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23 **UNITED STATES DISTRICT COURT**
24 **CENTRAL DISTRICT OF CALIFORNIA**

25 DANIELLE STEDMAN, GARY
26 SOTO, and JODY SOTO, on behalf of
27 themselves and all others similarly
28 situated,

Plaintiffs,

v.

MAZDA MOTOR CORPORATION,
MAZDA MOTOR OF AMERICA
INC.,

Defendant.

Case No. 8-14-cv-01608

CLASS ACTION COMPLAINT

DEMAND FOR JURY TRIAL

CLASS ACTION COMPLAINT
CASE NO. 8-14-cv-01608

1 **NATURE OF THE CASE**

2 1. Plaintiffs bring this proposed class action on behalf of themselves and other
3 owners of 2009-2011 Mazda 3 and Mazda 6 vehicles. Mazda sold the vehicles without
4 first telling consumers that Mazda opted to install dashboards in the vehicles that do not
5 withstand exposure to sunlight, melt, emit a noxious chemical smell, and take on a
6 reflective quality. When the dashboards become reflective, drivers trying to see through
7 the windshield have to struggle to see past the image of the dashboard in the windshield.
8 Furthermore, when the sun or another bright light catches the dashboard at the right
9 angle, light shoots unexpectedly into drivers' eyes, temporarily blinding the driver and
10 endangering everyone on the road. Drivers have reported to Mazda, its regional
11 representatives, and its dealers that they feel unsafe driving their vehicles as the result of
12 this highly reflective, deteriorating dashboard.

13 2. Many consumer complaints about the melting dashboards have been
14 reported to the National Highway Traffic Safety Administration (NHTSA). Many drivers
15 are unable to replace their defective dashboards because the replacement of the dashboard
16 can cost several thousand dollars and because Mazda refuses to help with the cost of
17 repairs. Furthermore, Mazda owners receive no assurance from Mazda that the
18 replacement dashboards will not suffer from the same problems.

19 3. Mazda's conduct violates multiple state consumer protection statutes. On
20 behalf of themselves and the proposed classes, Plaintiffs seek to compel Mazda to warn
21 drivers about the known defect and to bear the expense of replacing dashboards that
22 Mazda should never have placed in the stream of commerce in the first place.

23 **PARTIES**

24 4. Plaintiff Danielle Stedman is a citizen and resident of North Fort
25 Lauderdale, located in the County of Broward, Florida.

26 5. Plaintiff Jody Soto is a citizen and resident of Palm Coast, located in the
27 County of Flagler, Florida.

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18. As seen in the photograph above, Mazda owner Tina captured the reflective glare that obscures her vision as a result of her melting dashboard.¹

19. Mazda owners have described their unsafe and deteriorating Mazda dashboards in a variety of ways on the NHTSA complaint boards, which are monitored by Mazda. For example, just a few of the ways that the owners have described the

¹ On September 3, 2014, Tina posted the photograph of the glare caused by her melting dashboard, along with the concerns for her driving safety on the Facebook page of Jenn Strathman, an investigative reporter located in West Palm Beach, Florida. Tina indicated that she also filed a complaint with the NHTSA.

1 dashboards include “sticky,”² “shiny,”³ “the consistency of flypaper,”⁴ “a viscous
2 substance, surface finish turned from matte to high gloss,”⁵ “gooey, sticky black. If you
3 touch it it gets all over your hands and everything will stick to it,”⁶ and “shiny in the
4 affected area due to the ‘melting’ and is reflecting the sunlight into my eyes during
5 driving in sunny weather.”⁷

6 20. Below are further examples of complaints lodged with NHTSA which
7 demonstrate drivers’ reasonable safety concerns:

- 8
- 9 • **Date Complaint Filed:** 09/05/2014
 - 10 • **NHTSA ID Number:** 10631099
 - 11 • MAZDA 3
 - 12 • Model Year: 2010

13 “THE DASHBOARD OF MY MAZDA3 SEEMS TO BE MELTING.
14 THE BRIGHT SHINY PLASTIC IS CREATING A GLARE THAT
15 HINDERS MY VISION WHILE DRIVING. THE PLASTIC IS
16 STICKY TO THE TOUCH. ALSO, WHEN MY CAR HAS BEEN
17 SITTING FOR AWHILE DURING THE DAY IT SMELLS OF
18 MELTED PLASTIC WHEN YOU GET BACK INTO IT.”

- 19
- 20 • **Date Complaint Filed:** 08/26/2014
 - 21 • **NHTSA ID Number:** 10628423
 - 22 • MAZDA 3

23 ² E.g., NHTSA Id. Nos. 10630524, 10629925, 10629322.

24 ³ E.g., NHTSA Id. Nos. 10626379, 10621425, 10617479.

25 ⁴ NHTSA Id. No. 10622296.

26 ⁵ NHTSA Id. No. 10618802.

27 ⁶ NHTSA Id. No. 10618329.

28 ⁷ NHTSA Id. No. 10617306.

- Model Year: 2010

“TL* THE CONTACT OWNS A 2010 MAZDA. THE CONTACT STATED THAT THE DASHBOARD IN THE VEHICLE WAS MELTING. THE CONTACT MENTIONED THE MELTED DASHBOARD REFLECTS ONTO THE WINDSHIELD AND CAUSED A GLARE THAT WOULD AFFECT THE CONTACTS VISIBILITY. THE VEHICLE WAS TAKEN TO A DEALER. THE VEHICLE WAS NOT REPAIRED. THE MANUFACTURER WAS MADE AWARE OF THE FAILURE. THE FAILURE WAS MILEAGE WAS 38,000.”

