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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

DAVID KENNEDY, individually and on behalf
of all others similarly situated,

Plaintiff,

vs.

GENERAL MOTORS COMPANY, and DOES 1
through 10, inclusive,

Defendants.

Case No. 4:21-cv-09984

CLASS ACTION COMPLAINT

1. COMMON LAW FRAUD
2. VIOLATION OF CALIFORNIA UNFAIR
COMPETITION LAW, BUSINESS AND
PROFESSIONS CODE § 17200, *et seq.*
3. FALSE AND MISLEADING
ADVERTISING IN VIOLATION OF
BUSINESS AND PROFESSIONS CODE §
17500, *et seq.*
4. FAILURE TO RECALL/RETROFIT
UNDER CALIFORNIA LAW

DEMAND FOR JURY TRIAL

1 Plaintiff David Kennedy (“Plaintiff”) brings this action on behalf of himself, and all others
2 similarly situated, against Defendant General Motors Company (“Defendant” or “GM”) and Does
3 1 through 10, inclusive (collectively, “Defendants”). Plaintiff alleges the following based upon
4 information and belief, the investigation of counsel, and personal knowledge as to the factual
5 allegations pertaining to himself.

6 **INTRODUCTION**

7 1. Defendant is putting consumers’ safety at risk. Defendant falsely represents the 2020-
8 2022 Chevrolet Bolt EV and 2022 Chevrolet Bolt EUV vehicles (the “Class Vehicles”)¹ to be safe
9 and functional for normal use. In fact, the Class Vehicles are not safe and functional for normal use
10 as the batteries may ignite when the Class Vehicles are either fully charged or fall below seventy
11 (70) miles remaining mileage. Consumers also cannot park the Class Vehicles indoors overnight
12 due to the risk of fire. So far, Defendant has done nothing to remedy this issue. Simply put,
13 Defendant is prioritizing profits over the health and safety of consumers.



28 ¹ Plaintiff reserves the right to amend or add to the vehicle models included in the definition of Class Vehicles after conducting discovery.

1 made his purchase decision based on his belief that he would receive a vehicle that was safe and
2 functional. The Class Vehicle was valued at \$31,995. Per Plaintiff's lease agreement, Plaintiff has
3 paid \$271.65 per month for the Class Vehicle since his purchase in July 2021, in addition to the
4 initial down payment of \$6,000. These monthly payments have and will continue per the lease
5 agreement for thirty-five (35) months. Plaintiff entered into this lease agreement under the
6 assumption that he would be able to safely store, operate, and manage the Class Vehicle to fullest
7 battery and mileage capacity as needed.

8 9. Defendant, General Motors Company, is a Delaware corporation headquartered in
9 Detroit, Michigan. Defendant maintains its principal place of business at 300 Renaissance Ctr.
10 Detroit, Michigan 48265. Defendant, directly and through its agents, conducts business nationwide.
11 Defendant has substantial contacts with and receives substantial benefits and income from and
12 through the State of California. Defendant is the owner, manufacturer, and distributor of the Class
13 Vehicle, and is the company that created and/or authorized the false, misleading, and deceptive
14 representations for the Class Vehicles.

15 10. The true names and capacities, whether individual, corporate, associate or otherwise
16 of certain manufacturers, distributors, and/or their alter egos, sued herein as DOES 1 through 10
17 inclusive, are presently unknown to Plaintiff, who therefore sues these Defendants by fictitious
18 names. Plaintiff will seek leave of this Court to amend the Complaint to show their true names and
19 capacities when the same have been ascertained. Plaintiff is informed and believes and based
20 thereon alleges that DOES 1 through 10 were authorized to do and did business in Los Angeles
21 County. Plaintiff is further informed and believes and based thereon alleges that DOES 1 through
22 10 were and/or are, in some manner or way, responsible for and liable to Plaintiff for the events,
23 happenings, and damages hereinafter set forth below.

24 11. Plaintiff is informed and believes and based thereon alleges that at all times relevant
25 herein each of the Defendants was the agent, servant, employee, subsidiary, affiliate, partner,
26 assignee, successor-in-interest, alter ego, or other representative of each of the remaining
27 Defendants and was acting in such capacity in doing the things herein complained of and alleged.
28

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FACTUAL ALLEGATIONS COMMON TO ALL CLAIMS

I. DEFENDANT SEEKS TO CAPITALIZE ON THE GROWING U.S. “CLEAN” VEHICLE MARKET

17. The EV market in the United States is “expected to reach 6.9 million unit sales by 2025, up from 1.4 million unit sales forecast for 2020, due to government incentives driving EV ownership.”³

18. Defendant is one of the largest auto manufacturers in the world and is an industry leader in EV sales. In fact, Defendant plans to put “every driver in an electric vehicle on a scale previously unseen and [bring] the world to an all-electric future . . . [and] plan[s] to offer thirty (30) new electric vehicles (EVs) globally by 2025.”⁴

