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13 **UNITED STATES DISTRICT COURT**
14 **CENTRAL DISTRICT OF CALIFORNIA**
15 **WESTERN DIVISION**

16 JORDAN COLOSIMO and EVAN WAHL,
17 individually and on behalf of all others
18 similarly situated,

Case No. 2:20-cv-04187

19 Plaintiffs,

CLASS ACTION COMPLAINT

20 v.

21 AMERICAN HONDA MOTOR CO., INC.,

22 Defendant.

JURY TRIAL DEMANDED

1 Plaintiffs Jordan Colosimo and Evan Wahl (collectively, “Plaintiffs”), acting
2 individually and on behalf of all others similarly situated, bring this action for damages
3 and equitable relief against Defendant American Honda Motor Co., Inc. (“Defendant”):

4 **NATURE OF THE CASE**

5 1. This is a class action brought against Defendant on behalf of all consumers
6 who purchased or leased Defendant’s model years 2016-2020 Acura MDX or 2019-2020
7 Acura RDX (“Vehicle(s)” or “Class Vehicle(s)”).

8 2. Defendant’s Vehicles are defective, unsafe and routinely behave in such a
9 way as to place drivers of the Vehicles in danger. Plaintiffs are informed and believe,
10 that the Vehicles contain design, manufacturing, and/or workmanship defects that cause
11 sudden, rapid deceleration, engine stalls, hesitation upon depressing the gas pedal, abrupt
12 shutdowns and shifts into neutral while driving, especially at highway speeds, due to
13 miscommunication among the computers and software that control the engine, throttle
14 and transmission (the “Defect”).

15 3. The Defect is inherent in each Class Vehicle and was present at the time of
16 sale or lease to each Class member.

17 4. The Defect in Defendant’s Vehicles renders the Vehicles unsafe and unfit
18 for use. Although numerous consumers have experienced the unsafe conditions
19 stemming from the Acura RDX and MDX Defect, and consumers have reported the
20 Defect to Defendant, Defendant has not repaired or otherwise addressed the Defect.

21 5. Defendant designed and manufactured the Class Vehicles, as well as the
22 electrical, throttle, engine, and transmission systems and the software that controls these
23 systems within the Vehicles.

24 6. In the United States, Defendant provides warranty coverage for the
25 Vehicles under one or more warranties. Defendant currently provides a New Vehicle
26 Limited Warranty that covers vehicles under the Acura brand for 4 years or 50,000 miles
27 and a Powertrain Limited Warranty for powertrain components for 6 years or 70,000
28 miles.

1 7. Because the Defect was present at the time of sale or lease of the Vehicles
2 and concealed from Plaintiffs and other owners and/or lessees of Vehicles, Defendant
3 was required to repair the Vehicles under the terms of the warranties. Yet, Defendant
4 has failed to honor its warranties.

5 8. Through the continued sale of the Vehicles, Defendant has engaged in
6 unfair, deceptive, and misleading consumer practices with respect to the marketing and
7 sale and/or lease of the Vehicles, and has breached its contracts and warranties with the
8 Vehicles' purchasers and lessees of Defendant's model years 2016-2020 Acura MDX or
9 2019-2020 Acura RDX.

10 9. Plaintiffs bring this action pursuant to Fed. R. Civ. P. ("Rule") 23 for
11 damages and other relief arising from Defendant's unfair and deceptive business
12 practices. Defendant has violated California consumer protection acts, and Defendant
13 has breached its express and implied warranties. Plaintiffs allege violations of the
14 California Consumers Legal Remedies Act, Civil Code §§ 1750, *et seq.* ("CLRA");
15 Unfair Competition Law, California Business and Professions Code §§ 17200, *et seq.*
16 ("UCL"); breach of express warranty under California law; breach of the implied
17 warranty of merchantability under California law; as well as violations of the Magnuson-
18 Moss Warranty Act, 15 U.S.C. §§ 2301, *et seq.* ("MMWA").

19 **PARTIES**

20 10. Plaintiff Jordan Colosimo ("Plaintiff Colosimo") is a citizen and resident of
21 West Palm Beach, Florida. Plaintiff Colosimo leased a 2019 Acura MDX from the Acura
22 dealership, and has two years remaining on his three-year lease.

23 11. Since the start of his lease, Plaintiff Colosimo noticed hesitation and
24 deceleration issues while driving the Vehicle. Plaintiff Colosimo took the Vehicle to the
25 Acura dealership where they kept it for over four weeks. Upon information and belief,
26 the dealership changed the rear differential and the brake booster, and the dealership
27 referred his case to Defendant's Corporate Technical Division. The dealership indicated
28 that it had repaired the Vehicle Defect, but it has not. Defendant's Corporate Technical

1 Division contacted him, and Plaintiff Colosimo reported to the Corporate Technical
2 Division that he was still experiencing problems with his Vehicle.

3 12. Plaintiff Colosimo’s Vehicle now performs worse than it did before he took
4 it into the dealership. The Vehicle still has hesitation issues, and no one in Plaintiff
5 Colosimo’s family is willing to drive the Vehicle for its safety and reliability issues.

6 13. Plaintiff Evan Wahl (“Plaintiff Wahl”) is a citizen and resident of
7 California. Plaintiff Wahl owns a 2020 Acura RDX that he purchased from the Spreen
8 Acura dealership in Riverside, California.

9 14. Since his purchase, Plaintiff Wahl has noticed hesitation when depressing
10 the gas pedal, and that the Vehicle was “jumpy” in lower gears every time he drives the
11 Vehicle. Plaintiff Wahl took the Vehicle to the Acura dealership in Escondido,
12 California, and the Acura service department told Plaintiff Wahl that nothing was wrong
13 with his Vehicle.

14 15. Defendant American Honda Motor Co., Inc. is a corporation organized and
15 in existence under the laws of the State of California and registered to do business in the
16 State of California. Defendant is headquartered in California at 1919 Torrance
17 Boulevard, Torrance, CA 90501. Defendant conducts business and operates retail
18 locations throughout the State of California and the United States. Defendant does
19 substantial business in California, with a significant portion of the sales and leases made
20 in California.