- **Date Complaint Filed:** 06/12/2014
- **NHTSA ID Number:** 10597925
- MAZDA 6
- Model Year: 2009

“THE PASSENGER SIDE OF MY DASHBOARD IS MELTING. IT IS ONLY OCCURRING ON THE SECTION CLOSEST TO THE WINDOW AND FOR ABOUT 12 INCHES. I HAVE TRIED TO KEEP THE WINDOWS OPEN, USE HEAT BARRIERS/SHIELDS ETC. IT IS EVEN WET AND GOOEY WHEN THE AC IS ON AND I AM DRIVING. I HAVE READ THAT THE PLASTICS ETC THAT ARE USED IN VEHICLES CAN EMIT CANCEROUS ODORS/VAPORS/ETC WHEN THEY OVERHEAT. CAN THIS ISSUE PLEASE BE INVESTIGATED AS AFTER READING THE COMPLAINTS THIS IS A ROBUST PROBLEM THAT CAN AFFECT THE SAFETY OF MANY PEOPLE!”

21. Consumers are extremely concerned that the deterioration of their dashboard results in a vehicle which is unreasonably dangerous due to the risk that the passenger side airbag will fail to deploy:

- **Date Complaint Filed:** 05/01/2014
- **NHTSA ID Number:** 10586044
- MAZDA 3
- Model Year: 2010

1 “CAR WAS PURCHASED IN 2009 AND UP UNTIL LAST YEAR I
2 HAD VERY FEW PROBLEMS AND WAS VERY HAPPY WITH
3 THE CAR. HOWEVER, LAST YEAR I NOTICED MY
4 DASHBOARD APPEARED TO BE VERY SHINNY AND
5 EXTREMELY STICKY. IT APPEARED AS THOUGH SOME TYPE
6 OF GLUE HAD BEEN POURED ON IT. WHEN I TOUCHED THE
7 DASHBOARD THE MELTED MATERIAL WOULD COME OFF ON
8 MY FINGERS. I TOOK IT TO THE DEALERSHIP WHO SAID
9 THEY HAD NEVER SEEN ANYTHING LIKE IT. THEY
10 ARRANGED TO HAVE THE MAZDA AREA REPRESENTATIVE
11 COME AND LOOK AT IT. HE EXAMINED THE DASHBOARD
12 AND TOLD ME HE HAS SEEN THIS BEFORE, MOSTLY IN
13 STATES LIKE FLORIDA, THAT ARE BASICALLY HOT ALL
14 YEAR. HE STATED IT WAS THE GLUE USED TO SECURE THE
15 DASHBOARD WHICH WAS LEECHING UP. HE APPROVED THE
16 DEALERSHIP TO REPLACE THE PART AT NO CHARGE,
17 HOWEVER THE DEALERSHIP SAID IT WOULD COST \$300.00 TO
18 HAVE IT INSTALLED. IF THE PART WAS FAULTY WHY DO I
19 NEED TO PAY TO HAVE THE NEW PART INSTALLED. I HAVE
20 DONE NOTHING AND CONTINUE TO HAVE A DEFECTIVE
21 DASHBOARD, MY CONCERN IS WILL THE AIRBAG WORK
22 CORRECTLY INSIDE THIS DEFECTIVE DASHBOARD? I HAVE
23 RECENTLY SEEN THE INVESTIGATIVE REPORT ON MY LOCAL
24 NEWS CONCERNING THIS ISSUE. WITHOUT QUESTION THIS IS
25 A SAFETY ISSUE IN MY OPINION”

- 26 • **Date Complaint Filed:** 06/09/2014
- 27 • **NHTSA ID Number:** 10597226
- 28 • MAZDA 6
- Model Year: 2009

29 “THE DASHBOARD OF MY MAZDA IS MELTING. THE
30 DASHBOARD IS SHINY AND STICKY WITH A TERRIBLE
31 GLARE. IT LOOKS LIKE IT IS WET, BUT IT IS REALLY GOOEY. I
32 AM WORRIED THE AIRBAGS MAY DEPLOY PREMATURELY
33 OR NOT AT ALL. THE DAMAGE TO THE DASHBOARD IS
34 GETTING WORSE. I FEEL THIS IS INFERIOR WORKMANSHIP

1 AND OR MATERIALS AND SHOULD BE PLACED UNDER
2 RECALL.”

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- 4 • **Date Complaint Filed:** 04/30/2014
 - 5 • **NHTSA ID Number:** 10585803
 - 6 • MAZDA 6
 - 7 • Model Year: 2009

8 “THE DASHBOARD IN MY 2009 MAZDA6 PASSENGER SIDE IS
9 MELTING. THE DASHBOARD IS STICKY AND A MESS. IT
10 COULD PROBABLY BE A HAZARD WITH MY AIRBAG. THE
11 DASH IS ALSO VERY SOFT AND THE COLORING COMES OFF.”

12 22. Often, despite otherwise being pleased with the performance of their Mazda
13 vehicle, consumers recognize that the deterioration of the dashboard reduces their resale
14 value, or even their ability to sell the vehicle at any price:

- 15
- 16 • **Date Complaint Filed:** 05/30/2013
 - 17 • **NHTSA ID Number:** 10514300
 - 18 • MAZDA 3
 - 19 • Model Year: 2010

20 “MY 2010 MAZDA 3 DRIVES FINE AND DOES NOT HAVE
21 MECHANICAL ISSUES. THE ISSUE INVOLVES THE INTERIOR
22 DASHBOARD. SINCE IT WAS MADE FROM SOME TYPE OF
23 RUBBER, THE SUN HAS BEEN MELTING IT. AESTHETICALLY
24 IT DOESN'T LOOK GOOD, BUT WHILE DRIVING TOWARD THE
25 DIRECTION OF THE SUN, THE GLARE IT CAUSES ON MY
26 FRONT WINDSHIELD HAS BEEN AFFECTING MY DRIVING. I
27 HAVE SPOKEN TO A COUPLE OF PEOPLE AT A LOCAL MAZDA
28 DEALERSHIP AND ONE RIDICULOUS EMPLOYEE GAVE ME
RECOMMENDATIONS SUCH AS TO PARK MY CAR IN A
GARAGE, OR UNDER TREES WHENEVER POSSIBLE. APART
FROM THOSE IDIOTIC REMARKS, I WILL HAVE TO PAY OUT-
OF-POCKET DUE TO THE FACT THAT I AM NOW PAST MY
WARRANTY. I PREVIOUSLY OWNED A MITSUBISHI FOR 10
YEARS AND THAT NEVER HAD ISSUES ALONG THOSE LINES.

