

1 **KAPLAN FOX & KILSHEIMER LLP**
 2 Laurence D. King (SBN 206423)
 3 Matthew B. George (SBN 239322)
 4 Blair E. Reed (SBN 316791)
 5 Clarissa Olivares (SBN 343455)
 6 1999 Harrison Street, Suite 1560
 7 Oakland, CA 94612
 Telephone: 415-772-4700
 Facsimile: 415-772-4707
 Email: *lking@kaplanfox.com*
mgeorge@kaplanfox.com
breed@kaplanfox.com
colivares@kaplanfox.com

8 Marc A. Wites (*pro hac vice* to be filed)
 9 Thomas Rogers (*pro hac vice* to be filed)
WITES & ROGERS
 4400 North Federal Highway
 Lighthouse Point, Florida 33064
 T: (954) 933-4400
 Email: *mwites@witeslaw.com*
trogers@witeslaw.com

*Attorneys for Plaintiffs Bret Conway and
 Jennifer Rogers and the Proposed Class*

15 **UNITED STATES DISTRICT COURT**
 16 **CENTRAL DISTRICT OF CALIFORNIA**

18 BRET CONWAY and JENNIFER
 19 ROGERS, Individually and on Behalf
 of All Others Similarly Situated,

20 Plaintiffs,

21 v.

22 KAWASAKI MOTORS CORP.,
 23 U.S.A. AND KAWASAKI HEAVY
 INDUSTRIES (USA), INC. DBA
 24 KAWASAKI HEAVY INDUSTRIES
 MOTORCYCLE & ENGINE,

25 Defendants.

Case No. 8:24-cv-01452

CLASS ACTION

CLASS ACTION COMPLAINT

DEMAND FOR JURY TRIAL

1 Plaintiffs Bret Conway and Jennifer Rogers (collectively “Plaintiffs”), by their
2 undersigned counsel, on behalf of themselves and a Class of those similarly situated,
3 bring this action against Defendants, and allege based upon personal knowledge of
4 the allegations pertaining to themselves, and upon information, belief, and the
5 investigation of counsel as to all other allegations.

6 **INTRODUCTION**

7 1. Defendant Kawasaki Motors Corp., U.S.A. (“Kawasaki Motors”)
8 develops and sells vehicles through distributors in the United States of America.
9 Specifically at issue in this case are the side-by-side Utility Task Vehicles (“UTVs”)
10 known as the 2024 MULE PRO-FX™, PRO-FXR™, and PRO-FXT™ 1000 (the
11 “2024 Mules” or a “2024 Mule”). These vehicles are different versions of the 2024
12 MULE 1000. All the Mules at issue have an identical engine manufactured by
13 Kawasaki Heavy Duty Industries (USA), Inc. (“Kawasaki Heavy Duty”). Unless
14 otherwise indicated, Kawasaki Motors and Kawasaki Heavy Duty are referred to
15 collectively as “Kawasaki”.



25 2024 Mule Pro-FX 1000¹

26
27
28 ¹ <https://www.kawasaki.com/en-us/side-x-side/mule/3-passenger/mule-pro-fx-1000/2024-mule-pro-fx-1000-hd-edition>

1 2. Kawasaki represents that:

2 The MULE PRO-FX™ 1000 HD Edition side x side is a
3 powerful, high-capacity, three-passenger vehicle that’s built to
4 take on the most demanding days. With dependable power and
5 exceptional all-day comfort, this rugged side x side is the perfect
6 companion for work and play. Finish the job with the reliable
7 capability of the MULE PRO-FX 1000 HD Edition.²

8 3. Kawasaki represents that the vehicle includes “NEW KAWASAKI-
9 BUILT 999CC LIQUID COOLED, 4-STROKE PARALLEL TWIN ENGINE” and
10 instructs buyers to “Take on the most demanding jobs with the new 999cc twin-
11 cylinder Kawasaki-built engine that delivers both high power and high torque as well
12 as increased top speed.” *Id.*

13 4. Kawasaki’s early advertising for the 2024 Mule depicts ranchers and
14 farmers driving the 2024 Mule during the course of their workdays.³ The caption on
15 YouTube states, “For those who never back down and work tirelessly from sunup to
16 sundown, we understand your unwavering dedication. That’s why we built the all-
17 new 2024 #KawasakiMULE PRO 1000 series. Your ultimate companion designed
18 and tested to match your relentless spirit and tackle the toughest challenges head-on.”

19 5. Kawasaki’s website states:

20 Highly capable Kawasaki MULE™ side x sides have been
21 supporting the hardest workers for decades. Dependable
22 performance and reliable strength are what make a rugged MULE
23 side x side the ultimate workhorse. Confidently tackle each day
24 with a vehicle that you can rely on from sun-up to sun-down, day
25 after day, year after year.⁴

26 6. Unfortunately, Kawasaki has not provided buyers with a functioning
27 vehicle as promised. Rather, in April 2024, Kawasaki sent a notice to all buyers of

28 ² https://www.Kawasaki.com/en-us/side-x-side/Mule/3-passenger/Mule-pro-fx-1000?cm_re=GLOBALNAV-_-PRODUCTGROUPLIST-_-VEHICLE#

³ <https://www.youtube.com/watch?v=zZuJcRkpswg> (posted to YouTube on June 6, 2023).

