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Mohamed Elsayed

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
SOUTHERN DIVISION**

MOHAMED ELSAYED, individually,
and on behalf of all others similarly
situated,

Plaintiffs,

vs.

MASERATI NORTH AMERICA,
INC., a Delaware corporation; and
DOES 1 to 25, inclusive,

Defendants.

Case No.

**CLASS ACTION COMPLAINT
FOR DAMAGES AND
EQUITABLE RELIEF**

- JURY TRIAL DEMANDED -

1 Plaintiff Mohamed Elsayed, on behalf of himself and all others
2 similarly situated, brings this class action against Defendant Maserati of North
3 America, Inc. and alleges, based upon personal knowledge as to himself and his
4 own facts, and as to all others matters upon information and belief, as follows:
5

6 I. INTRODUCTION

7

8 1. Plaintiff Mohamed Elsayed brings this action individually and on
9 behalf of all other current and former owners and/or lessees of Defendant Maserati
10 North America, Inc.'s 2014-2016 model year Ghibli vehicles equipped with the
11 Passive Entry System (the "Class Vehicles").
12

13 2. The Maserati Ghibli's Passive Entry System is an enhancement to the
14 vehicle's Remote Keyless Entry (RKE) system. This feature allows drivers to
15 lock and unlock the vehicle's door(s) without having to press the key fob RKE
16 transmitter lock or unlock button. The Maserati Ghibli's Owner's Manual
17 provides that, in order to prevent inadvertent locking of the key fob RKE
18 transmitter inside a driver's vehicle, the Passive Entry System is equipped with an
19 automatic door unlock feature which will function if the ignition switch is in the
20 "off" position. The Owner's Manual further indicates that the vehicle *unlocks* the
21 doors under any of the following conditions: (a) the doors are manually locked
22 using the door lock knob positioned on the door panel; and/or (b) there is a valid
23 key fob RKE transmitter inside the vehicle.
24

25 3. However, despite assurances in its Owner's Manual that precautions
26 exist to prevent the inadvertent locking of the keys in the vehicle, instances have
27 occurred where the key fob is locked inside the vehicle, at times trapping small
28 children inside the locked vehicle while the child's panicked parent looks on

1 helplessly, fearing for their child's safety. Thus, a life threatening defect exists
2 with regard to the Maserati Ghibli's Passive Entry System (the "Passive Entry
3 System Defect").

4
5 4. As a result of Maserati's unfair, deceptive, and/or fraudulent business
6 practices, and its failure to disclose defects in the Ghibli's Passive Entry System,
7 owners and/or lessees of the Class Vehicles have suffered losses in money and/or
8 property.

9
10 5. Had Plaintiff and the other Class members known of the defects in
11 the Ghibli's Passive Entry System at the time they purchased or leased their
12 vehicles, they would not have purchased or leased those vehicles, or would have
13 paid substantially less for the vehicles than they did.

14
15 6. Plaintiff, individually and on behalf of the other members of the
16 proposed Class, brings this action for Defendant Maserati North America, Inc.'s
17 statutory and common law violations, including its violation of applicable
18 consumer protection and deceptive trade practice statutes and Defendant's
19 breaches of its warranties to Plaintiff and the other Class members, as alleged in
20 this Complaint.

21
22 **II. THE PARTIES**

23
24 7. Plaintiff Mohamed Elsayed is an individual consumer over the age of
25 18, residing in Laguna Hills, California.

26
27 8. Defendant Maserati North America, Inc. is a Delaware corporation
28 with its principal place of business in Englewood Cliffs, New Jersey. At all times

1 relevant to this action, Maserati designed, manufactured, advertised, sold, leased
2 and purportedly warranted the Class Vehicles throughout all fifty states (including
3 the District of Columbia). Defendant also develops and distributes advertising
4 brochures, owner’s manuals, and other documents relating to the vehicles at issue
5 in this matter.

6
7 9. Plaintiff is unaware of the true names of Does 1 through 25 and
8 therefore sues them by such fictitious names. Plaintiff will ask for leave of Court
9 to insert their true names when such have been ascertained.

10
11 10. Plaintiff is informed and understands that at all times mentioned in
12 this Complaint each of the Defendants herein was the agent of each of the
13 remaining Defendants, and in doing the things hereinafter alleged, was acting
14 within the course and scope of such agency and with the permission of his/her/its
15 co-Defendants.

16
17 **III. JURISDICTION**
18

19 11. This Court has jurisdiction over the subject matter presented by this
20 Complaint because it is a class action arising under 28 U.S.C. § 1332(d), which,
21 under the Class Action Fairness Act of 2005 (“CAFA”), Pub. L. No. 109-2, 119
22 Stat. 4 (2005), explicitly provides for the original jurisdiction of the federal courts
23 of any class action in which any member of the class is a citizen of a state
24 different from any defendant, and in which the matter in controversy exceeds in
25 the aggregate the sum of \$5,000,000, exclusive of interest and costs. Plaintiff
26 alleges that the total claims of individual Class Members are in excess of
27 \$5,000,000 in the aggregate, exclusive of interest and costs, as required by 28
28 U.S.C. § 1332(d)(2).

