

BURGESS PROPERTIES, LLC,	:	
ON BEHALF OF ITSELF AND ALL	:	
OTHERS SIMILARLY SITUATED,	:	
	:	
Plaintiffs,	:	CLASS ACTION COMPLAINT
	:	JURY DEMANDED
	:	
v.	:	
	:	
KUBOTA TRACTOR CORPORATION,	:	
KUBOTA CORPORATION	:	
MANUFACTURING COMPANY,	:	
	:	
Defendants.	:	

1. This is a class action lawsuit brought by Plaintiff on behalf of itself and a class of current and former owners and lessees of certain Kubota vehicles containing soy- and/or bio-based wiring insulation, wiring coatings, and/or other parts and components (the “Class Vehicles”). Plaintiff seeks redress on behalf of itself and the class defined herein for damage resulting from the inclusion of bio- and/or soy-based materials in Class Vehicle wiring or wiring systems.
2. Kubota incorporates soy- and/or bio-based ingredients in the wiring in Class Vehicle electrical wiring systems (as well as other parts of the Class Vehicles) that bait rodents to the vehicles and entices these pests to chew through, eat, or otherwise damage and compromise the wiring (the “Defect”). Indeed, upon information and belief, consumers (including Plaintiff) have been informed by Kubota-authorized dealers that rodent damage to Class Vehicles relating to the Defect is a common problem experienced by consumers.
3. The Defect causes damage to the Class Vehicles’ electrical and other operational systems and/or these systems cease to function, leaving the vehicles partially or completely inoperable.

4. The soy- and/or bio-based parts are purportedly more environmentally-friendly and less expensive than traditional wiring and other parts and components. However, current and former Class Vehicle owners and lessees should not be required to bear the costs associated with the Defect, nor should they be required to bear the risk of future out-of-warranty problems for animal-damaged wiring that results simply because Kubota made a cost-conscious decision to include cheaper bio-based or soy-based materials in Class Vehicles. Despite the fact Kubota is aware (or should be aware) of the Defect and that resulting rodent or other animal damage is a widespread problem in Class Vehicles across the United States, Kubota has failed to disclose the Defect to Class Vehicle purchasers and lessees, and routinely refuses to repair the Class Vehicles under its Limited Warranty (the “Warranty”) that it issues with each Class Vehicle purchase or lease.

5. Worse still, upon information and belief, when Kubota repairs Defect-related damage for Class Members, it simply incorporates new defective bio- or soy-based wiring parts or components, exposing Class Vehicles to the continued risk and likelihood of future rodent or animal damage which will necessitate additional repairs, all to be paid for by Class Members.

6. Upon information and belief, when Class Members bring their Class Vehicles to Kubota’s authorized dealers for Defect-related repairs, Kubota charges consumers for the costs associated therewith.

7. As a result of the Defect and the monetary costs associated with repairs, as well as other out-of-pocket losses and diminished Class Vehicle values, Plaintiff and Class Members have suffered injury in fact, incurred damages, and have otherwise been harmed by Kubota’s conduct.

8. As set forth below, Plaintiff seeks redress for, among other things, Kubota’s violations of warranty laws. Plaintiff also seeks recovery for monetary and equitable relief for Kubota’s failure

to implement or honor the terms of its Warranty, breaches of implied warranties, unjust enrichment, restitution, and declaratory relief.

II. JURISDICTION AND VENUE

9. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1331 because it arises under the laws of the United States and pursuant to 28 U.S.C. § 1332(d) because: (i) there are 100 or more Class Members; (ii) there is an aggregate amount in controversy exceeding \$5,000,000, exclusive of interest and costs; and (iii) because at least one plaintiff and defendant are citizens of different states. This Court has supplemental jurisdiction over the state law claims pursuant to 28 U.S.C. § 1367.

10. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391 because Kubota transacts business in this district, is subject to personal jurisdiction in this district, and is therefore deemed to be a citizen of this district. Additionally, Kubota has advertised in this district and has received substantial revenue and profits from its sales and/or leasing of Class Vehicles in this district; therefore, a substantial part of the events and/or omissions giving rise to the claims occurred, in part, within this district.

11. This Court has personal jurisdiction over Kubota because it has conducted substantial business in this judicial district and intentionally and purposefully placed Class Vehicles into the stream of commerce within this district and throughout the United States.

III. PARTIES

12. Plaintiff Burgess Properties, LLC (“Burgess”) is a corporate citizen of Alabama and is currently domiciled in Hillsboro, Alabama. Burgess owns and manages residential and commercial properties.

13. Kubota Corporation Manufacturing Company (KCMC) is a tractor and manufacturing company with headquarters in Osaka, Japan founded in 1890.

14. Kubota Tractor Corporation (KTC) was formed in 1972 as the company's North American base and is headquartered at 1000 Kubota Drive, Grapevine, Texas.