⁴ https://www.Kawasaki.com/en-us/side-x-side/Mule?utm_source=socialorganic&utm_medium=youtube_feed&utm_campaign=20230606npl_Mule&utm_content=06062023&cm_mmc=socialorganic-_-20230606npl_Mule-_-youtube_feed-_-06062023

1 the Mules, including Plaintiffs, that “Kawasaki is investigating improper combustion
2 during engine start up potentially creating a fire risk on 2024 MULE PRO-FX, PRO-
3 FXR & PRO-FXT 1000 models.” See Exhibit A (the “Stop Use Notice”).

4 7. The Stop Use Notice specifically instructed owners:

5 **DO NOT DRIVE YOUR MULE PRO-FX/FXR/FXT UNTIL**
6 **AN AUTHORIZED REPAIR HAS BEEN COMPLETED**

7 *Id.* (emphasis in original).

8 8. Two months later, Kawasaki has still neither provided a repair, stated
9 that they have identified a repair, or even suggested when 2024 Mule owners can
10 expect a repair on their 2024 Mules, meaning that 2024 Mule owners have no idea
11 when they will be able to use the 2024 Mules that they have purchased (even while
12 continuing to make payments if the purchase was not in cash). The lack of ability to
13 safely use the Mules is compounded because many 2024 Mules are used on farms
14 and ranches as work vehicles. In fact, the videos Kawasaki has posted on its website
15 show Mules being used this way.



25 Advertising images for the 2024 Mule Pro-FX 1000⁵

26
27
28 ⁵ <https://www.kawasaki.com/en-us/side-x-side/mule/3-passenger/mule-pro-fx-1000/2024-mule-pro-fx-1000-hd-edition>

1 15. Defendant Kawasaki Heavy Duty Industries (USA), Inc. is incorporated
2 in the State of New York, maintains in headquarters in New York at 60 East 42nd
3 Street, Suite 2001 New York, New York 10165, and does business in the State of
4 California.

5 **JURISDICTION**

6 16. This Court has personal jurisdiction over the Defendants. The Court also
7 has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. § 1332(d).
8 Defendants have transacted business and their affairs in California and have
9 committed the acts complained of in California. The amount in controversy exceeds
10 \$5,000,000.00, exclusive of interest and costs, and this case is a class action in which
11 some members of the Class are citizens of different states than Defendant. See 28
12 U.S.C. § 1332(d)(2)(A). This Court has supplemental jurisdiction over the state law
13 claims pursuant to 28 U.S.C. § 1367.

14 17. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391(b),
15 (c), and (d) because a substantial part of the events giving rise to Plaintiff's claims
16 occurred in this district. Defendants have transacted business and their affairs in this
17 district, maintain an office and reside in the State of California, and have committed
18 the acts complained of in this district.

19 **FACTUAL ALLEGATIONS**

20 18. Kawasaki manufactures, advertises, markets, and sells 2024 Mules and
21 related accessories throughout the United States of America.

22 19. The 2024 Mules at issue in this lawsuit include a 999 CC Liquid Cooled,
23 4-Stroke Parallel Twin Engine. This engine is significantly larger than that available
24 on earlier iterations of the Mule and, thus, should provide more power to the vehicles
25 and make them able move faster and tow heavier loads than Mules with smaller
26 engines.

27 20. The 2024 Mule also contains several other features that were not
28 previously available on earlier models.

1 21. The 2024 Mules have a MSRP retail value of \$15,099 to \$18,799, before
2 upgrades and taxes.⁶ Accessories for the 2024 Mules can cost thousands of dollars
3 per accessory.⁷

4 22. Just like any vehicle, Kawasaki knows that safety and dependability are
5 paramount considerations for purchasers of their UTVs, including the 2024 Mules.
6 On its own website, Kawasaki describes, e.g., the 2024 Mule Pro-FXR as “a
7 dependable workhorse that features a smooth, powerful twin-cylinder Kawasaki-built
8 engine” and “takes strength, dependability and durability to a whole new level”⁸:



DURABILITY

MUSCLE & ENDURANCE

Built to work hard on and off the job, the Kawasaki MULE PRO-FXR™ 1000 side x side takes strength, dependability and durability to a whole new level.

+ EXPLORE MORE

POWER & HANDLING

HIGHLY CAPABLE

The MULE PRO-FXR™ 1000 side x side is a dependable workhorse that features a smooth, powerful twin-cylinder Kawasaki-built engine and a rugged chassis that provides agile and confident handling.

+ EXPLORE MORE



⁶ The cheapest of the three 2024 Mules at issue here is listed at MSRP \$15,099 and the most expensive is listed at \$18,799. See <https://www.kawasaki.com/en-us/side-x-side/mule/3-passenger/mule-pro-fxr-1000/2024-mule-pro-fxr-1000>; <https://www.kawasaki.com/en-us/side-x-side/mule/3-to-6-passenger/mule-pro-fxt-1000/2024-mule-pro-fxt-1000-le>.