21 16. The conduct that forms the basis for each and every Class member’s claims
22 against Defendant, such as developing, marketing, and implementing the actions
23 complained of herein, emanated from Defendant’s headquarters in California, and is
24 consistent with directives of Defendant’s personnel in California.

25 **JURISDICTION AND VENUE**

26 17. This Court has jurisdiction over this action under the Class Action Fairness
27 Act (“CAFA”), 28 U.S.C. § 1332(d). There are at least 100 members in the proposed
28 classes, the aggregated claims of the individual Class members exceed the sum or value

1 of \$5,000,000.00 exclusive of interest and costs, and at least one Plaintiff is a citizen of
2 a state different from Defendant.

3 18. This Court may exercise jurisdiction over Defendant because Defendant’s
4 headquarters are located in Torrance, California, and Defendant does business
5 throughout this District. Thus, Defendant has established sufficient contacts in this
6 District such that personal jurisdiction is appropriate.

7 19. Venue is proper in this District under 28 U.S.C. § 1391(a) because a
8 substantial part of the events or omissions giving rise to Plaintiffs’ claims occurred in
9 this District.

10 **FACTUAL ALLEGATIONS**

11 **The Defect**

12 20. In a traditional setup for vehicles with gasoline engines, there are physical
13 connections between the gas pedal and the throttle to constrain or expand the amount of
14 air going into the engine. The more one presses the gas pedal, the more air enters the
15 engine, and sensors detect that air and increase the throttle position. The process of
16 increasing the throttle triggers an instruction to the fuel injectors to provide more fuel to
17 the engine, generating more power and ultimately, accelerating.

18 21. By contrast, Defendant’s throttle system is a “throttle by wire” system,
19 where, instead of cables, there is a sensor attached to the gas pedal that measures how
20 far it has been depressed. The measurement is sent to the throttle control computer,
21 which then sends a command to the throttle body to limit or expand the amount of air
22 going into the engine.

23 22. If the throttle is stuck open, a vehicle can be thrown into neutral, or a “limp
24 mode” in order to prevent engine, transmission, or other vehicle damage. By contrast, if
25 the throttle does not respond to the command to open, it will fail to allow more air into
26 the engine causing deceleration of the vehicle.

27 23. Upon information and belief, the Vehicles suffer from a Defect in design,
28 manufacture, and/or workmanship where the throttle receives conflicting instructions

1 from the gas pedal, the ECM, and/or the TCM. In such situations, the throttle will
2 malfunction, and either becomes stuck in position or otherwise fails to follow the
3 command of the driver. This malfunction will cause the Vehicles to hesitate, stall, shut
4 down, go into limp mode, or decelerate instead of accelerate at the command of the
5 driver depressing the gas pedal.

6 24. As a result of the Defect, Plaintiffs and Class members are unable to use
7 their Vehicles as advertised and have incurred damages as a result. The Defect is a
8 significant safety concern, and, though numerous consumers have specifically
9 complained about it, Defendant has failed to adequately address the Defect. Plaintiffs
10 and members of the proposed classes cannot rely upon their Vehicles safely transporting
11 them from place to place because, at any time, the Vehicles may spontaneously
12 decelerate, increasing the likelihood of accidents on the road, serious injury, and even
13 death.

14 25. Defendant knew or should have known that the Defect was not known or
15 reasonably discoverable by Plaintiffs and Class members before they purchased or
16 leased the Vehicles.

17 26. Upon information and belief, before Plaintiffs and Class members
18 purchased or leased their Vehicles, and since pre-production road testing of the Vehicles
19 starting late 2014, Defendant knew about the Defect through sources not available to
20 consumers. As such, Defendant knew or should have known that the Vehicles experience
21 a failure to accelerate, shifting into neutral, and sudden stalls and shutdowns while being
22 driven.

23 **Complaints Regarding the Vehicle Defect**

24 27. Defendant also was provided notice by numerous consumer complaints to
25 Defendant and Acura dealers, testing conducted in response to those complaints, high
26 failure rates and replacement part sales data, and other aggregate data from Acura dealers
27 about the problem. Publicly available facts confirm Defendant's knowledge.

1 28. Indeed, the Internet is littered with consumer complaints about the sudden
2 deceleration of the Vehicles, and terrifying accounts of “near-misses.” For example, on
3 the vehie.com website, there are numerous complaints regarding the deceleration
4 problem, and the safety issues associated with, the Vehicles. The website indicates that
5 there are 276 complaints about the Acura MDX, and at least 90 of them pertain to the
6 power train of the Acura MDX, 41 of them concern the engine, and 30 pertain to vehicle
7 speed control.¹ The vehie website also indicates that it has published 197 complaints
8 about the Acura RDX, 40 of which pertain to the engine, 20 pertain to the power train,
9 and 13 pertain to vehicle speed control.²

10 29. One anonymous consumer wrote on January 3, 2020 of the 2019 Acura
11 RDX [spelling and grammar errors in original]:

12 MY BRAND NEW 2019 Acura RDX THAT HAD 9200 MILES ON IT
13 SHUT DOWN ON ME ON THE FREEWAY. IT WAS RAINING AND I
14 PULLED OUT TO PASS, GOING ABOUT 75 MPH, AND IT WENT INTO
15 WHAT I NOW KNOW IS LIMP MODE AND THE ENGINE LIGHT
16 FLASHED ON AND OFF AND THE ENGINE WAS MAKING A
17 DIFFERENT SOUND THAN NORMAL. I HAD SOMEONE
18 TAILGATING ME, SO I AM LUCKY IT DIDNT CAUSE AN ACCIDENT.
19 GOT PULLED OVER AND CALLED THE DEALERSHIP AND THEY
20 SAID IT NEEDED TO COME IN. THEY SPECULATE RAINDROPS GOT
21 ON THE ENGINE FILTER (FORGET THE NAME) AND THE CAR
22 THOUGHT IT WAS MALFUNCTIONING AND SHUT DOWN. I HADNT
23 TURNED THE CAR OFF BECAUSE I WAS AFRAID ID BE STRANDED,
24 SO I DONT KNOW IF IT WOULD HAVE RESET ITSELF. STILL, I
25 BOUGHT THIS CAR FOR DEPENDABILITY AND IVE LOST ALL
26 TRUST. I HAD HAD THREE ACURA CARS BEFORE THIS. IVE BEEN
27 TOLD THERES NO FIX AND ENGINEERS ARE WORKING ON IT BUT
28 THEY COULDNT RECREATE THE SITUATION AND ITS WORKING
OKAY NOW. THIS IS A SAFETY ISSUE. I COULD HAVE BEEN ON A
TWO-LANE PASSING AND COULDNT GET BACK IN WHEN IT SHUT
DOWN BEFORE AN ONCOMING CAR! SO I CANT DRIVE IT IN THE
RAIN OR PASS NOW? THE DEALERSHIP HAD ONE OTHER RDX DO
THE SAME THING AND IM READING SEVERAL ONLINE. I FEEL
LIKE ITS RUSSIAN ROULETTE. DO I JUST HAVE A LEMON OR IS IT
A DESIGN FLAW? IM SCARED! THE CAR IS STILL AT THE
DEALERSHIP, BUT THERE'S NOTHING THAT CAN BE DONE

