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 Lyle McLean and the Proposed Class
 9

10 **UNITED STATES DISTRICT COURT**

11 **CENTRAL DISTRICT OF CALIFORNIA**

12
 13 JULIE HAMILTON, JERAD
 14 HAMILTON and LYLE MCLEAN,
 15 individually and on behalf of all others
 similarly situated,

16
 17 Plaintiffs,

18 vs.

19
 20 TBC CORPORATION, DYNAMIC
 TIRE CORPORATION, and DOES 1-
 21 10,

22 Defendants.
 23

Case No.:

CLASS ACTION COMPLAINT

DEMAND FOR JURY TRIAL

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1 are, in fact, manufactured in China. Defendants’ marketing and advertising materials
2 do not disclose that fact nor do the materials identify the Chinese manufacturer.

3 13. Defendants’ marketing and advertising materials state, among other
4 things, that the Class Tires are “the standard in premium trailer tires!” and that the
5 Class Tires have been “specifically designed to deliver long-lasting and dependable
6 performance for trailer applications including travel trailers and fifth wheels.”

7 14. Defendants’ marketing and advertising materials further represent that
8 “TBC Brands tires are manufactured to exacting manufacturing standards ... second
9 to none in the industry” and that the Class Tires feature “advanced construction
10 technology for superior strength and durability, as well as an optimized five rib tread
11 design for maximum ride stability and long tread life.”

12 15. Defendants’ marketing and advertising materials also tout that the Class
13 Tires have a “Nationwide Warranty.”

14 16. In fact, in contrast to Defendants’ representations that the Class Tires are
15 “long-lasting” and “dependable,” the Class Tires are dangerous and defective and
16 inexplicably fail under normal operating conditions. Defendants failed to disclose to
17 Plaintiffs, Class Members and the public that the Class Tires have a high rate of
18 failure, including tread separation. The failures of the Class Tires regularly occur on
19 highways, often at high speed and near other vehicles, posing serious risks of harm to
20 individuals, as well as property damage.

21 17. As a result of these defects, the Class Tires do not function as reasonable
22 consumers expect when used under ordinary driving conditions. Moreover, Plaintiffs
23 and Class Members will incur additional expenses to replace Class Tires that have not
24 yet failed, but are likely to do so in the future.

25 18. Defendants failed to disclose these material facts to the public and to
26 consumers. If the Plaintiffs and Class Members had known of the defects at the time
27 they purchased or acquired the Class Tires, they would have declined to purchase or
28 acquire the Class Tires, or would have paid considerably less than they did.

1 19. In sum, Defendants’ deliberate deception and failure to disclose has
2 caused significant harm to Plaintiffs, Class Members and the public. Defendants’
3 promise in its advertising and promotional materials of “safe travels” to those who
4 purchase or acquire the Class Tires rings hollow in light of the defective and
5 dangerous nature of the Class Tires.

6 **TOLLING OF THE STATUTE OF LIMITATIONS**

7 **Fraudulent Concealment**

8 20. Defendants concealed their fraud from Class Members. Upon information
9 and belief, Defendants have known of the tire failure and tread separation defects in
10 the Class Tires for many years, and intentionally concealed from or failed to notify
11 Plaintiffs, Class Members, and the public of the tread separation defect of the Class
12 Tires.

13 21. Despite knowing about the tire failure and tread separation defects,
14 Defendants have never acknowledged the problem to Plaintiffs, Class Members and
15 the public.

16 22. Any applicable statute of limitation has therefore been tolled by
17 Defendants’ knowledge and active concealment of the facts alleged herein.

18 **Estoppel**

19 23. Defendants were and are under a continuous duty to disclose to Plaintiffs
20 and Class Members the true character, quality and nature of the Class Tires. Instead,
21 Defendants actively concealed the true character, quality, and nature of the Class
22 Tires, and knowingly made misrepresentations about the quality, reliability,
23 characteristics, and performance of the Class Tires. Plaintiffs and Class Members
24 reasonably relied upon Defendant’s knowing and affirmative misrepresentations
25 and/or active concealment of these facts. Based on the above allegations, Defendants
26 are estopped from relying on any statutes of limitation in defense of this action.

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1 **Discovery Rule**

2 24. The causes of action alleged herein did not accrue until Plaintiffs and
3 Class Members discovered that the Class Tires had a tire failure and/or tread
4 separation defect, and were not performing as advertised and warranted by
5 Defendants.

6 25. Plaintiffs and Class Members had no realistic ability to discover the
7 presence of the tire failure or tread separation defect, or to otherwise learn of the
8 fraud, omissions and concealment, until within the applicable statutes of limitation.

9 **CLASS ACTION ALLEGATIONS**

10 26. Plaintiffs bring this lawsuit as a class action on their own behalf and on
11 behalf of all other persons similarly situated as members of the proposed Class,
12 pursuant to Federal Rules of Civil Procedure 23(a) and (b)(3) and/or (b)(2) and/or
13 (c)(4). This action satisfies the numerosity, commonality, typicality, adequacy,
14 predominance, and superiority requirements of those provisions.

