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13
 14 UNITED STATES DISTRICT COURT
 15 CENTRAL DISTRICT OF CALIFORNIA
 16

17 RYAN HARDY, TROY
 LUCASSIAN, and TODD BROWN
 18 individually, and on behalf of a class
 of similarly situated individuals,

19 Plaintiff,

20 v.

21 MITSUBISHI MOTORS NORTH
 22 AMERICA, INC., a California
 corporation, and MITSUBISHI
 23 MOTORS CORP., a Japanese
 corporation,

24 Defendants.
 25
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 27
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Case No.:

**CLASS ACTION COMPLAINT
FOR:**

- (1) Violations of California’s Consumers Legal Remedies Act
- (2) Violations of California’s Unfair Competition Law
- (3) Breach of Implied Warranty pursuant to Song-Beverly Consumer Warranty Act
- (4) Breach of Express Warranty under California law
- (5) Violations of Michigan’s Consumer Protection Act
- (6) Breach of Express Warranty under Michigan law
- (7) Breach of Implied Warranty under Michigan law
- (8) Violation of New York General Business Law § 349
- (9) Violation of New York

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- General Business Law § 350
- (10) Breach of Express Warranty under New York Law
- (11) Breach of Implied Warranty under New York Law
- (12) Breach of Express Warranty under the Magnuson-Moss Warranty Act
- (13) Breach of Implied Warranty under the Magnuson-Moss Warranty Act
- (14) Fraudulent Concealment/Omission
- (15) Unjust Enrichment

DEMAND FOR JURY TRIAL

1 a hard deceleration or “clunk” when drivers either slow down or accelerate at low
2 speeds; it causes complete transmission failure in the middle of roadways, and it
3 suffers catastrophic failure, necessitating replacement.

4 6. Defendants sold the Class Vehicles with either a 10-year/100,000-
5 mile powertrain warranty (2014-2017 Lancers, 2014-present Outlanders, Mirages,
6 and Eclipses) or a 5-year/60,000-mile powertrain warranty (2014 - 2015 Lancer
7 Evolutions, Ralliarts, and Sportbacks, 2014-2017 Lancer subsequent owners, and
8 2014-present Outlander, Mirage, and Eclipse subsequent owners) that purports to
9 cover the CVT. However, owners and lessees often have complained that their
10 CVTs fail and require replacement both within and just outside the warranty
11 period. This is evidenced through Class members reports to the National Highway
12 Traffic Safety Administration (“NHTSA”), that Mitsubishi’s authorized
13 dealerships are replacing transmissions both within, and just outside, the
14 applicable express warranty periods.

15 7. The CVT Defect is inherent in each Class Vehicle and was present at
16 the time of sale.

17 8. Discovery will show that, since 2014 if not earlier, Defendants have
18 been aware the Class Vehicles’ CVTs would need frequent repair, prematurely
19 fail, require frequent replacement, including replacements just outside of
20 warranty, that the replacement transmissions installed would be equally as
21 defective as the originals, and that the CVT would cause the symptoms of the CVT
22 Defect described above (juddering, lag when attempting to accelerate, hard
23 deceleration, complete failure, and other symptoms), yet Defendants continued to
24 install the defective CVT. Moreover, Defendants not only refused to disclose the
25 problem to consumers, they also actively concealed, and continue to conceal, their
26 knowledge concerning the CVT Defect.

27 9. Defendants undertook affirmative measures to conceal CVT failures
28 and other malfunctions through, among other things, Technical Service Bulletins

1 (“TSB”) issued to authorized repair facilities only.

2 10. Defendants had superior and/or exclusive knowledge of material facts
3 regarding the CVT Defect due to their pre-production testing, design failure mode
4 analysis, aggregate part sales, dealer audits, aggregate warranty information,
5 customer complaints made to NHTSA and online, and customer complaints made
6 to Mitsubishi and its dealers.

7 11. The CVT Defect is material because it poses a serious safety
8 concern. As attested by Class Members in complaints to the National Highway
9 Traffic Safety Administration (“NHTSA”), and other online forums, the CVT
10 Defect can impair any driver’s ability to control his or her vehicle and greatly
11 increase the risk of collision. For example, turning left across traffic in a vehicle
12 with delayed and unpredictable acceleration is plainly unsafe. In addition, these
13 conditions can make it difficult to safely change lanes, merge into traffic, turn,
14 accelerate from stop light/sign, and accelerate onto highways or freeways.

15 12. Defendants’ failure to disclose the CVT Defect has caused Plaintiffs
16 and putative class members to lose the use of their Vehicles and/or incur costly
17 repairs that have conferred an unjust substantial benefit upon Defendants.

18 13. Discovery will show that, in an effort to conceal the CVT Defect,
19 Defendants have instructed dealers to tell consumers their vehicles are “operating
20 normally” or “operating as intended” when they are not, or to give excuses for
21 sub-par performance. This is a common practice in the automotive industry,
22 particularly with transmission-related issues. By denying the existence of a defect,
23 manufacturers can play on the consumers’ lack of technical expertise and avoid
24 implementing potentially costly fixes for years, or at least until the vehicles are
25 out of warranty. When remedial measures are taken, they are often through the
26 issuance of service bulletins provided to dealers only that are narrowly crafted and
27 underinclusive, as occurred here and set forth below.

28 14. Had Defendants disclosed the CVT Defect, Plaintiffs and Class

1 Members would not have purchased the Class Vehicles, would have paid less for
2 them, or would have required Defendants to replace, or pay for the replacement
3 of, the defective CVT with a non-defective version before their warranty periods
4 expired.

5 THE PARTIES

6 Plaintiff Ryan Hardy

7 15. Plaintiff Hardy is a New York citizen residing in Buffalo, New York.

8 16. In or around March 2020, Plaintiff Hardy purchased a new 2020
9 Mitsubishi Mirage G4 from James Mitsubishi, an authorized Mitsubishi dealership
10 in Hamburg, New York.

11 17. Plaintiff Hardy purchased his vehicle primarily for personal, family,
12 or household use.

13 18. Passenger safety and reliability were important factors in Plaintiff
14 Hardy's decision to purchase his vehicle. Before making his purchase, Plaintiff
15 Hardy researched the Mitsubishi Mirage G4 online, including on the Mitsubishi
16 website. At the dealership, Plaintiff Hardy also reviewed the vehicle's Monroney
17 Sticker or "window sticker" which listed official information about the vehicle, as
18 well as vehicle brochures provided to him by dealership personnel, both of which
19 made no reference to the CVT Defect. Plaintiff Hardy believed that the Mirage
20 would be a safe and reliable vehicle.

21 19. Mitsubishi's omissions were material to Plaintiff Hardy. Had
22 Mitsubishi disclosed its knowledge of the CVT Defect before he purchased his
23 vehicle, Plaintiff Hardy would have seen and been aware of the disclosures.
24 Furthermore, had he known of the CVT Defect, Plaintiff Hardy would not have
25 purchased his vehicle, or would have paid less for it.

26 20. Shortly after purchase, Plaintiff Hardy began experiencing
27 transmission problems. Specifically, his vehicle jerks and shudders, even without
28 acceleration, hesitates on acceleration, and slips gears and/or fails to engage gears,

1 all under normal driving conditions. Additionally, Plaintiff Hardy fears for his
2 safety while merging on to highways and freeways, due to the sudden and
3 unexpected loss and/or delay of acceleration his vehicle exhibits.

4 21. On June 9, 2021, with 11,649 miles on the odometer, Plaintiff Hardy
5 brought his vehicle to Cortese Mitsubishi, an authorized Mitsubishi dealer,
6 complaining, as recorded on the dealership's repair records, that "THE VEHICLE
7 AT A STOP WITH FOOT ON THE BRAKE WANTS TO LERK[sic]
8 FORWARD WHEN FOOT IS ON THE BRAKE." The dealership failed to
9 perform any repairs in response, and merely reported, "THE VEHICLE
10 OPERATING AS DESGIEND[sic]."

11 22. Despite bringing his vehicle to the Mitsubishi dealership—
12 Mitsubishi's authorized agent for repairs—Plaintiff Hardy has not received a
13 repair under warranty, and his vehicle continues to exhibit the CVT Defect.

14 23. As a result of the CVT Defect, Plaintiff Hardy has lost confidence in
15 the ability of his Class Vehicle to provide safe and reliable transportation for
16 ordinary and advertised purposes. Further, Plaintiff Hardy will be unable to rely
17 on the Class Vehicles' advertising or labeling in the future, and so will not
18 purchase or lease another Class Vehicle although he would like to do so.

19 24. At all times, Plaintiff Hardy, like all Class Members, has driven his
20 vehicle in a manner both foreseeable and in which it was intended to be used.

21 **Plaintiff Troy Lucassian**

22 25. Plaintiff Lucassian is a Michigan citizen residing in Detroit,
23 Michigan.

24 26. In or around August 2018, Plaintiff Lucassian purchased a new 2017
25 Mitsubishi Mirage from Moran Mitsubishi, an authorized Mitsubishi dealership in
26 Southfield, Michigan.

27 27. Plaintiff Lucassian purchased his vehicle primarily for personal,
28 family, or household use.

1 28. Passenger safety and reliability were important factors in Plaintiff
2 Lucassian’s decision to purchase his vehicle. Before making his purchase, Plaintiff
3 Lucassian researched the Mitsubishi Mirage online, including on the Mitsubishi
4 website. At the dealership, Plaintiff discussed safety and reliability with dealership
5 personnel and was assured by the Mitsubishi employee the vehicle was both safe
6 and reliable. Nowhere in his online research or his discussions with dealer
7 personnel was Plaintiff Lucassian informed of the CVT Defect. Plaintiff Lucassian
8 believed that the Mirage would be a safe and reliable vehicle.

9 29. Mitsubishi’s omissions were material to Plaintiff Lucassian. Had
10 Mitsubishi disclosed its knowledge of the CVT Defect before he purchased his
11 vehicle, Plaintiff Lucassian would have seen and been aware of the disclosures.
12 Furthermore, had he known of the CVT Defect, Plaintiff Lucassian would not have
13 purchased his vehicle, or would have paid less for it.

14 30. In or around Summer 2020, Plaintiff Lucassian began experiencing
15 transmission problems. Specifically, when coming to a stop, the transmission feels
16 as though it wants to rotate and the vehicle lunges forward. Additionally, his
17 vehicle hesitates on acceleration or fails on acceleration, even while the vehicle is
18 exhibiting high revolutions per minute. All of the foregoing occurs under normal
19 driving conditions.

20 31. On August 10, 2020, with 47,192 miles on the odometer, Plaintiff
21 Lucassian brought his vehicle to Moran Mitsubishi, an authorized Mitsubishi
22 dealer, complaining, as recorded on the dealership’s repair records, that “WHEN
23 ACCELERATING FROM A LIGHT THERE IS A
24 RESISTANCE/HESITATION.” The dealership failed to perform any
25 transmission repairs in response or even diagnose the transmission, merely
26 replacing the engine oil and oil filter.

27 32. Plaintiff Lucassian continued to experience the CVT Defect and on
28 April 20, 2021, with 59,713 miles on the odometer, Plaintiff Lucassian brought

1 his vehicle to Waterford Mitsubishi, an authorized Mitsubishi dealer, complaining,
2 as recorded on the dealership’s repair records, that “FEELS LIKE VEHICLE IS
3 HESITATING INTO GEAR CUSTOMER NOTICES RPMS REV AND FEELS
4 SLOW TO TAKE OFF WHEN COMING TO A HARD STOP FEELS LIKE
5 VEHICLE WILL LUNGE FORWARD BEFORE COMPLETE STOP.” The
6 dealership confirmed Plaintiff Lucassian’s concerns and replaced the
7 transmission, reporting, “DELAYED ENGAGEMENT[sic] GOING INTO BOTH
8 DRIVE AND REVERSE NOTICE SOME SLIPPAGE OF TRANS ON TEST
9 DRIVE REPLACED TRANS[.]”

10 33. Despite bringing his vehicle to the Mitsubishi dealership—
11 Mitsubishi’s authorized agent for repairs—and receiving a replacement
12 transmission, Plaintiff Lucassian’s vehicle continues to exhibit the CVT Defect.

13 34. As a result of the CVT Defect, Plaintiff Lucassian has lost confidence
14 in the ability of his Class Vehicle to provide safe and reliable transportation for
15 ordinary and advertised purposes. Further, Plaintiff Lucassian will be unable to
16 rely on the Class Vehicles’ advertising or labeling in the future, and so will not
17 purchase or lease another Class Vehicle although he would like to do so.

18 35. At all times, Plaintiff Lucassian, like all Class Members, has driven
19 his vehicle in a manner both foreseeable and in which it was intended to be used.

20 **Plaintiff Todd Brown**

21 36. Plaintiff Brown is a California citizen residing in Cypress,
22 California.

23 37. In or around September 2016, Plaintiff Brown purchased a new 2016
24 Mitsubishi Outlander from South Coast Mitsubishi, an authorized Mitsubishi
25 dealership in Costa Mesa, California.

26 38. Plaintiff Brown purchased his vehicle primarily for personal, family,
27 or household use.

28 39. Passenger safety and reliability were important factors in Plaintiff

1 Brown’s decision to purchase his vehicle. Before making his purchase, Plaintiff
2 Brown researched the Mitsubishi Outlander online, visited the dealership and
3 reviewed the vehicle’s Monroney Sticker or “window sticker” which listed official
4 information about the vehicle, and test drove the vehicle. No reference to the CVT
5 Defect was made. Plaintiff Brown believed that the Outlander would be a safe and
6 reliable vehicle.

7 40. Mitsubishi’s omissions were material to Plaintiff Brown. Had
8 Mitsubishi disclosed its knowledge of the CVT Defect before he purchased his
9 vehicle, Plaintiff Brown would have seen and been aware of the disclosures.
10 Furthermore, had he known of the CVT Defect, Plaintiff Brown would not have
11 purchased his vehicle, or would have paid less for it.

12 41. Shortly after purchase, Plaintiff Brown began experiencing
13 transmission problems. Specifically, his vehicle hesitates upon acceleration, slips
14 gears, and gets stuck in lower gears, all under normal driving conditions.

15 42. On November 16, 2016, with 11,649 miles on the odometer, Plaintiff
16 Brown brought his vehicle to Cerritos Mitsubishi, an authorized Mitsubishi dealer,
17 complaining, as recorded on the dealership’s repair records, that the vehicle
18 exhibits “HESITATION WHEN TRYING TO ACSELLERATE[sic].” In
19 response, the dealership reprogrammed the transmission control module.

20 43. Plaintiff Brown continued to experience the CVT Defect and, on July
21 27, 2018, with 50,818 miles on the odometer, Plaintiff Brown brought his vehicle
22 to Commerce Mitsubishi, an authorized Mitsubishi dealer, again complaining of
23 hesitation. The dealership failed to diagnose or repair the CVT Defect, instead
24 recommending a “transmission drain and refill” and charging Plaintiff Brown
25 \$166.75 out of pocket. The dealer otherwise informed Plaintiff Brown his
26 transmission was running properly.

27 44. Despite bringing his vehicle to Mitsubishi dealerships multiple
28 times—Mitsubishi’s authorized agent for repairs—Plaintiff Brown’s vehicle

1 continues to exhibit the CVT Defect.

2 45. As a result of the CVT Defect, Plaintiff Brown has lost confidence in
3 the ability of his Class Vehicle to provide safe and reliable transportation for
4 ordinary and advertised purposes. Further, Plaintiff Brown will be unable to rely
5 on the Class Vehicles' advertising or labeling in the future, and so will not
6 purchase or lease another Class Vehicle although he would like to do so.

7 46. At all times, Plaintiff Brown, like all Class Members, has driven his
8 vehicle in a manner both foreseeable and in which it was intended to be used.

9 **Defendants**

10 47. Defendant MMNA is a corporation organized and in existence under
11 the laws of the State of California and registered to do business in the State of
12 California. MMNA's Corporate Headquarters are located at 4031 Aspen Grove
13 Drive, Suite 700, Franklin, Tennessee, 37067. MMNA designs, manufactures,
14 markets, distributes, services, repairs, sells, and leases passenger vehicles,
15 including the Class Vehicles, nationwide, and in California, Michigan, and New
16 York. MMNA is the warrantor and distributor of the Class Vehicles in the United
17 States.

18 48. At all relevant times, MMNA was and is engaged in the business of
19 designing, manufacturing, constructing, assembling, marketing, distributing,
20 and/or selling automobiles and motor vehicle components in California, New
21 York, Michigan and throughout the United States of America. MMNA is the
22 subsidiary of MMC and is the wholly owned subsidiary engaged in distribution,
23 marketing, sales, and service of Mitsubishi vehicles in the United States.