⁷ See, e.g., <https://www.kawasaki.com/en-us/shop/vehicle-accessories/side-x-side/kaf1000mrfnn>

⁸ <https://www.kawasaki.com/en-us/side-x-side/mule/3-passenger/mule-pro-fxr-1000>

23. In connection with the purchase of a 2024 Mule, Kawasaki provides an express 36-month manufacturer’s warranty:



Plaintiffs submit that Kawasaki provides the same, or functionally same, manufacturer’s warranty to all purchasers.

24. Despite Kawasaki’s warranty and statements about the safety and reliability of the 2024 Mules, the 2024 Mules do not meet the bare minimum standards of operating with the usual and expected level of safety due to a defective, dangerous engine that has led Kawasaki to recall the 2024 Mules in multiple foreign countries. Meanwhile, Kawasaki has issued a Stop Use Notice to American consumers to **“NOT DRIVE YOUR MULE PRO-FX/FXR/FXT UNTIL AN AUTHORIZED REPAIR HAS BEEN COMPLETED.”** This defect renders the 2024 Mules worthless and unusable for their intended purpose of safely and reliably transporting, hauling, and off-roading.

25. As noted above, the 2024 Mules have a defective engine such that they may catch on fire, damaging the Mules themselves and potentially causing serious or even fatal injury to consumers.

1 26. Indeed, consumers have reported experiencing the defect first-hand:

- 2 • June 6, 2024: “We went to move our mule because it was in the way
3 and it went with a BANG!!! My husband with back problems and
4 got it because he has a hard time walking it do chores.”⁹
5 • April 29, 2024: “i have a 1000 and it has destroyed the intake by
6 backfiring and waiting on repair and its been a month”¹⁰
7 • April 29, 2024: “I also have a fxr1000 and my intake just blew apart
8 yesterday, 50 hours on the clock.”¹¹

9 27. As of this date, Kawasaki has not issued a formal recall of the 2024
10 Mules in the United States; specifically, a search of the Consumer Products Safety
11 Commission (“CPSC”) website reveals no formal recalls for the 2024 Mule. Even
12 assuming a U.S. recall is forthcoming, the owners of 2024 Mules will have already
13 experienced losses and damages caused by the undisclosed defect and its associated
14 loss of useful life and diminished resale value.

15 28. By contrast, on April 23, 2024, Kawasaki issued a formal recall for the
16 identical 2024 Mule models sold in Canada, which specifies that “[o]n certain side-
17 by-side UTVs, the engine could backfire during start up and cause a vehicle fire.”¹²
18 Also on April 23, 2024, Kawasaki issued a formal recall for the identical 2024 Mule
19 models sold in Australia, which specifies that “[d]uring start-up a defect may cause
20 affected Kawasaki vehicles to catch fire” and that “[t]here is a risk of serious injury
21 from burns if the affected Kawasaki vehicle catches fire.”¹³

22 _____
23 ⁹ https://www.kawieriders.com/threads/mule-pro-fxt-1000-2024-stop-sale-recall.183675/page-4?nested_view=1&sortby=oldest

24 ¹⁰ <https://www.kawieriders.com/threads/mule-pro-1000-recalled-now-i-dont-know-what-to-get.183662/>

25 ¹¹ Id.

26 ¹² <https://recalls-rappels.canada.ca/en/alert-recall/transport-canada-recall-2024238-Kawasaki>

27 ¹³ <https://www.productsafety.gov.au/system/files/recall/Recall%20Advertisement%20-%2016%20May%202024.pdf>
28

1 29. Regardless of the recall status, in all three countries, consumers are
2 advised to immediately stop using their 2024 Mules. In no country has Kawasaki
3 offered a refund or repair. Instead, consumers are left with a dangerous and
4 inoperable 2024 vehicle for which they paid over \$15,000.

5 30. Additionally, Kawasaki's Mules are no stranger to defective engines and
6 recalls. Kawasaki was previously forced to recall their 2015-2020 Mule models just
7 a few years ago for a similar engine defect causing a fire hazard to consumers.¹⁴ Due
8 to this recent, expansive recall, Kawasaki was on notice to vigorously test the engines
9 of their 2024 Mules so they did not have this similar defect. Accordingly, Kawasaki's
10 premarket testing would have revealed the defect before it sold the 2024 Mules to
11 consumers with a similar fire hazard that could cause serious injury to persons and
12 property and render the Mules unfit for their purpose of providing reliable, safe
13 motorized transportation.

14 31. To date, Kawasaki has not taken any tangible steps to rectify the harm
15 its conduct has caused to consumers. Among other things, Kawasaki has not provided
16 buyers with the product they believed they were purchasing, offered a meaningful
17 refund, replacement vehicle, or even initiated a repair to the defective 2024 Mules.
18 Accordingly, Plaintiffs bring this action on behalf of themselves, and all similarly
19 situated persons in the proposed class for the relief requested as to Plaintiffs and Class
20 Members and to promote the public interests in holding Kawasaki responsible for
21 selling the 2024 Mules when these vehicles are incapable of being used safely. As a
22 proximate result of Kawasaki's unlawful conduct, Plaintiffs and members of the
23 proposed class have suffered damages in an amount to be determined at trial.