15 27. The proposed classes are defined as:

16 **Nationwide Class**

17 All persons or entities in the United States that purchased or acquired a
18 Power King Towmax STR trailer tire (“Class Tires”).

19 **California Subclass**

20 All persons or entities in California that purchased or acquired
21 a Power King Towmax STR trailer tire (“Class Tires”).

22 **Arizona Subclass**

23 All persons or entities in Arizona that purchased or acquired
24 a Power King Towmax STR trailer tire (“Class Tires”).

25
26 28. Excluded from the Nationwide Class, California Subclass and Arizona
27 Subclass (the “Classes”) are a) Defendants, any entity or division in which
28 Defendants have a controlling interest, and their legal representatives, officers,

1 directors, assigns, and successors; b) the Judge to whom this case is assigned and the
2 Judge's staff, c) governmental entities, d) those persons who have suffered personal
3 injuries as a result of the facts alleged herein. Plaintiffs reserve the right to amend the
4 Class definitions if discovery and further investigation reveal that any Class should be
5 expanded, divided into additional subclasses, or modified in any other way.

6 **Numerosity and Ascertainability**

7 29. Although the exact number of Class Members is uncertain at this time, the
8 size of the Classes can be estimated to be in the thousands, likely the tens of
9 thousands, and the number is great enough that joinder of all members is
10 impracticable. Plaintiffs will determine the exact number and identity of the Class
11 Members through discovery. The disposition of the claims of the Class Members in a
12 single action will provide substantial benefits to all parties and to the Court. Class
13 Members will be readily identifiable through Defendants' records, as well as the
14 records of other entities that may have distributed and/or sold the Class Tires.

15 **Typicality**

16 30. The claims of the representative Plaintiffs are typical of the claims of the
17 Class Members in that the representative Plaintiffs, like all Class Members,
18 purchased or acquired the Class Tires. The representative Plaintiffs, like all Class
19 Members, have been damaged by Defendants' conduct in that they have incurred
20 losses relating to the Class Tires. Furthermore, the factual bases of Defendants'
21 misconduct are common to all Class Members and represents a common thread of
22 misconduct resulting in injury to all Class Members.

23 **Adequate Representation**

24 31. Plaintiffs are members of the Nationwide Class, and California and
25 Arizona Subclasses, and will fairly and adequately represent and protect the interests
26 of the Class. Plaintiffs have retained counsel with substantial experience in
27 prosecuting consumer class actions, defective products, and complex litigation.

28

- 1 i. whether Defendants' wrongdoing and misconduct resulted in unjust
2 enrichment to Defendants;
- 3 j. whether Defendants violated the Magnuson-Moss Warranty Act with
4 respect to any express warranty made by Defendants;
- 5 k. whether Defendants violated the Magnuson-Moss Warranty Act with
6 respect to any implied warranty made by Defendants;
- 7 l. whether Defendants wrongfully failed to recall and/or retrofit the Class
8 Tires;
- 9 m. whether Defendants violated the unlawful prong of California's Unfair
10 Competition Law;
- 11 n. whether Defendants violated the unfair prong of California's Unfair
12 Competition Law;
- 13 o. whether Defendants violated the fraudulent prong of California's Unfair
14 Competition Law;
- 15 p. whether Defendants violated California's False Advertising Law;
- 16 q. whether Defendants violated California's Legal Remedies Act;
- 17 r. whether Defendants breached any express warranties under California
18 law;
- 19 s. whether Defendants breached any implied warranties under California
20 law;
- 21 t. whether Defendants breached any express warranties under Arizona law;
- 22 u. whether Defendants breach any implied warranties under Arizona law;
- 23 v. whether Defendants violated the Arizona Consumer Fraud Statute;
- 24 w. whether Plaintiffs and Class Members are entitled to actual, statutory,
25 and punitive damages;
- 26 x. whether Plaintiffs and Class Members are entitled to injunctive relief;
27 and
28

1 y. whether Plaintiffs and Class Members are entitled to equitable relief,
2 including restitution and disgorgement.

3 **Superiority**

4 34. Plaintiffs and Class Members have all suffered and will continue to suffer
5 harm and damages as a result of Defendants' unlawful and wrongful conduct. A
6 class action is superior to other available methods for the fair and efficient resolution
7 of this matter.

8 35. Absent a class action, most Class Members would likely find the cost of
9 litigating their claims prohibitively high and would therefore have no effective
10 remedy at law. Because of the relatively small size of the individual Class Members'
11 claims, it is likely that only a few Class Members could afford to seek legal redress
12 for Defendant's wrongdoing and misconduct. Without a class action, Class Members
13 will continue to incur damages and losses, and Defendants' conduct will continue
14 without remedy.

15 36. Class treatment of common questions of law and fact would also be a
16 superior method to multiple individual actions or piecemeal litigation in that class
17 treatment will conserve the resources of the courts and the litigants, and will promote
18 consistency and efficiency of adjudication.

19 37. Defendants have acted in a uniform manner with respect to the Plaintiffs
20 and Class Members.