1 16. With regard to the functionality of the Passive Entry System, the
2 Maserati Ghibli's Owner's Manual provides that, in order to prevent inadvertent
3 locking of the key fob RKE transmitter inside a driver's vehicle, the Passive Entry
4 System is equipped with an automatic door unlock feature which will function if
5 the ignition switch is in the "off" position. The Owner's Manual further indicates
6 that the vehicle *unlocks* the doors under any of the following conditions: (a) the
7 doors are manually locked using the door lock knob positioned on the door panel;
8 and/or (b) there is a valid key fob RKE transmitter inside the vehicle. The
9 Owner's Manual thus makes it clear that in order to lock the vehicle the key fob
10 must be located outside of the vehicle. If the key fob is located inside the vehicle,
11 the vehicle should not lock.

12
13 17. The Maserati Ghibli's Passive Entry System, however, is plagued
14 with a serious, life-threatening defect: despite assurances in its Owner's Manual
15 that precautions exist to prevent the inadvertent locking of the keys in the vehicle,
16 instances have occurred where the Class Vehicles' key fob is located inside the
17 vehicle, and a rear passenger (such as a small child) is able to press the rear power
18 door locks, locking the driver outside of the vehicle, at times trapping small
19 children inside of the vehicle.

20
21 18. Plaintiff has suffered just such a harrowing experience.

22
23 19. On August 8, 2015, Plaintiff Mohamed Elsayed leased a new 2015
24 Maserati Ghibli (VIN: ZAM57XSA9F1150123) from Ferrari of Newport Beach,
25 on of Defendant's authorized dealerships in Newport Beach, California. Mr.
26 Elsayed leased the vehicle for his own personal use, and for the use of his wife
27 and their small child. Plaintiff leased the vehicle under the reasonable, but
28

1 mistaken, belief that the vehicle was safe for himself, his wife and their toddler-
2 aged son.

3
4 20. Shortly after purchasing the vehicle, Plaintiff's wife, Mai Hazem, left
5 the couple's apartment to run errands in the vehicle with she and Plaintiff's son.
6 When Plaintiff's wife and son reached the vehicle, which was parked in a parking
7 structure with the ignition in the OFF position, Ms. Hazem placed her purse,
8 including her key fob and cellular phone, in the front passenger seat and closed
9 the door. Ms. Hazem then opened the rear passenger door, placed her son into his
10 car seat and closed the door. It was then that the unthinkable happened.
11 Plaintiff's son, who at the time was three-years old, reached over and pressed the
12 rear power door lock, locking the vehicle's doors.

13
14 21. Upon hearing the doors lock, Ms. Hazem began frantically checking
15 each of the vehicle's doors, only to find each one locked. She then looked around
16 the parking structure, only to find it empty. With both her key fob and cellular
17 phone locked in the car, Ms. Hazem became panicked. She could not unlock the
18 doors, could not call anyone for help, and could not leave the parking structure
19 with her small son locked inside the vehicle to find help. Ms. Hazem's fear was
20 exacerbated by the fact that it was a particularly hot Southern California day,
21 causing her to fear that her son would overheat and perish in the car.

22
23 22. Helpless, Ms. Hazem frantically motioned to her son, gesturing to try
24 and get him to push the power door lock again, to unlock himself. However,
25 because of his age, Plaintiff's son was not able to understand what his mother was
26 asking him to do. When Plaintiff's son finally understood that he should press the
27 power locks button, he mistakenly pressed the "lock" button, repeatedly re-

28

1 locking himself in the vehicle. Finally, after nearly 10-15 minutes of gesturing to
2 her son, Ms. Hazem was able to coax her son into unlocking the vehicle's door.

3
4 23. Concerned for their son's continued safety in the vehicle, Plaintiff
5 and Ms. Hazem contacted their Maserati dealership regarding the defect. In
6 response to Plaintiff's harrowing story, Maserati informed them that, "that's the
7 way the car is supposed to act."

8
9 24. Clearly however, this is *not* the way the car should react. In fact, the
10 vehicle's Owner's Manual makes it clear that the vehicle should *not* lock when the
11 key fob is in inside the vehicle and the ignition is in the OFF position.

12
13 25. The National Safety Council, a nonprofit organization whose mission
14 it is to save lives by preventing injuries and death in homes and on the road,
15 frequently warns parents of the life-threatening effects of children locked in hot
16 cars. Reports indicate that there have been 667 deaths of children left in hot cars
17 since 1998.¹ Children should never be left in hot cars, not even for a minute.
18 Producing a car that will allow a small child to lock himself or herself in the
19 vehicle, with no means of extracting the child, is as serious a threat to the child's
20 life as there can be.

