

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

POMERANTZ LLP
Jordan L. Lurie, State Bar No. 130013
jllurie@pomlaw.com
Ari Y. Bassler, State Bar No. 272618
abasser@pomlaw.com
1100 Glendon Avenue, 15th Floor
Los Angeles, CA 90024
Telephone: (310) 432-8492

THE LAW OFFICE OF ROBERT L. STARR
Robert L. Starr, State Bar No. 183052
robert@starrlaw.com
23901 Calabasas Road, Suite 2072
Calabasas, CA 91302

Attorneys for Plaintiff

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

GARY GIBSON, individually and on behalf
of all others similarly situated,

Plaintiff,

vs.

JAGUAR LAND ROVER NORTH
AMERICA, LLC, and DOES 1 through 10,
inclusive,

Defendants.

Case No.

CLASS ACTION

COMPLAINT FOR:

**(1) VIOLATION OF CALIFORNIA
BUSINESS AND PROFESSIONS
CODE, SECTION 17200, et seq.**

**(2) VIOLATION OF THE
CONSUMERS LEGAL REMEDIES
ACT, CAL. CIV. CODE SECTION
1750, et seq.**

(3) FRAUD

JURY TRIAL DEMANDED

1 Plaintiff Gary Gibson (“Plaintiff”), individually and on behalf of all other members of
2 the public similarly situated, brings this action against Defendant Jaguar Land Rover North
3 America, LLC (“Defendant” or “JLRNA”), upon information and belief, except as to his own
4 actions, the investigation of his counsel, and the facts that are a matter of public record, as
5 follows:

6 **INTRODUCTION**

7 1. For decades, JLRNA has been in the business of importing and distributing
8 JLRNA vehicles to the state of California, with the intent to sell JLRNA vehicles to consumers
9 in California. As such, the JLRNA vehicles have been subject to state and federal regulations
10 regarding both emissions standards and JLRNA’s obligation to provide consumers with
11 warranties relating to emissions parts.

12 2. Specifically, dating back over 20 years, California Code of Regulations, Title 13,
13 Section 2035, *et seq.*, entitled “Emission Control System Warranty Requirements for 1990 and
14 Subsequent Model Year Passenger Car, Light-Trucks, and Medium-Duty Vehicles and Engines”
15 (“the CCR”) has required JLRNA to provide a 7-year 70,000-mile warranty relating to “high-
16 priced” “warranted parts.” This provision is sometimes referred to as the “High-Cost
17 Emissions-Related Parts Warranty” or the “California Emission Control System Warranty.”

18 3. The CCR very clearly defines the methodology that JLRNA is required to use in
19 order to identify which parts should be covered by the 7-year 70,000-mile warranty.

20 4. Pursuant to CCR Section 2035, with regard to 1990 and subsequent model year
21 vehicles, a “warranted part” is defined as, “any part installed on a motor vehicle or motor
22 vehicle engine by the vehicle or engine manufacturer, or installed in a warranty repair, which
23 affects any regulated emission from a motor vehicle or engine which is subject to California
24 emission standards.”

25 5. Furthermore, CCR Section 2037(b) states: “The manufacturer of each motor
26 vehicle or motor vehicle engine shall warrant to the ultimate purchaser and each subsequent
27 purchaser that the vehicle or engine is:
28

- 1 (1) Designed, built, and equipped so as to conform with all applicable regulations
- 2 adopted by the Air Resources Board pursuant to its authority in chapters 1 and 2,
- 3 part 5, division 26 of the Health and Safety Code; and
- 4 (2) Free from defects in materials and workmanship which cause the failure of a
- 5 warranted part to be identical in all material respects to the part as described in
- 6 the vehicle or engine manufacturer's application for certification, including any
- 7 defect in materials or workmanship which would cause the vehicle's on-board
- 8 diagnostic malfunction indicator light to illuminate, for a period of three years or
- 9 50,000 miles, whichever first occurs; and
- 10 (3) Free from defects in materials and workmanship which cause the failure of a
- 11 warranted part described in section (c) below for seven years or 70,000 miles,
- 12 whichever first occurs.”