1 I HAVE TAKEN VARIOUS PHOTOGRAPHS OF HOW MY VISION
2 IS BEING OBSTRUCTED AND WOULD HAPPILY SEND THEM
3 TO ANYONE I NEED TO. THE CHEAP RUBBER MATERIAL
4 USED FOR THE DASHBOARD SHOULD NOT SIMPLY MELT
5 BECAUSE OF THE SUN. THE SUN WILL ALWAYS BE PRESENT,
6 THEREFORE THESE THINGS SHOULD BE TAKEN INTO
7 CONSIDERATION DURING MANUFACTURING. I WOULD LOVE
8 TO GET THIS ISSUE RESOLVED BEFORE HAVING TO LOSE
9 MONEY AND NEVER DEAL WITH MAZDA AGAIN. OVERALL I
10 LIKE THE CAR, BUT I CANNOT STAND THE WAY THE
11 INTERIOR HAS DIMINISHED IN SUCH A SHORT PERIOD OF
12 TIME. *TR”

11 Mazda’s Knowledge of the Defect and the Dangers Posed

12 23. Mazda knew or should have known when it sold the 2009-2011 Mazda 3 and
13 Mazda 6s that the dashboards would deteriorate when exposed to sunlight and predictably
14 high summertime temperatures and present an unsafe condition for drivers.

15 24. Mazda, like all automobile manufacturers, has known for decades that
16 dashboard reflections can impair drivers’ vision and can make it harder to see pedestrians
17 and objects on the road. For instance, a paper published in 1996 by researchers for the
18 University of Michigan Transportation Research Institute found that when a dashboard
19 casts a reflection in the windshield it can impair the drivers’ vision. *See* Schumann,
20 Josef, Daytime Veiling and Driver Visual Performance: Influence of Windshield Rake
21 Angle and Dashboard Reflectance, *The University of Michigan Transportation Research*
22 *Institute* (1996).

23 25. Likewise, product defects that obstruct the vision of drivers pose a severe
24 safety hazard, and there have been many recalls related to obstructions of the driver’s
25 vision. Other automotive manufacturers, such as Ford, have had recalls because of
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1 bubbles that form on the windshield in higher temperatures, which could obstruct drivers'
2 vision.⁸ In addition, defective windshield wipers necessitated several recalls in 1998 for
3 Nissan 200sx cars because when windshield wipers cannot clean the glass of the
4 windshield, a driver's vision can be obstructed.⁹ Similarly to these prior recalls, the
5 2009-2011 Mazda 3 and Mazda 6s' melting dashboards pose a severe safety hazard to
6 drivers because they can obstruct a driver's vision.

7 26. Mazda has had extensive experience working with the materials used in
8 dashboards and has personnel who specifically evaluate the durability of new vehicle
9 parts, including the dashboards. Given the composition of the dashboards in Class
10 Vehicles, Mazda knew or should have known that the dashboards would melt and crack
11 with exposure to sunlight.

12 27. Mazda nonetheless decided to sell Class Vehicles without altering the
13 dashboards, putting Mazda drivers, passengers, and others on the road at risk. Mazda did
14 not tell customers or dealers that the dashboards would melt and crack with exposure to
15 sunlight. Mazda thus had exclusive and superior knowledge of the dashboard defect and
16 actively concealed the defect and corresponding danger from consumers who had no way
17 to reasonably discover the problem before buying and driving their vehicles.

18 28. Had consumers been aware of the dashboard defect in their Mazda 3 and
19 Mazda 6 cars they would not have purchased their vehicles, or would have paid far less
20 than they paid for their vehicles. As Mazda knows, a reasonable person would consider
21 the dashboard defect important and would not purchase or lease a vehicle with a
22 potentially defective dashboard, or would pay substantially less for the vehicle.

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25 ⁸ [http://www.nconsumer.org/news-articles/ford-recalls-e-series-vehicles-with-](http://www.nconsumer.org/news-articles/ford-recalls-e-series-vehicles-with-windshield-defect.html)
26 [windshield-defect.html](http://www.nconsumer.org/news-articles/ford-recalls-e-series-vehicles-with-windshield-defect.html)

27 ⁹ http://www.automd.com/recall/Nissan_m/200sx_mm/
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1 29. Although there have been hundreds of consumer complaints about melting
2 dashboards through the NHTSA website (which Mazda monitors), and complaints made
3 directly to Mazda customer service about problems with its Mazda 3 and Mazda 6
4 dashboards, Mazda continues to deny the existence of a defect.

