundai USA, Kia Korea, Kia USA, Mitsubishi
22 Japan, Mitsubishi USA, and Toyota Sales USA, the California Plaintiffs’ and
23 California State Class members’ Class Vehicles were and are defective, and the
24 ACU Defect in their Class Vehicles were not remedied. Therefore, the California
25 Plaintiffs and California State Class members have been damaged, in an amount to
26 be proven at trial, through their overpayment at the time of purchase or lease for the
27 Class Vehicles with an undisclosed safety defect that would not be remedied.
28

1 2433. Pursuant to Cal. Civ. Code §§ 1791.1(d) and 1794, the California
2 Plaintiffs and California State Class members seek an order enjoining FCA, Honda
3 Japan, Honda USA, Honda Engineering USA, Hyundai Korea, Hyundai USA, Kia
4 Korea, Kia USA, Mitsubishi Japan, Mitsubishi USA, and Toyota Sales USA from
5 continuing their unfair and/or deceptive acts or practices, and for damages, punitive
6 damages, and any other just and proper relief available under the Song-Beverly
7 Consumer Warranty Act.

8 **c. California Count 3: False Advertising Under the California**
9 **False Advertising Law (Cal. Bus. & Prof. Code § 17500, et**
10 **seq.) Against FCA, Honda Japan, Honda USA, Honda**
11 **Engineering USA, Hyundai Korea, Hyundai USA, Kia**
12 **Korea, Kia USA, Mitsubishi Japan, Mitsubishi USA, Toyota**
13 **USA, and Toyota Sales USA**

12 2434. Plaintiffs reallege and incorporate by reference all allegations in
13 Sections I-VI above as though fully set forth herein.

14 2435. Plaintiffs Remigiusz Rundzio and Steve Laveaux bring this count
15 individually and on behalf of members of the California State Class who purchased
16 or leased FCA Class Vehicles, against FCA.

17 2436. Plaintiff Kevin Burns brings this count individually and on behalf of
18 members of the California State Class who purchased or leased Honda Class
19 Vehicles, against Honda Japan, Honda USA, and Honda Engineering USA.

20 2437. Plaintiff Michael Hernandez brings this count individually and on
21 behalf of members of the California State Class who purchased or leased Hyundai
22 Class Vehicles, against Hyundai Korea and Hyundai USA.

23 2438. Plaintiffs Bonnie Dellatorre and Lore Van Houten bring this count
24 individually and on behalf of members of the California State Class who purchased
25 or leased Kia Class Vehicles, against Kia Korea and Kia USA.

26 2439. Plaintiffs Tiffany Ecklor and Gaylynn Sanchez bring this count
27 individually and on behalf of members of the California State Class who purchased
28 or leased Mitsubishi Class Vehicles, against Mitsubishi Japan and Mitsubishi USA.

1 2440. Plaintiffs Mark Altier and Alejandra Renteria bring this count
2 individually and on behalf of members of the California State Class who purchased
3 or leased Toyota Class Vehicles, against Toyota USA and Toyota Sales USA.

4 2441. For purposes of this count, “California Plaintiffs” refers to Plaintiffs
5 Rundzio, Laveaux, Burns, Hernandez, Dellatorre, Van Houten, Ecklor, Sanchez,
6 Altier, and Renteria.

7 2442. For purposes of this count, “Class Vehicles” refers to the FCA, Honda,
8 Hyundai, Kia, Mitsubishi, and Toyota Class Vehicles.

9 2443. FCA, Honda Japan, Honda USA, Honda Engineering USA, Hyundai
10 Korea, Hyundai USA, Kia Korea, Kia USA, Mitsubishi Japan, Mitsubishi USA,
11 Toyota USA, Toyota Sales USA, the California Plaintiffs, and the California State
12 Class members are “persons” within the meaning of Cal. Bus. & Prof. Code
13 § 17506.

14 2444. The California False Advertising Law (“California FAL”) prohibits
15 false advertising. California Bus. & Prof. Code § 17500.

16 2445. In the course of their business, FCA, Honda Japan, Honda USA,
17 Honda Engineering USA, Hyundai Korea, Hyundai USA, Kia Korea, Kia USA,
18 Mitsubishi Japan, Mitsubishi USA, Toyota USA, and Toyota Sales USA, through
19 their agents, employees, and/or subsidiaries, violated the California FAL by
20 knowingly and intentionally misrepresenting, omitting, concealing, and/or failing to
21 disclose material facts regarding the reliability, safety, and performance of the Class
22 Vehicles, the safety of their Occupant Restraint Systems, and the ACU Defect, as
23 detailed above.

24 2446. FCA, Honda Japan, Honda USA, Honda Engineering USA, Hyundai
25 Korea, Hyundai USA, Kia Korea, Kia USA, Mitsubishi Japan, Mitsubishi USA,
26 Toyota USA, and Toyota Sales USA had an ongoing duty to the California Plaintiffs
27 and California State Class members to refrain from unfair or deceptive practices
28 under the California FAL in the course of their business. Specifically, they owed the

1 California Plaintiffs and California State Class members a duty to disclose all the
2 material facts concerning the ACU Defect in the Class Vehicles because:

- 3 a. They possessed exclusive access to and far superior knowledge
4 about technical facts regarding the ACU Defect;
- 5 b. They knew consumers lack the sophisticated expertise in vehicle
6 components and electrical phenomena that would be necessary
7 to discover the ACU Defect on their own;
- 8 c. They knew that the ACU Defect gave rise to serious safety
9 concerns for the consumers who purchased and lease Class
10 Vehicles; and
- 11 d. They made, helped to make, or conspired to make incomplete
12 representations about the safety and reliability of the Class
13 Vehicles and their Occupant Restraint System, while
14 purposefully withholding material facts about a known safety
15 defect.

16 2447. By misrepresenting the Class Vehicles as safe and reliable and the
17 defective ACU and ASICs installed in them as properly-functioning and free from
18 defects, and by failing to disclose and actively concealing the dangers and risk
19 posed by the ACU Defect to both consumers and NHTSA, FCA, Honda Japan,
20 Honda USA, Honda Engineering USA, Hyundai Korea, Hyundai USA, Kia Korea,
21 Kia USA, Mitsubishi Japan, Mitsubishi USA, Toyota USA, and Toyota Sales USA
22 engaged in untrue and misleading advertising prohibited by California Bus. & Prof.
23 Code § 17500.

24 2448. FCA, Honda Japan, Honda USA, Honda Engineering USA, Hyundai
25 Korea, Hyundai USA, Kia Korea, Kia USA, Mitsubishi Japan, Mitsubishi USA,
26 Toyota USA, and Toyota Sales USA made or caused to be made and disseminated
27 throughout California advertising, marketing, labeling, and other publications
28 containing numerous statements that were untrue or misleading, and which were

1 known, or which by the exercise of reasonable care they should have been known to
2 be untrue and misleading to consumers, including the California Plaintiffs and
3 California State Class members. Numerous examples of these statements and
4 advertisements appear in the preceding paragraphs and in the Exhibits hereto.

5 2449. FCA's, Honda Japan's, Honda USA's, Honda Engineering USA's,
6 Hyundai Korea's, Hyundai USA's, Kia Korea's, Kia USA's, Mitsubishi Japan's,
7 Mitsubishi USA's, Toyota USA's and Toyota Sales USA's unfair or deceptive acts
8 and practices, including their misrepresentations, concealments, omissions, and
9 suppressions of material facts, were designed to mislead and had a tendency or
10 capacity to mislead and create a false impression in consumers that the Class
11 Vehicles had properly-functioning and reliable airbags and seatbelts, and that the
12 Occupant Restraint System did not contain the ACU Defect and would perform its
13 intended function of activating the seatbelts and airbags during a collision. Indeed,
14 those misrepresentations, concealments, omissions, and suppressions of material
15 facts did in fact deceive reasonable consumers, including the California Plaintiffs
16 and California State Class members, about the true safety and reliability of Class
17 Vehicles and/or the defective ACUs installed in them, the quality of the Class
18 Vehicles and their brands, and the true value of the Class Vehicles.

19 2450. FCA's, Honda Japan's, Honda USA's, Honda Engineering USA's,
20 Hyundai Korea's, Hyundai USA's, Kia Korea's, Kia USA's, Mitsubishi Japan's,
21 Mitsubishi USA's, Toyota USA's, and Toyota Sales USA's misrepresentations,
22 omissions, and concealment of material facts regarding the ACU Defect and true
23 characteristics of the Occupant Restraint Systems in the Class Vehicles were
24 material to the decisions of the California Plaintiffs and California State Class
25 members to purchase and lease those vehicles, as FCA, Honda Japan, Honda USA,
26 Honda Engineering USA, Hyundai Korea, Hyundai USA, Kia Korea, Kia USA,
27 Mitsubishi Japan, Mitsubishi USA, Toyota USA, and Toyota Sales USA intended.
28 The California Plaintiffs and California State Class members were exposed to those

1 misrepresentations, concealments, omissions, and suppressions of material facts,
2 and relied on FCA's, Honda Japan's, Honda USA's, Honda Engineering USA's,
3 Hyundai Korea's, Hyundai USA's, Kia Korea's, Kia USA's, Mitsubishi Japan's,
4 Mitsubishi USA's, Toyota USA's, and Toyota Sales USA's misrepresentations that
5 the Class Vehicles and their Occupant Restraint Systems were safe and reliable in
6 deciding to purchase and lease those vehicles. Plaintiffs allege the information they
7 relied upon in Section II.B above. To aid review of this information, Exhibit 19
8 provides paragraph numbers for each Plaintiff.

9 2451. The California Plaintiffs and California State Class members' reliance
10 was reasonable, as they had no way of discerning that those representations were
11 false and misleading, or otherwise learning the facts that Defendants had concealed
12 or failed to disclose. The California Plaintiffs and California State Class members
13 did not, and could not, unravel those Defendants' deception on their own.

14 2452. Had the California Plaintiffs and California State Class members
15 known the truth about the ACU Defect, they would not have purchased or leased
16 Class Vehicles, or would have paid significantly less for them.

17 2453. The California Plaintiffs and California State Class members suffered
18 ascertainable losses and actual damages as a direct and proximate result of FCA's,
19 Honda Japan's, Honda USA's, Honda Engineering USA's, Hyundai Korea's,
20 Hyundai USA's, Kia Korea's, Kia USA's, Mitsubishi Japan's, Mitsubishi USA's,
21 Toyota USA's, and Toyota Sales USA's concealment, misrepresentations, and/or
22 failure to disclose material information.

23 2454. FCA's, Honda Japan's, Honda USA's, Honda Engineering USA's,
24 Hyundai Korea's, Hyundai USA's, Kia Korea's, Kia USA's, Mitsubishi Japan's,
25 Mitsubishi USA's, Toyota USA's, and Toyota Sales USA's violations present a
26 continuing risk to the California Plaintiffs and California State Class members, as
27 well as to the general public, because the Class Vehicles remain unsafe due to the
28

1 defective ACUs and ASICs therein. The unlawful acts and practices complained of
2 herein affect the public interest.

3 2455. The California Plaintiffs and California State Class members seek an
4 order enjoining FCA's, Honda Japan's, Honda USA's, Honda Engineering USA's,
5 Hyundai Korea's, Hyundai USA's, Kia Korea's, Kia USA's, Mitsubishi Japan's,
6 Mitsubishi USA's, Toyota USA's, and Toyota Sales USA's false advertising, any
7 such orders or judgments as may be necessary to restore to the California Plaintiffs
8 and California State Class members any money acquired by unfair competition,
9 including restitution and/or restitutionary disgorgement, and any other just and
10 proper relief available under the false advertising provisions of the California FAL.

11 2456. The California Plaintiffs plead this claim separately as well as in the
12 alternative to their claims for damages under Fed. R. Civ. P. 8(a)(3), because if the
13 California Plaintiffs' claims for damages are dismissed or judgment is entered on
14 them in favor of Defendants, the California Plaintiffs would have no adequate legal
15 remedy.

16 **d. California Count 4: Violation of the Consumer Legal**
17 **Remedies Act (Cal. Civ. Code § 1750, et seq.) Against FCA,**
18 **Honda Japan, Honda USA, Honda Engineering USA,**
19 **Hyundai Korea, Hyundai USA, Kia Korea, Kia USA,**
20 **Mitsubishi USA, Toyota USA, Toyota Sales USA, ZF**
21 **Electronics USA, ZF Passive Safety USA, ZF Automotive**
22 **USA, ZF TRW Corp., ZF Germany, ST Italy, ST USA, and**
23 **ST Malaysia⁵**

24 2457. Plaintiffs reallege and incorporate by reference all preceding
25 allegations as though fully set forth herein.

26 2458. Plaintiffs Remigiusz Rundzio and Steve Laveaux bring this count
27 individually and on behalf of members of the California State Class who purchased
28 or leased FCA Class Vehicles, against FCA, as well as ZF Electronics USA, ZF
Passive Safety USA, ZF Automotive USA, ZF TRW Corp., and ZF Germany

⁵ Plaintiffs bring this count against ZF TRW Corp., ZF Germany, ST Italy, ST USA, and ST Malaysia based on their omissions and concealment of material facts only.

1 (collectively, the “ZF Defendants”), and ST Italy, ST Malaysia, and ST USA
2 (collectively, the “ST Defendants”).

3 2459. Plaintiff Kevin Burns brings this count individually and on behalf of
4 members of the California State Class who purchased or leased Honda Class
5 Vehicles, against Honda Japan, Honda USA, Honda Engineering USA, the ZF
6 Defendants, and the ST Defendants.

7 2460. Plaintiff Michael Hernandez brings this count individually and on
8 behalf of members of the California State Class who purchased or leased Hyundai
9 Class Vehicles, against Hyundai Korea and Hyundai USA, the ZF Defendants, and
10 the ST Defendants.

11 2461. Plaintiffs Bonnie Dellatorre and Lore Van Houten bring this count
12 individually and on behalf of members of the California State Class who purchased
13 or leased Kia Class Vehicles, against Kia Korea, Kia USA, the ZF Defendants, and
14 the ST Defendants.

15 2462. Plaintiffs Tiffany Ecklor and Gaylynn Sanchez bring this count
16 individually and on behalf of members of the California State Class who purchased
17 or leased Mitsubishi Class Vehicles, against Mitsubishi Japan, Mitsubishi USA, the
18 ZF Defendants, and the ST Defendants.

19 2463. Plaintiffs Mark Altier and Alejandra Renteria bring this count
20 individually and on behalf of members of the California State Class who purchased
21 or leased Toyota Class Vehicles, against Toyota USA, Toyota Sales USA, the ZF
22 Defendants, and the ST Defendants.

23 2464. For purposes of this count, “California Plaintiffs” refers to Plaintiffs
24 Rundzio, Laveaux, Burns, Hernandez, Dellatorre, Van Houten, Ecklor, Sanchez,
25 Altier, and Renteria.

26 2465. For purposes of this count, “Defendants” refers to FCA, Honda Japan,
27 Honda USA, Honda Engineering USA, Hyundai Korea, Hyundai USA, Kia Korea,
28 Kia USA, Mitsubishi Japan, Mitsubishi USA, Toyota USA, Toyota Sales USA, ZF

1 Electronics USA, ZF Passive Safety USA, ZF Automotive USA, ZF TRW Corp.,
2 ZF Germany, ST Italy, ST Malaysia, and ST USA.

3 2466. For purposes of this count, “Class Vehicles” refers to FCA, Honda,
4 Hyundai, Kia, Mitsubishi, and Toyota Class Vehicles.

5 2467. The Class Vehicles and ACUs installed in them are “goods” within the
6 meaning of Cal. Civ. Code § 1761(a).

7 2468. Defendants, the California Plaintiffs, and California State Class
8 members are “persons” within the meaning of Cal. Civ. Code § 1761(c).

9 2469. The California Plaintiffs and California State Class members are
10 “consumers” within the meaning of Cal. Civ. Code § 1761(d).

11 2470. The California Legal Remedies Act (“CLRA”) prohibits “unfair
12 methods of competition and unfair or deceptive acts or practices undertaken by any
13 person in a transaction intended to result or that results in the sale or lease of goods
14 or services to any consumer[.]” Cal. Civ. Code § 1770.

15 2471. In the course of their business, Defendants, through their agents,
16 employees, and/or subsidiaries, violated the CLRA by knowingly and intentionally
17 misrepresenting, omitting, concealing, and/or failing to disclose material facts
18 regarding the reliability, safety, and performance of the Class Vehicles and the
19 defective ACUs, as detailed above.

20 2472. Defendants had an ongoing duty to the California Plaintiffs and
21 California State Class members to refrain from unfair or deceptive practices under
22 the CLRA in the course of their business. Specifically, Defendants owed the
23 California Plaintiffs and California State Class members a duty to disclose all the
24 material facts concerning the ACU Defect in the Class Vehicles because:

25 a. Defendants possessed exclusive access to and far superior
26 knowledge about technical facts regarding the ACU Defect;

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- 1 b. Consumers lack the sophisticated expertise in vehicle
- 2 components and electrical phenomena that would be necessary
- 3 to discover the ACU Defect on their own;
- 4 c. Defendants knew that the ACU Defect gave rise to serious
- 5 safety concerns for the consumers who purchased and leased
- 6 Class Vehicles; and
- 7 d. Defendants made, helped to make, or conspired to make
- 8 incomplete representations about the safety and reliability of the
- 9 Class Vehicles and their Occupant Restraint System, while
- 10 purposefully withholding material facts about a known safety
- 11 defect.

12 2473. By misrepresenting the Class Vehicles as safe and reliable and the
13 defective ACU and ASICs installed in them as properly-functioning and free from
14 defects, and by failing to disclose and actively concealing the dangers and risk
15 posed by the ACU Defect to both consumers and NHTSA, Defendants engaged in
16 one or more of the following unfair or deceptive business practices as defined in
17 Cal. Civ. Code § 1770(a):

- 18 a. Representing that the Class Vehicles and/or the defective ACUs
- 19 installed in them have characteristics, uses, benefits, and
- 20 qualities which they do not have.
- 21 b. Representing that the Class Vehicles and/or the defective ACUs
- 22 installed in them are of a particular standard, quality, and grade
- 23 when they are not.
- 24 c. Advertising the Class Vehicles and/or the defective ACUs
- 25 installed in them with the intent not to sell or lease them as
- 26 advertised.
- 27 d. Representing that the subject of a transaction has been supplied
- 28 in accordance with a previous representation when it has not.

1 Cal. Civ. Code §§ 1770(a)(5), (7), (9), and (16).

2 2474. Defendants’ unfair or deceptive acts or practices, including their
3 misrepresentations, concealments, omissions, and/or suppressions of material facts,
4 were designed to mislead and had a tendency or capacity to mislead and create a
5 false impression in consumers that the Class Vehicles had properly-functioning and
6 reliable airbags and seatbelts, and that the Occupant Restraint System did not
7 contain the ACU Defect and would perform its intended function of activating the
8 seatbelts and airbags during a collision. Indeed, those misrepresentations,
9 concealments, omissions, and suppressions of material facts did in fact deceive
10 reasonable consumers, including the California Plaintiffs and California State Class
11 members, about the true safety and reliability of Class Vehicles and/or the defective
12 ACUs installed in them, the quality of the Class Vehicles, and the true value of the
13 Class Vehicles.

14 2475. Defendants’ misrepresentations, concealments, omissions, and
15 suppressions of material facts regarding the ACU Defect and true characteristics of
16 the Occupant Restraint Systems in the Class Vehicles were material to the decisions
17 of the California Plaintiffs and California State Class members to purchase and
18 leased those vehicles, as Defendants intended. The California Plaintiffs and
19 California State Class members were exposed to those misrepresentations,
20 concealments, omissions, and suppressions of material facts, and relied on
21 Defendants’ misrepresentations that the Class Vehicles and their Occupant Restraint
22 Systems were safe and reliable in deciding to purchase and lease Class Vehicles.
23 Plaintiffs allege the information they relied upon in Section II.B above. To aid
24 review of this information, Exhibit 19 provides paragraph numbers for each
25 Plaintiff.

26 2476. The California Plaintiffs’ and California State Class members’ reliance
27 was reasonable, as they had no way of discerning that Defendants’ representations
28 were false and misleading, or otherwise learning the facts that Defendants had

1 concealed or failed to disclose. The California Plaintiffs and California State Class
2 members did not, and could not, unravel Defendants' deception on their own.

3 2477. The California Plaintiffs and California State Class members suffered
4 ascertainable losses and actual damages as a direct and proximate result of
5 Defendants' concealment, misrepresentations, and/or failure to disclose material
6 information.

7 2478. Defendants' violations present a continuing risk to the California
8 Plaintiffs and California State Class members, as well as to the general public,
9 because the Class Vehicles remain unsafe due to the defective ACUs and ASICs
10 therein. Defendants' unlawful acts and practices complained of herein affect the
11 public interest.

12 2479. Defendants were provided notice of the issues raised in this count and
13 this Complaint by the NHTSA investigations, the numerous complaints filed
14 against them, and the individual notice letters sent by California State Class
15 members within a reasonable amount of time after the ACU Defect became public.
16 Additionally, on May 23, 2019, California State Class members sent a notice letter
17 pursuant to Cal. Civ. Code § 1782 to them. Moreover, a notice letter was sent on
18 behalf of the California Plaintiffs and California State Class members pursuant to
19 Cal. Civ. Code § 1782 to FCA, Honda Japan, Honda USA, Honda Engineering
20 USA, Hyundai Korea, Hyundai USA, Kia Korea, Kia USA, Mitsubishi USA,
21 Toyota USA, Toyota Sales USA, and the ZF Defendants on April 24, 2020, and a
22 notice letter was sent to Mitsubishi Japan and ST USA on June 5, 2020. Finally, a
23 notice letter was sent to ST Italy and ST Malaysia pursuant to Cal. Civ. Code
24 § 1782 on May 25, 2022. Because Defendants failed to adequately remedy their
25 unlawful conduct within the requisite time period, the California Plaintiffs seek all
26 damages and relief to which the California Plaintiffs and California State Class
27 members are entitled.

28

1 2480. Pursuant to Cal. Civ. Code § 1782, Plaintiffs’ counsel, on behalf of the
2 California Plaintiffs and California State Class members, sent a notice letter to ST
3 Italy and ST Malaysia on May 25, 2022, which demanded that they correct or agree
4 to correct the actions described therein within thirty (30) days of such notice. As
5 such, the California Plaintiffs’ and California State Class members’ claims against
6 ST Italy and ST Malaysia under this count right now are for injunctive relief only. If
7 ST Italy and ST Malaysia fail to correct or agree to correct the actions described in
8 the notice letter, the California Plaintiffs will amend this Complaint to include all
9 compensatory and monetary damages against ST Italy and ST Malaysia to which
10 the California Plaintiffs and California Class members are entitled.

11 2481. Pursuant to Cal. Civ. Code § 1780(a), the California Plaintiffs and
12 California State Class members seek an order enjoining the above unfair or
13 deceptive acts or practices and awarding actual damages, treble damages,
14 restitution, attorneys’ fees, and any other just and proper relief available under the
15 CLRA against all Defendants except ST Italy and ST Malaysia. With respect to ST
16 Italy and ST Malaysia, the California Plaintiffs and California Class members seek
17 an order enjoining those Defendants’ unfair or deceptive acts or practices, and any
18 other just and proper equitable relief available under the CLRA.

19 e. **California Count 5: Unlawful, Unfair, or Fraudulent**
20 **Business Practices Under the California Unfair Competition**
21 **Law (Cal. Bus. & Prof. Code § 17200, et seq.) Against FCA,**
22 **Honda Japan, Honda USA, Honda Engineering USA,**
23 **Hyundai Korea, Hyundai USA, Kia Korea, Kia USA,**
24 **Mitsubishi Japan, Mitsubishi USA, Toyota USA, Toyota**
25 **Engineering USA, Toyota Sales USA, ZF Electronics USA,**
26 **ZF Passive Safety USA, ZF Automotive USA, ZF TRW**
27 **Corp., ZF Germany, ST Italy, ST Malaysia, and ST USA**

28 2482. Plaintiffs reallege and incorporate by reference all allegations in
Sections I-VI above as though fully set forth herein.

2483. Plaintiffs Remigiusz Rundzio and Steve Laveaux bring this count
individually and on behalf of members of the California State Class who purchased
or leased FCA Class Vehicles, against FCA, as well as ZF Electronics USA, ZF

1 Passive Safety USA, ZF Automotive USA, ZF TRW Corp., and ZF Germany
2 (collectively, the “ZF Defendants”), and ST Italy, ST Malaysia, and ST USA
3 (collectively, the “ST Defendants”).

4 2484. Plaintiff Kevin Burns brings this count individually and on behalf of
5 members of the California State Class who purchased or leased Honda Class
6 Vehicles, against Honda Japan, Honda USA, Honda Engineering USA, the ZF
7 Defendants, and the ST Defendants.

8 2485. Plaintiff Michael Hernandez brings this count individually and on
9 behalf of members of the California State Class who purchased or leased Hyundai
10 Class Vehicles, against Hyundai Korea and Hyundai USA, the ZF Defendants, and
11 the ST Defendants.

12 2486. Plaintiffs Bonnie Dellatorre and Lore Van Houten bring this count
13 individually and on behalf of members of the California State Class who purchased
14 or leased Kia Class Vehicles, against Kia Korea, Kia USA, ZF Defendants, and the
15 ST Defendants.

16 2487. Plaintiffs Tiffany Ecklor and Gaylynn Sanchez bring this count
17 individually and on behalf of members of the California State Class who purchased
18 or leased Mitsubishi Class Vehicles, against Mitsubishi Japan, Mitsubishi USA, the
19 ZF Defendants, and the ST Defendants.

20 2488. Plaintiffs Mark Altier and Alejandra Renteria bring this count
21 individually and on behalf of members of the California State Class who purchased
22 or leased Toyota Class Vehicles, against Toyota USA, Toyota Sales USA, Toyota
23 Engineering USA, the ZF Defendants, and the ST Defendants.

24 2489. For purposes of this count, “California Plaintiffs” refers to Plaintiffs
25 Rundzio, Laveaux, Burns, Hernandez, Dellatorre, Van Houten, Ecklor, Sanchez,
26 Altier, and Renteria.

27 2490. For purposes of this count, “Defendants” refers to FCA, Honda Japan,
28 Honda USA, Honda Engineering USA, Hyundai Korea, Hyundai USA, Kia Korea,

1 Kia USA, Mitsubishi Japan, Mitsubishi USA, Toyota USA, Toyota Engineering
2 USA, Toyota Sales USA, ZF Electronics USA, ZF Passive Safety USA, ZF
3 Automotive USA, ZF TRW Corp., ZF Germany, ST Italy, ST Malaysia, and ST
4 USA.

5 2491. For purposes of this count, “Class Vehicles” refers to FCA, Honda,
6 Hyundai, Kia, Mitsubishi, and Toyota Class Vehicles.

7 2492. California’s Unfair Competition Law (“UCL”), Business and
8 Professions Code § 17200, prohibits any “unlawful, unfair, or fraudulent business
9 act or practices.”

10 2493. Defendants committed an unlawful business act or practice in violation
11 of §17200 by violating the Federal Racketeer Influenced and Corrupt
12 Organizations (“RICO”) Act, the California FAL, the CLRA, and other laws alleged
13 herein.

14 2494. Defendants committed fraudulent acts or practices in violation of
15 §17200.⁶ Specifically, as alleged in detail above, Defendants designed, developed,
16 tested, manufactured, and/or installed defective ACUs into Class Vehicles,
17 knowingly and intentionally marketed and sold those Class Vehicles with the
18 defective ACUs installed while misrepresenting the safety of the Class Vehicles,
19 and/or and omitting, and failing to disclose material facts regarding the existence,
20 nature, and scope of the ACU Defect in the Class Vehicles from both NHTSA and
21 consumers alike, including the California Plaintiffs and California State Class
22 members.

23 2495. Defendants had an ongoing duty to the California Plaintiffs and
24 California State Class members to refrain from unfair or deceptive practices in the
25 course of their business. Specifically, Defendants owed the California Plaintiffs and
26

27 ⁶ Plaintiffs bring their claim under the fraudulent prong of the UCL against ZF
28 TRW Corp., ZF Germany, ST Italy, ST USA, and ST Malaysia based on their
omissions and concealment of material facts only.

1 California State Class members a duty to disclose all the material facts concerning
2 the ACU Defect in the Class Vehicles because:

- 3 a. Defendants possessed exclusive access to and far superior
4 knowledge about technical facts regarding the ACU Defect;
5 b. Consumers lack the sophisticated expertise in vehicle
6 components and electrical phenomena that would be necessary
7 to discover the ACU Defect on their own;
8 c. Defendants knew that the ACU Defect gave rise to serious
9 safety concerns for the consumers who purchased and leased
10 Class Vehicles; and
11 d. Defendants made, helped to make, or conspired to make
12 incomplete representations about the safety and reliability of the
13 Class Vehicles and their Occupant Restraint System, while
14 purposefully withholding material facts about a known safety
15 defect.

16 2496. Defendants' unfair or deceptive acts or practices were designed to
17 mislead and had a tendency or capacity to mislead and create a false impression in
18 consumers that the Class Vehicles had properly-functioning and reliable airbags and
19 seatbelts, and that the Class Vehicles' Occupant Restraint Systems did not contain
20 the ACU Defect and would perform its intended function of activating the seatbelts
21 and airbags during a collision. Indeed, those misrepresentations, concealments,
22 omissions, and suppressions of material facts did in fact deceive reasonable
23 consumers, including the California Plaintiffs and California State Class members,
24 about the true safety and reliability of Class Vehicles, the defective ACUs and
25 ASICs installed in them, the quality of the Class Vehicles, and the true value of the
26 Class Vehicles.

27 2497. Defendants' misrepresentations, concealments, omissions, and
28 suppressions of material facts regarding the ACU Defect and true characteristics of

1 the Occupant Restraint Systems in the Class Vehicles were material to the decisions
2 of the California Plaintiffs and California State Class members to purchase and
3 lease those vehicles, as Defendants intended. The California Plaintiffs and
4 California State Class members were exposed to those misrepresentations,
5 concealments, omissions, and suppressions of material facts, and relied on
6 Defendants' misrepresentations that the Class Vehicles and their Occupant Restraint
7 Systems were safe and reliable in deciding to purchase and lease Class Vehicles.
8 Plaintiffs allege the information they relied upon in Section II.B above. To aid
9 review of this information, Exhibit 19 provides paragraph numbers for each
10 Plaintiff.

11 2498. The California Plaintiffs' and California State Class members' reliance
12 was reasonable, as they had no way of discerning Defendants' representations were
13 false and misleading, or otherwise learning that the Class Vehicles contained the
14 ACU Defect, as alleged above. The California Plaintiffs and California State Class
15 members did not, and could not, unravel Defendants' deception on their own.

16 2499. Had they known the truth about the ACU Defect, the California
17 Plaintiffs and California State Class members would not have purchased or leased
18 the Class Vehicles, or would have paid significantly less for them.

19 2500. Additionally, Defendants committed unfair business acts and practices
20 in violation of § 17200 when they concealed the existence and nature of the ACU
21 Defect and the dangers and risks posed by the Class Vehicles and the ACU Defect
22 installed in them from consumers and NHTSA while misrepresenting or conspiring
23 to misrepresent that the Class Vehicles and the defective ACUs and ASICs installed
24 in them were reliable and safe when, in fact, they are not. These acts and practices
25 offend established public policy and the harm they cause to consumers greatly
26 outweighs any benefits associated with those practices. Defendants' conduct has
27 also impaired competition within the automotive vehicles market and has prevented
28 the California Plaintiffs and the California State Class members from making fully

1 informed decisions about whether to purchase or lease Class Vehicles and/or the
2 price to be paid to purchase or lease them.

3 2501. The California Plaintiffs and California State Class members suffered
4 ascertainable losses as a direct and proximate result of Defendants' unlawful,
5 fraudulent, and unfair business acts and practices.

6 2502. Defendants' acts and practices described above present a continuing
7 risk to the California Plaintiffs and California State Class members, as well as to the
8 general public, because the Class Vehicles remain unsafe due to the defective ACUs
9 and ASICs therein. Defendants' unlawful acts and practices complained of herein
10 affect the public interest.

11 2503. Pursuant to Cal. Bus. & Prof. Code § 17200, the California Plaintiffs
12 and California State Class members seek an order enjoining Defendants' unfair
13 and/or deceptive acts or practices, any such orders or judgments as may be
14 necessary to restore to the California Plaintiffs and California State Class members
15 any money acquired by unfair competition, including restitution and/or
16 restitutionary disgorgement, as provided in Cal. Bus. & Prof. Code §§ 17203, and
17 any other just and proper relief available under the California UCL.

18 2504. The California Plaintiffs plead this claim separately as well as in the
19 alternative to their claims for damages under Fed. R. Civ. P. 8(a)(3), because if the
20 California Plaintiffs' claims for damages are dismissed or judgment is entered on
21 them in favor of Defendants, the California Plaintiffs will have no adequate legal
22 remedy.

23 **f. California Count 6: Fraud by Omission and Concealment**
24 **Against FCA, Honda Japan, Honda USA, Honda**
25 **Engineering USA, Hyundai Korea, Hyundai USA, Kia**
26 **Korea, Kia USA, Toyota USA, Toyota Sales USA, Mitsubishi**
27 **Japan, and Mitsubishi USA**

28 2505. Plaintiffs reallege and incorporate by reference all preceding
allegations as though fully set forth herein.

1 2506. Plaintiffs Remigiusz Rundzio and Steve Laveaux bring this count
2 individually and on behalf of members of the California State Class who purchased
3 or leased FCA Class Vehicles, against FCA.

4 2507. Plaintiff Kevin Burns brings this count individually and on behalf of
5 members of the California State Class who purchased or leased Honda Class
6 Vehicles, against Honda Japan, Honda USA, and Honda Engineering USA.

7 2508. Plaintiff Michael Hernandez brings this count individually and on
8 behalf of members of the California State Class who purchased or leased Hyundai
9 Class Vehicles, against Hyundai Korea and Hyundai USA.

10 2509. Plaintiffs Bonnie Dellatorre and Lore Van Houten bring this count
11 individually and on behalf of members of the California State Class who purchased
12 or leased Kia Class Vehicles, against Kia Korea and Kia USA.

13 2510. Plaintiffs Tiffany Ecklor and Gaylynn Sanchez bring this count
14 individually and on behalf of members of the California State Class who purchased
15 or leased Mitsubishi Class Vehicles, against Mitsubishi Japan and Mitsubishi USA.

16 2511. Plaintiffs Mark Altier and Alejandra Renteria bring this count
17 individually and on behalf of members of the California State Class who purchased
18 or leased Toyota Class Vehicles, against Toyota USA and Toyota Sales USA.

19 2512. For purposes of this count, “California Plaintiffs” refers to Plaintiffs
20 Rundzio, Laveaux, Burns, Hernandez, Dellatorre, Van Houten, Ecklor, Sanchez,
21 Altier, and Renteria.

22 2513. For purposes of this count, “Class Vehicles” refers to FCA, Honda,
23 Hyundai, Kia, Mitsubishi, and Toyota Class Vehicles.

24 2514. FCA, Honda Japan, Honda USA, Honda Engineering USA, Hyundai
25 Korea, Hyundai USA, Kia Korea, Kia USA, Mitsubishi Japan, Mitsubishi USA,
26 Toyota USA, and Toyota Sales USA are liable for both fraudulent concealment and
27 non-disclosure. See, e.g., Restatement (Second) of Torts §§ 550-51 (1977).
28

1 2515. As explained in Section V, the ACU Defect in Class Vehicles poses
2 serious risks to vehicle occupants, including that it can cause: (1) airbags and
3 seatbelts not to activate during a crash because crashes can sometimes release
4 electrical transients, which cause the ACU to fail; (2) airbags to deploy when the
5 vehicle has not crashed, which is dangerous because it is shocking and difficult for
6 the driver to operate a vehicle when the airbag deploys without warning; and (3)
7 failures of other important post-crash operations of the safety system, such as
8 unlocking doors to facilitate escape or extraction of drivers and passengers by
9 emergency personnel, and shutting off a crashed vehicle's fuel or power supply.

10 2516. FCA, Honda Japan, Honda USA, Honda Engineering USA, Hyundai
11 Korea, Hyundai USA, Kia Korea, Kia USA, Mitsubishi Japan, Mitsubishi USA,
12 Toyota USA, and Toyota Sales USA had a duty to disclose the ACU Defect to the
13 California Plaintiffs and the California State Class members because:

- 14 a. FCA, Honda Japan, Honda USA, Honda Engineering USA,
15 Hyundai Korea, Hyundai USA, Kia Korea, Kia USA, Mitsubishi
16 Japan, Mitsubishi USA, Toyota USA, and Toyota Sales USA
17 had exclusive access to and far superior knowledge about
18 technical facts regarding the ACU Defect;
- 19 b. Given the ACU Defect's hidden and technical nature, the
20 California Plaintiffs and California State Class members lack the
21 sophisticated expertise in vehicle components and electrical
22 phenomena that would be necessary to discover the ACU Defect
23 on their own;
- 24 c. FCA, Honda Japan, Honda USA, Honda Engineering USA,
25 Hyundai Korea, Hyundai USA, Kia Korea, Kia USA, Mitsubishi
26 Japan, Mitsubishi USA, Toyota USA, and Toyota Sales USA
27 knew that the ACU Defect gave rise to serious safety concerns
28 for the consumers who use the vehicles, and the Class Vehicles

1 containing the ACU Defect would have been a material fact to
2 the California Plaintiffs' and California State Class members'
3 decisions to buy or lease FCA, Class Vehicles; and

4 d. FCA, Honda Japan, Honda USA, Honda Engineering USA,
5 Hyundai Korea, Hyundai USA, Kia Korea, Kia USA, Mitsubishi
6 Japan, Mitsubishi USA, Toyota USA, and Toyota Sales USA
7 made incomplete representations about the safety and reliability
8 of the Class Vehicles and their Occupant Restraint System,
9 while purposefully withholding material facts about a known
10 safety defect. In uniform advertising and materials provided
11 with each Class Vehicle, FCA, Honda Japan, Honda USA,
12 Honda Engineering USA, Hyundai Korea, Hyundai USA, Kia
13 Korea, Kia USA, Mitsubishi Japan, Mitsubishi USA, Toyota
14 USA, and Toyota Sales USA intentionally concealed,
15 suppressed, and failed to disclose to the consumers that the
16 Class Vehicles contained the ACU Defect. Because they
17 volunteered to provide information about the Class Vehicles that
18 they marketed and offered for sale and lease to consumers, FCA,
19 Honda Japan, Honda USA, Honda Engineering USA, Hyundai
20 Korea, Hyundai USA, Kia Korea, Kia USA, Mitsubishi Japan,
21 Mitsubishi USA, Toyota USA, and Toyota Sales USA had the
22 duty to disclose the whole truth.

23 2517. In breach of their duties, FCA, Honda Japan, Honda USA, Honda
24 Engineering USA, Hyundai Korea, Hyundai USA, Kia Korea, Kia USA, Mitsubishi
25 Japan, Mitsubishi USA, Toyota USA, and Toyota Sales USA failed to disclose that
26 the Class Vehicles were not safe and reliable, and that their Occupant Restraint
27 Systems, including their airbags and seatbelt pretensioners could fail in the event of
28 a crash due to the ACU Defect.

1 2518. FCA, Honda Japan, Honda USA, Honda Engineering USA, Hyundai
2 Korea, Hyundai USA, Kia Korea, Kia USA, Mitsubishi Japan, Mitsubishi USA,
3 Toyota USA, and Toyota Sales USA intended for the California Plaintiffs and
4 California State Class members to rely on their omissions—which they did by
5 purchasing and leasing the Class Vehicles at the prices they paid believing that the
6 Occupant Restraint Systems in their Class Vehicles would function properly.

7 2519. That reliance was reasonable, because a reasonable consumer would
8 not have expected that the Class Vehicles contained a safety defect that poses such a
9 serious risk. FCA, Honda Japan, Honda USA, Honda Engineering USA, Hyundai
10 Korea, Hyundai USA, Kia Korea, Kia USA, Mitsubishi Japan, Mitsubishi USA,
11 Toyota USA, and Toyota Sales USA knew that reasonable consumers expect that
12 their vehicle has working airbags and seatbelt pretensioners and would rely on
13 those facts in deciding whether to purchase, lease, or retain a new or used motor
14 vehicle. Whether a manufacturer's products are safe and reliable, and whether that
15 manufacturer stands behind its products, are material concerns to a consumer.
16 Especially here when at least nine people have already died due to the ACU Defect,
17 and many more have been injured.

18 2520. Additionally, FCA, Honda Japan, Honda USA, Honda Engineering
19 USA, Hyundai Korea, Hyundai USA, Kia Korea, Kia USA, Mitsubishi Japan,
20 Mitsubishi USA, Toyota USA, and Toyota Sales USA ensured that the California
21 Plaintiffs and California State Class members did not discover this information by
22 actively concealing and misrepresenting the true nature of the Class Vehicles'
23 Occupant Restraint Systems to consumers and NHTSA.

24 2521. FCA, Honda Japan, Honda USA, Honda Engineering USA, Hyundai
25 Korea, Hyundai USA, Kia Korea, Kia USA, Mitsubishi Japan, Mitsubishi USA,
26 Toyota USA, and Toyota Sales USA actively concealed and suppressed these
27 material facts, in whole or in part, to maintain a market for their Class Vehicles, to
28 protect profits, and to avoid costly recalls that would expose them to liability for

1 those expenses and harm the commercial reputations of Defendants and their
2 products. They did so at the expense of the California Plaintiffs and California State
3 Class members.

4 2522. To this day, FCA, Honda Japan, Honda USA, Honda Engineering
5 USA, Hyundai Korea, Hyundai USA, Kia Korea, Kia USA, Mitsubishi Japan,
6 Mitsubishi USA, Toyota USA, and Toyota Sales USA have not fully and adequately
7 disclosed the ACU Defect, and they continue to conceal material information about
8 the defect from consumers and NHTSA. The omitted and concealed facts were
9 material because a reasonable person would find them important in purchasing,
10 leasing, or retaining a new or used motor vehicle, and because they directly impact
11 the value of the Class Vehicles purchased or leased by the California Plaintiffs and
12 California State Class members.

13 2523. Had they been aware of the ACU Defect in the Class Vehicles, and
14 FCA's, Honda Japan's, Honda USA's, Honda Engineering USA's, Hyundai
15 Korea's, Hyundai USA's, Kia Korea's, Kia USA's, Mitsubishi Japan's, Mitsubishi
16 USA's, Toyota USA's, and Toyota Sales USA's callous disregard for safety, the
17 California Plaintiffs and California State Class members either would not have paid
18 as much as they did for their Class Vehicles, or they would not have purchased or
19 leased them.

20 2524. As alleged in Section V above, if FCA, Honda Japan, Honda USA,
21 Honda Engineering USA, Hyundai Korea, Hyundai USA, Kia Korea, Kia USA,
22 Mitsubishi Japan, Mitsubishi USA, Toyota USA, and Toyota Sales USA had fully
23 and adequately disclosed the ACU Defect to consumers and NHTSA, the California
24 Plaintiffs and California State Class members would have seen such a disclosure.

25 2525. Accordingly, FCA, Honda Japan, Honda USA, Honda Engineering
26 USA, Hyundai Korea, Hyundai USA, Kia Korea, Kia USA, Mitsubishi Japan,
27 Mitsubishi USA, Toyota USA, and Toyota Sales USA are liable to the California
28 Plaintiffs and California State Class members for their damages in an amount to be

1 proven at trial, including, but not limited to, their lost overpayment for the Class
2 Vehicles at the time of purchase or lease.

3 2526. FCA’s, Honda Japan’s, Honda USA’s, Honda Engineering USA’s,
4 Hyundai Korea’s, Hyundai USA’s, Kia Korea’s, Kia USA’s, Mitsubishi Japan’s,
5 Mitsubishi USA’s, Toyota USA’s, and Toyota Sales USA’s acts were done
6 maliciously, oppressively, deliberately, with intent to defraud; in reckless disregard
7 of the California Plaintiffs’ and California State Class members’ rights and well-
8 being; and to enrich themselves. FCA’s, Honda Japan’s, Honda USA’s, Honda
9 Engineering USA’s, Hyundai Korea’s, Hyundai USA’s, Kia Korea’s, Kia USA’s,
10 Mitsubishi Japan’s, Mitsubishi USA’s, Toyota USA’s, and Toyota Sales USA’s
11 misconduct warrants an assessment of punitive damages, as permitted by law, in an
12 amount sufficient to deter such conduct in the future, which amount shall be
13 determined according to proof at trial.

14 **g. California Count 7: Fraud by Omission and Concealment**
15 **Against ZF Electronics USA, ZF Passive Safety USA, ZF**
16 **Automotive USA, ZF TRW Corp., ZF Germany, ST Italy,**
ST USA, and ST Malaysia

17 2527. Plaintiffs reallege and incorporate by reference all preceding
18 allegations as though fully set forth herein.

19 2528. The California Plaintiffs bring this count individually and on behalf of
20 members of the California State Class who purchased or leased Class Vehicles,
21 against ZF Electronics USA, ZF Passive Safety USA, ZF Automotive USA, ZF
22 TRW Corp., and ZF Germany (collectively, the “ZF Defendants”), and ST Italy, ST
23 Malaysia, and ST USA (collectively, the “ST Defendants”).

24 2529. The ZF and ST Defendants are liable for both fraudulent concealment
25 and non-disclosure. See, e.g., Restatement (Second) of Torts §§ 550-51 (1977).

26 2530. As explained in Section IV.A, the ACU Defect in Class Vehicles poses
27 serious risks to vehicle occupants, including that it can cause: (1) airbags and
28 seatbelts not to activate during a crash because crashes can sometimes release

1 electrical transients, which cause the ACU to fail; (2) airbags to deploy when the
2 vehicle has not crashed, which is dangerous because it is shocking and difficult for
3 the driver to operate a vehicle when the airbag deploys without warning; and (3)
4 failures of other important post-crash operations of the safety system, such as
5 unlocking doors to facilitate escape or extraction of drivers and passengers by
6 emergency personnel, and shutting off a crashed vehicle's fuel or power supply.

7 2531. The ZF and ST Defendants had a duty to disclose the ACU Defect to
8 the California Plaintiffs and California State Class members because:

- 9 a. The ZF and ST Defendants had exclusive access to and far
10 superior knowledge about technical facts regarding the ACU
11 Defect;
- 12 b. Given the ACU Defect's hidden and technical nature, the
13 California Plaintiffs and California State Class members lack the
14 sophisticated expertise in vehicle components and electrical
15 phenomena that would be necessary to discover the ACU Defect
16 on their own;
- 17 c. The ZF and ST Defendants knew that the ACU Defect gave rise
18 to serious safety concerns for the consumers who use the
19 vehicles, and the Class Vehicles containing the ACU Defect
20 would have been a material fact to the California Plaintiffs' and
21 California State Class members' decisions to buy or lease Class
22 Vehicles; and
- 23 d. The ZF Defendants made incomplete representations about the
24 safety and reliability of the Class Vehicles and their Occupant
25 Restraint System, while purposefully withholding material facts
26 about a known safety defect, creating a duty to disclose the
27 whole truth. Specifically, ZF Electronics USA, ZF Passive
28 Safety USA, and ZF Automotive USA worked with the Vehicle

1 Manufacturer Defendants on the design and inclusion of the
2 airbag readiness indicators in the Class Vehicles, which falsely
3 assured Plaintiffs and Class Members that the Occupant
4 Restraint Systems in the Class Vehicles would function properly
5 in a crash.

6 2532. In breach of their duties, the ZF and ST Defendants failed to disclose
7 that the Class Vehicles were not safe and reliable, and that their Occupant Restraint
8 Systems, including their airbags and seatbelt pretensioners could fail in the event of
9 a crash due to the ACU Defect.

10 2533. The ZF and ST Defendants intended for the California Plaintiffs and
11 California State Class members to rely on their omissions—which they did by
12 purchasing and leasing the Class Vehicles at the prices they paid believing that the
13 Occupant Restraint Systems in their Class Vehicles would function properly.

14 2534. That reliance was reasonable, because a reasonable consumer would
15 not have expected that the Class Vehicles contained a safety defect that poses such a
16 serious risk. The ZF and ST Defendants knew that reasonable consumers expect
17 that their vehicle has working airbags and seatbelt pretensioners and would rely on
18 those facts in deciding whether to purchase, lease, or retain a new or used motor
19 vehicle. Whether a manufacturer’s products are safe and reliable, and whether that
20 manufacturer stands behind its products, are material concerns to a consumer.
21 Especially here, when at least nine people have already died due to the ACU
22 Defect, and many more have been injured.

23 2535. Additionally, the ZF and ST Defendants ensured that the California
24 Plaintiffs and California State Class members did not discover this information by
25 actively concealing and misrepresenting the true nature of the Class Vehicles’
26 Occupant Restraint Systems to consumers and NHTSA.

27 2536. The ZF and ST Defendants actively concealed and suppressed these
28 material facts, in whole or in part, to maintain a market for the DS84 ACU, to

1 protect profits, and to avoid costly recalls that would expose them to liability for
2 those expenses and harm the commercial reputations of Defendants and their
3 products. They did so at the expense of the California Plaintiffs and California State
4 Class members.

5 2537. To this day, the ZF and ST Defendants have not fully and adequately
6 disclosed the ACU Defect, and they continue to conceal material information about
7 the defect from consumers and NHTSA. The omitted and concealed facts were
8 material because a reasonable person would find them important in purchasing,
9 leasing, or retaining a new or used motor vehicle, and because they directly impact
10 the value of the Class Vehicles purchased or leased by the California Plaintiffs and
11 California State Class members.

12 2538. Had they been aware of the ACU Defect in the Class Vehicles, and the
13 ZF and ST Defendants' callous disregard for safety, the California Plaintiffs and
14 California State Class members either would not have paid as much as they did for
15 their Class Vehicles, or they would not have purchased or leased them.

16 2539. As alleged in Section V above, if the ZF and ST Defendants had fully
17 and adequately disclosed the ACU Defect to consumers and NHTSA, the California
18 Plaintiffs and California State Class members would have seen such a disclosure.

19 2540. Accordingly, the ZF and ST Defendants are liable to the California
20 Plaintiffs and California State Class members for their damages in an amount to be
21 proven at trial, including, but not limited to, their lost overpayment for the Class
22 Vehicles at the time of purchase or lease.

23 2541. The ZF and ST Defendants' acts were done maliciously, oppressively,
24 deliberately, with intent to defraud; in reckless disregard of the California Plaintiffs'
25 and California State Class members' rights and well-being; and to enrich
26 themselves. The ZF and ST Defendants' misconduct warrants an assessment of
27 punitive damages, as permitted by law, in an amount sufficient to deter such
28 conduct in the future, which amount shall be determined according to proof at trial.

1 **h. California Count 8: Unjust Enrichment Against FCA,**
2 **Honda Japan, Honda USA, Honda Engineering USA,**
3 **Hyundai Korea, Hyundai USA, Kia Korea, Kia USA,**
4 **Mitsubishi Japan, Mitsubishi USA, Toyota USA, Toyota**
5 **Engineering USA, and Toyota Sales USA**

6 2542. Plaintiffs reallege and incorporate by reference all allegations in
7 Sections I-VI above though fully set forth herein.

8 2543. Plaintiffs Remigiusz Rundzio and Steve Laveaux bring this count
9 individually and on behalf of members of the California State Class who purchased
10 or leased FCA Class Vehicles, against FCA.

11 2544. Plaintiff Kevin Burns brings this count individually and on behalf of
12 members of the California State Class who purchased or leased Honda Class
13 Vehicles, against Honda Japan, Honda USA, and Honda Engineering USA.

14 2545. Plaintiff Michael Hernandez brings this count individually and on
15 behalf of members of the California State Class who purchased or leased Hyundai
16 Class Vehicles, against Hyundai Korea and Hyundai USA.

17 2546. Plaintiffs Bonnie Dellatorre and Lore Van Houten bring this count
18 individually and on behalf of members of the California State Class who purchased
19 or leased Kia Class Vehicles, against Kia Korea and Kia USA.

20 2547. Plaintiffs Tiffany Ecklor and Gaylynn Sanchez bring this count
21 individually and on behalf of members of the California State Class who purchased
22 or leased Mitsubishi Class Vehicles, against Mitsubishi Japan and Mitsubishi USA.

23 2548. Plaintiffs Mark Altier and Alejandra Renteria bring this count
24 individually and on behalf of members of the California State Class who purchased
25 or leased Toyota Class Vehicles, against Toyota USA, Toyota Engineering USA,
26 and Toyota Sales USA.

27 2549. For purposes of this count, “California Plaintiffs” refers to Plaintiffs
28 Rundzio, Laveaux, Burns, Hernandez, Dellatorre, Van Houten, Ecklor, Sanchez,
Altier, and Renteria.

1 2550. For purposes of this count, “Class Vehicles” refers to FCA, Honda,
2 Hyundai, Kia, Mitsubishi, and Toyota Class Vehicles.

3 2551. When they purchased and leased the Class Vehicles, the California
4 Plaintiffs and California State Class members conferred tangible and material
5 economic benefits upon FCA, Honda Japan, Honda USA, Honda Engineering USA,
6 Hyundai Korea, Hyundai USA, Kia Korea, Kia USA, Mitsubishi Japan, Mitsubishi
7 USA, Toyota USA, Toyota Engineering USA, and Toyota Sales USA, who readily
8 accepted and retained these benefits.

9 2552. The California Plaintiffs and California State Class members would
10 not have purchased or leased their Class Vehicles, or would have paid less for them,
11 had they known of the ACU Defect at the time of purchase or lease. Therefore,
12 FCA, Honda Japan, Honda USA, Honda Engineering USA, Hyundai Korea,
13 Hyundai USA, Kia Korea, Kia USA, Mitsubishi Japan, Mitsubishi USA, Toyota
14 USA, Toyota Engineering USA, and Toyota Sales USA profited from the sale and
15 lease of the Class Vehicles to the detriment and expense of the California Plaintiffs
16 and California State Class members.

17 2553. FCA, Honda Japan, Honda USA, Honda Engineering USA, Hyundai
18 Korea, Hyundai USA, Kia Korea, Kia USA, Mitsubishi Japan, Mitsubishi USA,
19 Toyota USA, Toyota Engineering USA, and Toyota Sales USA appreciated these
20 economic benefits. These benefits were the expected result of FCA, Honda Japan,
21 Honda USA, Honda Engineering USA, Hyundai Korea, Hyundai USA, Kia Korea,
22 Kia USA, Mitsubishi Japan, Mitsubishi USA, Toyota USA, Toyota Engineering
23 USA, and Toyota Sales USA acting in their pecuniary interest at the expense of
24 their customers. They knew of these benefits because they were aware of the ACU
25 Defect, yet they failed to disclose this knowledge and misled the California
26 Plaintiffs and California State Class members regarding the nature and quality of
27 the Class Vehicles while profiting from this deception.
28

1 2554. It would be unjust, inequitable, and unconscionable for FCA, Honda
2 Japan, Honda USA, Honda Engineering USA, Hyundai Korea, Hyundai USA, Kia
3 Korea, Kia USA, Mitsubishi Japan, Mitsubishi USA, Toyota USA, Toyota
4 Engineering USA, and Toyota Sales USA to retain these benefits, including because
5 they were procured as a result of their wrongful conduct alleged above.

6 2555. The California Plaintiffs and California State Class members are
7 entitled to restitution of the benefits FCA, Honda Japan, Honda USA, Honda
8 Engineering USA, Hyundai Korea, Hyundai USA, Kia Korea, Kia USA, Mitsubishi
9 Japan, Mitsubishi USA, Toyota USA, Toyota Engineering USA, and Toyota Sales
10 USA unjustly retained and/or any amounts necessary to return the California
11 Plaintiffs and California State Class members to the position they occupied prior to
12 dealing with those Defendants, with such amounts to be determined at trial.

13 2556. The California Plaintiffs plead this claim separately as well as in
14 the alternative to their claims for damages under Fed. R. Civ. P. 8(a)(3), because if
15 the California Plaintiffs' claims for damages are dismissed or judgment is entered
16 on them in favor of Defendants, the California Plaintiffs will have no adequate legal
17 remedy.

18 **4. Colorado**

19 **a. Colorado Count 1: Breach of Express Warranty (Colo. Rev.**
20 **Stat. §§ 4-2-313 and 4-2.5-210) Mitsubishi Japan and**
21 **Mitsubishi USA**

22 2557. Plaintiffs reallege and incorporate by reference all preceding
23 allegations as though fully set forth herein.

24 2558. Plaintiff Michael Nearing (hereinafter, "Colorado Plaintiff") brings
25 this count individually and on behalf of members of the Colorado State Class who
26 purchased or leased Mitsubishi Class Vehicles, against Mitsubishi Japan and
27 Mitsubishi USA.
28

1 2559. Mitsubishi Japan and Mitsubishi USA are and were at all relevant
2 times “merchants” with respect to motor vehicles under Colo. Rev. Stat. §§ 4-2-
3 104(1) and 4-2.5-103(3), and “sellers” of motor vehicles under § 4-2-103(1)(d).

4 2560. With respect to leases, Mitsubishi Japan and Mitsubishi USA are and
5 were at all relevant times “lessors” of motor vehicles under Colo. Rev. Stat. § 4-
6 2.5-103(1)(p).

7 2561. All Colorado State Class members who purchased Mitsubishi Class
8 Vehicles in Colorado are “buyers” within the meaning of Colo. Rev. Stat. § 4-2-
9 103(1)(a).

10 2562. All Colorado State Class members who leased Mitsubishi Class
11 Vehicles in Colorado are “lessees” within the meaning of Colo. Rev. Stat. § 4-2.5-
12 103(1)(p).

13 2563. The Mitsubishi Class Vehicles are and were at all relevant times
14 “goods” within the meaning of Colo. Rev. Stat. §§ 4-2-105(1) and 4-2.5-103(1)(h).

15 2564. In connection with the purchase or lease of Mitsubishi Class Vehicles,
16 Mitsubishi Japan and Mitsubishi USA provided the Colorado Plaintiff and
17 Colorado State Class members with warranties in the form of: (a) written express
18 warranties covering the repair or replacement of components that are defective in
19 materials or workmanship, and (b) descriptions of the Mitsubishi Class Vehicles as
20 safe and reliable, and that their Occupant Restraint Systems, including their airbags
21 and seatbelt pretensioners, would function properly in the event of a crash

22 2565. However, Mitsubishi Japan and Mitsubishi USA knew or should have
23 known that the warranties were false and/or misleading. Specifically, Mitsubishi
24 Japan and Mitsubishi USA were aware of the ACU Defect in the Mitsubishi Class
25 Vehicles, which made the vehicles inherently defective and dangerous at the time
26 that they were sold and leased to the Colorado Plaintiff and Colorado State Class
27 members.

28

1 2566. The Colorado Plaintiff and Colorado State Class members were aware
2 the Mitsubishi Class Vehicles were covered by express warranties, and those
3 warranties were an essential part of the bargain between them and Mitsubishi Japan
4 and Mitsubishi USA when the Colorado Plaintiff and Colorado State Class
5 members unknowingly purchased and leased Mitsubishi Class Vehicles that came
6 equipped with defective ACUs and ASICs.

7 2567. Mitsubishi Japan and Mitsubishi USA misrepresented the Mitsubishi
8 Class Vehicles as safe and reliable while concealing that they contained the ACU
9 Defect, the Colorado Plaintiff and Colorado State Class members were exposed to
10 those misrepresentations, and the Colorado Plaintiff and Colorado State Class
11 members had no way of discerning that Mitsubishi Japan's and Mitsubishi USA's
12 representations were false and misleading or otherwise learning the material facts
13 that Mitsubishi Japan and Mitsubishi USA had concealed or failed to disclose.
14 Accordingly, the Colorado Plaintiff and Colorado State Class members reasonably
15 relied on Mitsubishi Japan's and Mitsubishi USA's express warranties when
16 purchasing or leasing their Mitsubishi Class Vehicles. Plaintiffs allege the
17 information they relied upon in Section II.B above. To aid review of this
18 information, Exhibit 19 provides paragraph numbers for each Plaintiff.

19 2568. Mitsubishi Japan and Mitsubishi USA knowingly breached their
20 express warranties to repair defects in materials and workmanship by failing to
21 repair the ACU Defect or replace the defective ACUs and ASICs in the Mitsubishi
22 Class Vehicles. Mitsubishi Japan and Mitsubishi USA also breached their express
23 warranties by selling and leasing Mitsubishi Class Vehicles with a defect that was
24 never disclosed to the Colorado Plaintiff and Colorado State Class members.

25 2569. The Colorado Plaintiff and Colorado State Class members have
26 provided Mitsubishi Japan and Mitsubishi USA with reasonable notice and
27 opportunity to cure the breaches of their express warranties by way of the numerous
28 NHTSA complaints filed against them, and the individual notice letters sent by

1 Colorado State Class members within a reasonable amount of time after the ACU
2 Defect became public. *See* ECF No. 396 at 133 (“Plaintiffs have alleged that they
3 provided pre-suit notice to the Mitsubishi Defendants, which is sufficient to state a
4 claim for breach of express warranty under Colorado law.”). On April 24, 2020 and
5 June 5, 2020, notice letters were sent on behalf of the Colorado Plaintiff and
6 Colorado State Class members to Mitsubishi USA and Mitsubishi Japan,
7 respectively.

8 2570. Alternatively, the Colorado Plaintiff and Colorado State Class
9 members were excused from providing Mitsubishi Japan and Mitsubishi USA with
10 notice and an opportunity to cure the breach, because it would have been futile. As
11 alleged above, Mitsubishi Japan and Mitsubishi USA have long known that the
12 Mitsubishi Class Vehicles contained the ACU Defect, and that the ACU Defect has
13 caused ACUs and ASICs to malfunction in crashes involving Class Vehicles;
14 however, to date, Mitsubishi Japan and Mitsubishi USA have not instituted a recall
15 or any other repair program, or even acknowledged that the ACU Defect exists—
16 even though Mitsubishi Class Vehicles are subject to the NHTSA investigation.
17 Therefore, the Colorado Plaintiff and Colorado State Class members had no reason
18 to believe that Mitsubishi Japan and Mitsubishi USA would have repaired the ACU
19 Defect if the Colorado Plaintiff and Colorado State Class members presented their
20 Class Vehicles to Mitsubishi Japan and Mitsubishi USA for repair.

21 2571. As a direct and proximate result of Mitsubishi Japan’s and Mitsubishi
22 USA’s breach of their express warranties, the Mitsubishi Class Vehicles were and
23 are defective and the ACU Defect in the Colorado Plaintiff’s and Colorado State
24 Class members’ Mitsubishi Class Vehicles was not remedied. Therefore, the
25 Colorado Plaintiff and Colorado State Class members have been damaged, in an
26 amount to be proven at trial, through their overpayment at the time of purchase or
27 lease for Mitsubishi Class Vehicles with an undisclosed safety defect that would not
28 be remedied.

1 **b. Colorado Count 2: Breach of Implied Warranty of**
2 **Merchantability (Colo. Rev. Stat. §§ 4-2-314 and 4-2.5-212)**
3 **Against Mitsubishi USA**

4 2572. Plaintiffs reallege and incorporate by reference all preceding
5 allegations as though fully set forth herein.

6 2573. The Colorado Plaintiff brings this count individually and on behalf of
7 members of the Colorado State Class who purchased or leased Mitsubishi Class
8 Vehicles, against Mitsubishi USA.

9 2574. A warranty that the Mitsubishi Class Vehicles were in merchantable
10 condition and fit for the ordinary purpose for which such goods are used is implied
11 by law pursuant to Colo. Rev. Stat. §§ 4-2-314 and 4-2.5-212.

12 2575. The Mitsubishi Defendants are and were at all relevant times
13 “merchants” with respect to motor vehicles under Colo. Rev. Stat. §§ 4-2-104(1)
14 and 4-2.5-103(3), and “sellers” of motor vehicles under § 4-2-103(1)(d).

15 2576. With respect to leases, the Mitsubishi Defendants are and were at all
16 relevant times “lessors” of motor vehicles under Colo. Rev. Stat. § 4-2.5-103(1)(p).

17 2577. All Colorado State Class members who purchased Mitsubishi Class
18 Vehicles in Colorado are “buyers” within the meaning of Colo. Rev. Stat. § 4-2-
19 103(1)(a).

20 2578. All Colorado State Class members who leased Mitsubishi Class
21 Vehicles in Colorado are “lessees” within the meaning of Colo. Rev. Stat. § 4-2.5-
22 103(1)(p).

23 2579. The Mitsubishi Class Vehicles are and were at all relevant times
24 “goods” within the meaning of Colo. Rev. Stat. §§ 4-2-105(1) and 4-2.5-103(1)(h).

25 2580. The Mitsubishi Class Vehicles did not comply with the implied
26 warranty of merchantability because, at the time of sale and at all times thereafter,
27 they were defective and not in merchantable condition, would not pass without
28 objection in the trade, and were not fit for the ordinary purpose for which vehicles
 were used. Specifically, the Mitsubishi Class Vehicles contain the ACU Defect,

1 which may cause the airbags and seatbelt pretensioners to fail to deploy during a
2 crash, the failure to unlock doors automatically after a crash, the failure to turn off a
3 fuel supply or high-voltage battery after a crash, or the airbags to inadvertently
4 deploy, rendering the Mitsubishi Class Vehicles inherently defective and
5 dangerous.

6 2581. The Colorado Plaintiff and Colorado State Class members have
7 provided Mitsubishi USA with reasonable notice and opportunity to cure the
8 breaches of their express warranties by way of the numerous NHTSA complaints
9 filed against them, and the individual notice letters sent by Colorado State Class
10 members within a reasonable amount of time after the ACU Defect became public.
11 On April 24, 2020 and June 5, 2020, notice letters were sent on behalf of the
12 Colorado Plaintiff and Colorado State Class members to Mitsubishi USA and
13 Mitsubishi Japan, respectively.

14 2582. Alternatively, the Colorado Plaintiff and Colorado State Class
15 members were excused from providing Mitsubishi Japan and Mitsubishi USA with
16 notice and an opportunity to cure the breach, because it would have been futile. As
17 alleged above, Mitsubishi USA have long known that the Mitsubishi Class Vehicles
18 contained the ACU Defect, and that the ACU Defect has caused ACUs and ASICs
19 to malfunction in crashes involving Class Vehicles; however, to date, Mitsubishi
20 Japan and Mitsubishi USA have not instituted a recall or any other repair program,
21 or even acknowledged that the ACU Defect exists—even though Mitsubishi Class
22 Vehicles are subject to the NHTSA investigation. Therefore, the Colorado Plaintiff
23 and Colorado State Class members had no reason to believe that Mitsubishi Japan
24 and Mitsubishi USA would have repaired the ACU Defect if the Colorado Plaintiff
25 and Colorado State Class members presented their Class Vehicles to Mitsubishi
26 Japan and Mitsubishi USA for repair.

27 2583. As a direct and proximate result of Mitsubishi Japan's and Mitsubishi
28 USA's breach of the implied warranty of merchantability, the Colorado Plaintiff

1 and Colorado State Class members have been damaged in an amount to be proven
2 at trial.

3 **c. Colorado Count 3: Violation of the Colorado Consumer**
4 **Protection Act (Colo. Rev. Stat. § 6-1-101, et seq.) Against**
5 **Mitsubishi Japan and Mitsubishi USA**

6 2584. Plaintiffs reallege and incorporate by reference all preceding
7 allegations as though fully set forth herein.

8 2585. The Colorado Plaintiff brings this count individually and on behalf of
9 members of the Colorado State Class who purchased or leased Mitsubishi Class
10 Vehicles, against the Mitsubishi Japan and Mitsubishi USA.

11 2586. Mitsubishi Japan, Mitsubishi USA, the Colorado Plaintiff, and
12 Colorado State Class members are “persons” within the meaning of Colo. Rev. Stat.
13 § 6-1-102(6).

14 2587. The Colorado Consumer Protection Act (“Colorado CPA”) prohibits
15 unfair, unconscionable, and deceptive acts or practices in the course of the person’s
16 business, vocation, or occupation. Colo. Rev. Stat. § 6-1-105.

17 2588. In the course of their business, Mitsubishi Japan and Mitsubishi USA,
18 through their agents, employees, and/or subsidiaries, violated the Colorado CPA by
19 knowingly and intentionally misrepresenting, omitting, concealing, and/or failing to
20 disclose material facts regarding the reliability, safety, and performance of the
21 Mitsubishi Class Vehicles, the safety of their Occupant Restraint Systems, and the
22 ACU Defect, as detailed above.

23 2589. Mitsubishi Japan and Mitsubishi USA had an ongoing duty to the
24 Colorado Plaintiff and Colorado State Class members to refrain from unfair or
25 deceptive practices under the Colorado DTPA in the course of their business.
26 Specifically, Mitsubishi Japan and Mitsubishi USA owed the Colorado Plaintiff and
27 Colorado State Class members a duty to disclose all the material facts concerning
28 the ACU Defect in the Mitsubishi Class Vehicles because they possessed exclusive
knowledge, they intentionally concealed the ACU Defect from the Colorado

1 Plaintiff and Colorado State Class members, and they made misrepresentations that
2 were rendered misleading because they were contradicted by withheld facts.

3 2590. By misrepresenting the Mitsubishi Class Vehicles and the defective
4 ACUs and ASICs installed in them as properly-functioning and free from defects,
5 and by failing to disclose and actively concealing the dangers and risk posed by the
6 ACU Defect, Mitsubishi Japan and Mitsubishi USA engaged in one or more of the
7 following unfair or deceptive business practices prohibited by Colo. Rev. Stat. § 6-
8 1-105:

- 9 a. Representing that the Mitsubishi Class Vehicles and/or the
10 defective ACUs and ASICs installed in them have
11 characteristics, uses, benefits, and qualities which they do not
12 have;
- 13 b. Making false representations about the approval or certification
14 of the Mitsubishi Class Vehicles and/or the defective ACUs and
15 ASICs installed in them;
- 16 c. Making false representations regarding the characteristics, uses,
17 and benefits of the Mitsubishi Class Vehicles and/or the
18 defective ACUs and ASICs installed in them;
- 19 d. Representing that the Mitsubishi Class Vehicles and/or the
20 defective ACUs and ASICs installed in them are of a particular
21 standard, quality, and grade when they are not;
- 22 e. Advertising the Mitsubishi Class Vehicles and/or the defective
23 ACUs and ASICs installed in them with the intent not to sell or
24 lease them as advertised;
- 25 f. Engaging in the other unconscionable, false, misleading, or
26 deceptive acts or practices pertaining to the Mitsubishi Class
27 Vehicles and/or the defective ACUs and ASICs installed in them
28 alleged above.

1 Colo. Rev. Stat. §§ 6-1-105(1)(b), (e), (g), (i), and (3).

2 2591. Mitsubishi Japan's and Mitsubishi USA's unfair or deceptive acts or
3 practices, including their misrepresentations, concealments, omissions, and
4 suppressions of material facts, had a tendency or capacity to mislead and create a
5 false impression in consumers that the Mitsubishi Class Vehicles had properly-
6 functioning and reliable airbags and seatbelts, and that the Occupant Restraint
7 System did not contain the ACU Defect and would perform its intended function of
8 activating the seatbelts and airbags during a collision. Indeed, those
9 misrepresentations, concealments, omissions, and suppressions of material facts did
10 in fact deceive reasonable consumers, including the Colorado Plaintiff and
11 Colorado State Class members, about the true safety and reliability of Mitsubishi
12 Class Vehicles and/or the defective ACUs and ASICs installed in them, the quality
13 of the Mitsubishi Class Vehicles, and the true value of the Mitsubishi Class
14 Vehicles.

15 2592. Mitsubishi Japan's and Mitsubishi USA's misrepresentations,
16 concealments, omissions, and suppressions of material facts regarding the ACU
17 Defect and true characteristics of the Occupant Restraint Systems in the Mitsubishi
18 Class Vehicles were material to the decisions of the Colorado Plaintiff and
19 Colorado State Class members to purchase and lease those vehicles, as Mitsubishi
20 Japan and Mitsubishi USA intended. The Colorado Plaintiff and Colorado State
21 Class members were exposed to those misrepresentations, concealments, omissions,
22 and suppressions of material facts, and relied on Mitsubishi Japan's and Mitsubishi
23 USA's misrepresentations that the Mitsubishi Class Vehicles and their Occupant
24 Restraint Systems were safe and reliable in deciding to purchase and lease
25 Mitsubishi Class Vehicles. Plaintiffs allege the information they relied upon in
26 Section II.B above. To aid review of this information, Exhibit 19 provides
27 paragraph numbers for each Plaintiff.

28

1 2593. The Colorado Plaintiff’s and Colorado State Class members’ reliance
2 was reasonable, as they had no way of discerning that Mitsubishi Japan’s and
3 Mitsubishi USA’s representations were false and misleading, or otherwise learning
4 the facts that Mitsubishi Japan and Mitsubishi USA had concealed or failed to
5 disclose. The Colorado Plaintiff and Colorado State Class members did not, and
6 could not, unravel Mitsubishi Japan’s and Mitsubishi USA’s deception on their
7 own.

8 2594. Had the Colorado Plaintiff and Colorado State Class members known
9 the truth about the ACU Defect, the Colorado Plaintiff and Colorado State Class
10 members would not have purchased or leased Mitsubishi Class Vehicles, or would
11 have paid significantly less for them.

12 2595. The Colorado Plaintiff and Colorado State Class members suffered
13 ascertainable losses and actual damages through their overpayment at the time of
14 purchase and lease for Mitsubishi Class Vehicles with an undisclosed safety defect
15 as a direct and proximate result of Mitsubishi Japan’s and Mitsubishi USA’s
16 concealment, misrepresentations, and/or failure to disclose material information.

17 2596. Mitsubishi Japan’s and Mitsubishi USA’s violations present a
18 continuing risk to the Colorado Plaintiff and Colorado State Class members, as well
19 as to the general public, because the Class Vehicles remain unsafe due to the
20 defective ACUs and ASICs therein. Additionally, Mitsubishi Japan’s and
21 Mitsubishi USA’s unlawful acts and practices complained of herein affect the
22 public interest.

23 2597. Pursuant to Colo. Rev. Stat. § 6-1-113, the Colorado Plaintiff and the
24 Colorado State Class members seek an order enjoining Mitsubishi Japan’s and
25 Mitsubishi USA’s unfair or deceptive acts or practices and awarding damages and
26 any other just and proper relief available under the Colorado CPA.

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1 **d. Colorado Count 4: Violation of the Colorado Consumer**
2 **Protection Act (Colo. Rev. Stat. § 6-1-101, et seq.) Against**
3 **ZF Electronics USA, ZF Passive Safety USA, ZF Automotive**
4 **USA, ZF TRW Corp., ZF Germany, ST Italy, ST USA, and**
5 **ST Malaysia**

6 2598. Plaintiffs reallege and incorporate by reference all preceding
7 allegations as though fully set forth herein.

8 2599. The Colorado Plaintiff brings this count individually and on behalf of
9 members of the Colorado State Class against ZF Electronics USA, ZF Passive
10 Safety USA, ZF Automotive USA, ZF TRW Corp., and ZF Germany (collectively,
11 the “ZF Defendants”), and ST Italy, ST Malaysia, and ST USA (collectively, the
12 “ST Defendants”).

13 2600. The ZF Defendants, the ST Defendants, the Colorado Plaintiff, and
14 Colorado State Class members are “persons” within the meaning of Colo. Rev. Stat.
15 § 6-1-102(6).

16 2601. The Colorado Consumer Protection Act (“Colorado CPA”) prohibits
17 unfair, unconscionable, and deceptive acts or practices in the course of the person’s
18 business, vocation, or occupation. Colo. Rev. Stat. § 6-1-105.

19 2602. The ZF and ST Defendants had an ongoing duty to the Colorado
20 Plaintiff and Colorado State Class members to refrain from unfair or deceptive
21 practices under the Colorado CPA in the course of their business. Specifically, the
22 ZF and ST Defendants owed the Colorado Plaintiff and Colorado State Class
23 members a duty to disclose all the material facts concerning the ACU Defect in the
24 Class Vehicles because they possessed exclusive knowledge of and intentionally
25 concealed the ACU Defect from the Colorado Plaintiff and Colorado State Class
26 members.

27 2603. In the course of their business, the ZF and ST Defendants, through
28 their agents, employees, and/or subsidiaries, violated the Colorado CPA by
29 knowingly and intentionally omitting, concealing, and failing to disclose material

1 facts regarding the existence, nature, and scope of the ACU Defect in the Class
2 Vehicles, as detailed above.

3 2604. Additionally, ZF Electronics USA, ZF Passive Safety USA, and ZF
4 Automotive USA, through their agents, employees, and/or subsidiaries, violated the
5 Colorado CPA by knowingly and intentionally misrepresenting the Class Vehicles
6 as safe and reliable and the defective ACU and ASICs installed in them as properly-
7 functioning and free from defects. Specifically, ZF Electronics USA, ZF Passive
8 Safety USA, and ZF Automotive USA worked with the Vehicle Manufacturer
9 Defendants on the design and inclusion of the airbag readiness indicators in the
10 Class Vehicles, which falsely assured Plaintiffs and Class Members that the
11 Occupant Restraint Systems in the Class Vehicles would function properly in a
12 crash.

13 2605. By misrepresenting, failing to disclose and actively concealing the
14 dangers and risk posed by the Class Vehicles due to the ACU Defect, the ZF and
15 ST Defendants engaged in deceptive trade practices prohibited by Colo. Rev. Stat.
16 § 6-1-105, including failing to disclose material information.

17 2606. The ZF and ST Defendants' unfair or deceptive acts or practices,
18 including their misrepresentations, concealments, omissions, and suppressions of
19 material facts, were designed to mislead and had a tendency or capacity to mislead
20 and create a false impression in consumers that the Class Vehicles had properly-
21 functioning and reliable airbags and seatbelts, and that the Occupant Restraint
22 System did not contain the ACU Defect and would perform its intended function of
23 activating the seatbelts and airbags during a collision. Indeed, those
24 misrepresentations, concealments, omissions, and suppressions of material facts did
25 in fact deceive reasonable consumers, including the Colorado Plaintiff and
26 Colorado State Class members, about the true safety and reliability of Class
27 Vehicles and/or the defective ACUs and ASICs installed in them, the quality of the
28 Class Vehicles, and the true value of the Class Vehicles.

1 2607. The Colorado Plaintiff and Colorado State Class members justifiably
2 relied on the ZF and ST Defendants’ misrepresentations, omissions, and
3 concealment, as they had no way of discerning that the Class Vehicles contained
4 the ACU Defect, as alleged above. The Colorado Plaintiff and Colorado State Class
5 members did not, and could not, unravel the ZF and ST Defendants’ deception on
6 their own.

7 2608. The ZF and ST Defendants’ misrepresentations and concealment of the
8 ACU Defect and true characteristics of the defective ACUs and ASICs in the Class
9 Vehicles were material to the Colorado Plaintiff and Colorado State Class
10 members, as the ZF and ST Defendants intended. Had they known the truth, the
11 Colorado Plaintiff and Colorado State Class members would not have purchased or
12 leased the Class Vehicles, or would have paid significantly less for them.

13 2609. The Colorado Plaintiff and Colorado State Class members suffered
14 ascertainable losses and actual damages as a direct and proximate result of the ZF
15 and ST Defendants’ misrepresentations, concealment, and/or failure to disclose
16 material information.

17 2610. The ZF and ST Defendants’ violations present a continuing risk to the
18 Colorado Plaintiff and Colorado State Class members, as well as to the general
19 public, because the Class Vehicles remain unsafe due to the defective ACUs and
20 ASICs therein. The ZF and ST Defendants’ unlawful acts and practices complained
21 of herein affect the public interest.

22 2611. Pursuant to Colo. Rev. Stat. § 6-1-113, the Colorado Plaintiff and
23 Colorado State Class members seek an order enjoining the ZF and ST Defendants’
24 unfair or deceptive acts or practices and awarding damages and any other just and
25 proper relief available under the Colorado CPA.

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1 **e. Colorado Count 5: Fraud by Omission and Concealment**
2 **Against Mitsubishi Japan and Mitsubishi USA**

3 2612. Plaintiffs reallege and incorporate by reference all preceding
4 allegations as though fully set forth herein.

5 2613. The Colorado Plaintiff brings this count individually and on behalf of
6 members of the Colorado State Class who purchased or leased Mitsubishi Class
7 Vehicles, against Mitsubishi Japan and Mitsubishi USA.

8 2614. Mitsubishi Japan and Mitsubishi USA are liable for both fraudulent
9 concealment and non-disclosure. *See, e.g.*, Restatement (Second) of Torts §§ 550-
10 51 (1977).

11 2615. As explained in Section IV.A, the ACU Defect in Class Vehicles poses
12 serious risks to vehicle occupants, including that it can cause: (1) airbags and
13 seatbelts not to activate during a crash because crashes can sometimes release
14 electrical transients, which cause the ACU to fail; (2) airbags to deploy when the
15 vehicle has not crashed, which is dangerous because it is shocking and difficult for
16 the driver to operate a vehicle when the airbag deploys without warning; and (3)
17 failures of other important post-crash operations of the safety system, such as
18 unlocking doors to facilitate escape or extraction of drivers and passengers by
19 emergency personnel, and shutting off a crashed vehicle’s fuel or power supply.

20 2616. Mitsubishi Japan and Mitsubishi USA had a duty to disclose the ACU
21 Defect to the Colorado Plaintiff and Colorado State Class members because:

22 a. Mitsubishi Japan and Mitsubishi USA had exclusive access to
23 and far superior knowledge about technical facts regarding the
24 ACU Defect;

25 b. Given the ACU Defect’s hidden and technical nature, the
26 Colorado Plaintiff and Colorado State Class members lack the
27 sophisticated expertise in vehicle components and electrical
28

1 phenomena that would be necessary to discover the ACU Defect
2 on their own;

3 c. Mitsubishi Japan and Mitsubishi USA knew that the ACU
4 Defect gave rise to serious safety concerns for the consumers
5 who use the vehicles, and the Mitsubishi Class Vehicles
6 containing the ACU Defect would have been a material fact to
7 the Colorado Plaintiff's and Colorado State Class members'
8 decisions to buy or lease Mitsubishi Class Vehicles; and

9 d. Mitsubishi Japan and Mitsubishi USA made incomplete
10 representations about the safety and reliability of the Mitsubishi
11 Class Vehicles and their Occupant Restraint System, while
12 purposefully withholding material facts about a known safety
13 defect. In uniform advertising and materials provided with each
14 Class Vehicle, Mitsubishi Japan, and Mitsubishi USA
15 intentionally concealed, suppressed, and failed to disclose to the
16 Colorado Plaintiff and Colorado State Class members that the
17 Mitsubishi Class Vehicles contained the ACU Defect. Because
18 they volunteered to provide information about the Mitsubishi
19 Class Vehicles that they marketed and offered for sale and lease
20 to the Colorado Plaintiff and Colorado State Class members,
21 Mitsubishi Japan and Mitsubishi USA had the duty to disclose
22 the whole truth.

23 2617. In breach of their duties, Mitsubishi Japan and Mitsubishi USA failed
24 to disclose that the Mitsubishi Class Vehicles were not safe and reliable, and that
25 their Occupant Restraint Systems, including their airbags and seatbelt pretensioners
26 could fail in the event of a crash due to the ACU Defect.

27 2618. Mitsubishi Japan and Mitsubishi USA intended for the Colorado
28 Plaintiff and Colorado State Class members to rely on their omissions—which they

1 did by purchasing and leasing the Mitsubishi Class Vehicles at the prices they paid
2 believing that the Occupant Restraint Systems in their Class Vehicles would
3 function properly.

4 2619. That reliance was reasonable, because a reasonable consumer would
5 not have expected that the Mitsubishi Class Vehicles contained a safety defect that
6 poses such a serious risk. Mitsubishi Japan and Mitsubishi USA knew that
7 reasonable consumers expect that their vehicle has working airbags and seatbelt
8 pretensioners and would rely on those facts in deciding whether to purchase, lease,
9 or retain a new or used motor vehicle. Whether a manufacturer's products are safe
10 and reliable, and whether that manufacturer stands behind its products, are material
11 concerns to a consumer. Especially here when at least nine people have already
12 died due to the ACU Defect, and many more have been injured.

13 2620. Additionally, Mitsubishi Japan and Mitsubishi USA ensured that the
14 Colorado Plaintiff and Colorado State Class members did not discover this
15 information by actively concealing and misrepresenting the true nature of the
16 Mitsubishi Class Vehicles' Occupant Restraint Systems to consumers and NHTSA.

17 2621. Mitsubishi Japan and Mitsubishi USA actively concealed and
18 suppressed these material facts, in whole or in part, to maintain a market for their
19 Class Vehicles, to protect profits, and to avoid costly recalls that would expose
20 them to liability for those expenses and harm the commercial reputations of
21 Defendants and their products. They did so at the expense of the Colorado Plaintiff
22 and Colorado State Class members.

23 2622. To this day, Mitsubishi Japan and Mitsubishi USA have not fully and
24 adequately disclosed the ACU Defect, and they continue to conceal material
25 information about the defect from consumers and NHTSA. The omitted and
26 concealed facts were material because a reasonable person would find them
27 important in purchasing, leasing, or retaining a new or used motor vehicle, and
28

1 because they directly impact the value of the Mitsubishi Class Vehicles purchased
2 or leased by the Colorado Plaintiff and Colorado State Class members.

3 2623. Had they been aware of the ACU Defect in the Mitsubishi Class
4 Vehicles, and Mitsubishi Japan's and Mitsubishi USA's callous disregard for
5 safety, the Colorado Plaintiff and Colorado State Class members either would not
6 have paid as much as they did for their Class Vehicles, or they would not have
7 purchased or leased them.

8 2624. As alleged in Section V above, if Mitsubishi Japan and Mitsubishi
9 USA had fully and adequately disclosed the ACU Defect to consumers and
10 NHTSA, the Colorado Plaintiff and Colorado State Class members would have
11 seen such a disclosure.

12 2625. Accordingly, Mitsubishi Japan and Mitsubishi USA are liable to the
13 Colorado Plaintiff and Colorado State Class members for their damages in an
14 amount to be proven at trial, including, but not limited to, their lost overpayment
15 for the Mitsubishi Class Vehicles at the time of purchase or lease.

16 2626. Mitsubishi Japan's and Mitsubishi USA's acts were done maliciously,
17 oppressively, deliberately, with intent to defraud; in reckless disregard of the
18 Colorado Plaintiff's and Colorado State Class members' rights and well-being; and
19 to enrich themselves. Mitsubishi Japan's and Mitsubishi USA's misconduct
20 warrants an assessment of punitive damages, as permitted by law, in an amount
21 sufficient to deter such conduct in the future, which amount shall be determined
22 according to proof at trial.

23 **f. Colorado Count 6: Fraud by Omission and Concealment**
24 **Against ZF Electronics USA, ZF Passive Safety USA, ZF**
25 **Automotive USA, ZF TRW Corp., ZF Germany, ST Italy,**
ST USA, and ST Malaysia

26 2627. Plaintiffs reallege and incorporate by reference all preceding
27 allegations as though fully set forth herein.
28

1 2628. The Colorado Plaintiff brings this count individually and on behalf of
2 members of the Colorado State Class who purchased or leased Class Vehicles,
3 against ZF Electronics USA, ZF Passive Safety USA, ZF Automotive USA, ZF
4 TRW Corp., and ZF Germany (collectively, the “ZF Defendants”), and ST Italy, ST
5 Malaysia, and ST USA (collectively, the “ST Defendants”).

6 2629. The ZF and ST Defendants are liable for both fraudulent concealment
7 and non-disclosure. *See, e.g.*, Restatement (Second) of Torts §§ 550-51 (1977).

8 2630. As explained in Section IV.A, the ACU Defect in Class Vehicles poses
9 serious risks to vehicle occupants, including that it can cause: (1) airbags and
10 seatbelts not to activate during a crash because crashes can sometimes release
11 electrical transients, which cause the ACU to fail; (2) airbags to deploy when the
12 vehicle has not crashed, which is dangerous because it is shocking and difficult for
13 the driver to operate a vehicle when the airbag deploys without warning; and (3)
14 failures of other important post-crash operations of the safety system, such as
15 unlocking doors to facilitate escape or extraction of drivers and passengers by
16 emergency personnel, and shutting off a crashed vehicle’s fuel or power supply.

17 2631. The ZF and ST Defendants had a duty to disclose the ACU Defect to
18 the Colorado Plaintiff and Colorado State Class members because:

- 19 a. The ZF and ST Defendants had exclusive access to and far
20 superior knowledge about technical facts regarding the ACU
21 Defect;
- 22 b. Given the ACU Defect’s hidden and technical nature, the
23 Colorado Plaintiff and Colorado State Class members lack the
24 sophisticated expertise in vehicle components and electrical
25 phenomena that would be necessary to discover the ACU Defect
26 on their own;
- 27 c. The ZF and ST Defendants knew that the ACU Defect gave rise
28 to serious safety concerns for the consumers who use the

1 vehicles, and the Class Vehicles containing the ACU Defect
2 would have been a material fact to the Colorado Plaintiff's and
3 Colorado State Class members' decisions to buy or lease Class
4 Vehicles; and

5 d. The ZF Defendants made incomplete representations about the
6 safety and reliability of the Class Vehicles and their Occupant
7 Restraint System, while purposefully withholding material facts
8 about a known safety defect, creating a duty to disclose the
9 whole truth. Specifically, ZF Electronics USA, ZF Passive
10 Safety USA, and ZF Automotive USA worked with the Vehicle
11 Manufacturer Defendants on the design and inclusion of the
12 airbag readiness indicators in the Class Vehicles, which falsely
13 assured Plaintiffs and Class Members that the Occupant
14 Restraint Systems in the Class Vehicles would function properly
15 in a crash.

16 2632. In breach of their duties, the ZF and ST Defendants failed to disclose
17 that the Class Vehicles were not safe and reliable, and that their Occupant Restraint
18 Systems, including their airbags and seatbelt pretensioners could fail in the event of
19 a crash due to the ACU Defect.

20 2633. The ZF and ST Defendants intended for the Colorado Plaintiff and
21 Colorado State Class members to rely on their omissions—which they did by
22 purchasing and leasing the Class Vehicles at the prices they paid believing that the
23 Occupant Restraint Systems in their Class Vehicles would function properly.

24 2634. That reliance was reasonable, because a reasonable consumer would
25 not have expected that the Class Vehicles contained a safety defect that poses such
26 a serious risk. The ZF and ST Defendants knew that reasonable consumers expect
27 that their vehicle has working airbags and seatbelt pretensioners and would rely on
28 those facts in deciding whether to purchase, lease, or retain a new or used motor

1 vehicle. Whether a manufacturer's products are safe and reliable, and whether that
2 manufacturer stands behind its products, are material concerns to a consumer.
3 Especially here when at least nine people have already died due to the ACU Defect,
4 and many more have been injured.

5 2635. Additionally, the ZF and ST Defendants ensured that the Colorado
6 Plaintiff and Colorado State Class members did not discover this information by
7 actively concealing and misrepresenting the true nature of the Class Vehicles'
8 Occupant Restraint Systems to consumers and NHTSA.

9 2636. The ZF and ST Defendants actively concealed and suppressed these
10 material facts, in whole or in part, to maintain a market for the DS84 ACU, to
11 protect profits, and to avoid costly recalls that would expose them to liability for
12 those expenses and harm the commercial reputations of Defendants and their
13 products. They did so at the expense of the Colorado Plaintiff and Colorado State
14 Class members.

15 2637. To this day, the ZF and ST Defendants have not fully and adequately
16 disclosed the ACU Defect, and they continue to conceal material information about
17 the defect from consumers and NHTSA. The omitted and concealed facts were
18 material because a reasonable person would find them important in purchasing,
19 leasing, or retaining a new or used motor vehicle, and because they directly impact
20 the value of the Class Vehicles purchased or leased by the Colorado Plaintiff and
21 Colorado State Class members.

22 2638. Had they been aware of the ACU Defect in the Class Vehicles, and the
23 ZF and ST Defendants' callous disregard for safety, the Colorado Plaintiff and
24 Colorado State Class members either would not have paid as much as they did for
25 their Class Vehicles, or they would not have purchased or leased them.

26 2639. As alleged in Section V above, if the ZF and ST Defendants had fully
27 and adequately disclosed the ACU Defect to consumers and NHTSA, the Colorado
28 Plaintiff and Colorado State Class members would have seen such a disclosure.

1 2640. Accordingly, the ZF and ST Defendants are liable to the Colorado
2 Plaintiff and Colorado State Class members for their damages in an amount to be
3 proven at trial, including, but not limited to, their lost overpayment for the Class
4 Vehicles at the time of purchase or lease.

5 2641. The ZF and ST Defendants' acts were done maliciously, oppressively,
6 deliberately, with intent to defraud; in reckless disregard of the Colorado Plaintiff's
7 and Colorado State Class members' rights and well-being; and to enrich
8 themselves. The ZF and ST Defendants' misconduct warrants an assessment of
9 punitive damages, as permitted by law, in an amount sufficient to deter such
10 conduct in the future, which amount shall be determined according to proof at trial.

11 **g. Colorado Count 7: Unjust Enrichment Against Mitsubishi**
12 **Japan and Mitsubishi USA**

13 2642. Plaintiffs reallege and incorporate by reference all allegations in
14 Sections I-VI above as though fully set forth herein.

15 2643. The Colorado Plaintiff brings this count individually and on behalf of
16 members of the Colorado State Class who purchased or leased Mitsubishi Class
17 Vehicles, against Mitsubishi Japan and Mitsubishi USA.

18 2644. The Colorado Plaintiff and Colorado State Class members conferred
19 tangible and material economic benefits upon Mitsubishi Japan and Mitsubishi
20 USA when they purchased or leased the Mitsubishi Class Vehicles. Mitsubishi
21 Japan and Mitsubishi USA readily accepted and retained these benefits.

22 2645. The Colorado Plaintiff and Colorado State Class members would not
23 have purchased or leased the Mitsubishi Class Vehicles, or would have paid less for
24 them, had they known of the ACU Defect at the time of purchase or lease.
25 Therefore, Mitsubishi Japan and Mitsubishi USA profited from the sale and lease of
26 the Mitsubishi Class Vehicles to the detriment and expense of the Colorado
27 Plaintiff and Colorado State Class members.

28

1 2646. Mitsubishi Japan and Mitsubishi USA appreciated these monetary
2 benefits. These benefits were the expected result of the Mitsubishi Defendants
3 acting in their pecuniary interest at the expense of their customers. Mitsubishi Japan
4 and Mitsubishi USA knew of these benefits because they were aware of the ACU
5 Defect, yet they failed to disclose this knowledge and misled the Colorado Plaintiff
6 and Colorado State Class members regarding the nature and quality of the
7 Mitsubishi Class Vehicles while profiting from this deception.

8 2647. It would be unjust, inequitable, and unconscionable for Mitsubishi
9 Japan and Mitsubishi USA to retain these benefits, including because they were
10 procured as a result of Mitsubishi Japan’s and Mitsubishi USA’s wrongful conduct
11 alleged above.

12 2648. The Colorado Plaintiff and Colorado State Class members are entitled
13 to restitution of the benefits Mitsubishi Japan and Mitsubishi USA unjustly retained
14 and/or any amounts necessary to return the Colorado Plaintiff and Colorado State
15 Class members to the position they occupied prior to dealing with Mitsubishi Japan
16 and Mitsubishi USA, with such amounts to be determined at trial.

17 2649. The Colorado Plaintiff pleads this claim separately as well as in the
18 alternative to his claims for damages under Fed. R. Civ. P. 8(a)(3), because if the
19 Colorado Plaintiff’s claims for damages are dismissed or judgment is entered in
20 favor of Defendants, the Colorado Plaintiff will have no adequate legal remedy.

21 **5. Connecticut**

22 **a. Connecticut Count 1: Breach of Implied Warranty of**
23 **Merchantability (Conn. Gen. Stat. Ann. §§ 42a-2-314 and**
24 **§ 42a-2a-504) Against Honda USA**

25 2650. Plaintiffs reallege and incorporate by reference all preceding
26 allegations as though fully set forth herein.

27 2651. Plaintiff Paul Huitzil (hereinafter, “Connecticut Plaintiff”) brings this
28 count individually and on behalf of members of the Connecticut State Class who
purchased or leased Honda Class Vehicles, against Honda USA.

1 2652. A warranty that the Honda Class Vehicles were in merchantable
2 condition and fit for the ordinary purpose for which such goods are used is implied
3 by law pursuant to Conn. Gen. Stat. Ann. §§ 42A-2-314 and § 42a-2a-504.

4 2653. Honda USA is and was at all relevant times a “merchant” with respect
5 to motor vehicles under Conn. Gen. Stat. Ann. §§ 42a-2-104(1) and 42a-2-103(2),
6 and a “seller” of motor vehicles under § 42a-2-103(1)(c).

7 2654. With respect to leases, Honda USA is and was at all relevant times a
8 “lessor” of motor vehicles under Conn. Gen. Stat. Ann. § 42a-2A-102(a)(23).

9 2655. All Connecticut State Class members who purchased Honda Class
10 Vehicles in Connecticut are “buyers” within the meaning of Conn. Gen. Stat. Ann.
11 § 42a-2-103(1)(a).

12 2656. All Connecticut State Class members who leased Honda Class
13 Vehicles in Connecticut are “lessees” within the meaning of Conn. Gen. Stat. Ann.
14 § 42a-2A-102(a)(21).

15 2657. The Honda Class Vehicles are and were at all relevant times “goods”
16 within the meaning of Conn. Gen. Stat. Ann. §§ 42a-2-105(1) and 42a-2-103(2).

17 2658. The Honda Class Vehicles did not comply with the implied warranty
18 of merchantability because, at the time of sale and lease and at all times thereafter,
19 they were defective and not in merchantable condition, would not pass without
20 objection in the trade, and were not fit for the ordinary purpose for which vehicles
21 were used. Specifically, at the time they were sold and leased, the Honda Class
22 Vehicles contained the ACU Defect, which may cause the airbags and seatbelt
23 pretensioners to fail to deploy during a crash, the failure to unlock doors
24 automatically after a crash, the failure to turn off a fuel supply or high-voltage
25 battery after a crash, or the airbags to inadvertently deploy, all of which render the
26 Honda Class Vehicles inherently defective and dangerous.

27 2659. The Connecticut Plaintiff and Connecticut State Class members have
28 provided Honda USA with reasonable notice and opportunity to cure the breaches

1 of their implied warranties by way of the numerous NHTSA complaints filed
2 against them, and the individual notice letters sent by Connecticut State Class
3 members within a reasonable amount of time after the ACU Defect became public.
4 Additionally, on April 24, 2020, a notice letter was sent on behalf of the
5 Connecticut Plaintiff and Connecticut State Class members to Honda USA.

6 2660. Alternatively, the Connecticut Plaintiff and Connecticut State Class
7 members were excused from providing Honda USA with notice and an opportunity
8 to cure the breach, because it would have been futile. As alleged above, Honda
9 USA has long known that the Honda Class Vehicles contained the ACU Defect,
10 and that the ACU Defect has caused ACUs and ASICs to malfunction in crashes
11 involving Class Vehicles; however, to date, Honda USA has not instituted a recall
12 or any other repair program, or even acknowledged that the ACU Defect exists—
13 even though Honda Class Vehicles are subject to the NHTSA investigation.
14 Therefore, the Connecticut Plaintiff and Connecticut State Class members had no
15 reason to believe that Honda USA would have repaired the ACU Defect if the
16 Connecticut Plaintiff and Connecticut State Class members presented their Class
17 Vehicles to Honda USA for repair.

18 2661. As a direct and proximate result of Honda USA's breach of the
19 implied warranty of merchantability, the Connecticut Plaintiff and Connecticut
20 State Class members have been damaged through their overpayment at the time of
21 purchase or lease for Honda Class Vehicles with an undisclosed safety defect in an
22 amount to be proven at trial.

23 **b. Connecticut Count 2: Violation of the Connecticut Unlawful**
24 **Trade Practices Act (Conn. Gen. Stat. Ann. § 42-110a, et**
25 **seq.) Against Honda Japan, Honda USA, and Honda**
Engineering USA

26 2662. Plaintiffs reallege and incorporate by reference all preceding
27 allegations as though fully set forth herein.
28

1 2663. The Connecticut Plaintiff brings this count individually and on behalf
2 of members of the Connecticut State Class who purchased or leased Honda Class
3 Vehicles, against Honda Japan, Honda USA, and Honda Engineering USA.

4 2664. Honda Japan, Honda USA, and Honda Engineering USA, the
5 Connecticut Plaintiff, and Connecticut State Class members are “persons” within
6 the meaning of Conn. Gen. Stat. Ann. § 42-110a(3).

7 2665. Honda Japan, Honda USA, and Honda Engineering USA were and are
8 engaged in “trade” or “commerce” within the meaning of Conn. Gen. Stat. Ann.
9 § 42-110a(4).

10 2666. The Connecticut Unfair Trade Practices Act (“Connecticut UTPA”)
11 prohibits “unfair methods of competition and unfair or deceptive acts or practices in
12 the conduct of any trade or commerce.” Conn. Gen. Stat. Ann. § 42-110b(a).

13 2667. In the course of their business, Honda Japan, Honda USA, and Honda
14 Engineering USA, through their agents, employees, and/or subsidiaries, violated the
15 Connecticut UTPA by knowingly and intentionally misrepresenting, omitting,
16 concealing, and/or failing to disclose material facts regarding the reliability, safety,
17 and performance of the Honda Class Vehicles, the safety of their Occupant
18 Restraint Systems, and the ACU Defect, as detailed above.

19 2668. Honda Japan, Honda USA, and Honda Engineering USA had an
20 ongoing duty to the Connecticut Plaintiff and Connecticut State Class members to
21 refrain from unfair or deceptive practices under the Connecticut UTPA in the
22 course of their business. Specifically, Honda Japan, Honda USA, and Honda
23 Engineering USA owed the Connecticut Plaintiff and Connecticut State Class
24 members a duty to disclose all the material facts concerning the ACU Defect in the
25 Honda Class Vehicles because they possessed exclusive knowledge, they
26 intentionally concealed the ACU Defect from the Connecticut Plaintiff and
27 Connecticut State Class members, and/or they made misrepresentations that were
28 rendered misleading because they were contradicted by withheld facts.

1 2669. By misrepresenting the Honda Class Vehicles as safe and reliable and
2 the defective ACU and ASICs installed in them as properly-functioning and free
3 from defects, and by failing to disclose and actively concealing the dangers and risk
4 posed by the ACU Defect to both consumers and NHTSA, Honda Japan, Honda
5 USA, and Honda Engineering USA engaged in unfair methods of competition and
6 unfair or deceptive acts or practices in the conduct of trade or commerce, as
7 prohibited by Conn. Gen. Stat. § 42-110b(a).

8 2670. Honda Japan's, Honda USA's, and Honda Engineering USA's unfair
9 and deceptive acts or practices, including their misrepresentations, concealments,
10 omissions, and suppressions of material facts, were designed to mislead and had a
11 tendency or capacity to mislead and create a false impression in consumers that the
12 Honda Class Vehicles had properly-functioning and reliable airbags and seatbelts,
13 and that the Occupant Restraint System did not contain the ACU Defect and would
14 perform its intended function of activating the seatbelts and airbags during a
15 collision. Indeed, those misrepresentations, concealments, omissions, and
16 suppressions of material facts did in fact deceive reasonable consumers, including
17 the Connecticut Plaintiff and Connecticut State Class members, about the true
18 safety and reliability of Honda Class Vehicles and/or the defective ACUs and
19 ASICs installed in them, the quality of the Honda Class Vehicles, and the true value
20 of the Honda Class Vehicles.

21 2671. Honda Japan's, Honda USA's, and Honda Engineering USA's
22 misrepresentations, concealments, omissions, and suppressions of material facts
23 regarding the ACU Defect and true characteristics of the Occupant Restraint
24 Systems in the Honda Class Vehicles were material to the decisions of the
25 Connecticut Plaintiff and Connecticut State Class members to purchase and lease
26 those vehicles, as Honda Japan, Honda USA, and Honda Engineering USA
27 intended. The Connecticut Plaintiff and Connecticut State Class members were
28 exposed to those misrepresentations, concealments, omissions, and suppressions of

1 material facts, and relied on Honda Japan's, Honda USA's, and Honda Engineering
2 USA's misrepresentations that the Honda Class Vehicles and their Occupant
3 Restraint Systems were safe and reliable in deciding to purchase and lease Honda
4 Class Vehicles. Plaintiffs allege the information they relied upon in Section II.B
5 above. To aid review of this information, Exhibit 19 provides paragraph numbers
6 for each Plaintiff.

7 2672. The Connecticut Plaintiff's and Connecticut State Class members'
8 reliance was reasonable, as they had no way of discerning that Honda Japan's,
9 Honda USA's, and Honda Engineering USA's representations were false and
10 misleading, or otherwise learning the facts that Honda Japan, Honda USA, and
11 Honda Engineering USA had concealed or failed to disclose. The Connecticut
12 Plaintiff and Connecticut State Class members did not, and could not, unravel
13 Honda Japan's, Honda USA's, and Honda Engineering USA's deception on their
14 own.

15 2673. Had the Connecticut Plaintiff and Connecticut State Class members
16 known the truth about the ACU Defect, the Connecticut Plaintiff and Connecticut
17 State Class members would not have purchased or leased Honda Class Vehicles, or
18 would have paid significantly less for them.

19 2674. The Connecticut Plaintiff and Connecticut State Class members
20 suffered ascertainable losses and actual damages through their overpayment at the
21 time of purchase and lease for Honda Class Vehicles with an undisclosed safety
22 defect as a direct and proximate result of Honda Japan's, Honda USA's, and Honda
23 Engineering USA's concealment, misrepresentations, and/or failure to disclose
24 material information.

25 2675. Honda Japan's, Honda USA's, and Honda Engineering USA's
26 violations present a continuing risk to the Connecticut Plaintiff and Connecticut
27 State Class members, as well as to the general public, because the Class Vehicles
28 remain unsafe due to the defective ACUs and ASICs therein. Additionally, Honda

1 Japan's, Honda USA's, and Honda Engineering USA's unlawful acts and practices
2 complained of herein affect the public interest.

3 2676. Pursuant to Conn. Gen. Stat. Ann. § 42-110g, the Connecticut Plaintiff
4 and Connecticut State Class members seek an order enjoining Honda Japan's,
5 Honda USA's, and Honda Engineering USA's unfair or deceptive acts or practices
6 and awarding damages and any other just and proper relief available under the
7 Connecticut UTPA.

8 **c. Connecticut Count 3: Violation of the Connecticut Unlawful**
9 **Trade Practices Act (Conn. Gen. Stat. Ann. § 42-110a, et**
10 **seq.) Against ZF Electronics USA, ZF Passive Safety USA,**
11 **ZF Automotive USA, ZF TRW Corp., ZF Germany, ST**
12 **Italy, ST USA, and ST Malaysia**

13 2677. Plaintiffs reallege and incorporate by reference all preceding
14 allegations as though fully set forth herein.

15 2678. The Connecticut Plaintiff brings this count individually and on behalf
16 of members of the Connecticut State Class against ZF Electronics USA, ZF Passive
17 Safety USA, ZF Automotive USA, ZF TRW Corp., and ZF Germany (collectively,
18 the "ZF Defendants"), and ST Italy, ST Malaysia, and ST USA (collectively, the
19 "ST Defendants").

20 2679. The ZF Defendants, the ST Defendants, the Connecticut Plaintiff, and
21 Connecticut State Class members are "persons" within the meaning of Conn. Gen.
22 Stat. Ann. § 42-110a(3).

23 2680. The ZF and ST Defendants were and are engaged in "trade" or
24 "commerce" within the meaning of Conn. Gen. Stat. Ann. § 42-110a(4).

25 2681. The Connecticut Unfair Trade Practices Act ("Connecticut UTPA")
26 prohibits "unfair methods of competition and unfair or deceptive acts or practices in
27 the conduct of any trade or commerce." Conn. Gen. Stat. Ann. § 42-110b(a).

28 2682. The ZF and ST Defendants had an ongoing duty to the Connecticut
Plaintiff and Connecticut State Class members to refrain from unfair or deceptive
practices under the Connecticut UTPA in the course of their business. Specifically,

1 the ZF and ST Defendants owed the Connecticut Plaintiff and Connecticut State
2 Class members a duty to disclose all the material facts concerning the ACU Defect
3 in the Class Vehicles because they possessed exclusive knowledge of and
4 intentionally concealed the ACU Defect from the Connecticut Plaintiff and
5 Connecticut State Class members.

6 2683. In the course of their business, the ZF and ST Defendants, through
7 their agents, employees, and/or subsidiaries, violated the Connecticut UTPA by
8 knowingly and intentionally omitting, concealing, and failing to disclose material
9 facts regarding the existence, nature, and scope of the ACU Defect in the Class
10 Vehicles, as detailed above.

11 2684. Additionally, ZF Electronics USA, ZF Passive Safety USA, and ZF
12 Automotive USA, through their agents, employees, and/or subsidiaries, violated the
13 Connecticut UTPA by knowingly and intentionally misrepresenting the Class
14 Vehicles as safe and reliable and the defective ACU and ASICs installed in them as
15 properly-functioning and free from defects. Specifically, ZF Electronics USA, ZF
16 Passive Safety USA, and ZF Automotive USA worked with the Vehicle
17 Manufacturer Defendants on the design and inclusion of the airbag readiness
18 indicators in the Class Vehicles, which falsely assured Plaintiffs and Class
19 Members that the Occupant Restraint Systems in the Class Vehicles would function
20 properly in a crash.

21 2685. By misrepresenting, failing to disclose and actively concealing the
22 dangers and risk posed by the Class Vehicles due to the ACU Defect, the ZF and
23 ST Defendants engaged in deceptive trade practices prohibited by Conn. Gen. Stat.
24 § 42-110b, including failing to disclose material information.

