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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**

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

### **INTRODUCTION**

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



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

2. Defendant is a prominent market participant in the electric vehicle (“EV”) industry. The Chevrolet EVs have helped position Defendant second among auto manufacturers in the emerging EV market, with nearly a 10% share of battery-car segment in 2021.<sup>2</sup>

3. Defendant markets the Class Vehicles in a systematically misleading manner by advertising them as safe and functional EVs. In reality, the Class Vehicles are neither safe nor functional for normal use due to the presence of lithium-ion battery modules.

4. In August 2021, Defendant issued a recall notice for the Class Vehicles, stating that the Class Vehicles’ batteries may ignite when nearing a full charge. Defendant warned Plaintiff and Class Members 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.

5. This battery defect presents a significant safety risk for Plaintiff and Class Members because of the inherent risk that the batteries may ignite when nearing full charge. Due to the battery defect and risk of fire, Plaintiff and Class Members are forced to make unforeseen accommodations and take precautions that interfere with their normal and expected use of the Class Vehicles.

6. Defendant has violated Business & Professions Code section 17200, *et seq.*, and Business & Professions Code section 17500, *et seq.* Plaintiff also brings this action to address Defendant’s state law breaches of express and implied warranties and failure to recall under state law.

7. Accordingly, Plaintiff and consumers have, suffered injury in fact caused by the false, fraudulent, unfair, deceptive, unlawful, and misleading practices set forth herein, and seek injunctive relief, as well as, *inter alia*, compensatory damages, statutory damages, restitution, and attorneys’ fees.

### **PARTIES**

8. Plaintiff is, and at all times relevant hereto was, a citizen of California residing in the county of Contra Costa. Plaintiff leased the 2022 Chevrolet Bolt EV (individually referred to as the “Class Vehicle”) on July 26, 2021, from Boardwalk Cars Inc, in Redwood City, California. Plaintiff

<sup>2</sup> Eisenstein, Paul A. *Ev Battery Fires: What Consumers Should Know*. Forbes, Forbes Magazine, 16 Sept. 2021, <https://www.forbes.com/wheels/news/battery-car-fires/> (last visited December 13, 2021).

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

13. Defendants, upon becoming involved with the manufacture, distribution, advertising, marketing, and sale of the Class Vehicles, knew or should have known that the Class Vehicles' advertising was false, deceptive, misleading, unfair, unlawful, and fraudulent. Since the time Defendants introduced the Class Vehicles into the marketplace, Defendants have misrepresented the safety of the Class Vehicles' batteries and the Class Vehicles' range capabilities in order to convince consumers to purchase and use the Class Vehicles, resulting in profits of hundreds of millions of dollars or more to Defendants, all to the damage and detriment of the consuming public.

14. This Court has subject matter jurisdiction of this action pursuant to 28 U.S.C. Section 1332 and the Class Action Fairness Act of 2005 because: (i) there are 100 or more class members, (ii) there is an aggregate amount in controversy exceeding \$5,000,000, exclusive of interest and costs, and (iii) there is minimal diversity because at least one plaintiff and defendant are citizens of different states.

16. Defendant is subject to personal jurisdiction in California based upon sufficient minimum contacts which exist between Defendant and California. Defendant is authorized to do and doing business in California.

