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**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA  
SACRAMENTO DIVISION**

LES WILLMON, individually and on behalf of  
those similarly situated,

Plaintiff,

vs.

POLARIS INDUSTRIES, INC., AND  
POLARIS SALES, INC.,

Defendants.

Case No.:

**CLASS ACTION COMPLAINT FOR  
EQUITABLE, INJUNCTIVE,  
DECLARATORY RELIEF,  
RESTITUTION AND DAMAGES;  
DEMAND FOR JURY TRIAL**

Plaintiff, LES WILLMON, by and through Plaintiff's undersigned counsel, individually and on behalf of all others similarly situated, hereby sets forth in this Individual and Class Action Complaint claims for equitable, injunctive and declaratory relief, restitution, and damages.

1. This Class Action is brought on behalf of all Consumers in California and the United States ("Plaintiff," "Class," "Class Members," "Consumers," "Owners" of Defective Vehicles) who own a Defective Vehicle, as defined in paragraph 10 below, which vehicles have been developed, designed, manufactured, assembled, tested, marketed, promoted, advertised,

**CLASS ACTION COMPLAINT  
CASE NO.**

1 sold, warranted, distributed, serviced, repaired and investigated by Defendants since 2013.

2 Defective Vehicles pose a significant and immediate safety threat to all owners,  
3 passengers, nearby persons and property owners, and to the public in general in that they are prone  
4 to and have a recorded history of catching fire during operation suddenly, without expectation  
5 and/or apparent ability to anticipate or predict, resulting in death, and catastrophic injury to  
6 persons and property. This defect is and has been for some time well-known by Defendant to be  
7 a safety defect, and a serious hazard to personal and public safety.

8 WHEREFORE, Plaintiff individually and on behalf of the Classes aver as follows:

9 2. At all times relevant to this action, Defendants intentionally, recklessly, and/or  
10 negligently concealed, suppressed, and omitted the risks, dangers, defects and disadvantages of  
11 its Defective Vehicles, including the failures of and inability to remediate the fire safety defect  
12 from which they suffer. At all times relevant to this action, Defendants marketed, sold,  
13 distributed, advertised, warranted, serviced, maintained, repaired and investigated such Vehicles,  
14 representing them explicitly and impliedly as safe to use, when, in fact, Defendants had reason to  
15 know, and did know, that their Defective Vehicles were not safe to use for their intended or for  
16 any purpose. The Defective Vehicles pose a serious risk to the safety of owners, users, passengers,  
17 occupants, pedestrians and fellow drivers, and nearby persons and property, including significant  
18 injury, maiming or death.

19 Defendants have failed to disclose and concealed these true facts from Plaintiff and the  
20 Class, and the public in general, and have failed to advise them reasonably that the Defective  
21 Vehicles cannot be operated safely and without significant risk of injury, cannot be safely  
22 purchased, sold or operated, and are valueless for their intended or any purpose.

23 3. Pursuant to Rules 23(b)(2), and/or 23(b)(3) of the Federal Rules of Civil  
24 Procedure, Plaintiff will seek certification of a California Consumer Class on their First and  
25 Second Causes of Action for Violation of California's Unfair Competition Law ("UCL") and  
26 Consumer Legal Remedies Act (CLRA) consisting of:

27 All consumer residents of the California who own Defective Vehicles, and all  
28 persons in the California who do not presently own Defective Vehicles but  
previously owned one of these vehicles and incurred an expense (other than as  
related to personal injury damages) as a result of the alleged fire hazard such

Vehicles pose. Excluded from the Class are all Persons who are employees, directors, officers, and agents of Defendant, or their respective subsidiaries and affiliated companies, as well as the judges, clerks, and staff members of the United States District Court for the Northern District of California, the Ninth Circuit Court of Appeals, the United States Supreme Court, and their immediate family members. Also excluded from the Class are all claims for personal injury relating in any way Defective Vehicles.