21 38. Classwide declaratory, equitable, and injunctive relief is appropriate under
22 Rule 23(b)(1) and/or (b)(2) because Defendants have acted on grounds that apply
23 generally to the class, and inconsistent adjudications with respect to Defendants'
24 liability would establish incompatible standards and substantially impair or impede
25 the ability of Class Members to protect their interests. Classwide relief assures fair,
26 consistent, and equitable treatment and protection of all Class Members, and
27 uniformity and consistency in Defendants' discharge of their duties to perform
28 corrective action regarding the Class Tires.

1 standardized promotional statements claiming that the Class Tires were safe and
2 suitable for use on trailers.

3 44. The foregoing misrepresentations were uniform across all Class Members.
4 The same advertisements were shown to all members of the public generally and the
5 same marketing materials were distributed to customers and potential customers, and
6 all of the materials contained the same standardized statements relating to the Class
7 Tires safety, durability, performance and suitability for use on trailers.

8 45. These representations directly contradicted the true nature and hidden
9 defects of the Class Tires when operating under normal circumstances. Defendants
10 knew the representations were false when they made them, and intended to defraud
11 purchasers thereby.

12 46. Defendants also had a duty to disclose, rather than to conceal and to
13 suppress, the full scope and extent of the safety deception because:

14 a. Defendants had exclusive knowledge of the safety and durability of the
15 Class Tires and concealment thereof;

16 b. The details regarding the safety and durability of the Class Tires and
17 concealment thereof were known and/or accessible only to Defendants;

18 c. Defendants knew Plaintiffs and Class Members did not know and could
19 not reasonably discover the safety and durability hazards in the Class Tires and
20 concealment thereof; and

21 d. Defendants made general representations about the qualities of the Class
22 Tires, including statements about their performance, safety and durability, which
23 were misleading, deceptive and incomplete without the disclosure of the fact that the
24 Class Tires did not possess these attributes.

25 47. Defendants' concealment was likewise uniform across all Class Members
26 in that Defendants concealed from everyone other than themselves, including
27 potential customers, the true facts relating to the safety, performance and durability of
28 the Class Tires.

1 48. Defendants’ misrepresentations and omissions were material in that they
2 would affect a reasonable consumer’s decision to purchase the Class Tires.
3 Defendants’ conduct, misrepresentations, omissions, concealment, and suppression
4 undermined the core value proposition that induced customers to purchase or acquire
5 the Class Tires.

6 49. Defendants’ intentionally deceptive conduct—its silent fraud and fraud by
7 concealment—likewise induced the purchase or acquisition of the Class Tires by
8 Plaintiffs and Class Members, and the resulting harm and damage to them.

9 50. Plaintiffs relied upon Defendants’ misrepresentations and concealment of
10 the true facts. Class Members are presumed to have relied upon Defendants’
11 misrepresentations and concealment of the true facts because those facts are material
12 to a reasonable consumer’s purchase or acquisition of the Class Tires.

13 51. As a result of Defendants’ inducements, Plaintiffs and Class Members
14 have sustained the injuries and damages set forth in this Complaint. If Plaintiffs and
15 Class Members had known about the misrepresentations and concealment by
16 Defendants, they would not have purchased the Class Tires. In fact, the Class Tires
17 could not have been marketed or sold to any reasonable consumer had existence of
18 the product defects been disclosed. Defendants are therefore liable to Plaintiffs and
19 Class Members in an amount to be proven at trial.

20 52. Defendants’ conduct was systematic, repetitious, knowing, intentional and
21 malicious, and demonstrated a lack of care and reckless disregard for the rights and
22 safety of Plaintiffs, Class Members and the public. Defendants’ conduct thus
23 warrants an assessment of punitive damages under Cal. Civ. Code § 3294 and other
24 applicable states’ laws, consistent with the actual harm it has caused, the
25 reprehensibility of its conduct, and the need to punish and deter such conduct.

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THIRD CLAIM FOR RELIEF

Violation of Magnuson-Moss Warranty Act, 15 U.S.C. § 2301, *et seq.*

Breach of Express Warranty

(Brought on Behalf of the Nationwide Class)

62. Plaintiffs bring this claim on behalf of themselves and the Nationwide Class.

63. Plaintiffs hereby incorporate by reference the allegations contained in the preceding paragraphs of this Complaint.

64. The Class Tires are “consumer products” within the meaning of the Magnuson-Moss Warranty Act, 15 U.S.C. § 2301(1).

65. Plaintiffs and Class Members are “consumers” within the meaning of the Magnuson-Moss Warranty Act, 15 U.S.C. § 2301(3), because they are persons entitled under applicable state law to enforce against the warrantor the obligations of its express and implied warranties.

66. Each Defendant is a “supplier” and “warrantor” within the meaning of the Magnuson-Moss Warranty Act, 15 U.S.C. § 2301(4)-(5).

67. Section 2310(d)(1) of Chapter 15 of the United States Code provides a cause of action for any consumer who is damaged by the failure of a warrantor to comply with a written or implied warranty.

68. In connection with the purchase of the Class Tires, Defendants provided an express Limited Warranty Against Defects in Workmanship and Materials for the life of the original tread, or five years from date of purchase (whichever comes first).

