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8 UNITED STATES DISTRICT COURT
9 CENTRAL DISTRICT OF CALIFORNIA

10 Kathleen A. Cadena, Mukeshbhai Patel,
11 Steven Geiger, and Erick Ferguson *on*
12 *behalf of themselves and all others*
13 *similarly situated,*

14 Plaintiffs,

15 vs.

16 American Honda Motor Co., Inc.,

17 Defendant.

Case No.: 2:18-cv-04007-MWF-PJW

**FIRST AMENDED CLASS ACTION
COMPLAINT FOR:**

- (1) **Breach of Express Warranty under the Magnuson-Moss Warranty Act**
- (2) **Breach of Express Warranty**
- (3) **Breach of Implied Warranty pursuant to Song-Beverly Consumer Warranty Act**
- (4) **Breach of Implied Warranty pursuant to Colo. Rev. Stat. Ann. § 4-2-314 & Tex. Bus. & Com. Code Ann. § 2.314**
- (5) **Violation of California Consumers Legal Remedies Act**
- (6) **Violation of Unfair Competition Law**
- (7) **Violation of Colorado Consumer Protection Act**
- (8) **Violation of Tennessee Consumer Protection Act**
- (9) **Violation of Texas Deceptive Trade Practices Act**

DEMAND FOR JURY TRIAL

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1 Plaintiffs, Kathleen A. Cadena, Mukeshbhai Patel, Steven Geiger, and Erick
2 Ferguson, by undersigned counsel, bring the following complaint against American
3 Honda Motor Co., Inc., and allege, on their own behalf and on behalf of all those
4 similarly situated, as follows:
5

6 **INTRODUCTION**
7

8 1. Plaintiffs Kathleen A. Cadena (“Cadena”), Mukeshbhai Patel (“Patel”),
9 Steven Geiger (“Geiger”), and Erick Ferguson (“Ferguson,” and together with Cadena
10 Patel, and Geiger, the “Plaintiffs”) bring this lawsuit against American Honda Motor
11 Co., Inc. (hereafter “Defendant” or “Honda”) on their own behalf and on behalf of a
12 proposed class of past and present owners and lessees of the following 2017-2018
13 Honda CR-V models: the EX, EX-L and the Touring (the “Class Vehicles”).
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16 2. Plaintiffs and the Class each paid more for the Class Vehicles, compared
17 with the price of base-level 2017-2018 Honda CR-Vs, because the Class Vehicles
18 contain “Honda Sensing®,” “an intelligent suite of safety and driver-assistive
19 technologies designed to alert you to things you might miss while driving”¹ (hereafter
20 “Honda Sensing”).
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23 3. Specifically, Honda Sensing includes “Collision Mitigation Braking
24 System™ (CMBS™),” “Road Departure Mitigation System (RDM),” “Adaptive
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¹ <https://automobiles.honda.com/cr-v#specifications> (last visited May 10, 2018).

1 Cruise Control (ACC) with Low-Speed Follow,” and “Lane Keeping Assist System
2 (LKAS).”²
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4 4. Honda Sensing is standard equipment on the following 2017-2018 Honda
5 CR-V models: the EX, EX-L and the Touring.³
6

7 5. These features are designed and promoted to avoid accidents or greatly
8 minimize the effects of a collision.

9 6. However, in practice, Honda Sensing makes the Class Vehicles *more*
10 *dangerous*, not safer, because, due to a software defect, Honda Sensing regularly and
11 systematically malfunctions, causing (1) numerous warning messages to intermittently
12 appear on the Class Vehicles’ instrument clusters alerting drivers to a problem with
13 Honda Sensing safety and driver-assist system, (2) the Class Vehicles to fluctuate
14 their highway speed without warning when adaptive cruise control is set, and (3) Class
15 Vehicles alerting drivers to apply brakes immediately although no obstruction is
16 present.
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20 7. Indeed, Plaintiff Cadena’s 2017 Honda CR-V Touring repeatedly alerted
21 her of problems with Honda Sensing safety and driver-assistive system, accelerated
22 and slowed unprompted, even though there was no obstruction ahead, and instructed
23 her to apply breaks, even though another vehicle was at least fifty (50) feet ahead.
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27 ² *Id.*

28 ³ *Id.*

1 8. Likewise, Plaintiff Patel’s 2017 Honda CR-V EX-L repeatedly alerted
2 him of problems with Honda Sensing safety system or that the vehicle’s radar was
3 obstructed, even though in fact there was no obstruction of the radar, and Plaintiff
4 Geiger’s 2017 Honda CR-V EX-L repeatedly alerted him of problems with Honda
5 Sensing safety and driver-assistive system by displaying numerous fault messages on
6 the vehicle’s instrument cluster.
7

9 9. Similarly, Ferguson’s 2017 Honda CR-V EX repeatedly displayed a fault
10 with Lane Keeping Assist and Road Departure Mitigation systems and shook the
11 steering wheel prompting Ferguson to correct his driving course, even though
12 Ferguson was travelling properly in the middle of the lane, repeatedly instructed
13 Ferguson to apply breaks and reduced its speed even though there was no obstruction
14 ahead, and Honda Sensing safety and driver-assistive system continued to malfunction
15 even after Ferguson disabled it.
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19 10. Moreover, Plaintiffs’ experience is not unique; numerous other drivers
20 have complained about these types of problem messages and unwarranted fluctuations
21 in vehicle speed when set on cruise control, or unwarranted instructions to apply
22 breaks. For instance, on March 12, 2017, one driver posted on a CR-V enthusiast
23 website that while driving his/her 2017 Honda CR-V EX “all of a sudden
24 many systems started reporting problems on my dashboard, all at the same time”
25 including the following:
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- 1 • Brake System Problem
- 2 • All Wheel Drive System Problem
- 3 • Tire Pressure Monitor Problem
- 4 • Electric Parking Brake Problem
- 5 • Road Departure Mitigation System Problem
- 6 • Collision Mitigation System Problem
- 7 • Lane Keeping Assist Problem
- 8 • Adaptive Cruise Control Problem
- 9 • Hill Start Assist Problem
- 10 • Vehicle Stability Assist (VSA) Problem
- 11 • Anti-Lock Brake System Problem
- 12 • Power Steering System (EPS) Problem”⁴

14 11. Since that initial post, dozens of other 2017 and 2018 CR-V owners
 15 reported the same issue.⁵

16 12. In addition, many drivers reported their complaints with Honda Sensing
 17 to the National Highway and Traffic Safety Administration (“NHTSA”):⁶

- 19 • “A SENSOR FAILURE DISPLAYS ON THE DASHBOARD SAYING
- 20 THAT SOME DRIVER ASSIST SYSTEMS CANNOT OPERATE:
- 21 RADAR OBSTRUCTED. HONDA OF FREDERICK TELLS ME IT'S A
- 22 WEATHER RELATED ISSUE AND MANUFACTURING ISSUE THAT
- 23 THEY CANNOT DO ANYMORE TO FIX THE PROBLEM.
- 24 HAVE HAPPEED 4 TIMES; RECORDED 3 TIMES: DRIVING IN RAIN
- 25 ON HIGHWAY, DRIVING IN SNOW IN TOWN, DRIVING NEXT DAY

26 ⁴ <http://www.crvownersclub.com/forums/137-2017-present-official-specs-features-etc-gen-5/135513-2017-crv-reporting-problems-multiple-electrical-systems-while-driving.html> (last visited
 27 May10, 2018).

28 ⁵ *See id.*

⁶ <https://www.nhtsa.gov/vehicle/2017/HONDA/CR-V/SUV/AWD> (last visited May10, 2018).

1 AFTER SNOW BUT NOTHING ON THE ROAD ON HIGHWAY. ALL
2 STRAIGHT WAYS.”

3 • “TRAVELING ON INTERSTATE AT THE SPEED LIMIT THE CAR
4 SUDDENLY BRAKED. ALL SAFETY SYSTEMS WERE ACTIVATED
5 AT THIS TIME. FORTUNATELY THERE WAS NO TRAFFIC IN
6 FRONT, BEHIND OR BESIDE. I GOT THE CAR UNDER CONTROL ,
7 TURNED ALL SYSTEMS OFF AND PROCEEDED. MESSAGES ON
8 DASH INDICATED FOUR SYSTEMS WERE INOPERATABLE.”

9 • “THE ADVANCED SAFETY SYSTEMS THAT RELY ON RADAR
10 (AUTO BRAKING, LANE DEPARTURE, ETC) ARE UNUSABLE IN
11 VERY LIGHT SNOW. THERE WAS BARELY ANYTHING ON THE
12 SENSOR COVER, YET THESE IMPORTANT SYSTEMS STOPPED
13 WORKING. THIS HAPPENED REPEATEDLY THROUGHOUT THE
14 DAY. WIPING THE SENSOR WOULD RESTORE FUNCTION, BUT
15 ONLY FOR A COUPLE OF MINUTES, AT BOTH LOW SPEEDS AND
16 ON THE HIGHWAY. THE VEHICLE HAS RECEIVED THE RECENT
17 SOFTWARE UPDATE THAT WAS SUPPOSED TO FIX THIS. (TSB
18 A17-064).”

