

1 MELISSA M. HARNETT (Bar No. 164309)
mharnett@wcclaw.com

2 **WASSERMAN, COMDEN
& CASSELMAN, L.L.P.**

3 5567 Reseda Boulevard, Suite 330
Post Office Box 7033

4 Tarzana, California 91357-7033
Telephone: (818) 705-6800

5 Facsimile: (818) 345-0162

6 Jeffrey Keller (Bar No. 148005)
jfkeller@kellergrover.com

7 **KELLER GROVER LLP**

425 Second Street, Suite 500

8 San Francisco, California 94107

Telephone: (415) 543-1305

9 Facsimile: (415) 543-7861

10 Attorneys for Plaintiff GARY FRAIGUN
11 and all others similarly situated

12 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

13 **IN AND FOR THE COUNTY OF SANTA BARBARA**

14
15 GARY FRAIGUN, as an individual,
16 and on Behalf of All Others Similarly
Situating,

17 Plaintiff,

18 vs.

19 GENERAL MOTORS
CORPORATION, a Delaware
20 Corporation, and DOES 1 through 10,

21 Defendants.

CASE NO. 01246195

CLASS ACTION

COMPLAINT FOR:

1) **VIOLATIONS OF THE
CONSUMERS LEGAL REMEDIES
ACT;**

2) **VIOLATIONS OF THE
UNFAIR COMPETITION ACT;**

3) **UNTRUE AND
MISLEADING ADVERTISING;**

4) **UNJUST ENRICHMENT**

5) **BREACH OF EXPRESS
WARRANTY**

JURY TRIAL DEMANDED

FILED
SUPERIOR COURT of CALIFORNIA
COUNTY of SANTA BARBARA

JUL 25 2007

GARY M. BLAIR, Executive Officer
BY Merilee A. Jay
Merilee A. Jay, Deputy Clerk

1 Plaintiff Gary Fraigun ("Plaintiff"), individually and on behalf of others
2 similarly situated, brings this action against Defendant General Motors Corporation
3 ("GMC") and DOES 1 through 10 (jointly "Defendants"), demanding a trial by jury,
4 as follows:
5

6
7 **JURISDICTION AND VENUE**

8 1. Venue is proper in this Court pursuant to California Code of Civil
9 Procedure § 395(b), in that this action arises from an offer or provision of goods
10 intended primarily for personal use. Plaintiff purchased the goods at issue from a
11 dealership located in the County of Santa Barbara. At all relevant times, Defendants
12 marketed and sold their products to purchasers in California, including but not
13 limited to in the County of Santa Barbara.
14

15 2. This Court has subject matter jurisdiction over this Class and the
16 representative action pursuant to Bus. & Prof. Code § 17200, et seq. ("UCL"); Bus.
17 & Prof. Code § 17500, et seq.; Civ. Code § 1750, et seq.; Code of Civil Procedure
18 § 382, and other provisions of the California Codes.
19

20 3. Defendants are authorized to do business in California, have sufficient
21 minimum contacts with California, and/or otherwise intentionally avail themselves
22 of the markets in California through the promotion, marketing and sale in California
23 of motor vehicles, to render the exercise of jurisdiction by this Court permissible
24 under traditional notions of fair play and substantial justice.
25
26
27
28

THE PARTIES

4. Individual and representative plaintiff Gary Fraigun is a resident of the County of Los Angeles, State of California.

5. Plaintiff is informed and believes and on that basis alleges that Defendant GMC is a Delaware corporation, with its principal place of business in Detroit, Michigan, registered to do business, and doing business, in the State of California.

6. The true names and capacities, whether individual, corporate, associate or otherwise of defendants DOES 1 through 10, inclusive, and each of their roles in this case, are unknown to Plaintiff, who therefore sues said defendants by such fictitious names pursuant to Code of Civil Procedure § 474. Plaintiff further alleges that each of said fictitiously named defendants is in some manner responsible for the acts and occurrences set forth herein. Plaintiff will amend this Complaint to show their true names and capacities when the same is ascertained, as well as the manner in which each fictitiously named defendant is responsible.