24 49. In order to sell vehicles to the general public, MMNA enters into
25 agreements with dealerships who are then authorized to sell Mitsubishi-branded
26 vehicles to consumers such as Plaintiffs. In return for the exclusive right to sell
27 new Mitsubishi vehicles in a geographic area, authorized dealerships are also
28 permitted to service and repair these vehicles under the warranties MMNA

1 provides directly to consumers. These contracts give MMNA a significant amount
2 of control over the actions of the dealerships, including sale and marketing of
3 vehicles and parts for those vehicles. All service and repairs at an authorized
4 dealership are also completed according to MMNA's explicit instructions, issued
5 through service manuals, TSBs, and other documents, that were created with input
6 from MMC. Per the agreements between MMNA and the authorized dealers,
7 consumers such as Plaintiffs can receive services under MMNA's issued
8 warranties at dealer locations that are convenient to them. MMNA has a
9 nationwide dealership network and operates offices and facilities throughout the
10 United States. MMNA distributes Mitsubishi parts and vehicles, which are then
11 sold through Defendants' network of dealerships. Money received from the
12 purchase of a Mitsubishi vehicle from a dealership flows from the dealer to
13 MMNA.

14 50. Defendant MMC is a Japanese corporation located at 1-21, Shibaura
15 3chome, Minato-ku Tokyo, Japan 108-8410. Defendant MMC is the parent
16 company of Mitsubishi and is responsible for the design, manufacturing,
17 distribution, marketing, sales, and service of Mitsubishi vehicles, including the
18 Class Vehicles, around the world, including in the United States.

19 51. Discovery will show that Defendant MMC communicates with
20 Defendant MMNA concerning virtually all aspects of the Mitsubishi products it
21 distributes within the United States.

22 64. Discovery will show that MMNA and MMC jointly design, determine
23 the substance of, and affix to its vehicles the window stickers visible on each new
24 Mitsubishi vehicle that is offered for sale at its authorized dealerships, including
25 those omitting mention of the Defect. These stickers were reviewed by Plaintiffs
26 and the Class prior to purchasing Class Vehicles. Defendants control the content
27 of these window stickers; its authorized dealerships have no input with respect to
28 their content. Vehicle manufacturers like Mitsubishi are legally required to affix a

1 window sticker to every vehicle offered for sale in the United States pursuant to
2 the Automobile Information Disclosure Act of 1958, 15 U.S.C. §§ 1231-1233, *et*
3 *seq.* The Act specifically prohibits the removal or alteration of the sticker by
4 anyone other than the ultimate purchaser prior to the sale of the car, including the
5 dealership at which the vehicle is offered for sale.

6 65. Defendants developed and disseminated the marketing materials to
7 which Plaintiffs and the Class were exposed, including owner's manuals,
8 informational brochures, warranty booklets, and information included in
9 maintenance recommendations and/or schedules for the Class Vehicles, and other
10 promotional materials relating to the Class Vehicles, all of which fail to disclose
11 the Defect.

12 52. Defendants designed, manufactured, constructed, assembled,
13 marketed, distributed, sold, and warranted the Class Vehicles, including Plaintiffs'
14 vehicles.

15 JURISDICTION

16 53. This is a class action.

17 54. Members of the proposed Class are citizens of states different from
18 the home states of Defendants.

19 55. There are at least 100 members in the proposed class, and the
20 aggregate claims of individual Class Members exceed \$5,000,000.00 in value,
21 exclusive of interest and costs.

22 56. Jurisdiction is proper in this Court pursuant to 28 U.S.C. § 1332(d).

23 57. This Court has personal jurisdiction over Plaintiffs because Plaintiffs
24 submit to the Court's jurisdiction. This Court has personal jurisdiction over
25 Defendants because MMNA is incorporated in this District; MMC conducts
26 substantial business in this District through MMNA; and discovery will show that
27 significant conduct involving Defendants giving rise to the Complaint took place
28 in this District.

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VENUE

58. Venue is proper in this Court pursuant to 28 U.S.C. § 1391 because Plaintiff Brown resides in Orange County, California, the conduct giving rise to this lawsuit occurred here, MMNA is deemed to reside in this district pursuant to 28 U.S.C. § 1391(a), and MMNA is incorporated here, and Defendants are subject to personal jurisdiction here by conducting business within the State of California. Plaintiffs’ counsel’s Declaration of Venue, to the extent required under California Civil Code section 1780(d), is attached hereto as **Exhibit 1**.

FACTUAL ALLEGATIONS

59. Defendants designed, manufactured, distributed, marketed, sold, and/or leased the Class Vehicles. Defendants sold, directly or indirectly, through dealers and other retail outlets, thousands of Class Vehicles in California and nationwide. Defendants warrant and service the Class Vehicles through their nationwide network of authorized dealers and service providers.

60. The CVT is an automatic transmission that uses two variable-diameter pulleys with a steel belt running between them to change speed, instead of a gearbox and clutch system. Rather than relying on the fixed gear ratios of the traditional automatic transmission, the pulleys can adjust their width to make the belt turn faster or slower, depending on the speed of the vehicle and the torque needed. In theory, the CVT chooses the gear ratio optimum for driving conditions.

61. The CVT, allegedly offering more efficient power delivery and better fuel economy, is standard in the Class Vehicles.

62. Consumers complain that their vehicles take an inordinately long time to accelerate from a stop or low speed, exhibit a hard deceleration or “clunk” when drivers either slow down or accelerate at low speeds, shudder and shake or make a loud clunking or knocking sound when the CVT finally selects the appropriate gear ratio, and completely fail to accelerate. Consumers also frequently complain of unusually high RPMs or a loud whining once they achieve speed and which exceeds

1 their reasonable expectations for noise from the CVT. Finally, in addition to
2 hesitations, slow response, and loud noises, the lifespan of the CVT in the Class
3 Vehicles is unreasonably short.

4 63. In a TSB issued only to its dealerships but not its customers,
5 Mitsubishi has admitted that the shuddering, surging, engine flare, lack of
6 acceleration, and shaking are attributable to internal contamination caused by
7 slippage of the CVT's belt. *See* Exhibit 2, TSB-20-23-001REV, "Potential
8 Transmission Shudder/Surge with Possible DTC (CVT-8)." In the TSB,
9 Mitsubishi describes the root cause of the CVT Defect as follows:

10 Certain vehicles with F1CJC/W1CJC (CVT-8) transmissions may exhibit a shudder or surge condition
11 possibly caused by poor reaction of the hydraulic pressure circuit. With continued driving under
12 these conditions, the CVT belt may slip repeatedly when accelerating, and abrasion powder may
enter the hydraulic pressure circuit, causing a warning light to turn on with one of the following
DTCs: P0776, P0730, P0741, P084A, P0969, P2719. The shudder/surge condition may also be
described as engine flare, lack of acceleration, and/or car shake.

13 64. Discovery will show that improper calibration of the CVT's control
14 unit, referred to by Mitsubishi as the CVT-ECU, contributes to the CVT Defect.
15 For example, as discussed further below, after an investigation into CVT-caused
16 hesitation opened in January 2016, Mitsubishi announced a safety recall whereby
17 the CVT-ECU would be recalibrated to prevent the CVT-ECU from instructing
18 the engine-ECU to reduce its torque output to prevent "shift shock" and slippage
19 of the CVT metal belt following range switch signal loss—a condition Mitsubishi
20 admitted was causing an "unexpected reduction in available acceleration" in a
21 subset of the Class Vehicles, which could "result in an increased risk of an
22 accident" that constituted "a safety issue depending on the driving situation."
23 Although Mitsubishi stated that the recalibration of the CVT-ECU was necessary
24 only to prevent the CVT-ECU from relaying this range switch signal loss to the
25 engine-ECU and that the issue was corrected in production, discovery will show
26 that the CVT-ECU is otherwise improperly calibrated, thus causing the CVT
27 Defect's symptoms, and that the recall did not resolve the CVT Defect.

28 65. Discovery will show that inadequate cooling also contributes to the

1 CVT Defect. The CVT fluid temperature is improperly regulated. This fluid
2 lubricates all the components of the CVT, including the belts, pulleys, and valves.
3 This design and/or manufacturing defect makes the transmission unreasonably
4 sensitive to heat. The CVT in every Class Vehicle is thus prone to overheating,
5 which activates a fluid temperature protection mode and reduces transmission
6 performance, among other symptoms. As a result, drivers experience conditions
7 ranging from shuddering, jerking, failure to accelerate, all the way to catastrophic
8 transmission failure.

9 66. The CVT Defect alleged is inherent in and the same for all Class
10 Vehicles.

11 67. Discovery will show that Mitsubishi was aware of material facts
12 regarding the CVT Defect but failed to disclose them to consumers. As a result of
13 this failure, Plaintiffs and Class Members have been damaged.

14 **The CVT Defect Poses an Unreasonable Safety Hazard**

15 68. The CVT Defect poses an unreasonable safety hazard. Hesitations,
16 slow/no responses, hard braking, and/or catastrophic transmission failure impair
17 drivers' control over their vehicles, which significantly increases the risk of
18 accidents. For example, turning across traffic in a vehicle with delayed and
19 unpredictable acceleration is unsafe. In addition, these conditions can make it
20 difficult to safely change lanes, merge into traffic, turn, brake slowly or accelerate
21 from stop light/sign, and accelerate onto highways or freeways.

22 69. Federal law requires automakers like Mitsubishi to be in close contact
23 with NHTSA regarding potential auto defects, including imposing a legal
24 requirement (backed by criminal penalties) compelling the confidential disclosure
25 of defects and related data by automakers to NHTSA, including field reports,
26 customer complaints, and warranty data. *See TREAD Act*, Pub. L. No. 106-414,
27 114 Stat.1800 (2000).

28 70. Automakers have a legal obligation to identify and report emerging

1 safety-related defects to NHTSA under the Early Warning Report requirements.
2 *Id.* Similarly, automakers monitor NHTSA databases for consumer complaints
3 regarding their automobiles as part of their ongoing obligation to identify potential
4 defects in their vehicles, including those which are safety related. *Id.* Thus,
5 Mitsubishi knew or should have known of the many complaints about the CVT
6 Defect logged by NHTSA Office of Defects Investigation (ODI). The content,
7 consistency, and disproportionate number of those complaints alerted, or should
8 have alerted, Mitsubishi to the CVT Defect.

9 71. With respect solely to the Class Vehicles, the following are but a few
10 examples of the many complaints concerning the CVT Defect which are available
11 through NHTSA's website, www.safercar.gov. Many of the complaints reveal that
12 Mitsubishi, through its network of dealers and repair technicians, has been made
13 aware of the CVT Defect. In addition, the complaints indicate that despite having
14 knowledge of the CVT Defect and even armed with knowledge of the exact
15 vehicles affected, Mitsubishi often refused to diagnose the defect or otherwise
16 attempt to repair it while Class Vehicles were still under warranty.

17
18 a. **DATE OF INCIDENT:** September 16, 2014
19 **DATE COMPLAINT FILED:** September 22, 2014
20 **NHTSA/ODI ID:** 10638179

21 **SUMMARY:** I WHILE DRIVING THE VEHICLE, THE VEHICLE
22 STARTED TO SHAKE AND THEN LOST THE ABILITY TO
23 MOVE. CHECK ENGINE LIGHTS CAME ON. VEHICLE ENGINE
24 WOULD RUN BUT VEHICLE WOULD NOT MOVE FORWARD
OR REVERSE. VEHICLE HAD TO BE TOWED TO LOCAL
Mitsubishi DEALERSHIP. ENTIRE TRANSMISSION HAD TO BE
REPLACED

25 b. **DATE OF INCIDENT:** September 15, 2015
26 **DATE COMPLAINT FILED:** October 26, 2015
27 **NHTSA/ODI ID:** 10786132

28 **SUMMARY:** UPON STARTING THE VEHICLE AND TAKING
OFF WITH THE SHIFTER ENGAGED IN AUTOMATIC, THE

1 CAR QUICKLY ENGAGES THE FIRST GEAR BUT AS I
2 DEPRESS THE ACCELERATOR PEDAL TO ACCELERATE, IT
3 FEELS AND SOUNDS LIKE THE ENGINE IS ABOUT TO STALL
4 OUT AND THE VEHICLE SLOWS BACK DOWN AS IF
5 HESITATING AND MALFUNCTIONING, THEN IT VERY
6 SLOWLY OVER ABOUT A 20-30 SECOND LULL WILL BEGIN
7 TO PICK UP SPEED AT AN INCREDIBLY SLOW AND
8 DANGEROUS SPEED. I HAVE TRIED MAKING RIGHT TURNS
9 AND LEFT YIELD TURNS ONLY TO FIND THAT I CANNOT
10 MOVE FAST ENOUGH OUT OF ANOTHER VEHICLES PATH IN
11 A SAFE TIME AND THAT IT IS TOO DIFFICULT TO TRY AND
12 PRESUME HOW LONG IT WILL TAKE TO CROSS A STREET
13 AS THE ACCELERATION OF THE VEHICLE IS
14 UNPREDICTABLE EVERY TIME. I HAVE TO CONSTANTLY
15 DRIVE WITH THE SHIFTER IN MANUAL TO OVERRIDE THIS
16 PROBLEM. THIS HAS ALMOST CAUSED ME SEVERAL
17 ACCIDENTS BEFORE I WAS ABLE TO DECIPHER THE SAFER
18 MANUAL POSITION IT ACCELERATION OF THE VEHICLE.

13 c. **DATE OF INCIDENT:** July 1, 2015

14 **DATE COMPLAINT FILED:** December 1, 2015

15 **NHTSA/ODI ID:** 10807645

16 **SUMMARY:** WHEN I PUSH ON GAS, THE CAR NEVER SHIFTS
17 GEARS! I CAN START OUT SLOWLY WITH A LITTLE GAS
18 PEDDLE PRESSURE, BUT WHEN TRYING TO GET UP TO
19 SPEED AND MERGE WITH TRAFFIC, IT WILL NEVER SHIFT
20 INTO A HIGHER GEAR! IT STAYS AT ABOUT 20MPH AND
21 ENGINE REVS TO RED ZONE UNLESS I LIFT OFF GAS. I
22 DON'T EVEN GET GAS PEDDLE HALFWAY DOWN.
23 TRANSMISSION ROARS, CAR DOESN'T GO, AND I CAN'T GO
24 FORWARD BUT AT A SLOW CRAWL UNLESS I PULL OVER,
25 LET OFF GAS COMPLETELY SO CAR CAN SETTLE, THEN TRY
26 AGAIN. IT WON'T SHIFT IN AWD OR 4WD AND I OLD LADY,
27 I DON'T TROOMP N ROCKET. I JUST WANT TO GET UP TO
28 55MPH WITHIN 1 MILE WITHOUT SENDING MY ENGINE
INTO DRAGONFLIES AND HALF A TANK OF GAS GONE! I
ASKED DEALER AND HE BLEW IT OFF AS A SLOW
STARTINGVEHICLE, BUT IT'S GETTING WORSE AND
TYRANNY NOT SHIFTING RIGHT. HAVE TO FIND A Mitsubishi
SERVICE CENTER.

d. **DATE OF INCIDENT:** January 28, 2017

1 **DATE COMPLAINT FILED:** January 15, 2017

2 **NHTSA/ODI ID:** 10948165

3 **SUMMARY:** I'M NOT SURE IF IT IS IN THE MOTOR OR
4 TRANSMISSION OF MY SUV. WHAT HAPPENS IS WHEN I AM
5 DRIVING ON THE HIGHWAY I PUSH DOWN ON THE
6 ACCELERATOR AND ITS AS THOUGH MY CAR IS STANDING
7 STILL THEN A FEW SECONDS LATER THE ACCELERATE
8 STARTS TO WORK AND MOVE THE CAR, THIS HAS
9 HAPPENED A FEW TIMES AND I HAVE ALMOST BEEN HIT
10 FROM BEHIND BECAUSE OF THIS. I NO LONGER DRIVE MY
11 CAR ON THE HIGHWAYS BECAUSE I'M TERRIFIED THAT
12 THIS WILL HAPPEN AGAIN WHILE ON THE HIGHWAY AND I
13 WILL BE CRASHED OR EVEN KILLED DUE TO WHAT EVER
14 IS GOING ON WITH MY CAR.

15 e. **DATE OF INCIDENT:** March 7, 2019

16 **DATE COMPLAINT FILED:** March 6, 2019

17 **NHTSA/ODI ID:** 11184754

18 **SUMMARY:** WHEN I AM ACCELERATING, PUSHING THE
19 GAS PEDAL THE RPMS GO DOWN SIGNIFICANTLY THEN
20 RISER SIGNIFICANTLY. NOW THERE IS A DEEP RUMBLE OR
21 VIBRATION IF I GO ABOVE 50 AND THE CHECK ENGINE
22 LIGHT IS ON. I LIVE IN FLAT TERRAIN WITH OCCASIONAL
23 HILLS BUT DRIVE MOSTLY HIGHWAYS.