19 • “I DROVE DOWN THE HIGHWAY 65 MILES PER HOUR WHEN
20 SUDDENLY THE CAR COMPUTER GOT STUCK AND THEN
21 STARTED AGAIN GIVING DIFFERENT ERRORS. DEACTIVATED
22 BRAKE SYSTEM, FRAME MISSING GASOLINE, FRAME ROAD
23 STABILIZATION SYSTEM DEACTIVATED AND FINALLY SPEED
24 CONTROL FRAME SPEED A FAULT.”

25 • “WHEN THE CRUISE CONTROL (ADAPTIVE CRUISE CONTROL) IS
26 ENGAGED, THE ACC CAN SOMETIMES JAM ON THE BRAKES
27 WITH NO OBSTACLE IN THE PATH.”

28 • “WAS DRIVING NORMALLY WHEN ABS, ADAPTIVE CRUISE
CONTROL, LANE KEEPING ASSIST, AUTOMATIC EMERGENCY
BREAKING, AND BREAKING SYSTEM "PROBLEM" LIGHTS LIT UP
ALL AT ONCE. LIMPED THE CAR HOME.”

- 1 • “DRIVING HIGHWAY SUDDENLY CAR SLOWS AND DASH READS
2 THAT ALL SYSTEMS- BRAKES, STEERING, AND, ETC FAILED.
3 PULLED CAR OFF ROAD SAFETY. SHUT CAR OFF.RESTARTED.
4 PROBLEM WENT AWAY. CHECKED ON HONDA OWNERS
5 WEBSITE. THIS IS AN ONGOING PROBLEM WITH NO FIX. SCARY
6 WHEN ALL SYSTEMS COULD BE COMPROMISED.”

7 13. Honda’s conduct is in breach of express and implied warranties, the
8 Magnuson-Moss Warrant Act, 15 U.S.C. § 2301, *et seq.* (the “MMWA”), constitutes a
9 violation of the California Unfair Competition Law, Cal. Bus. & Prof. Code § 17200,
10 *et seq.* (the “UCL”), a violation of the California Consumers Legal Remedies Act,
11 Cal. Civ. Code § 1750, *et seq.* (the “CLRA”), and violates other consumer protection
12 statutes.
13

14 14. Honda has and will continue to benefit from its unlawful conduct – by
15 selling more vehicles, at a higher price, and avoiding warranty obligations – while
16 consumers are harmed at the point of sale as their vehicles continue to suffer from
17 unremedied defect with the Honda Sensing safety and driver-assistive system. Had
18 Plaintiffs and other proposed class members known about the defect at the time of
19 purchase or lease, they would not have bought or leased the Class Vehicles, or would
20 have paid substantially less for them.
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23 15. To remedy Honda’s unlawful conduct, Plaintiffs, on behalf of proposed
24 class members, seek damages and restitution from Honda, as well as notification to
25 class members about the defect.
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PARTIES

16. Plaintiff Kathleen A. Cadena is, and at all times mentioned herein was, an adult individual residing in San Antonio, Texas.

17. Plaintiff Mukeshbhai Patel is, and at all times mentioned herein was, an adult individual residing in Cleveland, Tennessee.

18. Plaintiff Steven Geiger is, and at all times mentioned herein was, an adult individual residing in Canon City, Colorado.

19. Plaintiff Erick Ferguson is, and at all times mentioned herein was, an adult individual residing in Covina, California.

20. Defendant American Honda Motor Co., Inc. is headquartered at 1919 Torrance Boulevard, Torrance, California 90501-2746.

JURISDICTION AND VENUE

21. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1332(d) of the Class Action Fairness Act of 2005 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) there is minimal diversity because at least one Plaintiff and Honda are citizens of different states.

22. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b) because Honda resides in this District and a substantial part of the events or omissions giving rise to Plaintiffs' claims occurred in this District.

FACTUAL ALLEGATIONS

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23. Defendant American Honda Motor Co., Inc., is the manufacturer, distributor, and warrantor of all Class Vehicles sold and leased within the United States.

24. In its online marketing materials⁷ and in its marketing brochure⁸ for the Class Vehicles, Defendant advertised that Class Vehicles are equipped with “Honda Sensing®,” “an intelligent suite of safety and driver-assistive technologies designed to alert you to things you might miss while driving.”

25. Specifically, Honda Sensing includes “Collision Mitigation Braking System™ (CMBS™),” “Road Departure Mitigation System (RDM),” “Adaptive Cruise Control (ACC) with Low-Speed Follow,” and “Lane Keeping Assist System (LKAS).”⁹

26. Honda Sensing is standard equipment on the following 2017-2018 Honda CR-V models: the EX, EX-L and the Touring.¹⁰

27. These features are designed and promoted to avoid accidents or greatly minimize the effects of a collision: the Collision Mitigation Braking System “alert[s] the driver of a potential collision and take[s] steps to help mitigate the severity of a

⁷ <https://automobiles.honda.com/cr-v#specifications> (last visited May 10, 2018).
⁸ <https://automobiles.honda.com/-/media/Honda-Automobiles/Vehicles/2017/CR-V/Brochures/weird/MY17CRV-Wave2-Reprint.pdf> (last visited July 17, 2018).
⁹ <https://automobiles.honda.com/cr-v#specifications> (last visited May 10, 2018).
¹⁰ *Id.*

1 frontal collision if the system determines it to be unavoidable”¹¹; the Road Departure
2 Mitigation “[a]lerts and helps to assist you when the system detects a possibility of
3 your vehicle unintentionally crossing over detected lane markings and/or leaving the
4 roadway altogether”; Adaptive Cruise Control (ACC) with Low-Speed Follow
5 “[h]elps maintain a constant vehicle speed and a set following interval behind a
6 vehicle detected ahead of yours and, if the detected vehicle comes to a stop, can
7 decelerate and stop your vehicle”¹²; and Lane Keeping Assist System, which
8 “[p]rovides steering input to help keep the vehicle in the middle of a detected lane and
9 provides tactile and visual alerts if the vehicle is detected drifting out of its lane.”¹³
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13 28. Prior to purchasing their vehicles, Plaintiffs read and relied upon Honda’s
14 representations in its marketing materials and its marketing brochure regarding the
15 Honda Sensing safety and driver-assistive system.
16

17 29. Based on information and belief, Honda created, authorized, approved,
18 and disseminated its online marketing materials and its marketing brochure about
19 Class Vehicles’ Honda Sensing safety and driver-assistive system out of its Torrance,
20 California headquarters to all United States purchasers or lessees of the Class
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25 ¹¹ <http://owners.honda.com/vehicles/information/2018/CR-V/features/Collision-Mitigation-Braking-System> (last visited Apr. 11, 2018).

26 ¹² <http://owners.honda.com/vehicles/information/2018/CR-V/features/Adaptive-Cruise-Control/2>
27 (last visited Apr. 11, 2018).

28 ¹³ <http://owners.honda.com/vehicles/information/2018/CR-V/features/Lane-Keeping-Assist-System>
(last visited Apr. 11, 2018).

1 Vehicles, and Honda conducts its sales and service operations out of its Torrance,
2 California headquarters.¹⁴
3

4 30. Further, prior to purchasing their vehicles, Honda's authorized dealers
5 informed and demonstrated to Plaintiffs Honda Sensing safety and driver-assistive
6 system, and Plaintiffs relied on such representations in their decision to purchase their
7 vehicles.
8

9 31. A functional Honda Sensing safety and driver-assistive system was
10 material to Plaintiffs' decision to purchase their vehicles.
11

12 32. Prior to purchasing their vehicles, Plaintiffs relied upon Honda's
13 representations of a New Vehicle Limited Warranty that accompanied the sale of their
14 vehicles, and such representations were material to Plaintiffs' decision to purchase
15 their vehicles.
16

17 33. Specifically, each Class Vehicle sale or lease is accompanied with
18 Honda's 3-year / 36,000-mile New Vehicle Limited Warranty.
19

20 34. The terms of Honda's New Vehicle Limited Warranty are contained in
21 the warranty booklet that Plaintiffs and all class members received at the time they
22 purchased or leased the Class Vehicles.
23

24 35. Honda's warranty booklet sets forth the terms of its New Vehicle Limited
25 Warranty as follows:¹⁵
26

27 _____

28 ¹⁴ See <https://honda.com/operations> (last visited July 17, 2018); see https://www.honda.com/-/media/Honda-Homepage/PDF/Honda_2017_Digital_FactBook.pdf (last visited July 17, 2018).

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General Warranty Provisions

The warranty coverages in this booklet are offered only to the owner or lessee of a 2017 Honda automobile. To be covered, the vehicle must be distributed by American Honda through the Honda Automobile Division, and sold or leased by a Honda automobile dealer in the United States, Puerto Rico, the U.S. Virgin Islands, Guam, and the Commonwealth of the Northern Mariana Islands.

* * *

New Vehicle Limited Warranty

Your vehicle is covered for 3 years or 36,000 miles, whichever comes first. Some parts may have separate coverage under other warranties described in this book.

Warranty Coverage

Honda will repair or replace any part that is defective in material or workmanship under normal use.

* * *

How to Get Warranty Service

You should take your vehicle along with proof of the purchase date to a Honda automobile dealer during normal service hours.