24
25
26
27
28 ¹⁴ <https://www.cpsc.gov/Recalls/2020/Kawasaki-USA-Recalls-Off-Highway-Utility-Vehicles-Due-to-Fuel-Leak-Fire-Hazards-Recall-Alert>

PLAINTIFFS' EXPERIENCES

1
2 32. Plaintiffs purchased their 2024 Mule from Broward Motorsports of
3 Palm Beach on or about February 10, 2024, for over twenty-three thousand dollars
4 (\$23,000).

5 33. In connection with this purchase, Kawasaki provided an express 36-
6 month manufacturer's warranty. Plaintiffs are informed and believe that Kawasaki
7 provides the same, or functionally same, manufacturer's warranty to all class
8 members.

9 34. On or about April 2024, Plaintiffs received the Stop Use Notice from
10 Kawasaki. Plaintiffs are informed and believe that all class members received
11 identical or virtually identical Stop Use Notices.

12 35. As directed, Plaintiffs stopped all use of their 2024 Mule to avoid the
13 possibility that it would catch fire.

14 36. To date, Kawasaki has not informed Plaintiffs (a) whether Kawasaki has
15 designed a fix for the engine problem, (b) when Kawasaki expects that it will identify
16 a fix to the engine problem, (c) when the 2024 Mules will be repaired, or (d) when
17 the 2024 Mules will be safe to ride.

18 37. Kawasaki has not offered Plaintiffs any accommodation including, but
19 not limited to, a safe "loaner" vehicle during this time.

20 38. Instead, Kawasaki has offered Plaintiffs and all other Class Members
21 \$500 as a credit to purchase accessories for their defective Mules as "compensation"
22 for the fact that they have been unable to use their 2024 Mule for over two months.

23 39. Prior to purchasing the 2024 Mule, Plaintiffs did diligent research to
24 ascertain the 2024 Mule's capabilities, and as with any motorized vehicle, reasonably
25 expected that it would be free of safety defects and fit for use to provide reliable, safe
26 transportation. Plaintiffs would not have purchased their 2024 Mule, or would have
27 paid substantially less for it, had they known that it had a severe engine defect which
28

1 rendered it dangerous and inoperable and that it would be subject to a Stop Use
2 Notice from Kawasaki.

3 40. Plaintiffs have suffered financial injuries and losses due to their
4 purchase of the defective 2024 Mule because, among other things, they have not been
5 provided a safe, reliable 2024 Mule that they purchased and paid a premium price
6 for, they have not been able to safely use the 2024 Mule, they have not been provided
7 with any repairs to remedy the safety defect, they now have a defective 2024 Mule
8 that will have diminished resale value (even assuming there is a repair or recall), and
9 they have not been adequately compensated or provided equivalent goods and
10 services.

11 **CLASS ACTION ALLEGATIONS**

12 41. Pursuant to Rule 23(a), (b)(2), and (b)(3), Plaintiffs bring this action on
13 behalf of themselves and others similarly situated.

14 42. Specifically, Plaintiffs seek to represent a Nationwide class,
15 preliminarily defined as: “All persons in the United States who purchased, leased, or
16 otherwise own one of the 2024 Mules (the “Class”).”

17 43. Plaintiffs also seek to represent a Subclass preliminarily defined as: “All
18 persons in the state of Florida who purchased, leased, or otherwise own one of the
19 2024 Mules (the “Florida Subclass”).”

20 44. Excluded from the Class and Subclass are (i) each Defendant, any entity
21 in which a Defendant has a controlling interest or which has a controlling interest in
22 any Defendant, and Defendants’ legal representatives, predecessors, successors and
23 assigns; (ii) governmental entities; (iii) Defendants’ employees, officers, directors,
24 agents, and representatives and their family members; and (iv) the Judge and staff to
25 whom this case is assigned, and any member of the Judge’s immediate family.

26 45. At this time, Plaintiffs do not know the exact number of members of the
27 Class or Florida Subclass. However, given the nature of the claims which apply to
28 *all* purchasers of the 2024 Mules in question, and the fact that Plaintiffs are informed

1 and believe that thousands of 2024 Mules have been sold in the United States,
2 Plaintiffs believe that the members of the Class and Subclass are so numerous that
3 joinder of all members is impracticable.

4 46. There is a well-defined community of interest in the questions of law
5 and fact involved in this case. Questions of law and fact common to the members of
6 the Class and Subclass that predominate over questions that may affect individual
7 class members include:

8 a. When Kawasaki first knew or should have known that the engine
9 on the 2024 Mules engines created an improper combustion during engine start up
10 that could create a fire risk.

11 b. Whether Kawasaki misrepresented the safety of the 2024 Mules
12 and/or if it concealed, suppressed, or failed to disclose truthful information about the
13 safety of the engines in the 2024 Mules.

14 c. Whether Kawasaki's conduct was unfair, deceptive, and/or
15 misleading under applicable law.

16 d. Whether Kawasaki has been unjustly enriched as a result of the
17 unlawful, fraudulent, and unfair conduct alleged in this complaint such that it would
18 be inequitable for Kawasaki to retain the benefits conferred upon it by Plaintiffs and
19 the class.