4. Pursuant to Rules 23(b)(2), and/or 23(b)(3) of the Federal Rules of Civil Procedure, Plaintiff will seek certification of a United States' Consumer Class on his Third through Sixth Causes of Action for fraud and concealment, breach of express and implied warranties, and restitution/unjust enrichment consisting of:

All consumer residents of the United States who own Defective Vehicles, and all persons in the United States who do not presently own Defective Vehicles but previously owned one of these vehicles and incurred an expense (other than as related to personal injury damages) as a result of the alleged fire hazard such Vehicles pose. Excluded from the Class are all Persons who are employees, directors, officers, and agents of Defendant, or their respective subsidiaries and affiliated companies, as well as the judges, clerks, and staff members of the United States District Court for the Northern District of California, the Ninth Circuit Court of Appeals, the United States Supreme Court, and their immediate family members. Also excluded from the Class are all claims for personal injury relating in any way Defective Vehicles.

5. This is a Class Action filed on behalf of a California and U.S. Class of Consumers who own or did own and suffered monetary loss from the fire defect on one or more Defective Vehicles. This action seeks injunctive and declaratory relief, damages, restitution, disgorgement of profits, and other available remedies and damage arising out of Defendants' wrongful conduct resulting in the distribution, sale, warranting, maintenance, service and repair, investigation, and continued unsafe operation of Defective Vehicles.

#### **JURISDICTION AND VENUE**

6. The United States District Court for the Eastern District of California has subject matter jurisdiction over this action under the Class Action Fairness Act and the matter in controversy exceeds the sum or value of \$5,000,000.00 exclusive of interests and costs. 28 U.S.C. § 1332(d)(2)(A). None of the causes of action stated here has been assigned or otherwise given to any other court or tribunal.

7. Venue is proper in this District pursuant to 28 U.S.C. 1391(a), (b) and (c), U.S.C. 1407 and 28 U.S.C. 22. Defendant does substantial business in the State of California, and within

1 this Federal Judicial District, is registered to and in fact is doing business within the State of  
2 California, and otherwise maintains requisite minimum contacts with the State of California.  
3 Additionally, Defendant distributes in this district, receives substantial compensation and profits  
4 from sales, maintenance, and service of Defective Vehicles in this District, and has and continues  
5 to conceal and make material omissions in this District so as to subject it to in person jurisdiction  
6 in this District. Furthermore, venue is proper in this District because, like many other Class  
7 members, significant and material aspects of the transaction relating to Plaintiff WILLMON's  
8 purchase, service, repair and operation of his Defective Vehicle occurred within and were  
9 otherwise connected to this judicial district.

10 **PLAINTIFF**

11 8. Plaintiff Les Willmon, who resides in this judicial district, is the current owner of  
12 a 2016 Polaris RZR 1000 new from a dealership in this judicial district. Had he been reasonably  
13 apprised of the fire safety hazard associated with Defective Vehicles, he would not have  
14 purchased or used a Defective Vehicle.

15 9. Plaintiff bring this action individually and as a Class action as and for owners and  
16 previous owners of Defective Vehicles whose vehicles are dangerous and a safety hazard to the  
17 extent they are prone to catching fire during operation suddenly, without warning or advance  
18 notice, or ability to predict or otherwise anticipate, and who have lost money and suffered injury  
19 in fact as a result. In this regard, Plaintiff acts not only for themselves but as representatives of a  
20 Class of similarly situated individuals who fall within the description set forth in paragraphs 3  
21 and 4, above.

22  
23 **DEFECTIVE VEHICLES**

24 10. Defendants are the developer, designer, manufacturer, assembler, tester, inspector,  
25 marketer, advertiser, distributor, seller, warrantor, service and maintenance, root cause defect and  
26 other investigator, and reporter of 2013-2018 Polaris RZR 900 and 1000 Recreational Off-  
27 Highway Vehicles. ("Defective Vehicles"). Plaintiff are the present owners of a Defective  
28 Vehicle.

**DEFENDANT**

11. Defendant Polaris Industries, Inc. is an active U.S. corporation incorporated in the State of Delaware. Polaris Sales, Inc. is a Minnesota corporation. Both these Defendants maintain their principal place of business in Minnesota. These Defendants, and each of them, direct and coordinate all of Polaris' activities, including design, development, marketing and consumer communications, and investigation of alleged defects in Polaris vehicles including Defective Vehicles, in the California and U.S. market. These Defendants engaged in these activities with respect to Defective Vehicles from its principal place of business in the State of Minnesota, and have continued to perform significant and meaningful activities in connection with said Vehicles in California and throughout the United States since at least 2012.