25 2686. The ZF and ST Defendants' unfair or deceptive acts or practices,
26 including their misrepresentations, concealments, omissions, and suppressions of
27 material facts, were designed to mislead and had a tendency or capacity to mislead
28 and create a false impression in consumers that the Class Vehicles had properly-

1 functioning and reliable airbags and seatbelts, and that the Occupant Restraint
2 System did not contain the ACU Defect and would perform its intended function of
3 activating the seatbelts and airbags during a collision. Indeed, those
4 misrepresentations, concealments, omissions, and suppressions of material facts did
5 in fact deceive reasonable consumers, including the Connecticut Plaintiff and
6 Connecticut State Class members, about the true safety and reliability of Class
7 Vehicles and/or the defective ACUs and ASICs installed in them, the quality of the
8 Class Vehicles, and the true value of the Class Vehicles.

9 2687. The Connecticut Plaintiff and Connecticut State Class members
10 justifiably relied on the ZF and ST Defendants' misrepresentations, omissions, and
11 concealment, as they had no way of discerning that the Class Vehicles contained
12 the ACU Defect, as alleged above. The Connecticut Plaintiff and Connecticut State
13 Class members did not, and could not, unravel the ZF and ST Defendants'
14 deception on their own.

15 2688. The ZF and ST Defendants' misrepresentations and concealment of the
16 ACU Defect and true characteristics of the defective ACUs and ASICs in the Class
17 Vehicles were material to the Connecticut Plaintiff and Connecticut State Class
18 members, as the ZF and ST Defendants intended. Had they known the truth, the
19 Connecticut Plaintiff and Connecticut State Class members would not have
20 purchased or leased the Class Vehicles, or would have paid significantly less for
21 them.

22 2689. The Connecticut Plaintiff and Connecticut State Class members
23 suffered ascertainable losses and actual damages as a direct and proximate result of
24 the ZF and ST Defendants' misrepresentations, concealment and/or failure to
25 disclose material information.

26 2690. The ZF and ST Defendants' violations present a continuing risk to the
27 Connecticut Plaintiff and Connecticut State Class members, as well as to the
28 general public, because the Class Vehicles remain unsafe due to the defective

1 ACUs and ASICs therein. The ZF and ST Defendants’ unlawful acts and practices
2 complained of herein affect the public interest.

3 2691. Pursuant to Conn. Gen. Stat. Ann. § 42-110g, the Connecticut Plaintiff
4 and Connecticut State Class members seek an order enjoining the ZF and ST
5 Defendants’ unfair or deceptive acts or practices and awarding damages and any
6 other just and proper relief available under the Connecticut UTPA.

7 **d. Connecticut Count 4: Fraud by Omission and Concealment**
8 **Against Honda Japan, Honda USA, and Honda Engineering**
9 **USA**

10 2692. Plaintiffs reallege and incorporate by reference all preceding
11 allegations as though fully set forth herein.

12 2693. The Connecticut Plaintiff brings this count individually and on behalf
13 of members of the Connecticut State Class who purchased or leased Honda Class
14 Vehicles, against Honda Japan, Honda USA, and Honda Engineering USA.

15 2694. Honda Japan, Honda USA, and Honda Engineering USA are liable for
16 both fraudulent concealment and non-disclosure. *See, e.g.*, Restatement (Second) of
17 Torts §§ 550-51 (1977).

18 2695. As explained in Section IV.A, the ACU Defect in Class Vehicles poses
19 serious risks to vehicle occupants, including that it can cause: (1) airbags and
20 seatbelts not to activate during a crash because crashes can sometimes release
21 electrical transients, which cause the ACU to fail; (2) airbags to deploy when the
22 vehicle has not crashed, which is dangerous because it is shocking and difficult for
23 the driver to operate a vehicle when the airbag deploys without warning; and (3)
24 failures of other important post-crash operations of the safety system, such as
25 unlocking doors to facilitate escape or extraction of drivers and passengers by
26 emergency personnel, and shutting off a crashed vehicle’s fuel or power supply.

27 2696. Honda Japan, Honda USA, and Honda Engineering USA had a duty to
28 disclose the ACU Defect the Connecticut Plaintiff and Connecticut State Class
members because:

- 1 a. Honda Japan, Honda USA, and Honda Engineering USA had
2 exclusive access to and far superior knowledge about technical
3 facts regarding the ACU Defect;
- 4 b. Given the ACU Defect's hidden and technical nature, the
5 Connecticut Plaintiff and Connecticut State Class members lack
6 the sophisticated expertise in vehicle components and electrical
7 phenomena that would be necessary to discover the ACU Defect
8 on their own;
- 9 c. Honda Japan, Honda USA, and Honda Engineering USA knew
10 that the ACU Defect gave rise to serious safety concerns for the
11 consumers who use the vehicles, and the Honda Class Vehicles
12 containing the ACU Defect would have been a material fact to
13 the Connecticut Plaintiff's and Connecticut State Class
14 members' decisions to buy or lease Honda Class Vehicles; and
- 15 d. Honda Japan, Honda USA, and Honda Engineering USA made
16 incomplete representations about the safety and reliability of the
17 Honda Class Vehicles and their Occupant Restraint System,
18 while purposefully withholding material facts about a known
19 safety defect. In uniform advertising and materials provided
20 with each Class Vehicle, Honda Japan, Honda USA, and Honda
21 Engineering USA intentionally concealed, suppressed, and
22 failed to disclose to the Connecticut Plaintiff and Connecticut
23 State Class members that the Honda Class Vehicles contained
24 the ACU Defect. Because they volunteered to provide
25 information about the Honda Class Vehicles that they marketed
26 and offered for sale and lease to the Connecticut Plaintiff and
27 Connecticut State Class members, Honda Japan, Honda USA,
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1 and Honda Engineering USA had the duty to disclose the whole
2 truth.

3 2697. In breach of their duties, Honda Japan, Honda USA, and Honda
4 Engineering USA failed to disclose that the Honda Class Vehicles were not safe
5 and reliable, and that their Occupant Restraint Systems, including their airbags and
6 seatbelt pretensioners could fail in the event of a crash due to the ACU Defect.

7 2698. Honda Japan, Honda USA, and Honda Engineering USA intended for
8 the Connecticut Plaintiff and Connecticut State Class members to rely on their
9 omissions—which they did by purchasing and leasing the Honda Class Vehicles at
10 the prices they paid believing that the Occupant Restraint Systems in their Class
11 Vehicles would function properly.

12 2699. That reliance was reasonable, because a reasonable consumer would
13 not have expected that the Honda Class Vehicles contained a safety defect that
14 poses such a serious risk. Honda Japan, Honda USA, and Honda Engineering USA
15 knew that reasonable consumers expect that their vehicle has working airbags and
16 seatbelt pretensioners and would rely on those facts in deciding whether to
17 purchase, lease, or retain a new or used motor vehicle. Whether a manufacturer's
18 products are safe and reliable, and whether that manufacturer stands behind its
19 products, are material concerns to a consumer. Especially here when at least nine
20 people have already died due to the ACU Defect, and many more have been
21 injured.

22 2700. Additionally, Honda Japan, Honda USA, and Honda Engineering USA
23 ensured that the Connecticut Plaintiff and Connecticut State Class members did not
24 discover this information by actively concealing and misrepresenting the true nature
25 of the Honda Class Vehicles' Occupant Restraint Systems to consumers and
26 NHTSA.

27 2701. Honda Japan, Honda USA, and Honda Engineering USA actively
28 concealed and suppressed these material facts, in whole or in part, to maintain a

1 market for their Class Vehicles, to protect profits, and to avoid costly recalls that
2 would expose them to liability for those expenses and harm the commercial
3 reputations of Defendants and their products. They did so at the expense of the
4 Connecticut Plaintiff and Connecticut State Class members.

5 2702. To this day, Honda Japan, Honda USA, and Honda Engineering USA
6 have not fully and adequately disclosed the ACU Defect, and they continue to
7 conceal material information about the defect from consumers and NHTSA. The
8 omitted and concealed facts were material because a reasonable person would find
9 them important in purchasing, leasing, or retaining a new or used motor vehicle,
10 and because they directly impact the value of the Honda Class Vehicles purchased
11 or leased by the Connecticut Plaintiff and Connecticut State Class members.

12 2703. Had they been aware of the ACU Defect in the Honda Class Vehicles,
13 and Honda Japan's, Honda USA's, and Honda Engineering USA's callous
14 disregard for safety, the Connecticut Plaintiff and Connecticut State Class members
15 either would not have paid as much as they did for their Class Vehicles, or they
16 would not have purchased or leased them.

17 2704. As alleged in Section V above, if Honda Japan, Honda USA, and
18 Honda Engineering USA had fully and adequately disclosed the ACU Defect to
19 consumers and NHTSA, the Connecticut Plaintiff and Connecticut State Class
20 members would have seen such a disclosure.

21 2705. Accordingly, Honda Japan, Honda USA, and Honda Engineering USA
22 are liable to the Connecticut Plaintiff and Connecticut State Class members for their
23 damages in an amount to be proven at trial, including, but not limited to, their lost
24 overpayment for the Honda Class Vehicles at the time of purchase or lease.

25 2706. Honda Japan's, Honda USA's, and Honda Engineering USA's acts
26 were done maliciously, oppressively, deliberately, with intent to defraud; in
27 reckless disregard of the Connecticut Plaintiff's and Connecticut State Class
28 members' rights and well-being; and to enrich themselves. Honda Japan's, Honda

1 USA's, and Honda Engineering USA's misconduct warrants an assessment of
2 punitive damages, as permitted by law, in an amount sufficient to deter such
3 conduct in the future, which amount shall be determined according to proof at trial.

4 e. **Connecticut Count 5: Fraud by Omission and Concealment**
5 **Against ZF Electronics USA, ZF Passive Safety USA, ZF**
6 **Automotive USA, ZF TRW Corp., ZF Germany, ST Italy,**
7 **ST USA, and ST Malaysia**

7 2707. Plaintiffs reallege and incorporate by reference all preceding
8 allegations as though fully set forth herein.

9 2708. The Connecticut Plaintiff brings this count individually and on behalf
10 of members of the Connecticut State Class who purchased or leased Class Vehicles,
11 against ZF Electronics USA, ZF Passive Safety USA, ZF Automotive USA, ZF
12 TRW Corp., and ZF Germany (collectively, the "ZF Defendants"), and ST Italy, ST
13 Malaysia, and ST USA (collectively, the "ST Defendants").

14 2709. The ZF and ST Defendants are liable for both fraudulent concealment
15 and non-disclosure. *See, e.g.*, Restatement (Second) of Torts §§ 550-51 (1977).

16 2710. As explained in Section IV.A, the ACU Defect in Class Vehicles poses
17 serious risks to vehicle occupants, including that it can cause: (1) airbags and
18 seatbelts not to activate during a crash because crashes can sometimes release
19 electrical transients, which cause the ACU to fail; (2) airbags to deploy when the
20 vehicle has not crashed, which is dangerous because it is shocking and difficult for
21 the driver to operate a vehicle when the airbag deploys without warning; and (3)
22 failures of other important post-crash operations of the safety system, such as
23 unlocking doors to facilitate escape or extraction of drivers and passengers by
24 emergency personnel, and shutting off a crashed vehicle's fuel or power supply.

25 2711. The ZF and ST Defendants had a duty to disclose the ACU Defect to
26 the Connecticut Plaintiff and Connecticut State Class members because:

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- a. The ZF and ST Defendants had exclusive access to and far superior knowledge about technical facts regarding the ACU Defect;
- b. Given the ACU Defect’s hidden and technical nature, the Connecticut Plaintiff and Connecticut State Class members lack the sophisticated expertise in vehicle components and electrical phenomena that would be necessary to discover the ACU Defect on their own;
- c. The ZF and ST Defendants knew that the ACU Defect gave rise to serious safety concerns for the consumers who use the vehicles, and the Class Vehicles containing the ACU Defect would have been a material fact to the Connecticut Plaintiff’s and Connecticut State Class members’ decisions to buy or lease Class Vehicles; and
- d. The ZF Defendants made incomplete representations about the safety and reliability of the Class Vehicles and their Occupant Restraint System, while purposefully withholding material facts about a known safety defect, creating a duty to disclose the whole truth. Specifically, ZF Electronics USA, ZF Passive Safety USA, and ZF Automotive USA worked with the Vehicle Manufacturer Defendants on the design and inclusion of the airbag readiness indicators in the Class Vehicles, which falsely assured Plaintiffs and Class Members that the Occupant Restraint Systems in the Class Vehicles would function properly in a crash.

2712. In breach of their duties, the ZF and ST Defendants failed to disclose that the Class Vehicles were not safe and reliable, and that their Occupant Restraint

1 Systems, including their airbags and seatbelt pretensioners could fail in the event of
2 a crash due to the ACU Defect.

3 2713. The ZF and ST Defendants intended for the Connecticut Plaintiff and
4 Connecticut State Class members to rely on their omissions—which they did by
5 purchasing and leasing the Class Vehicles at the prices they paid believing that the
6 Occupant Restraint Systems in their Class Vehicles would function properly.

7 2714. That reliance was reasonable, because a reasonable consumer would
8 not have expected that the Class Vehicles contained a safety defect that poses such
9 a serious risk. The ZF and ST Defendants knew that reasonable consumers expect
10 that their vehicle has working airbags and seatbelt pretensioners and would rely on
11 those facts in deciding whether to purchase, lease, or retain a new or used motor
12 vehicle. Whether a manufacturer's products are safe and reliable, and whether that
13 manufacturer stands behind its products, are material concerns to a consumer.
14 Especially here when at least nine people have already died due to the ACU Defect,
15 and many more have been injured.

16 2715. Additionally, the ZF and ST Defendants ensured that the Connecticut
17 Plaintiff and Connecticut State Class members did not discover this information by
18 actively concealing and misrepresenting the true nature of the Class Vehicles'
19 Occupant Restraint Systems to consumers and NHTSA.

20 2716. The ZF and ST Defendants actively concealed and suppressed these
21 material facts, in whole or in part, to maintain a market for the DS84 ACU, to
22 protect profits, and to avoid costly recalls that would expose them to liability for
23 those expenses and harm the commercial reputations of Defendants and their
24 products. They did so at the expense of the Connecticut Plaintiff and Connecticut
25 State Class members.

26 2717. To this day, the ZF and ST Defendants have not fully and adequately
27 disclosed the ACU Defect, and they continue to conceal material information about
28 the defect from consumers and NHTSA. The omitted and concealed facts were

1 material because a reasonable person would find them important in purchasing,
2 leasing, or retaining a new or used motor vehicle, and because they directly impact
3 the value of the Class Vehicles purchased or leased by the Connecticut Plaintiff and
4 Connecticut State Class members.

5 2718. Had they been aware of the ACU Defect in the Class Vehicles, and the
6 ZF and ST Defendants' callous disregard for safety, the Connecticut Plaintiff and
7 Connecticut State Class members either would not have paid as much as they did
8 for their Class Vehicles, or they would not have purchased or leased them.

9 2719. As alleged in Section V above, if the ZF and ST Defendants had fully
10 and adequately disclosed the ACU Defect to consumers and NHTSA, the
11 Connecticut Plaintiff and Connecticut State Class members would have seen such a
12 disclosure.

13 2720. Accordingly, the ZF and ST Defendants are liable to the Connecticut
14 Plaintiff and Connecticut State Class members for their damages in an amount to be
15 proven at trial, including, but not limited to, their lost overpayment for the Class
16 Vehicles at the time of purchase or lease.

17 2721. The ZF and ST Defendants' acts were done maliciously, oppressively,
18 deliberately, with intent to defraud; in reckless disregard of the Connecticut
19 Plaintiff's and Connecticut State Class members' rights and well-being; and to
20 enrich themselves. The ZF and ST Defendants' misconduct warrants an assessment
21 of punitive damages, as permitted by law, in an amount sufficient to deter such
22 conduct in the future, which amount shall be determined according to proof at trial.

23 **f. Connecticut Count 6: Unjust Enrichment Against Honda**
24 **Japan, Honda USA, and Honda Engineering USA**

25 2722. Plaintiffs reallege and incorporate by reference all allegations in
26 Sections I-VI above as though fully set forth herein.

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1 2723. The Connecticut Plaintiff brings this count individually and on behalf
2 of members of the Connecticut State Class who purchased or leased Honda Class
3 Vehicles, against Honda Japan, Honda USA, and Honda Engineering USA.

4 2724. The Connecticut Plaintiff and Connecticut State Class members
5 conferred tangible and material monetary benefits upon Honda Japan, Honda USA,
6 and Honda Engineering USA when they purchased or leased the Honda Class
7 Vehicles. Honda Japan, Honda USA, and Honda Engineering USA readily accepted
8 and retained these benefits.

9 2725. The Connecticut Plaintiff and Connecticut State Class members would
10 not have purchased or leased the Honda Class Vehicles, or would have paid less for
11 them, had they known of the ACU Defect at the time of purchase or lease.
12 Therefore, Honda Japan, Honda USA, and Honda Engineering USA profited from
13 the sale and lease of the Honda Class Vehicles to the detriment and expense of the
14 Connecticut Plaintiff and Connecticut State Class members.

15 2726. Honda Japan, Honda USA, and Honda Engineering USA appreciated
16 these monetary benefits. These benefits were the expected result of Honda Japan,
17 Honda USA, and Honda Engineering USA acting in their pecuniary interest at the
18 expense of their customers. Honda Japan, Honda USA, and Honda Engineering
19 USA knew of these benefits because they were aware of the ACU Defect, yet they
20 failed to disclose this knowledge and misled the Connecticut Plaintiff and
21 Connecticut State Class members regarding the nature and quality of the Honda
22 Class Vehicles while profiting from this deception.

23 2727. It would be unjust, inequitable, and unconscionable for Honda Japan,
24 Honda USA, and Honda Engineering USA to retain these benefits, including
25 because they were procured as a result of Honda Japan's, Honda USA's, and Honda
26 Engineering USA's wrongful conduct alleged above.

27 2728. The Connecticut Plaintiff and Connecticut State Class members are
28 entitled to restitution of the benefits Honda Japan, Honda USA, and Honda

1 Engineering USA unjustly retained and/or any amounts necessary to return the
2 Connecticut Plaintiff and Connecticut State Class members to the position they
3 occupied prior to dealing with Honda Japan, Honda USA, and Honda Engineering
4 USA, with such amounts to be determined at trial.

5 2729. The Connecticut Plaintiff pleads this claim separately as well as in the
6 alternative to his claims for damages under Fed. R. Civ. P. 8(a)(3), because if the
7 Connecticut Plaintiff's claims for damages are dismissed or judgment is entered in
8 favor of Defendants, the Connecticut Plaintiff will have no adequate legal remedy.

9 **6. Florida**

10 **a. Florida Count 1: Breach of Express Warranty (Fla. Stat. §§ 672.313 and 680.21) Against FCA, Honda Japan, Honda**
11 **USA, Hyundai Korea, Hyundai USA, Kia Korea, Kia USA,**
12 **and Toyota Sales USA**

13 2730. Plaintiffs reallege and incorporate by reference all preceding
14 allegations as though fully set forth herein.

15 2731. Plaintiffs Moises Senti and Maximillian Accetta bring this count
16 individually and on behalf of members of the Florida State Class who purchased or
17 leased FCA Class Vehicles, against FCA.

18 2732. Plaintiffs Fredericka McPherson and Brian Chaiken bring this count
19 individually and on behalf of members of the Florida State Class who purchased or
20 leased Honda Class Vehicles, against Honda Japan and Honda USA.

21 2733. Plaintiff Carl Paul Maurilus brings this count individually and on
22 behalf of members of the Florida State Class who purchased or leased Hyundai
23 Class Vehicles, against Hyundai Korea and Hyundai USA.

24 2734. Plaintiffs John Colbert and Lawrence Graziano bring this count
25 individually and on behalf of members of the Florida State Class who purchased or
26 leased Kia Class Vehicles, against Kia Korea and Kia USA.

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1 2735. Plaintiffs Samuel Choc, and Tatiana Gales bring this count
2 individually and on behalf of members of the Florida State Class who purchased or
3 leased Toyota Class Vehicles, against Toyota Sales USA.

4 2736. For purposes of the count, Plaintiffs Senti, Accetta, McPherson,
5 Chaiken, Maurilus, Colbert, Graziano, Choc, and Gales shall be referred to as the
6 “Florida Plaintiffs.”

7 2737. FCA, Honda Japan, Honda USA, Hyundai Korea, Hyundai USA, Kia
8 Korea, Kia USA, and Toyota Sales USA are and were at all relevant times
9 “merchants” with respect to motor vehicles under Fla. Stat. §§ 672.104(1) and
10 680.1031(3)(k), and “sellers” of motor vehicles under § 672.103(1)(d).

11 2738. With respect to leases, FCA, Honda Japan, Honda USA, Honda
12 Engineering USA, Hyundai Korea, Hyundai USA, Kia Korea, Kia USA, and
13 Toyota Sales USA are and were at all relevant times “lessors” of motor vehicles
14 under Fla. Stat. § 680.1031(1)(p).

15 2739. All Florida State Class members who purchased FCA, Honda,
16 Hyundai, Kia, and Toyota Class Vehicles in Florida are “buyers” within the
17 meaning of Fla. Stat. §§ 672.103(1)(a).

18 2740. All Florida State Class members who leased FCA, Honda, Hyundai,
19 Kia, and Toyota Class Vehicles in Florida are “lessees” within the meaning of Fla.
20 Stat. § 680.1031(1)(n).

21 2741. FCA, Honda, Hyundai, Kia, and Toyota Class Vehicles are and were at
22 all relevant times “goods” within the meaning of Fla. Stat. §§ 672.105(1) and
23 680.1031(1)(h).

24 2742. In connection with the purchase or lease of FCA, Honda, Hyundai,
25 Kia, and Toyota Class Vehicles, FCA, Honda Japan, Honda USA, Hyundai Korea,
26 Hyundai USA, Kia Korea, Kia USA, and Toyota Sales USA provided the Florida
27 Plaintiffs and Florida State Class members with warranties in the form of: (a)
28 written express warranties covering the repair or replacement of components that

1 are defective in materials or workmanship, and (b) descriptions of the FCA, Honda,
2 Hyundai, Kia, and Toyota Class Vehicles as safe and reliable, and that their
3 Occupant Restraint Systems, including their airbags and seatbelt pretensioners,
4 would function properly in the event of a crash.

5 2743. However, FCA, Honda Japan, Honda USA, Hyundai Korea, Hyundai
6 USA, Kia Korea, Kia USA, and Toyota Sales USA knew or should have known
7 that the warranties were false and/or misleading. Specifically, they were aware of
8 the ACU Defect in the FCA, Honda, Hyundai, Kia, and Toyota Class Vehicles,
9 which made the vehicles inherently defective and dangerous at the time that they
10 were sold and leased to the Florida Plaintiffs and Florida State Class members.

11 2744. The Florida Plaintiffs and Florida State Class members were aware the
12 FCA, Honda, Hyundai, Kia, and Toyota Class Vehicles were covered by express
13 warranties, and those warranties were an essential part of the bargain between them
14 and FCA, Honda Japan, Honda USA, Hyundai Korea, Hyundai USA, Kia Korea,
15 Kia USA, and Toyota Sales USA when the Florida Plaintiffs and Florida State
16 Class members unknowingly purchased and leased FCA, Honda, Hyundai, Kia, and
17 Toyota Class Vehicles that came equipped with defective ACUs and ASICs.

18 2745. FCA, Honda Japan, Honda USA, Hyundai Korea, Hyundai USA, Kia
19 Korea, Kia USA, and Toyota Sales USA misrepresented the FCA, Honda, Hyundai,
20 Kia, and Toyota Class Vehicles as safe and reliable while concealing that they
21 contained the ACU Defect, the Florida Plaintiffs and Florida State Class members
22 were exposed to those misrepresentations, and the Florida Plaintiffs and Florida
23 State Class members had no way of discerning that those representations were false
24 and misleading or otherwise learning the material facts that FCA, Honda Japan,
25 Honda USA, Hyundai Korea, Hyundai USA, Kia Korea, Kia USA, and Toyota
26 Sales USA had concealed or failed to disclose. Accordingly, the Florida Plaintiffs
27 and Florida State Class members reasonably relied on those Defendants' express
28 warranties when purchasing or leasing their FCA, Honda, Hyundai, Kia, and

1 Toyota Class Vehicles. Plaintiffs allege the information they relied upon in Section
2 II.B above. To aid review of this information, Exhibit 19 provides paragraph
3 numbers for each Plaintiff.

4 2746. The Florida Plaintiffs and Florida State Class members reasonably
5 relied on of FCA's, Honda Japan's, Honda USA's, Hyundai Korea's, Hyundai
6 USA's, Kia Korea's, Kia USA's, and Toyota Sales USA's express warranties when
7 purchasing or leasing their FCA, Honda, Hyundai, Kia, and Toyota Class Vehicles.

8 2747. FCA, Honda Japan, Honda USA, Hyundai Korea, Hyundai USA, Kia
9 Korea, Kia USA, and Toyota Sales USA knowingly breached their express
10 warranties to repair defects in materials and workmanship by failing to repair the
11 ACU Defect or replace the defective ACUs and ASICs in the FCA, Honda,
12 Hyundai, Kia, and Toyota Class Vehicles. FCA, Honda Japan, Honda USA,
13 Hyundai Korea, Hyundai USA, Kia Korea, Kia USA, and Toyota Sales USA also
14 breached their express warranties by selling and leasing FCA, Honda, Hyundai,
15 Kia, and Toyota Class Vehicles with a defect that was never disclosed to the Florida
16 Plaintiffs and Florida State Class members.

17 2748. The Florida Plaintiffs and Florida State Class members have provided
18 FCA, Honda Japan, Honda USA, Hyundai Korea, Hyundai USA, Kia Korea, Kia
19 USA, and Toyota Sales USA with reasonable notice and opportunity to cure the
20 breaches of their express warranties by way of the numerous NHTSA complaints
21 filed against them, and the individual notice letters sent by Florida State Class
22 members within a reasonable amount of time after the ACU Defect became public.
23 Additionally, a notice letter was sent on behalf of the Florida Plaintiffs and Florida
24 State Class members to FCA, Honda Japan, Honda USA, Hyundai Korea, Hyundai
25 USA, Kia Korea, Kia USA, and Toyota Sales USA, on April 24, 2020.

26 2749. Alternatively, the Florida Plaintiffs and Florida State Class members
27 were excused from providing FCA, Honda Japan, Honda USA, Hyundai Korea,
28 Hyundai USA, Kia Korea, Kia USA, and Toyota Sales USA with notice and an

1 opportunity to cure the breach, because it would have been futile. As alleged above,
2 FCA, Honda Japan, Honda USA, Hyundai Korea, Hyundai USA, Kia Korea, Kia
3 USA, and Toyota Sales USA have long known that the FCA, Honda, Hyundai, Kia,
4 and Toyota Class Vehicles contained the ACU Defect, and that the ACU Defect has
5 caused ACUs and ASICs to malfunction in crashes involving Class Vehicles;
6 however, to date, Honda Japan and Honda USA have not instituted a recall or any
7 other repair program, or even acknowledged that the ACU Defect exists—even
8 though Honda Class Vehicles are subject to the NHTSA investigation. Similarly,
9 FCA, Hyundai Korea, Hyundai USA, Kia Korea, Kia USA, and Toyota Sales USA
10 have not instituted a recall or any other repair program with respect to the
11 unrecalled FCA, Hyundai, Kia, and Toyota Class Vehicles, or even acknowledged
12 that the ACU Defect exists in all of those Class Vehicles, including the recalled
13 FCA, Hyundai, Kia, and Toyota Class Vehicles. Therefore, they have refused to
14 recall or repair defective FCA, Hyundai, Kia, and Toyota Class Vehicles, and for
15 those that were recalled, the repair was inadequate because it did not fix the ACU
16 Defect. As such, the Florida Plaintiffs and Florida State Class members had no
17 reason to believe that FCA, Honda Japan, Honda USA, Hyundai Korea, Hyundai
18 USA, Kia Korea, Kia USA, and Toyota Sales USA would have repaired the ACU
19 Defect if the Florida Plaintiffs and Florida State Class members presented their
20 FCA, Honda, Hyundai, Kia, and Toyota Class Vehicles to them for repair.

21 2750. As a direct and proximate result of FCA's, Honda Japan's, Honda
22 USA's, Hyundai Korea's, Hyundai USA's, Kia Korea's, Kia USA's, and Toyota
23 Sales USA's breach of their express warranties, the FCA, Honda, Hyundai, Kia,
24 and Toyota Class Vehicles were and are defective and the ACU Defect in the
25 Florida Plaintiffs' and Florida State Class members' Class Vehicles were not
26 remedied. Therefore, the Florida Plaintiffs and Florida State Class members have
27 been damaged, in an amount to be proven at trial, through their overpayment at the
28

1 time of purchase or lease for the FCA, Honda, Hyundai, Kia, and Toyota Class
2 Vehicles with an undisclosed safety defect that would not be remedied.

3 **b. Florida Count 2: Breach of Implied Warranty of**
4 **Merchantability (Fla. Stat. §§ 672.314 and 680.212) Against**
5 **FCA, Honda USA, Hyundai USA, Kia USA, and Toyota**
6 **Sales USA**

7 2751. Plaintiffs reallege and incorporate by reference all preceding
8 allegations as though fully set forth herein.

9 2752. Plaintiffs Moises Senti and Maximillian Accetta bring this count
10 individually and on behalf of members of the Florida State Class who purchased or
11 leased FCA Class Vehicles, against FCA.

12 2753. Plaintiffs Fredericka McPherson and Brian Chaiken bring this count
13 individually and on behalf of members of the Florida State Class who purchased or
14 leased Honda Class Vehicles, against Honda USA.

15 2754. Plaintiff Carl Paul Maurilus brings this count individually and on
16 behalf of members of the Florida State Class who purchased or leased Hyundai
17 Class Vehicles, against Hyundai USA.

18 2755. Plaintiffs John Colbert and Lawrence Graziano bring this count
19 individually and on behalf of members of the Florida State Class who purchased or
20 leased Kia Class Vehicles, against Kia USA.

21 2756. Plaintiffs Samuel Choc and Tatiana Gales bring this count individually
22 and on behalf of members of the Florida State Class who purchased or leased
23 Toyota Class Vehicles, against Toyota Sales USA.

24 2757. For purposes of the count, Plaintiffs Senti, Accetta, McPherson,
25 Chaiken, Maurilus, Colbert, Graziano, Choc, and Gales shall be referred to as the
26 “Florida Plaintiffs.”

27 2758. The Florida Plaintiffs purchased their Class Vehicles from FCA,
28 Honda USA, Hyundai USA, Kia USA, and Toyota Sales USA authorized dealers,
and are therefore in privity with those Defendants. Moreover, the Florida Plaintiffs

1 were intended and direct beneficiaries of agreements between FCA, Honda USA,
2 Hyundai USA, Kia USA, and Toyota Sales USA and their dealers regarding sales
3 and leases of the FCA, Honda, Hyundai, Kia, and Toyota Class Vehicles.

4 2759. A warranty that the FCA, Honda, Hyundai, Kia, and Toyota Class
5 Vehicles were in merchantable condition and fit for the ordinary purpose for which
6 such goods are used is implied by law pursuant to Fla. Stat. §§ 672.314 and
7 680.212.

8 2760. FCA, Honda USA, Hyundai USA, Kia USA, and Toyota Sales USA
9 are and were at all relevant times “merchants” with respect to motor vehicles under
10 Fla. Stat. §§ 672.104(1) and 680.1031(3)(k), and “sellers” of motor vehicles under
11 § 672.103(1)(d).

12 2761. FCA, Honda USA, Hyundai USA, Kia USA, and Toyota Sales USA
13 are and were at all relevant times “lessors” of motor vehicles under Fla. Stat.
14 § 680.1031(1)(p).

15 2762. All Florida State Class members who purchased FCA, Honda,
16 Hyundai, Kia, and Toyota Class Vehicles in Florida are “buyers” within the
17 meaning of Fla. Stat. §§ 672.103(1)(a).

18 2763. All Florida State Class members who leased FCA, Honda, Hyundai,
19 Kia, and Toyota Class Vehicles in Florida are “lessees” within the meaning of Fla.
20 Stat. § 680.1031(1)(n).

21 2764. The FCA, Honda, Hyundai, Kia, and Toyota Class Vehicles are and
22 were at all relevant times “goods” within the meaning of Fla. Stat. §§ 672.105(1)
23 and 680.1031(1)(h).

24 2765. The FCA, Honda, Hyundai, Kia, and Toyota Class Vehicles did not
25 comply with the implied warranty of merchantability because, at the time of sale
26 and lease and at all times thereafter, they were defective and not in merchantable
27 condition, would not pass without objection in the trade, and were not fit for the
28 ordinary purpose for which vehicles were used. Specifically, at the time they were

1 sold and leased, the FCA, Honda, Hyundai, Kia, and Toyota Class Vehicles
2 contained the ACU Defect, which may cause the airbags and seatbelt pretensioners
3 to fail to deploy during a crash, the failure to unlock doors automatically after a
4 crash, the failure to turn off a fuel supply or high-voltage battery after a crash, or
5 the airbags to inadvertently deploy, all of which render the FCA, Honda, Hyundai,
6 Kia, and Toyota Class Vehicles inherently defective and dangerous.

7 2766. The Florida Plaintiffs and Florida State Class members have provided
8 FCA, Honda USA, Hyundai USA, Kia USA, and Toyota Sales USA with
9 reasonable notice and opportunity to cure the breaches of their express warranties
10 by way of the numerous NHTSA complaints filed against them, and individual
11 notice letters sent by the Florida State Class members within a reasonable amount
12 of time after the ACU Defect became public. Additionally, a notice letter was sent
13 on behalf of the Florida Plaintiffs and Florida State Class members to FCA, Honda
14 USA, Hyundai USA, Kia USA, and Toyota Sales USA on April 24, 2020.

15 2767. Alternatively, the Florida Plaintiffs and Florida State Class members
16 were excused from providing FCA, Honda USA, Hyundai USA, Kia USA, and
17 Toyota Sales USA with notice and an opportunity to cure the breach, because it
18 would have been futile. As alleged above, FCA, Honda USA, Hyundai USA, Kia
19 USA, and Toyota Sales USA have long known that the FCA, Honda, Hyundai, Kia,
20 and Toyota Class Vehicles contained the ACU Defect, and that the ACU Defect has
21 caused ACUs and ASICs to malfunction in crashes involving Class Vehicles;
22 however, to date, Honda USA has not instituted a recall or any other repair
23 program, or even acknowledged that the ACU Defect exists—even though Honda
24 Class Vehicles are subject to the NHTSA investigation. Similarly, FCA, Hyundai
25 USA, Kia USA, and Toyota Sales USA have not instituted a recall or any other
26 repair program with respect to the unrecalled FCA, Hyundai, Kia, and Toyota Class
27 Vehicles, or even acknowledged that the ACU Defect exists in all of those Class
28 Vehicles, including the recalled FCA, Hyundai, Kia, and Toyota Class Vehicles.

1 Therefore, they have refused to recall or repair defective FCA, Hyundai, Kia, and
2 Toyota Class Vehicles, and for those that were recalled, the repair was inadequate
3 because it did not fix the ACU Defect. As such, the Florida Plaintiffs and Florida
4 State Class members had no reason to believe that FCA, Honda USA, Hyundai
5 USA, Kia USA, and Toyota Sales USA would have repaired the ACU Defect if the
6 Florida Plaintiffs and Florida State Class members presented their FCA, Honda,
7 Hyundai, Kia, and Toyota Class Vehicles to them for repair.

8 2768. As a direct and proximate result of FCA's, Honda USA's, Hyundai
9 USA's, Kia USA's, Toyota Sales USA's breach of the implied warranty of
10 merchantability, the Florida Plaintiffs and Florida State Class members have been
11 damaged in an amount to be proven at trial.

12 **c. Florida Count 3: Violation of the Florida Deceptive & Unfair Trade Practices Act (Fla. Stat. § 501.201, et seq.)**
13 **Against FCA, Honda Japan, Honda USA, Honda**
14 **Engineering USA, Hyundai Korea, Hyundai USA, Kia**
15 **Korea, Kia USA, Toyota USA, and Toyota Sales USA⁷**

16 2769. Plaintiffs reallege and incorporate by reference all preceding
17 allegations as though fully set forth herein.

18 2770. Plaintiffs Moises Senti and Maximillian Accetta bring this count
19 individually and on behalf of members of the Florida State Class who purchased or
20 leased FCA Class Vehicles, against FCA.

21 2771. Plaintiffs Fredericka McPherson and Brian Chaiken bring this count
22 individually and on behalf of members of the Florida State Class who purchased or
23 leased Honda Class Vehicles, against Honda Japan, Honda USA, and Honda
24 Engineering USA.

25 2772. Plaintiff Carl Paul Maurilus brings this count individually and on
26 behalf of members of the Florida State Class who purchased or leased Hyundai
27 Class Vehicles, against Hyundai Korea and Hyundai USA.

28 ⁷ The Court held in its February 9, 2022 Order that the Florida Plaintiffs stated a claim for Violation of the Florida Deceptive & Unfair Trade Practices Act against FCA, Kia USA, and Hyundai USA. *See* ECF No. 396 at 94.

1 2773. Plaintiffs John Colbert and Lawrence Graziano bring this count
2 individually and on behalf of members of the Florida State Class who purchased or
3 leased Kia Class Vehicles, against Kia Korea and Kia USA.

4 2774. Plaintiffs Samuel Choc and Tatiana Gales bring this count individually
5 and on behalf of members of the Florida State Class who purchased or leased
6 Toyota Class Vehicles, against Toyota USA, and Toyota Sales USA.

7 2775. For purposes of the count, Plaintiffs Senti, Accetta, McPherson,
8 Chaiken, Maurilus, Colbert, Graziano, Choc, and Gales shall be referred to as the
9 “Florida Plaintiffs.”

10 2776. The Florida Plaintiffs and Florida State Class members are
11 “consumers” within the meaning of Fla. Stat. § 501.203(7).

12 2777. FCA, Honda Japan, Honda USA, Honda Engineering USA, Hyundai
13 Korea, Hyundai USA, Kia Korea, Kia USA, Toyota USA, and Toyota Sales USA
14 were and are engaged in “trade or commerce” within the meaning of Fla. Stat.
15 § 501.203(8).

16 2778. The Florida Unfair and Deceptive Trade Practices Act (“Florida
17 UDTPA”) prohibits “[u]nfair methods of competition, unconscionable acts or
18 practices, and unfair or deceptive acts or practices in the conduct of any trade or
19 commerce.” Fla. Stat. § 501.204(1).

20 2779. In the course of their business, FCA, Honda Japan, Honda USA,
21 Honda Engineering USA, Hyundai Korea, Hyundai USA, Kia Korea, Kia USA,
22 Toyota USA, and Toyota Sales USA, through their agents, employees, and/or
23 subsidiaries, violated the Florida UDTPA by knowingly and intentionally
24 misrepresenting, omitting, concealing, and/or failing to disclose material facts
25 regarding the reliability, safety, and performance of the FCA, Honda, Hyundai, Kia,
26 and Toyota Class Vehicles, the safety of their Occupant Restraint Systems, and the
27 ACU Defect, as detailed above.

28

1 2780. FCA, Honda Japan, Honda USA, Honda Engineering USA, Hyundai
2 Korea, Hyundai USA, Kia Korea, Kia USA, Toyota USA, and Toyota Sales USA
3 had an ongoing duty to the Florida Plaintiffs and Florida State Class members to
4 refrain from unfair or deceptive practices under the Florida UDTPA in the course of
5 their business. Specifically, FCA, Honda Japan, Honda USA, Honda Engineering
6 USA, Hyundai Korea, Hyundai USA, Kia Korea, Kia USA, Toyota USA, and
7 Toyota Sales USA owed the Florida Plaintiffs and Florida State Class members a
8 duty to disclose all the material facts concerning the ACU Defect in the FCA,
9 Honda, Hyundai, Kia, and Toyota Class Vehicles because they possessed exclusive
10 knowledge, they intentionally concealed the ACU Defect from the Florida Plaintiffs
11 and Florida State Class members, and/or they made misrepresentations that were
12 rendered misleading because they were contradicted by withheld facts.

13 2781. By misrepresenting the FCA, Honda, Hyundai, Kia, and Toyota Class
14 Vehicles as safe and reliable and the defective ACU and ASICs installed in them as
15 properly-functioning and free from defects, and by failing to disclose and actively
16 concealing the dangers and risk posed by the ACU Defect to both consumers and
17 NHTSA, FCA, Honda Japan, Honda USA, Honda Engineering USA, Hyundai
18 Korea, Hyundai USA, Kia Korea, Kia USA, Toyota USA, and Toyota Sales USA
19 engaged in unfair methods of competition and unfair or deceptive acts or practices
20 in the conduct of trade or commerce, as prohibited by Fla. Stat. § 501.204(1).

21 2782. FCA's, Honda Japan's, Honda USA's, Honda Engineering USA's,
22 Hyundai Korea's, Hyundai USA's, Kia Korea's, Kia USA's, Toyota USA's, and
23 Toyota Sales USA's unfair and deceptive acts or practices, including their
24 misrepresentations, concealments, omissions, and suppressions of material facts,
25 were designed to mislead and had a tendency or capacity to mislead and create a
26 false impression in consumers that the FCA, Honda, Hyundai, Kia, and Toyota
27 Class Vehicles had properly-functioning and reliable airbags and seatbelts, and that
28 the Occupant Restraint System did not contain the ACU Defect and would perform

1 its intended function of activating the seatbelts and airbags during a collision.
2 Indeed, those misrepresentations, concealments, omissions, and suppressions of
3 material facts did in fact deceive reasonable consumers, including the Florida
4 Plaintiffs and Florida State Class members, about the true safety and reliability of
5 FCA, Honda, Hyundai, Kia, and Toyota Class Vehicles and/or the defective ACUs
6 and ASICs installed in them, the quality of the FCA, Honda, Hyundai, Kia, and
7 Toyota Class Vehicles, and the true value of those vehicles.

8 2783. FCA's, Honda Japan's, Honda USA's, Honda Engineering USA's,
9 Hyundai Korea's, Hyundai USA's, Kia Korea's, Kia USA's, Toyota USA's, and
10 Toyota Sales USA's misrepresentations, concealments, omissions, and suppressions
11 of material facts regarding the ACU Defect and true characteristics of the Occupant
12 Restraint Systems in the FCA, Honda, Hyundai, Kia, and Toyota Class Vehicles
13 were material to the decisions of the Florida Plaintiffs and Florida State Class
14 members to purchase and lease those vehicles, as FCA, Honda Japan, Honda USA,
15 Honda Engineering USA, Hyundai Korea, Hyundai USA, Kia Korea, Kia USA,
16 Toyota USA, and Toyota Sales USA intended. The Florida Plaintiffs and Florida
17 State Class members were exposed to those misrepresentations, concealments,
18 omissions, and suppressions of material facts, and relied on FCA's, Honda Japan's,
19 Honda USA's, Honda Engineering USA's, Hyundai Korea's, Hyundai USA's, Kia
20 Korea's, Kia USA's, Toyota USA's, and Toyota Sales USA's misrepresentations
21 that the FCA, Honda, Hyundai, Kia, and Toyota Class Vehicles and their Occupant
22 Restraint Systems were safe and reliable in deciding to purchase and lease those
23 vehicles. Plaintiffs allege the information they relied upon in Section II.B above. To
24 aid review of this information, Exhibit 19 provides paragraph numbers for each
25 Plaintiff.

26 2784. The Florida Plaintiffs and Florida State Class members had no way of
27 discerning that FCA's, Honda Japan's, Honda USA's, Honda Engineering USA's,
28 Hyundai Korea's, Hyundai USA's, Kia Korea's, Kia USA's, Toyota USA's, and

1 Toyota Sales USA’s representations were false and misleading, or otherwise
2 learning the facts that the they had concealed or failed to disclose. The Florida
3 Plaintiffs and Florida State Class members did not, and could not, unravel FCA’s,
4 Honda Japan’s, Honda USA’s, Honda Engineering USA’s, Hyundai Korea’s,
5 Hyundai USA’s, Kia Korea’s, Kia USA’s, Toyota USA’s, and Toyota Sales USA’s
6 deception on their own.

7 2785. Had the Florida Plaintiffs and Florida State Class members known the
8 truth about the ACU Defect, the Florida Plaintiffs and Florida State Class members
9 would not have purchased or leased FCA, Honda, Hyundai, Kia, and Toyota Class
10 Vehicles, or would have paid significantly less for them.

11 2786. The Florida Plaintiffs and Florida State Class members suffered
12 ascertainable losses and actual damages as a direct and proximate result of FCA’s,
13 Honda Japan’s, Honda USA’s, Honda Engineering USA’s, Hyundai Korea’s,
14 Hyundai USA’s, Kia Korea’s, Kia USA’s, Toyota USA’s, and Toyota Sales USA’s
15 concealment, misrepresentations, and/or failure to disclose material information.

16 2787. FCA’s, Honda Japan’s, Honda USA’s, Honda Engineering USA’s,
17 Hyundai Korea’s, Hyundai USA’s, Kia Korea’s, Kia USA’s, Toyota USA’s, and
18 Toyota Sales USA’s violations present a continuing risk to the Florida Plaintiffs
19 and Florida State Class members, as well as to the general public, because the Class
20 Vehicles remain unsafe due to the defective ACUs and ASICs therein. Their
21 unlawful acts and practices complained of herein affect the public interest.

22 2788. Pursuant to Fla. Stat. § 501.211, the Florida Plaintiffs and Florida State
23 Class members seek an order enjoining FCA’s, Honda Japan’s, Honda USA’s,
24 Honda Engineering USA’s, Hyundai Korea’s, Hyundai USA’s, Kia Korea’s, Kia
25 USA’s, Toyota USA’s, and Toyota Sales USA’s unfair or deceptive acts or
26 practices and awarding damages and any other just and proper relief available under
27 the Florida UDTPA.
28

1 **d. Florida Count 4: Violation of the Florida Deceptive &**
2 **Unfair Trade Practices Act (Fla. Stat. § 501.201, et seq.)**
3 **Against ZF Electronics USA, ZF Passive Safety USA, ZF**
4 **Automotive USA, ZF TRW Corp., ZF Germany, ST Italy,**
5 **ST USA, and ST Malaysia**

6 2789. Plaintiffs reallege and incorporate by reference all preceding
7 allegations as though fully set forth herein.

8 2790. Plaintiffs Moises Senti, Maximillian Accetta, Fredericka McPherson,
9 Brian Chaiken, Carl Paul Maurilus, John Colbert, Lawrence Graziano, Samuel
10 Choc and Tatiana Gales bring this count individually and on behalf of members of
11 the Florida State Class against ZF Electronics USA, ZF Passive Safety USA, ZF
12 Automotive USA, ZF TRW Corp., and ZF Germany (collectively, the “ZF
13 Defendants”), and ST Italy, ST Malaysia, and ST USA (collectively, the “ST
14 Defendants”).

15 2791. For purposes of this count, Plaintiffs Senti, Accetta, McPherson,
16 Chaiken, Maurilus, Colbert, Graziano, Choc, and Gales shall be referred to as the
17 “Florida Plaintiffs.”

18 2792. The Florida Plaintiffs and Florida State Class members are
19 “consumers” within the meaning of Fla. Stat. § 501.203(7).

20 2793. The ZF and ST Defendants were and are engaged in “trade or
21 commerce” within the meaning of Fla. Stat. § 501.203(8).

22 2794. The Florida Unfair and Deceptive Trade Practices Act (“Florida
23 UDTPA”) prohibits “[u]nfair methods of competition, unconscionable acts or
24 practices, and unfair or deceptive acts or practices in the conduct of any trade or
25 commerce.” Fla. Stat. § 501.204(1).

26 2795. The ZF and ST Defendants had an ongoing duty to the Florida
27 Plaintiffs and Florida State Class members to refrain from unfair or deceptive
28 practices under the Florida UDTPA in the course of their business. Specifically, the
29 ZF and ST Defendants owed the Florida Plaintiffs and Florida State Class members
30 a duty to disclose all the material facts concerning the ACU Defect in the Class

1 Vehicles because they possessed exclusive knowledge of and intentionally
2 concealed the ACU Defect from the Florida Plaintiffs and Florida State Class
3 members.

4 2796. In the course of their business, the ZF and ST Defendants, through
5 their agents, employees, and/or subsidiaries, violated the Florida UDTPA by
6 knowingly and intentionally omitting, concealing, and failing to disclose material
7 facts regarding the existence, nature, and scope of the ACU Defect in the Class
8 Vehicles, as detailed above.

9 2797. Additionally, ZF Electronics USA, ZF Passive Safety USA, and ZF
10 Automotive USA, through their agents, employees, and/or subsidiaries, violated the
11 Florida UDTPA by knowingly and intentionally misrepresenting the Class Vehicles
12 as safe and reliable and the defective ACU and ASICs installed in them as properly-
13 functioning and free from defects. Specifically, ZF Electronics USA, ZF Passive
14 Safety USA, and ZF Automotive USA worked with the Vehicle Manufacturer
15 Defendants on the design and inclusion of the airbag readiness indicators in the
16 Class Vehicles, which falsely assured Plaintiffs and Class Members that the
17 Occupant Restraint Systems in the Class Vehicles would function properly in a
18 crash.

19 2798. By misrepresenting, failing to disclose and actively concealing the
20 dangers and risk posed by the Class Vehicles due to the ACU Defect, the ZF and
21 ST Defendants engaged in deceptive trade practices prohibited by Fla. Stat.
22 § 501.204(1).

23 2799. The ZF and ST Defendants' unfair or deceptive acts or practices,
24 including their misrepresentations, concealments, omissions, and suppressions of
25 material facts, were designed to mislead and had a tendency or capacity to mislead
26 and create a false impression in consumers that the Class Vehicles had properly-
27 functioning and reliable airbags and seatbelts, and that the Occupant Restraint
28 System did not contain the ACU Defect and would perform its intended function of

1 activating the seatbelts and airbags during a collision. Indeed, those
2 misrepresentations, concealments, omissions, and suppressions of material facts did
3 in fact deceive reasonable consumers, including the Florida Plaintiffs and Florida
4 State Class members, about the true safety and reliability of Class Vehicles and/or
5 the defective ACUs and ASICs installed in them, the quality of the Class Vehicles,
6 and the true value of the Class Vehicles.

7 2800. The Florida Plaintiffs and Florida State Class members justifiably
8 relied on the ZF and ST Defendants' misrepresentations, omissions, and
9 concealment, as they had no way of discerning that the Class Vehicles contained
10 the ACU Defect, as alleged above. The Florida Plaintiffs and Florida State Class
11 members did not, and could not, unravel the ZF and ST Defendants' deception on
12 their own.

13 2801. The ZF and ST Defendants' misrepresentations and concealment of the
14 ACU Defect and true characteristics of the defective ACUs and ASICs in the Class
15 Vehicles were material to the Florida Plaintiffs and Florida State Class members, as
16 the ZF and ST Defendants intended. Had they known the truth, the Florida
17 Plaintiffs and Florida State Class members would not have purchased or leased the
18 Class Vehicles, or would have paid significantly less for them.

19 2802. The Florida Plaintiffs and Florida State Class members suffered
20 ascertainable losses and actual damages as a direct and proximate result of the ZF
21 and ST Defendants' misrepresentations, concealment, and failure to disclose
22 material information.

23 2803. The ZF and ST Defendants' violations present a continuing risk to the
24 Florida Plaintiffs and Florida State Class members, as well as to the general public,
25 because the Class Vehicles remain unsafe due to the defective ACUs and ASICs
26 therein. The ZF and ST Defendants' unlawful acts and practices complained of
27 herein affect the public interest.
28

1 2804. Pursuant to Fla. Stat. § 501.211, the Florida Plaintiffs and Florida State
2 Class members seek an order enjoining the ZF and ST Defendants’ unfair or
3 deceptive acts or practices and awarding damages and any other just and proper
4 relief available under the Florida UDTPA.

5 e. **Florida Count 5: Fraud by Omission and Concealment**
6 **Against FCA, Honda Japan, Honda USA, Honda**
7 **Engineering USA, Hyundai Korea, Hyundai USA, Kia**
8 **Korea, Kia USA, Toyota USA, and Toyota Sales USA**

8 2805. Plaintiffs reallege and incorporate by reference all preceding
9 allegations as though fully set forth herein.

10 2806. Plaintiffs Moises Senti and Maximillian Accetta bring this count
11 individually and on behalf of members of the Florida State Class who purchased or
12 leased FCA Class Vehicles, against FCA.

13 2807. Plaintiffs Fredericka McPherson and Brian Chaiken bring this count
14 individually and on behalf of members of the Florida State Class who purchased or
15 leased Honda Class Vehicles, against Honda Japan, Honda USA, and Honda
16 Engineering USA.

17 2808. Plaintiff Carl Paul Maurilus brings this count individually and on
18 behalf of members of the Florida State Class who purchased or leased Hyundai
19 Class Vehicles, against Hyundai Korea and Hyundai USA.

20 2809. Plaintiffs John Colbert and Lawrence Graziano bring this count
21 individually and on behalf of members of the Florida State Class who purchased or
22 leased Kia Class Vehicles, against Kia Korea and Kia USA.

23 2810. Plaintiffs Samuel Choc and Tatiana Gales bring this count individually
24 and on behalf of members of the Florida State Class who purchased or leased
25 Toyota Class Vehicles, against Toyota USA and Toyota Sales USA.

26 2811. For purposes of the count, Plaintiffs Senti, Accetta, McPherson,
27 Chaiken, Maurilus, Colbert, Graziano, Choc, and Gales shall be referred to as the
28 “Florida Plaintiffs.”

1 2812. FCA, Honda Japan, Honda USA, Honda Engineering USA, Hyundai
2 Korea, Hyundai USA, Kia Korea, Kia USA, Toyota USA, and Toyota Sales USA
3 are liable for both fraudulent concealment and non-disclosure. See, e.g.,
4 Restatement (Second) of Torts §§ 550-51 (1977).

5 2813. As explained in Section IV.A, the ACU Defect in Class Vehicles poses
6 serious risks to vehicle occupants, including that it can cause: (1) airbags and
7 seatbelts not to activate during a crash because crashes can sometimes release
8 electrical transients, which cause the ACU to fail; (2) airbags to deploy when the
9 vehicle has not crashed, which is dangerous because it is shocking and difficult for
10 the driver to operate a vehicle when the airbag deploys without warning; and (3)
11 failures of other important post-crash operations of the safety system, such as
12 unlocking doors to facilitate escape or extraction of drivers and passengers by
13 emergency personnel, and shutting off a crashed vehicle’s fuel or power supply.

14 2814. FCA, Honda Japan, Honda USA, Honda Engineering USA, Hyundai
15 Korea, Hyundai USA, Kia Korea, Kia USA, Toyota USA, and Toyota Sales USA
16 had a duty to disclose the ACU Defect to the Florida Plaintiffs and the Florida State
17 Class members because:

- 18 a. FCA, Honda Japan, Honda USA, Honda Engineering USA,
19 Hyundai Korea, Hyundai USA, Kia Korea, Kia USA, Toyota
20 USA, and Toyota Sales USA had exclusive access to and far
21 superior knowledge about technical facts regarding the ACU
22 Defect;
- 23 b. Given the ACU Defect’s hidden and technical nature, the
24 Florida Plaintiffs and Florida State Class members lack the
25 sophisticated expertise in vehicle components and electrical
26 phenomena that would be necessary to discover the ACU Defect
27 on their own;
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- c. FCA, Honda Japan, Honda USA, Honda Engineering USA, Hyundai Korea, Hyundai USA, Kia Korea, Kia USA, Toyota USA, and Toyota Sales USA knew that the ACU Defect gave rise to serious safety concerns for the consumers who use the vehicles, and the Florida Class Vehicles containing the ACU Defect would have been a material fact to the Florida Plaintiffs' and Florida State Class members' decisions to buy or lease FCA, Honda, Hyundai, Kia, and Toyota Class Vehicles; and
- d. FCA, Honda Japan, Honda USA, Honda Engineering USA, Hyundai Korea, Hyundai USA, Kia Korea, Kia USA, Toyota USA, and Toyota Sales USA made incomplete representations about the safety and reliability of the FCA, Honda, Hyundai, Kia, and Toyota Class Vehicles and their Occupant Restraint System, while purposefully withholding material facts about a known safety defect. In uniform advertising and materials provided with each Class Vehicle, FCA, Honda Japan, Honda USA, Honda Engineering USA, Hyundai Korea, Hyundai USA, Kia Korea, Kia USA, Toyota USA, and Toyota Sales USA intentionally concealed, suppressed, and failed to disclose to the Florida Plaintiffs and Florida State Class members that the FCA, Honda, Hyundai, Kia, and Toyota Class Vehicles contained the ACU Defect. Because they volunteered to provide information about the FCA, Honda, Hyundai, Kia, and Toyota Class Vehicles that they marketed and offered for sale and lease to the Florida Plaintiffs and Florida State Class members, FCA, Honda Japan, Honda USA, Honda Engineering USA, Hyundai Korea, Hyundai USA, Kia Korea, Kia USA, Toyota USA, and Toyota Sales USA had the duty to disclose the whole truth.

1 2815. In breach of their duties, FCA, Honda Japan, Honda USA, Honda
2 Engineering USA, Hyundai Korea, Hyundai USA, Kia Korea, Kia USA, Toyota
3 USA, and Toyota Sales USA failed to disclose that the FCA, Honda, Hyundai, Kia,
4 and Toyota Class Vehicles were not safe and reliable, and that their Occupant
5 Restraint Systems, including their airbags and seatbelt pretensioners could fail in
6 the event of a crash due to the ACU Defect.

7 2816. FCA, Honda Japan, Honda USA, Honda Engineering USA, Hyundai
8 Korea, Hyundai USA, Kia Korea, Kia USA, Toyota USA, and Toyota Sales USA
9 intended for the Florida Plaintiffs and Florida State Class members to rely on their
10 omissions—which they did by purchasing and leasing the FCA, Honda, Hyundai,
11 Kia, and Toyota Class Vehicles at the prices they paid believing that the Occupant
12 Restraint Systems in their Class Vehicles would function properly.

13 2817. That reliance was reasonable, because a reasonable consumer would
14 not have expected that the FCA, Honda, Hyundai, Kia, and Toyota Class Vehicles
15 contained a safety defect that poses such a serious risk. FCA, Honda Japan, Honda
16 USA, Honda Engineering USA, Hyundai Korea, Hyundai USA, Kia Korea, Kia
17 USA, Toyota USA, and Toyota Sales USA knew that reasonable consumers expect
18 that their vehicle has working airbags and seatbelt pretensioners and would rely on
19 those facts in deciding whether to purchase, lease, or retain a new or used motor
20 vehicle. Whether a manufacturer’s products are safe and reliable, and whether that
21 manufacturer stands behind its products, are material concerns to a consumer.
22 Especially here when at least nine people have already died due to the ACU Defect,
23 and many more have been injured.

24 2818. Additionally, FCA, Honda Japan, Honda USA, Honda Engineering
25 USA, Hyundai Korea, Hyundai USA, Kia Korea, Kia USA, Toyota USA, and
26 Toyota Sales USA ensured that the Florida Plaintiffs and Florida State Class
27 members did not discover this information by actively concealing and
28

1 misrepresenting the true nature of the FCA, Honda, Hyundai, Kia, and Toyota Class
2 Vehicles' Occupant Restraint Systems to consumers and NHTSA.

3 2819. FCA, Honda Japan, Honda USA, Honda Engineering USA, Hyundai
4 Korea, Hyundai USA, Kia Korea, Kia USA, Toyota USA, and Toyota Sales USA
5 actively concealed and suppressed these material facts, in whole or in part, to
6 maintain a market for their Class Vehicles, to protect profits, and to avoid costly
7 recalls that would expose them to liability for those expenses and harm the
8 commercial reputations of Defendants and their products. They did so at the
9 expense of the Florida Plaintiffs and Florida State Class members.

10 2820. To this day, FCA, Honda Japan, Honda USA, Honda Engineering
11 USA, Hyundai Korea, Hyundai USA, Kia Korea, Kia USA, Toyota USA, and
12 Toyota Sales USA have not fully and adequately disclosed the ACU Defect, and
13 they continue to conceal material information about the defect from consumers and
14 NHTSA. The omitted and concealed facts were material because a reasonable
15 person would find them important in purchasing, leasing, or retaining a new or used
16 motor vehicle, and because they directly impact the value of the FCA, Honda,
17 Hyundai, Kia, and Toyota Class Vehicles purchased or leased by the Florida
18 Plaintiffs and Florida State Class members.

19 2821. Had they been aware of the ACU Defect in the FCA, Honda, Hyundai,
20 Kia, and Toyota Class Vehicles, and FCA's, Honda Japan's, Honda USA's, Honda
21 Engineering USA's, Hyundai Korea's, Hyundai USA's, Kia Korea's, Kia USA's,
22 Toyota USA's, and Toyota Sales USA's callous disregard for safety, the Florida
23 Plaintiffs and Florida State Class members either would not have paid as much as
24 they did for their Class Vehicles, or they would not have purchased or leased them.

25 2822. As alleged in Section V above, if FCA, Honda Japan, Honda USA,
26 Honda Engineering USA, Hyundai Korea, Hyundai USA, Kia Korea, Kia USA,
27 Toyota USA, and Toyota Sales USA had fully and adequately disclosed the ACU
28

1 Defect to consumers and NHTSA, the Florida Plaintiffs and Florida State Class
2 members would have seen such a disclosure.

3 2823. Accordingly, FCA, Honda Japan, Honda USA, Honda Engineering
4 USA, Hyundai Korea, Hyundai USA, Kia Korea, Kia USA, Toyota USA, and
5 Toyota Sales USA are liable to the Florida Plaintiffs and Florida State Class
6 members for their damages in an amount to be proven at trial, including, but not
7 limited to, their lost overpayment for the FCA, Honda, Hyundai, Kia, and Toyota
8 Class Vehicles at the time of purchase or lease.

9 2824. FCA's, Honda Japan's, Honda USA's, Honda Engineering USA's,
10 Hyundai Korea's, Hyundai USA's, Kia Korea's, Kia USA's, Toyota USA's, and
11 Toyota Sales USA's acts were done maliciously, oppressively, deliberately, with
12 intent to defraud; in reckless disregard of the Florida Plaintiffs' and Florida State
13 Class members' rights and well-being; and to enrich themselves. FCA's, Honda
14 Japan's, Honda USA's, Honda Engineering USA's, Hyundai Korea's, Hyundai
15 USA's, Kia Korea's, Kia USA's, Toyota USA's, and Toyota Sales USA's
16 misconduct warrants an assessment of punitive damages, as permitted by law, in an
17 amount sufficient to deter such conduct in the future, which amount shall be
18 determined according to proof at trial.

19 **f. Florida Count 6: Fraud by Omission and Concealment**
20 **Against ZF Electronics USA, ZF Passive Safety USA, ZF**
21 **Automotive USA, ZF TRW Corp., ZF Germany, ST Italy,**
22 **ST USA, and ST Malaysia**

23 2825. Plaintiffs reallege and incorporate by reference all preceding
24 allegations as though fully set forth herein.

25 2826. The Florida Plaintiffs bring this count individually and on behalf of
26 members of the Florida State Class who purchased or leased Class Vehicles, against
27 ZF Electronics USA, ZF Passive Safety USA, ZF Automotive USA, ZF TRW
28 Corp., and ZF Germany (collectively, the "ZF Defendants"), and ST Italy, ST
Malaysia, and ST USA (collectively, the "ST Defendants").

1 2827. The ZF and ST Defendants are liable for both fraudulent concealment
2 and non-disclosure. *See, e.g.*, Restatement (Second) of Torts §§ 550-51 (1977).

3 2828. As explained in Section IV.A, the ACU Defect in Class Vehicles poses
4 serious risks to vehicle occupants, including that it can cause: (1) airbags and
5 seatbelts not to activate during a crash because crashes can sometimes release
6 electrical transients, which cause the ACU to fail; (2) airbags to deploy when the
7 vehicle has not crashed, which is dangerous because it is shocking and difficult for
8 the driver to operate a vehicle when the airbag deploys without warning; and (3)
9 failures of other important post-crash operations of the safety system, such as
10 unlocking doors to facilitate escape or extraction of drivers and passengers by
11 emergency personnel, and shutting off a crashed vehicle’s fuel or power supply.

12 2829. The ZF and ST Defendants had a duty to disclose the ACU Defect to
13 the Florida Plaintiffs and Florida State Class members because:

- 14 a. The ZF and ST Defendants had exclusive access to and far
15 superior knowledge about technical facts regarding the ACU
16 Defect;
- 17 b. Given the ACU Defect’s hidden and technical nature, the
18 Florida Plaintiffs and Florida State Class members lack the
19 sophisticated expertise in vehicle components and electrical
20 phenomena that would be necessary to discover the ACU Defect
21 on their own;
- 22 c. The ZF and ST Defendants knew that the ACU Defect gave rise
23 to serious safety concerns for the consumers who use the
24 vehicles, and the Class Vehicles containing the ACU Defect
25 would have been a material fact to the Florida Plaintiffs’ and
26 Florida State Class members’ decisions to buy or lease Class
27 Vehicles; and

28

1 d. The ZF Defendants made incomplete representations about the
2 safety and reliability of the Class Vehicles and their Occupant
3 Restraint System, while purposefully withholding material facts
4 about a known safety defect, creating a duty to disclose the
5 whole truth. Specifically, ZF Electronics USA, ZF Passive
6 Safety USA, and ZF Automotive USA worked with the Vehicle
7 Manufacturer Defendants on the design and inclusion of the
8 airbag readiness indicators in the Class Vehicles, which falsely
9 assured Plaintiffs and Class Members that the Occupant
10 Restraint Systems in the Class Vehicles would function properly
11 in a crash.

12 2830. In breach of their duties, the ZF and ST Defendants failed to disclose
13 that the Class Vehicles were not safe and reliable, and that their Occupant Restraint
14 Systems, including their airbags and seatbelt pretensioners could fail in the event of
15 a crash due to the ACU Defect.

16 2831. The ZF and ST Defendants intended for the Florida Plaintiffs and
17 Florida State Class members to rely on their omissions—which they did by
18 purchasing and leasing the Class Vehicles at the prices they paid believing that the
19 Occupant Restraint Systems in their Class Vehicles would function properly.

20 2832. That reliance was reasonable, because a reasonable consumer would
21 not have expected that the Class Vehicles contained a safety defect that poses such
22 a serious risk. The ZF and ST Defendants knew that reasonable consumers expect
23 that their vehicle has working airbags and seatbelt pretensioners and would rely on
24 those facts in deciding whether to purchase, lease, or retain a new or used motor
25 vehicle. Whether a manufacturer’s products are safe and reliable, and whether that
26 manufacturer stands behind its products, are material concerns to a consumer.
27 Especially here when at least nine people have already died due to the ACU Defect,
28 and many more have been injured.

1 2833. Additionally, the ZF and ST Defendants ensured that the Florida
2 Plaintiffs and Florida State Class members did not discover this information by
3 actively concealing and misrepresenting the true nature of the Class Vehicles’
4 Occupant Restraint Systems to consumers and NHTSA.

5 2834. The ZF and ST Defendants actively concealed and suppressed these
6 material facts, in whole or in part, to maintain a market for the DS84 ACU, to
7 protect profits, and to avoid costly recalls that would expose them to liability for
8 those expenses and harm the commercial reputations of Defendants and their
9 products. They did so at the expense of the Florida Plaintiffs and Florida State
10 Class members.

11 2835. To this day, the ZF and ST Defendants have not fully and adequately
12 disclosed the ACU Defect, and they continue to conceal material information about
13 the defect from consumers and NHTSA. The omitted and concealed facts were
14 material because a reasonable person would find them important in purchasing,
15 leasing, or retaining a new or used motor vehicle, and because they directly impact
16 the value of the Class Vehicles purchased or leased by the Florida Plaintiffs and
17 Florida State Class members.

18 2836. Had they been aware of the ACU Defect in the Class Vehicles, and the
19 ZF and ST Defendants’ callous disregard for safety, the Florida Plaintiffs and
20 Florida State Class members either would not have paid as much as they did for
21 their Class Vehicles, or they would not have purchased or leased them.

22 2837. As alleged in Section V above, if the ZF and ST Defendants had fully
23 and adequately disclosed the ACU Defect to consumers and NHTSA, the Florida
24 Plaintiffs and Florida State Class members would have seen such a disclosure.

25 2838. Accordingly, the ZF and ST Defendants are liable to the Florida
26 Plaintiffs and Florida State Class members for their damages in an amount to be
27 proven at trial, including, but not limited to, their lost overpayment for the Class
28 Vehicles at the time of purchase or lease.

1 2839. The ZF and ST Defendants’ acts were done maliciously, oppressively,
2 deliberately, with intent to defraud; in reckless disregard of the Florida Plaintiffs’
3 and Florida State Class members’ rights and well-being; and to enrich themselves.
4 The ZF and ST Defendants’ misconduct warrants an assessment of punitive
5 damages, as permitted by law, in an amount sufficient to deter such conduct in the
6 future, which amount shall be determined according to proof at trial.

7 **g. Florida Count 7: Unjust Enrichment Against FCA, Honda**
8 **Japan, Honda USA, and Honda Engineering USA, Hyundai**
9 **Korea, Hyundai USA, Kia Korea, Kia USA, Toyota USA,**
 Toyota Sales USA, and Toyota Engineering USA

10 2840. Plaintiffs reallege and incorporate by reference all allegations in
11 Sections I-VI above as though fully set forth herein.

12 2841. Plaintiff Moises Senti brings this count individually and on behalf of
13 members of the Florida State Class who purchased or leased FCA Class Vehicles,
14 against FCA.

15 2842. Plaintiffs Fredericka McPherson and Brian Chaiken bring this count
16 individually and on behalf of members of the Florida State Class who purchased or
17 leased Honda Class Vehicles, against Honda Japan, Honda USA, and Honda
18 Engineering USA.

19 2843. Plaintiff Carl Paul Maurilus brings this count individually and on
20 behalf of members of the Florida State Class who purchased or leased Hyundai
21 Class Vehicles, against Hyundai Korea and Hyundai USA.

22 2844. Plaintiffs John Colbert and Lawrence Graziano bring this count
23 individually and on behalf of members of the Florida State Class who purchased or
24 leased Kia Class Vehicles, against Kia Korea and Kia USA.

25 2845. Plaintiffs Samuel Choc and Tatiana Gales bring this count individually
26 and on behalf of members of the Florida State Class who purchased or leased
27 Toyota Class Vehicles, against Toyota USA, Toyota Sales USA, and Toyota
28 Engineering USA.

1 2846. For purposes of the count, Plaintiffs Senti, McPherson, Chaiken,
2 Maurilus, Colbert, Graziano, Choc, and Gales shall be referred to as the “Florida
3 Plaintiffs.”

4 2847. The Florida Plaintiffs and Florida State Class members conferred
5 tangible and material monetary benefits upon FCA, Honda Japan, Honda USA,
6 Honda Engineering USA, Hyundai Korea, Hyundai USA, Kia Korea, Kia USA,
7 Toyota USA, Toyota Sales USA, and Toyota Engineering USA when they
8 purchased or leased the FCA, Honda, Hyundai, Kia, and Toyota Class Vehicles.
9 FCA, Honda Japan, Honda USA, Honda Engineering USA, Hyundai Korea,
10 Hyundai USA, Kia Korea, Kia USA, Toyota USA, Toyota Sales USA, and Toyota
11 Engineering USA readily accepted and retained these benefits.

12 2848. The Florida Plaintiffs and Florida State Class members would not have
13 purchased or leased the FCA, Honda, Hyundai, Kia, and Toyota Class Vehicles, or
14 would have paid less for them, had they known of the ACU Defect at the time of
15 purchase or lease. Therefore, FCA, Honda Japan, Honda USA, Honda Engineering
16 USA, Hyundai Korea, Hyundai USA, Kia Korea, Kia USA, Toyota USA, Toyota
17 Sales USA, and Toyota Engineering USA profited from the sale and lease of the
18 FCA, Honda, Hyundai, Kia, and Toyota Class Vehicles to the detriment and
19 expense of the Florida Plaintiffs and Florida State Class members.

20 2849. FCA, Honda Japan, Honda USA, and Honda Engineering USA,
21 Hyundai Korea, Hyundai USA, Kia Korea, Kia USA, Toyota USA, Toyota Sales
22 USA, and Toyota Engineering USA appreciated these monetary benefits. These
23 benefits were the expected result of FCA, Honda Japan, Honda USA, Honda
24 Engineering USA, Hyundai Korea, Hyundai USA, Kia Korea, Kia USA, Toyota
25 USA, Toyota Sales USA, and Toyota Engineering USA acting in their pecuniary
26 interest at the expense of their customers.

27 2850. FCA, Honda Japan, Honda USA, Honda Engineering USA, Hyundai
28 Korea, Hyundai USA, Kia Korea, Kia USA, Toyota USA, Toyota Sales USA, and

1 Toyota Engineering USA knew of these benefits because they were aware of the
2 ACU Defect, yet they failed to disclose this knowledge and misled the Florida
3 Plaintiffs and Florida State Class members regarding the nature and quality of the
4 FCA, Honda, Hyundai, Kia, and Toyota Class Vehicles while profiting from this
5 deception.

6 2851. It would be unjust, inequitable, and unconscionable for FCA, Honda
7 Japan, Honda USA, Honda Engineering USA, Hyundai Korea, Hyundai USA, Kia
8 Korea, Kia USA, Toyota USA, Toyota Sales USA, and Toyota Engineering USA to
9 retain these benefits, including because they were procured as a result of the
10 wrongful conduct alleged above.

11 2852. The Florida Plaintiffs and Florida State Class members are entitled to
12 restitution of the benefits FCA, Honda Japan, Honda USA, Honda Engineering
13 USA, Hyundai Korea, Hyundai USA, Kia Korea, Kia USA, Toyota USA, Toyota
14 Sales USA, and Toyota Engineering USA unjustly retained and/or any amounts
15 necessary to return the Florida Plaintiff and Florida State Class members to the
16 position they occupied prior to dealing with FCA, Honda Japan, Honda USA,
17 Honda Engineering USA, Hyundai Korea, Hyundai USA, Kia Korea, Kia USA,
18 Toyota USA, Toyota Sales USA, and Toyota Engineering USA, with such amounts
19 to be determined at trial.

20 2853. The Florida Plaintiffs plead this claim separately as well as in the
21 alternative to their claims for damages under Fed. R. Civ. P. 8(a)(3), because if the
22 Florida Plaintiffs' claims for damages are dismissed or judgment is entered in favor
23 of Defendants, the Florida Plaintiffs will have no adequate legal remedy.

24 **7. Illinois**

25 **a. Illinois Count 1: Breach of Implied Warranty of**
26 **Merchantability (810 Ill. Comp. Stat. 5/2-314 and 5/2A-212)**
27 **Against Kia USA**

28 2854. Plaintiffs reallege and incorporate by reference all preceding
allegations as though fully set forth herein.

1 2855. Plaintiffs Amanda Swanson and Brian Collins bring this count
2 individually and on behalf of members of the Illinois State Class who purchased or
3 leased Kia Class Vehicles, against Kia USA.

4 2856. For purposes of this count, Plaintiffs Swanson and Collins shall be
5 referred to as the “Illinois Plaintiffs.”

6 2857. The Illinois Plaintiffs purchased their Kia Class Vehicles from Kia
7 USA authorized dealers. Additionally, Kia USA knew the identity, purpose, and
8 requirements of the Illinois Plaintiffs and Illinois State Class members, and made
9 specific promises through advertising and label information to them about the Kia
10 Class Vehicles. Accordingly, the Illinois Plaintiffs and Illinois State Class members
11 are in privity with Kia USA.

12 2858. Moreover, the Illinois Plaintiffs and Illinois State Class members were
13 intended and direct beneficiaries of agreements between Kia USA and their dealers
14 regarding sales and leases of the Kia Class Vehicles, as, upon information and
15 belief, the agreements expressly were made for the direct benefit of the Illinois
16 Plaintiffs and Illinois State Class members.

17 2859. A warranty that the Kia Class Vehicles were in merchantable condition
18 and fit for the ordinary purpose for which such goods are used is implied by law
19 pursuant to 810 ILCS 5/2-314 and 5/2A-212.

20 2860. Kia USA is and was at all relevant times a “merchant” with respect to
21 motor vehicles under 810 ILCS 5/2-104(1) and 5/2A-103(3), and a “seller” of
22 motor vehicles under 5/2-103(1)(d).

23 2861. Kia USA is and was at all relevant times a “lessor” of motor vehicles
24 under 810 ILCS 5/2A-103(1)(p).

25 2862. All Illinois State Class members who purchased Kia Class Vehicles in
26 Illinois are “buyers” within the meaning of 810 ILCS 5/2-103(1)(a).

27 2863. All Illinois State Class members who leased Kia Class Vehicles in
28 Illinois are “lessees” within the meaning of 810 ILCS 5/2A-103(1)(n).

1 2864. The Kia Class Vehicles are and were at all relevant times “goods”
2 within the meaning of 810 ILCS 5/2-105(1) and 5/2A-103(1)(h).

3 2865. The Kia Class Vehicles did not comply with the implied warranty of
4 merchantability because, at the time of sale and lease and at all times thereafter,
5 they were defective and not in merchantable condition, would not pass without
6 objection in the trade, and were not fit for the ordinary purpose for which vehicles
7 were used. Specifically, at the time they were sold and leased, the Kia Class
8 Vehicles contained the ACU Defect, which may cause the airbags and seatbelt
9 pretensioners to fail to deploy during a crash, the failure to unlock doors
10 automatically after a crash, the failure to turn off a fuel supply or high-voltage
11 battery after a crash, or the airbags to inadvertently deploy, all of which render the
12 Kia Class Vehicles inherently defective and dangerous.

13 2866. The Illinois Plaintiffs and Illinois State Class members have provided
14 Kia USA with reasonable notice and opportunity to cure the breaches of its express
15 warranties by way of the numerous NHTSA complaints filed against it, and
16 individual notice letters sent by the Illinois State Class members within a
17 reasonable amount of time after the ACU Defect became public. Additionally, a
18 notice letter was sent on behalf of the Illinois Plaintiffs and Illinois State Class
19 members to Kia USA on April 24, 2020.

20 2867. Alternatively, the Illinois Plaintiffs and Illinois State Class members
21 were excused from providing Kia USA with notice and an opportunity to cure the
22 breach, because it would have been futile. As alleged above, Kia USA has long
23 known that the Kia Class Vehicles contained the ACU Defect, and that the ACU
24 Defect has caused ACUs and ASICs to malfunction in crashes involving Class
25 Vehicles; however, to date, Kia USA has not instituted a recall or any other repair
26 program with respect to the unrecalled Kia Class Vehicles, or even acknowledged
27 that the ACU Defect exists in all of those Class Vehicles, including the recalled Kia
28 Class Vehicles. Therefore, it has refused to recall or repair defective Kia Class

1 Vehicles, and for those that were recalled, the repair was inadequate because it did
2 not fix the ACU Defect. As such, the Illinois Plaintiffs and Illinois State Class
3 members had no reason to believe that Kia USA would have repaired the ACU
4 Defect if the Illinois Plaintiffs and Illinois State Class members presented their Kia
5 Class Vehicles to it for repair.

6 2868. As a direct and proximate result of Kia USA’s breach of the implied
7 warranty of merchantability, the Illinois Plaintiffs and Illinois State Class members
8 have been damaged in an amount to be proven at trial.

9 **b. Illinois Count 2: Violation of the Illinois Consumer Fraud
10 and Deceptive Business Practices Act (815 Ill. Comp. Stat.
11 505/1, et seq.) Against Kia Korea and Kia USA**

12 2869. Plaintiffs reallege and incorporate by reference all preceding
13 allegations as though fully set forth herein.

14 2870. Plaintiffs Amanda Swanson and Brian Collins bring this count
15 individually and on behalf of members of the Illinois State Class who purchased or
16 leased Kia Class Vehicles, against Kia Korea and Kia USA.

17 2871. For purposes of this count, Plaintiffs Swanson, and Collins shall be
18 referred to as the “Illinois Plaintiffs.”

19 2872. Kia Korea, Kia USA, the Illinois Plaintiffs, and the Illinois State Class
20 members are “persons” within the meaning of 815 ILCS 505/1(c).

21 2873. The Illinois Plaintiffs and Illinois State Class members are
22 “consumers” within the meaning of 815 ILCS 505/1(e).

23 2874. The Kia Class Vehicles and the ACUs installed in them are
24 “merchandise” within the meaning of 815 ILCS 505/1(b).

25 2875. Kia Korea and Kia USA were and are engaged in “trade” and
26 “commerce” within the meaning of 815 ILCS 505/1(f).

27 2876. The Illinois Consumer Fraud and Deceptive Business Practices Act
28 (“Illinois CFA”) prohibits “[u]nfair methods of competition and unfair or deceptive
acts or practices[.]” 815 ILCS 505/2.

1 2877. In the course of their business, Kia Korea and Kia USA, through their
2 agents, employees, and/or subsidiaries, violated the Illinois CFA by knowingly and
3 intentionally misrepresenting, omitting, concealing, and/or failing to disclose
4 material facts regarding the reliability, safety, and performance of the Kia Class
5 Vehicles, the safety of their Occupant Restraint Systems, and the ACU Defect, as
6 detailed above.

7 2878. Kia Korea and Kia USA had an ongoing duty to the Illinois Plaintiffs
8 and Illinois State Class members to refrain from unfair or deceptive practices under
9 the Illinois CFA in the course of their business. Specifically, Kia Korea and Kia
10 USA owed the Illinois Plaintiffs and Illinois State Class members a duty to disclose
11 all the material facts concerning the ACU Defect in the Kia Class Vehicles because
12 they possessed exclusive knowledge, they intentionally concealed the ACU Defect
13 from the Illinois Plaintiffs and Illinois State Class members, and they made
14 misrepresentations that were rendered misleading because they were contradicted
15 by withheld facts.

16 2879. By misrepresenting the Kia Class Vehicles as safe and reliable and the
17 defective ACU and ASICs installed in them as properly-functioning and free from
18 defects, and by failing to disclose and actively concealing the dangers and risk
19 posed by the ACU Defect to both consumers and NHTSA, Kia Korea and Kia USA
20 engaged in the following unfair or deceptive business practices prohibited by 815
21 ILCS 505/2 and 510/2:

- 22 a. Causing likelihood of confusion or of misunderstanding as to the
23 approval or certification of the Kia Class Vehicles;
- 24 b. Representing that the Kia Class Vehicles have approval,
25 characteristics, uses, or benefits that they do not have;
- 26 c. Representing that the Kia Class Vehicles are of a particular
27 standard, quality, and grade when they are not;
- 28

- 1 d. Advertising the Kia Class Vehicles with the intent not to sell or
- 2 lease them as advertised;
- 3 e. Engaging in other conduct which created a likelihood of
- 4 confusion or of misunderstanding; and/or
- 5 f. Using or employing deception, fraud, false pretense, false
- 6 promise or misrepresentation, or the concealment, suppression
- 7 or omission of a material fact with intent that others rely upon
- 8 such concealment, suppression or omission, in connection with
- 9 the advertisement and sale/lease of the Kia Class Vehicles,
- 10 whether or not any person has in fact been misled, deceived or
- 11 damaged thereby.

12 ILCS 505/2, 815 ILCS 510/2

13 2880. Kia Korea's and Kia USA's unfair and deceptive acts or practices,

14 including their misrepresentations, concealments, omissions, and suppressions of

15 material facts, were designed to mislead and had a tendency or capacity to mislead

16 and create a false impression in consumers that the Kia Class Vehicles had

17 properly-functioning and reliable airbags and seatbelts, and that the Occupant

18 Restraint System did not contain the ACU Defect and would perform its intended

19 function of activating the seatbelts and airbags during a collision. Indeed, those

20 misrepresentations, concealments, omissions, and suppressions of material facts did

21 in fact deceive reasonable consumers, including the Illinois Plaintiffs and Illinois

22 State Class members, about the true safety and reliability of Kia Class Vehicles

23 and/or the defective ACUs and ASICs installed in them, the quality of the Kia Class

24 Vehicles, and the true value of those vehicles.

25 2881. Kia Korea's and Kia USA's misrepresentations, concealments,

26 omissions, and suppressions of material facts regarding the ACU Defect and true

27 characteristics of the Occupant Restraint Systems in the Kia Class Vehicles were

28 material to the decisions of the Illinois Plaintiffs and Illinois State Class members

1 to purchase and lease those vehicles, as Kia Korea and Kia USA intended. The
2 Illinois Plaintiffs and Illinois State Class members were exposed to those
3 misrepresentations, concealments, omissions, and suppressions of material facts,
4 and relied on Kia Korea's and Kia USA's misrepresentations that the Kia Class
5 Vehicles and their Occupant Restraint Systems were safe and reliable in deciding to
6 purchase and lease those vehicles. Plaintiffs allege the information they relied upon
7 in Section II.B above. To aid review of this information, Exhibit 19 provides
8 paragraph numbers for each Plaintiff.

9 2882. The Illinois Plaintiffs and Illinois State Class members had no way of
10 discerning that Kia Korea's and Kia USA's representations were false and
11 misleading and/or otherwise learning the facts that Kia Korea and Kia USA had
12 concealed or failed to disclose. The Illinois Plaintiffs and Illinois State Class
13 members did not, and could not, unravel Kia Korea's and Kia USA's deception on
14 their own.

15 2883. Had the Illinois Plaintiffs and Illinois State Class members known the
16 truth about the ACU Defect, the Illinois Plaintiffs and Illinois State Class members
17 would not have purchased or leased Kia Class Vehicles, or would have paid
18 significantly less for them.

19 2884. The Illinois Plaintiffs and Illinois State Class members suffered
20 ascertainable losses and actual damages as a direct and proximate result of Kia
21 Korea's and Kia USA's concealment, misrepresentations, and/or failure to disclose
22 material information.

23 2885. Kia Korea's and Kia USA's violations present a continuing risk to the
24 Illinois Plaintiffs and Illinois State Class members, as well as to the general public,
25 because the Class Vehicles remain unsafe due to the defective ACUs and ASICs
26 therein. Kia Korea's and Kia USA's unlawful acts and practices complained of
27 herein affect the public interest.
28

1 2886. Pursuant to 815 ILCS 505/10a, the Illinois Plaintiffs and Illinois State
2 Class members seek an order enjoining Kia Korea’s and Kia USA’s unfair or
3 deceptive acts or practices and awarding damages and any other just and proper
4 relief available under the Illinois CFA.

5 **c. Illinois Count 3: Violation of the Illinois Consumer Fraud**
6 **and Deceptive Business Practices Act (815 Ill. Comp. Stat.**
7 **505/1, et seq.) Against ZF Electronics USA, ZF Passive**
8 **Safety USA, ZF Automotive USA, ZF TRW Corp., ZF**
9 **Germany, ST Italy, ST USA, and ST Malaysia**

10 2887. Plaintiffs reallege and incorporate by reference all preceding
11 allegations as though fully set forth herein.

12 2888. Plaintiffs Amanda Swanson and Brian Collins bring this count
13 individually and behalf of members of the Illinois State Class against ZF
14 Electronics USA, ZF Passive Safety USA, ZF Automotive USA, ZF TRW Corp.,
15 and ZF Germany (collectively, the “ZF Defendants”), and ST Italy, ST Malaysia,
16 and ST USA (collectively, the “ST Defendants”).

17 2889. For purposes of this count, Plaintiffs Swanson and Collins shall be
18 referred to as the “Illinois Plaintiffs.”

19 2890. The ZF Defendants, the ST Defendants, the Illinois Plaintiffs, and
20 Illinois State Class members are “persons” within the meaning of 815 ILCS
21 505/1(c).

22 2891. The Illinois Plaintiffs and Illinois State Class members are
23 “consumers” within the meaning of 815 ILCS 505/1(e).

24 2892. The Class Vehicles and the ACUs installed in them are “merchandise”
25 within the meaning of 815 ILCS 505/1(b).

26 2893. The ZF and ST Defendants were and are engaged in “trade” and
27 “commerce” within the meaning of 815 ILCS 505/1(f).

28 2894. The Illinois Consumer Fraud and Deceptive Business Practices Act
29 (“Illinois CFA”) prohibits “[u]nfair methods of competition and unfair or deceptive
30 acts or practices[.]” 815 ILCS 505/2.

1 2895. The ZF and ST Defendants had an ongoing duty to the Illinois
2 Plaintiffs and Illinois State Class members to refrain from unfair or deceptive
3 practices under the Illinois CFA in the course of their business. Specifically, the ZF
4 and ST Defendants owed the Illinois Plaintiffs and Illinois State Class members a
5 duty to disclose all the material facts concerning the ACU Defect in the Class
6 Vehicles because they possessed exclusive knowledge of and intentionally
7 concealed the ACU Defect from the Illinois Plaintiffs and Illinois State Class
8 members.

9 2896. In the course of their business, the ZF and ST Defendants, through
10 their agents, employees, and/or subsidiaries, violated the Illinois CFA by
11 knowingly and intentionally omitting, concealing, and failing to disclose material
12 facts regarding the existence, nature, and scope of the ACU Defect in the Class
13 Vehicles, as detailed above.

14 2897. Additionally, ZF Electronics USA, ZF Passive Safety USA, and ZF
15 Automotive USA, through their agents, employees, and/or subsidiaries, violated the
16 Illinois CFA by knowingly and intentionally misrepresenting the Class Vehicles as
17 safe and reliable and the defective ACU and ASICs installed in them as properly-
18 functioning and free from defects. Specifically, ZF Electronics USA, ZF Passive
19 Safety USA, and ZF Automotive USA worked with the Vehicle Manufacturer
20 Defendants on the design and inclusion of the airbag readiness indicators in the
21 Class Vehicles, which falsely assured Plaintiffs and Class Members that the
22 Occupant Restraint Systems in the Class Vehicles would function properly in a
23 crash.

24 2898. By misrepresenting, failing to disclose, and actively concealing the
25 dangers and risk posed by the Class Vehicles due to the ACU Defect, the ZF and
26 ST Defendants engaged in unfair or deceptive business practices prohibited by 815
27 ILCS 505/2, including the use or employment of deception and fraud, and/or the
28

1 concealment, suppression or omission of material facts, and engaging in conduct
2 which creates a likelihood of confusion or misunderstanding.

3 2899. The ZF and ST Defendants' unfair or deceptive acts or practices,
4 including their misrepresentations, concealments, omissions, and suppressions of
5 material facts, were designed to mislead and had a tendency or capacity to mislead
6 and create a false impression in consumers that the Class Vehicles had properly-
7 functioning and reliable airbags and seatbelts, and that the Occupant Restraint
8 System did not contain the ACU Defect and would perform its intended function of
9 activating the seatbelts and airbags during a collision. Indeed, those
10 misrepresentations, concealments, omissions, and suppressions of material facts did
11 in fact deceive reasonable consumers, including the Illinois Plaintiffs and Illinois
12 State Class members, about the true safety and reliability of Class Vehicles and/or
13 the defective ACUs and ASICs installed in them, the quality of the Class Vehicles,
14 and the true value of the Class Vehicles.

15 2900. The Illinois Plaintiffs and Illinois State Class members justifiably
16 relied on the ZF and ST Defendants' misrepresentations, omissions, and
17 concealment, as they had no way of discerning that the Class Vehicles contained
18 the ACU Defect, as alleged above. The Illinois Plaintiffs and Illinois State Class
19 members did not, and could not, unravel the ZF and ST Defendants' deception on
20 their own.

21 2901. The ZF and ST Defendants' misrepresentations and concealment of the
22 ACU Defect and true characteristics of the defective ACUs and ASICs in the Class
23 Vehicles were material to the Illinois Plaintiffs and Illinois State Class members, as
24 the ZF and ST Defendants intended. Had they known the truth, the Illinois
25 Plaintiffs and Illinois State Class members would not have purchased or leased the
26 Class Vehicles, or would have paid significantly less for them.

27 2902. The Illinois Plaintiffs and Illinois State Class members suffered
28 ascertainable losses and actual damages as a direct and proximate result of the ZF

1 and ST Defendants’ misrepresentations, concealment, and failure to disclose
2 material information.

3 2903. The ZF and ST Defendants’ violations present a continuing risk to the
4 Illinois Plaintiffs and Illinois State Class members, as well as to the general public,
5 because the Class Vehicles remain unsafe due to the defective ACUs and ASICs
6 therein. The ZF and ST Defendants’ unlawful acts and practices complained of
7 herein affect the public interest.

8 2904. Pursuant to 815 ILCS 505/10a, the Illinois Plaintiffs and Illinois State
9 Class members seek an order enjoining the ZF and ST Defendants’ unfair or
10 deceptive acts or practices and awarding damages and any other just and proper
11 relief available under the Illinois CFA.

12 **d. Illinois Count 4: Violation of the Illinois Uniform Deceptive**
13 **Trade Practices Act (815 Ill. Comp. Stat. 510/1, et seq.)**
14 **Against Kia Korea and Kia USA**

15 2905. Plaintiffs reallege and incorporate by reference all allegations in
16 Sections I-VI above as though fully set forth herein.

17 2906. Plaintiffs Amanda Swanson and Brian Collins bring this count
18 individually and on behalf of members of the Illinois State Class who purchased or
19 leased Kia Class Vehicles, against Kia Korea and Kia USA.

20 2907. For purposes of this count, Plaintiffs Swanson and Collins shall be
21 referred to as the “Illinois Plaintiffs.”

22 2908. Kia USA, the Illinois Plaintiffs, and Illinois State Class members are
23 “persons” within the meaning of 815 ILCS 510/1(5).

24 2909. The Illinois Uniform Deceptive Trade Practices Act (“Illinois
25 UDTPA”) prohibits deceptive trade practices in the course of a business, vocation,
26 or occupation. 815 ILCS 510/2(a).

27 2910. In the course of their business, Kia Korea and Kia USA, through their
28 agents, employees, and/or subsidiaries, violated the Illinois UDTPA by knowingly
and intentionally misrepresenting, omitting, concealing, and/or failing to disclose

1 material facts regarding the reliability, safety, and performance of the Kia Class
2 Vehicles, the safety of their Occupant Restraint Systems, and the ACU Defect, as
3 detailed above.

4 2911. Specifically, by misrepresenting the Class Vehicles and the defective
5 ACUs and ASICs installed in them as safe and/or free from defects, and by failing
6 to disclose and actively concealing the dangers and risk posed by the Class Vehicles
7 and the ACU Defect, Kia Korea and Kia USA engaged in one or more of the
8 following unfair or deceptive business practices prohibited by 815 ILCS 510/2(a):

- 9 a. Representing that the Kia Class Vehicles and/or the defective
10 ACUs and ASICs installed in them have characteristics, uses,
11 benefits, and qualities which they do not have;
- 12 b. Representing that the Kia Class Vehicles and/or the defective
13 ACUs and ASICs installed in them are of a particular standard,
14 quality, and grade when they are not;
- 15 c. Advertising the Kia Class Vehicles and/or the defective ACUs
16 and ASICs installed in them with the intent not to sell or lease
17 them as advertised; and
- 18 d. engaging in other conduct which similarly creates a likelihood
19 of confusion or misunderstanding.

20 815 ILCS 510/2(a)(5), (7), (9), and (12)

21 2912. Kia Korea's and Kia USA's unfair and deceptive acts or practices,
22 including their misrepresentations, concealments, omissions, and suppressions of
23 material facts, were designed to mislead and had a tendency or capacity to mislead
24 and create a false impression in consumers that the Kia Class Vehicles had
25 properly-functioning and reliable airbags and seatbelts, and that the Occupant
26 Restraint System did not contain the ACU Defect and would perform its intended
27 function of activating the seatbelts and airbags during a collision. Indeed, those
28 misrepresentations, concealments, omissions, and suppressions of material facts did

1 in fact deceive reasonable consumers, including the Illinois Plaintiffs and Illinois
2 State Class members, about the true safety and reliability of Kia Class Vehicles
3 and/or the defective ACUs and ASICs installed in them, the quality of the Kia Class
4 Vehicles, and the true value of those vehicles.

5 2913. Kia Korea's and Kia USA's misrepresentations, concealments,
6 omissions, and suppressions of material facts regarding the ACU Defect and true
7 characteristics of the Occupant Restraint Systems in the Kia Class Vehicles were
8 material to the decisions of the Illinois Plaintiffs and Illinois State Class members
9 to purchase and lease those vehicles, as Kia Korea and Kia USA intended. The
10 Illinois Plaintiffs and Illinois State Class members were exposed to those
11 misrepresentations, concealments, omissions, and suppressions of material facts,
12 and relied on Kia Korea's and Kia USA's misrepresentations that the Kia Class
13 Vehicles and their Occupant Restraint Systems were safe and reliable in deciding to
14 purchase and lease Kia Class Vehicles. Plaintiffs allege the information they relied
15 upon in Section II.B above. To aid review of this information, Exhibit 19 provides
16 paragraph numbers for each Plaintiff.

17 2914. The Illinois Plaintiffs' and Illinois State Class members' reliance was
18 reasonable, as they had no way of discerning that Kia Korea's and Kia USA's
19 representations were false and misleading, or otherwise learning the facts that they
20 had concealed or failed to disclose. The Illinois Plaintiffs and Illinois State Class
21 members did not, and could not, unravel Kia Korea's and Kia USA's deception on
22 their own.

23 2915. Had the Illinois Plaintiffs and Illinois State Class members known the
24 truth about the ACU Defect, the Illinois Plaintiffs and Illinois State Class members
25 would not have purchased or leased Kia Class Vehicles, or would have paid
26 significantly less for them.

27 2916. The Illinois Plaintiffs and Illinois State Class members suffered
28 ascertainable losses and actual damages through their overpayment at the time of

1 purchase and lease for Kia Class Vehicles with an undisclosed safety defect as a
2 direct and proximate result of Kia Korea's and Kia USA's concealment,
3 misrepresentations, and/or failure to disclose material information.

4 2917. Kia Korea's and Kia USA's violations present a continuing risk to the
5 Illinois Plaintiffs and Illinois State Class members, as well as to the general public,
6 because the Class Vehicles remain unsafe due to the defective ACUs and ASICs
7 therein. Additionally, Kia Korea's and Kia USA's unlawful acts and practices
8 complained of herein affect the public interest.

9 2918. Pursuant to 815 ILCS 510/3, the Illinois Plaintiffs and Illinois State
10 Class members seek an order enjoining Kia Korea's and Kia USA's unfair or
11 deceptive acts or practices and awarding other just and proper relief available under
12 the Illinois UDTPA.

13 2919. The Illinois Plaintiffs plead this claim separately as well as in the
14 alternative to their claims for damages under Fed. R. Civ. P. 8(a)(3), because if the
15 Illinois Plaintiffs' claims for damages are dismissed or judgment is entered in favor
16 of Defendants, the Illinois Plaintiffs will have no adequate legal remedy.

17 e. **Illinois Count 5: Violation of the Illinois Uniform Deceptive**
18 **Trade Practices Act (815 Ill. Comp. Stat. 510/1, et seq.)**
19 **Against ZF Electronics USA, ZF Passive Safety USA, ZF**
20 **Automotive USA, ZF TRW Corp., ZF Germany, ST Italy,**
21 **ST USA, and ST Malaysia**

22 2920. Plaintiffs reallege and incorporate by reference all allegations in
23 Sections I-VI above as though fully set forth herein.

24 2921. Plaintiffs Amanda Swanson and Brian Collins bring this count
25 individually and behalf of members of the Illinois State Class against ZF
26 Electronics USA, ZF Passive Safety USA, ZF Automotive USA, ZF TRW Corp.,
27 and ZF Germany (collectively, the "ZF Defendants"), and ST Italy, ST Malaysia,
28 and ST USA (collectively, the "ST Defendants").

29 2922. For purposes of this count, Plaintiffs Swanson and Collins shall be
referred to as the "Illinois Plaintiffs."

1 2923. The ZF Defendants, ST Defendants, Illinois Plaintiffs, and Illinois
2 State Class members are “persons” within the meaning of 815 ILCS 510/1(5).

3 2924. The Illinois Uniform Deceptive Trade Practices Act (“Illinois
4 UDTPA”) prohibits deceptive trade practices in the course of a business, vocation,
5 or occupation. 815 ILCS 510/2(a).

6 2925. In the course of their business, the ZF and ST Defendants, through
7 their agents, employees, and/or subsidiaries, violated the Illinois UDTPA by
8 knowingly and intentionally omitting, concealing, and failing to disclose material
9 facts regarding the existence, nature, and scope of the ACU Defect in the Class
10 Vehicles, as detailed above.

11 2926. Additionally, ZF Electronics USA, ZF Passive Safety USA, and ZF
12 Automotive USA, through their agents, employees, and/or subsidiaries, violated the
13 Illinois UDTPA by knowingly and intentionally misrepresenting the Class Vehicles
14 as safe and reliable and the defective ACU and ASICs installed in them as properly-
15 functioning and free from defects. Specifically, ZF Electronics USA, ZF Passive
16 Safety USA, and ZF Automotive USA worked with the Vehicle Manufacturer
17 Defendants on the design and inclusion of the airbag readiness indicators in the
18 Class Vehicles, which falsely assured Plaintiffs and Class Members that the
19 Occupant Restraint Systems in the Class Vehicles would function properly in a
20 crash.

21 2927. By misrepresenting, failing to disclose, and actively concealing the
22 dangers and risk posed by the Class Vehicles due to the ACU Defect, the ZF and
23 ST Defendants engaged in unfair or deceptive business practices prohibited by 815
24 ILCS 510/2, including the use or employment of deception and fraud, and/or the
25 concealment, suppression or omission of material facts, and engaging in conduct
26 which creates a likelihood of confusion or misunderstanding.

27 2928. The ZF and ST Defendants’ unfair or deceptive acts or practices,
28 including their misrepresentations, concealments, omissions, and suppressions of

1 material facts, were designed to mislead and had a tendency or capacity to mislead
2 and create a false impression in consumers that the Class Vehicles had properly-
3 functioning and reliable airbags and seatbelts, and that the Occupant Restraint
4 System did not contain the ACU Defect and would perform its intended function of
5 activating the seatbelts and airbags during a collision. Indeed, those
6 misrepresentations, concealments, omissions, and suppressions of material facts did
7 in fact deceive reasonable consumers, including the Illinois Plaintiffs and Illinois
8 State Class members, about the true safety and reliability of Class Vehicles and/or
9 the defective ACUs and ASICs installed in them, the quality of the Class Vehicles,
10 and the true value of the Class Vehicles.

11 2929. The Illinois Plaintiffs and Illinois State Class members justifiably
12 relied on the ZF and ST Defendants' misrepresentations, omissions, and
13 concealment, as they had no way of discerning that the Class Vehicles contained
14 the ACU Defect, as alleged above. The Illinois Plaintiffs and Illinois State Class
15 members did not, and could not, unravel the ZF and ST Defendants' deception on
16 their own.

17 2930. The ZF and ST Defendants' misrepresentations and concealment of the
18 ACU Defect and true characteristics of the defective ACUs and ASICs in the Class
19 Vehicles were material to the Illinois Plaintiffs and Illinois State Class members, as
20 the ZF and ST Defendants intended. Had they known the truth, the Illinois
21 Plaintiffs and Illinois State Class members would not have purchased or leased the
22 Class Vehicles, or would have paid significantly less for them.

23 2931. The Illinois Plaintiffs and Illinois State Class members suffered
24 ascertainable losses and actual damages as a direct and proximate result of the ZF
25 and ST Defendants' misrepresentations, concealment, and failure to disclose
26 material information.

27 2932. The ZF and ST Defendants' violations present a continuing risk to the
28 Illinois Plaintiffs and Illinois State Class members, as well as to the general public,

1 because the Class Vehicles remain unsafe due to the defective ACUs and ASICs
2 therein. The ZF and ST Defendants’ unlawful acts and practices complained of
3 herein affect the public interest.

4 2933. Pursuant to 815 ILCS 510/3, the Illinois Plaintiffs and Illinois State
5 Class members seek an order enjoining the ZF and ST Defendants’ unfair or
6 deceptive acts or practices and awarding any other just and proper relief available
7 under the Illinois UDTPA.

8 2934. The Illinois Plaintiffs plead this claim separately as well as in the
9 alternative to their claims for damages under Fed. R. Civ. P. 8(a)(3), because if the
10 Illinois Plaintiffs’ claims for damages are dismissed or judgment is entered in favor
11 of Defendants, the Illinois Plaintiffs will have no adequate legal remedy.

12 **f. Illinois Count 6: Fraud by Omission and Concealment**
13 **Against Kia Korea and Kia USA**

14 2935. Plaintiffs reallege and incorporate by reference all preceding
15 allegations as though fully set forth herein.

16 2936. Plaintiffs Amanda Swanson and Brian Collins bring this count
17 individually and on behalf of members of the Illinois State Class who purchased or
18 leased Kia Class Vehicles, against Kia Korea and Kia USA.

19 2937. For purposes of this count, Plaintiffs Swanson, and Collins shall be
20 referred to as the “Illinois Plaintiffs.”

21 2938. Kia Korea and Kia USA are liable for both fraudulent concealment and
22 non-disclosure. *See, e.g.*, Restatement (Second) of Torts §§ 550-51 (1977).

23 2939. As explained in Section IV.A, the ACU Defect in Class Vehicles poses
24 serious risks to vehicle occupants, including that it can cause: (1) airbags and
25 seatbelts not to activate during a crash because crashes can sometimes release
26 electrical transients, which cause the ACU to fail; (2) airbags to deploy when the
27 vehicle has not crashed, which is dangerous because it is shocking and difficult for
28 the driver to operate a vehicle when the airbag deploys without warning; and (3)

1 failures of other important post-crash operations of the safety system, such as
2 unlocking doors to facilitate escape or extraction of drivers and passengers by
3 emergency personnel, and shutting off a crashed vehicle's fuel or power supply.

4 2940. Kia Korea and Kia USA had a duty to disclose the ACU Defect to the
5 Illinois Plaintiffs and the Illinois State Class members because:

- 6 a. Kia Korea and Kia USA had exclusive access to and far superior
7 knowledge about technical facts regarding the ACU Defect;
- 8 b. Given the ACU Defect's hidden and technical nature, the
9 Illinois Plaintiffs and Illinois State Class members lack the
10 sophisticated expertise in vehicle components and electrical
11 phenomena that would be necessary to discover the ACU Defect
12 on their own;
- 13 c. Kia Korea and Kia USA knew that the ACU Defect gave rise to
14 serious safety concerns for the consumers who use the vehicles,
15 and the Kia Class Vehicles containing the ACU Defect would
16 have been a material fact to the Illinois Plaintiffs' and Illinois
17 State Class members' decisions to buy or lease Kia Class
18 Vehicles; and
- 19 d. Kia Korea and Kia USA made incomplete representations about
20 the safety and reliability of the Kia Class Vehicles and their
21 Occupant Restraint System, while purposefully withholding
22 material facts about a known safety defect. In uniform
23 advertising and materials provided with each Class Vehicle, Kia
24 Korea, and Kia USA intentionally concealed, suppressed, and
25 failed to disclose to the Illinois Plaintiffs and Illinois State Class
26 members that the Kia Class Vehicles contained the ACU Defect.
27 Because they volunteered to provide information about the Kia
28 Class Vehicles that they marketed and offered for sale and lease

1 to the Illinois Plaintiffs and Illinois State Class members, Kia
2 Korea and Kia USA had the duty to disclose the whole truth.

3 2941. In breach of their duties, Kia Korea and Kia USA failed to disclose
4 that the Kia Class Vehicles were not safe and reliable, and that their Occupant
5 Restraint Systems, including their airbags and seatbelt pretensioners could fail in
6 the event of a crash due to the ACU Defect.

7 2942. Kia Korea and Kia USA intended for the Illinois Plaintiffs and Illinois
8 State Class members to rely on their omissions—which they did by purchasing and
9 leasing the Kia Class Vehicles at the prices they paid believing that the Occupant
10 Restraint Systems in their Class Vehicles would function properly.

11 2943. That reliance was reasonable, because a reasonable consumer would
12 not have expected that the Kia Class Vehicles contained a safety defect that poses
13 such a serious risk. Kia Korea and Kia USA knew that reasonable consumers
14 expect that their vehicle has working airbags and seatbelt pretensioners and would
15 rely on those facts in deciding whether to purchase, lease, or retain a new or used
16 motor vehicle. Whether a manufacturer's products are safe and reliable, and
17 whether that manufacturer stands behind its products, are material concerns to a
18 consumer. Especially here when at least nine people have already died due to the
19 ACU Defect, and many more have been injured.

20 2944. Additionally, Kia Korea and Kia USA ensured that the Illinois
21 Plaintiffs and Illinois State Class members did not discover this information by
22 actively concealing and misrepresenting the true nature of the Kia Class Vehicles'
23 Occupant Restraint Systems to consumers and NHTSA.

24 2945. Kia Korea and Kia USA actively concealed and suppressed these
25 material facts, in whole or in part, to maintain a market for their Class Vehicles, to
26 protect profits, and to avoid costly recalls that would expose them to liability for
27 those expenses and harm the commercial reputations of Defendants and their
28

1 products. They did so at the expense of the Illinois Plaintiffs and Illinois State Class
2 members.

3 2946. To this day, Kia Korea and Kia USA have not fully and adequately
4 disclosed the ACU Defect, and they continue to conceal material information about
5 the defect from consumers and NHTSA. The omitted and concealed facts were
6 material because a reasonable person would find them important in purchasing,
7 leasing, or retaining a new or used motor vehicle, and because they directly impact
8 the value of the Kia Class Vehicles purchased or leased by the Illinois Plaintiffs and
9 Illinois State Class members.