20 e. Whether Kawasaki breached its express and/or implied
21 warranties to Plaintiffs and the Class.

22 f. Whether Plaintiffs and the members of the proposed Class are
23 entitled to compensatory, statutory, and/or punitive damages and other monetary
24 relief as provided under state law.

25 g. Whether Plaintiffs and the Class have sustained damages with
26 respect to the claims asserted and, if so, the proper measure of their damages.

27
28

1 h. Whether Kawasaki has violated the state consumer protection
2 laws alleged in this complaint including but not limited to the California Consumers
3 Legal Remedies Act and the Florida Deceptive and Unfair Trade Practices Act.

4 i. Whether Kawasaki has failed to comply with its statutory
5 obligations and is liable to Plaintiffs and the Class under the Magnuson-Moss
6 Warranty Act 15 U.S.C. §§2301, et seq.

7 j. Whether injunctive relief is appropriate; and

8 k. Whether Plaintiffs are entitled to recover costs and expenses
9 incurred in prosecuting this action and reasonable attorneys' fees.

10 47. Plaintiffs' claims are typical of the claims of the Class. Plaintiffs and
11 members of the proposed Class and Subclass all purchased 2024 Kawasaki Mules
12 containing engines manufactured and sold by Kawasaki. Plaintiffs and the members
13 of the proposed Class and Subclass have all suffered damages as a result of
14 Kawasaki's unlawful conduct set forth in this complaint.

15 48. Plaintiffs will fairly and adequately protect the interests of the proposed
16 Class and Subclass. Plaintiffs have no interest adverse to the interests of the members
17 of the proposed Class or Subclass.

18 49. Plaintiffs have retained competent counsel who have extensive
19 experience in prosecuting complex consumer and product defect class action
20 litigation.

21 50. The prosecution of separate actions by individual members of the Class
22 and/or Subclass would create a risk of inconsistent or varying adjudications,
23 establishing incompatible standards of conduct for Kawasaki.

24 51. A class action is superior to other available methods for the fair and
25 efficient adjudication of this controversy especially since Kawasaki's actions and
26 inaction are identical for all members of the Class and Subclass. Kawasaki has acted
27 or refused to act on grounds generally applicable to the Class. Declaratory and
28 injunctive relief with respect to the Class is appropriate.

1 52. The questions of law or fact common to members of the proposed Class
2 predominate over any individual questions affecting only individual class members.
3 Each of the members of the proposed Class and Subclass purchased a 2024 Mule that
4 was not as represented due to Kawasaki’s misrepresentations of, and concealment,
5 suppression, and failure to disclose the serious flaws in the vehicle’s engine. The
6 issues of fact and law applicable to the Class are identical to the issues of fact and
7 law applicable to each individual member of the proposed Class.

8 **CLAIMS FOR RELIEF**

9 **COUNT I**

10 **Violations of the California Consumers Legal Remedies Act,
11 Cal. Civ. Code §§1750, et seq.**

12 53. Plaintiffs incorporate by reference and re-allege all prior paragraphs of
13 this complaint as though fully set forth herein.

14 54. Plaintiffs and the Class Members are “consumers” that purchased
15 “goods” in the form of 2024 Mules within the meaning of California Civil Code
16 section 1761.

17 55. Kawasaki is a “person” within the meaning of California Civil Code
18 section 1761(c).

19 56. The application of the California Consumer Legal Remedies Act to the
20 putative Class in this action is appropriate because Defendant’s wrongful conduct
21 alleged herein, includes but is not limited to Defendant’s marketing and sale of
22 defective, unsafe utility vehicles in the state of California.

23 57. The California Consumer Legal Remedies Act, Cal. Civ. Code
24 §1770(a)(5) & (7) provide, in part, as follows:

25 (a) The unfair methods of competition and unfair or deceptive
26 acts or practices listed in this subdivision undertaken by
27 any person in a transaction intended to result or that results
28 in the sale or lease of goods or services to any consumer
are unlawful:

(5) Representing that goods or services have sponsorship,
approval, characteristics, ingredients, uses, benefits or
quantities which they do not have . . . ;

1
2 (7) Representing that goods or services are of a particular
3 standard, quality, or grade, or that goods are of a particular
4 style or model, if they are of another.

5 58. Kawasaki violated provisions of the CLRA, including but not limited to
6 Section 1770(a)(5) by representing that the 2024 Mules have characteristics, uses, or
7 benefits which they do not have, and Section 1770(a)(7) by representing that the 2024
8 Mules are of a particular standard, quality, or, grade, even though they are of another,
9 as well as Sections 1770(a)(2) and (a)(9). Such conduct includes, among other
10 things:

11 a. Designing, manufacturing, marketing, and selling the 2024
12 Mules to consumers that contained material, fundamental defects without disclosing
13 such defects to consumers;

14 b. Marketing and selling the 2024 Mules that were not
15 merchantable for the purpose of providing safe transportation; and

16 c. Marketing and selling the 2024 Mules while concealing material
17 facts from Plaintiffs and Class members regarding the defects in the 2024 Mules that
18 would manifest both within and outside their express or implied warranty periods
19 that would create a safety risk for Plaintiffs and Class members who purchased the
20 2024 Mules to provide safe transportation.