5 30. Additionally, the defect was discussed in an ABC Florida affiliate news
6 segment, which showed pictures of the severe glare that drivers experience from their
7 melting dashboards. In response to the news report about the dashboard defect, a
8 Mazda representative acknowledged that the dashboard defect is a multi-state problem:
9 “We are aware of a few instances of the dashboard changing texture in severely hot
10 weather states and we are looking into it.”¹⁰

11 **Mazda’s Refusal to Repair the Defective Dashboards**

12 31. Despite the large amount of evidence and warnings that Mazda has had
13 about the safety risk that Mazda melting dashboards pose, Mazda refuses to notify its
14 customers of the problem or cover the costs of repairs. The total for parts and labor to
15 replace a dashboard is between \$750 and \$2,000, depending on where the part is
16 replaced. Just the cost of the labor may total nearly \$1,000, depending on the location of
17 the Mazda dealership.

18 32. Many customers have made complaints to NHTSA about Mazda’s failure to
19 pay for the full cost to replace defective dashboards:

- 20
- 21 • **Date Complaint Filed:** 08/29/2014
- 22 • **NHTSA ID Number:** 10629322
- 23 • MAZDA 6
- 24 • Model Year: 2009

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26 ¹⁰ [http://www.wptv.com/money/consumer/sticky-shiny-safety-issue-drivers-complain-of-](http://www.wptv.com/money/consumer/sticky-shiny-safety-issue-drivers-complain-of-sun-glare-from-melting-dashboards)
27 [sun-glare-from-melting-dashboards](http://www.wptv.com/money/consumer/sticky-shiny-safety-issue-drivers-complain-of-sun-glare-from-melting-dashboards)

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“THE DASHBOARD OF MY 2009 MAZDA 6 IS MELTING. IT HAS BECOME EXTREMELY STICKY AND SHINY. THE CONDITION CAUSES A GLARE ON THE WINDSHIELD THAT CAN INTERFERE WITH VISIBILITY. IN ADDITION, THE DASHBOARD DETERIORATION IS CAUSING AN OILY FILM TO BUILD UP ON THE ENTIRE INSIDE OF THE WINDSHIELD. THE FILM HAS TO BE CLEANED OFF FREQUENTLY AND IS VERY DIFFICULT TO COMPLETELY REMOVE. ORDINARY WINDOW CLEANERS JUST SMEAR IT. THE FILM NTERFERES WITH THE DRIVER'S ABILITY TO SEE IN AFTERNOON SUN. I CONTACTED MAZDA AND THEY ARE AWARE OF THE PROBLEM. AFTER I HAD IT DOCUMENTED AT THE DEALER, MAZDA AGREED TO PAY FOR THE PART BUT WOULD NOT PAY FOR THE COST OF THE LABOR, WHICH IS ESTIMATED AT APPROXIMATELY \$500.”

- **Date Complaint Filed:** 09/10/2014
- **NHTSA ID Number:** 10632328
- MAZDA 3
- Model Year: 2010

“MY MAZDA3 DASHBOARD IS MELTING. I HAVE NEVER USED ANY CHEMICAL SUBSTANCES TO CLEAN THE INTERIOR OF MY CAR. I LIVE IN SOUTH FLORIDA AND I'VE RECENTLY BEEN USING A SUNSHADE PROTECTOR BUT THAT DOESN'T NOT SEEM TO BE HELPING. THE GLARE FROM THE DASHBOARD AFFECTS MY VISION OF THE ROAD. I CONSTANTLY HAVE TO CLEAN MY WINDSHIELD WITH MILD DISH SOAP BECAUSE THE RESIDUE TRANSFER FROM MY SUNSHADE ONTO MY WINDSHIELD. THE COST OF REPLACING MY DASHBOARD IS NOT INCLUDED IN MY EXTENDED WARRANTY PACKAGE. I HAVE COMPLAINED TO MY MAZDA DEALER ON MULTIPLE OCCASIONS, BUT I WAS TOLD THAT I WOULD HAVE TO PAY \$1,200.00 TO REPLACE THIS PROBLEM. IS THERE ANYTHING THAT CAN BE DONE?”

- **Date Complaint Filed:** 09/03/2014
- **NHTSA ID Number:** 10630524

- 1 • MAZDA 3
- 2 • Model Year: 2010

3 “THE DASHBOARD IS MELTING!! IT APPEARS THAT IT IS
4 DETERIORATING CAUSING VISIBILITY ISSUES. IT IS
5 BECOMING STICKY AND APPARENTLY IS A MANUFACTURER
6 DEFECT. AS THE SUN GLARES DOWN ON THE WINDSHIELD,
7 THE SUNS' RAYS BOUNCE OFF THE SHINY DASHBOARD
8 CAUSING ME TO LOSE VISION IN TRAFFIC. THE MAZDA
9 DEALER IS NOT WANTING TO REPLACE IT STATING IT IS OUT
10 OF WARRANTY. THEY WANT ME TO PAY OVER \$400 FOR THE
11 LABOR AND 50% OF THE PART. I EVEN CALLED THE MAZDA
12 HQ AND THEY REFUSE TO COVER THE DAMAGE, STATING
13 THEY COULD DO NOTHING BETTER THAN THE OFFER THE
14 DEALERSHIP GAVE ME. I REQUESTED TO SPEAK TO HIGHER
UP MANAGEMENT AT CORPORATE BUT WAS TOLD BY THE
REPRESENTATIVE THAT NOBODY COULD ASSIST ME
FURTHER. THIS IS SO ABSURD!!! PLEASE HELP BEFORE I
HAVE AN ACCIDENT.”

15 33. Mazda’s refusal to pay for the cost of dashboard repairs has caused great
16 hardship to Mazda owners. Many drivers cannot afford to replace their dashboards and
17 are forced to continue to drive unsafe cars, and risk getting into an accident. Mazda
18 owners also have difficulty selling their vehicles because of their melted dashboards.
19 Mazda owners who are able to sell their cars with melted dashboards are forced to sell
20 their vehicles at a steep discount due to the dashboard defect.

