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6 and the Proposed Class

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF RIVERSIDE

JUN 11 2014

R. Alessandro

MFA

JUN 12 2014

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8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **FOR THE COUNTY OF RIVERSIDE**

10
11 KATRINA ALLISON, individually and on behalf
12 of herself and all others similarly situated;

13 Plaintiffs,

14 v.

15 LSI PRODUCTS, INC. dba Pro Armor, a California
16 corporation; and DOES 1-20;

17 Defendants.
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Case No.

RIC 1405812

**NATIONWIDE CLASS ACTION
COMPLAINT FOR:**

- (1) **UNFAIR BUSINESS PRACTICES (Business and Professions Code § 17200 et seq.);**
- (2) **FALSE ADVERTISING (Business and Professions Code § 17200 et seq.);**
- (3) **VIOLATIONS OF THE CONSUMERS LEGAL REMEDIES ACT;**
- (4) **BREACH OF THE IMPLIED WARRANTY OF MERCHANTABILITY (Cal. Comm. Code § 2314);**
- (5) **FRAUDULENT CONCEALMENT; AND**

DEMAND FOR JURY TRIAL

By Fax

1 Plaintiff, based on personal knowledge as to herself and on information and belief as to all
2 others, through his undersigned attorneys, complains and alleges as follows:

3 **PARTIES AND OVERVIEW**

4 1. Plaintiff KATRINA ALLISON ("Allison") is an individual consumer
5 residing and domiciled in the State of California, who, during the proposed class period, purchased
6 a RZR-4 door (the "RZR-4 door") that was designed, manufactured, advertised and sold by
7 Defendant LSI PRODUCTS, INC. dba Pro Armor ("LSI" or "Defendant").

8 2. LSI is a California corporation with its principal place of business in
9 Riverside County, in the State of California, and at which location, LSI manufactures, such as the
10 RZR-4 door, to be purchased and used by consumers for the after-market installation upon a utility
11 vehicle (a "UTV").

12 3. Plaintiff is unaware of the true names and capacities, whether individual,
13 corporate or otherwise, of the Defendants sued herein as DOES 1 through 20, and therefore sues
14 these Defendants by such fictitious names. Plaintiff will amend this Complaint to state the true
15 names and capacities of such fictitiously named Defendants when ascertained. Plaintiff alleges
16 that each of such fictitiously named Defendants are in some manner connected with the matters
17 alleged herein and are liable to Plaintiff and the proposed class therefore.

18 4. Defendants are a leader in the UTV industry for after-market doors, as most
19 UTV's are sold without doors.

20 [CONTINUED ON NEXT PAGE]
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1 5. A picture of a UTV without any after-market doors (but with nets) is set
2 forth below for reference:



13 6. Of note, and as discussed herein below, the proposed class in this action
14 includes purchasers of the following of Defendants' doors for after-market installation upon
15 UTV's:

- 16 (1) RZR doors;
17 (2) RZR-4 doors;
18 (3) Teryx doors (sometimes referred to herein as the "T-Rex door");
19 (4) RZR-S doors;
20 (5) RZR XP 1000 doors;
21 (6) RZR XP 4 1000 doors;
22 (7) RZR XP900 doors; and
23 (8) RZR XP900 4 doors. (All of the above doors shall be referred to
24 collectively as the "Doors".) Plaintiff also reserves the right to expand the proposed class should
25 discovery unearth facts that warrant the inclusion of consumers of un-named versions and/or
26 categories of Defendants' doors.

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7. Defendants are headquartered at 5867 Jasmine Street, Riverside, California 92504, at which location Defendants designed, manufactured, advertised, distributed, produced, marketed, and sold the Doors, which are distributed for sale to consumers online and at retail outlets throughout the United States.

8. At all relevant times mentioned herein, and during the class period, Defendants were the sole manufacturers, distributors and driving force behind the Doors as well as one of the many retailers of the Doors.

9. Defendants are also still manufacturers, distributors and retailers of the Doors.

10. Since approximately 2010, Defendants have manufactured, advertised, marketed, distributed, and sold the Doors into commerce throughout California and the United States.

AGENCY

11. At all times relevant, each of the Defendants, named and fictitiously named, was and is the agent, partner, employee, co-venturer, and/or co-conspirator of each of the remaining Defendants and, in doing the things alleged herein acted within the scope, course, purpose, consent, knowledge, ratification, and/or authorization of such agency, partnership, employment, joint venture, and/or conspiracy. Wherever reference is made herein to "Defendants," such allegations shall be deemed to mean the acts of LSI, and DOES 1-20 acting individually, jointly and/or severally.

VICARIOUS LIABILITY

12. Plaintiff is informed and believes, and on that basis, alleges, that at all times herein mentioned, each of the Defendants, named or fictitiously named:

a. was responsible in some manner or way for the events and/or happenings referred to herein, and/or caused injury and damages directly and/or proximately thereby to Plaintiff and the proposed class as alleged herein;

b. is vicariously liable and responsible, as an agent, employee, joint

1 venturer, member, partner, or co-conspirator, for the happenings, events,
2 injuries and/or damages alleged herein; or
3 c. otherwise is an indispensable party to this action.

4 **VENUE**

5 13. Venue is proper in the Riverside Superior Court because a substantial part
6 of the events giving rise to the claims of Plaintiff and the Proposed Class (collectively,
7 "Plaintiffs") occurred in Riverside County. Additionally, Defendants are all either headquartered
8 or reside in Southern California, and LSI has designed, manufactured, advertised, and sold the
9 products subject of this action out of LSI's headquarters located in Riverside County, California.

10 **COMMON ALLEGATIONS**

11 **A. Defendants Did Not Believe The Presence Of An Engineer Was Necessary On**
12 **The Design Team For The RZR, RZR-4, And T-Rex Doors Because**
13 **Defendants Claim The Doors Are For "Style Purposes" Only.**

14 14. Defendants began the design process for the RZR doors, RZR-4 doors, and
15 T-Rex doors in 2010, and without including a licensed engineer on the design team for the
16 doors.

17 15. Alex Danze, the President and CEO of LSI, testified under penalty of
18 perjury that the design process for the RZR doors, RZR-4 doors, and T-Rex doors—the first three
19 versions of the Doors to be designed, marketed, advertised, distributed and/or sold—included a
20 two man design team (Alex Danze and Paul Brinegar), neither of whom had ever designed a UTV
21 door before:

22 Q. So the design team was Paul Brinegar and you; correct?

23 A. Yes.

24 Q. And no one else?

24 A. No.

25 ...

25 Q. So the only meeting of the LSI design team, which is you and Paul
26 Brinegar, could have happened in 2010?

26 A. Yes.

27 ...