**GENERAL ALLEGATIONS**

12. Defendants have designed, developed, and engaged in marketing and consumer communications, repaired, maintained, warranted, and conducted ongoing investigation regarding in excess of 133,000 Defective Vehicles they sold between at least 2012 and the present, in the California and U.S. market.

13. Defective Vehicles contain one or more defects which result in an unreasonable risk of injury and death, and property damage, in that said Vehicles pose a significant fire and burn hazard to operators and passengers of said Vehicles.

14. Defendants have long-standing knowledge of the fire safety hazard posed by their Defective Vehicles. By February 2016, Polaris had received more than 150 complaints of fires in Defective Vehicles, including reports of one death, at least 11 burn injuries, and a fire that burned ten (10) acres of land. Defendants failed to report these injuries to the federal government in a timely fashion, or to report this knowledge to consumers at all.

15. An initial recall of Defective Vehicles was followed by a further recall relating to an alleged fuel tank vent line in April 2016. By this time, reports of more than 160 fires, and 19 burn injuries had been reported.

16. By letter dated January 12, 2018, Polaris wrote to owners of Defective Vehicles. Noting Defendants "ongoing commitment to the safety of [its] riders," and "because [it] care[s]

about safety[,]" Defendants represented they "continue to monitor" its products. This letter advised about fires that had "caused death, serious injuries and property damage." This letter further advised that "users of the vehicles that were repaired as part of the April 2016 recall continue to report fires, including total-loss fires[,]" and represents that 2017 Vehicles not subject to the prior voluntary recall, "have also experienced fires." Defendants note in misleading fashion a reference to their motivation to "reduce the risk of fires in off-road vehicles, regardless of whether they result from original vehicle design, or manufacturing, or modifications, or consumer use" without addressing the specific fire risk associated with Defective Vehicles directly. Truth is, Plaintiff alleges, that Defendants, and each of them, have failed to identify the root cause or effectively remediate the fire safety hazard in their Vehicle through their prior voluntary recalls or otherwise, cannot do so at the present time, and know that Defective Vehicles are presently unsafe to use for their intended or any purpose given the material safety hazard they pose. Defendants have failed to disclose and concealed these true facts from Plaintiff and the Class, and the public in general, and have failed to advise them reasonably that the Defective Vehicles cannot be operated safely and without significant risk of injury, cannot be safely purchased, sold or operated, and are valueless for their intended or any purpose.

#### CLASS ALLEGATIONS

17. Pursuant to Rule 23 of the Federal Rules of Civil Procedure, Plaintiff seeks certification of a California Class on his First and Second Causes of Action defined as follows:

All consumer residents of the California who own Defective Vehicles, and all persons in the California who do not presently own Defective Vehicles but previously owned one of these vehicles and incurred an expense (other than as related to personal injury damages) as a result of the alleged fire hazard such Vehicles pose. Excluded from the Class are all Persons who are employees, directors, officers, and agents of Defendant, or their respective subsidiaries and affiliated companies, as well as the judges, clerks, and staff members of the United States District Court for the Northern District of California, the Ninth Circuit Court of Appeals, the United States Supreme Court, and their immediate family members. Also excluded from the Class are all claims for personal injury relating in any way Defective Vehicles.



18. Pursuant to Rules 23(b)(2), and/or 23(b)(3) of the Federal Rules of Civil Procedure, Plaintiff will seek certification of a United States Consumer Class on his Third through Sixth Causes of Action consisting of:

All consumer residents of the United States who own Defective Vehicles, and all persons in the United States who do not presently own Defective Vehicles but previously owned one of these vehicles and incurred an expense (other than related to personal injury damages) as a result of the alleged fire hazard such Vehicles pose. Excluded from the Class are all Persons who are employees, directors, officers, and agents of Defendant, or their respective subsidiaries and affiliated companies, as well as the judges, clerks, and staff members of the United States District Court for the Northern District of California, the Ninth Circuit Court of Appeals, the United States Supreme Court, and their immediate family members. Also excluded from the Class are all claims for personal injury relating in any way Defective Vehicles.