24 f. **DATE OF INCIDENT:** June 19, 2019

25 **DATE COMPLAINT FILED:** May 17, 2019

26 **NHTSA/ODI ID:** 11220947

27 **SUMMARY:** TOOK VEHICLE IN TO DEALER DUE TO A
28 VIBRATION COMING FROM TRANSMISSION, AND ALSO, MY
VEHICLE WOULD BE SLUGGISH WHEN IT WARMED UP.
MOST CONCERNING, WAS WHEN SLOWING AT AN
INTERSECTION TO TURN, AND THEN PRESSING THE GAS TO
ACCELERATE, THE VEHICLE WOULD BE HESITANT. THIS
ALMOST RESULTED IN A CAR ACCIDENT. BASED ON OTHER
REVIEWERS, I FIND THIS TO BE A CONCERN FOR MORE
THAN JUST MYSELF. I HAD TO PURCHASE A BRAND NEW
TRANSMISSION AT \$7,100. TOTAL MILES IS 56,000. WHEN ON
THE HIGHWAY, AND ATTEMPTING TO ACCELERATE. THE
RPMS WOULD SHOOT UP, BUT THE TRANSMISSION FELT
LIKE IT WOULD NOT SHIFT GEARS. I HAD TROUBLE AT
TIMES SPEEDING UP ON THE HIGHWAY. THIS COULD HAVE

1 ALSO RESULTED IN A BAD ACCIDENT.

2 g. **DATE OF INCIDENT:** November 5, 2021

3 **DATE COMPLAINT FILED:** October 8, 2021

4 **NHTSA/ODI ID:** 1 1439506

5 **SUMMARY:** I was driving on the way home, my car started to skip
6 and jerking. Went to Mitsubishi and told me I needed a whole new
7 transmission replacement on a 2016 Lancer with only 81,000 miles on
8 it. It seemed to never catch up to speed smoothly. Which I was terrified
9 I was going to wreck otw home that day.

10 h. **DATE OF INCIDENT:** October 27, 2021

11 **DATE COMPLAINT FILED:** October 25, 2021

12 **NHTSA/ODI ID:** 11438417

13 **SUMMARY:** Our 2016 lancer has suddenly started hesitating/ taking
14 seconds to shift from park to reverse/drive. Also while driving vehicle
15 its rpms fluctuate causing a shudder and surge in power or
16 acceleration. This is a very alarming problem as it puts mine and my
17 kids safety as it hesitates to shift and while driving it loses power and
18 then powers up by itself. We have taken to a transmission shop (HIGH
19 TECH Transmission) and now a dealer (Mission Mitsubishi) and both
20 have replicated problem and pulled code but dealer will not honor
21 recall or repair it. There was a safety recall for 2016 lancers with a
22 cvt8 (SR-16-006) that produces a code P084A as well which and that
23 if both were present a replacement transmission should be approved.
24 All information was pulled from Mitsubishi website, and I called them
25 and spoke to Carla did not give a last name and she advised me that
26 our lancer doesn't have a recall and I said well is it possible you'll
27 missed some vehicles that have the same problem from the recalls
28 you'll have already put out? And she got snappy and said to contact
safer car.gov; so here I am, presenting facts to you'll that my 2016
lancer may and hopefully is part of a recall which in result to not being
identified or checked out caused more damage as stated it would on
the manufacturers website. And needs to be fixed due to not being
identified in recall so preventive measures could have been taken.
Please our vehicle is experiencing the problem as a recall Mitsubishi
put out but failed to identify our lancer and now is experiencing
hesitation in CVT trans, and shudder/surge in transmission.

i. **DATE OF INCIDENT:** March 29, 2021

DATE COMPLAINT FILED: March 1, 2021

NHTSA/ODI ID: 11405458

1 **SUMMARY:** AUTOMATIC CVT TRANSMISSION BEGAN
2 FAILING AT 60,000 MILES. TRANSMISSION FLUID WAS
3 CHANGED AT 30K MILES, 55K MILES, 80K, AND 98,000
4 MILES. TRANSMISSION COMPLETELY FAILED AT 98,000
5 MILES. THIS IS DUE TO A MANUFACTURER DEFECT AND WE
6 SHOULD NOT HAVE TO PAY FOR THIS OUT OF POCKET.
7 PLEASE OPEN A RECALL. THIS HAS BEEN REPORTED
8 SEVERAL TIMES ON THIS VIN SERIES. THE VEHICLE
9 HESITATES TO SWITCH GEARS AND CANNOT ENTER 4TH
10 GEAR OR HIGHER. TRANSMISSION SLIPS WITH
11 ACCELERATION. PLEASE RECALL!

12 **DATE OF INCIDENT:** March 7, 2021

13 **DATE COMPLAINT FILED:** March 7, 2021

14 **NHTSA/ODI ID:** 11399625

15 **SUMMARY:** AS I WAS DRIVING IT IT SEEMS TO HESITATE
16 ON ACCELERATING AFTER A FEW STOPS THE
17 TRANSMISSION LIGHT WOULD COME ON FOR A LITTLE BIT
18 THEN GO OFF. SAME WITH THE CHECK ENGINE LIGHT. AS I
19 WAS DRIVING IT TO WORK ON THE HIGHWAY.. IT
20 SUDDENLY STARTED LOSING POWER AND I WAS ABLE TO
21 PULL OVER AND PARK IT AT A GAS STATION WHERE IT
22 WENT COMPLETELY DEAD.. I HAD AAA TOW IT.. IT
23 STARTED UP BUT THE SHIFTING IS NOT ENGAGING RIGHT
24 AWAY. HAD THE SOFTWARE UPDATED IN 2019.. THE CVT
25 TRANSMISSION ARE FULL OF PROBLEMS. IT SEEMS TO
26 HAVE THE SAME SYMPTOMS AS THE RECALL BUT MY CAR
27 WAS NOT RECALLED ACCORDING TO THE VIN NUMBER.. I
28 HAD A FLUSH DONE RECENTLY AND I HAVE ALSO HAD THE
OIL CHANGED WHEN NEEDED. THE ACCELERATION
HESITATION THEN LOSS OF POWER WHILE DRIVING 60 ON
THE FREEWAY IS A SAFETY ISSUE... A LOT OF SEMI TRUCKS
TRAVEL THAT HIGHWAY AND THEY CANT STOP WHEN A
CAR LOSES POWER IN FRONT OF THEM.

j. **DATE OF INCIDENT:** April 18, 2017

DATE COMPLAINT FILED: January 10, 2017

NHTSA/ODI ID: 10979053

SUMMARY: I HAVE NOTICED AN ISSUE WITH MY CARS
ACCELERATION FROM A 0 MILE PER HOUR STARTING
POINT TO A 30 MPH. IT IS VERY SUDDEN AND RANDOM. IT
HAS OCCURRED SEVERAL TIMES FROM A STOP AT A

1 TRAFFIC LIGHT OR A STOP SIGN. THERE IS A SECOND TO AS
2 LONG AS 4 SECOND HESITATION IN ACCELERATION.
3 ACCELERATOR PEDAL IS PRESSED AND THE CAR TAKES
4 OFF FOR A BRIEF SECOND OR 2 BEFORE THE FEW SECOND
5 HESITATION OCCURS. IT CAN BE DANGEROUS IF THIS
6 OCCURS WHEN PULLING OUT ON A BUSY HIGHWAY WITH
7 TRAFFIC COMING. FOR THOSE FEW SECONDS THERE IS
8 NOTHING YOU CAN DO BUT PRESS THE GAS PEDAL
9 HARDER WHEN THOUGH THE CAR IS NOT DOING
10 ANYTHING. AFTER THOSE FEW SECONDS THE CAR
11 TRANSMISSION KICKS IN AND YOU EVENTUALLY HAVE
12 CONTROL IN ACCELERATION ONCE AGAIN. TOOK TO THE
13 DEALER TODAY. THEY SAID NO RECALLS ON THE
14 VEHICLE. ONLINE I SEE A SIMILAR RECALL ON THE
15 OUTLANDER TRANSMISSION BUT SERVICE TECH SAYS HE
16 CHECKED AND NOTHING ON THE LANCER. THEY DROVE
17 MY CAR AND OF COURSE IT DON'T HAPPEN. IT'S VERY
18 RANDOM. IT USUALLY HAPPENS ONCE A WEEK. IT HAS
19 PROB OCCURRED ABOUT 10 TIMES IF NOT MORE. THERE IS
20 NO WAY TO EXPECT IT SO NOW I HAVE TO TAKE EXTREME
21 CAUTION WHEN I'M ABOUT TO PULL OUT ON A BUSY ROAD
22 WITH TRAFFIC COMING MY WAY. HAS ANYONE ELSE HAD
23 THIS ISSUE WITH THEIR LANCER?
24
25
26
27
28

k. **DATE OF INCIDENT:** August 16, 2019

DATE COMPLAINT FILED: August 15, 2019

NHTSA/ODI ID: 11244413

SUMMARY: WHILE DRIVING THE ABOVE VEHICLE ON THE
FREEWAY THE CAR SHUT DOWN. I PULLED OVER SAFELY
TO THE SIDE. SHUT THE VEHICLE OFF COMPLETELY AND
THEN RESTARTED IT.THE DASH WAS LIT UP LIKE A
CHRISTMAS TREE AND THE CAR STARTED AND WAS TO
DRIVE HOME IN A LIMP MODE IN. CALLED THE DEALER
THE CAR HAD RECALL FOR SOFTWARE UPDATE.THE
DEALER MICHAUD Mitsubishi IN DANVERS MA UPDATED
THE SOFTWARE AND CLEARED CODES. FEW DAYS BACK
THE CARE REFUSED TO UP-SHIFT WHILE DRIVING AND
WOULD NOT EXCEED MORE THEN 35 TO 40 MILES PER
HOUR.I NOTIFIED THE ABOVE DEALER AND TOOK IT BACK
TO THEM NO ERROR CODE WAS FOUND. I CONTINUED
DRIVING. ON WED 8/14/19 THE CAR AGAIN WOULD NOT UP-
SHIFT AND STAYED IN 2ND GEAR AND RPM WENT UP TO

1 5000. I PULLED OVER AND SHUT OFF THE VEHICLE.
2 RESTARTED IT AND IT DROVE NORMALLY. I AGAIN MADE
3 AN APPOINTMENT FOR FRIDAY 8/16/19 TO THE DEALER TO
4 SHOW THEM WHAT WAS HAPPENING. I WAS DRIVING
5 YESTERDAY 08/15/19 AROUND 10.15 AM ON THE FREEWAY
6 AT APPROXIMATELY 70 MILES AN HOUR WITH AN 18
7 WHEELER BEHIND ME, THE CAR SHUT OFF 2ND TIME IN ITS
8 LIFE AND THE DASHBOARD LIT UP LIKE A CHRISTMAS
9 TREE AGAIN. I QUICKLY AND SAFELY PULLED OVER
10 BEFORE I WAS REAR ENDED BY THE 18 WHEELER. I TOOK
11 PICS OF DASHBOARD AS IT WAS SHOWING ERROR CODES.
12 I CALLED THE DEALER AND ASKED THAT I COULD BRING
13 THE CAR NOW. THE LADY ANSWERING THE PHONE WAS
14 HOSTILE AND ULTIMATELY TURNED OVER THE CALL TO
15 OWNERS SON ZACK. I WENT TO DEALER BY NOON
16 YESTERDAY AND TALKED TO PAUL IN SERVICE/SALES.
17 THE VEHICLE WAS EXAMINED AND THE SAME ERROR
18 CODES HAD AGAIN BEEN REGENERATED BY ON BOARD
19 COMPUTER. I WAS TOLD TO LEAVE THE VEHICLE WHILE
20 DEALERS SERVICE DEPT WAS TRYING TO GET IN TOUCH
21 WITH Mitsubishi SERVICE DEPT. AS OF TODAY 08/16/19 I
22 DONT HAVE A STATUS UPDATE ON THE VEHICLE. *DT *TR
23 *JS

17 1. **DATE OF INCIDENT:** September 1, 2016
18 **DATE COMPLAINT FILED:** March 10, 2016
19 **NHTSA/ODI ID:** 10903141

20 **SUMMARY:** TL* THE CONTACT OWNS A 2015 Mitsubishi
21 MIRAGE. WHILE APPROACHING A STOP, THE VEHICLE FELT
22 AS THOUGH IT LUNGED FORWARD AND JERKED
23 VIOLENTLY. THERE WERE NO WARNING INDICATORS
24 ILLUMINATED. THE VEHICLE WAS TAKEN TO A DEALER,
25 BUT WAS NOT DIAGNOSED. THERE WAS CONCERN THAT
26 THE LOW REVERSE BRAKE COULD RE-ENGAGE. THE
27 MANUFACTURER WAS NOT MADE AWARE OF THE ISSUE.
28 THE FAILURE MILEAGE WAS 19,500.

m. **DATE OF INCIDENT:** January 6, 2021
DATE COMPLAINT FILED: January 5, 2021
NHTSA/ODI ID: 11386766

SUMMARY: TRANSMISSION CVT HAVE PROBLEMS. CAR
HAD A CHANGE TRANSMISSION OIL IN DEC 2020, AND

1 YESTERDAY CAR STOP TO GEAR AND INCREASE SPEED.
2 AFTER USED OBII SCAN, IT POP UP 5 DIFFERENTS CODE
3 INCLUDING SOLENOIDE PROBLEM AND SPEED SENSORS. I
4 HAVE TO CHANGE TRANSMISSION OIL AGAIN BECAUSE IT
5 WAS DIRTY (LIGHT BLACK) IN JUST 3 WEEK BURNED THE
6 NEW OIL. CAR START TO INCREASE SPEED AND GET GEAR
7 BETTER BUT NOT GOOD ENOUGH TO FULL SPEED. ALL FIVE
8 CODES DESAPEAR AS WELL AS "ENGINE SERVICE SOON"
9 CAR HAVE 113000 MILES. I BELIEVE CAR HAVE COMPUTER
10 PROBLEMS AND TRANSMISSION PROBLEMS CAR CANT
11 SAID ONE DAY 5 PROBLEMS, WE CHANGE THE
12 TRASNMISSION OIL AND NOW IT SAID NOT PROBLEM

9 n. **DATE OF INCIDENT:** January 10, 2018

10 **DATE COMPLAINT FILED:** January 10, 2018

11 **NHTSA/ODI ID:** 11062060

12 **SUMMARY:** TRANSMISSION IDLE SHUDDER. ERRATIC
13 SHIFTING. FEELS LIKE CVT FAILING. Mitsubishi DEALERSHIP
14 CONFIRMED AND REPROGRAMMED CVT PER BULLETIN
15 FROM MANUFACTURER. DENIED COVERAGE UNDER 10
16 YEAR / 100,000 POWER TRAIN WARRANTY. DEALER SAID
17 PROGRAMMING IS NOT PARTS FAILURE.

16 o. **DATE OF INCIDENT:** October 5, 2018

17 **DATE COMPLAINT FILED:** October 5, 2018

18 **NHTSA/ODI ID:** 11133605

19 **SUMMARY:** LOST OF ACCELERATION OR SUDDEN
20 ACCELERATION, HELLO, I PURCHASED THIS Mitsubishi
21 MIRAGE 2017, AND I DROVE IT FOR 2000 MILES. I HAVE
22 NOTICED THE LOST OF ACCELERATION OR SOMETIMES
23 SUDDEN ACCELERATION WITHOUT PRESSING THE
24 ACCELERATOR. I AM REPORTING MY Mitsubishi TO BE ON
25 THE SAFE SIDE, AND I AM ASKING IF THIS PROBLEM CAN
26 BE A TRIGGER FOR A RECALL ABOUT THIS CAR. I WANTED
27 TO STOP FOR A STOP SIGN, BUT THE CAR DID A SUDDEN
28 ACCELERATE, AND I HAD TO PRESS THE BRAKES HARD. I
HAD 3 PASSENGERS IN THE CAR, AND THE ACCELERATION
WAS LOSING POWER, AND I HAD TO DRIVE MY CAR VERY
SLOW. BUT WHEN I DROPPED THE PASSENGERS, THE CAR
WAS DRIVING FINE.

p. **DATE OF INCIDENT:** July 3, 2018

1 **DATE COMPLAINT FILED:** June 25, 2018

2 **NHTSA/ODI ID:** 11105380

3 **SUMMARY:** TL* THE CONTACT OWNS A 2017 Mitsubishi
4 MIRAGE. WHILE DRIVING VARIOUS SPEEDS, THE VEHICLE
5 WOULD JERK, HESITATE, AND STALL AFTER THE
6 ACCELERATOR PEDAL WAS RELEASED. THE
7 MANUFACTURER AND LOCAL DEALER (HIGH POINT
8 Mitsubishi, 2411 NORTH MAIN ST., HIGH POINT, NC) WERE
9 BOTH NOTIFIED OF THE FAILURE. THE FAILURE WAS NOT
10 DIAGNOSED OR REPAIRED. THE VIN WAS NOT AVAILABLE.
11 THE FAILURE MILEAGE WAS 25,000.

12 q. **DATE OF INCIDENT:** May 4, 2018

13 **DATE COMPLAINT FILED:** April 5, 2018

14 **NHTSA/ODI ID:** 11091927

15 **SUMMARY:** TL* THE CONTACT OWNS A 2018 Mitsubishi
16 MIRAGE. WHILE DRIVING VARIOUS SPEEDS, THE VEHICLE
17 SHOOK AND THE ENGINE REVVED. THERE WERE NO
18 WARNING INDICATORS ILLUMINATED. THE VEHICLE WAS
19 TAKEN TO SCHUMACHER Mitsubishi (4047 OKEECHOBEE
20 BLVD, #200, WEST PALM BEACH, FL 33409, 561-935-4302)
21 WHERE IT WAS DETERMINED THAT THE VEHICLE WAS
22 PERFORMING AS DESIGNED. THE MANUFACTURER WAS
23 NOT MADE AWARE OF THE FAILURE. THE FAILURE WAS
24 NOT REPAIRED. THE FAILURE MILEAGE WAS 8.