27 Q. And Paul Brinegar, does he have any sort of degrees, to your knowledge?

28 A. Not to my knowledge.

1 ...
2 Q. So in early 2010 when you, for the first time in your life, started designing
3 UTV doors, you designed three doors, the T-Rex, the RZR door and the
4 RZR 4 door; correct?

5 A. Correct.

6 Q. So, to your knowledge, it's possible that when you and Paul Brinegar were
7 designing doors for LSI in early 2010, that this was possibly the first time
8 that either you or Paul Brinegar had ever attempted designing an
9 aftermarket UTV door.

10 A. Correct.

11 See January 22, 2014 deposition transcript of Alex Danze ("Danze depo."), pp. 17: 16-20; 22: 9-
12 12; 97: 23-25; 101: 4-8; 105: 15-20 (emphasis added).

13 16. Alex Danze and Paul Brinegar are not engineers.

14 17. Alex Danze testified that Defendants did not even think about including an
15 engineer on the design team for the RZR, RZR-4, and T-Rex doors:

16 Q. Did you think about including an engineer on your design team in early
17 2010?

18 A. No.

19 See *id.*, p. 103: 13-15.

20 18. LSI has admitted that no engineer has ever been involved in its design of
21 the RZR and RZR-4 doors.

22 19. Alex Danze has also testified that at no time have the RZR doors and/or
23 RZR-4 doors been redesigned by Defendants and/or any engineer:

24 Q. So at no point has LSI come back to the design table, had a design team get
25 together and redesign the doors; correct?

26 A. Correct.

27 Q. So to clarify, there's actually never been a change in the design of the
28 doors since you and Paul Brinegar designed the doors in early 2010;
correct?

A. Let me think for a second. Correct.

Q. As you sit here right now, you've already told me that the RZR 4 door -- the
design of this RZR 4 door and this door has not ever been looked at by a

1 licensed engineer; you've told me that repeatedly; right?
2 A. Correct.

3 See Danze depo., pp. 18: 7-10; 19: 11-15; 283: 1-5 (emphasis added).

4
5 20. Alex Danze testified that the reason no engineer has ever been involved
6 with the design of the RZR, RZR-4, and T-Rex doors is because these doors were not designed for
7 any safety purpose, but purely for style purposes:

8 Q. Why didn't you hire an engineer to be on your design team?
9 [objections omitted]

10 A. We didn't feel it was necessary because the doors were not meant for any
11 type of safety, they were just meant for style.

12 ...
13 Q. ... this door is literally just for style, it's just to make the UTV look cool; is
14 that correct?

15 A. Correct.

16 Q. Okay. So this door, the door that – the RZR 4 door that [the Plaintiffs]
17 purchased in no way adds even one degree of safety to their UTV vehicle;
18 correct?

19 A. Correct.

20 Q. It was only to make their vehicle look cooler?

21 A. Correct.

22 Q. And so LSI at all times markets this door simply for style purposes;
23 correct?

24 A. Style purposes, correct.

25 Q. So no LSI employee should ever be telling a distributor, consumer, anyone
26 that the door should be purchased or installed on a UTV to add even 1
27 percent of safety to the vehicle?

28 A. Correct. That's what we instruct our employees.

29 Q. So it's your belief that because – This door adds literally no safety to a
30 vehicle; right?

31 A. Correct.

32 Q. So it's your belief that having this door on your vehicle makes it just as
33 safe as having no door on your UTV vehicle; right?

34 A. Correct.

35 See id., pp. 106: 11-17, 22-25; 107: 1-22 (emphasis added).

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21. LSI's COO, Jennifer Solegardner, also testified that there are no plans for a licensed engineer to inspect Defendants' doors at any time in the future:

Q. As the COO of LSI, do you know if LSI has any plans to have a licensed engineer take a look, I guess for the first time, at the RZR 4 door?

[objection omitted]

A. None that I'm aware of.

See Jennifer Solegardner June 26, 2013 deposition transcript ("Solegardner depo."), p. 68: 9-13.

B. Defendants Begin To Manufacture And Sell The RZR, RZR-4, And T-Rex Doors To Be Installed On UTV's For "Style Purposes" Only.

22. LSI began selling the RZR doors, RZR-4 doors, and T-Rex doors to consumers in 2010:

Q. Okay. So in mid to late 2010, LSI begins sale to consumers of the doors; correct?

A. Correct.

See *id.*, p. 37: 20-22.

23. LSI's sales manager, Fred Brayton, testified at his August 1, 2013 deposition that he understood that the RZR doors, RZR-4 doors, and T-Rex doors provided consumers with nothing more than a "style" benefit:

Q. When you are -- is there a sales staff under you?

A. Yes.

Q. At some point when one of them is hired, you have to train them on how to sell the doors; correct?

[objection omitted]

A. Yes.

Q. Okay. What do you say to them are the benefits of these doors to riders in ATV's?

[objection omitted]

A. Style.

Q. So are you saying that the doors are supposed to provide some sort of safety feature?

A. No.

...

1 Q. Okay. So it sounds like the only thing that you market or instruct your sales
2 team to let their customers know, "Hey, this is a good door you should buy"
is just style purposes?

3 A. Yes.

4 Q. That's it? The doors don't provide safety?

5 A. Correct.

6 Q. So, the only reason anyone should ever buy this door, as far as you're
concerned and LSI is concerned is style purposes?

