

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS**

JOHN J. MALONE,

Plaintiff,

v.

FCA US LLC,

Defendant.

Civil Action No. _____

COMPLAINT

JURY TRIAL DEMANDED

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I. INTRODUCTION

1. One of the most basic safety features in every car is the gear shifter that causes a stationary car to remain stationary *unless and until* an operator wants the car to move. The design of a gear shifter must be such that drivers know when a car is safe to exit because it is in the “park” mode, and it must include a safety override that automatically puts the car in park when the driver gets out of the car.

2. FCA US LLC (“Jeep,” “Chrysler,” or “FCA”) broke this basic rule. In its 2012-14 Dodge Chargers and Chrysler 300s and 2014-15 Jeep Grand Cherokees (“Defective Shifter Vehicles”), Jeep installed gear shifters, designed and manufactured by ZF Friedrichshafen AG (“ZF”). Departing from the long established “PRND” gear selector that provided a distinct position of the shifter for each gear, ZF shifters were electronic and never actually “shifted” into any gear, instead returning to a central location after being engaged (the “ZF Shifter”). The ZF Shifter design is dangerously defective because there is not any tactile or position feedback to the operator as to whether the car has actually been placed into the safe-to-exit “park” gear, nor a safety override that automatically puts the car in “park” or applies the parking brake if the driver gets out of the car.

3. The safety issue is real: well over 300 accidents have already been reported, causing dozens of serious injuries.

4. The design defect was avoidable. Jeep competitors, including BMW, have for several years used similar electronic shift levers that return to center after being engaged. But on the BMW, if the car is not in “park,” and the driver opens the door and unbuckles the seat belt, the car automatically shifts into “park,” preventing rollaway incidents and accidents.

5. The Audi A8 luxury sedan used the identical ZF Shifter, but Audi did not introduce a single A8 into the market before designing and implementing a safety override that

automatically engaged the electronic parking brake if the driver's door was opened and the seatbelt unbuckled. Jeep could have provided a similar safety override, but it chose not to.

6. Though complaints and accident reports have been ongoing since at least early 2015, Jeep has only recently initiated a voluntary recall of the over 811,000 Defective Shifter Vehicles in the United States. Initially, Jeep only sent a letter to owners describing the design defect of the ZF Shifter, even though it knew a viable fix existed and could solve the problem. After years of blaming rollaway accidents on their customers and telling them the cars were not defective, the widely publicized death of Anton Yelchin – a popular young actor, and the filing of the original complaint in this action, Jeep finally changed its tune and issued a recall to purportedly add an “autopark” feature to the defective shifter mechanism.

7. Jeep's unreasonable delay in fixing the defect and its warning letter was too little, too late for Plaintiff John J. Malone (“Mr. Malone”). Nearly a million Defective Shifter Vehicles remain in unsuspecting owners' driveways and garages. As a result of this dangerous defect, the Defective Shifter Vehicles are a hazard to their owners and the public.

8. Mr. Malone seeks damages for the conduct of Jeep related to the defectively designed gear selector as alleged in this complaint. Specifically, Mr. Malone seeks compensation for rehabilitation, medical bills, and pain and suffering, and punitive damages for Jeep's knowing fraud that put him at risk.

II. JURISDICTION AND VENUE

9. This Court has subject matter jurisdiction over this action under 28 U.S.C. § 1332(a) because the matter in controversy exceeds \$75,000, exclusive of interest and costs, and is a civil action in which the parties are citizens of different states.

10. Venue is proper in this District under 28 U.S.C. § 1391 because a substantial part of the events or omissions giving rise to Mr. Malone's claims occurred in this District. Mr.

Malone resides in this District and purchased and operated the Grand Cherokee in this District. Jeep has marketed, advertised, sold, and leased the Grand Cherokees and other vehicles with the ZF Shifter within this District.