21 59. Pursuant to California Civil Code sections 1752, 1780, and 1781,
22 Plaintiffs, on behalf of themselves and other Class members, seek an order of this
23 Court enjoining Defendant from the unlawful practices described herein, as well as
24 an award of costs of litigation and attorneys' fees.

25 60. Concurrently with the filing of the instant Complaint, Plaintiffs are
26 sending a CLRA notice of violation and demand letter to Defendant Kawasaki. Upon
27 response, or non-response within thirty (30) days, to this notice, Plaintiff shall file,
28 or seek leave to file, an Amended Complaint to seek monetary relief from Kawasaki
to provide actual, compensatory, statutory, and/or punitive damages.

1 **COUNT II**
2 **Unlawful, Unfair, and Fraudulent Business Acts and Practices**
3 **(Cal. Bus. & Prof. Code §§ 17200, *et seq.*)**

4 61. Plaintiffs incorporate by reference and re-allege all prior paragraphs of
5 this complaint as though fully set forth herein.

6 62. Kawasaki's acts and practices constitute unlawful, unfair, and
7 fraudulent business practices in violation of California's Unfair Competition Law,
8 California Business and Professions Code Section 17200, *et seq.* The application of
9 California's Unfair Competition Law to the putative Class in this action is
10 appropriate because Kawasaki's wrongful conduct alleged herein includes, but is not
11 limited, to Kawasaki's marketing and sale of defective, unsafe 2024 Mules.

12 63. Kawasaki has engaged in fraudulent, unlawful, and unfair business
13 practices in violation of California's Unfair Competition Law by, among other
14 things:

15 a. Designing, manufacturing, marketing, and selling 2024 Mules to
16 consumers that contained material, fundamental defects without disclosing such
17 defects to consumers;

18 b. Marketing and selling 2024 Mules that were not merchantable
19 for the purpose of providing transportation to any riders;

20 c. Marketing and selling 2024 Mules while concealing material
21 facts from Plaintiffs and Class Members regarding the defects in the Mules that
22 would manifest both within and outside their express and implied warranty periods
23 that would create a safety risk for Plaintiff and Class Members who purchased the
24 2024 Mules to provide safe transportation to any persons riding in the 2024 Mules;

25 d. Concealing from Class members that Kawasaki was in breach
26 and intended to breach its warranty obligations as set forth in this Complaint;

27 e. Violating additional laws and regulations as set forth herein; and

28 f. Breaching its express and implied warranties with Class
Members as set forth herein.

1 64. Kawasaki has also violated California’s Unfair Competition Law
 2 because the utility of its conduct as described in this Complaint is outweighed by the
 3 gravity of the consequences to Plaintiffs and Class Members, and because
 4 Defendant’s conduct as described in this Complaint is immoral, unethical,
 5 oppressive, unscrupulous, or substantially injurious to Plaintiffs and the Class
 6 Members.

7 65. Plaintiffs and the Class Members have suffered injury in the form of lost
 8 money and property, including but not limited to, a diminishment in the value of the
 9 Mules and loss of use of their Mules, as a direct result of Defendant’s fraudulent,
 10 unlawful, and unfair business practices and are therefore entitled to equitable relief,
 11 including restitution, disgorgement of Kawasaki’s profits obtained from its
 12 fraudulent, unlawful, and unfair business practices, and a permanent injunction that
 13 enjoins Kawasaki from the unlawful practices described herein, as well as attorneys’
 14 fees and costs of suit. Cal. Bus. & Prof. Code §17203.

15 **COUNT III**
 16 **Violation of Florida’s Deceptive And Unfair Trade Practices Act**
 (Fla. Stat. §§501.201, et seq.)

17 66. Plaintiffs incorporate by reference and re-allege each and every
 18 allegation set forth above as though fully set forth herein.

19 67. This Count is brought pursuant to the Florida Deceptive and Unfair
 20 Trade Practices Act, Fla. stat. §§501.201, et seq. (the “FDUTPA”). The stated
 21 purpose of the FDUTPA is to “protect the consuming public . . . from those who
 22 engage in unfair methods of competition, or unconscionable, deceptive, or unfair acts
 23 or practices in the conduct of any trade or commerce.” Fla. Stat. §501.202(2).

24 68. Plaintiffs and the members of the Florida Subclass are consumers as
 25 defined by Fla. Stat. §501.203.

26 69. Kawasaki is engaged in trade or commerce within the meaning of the
 27 Act.
 28

1 70. Fla. Stat. §501.204(1) declares unlawful “[u]nfair methods of
2 competition, unconscionable acts or practices, and unfair or deceptive acts or
3 practices in the conduct of any trade or commerce.”

4 71. Kawasaki has violated the provisions of FDUTPA by engaging in the
5 unfair and deceptive practices as described here which offend public policies and are
6 immoral, unethical, unscrupulous, and substantially injurious to consumers.