19. This action has been brought and may properly be maintained and certified as a Class action because:

- (a) The questions and issues of law or fact are of a common or general interest, affecting a large Class of individuals and the public at large;
- (b) The Classes posed consists of a sufficiently large group of individuals, believed to exceed 100,000 members, and is so large that it is impractical to join all members of the Class before the Court as individual Plaintiffs. Plaintiff is informed and believes that the identity of Class members is readily ascertainable from various sources including the examination of Defendant's ownership records, and/or via simple notice by publication;
- (c) The questions of law or fact common to the Class are substantially similar and predominate over those questions affecting only specific members of the Class;
- (d) The Class is united by a community of interest in obtaining appropriate equitable relief including injunctive relief, repair and/or buy-back of Dangerous Vehicles, restitution, damages, and other available relief designed to redress the wrongful conduct of Defendant;
- (e) Plaintiffs are members of the Class, and their claims are typical of the Class;
- (f) Named Plaintiffs will fairly and adequately represent the claims of the Class, and protect the interests of the Class without exercising personal interest or otherwise acting in a manner inconsistent with the best interests of the Class generally;
- (g) Named Plaintiffs have retained attorneys experienced in the litigation of Class and representative claims and in the area of consumer protection litigation who have agreed to and will responsibly and vigorously advocate on behalf of the Class as a whole;
- (h) Without Class certification, the prosecution of separate consumer actions by individual members of the Class would be impracticable and financially

difficult, and create a risk of repetitive, inconsistent and varying adjudications. This would have the effect of establishing incompatible standards of conduct for Defendants, discouraging the prosecution of meritorious but small claims, and/or result in adjudications which would be dispositive of the interests of other Class members not parties to the adjudication, or otherwise substantially impair the ability of Class members to protect their rights and interests;

- (i) Defendants acted or refused to act on grounds generally applicable to the Class, thereby making the award of equitable relief and/or restitution, and/or damages appropriate to the Class as a whole;
- (j) The Class action procedure is superior to other methods of adjudication, and specifically designed to result in the fair, uniform and efficient adjudication of the claims presented by this complaint. This Class action will facilitate judicial economy and preclude the undue financial, administrative and procedural burdens which would necessarily result from a multiplicity of individual actions.

**FIRST CLAIM FOR RELIEF**  
**(Unfair Business Practices)**

20. Plaintiff, individually and for the California Class, hereby incorporate by reference paragraphs 1-19 as though fully set forth herein.

21. California Business & Professions Code section 17200 precludes unfair competition, i.e., the employment of any unlawful, unfair or fraudulent business acts or practices; and any unfair, deceptive, untrue or misleading advertising violating Cal. Bus. & Prof. Code section 17500. This prohibition extends to any act, omission, or conduct or pattern of activity which affects the rights of consumers within the State of California and elsewhere.

22. In marketing, selling, maintaining, repairing, servicing, diagnosing and investigating Defective Vehicles, and in otherwise causing said Vehicles to be placed into and to remain in the stream of commerce for use and resale by California consumers, failing to disclose, omitting and misrepresenting the safety of its Vehicles, including the inadequacy and failure of Defendants' attempts to identify the root cause and remediate the safety hazard, and otherwise deceptively and misleadingly failing to disclose and concealing the continuing serious safety hazard they pose, Defendants made and continue to make available for consumer use a dangerous and patently unsafe product which is not safely useable for its intended, or any foreseeable use or misuse. Defendants were and remain obligated to disclose its knowledge regarding the hazard associated with said Defective Vehicles, including that the root cause of the safety hazard has not been identified and safety hazard not remediated, and is still prone to set on and cause a fire at



1 any moment.

2 23. Defendants' failure to disclose the material safety hazard associated with its  
3 Defective Vehicles has and continues to mislead consumers because the failure to disclose this  
4 safety hazard was and remains material to all owners and prior owners of Defective Vehicles.  
5 Plaintiffs and reasonable consumers attach significant importance and influence on safety  
6 hazards, like a recreational vehicle that is prone to set on fire suddenly and without warning,  
7 which hazard cannot be predicted or remediated with any or reasonable confidence.