19. The key element of Defendant’s strategy is a new lithium-ion battery, called Ultium, that Defendant claims will give it engineering flexibility while reducing battery cell costs to less than \$100 per kilowatt-hour.⁵

II. DEFENDANT’S MISLEADING MARKETING

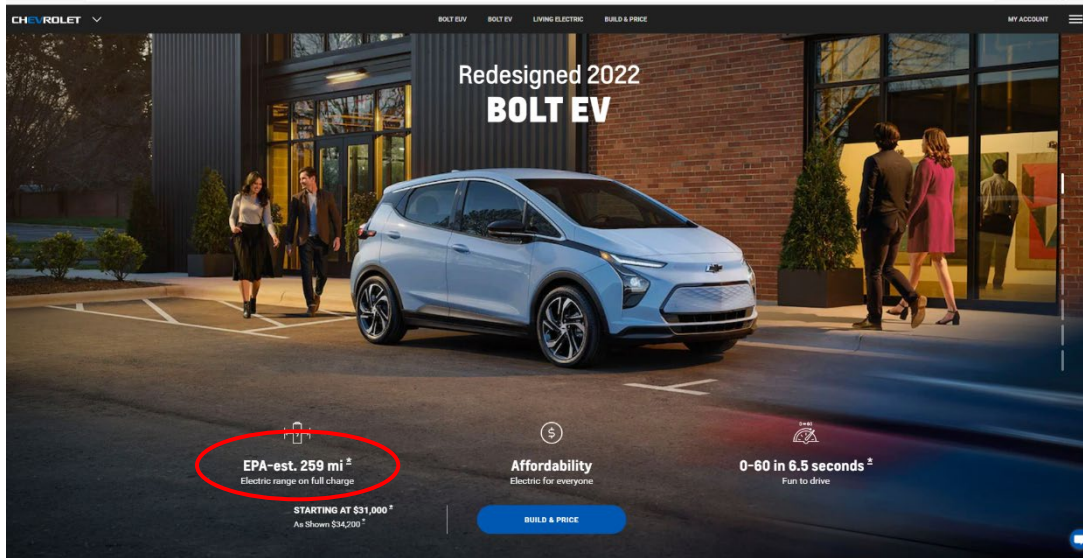
20. The safety and functionality of a vehicle is material to any consumer seeking to purchase that vehicle.

21. Accordingly, Defendant chose a marketing strategy that boasts a competitive mileage capacity (259 miles electric range on a full charge) to convey that consumers are receiving an electric vehicle that is able to maintain battery life for long distances. Such representations constitute an express warranty regarding the Class Vehicle’s capabilities.

³ *US EV market sales to rise to 6.9 million units by 2025: Frost & Sullivan*, S&P GLOBAL, <https://www.spglobal.com/platts/en/market-insights/latest-news/electric-power/111920-us-ev-market-sales-to-rise-to-69-million-units-by-2025-frost-amp-sullivan#:~:text=London%20%E2%80%94%20The%20US%20electric%20vehicles%20market%20is,Frost%20%26%20Sullivan%20said%20Nov.%2019.%20Not%20registered%3F> (last visited December 13, 2021).

⁴ See Defendant’s website, https://www.gm.com/commitments/electrification.html?ppc=MICROSOFT_70000001963580_71700000075931055_58700006500471849_p66451781569&d_src=313715&d_adsrc=4137267&d_campaign=71700000075931055&d_site=MICROSOFT&d_adgroup=58700006500471849&d_keyword=%27%27+gm+electric%22&gclid=281a5031429e114ea5d4317a3511006e&gclid=281a5031429e114ea5d4317a3511006e (last visited December 13, 2021).

⁵ Rosevear, John, *General Motors Will Answer Tesla With \$20 Billion Electric Vehicle Push*, THE MOTLEY FOOL, <https://www.fool.com/investing/2020/03/04/general-motors-will-answer-tesla-with-new-batterie.aspx> (last visited December 13, 2021).



22. Based on Defendant’s advertising, reasonable consumers believe that they are purchasing a vehicle that is functional and safe.

23. Plaintiff and other reasonable consumers of the Class Vehicles could not have reasonably understood or expected these representations to prove untrue at the point of sale.

24. Prior to the point of sale, the Class Vehicles do not allow for confirmation of the advertised features or the safety of the Class Vehicles.

25. Plaintiff expected the Class Vehicle to meet the stated long-range mileage capacity and battery usage.

III. THE CLASS VEHICLES ARE DANGEROUS

26. Approximately one month after Plaintiff leased the Class Vehicle, Defendant issued a recall notice, stating that the batteries may ignite when nearing a full charge. Specifically, Defendant warned that the Class Vehicles’ charge should not exceed 90%, the battery mileage should not fall below seventy (70) miles remaining, and the Class Vehicles should not be parked indoors overnight due to the risk of fire.