7. Plaintiff is informed and believes, and thereon alleges that at all times mentioned, that Defendants are each the partners, joint venturers, alter egos, and/or co-conspirators of each other. At all times mentioned, there existed such a unity of interest in ownership and interests between each of the Defendants that any separateness ceased to exist between them. The exercise of complete dominance and control over the other entities and their properties, rights and interests, rendered such entities as mere shells and instrumentalities of each other Defendant. As a result, an injustice would result if the separateness of the corporation is not

1 disregarded.
2

3 **FACTUAL ALLEGATIONS COMMON TO ALL CAUSES OF ACTION**
4

5 8. This action arises from Defendants' marketing and sale of motor
6 vehicles, doing business under the name of "Chevrolet" or "Chevy" brand vehicles.
7 Among the vehicles sold by Defendants are 2007 model year Tahoe, Avalanche and
8 Suburban sport utility vehicles (hereinafter the "Vehicles").
9

10 9. Plaintiff purchased a 2007 model year Chevrolet Tahoe SUV in
11 September of 2006. Plaintiff ordered the vehicle via the Internet at
12 www.chevrolet.com (the "Website"), after visiting dealerships in person and
13 reviewing information on the Internet. Prior to making the order, Plaintiff viewed
14 and relied upon information concerning the Tahoe and its available optional
15 equipment, located on both www.chevrolet.com and the brochure distributed by
16 Defendants concerning the vehicle.
17

18 10. In their brochures and on their Website, Defendants advertised, and
19 continue to advertise, that consumers could purchase the Vehicles with an optional
20 Bose Speaker System. The Bose Speaker System is described by Defendants in the
21 brochures and on the Website as:
22

23 The Bose® speaker system features nine custom-arranged
24 speakers, including a subwoofer in the center console.
25 This system is completely integrated within the Tahoe to
26 deliver fully balanced sound equally to every person.
Everything from the location of the speakers to their
design was engineered to give you panoramic, concert-like
sound during your travels.

27 The aforesated representations were made by Defendants in the brochures entitled
28

1 "2007 Tahoe" dated August 2006 and the "2007 Suburban" also dated August 2006
2 (collectively "Brochures"). The aforestated representations have been on the
3 Website since at least September 2006 (and probably earlier) and through at least
4 the filing of this Complaint ("Relevant Time Period").

5
6 11. In addition, Defendants advertised, and continue to advertise, in the
7 Brochures and on the Website during the same time period that a Vehicle purchased
8 with the "Navigation Radio" option "[i]ncludes the Bose® speaker system."

9
10 12. In Defendants' Brochures and on the Website during the Relevant Time
11 Period, Defendants have represented and continue to represent that the "NEW
12 Navigation Radio includes voice recognition, AM/FM stereo, Touch-Screen
13 Navigation Radio with alternate CD/MP3 player functionality, 5 seek-scan, auto
14 tone control and Radio Data System (RDS)." Defendants also represent that the
15 Bose speaker system features "a digital amplifier with six channels, custom signal
16 processing and nine speakers (including subwoofer)" for the Tahoe and Suburban,
17 and "a digital amplifier with six channels, custom signal processing and seven
18 speakers (including subwoofer)" for the Avalanche.

19
20 13. In the manual entitled "2007 Chevrolet Avalanche, Tahoe, Suburban
21 and GMC Yukon, Yukon XL, Yukon Denali, Yukon XV Denali Navigation
22 Manual," dated 2005 with the copyright owned by GMC ("Manual"), Defendants
23 represent that the Bose sound system provides "Digital Signal Processing" (DSP).
24 Defendants advise the consumer:

25
26 If the system has the Bose® sound system, the system will
27 have Digital Signal Processing (DSP). DSP is used to
28 provide a choice of four different listening experiences.
DSP can be used while listening to the audio system. The
type of DSP selected is displayed on the status line.

1 Select from the following DSP settings:

2 ...

3 Surround (Centerpoint™): Select this screen button to
4 turn on Bose® Centerpoint™. Centerpoint™ signal
5 processing gives surround sound listening for a CD, MP3,
6 or a DVD stereo audio source. Centerpoint™ delivers five
7 independent audio channels from conventional stereo
8 recordings.

9 14. Defendants also represent in the Manual:

10 AudioPilot®: If the system has the Bose® sound system,
11 it includes Bose AudioPilot® noise compensation
12 technology.

13 To use AudioPilot®, press the [] Automatic Volume
14 Control screen button to access the AudioPilot® menu,
15 then press the ON screen button. To turn it off, touch the
16 OFF screen button. When on, AudioPilot® continuously
17 adjusts the audio system equalization, to compensate for
18 background noise, so that your music always sounds the
19 same at the set volume level.

20 15. In the Brochures, Defendants advertise the Navigation system and radio
21 as including a functioning digital clock radio.

22 16. Based on the foregoing representations, Plaintiff purchased the
23 Navigation Radio option for his Tahoe, which he expected to include the Bose®
24 speaker system, DSP with surround sound, AudioPilot and a functioning digital
25 clock.

