

FOR IMMEDIATE RELEASE:

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Attorney General Balderas Sues Takata & 15 Automakers over Dangerous Airbags

To date, known Takata airbag IR incidents have injured over 180 people and killed at least 11 in the United States alone

Santa Fe, NM – Today, New Mexico Attorney General Hector Balderas announced that he filed a lawsuit this week against Japanese airbag manufacturer Takata and 15 automakers over dangerous and defective airbags that function as fragmentation grenades. Hundreds of thousands of which were installed in cars sold or offered for sale in the State of New Mexico. The lawsuit was filed in the First Judicial District Court in Santa Fe, New Mexico, and it names Takata, Honda, Ford, Toyota, BMW, Mazda, Subaru, Mitsubishi, Nissan, FCA, Volkswagen, Audi, Ferrari, General Motors, Jaguar, and Mercedes-Benz. Attorney General Balderas alleges that the parties knew about, and misrepresented, the existence and extent of the defective airbags, and tried to conceal the defect until the National Highway Traffic Safety Administration (NHTSA) and Congress exposed the full extent of the defective airbags.

“In New Mexico, no child should ever be put in danger so international corporations can reap enormous profits,” Attorney General Balderas said. “New Mexico families’ health and safety have been put at dangerous risk by Takata and the automakers, and we will hold them accountable. Corporations who harm New Mexicans will pay for their actions no matter their size or location around the world.”

Takata’s airbag systems are installed in millions of vehicles, including vehicles manufactured by the defendant automakers. Under New Mexico law, Takata had, and has, a duty to ensure that its airbag systems work safely and as intended, and must not make false, deceptive, or misleading statements or omissions regarding them to any person, including the public and its commercial partners. Takata airbags are now subject to the largest National Highway Traffic Safety Administration (NHTSA) recall in the history of that agency because they explode in situations in which they should not and do so at excessive pressures, leading to “inflator rupture” (IR) in which metal shrapnel from the airbag’s metal inflator assembly housing is sprayed into a car’s cockpit at high speed. To date, known Takata airbag IR incidents have injured over 180 people and killed at least 11 in the United States alone.

The New Mexico Office of the Attorney General is bringing the case against Takata and the automakers with help from Grant and Eisenhofer, a national law firm that was selected for its specialty in handling major consumer protection and automotive lawsuits, and class-action securities litigation.

Please see attached for a copy of the complaint that includes photos.

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**STATE OF NEW MEXICO
COUNTY OF SANTA FE
FIRST JUDICIAL DISTRICT COURT**

STATE OF NEW MEXICO, *ex rel.* HECTOR
BALDERAS, Attorney General,

Plaintiff,

v.

TAKATA CORPORATION, TK HOLDINGS, INC.,
HONDA MOTOR CO., LTD., AMERICAN HONDA
MOTOR CO., INC., FORD MOTOR COMPANY,
TOYOTA MOTOR CORPORATION, TOYOTA
MOTOR SALES, U.S.A., INC., TOYOTA MOTOR
ENGINEERING & MANUFACTURING NORTH
AMERICA, INC., BAYERISCHE MOTOREN
WERKE AG, BMW OF NORTH AMERICA, LLC,
BMW MANUFACTURING CO., LLC, MAZDA
MOTOR CORPORATION, MAZDA MOTOR OF
AMERICA, INC., FUJI HEAVY INDUSTRIES, LTD.,
SUBARU OF AMERICA, INC., MITSUBISHI
MOTORS CORPORATION, MITSUBISHI MOTORS
NORTH AMERICA, INC., NISSAN MOTOR CO.,
LTD., NISSAN NORTH AMERICA, INC., FCA US
LLC, FIAT CHRYSLER AUTOMOBILES N.V.,
VOLKSWAGEN GROUP OF AMERICA, INC.,
VOLKSWAGEN AG, AUDI OF AMERICA, LLC,
AUDI AG, FERRARI NORTH AMERICA, INC.,
FERRARI N.V., GENERAL MOTORS
CORPORATION, JAGUAR LAND ROVER NORTH
AMERICA, LLC, and MERCEDES-BENZ USA, LLC,

Defendants.

No. D-101-CV-2017-00176

Case assigned to Singleton, Sarah

JURY TRIAL DEMANDED

**COMPLAINT FOR VIOLATIONS
OF NEW MEXICO'S UNFAIR TRADE PRACTICES ACT**

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COMES NOW Plaintiff, the State of New Mexico, by the Honorable Hector H. Balderas, Attorney General of the State of New Mexico (“Plaintiff” or the “State”), and brings this action against Defendants: (a) Takata Corporation and TK Holdings, Inc. (together, “Takata”); (b) Honda Motor Co., Ltd. and American Honda Motor Co., Inc. (together, “Honda”); (c) Ford Motor Company (“Ford”); (d) Toyota Motor Corporation, Toyota Motor Sales, U.S.A., Inc., and Toyota Engineering & Manufacturing North America, Inc. (together, “Toyota”); (e) Bayerische Motoren Werke AG, BMW of North America, LLC, and BMW Manufacturing Co., LLC (together, “BMW”); (f) Mazda Motor Corporation and Mazda Motor of America, Inc. (together, “Mazda”); (g) Fuji Heavy Industries, Ltd. and Subaru of America, Inc. (together, “Subaru”); (h) Mitsubishi Motors Corporation and Mitsubishi Motors North America, Inc. (together, “Mitsubishi”); (i) Nissan Motor Co., Ltd. and Nissan North America, Inc. (together, “Nissan”); (j) FCA US LLC and Fiat Chrysler Automobiles N.V. (together, “FCA”); (k) Volkswagen Group of America, Inc. and Volkswagen AG (together, “VW” or “Volkswagen”); (l) Audi of America, LLC and Audi AG (together, “Audi”); (m) Ferrari North America, Inc. and Ferrari N.V. (together, “Ferrari”); (n) General Motors Corporation (“GM” or “General Motors”); (o) Jaguar Land Rover North America, LLC (“Jaguar”); and (p) Mercedes-Benz USA, LLC (“Mercedes-Benz”) (collectively, “Defendants”), seeking statutory penalties and all damages, including punitive damages, recoverable at law or in equity to remedy Defendants’ willful and deliberate violations of New Mexico’s consumer protection laws.

By their acts, omissions, conduct, and practices alleged below, Defendants violated New Mexico’s Unfair Practices Act, NMSA1978, Sections 57-12-1 to -26 (1967, as amended through 2009). In support of its Complaint, the State avers as follows:

I. INTRODUCTION

1. Properly functioning airbags are critical automobile safety features. In the event of an automobile accident, airbags function to absorb energy between the bodies of drivers and passengers and interior vehicle components, such as steering wheels, dashboard panels, windows and windshields, and structural body frame components. Their entire purpose is to prevent or minimize bodily injury to drivers and passengers involved in automobile accidents.

2. Companies that design and manufacture airbags must exercise the highest level of care. A malfunctioning airbag (e.g., one that fails to inflate at the appropriate rate, or which explodes upon impact) is highly likely to result in the serious bodily injury or death of drivers and passengers involved in automobile accidents. Airbag suppliers, like Takata, are entrusted with protecting the lives of millions. Similarly, vehicle manufacturers have a responsibility to their customers and the general public to take all reasonable precautions to ensure that the third-party vehicle components – especially safety-related components, like airbags – that they install in their vehicles will function safely and as intended.

3. Takata designs, manufactures, delivers, sells, and imports automotive safety systems, including airbags. Takata's airbag systems are installed in millions of vehicles, including vehicles manufactured by Defendants Honda, Ford, Toyota, BMW, Mazda, Subaru, Mitsubishi, Nissan, FCA, Volkswagen, Audi, Ferrari, General Motors, Jaguar, and Mercedes-Benz.

4. Profits must not be allowed to outweigh the safety of drivers and passengers. Any corners cut by Takata during the design or manufacturing process are bound to impact drivers and passengers anytime there is a need of the airbag system's protections. Likewise, vehicle manufacturers, including Honda, Ford, Toyota, BMW, Mazda, Subaru, Mitsubishi, Nissan, FCA, Volkswagen, Audi, Ferrari, General Motors, Jaguar, and Mercedes-Benz, must not be allowed to

make product or component sourcing decisions, at least with respect to critical safety features like airbags, based on any criteria other than the safety of their customers.

5. Under New Mexico law, Takata had, and has, a duty to ensure that its airbag systems work safely and as intended, and must not make false, deceptive, or misleading statements or omissions regarding them to any person, including the public and its commercial partners.

6. Similarly, under New Mexico law, Honda, Ford, Toyota, BMW, Mazda, Subaru, Mitsubishi, Nissan, FCA, Volkswagen, Audi, Ferrari, General Motors, Jaguar, and Mercedes-Benz (together, the “Vehicle Manufacturer Defendants”) had, and have, a duty to ensure their vehicles are safe and must not make false, deceptive, or misleading statements or omissions regarding their vehicles to any person.

7. Takata failed in its duty. Unlike other manufacturers’ airbags, which discharge when they are supposed to and do so at a safe rate, tens of millions of Takata airbags are now subject to the largest National Highway Traffic Safety Administration (“NHTSA”) recall in the history of that agency because they explode in situations in which they should not and do so at excessive pressures, leading to “inflator rupture” (“IR”) in which metal shrapnel from the airbag’s metal inflator assembly housing is sprayed into a car’s cockpit at high speed. In cases of IR, instead of functioning as an essential lifesaving device, Takata’s airbags function as a fragmentation grenade. To date, known Takata airbag IR incidents have injured over 180 people and killed at least 11 in the United States alone.

8. The root cause of the Takata airbag systems’ deadly explosions is a combination of Takata’s metal inflator assembly design, Takata’s choice of a moisture-sensitive and unstable propellant for its airbags, Takata’s failures to engage in sufficient safety and quality control

measures and processes at its manufacturing facilities, and the readily foreseeable effects of time, temperature, and humidity on Takata's finished airbag assemblies.

9. Specifically, Takata's metal inflators are insufficiently sealed, allowing moisture to infiltrate the propellant stored inside. Takata's choice of a moisture-sensitive, unstable propellant – namely, non-desiccated phase stabilized ammonium nitrate or “PSAN” – was driven primarily by cost concerns. Takata could have used, but chose not to use, any of a range of more expensive, moisture-resistant and stable propellants like tetrazole or guanidine nitrate, or even desiccated PSAN.

10. According to investigative journalism carried out by reporters at the *New York Times*, in the late 1990s, Takata decided to develop PSAN-equipped airbag assemblies to sustain its corporate viability in the face of mounting costs. In response, vehicle manufacturers, including but not limited to General Motors (which at the time sourced its airbags from a Takata competitor, Autoliv), pressed their suppliers to develop cheaper airbag assemblies, in order to cut costs and thus increase profits flowing to the vehicle manufacturers. As the *New York Times* reported in an August 26, 2016 piece, “Rather than being the victims of Takata's missteps, automakers pressed their suppliers to put cost before all else.”

11. Autoliv engineers and technicians studied the new Takata design in the late 1990s and discovered, according to former Autoliv chemist Robert Taylor, that when the airbag was detonated, “the gas is generated so fast, it blows the inflator to bits.” A member of Mr. Taylor's team further explained, “When we lit it off, it totally destroyed the fixture. It turned it into shrapnel.”

12. Takata's airbag inflator design, propellant, and quality control process choices were utterly unreasonable and positively dangerous. By making these choices, Takata produced tens of

millions of defective airbags (the “Defective Airbags”), hundreds of thousands of which were installed in cars sold or offered for sale in the State of New Mexico.

13. Takata’s placement of these Defective Airbags into the stream of commerce in New Mexico constitutes unfair, deceptive, and unconscionable trade practices in violation of New Mexico law.

14. Takata knew from the outset, in the late 1990s, that its Defective Airbags were dangerously defective. Indeed, even Takata’s competitor Autoliv was able to determine in the late 1990s that the Defective Airbags were dangerously defective. But by no later than 2003, Takata knew for certain that its Defective Airbags were dangerously defective because, by that time, Takata airbag-equipped vehicles were involved in accidents in which the airbags exploded, killing or injuring the vehicle occupants.

15. Yet Takata concealed its knowledge, repeatedly denying and obfuscating the existence of the defect from regulators and the public across the country, including in New Mexico. Indeed, as alleged more fully herein, Takata has made a number of public statements denying or minimizing the defect and assuring the public of its commitment to driver safety, in full knowledge of the deadly consequences of its explosive airbag systems.

16. On or about January 13, 2017, Takata pleaded guilty to a criminal charge brought by the U.S. Department of Justice, and will pay \$1 billion in fines and restitution (a \$25 million criminal fine, \$125 million to individuals injured by airbags, and \$850 million to vehicle manufacturers who purchased Takata’s airbag assemblies). In addition, three Takata executives – Shinichi Tanaka (an Executive Vice President), Hideo Nakajima (a Director of Engineering), and Tsuneo Chikaraishi (Chief of Japan-Asia inflator operations) – were indicted by the DOJ.

17. According to the indictment, Messrs. Tanaka, Nakajima, and Chikaraishi falsified and altered reports of tests on Defective Airbags showing that they are prone to rupture as early as 2000. They referred to this unconscionable, illegal, and malicious practice as “XX-ing the data.”

18. Takata shared its defective airbag designs (including use of PSAN as a propellant) with each of the Vehicle Manufacturer Defendants during the course of its commercial relationships with those manufacturers, and each of the Vehicle Manufacturer Defendants approved Takata’s designs.

19. Takata also falsely represented to its commercial partners, including the Vehicle Manufacturer Defendants, that its airbag systems were safe.

20. The Vehicle Manufacturer Defendants were not entitled to rely on such representations due to their knowledge that the airbags were defectively designed (including by virtue of their use of PSAN).

21. Moreover, BMW, Subaru, and Honda were aware of the defects in Takata’s airbags as a result of their investigations of accidents involving exploding airbags. Relatedly, over the course of several years, Takata and several vehicle manufacturers (including Honda and BMW) issued a series of partial, misleading, and ultimately ineffective recalls to address the Defective Airbags. Such recalls were initiated in 2004 following internal investigations – including joint investigations by Takata/Honda and Takata/BMW starting in 2003 – that put them even more firmly on notice of the defect.

22. As alleged in more detail herein, all Vehicle Manufacturer Defendants knew or should have known of the defect because (a) PSAN is a well-known industrial explosive, (b) in the late 1990s, Takata’s competitor Autoliv, which at the time supplied airbag assemblies to General Motors, FCA, Ford, Honda, Mazda, Mitsubishi, and Toyota, studied Takata’s PSAN-

equipped airbag assemblies and confirmed that they are dangerously defective, (c) various Vehicle Manufacturer Defendants, including BMW, Subaru, and Honda, as well as Takata, conducted accident studies in 2003-2004 showing that the Defective Airbags are dangerously defective, and (d) Honda, BMW, and Takata initiated limited joint recall programs covering several thousand Defective Airbags starting in 2004, which put all Vehicle Manufacturer Defendants on notice of the existence of the defect.