13 6. California Code of Regulations Section 2037(c) deals with “high-priced
14 warranted parts” under the California Emission Control System Warranty and states:

- 15 (1) Each manufacturer shall identify in its application for certification the “high-
16 priced” warranted parts which are:
 - 17 (a) For 1990 through 2007 model year vehicles: [i] included on the Board's
18 “Emissions Warranty Parts List” as last amended February 22, 1985,
19 incorporated herein by reference, and; [ii] have an individual replacement
20 cost at the time of certification exceeding the cost limit defined in section
21 (c)(3);
 - 22 (b) For 2008 and subsequent model year vehicles: [i] subject to coverage as a
23 warranted part in section (b)(2) above, and; [ii] have an individual
24 replacement cost at the time of certification exceeding the cost limit
25 defined in section (c)(3).
- 26 (2) The replacement cost shall be the retail cost to a vehicle owner and include the
27 cost of the part, labor, and standard diagnosis. The costs shall be those of the
28 highest-cost metropolitan area of California.

1 (3) The cost limit shall be calculated using the following equation:

2
$$\text{Cost limit } \{n\} = \$300 \times (\text{CPI}\{n-2\}) / 118.3$$

3 Cost limit {n} is the cost limit for the applicable model year of the vehicle
4 rounded to the nearest ten dollars.

5 7. In summary, any part that either effects a vehicle's emissions, or causes a
6 vehicle's on-board diagnostic malfunction indicator light to illuminate is, for the purpose of
7 determining coverage under the CCR, considered a "warranted part," which shall have a 3-year
8 50,000-mile warranty. Furthermore, if the part is determined to be a "high-priced" warranted
9 part, as defined by 2037(c) of the CCR, the part, the labor cost of diagnosing the part failure,
10 and the labor cost of replacing the part shall have a 7-year 70,000-mile emissions warranty
11 pursuant to the High-Cost Emissions-Related Parts Warranty.

12 **JLRNA'S CONDUCT**

13 8. JLRNA engages in a systematic business practice of intentionally refusing to
14 identify, in the JLRNA warranty booklet provided to owners and lessees, and in resources
15 provided to its dealerships, all of the parts that should be identified as "high-priced" warranted
16 parts and that should be covered under the 7-year 70,000-mile California High-Cost Emissions-
17 Related Parts Warranty. JLRNA classifies *some* of the "high-priced" warranted parts as being
18 parts covered under the 7-year 70,000-mile California emissions warranty, but not all of the
19 high-priced warranted parts that should be covered.

20 9. JLRNA does this in order to reduce the amount of money that JLRNA has to pay
21 out on warranty related repairs and warranty claims.

22 10. If JLRNA properly identified all of the high-priced warranted parts that should
23 be correctly identified as such, then JLRNA dealerships would properly provide coverage for
24 said high-priced parts under warranty.

25 11. The failure on the part of JLRNA to properly identify parts as "high-priced"
26 warranted parts under the CCR constitutes fraudulent concealment on the part of JLRNA, and
27 an unfair and unlawful business practice which is intended to minimize the amount of money
28 that JLRNA has to pay out in warranty claims. JLRNA's conduct violates California law.

1 stored in the system for low fuel pressure. The Ventura Dealership installed a new fuel pump,
2 driver module and new low-pressure sensor.

3 26. The cost for the labor associated with the repairs was \$834.00, and the total cost
4 of repairs was \$1,236.78. Plaintiff paid for these repairs out of pocket.

5 27. On October 4, 2017, at 60,650 miles, the Gibson Vehicle again underwent repairs
6 at the Ventura Dealership because the Gibson Vehicle continued to stall. The Ventura
7 Dealership generated Invoice 46192 relating to this repair visit. The Ventura Dealership found
8 that the low-pressure fuel pump was intermittently failing on the secondary circuit side, causing
9 the pump to cease working while driving. A new low-pressure fuel pump, gasket, and relay
10 were installed.

11 28. The cost of the labor associated with the repairs was \$695.00, and the total cost
12 of the repairs was \$1,249.20. Plaintiff again paid for these repairs out of pocket.

13 29. The cost associated with the diagnosis and repairs relating to Invoices 45956 and
14 46192 should have been covered and paid for by JLRNA under the 7-year 70,000-mile
15 California emissions warranty because, pursuant to California Code of Regulations section
16 2037(c), the parts relating to said repairs should have been identified by JLRNA as high-priced
17 warranted parts, due to the costs associated with the parts and labor relating to diagnosing the
18 failure and replacing said parts.