III. PARTIES

A. Plaintiff

11. Plaintiff John J. Malone is a resident of Massachusetts domiciled in Beverly, Massachusetts. Mr. Malone bought a 2015 Jeep Grand Cherokee in January 2016. Unknown to Mr. Malone at the time the vehicle was purchased, the vehicle was equipped with a ZF Shifter that is defectively designed. The design defect allows the driver to get out of the car while the car is not in “park,” which can cause the car to roll away from its parked position. The defect in the Jeep Grand Cherokee has caused Mr. Malone serious physical injury. Jeep knew that the ZF Shifter could lead to vehicle rollaway incidents but did not disclose this defect to Mr. Malone, so Mr. Malone operated the vehicle on the reasonable, but mistaken, belief that the Jeep Grand Cherokee was safe to operate as designed.

B. Defendant

12. Defendant FCA US LLC (“Jeep,” “Chrysler,” or “FCA”) is a limited liability company organized and existing under the laws of the State of Delaware, and is wholly owned by holding company Fiat Chrysler Automobiles N.V., a Dutch corporation headquartered in London, United Kingdom. FCA is doing business in the District of Massachusetts and elsewhere. FCA’s principal place of business and headquarters is in Auburn Hills, Michigan.

13. FCA (commonly referred to as Chrysler) is a motor vehicle “Manufacturer” and a licensed “Distributor” of new, previously untitled Chrysler, Dodge, Jeep, and Ram brand motor vehicles (“vehicles”). FCA’s Chrysler brand is one of the “Big Three” American automobile brands. FCA engages in commerce by distributing and selling new and unused passenger cars

and motor vehicles under its Chrysler, Dodge, Jeep, and Ram brands. Other major divisions of FCA include Mopar, its automotive parts and accessories division, and SRT, its performance automobile division. As of 2015, FCA is the seventh largest automaker in the world by unit production.

14. FCA's business operations in the United States include the manufacture, distribution, and sale of motor vehicles and parts through its network of independent, franchised motor vehicle dealers. FCA is engaged in interstate commerce in that it sells vehicles through this network located in every state of the United States.

15. FCA and/or its affiliates and agents developed and disseminated the owner's manuals and warranty booklets, advertisements, and other promotional materials relating to the Defective Shifter Vehicles.

IV. FACTUAL ALLEGATIONS

A. John J. Malone

16. John J. Malone is a 69-year old father of two and grandfather of one. Before he retired, he served the Commonwealth for 30 years as a Massachusetts State Policeman. He retired as a Detective Lieutenant and commanding officer of the unit.

17. Upon retirement from the State Police, Mr. Malone started work as a private investigator in civil and criminal cases. While he no longer has an active private investigation and security consulting business, he still holds a private investigator's license and takes on occasional work.

18. Six years ago, Mr. Malone was diagnosed with prostate cancer. Following surgery and radiation, Mr. Malone has endured monthly doctor visits at Massachusetts General Hospital in Boston, quarterly bone scans and numerous courses of treatment. His cancer has metastasized.

19. Still, Mr. Malone enjoys spending time with his family in his vacation condominium in New Hampshire. From there, he used to lead an active lifestyle, golfing four or five times a week and skiing with his sons and his granddaughter at least every other week at Loon Mountain.

20. Mr. Malone needed a roomy, reliable, safe car to get him, his family, and his dog to and from New Hampshire. He also needed a car from which to conduct his private investigation business. Believing that a Jeep Grand Cherokee Limited fit the bill, he has purchased three since 2003. The most recent one was a 2015 Grand Cherokee, which he purchased from Sudbay Jeep in Gloucester, Massachusetts in January 2016. He paid about \$42,000 for the 2015 Grand Cherokee.

21. Problems arose with Mr. Malone's 2015 Grand Cherokee almost immediately. He began to notice that the shift lever would not go into the desired position: for example, when trying to move from park to reverse, the transmission would go into neutral, skipping reverse. The shift lever would often be difficult to move – or would not move at all. Once, while getting out of the Jeep while his wife sat in the passenger seat, he noticed the car was still in gear, notwithstanding that he had tried to put it in park. Luckily, his foot was on the brake.