25 r. **DATE OF INCIDENT:** April 15, 2021

26 **DATE COMPLAINT FILED:** April 15, 2021

27 **NHTSA/ODI ID:** 11413289

28 **SUMMARY:** THE CAR STARTED SHAKING PROFUSELY
WHILE DRIVING. I PULLED OVER AND IT WAS LOUD. I
TURNED OFF THE CAR AND EVERYTHING SEEMED
NORMAL. I STARTED DRIVING AND AFTER ABOUT
100YARDS IT STARTED SHAKING AND WOULDN'T
ACCELERATE. I WAS ON ACCESS ROAD DRIVING. IT CAME
ALL OF A SUDDEN.

s. **DATE OF INCIDENT:** October 15, 2020

DATE COMPLAINT FILED: October 15, 2020

NHTSA/ODI ID: 11364470

SUMMARY: WHILE DRIVING AND AUTOMATIC THE CAT
JUMPS RPMS AND DOESN'T SHIFT RIGHT WHEN IN MANUAL

1 IT DRIVES PERFECTLY FINE.

2 t. **DATE OF INCIDENT:** April 30, 2020

3 **DATE COMPLAINT FILED:** April 27, 2020

4 **NHTSA/ODI ID:** 11322793

5 **SUMMARY:** I WAS DRIVING ON THE HIGHWAY AND WITH
6 NO WARNING THE VEHICLE LOST PRESSURE WHEN
7 PRESSING ON THE GAS PEDDLE TO DRIVE TO MAINTAIN
8 SPEED LIMIT WHEN DRIVING THE CAR. THE
9 TRANSMISSION FLUID WAS CHECKED AND THERE WAS
10 THE RECOMMENDED LEVEL OF TRANSMISSION FLUID.
11 MECHANIC STATED ERROR CODE P0868. PER
12 MECHANIC/TRANSMISSION SPECIALIST THIS IS A KNOWN
13 PROBLEM WITH Mitsubishi TRANSMISSIONS AND THEY ARE
14 ONLY ABLE TO GET THE TRANSMISSION FROM A DEALER.
15 PLEASE NOTE THAT HIS HAS OCCURRED TO OTHER 2014
16 Mitsubishi OUTLANDERS WITH 50,000 OR LESS THAT WERE
17 PURCHASED AT THE LANCASTER Mitsubishi IN LANCASTER,
18 PA.

14 u. **DATE OF INCIDENT:** April 4, 2020

15 **DATE COMPLAINT FILED:** April 1, 2020

16 **NHTSA/ODI ID:** 11320185

17 **SUMMARY:** SPEED DROPPED AND WON'T GO OUT OF
18 SECOND GEAR, MECHANIC SAYS ALL OF THESE
19 TRANSMISSIONS ARE BAD AND DANGEROUS, HAPPENED
20 ON CITY STREET

20 v. **DATE OF INCIDENT:** June 28, 2019

21 **DATE COMPLAINT FILED:** May 23, 2019

22 **NHTSA/ODI ID:** 11223130

23 **SUMMARY:** TL* THE CONTACT OWNS A 2014 Mitsubishi
24 OUTLANDER. WHILE DRIVING, A MESSAGE FLASHED
25 INDICATING TO SLOW DOWN BECAUSE THE
26 TRANSMISSION WAS OVERHEATING. THE VEHICLE WAS
27 NOT TAKEN TO A DEALER. THE VEHICLE WAS NOT
28 INCLUDED IN NHTSA CAMPAIGN NUMBER: 16V563000
(POWER TRAIN); ALTHOUGH, THE VEHICLE EXHIBITED THE
SAME FAILURE. THE VEHICLE WAS NOT DIAGNOSED OR
REPAIRED. THE MANUFACTURER WAS NOTIFIED OF THE
FAILURE. THE APPROXIMATE FAILURE MILEAGE WAS
72,000.

1 w. **DATE OF INCIDENT:** June 18, 2019
2 **DATE COMPLAINT FILED:** May 17, 2019
3 **NHTSA/ODI ID:** 11220937

4 **SUMMARY:** TOOK VEHICLE IN TO DEALER DUE TO A
5 VIBRATION COMING FROM TRANSMISSION, AND ALSO, MY
6 VEHICLE WOULD BE SLUGGISH WHEN IT WARMED UP.
7 MOST CONCERNING, WAS WHEN SLOWING AT AN
8 INTERSECTION TO TURN, AND THEN PRESSING THE GAS TO
9 ACCELERATE, THE VEHICLE WOULD BE HESITANT. THIS
10 ALMOST RESULTED IN A CAR ACCIDENT. BASED ON OTHER
11 REVIEWERS, I FIND THIS TO BE A CONCERN FOR MORE
12 THAN JUST MYSELF. I HAD TO PURCHASE A BRAND NEW
13 TRANSMISSION AT \$7,100. TOTAL MILES IS 56,000.

14 x. **DATE OF INCIDENT:** August 25, 2016
15 **DATE COMPLAINT FILED:** August 25, 2016
16 **NHTSA/ODI ID:** 10898578

17 **SUMMARY:** TL* THE CONTACT OWNS A 2014 Mitsubishi
18 OUTLANDER. WHILE DRIVING 30 MPH, THE
19 ACCELERATION SEIZED AND WOULD NOT RESPOND AFTER
20 A STOP. THE VEHICLE WAS TAKEN TO AN INDEPENDENT
21 MECHANIC WHO DIAGNOSED THAT THE ACCELERATION
22 WAS NORMAL. THE VEHICLE WAS NOT DIAGNOSED NOR
23 REPAIRED. THE FAILURE OCCURRED EVERYDAY SINCE
24 THE VEHICLE WAS PURCHASED FROM A USED CAR LOT.
25 THE APPROXIMATE FAILURE MILEAGE WAS 23,000.

26 **Customer Complaints on Third-Party Websites**

27 72. Similarly, complaints posted by consumers in internet forums
28 demonstrate that the defect is widespread and dangerous and that it can manifest
without warning and/or suitable repair. The complaints also indicate Mitsubishi's
awareness of the problems with the transmission and how potentially dangerous
the defect is for consumers. The following are a sample of consumer complaints
(spelling and grammar mistakes remain as found in the original):

73. On mirageforum.com, a consumer of a 2015 Mitsubishi Mirage
posted the following:

1 The issue I'm having is that my CVT automatic transmission is
2 jerky and clunky. Whenever I come to a stop it jerks into first gear
3 after the car has completely stop. This is the most noticeable jerk.
4 Other times, it will shift out of no where when going 40-
5 60mph...after a new transmission was put in, or so they say, it
6 had MORE problems than before. The gear shifter was not
7 working properly...and I was still having the same exact jerking
8 issues as before.

9 74. On mitsubishiforum.com, a consumer posted the following:

10 I have a 2014 Outlander Sport. 12 weeks ago at 110,000, the car
11 started whining on acceleration and within minutes the
12 transmission started slipping. Transmission light came on.
13 Brought it to my mechanic in Underhill and he said the
14 transmission was gone.

15 75. On carproblemzoo.com, a consumer posted the following:

16 When driving at city street speed of 25 mph and under my car
17 shakes so much and does not accelerate and feels like it is going
18 to shut down. On 3 occasions I was rear ended because of this and
19 one time was with a huge sanitation truck with my children inside
20 the car...it is a very scary situation and I just bought this car about
21 a year ago.

22 76. On carproblemzoo.com, another consumer posted the following:

23 The car started shaking profusely while driving. I pulled over and
24 it was loud. I turned off the car and everything seemed normal. I
25 started driving and after about 100yards it started shaking and
26 wouldn't accelerate. I was on access road driving. It came all of a
27 sudden.

28 77. On carproblemzoo.com, another consumer posted the following:

1 This happens almost all the time - when driving at city street
2 speed of 25 mph and under my car shakes so much and does not
3 accelerate and feels like it is going to shut down. On 3 occasions
4 I was rear ended because of this and one time was with a huge
5 sanitation truck with my children inside the car. I have taken this
6 car to the dealer and the Mitsubishi dealer to be looked at and help
7 to no avail it still does it. I have reported this to Mitsubishi motors
8 and was given a case number but to date no one has contacted me
9 nor helped me. I am scared for the safety of my family and myself
10 - it is a very scary situation and I just bought this car about a year
11 ago. Help me because no one else does.

12 78. On carproblemzoo.com, another consumer posted the following:

13 Engine rev'd high and low without affecting speed of vehicle.
14 Vehicle lost acceleration and came to a stop. Restarting the
15 vehicle allowed some movement but the problem persisted.
16 Dealership checking the vehicle said the transmission needed to
17 be replaced at a cost of \$9,700

18 79. On carproblemzoo.com, another consumer posted the following:

19 My 2016 Outlander started having a burning plastic smell. I made
20 a trip back home and thankfully made it safely because I started
21 having issues with accelerating. I would push the gas gently and
22 barely go but my car would rev up to 4-5 rpms. I could put my
23 foot to the floor and it wouldn't speed up at all. After checking the
24 transmission fluid and seeing it was on the lower side we added a
25 little more in hopes it would help but it did not. I was low on gas
26 after my trip so I drove to the closet store so it wouldn't be sitting
27 with no gas and at this point the transmission service required
28 warning came up. It started revving up even worse with the

1 slightest touch of the gas and I could barley get it to back out of
2 a spot or take off from a stop sign. We were trying to get it to a
3 neutral location that we knew it would be safe and while drinking
4 it there it started jumping and the check engine light came on. I
5 had it towed to a repair shop who verified it is a transmission issue
6 but said they recommend a dealer fix only. My car is a 2016, had
7 1 previous owner and only has 58347 miles on it.

8 80. On carproblemzoo.com, another consumer posted the following:

9 While driving the vehicle surges forwards like it is having
10 difficult shifting gears or accelerating . It happens while driving
11 40 miles . Al while at a stand still in traffic it shakes and vibrates
12 like it wants to stall then pulls forward . The the transmission
13 light flashes on then goes away.

14 **Mitsubishi Had Superior and Exclusive Knowledge of the CVT Defect**

15 81. Mitsubishi had superior and exclusive knowledge of the CVT Defect
16 and knew or should have known that the defect was not known or reasonably
17 discoverable by Plaintiffs and Class Members before they purchased or leased the
18 Class Vehicles.

19 82. Discovery will show that before Plaintiffs purchased their Class
20 Vehicles, and since at least 2014, Mitsubishi knew about the CVT Defect through
21 sources not available to consumers, including pre-release testing data, early
22 consumer complaints to Mitsubishi and its dealers who are their agents for vehicle
23 repairs, consumer complaints regarding earlier model years equipped with the
24 same CVT, testing conducted in response to those complaints, high failure rates
25 and replacement part sales data, consumer complaints to NHTSA (which
26 Mitsubishi monitors), by developing TSBs in an effort to address the CVT Defect,
27 and through other aggregate data from Mitsubishi dealers about the problem. TSBs
28

1 are issued exclusively to Mitsubishi's dealerships and service providers and are
2 not disseminated to consumers, even if their vehicles receive services as outlined
3 in the bulletins.

4 83. Mitsubishi is experienced in the design and manufacture of consumer
5 vehicles. As an experienced manufacturer, Mitsubishi conducts tests, including
6 pre-sale durability testing, on incoming components, including the transmission,
7 to verify the parts are free from defect and align with Mitsubishi's specifications.
8 Thus, Mitsubishi knew or should have known the transmission was defective and
9 prone to put drivers in a dangerous position due to the inherent risk of the CVT
10 Defect.

11 84. Additionally, discovery will show that Mitsubishi knew of the impact
12 of this defect from the sheer number of reports received from dealerships.
13 Mitsubishi's customer relations department, which interacts with individual
14 dealerships to identify potential common defects, has received numerous reports
15 regarding the defect, which led to the release of the TSBs. Mitsubishi's customer
16 relations department also collects and analyzes field data including, but not limited
17 to, repair requests made at dealerships, technical reports prepared by engineers
18 who have reviewed vehicles for which warranty coverage is being requested, parts
19 sales reports, and warranty claims data.

20 85. Defendants' warranty department similarly analyzes and collects data
21 submitted by its dealerships to identify warranty trends in its vehicles. It is
22 Defendants' policy that when a repair is made under warranty the dealership must
23 provide Mitsubishi with detailed documentation of the problem and a complete
24 disclosure of the repairs employed to correct it. Dealerships have an incentive to
25 provide detailed information to Defendants, because they will not be reimbursed
26 for any repairs unless the justification for reimbursement is sufficiently detailed.

27 86. In July 2016, Mitsubishi Motors North America, Inc. announced that,
28 following an investigation into CVT-caused hesitation that Mitsubishi began in

1 January 2016, Mitsubishi would be issuing a safety recall to address hesitation in
2 the following Class Vehicles: 2015 Mitsubishi Outlander Sport vehicles built
3 between June 25, 2014 and November 25, 2015, 2016; Mitsubishi Lancer vehicles
4 built between October 12, 2015 and April 27, 2016; 2016 Mitsubishi Outlander
5 vehicles built between May 11, 2015 and April 26, 2016; and 2016 Mitsubishi
6 Outlander Sport vehicles built between January 11, 2016 and July 8, 2016. In the
7 announcement, Mitsubishi admitted that this CVT-caused hesitation “could be a
8 safety issue depending on the driving situation,” and that, thus, a safety recall was
9 required. As part of its investigation, Mitsubishi admitted that, due to a range
10 switch signal loss, the CVT-ECU (the CVT’s control unit) was improperly
11 communicating with the engine-ECU “to reduce its torque output to prevent “shift-
12 shock” and slippage of the CVT metal belt,” resulting in “unexpected reduction in
13 available acceleration.” Mitsubishi also admitted that “unexpected reduction in
14 available acceleration during everyday driving, such as acceleration from a stop,
15 merging on to a freeway, or turning left against traffic, could result in an increased
16 risk of an accident. The recall, which was issued in August 2016, directed vehicle
17 owners to bring their vehicles to Mitsubishi dealerships to have their CVT-ECU
18 (the control unit that controls the CVT’s function) recalibrated. Mitsubishi also
19 made a component change in production in an effort to address the range switch
20 signal loss. However, discovery will show that this recall and production change
21 did not resolve the CVT Defect.

22 87. In April 2020, Mitsubishi issued TSB 20-23-001 for certain Class
23 Vehicles. The TSB was titled “Potential Transmission Shudder/Surge with
24 Possible DTC (CVT-8).” Specifically, the TSB was issued to correct “shudder or
25 surge condition possibly caused by poor reaction of the hydraulic pressure circuit.
26 With continued driving under these conditions, the CVT belt may slip repeatedly
27 when accelerating, and abrasion powder may enter the hydraulic pressure circuit,
28 causing a warning light to turn on with one of the following DTCs: P0776, P0730,

1 P0741, P084A, P0969, P2719. The shudder/surge condition may also be described
2 as engine flare, lack of acceleration, and/or car shake.” The repair procedure
3 provided was either replacing the entire CVT, or replacing various CVT
4 components, such as the CVT control valve and valve-body assembly. Discovery
5 will show that the problem persisted, and this TSB was superseded in June 2020,
6 with TSB 20-23-001REV. This revised TSB addressed the same concerns but
7 expanded the vehicles affected.

8 88. Discovery will show that each TSB issued by Mitsubishi was
9 approved by managers, directors, and/or executives at Mitsubishi. Therefore,
10 discovery will show that Mitsubishi’s managers, directors, and/or executives
11 knew, or should have known, about the CVT Defect, but refused to disclose the
12 CVT Defect to prospective purchasers and owners, and/or actively concealed the
13 CVT Defect.

14 89. The existence of the CVT Defect is a material fact that a reasonable
15 consumer would consider when deciding whether to purchase or lease a Class
16 Vehicle. Had Plaintiffs and other Class Members known of the CVT Defect, they
17 would have paid less for the Class Vehicles or would not have purchased or leased
18 them.

19 90. Reasonable consumers, like Plaintiffs, expect that a vehicle’s
20 transmission is safe, will function in a manner that will not pose a safety risk, and
21 is free from defects. Plaintiffs and Class Members further reasonably expect that
22 Mitsubishi will not sell or lease vehicles with known safety defects, such as the
23 CVT Defect, and will disclose any such defects to its consumers when it learns of
24 them. They did not expect Mitsubishi to conceal and fail to disclose the CVT
25 Defect to them, and to then continually deny its existence.

26 **Mitsubishi Has Actively Concealed the CVT Defect**

27 91. Despite its knowledge of the CVT Defect in the Class Vehicles,
28 Mitsubishi actively concealed the existence and nature of the defect from Plaintiffs

1 and Class Members. Specifically, Mitsubishi failed to disclose or actively
2 concealed at and after the time of purchase, lease, or repair:

3 (a) any and all known material defects or material nonconformity
4 of the Class Vehicles, including the defects pertaining to the CVT;

5 (b) that the Class Vehicles, including the CVT, were not in good
6 working order, were defective, and were not fit for their intended purposes;
7 and

8 (c) that the Class Vehicles and their transmissions were defective,
9 despite the fact that Mitsubishi learned of such defects as early as 2014.