23. Defendants' concealments of the defect from the public at large and the State of New Mexico, and denials and obfuscations of the defect to the public and the State of New Mexico, also constitute unfair, deceptive, and unconscionable trade practices in violation of New Mexico law.

24. Accordingly, because of Defendants' willful violations of the New Mexico Unfair Practices Act through the introduction of the Defective Airbags into the State, misrepresentations and omissions concerning the safety of the airbags (and vehicles in which Defective Airbags were installed), and concealments of the defect after placing these dangerous products in the State, the Attorney General of the State of New Mexico, pursuant to the statutory authority set forth in NMSA 1978, § 57-12-11, petitions this court for recovery, on behalf of the State of New Mexico, of a civil penalty of \$5,000 for each Defective Airbag that entered into New Mexico and a civil penalty of \$5,000 per Defendant for each day such Defendant concealed or obfuscated the existence or extent of the defect, or affirmatively misrepresented the safety of its vehicles or those vehicles' Takata airbag systems.

II. JURISDICTION

25. This court has personal jurisdiction over Defendants because, among other things, Defendants willfully placed the Defective Airbags into the stream of commerce with the knowledge and intent that their products would be widely disseminated throughout the United

States, including in the State of New Mexico, and with knowledge that the adverse effects of the unsafe condition of the Defective Airbags would be felt in the State of New Mexico.

26. By purposefully placing their Defective Airbags in the State of New Mexico, Defendants have purposefully availed themselves through specific acts of the privilege of conducting activities within the State of New Mexico and have conducted tortious acts within the State of New Mexico and are thereby subject to the specific personal jurisdiction of the Courts of this State under New Mexico's long-arm statute for claims relating to the Defective Airbags. *See* NMSA 1978, § 38-1-16.

27. In addition, this Court has personal jurisdiction over Defendants pursuant to NMSA 1978, § 38-1-6(F), due to Defendants' engagement of business within this state by placing their Defective Airbags into commerce here.

28. This Court's exercise of personal jurisdiction over all Defendants is consistent with due process as Defendants purposefully directed their Defective Airbags into New Mexico and otherwise availed themselves of the benefits and protections of the laws of New Mexico.

29. This Court has subject matter jurisdiction because the claims at issue arise under the statutes of the State of New Mexico, including NMSA 1978, § 57-12-8 and NMSA 1978, § 57-12-11.

III. VENUE

30. Venue is proper in Santa Fe County because Plaintiff resides here, and some or all of the acts, practices and conduct of Defendants which give rise to this civil action occurred here in Santa Fe County. *See* NMSA 1978, §§ 38-3-1(A), 38-3-1(B); 57-12-8. In addition, venue is proper in Santa Fe County against the foreign corporation Defendants because Plaintiff resides here, and none of the foreign corporation Defendants maintain a corporate agent for purposes of

service of process within the State. Accordingly, venue is proper in any county of the State. NMSA 1978, § 38-3-1(F).

IV. THE PARTIES

A. PLAINTIFF

31. Plaintiff is the State of New Mexico, by the Honorable Hector H. Balderas, the duly-elected Attorney General of the State of New Mexico, who has the statutory authority to enforce laws for the protection of the public. The Attorney General is authorized to act on behalf of the State in all actions when the interests of the State require action in his judgment, and is further empowered to prosecute all actions and proceedings brought by any State officer or head of a State department, board or commission, or any employee of the State in his official capacity. NMSA 1978, § 8-5-2(B, C).

32. The Attorney General is specifically authorized to bring suit on behalf of the State to enforce the New Mexico Unfair Practices Act. *See* NMSA 1978, § 57-12-8.

B. DEFENDANTS

Takata

33. Defendant Takata Corporation is a foreign for-profit corporation with its principal place of business in Tokyo, Japan. Takata is a specialized supplier of automotive safety systems that designs, manufactures, tests, markets, distributes, and sells airbags. Takata is the second largest supplier of airbags in the United States. Airbags make up nearly 40 percent of Takata's business. Takata is a vertically integrated company and manufactures component parts in its own facilities. Takata also engages in quality control at its own facilities during production. Takata, either directly or through its wholly owned subsidiaries, manufactures airbags for distribution in the United States and New Mexico, including the Defective Airbags at issue in this litigation. Takata delivers its products, including the Defective Airbags at issue in this litigation, into the

stream of commerce with the expectation that they will be purchased by consumers in the United States and the State of New Mexico. Airbags manufactured by Takata have been installed in millions of vehicles in the United States manufactured by at least fifteen different automakers, including Honda, Ford, Toyota, BMW, Mazda, Subaru, Mitsubishi, Nissan, FCA, Volkswagen, Audi, Ferrari, General Motors, Jaguar, and Mercedes-Benz. By 2014, Takata captured 22 percent of the global automotive airbag market.

34. Defendant TK Holdings, Inc. is a subsidiary of Takata Corporation incorporated in Delaware and headquartered in Auburn Hills, Michigan. TK Holdings, directly and through subsidiaries, owns or owned 56 manufacturing plants in twenty countries, including in Moses Lake, Washington, and LaGrange, Georgia in the United States as well as in Santiago de la Monclova, Coahuila, Mexico (“Monclova”), where the Defective Airbags were made. TK Holdings sells, designs, manufactures, tests, and markets airbags for distribution throughout the United States and the State of New Mexico. TK Holdings delivers its products into the stream of commerce with the expectation that they will be purchased by consumers in the United States and the State of New Mexico.

Honda

35. Defendant Honda Motor Co., Ltd. is a foreign for-profit corporation with its principal place of business in Tokyo, Japan. Honda Motor Co., Ltd. designs, manufactures, and sells automobiles and other products through independent retail dealers, outlets, and authorized dealerships in the United States and the State of New Mexico.

36. Defendant American Honda Motor Co., Inc. is a subsidiary of Honda Motor Co., Ltd. headquartered in Torrance, California. American Honda Motor Co. conducts Honda’s sales,

marketing, and operational activities for Honda cars, trucks, sport utility vehicles, and automobile parts in the United States and the State of New Mexico.

37. Honda vehicles sold or offered for sale in the State of New Mexico contain defective airbags manufactured by Takata. Honda delivers these products into the stream of commerce in New Mexico with the expectation that they will be purchased by consumers in the State of New Mexico.

38. Honda vehicles equipped with Defective Airbags include at least the following:

- a. 2001-2012 Honda Accord;
- b. 2001-2011 Honda Civic (including hybrid and NGV);
- c. 2002-2011 Honda CR-V;
- d. 2016 Honda CR-V;
- e. 2002-2004 Honda Odyssey;
- f. 2003-2015 Honda Pilot;
- g. 2003-2011 Honda Element;
- h. 2006-2014 Honda Ridgeline;
- i. 2006-2010 Honda Gold Wing motorcycle;
- j. 2007-2013 Honda Fit;
- k. 2010-2015 Honda Accord Crosstour;
- l. 2010-2014 Honda Insight;
- m. 2010-2014 Honda FCX Clarity;
- n. 2011-2015 Honda CR-Z;
- o. 2013-2014 Fit EV;
- p. 2002-2003 Acura 3.2TL;

- q. 2003 Acura 3.2CL;
- r. 2003-2006 Acura MDX;
- s. 2005-2012 Acura RL;
- t. 2007-2016 Acura RDX;
- u. 2009-2014 Acura TL;
- v. 2009-2014 Acura TSX;
- w. 2010-2013 Acura ZDX;
- x. 2013-2016 Acura ILX (including hybrid).

Ford

39. Defendant Ford Motor Company is headquartered in Dearborn, Michigan. Ford designs, manufactures, distributes, and services vehicles, parts, and accessories worldwide, including in the United States and in the State of New Mexico.

40. Ford vehicles sold or offered for sale in the State of New Mexico contain defective airbags manufactured by Takata. Ford delivers these products into the stream of commerce in New Mexico with the expectation that they will be purchased by consumers in the State of New Mexico.

41. Ford vehicles equipped with Defective Airbags include at least the following:
- a. 2004-2011 Ford Ranger;
 - b. 2005-2006 Ford GT;
 - c. 2005-2014 Ford Mustang;
 - d. 2006-2012 Ford Fusion;
 - e. 2007-2010 Ford Edge;
 - f. 2006-2012 Lincoln Zephyr;

- g. 2006-2012 Lincoln MKZ;
- h. 2007-2010 Lincoln MKX;
- i. 2006-2011 Mercury Milan.

Toyota

42. Defendant Toyota Motor Corporation is the world's largest automobile manufacturer and the highest-volume seller of vehicles in the United States and in the State of New Mexico. Toyota is a Japanese corporation headquartered in Toyota City, Aichi Prefecture, Japan.

43. Defendant Toyota Motor Sales, U.S.A., Inc. is a wholly-owned subsidiary of Toyota Motor Corporation and is responsible for the marketing, sales, and distribution in the United States and in the State of New Mexico of automobiles manufactured by Toyota Motor Corporation. Toyota Motor Sales, U.S.A., Inc. is headquartered in Torrance, California.

44. Defendant Toyota Motor Engineering & Manufacturing North America, Inc. is headquartered in Erlanger, Kentucky and is a subsidiary of Toyota Motor Corporation. Toyota Motor Engineering & Manufacturing North America, Inc. oversees Toyota's engineering design and development, research and development, and manufacturing activities in the United States, Mexico, and Canada.

45. Toyota vehicles sold or offered for sale in the State of New Mexico contain defective airbags manufactured by Takata. Toyota delivers these products into the stream of commerce in New Mexico with the expectation that they will be purchased by consumers in the State of New Mexico.

46. Toyota vehicles equipped with Defective Airbags include at least the following:
- a. 2002-2007 Toyota Sequoia;

- b. 2003-2013 Toyota Corolla and Corolla Matrix;
- c. 2003-2006 Toyota Tundra;
- d. 2004-2005 Toyota RAV4;
- e. 2006-2012 Toyota Yaris;
- f. 2010-2016 Toyota 4Runner;
- g. 2014 Toyota Sienna;
- h. 2002-2010 Lexus SC430;
- i. 2006-2013 Lexus IS;
- j. 2007-2012 Lexus ES;
- k. 2008-2014 Lexus IS F;
- l. 2010-2015 Lexus IS C;
- m. 2010-2017 Lexus GX;
- n. 2010-2015 Lexus IS convertible;
- o. 2012 Lexus LFA;
- p. 2008-2015 Scion xB.

BMW

47. Defendant Bayerische Motoren Werke AG is a German holding company and automobile manufacturer. Bayerische Motoren Werke AG is headquartered in Munich, Bavaria, Germany. BMW Group is a subsidiary of Bayerische Motoren Werke AG and is also headquartered in Munich. Bayerische Motoren Werke AG, together with its subsidiaries, designs, manufactures, and sells automobiles and motorcycles worldwide, including in the United States and the State of New Mexico.

48. Defendant BMW of North America, LLC is a subsidiary of Bayerische Motoren Werke AG that is headquartered in Woodcliff Lake, New Jersey. BMW of North America, LLC is the United States importer of BMW vehicles.

49. BMW vehicles sold or offered for sale in the State of New Mexico contain defective airbags manufactured by Takata. BMW delivers these products into the stream of commerce in New Mexico with the expectation that they will be purchased by consumers in the State of New Mexico.

50. BMW vehicles equipped with Defective Airbags include at least the following:

- a. 2000-2011 BMW 3-Series sedan;
- b. 2000-2012 BMW 3-Series wagon;
- c. 2002-2013 BMW 3-Series coupe and convertible;
- d. 2001-2013 BMW M3 coupe and convertible;
- e. 2002-2003 BMW 5-Series;
- f. 2002-2003 BMW M5;
- g. 2003-2013 BMW X5;
- h. 2007-2010 BMW X3;
- i. 2008-2013 BMW 1-Series coupe and convertible;
- j. 2008-2011 BMW M3 sedan;
- k. 2008-2014 BMW X6 (including hybrid);
- l. 2011-2015 BMW X1.

Mazda

51. Defendant Mazda Corporation, along with its subsidiaries, designs, manufactures, and sells automobiles worldwide, including in the United States and the State of New Mexico. Mazda Corporation is headquartered in Hiroshima, Japan.

52. Defendant Mazda Motors of America, Inc., doing business as Mazda North American Operations, is a subsidiary of Mazda Corporation organized under the laws of the State of California with its corporate headquarters located in Irvine, California. Mazda Motors of America, Inc. distributes, markets, and sells Mazda automobiles in the United States and in the State of New Mexico.

53. Mazda vehicles sold or offered for sale in the State of New Mexico contain defective airbags manufactured by Takata. Mazda delivers these products into the stream of commerce in New Mexico with the expectation that they will be purchased by consumers in the State of New Mexico.

54. Mazda vehicles equipped with Defective Airbags include at least the following:

- a. 2003-2011 Mazda 6;
- b. 2006-2007 Mazda Mazdaspeed 6;
- c. 2004-2011 Mazda RX-8;
- d. 2004-2006 Mazda MPV;
- e. 2004-2009 Mazda B-Series;
- f. 2007-2012 Mazda CX-7;
- g. 2007-2015 Mazda CX-9.

Subaru

55. Defendant Fuji Heavy Industries is the parent company of Subaru. Along with its subsidiaries, Fuji Heavy Industries designs, manufactures, and sells automobiles worldwide,

including in the United States and the State of New Mexico. Fuji Heavy Industries' global headquarters are located in Tokyo, Japan.

56. Defendant Subaru of America, Inc. is a subsidiary of Fuji Heavy Industries organized under the laws of the State of New Jersey with its corporate headquarters located in Cherry Hill, New Jersey. Subaru of America, Inc. distributes, markets, and sells Subaru automobiles in the United States and the State of New Mexico.

57. Subaru vehicles sold or offered for sale in the State of New Mexico contain defective airbags manufactured by Takata. Subaru delivers these products into the stream of commerce in New Mexico with the expectation that they will be purchased by consumers in the State of New Mexico.

58. Subaru vehicles equipped with Defective Airbags include at least the following:

- a. 2003-2014 Subaru Legacy;
- b. 2003-2014 Subaru Outback;
- c. 2003-2006 Subaru Baja;
- d. 2004-2011 Subaru Impreza;
- e. 2006-2014 Subaru Tribeca;
- f. 2009-2013 Subaru Forester;
- g. 2012-2014 Subaru WRX and WRX STI.