¹ https://www.vehie.com/complaints/acura?vehie_model=mdx (last accessed May 7, 2020).

² https://www.vehie.com/complaints/acura?vehie_model=rdx (last accessed May 7, 2020).

1 BECAUSE EVERYTHING CHECKS OUT. THEY DON'T HONESTLY
2 KNOW WHAT TO DO, SO THE POSSIBILITY OF BEING STRANDED
3 OR MISSING A FLIGHT OR BEING INJURED OR KILLED IS NOT OFF
4 THE TABLE! THEY KNOW THEY HAVE A PROBLEM BUT NOT
5 MAKING IT PUBLIC KNOWLEDGE. IT'S A BRAND NEW DESIGN SO
6 THERE MUST BE A FLAW.³

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18 30. Another consumer wrote on December 23, 2019 of the 2019 Acura RDX
19 [spelling and grammar errors in original]:

20 I was driving on a two-lane highway in rural mississippi. Once on a
21 straightaway and with plenty of space to pass, i attempted to do so. As soon
22 as i accelerated, the pedal went to the floor, i lost all power, engine light
23 flashed on, and i was trapped in the left lane with oncoming traffic racing at
24 me. With less than two seconds to spare and with the help of downhill motion,
25 i was able to squeeze ahead of the vehicle i was attempting to pass and into
26 the right lane just as oncoming traffic whizzed by. I sat on the shoulder of the
27 highway and literally shook for about an hour. The car was towed to acura of
28 jackson. While sitting at their dealership, i found all these similar complaints.
Like all the others, no codes showed up and nothing could be done. They kept
the car for three days and could not get it to replicate the situation. I drove it
back to texas and am just waiting for the issue to happen again... Praying that
if and when it does, it will not be a life-threatening situation this time. Why is
this continuing to be reported and nothing is being done? Others reported this
happening in heavy rain. I was traveling at 70mph on a wet road at the time.
It was cloudy, but it was not raining at the time. The car was in comfort mode
at the time.⁴

31. On March 15, 2020, another consumer wrote about the 2017 Acura MDX
[spelling and grammar errors in original]:

WE WERE DRIVING 70MPH ON THE INTERSTATE I10 HEADED TO
NEW ORLEANS WHEN OUR VEHICLE SUDDENLY AND WITHOUT
WARNING LOST ACCELERATION THE DASHBOARD LITE UP LIKE
A CHRISTMAS TREE TELLING ME TO PULL OVER IMMEDIATELY
AND THEN ELECTRIC PARKING BRAKE ERROR, TRANSMISSION
ERROR AND AN EMISSIONS ERROR ALL AT ONCE. THIS WAS A
VERY DANGEROUS INCIDENT AND WE SOMEHOW MANAGED TO
GET TO THE SMALL SIDE OF THE ROAD ON THIS BUSY
INTERSTATE. IT SCARED THE BOTH US! THE MDX WOULD NOT
GO INTO DRIVE OR NEUTRAL? WHILE WAITING FOR THE TOW
TRUCK WE ALMOST WERE SIDE SWIPED. THIS CAR WAS

³ https://www.vehie.com/complaints/acura?vehie_model=rdx (last accessed May 7, 2020).

⁴ *Id.*

1 PURCHASED FOR THE SAFETY FEATURES AND IT HAS REALLY
2 CAUSED MY WIFE AND I TO LOSE ALL FAITH AND NOW CANNOT
3 DEPEND ON IT. OUR VEHICLE HAS 44K ON IT AND IT WAS EVEN A
4 ACURA CERTIFIED PRE-OWNED INSPECTED VEHICLE. I HAVE
5 LEARNED THERE IS A CLASS ACTION LAWSUIT FOR THIS SAME
6 TYPE OF INCIDENT AND MODEL OF ACURA. THIS CAR IS
7 DANGEROUS AND ACURA BETTER OWN UP TO THIS FAULTY
8 VEHICLE. THIS NEEDS TO BE RECALLED!⁵

6 32. Yet another consumer posted about the deceleration on September 20, 2018
7 about the 2017 Acura MDX [spelling and grammar errors in original]:

8 THE TRANSMISSION IN THE CAR DECELERATES UNEXPECTEDLY,
9 THE VEHICLE STALLS WHEN TRYING TO ACCELERATE, IT ALSO
10 JERKS WHEN SHIFTING GEARS, ALL OF THESE ISSUES ARE
11 EXTREMELY DANGEROUS WHEN DRIVING ON THE HIGHWAY,
12 SWITCHING LANES AND SIMPLY DRIVING AND TRYING TO
13 MANEUVER FROM A STOP. WE HAVE ALSO HAD A WARNING POP
14 UP ON THE DASHBOARD TO IMMEDIATELY STOP THE VEHICLE IN
15 THE MIDDLE OF THE STREET BECAUSE THERE IS AN ISSUE WITH
16 THE TRANSMISSION, WE TOOK THE CAR TO THE DEALERSHIP
17 AND THEY SAID THEY DONT SEE THE SPECIFIC CODE AND TO
18 JUST HAVE IT TOWED IN NEXT TIME. I BOUGHT THIS CAR FOR
19 SAFETY, WE JUST HAD A BABY AND NOW I AM SCARED TO DRIVE
20 THE CAR ON A DAILY BASIS, WHAT IF IT DOESNT ACCELATE
21 WHEN NEEDED AND WE GET HIT! WE HAVE BROUGHT THE
22 TRANSMISSION ISSUE UP MUTLIPLE TIMES; HOWEVER, ALL WE
23 HAVE BEEN TOLD IS THAT THIS IS A NORMAL THING FOR
24 THE Acura MDX 2017 YEAR WE HAVE. THIS IS NOT NORMAL, IT IS
25 EXTREMELY UNSAFE.⁶