10 92. Discovery will show that when consumers present their Class
11 Vehicles to an authorized Mitsubishi dealer for transmission repairs, rather than
12 repair the problem under warranty, Mitsubishi dealers either inform consumers
13 that their vehicles are functioning properly or conduct repairs that merely mask
14 the CVT Defect.

15 93. Mitsubishi has caused Plaintiffs and Class Members to expend money
16 and/or time at its dealerships to diagnose, repair or replace the Class Vehicles'
17 CVT and/or related components, despite Mitsubishi's knowledge of the CVT
18 Defect.

19 **Defendants Have Unjustly Retained a Substantial Benefit**

20 94. Discovery will show that Plaintiffs allege that Defendants unlawfully
21 failed to disclose the alleged defect to induce them and other putative Class
22 Members to purchase or lease the Class Vehicles.

23 95. Plaintiffs further allege that Defendants thus engaged in deceptive
24 acts or practices pertaining to all transactions involving the Class Vehicles,
25 including Plaintiffs'.

26 96. As discussed above, therefore, Plaintiffs allege that Defendants
27 unlawfully induced them to purchase their respective Class Vehicles by concealing
28 a material fact (the defective CVT) and that they would have paid less for the Class

1 Vehicle, or not purchased them at all, had they known of the defect.

2 97. Accordingly, Defendants' ill-gotten gains, benefits accrued in the
3 form of increased sales and profits resulting from the material omissions that did -
4 and likely will continue to - deceive consumers, should be disgorged.

5 **Mitsubishi Authorized Dealers are Defendants' Agents**

6 98. In promoting, selling, and repairing its defective vehicles, Mitsubishi
7 acts through numerous authorized dealers who act as, and represent themselves to
8 the public as, exclusive Mitsubishi representatives and agents. That the dealers act
9 as Mitsubishi's agents is demonstrated by the following facts:

10 (a) The authorized Mitsubishi dealerships complete all service and
11 repair according to Mitsubishi's instructions, which Mitsubishi issues to its
12 authorized dealerships through service manuals, technical service bulletins
13 ("TSBs"), technical tips ("TT"), and other documents;

14 (b) Technicians at Mitsubishi dealerships are required to go to at
15 least yearly Mitsubishi-given trainings in order to remain certified to work
16 on Mitsubishi-branded vehicles, at which they receive training on
17 proprietary systems, which provides guided, step-by-step instructions on
18 diagnosing and repairing Mitsubishi-branded vehicles;

19 (c) Consumers are able to receive services under Mitsubishi's
20 issued New Vehicle Limited Warranty only at Mitsubishi's authorized
21 dealerships, and they are able to receive these services because of the
22 agreements between Mitsubishi and the authorized dealers. These
23 agreements provide Mitsubishi with a significant amount of control over the
24 actions of the authorized dealerships;

25 (d) The warranties provided by Mitsubishi for the defective
26 vehicles direct consumers to take their vehicles to authorized dealerships for
27 repairs or services;

28 (e) Mitsubishi dictates the nature and terms of the purchase

1 contracts entered into between its authorized dealers and consumers;

2 (f) Mitsubishi controls the way in which its authorized dealers can
3 respond to complaints and inquiries concerning defective vehicles, and the
4 dealerships are able to perform repairs under warranty only with
5 Mitsubishi's authorization;

6 (g) Mitsubishi has entered into agreements and understandings
7 with its authorized dealers pursuant to which it authorizes and exercises
8 substantial control over the operations of its dealers and the dealers'
9 interaction with the public, particularly the advertising; and

10 (h) Mitsubishi implemented its express and implied warranties as
11 they relate to the defects alleged herein by instructing authorized Mitsubishi
12 dealerships to address complaints of the Defect by prescribing and
13 implementing the relevant TSBs cited herein.

14 99. Indeed, Mitsubishi's warranty booklets make it abundantly clear that
15 Mitsubishi's authorized dealerships are its agents for vehicle sales and service. The
16 booklets, which are plainly written for the consumers, not the dealerships, tell the
17 consumers that: "To obtain warranty service, you must return your Vehicle to any
18 Authorized Mitsubishi Motors Dealer or Authorized Service Center"; "the part will
19 be repaired or replaced by any Authorized Mitsubishi Motors Dealer or Authorized
20 Service Center, using new or remanufactured Authorized Mitsubishi Motors parts;"
21 and "coverage applies only to ... parts sourced from and installed by an Authorized
22 Mitsubishi Motors Dealer."

23 100. Accordingly, as the above paragraphs demonstrate, the authorized
24 dealerships are agents of Mitsubishi. Plaintiffs and each of the members of the
25 Class have had sufficient direct dealings with either Mitsubishi or its agent
26 dealerships to establish privity of contract between Mitsubishi, on one hand, and
27 Plaintiffs and each of the members of the Class, on the other hand. This establishes
28 privity with respect to the express and implied warranty between Plaintiffs and

1 Mitsubishi. It also establishes that Plaintiffs were dealing with Mitsubishi through
2 its authorized agent dealerships when they were given the New Vehicle Limited
3 Warranty associated with their vehicle, without any ability to negotiate the terms
4 of that Warranty.

5 **Defendants' Warranties were Unconscionable**

6 101. Plaintiffs signed contracts for sale with Mitsubishi authorized dealers,
7 and with that sale, were presented with the terms of the Warranty as drafted by
8 Mitsubishi. While Plaintiffs have some ability to negotiate price of the vehicle, they
9 have no ability to negotiate the terms of the Warranty. Plaintiffs had no bargaining
10 power with respect to the Warranty, were presented with it as a *fait accompli*, and
11 had to accept it in the exact form in which it was presented to them, which occurred
12 after the vehicle purchase transaction was completed. Plaintiffs had no meaningful
13 choice regarding any aspect of the Warranty or its terms, including durational
14 limitations of time and mileage. The terms of the warranty unreasonably favored
15 Defendants over Plaintiffs and the members of the Class; a gross disparity in
16 bargaining power existed as between Defendants and Class members; and
17 Defendants knew or should have known that the CVT Defect would manifest in the
18 Class Vehicles both before and after the Warranty, thereby rendering the time and
19 mileage limitations insufficient, inadequate, and unconscionable.

20 102. Mitsubishi drafted the terms of the Warranty in part by using its
21 exclusive, superior knowledge of the existence and likely manifestation of the
22 Defect. Plaintiffs and Class Members were entirely ignorant of the Defect when
23 purchasing their Vehicles and when presented with the Warranty. Plaintiffs'
24 acceptance of the Warranty and its terms, including any disclaimers or durational
25 limits, was neither knowing nor voluntary. Defendants knew or should have known
26 at the time of sale that the Class Vehicles were defective and would fail prematurely
27 solely because of a defect in design, materials, and workmanship, to wit, the CVT
28 Defect. Plaintiffs and Class Members, on the other hand, had no notice of or ability

1 to detect the Defect prior to purchasing the Class Vehicles. For this reason, the
2 terms of the Warranty unreasonably favored Defendants over Plaintiffs and Class
3 Members, and Plaintiffs' and Class Members' acceptance of the Warranty's
4 durational limitations, to the extent they are found to apply so as to exclude
5 instances where the Defect manifested outside of them, was neither knowing nor
6 voluntary, thereby rendering such limitation unconscionable and ineffective.

7 103. Mitsubishi's exclusive superior knowledge of the existence of the
8 Defect and when it would manifest influenced its analysis of the Defect and
9 whether it should pay for a recall (*i.e.*, if a defect is more likely to manifest within
10 the durational limits, a recall is only fractionally more expensive than warranty
11 repairs; if it is more likely to manifest outside those limits, a recall is exponentially
12 more expensive than warranty repairs.)

13 104. Plaintiffs were also not aware and could not have been aware that
14 Mitsubishi would willfully not inform them of the Defect which affects the safety
15 of their vehicles and that the Defect could manifest outside of the durational limit
16 of the Warranty, despite Mitsubishi's knowledge of this. *See Carlson v. Gen.*
17 *Motors Corp.*, 883 F.2d 287 (4th Cir. 1989), cert. denied, 495 U.S. 904 (1990)
18 (““proof that GM knew of and failed to disclose major, inherent product defects
19 would obviously suggest that its imposition of the challenged ‘durational
20 limitations’ on implied warranties constituted ‘overreaching,’ and that the
21 disclaimers themselves were therefore ‘unconscionable.’”)

22 **TOLLING OF THE STATUTES OF LIMITATIONS**

23 105. Any applicable statute of limitations has been tolled by Mitsubishi's
24 knowing and active concealment of the CVT Defect and misrepresentations and
25 omissions alleged herein. Through no fault or lack of diligence, Plaintiffs and
26 members of the Class were deceived regarding the Class Vehicles and could not
27 reasonably discover the Defect or Mitsubishi's deception with respect to the
28 Defect. Mitsubishi and its agents continue to deny the existence and extent of the

1 Defect, even when questioned by Plaintiffs and members of the Class.

2 106. Plaintiffs and members of the Class did not discover and did not know
3 of any facts that would have caused a reasonable person to suspect that Defendants
4 were concealing a defect and/or the Class Vehicles contained the CVT Defect and
5 the corresponding safety risk. As alleged herein, the existence of the CVT Defect
6 was material to Plaintiffs and members of the Class at all relevant times. Within
7 the time period of any applicable statutes of limitations, Plaintiffs and members of
8 the Class could not have discovered through the exercise of reasonable diligence
9 the existence of the Defect or that the Defendants were concealing the Defect.

10 107. At all times, Mitsubishi is and was under a continuous duty to disclose
11 to Plaintiffs and members of the Class the true standard, quality, and grade of the
12 Class Vehicles and to disclose the CVT Defect and corresponding safety risk due
13 to their exclusive and superior knowledge of the existence and extent of the CVT
14 in Class Vehicles.

15 108. Mitsubishi knowingly, actively, and affirmatively concealed the facts
16 alleged herein. Plaintiffs and members of the Class reasonably relied on
17 Mitsubishi's knowing, active, and affirmative concealment.

18 109. For these reasons, all applicable statutes of limitation have been tolled
19 based on the discovery rule and Mitsubishi's fraudulent concealment, and
20 Mitsubishi is estopped from relying on any statutes of limitations in defense of this
21 action.

22 **CLASS ACTION ALLEGATIONS**

23 110. Plaintiffs bring this lawsuit as a class action on behalf of themselves
24 and all others similarly situated as members of the proposed Class pursuant to
25 Federal Rules of Civil Procedure 23(a) and 23(b)(3). This action satisfies the
26 numerosity, commonality, typicality, adequacy, predominance, and superiority
27 requirements of those provisions.

28 111. The Class and Sub-Classes are defined as:

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Class: All persons and entities in the United States who purchased or leased a Class Vehicle (the “Nationwide Class” or “Class”).

California Sub-Class: All members of the Nationwide Class who reside in the State of California.

CLRA Sub-Class: All members of the California Sub-Class who are “consumers” within the meaning of California Civil Code § 1761(d).

Implied Warranty Sub-Class: All members of the Nationwide Class who purchased or leased their vehicles in the State of California.

Michigan Sub-Class: All members of the Nationwide Class who are residents of Michigan or who purchased or leased their Class Vehicle in the State of Michigan.

New York Sub-Class: All members of the Nationwide Class who are residents of New York or who purchased or leased their Class Vehicle in the State of New York.

112. Excluded from the Class and Sub-Classes are: (1) Defendants, any entity or division in which Defendants have a controlling interest, and their legal representatives, officers, directors, assigns, and successors; (2) the Judge to whom this case is assigned and the Judge’s staff; (3) any Judge sitting in the presiding state and/or federal court system who may hear an appeal of any judgment entered; and (4) those persons who have suffered personal injuries as a result of the facts alleged herein. Plaintiffs reserve the right to amend the Class and Sub-Class definitions if discovery and further investigation reveal that the Class and Sub-Classes should be expanded or otherwise modified.

113. Numerosity: Although the exact number of Class Members is uncertain, and can only be ascertained through appropriate discovery, the number is significant enough such that joinder is impracticable. The disposition of the claims of these Class Members in a single action will provide substantial benefits to all parties and to the Court. The Class Members are readily identifiable from information and records in Defendants’ possession, custody, or control, as well as

1 from records kept by the Department of Motor Vehicles.

2 114. Typicality: Plaintiffs' claims are typical of the claims of the Class in
3 that Plaintiffs, like all Class Members, purchased or leased a Class Vehicle
4 designed, manufactured, and distributed by Mitsubishi. The representative
5 Plaintiffs, like all Class Members, have been damaged by Defendants' misconduct
6 in that they have incurred or will incur the cost of repairing or replacing the
7 defective transmission and/or its components. Furthermore, the factual bases of
8 Mitsubishi's misconduct are common to all Class Members and represent a
9 common thread resulting in injury to the Class.

10 115. Commonality: There are numerous questions of law and fact
11 common to Plaintiffs and the Class that predominate over any question affecting
12 Class Members individually. These common legal and factual issues include the
13 following:

- 14 (a) Whether Class Vehicles suffer from defects relating to the
15 CVT;
- 16 (b) Whether the defects relating to the CVT constitute an
17 unreasonable safety risk;
- 18 (c) Whether Defendants knew about the defects pertaining to the
19 CVT and, if so, how long Defendants have known of the defect;
- 20 (d) Whether the defective nature of the CVT constitutes a material
21 fact;
- 22 (e) Whether Defendants have had an ongoing duty to disclose the
23 defective nature of the CVT to Plaintiffs and Class Members;
- 24 (f) Whether Plaintiffs and the other Class Members are entitled to
25 equitable relief, including a preliminary and/or a permanent
26 injunction;
- 27 (g) Whether Defendants knew or reasonably should have known of
28 the defects pertaining to the CVT before they sold and leased Class

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- Vehicles to Class Members;
- (h) Whether Defendants should be declared financially responsible for notifying the Class Members of problems with the Class Vehicles and for the costs and expenses of repairing and replacing the defective CVT and/or its components;
- (i) Whether Defendants are obligated to inform Class Members of their right to seek reimbursement for having paid to diagnose, repair, or replace their defective CVT and/or its components;
- (j) Whether Defendants breached the implied warranty of merchantability pursuant to the Magnuson-Moss Warranty Act;
- (k) Whether Defendants breached the implied warranty of merchantability pursuant to the Song-Beverly Act;
- (l) Whether Defendants breached the implied warranty of merchantability under Michigan law;
- (m) Whether Defendants breached the implied warranty of merchantability under New York law;
- (n) Whether Defendants breached their express warranties under California Law;
- (o) Whether Defendants breached their express warranties under New York Law;
- (p) Whether Defendants breached their express warranties under Michigan Law; and
- (q) Whether Defendants breached express warranties pursuant to the Magnuson-Moss Warranty Act.

116. Adequate Representation: Plaintiffs will fairly and adequately protect the interests of the Class Members. Plaintiffs have retained attorneys experienced in the prosecution of class actions, including consumer and product defect class actions, and Plaintiffs intend to vigorously prosecute this action.

1 117. Predominance and Superiority: Plaintiffs and Class Members have
 2 all suffered, and will continue to suffer, harm and damages as a result of
 3 Defendants’ unlawful and wrongful conduct. A class action is superior to other
 4 available methods for the fair and efficient adjudication of the controversy. Absent
 5 a class action, most Class Members would likely find the cost of litigating their
 6 claims prohibitively high and would therefore have no effective remedy. Because
 7 of the relatively small size of the individual Class Members’ claims, it is likely
 8 that only a few Class Members could afford to seek legal redress for Defendants’
 9 misconduct. Absent a class action, Class Members will continue to incur damages,
 10 and Defendants’ misconduct will continue unabated without remedy or relief.
 11 Class treatment of common questions of law and fact would also be a superior
 12 method to multiple individual actions or piecemeal litigation in that it will
 13 conserve the resources of the courts and the litigants and promote consistency and
 14 efficiency of adjudication.

15 **FIRST CAUSE OF ACTION**
 16 **(Violation of California’s Consumers Legal Remedies Act,**
 17 **California Civil Code § 1750, et seq.)**
 18 **(On Behalf of the CLRA Sub-Class)**

19 118. Plaintiff Brown incorporates by reference the allegations contained in
 20 the preceding paragraphs of this Complaint.

21 119. Plaintiff Brown brings this cause of action on behalf of himself and
 22 the CLRA Sub-Class.

23 120. Defendants are “persons” as defined by California Civil Code
 24 § 1761(c).

25 121. Plaintiff Brown and the CLRA Sub-Class members are “consumers”
 26 within the meaning of California Civil Code § 1761(d) because they purchased
 27 their Class Vehicles primarily for personal, family, or household use.