Mitsubishi

59. Defendant Mitsubishi Corporation is the parent company of Mitsubishi. Along with its subsidiaries, Mitsubishi Corporation designs, manufactures, and sells automobiles worldwide, including in the United States and the State of New Mexico. Mitsubishi Corporation's global headquarters are located in Chiyoda-ku, Tokyo, Japan.

60. Defendant Mitsubishi Motors North America, Inc. is a subsidiary of Mitsubishi Corporation organized under the laws of California with its corporate headquarters located in Cypress, California. Mitsubishi Motors North America, Inc. distributes, markets, and sells Mitsubishi automobiles in the United States and the State of New Mexico.

61. Mitsubishi vehicles sold or offered for sale in the State of New Mexico contain defective airbags manufactured by Takata. Mitsubishi delivers these products into the stream of commerce in New Mexico with the expectation that they will be purchased by consumers in the State of New Mexico.

62. Mitsubishi vehicles equipped with Defective Airbags include at least the following:

- a. 2004 Mitsubishi Lancer Sportback;
- b. 2004-2007 Mitsubishi Lancer;
- c. 2004-2006 Mitsubishi Lancer Evolution;
- d. 2006-2009 Mitsubishi Raider;
- e. 2012-2017 Mitsubishi iMiEV.

Nissan

63. Defendant Nissan Motor Co., Ltd. is the parent company of Nissan. Along with its subsidiaries, Nissan Motor Co., Ltd. designs, manufactures, and sells automobiles worldwide, including in the United States and the State of New Mexico. Nissan Motor Co., Ltd.'s global headquarters are located in Yokohama, Japan.

64. Defendant Nissan North America, Inc. is a subsidiary of Nissan Motor Co., Ltd. organized under the laws of California with its corporate headquarters located in Franklin, Tennessee. Nissan North America, Inc. distributes, markets, and sells Nissan automobiles in the United States and the State of New Mexico.

65. Nissan vehicles sold or offered for sale in the State of New Mexico contain defective airbags manufactured by Takata. Nissan delivers these products into the stream of commerce in New Mexico with the expectation that they will be purchased by consumers in the State of New Mexico.

66. Nissan vehicles equipped with Defective Airbags include at least the following:

- a. 2001-2003 Nissan Maxima;
- b. 2002-2004 Nissan Pathfinder;
- c. 2002-2006 Nissan Sentra;
- d. 2007-2012 Nissan Versa;
- e. 2001-2004 Infiniti I30/I35;
- f. 2002-2003 Infiniti QX4;
- g. 2003-2008 Infiniti FX35/FX45;
- h. 2006-2010 Infiniti M35/M45.

FCA

67. Defendant Fiat Chrysler Automobiles N.V. is the parent company of FCA. Along with its subsidiaries, Fiat Chrysler Automobiles N.V. designs, manufactures, and sells automobiles worldwide, including in the United States and the State of New Mexico. Fiat Chrysler Automobiles N.V.'s global headquarters are located in London, England.

68. Defendant FCA US LLC is a subsidiary of Fiat Chrysler Automobiles N.V. organized under the laws of New Jersey with its corporate headquarters located in Auburn Hills, Michigan. FCA US LLC distributes, markets, and sells FCA automobiles in the United States and the State of New Mexico.

69. FCA vehicles sold or offered for sale in the State of New Mexico contain defective airbags manufactured by Takata. FCA delivers these products into the stream of commerce in New Mexico with the expectation that they will be purchased by consumers in the State of New Mexico.

70. FCA vehicles equipped with Defective Airbags include at least the following:

- a. 2005-2015 Chrysler 300;
- b. 2006-2008 Chrysler Crossfire;
- c. 2007-2009 Chrysler Aspen;
- d. 2006-2009 Dodge Sprinter 2500/3500;
- e. 2007-2017 Freightliner Sprinter 2500/3500;
- f. 2008-2009 Sterling Bullet 4500/5500;
- g. 2003-2008 Dodge Ram 1500;
- h. 2003-2009 Dodge Ram 2500;
- i. 2003-2010 Dodge Ram 3500;
- j. 2004-2009 Dodge Durango;
- k. 2005-2008 Dodge Magnum;
- l. 2005-2011 Dodge Dakota;
- m. 2006-2015 Dodge Charger;
- n. 2008-2014 Dodge Challenger;
- o. 2008-2010 Dodge Ram 4500/5500;
- p. 2007-2016 Jeep Wrangler.

Volkswagen

71. Defendant Volkswagen AG is the parent company of Volkswagen. Along with its subsidiaries, Volkswagen AG designs, manufactures, and sells automobiles worldwide, including in the United States and the State of New Mexico. Volkswagen AG's global headquarters are located in Wolfsburg, Germany.

72. Defendant Volkswagen Group of America, Inc. is a subsidiary of Volkswagen AG organized under the laws of New Jersey with its corporate headquarters located in Herndon, Virginia. Volkswagen Group of America, Inc. distributes, markets, and sells Volkswagen automobiles in the United States and the State of New Mexico.

73. Volkswagen vehicles sold or offered for sale in the State of New Mexico contain defective airbags manufactured by Takata. Volkswagen delivers these products into the stream of commerce in New Mexico with the expectation that they will be purchased by consumers in the State of New Mexico.

74. Volkswagen vehicles equipped with Defective Airbags include at least the following:

- a. 2006-2010 Volkswagen Passat sedan and wagon;
- b. 2012-2014 Volkswagen Passat sedan and wagon;
- c. 2009-2017 Volkswagen CC;
- d. 2009-2013 Volkswagen GTI;
- e. 2010-2014 Volkswagen Jetta SportWagen;
- f. 2010-2014 Volkswagen Golf;
- g. 2010-2014 Volkswagen Eos;
- h. 2013 Volkswagen Golf R;
- i. 2015 Volkswagen Tiguan.

Audi

75. Defendant Audi AG is the parent company of Audi. Along with its subsidiaries, Audi AG designs, manufactures, and sells automobiles worldwide, including in the United States and the State of New Mexico. Audi AG's global headquarters are located in Bayern, Germany.

76. Defendant Audi of America, LLC is a subsidiary of Audi AG organized under the laws of Delaware with its corporate headquarters located in Herndon, Virginia. Audi of America, LLC distributes, markets, and sells Audi automobiles in the United States and the State of New Mexico.

77. Audi vehicles sold or offered for sale in the State of New Mexico contain defective airbags manufactured by Takata. Audi delivers these products into the stream of commerce in New Mexico with the expectation that they will be purchased by consumers in the State of New Mexico.

78. Audi vehicles equipped with Defective Airbags include at least the following:

- a. 2004-2008 Audi A4;
- b. 2005-2008 Audi S4;
- c. 2003-2011 Audi A6;
- d. 2006-2013 Audi A3;
- e. 2006-2009 Audi A4 cabriolet;
- f. 2007-2008 Audi RS4;
- g. 2007-2009 Audi S4 cabriolet;
- h. 2007-2011 Audi S6;
- i. 2008 Audi RS4 cabriolet;
- j. 2009-2012 Audi Q5;

- k. 2015 Audi Q5;
- l. 2010-2012 Audi S5 cabriolet;
- m. 2016-2017 Audi TT;
- n. 2017 Audi R8.

Ferrari

79. Defendant Ferrari N.V. is the parent company of Ferrari. Along with its subsidiaries, Ferrari N.V. designs, manufactures, and sells automobiles worldwide, including in the United States and the State of New Mexico. Ferrari N.V.'s global headquarters are located in Maranello, Italy.

80. Defendant Ferrari North America, Inc. is a subsidiary of Ferrari N.V. organized under the laws of Delaware with its corporate headquarters located in Englewood Cliffs, New Jersey. Ferrari North America, Inc. distributes, markets, and sells Ferrari automobiles in the United States and the State of New Mexico.

81. Ferrari vehicles sold or offered for sale in the State of New Mexico contain defective airbags manufactured by Takata. Ferrari delivers these products into the stream of commerce in New Mexico with the expectation that they will be purchased by consumers in the State of New Mexico.

82. Ferrari vehicles equipped with Defective Airbags include at least the following:

- a. 2009-2014 Ferrari California;
- b. 2010-2015 Ferrari 458 Italia;
- c. 2012-2016 Ferrari FF;
- d. 2012-2015 Ferrari 458 Spider;
- e. 2013-2017 Ferrari F12 Berlinetta;

- f. 2014-2015 Ferrari 458 Speciale;
- g. 2015 458 Ferrari Speciale A;
- h. 2015-2017 Ferrari California T;
- i. 2016-2017 Ferrari F12 TDF;
- j. 2016-2017 Ferrari 488 GTB;
- k. 2016-2017 Ferrari 488 Spider;
- l. 2016 Ferrari F60;
- m. 2017 Ferrari GTC4 Lusso.

General Motors

83. Defendant General Motors Corporation, along with its subsidiaries, designs, manufactures, distributes, markets, and sells automobiles worldwide, including in the United States and the State of New Mexico. General Motors Corporation is organized under the laws of Delaware with its global headquarters located in Detroit, Michigan.

84. General Motors vehicles sold or offered for sale in the State of New Mexico contain defective airbags manufactured by Takata. General Motors delivers these products into the stream of commerce in New Mexico with the expectation that they will be purchased by consumers in the State of New Mexico.

85. General Motors vehicles equipped with Defective Airbags include at least the following:

- a. 2007-2014 Chevrolet Silverado HD;
- b. 2007-2014 Chevrolet Suburban;
- c. 2007-2014 Chevrolet Tahoe;
- d. 2007-2013 Chevrolet Avalanche;

- e. 2007-2013 Chevrolet Silverado 1500;
- f. 2015 Chevrolet Camaro;
- g. 2015 Chevrolet Equinox;
- h. 2015 Chevrolet Malibu;
- i. 2007-2014 Cadillac Escalade and Escalade ESV;
- j. 2007-2013 Cadillac EXT;
- k. 2015 Cadillac XTS;
- l. 2015 Buick LaCrosse;
- m. 2007-2014 GMC Sierra HD;
- n. 2007-2014 GMC Yukon and Yukon XL;
- o. 2007-2013 GMC Sierra 1500;
- p. 2015 GMC Terrain;
- q. 2003-2010 Pontiac Vibe;
- r. 2008-2009 Saturn Astra;
- s. 2003-2011 Saab 9-3;
- t. 2005-2006 Saab 9-2X;
- u. 2006-2009 Saab 9-5.

Jaguar

86. Defendant Jaguar Land Rover North America, LLC, along with its subsidiaries, designs, manufactures, distributes, markets, and sells automobiles worldwide, including in the United States and the State of New Mexico. Jaguar Land Rover North America, LLC is organized under the laws of Delaware with its global headquarters located in Mahwah, New Jersey.

87. Jaguar vehicles sold or offered for sale in the State of New Mexico contain defective airbags manufactured by Takata. Jaguar delivers these products into the stream of commerce in New Mexico with the expectation that they will be purchased by consumers in the State of New Mexico.

88. Jaguar vehicles equipped with Defective Airbags include at least the following:

- a. 2009-2015 Jaguar XF;
- b. 2007-2012 Land Rover Range Rover.

Mercedes-Benz

89. Defendant Mercedes-Benz USA, LLC, along with its subsidiaries, designs, manufactures, distributes, markets, and sells automobiles worldwide, including in the United States and the State of New Mexico. Mercedes-Benz USA, LLC is organized under the laws of Delaware with its global headquarters located in Montvale, New Jersey.

90. Mercedes-Benz vehicles sold or offered for sale in the State of New Mexico contain defective airbags manufactured by Takata. Mercedes-Benz delivers these products into the stream of commerce in New Mexico with the expectation that they will be purchased by consumers in the State of New Mexico.

91. Mercedes-Benz vehicles equipped with Defective Airbags include at least the following:

- a. 2005-2014 Mercedes-Benz C Class (including 2009-2011 C63 AMG, but excluding C55 AMG);
- b. 2007-2008 Mercedes-Benz SLK Class;
- c. 2007-2017 Mercedes Sprinter;
- d. 2009-2012 Mercedes-Benz GL Class;

- e. 2009-2011 Mercedes-Benz M Class;
- f. 2009-2012 Mercedes-Benz R Class;
- g. 2010-2011 Mercedes-Benz E Class sedan and wagon;
- h. 2010-2017 Mercedes-Benz E Class coupe;
- i. 2011-2017 Mercedes-Benz E Class convertible;
- j. 2010-2015 Mercedes-Benz GLK Class;
- k. 2011-2015 Mercedes-Benz SLS AMG coupe and roadster.

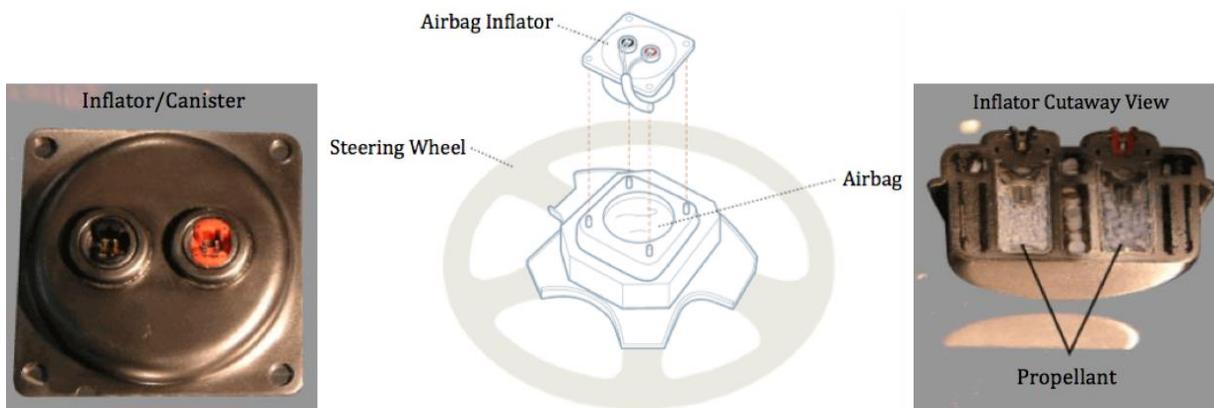
92. Defendants Honda, Ford, Toyota, BMW, Mazda, Subaru, Mitsubishi, Nissan, FCA, Volkswagen, Audi, Ferrari, General Motors, Jaguar, and Mercedes-Benz are collectively referred to as the “Vehicle Manufacturer Defendants.”

V. FACTUAL ALLEGATIONS

A. AIRBAG INFLATOR ASSEMBLIES SHOULD NOT EXPLODE LIKE A FRAGMENTATION GRENADE.

93. An airbag is a vehicle occupant restraint system that consists of a fabric cushion or envelope that opens rapidly in the event of a collision. When a crash is detected, a signal is sent to the inflator, which is composed of a steel canister that houses a propellant, initiating a chemical reaction that causes the propellant to burn. The burning propellant emits a gas that rapidly inflates and deploys the fabric cushion.