26 17. The Navigation system does not, in fact, include the Bose speaker
27 system. Rather, consumers are charged an additional amount for the Bose Speaker
28 system when the consumer purchases the Navigation system. Plaintiff was charged
an additional \$495 for the Bose speaker system, in addition to the \$2,250 he paid for
the Navigation Radio. \$495 is the standard price charged to consumers by
Defendants for the Bose speaker system option, regardless of whether the consumer

1 does or does not purchase the Navigation Radio option, as set forth in the
2 Manufacturer's label, dated May 21, 2006, © 2004 by General Motors Corporation.
3

4 18. Contrary to Defendants' representations, the Bose speaker system sold
5 by Defendants with the Vehicles to Plaintiff and other consumers does not include
6 DSP with surround sound.
7

8 19. Contrary to Defendants' representations, the Bose speaker system sold
9 by Defendants with the Vehicles to Plaintiff and other consumers does not permit
10 access to an AudioPilot menu to engage any such system.
11

12 20. The digital clock is defective and is only sporadically visible.
13 Defendants have refused and/or failed to correct this defect. Plaintiff is informed
14 and believes that this defect is present in multiple Vehicles, that Defendants are
15 aware of the defect, and that Defendants have failed to advise consumers of the
16 known defect.
17

18 21. On or about October 2006, Defendant GMC issued a service bulletin,
19 document ID# 1820456, to professional technicians including Graham, in which
20 GMC advises:
21

22 Some customers may experience a concern where the
23 clock will disappear from all the navigation and radio
24 screens. The customer may also notice that the clock
25 menu for setting the clock will also be missing.

26 . . .

27 Please do not replace the radio to resolve this concern.
28 Engineering is investigating the issue and this P/I will be
updated when a fix is available.

22. Defendants have refused and/or failed to correct the clock defect, and

1 further have refused and/or failed to refund to any consumer, including Plaintiff, the
2 value of the defective digital clock.

3
4 23. In the 2007 Tahoe/Suburban owners manual published by GMC,
5 Defendants have represented and continue to represent that the Vehicles are
6 equipped with a "delayed locking" feature which can be used by virtue of the remote
7 keyless entry transmitter. Defendants state:

8
9 When locking the doors with the power lock switch or the
10 remote keyless entry (RKE) transmitter and a door or the
11 liftgate is open, the doors will lock five seconds after the
last door is closed. You will hear three chimes to signal
that the delayed locking feature is in use.

12 Pressing the power lock switch or the lock button on the
13 RKE transmitter twice will override the delayed locking
feature and immediately lock all the doors.

14 24. The Vehicles in fact do not have a delayed locking feature, as described
15 in the owners manual, which can be utilized via the RKE.

16
17 25. The Vehicles are sold with a 3 year/36,000 mile warranty which
18 provides "complete vehicle coverage." Defendants have failed to correct, pursuant
19 to the warranty, the delayed locking feature, the defects in the Bose speaker system,
20 and the defective clock so that they will properly function as represented by
21 Defendants.

22
23 **CLASS ACTION ALLEGATIONS**

24
25 26. Plaintiff brings this action both on behalf of himself and as a class
26 action on behalf of the following Class (the "Transmitter Class"):

1 All persons who purchased 2007 model year Chevrolet Tahoe,
2 Avalanche and Suburban vehicle and (1) resided in California; (2)
3 purchased the Vehicle while located in California; or (3) purchased the
4 Vehicle from a source in California.

5
6 27. Plaintiff also brings this action both on behalf of himself, and as a class
7 action on behalf of the following sub-class (the "Clock Class"):

8
9 All persons who purchased 2007 model year Chevrolet Tahoe,
10 Avalanche and Suburban vehicles equipped with the Navigation Radio
11 and (1) resided in California; (2) purchased the Vehicle while located in
12 California; or (3) purchased the Vehicle from a source in California.

13
14 28. Plaintiff also brings this action both on behalf of himself, and as a class
15 action on behalf of the following sub-class (the "Bose Class"):

16
17 All persons who purchased 2007 model year Chevrolet Tahoe,
18 Avalanche and Suburban vehicles equipped with the Bose Speaker
19 System and (1) resided in California; (2) purchased the Vehicle while
20 located in California; or (3) purchased the Vehicle from a source in
21 California.