36. Unbeknownst to Honda’s consumers, Class Vehicles are also sold with defective millimeter wave radar software that causes repeat intermittent and unexpected failure of the Class Vehicle’s Honda Sensing safety and driver-assistive system.

¹⁵ See http://owners.honda.com/Documentum/Warranty/Handbooks/AWL_02971_2017_Honda_Warranty_Basebook_KA_FINAL.pdf (last visited July 17, 2018). Honda’s New Vehicle Limited Warranty terms for the 2018 Honda CR-V vehicles are substantially the same. See http://owners.honda.com/Documentum/Warranty/Handbooks/2018_Honda_Warranty_Basebook_A_WL05251_FINAL.pdf (last visited July 18, 2018).

1 37. Honda’s service department in Torrance, California, admitted this defect
2 exists by alerting its authorized dealers through a Technical Service Bulletin (“TSB”)
3
4 No. 17-064 titled “MID Displays ACC, CMBS, LKAS, RDM, Brake Warnings and
5 Other Listed Symptoms” that “an internal issue with the millimeter wave radar
6 software [...] may lead to one or more of the following symptoms:
7

- 8 • The millimeter wave radar is improperly calibrated, resulting in DTC P2583-
9 76 (temporary stop of integrated driver support system [misalignment
10 millimeter wave radar]).
- 11 • Front radar blindness due to severe weather conditions (rain, snow, fog, etc.)
12 may trigger a sporadic false Radar Obstructed message on the MID.
- 13 • The vehicle speed fluctuates at highway speeds when adaptive cruise control
14 is set.
- 15 • DTC C0051-54 (steering angle neutral position learning incomplete),
16 U0416-68 (brake actuator malfunction), and U0416-92 (temporary stop of
17 integrated driver support system [rejected control request by VSA system])
18 are set after the battery is replaced, disconnected, or jumped.
- 19 • During radar aiming, the Radar Obstructed message appears on the MID
20 throughout the aiming procedure.
- 21 • During radar aiming, 4 and No Target are not displayed on the MID.
- 22 • DTC B2A60-98 (multipurpose camera unit temperature too high) is set.”
23

24 38. According to Honda, the millimeter wave radar software issues affect
25 certain 2017 Honda CR-V vehicles in the following trim: EX, EX-L, and Touring.

26 39. As corrective action, Honda instructs its dealers, who are its agents for
27 vehicles repairs, to update the Class Vehicle’s millimeter wave radar unit software.
28

1 40. However, as evident from Plaintiffs’ experiences and those of other
2 consumers, the software update fails to correct the Honda Sensing defect or Honda’s
3 dealers failed or refused even to perform such corrective action.

5 41. But it is not only lack of repair that keeps owners of such Class Vehicles
6 frustrated, but that when Honda Sensing system malfunctions, it does so abruptly,
7 without warning, while the Class Vehicles are in motion on a public roadway.

9 42. The very system that was designed to keep drivers safe is in fact making
10 them *less safe* by detracting their attention.

12 43. Indeed, Plaintiff Cadena’s 2017 Honda CR-V Touring braked
13 automatically, fluctuated its highway speed when adaptive cruise control was set,
14 despite the fact that there was no reason for her vehicle to slow down. As a result of
15 this unprompted behavior and error message, Plaintiff Cadena was scared, concerned,
16 and feared that her car might malfunction if she continued to drive it on the highway,
17 and caused her to rent another vehicle when she undertook a road trip to another state.

20 44. Honda is, of course, currently aware that the Honda Sensing safety and
21 driver-assistive system in Class Vehicles is malfunctioning in record numbers. But
22 other than instructing its dealers to perform a software update, which does not cure the
23 defect, Honda has no fix.

25 45. To add insult to an injury, Honda dealers would even refuse a repair if
26 the Honda Sensing safety and driver-assistive system defect did not manifest itself at
27 the time the Class Vehicle was presented to the dealer for repair.

1 46. Honda has never disclosed the Honda Sensing system defect to
2 consumers – through its dealerships or otherwise. It has not even stopped selling CR-
3 V vehicles with defective Honda Sensing safety and driver-assistive system; it
4 continues to sell them – without including any warning – as both new vehicles and
5 used vehicles.
6
7

8 **ALLEGATIONS APPLICABLE TO PLAINTIFF CADENA**

9 47. On or about August 24, 2017, Cadena purchased a new 2017 Honda CR-
10 V Touring vehicle, Vehicle Identification Number 5J6RW1H95HL016505 (the
11 “Cadena Vehicle”) from Gillman Honda San Antonio in San Antonio, Texas, an
12 authorized dealership of Honda (hereafter “Gillman Honda”), primarily for her
13 personal, family, or household purposes.
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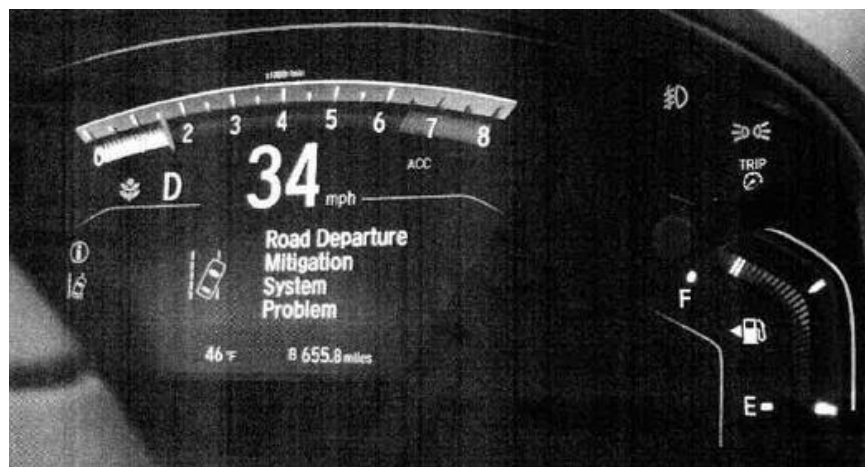
16 48. The Cadena Vehicle came equipped with the Honda Sensing safety and
17 driver-assistive system.
18

19 49. At the time Cadena purchased the Cadena Vehicle, Gillman Honda made
20 representations as to the Cadena Vehicle’s performance and quality and assured
21 Cadena that it was accompanied by Honda’s New Vehicle Limited Warranty and was
22 free from defects of workmanship.
23

24 50. Thereafter, continuing malfunctions, defects, and problems have plagued
25 the Cadena Vehicle.
26

27 51. On December 27, 2017, Cadena presented the Cadena Vehicle for repair
28 to Gillman Honda and complained that, as she was driving, the Cadena Vehicle

1 instrument cluster suddenly displayed an alert: “Road Departure Mitigation System
2 Problem.” See Illustration 1.
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12 Illustration 1

13 52. Cadena further complained that the Cadena Vehicle alerted her to a loss
14 of radar signal and problems with other Honda Sensing safety features.
15

16 53. Gillman Honda advised Cadena that Honda was aware of such issues and
17 such issues were under investigation, and that Honda instructed Gillman Honda not to
18 attempt any repairs except to re-aim the radar.
19

20 54. The Cadena Vehicle was ready for pick up on January 2, 2018.

21 55. Despite such repair attempt by Gillman Honda, the Cadena Vehicle
22 continues to suffer from the same nonconformity and intermittently alerts Cadena that
23 Honda Sensing safety and driver-assistive system is experiencing a problem.
24

25 56. In addition, on occasion, when set on cruise control, the Cadena Vehicle
26 accelerated and slowed down without driver prompt, even though there was no
27 obstruction ahead of the vehicle.
28

1 57. Yet, on another occasion, when driving on the highway, the Cadena
2 Vehicle suddenly instructed Cadena to apply breaks, even though another vehicle was
3 at least fifty (50) feet ahead of the Cadena Vehicle.
4

5 58. The defects experienced by Cadena substantially impair the use, value,
6 and safety of the Cadena Vehicle to her.
7

8 59. Cadena could not reasonably have discovered said nonconformities prior
9 to her acceptance of the Cadena Vehicle.
10

11 **ALLEGATIONS APPLICABLE TO PLAINTIFF PATEL**

12 60. On or about June 16, 2017, Patel purchased a 2017 Honda CR-V EX-L
13 vehicle, Vehicle Identification Number 5J6RW2H87HL041869 (the “Patel Vehicle”)
14 from Economy Honda Superstore in Chattanooga, Tennessee, an authorized
15 dealership of Honda (hereafter “Economy Honda”), primarily for his personal, family,
16 or household purposes.
17

18 61. Patel Vehicle came equipped with Honda Sensing safety and driver-
19 assistive system.
20

21 62. At the time Patel purchased the Patel Vehicle, Economy Honda made
22 representations as to the Patel Vehicle’s performance and quality and assured Patel
23 that it was accompanied by Honda’s New Vehicle Limited Warranty and was free
24 from defects of workmanship.
25

26 63. Thereafter, continuing malfunctions, defects, and problems have plagued
27 the Patel Vehicle.
28

1 64. Since Patel purchased the Patel Vehicle and over the course of the year
2 2017, Patel’s Vehicle intermittently alerted Patel that various components of Honda
3 Sensing safety and driver-assistive system were experiencing a problem.
4