21
22 26. Dissatisfied with Maserati's initial response to the dangers presented
23 by the Passive Entry System, Plaintiff again complained to Maserati regarding the
24 Passive Entry System's defect on February 17, 2016, when his car was at Ferrari
25 Maserati of Las Vegas for service. Plaintiff's February 17, 2016 repair receipt
26 notes, "Customer states child was able to lock himself in car..." In response to
27

28

¹ See <http://noheatstroke.org/>; See also <http://www.kidsandcars.org/userfiles/dangers/heat-stroke-fact-sheet.pdf>.

1 Plaintiff's complaint, Ferrari Maserati of Las Vegas noted, "doors working as
2 designed".

3
4 27. However, despite repeatedly asserting that the Class Vehicle's doors
5 work as they should, it is clear that a life threatening defect exists with regard to
6 the Class Vehicles' Passive Entry System.

7
8 28. Maserati marketed, distributed, and sold the Class Vehicles in the
9 State of California as well as nationwide.

10
11 29. Moreover, Maserati widely and repeatedly markets, advertises,
12 publicizes, and disseminates to the public that the Class Vehicles are safely
13 designed and manufactured. For example, in its brochures for the Ghibli,
14 Maserati touts the vehicle as having "[s]tate of the art engineering," which
15 "inevitably enhances the Ghibli's reliability, for which Maserati is world
16 renowned." Maserati further advertised that, "Maserati made passive safety a top
17 priority when designing the Ghibli..."

18
19 30. However, contrary to Maserati's assertions, the Class Vehicles are
20 not safe, and Maserati clearly has not made safety a top priority when designing
21 the Ghibli.

22
23 31. Maserati knew or, at a minimum should have known, at the time it
24 began to advertise and sell and/or lease the Class Vehicles that the Ghibli
25 contained serious design, manufacturing, and/or assembly defects with its Passive
26 Entry System.

1 All persons of entities who purchased or leased a Class
2 Vehicle in the State of California (the “California
3 Class”).

4 The Nationwide Class and the California Class are
5 hereinafter collectively referred to as the “Class” unless
6 otherwise noted.

7 This Class definition may be supplemented or extended
8 based on information learned through discovery.

9 36. Excluded from the Class are Defendant and its subsidiaries, affiliates,
10 officers and directors, including the members of the immediate families of the
11 officers and directors of Defendant, and the legal representatives, heirs, successors
12 and assigns of Defendant and any entity that has or had a controlling interest in
13 Defendant. Also excluded from the Class are those who make a timely election to
14 be excluded from the Class, governmental entities, and the Judge to whom this
15 case is assigned and his/her immediate family.

16
17 37. Certification of Plaintiff’s claim for class-wide treatment is
18 appropriate because Plaintiff can prove the elements of his claims on a class-wide
19 basis using the same evidence as would be used to prove those elements in
20 individual actions alleging the same claim.

21
22 38. Defendants’ representation, practices, and omissions were applied
23 uniformly to all Members of the Class during the Class Period, so that the
24 questions of law and fact are common to all Members of the Class. All Members
25 of the Class were and are similarly affected by having been exposed to the
26 misrepresentations and unfair business practices of Defendant, and the relief
27 sought is for the benefit of Plaintiff and Members of the Class.
28

1 39. This action has been brought and may be properly maintained on
2 behalf of each of the Classes proposed herein under Federal Rule of Civil
3 Procedure 23, as set forth in paragraphs 40-44 herein.

4
5 40. Federal Rule of Civil Procedure 23(a)(1) – Numerosity: The
6 members of the Nationwide Class and California Class is so numerous and
7 geographically dispersed that joinder of all Class Members would be impractical.
8 While Plaintiff believes that there are thousands of members of the Nationwide
9 and California Classes, the precise number of Nationwide and California Class
10 Members is unknown to Plaintiff, but can be ascertained through Maserati’s books
11 and records.

12
13 41. Federal Rule of Civil Procedure 23(a)(2) and 23(b)(3) –
14 Commonality and Predominance: Questions of law and fact common to each
15 Class Member exist that predominate over questions affecting only individual
16 Members, including, *inter alia*:

- 17
18 a. Whether Maserati engaged in the conduct alleged herein;
19
20 b. Whether Maserati designed, advertised, marketed, distributed,
21 leased, sold, or otherwise placed the Class Vehicles into the stream of
22 commerce in the United States with a defective Passive Entry System;
23
24 c. Whether the Passive Entry System in the Class Vehicles is
25 unreasonably dangerous;
26
27 d. Whether the Passive Entry System in the Class Vehicles
28 contains a defect;

1
2 e. Whether such defect caused the Passive Entry System in the
3 Class Vehicles to malfunction;

4
5 f. Whether Maserati knew, or should have known, that the
6 defects that existed with regard to the Passive Entry System would lead to
7 the malfunctions experienced with respect to the Class Vehicles;

8
9 g. Whether Maserati knew, or reasonably should have known, of
10 the Passive Entry System Defect in the Class Vehicles before it sold or
11 leased them to Class Members;

12
13 h. Whether Maserati's conduct violates consumer protection
14 statutes, warranty laws, and other laws as asserted herein;

15
16 i. Whether Plaintiff and other Class Members overpaid for their
17 Class Vehicles as a result of the defects alleged herein;

18
19 j. Whether Plaintiff and the other Class Members are entitled to
20 equitable relief, including, but not limited to, restitution and/or injunctive
21 relief; and

22
23 k. Whether Plaintiff and Class Members are entitled to damages
24 and the proper measure of such damages.