15. KCMC and KTC are collectively referred to herein as "Kubota."

IV. FACTUAL ALLEGATIONS

16. On September 28, 2017 Burgess purchased a 2017 Kubota L5460HSTC Tractor (this, along with all similarly situated Kubota equipment as defined herein are referred to as the "Class Vehicles") from Scott Equipment Company, Inc. ("Scott") which is an authorized Kubota dealer in Russellville, Alabama.

17. Burgess uses the vehicle for work purposes.

18. As with many Class Vehicles, Burgess kept and stored their Class Vehicle in a covered barn.

19. In January 2018, Burgess experienced failure of the Class Vehicle to properly operate.

20. Shortly thereafter, Burgess took the Class Vehicle to Scott for repair assessment. After disassembling the Class Vehicle, the Scott technicians advised Burgess the wiring harnesses in the Class Vehicle had been destroyed by chewing from rodents.

21. Scott informed Burgess the wiring was a soy-based product and Kubota was having many company problems such as Burgess was now experiencing due to that fact.

22. Scott informed Burgess the repair and replacement would not be covered under any Kubota Warranty and therefore Burgess was billed \$1,753.10 for the repair and replacement of the wiring (Attached Ex. B). Burgess paid this amount in full out of pocket.

23. To date, Kubota has failed to adequately remedy the Defect in Burgess's Class Vehicle or reimburse it for the rodent-related damage it paid to repair the Class Vehicle.

24. Burgess has suffered an ascertainable loss as a result of Kubota's omissions and/or misrepresentations associated with the Defect, including, but not limited to, cost of repairs, future repairs and diminished value of the Class Vehicle.

25. Neither Kubota nor any of its agents, dealers, or other representatives informed Burgess of the existence and prevalence of the Defect prior to its purchase, nor did it warn Burgess of the risks associated with the Defect or provide instructions to avoid the injuries that would result from the Defect.

26. Had Burgess known of the Defect, it would not have purchased the Class Vehicle, or would have paid significantly less than it did.

A. The Defective Soy- and/or Bio-Based Materials within Class Vehicles

27. Electrical wiring is ubiquitous in modern equipment/vehicles. A vehicle's electrical wiring connects the various critical and non-critical vehicle systems. The wire creates circuits that must stay intact in order for the vehicle to function as intended.

28. Electrical systems deliver and monitor electrical power to various devices and sensors in the vehicle. A vehicle's electrical system is complex and is made up of many different components. The battery is the center of and powers the electrical system. The electrical system is made up of a web of connected wires, fuses, and relay systems. This wiring carries the current supplied by the battery and directs it to various vehicle components. When an electrical component is not working correctly, it is often caused by an open circuit, which can result from a broken or compromised wire or wire connection. When this occurs, vehicle functions that are imperative to safe vehicle

operation may not work properly. This is because when electrical wiring is disconnected or compromised, circuits are broken, causing systems to partially or completely fail.

29. Historically, vehicle wiring was coated or covered with a glass, plastic or polymer-based insulation. However, over approximately the past decade, and especially in light of skyrocketing oil prices in the mid- to late-2000s, there has been a dramatic downshifting in vehicle manufacturing which has spurred manufacturers to explore new materials to decrease cost and make more parts recyclable. As a result, upon information and belief, Kubota and other major vehicle manufacturers migrated from petroleum-based wire insulation to a plant-, soy-, or other bio-based automobiles parts because it became considerably less expensive and is purportedly more environmentally-friendly, as it is biodegradable.

30. The use of these bio-based materials in vehicle manufacturing was recognized in a 2012 investigation by the United States Department of Agriculture, which specifically identified that many manufacturers use soy- or bio-based materials in the manufacturing process.¹

31. Wiring coating and/or insulation is an imperative line of defense to protect the integrity of electrical wiring in automobile electrical systems. But upon information and belief, Kubota made the decision to incorporate in its wiring insulation and/or coatings (and other parts in Class Vehicles) soy- and/or bio-based material – which invite, rather than protect against, electrical wiring issues and concerns, as set forth herein – and it did so not just in the name of “going green” but also, and significantly, in the name of profit and cost-cutting.

¹ United States Department of Agriculture, Biobased Automobile Parts Investigation, A report developed for the USDA Offices of Energy Policy and New Uses (Sept. 2012), available at <https://www.usda.gov/oce/reports/energy/Biobased%20Automobile%20Parts%20Investigation%20Report.pdf> (last visited March 21, 2017).

32. Irrespective of Kubota's business justifications, the transition to soy- or bio-based wiring parts and other parts has created an attraction for rodents and other animals and pests under the hoods of Class Vehicles at the expense of Class Members. Rodents and other animals are attracted to the soy- and bio-based materials in Class Vehicles, whether it is in the electrical wiring and wiring parts, seat cushion foam, air filters, or elsewhere in the Class Vehicles.

33. The inclusion of these materials, especially in Class Vehicle electrical wiring and wiring components, attracts rodents and other animals that nest under the hoods of Class Vehicles and feast on the wires, thereby compromising the integrity of Class Vehicle electrical systems and rendering Class Vehicles fully or partially inoperable. Vehicle electrical wiring does not have to be entirely chewed through to jeopardize the functionality of the wiring system, rather, mere exposure of the wires can make a vehicle unfit for use.