19 33. Other car review websites contain similar accounts. For example, one (of
20 many consumers) reported on the acurazine.com website on July 23, 2018 of his 2019
21 Acura:

22 I was driving on the highway about 75mph and I was trying to pass someone.
23 Then my engine cutout and the engine light came on. I was unable to
24 accelerate I believe it's called "limp" mode. I had to pull over, shut the car off
25 and turn it back on and everything is fine. Has anyone had this issue? I use
26 premium gas, and the car has 1500 miles on it.⁷

26 ⁵ https://www.vehie.com/complaints/acura?component_id=10 (last accessed May 7, 2020).

27 ⁶ *Id.*

28 ⁷ <https://acurazine.com/forums/3g-rdx-problems-fixes-458/limp-mode-2019-spec-971802/> (last
accessed May 7, 2020).

1 34. In addition to the myriad consumer reports and complaints available on
2 public fora, Defendant should have learned of this widespread Defect simply from the
3 sheer number of reports received from dealerships and from customer complaints
4 directly to Defendant. Defendant's customer relations department collects and analyzes
5 field data including repair requests made at dealerships, technical reports prepared by
6 engineers who have reviewed vehicles for which warranty coverage is being requested,
7 parts sales reports, and warranty claims data.

8 35. Yet, on information and belief, no Class member has received a repair from
9 Defendant or any Defendant authorized dealer that permanently resolves the Defect.

10 **Defendant's Warranty**

11 36. Defendant's Vehicles are covered by a New Vehicle Limited Warranty (4-
12 year/50,000-mile limited warranty) and a Powertrain Limited Warranty (6-year/70,000-
13 mile powertrain limited warranty), under which Defendant will repair or replace any part
14 that is defective in material or workmanship under normal use.

15 37. The Vehicles are defective insofar as they routinely experience unintended
16 and uncontrollable deceleration while being driven under normal circumstances.
17 Defendant has failed to warn purchasers and lessees about the Defect and has failed to
18 instruct purchasers and lessees as to how they should respond when their Vehicles
19 manifest the Defect.

20 38. Defendant did not include any such warnings or instructions in its owner's
21 guides or manuals, or in any representation about the Vehicles. In fact, Defendant has
22 made no efforts to make purchasers and lessees aware of any deceleration issues with
23 the Vehicles.

24 39. Plaintiffs and the other Class members reasonably relied on Defendant's
25 warranties regarding the safety and reliability of their Vehicles, including the
26 representation that the Vehicles contained no known defects at the time of sale.

27 40. Despite warranting that Defendant will "repair or replace" (including the
28 parts and labor charges) any powertrain component defective in material or

1 workmanship, Defendant sells its Vehicles knowing that the Vehicles uncontrollably
2 decelerate. Defendant omits that the Vehicles may unsafely decelerate and omits how an
3 operator should react should this happen. Despite requests by Plaintiffs and Class
4 members, Defendant has refused to repair this known Defect, which is a serious safety
5 hazard.

6 41. Defendant's actions and omissions constitute a breach of its warranties.
7 Further, Defendant's advertised statements that the Vehicles offer superior performance
8 and control in high-performance driving conditions are false and deceptive, and
9 Defendant's omissions regarding the Defect constitute breach of express and implied
10 warranties.

11 **CALIFORNIA LAW APPLIES NATIONWIDE TO THESE CLAIMS**

12 42. The State of California has a significant interest in regulating the conduct
13 of businesses operating within its borders. California, which seeks to protect the rights
14 and interests of California and all residents and citizens of the United States against a
15 company headquartered and doing business in California, has a greater interest in the
16 claims of Plaintiffs and Class members than any other state or country and is most
17 intimately concerned with the claims and outcome of this litigation.

18 43. The principal place of business of Defendant, located at 1919 Torrance
19 Boulevard in Torrance, California 90501, is the "nerve center" of its business
20 activities—the place where its high-level officers direct, control, and coordinate the
21 corporation's activities, including its marketing, development, and major policy,
22 financial, and legal decisions.

23 44. Defendant's response to the allegations herein, and corporate decisions
24 surrounding such response, were made from and in California.

25 45. Defendant's breaches of duty to Plaintiffs and the Class emanated from
26 California, and the Vehicles at issue herein were designed, manufactured, and tested in
27 California.

28

1 46. Application of California law with respect to Plaintiffs' and Class
2 members' claims is neither arbitrary nor fundamentally unfair because California has a
3 state interest in the claims of the Plaintiffs and the Class based upon Defendant's
4 significant and ongoing contacts with California.

5 47. Under California's choice of law principles, which are applicable to this
6 action, the common law of California applies to the common law claims of all Class
7 members. Additionally, given California's significant interest in regulating the conduct
8 of businesses operating within its borders, California's consumer protection laws may
9 be applied to nonresident Plaintiffs and Class members.

10 **CLASS ACTION ALLEGATIONS**

11 48. Plaintiffs bring this lawsuit individually and as a class action on behalf all
12 others similarly situated pursuant to Federal Rules of Civil Procedure ("Rule") 23(a),
13 (b)(2), and/or (b)(3). This action satisfies the numerosity, commonality, typicality,
14 adequacy, predominance, and superiority requirements of Rule 23.

15 49. The Nationwide Class and Sub-Class are defined as:

16 All purchasers or lessees of Defendant's model years 2016-2020
17 Acura MDX or 2019-2020 Acura RDX.

18 (collectively, the "Nationwide Classes").

19 50. The alternative California Class and Sub-Class are defined as:

20 All purchasers or lessees in California of Defendant's model
21 years 2016-2020 Acura MDX or 2019-2020 Acura RDX.

22 (collectively, the "California Classes," and collectively with the Nationwide Classes, the
23 "Classes").