69. Plaintiffs and members of the Nationwide Class experienced defects within the warranty period. Despite the existence of the warranties, the Defendants failed to inform Plaintiffs and Class members that the Class Tires were defective and unsafe, and prone to failure and tread separation.

70. Furthermore, by advertising that the Class Tires were safe, durable and would perform under ordinary driving conditions, Defendants expressly warranted to

1 Plaintiffs and Class Members that the Class Tires at least complied with all applicable
2 laws and regulations relating to tires and tire safety.

3 71. Moreover, through its advertising and representations, Defendants
4 warranted to purchasers of the Class Tires that the tires would be safe, durable and
5 would perform under ordinary driving conditions. Such statements became the basis
6 of the bargain for Plaintiffs and Class Members because such statements are among
7 the facts a reasonable consumer would consider material in the purchase of a vehicle.

8 72. In fact, in ordinary driving conditions, the Class Tires were not safe and
9 durable, and did not perform under ordinary driving conditions.

10 73. Plaintiffs, on behalf of themselves and Class Members, provided
11 Defendants with notice of their warranty claims by the filing of this Complaint.
12 Defendants failed to fulfill their warranty obligations despite this notice.

13 74. Plaintiffs and Class Members have suffered damages as set forth herein as
14 a direct and proximate result of Defendants' breach of express warranties since
15 Plaintiffs and Class Members purchased the Class Tires.

16 75. Plaintiffs and the Class Members are entitled to actual damages,
17 restitution, disgorgement, and such other relief as the Court deems proper.

18 **FOURTH CLAIM FOR RELIEF**

19 **Violation of Magnuson-Moss Warranty Act, 15 U.S.C. §§ 2301, *et seq.***

20 **Breach of Implied Warranty**

21 **(Brought on Behalf of the Nationwide Class)**

22 76. Plaintiffs bring this claim on behalf of themselves and the Nationwide
23 Class.

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

26 78. The Class Tires are "consumer products" within the meaning of the
27 Magnuson-Moss Warranty Act, 15 U.S.C. § 2301(1).
28

1 79. Plaintiffs and Class Members are “consumers” within the meaning of the
2 Magnuson-Moss Warranty Act, 15 U.S.C. § 2301(3), because they are persons
3 entitled under applicable state law to enforce against the warrantor the obligations of
4 its express and implied warranties.

5 80. Each Defendant is a “supplier” and “warrantor” within the meaning of the
6 Magnuson-Moss Warranty Act, 15 U.S.C. § 2301(4)-(5).

7 81. Section 2310(d)(1) of Chapter 15 of the United States Code provides a
8 cause of action for any consumer who is damaged by the failure of a warrantor to
9 comply with a written or implied warranty.

10 82. Defendants provided Plaintiffs and Class Members with an implied
11 warranty of merchantability in connection with the purchase of the Class Tires that is
12 an “implied warranty” within the meaning of the Magnuson-Moss Warranty Act, 15
13 U.S.C. § 2301(7). As a part of the implied warranty of merchantability, Defendants
14 warranted that the Class Tires would pass without objection in the trade as designed,
15 manufactured, and marketed, and were adequately labeled.

16 83. Defendants breached these implied warranties, as described in more detail
17 above, and are therefore liable to Plaintiffs and the Class pursuant to 15 U.S.C. §
18 2310(d)(1).

19 84. Any efforts to limit the implied warranties in a manner that would exclude
20 coverage of the Class Tires is unconscionable, and any such effort to disclaim, or
21 otherwise limit, liability for the Class Tires is null and void.

22 85. Plaintiffs and the Class Members have had sufficient direct dealings with
23 the Defendants, or their agents to establish privity of contract.

24 86. Nonetheless, privity is not required here because Plaintiffs and Class
25 Members are intended third-party beneficiaries of contracts between Defendants and
26 distributors, and specifically, of the implied warranties. The distributors were not
27 intended to be the ultimate consumers of the Class Tires and have no rights under the
28

1 warranty agreements provided with the Class Tires; the warranty agreements were
2 designed for and intended to benefit consumers.

3 87. Pursuant to 15 U.S.C. § 2310(e), Plaintiffs are entitled to bring this class
4 action and are not required to give Defendants notice and an opportunity to cure until
5 such time as the Court determines the representative capacity of Plaintiffs pursuant to
6 Rule 23 of the Federal Rules of Civil Procedure.

7 88. Plaintiffs' individual claims place into controversy an amount equal to or
8 exceeding \$25.00. The amount in controversy of this entire action exceeds the sum
9 of \$50,000.00, exclusive of interest and costs, computed on the basis of all claims to
10 be determined in this action. Plaintiffs, individually and on behalf of the Class
11 Members, seek all damages permitted by law. In addition, pursuant to 15 U.S.C. §
12 2310(d)(2), Plaintiffs and Class Members are entitled to recover a sum equal to the
13 aggregate amount of costs and expenses (including attorney fees based on actual time
14 expended) determined by the Court to have reasonably been incurred by Plaintiffs
15 and Class Members in connection with the commencement and prosecution of this
16 action.