8 24. Additionally, Plaintiff and the CLASS aver that Defendants' conduct as described  
9 herein meets the requirements to state a claim under the "fraudulent" prong of the UCL because  
10 Defendants' conduct constitutes a cause of action for fraudulent omission. Here, the undisclosed  
11 facts regarding the fire safety hazard in Defective Vehicles, including that the likelihood of a  
12 Vehicle fire cannot be predicted and that the safety hazard cannot be remediated with any or  
13 reasonable confidence. Defendants' knowledge of the fire safety hazard and its continuing safety  
14 implications is set forth in Paragraphs 14-16 herein, and shall be further developed through  
15 discovery.

16 25. Additionally, Plaintiff and the CLASS aver that Defendants' conduct as described  
17 herein meets the requirements to state a claim under the "fraudulent" prong of the UCL because  
18 said conduct qualifies as intentional and/or negligent fraud by concealment. Here, the importance  
19 of the undisclosed facts regarding the fire safety hazard in Defective Vehicles is material to  
20 Plaintiff because such hazard poses a significant safety hazard. Defendants' knowledge of this  
21 fire safety hazard in Defective Vehicles is set forth in Paragraphs 14-16 herein demonstrates that  
22 Defendant understood that the safety defect in Defective Vehicles is and remains material to  
23 Plaintiff and the CLASS.

24 26. Defendants' conduct is unlawful within the meaning of the UCL in that Defendant  
25 has and continues to violate Cal. Civil Code section 1750, et seq. (hereinafter "CLRA") including  
26 that Defendant represented, by lack of disclosure, omission and concealment, that Defective  
27 Vehicles: (a) had characteristics, uses or benefits that said VEHICLES did not have in violation  
28 of Section 1770(a)(5) of the CLRA; and (b) were of a particular standard, quality or grade when

1 they were of another in violation of 1770(a)(7) of the CLRA. Defendant also violated Federal  
2 laws and regulations including those set forth in a settlement reached with the federal CPSC,  
3 material to Defendants' reporting of and making of disclosures to the federal government in  
4 relation to the fire safety hazard affecting and continuing to affect Defective Vehicles.

5 27. Defendants' conduct is unfair within the meaning of the UCL in that the alleged  
6 consumer injury is substantial, creating an unreasonable risk for catastrophic physical injury and  
7 death to any persons using or coming into contact with Defective Vehicles. There is no  
8 countervailing benefit to Defendants to conduct themselves in the wrongful manner averred  
9 herein. Defendants' failure to disclose, omissions and concealments are tethered to state and  
10 federal laws, regulations, and policies including those referenced in the immediately preceding  
11 paragraph, designed to avoid and protect against Defendants' wrongful conduct in connection  
12 with Defective Vehicles.

13 28. Were it not for the unfair competition of Defendant, the Class would not have  
14 purchased, paid to warrant, nor continued to use Defective Vehicles at all or only after said  
15 Vehicles were rendered safe by effective remediation of the fire safety hazard posed.

16 29. The members of the Class have and will continue to suffer injury in fact and lose  
17 money as a direct result of Defendants' unfair competition in that each has expended money to  
18 purchase, maintain and use Defective Vehicles which are not safe to use nor capable of being sold  
19 at all or for reasonable value.

20 30. As a result of Defendants' unfair competition, Plaintiff and the Class are entitled  
21 to appropriate equitable relief including declarations and injunctive relief, and available monetary  
22 relief in the form of restitution (including fluid recovery when certified as a Class action).  
23 Plaintiff are also entitled to recover an award of attorneys' fees for prosecuting this action, interest  
24 on restitution, and such other relief as the broad and encompassing equitable jurisdiction requires.

25 **SECOND CLAIM FOR RELIEF**  
26 **(Violation of the Consumers Legal Remedies Act)**

27 31. Plaintiff, individually and for the California Class, hereby incorporate by reference  
28 paragraphs 1-30, as though fully set forth herein.

32. California Civil Code Section 1750, *et seq.*, precludes Defendants from representing in transactions which are intended to result, or which have resulted, in the sale and use of Defective Vehicles that goods have characteristics and benefits which they do not have, or that are of a particular standard, quality or grade when they were of another.

33. In engaging in the conduct described herein, as more specifically set forth in paragraphs 14-16 of this Complaint, Defendants have and continue to violate the Consumer Legal Remedies Act including Civil Code section 1770(a)(5) and (a)(7), engaging in conduct likely to and, in fact, misleading Plaintiffs and the Class.