24 51. Excluded from the Classes are: (1) Defendant, any entity or division in
25 which Defendant has a controlling interest, and its legal representatives, officers,
26 directors, assigns, and successors; (2) the Judge to whom this case is assigned and the
27 Judge's staff; and (3) those persons who have suffered personal injuries as a result of the
28 facts alleged herein. Plaintiffs reserve the right to amend the Class definitions if

1 discovery and further investigation reveal that the Classes should be expanded or
2 otherwise modified.

3 52. Numerosity: Although the exact number of Class members is uncertain and
4 can only be ascertained through appropriate discovery, the number is great enough such
5 that joinder is impracticable. The disposition of the claims of these Class members in a
6 single action will provide substantial benefits to all parties and to the Court. The Class
7 members are readily identifiable from information and records in Defendant's
8 possession, custody, or control.

9 53. Typicality: The claims of the representative Plaintiffs are typical in that
10 Plaintiffs, like all Class members, are or were owners of Defendant's model years 2016-
11 2020 Acura MDX or 2019-2020 Acura RDX. Plaintiffs, like all Class members, have
12 been damaged by Defendant's misconduct in that, *inter alia*, Plaintiffs purchased or
13 leased a defective Vehicle that renders the Vehicle unsafe and unusable. Furthermore,
14 the factual bases of Defendant's misconduct are common to all Class members and
15 represent a common thread of fraudulent, deliberate, and negligent misconduct resulting
16 in injury to all Class members.

17 54. Commonality: There are numerous questions of law and fact common to
18 Plaintiffs and Class members that predominate over any individual questions. These
19 common legal and factual issues include the following:

- 20 a. Whether the Vehicles suffer from one or more Defect;
- 21 b. Whether the Defect in the Vehicles causes unintended and uncontrollable
- 22 deceleration or other performance issues related to the acceleration of the
- 23 Vehicles;
- 24 c. Whether the Defect creates or constitutes an unreasonable safety risk;
- 25 d. Whether the Vehicles have suffered a diminution of value;
- 26 e. Whether Defendant had a duty to disclose the Defect to Plaintiffs and Class
- 27 members;
- 28

- 1 f. Whether Defendant knew or should have known of the existence of the
- 2 Defect;
- 3 g. Whether Defendant's marketing and advertising of the Vehicles was false
- 4 and misleading;
- 5 h. Whether Defendant concealed facts from Plaintiffs and Class members
- 6 about the performance and safety of the Vehicles;
- 7 i. Whether Defendant concealed facts from Plaintiffs and Class members
- 8 about the Defect;
- 9 j. Whether Defendant knew or should have known that its representations
- 10 were false, or that its representations omitted material facts;
- 11 k. Whether Defendant's conduct was a violation of the CLRA;
- 12 l. Whether Defendant's conduct was a violation of the UCL;
- 13 m. Whether Defendant breached its warranties under the MMWA;
- 14 n. Whether Plaintiffs and other Class members have sustained damages as a
- 15 result of Defendant's wrongful business practices described herein, and the
- 16 proper measure of damages.

17 55. Adequate Representation: Plaintiffs will fairly and adequately protect the

18 interests of Class members. Plaintiffs have retained attorneys experienced in the

19 prosecution of class actions, including consumer and product defect class actions, and

20 Plaintiffs intend to prosecute this action vigorously.

21 56. Predominance and Superiority: Plaintiffs and Class members have all

22 suffered and will continue to suffer harm and damages as a result of Defendant's

23 unlawful and wrongful conduct. A class action is superior to other available methods

24 for the fair and efficient adjudication of the controversy. Absent a class action, Class

25 members would likely find the cost of litigating their claims prohibitively high and

26 would therefore have no effective remedy at law. Because of the relatively small size of

27 Class members' individual claims, it is likely that few Class members could afford to

28 seek legal redress for Defendant's misconduct. Absent a class action, Class members

1 will continue to incur damages, and Defendant’s misconduct will continue without
2 remedy. Class treatment of common questions of law and fact would also be a superior
3 method to multiple individual actions or piecemeal litigation in that class treatment will
4 conserve the resources of the courts and the litigants and will promote consistency and
5 efficiency of adjudication.

6
7 **FIRST CAUSE OF ACTION**
8 **Violation of the California Consumers Legal Remedies Act**
9 **Cal. Civ. Code § 1750, et seq.**
10 **(On behalf of the Nationwide Classes or,**
11 **in the Alternative, the California Classes)**

12 57. Plaintiffs hereby incorporate by reference the allegations contained in the
13 preceding paragraphs of this Complaint.

14 58. Plaintiffs bring this cause of action individually and on behalf of the
15 Nationwide Classes or, in the alternative, the California Classes against Defendant.

16 59. Defendant is a “person” as defined by Cal. Civ. Code § 1761(c).

17 60. Plaintiffs and Class members are “consumers” within the meaning of Cal.
18 Civ. Code § 1761(d).

19 61. Plaintiffs’ and Class members’ Vehicles constitute “goods” as defined by
20 Cal. Civ. Code § 1761(a).

21 62. Plaintiffs’ and Class members’ purchases and/or leases of the Vehicles
22 constitute “transactions,” as defined by Cal. Civ. Code § 1761(e).

23 63. Plaintiffs’ and Class members’ use their Vehicles for personal, family, and
24 household purposes as meant by Cal. Civ. Code § 1761(d).

25 64. Venue is proper under Cal. Civ. Code § 1780(d) because a substantial
26 portion of the transactions at issue occurred in this District. (*See Declaration of Tina*
27 *Wolfson, attached hereto.*)

28 65. By failing to disclose and concealing the defective nature of the Class
Vehicles from Plaintiffs and prospective Class members, Defendant violated California
Civil Code § 1770(a), as it represented that the Vehicles had characteristics and benefits

1 that they do not have and represented that the Vehicles were of a particular standard,
2 quality, or grade when they were of another.