17 89. Plaintiffs and Class Members have suffered damages as set forth herein as
18 a direct and proximate result of Defendants' breach of implied warranty since
19 Plaintiff and Class Members purchased the Class Tires.

20 90. Plaintiffs and the Class Members are entitled to actual damages,
21 restitution, disgorgement, and such other relief as the Court deems proper.

22 91. Further, Plaintiffs and the Class Members are also entitled to equitable
23 relief under 15 U.S.C. §2310(d)(1).

24 **FIFTH CLAIM FOR RELIEF**

25 **Negligent Failure to Recall/Retrofit**

26 **(Brought on Behalf of the Nationwide Class)**

27 92. Plaintiffs bring this claim on behalf of themselves and the Nationwide
28 Class.

1 93. Plaintiffs incorporate by reference the allegations contained in the
2 preceding paragraphs of this Complaint.

3 94. Defendants manufactured, marketed, distributed, sold or otherwise placed
4 into the stream of commerce the Class Tires, as set forth herein.

5 95. Defendants knew, or reasonable should have known, that the Class Tires
6 were dangerous when used in a reasonably foreseeable manner, and posed an
7 unreasonable risk of harm to consumers.

8 96. Defendants became aware that the Class Tires were dangerous when used
9 in a reasonably foreseeable manner, and posed an unreasonable risk after the Class
10 Tires were sold.

11 97. Defendants failed to recall or retrofit the Class Tires in a timely manner,
12 or at all, or warn of the dangers posed by the Class Tires.

13 98. A reasonable manufacturer in the same or similar circumstances would
14 have timely recalled or retrofitted the Class Tires, or warned of the dangers.

15 99. Plaintiffs and Class members were harmed by Defendants' failure to
16 recall, retrofit or warn of the dangers of the Class Tires properly and in a timely
17 manner, and, as a result, have suffered damages, including out-of-pocket costs,
18 losses, property damages, and inconvenience as a result of Defendants' ongoing
19 failure to recall, retrofit, warn and/or fully repair the Class Tires.

20 100. As a direct and proximate result of Defendants' conduct as described
21 above, Plaintiffs and Class members have suffered damages as set forth herein.

22 **SIXTH CLAIM FOR RELIEF**

23 **Violation of California's Consumer Legal Remedies Act ("CLRA"),**

24 **Cal. Civ. Code § 1750, et seq.**

25 **(Brought on Behalf of the California Subclass)**

26 101. Plaintiffs Julie Hamilton and Jerad Hamilton bring this claim on behalf of
27 themselves and the California Subclass.

28

1 102. Plaintiffs hereby incorporate by reference the allegations contained in the
2 preceding paragraphs of this Complaint.

3 103. Each Defendant is a “person” as defined by the CLRA. Cal. Civ. Code §
4 1761(c).

5 104. Plaintiffs and Class Members are “consumers” within the meaning of the
6 CLRA, as defined by Cal. Civ. Code § 1761(d), who purchased Class Tires.

7 105. The CLRA prohibits “unfair or deceptive acts or practices undertaken by
8 any person in a transaction intended to result or which results in the sale or lease of
9 goods or services to any consumer[.]” Cal. Civ. Code § 1770(a).

10 106. Defendants engaged in unfair or deceptive trade practices that violated
11 Cal. Civ. Code § 1770(a), as described above and below, by, among other things,
12 failing to disclose the defective and dangerous nature of the Class Tires, representing
13 that the Class Tires had characteristics and benefits (e.g., safety, durability,
14 performance) that they do not have, and representing that the Class Tires were of a
15 particular standard, quality, or grade when they were of another. *See* Cal. Civ. Code
16 §§ 1770(a)(5), (7).

17 107. Defendants knew or should have known that its conduct violated the
18 CLRA.

19 108. Defendants’ unfair and deceptive acts or practices occurred repeatedly in
20 Defendants’ course of trade or business, were material, were capable of deceiving a
21 substantial portion of the purchasing public, and imposed a safety risk on the public.

22 109. Defendants knew that the Class Tires would not perform as promised and
23 were not suitable for their intended use, and were defectively designed and/or
24 manufactured.

25 110. Defendants were under a duty to Plaintiffs and Class Members to disclose
26 the deceptive and defective nature of the Class Tires because:

27 a. The defect in the Class Tires presents a safety hazard in that it causes a
28 tire failure, including tread separation in the Class Tires;

1 b. Defendants are in a superior position to know the true facts about the
2 safety defect in the Class Tires;

3 c. Plaintiffs and Class Members could not reasonably have been expected
4 to learn or discover that the Class Tires contained the safety defect; and

5 d. Defendants knew that Plaintiffs and Class Members could not
6 reasonably have been expected to learn or discover the safety defect before its
7 manifestation.

8 111. In failing to disclose the defective nature of the Class Tires, Defendants
9 knowingly and intentionally concealed material facts and breached their duty not to
10 do so.