22. In May of 2016, Mr. Malone received two recall notices. The first indicated that there was a problem with his Jeep's brake pads, and that they would need to be replaced. Approximately a week later, Mr. Malone received a second recall notice, this time indicating that there was a problem with the shift lever that could result in the car's rolling away. The notice advised that there was no permanent remedy for the problem at that time, but that Jeep hoped to find a remedy by the 4th quarter of 2016. Sudbay Jeep confirmed that while they could replace the brake pads, there was nothing they could do about the shift lever problem.

23. On June 2, 2016, Mr. Malone went to the dealership for the required brake pad service. When the service was complete, he drove to a nearby store to pick up a newspaper. He parked a few feet away from a concrete wall, put his Grand Cherokee in Park, pushed the ignition button to turn the car off, and got out of the car. But something was wrong. Usually, when Mr. Malone turned off his car and opened the door, the radio stopped. This time, as he stepped onto the ground, he heard the radio still playing. With his left foot on the ground, he noticed the car was in gear, and was moving. He tried to hit the brake but it was too late. The car kept moving, pinning his left leg between the open door and the nearby concrete wall.

24. Mr. Malone suffered a torn ACL and fractures and severe bruising to the bones of his knee.

25. After his release from Beverly Hospital, he began physical therapy. He wore a leg brace and walked with a cane. He needed fluid drained from his knee three times. But the pain continued to increase. X-rays confirmed that due to the damage from the accident, his knee bones were deteriorating.

26. Mr. Malone will need a total knee replacement. He is scheduled for surgery on October 6, 2016. Mr. Malone's doctors have told him that the pending surgery may affect his next course of cancer treatment.

27. Because of his injuries, Mr. Malone cannot participate fully in his formerly active family life. He has not been able to golf since the accident. He cannot ski with his seven-year old granddaughter. He has cancelled a scheduled, paid-for father/son trip to Ireland. He has had to turn down investigative cases. It is difficult for Mr. Malone to do things around the house, to pick up food at the grocery store, to walk the dog, to take care of the yard or to take a walk on the beach. His quality of life has been severely diminished.

B. Jeep and the ZF Electronic Gear Shifter

28. Mr. Malone's vehicle – a 2015 Jeep Grand Cherokee – was equipped with the ZF Shifter, which is an 8-speed transmission with an electronic gear selector.

29. On its website announcing a “voluntary recall” of these vehicles, Jeep describes the ZF Shifter as follows:

The vehicles affected by this recall are equipped with electronic shift levers that return to the same position after each manipulation. Gear selection is conveyed to the driver by multiple sets of indicator lights, not gear-selector position, and unless due care is taken, drivers may draw erroneous conclusions about the status of their vehicles.¹

30. The ZF Shifter does not have positions for each gear setting, *i.e.*, Park, Reverse, Neutral, Drive (“PRND”). Rather, it always rests in the same position after having been pushed up or down from that position. The following is a picture of the ZF Shifter in a Jeep Grand Cherokee:

¹ See <http://media.fcanorthamerica.com/newsrelease.do?id=17455&mid=1> (last viewed on July 6, 2016).



31. Importantly, the ZF Shifter does not include a safety override that prevents the driver from getting out of the car when it is not in “park.” Other manufacturers, including BMW, use monostable electronic gear shifters like the ZF Shifter, but *the BMW gear shifter has a safety override*. If the BMW is not in “park” and the driver’s door is opened while the seatbelt is unbuckled, the car *automatically shifts into “park.”* This safety override eliminates the possibility of the rollaway incidents that plague the Defective Shifter Vehicles.

32. Likewise, the Audi A8 luxury sedan uses the same ZF Shifter that Jeep used on the Defective Shifter Vehicles. But Audi did not sell a single A8 equipped with the ZF Shifter until it had developed a safety override that automatically engaged the electronic parking brake on the car if the driver’s door is opened while the seatbelt is unbuckled.

33. When Jeep first sold a Defective Shifter Vehicle, it had the ability and technological capability to install a safety override that would have prevented the rollaway

incidents that have plagued the Defective Shifter Vehicles and caused hundreds of accidents, dozens of injuries, and at least one death. It simply chose not to do so.