10 2947. Had they been aware of the ACU Defect in the Kia Class Vehicles,
11 and Kia Korea's and Kia USA's callous disregard for safety, the Illinois Plaintiffs
12 and Illinois State Class members either would not have paid as much as they did for
13 their Class Vehicles, or they would not have purchased or leased them.

14 2948. As alleged in Section V above, if Kia Korea and Kia USA had fully
15 and adequately disclosed the ACU Defect to consumers and NHTSA, the Illinois
16 Plaintiffs and Illinois State Class members would have seen such a disclosure.

17 2949. Accordingly, Kia Korea and Kia USA are liable to the Illinois
18 Plaintiffs and Illinois State Class members for their damages in an amount to be
19 proven at trial, including, but not limited to, their lost overpayment for the Kia
20 Class Vehicles at the time of purchase or lease.

21 2950. Kia Korea's and Kia USA's acts were done maliciously, oppressively,
22 deliberately, with intent to defraud; in reckless disregard of the Illinois Plaintiffs'
23 and Illinois State Class members' rights and well-being; and to enrich themselves.
24 Kia Korea's and Kia USA's misconduct warrants an assessment of punitive
25 damages, as permitted by law, in an amount sufficient to deter such conduct in the
26 future, which amount shall be determined according to proof at trial.

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1 g. **Illinois Count 7: Fraud by Omission and Concealment**
2 **Against ZF Electronics USA, ZF Passive Safety USA, ZF**
3 **Automotive USA, ZF TRW Corp., ZF Germany, ST Italy,**
4 **ST USA, and ST Malaysia**

5 2951. Plaintiffs reallege and incorporate by reference all preceding
6 allegations as though fully set forth herein.

7 2952. The Illinois Plaintiffs bring this count individually and on behalf of
8 members of the Illinois State Class who purchased or leased Class Vehicles, against
9 ZF Electronics USA, ZF Passive Safety USA, ZF Automotive USA, ZF TRW
10 Corp., and ZF Germany (collectively, the “ZF Defendants”), and ST Italy, ST
11 Malaysia, and ST USA (collectively, the “ST Defendants”).

12 2953. The ZF and ST Defendants are liable for both fraudulent concealment
13 and non-disclosure. *See, e.g.*, Restatement (Second) of Torts §§ 550-51 (1977).

14 2954. As explained in Section IV.A, the ACU Defect in Class Vehicles poses
15 serious risks to vehicle occupants, including that it can cause: (1) airbags and
16 seatbelts not to activate during a crash because crashes can sometimes release
17 electrical transients, which cause the ACU to fail; (2) airbags to deploy when the
18 vehicle has not crashed, which is dangerous because it is shocking and difficult for
19 the driver to operate a vehicle when the airbag deploys without warning; and (3)
20 failures of other important post-crash operations of the safety system, such as
21 unlocking doors to facilitate escape or extraction of drivers and passengers by
22 emergency personnel, and shutting off a crashed vehicle’s fuel or power supply.

23 2955. The ZF and ST Defendants had a duty to disclose the ACU Defect to
24 the Illinois Plaintiffs and Illinois State Class members because:

- 25 a. The ZF and ST Defendants had exclusive access to and far
26 superior knowledge about technical facts regarding the ACU
27 Defect;
- 28 b. Given the ACU Defect’s hidden and technical nature, the
 Illinois Plaintiffs and Illinois State Class members lack the

1 sophisticated expertise in vehicle components and electrical
2 phenomena that would be necessary to discover the ACU Defect
3 on their own;

4 c. The ZF and ST Defendants knew that the ACU Defect gave rise
5 to serious safety concerns for the consumers who use the
6 vehicles, and the Class Vehicles containing the ACU Defect
7 would have been a material fact to the Illinois Plaintiffs' and
8 Illinois State Class members' decisions to buy or lease Class
9 Vehicles; and

10 d. The ZF Defendants made incomplete representations about the
11 safety and reliability of the Class Vehicles and their Occupant
12 Restraint System, while purposefully withholding material facts
13 about a known safety defect, creating a duty to disclose the
14 whole truth. Specifically, ZF Electronics USA, ZF Passive
15 Safety USA, and ZF Automotive USA worked with the Vehicle
16 Manufacturer Defendants on the design and inclusion of the
17 airbag readiness indicators in the Class Vehicles, which falsely
18 assured Plaintiffs and Class Members that the Occupant
19 Restraint Systems in the Class Vehicles would function properly
20 in a crash.

21 2956. In breach of their duties, the ZF and ST Defendants failed to disclose
22 that the Class Vehicles were not safe and reliable, and that their Occupant Restraint
23 Systems, including their airbags and seatbelt pretensioners could fail in the event of
24 a crash due to the ACU Defect.

25 2957. The ZF and ST Defendants intended for the Illinois Plaintiffs and
26 Illinois State Class members to rely on their omissions—which they did by
27 purchasing and leasing the Class Vehicles at the prices they paid believing that the
28 Occupant Restraint Systems in their Class Vehicles would function properly.

1 2958. That reliance was reasonable, because a reasonable consumer would
2 not have expected that the Class Vehicles contained a safety defect that poses such
3 a serious risk. The ZF and ST Defendants knew that reasonable consumers expect
4 that their vehicle has working airbags and seatbelt pretensioners and would rely on
5 those facts in deciding whether to purchase, lease, or retain a new or used motor
6 vehicle. Whether a manufacturer's products are safe and reliable, and whether that
7 manufacturer stands behind its products, are material concerns to a consumer.
8 Especially here when at least nine people have already died due to the ACU Defect,
9 and many more have been injured.

10 2959. Additionally, the ZF and ST Defendants ensured that the Illinois
11 Plaintiffs and Illinois State Class members did not discover this information by
12 actively concealing and misrepresenting the true nature of the Class Vehicles'
13 Occupant Restraint Systems to consumers and NHTSA.

14 2960. The ZF and ST Defendants actively concealed and suppressed these
15 material facts, in whole or in part, to maintain a market for the DS84 ACU, to
16 protect profits, and to avoid costly recalls that would expose them to liability for
17 those expenses and harm the commercial reputations of Defendants and their
18 products. They did so at the expense of the Illinois Plaintiffs and Illinois State Class
19 members.

20 2961. To this day, the ZF and ST Defendants have not fully and adequately
21 disclosed the ACU Defect, and they continue to conceal material information about
22 the defect from consumers and NHTSA. The omitted and concealed facts were
23 material because a reasonable person would find them important in purchasing,
24 leasing, or retaining a new or used motor vehicle, and because they directly impact
25 the value of the Class Vehicles purchased or leased by the Illinois Plaintiffs and
26 Illinois State Class members.

27 2962. Had they been aware of the ACU Defect in the Class Vehicles, and the
28 ZF and ST Defendants' callous disregard for safety, the Illinois Plaintiffs and

1 Illinois State Class members either would not have paid as much as they did for
2 their Class Vehicles, or they would not have purchased or leased them.

3 2963. As alleged in Section V above, if the ZF and ST Defendants had fully
4 and adequately disclosed the ACU Defect to consumers and NHTSA, the Illinois
5 Plaintiffs and Illinois State Class members would have seen such a disclosure.

6 2964. Accordingly, the ZF and ST Defendants are liable to the Illinois
7 Plaintiffs and Illinois State Class members for their damages in an amount to be
8 proven at trial, including, but not limited to, their lost overpayment for the Class
9 Vehicles at the time of purchase or lease.

10 2965. The ZF and ST Defendants' acts were done maliciously, oppressively,
11 deliberately, with intent to defraud; in reckless disregard of the Illinois Plaintiffs'
12 and Illinois State Class members' rights and well-being; and to enrich themselves.
13 The ZF and ST Defendants' misconduct warrants an assessment of punitive
14 damages, as permitted by law, in an amount sufficient to deter such conduct in the
15 future, which amount shall be determined according to proof at trial.

16 **h. Illinois Count 8: Unjust Enrichment Against Kia Korea and**
17 **Kia USA**

18 2966. Plaintiffs reallege and incorporate by reference all allegations in
19 Sections I-VI above as though fully set forth herein.

20 2967. Plaintiffs Amanda Swanson and Brian Collins bring this count
21 individually and on behalf of members of the Illinois State Class who purchased or
22 leased Kia Class Vehicles, against Kia Korea and Kia USA.

23 2968. For purposes of this count, Plaintiffs Swanson and Collins shall be
24 referred to as the "Illinois Plaintiffs."

25 2969. The Illinois Plaintiffs and Illinois State Class members conferred
26 tangible and material economic benefits upon Kia Korea and Kia USA when they
27 purchased or leased the Kia Class Vehicles. Kia Korea and Kia USA readily
28 accepted and retained these benefits.

1 2970. The Illinois Plaintiffs and Illinois State Class members would not have
2 purchased or leased their Kia Class Vehicles, or would have paid less for them, had
3 they known of the ACU Defect at the time of purchase or lease. Therefore, Kia
4 Korea and Kia USA profited from the sale and lease of the Kia Class Vehicles to
5 the detriment and expense of the Illinois Plaintiffs and Illinois State Class members.

6 2971. Kia Korea and Kia USA appreciated those benefits. These benefits
7 were the expected result of Kia Korea and Kia USA acting in their pecuniary
8 interest at the expense of their customers. Kia Korea and Kia USA knew of these
9 benefits because they were aware of the ACU Defect, yet they failed to disclose this
10 knowledge and misled the Illinois Plaintiffs and Illinois State Class members
11 regarding the nature and quality of the Kia Class Vehicles while profiting from this
12 deception.

13 2972. It would be unjust, inequitable, and unconscionable for Kia Korea and
14 Kia USA to retain these benefits, including because they were procured as a result
15 of their wrongful conduct alleged above.

16 2973. The Illinois Plaintiffs and Illinois State Class members are entitled to
17 restitution of the benefits Kia Korea and Kia USA unjustly retained and/or any
18 amounts necessary to return the Illinois Plaintiffs and Illinois State Class members
19 to the position they occupied prior to dealing with Kia Korea and Kia USA, with
20 such amounts to be determined at trial.

21 2974. The Illinois Plaintiffs plead this claim separately as well as in the
22 alternative to their claims for damages under Fed. R. Civ. P. 8(a)(3), because if the
23 Illinois Plaintiffs' claims for damages are dismissed or judgment is entered in favor
24 of Defendants, the Illinois Plaintiffs will have no adequate legal remedy.

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1 **8. Indiana**

2 **a. Indiana Count 1: Breach of Express Warranty (Ind. Code**
3 **§§ 26-1-2-313 and 26-1-2.1-210) Against Kia Korea and Kia**
4 **USA**

5 2975. Plaintiffs reallege and incorporate by reference all preceding
6 allegations as though fully set forth herein.

7 2976. Plaintiff Kenneth Ogorek (hereinafter, “Indiana Plaintiff”) brings this
8 count individually and on behalf of members of the Indiana State Class who
9 purchased or leased Kia Class Vehicles, against Kia Korea and Kia USA.

10 2977. Kia Korea and Kia USA are and were at all relevant times “merchants”
11 with respect to motor vehicles under Ind. Code §§ 26-1-2.1-103(3) and 26-1-2-
12 104(1), and “sellers” of motor vehicles under § 26-1-2-103(1)(d).

13 2978. With respect to leases, Kia Korea and Kia USA are and were at all
14 relevant times “lessors” of motor vehicles under Ind. Code § 26-1-2.1-103(1)(p).

15 2979. All Indiana State Class members who purchased Kia Class Vehicles in
16 Indiana are “buyers” within the meaning of Ind. Code § 26-1-2-103(1)(a).

17 2980. All Indiana State Class members who leased Kia Class Vehicles in
18 Indiana are “lessees” within the meaning of Ind. Code § 26-1-2.1-103(1)(n).

19 2981. The Kia Class Vehicles are and were at all relevant times “goods”
20 within the meaning of Ind. Code §§ 26-1-2.1-103(1)(h) and 26-1-2-105(1).

21 2982. In connection with the purchase or lease of Kia Class Vehicles, Kia
22 Korea and Kia USA provided the Indiana Plaintiff and Indiana State Class members
23 with written express warranties in the form of: (a) written express warranties
24 covering the repair or replacement of components that are defective in materials or
25 workmanship, and (b) descriptions of the Kia Class Vehicles as safe and reliable,
26 and that their Occupant Restraint Systems, including their airbags and seatbelt
27 pretensioners, would function properly in the event of a crash.

28 2983. However, Kia Korea and Kia USA knew or should have known that
the warranties were false and/or misleading. Specifically, Kia Korea and Kia USA

1 were aware of the ACU Defect in the Kia Class Vehicles, which made the vehicles
2 inherently defective and dangerous at the time that they were sold and leased to the
3 Indiana Plaintiff and Indiana State Class members.

4 2984. The Indiana Plaintiff and Indiana State Class members were aware the
5 Kia Class Vehicles were covered by express warranties, and those warranties were
6 an essential part of the bargain between them and Kia Korea and Kia USA when the
7 Indiana Plaintiff and Indiana State Class members unknowingly purchased and
8 leased Kia Class Vehicles that came equipped with defective ACUs and ASICs.

9 2985. Kia Korea and Kia USA misrepresented the Kia Class Vehicles as safe
10 and reliable while concealing that they contained the ACU Defect, the Indiana
11 Plaintiff and Indiana State Class members were exposed to those
12 misrepresentations, and the Indiana Plaintiff and Indiana State Class members had
13 no way of discerning that Kia Korea's and Kia USA's representations were false
14 and misleading or otherwise learning the material facts that Kia Korea and Kia
15 USA had concealed or failed to disclose. Accordingly, the Indiana Plaintiff and
16 Indiana State Class members reasonably relied on Kia Korea's and Kia USA's
17 express warranties when purchasing or leasing their Kia Class Vehicles. Plaintiffs
18 allege the information they relied upon in Section II.B above. To aid review of this
19 information, Exhibit 19 provides paragraph numbers for each Plaintiff.

20 2986. Kia Korea and Kia USA knowingly breached their express warranties
21 to repair defects in materials and workmanship by failing to repair the ACU Defect
22 or replace the defective ACUs and ASICs in the Kia Class Vehicles. Kia Korea and
23 Kia USA also breached their express warranties by selling and leasing Kia Class
24 Vehicles with a defect that was never disclosed to the Indiana Plaintiff and Indiana
25 State Class members.

26 2987. The Indiana Plaintiff and Indiana State Class members have provided
27 Kia Korea and Kia USA with reasonable notice and opportunity to cure the
28 breaches of their express warranties by way of the numerous NHTSA complaints

1 filed against them, and the individual notice letters sent by Indiana State Class
2 members within a reasonable amount of time after the ACU Defect became public.
3 On April 24, 2020, notice letters were sent on behalf of the Indiana Plaintiff and
4 Indiana State Class members to Kia Korea and Kia USA.

5 2988. Alternatively, the Indiana Plaintiff and Indiana State Class members
6 were excused from providing Kia Korea and Kia USA with notice and an
7 opportunity to cure the breach, because it would have been futile. As alleged above,
8 Kia Korea and Kia USA have long known that the Kia Class Vehicles contained the
9 ACU Defect, and that the ACU Defect has caused ACUs and ASICs to malfunction
10 in crashes involving Class Vehicles; however, to date, Kia Korea and Kia USA
11 have not instituted a recall or any other repair program with respect to the
12 unrecalled Kia Class Vehicles, or even acknowledged that the ACU Defect exists in
13 all of the Kia Class Vehicles, including the recalled Kia Class Vehicles. Therefore,
14 the Indiana Plaintiff and Indiana State Class members had no reason to believe that
15 Kia Korea and Kia USA would have repaired the ACU Defect if the Indiana
16 Plaintiff and Indiana State Class members presented their Class Vehicles to Kia
17 Korea and Kia USA for repair.

18 2989. As a direct and proximate result of Kia Korea's and Kia USA's breach
19 of their express warranties, the Kia Class Vehicles were and are defective and the
20 ACU Defect in the Indiana Plaintiff's and Indiana State Class members' Kia Class
21 Vehicles was not remedied. Therefore, the Indiana Plaintiff and Indiana State Class
22 members have been damaged, in an amount to be proven at trial, through their
23 overpayment at the time of purchase or lease for Kia Class Vehicles with an
24 undisclosed safety defect that would not be remedied.

25 **b. Indiana Count 2: Breach of Implied Warranty of**
26 **Merchantability (Ind. Code §§ 26-1-2-314 and 26-1-2.1-212)**
27 **Against Kia USA**

28 2990. Plaintiffs reallege and incorporate by reference all preceding
allegations as though fully set forth herein.

1 2991. The Indiana Plaintiff brings this count individually and on behalf of
2 members of the Indiana State Class who purchased or leased Kia Class Vehicles,
3 against Kia USA.

4 2992. A warranty that the Kia Class Vehicles were in merchantable condition
5 and fit for the ordinary purpose for which such goods are used is implied by law
6 pursuant to Ind. Code §§ 26-1-2-314 and 26-1-2.1-212.

7 2993. Kia USA is and was at all relevant times a “merchant” with respect to
8 motor vehicles under Ind. Code §§ 26-1-2.1-103(3) and 26-1-2-104(1), and a
9 “seller” of motor vehicles under § 26-1-2-103(1)(d).

10 2994. Kia USA is and was at all relevant times a “lessor” of motor vehicles
11 under Ind. Code § 26-1-2.1-103(1)(p).

12 2995. All Indiana State Class members who purchased Kia Class Vehicles in
13 Indiana are “buyers” within the meaning of Ind. Code § 26-1-2-103(1)(a).

14 2996. All Indiana State Class members who leased Kia Class Vehicles in
15 Indiana are “lessees” within the meaning of Ind. Code § 26-1-2.1-103(1)(n).

16 2997. The Kia Class Vehicles are and were at all relevant times “goods”
17 within the meaning of Ind. Code §§ 26-1-2.1-103(1)(h) and 26-1-2-105(1).

18 2998. The Kia Class Vehicles did not comply with the implied warranty of
19 merchantability because, at the time of sale and lease and at all times thereafter,
20 they were defective and not in merchantable condition, would not pass without
21 objection in the trade, and were not fit for the ordinary purpose for which vehicles
22 were used. Specifically, at the time they were sold and leased, the Kia Class
23 Vehicles contained the ACU Defect, which may cause the airbags and seatbelt
24 pretensioners to fail to deploy during a crash, the failure to unlock doors
25 automatically after a crash, the failure to turn off a fuel supply or high-voltage
26 battery after a crash, or the airbags to inadvertently deploy, all of which render the
27 Kia Class Vehicles inherently defective and dangerous
28

1 2999. The Indiana Plaintiff and Indiana State Class members have provided
2 Kia USA with reasonable notice and opportunity to cure the breaches of its implied
3 warranties by way of the numerous NHTSA complaints filed against it, and
4 individual notice letters sent by Indiana State Class members within a reasonable
5 amount of time after the ACU Defect became public. Additionally, on May 23,
6 2019, Indiana State Class members sent a notice letter pursuant Ind. Code § 24-5-
7 0.5-5(a) to Kia USA. Moreover, a second notice letter was sent on behalf of the
8 Indiana Plaintiff and Indiana State Class members to Kia USA on April 24, 2020.

9 3000. Alternatively, the Indiana Plaintiff and Indiana State Class members
10 were excused from providing Kia USA with notice and an opportunity to cure the
11 breach, because it would have been futile. As alleged above, Kia USA have long
12 known that the Kia Class Vehicles contained the ACU Defect, and that the ACU
13 Defect has caused ACUs and ASICs to malfunction in crashes involving Class
14 Vehicles; however, to date, Kia USA have not instituted a recall or any other repair
15 program with respect to the unrecalled Kia Class Vehicles, or even acknowledged
16 that the ACU Defect exists in all of the Kia Class Vehicles, including the recalled
17 Kia Class Vehicles. Therefore, the Indiana Plaintiff and Indiana State Class
18 members had no reason to believe that Kia USA would have repaired the ACU
19 Defect if the Indiana Plaintiff and Indiana State Class members presented their
20 Class Vehicles to Kia USA for repair.

21 3001. As a direct and proximate result of Kia USA's breach of the implied
22 warranty of merchantability, the Indiana Plaintiff and Indiana State Class members
23 have been damaged in an amount to be proven at trial.

24 **c. Indiana Count 3: Violation of the Indiana Deceptive**
25 **Consumer Sales Act (Ind. Code § 24-5-0.5-3, et seq.) Against**
26 **Kia Korea and Kia USA**

27 3002. Plaintiffs reallege and incorporate by reference all preceding
28 allegations as though fully set forth herein.

1 3003. The Indiana Plaintiff brings this count individually and on behalf of
2 members of the Indiana State Class who purchased or leased Kia Class Vehicles,
3 against Kia Korea and Kia USA.

4 3004. Kia Korea and Kia USA are “suppliers” within the meaning of Ind.
5 Code § 24-5-0.5-2(a)(3).

6 3005. Kia Korea, Kia USA, the Indiana Plaintiff, and the Indiana State Class
7 members are “persons” within the meaning of Ind. Code § 24-5-0.5-2(a)(2).

8 3006. Kia Korea and Kia USA were and are engaged in “consumer
9 transactions” within the meaning of Ind. Code § 24-5-0.5-2(a)(1).

10 3007. The Indiana Deceptive Consumer Sales Act (“Indiana DCSA”)
11 prohibits a supplier from committing an “unfair, abusive, or deceptive act,
12 omission, or practice in connection with a consumer transaction.” Ind. Code § 24-5-
13 0.5-3(a).

14 3008. In the course of their business, Kia Korea and Kia USA, through their
15 agents, employees, and/or subsidiaries, violated the Indiana DCSA by knowingly
16 and intentionally misrepresenting, omitting, concealing, and/or failing to disclose
17 material facts regarding the reliability, safety, and performance of the Kia Class
18 Vehicles, the safety of their Occupant Restraint Systems, and the ACU Defect, as
19 detailed above.

20 3009. Kia Korea and Kia USA had an ongoing duty to the Indiana Plaintiff
21 and Indiana State Class members to refrain from unfair or deceptive practices under
22 the Indiana DCSA in the course of their business. Specifically, Kia Korea and Kia
23 USA owed the Indiana Plaintiff and Indiana State Class members a duty to disclose
24 all the material facts concerning the ACU Defect in the Kia Class Vehicles because
25 they possessed exclusive knowledge, they intentionally concealed the ACU Defect
26 from the Indiana Plaintiff and Indiana State Class members, and they made
27 misrepresentations that were rendered misleading because they were contradicted
28 by withheld facts.

1 3010. By misrepresenting the Kia Class Vehicles and the defective ACUs
2 installed in them as safe and reliable and the defective ACU and ASICs installed in
3 them as properly-functioning and free from defects, and by failing to disclose and
4 actively concealing the dangers and risk posed by the ACU Defect to both
5 consumers and NHTSA, Kia Korea and Kia USA engaged in one or more of the
6 following unfair or deceptive business practices prohibited by Ind. Code § 24-5-
7 0.5-3:

- 8 a. Representing that the Kia Class Vehicles have approval,
9 characteristics, uses, or benefits that they do not have;
- 10 b. Representing that the Kia Class Vehicles are of a particular
11 standard, quality, and grade when they are not; and
- 12 c. Advertising the Kia Class Vehicles with the intent not to sell or
13 lease them as advertised.

14 Ind. Code §§ 24-5-0.5-3(b)(1), (2), and (11).

15 3011. Kia Korea's and Kia USA's unfair and deceptive acts or practices,
16 including their misrepresentations, concealments, omissions, and suppressions of
17 material facts, were designed to mislead and had a tendency or capacity to mislead
18 and create a false impression in consumers that the Kia Class Vehicles had
19 properly-functioning and reliable airbags and seatbelts, and that the Occupant
20 Restraint System did not contain the ACU Defect and would perform its intended
21 function of activating the seatbelts and airbags during a collision. Indeed, those
22 misrepresentations, concealments, omissions, and suppressions of material facts did
23 in fact deceive reasonable consumers, including the Indiana Plaintiff and Indiana
24 State Class members, about the true safety and reliability of Kia Class Vehicles
25 and/or the defective ACUs and ASICs installed in them, the quality of the Kia Class
26 Vehicles, and the true value of those vehicles.

27 3012. Kia Korea's and Kia USA's misrepresentations, concealments,
28 omissions, and suppressions of material facts regarding the ACU Defect and true

1 characteristics of the Occupant Restraint Systems in the Kia Class Vehicles were
2 material to the decisions of the Indiana Plaintiff and Indiana State Class members to
3 purchase and lease those vehicles, as Kia Korea and Kia USA intended. The
4 Indiana Plaintiff and Indiana State Class members were exposed to those
5 misrepresentations, concealments, omissions, and suppressions of material facts,
6 and relied on Kia Korea's and Kia USA's misrepresentations that the Kia Class
7 Vehicles and their Occupant Restraint Systems were safe and reliable in deciding to
8 purchase and lease those vehicles. Plaintiffs allege the information they relied upon
9 in Section II.B above. To aid review of this information, Exhibit 19 provides
10 paragraph numbers for each Plaintiff.

11 3013. The Indiana Plaintiff and Indiana State Class members had no way of
12 discerning that Kia Korea's and Kia USA's representations were false and
13 misleading and/or otherwise learning the facts that Kia Korea and Kia USA had
14 concealed or failed to disclose. The Indiana Plaintiff and Indiana State Class
15 members did not, and could not, unravel Kia Korea's and Kia USA's deception on
16 their own.

17 3014. Had the Indiana Plaintiff and Indiana State Class members known the
18 truth about the ACU Defect, the Indiana Plaintiff and Indiana State Class members
19 would not have purchased or leased Kia Class Vehicles, or would have paid
20 significantly less for them.

21 3015. The Indiana Plaintiff and Indiana State Class members suffered
22 ascertainable losses and actual damages as a direct and proximate result of Kia
23 Korea's and Kia USA's misrepresentations, concealment, and/or failure to disclose
24 material information.

25 3016. Kia Korea's and Kia USA's violations present a continuing risk to the
26 Indiana Plaintiff and Indiana State Class members, as well as to the general public,
27 because the Class Vehicles remain unsafe due to the defective ACUs and ASICs
28

1 therein. Kia Korea's and Kia USA's unlawful acts and practices complained of
2 herein affect the public interest.

3 3017. Kia Korea and Kia USA were provided notice of the issues raised in
4 this count and this Complaint by the NHTSA investigations, the numerous
5 complaints filed against them, and the individual notice letters sent by the Indiana
6 State Class members within a reasonable amount of time after the ACU Defect
7 became public. Additionally, on May 23, 2019, Indiana State Class members sent a
8 notice letter pursuant to Ind. Code § 24-5-0.5-5(a) to Kia. Moreover, a second
9 notice letter was sent on behalf of the Indiana Plaintiff and Indiana State Class
10 members pursuant to Ind. Code § 24-5-0.5-5(a) to Kia on April 24, 2020. Because
11 Kia Korea and Kia USA failed to adequately remedy their unlawful conduct within
12 the requisite time period, the Indiana Plaintiff seeks all damages and relief to which
13 he and the Indiana State Class members are entitled.

14 3018. Alternatively, the Indiana Plaintiff and Indiana State Class members
15 were excused from providing Kia Korea and Kia USA with notice and an
16 opportunity to cure the breach, because it would have been futile. As alleged above,
17 Kia Korea and Kia USA have long known that the Kia Class Vehicles contained the
18 ACU Defect, and that the ACU Defect has caused ACUs and ASICs to malfunction
19 in crashes involving Class Vehicles; however, to date, Kia Korea and Kia USA
20 have not instituted a recall or any other repair program with respect to the
21 unrecalled Kia Class Vehicles, or even acknowledged that the ACU Defect exists in
22 all of the Kia Class Vehicles, including the recalled Kia Class Vehicles. Therefore,
23 the Indiana Plaintiff and Indiana State Class members had no reason to believe that
24 Kia Korea and Kia USA would have repaired the ACU Defect if the Indiana
25 Plaintiff and Indiana State Class members presented their Class Vehicles to Kia
26 Korea and Kia USA for repair.

27 3019. Pursuant to Ind. Code § 24-5-0.5-4, the Indiana Plaintiff and Indiana
28 State Class members seek an order enjoining Kia Korea's and Kia USA's unfair or

1 deceptive acts or practices and awarding damages and any other just and proper
2 relief available under the Indiana DCSA.

3 **d. Indiana Count 4: Violation of the Indiana Deceptive**
4 **Consumer Sales Act (Ind. Code § 24-5-0.5-3, et seq.) Against**
5 **ZF Electronics USA, ZF Passive Safety USA, ZF Automotive**
6 **USA, ZF TRW Corp., ZF Germany, ST Italy, ST USA, and**
7 **ST Malaysia**

8 3020. Plaintiffs reallege and incorporate by reference all preceding
9 allegations as though fully set forth herein.

10 3021. The Indiana Plaintiff brings this count individually and on behalf of
11 members of the Indiana State Class against ZF Electronics USA, ZF Passive Safety
12 USA, ZF Automotive USA, ZF TRW Corp., and ZF Germany (collectively, the
13 “ZF Defendants”), and ST Italy, ST Malaysia, and ST USA (collectively, the “ST
14 Defendants”).

15 3022. The ZF and ST Defendants are “suppliers” within the meaning of Ind.
16 Code § 24-5-0.5-2(a)(3).

17 3023. The ZF and ST Defendants, the Indiana Plaintiff, and the Indiana State
18 Class members are “persons” within the meaning of Ind. Code § 24-5-0.5-2(a)(2).

19 3024. The ZF and ST Defendants were and are engaged in “consumer
20 transactions” within the meaning of Ind. Code § 24-5-0.5-2(a)(1).

21 3025. The Indiana Deceptive Consumer Sales Act (“Indiana DCSA”)
22 prohibits a supplier from committing an “unfair, abusive, or deceptive act,
23 omission, or practice in connection with a consumer transaction.” Ind. Code § 24-5-
24 0.5-3(a).

25 3026. The ZF and ST Defendants had an ongoing duty to the Indiana
26 Plaintiff and Indiana State Class members to refrain from unfair or deceptive
27 practices under the Indiana DCSA in the course of their business. Specifically, the
28 ZF and ST Defendants owed the Indiana Plaintiff and Indiana State Class members
a duty to disclose all the material facts concerning the ACU Defect in the Class
Vehicles because they possessed exclusive knowledge of and intentionally

1 concealed the ACU Defect from the Indiana Plaintiff and Indiana State Class
2 members.

3 3027. In the course of their business, the ZF and ST Defendants, through
4 their agents, employees, and/or subsidiaries, violated the Indiana DCSA by
5 knowingly and intentionally omitting, concealing, and/or failing to disclose
6 material facts regarding the existence, nature, and scope of the ACU Defect in the
7 Class Vehicles, as detailed above.

8 3028. Additionally, ZF Electronics USA, ZF Passive Safety USA, and ZF
9 Automotive USA, through their agents, employees, and/or subsidiaries, violated the
10 Indiana DCSA by knowingly and intentionally misrepresenting the Class Vehicles
11 as safe and reliable and the defective ACU and ASICs installed in them as properly-
12 functioning and free from defects. Specifically, ZF Electronics USA, ZF Passive
13 Safety USA, and ZF Automotive USA worked with the Vehicle Manufacturer
14 Defendants on the design and inclusion of the airbag readiness indicators in the
15 Class Vehicles, which falsely assured Indiana Plaintiff and Indiana State Class
16 Members that the Occupant Restraint Systems in the Class Vehicles would function
17 properly in a crash.

18 3029. By misrepresenting, failing to disclose, and actively concealing the
19 dangers and risk posed by the Class Vehicles due to the ACU Defect, the ZF and
20 ST Defendants engaged in an unfair, abusive, or deceptive act, omission, or practice
21 in connection with a consumer transaction prohibited by Ind. Code § 24-5-0.5-3(a).

22 3030. The ZF and ST Defendants' unfair or deceptive acts or practices,
23 including their misrepresentations, concealments, omissions, and suppressions of
24 material facts, were designed to mislead and had a tendency or capacity to mislead
25 and create a false impression in consumers that the Class Vehicles had properly-
26 functioning and reliable airbags and seatbelts, and that the Occupant Restraint
27 System did not contain the ACU Defect and would perform its intended function of
28 activating the seatbelts and airbags during a collision. Indeed, those

1 misrepresentations, concealments, omissions, and suppressions of material facts did
2 in fact deceive reasonable consumers, including the Indiana Plaintiff and Indiana
3 State Class members, about the true safety and reliability of Class Vehicles and the
4 defective ACUs and ASICs installed in them, the quality of the Class Vehicles, and
5 the true value of the Class Vehicles.

6 3031. The Indiana Plaintiff and Indiana State Class members justifiably
7 relied on the ZF and ST Defendants' misrepresentations, omissions, and
8 concealment, as they had no way of discerning that the Class Vehicles contained
9 the ACU Defect, as alleged above. The Indiana Plaintiff and Indiana State Class
10 members did not, and could not, unravel the ZF and ST Defendants' deception on
11 their own.

12 3032. The ZF and ST Defendants' misrepresentations and concealment of the
13 ACU Defect and true characteristics of the defective ACUs and ASICs in the Class
14 Vehicles were material to the Indiana Plaintiff and Indiana State Class members, as
15 the ZF and ST Defendants intended. Had they known the truth, the Indiana Plaintiff
16 and Indiana State Class members would not have purchased or leased the Class
17 Vehicles, or would have paid significantly less for them.

18 3033. The Indiana Plaintiff and Indiana State Class members suffered
19 ascertainable losses and actual damages as a direct and proximate result of the ZF
20 and ST Defendants' misrepresentations, concealment, and failure to disclose
21 material information.

22 3034. The ZF and ST Defendants' violations present a continuing risk to the
23 Indiana Plaintiff and Indiana State Class members, as well as to the general public,
24 because the Class Vehicles remain unsafe due to the defective ACUs and ASICs
25 therein. The ZF and ST Defendants' unlawful acts and practices complained of
26 herein affect the public interest.

27 3035. The ZF and ST Defendants were provided notice of the issues raised in
28 this count and this Complaint by the NHTSA investigations, the numerous

1 complaints filed against them, and the individual notice letters sent by the Indiana
2 State Class members within a reasonable amount of time after the ACU Defect
3 became public. Also, on May 23, 2019, Indiana State Class members sent a notice
4 letter pursuant to Ind. Code § 24-5-0.5-5(a) to the ZF Defendants. Moreover,
5 additional notice letters were sent on behalf of the Indiana Plaintiff and Indiana
6 State Class members pursuant to Ind. Code § 24-5-0.5-5(a) on April 24, 2020 (to
7 the ZF Defendants), June 5, 2020 (to ST USA) and May 25, 2022 (to ST Italy and
8 ST Malaysia). Because the ZF and ST Defendants failed to adequately remedy their
9 unlawful conduct within the requisite time period, the Indiana Plaintiff seeks all
10 damages and relief to which he and the Indiana State Class members are entitled.

11 3036. Alternatively, any requirement to give notice to the Defendants under
12 Ind. Code §§ 24-5-0.5-5 is excused because the ACU Defect is incurable and the
13 ZF and ST Defendants' behavior was part of a scheme, artifice, or device with
14 intent to defraud and mislead.

15 3037. Pursuant to Ind. Code § 24-5-0.5-4, the Indiana Plaintiff and Indiana
16 State Class members seek an order enjoining the ZF and ST Defendants' unfair or
17 deceptive acts or practices and awarding damages and any other just and proper
18 relief available under the Indiana DCSA.

19 **e. Indiana Count 5: Fraud by Omission and Concealment**
20 **Against Kia Korea and Kia USA**

21 3038. Plaintiffs reallege and incorporate by reference all preceding
22 allegations as though fully set forth herein.

23 3039. The Indiana Plaintiff brings this count individually and on behalf of
24 members of the Indiana State Class who purchased or leased Kia Class Vehicles,
25 against Kia Korea and Kia USA.

26 3040. Kia Korea and Kia USA are liable for both fraudulent concealment and
27 non-disclosure. *See, e.g.*, Restatement (Second) of Torts §§ 550-51 (1977).
28

1 3041. As explained in Section IV.A, the ACU Defect in Class Vehicles poses
2 serious risks to vehicle occupants, including that it can cause: (1) airbags and
3 seatbelts not to activate during a crash because crashes can sometimes release
4 electrical transients, which cause the ACU to fail; (2) airbags to deploy when the
5 vehicle has not crashed, which is dangerous because it is shocking and difficult for
6 the driver to operate a vehicle when the airbag deploys without warning; and (3)
7 failures of other important post-crash operations of the safety system, such as
8 unlocking doors to facilitate escape or extraction of drivers and passengers by
9 emergency personnel, and shutting off a crashed vehicle’s fuel or power supply.

10 3042. Kia Korea and Kia USA had a duty to disclose the ACU Defect to the
11 Indiana Plaintiff and Indiana State Class members because:

- 12 a. Kia Korea and Kia USA had exclusive access to and far superior
13 knowledge about technical facts regarding the ACU Defect;
- 14 b. Given the ACU Defect’s hidden and technical nature, the
15 Indiana Plaintiff and Indiana State Class members lack the
16 sophisticated expertise in vehicle components and electrical
17 phenomena that would be necessary to discover the ACU Defect
18 on their own;
- 19 c. Kia Korea and Kia USA knew that the ACU Defect gave rise to
20 serious safety concerns for the consumers who use the vehicles,
21 and the Kia Class Vehicles containing the ACU Defect would
22 have been a material fact to the Indiana Plaintiff’s and Indiana
23 State Class members’ decisions to buy or lease Kia Class
24 Vehicles; and
- 25 d. Kia Korea and Kia USA made incomplete representations about
26 the safety and reliability of the Kia Class Vehicles and their
27 Occupant Restraint System, while purposefully withholding
28 material facts about a known safety defect. In uniform

1 advertising and materials provided with each Class Vehicle, Kia
2 Korea, and Kia USA intentionally concealed, suppressed, and
3 failed to disclose to the Indiana Plaintiff and Indiana State Class
4 members that the Kia Class Vehicles contained the ACU Defect.
5 Because they volunteered to provide information about the Kia
6 Class Vehicles that they marketed and offered for sale and lease
7 to the Indiana Plaintiff and Indiana State Class members, Kia
8 Korea and Kia USA had the duty to disclose the whole truth.

9 3043. In breach of their duties, Kia Korea and Kia USA failed to disclose
10 that the Kia Class Vehicles were not safe and reliable, and that their Occupant
11 Restraint Systems, including their airbags and seatbelt pretensioners could fail in
12 the event of a crash due to the ACU Defect.

13 3044. Kia Korea and Kia USA intended for the Indiana Plaintiff and Indiana
14 State Class members to rely on their omissions—which they did by purchasing and
15 leasing the Kia Class Vehicles at the prices they paid believing that the Occupant
16 Restraint Systems in their Class Vehicles would function properly.

17 3045. That reliance was reasonable, because a reasonable consumer would
18 not have expected that the Kia Class Vehicles contained a safety defect that poses
19 such a serious risk. Kia Korea and Kia USA knew that reasonable consumers
20 expect that their vehicle has working airbags and seatbelt pretensioners and would
21 rely on those facts in deciding whether to purchase, lease, or retain a new or used
22 motor vehicle. Whether a manufacturer's products are safe and reliable, and
23 whether that manufacturer stands behind its products, are material concerns to a
24 consumer. Especially here when at least nine people have already died due to the
25 ACU Defect, and many more have been injured.

26 3046. Additionally, Kia Korea and Kia USA ensured that the Indiana
27 Plaintiff and Indiana State Class members did not discover this information by
28

1 actively concealing and misrepresenting the true nature of the Kia Class Vehicles’
2 Occupant Restraint Systems to consumers and NHTSA.

3 3047. Kia Korea and Kia USA actively concealed and suppressed these
4 material facts, in whole or in part, to maintain a market for their Class Vehicles, to
5 protect profits, and to avoid costly recalls that would expose them to liability for
6 those expenses and harm the commercial reputations of Defendants and their
7 products. They did so at the expense of the Indiana Plaintiff and Indiana State Class
8 members.

9 3048. To this day, Kia Korea and Kia USA have not fully and adequately
10 disclosed the ACU Defect, and they continue to conceal material information about
11 the defect from consumers and NHTSA. The omitted and concealed facts were
12 material because a reasonable person would find them important in purchasing,
13 leasing, or retaining a new or used motor vehicle, and because they directly impact
14 the value of the Kia Class Vehicles purchased or leased by the Indiana Plaintiff and
15 Indiana State Class members.

16 3049. Had they been aware of the ACU Defect in the Kia Class Vehicles,
17 and Kia Korea’s and Kia USA’s callous disregard for safety, the Indiana Plaintiff
18 and Indiana State Class members either would not have paid as much as they did
19 for their Class Vehicles, or they would not have purchased or leased them.

20 3050. As alleged in Section V above, if Kia Korea and Kia USA had fully
21 and adequately disclosed the ACU Defect to consumers and NHTSA, the Indiana
22 Plaintiff and Indiana State Class members would have seen such a disclosure.

23 3051. Accordingly, Kia Korea and Kia USA are liable to the Indiana Plaintiff
24 and Indiana State Class members for their damages in an amount to be proven at
25 trial, including, but not limited to, their lost overpayment for the Kia Class Vehicles
26 at the time of purchase or lease.

27 3052. Kia Korea’s and Kia USA’s acts were done maliciously, oppressively,
28 deliberately, with intent to defraud; in reckless disregard of the Indiana Plaintiff’s

1 and Indiana State Class members’ rights and well-being; and to enrich themselves.
2 Kia Korea’s and Kia USA’s misconduct warrants an assessment of punitive
3 damages, as permitted by law, in an amount sufficient to deter such conduct in the
4 future, which amount shall be determined according to proof at trial.

5 **f. Indiana Count 6: Fraud by Omission and Concealment**
6 **Against ZF Electronics USA, ZF Passive Safety USA, ZF**
7 **Automotive USA, ZF TRW Corp., ZF Germany, ST Italy,**
8 **ST USA, and ST Malaysia**

9 3053. Plaintiffs reallege and incorporate by reference all preceding
10 allegations as though fully set forth herein.

11 3054. The Indiana Plaintiff brings this count individually and on behalf of
12 members of the Indiana State Class who purchased or leased Class Vehicles,
13 against ZF Electronics USA, ZF Passive Safety USA, ZF Automotive USA, ZF
14 TRW Corp., and ZF Germany (collectively, the “ZF Defendants”), and ST Italy, ST
15 Malaysia, and ST USA (collectively, the “ST Defendants”).

16 3055. The ZF and ST Defendants are liable for both fraudulent concealment
17 and non-disclosure. *See, e.g.*, Restatement (Second) of Torts §§ 550-51 (1977).

18 3056. As explained in Section IV.A, the ACU Defect in Class Vehicles poses
19 serious risks to vehicle occupants, including that it can cause: (1) airbags and
20 seatbelts not to activate during a crash because crashes can sometimes release
21 electrical transients, which cause the ACU to fail; (2) airbags to deploy when the
22 vehicle has not crashed, which is dangerous because it is shocking and difficult for
23 the driver to operate a vehicle when the airbag deploys without warning; and (3)
24 failures of other important post-crash operations of the safety system, such as
25 unlocking doors to facilitate escape or extraction of drivers and passengers by
26 emergency personnel, and shutting off a crashed vehicle’s fuel or power supply.

27 3057. The ZF and ST Defendants had a duty to disclose the ACU Defect to
28 the Indiana Plaintiff and Indiana State Class members because:

- 1 a. The ZF and ST Defendants had exclusive access to and far
2 superior knowledge about technical facts regarding the ACU
3 Defect;
- 4 b. Given the ACU Defect’s hidden and technical nature, the
5 Indiana Plaintiff and Indiana State Class members lack the
6 sophisticated expertise in vehicle components and electrical
7 phenomena that would be necessary to discover the ACU Defect
8 on their own;
- 9 c. The ZF and ST Defendants knew that the ACU Defect gave rise
10 to serious safety concerns for the consumers who use the
11 vehicles, and the Class Vehicles containing the ACU Defect
12 would have been a material fact to the Indiana Plaintiff’s and
13 Indiana State Class members’ decisions to buy or lease Class
14 Vehicles; and
- 15 d. The ZF Defendants made incomplete representations about the
16 safety and reliability of the Class Vehicles and their Occupant
17 Restraint System, while purposefully withholding material facts
18 about a known safety defect, creating a duty to disclose the
19 whole truth. Specifically, ZF Electronics USA, ZF Passive
20 Safety USA, and ZF Automotive USA worked with the Vehicle
21 Manufacturer Defendants on the design and inclusion of the
22 airbag readiness indicators in the Class Vehicles, which falsely
23 assured Plaintiffs and Class Members that the Occupant
24 Restraint Systems in the Class Vehicles would function properly
25 in a crash.

26 3058. In breach of their duties, the ZF and ST Defendants failed to disclose
27 that the Class Vehicles were not safe and reliable, and that their Occupant Restraint
28

1 Systems, including their airbags and seatbelt pretensioners could fail in the event of
2 a crash due to the ACU Defect.

3 3059. The ZF and ST Defendants intended for the Indiana Plaintiff and
4 Indiana State Class members to rely on their omissions—which they did by
5 purchasing and leasing the Class Vehicles at the prices they paid believing that the
6 Occupant Restraint Systems in their Class Vehicles would function properly.

7 3060. That reliance was reasonable, because a reasonable consumer would
8 not have expected that the Class Vehicles contained a safety defect that poses such
9 a serious risk. The ZF and ST Defendants knew that reasonable consumers expect
10 that their vehicle has working airbags and seatbelt pretensioners and would rely on
11 those facts in deciding whether to purchase, lease, or retain a new or used motor
12 vehicle. Whether a manufacturer's products are safe and reliable, and whether that
13 manufacturer stands behind its products, are material concerns to a consumer.
14 Especially here when at least nine people have already died due to the ACU Defect,
15 and many more have been injured.

16 3061. Additionally, the ZF and ST Defendants ensured that the Indiana
17 Plaintiff and Indiana State Class members did not discover this information by
18 actively concealing and misrepresenting the true nature of the Class Vehicles'
19 Occupant Restraint Systems to consumers and NHTSA.

20 3062. The ZF and ST Defendants actively concealed and suppressed these
21 material facts, in whole or in part, to maintain a market for the DS84 ACU, to
22 protect profits, and to avoid costly recalls that would expose them to liability for
23 those expenses and harm the commercial reputations of Defendants and their
24 products. They did so at the expense of the Indiana Plaintiff and Indiana State Class
25 members.

26 3063. To this day, the ZF and ST Defendants have not fully and adequately
27 disclosed the ACU Defect, and they continue to conceal material information about
28 the defect from consumers and NHTSA. The omitted and concealed facts were

1 material because a reasonable person would find them important in purchasing,
2 leasing, or retaining a new or used motor vehicle, and because they directly impact
3 the value of the Class Vehicles purchased or leased by the Indiana Plaintiff and
4 Indiana State Class members.

5 3064. Had they been aware of the ACU Defect in the Class Vehicles, and the
6 ZF and ST Defendants' callous disregard for safety, the Indiana Plaintiff and
7 Indiana State Class members either would not have paid as much as they did for
8 their Class Vehicles, or they would not have purchased or leased them.

9 3065. As alleged in Section V above, if the ZF and ST Defendants had fully
10 and adequately disclosed the ACU Defect to consumers and NHTSA, the Indiana
11 Plaintiff and Indiana State Class members would have seen such a disclosure.

12 3066. Accordingly, the ZF and ST Defendants are liable to the Indiana
13 Plaintiff and Indiana State Class members for their damages in an amount to be
14 proven at trial, including, but not limited to, their lost overpayment for the Class
15 Vehicles at the time of purchase or lease.

16 3067. The ZF and ST Defendants' acts were done maliciously, oppressively,
17 deliberately, with intent to defraud; in reckless disregard of the Indiana Plaintiff's
18 and Indiana State Class members' rights and well-being; and to enrich themselves.
19 The ZF and ST Defendants' misconduct warrants an assessment of punitive
20 damages, as permitted by law, in an amount sufficient to deter such conduct in the
21 future, which amount shall be determined according to proof at trial.

22 **g. Indiana Count 7: Unjust Enrichment Against Kia Korea and**
23 **Kia USA**

24 3068. Plaintiffs reallege and incorporate by reference all allegations in
25 Sections I-VI above as though fully set forth herein.

26 3069. The Indiana Plaintiff brings this count individually and on behalf of
27 members of the Indiana State Class who purchased or leased Kia Class Vehicles,
28 against Kia Korea and Kia USA.

1 3070. The Indiana Plaintiff and Indiana State Class members conferred
2 tangible and material economic benefits upon Kia Korea and Kia USA when they
3 purchased or leased the Kia Class Vehicles. Kia Korea and Kia USA readily
4 accepted and retained these benefits.

5 3071. The Indiana Plaintiff and Indiana State Class members would not have
6 purchased or leased their Kia Class Vehicles, or would have paid less for them, had
7 they known of the ACU Defect at the time of purchase or lease. Therefore, Kia
8 Korea and Kia USA profited from the sale and lease of the Kia Class Vehicles to
9 the detriment and expense of the Indiana Plaintiff and Indiana State Class members.

10 3072. Kia Korea and Kia USA appreciated these benefits. These benefits
11 were the expected result of Kia Korea and Kia USA acting in their pecuniary
12 interest at the expense of their customers. Kia Korea and Kia USA knew of these
13 benefits because they were aware of the ACU Defect, yet they failed to disclose this
14 knowledge and misled the Indiana Plaintiff and Indiana State Class members
15 regarding the nature and quality of the Kia Class Vehicles while profiting from this
16 deception.

17 3073. It would be unjust, inequitable, and unconscionable for Kia Korea and
18 Kia USA to retain these benefits, including because they were procured as a result
19 of the wrongful conduct alleged above.

20 3074. The Indiana Plaintiff and Indiana State Class members are entitled to
21 restitution of the benefits Kia Korea and Kia USA unjustly retained and/or any
22 amounts necessary to return the Indiana Plaintiff and Indiana State Class members
23 to the position they occupied prior to dealing with Kia Korea and Kia USA, with
24 such amounts to be determined at trial.

25 3075. The Indiana Plaintiff plead this claim separately as well as in the
26 alternative to their claims for damages under Fed. R. Civ. P. 8(a)(3), because if the
27 Indiana Plaintiff' claims for damages are dismissed or judgment is entered in favor
28 of Defendants, the Indiana Plaintiff will have no adequate legal remedy.

1 **9. Maryland**

2 **a. Maryland Count 1: Breach of Express Warranty (Md. Code**
3 **Com. Law §§ 2-313 and 2A-210) Against Hyundai Korea,**
4 **Hyundai USA, Kia Korea, and Kia USA⁸**

5 3076. Plaintiffs reallege and incorporate by reference all preceding
6 allegations as though fully set forth herein.

7 3077. Plaintiffs Joseph Fuller and Tina Fuller bring this count individually
8 and on behalf of members of the Maryland State Class who purchased or leased
9 Hyundai Class Vehicles, against Hyundai Korea and Hyundai USA.

10 3078. Plaintiff Diana King brings this count individually and on behalf of
11 members of the Maryland State Class who purchased or leased Kia Class Vehicles,
12 against Kia Korea and Kia USA.

13 3079. For purposes of this count, Plaintiffs Joseph Fuller, Tina Fuller and
14 King shall be referred to as the “Maryland Plaintiffs.”

15 3080. Hyundai Korea, Hyundai USA, Kia Korea, and Kia USA are and were
16 at all relevant times “merchants” with respect to motor vehicles under Md. Code.
17 Com. Law §§ 2-104(1) and 2A-103(3), and “sellers” of motor vehicles under § 2-
18 103(1)(d).

19 3081. Hyundai Korea, Hyundai USA, Kia Korea, and Kia USA are and were
20 at all relevant times “lessors” of motor vehicles under Md. Code. Com. Law § 2A-
21 103(1)(p).

22 3082. All Maryland State Class members who purchased Hyundai and Kia
23 Class Vehicles in Maryland are “buyers” within the meaning of Md. Code. Com.
24 Law § 2-103(1)(a).

25 3083. All Maryland State Class members who leased Hyundai and Kia Class
26 Vehicles in Maryland are “lessees” within the meaning of Md. Code. Com. Law
27 § 2A-103(1)(n).

28 ⁸ The Court held in its February 9, 2022 Order that the Maryland Plaintiffs stated a
 claim for breach of express warranty. *See* ECF No. 396 at 143.

1 3084. The Hyundai and Kia Class Vehicles are and were at all relevant times
2 “goods” within the meaning of Md. Code. Com. Law §§ 2-105(1) and 2A-
3 103(1)(h).

4 3085. In connection with the purchase or lease of Hyundai and Kia Class
5 Vehicles, Hyundai Korea, Hyundai USA, Kia Korea, and Kia USA provided the
6 Maryland Plaintiffs and Maryland State Class members with written express
7 warranties in the form of: (a) written express warranties covering the repair or
8 replacement of components that are defective in materials or workmanship, and (b)
9 descriptions of the Kia Class Vehicles as safe and reliable, and that their Occupant
10 Restraint Systems, including their airbags and seatbelt pretensioners, would
11 function properly in the event of a crash.

12 3086. However, Hyundai Korea, Hyundai USA, Kia Korea, and Kia USA
13 knew or should have known that the warranties were false and/or misleading.
14 Specifically, they were aware of the ACU Defect in the Hyundai and Kia Class
15 Vehicles, which made the vehicles inherently defective and dangerous at the time
16 that they were sold and leased to the Maryland Plaintiffs and Maryland State Class
17 members.

18 3087. The Maryland Plaintiffs and Maryland State Class members were
19 aware the Hyundai and Kia Class Vehicles were covered by express warranties, and
20 those warranties formed the basis of the bargain that was reached when the
21 Maryland Plaintiffs and Maryland State Class members unknowingly purchased or
22 leased Hyundai and Kia Class Vehicles that came equipped with a defective ACU.

23 3088. Hyundai Korea, Hyundai USA, Kia Korea and Kia USA
24 misrepresented the Hyundai and Kia Class Vehicles as safe and reliable while
25 concealing that they contained the ACU Defect, the Maryland Plaintiffs and
26 Maryland State Class members were exposed to those misrepresentations, and the
27 Maryland Plaintiffs and Maryland State Class members had no way of discerning
28 that Hyundai Korea’s, Hyundai USA’s, Kia Korea’s and Kia USA’s representations

1 were false and misleading or otherwise learning the material facts that they had
2 concealed or failed to disclose. The Maryland Plaintiffs and Maryland State Class
3 members reasonably relied on Hyundai Korea's, Hyundai USA's, Kia Korea's, and
4 Kia USA's express warranties when purchasing or leasing their Hyundai and Kia
5 Class Vehicles. Plaintiffs allege the information they relied upon in Section II.B
6 above. To aid review of this information, Exhibit 19 provides paragraph numbers
7 for each Plaintiff.

8 3089. Hyundai Korea, Hyundai USA, Kia Korea, and Kia USA knowingly
9 breached their express warranties to repair defects in materials and workmanship by
10 failing to repair the ACU Defect or replace the defective ACUs and ASICs in the
11 Hyundai and Kia Class Vehicles. Hyundai Korea, Hyundai USA, Kia Korea, and
12 Kia USA also breached their express warranties by providing a product containing
13 defects that were never disclosed to the Maryland Plaintiffs and Maryland State
14 Class members.

15 3090. The Maryland Plaintiffs and Maryland State Class members have
16 provided Hyundai Korea, Hyundai USA, Kia Korea and Kia USA with reasonable
17 notice and opportunity to cure the breaches of their express warranties by way of
18 the numerous NHTSA complaints filed against them, and individual notice letters
19 sent by the Maryland State Class members within a reasonable amount of time after
20 the ACU Defect became public. Additionally, a notice letter was sent on behalf of
21 the Maryland Plaintiffs and Maryland State Class members to Hyundai and Kia on
22 April 24, 2020.

23 3091. Alternatively, the Maryland Plaintiffs and Maryland State Class
24 members were excused from providing Hyundai Korea, Hyundai USA, Kia Korea,
25 and Kia USA with notice and an opportunity to cure the breach, because it would
26 have been futile. As alleged above, Hyundai Korea, Hyundai USA, Kia Korea and
27 Kia USA have long known that the Hyundai and Kia Class Vehicles contained the
28 ACU Defect, and that the ACU Defect has caused ACUs and ASICs to malfunction

1 in crashes involving Class Vehicles; however, to date, Hyundai Korea, Hyundai
2 USA, Kia Korea and Kia USA have not instituted a recall or any other repair
3 program with respect to the unrecalled Kia Class Vehicles, or even acknowledged
4 that the ACU Defect exists in all of the Hyundai and Kia Class Vehicles, including
5 the recalled Hyundai and Kia Class Vehicles. Therefore, the Maryland Plaintiffs and
6 Maryland State Class members had no reason to believe that Hyundai Korea,
7 Hyundai USA, Kia Korea, and Kia USA would have repaired the ACU Defect they
8 presented their Class Vehicles to them for repair.

9 3092. As a direct and proximate result of Hyundai Korea's, Hyundai USA's,
10 Kia Korea's and Kia USA's breach of their express warranties, the Hyundai and
11 Kia Class Vehicles were and are defective and the ACU Defect in the Maryland
12 Plaintiffs' and Maryland State Class members' Hyundai and Kia Class Vehicles
13 was not remedied. Therefore, the Maryland Plaintiffs and Maryland State Class
14 members have been damaged, in an amount to be proven at trial, through their
15 overpayment at the time of purchase or lease for Hyundai and Kia Class Vehicles
16 with an undisclosed safety defect that would not be remedied.

17 **b. Maryland Count 2: Breach of Implied Warranty of**
18 **Merchantability (Md. Code Com. Law §§ 2-314 and 2A-212)**
19 **Against Hyundai USA and Kia USA⁹**

20 3093. Plaintiffs reallege and incorporate by reference all preceding
21 allegations as though fully set forth herein.

22 3094. Plaintiffs Joseph Fuller and Tina Fuller bring this count individually
23 and on behalf of members of the Maryland State Class who purchased or leased
24 Hyundai Class Vehicles, against Hyundai USA.

25 3095. Plaintiff Diana King brings this count individually and on behalf of
26 members of the Maryland State Class who purchased or leased Kia Class Vehicles,
27 against Kia USA.

28 ⁹ The Court held in its February 9, 2022 Order that the Maryland Plaintiffs stated a claim for breach of implied warranty. *See* ECF No. 396 at 143.

1 3096. For purposes of this count, Plaintiffs Joseph Fuller, Tina Fuller and
2 King shall be referred to as the “Maryland Plaintiffs.”

3 3097. Hyundai USA and Kia USA are and were at all relevant times
4 “merchants” with respect to motor vehicles Md. Code Com. Law §§ 2-104(1) and
5 2A-103(3), and “sellers” of motor vehicles under § 2-103(1)(d).

6 3098. With respect to leases, Hyundai USA, and Kia USA are and were at all
7 relevant times “lessors” of motor vehicles under Md. Code. Com. Law § 2A-
8 103(1)(p).

9 3099. All Maryland State Class members who purchased Class Vehicles in
10 Maryland are “buyers” within the meaning of Md. Code. Com. Law § 2-103(1)(a).

11 3100. All Maryland State Class members who leased Class Vehicles in
12 Maryland are “lessees” within the meaning of Md. Code. Com. Law § 2A-
13 103(1)(n).

14 3101. The Class Vehicles are and were at all relevant times “goods” within
15 the meaning of Md. Code. Com. Law §§ 2-105(1) and 2A-103(1)(h).

16 3102. A warranty that the Hyundai and Kia Class Vehicles were in
17 merchantable condition and fit for the ordinary purpose for which such goods are
18 used is implied by law pursuant to Md. Code Com. Law §§ 2-314 and 2A-212.

19 3103. The Hyundai and Kia Class Vehicles did not comply with the implied
20 warranty of merchantability because, at the time of sale and at all times thereafter,
21 they were defective and not in merchantable condition, would not pass without
22 objection in the trade, and were not fit for the ordinary purpose for which vehicles
23 were used. Specifically, at the time they were sold and leased, the Hyundai and Kia
24 Class Vehicles contained the ACU Defect, which may cause the airbags and
25 seatbelt pretensioners to fail to deploy during a crash the failure to unlock doors
26 automatically after a crash, the failure to turn off a fuel supply or high-voltage
27 battery after a crash, or the airbags to inadvertently deploy, all of which render the
28 Hyundai and Kia Class Vehicles inherently defective and dangerous.

1 3104. The Maryland Plaintiffs and Maryland State Class members have
2 provided Hyundai USA and Kia USA with reasonable notice and opportunity to
3 cure the breaches of their implied warranties by way of the numerous NHTSA
4 complaints filed against them, and individual notice letters sent by the Maryland
5 State Class members within a reasonable amount of time after the ACU Defect
6 became public. Additionally, a notice letter was sent on behalf of the Maryland
7 Plaintiffs and Maryland State Class members to Hyundai USA and Kia USA on
8 April 24, 2020.

9 3105. Alternatively, the Maryland Plaintiffs and Maryland State Class
10 members were excused from providing Hyundai USA and Kia USA with notice and
11 an opportunity to cure the breach, because it would have been futile. As alleged
12 above, Hyundai USA and Kia USA, have long known that the Hyundai and Kia
13 Class Vehicles contained the ACU Defect, and that the ACU Defect has caused
14 ACUs and ASICs to malfunction in crashes involving Class Vehicles; however, to
15 date, Hyundai USA and Kia USA have not instituted a recall or any other repair
16 program with respect to the unrecalled Hyundai and Kia Class Vehicles, or even
17 acknowledged that the ACU Defect exists in all of those Class Vehicles, including
18 the recalled Hyundai and Kia Class Vehicles. Therefore, they have refused to recall
19 or repair defective Hyundai and Kia Class Vehicles, and for those that were
20 recalled, the repair was inadequate because it did not fix the ACU Defect. As such,
21 the Maryland Plaintiffs and Maryland State Class members had no reason to believe
22 that Hyundai USA and Kia USA would have repaired the ACU Defect if the
23 Maryland Plaintiffs and Maryland State Class members presented their Hyundai
24 and Kia Class Vehicles to them for repair.

25 3106. As a direct and proximate result of Hyundai USA's and Kia USA's
26 breach of the implied warranty of merchantability, the Maryland Plaintiffs and
27 Maryland State Class members have been damaged in an amount to be proven at
28 trial.

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c. Maryland Count 3: Violation of the Maryland Consumer Protection Act (Md. Code Com. Law § 13-101, *et seq.*) Against Hyundai Korea, Hyundai USA, Kia Korea, and Kia USA¹⁰

3107. Plaintiffs reallege and incorporate by reference all preceding allegations as though fully set forth herein.

3108. Plaintiffs Joseph Fuller and Tina Fuller bring this count individually and on behalf of members of the Maryland State Class who purchased or leased Hyundai Class Vehicles, against Hyundai Korea and Hyundai USA.

3109. Plaintiff Diana King brings this count individually and on behalf of members of the Maryland State Class who purchased or leased Kia Class Vehicles, against Kia Korea, and Kia USA.

3110. For purposes of this count, Plaintiffs Joseph Fuller, Tina Fuller and King shall be referred to as the “Maryland Plaintiffs.”

3111. Hyundai Korea, Hyundai USA, Kia Korea, Kia USA, the Maryland Plaintiffs, and Maryland State Class members are “persons” within the meaning of Md. Code Com. Law § 13-101(h).

3112. The Maryland Plaintiffs and Maryland State Class members are “consumers” within the meaning of Md. Code Com. Law § 13-101(c).

3113. The Class Vehicles and ACUs installed in them are “merchandise” within the meaning of Md. Code Com. Law § 13-101(f).

3114. The Maryland Consumer Protection Act (“Maryland CPA”) prohibits “[u]nfair, abusive, or deceptive trade practices[.]” Md. Code Com. Law § 13-301.

3115. In the course of their business, Hyundai Korea, Hyundai USA, Kia Korea, and Kia USA, through their agents, employees, and/or subsidiaries, violated the Maryland CPA by knowingly and intentionally misrepresenting, omitting, concealing, and/or failing to disclose material facts regarding the reliability, safety,

¹⁰ The Court held in its February 9, 2022 Order that the Maryland Plaintiffs stated a claim against Hyundai USA and Kia USA for Violation of the Maryland Consumer Protection Act based on alleged fraudulent omissions. *See* ECF No. 396 at 99.

1 and performance of the Hyundai and Kia Class Vehicles, the safety of their
2 Occupant Restraint Systems, and the ACU Defect, as detailed above.

3 3116. Hyundai Korea, Hyundai USA, Kia Korea, and Kia USA had an
4 ongoing duty to the Maryland Plaintiffs and Maryland State Class members to
5 refrain from unfair or deceptive practices under the Maryland CPA in the course of
6 their business. Specifically, Hyundai Korea, Hyundai USA, Kia Korea, and Kia
7 USA owed the Maryland Plaintiffs and Maryland State Class members a duty to
8 disclose all the material facts concerning the ACU Defect in the Hyundai and Kia
9 Class Vehicles because they possessed exclusive knowledge, they intentionally
10 concealed the ACU Defect from the Maryland Plaintiffs and Maryland State Class
11 members, and they made misrepresentations that were rendered misleading because
12 they were contradicted by withheld facts.

13 3117. By misrepresenting the Hyundai and Kia Class Vehicles as safe and
14 reliable and the defective ACU and ASICs installed in them as properly-functioning
15 and free from defects, and by failing to disclose and actively concealing the dangers
16 and risk posed by the ACU Defect to both consumers and NHTSA, Hyundai Korea,
17 Hyundai USA, Kia Korea, and Kia USA engaged in one or more of the following
18 unfair or deceptive business practices prohibited by Md. Code Com. Law § 13-303:

- 19 a. Representing that the Hyundai and Kia Class Vehicles and/or the
20 defective ACUs and ASICs installed in them have
21 characteristics, uses, benefits, and qualities which they do not
22 have;
- 23 b. Representing that the Hyundai and Kia Class Vehicles and/or the
24 defective ACUs and ASICs installed in them are of a particular
25 standard, quality, and grade when they are not;
- 26 c. Failure to state material facts about the Hyundai and Kia Class
27 Vehicles and defective ACUs and ASICs;
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- 1 d. Advertising the Hyundai and Kia Class Vehicles and/or the
- 2 defective ACUs and ASICs installed in them with the intent not
- 3 to sell or lease them as advertised; and
- 4 e. Otherwise engaging in deception, fraud, false pretense, false
- 5 premise, misrepresentation, or knowing concealment,
- 6 suppression, or omission of material facts regarding the safety of
- 7 the Hyundai and Kia Class Vehicles and/or defective ACUs.

8 Md. Code Com. Law §§ 13-301(1), (2)(i), (2)(iv), (3), (5)(i), and (9)(i).

9 3118. Hyundai Korea's, Hyundai USA's, Kia Korea's, and Kia USA's unfair
10 or deceptive acts or practices, including misrepresentations, concealments,
11 omissions, and suppressions of material facts, were designed to mislead and had a
12 tendency or capacity to mislead and create a false impression in consumers that the
13 Hyundai and Kia Class Vehicles had properly-functioning and reliable airbags and
14 seatbelts, and that the Occupant Restraint System did not contain the ACU Defect
15 and would perform its intended function of activating the seatbelts and airbags
16 during a collision. Indeed, those misrepresentations, concealments, omissions, and
17 suppressions of material facts did in fact deceive reasonable consumers, including
18 the Maryland Plaintiffs and Maryland State Class members, about the true safety
19 and reliability of Hyundai and Kia Class Vehicles and/or the defective ACUs and
20 ASICs installed in them, the quality of the Hyundai and Kia Class Vehicles, and the
21 true value of those vehicles.

22 3119. Hyundai Korea's, Hyundai USA's, Kia Korea's, and Kia USA's
23 misrepresentations, concealments, omissions, and suppressions of material facts
24 regarding the ACU Defect and true characteristics of the Occupant Restraint
25 Systems in the Hyundai and Kia Class Vehicles were material to the Maryland
26 Plaintiffs and Maryland State Class members, as Hyundai Korea, Hyundai USA,
27 Kia Korea, and Kia USA intended. The Maryland Plaintiffs and Maryland State
28 Class members were exposed to those misrepresentations, concealments, omissions,

1 and suppressions of material facts, and relied on Hyundai Korea's, Hyundai USA's,
2 Kia Korea's, and Kia USA's misrepresentations that the Hyundai and Kia Class
3 Vehicles and their Occupant Restraint Systems were safe and reliable in deciding to
4 purchase and lease those vehicles. Plaintiffs allege the information they relied upon
5 in Section II.B above. To aid review of this information, Exhibit 19 provides
6 paragraph numbers for each Plaintiff.

7 3120. The Maryland Plaintiffs and Maryland State Class members had no
8 way of discerning that Hyundai Korea's, Hyundai USA's, Kia Korea's, and Kia
9 USA's representations were false and misleading and/or otherwise learning the
10 facts that Hyundai Korea, Hyundai USA, Kia Korea, and Kia USA had concealed
11 or failed to disclose. The Maryland Plaintiffs and Maryland State Class members
12 did not, and could not, unravel Hyundai Korea's, Hyundai USA's, Kia Korea's, and
13 Kia USA's deception on their own.

14 3121. Had they known the truth, the Maryland Plaintiffs and Maryland State
15 Class members would not have purchased or leased the Hyundai and Kia Class
16 Vehicles, or would have paid significantly less for them.

17 3122. The Maryland Plaintiffs and Maryland State Class members suffered
18 ascertainable losses and actual damages as a direct and proximate result of Hyundai
19 Korea's, Hyundai USA's, Kia Korea's, and Kia USA's concealment,
20 misrepresentations, and failure to disclose material information.

21 3123. Hyundai Korea's, Hyundai USA's, Kia Korea's, and Kia USA's
22 violations present a continuing risk to the Maryland Plaintiffs and Maryland State
23 Class members, as well as to the general public, because the Class Vehicles remain
24 unsafe due to the defective ACUs and ASICs therein. Hyundai Korea's, Hyundai
25 USA's, Kia Korea's, and Kia USA's unlawful acts and practices complained of
26 herein affect the public interest.

27 3124. Pursuant to Md. Code Com. Law § 13-408, the Maryland Plaintiffs
28 and Maryland State Class members seek an order enjoining Hyundai Korea's,

1 Hyundai USA’s, Kia Korea’s, and Kia USA’s unfair or deceptive acts or practices
2 and awarding damages and any other just and proper relief available under the
3 Maryland CPA.

4 **d. Maryland Count 4: Violation of the Maryland Consumer**
5 **Protection Act (Md. Code Com. Law § 13-101, et seq.)**
6 **Against ZF Electronics USA, ZF Passive Safety USA, ZF**
7 **Automotive USA, ZF TRW Corp., ZF Germany, ST Italy,**
8 **ST USA, and ST Malaysia**

9 3125. Plaintiffs reallege and incorporate by reference all preceding
10 allegations as though fully set forth herein.

11 3126. Plaintiffs Joseph Fuller, Tina Fuller, and Diana King bring this count
12 individually and on behalf of members of the Maryland State Class against ZF
13 Electronics USA, ZF Passive Safety USA, ZF Automotive USA, ZF TRW Corp.,
14 and ZF Germany (collectively, the “ZF Defendants”), and ST Italy, ST Malaysia,
15 and ST USA (collectively, the “ST Defendants”).

16 3127. For purposes of this count, Plaintiffs Joseph Fuller, Tina Fuller and
17 King shall be referred to as the “Maryland Plaintiffs.”

18 3128. The ZF Defendants, ST Defendants, Maryland Plaintiffs, and
19 Maryland State Class members are “persons” within the meaning of Md. Code
20 Com. Law § 13-101(h).

21 3129. The Maryland Plaintiffs and Maryland State Class members are
22 “consumers” within the meaning of Md. Code Com. Law § 13-101(c).

23 3130. The Hyundai and Kia Class Vehicles and ACUs installed in them are
24 “merchandise” within the meaning of Md. Code Com. Law § 13-101(f).

25 3131. The Maryland Consumer Protection Act (“Maryland CPA”) prohibits
26 “[u]nfair, abusive, or deceptive trade practices[.]” Md. Code Com. Law § 13-301.

27 3132. The ZF and ST Defendants had an ongoing duty to the Maryland
28 Plaintiffs and Maryland State Class members to refrain from unfair or deceptive
practices under the Maryland CPA in the course of their business. Specifically, the
ZF and ST Defendants owed the Maryland Plaintiffs and Maryland State Class

1 members a duty to disclose all the material facts concerning the ACU Defect in the
2 Class Vehicles because they possessed exclusive knowledge of and intentionally
3 concealed the ACU Defect from the Maryland Plaintiffs and Maryland State Class
4 members.

5 3133. In the course of their business, the ZF and ST Defendants, through
6 their agents, employees, and/or subsidiaries, violated the Maryland CPA by
7 knowingly and intentionally omitting, concealing, and failing to disclose material
8 facts regarding the existence, nature, and scope of the ACU Defect in the Class
9 Vehicles, as detailed above.

10 3134. Additionally, ZF Electronics USA, ZF Passive Safety USA, and ZF
11 Automotive USA, through their agents, employees, and/or subsidiaries, violated the
12 Maryland CPA by knowingly and intentionally misrepresenting the Class Vehicles
13 as safe and reliable and the defective ACU and ASICs installed in them as properly-
14 functioning and free from defects. Specifically, ZF Electronics USA, ZF Passive
15 Safety USA, and ZF Automotive USA worked with the Vehicle Manufacturer
16 Defendants on the design and inclusion of the airbag readiness indicators in the
17 Class Vehicles, which falsely assured Plaintiffs and Class Members that the
18 Occupant Restraint Systems in the Class Vehicles would function properly in a
19 crash.

20 3135. By misrepresenting, failing to disclose and actively concealing the
21 dangers and risk posed by the Class Vehicles due to the ACU Defect, the ZF and
22 ST Defendants engaged in unfair or deceptive trade practices prohibited by Md.
23 Code Com. Law § 13-301, including failing to state material facts, deception, fraud,
24 and/or knowing concealment, suppression, or omission of material facts.

25 3136. The ZF and ST Defendants' unfair or deceptive acts or practices,
26 including their misrepresentations, concealments, omissions, and suppressions of
27 material facts, were designed to mislead and had a tendency or capacity to mislead
28 and create a false impression in consumers that the Class Vehicles had properly-

1 functioning and reliable airbags and seatbelts, and that the Occupant Restraint
2 System did not contain the ACU Defect and would perform its intended function of
3 activating the seatbelts and airbags during a collision. Indeed, those
4 misrepresentations, concealments, omissions, and suppressions of material facts did
5 in fact deceive reasonable consumers, including the Maryland Plaintiffs and
6 Maryland State Class members, about the true safety and reliability of Class
7 Vehicles and the defective ACUs and ASICs installed in them, the quality of the
8 Class Vehicles, and the true value of the Class Vehicles.

9 3137. The Maryland Plaintiffs and Maryland State Class members justifiably
10 relied on the ZF and ST Defendants' misrepresentations, omissions, and
11 concealment, as they had no way of learning the facts that the ZF and ST
12 Defendants had concealed or failed to disclose. The Maryland Plaintiffs and
13 Maryland State Class members did not, and could not, unravel the ZF and ST
14 Defendants' deception on their own.

15 3138. The ZF and ST Defendants' misrepresentations and concealment of the
16 ACU Defect and true characteristics of the defective ACUs and ASICs in the Class
17 Vehicles were material to the Maryland Plaintiffs and Maryland State Class
18 members, as the ZF and ST Defendants intended. Had they known the truth, the
19 Maryland Plaintiffs and Maryland State Class members would not have purchased
20 or leased the Class Vehicles, or would have paid significantly less for them.

21 3139. The Maryland Plaintiffs and Maryland State Class members suffered
22 ascertainable losses and actual damages as a direct and proximate result of the ZF
23 and ST Defendants' misrepresentations, concealment, and failure to disclose
24 material information.

25 3140. The ZF and ST Defendants' violations present a continuing risk to the
26 Maryland Plaintiffs and Maryland State Class members, as well as to the general
27 public, because the Class Vehicles remain unsafe due to the defective ACUs and
28

1 ASICs therein. The ZF and ST Defendants’ unlawful acts and practices complained
2 of herein affect the public interest.

3 3141. Pursuant to Md. Code Com. Law § 13-408, the Maryland Plaintiffs
4 and Maryland State Class members seek an order enjoining the ZF and ST
5 Defendants’ unfair or deceptive acts or practices and awarding damages and any
6 other just and proper relief available under the Maryland CPA.

7 e. **Maryland Count 5: Fraud by Omission and Concealment**
8 **Against Hyundai Korea, Hyundai USA, Kia Korea, and Kia**
9 **USA**

10 3142. Plaintiffs reallege and incorporate by reference all preceding
11 allegations as though fully set forth herein.

12 3143. Plaintiffs Joseph Fuller and Tina Fuller bring this count individually
13 and on behalf of members of the Maryland State Class who purchased or leased
14 Hyundai Class Vehicles, against Hyundai Korea and Hyundai USA.

15 3144. Plaintiff Diana King brings this count individually and on behalf of
16 members of the Maryland State Class who purchased or leased Kia Class Vehicles,
17 against Kia Korea and Kia USA.

18 3145. For purposes of this count, Plaintiffs Joseph Fuller, Tina Fuller and
19 Diana King shall be referred to as the “Maryland Plaintiffs.”

20 3146. Hyundai Korea, Hyundai USA, Kia Korea, and Kia USA are liable for
21 both fraudulent concealment and non-disclosure. *See, e.g.*, Restatement (Second) of
22 Torts §§ 550-51 (1977).

23 3147. As explained in Section IV.A, the ACU Defect in Class Vehicles poses
24 serious risks to vehicle occupants, including that it can cause: (1) airbags and
25 seatbelts not to activate during a crash because crashes can sometimes release
26 electrical transients, which cause the ACU to fail; (2) airbags to deploy when the
27 vehicle has not crashed, which is dangerous because it is shocking and difficult for
28 the driver to operate a vehicle when the airbag deploys without warning; and (3)
failures of other important post-crash operations of the safety system, such as

1 unlocking doors to facilitate escape or extraction of drivers and passengers by
2 emergency personnel, and shutting off a crashed vehicle's fuel or power supply.

3 3148. Hyundai Korea, Hyundai USA, Kia Korea, and Kia USA had a duty to
4 disclose the ACU Defect to the Maryland Plaintiffs and Maryland State Class
5 members because:

- 6 a. Hyundai Korea, Hyundai USA, Kia Korea, and Kia USA had
7 exclusive access to and far superior knowledge about technical
8 facts regarding the ACU Defect;
- 9 b. Given the ACU Defect's hidden and technical nature, the
10 Maryland Plaintiffs and Maryland State Class members lack the
11 sophisticated expertise in vehicle components and electrical
12 phenomena that would be necessary to discover the ACU Defect
13 on their own;
- 14 c. Hyundai Korea, Hyundai USA, Kia Korea, and Kia USA knew
15 that the ACU Defect gave rise to serious safety concerns for the
16 consumers who use the vehicles, and the Hyundai and Kia Class
17 Vehicles containing the ACU Defect would have been a material
18 fact to the Maryland Plaintiffs' and Maryland State Class
19 members' decisions to buy or lease Hyundai and Kia Class
20 Vehicles; and
- 21 d. Hyundai Korea, Hyundai USA, Kia Korea, and Kia USA made
22 incomplete representations about the safety and reliability of the
23 Hyundai and Kia Class Vehicles and their Occupant Restraint
24 System, while purposefully withholding material facts about a
25 known safety defect. In uniform advertising and materials
26 provided with each Class Vehicle, Hyundai Korea, Hyundai
27 USA, Kia Korea, and Kia USA intentionally concealed,
28 suppressed, and failed to disclose to the Maryland Plaintiffs and

1 Maryland State Class members that the Hyundai and Kia Class
2 Vehicles contained the ACU Defect. Because they volunteered
3 to provide information about the Hyundai and Kia Class
4 Vehicles that they marketed and offered for sale and lease to the
5 Maryland Plaintiffs and Maryland State Class members,
6 Hyundai Korea, Hyundai USA, Kia Korea, and Kia USA had
7 the duty to disclose the whole truth.

8 3149. In breach of their duties, Hyundai Korea, Hyundai USA, Kia Korea,
9 and Kia USA failed to disclose that the Hyundai and Kia Class Vehicles were not
10 safe and reliable, and that their Occupant Restraint Systems, including their airbags
11 and seatbelt pretensioners could fail in the event of a crash due to the ACU Defect.

12 3150. Hyundai Korea, Hyundai USA, Kia Korea, and Kia USA intended for
13 the Maryland Plaintiffs and Maryland State Class members to rely on their
14 omissions—which they did by purchasing and leasing the Hyundai and Kia Class
15 Vehicles at the prices they paid believing that the Occupant Restraint Systems in
16 their Class Vehicles would function properly.

17 3151. That reliance was reasonable, because a reasonable consumer would
18 not have expected that the Hyundai and Kia Class Vehicles contained a safety
19 defect that poses such a serious risk. Hyundai Korea, Hyundai USA, Kia Korea, and
20 Kia USA knew that reasonable consumers expect that their vehicle has working
21 airbags and seatbelt pretensioners and would rely on those facts in deciding whether
22 to purchase, lease, or retain a new or used motor vehicle. Whether a manufacturer's
23 products are safe and reliable, and whether that manufacturer stands behind its
24 products, are material concerns to a consumer. Especially here when at least nine
25 people have already died due to the ACU Defect, and many more have been
26 injured.

27 3152. Additionally, Hyundai Korea, Hyundai USA, Kia Korea, and Kia USA
28 ensured that the Maryland Plaintiffs and Maryland State Class members did not

1 discover this information by actively concealing and misrepresenting the true nature
2 of the Hyundai and Kia Class Vehicles' Occupant Restraint Systems to consumers
3 and NHTSA.

4 3153. Hyundai Korea, Hyundai USA, Kia Korea, and Kia USA actively
5 concealed and suppressed these material facts, in whole or in part, to maintain a
6 market for their Class Vehicles, to protect profits, and to avoid costly recalls that
7 would expose them to liability for those expenses and harm the commercial
8 reputations of Defendants and their products. They did so at the expense of the
9 Maryland Plaintiffs and Maryland State Class members.

10 3154. To this day, Hyundai Korea, Hyundai USA, Kia Korea, and Kia USA
11 have not fully and adequately disclosed the ACU Defect, and they continue to
12 conceal material information about the defect from consumers and NHTSA. The
13 omitted and concealed facts were material because a reasonable person would find
14 them important in purchasing, leasing, or retaining a new or used motor vehicle,
15 and because they directly impact the value of the Hyundai and Kia Class Vehicles
16 purchased or leased by the Maryland Plaintiffs and Maryland State Class members.

17 3155. Had they been aware of the ACU Defect in the Hyundai and Kia Class
18 Vehicles, and Hyundai Korea's, Hyundai USA's, Kia Korea's, and Kia USA's
19 callous disregard for safety, the Maryland Plaintiffs and Maryland State Class
20 members either would not have paid as much as they did for their Class Vehicles,
21 or they would not have purchased or leased them.

22 3156. As alleged in Section V above, if Hyundai Korea, Hyundai USA, Kia
23 Korea, and Kia USA had fully and adequately disclosed the ACU Defect to
24 consumers and NHTSA, the Maryland Plaintiffs and Maryland State Class
25 members would have seen such a disclosure.

26 3157. Accordingly, Hyundai Korea, Hyundai USA, Kia Korea, and Kia USA
27 are liable to the Maryland Plaintiffs and Maryland State Class members for their
28 damages in an amount to be proven at trial, including, but not limited to, their lost

1 overpayment for the Hyundai and Kia Class Vehicles at the time of purchase or
2 lease.

3 3158. Hyundai Korea’s, Hyundai USA’s, Kia Korea’s, and Kia USA’s acts
4 were done maliciously, oppressively, deliberately, with intent to defraud; in
5 reckless disregard of the Maryland Plaintiffs’ and Maryland State Class members’
6 rights and well-being; and to enrich themselves. Hyundai Korea’s, Hyundai USA’s,
7 Kia Korea’s, and Kia USA’s misconduct warrants an assessment of punitive
8 damages, as permitted by law, in an amount sufficient to deter such conduct in the
9 future, which amount shall be determined according to proof at trial.

10 **f. Maryland Count 6: Fraud by Omission and Concealment**
11 **Against ZF Electronics USA, ZF Passive Safety USA, ZF**
12 **Automotive USA, ZF TRW Corp., ZF Germany, ST Italy,**
13 **ST USA, and ST Malaysia**

14 3159. Plaintiffs reallege and incorporate by reference all preceding
15 allegations as though fully set forth herein.

16 3160. The Maryland Plaintiffs bring this count individually and on behalf of
17 members of the Maryland State Class who purchased or leased Class Vehicles,
18 against ZF Electronics USA, ZF Passive Safety USA, ZF Automotive USA, ZF
19 TRW Corp., and ZF Germany (collectively, the “ZF Defendants”), and ST Italy, ST
20 Malaysia, and ST USA (collectively, the “ST Defendants”).

21 3161. The ZF and ST Defendants are liable for both fraudulent concealment
22 and non-disclosure. *See, e.g.*, Restatement (Second) of Torts §§ 550-51 (1977).

23 3162. As explained in Section IV.A, the ACU Defect in Class Vehicles poses
24 serious risks to vehicle occupants, including that it can cause: (1) airbags and
25 seatbelts not to activate during a crash because crashes can sometimes release
26 electrical transients, which cause the ACU to fail; (2) airbags to deploy when the
27 vehicle has not crashed, which is dangerous because it is shocking and difficult for
28 the driver to operate a vehicle when the airbag deploys without warning; and (3)
failures of other important post-crash operations of the safety system, such as

1 unlocking doors to facilitate escape or extraction of drivers and passengers by
2 emergency personnel, and shutting off a crashed vehicle’s fuel or power supply.

3 3163. The ZF and ST Defendants had a duty to disclose the ACU Defect to
4 the Maryland Plaintiffs and Maryland State Class members because:

- 5 a. The ZF and ST Defendants had exclusive access to and far
6 superior knowledge about technical facts regarding the ACU
7 Defect;
- 8 b. Given the ACU Defect’s hidden and technical nature, the
9 Maryland Plaintiffs and Maryland State Class members lack the
10 sophisticated expertise in vehicle components and electrical
11 phenomena that would be necessary to discover the ACU Defect
12 on their own;
- 13 c. The ZF and ST Defendants knew that the ACU Defect gave rise
14 to serious safety concerns for the consumers who use the
15 vehicles, and the Class Vehicles containing the ACU Defect
16 would have been a material fact to the Maryland Plaintiffs’ and
17 Maryland State Class members’ decisions to buy or lease Class
18 Vehicles; and
- 19 d. The ZF Defendants made incomplete representations about the
20 safety and reliability of the Class Vehicles and their Occupant
21 Restraint System, while purposefully withholding material facts
22 about a known safety defect, creating a duty to disclose the
23 whole truth. Specifically, ZF Electronics USA, ZF Passive
24 Safety USA, and ZF Automotive USA worked with the Vehicle
25 Manufacturer Defendants on the design and inclusion of the
26 airbag readiness indicators in the Class Vehicles, which falsely
27 assured Plaintiffs and Class Members that the Occupant
28

1 Restraint Systems in the Class Vehicles would function properly
2 in a crash.

3 3164. In breach of their duties, the ZF and ST Defendants failed to disclose
4 that the Class Vehicles were not safe and reliable, and that their Occupant Restraint
5 Systems, including their airbags and seatbelt pretensioners could fail in the event of
6 a crash due to the ACU Defect.

7 3165. The ZF and ST Defendants intended for the Maryland Plaintiffs and
8 Maryland State Class members to rely on their omissions—which they did by
9 purchasing and leasing the Class Vehicles at the prices they paid believing that the
10 Occupant Restraint Systems in their Class Vehicles would function properly.

11 3166. That reliance was reasonable, because a reasonable consumer would
12 not have expected that the Class Vehicles contained a safety defect that poses such
13 a serious risk. The ZF and ST Defendants knew that reasonable consumers expect
14 that their vehicle has working airbags and seatbelt pretensioners and would rely on
15 those facts in deciding whether to purchase, lease, or retain a new or used motor
16 vehicle. Whether a manufacturer's products are safe and reliable, and whether that
17 manufacturer stands behind its products, are material concerns to a consumer.
18 Especially here when at least nine people have already died due to the ACU Defect,
19 and many more have been injured.

20 3167. Additionally, the ZF and ST Defendants ensured that the Maryland
21 Plaintiffs and Maryland State Class members did not discover this information by
22 actively concealing and misrepresenting the true nature of the Class Vehicles'
23 Occupant Restraint Systems to consumers and NHTSA.

24 3168. The ZF and ST Defendants actively concealed and suppressed these
25 material facts, in whole or in part, to maintain a market for the DS84 ACU, to
26 protect profits, and to avoid costly recalls that would expose them to liability for
27 those expenses and harm the commercial reputations of Defendants and their
28

1 products. They did so at the expense of the Maryland Plaintiffs and Maryland State
2 Class members.

3 3169. To this day, the ZF and ST Defendants have not fully and adequately
4 disclosed the ACU Defect, and they continue to conceal material information about
5 the defect from consumers and NHTSA. The omitted and concealed facts were
6 material because a reasonable person would find them important in purchasing,
7 leasing, or retaining a new or used motor vehicle, and because they directly impact
8 the value of the Class Vehicles purchased or leased by the Maryland Plaintiffs and
9 Maryland State Class members.

10 3170. Had they been aware of the ACU Defect in the Class Vehicles, and the
11 ZF and ST Defendants' callous disregard for safety, the Maryland Plaintiffs and
12 Maryland State Class members either would not have paid as much as they did for
13 their Class Vehicles, or they would not have purchased or leased them.

14 3171. As alleged in Section V above, if the ZF and ST Defendants had fully
15 and adequately disclosed the ACU Defect to consumers and NHTSA, the Maryland
16 Plaintiffs and Maryland State Class members would have seen such a disclosure.

17 3172. Accordingly, the ZF and ST Defendants are liable to the Maryland
18 Plaintiffs and Maryland State Class members for their damages in an amount to be
19 proven at trial, including, but not limited to, their lost overpayment for the Class
20 Vehicles at the time of purchase or lease.

21 3173. The ZF and ST Defendants' acts were done maliciously, oppressively,
22 deliberately, with intent to defraud; in reckless disregard of the Maryland Plaintiffs'
23 and Maryland State Class members' rights and well-being; and to enrich
24 themselves. The ZF and ST Defendants' misconduct warrants an assessment of
25 punitive damages, as permitted by law, in an amount sufficient to deter such
26 conduct in the future, which amount shall be determined according to proof at trial.

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g. Maryland Count 7: Unjust Enrichment Against Hyundai Korea and Hyundai USA

3174. Plaintiffs reallege and incorporate by reference all allegations in Sections I-VI above as though fully set forth herein.

3175. Plaintiffs Joseph Fuller and Tina Fuller bring this count individually and on behalf of members of the Maryland State Class who purchased or leased Hyundai Class Vehicles, against Hyundai Korea and Hyundai USA.

3176. For purposes of this count, Plaintiffs Joseph Fuller and Tina Fuller shall be referred to as the “Maryland Plaintiffs.”

3177. The Maryland Plaintiffs and Maryland State Class members conferred tangible and material economic benefits upon Hyundai Korea and Hyundai USA when they purchased or leased the Hyundai Class Vehicles. Hyundai Korea and Hyundai USA readily accepted and retained these benefits.

3178. The Maryland Plaintiffs and Maryland State Class members would not have purchased or leased their Hyundai Class Vehicles, or would have paid less for them, had they known of the ACU Defect at the time of purchase or lease. Therefore, Hyundai Korea and Hyundai USA profited from the sale and lease of the Hyundai Class Vehicles to the detriment and expense of the Maryland Plaintiffs and Maryland State Class members.

3179. Hyundai Korea and Hyundai USA appreciated these benefits, which were the expected result of Hyundai Korea and Hyundai USA acting in their pecuniary interest at the expense of their customers. Hyundai Korea and Hyundai USA knew of these benefits because they were aware of the ACU Defect, yet they failed to disclose this knowledge and misled Maryland Plaintiffs and Maryland State Class members regarding the nature and quality of the Hyundai Class Vehicles while profiting from this deception.

1 3180. It would be unjust, inequitable, and unconscionable for Hyundai Korea
2 and Hyundai USA to retain these benefits, including because they were procured as
3 a result of their wrongful conduct alleged above.

4 3181. The Maryland Plaintiffs and Maryland State Class members are
5 entitled to restitution of the benefits Hyundai Korea and Hyundai USA unjustly
6 retained and/or any amounts necessary to return the Maryland Plaintiffs and
7 Maryland State Class members to the position they occupied prior to dealing with
8 Hyundai Korea and Hyundai USA, with such amounts to be determined at trial.

9 3182. The Maryland Plaintiffs plead this claim separately as well as in the
10 alternative to their claims for damages under Fed. R. Civ. P. 8(a)(3), because if the
11 Maryland Plaintiffs' claims for damages are dismissed or judgment is entered in
12 favor of Defendants, the Maryland Plaintiffs will have no adequate legal remedy.

13 **10. Massachusetts**

14 **a. Massachusetts Count 1: Breach of Express Warranty (Mass. Gen. Laws ch. 106, §§ 2-313 and 2A-210) Against Kia Korea and Kia USA¹¹**

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16 3183. Plaintiffs reallege and incorporate by reference all preceding
17 allegations as though fully set forth herein.

18 3184. Plaintiff Dylan DeMoranville (hereinafter, "the Massachusetts
19 Plaintiff") brings this count individually and on behalf of members of the
20 Massachusetts State Class who purchased or leased Kia Class Vehicles, against Kia
21 Korea and Kia USA.

22 3185. Kia Korea and Kia USA are and were at all relevant times "merchants"
23 with respect to motor vehicles under Mass. Gen. Laws ch. 106, §§ 2-104(1) and
24 2A-103(3), and "sellers" of motor vehicles under § 2-103(1)(d).

25 3186. Kia Korea and Kia USA are and were at all relevant times "lessors" of
26 motor vehicles under Mass. Gen. Laws ch. 106, § 2A-103(1)(p).

27 _____
28 ¹¹ The Court held in its February 9, 2022 Order that the Massachusetts Plaintiff stated a claim for breach of express warranty. *See* ECF No. 396 at 144.

1 3187. All Massachusetts State Class members who purchased Kia Class
2 Vehicles in Massachusetts are “buyers” within the meaning of Mass. Gen. Laws ch.
3 106, § 2-103(1)(a).

4 3188. All Massachusetts State Class members who leased Kia Class Vehicles
5 in Massachusetts are “lessees” within the meaning of Mass. Gen. Laws ch. 106,
6 § 2A-103(1)(n).

7 3189. The Kia Class Vehicles are and were at all relevant times “goods”
8 within the meaning of Mass. Gen. Laws ch. 106, §§ 2-105(1) and 2A-103(1)(h).

9 3190. In connection with the purchase or lease of Kia Class Vehicles, Kia
10 Korea and Kia USA provided the Massachusetts Plaintiff and Massachusetts State
11 Class members with written express warranties in the form of: (a) written express
12 warranties covering the repair or replacement of components that are defective in
13 materials or workmanship, and (b) descriptions of the Kia Class Vehicles as safe
14 and reliable, and that their Occupant Restraint Systems, including their airbags and
15 seatbelt pretensioners, would function properly in the event of a crash.

16 3191. However, Kia Korea and Kia USA knew or should have known that
17 the warranties were false and/or misleading. Specifically, Kia Korea and Kia USA
18 were aware of the ACU Defect in the Kia Class Vehicles, which made the vehicles
19 inherently defective and dangerous at the time that they were sold and leased to the
20 Massachusetts Plaintiff and Massachusetts State Class members.

21 3192. The Massachusetts Plaintiff and Massachusetts State Class members
22 were aware the Kia Class Vehicles were covered by express warranties, and those
23 warranties were an essential part of the bargain that was reached when the
24 Massachusetts Plaintiff and Massachusetts State Class members unknowingly
25 purchased or leased Kia Class Vehicles that came equipped with defective ACUs
26 and ASICs.

27 3193. Kia Korea and Kia USA misrepresented the Kia Class Vehicles as safe
28 and reliable while concealing that they contained the ACU Defect, the

1 Massachusetts Plaintiff and Massachusetts State Class members were exposed to
2 those misrepresentations, and the Massachusetts Plaintiff and Massachusetts State
3 Class members had no way of discerning that Kia Korea's and Kia USA's
4 representations were false and misleading or otherwise learning the material facts
5 that Kia Korea and Kia USA had concealed or failed to disclose. Accordingly, the
6 Massachusetts Plaintiff and Massachusetts State Class members reasonably relied
7 on Kia Korea's and Kia USA's express warranties when purchasing or leasing their
8 Kia Class Vehicles. Plaintiffs allege the information they relied upon in Section II.B
9 above. To aid review of this information, Exhibit 19 provides paragraph numbers
10 for each Plaintiff.

11 3194. Kia Korea and Kia USA knowingly breached their express warranties
12 to repair defects in materials and workmanship by failing to repair the ACU Defect
13 or replace the defective ACUs and ASICs in the Kia Class Vehicles. Kia Korea and
14 Kia USA also breached their express warranties by providing a product containing
15 defects that were never disclosed to the Massachusetts Plaintiff and Massachusetts
16 State Class members.

17 3195. The Massachusetts Plaintiff and Massachusetts State Class members
18 have provided Kia Korea and Kia USA with reasonable notice and opportunity to
19 cure the breaches of their express warranties by way of the numerous NHTSA
20 complaints filed against them, and individual notice letters sent by the
21 Massachusetts State Class members within a reasonable amount of time after the
22 ACU Defect became public. Additionally, on May 23, 2019, Massachusetts State
23 Class members sent a notice letter to Kia. Moreover, a second notice letter was sent
24 on behalf of the Massachusetts Plaintiff and Massachusetts State Class members to
25 Kia on April 24, 2020.

26 3196. Alternatively, the Massachusetts Plaintiff and Massachusetts State
27 Class members were excused from providing Kia Korea and Kia USA with notice
28 and an opportunity to cure the breach, because it would have been futile. As alleged

1 above, Kia Korea and Kia USA have long known that the Kia Class Vehicles
2 contained the ACU Defect, and that the ACU Defect has caused ACUs and ASICs
3 to malfunction in crashes involving Class Vehicles; however, to date, Kia Korea
4 and Kia USA have not instituted a recall or any other repair program with respect to
5 the unrecalled Kia Class Vehicles, or even acknowledged that the ACU Defect
6 exists in all of the Kia Class Vehicles, including the recalled Kia Class Vehicles.
7 Therefore, the Massachusetts Plaintiff and Massachusetts State Class members had
8 no reason to believe that Kia Korea and Kia USA would have repaired the ACU
9 Defect if they presented their Class Vehicles to Kia Korea and Kia USA for
10 repair.

11 3197. As a direct and proximate result of Kia Korea's and Kia USA's breach
12 of their express warranties, the Kia Class Vehicles were and are defective and the
13 ACU Defect in the Massachusetts Plaintiff's and Massachusetts State Class
14 members' Kia Class Vehicles was not remedied. Therefore, the Massachusetts
15 Plaintiff and Massachusetts State Class members have been damaged, in an amount
16 to be proven at trial, through their overpayment at the time of purchase or lease for
17 Kia Class Vehicles with an undisclosed safety defect that would not be remedied.

18 **b. Massachusetts Count 2: Breach of Implied Warranty of**
19 **Merchantability (Mass. Gen. Laws ch. 106, §§ 2-314 and 2A-**
20 **212) Against Kia USA¹²**

21 3198. Plaintiffs reallege and incorporate by reference all preceding
22 allegations as though fully set forth herein.

23 3199. The Massachusetts Plaintiff brings this count individually and on
24 behalf of members of the Massachusetts State Class who purchased or leased Kia
25 Class Vehicles, against Kia USA.

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28 ¹² The Court held in its February 9, 2022 Order that the Massachusetts Plaintiff stated a claim for breach of implied warranty. *See* ECF No. 396 at 144.

1 3200. A warranty that the Kia Class Vehicles were in merchantable condition
2 and fit for the ordinary purpose for which such goods are used is implied by law
3 pursuant to Mass. Gen. Laws ch. 106, §§ 2-314 and 2A-212.

4 3201. Kia USA is and was at all relevant times a “merchant” with respect to
5 motor vehicles under Mass. Gen. Laws ch. 106, §§ 2-104(1) and 2A-103(3), and a
6 “seller” of motor vehicles under § 2-103(1)(d).

7 3202. Kia USA is and was at all relevant times a “lessor” of motor vehicles
8 under Mass. Gen. Laws ch. 106, § 2A-103(1)(p).

9 3203. All Massachusetts State Class members who purchased Kia Class
10 Vehicles in Massachusetts are “buyers” within the meaning of Mass. Gen. Laws ch.
11 106, § 2-103(1)(a).

12 3204. All Massachusetts State Class members who leased Kia Class Vehicles
13 in Massachusetts are “lessees” within the meaning of Mass. Gen. Laws ch. 106,
14 § 2A-103(1)(n).

15 3205. The Kia Class Vehicles are and were at all relevant times “goods”
16 within the meaning of Mass. Gen. Laws ch. 106, §§ 2-105(1) and 2A-103(1)(h).

17 3206. The Kia Class Vehicles did not comply with the implied warranty of
18 merchantability because, at the time of sale and at all times thereafter, they were
19 defective and not in merchantable condition, would not pass without objection in
20 the trade, and were not fit for the ordinary purpose for which vehicles were used.
21 Specifically, the Kia Class Vehicles contain the ACU Defect, which may cause the
22 airbags and seatbelt pretensioners to fail to deploy during an crash, the failure to
23 unlock doors automatically after a crash, the failure to turn off a fuel supply or
24 high-voltage battery after a crash, or the airbags to inadvertently deploy, all of
25 which render the Kia Class Vehicles inherently defective and dangerous.

26 3207. The Massachusetts Plaintiff and Massachusetts State Class members
27 have provided Kia USA with reasonable notice and opportunity to cure the
28 breaches of its implied warranties by way of the numerous NHTSA complaints

1 filed against it, and individual notice letters sent by the Massachusetts State Class
2 members within a reasonable amount of time after the ACU Defect became public.
3 Additionally, on May 23, 2019, Massachusetts State Class members sent a notice
4 letter to Kia. Moreover, a second notice letter was sent on behalf of the
5 Massachusetts Plaintiff and Massachusetts State Class members to Kia USA, on
6 April 24, 2020.

7 3208. Alternatively, the Massachusetts Plaintiff and Massachusetts State
8 Class members were excused from providing Kia USA with notice and an
9 opportunity to cure the breach, because it would have been futile. As alleged above,
10 Kia USA has long known that the Kia Class Vehicles contained the ACU Defect,
11 and that the ACU Defect has caused ACUs and ASICs to malfunction in crashes
12 involving Class Vehicles; however, to date, Kia USA has not instituted a recall or
13 any other repair program with respect to the unrecalled Kia Class Vehicles, or even
14 acknowledged that the ACU Defect exists in all of the Kia Class Vehicles, including
15 the recalled Kia Class Vehicles. Therefore, the Massachusetts Plaintiff and
16 Massachusetts State Class members had no reason to believe that Kia USA would
17 have repaired the ACU Defect if the they presented their Class Vehicles to Kia
18 USA for repair.

19 3209. As a direct and proximate result of Kia USA's breach of the implied
20 warranty of merchantability, the Massachusetts Plaintiff and Massachusetts State
21 Class members have been damaged in an amount to be proven at trial.

22 c. **Massachusetts Count 3: Violation of the Deceptive Acts or**
23 **Practices Prohibited By Massachusetts Law (Mass. Gen.**
24 **Laws ch. 93a, § 1, *et seq.*) Against Kia Korea and Kia USA¹³**

25 3210. Plaintiffs reallege and incorporate by reference all preceding
26 allegations as though fully set forth herein.

27 ¹³ The Court held in its February 9, 2022 Order that the Massachusetts Plaintiff
28 stated a claim against Kia USA for violation of Mass. Gen. Laws ch. 93a, § 1, *et seq.* See ECF No. 396 at 101.

1 3211. The Massachusetts Plaintiff brings this count individually and on
2 behalf of members of the Massachusetts State Class who purchased or leased Kia
3 Class Vehicles, against Kia Korea and Kia USA.

4 3212. Kia Korea, Kia USA, the Massachusetts Plaintiff, and Massachusetts
5 State Class members are “persons” within the meaning of Mass. Gen. Laws ch.
6 93A, § 1(a).

7 3213. Kia Korea and Kia USA were and are engaged in “trade” or
8 “commerce” within the meaning of Mass. Gen. Laws ch. 93A, § 1(b).

9 3214. The Massachusetts consumer protection law (“Massachusetts Act”)
10 prohibits “[u]nfair methods of competition and unfair or deceptive acts or practices
11 in the conduct of any trade or commerce[.]” Mass. Gen. Laws ch. 93A, § 2.

12 3215. In the course of their business, Kia Korea and Kia USA, through their
13 agents, employees, and/or subsidiaries, violated the Massachusetts Act by
14 knowingly and intentionally misrepresenting, omitting, concealing, and/or failing to
15 disclose material facts regarding the reliability, safety, and performance of the Kia
16 Class Vehicles, the safety of their Occupant Restraint Systems, and the ACU
17 Defect, as detailed above.

18 3216. Kia Korea and Kia USA had an ongoing duty to the Massachusetts
19 Plaintiff and Massachusetts State Class members to refrain from unfair or deceptive
20 practices under the Massachusetts Act in the course of their business. Specifically,
21 Kia Korea and Kia USA owed the Massachusetts Plaintiff and Massachusetts State
22 Class members a duty to disclose all the material facts concerning the ACU Defect
23 in the Kia Class Vehicles because they possessed exclusive knowledge of and
24 intentionally concealed the ACU Defect from the Massachusetts Plaintiff and
25 Massachusetts State Class members, and/or they made misrepresentations that were
26 rendered misleading because they were contradicted by withheld facts.

27 3217. By misrepresenting the Kia Class Vehicles and/or the defective ACUs
28 installed in them as safe, reliable, and free from defects, and by failing to disclose

1 and actively concealing the dangers and risk posed by the Kia Class Vehicles and
2 the ACU Defect, Kia Korea and Kia USA engaged in unfair or deceptive business
3 practices in the conduct of any trade or commerce, as prohibited by Mass. Gen.
4 Laws ch. 93A, § 2.

5 3218. Kia Korea's and Kia USA's unfair or deceptive acts or practices,
6 including misrepresentations, concealments, omissions, and/or suppressions of
7 material facts, were designed to mislead and had a tendency or capacity to mislead
8 and create a false impression in consumers that the Kia Class Vehicles had
9 properly-functioning and reliable airbags and seatbelts, and that the Occupant
10 Restraint System did not contain the ACU Defect and would perform its intended
11 function of activating the seatbelts and airbags during a collision. Indeed, those
12 misrepresentations, concealments, omissions, and suppressions of material facts did
13 in fact deceive reasonable consumers, including the Massachusetts Plaintiff and
14 Massachusetts State Class members, about the true safety and reliability of Kia
15 Class Vehicles and/or the defective ACUs and ASICs installed in them, the quality
16 of the Kia Class Vehicles, and the true value of those vehicles.

17 3219. Kia Korea's and Kia USA's misrepresentations, concealments,
18 omissions, and suppressions of material facts regarding the ACU Defect and true
19 characteristics of the Occupant Restraint Systems in the Hyundai and Kia Class
20 Vehicles were material to the decisions of the Massachusetts Plaintiff and
21 Massachusetts State Class members, as Kia Korea and Kia USA intended. The
22 Massachusetts Plaintiff and Massachusetts State Class members were exposed to
23 those misrepresentations, concealments, omissions, and suppressions of material
24 facts, and relied on Kia Korea's and Kia USA's misrepresentations that the Kia
25 Class Vehicles and their Occupant Restraint Systems were safe and reliable in
26 deciding to purchase and lease those vehicles. Plaintiffs allege the information they
27 relied upon in Section II.B above. To aid review of this information, Exhibit 19
28 provides paragraph numbers for each Plaintiff.

1 3220. The Massachusetts Plaintiff and Massachusetts State Class members
2 had no way of discerning that Kia Korea's and Kia USA's representations were
3 false and misleading and/or otherwise learning the facts that Kia Korea and Kia
4 USA had concealed or failed to disclose. The Massachusetts Plaintiff and
5 Massachusetts State Class members did not, and could not, unravel Kia Korea's and
6 Kia USA's deception on their own.

7 3221. Had they known the truth about the ACU Defect, the Massachusetts
8 Plaintiff and Massachusetts State Class members would not have purchased or
9 leased the Kia Class Vehicles, or would have paid significantly less for them.

10 3222. The Massachusetts Plaintiff and Massachusetts State Class members
11 suffered ascertainable losses and actual damages as a direct and proximate result of
12 Kia Korea's and Kia USA's concealment, misrepresentations, and/or failure to
13 disclose material information.

14 3223. Kia Korea's and Kia USA's violations present a continuing risk to the
15 Massachusetts Plaintiff and Massachusetts State Class members, as well as to the
16 general public, because the Class Vehicles remain unsafe due to the defective
17 ACUs and ASICs therein. Kia Korea's and Kia USA's unlawful acts and practices
18 complained of herein affect the public interest.

19 3224. Kia Korea and Kia USA were provided notice of the issues raised in
20 this count and this Complaint by the NHTSA investigations, the numerous
21 complaints filed against them, and the many individual notice letters sent by
22 Massachusetts State Class members within a reasonable amount of time after the
23 ACU Defect became public. Additionally, on May 23, 2019, Massachusetts State
24 Class members sent a notice letter pursuant to Mass. Gen. Laws ch. 93A, § 9(3) to
25 Kia. Moreover, a second notice letter was sent on behalf of the Massachusetts
26 Plaintiff and Massachusetts State Class members pursuant to Mass. Gen. Laws ch.
27 93A, § 9(3) to Kia on April 24, 2020. Kia Korea and Kia USA failed to adequately
28 remedy their unlawful conduct within the requisite time period, the Massachusetts

1 Plaintiff seeks all damages and relief to which the Massachusetts Plaintiff and
2 Massachusetts State Class members are entitled.