5 65. Eventually, on February 24, 2018, Patel presented the Patel Vehicle for
6 repair to Honda of Cleveland in Cleveland, Tennessee, an authorized dealership of
7 Honda (hereafter “Cleveland Honda”), and complained that as he was driving, the
8 Patel Vehicle instrument cluster suddenly displayed an alert: “Lane Keeping Assist
9 System Problem.” Patel further complained that the Patel Vehicle alerted him on prior
10 occasions of problems with Honda Sensing safety and driver-assistive system.
11
12

13 66. Cleveland Honda failed to duplicate Patel’s complaint, concluded that the
14 Patel Vehicle was operating as designed, and attempted no repairs.
15

16 67. The Patel Vehicle was ready for pick up on February 24, 2018.
17

18 68. Nevertheless, the Patel Vehicle continues to suffer from the same
19 nonconformity and intermittently alerts Patel that the Honda Sensing safety and
20 driver-assistive system is experiencing a problem, or that Patel Vehicle radar is
21 obstructed, even though there is no obstruction of the radar. *See* Illustration 2.
22



Illustration 2

1 69. The defects experienced by Patel substantially impair the use, value, and
2 safety of the Patel Vehicle to him.
3

4 70. Patel could not reasonably have discovered said nonconformities prior to
5 his acceptance of the Patel Vehicle.
6

7 **ALLEGATIONS APPLICABLE TO PLAINTIFF GEIGER**

8 71. On or about September 30, 2017, Geiger purchased a 2017 Honda CR-V
9 EX-L vehicle, Vehicle Identification Number 2HKRW2H89HH676134 (the “Geiger
10 Vehicle”) from Freedom Honda in Colorado Springs, Colorado, an authorized
11 dealership of Honda (hereafter “Freedom Honda”), primarily for his personal, family,
12 or household purposes.
13

14 72. The Geiger Vehicle came equipped with Honda Sensing safety and
15 driver-assistive system.
16

17 73. At the time Geiger purchased the Geiger Vehicle, Freedom Honda made
18 representations as to the Geiger Vehicle’s performance and quality and assured Geiger
19 that it was accompanied by Honda’s New Vehicle Limited Warranty and was free
20 from defects of workmanship.
21
22

23 74. Thereafter, continuing malfunctions, defects, and problems have plagued
24 the Geiger Vehicle.
25

26 75. On April 24, 2018, as Geiger’s spouse was driving the Geiger Vehicle,
27 the vehicle’s instrument cluster suddenly displayed the following alerts:
28

- 1 • Brake System Problem
- 2 • All Wheel Drive System Problem
- 3 • Tire Pressure Monitor Problem
- 4 • Electric Parking Brake Problem
- 5 • Road Departure Mitigation System Problem
- 6 • Collision Mitigation System Problem
- 7 • Lane Keeping Assist Problem
- 8 • Adaptive Cruise Control Problem
- 9 • Hill Start Assist Problem
- 10 • Vehicle Stability Assist (VSA) Problem
- 11 • Anti-Lock Brake System Problem
- 12 • Power Steering System (EPS) Problem

13
14 76. The very next day, on April 25, 2018, Geiger brought the Geiger Vehicle
15 to Freedom Honda and complained of the aforementioned faults.

16
17 77. Freedom Honda attempted a repair by clearing all fault codes and
18 concluded that the Geiger Vehicle system software was up to date.

19
20 78. Further, Freedom Honda advised Geiger that it was not aware of any
21 Technical Service Bulletins relating to the Honda Sensing safety and driver-assistive
22 system.

23
24 79. The Geiger Vehicle was ready for pick up on the same day.

25
26 80. However, several days later, the Geiger Vehicle again displayed the same
27 faults with its Honda Sensing safety and driver-assistive system.

28

1 81. The defects experienced by Geiger substantially impair the use, value,
2 and safety of the Geiger Vehicle to him.
3

4 82. Geiger could not reasonably have discovered said nonconformities prior
5 to his acceptance of the Geiger Vehicle.
6

7 **ALLEGATIONS APPLICABLE TO PLAINTIFF FERGUSON**

8 83. Sometime in March of 2017 Ferguson purchased a 2017 Honda CR-V
9 EX vehicle, Vehicle Identification Number 5J6RW1H5XHL011538 (the “Ferguson
10 Vehicle”) from Norm Reeves Honda Superstore in West Covina, California, an
11 authorized dealership of Honda (hereafter “Norm Reeves Honda”), primarily for his
12 personal, family, or household purposes.
13

14 84. The Ferguson Vehicle came equipped with Honda Sensing safety and
15 driver-assistive system.
16

17 85. At the time Ferguson purchased the Ferguson Vehicle, Norm Reeves
18 Honda made representations as to the Ferguson Vehicle’s performance and quality
19 and assured Ferguson that it was accompanied by Honda’s New Vehicle Limited
20 Warranty and was free from defects of workmanship.
21

22 86. Thereafter, continuing malfunctions, defects, and problems have plagued
23 the Ferguson Vehicle.
24

25 87. Around the time the Ferguson Vehicle reached 4,000 miles on its
26 odometer, Ferguson was driving the Ferguson Vehicle on the highway with a cruise
27 control engaged, when the Ferguson Vehicle suddenly braked hard and then engaged
28

1 its Lane Keeping Assist function forcing the Ferguson Vehicle into adjacent lane that
2 was occupied by a truck, nearly causing a collision.
3

4 88. Ferguson brought the Ferguson Vehicle to Norm Reeves Honda and
5 complained of the aforementioned faults.
6

7 89. Norm Reeves Honda attempted a repair by resetting Honda Sensing
8 safety and driver-assistive system and concluded that the Ferguson Vehicle was
9 operating as designed.
10

11 90. However, soon thereafter, the Ferguson Vehicle again exhibited the same
12 faults with its Honda Sensing safety and driver-assistive system and repeatedly
13 displayed a fault with Lane Keeping Assist and Road Departure Mitigation systems
14 and shook the steering wheel prompting Ferguson to correct his driving course, even
15 though Ferguson was travelling properly in the middle of the lane, repeatedly
16 instructed Ferguson to apply breaks and reduced its speed even though there was no
17 obstruction ahead, and Honda Sensing safety and driver-assistive system continued to
18 malfunction even after Ferguson disabled it.
19
20
21

22 91. Despite Ferguson presenting the Ferguson Vehicle to Norm Reeves
23 Honda for repair on at least two occasions, the Ferguson Vehicle continues to suffer
24 from the same nonconformity with its Honda Sensing safety and driver-assistive
25 system.
26

27 92. The defects experienced by Ferguson substantially impair the use, value,
28 and safety of the Ferguson Vehicle to him.

1 93. Ferguson could not reasonably have discovered said nonconformities
2 prior to his acceptance of the Ferguson Vehicle.
3

4 **CLASS ACTION ALLEGATIONS**

5 **A. The Class**

6 94. Plaintiffs bring this case as a class action on behalf of a nationwide class
7 pursuant to Fed. R. Civ. P. 23(a), 23(b)(2), and/or 23(b)(3).
8

9 **Nationwide Class:** All persons or entities in the United States who
10 bought or leased a Class Vehicle (the “Nationwide Class”).

11 95. Pursuant to Fed. R. Civ. P. 23(c)(5), Plaintiffs seek to represent the
12 following state classes only in the event that the Court declines to certify the
13

14 Nationwide Class:

15 **California Class:** All persons or entities in the state of California who
16 bought or leased a Class Vehicle (the “California Sub-Class”)

17 **Colorado Class:** All persons or entities in the state of Colorado who
18 bought or leased a Class Vehicle (the “Colorado Sub-Class”).

19 **Tennessee Class:** All persons or entities in the state of Tennessee who
20 bought or leased a Class Vehicle (the “Tennessee Sub-Class”).

21 **Texas Class:** All persons or entities in the state of Texas who bought or
22 leased a Class Vehicle (the “Texas Sub-Class”).
23

24 96. Defendant and its employees or agents are excluded from the Class.

25 **B. Numerosity**

26 97. Upon information and belief, each of the Classes are so numerous that
27 joinder of all members is impracticable. While the exact number and identities of
28

1 individual members of the Classes are unknown at this time, such information being
2 in the sole possession of Defendant and obtainable by Plaintiffs only through the
3 discovery process, Plaintiffs believe, and on that basis allege, that hundreds of
4 thousands of Class Vehicles have been sold and leased in each of the States that are
5 the subject of the Classes.
6
7

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

9 98. There are questions of law and fact common to the Class that
10 predominate over any questions affecting only individual Class members. These
11 questions include:
12

- 13 a. Whether the Class Vehicles were sold with defective Honda Sensing
14 safety and driver-assistive system that causes such systems to
15 intermittently malfunction;
- 16 b. Whether the Class Vehicles were sold with defective Honda Sensing
17 safety and driver-assistive system that causes such vehicles to
18 fluctuate their speed when adaptive cruise control is set;
- 19 c. Whether Honda knew about the above-described defect but failed to
20 disclose the problem and its consequences to its customers;
- 21 d. Whether Honda breached express warranties and MMWA when it
22 failed to repair the defect with the Honda Sensing safety and driver-
23 assistive system;
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- e. Whether Honda breached implied warranties and MMWA when it sold vehicles that contain defects with its Honda Sensing safety and driver-assistive system;
- f. Whether Honda violated the UCL;
- g. Whether Honda violated the CLRA;
- h. Whether Honda violated Colorado Consumer Protection Act;
- i. Whether Honda violated Tennessee Consumer Protection Act;
- j. Whether Honda violated Texas Deceptive Trade Practices Act;
- k. Whether Honda is liable for damages, and the amount of such damages;
- l. Whether Honda should be required to disclose the existence of the defect; and
- m. Whether Plaintiffs and class members are entitled to equitable relief including injunctive relief.