3 66. Defendant's active concealment, failure to disclose, and subsequent
4 misrepresentations violated the California Consumers Legal Remedies Act ("CLRA")
5 in the following manner:

6 a. In violation of Section 1770(a)(5), Defendant made
7 misrepresentations and omissions concerning the benefits, performance, and reliability,
8 safety and performance of the Vehicles;

9 b. In violation of Section 1770(a)(7), Defendant misrepresented that the
10 Vehicles were of a particular standard, quality, and/or grade when they were of another
11 (unsafe and under-performing);

12 c. In violation of Section 1770(a)(9), Defendant advertised its Vehicles
13 with an intent not to sell them as advertised (by selling them with unsafe and
14 underperforming acceleration systems it knew contained a Defect);

15 d. In violation of Section 1770(a)(16), Defendant misrepresented that
16 Vehicles were supplied in accordance with previous representations when they were not
17 (by selling them with unsafe and underperforming acceleration systems it knew
18 contained a Defect).

19 67. Defendant knowingly misrepresented and omitted material facts regarding
20 the Vehicles' safety and performance, and such misrepresentations or omissions were
21 material to Plaintiffs and Class members because a reasonable person would have
22 considered safety and performance material.

23 68. Plaintiffs and Class members relied upon Defendant's material
24 nondisclosures and misrepresentations, and had Plaintiffs and Class members known the
25 truth about the safety and performance issues in the Vehicles, they would not have
26 purchased the Vehicles.

27 69. As a direct and proximate result of Defendant's material nondisclosures and
28 misrepresentations, Plaintiffs and Class members have been irreparably harmed.

1 70. On behalf of the Class, Plaintiffs seek injunctive relief in the form of an
2 order enjoining Defendant from making such material misrepresentations and failing to
3 disclose or actively concealing its aforementioned practices. Plaintiffs also seek
4 compensatory and punitive damages under the CLRA, and attorneys' fees and costs.

5 71. In accordance with Cal. Civ. Code § 1782(a), concurrently with the filing
6 of this Complaint, Plaintiffs' counsel served Defendant with notice of the CLRA
7 violations by certified mail return receipt requested.

8 72. If Defendant fails to provide appropriate relief for its CLRA violations
9 within 30 days of receipt of Plaintiffs' notification letter, Plaintiffs will amend this
10 Complaint to also seek compensatory and exemplary damages as permitted by Cal. Civ.
11 Code §§ 1780 and 1782(b).

12
13 **SECOND CAUSE OF ACTION**
14 **Violations of the California Unfair Competition Law**
15 **Cal. Bus. & Prof. Code § 17200, *et seq.***
 (On behalf of the Nationwide Classes or,
 in the Alternative, the California Classes)

16 73. Plaintiffs hereby incorporate by reference the allegations contained in the
17 preceding paragraphs of this Complaint.

18 74. Plaintiffs bring this cause of action individually and on behalf of the
19 Nationwide Classes or, in the alternative, the California Classes against Defendant.

20 75. California Business & Professions Code § 17200, *et seq.* ("UCL") prohibits
21 acts of "unfair competition," including any "unlawful, unfair or fraudulent business act
22 or practice" and "unfair, deceptive, untrue or misleading advertising."

23 76. Defendant knew the Vehicles were defective in design, materials,
24 manufacture, and/or workmanship, would fail prematurely, and were not suitable for
25 their intended use.

26 77. In failing to disclose the Defect, Defendant has knowingly and intentionally
27 concealed material facts and breached its duty not to do so.

28

1 78. In failing to disclose the Vehicle Defect, Defendant knowingly,
2 intentionally, and/or negligently concealed material facts and breached its duty not to do
3 so.

4 79. Defendant was under a duty to Plaintiffs and Class members to disclose the
5 Defect in the Vehicles because:

- 6 a) Defendant was in a superior position to know the true state of facts
7 about the acceleration system contained in the Vehicles;
8 b) Defendant actively concealed the Defect from Plaintiffs and Class
9 members; and
10 c) The Defect poses a safety risk to Plaintiffs.

11 80. The facts concealed by Defendant to Plaintiffs and Class members are
12 material in that a reasonable person would have considered them to be important in
13 deciding whether to purchase or lease Vehicles. Had they known of the Defect, Plaintiff
14 and the other Class members would have paid less for the Vehicles or would not have
15 purchased or leased them at all.

16 81. Defendant continued to conceal the Defect or failed to remedy the Defect
17 even after the Defect was independently exposed to consumers. Defendant continues to
18 fail to remedy the Defect.

19 82. Defendant has violated and continues to violate the UCL's prohibition
20 against engaging in "unlawful" business acts or practices, by, among other things,
21 violating the CLRA.

22 83. Defendant's acts, omissions, and conduct also violate the unfair prong of
23 the UCL because Defendant's acts, omissions, and conduct, as alleged herein, offended
24 public policy and constitutes immoral, unethical, oppressive, and unscrupulous activities
25 that caused substantial injury, including to Plaintiffs and Class members. The gravity of
26 Defendant's conduct outweighs any potential benefits attributable to such conduct and
27 there were reasonably available alternatives to further Defendant's legitimate business
28 interests, other than Defendant's conduct described herein.

1 84. By failing to disclose and actively concealing the Defect in its Vehicles,
2 Defendant engaged in a fraudulent business practice that is likely to deceive a reasonable
3 consumer.

4 85. As a direct and proximate result of Defendant's unfair and deceptive
5 practices, Plaintiffs and Class members have suffered and will continue to suffer actual
6 damages.

7 86. Defendant has been unjustly enriched and should be required to make
8 restitution to Plaintiffs and the Class pursuant to Sections 17203 and 17204 of the UCL.

9
10 **THIRD CAUSE OF ACTION**
11 **Breach of Express Warranty – Magnuson-Moss Warranty Act**
12 **(15 U.S.C. §§ 2301, *et. seq.*)**
13 **(On behalf of the Nationwide Classes)**

14 87. Plaintiffs hereby incorporate by reference the allegations contained in the
15 preceding paragraphs of this Complaint.

16 88. The defective Vehicles are consumer products as defined in 15 U.S.C. §
17 2301(1).

18 89. Plaintiffs and Class members are consumers as defined in 15 U.S.C. §
19 2301(3).

20 90. Defendant is a supplier and warrantor as defined in 15 U.S.C. § 2301(4)
21 and (5).

22 91. Defendant's express warranty is a written warranty within the meaning of
23 15 U.S.C. § 2301(6).