21 **PLAINTIFFS’ EXPERIENCES**

22 **Plaintiff Danielle Stedman**

23 34. Danielle Stedman purchased a 2010 Mazda 3 from Gunther Motors located
24 in Ft. Lauderdale, Florida in February of 2011. In May or June of 2014, the Mazda’s
25 dashboard in her car began to melt. The melting dashboard on Ms. Stedman’s car causes
26 a harsh glare on her windshield that obscures her vision. The glare from the dashboard
27 is a safety hazard whenever she drives the car and the sun is shining.
28

1 41. Ms. Soto contacted the Mazda North American Operations' Customer
2 Service Center upon realizing that her dashboard was deteriorating. She was directed to
3 contact Daytona Mazda, the closest dealership to her home and which is located in
4 Daytona Beach, Florida. Ms. Soto set up an appointment to have her vehicle's dash
5 inspected at the dealership and confirmed the appointment with the corporate office.

6 42. After the inspection Ms. Soto received a call from Mazda of Daytona,
7 stating that since her car was no longer under warranty, Mazda corporate would pay for
8 the cost of the parts and she would be responsible for the cost of all labor. At the time,
9 she asked for an estimate of the labor costs and was told by the dealership's service
10 person that she was not sure, but it would have to be the same labor costs "as another
11 customer who was coming in with the same problem."

12 43. Ms. Soto repeatedly asked for this agreement in writing, but never received
13 it. She received a copy of an email that Greg Smith sent to her local Mazda dealership on
14 August 22, 2014. Greg Smith's email signature indicates he is with Mazda North
15 American Operations, Southeast Region. The email from Greg Smith to the dealership
16 stated: "Tony and Tania this customer has no CP history at all and really does not deserve
17 any assistance and she is not the original owner. However is s dash issue on some these
18 units. Tony you incorrectly listed the part cost at \$237 It is \$273. I will give you a 30%
19 mark up and pay \$355 to cover the part. The customer will be responsible for all labor."
20 In this email, Mazda acknowledged the dashboard "issue," but did not explain why Ms.
21 Soto "does not deserve any assistance," despite the fact that Ms. Soto's Mazda has a
22 manufacturing defect.

23 44. Mazda eventually told Ms. Soto that if she were to have the Mazda dealer
24 replace her dashboard, she would have to pay Mazda approximately \$400.00 in labor
25 costs and that there was nothing else they would do for her.

26 45. Ms. Soto is afraid to drive her car during the day because her melting
27 dashboard causes a glare on her windshield when the sun is shining. Furthermore, she is
28 concerned that the airbags would fail to deploy properly in case of an accident as a result

1 of stickiness of the melting dashboard. Ms. Soto's car is dangerous to drive during the
2 day in its current condition.

3 46. If Ms. Soto had known that the Mazda vehicle's dashboard would
4 deteriorate if exposed to sunlight, she would not have purchased her vehicle or she would
5 have spent significantly less to purchase her vehicle. She did not receive the benefit of
6 her bargain.

7 **Tolling and Estoppel of Statutes of Limitation**
8 **and Fraudulent Concealment**

9 47. The claims alleged in this complaint accrued upon discovery of the defects
10 of the dashboards of the Class Vehicles. Mazda took steps to actively misrepresent and
11 conceal the true character, nature and quality of the material of the dashboard. The defect
12 manifests itself after a period of time and under certain predictable weather conditions,
13 such that Plaintiffs and Class members could not reasonably discover the defect through
14 reasonable and diligent investigation. Furthermore, Plaintiffs and Class members could
15 not have reasonably discovered or known of the safety risks until the dashboard began to
16 visibly deteriorate.

17 48. Any applicable statutes of limitations have been tolled by Mazda's
18 knowledge and actual misrepresentation, concealment and denial of the facts as alleged
19 herein. Mazda's misrepresentations and concealments have been and are ongoing and
20 continue to this day. As a result of Mazda's active concealment of the design and
21 material defect and/or failure to inform Plaintiffs and all members of the Classes and/or
22 Subclasses of the defect, any and all statutes of limitations otherwise applicable to the
23 allegations have been tolled.

24 49. Alternatively, the facts alleged give rise to an estoppel. Mazda knew of the
25 defect and the serious risks it posed to consumers and has actively concealed it. Mazda
26 was and is under a continuous duty to disclose to Plaintiffs and all members of the
27 Classes and/or Subclasses the true character, quality and nature of the Class Vehicles,
28

1 particularly that their dashboards are not designed to withstand exposure to sunlight and
2 will pose a threat to the safety of the driver and passengers when the dashboard
3 prematurely deteriorates.

4 50. At all relevant times, and continuing to this day, Mazda knowingly and
5 actively misrepresented and concealed the true character, quality and nature of the Class
6 Vehicles and sold the Class Vehicles into the stream of commerce as if they were suitable
7 for their intended use. Given Mazda's failure to disclose this non-public information
8 about the defective nature of the Class Vehicles and risks to the public —information
9 over which Mazda had and continues to have exclusive control—and because Plaintiffs
10 and all members of the Classes and/or Subclasses could not reasonably have known that
11 the Class Vehicles were thereby defective, Plaintiffs and all members of the Classes
12 and/or Subclasses reasonably relied on Mazda's knowing affirmative and ongoing
13 concealment. Had Plaintiffs and all members of the Classes and/or Subclasses known
14 that the Class Vehicles posed a safety risk to the public, they would not have purchased
15 the Class Vehicles. Therefore, Mazda is estopped from any statute of limitations defense
16 in this action.
17

18 51. Additionally, Mazda is estopped from raising any defense of laches due to
19 its own conduct as alleged herein.