27. Defendant falsely represents the safety of the Class Vehicles as well as the expected battery usage and mileage capacity of the Class Vehicles. The marketing material for the Class Vehicles leads the reasonable consumer to believe he or she is purchasing an environmentally friendly vehicle that functions as a long-range vehicle, when, in reality, he or she cannot charge the

1 vehicles to their full battery capacity or drive the Class Vehicles for long distances due to fear of
2 falling below seventy (70) miles remaining on a single charge.

3 28. Plaintiff and the Class expected to use the Class Vehicles without the fear of the
4 Class Vehicles igniting and causing serious bodily harm or death.

5 **IV. DUE TO DEFENDANT’S MISLEADING MARKETING, PLAINTIFF AND THE**
6 **CLASS HAVE SUFFERED INCONVENIENCE AND ANXIETY**

7 29. Plaintiff has been forced to make unforeseen accommodations and take precautions
8 that interfere with his normal and expected use of the Class Vehicle, including but not limited to:
9 (1) only charging the Class Vehicle in the driveway during the morning through early afternoon
10 time frames when he can monitor and before the steep increase of kWh rates in peak time; (2) not
11 charging the Class Vehicle overnight due to fire risk, even though it is most convenient for Plaintiff,
12 which also limits the amount of charge that he can obtain; (3) only parking the vehicle at the far
13 end of his driveway, as far away from the garage and house as possible, to reduce the risk of fire;
14 (4) only parking the vehicle outdoors and exposing it to the elements at all times, resulting in paint
15 deterioration; (5) only using the vehicle for short distances due to limited charging capacity (i.e. no
16 more than 63%)⁶ and fear of the car overheating and lighting on fire if used for long distances; (6)
17 resorting to using other vehicles or obtaining rides for longer distance trips and accruing additional
18 fuel and/or related expenses; (7) installing smoke alarms in the garage to warn of any fire ignition
19 when the Vehicle is charging; (8) being forced to drive other vehicles when parking at locations
20 that require parking in a structure; (9) searching for outdoor parking away from other vehicles or
21 structures to avoid the risk of damaging others’ property.

22 30. As a result, Plaintiff’s use and enjoyment of the Class Vehicle has been severely
23 limited. Instead of utilizing the vehicle, or even saving money due to the vehicle being electric,
24 Plaintiff is forced to use other vehicles instead, spend more money on gas charges, and substantially
25 limit the use of the Class Vehicle.

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28 ⁶ Defendant’s warning that consumers should not charge the Vehicles past 90% drops the advertised mileage capacity
from 259 to 233.10 miles. Taking into consideration that consumers cannot allow the miles remaining on the Vehicle
to fall below 70 miles, the battery range falls further to 163.10 miles – that is, 62.97% of the advertised mileage.

1 36. The Class is comprised of tens of thousands of persons. The Class is so numerous
2 that joinder of all members is impracticable and the disposition of their claims in a class action will
3 benefit the parties and the Court.

4 37. There is a well-defined community of interest in the questions of law and fact
5 involved affecting the parties to be represented in that the Class was exposed to the same common
6 and uniform false and misleading advertising and omissions. The questions of law and fact common
7 to the Class predominate over questions which may affect individual Class members. Common
8 questions of law and fact include, but are not limited to, the following:

- 9 a. The true nature, safety, and actual mileage capacity of each Class Vehicle;
- 10 b. Whether the marketing, advertising, and other promotional materials for the Class
11 Vehicles are deceptive;
- 12 c. Whether Defendant misrepresented the approval of the United States Congress, and
13 California Legislature that the Class Vehicles are safe and can perform up to the
14 advertised miles;
- 15 d. Whether the Class Vehicles are unsafe for reasonably foreseeable use;
- 16 e. Whether Defendant's conduct is an unlawful business act or practice within the
17 meaning of Business and Professions Code section 17200, *et seq.*;
- 18 f. Whether Defendant's conduct is a fraudulent business act or practice within the
19 meaning of Business and Professions Code section 17200, *et seq.*;
- 20 g. Whether Defendant's conduct is an unfair business act or practice within the meaning
21 of Business and Professions Code section 17200, *et seq.*;
- 22 h. Whether Defendants' advertising is untrue or misleading within the meaning of
23 Business and Professions Code section 17500, *et seq.*;
- 24 i. Whether Defendant made false and misleading representations in its advertising and
25 marketing of the Class Vehicles;
- 26 j. Whether Defendant knew or should have known that the representations were false;
- 27 k. Whether Plaintiff and the Class paid more money for the Class Vehicles' perceived
28 attributes;

1 1. Whether Defendant committed common law fraud;

2 38. Plaintiff's claims are typical of the claims of the proposed Class, as the
3 representations and omissions made by Defendant are uniform and consistent and are contained in
4 advertisements that was seen and relied on by Plaintiff and Class Members.