11 112. The facts that were misrepresented, concealed or not disclosed by
12 Defendants to Plaintiffs and Class Members are material in that a reasonable
13 consumer would have considered them to be important in deciding whether or not to
14 purchase the Class Tires. Moreover, a reasonable consumer would consider the tire
15 failure and/or tread separation to pose a serious safety risk. Had Plaintiffs and Class
16 Members known about the true nature and quality of the Class Tires, they would not
17 have purchased or acquired them or would have paid less for them.

18 113. Plaintiffs and Class Members are reasonable consumers who do not expect
19 their Class Tires to pose serious safety risks when driving. This is a reasonable and
20 objective consumer expectation relating to a trailer tire.

21 114. As a result of Defendants' violations of the CLRA, Plaintiffs seek an order
22 of this Court permanently enjoining Defendants from perpetrating its deceptive and
23 unlawful marketing practices. Under Cal. Civ. Code § 17782(d), if Defendants do
24 not take action to cease their deceptive and unlawful marketing practices within thirty
25 days of being served with this Complaint, Plaintiffs will amend this Complaint to
26 seek, in addition to equitable relief, an order permitting Plaintiffs and Class Members
27 to recover actual damages, restitution, disgorgement, punitive damages, attorney fees
28 and costs, and such other relief as set forth in this Complaint.

1 defect presents a safety hazard since a tire failure on the roadway is a dangerous and
2 potentially life-threatening event.

3 120. Defendants committed *fraudulent business acts and practices* in violation
4 of Cal. Bus. & Prof. Code §§ 17200, *et seq.* when they concealed the existence of the
5 defects and dangers of the Class Tires as set forth herein, while representing in their
6 marketing, advertising, and other broadly disseminated representations that the Class
7 Tires were safe, durable, and would perform in ordinary driving conditions.

8 Defendants' representations and active concealment of the tire failure and tread
9 separation defect are likely to mislead the public with regard to the true defective
10 nature of the Class Tires.

11 121. Defendants' unfair or deceptive acts or practices occurred repeatedly in
12 the course of their trade or business, and were capable of deceiving a substantial
13 portion of the purchasing public.

14 122. As a direct and proximate result of Defendants' unfair and deceptive
15 practices, Plaintiffs and Class Members have suffered and will continue to suffer
16 actual damages.

17 123. As a result of its unfair and deceptive conduct, Defendants have been
18 unjustly enriched and should be required to disgorge their unjust profits and make
19 restitution to Plaintiffs and Class Members, and pay for the attorney fees of Plaintiffs
20 and Class Members.

21 **EIGHTH CLAIM FOR RELIEF**

22 **Violation of California False Advertising Law,**

23 **Cal. Bus. & Prof. Code §§ 17500, *et seq.***

24 **(Brought on Behalf of the California Subclass)**

25 124. Plaintiffs Julie Hamilton and Jerad Hamilton bring this claim on behalf of
26 themselves and the California Subclass.

27 125. Plaintiffs hereby incorporate by reference the allegations contained in the
28 preceding paragraphs of this Complaint.

1 126. Cal. Bus. & Prof. Code § 17500 states: “It is unlawful for any ...
2 corporation ... with intent directly or indirectly to dispose of real or personal property
3 ... to induce the public to enter into any obligation relating thereto, to make or
4 disseminate or cause to be made or disseminated ... from this state before the public
5 in any state, in any newspaper or other publication, or any advertising device, ... or in
6 any other manner or means whatever, including over the internet, any statement ...
7 which is untrue or misleading, and which is known, or which by the exercise of
8 reasonable care should be known, to be untrue or misleading.”

9 127. Defendants caused to be made or disseminated through California and the
10 United States, through advertising, marketing and other publications, statements that
11 were untrue or misleading, touting the benefits of the Class Tires while concealing
12 the presence of the tire failure and tread separation defect. These representations and
13 active concealment of the defects and dangers were calculated to deceive the public,
14 and were known, or by the exercise of reasonable care, should have been known to
15 Defendants, to be untrue and misleading to consumers, including Plaintiffs and Class
16 members.

17 128. Defendants have violated Cal. Bus. & Prof. Code § 17500 because the
18 misrepresentations and omissions regarding the safety, durability and performance of
19 the Class Tires as set forth in this Complaint were material and likely to deceive a
20 reasonable consumer.

21 129. Plaintiffs and Class members have suffered an injury in fact, including the
22 loss of money or property, as a result of Defendants’ unfair, unlawful, and/or
23 deceptive practices. In purchasing the Class Tires, Plaintiffs and Class Members
24 relied on the misrepresentations and/or omissions of Defendants with respect to the
25 safety, performance and reliability of the Class Tires.

26 130. Defendants’ representations were false because the Class Tires were faulty
27 and defective. Had Plaintiffs and Class members known this, they would not have
28

1 purchased or acquired the Class Tires and/or paid as much for them. Thus, Plaintiffs
2 and Class members did not receive the benefit of the bargain.

3 131. Plaintiffs and Class members request that the Court enter such orders and
4 judgments as may be necessary to enjoin Defendants from continuing their unfair,
5 unlawful and/or deceptive practices and to restore to Plaintiffs and Class Members
6 any money Defendants acquired by unfair competition, including restitution and/or
7 restitutionary disgorgement, and for such other relief as set forth below.