34. The safety concerns raised by wiring damage and failures in vehicle electrical systems are obvious, and Kubota's continued use of soy- or bio-based materials, including wiring insulation and/or wiring coatings, poses a legitimate threat to the safety of Plaintiff, Class Members and prospective purchasers or lessees of Class Vehicles.

35. In fact, Kubota knew or should have known that Class Vehicles are even more subject to rodents than street/passenger vehicles given the fact Class Vehicles are farm, construction and other outdoor equipment that are commonly kept and stored in outdoor or partially outdoor spaces like sheds, barns, warehouses and storage facilities where rodents thrive in their natural environment.

36. Soy- and/or bio-based wiring is not suitable for its intended purpose – to protect vehicle wiring and circuitry in order to keep vehicles operational and safe.

37. Regardless of the precise composition of the materials used in Class Vehicle wiring or wiring insulation, under the circumstances alleged herein – where numerous consumers are routinely experiencing significant rodent/animal damage to relatively new Class Vehicles through no fault of their own – Kubota should (a) disclose this issue to prospective purchasers and lessees; (b) should not be excluding repairs for rodent/animal related damage from coverage under the terms of Kubota’s Warranty; and (c) Kubota should be taking appropriate measures to modify the areas surrounding the wires in such a way to prevent the ongoing intrusion from rodents (such as, for example, incorporating rodent-deterrent materials, coatings, devices, meshes, etc.).

38. As a result, Plaintiff and members of the proposed Class were harmed in their business and/or property in multiple ways and suffered actual damages, including but not limited to:

- a. The monetary costs associated with repairs as well as other out-of-pocket losses;
- b. Overpayment for leased or purchased Class Vehicles, in that Plaintiffs believed they were paying for vehicles that would not be at an increased risk of damage by pests because of the inclusion of bio-based products, and obtained vehicles with these products; and
- c. The diminished value of the Class Vehicles, thus reducing their resale value unless and until suitable replacement is undertaken.

B. Kubota’s Knowledge of the Defect

39. Kubota was aware or should have been aware of the Defect in Class Vehicles through (1) its own records of customers’ complaints; (2) dealership repair records; (3) warranty and post-warranty claims; (4) internal durability testing; and (5) other various sources. Despite its knowledge, Kubota failed to notify consumers of the nature and extent of the Defect and/or provide any adequate remedy under the Warranty.

40. Kubota is also aware or should have been aware of the Defect, because upon information and belief, its agents, dealers, or other representatives routinely and consistently refuse to provide Warranty coverage for damage to Class Vehicles resulting from the Defect. Instead, Kubota, through its agents, dealers, or other representatives, compels consumers to either pay for repairs out-of-pocket or to make an insurance claim and pay an expensive deductible.

41. Furthermore, the defective nature of the soy-based wiring has been widely publicized and known within the vehicle manufacturing industry generally.

42. A number of news stations across the United States have done consumer interest stories on soy or bio-based wiring in vehicles, reporting on how the inclusion of these materials or ingredients attracts pests that cause extensive damage. One news media outlet that claims to be leading a nationwide investigation into this very issue reports (among other findings) the following:

Many new vehicles now use wiring that has a soy-based coating, which is better for the environment and cheaper to make than the traditional kind. But apparently, rodents love to gnaw on it, which can cause major electrical problems.²

43. Consumer media websites have also tracked the propensity of soy- and/or bio-based wiring insulation and coatings to attract animals and result in damage. Major car manufacturers are experiencing the same Defect as Kubota. Honda Motor Company is supposedly convinced there is a problem with its own wiring insulation and reportedly made plans to introduce a spicy chemical

² Jason Stoogenke, Action 9 leads national investigation into rodents chewing on vehicle wires, WSOCTV, Jun. 3, 2016, <http://www.wsoc.tv/news/9-investigates/rodents-chewing-on-vehicle-wiring/235719735> (last visited Nov. 29, 19 2016).

to its wiring to stop rodents from eating it.³ Upon information and belief, Honda has also introduced its own proprietary rodent tape which discourages or repels rodent attacks.⁴

44. Significantly, Kubota knew or should have known that the Class Vehicles are commonly kept and stored in outdoor or partially outdoor spaces like sheds, barns, warehouses and storage facilities where rodents thrive in their natural environment, and thus, the Defect is at an even greater risk of materializing.

45. Kubota has turned this Defect into another source of income for itself and its dealers by charging Class Vehicle owners and lessees for repairs (or charging for purchase and installation of repellants, traps, and other preventive measures) to deal with the adverse consequences of the Defect that Kubota should, itself, be covering under the Warranty.

46. Kubota has evaded and continues to evade its Warranty obligations by failing to tell consumers their Class Vehicles are defective and by claiming rodent damage is not covered under Warranty repairs or replacements.