28 122. By failing to disclose and concealing the defective nature of the CVT

1 from Plaintiff Brown and prospective CLRA Sub-Class members, Defendants
2 violated California Civil Code § 1770(a), as they represented that the Class
3 Vehicles and their transmissions had characteristics and benefits that they do not
4 have, and represented that the Class Vehicles and their transmissions were of a
5 particular standard, quality, or grade when they were actually of another. *See* Cal.
6 Civ. Code §§ 1770(a)(5) & (7).

7 123. Defendants' unfair and deceptive acts or practices occurred
8 repeatedly in Defendants' trade or business, were capable of deceiving a
9 substantial portion of the purchasing public, and imposed a serious safety risk on
10 the public.

11 124. Defendants knew that the Class Vehicles and their transmissions
12 suffered from an inherent defect, were defectively designed, and were not suitable
13 for their intended use.

14 125. As a result of their reliance on Defendants' omissions, owners and/or
15 lessees of the Class Vehicles, including Plaintiff Brown, suffered an ascertainable
16 loss of money, property, and/or value of their Class Vehicles. Additionally, as a
17 result of the CVT Defect, Plaintiff Brown and the CLRA Sub-Class members were
18 harmed and suffered actual damages in that the Class Vehicles' transmissions and
19 their components are substantially certain to fail before their expected useful life
20 has run.

21 126. Defendants were under a duty to Plaintiff Brown and the CLRA Sub-
22 Class members to disclose the defective nature of the transmission and/or the
23 associated repair costs because:

24 (a) Defendants were in a superior position to know the true state of facts
25 about the safety defect in the Class Vehicles' transmission;

26 (b) Plaintiff Brown and the CLRA Sub-Class members could not
27 reasonably have been expected to learn or discover that their transmission had a
28 dangerous safety defect until it manifested; and

1 (c) Defendants knew that Plaintiff Brown and the CLRA Sub-Class
2 members could not reasonably have been expected to learn of or discover the
3 safety defect.

4 127. In failing to disclose the defective nature of the transmission,
5 Defendants knowingly and intentionally concealed material facts and breached its
6 duty not to do so.

7 128. The facts Defendants concealed from or failed to disclose to Plaintiff
8 Brown and the CLRA Sub-Class members are material in that a reasonable
9 consumer would have considered them to be important in deciding whether to
10 purchase or lease the Class Vehicles or pay less. Had Plaintiff Brown and the
11 CLRA Sub-Class members known that the Class Vehicles' transmission was
12 defective, they would not have purchased or leased the Class Vehicles or would
13 have paid less for them.

14 129. Plaintiff Brown and the CLRA Sub-Class members are reasonable
15 consumers who do not expect the transmissions installed in their vehicles to
16 exhibit problems such as the CVT Defect. This is the reasonable and objective
17 consumer expectation relating to a vehicle's transmission.

18 130. As a result of Defendants' conduct, Plaintiff Brown and the CLRA
19 Sub-Class members were harmed and suffered actual damages in that the Class
20 Vehicles experienced and will continue to experience problems such as the CVT
21 Defect.

22 131. As a direct and proximate result of Defendants' unfair or deceptive
23 acts or practices, Plaintiff Brown and the CLRA Sub-Class members suffered and
24 will continue to suffer actual damages.

25 132. Plaintiff Brown and the CLRA Sub-Class members are entitled to
26 equitable relief.

27 133. Plaintiff Brown provided Defendants with notice of its violations of
28 the CLRA pursuant to California Civil Code § 1782(a). If, within 30 days,

1 Defendants fails to provide appropriate relief for its violations of the CLRA,
2 Plaintiff Brown will amend this Complaint to seek monetary, compensatory, and
3 punitive damages, in addition to the injunctive and equitable relief that he seeks
4 now on behalf of himself and the CLRA Sub-Class.

5 **SECOND CAUSE OF ACTION**

6 **(Violation of California Business & Professions Code § 17200, *et seq.*)**

7 **(On Behalf of the California Sub-Class)**

8 134. Plaintiff Brown incorporates by reference the allegations contained in
9 the preceding paragraphs of this Complaint.

10 135. Plaintiff Brown brings this cause of action on behalf of himself and
11 the California Sub-Class (CA Sub-Class).

12 136. As a result of their reliance on Defendants' omissions, owners and/or
13 lessees of the Class Vehicles, including Plaintiff Brown, suffered an ascertainable
14 loss of money, property, and/or value of their Class Vehicles. Additionally, as a
15 result of the CVT Defect, Plaintiff Brown and the CA Sub-Class members were
16 harmed and suffered actual damages in that the Class Vehicles' transmission
17 and/or its components are substantially certain to fail before their expected useful
18 life has run.

19 137. California Business & Professions Code § 17200 prohibits acts of
20 "unfair competition," including any "unlawful, unfair or fraudulent business act
21 or practice" and "unfair, deceptive, untrue or misleading advertising."

22 138. Plaintiff Brown and the CA Sub-Class members are reasonable
23 consumers who do not expect their transmissions to exhibit problems such as
24 shuddering and hesitation on acceleration, premature wear, and frequent
25 replacement or repair.

26 139. Defendants knew the Class Vehicles and their transmissions were
27 defectively designed or manufactured, would fail prematurely, and were not
28 suitable for their intended use.

1 140. In failing to disclose the CVT Defect, Defendants have knowingly
2 and intentionally concealed material facts and breached its duty not to do so.

3 141. Defendants were under a duty to Plaintiff Brown and the CA Sub-
4 Class members to disclose the defective nature of the Class Vehicles and their
5 transmissions because:

6 (a) Defendants were in a superior position to know the true state of facts
7 about the safety defect in the Class Vehicles' transmissions; and

8 (b) Defendants actively concealed the defective nature of the Class
9 Vehicles and their transmissions from Plaintiff Brown and the CA Sub-Class.

10 142. The facts Defendants concealed from or failed to disclose to Plaintiff
11 Brown and the CA Sub-Class members are material in that a reasonable person
12 would have considered them to be important in deciding whether to purchase or
13 lease Class Vehicles. Had they known of the CVT Defect, Plaintiff Brown and the
14 other CA Sub-Class members would have paid less for Class Vehicles or would
15 not have purchased or leased them at all.

16 143. Defendants continued to conceal the defective nature of the Class
17 Vehicles and their transmissions even after Plaintiff Brown and the other CA Sub-
18 Class members began to report problems.

19 144. Defendants' conduct was and is likely to deceive consumers.

20 145. Defendants' acts, conduct, and practices were unlawful, in that they
21 constituted:

22 (a) Violations of California's Consumers Legal Remedies Act;

23 (b) Violations of the Song-Beverly Consumer Warranty Act;

24 (c) Violations of the Magnuson-Moss Warranty Act; and

25 (d) Breach of Express Warranty under California Commercial Code §
26 2313.

27 146. By their conduct, Defendants have engaged in unfair competition and
28 unlawful, unfair, and fraudulent business practices.

1 147. Defendants' unfair or deceptive acts or practices occurred repeatedly
2 in Defendants' trade or business and were capable of deceiving a substantial
3 portion of the purchasing public.

4 148. As a direct and proximate result of Defendants' unfair and deceptive
5 practices, Plaintiff Brown and the other CA Sub-Class members have suffered and
6 will continue to suffer actual damages.

7 149. Defendants have been unjustly enriched and should be required to
8 make restitution to Plaintiff Brown and the other CA Sub-Class members pursuant
9 to §§ 17203 and 17204 of the Business & Professions Code.

10 **THIRD CAUSE OF ACTION**

11 **(Breach of Implied Warranty Pursuant to Song-Beverly**

12 **Consumer Warranty Act, California Civil Code §§ 1792 and 1791.1, *et seq.*)**

13 **(On Behalf of the Implied Warranty Sub-Class)**

14 150. Plaintiff Brown incorporates by reference the allegations contained in
15 the preceding paragraphs of this Complaint.

16 151. Plaintiff Brown brings this cause of action against Defendants on
17 behalf of himself and the Implied Warranty Sub-Class (IW Sub-Class).

18 152. Defendants were at all relevant times the manufacturer, distributor,
19 warrantor, and/or seller of the Class Vehicles. Defendants knew or had reason to
20 know of the specific use for which the Class Vehicles were purchased or leased.

21 153. Defendants provided Plaintiff Brown and the IW Sub-Class members
22 with an implied warranty that the Class Vehicles and their components and parts
23 are merchantable and fit for the ordinary purposes for which they were sold.
24 However, the Class Vehicles are not fit for their ordinary purpose of providing
25 reasonably reliable and safe transportation because, *inter alia*, the Class Vehicles
26 and their transmissions suffered from an inherent defect at the time of sale and
27 thereafter and are not fit for their particular purpose of providing safe and reliable
28 transportation.

1 154. Defendants impliedly warranted that the Class Vehicles were of
2 merchantable quality and fit for their intended use. This implied warranty
3 included, among other things: (i) a warranty that the Class Vehicles and their
4 transmissions, which were manufactured, supplied, distributed, and/or sold by
5 Mitsubishi, would provide safe and reliable transportation; and (ii) a warranty that
6 the Class Vehicles and their transmissions would be fit for their intended use.

7 155. Contrary to the applicable implied warranties, the Class Vehicles and
8 their transmissions at the time of sale and thereafter were not fit for their ordinary
9 and intended purpose of providing Plaintiff Brown and the IW Sub-Class members
10 with reliable, durable, and safe transportation. Instead, the Class Vehicles are
11 defective, including the defective transmissions.

12 156. The CVT Defect is inherent and was present in each Class Vehicle at
13 the time of sale.

14 157. As a result of Defendants' breach of the applicable implied
15 warranties, owners and/or lessees of the Class Vehicles suffered an ascertainable
16 loss of money, property, and/or value of their Class Vehicles. Additionally, as a
17 result of the CVT Defect, Plaintiff Brown and the IW Sub-Class members were
18 harmed and suffered actual damages in that the Class Vehicles' transmissions
19 and/or its components are substantially certain to fail before their expected useful
20 life has run.

21 158. Defendants' actions, as complained of herein, breached the implied
22 warranty that the Class Vehicles were of merchantable quality and fit for such use
23 in violation of California Civil Code §§ 1792 and 1791.1.

24 **FOURTH CAUSE OF ACTION**

25 **(Breach of Express Warranty Pursuant to Cal. Com. Code §§ 2313, 10210)**

26 **(On Behalf of the California Sub-Class)**

27 159. Plaintiff Brown incorporates by reference the allegations contained in
28 the preceding paragraphs of this Complaint.

1 160. Plaintiff Brown brings this cause of action on behalf of himself and
2 the CA Sub-Class.

3 161. Defendants provided all purchasers and lessees of the Class Vehicles
4 with an express warranty described *infra*, which became a material part of the
5 bargain. Accordingly, Defendants’ express warranty is an express warranty under
6 California law.

7 162. The transmission was manufactured and/or installed in the Class
8 Vehicles by Defendants and is covered by the express warranty.

9 150. In a section entitled “What is Covered,” Defendants’ express
10 warranty provides, in relevant part, that the warranty covers “all parts of this
11 Vehicle supplied by Mitsubishi[.]” The warranty further provides that if a “defect
12 in materials or workmanship appears during the first 5 years or 60,000 odometer
13 miles, the part will be repaired or replaced by any Authorized Mitsubishi Motors
14 Dealer or Authorized Service Center, using new or remanufactured Authorized
15 Mitsubishi Motors parts.”

16 152. Defendants breached the express warranties by selling and leasing
17 Class Vehicles with CVTs that were defective, requiring repair or replacement
18 within the warranty period, and refusing to honor the express warranty by
19 repairing or replacing, free of charge, the CVT. In addition, when Defendants did
20 agree to pay a portion of the costs, Defendants nevertheless breached the express
21 warranty by simply replacing Plaintiff’s and Class Members’ defective CVTs with
22 similarly defective CVTs, thus failing to “repair” the defect.

23 153. Plaintiff was not required to notify Mitsubishi of the breach or was
24 not required to do so because affording Mitsubishi a reasonable opportunity to
25 cure its breach of written warranty would have been futile. Defendants were also
26 on notice of the defect from complaints and service requests it received from Class
27 Members, from repairs and/or replacements of the transmissions, and from other
28 internal sources.

1 154. As a direct and proximate cause of Defendants’ breach, Plaintiff and
2 the other Class Members have suffered, and continue to suffer, damages, including
3 economic damages at the point of sale or lease. Additionally, Plaintiff and the
4 other Class Members have incurred or will incur economic damages at the point
5 of repair in the form of the cost of repair.

6 155. Plaintiff and the other Class Members are entitled to legal and
7 equitable relief against Defendants, including actual damages, consequential
8 damages, specific performance, attorneys’ fees, costs of suit, and other relief as
9 appropriate.

10 **FIFTH CAUSE OF ACTION**

11 **(Violations of the Michigan Consumer Protection Act,**

12 **Mich. Comp. Laws § 445.903, et seq.)**

13 **(On Behalf of the Michigan Sub-Class)**

14 163. Plaintiff Lucassian, individually and on behalf of the Michigan Class,
15 incorporates by reference all of the allegations contained in the preceding
16 paragraphs of this Class Action Complaint as if fully set forth herein.

17 164. Plaintiff Lucassian brings this claim individually and on behalf of the
18 Michigan Class against Defendants.

19 165. Plaintiff Lucassian and the Michigan Class members are “person[s]”
20 within the meaning of the Mich. Comp. Laws. § 445.902(1)(d).

21 166. At all relevant times, Defendants were “person[s]” engaged in “trade
22 or commerce” within the meaning of the Mich. Comp. Laws § 445.902(1)(d) and
23 (g).

24 167. The Michigan Consumer Protection Act (“Michigan CPA”) prohibits
25 “[u]nfair, unconscionable, or deceptive methods, acts, or practices in the conduct
26 of trade or commerce” Mich. Comp. Laws § 445.903(1).

27 168. Defendants engaged in unfair, unconscionable, or deceptive methods,
28 acts or practices prohibited by the Michigan CPA, including: “(c) Representing

1 that goods or services have ... characteristics ... that they do not have;" "(e)
2 Representing that goods or services are of a particular standard ... if they are of
3 another;" "(i) Making false or misleading statements of fact concerning the
4 reasons for, existence of, or amounts of price reductions;" "(s) Failing to reveal a
5 material fact, the omission of which tends to mislead or deceive the consumer, and
6 which fact could not reasonably be known by the consumer;" "(bb) Making a
7 representation of fact or statement of fact material to the transaction such that a
8 person reasonably believes the represented or suggested state of affairs to be other
9 than it actually is;" and "(cc) Failing to reveal facts that are material to the
10 transaction in light of representations of fact made in a positive manner." Mich.
11 Comp. Laws § 445.903(1).

12 169. In the course of its business, Defendants concealed and suppressed
13 material facts concerning the Class Vehicles' transmissions. Defendants failed to
14 disclose the existence of the CVT Defect. Defendants also engaged in unlawful
15 trade practices by employing deception, deceptive acts or practices, fraud,
16 concealment, suppression, or omission of any material fact with intent that others
17 rely upon such concealment, and suppression or omission, in connection with the
18 sale and lease of Class Vehicles.

19 170. Defendants knew the Class Vehicles and their transmissions were
20 defectively designed or manufactured, would fail prematurely, and were not
21 suitable for their intended use.

22 171. Defendants owed Plaintiff Lucassian and the Michigan Class a duty
23 to disclose the CVT Defect because Defendants: (a) possessed superior and
24 exclusive knowledge about the defect; (b) intentionally concealed the foregoing
25 from Plaintiff Lucassian and the Michigan Class; and (c) made incomplete
26 representations about the Class Vehicles while intentionally withholding material
27 facts from Plaintiff Lucassian and the Michigan Class that contradicted these
28 representations.

1 172. Defendants' omissions were material because they were likely to
2 deceive reasonable consumers.

3 173. Defendants acted intentionally, knowingly, and maliciously to violate
4 Michigan's CPA, and recklessly disregard Plaintiff's and the Michigan Class
5 members' rights. Defendants' knowledge of the CVT Defect put them on notice
6 that the Class Vehicles were not as advertised. Defendants' violations present a
7 continuing risk to Plaintiff Lucassian and the Michigan Class members, as well as
8 the general public. Defendants' unlawful acts and practices complained of herein
9 affect the public interest.

10 174. As a direct and proximate result of Defendants' violations of the
11 Michigan CPA, Plaintiff Lucassian and the Michigan Class members have
12 suffered injury-in-fact and/or actual damage.

13 175. Plaintiff Lucassian and the Michigan Class members seek injunctive
14 relief to enjoin Defendants from continuing its unfair and deceptive acts; monetary
15 damages against Defendants measures as the greater of (a) actual damages in an
16 amount to be determined at trial, and (b) statutory damages in the amount of \$250
17 for Plaintiff Lucassian and each Michigan Class member; reasonable attorneys'
18 fees; and any other just and proper relief available under Mich. Comp. Laws §
19 445.911.

20 176. Plaintiff Lucassian and the Michigan Class members also seek
21 punitive damages against Defendants because Defendants' conduct evidences an
22 extreme deviation from reasonable standards. Defendants flagrantly, maliciously,
23 and fraudulently misrepresented the reliability of the Class Vehicles, deceived
24 Michigan Class members, and concealed material facts that only it knew.
25 Defendants' conduct constitutes malice, oppression, and fraud warranting punitive
26 damages.