Figure 1: Airbag Inflator And Parts Photographs and Illustration



94. Airbags are intended to prevent passengers' bodies from being propelled against objects such as the windshield, dashboard, and steering wheel during a collision. Thus, the airbags are supposed to lower the risk of death and serious bodily injury when they inflate in an automobile accident.

95. In order to create a safe airbag, the propellant must burn in a controlled manner so that it inflates the cushion without sending pieces of the metal inflator assembly into vehicle occupants' bodies.

96. If the propellant burns too fast, however, it exerts more pressure on the metal inflator assembly than the inflator can safely contain.

97. This "overpressure" causes the metal inflator to explode into jagged pieces of shrapnel that rip through the fabric cushion as well as through anything else that they may come in contact with, such as the occupants of a vehicle.

Figure 2: Perforated Airbag Cushion and Piece of Metal Shrapnel Recovered from Neck of Florida Resident Following Explosion of Takata Defective Airbag Installed in 2003 Honda Civic on March 20, 2015



98. Properly designed and manufactured airbag inflators do not explode; instead, they direct the gas and pressure from the burning propellant into the fabric cushion and away from vehicle occupants through vents, inflating the airbag, saving lives, and not peppering vehicle occupants with deadly pieces of shrapnel.

99. Because of Takata's design choices, however, Takata's Defective Airbags have a high propensity to explode and function as if they were fragmentation grenades instead of the life-saving devices Takata represented them to be.

B. TAKATA'S DEFECTIVE AIRBAGS EXPLODE BECAUSE OF TAKATA'S AIRBAG DESIGN CHOICES AND MANUFACTURING PRACTICES.

100. Since 1983, Takata has supplied automakers with airbags and has become one of the three largest airbag manufacturers worldwide.

101. When it began manufacturing airbags in the 1980s, Takata used a compound called sodium azide as the propellant within its inflators.

102. In 1991, Takata began manufacturing airbag inflators in the United States.

103. In the mid-1990s, Takata began using a different propellant called 5-aminotetrazole ("Tetrazole"), in part due to toxicity issues associated with sodium azide.

104. Tetrazole is a relatively stable propellant that is less sensitive to humidity and temperature swings, and is thus well suited for use as a propellant in an airbag inflator assembly.

105. Tetrazole, however, is more expensive than a number of alternative propellants available on the market.

106. In the late 1990s, Takata suffered a financial setback when one of its manufacturing facilities was destroyed. As a result of this incident, Takata was forced to source parts of its airbag systems from competitors in order to satisfy its contracts. This circumstance put significant financial pressure on Takata.

107. In or around 1997, following that incident, Takata's management pressured its engineers in Michigan to devise a lower-cost propellant based upon ammonium nitrate, a compound commonly used in fertilizer and industrial explosives. Takata had already investigated the use of ammonium nitrate in airbag deployment systems in the early or mid-1990s, but declined to pursue this design at that time.

108. Ammonium nitrate is an extremely unstable compound that has a tendency to break down over time and which is sensitive to moisture. Its instability can be caused by many factors such as humidity or temperature fluctuations. Because of its instability and the difficulty of properly packaging ammonium nitrate, no other airbag manufacturer uses it in their airbags.

109. From the time it began investigating ammonium nitrate in the late 1990s, Takata understood these risks. Indeed, Takata expressed concern, in a 1995 patent document, that an ammonium nitrate propellant would be vulnerable to temperature changes and that its casing "might even blow up." Takata further recognized that "[o]ne of the major problems with the use of ammonium nitrate is that it undergoes several crystalline phase changes," one of which occurs at approximately 90 degrees Fahrenheit.

110. If ammonium nitrate undergoes this type of temperature change, the compound may, according to Takata, "expand and contract and change shape resulting in growth and

cracking” of the propellant, which might cause an airbag inflator to “not operate properly or might even blow up because of the excess pressure generated.”

111. Additionally, Takata admitted in a 1999 patent document that pure ammonium nitrate is “problematic” because many gas generating compositions made with it are “thermally unstable.”

112. Ammonium nitrate, however, is relatively cheap.

113. Indeed, the only conceivable advantage to using ammonium nitrate for an airbag manufacturer, according to an expert quoted in the *New York Times*, is that it is “cheap, unbelievably cheap.”

114. Takata had originally planned to continue using tetrazole as its propellant, which was not only more stable than ammonium nitrate, but also yields other desired benefits, such as being more environmentally friendly. But tetrazole was too expensive for Takata in light of its mounting costs, and executives ultimately pressured engineers in Michigan to develop a cheaper alternative in order to maximize Takata’s profits.

115. In 1999, as the ammonium nitrate design was being reconsidered, Takata’s engineering team in Moses Lake, Michigan, raised objections and pointed to explosives manuals that warned of the risk of disintegration and irregular, overly-energetic combustion. As one former Takata engineer told a reporter, “ammonium nitrate stuck out like a sore thumb,” and yet his team was given only “a couple days” to do its review.

116. In November 2014, the *New York Times* quoted Paul Worsey, an expert in explosives engineering at the Missouri University of Science and Technology, as saying, “[ammonium nitrate] shouldn’t be used in airbags,” because “there are limits to just how far ammonium nitrate can be stabilized.”

117. The use of ammonium nitrate in the Defective Airbags is inherently unsafe because ammonium nitrate is sensitive to temperature swings, which can change its crystalline structure and change from one phase to another simply due to the varying temperatures from daytime to nighttime.

118. *Bloomberg Businessweek* reported in November 2014 that, “[t]he ammonium nitrate in a Takata airbag that has been sitting in the hot sun all day, or out in the cold all night, is not the same compound that was tested in the lab and will not explode in the same way when it is set off.”

119. Additionally, ammonium nitrate breaks down over time, resulting in increased instability. Thus, the Defective Airbags are ticking time-bombs that could explode and injure vehicle owners at any time and without warning.

120. Numerous engineering and chemical experts have stated that the use of ammonium nitrate in airbags is dangerous and unsafe. For example, *Consumer Research* reported in November 2014 that Katsumi Kato, an assistant professor in safety engineering at Japan’s Fukuoka University, stated “ammonium nitrate can be unstable. Its crystal structure can change according to temperature. . . . It changes the burn rate. It leads to various malfunctions.”

121. In December 2014, the *New York Times* reported that Jimmie Oxley, an explosives expert at the University of Rhode Island, opined, “the problem with ammonium nitrate is that it doesn’t have high temperature stability” which is problematic because “a car may go to northern Canada or it may go the Equator, or to Phoenix, Ariz.” Commenting further, Oxley noted that another problem with using ammonium nitrate in airbags relates to the highly questionable expectation that the ammonium nitrate will remain stable for many years, stating “it’s there for the life of the car, which is a pretty strong requirement for a chemical to have.” Accordingly, because

ammonium nitrate breaks down over time, it can never be definitively determined that the airbag will be safe for the life of the vehicle.

122. Takata itself admits that using ammonium nitrate in airbags can lead to safety problems.

123. The *New York Times* reports that, in a 1996 patent application filed by Takata, the company expressed concern over using the ammonium nitrate, “saying it was so vulnerable to temperature changes that its metal casing, under excessive pressure, ‘might even blow up.’”

124. The *New York Times* also reported that a June 1995 patent filed by Takata’s research lab in Farmington Hills, Michigan, acknowledges that “[o]ne of the major problems with the use of ammonium nitrate is that it undergoes several crystalline phase changes” thus it is sensitive to temperature changes and to moisture.

125. In December of 2014, *CNNMoney* reported that in a 1999 Takata patent document, the company admitted, “ammonium nitrate is problematic because many gas generant compositions containing the oxidizer are thermally unstable.”

126. *CNNMoney* also reported that a Takata patent document from October 2006 recognized the need to test the performance of “ammonium nitrate under various extreme temperatures because of its history as an unstable chemical.” The patent stated, “[t]hese extreme tests can cause many problems, ranging from failure to inflate the airbag to over-pressurization of the inflator leading to ruptures.”

127. Scott Upham, formerly a senior manager at Takata in the mid-1990s, told the *New York Times* that “the patent documents show[] that the company had long been aware of the risks associated with its choice of propellant, and that those risks had not been fully resolved.” The *New*

York Times article quotes Upham as stating, “Takata clearly knew there were severe issues with the use of this product from early on.”

128. Mark Lillie, a former Takata propellant expert and current New Mexico resident, told *CNN* that he and a team of Takata chemical engineers were asked in 1999 to review the ammonium nitrate propellant for use in airbags. He noted that “ammonium nitrate stuck out like a sore thumb” and stated that the team was only given “a couple of days” to do its review.

129. *CNN* reported that “Lillie claimed that he and the team predicted there would be problems leading to catastrophic failure of the inflator ‘that would produce serious injury or death.’”

130. Recently, Mr. Lillie was invited to share his views and concerns regarding the use of ammonium nitrate in airbags with Senate staff members.

131. The *New York Times* reported that Mr. Lillie acknowledged, “[i]t’s a basic design flaw that predisposes this propellant to break apart, and therefore risk catastrophic failure in an inflator.”

132. As alleged above, because of its unstable nature, no other airbag manufacturer other than Takata uses ammonium nitrate as the explosive chemical in its airbag propellant.

133. Autoliv, for example, one of the biggest airbag manufacturers in the world, warned in a patent application in January 2003 that ammonium nitrate’s sensitivity to temperature changes could render the compound “unacceptable” for typical airbags. The filing also pointed out that keeping ammonium nitrate sufficiently dry “is generally impractical for most manufacturing situations.”

134. As the *New York Times* reported in August 2016, Autoliv was pressured in the late 1990s to develop a cheaper airbag assembly by its large vehicle manufacturer clients, including

but not limited to General Motors, in response to Takata's development of a cheap, PSAN-equipped airbag assembly.

135. Autoliv engineers and technicians studied Takata's new PSAN-equipped design in the late 1990s and concluded, according to former Autoliv chemist Robert Taylor, that when the airbag was detonated, "the gas is generated so fast, it blows the inflator to bits." A member of Mr. Taylor's team at Autoliv further explained, "When we lit it off, it totally destroyed the fixture. It turned it into shrapnel." Autoliv therefore declined to pursue a PSAN-equipped airbag assembly design.

136. At that time, Autoliv's vehicle manufacturer clients included General Motors, FCA, Ford, Honda, Mazda, Mitsubishi, and Toyota. Each of these clients eventually contracted with Takata to purchase its cheaper, PSAN-equipped airbag assemblies.

137. On information and belief, Autoliv's relevant findings – including that Takata's PSAN-equipped airbag assemblies were dangerous to vehicle occupants – were shared with or made available to its vehicle manufacturer clients, including General Motors, FCA, Ford, Honda, Mazda, Mitsubishi, and Toyota.

138. Despite these widely-known problems with ammonium nitrate, at some point between 1999 and 2001, Takata switched from using tetrazole to using ammonium nitrate as the primary propellant ingredient in its airbag inflators.

139. To this day, Takata remains the *only* auto parts supplier to use ammonium nitrate in vehicle airbags.

140. The volatility and instability of Takata's ammonium nitrate propellant has been underscored by the glaring and persistent quality control problems that have plagued Takata's manufacturing operations.

141. Despite the known difficulties with keeping ammonium nitrate dry, Takata decided to place its ammonium nitrate propellant into insufficiently sealed metal inflator assemblies that allowed moisture to infiltrate and degrade the ammonium nitrate within.

142. Starting in 2001, engineers at the Monclova, Mexico plant identified a range of problems, including faulty welding and rust, which they said could have caused inflators to fail.

143. Between 2001 and 2003, Takata struggled with at least 45 different inflator problems, according to dozens of internal reports titled “potential failures” and reviewed by *Reuters*.

144. On at least three occasions between 2005 and 2006, Takata engineers struggled to eliminate leaks found in inflators, according to engineering presentations.

145. In 2005, Shainin, a U.S. consulting firm, found a pattern of additional problems relating to Takata’s inflators.

146. On March 31, 2006, Takata’s Monclova, Mexico plant was rocked by violent explosions in containers loaded with propellant, leaving at least a dozen workers injured.

147. Apparently, not even that terrible accident could prompt serious and lasting improvements. In a February 2007 email to multiple colleagues, one manager stated that “[t]he whole situation makes me sick,” referring to Takata’s failure to implement checks it had introduced to try to keep the airbags from failing.

148. According to internal Takata documents, Takata was struggling to meet a surge in demand for its cheap airbags. Putting profits ahead of safety, Takata exhibited shoddy and reckless behavior in the handling of its ammonium nitrate propellant.

149. In March 2011, a Takata supervisor at the Monclova plant sent an e-mail to other employees stating: “A part that is not welded = one life less, which shows we are not fulfilling the

mission.” The title of the e-mail was “*Defectos y defectos y defectos!!!!*” This shoddy and reckless attitude permeated all of Takata’s operations and facilities.

150. Yet, handling problems at Takata facilities persisted: another manager urged employees to examine the propellant visible in a cross section of an airbag inflator, noting that “[t]he propellant arrangement inside is what can be damaged when the airbags are dropped. . . . Here you can see why it is important to handle our product properly.”

151. A 2009 Takata presentation of guidelines on handling inflators and airbag units also stressed the dangers of mishandling them. The presentation included a link to a video that appeared to show side-curtain airbags deploying violently, sending the inflator hurtling into the car’s cabin.

152. Despite knowing it was shipping potentially deadly products, Takata resisted taking back damaged or wet airbag modules, in part because Takata struggled to keep up with a surge in demand for its airbags through the early and mid-2000s as it won big new clients like General Motors.

153. Furthermore, the Defective Airbag inflator assemblies that house the ammonium nitrate do not conform to the airbag safety standards set forth in ISO 12097-3, which is intended to ensure that if the inflator assembly fails, it does so in a safe manner.

154. On May 4, 2016, NHTSA published a series of documents, including the Expert Report of Harold R. Blomquist, Ph.D. Dr. Blomquist opined that, based on a review of studies conducted by experts in three independent laboratories, he “identified a consensus regarding the primary factors contributing to the root cause of the rupturing Takata inflators: simplified, the inflator design permits moist air to slowly enter the inflator, where the moisture-sensitive propellant slowly degrades physically due to temperature cycling. During subsequent air bag

deployment in a crash, the damaged propellant burns more rapidly than intended, and over-pressurizes the inflator's steel housing causing fragmentation.”

155. Put even more simply, due to Takata's design choices, the Defective Airbags function like fragmentation grenades buried in steering wheels and interior panels.