34. Jeep has already recognized that the ZF Shifter has a problem. As noted on its website, “To address customer satisfaction issues, the Company began equipping the Charger and 300 with a new shift-lever design in model-year 2015. The Grand Cherokee’s shift-lever was updated in model year 2016.”²

35. In Jeep’s own recall chronology it states that as of April 12, 2016, “FCA has identified approximately 700 field reports potentially related to this issue which includes 212 crashes, 308 claims of property damage and 41 injuries.”

1. Jeep knew that the shifter was defective and unreasonably dangerous.

36. Upon reasonable inspection and testing of the Grand Cherokee and each of its components, Jeep knew or should have known the Grand Cherokee was defective and unreasonably susceptible to failure.

37. Jeep knew or should have known of the defective design and manufacture of the Grand Cherokee and failed to take reasonable corrective steps in curing the defects.

38. Jeep had sufficient knowledge, expertise, availability, and resources to inspect the Grand Cherokee for defects before its sale.

39. Jeep failed to properly inspect and confirm the safety of the Grand Cherokee before its entry into the stream of commerce and sale.

40. Jeep failed to complete a reasonable inspection of the Grand Cherokee, which inspection would have revealed the unreasonably high potential for the failure of the Grand Cherokee.

² *See id.*

41. The Grand Cherokee was manufactured without adequate quality control measures and using inappropriate manufacturing procedures.

42. On information and belief, Jeep's knowledge as described in this complaint is reflected in its internal communications, including memoranda and e-mail.

43. Jeep's knowledge as described in this complaint is reflected in internal communications, including memoranda and e-mail; in reports of other incidents – including those compiled in the NHTSA database, which Jeep regularly reviews – involving Jeep's vehicles; in Jeep's ' compilations and analyses of crash data; and in the results of tests conducted by Defendant and others, including but not limited to failure mode and effects analyses (FMEA), human factors simulations, pre-release vehicle evaluation tests, computer simulations, and cost/benefit analyses.

2. The National Highway Transportation Safety Administration has determined the ZF Shifter is poorly designed.

44. The National Highway Transportation Safety Administration ("NHTSA") Office of Defects Investigation ("ODI") opened Preliminary Evaluation PE15-030 on August 20, 2015, to investigate 14 reports of rollaway 2014-15 Jeep Grand Cherokee vehicles.³

45. NHTSA testing during PE15-030 indicated that the operation of the monostable shifter is not intuitive and provides poor tactile and visual feedback to the driver, increasing the potential for unintended gear selection.

46. ODI's analysis of the PE15-030 complaint and field report data identified 306 incidents of vehicle rollaway following intended shifts to Park in the 2014-2015 Grand

³ See <http://www-odi.nhtsa.dot.gov/owners/SearchResultsByUrlCode.action?referenceSearch.requestId=48801&referenceSearch.urlCode=RGRCHIUC3ZXFGZZ> (last accessed June 20, 2016).

Cherokee. These resulted in 117 alleged crashes. Twenty-eight of the crashes reportedly caused injuries, including three with a fractured pelvis and four others requiring some degree of hospitalization (a ruptured bladder, fractured kneecap, broken ribs, and damaged right leg). Other injuries include reports of a broken nose, facial lacerations requiring stitches, sprained knees, severe bruising, and trauma to legs.

47. Model year 2012-2014 Chrysler 300 and Dodge Charger vehicles (L-cars) equipped with 3.6L engines use the same defective ZF Shifter found in the Jeep Grand Cherokee. ODI received 8 complaints, including 4 crashes and 2 injuries on the subject L-cars.