19 30. The reason that Plaintiff was charged for said repairs was not the result of an
20 individual issue relating to the Ventura Dealership, or an oversight by the Ventura Dealership in
21 failing to identify the repairs as repairs that should have been covered under the 7-year 70,000-
22 mile California emissions warranty. Rather, Plaintiff was charged for said repairs because of
23 JLRNA's uniform and systematic business practice of intentionally refusing to identify in the
24 JLRNA warranty booklet, and in resources provided to its dealerships, all of the parts that
25 should be identified as high-priced warranted parts under California law.

26 31. CCR section 2037(c)(1)(B) regarding "High-priced Warranty Parts" requires
27 JLRNA to identify the "high-priced warranted parts . . . which have an individual replacement
28 cost at the time of certification exceeding the cost limit defined in section (c)(3)."

1 32. JLRNA intentionally failed to identify all said components in order to reduce the
2 amount of money that JLRNA spends on warranty-related repairs. If JLRNA complied with
3 California law and properly identified all parts as high-price warranted parts that should be
4 identified as such, then JLRNA dealerships would properly provide warranty coverage for said
5 high-price warranted parts.

6 33. JLRNA fraudulently concealed from Plaintiff and members of the Class all of the
7 parts that qualify as high-price warranted parts in an effort to minimize the amount of money
8 that JLRNA has to pay out in warranty claims.

9 34. JLRNA’s failure to provide coverage under the 7-year 70,000-mile California
10 emissions warranty was the result of JLRNA’s intentional uniform and systematic business
11 practice of willfully violating California law.

12 35. JLRNA’s conduct violates California’s Unfair Competition Law, California
13 Business and Professions Code sections 17200, *et seq.* (the “UCL”), and violates the Consumers
14 Legal Remedies Act, California Civil Code sections 1750, *et seq.*

15 36. Plaintiff, and other members of the Class have suffered damage as a result of
16 JLRNA’s wrongful, unfair, unlawful, and fraudulent conduct.

17 37. On December 31, 2018, pursuant to California Civil Code Section 1782, counsel
18 for Plaintiff notified JLRNA in writing of Plaintiff’s claims under the Consumers Legal
19 Remedies Act relating to said unlawful warranty practices and provided JLRNA an opportunity
20 to take actions to remedy said unlawful practices. JLRNA refused to take any actions to remedy
21 said unlawful practices.

22 **PLAINTIFF’S CLASS ACTION ALLEGATIONS**

23 38. Plaintiff re-alleges and incorporates by reference each allegation set forth above.

24 39. Plaintiff brings this class action pursuant to Federal Rule of Civil Procedure
25 23(a) and (b)(2) and (b)(3) on behalf of himself and members of the Class as defined below.

26 40. Excluded from the Class are Defendant, and its subsidiaries and affiliates; its
27 current and former officers, directors, and employees (and members of their immediate
28 families); and the legal representatives, heirs, successors or assigns of any of the foregoing.

1 41. All claims alleged herein arise under California law for which Plaintiff seeks
2 relief authorized by California law.

3 42. Plaintiff’s proposed class consists of and is defined as follows:

4
5 All persons in California who, within the last four years, have been
6 owners or lessees of JLRNA vehicles and who have paid for repairs
7 and parts that should have been covered under JLRNA’s “high-
8 priced warranted parts” 7-year 70,000-mile California emissions
9 warranty (the “Class”).

10 43. On behalf of the Class, Plaintiff seeks injunctive relief requiring JLRNA to
11 identify all of the parts or components that should have been, and that should be, properly
12 covered under the 7-year or 70,000-mile California Emission Control System Warranty.

13 44. On behalf of the Class, Plaintiff also seeks reimbursement for the money
14 wrongfully paid by Plaintiff and members of the Class relating to repairs that should have been
15 covered by JLRNA under the 7-year 70,000-mile California Emission Control System Warranty
16 during the Class period.

17 45. Plaintiff reserves the right to redefine the Class and to add subclasses as
18 appropriate based on further investigation, discovery, and specific theories of liability.

19 46. As required by Fed. R. Civ. P. 23(a)(2) and (b)(3), there are questions of law and
20 fact common to the Class, and those common questions predominate over any questions
21 affecting only individual members. Among the common questions of law and fact include:

22 (a) Whether JLRNA has failed, and is failing, to comply with the High-Cost
23 Emissions-Related Parts Warranty by failing to provide a 7-year 70,000 mile
24 California emissions warranty for parts that are defined as high-priced warranted
25 parts pursuant to the CCR.