5 39. Plaintiff will fairly and adequately represent and protect the interests of the proposed
6 Class. Plaintiff has retained competent and experienced counsel in class action and other complex
7 litigation.

8 40. Plaintiff and the Class have suffered injury in fact and have lost money as a result of
9 Defendant's false, deceptive, and misleading representations. Plaintiff purchased the Class Vehicle
10 because he wanted a safe and fuel-efficient electric vehicle with competitive mileage capabilities.
11 Plaintiff relied on Defendant's representations and would not have purchased the Class Vehicle if
12 he had known that the representations as described herein were false and misleading.

13 41. The Class is identifiable and readily ascertainable. Notice can be provided to such
14 purchasers using techniques and a form of notice similar to those customarily used in class actions
15 and by Internet publication, radio, newspapers, and magazines.

16 42. A class action is superior to other available methods for fair and efficient adjudication
17 of this controversy. The expense and burden of individual litigation would make it impracticable
18 or impossible for proposed members of the Class to prosecute their claims individually.

19 43. The trial and the litigation of Plaintiff's claims are manageable. Individual litigation
20 of the legal and factual issues raised by Defendant's conduct would increase delay and expense to
21 all parties and the court system. The class action device presents far fewer management difficulties
22 and provides the benefits of a single, uniform adjudication, economies of scale, and comprehensive
23 supervision by a single court.

24 44. Defendant has acted on grounds generally applicable to the entire Class, thereby
25 making final injunctive relief and/or corresponding declaratory relief appropriate with respect to
26 the Class as a whole. The prosecution of separate actions by individual Class members would create
27 the risk of inconsistent or varying adjudications with respect to individual members of the Class
28 that would establish incompatible standards of conduct for Defendant.

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1 45. Absent a class action, Defendant will likely retain the benefits of its wrongdoing.
2 Because of the small size of the individual Class members' claims, few, if any, Class members
3 could afford to seek legal redress for the wrongs complained of herein. Absent a representative
4 action, the Class members will continue to suffer losses and Defendant will be allowed to continue
5 these violations of law and to retain the proceeds of its ill-gotten gains.

6 **COUNT ONE**
7 **FRAUD**
8 **(Common Law)**

9 46. Plaintiff repeats and realleges the allegations set forth in the preceding paragraphs
10 and incorporates the same as if set forth herein at length.

11 **A. Affirmative Misrepresentation**

12 47. Plaintiff asserts this affirmative misrepresentation theory of fraud on behalf of
13 himself and the Nationwide Class or, in the alternative, on behalf of the State Class, against
14 Defendant.

15 48. Defendant willfully, falsely, and knowingly marketed the Class Vehicle as having the
16 range capability to reach 259-miles on a full charge. Through this deceptive marketing, Defendant
17 communicated to Plaintiff that the Class Vehicle was, among other things, environmentally friendly
18 and capable of long-range use.

19 49. This was a material fact, as mileage range is essential to the reasonable consumer's
20 decision-making process. Defendant's representations were false because the Class Vehicle in fact
21 contains a lithium-ion battery that causes the vehicle to overheat during pro-longed use, resulting
22 in a substantial reduction in the range capability of the Class Vehicle.

23 50. Defendant knew the representations were false and intended Plaintiff and Class
24 Members to rely on them.

25 51. Plaintiff decided to buy the Class Vehicle based in part on the false and misleading
26 representations described herein. Because Defendant's mileage range advertisements were part of
27 an extensive advertising campaign, and each Class Member was exposed to the advertisements, a
28 plausible inference of reliance can be made for the entire Class. (*In Re Tobacco II Cases*, 207 P.3d
20, 40 (Cal. 2009)).

1 **B. Fraudulent Concealment: Mileage Range and Battery Safety**

2 52. Plaintiff asserts this fraudulent concealment theory of fraud on behalf of himself and
3 the Nationwide Class or, in the alternative, on behalf of the State Class, against Defendant.

4 53. Again, Defendant marketed the Class Vehicle as having the range capability to reach
5 259-miles on a full charge, which not only communicated that the Class Vehicle was
6 environmentally friendly, but also that it was capable of long-range use.

7 54. The mileage range was also the centerpiece of Defendant's marketing efforts and
8 featured prominently in virtually every advertisement and consumer communication. Through
9 dealership training materials leading to representations at the point of sale, vehicle brochures, the
10 manufacturer websites, print advertisements, television advertisements, and other avenues,
11 Defendant pervasively and consistently represented that the Class Vehicle had the best-in-class fuel
12 economy and touted its specific mileage range on a single charge, as well as its supposedly superior
13 battery, that was presumably safe.