156. In the fallout from the airbag scandal, in June 2016, Takata CEO Shigehisa Takada announced that he would resign from his position.

157. On January 13, 2017, Takata pleaded guilty to one count of wire fraud brought by the U.S. Department of Justice in a Michigan federal court. As part of the plea agreement, Takata is also required to pay \$1 billion in fines and restitution, including a \$25 million criminal fine, a \$125 million fund for individual victim restitution, and \$850 million in restitution to vehicle manufacturers.

158. In addition, three Takata executives – Shinichi Tanaka (an Executive Vice President), Hideo Nakajima (a Director of Engineering), and Tsuneo Chikaraishi (Chief of Japan-Asia inflator operations) – were indicted by the DOJ on January 13, 2017.

159. According to the indictment, Messrs. Tanaka, Nakajima, and Chikaraishi falsified and altered reports of tests on Defective Airbags showing that they are prone to rupture as early as 2000. They referred to this unconscionable, illegal, and malicious practice as “XX-ing the data.”

160. As Takata admitted in connection with its guilty plea, between 2000 and 2015, Takata and its agents intentionally and repeatedly deleted, manipulated, and concealed testing data and reports showing that the Defective Airbags are dangerously defective, including in reports to vehicle manufacturers and/or others in the supply chain leading to the sale or offering for sale of vehicles equipped with Defective Airbags in the State of New Mexico.

C. AS EVIDENCE OF A SERIOUS DEFECT MOUNTED, DEFENDANTS TRIED TO CONCEAL THE DEFECT UNTIL NHTSA AND CONGRESS EXPOSED THE FULL

EXTENT OF THE DEFECTIVE AIRBAGS, LEADING TO THE LARGEST RECALL IN NHTSA HISTORY AND ASSESSMENT OF A \$200 MILLION FINE.

161. Over the years and throughout many vehicle recalls, Takata offered varying and ever-changing reasons for the Defective Airbags. For example, Takata at various times asserted that some airbags were defective due to inadequate manufacturing controls relating to the ammonium nitrate; at other times Takata asserted that some airbags were defective due to improper ammonium nitrate storage methods; and at still other times Takata asserted the airbags were defective due to the improper housing of the ammonium nitrate within the airbag system.

162. Although Takata knew about the serious safety implications of its defective design choices at the time they were made, and conducted testing prior to launching the Defective Airbags demonstrating the dangerous defect (testing that was subsequently suppressed or concealed), Takata received confirmation of the real world dangers of its Defective Airbags no later than 2003, when a Takata inflator ruptured in a BMW vehicle in Switzerland.

163. BMW and Takata jointly investigated the incident in one of Takata's Michigan facilities in January 2004.

164. This joint Takata/BMW investigation concerned inflators used at the time in BMW, Honda, and Toyota vehicles.

165. The joint Takata/BMW investigation results showed that these inflators were defective.

166. Nevertheless, Takata and BMW inaccurately minimized the incident as an anomaly. Neither Takata nor BMW alerted federal safety regulators or the State of New Mexico as to the dangerous defects in Takata's airbags following this accident.

167. On November 1, 2003, Charlene Weaver of Arizona—one of the least humid states in the country—was a passenger in a 2004 Subaru Impreza when she was killed in a Takata airbag-related accident.

168. Neither Takata nor Subaru alerted federal safety regulators or the State of New Mexico as to the dangerous defects in Takata’s airbags following this accident.

169. Similarly, in 2004, a Takata Defective Airbag in a Honda Accord exploded in Alabama, releasing metal shrapnel and severely injuring the car’s driver.

170. Honda and Takata jointly investigated the incident and inaccurately minimized it as an anomaly. Neither Takata nor Honda alerted federal safety regulators or the State of New Mexico as to the dangerous defects in Takata’s airbags following this accident.

171. Between 2001 and 2003, internal Takata reports titled “potential failures” showed that Takata struggled with at least 45 different inflator problems, and that, in 2002, the Monclova plant recorded 60 to 80 defects for every million inflators shipped to automakers—six to eight times beyond Takata’s quality control limit. In light of this accumulated knowledge, Takata’s dismissal of the explosions in the BMW, Subaru, and Honda accidents described above as anomalies, without further study, was inexcusable.

172. Even as it downplayed or ignored the incidents publicly, engineers at Takata’s American headquarters in Auburn Hills, Michigan, began conducting secret tests on 50 airbags retrieved from scrapyards.

173. The tests were conducted by Al Bernat, Takata’s then-vice president of engineering, and took place over weekends and holidays during the summer of 2004.

174. Steel inflators in at least two of the airbags cracked during the tests, a condition which can lead to rupture.

175. Takata engineers theorized that welding problems made the inflator vulnerable to splitting and rupturing. The result was so startling that engineers began designing possible fixes in anticipation of a recall.

176. But Takata's executives discounted the 2004 test results and ordered the lab technicians to *delete the test data* from company computers, and to dispose of the airbag inflators.

177. Prototypes of design alternatives were also trashed at the direction of Takata's senior management.

178. One former Takata employee stated that "[a]ll the testing was hush-hush. . . . Then one day, it was, 'Pack it all up, shut the whole thing down.' It was not standard procedure."

179. The serious danger posed by the defective Takata airbags was not disclosed to U.S. safety regulators until 2008, despite Takata's advance knowledge of the excessive volatility and unsuitability for use of ammonium nitrate as a propellant, despite numerous red flags raised by prior Takata airbag ruptures or explosions as early as 2003, and despite Takata's internal testing as early as 1999-2000 that unequivocally revealed the dangerous defect.

180. It took three additional reports of airbag rupture incidents in 2007 to prompt the 2008 disclosure, and even then Takata and Honda assured regulators that they needed to recall only approximately 4,000 Honda vehicles, claiming that they had identified all "possible vehicles that could potentially experience the problem."

181. Relying on Takata's and Honda's misrepresentations and omissions concerning the nature and scope of the defect, NHTSA closed its investigation into the Takata airbags on May 6, 2010.

182. Behind the scenes, however, Takata and Honda were busy conducting tests that confirmed that far more serious problems plague the airbag systems in millions of production vehicles.

183. As noted above, Takata conducted secret tests in 2004, which again confirmed that its inflators were dangerously defective, then destroyed those test results to conceal the defect.

184. After a 2007 airbag rupture incident, Honda began collecting inflators for further testing.

185. Although Honda and Takata issued a series of recalls in 2009, 2010 and 2011, they did so in a limited and misleading manner in an effort to avoid the huge costs and bad publicity that would have been associated with appropriately-sized general recalls.

186. Despite the repeated Takata/Honda recalls, Takata and Honda still failed to take reasonable measures to investigate or inform regulators of the full extent of the problems.

187. Similarly, Ford, Toyota, BMW, Mazda, Subaru, Mitsubishi, Nissan, FCA, Volkswagen, Audi, Ferrari, General Motors, Jaguar, and Mercedes-Benz each knew that their production vehicles included defective Takata airbags as the Takata/Honda recalls were occurring, or decided after these recalls were issued, in full knowledge of these recalls, to install Defective Airbags in their production vehicles.

188. To avoid the cost and negative publicity associated with conducting a safety recall, the Vehicle Manufacturer Defendants each decided, like Honda, to refrain from recalling vehicles equipped with Defective Airbags manufactured by Takata.

189. By the middle of 2013, the pace of Defective Airbag-related recalls increased exponentially.

190. Approximately 3,000,000 vehicles had been recalled up until that point (the vast majority of which were Hondas); recalls announced in April-May 2013 added 4,000,000 more vehicles to the list, across ten manufacturers.

191. Just one year later, in June 2014, another 5,600,000 vehicles were recalled due to the Defective Airbags.

192. By October 2014, global recalls had reached 16,500,000 vehicles equipped with Defective Airbags.

193. Even then, Takata, along with each of the Vehicle Manufacturer Defendants, worked hard to limit the scope of the recalls to humid parts of the country on the specious reasoning that the airbags did not endanger drivers and passengers in drier climates, although Defendants knew that was untrue.

194. Takata strenuously and falsely claimed that the risks caused by the Defective Airbags disappeared to the north of some arbitrary latitude in the American South. And Takata mischaracterized the Defective Airbags as the product of idiosyncratic manufacturing flaws in an attempt to limit its exposure.

195. Even while Takata was assuring the public that the Defective Airbags were safe, in fact, GM was required to recall model year 2013 and 2014 Chevy Cruze vehicles because of the risk of the Takata airbags rupturing.

196. In November 2014, NHTSA requested that Takata produce information about the chemical composition and manufacturing processes for the ammonium nitrate propellant that is being used in the Defective Airbags.

197. NHTSA stated to *Reuters* that “[t]here is evidence [] that certain Takata air bags [] exposed to . . . regions with consistently high temperatures and humidity pose a safety risk.”

198. Moreover, in its November 2014 press release, NHTSA labeled the airbag defect as an “ammonium nitrate defect.”

199. NHTSA further stated, “Why does humidity trigger an explosion? Federal investigators, along with Takata officials, suspect that chronic moisture exposure can speed up the combustion of ammonium nitrate in the airbag system. This generates excess pressure, which then shatters the inflator canisters. It’s unknown at this point how much humidity is needed to set off this ammonium nitrate defect.”

200. On November 13, 2014, Takata issued a formal press release responding to a *New York Times* article published on November 6, 2014. The *New York Times* article reported, *inter alia*, that Takata had conducted secret testing using scrapyards inflators in 2004 and concealed the results of that testing. The Takata press release states (in all capitals), “THESE ALLEGATIONS ARE NOT TRUE,” and goes on to contest the accuracy of the *New York Times* article while insisting that Takata’s airbag systems are safe.

201. According to a November 19, 2014, report from *The Wall Street Journal*, on November 18, 2014, NHTSA Acting Administrator David Friedman announced that based on “new information” the “recalls need to happen nationally, rather than by region.”

202. Despite that announcement, at a hearing of the United States Senate Committee on Commerce on November 20, 2014, Takata Senior Vice President Hiroshi Shimizu refused to support a national recall.

203. Takata reiterated its refusal at a hearing before the U.S. House of Representatives Energy and Commerce Subcommittee on December 3, 2014, claiming there was “not enough scientific evidence” to support a national recall.

204. Yet, as NHTSA Administrator David Friedman stated, “when we saw real-world incidents on the driver side, one in California, we pushed Honda to make sure that their recall covered that region. Then very recently, we became aware of a driver side incident in North Carolina. With six total incidents, two of which are outside that region, we can no longer support a regional recall. Our policy is clear: Recalls must be nationwide unless the manufacturers can demonstrate that they are regional. With the new data, it is clear they can no longer demonstrate that the region that was used before was appropriate for driver side airbags.”

205. The geographic scope of the incidents undermined Takata’s focus on humidity as the defining contributor to the dangerous ruptures.

206. As Mr. Friedman explained, “[o]ne of the most frustrating parts about this is that neither the automakers nor Takata have been able to get to the bottom of the root cause on this. We have been pushing them to do so.”

207. As of the December 3, 2014 House hearing, Honda, along with Ford, FCA, and Toyota, had agreed to NHTSA’s demand for a nationwide recall, principally for driver side airbags.

208. Days later, Mazda expanded the geographic scope of its recall.

209. By December 23, 2014, BMW had also agreed to a nationwide recall.

210. Having neglected the defect for over a decade, vehicle manufacturers using Takata airbags met in December 2014 to “sort out a way to understand the technical issues involved.”

211. Takata, however, refused to cooperate.

212. In February 2015, NHTSA issued a \$14,000 per day fine because of Takata’s ongoing foot-dragging and obfuscation in providing much needed information.

213. In response to pressure from NHTSA in addition to private plaintiffs and public media scrutiny, Takata was forced to consult with external explosives and airbag specialists, and performed additional testing on the airbags.

214. This testing confirmed what all Defendants already knew: Takata's airbags containing ammonium nitrate were defective and prone to over-aggressive deployment and rupture.

215. Thereafter, on May 18, 2015, Takata filed four Defect Information Reports ("DIRs") with NHTSA and agreed to a Consent Order regarding its (1) PSDI, PSDI-4, and PSDI-4K driver air bag inflators; (2) SPI passenger air bag inflators; (3) PSPI-L passenger air bag inflators; and (4) PSPI passenger air bag inflators, respectively.

216. After concealing the defect for more than a decade, Takata finally admitted that "a defect related to motor vehicle safety may arise in some of the subject inflators."

217. And in testimony presented to Congress following the submission of its DIRs, Takata's representative admitted that the use of ammonium nitrate is a factor that contributes to the tendency of Takata's airbags to rupture, and that as a result, Takata will phase out the use of ammonium nitrate.

218. Still, even Takata's defect admission is inaccurate and misleading, as the Defective Airbags are still manifestly defective because they use ammonium nitrate.

219. Shockingly, Takata continued to produce new inflators with ammonium nitrate, even after conceding that such inflators create an unacceptable public safety hazard.

220. Still more shockingly, certain vehicle manufacturers, including Volkswagen, Audi, Toyota, Mitsubishi, and FCA, continued to install Takata's Defective Airbags into 2016.

221. In June 2015, NHTSA commenced a Coordinated Remedy Program Proceeding to consider whether it should use its accelerated remedy authority in connection with the Takata air bag inflator recalls. The Proceeding included public comment, meetings with affected vehicle manufacturers and suppliers, review of voluminous data and information produced by manufacturers and suppliers, and a public meeting in October 2015.

222. On November 3, 2015, NHTSA issued two orders.

223. First, the NHTSA Coordinated Remedy Order established a coordinated remedy recall program for the Defective Airbags, an approach that prioritized the remedy based on risk. It also provided timelines by which the vehicle manufacturers must have a sufficient supply of remedy parts, and a deadline by which they must complete the remedy programs.

224. Second, the NHTSA Consent Order prohibited Takata from entering into any new contracts for the supply of any PSAN inflator. It also provided a schedule by which Takata must phase out of the production of non-desiccated PSAN inflators, and a schedule by which Takata must either (i) prove that its unrecalled PSAN inflators are safe; or (ii) recall those inflators.

225. The Consent Order also provided that NHTSA may order Takata to submit a DIR sooner if necessary.

226. Furthermore, the Consent Order imposed a record civil penalty of \$200 million.

227. Of that \$200 million fine, \$70 million is payable in cash. An additional \$130 million would become due if Takata fails to meet its commitments or engages in additional violations of law.

228. As relevant to the State of New Mexico's claims against Takata based on violations of New Mexico law, the Consent Order explicitly "does not release Takata from civil or criminal liabilities, if any, that may be asserted by the United States, the Department of Transportation,

NHTSA, **or any other governmental entity**, other than as described in this Consent Order” (emphasis added).