D. Typicality

99. The Plaintiffs’ claims are typical of the claims of the Classes since each Plaintiff purchased or leased a defective Class Vehicle, as did each member of the Classes. Furthermore, Plaintiffs and all members of the Classes sustained economic injuries arising out of Defendant’s wrongful conduct. Plaintiffs are advancing the same claims and legal theories on behalf of themselves and all absent Class members.

1 **E. Protecting the Interests of the Class Members**

2 100. Plaintiffs will fairly and adequately protect the interests of the Class and
3
4 have retained counsel experienced in handling class actions and claims involving
5 unlawful business practices. Neither Plaintiff nor their counsel has any interests
6 which might cause them not to vigorously pursue this action.
7

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

9 101. A class action is the superior method for the fair and efficient
10 adjudication of this controversy. The injury suffered by each individual Class
11 member is relatively small in comparison to the burden and expense of individual
12 prosecution of the complex and extensive litigation necessitated by Defendant's
13 conduct. It would be virtually impossible for members of the Class individually to
14 redress effectively the wrongs done to them. Even if the members of the Class could
15 afford such individual litigation, the court system could not. Individualized litigation
16 presents a potential for inconsistent or contradictory judgments. Individualized
17 litigation increases the delay and expense to all parties, and to the court system,
18 presented by the complex legal and factual issues of the case. By contrast, the class
19 action device presents far fewer management difficulties, and provides the benefits of
20 single adjudication, an economy of scale, and comprehensive supervision by a single
21 court. Upon information and belief, members of the Classes can be readily identified
22 and notified based on, inter alia, Defendant's vehicle identification numbers, warranty
23 claims, registration records, and database of complaints.
24
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1 102. Defendant has acted, and refused to act, on grounds generally applicable
2 to the Classes, thereby making appropriate final equitable relief with respect to the
3 Classes as a whole.
4

5 **CHOICE OF LAW ALLEGATIONS**

6 103. It is appropriate to apply California law to the nationwide claims because
7 California’s interest in this litigation exceeds that of any other state. Honda does
8 substantial business in California, its principal offices are located in California, and it
9 maintains over 100 authorized dealerships in California –more than any other state.
10

11 104. The conduct that forms the basis for each and every class member’s
12 claims against Honda emanated from Honda’s headquarters in Torrance, California.
13 Honda’s marketing department, warranty department, customer affairs department,
14 and engineering and design analysis groups are all located in Torrance, California, and
15 it is those departments which were responsible for the decision to conceal the Honda
16 Sensing safety and driver-assistive system defect from Honda’s customers and to
17 systematically deny or fail to repair resulting nonconformities with Honda Sensing
18 safety and driver-assistive system.
19

20 105. The State of California also has the greatest interest in applying its law to
21 class members’ claims. Its governmental interests include not only an interest in
22 compensating resident consumers under its consumer protection laws, but also under
23 the State’s interest in using its laws to regulate a resident corporation and preserve a
24 business climate free of deceptive practices.
25
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1 111. 15 U.S.C. § 2304(a)(1) requires Defendant, as a warrantor, to remedy any
2 defect, malfunction or nonconformance of the Class Vehicles within a reasonable time
3 and without charge to the Plaintiffs and class members.
4

5 112. The Defendant’s failure and/or refusal to repair the Class Vehicles’
6 Honda Sensing safety and driver-assistive system within the applicable warranty
7 period constitutes a breach of the written and implied warranties applicable to the
8 Class Vehicles.
9

10 113. Despite repeated demands, Defendant has failed to remedy the Class
11 Vehicles’ defects within a reasonable time, and/or a reasonable number of attempts,
12 thereby breaching the written and implied warranties applicable to the Class Vehicles.
13
14

15 114. As a result of Defendant’s breaches of the written and implied warranties,
16 and Defendant’s failure to remedy the same within a reasonable time, Plaintiffs and
17 class members have suffered damages.
18

19 **SECOND CAUSE OF ACTION**

20 **Breach of Express Warranty under Cal. Comm. Code § 2313, or, in the**
21 **Alternative, under Colo. Rev. Stat. Ann. § 4-2-313, Tenn. Code Ann.**
22 **§ 47-2-313, and Tex. Bus. & Com. Code Ann. § 2.313**
(On Behalf of the Nationwide Class or, in the Alternative, the State Sub-Classes)

23 115. Plaintiffs incorporate by reference all of the above paragraphs of this
24 Complaint as though fully stated herein.
25

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

1 to be defective in material or workmanship under normal use and maintenance,
2 including the Honda Sensing safety and driver-assistive system.
3

4 117. In addition, in connection with the sale of the Class Vehicles, Defendant
5 made the following express warranties to Plaintiffs and class members:

- 6 a. The Class Vehicles were fit for the purposes of safe, reliable, and
7 attractive transportation;
- 8 b. The Class Vehicles were of good, sound, and merchantable quality;
- 9 c. The Class Vehicles were free from defective parts and workmanship;
- 10 d. The Class Vehicles were so engineered and designed as to function
11 without requiring unreasonable maintenance and repairs;
- 12 e. In the event the Class Vehicles were not free from defective parts or
13 workmanship as set forth above, the Defendant would repair or
14 replace same without cost to Plaintiffs; and
- 15 f. That any defects or non-conformities would be cured within a
16 reasonable time.
17
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22 118. Plaintiffs and class members relied on Defendant's warranties when they
23 agreed to purchase or lease the Class Vehicles and Defendant's warranties were part
24 of the basis of the bargain.
25

26 119. Defendant breached these express warranties in that the Class Vehicles
27 suffer from the above-described defects with Honda Sensing safety and driver-
28

1 assistive system, which substantially impair the Class Vehicles' use, safety, and value
2 to the Plaintiffs and class members.
3

4 120. Plaintiffs and class members have given Defendant reasonable
5 opportunities to cure said defects, but Defendant has been unable and/or has refused to
6 do so within a reasonable time.
7

8 121. As a result of said nonconformities, Plaintiffs and class members cannot
9 reasonably rely on the Class Vehicles for the ordinary purpose of safe, comfortable,
10 and efficient transportation.
11

12 122. The Plaintiffs and class members could not reasonably have discovered
13 said nonconformities with the Class Vehicles prior to Plaintiffs' and class members'
14 acceptance of the Class Vehicles.
15

16 123. The Plaintiffs and class members would not have purchased the Class
17 Vehicles, or would have paid less for the Class Vehicles, had they known, prior to
18 their respective time of purchase or lease, that Honda Sensing components did not
19 function as advertised and warranted.
20

21 124. As a result of Defendant's breach of express warranties, Plaintiffs and
22 class members have been damaged in an amount that is the difference between the
23 value of Class Vehicles if they had possessed the qualities and attributes represented
24 and the value of the Class Vehicles Plaintiff and class members actually received.
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THIRD CAUSE OF ACTION

**Breach of Implied Warranty Pursuant to Song-Beverly
Consumer Warranty Act – Cal. Civ. Code §§ 1792 and 1791.1, *et seq.*
(On Behalf of the Nationwide Class, or in the Alternative, the California Sub-Class)**

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

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

127. The Class Vehicles were subject to implied warranties of merchantability running from the Defendant to the Plaintiffs and class members.

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

129. Defendant breached the implied warranty of merchantability in that the Class Vehicles suffer from the above-described defects with Honda Sensing safety and driver-assistive system and thus were not in merchantable condition when the Plaintiffs and class members purchased or leased them, or at any time thereafter, and the Class Vehicles are unfit for the ordinary purposes for which such vehicles are used.

130. As a result of Defendant’s breach of the applicable implied warranties, owners and lessees of the Class Vehicles suffered an ascertainable loss of money, property, and/or value of their Class Vehicles. Additionally, as a result of the Honda Sensing safety and driver-assistive system defect, Plaintiffs and the class members were harmed and suffered actual damages in that the Class Vehicles’ Honda Sensing

1 safety and driver-assistive system is substantially certain to fail before and after the
2 expiration of applicable warranties.

3
4 131. Defendant's actions, as complained of herein, breached the implied
5 warranty that the Class Vehicles were of merchantable quality and fit for such use in
6 violation of California Civil Code §§ 1792 and 1791.1.
7

8 **FOURTH CAUSE OF ACTION**

9 **Breach of Implied Warranty of Merchantability under Colo. Rev. Stat. Ann. § 4-
2-314 and Tex. Bus. & Com. Code Ann. § 2.314**

10 **(In Alternative, on Behalf of the Colorado and Texas Sub-Classes)**

11 132. Plaintiffs Cadena and Geiger (Plaintiffs for purposes of Colorado and
12 Texas Sub-class Counts) incorporate by reference all of the above paragraphs of this
13 Complaint as though fully stated herein.
14

15 133. Defendant is a merchant with respect to motor vehicles.