48. In early February 2016, amid continuing reports of rollaway vehicles, NHTSA upgraded its investigation to an engineering analysis, after determining the issue is one of design rather than defect.⁴

3. Reports to NHTSA recount incidents of vehicle rollaway.

49. NHTSA has received hundreds of reports of rollaway incidents involving the Defective Shifter Vehicles, including the reports copied verbatim below:

MY WIFE PULLED THE CAR INTO A COMMUNITY PARK AND PUT THE JEEP IN PARK AND OPENED THE DOOR TO GRAB HER SONS LOST DOG. NEXT THING SHE KNOWS THE JEEP IS ROLLING, AND PROCEEDS TO RUN HER OVER AND CONTINUES DOWN A SMALL HILL INTO SOME TREES. SHE WAS TAKEN TO THE HOSPITAL VIA A 911 CALL AND WE ARE NOW WAITING FOR RESULTS FROM AN MRI. THIS PROBLEM COULD HAVE KILLED HER IF SHE DIDN'T GET HER HEAD OUT OF THE WAY.

ON AUGUST 19, 2014, I STEPPED OUT OF MY STATIONARY 2014 JEEP GRAND CHEROKEE OVERLAND BELIEVING I HAD PUT THE VEHICLE IN PARK ON A GENTLE CITYSTREET SLOPE WHEN IT SUDDENLY MOVED BACKWARD, ROLLING OVER MY LEFT LEG AND SEVERELY DAMAGING MY KNEE, SKIN, ARTERY, AND

⁴ See *id.*

QUAD MUSCLES. MY WIFE IMMEDIATELY CALLED AN AMBULANCE, WHICH TRANSPORTED ME TO A LOCAL HOSPITAL, WHERE DOCTORS SURGICALLY ATTACHED AN "EXTERNAL FIXATOR" IN THREE PLACES, STABILIZING AND COMPLETELY IMMOBILIZING MY LEG (FOR THE NEXT FIVE WEEKS). AFTER A SECOND SURGERY AND OVER A YEAR OF PAINFUL AND ARDUOUS THERAPY LATER, I CAN NOW WALK WITH A KNEEBRACE, HALTINGLY AND WITH A NOTICEABLE LIMP. . . ALL DUE TO THE JEEP GRAND CHEROKEE'S TRANSMISSION THAT DOES NOT ACCURATELY INDICATE WHAT GEAR IT IS IN! UNLESS ONE IS CONCENTRATING 100+% OF THE TIME ON THE CONSOLE SHIFTER AND CONSTANTLY GLANCING AT THE INDICATOR LIGHTS ON THE VEHICLE DASHBOARD THE DRIVER NEVER KNOWS WHAT POSITION THE JEEP'S TRANSMISSION IS IN! THE SHIFTER ON THE CONSOLE ALWAYS LOOKS EXACTLY THE SAME, NO MATTER WHAT GEAR HAS SUPPOSEDLY BEEN SELECTED. WE HAD NO ABSOLUTELY FOREWARNING OF THE POTENTIAL LIFE THREATENING PROBLEM INHERENT IN THIS VEHICLE'S DESIGN, AND I CAN ONLY THANK GOD THAT I'M STILL ALIVE TODAY. LAST WEEK WE WERE SURPRISED TO RECEIVE WRITTEN NOTIFICATION FROM FIAT CHRYSLER AUTOMOBILES THAT THE COMPANY AND NHTSA HAD RECALLED 2014 JEEP GRAND CHEROKEES FOR THE SPECIFIC DEFECT DESCRIBED IN MY INCIDENT ABOVE! (FINALLY! VINDICATION!) THE RECALL NUMBER IS SHOW BELOW, I BELIEVE. FCA VEHICLE RECALL NUMBER: S27 / NHTSA 16V240

ON FEBRUARY 25TH, I SHIFTED MY CAR INTO PARK AND WAS GETTING OUT TO LOOK AT BACK WIPER WHICH SEEMED TO BE STUCK. I HAD LEFT THE CAR RUNNING. THE CAR TOOK OFF IN GEAR AND CAUSED ME TO FALL AND BREAK MY ANKLE IN AN OPEN COMPOUND FRACTURE THAT REQUIRED HOSPITALIZATION AND SURGERY. MY JEEP ENDED UP HITTING A PARKED GARBAGE TRUCK AND SUSTAINED ABOUT \$5000 DAMAGE. WHO KNOWS WHAT MY MEDICAL BILLS WILL END UP BEING. PLUS MY ANKLE MAY NEVER BE RIGHT. I WILL INCLUDE A PHOTO OF MY CAR AND XRAY. IT HAPPENED ON PRIVATE PROPERTY (TACO BELL PARKING LOT). A POLICE OFFICER CAME AND PARKED MY CAR AND CALLED AN AMBULANCE BUT DID NOT MAKE A REPORT SINCE ON PRIVATE PROPERTY. WE HAVE NOT HEARD FROM GARBAGE TRUCK AND DOUBT