7 A. Yes.

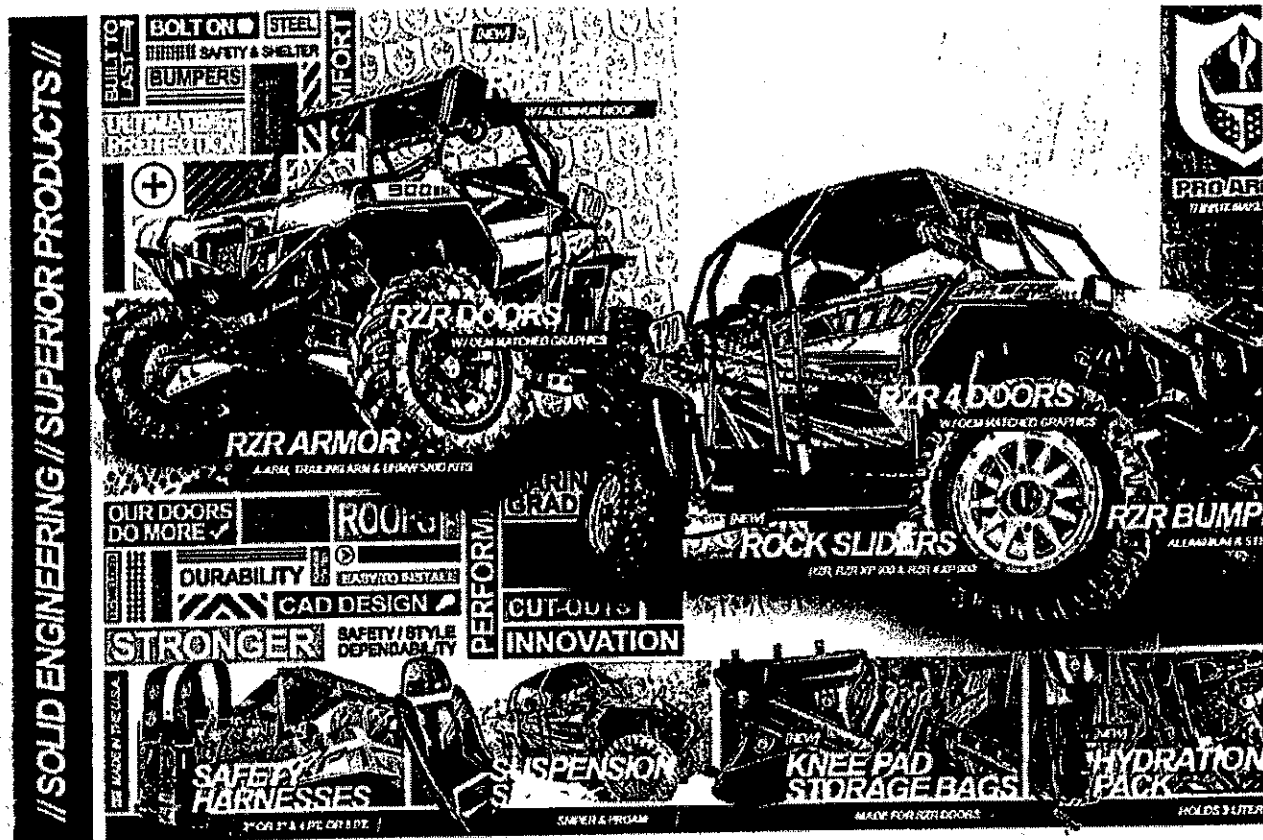
8 See Fred Brayton August 1, 2013 deposition transcript, pp. 43: 8-10, 20-24; 44: 1-5; 45: 3-5; 47:
24-25; 48: 1-5, 20-23 (emphasis added).

9
10 **C. LSI Begins (Falsely) Marketing And Advertising The RZR, RZR-4, And T-**
11 **Rex Doors To Consumers As Having Superior Engineering And Adding**
12 **Safety Features Upon Installation To A UTV.**

13 24. Despite the facts that: (1) no engineer has ever been involved in designing
14 and/or manufacturing the doors; and (2) the doors were designed by Defendants to add nothing
15 more than a "style" benefit to a UTV, Defendants began falsely advertising and marketing the
16 RZR doors, RZR-4 doors, and T-Rex doors to consumers as being designed by engineers and
17 providing safety benefits to a consumer's UTV.

18 25. For example, one of Defendants' print advertisements for the RZR doors,
19 RZR-4 doors, and T-Rex doors has falsely represented to consumers that these doors: (1) possess
20 "solid engineering"; (2) provide consumers with "ultimate protection,"; (3) are "stronger," (4)
21 provide consumers with "safety & shelter,"; (5) provide consumers with "safety/style"; (6) that
22 "[Defendants'] doors do more,"; and (7) Defendants' doors add "performance" to UTV's. A true
23 and correct copy of this print advertisement is set forth herein below:

24 [ADVERTISEMENT IS SET FORTH ON THE FOLLOWING PAGE]
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26. Defendants understood that their advertising and marketing of the doors was misleading to consumers.

27. Defendants understood that ordinary consumers would believe that the RZR doors, RZR-4 doors, and T-Rex doors were being held out as adding safety once installed upon a UTV:

- Q. But some ordinary consumers might look at the door and think, "Oh, this RZR 4 door is for style purposes as well as safety purposes, its"--
- A. They might think that, yes.
- Q. Yeah, they might think that it's going to keep them and their passengers safely inside their UTVs; right?
- A. Correct.
- Q. And LSI does absolutely nothing in its -- You send out no written notice of any sort to alert consumers or your clients that these RZR 4 doors are only for style purposes; correct?
- A. I would have to read the instructions again, but I don't believe they say that.
- ...
- Q. So you don't believe that ordinary consumers had any expectation with regard to whether or not the door would keep them safely inside the vehicle?

1 A. Some consumers might think that. We did not engineer the door and
2 market the door that way.

3 See Danze depo., pp. 167: 12-25; 171: 2-6 (emphasis added).

4 28. However, Defendants did nothing to properly alert consumers that—(and
5 despite Defendants' misleading advertisements)—Defendants' doors were not engineered to add
6 any safety features to a UTV.

7 29. Additionally, Defendants' sales representatives, such as Chris Cahill, have
8 testified that they were instructed by Defendants to falsely advertise and market the RZR doors,
9 RZR-4 doors, and T-Rex doors to consumers as adding safety to a UTV.

10 30. Chris Cahill testified under penalty of perjury on June 26, 2013, that his
11 manager at LSI, Fred Brayton, specifically instructed him to sell these doors to consumers by
12 holding them out as adding safety to a UTV:

13 Q. And what did Fred Brayton explain to you was the way you were supposed
14 to tell your customers were the benefits of this LSI door back in August of
15 2011?

16 [objection omitted]

17 A. He basically just told me that the doors added safety and security and
18 style.

19 Q. The three S's?

20 A. Yep.

21 ...
22 Q. I guess you were informed by your manager at LSI back in August 2011
23 that you were supposed to inform the – your customers that part of the
24 design of the LSI door was that it would – it was designed to, I guess, keep
25 passengers inside the vehicle in case of a rollover or a tip situation.

26 A. Added safety, yeah.

27 ...
28 Q. And so you've already told me that one of the ways that you're selling the
door is, you would tell distributors this is a good door to keep passengers
safe in case of a rollover or tip of the vehicle; right?

29 A. Correct.

30 ...
31 Q. So then we're talking about the second element that LSI had instructed
you to advertise that the doors would provide in terms of safety, was it
would keep passengers safely in the vehicle; right?

32 A. Yes.

33 See Chris Cahill's June 26, 2013 deposition, pp. 19: 21-25; 20: 1-6; 22 25; 23: 1-6; 24: 14-18; 29:
34 8-12 (emphasis added).

1 31. Nevertheless, Defendants continue to deny that they have ever advertised
2 and/or marketed the Doors as adding safety to a UTV.