20 **CLASS ACTION ALLEGATIONS**

21 52. Plaintiffs bring this action on behalf of themselves and on behalf of a
22 proposed Nationwide Class, initially defined as:

23 All persons in the United States who owned or leased a Class Vehicle.

24 53. Plaintiffs propose the following Florida Class:

25 All persons who purchased or leased a Class Vehicle in Florida.

26 54. Excluded from each proposed class is Mazda; any affiliate, parent, or
27 subsidiary of Mazda; any entity in which Mazda has a controlling interest; any officer,
28 director, or employee of Mazda; any successor or assign of Mazda; anyone employed by

1 counsel for Plaintiffs in this action; any judge to whom this case is assigned, his or her
2 spouse, and all persons within the third degree of relationship to either of them, as well as
3 the spouses of such persons; and anyone who purchased a Class Vehicle for the purpose
4 of resale.

5 55. This action has been brought and may properly be maintained on behalf of
6 the classes proposed above under the criteria of Federal Rule of Civil Procedure Rule 23.

7 56. Numerosity. Mazda sold hundreds of thousands of Class Vehicles,
8 including a substantial number in the states covered by the proposed classes. Members of
9 the proposed classes likely number in the tens or hundreds of thousands and are thus too
10 numerous to practically join in a single action. Class members may be notified of the
11 pendency of this action by mail, supplemented (if deemed necessary or appropriate by the
12 Court) by published notice.

13 57. Existence and predominance of common questions. Common questions of
14 law and fact exist as to all members of the proposed classes and predominate over
15 questions affecting only individual class members. These common questions include
16 whether:

- 17 a. Class Vehicles were factory equipped with defective dashboards;
- 18 b. Mazda knew or should have known about the dashboard defect and, if
19 so, when Mazda discovered the defect;
- 20 c. The existence of the dashboard defect would be important to a
21 reasonable person, for example, because it poses an unreasonable
22 safety risk;
- 23 d. Mazda disclosed the dashboard defect to potential customers;
- 24 e. Mazda dealerships have failed to provide free dashboard repairs for
25 Class Vehicles.

26 58. Typicality. Plaintiffs' claims are typical of the claims of the proposed
27 classes. Each Plaintiff and the class members he or she proposes to represent purchased a
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1 Class Vehicle that contains the same defective dashboard, giving rise to substantially the
2 same claims.

3 59. Adequacy. Plaintiffs are adequate representatives of the proposed classes
4 because their interests do not conflict with the interests of the members of the classes
5 they seek to represent. Plaintiffs have retained counsel competent and experienced in
6 complex class action litigation, and Plaintiffs intend to prosecute this action vigorously.
7 The interests of members of the classes will be fairly and adequately protected by
8 Plaintiffs and their counsel.

9 60. Superiority. The class action is superior to other available means for the fair
10 and efficient adjudication of this dispute. The injury suffered by each class member,
11 while meaningful on an individual basis, is not of such magnitude as to make the
12 prosecution of individual actions against Mazda economically feasible. Even if class
13 members themselves could afford such individualized litigation, the court system could
14 not. In addition to the burden and expense of managing many actions arising from the
15 Mazda defect, individualized litigation presents a potential for inconsistent or
16 contradictory judgments. Individualized litigation increases the delay and expense to all
17 parties and the court system presented by the legal and factual issues of the case. By
18 contrast, the class action device presents far fewer management difficulties and provides
19 the benefits of single adjudication, economy of scale, and comprehensive supervision by
20 a single court.

21 61. In the alternative, the proposed classes may be certified because:

- 22 a. the prosecution of separate actions by the individual members of the
23 proposed classes would create a risk of inconsistent or varying
24 adjudication with respect to individual class members which would
25 establish incompatible standards of conduct for Mazda;
- 26 b. the prosecution of separate actions by individual class members would
27 create a risk of adjudications with respect to them which would, as a
28 practical matter, be dispositive of the interests of other class members

1 not parties to the adjudications, or substantially impair or impede their
2 ability to protect their interests; and

3 c. Mazda has acted or refused to act on grounds generally applicable to
4 the proposed classes, thereby making appropriate final and injunctive
5 relief with respect to the members of the proposed classes as a whole.

6 **COUNT ONE**

7
8 **Plaintiffs, on behalf of the Nationwide Class**
9 **For unlawful, unfair, and fraudulent business practices under**
10 **California Business and Professions Code § 17200 *et seq.***

11 62. Plaintiffs, on behalf of themselves and the proposed Nationwide class,
12 hereby re-allege the paragraphs above.

13 63. Mazda has violated and continues to violate California's Unfair Competition
14 Law, Cal. Bus. & Prof. Code § 17200, *et seq.*, which prohibits unlawful, unfair, or
15 fraudulent business acts or practices.

16 64. Mazda's acts and practices constitute fraudulent practices in that they are
17 likely to deceive a reasonable consumer. A reasonable consumer would not have bought
18 a Class Vehicle if Mazda adequately disclosed the dashboard defect in its Class Vehicles,
19 and that the dashboard defect presents a safety hazard.

20 65. Mazda's fraudulent acts and practices also constitute unfair practices in that
21 (i) they are unethical, unscrupulous, and substantially injurious to consumers; (ii) any
22 legitimate utility of Mazda's conduct is outweighed by the harm to consumers; (iii) the
23 injury is not one that consumers reasonably could have avoided; and/or (iv) the conduct
24 runs afoul of the public safety policy embodied in the Highway Safety Act, which seeks
25 to protect consumers against unfair and sharp business practices and to promote a basic
26 level of honesty and reliability in the marketplace.