47. Kubota has known (or it should have known) that soy- and/or bio-based materials, including wiring insulation and coating, attract rodents and other pests that damage Class Vehicles. Upon information and belief, when damage occurs, Kubota dealers inform consumers that rodent

³ See, e.g., Jenn Strathman, Mechanics Say Soy In Car Wiring Attracts Munching Mice, So Honda Created A Solution, WPTV, Nov. 6, 2013, <http://www.wptv.com/money/consumer/mechanics-say-soy-in-car-wiring-attracts-munching-mice-so-toyota-created-a-solution> (last visited Nov. 29, 2016) (a Toyota Tundra purchaser experienced engine trouble due to rodent eating his wires); Jason Stoogenke, Action 9 Leads National Investigation Into Rodents Chewing On Vehicle Wires, WSOTV, updated June 3, 2016, <http://www.wsoc.tv.com/web/wsoc/news/9-investigates/rodents-chewing-on-vehicle-wiring/235719735> (last visited Nov. 29, 2016) (recounting the story of a purchaser of a brand new Toyota Camry who could not turn on her engine because rodents ate the soy wiring in her vehicle).

⁴ Tim Esterdahl, Mice Eat Toyota Tundra Wires – True Story, Nov. 8, 2013, <http://www.tundraheadquarters.com/blog/mice-eat-wires/> (last visited Nov. 29, 2016).

damage is very common in the type equipment in the Class Vehicles, and acknowledge it is the bio-based or soy-based materials in the vehicles that are attracting rodents. Yet, notwithstanding its knowledge of the Defect, Kubota consistently refuses to repair the Class Vehicles under the Warranty when the Defect manifests.

C. Kubota's Limited Warranty

48. Despite Kubota's knowledge of the Defect, it refuses to honor its Warranty, which provides: "Warranty is a written guarantee by the manufacturer of a product, promising to repair or replace parts which have a defect in materials or workmanship". (Attached as Ex. A, p. 1). The Warranty also states:

***The Kubota Limited Warranty**

Kubota Tractor Corporation will, through its authorized dealers, repair or replace any Genuine Kubota part which is found to be defective in materials or workmanship. The defect must occur during normal use of the product and within the length of warranty coverage. The repair or replacement will be at no charge for either the part or the labor to repair or replace that part. Repairs must be completed using only Genuine Kubota parts, or parts that have been approved by Kubota.

* Unless agreed, or as required by law.

(Ex. A, p. 2).

49. The Warranty specifically spells out what it does not cover:

This Warranty Does NOT Cover Failures Caused By:

- Abusive operation
- Natural calamities
- Unauthorized modifications
- Improper repairs
- Use of non-Genuine Kubota parts
- Neglected maintenance/incorrect operation (specified in Operator's Manual)
- Unapproved attachments
- Usage which is contrary to the intended purpose

***This Warranty does NOT cover replacement of Wear or Maintenance items (unless defective) including, but not limited to:**

- Clutch and brake linings

- Filters (air, fuel, oil)
- Light bulbs
- Window glass
- Lubricants & coolants (unless used during an authorized repair)
- Belts
- Cutting blades and tines
- Bucket teeth
- Injector nozzles
- Spark plugs
- Tires and tracks

This Warranty does NOT cover:

- Pickup or delivery of the equipment*
- Rental of replacement equipment during the repair period
- Products which have been declared a total loss and subsequently salvaged
- Overtime labor charges
- Travel time or mileage (customer responsibility)*
- Service calls (customer responsibility)
- Transportation of equipment to dealer from customer's home or other location (customer responsibility)*
- Repairs performed by Non U.S. Kubota Dealers

* Unless agreed, or as required by law.

(Ex. A, pp. 4-5). Thus, the Warranty covers any defect unless the defect is listed as an exception.

50. Soy- and/or bio-based insulated wiring and wiring components are not listed as a written exception in the Warranty. Kubota created this problem by including soy materials in the manufacturing process for Class Vehicles. Thus, the Defect is the inclusion of soy- and/or bio-based materials in Class Vehicles and the intrinsic nature of these materials to attract rodents, and the Defect existed in Class Vehicles at the time of manufacturing and when Class Vehicles leave manufacturing locations.

51. Furthermore, the Warranty does not expressly or impliedly disclaim Warranty coverage for rodent or other animal damage in Class Vehicles and the same is true for the Warranties that cover all Class Vehicles. If Kubota wanted to exclude rodent damage from Warranty coverage, it could have done so, just as it did for numerous other specific issues. But Kubota did not exclude this

damage. Kubota cannot now rely on the language in its Warranty exclusions which have nothing to do with soy or bio-based wiring or rodents to escape its Warranty obligations to consumers.

52. Notwithstanding its obligation under its Warranties, Kubota has denied Warranty coverage to Plaintiff and Class Members for Defect-related damage. Kubota has refused to cover the costs of repairs due to a problem that Kubota created. Thus, Plaintiff and Class Members were and are forced to pay out of pocket for repairs and services (and other out of pockets) that should have been covered under Kubota's Warranty.