22
23 29. Plaintiff also brings this action both on behalf of himself, and as a class
24 action on behalf of the following sub-class (the "Overcharge Class"):

25
26 All persons who purchased 2007 model year Chevrolet Tahoe,
27 Avalanche and Suburban vehicles equipped with the LT2 trim package,
28

1 the Bose Speaker System, and the Navigation Radio and (1) resided in
2 California; (2) purchased the Vehicle while located in California; or (3)
3 purchased the Vehicle from a source in California.
4

5 30. Said definitions may be further defined by additional pleadings,
6 evidentiary hearings, a class certification hearing, and order of this Court. To the
7 extent that any limitations period for a particular cause of action asserted herein is
8 less than four years prior to the filing of this Complaint, then each of the foregoing
9 definitions are further limited to include only those class members who have claims
10 arising within the applicable limitations period for each cause of action as stated
11 below. Where applicable, the Class, the Clock Class, the Bose Class, and the
12 Overcharge Class will jointly be referred to as the "Classes."
13

14 31. Although Plaintiff does not know the exact number of the members of
15 the Classes, since such information is within the exclusive control of Defendants,
16 Plaintiffs believe that due to the nature of the commerce involved, the number of
17 members of each of the Classes are sufficiently numerous that it is impracticable to
18 bring all members of each of the Classes before the Court.
19

20 32. The claims of Plaintiff are typical of the claims of each of the Class
21 members. Plaintiff and the members of the Classes each relied upon the deceptive
22 and misleading representations by Defendants regarding the equipment sold on their
23 Vehicles, which were uniformly made to each of the Plaintiffs and members of the
24 Classes via written material distributed by Defendants.
25

26 33. Numerous questions of law and fact are common to each of the Classes,
27 which predominate over any individual issues. Questions of law and fact which are
28

1 common to each of the Classes include, without limitation:
2

3 a. With respect to the Overcharge Class, whether Defendants falsely
4 advertised that the Vehicles equipped with Navigation Radio included the Bose
5 Speaker System at no extra charge;
6

7 b. With respect to the Bose Class, whether Defendants falsely advertised
8 that the Vehicles equipped with the Bose Speaker System included DSP and
9 surround sound;
10

11 c. With respect to the Bose Class, whether Defendants falsely advertised
12 the Bose Speaker System-equipped Vehicles as including "Bose® AudioPilot noise
13 compensation technology;
14

15 d. With respect to the Clock Class, whether Defendants falsely advertised
16 and sold the Navigation Radio as having a digital clock feature, while failing to
17 disclose that the digital clock may disappear from all the navigation and radio
18 screens, and that the clock menu for setting the clock may also be missing.
19

20 e. With respect to the Transmitter Class, whether Defendants falsely
21 advertised the Vehicles as equipped with a delayed locking feature utilized via the
22 RKE transmitter.
23
24
25

26 34. Defendants engaged in a common course of conduct involving similar
27 or identical plans, intent, design, statutory violations, and schemes. Individual
28

1 questions, if any, pale by comparison to the numerous questions that dominate this
2 litigation. The injuries sustained by the members of each of the Classes respectively
3 arise from a common nucleus of operative facts involving the Defendants'
4 misconduct.

5
6 35. Plaintiff will fairly and adequately represent the interests of the Classes
7 in that Plaintiff is a typical purchaser of the Vehicles at issue and is a member of
8 each of the Classes. Plaintiff's interests do not conflict with the interests of the
9 members of the Classes he seeks to represent. Furthermore, Plaintiff has retained
10 competent counsel experienced in class action litigation. Plaintiff's counsel will
11 fairly and adequately protect the interests of the members of the Classes.

12
13 36. This class action is superior to the alternatives, if any, for the fair and
14 efficient adjudication of this controversy. The Classes are readily definable. A
15 class action will enable claims to be handled in an orderly and expeditious manner.
16 A class action will save time and expense and will ensure uniformity of decisions.

17
18 37. The relief sought per individual member of each of the Classes is small
19 given the burden and expense of individual prosecution of the potentially extensive
20 litigation necessitated by the conduct of Defendants. Actual damages for Plaintiff
21 and Class members is expected to be less than \$5,000 each. Furthermore, it would
22 be virtually impossible for the class members to seek redress on an individual basis.
23 Even if the class members themselves could afford such individual litigation, the
24 court system could not.

25
26 38. Individual litigation of the legal and factual issues raised by the conduct
27 of Defendants would increase delay and expense to all parties and to the court
28

1 system. The class action device presents far fewer management difficulties and
2 provides the benefits of a single, uniform adjudication, economies of scale and
3 comprehensive supervision by a single court. Given the similar nature of the claims
4 of the members of each of the Classes, and the law applicable thereto, the Court and
5 the parties will easily be able to manage a class action.

6
7 39. Prosecution of separate actions by individual Class members would
8 create the risk of inconsistent or varying adjudications, establishing incompatible
9 standards of conduct for the Defendants.

10
11 40. Injunctive relief is appropriate as to each of the Classes as a whole
12 because Defendants have acted or refused to act on grounds generally applicable to
13 the Class.