**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.”<sup>3</sup>

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.”<sup>4</sup>

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.<sup>5</sup>

**II. DEFENDANT’S MISLEADING MARKETING**

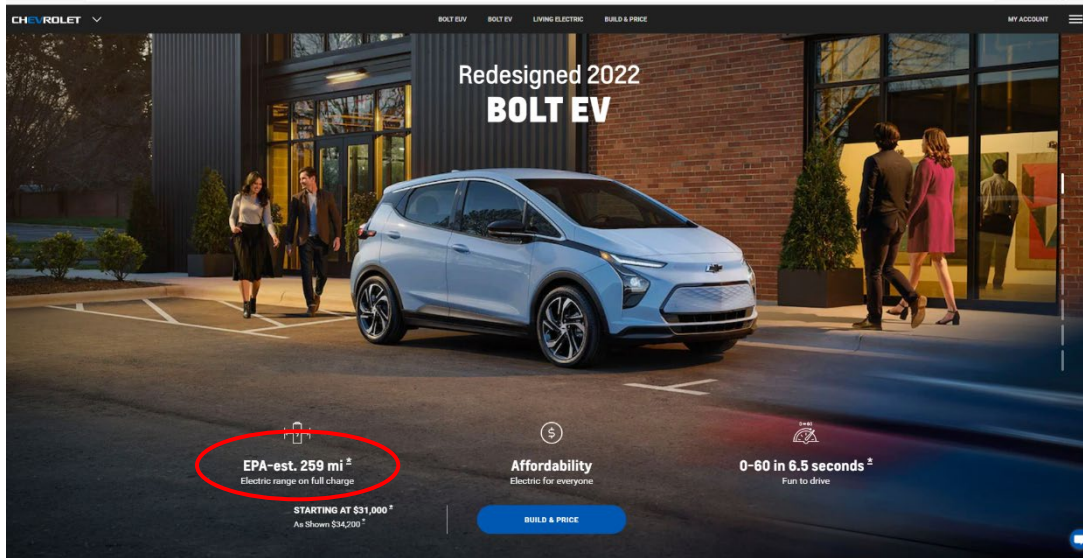
20. The safety and functionality of a vehicle is material to any consumer seeking to purchase that vehicle.

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.

<sup>3</sup> *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).

<sup>4</sup> See Defendant’s website, [https://www.gm.com/commitments/electrification.html?ppc=MICROSOFT\\_700000001963580\\_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&gclidsrc=3p.ds&mclid=281a5031429e114ea5d4317a3511006e](https://www.gm.com/commitments/electrification.html?ppc=MICROSOFT_700000001963580_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&gclidsrc=3p.ds&mclid=281a5031429e114ea5d4317a3511006e) (last visited December 13, 2021).

<sup>5</sup> 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

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

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

#### **IV. DUE TO DEFENDANT'S MISLEADING MARKETING, PLAINTIFF AND THE CLASS HAVE SUFFERED INCONVENIENCE AND ANXIETY**

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

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

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<sup>6</sup> 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.

31. Due to the fact that Plaintiff cannot charge the Class Vehicle overnight and instead must resort to sporadic charging times, the charge is severely limited and thus, his ability to use the Class Vehicle is limited even more.

32. Plaintiff has suffered constant anxiety and loss of sleep as a direct result of the risk the Class Vehicle may spontaneously ignite.

33. Plaintiff would not have bought the Class Vehicle if he had known it was neither safe nor functioned as advertised, based on Defendant's standards for normal use. Plaintiff would like to use the Class Vehicle as intended without limitation; however, Defendant has not yet advised Plaintiff when the battery defect will be fixed, resulting in Plaintiff's significantly diminished use and enjoyment of the Class Vehicle.

34. Therefore, Plaintiff and the class are entitled to (a) recovery of damages in the form of loss of use of the Class Vehicle(s); (b) the option to return the Class Vehicles and obtain the money back for which they paid; and/or (c) the option to keep the vehicle with the immediate fix of the batteries or option to lease rent-free other vehicles at Defendant's expense. Plaintiff is also entitled to recovery of attorneys' fees and costs, and prejudgment and post judgment interest.

#### **CLASS ACTION ALLEGATIONS**

35. Plaintiff brings this action on his own behalf and on behalf of all other persons similarly situated. The Class which Plaintiff seeks to represent comprises:

"All persons who purchased the Class Vehicles in the United States or, alternatively, the State of California, for personal use and not for resale during the time period of four years prior to the filing of the complaint through the date of the court's approval of the class certification motion."

Excluded from the Class are Defendant's officers, directors, and employees, and any individual who received remuneration from Defendant in connection with that individual's use or endorsement of the Class Vehicles. Said definition may be further defined or amended by additional pleadings, evidentiary hearings, a class certification hearing, and orders of this Court.