26 (b) Whether JLRNA has failed, and is failing, to identify for consumers and
27 dealerships all of the parts that should be identified as high-priced warranted
28 parts, and thus covered by the 7-year 70,000-mile California High-Cost
Emissions-Related Parts Warranty.

- 1 (c) Whether JLRNA has engaged in, and is engaging in, a systematic business
2 practice of intentionally failing to identify all of the parts that should be
3 identified as high-priced warranted parts and thus covered by the 7-year 70,000-
4 mile California High-Cost Emissions-Related Parts Warranty under the CCR.
- 5 (d) Whether JLRNA has failed, and is failing, to identify all of the parts that should
6 be identified as high-priced warranted parts and thus covered by the 7-year
7 70,000 mile California High-Cost Emissions-Related Parts Warranty in an effort
8 to reduce the amount of money that JLRNA spends on warranty related repairs.
- 9 (e) Whether JLRNA’s conduct of failing to identify all of the parts that should be
10 identified as high-priced warranted parts and thus covered by the 7-year 70,000-
11 mile California High-Cost Emissions-Related Parts Warranty results in
12 consumers suffering financial loss.
- 13 (f) Whether JLRNA’s conduct of failing to identify all of the parts that should be
14 identified as high-priced warranted parts and thus covered by the 7-year 70,000-
15 mile California High-Cost Emissions-Related Parts Warranty results in
16 wrongfully minimizing the amount of money that JLRNA has to pay out in
17 warranty claims.
- 18 (g) Whether JLRNA’s conduct of failing to identify all of the parts that should be
19 identified as high-priced warranted parts and thus covered by the 7-year 70,000-
20 mile California High-Cost Emissions-Related Parts Warranty violates California
21 law.
- 22 (h) Whether JLRNA has engaged in, and is engaging in, unlawful and unfair
23 business practices in violation of California Business & Professions Code
24 sections 17200, *et seq.* with regard to JLRNA’s failure to identify all of the high-
25 priced warranted parts that should be covered by the 7-year 70,000 mile
26 California High-Cost Emissions-Related Parts Warranty.
- 27 (i) Whether Plaintiff and Class members are entitled to injunctive relief regarding
28 JLRNA’s failure to identify all of the high-priced warranted parts that should be

1 covered by the 7-year 70,000-mile California High-Cost Emissions-Related Parts
2 Warranty.

3 (j) The appropriate amount of restitution, or monetary penalties resulting from
4 JLRNA's violations of California law.

5 (k) Whether JLRNA has engaged in, and is engaging, in fraudulent concealment
6 relating to JLRNA's failure to identify all of the high-priced warranted parts that
7 should be covered by the 7-year 70,000-mile California High-Cost Emissions-
8 Related Parts Warranty.

9 (l) Whether JLRNA has violated and is violating the Consumers Legal Remedies
10 Act, California Civil Code Section 1750, *et seq.*, with regard to JLRNA's failure
11 to identify all of the high-priced warranted parts which should be covered by the
12 7-year 70,000-mile California High-Cost Emissions-Related Parts Warranty.

13 47. Numerosity: As required by Fed. R. Civ. P. 23(a)(1), the members of the Class
14 are so numerous that joinder of all Class members would be unfeasible and impractical, and the
15 resolutions of their claims through the procedure of a class action will be of benefit to the
16 Parties and the Court. The membership of the entire Class is unknown to Plaintiff at this time;
17 however, the Class is estimated to be greater than one hundred (100) individuals and the identity
18 of such membership is readily ascertainable by inspection of Defendant's records.

19 48. Typicality: As required by Fed. R. Civ. P. 23(a)(3), Plaintiff's claims are typical
20 of the claims of all members of the Class since Plaintiff and all members of the Class suffered
21 damages as result of Defendant's fraudulent concealment and wrongful conduct set forth herein.

22 49. Adequacy: As required by Fed. R. Civ. P. 23(a)(4), Plaintiff will fairly and
23 adequately protect the interests of the members of the Class. Plaintiff has no interests adverse or
24 antagonistic to those of the Class and has retained counsel competent and experienced in class
25 action litigation who will zealously prosecute this matter on behalf of the Class to its
26 conclusion.

27 50. Superiority: As required by Fed. R. Civ. P. 23(b)(3), the nature of this action
28 makes the use of a class action adjudication superior to other methods. A class action will

1 achieve economies of time, effort, and expense as compared with separate lawsuits, and will
2 avoid inconsistent outcomes because the same issues can be adjudicated in the same manner and
3 at the same time for the entire Class.