16 134. The Class Vehicles were subject to implied warranties of merchantability
17 running from the Defendant to the Plaintiffs and class members.
18

19 135. An implied warranty that the Class Vehicles were merchantable arose by
20 operation of law as part of the sale or lease of the Class Vehicles.
21

22 136. Defendant breached the implied warranty of merchantability in that the
23 Class Vehicles suffer from the above-described defects with Honda Sensing safety
24 and driver-assistive system and thus were not in merchantable condition when the
25 Plaintiffs and class members purchased or leased them, or at any time thereafter, and
26
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1 the Class Vehicles are unfit for the ordinary purposes for which such vehicles are
2 used.

3
4 137. As a result of Defendant's breach of the applicable implied warranties,
5 owners and lessees of the Class Vehicles suffered an ascertainable loss of money,
6 property, and/or value of their Class Vehicles. Additionally, as a result of the Honda
7 Sensing safety and driver-assistive system defect, Plaintiffs and the class members
8 were harmed and suffered actual damages in that the Class Vehicles' Honda Sensing
9 safety and driver-assistive system is substantially certain to fail before and after the
10 expiration of applicable warranties.
11
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13 138. Defendant's actions, as complained of herein, breached the implied
14 warranty that the Class Vehicles were of merchantable quality and fit for such use.
15

16 **FIFTH CAUSE OF ACTION**
17 **Violation of the Consumers Legal Remedies Act,**
18 **Cal. Civil Code §§ 1750, *et seq.***
19 **(On Behalf of the Nationwide Class, or in the Alternative, the California Sub-Class)**

20 139. Plaintiffs incorporate by reference all of the above paragraphs of this
21 complaint as though fully stated herein.

22 140. The California Consumers Legal Remedies Act, Cal. Civil Code §§ 1750,
23 *et seq.* ("CLRA") prohibits various deceptive practices in connection with the conduct
24 of a business providing goods, property, or services to consumers primarily for
25 personal, family, or household purposes. The self-declared purposes of the CLRA are
26 to protect consumers against unfair and deceptive business practices and to provide
27
28

1 efficient and economical procedures to secure such protection. Cal. Civil Code §
2 1760.
3

4 141. Defendant is a “person” as defined in Cal. Civil Code § 1761(c).

5 142. The Plaintiffs and each class member are “consumers” as defined in Cal.
6 Civil Code § 1761(d).
7

8 143. The Class Vehicles and the Honda Sensing safety and driver-assistive
9 system constitute “goods” and “services,” as defined by Cal. Civ. Code § 1761(a) and
10 (b).
11

12 144. Plaintiffs’ and class members’ purchases or leases of the Class Vehicles
13 constitute “transactions,” as defined by Cal. Civ. Code § 1761(e).
14

15 145. Plaintiffs and class members purchased or leased the Class Vehicles for
16 personal, family, and household purposes, as defined by Cal. Civ. Code § 1761(d).
17

18 146. Venue is proper under Cal. Civ. Code § 1780(d) because a substantial
19 portion of the conduct at issue occurred in this District. An affidavit establishing that
20 this Court is the proper venue for this action is attached below.
21

22 147. Defendant deceived consumers in that it misrepresented that the Honda
23 Sensing safety and driver-assistive system was functional in the Class Vehicles, when
24 in fact the Honda Sensing safety and driver-assistive system was not and continues to
25 not be functional.
26

27 148. Defendant deceived consumers in that it misrepresented that pursuant to
28 Honda’s written warranty “Honda will repair or replace any part that is defective in

1 material or workmanship under normal use,” when in fact Honda failed and/or refused
2 to repair the Honda Sensing safety and driver-assistive system and misrepresented that
3 such system is operating as designed.
4

5 149. Defendant’s misrepresentations and nondisclosures violated the CLRA in
6 the following manner:
7

- 8 a. In violation of Section 1770(a)(5), Defendant misrepresented that the
9 Class Vehicles had characteristics, benefits, or uses that they did not
10 have (representing the Class Vehicles were equipped with functional
11 Honda Sensing safety and driver-assistive system when they were
12 not);
13
14 b. In violation of Section 1770(a)(7), Defendant misrepresented that the
15 Class Vehicles were of a particular standard, quality, and/or grade
16 when they were of another (representing the Class Vehicles were
17 equipped with functional Honda Sensing safety and driver-assistive
18 system when they were not);
19
20 c. In violation of Section 1770(a)(14), Defendant misrepresented that the
21 Class Vehicles sale was accompanied by an express warranty
22 promising to correct all defects in material and workmanship where it
23 did not honor such promise (promising to repair the Class Vehicles’
24 dysfunctional Honda Sensing safety and driver-assistive system and
25 having failed and/or refused to repair);
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d. In violation of Section 1770(a)(16), Defendant misrepresented that the Class Vehicles were supplied in accordance with previous representations when they were not (representing the Class Vehicles were equipped with functional Honda Sensing safety and driver-assistive system when they were not).

150. Further, the Defendant violated California Civil Code § 1770(a)(5), (7), (14), and (16) when it sold or leased Plaintiffs and class members the Class Vehicles with knowledge that they contained defects with their Honda Sensing safety and driver-assistive system and knowingly concealed said defects from Plaintiffs and class members with the intent that Plaintiffs and class members rely upon its concealment.

151. Moreover, as alleged above, Defendant continues to conceal said defects from the Plaintiffs and class members after Plaintiffs and class members purchased or leased their vehicles by claiming that Class Vehicles are operating as designed and therefore do not warrant a repair despite knowing they were not free of defects.

152. Further, in connection with the sale or lease of Class Vehicles to the Plaintiffs and class members, Honda omitted material information about those vehicles which it was legally obligated to disclose. Honda has never informed Plaintiffs or class members – at the point of sale or otherwise – that Honda Sensing safety and driver-assistive system in Class Vehicles is defective and can cause sudden fault messages to be displayed on the Class Vehicles’ instrument cluster and for the

1 Class Vehicles to fluctuate their speed when set on cruise control, thereby making
2 such vehicles not safe, but more dangerous.
3

4 153. The Class Vehicle's faulty Honda Sensing safety and driver-assistive
5 system poses an unreasonable safety risk to consumers and other members of the
6 public with whom they share the road. Honda had exclusive knowledge of the defect
7 and has actively concealed it from consumers.
8

9 154. Defendant's misrepresentations and nondisclosures regarding the Class
10 Vehicles were material to Plaintiffs and class members because they viewed and relied
11 upon the Honda Sensing safety and driver-assistive system representations before
12 purchasing or leasing their Class Vehicles, and a reasonable person would have
13 considered those representations important in deciding whether or not to purchase or
14 lease the Class Vehicles and because Defendant had a duty to disclose the truth.
15
16

17 155. Plaintiffs and class members relied upon Defendant's material
18 misrepresentations and nondisclosures; and had Plaintiffs and class members known
19 the truth, they would have acted differently.
20
21

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

1 system when in fact they were not, and that it would repair any nonconformity with
2 such system, when in fact it failed and/or refused to do so.
3

4 161. Defendant’s practice of representing that the Class Vehicles were
5 equipped with functional Honda Sensing safety and driver-assistive system when they
6 were not, and Defendant’s practice of failure and/or refusal to honor its express
7 warranty in repairing all nonconformities with such system, violated the “unfair”
8 prong of the UCL because it was immoral, unethical, oppressive, unscrupulous,
9 unconscionable, and/or substantially injurious to Plaintiffs and class members.
10 Defendant’s practice was also contrary to public policy and the harm it caused to
11 consumers outweighed its utility, if any.
12
13
14

15 162. Defendant violated the “fraudulent” prong of the UCL by making
16 material misrepresentations that the Class Vehicles were equipped with functional
17 Honda Sensing safety and driver-assistive system when in fact they were not, and
18 further violated the “fraudulent” prong of the UCL by promising to repair any
19 nonconformity with such system pursuant to the terms of its express warranty, and not
20 honoring its promise. These material misrepresentations were likely to mislead
21 consumers.
22
23

24 163. Defendant further violated the UCL by representing the Class Vehicles to
25 be of good, merchantable quality, free of defects, when in fact they were not.
26

27 164. Plaintiffs and class members relied on Defendant’s material
28 misrepresentations regarding the Honda Sensing safety and driver-assistive system

1 and would not have paid for, or would not have paid as much for the Class Vehicles
2 had they known the truth.
3

4 165. Defendant is in the business of selling private automobiles and therefore
5 the violations are likely to affect the general public, now and in the future.
6

7 166. Defendant violated the law willfully and knowingly.

8 167. The Class Vehicles are worth less without the functioning Honda Sensing
9 safety and driver-assistive system.
10

11 168. As a result of Defendant's violations of the UCL, Plaintiffs have suffered
12 injury in fact and have lost money or property. Plaintiffs and class members
13 purchased or leased vehicles they would not otherwise have purchased or leased,
14 which continue to suffer from unremedied defects with Honda Sensing safety and
15 driver-assistive system and are left with vehicles of diminished value.
16

17 169. Accordingly, Plaintiffs seek an order enjoining Defendant from
18 committing such unlawful, unfair, and fraudulent business practices, and seek the full
19 amount of money Plaintiffs and class members paid for the Honda Sensing safety and
20 driver-assistive system and/or restitutionary disgorgement of profits from Defendant.
21

22 Plaintiff also seeks attorneys' fees and costs under Cal Code Civ. Proc. § 1021.5.
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SEVENTH CAUSE OF ACTION
Violation of Colorado Consumer Protection Act –
Colo. Rev. Stat. §§ 6-1-101, *et seq.*
(On Behalf of the Colorado Sub-Class)

170. Plaintiff Patel incorporates by reference all of the above paragraphs of this complaint as though fully stated herein.