3 32. Jennifer Solegardner—(again, who is LSI's COO)—testified that
4 Defendants have not instructed their salespeople to sell the doors as a safety product (because
5 Defendant contends that the doors are not a safety product):

6 Q. Are the doors not designed to make a vehicle safer?

7 A. No . . . We've never marketed the doors as a safety device.

8 Q. So it would actually be an incorrect statement for an LSI employee to be
trying to sell to a customer the RZR 4 doors by saying, "This" – "Put this
door on, it will make your" – "the vehicle safer for passengers"; correct?

9 [objection omitted]

10 A. That is not the intent of the doors.

11 Q. Right. So you wouldn't want your employees telling customers that the
intent of the doors was anything related to safety; right?

12 [objection omitted]

13 A. We do not tell our salespeople to sell the doors as a safety product. . . .
They're not intended for – as a safety product.

14 See Solegardner depo., pp. 89: 3-25; 90: 1-2, 25; 91: 1 (emphasis added).

15 **D. After Defendants Had Already Begun Selling The Doors To Consumers, LSI—**
16 **For The Very First Time—Officially Tests The RZR, RZR-4, And T-Rex**
17 **Doors For Safety.**

18 33. It was not until nearly a year after the commencement of sales of the doors,
19 that Defendants first began any official testing of the RZR doors, RZR-4 doors, and T-Rex doors.

20 34. At deposition, Alex Danze admitted that Defendants began selling these
21 doors to consumers in 2010, without first testing the doors for safety in situations where a UTV
22 (with the doors installed on it) tips or rolls over and/or officially testing the doors:

23 Q. And that means that the time periods of LSI's testing of the RZR 4 doors
24 occurred from September 9th, 2011 to March 20th, 2012, by Dan Sandoval;
correct?

25 A. By – yes.

26 Q. And then there was one other official testing period of the RZR 4 doors,
which was Darrel Patton's field testing, which occurred from December
27 22nd, 2011 to July 16th, 2012; correct?

28 A. Correct.

...

1 Q. So that means that in mid to late 2010 when LSI began its sale to
2 consumers of the RZR 4 doors for the first time, that LSI had performed
3 no testing upon the RZR 4 doors regarding tip or rollover situations of the
4 UTVs; correct?

5 A. Correct.

6 See Danze depo., pp. 243: 4-12; 253: 16-21 (emphasis added).

7 35. Defendants have therefore admitted that their aforementioned
8 representations to the public regarding the RZR doors, RZR-4 doors, and T-Rex doors have been
9 knowingly false and/or misleading.

10 36. Defendants' aforementioned representations to the public regarding the
11 RZR doors, RZR-4 doors, and T-Rex Defendants have also been made by Defendants without any
12 reasonable belief that these representations are true, and instead were made by Defendants in order
13 to fraudulently induce the general public and Plaintiffs into purchasing Defendants' products.

14 37. On information and belief, Plaintiffs allege that Defendants have made the
15 same or similar false and/or misleading representations in print as well as by public outcry to the
16 general public and Plaintiffs regarding Defendants' RZR-S doors, RZR XP 1000 doors, RZR XP 4
17 1000 doors, RZR XP900 doors, and RZR XP900 4 doors.

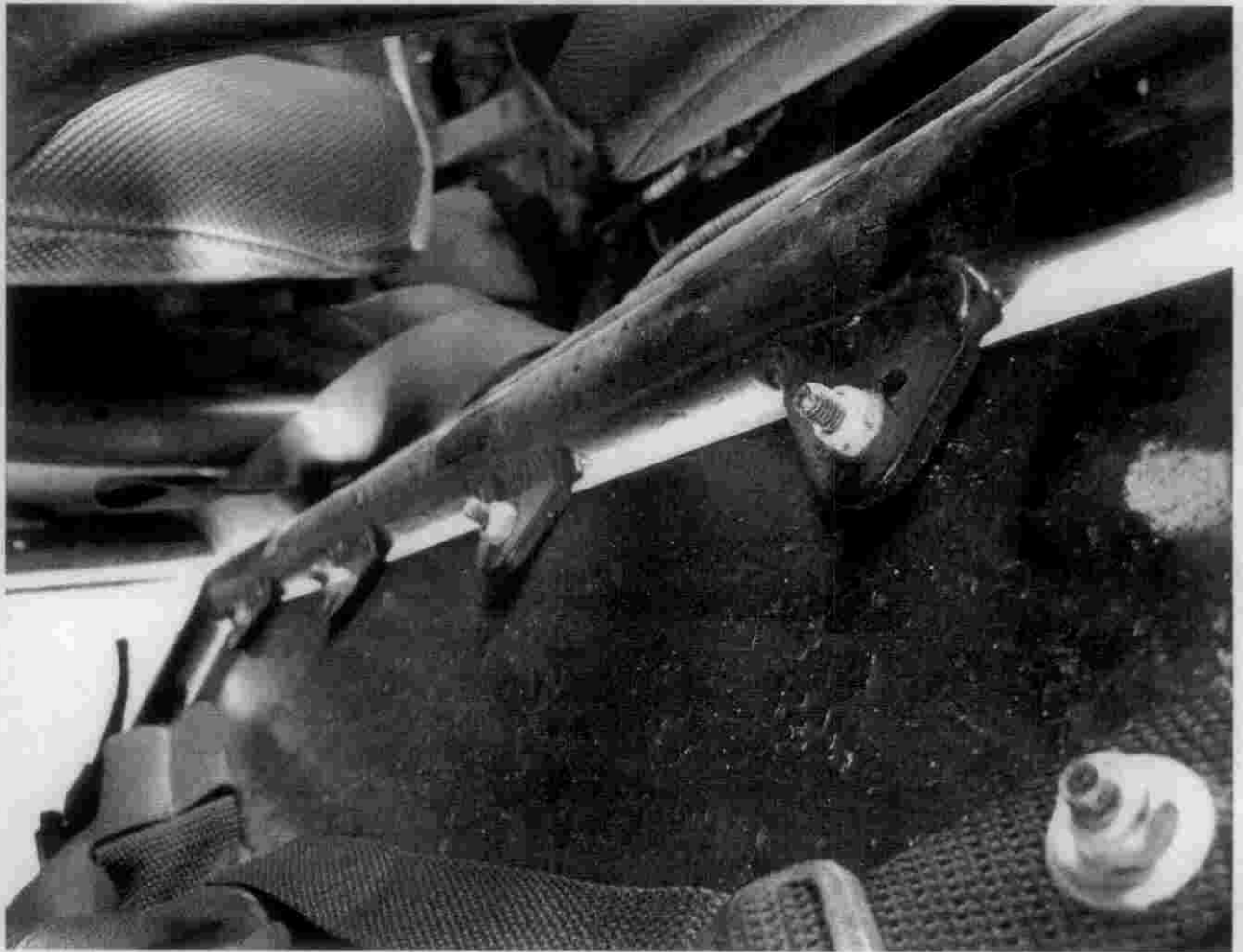
18 **DEFENDANTS' DESIGN DEFECT**

19 38. This Nationwide Class Action also seeks to adjudicate a design defect in the
20 Doors. The design defect arises from certain interior bolts (the "Bolts") of the Doors improperly
21 and dangerously protruding from the Doors so that the interior of an UTV becomes essentially
22 lined with spikes capable of impaling and carving off human flesh and/or limbs. True and correct
23 pictures of the Bolts on Defendants' RZR-4 Doors are set forth below:

24 [IMAGES OF THE BOLTS ARE SET FORTH ON THE FOLLOWING PAGE]
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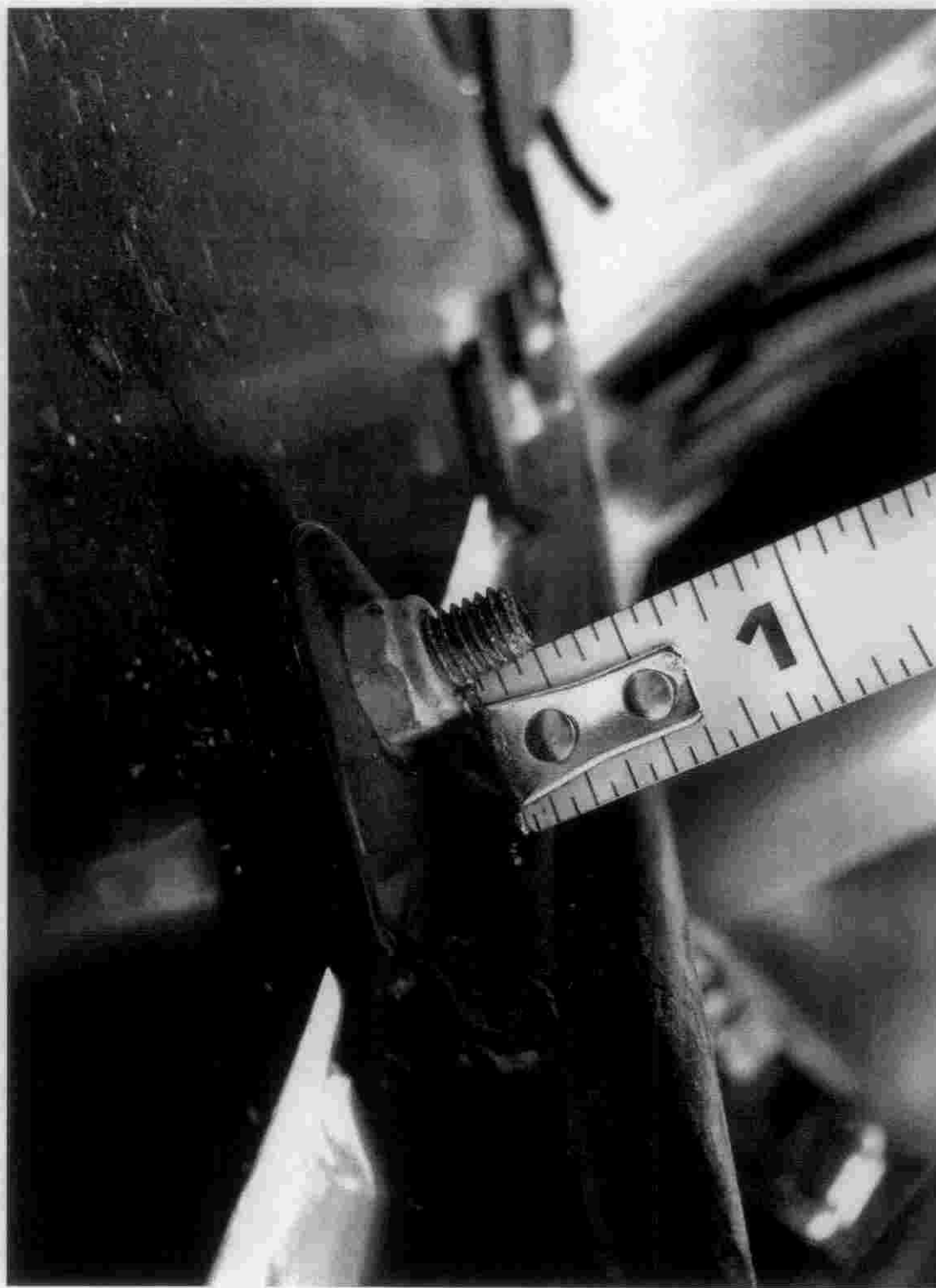


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1 39. Defendants were well aware of the dangerous length and protrusion of the
2 Bolts in the Doors in early 2011, but—in order to avoid the costs of a recall—Defendants
3 continued to allow its dangerous product to be manufactured, sold and installed on UTVs without
4 any changes to the dangerous design.

5 40. It is only after consumers began to sustain injuries—(and certain consumers
6 sustained horrific injuries from the Bolts)—that Defendants first implemented the design changes
7 to the Doors that Defendants knew, since approximately early 2011, were necessary to prevent
8 injuries to consumers.

9 41. In early 2013, Defendants changed the design of the Doors to include
10 shorter Bolts (shortening the Bolts from 20mm to 16mm) and a smooth cap to be placed on top of
11 the jagged edges of the Bolts—but at no time have Defendants ever provided proper notice to
12 consumers of these changes.

13 42. Indeed, Alex Danze testified at his deposition he is well aware that
14 consumers in the United States are currently using Defendants' old version of the Doors without
15 knowledge of Defendants' modifications for a safer design.

16 Q. So as you sit here today, you are a hundred percent aware that somewhere
17 in America someone is using LSI's old design of the RZR 4 doors on their
18 UTV with the uncapped bolts and 20-millimeter bolts and the metal skins;
19 right?

20 A. Correct.

21 Q. And that's fine with you, you have absolutely no problem with that right?
22 [Objection omitted]

23 A. Correct.

24 See Danze depo., pp. 161: 17-25; 162: 1-2 (emphasis added).

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CLASS ACTION ALLEGATIONS

43. Plaintiff Allison brings this Nationwide Class Action pursuant to the California Code of Civil Procedure § 382 and the California Civil Code § 1782, on behalf of herself and all other persons similarly situated.

44. The Class that Plaintiff Allison seeks to represent is defined as follows: All persons or entities who purchased Defendants' Doors—specifically, Defendants' RZR doors, RZR-4 doors, Teryx doors (sometimes referred to herein as the "T-Rex door"), RZR-S doors, RZR XP 1000 doors, RZR XP 4 1000 doors, RZR XP900 doors, and RZR XP900 4 doors—while residing in the United States for purposes other than resale or distribution during the Class period, which is defined as the four years preceding the filing of this action.