3 3225. Alternatively, the Massachusetts Plaintiff and Massachusetts State
4 Class members were excused from providing Kia Korea and Kia USA with notice
5 and an opportunity to cure the breach, because it would have been futile. As alleged
6 above, Kia Korea and Kia USA has long known that the Kia Class Vehicles
7 contained the ACU Defect, and that the ACU Defect has caused ACUs and ASICs
8 to malfunction in crashes involving Class Vehicles; however, to date, Kia Korea
9 and Kia USA have not instituted a recall or any other repair program with respect to
10 the unrecalled Kia Class Vehicles, or even acknowledged that the ACU Defect
11 exists in all of the Kia Class Vehicles, including the recalled Kia Class Vehicles.
12 Therefore, the Massachusetts Plaintiff and Massachusetts State Class members had
13 no reason to believe that Kia Korea and Kia USA would have repaired the ACU
14 Defect if the they presented their Class Vehicles to Kia Korea and Kia USA for
15 repair.

16 3226. Pursuant to Mass. Gen. Laws ch. 93A, § 9, the Massachusetts Plaintiff
17 and Massachusetts State Class members seek an order enjoining Kia Korea's and
18 Kia USA's unfair or deceptive acts or practices and awarding damages and any
19 other just and proper relief available under the Massachusetts Act.

20 **d. Massachusetts Count 4: Violation of the Deceptive Acts or**
21 **Practices Prohibited By Massachusetts Law (Mass. Gen.**
22 **Laws ch. 93a, § 1, et seq.) Against ZF Electronics USA, ZF**
Passive Safety USA, ZF Automotive USA, ZF TRW Corp.,
ZF Germany, ST Italy, ST USA, and ST Malaysia

23 3227. Plaintiffs reallege and incorporate by reference all preceding
24 allegations as though fully set forth herein.

25 3228. The Massachusetts Plaintiff brings this count individually and on
26 behalf of members of the Massachusetts State Class against ZF Electronics USA,
27 ZF Passive Safety USA, ZF Automotive USA, ZF TRW Corp., and ZF Germany
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1 (collectively, the “ZF Defendants”), and ST Italy, ST Malaysia, and ST USA
2 (collectively, the “ST Defendants”).

3 3229. The ZF Defendants, ST Defendants, Massachusetts Plaintiff, and
4 Massachusetts State Class members are “persons” within the meaning of Mass.
5 Gen. Laws ch. 93A, § 1(a).

6 3230. The ZF and ST Defendants were and are engaged in “trade” or
7 “commerce” within the meaning of Mass. Gen. Laws ch. 93A, § 1(b).

8 3231. The Massachusetts consumer protection law (“Massachusetts Act”)
9 prohibits “[u]nfair methods of competition and unfair or deceptive acts or practices
10 in the conduct of any trade or commerce[.]” Mass. Gen. Laws ch. 93A, § 2.

11 3232. The ZF and ST Defendants had an ongoing duty to the Massachusetts
12 Plaintiff and Massachusetts State Class members to refrain from unfair or deceptive
13 practices under the Massachusetts Act in the course of their business. Specifically,
14 the ZF and ST Defendants owed the Massachusetts Plaintiff and Massachusetts
15 State Class members a duty to disclose all the material facts concerning the ACU
16 Defect in the Class Vehicles because they possessed exclusive knowledge of and
17 intentionally concealed the ACU Defect from the Massachusetts Plaintiff and
18 Massachusetts State Class members.

19 3233. In the course of their business, the ZF and ST Defendants, through
20 their agents, employees, and/or subsidiaries, violated the Massachusetts Act by
21 knowingly and intentionally omitting, concealing, and failing to disclose material
22 facts regarding the existence, nature, and scope of the ACU Defect in the Class
23 Vehicles, as detailed above.

24 3234. Additionally, ZF Electronics USA, ZF Passive Safety USA, and ZF
25 Automotive USA through their agents, employees, and/or subsidiaries, violated the
26 Massachusetts Act when they knowingly and intentionally misrepresented the Class
27 Vehicles as safe and reliable and the defective ACU and ASICs installed in them as
28 properly-functioning and free from defects. Specifically, ZF Electronics USA, ZF

1 Passive Safety USA, and ZF Automotive USA worked with the Vehicle
2 Manufacturer Defendants on the design and inclusion of the airbag readiness
3 indicators in the Class Vehicles, which falsely assured Plaintiffs and Class
4 Members that the Occupant Restraint Systems in the Class Vehicles would function
5 properly in a crash.

6 3235. By misrepresenting, failing to disclose, and actively concealing the
7 dangers and risk posed by the Class Vehicles due to the ACU Defect, the ZF and
8 ST Defendants engaged in deceptive acts or practices prohibited by Mass. Gen.
9 Laws ch. 93A, § 2.

10 3236. The ZF and ST Defendants' unfair or deceptive acts or practices,
11 including their misrepresentations, concealments, omissions, and suppressions of
12 material facts, were designed to mislead and had a tendency or capacity to mislead
13 and create a false impression in consumers that the Class Vehicles had properly-
14 functioning and reliable airbags and seatbelts, and that the Occupant Restraint
15 System did not contain the ACU Defect and would perform its intended function of
16 activating the seatbelts and airbags during a collision. Indeed, those
17 misrepresentations, concealments, omissions, and suppressions of material facts did
18 in fact deceive reasonable consumers, including the Massachusetts Plaintiff and
19 Massachusetts State Class members, about the true safety and reliability of Class
20 Vehicles and/or the defective ACUs and ASICs installed in them, the quality of the
21 Class Vehicles, and the true value of the Class Vehicles.

22 3237. The Massachusetts Plaintiff and Massachusetts State Class members
23 justifiably relied on the ZF and ST Defendants' misrepresentations, omissions, and
24 concealment, as they had no way of discerning that the Class Vehicles contained
25 the ACU Defect, as alleged above. The Massachusetts Plaintiff and Massachusetts
26 State Class members did not, and could not, unravel the ZF and ST Defendants'
27 deception on their own.

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1 3238. The ZF and ST Defendants' misrepresentations, omissions, and
2 concealment of the ACU Defect and true characteristics of the defective ACUs and
3 ASICs in the Class Vehicles were material to the decisions of the Massachusetts
4 Plaintiff and Massachusetts State Class members to purchase and lease Class
5 Vehicles, as the ZF and ST Defendants intended. Had they known the truth, the
6 Massachusetts Plaintiff and Massachusetts State Class members would not have
7 purchased or leased the Class Vehicles, or would have paid significantly less for
8 them.

9 3239. The Massachusetts Plaintiff and Massachusetts State Class members
10 suffered ascertainable losses and actual damages as a direct and proximate result of
11 the ZF and ST Defendants' misrepresentations, concealment, and failure to disclose
12 material information.

13 3240. The ZF and ST Defendants' violations present a continuing risk to the
14 Massachusetts Plaintiff and Massachusetts State Class members, as well as to the
15 general public, because the Class Vehicles remain unsafe due to the defective
16 ACUs and ASICs therein. The ZF and ST Defendants' unlawful acts and practices
17 complained of herein affect the public interest.

18 3241. The ZF and ST Defendants were provided notice of the issues raised in
19 this count and this Complaint by the NHTSA investigations, the numerous
20 complaints filed against them, and the many individual notice letters sent by
21 Massachusetts State Class members within a reasonable amount of time after the
22 allegations of the ACU Defect became public. Also, on May 23, 2019,
23 Massachusetts State Class members sent a notice letter pursuant to Mass. Gen.
24 Laws ch. 93A, § 9(3) to the ZF Defendants, and a second notice letter was sent to
25 the ZF Defendants on behalf of the Massachusetts Plaintiff and Massachusetts State
26 Class members pursuant to Mass. Gen. Laws ch. 93A, § 9(3) on April 24, 2020.
27 Moreover, a notice letter was sent to ST USA on behalf of the Massachusetts
28 Plaintiff and Massachusetts State Class members pursuant to Mass. Gen. Laws ch.

1 93A, § 9(3) on June 5, 2020, and to ST Italy and ST Malaysia on May 25, 2022.
2 Because the ZF and ST Defendants failed to adequately remedy their unlawful
3 conduct within the requisite time period, the Massachusetts Plaintiff seeks all
4 damages and relief to which the Massachusetts Plaintiff and Massachusetts State
5 Class members are entitled.

6 3242. Alternatively, any requirement to give notice to the Defendants under
7 Mass. Gen. Laws ch. 93A, § 9(3) is excused because, *inter alia*, on information and
8 belief the ZF and ST Defendants do not maintain a place of business or do not keep
9 assets within Massachusetts.

10 3243. Pursuant to Mass. Gen. Laws ch. 93A, § 9, the Massachusetts Plaintiff
11 and Massachusetts State Class members seek an order enjoining the ZF and ST
12 Defendants' unfair or deceptive acts or practices and awarding damages and any
13 other just and proper relief available under the Massachusetts Act.

14 **e. Massachusetts Count 5: Fraud by Omission and**
15 **Concealment Against Kia Korea and Kia USA**

16 3244. Plaintiffs reallege and incorporate by reference all preceding
17 allegations as though fully set forth herein.

18 3245. The Massachusetts Plaintiff brings this count individually and on
19 behalf of members of the Massachusetts State Class who purchased or leased Kia
20 Class Vehicles, against Kia Korea and Kia USA.

21 3246. Kia Korea and Kia USA are liable for both fraudulent concealment and
22 non-disclosure. *See, e.g.*, Restatement (Second) of Torts §§ 550-51 (1977).

23 3247. As explained in Section IV.A, the ACU Defect in Class Vehicles poses
24 serious risks to vehicle occupants, including that it can cause: (1) airbags and
25 seatbelts not to activate during a crash because crashes can sometimes release
26 electrical transients, which cause the ACU to fail; (2) airbags to deploy when the
27 vehicle has not crashed, which is dangerous because it is shocking and difficult for
28 the driver to operate a vehicle when the airbag deploys without warning; and (3)

1 failures of other important post-crash operations of the safety system, such as
2 unlocking doors to facilitate escape or extraction of drivers and passengers by
3 emergency personnel, and shutting off a crashed vehicle's fuel or power supply.

4 3248. Kia Korea and Kia USA had a duty to disclose the ACU Defect to the
5 Massachusetts Plaintiff and Massachusetts State Class members because:

- 6 a. Kia Korea and Kia USA had exclusive access to and far superior
7 knowledge about technical facts regarding the ACU Defect;
- 8 b. Given the ACU Defect's hidden and technical nature, the
9 Massachusetts Plaintiff and Massachusetts State Class members
10 lack the sophisticated expertise in vehicle components and
11 electrical phenomena that would be necessary to discover the
12 ACU Defect on their own;
- 13 c. Kia Korea and Kia USA knew that the ACU Defect gave rise to
14 serious safety concerns for the consumers who use the vehicles,
15 and the Kia Class Vehicles containing the ACU Defect would
16 have been a material fact to the Massachusetts Plaintiff's and
17 Massachusetts State Class members' decisions to buy or lease
18 Kia Class Vehicles; and
- 19 d. Kia Korea and Kia USA made incomplete representations about
20 the safety and reliability of the Kia Class Vehicles and their
21 Occupant Restraint System, while purposefully withholding
22 material facts about a known safety defect. In uniform
23 advertising and materials provided with each Class Vehicle, Kia
24 Korea, and Kia USA intentionally concealed, suppressed, and
25 failed to disclose to the Massachusetts Plaintiff and
26 Massachusetts State Class members that the Kia Class Vehicles
27 contained the ACU Defect. Because they volunteered to provide
28 information about the Kia Class Vehicles that they marketed and

1 offered for sale and lease to the Massachusetts Plaintiff and
2 Massachusetts State Class members, Kia Korea and Kia USA
3 had the duty to disclose the whole truth.

4 3249. In breach of their duties, Kia Korea and Kia USA failed to disclose
5 that the Kia Class Vehicles were not safe and reliable, and that their Occupant
6 Restraint Systems, including their airbags and seatbelt pretensioners could fail in
7 the event of a crash due to the ACU Defect.

8 3250. Kia Korea and Kia USA intended for the Massachusetts Plaintiff and
9 Massachusetts State Class members to rely on their omissions—which they did by
10 purchasing and leasing the Kia Class Vehicles at the prices they paid believing that
11 the Occupant Restraint Systems in their Class Vehicles would function properly.

12 3251. That reliance was reasonable, because a reasonable consumer would
13 not have expected that the Kia Class Vehicles contained a safety defect that poses
14 such a serious risk. Kia Korea and Kia USA knew that reasonable consumers
15 expect that their vehicle has working airbags and seatbelt pretensioners and would
16 rely on those facts in deciding whether to purchase, lease, or retain a new or used
17 motor vehicle. Whether a manufacturer’s products are safe and reliable, and
18 whether that manufacturer stands behind its products, are material concerns to a
19 consumer. Especially here when at least nine people have already died due to the
20 ACU Defect, and many more have been injured.

21 3252. Additionally, Kia Korea and Kia USA ensured that the Massachusetts
22 Plaintiff and Massachusetts State Class members did not discover this information
23 by actively concealing and misrepresenting the true nature of the Kia Class
24 Vehicles’ Occupant Restraint Systems to consumers and NHTSA.

25 3253. Kia Korea and Kia USA actively concealed and suppressed these
26 material facts, in whole or in part, to maintain a market for their Class Vehicles, to
27 protect profits, and to avoid costly recalls that would expose them to liability for
28 those expenses and harm the commercial reputations of Defendants and their

1 products. They did so at the expense of the Massachusetts Plaintiff and
2 Massachusetts State Class members.

3 3254. To this day, Kia Korea and Kia USA have not fully and adequately
4 disclosed the ACU Defect, and they continue to conceal material information about
5 the defect from consumers and NHTSA. The omitted and concealed facts were
6 material because a reasonable person would find them important in purchasing,
7 leasing, or retaining a new or used motor vehicle, and because they directly impact
8 the value of the Kia Class Vehicles purchased or leased by the Massachusetts
9 Plaintiff and Massachusetts State Class members.

10 3255. Had they been aware of the ACU Defect in the Kia Class Vehicles,
11 and Kia Korea's and Kia USA's callous disregard for safety, the Massachusetts
12 Plaintiff and Massachusetts State Class members either would not have paid as
13 much as they did for their Class Vehicles, or they would not have purchased or
14 leased them.

15 3256. As alleged in Section V above, if Kia Korea and Kia USA had fully
16 and adequately disclosed the ACU Defect to consumers and NHTSA, the
17 Massachusetts Plaintiff and Massachusetts State Class members would have seen
18 such a disclosure.

19 3257. Accordingly, Kia Korea and Kia USA are liable to the Massachusetts
20 Plaintiff and Massachusetts State Class members for their damages in an amount to
21 be proven at trial, including, but not limited to, their lost overpayment for the Kia
22 Class Vehicles at the time of purchase or lease.

23 3258. Kia Korea's and Kia USA's acts were done maliciously, oppressively,
24 deliberately, with intent to defraud; in reckless disregard of the Massachusetts
25 Plaintiff's and Massachusetts State Class members' rights and well-being; and to
26 enrich themselves. Kia Korea's and Kia USA's misconduct warrants an assessment
27 of punitive damages, as permitted by law, in an amount sufficient to deter such
28 conduct in the future, which amount shall be determined according to proof at trial.

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f. Massachusetts Count 6: Fraud by Omission and Concealment Against ZF Electronics USA, ZF Passive Safety USA, ZF Automotive USA, ZF TRW Corp., ZF Germany, ST Italy, ST USA, and ST Malaysia

3259. Plaintiffs reallege and incorporate by reference all preceding allegations as though fully set forth herein.

3260. The Massachusetts Plaintiff brings this count individually and on behalf of members of the Massachusetts State Class who purchased or leased Class Vehicles, against ZF Electronics USA, ZF Passive Safety USA, ZF Automotive USA, ZF TRW Corp., and ZF Germany (collectively, the “ZF Defendants”), and ST Italy, ST Malaysia, and ST USA (collectively, the “ST Defendants”).

3261. The ZF and ST Defendants are liable for both fraudulent concealment and non-disclosure. *See, e.g.*, Restatement (Second) of Torts §§ 550-51 (1977).

3262. As explained in Section IV.A, the ACU Defect in Class Vehicles poses serious risks to vehicle occupants, including that it can cause: (1) airbags and seatbelts not to activate during a crash because crashes can sometimes release electrical transients, which cause the ACU to fail; (2) airbags to deploy when the vehicle has not crashed, which is dangerous because it is shocking and difficult for the driver to operate a vehicle when the airbag deploys without warning; and (3) failures of other important post-crash operations of the safety system, such as unlocking doors to facilitate escape or extraction of drivers and passengers by emergency personnel, and shutting off a crashed vehicle’s fuel or power supply.

3263. The ZF and ST Defendants had a duty to disclose the ACU Defect to the Massachusetts Plaintiff and Massachusetts State Class members because:

- a. The ZF and ST Defendants had exclusive access to and far superior knowledge about technical facts regarding the ACU Defect;
- b. Given the ACU Defect’s hidden and technical nature, the Massachusetts Plaintiff and Massachusetts State Class members

1 lack the sophisticated expertise in vehicle components and
2 electrical phenomena that would be necessary to discover the
3 ACU Defect on their own;

4 c. The ZF and ST Defendants knew that the ACU Defect gave rise
5 to serious safety concerns for the consumers who use the
6 vehicles, and the Class Vehicles containing the ACU Defect
7 would have been a material fact to the Massachusetts Plaintiff's
8 and Massachusetts State Class members' decisions to buy or
9 lease Class Vehicles; and

10 d. The ZF Defendants made incomplete representations about the
11 safety and reliability of the Class Vehicles and their Occupant
12 Restraint System, while purposefully withholding material facts
13 about a known safety defect, creating a duty to disclose the
14 whole truth. Specifically, ZF Electronics USA, ZF Passive
15 Safety USA, and ZF Automotive USA worked with the Vehicle
16 Manufacturer Defendants on the design and inclusion of the
17 airbag readiness indicators in the Class Vehicles, which falsely
18 assured Plaintiffs and Class Members that the Occupant
19 Restraint Systems in the Class Vehicles would function properly
20 in a crash.

21 3264. In breach of their duties, the ZF and ST Defendants failed to disclose
22 that the Class Vehicles were not safe and reliable, and that their Occupant Restraint
23 Systems, including their airbags and seatbelt pretensioners could fail in the event of
24 a crash due to the ACU Defect.

25 3265. The ZF and ST Defendants intended for the Massachusetts Plaintiff
26 and Massachusetts State Class members to rely on their omissions—which they did
27 by purchasing and leasing the Class Vehicles at the prices they paid believing that
28 the Occupant Restraint Systems in their Class Vehicles would function properly.

1 3266. That reliance was reasonable, because a reasonable consumer would
2 not have expected that the Class Vehicles contained a safety defect that poses such
3 a serious risk. The ZF and ST Defendants knew that reasonable consumers expect
4 that their vehicle has working airbags and seatbelt pretensioners and would rely on
5 those facts in deciding whether to purchase, lease, or retain a new or used motor
6 vehicle. Whether a manufacturer's products are safe and reliable, and whether that
7 manufacturer stands behind its products, are material concerns to a consumer.
8 Especially here when at least nine people have already died due to the ACU Defect,
9 and many more have been injured.

10 3267. Additionally, the ZF and ST Defendants ensured that the
11 Massachusetts Plaintiff and Massachusetts State Class members did not discover
12 this information by actively concealing and misrepresenting the true nature of the
13 Class Vehicles' Occupant Restraint Systems to consumers and NHTSA.

14 3268. The ZF and ST Defendants actively concealed and suppressed these
15 material facts, in whole or in part, to maintain a market for the DS84 ACU, to
16 protect profits, and to avoid costly recalls that would expose them to liability for
17 those expenses and harm the commercial reputations of Defendants and their
18 products. They did so at the expense of the Massachusetts Plaintiff and
19 Massachusetts State Class members.

20 3269. To this day, the ZF and ST Defendants have not fully and adequately
21 disclosed the ACU Defect, and they continue to conceal material information about
22 the defect from consumers and NHTSA. The omitted and concealed facts were
23 material because a reasonable person would find them important in purchasing,
24 leasing, or retaining a new or used motor vehicle, and because they directly impact
25 the value of the Class Vehicles purchased or leased by the Massachusetts Plaintiff
26 and Massachusetts State Class members.

27 3270. Had they been aware of the ACU Defect in the Class Vehicles, and the
28 ZF and ST Defendants' callous disregard for safety, the Massachusetts Plaintiff and

1 Massachusetts State Class members either would not have paid as much as they did
2 for their Class Vehicles, or they would not have purchased or leased them.

3 3271. As alleged in Section V above, if the ZF and ST Defendants had fully
4 and adequately disclosed the ACU Defect to consumers and NHTSA, the
5 Massachusetts Plaintiff and Massachusetts State Class members would have seen
6 such a disclosure.

7 3272. Accordingly, the ZF and ST Defendants are liable to the Massachusetts
8 Plaintiff and Massachusetts State Class members for their damages in an amount to
9 be proven at trial, including, but not limited to, their lost overpayment for the Class
10 Vehicles at the time of purchase or lease.

11 3273. The ZF and ST Defendants' acts were done maliciously, oppressively,
12 deliberately, with intent to defraud; in reckless disregard of the Massachusetts
13 Plaintiff's and Massachusetts State Class members' rights and well-being; and to
14 enrich themselves. The ZF and ST Defendants' misconduct warrants an assessment
15 of punitive damages, as permitted by law, in an amount sufficient to deter such
16 conduct in the future, which amount shall be determined according to proof at trial.

17 **11. Michigan**

18 **a. Michigan Count 1: Breach of Express Warranty (Mich. Comp. Laws §§ 440.2313 and 440.2860) Against Kia Korea and Kia USA**

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20 3274. Plaintiffs reallege and incorporate by reference all preceding
21 allegations as though fully set forth herein.

22 3275. Plaintiff Kinyata Jones (hereinafter, "Michigan Plaintiff") brings this
23 count individually and on behalf of members of the Michigan State Class who
24 purchased or leased Kia Class Vehicles, against Kia Korea and Kia USA.

25 3276. The Michigan Plaintiff and Michigan State Class members purchased
26 their Kia Class Vehicles primarily for personal, family, or household purposes.

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1 3277. Kia Korea and Kia USA are and were at all relevant times “merchants”
2 with respect to motor vehicles under Mich. Comp. Laws §§ 440.2104(1) and
3 440.2803(3), and “sellers” of motor vehicles under § 440.2103(1)(c).

4 3278. Kia Korea and Kia USA are and were at all relevant times “lessors” of
5 motor vehicles under Mich. Comp. Laws § 440.2803(1)(p).

6 3279. All Michigan State Class members who purchased Kia Class Vehicles
7 in Michigan are “buyers” within the meaning of Mich. Comp. Laws
8 §440.2103(1)(a).

9 3280. All Michigan State Class members who leased Kia Class Vehicles in
10 Michigan are “lessees” within the meaning of Mich. Comp. Laws § 440.2803(1)(n).

11 3281. The Kia Class Vehicles are and were at all relevant times “goods”
12 within the meaning of Mich. Comp. Laws §§ 440.2105(1) and 4400.2803(1)(h).

13 3282. In connection with the purchase or lease of Kia Class Vehicles, Kia
14 Korea and Kia USA provided the Michigan Plaintiff and Michigan State Class
15 members with written express warranties in the form of: (a) written express
16 warranties covering the repair or replacement of components that are defective in
17 materials or workmanship, and (b) descriptions of the Kia Class Vehicles as safe
18 and reliable, and that their Occupant Restraint Systems, including their airbags and
19 seatbelt pretensioners, would function properly in the event of a crash

20 3283. However, Kia Korea and Kia USA knew or should have known that
21 the warranties were false and/or misleading. Specifically, Kia Korea and Kia USA
22 were aware of the ACU Defect in the Kia Class Vehicles, which made the vehicles
23 inherently defective and dangerous at the time that they were sold and leased to the
24 Michigan Plaintiff and Michigan State Class members.

25 3284. The Michigan Plaintiff and Michigan State Class members were aware
26 the Kia Class Vehicles were covered by express warranties, and those warranties
27 were an essential part of the bargain that was reached when they unknowingly
28 purchased or leased Kia Class Vehicles that contained the ACU Defect.

1 3285. Kia Korea and Kia USA misrepresented the Kia Class Vehicles as safe
2 and reliable while concealing that they contained the ACU Defect, the Michigan
3 Plaintiff and Michigan State Class members were exposed to those
4 misrepresentations, and the Michigan Plaintiff and Michigan State Class members
5 had no way of discerning that Kia Korea's and Kia USA's representations were
6 false and misleading or otherwise learning the material facts that Kia Korea and Kia
7 USA had concealed or failed to disclose. Accordingly, the Michigan Plaintiff and
8 Michigan State Class members reasonably relied on Kia Korea's and Kia USA's
9 express warranties when purchasing or leasing their Kia Class Vehicles. Plaintiffs
10 allege the information they relied upon in Section II.B above. To aid review of this
11 information, Exhibit 19 provides paragraph numbers for each Plaintiff.

12 3286. Kia Korea and Kia USA knowingly breached their express warranties
13 to repair defects in materials and workmanship by failing to repair the ACU Defect
14 or replace the defective ACUs and ASICs in the Kia Class Vehicles. Kia Korea and
15 Kia USA also breached their express warranties by providing a product containing
16 defects that were never disclosed to the Michigan Plaintiff and Michigan State
17 Class members.

18 3287. The Michigan Plaintiff and Michigan State Class members have
19 provided Kia Korea and Kia USA with reasonable notice and opportunity to cure
20 the breaches of their express warranties by way of the numerous NHTSA
21 complaints filed against them, and individual notice letters sent by the Michigan
22 State Class members within a reasonable amount of time after the ACU Defect
23 became public. Additionally, a notice letter was sent on behalf of the Michigan
24 Plaintiff and Michigan State Class members to Kia Korea and Kia USA on April
25 24, 2020.

26 3288. Alternatively, the Michigan Plaintiff and Michigan State Class
27 members were excused from providing Kia Korea and Kia USA with notice and an
28 opportunity to cure the breach, because it would have been futile. As alleged above,

1 Kia Korea and Kia USA have long known that the Kia Class Vehicles contained the
2 ACU Defect, and that the ACU Defect has caused ACUs and ASICs to malfunction
3 in crashes involving Class Vehicles; however, to date, Kia Korea and Kia USA
4 have not instituted a recall or any other repair program with respect to the
5 unrecalled Kia Class Vehicles, or even acknowledged that the ACU Defect exists in
6 all of the Kia Class Vehicles, including the recalled Kia Class Vehicles. Therefore,
7 the Michigan Plaintiff and Michigan State Class members had no reason to believe
8 that Kia Korea and Kia USA would have repaired the ACU Defect if the they
9 presented their Class Vehicles to Kia Korea and Kia USA for repair.

10 3289. As a direct and proximate result of Kia Korea's and Kia USA's breach
11 of their express warranties, the Kia Class Vehicles were and are defective and the
12 ACU Defect in the Michigan Plaintiff's and Michigan State Class members' Kia
13 Class Vehicles was not remedied. Therefore, the Michigan Plaintiff and Michigan
14 State Class members have been, in an amount to be proven at trial, through their
15 overpayment at the time of purchase or lease for Kia Class Vehicles with an
16 undisclosed safety defect that would not be remedied.

17 **b. Michigan Count 2: Breach of Implied Warranty of**
18 **Merchantability (Mich. Comp. Laws §§ 440.2314 and**
440.2862) Against Kia USA

19 3290. Plaintiffs reallege and incorporate by reference all preceding
20 allegations as though fully set forth herein.

21 3291. The Michigan Plaintiff brings this count individually and on behalf of
22 members of the Michigan State Class who purchased or leased Kia Class Vehicles,
23 against Kia USA.

24 3292. A warranty that the Kia Class Vehicles were in merchantable condition
25 and fit for the ordinary purpose for which such goods are used is implied by law
26 pursuant to Mich. Comp. Laws §§ 440.2314 and 440.2862.

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1 3293. Kia USA is and was at all relevant times a “merchant” with respect to
2 motor vehicles under Mich. Comp. Laws §§ 440.2104(1) and 440.2803(3), and a
3 “seller” of motor vehicles under § 440.2103(1)(c).

4 3294. Kia USA is and was at all relevant times a “lessor” of motor vehicles
5 under Mich. Comp. Laws § 440.2803(1)(p).

6 3295. All Michigan State Class members who purchased Kia Class Vehicles
7 in Michigan are “buyers” within the meaning of Mich. Comp. Laws
8 § 440.2103(1)(a).

9 3296. All Michigan State Class members who leased Kia Class Vehicles in
10 Michigan are “lessees” within the meaning of Mich. Comp. Laws § 440.2803(1)(n).

11 3297. The Kia Class Vehicles are and were at all relevant times “goods”
12 within the meaning of Mich. Comp. Laws §§ 440.2105(1) and 4400.2803(1)(h).

13 3298. The Kia Class Vehicles did not comply with the implied warranty of
14 merchantability because, at the time of sale and at all times thereafter, they were
15 defective and not in merchantable condition, would not pass without objection in
16 the trade, and were not fit for the ordinary purpose for which vehicles were used.
17 Specifically, the Kia Class Vehicles contain the ACU Defect, which may cause the
18 airbags and seatbelt pretensioners to fail to deploy during an crash, the failure to
19 unlock doors automatically after a crash, the failure to turn off a fuel supply or
20 high-voltage battery after a crash, or the airbags to inadvertently deploy, all of
21 which render the Kia Class Vehicles inherently defective and dangerous.

22 3299. The Michigan Plaintiff and Michigan State Class members have
23 provided Kia USA with reasonable notice and opportunity to cure the breaches of
24 their implied warranties by way of the numerous NHTSA complaints filed against
25 them, and individual notice letters sent by the Michigan State Class members
26 within a reasonable amount of time after the ACU Defect became public.
27 Additionally, a notice letter was sent on behalf of the Michigan Plaintiff and
28 Michigan State Class members to Kia USA on April 24, 2020.

1 3300. Alternatively, the Michigan Plaintiff and Michigan State Class
2 members were excused from providing Kia USA with notice and an opportunity to
3 cure the breach, because it would have been futile. As alleged above, Kia USA has
4 long known that the Kia Class Vehicles contained the ACU Defect, and that the
5 ACU Defect has caused ACUs and ASICs to malfunction in crashes involving
6 Class Vehicles; however, to date, Kia USA has not instituted a recall or any other
7 repair program with respect to the unrecalled Kia Class Vehicles, or even
8 acknowledged that the ACU Defect exists in all of the Kia Class Vehicles, including
9 the recalled Kia Class Vehicles. Therefore, the Michigan Plaintiff and Michigan
10 State Class members had no reason to believe that Kia USA would have repaired
11 the ACU Defect if they presented their Class Vehicles to Kia USA for repair.

12 3301. As a direct and proximate result of Kia USA's breach of the implied
13 warranty of merchantability, the Michigan Plaintiff and Michigan State Class
14 members have been damaged in an amount to be proven at trial.

15 **c. Michigan Count 3: Violation of the Michigan Consumer**
16 **Protection Act (Mich. Comp. Laws § 445.901, et seq.)**
17 **Against Kia Korea and Kia USA**

18 3302. Plaintiffs reallege and incorporate by reference all preceding
19 allegations as though fully set forth herein.

20 3303. The Michigan Plaintiff brings this count individually and on behalf of
21 members of the Michigan State Class who purchased or leased Kia Class Vehicles,
22 against Kia Korea and Kia USA.

23 3304. Kia Korea, Kia USA, the Michigan Plaintiff, and Michigan State Class
24 members are "persons" within the meaning of Mich. Comp. Laws § 445.902(1)(d).

25 3305. Kia Korea and Kia USA were and are engaged in "trade" or
26 "commerce" within the meaning of Mich. Comp. Laws § 445.902(1)(g).

27 3306. The Michigan Consumer Protection Act ("Michigan CPA") prohibits
28 "[u]nfair, unconscionable, or deceptive methods, acts, or practices in the conduct of
trade or commerce[.]" Mich. Comp. Laws § 445.903(1).

1 3307. In the course of their business, Kia Korea and Kia USA, through their
2 agents, employees, and/or subsidiaries, violated the Michigan CPA by knowingly
3 and intentionally misrepresenting, omitting, concealing, and/or failing to disclose
4 material facts regarding the reliability, safety, and performance of the Kia Class
5 Vehicles, the safety of their Occupant Restraint Systems, and the ACU Defect, as
6 detailed above.

7 3308. Kia Korea and Kia USA had an ongoing duty to the Michigan Plaintiff
8 and Michigan State Class members to refrain from unfair or deceptive practices
9 under the Michigan CPA in the course of their business. Specifically, Kia Korea
10 and Kia USA owed the Michigan Plaintiff and Michigan State Class members a
11 duty to disclose all the material facts concerning the ACU Defect in the Kia Class
12 Vehicles because they possessed exclusive knowledge of and intentionally
13 concealed the ACU Defect from the Michigan Plaintiff and Michigan State Class
14 members, and they made misrepresentations that were rendered misleading because
15 they were contradicted by withheld facts.

16 3309. By misrepresenting the Kia Class Vehicles and/or the defective ACUs
17 installed in them as safe, reliable, and free from defects, and by failing to disclose
18 and actively concealing the dangers and risk posed by the Kia Class Vehicles and
19 the ACU Defect, Kia Korea and Kia USA engaged in unfair or deceptive business
20 practices prohibited by Mich. Comp. Laws §§ 445.903:

- 21 a. Representing that the Kia Class Vehicles and/or the defective
22 ACUs and ASICs installed in them have characteristics, uses,
23 benefits, and qualities which they do not have.
- 24 b. Representing that the Kia Class Vehicles and/or the defective
25 ACUs installed in them are of a particular standard, quality, and
26 grade when they are not.
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- 1 c. Advertising the Kia Class Vehicles and/or the defective ACUs
- 2 installed in them with the intent not to sell or lease them as
- 3 advertised.
- 4 d. Failing to reveal a material fact, the omission of which tends to
- 5 mislead or deceive the consumer, and which fact could not
- 6 reasonably be known by the consumer.
- 7 e. Failing to reveal facts that are material to the transaction in light
- 8 of representations of fact made in a positive manner.

9 Mich. Comp. Laws §§ 445.903(1)(c), (e), (g), (s), and (cc).

10 3310. Kia Korea's and Kia USA's unfair or deceptive acts or practices,
11 including misrepresentations, concealments, omissions, and/or suppressions of
12 material facts, were designed to mislead and had a tendency or capacity to mislead
13 and create a false impression in consumers that the Kia Class Vehicles had
14 properly-functioning and reliable airbags and seatbelts, and that the Occupant
15 Restraint System did not contain the ACU Defect and would perform its intended
16 function of activating the seatbelts and airbags during a collision. Indeed, those
17 misrepresentations, concealments, omissions, and suppressions of material facts did
18 in fact deceive reasonable consumers, including the Michigan Plaintiff and
19 Michigan State Class members, about the true safety and reliability of Kia Class
20 Vehicles and/or the defective ACUs and ASICs installed in them, the quality of the
21 Kia Class Vehicles, and the true value of those vehicles.

22 3311. Kia Korea's and Kia USA's misrepresentations, concealments,
23 omissions, and suppressions of material facts regarding the ACU Defect and true
24 characteristics of the Occupant Restraint Systems in the Kia Class Vehicles were
25 material to the decisions of the Michigan Plaintiff and Michigan State Class
26 members, as Kia Korea and Kia USA intended. The Michigan Plaintiff and
27 Michigan State Class members were exposed to those misrepresentations,
28 concealments, omissions, and suppressions of material facts, and relied on Kia

1 Korea's and Kia USA's misrepresentations that the Kia Class Vehicles and their
2 Occupant Restraint Systems were safe and reliable in deciding to purchase and
3 lease those vehicles. Plaintiffs allege the information they relied upon in Section
4 II.B above. To aid review of this information, Exhibit 19 provides paragraph
5 numbers for each Plaintiff.

6 3312. The Michigan Plaintiff and Michigan State Class members had no way
7 of discerning that Kia Korea's and Kia USA's representations were false and
8 misleading and/or otherwise learning the facts that Kia Korea and Kia USA had
9 concealed or failed to disclose. The Michigan Plaintiff and Michigan State Class
10 members did not, and could not, unravel Kia Korea's and Kia USA's deception on
11 their own.

12 3313. Had they known the truth about the ACU Defect, the Michigan
13 Plaintiff and Michigan State Class members would not have purchased or leased the
14 Kia Class Vehicles, or would have paid significantly less for them.

15 3314. Kia Korea's and Kia USA's fraudulent behavior, described herein,
16 concerned whether the Kia Class Vehicles had a functional Occupant Restraint
17 System and the value of the Kia Class Vehicles, and therefore deprived the
18 Michigan Plaintiff and Michigan State Class members of the ability to negotiate fair
19 terms and make an informed decision about whether to purchase or lease Kia Class
20 Vehicles and how much to pay for them.

21 3315. The Michigan Plaintiff and Michigan State Class members suffered
22 ascertainable losses and actual damages as a direct and proximate result of Kia
23 Korea's and Kia USA's concealment, misrepresentations, and failure to disclose
24 material information.

25 3316. Kia Korea's and Kia USA's violations present a continuing risk to the
26 Michigan Plaintiff and Michigan State Class members, as well as to the general
27 public, because the Class Vehicles remain unsafe due to the defective ACUs and
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1 ASICs therein. Kia Korea’s and Kia USA’s unlawful acts and practices complained
2 of herein affect the public interest.

3 3317. Pursuant to Mich. Comp. Laws § 445.911, the Michigan Plaintiff and
4 Michigan State Class members seek an order enjoining Kia Korea’s and Kia USA’s
5 unfair or deceptive acts or practices and awarding damages and any other just and
6 proper relief available under the Michigan CPA.

7 **d. Michigan Count 4: Violation of the Michigan Consumer**
8 **Protection Act (Mich. Comp. Laws § 445.901, et seq.)**
9 **Against ZF Electronics USA, ZF Passive Safety USA, ZF**
10 **Automotive USA, ZF TRW Corp., ZF Germany, ST Italy,**
11 **ST USA, and ST Malaysia**

12 3318. Plaintiffs reallege and incorporate by reference all preceding
13 allegations as though fully set forth herein.

14 3319. The Michigan Plaintiff brings this count individually and on behalf
15 of members of the Michigan State Class against ZF Electronics USA, ZF Passive
16 Safety USA, ZF Automotive USA, ZF TRW Corp., and ZF Germany (collectively,
17 the “ZF Defendants”), and ST Italy, ST Malaysia, and ST USA (collectively, the
18 “ST Defendants”).

19 3320. The ZF Defendants, ST Defendants, Michigan Plaintiff, and
20 Michigan State Class members are “persons” within the meaning of Mich. Comp.
21 Laws § 445.902(1)(d).

22 3321. The ZF and ST Defendants were and are engaged in “trade” or
23 “commerce” within the meaning of Mich. Comp. Laws § 445.902(1)(g).

24 3322. The Michigan Consumer Protection Act (“Michigan CPA”) prohibits “[u]nfair, unconscionable, or deceptive methods, acts, or practices in the
25 conduct of trade or commerce[.]” Mich. Comp. Laws § 445.903(1).

26 3323. The ZF and ST Defendants had an ongoing duty to the Michigan
27 Plaintiff and Michigan State Class members to refrain from unfair or deceptive
28 practices under the Michigan CPA in the course of their business. Specifically, the
ZF and ST Defendants owed the Michigan Plaintiff and Michigan State Class

1 members a duty to disclose all the material facts concerning the ACU Defect in the
2 Class Vehicles because they possessed exclusive knowledge of and intentionally
3 concealed the ACU Defect from the Michigan Plaintiff and Michigan State Class
4 members.

5 3324. In the course of their business, the ZF and ST Defendants, through
6 their agents, employees, and/or subsidiaries, violated the Michigan CPA by
7 knowingly and intentionally omitting, concealing, and failing to disclose material
8 facts regarding the existence, nature, and scope of the ACU Defect in the Class
9 Vehicles, as detailed above.

10 3325. Additionally, ZF Electronics USA, ZF Passive Safety USA, and
11 ZF Automotive USA through their agents, employees, and/or subsidiaries, violated
12 the Michigan CPA when they knowingly and intentionally misrepresented the Class
13 Vehicles as safe and reliable and the defective ACU and ASICs installed in them as
14 properly-functioning and free from defects. Specifically, ZF Electronics USA, ZF
15 Passive Safety USA, and ZF Automotive USA worked with the Vehicle
16 Manufacturer Defendants on the design and inclusion of the airbag readiness
17 indicators in the Class Vehicles, which falsely assured Plaintiffs and Class
18 Members that the Occupant Restraint Systems in the Class Vehicles would function
19 properly in a crash.

20 3326. By misrepresenting, failing to disclose, and actively concealing the
21 dangers and risk posed by the Class Vehicles due to the ACU Defect, the ZF and ST
22 Defendants engaged in one or more of the unfair, unconscionable, or deceptive
23 methods, acts, or practices in the conduct of trade or commerce prohibited by Mich.
24 Comp. Laws § 445.903(1), (1)(c), (e), (g), (s), and (cc), including misrepresenting
25 and failing to reveal material facts that could not reasonably be known by the
26 consumer, and failing to reveal facts that are material to the transaction in light of
27 representations of fact made by the Vehicle Manufacturer Defendants.

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1 3327. The ZF and ST Defendants’ unfair or deceptive acts or practices,
2 including their misrepresentations, concealments, omissions, and suppressions of
3 material facts, were designed to mislead and had a tendency or capacity to mislead
4 and create a false impression in consumers that the Class Vehicles had properly-
5 functioning and reliable airbags and seatbelts, and that the Occupant Restraint
6 System did not contain the ACU Defect and would perform its intended function of
7 activating the seatbelts and airbags during a collision. Indeed, those
8 misrepresentations, concealments, omissions, and suppressions of material facts did
9 in fact deceive reasonable consumers, including the Michigan Plaintiff and
10 Michigan State Class members, about the true safety and reliability of Class
11 Vehicles and/or the defective ACUs installed in them.

12 3328. The Michigan Plaintiff and Michigan State Class members
13 justifiably relied on the ZF and ST Defendants’ misrepresentations, omissions, and
14 concealment, as they had no way of discerning that the Class Vehicles contained the
15 ACU Defect, as alleged above. The Michigan Plaintiff and Michigan State Class
16 members did not, and could not, unravel the ZF and ST Defendants’ deception on
17 their own.

18 3329. The ZF and ST Defendants’ misrepresentations, omissions, and
19 concealment of the ACU Defect and true characteristics of the defective ACUs and
20 ASICs in the Class Vehicles were material to the Michigan Plaintiff and Michigan
21 State Class members, as the ZF and ST Defendants intended. Had they known the
22 truth about the ACU Defect, the Michigan Plaintiff and Michigan State Class
23 members would not have purchased or leased the Class Vehicles, or would have
24 paid significantly less for them.

25 3330. The ZF and ST Defendants’ fraudulent behavior, described herein,
26 concerned whether Class Vehicles had a functional Occupant Restraint System and
27 the value of the Class Vehicles, and therefore deprived the Michigan Plaintiff and
28 Michigan State Class members of the ability to negotiate fair terms and make an

1 informed decision about whether to purchase or lease Class Vehicles and how much
2 to pay for them.

3 3331. The Michigan Plaintiff and Michigan State Class members
4 suffered ascertainable losses and actual damages as a direct and proximate result of
5 the ZF and ST Defendants' misrepresentations, concealment, and failure to disclose
6 material information.

7 3332. The ZF and ST Defendants' violations present a continuing risk to
8 the Michigan Plaintiff and Michigan State Class members, as well as to the general
9 public, because the Class Vehicles remain unsafe due to the defective ACUs and
10 ASICs therein. The ZF and ST Defendants' unlawful acts and practices complained
11 of herein affect the public interest.

12 3333. Pursuant to Mich. Comp. Laws § 445.911, the Michigan Plaintiff and
13 Michigan State Class members seek an order enjoining the ZF and ST Defendants'
14 unfair or deceptive acts or practices and awarding damages and any other just and
15 proper relief available under the Michigan CPA.

16 **e. Michigan Count 5: Fraud by Omission and Concealment**
17 **Against Kia Korea and Kia USA**

18 3334. Plaintiffs reallege and incorporate by reference all preceding
19 allegations as though fully set forth herein.

20 3335. The Michigan Plaintiff brings this count individually and on behalf of
21 members of the Michigan State Class who purchased or leased Kia Class Vehicles,
22 against Kia Korea and Kia USA.

23 3336. Kia Korea and Kia USA are liable for both fraudulent concealment and
24 non-disclosure. *See, e.g.*, Restatement (Second) of Torts §§ 550-51 (1977).

25 3337. As explained in Section IV.A, the ACU Defect in Class Vehicles poses
26 serious risks to vehicle occupants, including that it can cause: (1) airbags and
27 seatbelts not to activate during a crash because crashes can sometimes release
28 electrical transients, which cause the ACU to fail; (2) airbags to deploy when the

1 vehicle has not crashed, which is dangerous because it is shocking and difficult for
2 the driver to operate a vehicle when the airbag deploys without warning; and (3)
3 failures of other important post-crash operations of the safety system, such as
4 unlocking doors to facilitate escape or extraction of drivers and passengers by
5 emergency personnel, and shutting off a crashed vehicle's fuel or power supply.

6 3338. Kia Korea and Kia USA had a duty to disclose the ACU Defect to the
7 Michigan Plaintiff and Michigan State Class members because:

- 8 a. Kia Korea and Kia USA had exclusive access to and far superior
9 knowledge about technical facts regarding the ACU Defect;
- 10 b. Given the ACU Defect's hidden and technical nature, the
11 Michigan Plaintiff and Michigan State Class members lack the
12 sophisticated expertise in vehicle components and electrical
13 phenomena that would be necessary to discover the ACU Defect
14 on their own;
- 15 c. Kia Korea and Kia USA knew that the ACU Defect gave rise to
16 serious safety concerns for the consumers who use the vehicles,
17 and the Kia Class Vehicles containing the ACU Defect would
18 have been a material fact to the Michigan Plaintiff's and
19 Michigan State Class members' decisions to buy or lease Kia
20 Class Vehicles; and
- 21 d. Kia Korea and Kia USA made incomplete representations about
22 the safety and reliability of the Kia Class Vehicles and their
23 Occupant Restraint System, while purposefully withholding
24 material facts about a known safety defect. In uniform
25 advertising and materials provided with each Class Vehicle, Kia
26 Korea, and Kia USA intentionally concealed, suppressed, and
27 failed to disclose to the Michigan Plaintiff and Michigan State
28 Class members that the Kia Class Vehicles contained the ACU

1 Defect. Because they volunteered to provide information about
2 the Kia Class Vehicles that they marketed and offered for sale
3 and lease to the Michigan Plaintiff and Michigan State Class
4 members, Kia Korea and Kia USA had the duty to disclose the
5 whole truth.

6 3339. In breach of their duties, Kia Korea and Kia USA failed to disclose
7 that the Kia Class Vehicles were not safe and reliable, and that their Occupant
8 Restraint Systems, including their airbags and seatbelt pretensioners, could fail in
9 the event of a crash due to the ACU Defect.

10 3340. Kia Korea and Kia USA intended for the Michigan Plaintiff and
11 Michigan State Class members to rely on their omissions—which they did by
12 purchasing and leasing the Kia Class Vehicles at the prices they paid believing that
13 the Occupant Restraint Systems in their Class Vehicles would function properly.

14 3341. That reliance was reasonable, because a reasonable consumer would
15 not have expected that the Kia Class Vehicles contained a safety defect that poses
16 such a serious risk. Kia Korea and Kia USA knew that reasonable consumers
17 expect that their vehicle has working airbags and seatbelt pretensioners and would
18 rely on those facts in deciding whether to purchase, lease, or retain a new or used
19 motor vehicle. Whether a manufacturer's products are safe and reliable, and
20 whether that manufacturer stands behind its products, are material concerns to a
21 consumer. Especially here when at least nine people have already died due to the
22 ACU Defect, and many more have been injured.

23 3342. Additionally, Kia Korea and Kia USA ensured that the Michigan
24 Plaintiff and Michigan State Class members did not discover this information by
25 actively concealing and misrepresenting the true nature of the Kia Class Vehicles'
26 Occupant Restraint Systems to consumers and NHTSA.

27 3343. Kia Korea and Kia USA actively concealed and suppressed these
28 material facts, in whole or in part, to maintain a market for their Class Vehicles, to

1 protect profits, and to avoid costly recalls that would expose them to liability for
2 those expenses and harm the commercial reputations of Defendants and their
3 products. They did so at the expense of the Michigan Plaintiff and Michigan State
4 Class members.

5 3344. To this day, Kia Korea and Kia USA have not fully and adequately
6 disclosed the ACU Defect, and they continue to conceal material information about
7 the defect from consumers and NHTSA. The omitted and concealed facts were
8 material because a reasonable person would find them important in purchasing,
9 leasing, or retaining a new or used motor vehicle, and because they directly impact
10 the value of the Kia Class Vehicles purchased or leased by the Michigan Plaintiff
11 and Michigan State Class members.

12 3345. Had they been aware of the ACU Defect in the Kia Class Vehicles,
13 and Kia Korea's and Kia USA's callous disregard for safety, the Michigan Plaintiff
14 and Michigan State Class members either would not have paid as much as they did
15 for their Class Vehicles, or they would not have purchased or leased them.

16 3346. As alleged in Section V above, if Kia Korea and Kia USA had fully
17 and adequately disclosed the ACU Defect to consumers and NHTSA, the Michigan
18 Plaintiff and Michigan State Class members would have seen such a disclosure.

19 3347. Accordingly, Kia Korea and Kia USA are liable to the Michigan
20 Plaintiff and Michigan State Class members for their damages in an amount to be
21 proven at trial, including, but not limited to, their lost overpayment for the Kia
22 Class Vehicles at the time of purchase or lease.

23 3348. Kia Korea's and Kia USA's acts were done maliciously, oppressively,
24 deliberately, with intent to defraud; in reckless disregard of the Michigan Plaintiff's
25 and Michigan State Class members' rights and well-being; and to enrich
26 themselves. Kia Korea's and Kia USA's misconduct warrants an assessment of
27 punitive damages, as permitted by law, in an amount sufficient to deter such
28 conduct in the future, which amount shall be determined according to proof at trial.

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f. Michigan Count 6: Fraud by Omission and Concealment Against ZF Electronics USA, ZF Passive Safety USA, ZF Automotive USA, ZF TRW Corp., ZF Germany, ST Italy, ST USA, and ST Malaysia

3349. Plaintiffs reallege and incorporate by reference all preceding allegations as though fully set forth herein.

3350. The Michigan Plaintiff brings this count individually and on behalf of members of the Michigan State Class who purchased or leased Class Vehicles, against ZF Electronics USA, ZF Passive Safety USA, ZF Automotive USA, ZF TRW Corp., and ZF Germany (collectively, the “ZF Defendants”), and ST Italy, ST Malaysia, and ST USA (collectively, the “ST Defendants”).

3351. The ZF and ST Defendants are liable for both fraudulent concealment and non-disclosure. *See, e.g.*, Restatement (Second) of Torts §§ 550-51 (1977).

3352. As explained in Section IV.A, the ACU Defect in Class Vehicles poses serious risks to vehicle occupants, including that it can cause: (1) airbags and seatbelts not to activate during a crash because crashes can sometimes release electrical transients, which cause the ACU to fail; (2) airbags to deploy when the vehicle has not crashed, which is dangerous because it is shocking and difficult for the driver to operate a vehicle when the airbag deploys without warning; and (3) failures of other important post-crash operations of the safety system, such as unlocking doors to facilitate escape or extraction of drivers and passengers by emergency personnel, and shutting off a crashed vehicle’s fuel or power supply.

3353. The ZF and ST Defendants had a duty to disclose the ACU Defect to the Michigan Plaintiff and Michigan State Class members because:

- a. The ZF and ST Defendants had exclusive access to and far superior knowledge about technical facts regarding the ACU Defect;
- b. Given the ACU Defect’s hidden and technical nature, the Michigan Plaintiff and Michigan State Class members lack the

1 sophisticated expertise in vehicle components and electrical
2 phenomena that would be necessary to discover the ACU Defect
3 on their own;

4 c. The ZF and ST Defendants knew that the ACU Defect gave rise
5 to serious safety concerns for the consumers who use the
6 vehicles, and the Class Vehicles containing the ACU Defect
7 would have been a material fact to the Michigan Plaintiff's and
8 Michigan State Class members' decisions to buy or lease Class
9 Vehicles; and

10 d. The ZF Defendants made incomplete representations about the
11 safety and reliability of the Class Vehicles and their Occupant
12 Restraint System, while purposefully withholding material facts
13 about a known safety defect, creating a duty to disclose the
14 whole truth. Specifically, ZF Electronics USA, ZF Passive
15 Safety USA, and ZF Automotive USA worked with the Vehicle
16 Manufacturer Defendants on the design and inclusion of the
17 airbag readiness indicators in the Class Vehicles, which falsely
18 assured Plaintiffs and Class Members that the Occupant
19 Restraint Systems in the Class Vehicles would function properly
20 in a crash.

21 3354. In breach of their duties, the ZF and ST Defendants failed to disclose
22 that the Class Vehicles were not safe and reliable, and that their Occupant Restraint
23 Systems, including their airbags and seatbelt pretensioners, could fail in the event
24 of a crash due to the ACU Defect.

25 3355. The ZF and ST Defendants intended for the Michigan Plaintiff and
26 Michigan State Class members to rely on their omissions—which they did by
27 purchasing and leasing the Class Vehicles at the prices they paid believing that the
28 Occupant Restraint Systems in their Class Vehicles would function properly.

1 3356. That reliance was reasonable, because a reasonable consumer would
2 not have expected that the Class Vehicles contained a safety defect that poses such
3 a serious risk. The ZF and ST Defendants knew that reasonable consumers expect
4 that their vehicle has working airbags and seatbelt pretensioners and would rely on
5 those facts in deciding whether to purchase, lease, or retain a new or used motor
6 vehicle. Whether a manufacturer's products are safe and reliable, and whether that
7 manufacturer stands behind its products, are material concerns to a consumer.
8 Especially here when at least nine people have already died due to the ACU Defect,
9 and many more have been injured.

10 3357. Additionally, the ZF and ST Defendants ensured that the Michigan
11 Plaintiff and Michigan State Class members did not discover this information by
12 actively concealing and misrepresenting the true nature of the Class Vehicles'
13 Occupant Restraint Systems to consumers and NHTSA.

14 3358. The ZF and ST Defendants actively concealed and suppressed these
15 material facts, in whole or in part, to maintain a market for the DS84 ACU, to
16 protect profits, and to avoid costly recalls that would expose them to liability for
17 those expenses and harm the commercial reputations of Defendants and their
18 products. They did so at the expense of the Michigan Plaintiff and Michigan State
19 Class members.

20 3359. To this day, the ZF and ST Defendants have not fully and adequately
21 disclosed the ACU Defect, and they continue to conceal material information about
22 the defect from consumers and NHTSA. The omitted and concealed facts were
23 material because a reasonable person would find them important in purchasing,
24 leasing, or retaining a new or used motor vehicle, and because they directly impact
25 the value of the Class Vehicles purchased or leased by the Michigan Plaintiff and
26 Michigan State Class members.

27 3360. Had they been aware of the ACU Defect in the Class Vehicles, and the
28 ZF and ST Defendants' callous disregard for safety, the Michigan Plaintiff and

1 Michigan State Class members either would not have paid as much as they did for
2 their Class Vehicles, or they would not have purchased or leased them.

3 3361. As alleged in Section V above, if the ZF and ST Defendants had fully
4 and adequately disclosed the ACU Defect to consumers and NHTSA, the Michigan
5 Plaintiff and Michigan State Class members would have seen such a disclosure.

6 3362. Accordingly, the ZF and ST Defendants are liable to the Michigan
7 Plaintiff and Michigan State Class members for their damages in an amount to be
8 proven at trial, including, but not limited to, their lost overpayment for the Class
9 Vehicles at the time of purchase or lease.

10 3363. The ZF and ST Defendants' acts were done maliciously, oppressively,
11 deliberately, with intent to defraud; in reckless disregard of the Michigan Plaintiff's
12 and Michigan State Class members' rights and well-being; and to enrich
13 themselves. The ZF and ST Defendants' misconduct warrants an assessment of
14 punitive damages, as permitted by law, in an amount sufficient to deter such
15 conduct in the future, which amount shall be determined according to proof at trial.

16 **12. Minnesota**

17 **a. Minnesota Count 1: Breach of Express Warranty (Minn.
18 Stat. §§ 336.2-313 and 336.2A-210) Against FCA, Kia Korea,
and Kia USA**

19 3364. Plaintiffs reallege and incorporate by reference all preceding
20 allegations as though fully set forth herein.

21 3365. Plaintiff Steve Keister brings this count individually and on behalf of
22 members of the Minnesota State Class who purchased or leased FCA Class
23 Vehicles, against FCA.

24 3366. Plaintiff Bobbi Jo Birk-LaBarge brings this count individually and on
25 behalf of members of the Minnesota State Class who purchased or leased Kia Class
26 Vehicles, against Kia Korea and Kia USA.

27 3367. For purposes of this count, Plaintiffs Keister and Birk-LaBarge shall
28 be referred to as the "Minnesota Plaintiffs."

1 3368. FCA, Kia Korea, and Kia USA are and were at all relevant times
2 “merchants” with respect to motor vehicles under Minn. Stat. §§ 336.2-104(1) and
3 336.2A-103(3), and “sellers” of motor vehicles under § 336.2-103(1)(d).

4 3369. FCA, Kia Korea, and Kia USA are and were at all relevant times
5 “lessors” of motor vehicles under Minn. Stat. § 336.2A-103(1)(p).

6 3370. All Minnesota State Class members who purchased FCA and Kia
7 Class Vehicles in Minnesota are “buyers” within the meaning of Minn. Stat.
8 § 336.2-103(1)(a).

9 3371. All Minnesota State Class members who leased FCA and Kia Class
10 Vehicles in Minnesota are “lessees” within the meaning of Minn. Stat. § 336.2A-
11 103(1)(n).

12 3372. The FCA and Kia Class Vehicles are and were at all relevant times
13 “goods” within the meaning of Minn. Stat. §§ 336.2-105(1) and 336.2A-103(1)(h).

14 3373. In connection with the purchase or lease of FCA and Kia Class
15 Vehicles, FCA, Kia Korea, and Kia USA provided the Minnesota Plaintiffs and
16 Minnesota State Class members with written express warranties in the form of: (a)
17 written express warranties covering the repair or replacement of components that
18 are defective in materials or workmanship, and (b) descriptions of the FCA and Kia
19 Class Vehicles as safe and reliable, and that their Occupant Restraint Systems,
20 including their airbags and seatbelt pretensioners, would function properly in the
21 event of a crash.

22 3374. However, FCA, Kia Korea, and Kia USA knew or should have known
23 that the warranties were false and/or misleading. Specifically, FCA, Kia Korea, and
24 Kia USA were aware of the ACU Defect in the FCA and Kia Class Vehicles, which
25 made the vehicles inherently defective and dangerous at the time that they were
26 sold and leased to the Minnesota Plaintiffs and Minnesota State Class members.

27 3375. The Minnesota Plaintiffs and Minnesota State Class members were
28 aware the FCA and Kia Class Vehicles were covered by express warranties, and

1 those warranties were an essential part of the bargain between the Minnesota
2 Plaintiffs and Minnesota State Class members, FCA, Kia Korea, and Kia USA
3 when they unknowingly purchased or leased FCA and Kia Class Vehicles that
4 contained the ACU Defect.

5 3376. FCA, Kia Korea, and Kia USA misrepresented the FCA and Kia Class
6 Vehicles as safe and reliable while concealing that they contained the ACU Defect,
7 the Minnesota Plaintiffs and Minnesota State Class members were exposed to those
8 misrepresentations, and the Minnesota Plaintiffs and Minnesota State Class
9 members had no way of discerning that FCA's, Kia Korea's, and Kia USA's
10 representations were false and misleading or otherwise learning the material facts
11 that FCA, Kia Korea, and Kia USA had concealed or failed to disclose.
12 Accordingly, the Minnesota Plaintiffs and Minnesota State Class members
13 reasonably relied on FCA's, Kia Korea's, and Kia USA's express warranties when
14 purchasing or leasing their FCA and Kia Class Vehicles. Plaintiffs allege the
15 information they relied upon in Section II.B above. To aid review of this
16 information, Exhibit 19 provides paragraph numbers for each Plaintiff.

17 3377. FCA, Kia Korea, and Kia USA knowingly breached their express
18 warranties to repair defects in materials and workmanship by failing to repair the
19 ACU Defect or replace the defective ACUs and ASICs in the FCA and Kia Class
20 Vehicles. FCA, Kia Korea, and Kia USA also breached their express warranties by
21 providing a product containing defects that were never disclosed to the Minnesota
22 Plaintiffs and Minnesota State Class members.

23 3378. The Minnesota Plaintiffs and Minnesota State Class members have
24 provided FCA, Kia Korea, and Kia USA with reasonable notice and opportunity to
25 cure the breaches of their express warranties by way of the numerous NHTSA
26 complaints filed against them, and individual notice letters sent by the Minnesota
27 State Class members within a reasonable amount of time after the ACU Defect
28 became public. Additionally, a notice letter was sent on behalf of the Minnesota

1 Plaintiffs and Minnesota State Class members to FCA, Kia Korea, and Kia USA on
2 April 24, 2020.

3 3379. Alternatively, the Minnesota Plaintiffs and Minnesota State Class
4 members were excused from providing FCA, Kia Korea, and Kia USA with notice
5 and an opportunity to cure the breach, because it would have been futile. As alleged
6 above, FCA, Kia Korea, and Kia USA have long known that the FCA and Kia
7 Class Vehicles contained the ACU Defect, and that the ACU Defect has caused
8 ACUs and ASICs to malfunction in crashes involving Class Vehicles; however, to
9 date, FCA, Kia Korea, and Kia USA have not instituted a recall or any other repair
10 program with respect to the unrecalled FCA and Kia Class Vehicles, or even
11 acknowledged that the ACU Defect exists in all of the FCA and Kia Class Vehicles,
12 including the recalled FCA and Kia Class Vehicles. Therefore, the Minnesota
13 Plaintiffs and Minnesota State Class members had no reason to believe that FCA,
14 Kia Korea, and Kia USA would have repaired the ACU Defect if they presented
15 their Class Vehicles to FCA, Kia Korea, and Kia USA for repair.

16 3380. As a direct and proximate result of FCA's, Kia Korea's, and Kia
17 USA's breach of their express warranties, the FCA and Kia Class Vehicles were
18 and are defective and the ACU Defect in the Minnesota Plaintiffs' and Minnesota
19 State Class members' FCA and Kia Class Vehicles was not remedied. Therefore,
20 the Minnesota Plaintiffs and Minnesota State Class members have been damaged,
21 in an amount to be proven at trial, through their overpayment at the time of
22 purchase or lease for Kia Class Vehicles with an undisclosed safety defect that
23 would not be remedied.

24 **b. Minnesota Count 2: Breach of Implied Warranty of**
25 **Merchantability (Minn. Stat. §§ 336.2-314 and 336.2A-212)**
26 **Against FCA and Kia USA**

27 3381. Plaintiffs reallege and incorporate by reference all preceding
28 allegations as though fully set forth herein.

1 3382. Plaintiff Steve Keister brings this count individually and on behalf of
2 members of the Minnesota State Class who purchased or leased FCA Class
3 Vehicles, against FCA.

4 3383. Plaintiff Bobbi Jo Birk-LaBarge brings this count individually and on
5 behalf of members of the Minnesota State Class who purchased or leased Kia Class
6 Vehicles, against Kia USA.

7 3384. For purposes of this count, Plaintiffs Keister and Birk-LaBarge shall
8 be referred to as the “Minnesota Plaintiffs.”

9 3385. A warranty that the FCA and Kia Class Vehicles were in merchantable
10 condition and fit for the ordinary purpose for which such goods are used is implied
11 by law pursuant to Minn. Stat. §§ 336.2-314 and 336.2A-212.

12 3386. The FCA and Kia Defendants are and were at all relevant times
13 “merchants” with respect to motor vehicles under Minn. Stat. §§ 336.2-104(1) and
14 336.2A-103(3), and “sellers” of motor vehicles under § 336.2-103(1)(d).

15 3387. With respect to leases, the FCA and Kia Defendants are and were at all
16 relevant times “lessors” of motor vehicles under Minn. Stat. § 336.2A-103(1)(p).

17 3388. All Minnesota State Class members who purchased FCA and Kia
18 Class Vehicles in Minnesota are “buyers” within the meaning of Minn. Stat.
19 § 336.2-103(1)(a),

20 3389. All Minnesota State Class members who leased FCA and Kia Class
21 Vehicles in Minnesota are “lessees” within the meaning of Minn. Stat. § 336.2A-
22 103(1)(n).

23 3390. The FCA and Kia Class Vehicles are and were at all relevant times
24 “goods” within the meaning of Minn. Stat. §§ 336.2-105(1) and 336.2A-103(1)(h).

25 3391. The FCA and Kia Class Vehicles did not comply with the implied
26 warranty of merchantability because, at the time of sale and at all times thereafter,
27 they were defective and not in merchantable condition, would not pass without
28 objection in the trade, and were not fit for the ordinary purpose for which vehicles

1 were used. Specifically, at the time they were sold and leased the FCA and Kia
2 Class Vehicles contained the ACU Defect, which may cause the airbags and
3 seatbelt pretensioners to fail to deploy during a crash, the failure to unlock doors
4 automatically after a crash, the failure to turn off a fuel supply or high-voltage
5 battery after a crash, or the airbags to inadvertently deploy, all of which render the
6 FCA and Kia Class Vehicles inherently defective and dangerous.

7 3392. The Minnesota Plaintiffs and Minnesota State Class members have
8 provided FCA and Kia USA with reasonable notice and opportunity to cure the
9 breaches of their implied warranties by way of the numerous NHTSA complaints
10 filed against them, and individual notice letters sent by the Minnesota State Class
11 members within a reasonable amount of time after the ACU Defect became public.
12 Additionally, a notice letter was sent on behalf of the Minnesota Plaintiffs and
13 Minnesota State Class members to FCA and Kia USA on April 24, 2020.

14 3393. Alternatively, the Minnesota Plaintiffs and Minnesota State Class
15 members were excused from providing FCA and Kia USA with notice and an
16 opportunity to cure the breach, because it would have been futile. As alleged above,
17 FCA and Kia USA have long known that the FCA and Kia Class Vehicles
18 contained the ACU Defect, and that the ACU Defect has caused ACUs and ASICs
19 to malfunction in crashes involving Class Vehicles; however, to date, FCA and Kia
20 USA have not instituted a recall or any other repair program with respect to the
21 unrecalled FCA and Kia Class Vehicles, or even acknowledged that the ACU Defect
22 exists in all of the FCA and Kia Class Vehicles, including the recalled FCA and Kia
23 Class Vehicles. Therefore, the Minnesota Plaintiffs and Minnesota State Class
24 members had no reason to believe that FCA and Kia USA would have repaired the
25 ACU Defect if they presented their Class Vehicles to FCA and Kia USA for repair.

26 3394. As a direct and proximate result of the FCA's and Kia USA's breach
27 of the implied warranty of merchantability, the Minnesota Plaintiffs and Minnesota
28 State Class members have been damaged in an amount to be proven at trial.

1 c. **Minnesota Count 3: Violation of the Minnesota Prevention**
2 **of Consumer Fraud Act (Minn. Stat. § 325F.68, *et seq.* and**
3 **Minn. Stat. § 8.31, subd. 3a) Against FCA, Kia Korea, and**
4 **Kia USA**

5 3395. Plaintiffs reallege and incorporate by reference all preceding
6 allegations as though fully set forth herein.

7 3396. Plaintiff Steve Keister brings this count individually and on behalf of
8 members of the Minnesota State Class who purchased or leased FCA Class
9 Vehicles, against FCA.

10 3397. Plaintiff Bobbi Jo Birk-LaBarge brings this count individually and on
11 behalf of members of the Minnesota State Class who purchased or leased Kia Class
12 Vehicles, against Kia Korea and Kia USA.

13 3398. For purposes of this count, Plaintiffs Keister and Birk-LaBarge shall
14 be referred to as the “Minnesota Plaintiffs.”

15 3399. FCA, Kia Korea, Kia USA, the Minnesota Plaintiffs, and the
16 Minnesota State Class members are “persons” within the meaning of Minn. Stat.
17 § 325F.68(3).

18 3400. The FCA and Kia Class Vehicles and ACUs and ASICs installed in
19 them are “merchandise” within the meaning of Minn. Stat. § 325F.68(2).

20 3401. The Minnesota Prevention of Consumer Fraud Act (“Minnesota
21 CFA”) prohibits “act, use, or employment by any person of any fraud, false
22 pretense, false promise, misrepresentation, misleading statement or deceptive
23 practice, with the intent that others rely thereon in connection with the sale of any
24 merchandise, whether or not any person has in fact been misled, deceived, or
25 damaged[.]” Minn. Stat. § 325F.69(1).

26 3402. In the course of their business, FCA, Kia Korea, and Kia USA,
27 through their agents, employees, and/or subsidiaries, violated the Minnesota CFA
28 by knowingly and intentionally misrepresenting, omitting, concealing, and/or
 failing to disclose material facts regarding the reliability, safety, and performance of

1 the Class Vehicles, the safety of their Occupant Restraint Systems, and the ACU
2 Defect, as detailed above.

3 3403. FCA, Kia Korea, and Kia USA had an ongoing duty to the Minnesota
4 Plaintiffs and Minnesota State Class members to refrain from unfair or deceptive
5 practices under the Minnesota CFA in the course of their business. Specifically,
6 FCA, Kia Korea, and Kia USA owed the Minnesota Plaintiffs and Minnesota State
7 Class members a duty to disclose all the material facts concerning the ACU Defect
8 in the FCA and Kia Class Vehicles because they possessed exclusive knowledge of
9 and intentionally concealed the ACU Defect from the Minnesota Plaintiffs and
10 Minnesota State Class members, and they made misrepresentations that were
11 rendered misleading because they were contradicted by withheld facts.

12 3404. By misrepresenting the FCA and Kia Class Vehicles as safe and
13 reliable and the defective ACU and ASICs installed in them as properly-functioning
14 and free from defects, and by failing to disclose and actively concealing the dangers
15 and risk posed by the ACU Defect to both consumers and NHTSA, FCA, Kia
16 Korea, and Kia USA engaged in unfair or deceptive business practices prohibited
17 by Minn. Stat. § 325F.69, including use, or employment by any person of any fraud,
18 false pretense, false promise, misrepresentation, misleading statement or deceptive
19 practice, with the intent that others rely thereon in connection with the sale of any
20 merchandise.

21 3405. FCA's, Kia Korea's and Kia USA's unfair and deceptive acts or
22 practices, including their misrepresentations, concealments, omissions, and
23 suppressions of material facts, were designed to mislead and had a tendency or
24 capacity to mislead and create a false impression in consumers that the FCA and
25 Kia Class Vehicles had properly-functioning and reliable airbags and seatbelts, and
26 that the Occupant Restraint System did not contain the ACU Defect and would
27 perform its intended function of activating the seatbelts and airbags during a
28 collision. Indeed, those misrepresentations, concealments, omissions, and

1 suppressions of material facts did in fact deceive reasonable consumers, including
2 the Minnesota Plaintiffs and Minnesota State Class members, about the true safety
3 and reliability of FCA and Kia Class Vehicles and the defective ACUs and ASICs
4 installed in them, the quality of the FCA and Kia Class Vehicles, and their true
5 value.

6 3406. FCA's, Kia Korea's, and Kia USA's misrepresentations,
7 concealments, omissions, and suppressions of material facts regarding the ACU
8 Defect and true characteristics of the Occupant Restraint Systems in the FCA and
9 Kia Class Vehicles were material to the decisions of the Minnesota Plaintiffs and
10 Minnesota State Class members to purchase and lease those vehicles, as FCA, Kia
11 Korea, and Kia USA intended. The Minnesota Plaintiffs and Minnesota State Class
12 members were exposed to those misrepresentations, concealments, omissions, and
13 suppressions of material facts, and relied on FCA's, Kia Korea's, and Kia USA's
14 misrepresentations that the FCA and Kia Class Vehicles and their Occupant
15 Restraint Systems were safe and reliable in deciding to purchase and lease those
16 vehicles. Plaintiffs allege the information they relied upon in Section II.B above. To
17 aid review of this information, Exhibit 19 provides paragraph numbers for each
18 Plaintiff.

19 3407. The Minnesota Plaintiffs and Minnesota State Class members had no
20 way of discerning that FCA's, Kia Korea's, and Kia USA's representations were
21 false and misleading and/or otherwise learning the facts that FCA, Kia Korea, and
22 Kia USA had concealed or failed to disclose. The Minnesota Plaintiffs and
23 Minnesota State Class members did not, and could not, unravel FCA's, Kia
24 Korea's, and Kia USA's deception on their own.

25 3408. Had the Minnesota Plaintiffs and Minnesota State Class members
26 known the truth about the ACU Defect, they would not have purchased or leased
27 the FCA and Kia Class Vehicles, or would have paid significantly less for them.
28

1 3409. The Minnesota Plaintiffs and Minnesota State Class members suffered
2 ascertainable losses and actual damages as a direct and proximate result of FCA’s,
3 Kia Korea’s, and Kia USA’s misrepresentations, concealment, and/or failure to
4 disclose material information.

5 3410. FCA’s, Kia Korea’s, and Kia USA’s violations present a continuing
6 risk to the Minnesota Plaintiffs and Minnesota State Class members, as well as to
7 the general public, because the Class Vehicles remain unsafe due to the defective
8 ACUs and ASICs therein. FCA’s, Kia Korea’s, and Kia USA’s unlawful acts and
9 practices complained of herein affect the public interest.

10 3411. Pursuant to Minn. Stat. §§ 8.31(3a) and 549.20(1)(a), the Minnesota
11 Plaintiffs and Minnesota State Class members seek an order enjoining FCA’s, Kia
12 Korea’s, and Kia USA’s unfair or deceptive acts or practices and awarding damages
13 and any other just and proper relief available under the Minnesota CFA.

14 **d. Minnesota Count 4: Violation of the Minnesota Uniform**
15 **Deceptive Trade Practices Act (Minn. Stat. § 325D.43, et**
16 **seq.) Against FCA, Kia Korea, and Kia USA**

17 3412. Plaintiffs reallege and incorporate by reference all allegations in
18 Sections I-VI above as though fully set forth herein.

19 3413. Plaintiff Steve Keister brings this count individually and on behalf of
20 members of the Minnesota State Class who purchased or leased FCA Class
21 Vehicles, against FCA.

22 3414. Plaintiff Bobbi Jo Birk-LaBarge brings this count individually and on
23 behalf of members of the Minnesota State Class who purchased or leased Kia Class
24 Vehicles, against Kia Korea and Kia USA.

25 3415. For purposes of this count, Plaintiffs Keister and Birk-LaBarge shall
26 be referred to as the “Minnesota Plaintiffs.”

27 3416. The Minnesota Deceptive Trade Practices Act (“Minnesota DTPA”)
28 prohibits deceptive trade practices in the course of a business, vocation, or
occupation. Minn. Stat. § 325D.44, Subd. 1.

1 3417. In the course of their business, FCA, Kia Korea, and Kia USA,
2 through their agents, employees, and/or subsidiaries, violated the Minnesota DTPA
3 by knowingly and intentionally misrepresenting, omitting, concealing, and/or
4 failing to disclose material facts regarding the reliability, safety, and performance of
5 the FCA and Kia Class Vehicles, the safety of their Occupant Restraint Systems,
6 and the ACU Defect, as detailed above.

7 3418. FCA, Kia Korea, and Kia USA had an ongoing duty to the Minnesota
8 Plaintiffs and Minnesota State Class members to refrain from unfair or deceptive
9 practices under the Minnesota DTPA in the course of their business. Specifically,
10 FCA, Kia Korea, and Kia USA owed the Minnesota Plaintiffs and Minnesota State
11 Class members a duty to disclose all the material facts concerning the ACU Defect
12 in the FCA and Kia Class Vehicles because they possessed exclusive knowledge of
13 and intentionally concealed the ACU Defect from the Minnesota Plaintiffs and
14 Minnesota State Class members, and they made misrepresentations that were
15 rendered misleading because they were contradicted by withheld facts.

16 3419. By misrepresenting the FCA and Kia Class Vehicles as safe and
17 reliable and the defective ACU and ASICs installed in them as properly-functioning
18 and free from defects, and by failing to disclose and actively concealing the dangers
19 and risk posed by the ACU Defect to both consumers and NHTSA, FCA, Kia
20 Korea, and Kia USA engaged in one or more of the following unfair or deceptive
21 business practices prohibited by Minn. Stat. § 325D.44, Subd. 1:

- 22 a. Representing that the FCA and Kia Class Vehicles and the
23 defective ACUs and ASICs installed in them have
24 characteristics, uses, benefits, and qualities which they do not
25 have;
- 26 b. Representing that the FCA and Kia Class Vehicles and/or the
27 defective ACUs and ASICs installed in them are of a particular
28 standard, quality, and grade when they are not;

- 1 c. Advertising the Class Vehicles and/or the defective ACUs and
- 2 ASICs installed in them with the intent not to sell or lease them
- 3 as advertised; and
- 4 d. Engaging in false, misleading, or deceptive acts or practice in
- 5 the conduct of trade or commerce pertaining to the FCA and Kia
- 6 Class Vehicles and the defective ACUs installed in them.

7 Minn. Stat. §§ 325D.44, Subd. 1(5), (7), (9), and (13).

8 3420. FCA's, Kia Korea's and Kia USA's unfair and deceptive acts or
9 practices, including their misrepresentations, concealments, omissions, and
10 suppressions of material facts, were designed to mislead and had a tendency or
11 capacity to mislead and create a false impression in consumers that the FCA and
12 Kia Class Vehicles had properly-functioning and reliable airbags and seatbelts, and
13 that the Occupant Restraint System did not contain the ACU Defect and would
14 perform its intended function of activating the seatbelts and airbags during a
15 collision. Indeed, those misrepresentations, concealments, omissions, and
16 suppressions of material facts did in fact deceive reasonable consumers, including
17 the Minnesota Plaintiffs and Minnesota State Class members, about the true safety
18 and reliability of FCA and Kia Class Vehicles and the defective ACUs and ASICs
19 installed in them, the quality of the FCA and Kia Class Vehicles, and their true
20 value.

21 3421. FCA's, Kia Korea's, and Kia USA's misrepresentations,
22 concealments, omissions, and suppressions of material facts regarding the ACU
23 Defect and true characteristics of the Occupant Restraint Systems in the FCA and
24 Kia Class Vehicles were material to the decisions of the Minnesota Plaintiffs and
25 Minnesota State Class members to purchase and lease those vehicles, as FCA, Kia
26 Korea, and Kia USA intended. The Minnesota Plaintiffs and Minnesota State Class
27 members were exposed to those misrepresentations, concealments, omissions, and
28 suppressions of material facts, and relied on FCA's, Kia Korea's, and Kia USA's

1 misrepresentations that the FCA and Kia Class Vehicles and their Occupant
2 Restraint Systems were safe and reliable in deciding to purchase and lease those
3 vehicles. Plaintiffs allege the information they relied upon in Section II.B above. To
4 aid review of this information, Exhibit 19 provides paragraph numbers for each
5 Plaintiff.

6 3422. The Minnesota Plaintiffs and Minnesota State Class members had no
7 way of discerning that FCA's, Kia Korea's, and Kia USA's representations were
8 false and misleading and/or otherwise learning the facts that FCA, Kia Korea, and
9 Kia USA had concealed or failed to disclose. The Minnesota Plaintiffs and
10 Minnesota State Class members did not, and could not, unravel FCA's, Kia
11 Korea's, and Kia USA's deception on their own.

12 3423. Had the Minnesota Plaintiffs and Minnesota State Class members
13 known the truth about the ACU Defect, they would not have purchased or leased
14 the FCA and Kia Class Vehicles, or would have paid significantly less for them.

15 3424. The Minnesota Plaintiffs and Minnesota State Class members suffered
16 ascertainable losses and actual damages as a direct and proximate result of FCA's,
17 Kia Korea's, and Kia USA's misrepresentations, concealment, and/or failure to
18 disclose material information.

19 3425. FCA's, Kia Korea's, and Kia USA's violations present a continuing
20 risk to the Minnesota Plaintiffs and Minnesota State Class members, as well as to
21 the general public, because the Class Vehicles remain unsafe due to the defective
22 ACUs and ASICs therein. FCA's, Kia Korea's, and Kia USA's unlawful acts and
23 practices complained of herein affect the public interest.

24 3426. Pursuant to Minn. Stat. §§ 8.31(3a), 325D.45, and 549.20(1)(a), the
25 Minnesota Plaintiffs and Minnesota State Class members seek an order enjoining
26 FCA's, Kia Korea's, and Kia USA's unfair or deceptive acts or practices and any
27 other just and proper relief available under the Minnesota CFA.
28

1 3427. The Minnesota Plaintiffs plead this claim separately as well as in the
2 alternative to their claims for damages under Fed. R. Civ. P. 8(a)(3), because if the
3 Minnesota Plaintiffs' claims for damages are dismissed or judgment is entered in
4 favor of Defendants, the Minnesota Plaintiffs will have no adequate legal remedy.

5 e. **Minnesota Count 5: Violation of the Minnesota Prevention
6 of Consumer Fraud Act (Minn. Stat. § 325F.68, *et seq.* and
7 Minn. Stat. § 8.31, subd. 3a) Against ZF Electronics USA, ZF
8 Passive Safety USA, ZF Automotive USA, ZF TRW Corp.,
9 ZF Germany, ST Italy, ST USA, and ST Malaysia**

10 3428. Plaintiffs reallege and incorporate by reference all preceding
11 allegations as though fully set forth herein.

12 3429. Plaintiffs Steve Keister and Bobbi Jo Birk-LaBarge bring this count
13 individually and on behalf of members of the Minnesota State Class ZF Electronics
14 USA, ZF Passive Safety USA, ZF Automotive USA, ZF TRW Corp., and ZF
15 Germany (collectively, the "ZF Defendants"), and ST Italy, ST Malaysia, and ST
16 USA (collectively, the "ST Defendants").

17 3430. For purposes of this count, Plaintiffs Keister and Birk-LaBarge shall
18 be referred to as the "Minnesota Plaintiffs."

19 3431. The ZF Defendants, ST Defendants, Minnesota Plaintiffs, and
20 Minnesota State Class members are "persons" within the meaning of Minn. Stat.
21 § 325F.68(3).

22 3432. The Class Vehicles and defective ACUs installed in them are
23 "merchandise" within the meaning of Minn. Stat. § 325F.68(2).

24 3433. The Minnesota Prevention of Consumer Fraud Act ("Minnesota
25 CFA") prohibits "act, use, or employment by any person of any fraud, false
26 pretense, false promise, misrepresentation, misleading statement or deceptive
27 practice, with the intent that others rely thereon in connection with the sale of any
28 merchandise, whether or not any person has in fact been misled, deceived, or
damaged[.]" Minn. Stat. § 325F.69(1).

1 3434. The ZF and ST Defendants had an ongoing duty to the Minnesota
2 Plaintiffs and Minnesota State Class members to refrain from unfair or deceptive
3 practices under the Minnesota CFA in the course of their business. Specifically, the
4 ZF and ST Defendants owed the Minnesota Plaintiffs and Minnesota State Class
5 members a duty to disclose all the material facts concerning the ACU Defect in the
6 Class Vehicles because they possessed exclusive knowledge of and intentionally
7 concealed the ACU Defect from the Minnesota Plaintiffs and Minnesota State Class
8 members.

9 3435. In the course of their business, the ZF and ST Defendants, through
10 their agents, employees, and/or subsidiaries, violated the Minnesota CFA by
11 knowingly and intentionally omitting, concealing, and failing to disclose material
12 facts regarding the existence, nature, and scope of the ACU Defect in the Class
13 Vehicles, as detailed above.

14 3436. Additionally, ZF Electronics USA, ZF Passive Safety USA, and ZF
15 Automotive USA, through their agents, employees, and/or subsidiaries, violated the
16 Minnesota CPA by knowingly and intentionally misrepresenting the Class Vehicles
17 as safe and reliable and the defective ACU and ASICs installed in them as properly-
18 functioning and free from defects. Specifically, ZF Electronics USA, ZF Passive
19 Safety USA, and ZF Automotive USA worked with the Vehicle Manufacturer
20 Defendants on the design and inclusion of the airbag readiness indicators in the
21 Class Vehicles, which falsely assured Plaintiffs and Class Members that the
22 Occupant Restraint Systems in the Class Vehicles would function properly in a
23 crash.

24 3437. By misrepresenting, failing to disclose and actively concealing the
25 dangers and risk posed by the Class Vehicles due to the ACU Defect, the ZF and
26 ST Defendants engaged in unfair or deceptive trade practices prohibited by Minn.
27 Stat. § 325F.69, including the use or employment of fraud, false pretense, and
28 deceptive practices.

1 3438. The ZF and ST Defendants’ unfair or deceptive acts or practices,
2 including their misrepresentations, concealments, omissions, and suppressions of
3 material facts, were designed to mislead and had a tendency or capacity to mislead
4 and create a false impression in consumers that the Class Vehicles had properly-
5 functioning and reliable airbags and seatbelts, and that the Occupant Restraint
6 System did not contain the ACU Defect and would perform its intended function of
7 activating the seatbelts and airbags during a collision. Indeed, those
8 misrepresentations, concealments, omissions, and suppressions of material facts did
9 in fact deceive reasonable consumers, including the Minnesota Plaintiffs and
10 Minnesota State Class members, about the true safety and reliability of Class
11 Vehicles and the defective ACUs and ASICs installed in them, the quality of the
12 Class Vehicles, and the true value of the Class Vehicles.

13 3439. The Minnesota Plaintiffs and Minnesota State Class members
14 justifiably relied on the ZF and ST Defendants’ misrepresentations, omissions, and
15 concealment, as they had no way of learning the facts that the ZF and ST
16 Defendants had concealed or failed to disclose. The Minnesota Plaintiffs and
17 Minnesota State Class members did not, and could not, unravel the ZF and ST
18 Defendants’ deception on their own.

19 3440. The ZF and ST Defendants’ misrepresentations and concealment of the
20 ACU Defect and true characteristics of the defective ACUs and ASICs in the Class
21 Vehicles were material to the Minnesota Plaintiffs and Minnesota State Class
22 members, as the ZF and ST Defendants intended. Had they known the truth, the
23 Minnesota Plaintiffs and Minnesota State Class members would not have purchased
24 or leased the Class Vehicles, or would have paid significantly less for them.

25 3441. The Minnesota Plaintiffs and Minnesota State Class members suffered
26 ascertainable losses and actual damages as a direct and proximate result of the ZF
27 and ST Defendants’ misrepresentations, concealment, and failure to disclose
28 material information.

1 3442. The ZF and ST Defendants’ violations present a continuing risk to the
2 Minnesota Plaintiffs and Minnesota State Class members, as well as to the general
3 public, because the Class Vehicles remain unsafe due to the defective ACUs and
4 ASICs therein. The ZF and ST Defendants’ unlawful acts and practices complained
5 of herein affect the public interest.

6 3443. Pursuant to Minn. Stat. §§ 8.31(3a) and 549.20(1)(a), the Minnesota
7 Plaintiffs and Minnesota State Class members seek an order enjoining the ZF and
8 ST Defendants’ unfair or deceptive acts or practices and awarding damages and any
9 other just and proper relief available under the Minnesota CFA.

10 **f. Minnesota Count 6: Violation of the Minnesota Uniform**
11 **Deceptive Trade Practices Act (Minn. Stat. § 325D.43, et**
12 **seq.) Against ZF Electronics USA, ZF Passive Safety USA,**
13 **ZF Automotive USA, ZF TRW Corp., ZF Germany, ST**
14 **Italy, ST USA, and ST Malaysia**

15 3444. Plaintiffs reallege and incorporate by reference all allegations in
16 Sections I-VI above as though fully set forth herein.

17 3445. Plaintiffs Steve Keister and Bobbi Jo Birk-LaBarge bring this count
18 individually and on behalf of members of the Minnesota State Class against ZF
19 Electronics USA, ZF Passive Safety USA, ZF Automotive USA, ZF TRW Corp.,
20 and ZF Germany (collectively, the “ZF Defendants”), and ST Italy, ST Malaysia,
21 and ST USA (collectively, the “ST Defendants”).

22 3446. For purposes of this count, Plaintiffs Keister and Birk-LaBarge shall
23 be referred to as the “Minnesota Plaintiffs.”

24 3447. The Minnesota Deceptive Trade Practices Act (“Minnesota DTPA”)
25 prohibits deceptive trade practices in the course of a business, vocation, or
26 occupation. Minn. Stat. § 325D.44, Subd. 1.

27 3448. The ZF and ST Defendants had an ongoing duty to the Minnesota
28 Plaintiffs and Minnesota State Class members to refrain from unfair or deceptive
practices under the Minnesota DTPA in the course of their business. Specifically,
the ZF and ST Defendants owed the Minnesota Plaintiffs and Minnesota State Class

1 members a duty to disclose all the material facts concerning the ACU Defect in the
2 Class Vehicles because they possessed exclusive knowledge of and intentionally
3 concealed the ACU Defect from the Minnesota Plaintiffs and Minnesota State Class
4 members.

5 3449. In the course of their business, the ZF and ST Defendants, through
6 their agents, employees, and/or subsidiaries, violated the Minnesota DTPA by
7 knowingly and intentionally omitting, concealing, and failing to disclose material
8 facts regarding the existence, nature, and scope of the ACU Defect in the Class
9 Vehicles, as detailed above.

10 3450. Additionally, ZF Electronics USA, ZF Passive Safety USA, and ZF
11 Automotive USA, through their agents, employees, and/or subsidiaries, violated the
12 Minnesota DTPA by knowingly and intentionally misrepresenting the Class
13 Vehicles as safe and reliable and the defective ACU and ASICs installed in them as
14 properly-functioning and free from defects. Specifically, ZF Electronics USA, ZF
15 Passive Safety USA, and ZF Automotive USA worked with the Vehicle
16 Manufacturer Defendants on the design and inclusion of the airbag readiness
17 indicators in the Class Vehicles, which falsely assured Plaintiffs and Class
18 Members that the Occupant Restraint Systems in the Class Vehicles would function
19 properly in a crash.

20 3451. By misrepresenting, failing to disclose and actively concealing the
21 dangers and risk posed by the Class Vehicles due to the ACU Defect, the ZF and
22 ST Defendants engaged in unfair or deceptive trade practices prohibited by Minn.
23 Stat. § 325D.44, Subd. 1, including engaging in false, misleading, or deceptive acts
24 or practices in the conduct of trade or commerce pertaining to the FCA and Kia
25 Class Vehicles and the defective ACUs installed in them.

26 3452. The ZF and ST Defendants' unfair or deceptive acts or practices,
27 including their misrepresentations, concealments, omissions, and suppressions of
28 material facts, were designed to mislead and had a tendency or capacity to mislead

1 and create a false impression in consumers that the Class Vehicles had properly-
2 functioning and reliable airbags and seatbelts, and that the Occupant Restraint
3 System did not contain the ACU Defect and would perform its intended function of
4 activating the seatbelts and airbags during a collision. Indeed, those
5 misrepresentations, concealments, omissions, and suppressions of material facts did
6 in fact deceive reasonable consumers, including the Minnesota Plaintiffs and
7 Minnesota State Class members, about the true safety and reliability of Class
8 Vehicles and the defective ACUs and ASICs installed in them, the quality of the
9 Class Vehicles, and the true value of the Class Vehicles.

10 3453. The Minnesota Plaintiffs and Minnesota State Class members
11 justifiably relied on the ZF and ST Defendants' misrepresentations, omissions, and
12 concealment, as they had no way of learning the facts that the ZF and ST
13 Defendants had concealed or failed to disclose. The Minnesota Plaintiffs and
14 Minnesota State Class members did not, and could not, unravel the ZF and ST
15 Defendants' deception on their own.

16 3454. The ZF and ST Defendants' misrepresentations and concealment of the
17 ACU Defect and true characteristics of the defective ACUs and ASICs in the Class
18 Vehicles were material to the Minnesota Plaintiffs and Minnesota State Class
19 members, as the ZF and ST Defendants intended. Had they known the truth, the
20 Minnesota Plaintiffs and Minnesota State Class members would not have purchased
21 or leased the Class Vehicles, or would have paid significantly less for them.

22 3455. The Minnesota Plaintiffs and Minnesota State Class members suffered
23 ascertainable losses and actual damages as a direct and proximate result of the ZF
24 and ST Defendants' misrepresentations, concealment, and failure to disclose
25 material information.

26 3456. The ZF and ST Defendants' violations present a continuing risk to the
27 Minnesota Plaintiffs and Minnesota State Class members, as well as to the general
28 public, because the Class Vehicles remain unsafe due to the defective ACUs and

1 ASICs therein. The ZF and ST Defendants’ unlawful acts and practices complained
2 of herein affect the public interest.

3 3457. Pursuant to Minn. Stat. §§ 8.31(3a), 325D.45, and 549.20(1)(a), the
4 Minnesota Plaintiffs and Minnesota State Class members seek an order enjoining
5 the ZF and ST Defendants’ unfair or deceptive acts or practices and awarding
6 damages and any other just and proper relief available under the Minnesota DTPA.

7 3458. The Minnesota Plaintiffs plead this claim separately as well as in the
8 alternative to their claims for damages under Fed. R. Civ. P. 8(a)(3), because if the
9 Minnesota Plaintiffs’ claims for damages are dismissed or judgment is entered in
10 favor of Defendants, the Minnesota Plaintiffs will have no adequate legal remedy.

11 **g. Minnesota Count 7: Fraud by Omission and Concealment**
12 **Against FCA, Kia Korea, and Kia USA**

13 3459. Plaintiffs reallege and incorporate by reference all preceding
14 allegations as though fully set forth herein.

15 3460. Plaintiff Steve Keister brings this count individually and on behalf of
16 members of the Minnesota State Class who purchased or leased FCA Class
17 Vehicles, against FCA.

18 3461. Plaintiff Bobbi Jo Birk-LaBarge brings this count individually and on
19 behalf of members of the Minnesota State Class who purchased or leased Kia Class
20 Vehicles, against Kia Korea and Kia USA.

21 3462. For purposes of this count, Plaintiffs Keister and Birk-LaBarge shall
22 be referred to as the “Minnesota Plaintiffs.”

23 3463. FCA, Kia Korea, and Kia USA are liable for both fraudulent
24 concealment and non-disclosure. *See, e.g.*, Restatement (Second) of Torts §§ 550-
25 51 (1977).

26 3464. As explained in Section IV.A, the ACU Defect in Class Vehicles poses
27 serious risks to vehicle occupants, including that it can cause: (1) airbags and
28 seatbelts not to activate during a crash because crashes can sometimes release

1 electrical transients, which cause the ACU to fail; (2) airbags to deploy when the
2 vehicle has not crashed, which is dangerous because it is shocking and difficult for
3 the driver to operate a vehicle when the airbag deploys without warning; and (3)
4 failures of other important post-crash operations of the safety system, such as
5 unlocking doors to facilitate escape or extraction of drivers and passengers by
6 emergency personnel, and shutting off a crashed vehicle's fuel or power supply.

7 3465. FCA, Kia Korea, and Kia USA had a duty to disclose the ACU Defect
8 to the Minnesota Plaintiffs and Minnesota State Class members because:

- 9 a. FCA, Kia Korea, and Kia USA had exclusive access to and far
10 superior knowledge about technical facts regarding the ACU
11 Defect;
- 12 b. Given the ACU Defect's hidden and technical nature, the
13 Minnesota Plaintiffs and Minnesota State Class members lack
14 the sophisticated expertise in vehicle components and electrical
15 phenomena that would be necessary to discover the ACU Defect
16 on their own;
- 17 c. FCA, Kia Korea, and Kia USA knew that the ACU Defect gave
18 rise to serious safety concerns for the consumers who use the
19 vehicles, and the FCA and Kia Class Vehicles containing the
20 ACU Defect would have been a material fact to the Minnesota
21 Plaintiffs' and Minnesota State Class members' decisions to buy
22 or lease FCA and Kia Class Vehicles; and
- 23 d. FCA, Kia Korea, and Kia USA made incomplete representations
24 about the safety and reliability of the FCA and Kia Class
25 Vehicles and their Occupant Restraint System, while
26 purposefully withholding material facts about a known safety
27 defect. In uniform advertising and materials provided with each
28 Class Vehicle, FCA, Kia Korea, and Kia USA intentionally

1 concealed, suppressed, and failed to disclose to the Minnesota
2 Plaintiffs and Minnesota State Class members that the FCA and
3 Kia Class Vehicles contained the ACU Defect. Because they
4 volunteered to provide information about the FCA and Kia Class
5 Vehicles that they marketed and offered for sale and lease to the
6 Minnesota Plaintiffs and Minnesota State Class members, FCA,
7 Kia Korea, and Kia USA had the duty to disclose the whole
8 truth.

9 3466. In breach of their duties, FCA, Kia Korea, and Kia USA failed to
10 disclose that the FCA and Kia Class Vehicles were not safe and reliable, and that
11 their Occupant Restraint Systems, including their airbags and seatbelt pretensioners,
12 could fail in the event of a crash due to the ACU Defect.

13 3467. FCA, Kia Korea, and Kia USA intended for the Minnesota Plaintiffs
14 and Minnesota State Class members to rely on their omissions—which they did by
15 purchasing and leasing the FCA and Kia Class Vehicles at the prices they paid
16 believing that the Occupant Restraint Systems in their Class Vehicles would
17 function properly.

18 3468. That reliance was reasonable, because a reasonable consumer would
19 not have expected that the FCA and Kia Class Vehicles contained a safety defect
20 that poses such a serious risk. FCA, Kia Korea, and Kia USA knew that reasonable
21 consumers expect that their vehicle has working airbags and seatbelt pretensioners
22 and would rely on those facts in deciding whether to purchase, lease, or retain a
23 new or used motor vehicle. Whether a manufacturer’s products are safe and
24 reliable, and whether that manufacturer stands behind its products, are material
25 concerns to a consumer. Especially here when at least nine people have already
26 died due to the ACU Defect, and many more have been injured.

27 3469. Additionally, FCA, Kia Korea, and Kia USA ensured that the
28 Minnesota Plaintiffs and Minnesota State Class members did not discover this

1 information by actively concealing and misrepresenting the true nature of the FCA
2 and Kia Class Vehicles' Occupant Restraint Systems to consumers and NHTSA.

3 3470. FCA, Kia Korea, and Kia USA actively concealed and suppressed
4 these material facts, in whole or in part, to maintain a market for their Class
5 Vehicles, to protect profits, and to avoid costly recalls that would expose them to
6 liability for those expenses and harm the commercial reputations of Defendants and
7 their products. They did so at the expense of the Minnesota Plaintiffs and
8 Minnesota State Class members.

9 3471. To this day, FCA, Kia Korea, and Kia USA have not fully and
10 adequately disclosed the ACU Defect, and they continue to conceal material
11 information about the defect from consumers and NHTSA. The omitted and
12 concealed facts were material because a reasonable person would find them
13 important in purchasing, leasing, or retaining a new or used motor vehicle, and
14 because they directly impact the value of the FCA and Kia Class Vehicles
15 purchased or leased by the Minnesota Plaintiffs and Minnesota State Class
16 members.

17 3472. Had they been aware of the ACU Defect in the FCA and Kia Class
18 Vehicles, and FCA's, Kia Korea's, and Kia USA's callous disregard for safety, the
19 Minnesota Plaintiffs and Minnesota State Class members either would not have
20 paid as much as they did for their Class Vehicles, or they would not have purchased
21 or leased them.

22 3473. As alleged in Section V above, if FCA, Kia Korea, and Kia USA had
23 fully and adequately disclosed the ACU Defect to consumers and NHTSA, the
24 Minnesota Plaintiffs and Minnesota State Class members would have seen such a
25 disclosure.

26 3474. Accordingly, FCA, Kia Korea, and Kia USA are liable to the
27 Minnesota Plaintiffs and Minnesota State Class members for their damages in an
28

1 amount to be proven at trial, including, but not limited to, their lost overpayment
2 for the FCA and Kia Class Vehicles at the time of purchase or lease.

3 3475. FCA's, Kia Korea's, and Kia USA's acts were done maliciously,
4 oppressively, deliberately, with intent to defraud; in reckless disregard of the
5 Minnesota Plaintiffs' and Minnesota State Class members' rights and well-being;
6 and to enrich themselves. FCA's, Kia Korea's, and Kia USA's misconduct warrants
7 an assessment of punitive damages, as permitted by law, in an amount sufficient to
8 deter such conduct in the future, which amount shall be determined according to
9 proof at trial.

10 **h. Minnesota Count 8: Fraud by Omission and Concealment**
11 **Against ZF Electronics USA, ZF Passive Safety USA, ZF**
12 **Automotive USA, ZF TRW Corp., ZF Germany, ST Italy,**
13 **ST USA, and ST Malaysia**

14 3476. Plaintiffs reallege and incorporate by reference all preceding
15 allegations as though fully set forth herein.

16 3477. The Minnesota Plaintiffs bring this count individually and on behalf of
17 members of the Minnesota State Class who purchased or leased Class Vehicles,
18 against ZF Electronics USA, ZF Passive Safety USA, ZF Automotive USA, ZF
19 TRW Corp., and ZF Germany (collectively, the "ZF Defendants"), and ST Italy, ST
20 Malaysia, and ST USA (collectively, the "ST Defendants").

21 3478. The ZF and ST Defendants are liable for both fraudulent concealment
22 and non-disclosure. *See, e.g.*, Restatement (Second) of Torts §§ 550-51 (1977).

23 3479. As explained in Section IV.A, the ACU Defect in Class Vehicles poses
24 serious risks to vehicle occupants, including that it can cause: (1) airbags and
25 seatbelts not to activate during a crash because crashes can sometimes release
26 electrical transients, which cause the ACU to fail; (2) airbags to deploy when the
27 vehicle has not crashed, which is dangerous because it is shocking and difficult for
28 the driver to operate a vehicle when the airbag deploys without warning; and (3)
failures of other important post-crash operations of the safety system, such as

1 unlocking doors to facilitate escape or extraction of drivers and passengers by
2 emergency personnel, and shutting off a crashed vehicle’s fuel or power supply.

3 3480. The ZF and ST Defendants had a duty to disclose the ACU Defect to
4 the Minnesota Plaintiffs and Minnesota State Class members because:

- 5 a. The ZF and ST Defendants had exclusive access to and far
6 superior knowledge about technical facts regarding the ACU
7 Defect;
- 8 b. Given the ACU Defect’s hidden and technical nature, the
9 Minnesota Plaintiffs and Minnesota State Class members lack
10 the sophisticated expertise in vehicle components and electrical
11 phenomena that would be necessary to discover the ACU Defect
12 on their own;
- 13 c. The ZF and ST Defendants knew that the ACU Defect gave rise
14 to serious safety concerns for the consumers who use the
15 vehicles, and the Class Vehicles containing the ACU Defect
16 would have been a material fact to the Minnesota Plaintiffs’ and
17 Minnesota State Class members’ decisions to buy or lease Class
18 Vehicles; and
- 19 d. The ZF Defendants made incomplete representations about the
20 safety and reliability of the Class Vehicles and their Occupant
21 Restraint System, while purposefully withholding material facts
22 about a known safety defect, creating a duty to disclose the
23 whole truth. Specifically, ZF Electronics USA, ZF Passive
24 Safety USA, and ZF Automotive USA worked with the Vehicle
25 Manufacturer Defendants on the design and inclusion of the
26 airbag readiness indicators in the Class Vehicles, which falsely
27 assured Plaintiffs and Class Members that the Occupant
28

1 Restraint Systems in the Class Vehicles would function properly
2 in a crash.

3 3481. In breach of their duties, the ZF and ST Defendants failed to disclose
4 that the Class Vehicles were not safe and reliable, and that their Occupant Restraint
5 Systems, including their airbags and seatbelt pretensioners, could fail in the event
6 of a crash due to the ACU Defect.

7 3482. The ZF and ST Defendants intended for the Minnesota Plaintiffs and
8 Minnesota State Class members to rely on their omissions—which they did by
9 purchasing and leasing the Class Vehicles at the prices they paid believing that the
10 Occupant Restraint Systems in their Class Vehicles would function properly.

11 3483. That reliance was reasonable, because a reasonable consumer would
12 not have expected that the Class Vehicles contained a safety defect that poses such
13 a serious risk. The ZF and ST Defendants knew that reasonable consumers expect
14 that their vehicle has working airbags and seatbelt pretensioners and would rely on
15 those facts in deciding whether to purchase, lease, or retain a new or used motor
16 vehicle. Whether a manufacturer's products are safe and reliable, and whether that
17 manufacturer stands behind its products, are material concerns to a consumer.
18 Especially here when at least nine people have already died due to the ACU Defect,
19 and many more have been injured.

20 3484. Additionally, the ZF and ST Defendants ensured that the Minnesota
21 Plaintiffs and Minnesota State Class members did not discover this information by
22 actively concealing and misrepresenting the true nature of the Class Vehicles'
23 Occupant Restraint Systems to consumers and NHTSA.

24 3485. The ZF and ST Defendants actively concealed and suppressed these
25 material facts, in whole or in part, to maintain a market for the DS84 ACU, to
26 protect profits, and to avoid costly recalls that would expose them to liability for
27 those expenses and harm the commercial reputations of Defendants and their
28

1 products. They did so at the expense of the Minnesota Plaintiffs and Minnesota
2 State Class members.

3 3486. To this day, the ZF and ST Defendants have not fully and adequately
4 disclosed the ACU Defect, and they continue to conceal material information about
5 the defect from consumers and NHTSA. The omitted and concealed facts were
6 material because a reasonable person would find them important in purchasing,
7 leasing, or retaining a new or used motor vehicle, and because they directly impact
8 the value of the Class Vehicles purchased or leased by the Minnesota Plaintiffs and
9 Minnesota State Class members.

10 3487. Had they been aware of the ACU Defect in the Class Vehicles, and the
11 ZF and ST Defendants' callous disregard for safety, the Minnesota Plaintiffs and
12 Minnesota State Class members either would not have paid as much as they did for
13 their Class Vehicles, or they would not have purchased or leased them.

14 3488. As alleged in Section V above, if the ZF and ST Defendants had fully
15 and adequately disclosed the ACU Defect to consumers and NHTSA, the
16 Minnesota Plaintiffs and Minnesota State Class members would have seen such a
17 disclosure.

18 3489. Accordingly, the ZF and ST Defendants are liable to the Minnesota
19 Plaintiffs and Minnesota State Class members for their damages in an amount to be
20 proven at trial, including, but not limited to, their lost overpayment for the Class
21 Vehicles at the time of purchase or lease.

22 3490. The ZF and ST Defendants' acts were done maliciously, oppressively,
23 deliberately, with intent to defraud; in reckless disregard of the Minnesota
24 Plaintiffs' and Minnesota State Class members' rights and well-being; and to enrich
25 themselves. The ZF and ST Defendants' misconduct warrants an assessment of
26 punitive damages, as permitted by law, in an amount sufficient to deter such
27 conduct in the future, which amount shall be determined according to proof at trial.
28

1 **i. Minnesota Count 9: Unjust Enrichment Against FCA, Kia**
2 **Korea, and Kia USA**

3 3491. Plaintiffs reallege and incorporate by reference all preceding
4 allegations in Sections I-VI above as though fully set forth herein.

5 3492. Plaintiff Steve Keister brings this count individually and on behalf of
6 members of the Minnesota State Class who purchased or leased FCA Class
7 Vehicles, against FCA.

8 3493. Plaintiff Bobbi Jo Birk-LaBarge brings this count individually and on
9 behalf of members of the Minnesota State Class who purchased or leased Kia Class
10 Vehicles, against Kia Korea, and Kia USA.

11 3494. For purposes of this count, Plaintiffs Keister and Birk-LaBarge shall
12 be referred to as the “Minnesota Plaintiffs.”

13 3495. The Minnesota Plaintiffs and Minnesota State Class members
14 conferred tangible and material economic benefits upon FCA, Kia Korea, and Kia
15 USA when they purchased or leased the FCA and Kia Class Vehicles. FCA, Kia
16 Korea, and Kia USA readily accepted and retained these benefits.

17 3496. The Minnesota Plaintiffs and Minnesota State Class members would
18 not have purchased or leased their FCA and Kia Class Vehicles, or would have paid
19 less for them, had they known of the ACU Defect at the time of purchase or lease.
20 Therefore, FCA, Kia Korea, and Kia USA profited from the sale and lease of the
21 FCA and Kia Class Vehicles to the detriment and expense of the Minnesota
22 Plaintiffs and Minnesota State Class members.

23 3497. FCA, Kia Korea, and Kia USA appreciated these benefits, which were
24 the expected result of FCA, Kia Korea, and Kia USA acting in their pecuniary
25 interest at the expense of their customers. FCA, Kia Korea, and Kia USA knew of
26 these benefits because they were aware of the ACU Defect, yet they failed to
27 disclose this knowledge and misled Minnesota Plaintiffs and Minnesota State Class
28

1 members regarding the nature and quality of the FCA and Kia Class Vehicles while
2 profiting from this deception.