IT DID ANYTHING TO IT. THE CAR WAS IN PARK AND NOT SURE HOW FAST WAS GOING WHEN HIT THE GARBAGE TRUCK

4. Jeep and ZF maintain that there is nothing wrong with the Defective Shifter Vehicles.

50. While Jeep has acknowledged it knows of 41 injuries that may be related to what it describes as a “confusing” shifter, it has stated: “the vehicles involved in these events were inspected and no evidence of equipment failure was found.”⁵

51. ZF issued a press release stating:

ZF supplies gearshift systems to automotive manufacturers according to their technical and design specifications. The manufacturer designs the integration of the gearshift system into the vehicle operating concept and develops the respective safeguard mechanisms. ZF delivered a fully functional state-of-the-art product, which was integrated into the vehicle architecture by the manufacturer. As such, ZF is unaware of any indications that claims could be made against ZF in the context of the current NHTSA investigations of the FCA vehicle models “2014-15 Grand Cherokee; 2012-14 Charger & 300 w/3.6 l engine”.⁶

52. The Defective Shifter Vehicles have been under investigation by NHTSA since August 20, 2015, yet Jeep concealed detailed information on the defect by marking as confidential all but two pages from its owner’s manual in the presentation it provided to NHTSA in response to its investigation. Jeep has purposefully kept consumers and its customers in the dark about the ZF Shifter defect. This shroud of secrecy has unquestionably increased the risk of accidents, injury, and death to consumers because it has delayed consumer awareness to take extreme care to ensure that the “park” position is engaged before getting out of a Defective Shifter Vehicle.

⁵ See <http://jalopnik.com/flat-chrysler-is-recalling-1-1-million-cars-because-peo-1772561060> (last accessed on July 6, 2016).

⁶ See *id.*

5. Jeep's delayed and inadequate response to the defectively designed ZF Shifter has led to hundreds of accidents, many involving serious injury.

53. Jeep's foot-dragging on notifying its customers of the dangerous ZF Shifter defect and taking steps to correct it is, unfortunately, business as usual for Jeep. As reported in the New York Times on June 21, 2016, Center for Auto Safety Executive Director Clarence Ditlow said, "There was no sense of urgency on [Jeep's] part or NHTSA's part given the potential for death or injury." The Times points out that NHTSA "had publicly chastised the company, which acknowledged delaying recalls in almost two dozen cases going back to 2013 and affecting millions of vehicles." NHTSA head Mark Rosekind had said at the time, "[t]his represents a significant failure to meet a manufacturer's safety responsibilities."

54. Jeep promised to speed up its recalls and agreed to pay close to \$105 million in penalties, but this case evidences the fact that little has changed. Jeep and its corporate culture are still putting profits ahead of safety, and Jeep customers are being maimed, even killed, as a result.

V. CAUSES OF ACTION

COUNT I – NEGLIGENCE AND GROSS NEGLIGENCE

55. Mr. Malone realleges and incorporates by reference all paragraphs as though fully set forth herein.

56. Jeep was the designer, manufacturer, distributor, marketer, and seller of the Grand Cherokee.

57. Specifically, but without limitation:

- a. Jeep owed Mr. Malone a duty to comply with existing standards of care, and to exercise due care, in providing a Grand Cherokee which was free of defects and safe for its intended use.

- b. Jeep owed Mr. Malone a duty to exercise reasonable care to prevent the Grand Cherokee from creating an unreasonable risk of harm to Mr. Malone.

58. Jeep breached those duties and was otherwise negligent in its design, manufacturing, distribution, marketing, and sale of the Grand Cherokee, which was sold to Mr. Malone.