7 72. Kawasaki engaged in a deceptive act and unfair practice that is likely to
8 mislead consumers, offends established public policy, and that is immoral, unethical,
9 oppressive, unscrupulous or substantially injurious to consumers, by selling the 2024
10 Mules which are not useable for their intended purpose, or for any purpose.

11 73. Plaintiffs and members of the Florida Subclass have been aggrieved by
12 Kawasaki’s unfair and deceptive practices in that they purchased the 2024 Mules and
13 are unable to use them for their intended purposes, or at all. In fact, at the time of the
14 filing of this Complaint, the 2024 Mules have no value because they cannot be use
15 to provide reliable, safe motorized transportation.

16 74. The damages suffered by Plaintiffs and the Florida Class were directly
17 and proximately caused by the deceptive, misleading, and unfair practices of
18 Kawasaki, as more fully described above.

19 75. Plaintiffs on behalf of themselves and the Florida Subclass demand
20 judgment in their favor, and an award against Kawasaki, pursuant to Florida’s
21 Deceptive and Unfair Trade Practices Act for all damages to which it is entitled under
22 the law, including but not limited to, pursuant to Fla. Stat. §§501.211(2) and
23 501.2105, actual damages, attorneys’ fees, costs, and for other such relief as this
24 Court finds just, fair, and equitable under the circumstances.

25 **COUNT IV**
26 **Breach of the Implied Warranty of Merchantability**

27 76. Plaintiffs incorporate by reference and re-allege each and every
28 allegation set forth above as though fully set forth herein.

1 77. Plaintiffs bring this claim individually and on behalf of members of the
2 Class. In the alternative, Plaintiffs bring this claim on behalf of the Florida Subclass
3 under Florida Statute §§672.314 *et seq.*

4 78. Kawasaki, as the designer, manufacturer, marketer, distributor, and/or
5 seller, impliedly warranted that the 2024 Mules were merchantable as UTV vehicles.

6 79. Kawasaki breached the warranty implied in the contract for the sale of
7 the 2024 Mules because it could not “pass without objection in the trade under the
8 contract description,” the goods were not “of fair average quality within the
9 description,” the goods were not “adequately contained, packaged, and labeled as the
10 agreement may require,” and the goods did not “conform to the promise or
11 affirmations of fact made on the container or label.” *See* U.C.C. § 2-314(2) (listing
12 requirements for merchantability). As a result, Plaintiffs and Class members did not
13 receive the goods as impliedly warranted by Kawasaki to be merchantable.

14 80. Plaintiffs and Class members purchased the 2024 Mules relying on
15 Kawasaki’s purported skill and judgment in properly marketing and selling the 2024
16 Mules.

17 81. The 2024 Mules were not altered by Plaintiffs or Class members.

18 82. The 2024 Mules were defective when they left Kawasaki’s exclusive
19 control.

20 83. Kawasaki knew that the 2024 Mules would be purchased and used
21 without additional testing by Plaintiffs and Class members.

22 84. The 2024 Mules were defectively designed and unfit for their intended
23 purpose and Plaintiffs and Class members did not receive the goods as warranted.

24 85. As a direct and proximate cause of Kawasaki’s breach of the implied
25 warranty, Plaintiffs and Class members have been injured and harmed because they
26 would not have purchased the 2024 Mules if they knew the truth about the 2024
27 Mules, and that the 2024 Mules they received were worth substantially less than the
28 2024 Mules they were promised and expected.

1 86. On behalf of themselves and other members of the class, Plaintiffs seek
2 damages.

3 **COUNT V**
4 **Breach of Express Warranty**

5 87. Plaintiffs incorporate by reference and re-allege each and every
6 allegation set forth above as though fully set forth herein.

7 88. Plaintiffs bring this claim individually and on behalf of the members of
8 the Class. In the alternative, Plaintiffs bring this claim on behalf of the Florida
9 Subclass under Florida Statute §672.313.

10 89. Kawasaki, as the designer, manufacturer, marketer, distributor, or seller
11 expressly warranted that the 2024 Mules were fit for their intended purpose in that
12 they would function properly as UTV vehicles, and that the 2024 Mules were fit for
13 their principal use of transporting people and goods.

14 90. Kawasaki provides a 36-month warranty for 2024 Mules:



15
16
17
18
19
20
21
22
23
24
25
26
27 91. In fact, the 2024 Mules do not function properly as UTV vehicles and
28 are not safe for their principal use transporting persons and goods.

1 92. Despite its express warranties, in April 2024, Kawasaki instructed all
2 purchasers of the 2024 Mules to immediately stop their use and, as of the date of the
3 filing of the instant Complaint, has not offered or suggested any method to render the
4 2024 Mules safe for their intended uses.

5 93. Plaintiffs and the Class members have been and are being injured as a
6 direct and proximate result of Kawasaki's breach because: (a) they would not have
7 purchased the 2024 Mules on the same terms if the truth concerning Kawasaki's 2024
8 Mules had been known; (b) they paid a price premium due to Defendant's
9 misrepresentations and omissions about the 2024 Mules; and (c) the 2024 Mules have
10 not and do not perform as promised.

11 94. On behalf of themselves and other members of the class, Plaintiffs seek
12 damages and other legal and equitable relief.