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. Whether Defendant committed common law fraud;

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

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

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

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

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

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

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

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

**COUNT ONE**  
**FRAUD**  
**(Common Law)**

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

**A. Affirmative Misrepresentation**

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

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

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

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

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

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

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

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

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

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

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

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

58. Defendant had a duty to disclose that the battery in the Class Vehicle is unsafe at the point of purchase because (1) Defendant had exclusive knowledge of the material, suppressed facts; (2) Defendant took affirmative actions to conceal the material facts; and (3) Defendant made partial representations about the mileage range, battery safety, and performance of the Class Vehicle that

were misleading without disclosure of the fact that the Class Vehicle contained unsafe batteries that caused the Class Vehicle to overheat and pose a risk of fire.

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

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

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

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

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

## **COUNT TWO**

### **VIOLATION OF CALIFORNIA UNFAIR COMPETITION LAW BUSINESS & PROFESSIONS CODE § 17200, *et seq.***

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

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

66. Defendant advertised the Class Vehicle as having a leading electric vehicle mileage capacity of 259 miles per full charge. Contrary to these representations, the Class Vehicle is not capable of meeting this mileage expectation, due to the unsafe battery condition. This misrepresentation is evident from Defendant's recall notice sent out to Plaintiff and the Class on 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'

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  
28

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).

86. Defendant's conduct of using a defective battery at the point of sale without notifying prospective consumers that the battery is unsafe, is likely to deceive members of the public.

87. Defendant's conduct of advertising a battery range of 259 miles is fraudulent and likely to deceive members of the public.

88. Defendant's use of a defective battery, as alleged herein, is false, deceptive, misleading, and unreasonable, and constitutes fraudulent conduct.

89. Defendant knew or should have known of their fraudulent conduct.

90. As alleged herein, the misrepresentations by Defendant detailed above constitute a fraudulent business practice in violation of California Business & Professions Code Section 17200.

91. Defendant had reasonably available alternatives to further its legitimate business interests other than the conduct described herein. Defendant could have used a battery appropriate for the quality and safety of the Class Vehicle.

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

93. Plaintiff and the Class have suffered injury in fact and have lost money as a result of Defendant's fraudulent conduct. Plaintiff paid an unwarranted premium for this vehicle. Plaintiff would not have purchased the Class Vehicle if she had known that the battery unsafe and unfit for normal use.

### C. "Unlawful" Prong

94. California Business and Professions Code Section 17200, *et seq.*, identifies violations of other laws as "unlawful practices that the unfair competition law makes independently actionable." *Velazquez v. GMAC Mortg. Corp.*, 605 F. Supp. 2d 1049, 1068 (C.D. Cal. 2008).

95. Defendant's use of a defective battery, as alleged in the preceding paragraphs, violates California Business and Professions Code Section 17500, *et. seq.*

96. Defendant's use of a defective battery, as alleged herein, is false, deceptive, misleading, and unreasonable, and constitutes unlawful conduct.

97. Defendant knew or should have known of its unlawful conduct.

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.

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

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

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

105. Plaintiff and the Class suffered ascertainable loss and actual damages as a direct and proximate result of Defendant's misrepresentations and their concealment of and failure to disclose material information. Pursuant to Cal. Bus. & Prof. Code § 17200, Plaintiff and the California State Class seek an order enjoining Defendant's unfair and/or deceptive acts or practices, any such orders or judgments as may be necessary to restore to Plaintiff and California State Class members any money acquired by unfair competition, including restitution and/or restitutionary disgorgement, as

provided in Cal. Bus. & Prof. Code §§ 17203 and 3345, and any other just and proper relief available under the California UCL.

### **COUNT THREE**

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

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

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

108. California's False Advertising Law, California Business and Professions Code Section 17500, *et seq.*, makes it "unlawful for any person to make or disseminate or cause to be made or disseminated before the public in this state, in any advertising device or in any other manner or means whatever, including over the Internet, any statement, concerning personal property or services, professional or otherwise, or 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."

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

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

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

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

113. As a direct and proximate result of Defendant's conduct alleged herein in violation of the FAL, Plaintiff and members of the Class, pursuant to § 17535, are entitled to an order of this 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.

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

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

#### **COUNT FOUR**

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

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

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

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

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

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

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

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

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

125. Plaintiff and the Class were harmed by Defendant's failure to recall the Class Vehicles properly and in a timely manner and, as a result, have suffered damages, including their

out-of-pocket costs, losses, and inconvenience, and caused by Defendant's ongoing failure to properly recall, retrofit, and fully repair the Class Vehicles.