24 92. Defendant provided a 4-year, 50,000-mile New Vehicle Limited Warranty,
25 and a 6-year, 70,000-mile Powertrain Limited Warranty. Defendant breached the express
26 warranties by selling and leasing Class Vehicles with the Defect, requiring repair or
27 replacement within the warranty period, and refusing to honor the express warranties by
28 repairing or replacing, free of charge, powertrain components that contribute to the
Defect. In addition, when authorized dealers did attempt repairs, Defendant nevertheless

1 breached the express warranties by failing to permanently repair the Defect in Plaintiffs’
2 and Class members’ Vehicles, thus failing to actually repair the Defect.

3 93. Defendant’s breach of the express warranties has deprived Plaintiffs and
4 Class members of the benefit of their bargain by failing to provide Vehicles capable of
5 accelerating, especially at highways, without stalling, suddenly decelerating, shutting
6 down, or shifting to neutral.

7 94. Defendant’s refusal to provide an adequate repair or replacement of the
8 Vehicles violates 15 U.S.C. § 2304.

9 95. Defendant has been afforded a reasonable opportunity to cure its breach,
10 including when Plaintiffs and Class members brought their Vehicles in for diagnoses
11 and repair of the Defect.

12 96. Plaintiffs and Class members have suffered damages directly and
13 proximately caused by Defendant’s breach of the express warranties and are entitled to
14 recover damages including actual damages, consequential damages, specific
15 performance, diminution in value, costs, attorneys’ fees, and/or other relief as
16 appropriate.

17 **FOURTH CAUSE OF ACTION**
18 **Breach of Implied Warranty – Magnuson-Moss Warranty Act**
19 **(15 U.S.C. §§ 2301, *et. seq.*)**
20 **(On behalf of the Nationwide Classes)**

21 97. Plaintiffs hereby incorporate by reference the allegations contained in the
22 preceding paragraphs of this Complaint.

23 98. Plaintiffs bring this cause of action individually and on behalf of the
24 Nationwide Classes against Defendant.

25 99. The Vehicles are “consumer products” within the meaning of 15 U.S.C. §
26 2301.

27 100. Plaintiffs and Class members are “consumers” within the meaning of 15
28 U.S.C. § 2301 because they are persons entitled under applicable state law to enforce
against the warrantor the obligations of its express and implied warranties.

1 101. Defendant is a “supplier” of consumer products to consumers and a
2 “warrantor” within the meaning of 15 U.S.C. § 2301.

3 102. 15 U.S.C. § 2310(d)(1)(A) and/or § 2310(d)(3)(C) is satisfied because
4 Plaintiffs properly invoke jurisdiction under the Class Action Fairness Act (“CAFA”).

5 103. Defendant provided Plaintiffs and Class members with an implied warranty
6 that the Vehicles are merchantable, pass without objection in the trade, are fit for the
7 ordinary purposes for which they were sold, are adequately labeled, and conform to the
8 promises and affirmations on the label.

9 104. However, the Vehicles are not merchantable because they are not fit for
10 their ordinary purpose of providing reasonably reliable and safe transportation because
11 the Vehicles suffered from a latent Defect at the time of sale and/or lease. The Vehicles
12 are thereafter not fit for their particular purpose of providing safe and reliable
13 transportation. The Vehicles would not pass without objection in the trade, are not
14 adequately labeled and do not comport the promises and affirmations on the label
15 because the Vehicles are prone to random and uncontrollable deceleration, stall,
16 shutdown, or shift into neutral when the driver tries to accelerate, particularly at highway
17 speeds.

18 105. Defendant’s breach of implied warranties has deprived Plaintiffs and Class
19 members of the benefit of their bargain by failing to provide them with Vehicles that
20 reliably and safely accelerate when the gas pedal is depressed.

21 106. Defendant knew or was reckless in not knowing of the lack of truth in its
22 statements about the safety and reliability of the Vehicles, of the material omissions
23 concerning the standard, quality or grade of the Class Vehicles and the presence of the
24 Defect and associated safety risk, but failed to repair or replace the defective powertrain
25 system components and/or disclose the Defect.

26 107. Defendant has been afforded a reasonable opportunity to cure its breach,
27 including when Plaintiff and Class members brought their Vehicles in for diagnoses and
28 repair of the Defect.

1 108. As a direct and proximate cause of Defendant's breach of implied
2 warranties, Plaintiffs and Class members sustained and incurred damages and other
3 losses in an amount to be determined at trial.

4 109. Defendant's conduct damaged Plaintiffs and Class members, who are
5 entitled to recover actual damages, consequential damages, specific performance,
6 diminution in value, costs, attorneys' fees, and/or other relief as appropriate.

7
8 **FIFTH CAUSE OF ACTION**
9 **Breach of Express Warranty (Cal. Comm. Code § 2313)**
10 **(On behalf of the Nationwide Classes or,**
11 **in the Alternative, the California Classes)**

12 110. Plaintiffs hereby incorporate by reference the allegations contained in the
13 preceding paragraphs of this Complaint.

14 111. Plaintiffs bring this cause of action individually and on behalf of the
15 Nationwide Classes or, in the alternative, the California Classes against Defendant.

16 112. As an express warrantor, manufacturer, and merchant, Defendant had
17 certain obligations pursuant to its warranties to repair and replace defects.

18 113. Defendant expressly warranted the powertrain, under the Powertrain
19 Limited Warranty, promising to repair or replace components that fail to function
20 properly during normal use, for 6 years or 70,000 miles.

21 114. Defendant sells the Vehicles knowing that the Defect causes serious safety
22 issues when the Vehicles routinely, unintentionally, and uncontrollably decelerate so that
23 Plaintiffs and Class members are deprived of a warranted feature of the Vehicles.

24 115. The Defect was present at the time of sale and/or lease to Plaintiffs and
25 Class members.

26 116. Defendant breached (and continues to breach) its warranties because it
27 wrongfully, uniformly, and repeatedly refuses to repair the Defect, forcing Plaintiffs and
28 Class members to either (a) drive their Vehicles at the risk of the Vehicles spontaneously
decelerating, putting the Plaintiffs and Class members at great risk of an accident, or (b)
not drive their Vehicles at all in order to avoid such a risk.

1 117. Plaintiffs and Class members have used their Vehicles in a manner
2 consistent with the Vehicles' intended use, and have performed each and every duty
3 required under the terms of the warranty, including presentment, except as may have
4 been excused or prevented by the conduct of Defendant or by operation of law in light
5 of Defendant's unconscionable conduct described throughout this Complaint.