14 55. Defendant concealed and suppressed the fact that the Class Vehicle could not achieve
15 its expected range and safety due to the overheating battery. Instead, Plaintiff and Class Members
16 would only be able to charge the Class Vehicle to 90% and use the Class Vehicle only if the use
17 did not exceed 70 miles remaining. This was a material fact about which the Defendant had
18 knowledge, and which it concealed from Plaintiff and Class Members to mislead them.

19 56. Knowledge and information regarding the Class Vehicles' defects were in the
20 exclusive and superior possession of Defendant and their dealers, and were not provided to Plaintiff
21 and Class Members, who could not reasonably discover the defect through due diligence.

22 57. Plaintiff and Class Members did not know this fact and could not have discovered it
23 through reasonably diligent investigation.

24 58. Defendant had a duty to disclose that the battery in the Class Vehicle is unsafe at the
25 point of purchase because (1) Defendant had exclusive knowledge of the material, suppressed facts;
26 (2) Defendant took affirmative actions to conceal the material facts; and (3) Defendant made partial
27 representations about the mileage range, battery safety, and performance of the Class Vehicle that
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1 were misleading without disclosure of the fact that the Class Vehicle contained unsafe batteries that
2 caused the Class Vehicle to overheat and pose a risk of fire.

3 59. Defendant intended for Plaintiff and the Class to rely on these representations, as
4 evidenced by Defendant’s advertising which stresses the “259-mi” range of each Class Vehicle.

5 60. Plaintiff decided to buy the Class Vehicle based in substantial part on the
6 representations communicated through the Defendant’s marketing material. Because Defendant’s
7 mileage range advertisements were part of an extensive advertising campaign, and each Class
8 Member was exposed to the advertisements, a plausible inference of reliance can be made for the
9 entire Class. (*In Re Tobacco II Cases*, 207 P.3d 20, 40 (Cal. 2009)).

10 61. Plaintiff and the Class have reasonably and detrimentally relied on Defendant’s
11 misrepresentations when purchasing the Class Vehicles and, had they known the truth, they would
12 not have purchased the Class Vehicles or would have paid significantly less for the Class Vehicles.

13 62. Plaintiff would like to use the Class Vehicle as intended without limitation; however,
14 Defendant has not yet even advised Plaintiff when the recall can be fixed, resulting in Plaintiff’s
15 significantly diminished use and enjoyment of the Class Vehicle.

16 63. Therefore, as a direct and proximate result of Defendant’s fraud, Plaintiff and
17 members of the Class have suffered injury in fact.

18 **COUNT TWO**
19 **VIOLATION OF CALIFORNIA UNFAIR COMPETITION LAW**
20 **BUSINESS & PROFESSIONS CODE § 17200, *et seq.***

21 64. Plaintiff repeats and realleges the allegations set forth in the preceding paragraphs
22 and incorporates the same as if set forth herein at length.

23 65. Plaintiff brings this claim individually and on behalf of the Class.

24 66. Defendant advertised the Class Vehicle as having a leading electric vehicle mileage
25 capacity of 259 miles per full charge. Contrary to these representations, the Class Vehicle is not
26 capable of meeting this mileage expectation, due to the unsafe battery condition. This
27 misrepresentation is evident from Defendant’s recall notice sent out to Plaintiff and the Class on
28 August 20, 2021, warning them to not to exceed 90% of the mileage capability, approximately 233
miles to the charge. Moreover, Plaintiff and the Class were informed not to allow the vehicles’

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1 charge to fall below 70 miles. Lastly, Plaintiff and the Class were warned not to park the vehicles
2 indoor overnight due to concerns that the battery may catch on fire.

3 67. These restrictions significantly infringe upon Plaintiff’s use of the Class Vehicle and
4 present serious safety concerns. Had Plaintiff known of these safety issues and use limitations a
5 month prior, he would not have purchased the Class Vehicle.

6 68. The UCL prohibits “any unlawful, unfair... or fraudulent business act or practice.”
7 Cal. Bus & Prof. Code § 17200.

8 **A. “Unfair Prong”**

9 69. Under California’s Unfair Competition Law, Cal. Bus. & Prof. Code Section 17200,
10 *et seq.*, a challenged activity is “unfair” when “any injury it causes outweighs any benefits provided
11 to consumers and the injury is one that the consumers themselves could not reasonably avoid.”
12 *Camacho v. Auto Club of Southern California*, 142 Cal. App. 4th 1394, 1403 (2006).

13 70. Defendant’s action of using a defective battery in the Class Vehicle does not confer
14 any benefit to consumers.