3 3498. It would be unjust, inequitable, and unconscionable for FCA, Kia
4 Korea, and Kia USA to retain these benefits, including because they were procured
5 as a result of FCA's, Kia Korea's, and Kia USA's wrongful conduct alleged above.

6 3499. The Minnesota Plaintiffs and Minnesota State Class members are
7 entitled to restitution of the benefits FCA, Kia Korea, and Kia USA unjustly
8 retained and/or any amounts necessary to return the Minnesota Plaintiffs and
9 Minnesota State Class members to the position they occupied prior to dealing with
10 FCA, Kia Korea, and Kia USA, with such amounts to be determined at trial.

11 3500. The Minnesota Plaintiffs plead this claim separately as well as in the
12 alternative to their claims for damages under Fed. R. Civ. P. 8(a)(3), because if the
13 Minnesota Plaintiffs' claims for damages are dismissed or judgment is entered in
14 favor of Defendants, the Minnesota Plaintiffs will have no adequate legal remedy.

15 **13. Missouri**

16 **a. Missouri Count 1: Breach of Express Warranty (Mo. Rev. Stat. §§ 400.2-313 and 400.2A-210) Against Kia Korea and Kia USA**

17
18 3501. Plaintiffs reallege and incorporate by reference all preceding
19 allegations as though fully set forth herein.

20 3502. Plaintiff Dan Sutterfield (hereinafter, "Missouri Plaintiff") brings this
21 count individually and on behalf of members of the Missouri State Class who
22 purchased or leased Kia Class Vehicles, against Kia Korea and Kia USA.

23 3503. Kia Korea and Kia USA are and were at all relevant times "merchants"
24 with respect to motor vehicles under Mo. Rev. Stat. §§ 400.2-104(1) and 400.2A-
25 103(3), and "sellers" of motor vehicles under § 400.2-103(1)(d).

26 3504. With respect to leases, Kia Korea and Kia USA are and were at all
27 relevant times "lessors" of motor vehicles under Mo. Rev. Stat. § 400.2A-
28 103(1)(p).

1 3505. All Missouri State Class members who purchased Kia Class Vehicles
2 in Missouri are “buyers” within the meaning of Mo. Rev. Stat. § 400.2-103(1)(a).

3 3506. All Missouri State Class members who leased Kia Class Vehicles in
4 Missouri are “lessees” within the meaning of Mo. Rev. Stat. § 400.2A-103(1)(n).

5 3507. The Kia Class Vehicles are and were at all relevant times “goods”
6 within the meaning of Mo. Rev. Stat. §§ 400.2-105(1) and 400.2A-103(1)(h).

7 3508. In connection with the purchase or lease of Kia Class Vehicles, Kia
8 Korea and Kia USA provided the Missouri Plaintiff and Missouri State Class
9 members with warranties in the form of: (a) written express warranties covering the
10 repair or replacement of components that are defective in materials or
11 workmanship, and (b) descriptions of the Kia Class Vehicles as safe and reliable,
12 and that their Occupant Restraint Systems, including their airbags and seatbelt
13 pretensioners, would function properly in the event of a crash.

14 3509. However, Kia Korea and Kia USA knew or should have known that
15 the warranties were false and/or misleading. Specifically, Kia Korea and Kia USA
16 were aware of the ACU Defect in the Kia Class Vehicles, which made the vehicles
17 inherently defective and dangerous at the time that they were sold and leased to the
18 Missouri Plaintiff and Missouri State Class members.

19 3510. The Missouri Plaintiff and Missouri State Class members were aware
20 the Kia Class Vehicles were covered by express warranties, and those warranties
21 were an essential part of the bargain between them, Kia Korea and Kia USA when
22 the Missouri Plaintiff and Missouri State Class members unknowingly purchased
23 and leased Kia Class Vehicles that came equipped with defective ACUs and ASICs.

24 3511. Kia Korea and Kia USA misrepresented the Kia Class Vehicles as safe
25 and reliable while concealing that they contained the ACU Defect, the Missouri
26 Plaintiff and Missouri State Class members were exposed to those
27 misrepresentations, and the Missouri Plaintiff and Missouri State Class members
28 had no way of discerning that Kia Korea’s and Kia USA’s representations were

1 false and misleading or otherwise learning the material facts that Kia Korea and Kia
2 USA had concealed or failed to disclose. Accordingly, the Missouri Plaintiff and
3 Missouri State Class members reasonably relied on Kia Korea's and Kia USA's
4 express warranties when purchasing or leasing their Kia Class Vehicles. Plaintiffs
5 allege the information they relied upon in Section II.B above. To aid review of this
6 information, Exhibit 19 provides paragraph numbers for each Plaintiff.

7 3512. Kia Korea and Kia USA knowingly breached their express warranties
8 to repair defects in materials and workmanship by failing to repair the ACU Defect
9 or replace the defective ACUs and ASICs in the Kia Class Vehicles. Kia Korea and
10 Kia USA also breached their express warranties by selling and leasing Kia Class
11 Vehicles with a defect that was never disclosed to the Missouri Plaintiff and
12 Missouri State Class members.

13 3513. The Missouri Plaintiff and Missouri State Class members have
14 provided Kia Korea and Kia USA with reasonable notice and opportunity to cure
15 the breaches of their express warranties by way of the numerous NHTSA
16 complaints filed against them, and the individual notice letters sent by Missouri
17 State Class members within a reasonable amount of time after the ACU Defect
18 became public. Additionally, on April 24, 2020, a notice letter was sent on behalf of
19 the Missouri Plaintiff and Missouri State Class members to Kia Korea and Kia
20 USA.

21 3514. Alternatively, the Missouri Plaintiff and Missouri State Class members
22 were excused from providing Kia Korea and Kia USA with notice and an
23 opportunity to cure the breach, because it would have been futile. As alleged above,
24 Kia Korea and Kia USA have long known that the Kia Class Vehicles contained the
25 ACU Defect, and that the ACU Defect has caused ACUs and ASICs to malfunction
26 in crashes involving Class Vehicles; however, to date, Kia Korea and Kia USA
27 have not instituted a recall or any other repair program with respect to the
28 unrecalled Kia Class Vehicles, or even acknowledged that the ACU Defect exists in

1 all Kia Class Vehicles, including the recalled Kia Class Vehicles—even though all
2 of the Kia Class Vehicles are subject to the NHTSA investigation. Therefore, the
3 Missouri Plaintiff and Missouri State Class members had no reason to believe that
4 Kia Korea and Kia USA would have repaired the ACU Defect if the Missouri
5 Plaintiff and Missouri State Class members presented their Class Vehicles to them
6 for repair.

7 3515. As a direct and proximate result of Kia Korea’s and Kia USA’s breach
8 of their express warranties, the Kia Class Vehicles were and are defective and the
9 ACU Defect in the Missouri Plaintiff’s and Missouri State Class members’ Kia
10 Class Vehicles was not remedied. Therefore, the Missouri Plaintiff and Missouri
11 State Class members have been damaged, in an amount to be proven at trial,
12 through their overpayment at the time of purchase or lease for Kia Class Vehicles
13 with an undisclosed safety defect that would not be remedied.

14 **b. Missouri Count 2: Breach of Implied Warranty of**
15 **Merchantability (Mo. Rev. Stat. §§ 400.2-314 and 400.2A-**
16 **212) Against Kia USA**

17 3516. Plaintiffs reallege and incorporate by reference all preceding
18 allegations as though fully set forth herein.

19 3517. The Missouri Plaintiff brings this count individually and on behalf of
20 members of the Missouri State Class who purchased or leased Kia Class Vehicles,
21 against Kia USA.

22 3518. A warranty that the Kia Class Vehicles were in merchantable condition
23 and fit for the ordinary purpose for which such goods are used is implied by law
24 pursuant to Mo. Rev. Stat. §§ 400.2-314 and 400.2A-212.

25 3519. Kia USA is and was at all relevant times a “merchant” with respect to
26 motor vehicles under Mo. Rev. Stat. §§ 400.2-104(1) and 400.2A-103(3), and a
27 “seller” of motor vehicles under § 400.2-103(1)(d).

28 3520. With respect to leases, Kia USA is and was at all relevant times a
“lessor” of motor vehicles under Mo. Rev. Stat. § 400.2A-103(1)(p).

1 3521. All Missouri State Class members who purchased Kia Class Vehicles
2 in Missouri are “buyers” within the meaning of Mo. Rev. Stat. § 400.2-103(1)(a).

3 3522. All Missouri State Class members who leased Kia Class Vehicles in
4 Missouri are “lessees” within the meaning of Mo. Rev. Stat. § 400.2A-103(1)(n).

5 3523. The Kia Class Vehicles are and were at all relevant times “goods”
6 within the meaning of Mo. Rev. Stat. §§ 400.2-105(1) and 400.2A-103(1)(h).

7 3524. The Kia Class Vehicles did not comply with the implied warranty of
8 merchantability because, at the time of sale and lease and at all times thereafter,
9 they were defective and not in merchantable condition, would not pass without
10 objection in the trade, and were not fit for the ordinary purpose for which vehicles
11 were used. Specifically, at the time they were sold and leased, the Kia Class
12 Vehicles contained the ACU Defect, which may cause the airbags and seatbelt
13 pretensioners to fail to deploy during a crash, the failure to unlock doors
14 automatically after a crash, the failure to turn off a fuel supply or high-voltage
15 battery after a crash, or the airbags to inadvertently deploy, all of which render the
16 Kia Class Vehicles inherently defective and dangerous.

17 3525. The Missouri Plaintiff and Missouri State Class members have
18 provided Kia USA with reasonable notice and opportunity to cure the breaches of
19 its implied warranty by way of the numerous NHTSA complaints filed against it,
20 and the individual notice letters sent by Missouri State Class members within a
21 reasonable amount of time after the ACU Defect became public. Additionally, on
22 April 24, 2020, a notice letter was sent on behalf of the Missouri Plaintiff and
23 Missouri State Class members to Kia USA.

24 3526. Alternatively, the Missouri Plaintiff and Missouri State Class members
25 were excused from providing Kia USA with notice and an opportunity to cure the
26 breach, because it would have been futile. As alleged above, Kia USA has long
27 known that the Kia Class Vehicles contained the ACU Defect, and that the ACU
28 Defect has caused ACUs and ASICs to malfunction in crashes involving Class

1 Vehicles; however, to date, Kia USA has not instituted a recall or any other repair
2 program with respect to the unrecalled Kia Class Vehicles, or even acknowledged
3 that the ACU Defect exists in all Kia Class Vehicles, including the recalled Kia
4 Class Vehicles—even though all of the Kia Class Vehicles are subject to the
5 NHTSA investigation. Therefore, the Missouri Plaintiff and Missouri State Class
6 members had no reason to believe that Kia USA would have repaired the ACU
7 Defect if the Missouri Plaintiff and Missouri State Class members presented their
8 Class Vehicles to it for repair.

9 3527. As a direct and proximate result of Kia USA’s breach of the implied
10 warranty of merchantability, the Missouri Plaintiff and Missouri State Class
11 members have been damaged through their overpayment at the time of purchase or
12 lease for Kia Class Vehicles with an undisclosed safety defect in an amount to be
13 proven at trial.

14 c. **Missouri Count 3: Violation of the Missouri Merchandising**
15 **Practices Act (Mo. Rev. Stat. § 407.010, *et seq.*) Against Kia**
16 **Korea and Kia USA**

17 3528. Plaintiffs reallege and incorporate by reference all preceding
18 allegations as though fully set forth herein.

19 3529. The Missouri Plaintiff brings this count individually and on behalf of
20 members of the Missouri State Class who purchased or leased Kia Class Vehicles,
21 against Kia Korea and Kia USA.

22 3530. Kia Korea, Kia USA, the Missouri Plaintiff, and Missouri State Class
23 members are “persons” within the meaning of Mo. Rev. Stat. § 407.010(5).

24 3531. Kia Korea and Kia USA were and are engaged in “trade or commerce”
25 within the meaning of Mo. Rev. Stat. § 407.010(7).

26 3532. The Missouri Merchandising Practices Act (“Missouri MPA”)
27 prohibits unlawful business practices. Mo. Rev. Stat. § 407.020(1).
28

1 3533. The Missouri Plaintiff and Missouri State Class Members purchased
2 their Kia Class Vehicles and the ACUs installed in them primarily for personal,
3 family, or household purposes.

4 3534. In the course of their business, Kia Korea and Kia USA, through their
5 agents, employees, and/or subsidiaries, violated the Missouri MPA by knowingly
6 and intentionally misrepresenting, omitting, concealing, and/or failing to disclose
7 material facts regarding the reliability, safety, and performance of the Kia Class
8 Vehicles, the safety of their Occupant Restraint Systems, and the ACU Defect, as
9 detailed above.

10 3535. Kia Korea and Kia USA had an ongoing duty to the Missouri Plaintiff
11 and Missouri State Class members to refrain from unfair or deceptive practices
12 under the Missouri MPA in the course of their business. Specifically, Kia Korea
13 and Kia USA owed the Missouri Plaintiff and Missouri State Class members a duty
14 to disclose all the material facts concerning the ACU Defect in the Kia Class
15 Vehicles because they possessed exclusive knowledge, they intentionally concealed
16 the ACU Defect from the Missouri Plaintiff and Missouri State Class members,
17 and/or they made misrepresentations that were rendered misleading because they
18 were contradicted by withheld facts.

19 3536. By misrepresenting the Kia Class Vehicles as safe and reliable and the
20 defective ACU and ASICs installed in them as properly-functioning and free from
21 defects, and by failing to disclose and actively concealing the dangers and risk
22 posed by the ACU Defect to both consumers and NHTSA, Kia Korea and Kia USA
23 engaged in one or more of the following unfair or deceptive business practices
24 prohibited by Mo. Rev. Stat. § 407.020(1): using or employing deception, fraud,
25 false pretense, false promise or misrepresentation, or the concealment, suppression
26 or omission of a material fact with intent that others rely upon such concealment,
27 suppression or omission, in connection with the advertisement and sale/lease of the
28

1 Kia Class Vehicles, whether or not any person has in fact been misled, deceived or
2 damaged thereby.

3 3537. Kia Korea's and Kia USA's unfair and deceptive acts or practices,
4 including their misrepresentations, concealments, omissions, and suppressions of
5 material facts, were designed to mislead and had a tendency or capacity to mislead
6 and create a false impression in consumers that the Kia Class Vehicles had
7 properly-functioning and reliable airbags and seatbelts, and that the Occupant
8 Restraint System did not contain the ACU Defect and would perform its intended
9 function of activating the seatbelts and airbags during a collision. Indeed, those
10 misrepresentations, concealments, omissions, and suppressions of material facts did
11 in fact deceive reasonable consumers, including the Missouri Plaintiff and Missouri
12 State Class members, about the true safety and reliability of Kia Class Vehicles
13 and/or the defective ACUs and ASICs installed in them, the quality of the Kia Class
14 Vehicles, and the true value of the Kia Class Vehicles.

15 3538. Kia Korea's and Kia USA's misrepresentations, concealments,
16 omissions, and suppressions of material facts regarding the ACU Defect and true
17 characteristics of the Occupant Restraint Systems in the Kia Class Vehicles were
18 material to the decisions of the Missouri Plaintiff and Missouri State Class
19 members to purchase and lease those vehicles, as Kia Korea and Kia USA intended.
20 The Missouri Plaintiff and Missouri State Class members were exposed to those
21 misrepresentations, concealments, omissions, and suppressions of material facts,
22 and relied on Kia Korea's and Kia USA's misrepresentations that the Kia Class
23 Vehicles and their Occupant Restraint Systems were safe and reliable in deciding to
24 purchase and lease Kia Class Vehicles. Plaintiffs allege the information they relied
25 upon in Section II.B above. To aid review of this information, Exhibit 19 provides
26 paragraph numbers for each Plaintiff.

27 3539. The Missouri Plaintiff's and Missouri State Class members' reliance
28 was reasonable, as they had no way of discerning that Kia Korea's and Kia USA's

1 representations were false and misleading, or otherwise learning the facts that Kia
2 Korea and Kia USA had concealed or failed to disclose. The Missouri Plaintiff and
3 Missouri State Class members did not, and could not, unravel Kia Korea's and Kia
4 USA's deception on their own.

5 3540. Had the Missouri Plaintiff and Missouri State Class members known
6 the truth about the ACU Defect, the Missouri Plaintiff and Missouri State Class
7 members would not have purchased or leased Kia Class Vehicles, or would have
8 paid significantly less for them.

9 3541. The Missouri Plaintiff and Missouri State Class members suffered
10 ascertainable losses and actual damages through their overpayment at the time of
11 purchase and lease for Kia Class Vehicles with an undisclosed safety defect as a
12 direct and proximate result of Kia Korea's and Kia USA's concealment,
13 misrepresentations, and/or failure to disclose material information.

14 3542. Kia Korea's and Kia USA's violations present a continuing risk to the
15 Missouri Plaintiff and Missouri State Class members, as well as to the general
16 public, because the Class Vehicles remain unsafe due to the defective ACUs and
17 ASICs therein. Additionally, their unlawful acts and practices complained of herein
18 affect the public interest.

19 3543. Pursuant to Mo. Rev. Stat. § 407.025, the Missouri Plaintiff and
20 Missouri State Class members seek an order enjoining Kia Korea's and Kia USA's
21 unfair or deceptive acts or practices and awarding damages and any other just and
22 proper relief available under the Missouri MPA.

23 **d. Missouri Count 4: Violation of the Missouri Merchandising**
24 **Practices Act (Mo. Rev. Stat. § 407.010, et seq.) Against ZF**
25 **Electronics USA, ZF Passive Safety USA, ZF Automotive**
26 **USA, ZF TRW Corp., ZF Germany, ST Italy, ST USA, and**
27 **ST Malaysia**

28 3544. Plaintiffs reallege and incorporate by reference all preceding
allegations as though fully set forth herein.

1 3545. The Missouri Plaintiff brings this count individually and on behalf of
2 members of the Missouri State Class against ZF Electronics USA, ZF Passive
3 Safety USA, ZF Automotive USA, ZF TRW Corp., and ZF Germany (collectively,
4 the “ZF Defendants”), and ST Italy, ST Malaysia, and ST USA (collectively, the
5 “ST Defendants”).

6 3546. The ZF Defendants, the ST Defendants, the Missouri Plaintiff, and
7 Missouri State Class members are “persons” within the meaning of Mo. Rev. Stat.
8 § 407.010(5).

9 3547. The ZF and ST Defendants were and are engaged in “trade or
10 commerce” within the meaning of Mo. Rev. Stat. § 407.010(7).

11 3548. The Missouri Merchandising Practices Act (“Missouri MPA”)
12 prohibits unlawful business practices. Mo. Rev. Stat. § 407.020(1).

13 3549. The Missouri Plaintiff and Missouri State Class Members purchased
14 their Kia Class Vehicles and the ACUs installed in them primarily for personal,
15 family, or household purposes.

16 3550. The ZF and ST Defendants had an ongoing duty to the Missouri
17 Plaintiff and Missouri State Class members to refrain from unfair or deceptive
18 practices under the Missouri MPA in the course of their business. Specifically, the
19 ZF and ST Defendants owed the Missouri Plaintiff and Missouri State Class
20 members a duty to disclose all the material facts concerning the ACU Defect in the
21 Class Vehicles because they possessed exclusive knowledge and they intentionally
22 concealed the ACU Defect from the Missouri Plaintiff and Missouri State Class
23 members.

24 3551. In the course of their business, the ZF and ST Defendants, through
25 their agents, employees, and/or subsidiaries, violated the Missouri MPA by
26 knowingly and intentionally omitting, concealing, and failing to disclose material
27 facts regarding the existence, nature, and scope of the defective ACU and ASIC
28 installed in the Class Vehicles, as detailed above.

1 3552. Additionally, ZF Electronics USA, ZF Passive Safety USA, and ZF
2 Automotive USA, through their agents, employees, and/or subsidiaries, violated the
3 Missouri MPA when they knowingly and intentionally misrepresented the Class
4 Vehicles as safe and reliable and the defective ACU and ASICs installed in them as
5 properly-functioning and free from defects. Specifically, ZF Electronics USA, ZF
6 Passive Safety USA, and ZF Automotive USA worked with the Vehicle
7 Manufacturer Defendants on the design and inclusion of the airbag readiness
8 indicators in the Class Vehicles, which falsely assured Plaintiffs and Class
9 Members that the Occupant Restraint Systems in the Class Vehicles would function
10 properly in a crash.

11 3553. By misrepresenting, failing to disclose, and actively concealing the
12 dangers and risk posed by the Class Vehicles due to the ACU Defect, the ZF and
13 ST Defendants engaged in unlawful business practices prohibited by Mo. Rev. Stat.
14 § 407.020(1), including using or employing deception and fraud, and/or the
15 misrepresentation, concealment, suppression or omission of material facts regarding
16 the ACU Defect.

17 3554. The ZF and ST Defendants' unfair or deceptive acts or practices,
18 including their misrepresentations, concealments, omissions, and suppressions of
19 material facts, were designed to mislead and had a tendency or capacity to mislead
20 and create a false impression in consumers that the Class Vehicles had properly-
21 functioning and reliable airbags and seatbelts, and that the Occupant Restraint
22 System did not contain the ACU Defect and would perform its intended function of
23 activating the seatbelts and airbags during a collision. Indeed, those
24 misrepresentations, concealments, omissions, and suppressions of material facts did
25 in fact deceive reasonable consumers, including the Missouri Plaintiff and Missouri
26 State Class members, about the true safety and reliability of Class Vehicles and/or
27 the defective ACUs and ASICs installed in them, the quality of the Class Vehicles,
28 and the true value of the Class Vehicles.

1 3555. The Missouri Plaintiff and Missouri State Class members justifiably
2 relied on the ZF and ST Defendants’ misrepresentations, omissions, and
3 concealment, as they had no way of discerning that the Class Vehicles contained
4 the ACU Defect, as alleged above. The Missouri Plaintiff and Missouri State Class
5 members did not, and could not, unravel the ZF and ST Defendants’ deception on
6 their own.

7 3556. The ZF and ST Defendants’ misrepresentations and concealment of the
8 ACU Defect and true characteristics of the defective ACUs and ASICs in the Class
9 Vehicles were material to the decisions of the Missouri Plaintiff and Missouri State
10 Class members to purchase and lease Class Vehicles, as the ZF and ST Defendants
11 intended. Had they known the truth, the Missouri Plaintiff and Missouri State Class
12 members would not have purchased or leased the Class Vehicles, or would have
13 paid significantly less for them.

14 3557. The Missouri Plaintiff and Missouri State Class members suffered
15 ascertainable losses and actual damages as a direct and proximate result of the ZF
16 and ST Defendants’ misrepresentations, concealment and/or failure to disclose
17 material information.

18 3558. The ZF and ST Defendants’ violations present a continuing risk to the
19 Missouri Plaintiff and Missouri State Class members, as well as to the general
20 public, because the Class Vehicles remain unsafe due to the defective ACUs and
21 ASICs therein. The ZF and ST Defendants’ unlawful acts and practices complained
22 of herein affect the public interest.

23 3559. Pursuant to Mo. Rev. Stat. § 407.025, the Missouri Plaintiff and
24 Missouri State Class members seek an order enjoining the ZF and ST Defendants’
25 unfair or deceptive acts or practices and awarding damages and any other just and
26 proper relief available under the Missouri MPA.

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**e. Missouri Count 5: Fraud by Omission and Concealment
Against Kia Korea and Kia USA**

3560. Plaintiffs reallege and incorporate by reference all preceding allegations as though fully set forth herein.

3561. The Missouri Plaintiff brings this count individually and on behalf of members of the Missouri State Class who purchased or leased Kia Class Vehicles, against Kia Korea and Kia USA.

3562. Kia Korea and Kia USA are liable for both fraudulent concealment and non-disclosure. See, e.g., Restatement (Second) of Torts §§ 550-51 (1977).

3563. As explained in Section IV.A, the ACU Defect in Class Vehicles poses serious risks to vehicle occupants, including that it can cause: (1) airbags and seatbelts not to activate during a crash because crashes can sometimes release electrical transients, which cause the ACU to fail; (2) airbags to deploy when the vehicle has not crashed, which is dangerous because it is shocking and difficult for the driver to operate a vehicle when the airbag deploys without warning; and (3) failures of other important post-crash operations of the safety system, such as unlocking doors to facilitate escape or extraction of drivers and passengers by emergency personnel, and shutting off a crashed vehicle’s fuel or power supply.

3564. Kia Korea and Kia USA had a duty to disclose the ACU Defect to the Missouri Plaintiff and the Missouri State Class members because:

- a. Kia Korea and Kia USA had exclusive access to and far superior knowledge about technical facts regarding the ACU Defect;
- b. Given the ACU Defect’s hidden and technical nature, the Missouri Plaintiff and Missouri State Class members lack the sophisticated expertise in vehicle components and electrical phenomena that would be necessary to discover the ACU Defect on their own;

1 c. Kia Korea and Kia USA knew that the ACU Defect gave rise to
2 serious safety concerns for the consumers who use the vehicles,
3 and the Kia Class Vehicles containing the ACU Defect would
4 have been a material fact to the Missouri Plaintiff's and
5 Missouri State Class members' decisions to buy or lease Kia
6 Class Vehicles; and

7 d. Kia Korea and Kia USA made incomplete representations about
8 the safety and reliability of the Kia Class Vehicles and their
9 Occupant Restraint System, while purposefully withholding
10 material facts about a known safety defect. In uniform
11 advertising and materials provided with each Class Vehicle, Kia
12 Korea, and Kia USA intentionally concealed, suppressed, and
13 failed to disclose to the Missouri Plaintiff and Missouri State
14 Class members that the Kia Class Vehicles contained the ACU
15 Defect. Because they volunteered to provide information about
16 the Kia Class Vehicles that they marketed and offered for sale
17 and lease to the Missouri Plaintiff and Missouri State Class
18 members, Kia Korea and Kia USA had the duty to disclose the
19 whole truth.

20 3565. In breach of their duties, Kia Korea and Kia USA failed to disclose
21 that the Kia Class Vehicles were not safe and reliable, and that their Occupant
22 Restraint Systems, including their airbags and seatbelt pretensioners could fail in
23 the event of a crash due to the ACU Defect.

24 3566. Kia Korea and Kia USA intended for the Missouri Plaintiff and
25 Missouri State Class members to rely on their omissions—which they did by
26 purchasing and leasing the Kia Class Vehicles at the prices they paid believing that
27 the Occupant Restraint Systems in their Class Vehicles would function properly.
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1 3567. That reliance was reasonable, because a reasonable consumer would
2 not have expected that the Kia Class Vehicles contained a safety defect that poses
3 such a serious risk. Kia Korea and Kia USA knew that reasonable consumers
4 expect that their vehicle has working airbags and seatbelt pretensioners and would
5 rely on those facts in deciding whether to purchase, lease, or retain a new or used
6 motor vehicle. Whether a manufacturer's products are safe and reliable, and
7 whether that manufacturer stands behind its products, are material concerns to a
8 consumer. Especially here when at least nine people have already died due to the
9 ACU Defect, and many more have been injured.

10 3568. Additionally, Kia Korea and Kia USA ensured that the Missouri
11 Plaintiff and Missouri State Class members did not discover this information by
12 actively concealing and misrepresenting the true nature of the Kia Class Vehicles'
13 Occupant Restraint Systems to consumers and NHTSA.

14 3569. Kia Korea and Kia USA actively concealed and suppressed these
15 material facts, in whole or in part, to maintain a market for their Class Vehicles, to
16 protect profits, and to avoid costly recalls that would expose them to liability for
17 those expenses and harm the commercial reputations of Defendants and their
18 products. They did so at the expense of the Missouri Plaintiff and Missouri State
19 Class members.

20 3570. To this day, Kia Korea and Kia USA have not fully and adequately
21 disclosed the ACU Defect, and they continue to conceal material information about
22 the defect from consumers and NHTSA. The omitted and concealed facts were
23 material because a reasonable person would find them important in purchasing,
24 leasing, or retaining a new or used motor vehicle, and because they directly impact
25 the value of the Kia Class Vehicles purchased or leased by the Missouri Plaintiff
26 and Missouri State Class members.

27 3571. Had they been aware of the ACU Defect in the Kia Class Vehicles,
28 and Kia Korea's and Kia USA's callous disregard for safety, the Missouri Plaintiff

1 and Missouri State Class members either would not have paid as much as they did
2 for their Class Vehicles, or they would not have purchased or leased them.

3 3572. As alleged in Section V above, if Kia Korea and Kia USA had fully
4 and adequately disclosed the ACU Defect to consumers and NHTSA, the Missouri
5 Plaintiff and Missouri State Class members would have seen such a disclosure.

6 3573. Accordingly, Kia Korea and Kia USA are liable to the Missouri
7 Plaintiff and Missouri State Class members for their damages in an amount to be
8 proven at trial, including, but not limited to, their lost overpayment for the Kia
9 Class Vehicles at the time of purchase or lease.

10 3574. Kia Korea's and Kia USA's acts were done maliciously, oppressively,
11 deliberately, with intent to defraud; in reckless disregard of the Missouri Plaintiff's
12 and Missouri State Class members' rights and well-being; and to enrich themselves.
13 Kia Korea's and Kia USA's misconduct warrants an assessment of punitive
14 damages, as permitted by law, in an amount sufficient to deter such conduct in the
15 future, which amount shall be determined according to proof at trial.

16 **f. Missouri Count 6: Fraud by Omission and Concealment**
17 **Against ZF Electronics USA, ZF Passive Safety USA, ZF**
18 **Automotive USA, ZF TRW Corp., ZF Germany, ST Italy,**
ST USA, and ST Malaysia

19 3575. Plaintiffs reallege and incorporate by reference all preceding
20 allegations as though fully set forth herein.

21 3576. The Missouri Plaintiff brings this count individually and on behalf of
22 members of the Missouri State Class who purchased or leased Class Vehicles,
23 against ZF Electronics USA, ZF Passive Safety USA, ZF Automotive USA, ZF
24 TRW Corp., and ZF Germany (collectively, the "ZF Defendants"), and ST Italy, ST
25 Malaysia, and ST USA (collectively, the "ST Defendants").

26 3577. The ZF and ST Defendants are liable for both fraudulent concealment
27 and non-disclosure. See, e.g., Restatement (Second) of Torts §§ 550-51 (1977).
28

1 3578. As explained in Section IV.A, the ACU Defect in Class Vehicles poses
2 serious risks to vehicle occupants, including that it can cause: (1) airbags and
3 seatbelts not to activate during a crash because crashes can sometimes release
4 electrical transients, which cause the ACU to fail; (2) airbags to deploy when the
5 vehicle has not crashed, which is dangerous because it is shocking and difficult for
6 the driver to operate a vehicle when the airbag deploys without warning; and (3)
7 failures of other important post-crash operations of the safety system, such as
8 unlocking doors to facilitate escape or extraction of drivers and passengers by
9 emergency personnel, and shutting off a crashed vehicle’s fuel or power supply.

10 3579. The ZF and ST Defendants had a duty to disclose the ACU Defect to
11 the Missouri Plaintiff and Missouri State Class members because:

- 12 a. The ZF and ST Defendants had exclusive access to and far
13 superior knowledge about technical facts regarding the ACU
14 Defect;
- 15 b. Given the ACU Defect’s hidden and technical nature, the
16 Missouri Plaintiff and Missouri State Class members lack the
17 sophisticated expertise in vehicle components and electrical
18 phenomena that would be necessary to discover the ACU Defect
19 on their own;
- 20 c. The ZF and ST Defendants knew that the ACU Defect gave rise
21 to serious safety concerns for the consumers who use the
22 vehicles, and the Class Vehicles containing the ACU Defect
23 would have been a material fact to the Missouri Plaintiff’s and
24 Missouri State Class members’ decisions to buy or lease Class
25 Vehicles; and
- 26 d. The ZF Defendants made incomplete representations about the
27 safety and reliability of the Class Vehicles and their Occupant
28 Restraint System, while purposefully withholding material facts

1 about a known safety defect, creating a duty to disclose the
2 whole truth. Specifically, ZF Electronics USA, ZF Passive
3 Safety USA, and ZF Automotive USA worked with the Vehicle
4 Manufacturer Defendants on the design and inclusion of the
5 airbag readiness indicators in the Class Vehicles, which falsely
6 assured Plaintiffs and Class Members that the Occupant
7 Restraint Systems in the Class Vehicles would function properly
8 in a crash.

9 3580. In breach of their duties, the ZF and ST Defendants failed to disclose
10 that the Class Vehicles were not safe and reliable, and that their Occupant Restraint
11 Systems, including their airbags and seatbelt pretensioners could fail in the event of
12 a crash due to the ACU Defect.

13 3581. The ZF and ST Defendants intended for the Missouri Plaintiff and
14 Missouri State Class members to rely on their omissions—which they did by
15 purchasing and leasing the Class Vehicles at the prices they paid believing that the
16 Occupant Restraint Systems in their Class Vehicles would function properly.

17 3582. That reliance was reasonable, because a reasonable consumer would
18 not have expected that the Class Vehicles contained a safety defect that poses such
19 a serious risk. The ZF and ST Defendants knew that reasonable consumers expect
20 that their vehicle has working airbags and seatbelt pretensioners and would rely on
21 those facts in deciding whether to purchase, lease, or retain a new or used motor
22 vehicle. Whether a manufacturer's products are safe and reliable, and whether that
23 manufacturer stands behind its products, are material concerns to a consumer.
24 Especially here when at least nine people have already died due to the ACU Defect,
25 and many more have been injured.

26 3583. Additionally, the ZF and ST Defendants ensured that the Missouri
27 Plaintiff and Missouri State Class members did not discover this information by
28

1 actively concealing and misrepresenting the true nature of the Class Vehicles’
2 Occupant Restraint Systems to consumers and NHTSA.

3 3584. The ZF and ST Defendants actively concealed and suppressed these
4 material facts, in whole or in part, to maintain a market for the DS84 ACU, to
5 protect profits, and to avoid costly recalls that would expose them to liability for
6 those expenses and harm the commercial reputations of Defendants and their
7 products. They did so at the expense of the Missouri Plaintiff and Missouri State
8 Class members.

9 3585. To this day, the ZF and ST Defendants have not fully and adequately
10 disclosed the ACU Defect, and they continue to conceal material information about
11 the defect from consumers and NHTSA. The omitted and concealed facts were
12 material because a reasonable person would find them important in purchasing,
13 leasing, or retaining a new or used motor vehicle, and because they directly impact
14 the value of the Class Vehicles purchased or leased by the Missouri Plaintiff and
15 Missouri State Class members.

16 3586. Had they been aware of the ACU Defect in the Class Vehicles, and the
17 ZF and ST Defendants’ callous disregard for safety, the Missouri Plaintiff and
18 Missouri State Class members either would not have paid as much as they did for
19 their Class Vehicles, or they would not have purchased or leased them.

20 3587. As alleged in Section V above, if the ZF and ST Defendants had fully
21 and adequately disclosed the ACU Defect to consumers and NHTSA, the Missouri
22 Plaintiff and Missouri State Class members would have seen such a disclosure.

23 3588. Accordingly, the ZF and ST Defendants are liable to the Missouri
24 Plaintiff and Missouri State Class members for their damages in an amount to be
25 proven at trial, including, but not limited to, their lost overpayment for the Class
26 Vehicles at the time of purchase or lease.

27 3589. The ZF and ST Defendants’ acts were done maliciously, oppressively,
28 deliberately, with intent to defraud; in reckless disregard of the Missouri Plaintiff’s

1 and Missouri State Class members' rights and well-being; and to enrich themselves.
2 The ZF and ST Defendants' misconduct warrants an assessment of punitive
3 damages, as permitted by law, in an amount sufficient to deter such conduct in the
4 future, which amount shall be determined according to proof at trial.

5 **g. Missouri Count 7: Unjust Enrichment Against the Kia**
6 **Korea and Kia USA**

7 3590. Plaintiffs reallege and incorporate by reference all allegations in
8 Sections I-VI above as though fully set forth herein.

9 3591. The Missouri Plaintiff brings this count individually and on behalf of
10 members of the Missouri State Class who purchased or leased Kia Class Vehicles,
11 against Kia Korea and Kia USA.

12 3592. The Missouri Plaintiff and Missouri State Class members conferred
13 tangible and material monetary benefits upon Kia Korea and Kia USA when they
14 purchased or leased the Kia Class Vehicles. Kia Korea and Kia USA readily
15 accepted and retained these benefits.

16 3593. The Missouri Plaintiff and Missouri State Class members would not
17 have purchased or leased the Kia Class Vehicles, or would have paid less for them,
18 had they known of the ACU Defect at the time of purchase or lease. Therefore, Kia
19 Korea and Kia USA profited from the sale and lease of the Kia Class Vehicles to
20 the detriment and expense of the Missouri Plaintiff and Missouri State Class
21 members.

22 3594. Kia Korea and Kia USA appreciated these monetary benefits. These
23 benefits were the expected result of Kia Korea and Kia USA acting in their
24 pecuniary interest at the expense of their customers. Kia Korea and Kia USA knew
25 of these benefits because they were aware of the ACU Defect, yet they failed to
26 disclose this knowledge and misled the Missouri Plaintiff and Missouri State Class
27 members regarding the nature and quality of the Kia Class Vehicles while profiting
28 from this deception.

1 3595. It would be unjust, inequitable, and unconscionable for Kia Korea and
2 Kia USA to retain these monetary benefits, including because they were procured
3 as a result of Kia Korea’s and Kia USA’s wrongful conduct alleged above.

4 3596. The Missouri Plaintiff and Missouri State Class members are entitled
5 to restitution of the benefits Kia Korea and Kia USA unjustly retained and/or any
6 amounts necessary to return the Missouri Plaintiff and Missouri State Class
7 members to the position they occupied prior to dealing with Kia Korea and Kia
8 USA, with such amounts to be determined at trial.

9 3597. The Missouri Plaintiff pleads this claim separately as well as in the
10 alternative to his claims for damages under Fed. R. Civ. P. 8(a)(3), because if the
11 Missouri Plaintiff’s claims for damages are dismissed or judgment is entered in
12 favor of Defendants, the Missouri Plaintiff would have no adequate legal remedy.

13 **14. Nevada**

14 **a. Nevada Count 1: Breach of Express Warranty (Nev. Rev. Stat. §§ 104.2313 and 104A.2210) Against Toyota Sales USA¹⁴**

15
16 3598. Plaintiffs reallege and incorporate by reference all preceding
17 allegations as though fully set forth herein.

18 3599. Plaintiff Gary Samouris (hereinafter, “Nevada Plaintiff”) brings this
19 count individually and on behalf of members of the Nevada State Class who
20 purchased or leased Toyota Class Vehicles, against Toyota Sales USA.

21 3600. Toyota Sales USA is and was at all relevant times a “merchant” with
22 respect to motor vehicles under Nev. Rev. Stat. §§ 104.2104(1) and 104A.2103(3),
23 and a “seller” of motor vehicles under § 104.2103(1)(c).

24 3601. With respect to leases, Toyota Sales USA is and was at all relevant
25 times a “lessor” of motor vehicles under Nev. Rev. Stat. § 104A.2103(1)(p).

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28 ¹⁴ The Court held in its February 9, 2022 Order that the Nevada Plaintiff stated a claim for breach of express warranty. *See* ECF No. 396 at 150.

1 3602. All Nevada State Class members who purchased Toyota Class
2 Vehicles in Nevada are “buyers” within the meaning of Nev. Rev. Stat.
3 § 104.2103(1)(a).

4 3603. All Nevada State Class members who leased Toyota Class Vehicles in
5 Nevada are “lessees” within the meaning of Nev. Rev. Stat. § 104A.2103(1)(n).

6 3604. The Toyota Class Vehicles are and were at all relevant times “goods”
7 within the meaning of Nev. Rev. Stat. §§ 104.2105(1) and 104A.2103(1)(h).

8 3605. In connection with the purchase or lease of Toyota Class Vehicles,
9 Toyota Sales USA provided the Nevada Plaintiff and Nevada State Class members
10 with warranties in the form of: (a) written express warranties covering the repair or
11 replacement of components that are defective in materials or workmanship, and (b)
12 descriptions of the Toyota Class Vehicles as safe and reliable, and that their
13 Occupant Restraint Systems, including their airbags and seatbelt pretensioners,
14 would function properly in the event of a crash

15 3606. However, Toyota Sales USA knew or should have known that the
16 warranties were false and/or misleading. Specifically, Toyota Sales USA was aware
17 of the ACU Defect in the Toyota Class Vehicles, which made the vehicles
18 inherently defective and dangerous at the time that they were sold and leased to the
19 Nevada Plaintiff and Nevada State Class members.

20 3607. The Nevada Plaintiff and Nevada State Class members were aware the
21 Toyota Class Vehicles were covered by express warranties, and those warranties
22 were an essential part of the bargain between them and Toyota Sales USA when the
23 Nevada Plaintiff and Nevada State Class members unknowingly purchased and
24 leased Toyota Class Vehicles that came equipped with defective ACUs and ASICs.

25 3608. Toyota Sales USA misrepresented the Toyota Class Vehicles as safe
26 and reliable while concealing that they contained the ACU Defect, the Nevada
27 Plaintiff and Nevada State Class members were exposed to those
28 misrepresentations, and the Nevada Plaintiff and Nevada State Class members had

1 no way of discerning that Toyota Sales USA's representations were false and
2 misleading or otherwise learning the material facts that Toyota Sales USA had
3 concealed or failed to disclose. Accordingly, the Nevada Plaintiff and Nevada State
4 Class members reasonably relied on Toyota Sales USA's express warranties when
5 purchasing or leasing their Toyota Class Vehicles. Plaintiffs allege the information
6 they relied upon in Section II.B above. To aid review of this information, Exhibit
7 19 provides paragraph numbers for each Plaintiff.

8 3609. Toyota Sales USA knowingly breached its express warranties to repair
9 defects in materials and workmanship by failing to repair the ACU Defect or
10 replace the defective ACUs and ASICs in the Toyota Class Vehicles. Toyota Sales
11 USA also breached its express warranties by selling and leasing Toyota Class
12 Vehicles with a defect that was never disclosed to the Nevada Plaintiff and Nevada
13 State Class members.

14 3610. The Nevada Plaintiff and Nevada State Class members provided
15 Toyota Sales USA with reasonable notice and opportunity to cure the breaches of
16 its express warranties by way of the numerous NHTSA complaints filed against it,
17 and the individual notice letters sent by Nevada State Class members within a
18 reasonable amount of time after the ACU Defect became public. Additionally, on
19 April 24, 2020, a notice letter was sent on behalf of the Nevada Plaintiff and
20 Nevada State Class members to Toyota Sales USA.

21 3611. Alternatively, the Nevada Plaintiff and Nevada State Class members
22 were excused from providing Toyota Sales USA with notice and an opportunity to
23 cure the breach, because it would have been futile. As alleged above, Toyota Sales
24 USA has long known that the Toyota Class Vehicles contained the ACU Defect,
25 and that the ACU Defect has caused ACUs and ASICs to malfunction in crashes
26 involving Class Vehicles; however, to date, Toyota Sales USA has not instituted a
27 recall or any other repair program with respect to the unrecalled Toyota Class
28 Vehicles, or even acknowledged that the ACU Defect still exists in all Toyota Class

1 Vehicles, including the recalled Toyota Class Vehicles—even though Toyota Class
2 Vehicles are subject to the NHTSA investigation. Therefore, the Nevada Plaintiff
3 and Nevada State Class members had no reason to believe that Toyota Sales USA
4 would have repaired the ACU Defect if the Nevada Plaintiff and Nevada State
5 Class members presented their Class Vehicles to it for repair.

6 3612. As a direct and proximate result of Toyota Sales USA’s breach of its
7 express warranties, the Toyota Class Vehicles were and are defective and the ACU
8 Defect in the Nevada Plaintiff’s and Nevada State Class members’ Toyota Class
9 Vehicles was not remedied. Therefore, the Nevada Plaintiff and Nevada State Class
10 members have been damaged, in an amount to be proven at trial, through their
11 overpayment at the time of purchase or lease for Toyota Class Vehicles with an
12 undisclosed safety defect that would not be remedied.

13 **b. Nevada Count 2: Breach of Implied Warranty of**
14 **Merchantability (Nev. Rev. Stat. §§ 104.2314 and**
104A.2212) Against Toyota Sales USA

15 3613. Plaintiffs reallege and incorporate by reference all preceding
16 allegations as though fully set forth herein.

17 3614. The Nevada Plaintiff brings this count individually and on behalf of
18 members of the Nevada State Class who purchased or leased Toyota Class
19 Vehicles, against Toyota Sales USA.

20 3615. A warranty that the Toyota Class Vehicles were in merchantable
21 condition and fit for the ordinary purpose for which such goods are used is implied
22 by law pursuant to Nev. Rev. Stat. §§ 104.2314 and 104A.2212.

23 3616. Toyota Sales USA is and was at all relevant times a “merchant” with
24 respect to motor vehicles under Nev. Rev. Stat. §§ 104.2104(1) and 104A.2103(3),
25 and a “seller” of motor vehicles under § 104.2103(1)(c).

26 3617. With respect to leases, Toyota Sales USA is and was at all relevant
27 times a “lessor” of motor vehicles under Nev. Rev. Stat. § 104A.2103(1)(p).
28

1 3618. All Nevada State Class members who purchased Toyota Class
2 Vehicles in Nevada are “buyers” within the meaning of Nev. Rev. Stat.
3 § 104.2103(1)(a).

4 3619. All Nevada State Class members who leased Toyota Class Vehicles in
5 Nevada are “lessees” within the meaning of Nev. Rev. Stat. § 104A.2103(1)(n).

6 3620. The Toyota Class Vehicles are and were at all relevant times “goods”
7 within the meaning of Nev. Rev. Stat. §§ 104.2105(1) and 104A.2103(1)(h).

8 3621. The Toyota Class Vehicles did not comply with the implied warranty
9 of merchantability because, at the time of sale and lease and at all times thereafter,
10 they were defective and not in merchantable condition, would not pass without
11 objection in the trade, and were not fit for the ordinary purpose for which vehicles
12 were used. Specifically, at the time they were sold and leased, the Toyota Class
13 Vehicles contained the ACU Defect, which may cause the airbags and seatbelt
14 pretensioners to fail to deploy during a crash, the failure to unlock doors
15 automatically after a crash, the failure to turn off a fuel supply or high-voltage
16 battery after a crash, or the airbags to inadvertently deploy, all of which render the
17 Toyota Class Vehicles inherently defective and dangerous.

18 3622. The Nevada Plaintiff and Nevada State Class members have provided
19 Toyota Sales USA with reasonable notice and opportunity to cure the breaches of
20 their implied warranties by way of the numerous NHTSA complaints filed against
21 them, and the individual notice letters sent by Nevada State Class members within a
22 reasonable amount of time after the ACU Defect became public. Additionally, on
23 April 24, 2020, a notice letter was sent on behalf of the Nevada Plaintiff and
24 Nevada State Class members to Toyota Sales USA.

25 3623. Alternatively, the Nevada Plaintiff and Nevada State Class members
26 were excused from providing Toyota Sales USA with notice and an opportunity to
27 cure the breach, because it would have been futile. As alleged above, Toyota Sales
28 USA has long known that the Toyota Class Vehicles contained the ACU Defect,

1 and that the ACU Defect has caused ACUs and ASICs to malfunction in crashes
2 involving Class Vehicles; however, to date, Toyota Sales USA has not instituted a
3 recall or any other repair program with respect to the unrecalled Toyota Class
4 Vehicles, or even acknowledged that the ACU Defect still exists in all Toyota Class
5 Vehicles, including the recalled Toyota Class Vehicles—even though Toyota Class
6 Vehicles are subject to the NHTSA investigation. Therefore, the Nevada Plaintiff
7 and Nevada State Class members had no reason to believe that Toyota Sales USA
8 would have repaired the ACU Defect if the Nevada Plaintiff and Nevada State
9 Class members presented their Class Vehicles to it for repair.

10 3624. As a direct and proximate result of Toyota Sales USA’s breach of the
11 implied warranty of merchantability, the Nevada Plaintiff and Nevada State Class
12 members have been damaged through their overpayment at the time of purchase or
13 lease for Toyota Class Vehicles with an undisclosed safety defect in an amount to
14 be proven at trial.

15 **c. Nevada Count 3: Violation of the Nevada Deceptive Trade**
16 **Practices Act (Nev. Rev. Stat. § 598.0903, et seq.) Against**
17 **Toyota Sales USA and Toyota USA**

18 3625. Plaintiffs reallege and incorporate by reference all preceding
19 allegations as though fully set forth herein.

20 3626. The Nevada Plaintiff brings this count individually and on behalf of
21 members of the Nevada State Class who purchased or leased Toyota Class
22 Vehicles, against Toyota Sales USA and Toyota USA.

23 3627. The Nevada Deceptive Trade Practices Act (“Nevada DTPA”), Nev.
24 Rev. Stat. § 598.0903, et. seq. prohibits the use of deceptive trade practices in the
25 course of business and occupation.

26 3628. In the course of their business, Toyota Sales USA and Toyota USA,
27 through their agents, employees, and/or subsidiaries, violated the Nevada DTPA by
28 knowingly and intentionally misrepresenting, omitting, concealing, and/or failing to
disclose material facts regarding the reliability, safety, and performance of the

1 Toyota Class Vehicles, the safety of their Occupant Restraint Systems, and the
2 ACU Defect, as detailed above.

3 3629. Toyota Sales USA and Toyota USA had an ongoing duty to the
4 Nevada Plaintiff and Nevada State Class members to refrain from unfair or
5 deceptive practices under the Nevada DTPA in the course of their business.
6 Specifically, Toyota Sales USA and Toyota USA owed the Nevada Plaintiff and
7 Nevada State Class members a duty to disclose all the material facts concerning the
8 ACU Defect in the Toyota Class Vehicles because they possessed exclusive
9 knowledge, they intentionally concealed the ACU Defect from the Toyota Plaintiff
10 and Toyota State Class members, and/or they made misrepresentations that were
11 rendered misleading because they were contradicted by withheld facts.

12 3630. By misrepresenting the Toyota Class Vehicles as safe and reliable and
13 the defective ACU and ASICs installed in them as properly-functioning and free
14 from defects, and by failing to disclose and actively concealing the dangers and risk
15 posed by the ACU Defect to both consumers and NHTSA, Toyota Sales USA and
16 Toyota USA engaged in one or more of the following unfair or deceptive business
17 practices prohibited by Nev. Rev. Stat. §§ 598.0915, 598.0923, and 598.0925:

- 18 a. Representing that the Toyota Class Vehicles and/or the defective
19 ACU and ASICs installed in them have certifications which they
20 do not have;
- 21 b. Representing that the Toyota Class Vehicles and/or the defective
22 ACU and ASICs installed in them have characteristics, uses,
23 benefits, and qualities which they do not have;
- 24 c. Representing that the Toyota Class Vehicles and/or the defective
25 ACU and ASICs installed in them are of a particular standard,
26 quality, and grade when they are not;

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- 1 d. Advertising the Toyota Class Vehicles and/or the defective ACU
- 2 and ASICs installed in them with the intent not to sell or lease
- 3 them as advertised;
- 4 e. Failing to disclose the defective ACU and ASICs in connection
- 5 with the sale of the Toyota Class Vehicles; and
- 6 f. Making an assertion of scientific fact in an advertisement which
- 7 would cause a reasonable person to believe that the assertion is
- 8 true.

9 Nev. Rev. Stat. §§ 598.0915(5), (7), (9), (15), 598.0923(2), and 598.0925.
10 3631. Toyota Sales USA’s and Toyota USA’s unfair and deceptive acts or
11 practices, including their misrepresentations, concealments, omissions, and
12 suppressions of material facts, were designed to mislead and had a tendency or
13 capacity to mislead and create a false impression in consumers that the Toyota
14 Class Vehicles had properly-functioning and reliable airbags and seatbelts, and that
15 the Occupant Restraint System did not contain the ACU Defect and would perform
16 its intended function of activating the seatbelts and airbags during a collision.
17 Indeed, those misrepresentations, concealments, omissions, and suppressions of
18 material facts did in fact deceive reasonable consumers, including the Nevada
19 Plaintiff and Nevada State Class members, about the true safety and reliability of
20 Toyota Class Vehicles and/or the defective ACUs and ASICs installed in them, the
21 quality of the Toyota Class Vehicles, and the true value of the Toyota Class
22 Vehicles.

23 3632. Toyota Sales USA’s and Toyota USA’s misrepresentations,
24 concealments, omissions, and suppressions of material facts regarding the ACU
25 Defect and true characteristics of the Occupant Restraint Systems in the Toyota
26 Class Vehicles were material to the decisions of the Nevada Plaintiff and Nevada
27 State Class members to purchase and lease those vehicles, as Toyota Sales USA
28 and Toyota USA intended. The Nevada Plaintiff and Nevada State Class members

1 were exposed to those misrepresentations, concealments, omissions, and
2 suppressions of material facts, and relied on Toyota Sales USA's and Toyota
3 USA's misrepresentations that the Toyota Class Vehicles and their Occupant
4 Restraint Systems were safe and reliable in deciding to purchase and lease Toyota
5 Class Vehicles. Plaintiffs allege the information they relied upon in Section II.B
6 above. To aid review of this information, Exhibit 19 provides paragraph numbers
7 for each Plaintiff.

8 3633. The Nevada Plaintiff's and Nevada State Class members' reliance was
9 reasonable, as they had no way of discerning that Toyota Sales USA's and Toyota
10 USA's representations were false and misleading, or otherwise learning the facts
11 that Toyota Sales USA and Toyota USA had concealed or failed to disclose. The
12 Nevada Plaintiff and Nevada State Class members did not, and could not, unravel
13 Toyota Sales USA's and Toyota USA's deception on their own.

14 3634. Had the Nevada Plaintiff and Nevada State Class members known the
15 truth about the ACU Defect, the Nevada Plaintiff and Nevada State Class members
16 would not have purchased or leased Toyota Class Vehicles, or would have paid
17 significantly less for them.

18 3635. The Nevada Plaintiff and Nevada State Class members suffered
19 ascertainable losses and actual damages through their overpayment at the time of
20 purchase and lease for Toyota Class Vehicles with an undisclosed safety defect as a
21 direct and proximate result of Toyota Sales USA's and Toyota USA's concealment,
22 misrepresentations, and/or failure to disclose material information.

23 3636. Toyota Sales USA's and Toyota USA's violations present a continuing
24 risk to the Nevada Plaintiff and Nevada State Class members, as well as to the
25 general public, because the Class Vehicles remain unsafe due to the defective
26 ACUs and ASICs therein. Additionally, their unlawful acts and practices
27 complained of herein affect the public interest.

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1 3637. Pursuant to Nev. Rev. Stat. §§ 41.600, the Nevada Plaintiff and
2 Nevada State Class members seek an order enjoining Toyota Sales USA’s and
3 Toyota USA’s unfair or deceptive acts or practices and awarding damages and any
4 other just and proper relief available under the Nevada DTPA.

5 **d. Nevada Count 4: Violation of the Nevada Deceptive Trade**
6 **Practices Act (Nev. Rev. Stat. § 598.0903, et seq.) Against ZF**
7 **Electronics USA, ZF Passive Safety USA, ZF Automotive**
8 **USA, ZF TRW Corp., ZF Germany, ST Italy, ST USA, and**
9 **ST Malaysia.**

10 3638. Plaintiffs reallege and incorporate by reference all preceding
11 allegations as though fully set forth herein.

12 3639. The Nevada Plaintiff brings this count individually and on behalf of
13 members of the Nevada State Class against ZF Electronics USA, ZF Passive Safety
14 USA, ZF Automotive USA, ZF TRW Corp., and ZF Germany (collectively, the
15 “ZF Defendants”), and ST Italy, ST Malaysia, and ST USA (collectively, the “ST
16 Defendants”).

17 3640. The Nevada Deceptive Trade Practices Act (“Nevada DTPA”), Nev.
18 Rev. Stat. § 598.0903, et. seq. prohibits the use of deceptive trade practices in the
19 course of business and occupation.

20 3641. The ZF and ST Defendants had an ongoing duty to the Nevada
21 Plaintiff and Nevada State Class members to refrain from unfair or deceptive
22 practices under the Nevada DTPA in the course of their business. Specifically, the
23 ZF and ST Defendants owed the Nevada Plaintiff and Nevada State Class members
24 a duty to disclose all the material facts concerning the ACU Defect in the Class
25 Vehicles because they possessed exclusive knowledge and they intentionally
26 concealed the ACU Defect from the Nevada Plaintiff and Nevada State Class
27 members.

28 3642. In the course of their business, the ZF and ST Defendants, through
their agents, employees, and/or subsidiaries, violated the Nevada DTPA by
knowingly and intentionally omitting, concealing, and failing to disclose material

1 facts regarding the existence, nature, and scope of the defective ACU and ASIC
2 installed in the Class Vehicles, as detailed above.

3 3643. Additionally, ZF Electronics USA, ZF Passive Safety USA, and ZF
4 Automotive USA, through their agents, employees, and/or subsidiaries, violated the
5 Nevada DTPA when they knowingly and intentionally misrepresented the Class
6 Vehicles as safe and reliable and the defective ACU and ASICs installed in them as
7 properly-functioning and free from defects. Specifically, ZF Electronics USA, ZF
8 Passive Safety USA, and ZF Automotive USA worked with the Vehicle
9 Manufacturer Defendants on the design and inclusion of the airbag readiness
10 indicators in the Class Vehicles, which falsely assured Plaintiffs and Class
11 Members that the Occupant Restraint Systems in the Class Vehicles would function
12 properly in a crash.

13 3644. By misrepresenting, failing to disclose, and actively concealing the
14 dangers and risk posed by the Class Vehicles due to the ACU Defect, the ZF and
15 ST Defendants engaged in deceptive acts or practices prohibited by the Nevada
16 DTPA.

17 3645. The ZF and ST Defendants' unfair or deceptive acts or practices,
18 including their misrepresentations, concealments, omissions, and suppressions of
19 material facts, were designed to mislead and had a tendency or capacity to mislead
20 and create a false impression in consumers that the Class Vehicles had properly-
21 functioning and reliable airbags and seatbelts, and that the Occupant Restraint
22 System did not contain the ACU Defect and would perform its intended function of
23 activating the seatbelts and airbags during a collision. Indeed, those
24 misrepresentations, concealments, omissions, and suppressions of material facts did
25 in fact deceive reasonable consumers, including the Nevada Plaintiff and Nevada
26 State Class members, about the true safety and reliability of Class Vehicles and/or
27 the defective ACUs and ASICs installed in them, the quality of the Class Vehicles,
28 and the true value of the Class Vehicles.

1 3646. The Nevada Plaintiff and Nevada State Class members justifiably
2 relied on the ZF and ST Defendants' misrepresentations, omissions, and
3 concealment, as they had no way of discerning that the Class Vehicles contained
4 the ACU Defect, as alleged above. The Nevada Plaintiff and Nevada State Class
5 members did not, and could not, unravel the ZF and ST Defendants' deception on
6 their own

7 3647. The ZF and ST Defendants' misrepresentations and concealment of the
8 ACU Defect and true characteristics of the defective ACUs and ASICs in the Class
9 Vehicles were material to the decisions of the Nevada Plaintiff and Nevada State
10 Class members to purchase and lease Class Vehicles, as the ZF and ST Defendants
11 intended. Had they known the truth, the Nevada Plaintiff and Nevada State Class
12 members would not have purchased or leased the Class Vehicles, or would have
13 paid significantly less for them.

14 3648. The Nevada Plaintiff and Nevada State Class members suffered
15 ascertainable losses and actual damages as a direct and proximate result of the ZF
16 and ST Defendants' misrepresentations, concealment and/or failure to disclose
17 material information.

18 3649. The ZF and ST Defendants' violations present a continuing risk to the
19 Nevada Plaintiff and Nevada State Class members, as well as to the general public,
20 because the Class Vehicles remain unsafe due to the defective ACUs and ASICs
21 therein. The ZF and ST Defendants' unlawful acts and practices complained of
22 herein affect the public interest.

23 3650. Pursuant to Nev. Rev. Stat. §§ 41.600, the Nevada Plaintiff and
24 Nevada State Class members seek an order enjoining the ZF and ST Defendants'
25 unfair or deceptive acts or practices and awarding damages and any other just and
26 proper relief available under the Nevada DTPA.

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1 **e. Nevada Count 5: Fraud by Omission and Concealment**
2 **Against Toyota Sales USA and Toyota USA**

3 3651. Plaintiffs reallege and incorporate by reference all preceding
4 allegations as though fully set forth herein.

5 3652. The Nevada Plaintiff brings this count individually and on behalf of
6 members of the Nevada State Class who purchased or leased Toyota Class
7 Vehicles, against Toyota Sales USA and Toyota USA.

8 3653. Toyota Sales USA and Toyota USA are liable for both fraudulent
9 concealment and non-disclosure. *See, e.g.*, Restatement (Second) of Torts §§ 550-
10 51 (1977).

11 3654. As explained in Section IV.A, the ACU Defect in Class Vehicles poses
12 serious risks to vehicle occupants, including that it can cause: (1) airbags and
13 seatbelts not to activate during a crash because crashes can sometimes release
14 electrical transients, which cause the ACU to fail; (2) airbags to deploy when the
15 vehicle has not crashed, which is dangerous because it is shocking and difficult for
16 the driver to operate a vehicle when the airbag deploys without warning; and (3)
17 failures of other important post-crash operations of the safety system, such as
18 unlocking doors to facilitate escape or extraction of drivers and passengers by
19 emergency personnel, and shutting off a crashed vehicle's fuel or power supply.

20 3655. Toyota Sales USA and Toyota USA had a duty to disclose the ACU
21 Defect to the Nevada Plaintiff and Nevada State Class members because:

- 22 a. Toyota Sales USA and Toyota USA had exclusive access to and
23 far superior knowledge about technical facts regarding the ACU
24 Defect;
- 25 b. Given the ACU Defect's hidden and technical nature, the
26 Nevada Plaintiff and Nevada State Class members lack the
27 sophisticated expertise in vehicle components and electrical
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1 phenomena that would be necessary to discover the ACU Defect
2 on their own;

3 c. Toyota Sales USA and Toyota USA knew that the ACU Defect
4 gave rise to serious safety concerns for the consumers who use
5 the vehicles, and the Toyota Class Vehicles containing the ACU
6 Defect would have been a material fact to the Nevada Plaintiff's
7 and Nevada State Class members' decisions to buy or lease
8 Toyota Class Vehicles; and

9 d. Toyota Sales USA and Toyota USA made incomplete
10 representations about the safety and reliability of the Toyota
11 Class Vehicles and their Occupant Restraint System, while
12 purposefully withholding material facts about a known safety
13 defect. In uniform advertising and materials provided with each
14 Class Vehicle, Toyota Sales USA and Toyota USA intentionally
15 concealed, suppressed, and failed to disclose to the Nevada
16 Plaintiff and Nevada State Class members that the Toyota Class
17 Vehicles contained the ACU Defect. Because they volunteered
18 to provide information about the Toyota Class Vehicles that they
19 marketed and offered for sale and lease to the Nevada Plaintiff
20 and Nevada State Class members, Toyota Sales USA and
21 Toyota USA had the duty to disclose the whole truth.

22 3656. In breach of their duties, Toyota Sales USA and Toyota USA failed to
23 disclose that the Toyota Class Vehicles were not safe and reliable, and that their
24 Occupant Restraint Systems, including their airbags and seatbelt pretensioners
25 could fail in the event of a crash due to the ACU Defect.

26 3657. Toyota Sales USA and Toyota USA intended for the Nevada Plaintiff
27 and Nevada State Class members to rely on their omissions—which they did by
28 purchasing and leasing the Toyota Class Vehicles at the prices they paid believing

1 that the Occupant Restraint Systems in their Class Vehicles would function
2 properly.

3 3658. That reliance was reasonable, because a reasonable consumer would
4 not have expected that the Toyota Class Vehicles contained a safety defect that
5 poses such a serious risk. Toyota Sales USA and Toyota USA knew that reasonable
6 consumers expect that their vehicle has working airbags and seatbelt pretensioners
7 and would rely on those facts in deciding whether to purchase, lease, or retain a
8 new or used motor vehicle. Whether a manufacturer's products are safe and
9 reliable, and whether that manufacturer stands behind its products, are material
10 concerns to a consumer. Especially here when at least nine people have already
11 died due to the ACU Defect, and many more have been injured.

12 3659. Additionally, Toyota Sales USA and Toyota USA ensured that the
13 Nevada Plaintiff and Nevada State Class members did not discover this information
14 by actively concealing and misrepresenting the true nature of the Toyota Class
15 Vehicles' Occupant Restraint Systems to consumers and NHTSA.

16 3660. Toyota Sales USA and Toyota USA actively concealed and suppressed
17 these material facts, in whole or in part, to maintain a market for their Class
18 Vehicles, to protect profits, and to avoid costly recalls that would expose them to
19 liability for those expenses and harm the commercial reputations of Defendants and
20 their products. They did so at the expense of the Nevada Plaintiff and Nevada State
21 Class members.

22 3661. To this day, Toyota Sales USA and Toyota USA have not fully and
23 adequately disclosed the ACU Defect, and they continue to conceal material
24 information about the defect from consumers and NHTSA. The omitted and
25 concealed facts were material because a reasonable person would find them
26 important in purchasing, leasing, or retaining a new or used motor vehicle, and
27 because they directly impact the value of the Toyota Class Vehicles purchased or
28 leased by the Nevada Plaintiff and Nevada State Class members.

1 3662. Had they been aware of the ACU Defect in the Toyota Class Vehicles,
2 and Toyota Sales USA's and Toyota USA's callous disregard for safety, the
3 Nevada Plaintiff and Nevada State Class members either would not have paid as
4 much as they did for their Class Vehicles, or they would not have purchased or
5 leased them.

6 3663. As alleged in Section V above, if Toyota Sales USA and Toyota USA
7 had fully and adequately disclosed the ACU Defect to consumers and NHTSA, the
8 Nevada Plaintiff and Nevada State Class members would have seen such a
9 disclosure.

10 3664. Accordingly, Toyota Sales USA and Toyota USA are liable to the
11 Nevada Plaintiff and Nevada State Class members for their damages in an amount
12 to be proven at trial, including, but not limited to, their lost overpayment for the
13 Toyota Class Vehicles at the time of purchase or lease.

14 3665. Toyota Sales USA's and Toyota USA's acts were done maliciously,
15 oppressively, deliberately, with intent to defraud; in reckless disregard of the
16 Nevada Plaintiff's and Nevada State Class members' rights and well-being; and to
17 enrich themselves. Toyota Sales USA's and Toyota USA's misconduct warrants an
18 assessment of punitive damages, as permitted by law, in an amount sufficient to
19 deter such conduct in the future, which amount shall be determined according to
20 proof at trial.

21 **f. Nevada Count 6: Fraud by Omission and Concealment**
22 **Against ZF Electronics USA, ZF Passive Safety USA, ZF**
23 **Automotive USA, ZF TRW Corp., ZF Germany, ST Italy,**
24 **ST USA, and ST Malaysia**

25 3666. Plaintiffs reallege and incorporate by reference all preceding
26 allegations as though fully set forth herein.

27 3667. The Nevada Plaintiff brings this count individually and on behalf of
28 members of the Nevada State Class who purchased or leased Class Vehicles,
against ZF Electronics USA, ZF Passive Safety USA, ZF Automotive USA, ZF

1 TRW Corp., and ZF Germany (collectively, the “ZF Defendants”), and ST Italy, ST
2 Malaysia, and ST USA (collectively, the “ST Defendants”).

3 3668. The ZF and ST Defendants are liable for both fraudulent concealment
4 and non-disclosure. *See, e.g.*, Restatement (Second) of Torts §§ 550-51 (1977).

5 3669. As explained in Section IV.A, the ACU Defect in Class Vehicles poses
6 serious risks to vehicle occupants, including that it can cause: (1) airbags and
7 seatbelts not to activate during a crash because crashes can sometimes release
8 electrical transients, which cause the ACU to fail; (2) airbags to deploy when the
9 vehicle has not crashed, which is dangerous because it is shocking and difficult for
10 the driver to operate a vehicle when the airbag deploys without warning; and (3)
11 failures of other important post-crash operations of the safety system, such as
12 unlocking doors to facilitate escape or extraction of drivers and passengers by
13 emergency personnel, and shutting off a crashed vehicle’s fuel or power supply.

14 3670. The ZF and ST Defendants had a duty to disclose the ACU Defect to
15 the Nevada Plaintiff and Nevada State Class members because:

- 16 a. The ZF and ST Defendants had exclusive access to and far
17 superior knowledge about technical facts regarding the ACU
18 Defect;
- 19 b. Given the ACU Defect’s hidden and technical nature, the
20 Nevada Plaintiff and Nevada State Class members lack the
21 sophisticated expertise in vehicle components and electrical
22 phenomena that would be necessary to discover the ACU Defect
23 on their own;
- 24 c. The ZF and ST Defendants knew that the ACU Defect gave rise
25 to serious safety concerns for the consumers who use the
26 vehicles, and the Class Vehicles containing the ACU Defect
27 would have been a material fact to the Nevada Plaintiff’s and
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1 Nevada State Class members’ decisions to buy or lease Class
2 Vehicles; and

3 d. The ZF Defendants made incomplete representations about the
4 safety and reliability of the Class Vehicles and their Occupant
5 Restraint System, while purposefully withholding material facts
6 about a known safety defect, creating a duty to disclose the
7 whole truth. Specifically, ZF Electronics USA, ZF Passive
8 Safety USA, and ZF Automotive USA worked with the Vehicle
9 Manufacturer Defendants on the design and inclusion of the
10 airbag readiness indicators in the Class Vehicles, which falsely
11 assured Plaintiffs and Class Members that the Occupant
12 Restraint Systems in the Class Vehicles would function properly
13 in a crash.

14 3671. In breach of their duties, the ZF and ST Defendants failed to disclose
15 that the Class Vehicles were not safe and reliable, and that their Occupant Restraint
16 Systems, including their airbags and seatbelt pretensioners could fail in the event of
17 a crash due to the ACU Defect.

18 3672. The ZF and ST Defendants intended for the Nevada Plaintiff and
19 Nevada State Class members to rely on their omissions—which they did by
20 purchasing and leasing the Class Vehicles at the prices they paid believing that the
21 Occupant Restraint Systems in their Class Vehicles would function properly.

22 3673. That reliance was reasonable, because a reasonable consumer would
23 not have expected that the Class Vehicles contained a safety defect that poses such
24 a serious risk. The ZF and ST Defendants knew that reasonable consumers expect
25 that their vehicle has working airbags and seatbelt pretensioners and would rely on
26 those facts in deciding whether to purchase, lease, or retain a new or used motor
27 vehicle. Whether a manufacturer’s products are safe and reliable, and whether that
28 manufacturer stands behind its products, are material concerns to a consumer.

1 Especially here when at least nine people have already died due to the ACU Defect,
2 and many more have been injured.

3 3674. Additionally, the ZF and ST Defendants ensured that the Nevada
4 Plaintiff and Nevada State Class members did not discover this information by
5 actively concealing and misrepresenting the true nature of the Class Vehicles’
6 Occupant Restraint Systems to consumers and NHTSA.

7 3675. The ZF and ST Defendants actively concealed and suppressed these
8 material facts, in whole or in part, to maintain a market for the DS84 ACU, to
9 protect profits, and to avoid costly recalls that would expose them to liability for
10 those expenses and harm the commercial reputations of Defendants and their
11 products. They did so at the expense of the Nevada Plaintiff and Nevada State Class
12 members.

13 3676. To this day, the ZF and ST Defendants have not fully and adequately
14 disclosed the ACU Defect, and they continue to conceal material information about
15 the defect from consumers and NHTSA. The omitted and concealed facts were
16 material because a reasonable person would find them important in purchasing,
17 leasing, or retaining a new or used motor vehicle, and because they directly impact
18 the value of the Class Vehicles purchased or leased by the Nevada Plaintiff and
19 Nevada State Class members.

20 3677. Had they been aware of the ACU Defect in the Class Vehicles, and the
21 ZF and ST Defendants’ callous disregard for safety, the Nevada Plaintiff and
22 Nevada State Class members either would not have paid as much as they did for
23 their Class Vehicles, or they would not have purchased or leased them.

24 3678. As alleged in Section V above, if the ZF and ST Defendants had fully
25 and adequately disclosed the ACU Defect to consumers and NHTSA, the Nevada
26 Plaintiff and Nevada State Class members would have seen such a disclosure.

27 3679. Accordingly, the ZF and ST Defendants are liable to the Nevada
28 Plaintiff and Nevada State Class members for their damages in an amount to be

1 proven at trial, including, but not limited to, their lost overpayment for the Class
2 Vehicles at the time of purchase or lease.

3 3680. The ZF and ST Defendants' acts were done maliciously, oppressively,
4 deliberately, with intent to defraud; in reckless disregard of the Nevada Plaintiff's
5 and Nevada State Class members' rights and well-being; and to enrich themselves.
6 The ZF and ST Defendants' misconduct warrants an assessment of punitive
7 damages, as permitted by law, in an amount sufficient to deter such conduct in the
8 future, which amount shall be determined according to proof at trial.

9 **g. Nevada Count 7: Unjust Enrichment Against Toyota Sales**
10 **USA, Toyota USA, and Toyota Engineering USA**

11 3681. Plaintiffs reallege and incorporate by reference all allegations in
12 Sections I-V above as though fully set forth herein.

13 3682. The Nevada Plaintiff brings this count individually and on behalf of
14 members of the Nevada State Class who purchased or leased Toyota Class
15 Vehicles, against Toyota Sales USA, Toyota USA, and Toyota Engineering USA.

16 3683. The Nevada Plaintiff and Nevada State Class members conferred
17 tangible and material monetary benefits upon Toyota Sales USA, Toyota USA, and
18 Toyota Engineering USA when they purchased or leased the Toyota Class
19 Vehicles. Toyota Sales USA, Toyota USA, and Toyota Engineering USA readily
20 accepted and retained these benefits.

21 3684. The Nevada Plaintiff and Nevada State Class members would not have
22 purchased or leased the Toyota Class Vehicles, or would have paid less for them,
23 had they known of the ACU Defect at the time of purchase or lease. Therefore,
24 Toyota Sales USA, Toyota USA, and Toyota Engineering USA profited from the
25 sale and lease of the Toyota Class Vehicles to the detriment and expense of the
26 Nevada Plaintiff and Nevada State Class members.

27 3685. Toyota Sales USA, Toyota USA, and Toyota Engineering USA
28 appreciated these monetary benefits. These benefits were the expected result of

1 Toyota Sales USA’s, Toyota USA’s, and Toyota Engineering USA’s acting in their
2 pecuniary interest at the expense of their customers. Toyota Sales USA, Toyota
3 USA, and Toyota Engineering USA knew of these benefits because they were
4 aware of the ACU Defect, yet they failed to disclose this knowledge and misled the
5 Nevada Plaintiff and Nevada State Class members regarding the nature and quality
6 of the Toyota Class Vehicles while profiting from this deception.

7 3686. It would be unjust, inequitable, and unconscionable for Toyota Sales
8 USA, Toyota USA, and Toyota Engineering USA to retain these monetary benefits,
9 including because they were procured as a result of Toyota Sales USA’s, Toyota
10 USA’s, and Toyota Engineering USA’s wrongful conduct alleged above.

11 3687. The Nevada Plaintiff and Nevada State Class members are entitled to
12 restitution of the benefits Toyota Sales USA, Toyota USA, and Toyota Engineering
13 USA unjustly retained and/or any amounts necessary to return the Nevada Plaintiff
14 and Nevada State Class members to the position they occupied prior to dealing with
15 Toyota Sales USA, Toyota USA, and Toyota Engineering USA, with such amounts
16 to be determined at trial.

17 3688. The Nevada Plaintiff pleads this claim separately as well as in the
18 alternative to his claims for damages under Fed. R. Civ. P. 8(a)(3), because if the
19 Nevada Plaintiff’s claims for damages are dismissed or judgment is entered in favor
20 of Defendants, the Nevada Plaintiff would have no adequate legal remedy.

21 **15. New Jersey**

22 **a. New Jersey Count 1: Breach of Implied Warranty of**
23 **Merchantability (N.J. Stat. Ann. §§ 12A:2-314 and 12A:2A-**
24 **212) Against Kia USA**

25 3689. Plaintiffs reallege and incorporate by reference all preceding
26 allegations as though fully set forth herein.

27 3690. Plaintiff Gersen Damens (hereinafter, “New Jersey Plaintiff”) brings
28 this count individually and on behalf of members of the New Jersey State Class
who purchased or leased Kia Class Vehicles, against Kia USA.

1 3691. A warranty that the Kia Class Vehicles were in merchantable condition
2 and fit for the ordinary purpose for which such goods are used is implied by law
3 pursuant to N.J. Stat. Ann. §§ 12A:2-314 and 12A:2A-212.

4 3692. Kia USA is and was at all relevant times a “merchant” with respect to
5 motor vehicles under N.J. Stat. Ann. §§ 12A:2-104(1) and 12A:2A-103(3), and a
6 “seller” of motor vehicles under § 12A:2-103(1)(d).

7 3693. With respect to leases, Kia USA is and was at all relevant times a
8 “lessor” of motor vehicles under N.J. Stat. Ann. § 12A:2A-103(1)(p).

9 3694. All New Jersey State Class members who purchased Kia Class
10 Vehicles in New Jersey are “buyers” within the meaning of N.J. Stat. Ann.
11 § 12A:2-103(1)(a).

12 3695. All New Jersey State Class members who leased Kia Class Vehicles in
13 New Jersey are “lessees” within the meaning of N.J. Stat. Ann. § 12A:2A-
14 103(1)(n).

15 3696. The Kia Class Vehicles are and were at all relevant times “goods”
16 within the meaning of N.J. Stat. Ann. §§ 12A:2-105(1) and 2A-103(1)(h).

17 3697. The Kia Class Vehicles did not comply with the implied warranty of
18 merchantability because, at the time of sale and lease and at all times thereafter,
19 they were defective and not in merchantable condition, would not pass without
20 objection in the trade, and were not fit for the ordinary purpose for which vehicles
21 were used. Specifically, at the time they were sold and leased, the Kia Class
22 Vehicles contained the ACU Defect, which may cause the airbags and seatbelt
23 pretensioners to fail to deploy during a crash, the failure to unlock doors
24 automatically after a crash, the failure to turn off a fuel supply or high-voltage
25 battery after a crash, or the airbags to inadvertently deploy, all of which render the
26 Kia Class Vehicles inherently defective and dangerous.

27 3698. The New Jersey Plaintiff and New Jersey State Class members have
28 provided Kia USA with reasonable notice and opportunity to cure the breaches of

1 its implied warranty by way of the numerous NHTSA complaints filed against it,
2 and individual notice letters sent by the New Jersey State Class members within a
3 reasonable amount of time after the ACU Defect became public. Additionally, on
4 April 24, 2020, a notice letter was sent on behalf of the New Jersey Plaintiff and
5 New Jersey State Class members to Kia USA.

6 3699. Alternatively, the New Jersey Plaintiff and New Jersey State Class
7 members were excused from providing Kia USA with notice and an opportunity to
8 cure the breach, because it would have been futile. As alleged above, Kia USA has
9 long known that the Kia Class Vehicles contained the ACU Defect, and that the
10 ACU Defect has caused ACUs and ASICs to malfunction in crashes involving
11 Class Vehicles; however, to date, Kia USA has not instituted a recall or any other
12 repair program with respect to the unrecalled Kia Class Vehicles, or even
13 acknowledged that the ACU Defect exists in all Kia Class Vehicles, including the
14 recalled Kia Class Vehicles—even though all of the Kia Class Vehicles are subject
15 to the NHTSA investigation. Therefore, the New Jersey Plaintiff and New Jersey
16 State Class members had no reason to believe that Kia USA would have repaired
17 the ACU Defect if the New Jersey Plaintiff and New Jersey State Class members
18 presented their Class Vehicles to it for repair.

19 3700. As a direct and proximate result of Kia USA’s breach of the implied
20 warranty of merchantability, the New Jersey Plaintiff and New Jersey State Class
21 members have been damaged through their overpayment at the time of purchase or
22 lease for Kia Class Vehicles with an undisclosed safety defect in an amount to be
23 proven at trial.

24 **b. New Jersey Count 2: Violation of New Jersey Consumer**
25 **Fraud Act (N.J. Stat. Ann. § 56:8-1, et seq.) Against Kia**
26 **Korea and Kia USA**

27 3701. Plaintiffs reallege and incorporate by reference all preceding
28 allegations as though fully set forth herein.

1 3702. The New Jersey Plaintiff brings this count individually and on behalf
2 of members of the New Jersey State Class who purchased or leased Kia Class
3 Vehicles, against Kia Korea and Kia USA.

4 3703. Kia Korea and Kia USA, the New Jersey Plaintiff, and New Jersey
5 State Class members are “persons” within the meaning of N.J. Stat. Ann. § 56:8-
6 1(d).

7 3704. The Kia Class Vehicles and the ACU and ASICs installed in them are
8 “merchandise” within the meaning of N.J. Stat. Ann. § 56:8-1(c).

9 3705. The New Jersey Consumer Fraud Act (“New Jersey CFA”) prohibits
10 unfair trade practices. N.J. Stat. Ann. § 56:8-2.

11 3706. In the course of their business, Kia Korea and Kia USA, through their
12 agents, employees, and/or subsidiaries, violated the New Jersey CFA by knowingly
13 and intentionally misrepresenting, omitting, concealing, and/or failing to disclose
14 material facts regarding the reliability, safety, and performance of the Kia Class
15 Vehicles, the safety of their Occupant Restraint Systems, and the ACU Defect, as
16 detailed above.

17 3707. Kia Korea and Kia USA had an ongoing duty to the New Jersey
18 Plaintiff and New Jersey State Class members to refrain from unfair or deceptive
19 practices under the New Jersey CFA in the course of their business. Specifically,
20 Kia Korea and Kia USA owed the New Jersey Plaintiff and New Jersey State Class
21 members a duty to disclose all the material facts concerning the ACU Defect in the
22 Kia Class Vehicles because they possessed exclusive knowledge, they intentionally
23 concealed the ACU Defect from the New Jersey Plaintiff and New Jersey State
24 Class members, and/or they made misrepresentations that were rendered misleading
25 because they were contradicted by withheld facts.

26 3708. By misrepresenting the Kia Class Vehicles as safe and reliable and the
27 defective ACU and ASICs installed in them as properly-functioning and free from
28 defects, and by failing to disclose and actively concealing the dangers and risk

1 posed by the ACU Defect to both consumers and NHTSA, Kia Korea and Kia USA
2 engaged in one or more of the following unfair or deceptive business practices
3 prohibited by N.J. Stat. Ann. § 56:8-2: using or employing deception, fraud, false
4 pretense, false promise or misrepresentation, or the concealment, suppression or
5 omission of a material fact with intent that others rely upon such concealment,
6 suppression or omission, in connection with the advertisement and sale/lease of the
7 Kia Class Vehicles.

8 3709. Kia Korea's and Kia USA's unfair and deceptive acts or practices,
9 including their misrepresentations, concealments, omissions, and suppressions of
10 material facts, were designed to mislead and had a tendency or capacity to mislead
11 and create a false impression in consumers that the Kia Class Vehicles had
12 properly-functioning and reliable airbags and seatbelts, and that the Occupant
13 Restraint System did not contain the ACU Defect and would perform its intended
14 function of activating the seatbelts and airbags during a collision. Indeed, those
15 misrepresentations, concealments, omissions, and suppressions of material facts did
16 in fact deceive reasonable consumers, including the New Jersey Plaintiff and New
17 Jersey State Class members, about the true safety and reliability of Kia Class
18 Vehicles and/or the defective ACUs and ASICs installed in them, the quality of the
19 Kia Class Vehicles, and the true value of the Kia Class Vehicles.

20 3710. Kia Korea's and Kia USA's misrepresentations, concealments,
21 omissions, and suppressions of material facts regarding the ACU Defect and true
22 characteristics of the Occupant Restraint Systems in the Kia Class Vehicles were
23 material to the decisions of the New Jersey Plaintiff and New Jersey State Class
24 members to purchase and lease those vehicles, as Kia Korea and Kia USA intended.
25 The New Jersey Plaintiff and New Jersey State Class members were exposed to
26 those misrepresentations, concealments, omissions, and suppressions of material
27 facts, and relied on Kia Korea's and Kia USA's misrepresentations that the Kia
28 Class Vehicles and their Occupant Restraint Systems were safe and reliable in

1 deciding to purchase and lease Kia Class Vehicles. Plaintiffs allege the information
2 they relied upon in Section II.B above. To aid review of this information, Exhibit
3 19 provides paragraph numbers for each Plaintiff.

4 3711. The New Jersey Plaintiff's and New Jersey State Class members'
5 reliance was reasonable, as they had no way of discerning that Kia Korea's and Kia
6 USA's representations were false and misleading, or otherwise learning the facts
7 that Kia Korea and Kia USA had concealed or failed to disclose. The New Jersey
8 Plaintiff and New Jersey State Class members did not, and could not, unravel Kia
9 Korea's and Kia USA's deception on their own.

10 3712. Had the New Jersey Plaintiff and New Jersey State Class members
11 known the truth about the ACU Defect, the New Jersey Plaintiff and New Jersey
12 State Class members would not have purchased or leased Kia Class Vehicles, or
13 would have paid significantly less for them.

14 3713. The New Jersey Plaintiff and New Jersey State Class members
15 suffered ascertainable losses and actual damages through their overpayment at the
16 time of purchase and lease for Kia Class Vehicles with an undisclosed safety defect
17 as a direct and proximate result of Kia Korea's and Kia USA's concealment,
18 misrepresentations, and/or failure to disclose material information.

19 3714. Kia Korea's and Kia USA's violations present a continuing risk to the
20 New Jersey Plaintiff and New Jersey State Class members, as well as to the general
21 public, because the Class Vehicles remain unsafe due to the defective ACUs and
22 ASICs therein. Additionally, their unlawful acts and practices complained of herein
23 affect the public interest.

24 3715. Pursuant to N.J. Stat. Ann. § 56:8-19, the New Jersey Plaintiff and
25 New Jersey State Class members seek an order enjoining Kia Korea's and Kia
26 USA's unfair or deceptive acts or practices and awarding damages and any other
27 just and proper relief available under the New Jersey CFA.

28

1 c. **New Jersey Count 3: Violation of New Jersey Consumer**
2 **Fraud Act (N.J. Stat. Ann. § 56:8-1, et seq.) Against ZF**
3 **Electronics USA, ZF Passive Safety USA, ZF Automotive**
4 **USA, ZF TRW Corp., ZF Germany, ST Italy, ST USA, and**
5 **ST Malaysia.**

6 3716. Plaintiffs reallege and incorporate by reference all preceding
7 allegations as though fully set forth herein.

8 3717. The New Jersey Plaintiff brings this count individually and on behalf
9 of members of the New Jersey State Class against ZF Electronics USA, ZF Passive
10 Safety USA, ZF Automotive USA, ZF TRW Corp., and ZF Germany (collectively,
11 the “ZF Defendants”), and ST Italy, ST Malaysia, and ST USA (collectively, the
12 “ST Defendants”).

13 3718. The ZF Defendants, the ST Defendants, the New Jersey Plaintiff, and
14 New Jersey State Class members are “persons” within the meaning of N.J. Stat.
15 Ann. § 56:8-1(d).

16 3719. The Class Vehicles and ACU and ASICs installed in them are
17 “merchandise” within the meaning of N.J. Stat. Ann. § 56:8-1(c).

18 3720. The New Jersey Consumer Fraud Act (“New Jersey CFA”) prohibits
19 unfair trade practices. N.J. Stat. Ann. § 56:8-2.

20 3721. The ZF and ST Defendants had an ongoing duty to the New Jersey
21 Plaintiff and New Jersey State Class members to refrain from unfair or deceptive
22 practices under the New Jersey CFA in the course of their business. Specifically,
23 the ZF and ST Defendants owed the New Jersey Plaintiff and New Jersey State
24 Class members a duty to disclose all the material facts concerning the ACU Defect
25 in the Class Vehicles because they possessed exclusive knowledge and they
26 intentionally concealed the ACU Defect from the New Jersey Plaintiff and New
27 Jersey State Class members.

28 3722. In the course of their business the ZF and ST Defendants, through their
agents, employees, and/or subsidiaries, violated the New Jersey CFA by knowingly
and intentionally omitting, concealing, and failing to disclose material facts

1 regarding the existence, nature, and scope of the ACU Defect in the Class Vehicles,
2 as detailed above.

3 3723. Additionally, ZF Electronics USA, ZF Passive Safety USA, and ZF
4 Automotive USA, through their agents, employees, and/or subsidiaries, violated the
5 New Jersey CFA when they knowingly and intentionally misrepresented the Class
6 Vehicles as safe and reliable and the defective ACU and ASICs installed in them as
7 properly-functioning and free from defects. Specifically, ZF Electronics USA, ZF
8 Passive Safety USA, and ZF Automotive USA worked with the Vehicle
9 Manufacturer Defendants on the design and inclusion of the airbag readiness
10 indicators in the Class Vehicles, which falsely assured Plaintiffs and Class
11 Members that the Occupant Restraint Systems in the Class Vehicles would function
12 properly in a crash.

13 3724. By misrepresenting, failing to disclose and actively concealing the
14 dangers and risk posed by the Class Vehicles due to the ACU Defect, the ZF and
15 ST Defendants engaged in one or more of the unlawful practices prohibited by N.J.
16 Stat. Ann. § 56:8-2, including the act, use, or employment of any unconscionable
17 commercial practice, and/or concealment, suppression or omission of material facts.

18 3725. The ZF and ST Defendants' unfair or deceptive acts or practices,
19 including their misrepresentations, concealments, omissions, and suppressions of
20 material facts, were designed to mislead and had a tendency or capacity to mislead
21 and create a false impression in consumers that the Class Vehicles had properly-
22 functioning and reliable airbags and seatbelts, and that the Occupant Restraint
23 System did not contain the ACU Defect and would perform its intended function of
24 activating the seatbelts and airbags during a collision. Indeed, those
25 misrepresentations, concealments, omissions, and suppressions of material facts did
26 in fact deceive reasonable consumers, including the New Jersey Plaintiff and New
27 Jersey State Class members, about the true safety and reliability of Class Vehicles
28

1 and/or the defective ACUs and ASICs installed in them, the quality of the Class
2 Vehicles, and the true value of the Class Vehicles.

3 3726. The New Jersey Plaintiff and New Jersey State Class members
4 justifiably relied on the ZF and ST Defendants' misrepresentations, omissions, and
5 concealment, as they had no way of discerning that the Class Vehicles contained
6 the ACU Defect, as alleged above. The New Jersey Plaintiff and New Jersey State
7 Class members did not, and could not, unravel the ZF and ST Defendants'
8 deception on their own.

9 3727. The ZF and ST Defendants' misrepresentations and concealment of the
10 ACU Defect and true characteristics of the defective ACUs and ASICs in the Class
11 Vehicles were material to the decisions of the New Jersey Plaintiff and New Jersey
12 State Class members to purchase and lease Class Vehicles, as the ZF and ST
13 Defendants intended. Had they known the truth, the New Jersey Plaintiff and New
14 Jersey State Class members would not have purchased or leased the Class Vehicles,
15 or would have paid significantly less for them.

16 3728. The New Jersey Plaintiff and New Jersey State Class members
17 suffered ascertainable losses and actual damages as a direct and proximate result of
18 the ZF and ST Defendants' misrepresentations, concealment and/or failure to
19 disclose material information.

20 3729. The ZF and ST Defendants' violations present a continuing risk to the
21 New Jersey Plaintiff and New Jersey State Class members, as well as to the general
22 public, because the Class Vehicles remain unsafe due to the defective ACUs and
23 ASICs therein. The ZF and ST Defendants' unlawful acts and practices complained
24 of herein affect the public interest.

25 3730. Pursuant to N.J. Stat Ann. § 56:8-19, the New Jersey Plaintiff and New
26 Jersey State Class members seek an order enjoining the ZF and ST Defendants'
27 unfair or deceptive acts or practices and awarding damages and any other just and
28 proper relief available under the New Jersey CFA.

1 **d. New Jersey Count 4: Fraud by Omission and Concealment**
2 **Against Kia Korea and Kia USA**

3 3731. Plaintiffs reallege and incorporate by reference all preceding
4 allegations as though fully set forth herein.

5 3732. The New Jersey Plaintiff brings this count individually and on behalf
6 of members of the New Jersey State Class who purchased or leased Kia Class
7 Vehicles, against Kia Korea and Kia USA.

8 3733. Kia Korea and Kia USA are liable for both fraudulent concealment and
9 non-disclosure. *See, e.g.*, Restatement (Second) of Torts §§ 550-51 (1977).

10 3734. As explained in Section IV.A, the ACU Defect in Class Vehicles poses
11 serious risks to vehicle occupants, including that it can cause: (1) airbags and
12 seatbelts not to activate during a crash because crashes can sometimes release
13 electrical transients, which cause the ACU to fail; (2) airbags to deploy when the
14 vehicle has not crashed, which is dangerous because it is shocking and difficult for
15 the driver to operate a vehicle when the airbag deploys without warning; and (3)
16 failures of other important post-crash operations of the safety system, such as
17 unlocking doors to facilitate escape or extraction of drivers and passengers by
18 emergency personnel, and shutting off a crashed vehicle’s fuel or power supply.

19 3735. Kia Korea and Kia USA had a duty to disclose the ACU Defect to the
20 New Jersey Plaintiff and New Jersey State Class members because:

- 21 a. Kia Korea and Kia USA had exclusive access to and far superior
22 knowledge about technical facts regarding the ACU Defect;
- 23 b. Given the ACU Defect’s hidden and technical nature, the New
24 Jersey Plaintiff and New Jersey State Class members lack the
25 sophisticated expertise in vehicle components and electrical
26 phenomena that would be necessary to discover the ACU Defect
27 on their own;

28

1 c. Kia Korea and Kia USA knew that the ACU Defect gave rise to
2 serious safety concerns for the consumers who use the vehicles,
3 and the Kia Class Vehicles containing the ACU Defect would
4 have been a material fact to the New Jersey Plaintiff's and New
5 Jersey State Class members' decisions to buy or lease Kia Class
6 Vehicles; and

7 d. Kia Korea and Kia USA made incomplete representations about
8 the safety and reliability of the Kia Class Vehicles and their
9 Occupant Restraint System, while purposefully withholding
10 material facts about a known safety defect. In uniform
11 advertising and materials provided with each Class Vehicle, Kia
12 Korea, and Kia USA intentionally concealed, suppressed, and
13 failed to disclose to the New Jersey Plaintiff and New Jersey
14 State Class members that the Kia Class Vehicles contained the
15 ACU Defect. Because they volunteered to provide information
16 about the Kia Class Vehicles that they marketed and offered for
17 sale and lease to the New Jersey Plaintiff and New Jersey State
18 Class members, Kia Korea and Kia USA had the duty to
19 disclose the whole truth.

20 3736. In breach of their duties, Kia Korea and Kia USA failed to disclose
21 that the Kia Class Vehicles were not safe and reliable, and that their Occupant
22 Restraint Systems, including their airbags and seatbelt pretensioners could fail in
23 the event of a crash due to the ACU Defect.

24 3737. Kia Korea and Kia USA intended for the New Jersey Plaintiff and
25 New Jersey State Class members to rely on their omissions—which they did by
26 purchasing and leasing the Kia Class Vehicles at the prices they paid believing that
27 the Occupant Restraint Systems in their Class Vehicles would function properly.
28

1 3738. That reliance was reasonable, because a reasonable consumer would
2 not have expected that the Kia Class Vehicles contained a safety defect that poses
3 such a serious risk. Kia Korea and Kia USA knew that reasonable consumers
4 expect that their vehicle has working airbags and seatbelt pretensioners and would
5 rely on those facts in deciding whether to purchase, lease, or retain a new or used
6 motor vehicle. Whether a manufacturer's products are safe and reliable, and
7 whether that manufacturer stands behind its products, are material concerns to a
8 consumer. Especially here when at least nine people have already died due to the
9 ACU Defect, and many more have been injured.

10 3739. Additionally, Kia Korea and Kia USA ensured that the New Jersey
11 Plaintiff and New Jersey State Class members did not discover this information by
12 actively concealing and misrepresenting the true nature of the Kia Class Vehicles'
13 Occupant Restraint Systems to consumers and NHTSA.

14 3740. Kia Korea and Kia USA actively concealed and suppressed these
15 material facts, in whole or in part, to maintain a market for their Class Vehicles, to
16 protect profits, and to avoid costly recalls that would expose them to liability for
17 those expenses and harm the commercial reputations of Defendants and their
18 products. They did so at the expense of the New Jersey Plaintiff and New Jersey
19 State Class members.

20 3741. To this day, Kia Korea and Kia USA have not fully and adequately
21 disclosed the ACU Defect, and they continue to conceal material information about
22 the defect from consumers and NHTSA. The omitted and concealed facts were
23 material because a reasonable person would find them important in purchasing,
24 leasing, or retaining a new or used motor vehicle, and because they directly impact
25 the value of the Kia Class Vehicles purchased or leased by the New Jersey Plaintiff
26 and New Jersey State Class members.

27 3742. Had they been aware of the ACU Defect in the Kia Class Vehicles,
28 and Kia Korea's and Kia USA's callous disregard for safety, the New Jersey

1 Plaintiff and New Jersey State Class members either would not have paid as much
2 as they did for their Class Vehicles, or they would not have purchased or leased
3 them.

4 3743. As alleged in Section V above, if Kia Korea and Kia USA had fully
5 and adequately disclosed the ACU Defect to consumers and NHTSA, the New
6 Jersey Plaintiff and New Jersey State Class members would have seen such a
7 disclosure.

8 3744. Accordingly, Kia Korea and Kia USA are liable to the New Jersey
9 Plaintiff and New Jersey State Class members for their damages in an amount to be
10 proven at trial, including, but not limited to, their lost overpayment for the Kia
11 Class Vehicles at the time of purchase or lease.

12 3745. Kia Korea's and Kia USA's acts were done maliciously, oppressively,
13 deliberately, with intent to defraud; in reckless disregard of the New Jersey
14 Plaintiff's and New Jersey State Class members' rights and well-being; and to
15 enrich themselves. Kia Korea's and Kia USA's misconduct warrants an assessment
16 of punitive damages, as permitted by law, in an amount sufficient to deter such
17 conduct in the future, which amount shall be determined according to proof at trial.

18 e. **New Jersey Count 5: Fraud by Omission and Concealment**
19 **Against ZF Electronics USA, ZF Passive Safety USA, ZF**
20 **Automotive USA, ZF TRW Corp., ZF Germany, ST Italy,**
ST USA, and ST Malaysia

21 3746. Plaintiffs reallege and incorporate by reference all preceding
22 allegations as though fully set forth herein.

23 3747. The New Jersey Plaintiff brings this count individually and on behalf
24 of members of the New Jersey State Class who purchased or leased Class Vehicles,
25 against ZF Electronics USA, ZF Passive Safety USA, ZF Automotive USA, ZF
26 TRW Corp., and ZF Germany (collectively, the "ZF Defendants"), and ST Italy, ST
27 Malaysia, and ST USA (collectively, the "ST Defendants").
28

1 3748. The ZF and ST Defendants are liable for both fraudulent concealment
2 and non-disclosure. *See, e.g.*, Restatement (Second) of Torts §§ 550-51 (1977).

3 3749. As explained in Section IV.A, the ACU Defect in Class Vehicles poses
4 serious risks to vehicle occupants, including that it can cause: (1) airbags and
5 seatbelts not to activate during a crash because crashes can sometimes release
6 electrical transients, which cause the ACU to fail; (2) airbags to deploy when the
7 vehicle has not crashed, which is dangerous because it is shocking and difficult for
8 the driver to operate a vehicle when the airbag deploys without warning; and (3)
9 failures of other important post-crash operations of the safety system, such as
10 unlocking doors to facilitate escape or extraction of drivers and passengers by
11 emergency personnel, and shutting off a crashed vehicle’s fuel or power supply.

12 3750. The ZF and ST Defendants had a duty to disclose the ACU Defect to
13 the New Jersey Plaintiff and New Jersey State Class members because:

- 14 a. The ZF and ST Defendants had exclusive access to and far
15 superior knowledge about technical facts regarding the ACU
16 Defect;
- 17 b. Given the ACU Defect’s hidden and technical nature, the New
18 Jersey Plaintiff and New Jersey State Class members lack the
19 sophisticated expertise in vehicle components and electrical
20 phenomena that would be necessary to discover the ACU Defect
21 on their own;
- 22 c. The ZF and ST Defendants knew that the ACU Defect gave rise
23 to serious safety concerns for the consumers who use the
24 vehicles, and the Class Vehicles containing the ACU Defect
25 would have been a material fact to the New Jersey Plaintiff’s
26 and New Jersey State Class members’ decisions to buy or lease
27 Class Vehicles; and
28

1 d. The ZF Defendants made incomplete representations about the
2 safety and reliability of the Class Vehicles and their Occupant
3 Restraint System, while purposefully withholding material facts
4 about a known safety defect, creating a duty to disclose the
5 whole truth. Specifically, ZF Electronics USA, ZF Passive
6 Safety USA, and ZF Automotive USA worked with the Vehicle
7 Manufacturer Defendants on the design and inclusion of the
8 airbag readiness indicators in the Class Vehicles, which falsely
9 assured Plaintiffs and Class Members that the Occupant
10 Restraint Systems in the Class Vehicles would function properly
11 in a crash.

12 3751. In breach of their duties, the ZF and ST Defendants failed to disclose
13 that the Class Vehicles were not safe and reliable, and that their Occupant Restraint
14 Systems, including their airbags and seatbelt pretensioners could fail in the event of
15 a crash due to the ACU Defect.

16 3752. The ZF and ST Defendants intended for the New Jersey Plaintiff and
17 New Jersey State Class members to rely on their omissions—which they did by
18 purchasing and leasing the Class Vehicles at the prices they paid believing that the
19 Occupant Restraint Systems in their Class Vehicles would function properly.

20 3753. That reliance was reasonable, because a reasonable consumer would
21 not have expected that the Class Vehicles contained a safety defect that poses such
22 a serious risk. The ZF and ST Defendants knew that reasonable consumers expect
23 that their vehicle has working airbags and seatbelt pretensioners and would rely on
24 those facts in deciding whether to purchase, lease, or retain a new or used motor
25 vehicle. Whether a manufacturer’s products are safe and reliable, and whether that
26 manufacturer stands behind its products, are material concerns to a consumer.
27 Especially here when at least nine people have already died due to the ACU Defect,
28 and many more have been injured.

1 3754. Additionally, the ZF and ST Defendants ensured that the New Jersey
2 Plaintiff and New Jersey State Class members did not discover this information by
3 actively concealing and misrepresenting the true nature of the Class Vehicles’
4 Occupant Restraint Systems to consumers and NHTSA.

5 3755. The ZF and ST Defendants actively concealed and suppressed these
6 material facts, in whole or in part, to maintain a market for the DS84 ACU, to
7 protect profits, and to avoid costly recalls that would expose them to liability for
8 those expenses and harm the commercial reputations of Defendants and their
9 products. They did so at the expense of the New Jersey Plaintiff and New Jersey
10 State Class members.

11 3756. To this day, the ZF and ST Defendants have not fully and adequately
12 disclosed the ACU Defect, and they continue to conceal material information about
13 the defect from consumers and NHTSA. The omitted and concealed facts were
14 material because a reasonable person would find them important in purchasing,
15 leasing, or retaining a new or used motor vehicle, and because they directly impact
16 the value of the Class Vehicles purchased or leased by the New Jersey Plaintiff and
17 New Jersey State Class members.

18 3757. Had they been aware of the ACU Defect in the Class Vehicles, and the
19 ZF and ST Defendants’ callous disregard for safety, the New Jersey Plaintiff and
20 New Jersey State Class members either would not have paid as much as they did
21 for their Class Vehicles, or they would not have purchased or leased them.

22 3758. As alleged in Section V above, if the ZF and ST Defendants had fully
23 and adequately disclosed the ACU Defect to consumers and NHTSA, the New
24 Jersey Plaintiff and New Jersey State Class members would have seen such a
25 disclosure.

26 3759. Accordingly, the ZF and ST Defendants are liable to the New Jersey
27 Plaintiff and New Jersey State Class members for their damages in an amount to be
28

1 proven at trial, including, but not limited to, their lost overpayment for the Class
2 Vehicles at the time of purchase or lease.

3 3760. The ZF and ST Defendants' acts were done maliciously, oppressively,
4 deliberately, with intent to defraud; in reckless disregard of the New Jersey
5 Plaintiff's and New Jersey State Class members' rights and well-being; and to
6 enrich themselves. The ZF and ST Defendants' misconduct warrants an assessment
7 of punitive damages, as permitted by law, in an amount sufficient to deter such
8 conduct in the future, which amount shall be determined according to proof at trial.

9 **f. New Jersey Count 6: Unjust Enrichment Against Kia Korea**
10 **and Kia USA**

11 3761. Plaintiffs reallege and incorporate by reference all allegations in
12 Sections I-VI above as though fully set forth herein.

13 3762. The New Jersey Plaintiff brings this count individually and on behalf
14 of members of the New Jersey State Class who purchased or leased Kia Class
15 Vehicles, against Kia Korea and Kia USA.

16 3763. The New Jersey Plaintiff and New Jersey State Class members
17 conferred tangible and material monetary benefits upon Kia Korea and Kia USA
18 when they purchased or leased the Kia Class Vehicles. Kia Korea and Kia USA
19 readily accepted and retained these benefits.

20 3764. The New Jersey Plaintiff and New Jersey State Class members would
21 not have purchased or leased the Kia Class Vehicles, or would have paid less for
22 them, had they known of the ACU Defect at the time of purchase or lease.
23 Therefore, Kia Korea and Kia USA profited from the sale and lease of the Kia
24 Class Vehicles to the detriment and expense of the New Jersey Plaintiff and New
25 Jersey State Class members.

26 3765. Kia Korea and Kia USA appreciated these monetary benefits. These
27 benefits were the expected result of Kia Korea and Kia USA acting in their
28 pecuniary interest at the expense of their customers. Kia Korea and Kia USA knew

1 of these benefits because they were aware of the ACU Defect, yet they failed to
2 disclose this knowledge and misled the New Jersey Plaintiff and New Jersey State
3 Class members regarding the nature and quality of the Kia Class Vehicles while
4 profiting from this deception.

5 3766. It would be unjust, inequitable, and unconscionable for Kia Korea and
6 Kia USA to retain these monetary benefits, including because they were procured
7 as a result of Kia Korea's and Kia USA's wrongful conduct alleged above.

8 3767. The New Jersey Plaintiff and New Jersey State Class members are
9 entitled to restitution of the benefits Kia Korea and Kia USA unjustly retained
10 and/or any amounts necessary to return the New Jersey Plaintiff and New Jersey
11 State Class members to the position they occupied prior to dealing with Kia Korea
12 and Kia USA, with such amounts to be determined at trial.

13 3768. The New Jersey Plaintiff pleads this claim separately as well as in the
14 alternative to his claims for damages under Fed. R. Civ. P. 8(a)(3), because if the
15 New Jersey Plaintiff's claims for damages are dismissed or judgment is entered in
16 favor of Defendants, the New Jersey Plaintiff would have no adequate legal
17 remedy.

18 **16. New York**

19 **a. New York Count 1: Violation of New York General Business**
20 **Law § 349 (N.Y. Gen. Bus. Law § 349) Against FCA, Honda**
21 **Japan, Honda USA, and Honda Engineering USA**

22 3769. Plaintiffs reallege and incorporate by reference all preceding
23 allegations as though fully set forth herein.

24 3770. Plaintiff Eric Fishon brings this count individually and on behalf of
25 members of the New York State Class who purchased or leased FCA Class
26 Vehicles, against FCA.

27 3771. Plaintiff Ravichandran Namakkal bring this count individually and on
28 behalf of members of the New York State Class who purchased or leased Honda
Class Vehicles, against Honda Japan, Honda USA, and Honda Engineering USA.

1 3772. For purposes of this count, Plaintiffs Fishon and Namakkal shall be
2 referred to as the “New York Plaintiffs.”

3 3773. The New York Plaintiffs and New York State Class members are
4 “persons” within the meaning of N.Y. Gen. Bus. Law § 349(h).

5 3774. FCA, Honda Japan, Honda USA, and Honda Engineering USA are
6 each a “person,” “firm,” “corporation,” or “association” within the meaning of N.Y.
7 Gen. Bus. Law § 349.

8 3775. The New York Deceptive Acts and Practices Act (“New York
9 DAPA”) prohibits “[d]eceptive acts or practices in the conduct of any business,
10 trade or commerce[.]” N.Y. Gen. Bus. Law. § 349.

11 3776. In the course of their business, FCA, Honda Japan, Honda USA, and
12 Honda Engineering USA, through their agents, employees, and/or subsidiaries,
13 violated the New York DAPA by knowingly and intentionally misrepresenting,
14 omitting, concealing, and/or failing to disclose material facts regarding the
15 reliability, safety, and performance of the FCA and Honda Class Vehicles, the
16 safety of their Occupant Restraint Systems, and the ACU Defect, as detailed above.

17 3777. FCA, Honda Japan, Honda USA, and Honda Engineering USA had an
18 ongoing duty to the New York Plaintiffs and New York State Class members to
19 refrain from unfair or deceptive practices under the New York DAPA in the course
20 of their business. Specifically, they owed the New York Plaintiffs and New York
21 State Class members a duty to disclose all the material facts concerning the ACU
22 Defect in the FCA and Honda Class Vehicles because they possessed exclusive
23 knowledge, they intentionally concealed the ACU Defect from the New York
24 Plaintiffs and New York State Class members, and/or they made misrepresentations
25 that were rendered misleading because they were contradicted by withheld facts.