6 118. Defendant received timely notice regarding the problems at issue in this
7 litigation and, notwithstanding such notice, has failed and refused to offer an effective
8 remedy.

9 119. Upon information and belief, Defendant received numerous complaints,
10 service calls and visits, notices of the need for repair and resulting safety issues, and
11 requests for warranty repairs and coverage relating to the Defect from other members of
12 the Class.

13 120. Defendant and its authorized agents (the dealers) have wrongfully,
14 uniformly, and repeatedly refused and/or failed to properly repair or replace the
15 powertrain.

16 121. Accordingly, Plaintiffs and Class members have suffered damages caused
17 by Defendant's breach of the warranty and are entitled to recover damages as set forth
18 herein.

19 **SIXTH CAUSE OF ACTION**
20 **Breach of Implied Warranty of Merchantability (Cal. Comm. Code § 2314)**
21 **(On behalf of the Nationwide Classes or,**
22 **in the Alternative, the California Classes)**

23 122. Plaintiffs hereby incorporate by reference the allegations contained in the
24 preceding paragraphs of this Complaint.

25 123. Plaintiffs bring this cause of action individually and on behalf of the
26 Nationwide Classes or, in the alternative, the California Classes against Defendant.

27 124. Defendant is and was at all relevant times a merchant with respect to the
28 Vehicles under Cal. Com. Code § 2104.

1 125. By operation of law, Defendant, as a manufacturer of the Vehicles and as
2 offeror of its warranties, impliedly warranted to Plaintiffs and Class members that the
3 Vehicles they purchased were of merchantable quality and fit for their ordinary and
4 intended use of operating without spontaneous, unintentional, and uncontrollable
5 deceleration.

6 126. Defendant breached the implied warranty of merchantability in connection
7 with its sale and/or lease and distribution of the Vehicles. At the point of sale and/or
8 lease, the Vehicles contained a latent Defect that rendered the Vehicles defective and
9 unfit for their ordinary and intended purposes.

10 127. At all relevant times, Defendant was the manufacturer, distributor,
11 warrantor, and/or seller of the Vehicles.

12 128. Defendant knew or had reason to know of the specific use for which
13 Plaintiffs and Class members purchased the Vehicles. Had Plaintiffs and Class members
14 known that the Vehicles were defective, they would not have purchased them or would
15 not have purchased them at the price they paid.

16 129. Because of the Defect, the Vehicles were not in merchantable condition
17 when sold and were not fit for their ordinary and intended purpose. Defendant knew
18 about the Defect in its Vehicles, and Defendant had an opportunity to cure its breach of
19 its warranty. Despite knowing the Vehicles are/were defective prior to or concurrent with
20 its sale and/or lease, Defendant has refused to provide Plaintiffs and Class members with
21 appropriate and effective warranty relief. As a result, Plaintiffs and Class members are
22 left without the functional Vehicles they reasonably expected when making their
23 purchasing and/or leasing decisions.

24 130. Plaintiffs and Class members have complied with all obligations under the
25 warranty, and have afforded Defendant a reasonable opportunity to cure the breach of
26 written warranties.

27 131. Accordingly, Defendant is liable to Plaintiffs and Class members for
28 damages in an amount to be proven at trial.

RELIEF REQUESTED

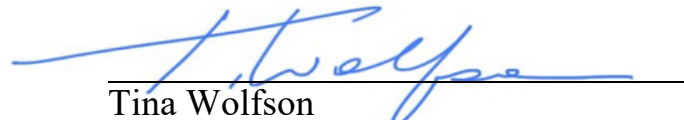
1
2 Plaintiffs, individually and on behalf of all others similarly situated, request the
3 Court enter judgment against Defendant, and accordingly request the following:

- 4 A. An order certifying the proposed Classes and designating Plaintiffs as the named
5 representatives of the Classes and designating the undersigned as Class Counsel;
- 6 B. An order requiring Defendant to cease and desist from engaging in the alleged
7 wrongful conduct and to engage in a corrective advertising campaign;
- 8 C. An award to Plaintiffs and Class members of compensatory, actual, exemplary,
9 and statutory damages, including interest, in an amount to be proven at trial;
- 10 D. A declaration that Defendant must disgorge, for the benefit of Plaintiffs and Class
11 members, all or part of the ill-gotten profits it received from its deceptive and
12 unfair business practices, or make full restitution to Plaintiffs and Class members;
- 13 E. An award of attorneys' fees and costs pursuant to all applicable laws;
- 14 F. An award of pre-judgment and post-judgment interest, as provided by law;
- 15 G. Leave to amend the Complaint to conform to the evidence produced at trial; and
- 16 H. Such other relief as may be appropriate under the circumstances.

DEMAND FOR JURY TRIAL

17
18 Plaintiffs, individually and on behalf of all others similarly situated, hereby
19 demand a trial by jury as to all matters so triable.

20
21
22 Dated: May 7, 2020



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Attorneys for Plaintiffs

DECLARATION OF TINA WOLFSON

I, Tina Wolfson, declare as follows:

1. I am an attorney with the law firm of Ahdoot & Wolfson, PC, counsel for Plaintiffs in the above-captioned action. I am admitted to practice law in California and before this Court and am a member in good standing of the State Bar of California. This declaration is made pursuant to California Civil Code section 1780(d). I make this declaration based on my research of public records and upon personal knowledge and, if called upon to do so, could and would testify competently thereto.

2. Venue is proper in this Court because Plaintiffs suffered injuries as a result of Defendant's acts in this District, including Defendant's decision to sell defective Vehicles in this District. Defendant regularly operates retail locations in this District and is registered to do business in California.

3. Plaintiff Jordan Colosimo ("Plaintiff Colosimo") is a citizen and resident of Florida.

4. Plaintiff Evan Wahl ("Plaintiff Wahl") is a citizen and resident of California.

5. Defendant American Honda Motor Co., Inc. is a California corporation registered to do business in California with its headquarters at 1919 Torrance Boulevard, Torrance, California 90501.

I declare under penalty of perjury under the laws of the United States and the State of California this 7th day of May 2020 in Los Angeles, California that the foregoing is true and correct.


Tina Wolfson