45. *In the alternative*, Plaintiff Allison seeks to represent a Class and/or Sub-Class of only California purchasers of the Doors, defined as follows:

All persons or entities who purchased Defendants' Doors—specifically, Defendants' RZR doors, RZR-4 doors, Teryx doors (sometimes referred to herein as the "T-Rex door"), RZR-S doors, RZR XP 1000 doors, RZR XP 4 1000 doors, RZR XP900 doors, and RZR XP900 4 doors—while residing in California for purposes other than resale or distribution during the Class period, which is defined as the four years preceding the filing of this action.

46. The foregoing Class shall exclude all federal, state, governmental and national entities, and Defendants, their co-conspirators, and their respective predecessors, subsidiaries, affiliates, family members, and business partners.

47. Also excluded are class counsel and their employees, the judicial officers and associated court staff assigned to this case as well as any individuals claiming damages from personal injuries or wrongful death arising from the defective design of the Doors.

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1 48. The Class expressly disclaims any recovery for physical injury from the
2 defective design of the Doors. Nevertheless, the increased risk of injury from the failure of
3 Defendants to safely design the Doors (so that the Bolts will not cause injury to passengers of a
4 UTV) is an obvious consequence of the defective design of the Doors, and serves as an
5 independent justification for the relief sought by Plaintiffs.

6 49. The Class can be readily identified using sales records, production records,
7 and other information kept by Defendants or third parties in the usual course of business and
8 presently within their possession, custody, or control.

9 50. The Class is so numerous that joinder of all members is impracticable.
10 Defendants sold, marketed and distributed the product through retail and online outlets in both the
11 United States and foreign territories. The identity and exact number of Class members is
12 unknown, but Plaintiffs anticipates the total membership of the Class members in the tens of
13 thousands.

14 51. Plaintiff Allison's claims are typical of those of other Class members, all of
15 whom have suffered harm due to Defendants' uniform course of conduct. Plaintiff Allison is a
16 member of the Class and the Doors share the same if not identical, design, relevant parts,
17 materials, workmanship, manufacture, advertising, and marketing. Therefore, Plaintiff Allison's
18 claims will be typical of the entire Class.

19 52. Common questions of law and fact affect each and every Class member.
20 These common questions of law and fact predominate over any questions affecting on individual
21 members of the Class. Common questions include:

- 22 a. Whether Defendants' provided the public with false and/or
23 misleading advertising in violation of California Business &
24 Professions Code § 17500 *et. seq.*;
- 25 b. Whether Defendants' made statements constituting false and/or
26 misleading advertising in violation of California Business &
27 Professions Code § 17500 *et. seq.*;

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- c. Whether Defendants' conduct in misrepresenting the benefits of the Doors constituted unfair business practices in violation of California Business & Professions Code § 17200 *et. seq.*;
- d. Whether Defendants' conduct in misrepresenting the benefits of the Doors constituted fraudulent business practices in violation of California Business & Professions Code § 17200 *et. seq.*;
- e. Whether Defendants represented that the Doors have characteristics, uses, or benefits which they do not have;
- f. Whether the Doors have a defective design;
- g. Whether Defendants' conduct, as alleged in this Complaint, caused injury to the class of Plaintiffs;
- h. Whether Defendants have engaged in fraudulent concealment;
- i. Whether Plaintiffs are entitled to equitable and/or injunctive relief, including but not limited to specific performance; and
- j. The appropriate measure of damages sustained by the class of Plaintiffs.

53. Plaintiffs will fairly and adequately protect the interests of the Class, and have retained attorneys experienced in consumer protection actions, class actions, and complex litigation as their counsel.

54. Plaintiff Allison purchased an RZR-4 door in reliance upon the advertisements and marketing by Defendants of Defendants' Doors as being well engineered and to add safety to Plaintiff Allison's UTV.

55. A class action is superior to other methods for fair and efficient adjudication of this controversy. Treatment as a class action will permit a large number of similarly situated persons to adjudicate their common claims in a single forum simultaneously, efficiently, and without the duplication of effort and expense that numerous individual actions would entail.

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1 56. Class treatment will also permit the adjudication of relatively small claims
2 by many members who otherwise could not afford to litigate the claims as asserted in this
3 Complaint.

4 57. This class action presents no difficulties in management that would
5 preclude maintenance of a class action. Plaintiffs anticipate providing appropriate notice to be
6 approved by the Court after discovery into the size and nature of the Class.

7 **FIRST CAUSE OF ACTION**

8 **VIOLATIONS OF UNFAIR BUSINESS PRACTICE ACT—CALIFORNIA BUSINESS AND**
9 **PROFESSIONS CODE §§ 17200 ET SEQ.**

10 **(By Plaintiffs Against All Defendants)**

11 58. Plaintiffs re-allege and incorporate herein by reference each and every
12 allegation contained in paragraphs 1 through 57, inclusive, hereinabove.

13 59. California Business & Professions Code §§ 17200 *et seq.*, also known as the
14 California Unfair Competition Law (the “UCL”), prohibits acts of “unfair competition,” including
15 but not limited to any unlawful, unfair, fraudulent, or deceptive business act or practice as well as
16 “unfair, deceptive, untrue or misleading advertising.”

17 60. By the engaging in the unfair, deceptive, untrue or misleading advertising,
18 marketing and/or conduct as set forth above, Defendants have engaged in unlawful business acts
19 and practices in violation of the UCL by violating state and federal laws including but not limited
20 to Business and Professions code §§ 17500 *et seq.*, which makes false and deceptive advertising
21 unlawful.

22 61. In addition to being unlawful, Defendants’ acts, conduct and practices
23 alleged above are unfair. Defendants, through deceptive and misleading advertising, marketing,
24 and representations, induced Allison and the Class to purchase the Doors believing that the Doors
25 added “safety” to a UTV, were designed, in part, by a licensed engineer, and added more benefits
26 to a UTV than simply a “style” benefit. These representations by Defendants were material to
27 Plaintiffs’ decision to purchase the Doors. This injury is not outweighed by any countervailing
28 benefits to consumers or competition.

1 62. In addition to being unlawful and unfair, Defendants' acts, conduct and
2 business practices as alleged above are fraudulent and/or deceptive. Defendants' packaging,
3 labeling, advertising, and marketing characterized the Doors as being designed by engineers and
4 providing safety benefits—when the Doors were not ever designed by engineers and provide no
5 benefits other than a style benefit—and therefore Defendants' packaging, labeling, advertising,
6 and marketing have a capacity, tendency, and/or likelihood to deceive and/or confuse reasonable
7 consumers, and have deceived and confused reasonable consumers.