8 **NINTH CLAIM FOR RELIEF**

9 **Breach of Express Warranty**

10 **(Cal. Com. Code §§ 2313 and 10210)**

11 **(Brought on Behalf of the California Subclass)**

12 132. Plaintiffs Julie Hamilton and Jerad Hamilton bring this claim on behalf of
13 themselves and the California Subclass.

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

16 134. Defendants were at all relevant times “merchants” with respect to the
17 Class Tires under Cal. Com. Code §§ 2104(1) and 10103(c), and “sellers” under §
18 2103(1)(d).

19 135. The Class Tires were at all relevant times “goods” within the meaning of
20 Cal. Com. Code §§ 2105(1) and 10103(a)(8).

21 136. In connection with the purchase of the Class Tires, Defendants provided
22 an express Limited Warranty Against Defects in Workmanship and Materials for the
23 life of the original tread, or five years from date of purchase (whichever comes first).

24 137. Further, by advertising that the Class Tires were safe, durable and would
25 perform under ordinary driving conditions, Defendants expressly warranted to
26 Plaintiffs and Class Members that the Class Tires at least complied with all applicable
27 laws and regulations relating to tires and tire safety.

28

1 138. Moreover, through its advertising, marketing and promotional
2 representations, Defendants warranted to purchasers of the Class Tires that the tires
3 would be safe, durable and would perform under ordinary driving conditions. Such
4 statements became the basis of the bargain for Plaintiffs and Class Members because
5 such statements are among the facts a reasonable consumer would consider material
6 in the purchase of a vehicle.

7 139. Defendants breached these express warranties because the Class Tires did
8 not have the safety, durability and performance characteristics warranted by
9 Defendants.

10 140. As a direct and proximate result of the breach of the express warranties by
11 Defendants, Plaintiffs and Class Members have been damaged in an amount to be
12 determined at trial.

13 **TENTH CLAIM FOR RELIEF**

14 **Breach of Implied Warranty of Merchantability**

15 **(Cal. Com. Code §§ 2314 and 10212)**

16 **(Brought on Behalf of the California Subclass)**

17 141. Plaintiffs Julie Hamilton and Jerad Hamilton bring this claim on behalf of
18 themselves and the California Subclass.

19 142. Plaintiffs hereby incorporate by reference the allegations contained in the
20 preceding paragraphs of this Complaint.

21 143. Defendants were at all relevant times “merchants” with respect to the
22 Class Tires under Cal. Com. Code §§ 2104(1) and 10103(c), and “sellers” of the
23 Class Tires under §2103(1)(d).

24 144. The Class Tires were at all relevant times “goods” within the meaning of
25 Cal. Com. Code §§ 2105(1) and 10103(a)(8).

26 145. A warranty that the Class Tires were in merchantable condition and fit
27 for the ordinary purpose for which tires are used is implied by law pursuant to Cal.
28 Com. Code §§ 2314 and 10212.

1 146. The Class Tires, when sold and marketed, and at all times thereafter, were
2 not in merchantable condition and are not fit for the ordinary purpose for which tires
3 are used. Specifically, the Class Tires are defective and dangerous in that they are
4 not safe and durable, do not perform under ordinary driving conditions, and are likely
5 to fail while being operated.

6 147. Defendants breached the implied warranty of merchantability when it
7 sold and marketed Plaintiffs and Class Members the Class Tires, which did not
8 conform to the promises or affirmations of fact contained in the advertising,
9 promotional, marketing and warranty written materials relating to the Class Tires, and
10 provided to Plaintiffs and Class Members.

11 148. As a direct and proximate result of the breach of the implied warranty by
12 Defendants, Plaintiffs and Class Members have been damaged in an amount to be
13 determined at trial.

14 **ELEVENTH CLAIM FOR RELIEF**

15 **Violation of Arizona Consumer Fraud Statute,**

16 **Ariz. Revised Stat. §§ 44-1521, *et seq.***

17 **(Brought on Behalf of the Arizona Subclass)**

18 149. Plaintiff Kyle McLean hereby incorporates by reference the allegations
19 contained in the preceding paragraphs of this Complaint.

20 150. Plaintiff Kyle McLean brings this cause of action on behalf of himself
21 and the Arizona Subclass.

22 151. Defendants, Plaintiff, and the Arizona Subclass are “persons” within the
23 meaning of the Arizona Consumer Fraud Act (“ACFA”), Ariz. Rev. Stat. § 44-
24 1521(6).

25 152. The Class Tires are “merchandise” within the meaning of Ariz. Rev. Stat.
26 § 44-1521(5).

27 153. The ACFA provides that “[t]he act, use or employment by any person of
28 any deception, deceptive act or practice, fraud, ... misrepresentation, or concealment,

1 suppression or omission of any material fact with intent that others rely upon such
2 concealment, suppression or omission, in connection with the sale ... of any
3 merchandise whether or not any person has in fact been misled, deceived or damaged
4 thereby, is declared to be an unlawful practice.” Ariz. Rev. Stat. §44-1522(A).