59. The Grand Cherokee failed because Jeep failed to exercise reasonable care to prevent the Grand Cherokee from creating an unreasonable risk of harm. Jeep's failures occurred when it manufactured, designed, engineered, developed, tested, approved, inspected, repaired, labeled, advertised, promoted, marketed, distributed, wholesaled, prepared for distribution, and/or sold the Grand Cherokee.

60. Jeep failed to exercise due care in accordance with the standard of care and skill required of, and ordinarily exercised by, a designer, manufacturer, distributor, marketer, and seller of automotive vehicles.

61. Jeep's negligent acts include but are not limited to:
- a. negligently designing the Grand Cherokee;
 - b. negligently designing and incorporating, among other components, a defective electronic shifter;
 - c. failing to exercise reasonable care to prevent the Grand Cherokee from creating an unreasonable risk of harm to the person or property of one who might reasonably be expected to use the Grand Cherokee in a foreseeable manner;
 - d. failing to incorporate safer alternative designs and formulations during the design and manufacture of the Grand Cherokee that were practicable and would have eliminated the unsafe nature of the Grand Cherokee without impairing its usefulness;
 - e. failing to adequately inspect and test the Grand Cherokee before sale or distribution; and

- f. failing to recall and remove the Grand Cherokee from the stream of commerce before it malfunctioned during Mr. Malone's use.

62. Mr. Malone was a person who Jeep reasonably expected, or reasonably should have expected, to use or be affected by the Grand Cherokee.

63. Jeep knew, or should have known in the exercise of reasonable care, of alternative designs that were technologically and economically feasible, and that would better protect occupants from the negligently designed and manufactured defects described above, but Jeep chose not to incorporate these alternative designs.

64. The risk of rollaway was known or knowable to Jeep in light of the recognized and prevailing scientific and technical knowledge available at the time of manufacture.

65. The risk of serious injury or death resulting from a rollaway incident was not obvious to Mr. Malone or the general public.

66. Jeep knew or should have known in the exercise of reasonable care that (1) the use of the Grand Cherokee may be harmful or injurious to the user, and (2) that risk of harm and injury was not obvious to the user.

67. Jeep's negligent actions, including its lax quality-control measures and inappropriate manufacturing practices and procedures, contributed to the failure of the Grand Cherokee on June 2, 2016, when John Malone was attempting to park his vehicle, and it failed catastrophically.

68. As a result of the June 2, 2016, rollaway accident, John Malone was injured by Jeep's negligence.

COUNT II – NEGLIGENCE PER SE

69. Mr. Malone realleges and incorporates by reference the allegations contained in the preceding paragraphs of this complaint.

70. Jeep was negligent *per se*.

71. Under 49 U.S.C. § 30101, *et seq.*, the purpose of which was to reduce traffic accidents and death and injuries from traffic accidents, and 49 C.F.R. § 573.6 promulgated thereunder, Jeep was required to “furnish a report to the NHTSA for each defect . . . related to motor vehicle safety.”

72. This statute was enacted for public safety and designed to protect Mr. Malone and other drivers and passengers of vehicles from defective conditions in their vehicles that may cause death or physical injury.

73. The ignition switch defect in Mr. Malone’s vehicle was a defect that related to motor vehicle safety because it resulted in a failure of a vehicle to remain stationary when the occupant intended it to do so. Jeep was therefore required to furnish a defect report to the NHTSA. Jeep failed to furnish the required report for years after knowing about the rollaway safety defect and therefore violated the statute and regulations promulgated thereunder.

74. Mr. Malone suffered serious personal injury as a direct and proximate result of Jeep’s failure to furnish the required defect reports to the NHTSA.

75. Jeep’s statutory violation for failing to file the required defect reports was a proximate cause of Mr. Malone’s injuries. Had the requisite defect reports been furnished to the NHTSA, Mr. Malone’s vehicle would have been recalled and the defect corrected or, alternatively, Mr. Malone would have been on notice of the defective condition in her vehicle and could have avoided driving the vehicle while the defective condition persisted.

