were defective at the time of sale and would fail well before their useful lives.

COUNT III
BREACH OF THE IMPLIED WARRANTY OF MERCHANTABILITY

51. Plaintiffs and the Class repeat and incorporate herein by reference each and every paragraph of this complaint as though set forth in full in this cause of action.

52. Defendants impliedly warranted that the class vehicles were of a merchantable quality.

53. Defendants breached the implied warranty of merchantability, as the class vehicles were not of a merchantable quality due to their defective gas pedals.

54. As a direct and proximate result of the breach of said warranties, Plaintiffs and Class members were injured, and are entitled to damages.

55. Defendants' attempt to disclaim or limit the implied warranty of merchantability vis-à-vis consumers is unconscionable and unenforceable here. Specifically, Defendants' warranty limitation is unenforceable because they knowingly sold a defective product without conspicuously informing consumers about the defect.

56. The time limits contained in Defendants' warranty period were also unconscionable and inadequate to protect Plaintiffs and member of the Class. Among other things, Plaintiffs and members of the Class had no meaningful choice in determining these time limitations, the terms of which unreasonably favored Defendants. A gross disparity in bargaining power existed between Defendant and Class members, and Defendant knew or should have known that the Class Vehicles were defective at the time of sale and would fail well before their useful lives.

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