25
26 42. Federal Rule of Civil Procedure 23(a)(3) – Typicality: The claims
27 asserted by Plaintiff are typical of the claims of the Class Members, as his claims
28 arise from the same course of conduct by Defendant and the relief sought is

1 common. Plaintiff, like all Class Members, was injured as a result of Defendants'
2 wrongful conduct alleged herein.

3
4 43. Federal Rule of Civil Procedure 23(a)(4) – Adequacy: Plaintiff will
5 fairly and adequately represent and protect the interests of the Class Members.
6 Plaintiff has retained counsel competent and experienced in both consumer
7 protection and class action litigation.

8
9 44. Federal Rule of Civil Procedure 23(b)(3) – Superiority: A class
10 action is superior to any other available means for the fair and efficient
11 adjudication of this controversy, and no unusual difficulties are likely to be
12 encountered in the management of this class action. The damages or other
13 financial detriment suffered by Plaintiff and the other Nationwide and California
14 Class Members are relatively small compared to the burden and expense that
15 would be required to individually litigate their claims against Maserati, so it
16 would be impracticable for Nationwide and California Class Members to
17 individually seek redress for Maserati's willful conduct. Even if the Nationwide
18 and California Class Members could afford individual litigation, the court system
19 could not. Individualized litigation creates a potential for inconsistent or
20 contradictory judgments, and increases the delay and expense to all parties and the
21 court system. By contrast, the class action device presents far fewer management
22 difficulties and provides the benefits of single adjudication, economy of scale, and
23 comprehensive supervision by a single court. Thus, the benefits of proceeding as
24 a class action, including providing a method for obtaining redress for claims that
25 would not be practical to pursue individually, outweigh any difficulties that might
26 be argued regarding the management of this class action.

1 **VII. CLAIMS FOR RELIEF**

2
3 **A. Claims by Nationwide Class**

4
5 **COUNT I**

6 **Violation of Magnuson-Moss Warranty Act**

7 **(By Nationwide Class)**

8
9 45. Plaintiff repeats every allegation contained in the paragraphs above
10 and incorporates such allegations by reference. Plaintiff brings this cause of
11 action on behalf of himself and the Nationwide Class.

12
13 46. Plaintiff is a "consumer" within the meaning of the Magnuson-Moss
14 Warranty Act, 15 U.S.C. § 2301(3).

15
16 47. The Class Vehicles are "consumer products" within the meaning of
17 the Magnuson-Moss Warranty Act, 15 U.S.C. § 2301(1).

18
19 48. Maserati is a "supplier" and "warrantor" within the meaning of the
20 Magnuson-Moss Warranty Act, 15 U.S.C. § 2301(4)-(5).

21
22 49. The Class Vehicles are "consumer products" within the meaning of
23 the Magnuson-Moss Warranty Act, 15 U.S.C. § 2301(1).

24
25 50. 15 U.S. C. § 2301(d)(I) provides a cause of action for any consumer
26 who is damaged by the failure of a warrantor to comply with a written or implied
27 warranty.

1 51. Maserati's express warranties are written warranties within the
2 meaning of the Magnuson-Moss Warranty Act, 15 U.S. C. § 2301(6). The Class
3 Vehicles' implied warranties are covered under 15 U.S.C. § 2301(7).
4

5 52. Maserati breached these warranties as described in more detail above.
6 Without limitation, the Class Vehicles are equipped with a defective Passive Entry
7 System which allows the inadvertent locking of a driver's keys in the vehicle, at
8 times trapping small children inside the locked vehicle while the child's panicked
9 parent looks on helplessly, fearing for their child's safety.
10

11 53. Plaintiff and the other Nationwide Class members have had sufficient
12 direct dealings with either Maserati or its agents to establish privity of contract
13 between Maserati, on one hand, and Plaintiff and each of the other Nationwide
14 Class members on the other hand. Nonetheless, privity is not required here
15 because Plaintiff and each of the other Nationwide Class members are intended
16 third-party beneficiaries of contracts between Maserati and its dealers, and
17 specifically, of Maserati's implied warranties. The dealers were not intended to be
18 the ultimate consumers of the Class Vehicles and have no rights under the
19 warranty agreements provided with the Class Vehicles; the warranty agreements
20 were designed for and intended to benefit the consumers only.
21

22 54. Affording Maserati a reasonable opportunity to cure its breach of
23 written warranties would be unnecessary and futile here. At the time of sale or
24 lease of each Class Vehicle, Maserati knew, should have known, or was reckless
25 in not knowing of its misrepresentations and omissions concerning the Class
26 Vehicles' inability to perform as warranted, but nonetheless failed to rectify the
27 situation and/or disclose the defective design. Moreover, each time Plaintiff has
28 informed Maserati of the defect, they have represented to him that the vehicle was

1 performing as it should. Under the circumstances, the remedies available under
2 any informal settlement procedure would be inadequate and any requirement that
3 Plaintiff resorts to an informal dispute resolution procedure and/ or afford
4 Maserati a reasonable opportunity to cure its breach of warranties is excused and
5 thereby deemed satisfied.