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1 **SIXTH CAUSE OF ACTION**
2 **(Breach of Express Warranty,**
3 **Mich. Comp. Laws § 440.2313, 440.2860)**
4 **(On Behalf of the Michigan Sub-Class)**

5 177. Plaintiff Lucassian, individually and on behalf of the Michigan Class,
6 incorporates by reference all of the allegations contained in the preceding
7 paragraphs of this Class Action Complaint as if fully set forth herein.

8 178. Plaintiff Lucassian brings this claim individually and on behalf of the
9 Michigan Class against Defendants.

10 179. Defendants are and were at all relevant times “merchant[s]” with
11 respect to motor vehicles under Mich. Comp. Laws § 440.2104(1) and “seller[s]”
12 of motor vehicles under § 440.2103(1)(c).

13 180. With respect to leases, Defendants are and were at all relevant times
14 “lessor[s]” of motor vehicles under Mich. Comp. Laws § 440.2803(1)(p).

15 181. The Class Vehicles are and were at all relevant times “goods” within
16 the meaning of Mich. Comp. Laws §§ 440.2105(1) and 440.2803(1)(h).

17 182. The transmissions were manufactured and/or installed in the Class
18 Vehicles by Defendants and are covered by the express warranty.

19 183. In a section entitled “What is Covered,” Defendants’ express
20 warranty provides, in relevant part, that the warranty covers “all parts of this
21 Vehicle supplied by Mitsubishi[.]” The warranty further provides that if a “defect
22 in materials or workmanship appears during the first 5 years or 60,000 odometer
23 miles, the part will be repaired or replaced by any Authorized Mitsubishi Motors
24 Dealer or Authorized Service Center, using new or remanufactured Authorized
25 Mitsubishi Motors parts.”

26 184. Defendants’ express warranties regarding the Class Vehicles formed
27 a basis of the bargain that was breached when Plaintiff Lucassian and the Michigan
28 Class members purchased or leased the Class Vehicles with defective

1 transmissions.

2 185. Plaintiff Lucassian and the Michigan Class members experienced
3 defects within the warranty period. Despite the existence of the express warranties,
4 Defendants failed to inform Plaintiff Lucassian and the Michigan Class members
5 that the Class Vehicles were equipped with defective transmissions.

6 186. Defendants breached the express warranty promising to repair or
7 adjust defects in materials or workmanship of any part supplied by Defendants.
8 Defendants have not repaired or adjusted, and have been unable to repair or adjust,
9 the Class Vehicles' materials and workmanship defects.

10 187. Plaintiff Lucassian reported his transmission failure to Defendants via
11 their agents, Mitsubishi authorized repair facilities. In addition, Defendants were
12 provided with notice of these issues by numerous NHTSA and consumer
13 complaints filed against it, including the instant Complaint and similar legal
14 proceedings, and has actual knowledge of the defect. Plaintiff Lucassian and
15 members of the Michigan Sub-Class were not required to notify Mitsubishi of the
16 breach because affording Mitsubishi a reasonable opportunity to cure its breach of
17 warranty would have been futile. Mitsubishi was also on notice of the CVT Defect
18 from the complaints and service requests it received from Plaintiff and the Class
19 Members and through other internal sources.

20 188. Nonetheless, Plaintiff Lucassian and members of the Michigan Sub-
21 Class provided notice to Mitsubishi of the breach of express warranties when they
22 took their vehicles to Mitsubishi -authorized providers of warranty repairs.
23 Plaintiff Lucassian also provided notice to Mitsubishi of its breach of express
24 warranty by letter dated November 4, 2021.

25 189. As a direct and proximate result of Defendants' breach of express
26 warranties, Plaintiff Lucassian and the Michigan Class members have been
27 damaged in an amount to be determined at trial.

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SEVENTH CAUSE OF ACTION
(Breach of Implied Warranty of Merchantability,
Mich. Comp. Laws § 440.2314, 440.2860)
(On Behalf of the Michigan Sub-Class)

190. 164. Plaintiff Lucassian, individually and on behalf of the Michigan Class, incorporates by reference all of the allegations contained in the preceding paragraphs of this Class Action Complaint as if fully set forth herein.

191. Plaintiff Lucassian brings this claim individually and on behalf of the Michigan Class against Defendants.

192. Defendants are and were at all relevant times “merchant[s]” with respect to motor vehicles under Mich. Comp. Laws § 440.2104(1) and “seller[s]” of motor vehicles under § 440.2103(1)(c).

193. With respect to leases, Defendants are and were at all relevant times “lessor[s]” of motor vehicles under Mich. Comp. Laws. S 440.2803(1)(p).

194. The Class Vehicles are and were at all relevant times “goods” within the meaning of Mich. Comp. Laws §§ 440.2105(1) and 440.2803(1)(h).

195. A warranty that the Class Vehicles were in merchantable condition and fit for the ordinary purpose for which vehicles are used is implied by law pursuant to Mich. Comp. Laws §§ 440.2314 and 440.2862.

196. Defendants provided Plaintiff Lucassian and Class Members with an implied warranty that the Class Vehicles and their components and parts are merchantable and fit for the ordinary purposes for which they were sold. However, the Class Vehicles are not fit for their ordinary purpose of providing reasonably reliable and safe transportation because, *inter alia*, the Class Vehicles and their transmissions suffered from an inherent defect at the time of sale and thereafter and are not fit for their particular purpose of providing safe and reliable transportation.

197. Defendants impliedly warranted that the Class Vehicles were of

1 merchantable quality and fit for their intended use. This implied warranty
2 included, among other things: (i) a warranty that the Class Vehicles and their
3 transmissions, which were manufactured, supplied, distributed, and/or sold by
4 Mitsubishi would provide safe and reliable transportation; and (ii) a warranty that
5 the Class Vehicles and their transmissions would be fit for their intended use.

6 198. Contrary to the applicable implied warranties, the Class Vehicles and
7 their transmissions at the time of sale and thereafter were not fit for their ordinary
8 and intended purpose of providing Plaintiff Lucassian and Class Members with
9 reliable, durable, and safe transportation. Instead, the Class Vehicles are defective,
10 including the defective transmissions.

11 199. The CVT Defect is inherent and was present in each Class Vehicle at
12 the time of sale.

13 200. Because of Defendants' breach of the applicable implied warranties,
14 owners and/or lessees of the Class Vehicles suffered an ascertainable loss of
15 money, property, and/or value of their Class Vehicles. Additionally, because of
16 the CVT Defect, Plaintiff Lucassian and Class Members were harmed and suffered
17 actual damages in that the Class Vehicles' transmissions are substantially certain
18 to fail before their expected useful life has run.

19 201. Plaintiff Lucassian and members of the Michigan Sub-Class were not
20 required to notify Mitsubishi of the breach because affording Mitsubishi a
21 reasonable opportunity to cure its breach of warranty would have been futile.
22 Mitsubishi was also on notice of the CVT Defect from the complaints and service
23 requests it received from Plaintiff Lucassian and the Class Members and through
24 other internal sources.

25 202. Nonetheless, Plaintiff Lucassian and members of the Michigan Sub-
26 Class provided notice to Mitsubishi of the breach of implied warranties when they
27 took their vehicles to Mitsubishi -authorized provider of warranty repairs. Plaintiff
28 Lucassian also provided notice to Mitsubishi of its breach of implied warranty by

1 letter dated November 4, 2021.

2 203. As a direct and proximate result of Defendants' breach of the implied
3 warranty of merchantability, Plaintiff Lucassian and the Michigan Class members
4 have been damaged in an amount to be determined at trial.

5 **EIGHTH CAUSE OF ACTION**

6 **(Violations of New York General Business Law § 349)**

7 **(On Behalf of the New York Sub-Class)**

8 204. Plaintiff Hardy incorporates by reference all preceding allegations as
9 if fully set forth herein.

10 205. Plaintiff Hardy brings this claim individually and on behalf of the
11 New York Subclass.

12 206. New York's General Business Law § 349 makes unlawful
13 "[d]eceptive acts or practices in the conduct of any business, trade or commerce."

14 207. In the course of Mitsubishi's business, it willfully failed to disclose
15 and actively concealed the dangerous risk of the CVT Defect in Class Vehicles as
16 described above. Accordingly, Defendants engaged in unfair methods of
17 competition, unconscionable acts or practices, and unfair or deceptive acts or
18 practices as defined in N.Y. Gen. Bus. Law § 349, including engaging in conduct
19 likely to deceive.

20 208. Mitsubishi's actions as set forth above occurred in the conduct of
21 trade or commerce.

22 209. Because Mitsubishi's deception takes place in the context of
23 automobile safety, its deception affects the public interest. Further, Defendants'
24 unlawful conduct constitutes unfair acts or practices that have the capacity to
25 deceive consumers, and that have a broad impact on consumers at large.

26 210. Mitsubishi's conduct proximately caused injuries to Plaintiff Hardy
27 and the other Class members.

28 211. Plaintiff Hardy and the other Class members were injured as a result

1 of Defendants’ conduct in that Plaintiff Hardy and the New York Subclass
2 members overpaid for their Class Vehicles and did not receive the benefit of their
3 bargain. These injuries are the direct and natural consequence of Mitsubishi’s
4 misrepresentations and omissions.

5 **NINTH CAUSE OF ACTION**

6 **(Violations of New York General Business Law § 350)**

7 **(On Behalf of the New York Sub-Class)**

8 212. Plaintiff Hardy incorporates by reference all preceding allegations as
9 if fully set forth herein.

10 213. Plaintiff Hardy brings this claim individually and on behalf of the
11 New York Subclass.

12 214. New York’s General Business Law § 350 makes unlawful “[f]alse
13 advertising in the conduct of any business, trade or commerce[.]” False advertising
14 includes “advertising, including labeling, of a commodity ... if such advertising is
15 misleading in a material respect,” taking into account “the extent to which the
16 advertising fails to reveal facts material in the light of ... representations [made]
17 with respect to the commodity....” N.Y. Gen. Bus. Law § 350-a.

18 215. Mitsubishi caused to be made or disseminated through New York,
19 through advertising, marketing, and other publications, statements that were
20 untrue or misleading, and which were known, or which by the exercise of
21 reasonable care should have been known to Mitsubishi, to be untrue and
22 misleading to consumers, including Plaintiff Hardy and the other Class members.

23 216. Mitsubishi has violated N.Y. Gen. Bus. Law § 350 because the
24 omissions regarding the defective transmissions in Class Vehicles as described
25 above, and that Mitsubishi would not cover repair or replacement of the CVT
26 under its warranty, were material and likely to deceive a reasonable consumer.

27 217. Plaintiff Hardy and the other Class members have suffered injury,
28 including the loss of money or property, as a result of Mitsubishi’s false

1 advertising. In purchasing or leasing their Class Vehicles, Plaintiff Hardy and the
2 other Class members relied on the representations and/or omissions of Mitsubishi
3 with respect to the safety, quality, functionality, and reliability of the Class
4 Vehicles and the coverage of Mitsubishi's express warranty.

5 218. Accordingly, Plaintiff Hardy and the other Class members overpaid
6 for their Class Vehicles and did not receive the benefit of the bargain for their
7 Class Vehicles.

8 219. Plaintiff Hardy, individually and on behalf of the other New York
9 Subclass members, requests this Court enter such orders or judgments as may be
10 necessary to enjoin Mitsubishi from continuing its unfair, unlawful and/or
11 deceptive practices. Plaintiff Hardy and the other Class members are also entitled
12 to recover their actual damages or \$500, whichever is greater. Because Defendants
13 acted willfully or knowingly, Plaintiff Hardy and the other Class members are
14 entitled to recover three times actual damages, up to \$10,000.

15 **TENTH CAUSE OF ACTION**

16 **(Breach of Express Warranty, N.Y.U.C.C. § 2-313)**

17 **(On Behalf of the New York Sub-Class)**

18 220. Plaintiff Hardy incorporates by reference all preceding allegations as
19 if fully set forth herein.

20 221. Plaintiff Hardy brings this claim individually and on behalf of the
21 New York Subclass.

22 222. Mitsubishi is and was at all relevant times a merchant with respect to
23 motor vehicles.

24 223. In connection with the purchase or lease of each one of its new
25 vehicles, Mitsubishi provides an express New Vehicle Limited Warranty
26 ("NVLW") for a period of 5 years or 60,000 miles. This NVLW exists to cover
27 the entire vehicle for any "defect in materials or workmanship."

28 224. Mitsubishi's NVLW formed the basis of the bargain that was reached

1 when Plaintiff Hardy and the other Class members purchased or leased their Class
2 Vehicles equipped with defective transmissions.

3 225. Mitsubishi breached the express warranty to repair or replace defects
4 in materials and workmanship of any part of the Class Vehicles.

5 226. Further, the limited warranty of repair and/or replacement fails in its
6 essential purpose because the contractual remedy is insufficient to make Plaintiff
7 Hardy and the other Class members whole and because Defendants have failed
8 and/or refused to adequately provide the promised remedies within a reasonable
9 time.

10 227. Further, the limited warranty of repair and/or replacement fails in its
11 essential purpose because the contractual remedy is insufficient to make Plaintiff
12 Hardy and the other Class members whole and because Defendants have failed
13 and/or refused to adequately provide the promised remedies within a reasonable
14 time.

15 228. Accordingly, recovery by Plaintiff Hardy and the New York Subclass
16 members is not limited to the limited warranty of repair or replacement to parts
17 defective in materials or workmanship, and Plaintiff Hardy, individually and on
18 behalf of the other Class members, seeks all remedies as allowed by law.

19 229. Also, as alleged in more detail herein, at the time that Mitsubishi
20 warranted and sold the Class Vehicles it knew that the Class Vehicles did not
21 conform to Mitsubishi's Limited Warranty and were inherently defective, and
22 Mitsubishi wrongfully and fraudulently concealed material facts regarding its
23 Class Vehicles. Plaintiff Hardy and the New York Subclass members were
24 therefore induced to purchase or lease the Class Vehicles under false and/or
25 fraudulent pretenses.

26 230. Due to Mitsubishi's breach of warranty as set forth herein, Plaintiff
27 Hardy and the other New York Subclass members assert as an additional and/or
28 alternative remedy, as set forth in N.Y. U.C.C. § 2-608, for a revocation of

1 acceptance of the goods, and for a return to Plaintiff Hardy and to the other New
2 York Subclass members of the purchase price of all Class Vehicles currently
3 owned for such other incidental and consequential damages as allowed under N.Y.
4 U.C.C. §§ 2-711 and 2-608.

5 231. Plaintiff Hardy and members of the New York Sub-Class were not
6 required to notify Mitsubishi of the breach because affording Mitsubishi a
7 reasonable opportunity to cure its breach of warranty would have been futile.
8 Mitsubishi was also on notice of the CVT Defect from the complaints and service
9 requests it received from Plaintiffs and the Class Members and through other
10 internal sources.

11 232. Nonetheless, Plaintiffs and members of the New York Sub-Class
12 provided notice to Mitsubishi of the breach of express warranties when they took
13 their vehicles to Mitsubishi -authorized provider of warranty repairs. Plaintiff
14 Hardy also provided notice to Mitsubishi of its breach of express warranty by letter
15 dated November 4, 2021.

16 233. As a direct and proximate result of Mitsubishi's breach of express
17 warranty, Plaintiff Hardy and the other New York Subclass members have been
18 damaged in an amount to be determined at trial.

19 **ELEVENTH CAUSE OF ACTION**

20 **(Breach of Implied Warranty, N.Y.U.C.C. § 2-315)**

21 **(On Behalf of the New York Sub-Class)**

22 234. Plaintiff Hardy incorporates by reference all preceding allegations
23 as if fully set forth herein.

24 235. Plaintiff Hardy brings this claim individually and on behalf of the
25 New York Subclass.

26 236. Mitsubishi marketed the Class Vehicles as safe and reliable vehicles.
27 Such representations formed a basis of the bargain in the decisions of Plaintiff
28 Hardy and the members of the New York Sub-Class to purchase or lease the

1 Vehicles.

2 237. Mitsubishi was, at all relevant times, a “merchant” of motor vehicles
3 as defined by N.Y. U.C.C. Law § 2-104.

4 238. A warranty that the Class Vehicles and/or the Defective CVTs
5 installed in them were in merchantable condition was implied by law in Class
6 Vehicle transactions.

7 239. Mitsubishi’s implied warranty formed a basis of the bargain that was
8 reached when Plaintiff Hardy and the other New York Class members purchased
9 or leased their Vehicles.

10 240. Plaintiff Hardy and the members of the New York Sub-Class owned
11 Vehicles with defective transmissions within the warranty period but had no
12 knowledge of the existence of the Defect, which was known and concealed by
13 Mitsubishi.

14 241. Despite the existence of the warranty, Mitsubishi failed to inform
15 Plaintiff Hardy and the members of the New York Sub-Class that the Vehicles
16 contained the defective CVTs during the warranty periods.

17 242. Mitsubishi breached the implied warranty promising to repair and
18 correct a manufacturing defect or defect in materials or workmanship of any parts
19 they supplied.