4 51. Defendant keeps extensive computerized records of its customers. Defendant has
5 one or more databases through which a significant majority of Class members may be identified
6 and ascertained, and it maintains contact information, including email and home mailing
7 addresses, through which notice of this action could be disseminated in accordance with due
8 process requirements.

9 52. Class certification of Plaintiff's claims is also appropriate pursuant to Fed. R.
10 Civ. P. 23(b)(2) because Defendant has acted or refused to act on grounds generally applicable
11 to Plaintiff and the Class, making appropriate both declaratory and injunctive relief with respect
12 to Plaintiff and the Class.

13 **TOLLING OF THE STATUTE OF LIMITATIONS**

14 53. JLRNA has actively engaged in fraudulent, misleading, and dishonest conduct
15 relating to its failure to properly identify parts that should be identified as high-priced warranted
16 parts covered under the 7-year 70,000-mile California emissions warranty. Despite acting
17 diligently, Plaintiff and the Class cannot be reasonably expected on their own to learn or
18 discover what parts and repairs should be identified as high-priced warranted parts covered
19 under the 7-year 70,000-mile California emissions warranty. Therefore, the discovery rule is
20 applicable to the claims asserted by Plaintiff and members of the Class, and the statute of
21 limitations for bringing the claims set forth herein should be tolled.

22 54. JLRNA has actual and constructive knowledge that it is violating California law
23 by failing to identify all of the parts that should be identified as high-priced warranted parts, and
24 by failing to provide a 7-year 70,000-mile California emissions warranty relating to said parts.
25 JLRNA has concealed from Plaintiff and members of the Class that JLRNA is violating
26 California law as set forth herein.

27
28

1 55. Any applicable statute of limitation is tolled by JLRNA’s knowledge, active
2 concealment, and wrongful conduct set forth herein. JLRNA is further estopped from relying
3 on any statute of limitation because of its concealment set forth herein.

4 **FIRST CLAIM FOR RELIEF**

5 **Violation of California Unfair Competition Law**

6 **(Cal. Bus. & Prof. Code §§ 17200 *et seq.*)**

7 **Against All Defendants**

8 56. Plaintiff re-alleges and incorporates by reference each allegation set forth above.

9 57. California Business and Professions Code sections 17200 *et seq.* (the “UCL”) prohibits
10 “any unlawful, unfair or fraudulent business act or practice.” JLRNA has committed
11 acts of unfair competition proscribed by the UCL, including the acts and practices alleged
12 herein.

13 58. The UCL imposes strict liability. Plaintiff need not prove that JLRNA
14 intentionally or negligently engaged in unlawful, unfair, or fraudulent business practices – only
15 that such practices occurred.

16 59. JLRNA is a “person” as defined by Business & Professions Code § 17201.

17 60. As alleged above, JLRNA engages and has engaged in a uniform and systematic
18 business practice of intentionally refusing to identify in the JLRNA warranty booklet, and in
19 resources provided to its dealerships, numerous parts which should be identified as high-priced
20 warranted parts. JLRNA does this in an effort to reduce the amount of money that JLRNA
21 spends on warranty-related repairs. If JLRNA complied with California law and properly
22 identified all parts as high-priced warranted parts that should be identified as such, then JLRNA
23 dealerships would properly provide warranty coverage for said high-priced warranted parts.

24 61. The failure on the part of JLRNA to properly identify all parts as high-priced
25 warranted parts that should be identified as such, is a uniform, systematic, and intentional
26 business practice on the part of JLRNA to minimize the amount of money that JLRNA has to
27 pay out in warranty claims. JLRNA’s conduct violates California law.

28

1 62. Plaintiff contends that said conduct is a fraudulent concealment on the part of
2 JLRNA, with JLRNA fraudulently concealing from consumers and JLRNA’s dealerships all of
3 the high-priced warranted parts, in an effort by JLRNA to minimize the amount of money that
4 JLRNA has to pay out in warranty claims. One of the ways JLRNA defrauds and misleads
5 consumers relates to the information that JLRNA provides to consumers in the written warranty
6 booklet provided by JLRNA to consumers. JLRNA intentionally provides false information in
7 its warranty booklets by intentionally failing to classify all of the high-priced warranted parts as
8 parts that should be covered under the 7-year 70,000-mile California emissions warranty.
9 Plaintiff alleges that Plaintiff and members of the Class have suffered damage as a result of
10 JLRNA’s wrongful, unfair, unlawful, and fraudulent conduct.