6
7 55. Plaintiff and the other Nationwide Class members would suffer
8 economic hardship if they returned their Class Vehicles but did not receive the
9 return of all payments made by them. Because Maserati is refusing to
10 acknowledge any revocation of acceptance and return immediately any payments
11 made, Plaintiff and the other Nationwide Class members have not re-accepted
12 their Class Vehicles by retaining them.

13
14 56. The amount in controversy of Plaintiffs individual claims meets or
15 exceeds the sum of \$25. The amount in controversy of this action exceeds the sum
16 of \$50,000, exclusive of interest and costs, computed on the basis of all claims to
17 be determined in this lawsuit.

18
19 57. Plaintiff, individually and on behalf of the other Nationwide Class
20 members, seeks all damages permitted by law, including diminution in value of
21 the Class Vehicles, in an amount to be proven at trial.

COUNT II

Breach of Express Warranty

(By Nationwide Class)

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5 58. Plaintiff repeats every allegation contained in the paragraphs above
6 and incorporates such allegations by reference. Plaintiff brings this cause of
7 action on behalf of himself and the Nationwide Class.
8

9 59. Maserati expressly warranted that the Class Vehicles, together with
10 the Passive Entry System installed therein, were of high quality and, at a
11 minimum, would work properly and as intended.
12

13 60. Maserati breached this warranty by selling to Plaintiff and the other
14 Nationwide Class members the Class Vehicles with known defective Passive
15 Entry Systems. As alleged hereinabove, the defective Passive Entry Systems fail
16 to function properly as a result of an inherent design and/or manufacturing defect.
17

18 61. As a result of Maserati's conduct, Plaintiff and the other Nationwide
19 Class members have suffered economic damages including, without limitation,
20 loss of vehicle use, substantial loss in value and resale value of the vehicles, and
21 other related damages.
22

23 62. Plaintiff and the other Nationwide Class members have complied
24 with all obligations under the warranty, or otherwise have been excused from
25 performance of said obligations as a result of Maserati's conduct described
26 hereinabove.
27
28

COUNT III

Breach of Implied Warranty of Fitness For a Particular Purpose

(By Nationwide Class)

63. Plaintiff repeats every allegation contained in the paragraphs above and incorporates such allegations by reference. Plaintiff brings this cause of action on behalf of himself and the Nationwide Class.

64. At the time of contracting, Maserati had reason to know of the Plaintiff's and other Nationwide Class members' particular purpose for purchasing or leasing a Class Vehicle with a Passive Entry System. That particular purpose includes use of the Class Vehicle for the safe transportation of the Plaintiff and Nationwide Class Members and their families.

65. Plaintiff and the other Nationwide Class members relied on Maserati's skill and/or judgment to select or furnish suitable goods, thereby creating an implied warranty that the goods would be fit for such purpose.

66. The Class Vehicles, and the Passive Entry System installed therein, were not fit for these purposes, as alleged hereinabove. Thus, Plaintiff and the other Nationwide Class members were injured by Maserati's conduct in breaching the implied warranty.

COUNT IV

Breach of Implied Warranty of Merchantability

(By Nationwide Class)

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5 67. Plaintiff repeats every allegation contained in the paragraphs above
6 and incorporates such allegations by reference. Plaintiff brings this cause of
7 action on behalf of himself and the Nationwide Class.

8
9 68. Maserati is and was at all relevant times a merchant with respect to
10 the Maserati Ghibli.

11
12 69. The Class Vehicles, when sold and at all times thereafter, were not in
13 merchantable condition and are not fit for the ordinary purpose for which motor
14 vehicles are used. Specifically, the Class Vehicles are equipped with a defective
15 Passive Entry System, which allows the inadvertent locking of a driver's keys in
16 the vehicle, at times trapping small children inside the locked vehicle while the
17 child's panicked parent looks on helplessly, fearing for their child's safety. The
18 Class Vehicles share a common design defect in that the vehicles' Passive Entry
19 System fails to operate as represented by Maserati.

20
21 70. Plaintiff and each of the other Nationwide Class members are
22 intended third-party beneficiaries of contracts between Maserati and its dealers
23 and, specifically, of Maserati's implied warranties.

24
25 71. As a direct and proximate result of Maserati's breach of the warranty
26 of merchantability, Plaintiff and the other Nationwide Class members have been
27 damaged in an amount to be proven at trial.

28

COUNT VI

Products Liability – Failure to Warn

(By California Subclass)

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5 78. Plaintiff repeats every allegation contained in the paragraphs above
6 and incorporates such allegations by reference. Plaintiff brings this cause of
7 action on behalf of himself and the California Subclass.

8
9 79. Defendant designed, engineered, manufactured, tested, assembled,
10 marketed, advertised, sold and/or distributed the Class Vehicle purchased and/or
11 leased by Plaintiff and the California Subclass.