27 66. As a direct and proximate result of Mazda's unlawful, unfair, and fraudulent
28 business practices as alleged herein, Plaintiffs and Class members have suffered injury in

1 fact and lost money or property, in that they purchased Class Vehicles they otherwise
2 would not have, paid more for Class Vehicles than they otherwise would, paid for repairs,
3 and replacements, and/or rental cars, and are left with Class Vehicles of diminished value
4 and utility because of the defect. Meanwhile, Mazda has sold more Class Vehicles than it
5 otherwise could have and charged inflated prices for Class Vehicles, unjustly enriching
6 itself thereby.

7 67. Plaintiffs and Class members are entitled to equitable relief, including
8 restitutionary disgorgement of all profits accruing to Mazda because of its deceptive
9 practices, and an order requiring Mazda to adequately disclose and repair the dashboard
10 defect.

11 **COUNT TWO**

12 **Plaintiffs, on Behalf of the Nationwide Class**
13 **Violation of the Consumers Legal Remedies Act,**
14 **Cal. Civ. Code. §§ 1750, *et seq.***

15 68. Plaintiffs, on behalf of a Nationwide Class, reallege as if fully set forth, each
16 and every allegation set forth herein.

17 69. Mazda is a “person” within the meaning of Civil Code sections 1761(c) and
18 1770, and has provided “goods” within the meaning of California Civil Code section
19 1761(b) and 1770.

20 70. Plaintiffs and members of the class are “consumers” within the meaning of
21 Civil Code section 1761(d) and 1770, and have engaged in a “transaction” within the
22 meaning of Civil Code section 1761(e) and 1770.

23 71. Mazda’s acts and practices, undertaken in transactions intended to result and
24 which did result in the sale or lease of Class Vehicles, violate Section 1770 of the
25 Consumers Legal Remedies Act in that:

- 26 (a) Mazda represents that its goods have sponsorship, approval, characteristics,
27 uses or benefits which they do not have;
28 (b) Mazda advertises its goods with intent not to sell them as advertised;

1 (c) Mazda represents that a transaction confers or involves rights, remedies, or
2 obligations which it does not have or involve; and

3 (d) Mazda represents that its goods have been supplied in accordance with a
4 previous representation when they have not.

5 72. Mazda has violated the Consumers Legal Remedies Act by failing to
6 disclose, at the point of sale or otherwise, that the Class Vehicles' dashboards are
7 defective and pose a safety hazard.

8 73. Had Mazda adequately disclosed information about the defective
9 dashboards, Plaintiffs, Class members, and reasonable consumers would not have
10 purchased or would have paid less for their Class Vehicles.

11 74. Pursuant to the provision of California Civil Code § 1780, Plaintiffs seek an
12 order enjoining Mazda from the unlawful practices described herein, a declaration that
13 Mazda's conduct violates the Consumers Legal Remedies Act, and attorneys' fees and
14 costs of litigation.

15 75. Plaintiffs, on behalf of themselves and the Class, notified Mazda in writing
16 of the CLRA violations and requested that Mazda cure the violations. Should Mazda not
17 comply with Plaintiffs' request, Plaintiffs intend to amend their complaint and seek
18 damages under the CLRA.

19 **COUNT THREE**

20 **Plaintiffs, on Behalf of the Florida Class**
21 **Violation of the Florida Deceptive and Unfair Trade Practices Act,**
22 **Fla. Stat. § 501.201, et seq.**

23 76. Plaintiffs, on behalf of themselves and the Florida class, hereby re-allege the
24 preceding paragraphs.

25 77. The purpose of the Florida Deceptive and Unfair Trade Practices Act, Fla.
26 Stat. § 501.201 et seq., is to "protect the consuming public...from those who engage in
27 unfair methods of competition, or unconscionable, deceptive or unfair acts or practice in
28 the conduct of any trade or commerce." Fla. Stat. § 501.202(2).

1 78. Plaintiffs and the Florida class members are “consumers” within the
2 meaning of Fla. Stat. §501.203(7).

3 79. At all relevant times, Mazda was engaged in trade or commerce within the
4 meaning of Fla. Stat. §501.203(8).

5 80. Mazda has violated Florida’s Deceptive and Unfair Trade Practices Act by
6 failing to disclose, at the point of sale or otherwise, that the dashboard in Class Vehicles
7 is defective and poses a safety hazard. This conduct offends public policy and is
8 unethical, unscrupulous, and substantially injurious to consumers.

9 81. Mazda’s actions as set forth above occurred in the conduct of trade or
10 commerce.

11 82. Mazda’s actions impact the public interest because Plaintiffs and the Florida
12 Class members were injured in exactly the same way as thousands of others purchasing
13 and/or leasing Class Vehicles as a result of Mazda’s generalized course of deception.

14 83. All of the wrongful conduct alleged herein occurred, and continues to occur,
15 in the conduct of Mazda’s business.

16 84. Plaintiffs and the Florida Class members were injured and suffered
17 economic damages as a result of Mazda’s conduct.

18 85. Plaintiffs and the Florida Class members overpaid for their Class Vehicles
19 and did not receive the benefit of their bargain, and the Class Vehicles have suffered a
20 diminution in value as a result of the conduct described herein.

21 86. Mazda’s conduct proximately caused the injuries to Plaintiff and the Florida
22 Class members.

23 87. Mazda is liable to Plaintiffs and the Florida Class members for damages in
24 amounts to be proven at trial, including attorneys’ fees recoverable pursuant to Fla. Stat.
25 § 501.2105, costs, and treble damages.

26 88. As a direct and proximate result of Mazda’s conduct, Plaintiffs and other
27 members of the Florida class have been harmed in that they purchased Class Vehicles
28 they otherwise would not have, paid more for Class Vehicles than they otherwise would

1 have, paid for dashboard diagnoses, repairs, and replacements, and/or rental cars, and are
2 left with Class Vehicles of diminished value and utility because of the defect.
3 Meanwhile, Mazda has sold more Class Vehicles than it otherwise could have and
4 charged inflated prices for Class Vehicles, unjustly enriching itself thereby.