11 63. Furthermore, JLRNA has refused to, and continues to refuse to provide 7-year
12 70,000-mile California emissions warranty coverage relating to all repairs which should be
13 covered under said warranty pursuant to California law. This refusal is intentional, willful,
14 unfair, unlawful, and done with JLRNA’s specific intent to defraud Plaintiff and members of the
15 Class.

16 64. As a direct and proximate result of JLRNA’s acts and practices in violation of the
17 UCL, Plaintiff and members of the Class have suffered injury in fact and lost money or property
18 as set forth above and will continue to do so.

19 65. A business practice is “unlawful” under the UCL if it is forbidden by law or
20 regulations, including standards of professional conduct.

21 66. The violation of any law or regulation may serve as the predicate for a violation
22 of the “unlawful” prong of the UCL. JLRNA’s conduct is unlawful in that it also violates the
23 CCR, including the requirement under CCR section 2037(c)(1)(B) regarding “High-priced
24 Warranty Parts” that JLRNA identify the “high-priced warranted parts . . . which have an
25 individual replacement cost at the time of certification exceeding the cost limit defined in
26 section (c)(3).”

27 67. All of the acts and practices of JLRNA as described in this Complaint constitute
28 “unfair” business acts and practices. A business act or practice is “unfair” under the UCL if the

1 reasons, justifications and motives of the alleged wrongdoer are outweighed by the gravity of
2 the harm to the alleged victims. Plaintiff and members of the Class have suffered injury in fact
3 and a loss of money or property as a result of JLRNA's unfair business acts and practices as set
4 forth in detail above.

5 68. JLRNA's conduct does not benefit consumers or competition. Plaintiff and
6 members of the Class could not reasonably avoid the injury each of them suffered or will suffer,
7 which injury is substantial. JLRNA's conduct only benefits JLRNA, because it enables JLRNA
8 to wrongfully avoid having to pay warranty claims which should be covered by the 7-year
9 70,000-mile California emissions warranty.

10 69. The gravity of the consequences of JLRNA's conduct as described above
11 outweighs the justification, motive or reason therefor, is immoral, unethical and unscrupulous,
12 and offends established public policy that is tethered to legislatively declared policies as set
13 forth in the laws detailed above, or is substantially injurious to the public, for the reasons set
14 forth above.

15 70. JLRNA's acts of unfair competition as set forth above present a continuing threat
16 and will persist and continue to do so unless and until this Court issues appropriate injunctive
17 relief. Plaintiff also seeks attorneys' fees and costs pursuant to, *inter alia*, C.C.P. § 1021.5.

18 **SECOND CLAIM FOR RELIEF**

19 **Violation of California Consumers Legal Remedies Act**

20 **(Cal. Civil Code §§ 1750 *et seq.*)**

21 **Against All Defendants**

22 71. Plaintiff re-alleges and incorporates by reference each allegation set forth above.

23 72. JLRNA has violated Section 1770 of the California Consumers Legal Remedies
24 Act, Cal. Civ. Code Section 1750, *et seq.* (the "CLRA"). The violation is that JLRNA promised
25 both the State of California, and members of the Class, including Plaintiff, that it would honor
26 the terms of the JLRNA warranty, and by doing so, that it would honor the terms of the CCR,
27 however JLRNA has failed to do so. Furthermore, the warranty book provided by JLRNA to
28 consumers specifically references the California emissions warranty, and both inferentially and

1 specifically represents that it will honor the terms of the CCR, however JLRNA has refused, and
2 continues to refuse to honor the terms of the CCR, as stated herein.

3 73. Plaintiff is a consumer who was wrongfully required to pay for repairs which
4 should have been paid for by JLRNA pursuant to the CCR. The Gibson Vehicle was presented
5 by Plaintiff for repairs at a JLRNA authorized repair facility, in compliance with the terms and
6 conditions of the JLRNA warranty. The Gibson Vehicle required repairs which should have
7 been covered pursuant to the CCR, based upon the Gibson Vehicle's mileage and age. JLRNA
8 wrongfully failed and refused to pay for the warranty repairs due to the unlawful pattern and
9 practice set forth herein. Thus, Plaintiff suffered damage.