15 71. Defendant’s action of using a defective battery in the Class Vehicle causes injuries
16 to consumers, who cannot use their vehicle commensurate with their reasonable expectations.

17 72. Defendant’s action of using a defective battery in the Class Vehicle causes injuries
18 to consumers, who cannot park their vehicle commensurate with their reasonable expectations.

19 73. Defendant’s action of using a defective battery in the Class Vehicle causes injuries
20 to consumers, who end up overpaying for the Class Vehicle and receiving a quality of vehicle less
21 than what they expected to receive.

22 74. Consumers cannot avoid any of the injuries caused by the defective battery in the
23 Class Vehicles.

24 75. Accordingly, the injuries caused by Defendant’s use of the defective battery in the
25 Class Vehicles outweigh any benefits.

26 76. Some courts conduct a balancing test to decide if a challenged activity amounts to
27 unfair conduct under California Business and Professions Code Section 17200. They “weigh the
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1 utility of the defendant’s conduct against the gravity of the harm to the alleged victim.” *Davis v.*
2 *HSBC Bank Nevada, N.A.*, 691 F.3d 1152, 1169 (9th Cir. 2012).

3 77. Here, Defendant’s conduct of using the defective battery in the Class Vehicles has no
4 utility and financially harms purchasers. Thus, the utility of Defendant’s conduct is vastly
5 outweighed by the gravity of harm.

6 78. Some courts require that “unfairness must be tethered to some legislative declared
7 policy or proof of some actual or threatened impact on competition.” *Lozano v. AT&T*
8 *Wireless Servs. Inc.*, 504 F. 3d 718, 735 (9th Cir. 2007).

9 79. As alleged herein, the misrepresentations by Defendant detailed above constitute an
10 unfair practice that poses a threatening impact on competition within the meaning of California
11 Business and Professions Code Section 17200.

12 80. Defendant’s marketing of the Class Vehicles, as alleged herein, is false, deceptive,
13 misleading, and unreasonable, and constitutes unfair conduct.

14 81. Defendant knew or should have known of their unfair conduct.

15 82. There existed reasonably available alternatives to further Defendant’s legitimate
16 business interests, other than the conduct alleged herein. Defendant could have used a battery
17 appropriate for the Class Vehicle.

18 83. All of the conduct alleged herein occurs and continues to occur in Defendant’s
19 business. Defendant’s wrongful conduct is part of a pattern or generalized course of conduct
20 repeated on thousands of occasions daily.

21 84. Plaintiff and the Class have suffered injury in fact and have lost money as a result of
22 Defendant’s unfair conduct. Plaintiff paid an unwarranted premium for this vehicle. Plaintiff would
23 not have purchased the Class Vehicle if he had known that the Class Vehicle contained a defective,
24 unsafe battery.

25 **B. “Fraudulent” Prong**

26 85. California Business and Professions Code Section 17200, et seq., considers conduct
27 fraudulent and prohibits said conduct if it is likely to deceive members of the public. *Bank of the*
28 *West v. Superior Court*, 2 Cal. 4th 1254, 1267 (1992).

1 98. As alleged in the preceding paragraphs, the misrepresentations by Defendant detailed
2 above constitute an unlawful business practice within the meaning of California Business and
3 Professions Code Section 17200.

4 99. There were reasonably available alternatives to further Defendant's legitimate
5 business interests, other than the conduct alleged herein. Defendant could have used a battery
6 appropriate for the quality and safety of the Class Vehicle.

7 100. All of the conduct alleged herein occurred and continues to occur in Defendant's
8 business. Defendant's unlawful conduct is part of a pattern or generalized course of conduct
9 repeated on thousands of occasions daily.

10 101. Plaintiff and the Class have suffered injury in fact and have lost money as a result of
11 Defendant's unlawful conduct. Plaintiff paid an unwarranted premium for this Class Vehicle.
12 Plaintiff would not have purchased the Class Vehicle if he had known that the battery unsafe and
13 unfit for normal use.

14 102. Plaintiff would like to use the Class Vehicle as intended without limitation; however,
15 Defendant has not yet even advised Plaintiff when the recall can be fixed, resulting in Plaintiff's
16 significantly diminished use and enjoyment of the Class Vehicle.

17 103. As a result of the business acts and practices described above, Plaintiff and members
18 of the Class, pursuant to § 17203, are entitled to an order enjoining such future wrongful conduct
19 on the part of Defendant and such other orders and judgments that may be necessary to disgorge
20 Defendant's ill-gotten gains and to restore to any person in interest any money paid for the Class
21 Vehicles as a result of the wrongful conduct of Defendant.

22 a. Plaintiff and members of the Class are entitled to equitable relief as no adequate
23 remedy at law exists.