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

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

**PRAYER FOR RELIEF**

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

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

**JURY TRIAL DEMANDED**

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

Dated: December 23, 2021

**CLARKSON LAW FIRM, P.C.**

By: /s/ Yana Hart  
Yana Hart, Esq.  
Ryan Clarkson, Esq.

*Attorneys for Plaintiff*

**CLARKSON LAW FIRM, P.C.**

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Yana Hart (SBN 306499)

*yhart@clarksonlawfirm.com*

22525 Pacific Coast Highway

Malibu, CA 90265

Tel: (213) 788-4050

Fax: (213) 788-4070

*Attorneys for Plaintiff*

**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**

**DECLARATION OF DAVID KENNEDY  
REGARDING VENUE PURSUANT TO  
CALIFORNIA CODE OF CIVIL  
PROCEDURE SECTION 1780(d)**

1 I, David Kennedy, declare as follows:

2 1. I am the Plaintiff in this action and a citizen of California. I have personal knowledge  
3 of the facts stated herein, and if called to testify as a witness, I could and would competently testify  
4 thereto.

5 2. Pursuant to California Civil Code Section 1780(d), this Court is proper for trial of  
6 this action because Defendants conduct substantial amount of business in this District.

7 3. I leased the 2022 Chevrolet Bolt EV (individually referred to as the "Class Vehicle")  
8 on July 26, 2021, from Boardwalk Cars Inc, in Redwood City, CA. The Class Vehicle was valued  
9 at \$31,995.

10  
11 I declare under penalty of perjury under the laws of the United States and the State California  
12 that the foregoing is true and correct.

13  
14 Executed on 12/23/2021 at Danville, California.  
15 (date) (location)

16 David Kennedy  
17 David Kennedy

CIVIL COVER SHEET

The JS-CAND 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved in its original form by the Judicial Conference of the United States in September 1974, is required for the Clerk of Court to initiate the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

**I. (a) PLAINTIFFS**  
  
David Kennedy  
  
**(b)** County of Residence of First Listed Plaintiff    Contra Costa  
*(EXCEPT IN U.S. PLAINTIFF CASES)*  
  
**(c)** Attorneys *(Firm Name, Address, and Telephone Number)*  
Yana Hart, Ryan Clarkson, Clarkson Law Firm, P.C.  
22525 Pacific Coast Highway, Malibu, CA 90265; (213) 788-4050

**DEFENDANTS**  
  
General Motors Company  
  
County of Residence of First Listed Defendant  
*(IN U.S. PLAINTIFF CASES ONLY)*  
  
NOTE:    IN LAND CONDEMNATION CASES, USE THE LOCATION OF  
             THE TRACT OF LAND INVOLVED.  
  
Attorneys *(If Known)*

**II. BASIS OF JURISDICTION** *(Place an "X" in One Box Only)*  
  
☐ 1 U.S. Government Plaintiff    ☐ 3 Federal Question *(U.S. Government Not a Party)*  
  
☐ 2 U.S. Government Defendant    ☒ 4 Diversity *(Indicate Citizenship of Parties in Item III)*

**III. CITIZENSHIP OF PRINCIPAL PARTIES** *(Place an "X" in One Box for Plaintiff and One Box for Defendant)*  

	PTF	DEF		PTF	DEF
Citizen of This State	<input checked="" type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input checked="" type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6

**IV. NATURE OF SUIT** *(Place an "X" in One Box Only)*

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment Of Veteran's Benefits <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury -Medical Malpractice  <b>CIVIL RIGHTS</b> <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/ Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities--Employment <input type="checkbox"/> 446 Amer. w/Disabilities--Other <input type="checkbox"/> 448 Education	<b>PERSONAL INJURY</b> <input type="checkbox"/> 365 Personal Injury -- Product Liability <input type="checkbox"/> 367 Health Care/ Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability  <b>PERSONAL PROPERTY</b> <input checked="" type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability  <b>PRISONER PETITIONS</b>  <b>HABEAS CORPUS</b> <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty  <b>OTHER</b> <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee--Conditions of Confinement	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC § 881 <input type="checkbox"/> 690 Other  <b>LABOR</b> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act  <b>IMMIGRATION</b> <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC § 158 <input type="checkbox"/> 423 Withdrawal 28 USC § 157  <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent--Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark <input type="checkbox"/> 880 Defend Trade Secrets Act of 2016  <b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g))  <b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS--Third Party 26 USC § 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC § 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced & Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 485 Telephone Consumer Protection Act <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes

**V. ORIGIN** *(Place an "X" in One Box Only)*  
☒ 1 Original Proceeding    ☐ 2 Removed from State Court    ☐ 3 Remanded from Appellate Court    ☐ 4 Reinstated or Reopened    ☐ 5 Transferred from Another District *(specify)*    ☐ 6 Multidistrict Litigation--Transfer    ☐ 8 Multidistrict Litigation--Direct File

**VI. CAUSE OF ACTION**  
Cite the U.S. Civil Statute under which you are filing *(Do not cite jurisdictional statutes unless diversity):*  
28 U.S.C. § 1332(d)(2)(A)  
Brief description of cause:  
Violations of Class Action Fairness Act ("CAFA")

**VII. REQUESTED IN COMPLAINT:**    ☒ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, Fed. R. Civ. P.    **DEMAND \$**    **CHECK YES only if demanded in complaint: JURY DEMAND:**    ☒ Yes    ☐ No

**VIII. RELATED CASE(S), IF ANY** *(See instructions):*    JUDGE    DOCKET NUMBER

**IX. DIVISIONAL ASSIGNMENT (Civil Local Rule 3-2)**  
*(Place an "X" in One Box Only)*    ☒ SAN FRANCISCO/OAKLAND    ☐ SAN JOSE    ☐ EUREKA-MCKINLEYVILLE

## INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS-CAND 44

**Authority For Civil Cover Sheet.** The JS-CAND 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved in its original form by the Judicial Conference of the United States in September 1974, is required for the Clerk of Court to initiate the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I. a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
  - b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the “defendant” is the location of the tract of land involved.)
  - c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section “(see attachment).”
- II. Jurisdiction.** The basis of jurisdiction is set forth under Federal Rule of Civil Procedure 8(a), which requires that jurisdictions be shown in pleadings. Place an “X” in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
- (1) United States plaintiff. Jurisdiction based on 28 USC §§ 1345 and 1348. Suits by agencies and officers of the United States are included here.
  - (2) United States defendant. When the plaintiff is suing the United States, its officers or agencies, place an “X” in this box.
  - (3) Federal question. This refers to suits under 28 USC § 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
  - (4) Diversity of citizenship. This refers to suits under 28 USC § 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS-CAND 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an “X” in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerk(s) in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.
- V. Origin.** Place an “X” in one of the six boxes.
- (1) Original Proceedings. Cases originating in the United States district courts.
  - (2) Removed from State Court. Proceedings initiated in state courts may be removed to the district courts under Title 28 USC § 1441. When the petition for removal is granted, check this box.
  - (3) Remanded from Appellate Court. Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
  - (4) Reinstated or Reopened. Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
  - (5) Transferred from Another District. For cases transferred under Title 28 USC § 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
  - (6) Multidistrict Litigation Transfer. Check this box when a multidistrict case is transferred into the district under authority of Title 28 USC § 1407. When this box is checked, do not check (5) above.
  - (8) Multidistrict Litigation Direct File. Check this box when a multidistrict litigation case is filed in the same district as the Master MDL docket. Please note that there is no Origin Code 7. Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC § 553. Brief Description: Unauthorized reception of cable service.
- VII. Requested in Complaint.** Class Action. Place an “X” in this box if you are filing a class action under Federal Rule of Civil Procedure 23. Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction. Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS-CAND 44 is used to identify related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.
- IX. Divisional Assignment.** If the Nature of Suit is under Property Rights or Prisoner Petitions or the matter is a Securities Class Action, leave this section blank. For all other cases, identify the divisional venue according to Civil Local Rule 3-2: “the county in which a substantial part of the events or omissions which give rise to the claim occurred or in which a substantial part of the property that is the subject of the action is situated.”
- Date and Attorney Signature.** Date and sign the civil cover sheet.