title, or under a written warranty, implied warranty, or service contract . . . may bring suit for damages and other legal and equitable relief . . . in an appropriate district court of the United States." 15 U.S.C. § 2310(d)(1). The Magnuson-Moss Warranty Act also authorizes class actions and the award of attorney's fees. 15 U.S.C. § 2310(e).

68. Upon information and belief, Defendants knew or should have known at the time of sale to members of Plaintiff Subclass One and Subclass Representatives that an inherent defect existed in the subject vehicles, which rendered those vehicles unfit for their customary and usual purposes and for the particular purpose for which Defendants knew or should have known the vehicles were intended, as alleged more fully above.

69. Defendants' knowledge of the defect in the subject vehicles gave Defendants more than adequate opportunity to repair or otherwise remedy the defect. After a reasonable number of attempts, Defendants have failed to repair or otherwise remedy the ETCS-i and BOS defect because the defect is inherent and permanent.

70. As described above, Defendants have failed to comply with their obligations under written manufacturer's warranties issued to members of Plaintiff Subclass One and Subclass Representatives because Defendants cannot successfully repair or otherwise remedy the inherent and permanent defect in the ETCS-i and BOS. Those written warranties are "service contracts" as defined by 15 U.S.C. 2301(8).

71. Defendants impliedly warranted that the subject vehicles would be merchantable. Defendants breached that warranty in the manner described above in Count II.

72. As a direct and proximate result of Defendants breach of written warranties and service contracts, members of Plaintiff Subclass One and their Subclass Representatives sustained actual damages in the form of significant diminution in the fair market value of their

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