5 89. Pursuant to Fla. Stat. §501.211, Plaintiffs and the Florida Class seek
6 damages, a declaratory judgment, and an order requiring Mazda to adequately disclose
7 and repair the dashboard defect.

8
9 **COUNT FOUR**

10 **Plaintiffs, on Behalf of the Florida Class**
11 **Unjust Enrichment**

12 90. Plaintiffs incorporate by reference and re-allege all paragraphs previously
13 alleged herein and further allege as follows.

14 91. Mazda had knowledge of the dashboard defect and the serious safety risks it
15 poses, which it failed to disclose to Plaintiffs and the Florida Class members.

16 92. As a result of their wrongful and fraudulent acts and omissions, as set forth
17 above, pertaining to the design defect of the Class Vehicles and the concealment of the
18 defect, Mazda obtained monies which rightfully belong to Plaintiffs to the detriment of
19 the Plaintiffs.

20 93. Mazda appreciated, accepted and retained the non-gratuitous benefits
21 conferred by Plaintiffs and the Florida Class members, who without knowledge of the
22 defect paid a higher price for their Class Vehicles which actually had lower values, and
23 received monies for Class Vehicles that Plaintiffs and Florida Class members would not
24 have purchased.

25 94. It would be inequitable and unjust for Mazda to retain these wrongfully-
26 obtained profits.

27 95. Mazda's retention of these wrongfully-obtained profits would violate the
28 fundamental principles of justice, equity, and good conscience.

1 96. Plaintiffs, therefore, are entitled to restitution of the profits unjustly
2 obtained, plus interest.

3 **COUNT FIVE**

4 **Plaintiffs, on Behalf of the Nationwide Class**
5 **Negligence**

6 97. Plaintiffs, on behalf of themselves and the Nationwide Class, re-allege as if
7 fully set forth, each and every allegation set forth herein.

8 98. Mazda owed Plaintiffs and Class members a duty, once it discovered the
9 dashboard defect, to ensure that an appropriate repair procedure was made available to
10 drivers.

11 99. Mazda owed a duty to Plaintiffs and Class members not to engage in
12 fraudulent or deceptive conduct, including the knowing omission of material information
13 such as the existence of the dashboard defect. This duty is independent of any
14 contractual duties Mazda may owe or have owed.

15 100. A finding that Mazda owed a duty to Plaintiffs and Class members would
16 not significantly burden Mazda. Mazda has the means to efficiently notify drivers of
17 Mazda vehicles about dangerous defects. The cost borne by Mazda for these efforts is
18 insignificant in light of the dangers posed to Plaintiffs and Class members by Mazda's
19 failure to disclose the dashboard defect and provide an appropriate notice and repair.

20 101. Mazda failed to disclose and deceptively concealed the dashboard defect to
21 Plaintiffs, and other drivers of Class Vehicles, and failed to provide appropriate notice of
22 repair procedures for the dashboard defect. Mazda departed from the reasonable standard
23 of care and breached its duties to Plaintiffs and other drivers of Mazda vehicles.

24 102. Mazda's conduct was morally blameworthy. Mazda knew about the
25 dashboard defect and knew it was dangerous. Yet Mazda concealed the defect, placing
26 drivers of Class Vehicles at unnecessary risk.

27
28

1 103. Mazda's conduct was contrary to public policy favoring the disclosure of
2 defects that may affect customer safety and the prevention of accidents and injuries due
3 to defective automobiles.

4 104. As a direct, reasonably foreseeable, and proximate result of Mazda's failure
5 to exercise reasonable care, inform Plaintiffs and other Class members of the defect, and
6 provide appropriate repairs for the defect, Plaintiffs and Class members have suffered
7 damages in that they spent more money on Class Vehicles and related purchases than
8 they otherwise would have and are left with Class Vehicles that cannot be safely driven
9 and which are of diminished value.

10 105. Plaintiffs could not through the exercise of reasonable diligence have
11 prevented the injuries caused by Mazda's negligence. Neither Plaintiffs nor other Class
12 members contributed to Mazda's failure to provide appropriate notice and repairs.
13 Plaintiffs seek to recover their damages caused by Mazda.

14 **PRAAYER FOR RELIEF**

15
16 WHEREFORE, Plaintiffs pray for judgment as follows:

- 17 a. For an order certifying the proposed classes and appointing Plaintiffs and
18 their counsel to represent the classes;
- 19 b. For an order awarding Plaintiffs and the members of the classes actual,
20 statutory, punitive or any other form of damages provided by and pursuant to
21 Counts Three and Five;
- 22 c. For an order awarding Plaintiffs and the members of the classes restitution,
23 disgorgement or other equitable relief provided by and pursuant to Counts
24 One, Three, and Four, or as the Court deems proper;
- 25 d. For an order requiring Mazda to adequately disclose and repair the
26 dashboard defect;
- 27 e. For an order awarding Plaintiffs and the members of the classes pre-
28 judgment and post-judgment interest;

- 1 f. For an order awarding Plaintiffs and the members of the classes reasonable
2 attorney fees and costs of suit, including expert witness fees; and
3 g. For an order awarding such other and further relief as this Court may deem
4 just and proper.
5

6 DATED: October 3, 2014

Respectfully submitted,

7 **GIRARD GIBBS LLP**

8
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DEMAND FOR JURY TRIAL

Plaintiffs hereby demand a trial by jury on all claims so triable.

DATED: October 3, 2014

Respectfully submitted,

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