10 74. JLRNA knows that it is violating to terms of the CCR, however JLRNA
11 intentionally violates the CCR in order to save money. Plaintiff and members of the Class are
12 generally unaware of the terms and scope of the CCR, thus JLRNA is able to get away with said
13 wrongful conduct. As a result, Plaintiff and members of the Class have suffered damage.
14 JLRNA engages in a systemic pattern of denying warranty claims under the CCR relating to
15 high-priced warranted parts.

16 75. Plaintiff and members of the Class have presented JLRNA vehicles to JLRNA
17 authorized repair facilities for repairs that should have been covered under the CCR, but
18 coverage has been wrongfully denied to them. As a result, Plaintiff and members of the Class
19 have thus suffered damage. Plaintiff brings this claim on behalf of himself and the Class.

20 76. JLRNA's conduct in warranting, advertising, leasing, selling and distributing
21 vehicles in the State of California, while at the same time knowingly and wrongfully failing to
22 honor the terms of the CCR, constitutes violations of the following subsections of Section 1770:

- 23 (a) JLRNA represents and has represented that the vehicles sold and leased in the
24 State of California have characteristics or benefits which they did not have (in
25 violation of Section 1770(a)(5));
- 26 (b) JLRNA has falsely represented that the vehicles sold and leased in the State of
27 California were of a particular standard, quality, or grade when they were of
28 another (in violation of Section 1770(a)(7)); and,

1 (c) JLRNA advertised the vehicles that have been sold and leased in the State of
2 California with the intent not to sell them as advertised (in violation of Section
3 1770(a)(9)).

4 77. California Civil Code section 1780(a) provides that any consumer who suffers
5 damage as a result of a violation of the CLRA may bring an action to recover: 1) actual
6 damages, but in no case shall the total award of damages in a class action be less than \$1,000; 2)
7 an order enjoining the methods, acts, or practices; 3) restitution of property; 4) punitive
8 damages; and 5) any other relief that the court deems proper.

9 78. California Civil Code section 1781 provides that Plaintiff may pursue this case as
10 a class action.

11 79. Plaintiff requests injunctive relief pursuant to Civil Code 1782(d).

12 80. Plaintiff is entitled to attorney fees pursuant to Civil Code section 1780(e).

13 **THIRD CLAIM FOR RELIEF**

14 **Fraud by Omission**

15 **Against All Defendants**

16 81. Plaintiff re-alleges and incorporates by reference each allegation set forth above.

17 82. Plaintiff contends that JLRNA engages in a uniform and systematic business
18 practice of intentionally refusing to identify in the JLRNA warranty booklet, and in resources
19 provided to its dealerships, all parts which should be identified as high-priced warranted parts.
20 JLRNA does this in an effort to reduce the amount of money that JLRNA spends on warranty-
21 related repairs. If JLRNA complied with California law, and properly identified all parts as
22 high-priced warranted parts which should be identified as such, then JLRNA dealerships would
23 properly provide warranty coverage for said high-priced warranted parts.

24 83. JLRNA's failure to properly identify all parts as high-priced warranted parts
25 which should be identified as such, is a systematic and intentional business practice on the part
26 of JLRNA to minimize the amount of money that JLRNA has to pay out in warranty claims.
27 JLRNA's conduct violates California law.

28

1 84. Said conduct is a fraudulent concealment on the part of JLRNA, because JLRNA
2 fraudulently conceals from consumers and JLRNA's dealerships all of the high-priced
3 warranted parts, in an effort by JLRNA to minimize the amount of money that JLRNA has to
4 pay out in warranty claims. One of the ways JLRNA defrauds and misleads consumers relates to
5 the information that JLRNA provides to consumers in the written warranty booklet provided by
6 JLRNA to consumers. JLRNA intentionally provides false information in the warranty booklets
7 by intentionally failing to classify all of the high-priced warranted parts as parts that should be
8 covered under the 7-year 70,000-mile California emissions warranty. Plaintiff alleges that
9 Plaintiff and members of the Class have suffered damage as a result of JLRNA's wrongful,
10 unfair, unlawful, and fraudulent conduct.

11 85. Plaintiff contends that JLRNA is fully aware of its obligations pursuant to the
12 CCR and that JLRNA willfully and intentionally conceals from consumers, and from the
13 JLRNA dealerships, all of the parts which should be covered as high-priced warranted parts
14 pursuant to the California emissions warranty, in order to fraudulently reduce the amount of
15 money that JLRNA has to pay in warranty claims.