20 243. Mitsubishi knew about the CVT Defect, allowing them to cure their
21 breach of warranty if they chose.

22 244. However, Mitsubishi concealed the Defect and has refused to repair
23 or replace the CVTs despite the Defect’s existence at the time of sale or lease of
24 the Vehicles.

25 245. Any attempt by Mitsubishi to disclaim or limit recovery to the terms
26 of the implied warranties is unconscionable and unenforceable here. Specifically,
27 Mitsubishi’s warranty limitation is unenforceable because they knowingly sold or
28 leased a defective product without informing consumers about the Defect. The

1 time limits contained in Mitsubishi's warranty periods were also unconscionable
2 and inadequate to protect Plaintiff Hardy and the members of the New York Sub-
3 Class. Among other things, Plaintiff Hardy and the members of the New York
4 Sub-Class had no meaningful choice in determining these time limitations, the
5 terms of which unreasonably favored Mitsubishi. A gross disparity in bargaining
6 power existed between Mitsubishi and Plaintiff Hardy and the members of the
7 New York Sub-Class, and Mitsubishi knew the CVTs were defective at the time
8 of sale.

9 246. Further, the limited warranty promising to repair and/or correct a
10 manufacturing defect fails in its essential purpose because the contractual remedy
11 is insufficient to make Plaintiff Hardy and the members of the New York Sub-
12 Class whole because the replacement CVT used by Mitsubishi contains the same
13 Defect. Affording Mitsubishi a reasonable opportunity to cure the breach therefore
14 would be unnecessary and futile.

15 247. Because of Defendants' breach of the applicable implied warranties,
16 owners and/or lessees of the Class Vehicles suffered an ascertainable loss of
17 money, property, and/or value of their Class Vehicles. Additionally, because of
18 the CVT Defect, Plaintiff Hardy and the New York Sub-class Members were
19 harmed and suffered actual damages in that the Class Vehicles' CVTs are
20 substantially certain to fail before their expected useful life has run.

21 248. Plaintiff Hardy and members of the New York Sub-Class were not
22 required to notify Mitsubishi of the breach because affording Mitsubishi a
23 reasonable opportunity to cure its breach of warranty would have been futile.
24 Mitsubishi was also on notice of the CVT Defect from the complaints and service
25 requests it received from Plaintiffs and the Class Members and through other
26 internal sources.

27 249. Nonetheless, Plaintiff Hardy and members of the New York Sub-
28 Class provided notice to Mitsubishi of the breach of implied warranties when they

1 took their vehicles to Mitsubishi -authorized provider of warranty repairs. Plaintiff
2 Hardy also provided notice to Mitsubishi of its breach of implied warranty by letter
3 dated November 4, 2021.

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5 250. As a direct and proximate result of Defendants’ breach of the implied
6 warranty, Plaintiff Hardy and the New York Class members have been damaged
7 in an amount to be determined at trial.

8 **TWELFTH CAUSE OF ACTION**

9 **(Breach of Express Warranty under the Magnuson-Moss Warranty Act,**
10 **15 U.S.C. § 2303 *et seq.*)**

11 **(On Behalf of the Nationwide Class, or, in the Alternative, on Behalf of All**
12 **Sub-Classes Against Defendants)**

13 251. Plaintiffs incorporate by reference the allegations contained in the
14 preceding paragraphs of this Complaint.

15 252. Plaintiffs bring this cause of action on behalf of themselves and on
16 behalf of the Class against Defendants.

17 253. Defendants provided all purchasers and lessees of the Class Vehicles
18 with an express warranty described *infra*, which became a material part of the
19 bargain.

20 254. The transmission and its component parts were manufactured and/or
21 installed in the Class Vehicles by Defendants and are covered by the express
22 warranty.

23 255. In a section entitled “What is Covered,” Defendants’ express
24 warranty provides, in relevant part, that the warranty covers “all parts of this
25 Vehicle supplied by MMNA[.]” The warranty further provides that if a “defect in
26 materials or workmanship appears during the first 5 years or 60,000 odometer
27 miles, the part will be repaired or replaced by any Authorized Mitsubishi Motors
28 Dealer or Authorized Service Center, using new or remanufactured Authorized

1 Mitsubishi Motors parts.”

2 256. Defendants breached the express warranties by selling and leasing
3 Class Vehicles with transmissions that were defective, requiring repair or
4 replacement within the warranty period, and refusing to honor the express
5 warranty by repairing or replacing, free of charge, the transmission and its
6 component parts. Mitsubishi has failed to “repair” the defects as alleged herein.

7 257. Plaintiffs were not required to notify Mitsubishi of the breach or were
8 not required to do so because affording Mitsubishi a reasonable opportunity to
9 cure its breach of written warranty would have been futile. Defendants were also
10 on notice of the defect from complaints and service requests they received from
11 Class Members, from repairs and/or replacements of the transmission, and from
12 other internal sources.

13 258. Plaintiffs also provided notice to Mitsubishi of its breach of warranty
14 claims under the MMWA by letters dated November 4, 2021 (Plaintiffs Hardy and
15 Lucassian), and December 1, 2021 (Plaintiff Brown).

16 259. As a direct and proximate cause of Defendants’ breach, Plaintiffs and
17 the other Class members have suffered, and continue to suffer, damages, including
18 economic damages at the point of sale or lease. Additionally, Plaintiffs and the
19 other Class members have incurred or will incur economic damages at the point
20 of repair in the form of the cost of repair.

21 260. Plaintiffs and the other Class members are entitled to legal and
22 equitable relief against Defendants, including actual damages, consequential
23 damages, specific performance, attorneys’ fees, costs of suit, and other relief as
24 appropriate.

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1 **THIRTEENTH CAUSE OF ACTION**

2 **(Breach of Implied Warranty under the Magnuson-Moss Warranty Act,**
3 **15 U.S.C. § 2303 *et seq.*)**

4 **(On Behalf of the Nationwide Class, or, in the Alternative, on Behalf of All**
5 **Sub-Classes Against Defendants)**

6 261. Plaintiffs incorporate by reference the allegations contained in the
7 preceding paragraphs of this Complaint.

8 262. Plaintiffs bring this cause of action on behalf of themselves and the
9 Class against Defendants.

10 263. The Class Vehicles are a “consumer product” within the meaning of
11 the Magnuson-Moss Warranty Act, 15 U.S.C. § 2301(1).

12 264. Plaintiffs and Class Members are “consumers” within the meaning of
13 the Magnuson-Moss Warranty Act, 15 U.S.C. § 2301(3).

14 265. Defendants are “suppliers” and “warrantors” within the meaning of
15 the Magnuson-Moss Warranty Act, 15 U.S.C. § 2301(4)-(5).

16 266. Mitsubishi impliedly warranted that the Class Vehicles were of
17 merchantable quality and fit for use. This implied warranty included, among other
18 things: (i) a warranty that the Class Vehicles and their transmissions manufactured,
19 supplied, distributed, and/or sold by Mitsubishi would provide safe and reliable
20 transportation; and (ii) a warranty that the Class Vehicles and their transmissions
21 would be fit for their intended use while the Class Vehicles were being operated.

22 267. Contrary to the applicable implied warranties, the Class Vehicles and
23 their transmissions at the time of sale and thereafter were not fit for their ordinary
24 and intended purpose of providing Plaintiffs and Class members with reliable,
25 durable, and safe transportation. Instead, the Class Vehicles are defective,
26 including the defective design and materials of their transmissions.

27 268. Defendants’ breach of implied warranties has deprived Plaintiffs and
28 Class members of the benefit of their bargain.

1 269. The amount in controversy of Plaintiffs' individual claims meets or
2 exceeds the sum or value of \$25,000. In addition, the amount in controversy meets
3 or exceeds the sum or value of \$50,000 (exclusive of interests and costs) computed
4 on the basis of all claims to be determined in this suit.

5 270. Defendants have been afforded a reasonable opportunity to cure their
6 breach, including when Plaintiffs and Class members brought their vehicles in for
7 diagnoses and transmission repair.

8 271. As a direct and proximate cause of Defendants' breach of implied
9 warranties, Plaintiffs and Class members sustained and incurred damages and
10 other losses in an amount to be determined at trial. Defendants' conduct damaged
11 Plaintiffs and Class members, who are entitled to recover actual damages,
12 consequential damages, specific performance, diminution in value, costs,
13 attorneys' fees, and/or other relief as appropriate.

14 272. As a result of Defendants' violations of the Magnuson-Moss
15 Warranty Act as alleged herein, Plaintiffs and Class members have incurred
16 damages.

17 273. Plaintiffs also provided notice to Mitsubishi of its breach of warranty
18 claims under the MMWA by letters dated November 4, 2021 (Plaintiffs Hardy and
19 Lucassian), and December 1, 2021 (Plaintiff Brown).

20 **FOURTEENTH CAUSE OF ACTION**

21 **(For Fraud by Omission or Fraudulent Concealment)**

22 **(On Behalf of the Nationwide Class, or, in the Alternative, on Behalf of All**
23 **Sub-Classes Against Defendants)**

24 274. Plaintiffs incorporate by reference the allegations contained in the
25 preceding paragraphs of this Complaint.

26 275. Plaintiffs bring this cause of action on behalf of themselves and the
27 Class or, alternatively, on behalf of all Sub-Classes against Defendants.

28 276. Defendants knew that the Class Vehicles suffered from an inherent

1 CVT Defect, were defectively designed and/or manufactured, and were not
2 suitable for their intended use.

3 277. Defendants concealed from and failed to disclose to Plaintiffs and
4 Class Members the defective nature of the Class Vehicles.

5 278. Defendants were under a duty to Plaintiffs and Class Members to
6 disclose the defective nature of the Class Vehicles because:

- 7 a. Defendants were in a superior position to know the true state of
8 facts about the safety defect contained in the Class Vehicles;
- 9 b. The omitted facts were material because they directly impact the
10 safety of the Class Vehicles;
- 11 c. Defendants knew the omitted facts regarding the CVT Defect were
12 not known to or reasonably discoverable by Plaintiffs and Class
13 Members;
- 14 d. Defendants made partial disclosures about the quality of the Class
15 Vehicles without revealing their true defective nature; and,
- 16 e. Defendants actively concealed the defective nature of the Class
17 Vehicles from Plaintiffs and Class Members.

18 279. The facts concealed or not disclosed by Defendants to Plaintiffs and
19 the other Class Members are material in that a reasonable person would have
20 considered them to be important in deciding whether to purchase or lease
21 Defendants' Class Vehicles or pay a lesser price for them. Whether a vehicle's
22 transmission is defective, which can cause inordinately long times to accelerate
23 from a stop or low speed, exhibit a hard deceleration or "clunk" when drivers either
24 slow down or accelerate at low speeds, shudder and shake or make a loud clunking
25 or knocking sound when the CVT finally selects the appropriate gear ratio, and
26 completely fail to accelerate, are material safety concerns. Had Plaintiffs and Class
27 Members known about the defective nature of the Class Vehicles, they would not
28 have purchased or leased the Class Vehicles or would have paid less for them.

1 280. Defendants concealed or failed to disclose the true nature of the
2 design and/or manufacturing defects contained in the Class Vehicles to induce
3 Plaintiffs and Class Members to act thereon. Plaintiffs and the other Class
4 Members justifiably relied on Defendant's omissions to their detriment. This
5 detriment is evident from Plaintiffs' and Class Members' purchase or lease of
6 Defendants' defective Class Vehicles.

7 281. Defendants continued to conceal the defective nature of the Class
8 Vehicles even after Class Members began to report the problems. Indeed,
9 Defendants continue to cover up and conceal the true nature of the problem today.

10 282. As a direct and proximate result of Defendants' misconduct, Plaintiffs
11 and Class Members have suffered and will continue to suffer actual damages.
12 Plaintiffs and the Class reserve their right to elect either to (a) rescind their
13 purchase or lease of the defective Vehicles and obtain restitution or (b) affirm their
14 purchase or lease of the defective Vehicles and recover damages.

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

20 **FIFTEENTH CAUSE OF ACTION**
21 **(For Unjust Enrichment)**
22 **(On Behalf of the Nationwide Class, or, in the Alternative, on Behalf of All**
23 **Sub-Classes Against Defendants)**

24 284. Plaintiffs incorporate by reference the allegations contained in the
25 preceding paragraphs of this Complaint.

26 285. Plaintiffs bring this cause of action on behalf of themselves and the
27 Class or, alternatively, on behalf of all Sub-Classes against Defendants.

28 286. Defendants have received and retained a benefit from Plaintiffs and

1 the members of the Class, and inequity has resulted.

2 287. As a direct and proximate result of Defendants' failure to disclose
3 known defects, Defendants have profited through the sale and lease of the Class
4 Vehicles, the value of which was artificially inflated by Defendants' concealment
5 of and omissions regarding the CVT Defect. Defendants charged higher prices for
6 the vehicles than the vehicles' true value, and Plaintiffs and Class Members thus
7 overpaid for the Class Vehicles. Although these vehicles are purchased through
8 Defendants' authorized dealers and distributors, the money from the vehicle sales
9 flows directly back to Defendants.

10 288. Additionally, as a direct and proximate result of Defendants' failure
11 to disclose known defects in the Class Vehicles, Plaintiffs and Class Members
12 have vehicles that require repeated, high-cost repairs that can and therefore have
13 conferred an unjust substantial benefit upon Defendants.

14 289. Defendants have been unjustly enriched due to the known defects in
15 the Class Vehicles through the use of money paid that earned interest or otherwise
16 added to Defendants' profits when said money should have remained with
17 Plaintiffs and Class Members.

18 290. Plaintiffs and Class Members were not aware of the true facts
19 regarding the Defect in the Class Vehicles and did not benefit from Defendants'
20 unjust conduct.

21 291. As a result of the Defendants' unjust enrichment, Plaintiffs and Class
22 Members have suffered damages.

23 292. Plaintiffs do not seek restitution under their unjust enrichment claim.
24 Rather, Plaintiffs and Class Members seek non-restitutionary disgorgement of the
25 financial profits that Defendants obtained as a result of its unjust conduct.

26 293. Additionally, Plaintiffs seek injunctive relief to compel Defendants
27 to offer, under warranty, remediation solutions that Defendant identifies. Plaintiffs
28 also seek injunctive relief enjoining Defendants from further deceptive

1 distribution, sales, and lease practices with respect to Class Vehicles, enjoining
2 Defendants from selling the Class Vehicles with the misleading information;
3 compelling Defendants to provide Class members with a replacement components
4 that do not contain the defects alleged herein; and/or compelling Defendants to
5 reform its warranty, in a manner deemed to be appropriate by the Court, to cover
6 the injury alleged and to notify all Class Members that such warranty has been
7 reformed. Money damages are not an adequate remedy for the above requested
8 non-monetary injunctive relief.

9 **RELIEF REQUESTED**

10 294. Plaintiffs, on behalf of themselves and all others similarly situated,
11 request the Court enter judgment against Defendants, as follows:

- 12 (a) An order certifying the proposed Class and Sub-Classes,
13 designating Plaintiffs as named representatives of the Class, and
14 designating the undersigned as Class Counsel;
- 15 (b) A declaration that Defendants is financially responsible for
16 notifying all Class Members about the defective nature of the
17 CVT, including the need for periodic maintenance;
- 18 (c) An order enjoining Defendants from further deceptive
19 distribution, sales, and lease practices with respect to Class
20 Vehicles; compelling Defendants to issue a voluntary recall for
21 the Class Vehicles pursuant to 49 U.S.C. § 30118(a); compelling
22 Defendants to repair and eliminate the CVT Defect from every
23 Class Vehicle; enjoining Defendants from selling the Class
24 Vehicles with the misleading information; and/or compelling
25 Defendants to reform its warranty, in a manner deemed to be
26 appropriate by the Court, to cover the injury alleged and to notify
27 all Class Members that such warranty has been reformed;
- 28 (d) An award to Plaintiff and the Class for compensatory, exemplary,

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- and statutory damages, including interest, in an amount to be proven at trial; except that Plaintiff Brown does not currently seek monetary damages under the Consumers Legal Remedies Act;
- (e) Any and all remedies provided pursuant to the Magnuson-Moss Warranty Act;
- (f) A declaration that Defendants must disgorge, for the benefit of the Class, all or part of the ill-gotten profits it received from the sale or lease of its Class Vehicles or make full restitution to Plaintiffs and Class Members;
- (g) An award of attorneys' fees and costs, as allowed by law;
- (h) An award of pre-judgment and post-judgment interest, as provided by law;
- (i) Leave to amend the Complaint to conform to the evidence produced at trial; and
- (j) Such other relief as may be appropriate under the circumstances.

DEMAND FOR JURY TRIAL

295. Pursuant to Federal Rule of Civil Procedure 38(b) and Central District of California Local Rule 38-1, Plaintiffs demand a trial by jury of all issues in this action so triable.

Dated: December 3, 2021

Respectfully submitted,

Capstone Law APC

By: /s/ Tarek H. Zohdy
Tarek H. Zohdy
Cody R. Padgett
Laura E. Goolsby

Attorneys for Plaintiff

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/s/Russell D. Paul
Russell D. Paul
Amey J. Park
BERGER MONTAGUE PC