V. CLASS ACTION ALLEGATIONS

53. Plaintiff brings this lawsuit on behalf of itself and all similarly situated individuals and entities, pursuant to Federal Rule of Civil Procedure 23(a), 23(b)(2) and 23(b)(3). Specifically, the nationwide class (the "Nationwide Class") consists of:

Nationwide Class: All persons or entities who: (a) currently own or lease a Class Vehicle with soy- and/or bio-based wiring; and/or (b) previously owned or leased a Class Vehicle with soy- and/or bio-based wiring within the Warranty Period.

Excluded from the Class are Kubota, its affiliates, subsidiaries, parents, successors, predecessors, any entity in which Kubota or its parents have a controlling interest; Kubota's current and former employees, officers and directors; the Judge(s) and/or Magistrate(s) assigned to this case; any person who properly obtains exclusion from the Class; any person whose claims have been finally adjudicated on the merits or otherwise released; and the parties' counsel in this litigation. Plaintiffs reserve the right to modify, change, or expand the Class definitions based upon discovery and further investigation.

54. **Numerosity:** Upon information and belief, the Class is so numerous that joinder of all members is impracticable. While the exact number and identities of individual members of the

Class are unknown at this time, such information being in the sole possession of Kubota and its agents and is obtainable by Plaintiff only through the discovery process, Plaintiff believes, and on that basis alleges, that thousands of Class Members have been subjected to the conduct by Kubota herein alleged.

55. Existence and Predominance of Common Questions of Fact and Law: Common questions of law and fact exist as to all members of the Class. These questions predominate over the questions affecting individual Class Members. These common legal and factual questions include, but are not limited to:

- a. Whether Kubota engaged in the conduct alleged herein;
- b. Whether Kubota designed, advertised, marketed, distributed, leased, sold, or otherwise placed Class Vehicles into the stream of commerce in the United States;
- c. Whether the Class Vehicles are sold with soy- and/or bio-based wiring insulation and other parts or components;
- d. Whether Kubota knew that Class Vehicles with soy- and/or bio-based wiring insulation and other parts or components subject these vehicles to an increased risk of damage from pests chewing through, eating, or otherwise damaging and compromising the Class Vehicles;
- e. Whether Kubota failed to disclose the fact that Class Vehicles include soy- and/or bio-based wiring insulation and other parts or components and the consequences to its customers;
- f. Whether a reasonable consumer would consider the Defect or its consequences to be material;
- g. Whether the Defect causes Class Vehicles to malfunction;
- h. Whether Kubota's conduct violates state and federal warranty laws and other laws as asserted herein;
- i. Whether the Defect is covered or should be covered under Kubota's Warranty;
- j. Whether Plaintiff and the other Class Members overpaid for their Class Vehicles as a result of the Defect alleged herein;
- k. Whether Plaintiff and the other Class Members are entitled to equitable relief, including, but not limited to, restitution or injunctive relief; and

1. Whether Plaintiff and the other Class Members are entitled to damages and other monetary relief and, if so, in what amount.

56. **Typicality:** All of Plaintiff's claims are typical of the claims of the Class since Plaintiff and all Class Members were injured in the same manner by Kubota's uniform course of conduct described herein. Plaintiff and all Class Members have the same claims against Kubota relating to the conduct alleged herein, and the same events giving rise to Plaintiff's claims for relief are identical to those giving rise to the claims of all Class Members. Plaintiff and all Class Members sustained monetary and economic injuries including, but not limited to, ascertainable losses arising out of Kubota's wrongful conduct as described herein. Plaintiff is advancing the same claims and legal theories on behalf of themselves and all absent Class Members.

57. **Adequacy:** Plaintiff is an adequate representative for the Class because its interests do not conflict with the interests of the Class that it seeks to represent. Plaintiff has retained counsel competent and highly experienced in complex class action litigation – including consumer fraud class action cases and automobile defect cases, and counsel intends to prosecute this action vigorously. The interests of the Class will be fairly and adequately protected by Plaintiff and its counsel.

58. **Superiority:** A class action is superior to all other available means of fair and efficient adjudication of the claims of Plaintiff and all Class Members. The injury suffered by each individual Class member is relatively small in comparison to the burden and expense of individual prosecution of the complex and extensive litigation necessitated by Kubota's conduct. It would be virtually impossible for members of the Class individually to redress effectively the wrongs done to them by Kubota. Even if Class Members could afford such individual litigation, the court system could not. Individualized litigation presents a potential for inconsistent or contradictory judgments. Individualized litigation increases the delay and expense to all parties, and to the court system,

presented by the complex legal and factual issues of the case. By contrast, the class action device presents far fewer management difficulties, and provides the benefits of single adjudication, an economy of scale, and comprehensive supervision by a single court. Upon information and belief, members of the Class can be readily identified and notified based on, inter alia, the records (including databases, e-mails, etc.) Kubota and its agents maintain regarding sales and leases of Class Vehicles. Plaintiff knows of no difficulty to be encountered in the management of this action that would preclude its maintenance as a class action.