24 (1) The applicable limitations period is four years for claims brought under the UCL,
25 which is one year longer than the applicable statute of limitations under the FAL.
26 Thus, class members who purchased the Class Vehicles between 3 and 4 years prior
27 to the filing of the complaint will be barred from the Class if equitable relief were not
28 granted under the UCL.

1 (2) The scope of actionable misconduct under the unfair prong of the UCL is broader
2 than the other causes of action asserted herein to include, for example, the overall
3 unfair marketing scheme of using batteries that cannot yield the advertised mileage
4 range. Thus, Plaintiff and class members may be entitled to restitution under the
5 UCL, while not entitled to damages under other causes of action asserted herein (e.g.,
6 the FAL requires actual or constructive knowledge of the falsity).

7 (3) Injunctive relief is appropriate on behalf of Plaintiff and members of the Class
8 because Defendant continues to deceptively maintain defective batteries in the Class
9 Vehicles. Injunctive relief is necessary to prevent Defendant from continuing to
10 engage in this unfair, fraudulent, and/or unlawful conduct described herein and to
11 prevent future harm—none of which can be achieved through available legal
12 remedies. Further, injunctive relief, in the form of removing the Class Vehicles from
13 market and ceasing the marketing scheme that boasts an impressive mileage range
14 for Class Vehicles, is necessary to dispel public misperception about the Class
15 Vehicles that has resulted from years of Defendant’s unlawful marketing efforts.
16 Plaintiff is, currently, unable to accurately quantify the damages caused by
17 Defendant’s future harm, rendering injunctive relief a necessary remedy.

18 104. Pursuant to Civil Code § 3287(a), Plaintiff and the Class are further entitled to pre-
19 judgment interest as a direct and proximate result of Defendant’s unfair and fraudulent business
20 conduct. The amount on which interest is to be calculated is a sum certain and capable of
21 calculation, and Plaintiff and the Class are entitled to interest in an amount according to proof.

22 105. Plaintiff and the Class suffered ascertainable loss and actual damages as a direct and
23 proximate result of Defendant’s misrepresentations and their concealment of and failure to disclose
24 material information. Pursuant to Cal. Bus. & Prof. Code § 17200, Plaintiff and the California State
25 Class seek an order enjoining Defendant’s unfair and/or deceptive acts or practices, any such orders
26 or judgments as may be necessary to restore to Plaintiff and California State Class members any
27 money acquired by unfair competition, including restitution and/or restitutionary disgorgement, as
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1 provided in Cal. Bus. & Prof. Code §§ 17203 and 3345, and any other just and proper relief
2 available under the California UCL.

3 **COUNT THREE**

4 **FALSE AND MISLEADING ADVERTISING IN VIOLATION OF BUSINESS &
5 PROFESSIONS CODE § 17500, *et seq.***

6 106. Plaintiff repeats and realleges the allegations set forth in the preceding paragraphs
7 and incorporates the same as if set forth herein at length.

8 107. Plaintiff brings this claim individually and on behalf of the Class.

9 108. California’s False Advertising Law, California Business and Professions Code
10 Section 17500, *et seq.*, makes it “unlawful for any person to make or disseminate or cause to be
11 made or disseminated before the public in this state, in any advertising device or in any other
12 manner or means whatever, including over the Internet, any statement, concerning personal
13 property or services, professional or otherwise, or performance or disposition thereof, which is
14 untrue or misleading and which is known, or which by the exercise of reasonable care should
15 be known, to be untrue or misleading.”

16 109. Defendant knowingly 1) misrepresented the Class Vehicle’s mileage capacity
17 capabilities – a material fact that was false and 2) misrepresented the Class Vehicle’s safety
18 features.

19 110. Defendant knew or should have known, through the exercise of reasonable care, that
20 their representations about the mileage capabilities and the safety of the Class Vehicle were untrue
21 and misleading.

22 111. Defendant’s action of misrepresenting the mileage capabilities and the Class
23 Vehicle’s safety is likely to deceive the general public.

24 112. Defendant’s actions were false and misleading, such that the general public is and
25 was likely to be deceived, in violation of Section 17500.

26 113. As a direct and proximate result of Defendant’s conduct alleged herein in violation
27 of the FAL, Plaintiff and members of the Class, pursuant to § 17535, are entitled to an order of this
28 Court enjoining such future wrongful conduct on the part of Defendant and requiring Defendant to
disclose the true nature of its misrepresentations.

1 a. Plaintiff and members of the Class are entitled to equitable relief as no adequate
2 remedy at law exists.