13 **COUNT VI**
14 **Breach of the Magnuson-Moss Warranty Act**
15 **15 U.S.C. §§2301, et seq.**

16 95. Plaintiffs incorporate by reference and re-allege each and every
17 allegation set forth above as though fully set forth herein.

18 96. Plaintiffs bring this claim individually and on behalf of the members of
19 the Class.

20 97. Plaintiffs and the other Class Members are "consumers" within the
21 meaning of the Magnuson-Moss Warranty Act, 15 U.S.C. § 2301(3).

22 98. Kawasaki is a "supplier" and "warrantor" within the meaning of 15
23 U.S.C. § 2301(4)-(5).

24 99. The 2024 Mules are "consumer products" within the meaning of §
25 2301(1).

26 100. Kawasaki's express warranty is a "written warranty" within the meaning
27 of § 2301(6).

28 101. Kawasaki has breached the express warranty by:

1 a. Instructing Plaintiffs and the Class to cease all use of their 2024
2 Mules but providing no repairs to the vehicles and no timeline for the expected
3 repair of the vehicles;

4 b. Selling the 2024 Mules with engines containing defective
5 ignitions that may cause the 2024 Mules to start fires; and

6 c. Failing to honor the express warranty by repairing or replacing,
7 free of charge, the engines and, instead, simply directing Plaintiffs and the Class
8 Members to cease use of the vehicles.

9 102. Kawasaki's breach of the express warranty has deprived, and is
10 depriving, Plaintiffs and the other Class Members of the benefits of their bargains in
11 that they cannot use the vehicles that they purchased.

12 103. The amount in controversy of the Plaintiffs' individual claims meets or
13 exceeds the sum or value of twenty-five dollars (\$25.00). In addition, because
14 approximately thousands of 2024 Mules have been sold and none of these vehicles
15 are operable, the amount in controversy meets or exceeds the sum or value of fifty
16 thousand dollars (\$50,000.00) exclusive of interests and costs computed on the basis
17 of all claims to be determined in this action.

18 104. Kawasaki acknowledged the problem with the 2024 Mules' engines
19 when it directed their owners to cease using the vehicles in April 2024, but Kawasaki
20 has failed to announce—let alone to offer to Plaintiffs or the Class Members—a
21 repair or compensation for the loss of use of the vehicles. Kawasaki also has not
22 announced or offered to replace the defective, unusable vehicles.

23 105. As a direct and proximate result of Kawasaki's breach of warranty,
24 Plaintiffs and Class Members sustained and are continuing to sustain damages and
25 other losses in an amount to be determined at trial. Kawasaki's conduct has damaged,
26 and continues to damage, Plaintiffs and Class Members who are entitled to recover
27 damages, consequential damages, specific performance, diminution in value, loss of
28 use costs, costs, attorneys' fees, rescission, and/or other relief as appropriate.

1 **PRAYER FOR RELIEF**

2 WHEREFORE, Plaintiffs demand judgment on behalf of themselves and
3 members of the Class and Subclass as follows:

- 4 A. For an order certifying the Class and Subclass under Rule 23 of
5 the Federal Rules of Civil Procedure and naming Plaintiffs as
6 representatives of the Class and Subclass, and Plaintiffs’
7 attorneys as Class Counsel;
- 8 B. For an order declaring that Kawasaki’s conduct violates the
9 statutes referenced herein;
- 10 C. For an order finding in favor of Plaintiffs, the Class, and/or the
11 Subclass on all counts asserted herein;
- 12 D. For actual, compensatory, statutory, and punitive damages in
13 amounts to be determined by the Court and/or jury;
- 14 E. For injunctive relief enjoining the illegal acts detailed herein;
- 15 F. For prejudgment interest on all amounts awarded;
- 16 G. For an order of restitution and all other forms of equitable
17 monetary relief;
- 18 H. For an order awarding Plaintiffs, the Class, and Subclass their
19 reasonable attorneys’ fees and expense and costs of suit.

20 **JURY TRIAL DEMAND**

21 Plaintiff demands a trial by jury on all issues so triable.
22
23
24
25
26
27
28

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

Respectfully submitted,

DATED: July 1, 2024

KAPLAN FOX & KILSHEIMER LLP

By: /s/ Laurence D. King
Laurence D. King

Laurence D. King (SBN 206423)
Matthew B. George (SBN 239322)
Blair E. Reed (SBN 316791)
Clarissa R. Olivares (SBN 343455)
1999 Harrison Street, Suite 1560
Oakland, CA 94612
Telephone: 415-772-4700
Facsimile: 415-772-4707
Email: *lking@kaplanfox.com*
mgeorge@kaplanfox.com
breed@kaplanfox.com
colivares@kaplanfox.com

Marc A. Wites (*pro hac vice* to be filed)
Thomas Rogers (*pro hac vice* to be filed)
WITES & ROGERS
4400 North Federal Highway
Lighthouse Point, Florida 33064
T: (954) 933-4400
Email: *mwites@witeslaw.com*
trogers@witeslaw.com

*Attorneys for Plaintiffs Bret Conway and
Jennifer Rogers and the Proposed Class*