229. Also on November 3, 2015, Honda dropped Takata as its airbag supplier and concluded that Takata has “misrepresented and manipulated test data” concerning the Defective Airbags.

230. In December 2015, NHTSA appointed an independent monitor to oversee Takata’s actions with respect to the Defective Airbags.

231. On May 4, 2016, NHTSA announced a further recall expansion, to which Takata consented, based upon new scientific data provided by three independent testing groups and reviewed by NHTSA and its expert.

232. This expansion covers an estimated 38,000,000 inflators and provides a clear schedule for the recall of all remaining Takata frontal inflators that contain non-desiccated PSAN propellant, including like-for-like replacements, by December 31, 2019.

233. In conjunction with the expanded recall, NHTSA amended its Takata Consent Order. In that amendment, NHTSA noted that “at some point in the future all non-desiccated frontal Takata PSAN inflators will reach a threshold level of degradation that could result in the inflator becoming unreasonably dangerous.”

234. Takata has been shipping between 700,000 and 1,000,000 replacement inflators per month since approximately the second quarter of 2015. This pace is insufficient to supply the needed parts to automakers handling the massive recalls described above.

235. Dealerships and technicians performing the Defective Airbag recall work are currently experiencing a severe nationwide shortage of parts. The Vehicle Manufacturer

Defendants have instructed their dealerships to tell vehicle owners that they may need to wait several months before the necessary replacement parts are available.

236. Honda has stated that it would not issue recall letters to car owners until Takata has supplied the necessary parts. Thus, many Honda drivers have yet to learn about the recall as they continue to drive vehicles with potentially deadly airbags. Even Honda drivers that received notices have been instructed that they must wait at least one month before their vehicles can be repaired.

237. Similarly, Toyota dealers have reported that wait times for customers with affected vehicles can reach one to three months. Toyota has gone so far as to disable the passenger airbags entirely and put an alarming “*Do Not Sit Here*” sticker on the dashboard of affected vehicles until a repair can be made. Toyota is also advising its customers to stop driving their vehicles until the airbags are replaced. Toyota has declined to supply its customers with cost-free temporary replacement vehicles.

238. General Motors has similarly opted to “repair” their customers’ vehicles not by installing safe, operative airbags, nor by supplying temporary replacement vehicles, but by simply disabling the Takata airbags entirely. Toyota’s and General Motors’ decision to disable the airbags was the subject of a letter from Senators Blumenthal and Markey directed to the Department of Transportation, which indicated their “alarm[.]” and “astonish[ment]” at this apparently unlawful practice.

239. NHTSA took steps in December 2016 to prioritize the highest-risk vehicles and to speed up the availability of replacement airbags, noting that as of that time, only approximately 12.5 million driver and passenger airbags have been replaced, and that many of these are “like for like” replacements that will lessen risk in the short term but ultimately need to be replaced with

non-defective components. The parts shortage remains a critical concern and is attributable primarily to Takata's foot-dragging and persistent denial that a defect exists.

240. More alarming still is that, as late as January 2017, Takata and the Vehicle Manufacturer Defendants continued to refuse and resist calls for nationwide recalls of passenger-side airbags (including PSPI-L and PSPI passenger-side airbags), insisting on limiting those recalls by region, and to oppose an immediate, universal recall of all airbag systems using non-desiccated ammonium nitrate as a propellant. Meanwhile, new reports of serious injuries or deaths caused by Defective Airbags are made on a nearly weekly basis.

241. Despite Takata's January 13, 2017 guilty plea, the company has not yet endorsed a universal recall.

D. HONDA, FORD, TOYOTA, BMW, MAZDA, SUBARU, MITSUBISHI, NISSAN, FCA, VOLKSWAGEN, AUDI, FERRARI, GENERAL MOTORS, JAGUAR, AND MERCEDES-BENZ KNEW ABOUT, AND MISREPRESENTED, THE EXISTENCE AND EXTENT OF THE DEFECTIVE AIRBAGS.

242. Each of the Vehicle Manufacturer Defendants made false, deceptive, unfair, and misleading statements and omissions concerning the safety of their vehicles sold in the State of New Mexico, including statements and omissions specifically concerning the Takata airbag systems with which those vehicles were equipped.

243. By way of example:

- i. **Honda** (2002) website represented: "Having already earned top safety ratings with its quadruple five-star front- and side-impact crash test ratings, the 2002 Odyssey now offers the latest generation of airbag systems from Honda. Driver's and front passenger's dual stage airbags (SRS) along with driver's and front passenger's side airbags are now standard equipment on all models – yet another minivan first . . . Both front airbags have a dual-stage inflator that can deploy the airbag at one of

two rates depending on the severity of the crash. ... The front passenger's side airbags has an automatic cutoff system that is designed to prevent side airbag deployment if a child (or small statured adult) leans into the side airbag deployment path. Once the child returns to an upright position, the side airbag will be able to deploy and provide protection in the event of a side impact ... Building on the standard anti-lock braking system (ABS), new standard rear disc brakes result in improved stopping performance with higher resistance to brake fade and a more responsive brake pedal feel. Amber rear turn signals have been added, which help other drivers differentiate the indicators with increased clarity.”

- ii. **Honda** (2002) television commercial represented: “5-stars of frontal collision tests ... that’s a safe car. Safe, get it through your head. To see what safe really means, take a close look at the 2002 Civic from Honda.”
- iii. **Honda** (2002) brochure represented: “Honda’s commitment to safe driving is in evidence throughout every vehicle... Every new vehicle comes with dual front airbags (SRS), most using a dual stage design... All designed to keep you and yours out of harm’s way.”
- iv. **Honda** (2004) brochure represented: “A glance at the crash-test data posted by the U.S. government’s National Highway Traffic Safety Administration reveals a galaxy of 5-star ratings for Honda cars and trucks. In fact, five of our models to date – Accord Coupe, Civic Coupe, CR-V, Odyssey, and Pilot – have earned the highest NHSTA crash-test ratings in frontal and side impact testing... It’s a solid testament to our emphasis on safety.”

- v. **Honda** (2007) website represented: “Through innovative original research, Honda has created advanced airbags that offer outstanding levels of occupant protection.”
- vi. **Honda** (2007) website represented: “Honda led the industry through advances such as driver and front passenger airbags with ‘dual output inflators’ that adjust the deployment force of the airbags to the severity of the crash.”
- vii. **Honda** (2007) website represented: “The Honda Accord is the first mid-size sedan to offer front, front-side and side curtain airbags as standard equipment. Accord earned a 5-star frontal impact rating from the U.S. government and a frontal ‘Best Pick’ from the Insurance Institute for Highway Safety (IIHS).”
- viii. **Honda** (2007) website represented: “Every Honda and Acura vehicle begins with a basic structure designed to be fundamentally safe, but we add advanced technology as standard equipment that can help the driver maintain control of the vehicle.”
- ix. **Honda** (2015) website represented: “Honda is committed to providing safety for everyone – that means crash protection not only for our own drivers and passengers, but also for the occupants of other vehicles, and injury mitigation for pedestrians. ... As a leader, Honda looks beyond government regulations, studying real world situations to develop new safety technologies for everyone.”
- x. **Honda** (2015) website represented: “Acura believes driving a luxury car should be a highly enjoyable experience. And while we tend to dwell on the more exhilarating aspects of our vehicles, we consider your safety a top priority.... Safety has been top of mind with Acura engineers since day one.... Over the years, we’ve added

many advanced safety technologies to the list, and the vast majority of them are now standard on every model.”

- xi. **Ford** (2006) brochure represented: “Up-to-the-minute safety and security systems help protect you and your passengers out there on the road.”
- xii. **Ford** (2006) brochure represented that its “Personal Safety System® ... enhances protection for the driver and front passenger in certain frontal collisions. The system customizes the deployment of the dual-stage front airbags based on several criteria, including the driver’s seat position, whether the front safety belts are in use, the amount of pressure exerted on the front-passenger’s seat, and the overall severity of the impact.”
- xiii. **Ford** (2015) website represented: “At Ford, we hold ourselves to very high standards for vehicle safety. The fact is, vehicle safety is a critical part of our brand promise to Go Further. We aim to give customers peace of mind and make the world safer by developing advanced safety technologies and making them available across a wide range of vehicles.”
- xiv. **Toyota** (2002) website represented: “With safety features like dual front air bags, crumple zones and 3-point seatbelts in every seating position. So gather up all the hikers – big and small – and head out. Way out.”
- xv. **Toyota** (2015) website represented: “For us, the journey towards a safe road never ends. This belief, along with our collaborative research efforts, drives us to create advancements and innovations in safety that have helped (and continue to help) prevent crashes and protect people.”

- xvi. **BMW** (2005) website represented: “Driver’s and passenger’s front airbag supplemental restraint system (SRS) with ‘smart’ dual-threshold, dual-stage deployment and sensor to help prevent unnecessary passenger’s airbag deployment.”
- xvii. **BMW** (2008) website represented: “The driver and front passenger airbags provide effective protection for the head and upper-torso area, preventing contact with the steering wheel and dashboard. In a head-on collision, you have the best possible protection.”
- xviii. **BMW** (2008) website represented: “The principle behind the function of the front airbags for driver and passenger is very simple: in the event of an impact with a force greater than the safe threshold, the airbag sensors activate a substance that causes the airbags to instantly inflate. Within a fraction of a second, the airbags form a protective cushion over the steering wheel and dashboard, significantly reducing the risk of cranial and upper body injuries.”
- xix. **BMW** (2015) website represented: “There is no end to our quest for the next innovation. And it’s not just about greater power and more efficient performance. It’s also about safety. We prepare our vehicles to expect the unexpected.”
- xx. **Mazda** (2004) brochure represented: “Reassuring safety features” in all of its vehicles.
- xxi. **Mazda** (2005) website represented: “In every configuration, you’ll enjoy Mazda’s legendary performance, function, style, and safety.”
- xxii. **Mazda** (2015) website represented: “In the realm of safety, Mazda’s aim is to achieve a safe and accident-free automotive society from the three viewpoints of

vehicles, people, and roads and infrastructure. Specifically, the Company carries out research and development into safety technologies based on the Mazda Proactive Safety philosophy, which particularly respects the driver, and has released vehicles featuring the full suite of Mazda's advanced safety technologies....”

- xxiii. **Subaru** (2005) website represented: “Features like seatbelts with front pretensioners and force limiters, crumple zones, side-impact beams, front air bags and a Ring-Shaped Reinforcement Frame aid in minimizing the effects of a collision.”
- xxiv. **Subaru** (2005) brochure represented: “THE SUBARU DRIVING EXPERIENCE EVOKES MANY EMOTIONS. Confidence should always be one of them. Which is why Subaru is engineered according to the principles of ‘Active Driving/Active Safety.’”
- xxv. **Subaru** (2005) brochure represented: “Advanced front air bags, including passenger-side dual-stage deployment, help provide optimal protection for the driver and front passenger.”
- xxvi. **Subaru** (2015) website represented: “Safety drives Subaru design.”
- xxvii. **Mitsubishi** (2003) press release represented: “Safety: In addition to passenger comfort, Mitsubishi Motors engineers also set out to optimize occupant safety. ... Additional standard safety features include three-point safety belts for all occupants, front seatbelt pretensioners and force limiters, and driver and front passenger airbags.”
- xxviii. **Mitsubishi** (2007) website represented: “Advanced front airbags.”

- xxix. **Mitsubishi** (2012) brochure represented: “A six-airbag system with advanced frontal airbags. And even a system that disconnects the current from the battery in the event of an impact. . . . A total of six SRS airbags help protect drivers and passengers in the event of a collision.”
- xxx. **Mitsubishi** (2015) website represented: “We are committed to providing the utmost driving pleasure and safety for our valued customers and our community. On these commitments we will never compromise. That is the Mitsubishi Motors way.”
- xxxi. **Nissan** (2005) brochure represented: Nissan vehicles contain “an entire set of safety features to help protect you from the unavoidable. Including steel reinforcements, guard beams and advanced airbags that will help safeguard you and your passengers in the event of an accident.”
- xxxii. **Nissan** (2012) website represented: “Standard safety features found on every 2012 Versa Sedan include the Nissan Advanced Air Bag System (AABS) (includes dual-stage front supplemental air bags and front seat side-impact supplemental air bags for chest protection), seat-mounted driver and front passenger side-impact supplemental air bags, and roof-mounted curtain side-impact air bags for front and rear outboard occupant head protection.”
- xxxiii. **Nissan** (2015) website represented: “Nissan is committed to its position as a leader in the world of automotive safety. This dedication to comprehensive safety goes into the engineering and design of every vehicle we make. . . .”
- xxxiv. **Volkswagen** (2009) brochure represented: “The Passat comes standard with 45 safety features that make up the Prevent and Preserve Safety System. The features work in harmony to both help you avoid an accident, and protect you if an accident

is unavoidable. ... Dual Front and Side Airbags: Can deploy within five hundredths of a second. Side Curtain Protection: Airbags deploy down the roofline from the A-pillar to the C-pillar, to help reduce head and upper torso injury in the event of side impact.”

- xxxv. **Volkswagen** (2012) brochure represented: “It’s safe to say we’ve got you covered. German engineering may be best known for its performance, but all that thought and precision goes into the development of our safety features too. Every feature in our comprehensive safety system is designed to work together with other complementary features just when you need them the most. Which is to say, every time you climb into your all-new 2012 Passat.”
- xxxvi. **Audi** (2008) brochure represented: “Not just safe for its size, safe for any size. ... As you can plainly see from the illustration to the left, the A4 has airbags aplenty. Including comprehensive Sideguard protection as well as dualstage, dual-threshold front airbags. ... At Audi, safety isn’t one thing. ... Safety is everything.”
- xxxvii. **Audi** (2016) brochure represented: “Airbags. Designed to work in concert with our safety belts and properly-adjusted head restraints, our airbag system is a comprehensive safety measure. The TT Roadster features six standard airbags, including front-impact and side airbags that protect both the head and thorax of the driver and front passenger, while the TT Coupe features eight standard airbags, including the addition of side curtain airbags. Regardless of the model, you’ll feel practically surrounded. And that’s a good thing.”
- xxxviii. **FCA** (2008) brochure represented: “Every 300 model puts a high premium on safety with standard advanced multistage front air bags Safety and security

are built into every Chrysler 300 model from the ground up. ... Advanced multistage front air bags and newly available front seat-mounted side air bags with supplemental front and rear side-curtain air bags provide even better protection.”

xxxix. **FCA** (2008) brochure represented: “When it comes to your safety, Chrysler Aspen has the protective instincts of a bodyguard. ... All models include advanced multistage driver and front-passenger air bags. Within split seconds, Aspen makes immediate adjustments to its air bag deployment, inflating with a force that is appropriate to the severity of the impact.”

xl. **FCA** (2013) brochure represented, under “SAFETY AND SECURITY FEATURES”: “AIR BAGS. Advanced multistage front air bags, supplemental front seat thorax side air bags, driver’s knee air bag, and supplemental side curtain air bags for front and rear outboard occupants are all standard.”

xli. **Ferrari** (2009) brochure represented: Airbags “have been tested to ensure that they offer the highest possible levels of safety. . . . The airbags [1] and [2] have been designed to increase the level of protection given by the seat belts in the event of a head-on collision. The airbags [3] and [4] have been designed to increase the level of protection given by the seat belts in the event of a side-on collision and are placed between the occupant’s head and external structures which could go through the passenger compartment and cause injury. ... Once deployed, [the airbags] will serve as protection between the driver and/or passenger and structures that could cause injury.”

xlii. **Ferrari** (2011) brochure represented: “The front driver’s airbag and front passenger airbag have been designed to increase the level of protection given by

the seat belts in the event of a head-on collision. The driver's head protection side airbag and passenger head protection side airbag have been designed to increase the level of protection given by the seat belts in the event of a side collision and are placed between the occupant's head and external structures which could penetrate the passenger compartment and cause injury. ... Once deployed, [the airbags] will serve as protection between the driver and/or passenger and structures that could cause injury."