3 (1) Injunctive relief is appropriate on behalf of Plaintiff and members of the Class
4 because Defendant continues to deceptively misrepresent the Class Vehicle.
5 Injunctive relief is necessary to prevent Defendant from continuing to engage in
6 the unlawful conduct alleged herein and to prevent future harm—none of which
7 can be achieved through available legal remedies. Further, injunctive relief, in the
8 form of advertising modifications, is necessary to dispel public misperception
9 about the Class Vehicle that has resulted from years of Defendant’s unfair,
10 fraudulent, and unlawful marketing efforts. Such modifications would include,
11 but are not limited to, using a safe battery and reflecting an accurate mileage
12 capacity in their marketing materials. Such relief is also not available through a
13 legal remedy as monetary damages may be awarded to remedy past harm (i.e.,
14 purchasers who have been misled), while injunctive relief is necessary to remedy
15 future harm (i.e., prevent future purchasers from being misled), under the current
16 circumstances where the dollar amount of future damages is not reasonably
17 ascertainable at this time. Plaintiff is, currently, unable to accurately quantify the
18 damages caused by Defendant’s future harm (e.g., the dollar amount that Plaintiff
19 and Class members overpay pay for the Class Vehicle), rendering injunctive relief
20 a necessary remedy.

21 114. Plaintiff and the Class have suffered injury in fact and have lost money as a result of
22 Defendant’s false representations. Plaintiff purchased the Class Vehicle in reliance upon the claims
23 by Defendant that the Class Vehicle can achieve 259 miles per full charge, can be driven until the
24 mileage is close to or at 0 miles, and can park the Class Vehicle indoors overnight as expected by
25 a reasonable consumer. Plaintiff would not have purchased the Class Vehicles if she had known
26 that the advertising and marketing as alleged herein were false.

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1 115. Plaintiff would like to use the Class Vehicle as intended without limitation; however,
2 Defendant has not yet even advised Plaintiff when the recall can be fixed, resulting in Plaintiff's
3 significantly diminished use and enjoyment of the Class Vehicle.

4 116. Plaintiff and members of the Class also request an order requiring Defendant to
5 disgorge its ill-gotten gains and/or award full restitution of all monies wrongfully acquired by
6 Defendant by means of such acts of false advertising, plus interest and attorneys' fees.

7 **COUNT FOUR**

8 **Failure to Recall/Retrofit under California Law**

9 117. Plaintiff repeats and realleges the allegations set forth above and incorporates the
10 same as if set forth herein at length.

11 118. Plaintiff brings this cause of action individually and on behalf of the members of the
12 Class against Defendant.

13 119. By means of Defendant's wrongful conduct alleged herein, Defendant knowingly
14 sold the Class Vehicles to Plaintiff and Class Members in a manner that was unfair, unconscionable,
15 and oppressive.

16 120. Defendant manufactured, marketed, distributed, sold, or otherwise placed into the
17 stream of U.S. commerce the Class Vehicles, as set forth above.

18 121. Defendant knew or reasonably should have known that the Class Vehicles were
19 dangerous when used in a reasonably foreseeable manner and posed an unreasonable risk.

20 122. Defendant became aware the Class Vehicles were dangerous when used in a
21 reasonably foreseeable manner and posed an unreasonable risk.

22 123. Defendant failed to recall the Class Vehicles in a timely manner or warn of the
23 dangers posed by the Class Vehicles.

24 124. A reasonable manufacturer in the same or similar circumstance would have timely
25 and properly recalled the Class Vehicles.

26 125. Plaintiff and the Class were harmed by Defendant's failure to recall the Class
27 Vehicles properly and in a timely manner and, as a result, have suffered damages, including their
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1 out-of-pocket costs, losses, and inconvenience, and caused by Defendant’s ongoing failure to
2 properly recall, retrofit, and fully repair the Class Vehicles.

3 126. Even in the event of a recall, Plaintiff and the Class have suffered and continue to
4 suffer damages for each day that a recall is delayed.

5 127. Defendant’s failure to timely recall the Class Vehicles was a substantial factor in
6 causing harm to Plaintiff and the Class as alleged herein.

7 **PRAYER FOR RELIEF**

8 WHEREFORE, Plaintiff, individually and on behalf of all others similarly situated, prays for
9 judgment and relief on all Causes of Action as follows:

- 10 A. An order enjoining Defendant from continuing to advertise the Class Vehicles
- 11 as challenged herein;
- 12 B. Damages against Defendant in an amount to be determined at trial, together
- 13 with pre- and post- judgement interest at the maximum rate allowable by law
- 14 on any amounts awarded;
- 15 C. Restitution and/or disgorgement in an amount to be determined at trial;
- 16 D. Reasonable attorneys’ fees and costs; and
- 17 E. Granting such other and further as may be just and proper.

18 **JURY TRIAL DEMANDED**

19 128. Plaintiff demands a jury trial on all triable issues.

20
21 Dated: December 23, 2021

CLARKSON LAW FIRM, P.C.

22 By: /s/ Yana Hart
23 Yana Hart, Esq.
24 Ryan Clarkson, Esq.

Attorneys for Plaintiff