171. Plaintiff Patel brings this Count on behalf of the Colorado Sub-Class.

172. Defendant is a “person” as defined by the Colorado Consumer Protection Act, Colo. Rev. Stat. § 6-1-102.

173. Colorado’s Consumer Protection Act (the “CCPA”) prohibits a person from engaging in a “deceptive trade practice,” including “knowingly mak[ing] a false representation as to the characteristics, ingredients, uses, benefits, alterations, or quantities of goods [...]” “represent[ing] that goods, good, services, or property are of a particular standard, quality, or grade, [...] if he knows or should know that they are of another;” and “advertis[ing] goods, services, or property with intent not to sell them as advertised.” Colo. Rev. Stat. § 6-1-105(1)(e), (g), and (i).

174. By failing to disclose and concealing the defective nature of the Honda Sensing safety and driver-assistive system from Colorado Plaintiff and other Colorado Sub-class members, Defendant violated the CCPA, as it represented that the Class Vehicles and their Honda Sensing safety and driver-assistive system had characteristics and benefits that they do not have; represented that the Class Vehicles and their Honda Sensing safety and driver-assistive system were of a particular

1 standard, quality, or grade when they were of another; advertised Class Vehicles with
2 the intent not to sell them as advertised; represented it would cure any warrantable
3 defect with the Class Vehicles and did not; and otherwise engaged in conduct likely to
4 deceive.
5

6 175. Defendant further deceived consumers in that it misrepresented that
7 pursuant to Honda's written warranty "Honda will repair or replace any part that is
8 defective in material or workmanship under normal use," when in fact Honda failed
9 and/or refused to repair the Honda Sensing safety and driver-assistive system and
10 misrepresented that such system is operating as designed.
11
12

13 176. Defendant's unfair and deceptive acts or practices occurred repeatedly in
14 Defendant's trade or business, were capable of deceiving a substantial portion of the
15 purchasing public, and imposed a safety risk on the public.
16

17 177. Defendant knew that the Class Vehicles and their Honda Sensing safety
18 and driver-assistive system suffered from an inherent defect, were defectively
19 designed or manufactured, and were not suitable for their intended use.
20

21 178. As a result of Defendant's omissions and/or misrepresentations, owners
22 and lessees of the Class Vehicles suffered an ascertainable loss of money, property,
23 and/or value of their Class Vehicles. Additionally, as a result of the Honda Sensing
24 safety and driver-assistive system defect and Honda's failure to honor the warranty,
25 Plaintiffs and the Class Members were harmed and suffered actual damages.
26
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1 179. Defendant’s conduct was the direct and proximate cause of Colorado
2 Plaintiff and other Colorado Sub-Class members’ injuries.
3

4 **EIGHTH CAUSE OF ACTION**
5 **Violation of Tennessee Consumer Protection Act –**
6 **Tenn. Code Ann. § 47-18-101, *et seq.***
7 **(In Alternative, on Behalf of the Tennessee Sub-Class)**

8 180. Plaintiff Geiger incorporates by reference all of the above paragraphs of
9 this complaint as though fully stated herein.

10 181. Plaintiff Geiger brings this Count on behalf of the Tennessee Sub-Class.

11 182. Plaintiff and the Tennessee Subclass are “natural persons” and
12 “consumers” within the meaning of Tenn. Code Ann. § 47-18-103(2).
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14 183. Defendant is a “person” within the meaning of Tenn. Code Ann. § 47-18-
15 103(2).
16

17 184. Defendant’s conduct complained of herein affected “trade,” “commerce”
18 or “consumer transactions” within the meaning of Tenn. Code Ann. § 47-18-103(19).
19

20 185. The Tennessee Consumer Protection Act (“Tennessee CPA”) prohibits
21 “[u]nfair or deceptive acts or practices affecting the conduct of any trade or
22 commerce,” including but not limited to: “Representing that goods or services have ...
23 characteristics, [or] ... benefits ... that they do not have...;” “Representing that goods
24 or services are of a particular standard, quality or grade ... if they are of another;”
25 “Advertising goods or services with intent not to sell them as advertised;” and
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1 “Engaging in any other act or practice which is deceptive to the consumer or any other
2 person.” Tenn. Code Ann. § 47-18-104.
3

4 186. By willfully failing to disclose and concealing the defective nature of the
5 Honda Sensing safety and driver-assistive system from Plaintiff Patel and other
6 Tennessee Sub-class members, Defendant violated the Tennessee CPA, as it
7 represented that the Class Vehicles and their Honda Sensing safety and driver-
8 assistive system had characteristics and benefits that they do not have; represented that
9 the Class Vehicles and their Honda Sensing safety and driver-assistive system were of
10 a particular standard, quality, or grade when they were of another; advertised Class
11 Vehicles with the intent not to sell them as advertised; represented it would cure any
12 warrantable defect with the Class Vehicles and did not; and otherwise engaged in
13 conduct likely to deceive.
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17 187. Defendant further deceived consumers in that it misrepresented that
18 pursuant to Honda’s written warranty “Honda will repair or replace any part that is
19 defective in material or workmanship under normal use,” when in fact Honda failed
20 and/or refused to repair the Honda Sensing safety and driver-assistive system and
21 misrepresented that such system is operating as designed.
22
23

24 188. In purchasing or leasing the Class Vehicles, Plaintiff Patel and the other
25 Tennessee Sub-Class members were deceived by Defendant’s failure to disclose that
26 Honda Sensing safety and driver-assistive system in the Class Vehicles was defective
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1 as described above, or that Defendant would not cure such defect as required under
2 applicable warranties.
3

4 189. Plaintiff Patel and Tennessee Sub-Class members reasonably relied upon
5 Defendant's false misrepresentations. They had no way of knowing that Defendant's
6 representations were false and gravely misleading.
7

8 190. Defendant's actions as set forth above occurred in the conduct of trade or
9 commerce.
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11 191. Defendant's unfair or deceptive acts or practices were likely to and did in
12 fact deceive reasonable consumers.
13

14 192. Defendant intentionally and knowingly misrepresented material facts
15 regarding the Class Vehicles with an intent to mislead Plaintiff Patel and Tennessee
16 Sub-Class members.
17

18 193. Defendant knew or should have known that its conduct violated the
19 Tennessee CPA.
20

21 194. Defendant owed Plaintiff Patel and Tennessee Sub-Class members a duty
22 to disclose the truth about its Honda Sensing safety and driver-assistive system defect
23 because Defendant:
24

- 25 a. Possessed exclusive knowledge that Honda Sensing safety and driver-
26 assistive system poses an unreasonable safety risk to consumers and
27 other members of the public with whom they share the road;
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- b. Intentionally concealed the foregoing from Plaintiff Patel and Tennessee Sub-Class members; and/or
- c. Made incomplete representations that Honda Sensing safety and driver-assistive system was functional and operated as designed in the Class Vehicles, while purposefully withholding material facts from Plaintiff Patel and Tennessee Sub-Class members that contradicted these representations.

195. Defendant had a duty to disclose that due to a software defect Honda Sensing safety and driver-assistive system in the Class Vehicles regularly and systematically malfunctions, causing (1) numerous warning messages to intermittently appear on the Class Vehicles' instrument clusters alerting drivers to a problem with Honda Sensing safety and driver-assist system, (2) the Class Vehicles to fluctuate their highway speed without warning when adaptive cruise control is set, and (3) Class Vehicles alerting drivers to apply brakes immediately although no obstruction is present, because Plaintiff Patel and Tennessee Sub-Class members relied on Defendant's material representations that the Class Vehicles they were purchasing or leasing were equipped with a functional Honda Sensing safety and driver-assistive system, free from defects.

196. Defendant's conduct proximately caused injuries to Plaintiff Patel and Tennessee Sub-Class members.

1 197. Plaintiff Patel and Tennessee Sub-Class members were injured and
2 suffered ascertainable loss, injury-in-fact, and/or actual damages as a proximate result
3 of Defendant's conduct in that Plaintiff Patel and Tennessee Sub-Class members
4 overpaid for their Class Vehicles and did not receive the benefit of their bargain, and
5 the Class Vehicles have suffered a diminution in value. These injuries are the direct
6 and natural consequence of Defendant's misrepresentations and omissions.
7

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9 198. Defendant's violations present a continuing risk to Plaintiff Patel and
10 Tennessee Sub-Class members as well as to the general public. Defendant's unlawful
11 acts and practices complained of herein affect the public interest.
12

13 199. Pursuant to Tenn. Code Ann. § 47-18-109(a), Plaintiff Patel and
14 Tennessee Sub-Class members seek monetary relief against Defendant measured as
15 actual damages in an amount to be determined at trial, treble damages as a result of
16 Defendant's willful or knowing violations, and any other just and proper relief
17 available under the Tennessee CPA.
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19
20 **NINTH CAUSE OF ACTION**
21 **Violation of Texas Deceptive Trade Practices Act –**
22 **Tex. Bus. & Com. Code §§ 17.41, *et seq.***
23 **(In Alternative, on Behalf of the Texas Sub-Class)**

24 200. Plaintiff Cadena incorporates by reference all of the above paragraphs of
25 this complaint as though fully stated herein.