8 63. As a direct and proximate result of Defendants' unlawful, unfair and
9 fraudulent business practices, Plaintiffs have been injured in fact. Plaintiffs purchased the Doors
10 in reliance upon Defendants' false and misleading packaging, labeling, advertising, and marketing
11 to the general public regarding the Doors being designed by engineers and providing safety
12 benefits—again, neither of which is true—and Plaintiffs would not have purchased the Doors (or
13 paid the same purchase price) had Plaintiffs known the Doors provide no safety benefit to UTV's
14 whatsoever and were designed and manufactured without any input from engineers.

15 64. Defendants' unlawful, unfair and fraudulent business practices as alleged
16 above present a continuing threat to Plaintiffs because Defendants persist and continue to engage
17 in such practices, and will not cease doing so unless enjoined or restrained by this Court.

18 65. Under California Business & Profession Code § 17203, Plaintiffs seeks an
19 Order of this Court:

- 20 a. Enjoining Defendants from continuing to engage, use, or employ any
21 unlawful, unfair and/or deceptive business act or practice and unfair,
22 deceptive, untrue, or misleading packaging, labeling, advertising,
23 marketing, and any act prohibited by California Business Code §§ 17200 *et*
24 *seq.*; and
25 b. Restoring all monies that may have been acquired by Defendants as a result
26 of such unlawful, unfair, and/or deceptive acts and/or practices.

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SECOND CAUSE OF ACTION
VIOLATIONS OF CALIFORNIA FALSE ADVERTISING LAW—CALIFORNIA
BUSINESS AND PROFESSIONS CODE §§ 17500 *ET SEQ.*

(By Plaintiffs Against All Defendants)

66. Plaintiffs re-allege and incorporate herein by reference each and every allegation contained in paragraphs 1 through 65, inclusive, hereinabove.

67. California Business & Professions Code §§ 172500 *et seq.*, also known as California False Advertising Law, makes it “unlawful for any person, . . . corporation or association, or any employee thereof with intent directly or indirectly to dispose of . . . personal property . . . or anything of any nature whatsoever . . . to make or disseminate or cause to be made or disseminated from this state before the public in any state, in any newspaper or other publication, or any advertising device, or by public outcry or proclamation, or in any other manner or means whatsoever, including over the Internet, any statement, concerning that . . . personal property . . . or concerning any circumstance or matter of fact connected with the proposed performance or disposition thereof, which is untrue or misleading, and which is known, or which by the exercise of reasonable care should be known, to be untrue or misleading . . .”

68. As alleged above, Defendants disseminated or caused to be disseminated deceptive advertising of the Doors to the general public through various media. Such advertising, including but not limited to, the packaging, labeling, advertising, and marketing of Doors as being designed by engineers and providing safety benefits—when the Doors were not ever designed by engineers and provide no benefits other than a style benefit—were false and misleading. Indeed, as set forth above, Defendants have admitted that the Doors do not provide any safety benefit of any sort and were not designed by a single engineer.

69. Nevertheless, Defendants continue to disseminate or cause to be disseminated such deceptive statements as alleged herein.

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1 70. The false and deceptive statements regarding the Doors being designed by
2 engineers and providing a safety benefit upon installation upon a UTV, as disseminated by
3 Defendants, or as caused to be disseminated by Defendants are likely to deceive the consuming
4 public.

5 71. While disseminating or causing to be disseminated the false and deceptive
6 statements regarding the benefits of the Doors, as alleged above, the Defendants knew or should
7 have reasonably known that their statements were false and/or misleading. Additionally, these
8 representations Defendants were material to Plaintiffs' decision to purchase the Doors.

9 72. As a direct and proximate result of Defendants' false and misleading
10 advertising, Plaintiffs have been injured in fact, in that they purchased the Doors in reliance upon
11 Defendants' false and misleading advertising as to the benefits of their products, and Plaintiffs
12 would not have purchased the Doors (or paid the same purchase price) had Plaintiffs known the
13 Doors provided no safety benefit to UTV's whatsoever and were designed and manufactured
14 without any input from engineers.

15 73. Defendants' false and misleading advertising, as alleged above, present a
16 continuing threat to Plaintiffs because Defendants persist and continue to disseminate false and
17 misleading advertising, and will not cease doing so unless enjoined or restrained by this Court.

18 74. Under California Business & Profession Code § 17535, Plaintiffs seeks an
19 Order of this Court:

- 20 a. Enjoining Defendants from continuing to engage, use, or employ any act
21 prohibited by California Business Code §§ 17500 *et seq.*; and
22 b. Restoring all monies that may have been acquired by Defendants as a result
23 of Defendants' false and misleading statements in advertisements,
24 promotions, packaging, labeling, testimonials, and/or marketing as
25 described herein.

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THIRD CAUSE OF ACTION
VIOLATIONS OF THE CONSUMERS LEGAL REMEDIES ACT-CALIFORNIA CIVIL
CODE §§ 1750 ET SEQ.

(By Plaintiffs Against All Defendants)

75. Plaintiffs re-allege and incorporate herein by reference each and every allegation contained in paragraphs 1 through 74, inclusive, hereinabove.

76. This cause of action is brought pursuant to the California Consumers Legal Remedies Act, California Civil Code Section §§ 1750, *et seq.* (the "CLRA").

77. Plaintiffs are consumers as defined by the CLRA and Defendants are either suppliers or sellers as defined by the CLRA.

78. Defendants' conduct described herein involves consumer transactions as defined by the CLRA.

79. In violation of the CLRA, California Civil Code § 1770(a)(5), Defendants represented that the Doors had characteristics, uses, and benefits that they did not have. Those represented benefits included that the Doors added a safety benefit to a UTV upon installation and that an engineer had been involved in the design process of the Doors, which Defendants have admitted to be false and misleading representations.

80. Plaintiffs have therefore suffered actual harm by the acts and/or omissions of Defendants as set forth herein, in that Plaintiffs have unknowingly purchased the Doors for a price greater than the actual fair market value of the Doors with proper disclosure of the facts that the Doors do not provide any safety benefit and were not designed by engineers in any way.

81. For those Plaintiffs who elect to affirm the sale, these damages can be calculated by the difference between the actual value of that which Plaintiffs paid and the actual value of that which they received, together with additional damages arising from the sales transaction, amounts expended in reliance upon the fraud, and compensation for loss of use and enjoyment of the property.

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1 82. Under California Civil Code § 1780, Plaintiff Allison, on behalf of herself
2 and the Class members, and members of the general public, seeks an order of this Court enjoining
3 Defendants from continuing to engage, use, or employ any act prohibited by California Code §
4 1780 *et seq.* Plaintiff further intends to amend the Complaint pursuant to Civil Code § 1782(d)
5 should Defendants not timely comply with the impending preliminary notice to be served in
6 compliance with Civil Code § 1782.