- xliii. **General Motors** (2008) brochure represented: "Interacting safety systems – crumple zones, safety cage, airbags, seatbelts and the active head restraint (SAHR) are just some of the safety systems designed to help protect you and your passengers. They interact to absorb and distribute impact energy efficiently, thus offering a high level of real-life safety. Dual-stage front airbags – designed to register the crash force and monitor whether the belt is being used. The system adjusts airbag deployment to suit, either to the maximum or with lower pressure. Side airbags – high, two-part side airbags fitted in the front seat's backrest help protect both the head and thorax."
- xliv. **General Motors** (2012) brochure represented: "A HOLISTIC APPROACH TO SAFETY. ... But when a collision can't be avoided, we've engineered a rigid body structure and strategically engineered crumple zones. Peace of mind also comes with six airbags standard and one year OnStar Automatic Crash Response."
- xlv. **General Motors** (2015) brochure represented: "HUGE ON SAFETY. Malibu received the highest possible Overall Vehicle Score for safety from NHTSA, but this safety story doesn't end there. ... 10 STANDARD AIRBAGS. If a moderate

to severe collision does occur, Malibu is designed to respond quickly with 10 standard air bags.”

- xlvi. **Jaguar** (2009) brochure represented: “These advanced active features are further complimented by sophisticated passive safety systems such as two-stage driver and front passenger airbags, side curtain airbags, Seat Weight Sensing and Occupant Position Sensing that work as needed in individual circumstances. ... Of course, you may never need Jaguar’s innovative safety systems but they’re there to deploy if you ever do.”
- xlvii. **Jaguar** (2010) brochure represented: “The new 2010 Range Rover has one of the most sophisticated arrays of safety aids ever built into a vehicle. Its monoscope body and integrated chassis gives, thanks to the high-strength steel construction, class-leading torsional rigidity. There are seven airbags. For side impact protection there is one of the largest curtain airbags ever fitted to a passenger vehicle.”
- xlviii. **Mercedes-Benz** (2005) brochure represented: “And, like every C-Class, the C230 Kompressor Sport Sedan offers the 10-way protection of eight standard air bags. ... Eight standard air bags: Every C-Class provides the 10-way protection of eight standard air bags, including adaptive dual-stage front air bags, four side-impact air bags, and Head Protection Curtains along the side windows for all four outboard occupants. ... Integrated Restraint System: Driver and front passenger are each provided with an adaptive dual-stage front air bag, side-impact air bag, and 3-point seat belt with Emergency Tensioning Device (ETD) and belt force limiter. Outboard rear passengers are each provided with a side impact air bag and 3-point seat belt with ETD and belt force limiter. ... Head Protection Curtains: In a side

impact exceeding a preset threshold, a multi-chamber air bag deploys along the front and rear side windows on the affected side of the car. Adaptive dual-stage front air bags are deployed in response to frontal impact severity exceeding the system's deployment thresholds.”

- xlix. **Mercedes-Benz** (2011) brochure represented: “When seconds count, it pays to be first. The history, and future, of safety. ...Mercedes Benz has a second-to-none heritage of advancing automotive safety. ... Standard 12-way air bag protection: Within the high-strength steel-reinforced uni-body structure of the R-Class, eight air bags offer a total of 12 ways of occupant protection. In addition to dual-stage front air bags, there are also four side-impact air bags, as well as side curtain air bags for the outboard occupants in all three rows.”

244. Each of the foregoing marketing representations concerning vehicle safety was materially false, misleading, unfair, and deceptive. In each example, the respective Vehicle Manufacturer Defendant elected to promote the safety of its vehicles (including the airbag systems installed therein) but failed to disclose that those vehicles contain a dangerous and potentially deadly airbag defect.

245. As alleged above, the Vehicle Manufacturer Defendants each received information from Takata (or its agents) regarding the design of Takata's airbag systems, including the fact that such airbag systems would use ammonium nitrate as a propellant, prior to approving and installing any such airbag systems in their vehicles.

246. Under Honda's policy regarding the sourcing of third-party component materials, Honda was required to review and approve Takata's airbag system specifications prior to installing those systems in its vehicles. On information and belief, the State alleges that Honda reviewed

and approved Takata's airbag system specifications prior to installing any such airbag systems in its vehicles.

247. Under Ford's policy regarding the sourcing of third-party component materials, Ford was required to review and approve Takata's airbag system specifications prior to installing those systems in its vehicles. On information and belief, the State alleges that Ford reviewed and approved Takata's airbag system specifications prior to installing any such airbag systems in its vehicles.

248. Under Toyota's policy regarding the sourcing of third-party component materials, Toyota was required to review and approve Takata's airbag system specifications prior to installing those systems in its vehicles. On information and belief, the State alleges that Toyota reviewed and approved Takata's airbag system specifications prior to installing any such airbag systems in its vehicles.

249. Under BMW's policy regarding the sourcing of third-party component materials, BMW was required to review and approve Takata's airbag system specifications prior to installing those systems in its vehicles. On information and belief, the State alleges that BMW reviewed and approved Takata's airbag system specifications prior to installing any such airbag systems in its vehicles.

250. Under Mazda's policy regarding the sourcing of third-party component materials, Mazda was required to review and approve Takata's airbag system specifications prior to installing those systems in its vehicles. On information and belief, the State alleges that Mazda reviewed and approved Takata's airbag system specifications prior to installing any such airbag systems in its vehicles.

251. Under Subaru's policy regarding the sourcing of third-party component materials, Subaru was required to review and approve Takata's airbag system specifications prior to installing those systems in its vehicles. On information and belief, the State alleges that Subaru reviewed and approved Takata's airbag system specifications prior to installing any such airbag systems in its vehicles.

252. Under Mitsubishi's policy regarding the sourcing of third-party component materials, Mitsubishi was required to review and approve Takata's airbag system specifications prior to installing those systems in its vehicles. On information and belief, the State alleges that Mitsubishi reviewed and approved Takata's airbag system specifications prior to installing any such airbag systems in its vehicles.

253. Under Nissan's policy regarding the sourcing of third-party component materials, Nissan was required to review and approve Takata's airbag system specifications prior to installing those systems in its vehicles. On information and belief, the State alleges that Nissan reviewed and approved Takata's airbag system specifications prior to installing any such airbag systems in its vehicles.

254. Under FCA's policy regarding the sourcing of third-party component materials, FCA was required to review and approve Takata's airbag system specifications prior to installing those systems in its vehicles. On information and belief, the State alleges that FCA reviewed and approved Takata's airbag system specifications prior to installing any such airbag systems in its vehicles.

255. Under Volkswagen's policy regarding the sourcing of third-party component materials, Volkswagen was required to review and approve Takata's airbag system specifications prior to installing those systems in its vehicles. On information and belief, the State alleges that

Volkswagen reviewed and approved Takata's airbag system specifications prior to installing any such airbag systems in its vehicles.

256. Under Audi's policy regarding the sourcing of third-party component materials, Audi was required to review and approve Takata's airbag system specifications prior to installing those systems in its vehicles. On information and belief, the State alleges that Audi reviewed and approved Takata's airbag system specifications prior to installing any such airbag systems in its vehicles.

257. Under Ferrari's policy regarding the sourcing of third-party component materials, Ferrari was required to review and approve Takata's airbag system specifications prior to installing those systems in its vehicles. On information and belief, the State alleges that Ferrari reviewed and approved Takata's airbag system specifications prior to installing any such airbag systems in its vehicles.

258. Under General Motors' policy regarding the sourcing of third-party component materials, General Motors was required to review and approve Takata's airbag system specifications prior to installing those systems in its vehicles. On information and belief, the State alleges that General Motors reviewed and approved Takata's airbag system specifications prior to installing any such airbag systems in its vehicles.

259. Under Jaguar's policy regarding the sourcing of third-party component materials, Jaguar was required to review and approve Takata's airbag system specifications prior to installing those systems in its vehicles. On information and belief, the State alleges that Jaguar reviewed and approved Takata's airbag system specifications prior to installing any such airbag systems in its vehicles.

260. Under Mercedes-Benz's policy regarding the sourcing of third-party component materials, Mercedes-Benz was required to review and approve Takata's airbag system specifications prior to installing those systems in its vehicles. On information and belief, the State alleges that Mercedes-Benz reviewed and approved Takata's airbag system specifications prior to installing any such airbag systems in its vehicles.

261. The Vehicle Manufacturer Defendants each knew or should have known that, due to the volatility and potential danger of using ammonium nitrate as an airbag inflator propellant, Takata's airbag systems were unsafe and defective. Although Takata – as it now admits – fabricated some of the airbag safety data that it sent to the Vehicle Manufacturer Defendants, the latter are not passive victims of Takata's fraud, but rather active co-conspirators who profited immensely as a result of their intentional failure to act in response to their knowledge of the dangerous defect in Takata's airbag assemblies.

262. The Vehicle Manufacturer Defendants each knew or should have known that, because ammonium nitrate is typically used as an industrial explosive, Takata's airbag systems were unsafe and defective.

263. The Vehicle Manufacturer Defendants each knew or should have known, because Takata itself indicated in patent documents as early as 1995 that ammonium nitrate is unstable and potentially explosive, that Takata's airbag systems were unsafe and defective.

264. The Vehicle Manufacturer Defendants each knew or should have known that Takata's airbag systems were unsafe and defective because Takata's competitor, Autoliv, studied the Takata PSAN-equipped airbag assembly design in the late 1990s and early 2000s, and concluded that the airbag assembly design was dangerous to vehicle occupants.

265. Furthermore, as a result of the 2003 accident and joint Takata/BMW investigation described above, BMW knew no later than 2003 that its vehicles contained dangerously defective airbag systems. Yet BMW continued to use Takata's airbag systems in its vehicles after 2003.

266. As a result of the 2003 accident involving a Subaru Impreza described above, Subaru knew no later than 2003 that its vehicles contained dangerously defective airbag systems. Yet Subaru continued to use Takata's airbag systems in its vehicles after 2003.

267. Similarly, as a result of the 2004 accident and joint Takata/Honda investigation described above, Honda knew no later than 2004 that its vehicles contained dangerously defective airbag systems. Yet Honda continued to use Takata's airbag systems in its vehicles after 2004.

268. The Vehicle Manufacturer Defendants each also had a duty to investigate the safety of the airbag systems installed in their vehicles following the first Takata airbag-related recall of Honda vehicles in 2008. Yet each failed to adequately investigate and/or take corrective action with respect to the Defective Airbags in their vehicles at that time.

E. TAKATA IS SUBJECT TO FURTHER SANCTION BY THE STATE OF NEW MEXICO BECAUSE TAKATA WILLFULLY ENGAGED IN UNFAIR TRADE PRACTICES DIRECTED AT NEW MEXICO.

269. Takata's actions as described above were directed into every state in the United States, including New Mexico.

270. Takata intentionally availed itself of the benefits of New Mexico's laws by directing its products into New Mexico.

271. Takata's actions as described above created real and unreasonable health risks for the citizenry of the State of New Mexico.

272. As a result of Takata's unfair, deceptive, and unconscionable conduct described above, Defective Airbags continued to be present in the State of New Mexico and will continue to pose unreasonable risks of injury and death on New Mexico citizens for the foreseeable future

until all Defective Airbags are removed from the vehicles in which they were installed and replaced with airbags made with a stable moisture- and temperature-resistant propellant housed in safe inflator assemblies.

273. Accordingly, by both the advantages Takata obtained by bringing its products within the State of New Mexico and unreasonable risks of injury and death Takata knowingly placed on the New Mexico citizenry, it is well within the bounds of fair play and substantial justice for Takata to be subject to further sanction by the State of New Mexico for violating New Mexico law, including the Unfair Practices Act.

VI. TOLLING OF THE STATUTE OF LIMITATIONS BASED ON FRAUDULENT CONCEALMENT AND ESTOPPEL

274. Defendants knew or should have known that the Defective Airbags were unsafe and defectively designed since 1999, when Takata prepared and disseminated its PSAN-equipped airbag assembly design, and certainly since 2003 when the first known incident of a rupturing Defective Airbag occurred in a BMW vehicle in Switzerland.

275. Defendants concealed the Defective Airbags, including the existence and the extent of the defect, since 1999.

276. The Vehicle Manufacturer Defendants each continued to make representations regarding the safety of their vehicles, including the airbag systems installed in those vehicles, in the period from 1999 to 2016, while failing to disclose the existence, nature, and full scope of the airbag defect.

277. Takata continued to deny the existence of the defect until November 3, 2015, when NHTSA issued the Consent Order. Takata continues to oppose an immediate, universal recall of all defective airbag systems.

278. Although Defendants now acknowledge and admit the problems with the Defective Airbags and are now cooperating with NHTSA to implement a recall, the existence of Defective Airbags was kept secret from the public, and Defendants affirmatively concealed the existence and severity of the defect by, e.g., deleting testing data and denying it engaged in such testing (Takata), blaming the defect on a limited manufacturing process aberration rather than on systemic design flaws (Takata), and minimizing the significance of its accident-related investigations and denying that an airbag defect existed (Takata, BMW, Honda). All Vehicle Manufacturer Defendants similarly affirmatively concealed the existence and severity of the defect by failing to acknowledge the defect in their production fleets equipped with Takata airbag systems, failing to take corrective action in light of their knowledge of the defect, and affirmatively misrepresenting the safety of their vehicles and/or their airbag technology.