59. Kubota has acted or refused to act on grounds generally applicable to Plaintiff and the other members of the Class, thereby making appropriate final injunctive relief and declaratory relief, as described below, with respect to the Class as a whole.

60. Given that Kubota has engaged in a common course of conduct as to Plaintiff and the Class, similar or identical injuries and common law and statutory violations are involved and common questions far outweigh any potential individual questions.

61. The Class is defined in terms of objective characteristics and common transactional facts; namely, the purchase or lease of Class Vehicles containing the Defect that resulted in rodent damage to Class Vehicle electrical wiring and systems. Class membership will be readily ascertainable from Kubota's business records.

62. Plaintiff reserves the right to revise the above Class definitions based on facts adduced in discovery.

COUNT I

(DECLARATORY JUDGMENT ACT, 28 U.S.C. §2201(a), et. seq.)

63. Plaintiff hereby incorporates by reference each and every allegation of this class action complaint with the same force and effect as if it had been fully restated herein.

64. The Class Vehicles owned or leased by Plaintiff and the putative Class Members all were initially sold or leased with an accompanying express warranty issued by Kubota. A copy of that warranty covering Plaintiff's vehicle, which in all matters pertinent to this action is identical across all Class Vehicles, is attached hereto as Ex. A.

65. The Kubota Limited Warranty provides in pertinent part:

Kubota Tractor Corporation will, through its authorized dealers, repair or replace any Genuine Kubota part which is found to be defective in materials or workmanship. The defect must occur during normal use of the product and within the length of warranty coverage. The repair or replacement will be at no charge for either the part or the labor to repair or replace that part. Repairs must be completed using only Genuine Kubota parts, or parts that have been approved by Kubota.

(Ex. A).

66. All Class Vehicles are equipped with soy- and/or bio-based wiring. For the reasons detailed in this class action complaint, this wiring is defective in material and/or workmanship under normal use because soy- and/or bio-based material comprising the wiring or its insulation attracts rodents or other animals that then chew through the wiring. The soy- and/or bio-based material comprising the wiring or its insulation is therefore unfit to achieve wiring's purpose, and once chewed through, the wiring fails in its workmanship because it no longer is able to achieve its intended electrical function.

67. The soy- and/or bio-based wiring in Class Vehicles experienced this Defect in material and workmanship during the durational term of Kubota's Limited Warranty. The soy- and/or bio-based material comprising the wiring or its insulation in Class Vehicles attracted rodents or other animals that chewed through the wiring or its insulation in Plaintiff's and Class Vehicles, leaving the Class Vehicles partially inoperable during the term of the Limited Warranty.

68. Other Class Members have experienced the same fate as Plaintiff in their Class Vehicles, and countless others will experience this same fate during the term of the Kubota Limited Warranty.

69. A real controversy or dispute exists between Plaintiff (and the Class Members) versus Kubota, regarding Kubota's duties and Plaintiff's and the Class Members' rights with respect to obtaining coverage under the Kubota Limited Warranty for the defective soy- and/or bio-based wiring or its insulation in the Class Vehicles.

70. Not only will a determination and declaration of whether the soy- and/or bio-based wiring or its insulation in the Class Vehicles is subject to coverage under the Limited Warranty impact the rights of Class Members to have their repairs reimbursed or covered by Kubota, but such a determination will also impact the value of each Class Members' purchase or lease of a Class Vehicle. An express warranty that, by its terms, purports to cover defects in material or workmanship but is then interpreted not to cover soy- and/or bio-based wiring or its insulation that is alleged to be defective is worth less than an identically- worded warranty that is interpreted to cover defective soy- and/or bio-based wiring or its insulation.

71. As a result of the controversy and dispute as to warranty coverage between Plaintiff (and the Class Members) and Kubota, Plaintiff is entitled to and does seek a declaratory judgment as to Plaintiff's and the Class Members' rights to obtain warranty coverage from Kubota's Limited Warranty for any damage, during the durational term of Kubota's Limited Warranty, caused by the defective soy- and/or bio-based wiring or its insulation in the Class Vehicles.

72. Pursuant to 28 U.S.C. § 2202 of the Declaratory Judgment Act, which provides that "[f]urther necessary or proper relief based on a declaratory judgment or decree may be granted, after reasonable notice and hearing, against any adverse party whose rights have been determined

by such judgment,” Plaintiff also seeks as part of this Declaratory Judgment Act count, an Order declaring that Plaintiff’s action has conferred a common benefit to the Class Members entitling Plaintiff and their counsel to an award of attorneys’ costs and fees for conferring the same.

COUNT II
(BREACH OF EXPRESS WARRANTY)

73. Plaintiff hereby incorporates by reference each and every allegation of this class action complaint with the same force and effect as if it had been fully restated herein.

74. The Class Vehicles owned or leased by Plaintiff and the putative Class Members all were initially sold or leased with an accompanying express warranty issued by Kubota known as the Kubota Limited Warranty.