16 86. JLRNA is and was under a duty to disclose to consumers and to its dealerships
17 all of the parts which it is required to cover under the 7-year 70,000-mile California emissions
18 warranty, because:

- 19 (1) JLRNA is and was in a superior position to know the true state of facts about the
20 duration of the 7-year 70,000-mile California emissions warranty;
- 21 (2) JLRNA has made partial disclosures about the extent of the 7-year 70,000-mile
22 California emissions warranty;
- 23 (3) JLRNA has actively concealed and failed to identify all of the parts which are
24 covered under the 7-year 70,000-mile California emissions warranty; and,
- 25 (4) Members of the Class, including Plaintiff, have suffered actual loss due to
26 JLRNA's fraudulent concealment and false representations.

27 87. The facts concealed and not disclosed by JLRNA to Plaintiff and members of the
28 Class are material. Had Plaintiff and members of the Class known the true extent of the 7-year

1 70,000-mile California emissions warranty, and had JLRNA been truthful to its dealerships and
2 members of the Class with regard to identifying all of the parts and repairs that are covered
3 under the 7-year 70,000-mile California emissions warranty, members of the Class would have
4 been able to avoid spending money in order to repair JLRNA vehicles sold and leased in
5 California. As a result, Plaintiff and members of the Class have suffered damage.

6 88. JLRNA continues to fraudulently conceal and misrepresent the extent of the 7-
7 year 70,000-mile California emissions warranty in order to minimize the amount of money that
8 JLRNA spends on warranty related repairs.

9 89. Plaintiff and members of the Class have justifiably relied on the fraudulent
10 concealment, omissions, and misrepresentations on the part of JLRNA, to Plaintiff and members
11 of the Class' detriment.

12 90. Furthermore, JLRNA has refused to, and continues to refuse to provide 7-year
13 70,000-mile California emissions warranty coverage relating to all repairs which should be
14 covered under said warranty pursuant to California law. This refusal is intentional, willful,
15 unfair, unlawful, and done with the specific design on the part of JLRNA to defraud Plaintiff
16 and members of the Class.

17 **PRAYER FOR RELIEF**

18 WHEREFORE, Plaintiff, on behalf of himself and all others similarly situated, prays for
19 relief and judgment against JLRNA as follows:

20 1. Plaintiff, on behalf of himself, and members of the Class, requests the Court to
21 enter judgment against JLRNA as follows:

22 (a) An order certifying the proposed Class designating Plaintiff as named
23 representative of the Class, and designating Plaintiff's Counsel as Class Counsel;

24 (b) A declaration that JLRNA is financially responsible for notifying all
25 members off the Class about the wrongful conduct set forth herein;

26 (c) An order enjoining JLRNA from further deceptive distribution, sales,
27 and lease practices, and to reimburse both Plaintiff and members off the Class for the money
28 wrongfully paid by Plaintiff and members of the Class relating to repairs which should have

1 been covered by JLRNA under the 7-year 70,000-mile California emissions warranty;

2 (d) An award to Plaintiff and members of the Class of compensatory,
3 exemplary, and statutory damages, including interest, in an amount to be proven at trial;

4 (e) An award to Plaintiff and members of the Class of any repair costs they
5 are owed;

6 (f) A declaration that JLRNA must disgorge, for the benefit of the Class, all
7 or part of the ill-gotten profits it received as a result of the wrongful conduct set forth herein,
8 or make full restitution to Plaintiff and members of the Class;

9 (g) An award of attorneys' fees and costs, as allowed by law;

10 (h) An award of attorneys' fees and costs pursuant to California Code of
11 Civil Procedure § 1021.5;

12 (i) An award of pre-judgment and post-judgment interest;

13 (j) Leave to amend the Complaint to conform to the evidence produced at
14 trial; and

15 (k) Other relief as may be appropriate under the circumstances.

16 **DEMAND FOR JURY TRIAL**

17 Pursuant to Federal Rules of Civil Procure, Rule 38(b), Plaintiff hereby demands a trial
18 by jury as to all claims so triable.

19

20 Dated: May 24, 2019

Respectfully submitted,

21

POMERANTZ LLP
THE LAW OFFICE OF ROBERT STARR

22

23

By: _____



Jordan L. Lurie
Ari Y. Bassler

24

25

Attorneys for Plaintiff

26

27

28