5 154. Defendants concealed and suppressed material facts relating to the Class
6 Tires by engaging in the acts and practices alleged above. These practices constitute
7 fraud, false promise, misrepresentation, concealment and suppression.

8 155. Plaintiff and members of the Arizona Subclass had no way of discerning
9 that Defendants’ representations were false and misleading, and relied on
10 Defendants’ deceptive representations in purchasing the Class Tires, believing that
11 the Class Tires were safe, durable and performed under ordinary operating
12 conditions.

13 156. As a direct and proximate result of Defendants’ deceptive acts and
14 practices, Plaintiff McLean and Class Members have been damaged in an amount to
15 be determined at trial.

16 157. Plaintiff McLean and Class Members also seek punitive damages because
17 Defendants engaged in aggravated and outrageous conduct with an evil mind.

18 **TWELTH CLAIM FOR RELIEF**

19 **BREACH OF EXPRESS WARRANTY**

20 **(Ariz. Rev. Stat. §§ 47-2313 and 47-2A210)**

21 **(Brought on Behalf of the Arizona Subclass)**

22 158. Plaintiff Kyle McLean hereby incorporates by reference the allegations
23 contained in the preceding paragraphs of this Complaint.

24 159. Plaintiff Kyle McLean brings this cause of action on behalf of himself
25 and the Arizona Subclass.

26 160. The Defendants were at all relevant times “merchants” with respect to
27 trailer tires under Ariz. Rev. Stat. §§ 47-2104(A) and 47-2A103(c); and are a “seller”
28 of trailer tires under Ariz. Rev. Stat. § 47-2103(A)(4).

1 168. Plaintiff Kyle McLean brings this cause of action on behalf of himself
2 and the Arizona Subclass.

3 169. Defendants were at all relevant times “merchants” with respect to trailer
4 tires under Ariz. Rev. Stat. §§ 47-2104(A) and 47-2a103(c); and a “seller” of trailer
5 tires under Ariz. Rev. Stat. § 47-2103(A)(4).

6 170. The Class Tires were at all relevant times “goods” within the meaning of
7 Ariz. Rev. Stat. §§ 47-2105(A) and 47-2a103(A)(8).

8 171. A warranty that the Class Tires were in merchantable condition and fit
9 for the ordinary purpose for which tires are used is implied pursuant to Ariz. Rev.
10 Stat. §§ 47-2314 and 47-2a212.

11 172. The Class Tires, when sold and marketed, and at all times thereafter,
12 were not in merchantable condition and are not fit for the ordinary purpose for which
13 tires are used. Specifically, the Class Tires are defective and dangerous in that they
14 are not safe and durable, do not perform under ordinary driving conditions and are
15 likely to experience a tire failure or tread separation while being driven.

16 173. Defendants were provided notice of these issues by numerous individual
17 letters and communications sent by Plaintiff and Class members regarding the failure
18 of the Class Tires.

19 174. As a direct and proximate result of the breach of the implied warranty by
20 Defendants, Plaintiff McLean and Arizona class members have been damaged in an
21 amount to be determined at trial.

22 **PRAYER FOR RELIEF**

23 Plaintiffs, individually and on behalf of all others similarly situated, pray
24 for relief as follows:

25 1. An Order certifying the proposed Nationwide Class, designating
26 Plaintiffs as the named representatives of the Nationwide Class, and designating the
27 undersigned as Class Counsel;

1 2. An Order certifying the proposed California Class, designating Plaintiffs
2 Julie Hamilton and Jerad Hamilton as the named representatives of the California
3 Class, and designating the undersigned as Class Counsel;

4 3. An Order certifying the proposed Arizona Class, designating Plaintiff
5 Lyle McLean as the named representative of the Arizona Class, and designating the
6 undersigned as Class Counsel;

7 4. A declaration that Defendants are financially responsible for notifying
8 all Class Members about the true nature of the Class Tires;

9 5. An Order enjoining Defendants to desist from further deceptive
10 distribution, marketing and sales practices with respect to the Class Tires;

11 6. An Order compelling Defendants to buy back, or replace, the Class Tires
12 on fair and equitable terms;

13 7. An award to Plaintiffs and Class Members of actual, compensatory,
14 exemplary, punitive and statutory penalties and damages, including interest, in an
15 amount to be proven at trial;

16 8. Equitable and injunctive relief as may be necessary to protect the
17 interests of Plaintiffs and Class Members, including disgorgement and restitution of
18 all monies received by Defendants as a result of their wrongful conduct;

19 9. An award of reasonable attorney fees and costs, as permitted by law;

20 10. An award of pre-judgment and post-judgment interest, as permitted by
21 law;

22 11. Leave to amend this Complaint to conform to the evidence produced at
23 trial; and

24 12. Such other and further relief as may be appropriate.

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DEMAND FOR JURY TRIAL

Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, Plaintiffs demand a trial by jury of any and all issues so triable of right.

Dated: February 9, 2017

Respectfully submitted,

By: /s/ Dan C. Bolton

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