75. The Kubota Limited Warranty provides in pertinent part:

Kubota Tractor Corporation will, through its authorized dealers, repair or replace any Genuine Kubota part which is found to be defective in materials or workmanship. The defect must occur during normal use of the product and within the length of warranty coverage. The repair or replacement will be at no charge for either the part or the labor to repair or replace that part.

(Ex. A).

76. All Class Vehicles are equipped with soy- and/or bio-based wiring or its insulation. For the reasons detailed in this class action complaint, this soy- and/or bio-based wiring or its insulation is defective in material or workmanship under normal use because soy- and/or bio-based material comprising the wiring or its insulation attracts rodents or other animals that then chew through the wiring. The soy- and/or bio-based material comprising the wiring or its insulation is therefore unfit to achieve wiring’s purpose, and once chewed through, the wiring fails in its workmanship because it no longer is able to achieve its intended electrical function.

77. The soy- and/or bio-based wiring in Class Vehicles experienced this Defect in material and workmanship during the durational term of Kubota's Limited Warranty. The soy- and/or bio-based material comprising the wiring in Class Vehicles attracted rodents or other animals that chewed through the wiring in Plaintiff's and Class Vehicles, leaving them partially inoperable during the term of the Limited Warranty.

78. Countless other Class Members have experienced the same fate as Plaintiff in their Class Vehicles, and countless others will experience this same fate during the term of the Limited Warranty.

79. Despite Plaintiff's experiences and that of countless other Class Members, and despite the express terms of the Limited Warranty, Kubota has taken the position that the soy- and/or bio-based wiring or its insulation in Class Vehicles does not amount to a defect in material or workmanship that is subject to coverage under the Limited Warranty. Plaintiff, therefore, was charged and paid for the repair or replacement of the defective soy- and/or bio-based wiring or its insulation in its Class Vehicle that was chewed through by a rodent or animal and that, therefore, left the vehicle inoperable. This, despite the fact, that when this problem initially arose and Plaintiff brought its vehicle for repair to a Kubota factory-authorized dealership, the vehicle was within the age, operational hours and mileage durational limits of Kubota's Limited Warranty.

80. Kubota's failure to cover under warranty the repair or replacement of the defective soy- and/or bio-based wiring or its insulation when Plaintiff's vehicle was presented to a Kubota dealership for such repair during the durational term of the warranty, amounts to a material breach of Kubota's obligations under the Kubota Limited Warranty.

81. As a direct, proximate, and foreseeable result of Kubota's material breach of its Limited Warranty, Plaintiff and all Class Members whose vehicles experienced chewed through soy-

and/or bio-based wiring or its insulation in their vehicles that were brought for repairs to a Kubota dealership during the term of the warranty but were not afforded coverage for that repair under that warranty were all injured by, inter alia, paying for that repair either themselves out-of-pocket or going through their own insurance products instead of having that repair made free of charge by Kubota, as was called for under the Kubota Limited Warranty.

COUNT III

(MAGNUSON-MOSS WARRANTY ACT, 15 U.S.C. § 2301, et. seq.)

82. Plaintiff hereby incorporates by reference each and every allegation of this class action complaint with the same force and effect as if it had been fully restated herein.

83. Kubota is a “warrantor” within the meaning of the federal Magnuson-Moss Warranty Act.

84. Plaintiff and each of the putative Class Members are “consumers” within the meaning of the federal Magnuson-Moss Warranty Act.

85. Kubota has issued a written warranty, known as the Kubota Limited Warranty, applicable to all Class Vehicles when initially sold or leased that has a duration extending to the earlier of 3 years or 36,000 miles covering the Class Vehicles. Through this warranty Kubota warrants, in pertinent part:

Kubota Tractor Corporation will, through its authorized dealers, repair or replace any Genuine Kubota part which is found to be defective in materials or workmanship. The defect must occur during normal use of the product and within the length of warranty coverage. The repair or replacement will be at no charge for either the part or the labor to repair or replace that part.

(Ex. A, p. 2).

86. In fact, contrary to the representations of its Limited Warranty, Kubota has since told Plaintiff the Defect in material or workmanship to the soy- and/or bio-based wiring or its insulation in the Class Vehicles that is described in this class action complaint (and that Plaintiff experienced) is not subject to coverage under Kubota’s Limited Warranty.

87. Prior to commencing this suit, Plaintiff notified Kubota through its authorized dealer of the Defect and provided Kubota an opportunity to cure the same under their its Limited Warranty, but Kubota has not done so (and, in fact, expressly refused to do so).

88. Under 15 U.S.C. § 2310(d)(1), Plaintiff, as a consumer “who [are] damaged by the failure of a supplier, warrantor, or service contractor to comply with any obligation under this chapter, or under a written warranty, implied warranty, or service contract, may bring suit for damages and other legal and equitable relief.” 15 U.S.C. § 2310(d)(1). Plaintiff sues pursuant to this section to recover money damages and for legal and equitable relief on behalf of itself and the Class Members.