7 83. Plaintiff Allison has included an affidavit with this Complaint that shows
8 venue in the Riverside Superior Court is proper, to the extent such an affidavit is required by
9 California Civil Code § 1780(d).

10 **FOURTH CAUSE OF ACTION**

11 **BREACH OF THE IMPLIED WARRANTY OF MERCHANTABILITY**

12 **(By Plaintiffs Against All Defendants)**

13 84. Plaintiffs re-allege and incorporate herein by reference each and every
14 allegation contained in paragraphs 1 through 83, inclusive, hereinabove.

15 85. Defendants were at all times relevant a merchant with respect to after-
16 market doors for UTV's under California Commercial Code § 2104.

17 86. A warranty that the Doors were in merchantable condition was implied by
18 law, pursuant to California Commercial Code § 2314.

19 87. The Doors, however, when sold and thereafter, were not in merchantable
20 condition and were not fit for the ordinary purpose for which after-market doors are used, in that
21 the Bolts on the Doors—even when capped—protrude dangerously and unnecessarily into the
22 cabin of a UTV and pose a danger to any passenger during use of the UTV, and certain during a
23 tip or rollover of the UTV. Because of these defects, the Doors are not safe for use on UTV's and
24 therefore not fit for ordinary purposes.

25 88. Defendants breached the warranty of merchantability implied by law for the
26 Doors.

27 89. Notice of breach is not required because Defendants are aware from their
28 own testing that the Doors are not in merchantable condition.

1 90. Plaintiffs are the intended beneficiaries of the implied warranties governing
2 Defendants' Doors as set forth herein.

3 91. As a direct and proximate result of Defendants' breach of the implied
4 warranty of merchantability, Plaintiffs have been damaged in an amount to be proven at trial, but
5 in excess of \$25,000.00.

6 **FIFTH CAUSE OF ACTION**

7 **FRAUDULENT CONCEALMENT**

8 **(By Plaintiffs Against All Defendants)**

9 92. Plaintiffs re-allege and incorporate herein by reference each and every
10 allegation contained in paragraphs 1 through 91, inclusive, hereinabove.

11 93. As set forth above, Defendants concealed and/or suppressed material facts
12 concerning the defective and dangerous Bolts in the Doors.

13 94. Defendants had a duty to disclose the defective and dangerous Bolts in the
14 Doors—and/or that Defendants had made changes for safety purposes to the Bolts in the Doors—
15 because Defendants marketed the Doors as being safe and claimed that Defendants were
16 committed to "solid engineering" and "superior products." Once Defendants made these safety
17 representations to the public, Defendants were under a duty to disclose omitted facts regarding the
18 Doors, because where one does speak, one must speak the whole truth and not conceal any facts
19 which materially qualify those facts stated. One who volunteers information must be truthful and
20 the telling of a half-truth calculated to deceive is fraud.

21 95. In addition, Defendants had a duty to disclose these omitted material facts
22 because they were known and/or accessible only to Defendants who have superior knowledge and
23 access to the facts, and Defendants knew they were not known to or reasonably discoverable by
24 Plaintiffs. There omitted facts were material because they directly impact the engineering and
25 safety of the Doors, which is a material concern.

26 96. Defendants actively concealed and/or suppressed these material facts, in
27 whole or in part, with the intent to induce Plaintiffs to purchase the Doors and/or purchase the
28 Doors at a higher price than their true market value.

1 97. Defendants still have not made full and adequate disclosure and continue to
2 defraud Plaintiffs.

3 98. Plaintiffs were unaware of these omitted material facts and would not have
4 acted as they did if they had known of the concealed and/or suppressed facts.

5 99. Plaintiffs' actions in purchasing the Doors and relying upon the
6 representations of Defendants were actual and justifiable for the reasons set forth herein.
7 Defendants were in exclusive control of the material facts and such facts were not known to the
8 public and/or Plaintiffs.

9 100. As a result of the concealment and/or suppression of the material facts by
10 Defendants, Plaintiffs have sustained damage. For those Plaintiffs who elect to affirm the sale,
11 these damages, pursuant to California Code of Civil Procedure § 3343, include the difference
12 between the actual value of that which Plaintiffs paid and the actual value of that which they
13 received, together with additional damages arising from the sales transaction, amounts expended
14 in reliance upon the fraud, and compensation for loss of use and enjoyment of the property. For
15 those Plaintiffs who want to rescind the purchase of the Doors, then those Plaintiffs are entitled to
16 restitution and consequential damages pursuant to California Code of Civil Procedure § 1692.

17 101. Defendants' acts were done maliciously, oppressively, deliberately, with
18 intent to defraud, and in reckless disregard of Plaintiffs' rights and well-being to enrich
19 Defendants. Defendants' conduct warrants an assessment of punitive damages in an amount
20 sufficient to deter such conduct in the future, which amount is to be determined according to
21 proof.

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1 **PRAYER FOR RELIEF**

2 WHEREFORE, Plaintiffs respectfully pray this Court to order judgment in their
3 favor and against Defendants and DOES 1-20 as follows:

4 (A) For an Order certifying the class and/or sub-class, as well as certifying this
5 action as a class action and directing that reasonable notice of this action be given to members of
6 the Class, or alternatively certify all issues and claims that are appropriately certified, and
7 designated and appoint Plaintiff as the Class Representative and his counsel as Class Counsel;

8 (B) For an Order finding and declaring Defendants' acts and practices as
9 challenged herein unlawful, unfair, deceptive and/or fraudulent;

10 (C) For an Order preliminarily and permanently enjoining Defendants from
11 engaging in the practices complained and alleged herein;

12 (D) For an Order requiring Defendants to make restitution of all revenues,
13 earnings, compensation and benefits obtained as a result of Defendants' wrongful conduct;

14 (E) For compensatory damages, as proven at trial, but in excess of \$25,000.00;

15 (F) For general and special damages, as proven at trial, but in excess of
16 \$25,000.00;

17 (G) For disgorgement pursuant to Business and Professions Code §§ 17203, and
18 17535;

19 (H) For punitive damages;

20 (I) For prejudgment and post-judgment interest to the extent permitted by law;

21 (J) For an award of attorneys' fees, costs, and expenses incurred in the
22 investigation, filing, and prosecution of this action to the extent permitted by law; and

23 (K) For such other and further relief as the Court deems just and proper.

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Dated: June 11, 2014

Brian Becker

Eric L. Webb
Brian G. Beecher
Attorneys for Plaintiff KATRINA ALLISON
and the Proposed Class