26 3778. By misrepresenting the FCA and Honda Class Vehicles as safe and
27 reliable and the defective ACU and ASICs installed in them as properly-functioning
28 and free from defects, and by failing to disclose and actively concealing the dangers

1 and risk posed by the ACU Defect to both consumers and NHTSA, FCA, Honda
2 Japan, Honda USA, and Honda Engineering USA engaged in deceptive acts or
3 practices in the conduct of business, trade or commerce, and/or in the furnishing of
4 any service, as prohibited by N.Y. Gen. Bus. Law § 349.

5 3779. FCA's, Honda Japan's, Honda USA's, and Honda Engineering USA's
6 unfair and deceptive acts or practices, including their misrepresentations,
7 concealments, omissions, and suppressions of material facts, were designed to
8 mislead and had a tendency or capacity to mislead and create a false impression in
9 consumers that the FCA and Honda Class Vehicles had properly-functioning and
10 reliable airbags and seatbelts, and that the Occupant Restraint System did not
11 contain the ACU Defect and would perform its intended function of activating the
12 seatbelts and airbags during a collision. Indeed, those misrepresentations,
13 concealments, omissions, and suppressions of material facts did in fact deceive
14 reasonable consumers, including the New York Plaintiffs and New York State
15 Class members, about the true safety and reliability of FCA and Honda Class
16 Vehicles and/or the defective ACUs and ASICs installed in them, the quality of the
17 FCA and Honda Class Vehicles, and the true value of the FCA and Honda Class
18 Vehicles.

19 3780. FCA's, Honda Japan's, Honda USA's, and Honda Engineering USA's
20 misrepresentations, concealments, omissions, and suppressions of material facts
21 regarding the ACU Defect and true characteristics of the Occupant Restraint
22 Systems in the FCA and Honda Class Vehicles were material to the decisions of the
23 New York Plaintiffs and New York State Class members to purchase and lease
24 those vehicles, as FCA, Honda Japan, Honda USA, and Honda Engineering USA
25 intended. The New York Plaintiffs and New York State Class members were
26 exposed to those misrepresentations, concealments, omissions, and suppressions of
27 material facts, and relied on FCA's, Honda Japan's, Honda USA's, and Honda
28 Engineering USA's misrepresentations that the FCA and Honda Class Vehicles and

1 their Occupant Restraint Systems were safe and reliable in deciding to purchase and
2 lease FCA and Honda Class Vehicles. Plaintiffs allege the information they relied
3 upon in Section II.B above. To aid review of this information, Exhibit 19 provides
4 paragraph numbers for each Plaintiff.

5 3781. The New York Plaintiffs' and New York State Class members'
6 reliance was reasonable, as they had no way of discerning that FCA's, Honda
7 Japan's, Honda USA's, and Honda Engineering USA's representations were false
8 and misleading, or otherwise learning the facts that they had concealed or failed to
9 disclose. The New York Plaintiffs and New York State Class members did not, and
10 could not, unravel FCA's, Honda Japan's, Honda USA's, and Honda Engineering
11 USA's deception on their own.

12 3782. Had the New York Plaintiffs and New York State Class members
13 known the truth about the ACU Defect, the New York Plaintiffs and New York
14 State Class members would not have purchased or leased FCA and Honda Class
15 Vehicles, or would have paid significantly less for them.

16 3783. The New York Plaintiffs and New York State Class members suffered
17 ascertainable losses and actual damages through their overpayment at the time of
18 purchase and lease for FCA and Honda Class Vehicles with an undisclosed safety
19 defect as a direct and proximate result of FCA's, Honda Japan's, Honda USA's,
20 and Honda Engineering USA's concealment, misrepresentations, and/or failure to
21 disclose material information.

22 3784. FCA's, Honda Japan's, Honda USA's, and Honda Engineering USA's
23 violations present a continuing risk to the New York Plaintiffs and New York State
24 Class members, as well as to the general public, because the Class Vehicles remain
25 unsafe due to the defective ACUs and ASICs therein. Additionally, their unlawful
26 acts and practices complained of herein affect the public interest.

27 3785. Pursuant to N.Y. Gen. Bus. Law § 349, the New York Plaintiffs and
28 New York State Class members seek an order enjoining FCA's, Honda Japan's,

1 Honda USA’s, and Honda Engineering USA’s unfair or deceptive acts or practices
2 and awarding damages and any other just and proper relief available under the New
3 York DAPA.

4 **b. New York Count 2: Violation of New York General Business**
5 **Law § 349 (N.Y. Gen. Bus. Law § 349) Against ZF**
6 **Electronics USA, ZF Passive Safety USA, ZF Automotive**
7 **USA, ZF TRW Corp., ZF Germany, ST Italy, ST USA, and**
8 **ST Malaysia**

9 3786. Plaintiffs reallege and incorporate by reference all preceding
10 allegations as though fully set forth herein.

11 3787. Plaintiffs Eric Fishon and Ravichandran Namakkal bring this count
12 individually and on behalf of members of the New York State Class against ZF
13 Electronics USA, ZF Passive Safety USA, ZF Automotive USA, ZF TRW Corp.,
14 and ZF Germany (collectively, the “ZF Defendants”), and ST Italy, ST Malaysia,
15 and ST USA (collectively, the “ST Defendants”).

16 3788. For purposes of this count, Plaintiffs Fishon and Namakkal shall be
17 referred to as the “New York Plaintiffs.”

18 3789. The New York Plaintiffs and New York State Class members are
19 “persons” within the meaning of N.Y. Gen. Bus. Law § 349(h).

20 3790. The ZF and ST Defendants are each a “person,” “firm,” “corporation,”
21 or “association” within the meaning of N.Y. Gen. Bus. Law § 349.

22 3791. The New York Deceptive Acts and Practices Act (“New York
23 DAPA”) prohibits “[d]eceptive acts or practices in the conduct of any business,
24 trade or commerce[.]” N.Y. Gen. Bus. Law. § 349.

25 3792. The ZF and ST Defendants had an ongoing duty to the New York
26 Plaintiffs and New York State Class members to refrain from unfair or deceptive
27 practices under the New York DAPA in the course of their business. Specifically,
28 the ZF and ST Defendants owed the New York Plaintiffs and New York State Class
 members a duty to disclose all the material facts concerning the ACU Defect in the
 Class Vehicles because they possessed exclusive knowledge and they intentionally

1 concealed the ACU Defect from the New York Plaintiffs and New York State Class
2 members.

3 3793. In the course of their business, the ZF and ST Defendants, through
4 their agents, employees, and/or subsidiaries, violated the New York DAPA by
5 knowingly and intentionally omitting, concealing, and failing to disclose material
6 facts regarding the existence, nature, and scope of the defective ACU and ASIC
7 installed in the Class Vehicles, as detailed above.

8 3794. Additionally, ZF Electronics USA, ZF Passive Safety USA, and ZF
9 Automotive USA, through their agents, employees, and/or subsidiaries, violated the
10 New York DAPA when they knowingly and intentionally misrepresented the Class
11 Vehicles as safe and reliable and the defective ACU and ASICs installed in them as
12 properly-functioning and free from defects. Specifically, ZF Electronics USA, ZF
13 Passive Safety USA, and ZF Automotive USA worked with the Vehicle
14 Manufacturer Defendants on the design and inclusion of the airbag readiness
15 indicators in the Class Vehicles, which falsely assured Plaintiffs and Class
16 Members that the Occupant Restraint Systems in the Class Vehicles would function
17 properly in a crash.

18 3795. By misrepresenting, failing to disclose and actively concealing the
19 dangers and risk posed by the Class Vehicles due to the ACU Defect, the ZF and
20 ST Defendants engaged in deceptive acts or practices in the conduct of business,
21 trade or commerce prohibited by N.Y. Gen. Bus. Law § 349.

22 3796. The ZF and ST Defendants' unfair or deceptive acts or practices,
23 including their misrepresentations, concealments, omissions, and suppressions of
24 material facts, were designed to mislead and had a tendency or capacity to mislead
25 and create a false impression in consumers that the Class Vehicles had properly-
26 functioning and reliable airbags and seatbelts, and that the Occupant Restraint
27 System did not contain the ACU Defect and would perform its intended function of
28 activating the seatbelts and airbags during a collision. Indeed, those

1 misrepresentations, concealments, omissions, and suppressions of material facts did
2 in fact deceive reasonable consumers, including the New York Plaintiffs and New
3 York State Class members, about the true safety and reliability of Class Vehicles
4 and/or the defective ACUs and ASICs installed in them, the quality of the Class
5 Vehicles, and the true value of the Class Vehicles.

6 3797. The New York Plaintiffs' and New York State Class members
7 justifiably relied on the ZF and ST Defendants' misrepresentations, omissions, and
8 concealment, as they had no way of discerning that the Class Vehicles contained
9 the ACU Defect, as alleged above. The New York Plaintiffs and New York State
10 Class members did not, and could not, unravel the ZF and ST Defendants'
11 deception on their own

12 3798. The ZF and ST Defendants' misrepresentations and concealment of the
13 ACU Defect and true characteristics of the defective ACUs and ASICs in the Class
14 Vehicles were material to the decisions of the New York Plaintiffs and New York
15 State Class members to purchase and lease Class Vehicles, as the ZF and ST
16 Defendants intended. Had they known the truth, the New York Plaintiffs and New
17 York State Class members would not have purchased or leased the Class Vehicles,
18 or would have paid significantly less for them.

19 3799. The New York Plaintiffs and New York State Class members suffered
20 ascertainable losses and actual damages as a direct and proximate result of the ZF
21 and ST Defendants' misrepresentations, concealment and/or failure to disclose
22 material information.

23 3800. The ZF and ST Defendants' violations present a continuing risk to the
24 New York Plaintiffs and New York State Class members, as well as to the general
25 public, because the Class Vehicles remain unsafe due to the defective ACUs and
26 ASICs therein. The ZF and ST Defendants' unlawful acts and practices complained
27 of herein affect the public interest.
28

1 3801. Pursuant to N.Y. Gen. Bus. Law § 349, the New York Plaintiffs and
2 New York State Class members seek an order enjoining the ZF and ST Defendants’
3 unfair or deceptive acts or practices and awarding damages and any other just and
4 proper relief available under the New York DAPA.

5 **c. New York Count 3: Violation of New York General Business**
6 **Law § 350 (N.Y. Gen. Bus. Law § 350) Against FCA, Honda**
7 **Japan, and Honda USA**

8 3802. Plaintiffs reallege and incorporate by reference all preceding
9 allegations as though fully set forth herein.

10 3803. Plaintiff Eric Fishon brings this count individually and on behalf of
11 members of the New York State Class who purchased or leased FCA Class
12 Vehicles, against FCA.

13 3804. Plaintiff Ravichandran Namakkal bring this count individually and on
14 behalf of members of the New York State Class who purchased or leased Honda
15 Class Vehicles, against Honda Japan and Honda USA.

16 3805. For purposes of this count, Plaintiffs Fishon and Namakkal shall be
17 referred to as the “New York Plaintiffs.”

18 3806. FCA, Honda Japan and Honda USA were and are engaged in “conduct
19 of business, trade or commerce” within the meaning of N.Y. Gen. Bus. Law § 350.

20 3807. The New York False Advertising Act (“New York FAA”) prohibits
21 “[f]alse advertising in the conduct of any business, trade or commerce.” N.Y. Gen.
22 Bus. Law § 350.

23 3808. FCA, Honda Japan, and Honda USA caused to be made or
24 disseminated through New York, through advertising, marketing, and other
25 publications, statements that were untrue or misleading, and which were known, or
26 which by exercise of reasonable care should have been known by them to be untrue
27 and misleading to consumers, including the New York Plaintiffs and New York
28 State Class members. Numerous examples of these statements and advertisements

1 appear in the preceding paragraphs throughout this Complaint and the Exhibits
2 hereto.

3 3809. In the course of their business, FCA, Honda Japan, and Honda USA,
4 through their agents, employees, and/or subsidiaries, violated the New York FAA
5 by knowingly and intentionally misrepresenting, omitting, concealing, and/or
6 failing to disclose material facts regarding the reliability, safety, and performance of
7 the FCA and Honda Class Vehicles, the safety of their Occupant Restraint Systems,
8 and the ACU Defect, as detailed above.

9 3810. FCA, Honda Japan, and Honda USA had an ongoing duty to the New
10 York Plaintiffs and New York State Class members to refrain from unfair or
11 deceptive practices under the New York FAA in the course of their business.
12 Specifically, they owed the New York Plaintiffs and New York State Class
13 members a duty to disclose all the material facts concerning the ACU Defect in the
14 FCA and Honda Class Vehicles because they possessed exclusive knowledge, they
15 intentionally concealed the ACU Defect from the New York Plaintiffs and New
16 York State Class members, and/or they made misrepresentations that were rendered
17 misleading because they were contradicted by withheld facts.

18 3811. By misrepresenting the Class Vehicles as safe and reliable and the
19 defective ACU and ASICs installed in them as properly-functioning and free from
20 defects, and by failing to disclose and actively concealing the dangers and risk
21 posed by the ACU Defect to both consumers and NHTSA, FCA, Honda Japan, and
22 Honda USA engaged in the false and misleading advertising practices prohibited by
23 N.Y. Gen. Bus. Law § 350.

24 3812. FCA's, Honda Japan's, and Honda USA's unfair and deceptive acts or
25 practices, including their misrepresentations, concealments, omissions, and
26 suppressions of material facts, were designed to mislead and had a tendency or
27 capacity to mislead and create a false impression in consumers that the FCA and
28 Honda Class Vehicles had properly-functioning and reliable airbags and seatbelts,

1 and that the Occupant Restraint System did not contain the ACU Defect and would
2 perform its intended function of activating the seatbelts and airbags during a
3 collision. Indeed, those misrepresentations, concealments, omissions, and
4 suppressions of material facts did in fact deceive reasonable consumers, including
5 the New York Plaintiffs and New York State Class members, about the true safety
6 and reliability of FCA and Honda Class Vehicles and/or the defective ACUs and
7 ASICs installed in them, the quality of the FCA and Honda Class Vehicles, and the
8 true value of the FCA and Honda Class Vehicles.

9 3813. FCA's, Honda Japan's, and Honda USA's misrepresentations,
10 concealments, omissions, and suppressions of material facts regarding the ACU
11 Defect and true characteristics of the Occupant Restraint Systems in the FCA and
12 Honda Class Vehicles were material to the decisions of the New York Plaintiffs and
13 New York State Class members to purchase and lease those vehicles, as FCA,
14 Honda Japan, and Honda USA intended. The New York Plaintiffs and New York
15 State Class members were exposed to those misrepresentations, concealments,
16 omissions, and suppressions of material facts, and relied on FCA's, Honda Japan's,
17 and Honda USA's misrepresentations that the FCA and Honda Class Vehicles and
18 their Occupant Restraint Systems were safe and reliable in deciding to purchase and
19 lease FCA and Honda Class Vehicles. Plaintiffs allege the information they relied
20 upon in Section II.B above. To aid review of this information, Exhibit 19 provides
21 paragraph numbers for each Plaintiff.

22 3814. The New York Plaintiffs' and New York State Class members'
23 reliance was reasonable, as they had no way of discerning that FCA's, Honda
24 Japan's, and Honda USA's representations were false and misleading, or otherwise
25 learning the facts that FCA, Honda Japan, and Honda USA had concealed or failed
26 to disclose. The New York Plaintiffs and New York State Class members did not,
27 and could not, unravel FCA's, Honda Japan's, and Honda USA's deception on their
28 own.

1 3815. Had the New York Plaintiffs and New York State Class members
2 known the truth about the ACU Defect, the New York Plaintiffs and New York
3 State Class members would not have purchased or leased FCA and Honda Class
4 Vehicles, or would have paid significantly less for them.

5 3816. The New York Plaintiffs and New York State Class members suffered
6 ascertainable losses and actual damages as a direct and proximate result of FCA's,
7 Honda Japan's, and Honda USA's concealment, misrepresentations, and/or failure
8 to disclose material information.

9 3817. FCA's, Honda Japan's, and Honda USA's violations present a
10 continuing risk to the New York Plaintiffs and New York State Class members, as
11 well as to the general public, because the Class Vehicles remain unsafe due to the
12 defective ACUs and ASICs therein. Additionally, their unlawful acts and practices
13 complained of herein affect the public interest.

14 3818. Pursuant to New York FAA, the New York Plaintiffs and New York
15 State Class members seek an order enjoining FCA's, Honda Japan's, and Honda
16 USA's false advertising practices and awarding damages and any other just and
17 proper relief available under the New York FAA.

18 **d. New York Count 4: Fraud by Omission and Concealment**
19 **Against FCA, Honda Japan, Honda USA, and Honda**
20 **Engineering USA**

21 3819. Plaintiffs reallege and incorporate by reference all preceding
22 allegations as though fully set forth herein.

23 3820. Plaintiff Eric Fishon brings this count individually and on behalf of
24 members of the New York State Class who purchased or leased FCA Class
25 Vehicles, against FCA.

26 3821. Plaintiff Ravichandran Namakkal bring this count individually and on
27 behalf of members of the New York State Class who purchased or leased Honda
28 Class Vehicles, against Honda Japan, Honda USA, and Honda Engineering USA.

1 3822. For purposes of this count, Plaintiffs Fishon and Namakkal shall be
2 referred to as the “New York Plaintiffs.”

3 3823. FCA, Honda Japan, Honda USA, and Honda Engineering USA are
4 liable for both fraudulent concealment and non-disclosure. *See, e.g.*, Restatement
5 (Second) of Torts §§ 550-51 (1977).

6 3824. As explained in Section IV.A, the ACU Defect in Class Vehicles poses
7 serious risks to vehicle occupants, including that it can cause: (1) airbags and
8 seatbelts not to activate during a crash because crashes can sometimes release
9 electrical transients, which cause the ACU to fail; (2) airbags to deploy when the
10 vehicle has not crashed, which is dangerous because it is shocking and difficult for
11 the driver to operate a vehicle when the airbag deploys without warning; and (3)
12 failures of other important post-crash operations of the safety system, such as
13 unlocking doors to facilitate escape or extraction of drivers and passengers by
14 emergency personnel, and shutting off a crashed vehicle’s fuel or power supply.

15 3825. FCA, Honda Japan, Honda USA, and Honda Engineering USA had a
16 duty to disclose the ACU Defect to the New York Plaintiffs and New York State
17 Class members because:

- 18 a. FCA, Honda Japan, Honda USA, and Honda Engineering USA
19 had exclusive access to and far superior knowledge about
20 technical facts regarding the ACU Defect;
- 21 b. Given the ACU Defect’s hidden and technical nature, the New
22 York Plaintiffs and New York State Class members lack the
23 sophisticated expertise in vehicle components and electrical
24 phenomena that would be necessary to discover the ACU Defect
25 on their own;
- 26 c. FCA, Honda Japan, Honda USA, and Honda Engineering USA
27 knew that the ACU Defect gave rise to serious safety concerns
28 for the consumers who use the vehicles, and the FCA and Honda

1 Class Vehicles containing the ACU Defect would have been a
2 material fact to the New York Plaintiffs’ and New York State
3 Class members’ decisions to buy or lease FCA and Honda Class
4 Vehicles; and

5 d. FCA, Honda Japan, Honda USA, and Honda Engineering USA
6 made incomplete representations about the safety and reliability
7 of the FCA and Honda Class Vehicles and their Occupant
8 Restraint System, while purposefully withholding material facts
9 about a known safety defect. In uniform advertising and
10 materials provided with each Class Vehicle, FCA, Honda Japan,
11 Honda USA, and Honda Engineering USA intentionally
12 concealed, suppressed, and failed to disclose to the New York
13 Plaintiffs and New York State Class members that the FCA and
14 Honda Class Vehicles contained the ACU Defect. Because they
15 volunteered to provide information about the FCA and Honda
16 Class Vehicles that they marketed and offered for sale and lease
17 to the New York Plaintiffs and New York State Class members,
18 FCA, Honda Japan, Honda USA, and Honda Engineering USA
19 had the duty to disclose the whole truth.

20 3826. In breach of their duties, FCA, Honda Japan, Honda USA, and Honda
21 Engineering USA failed to disclose that the FCA and Honda Class Vehicles were
22 not safe and reliable, and that their Occupant Restraint Systems, including their
23 airbags and seatbelt pretensioners could fail in the event of a crash due to the ACU
24 Defect.

25 3827. FCA, Honda Japan, Honda USA, and Honda Engineering USA
26 intended for the New York Plaintiffs and New York State Class members to rely on
27 their omissions—which they did by purchasing and leasing the FCA and Honda
28

1 Class Vehicles at the prices they paid believing that the Occupant Restraint Systems
2 in their Class Vehicles would function properly.

3 3828. That reliance was reasonable, because a reasonable consumer would
4 not have expected that the FCA and Honda Class Vehicles contained a safety defect
5 that poses such a serious risk. FCA, Honda Japan, Honda USA, and Honda
6 Engineering USA knew that reasonable consumers expect that their vehicle has
7 working airbags and seatbelt pretensioners and would rely on those facts in
8 deciding whether to purchase, lease, or retain a new or used motor vehicle. Whether
9 a manufacturer's products are safe and reliable, and whether that manufacturer
10 stands behind its products, are material concerns to a consumer. Especially here
11 when at least nine people have already died due to the ACU Defect, and many more
12 have been injured.

13 3829. Additionally, FCA, Honda Japan, Honda USA, and Honda
14 Engineering USA ensured that the New York Plaintiffs and New York State Class
15 members did not discover this information by actively concealing and
16 misrepresenting the true nature of the FCA and Honda Class Vehicles' Occupant
17 Restraint Systems to consumers and NHTSA.

18 3830. FCA, Honda Japan, Honda USA, and Honda Engineering USA
19 actively concealed and suppressed these material facts, in whole or in part, to
20 maintain a market for their Class Vehicles, to protect profits, and to avoid costly
21 recalls that would expose them to liability for those expenses and harm the
22 commercial reputations of Defendants and their products. They did so at the
23 expense of the New York Plaintiffs and New York State Class members.

24 3831. To this day, FCA, Honda Japan, Honda USA, and Honda Engineering
25 USA have not fully and adequately disclosed the ACU Defect, and they continue to
26 conceal material information about the defect from consumers and NHTSA. The
27 omitted and concealed facts were material because a reasonable person would find
28 them important in purchasing, leasing, or retaining a new or used motor vehicle,

1 and because they directly impact the value of the FCA and Honda Class Vehicles
2 purchased or leased by the New York Plaintiffs and New York State Class
3 members.

4 3832. Had they been aware of the ACU Defect in the FCA and Honda Class
5 Vehicles, and FCA's, Honda Japan's, Honda USA's, and Honda Engineering
6 USA's callous disregard for safety, the New York Plaintiffs and New York State
7 Class members either would not have paid as much as they did for their Class
8 Vehicles, or they would not have purchased or leased them.

9 3833. As alleged in Section V above, if FCA, Honda Japan, Honda USA, and
10 Honda Engineering USA had fully and adequately disclosed the ACU Defect to
11 consumers and NHTSA, the New York Plaintiffs and New York State Class
12 members would have seen such a disclosure.

13 3834. Accordingly, FCA, Honda Japan, Honda USA, and Honda
14 Engineering USA are liable to the New York Plaintiffs and New York State Class
15 members for their damages in an amount to be proven at trial, including, but not
16 limited to, their lost overpayment for the FCA and Honda Class Vehicles at the
17 time of purchase or lease.

18 3835. FCA's, Honda Japan's, Honda USA's, and Honda Engineering USA's
19 acts were done maliciously, oppressively, deliberately, with intent to defraud; in
20 reckless disregard of the New York Plaintiffs' and New York State Class members'
21 rights and well-being; and to enrich themselves. FCA's, Honda Japan's, Honda
22 USA's, and Honda Engineering USA's misconduct warrants an assessment of
23 punitive damages, as permitted by law, in an amount sufficient to deter such
24 conduct in the future, which amount shall be determined according to proof at trial.

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1 e. **New York Count 5: Fraud by Omission and Concealment**
2 **Against ZF Electronics USA, ZF Passive Safety USA, ZF**
3 **Automotive USA, ZF TRW Corp., ZF Germany, ST Italy,**
4 **ST USA, and ST Malaysia**

5 3836. Plaintiffs reallege and incorporate by reference all preceding
6 allegations as though fully set forth herein.

7 3837. The New York Plaintiffs bring this count individually and on behalf of
8 members of the New York State Class who purchased or leased Class Vehicles,
9 against ZF Electronics USA, ZF Passive Safety USA, ZF Automotive USA, ZF
10 TRW Corp., and ZF Germany (collectively, the “ZF Defendants”), and ST Italy, ST
11 Malaysia, and ST USA (collectively, the “ST Defendants”).

12 3838. The ZF and ST Defendants are liable for both fraudulent concealment
13 and non-disclosure. *See, e.g.*, Restatement (Second) of Torts §§ 550-51 (1977).

14 3839. As explained in Section IV.A, the ACU Defect in Class Vehicles poses
15 serious risks to vehicle occupants, including that it can cause: (1) airbags and
16 seatbelts not to activate during a crash because crashes can sometimes release
17 electrical transients, which cause the ACU to fail; (2) airbags to deploy when the
18 vehicle has not crashed, which is dangerous because it is shocking and difficult for
19 the driver to operate a vehicle when the airbag deploys without warning; and (3)
20 failures of other important post-crash operations of the safety system, such as
21 unlocking doors to facilitate escape or extraction of drivers and passengers by
22 emergency personnel, and shutting off a crashed vehicle’s fuel or power supply.

23 3840. The ZF and ST Defendants had a duty to disclose the ACU Defect to
24 the New York Plaintiffs and New York State Class members because:

- 25 a. The ZF and ST Defendants had exclusive access to and far
26 superior knowledge about technical facts regarding the ACU
27 Defect;
- 28 b. Given the ACU Defect’s hidden and technical nature, the New
 York Plaintiffs and New York State Class members lack the

1 sophisticated expertise in vehicle components and electrical
2 phenomena that would be necessary to discover the ACU Defect
3 on their own;

4 c. The ZF and ST Defendants knew that the ACU Defect gave rise
5 to serious safety concerns for the consumers who use the
6 vehicles, and the Class Vehicles containing the ACU Defect
7 would have been a material fact to the New York Plaintiffs' and
8 New York State Class members' decisions to buy or lease Class
9 Vehicles; and

10 d. The ZF Defendants made incomplete representations about the
11 safety and reliability of the Class Vehicles and their Occupant
12 Restraint System, while purposefully withholding material facts
13 about a known safety defect, creating a duty to disclose the
14 whole truth. Specifically, ZF Electronics USA, ZF Passive
15 Safety USA, and ZF Automotive USA worked with the Vehicle
16 Manufacturer Defendants on the design and inclusion of the
17 airbag readiness indicators in the Class Vehicles, which falsely
18 assured Plaintiffs and Class Members that the Occupant
19 Restraint Systems in the Class Vehicles would function properly
20 in a crash.

21 3841. In breach of their duties, the ZF and ST Defendants failed to disclose
22 that the Class Vehicles were not safe and reliable, and that their Occupant Restraint
23 Systems, including their airbags and seatbelt pretensioners could fail in the event of
24 a crash due to the ACU Defect.

25 3842. The ZF and ST Defendants intended for the New York Plaintiffs and
26 New York State Class members to rely on their omissions—which they did by
27 purchasing and leasing the Class Vehicles at the prices they paid believing that the
28 Occupant Restraint Systems in their Class Vehicles would function properly.

1 3843. That reliance was reasonable, because a reasonable consumer would
2 not have expected that the Class Vehicles contained a safety defect that poses such
3 a serious risk. The ZF and ST Defendants knew that reasonable consumers expect
4 that their vehicle has working airbags and seatbelt pretensioners and would rely on
5 those facts in deciding whether to purchase, lease, or retain a new or used motor
6 vehicle. Whether a manufacturer's products are safe and reliable, and whether that
7 manufacturer stands behind its products, are material concerns to a consumer.
8 Especially here when at least nine people have already died due to the ACU Defect,
9 and many more have been injured.

10 3844. Additionally, the ZF and ST Defendants ensured that the New York
11 Plaintiffs and New York State Class members did not discover this information by
12 actively concealing and misrepresenting the true nature of the Class Vehicles'
13 Occupant Restraint Systems to consumers and NHTSA.

14 3845. The ZF and ST Defendants actively concealed and suppressed these
15 material facts, in whole or in part, to maintain a market for the DS84 ACU, to
16 protect profits, and to avoid costly recalls that would expose them to liability for
17 those expenses and harm the commercial reputations of Defendants and their
18 products. They did so at the expense of the New York Plaintiffs and New York
19 State Class members.

20 3846. To this day, the ZF and ST Defendants have not fully and adequately
21 disclosed the ACU Defect, and they continue to conceal material information about
22 the defect from consumers and NHTSA. The omitted and concealed facts were
23 material because a reasonable person would find them important in purchasing,
24 leasing, or retaining a new or used motor vehicle, and because they directly impact
25 the value of the Class Vehicles purchased or leased by the New York Plaintiffs and
26 New York State Class members.

27 3847. Had they been aware of the ACU Defect in the Class Vehicles, and the
28 ZF and ST Defendants' callous disregard for safety, the New York Plaintiffs and

1 New York State Class members either would not have paid as much as they did for
2 their Class Vehicles, or they would not have purchased or leased them.

3 3848. As alleged in Section V above, if the ZF and ST Defendants had fully
4 and adequately disclosed the ACU Defect to consumers and NHTSA, the New
5 York Plaintiffs and New York State Class members would have seen such a
6 disclosure.

7 3849. Accordingly, the ZF and ST Defendants are liable to the New York
8 Plaintiffs and New York State Class members for their damages in an amount to be
9 proven at trial, including, but not limited to, their lost overpayment for the Class
10 Vehicles at the time of purchase or lease.

11 3850. The ZF and ST Defendants' acts were done maliciously, oppressively,
12 deliberately, with intent to defraud; in reckless disregard of the New York
13 Plaintiffs' and New York State Class members' rights and well-being; and to enrich
14 themselves. The ZF and ST Defendants' misconduct warrants an assessment of
15 punitive damages, as permitted by law, in an amount sufficient to deter such
16 conduct in the future, which amount shall be determined according to proof at trial.

17 **f. New York Count 6: Unjust Enrichment Against FCA,**
18 **Honda Japan, Honda USA, and Honda Engineering USA**

19 3851. Plaintiffs reallege and incorporate by reference all allegations in
20 Sections I- VI above as though fully set forth herein.

21 3852. Plaintiff Eric Fishon brings this count individually and on behalf of
22 members of the New York State Class who purchased or leased FCA Class
23 Vehicles, against FCA.

24 3853. Plaintiff Ravichandran Namakkal brings this count individually and on
25 behalf of members of the New York State Class who purchased or leased Honda
26 Class Vehicles, against Honda Japan, Honda USA, and Honda Engineering USA.

27 3854. For purposes of this count, Plaintiffs Fishon and Namakkal shall be
28 referred to as the "New York Plaintiffs."

1 3855. The New York Plaintiffs and New York State Class members
2 conferred tangible and material monetary benefits upon FCA, Honda Japan, Honda
3 USA, and Honda Engineering USA when they purchased or leased the FCA and
4 Honda Class Vehicles. FCA, Honda Japan, Honda USA, and Honda Engineering
5 USA readily accepted and retained these benefits.

6 3856. The New York Plaintiffs and New York State Class members would
7 not have purchased or leased the FCA and Honda Class Vehicles, or would have
8 paid less for them, had they known of the ACU Defect at the time of purchase or
9 lease. Therefore, FCA, Honda Japan, Honda USA, and Honda Engineering USA
10 profited from the sale and lease of the FCA and Honda Class Vehicles to the
11 detriment and expense of the New York Plaintiffs and New York State Class
12 members.

13 3857. FCA, Honda Japan, Honda USA, and Honda Engineering USA
14 appreciated these monetary benefits. These benefits were the expected result of
15 FCA, Honda Japan, Honda USA, and Honda Engineering USA acting in their
16 pecuniary interest at the expense of their customers. FCA, Honda Japan, Honda
17 USA, and Honda Engineering USA knew of these benefits because they were aware
18 of the ACU Defect, yet they failed to disclose this knowledge and misled the New
19 York Plaintiffs and New York State Class members regarding the nature and
20 quality of the FCA and Honda Class Vehicles while profiting from this deception.

21 3858. It would be unjust, inequitable, and unconscionable for FCA, Honda
22 Japan, Honda USA, and Honda Engineering USA to retain these monetary benefits,
23 including because they were procured as a result of FCA's, Honda Japan's, Honda
24 USA's, and Honda Engineering USA's wrongful conduct alleged above.

25 3859. The New York Plaintiffs and New York State Class members are
26 entitled to restitution of the benefits FCA, Honda Japan, Honda USA, and Honda
27 Engineering USA unjustly retained and/or any amounts necessary to return the New
28 York Plaintiffs and New York State Class members to the position they occupied

1 prior to dealing with FCA, Honda Japan, Honda USA, and Honda Engineering
2 USA, with such amounts to be determined at trial.

3 3860. The New York Plaintiffs plead this claim separately as well as in the
4 alternative to their claims for damages under Fed. R. Civ. P. 8(a)(3), because if the
5 New York Plaintiffs claims for damages are dismissed or judgment is entered in
6 favor of Defendants, the New York Plaintiffs would have no adequate legal
7 remedy.

8 **17. North Carolina**

9 **a. North Carolina Count 1: Breach of Express Warranty (N.C.
10 Gen. Stat. §§ 25-2-313 and 25-2A-210) Against FCA, Honda
11 Japan, and Honda USA¹⁵**

12 3861. Plaintiffs reallege and incorporate by reference all preceding
13 allegations as though fully set forth herein.

14 3862. Plaintiff Constanza Gonzalez brings this count individually and on
15 behalf of members of the North Carolina State Class who purchased or leased FCA
16 Class Vehicles, against FCA.

17 3863. Plaintiff Tonya McNeely brings this count individually and on behalf
18 of members of the North Carolina State Class who purchased or leased Honda
19 Class Vehicles, against Honda Japan and Honda USA.

20 3864. For purposes of this count, Plaintiffs Gonzalez and McNeely shall be
21 referred to as the “North Carolina Plaintiffs.”

22 3865. FCA, Honda Japan, and Honda USA are and were at all relevant times
23 “merchants” with respect to motor vehicles under N.C. Gen. Stat. §§ 25-2-104(1)
24 and 25-2A-103(3), and “sellers” of motor vehicles under § 25-2-103(1)(d).

25 3866. With respect to leases, FCA, Honda Japan, and Honda USA are and
26 were at all relevant times “lessors” of motor vehicles under N.C. Gen. Stat. § 25-
27 2A-103(1)(p).

28 ¹⁵ The Court held in its February 9, 2022 Order that the North Carolina Plaintiffs
stated a claim for breach of express warranty. *See* ECF No. 396 at 155-56.

1 3867. All North Carolina State Class members who purchased FCA and
2 Honda Class Vehicles in North Carolina are “buyers” within the meaning of N.C.
3 Gen. Stat. § 25-2-103(1)(a).

4 3868. All North Carolina State Class members who leased FCA and Honda
5 Class Vehicles in North Carolina are “lessees” within the meaning of N.C. Gen.
6 Stat. § 25-2A-103(1)(n).

7 3869. The FCA and Honda Class Vehicles are and were at all relevant times
8 “goods” within the meaning of N.C. Gen. Stat. §§ 25-2-105(1) and 25-2A-
9 103(1)(h).

10 3870. In connection with the purchase or lease of FCA and Honda Class
11 Vehicles, FCA, Honda Japan, and Honda USA provided the North Carolina
12 Plaintiffs and North Carolina State Class members with warranties in the form of:
13 (a) written express warranties covering the repair or replacement of components
14 that are defective in materials or workmanship, and (b) descriptions of the FCA and
15 Honda Class Vehicles as safe and reliable, and that their Occupant Restraint
16 Systems, including their airbags and seatbelt pretensioners, would function properly
17 in the event of a crash

18 3871. However, FCA, Honda Japan, and Honda USA knew or should have
19 known that the warranties were false and/or misleading. Specifically, FCA, Honda
20 Japan, and Honda USA were aware of the ACU Defect in the FCA and Honda
21 Class Vehicles, which made the vehicles inherently defective and dangerous at the
22 time that they were sold and leased to the North Carolina Plaintiff and North
23 Carolina State Class members.

24 3872. The North Carolina Plaintiffs and North Carolina State Class members
25 were aware the FCA and Honda Class Vehicles were covered by express
26 warranties, and those warranties were an essential part of the bargain between them
27 and FCA, Honda Japan, and Honda USA when the North Carolina Plaintiffs and
28

1 North Carolina State Class members unknowingly purchased and leased FCA and
2 Honda Class Vehicles that came equipped with defective ACUs and ASICs.

3 3873. FCA, Honda Japan, and Honda USA misrepresented the FCA and
4 Honda Class Vehicles as safe and reliable while concealing that they contained the
5 ACU Defect, the North Carolina Plaintiffs and North Carolina State Class members
6 were exposed to those misrepresentations, and the North Carolina Plaintiffs and
7 North Carolina State Class members had no way of discerning that FCA's, Honda
8 Japan's, and Honda USA's representations were false and misleading or otherwise
9 learning the material facts that FCA, Honda Japan, and Honda USA had concealed
10 or failed to disclose. Accordingly, the North Carolina Plaintiffs and North Carolina
11 State Class members reasonably relied on FCA's, Honda Japan's, and Honda
12 USA's express warranties when purchasing or leasing their FCA and Honda Class
13 Vehicles. Plaintiffs allege the information they relied upon in Section II.B above.
14 To aid review of this information, Exhibit 19 provides paragraph numbers for each
15 Plaintiff.

16 3874. FCA, Honda Japan, and Honda USA knowingly breached their express
17 warranties to repair defects in materials and workmanship by failing to repair the
18 ACU Defect or replace the defective ACUs and ASICs in the FCA and Honda
19 Class Vehicles. FCA, Honda Japan, and Honda USA also breached their express
20 warranties by selling and leasing FCA and Honda Class Vehicles with a defect that
21 was never disclosed to the North Carolina Plaintiffs and North Carolina State Class
22 members.

23 3875. The North Carolina Plaintiffs and North Carolina State Class members
24 have provided FCA, Honda Japan, and Honda USA with reasonable notice and
25 opportunity to cure the breaches of their express warranties by way of the numerous
26 NHTSA complaints filed against them, and the individual notice letters sent by
27 North Carolina State Class members within a reasonable amount of time after the
28 ACU Defect became public. Additionally, on April 24, 2020, a notice letter was

1 sent on behalf of the North Carolina Plaintiffs and North Carolina State Class
2 members to FCA, Honda Japan, and Honda USA.

3 3876. Alternatively, the North Carolina Plaintiffs and North Carolina State
4 Class members were excused from providing FCA, Honda Japan, and Honda USA
5 with notice and an opportunity to cure the breach, because it would have been
6 futile. As alleged above, FCA, Honda Japan, and Honda USA have long known that
7 the FCA and Honda Class Vehicles contained the ACU Defect, and that the ACU
8 Defect has caused ACUs and ASICs to malfunction in crashes involving Class
9 Vehicles; however, to date, the Honda Japan and Honda USA have not instituted a
10 recall or any other repair program, or even acknowledged that the ACU Defect
11 exists—even though Honda Class Vehicles are subject to the NHTSA investigation.
12 Similarly, FCA has not instituted a recall or any other repair program with respect
13 to the unrecalled FCA Class Vehicles, or even acknowledged that the ACU Defect
14 exists in all FCA Class Vehicles, including the recalled FCA Class Vehicles.
15 Therefore, the North Carolina Plaintiffs and North Carolina State Class members
16 had no reason to believe that FCA, Honda Japan, and Honda USA would have
17 repaired the ACU Defect if the North Carolina Plaintiffs and North Carolina State
18 Class members presented their FCA and Honda Class Vehicles to FCA, Honda
19 Japan, and Honda USA for repair.

20 3877. As a direct and proximate result of FCA's, Honda Japan's, and Honda
21 USA's breach of their express warranties, the FCA and Honda Class Vehicles were
22 and are defective and the ACU Defect in the North Carolina Plaintiffs' and North
23 Carolina State Class members' FCA and Honda Class Vehicles was not remedied.
24 Therefore, the North Carolina Plaintiffs and North Carolina State Class members
25 have been damaged, in an amount to be proven at trial, through their overpayment
26 at the time of purchase or lease for FCA and Honda Class Vehicles with an
27 undisclosed safety defect that would not be remedied.

28

1 **b. North Carolina Count 2: Violation of the North Carolina**
2 **Unfair and Deceptive Trade Practices Act (N.C. Gen. Stat.**
3 **§ 75-1.1, et seq.) Against FCA¹⁶, Honda Japan, Honda USA,**
4 **and Honda Engineering USA**

5 3878. Plaintiffs reallege and incorporate by reference all preceding
6 allegations as though fully set forth herein.

7 3879. Plaintiff Constanza Gonzalez brings this count individually and on
8 behalf of members of the North Carolina State Class who purchased or leased FCA
9 Class Vehicles, against FCA.

10 3880. Plaintiff Tonya McNeely brings this count individually and on behalf
11 of members of the North Carolina State Class who purchased or leased Honda
12 Class Vehicles, against Honda Japan, Honda USA, and Honda Engineering USA.

13 3881. For purposes of this count, Plaintiffs Gonzalez and McNeely shall be
14 referred to as the “North Carolina Plaintiffs.”

15 3882. FCA, Honda Japan, Honda USA, and Honda Engineering USA were
16 and are engaged in “commerce” within the meaning of N.C. Gen. Stat. § 75-1.1(b).

17 3883. In the course of their business, FCA, Honda Japan, Honda USA, and
18 Honda Engineering USA, through their agents, employees, and/or subsidiaries,
19 violated the North Carolina Unfair and Deceptive Trade Practices Act (“North
20 Carolina UDTPA”) by knowingly and intentionally misrepresenting, omitting,
21 concealing, and/or failing to disclose material facts regarding the reliability, safety,
22 and performance of the FCA and Honda Class Vehicles, the safety of their
23 Occupant Restraint Systems, and the ACU Defect, as detailed above.

24 3884. FCA, Honda Japan, Honda USA, and Honda Engineering USA had an
25 ongoing duty to the North Carolina Plaintiffs and North Carolina State Class
26 members to refrain from unfair or deceptive practices under the North Carolina
27 UDTPA in the course of their business. Specifically, FCA, Honda Japan, Honda

28 ¹⁶ The Court held in its February 9, 2022 Order that Plaintiff Gonzalez had
 sufficiently plead a Violation of the North Carolina Unfair and Deceptive Trade
 Practices Act against FCA. *See* ECF No. 396 at 111.

1 USA, and Honda Engineering USA owed the North Carolina Plaintiffs and North
2 Carolina State Class members a duty to disclose all the material facts concerning
3 the ACU Defect in the FCA and Honda Class Vehicles because they possessed
4 exclusive knowledge, they intentionally concealed the ACU Defect from the North
5 Carolina Plaintiffs and North Carolina State Class members, and/or they made
6 misrepresentations that were rendered misleading because they were contradicted
7 by withheld facts.

8 3885. By misrepresenting the FCA and Honda Class Vehicles as safe and
9 reliable and the defective ACU and ASICs installed in them as properly-functioning
10 and free from defects, and by failing to disclose and actively concealing the dangers
11 and risk posed by the ACU Defect to both consumers and NHTSA, FCA, Honda
12 Japan, Honda USA, and Honda Engineering USA engaged the unfair methods of
13 competition in or affecting commerce, and unfair or deceptive acts or practices in or
14 affecting commerce prohibited by N.C. Gen. Stat. § 75-16.

15 3886. FCA's, Honda Japan's, Honda USA's, and Honda Engineering USA's
16 unfair and deceptive acts or practices, including their misrepresentations,
17 concealments, omissions, and suppressions of material facts, were designed to
18 mislead and had a tendency or capacity to mislead and create a false impression in
19 consumers that the FCA and Honda Class Vehicles had properly-functioning and
20 reliable airbags and seatbelts, and that the Occupant Restraint System did not
21 contain the ACU Defect and would perform its intended function of activating the
22 seatbelts and airbags during a collision. Indeed, those misrepresentations,
23 concealments, omissions, and suppressions of material facts did in fact deceive
24 reasonable consumers, including the North Carolina Plaintiffs and North Carolina
25 State Class members, about the true safety and reliability of FCA and Honda Class
26 Vehicles and/or the defective ACUs and ASICs installed in them, the quality of the
27 FCA and Honda Class Vehicles, and the true value of the FCA and Honda Class
28 Vehicles.

1 3887. FCA’s, Honda Japan’s, Honda USA’s, and Honda Engineering USA’s
2 misrepresentations, concealments, omissions, and suppressions of material facts
3 regarding the ACU Defect and true characteristics of the Occupant Restraint
4 Systems in the FCA and Honda Class Vehicles were material to the decisions of the
5 North Carolina Plaintiffs and North Carolina State Class members to purchase and
6 lease those vehicles, as FCA, Honda Japan, Honda USA, and Honda Engineering
7 USA intended. The North Carolina Plaintiffs and North Carolina State Class
8 members were exposed to those misrepresentations, concealments, omissions, and
9 suppressions of material facts, and relied on FCA’s, Honda Japan’s, Honda USA’s,
10 and Honda Engineering USA’s misrepresentations that the FCA and Honda Class
11 Vehicles and their Occupant Restraint Systems were safe and reliable in deciding to
12 purchase and lease FCA and Honda Class Vehicles. Plaintiffs allege the
13 information they relied upon in Section II.B above. To aid review of this
14 information, Exhibit 19 provides paragraph numbers for each Plaintiff.

15 3888. The North Carolina Plaintiffs’ and North Carolina State Class
16 members’ reliance was reasonable, as they had no way of discerning that FCA’s,
17 Honda Japan’s, Honda USA’s, and Honda Engineering USA’s representations were
18 false and misleading, or otherwise learning the facts that FCA, Honda Japan, Honda
19 USA, and Honda Engineering USA had concealed or failed to disclose. The North
20 Carolina Plaintiffs and North Carolina State Class members did not, and could not,
21 unravel FCA’s, Honda Japan’s, Honda USA’s, and Honda Engineering USA’s
22 deception on their own.

23 3889. Had the North Carolina Plaintiffs and North Carolina State Class
24 members known the truth about the ACU Defect, the North Carolina Plaintiffs and
25 North Carolina State Class members would not have purchased or leased FCA and
26 Honda Class Vehicles, or would have paid significantly less for them.

27 3890. The North Carolina Plaintiff and North Carolina State Class members
28 suffered ascertainable losses and actual damages through their overpayment at the

1 time of purchase and lease for FCA and Honda Class Vehicles with an undisclosed
2 safety defect as a direct and proximate result of FCA's, Honda Japan's, Honda
3 USA's, and Honda Engineering USA's concealment, misrepresentations, and/or
4 failure to disclose material information.

5 3891. FCA's, Honda Japan's, Honda USA's, and Honda Engineering USA's
6 violations present a continuing risk to the North Carolina Plaintiff and North
7 Carolina State Class members, as well as to the general public, because the Class
8 Vehicles remain unsafe due to the defective ACUs and ASICs therein. Additionally,
9 their unlawful acts and practices complained of herein affect the public interest.

10 3892. Pursuant to N.C. Gen. Stat. § 75-16, the North Carolina Plaintiffs and
11 North Carolina State Class members seek an order enjoining FCA's, Honda
12 Japan's, Honda USA's, and Honda Engineering USA's unfair or deceptive acts or
13 practices and awarding damages and any other just and proper relief available under
14 the North Carolina UDTPA.

15 c. **North Carolina Count 3: Violation of the North Carolina**
16 **Unfair and Deceptive Trade Practices Act (N.C. Gen. Stat.**
17 **§ 75-1.1, et seq.) Against ZF Electronics USA, ZF Passive**
18 **Safety USA, ZF Automotive USA, ZF TRW Corp., ZF**
19 **Germany, ST Italy, ST USA, and ST Malaysia**

20 3893. Plaintiffs reallege and incorporate by reference all preceding
21 allegations as though fully set forth herein.

22 3894. Plaintiffs Constanza Gonzalez and Tonya McNeely bring this count
23 individually and on behalf of members of the North Carolina State Class against ZF
24 Electronics USA, ZF Passive Safety USA, ZF Automotive USA, ZF TRW Corp.,
25 and ZF Germany (collectively, the "ZF Defendants"), and ST Italy, ST Malaysia,
26 and ST USA (collectively, the "ST Defendants").

27 3895. For purposes of this count, Plaintiffs Gonzalez and McNeely shall be
28 referred to as the "North Carolina Plaintiffs."

3896. The ZF and ST Defendants were and are engaged in "commerce"
within the meaning of N.C. Gen. Stat. § 75-1.1(b).

1 3897. The ZF and ST Defendants had an ongoing duty to the North Carolina
2 Plaintiffs and North Carolina State Class members to refrain from unfair or
3 deceptive practices under the North Carolina UDTPA in the course of their
4 business. Specifically, the ZF and ST Defendants owed the North Carolina
5 Plaintiffs and North Carolina State Class members a duty to disclose all the
6 material facts concerning the ACU Defect in the Class Vehicles because they
7 possessed exclusive knowledge and they intentionally concealed the ACU Defect
8 from the North Carolina Plaintiffs and North Carolina State Class members.

9 3898. In the course of their business, the ZF and ST Defendants, through
10 their agents, employees, and/or subsidiaries, violated the North Carolina UDTPA
11 by knowingly and intentionally omitting, concealing, and failing to disclose
12 material facts regarding the existence, nature, and scope of the defective ACU and
13 ASIC installed in the Class Vehicles, as detailed above.

14 3899. Additionally, ZF Electronics USA, ZF Passive Safety USA, and ZF
15 Automotive USA through their agents, employees, and/or subsidiaries, violated the
16 North Carolina UDTPA when they knowingly and intentionally misrepresented the
17 Class Vehicles as safe and reliable and the defective ACU and ASICs installed in
18 them as properly-functioning and free from defects. Specifically, ZF Electronics
19 USA, ZF Passive Safety USA, and ZF Automotive USA worked with the Vehicle
20 Manufacturer Defendants on the design and inclusion of the airbag readiness
21 indicators in the Class Vehicles, which falsely assured Plaintiffs and Class
22 Members that the Occupant Restraint Systems in the Class Vehicles would function
23 properly in a crash.

24 3900. By misrepresenting, failing to disclose, and actively concealing the
25 dangers and risk posed by the Class Vehicles due to the ACU Defect, the ZF and
26 ST Defendants engaged in unfair methods of competition in or affecting commerce,
27 and unfair or deceptive acts or practices in or affecting commerce prohibited by
28 N.C. Gen. Stat. § 75-1.1(a).

1 3901. The ZF and ST Defendants’ unfair or deceptive acts or practices,
2 including their misrepresentations, concealments, omissions, and suppressions of
3 material facts, were designed to mislead and had a tendency or capacity to mislead
4 and create a false impression in consumers that the Class Vehicles had properly-
5 functioning and reliable airbags and seatbelts, and that the Occupant Restraint
6 System did not contain the ACU Defect and would perform its intended function of
7 activating the seatbelts and airbags during a collision. Indeed, those
8 misrepresentations, concealments, omissions, and suppressions of material facts did
9 in fact deceive reasonable consumers, including the North Carolina Plaintiffs and
10 North Carolina State Class members, about the true safety and reliability of Class
11 Vehicles and/or the defective ACUs and ASICs installed in them, the quality of the
12 Class Vehicles, and the true value of the Class Vehicles.

13 3902. The North Carolina Plaintiffs and North Carolina State Class members
14 justifiably relied on the ZF and ST Defendants’ misrepresentations, omissions, and
15 concealment, as they had no way of discerning that the Class Vehicles contained
16 the ACU Defect, as alleged above. The North Carolina Plaintiff and North Carolina
17 State Class members did not, and could not, unravel the ZF and ST Defendants’
18 deception on their own

19 3903. The ZF and ST Defendants’ misrepresentations and concealment of the
20 ACU Defect and true characteristics of the defective ACUs and ASICs in the Class
21 Vehicles were material to the decisions of the North Carolina Plaintiffs and North
22 Carolina State Class members to purchase and lease Class Vehicles, as the ZF and
23 ST Defendants intended. Had they known the truth, the North Carolina Plaintiffs
24 and North Carolina State Class members would not have purchased or leased the
25 Class Vehicles, or would have paid significantly less for them.

26 3904. The North Carolina Plaintiffs and North Carolina State Class members
27 suffered ascertainable losses and actual damages as a direct and proximate result of
28

1 the ZF and ST Defendants’ misrepresentations, concealment and/or failure to
2 disclose material information.

3 3905. The ZF and ST Defendants’ violations present a continuing risk to the
4 North Carolina Plaintiffs and North Carolina State Class members, as well as to the
5 general public, because the Class Vehicles remain unsafe due to the defective
6 ACUs and ASICs therein. The ZF and ST Defendants’ unlawful acts and practices
7 complained of herein affect the public interest.

8 3906. Pursuant to N.C. Gen. Stat. § 75-1.1(a), the North Carolina Plaintiffs
9 and North Carolina State Class members seek an order enjoining the ZF and ST
10 Defendants’ unfair or deceptive acts or practices and awarding damages and any
11 other just and proper relief available under the North Carolina UDTPA.

12 **d. North Carolina Count 4: Fraud by Omission and**
13 **Concealment Against FCA, Honda Japan, Honda USA, and**
14 **Honda Engineering USA**

15 3907. Plaintiffs reallege and incorporate by reference all preceding
16 allegations as though fully set forth herein.

17 3908. Plaintiff Constanza Gonzalez brings this count individually and on
18 behalf of members of the North Carolina State Class who purchased or leased FCA
19 Class Vehicles, against FCA.

20 3909. Plaintiff Tonya McNeely brings this count individually and on behalf
21 of members of the North Carolina State Class who purchased or leased Honda
22 Class Vehicles, against Honda Japan, Honda USA, and Honda Engineering USA.

23 3910. For purposes of this count, Plaintiffs Gonzalez and McNeely shall be
24 referred to as the “North Carolina Plaintiffs.”

25 3911. FCA, Honda Japan, Honda USA, and Honda Engineering USA are
26 liable for both fraudulent concealment and non-disclosure. *See, e.g.*, Restatement
(Second) of Torts §§ 550-51 (1977).

27 3912. As explained in Section IV.A, the ACU Defect in Class Vehicles poses
28 serious risks to vehicle occupants, including that it can cause: (1) airbags and

1 seatbelts not to activate during a crash because crashes can sometimes release
2 electrical transients, which cause the ACU to fail; (2) airbags to deploy when the
3 vehicle has not crashed, which is dangerous because it is shocking and difficult for
4 the driver to operate a vehicle when the airbag deploys without warning; and (3)
5 failures of other important post-crash operations of the safety system, such as
6 unlocking doors to facilitate escape or extraction of drivers and passengers by
7 emergency personnel, and shutting off a crashed vehicle's fuel or power supply.

8 3913. FCA, Honda Japan, Honda USA, and Honda Engineering USA had a
9 duty to disclose the ACU Defect to the North Carolina Plaintiffs and North
10 Carolina State Class members because:

- 11 a. FCA, Honda Japan, Honda USA, and Honda Engineering USA
12 had exclusive access to and far superior knowledge about
13 technical facts regarding the ACU Defect;
- 14 b. Given the ACU Defect's hidden and technical nature, the North
15 Carolina Plaintiffs and North Carolina State Class members lack
16 the sophisticated expertise in vehicle components and electrical
17 phenomena that would be necessary to discover the ACU Defect
18 on their own;
- 19 c. FCA, Honda Japan, Honda USA, and Honda Engineering USA
20 knew that the ACU Defect gave rise to serious safety concerns
21 for the consumers who use the vehicles, and the FCA and Honda
22 Class Vehicles containing the ACU Defect would have been a
23 material fact to the North Carolina Plaintiffs' and North Carolina
24 State Class members' decisions to buy or lease FCA and Honda
25 Class Vehicles; and
- 26 d. FCA, Honda Japan, Honda USA, and Honda Engineering USA
27 made incomplete representations about the safety and reliability
28 of the FCA and Honda Class Vehicles and their Occupant

1 Restraint System, while purposefully withholding material facts
2 about a known safety defect. In uniform advertising and
3 materials provided with each Class Vehicle, FCA, Honda Japan,
4 Honda USA, and Honda Engineering USA intentionally
5 concealed, suppressed, and failed to disclose to the North
6 Carolina Plaintiffs and North Carolina State Class members that
7 the FCA and Honda Class Vehicles contained the ACU Defect.
8 Because they volunteered to provide information about the FCA
9 and Honda Class Vehicles that they marketed and offered for
10 sale and lease to the North Carolina Plaintiffs and North
11 Carolina State Class members, FCA, Honda Japan, Honda USA,
12 and Honda Engineering USA had the duty to disclose the whole
13 truth.

14 3914. In breach of their duties, FCA, Honda Japan, Honda USA, and Honda
15 Engineering USA failed to disclose that the FCA and Honda Class Vehicles were
16 not safe and reliable, and that their Occupant Restraint Systems, including their
17 airbags and seatbelt pretensioners could fail in the event of a crash due to the ACU
18 Defect.

19 3915. FCA, Honda Japan, Honda USA, and Honda Engineering USA
20 intended for the North Carolina Plaintiffs and North Carolina State Class members
21 to rely on their omissions—which they did by purchasing and leasing the FCA and
22 Honda Class Vehicles at the prices they paid believing that the Occupant Restraint
23 Systems in their Class Vehicles would function properly.

24 3916. That reliance was reasonable, because a reasonable consumer would
25 not have expected that the FCA and Honda Class Vehicles contained a safety defect
26 that poses such a serious risk. FCA, Honda Japan, Honda USA, and Honda
27 Engineering USA knew that reasonable consumers expect that their vehicle has
28 working airbags and seatbelt pretensioners and would rely on those facts in

1 deciding whether to purchase, lease, or retain a new or used motor vehicle. Whether
2 a manufacturer's products are safe and reliable, and whether that manufacturer
3 stands behind its products, are material concerns to a consumer. Especially here
4 when at least nine people have already died due to the ACU Defect, and many more
5 have been injured.

6 3917. Additionally, FCA, Honda Japan, Honda USA, and Honda
7 Engineering USA ensured that the North Carolina Plaintiffs and North Carolina
8 State Class members did not discover this information by actively concealing and
9 misrepresenting the true nature of the FCA and Honda Class Vehicles' Occupant
10 Restraint Systems to consumers and NHTSA.

11 3918. FCA, Honda Japan, Honda USA, and Honda Engineering USA
12 actively concealed and suppressed these material facts, in whole or in part, to
13 maintain a market for their Class Vehicles, to protect profits, and to avoid costly
14 recalls that would expose them to liability for those expenses and harm the
15 commercial reputations of Defendants and their products. They did so at the
16 expense of the North Carolina Plaintiffs and North Carolina State Class members.

17 3919. To this day, FCA, Honda Japan, Honda USA, and Honda Engineering
18 USA have not fully and adequately disclosed the ACU Defect, and they continue to
19 conceal material information about the defect from consumers and NHTSA. The
20 omitted and concealed facts were material because a reasonable person would find
21 them important in purchasing, leasing, or retaining a new or used motor vehicle,
22 and because they directly impact the value of the FCA and Honda Class Vehicles
23 purchased or leased by the North Carolina Plaintiffs and North Carolina State Class
24 members.

25 3920. Had they been aware of the ACU Defect in the FCA and Honda Class
26 Vehicles, and FCA's, Honda Japan's, Honda USA's, and Honda Engineering
27 USA's callous disregard for safety, the North Carolina Plaintiffs and North
28

1 Carolina State Class members either would not have paid as much as they did for
2 their Class Vehicles, or they would not have purchased or leased them.

3 3921. As alleged in Section V above, if FCA, Honda Japan, Honda USA, and
4 Honda Engineering USA had fully and adequately disclosed the ACU Defect to
5 consumers and NHTSA, the North Carolina Plaintiffs and North Carolina State
6 Class members would have seen such a disclosure.

7 3922. Accordingly, FCA, Honda Japan, Honda USA, and Honda
8 Engineering USA are liable to the North Carolina Plaintiffs and North Carolina
9 State Class members for their damages in an amount to be proven at trial, including,
10 but not limited to, their lost overpayment for the FCA and Honda Class Vehicles at
11 the time of purchase or lease.

12 3923. FCA's, Honda Japan's, Honda USA's, and Honda Engineering USA's
13 acts were done maliciously, oppressively, deliberately, with intent to defraud; in
14 reckless disregard of the North Carolina Plaintiffs' and North Carolina State Class
15 members' rights and well-being; and to enrich themselves. FCA's, Honda Japan's,
16 Honda USA's, and Honda Engineering USA's misconduct warrants an assessment
17 of punitive damages, as permitted by law, in an amount sufficient to deter such
18 conduct in the future, which amount shall be determined according to proof at trial.

19 **e. North Carolina Count 5: Fraud by Omission and**
20 **Concealment Against ZF Electronics USA, ZF Passive**
21 **Safety USA, ZF Automotive USA, ZF TRW Corp., ZF**
22 **Germany, ST Italy, ST USA, and ST Malaysia**

23 3924. Plaintiffs reallege and incorporate by reference all preceding
24 allegations as though fully set forth herein.

25 3925. The North Carolina Plaintiffs bring this count individually and on
26 behalf of members of the North Carolina State Class who purchased or leased Class
27 Vehicles, against ZF Electronics USA, ZF Passive Safety USA, ZF Automotive
28 USA, ZF TRW Corp., and ZF Germany (collectively, the "ZF Defendants"), and
ST Italy, ST Malaysia, and ST USA (collectively, the "ST Defendants").

1 3926. The ZF and ST Defendants are liable for both fraudulent concealment
2 and non-disclosure. *See, e.g.*, Restatement (Second) of Torts §§ 550-51 (1977).

3 3927. As explained in Section IV.A, the ACU Defect in Class Vehicles poses
4 serious risks to vehicle occupants, including that it can cause: (1) airbags and
5 seatbelts not to activate during a crash because crashes can sometimes release
6 electrical transients, which cause the ACU to fail; (2) airbags to deploy when the
7 vehicle has not crashed, which is dangerous because it is shocking and difficult for
8 the driver to operate a vehicle when the airbag deploys without warning; and (3)
9 failures of other important post-crash operations of the safety system, such as
10 unlocking doors to facilitate escape or extraction of drivers and passengers by
11 emergency personnel, and shutting off a crashed vehicle’s fuel or power supply.

12 3928. The ZF and ST Defendants had a duty to disclose the ACU Defect to
13 the North Carolina Plaintiffs and North Carolina State Class members because:

- 14 a. The ZF and ST Defendants had exclusive access to and far
15 superior knowledge about technical facts regarding the ACU
16 Defect;
- 17 b. Given the ACU Defect’s hidden and technical nature, the North
18 Carolina Plaintiffs and North Carolina State Class members lack
19 the sophisticated expertise in vehicle components and electrical
20 phenomena that would be necessary to discover the ACU Defect
21 on their own;
- 22 c. The ZF and ST Defendants knew that the ACU Defect gave rise
23 to serious safety concerns for the consumers who use the
24 vehicles, and the Class Vehicles containing the ACU Defect
25 would have been a material fact to the North Carolina Plaintiffs’
26 and North Carolina State Class members’ decisions to buy or
27 lease Class Vehicles; and

28

1 d. The ZF Defendants made incomplete representations about the
2 safety and reliability of the Class Vehicles and their Occupant
3 Restraint System, while purposefully withholding material facts
4 about a known safety defect, creating a duty to disclose the
5 whole truth. Specifically, ZF Electronics USA, ZF Passive
6 Safety USA, and ZF Automotive USA worked with the Vehicle
7 Manufacturer Defendants on the design and inclusion of the
8 airbag readiness indicators in the Class Vehicles, which falsely
9 assured Plaintiffs and Class Members that the Occupant
10 Restraint Systems in the Class Vehicles would function properly
11 in a crash.

12 3929. In breach of their duties, the ZF and ST Defendants failed to disclose
13 that the Class Vehicles were not safe and reliable, and that their Occupant Restraint
14 Systems, including their airbags and seatbelt pretensioners could fail in the event of
15 a crash due to the ACU Defect.

16 3930. The ZF and ST Defendants intended for the North Carolina Plaintiffs
17 and North Carolina State Class members to rely on their omissions—which they did
18 by purchasing and leasing the Class Vehicles at the prices they paid believing that
19 the Occupant Restraint Systems in their Class Vehicles would function properly.

20 3931. That reliance was reasonable, because a reasonable consumer would
21 not have expected that the Class Vehicles contained a safety defect that poses such
22 a serious risk. The ZF and ST Defendants knew that reasonable consumers expect
23 that their vehicle has working airbags and seatbelt pretensioners and would rely on
24 those facts in deciding whether to purchase, lease, or retain a new or used motor
25 vehicle. Whether a manufacturer’s products are safe and reliable, and whether that
26 manufacturer stands behind its products, are material concerns to a consumer.
27 Especially here when at least nine people have already died due to the ACU Defect,
28 and many more have been injured.

1 3932. Additionally, the ZF and ST Defendants ensured that the North
2 Carolina Plaintiffs and North Carolina State Class members did not discover this
3 information by actively concealing and misrepresenting the true nature of the Class
4 Vehicles' Occupant Restraint Systems to consumers and NHTSA.

5 3933. The ZF and ST Defendants actively concealed and suppressed these
6 material facts, in whole or in part, to maintain a market for the DS84 ACU, to
7 protect profits, and to avoid costly recalls that would expose them to liability for
8 those expenses and harm the commercial reputations of Defendants and their
9 products. They did so at the expense of the North Carolina Plaintiffs and North
10 Carolina State Class members.

11 3934. To this day, the ZF and ST Defendants have not fully and adequately
12 disclosed the ACU Defect, and they continue to conceal material information about
13 the defect from consumers and NHTSA. The omitted and concealed facts were
14 material because a reasonable person would find them important in purchasing,
15 leasing, or retaining a new or used motor vehicle, and because they directly impact
16 the value of the Class Vehicles purchased or leased by the North Carolina Plaintiffs
17 and North Carolina State Class members.

18 3935. Had they been aware of the ACU Defect in the Class Vehicles, and the
19 ZF and ST Defendants' callous disregard for safety, the North Carolina Plaintiffs
20 and North Carolina State Class members either would not have paid as much as
21 they did for their Class Vehicles, or they would not have purchased or leased them.

22 3936. As alleged in Section V above, if the ZF and ST Defendants had fully
23 and adequately disclosed the ACU Defect to consumers and NHTSA, the North
24 Carolina Plaintiffs and North Carolina State Class members would have seen such a
25 disclosure.

26 3937. Accordingly, the ZF and ST Defendants are liable to the North
27 Carolina Plaintiffs and North Carolina State Class members for their damages in an
28

1 amount to be proven at trial, including, but not limited to, their lost overpayment
2 for the Class Vehicles at the time of purchase or lease.

3 3938. The ZF and ST Defendants' acts were done maliciously, oppressively,
4 deliberately, with intent to defraud; in reckless disregard of the North Carolina
5 Plaintiffs' and North Carolina State Class members' rights and well-being; and to
6 enrich themselves. The ZF and ST Defendants' misconduct warrants an assessment
7 of punitive damages, as permitted by law, in an amount sufficient to deter such
8 conduct in the future, which amount shall be determined according to proof at trial.

9 **f. North Carolina Count 6: Unjust Enrichment Against Honda**
10 **Japan, Honda Engineering USA, and Honda USA**

11 3939. Plaintiffs reallege and incorporate by reference all allegations in
12 Sections I- VI above as though fully set forth herein.

13 3940. Plaintiff Tonya McNeely (for purposes of this count, the "North
14 Carolina Plaintiff"), brings this count individually and on behalf of members of the
15 North Carolina State Class who purchased or leased Honda Class Vehicles, against
16 Honda Japan, Honda Engineering USA, and Honda USA.

17 3941. The North Carolina Plaintiff and North Carolina State Class members
18 conferred tangible and material monetary benefits upon Honda Japan, Honda
19 Engineering USA, and Honda USA when they purchased or leased the Honda Class
20 Vehicles. Honda Japan, Honda Engineering USA, and Honda USA readily accepted
21 and retained these benefits.

22 3942. The North Carolina Plaintiff and North Carolina State Class members
23 would not have purchased or leased the Honda Class Vehicles, or would have paid
24 less for them, had they known of the ACU Defect at the time of purchase or lease.
25 Therefore, Honda Japan, Honda Engineering USA, and Honda USA profited from
26 the sale and lease of the Honda Class Vehicles to the detriment and expense of the
27 North Carolina Plaintiff and North Carolina State Class members.

28

1 3943. Honda Japan, Honda Engineering USA, and Honda USA appreciated
2 these monetary benefits. These benefits were the expected result of Honda Japan,
3 Honda Engineering USA, and Honda USA acting in their pecuniary interest at the
4 expense of their customers. Honda Japan, Honda Engineering USA, and Honda
5 USA knew of these benefits because they were aware of the ACU Defect, yet they
6 failed to disclose this knowledge and misled the North Carolina Plaintiff and North
7 Carolina State Class members regarding the nature and quality of the Honda Class
8 Vehicles while profiting from this deception.

9 3944. It would be unjust, inequitable, and unconscionable for Honda Japan,
10 Honda Engineering USA, and Honda USA to retain these monetary benefits,
11 including because they were procured as a result of Honda Japan's, Honda
12 Engineering USA's, and Honda USA's wrongful conduct alleged above.

13 3945. The North Carolina Plaintiff and North Carolina State Class members
14 are entitled to restitution of the benefits Honda Japan, Honda Engineering USA,
15 and Honda USA unjustly retained and/or any amounts necessary to return the North
16 Carolina Plaintiff and North Carolina State Class members to the position they
17 occupied prior to dealing with Honda Japan, Honda Engineering USA, and Honda
18 USA, with such amounts to be determined at trial.

19 3946. The North Carolina Plaintiff pleads this claim separately as well as in
20 the alternative to his claims for damages under Fed. R. Civ. P. 8(a)(3), because if
21 the North Carolina Plaintiff's claims for damages are dismissed or judgment is
22 entered in favor of Defendants, the North Carolina Plaintiff would have no adequate
23 legal remedy.

24 **18. Oklahoma**

25 **a. Oklahoma Count 1: Breach of Express Warranty (Okla.**
26 **Stat. Ann. tit. 12A, §§ 2-313 and 2A-210) Against FCA**

27 3947. Plaintiffs reallege and incorporate by reference all preceding
28 allegations as though fully set forth herein.

1 3948. Plaintiff James Dean (hereinafter, “Oklahoma Plaintiff”) brings this
2 count individually and on behalf of members of the Oklahoma State Class who
3 purchased or leased FCA Class Vehicles, against FCA.

4 3949. FCA is and was at all relevant times a “merchant” with respect to
5 motor vehicles under Okla. Stat. Ann. tit. 12A, §§ 2-104(1) and 2-A-103(3), and a
6 “seller” of motor vehicles under § 2-103(1)(c).

7 3950. With respect to leases, FCA is and was at all relevant times a “lessor”
8 of motor vehicles under Okla. Stat. Ann. tit. 12A, § 2A-103(1)(p).

9 3951. All Oklahoma State Class members who purchased FCA Class
10 Vehicles in Oklahoma are “buyers” within the meaning of Okla. Stat. Ann. tit. 12A,
11 § 2-103(1)(a).

12 3952. All Oklahoma State Class members who leased FCA Class Vehicles in
13 Oklahoma are “lessees” within the meaning of Okla. Stat. Ann. tit. 12A, § 2A-
14 103(1)(n).

15 3953. The FCA Class Vehicles are and were at all relevant times “goods”
16 within the meaning of Okla. Stat. Ann. tit. 12A, §§ 2-105(1) and 2A-103(1)(h).

17 3954. In connection with the purchase or lease of FCA Class Vehicles, FCA
18 provided the Oklahoma Plaintiff and Oklahoma State Class members with
19 warranties in the form of: (a) written express warranties covering the repair or
20 replacement of components that are defective in materials or workmanship, and (b)
21 descriptions of the FCA Class Vehicles as safe and reliable, and that their Occupant
22 Restraint Systems, including their airbags and seatbelt pretensioners, would
23 function properly in the event of a crash.

24 3955. However, FCA knew or should have known that the warranties were
25 false and/or misleading. Specifically, FCA was aware of the ACU Defect in the
26 FCA Class Vehicles, which made the vehicles inherently defective and dangerous
27 at the time that they were sold and leased to the Oklahoma Plaintiff and Oklahoma
28 State Class members.

1 3956. The Oklahoma Plaintiff and Oklahoma State Class members were
2 aware the Honda Class Vehicles were covered by express warranties, and those
3 warranties were an essential part of the bargain between them and FCA when the
4 Oklahoma Plaintiff and Oklahoma State Class members unknowingly purchased
5 and leased FCA Class Vehicles that came equipped with defective ACUs and
6 ASICs.

7 3957. FCA misrepresented the FCA Class Vehicles as safe and reliable while
8 concealing that they contained the ACU Defect, the Oklahoma Plaintiff and
9 Oklahoma State Class members were exposed to those misrepresentations, and the
10 Oklahoma Plaintiff and Oklahoma State Class members had no way of discerning
11 that FCA's representations were false and misleading or otherwise learning the
12 material facts that FCA had concealed or failed to disclose. Accordingly, the
13 Oklahoma Plaintiff and Oklahoma State Class members reasonably relied on the
14 FCA's express warranties when purchasing or leasing their FCA Class Vehicles.
15 Plaintiffs allege the information they relied upon in Section II.B above. To aid
16 review of this information, Exhibit 19 provides paragraph numbers for each
17 Plaintiff.

18 3958. FCA knowingly breached its express warranties to repair defects in
19 materials and workmanship by failing to repair the ACU Defect or replace the
20 defective ACUs and ASICs in the FCA Class Vehicles. FCA also breached its
21 express warranties by selling and leasing FCA Class Vehicles with a defect that
22 was never disclosed to the Oklahoma Plaintiff and Oklahoma State Class members.

23 3959. The Oklahoma Plaintiff and Oklahoma State Class members have
24 provided FCA with reasonable notice and opportunity to cure the breaches of their
25 express warranties by way of the numerous NHTSA complaints filed against it, and
26 the individual notice letters sent by Oklahoma State Class members within a
27 reasonable amount of time after the ACU Defect became public. Additionally, on
28

1 April 24, 2020, a notice letter was sent on behalf of the Oklahoma Plaintiff and
2 Oklahoma State Class members to FCA.

3 3960. Alternatively, the Oklahoma Plaintiff and Oklahoma State Class
4 members were excused from providing FCA with notice and an opportunity to cure
5 the breach, because it would have been futile. As alleged above, FCA has long
6 known that the FCA Class Vehicles contained the ACU Defect, and that the ACU
7 Defect has caused ACUs and ASICs to malfunction in crashes involving Class
8 Vehicles; however, to date, FCA has not instituted a recall or any other repair
9 program with respect to the unrecalled FCA Class Vehicles, or even acknowledged
10 that the ACU Defect exists in all FCA Class Vehicles, including the recalled FCA
11 Class Vehicles—even though FCA Class Vehicles are subject to the NHTSA
12 investigation. Therefore, the Oklahoma Plaintiff and Oklahoma State Class
13 members had no reason to believe that FCA would have repaired the ACU Defect if
14 the Oklahoma Plaintiff and Oklahoma State Class members presented their Class
15 Vehicles to it for repair.

16 3961. As a direct and proximate result of FCA’s breach of their express
17 warranties, the FCA Class Vehicles were and are defective and the ACU Defect in
18 the Oklahoma Plaintiff’s and Oklahoma State Class members’ FCA Class Vehicles
19 was not remedied. Therefore, the Oklahoma Plaintiff and Oklahoma State Class
20 members have been damaged, in an amount to be proven at trial, through their
21 overpayment at the time of purchase or lease for FCA Class Vehicles with an
22 undisclosed safety defect that would not be remedied.

23 **b. Oklahoma Count 2: Breach of Implied Warranty of**
24 **Merchantability (Okla. Stat. Ann. tit. 12A, §§ 2-314 and 2A-**
25 **212) Against FCA**

26 3962. Plaintiffs reallege and incorporate by reference all preceding
27 allegations as though fully set forth herein.
28

1 3963. The Oklahoma Plaintiff brings this count individually and on behalf of
2 members of the Oklahoma State Class who purchased or leased FCA Class
3 Vehicles, against FCA.

4 3964. A warranty that the FCA Class Vehicles were in merchantable
5 condition and fit for the ordinary purpose for which such goods are used is implied
6 by law pursuant to Okla. Stat. Ann. tit. 12A, §§ 2-314 and 2A-212.

7 3965. FCA is and was at all relevant times a “merchant” with respect to
8 motor vehicles under Okla. Stat. Ann. tit. 12A, §§ 2-104(1) and 2-A-103(3), and a
9 “seller” of motor vehicles under § 2-103(1)(c).

10 3966. With respect to leases, FCA is and was at all relevant times a “lessor”
11 of motor vehicles under Okla. Stat. Ann. tit. 12A, § 2A-103(1)(p).

12 3967. All Oklahoma State Class members who purchased FCA Class
13 Vehicles in Oklahoma are “buyers” within the meaning of Okla. Stat. Ann. tit. 12A,
14 § 2-103(1)(a).

15 3968. All Oklahoma State Class members who leased FCA Class Vehicles in
16 Oklahoma are “lessees” within the meaning of Okla. Stat. Ann. tit. 12A, § 2A-
17 103(1)(n).

18 3969. The FCA Class Vehicles were at all relevant times “goods” within the
19 meaning of Okla. Stat. Ann. tit. 12A, §§ 2-105(1) and 2A-103(1)(h).

20 3970. The FCA Class Vehicles did not comply with the implied warranty of
21 merchantability because, at the time of sale and lease and at all times thereafter,
22 they were defective and not in merchantable condition, would not pass without
23 objection in the trade, and were not fit for the ordinary purpose for which vehicles
24 were used. Specifically, at the time they were sold and leased, the FCA Class
25 Vehicles contained the ACU Defect, which may cause the airbags and seatbelt
26 pretensioners to fail to deploy during a crash, the failure to unlock doors
27 automatically after a crash, the failure to turn off a fuel supply or high-voltage
28

1 battery after a crash, or the airbags to inadvertently deploy, all of which render the
2 FCA Class Vehicles inherently defective and dangerous.

3 3971. The Oklahoma Plaintiff and Oklahoma State Class members have
4 provided FCA with reasonable notice and opportunity to cure the breaches of its
5 implied warranties by way of the numerous NHTSA complaints filed against it, and
6 the individual notice letters sent by Oklahoma State Class members within a
7 reasonable amount of time after the ACU Defect became public. Additionally, on
8 April 24, 2020, a notice letter was sent on behalf of the Oklahoma Plaintiff and
9 Oklahoma State Class members to FCA.

10 3972. Alternatively, the Oklahoma Plaintiff and Oklahoma State Class
11 members were excused from providing FCA with notice and an opportunity to cure
12 the breach, because it would have been futile. As alleged above, FCA has long
13 known that the FCA Class Vehicles contained the ACU Defect, and that the ACU
14 Defect has caused ACUs and ASICs to malfunction in crashes involving Class
15 Vehicles; however, to date, FCA has not instituted a recall or any other repair
16 program with respect to the unrecalled FCA Class Vehicles, or even acknowledged
17 that the ACU Defect exists in all FCA Class Vehicles, including the recalled FCA
18 Class Vehicles—even though FCA Class Vehicles are subject to the NHTSA
19 investigation. Therefore, the Oklahoma Plaintiff and Oklahoma State Class
20 members had no reason to believe that FCA would have repaired the ACU Defect if
21 the Oklahoma Plaintiff and Oklahoma State Class members presented their Class
22 Vehicles to it for repair.

23 3973. As a direct and proximate result of FCA's breach of the implied
24 warranty of merchantability, the Oklahoma Plaintiff and Oklahoma State Class
25 members have been damaged through their overpayment at the time of purchase or
26 lease for FCA Class Vehicles with an undisclosed safety defect in an amount to be
27 proven at trial.

28

1 c. **Oklahoma Count 3: Violation of the Oklahoma Consumer
2 Protection Act (Okla. Stat. Ann. tit. 15, § 751, *et seq.*)
3 Against FCA¹⁷**

4 3974. Plaintiffs reallege and incorporate by reference all preceding
5 allegations as though fully set forth herein.

6 3975. The Oklahoma Plaintiff brings this count individually and on behalf of
7 members of the Oklahoma State Class who purchased or leased FCA Class
8 Vehicles, against FCA.

9 3976. FCA, the Oklahoma Plaintiff, and the Oklahoma State Class members
10 are “persons” within the meaning of Okla. Stat. tit. 15, § 752(1).

11 3977. FCA is and was engaged in “consumer transactions” within the
12 meaning of Okla. Stat. tit. 15, § 752(2).

13 3978. The FCA Class Vehicles and ACUs installed in them are
14 “merchandise” within the meaning of Okla. Stat. tit. 15, § 752(7).

15 3979. The Oklahoma Consumer Protection Act (“Oklahoma CPA”) prohibits
16 deceptive and unfair trade practices.

17 3980. In the course of its business, FCA, through its agents, employees,
18 and/or subsidiaries, violated the Oklahoma CPA by knowingly and intentionally
19 misrepresenting, omitting, concealing, and/or failing to disclose material facts
20 regarding the reliability, safety, and performance of the FCA Class Vehicles, the
21 safety of their Occupant Restraint Systems, and the ACU Defect, as detailed above.

22 3981. FCA had an ongoing duty to the Oklahoma Plaintiff and Oklahoma
23 State Class members to refrain from unfair or deceptive practices under the
24 Oklahoma CPA in the course of its business. Specifically, FCA owed the Oklahoma
25 Plaintiff and Oklahoma State Class members a duty to disclose all the material facts
26 concerning the ACU Defect in the FCA Class Vehicles because it possessed
27 exclusive knowledge, it intentionally concealed the ACU Defect from the

28 ¹⁷ The Court held in its February 9, 2022 Order that the Oklahoma Plaintiff had
 sufficiently plead an Oklahoma Consumer Protection Act claim against FCA. *See*
 ECF No. 396 at 113.

1 Oklahoma Plaintiff and Oklahoma State Class members, and/or it made
2 misrepresentations that were rendered misleading because they were contradicted
3 by withheld facts.

4 3982. By misrepresenting the FCA Class Vehicles as safe and reliable and
5 the defective ACU and ASICs installed in them as properly-functioning and free
6 from defects, and by failing to disclose and actively concealing the dangers and risk
7 posed by the ACU Defect to both consumers and NHTSA, FCA engaged in one or
8 more of the following unfair or deceptive business practices prohibited by Okla.
9 Stat. tit. 15, § 753:

- 10 a. Representing that the FCA Class Vehicles and/or the defective
11 ACUs installed in them are approved and certified as safe and
12 reliable;
- 13 b. Representing that the FCA Class Vehicles and/or the defective
14 ACUs installed in them are of a particular standard, quality, and
15 grade when they are not;
- 16 c. Advertising the FCA Class Vehicles and/or the defective ACUs
17 installed in them as safe and free from defects, with the intent
18 not to sell or lease them as advertised; and
- 19 d. Engaging in the immoral, unethical, oppressive, unscrupulous,
20 or substantially injurious to consumers described above, which
21 offends established public policy.

22 Okla. Stat. tit. 15, §§ 753(5), (7), (8), and (20).

23 3983. FCA's unfair and deceptive acts or practices, including their
24 misrepresentations, concealments, omissions, and suppressions of material facts,
25 were designed to mislead and had a tendency or capacity to mislead and create a
26 false impression in consumers that the FCA Class Vehicles had properly-
27 functioning and reliable airbags and seatbelts, and that the Occupant Restraint
28 System did not contain the ACU Defect and would perform its intended function of

1 activating the seatbelts and airbags during a collision. Indeed, those
2 misrepresentations, concealments, omissions, and suppressions of material facts did
3 in fact deceive reasonable consumers, including the Oklahoma Plaintiff and
4 Oklahoma State Class members, about the true safety and reliability of FCA Class
5 Vehicles and/or the defective ACUs and ASICs installed in them, the quality of the
6 FCA Class Vehicles, and the true value of the FCA Class Vehicles.

7 3984. FCA's misrepresentations, concealments, omissions, and suppressions
8 of material facts regarding the ACU Defect and true characteristics of the Occupant
9 Restraint Systems in the FCA Class Vehicles were material to the decisions of the
10 Oklahoma Plaintiff and Oklahoma State Class members to purchase and lease those
11 vehicles, as FCA intended. The Oklahoma Plaintiff and Oklahoma State Class
12 members were exposed to those misrepresentations, concealments, omissions, and
13 suppressions of material facts, and relied on FCA's misrepresentations that the FCA
14 Class Vehicles and their Occupant Restraint Systems were safe and reliable in
15 deciding to purchase and lease FCA Class Vehicles. Plaintiffs allege the
16 information they relied upon in Section II.B above. To aid review of this
17 information, Exhibit 19 provides paragraph numbers for each Plaintiff.

18 3985. The Oklahoma Plaintiff's and Oklahoma State Class members'
19 reliance was reasonable, as they had no way of discerning that FCA's
20 representations were false and misleading, or otherwise learning the facts that FCA
21 had concealed or failed to disclose. The Oklahoma Plaintiff and Oklahoma State
22 Class members did not, and could not, unravel FCA's deception on their own.

23 3986. Had the Oklahoma Plaintiff and Oklahoma State Class members
24 known the truth about the ACU Defect, the Oklahoma Plaintiff and Oklahoma State
25 Class members would not have purchased or leased FCA Class Vehicles, or would
26 have paid significantly less for them.

27 3987. The Oklahoma Plaintiff and Oklahoma State Class members suffered
28 ascertainable losses and actual damages through their overpayment at the time of

1 purchase and lease for FCA Class Vehicles with an undisclosed safety defect as a
2 direct and proximate result of FCA’s concealment, misrepresentations, and/or
3 failure to disclose material information.

4 3988. FCA’s violations present a continuing risk to the Oklahoma Plaintiff
5 and Oklahoma State Class members, as well as to the general public, because the
6 Class Vehicles remain unsafe due to the defective ACUs and ASICs therein.
7 Additionally, FCA’s unlawful acts and practices complained of herein affect the
8 public interest.

9 3989. Pursuant to Okla. Stat. tit. 15, § 761.1, the Oklahoma Plaintiff and
10 Oklahoma State Class members seek an order enjoining the FCA’s unfair or
11 deceptive acts or practices and awarding damages and any other just and proper
12 relief available under the Oklahoma CPA.

13 **d. Oklahoma Count 4: Violation of the Oklahoma Consumer**
14 **Protection Act (Okla. Stat. Ann. tit. 15, § 751, et seq.)**
15 **Against ZF Electronics USA, ZF Passive Safety USA, ZF**
16 **Automotive USA, ZF TRW Corp., ZF Germany, ST Italy,**
17 **ST USA, and ST Malaysia.**

18 3990. Plaintiffs reallege and incorporate by reference all preceding
19 allegations as though fully set forth herein.

20 3991. The Oklahoma Plaintiff brings this count individually and on behalf of
21 members of the Oklahoma State Class against ZF Electronics USA, ZF Passive
22 Safety USA, ZF Automotive USA, ZF TRW Corp., and ZF Germany (collectively,
23 the “ZF Defendants”), and ST Italy, ST Malaysia, and ST USA (collectively, the
24 “ST Defendants”).

25 3992. The ZF Defendants, the ST Defendants, the Oklahoma Plaintiff, and
26 Oklahoma State Class members are “persons” within the meaning of Okla. Stat. tit.
27 15, § 752(1).

28 3993. The ZF and ST Defendants were and are engaged in “consumer
transactions” within the meaning of Okla. Stat. tit. 15, § 752(2).

1 3994. The Class Vehicles and ACUs installed in them are “merchandise”
2 within the meaning of Okla. Stat. tit. 15, § 752(7).

3 3995. The Oklahoma CPA prohibits deceptive and unfair trade practices.

4 3996. In the course of their business, the ZF and ST Defendants, through
5 their agents, employees, and/or subsidiaries, violated the Oklahoma CPA by
6 knowingly and intentionally omitting, concealing, and failing to disclose material
7 facts regarding the existence, nature, and scope of the defective ACU and ASIC
8 installed in the Class Vehicles, as detailed above.

9 3997. Additionally, ZF Electronics USA, ZF Passive Safety USA, and ZF
10 Automotive USA through their agents, employees, and/or subsidiaries, violated the
11 Oklahoma CPA when they knowingly and intentionally misrepresented the Class
12 Vehicles as safe and reliable and the defective ACU and ASICs installed in them as
13 properly-functioning and free from defects. Specifically, ZF Electronics USA, ZF
14 Passive Safety USA, and ZF Automotive USA worked with the Vehicle
15 Manufacturer Defendants on the design and inclusion of the airbag readiness
16 indicators in the Class Vehicles, which falsely assured Plaintiffs and Class
17 Members that the Occupant Restraint Systems in the Class Vehicles would function
18 properly in a crash.

19 3998. By misrepresenting, failing to disclose, and actively concealing the
20 dangers and risk posed by the Class Vehicles due to the ACU Defect, the ZF and
21 ST Defendants engaged in deceptive acts or practices prohibited by Okla. Stat. tit.
22 15, § 753.

23 3999. The ZF and ST Defendants’ unfair or deceptive acts or practices,
24 including their misrepresentations, concealments, omissions, and suppressions of
25 material facts, were designed to mislead and had a tendency or capacity to mislead
26 and create a false impression in consumers that the Class Vehicles had properly-
27 functioning and reliable airbags and seatbelts, and that the Occupant Restraint
28 System did not contain the ACU Defect and would perform its intended function of

1 activating the seatbelts and airbags during a collision. Indeed, those
2 misrepresentations, concealments, omissions, and suppressions of material facts did
3 in fact deceive reasonable consumers, including the Oklahoma Plaintiff and
4 Oklahoma State Class members, about the true safety and reliability of Class
5 Vehicles and/or the defective ACUs and ASICs installed in them, the quality of the
6 Class Vehicles, and the true value of the Class Vehicles.

7 4000. The Oklahoma Plaintiff and Oklahoma State Class members justifiably
8 relied on the ZF and ST Defendants' misrepresentations, omissions, and
9 concealment, as they had no way of discerning that the Class Vehicles contained
10 the ACU Defect, as alleged above. The Oklahoma Plaintiff and Oklahoma State
11 Class members did not, and could not, unravel the ZF and ST Defendants'
12 deception on their own

13 4001. The ZF and ST Defendants' misrepresentations and concealment of the
14 ACU Defect and true characteristics of the defective ACUs and ASICs in the Class
15 Vehicles were material to the decisions of the Oklahoma Plaintiff and Oklahoma
16 State Class members to purchase and lease Class Vehicles, as the ZF and ST
17 Defendants intended. Had they known the truth, the Oklahoma Plaintiff and
18 Oklahoma State Class members would not have purchased or leased the Class
19 Vehicles, or would have paid significantly less for them.

20 4002. The Oklahoma Plaintiff and Oklahoma State Class members suffered
21 ascertainable losses and actual damages as a direct and proximate result of the ZF
22 and ST Defendants' misrepresentations, concealment and/or failure to disclose
23 material information.

24 4003. The ZF and ST Defendants' violations present a continuing risk to the
25 Oklahoma Plaintiff and Oklahoma State Class members, as well as to the general
26 public, because the Class Vehicles remain unsafe due to the defective ACUs and
27 ASICs therein. The ZF and ST Defendants' unlawful acts and practices complained
28 of herein affect the public interest.

1 4004. Pursuant to Okla. Stat. tit. 15, § 761.1, the Oklahoma Plaintiff and
2 Oklahoma State Class members seek an order enjoining the ZF and ST Defendants’
3 unfair or deceptive acts or practices and awarding damages and any other just and
4 proper relief available under the Oklahoma CPA.

5 **e. Oklahoma Count 5: Fraud by Omission and Concealment**
6 **Against FCA**

7 4005. Plaintiffs reallege and incorporate by reference all preceding
8 allegations as though fully set forth herein.

9 4006. The Oklahoma Plaintiff brings this count individually and on behalf of
10 members of the Oklahoma State Class who purchased or leased FCA Class
11 Vehicles, against FCA.

12 4007. FCA is liable for both fraudulent concealment and non-disclosure. *See,*
13 *e.g.,* Restatement (Second) of Torts §§ 550-51 (1977).

14 4008. As explained in Section IV.A, the ACU Defect in Class Vehicles poses
15 serious risks to vehicle occupants, including that it can cause: (1) airbags and
16 seatbelts not to activate during a crash because crashes can sometimes release
17 electrical transients, which cause the ACU to fail; (2) airbags to deploy when the
18 vehicle has not crashed, which is dangerous because it is shocking and difficult for
19 the driver to operate a vehicle when the airbag deploys without warning; and (3)
20 failures of other important post-crash operations of the safety system, such as
21 unlocking doors to facilitate escape or extraction of drivers and passengers by
22 emergency personnel, and shutting off a crashed vehicle’s fuel or power supply.

23 4009. FCA had a duty to disclose the ACU Defect to the Oklahoma Plaintiff
24 and Oklahoma State Class members because:

- 25 a. FCA had exclusive access to and far superior knowledge about
- 26 technical facts regarding the ACU Defect;
- 27 b. Given the ACU Defect’s hidden and technical nature, the
- 28 Oklahoma Plaintiff and Oklahoma State Class members lack the

1 sophisticated expertise in vehicle components and electrical
2 phenomena that would be necessary to discover the ACU Defect
3 on their own;

4 c. FCA knew that the ACU Defect gave rise to serious safety
5 concerns for the consumers who use the vehicles, and the FCA
6 Class Vehicles containing the ACU Defect would have been a
7 material fact to the Oklahoma Plaintiff's and Oklahoma State
8 Class members' decisions to buy or lease FCA Class Vehicles;
9 and

10 d. FCA made incomplete representations about the safety and
11 reliability of the FCA Class Vehicles and their Occupant
12 Restraint System, while purposefully withholding material facts
13 about a known safety defect. In uniform advertising and
14 materials provided with each Class Vehicle, FCA intentionally
15 concealed, suppressed, and failed to disclose to the Oklahoma
16 Plaintiff and Oklahoma State Class members that the FCA Class
17 Vehicles contained the ACU Defect. Because they volunteered
18 to provide information about the FCA Class Vehicles that they
19 marketed and offered for sale and lease to the Oklahoma
20 Plaintiff and Oklahoma State Class members, FCA had the duty
21 to disclose the whole truth.

22 4010. In breach of its duties, FCA failed to disclose that the FCA Class
23 Vehicles were not safe and reliable, and that their Occupant Restraint Systems,
24 including their airbags and seatbelt pretensioners could fail in the event of a crash
25 due to the ACU Defect.

26 4011. FCA intended for the Oklahoma Plaintiff and Oklahoma State Class
27 members to rely on its omissions—which they did by purchasing and leasing the
28

1 FCA Class Vehicles at the prices they paid believing that the Occupant Restraint
2 Systems in their Class Vehicles would function properly.

3 4012. That reliance was reasonable, because a reasonable consumer would
4 not have expected that the FCA Class Vehicles contained a safety defect that poses
5 such a serious risk. FCA knew that reasonable consumers expect that their vehicle
6 has working airbags and seatbelt pretensioners and would rely on those facts in
7 deciding whether to purchase, lease, or retain a new or used motor vehicle. Whether
8 a manufacturer's products are safe and reliable, and whether that manufacturer
9 stands behind its products, are material concerns to a consumer. Especially here
10 when at least nine people have already died due to the ACU Defect, and many more
11 have been injured.

12 4013. Additionally, FCA ensured that the Oklahoma Plaintiff and Oklahoma
13 State Class members did not discover this information by actively concealing and
14 misrepresenting the true nature of the FCA Class Vehicles' Occupant Restraint
15 Systems to consumers and NHTSA.

16 4014. FCA actively concealed and suppressed these material facts, in whole
17 or in part, to maintain a market for its Class Vehicles, to protect profits, and to
18 avoid costly recalls that would expose them to liability for those expenses and harm
19 the commercial reputations of Defendants and their products. It did so at the
20 expense of the Oklahoma Plaintiff and Oklahoma State Class members.

21 4015. To this day, FCA has not fully and adequately disclosed the ACU
22 Defect, and they continue to conceal material information about the defect from
23 consumers and NHTSA. The omitted and concealed facts were material because a
24 reasonable person would find them important in purchasing, leasing, or retaining a
25 new or used motor vehicle, and because they directly impact the value of the FCA
26 Class Vehicles purchased or leased by the Oklahoma Plaintiff and Oklahoma State
27 Class members.

28

1 4016. Had they been aware of the ACU Defect in the FCA Class Vehicles,
2 and FCA’s callous disregard for safety, the Oklahoma Plaintiff and Oklahoma State
3 Class members either would not have paid as much as they did for their Class
4 Vehicles, or they would not have purchased or leased them.

5 4017. As alleged in Section V above, FCA had fully and adequately
6 disclosed the ACU Defect to consumers and NHTSA, the Oklahoma Plaintiff and
7 Oklahoma State Class members would have seen such a disclosure.

8 4018. Accordingly, FCA is liable to the Oklahoma Plaintiff and Oklahoma
9 State Class members for their damages in an amount to be proven at trial, including,
10 but not limited to, their lost overpayment for the FCA Class Vehicles at the time of
11 purchase or lease.

12 4019. FCA’s acts were done maliciously, oppressively, deliberately, with
13 intent to defraud; in reckless disregard of the Oklahoma Plaintiff’s and Oklahoma
14 State Class members’ rights and well-being; and to enrich themselves. FCA’s
15 misconduct warrants an assessment of punitive damages, as permitted by law, in an
16 amount sufficient to deter such conduct in the future, which amount shall be
17 determined according to proof at trial.

18 **f. Oklahoma Count 6: Fraud by Omission and Concealment**
19 **Against ZF Electronics USA, ZF Passive Safety USA, ZF**
20 **Automotive USA, ZF TRW Corp., ZF Germany, ST Italy,**
21 **ST USA, and ST Malaysia**

22 4020. Plaintiffs reallege and incorporate by reference all preceding
23 allegations as though fully set forth herein.

24 4021. The Oklahoma Plaintiff brings this count individually and on behalf of
25 members of the Oklahoma State Class who purchased or leased Class Vehicles,
26 against ZF Electronics USA, ZF Passive Safety USA, ZF Automotive USA, ZF
27 TRW Corp., and ZF Germany (collectively, the “ZF Defendants”), and ST Italy, ST
28 Malaysia, and ST USA (collectively, the “ST Defendants”).

1 4022. The ZF and ST Defendants are liable for both fraudulent concealment
2 and non-disclosure. *See, e.g.*, Restatement (Second) of Torts §§ 550-51 (1977).

3 4023. As explained in Section IV.A, the ACU Defect in Class Vehicles poses
4 serious risks to vehicle occupants, including that it can cause: (1) airbags and
5 seatbelts not to activate during a crash because crashes can sometimes release
6 electrical transients, which cause the ACU to fail; (2) airbags to deploy when the
7 vehicle has not crashed, which is dangerous because it is shocking and difficult for
8 the driver to operate a vehicle when the airbag deploys without warning; and (3)
9 failures of other important post-crash operations of the safety system, such as
10 unlocking doors to facilitate escape or extraction of drivers and passengers by
11 emergency personnel, and shutting off a crashed vehicle’s fuel or power supply.

12 4024. The ZF and ST Defendants had a duty to disclose the ACU Defect to
13 the Oklahoma Plaintiff and Oklahoma State Class members because:

- 14 a. The ZF and ST Defendants had exclusive access to and far
15 superior knowledge about technical facts regarding the ACU
16 Defect;
- 17 b. Given the ACU Defect’s hidden and technical nature, the
18 Oklahoma Plaintiff and Oklahoma State Class members lack the
19 sophisticated expertise in vehicle components and electrical
20 phenomena that would be necessary to discover the ACU Defect
21 on their own;
- 22 c. The ZF and ST Defendants knew that the ACU Defect gave rise
23 to serious safety concerns for the consumers who use the
24 vehicles, and the Class Vehicles containing the ACU Defect
25 would have been a material fact to the Oklahoma Plaintiff’s and
26 Oklahoma State Class members’ decisions to buy or lease Class
27 Vehicles; and

28

1 d. The ZF Defendants made incomplete representations about the
2 safety and reliability of the Class Vehicles and their Occupant
3 Restraint System, while purposefully withholding material facts
4 about a known safety defect, creating a duty to disclose the
5 whole truth. Specifically, ZF Electronics USA, ZF Passive
6 Safety USA, and ZF Automotive USA worked with the Vehicle
7 Manufacturer Defendants on the design and inclusion of the
8 airbag readiness indicators in the Class Vehicles, which falsely
9 assured Plaintiffs and Class Members that the Occupant
10 Restraint Systems in the Class Vehicles would function properly
11 in a crash.

12 4025. In breach of their duties, the ZF and ST Defendants failed to disclose
13 that the Class Vehicles were not safe and reliable, and that their Occupant Restraint
14 Systems, including their airbags and seatbelt pretensioners could fail in the event of
15 a crash due to the ACU Defect.

16 4026. The ZF and ST Defendants intended for the Oklahoma Plaintiff and
17 Oklahoma State Class members to rely on their omissions—which they did by
18 purchasing and leasing the Class Vehicles at the prices they paid believing that the
19 Occupant Restraint Systems in their Class Vehicles would function properly.

20 4027. That reliance was reasonable, because a reasonable consumer would
21 not have expected that the Class Vehicles contained a safety defect that poses such
22 a serious risk. The ZF and ST Defendants knew that reasonable consumers expect
23 that their vehicle has working airbags and seatbelt pretensioners and would rely on
24 those facts in deciding whether to purchase, lease, or retain a new or used motor
25 vehicle. Whether a manufacturer’s products are safe and reliable, and whether that
26 manufacturer stands behind its products, are material concerns to a consumer.
27 Especially here when at least nine people have already died due to the ACU Defect,
28 and many more have been injured.

1 4028. Additionally, the ZF and ST Defendants ensured that the Oklahoma
2 Plaintiff and Oklahoma State Class members did not discover this information by
3 actively concealing and misrepresenting the true nature of the Class Vehicles’
4 Occupant Restraint Systems to consumers and NHTSA.

5 4029. The ZF and ST Defendants actively concealed and suppressed these
6 material facts, in whole or in part, to maintain a market for the DS84 ACU, to
7 protect profits, and to avoid costly recalls that would expose them to liability for
8 those expenses and harm the commercial reputations of Defendants and their
9 products. They did so at the expense of the Oklahoma Plaintiff and Oklahoma State
10 Class members.

11 4030. To this day, the ZF and ST Defendants have not fully and adequately
12 disclosed the ACU Defect, and they continue to conceal material information about
13 the defect from consumers and NHTSA. The omitted and concealed facts were
14 material because a reasonable person would find them important in purchasing,
15 leasing, or retaining a new or used motor vehicle, and because they directly impact
16 the value of the Class Vehicles purchased or leased by the Oklahoma Plaintiff and
17 Oklahoma State Class members.

18 4031. Had they been aware of the ACU Defect in the Class Vehicles, and the
19 ZF and ST Defendants’ callous disregard for safety, the Oklahoma Plaintiff and
20 Oklahoma State Class members either would not have paid as much as they did for
21 their Class Vehicles, or they would not have purchased or leased them.

22 4032. As alleged in Section V above, if the ZF and ST Defendants had fully
23 and adequately disclosed the ACU Defect to consumers and NHTSA, the
24 Oklahoma Plaintiff and Oklahoma State Class members would have seen such a
25 disclosure.

26 4033. Accordingly, the ZF and ST Defendants are liable to the Oklahoma
27 Plaintiff and Oklahoma State Class members for their damages in an amount to be
28

1 proven at trial, including, but not limited to, their lost overpayment for the Class
2 Vehicles at the time of purchase or lease.

3 4034. The ZF and ST Defendants' acts were done maliciously, oppressively,
4 deliberately, with intent to defraud; in reckless disregard of the Oklahoma
5 Plaintiff's and Oklahoma State Class members' rights and well-being; and to enrich
6 themselves. The ZF and ST Defendants' misconduct warrants an assessment of
7 punitive damages, as permitted by law, in an amount sufficient to deter such
8 conduct in the future, which amount shall be determined according to proof at trial.

9 **g. Oklahoma Count 7: Unjust Enrichment Against FCA**

10 4035. Plaintiffs reallege and incorporate by reference all allegations in
11 Sections I-VI above as though fully set forth herein.

12 4036. The Oklahoma Plaintiff brings this count individually and on behalf of
13 members of the Oklahoma State Class who purchased or leased FCA Class
14 Vehicles, against FCA.

15 4037. The Oklahoma Plaintiff and Oklahoma State Class members conferred
16 tangible and material monetary benefits upon FCA when they purchased or leased
17 the FCA Class Vehicles. FCA readily accepted and retained these benefits.

18 4038. The Oklahoma Plaintiff and Oklahoma State Class members would not
19 have purchased or leased the FCA Class Vehicles, or would have paid less for
20 them, had they known of the ACU Defect at the time of purchase or lease.
21 Therefore, FCA profited from the sale and lease of the FCA Class Vehicles to the
22 detriment and expense of the Oklahoma Plaintiff and Oklahoma State Class
23 members.

24 4039. FCA appreciated these monetary benefits. These benefits were the
25 expected result of FCA acting in its pecuniary interest at the expense of its
26 customers. FCA knew of these benefits because it was aware of the ACU Defect,
27 yet it failed to disclose this knowledge and misled the Oklahoma Plaintiff and
28

1 Oklahoma State Class members regarding the nature and quality of the FCA Class
2 Vehicles while profiting from this deception.

3 4040. It would be unjust, inequitable, and unconscionable for FCA to retain
4 these monetary benefits, including because they were procured as a result of FCA’s
5 wrongful conduct alleged above.

6 4041. The Oklahoma Plaintiff and Oklahoma State Class members are
7 entitled to restitution of the benefits FCA unjustly retained and/or any amounts
8 necessary to return the Oklahoma Plaintiff and Oklahoma State Class members to
9 the position they occupied prior to dealing with FCA, with such amounts to be
10 determined at trial.

11 4042. The Oklahoma Plaintiff pleads this claim separately as well as in the
12 alternative to his claims for damages under Fed. R. Civ. P. 8(a)(3), because if the
13 Oklahoma Plaintiff’s claims for damages are dismissed or judgment is entered in
14 favor of Defendants, the Oklahoma Plaintiff would have no adequate legal remedy.

15 **19. Pennsylvania**

16 **a. Pennsylvania Count 1: Breach of Express Warranty (13 Pa.**
17 **Cons. Stat. §§ 2313 and 2A210) Against Hyundai Korea,**
Hyundai USA, Kia Korea, and Kia USA

18 4043. Plaintiffs reallege and incorporate by reference all preceding
19 allegations as though fully set forth herein.

20 4044. Plaintiff Larae Angel brings this count individually and on behalf of
21 members of the Pennsylvania State Class who purchased or leased Hyundai Class
22 Vehicles, against the Hyundai Korea and Hyundai USA.

23 4045. Plaintiff Richard Kintzel brings this count individually and on behalf
24 of members of the Pennsylvania State Class who purchased or leased Kia Class
25 Vehicles, against Kia Korea and Kia USA.

26 4046. For purposes of this count, Plaintiffs Angel and Kintzel shall be
27 referred to as the “Pennsylvania Plaintiffs.”

28

1 4047. Hyundai Korea, Hyundai USA, Kia Korea, and Kia USA are and were
2 at all relevant times “merchants” with respect to motor vehicles under 13 Pa. Cons.
3 Stat. §§ 2104 and 2A103(c), and “sellers” of motor vehicles under § 2103(a).

4 4048. With respect to leases, Hyundai Korea, Hyundai USA, Kia Korea, and
5 Kia USA are and were at all relevant times “lessors” of motor vehicles under 13 Pa.
6 Cons. Stat. § 2A103(a).

7 4049. All Pennsylvania State Class members who purchased Hyundai and
8 Kia Class Vehicles in Pennsylvania are “buyers” within the meaning of 13 Pa.
9 Cons. Stat. § 2103(a).

10 4050. All Pennsylvania State Class members who leased Hyundai and Kia
11 Class Vehicles in Pennsylvania are “lessees” within the meaning of 13 Pa. Cons.
12 Stat. § 2A103(a).

13 4051. The Hyundai and Kia Class Vehicles are and were at all relevant times
14 “goods” within the meaning of 13 Pa. Cons. Stat. §§ 2105(a) and 2A103(a).

15 4052. In connection with the purchase or lease of Hyundai and Kia Class
16 Vehicles, Hyundai Korea, Hyundai USA, Kia Korea, and Kia USA provided the
17 Pennsylvania Plaintiffs and Pennsylvania State Class members with warranties in
18 the form of: (a) written express warranties covering the repair or replacement of
19 components that are defective in materials or workmanship, and (b) descriptions of
20 the Hyundai and Kia Class Vehicles as safe and reliable, and that their Occupant
21 Restraint Systems, including their airbags and seatbelt pretensioners, would
22 function properly in the event of a crash.

23 4053. However, Hyundai Korea, Hyundai USA, Kia Korea, and Kia USA
24 knew or should have known that the warranties were false and/or misleading.
25 Specifically, Hyundai Korea, Hyundai USA, Kia Korea, and Kia USA were aware
26 of the ACU Defect in the Hyundai and Kia Class Vehicles, which made the vehicles
27 inherently defective and dangerous at the time that they were sold and leased to the
28 Pennsylvania Plaintiffs and Pennsylvania State Class members.