89. Likewise, pursuant to 15 U.S.C. § 2310(d)(2), upon prevailing in this action, Plaintiff is entitled to receive an award of attorneys’ fees and expenses and pray for the same.

COUNT IV

(BREACH OF THE IMPLIED WARRANTY OF MERCHANTABILITY)

90. Plaintiff hereby incorporates by reference each and every allegation of this class action complaint with the same force and effect as if it had been fully restated herein.

91. Kubota is a “merchant” as defined under the UCC.

92. The Class Vehicles are “goods” as defined under the UCC.

93. Kubota impliedly warranted the Class Vehicles were of a merchantable quality.

94. Kubota breached the implied warranty of merchantability because the Class Vehicles were not of a merchantable quality due to the Defect, and the associated problems caused by the Defect.

95. Plaintiff’s and Class Members’ interactions with Kubota suffice to create privity of contract between Plaintiff and Class Members, on the one hand, and Kubota, on the other hand; however, privity of contract need not be established nor is it required because Plaintiff and Class Members are intended third-party beneficiaries of contracts between Kubota and its authorized dealers, and

specifically, of Kubota's implied warranties. Kubota's dealers are intermediaries between Kubota and consumers that sell Class Vehicles to consumers and are not consumers of Class Vehicles, and therefore have no rights against Kubota with respect to Plaintiff's and Class Members' purchases or leases of Class Vehicles. Kubota's warranties were designed for the benefit of consumers who purchase(d) or lease(d) Class Vehicles.

96. As a direct and proximate result of the breach of said warranties, Plaintiff and Class Members were injured and are entitled to damages.

97. Kubota's attempt to disclaim or limit the implied warranty of merchantability vis-à-vis consumers is unconscionable and unenforceable here. Specifically, Kubota's Warranty Limitations are unenforceable because Kubota knowingly sold a defective product without informing consumers about the Defect.

98. Plaintiff and Class Members have complied with all obligations under the Warranty or otherwise have been excused from performance of said obligations as a result of Kubota's conduct described herein.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff and the Class Members pray for judgment against the Defendant as follows:

A. That the Court determine that this action may be litigated as a class action, and Plaintiff and its counsel be appointed class representative and class counsel, respectively;

B. That judgment be entered against Kubota and in favor of Plaintiff and the Class Members on all counts;

C. That Kubota be ordered to bear the cost of notifying the absent Class Members of this class action, and of the Class Members' rights respecting the same;

D. That Kubota be ordered to pay the actual damages and losses sustained by Plaintiff and the Class Members, including future damages based on replacement or diminished value, as well as any and all statutory damages that Plaintiff and the Class Members are entitled to under law;

E. The Court order the creation of a common fund from which Plaintiff and their counsel shall be awarded their reasonable costs of suit, including reasonable attorneys' fees and expenses incurred in prosecuting this class action and in conferring a common benefit upon the Class Members;

F. The Court enter a Declaratory Judgment ordering and adjudicating with finality that the Defect in the Class Vehicles that is alleged in this class action Complaint is subject to coverage under Kubota's Limited Warranty;

G. That, as part of its Declaratory Judgment, the Court adjudicate that Plaintiff and their counsel have conferred a common benefit to the Class Members, entitling them to an award of attorneys' fees and costs for prosecuting this action, and awarding such fees and costs to Plaintiff's counsel to be paid by Kubota.

H. That Plaintiff and the Class Members be awarded all such other relief as this Court deems just and proper.

JURY DEMAND

Plaintiff respectfully request a trial by jury on all claims and causes of action properly triable before a jury.

Dated: June 11, 2018

/s/ Jay Aughtman

Joseph "Jay" H. Aughtman (ASB-8081-A43J)
AUGHTMAN LAW FIRM, LLC

1772 Platt Place
Montgomery, AL 36117
Phone: (334) 215-9873
Fax: (334) 213-5663
jay@oughtmanlaw.com

Richard M. Golomb (*pro hac vice*)
Kenneth J. Grunfeld (*pro hac vice*)
GOLOMB & HONIK, P.C.
1835 Market Street, Suite 2900
Philadelphia, PA 19103
Phone: (215) 985-9177
Fax: (215) 985-4169

Richard D. Morrison (MORR4889)
The Morrison Law Firm, LLC
8219 Old Federal Road
Montgomery, AL 36117
Phone: (334) 513-1323
Fax: (334) 513-1343

Attorneys for Plaintiff and the Class

DEFENDANT TO BE SERVED BY THE COURT BY CERTIFIED MAIL AS FOLLOWS:

Kubota Tractor Corporation
CT CORPORATION SYSTEM
2 NORTH JACKSON STREET SUITE 605
MONTGOMERY, AL 36104

**DEFENDANT TO BE SERVED VIA PERSONAL PROCESS SERVER PURSUANT TO
THE HAGUE CONVENTION FOR INTERNATIONAL PROCESS SERVICE AS
FOLLOWS:**

Kubota Corporation Manufacturing Company
1-2-47 Shikitusu-Higashi Naniwa-Ku
Osaka, Osaka-FU 556-8601