34. Were it not for the misconduct of Defendant, Plaintiff and the Class would not have purchased, used or sold Defective Vehicles, or continued to use Defective Vehicles.

35. Plaintiff and members of the Class have suffered and will continue to suffer injury in fact, and harms and damages as a direct result of Defendants' CLRA violations in that each has expended money to purchase and use Defective Vehicles, and has had their Vehicles rendered of no value.

36. Plaintiff, individually and on behalf of the Class alleged in this Complaint, has given notice to Defendants in accordance with Cal. Civil Code section 1782 on April 4, 2018, via certified mail, return receipt requested. If, upon expiration of 30 days from the date of the mailing of this notice without Defendants, or any of them, complying with the demand for a remedy contained therein, Plaintiff will amend this Complaint in order to state a claim for damages, including punitive damages.

37. As a result of Defendants' violations of the Consumers Legal Remedies Act, the Plaintiff and the Class are entitled to injunctive relief and attorneys' fees, and reserves his right to pursue monetary and punitive damages as may be allowed under the CLRA.

**THIRD CLAIM FOR RELIEF**  
**(Fraud and Concealment)**

38. The allegations set forth in paragraphs 1-37 herein are incorporated into this section by reference as if set forth verbatim, and stated for the United States consumer Class.

39. In marketing, advertising, selling, warranting, repairing, and in communicating with owners about, Defective Vehicles, and in otherwise warranting the quality and safety of said Vehicles, Defendants affirmatively misrepresented that such Vehicles were safe and free from defects. Due, *inter alia*, to the relationship between the parties, the presence of a material fire safety hazard in Defective Vehicles, Defendants' superior knowledge of their Vehicles and efforts to investigate and remediate the fire safety hazard, Defendants' partial and incomplete disclosures about the quality, merchantability and safety of Defective Vehicles, and the inequality of bargaining power and knowledge between Defendants on the one hand and Plaintiff and Class Members, on the other, Defendants, and each of them, were under an affirmative and positive duty to disclose the fire safety hazard, and Defendants' failure to reasonably disclose, omit and conceal the truth about the fire safety hazard is actionable fraud.

40. Plaintiff and the Class relied upon Defendants' affirmative misrepresentations regarding the quality, merchantability and safety of Defective Vehicles in making the decision to purchase and to continue to operate said Vehicles, and to pay for, buy, operate, maintain and repair their Defective Vehicles. The fact and nature of the defect was peculiarly within Defendants' knowledge; could not have been known to Plaintiff; and was material to Plaintiff and the Class and reasonable consumers such that Plaintiff and the Class were justified in assuming its nonexistence, and its effective remediation in making the decision to purchase and to continue to operate said Defective Vehicles, and to pay for their repair, maintenance and use.

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41. Plaintiff have relied upon Defendants' representations, and the information Defendants have failed to disclose, omitted and concealed is material to reasonable consumers, including Plaintiff and the Class.

42. Defendants have and continues to fairly disclose, omit and conceal from Defective Vehicle owners the nature and extent of the fire safety hazard in Defective Vehicles have and continue to pose.

43. Under both express and implied warranties, Defendants owed a duty to Plaintiff and Class Members to inform them of the nature and extent of the defect and Defendants' responsibility for it.

44. When Defendants learned that any of its previous representations regarding the defect were false, it had a duty to correct those representations and disclose its knowledge of the fire safety hazard.

45. Defendants' failure to disclose to Plaintiff and Class Members is equivalent to a fraudulent concealment and amounts to fraud just as much as an affirmative falsehood.

46. Defendants' fraudulent representations, omissions and concealment caused or proximately caused damages to Plaintiff and Class Members as set forth below.

47. Defendants' fraudulent concealment also operates to equitably toll the limitations period applicable to all causes of action asserted by Plaintiff and Class Members herein. This is especially true since the fire safety hazard has and continues to constitute a material safety issue.

48. Defendants' fraud has been continuing, intentional, reckless, and in conscious disregard of the rights of Plaintiff and the Class, justifying an award of punitive damages.

49. Plaintiff and the Class are entitled to compensatory and other damages including punitive damages, and such other and further relief which the court concludes, in exercise of its jurisdiction, is just and proper.

**FOURTH CLAIM FOR RELIEF**  
**(Breach of Express Warranty)**

50. The allegations set forth in paragraphs 1-49 herein are incorporated into this section by reference as if set forth verbatim, and stated for the United States consumer Class.