279. Any applicable statutes of limitation have, therefore, been tolled by Defendants' knowledge, active concealment, and denial of the facts alleged herein.

280. Defendants, moreover, were and remain under a continuing duty to disclose to the State the true character, quality, and nature of the vehicles they introduce into the State.

281. Defendants, however, actively concealed the true character, quality, and nature of the Defective Airbags and knowingly misrepresented the quality, reliability, characteristics, and performance of the Defective Airbags.

282. The State reasonably relied upon Defendants' knowing and affirmative misrepresentations and/or active concealment of these facts.

283. Based on the foregoing, Defendants are estopped from relying on any statutes of limitation in defense of this action.

VII. CLAIMS AND VIOLATIONS ALLEGED

A. COUNT 1 – VIOLATIONS OF THE NEW MEXICO UNFAIR PRACTICES ACT

284. The State of New Mexico reasserts, realleges, and incorporates by reference each of Paragraphs 1-283 above, as though fully set forth below.

285. The Unfair Practices Act, NMSA 1978, §§ 57-12-1, *et seq.*, is consumer protective legislation that prohibits the economic exploitation of consumers in the State of New Mexico through, among other things, unfair, false, deceptive, or misleading advertising or conduct of business in an unfair manner.

286. Pursuant to NMSA 1978, § 57-12-2(A), Defendants are each a “person” under the Unfair Practices Act.

287. The Defective Airbags, and the vehicles in which Defective Airbags are installed, are “goods” under the Unfair Practices Act.

288. Pursuant to NMSA 1978, § 57-12-2(D) an “unfair or deceptive trade practice” means “an act specifically declared unlawful pursuant to the Unfair Practices Act, a false or misleading oral or written statement, visual description or other representation of any kind knowingly made in connection with the sale, lease, rental or loan of goods . . . in the regular course of the person’s trade or commerce, that may, tends to or does deceive or mislead any person and includes” all of the following specifically declared acts:

(2) causing confusion or misunderstanding as to the . . . certification of goods or services; . . .

(5) representing that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits or quantities that they do not have or that a person has sponsorship, approval, status, affiliation or connection that the person does not have; . . .

(7) representing that goods or services are of a particular standard, quality or grade or that goods are of a particular style or model if they are of another; . . .

(14) using exaggeration, innuendo or ambiguity as to a material fact or failing to state a material fact if doing so deceives or tends to deceive; . . . [or]

(17) failing to deliver the quality or quantity of goods or services contracted for[.]

289. Pursuant to NMSA 1978, § 57-12-2(E) an “unconscionable trade practice” means “an act or practice in connection with the sale, lease, rental or loan, or in connection with the offering for sale, lease, rental or loan, of any goods or services . . . that to a person’s detriment: (1) takes advantage of the lack of knowledge, ability, experience or capacity of a person to a grossly unfair degree; or (2) results in a gross disparity between the value received by a person and the price paid.”

290. Pursuant to NMSA 1978, § 57-12-3, “Unfair or deceptive trade practices and unconscionable trade practices in the conduct of any trade or commerce are unlawful.”

291. Pursuant to NMSA 1978, § 57-12-6(A), the “willful misrepresentation of the . . . condition of a motor vehicle by any person . . . is an unlawful practice within the meaning of the Unfair Practices Act[.]”

292. Defendants repeatedly and continuously made unfair, deceptive, false, or misleading statements and omissions regarding the safety characteristics of the Defective Airbags (and/or vehicles in which such Defective Airbags were installed) from the moment the Defective Airbags were first introduced into the stream of commerce in the State of New Mexico, including, but not limited to, by affirmatively misrepresenting and promoting as safe vehicles containing Defective Airbags; by affirmatively misrepresenting and promoting as safe the Defective Airbags themselves; by denying the causes of and failing to disclose the propensity of the Defective Airbags to experience inflator rupture; by claiming the Defective Airbags were not defective when in fact they were; by claiming that fewer than all Defective Airbags were defective; by stating that only a portion of the country’s population (in humid areas) would be likely to experience a Defective

Airbag-related malfunction; and by failing to disclose that vehicles containing Defective Airbags are unsafe.

293. Defendant Takata made false, misleading, unfair, and deceptive statements directly to Honda, Ford, Toyota, BMW, Mazda, Subaru, Mitsubishi, Nissan, FCA, Volkswagen, Audi, Ferrari, General Motors, Jaguar, and Mercedes-Benz during the course of its business relationships with those Defendants, including representations that its airbag systems were safe and omitting to state that its airbag systems have a dangerous propensity to explode.

294. Defendant Takata made false, misleading, unfair, and deceptive statements concerning the existence and the extent of the defect in the Defective Airbags, including by stating that fewer than all Defective Airbags were defective in connection with the 2008 Honda recall, denying that it had conducted a series of secret tests on the Defective Airbags, blaming the defect on a limited manufacturing issue, and claiming in its May 2015 DIRs that the defect “may arise in some of the subject inflators” while, in fact, the defect already exists in all Takata inflators containing ammonium nitrate.

295. Defendant Honda made false, misleading, unfair, and deceptive statements on its websites, promotional literature/brochures, television commercials, and other media regarding the safety of its vehicles and the safety of the airbag systems installed in those vehicles, as alleged above.

296. Defendant Ford made false, misleading, unfair, and deceptive statements on its websites, promotional literature/brochures, television commercials, and other media regarding the safety of its vehicles and the safety of the airbag systems installed in those vehicles, as alleged above.

297. Defendant Toyota made false, misleading, unfair, and deceptive statements on its websites, promotional literature/brochures, television commercials, and other media regarding the safety of its vehicles and the safety of the airbag systems installed in those vehicles, as alleged above.

298. Defendant BMW made false, misleading, unfair, and deceptive statements on its websites, promotional literature/brochures, television commercials, and other media regarding the safety of its vehicles and the safety of the airbag systems installed in those vehicles, as alleged above.

299. Defendant Mazda made false, misleading, unfair, and deceptive statements on its websites, promotional literature/brochures, television commercials, and other media regarding the safety of its vehicles and the safety of the airbag systems installed in those vehicles, as alleged above.

300. Defendant Subaru made false, misleading, unfair, and deceptive statements on its websites, promotional literature/brochures, television commercials, and other media regarding the safety of its vehicles and the safety of the airbag systems installed in those vehicles, as alleged above.

301. Defendant Mitsubishi made false, misleading, unfair, and deceptive statements on its websites, promotional literature/brochures, television commercials, and other media regarding the safety of its vehicles and the safety of the airbag systems installed in those vehicles, as alleged above.

302. Defendant Nissan made false, misleading, unfair, and deceptive statements on its websites, promotional literature/brochures, television commercials, and other media regarding the

safety of its vehicles and the safety of the airbag systems installed in those vehicles, as alleged above.

303. Defendant FCA made false, misleading, unfair, and deceptive statements on its websites, promotional literature/brochures, television commercials, and other media regarding the safety of its vehicles and the safety of the airbag systems installed in those vehicles, as alleged above.

304. Defendant Volkswagen made false, misleading, unfair, and deceptive statements on its websites, promotional literature/brochures, television commercials, and other media regarding the safety of its vehicles and the safety of the airbag systems installed in those vehicles, as alleged above.

305. Defendant Audi made false, misleading, unfair, and deceptive statements on its websites, promotional literature/brochures, television commercials, and other media regarding the safety of its vehicles and the safety of the airbag systems installed in those vehicles, as alleged above.

306. Defendant Ferrari made false, misleading, unfair, and deceptive statements on its websites, promotional literature/brochures, television commercials, and other media regarding the safety of its vehicles and the safety of the airbag systems installed in those vehicles, as alleged above.

307. Defendant General Motors made false, misleading, unfair, and deceptive statements on its websites, promotional literature/brochures, television commercials, and other media regarding the safety of its vehicles and the safety of the airbag systems installed in those vehicles, as alleged above.

308. Defendant Jaguar made false, misleading, unfair, and deceptive statements on its websites, promotional literature/brochures, television commercials, and other media regarding the safety of its vehicles and the safety of the airbag systems installed in those vehicles, as alleged above.

309. Defendant Mercedes-Benz made false, misleading, unfair, and deceptive statements on its websites, promotional literature/brochures, television commercials, and other media regarding the safety of its vehicles and the safety of the airbag systems installed in those vehicles, as alleged above.

310. Defendants made these unfair, deceptive, false, or misleading representations, or omitted truthful material information, knowingly in the connection with the sale of Defective Airbags (Takata) and/or vehicles equipped with Defective Airbags (Honda, Ford, Toyota, BMW, Mazda, Subaru, Mitsubishi, Nissan, FCA, Volkswagen, Audi, Ferrari, General Motors, Jaguar, and Mercedes-Benz).

311. Defendants made these unfair, deceptive, false or misleading representations, or omitted truthful material information, in the regular course of Defendants' respective businesses.

312. Defendants' unfair, deceptive, false, or misleading representations, or omissions of material information, were the types of representations or omissions that may, or tend to, and in fact did, deceive and mislead other persons.

313. In addition, Defendants engaged in unconscionable trade practices by taking advantage of consumers' and regulators' lack of knowledge of the design and manufacturing defects within the Defective Airbags to a grossly unfair degree, causing detriment to the State of New Mexico by exposing its citizenry to severe and unconscionable risk of serious injury or death due to inflator rupture from a device meant to protect them from injury and death.

314. Pursuant to NMSA 1978, § 57-12-11, “In any action brought under Section 57-12-8 NMSA 1978, 1978, if the court finds that a person is willfully using or has willfully used a method, act or practice declared unlawful by the Unfair Practices Act, the attorney general, upon petition to the court, may recover, on behalf of the state of New Mexico, a civil penalty of not exceeding five thousand dollars (\$5,000) per violation.”

315. Takata committed a separate and independent willful violation of the Unfair Practices Act through each and every unfair, deceptive, false, or misleading representation, or omission of material information, to any person, including to any vehicle manufacturer with whom Takata contracted as well as the public.

316. Honda committed a separate and independent willful violation of the Unfair Practices Act through each and every unfair, deceptive, false, or misleading representation, or omission of material information, to any person, including to any customer or potential customer, dealership, and the public.

317. Ford committed a separate and independent willful violation of the Unfair Practices Act through each and every unfair, deceptive, false, or misleading representation, or omission of material information, to any person, including to any customer or potential customer, dealership, and the public.

318. Toyota committed a separate and independent willful violation of the Unfair Practices Act through each and every unfair, deceptive, false, or misleading representation, or omission of material information, to any person, including to any customer or potential customer, dealership, and the public.

319. BMW committed a separate and independent willful violation of the Unfair Practices Act through each and every unfair, deceptive, false, or misleading representation, or

omission of material information, to any person, including to any customer or potential customer, dealership, and the public.

320. Mazda committed a separate and independent willful violation of the Unfair Practices Act through each and every unfair, deceptive, false, or misleading representation, or omission of material information, to any person, including to any customer or potential customer, dealership, and the public.

321. Subaru committed a separate and independent willful violation of the Unfair Practices Act through each and every unfair, deceptive, false, or misleading representation, or omission of material information, to any person, including to any customer or potential customer, dealership, and the public.

322. Mitsubishi committed a separate and independent willful violation of the Unfair Practices Act through each and every unfair, deceptive, false, or misleading representation, or omission of material information, to any person, including to any customer or potential customer, dealership, and the public.

323. Nissan committed a separate and independent willful violation of the Unfair Practices Act through each and every unfair, deceptive, false, or misleading representation, or omission of material information, to any person, including to any customer or potential customer, dealership, and the public.

324. FCA committed a separate and independent willful violation of the Unfair Practices Act through each and every unfair, deceptive, false, or misleading representation, or omission of material information, to any person, including to any customer or potential customer, dealership, and the public.

325. Volkswagen committed a separate and independent willful violation of the Unfair Practices Act through each and every unfair, deceptive, false, or misleading representation, or omission of material information, to any person, including to any customer or potential customer, dealership, and the public.

326. Audi committed a separate and independent willful violation of the Unfair Practices Act through each and every unfair, deceptive, false, or misleading representation, or omission of material information, to any person, including to any customer or potential customer, dealership, and the public.

327. Ferrari committed a separate and independent willful violation of the Unfair Practices Act through each and every unfair, deceptive, false, or misleading representation, or omission of material information, to any person, including to any customer or potential customer, dealership, and the public.

328. General Motors committed a separate and independent willful violation of the Unfair Practices Act through each and every unfair, deceptive, false, or misleading representation, or omission of material information, to any person, including to any customer or potential customer, dealership, and the public.

329. Jaguar committed a separate and independent willful violation of the Unfair Practices Act through each and every unfair, deceptive, false, or misleading representation, or omission of material information, to any person, including to any customer or potential customer, dealership, and the public.

330. Mercedes-Benz committed a separate and independent willful violation of the Unfair Practices Act through each and every unfair, deceptive, false, or misleading representation,

or omission of material information, to any person, including to any customer or potential customer, dealership, and the public.

331. Each and every time Defendants sold or offered for sale a Defective Airbag or vehicle equipped with a Defective Airbag in the State of New Mexico, or otherwise allowed a Defective Airbag to be present in the State of New Mexico, Defendants committed a separate and independent violation of the Unfair Practices Act through unconscionable trade practices.

332. Defendants have engaged in violations of the Unfair Practices Act by making unfair, deceptive, false, or misleading statements; by omitting material information; and by engaging in unconscionable trade practices, with respect to the Defective Airbags, since at least 1999 and continuing through the present, with multiple violations occurring on each and every day during this period. The State here incorporates by reference the lists of model years and models of vehicles equipped with Defective Airbags, organized by make, in this Complaint's "Parties" section.

333. Defendants should each therefore be assessed a separate civil penalty of \$5,000 for each independent violation, and all other such relief as may be just and proper should be recovered by the State.

VIII. REQUEST FOR RELIEF

WHEREFORE, Plaintiff, the State of New Mexico, respectfully requests that the Court enter judgment in its favor and against Defendants, as follows:

- a. Awarding the maximum amount of statutory penalties available under NMSA 1978, § 57-12-11, for each violation of New Mexico's Unfair Trade Practices Act, NMSA 1978, §§ 57-12-1, *et seq.*;

- b. Ordering Defendants to disgorge all profits they illegally obtained by and through illegal conduct, and used to further fund or promote the illegal conduct or that constituted capital available for that purpose;
- c. Awarding Plaintiff its attorneys' fees and litigation costs; and,
- d. Awarding such other relief as may be available and appropriate under the law or in equity.

IX. DEMAND FOR JURY TRIAL

Plaintiff demands a jury trial for all claims upon which a jury trial is available.

Dated: January 20, 2017

Respectfully submitted,

Hector H. Balderas
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