12
13 80. Defendant knew or had reason to know that the Class Vehicle
14 purchased and/or leased by Plaintiff and the California Subclass was, or was likely
15 to be, dangerous for the use for which it was supplied.

16
17 81. Defendant had no reason to believe those for whose use the product
18 was supplied would realize its dangerous condition.

19
20 82. Defendant failed to exercise reasonable care to inform unsuspecting
21 consumers, including Plaintiff and the California Subclass, of the dangerous
22 condition, or of facts which made the vehicle likely to be dangerous.

23
24 83. As a direct and proximate result of Defendant's actions as alleged
25 herein, Plaintiff and the California Subclass has suffered damages.

26
27 84. Defendant's negligent failure to warn was the direct and proximate
28 cause of the Plaintiff and the California Subclass members' injuries.

1
2 85. As a direct and proximate result of Defendant's actions, inactions,
3 and breach of the standard of care, Plaintiff and the California Subclass are
4 entitled to damages in an amount to be proven at the time of trial.
5

6 **COUNT VII**
7 **Breach of Express Warranty**
8 **(By California Subclass)**
9

10 86. Plaintiff repeats every allegation contained in the paragraphs above
11 and incorporates such allegations by reference. Plaintiff brings this cause of
12 action on behalf of himself and the California subclass.
13

14 87. At all times herein mentioned, Defendant is the warrantor of the
15 Class Vehicles' express warranty.
16

17 88. Pursuant to the Class Vehicles' express warranty, Defendant
18 undertook to preserve and maintain the utility or performance of the vehicle or
19 provide compensation if there was a failure in such utility or performance.
20

21 89. Plaintiff's and California subclass members' relied on such
22 warranties in purchasing and driving the Class Vehicles.
23

24 90. The Class Vehicles were not as warranted. Plaintiff's and California
25 subclass members' Class Vehicles have and had serious defects and
26 nonconformities to warranty, including but not limited to a defective Passive
27 Entry System which allows the inadvertent locking of a driver's keys in the
28 vehicle, at times trapping small children inside the locked vehicle while the

1 child's panicked parent looks on helplessly, fearing for their child's safety. This
2 defective condition could result in death or serious bodily injury.

3
4 91. The defects and nonconformity to warranty manifested within the
5 applicable express warranty period, and were likely to cause death or serious
6 bodily injury if the vehicle was driven.

7
8 92. Defendant knew or should have known that the Class Vehicles did
9 not operate as warranted.

10
11 93. As a result of the failure of the Class Vehicles to operate as
12 warranted, Plaintiff and the California subclass members have suffered damages.

13
14 94. The failure of the Class Vehicles to be as represented was a
15 substantial factor in causing Plaintiff and the California subclass members'
16 damages.

17
18 95. Affording Maserati a reasonable opportunity to cure its breach of
19 written warranties would be unnecessary and futile here. At the time of sale or
20 lease of each Class Vehicle, Maserati knew, should have known, or was reckless
21 in not knowing of its misrepresentations and omissions concerning the Class
22 Vehicles' inability to perform as warranted, but nonetheless failed to rectify the
23 situation and/or disclose the defective design. Moreover, each time Plaintiff has
24 informed Maserati of the defect, they have represented to him that the vehicle was
25 performing as it should. Under the circumstances, the remedies available under
26 any informal settlement procedure would be inadequate and any requirement that
27 Plaintiff resorts to an informal dispute resolution procedure and/or afford Maserati
28

1 a reasonable opportunity to cure its breach of warranties is excused and thereby
2 deemed satisfied.

3
4 96. Plaintiff and the California subclass members therefore justifiably
5 revoke acceptance of the vehicle.

6
7 97. As a direct and proximate result of Defendant's actions, Plaintiff and
8 the California subclass members are entitled to monetary damages in an amount to
9 be proven at the time of trial. Alternatively, Plaintiff and the California subclass
10 members are entitled to rescission of their respective purchase and/or lease
11 agreements with Defendant, and seek recovery of the amounts paid toward the
12 purchase and/or lease of the vehicle.

13
14 98. As a direct and proximate result of Defendant's actions, Plaintiff and
15 the California subclass members are entitled to a statutory penalty pursuant to Cal.
16 Civ. Code § 1794(c).

17
18 99. Additionally, Plaintiff and the California subclass members seek
19 attorney's fees and costs pursuant to Cal. Civ. Code § 1794(d), and all other
20 remedies permitted by law.

21
22 **COUNT VIII**

23 **Breach of Implied Warranty of Merchantability**

24 **(By California Subclass)**

25
26 100. Plaintiff repeats every allegation contained in the paragraphs above
27 and incorporates such allegations by reference. Plaintiff brings this cause of
28 action on behalf of himself and the California Subclass.

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101. Defendant designed, engineered, manufactured, tested, assembled, marked, advertised, sold and/or distributed the Class Vehicles leased and/or purchased by Plaintiff and members of the California Subclass.