26 201. Plaintiff Cadena brings this Count on behalf of the Texas Sub-Class.
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1 202. Plaintiff Cadena and the Texas Sub-Class are individuals, partnerships
2 and corporations with assets of less than \$25 million (or are controlled by corporations
3 and corporations with assets of less than \$25 million (or are controlled by corporations
4 or entities with less than \$25 million in assets). *See* Tex. Bus. & Com. Code § 17.41.

5 203. The Texas Deceptive Trade Practices-Consumer Protection Act (“Texas
6 DTPA”) provides a private right of action to a consumer where the consumer suffers
7 economic damage as the result of either (i) the use of false, misleading or deceptive
8 act or practice specifically enumerated in Tex. Bus. & Com. Code § 17.46(b); or (ii)
9 “an unconscionable action or course of action by any person.” Tex. Bus. & Com.
10 Code § 17.50(a)(2) & (3). The Texas DTPA declares several specific actions to be
11 unlawful, including: “(5) Representing that goods or services have sponsorship,
12 approval, characteristics, ingredients, uses, benefits, or qualities that they do not
13 have,” “(7) Representing that goods or services are of a particular standard, quality, or
14 grade, or that goods are of a particular style or model, if they are of another,” and (9)
15 advertising goods or services with intent not to sell them as advertised.” An
16 “unconscionable action or course of action,” means “an act or practice which, to a
17 consumer’s detriment, takes advantage of the lack of knowledge, ability, experience,
18 or capacity of the consumer to a grossly unfair degree.” Tex. Bus. & Com. Code §
19 17.45(5). As detailed herein, Defendant has engaged in an unconscionable action or
20 course of action and thereby caused economic damages to Plaintiff Cadena and the
21 Texas Sub-Class.
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1 204. By willfully failing to disclose and concealing the defective nature of the
2 Honda Sensing safety and driver-assistive system from Plaintiff Cadena and other
3 Texas Sub-Class members, Defendant violated the Texas DTPA, as it represented that
4 the Class Vehicles and their Honda Sensing safety and driver-assistive system had
5 characteristics and benefits that they do not have; represented that the Class Vehicles
6 and their Honda Sensing safety and driver-assistive system were of a particular
7 standard, quality, or grade when they were of another; advertised Class Vehicles with
8 the intent not to sell them as advertised; represented it would cure any warrantable
9 defect with the Class Vehicles and did not; engaging in acts or practices which, to a
10 consumer's detriment, takes advantage of the lack of knowledge, ability experience, or
11 capacity of the consumer to a grossly unfair degree; and otherwise engaged in conduct
12 likely to deceive.
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17 205. Defendant further deceived consumers in that it misrepresented that
18 pursuant to Honda's written warranty "Honda will repair or replace any part that is
19 defective in material or workmanship under normal use," when in fact Honda failed
20 and/or refused to repair the Honda Sensing safety and driver-assistive system and
21 misrepresented that such system is operating as designed.
22
23

24 206. In purchasing or leasing the Class Vehicles, Plaintiff Cadena and the
25 other Texas Sub-Class members were deceived by Defendant's failure to disclose that
26 Honda Sensing safety and driver-assistive system in the Class Vehicles was defective
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1 as described above, or that Defendant would not cure such defect as required under
2 applicable warranties.
3

4 207. Plaintiff Cadena and the other Texas Sub-Class members reasonably
5 relied upon Defendant's false misrepresentations. They had no way of knowing that
6 Defendant's representations were false and gravely misleading.
7

8 208. Defendant's actions as set forth above occurred in the conduct of trade or
9 commerce.
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11 209. Defendant's unfair or deceptive acts or practices were likely to and did in
12 fact deceive reasonable consumers.
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14 210. Defendant intentionally and knowingly misrepresented material facts
15 regarding the Class Vehicles with an intent to mislead Plaintiff Patel and Tennessee
16 Sub-Class members.
17

18 211. Defendant knew or should have known that its conduct violated the
19 Texas DTPA.
20

21 212. Defendant owed Plaintiff Patel and Tennessee Sub-Class members a duty
22 to disclose the truth about its Honda Sensing safety and driver-assistive system defect
23 because Defendant:
24

- 25 a. Possessed exclusive knowledge that Honda Sensing safety and driver-
26 assistive system poses an unreasonable safety risk to consumers and
27 other members of the public with whom they share the road;
28

- 1 b. Intentionally concealed the foregoing from Plaintiff Cadena and Texas
- 2 Sub-Class members; and/or
- 3
- 4 c. Made incomplete representations that Honda Sensing safety and
- 5 driver-assistive system was functional and operated as designed in the
- 6 Class Vehicles, while purposefully withholding material facts from
- 7 Plaintiff Cadena and Texas Sub-Class members that contradicted
- 8 these representations.
- 9

10 213. Defendant had a duty to disclose that due to a software defect, Honda

11 Sensing safety and driver-assistive system in the Class Vehicles regularly and

12 systematically malfunctions, causing (1) numerous warning messages to intermittently

13 appear on the Class Vehicles' instrument clusters alerting drivers to a problem with

14 Honda Sensing safety and driver-assist system, (2) the Class Vehicles to fluctuate

15 their highway speed without warning when adaptive cruise control is set, and (3) Class

16 Vehicles alerting drivers to apply brakes immediately although no obstruction is

17 present, because Plaintiff Cadena and Texas Sub-Class members relied on

18 Defendant's material representations that the Class Vehicles they were purchasing or

19 leasing were equipped with a functional Honda Sensing safety and driver-assistive

20 system, free from defects.

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26 214. Defendant's conduct proximately caused injuries to Plaintiff Cadena and

27 Texas Sub-Class members.

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- C. Money damages, in the form of a refund of the full contract price, including trade-in allowance, taxes, fees, insurance premiums, interest, and costs, and a refund of all payments made by Plaintiffs and class members on the subject contracts;
- D. Equitable relief including, but not limited to, replacement of the Class Vehicles with new vehicles, or repair of the defective Class Vehicles with an extension of the express warranties and service contracts which are or were applicable to the Class Vehicles, in the event that Plaintiffs are not found to be entitled to revocation;
- E. A declaration requiring Defendant to comply with the various provisions of the state and federal consumer protection statutes herein alleged and to make all the required disclosures;
- F. Incidental and consequential damages;
- G. Punitive damages;
- H. Reasonable attorneys' fees and costs;
- I. Pre-judgment and post-judgment interest, as provided by law;
- J. Plaintiffs demand that Defendant perform a recall, and repair all Class Vehicles; and
- K. Such other and further relief as this Court deems just and proper.

TRIAL BY JURY DEMANDED ON ALL COUNTS

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DATED: July 20, 2018

TRINETTE G. KENT

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

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AFFIDAVIT OF TRINETTE G. KENT

I, Trinette G. Kent, declare as follows:

1. I am an attorney with the law firm of Lemberg Law, LLC, counsel for Plaintiffs in this action. I am admitted to practice law in California and before this Court, and am a member in good standing of the State Bar of California. This declaration is made pursuant to California Civil Code section 1780(d). I make this declaration based on my research of public records and upon personal knowledge and, if called upon to do so, could and would testify competently thereto.

2. Venue is proper in this Court because Plaintiffs suffered injuries as a result of Defendant’s acts in this District, including, inter alia, Defendant’s act of creating, approving, and disseminating the above-referenced Honda Sensing safety and driver-assistive system online and printed marketing materials from its Torrance, California headquarters, which gave rise to this action and occurred in this District, and Defendant (1) is headquartered in this District, (2) is authorized and registered to conduct business in this District and has intentionally availed itself of the laws and markets of this District through the distribution and sale of its vehicles in this District, and (3) is subject to personal jurisdiction in this District.

3. Plaintiff Kathleen A. Cadena is a resident of Bexar County, Texas.

4. Plaintiff Mukeshbhai Patel is a resident of Bradley County, Tennessee.

5. Plaintiff Steven Geiger is a resident of Fremont County, Colorado.

6. Plaintiff Erick Ferguson is a resident of Los Angeles, California.

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7. Defendant is a California registered corporation with its principal place of business located at 1919 Torrance Boulevard, Torrance, California 90501-2746.

I declare under penalty of perjury under the laws of the United States and the State of California this 20th day of July, 2018, in Phoenix, Arizona, that the foregoing is true and correct.



Trinette G. Kent

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CERTIFICATE OF SERVICE

I, the undersigned, certify and declare that I am over the age of 18 years, and not a party to the above-entitled cause. I hereby certify that on July 20, 2018, a copy of the foregoing **FIRST AMENDED CLASS ACTION COMPLAINT** was filed electronically. Notice of this filing was sent by operation of the Court's electronic filing system to all parties indicated on the electronic filing receipt. All other parties will be served by regular U.S. Mail. Parties may access this filing through the Court's electronic filing system.

TRINETTE G. KENT

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