51. Defendants have been provided sufficient notice by Plaintiff and the Class. Despite this notice, Defendant has not cured the complained-of harm to Plaintiff and the Class. Instead, Defendants has denied that a defect(s) existed, or that Plaintiff and the Class were entitled to relief.

52. The defects complained of herein existed at the moment of purchase of the Class Vehicles. This latent defect was made known to Defendants, and the defects complained of herein



1 occurred within the original warranty period. Defendants are *estopped* from asserting their  
2 defenses, including the statute of limitations, as to breach of warranty because (a) Defendants'  
3 actions of affirmative fraud, deception, or concealment (intentional or unintentional) of fact  
4 caused Plaintiff and the Class to relax their vigilance or deviate from inquiry; (b) Plaintiff and the  
5 Class were unaware of the defects; and (c) Plaintiff and the Class were unable to undertake any  
6 action to accomplish the benefit of the warranty given, *inter alia*, Defendants' deception and the  
7 latent nature of the defect.

8         53. Under the express warranty law of the various states of the United States, the Class  
9 Vehicles had an express basic coverage warranty from Defendants including a separate powertrain  
10 warranty, that covered the defects herein complained. The warranties cover repairs to correct any  
11 vehicle defect related to materials or workmanship occurring during the warranty coverage  
12 period. With their vehicle purchases, Plaintiff and the Class Members all received identical  
13 express warranties from Defendants, either through the basis coverage or powertrain coverage.

14         54. The express warranties became part of the basis of the bargain in the course of  
15 Plaintiff and the Class purchasing their Affected Vehicles under the warranty laws of the various  
16 states of the United States, and the Class has the necessary and lawfully required privity with  
17 Defendant, or either of them, in order to assert and claim benefit under Defendants' express  
18 warranties.

19         55. At the time of purchase and delivery, and within an applicable warranty period,  
20 Class Members' Defective Vehicles each suffered from a fire safety hazard. The defect was  
21 present from the date it left the manufacturer and each time Class Member Vehicles were driven—  
22 although the dangerous manifestation of said defect remained latent and hidden until Class  
23 members were confronted with a frightening, dangerous and unexpected Vehicle fire. The  
24 defects are still present in all Defective Vehicles that have not had the fire safety hazard and defect  
25 manifest in their Vehicles. Those Class Members who have paid to repair or replace their  
26 Vehicles after the defect manifested have unfulfilled express and implied warranty rights to have  
27 the defect remedied at Defendants' expense.  
28

56. Defendants have breached the express warranty by not making repairs as it is obligated to do, or by otherwise effectively remediating the Vehicles' fire safety hazard.

57. Defendants' intentional and unreasonable delay and withholding of information regarding the fire safety hazard defect from its dealers, and Plaintiff and the Class, have caused any exclusive or limited remedy in Defendants' warranty document to fail of its essential purpose to the extent that it prevented Plaintiff and Class Members from making warranty claims during the actual warranty period.

58. Defendants' breach of the express warranty has been and remains the actual and proximate cause of damage to Plaintiff and the Class Members as set forth below.

**FIFTH CLAIM FOR RELIEF**  
**(Implied Warranty)**

59. The allegations set forth in paragraphs 1-58 herein are incorporated into this section by reference as if set forth verbatim, and stated for the United States consumer Class.

60. Under the laws of the various states of the United States applying to the sale of products and goods such as Defective Vehicles, there are implied warranties, including but not limited to merchantability, fitness for particular purpose, safe use and operation, and conformance with advertising and marketing representations. These warranties apply to the marketing and sale of said Vehicles, and Plaintiff and the Class stand in privity to Defendants, or either of them, with respect thereto.

61. Defendants breached and continue to breach these warranties in failing to market and sell a product which was fit for its intended use as a fit, merchantable, and otherwise reasonably safe to use as represented by Defendants' marketing, advertising and placing Defective Vehicles in the stream of commerce for sale to consumers throughout the United States.