14
15 **FIRST CAUSE OF ACTION**

16 **VIOLATION OF THE CONSUMERS LEGAL REMEDIES ACT**
17 **(CAL. CIV. CODE § 1750 et seq.)**

18 **(On behalf of Plaintiff and each of the Classes as against all Defendants)**

19 41. Plaintiff incorporates by reference all the above allegations as if fully
20 set forth herein.

21
22 42. This cause of action is asserted on behalf of Plaintiff, the Classes, and
23 each of the foregoing, but shall be limited to a subclass of only individual class
24 members, to the exclusion of any business or other legal entity.

25
26 43. Plaintiff and members of the Classes are consumers who have
27 purchased motor vehicles from Defendants for personal or family purposes.
28

1 44. Defendants had a deceptive and unfair practice of making, and did
2 unfairly make false statements of fact to Bose and Overcharge Class members,
3 concerning the inclusion of the Bose Speaker System in the purchase of the
4 Navigation Radio package; the presence of AudioPilot in the Bose Speaker System;
5 the presence of DSP and surround sound in the Bose Speaker System.
6

7 45. Defendants had a deceptive and unfair practice of making, and did
8 unfairly make false statements of fact to the Class members, concerning the
9 "delayed locking" feature's use by virtue of the remote keyless entry transmitter.
10

11 46. Defendants had a deceptive and unfair practice of representing, and did
12 unfairly make false statements of fact to the Clock Class members that the
13 Navigation radio had a clock which was both visible and useable by the consumer
14 under normal conditions, while failing to disclose that the clock was only
15 sporadically visible because of a defect.
16

17 47. Defendants had a deceptive practice of falsely advertising, and did
18 falsely advertise, the Vehicles with an intent not to sell them as advertised, in
19 violation of Civil Code § 1770(a)(9). Defendants advertised the Vehicles as
20 including the above-described equipment and characteristics. In fact, Defendants
21 intended to sell, and did sell, these Vehicles without the equipment and
22 characteristics.
23

24 48. In selling the Vehicles to Plaintiff and the relevant Classes, Defendants
25 represented that the Vehicles had characteristics, uses, and benefits which they did
26 not have, in violation of Civil Code § 1770(a)(5).
27
28

1 49. In selling the Vehicles to Plaintiff and the relevant Classes, Defendants
2 represented that the Vehicles had a particular standard or quality, which they did not
3 have, in violation of Civil Code § 1770(a)(7).
4

5 50. In selling the Vehicles to Plaintiff and the Overcharge Class,
6 Defendants made false and misleading statements of fact concerning the existence
7 of and amounts of price reductions, in violation of Civil Code § 1770(a)(13), in
8 falsely representing that the Navigation Option would include the Bose Speaker
9 System, when in fact Defendants did not reduce the price of the Vehicle so as to
10 include the Bose Speaker System with the purchase of the Navigation Option.
11 Rather, Defendants continued to charge, and did charge the full price of the Bose
12 Speaker System despite the purchase of the Navigation Option.
13

14 51. Plaintiff and the Overcharge Class members have each been damaged
15 in that they have been subjected by Defendants to the deceptive business practices
16 prohibited by California Civil Code § 1770 as outlined above, and thus have had
17 their legal rights infringed. Further, Plaintiff and each Overcharge Class member
18 have suffered damage by paying Defendants for equipment and characteristics not
19 delivered to them, and by being separately charged for the Bose Speaker System
20 which they should have received as part of the cost of the Navigation system.
21 Plaintiff's claims are typical of the claims of the Overcharge Class members because
22 his legal rights were infringed by Defendants' deceptive business practices as
23 outlined above.
24

25 52. Plaintiff, the Transmitter Class members, the Bose Class members, and
26 the Clock Class members, have each been damaged in that they have been subjected
27 by Defendants to the deceptive business practices prohibited by California Civil
28

1 Code § 1770 as outlined above, and thus have had their legal rights infringed.
2 Further, Plaintiff and the members of the Transmitter Class, the Bose Class, and the
3 Clock Class have suffered damage by paying Defendants for equipment and
4 characteristics not delivered to them. Plaintiff's claims are typical of the claims of
5 the Class members because his legal rights were infringed by Defendants' deceptive
6 business practices as outlined above.
7

8 53. More than thirty (30) days have passed since notice was sent to
9 Defendants in writing by certified mail pursuant to California Civil Code § 1782 (a),
10 in which demand was made that Defendants make an appropriate correction, repair
11 or replacement, or other remedy with respect to the Bose Class, the Transmitter
12 Class, the Overcharge Class and the Clock Class. Defendants have refused to make
13 an appropriate correction, repair or replacement, or other remedy with respect to
14 these Classes.
15