102. Pursuant to both California Civil Code and California Commercial Code, Defendant implied a warranty of merchantability concerning the Class Vehicle that it was fit for the ordinary purpose for which such goods are used.

103. The product sold by Defendant and supplied to Plaintiff and members of the California Subclass was not of merchantable quality in that: (a) The product was unreasonably dangerous; and (b) the unreasonably dangerous condition existed when the goods left Defendant's hands.

104. As a result of the failure of the Class Vehicle to have the expected quality, instances have occurred where the vehicles' key fob is locked inside the vehicle, at times trapping small children inside the locked vehicle, a condition which could very easily result in death or serious bodily injury.

105. The failure of the Class Vehicles to have the expected quality was a substantial factor in causing harm to Plaintiff and members of the California Subclass.

106. Plaintiff and the California Subclass is therefore entitled to damages in an amount to be proven at trial.

1 107. Plaintiff and the California Subclass is further entitled to rescission of
2 their contracts and a return of any amounts paid toward the purchase of their Class
3 Vehicles.

4
5 108. Plaintiff and the California Subclass is further entitled to recover a
6 civil penalty pursuant to Cal. Civil Code §1794(e)(1) of two times the amount of
7 their actual damages. Plaintiff and the Subclass Members are also entitled to
8 attorneys' fees and costs pursuant to California Civil Code § 1794(d), and all other
9 remedies permitted by law.

10
11 **COUNT IX**

12 **Violation of the Consumers Legal Remedies Act,**

13 **Cal. Civ. Code § 1750, *et seq.***

14 **(By California Subclass)**

15
16 109. Plaintiff repeats every allegation contained in the paragraphs above
17 and incorporates such allegations by reference. Plaintiff brings this cause of
18 action on behalf of himself and the California Subclass.

19
20 110. This Cause of Action is brought pursuant to California's Consumers
21 Legal Remedies Act ("CLRA"), Cal. Civ. Code §§ 1750, *et. seq.*

22
23 111. The Class Vehicles are "goods" as defined in Cal. Civ. Code §
24 1761(a).

25
26 112. Plaintiff and the Class Members are "consumers" as defined in Cal.
27 Civ. Code § 1761(d), and Plaintiff, Class Members, and Maserati are "persons" as
28 defined in Cal. Civ. Code § 1761(c).

1
2 113. Maserati made numerous representations concerning the Class
3 Vehicles' safety and performance that were misleading, including marketing and
4 advertising the Class Vehicles as having "[s]tate of the art engineering," which
5 "inevitably enhances the Ghibli's reliability, for which Maserati is world
6 renowned." Maserati further marketed and advertised the Class Vehicles as
7 having mechanisms in place to prevent the inadvertent locking of the keys in the
8 vehicle.

9
10 114. In purchasing or leasing the Class Vehicles, Plaintiff and Class
11 Members were deceived by Maserati's failure to disclose that the Class Vehicles
12 allow the inadvertent locking of a driver's keys in the vehicle, at times trapping
13 small children inside the locked vehicle while the child's panicked parent looks on
14 helplessly, fearing for their child's safety.

15
16 115. Maserati's conduct, as hereinabove described, is in violation of
17 California Civil Code §§ 1770(a)(5), 1770(a)(7), 1770(a)(9), and 1770(a)(16) by
18 marketing and supplying a defective product to Plaintiff and Class Members,
19 negligently designing a product sold and/or leased to Plaintiff and Class Members,
20 failing to warn Plaintiff and Class Members of the defect in such product, failing
21 to recall such product, failing to remedy the defect in such product, failing to
22 disclose the defect in such product as required by law, breaching the express and
23 implied warranties for such product and fraudulently concealing the defect in such
24 product. These acts and practices constitute a continuing and ongoing unfair
25 and/or deceptive business activity, and justify the issuance of an injunctive relief
26 pursuant to Cal. Civ. Code § 1782(d).

1 116. As a direct and proximate result of Defendant's unlawful, unfair, and
2 deceptive business practices in violation of California Civil Code Cal. Civ. Code
3 § 1750 *et seq.*, Plaintiff and the Class Members have suffered and continue to
4 suffer harm by Defendant's conduct. Defendant's conduct presents a continuing
5 threat of harm to the public in that, among other things, Defendant will continue to
6 mislead consumers by selling vehicles that are not of the particular characteristics,
7 standard, quality, and/or grade represented by Defendant to consumers.
8 Furthermore, Defendant's conduct presents a continuing threat of harm to the
9 public in that Defendant will continue to make false representations to consumers
10 that Defendant has sold the vehicle in accordance to Defendant's prior
11 representations to such consumers, when in fact Defendant has not actually done
12 so.