1 4054. The Pennsylvania Plaintiffs and Pennsylvania State Class members
2 were aware the Hyundai and Kia Class Vehicles were covered by express
3 warranties, and those warranties were an essential part of the bargain between them,
4 Hyundai Korea, Hyundai USA, Kia Korea, and Kia USA when the Pennsylvania
5 Plaintiffs and Pennsylvania State Class members unknowingly purchased and
6 leased Hyundai and Kia Class Vehicles that came equipped with defective ACUs
7 and ASICs.

8 4055. Hyundai Korea, Hyundai USA, Kia Korea, and Kia USA
9 misrepresented the Hyundai and Kia Class Vehicles as safe and reliable while
10 concealing that they contained the ACU Defect, the Pennsylvania Plaintiffs and
11 Pennsylvania State Class members were exposed to those misrepresentations, and
12 the Pennsylvania Plaintiffs and Pennsylvania State Class members had no way of
13 discerning that Hyundai Korea's, Hyundai USA's, Kia Korea's, and Kia USA's
14 representations were false and misleading or otherwise learning the material facts
15 that Hyundai Korea, Hyundai USA, Kia Korea, and Kia USA had concealed or
16 failed to disclose. Accordingly, the Pennsylvania Plaintiffs and Pennsylvania State
17 Class members reasonably relied on Hyundai Korea's, Hyundai USA's, Kia
18 Korea's, and Kia USA's express warranties when purchasing or leasing their
19 Hyundai and Kia Class Vehicles. Plaintiffs allege the information they relied upon
20 in Section II.B above. To aid review of this information, Exhibit 19 provides
21 paragraph numbers for each Plaintiff.

22 4056. Hyundai Korea, Hyundai USA, Kia Korea, and Kia USA knowingly
23 breached their express warranties to repair defects in materials and workmanship by
24 failing to repair the ACU Defect or replace the defective ACUs and ASICs in the
25 Hyundai and Kia Class Vehicles. Hyundai Korea, Hyundai USA, Kia Korea, and
26 Kia USA also breached their express warranties by selling and leasing Hyundai and
27 Kia Class Vehicles with a defect that was never disclosed to the Pennsylvania
28 Plaintiffs and Pennsylvania State Class members.

1 4057. The Pennsylvania Plaintiffs and Pennsylvania State Class members
2 have provided Hyundai Korea, Hyundai USA, Kia Korea, and Kia USA with
3 reasonable notice and opportunity to cure the breaches of their express warranties
4 by way of the numerous NHTSA complaints filed against them, and individual
5 notice letters sent by the Pennsylvania State Class members within a reasonable
6 amount of time after the ACU Defect became public. Additionally, on April 24,
7 2020, a notice letter was sent on behalf of the Pennsylvania Plaintiffs and
8 Pennsylvania State Class members to Hyundai Korea, Hyundai USA, Kia Korea,
9 and Kia USA.

10 4058. Alternatively, the Pennsylvania Plaintiffs and Pennsylvania State Class
11 members were excused from providing Hyundai Korea, Hyundai USA, Kia Korea,
12 and Kia USA with notice and an opportunity to cure the breach, because it would
13 have been futile. As alleged above, Hyundai Korea and Hyundai USA have long
14 known that the Hyundai Class Vehicles contained the ACU Defect, and that the
15 ACU Defect has caused ACUs and ASICs to malfunction in crashes involving
16 Class Vehicles; however, to date, Hyundai Korea and Hyundai USA have not
17 instituted a recall or any other repair program with respect to the unrecalled
18 Hyundai Class Vehicles, or even acknowledged that the ACU Defect exists in all
19 Hyundai Class Vehicles, including the recalled Hyundai Class Vehicles—even
20 though all of the Hyundai Class Vehicles are subject to the NHTSA investigation.
21 Similarly, to date, Kia Korea and Kia USA have not instituted a recall or any other
22 repair program with respect to the unrecalled Kia Class Vehicles, or even
23 acknowledged that the ACU Defect exists in all Kia Class Vehicles, including the
24 recalled Kia Class Vehicles—even though all of the Kia Class Vehicles are subject
25 to the NHTSA investigation. Therefore, the Pennsylvania Plaintiffs and
26 Pennsylvania State Class members had no reason to believe that Hyundai Korea,
27 Hyundai USA, Kia Korea, and Kia USA would have repaired the ACU Defect if
28

1 the Pennsylvania Plaintiffs and Pennsylvania State Class members presented their
2 Class Vehicles to them for repair.

3 4059. As a direct and proximate result of Hyundai Korea's, Hyundai USA's,
4 Kia Korea's, and Kia USA's breach of their express warranties, the Hyundai and
5 Kia Class Vehicles were and are defective and the ACU Defect in the Pennsylvania
6 Plaintiffs' and Pennsylvania State Class members' Hyundai and Kia Class Vehicles
7 was not remedied. Therefore, the Pennsylvania Plaintiffs and Pennsylvania State
8 Class members have been damaged, in an amount to be proven at trial, through
9 their overpayment at the time of purchase or lease for Hyundai and Kia Class
10 Vehicles with an undisclosed safety defect that would not be remedied.

11 **b. Pennsylvania Count 2: Breach of Implied Warranty of**
12 **Merchantability (13 Pa. Cons. Stat. §§ 2314 and 2A212)**
13 **Against Hyundai USA and Kia USA**

14 4060. Plaintiffs reallege and incorporate by reference all preceding
15 allegations as though fully set forth herein.

16 4061. Plaintiff Larae Angel brings this count individually and on behalf of
17 members of the Pennsylvania State Class who purchased or leased Hyundai Class
18 Vehicles, against Hyundai USA.

19 4062. Plaintiff Richard Kintzel brings this count individually and on behalf
20 of members of the Pennsylvania State Class who purchased or leased Kia Class
21 Vehicles, against Kia USA.

22 4063. For purposes of this count, Plaintiffs Angel and Kintzel shall be
23 referred to as the "Pennsylvania Plaintiffs."

24 4064. A warranty that the Hyundai and Kia Class Vehicles were in
25 merchantable condition and fit for the ordinary purpose for which such goods are
26 used is implied by law pursuant to 13 Pa. Cons. Stat. §§ 2314 and 2A212.

27 4065. Hyundai USA and Kia USA are and were at all relevant times
28 "merchants" with respect to motor vehicles under 13 Pa. Cons. Stat. §§ 2104 and
2A103(c), and "sellers" of motor vehicles under § 2103(a).

1 4066. With respect to leases, Hyundai USA and Kia USA are and were at all
2 relevant times “lessors” of motor vehicles under 13 Pa. Cons. Stat. § 2A103(a).

3 4067. All Pennsylvania State Class members who purchased Class Vehicles
4 in Pennsylvania are “buyers” within the meaning of 13 Pa. Cons. Stat. § 2103(a).

5 4068. All Pennsylvania State Class members who leased Class Vehicles in
6 Pennsylvania are “lessees” within the meaning of 13 Pa. Cons. Stat. § 2A103(a).

7 4069. The Class Vehicles are and were at all relevant times “goods” within
8 the meaning of 13 Pa. Cons. Stat. §§ 2105(a) and 2A103(a).

9 4070. The Hyundai and Kia Class Vehicles did not comply with the implied
10 warranty of merchantability because, at the time of sale and lease and at all times
11 thereafter, they were defective and not in merchantable condition, would not pass
12 without objection in the trade, and were not fit for the ordinary purpose for which
13 vehicles were used. Specifically, at the time they were sold and leased, the Hyundai
14 and Kia Class Vehicles contained the ACU Defect, which may cause the airbags
15 and seatbelt pretensioners to fail to deploy during a crash, the failure to unlock
16 doors automatically after a crash, the failure to turn off a fuel supply or high-
17 voltage battery after a crash, or the airbags to inadvertently deploy, all of which
18 render the Hyundai and Kia Class Vehicles inherently defective and dangerous.

19 4071. The Pennsylvania Plaintiffs and Pennsylvania State Class members
20 have provided Hyundai USA and Kia USA with reasonable notice and opportunity
21 to cure the breaches of its implied warranty by way of the numerous NHTSA
22 complaints filed against it, and the individual notice letters sent by Pennsylvania
23 State Class members within a reasonable amount of time after the ACU Defect
24 became public. Additionally, on April 24, 2020, a notice letter was sent on behalf of
25 the Pennsylvania Plaintiffs and Pennsylvania State Class members to Hyundai USA
26 and Kia USA.

27 4072. Alternatively, the Pennsylvania Plaintiffs and Pennsylvania State Class
28 members were excused from providing Hyundai USA and Kia USA with notice and

1 an opportunity to cure the breach, because it would have been futile. As alleged
2 above, Hyundai USA has long known that the Hyundai Class Vehicles contained
3 the ACU Defect, and that the ACU Defect has caused ACUs and ASICs to
4 malfunction in crashes involving Class Vehicles; however, to date, Hyundai USA
5 has not instituted a recall or any other repair program with respect to the unrecalled
6 Hyundai Class Vehicles, or even acknowledged that the ACU Defect exists in all
7 Hyundai Class Vehicles, including the recalled Hyundai Class Vehicles—even
8 though all of the Hyundai Class Vehicles are subject to the NHTSA investigation.
9 Similarly, to date, Kia USA has not instituted a recall or any other repair program
10 with respect to the unrecalled Kia Class Vehicles, or even acknowledged that the
11 ACU Defect exists in all Kia Class Vehicles, including the recalled Kia Class
12 Vehicles—even though all of the Kia Class Vehicles are subject to the NHTSA
13 investigation. Therefore, the Pennsylvania Plaintiffs and Pennsylvania State Class
14 members had no reason to believe that Hyundai USA and Kia USA would have
15 repaired the ACU Defect if the Pennsylvania Plaintiffs and Pennsylvania State
16 Class members presented their Class Vehicles to them for repair.

17 4073. As a direct and proximate result of Hyundai USA’s and Kia USA’s
18 breach of the implied warranty of merchantability, the Pennsylvania Plaintiff and
19 Pennsylvania State Class members have been damaged through their overpayment
20 at the time of purchase or lease for Hyundai and Kia Class Vehicles with an
21 undisclosed safety defect in an amount to be proven at trial.

22 c. **Pennsylvania Count 3: Violation of the Pennsylvania Unfair**
23 **Trade Practices and Consumer Protection Law (73 Pa.**
24 **Cons. Stat. §§ 201-1, et seq.) Against Hyundai Korea,**
Hyundai USA, Kia Korea, and Kia USA¹⁸

25 4074. Plaintiffs reallege and incorporate by reference all preceding
26 allegations as though fully set forth herein.

27 ¹⁸ The Court held in its February 9, 2022 Order that the Pennsylvania Plaintiffs
28 stated a claim under the Pennsylvania Unfair Trade Practices and Consumer

1 4075. Plaintiff Larae Angel brings this count individually and on behalf of
2 members of the Pennsylvania State Class who purchased or leased Hyundai Class
3 Vehicles, against Hyundai Korea and Hyundai USA.

4 4076. Plaintiff Richard Kintzel brings this count individually and on behalf
5 of members of the Pennsylvania State Class who purchased or leased Kia Class
6 Vehicles, against Kia Korea and Kia USA.

7 4077. For purposes of this count, Plaintiffs Angel and Kintzel shall be
8 referred to as the “Pennsylvania Plaintiffs.”

9 4078. Hyundai Korea, Hyundai USA, Kia Korea, Kia USA, the Pennsylvania
10 Plaintiffs, and Pennsylvania State Class members are “persons” within the meaning
11 of 73 Pa. Cons. Stat. § 201-2(2).

12 4079. The Pennsylvania Plaintiffs and Pennsylvania State Class Members
13 purchased their Hyundai and Kia Class Vehicles and the ACUs installed in them
14 primarily for personal, family, or household purposes within the meaning of 73 Pa.
15 Cons. Stat. § 201-9.2(a).

16 4080. Hyundai Korea, Hyundai USA, Kia Korea, and Kia USA were and are
17 engaged in “trade” or “commerce” within the meaning of 73 Pa. Cons. Stat. § 201-
18 2(3).

19 4081. The Pennsylvania Unfair Trade Practices and Consumer Protection
20 Law (“Pennsylvania CPL”) prohibits “unfair or deceptive acts or practices in the
21 conduct of any trade or commerce[.]” 73 Pa. Cons. Stat. § 201-3.

22 4082. In the course of their business, Hyundai Korea, Hyundai USA, Kia
23 Korea, and Kia USA, through their agents, employees, and/or subsidiaries, violated
24 the Pennsylvania CPL by knowingly and intentionally misrepresenting, omitting,
25 concealing, and/or failing to disclose material facts regarding the reliability, safety,
26 and performance of the Hyundai and Kia Class Vehicles, the safety of their
27 Occupant Restraint Systems, and the ACU Defect, as detailed above.

28 _____
Protection Law against Hyundai USA and Kia USA. *See* ECF No. 396 at 114-15.

1 4083. Hyundai Korea, Hyundai USA, Kia Korea, and Kia USA had an
2 ongoing duty to the Pennsylvania Plaintiffs and Pennsylvania State Class members
3 to refrain from unfair or deceptive practices under the Pennsylvania CPL in the
4 course of their business. Specifically, Hyundai Korea, Hyundai USA, Kia Korea,
5 and Kia USA owed the Pennsylvania Plaintiffs and Pennsylvania State Class
6 members a duty to disclose all the material facts concerning the ACU Defect in the
7 Hyundai and Kia Class Vehicles because they possessed exclusive knowledge, they
8 intentionally concealed the ACU Defect from the Pennsylvania Plaintiffs and
9 Pennsylvania State Class members, and/or they made misrepresentations that were
10 rendered misleading because they were contradicted by withheld facts.

11 4084. By misrepresenting the Hyundai and Kia Class Vehicles as safe and
12 reliable and the defective ACU and ASICs installed in them as properly-functioning
13 and free from defects, and by failing to disclose and actively concealing the dangers
14 and risk posed by the ACU Defect to both consumers and NHTSA, Hyundai Korea,
15 Hyundai USA, Kia Korea, and Kia USA engaged in one or more of the following
16 unfair or deceptive business practices prohibited by 73 Pa. Cons. Stat. § 201-2(3):

- 17 a. Representing that the Hyundai and Kia Class Vehicles and/or the
18 defective ACUs installed in them have characteristics, uses,
19 benefits, and qualities which they do not have.
- 20 b. Representing that the Hyundai and Kia Class Vehicles and/or the
21 defective ACUs installed in them are of a particular standard,
22 quality, and grade when they are not.
- 23 c. Advertising the Hyundai and Kia Class Vehicles and/or the
24 defective ACUs installed in them with the intent not to sell or
25 lease them as advertised.
- 26 d. Engaging in any other fraudulent or deceptive conduct which
27 creates a likelihood of confusion or of misunderstanding.

28 73 Pa. Cons. Stat. § 201-2(4)(v), (vii), (ix) and (xxi).

1 4085. Hyundai Korea’s, Hyundai USA’s, Kia Korea’s, and Kia USA’s unfair
2 and deceptive acts or practices, including their misrepresentations, concealments,
3 omissions, and suppressions of material facts, were designed to mislead and had a
4 tendency or capacity to mislead and create a false impression in consumers that the
5 Hyundai and Kia Class Vehicles had properly-functioning and reliable airbags and
6 seatbelts, and that the Occupant Restraint System did not contain the ACU Defect
7 and would perform its intended function of activating the seatbelts and airbags
8 during a collision. Indeed, those misrepresentations, concealments, omissions, and
9 suppressions of material facts did in fact deceive reasonable consumers, including
10 the Pennsylvania Plaintiffs and Pennsylvania State Class members, about the true
11 safety and reliability of Hyundai and Kia Class Vehicles and/or the defective ACUs
12 and ASICs installed in them, the quality of the Hyundai and Kia Class Vehicles,
13 and the true value of the Hyundai and Kia Class Vehicles.

14 4086. Hyundai Korea’s, Hyundai USA’s, Kia Korea’s, and Kia USA’s
15 misrepresentations, concealments, omissions, and suppressions of material facts
16 regarding the ACU Defect and true characteristics of the Occupant Restraint
17 Systems in the Hyundai and Kia Class Vehicles were material to the decisions of
18 the Pennsylvania Plaintiffs and Pennsylvania State Class members to purchase and
19 lease those vehicles, as Hyundai Korea, Hyundai USA, Kia Korea, and Kia USA
20 intended. The Pennsylvania Plaintiffs and Pennsylvania State Class members were
21 exposed to those misrepresentations, concealments, omissions, and suppressions of
22 material facts, and relied on Hyundai Korea’s, Hyundai USA’s, Kia Korea’s, and
23 Kia USA’s misrepresentations that the Hyundai-Kia Vehicles and their Occupant
24 Restraint Systems were safe and reliable in deciding to purchase and lease Hyundai
25 and Kia Class Vehicles. Plaintiffs allege the information they relied upon in Section
26 II.B above. To aid review of this information, Exhibit 19 provides paragraph
27 numbers for each Plaintiff.
28

1 4087. The Pennsylvania Plaintiffs' and Pennsylvania State Class members'
2 reliance was reasonable, as they had no way of discerning that Hyundai Korea's,
3 Hyundai USA's, Kia Korea's, and Kia USA's representations were false and
4 misleading, or otherwise learning the facts that Hyundai Korea, Hyundai USA, Kia
5 Korea, and Kia USA had concealed or failed to disclose. The Pennsylvania
6 Plaintiffs and Pennsylvania State Class members did not, and could not, unravel
7 Hyundai Korea's, Hyundai USA's, Kia Korea's, and Kia USA's deception on their
8 own.

9 4088. Had the Pennsylvania Plaintiffs and Pennsylvania State Class members
10 known the truth about the ACU Defect, the Pennsylvania Plaintiffs and
11 Pennsylvania State Class members would not have purchased or leased Hyundai
12 and Kia Class Vehicles, or would have paid significantly less for them.

13 4089. The Pennsylvania Plaintiffs and Pennsylvania State Class members
14 suffered ascertainable losses and actual damages through their overpayment at the
15 time of purchase and lease for Hyundai and Kia Class Vehicles with an undisclosed
16 safety defect as a direct and proximate result of Hyundai Korea's, Hyundai USA's,
17 Kia Korea's, and Kia USA's concealment, misrepresentations, and/or failure to
18 disclose material information.

19 4090. Hyundai Korea's, Hyundai USA's, Kia Korea's, and Kia USA's
20 violations present a continuing risk to the Pennsylvania Plaintiffs and Pennsylvania
21 State Class members, as well as to the general public, because the Class Vehicles
22 remain unsafe due to the defective ACUs and ASICs therein. Additionally, their
23 unlawful acts and practices complained of herein affect the public interest.

24 4091. Pursuant to 73 Pa. Cons. Stat. § 201-9.2(a), the Pennsylvania Plaintiffs
25 and Pennsylvania State Class members seek an order enjoining the Hyundai
26 Korea's, Hyundai USA's, Kia Korea's, and Kia USA's unfair or deceptive acts or
27 practices and awarding damages and any other just and proper relief available under
28 the Pennsylvania CPL.

1 **d. Pennsylvania Count 4: Violation of the Pennsylvania Unfair**
2 **Trade Practices and Consumer Protection Law (73 Pa.**
3 **Cons. Stat. §§ 201-1, et seq.) Against ZF Electronics USA, ZF**
4 **Passive Safety USA, ZF Automotive USA, ZF TRW Corp.,**
5 **ZF Germany, ST Italy, ST USA, and ST Malaysia**

6 4092. Plaintiffs reallege and incorporate by reference all preceding
7 allegations as though fully set forth herein.

8 4093. Plaintiffs Larae Angel and Richard Kintzel bring this count
9 individually and on behalf of members of the Pennsylvania State Class against ZF
10 Electronics USA, ZF Passive Safety USA, ZF Automotive USA, ZF TRW Corp.,
11 and ZF Germany (collectively, the “ZF Defendants”), and ST Italy, ST Malaysia,
12 and ST USA (collectively, the “ST Defendants”).

13 4094. For purposes of this count, Plaintiffs Angel and Kintzel shall be
14 referred to as the “Pennsylvania Plaintiffs.”

15 4095. The ZF Defendants, the ST Defendants, the Pennsylvania Plaintiffs,
16 and Pennsylvania State Class members are “persons” within the meaning of 73 Pa.
17 Cons. Stat. § 201-2(2).

18 4096. The Pennsylvania Plaintiffs and Pennsylvania State Class Members
19 purchased their Class Vehicles and the ACUs installed in them primarily for
20 personal, family, or household purposes within the meaning of 73 Pa. Cons. Stat.
21 § 201-9.2(a).

22 4097. The ZF and ST Defendants were and are engaged in “trade” or
23 “commerce” within the meaning of 73 Pa. Cons. Stat. § 201-2(3).

24 4098. The Pennsylvania Unfair Trade Practices and Consumer Protection
25 Law (“Pennsylvania CPL”) prohibits “unfair or deceptive acts or practices in the
26 conduct of any trade or commerce[.]” 73 Pa. Cons. Stat. § 201-3.

27 4099. The ZF and ST Defendants had an ongoing duty to the Pennsylvania
28 Plaintiffs and Pennsylvania State Class members to refrain from unfair or deceptive
 practices under the Pennsylvania CPL in the course of their business. Specifically,
 the ZF and ST Defendants owed the Pennsylvania Plaintiffs and Pennsylvania State

1 Class members a duty to disclose all the material facts concerning the ACU Defect
2 in the Class Vehicles because they possessed exclusive knowledge and they
3 intentionally concealed the ACU Defect from the Pennsylvania Plaintiffs and
4 Pennsylvania State Class members.

5 4100. In the course of their business, the ZF and ST Defendants, through
6 their agents, employees, and/or subsidiaries, violated the Pennsylvania CPL by
7 knowingly and intentionally omitting, concealing, and failing to disclose material
8 facts regarding the existence, nature, and scope of the defective ACU and ASIC
9 installed in the Class Vehicles, as detailed above.

10 4101. Additionally, ZF Electronics USA, ZF Passive Safety USA, and ZF
11 Automotive USA through their agents, employees, and/or subsidiaries, violated the
12 Pennsylvania CPL when they knowingly and intentionally misrepresented the Class
13 Vehicles as safe and reliable and the defective ACU and ASICs installed in them as
14 properly-functioning and free from defects. Specifically, ZF Electronics USA, ZF
15 Passive Safety USA, and ZF Automotive USA worked with the Vehicle
16 Manufacturer Defendants on the design and inclusion of the airbag readiness
17 indicators in the Class Vehicles, which falsely assured Plaintiffs and Class
18 Members that the Occupant Restraint Systems in the Class Vehicles would function
19 properly in a crash.

20 4102. By misrepresenting, failing to disclose, and actively concealing the
21 dangers and risk posed by the Class Vehicles due to the ACU Defect, the ZF and
22 ST Defendants engaged in deceptive acts or practices prohibited by 73 Pa. Cons.
23 Stat. § 201-3.

24 4103. The ZF and ST Defendants' unfair or deceptive acts or practices,
25 including their misrepresentations, concealments, omissions, and suppressions of
26 material facts, were designed to mislead and had a tendency or capacity to mislead
27 and create a false impression in consumers that the Class Vehicles had properly-
28 functioning and reliable airbags and seatbelts, and that the Occupant Restraint

1 System did not contain the ACU Defect and would perform its intended function of
2 activating the seatbelts and airbags during a collision. Indeed, those
3 misrepresentations, concealments, omissions, and suppressions of material facts did
4 in fact deceive reasonable consumers, including the Pennsylvania Plaintiffs and
5 Pennsylvania State Class members, about the true safety and reliability of Class
6 Vehicles and/or the defective ACUs and ASICs installed in them, the quality of the
7 Class Vehicles, and the true value of the Class Vehicles.

8 4104. The Pennsylvania Plaintiffs and Pennsylvania State Class members
9 justifiably relied on the ZF and ST Defendants' misrepresentations, omissions, and
10 concealment, as they had no way of discerning that the Class Vehicles contained
11 the ACU Defect, as alleged above. The Pennsylvania Plaintiffs and Pennsylvania
12 State Class members did not, and could not, unravel the ZF and ST Defendants'
13 deception on their own

14 4105. The ZF and ST Defendants' misrepresentations and concealment of the
15 ACU Defect and true characteristics of the defective ACUs and ASICs in the Class
16 Vehicles were material to the decisions of the Pennsylvania Plaintiffs and
17 Pennsylvania State Class members to purchase and lease Class Vehicles, as the ZF
18 and ST Defendants intended. Had they known the truth, the Pennsylvania Plaintiffs
19 and Pennsylvania State Class members would not have purchased or leased the
20 Class Vehicles, or would have paid significantly less for them.

21 4106. The Pennsylvania Plaintiffs and Pennsylvania State Class members
22 suffered ascertainable losses and actual damages as a direct and proximate result of
23 the ZF and ST Defendants' misrepresentations, concealment and/or failure to
24 disclose material information.

25 4107. The ZF and ST Defendants' violations present a continuing risk to the
26 Pennsylvania Plaintiffs and Pennsylvania State Class members, as well as to the
27 general public, because the Class Vehicles remain unsafe due to the defective
28

1 ACUs and ASICs therein. The ZF and ST Defendants’ unlawful acts and practices
2 complained of herein affect the public interest.

3 4108. Pursuant to 73 Pa. Cons. Stat. § 201-9.2(a), the Pennsylvania Plaintiffs
4 and Pennsylvania State Class members seek an order enjoining the ZF and ST
5 Defendants’ unfair or deceptive acts or practices and awarding damages and any
6 other just and proper relief available under the Pennsylvania CPL.

7 e. **Pennsylvania Count 5: Fraud by Omission and Concealment**
8 **Against Hyundai Korea, Hyundai USA, Kia Korea, and Kia**
9 **USA**

10 4109. Plaintiffs reallege and incorporate by reference all preceding
11 allegations as though fully set forth herein.

12 4110. Plaintiff Larae Angel brings this count individually and on behalf of
13 members of the Pennsylvania State Class who purchased or leased Hyundai Class
14 Vehicles, against Hyundai Korea and Hyundai USA.

15 4111. Plaintiff Richard Kintzel brings this count individually and on behalf
16 of members of the Pennsylvania State Class who purchased or leased Kia Class
17 Vehicles, against Kia Korea and Kia USA.

18 4112. For purposes of this count, Plaintiffs Angel and Kintzel shall be
19 referred to as the “Pennsylvania Plaintiffs.”

20 4113. Hyundai Korea, Hyundai USA, Kia Korea, and Kia USA are liable for
21 both fraudulent concealment and non-disclosure. *See, e.g.*, Restatement (Second) of
22 Torts §§ 550-51 (1977).

23 4114. As explained in Section IV.A, the ACU Defect in Class Vehicles poses
24 serious risks to vehicle occupants, including that it can cause: (1) airbags and
25 seatbelts not to activate during a crash because crashes can sometimes release
26 electrical transients, which cause the ACU to fail; (2) airbags to deploy when the
27 vehicle has not crashed, which is dangerous because it is shocking and difficult for
28 the driver to operate a vehicle when the airbag deploys without warning; and (3)
failures of other important post-crash operations of the safety system, such as

1 unlocking doors to facilitate escape or extraction of drivers and passengers by
2 emergency personnel, and shutting off a crashed vehicle’s fuel or power supply.

3 4115. Hyundai Korea, Hyundai USA, Kia Korea, and Kia USA had a duty to
4 disclose the ACU Defect to the Pennsylvania Plaintiffs and Pennsylvania State
5 Class members because:

- 6 a. Hyundai Korea, Hyundai USA, Kia Korea, and Kia USA had
7 exclusive access to and far superior knowledge about technical
8 facts regarding the ACU Defect;
- 9 b. Given the ACU Defect’s hidden and technical nature, the
10 Pennsylvania Plaintiffs and Pennsylvania State Class members
11 lack the sophisticated expertise in vehicle components and
12 electrical phenomena that would be necessary to discover the
13 ACU Defect on their own;
- 14 c. Hyundai Korea, Hyundai USA, Kia Korea, and Kia USA knew
15 that the ACU Defect gave rise to serious safety concerns for the
16 consumers who use the vehicles, and the Hyundai and Kia Class
17 Vehicles containing the ACU Defect would have been a material
18 fact to the Pennsylvania Plaintiffs’ and Pennsylvania State Class
19 members’ decisions to buy or lease Hyundai and Kia Class
20 Vehicles; and
- 21 d. Hyundai Korea, Hyundai USA, Kia Korea, and Kia USA made
22 incomplete representations about the safety and reliability of the
23 Hyundai and Kia Class Vehicles and their Occupant Restraint
24 System, while purposefully withholding material facts about a
25 known safety defect. In uniform advertising and materials
26 provided with each Class Vehicle, Hyundai Korea, Hyundai
27 USA, Kia Korea, and Kia USA intentionally concealed,
28 suppressed, and failed to disclose to the Pennsylvania Plaintiffs

1 and Pennsylvania State Class members that the Hyundai and Kia
2 Class Vehicles contained the ACU Defect. Because they
3 volunteered to provide information about the Hyundai and Kia
4 Class Vehicles that they marketed and offered for sale and lease
5 to the Pennsylvania Plaintiffs and Pennsylvania State Class
6 members, Hyundai Korea, Hyundai USA, Kia Korea, and Kia
7 USA had the duty to disclose the whole truth.

8 4116. In breach of their duties, Hyundai Korea, Hyundai USA, Kia Korea,
9 and Kia USA failed to disclose that the Hyundai and Kia Class Vehicles were not
10 safe and reliable, and that their Occupant Restraint Systems, including their airbags
11 and seatbelt pretensioners could fail in the event of a crash due to the ACU Defect.

12 4117. Hyundai Korea, Hyundai USA, Kia Korea, and Kia USA intended for
13 the Pennsylvania Plaintiffs and Pennsylvania State Class members to rely on their
14 omissions—which they did by purchasing and leasing the Hyundai and Kia Class
15 Vehicles at the prices they paid believing that the Occupant Restraint Systems in
16 their Class Vehicles would function properly.

17 4118. That reliance was reasonable, because a reasonable consumer would
18 not have expected that the Hyundai and Kia Class Vehicles contained a safety
19 defect that poses such a serious risk. Hyundai Korea, Hyundai USA, Kia Korea, and
20 Kia USA knew that reasonable consumers expect that their vehicle has working
21 airbags and seatbelt pretensioners and would rely on those facts in deciding whether
22 to purchase, lease, or retain a new or used motor vehicle. Whether a manufacturer's
23 products are safe and reliable, and whether that manufacturer stands behind its
24 products, are material concerns to a consumer. Especially here when at least nine
25 people have already died due to the ACU Defect, and many more have been
26 injured.

27 4119. Additionally, Hyundai Korea, Hyundai USA, Kia Korea, and Kia USA
28 ensured that the Pennsylvania Plaintiffs and Pennsylvania State Class members did

1 not discover this information by actively concealing and misrepresenting the true
2 nature of the Hyundai and Kia Class Vehicles' Occupant Restraint Systems to
3 consumers and NHTSA.

4 4120. Hyundai Korea, Hyundai USA, Kia Korea, and Kia USA actively
5 concealed and suppressed these material facts, in whole or in part, to maintain a
6 market for their Class Vehicles, to protect profits, and to avoid costly recalls that
7 would expose them to liability for those expenses and harm the commercial
8 reputations of Defendants and their products. They did so at the expense of the
9 Pennsylvania Plaintiffs and Pennsylvania State Class members.

10 4121. To this day, Hyundai Korea, Hyundai USA, Kia Korea, and Kia USA
11 have not fully and adequately disclosed the ACU Defect, and they continue to
12 conceal material information about the defect from consumers and NHTSA. The
13 omitted and concealed facts were material because a reasonable person would find
14 them important in purchasing, leasing, or retaining a new or used motor vehicle,
15 and because they directly impact the value of the Hyundai and Kia Class Vehicles
16 purchased or leased by the Pennsylvania Plaintiffs and Pennsylvania State Class
17 members.

18 4122. Had they been aware of the ACU Defect in the Hyundai and Kia Class
19 Vehicles, and Hyundai Korea's, Hyundai USA's, Kia Korea's, and Kia USA's
20 callous disregard for safety, the Pennsylvania Plaintiffs and Pennsylvania State
21 Class members either would not have paid as much as they did for their Class
22 Vehicles, or they would not have purchased or leased them.

23 4123. As alleged in Section V above, if Hyundai Korea, Hyundai USA, Kia
24 Korea, and Kia USA had fully and adequately disclosed the ACU Defect to
25 consumers and NHTSA, the Pennsylvania Plaintiffs and Pennsylvania State Class
26 members would have seen such a disclosure.

27 4124. Accordingly, Hyundai Korea, Hyundai USA, Kia Korea, and Kia USA
28 are liable to the Pennsylvania Plaintiffs and Pennsylvania State Class members for

1 their damages in an amount to be proven at trial, including, but not limited to, their
2 lost overpayment for the Hyundai and Kia Class Vehicles at the time of purchase or
3 lease.

4 4125. Hyundai Korea's, Hyundai USA's, Kia Korea's, and Kia USA's acts
5 were done maliciously, oppressively, deliberately, with intent to defraud; in
6 reckless disregard of the Pennsylvania Plaintiffs' and Pennsylvania State Class
7 members' rights and well-being; and to enrich themselves. Hyundai Korea's,
8 Hyundai USA's, Kia Korea's, and Kia USA's misconduct warrants an assessment
9 of punitive damages, as permitted by law, in an amount sufficient to deter such
10 conduct in the future, which amount shall be determined according to proof at trial.

11 **f. Pennsylvania Count 6: Fraud by Omission and Concealment**
12 **Against ZF Electronics USA, ZF Passive Safety USA, ZF**
13 **Automotive USA, ZF TRW Corp., ZF Germany, ST Italy,**
14 **ST USA, and ST Malaysia**

14 4126. Plaintiffs reallege and incorporate by reference all preceding
15 allegations as though fully set forth herein.

16 4127. The Pennsylvania Plaintiffs bring this count individually and on behalf
17 of members of the Pennsylvania State Class who purchased or leased Class
18 Vehicles, against ZF Electronics USA, ZF Passive Safety USA, ZF Automotive
19 USA, ZF TRW Corp., and ZF Germany (collectively, the "ZF Defendants"), and
20 ST Italy, ST Malaysia, and ST USA (collectively, the "ST Defendants").

21 4128. The ZF and ST Defendants are liable for both fraudulent concealment
22 and non-disclosure. *See, e.g.*, Restatement (Second) of Torts §§ 550-51 (1977).

23 4129. As explained in Section IV.A, the ACU Defect in Class Vehicles poses
24 serious risks to vehicle occupants, including that it can cause: (1) airbags and
25 seatbelts not to activate during a crash because crashes can sometimes release
26 electrical transients, which cause the ACU to fail; (2) airbags to deploy when the
27 vehicle has not crashed, which is dangerous because it is shocking and difficult for
28 the driver to operate a vehicle when the airbag deploys without warning; and (3)

1 failures of other important post-crash operations of the safety system, such as
2 unlocking doors to facilitate escape or extraction of drivers and passengers by
3 emergency personnel, and shutting off a crashed vehicle's fuel or power supply.

4 4130. The ZF and ST Defendants had a duty to disclose the ACU Defect to
5 the Pennsylvania Plaintiffs and Pennsylvania State Class members because:

- 6 a. The ZF and ST Defendants had exclusive access to and far
7 superior knowledge about technical facts regarding the ACU
8 Defect;
- 9 b. Given the ACU Defect's hidden and technical nature, the
10 Pennsylvania Plaintiffs and Pennsylvania State Class members
11 lack the sophisticated expertise in vehicle components and
12 electrical phenomena that would be necessary to discover the
13 ACU Defect on their own;
- 14 c. The ZF and ST Defendants knew that the ACU Defect gave rise
15 to serious safety concerns for the consumers who use the
16 vehicles, and the Class Vehicles containing the ACU Defect
17 would have been a material fact to the Pennsylvania Plaintiffs'
18 and Pennsylvania State Class members' decisions to buy or
19 lease Class Vehicles; and
- 20 d. The ZF Defendants made incomplete representations about the
21 safety and reliability of the Class Vehicles and their Occupant
22 Restraint System, while purposefully withholding material facts
23 about a known safety defect, creating a duty to disclose the
24 whole truth. Specifically, ZF Electronics USA, ZF Passive
25 Safety USA, and ZF Automotive USA worked with the Vehicle
26 Manufacturer Defendants on the design and inclusion of the
27 airbag readiness indicators in the Class Vehicles, which falsely
28 assured Plaintiffs and Class Members that the Occupant

1 Restraint Systems in the Class Vehicles would function properly
2 in a crash.

3 4131. In breach of their duties, the ZF and ST Defendants failed to disclose
4 that the Class Vehicles were not safe and reliable, and that their Occupant Restraint
5 Systems, including their airbags and seatbelt pretensioners could fail in the event of
6 a crash due to the ACU Defect.

7 4132. The ZF and ST Defendants intended for the Pennsylvania Plaintiffs
8 and Pennsylvania State Class members to rely on their omissions—which they did
9 by purchasing and leasing the Class Vehicles at the prices they paid believing that
10 the Occupant Restraint Systems in their Class Vehicles would function properly.

11 4133. That reliance was reasonable, because a reasonable consumer would
12 not have expected that the Class Vehicles contained a safety defect that poses such
13 a serious risk. The ZF and ST Defendants knew that reasonable consumers expect
14 that their vehicle has working airbags and seatbelt pretensioners and would rely on
15 those facts in deciding whether to purchase, lease, or retain a new or used motor
16 vehicle. Whether a manufacturer's products are safe and reliable, and whether that
17 manufacturer stands behind its products, are material concerns to a consumer.
18 Especially here when at least nine people have already died due to the ACU Defect,
19 and many more have been injured.

20 4134. Additionally, the ZF and ST Defendants ensured that the Pennsylvania
21 Plaintiffs and Pennsylvania State Class members did not discover this information
22 by actively concealing and misrepresenting the true nature of the Class Vehicles'
23 Occupant Restraint Systems to consumers and NHTSA.

24 4135. The ZF and ST Defendants actively concealed and suppressed these
25 material facts, in whole or in part, to maintain a market for the DS84 ACU, to
26 protect profits, and to avoid costly recalls that would expose them to liability for
27 those expenses and harm the commercial reputations of Defendants and their
28

1 products. They did so at the expense of the Pennsylvania Plaintiffs and
2 Pennsylvania State Class members.

3 4136. To this day, the ZF and ST Defendants have not fully and adequately
4 disclosed the ACU Defect, and they continue to conceal material information about
5 the defect from consumers and NHTSA. The omitted and concealed facts were
6 material because a reasonable person would find them important in purchasing,
7 leasing, or retaining a new or used motor vehicle, and because they directly impact
8 the value of the Class Vehicles purchased or leased by the Pennsylvania Plaintiffs
9 and Pennsylvania State Class members.

10 4137. Had they been aware of the ACU Defect in the Class Vehicles, and the
11 ZF and ST Defendants' callous disregard for safety, the Pennsylvania Plaintiffs and
12 Pennsylvania State Class members either would not have paid as much as they did
13 for their Class Vehicles, or they would not have purchased or leased them.

14 4138. As alleged in Section V above, if the ZF and ST Defendants had fully
15 and adequately disclosed the ACU Defect to consumers and NHTSA, the
16 Pennsylvania Plaintiffs and Pennsylvania State Class members would have seen
17 such a disclosure.

18 4139. Accordingly, the ZF and ST Defendants are liable to the Pennsylvania
19 Plaintiffs and Pennsylvania State Class members for their damages in an amount to
20 be proven at trial, including, but not limited to, their lost overpayment for the Class
21 Vehicles at the time of purchase or lease.

22 4140. The ZF and ST Defendants' acts were done maliciously, oppressively,
23 deliberately, with intent to defraud; in reckless disregard of the Pennsylvania
24 Plaintiffs' and Pennsylvania State Class members' rights and well-being; and to
25 enrich themselves. The ZF and ST Defendants' misconduct warrants an assessment
26 of punitive damages, as permitted by law, in an amount sufficient to deter such
27 conduct in the future, which amount shall be determined according to proof at trial.
28

1 **g. Pennsylvania Count 7: Unjust Enrichment Against Hyundai**
2 **Korea, Hyundai USA, Kia Korea, and Kia USA**

3 4141. Plaintiffs reallege and incorporate by reference all allegations in
4 Sections I-VI above as though fully set forth herein.

5 4142. Plaintiff Larae Angel brings this count individually and on behalf of
6 members of the Pennsylvania State Class who purchased or leased Hyundai Class
7 Vehicles, against Hyundai Korea and Hyundai USA.

8 4143. Plaintiff Richard Kintzel brings this count individually and on behalf
9 of members of the Pennsylvania State Class who purchased or leased Kia Class
10 Vehicles, against Kia Korea and Kia USA.

11 4144. For purposes of this count, Plaintiffs Angel and Kintzel shall be
12 referred to as the “Pennsylvania Plaintiffs.”

13 4145. The Pennsylvania Plaintiffs and Pennsylvania State Class members
14 conferred tangible and material monetary benefits upon Hyundai Korea, Hyundai
15 USA, Kia Korea, and Kia USA when they purchased or leased the Hyundai and Kia
16 Class Vehicles. Hyundai Korea, Hyundai USA, Kia Korea, and Kia USA readily
17 accepted and retained these benefits.

18 4146. The Pennsylvania Plaintiffs and Pennsylvania State Class members
19 would not have purchased or leased the Hyundai and Kia Class Vehicles, or would
20 have paid less for them, had they known of the ACU Defect at the time of purchase
21 or lease. Therefore, Hyundai Korea, Hyundai USA, Kia Korea, and Kia USA
22 profited from the sale and lease of the Hyundai and Kia Class Vehicles to the
23 detriment and expense of the Pennsylvania Plaintiffs and Pennsylvania State Class
24 members.

25 4147. Hyundai Korea, Hyundai USA, Kia Korea, and Kia USA appreciated
26 these monetary benefits. These benefits were the expected result of Hyundai Korea,
27 Hyundai USA, Kia Korea, and Kia USA acting in their pecuniary interest at the
28 expense of their customers. Hyundai Korea, Hyundai USA, Kia Korea, and Kia

1 USA knew of these benefits because they were aware of the ACU Defect, yet they
2 failed to disclose this knowledge and misled the Pennsylvania Plaintiffs and
3 Pennsylvania State Class members regarding the nature and quality of the Hyundai
4 and Kia Class Vehicles while profiting from this deception.

5 4148. It would be unjust, inequitable, and unconscionable for Hyundai
6 Korea, Hyundai USA, Kia Korea, and Kia USA to retain these monetary benefits,
7 including because they were procured as a result of Hyundai Korea's, Hyundai
8 USA's, Kia Korea's, and Kia USA's wrongful conduct alleged above.

9 4149. The Pennsylvania Plaintiffs and Pennsylvania State Class members are
10 entitled to restitution of the benefits Hyundai Korea, Hyundai USA, Kia Korea, and
11 Kia USA unjustly retained and/or any amounts necessary to return the Pennsylvania
12 Plaintiffs and Pennsylvania State Class members to the position they occupied prior
13 to dealing with Hyundai Korea, Hyundai USA, Kia Korea, and Kia USA, with such
14 amounts to be determined at trial.

15 4150. The Pennsylvania Plaintiffs pleads this claim separately as well as in
16 the alternative to his claims for damages under Fed. R. Civ. P. 8(a)(3), because if
17 the Pennsylvania Plaintiffs' claims for damages are dismissed or judgment is
18 entered in favor of Defendants, the Pennsylvania Plaintiffs would have no adequate
19 legal remedy.

20 **20. South Carolina**

21 **a. South Carolina Count 1: Breach of Express Warranty (S.C.**
22 **Code Ann. §§ 36-2-313 and 36-2A-210) Toyota Sales USA¹⁹**

23 4151. Plaintiffs reallege and incorporate by reference all preceding
24 allegations as though fully set forth herein.

25

26

27

28

¹⁹ The Court held in its February 9, 2022 Order that the South Carolina Plaintiff stated a claim for breach of express warranty. *See* ECF No. 396 at 160-61.

1 4152. Plaintiff Michael Hines (hereinafter, “South Carolina Plaintiff”) brings
2 this count individually and on behalf of members of the South Carolina State Class
3 who purchased Toyota Class Vehicles, against Toyota Sales USA.

4 4153. Toyota Sales USA is and was at all relevant times a “merchant” with
5 respect to motor vehicles under S.C. Code Ann. §§ 36-2-104(1) and 36-2A-103(3),
6 and a “seller” of motor vehicles under § 36-2-103(1)(d).

7 4154. With respect to leases, Toyota Sales USA is and was at all relevant
8 times a “lessor” of motor vehicles under S.C. Code Ann. § 36-2A-103(1)(p).

9 4155. All South Carolina State Class members who purchased Toyota Class
10 Vehicles in South Carolina are “buyers” within the meaning of S.C. Code Ann.
11 § 36-2-103(1)(a).

12 4156. All South Carolina State Class members who leased Toyota Class
13 Vehicles in South Carolina are “lessees” within the meaning of S.C. Code Ann.
14 § 36-2A-103(1)(n).

15 4157. The Toyota Class Vehicles are and were at all relevant times “goods”
16 within the meaning of S.C. Code Ann. §§ 36-2-105(1) and 36-2A-103(1)(h).

17 4158. In connection with the purchase or lease of Toyota Class Vehicles,
18 Toyota Sales USA provided the South Carolina Plaintiff and South Carolina State
19 Class members with warranties in the form of: (a) written express warranties
20 covering the repair or replacement of components that are defective in materials or
21 workmanship, and (b) descriptions of the Toyota Class Vehicles as safe and
22 reliable, and that their Occupant Restraint Systems, including their airbags and
23 seatbelt pretensioners, would function properly in the event of a crash

24 4159. However, Toyota Sales USA knew or should have known that the
25 warranties were false and/or misleading. Specifically, Toyota Sales USA was aware
26 of the ACU Defect in the Toyota Class Vehicles, which made the vehicles
27 inherently defective and dangerous at the time that they were sold and leased to the
28 South Carolina Plaintiff and South Carolina State Class members.

1 4160. The South Carolina Plaintiff and South Carolina State Class members
2 were aware the Toyota Class Vehicles were covered by express warranties, and
3 those warranties were an essential part of the bargain between them and Toyota
4 Sales USA when the South Carolina Plaintiff and South Carolina State Class
5 members unknowingly purchased and leased Toyota Class Vehicles that came
6 equipped with defective ACUs and ASICs.

7 4161. Toyota Sales USA misrepresented the Toyota Class Vehicles as safe
8 and reliable while concealing that they contained the ACU Defect, the South
9 Carolina Plaintiff and South Carolina State Class members were exposed to those
10 misrepresentations, and the South Carolina Plaintiff and South Carolina State Class
11 members had no way of discerning that Toyota Sales USA's representations were
12 false and misleading or otherwise learning the material facts that Toyota Sales USA
13 had concealed or failed to disclose. Accordingly, the South Carolina Plaintiff and
14 South Carolina State Class members reasonably relied on Toyota Sales USA's
15 express warranties when purchasing or leasing their Toyota Class Vehicles.
16 Plaintiffs allege the information they relied upon in Section II.B above. To aid
17 review of this information, Exhibit 19 provides paragraph numbers for each
18 Plaintiff.

19 4162. Toyota Sales USA knowingly breached its express warranties to repair
20 defects in materials and workmanship by failing to repair the ACU Defect or
21 replace the defective ACUs and ASICs in the Toyota Class Vehicles. Toyota Sales
22 USA also breached its express warranties by selling and leasing Toyota Class
23 Vehicles with a defect that was never disclosed to the South Carolina Plaintiff and
24 South Carolina State Class members.

25 4163. The South Carolina Plaintiff and South Carolina State Class members
26 have provided Toyota Sales USA with reasonable notice and opportunity to cure
27 the breaches of its express warranties by way of the numerous NHTSA complaints
28 filed against them, and the individual notice letters sent by South Carolina State

1 Class members within a reasonable amount of time after the ACU Defect became
2 public. Additionally, on April 24, 2020, a notice letter was sent on behalf of the
3 South Carolina Plaintiff and South Carolina State Class members to Toyota Sales
4 USA.

5 4164. Alternatively, the South Carolina Plaintiff and South Carolina State
6 Class members were excused from providing Toyota Sales USA with notice and an
7 opportunity to cure the breach, because it would have been futile. As alleged above,
8 Toyota Sales USA has long known that the Toyota Class Vehicles contained the
9 ACU Defect, and that the ACU Defect has caused ACUs and ASICs to malfunction
10 in crashes involving Class Vehicles; however, to date, Toyota Sales USA has not
11 instituted a recall or any other repair program with respect to the unrecalled Toyota
12 Class Vehicles, or even acknowledged that the ACU Defect exists in all Toyota
13 Class Vehicles, including the recalled Toyota Class Vehicles—even though Toyota
14 Class Vehicles are subject to the NHTSA investigation. Therefore, the South
15 Carolina Plaintiff and South Carolina State Class members had no reason to believe
16 that Toyota Sales USA would have repaired the ACU Defect if the South Carolina
17 Plaintiff and South Carolina State Class members presented their Class Vehicles to
18 it for repair.

19 4165. As a direct and proximate result of Toyota Sales USA's breach of its
20 express warranties, the Toyota Class Vehicles were and are defective and the ACU
21 Defect in the South Carolina Plaintiff's and South Carolina State Class members'
22 Toyota Class Vehicles was not remedied. Therefore, the South Carolina Plaintiff
23 and South Carolina State Class members have been damaged, in an amount to be
24 proven at trial, through their overpayment at the time of purchase or lease for
25 Toyota Class Vehicles with an undisclosed safety defect that would not be
26 remedied.

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1 **b. South Carolina Count 2: Breach of Implied Warranty of**
2 **Merchantability (S.C. Code Ann. §§ 36-2-314 and 36-2A-**
3 **212) Against Toyota Sales USA**²⁰

4 4166. Plaintiffs reallege and incorporate by reference all preceding
5 allegations as though fully set forth herein.

6 4167. The South Carolina Plaintiff brings this count individually and on
7 behalf of members of the South Carolina State Class who purchased Toyota Class
8 Vehicles, against Toyota Sales USA.

9 4168. A warranty that the Toyota Class Vehicles were in merchantable
10 condition and fit for the ordinary purpose for which such goods are used is implied
11 by law pursuant to S.C. Code Ann. §§ 36-2-314 and 36-2A-212.

12 4169. Toyota Sales USA is and was at all relevant times a “merchant” with
13 respect to motor vehicles under S.C. Code Ann. §§ 36-2-104(1) and 36-2A-103(3),
14 and a “seller” of motor vehicles under § 36-2-103(1)(d).

15 4170. With respect to leases, Toyota Sales USA is and was at all relevant
16 times a “lessor” of motor vehicles under S.C. Code Ann. § 36-2A-103(1)(p).

17 4171. All South Carolina State Class members who purchased Toyota Class
18 Vehicles in South Carolina are “buyers” within the meaning of S.C. Code Ann.
19 § 36-2-103(1)(a).

20 4172. All South Carolina State Class members who leased Toyota Class
21 Vehicles in South Carolina are “lessees” within the meaning of S.C. Code Ann.
22 § 36-2A-103(1)(n).

23 4173. The Toyota Class Vehicles are and were at all relevant times “goods”
24 within the meaning of S.C. Code Ann. §§ 36-2-105(1) and 36-2A-103(1)(h).

25 4174. The Toyota Class Vehicles did not comply with the implied warranty
26 of merchantability because, at the time of sale and lease and at all times thereafter,
27 they were defective and not in merchantable condition, would not pass without
28 objection in the trade, and were not fit for the ordinary purpose for which vehicles

²⁰ *Id.*

1 were used. Specifically, at the time they were sold and leased, the Toyota Class
2 Vehicles contained the ACU Defect, which may cause the airbags and seatbelt
3 pretensioners to fail to deploy during a crash, the failure to unlock doors
4 automatically after a crash, the failure to turn off a fuel supply or high-voltage
5 battery after a crash, or the airbags to inadvertently deploy, all of which render the
6 Toyota Class Vehicles inherently defective and dangerous.

7 4175. The South Carolina Plaintiff and South Carolina Plaintiff State Class
8 members have provided Toyota Sales USA with reasonable notice and opportunity
9 to cure the breaches of its implied warranties by way of the numerous NHTSA
10 complaints filed against it, and the individual notice letters sent by South Carolina
11 State Class members within a reasonable amount of time after the ACU Defect
12 became public. Additionally, on April 24, 2020, a notice letter was sent on behalf of
13 the South Carolina Plaintiff and South Carolina State Class members to Toyota
14 Sales USA.

15 4176. Alternatively, the South Carolina Plaintiff and South Carolina State
16 Class members were excused from providing Toyota Sales USA with notice and an
17 opportunity to cure the breach, because it would have been futile. As alleged above,
18 Toyota Sales USA has long known that the Toyota Class Vehicles contained the
19 ACU Defect, and that the ACU Defect has caused ACUs and ASICs to malfunction
20 in crashes involving Class Vehicles; however, to date, Toyota Sales USA has not
21 instituted a recall or any other repair program with respect to the unrecalled Toyota
22 Class Vehicles, or even acknowledged that the ACU Defect exists in all Toyota
23 Class Vehicles, including the recalled Toyota Class Vehicles—even though Toyota
24 Class Vehicles are subject to the NHTSA investigation. Therefore, the South
25 Carolina Plaintiff and South Carolina State Class members had no reason to believe
26 that Toyota Sales USA would have repaired the ACU Defect if the South Carolina
27 Plaintiff and South Carolina State Class members presented their Class Vehicles to
28 it for repair.

1 4177. As a direct and proximate result of Toyota Sales USA’s breach of the
2 implied warranty of merchantability, the South Carolina Plaintiff and South
3 Carolina Plaintiff State Class members have been damaged through their
4 overpayment at the time of purchase or lease for Toyota Class Vehicles with an
5 undisclosed safety defect in an amount to be proven at trial.

6 **c. South Carolina Count 3: Violation of the South Carolina**
7 **Unfair Trade Practices Act (S.C. Code Ann. § 39-5-10, et**
8 **seq.) Against Toyota USA and Toyota Sales USA**

9 4178. Plaintiffs reallege and incorporate by reference all preceding
10 allegations as though fully set forth herein.

11 4179. The South Carolina Plaintiff brings this count individually and on
12 behalf of members of the South Carolina State Class who purchased Toyota Class
13 Vehicles, against Toyota USA and Toyota Sales USA.

14 4180. Toyota USA Toyota Sales USA, the South Carolina Plaintiff, and the
15 South Carolina State Class members are “persons” within the meaning of S.C. Code
16 Ann. § 39-5-10(a).

17 4181. Toyota USA and Toyota Sales USA were and are engaged in “trade”
18 or “commerce” within the meaning of S.C. Code Ann. § 39-5-10(b).

19 4182. The South Carolina Unfair Trade Practices Act (“South Carolina
20 UTPA”) prohibits “unfair or deceptive acts or practices in the conduct of any trade
21 or commerce[.]” S.C. Code Ann. § 39-5-20(a).

22 4183. In the course of their business, Toyota USA and Toyota Sales USA,
23 through their agents, employees, and/or subsidiaries, violated the South Carolina
24 UTPA by knowingly and intentionally misrepresenting, omitting, concealing,
25 and/or failing to disclose material facts regarding the reliability, safety, and
26 performance of the Toyota Class Vehicles, the safety of their Occupant Restraint
27 Systems, and the ACU Defect, as detailed above.

28 4184. Toyota USA and Toyota Sales USA had an ongoing duty to the South
Carolina Plaintiff and South Carolina State Class members to refrain from unfair or

1 deceptive practices under the South Carolina UTPA in the course of their business.
2 Specifically, Toyota USA and Toyota Sales USA owed the South Carolina Plaintiff
3 and South Carolina State Class members a duty to disclose all the material facts
4 concerning the ACU Defect in the Toyota Class Vehicles because they possessed
5 exclusive knowledge, they intentionally concealed the ACU Defect from the South
6 Carolina Plaintiff and South Carolina State Class members, and/or they made
7 misrepresentations that were rendered misleading because they were contradicted
8 by withheld facts.

9 4185. By misrepresenting the Toyota Class Vehicles as safe and reliable and
10 the defective ACU and ASICs installed in them as properly-functioning and free
11 from defects, and by failing to disclose and actively concealing the dangers and risk
12 posed by the ACU Defect to both consumers and NHTSA, Toyota USA and Toyota
13 Sales USA engaged in unfair or deceptive business practices prohibited by S.C.
14 Code Ann. § 39-5-20(a).

15 4186. Toyota USA's and Toyota Sales USA's unfair and deceptive acts or
16 practices, including their misrepresentations, concealments, omissions, and
17 suppressions of material facts, were designed to mislead and had a tendency or
18 capacity to mislead and create a false impression in consumers that the Toyota
19 Class Vehicles had properly-functioning and reliable airbags and seatbelts, and that
20 the Occupant Restraint System did not contain the ACU Defect and would perform
21 its intended function of activating the seatbelts and airbags during a collision.
22 Indeed, those misrepresentations, concealments, omissions, and suppressions of
23 material facts did in fact deceive reasonable consumers, including the South
24 Carolina Plaintiff and South Carolina State Class members, about the true safety
25 and reliability of Toyota Class Vehicles and/or the defective ACUs and ASICs
26 installed in them, the quality of the Toyota Class Vehicles, and the true value of the
27 Toyota Class Vehicles.

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1 4187. Toyota USA’s and Toyota Sales USA’s misrepresentations,
2 concealments, omissions, and suppressions of material facts regarding the ACU
3 Defect and true characteristics of the Occupant Restraint Systems in the Toyota
4 Class Vehicles were material to the decisions of the South Carolina Plaintiff and
5 South Carolina State Class members to purchase and lease those vehicles, as
6 Toyota USA and Toyota Sales USA intended. The South Carolina Plaintiff and
7 South Carolina State Class members were exposed to those misrepresentations,
8 concealments, omissions, and suppressions of material facts, and relied on Toyota
9 USA’s and Toyota Sales USA’s misrepresentations that the Toyota Class Vehicles
10 and their Occupant Restraint Systems were safe and reliable in deciding to purchase
11 and lease Toyota Class Vehicles. Plaintiffs allege the information they relied upon
12 in Section II.B above. To aid review of this information, Exhibit 19 provides
13 paragraph numbers for each Plaintiff.

14 4188. The South Carolina Plaintiff’s and South Carolina State Class
15 members’ reliance was reasonable, as they had no way of discerning that Toyota
16 USA’s and Toyota Sales USA’s representations were false and misleading, or
17 otherwise learning the facts that Toyota USA and Toyota Sales USA had concealed
18 or failed to disclose. The South Carolina Plaintiff and South Carolina State Class
19 members did not, and could not, unravel Toyota USA’s and Toyota Sales USA’s
20 deception on their own.

21 4189. Had the South Carolina Plaintiff and South Carolina State Class
22 members known the truth about the ACU Defect, the South Carolina Plaintiff and
23 South Carolina State Class members would not have purchased or leased Toyota
24 Class Vehicles, or would have paid significantly less for them.

25 4190. The South Carolina Plaintiff and South Carolina State Class members
26 suffered ascertainable losses and actual damages through their overpayment at the
27 time of purchase and lease for Toyota Class Vehicles with an undisclosed safety
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1 defect as a direct and proximate result of Toyota USA’s and Toyota Sales USA’s
2 concealment, misrepresentations, and/or failure to disclose material information.

3 4191. Toyota USA’s and Toyota Sales USA’s violations present a continuing
4 risk to the South Carolina Plaintiff and South Carolina State Class members, as well
5 as to the general public, because the Class Vehicles remain unsafe due to the
6 defective ACUs and ASICs therein. Additionally, their unlawful acts and practices
7 complained of herein affect the public interest.

8 4192. Pursuant to S.C. Code Ann. § 39-5-140(a), the South Carolina Plaintiff
9 and South Carolina State Class members seek an order enjoining Toyota USA’s and
10 Toyota Sales USA’s unfair or deceptive acts or practices and awarding damages
11 and any other just and proper relief available under the South Carolina UTPA.

12 **d. South Carolina Count 4: Violation of the South Carolina**
13 **Unfair Trade Practices Act (S.C. Code Ann. § 39-5-10, et**
14 **seq.) Against ZF Electronics USA, ZF Passive Safety USA,**
ZF Automotive USA, ZF TRW Corp., ZF Germany, ST
Italy, ST USA, and ST Malaysia

15 4193. Plaintiffs reallege and incorporate by reference all preceding
16 allegations as though fully set forth herein.

17 4194. The South Carolina Plaintiff brings this count individually and on
18 behalf of members of the South Carolina State Class against ZF Electronics USA,
19 ZF Passive Safety USA, ZF Automotive USA, ZF TRW Corp., and ZF Germany
20 (collectively, the “ZF Defendants”), and ST Italy, ST Malaysia, and ST USA
21 (collectively, the “ST Defendants”).

22 4195. The ZF Defendants, the ST Defendants, the South Carolina Plaintiff,
23 and South Carolina State Class members are “persons” within the meaning of S.C.
24 Code Ann. § 39-5-10(a).

25 4196. The ZF and ST Defendants were and are engaged in “trade” or
26 “commerce” within the meaning of S.C. Code Ann. § 39-5-10(b).

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1 4197. The South Carolina Unfair Trade Practices Act (“South Carolina
2 UTPA”) prohibits “unfair or deceptive acts or practices in the conduct of any trade
3 or commerce[.]” S.C. Code Ann. § 39-5-20(a).

4 4198. The ZF and ST Defendants had an ongoing duty to the South Carolina
5 Plaintiff and South Carolina State Class members to refrain from unfair or
6 deceptive practices under the South Carolina UTPA in the course of their business.
7 Specifically, the ZF and ST Defendants owed the South Carolina Plaintiff and
8 South Carolina State Class members a duty to disclose all the material facts
9 concerning the ACU Defect in the Class Vehicles because they possessed exclusive
10 knowledge and they intentionally concealed the ACU Defect from the South
11 Carolina Plaintiff and South Carolina State Class members.

12 4199. In the course of their business, the ZF and ST Defendants, through
13 their agents, employees, and/or subsidiaries, violated the South Carolina UTPA by
14 knowingly and intentionally omitting, concealing, and failing to disclose material
15 facts regarding the existence, nature, and scope of the defective ACU and ASIC
16 installed in the Class Vehicles, as detailed above.

17 4200. Additionally, ZF Electronics USA, ZF Passive Safety USA, and ZF
18 Automotive USA through their agents, employees, and/or subsidiaries, violated the
19 South Carolina UTPA when they knowingly and intentionally misrepresented the
20 Class Vehicles as safe and reliable and the defective ACU and ASICs installed in
21 them as properly-functioning and free from defects. Specifically, ZF Electronics
22 USA, ZF Passive Safety USA, and ZF Automotive USA worked with the Vehicle
23 Manufacturer Defendants on the design and inclusion of the airbag readiness
24 indicators in the Class Vehicles, which falsely assured Plaintiffs and Class
25 Members that the Occupant Restraint Systems in the Class Vehicles would function
26 properly in a crash.

27 4201. By misrepresenting, failing to disclose, and actively concealing the
28 dangers and risk posed by the Class Vehicles due to the ACU Defect, the ZF and

1 ST Defendants engaged in deceptive acts or practices prohibited by S.C. Code Ann.
2 § 39-5-20(a).

3 4202. The ZF and ST Defendants' unfair or deceptive acts or practices,
4 including their misrepresentations, concealments, omissions, and suppressions of
5 material facts, were designed to mislead and had a tendency or capacity to mislead
6 and create a false impression in consumers that the Class Vehicles had properly-
7 functioning and reliable airbags and seatbelts, and that the Occupant Restraint
8 System did not contain the ACU Defect and would perform its intended function of
9 activating the seatbelts and airbags during a collision. Indeed, those
10 misrepresentations, concealments, omissions, and suppressions of material facts did
11 in fact deceive reasonable consumers, including the South Carolina Plaintiff and
12 South Carolina State Class members, about the true safety and reliability of Class
13 Vehicles and/or the defective ACUs and ASICs installed in them, the quality of the
14 Class Vehicles, and the true value of the Class Vehicles.

15 4203. The South Carolina Plaintiff and South Carolina State Class members
16 justifiably relied on the ZF and ST Defendants' misrepresentations, omissions, and
17 concealment, as they had no way of discerning that the Class Vehicles contained
18 the ACU Defect, as alleged above. The South Carolina Plaintiff and South Carolina
19 State Class members did not, and could not, unravel the ZF and ST Defendants'
20 deception on their own

21 4204. The ZF and ST Defendants' misrepresentations and concealment of the
22 ACU Defect and true characteristics of the defective ACUs and ASICs in the Class
23 Vehicles were material to the decisions of the South Carolina Plaintiff and South
24 Carolina State Class members to purchase and lease Class Vehicles, as the ZF and
25 ST Defendants intended. Had they known the truth, the South Carolina Plaintiff and
26 South Carolina State Class members would not have purchased or leased the Class
27 Vehicles, or would have paid significantly less for them.

28

1 4205. The South Carolina Plaintiff and South Carolina State Class members
2 suffered ascertainable losses and actual damages as a direct and proximate result of
3 the ZF and ST Defendants’ misrepresentations, concealment and/or failure to
4 disclose material information.

5 4206. The ZF and ST Defendants’ violations present a continuing risk to the
6 South Carolina Plaintiff and South Carolina State Class members, as well as to the
7 general public, because the Class Vehicles remain unsafe due to the defective
8 ACUs and ASICs therein. The ZF and ST Defendants’ unlawful acts and practices
9 complained of herein affect the public interest.

10 4207. Pursuant to S.C. Code Ann. § 39-5-140(a), the South Carolina Plaintiff
11 and South Carolina State Class members seek an order enjoining the ZF and ST
12 Defendants’ unfair or deceptive acts or practices and awarding damages and any
13 other just and proper relief available under the South Carolina UTPA.

14 **e. South Carolina Count 5: Fraud by Omission and**
15 **Concealment Against Toyota USA and Toyota Sales USA**

16 4208. Plaintiffs reallege and incorporate by reference all preceding
17 allegations as though fully set forth herein.

18 4209. The South Carolina Plaintiff brings this count individually and on
19 behalf of members of the South Carolina State Class who purchased or leased
20 Toyota Class Vehicles, against Toyota USA and Toyota Sales USA.

21 4210. Toyota USA and Toyota Sales USA are liable for both fraudulent
22 concealment and non-disclosure. *See, e.g.*, Restatement (Second) of Torts §§ 550-
23 51 (1977).

24 4211. As explained in Section IV.A, the ACU Defect in Class Vehicles poses
25 serious risks to vehicle occupants, including that it can cause: (1) airbags and
26 seatbelts not to activate during a crash because crashes can sometimes release
27 electrical transients, which cause the ACU to fail; (2) airbags to deploy when the
28 vehicle has not crashed, which is dangerous because it is shocking and difficult for

1 the driver to operate a vehicle when the airbag deploys without warning; and (3)
2 failures of other important post-crash operations of the safety system, such as
3 unlocking doors to facilitate escape or extraction of drivers and passengers by
4 emergency personnel, and shutting off a crashed vehicle's fuel or power supply.

5 4212. Toyota USA and Toyota Sales USA had a duty to disclose the ACU
6 Defect to the South Carolina Plaintiff and South Carolina State Class members
7 because:

- 8 a. Toyota USA and Toyota Sales USA had exclusive access to and
9 far superior knowledge about technical facts regarding the ACU
10 Defect;
- 11 b. Given the ACU Defect's hidden and technical nature, the South
12 Carolina Plaintiff and South Carolina State Class members lack
13 the sophisticated expertise in vehicle components and electrical
14 phenomena that would be necessary to discover the ACU Defect
15 on their own;
- 16 c. Toyota USA and Toyota Sales USA knew that the ACU Defect
17 gave rise to serious safety concerns for the consumers who use
18 the vehicles, and the Toyota Class Vehicles containing the ACU
19 Defect would have been a material fact to the South Carolina
20 Plaintiff's and South Carolina State Class members' decisions to
21 buy or lease Toyota Class Vehicles; and
- 22 d. Toyota USA and Toyota Sales USA made incomplete
23 representations about the safety and reliability of the Toyota
24 Class Vehicles and their Occupant Restraint System, while
25 purposefully withholding material facts about a known safety
26 defect. In uniform advertising and materials provided with each
27 Class Vehicle, Toyota USA and Toyota Sales USA intentionally
28 concealed, suppressed, and failed to disclose to the South

1 Carolina Plaintiff and South Carolina State Class members that
2 the Toyota Class Vehicles contained the ACU Defect. Because
3 they volunteered to provide information about the Toyota Class
4 Vehicles that they marketed and offered for sale and lease to the
5 South Carolina Plaintiff and South Carolina State Class
6 members, Toyota USA and Toyota Sales USA had the duty to
7 disclose the whole truth.

8 4213. In breach of their duties, Toyota USA and Toyota Sales USA failed to
9 disclose that the Toyota Class Vehicles were not safe and reliable, and that their
10 Occupant Restraint Systems, including their airbags and seatbelt pretensioners
11 could fail in the event of a crash due to the ACU Defect.

12 4214. Toyota USA and Toyota Sales USA intended for the South Carolina
13 Plaintiff and South Carolina State Class members to rely on their omissions—
14 which they did by purchasing and leasing the Toyota Class Vehicles at the prices
15 they paid believing that the Occupant Restraint Systems in their Class Vehicles
16 would function properly.

17 4215. That reliance was reasonable, because a reasonable consumer would
18 not have expected that the Toyota Class Vehicles contained a safety defect that
19 poses such a serious risk. Toyota USA and Toyota Sales USA knew that reasonable
20 consumers expect that their vehicle has working airbags and seatbelt pretensioners
21 and would rely on those facts in deciding whether to purchase, lease, or retain a
22 new or used motor vehicle. Whether a manufacturer's products are safe and
23 reliable, and whether that manufacturer stands behind its products, are material
24 concerns to a consumer. Especially here when at least nine people have already
25 died due to the ACU Defect, and many more have been injured.

26 4216. Additionally, Toyota USA and Toyota Sales USA ensured that the
27 South Carolina Plaintiff and South Carolina State Class members did not discover
28

1 this information by actively concealing and misrepresenting the true nature of the
2 Toyota Class Vehicles' Occupant Restraint Systems to consumers and NHTSA.

3 4217. Toyota USA and Toyota Sales USA actively concealed and suppressed
4 these material facts, in whole or in part, to maintain a market for their Class
5 Vehicles, to protect profits, and to avoid costly recalls that would expose them to
6 liability for those expenses and harm the commercial reputations of Defendants and
7 their products. They did so at the expense of the South Carolina Plaintiff and South
8 Carolina State Class members.

9 4218. To this day, Toyota USA and Toyota Sales USA have not fully and
10 adequately disclosed the ACU Defect, and they continue to conceal material
11 information about the defect from consumers and NHTSA. The omitted and
12 concealed facts were material because a reasonable person would find them
13 important in purchasing, leasing, or retaining a new or used motor vehicle, and
14 because they directly impact the value of the Toyota Class Vehicles purchased or
15 leased by the South Carolina Plaintiff and South Carolina State Class members.

16 4219. Had they been aware of the ACU Defect in the Toyota Class Vehicles,
17 and Toyota USA's and Toyota Sales USA's callous disregard for safety, the South
18 Carolina Plaintiff and South Carolina State Class members either would not have
19 paid as much as they did for their Class Vehicles, or they would not have purchased
20 or leased them.

21 4220. As alleged in Section V above, if Toyota USA and Toyota Sales USA
22 had fully and adequately disclosed the ACU Defect to consumers and NHTSA, the
23 South Carolina Plaintiff and South Carolina State Class members would have seen
24 such a disclosure.

25 4221. Accordingly, Toyota USA and Toyota Sales USA are liable to the
26 South Carolina Plaintiff and South Carolina State Class members for their damages
27 in an amount to be proven at trial, including, but not limited to, their lost
28 overpayment for the Toyota Class Vehicles at the time of purchase or lease.

1 4222. Toyota USA’s and Toyota Sales USA’s acts were done maliciously,
2 oppressively, deliberately, with intent to defraud; in reckless disregard of the South
3 Carolina Plaintiff’s and South Carolina State Class members’ rights and well-being;
4 and to enrich themselves. Toyota USA’s and Toyota Sales USA’s misconduct
5 warrants an assessment of punitive damages, as permitted by law, in an amount
6 sufficient to deter such conduct in the future, which amount shall be determined
7 according to proof at trial.

8 **f. South Carolina Count 6: Fraud by Omission and**
9 **Concealment Against ZF Electronics USA, ZF Passive**
10 **Safety USA, ZF Automotive USA, ZF TRW Corp., ZF**
11 **Germany, ST Italy, ST USA, and ST Malaysia**

12 4223. Plaintiffs reallege and incorporate by reference all preceding
13 allegations as though fully set forth herein.

14 4224. The South Carolina Plaintiff brings this count individually and on
15 behalf of members of the South Carolina State Class who purchased or leased Class
16 Vehicles, against ZF Electronics USA, ZF Passive Safety USA, ZF Automotive
17 USA, ZF TRW Corp., and ZF Germany (collectively, the “ZF Defendants”), and
18 ST Italy, ST Malaysia, and ST USA (collectively, the “ST Defendants”).

19 4225. The ZF and ST Defendants are liable for both fraudulent concealment
20 and non-disclosure. *See, e.g.*, Restatement (Second) of Torts §§ 550-51 (1977).

21 4226. As explained in Section IV.A, the ACU Defect in Class Vehicles poses
22 serious risks to vehicle occupants, including that it can cause: (1) airbags and
23 seatbelts not to activate during a crash because crashes can sometimes release
24 electrical transients, which cause the ACU to fail; (2) airbags to deploy when the
25 vehicle has not crashed, which is dangerous because it is shocking and difficult for
26 the driver to operate a vehicle when the airbag deploys without warning; and (3)
27 failures of other important post-crash operations of the safety system, such as
28 unlocking doors to facilitate escape or extraction of drivers and passengers by
emergency personnel, and shutting off a crashed vehicle’s fuel or power supply.

1 4227. The ZF and ST Defendants had a duty to disclose the ACU Defect to
2 the South Carolina Plaintiff and South Carolina State Class members because:

- 3 a. The ZF and ST Defendants had exclusive access to and far
4 superior knowledge about technical facts regarding the ACU
5 Defect;
- 6 b. Given the ACU Defect’s hidden and technical nature, the South
7 Carolina Plaintiff and South Carolina State Class members lack
8 the sophisticated expertise in vehicle components and electrical
9 phenomena that would be necessary to discover the ACU Defect
10 on their own;
- 11 c. The ZF and ST Defendants knew that the ACU Defect gave rise
12 to serious safety concerns for the consumers who use the
13 vehicles, and the Class Vehicles containing the ACU Defect
14 would have been a material fact to the South Carolina Plaintiff’s
15 and South Carolina State Class members’ decisions to buy or
16 lease Class Vehicles; and
- 17 d. The ZF Defendants made incomplete representations about the
18 safety and reliability of the Class Vehicles and their Occupant
19 Restraint System, while purposefully withholding material facts
20 about a known safety defect, creating a duty to disclose the
21 whole truth. Specifically, ZF Electronics USA, ZF Passive
22 Safety USA, and ZF Automotive USA worked with the Vehicle
23 Manufacturer Defendants on the design and inclusion of the
24 airbag readiness indicators in the Class Vehicles, which falsely
25 assured Plaintiffs and Class Members that the Occupant
26 Restraint Systems in the Class Vehicles would function properly
27 in a crash.
28

1 4228. In breach of their duties, the ZF and ST Defendants failed to disclose
2 that the Class Vehicles were not safe and reliable, and that their Occupant Restraint
3 Systems, including their airbags and seatbelt pretensioners could fail in the event of
4 a crash due to the ACU Defect.

5 4229. The ZF and ST Defendants intended for the South Carolina Plaintiff
6 and South Carolina State Class members to rely on their omissions—which they did
7 by purchasing and leasing the Class Vehicles at the prices they paid believing that
8 the Occupant Restraint Systems in their Class Vehicles would function properly.

9 4230. That reliance was reasonable, because a reasonable consumer would
10 not have expected that the Class Vehicles contained a safety defect that poses such
11 a serious risk. The ZF and ST Defendants knew that reasonable consumers expect
12 that their vehicle has working airbags and seatbelt pretensioners and would rely on
13 those facts in deciding whether to purchase, lease, or retain a new or used motor
14 vehicle. Whether a manufacturer’s products are safe and reliable, and whether that
15 manufacturer stands behind its products, are material concerns to a consumer.
16 Especially here when at least nine people have already died due to the ACU Defect,
17 and many more have been injured.

18 4231. Additionally, the ZF and ST Defendants ensured that the South
19 Carolina Plaintiff and South Carolina State Class members did not discover this
20 information by actively concealing and misrepresenting the true nature of the Class
21 Vehicles’ Occupant Restraint Systems to consumers and NHTSA.

22 4232. The ZF and ST Defendants actively concealed and suppressed these
23 material facts, in whole or in part, to maintain a market for the DS84 ACU, to
24 protect profits, and to avoid costly recalls that would expose them to liability for
25 those expenses and harm the commercial reputations of Defendants and their
26 products. They did so at the expense of the South Carolina Plaintiff and South
27 Carolina State Class members.

28

1 4233. To this day, the ZF and ST Defendants have not fully and adequately
2 disclosed the ACU Defect, and they continue to conceal material information about
3 the defect from consumers and NHTSA. The omitted and concealed facts were
4 material because a reasonable person would find them important in purchasing,
5 leasing, or retaining a new or used motor vehicle, and because they directly impact
6 the value of the Class Vehicles purchased or leased by the South Carolina Plaintiff
7 and South Carolina State Class members.

8 4234. Had they been aware of the ACU Defect in the Class Vehicles, and the
9 ZF and ST Defendants' callous disregard for safety, the South Carolina Plaintiff
10 and South Carolina State Class members either would not have paid as much as
11 they did for their Class Vehicles, or they would not have purchased or leased them.

12 4235. As alleged in Section V above, if the ZF and ST Defendants had fully
13 and adequately disclosed the ACU Defect to consumers and NHTSA, the South
14 Carolina Plaintiff and South Carolina State Class members would have seen such a
15 disclosure.

16 4236. Accordingly, the ZF and ST Defendants are liable to the South
17 Carolina Plaintiff and South Carolina State Class members for their damages in an
18 amount to be proven at trial, including, but not limited to, their lost overpayment
19 for the Class Vehicles at the time of purchase or lease.

20 4237. The ZF and ST Defendants' acts were done maliciously, oppressively,
21 deliberately, with intent to defraud; in reckless disregard of the South Carolina
22 Plaintiff's and South Carolina State Class members' rights and well-being; and to
23 enrich themselves. The ZF and ST Defendants' misconduct warrants an assessment
24 of punitive damages, as permitted by law, in an amount sufficient to deter such
25 conduct in the future, which amount shall be determined according to proof at trial.

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1 **21. South Dakota**

2 **a. South Dakota Count 1: Breach of Express Warranty (S.D. Codified Laws §§ 57A-2-313 and 57A-2A-210) Against FCA**

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4 4238. Plaintiffs reallege and incorporate by reference all preceding
5 allegations as though fully set forth herein.

6 4239. Plaintiff Desiree Meyer (hereinafter, “South Dakota Plaintiff”) brings
7 this count individually and on behalf of members of the South Dakota State Class
8 who purchased or leased FCA Class Vehicles, against FCA.

9 4240. FCA is and was at all relevant times a “merchant” with respect to
10 motor vehicles under S.D. Codified Laws §§ 57A-2-104(1) and 57A-2A-103(3),
11 and a “seller” of motor vehicles under § 57A-2-103(1)(d).

12 4241. With respect to leases, FCA is and was at all relevant times a “lessor”
13 of motor vehicles under S.D. Codified Laws § 57A-2A-103(1)(p).

14 4242. All South Dakota State Class members who purchased FCA Class
15 Vehicles in South Dakota are “buyers” within the meaning of S.D. Codified Laws
16 § 57A-2-103(1)(a).

17 4243. All South Dakota State Class members who leased FCA Class
18 Vehicles in South Dakota are “lessees” within the meaning of S.D. Codified Laws
19 § 57A-2A-103(1)(n).

20 4244. The FCA Class Vehicles are and were at all relevant times “goods”
21 within the meaning of S.D. Codified Laws §§ 57A-2-105(1) and 57A-2A-
22 103(1)(h).

23 4245. In connection with the purchase or lease of FCA Class Vehicles, FCA
24 provided the South Dakota Plaintiff and South Dakota State Class members with
25 warranties in the form of: (a) written express warranties covering the repair or
26 replacement of components that are defective in materials or workmanship, and (b)
27 descriptions of the FCA Class Vehicles as safe and reliable, and that their Occupant
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1 Restraint Systems, including their airbags and seatbelt pretensioners, would
2 function properly in the event of a crash

3 4246. However, FCA knew or should have known that the warranties were
4 false and/or misleading. Specifically, FCA was aware of the ACU Defect in the
5 FCA Class Vehicles, which made the vehicles inherently defective and dangerous
6 at the time that they were sold and leased to the South Dakota Plaintiff and South
7 Dakota State Class members.

8 4247. The South Dakota Plaintiff and South Dakota State Class members
9 were aware the FCA Class Vehicles were covered by express warranties, and those
10 warranties were an essential part of the bargain between them and FCA when the
11 South Dakota Plaintiff and South Dakota State Class members unknowingly
12 purchased and leased FCA Class Vehicles that came equipped with defective ACUs
13 and ASICs.

14 4248. FCA misrepresented the FCA Class Vehicles as safe and reliable while
15 concealing that they contained the ACU Defect, the South Dakota Plaintiff and
16 South Dakota State Class members were exposed to those misrepresentations, and
17 the South Dakota Plaintiff and South Dakota State Class members had no way of
18 discerning that FCA's representations were false and misleading or otherwise
19 learning the material facts that FCA had concealed or failed to disclose.

20 Accordingly, the South Dakota Plaintiff and South Dakota State Class members
21 reasonably relied on FCA's express warranties when purchasing or leasing their
22 FCA Class Vehicles. Plaintiffs allege the information they relied upon in Section
23 II.B above. To aid review of this information, Exhibit 19 provides paragraph
24 numbers for each Plaintiff.

25 4249. FCA knowingly breached its express warranties to repair defects in
26 materials and workmanship by failing to repair the ACU Defect or replace the
27 defective ACUs and ASICs in the FCA Class Vehicles. FCA also breached its
28 express warranties by selling and leasing FCA Class Vehicles with a defect that

1 was never disclosed to the South Dakota Plaintiff and South Dakota State Class
2 members.

3 4250. The South Dakota Plaintiff and South Dakota State Class members
4 have provided FCA with reasonable notice and opportunity to cure the breaches of
5 its express warranties by way of the numerous NHTSA complaints filed against it,
6 and the individual notice letters sent by South Dakota State Class members within a
7 reasonable amount of time after the ACU Defect became public. Additionally, on
8 April 24, 2020, a notice letter was sent on behalf of the South Dakota Plaintiff and
9 South Dakota State Class members to FCA.

10 4251. Alternatively, the South Dakota Plaintiff and South Dakota State Class
11 members were excused from providing FCA with notice and an opportunity to cure
12 the breach, because it would have been futile. As alleged above, FCA has long
13 known that the FCA Class Vehicles contained the ACU Defect, and that the ACU
14 Defect has caused ACUs and ASICs to malfunction in crashes involving Class
15 Vehicles; however, to date, FCA has not instituted a recall or any other repair
16 program with respect to the unrecalled FCA Class Vehicles, or even acknowledged
17 that the ACU Defect exists in all FCA Class Vehicles, including the recalled FCA
18 Class Vehicles—even though FCA Class Vehicles are subject to the NHTSA
19 investigation. Therefore, the South Dakota Plaintiff and South Dakota State Class
20 members had no reason to believe that FCA would have repaired the ACU Defect if
21 the South Dakota Plaintiff and South Dakota State Class members presented their
22 Class Vehicles to it for repair.

23 4252. As a direct and proximate result of FCA's breach of its express
24 warranties, the FCA Class Vehicles were and are defective and the ACU Defect in
25 the South Dakota Plaintiff's and South Dakota State Class members' FCA Class
26 Vehicles was not remedied. Therefore, the South Dakota Plaintiff and South Dakota
27 State Class members have been damaged, in an amount to be proven at trial,
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1 through their overpayment at the time of purchase or lease for FCA Class Vehicles
2 with an undisclosed safety defect that would not be remedied.

3 **b. South Dakota Count 2: Breach of Implied Warranty of**
4 **Merchantability (S.D. Codified Laws §§ 57A-2-314 and 57A-**
5 **2A-212) Against FCA**

6 4253. Plaintiffs reallege and incorporate by reference all preceding
7 allegations as though fully set forth herein.

8 4254. The South Dakota Plaintiff brings this count individually and on behalf
9 of members of the South Dakota State Class who purchased or leased FCA Class
10 Vehicles, against FCA.

11 4255. A warranty that the FCA Class Vehicles were in merchantable
12 condition and fit for the ordinary purpose for which such goods are used is implied
13 by law pursuant to S.D. Codified Laws §§ 57A-2-314 and 57A-2A-212.

14 4256. FCA is and was at all relevant times a “merchant” with respect to
15 motor vehicles under S.D. Codified Laws §§ 57A-2-104(1) and 57A-2A-103(3),
16 and a “seller” of motor vehicles under § 57A-2-103(1)(d).

17 4257. With respect to leases, FCA is and was at all relevant times a “lessor”
18 of motor vehicles under S.D. Codified Laws § 57A-2A-103(1)(p).

19 4258. All South Dakota State Class members who purchased FCA Class
20 Vehicles in South Dakota are “buyers” within the meaning of S.D. Codified Laws
21 § 57A-2-103(1)(a).

22 4259. All South Dakota State Class members who leased FCA Class
23 Vehicles in South Dakota are “lessees” within the meaning of S.D. Codified Laws
24 § 57A-2A-103(1)(n).

25 4260. The FCA Class Vehicles are and were at all relevant times “goods”
26 within the meaning of S.D. Codified Laws §§ 57A-2-105(1) and 57A-2A-
27 103(1)(h).

28 4261. The FCA Class Vehicles did not comply with the implied warranty of
merchantability because, at the time of sale and lease and at all times thereafter,

1 they were defective and not in merchantable condition, would not pass without
2 objection in the trade, and were not fit for the ordinary purpose for which vehicles
3 were used. Specifically, at the time they were sold and leased, the FCA Class
4 Vehicles contained the ACU Defect, which may cause the airbags and seatbelt
5 pretensioners to fail to deploy during a crash, the failure to unlock doors
6 automatically after a crash, the failure to turn off a fuel supply or high-voltage
7 battery after a crash, or the airbags to inadvertently deploy, all of which render the
8 FCA Class Vehicles inherently defective and dangerous.

9 4262. The South Dakota Plaintiff and South Dakota State Class members
10 have provided FCA with reasonable notice and opportunity to cure the breaches of
11 its implied warranties by way of the numerous NHTSA complaints filed against it,
12 and the individual notice letters sent by South Dakota State Class members within a
13 reasonable amount of time after the ACU Defect became public. Additionally, on
14 April 24, 2020, a notice letter was sent on behalf of the South Dakota Plaintiff and
15 South Dakota State Class members to FCA.

16 4263. Alternatively, the South Dakota Plaintiff and South Dakota State Class
17 members were excused from providing FCA with notice and an opportunity to cure
18 the breach, because it would have been futile. As alleged above, FCA has long
19 known that the FCA Class Vehicles contained the ACU Defect, and that the ACU
20 Defect has caused ACUs and ASICs to malfunction in crashes involving Class
21 Vehicles; however, to date, FCA has not instituted a recall or any other repair
22 program with respect to the unrecalled FCA Class Vehicles, or even acknowledged
23 that the ACU Defect exists in all FCA Class Vehicles, including the recalled FCA
24 Class Vehicles—even though FCA Class Vehicles are subject to the NHTSA
25 investigation. Therefore, the South Dakota Plaintiff and South Dakota State Class
26 members had no reason to believe that FCA would have repaired the ACU Defect if
27 the South Dakota Plaintiff and South Dakota State Class members presented their
28 Class Vehicles to it for repair.

1 4264. As a direct and proximate result of Honda USA’s breach of the
2 implied warranty of merchantability, the South Dakota Plaintiff and South Dakota
3 State Class members have been damaged through their overpayment at the time of
4 purchase or lease for FCA Class Vehicles with an undisclosed safety defect in an
5 amount to be proven at trial.

6 **c. South Dakota Count 3: Violation of the South Dakota**
7 **Deceptive Trade Practices and Consumer Protection Law**
8 **(S.D. Codified Laws § 37-24-1, et seq.) Against FCA**

9 4265. Plaintiffs reallege and incorporate by reference all preceding
10 allegations as though fully set forth herein.

11 4266. The South Dakota Plaintiff brings this count individually and on behalf
12 of members of the South Dakota State Class who purchased or leased FCA Class
13 Vehicles, against FCA.

14 4267. FCA, the South Dakota Plaintiff, and the South Dakota State Class
15 members are “persons” within the meaning of S.D. Codified Laws § 37-24-1(8).

16 4268. The FCA Class Vehicles and ACUs installed in them are
17 “merchandise” within the meaning of S.D. Codified Laws § 37-24-1(7).

18 4269. FCA is and was engaged in “trade” or “commerce” within the meaning
19 of S.D. Codified Laws § 37-24-1(13).

20 4270. The South Dakota Deceptive Trade Practices and Consumer Protection
21 Law (“South Dakota CPA”) prohibits “deceptive acts or practices.” S.D. Codified
22 Laws § 37-24-6(1).

23 4271. In the course of its business, FCA, through its agents, employees,
24 and/or subsidiaries, violated the South Dakota CPA by knowingly and intentionally
25 misrepresenting, omitting, concealing, and/or failing to disclose material facts
26 regarding the reliability, safety, and performance of the FCA Class Vehicles, the
27 safety of their Occupant Restraint Systems, and the ACU Defect, as detailed above.

28 4272. FCA had an ongoing duty to the South Dakota Plaintiff and South
Dakota State Class members to refrain from unfair or deceptive practices under the

1 South Dakota CPA in the course of its business. Specifically, FCA owed the South
2 Dakota Plaintiff and South Dakota State Class members a duty to disclose all the
3 material facts concerning the ACU Defect in the FCA Class Vehicles because it
4 possessed exclusive knowledge, it intentionally concealed the ACU Defect from the
5 South Dakota Plaintiff and South Dakota State Class members, and/or it made
6 misrepresentations that were rendered misleading because they were contradicted
7 by withheld facts.

8 4273. By misrepresenting the FCA Class Vehicles as safe and reliable and
9 the defective ACU and ASICs installed in them as properly-functioning and free
10 from defects, and by failing to disclose and actively concealing the dangers and risk
11 posed by the ACU Defect to both consumers and NHTSA, FCA engaged in unfair
12 or deceptive business practices prohibited by S.D. Codified Laws § 37-24-6(1).

13 4274. FCA's unfair and deceptive acts or practices, including its
14 misrepresentations, concealments, omissions, and suppressions of material facts,
15 were designed to mislead and had a tendency or capacity to mislead and create a
16 false impression in consumers that the FCA Class Vehicles had properly-
17 functioning and reliable airbags and seatbelts, and that the Occupant Restraint
18 System did not contain the ACU Defect and would perform its intended function of
19 activating the seatbelts and airbags during a collision. Indeed, those
20 misrepresentations, concealments, omissions, and suppressions of material facts did
21 in fact deceive reasonable consumers, including the South Dakota Plaintiff and
22 South Dakota State Class members, about the true safety and reliability of FCA
23 Class Vehicles and/or the defective ACUs and ASICs installed in them, the quality
24 of the FCA Class Vehicles, and the true value of the FCA Class Vehicles.

25 4275. FCA's misrepresentations, concealments, omissions, and suppressions
26 of material facts regarding the ACU Defect and true characteristics of the Occupant
27 Restraint Systems in the FCA Class Vehicles were material to the decisions of the
28 South Dakota Plaintiff and South Dakota State Class members to purchase and

1 lease those vehicles, as FCA intended. The South Dakota Plaintiff and South
2 Dakota State Class members were exposed to those misrepresentations,
3 concealments, omissions, and suppressions of material facts, and relied on FCA's
4 misrepresentations that the FCA Class Vehicles and their Occupant Restraint
5 Systems were safe and reliable in deciding to purchase and lease FCA Class
6 Vehicles. Plaintiffs allege the information they relied upon in Section II.B above.
7 To aid review of this information, Exhibit 19 provides paragraph numbers for each
8 Plaintiff.

9 4276. The South Dakota Plaintiff's and South Dakota State Class members'
10 reliance was reasonable, as they had no way of discerning that FCA's
11 representations were false and misleading, or otherwise learning the facts that FCA
12 had concealed or failed to disclose. The South Dakota Plaintiff and South Dakota
13 State Class members did not, and could not, unravel FCA's deception on their own.

14 4277. Had the South Dakota Plaintiff and South Dakota State Class members
15 known the truth about the ACU Defect, the South Dakota Plaintiff and South
16 Dakota State Class members would not have purchased or leased FCA Class
17 Vehicles, or would have paid significantly less for them.

18 4278. The South Dakota Plaintiff and South Dakota State Class members
19 suffered ascertainable losses and actual damages through their overpayment at the
20 time of purchase and lease for FCA Class Vehicles with an undisclosed safety
21 defect as a direct and proximate result of FCA's concealment, misrepresentations,
22 and/or failure to disclose material information.

23 4279. FCA's violations present a continuing risk to the South Dakota
24 Plaintiff and South Dakota State Class members, as well as to the general public,
25 because the Class Vehicles remain unsafe due to the defective ACUs and ASICs
26 therein. Additionally, FCA's unlawful acts and practices complained of herein
27 affect the public interest.

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1 4280. Pursuant to S.D. Codified Laws § 37-24-31, the South Dakota Plaintiff
2 and South Dakota State Class members seek an order enjoining FCA’s unfair or
3 deceptive acts or practices and awarding damages and any other just and proper
4 relief available under the South Dakota CPA.

5 **d. South Dakota Count 4: Violation of the South Dakota**
6 **Deceptive Trade Practices and Consumer Protection Law**
7 **(S.D. Codified Laws § 37-24-1, et seq.) Against ZF**
8 **Electronics USA, ZF Passive Safety USA, ZF Automotive**
9 **USA, ZF TRW Corp., ZF Germany, ST Italy, ST USA, and**
10 **ST Malaysia**

11 4281. Plaintiffs reallege and incorporate by reference all preceding
12 allegations as though fully set forth herein.

13 4282. The South Dakota Plaintiff brings this count individually and on behalf
14 members of the South Dakota State Class against ZF Electronics USA, ZF Passive
15 Safety USA, ZF Automotive USA, ZF TRW Corp., and ZF Germany (collectively,
16 the “ZF Defendants”), and ST Italy, ST Malaysia, and ST USA (collectively, the
17 “ST Defendants”).

18 4283. The ZF Defendants, the ST Defendants, the South Dakota Plaintiff,
19 and South Dakota State Class members are “persons” within the meaning of S.D.
20 Codified Laws § 37-24-1(8).

21 4284. The Class Vehicles and ACUs installed in them are “merchandise”
22 within the meaning of S.D. Codified Laws § 37-24-1(7).

23 4285. The ZF and ST Defendants were and are engaged in “trade” or
24 “commerce” within the meaning of S.D. Codified Laws § 37-24-1(13).

25 4286. The South Dakota Deceptive Trade Practices and Consumer Protection
26 Law (“South Dakota CPA”) prohibits “deceptive acts or practices.” S.D. Codified
27 Laws § 37-24-6(1).

28 4287. The ZF and ST Defendants had an ongoing duty to the South Dakota
Plaintiff and South Dakota State Class members to refrain from unfair or deceptive
practices under the South Dakota CPA in the course of their business. Specifically,

1 the ZF and ST Defendants owed the South Dakota Plaintiff and South Dakota State
2 Class members a duty to disclose all the material facts concerning the ACU Defect
3 in the Class Vehicles because they possessed exclusive knowledge and they
4 intentionally concealed the ACU Defect from the South Dakota Plaintiff and South
5 Dakota State Class members.

6 4288. In the course of their business, the ZF and ST Defendants, through
7 their agents, employees, and/or subsidiaries, violated the South Dakota CPA by
8 knowingly and intentionally omitting, concealing, and failing to disclose material
9 facts regarding the existence, nature, and scope of the defective ACU and ASIC
10 installed in the Class Vehicles, as detailed above.

11 4289. Additionally, ZF Electronics USA, ZF Passive Safety USA, and ZF
12 Automotive USA through their agents, employees, and/or subsidiaries, violated the
13 South Dakota CPA when they knowingly and intentionally misrepresented the
14 Class Vehicles as safe and reliable and the defective ACU and ASICs installed in
15 them as properly-functioning and free from defects. Specifically, ZF Electronics
16 USA, ZF Passive Safety USA, and ZF Automotive USA worked with the Vehicle
17 Manufacturer Defendants on the design and inclusion of the airbag readiness
18 indicators in the Class Vehicles, which falsely assured Plaintiffs and Class
19 Members that the Occupant Restraint Systems in the Class Vehicles would function
20 properly in a crash.

21 4290. By misrepresenting, failing to disclose, and actively concealing the
22 dangers and risk posed by the Class Vehicles due to the ACU Defect, the ZF and
23 ST Defendants engaged in deceptive acts or practices prohibited by S.D. Codified
24 Laws § 37-24-6, including acting, using, or employing deceptive acts or practices
25 and fraud, and/or concealing, suppressing, or omitting material facts.

26 4291. The ZF and ST Defendants' unfair or deceptive acts or practices,
27 including their misrepresentations, concealments, omissions, and suppressions of
28 material facts, were designed to mislead and had a tendency or capacity to mislead

1 and create a false impression in consumers that the Class Vehicles had properly-
2 functioning and reliable airbags and seatbelts, and that the Occupant Restraint
3 System did not contain the ACU Defect and would perform its intended function of
4 activating the seatbelts and airbags during a collision. Indeed, those
5 misrepresentations, concealments, omissions, and suppressions of material facts did
6 in fact deceive reasonable consumers, including the South Dakota Plaintiff and
7 South Dakota State Class members, about the true safety and reliability of Class
8 Vehicles and/or the defective ACUs and ASICs installed in them, the quality of the
9 Class Vehicles, and the true value of the Class Vehicles.

10 4292. The South Dakota Plaintiff and South Dakota State Class members
11 justifiably relied on the ZF and ST Defendants' misrepresentations, omissions, and
12 concealment, as they had no way of discerning that the Class Vehicles contained
13 the ACU Defect, as alleged above. The South Dakota Plaintiff and South Dakota
14 State Class members did not, and could not, unravel the ZF and ST Defendants'
15 deception on their own

16 4293. The ZF and ST Defendants' misrepresentations and concealment of the
17 ACU Defect and true characteristics of the defective ACUs and ASICs in the Class
18 Vehicles were material to the decisions of the South Dakota Plaintiff and South
19 Dakota State Class members to purchase and lease Class Vehicles, as the ZF and
20 ST Defendants intended. Had they known the truth, the South Dakota Plaintiff and
21 South Dakota State Class members would not have purchased or leased the Class
22 Vehicles, or would have paid significantly less for them.

23 4294. The South Dakota Plaintiff and South Dakota State Class members
24 suffered ascertainable losses and actual damages as a direct and proximate result of
25 the ZF and ST Defendants' misrepresentations, concealment and/or failure to
26 disclose material information.

27 4295. The ZF and ST Defendants' violations present a continuing risk to the
28 South Dakota Plaintiff and South Dakota State Class members, as well as to the

1 general public, because the Class Vehicles remain unsafe due to the defective
2 ACUs and ASICs therein. The ZF and ST Defendants' unlawful acts and practices
3 complained of herein affect the public interest.

4 4296. Pursuant to S.D. Codified Laws § 37-24-31, the South Dakota Plaintiff
5 and South Dakota State Class members seek an order enjoining the ZF and ST
6 Defendants' unfair or deceptive acts or practices and awarding damages and any
7 other just and proper relief available under the South Dakota CPA.

8 **e. South Dakota Count 5: Fraud by Omission and**
9 **Concealment Against FCA**

10 4297. Plaintiffs reallege and incorporate by reference all preceding
11 allegations as though fully set forth herein.

12 4298. The South Dakota Plaintiff brings this count individually and on behalf
13 of members of the South Dakota State Class who purchased or leased FCA Class
14 Vehicles, against FCA.

15 4299. FCA is liable for both fraudulent concealment and non-disclosure. *See,*
16 *e.g.,* Restatement (Second) of Torts §§ 550-51 (1977).

17 4300. As explained in Section IV.A, the ACU Defect in Class Vehicles poses
18 serious risks to vehicle occupants, including that it can cause: (1) airbags and
19 seatbelts not to activate during a crash because crashes can sometimes release
20 electrical transients, which cause the ACU to fail; (2) airbags to deploy when the
21 vehicle has not crashed, which is dangerous because it is shocking and difficult for
22 the driver to operate a vehicle when the airbag deploys without warning; and (3)
23 failures of other important post-crash operations of the safety system, such as
24 unlocking doors to facilitate escape or extraction of drivers and passengers by
25 emergency personnel, and shutting off a crashed vehicle's fuel or power supply.

26 4301. FCA had a duty to disclose the ACU Defect to the South Dakota
27 Plaintiff and South Dakota State Class members because:
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- a. FCA had exclusive access to and far superior knowledge about technical facts regarding the ACU Defect;
- b. Given the ACU Defect’s hidden and technical nature, the South Dakota Plaintiff and South Dakota State Class members lack the sophisticated expertise in vehicle components and electrical phenomena that would be necessary to discover the ACU Defect on their own;
- c. FCA knew that the ACU Defect gave rise to serious safety concerns for the consumers who use the vehicles, and the FCA Class Vehicles containing the ACU Defect would have been a material fact to the South Dakota Plaintiff’s and South Dakota State Class members’ decisions to buy or lease FCA Class Vehicles; and
- d. FCA made incomplete representations about the safety and reliability of the FCA Class Vehicles and their Occupant Restraint System, while purposefully withholding material facts about a known safety defect. In uniform advertising and materials provided with each Class Vehicle, FCA intentionally concealed, suppressed, and failed to disclose to the South Dakota Plaintiff and South Dakota State Class members that the FCA Class Vehicles contained the ACU Defect. Because they volunteered to provide information about the FCA Class Vehicles that they marketed and offered for sale and lease to the South Dakota Plaintiff and South Dakota State Class members, FCA had the duty to disclose the whole truth.

4302. In breach of its duties, FCA failed to disclose that the FCA Class Vehicles were not safe and reliable, and that their Occupant Restraint Systems,

1 including their airbags and seatbelt pretensioners could fail in the event of a crash
2 due to the ACU Defect.

3 4303. FCA intended for the South Dakota Plaintiff and South Dakota State
4 Class members to rely on its omissions—which they did by purchasing and leasing
5 the FCA Class Vehicles at the prices they paid believing that the Occupant
6 Restraint Systems in their Class Vehicles would function properly.

7 4304. That reliance was reasonable, because a reasonable consumer would
8 not have expected that the FCA Class Vehicles contained a safety defect that poses
9 such a serious risk. FCA knew that reasonable consumers expect that their vehicle
10 has working airbags and seatbelt pretensioners and would rely on those facts in
11 deciding whether to purchase, lease, or retain a new or used motor vehicle. Whether
12 a manufacturer's products are safe and reliable, and whether that manufacturer
13 stands behind its products, are material concerns to a consumer. Especially here
14 when at least nine people have already died due to the ACU Defect, and many more
15 have been injured.

16 4305. Additionally, FCA ensured that the South Dakota Plaintiff and South
17 Dakota State Class members did not discover this information by actively
18 concealing and misrepresenting the true nature of the FCA Class Vehicles'
19 Occupant Restraint Systems to consumers and NHTSA.

20 4306. FCA actively concealed and suppressed these material facts, in whole
21 or in part, to maintain a market for its Class Vehicles, to protect profits, and to
22 avoid costly recalls that would expose them to liability for those expenses and harm
23 the commercial reputations of Defendants and their products. It did so at the
24 expense of the South Dakota Plaintiff and South Dakota State Class members.

25 4307. To this day, FCA has not fully and adequately disclosed the ACU
26 Defect, and they continue to conceal material information about the defect from
27 consumers and NHTSA. The omitted and concealed facts were material because a
28 reasonable person would find them important in purchasing, leasing, or retaining a

1 new or used motor vehicle, and because they directly impact the value of the FCA
2 Class Vehicles purchased or leased by the South Dakota Plaintiff and South Dakota
3 State Class members.

4 4308. Had they been aware of the ACU Defect in the FCA Class Vehicles,
5 and FCA's callous disregard for safety, the South Dakota Plaintiff and South
6 Dakota State Class members either would not have paid as much as they did for
7 their Class Vehicles, or they would not have purchased or leased them.

8 4309. As alleged in Section V above, if FCA had fully and adequately
9 disclosed the ACU Defect to consumers and NHTSA, the South Dakota Plaintiff
10 and South Dakota State Class members would have seen such a disclosure.

11 4310. Accordingly, FCA is liable to the South Dakota Plaintiff and South
12 Dakota State Class members for their damages in an amount to be proven at trial,
13 including, but not limited to, their lost overpayment for the FCA Class Vehicles at
14 the time of purchase or lease.

15 4311. FCA's acts were done maliciously, oppressively, deliberately, with
16 intent to defraud; in reckless disregard of the South Dakota Plaintiff's and South
17 Dakota State Class members' rights and well-being; and to enrich themselves.
18 FCA's misconduct warrants an assessment of punitive damages, as permitted by
19 law, in an amount sufficient to deter such conduct in the future, which amount shall
20 be determined according to proof at trial.

21 **f. South Dakota Count 6: Fraud by Omission and**
22 **Concealment Against ZF Electronics USA, ZF Passive**
23 **Safety USA, ZF Automotive USA, ZF TRW Corp., ZF**
Germany, ST Italy, ST USA, and ST Malaysia

24 4312. Plaintiffs reallege and incorporate by reference all preceding
25 allegations as though fully set forth herein.

26 4313. The South Dakota Plaintiff brings this count individually and on behalf
27 of members of the South Dakota State Class who purchased or leased Class
28 Vehicles, against ZF Electronics USA, ZF Passive Safety USA, ZF Automotive

1 USA, ZF TRW Corp., and ZF Germany (collectively, the “ZF Defendants”), and
2 ST Italy, ST Malaysia, and ST USA (collectively, the “ST Defendants”).

3 4314. The ZF and ST Defendants are liable for both fraudulent concealment
4 and non-disclosure. *See, e.g.*, Restatement (Second) of Torts §§ 550-51 (1977).

5 4315. As explained in Section IV.A, the ACU Defect in Class Vehicles poses
6 serious risks to vehicle occupants, including that it can cause: (1) airbags and
7 seatbelts not to activate during a crash because crashes can sometimes release
8 electrical transients, which cause the ACU to fail; (2) airbags to deploy when the
9 vehicle has not crashed, which is dangerous because it is shocking and difficult for
10 the driver to operate a vehicle when the airbag deploys without warning; and (3)
11 failures of other important post-crash operations of the safety system, such as
12 unlocking doors to facilitate escape or extraction of drivers and passengers by
13 emergency personnel, and shutting off a crashed vehicle’s fuel or power supply.

14 4316. The ZF and ST Defendants had a duty to disclose the ACU Defect to
15 the South Dakota Plaintiff and South Dakota State Class members because:

- 16 a. The ZF and ST Defendants had exclusive access to and far
17 superior knowledge about technical facts regarding the ACU
18 Defect;
- 19 b. Given the ACU Defect’s hidden and technical nature, the South
20 Dakota Plaintiff and South Dakota State Class members lack the
21 sophisticated expertise in vehicle components and electrical
22 phenomena that would be necessary to discover the ACU Defect
23 on their own;
- 24 c. The ZF and ST Defendants knew that the ACU Defect gave rise
25 to serious safety concerns for the consumers who use the
26 vehicles, and the Class Vehicles containing the ACU Defect
27 would have been a material fact to the South Dakota Plaintiff’s
28

1 and South Dakota State Class members’ decisions to buy or
2 lease Class Vehicles; and
3 d. The ZF Defendants made incomplete representations about the
4 safety and reliability of the Class Vehicles and their Occupant
5 Restraint System, while purposefully withholding material facts
6 about a known safety defect, creating a duty to disclose the
7 whole truth. Specifically, ZF Electronics USA, ZF Passive
8 Safety USA, and ZF Automotive USA worked with the Vehicle
9 Manufacturer Defendants on the design and inclusion of the
10 airbag readiness indicators in the Class Vehicles, which falsely
11 assured Plaintiffs and Class Members that the Occupant
12 Restraint Systems in the Class Vehicles would function properly
13 in a crash.

14 4317. In breach of their duties, the ZF and ST Defendants failed to disclose
15 that the Class Vehicles were not safe and reliable, and that their Occupant Restraint
16 Systems, including their airbags and seatbelt pretensioners could fail in the event of
17 a crash due to the ACU Defect.

18 4318. The ZF and ST Defendants intended for the South Dakota Plaintiff and
19 South Dakota State Class members to rely on their omissions—which they did by
20 purchasing and leasing the Class Vehicles at the prices they paid believing that the
21 Occupant Restraint Systems in their Class Vehicles would function properly.

22 4319. That reliance was reasonable, because a reasonable consumer would
23 not have expected that the Class Vehicles contained a safety defect that poses such
24 a serious risk. The ZF and ST Defendants knew that reasonable consumers expect
25 that their vehicle has working airbags and seatbelt pretensioners and would rely on
26 those facts in deciding whether to purchase, lease, or retain a new or used motor
27 vehicle. Whether a manufacturer’s products are safe and reliable, and whether that
28 manufacturer stands behind its products, are material concerns to a consumer.

1 Especially here when at least nine people have already died due to the ACU Defect,
2 and many more have been injured.

3 4320. Additionally, the ZF and ST Defendants ensured that the South Dakota
4 Plaintiff and South Dakota State Class members did not discover this information
5 by actively concealing and misrepresenting the true nature of the Class Vehicles'
6 Occupant Restraint Systems to consumers and NHTSA.