16 54. As a result of the conduct of Defendants as alleged herein, Plaintiff and
17 the Transmitter Class, the Bose Class, the Overcharge Class and the Clock Class
18 should be awarded actual damages, restitution, attorneys fees and costs, and punitive
19 damages pursuant to California Civil Code § 1780(a).
20

21 55. Plaintiff further requests that this Court enter a permanent injunction
22 enjoining Defendants, and their agents, servants, employees and all persons acting
23 under or in concert with them, to cease and desist from the following:
24

25 a. Conducting any further sales, marketing or advertisement of the above-
26 described Bose Speaker System as having AudioPilot, DSP and surround sound
27 features.
28

1 b. From charging an additional amount for the Bose® Speaker System
2 when a consumer purchases the Navigation Radio package; or, refraining from
3 marketing or advertising the Navigation Radio as being inclusive of the Bose
4 Speaker System.

5
6 c. From marketing the Navigation Radio as having a digital clock feature
7 without also disclosing that the digital clock may disappear from all the navigation
8 and radio screens, and that the clock menu for setting the clock may also be missing.

9
10 d. Conducting any further sales, marketing or advertisement of the
11 Vehicles as having a "delayed locking" feature which may be used by virtue of the
12 remote keyless entry transmitter.

13
14 e. From any other conduct which the Court determines warranted so as to
15 prevent the commission of unfair competition by Defendants.

16
17 **SECOND CAUSE OF ACTION**

18 **VIOLATION OF UNFAIR COMPETITION ACT**
19 **(Cal. Bus. & Prof. Code § 17200 et seq.)**

20 **(On behalf of Plaintiff and each of the Classes as against all Defendants)**

21
22 56. Plaintiff incorporates by reference all the above allegations as if fully
23 set forth herein.

24
25 57. This cause of action is asserted on behalf of the Plaintiff and members
26 of each of the Classes and sub-classes.

27
28 58. The actions of Defendants, as complained herein, constitute unfair and

1 deceptively unlawful practices committed in violation of the Unfair Competition
2 Act. The conduct of Defendants was fraudulent, unfair and/or unlawful because,
3 among other things, Defendants made false representations to induce consumers,
4 including Plaintiff, into buying the Vehicles, the equipment and characteristics of
5 which materially differed from Defendants' representations and advertisements.
6

7 59. Plaintiff and members of the Class and each sub-class, and each of
8 them, have been damaged in that they have been subjected by Defendants to
9 unlawful, unfair or fraudulent business practices, and unfair, deceptive, untrue or
10 misleading advertising, prohibited by California's unfair competition laws, as
11 outlined above, and thus have had their legal rights infringed. Further, Plaintiff and
12 each of the members of the Class have suffered damage by paying Defendants for
13 equipment not provided on the Vehicles.
14

15 60. Plaintiff's claims are typical of the claims of the Class because each
16 have had their legal rights infringed by Defendants' deceptive business practices as
17 outlined above. The same misrepresentations, concealments and omissions were
18 made by Defendants to Plaintiff and the Class Members, each of whom relied upon
19 such misrepresentations, omissions and concealments upon purchasing Vehicles
20 from Defendants.
21

22 61. Plaintiff meets the standing requirements of C.C.P. § 382 to bring this
23 cause of action because, among other reasons, the question is one of a common or
24 general interest, is a question of many persons and/or the parties are numerous and it
25 is impracticable to bring them all before the Court. Further, Plaintiff has standing to
26 bring this action because Plaintiff suffered injury in fact and lost money as a result
27 of Defendants' conduct.
28

1 62. All of the conduct alleged herein occurs and continues to occur in
2 Defendants' business. The conduct of Defendants is part of a pattern or generalized
3 course of conduct repeated on thousands of occasions every year. Plaintiff relied
4 upon the misrepresentations, concealments and omissions, to his detriment, and such
5 reliance was typical of the Class by virtue of the nature of the transactions involved.
6 Plaintiff further had taken from him by Defendants money which Plaintiff did not
7 owe to Defendants.

8
9 63. Plaintiff requests that this Court enter such orders or judgments as may
10 be necessary to restore to any person in interest any money which may have been
11 acquired by means of such unfair practices as provided in Bus. & Prof. Code §
12 17203, and for such other relief as set forth below.