13
14 117. Accordingly, Plaintiff and the Class Members seeks an injunction
15 that requires that Defendant immediately cease any and all acts of unfair and
16 fraudulent business acts as alleged herein, including, without limitation, making
17 false, misleading and deceptive representations as to the standard, quality, grade,
18 style, and/or model of the vehicles it sells or has sold, and to enjoin defendants
19 from continuing to engage in any such acts or practices in the future.
20 Additionally, Plaintiff and the Class Members seeks an order requiring Defendant
21 to accept the return of the Class Vehicles and to restore Plaintiff and the Class
22 Members to the position they were in prior to the sale and/or lease of the Class
23 Vehicles. Plaintiff and the Class Members further seek from Defendants
24 restitution of property pursuant to Cal Civ. Code § 1780(a)(3).

25
26 118. Additionally, Plaintiff and the Class Members seeks attorney's fees
27 and costs pursuant to Cal. Civ. Code § 1780(e), and all other remedies permitted
28 by law.

1 **COUNT X**

2 **Unlawful, Unfair, and Fraudulent Business Acts and Practices —**

3 **Violation of Cal. Bus. & Prof. Code § 17200, *et seq.***

4 **(By California Subclass)**

5
6 119. Plaintiff repeats every allegation contained in the paragraphs above
7 and incorporates such allegations by reference. Plaintiff brings this cause of
8 action on behalf of himself and the California Subclass.

9
10 120. This cause of action is brought under the California Unfair
11 Competition Law (“UCL”), California Business & Professions Code § 17200, *et*
12 *seq.*, which provides that “unfair competition shall mean and include any
13 unlawful, unfair or fraudulent business act or practice and unfair, deceptive,
14 untrue or misleading advertising and any act prohibited by Chapter I
15 (commencing with Section 17500) as Part 3 of Division 7 of the Business and
16 Professions Code.”

17
18 121. Maserati engaged in unfair, deceptive, untrue or misleading
19 advertising because they falsely marketed and advertised the Class Vehicles as
20 having mechanisms in place to prevent the inadvertent locking of the keys in the
21 vehicle.

22
23 122. As a result of Maserati’s misrepresentations alleged herein, Plaintiff
24 and the other California Class members overpaid for their Class Vehicles because
25 the value of the Class Vehicles was illusory.

26
27 123. Maserati’s misrepresentations and omissions alleged herein caused
28 Plaintiff and the other California Class members to make their purchases or leases

1 of their Class Vehicles. Absent those misrepresentations and omissions, Plaintiff
2 and the other California Class members would not have purchased or leased these
3 Vehicles, would not have purchased or leased these Vehicles at the prices they
4 paid, and/or would have purchased or leased less expensive alternative vehicles
5 that could travel a longer range while maintaining power and performance.

6
7 124. As one of the purchasers of the Class Vehicles who, as alleged
8 above, was exposed to the misrepresentations and would not have paid the prices
9 he did, if at all, if the true facts had been disclosed to him, Plaintiff has standing
10 and is entitled to seek all available remedies under the UCL.

11
12 125. As a private attorney general seeking to confer an important benefit
13 to upon the public at large, Crown seeks to recover its reasonable attorneys' fees
14 pursuant to California Civil Procedure Code § 1021.5.

15
16 126. Under California Business & Professions Code § 17203, as a result of
17 Maserati's violations of the UCL, Plaintiff and Class Members are entitled to
18 injunctive relief, restitution for out-of-pocket expenses, and an order disgorging
19 from Defendant and restoring to Members of the Class all monies that may have
20 been acquired by Defendant because of such unfair, deceptive and/or unlawful
21 business acts or practices.

22
23 127. Under California Civil Code § 3287(a), Plaintiff and Class Members
24 are further entitled to pre-judgment interest as a direct and proximate result of
25 Maserati's wrongful conduct. The amount on which interest is applied is a sum
26 certain and capable of calculation in an amount according to proof.

1 **PRAYER FOR RELIEF**

2
3 **WHEREFORE**, Plaintiff, for himself and all others similarly situated,
4 prays for relief against Defendants, jointly and severally under each Claim for
5 Relief in this Complaint as follows:

6
7 1. For an order certifying the Nationwide Class and California Subclass,
8 and appointing Plaintiff's counsel as Counsel for both Classes;

9
10 2. For an award of equitable relief as follows:

11
12 a. An order enjoining Maserati from continuing to engage, use, or
13 employ any unlawful, unfair and/or deceptive business acts or practices and
14 from refusing to engage in a corrective advertising campaign; and

15
16 b. An order awarding restitution for out-of-pocket expenses and
17 economic harm and disgorging and restoring all monies that may have been
18 acquired by Maserati because of such acts and/or practices;

19
20 3. For an award of damages as permitted by law;

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22 4. For an award of punitive damages for Maserati's malicious,
23 oppressive and deliberate fraud, as permitted by law;

24
25 5. For an order rescinding their contracts and a ordering the return of
26 any amounts paid toward the purchase of their Class Vehicles

JURY DEMAND

Plaintiff hereby demands a trial by jury on all issues so triable.

MLG AUTOMOTIVE LAW, APLC

Dated: May 19, 2016

By: /s/ Kathryn J. Harvey
Jonathan A. Michaels, Esq.
Kathryn J. Harvey, Esq.
Kristen R. Rodriguez, Esq.
Attorneys for Plaintiff,
Mohamed Elsayed

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