62. The defect, which rendered and continues to render Defective Vehicles unsafe for their intended, expected or any purpose, was material to Plaintiff and the Class, who relied upon the reputation of Defendants and its products, and its marketing and other representations regarding the safety of its vehicles and their braking systems to purchase, service maintain and and continue to drive Defective Vehicles. Because of the nature of the defect, and the

1 circumstances of Defendants' continuing representations and failures to fully disclose,  
2 Defendants were under an ongoing duty to disclose its failure and inability to honor said Vehicles'  
3 implied warranties

4 63. Defendants' breach of implied warranties was a direct and proximate cause of loss  
5 and damage to Plaintiff and the Class. Had consumers been advised of the fire safety hazard  
6 defect and the compromised safety of Defective Vehicles, Plaintiff and the Class would not have  
7 purchased Defective Vehicles, or would not have maintained, repaired or driven them until they  
8 had been repaired to a reasonably safe standard.

9 64. Defendants' breaches of implied warranties have been and remain the actual and  
10 proximate cause of damage to Plaintiff and the Class Members as set forth below, and Plaintiff  
11 and the Class have all suffered loss and damage as the result.

12 **SIXTH CLAIM FOR RELIEF**  
13 **(Unjust Enrichment and Restitution)**

14 65. The allegations set forth in paragraphs 1-75 herein are incorporated into this  
15 section by reference as if set forth verbatim and stated for the United States consumer Class.

16 66. Defendants have been unjustly enriched itself at the expense of Plaintiff and Class  
17 Members, all of whom, in fairness and application of equitable rules and conventions, were  
18 entitled to have the defective Delta Stroke Sensor in their Class Vehicles replaced or otherwise  
19 remedied at Defendants' expense.

20 67. Defendants have been unjustly enriched, *inter alia*, by receipt of the difference in  
21 value between the amount paid for Defective Vehicles and their actual fair market value given  
22 the fire safety hazard they pose.

23 68. Because of this unjust enrichment, a constructive trust should be imposed, and  
24 Defendants should be disgorged of amounts wrongfully retained and/or required to make  
25 restitution to Plaintiff and Class Members of benefits received, retained or equitably  
26 misappropriated.

27 69. Defendants have and continue to retain, hold and use money to which Plaintiff are  
28 lawfully entitled, which but for Defendants' violation of law and equity, would have been retained

1 by or delivered to and used for the benefit of Plaintiff and the Class. Plaintiff and the Class seek  
2 restitution under the principles of quasi-contract and/or equity. Plaintiff further seeks imposition  
3 of a constructive trust over, and restitution through disgorgement of, Defendants' unlawful,  
4 unjust, and ill-gotten gains, so that they may be allocated and distributed equitably by the Court  
5 for the benefit of Plaintiff and Class Members.

6  
7 **RELIEF REQUESTED**

8 WHEREFORE, Plaintiff and the Class pray judgment against Defendants hereinafter as  
9 follows:

10 **ON THEIR FIRST CLAIM FOR RELIEF:**

- 11 1. Equitable and/or injunctive relief as appropriate;  
12 2. Monetary relief including restitution and fluid recovery;  
13 3. Attorneys' fees and costs of suit;  
14 4. Interest; and  
15 5. Such other and further relief as the court deems proper.

16  
17 **ON THEIR SECOND CLAIM FOR RELIEF:**

- 18 1. Injunctive relief;  
19 2. Attorneys' fees, and costs and expenses of suit; and  
20 3. Such other and further relief as the court deems proper.

21 **ON THEIR THIRD CLAIM FOR RELIEF:**

- 22 1. Damages, including general and punitive damages;  
23 2. Declaratory and injunctive relief;  
24 3. Interest; and  
25 4. Such other and further relief as the court deems proper.

26 **ON THEIR FOURTH AND FIFTH CLAIMS FOR RELIEF:**

- 27 1. Compensatory Damages;  
28 2. Interest; and  
3. Such other and further relief as the court deems proper.

**CLASS ACTION COMPLAINT**

ON THEIR SIXTH CAUSE OF ACTION

1. Restitution;
2. Disgorgement of profits;;
3. Imposition of a constructive trust;
4. Interest; and
5. Such other and further equitable relief as the court deems proper.

Dated: April 5, 2018

Respectfully submitted,

By: /s/ Kirk J. Wolden

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DEMAND FOR JURY TRIAL

Plaintiff demands a jury trial on all causes of action to which he is entitled.

Respectfully submitted,

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