13
14 64. Plaintiff further requests that this Court enter a permanent injunction
15 enjoining Defendants, and their agents, servants, employees and all persons acting
16 under or in concert with them, to cease and desist from the following:

17
18 a. Conducting any further sales, marketing or advertisement of the above-
19 described Bose Speaker System, Navigation Radio, Digital Signal Processing,
20 surround sound, digital clock, and/or "delayed locking" feature which may be used
21 by virtue of the remote keyless entry transmitter, and

22
23 b. From any other conduct which the Court determines warranted so as to
24 prevent the commission of unfair competition by Defendants.

25
26 c. Plaintiff, on behalf of himself and the Class, seeks an order of this
27 Court awarding restitution, injunctive relief and all other relief allowed under §
28

1 17200, *et seq.*, plus interest, attorneys' fees and costs pursuant to, *inter alia*, C.C.P. §
2 1021.5. Plaintiff engaged counsel to prosecute this action and is entitled to recover
3 costs and reasonable attorney's fees according to proof at trial. This case will result
4 in the enforcement of an important right affecting the public interest, a significant
5 benefit (pecuniary or nonpecuniary) will be conferred on a large class of persons
6 (thousands), the necessity and financial burden of private enforcement are such as to
7 make the award appropriate; and such fees should not in the interest of justice be
8 paid out of the recovery, if any (as the cost of litigation by itself may exceed the
9 monetary amounts paid by way of restitution).

10 **THIRD CAUSE OF ACTION**

11 **UNTRUE AND MISLEADING ADVERTISING** 12 **(Cal. Bus. & Prof. Code § 17500, et seq.)**

13 **(On behalf of Plaintiff and each of the Classes as against all Defendants)**

14 65. Plaintiff incorporates by reference all the above allegations as if fully
15 set forth herein.

16 66. This cause of action is asserted on behalf of Plaintiff and each of the
17 Classes.

18 67. Defendants made representations, omissions and concealments
19 disseminated to the public as set forth above. These representations, omissions and
20 concealments were made to induce the public to purchase Defendants' Vehicles.
21 The representations were false. The information omitted and concealed should have
22 been disseminated.

23 68. All of the conduct alleged herein occurs and continues to occur in
24
25
26
27
28

1 Defendants' business. The conduct of Defendants is part of a pattern or generalized
2 course of conduct repeated on thousands of occasions yearly. Plaintiff relied upon
3 the misrepresentations, concealments and omissions, to his detriment, and such
4 reliance was typical of the Class members by virtue of the nature of the transactions
5 involved.

6
7 69. Defendants were aware, or by the exercise of reasonable case should
8 have been aware, that the representations were untrue or misleading. Defendants
9 also were aware, or by the exercise of reasonable case should have been aware, that
10 the concealments and omissions should have been disseminated in the advertising.

11
12 70. Plaintiff has been harmed, suffered injury in fact and lost money.
13 Plaintiff, on behalf of himself and the Class, seeks restitution, injunctive relief and
14 all other relief allowable under § 17500, *et seq.*

15
16 71. Pursuant to Bus. & Prof. Code § 17535, Plaintiff and members of the
17 Class are entitled to remedies as set forth below.

18
19 **FOURTH CAUSE OF ACTION**

20 **UNJUST ENRICHMENT**

21 **(On behalf of Plaintiff and each of the Classes as against all Defendants)**

22
23 72. Plaintiff incorporates by reference all the above allegations as if fully
24 set forth herein.

25
26 73. This cause of action is asserted on behalf of Plaintiff and each of the
27 Classes.

1 74. Defendants have benefited and been unjustly enriched by the above-
2 alleged conduct.

3
4 75. Defendants have knowledge of this benefit, and have voluntarily
5 accepted and retained this benefit.

6
7 76. The circumstances as described herein are such that it would be
8 inequitable for Defendants to retain these ill-gotten benefits without paying the
9 value thereof to Plaintiff and the members of the Classes, or through other
10 disgorgement.

11
12 77. Plaintiff and the Classes are entitled to the amount of Defendants' ill-
13 gotten gains, including interest, resulting from its unlawful, unjust and inequitable
14 conduct as described above.

15
16 78. Plaintiff seeks an order of disgorgement of profits into a fluid recovery
17 fund.

18
19 **FIFTH CAUSE OF ACTION**

20 **BREACH OF EXPRESS WARRANTY**
21 **(Cal. Civil Code § 1792.2 et seq.)**

22 **(On behalf of Plaintiff, and each of the Transmitter, and Clock, Bose as against**
23 **all Defendants)**

24 79. Plaintiff incorporates by reference all the above allegations as if fully
25 set forth herein.

26 80. This claim is asserted on behalf of a sub-class of the Transmitter Class,
27 the Bose Class, and the Clock Class, comprised of all persons whose express
28

1 warranty is still in effect.