7 4321. The ZF and ST Defendants actively concealed and suppressed these
8 material facts, in whole or in part, to maintain a market for the DS84 ACU, to
9 protect profits, and to avoid costly recalls that would expose them to liability for
10 those expenses and harm the commercial reputations of Defendants and their
11 products. They did so at the expense of the South Dakota Plaintiff and South
12 Dakota State Class members.

13 4322. To this day, the ZF and ST Defendants have not fully and adequately
14 disclosed the ACU Defect, and they continue to conceal material information about
15 the defect from consumers and NHTSA. The omitted and concealed facts were
16 material because a reasonable person would find them important in purchasing,
17 leasing, or retaining a new or used motor vehicle, and because they directly impact
18 the value of the Class Vehicles purchased or leased by the South Dakota Plaintiff
19 and South Dakota State Class members.

20 4323. Had they been aware of the ACU Defect in the Class Vehicles, and the
21 ZF and ST Defendants' callous disregard for safety, the South Dakota Plaintiff and
22 South Dakota State Class members either would not have paid as much as they did
23 for their Class Vehicles, or they would not have purchased or leased them.

24 4324. As alleged in Section V above, if the ZF and ST Defendants had fully
25 and adequately disclosed the ACU Defect to consumers and NHTSA, the South
26 Dakota Plaintiff and South Dakota State Class members would have seen such a
27 disclosure.

28

1 4325. Accordingly, the ZF and ST Defendants are liable to the South Dakota
2 Plaintiff and South Dakota State Class members for their damages in an amount to
3 be proven at trial, including, but not limited to, their lost overpayment for the Class
4 Vehicles at the time of purchase or lease.

5 4326. The ZF and ST Defendants' acts were done maliciously, oppressively,
6 deliberately, with intent to defraud; in reckless disregard of the South Dakota
7 Plaintiff's and South Dakota State Class members' rights and well-being; and to
8 enrich themselves. The ZF and ST Defendants' misconduct warrants an assessment
9 of punitive damages, as permitted by law, in an amount sufficient to deter such
10 conduct in the future, which amount shall be determined according to proof at trial.

11 **g. South Dakota Count 7: Unjust Enrichment Against FCA**

12 4327. Plaintiffs reallege and incorporate by reference all allegations in
13 Sections I-VI above as though fully set forth herein.

14 4328. The South Dakota Plaintiff brings this count individually and on behalf
15 of members of the South Dakota State Class who purchased or leased FCA Class
16 Vehicles, against FCA.

17 4329. The South Dakota Plaintiff and South Dakota State Class members
18 conferred tangible and material monetary benefits upon FCA when they purchased
19 or leased the FCA Class Vehicles. FCA readily accepted and retained these
20 benefits.

21 4330. The South Dakota Plaintiff and South Dakota State Class members
22 would not have purchased or leased the FCA Class Vehicles, or would have paid
23 less for them, had they known of the ACU Defect at the time of purchase or lease.
24 Therefore, FCA profited from the sale and lease of the FCA Class Vehicles to the
25 detriment and expense of the South Dakota Plaintiff and South Dakota State Class
26 members.

27 4331. FCA appreciated these monetary benefits. These benefits were the
28 expected result of FCA acting in its pecuniary interest at the expense of its

1 customers. FCA knew of these benefits because it was aware of the ACU Defect,
2 yet it failed to disclose this knowledge and misled the South Dakota Plaintiff and
3 South Dakota State Class members regarding the nature and quality of the FCA
4 Class Vehicles while profiting from this deception.

5 4332. It would be unjust, inequitable, and unconscionable for FCA to retain
6 these monetary benefits, including because they were procured as a result of FCA's
7 wrongful conduct alleged above.

8 4333. The South Dakota Plaintiff and South Dakota State Class members are
9 entitled to restitution of the benefits FCA unjustly retained and/or any amounts
10 necessary to return the South Dakota Plaintiff and South Dakota State Class
11 members to the position they occupied prior to dealing with FCA, with such
12 amounts to be determined at trial.

13 4334. The South Dakota Plaintiff pleads this claim separately as well as in
14 the alternative to his claims for damages under Fed. R. Civ. P. 8(a)(3), because if
15 the South Dakota Plaintiff's claims for damages are dismissed or judgment is
16 entered in favor of Defendants, the South Dakota Plaintiff would have no adequate
17 legal remedy.

18 **22. Texas**

19 **a. Texas Count 1: Breach of Implied Warranty of**
20 **Merchantability (Tex. Bus. & Com. Code Ann. §§ 2.314 and**
21 **2A.212) Against Honda USA, Hyundai USA, and Toyota**
Sales USA²¹

22 4335. Plaintiffs reallege and incorporate by reference all preceding
23 allegations as though fully set forth herein.

24
25
26
27 ²¹ The Court held in its February 9, 2022 Order that Plaintiffs DeRouen, Hunt and
28 Green each have stated a claim for breach of implied warranty under Texas law. *See*
ECF No. 396 at 167.

1 4336. Plaintiff Angela Bowens brings this count individually and on behalf
2 of members of the Texas State Class who purchased or leased Honda Class
3 Vehicles, against Honda USA.

4 4337. Plaintiff Burton Reckles brings this count individually and on behalf of
5 members of the Texas State Class who purchased or leased Hyundai Class
6 Vehicles, against Hyundai USA.

7 4338. Plaintiffs Brent DeRouen, Danny Hunt, Evan Green, and Joy Davis
8 bring this count individually and on behalf of members of the Texas State Class
9 who purchased or leased Toyota Class Vehicles, against Toyota Sales USA.

10 4339. For purposes of this count, Plaintiffs Bowens, Reckles, DeRouen,
11 Hunt, Green, and Davis shall be referred to as the “Texas Plaintiffs.”

12 4340. A warranty that the Honda, Hyundai, and Toyota Class Vehicles were
13 in merchantable condition and fit for the ordinary purpose for which such goods are
14 used is implied by law pursuant to Tex. Bus. & Com. Code Ann. §§ 2.314 and
15 2A.212.

16 4341. Honda USA, Hyundai USA, and Toyota Sales USA are and were at all
17 relevant times “merchants” with respect to motor vehicles under Tex. Bus. & Com.
18 Code Ann. §§ 2.104(a) and 2A.103(c), and “sellers” of motor vehicles under
19 § 2.103(a)(4).

20 4342. With respect to leases, Honda USA, Hyundai USA, and Toyota Sales
21 USA are and were at all relevant times “lessors” of motor vehicles under Tex. Bus.
22 & Com. Code Ann. § 2A.103(a)(16).

23 4343. All Texas State Class members who purchased Honda, Hyundai, and
24 Toyota Class Vehicles in Texas are “buyers” within the meaning of Tex. Bus. &
25 Com. Code Ann. § 2.103(a).

26 4344. All Texas State Class members who leased Honda, Hyundai, and
27 Toyota Class Vehicles in Texas are “lessees” within the meaning of Tex. Bus. &
28 Com. Code Ann. § 2A.103(a)(14).

1 4345. The Class Vehicles are and were at all relevant times “goods” within
2 the meaning of Tex. Bus. & Com. Code Ann. §§ 2.105(a) and 2A.103(a)(8).

3 4346. The Honda, Hyundai, and Toyota Class Vehicles did not comply with
4 the implied warranty of merchantability because, at the time of sale and lease and at
5 all times thereafter, they were defective and not in merchantable condition, would
6 not pass without objection in the trade, and were not fit for the ordinary purpose for
7 which vehicles were used. Specifically, at the time they were sold and leased, the
8 Honda, Hyundai, and Toyota Class Vehicles contained the ACU Defect, which may
9 cause the airbags and seatbelt pretensioners to fail to deploy during a crash, the
10 failure to unlock doors automatically after a crash, the failure to turn off a fuel
11 supply or high-voltage battery after a crash, or the airbags to inadvertently deploy,
12 all of which render the Honda, Hyundai, and Toyota Class Vehicles inherently
13 defective and dangerous.

14 4347. The Texas Plaintiffs and Texas State Class members have provided
15 Honda USA, Hyundai USA, and Toyota Sales USA with reasonable notice and
16 opportunity to cure the breaches of their implied warranties by way of the numerous
17 NHTSA complaints filed against them, and the individual notice letters sent by
18 Texas State Class members within a reasonable amount of time after the ACU
19 Defect became public. Additionally, on April 24, 2020, a notice letter was sent on
20 behalf of the Texas Plaintiffs and Texas State Class members to Honda USA,
21 Hyundai USA, and Toyota Sales USA.

22 4348. Alternatively, the Texas Plaintiffs and Texas State Class members
23 were excused from providing Honda USA, Hyundai USA, and Toyota Sales USA
24 with notice and an opportunity to cure the breach, because it would have been
25 futile. As alleged above, Honda USA, Hyundai USA, and Toyota Sales USA have
26 long known that Class Vehicles contained the ACU Defect, and that the ACU
27 Defect has caused ACUs and ASICs to malfunction in crashes involving Class
28 Vehicles; however, to date, Hyundai USA and Toyota Sales USA have not

1 instituted a recall or any other repair program with respect to their unrecalled Class
2 Vehicles, or even acknowledged that the ACU Defect exists in all their Class
3 Vehicles, including the recalled Class Vehicles—even though Hyundai and Toyota
4 Class Vehicles are subject to the NHTSA investigation. Similarly, to date, Honda
5 USA has not instituted a recall or any other repair program, or even acknowledged
6 that the ACU Defect exists—even though Honda Class Vehicles are subject to the
7 NHTSA investigation. Therefore, the Texas Plaintiffs and Texas State Class
8 members had no reason to believe that Honda USA, Hyundai USA, and Toyota
9 Sales USA would have repaired the ACU Defect if the Texas Plaintiffs and Texas
10 State Class members presented their Class Vehicles to them for repair.

11 4349. As a direct and proximate result of Honda USA’s, Hyundai USA’s,
12 and Toyota Sales USA’s breach of the implied warranty of merchantability, the
13 Texas Plaintiffs and Texas State Class members have been damaged through their
14 overpayment at the time of purchase or lease for Toyota Class Vehicles with an
15 undisclosed safety defect in an amount to be proven at trial.

16 **b. Texas Count 2: Violation of the Deceptive Trade Practices-**
17 **Consumer Protection Act (Tex. Bus. & Com. Code Ann.**
18 **§ 17.41, et seq.) Against Honda Japan, Honda USA, Honda**
Engineering USA, Hyundai Korea, Hyundai USA, Toyota
USA, and Toyota Sales USA

19 4350. Plaintiffs reallege and incorporate by reference all preceding
20 allegations as though fully set forth herein.

21 4351. Plaintiff Angela Bowens brings this count individually and on behalf
22 of members of the Texas State Class who purchased or leased Honda Class
23 Vehicles, against Honda Japan, Honda USA, and Honda Engineering USA.

24 4352. Plaintiff Burton Reckles brings this count individually and on behalf of
25 members of the Texas State Class who purchased or leased Hyundai Class
26 Vehicles, against Hyundai Korea and Hyundai USA.

27 4353. Plaintiffs Brent DeRouen, Danny Hunt, Evan Green, and Joy Davis
28 bring this count individually and on behalf of members of the Texas State Class

1 who purchased or leased Toyota Class Vehicles, against Toyota USA and Toyota
2 Sales USA.

3 4354. For purposes of this count, Plaintiffs Bowens, Reckles, DeRouen,
4 Hunt, Green, and Davis shall be referred to as the “Texas Plaintiffs.”

5 4355. Honda Japan, Honda USA, Honda Engineering USA, Hyundai Korea,
6 Hyundai USA, Toyota USA, Toyota Sales USA, the Texas Plaintiffs, and Texas
7 State Class members are “persons” within the meaning of Tex. Bus. & Com. Code
8 Ann. § 17.45(3).

9 4356. The Texas Plaintiffs and Texas State Class members are “consumers”
10 within the meaning of Tex. Bus. & Com. Code Ann. § 17.45(4).

11 4357. The Honda, Hyundai, and Toyota Class Vehicles are “goods” within
12 the meaning of Tex. Bus. & Com. Code Ann. § 17.45(1).

13 4358. Honda Japan, Honda USA, Honda Engineering USA, Hyundai Korea,
14 Hyundai USA, Toyota USA, and Toyota Sales USA were and are engaged in
15 “trade” or “commerce” within the meaning of Tex. Bus. & Com. Code Ann.
16 § 17.45(6).

17 4359. The Deceptive Trade Practices-Consumer Protection Act (“Texas
18 DTPA”) prohibits “[f]alse, misleading, or deceptive acts or practices in the conduct
19 of any trade or commerce[,]” Tex. Bus. & Com. Code Ann. § 17.46(a), and an
20 “unconscionable action or course of action[,]” Tex. Bus. & Com. Code Ann.
21 §§ 17.45(5) and 17.50(a)(3).

22 4360. In the course of their business, Honda Japan, Honda USA, Honda
23 Engineering USA, Hyundai Korea, Hyundai USA, Toyota USA, and Toyota Sales
24 USA, through their agents, employees, and/or subsidiaries, violated the Texas
25 DTPA by knowingly and intentionally misrepresenting, omitting, concealing,
26 and/or failing to disclose material facts regarding the reliability, safety, and
27 performance of the Honda, Hyundai, and Toyota Class Vehicles, the safety of their
28 Occupant Restraint Systems, and the ACU Defect, as detailed above.

1 4361. Honda Japan, Honda USA, Honda Engineering USA, Hyundai Korea,
2 Hyundai USA, Toyota USA, and Toyota Sales USA had an ongoing duty to the
3 Texas Plaintiffs and Texas State Class members to refrain from unfair or deceptive
4 practices under the Texas DTPA in the course of their business. Specifically, Honda
5 Japan, Honda USA, Honda Engineering USA, Hyundai Korea, Hyundai USA,
6 Toyota USA, and Toyota Sales USA owed the Texas Plaintiffs and Texas State
7 Class members a duty to disclose all the material facts concerning the ACU Defect
8 in the Honda, Hyundai, and Toyota Class Vehicles because they possessed
9 exclusive knowledge, they intentionally concealed the ACU Defect from the Texas
10 Plaintiffs and Texas State Class members, and/or they made misrepresentations that
11 were rendered misleading because they were contradicted by withheld facts.

12 4362. By misrepresenting the Honda, Hyundai, and Toyota Class Vehicles as
13 safe and reliable and the defective ACU and ASICs installed in them as properly-
14 functioning and free from defects, and by failing to disclose and actively concealing
15 the dangers and risk posed by the ACU Defect to both consumers and NHTSA,
16 Honda Japan, Honda USA, Honda Engineering USA, Hyundai Korea, Hyundai
17 USA, Toyota USA, and Toyota Sales USA engaged in one or more of the following
18 unfair or deceptive business practices prohibited by Tex. Bus. & Com. Code Ann.
19 §§ 17.46:

- 20 a. Representing that the Class Vehicles and/or the defective ACUs
21 installed in them have characteristics, uses, benefits, and
22 qualities which they do not have;
- 23 b. Representing that the Class Vehicles and/or the defective ACUs
24 installed in them are of a particular standard, quality, and grade
25 when they are not; and
- 26 c. Advertising the Class Vehicles and/or the defective ACUs
27 installed in them with the intent not to sell or lease them as
28 advertised.

1 Tex. Bus. & Com. Code Ann. §§ 17.46(5), (7), and (9).

2 4363. Honda Japan's, Honda USA's, Honda Engineering USA's, Hyundai
3 Korea's, Hyundai USA's, Toyota USA's, and Toyota Sales USA's unfair and
4 deceptive acts or practices, including their misrepresentations, concealments,
5 omissions, and suppressions of material facts, were designed to mislead and had a
6 tendency or capacity to mislead and create a false impression in consumers that the
7 Honda, Hyundai, and Toyota Class Vehicles had properly-functioning and reliable
8 airbags and seatbelts, and that the Occupant Restraint System did not contain the
9 ACU Defect and would perform its intended function of activating the seatbelts and
10 airbags during a collision. Indeed, those misrepresentations, concealments,
11 omissions, and suppressions of material facts did in fact deceive reasonable
12 consumers, including the Texas Plaintiffs and Texas State Class members, about
13 the true safety and reliability of Honda, Hyundai, and Toyota Class Vehicles and/or
14 the defective ACUs and ASICs installed in them, the quality of the Honda,
15 Hyundai, and Toyota Class Vehicles, and the true value of the Honda, Hyundai, and
16 Toyota Class Vehicles.

17 4364. Honda Japan's, Honda USA's, Honda Engineering USA's, Hyundai
18 Korea's, Hyundai USA's, Toyota USA's, and Toyota Sales USA's
19 misrepresentations, concealments, omissions, and suppressions of material facts
20 regarding the ACU Defect and true characteristics of the Occupant Restraint
21 Systems in the Honda, Hyundai, and Toyota Class Vehicles were material to the
22 decisions of the Texas Plaintiffs and Texas State Class members to purchase and
23 lease those vehicles, as Honda Japan, Honda USA, Honda Engineering USA,
24 Hyundai Korea, Hyundai USA, Toyota USA, and Toyota Sales USA intended. The
25 Texas Plaintiffs and Texas State Class members were exposed to those
26 misrepresentations, concealments, omissions, and suppressions of material facts,
27 and relied on Honda Japan's, Honda USA's, Honda Engineering USA's, Hyundai
28 Korea's, Hyundai USA's, Toyota USA's, and Toyota Sales USA's

1 misrepresentations that the Honda, Hyundai, and Toyota Class Vehicles and their
2 Occupant Restraint Systems were safe and reliable in deciding to purchase and
3 lease Honda, Hyundai, and Toyota Class Vehicles. Plaintiffs allege the information
4 they relied upon in Section II.B above. To aid review of this information, Exhibit
5 19 provides paragraph numbers for each Plaintiff.

6 4365. The Texas Plaintiffs' and Texas State Class members' reliance was
7 reasonable, as they had no way of discerning that Honda Japan's, Honda USA's,
8 Honda Engineering USA's, Hyundai Korea's, Hyundai USA's, Toyota USA's, and
9 Toyota Sales USA's representations were false and misleading, or otherwise
10 learning the facts that they had concealed or failed to disclose. The Texas Plaintiffs
11 and Texas State Class members did not, and could not, unravel Honda Japan's,
12 Honda USA's, Honda Engineering USA's, Hyundai Korea's, Hyundai USA's,
13 Toyota USA's, and Toyota Sales USA's deception on their own.

14 4366. Had the Texas Plaintiffs and Texas State Class members known the
15 truth about the ACU Defect, the Texas Plaintiffs and Texas State Class members
16 would not have purchased or leased Honda, Hyundai, and Toyota Class Vehicles, or
17 would have paid significantly less for them.

18 4367. The Texas Plaintiffs and Texas State Class members suffered
19 ascertainable losses and actual damages through their overpayment at the time of
20 purchase and lease for Honda, Hyundai, and Toyota Class Vehicles with an
21 undisclosed safety defect as a direct and proximate result of Honda Japan's, Honda
22 USA's, Honda Engineering USA's, Hyundai Korea's, Hyundai USA's, Toyota
23 USA's, and Toyota Sales USA's concealment, misrepresentations, and/or failure to
24 disclose material information.

25 4368. Honda Japan's, Honda USA's, Honda Engineering USA's, Hyundai
26 Korea's, Hyundai USA's, Toyota USA's, and Toyota Sales USA's violations
27 present a continuing risk to the Texas Plaintiffs and Texas State Class members, as
28 well as to the general public, because the Class Vehicles remain unsafe due to the

1 defective ACUs and ASICs therein. Additionally, their unlawful acts and practices
2 complained of herein affect the public interest.

3 4369. Honda Japan, Honda USA, Honda Engineering USA, Hyundai Korea,
4 Hyundai USA, Toyota USA, and Toyota Sales USA were provided notice of the
5 issues raised in this count and this Complaint by the NHTSA investigations, the
6 numerous complaints filed against them, and the many individual notice letters sent
7 within a reasonable amount of time after the ACU Defect became public.
8 Additionally, on May 23, 2019, Texas State Class members sent them a notice letter
9 pursuant to Tex. Bus. & Com. Code Ann. § 17.505(a). Moreover, a second notice
10 letter was sent on behalf of the Texas Plaintiffs and Texas State Class members
11 pursuant to Tex. Bus. & Com. Code Ann. § 17.505(a) to Honda Japan, Honda USA,
12 Honda Engineering USA, Hyundai Korea, Hyundai USA, Toyota USA, and Toyota
13 Sales USA on April 24, 2020. Because all of these Defendants failed to adequately
14 remedy their unlawful conduct within the requisite time period, the Texas Plaintiffs
15 seek all damages and relief to which the Texas Plaintiffs and Texas State Class
16 members are entitled.

17 4370. Alternatively, any requirement to give notice to the Defendants under
18 Tex. Bus. & Com. Code Ann. § 17.505(a) is excused because, *inter alia*, notice was
19 impracticable due to the necessity of filing suit in order to prevent the expiration of
20 the statute of limitations on certain Texas Plaintiffs and Texas State Class
21 Members' claims.

22 4371. Pursuant to Tex. Bus. & Com. Code Ann. § 17.50, the Texas Plaintiffs
23 and Texas State Class members seek an order enjoining Honda Japan's, Honda
24 USA's, Honda Engineering USA's, Hyundai Korea's, Hyundai USA's, Toyota
25 USA's, and Toyota Sales USA's unfair or deceptive acts or practices and awarding
26 damages and any other just and proper relief available under the Texas DTPA.

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1 c. **Texas Count 3: Violation of the Deceptive Trade Practices-
2 Consumer Protection Act (Tex. Bus. & Com. Code Ann.
3 § 17.41, *et seq.*) Against ZF Electronics USA, ZF Passive
4 Safety USA, ZF Automotive USA, ZF Germany, ST Italy,
5 ST USA, and ST Malaysia**

4 4372. Plaintiffs reallege and incorporate by reference all preceding
5 allegations as though fully set forth herein.

6 4373. Plaintiffs Angela Bowens, Burton Reckles, Brent DeRouen, Danny
7 Hunt, Evan Green, and Joy Davis bring this count individually and on behalf of
8 members of the Texas State Class against ZF Electronics USA, ZF Passive Safety
9 USA, ZF Automotive USA, ZF TRW Corp., and ZF Germany (collectively, the
10 “ZF Defendants”), and ST Italy, ST Malaysia, and ST USA (collectively, the “ST
11 Defendants”).

12 4374. For purposes of this count, Plaintiffs Bowens, Reckles, DeRouen,
13 Hunt, Green, and Davis shall be referred to as the Texas Plaintiffs.

14 4375. The ZF Defendants, the ST Defendants, the Texas Plaintiffs, and
15 Texas State Class members are “persons” within the meaning of Tex. Bus. & Com.
16 Code Ann. § 17.45(3).

17 4376. The Texas Plaintiffs and Texas State Class members are “consumers”
18 within the meaning of Tex. Bus. & Com. Code Ann. § 17.45(4).

19 4377. The Class Vehicles are “goods” within the meaning of Tex. Bus. &
20 Com. Code Ann. § 17.45(1).

21 4378. The ZF and ST Defendants were and are engaged in “trade” or
22 “commerce” within the meaning of Tex. Bus. & Com. Code Ann. § 17.45(6).

23 4379. The Deceptive Trade Practices-Consumer Protection Act (“Texas
24 DTPA”) prohibits “[f]alse, misleading, or deceptive acts or practices in the conduct
25 of any trade or commerce[,]” Tex. Bus. & Com. Code Ann. § 17.46(a), and an
26 “unconscionable action or course of action[,]” Tex. Bus. & Com. Code Ann.
27 §§ 17.45(5) and 17.50(a)(3).

28

1 4380. In the course of their business, the ZF and ST Defendants, through
2 their agents, employees, and/or subsidiaries, violated the Texas DTPA by
3 knowingly and intentionally omitting, concealing, and failing to disclose material
4 facts regarding the existence, nature, and scope of the defective ACU and ASIC
5 installed in the Class Vehicles, as detailed above.

6 4381. Additionally, ZF Electronics USA, ZF Passive Safety USA, and ZF
7 Automotive USA through their agents, employees, and/or subsidiaries, violated the
8 Texas DTPA when they knowingly and intentionally misrepresented the Class
9 Vehicles as safe and reliable and the defective ACU and ASICs installed in them as
10 properly-functioning and free from defects. Specifically, ZF Electronics USA, ZF
11 Passive Safety USA, and ZF Automotive USA worked with the Vehicle
12 Manufacturer Defendants on the design and inclusion of the airbag readiness
13 indicators in the Class Vehicles, which falsely assured Plaintiffs and Class
14 Members that the Occupant Restraint Systems in the Class Vehicles would function
15 properly in a crash.

16 4382. By misrepresenting, failing to disclose, and actively concealing the
17 dangers and risk posed by the Class Vehicles due to the ACU Defect, The ZF and
18 ST Defendants engaged in deceptive acts or practices prohibited by Tex. Bus. &
19 Com. Code Ann. §§ 17.46.

20 4383. The ZF and ST Defendants' unfair or deceptive acts or practices,
21 including their misrepresentations, concealments, omissions, and suppressions of
22 material facts, were designed to mislead and had a tendency or capacity to mislead
23 and create a false impression in consumers that the Class Vehicles had properly-
24 functioning and reliable airbags and seatbelts, and that the Occupant Restraint
25 System did not contain the ACU Defect and would perform its intended function of
26 activating the seatbelts and airbags during a collision. Indeed, those
27 misrepresentations, concealments, omissions, and suppressions of material facts did
28 in fact deceive reasonable consumers, including the Texas Plaintiffs and Texas

1 State Class members, about the true safety and reliability of Class Vehicles and/or
2 the defective ACUs and ASICs installed in them, the quality of the Class Vehicles,
3 and the true value of the Class Vehicles.

4 4384. The Texas Plaintiffs and Texas State Class members justifiably relied
5 on the ZF and ST Defendants' misrepresentations, omissions, and concealment, as
6 they had no way of discerning that the Class Vehicles contained the ACU Defect, as
7 alleged above. The Texas Plaintiffs and Texas State Class members did not, and
8 could not, unravel the ZF and ST Defendants' deception on their own

9 4385. The ZF and ST Defendants' misrepresentations and concealment of the
10 ACU Defect and true characteristics of the defective ACUs and ASICs in the Class
11 Vehicles were material to the decisions of the Texas Plaintiffs and Texas State
12 Class members to purchase and lease Class Vehicles, as the ZF and ST Defendants
13 intended. Had they known the truth, the Texas Plaintiffs and Texas State Class
14 members would not have purchased or leased the Class Vehicles, or would have
15 paid significantly less for them.

16 4386. The Texas Plaintiffs and Texas State Class members suffered
17 ascertainable losses and actual damages as a direct and proximate result of the ZF
18 and ST Defendants' misrepresentations, concealment and/or failure to disclose
19 material information.

20 4387. The ZF and ST Defendants' violations present a continuing risk to the
21 Texas Plaintiffs and Texas State Class members, as well as to the general public,
22 because the Class Vehicles remain unsafe due to the defective ACUs and ASICs
23 therein. The ZF and ST Defendants' unlawful acts and practices complained of
24 herein affect the public interest.

25 4388. The ZF and ST Defendants were provided notice of the issues raised in
26 this count and this Complaint by the NHTSA investigations, the numerous
27 complaints filed against them, and the many individual notice letters sent within a
28 reasonable amount of time after the ACU Defect became public. A notice letter was

1 sent on behalf of the Texas Plaintiffs and Texas State Class members pursuant to
2 Tex. Bus. & Com. Code Ann. § 17.505(a) to the ZF Defendants on April 24, 2020,
3 ST USA on June 5, 2020, and ST Italy and ST Malaysia on May 25, 2022. Because
4 the ZF and ST Defendants failed to adequately remedy their unlawful conduct
5 within the requisite time period, the Texas Plaintiffs seek all damages and relief to
6 which the Texas Plaintiffs and Texas State Class members are entitled.

7 4389. Alternatively, any requirement to give notice to the ZF and ST
8 Defendants under Tex. Bus. & Com. Code Ann. § 17.505(a) is excused because,
9 *inter alia*, notice was impracticable due to the necessity of filing suit in order to
10 prevent the expiration of the statute of limitations on certain Texas Plaintiffs and
11 Texas State Class Members' claims.

12 4390. Pursuant to Tex. Bus. & Com. Code Ann. § 17.50, the Texas Plaintiffs
13 and Texas State Class members seek an order enjoining the ZF and ST Defendants'
14 unfair or deceptive acts or practices and awarding damages and any other just and
15 proper relief available under the Texas DTPA.

16 **d. Texas Count 4: Fraud by Omission and Concealment**
17 **Against Honda Japan, Honda USA, Honda Engineering**
18 **USA, Hyundai Korea, Hyundai USA, Toyota USA, and**
Toyota Sales USA

19 4391. Plaintiffs reallege and incorporate by reference all preceding
20 allegations as though fully set forth herein.

21 4392. Plaintiff Angela Bowens brings this count individually and on behalf
22 of members of the Texas State Class who purchased or leased Honda Class
23 Vehicles, against Honda Japan, Honda USA, and Honda Engineering USA.

24 4393. Plaintiff Burton Reckles brings this count individually and on behalf of
25 members of the Texas State Class who purchased or leased Hyundai Class
26 Vehicles, against Hyundai Korea and Hyundai USA.

27 4394. Plaintiffs Brent DeRouen, Danny Hunt, Evan Green, and Joy Davis
28 bring this count individually and on behalf of members of the Texas State Class

1 who purchased or leased Toyota Class Vehicles, against Toyota USA and Toyota
2 Sales USA.

3 4395. For purposes of this count, Plaintiffs Bowens, Reckles, DeRouen,
4 Hunt, Green, and Davis shall be referred to as the “Texas Plaintiffs.”

5 4396. Honda Japan, Honda USA, Honda Engineering USA, Hyundai Korea,
6 Hyundai USA, Toyota USA, and Toyota Sales USA are liable for both fraudulent
7 concealment and non-disclosure. *See, e.g.*, Restatement (Second) of Torts §§ 550-
8 51 (1977).

9 4397. As explained in Section IV.A, the ACU Defect in Class Vehicles poses
10 serious risks to vehicle occupants, including that it can cause: (1) airbags and
11 seatbelts not to activate during a crash because crashes can sometimes release
12 electrical transients, which cause the ACU to fail; (2) airbags to deploy when the
13 vehicle has not crashed, which is dangerous because it is shocking and difficult for
14 the driver to operate a vehicle when the airbag deploys without warning; and (3)
15 failures of other important post-crash operations of the safety system, such as
16 unlocking doors to facilitate escape or extraction of drivers and passengers by
17 emergency personnel, and shutting off a crashed vehicle’s fuel or power supply.

18 4398. Honda Japan, Honda USA, Honda Engineering USA, Hyundai Korea,
19 Hyundai USA, Toyota USA, and Toyota Sales USA had a duty to disclose the ACU
20 Defect to the Texas Plaintiffs and Texas State Class members because:

- 21 a. Honda Japan, Honda USA, Honda Engineering USA, Hyundai
22 Korea, Hyundai USA, Toyota USA, and Toyota Sales USA had
23 exclusive access to and far superior knowledge about technical
24 facts regarding the ACU Defect;
- 25 b. Given the ACU Defect’s hidden and technical nature, the Texas
26 Plaintiffs and Texas State Class members lack the sophisticated
27 expertise in vehicle components and electrical phenomena that
28 would be necessary to discover the ACU Defect on their own;

1 c. Honda Japan, Honda USA, Honda Engineering USA, Hyundai
2 Korea, Hyundai USA, Toyota USA, and Toyota Sales USA
3 knew that the ACU Defect gave rise to serious safety concerns
4 for the consumers who use the vehicles, and the Honda,
5 Hyundai, and Toyota Class Vehicles containing the ACU Defect
6 would have been a material fact to the Texas Plaintiffs' and
7 Texas State Class members' decisions to buy or lease Honda,
8 Hyundai, and Toyota Class Vehicles; and

9 d. Honda Japan, Honda USA, Honda Engineering USA, Hyundai
10 Korea, Hyundai USA, Toyota USA, and Toyota Sales USA
11 made incomplete representations about the safety and reliability
12 of the Honda, Hyundai, and Toyota Class Vehicles and their
13 Occupant Restraint System, while purposefully withholding
14 material facts about a known safety defect. In uniform
15 advertising and materials provided with each Class Vehicle,
16 Honda Japan, Honda USA, Honda Engineering USA, Hyundai
17 Korea, Hyundai USA, Toyota USA, and Toyota Sales USA
18 intentionally concealed, suppressed, and failed to disclose to the
19 Texas Plaintiffs and Texas State Class members that the Honda,
20 Hyundai, and Toyota Class Vehicles contained the ACU Defect.
21 Because they volunteered to provide information about the
22 Honda, Hyundai, and Toyota Class Vehicles that they marketed
23 and offered for sale and lease to the Texas Plaintiffs and Texas
24 State Class members, Honda Japan, Honda USA, Honda
25 Engineering USA, Hyundai Korea, Hyundai USA, Toyota USA,
26 and Toyota Sales USA had the duty to disclose the whole truth.

27 4399. In breach of their duties, Honda Japan, Honda USA, Honda
28 Engineering USA, Hyundai Korea, Hyundai USA, Toyota USA, and Toyota Sales

1 USA failed to disclose that the Honda, Hyundai, and Toyota Class Vehicles were
2 not safe and reliable, and that their Occupant Restraint Systems, including their
3 airbags and seatbelt pretensioners could fail in the event of a crash due to the ACU
4 Defect.

5 4400. Honda Japan, Honda USA, Honda Engineering USA, Hyundai Korea,
6 Hyundai USA, Toyota USA, and Toyota Sales USA intended for the Texas
7 Plaintiffs and Texas State Class members to rely on their omissions—which they
8 did by purchasing and leasing the Honda, Hyundai, and Toyota Class Vehicles at
9 the prices they paid believing that the Occupant Restraint Systems in their Class
10 Vehicles would function properly.

11 4401. That reliance was reasonable, because a reasonable consumer would
12 not have expected that the Honda, Hyundai, and Toyota Class Vehicles contained a
13 safety defect that poses such a serious risk. Honda Japan, Honda USA, Honda
14 Engineering USA, Hyundai Korea, Hyundai USA, Toyota USA, and Toyota Sales
15 USA knew that reasonable consumers expect that their vehicle has working airbags
16 and seatbelt pretensioners and would rely on those facts in deciding whether to
17 purchase, lease, or retain a new or used motor vehicle. Whether a manufacturer’s
18 products are safe and reliable, and whether that manufacturer stands behind its
19 products, are material concerns to a consumer. Especially here when at least nine
20 people have already died due to the ACU Defect, and many more have been
21 injured.

22 4402. Additionally, Honda Japan, Honda USA, Honda Engineering USA,
23 Hyundai Korea, Hyundai USA, Toyota USA, and Toyota Sales USA ensured that
24 the Texas Plaintiffs and Texas State Class members did not discover this
25 information by actively concealing and misrepresenting the true nature of the
26 Honda, Hyundai, and Toyota Class Vehicles’ Occupant Restraint Systems to
27 consumers and NHTSA.

28

1 4403. Honda Japan, Honda USA, Honda Engineering USA, Hyundai Korea,
2 Hyundai USA, Toyota USA, and Toyota Sales USA actively concealed and
3 suppressed these material facts, in whole or in part, to maintain a market for their
4 Class Vehicles, to protect profits, and to avoid costly recalls that would expose
5 them to liability for those expenses and harm the commercial reputations of
6 Defendants and their products. They did so at the expense of the Texas Plaintiffs
7 and Texas State Class members.

8 4404. To this day, Honda Japan, Honda USA, Honda Engineering USA,
9 Hyundai Korea, Hyundai USA, Toyota USA, and Toyota Sales USA have not fully
10 and adequately disclosed the ACU Defect, and they continue to conceal material
11 information about the defect from consumers and NHTSA. The omitted and
12 concealed facts were material because a reasonable person would find them
13 important in purchasing, leasing, or retaining a new or used motor vehicle, and
14 because they directly impact the value of the Honda, Hyundai, and Toyota Class
15 Vehicles purchased or leased by the Texas Plaintiffs and Texas State Class
16 members.

17 4405. Had they been aware of the ACU Defect in the Honda, Hyundai, and
18 Toyota Class Vehicles, and Honda Japan's, Honda USA's, Honda Engineering
19 USA's, Hyundai Korea's, Hyundai USA's, Toyota USA's, and Toyota Sales USA's
20 callous disregard for safety, the Texas Plaintiffs and Texas State Class members
21 either would not have paid as much as they did for their Class Vehicles, or they
22 would not have purchased or leased them.

23 4406. As alleged in Section V above, if Honda Japan, Honda USA, Honda
24 Engineering USA, Hyundai Korea, Hyundai USA, Toyota USA, and Toyota Sales
25 USA had fully and adequately disclosed the ACU Defect to consumers and
26 NHTSA, the Texas Plaintiffs and Texas State Class members would have seen such
27 a disclosure.

28

1 4407. Accordingly, Honda Japan, Honda USA, Honda Engineering USA,
2 Hyundai Korea, Hyundai USA, Toyota USA, and Toyota Sales USA are liable to
3 the Texas Plaintiffs and Texas State Class members for their damages in an amount
4 to be proven at trial, including, but not limited to, their lost overpayment for the
5 Honda, Hyundai, and Toyota Class Vehicles at the time of purchase or lease.

6 4408. Honda Japan's, Honda USA's, Honda Engineering USA's, Hyundai
7 Korea's, Hyundai USA's, Toyota USA's, and Toyota Sales USA's acts were done
8 maliciously, oppressively, deliberately, with intent to defraud; in reckless disregard
9 of the Texas Plaintiffs' and Texas State Class members' rights and well-being; and
10 to enrich themselves. Honda Japan's, Honda USA's, Honda Engineering USA's,
11 Hyundai Korea's, Hyundai USA's, Toyota USA's, and Toyota Sales USA's
12 misconduct warrants an assessment of punitive damages, as permitted by law, in an
13 amount sufficient to deter such conduct in the future, which amount shall be
14 determined according to proof at trial.

15 e. **Texas Count 5: Fraud by Omission and Concealment**
16 **Against ZF Electronics USA, ZF Passive Safety USA, ZF**
17 **Automotive USA, ZF TRW Corp., ZF Germany, ST Italy,**
ST USA, and ST Malaysia

18 4409. Plaintiffs reallege and incorporate by reference all preceding
19 allegations as though fully set forth herein.

20 4410. The Texas Plaintiffs bring this count individually and on behalf of
21 members of the Texas State Class who purchased or leased Class Vehicles, against
22 ZF Electronics USA, ZF Passive Safety USA, ZF Automotive USA, ZF TRW
23 Corp., and ZF Germany (collectively, the "ZF Defendants"), and ST Italy, ST
24 Malaysia, and ST USA (collectively, the "ST Defendants").

25 4411. The ZF and ST Defendants are liable for both fraudulent concealment
26 and non-disclosure. *See, e.g.*, Restatement (Second) of Torts §§ 550-51 (1977).

27 4412. As explained in Section IV.A, the ACU Defect in Class Vehicles poses
28 serious risks to vehicle occupants, including that it can cause: (1) airbags and

1 seatbelts not to activate during a crash because crashes can sometimes release
2 electrical transients, which cause the ACU to fail; (2) airbags to deploy when the
3 vehicle has not crashed, which is dangerous because it is shocking and difficult for
4 the driver to operate a vehicle when the airbag deploys without warning; and (3)
5 failures of other important post-crash operations of the safety system, such as
6 unlocking doors to facilitate escape or extraction of drivers and passengers by
7 emergency personnel, and shutting off a crashed vehicle's fuel or power supply.

8 4413. The ZF and ST Defendants had a duty to disclose the ACU Defect to
9 the Texas Plaintiffs and Texas State Class members because:

- 10 a. The ZF and ST Defendants had exclusive access to and far
11 superior knowledge about technical facts regarding the ACU
12 Defect;
- 13 b. Given the ACU Defect's hidden and technical nature, the Texas
14 Plaintiffs and Texas State Class members lack the sophisticated
15 expertise in vehicle components and electrical phenomena that
16 would be necessary to discover the ACU Defect on their own;
- 17 c. The ZF and ST Defendants knew that the ACU Defect gave rise
18 to serious safety concerns for the consumers who use the
19 vehicles, and the Class Vehicles containing the ACU Defect
20 would have been a material fact to the Texas Plaintiffs' and
21 Texas State Class members' decisions to buy or lease Class
22 Vehicles; and
- 23 d. The ZF Defendants made incomplete representations about the
24 safety and reliability of the Class Vehicles and their Occupant
25 Restraint System, while purposefully withholding material facts
26 about a known safety defect, creating a duty to disclose the
27 whole truth. Specifically, ZF Electronics USA, ZF Passive
28 Safety USA, and ZF Automotive USA worked with the Vehicle

1 Manufacturer Defendants on the design and inclusion of the
2 airbag readiness indicators in the Class Vehicles, which falsely
3 assured Plaintiffs and Class Members that the Occupant
4 Restraint Systems in the Class Vehicles would function properly
5 in a crash.

6 4414. In breach of their duties, the ZF and ST Defendants failed to disclose
7 that the Class Vehicles were not safe and reliable, and that their Occupant Restraint
8 Systems, including their airbags and seatbelt pretensioners could fail in the event of
9 a crash due to the ACU Defect.

10 4415. The ZF and ST Defendants intended for the Texas Plaintiffs and Texas
11 State Class members to rely on their omissions—which they did by purchasing and
12 leasing the Class Vehicles at the prices they paid believing that the Occupant
13 Restraint Systems in their Class Vehicles would function properly.

14 4416. That reliance was reasonable, because a reasonable consumer would
15 not have expected that the Class Vehicles contained a safety defect that poses such
16 a serious risk. The ZF and ST Defendants knew that reasonable consumers expect
17 that their vehicle has working airbags and seatbelt pretensioners and would rely on
18 those facts in deciding whether to purchase, lease, or retain a new or used motor
19 vehicle. Whether a manufacturer’s products are safe and reliable, and whether that
20 manufacturer stands behind its products, are material concerns to a consumer.
21 Especially here when at least nine people have already died due to the ACU Defect,
22 and many more have been injured.

23 4417. Additionally, the ZF and ST Defendants ensured that the Texas
24 Plaintiffs and Texas State Class members did not discover this information by
25 actively concealing and misrepresenting the true nature of the Class Vehicles’
26 Occupant Restraint Systems to consumers and NHTSA.

27 4418. The ZF and ST Defendants actively concealed and suppressed these
28 material facts, in whole or in part, to maintain a market for the DS84 ACU, to

1 protect profits, and to avoid costly recalls that would expose them to liability for
2 those expenses and harm the commercial reputations of Defendants and their
3 products. They did so at the expense of the Texas Plaintiffs and Texas State Class
4 members.

5 4419. To this day, the ZF and ST Defendants have not fully and adequately
6 disclosed the ACU Defect, and they continue to conceal material information about
7 the defect from consumers and NHTSA. The omitted and concealed facts were
8 material because a reasonable person would find them important in purchasing,
9 leasing, or retaining a new or used motor vehicle, and because they directly impact
10 the value of the Class Vehicles purchased or leased by the Texas Plaintiffs and
11 Texas State Class members.

12 4420. Had they been aware of the ACU Defect in the Class Vehicles, and the
13 ZF and ST Defendants' callous disregard for safety, the Texas Plaintiffs and Texas
14 State Class members either would not have paid as much as they did for their Class
15 Vehicles, or they would not have purchased or leased them.

16 4421. As alleged in Section V above, if the ZF and ST Defendants had fully
17 and adequately disclosed the ACU Defect to consumers and NHTSA, the Texas
18 Plaintiffs and Texas State Class members would have seen such a disclosure.

19 4422. Accordingly, the ZF and ST Defendants are liable to the Texas
20 Plaintiffs and Texas State Class members for their damages in an amount to be
21 proven at trial, including, but not limited to, their lost overpayment for the Class
22 Vehicles at the time of purchase or lease.

23 4423. The ZF and ST Defendants' acts were done maliciously, oppressively,
24 deliberately, with intent to defraud; in reckless disregard of the Texas Plaintiffs'
25 and Texas State Class members' rights and well-being; and to enrich themselves.
26 The ZF and ST Defendants' misconduct warrants an assessment of punitive
27 damages, as permitted by law, in an amount sufficient to deter such conduct in the
28 future, which amount shall be determined according to proof at trial.

1 **f. Texas Count 6: Unjust Enrichment Against Honda Japan,**
2 **Honda USA, Honda Engineering USA, Hyundai Korea,**
3 **Hyundai USA, Toyota USA, and Toyota Sales USA, and**
4 **Toyota Engineering USA**

4 4424. Plaintiffs reallege and incorporate by reference all allegations in
5 Sections I-VI above as though fully set forth herein.

6 4425. Plaintiff Angela Bowens brings this count individually and on behalf
7 of members of the Texas State Class who purchased or leased Honda Class
8 Vehicles, against Honda Japan, Honda USA, and Honda Engineering USA.

9 4426. Plaintiff Burton Reckles brings this count individually and on behalf of
10 members of the Texas State Class who purchased or leased Hyundai Class
11 Vehicles, against Hyundai Korea and Hyundai USA.

12 4427. Plaintiffs Brent DeRouen, Danny Hunt, Evan Green, and Joy Davis
13 bring this count individually and on behalf of members of the Texas State Class
14 who purchased or leased Toyota Class Vehicles, against Toyota USA, Toyota Sales
15 USA, and Toyota Engineering USA.

16 4428. For purposes of this count, Plaintiffs Bowens, Reckles, DeRouen,
17 Hunt, Green, and Davis shall be referred to as the “Texas Plaintiffs.”

18 4429. The Texas Plaintiffs and Texas State Class members conferred
19 tangible and material monetary benefits upon Honda Japan, Honda USA, Honda
20 Engineering USA, Hyundai Korea, Hyundai USA, Toyota USA, Toyota Sales
21 USA, and Toyota Engineering USA when they purchased or leased the Honda,
22 Hyundai, and Toyota Class Vehicles. These Defendants readily accepted and
23 retained these benefits.

24 4430. The Texas Plaintiffs and Texas State Class members would not have
25 purchased or leased the Honda, Hyundai, and Toyota Class Vehicles, or would have
26 paid less for them, had they known of the ACU Defect at the time of purchase or
27 lease. Therefore, Honda Japan, Honda USA, Honda Engineering USA, Hyundai
28 Korea, Hyundai USA, Toyota USA, Toyota Sales USA, and Toyota Engineering

1 USA profited from the sale and lease of the Honda, Hyundai, and Toyota Class
2 Vehicles to the detriment and expense of the Texas Plaintiffs and Texas State Class
3 members.

4 4431. Honda Japan, Honda USA, Honda Engineering USA, Hyundai Korea,
5 Hyundai USA, Toyota USA, Toyota Sales USA, and Toyota Engineering USA
6 appreciated these monetary benefits. These benefits were the expected result of
7 these Defendants acting in their pecuniary interest at the expense of their customers.
8 Honda Japan, Honda USA, Honda Engineering USA, Hyundai Korea, Hyundai
9 USA, Toyota USA, Toyota Sales USA, and Toyota Engineering USA knew of
10 these benefits because they were aware of the ACU Defect, yet they failed to
11 disclose this knowledge and misled the Texas Plaintiffs and Texas State Class
12 members regarding the nature and quality of the Honda, Hyundai, and Toyota Class
13 Vehicles while profiting from this deception.

14 4432. It would be unjust, inequitable, and unconscionable for Honda Japan,
15 Honda USA, Honda Engineering USA, Hyundai Korea, Hyundai USA, Toyota
16 USA, Toyota Sales USA, and Toyota Engineering USA to retain these monetary
17 benefits, including because they were procured as a result of the wrongful conduct
18 alleged above.

19 4433. The Texas Plaintiffs and Texas State Class members are entitled to
20 restitution of the benefits Honda Japan, Honda USA, Honda Engineering USA,
21 Hyundai Korea, Hyundai USA, Toyota USA, Toyota Sales USA, and Toyota
22 Engineering USA unjustly retained and/or any amounts necessary to return the
23 Texas Plaintiffs and Texas State Class members to the position they occupied prior
24 to dealing with them, with such amounts to be determined at trial.

25 4434. The Texas Plaintiff pleads this claim separately as well as in the
26 alternative to his claims for damages under Fed. R. Civ. P. 8(a)(3), because if the
27 Texas Plaintiffs' claims for damages are dismissed or judgment is entered in favor
28 of Defendants, the Texas Plaintiffs would have no adequate legal remedy.

1 **23. Washington**

2 **a. Washington Count 1: Violation of the Washington**
3 **Consumer Protection Act (Wash. Rev. Code § 19.86.010, et**
4 **seq.) Against Toyota USA and Toyota Sales USA**

4 4435. Plaintiffs reallege and incorporate by reference all preceding
5 allegations as though fully set forth herein.

6 4436. Plaintiff Dee Roberts (hereinafter, “Washington Plaintiff”) brings this
7 count individually and on behalf of members of the Washington State Class who
8 purchased or leased Toyota Class Vehicles, against Toyota USA and Toyota Sales
9 USA.

10 4437. Toyota USA Toyota Sales USA, the Washington Plaintiff, and
11 Washington State Class members are “persons” within the meaning of Wash. Rev.
12 Code § 19.86.010(1).

13 4438. The Toyota Class Vehicles and defective ACUs installed in them are
14 “assets” within the meaning of Wash. Rev. Code § 19.86.010(3).

15 4439. Toyota USA and Toyota Sales USA are and were engaged in “trade”
16 or “commerce” within the meaning of Wash. Rev. Code § 19.86.010(2).

17 4440. The Washington Consumer Protection Act (“Washington CPA”)
18 prohibits “[u]nfair methods of competition and unfair or deceptive acts or practices
19 in the conduct of any trade or commerce[.]” Wash. Rev. Code § 19.86.020.

20 4441. In the course of their business, Toyota USA and Toyota Sales USA,
21 through their agents, employees, and/or subsidiaries, violated the Washington CPA
22 by knowingly and intentionally misrepresenting, omitting, concealing, and/or
23 failing to disclose material facts regarding the reliability, safety, and performance of
24 the Toyota Class Vehicles, the safety of their Occupant Restraint Systems, and the
25 ACU Defect, as detailed above.

26 4442. Toyota USA and Toyota Sales USA had an ongoing duty to the
27 Washington Plaintiff and Washington State Class members to refrain from unfair or
28 deceptive practices under the Washington CPA in the course of their business.

1 Specifically, Toyota USA and Toyota Sales USA owed the Washington Plaintiff
2 and Washington State Class members a duty to disclose all the material facts
3 concerning the ACU Defect in the Toyota Class Vehicles because they possessed
4 exclusive knowledge, they intentionally concealed the ACU Defect from the
5 Washington Plaintiff and Washington State Class members, and/or they made
6 misrepresentations that were rendered misleading because they were contradicted
7 by withheld facts.

8 4443. By misrepresenting the Toyota Class Vehicles as safe and reliable and
9 the defective ACU and ASICs installed in them as properly-functioning and free
10 from defects, and by failing to disclose and actively concealing the dangers and risk
11 posed by the ACU Defect to both consumers and NHTSA, Toyota USA and Toyota
12 Sales USA engaged in unfair or deceptive business practices prohibited by Wash.
13 Rev. Code § 19.86.020.

14 4444. Toyota USA's and Toyota Sales USA's unfair and deceptive acts or
15 practices, including their misrepresentations, concealments, omissions, and
16 suppressions of material facts, were designed to mislead and had a tendency or
17 capacity to mislead and create a false impression in consumers that the Toyota
18 Class Vehicles had properly-functioning and reliable airbags and seatbelts, and that
19 the Occupant Restraint System did not contain the ACU Defect and would perform
20 its intended function of activating the seatbelts and airbags during a collision.
21 Indeed, those misrepresentations, concealments, omissions, and suppressions of
22 material facts did in fact deceive reasonable consumers, including the Washington
23 Plaintiff and Washington State Class members, about the true safety and reliability
24 of Toyota Class Vehicles and/or the defective ACUs and ASICs installed in them,
25 the quality of the Toyota Class Vehicles, and the true value of the Toyota Class
26 Vehicles.

27 4445. Toyota USA's and Toyota Sales USA's misrepresentations,
28 concealments, omissions, and suppressions of material facts regarding the ACU

1 Defect and true characteristics of the Occupant Restraint Systems in the Toyota
2 Class Vehicles were material to the decisions of the Washington Plaintiff and
3 Washington State Class members to purchase and lease those vehicles, as Toyota
4 USA and Toyota Sales USA intended. The Washington Plaintiff and Washington
5 State Class members were exposed to those misrepresentations, concealments,
6 omissions, and suppressions of material facts, and relied on Toyota USA's and
7 Toyota Sales USA's misrepresentations that the Toyota Class Vehicles and their
8 Occupant Restraint Systems were safe and reliable in deciding to purchase and
9 lease Toyota Class Vehicles. Plaintiffs allege the information they relied upon in
10 Section II.B above. To aid review of this information, Exhibit 19 provides
11 paragraph numbers for each Plaintiff.

12 4446. The Washington Plaintiff's and Washington State Class members'
13 reliance was reasonable, as they had no way of discerning that Toyota USA's and
14 Toyota Sales USA's representations were false and misleading, or otherwise
15 learning the facts that Toyota USA and Toyota Sales USA had concealed or failed
16 to disclose. The Washington Plaintiff and Washington State Class members did not,
17 and could not, unravel Toyota USA's and Toyota Sales USA's deception on their
18 own.

19 4447. Had the Washington Plaintiff and Washington State Class members
20 known the truth about the ACU Defect, the Washington Plaintiff and Washington
21 State Class members would not have purchased or leased Toyota Class Vehicles, or
22 would have paid significantly less for them.

23 4448. The Washington Plaintiff and Washington State Class members
24 suffered ascertainable losses and actual damages through their overpayment at the
25 time of purchase and lease for Toyota Class Vehicles with an undisclosed safety
26 defect as a direct and proximate result of Toyota USA's and Toyota Sales USA's
27 concealment, misrepresentations, and/or failure to disclose material information.
28

1 4449. Toyota USA’s and Toyota Sales USA’s violations present a continuing
2 risk to the Washington Plaintiff and Washington State Class members, as well as to
3 the general public, because the Class Vehicles remain unsafe due to the defective
4 ACUs and ASICs therein. Additionally, their unlawful acts and practices
5 complained of herein affect the public interest.

6 4450. Pursuant to Wash. Rev. Code §§ 19.86.090, the Washington Plaintiff
7 and Washington State Class members seek an order enjoining Toyota USA’s and
8 Toyota Sales USA’s unfair or deceptive acts or practices and awarding damages
9 and any other just and proper relief available under the Washington CPA.

10 **b. Washington Count 2: Violation of the Washington**
11 **Consumer Protection Act (Wash. Rev. Code § 19.86.010, et**
12 **seq.) Against ZF Electronics USA, ZF Passive Safety USA,**
ZF Automotive USA, ZF TRW Corp., ZF Germany, ST
Italy, ST USA, and ST Malaysia.

13 4451. Plaintiffs reallege and incorporate by reference all preceding
14 allegations as though fully set forth herein.

15 4452. The Washington Plaintiff brings this count individually and on behalf
16 of members of the Washington State Class against ZF Electronics USA, ZF Passive
17 Safety USA, ZF Automotive USA, ZF TRW Corp., and ZF Germany (collectively,
18 the “ZF Defendants”), and ST Italy, ST Malaysia, and ST USA (collectively, the
19 “ST Defendants”).

20 4453. The ZF Defendants, the ST Defendants, the Washington Plaintiff, and
21 Washington State Class members are “persons” within the meaning of Wash. Rev.
22 Code § 19.86.010(1).

23 4454. The Class Vehicles and defective ACUs installed in them are “assets”
24 within the meaning of Wash. Rev. Code § 19.86.010(3).

25 4455. The ZF and ST Defendants were and are engaged in “trade” or
26 “commerce” within the meaning of Wash. Rev. Code § 19.86.010(2).

27
28

1 4456. The Washington Consumer Protection Act (“Washington CPA”)
2 prohibits “[u]nfair methods of competition and unfair or deceptive acts or practices
3 in the conduct of any trade or commerce[.]” Wash. Rev. Code § 19.86.020.

4 4457. The ZF and ST Defendants had an ongoing duty to the Washington
5 Plaintiff and Washington State Class members to refrain from unfair or deceptive
6 practices under the Washington CPA in the course of their business. Specifically,
7 the ZF and ST Defendants owed the Washington Plaintiff and Washington State
8 Class members a duty to disclose all the material facts concerning the ACU Defect
9 in the Class Vehicles because they possessed exclusive knowledge and they
10 intentionally concealed the ACU Defect from the Washington Plaintiff and
11 Washington State Class members.

12 4458. In the course of their business, the ZF and ST Defendants, through
13 their agents, employees, and/or subsidiaries, violated the Washington CPA by
14 knowingly and intentionally omitting, concealing, and failing to disclose material
15 facts regarding the existence, nature, and scope of the defective ACU and ASIC
16 installed in the Class Vehicles, as detailed above.

17 4459. Additionally, ZF Electronics USA, ZF Passive Safety USA, and ZF
18 Automotive USA through their agents, employees, and/or subsidiaries, violated the
19 Washington CPA when they knowingly and intentionally misrepresented the Class
20 Vehicles as safe and reliable and the defective ACU and ASICs installed in them as
21 properly-functioning and free from defects. Specifically, ZF Electronics USA, ZF
22 Passive Safety USA, and ZF Automotive USA worked with the Vehicle
23 Manufacturer Defendants on the design and inclusion of the airbag readiness
24 indicators in the Class Vehicles, which falsely assured Plaintiffs and Class
25 Members that the Occupant Restraint Systems in the Class Vehicles would function
26 properly in a crash.

27 4460. By misrepresenting, failing to disclose, and actively concealing the
28 dangers and risk posed by the Class Vehicles due to the ACU Defect, the ZF and

1 ST Defendants engaged unfair methods of competition and unfair or deceptive acts
2 or practices in the conduct of any trade or commerce prohibited by Wash. Rev.
3 Code § 19.86.020.

4 4461. The ZF and ST Defendants' unfair or deceptive acts or practices,
5 including their misrepresentations, concealments, omissions, and suppressions of
6 material facts, were designed to mislead and had a tendency or capacity to mislead
7 and create a false impression in consumers that the Class Vehicles had properly-
8 functioning and reliable airbags and seatbelts, and that the Occupant Restraint
9 System did not contain the ACU Defect and would perform its intended function of
10 activating the seatbelts and airbags during a collision. Indeed, those
11 misrepresentations, concealments, omissions, and suppressions of material facts did
12 in fact deceive reasonable consumers, including the Washington Plaintiff and
13 Washington State Class members, about the true safety and reliability of Class
14 Vehicles and/or the defective ACUs and ASICs installed in them, the quality of the
15 Class Vehicles, and the true value of the Class Vehicles.

16 4462. The Washington Plaintiff and Washington State Class members
17 justifiably relied on the ZF and ST Defendants' misrepresentations, omissions, and
18 concealment, as they had no way of discerning that the Class Vehicles contained
19 the ACU Defect, as alleged above. The Washington Plaintiff and Washington State
20 Class members did not, and could not, unravel the ZF and ST Defendants'
21 deception on their own

22 4463. The ZF and ST Defendants' misrepresentations and concealment of the
23 ACU Defect and true characteristics of the defective ACUs and ASICs in the Class
24 Vehicles were material to the decisions of the Washington Plaintiff and Washington
25 State Class members to purchase and lease Class Vehicles, as the ZF and ST
26 Defendants intended. Had they known the truth, the Washington Plaintiff and
27 Washington State Class members would not have purchased or leased the Class
28 Vehicles, or would have paid significantly less for them.

1 4464. The Washington Plaintiff and Washington State Class members
2 suffered ascertainable losses and actual damages as a direct and proximate result of
3 the ZF and ST Defendants' misrepresentations, concealment and/or failure to
4 disclose material information.

5 4465. The ZF and ST Defendants' violations present a continuing risk to the
6 Washington Plaintiff and Washington State Class members, as well as to the
7 general public, because the Class Vehicles remain unsafe due to the defective
8 ACUs and ASICs therein. The ZF and ST Defendants' unlawful acts and practices
9 complained of herein affect the public interest.

10 4466. Pursuant to Wash. Rev. Code §§ 19.86.090, the Washington Plaintiff
11 and Washington State Class members seek an order enjoining the ZF and ST
12 Defendants' unfair or deceptive acts or practices and awarding damages and any
13 other just and proper relief available under the Washington CPA.

14 **c. Washington Count 3: Fraud by Omission and Concealment**
15 **Against Toyota USA and Toyota Sales USA**

16 4467. Plaintiffs reallege and incorporate by reference all preceding
17 allegations as though fully set forth herein.

18 4468. The Washington Plaintiff brings this count individually and on behalf
19 of members of the Washington State Class who purchased or leased Toyota Class
20 Vehicles, against Toyota USA and Toyota Sales USA.

21 4469. Toyota USA and Toyota Sales USA are liable for both fraudulent
22 concealment and non-disclosure. *See, e.g.*, Restatement (Second) of Torts §§ 550-
23 51 (1977).

24 4470. As explained in Section IV.A, the ACU Defect in Class Vehicles poses
25 serious risks to vehicle occupants, including that it can cause: (1) airbags and
26 seatbelts not to activate during a crash because crashes can sometimes release
27 electrical transients, which cause the ACU to fail; (2) airbags to deploy when the
28 vehicle has not crashed, which is dangerous because it is shocking and difficult for

1 the driver to operate a vehicle when the airbag deploys without warning; and (3)
2 failures of other important post-crash operations of the safety system, such as
3 unlocking doors to facilitate escape or extraction of drivers and passengers by
4 emergency personnel, and shutting off a crashed vehicle's fuel or power supply.

5 4471. Toyota USA and Toyota Sales USA had a duty to disclose the ACU
6 Defect to the Washington Plaintiff and Washington State Class members because:

- 7 a. Toyota USA and Toyota Sales USA had exclusive access to and
8 far superior knowledge about technical facts regarding the ACU
9 Defect;
- 10 b. Given the ACU Defect's hidden and technical nature, the
11 Washington Plaintiff and Washington State Class members lack
12 the sophisticated expertise in vehicle components and electrical
13 phenomena that would be necessary to discover the ACU Defect
14 on their own;
- 15 c. Toyota USA and Toyota Sales USA knew that the ACU Defect
16 gave rise to serious safety concerns for the consumers who use
17 the vehicles, and the Toyota Class Vehicles containing the ACU
18 Defect would have been a material fact to the Washington
19 Plaintiff's and Washington State Class members' decisions to
20 buy or lease Toyota Class Vehicles; and
- 21 d. Toyota USA and Toyota Sales USA made incomplete
22 representations about the safety and reliability of the Toyota
23 Class Vehicles and their Occupant Restraint System, while
24 purposefully withholding material facts about a known safety
25 defect. In uniform advertising and materials provided with each
26 Class Vehicle, Toyota USA and Toyota Sales USA intentionally
27 concealed, suppressed, and failed to disclose to the Washington
28 Plaintiff and Washington State Class members that the Toyota

1 Class Vehicles contained the ACU Defect. Because they
2 volunteered to provide information about the Toyota Class
3 Vehicles that they marketed and offered for sale and lease to the
4 Washington Plaintiff and Washington State Class members,
5 Toyota USA and Toyota Sales USA had the duty to disclose the
6 whole truth.

7 4472. In breach of their duties, Toyota USA and Toyota Sales USA failed to
8 disclose that the Toyota Class Vehicles were not safe and reliable, and that their
9 Occupant Restraint Systems, including their airbags and seatbelt pretensioners
10 could fail in the event of a crash due to the ACU Defect.

11 4473. Toyota USA and Toyota Sales USA intended for the Washington
12 Plaintiff and Washington State Class members to rely on their omissions—which
13 they did by purchasing and leasing the Toyota Class Vehicles at the prices they paid
14 believing that the Occupant Restraint Systems in their Class Vehicles would
15 function properly.

16 4474. That reliance was reasonable, because a reasonable consumer would
17 not have expected that the Toyota Class Vehicles contained a safety defect that
18 poses such a serious risk. Toyota USA and Toyota Sales USA knew that reasonable
19 consumers expect that their vehicle has working airbags and seatbelt pretensioners
20 and would rely on those facts in deciding whether to purchase, lease, or retain a
21 new or used motor vehicle. Whether a manufacturer's products are safe and
22 reliable, and whether that manufacturer stands behind its products, are material
23 concerns to a consumer. Especially here when at least nine people have already
24 died due to the ACU Defect, and many more have been injured.

25 4475. Additionally, Toyota USA and Toyota Sales USA ensured that the
26 Washington Plaintiff and Washington State Class members did not discover this
27 information by actively concealing and misrepresenting the true nature of the
28 Toyota Class Vehicles' Occupant Restraint Systems to consumers and NHTSA.

1 4476. Toyota USA and Toyota Sales USA actively concealed and suppressed
2 these material facts, in whole or in part, to maintain a market for their Class
3 Vehicles, to protect profits, and to avoid costly recalls that would expose them to
4 liability for those expenses and harm the commercial reputations of Defendants and
5 their products. They did so at the expense of the Washington Plaintiff and
6 Washington State Class members.

7 4477. To this day, Toyota USA and Toyota Sales USA have not fully and
8 adequately disclosed the ACU Defect, and they continue to conceal material
9 information about the defect from consumers and NHTSA. The omitted and
10 concealed facts were material because a reasonable person would find them
11 important in purchasing, leasing, or retaining a new or used motor vehicle, and
12 because they directly impact the value of the Toyota Class Vehicles purchased or
13 leased by the Washington Plaintiff and Washington State Class members.

14 4478. Had they been aware of the ACU Defect in the Toyota Class Vehicles,
15 and Toyota USA's and Toyota Sales USA's callous disregard for safety, the
16 Washington Plaintiff and Washington State Class members either would not have
17 paid as much as they did for their Class Vehicles, or they would not have purchased
18 or leased them.

19 4479. As alleged in Section V above, if Toyota USA and Toyota Sales USA
20 had fully and adequately disclosed the ACU Defect to consumers and NHTSA, the
21 Washington Plaintiff and Washington State Class members would have seen such a
22 disclosure.

23 4480. Accordingly, Toyota USA and Toyota Sales USA are liable to the
24 Washington Plaintiff and Washington State Class members for their damages in an
25 amount to be proven at trial, including, but not limited to, their lost overpayment
26 for the Toyota Class Vehicles at the time of purchase or lease.

27 4481. Toyota USA's and Toyota Sales USA's acts were done maliciously,
28 oppressively, deliberately, with intent to defraud; in reckless disregard of the

1 Washington Plaintiff's and Washington State Class members' rights and well-
2 being; and to enrich themselves. Toyota USA's and Toyota Sales USA's
3 misconduct warrants an assessment of punitive damages, as permitted by law, in an
4 amount sufficient to deter such conduct in the future, which amount shall be
5 determined according to proof at trial.

6 **d. Washington Count 4: Fraud by Omission and Concealment**
7 **Against ZF Electronics USA, ZF Passive Safety USA, ZF**
8 **Automotive USA, ZF TRW Corp., ZF Germany, ST Italy,**
9 **ST USA, and ST Malaysia**

9 4482. Plaintiffs reallege and incorporate by reference all preceding
10 allegations as though fully set forth herein.

11 4483. The Washington Plaintiff brings this count individually and on behalf
12 of members of the Washington State Class who purchased or leased Class Vehicles,
13 against ZF Electronics USA, ZF Passive Safety USA, ZF Automotive USA, ZF
14 TRW Corp., and ZF Germany (collectively, the "ZF Defendants"), and ST Italy, ST
15 Malaysia, and ST USA (collectively, the "ST Defendants").

16 4484. The ZF and ST Defendants are liable for both fraudulent concealment
17 and non-disclosure. *See, e.g.*, Restatement (Second) of Torts §§ 550-51 (1977).

18 4485. As explained in Section IV.A, the ACU Defect in Class Vehicles poses
19 serious risks to vehicle occupants, including that it can cause: (1) airbags and
20 seatbelts not to activate during a crash because crashes can sometimes release
21 electrical transients, which cause the ACU to fail; (2) airbags to deploy when the
22 vehicle has not crashed, which is dangerous because it is shocking and difficult for
23 the driver to operate a vehicle when the airbag deploys without warning; and (3)
24 failures of other important post-crash operations of the safety system, such as
25 unlocking doors to facilitate escape or extraction of drivers and passengers by
26 emergency personnel, and shutting off a crashed vehicle's fuel or power supply.

27 4486. The ZF and ST Defendants had a duty to disclose the ACU Defect to
28 the Washington Plaintiff and Washington State Class members because:

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- a. The ZF and ST Defendants had exclusive access to and far superior knowledge about technical facts regarding the ACU Defect;
- b. Given the ACU Defect’s hidden and technical nature, the Washington Plaintiff and Washington State Class members lack the sophisticated expertise in vehicle components and electrical phenomena that would be necessary to discover the ACU Defect on their own;
- c. The ZF and ST Defendants knew that the ACU Defect gave rise to serious safety concerns for the consumers who use the vehicles, and the Class Vehicles containing the ACU Defect would have been a material fact to the Washington Plaintiff’s and Washington State Class members’ decisions to buy or lease Class Vehicles; and
- d. The ZF Defendants made incomplete representations about the safety and reliability of the Class Vehicles and their Occupant Restraint System, while purposefully withholding material facts about a known safety defect, creating a duty to disclose the whole truth. Specifically, ZF Electronics USA, ZF Passive Safety USA, and ZF Automotive USA worked with the Vehicle Manufacturer Defendants on the design and inclusion of the airbag readiness indicators in the Class Vehicles, which falsely assured Plaintiffs and Class Members that the Occupant Restraint Systems in the Class Vehicles would function properly in a crash.

4487. In breach of their duties, the ZF and ST Defendants failed to disclose that the Class Vehicles were not safe and reliable, and that their Occupant Restraint

1 Systems, including their airbags and seatbelt pretensioners could fail in the event of
2 a crash due to the ACU Defect.

3 4488. The ZF and ST Defendants intended for the Washington Plaintiff and
4 Washington State Class members to rely on their omissions—which they did by
5 purchasing and leasing the Class Vehicles at the prices they paid believing that the
6 Occupant Restraint Systems in their Class Vehicles would function properly.

7 4489. That reliance was reasonable, because a reasonable consumer would
8 not have expected that the Class Vehicles contained a safety defect that poses such
9 a serious risk. The ZF and ST Defendants knew that reasonable consumers expect
10 that their vehicle has working airbags and seatbelt pretensioners and would rely on
11 those facts in deciding whether to purchase, lease, or retain a new or used motor
12 vehicle. Whether a manufacturer's products are safe and reliable, and whether that
13 manufacturer stands behind its products, are material concerns to a consumer.
14 Especially here when at least nine people have already died due to the ACU Defect,
15 and many more have been injured.

16 4490. Additionally, the ZF and ST Defendants ensured that the Washington
17 Plaintiff and Washington State Class members did not discover this information by
18 actively concealing and misrepresenting the true nature of the Class Vehicles'
19 Occupant Restraint Systems to consumers and NHTSA.

20 4491. The ZF and ST Defendants actively concealed and suppressed these
21 material facts, in whole or in part, to maintain a market for the DS84 ACU, to
22 protect profits, and to avoid costly recalls that would expose them to liability for
23 those expenses and harm the commercial reputations of Defendants and their
24 products. They did so at the expense of the Washington Plaintiff and Washington
25 State Class members.

26 4492. To this day, the ZF and ST Defendants have not fully and adequately
27 disclosed the ACU Defect, and they continue to conceal material information about
28 the defect from consumers and NHTSA. The omitted and concealed facts were

1 material because a reasonable person would find them important in purchasing,
2 leasing, or retaining a new or used motor vehicle, and because they directly impact
3 the value of the Class Vehicles purchased or leased by the Washington Plaintiff and
4 Washington State Class members.

5 4493. Had they been aware of the ACU Defect in the Class Vehicles, and the
6 ZF and ST Defendants' callous disregard for safety, the Washington Plaintiff and
7 Washington State Class members either would not have paid as much as they did
8 for their Class Vehicles, or they would not have purchased or leased them.

9 4494. As alleged in Section V above, if the ZF and ST Defendants had fully
10 and adequately disclosed the ACU Defect to consumers and NHTSA, the
11 Washington Plaintiff and Washington State Class members would have seen such a
12 disclosure.

13 4495. Accordingly, the ZF and ST Defendants are liable to the Washington
14 Plaintiff and Washington State Class members for their damages in an amount to be
15 proven at trial, including, but not limited to, their lost overpayment for the Class
16 Vehicles at the time of purchase or lease.

17 4496. The ZF and ST Defendants' acts were done maliciously, oppressively,
18 deliberately, with intent to defraud; in reckless disregard of the Washington
19 Plaintiff's and Washington State Class members' rights and well-being; and to
20 enrich themselves. The ZF and ST Defendants' misconduct warrants an assessment
21 of punitive damages, as permitted by law, in an amount sufficient to deter such
22 conduct in the future, which amount shall be determined according to proof at trial.

23 e. **Washington Count 5: Unjust Enrichment Against Toyota**
24 **USA, Toyota Sales USA, and Toyota Engineering USA**

25 4497. Plaintiffs reallege and incorporate by reference all allegations in
26 Sections I-VI above as though fully set forth herein.

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1 4498. The Washington Plaintiff brings this count individually and on behalf
2 of members of the Washington State Class who purchased or leased Toyota Class
3 Vehicles, against Toyota USA, Toyota Sales USA, and Toyota Engineering USA.

4 4499. The Washington Plaintiff and Washington State Class members
5 conferred tangible and material monetary benefits upon Toyota USA, Toyota Sales
6 USA, and Toyota Engineering USA when they purchased or leased the Toyota
7 Class Vehicles. Toyota USA, Toyota Sales USA, and Toyota Engineering USA
8 readily accepted and retained these benefits.

9 4500. The Washington Plaintiff and Washington State Class members would
10 not have purchased or leased the Toyota Class Vehicles, or would have paid less for
11 them, had they known of the ACU Defect at the time of purchase or lease.
12 Therefore, Toyota USA, Toyota Sales USA, and Toyota Engineering USA profited
13 from the sale and lease of the Toyota Class Vehicles to the detriment and expense
14 of the Washington Plaintiff and Washington State Class members.

15 4501. Toyota USA, Toyota Sales USA, and Toyota Engineering USA
16 appreciated these monetary benefits. These benefits were the expected result of
17 Toyota USA, Toyota Sales USA, and Toyota Engineering USA acting in their
18 pecuniary interest at the expense of their customers. Toyota USA, Toyota Sales
19 USA, and Toyota Engineering USA knew of these benefits because they were
20 aware of the ACU Defect, yet they failed to disclose this knowledge and misled the
21 Washington Plaintiff and Washington State Class members regarding the nature
22 and quality of the Toyota Class Vehicles while profiting from this deception.

23 4502. It would be unjust, inequitable, and unconscionable for Toyota USA,
24 Toyota Sales USA, and Toyota Engineering USA to retain these monetary benefits,
25 including because they were procured as a result of Toyota USA's, Toyota Sales
26 USA's, and Toyota Engineering USA's wrongful conduct alleged above.

27 4503. The Washington Plaintiff and Washington State Class members are
28 entitled to restitution of the benefits Toyota USA, Toyota Sales USA, and Toyota

1 Engineering USA unjustly retained and/or any amounts necessary to return the
2 Washington Plaintiff and Washington State Class members to the position they
3 occupied prior to dealing with Toyota USA, Toyota Sales USA, and Toyota
4 Engineering USA, with such amounts to be determined at trial.

5 4504. The Washington Plaintiff pleads this claim separately as well as in the
6 alternative to his claims for damages under Fed. R. Civ. P. 8(a)(3), because if the
7 Washington Plaintiff's claims for damages are dismissed or judgment is entered in
8 favor of Defendants, the Washington Plaintiff would have no adequate legal
9 remedy.

10 **24. Wisconsin**

11 **a. Wisconsin Count 1: Breach of Express Warranty (Wis. Stat.**
12 **§§ 402.313 and 411.210) Against Mitsubishi Japan and**
13 **Mitsubishi USA²²**

14 4505. Plaintiffs reallege and incorporate by reference all preceding
15 allegations as though fully set forth herein.

16 4506. Plaintiff John Sancomb (hereinafter, "Wisconsin Plaintiff") brings this
17 count individually and on behalf of members of the Wisconsin State Class who
18 purchased or leased Mitsubishi Class Vehicles, against Mitsubishi Japan and
19 Mitsubishi USA.

20 4507. Mitsubishi Japan and Mitsubishi USA are and were at all relevant
21 times "merchants" with respect to motor vehicles under Wis. Stat. §§ 402.104(3)
22 and 411.103(1)(t), and "sellers" of motor vehicles under § 402.103(1)(d).

23 4508. With respect to leases, Mitsubishi Japan and Mitsubishi USA are and
24 were at all relevant times "lessors" of motor vehicles under Wis. Stat.
25 § 411.103(1)(p).

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27 ²² The Court held in its February 9, 2022 Order that the Wisconsin Plaintiff has
28 pleaded sufficient facts to state a claim for breach of express warranty against
MMNA under Wisconsin law. *See* ECF No. 396 at 169.

1 4509. All Wisconsin State Class members who purchased Mitsubishi Class
2 Vehicles in Wisconsin are “buyers” within the meaning of Wis. Stat.
3 § 402.103(1)(a).

4 4510. All Wisconsin State Class members who leased Mitsubishi Class
5 Vehicles in Wisconsin are “lessees” within the meaning of Wis. Stat.
6 § 411.103(1)(n).

7 4511. The Mitsubishi Class Vehicles are and were at all relevant times
8 “goods” within the meaning of Wis. Stat. §§ 402.105(1)(c) and 411.103(1)(h).

9 4512. In connection with the purchase or lease of Mitsubishi Class Vehicles,
10 Mitsubishi Japan and Mitsubishi USA provided the Wisconsin Plaintiff and
11 Wisconsin State Class members with warranties in the form of: (a) written express
12 warranties covering the repair or replacement of components that are defective in
13 materials or workmanship, and (b) descriptions of the Mitsubishi Class Vehicles as
14 safe and reliable, and that their Occupant Restraint Systems, including their airbags
15 and seatbelt pretensioners, would function properly in the event of a crash

16 4513. However, Mitsubishi Japan and Mitsubishi USA knew or should have
17 known that the warranties were false and/or misleading. Specifically, Mitsubishi
18 Japan and Mitsubishi USA were aware of the ACU Defect in the Mitsubishi Class
19 Vehicles, which made the vehicles inherently defective and dangerous at the time
20 that they were sold and leased to the Wisconsin Plaintiff and Wisconsin State Class
21 members.

22 4514. The Wisconsin Plaintiff and Wisconsin State Class members were
23 aware the Mitsubishi Class Vehicles were covered by express warranties, and those
24 warranties were an essential part of the bargain between them, Mitsubishi Japan,
25 and Mitsubishi USA when the Wisconsin Plaintiff and Wisconsin State Class
26 members unknowingly purchased and leased Mitsubishi Class Vehicles that came
27 equipped with defective ACUs and ASICs.

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1 4515. Mitsubishi Japan and Mitsubishi USA misrepresented the Mitsubishi
2 Class Vehicles as safe and reliable while concealing that they contained the ACU
3 Defect, the Wisconsin Plaintiff and Wisconsin State Class members were exposed
4 to those misrepresentations, and the Wisconsin Plaintiff and Wisconsin State Class
5 members had no way of discerning that Mitsubishi Japan's and Mitsubishi USA's
6 representations were false and misleading or otherwise learning the material facts
7 that Mitsubishi Japan and Mitsubishi USA had concealed or failed to disclose.
8 Accordingly, the Wisconsin Plaintiff and Wisconsin State Class members
9 reasonably relied on Mitsubishi Japan's and Mitsubishi USA's express warranties
10 when purchasing or leasing their Mitsubishi Class Vehicles. Plaintiffs allege the
11 information they relied upon in Section II.B above. To aid review of this
12 information, Exhibit 19 provides paragraph numbers for each Plaintiff.

13 4516. Mitsubishi Japan and Mitsubishi USA knowingly breached its express
14 warranties to repair defects in materials and workmanship by failing to repair the
15 ACU Defect or replace the defective ACUs and ASICs in the Mitsubishi Class
16 Vehicles. Mitsubishi Japan and Mitsubishi USA also breached their express
17 warranties by selling and leasing Mitsubishi Class Vehicles with a defect that was
18 never disclosed to the Wisconsin Plaintiff and Wisconsin State Class members.

19 4517. The Wisconsin Plaintiff and Wisconsin State Class members have
20 provided Mitsubishi Japan and Mitsubishi USA with reasonable notice and
21 opportunity to cure the breaches of its express warranties by way of the numerous
22 NHTSA complaints filed against it, and individual notice letters sent by the
23 Wisconsin State Class members within a reasonable amount of time after the ACU
24 Defect became public. Additionally, a notice letter was sent on behalf of the
25 Wisconsin Plaintiff and Wisconsin State Class members to Mitsubishi USA on
26 April 24, 2020, and a notice letter was sent to Mitsubishi Japan on June 5, 2020.²³

27 ²³ The Court held in its February 9, 2022 Order that the Wisconsin Plaintiff
28 adequately alleged that he provided the requisite notice to Mitsubishi USA, *see*

1 4518. Alternatively, the Wisconsin Plaintiff and Wisconsin State Class
2 members were excused from providing Mitsubishi Japan and Mitsubishi USA with
3 notice and an opportunity to cure the breach, because it would have been futile. As
4 alleged above, Mitsubishi Japan and Mitsubishi USA have long known that the
5 Mitsubishi Class Vehicles contained the ACU Defect, and that the ACU Defect has
6 caused ACUs and ASICs to malfunction in crashes involving Class Vehicles;
7 however, to date, Mitsubishi Japan and Mitsubishi USA have not instituted a recall
8 or any other repair program, or even acknowledged that the ACU Defect exists—
9 even though Mitsubishi Class Vehicles are subject to the NHTSA investigation.
10 Therefore, the Mitsubishi Plaintiff and Mitsubishi State Class members had no
11 reason to believe that Mitsubishi Japan and Mitsubishi USA would have repaired
12 the ACU Defect if the Wisconsin Plaintiff and Wisconsin State Class members
13 presented their Class Vehicles to Mitsubishi Japan and Mitsubishi USA for repair.

14 4519. As a direct and proximate result of Mitsubishi Japan’s and Mitsubishi
15 USA’s breach of their express warranties, the Mitsubishi Class Vehicles were and
16 are defective and the ACU Defect in the Wisconsin Plaintiff’s and Wisconsin State
17 Class members’ Mitsubishi Class Vehicles was not remedied. Therefore, the
18 Wisconsin Plaintiff and Wisconsin State Class members have been damaged, in an
19 amount to be proven at trial, through their overpayment at the time of purchase or
20 lease for Mitsubishi Class Vehicles with an undisclosed safety defect that would not
21 be remedied.

22 **b. Wisconsin Count 2: Violation of the Wisconsin Deceptive**
23 **Trade Practices Act (Wis. Stat. § 100.18, et seq.) Against**
24 **Mitsubishi Japan and Mitsubishi USA**

25 4520. Plaintiffs reallege and incorporate by reference all preceding
26 allegations as though fully set forth herein.

27 _____
28 ECF No. 396 at 169, but failed to, “include sufficient allegations that notice was
provided [to Mitsubishi Japan]. *Id.* The Wisconsin Plaintiff has amended this claim
to include the date in which he sent Mitsubishi Japan a notice letter.

1 4521. The Wisconsin Plaintiff brings this count individually and on behalf of
2 members of the Wisconsin State Class who purchased or leased Mitsubishi Class
3 Vehicles, against Mitsubishi Japan and Mitsubishi USA.

4 4522. Mitsubishi Japan and Mitsubishi USA are “person[s], firm[s],
5 corporation[s], or association[s]” within the meaning of Wis. Stat. § 100.18(1).

6 4523. The Wisconsin Plaintiff and Wisconsin State Class are members of
7 “the public” within the meaning of Wis. Stat. § 100.18(1).

8 4524. The Mitsubishi Class Vehicles and the defective ACUs installed in
9 them are “merchandise” within the meaning of Wis. Stat. § 100.18(1).

10 4525. The Wisconsin Deceptive Trade Practices Act (“Wisconsin DTPA”)
11 prohibits any “assertion, representation or statement of fact which is untrue,
12 deceptive or misleading.” Wis. Stat. § 100.18(1).

13 4526. In the course of their business, Mitsubishi Japan and Mitsubishi USA,
14 through their agents, employees, and/or subsidiaries, violated the Wisconsin DTPA
15 by knowingly and intentionally misrepresenting material facts regarding the
16 reliability, safety, and performance of the Mitsubishi Class Vehicles, the safety of
17 their Occupant Restraint Systems, and the ACU Defect, as detailed above.

18 4527. By misrepresenting the Mitsubishi Class Vehicles as safe and reliable
19 and the defective ACU and ASICs installed in them as properly-functioning and
20 free from defects, Mitsubishi Japan and Mitsubishi USA violated the Wisconsin
21 DTPA by making assertions, representations and statements of fact which are
22 untrue, deceptive or misleading, as prohibited by Wis. Stat. § 100.18(1).

23 4528. Mitsubishi Japan’s and Mitsubishi USA’s misrepresentations of
24 material facts were designed to mislead and had a tendency or capacity to mislead
25 and create a false impression in consumers that the Mitsubishi Class Vehicles had
26 properly-functioning and reliable airbags and seatbelts, and that the Occupant
27 Restraint System did not contain the ACU Defect and would perform its intended
28 function of activating the seatbelts and airbags during a collision. Indeed, those

1 misrepresentations of material facts did in fact deceive reasonable consumers,
2 including the Wisconsin Plaintiff and Wisconsin State Class members, about the
3 true safety and reliability of Mitsubishi Class Vehicles and/or the defective ACUs
4 and ASICs installed in them, the quality of the Mitsubishi Class Vehicles, and the
5 true value of the Mitsubishi Class Vehicles.

6 4529. Mitsubishi Japan's and Mitsubishi USA's misrepresentations of
7 material facts regarding the ACU Defect and true characteristics of the Occupant
8 Restraint Systems in the Mitsubishi Class Vehicles were material to the decisions of
9 the Wisconsin Plaintiff and Wisconsin State Class members to purchase and lease
10 those vehicles, as Mitsubishi Japan and Mitsubishi USA intended. The Wisconsin
11 Plaintiff and Wisconsin State Class members were exposed to those
12 misrepresentations of material facts, and relied on Mitsubishi Japan's and
13 Mitsubishi USA's misrepresentations that the Mitsubishi Class Vehicles and their
14 Occupant Restraint Systems were safe and reliable in deciding to purchase and
15 lease Mitsubishi Class Vehicles. Plaintiffs allege the information they relied upon
16 in Section II.B above. To aid review of this information, Exhibit 19 provides
17 paragraph numbers for each Plaintiff.

18 4530. The Wisconsin Plaintiff's and Wisconsin State Class members'
19 reliance was reasonable, as they had no way of discerning that Mitsubishi Japan's
20 and Mitsubishi USA's representations were false and misleading. The Wisconsin
21 Plaintiff and Wisconsin State Class members did not, and could not, unravel
22 Mitsubishi Japan's and Mitsubishi USA's deception on their own.

23 4531. Had the Wisconsin Plaintiff and Wisconsin State Class members
24 known the truth about the ACU Defect, the Wisconsin Plaintiff and Wisconsin
25 State Class members would not have purchased or leased Mitsubishi Class
26 Vehicles, or would have paid significantly less for them.

27 4532. The Wisconsin Plaintiff and Wisconsin State Class members suffered
28 ascertainable losses and actual damages through their overpayment at the time of

1 purchase and lease for Mitsubishi Class Vehicles with an undisclosed safety defect
2 as a direct and proximate result of Mitsubishi Japan’s and Mitsubishi USA’s
3 misrepresentations of material information.

4 4533. Mitsubishi Japan’s and Mitsubishi USA’s violations present a
5 continuing risk to the Wisconsin Plaintiff and Wisconsin State Class members, as
6 well as to the general public, because the Mitsubishi Class Vehicles remain unsafe
7 due to the defective ACUs and ASICs therein. Additionally, their unlawful acts and
8 practices complained of herein affect the public interest.

9 4534. Pursuant to Wis. Stat. § 100.18(11)(b)(2), the Wisconsin Plaintiff and
10 Wisconsin State Class members seek an order enjoining Mitsubishi Japan’s and
11 Mitsubishi USA’s unfair or deceptive acts or practices and awarding damages and
12 any other just and proper relief available under the Wisconsin DTPA.

13 **c. Wisconsin Count 3: Violation of the Wisconsin Deceptive**
14 **Trade Practices Act (Wis. Stat. § 100.18, et seq.) Against ZF**
15 **Electronics USA, ZF Passive Safety USA, and ZF**
16 **Automotive USA**

16 4535. Plaintiffs reallege and incorporate by reference all preceding
17 allegations as though fully set forth herein.

18 4536. The Wisconsin Plaintiff brings this count individually and on behalf of
19 members of the Wisconsin State Class against ZF Electronics USA, ZF Passive
20 Safety USA, and ZF Automotive USA.

21 4537. ZF Electronics USA, ZF Passive Safety USA, and ZF Automotive
22 USA are “person[s], firm[s], corporation[s], or association[s]” within the meaning
23 of Wis. Stat. § 100.18(1).

24 4538. The Wisconsin Plaintiff and Wisconsin State Class are members of
25 “the public” within the meaning of Wis. Stat. § 100.18(1).

26 4539. The Class Vehicles and the defective ACUs installed in them are
27 “merchandise” within the meaning of Wis. Stat. § 100.18(1).

28

1 4540. The Wisconsin Deceptive Trade Practices Act (“Wisconsin DTPA”)
2 prohibits any “assertion, representation or statement of fact which is untrue,
3 deceptive or misleading.” Wis. Stat. § 100.18(1).

4 4541. ZF Electronics USA, ZF Passive Safety USA, and ZF Automotive
5 USA, through their agents, employees, and/or subsidiaries, violated the Wisconsin
6 DTPA when they knowingly and intentionally misrepresented the Class Vehicles as
7 safe and reliable and the defective ACU and ASICs installed in them as properly-
8 functioning and free from defects. Specifically, ZF Electronics USA, ZF Passive
9 Safety USA, and ZF Automotive USA worked with the Vehicle Manufacturer
10 Defendants on the design and inclusion of the airbag readiness indicators in the
11 Class Vehicles, which falsely assured Plaintiffs and Class Members that the
12 Occupant Restraint Systems in the Class Vehicles would function properly in a
13 crash.

14 4542. By misrepresenting the Occupant Restraint Systems in the Class
15 Vehicles as properly-functioning and free from defects, ZF Electronics USA, ZF
16 Passive Safety USA, and ZF Automotive USA violated the Wisconsin DTPA by
17 making assertions, representations and statements of fact which are untrue,
18 deceptive or misleading, as prohibited by Wis. Stat. § 100.18(1).

19 4543. ZF Electronics USA’s, ZF Passive Safety USA’s, and ZF Automotive
20 USA’s misrepresentations of material facts were designed to mislead and had a
21 tendency or capacity to mislead and create a false impression in consumers that the
22 Class Vehicles had properly-functioning and reliable airbags and seatbelts, and that
23 the Occupant Restraint System did not contain the ACU Defect and would perform
24 its intended function of activating the seatbelts and airbags during a collision.
25 Indeed, those misrepresentations of material facts did in fact deceive reasonable
26 consumers, including the Wisconsin Plaintiff and Wisconsin State Class members,
27 about the true safety and reliability of Class Vehicles and/or the defective ACUs
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1 and ASICs installed in them, the quality of the Class Vehicles, and the true value of
2 the Class Vehicles.

3 4544. The Wisconsin Plaintiff and Wisconsin State Class members
4 justifiably relied on ZF Electronics USA's, ZF Passive Safety USA's, and ZF
5 Automotive USA's misrepresentations as they had no way of discerning that the
6 Class Vehicles contained the ACU Defect, as alleged above. The Wisconsin
7 Plaintiff and Wisconsin State Class members did not, and could not, unravel ZF
8 Electronics USA's, ZF Passive Safety USA's, and ZF Automotive USA's deception
9 on their own.

10 4545. ZF Electronics USA's, ZF Passive Safety USA's, and ZF Automotive
11 USA's misrepresentations regarding the Occupant Restraint Systems in the Class
12 Vehicles were material to the decisions of the Wisconsin Plaintiff and Wisconsin
13 State Class members to purchase and lease Class Vehicles, as they intended. Had
14 they known the truth, the Wisconsin Plaintiff and Wisconsin State Class members
15 would not have purchased or leased the Class Vehicles, or would have paid
16 significantly less for them.

17 4546. The Wisconsin Plaintiff and Wisconsin State Class members suffered
18 ascertainable losses and actual damages as a direct and proximate result of ZF
19 Electronics USA's, ZF Passive Safety USA's, and ZF Automotive USA's
20 misrepresentations.

21 4547. ZF Electronics USA's, ZF Passive Safety USA's, and ZF Automotive
22 USA's violations present a continuing risk to the Wisconsin Plaintiff and
23 Wisconsin State Class members, as well as to the general public, because the Class
24 Vehicles remain unsafe due to the defective ACUs and ASICs therein. ZF
25 Electronics USA's, ZF Passive Safety USA's, and ZF Automotive USA's unlawful
26 acts and practices complained of herein affect the public interest.

27 4548. Pursuant to Wis. Stat. § 100.18(11)(b)(2), the Wisconsin Plaintiff and
28 Wisconsin State Class members seek an order enjoining ZF Electronics USA's, ZF

1 Passive Safety USA's, and ZF Automotive USA's unfair or deceptive acts or
2 practices and awarding damages and any other just and proper relief available under
3 the Wisconsin DTPA.

4 **d. Wisconsin Count 4: Fraud by Omission and Concealment**
5 **Against Mitsubishi Japan and Mitsubishi USA**

6 4549. Plaintiffs reallege and incorporate by reference all preceding
7 allegations as though fully set forth herein.

8 4550. The Wisconsin Plaintiff brings this count individually and on behalf of
9 members of the Wisconsin State Class who purchased or leased Mitsubishi Class
10 Vehicles, against Mitsubishi Japan and Mitsubishi USA.

11 4551. Mitsubishi Japan and Mitsubishi USA are liable for both fraudulent
12 concealment and non-disclosure. *See, e.g.*, Restatement (Second) of Torts §§ 550-
13 51 (1977).

14 4552. As explained in Section IV.A, the ACU Defect in Class Vehicles poses
15 serious risks to vehicle occupants, including that it can cause: (1) airbags and
16 seatbelts not to activate during a crash because crashes can sometimes release
17 electrical transients, which cause the ACU to fail; (2) airbags to deploy when the
18 vehicle has not crashed, which is dangerous because it is shocking and difficult for
19 the driver to operate a vehicle when the airbag deploys without warning; and (3)
20 failures of other important post-crash operations of the safety system, such as
21 unlocking doors to facilitate escape or extraction of drivers and passengers by
22 emergency personnel, and shutting off a crashed vehicle's fuel or power supply.

23 4553. Mitsubishi Japan and Mitsubishi USA had a duty to disclose the ACU
24 Defect to the Wisconsin Plaintiff and Wisconsin State Class members because:

- 25 a. Mitsubishi Japan and Mitsubishi USA had exclusive access to
26 and far superior knowledge about technical facts regarding the
27 ACU Defect;
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- b. Given the ACU Defect’s hidden and technical nature, the Wisconsin Plaintiff and Wisconsin State Class members lack the sophisticated expertise in vehicle components and electrical phenomena that would be necessary to discover the ACU Defect on their own;
- c. Mitsubishi Japan and Mitsubishi USA knew that the ACU Defect gave rise to serious safety concerns for the consumers who use the vehicles, and the Mitsubishi Class Vehicles containing the ACU Defect would have been a material fact to the Wisconsin Plaintiff’s and Wisconsin State Class members’ decisions to buy or lease Mitsubishi Class Vehicles; and
- d. Mitsubishi Japan and Mitsubishi USA made incomplete representations about the safety and reliability of the Mitsubishi Class Vehicles and their Occupant Restraint System, while purposefully withholding material facts about a known safety defect. In uniform advertising and materials provided with each Class Vehicle, Mitsubishi Japan, and Mitsubishi USA intentionally concealed, suppressed, and failed to disclose to the Wisconsin Plaintiff and Wisconsin State Class members that the Mitsubishi Class Vehicles contained the ACU Defect. Because they volunteered to provide information about the Mitsubishi Class Vehicles that they marketed and offered for sale and lease to the Wisconsin Plaintiff and Wisconsin State Class members, Mitsubishi Japan and Mitsubishi USA had the duty to disclose the whole truth.

4554. In breach of their duties, Mitsubishi Japan and Mitsubishi USA failed to disclose that the Mitsubishi Class Vehicles were not safe and reliable, and that

1 their Occupant Restraint Systems, including their airbags and seatbelt pretensioners
2 could fail in the event of a crash due to the ACU Defect.

3 4555. Mitsubishi Japan and Mitsubishi USA intended for the Wisconsin
4 Plaintiff and Wisconsin State Class members to rely on their omissions—which
5 they did by purchasing and leasing the Mitsubishi Class Vehicles at the prices they
6 paid believing that the Occupant Restraint Systems in their Class Vehicles would
7 function properly.

8 4556. That reliance was reasonable, because a reasonable consumer would
9 not have expected that the Mitsubishi Class Vehicles contained a safety defect that
10 poses such a serious risk. Mitsubishi Japan and Mitsubishi USA knew that
11 reasonable consumers expect that their vehicle has working airbags and seatbelt
12 pretensioners and would rely on those facts in deciding whether to purchase, lease,
13 or retain a new or used motor vehicle. Whether a manufacturer's products are safe
14 and reliable, and whether that manufacturer stands behind its products, are material
15 concerns to a consumer. Especially here when at least nine people have already
16 died due to the ACU Defect, and many more have been injured.

17 4557. Additionally, Mitsubishi Japan and Mitsubishi USA ensured that the
18 Wisconsin Plaintiff and Wisconsin State Class members did not discover this
19 information by actively concealing and misrepresenting the true nature of the
20 Mitsubishi Class Vehicles' Occupant Restraint Systems to consumers and NHTSA.

21 4558. Mitsubishi Japan and Mitsubishi USA actively concealed and
22 suppressed these material facts, in whole or in part, to maintain a market for their
23 Class Vehicles, to protect profits, and to avoid costly recalls that would expose
24 them to liability for those expenses and harm the commercial reputations of
25 Defendants and their products. They did so at the expense of the Wisconsin
26 Plaintiff and Wisconsin State Class members.

27 4559. To this day, Mitsubishi Japan and Mitsubishi USA have not fully and
28 adequately disclosed the ACU Defect, and they continue to conceal material

1 information about the defect from consumers and NHTSA. The omitted and
2 concealed facts were material because a reasonable person would find them
3 important in purchasing, leasing, or retaining a new or used motor vehicle, and
4 because they directly impact the value of the Mitsubishi Class Vehicles purchased
5 or leased by the Wisconsin Plaintiff and Wisconsin State Class members.

6 4560. Had they been aware of the ACU Defect in the Mitsubishi Class
7 Vehicles, and Mitsubishi Japan's and Mitsubishi USA's callous disregard for
8 safety, the Wisconsin Plaintiff and Wisconsin State Class members either would not
9 have paid as much as they did for their Class Vehicles, or they would not have
10 purchased or leased them.

11 4561. As alleged in Section V above, if Mitsubishi Japan and Mitsubishi
12 USA had fully and adequately disclosed the ACU Defect to consumers and
13 NHTSA, the Wisconsin Plaintiff and Wisconsin State Class members would have
14 seen such a disclosure.

15 4562. Accordingly, Mitsubishi Japan and Mitsubishi USA are liable to the
16 Wisconsin Plaintiff and Wisconsin State Class members for their damages in an
17 amount to be proven at trial, including, but not limited to, their lost overpayment
18 for the Mitsubishi Class Vehicles at the time of purchase or lease.

19 4563. Mitsubishi Japan's and Mitsubishi USA's acts were done maliciously,
20 oppressively, deliberately, with intent to defraud; in reckless disregard of the
21 Wisconsin Plaintiff's and Wisconsin State Class members' rights and well-being;
22 and to enrich themselves. Mitsubishi Japan's and Mitsubishi USA's misconduct
23 warrants an assessment of punitive damages, as permitted by law, in an amount
24 sufficient to deter such conduct in the future, which amount shall be determined
25 according to proof at trial.

1 **e. Wisconsin Count 5: Fraud by Omission and Concealment**
2 **Against ZF Electronics USA, ZF Passive Safety USA, ZF**
3 **Automotive USA, ZF TRW Corp., ZF Germany, ST Italy,**
4 **ST USA, and ST Malaysia**

4 4564. Plaintiffs reallege and incorporate by reference all preceding
5 allegations as though fully set forth herein.

6 4565. The Wisconsin Plaintiff brings this count individually and on behalf of
7 members of the Wisconsin State Class who purchased or leased Class Vehicles,
8 against ZF Electronics USA, ZF Passive Safety USA, ZF Automotive USA, ZF
9 TRW Corp., and ZF Germany (collectively, the “ZF Defendants”), and ST Italy, ST
10 Malaysia, and ST USA (collectively, the “ST Defendants”).

11 4566. The ZF and ST Defendants are liable for both fraudulent concealment
12 and non-disclosure. *See, e.g.*, Restatement (Second) of Torts §§ 550-51 (1977).

13 4567. As explained in Section IV.A, the ACU Defect in Class Vehicles poses
14 serious risks to vehicle occupants, including that it can cause: (1) airbags and
15 seatbelts not to activate during a crash because crashes can sometimes release
16 electrical transients, which cause the ACU to fail; (2) airbags to deploy when the
17 vehicle has not crashed, which is dangerous because it is shocking and difficult for
18 the driver to operate a vehicle when the airbag deploys without warning; and (3)
19 failures of other important post-crash operations of the safety system, such as
20 unlocking doors to facilitate escape or extraction of drivers and passengers by
21 emergency personnel, and shutting off a crashed vehicle’s fuel or power supply.

22 4568. The ZF and ST Defendants had a duty to disclose the ACU Defect to
23 the Wisconsin Plaintiff and Wisconsin State Class members because:

- 24 a. The ZF and ST Defendants had exclusive access to and far
25 superior knowledge about technical facts regarding the ACU
26 Defect;
- 27 b. Given the ACU Defect’s hidden and technical nature, the
28 Wisconsin Plaintiff and Wisconsin State Class members lack the

1 sophisticated expertise in vehicle components and electrical
2 phenomena that would be necessary to discover the ACU Defect
3 on their own;

4 c. The ZF and ST Defendants knew that the ACU Defect gave rise
5 to serious safety concerns for the consumers who use the
6 vehicles, and the Class Vehicles containing the ACU Defect
7 would have been a material fact to the Wisconsin Plaintiff's and
8 Wisconsin State Class members' decisions to buy or lease Class
9 Vehicles; and

10 d. The ZF Defendants made incomplete representations about the
11 safety and reliability of the Class Vehicles and their Occupant
12 Restraint System, while purposefully withholding material facts
13 about a known safety defect, creating a duty to disclose the
14 whole truth. Specifically, ZF Electronics USA, ZF Passive
15 Safety USA, and ZF Automotive USA worked with the Vehicle
16 Manufacturer Defendants on the design and inclusion of the
17 airbag readiness indicators in the Class Vehicles, which falsely
18 assured Plaintiffs and Class Members that the Occupant
19 Restraint Systems in the Class Vehicles would function properly
20 in a crash.

21 4569. In breach of their duties, the ZF and ST Defendants failed to disclose
22 that the Class Vehicles were not safe and reliable, and that their Occupant Restraint
23 Systems, including their airbags and seatbelt pretensioners could fail in the event of
24 a crash due to the ACU Defect.

25 4570. The ZF and ST Defendants intended for the Wisconsin Plaintiff and
26 Wisconsin State Class members to rely on their omissions—which they did by
27 purchasing and leasing the Class Vehicles at the prices they paid believing that the
28 Occupant Restraint Systems in their Class Vehicles would function properly.

1 4571. That reliance was reasonable, because a reasonable consumer would
2 not have expected that the Class Vehicles contained a safety defect that poses such
3 a serious risk. The ZF and ST Defendants knew that reasonable consumers expect
4 that their vehicle has working airbags and seatbelt pretensioners and would rely on
5 those facts in deciding whether to purchase, lease, or retain a new or used motor
6 vehicle. Whether a manufacturer's products are safe and reliable, and whether that
7 manufacturer stands behind its products, are material concerns to a consumer.
8 Especially here when at least nine people have already died due to the ACU Defect,
9 and many more have been injured.

10 4572. Additionally, the ZF and ST Defendants ensured that the Wisconsin
11 Plaintiff and Wisconsin State Class members did not discover this information by
12 actively concealing and misrepresenting the true nature of the Class Vehicles'
13 Occupant Restraint Systems to consumers and NHTSA.

14 4573. The ZF and ST Defendants actively concealed and suppressed these
15 material facts, in whole or in part, to maintain a market for the DS84 ACU, to
16 protect profits, and to avoid costly recalls that would expose them to liability for
17 those expenses and harm the commercial reputations of Defendants and their
18 products. They did so at the expense of the Wisconsin Plaintiff and Wisconsin State
19 Class members.

20 4574. To this day, the ZF and ST Defendants have not fully and adequately
21 disclosed the ACU Defect, and they continue to conceal material information about
22 the defect from consumers and NHTSA. The omitted and concealed facts were
23 material because a reasonable person would find them important in purchasing,
24 leasing, or retaining a new or used motor vehicle, and because they directly impact
25 the value of the Class Vehicles purchased or leased by the Wisconsin Plaintiff and
26 Wisconsin State Class members.

27 4575. Had they been aware of the ACU Defect in the Class Vehicles, and the
28 ZF and ST Defendants' callous disregard for safety, the Wisconsin Plaintiff and

1 Wisconsin State Class members either would not have paid as much as they did for
2 their Class Vehicles, or they would not have purchased or leased them.

3 4576. As alleged in Section V above, if the ZF and ST Defendants had fully
4 and adequately disclosed the ACU Defect to consumers and NHTSA, the
5 Wisconsin Plaintiff and Wisconsin State Class members would have seen such a
6 disclosure.

7 4577. Accordingly, the ZF and ST Defendants are liable to the Wisconsin
8 Plaintiff and Wisconsin State Class members for their damages in an amount to be
9 proven at trial, including, but not limited to, their lost overpayment for the Class
10 Vehicles at the time of purchase or lease.

11 4578. The ZF and ST Defendants' acts were done maliciously, oppressively,
12 deliberately, with intent to defraud; in reckless disregard of the Wisconsin
13 Plaintiff's and Wisconsin State Class members' rights and well-being; and to enrich
14 themselves. The ZF and ST Defendants' misconduct warrants an assessment of
15 punitive damages, as permitted by law, in an amount sufficient to deter such
16 conduct in the future, which amount shall be determined according to proof at trial.

17 **VIII. PRAYER FOR RELIEF**

18 4579. Plaintiffs, on behalf of themselves and all others similarly situated,
19 respectfully request the Court to grant certification of the proposed Classes and
20 enter judgment against the Defendants, as follows:

- 21 a. An order certifying the proposed Classes, designating Plaintiffs
22 as the named representatives of the Class, designating the
23 undersigned as Class Counsel, and making such further orders
24 for the protection of Class members as the Court deems
25 appropriate, under Fed. R. Civ. P. 23;
- 26 b. An order enjoining the Vehicle Manufacturer Defendants to
27 desist from further deceptive distribution, sales, and lease
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- practices with respect to the Class Vehicles and such other injunctive relief that the Court deems just and proper;
- c. An award to Plaintiffs and Class Members of compensatory, exemplary, treble, and punitive remedies and damages and statutory penalties, including interest, in an amount to be proven at trial;
 - d. An award to Plaintiffs and Class Members for the return of the purchase prices of the Class Vehicles, with interest from the time it was paid, for the reimbursement of the reasonable expenses occasioned by the sale, for damages, and for reasonable attorney fees;
 - e. A Defendant-funded program, using transparent, consistent, and reasonable protocols, under which out-of-pocket and loss-of-use expenses and damages claims associated with the Defective ACUs in Plaintiffs' and Class Members' Class Vehicles, can be made and paid, such that the Defendants, not the Class Members, absorb the losses and expenses fairly traceable to the recalls of the vehicles and correction of the defective DS84 ACUs;
 - f. A declaration that the Defendants must disgorge, for the benefit of Plaintiffs and Class Members, all or part of the ill-gotten profits they received from the sale or lease of the Class Vehicles or make full restitution to Plaintiffs and Class Members;
 - g. An award of attorneys' fees and costs, as allowed by law;
 - h. An award of any and all applicable statutory and civil penalties;
 - i. An award of prejudgment and post judgment interest, as provided by law;

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- j. Leave to amend this Complaint to conform to the evidence produced in discovery and at trial; and
- k. Such other relief as may be appropriate, just, and equitable under the circumstances.

IX. DEMAND FOR JURY TRIAL

4580. Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, Plaintiffs demand a jury trial as to all issues triable by a jury.

1 Dated: May 26, 2022

2 Respectfully submitted,

3 /s/ Roland Tellis

4 Roland Tellis

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Plaintiffs' Steering Committee

CERTIFICATE OF SERVICE

I certify that on May 26, 2022, a copy of the foregoing **CONSOLIDATED AMENDED CLASS ACTION COMPLAINT** was served electronically through the Court’s electronic filing system upon all Parties appearing on the Court’s ECF service list.

DATED: May 26, 2022

/s/ Roland Tellis

Roland Tellis

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