2
3 81. Defendants expressly warranted that the Vehicles were free of defects
4 in materials and workmanship.

5
6 82. Defendants' Vehicles are defective in materials and/or workmanship.
7 The Bose Speaker System does not include properly functioning DSP with surround
8 sound, AudioPilot or a digital clock. The "delayed locking" feature can not be used
9 by virtue of the remote keyless entry transmitter.

10
11 83. Plaintiff and the Class members have incurred damages as described
12 herein as a direct and proximate result of the defective Bose Speaker System, the
13 defective clock, and the defective delayed locking feature and Defendants' violation
14 of the provisions of the Cal. Civ. Code § 1791.2, *et seq*, in that Plaintiff and the
15 members of the Transmitter Class, the Clock Class, and the Bose Class have paid
16 the purchase price for a product which cannot be used in the manner in which it was
17 marketed and sold. Plaintiff, on behalf of himself and the members of the Classes,
18 has requested that Defendants correct or repair the defects and Defendants have
19 refused. Plaintiff and the members of the Transmitter Class, the Clock Class, and
20 the Bose Class are entitled to refund of the purchase price of and/or the value paid
21 for the Vehicle, and the Bose Speaker System, the clock and/or the delayed locking
22 feature, which do not function as advertised or sold, consequential and incidental
23 damages, costs and expenses, including attorney's fees.

24
25 **PRAYER FOR RELIEF**

26
27 WHEREFORE, Plaintiffs, on behalf of himself and as representative of all
28

1 other persons similarly situated, prays for judgment against the Defendants, as
2 follows:

3
4 1) An Order certifying the Transmitter Class and any appropriate sub-
5 class thereof, and appointing Plaintiff, Gary Fraigun, and his counsel, to represent
6 the Class;

7
8 2) An Order certifying the Clock Class and any appropriate sub-class
9 thereof, and appointing Plaintiff, Gary Fraigun, and his counsel, to represent the
10 Class;

11
12 3) An Order certifying the Bose Class and any appropriate sub-class
13 thereof, and appointing Plaintiff, Gary Fraigun, and his counsel, to represent the
14 Class;

15
16 4) An Order certifying the Overcharge Class and any appropriate sub-
17 class thereof, and appointing Plaintiff, Gary Fraigun, and his counsel, to represent
18 the Class;

19
20 5) 5) An award of general damages according to proof;

21
22 6) An award of special damages according to proof;

23
24 7) An award of punitive damages in an amount sufficient to deter and
25 make an example of Defendants;

26
27 8) An award of restitution in an amount according to proof;

1 9) An order entering a permanent injunction enjoining Defendants, and
2 their agents, servants, employees and all persons acting under or in concert with
3 them, to cease and desist from the following acts:
4

5 a. Conducting any further sales, marketing or advertisement of the above-
6 described Bose Speaker System as having AudioPilot, DSP and surround sound
7 features;
8

9 b. From charging an additional amount for the Bose Speaker System
10 when a consumer purchases the Navigation Radio package; or, refraining from
11 marketing or advertising the Navigation Radio as being inclusive of the Bose
12 Speaker System;
13

14 c. From marketing the Navigation Radio as having a digital clock feature
15 without also disclosing that the digital clock may disappear from all the navigation
16 and radio screens, and that the clock menu for setting the clock may also be missing;
17

18 d. Conducting any further sales, marketing or advertisement of the
19 Vehicles as having a "delayed locking" feature which may be used by virtue of the
20 remote keyless entry transmitter;
21

22 e. From any other conduct which the Court determines warranted so as to
23 prevent the commission of unfair competition by Defendants.
24

25 11) For reasonable attorneys' fees;
26

27 12) For costs incurred herein;
28

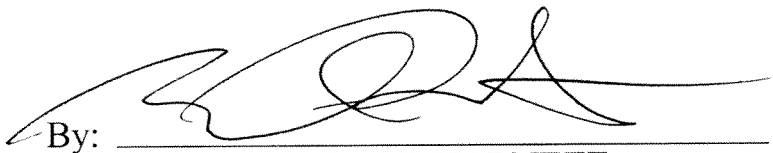
1 13) For prejudgment interest; and
2

3 14) For all general, special, and equitable relief to which the Plaintiff and
4 the members of the Classes are entitled by law.
5
6
7

8 DATED: July 24, 2007

**WASSERMAN, COMDEN &
CASSELMAN, L.L.P.**

KELLER GROVER LLP

10
11
12 
13 By: _____

MELISSA M. HARNETT
Attorneys for GARY FRAIGUN and the
Putative Class
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28