COUNT III – FAILURE TO WARN

76. Mr. Malone realleges and incorporates by reference the allegations contained in the preceding paragraphs of this complaint.

77. Jeep, as the designer, manufacturer, distributor, marketer, and seller of the Grand Cherokee, owed Mr. Malone a duty to warn the Mr. Malone of any dangers, defects, or risk of harm or injury that were not obvious to Mr. Malone or the general public.

78. The Grand Cherokee designed, manufactured, distributed, marketed, and sold by Jeep was defective, and as such posed a substantial health and safety risk to Mr. Malone and other members of the public.

79. Jeep knew or reasonably should have known that the Grand Cherokee was defective. Jeep knew or reasonably should have known of the substantial health and safety risk the Grand Cherokee posed to Mr. Malone and other members of the public.

80. The risk that Mr. Malone's Grand Cherokee would be involved in a rollaway accident was not obvious to Mr. Malone or the general public.

81. Mr. Malone was reasonably unaware of the substantial health and safety risk posed by the Grand Cherokee designed, manufactured, distributed, marketed, and sold by Jeep.

82. A reasonable designer, manufacturer, distributor, marketer, and seller of automotive vehicles would have known that the risk of harm or injury from a rollaway accident was not obvious to Mr. Malone or other members of the public, and would have warned Mr. Malone that his Grand Cherokee posed a serious risk of harm or injury due to a rollaway accident.

83. Jeep breached its duty to Mr. Malone by failing to warn Mr. Malone of the risk of harm or injury where a reasonably careful person would have done so under the circumstances.

84. As a result of Jeep's failure to warn Mr. Malone of the non-obvious risk of a rollaway accident, John Malone was injured by his Grand Cherokee on June 2, 2016.

COUNT IV – BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY

85. Mr. Malone realleges and incorporates by reference the allegations contained in the preceding paragraphs of this complaint.

86. Jeep is a manufacturer and seller, as it designed, assembled, fabricated, produced, constructed, and prepared the Grand Cherokee before it was sold. Jeep is a seller because it was a manufacturer, wholesaler, and distributor engaged in the business of selling a product for resale or use, with actual knowledge of the defects in the Grand Cherokee.

87. The Grand Cherokee purchase by Mr. Malone from defendant seller is a good subject to an implied warranty of merchantability pursuant to M.G.L.A. c. 106, § 2-314, under which Jeep impliedly warranted that the goods it provided to Mr. Malone and other consumers were safe, merchantable, and reasonably suited for the ordinary purposes for which they were sold.

88. Jeep did not effectively disclaim said warranty.

89. The Grand Cherokee sold by Jeep was defective. Jeep breached its implied warranty of merchantability, in that, among other things, the good were not safe, merchantable, and reasonably suited for the ordinary purposes for which they were sold.

90. Jeep sold the Grand Cherokee to a business affiliated with Mr. Malone.

91. Mr. Malone was a person whom Jeep reasonably might have expected to purchase and the use Grand Cherokee.

92. Mr. Malone relied upon the warranty of the defendant, Jeep, that the Grand Cherokee he purchased was of merchantable quality but it was defective in that the ZF shifter rendered it unreasonably dangerous, and as a result caused the Grand Cherokee to roll into Mr. Malone and cause severe injury to his person.

93. As a result of the breach of warranty, Mr. Malone sustained personal injuries, suffered great pain of body and mind.

94. Jeep placed the Grand Cherokee in the stream of commerce and expected it to reach the user or consumer without substantial change in the condition in which it was sold. Indeed, it reached Mr. Malone – someone who would reasonably be expected to use, consume, or be affected by the Grand Cherokee – without substantial change in the condition in which it was sold.

95. The Grand Cherokee was defective, and its defects are outlined throughout this complaint. Generally, they comprise the design and provision of a dangerous, defective shifter and, despite knowledge of the defects, the failure to warn consumers about the shifter's defects.

96. In situations such as Mr. Malone's – where the driver used the vehicle as intended and in a foreseeable and reasonable manner – the vehicle should not fail.

97. Nevertheless, the Grand Cherokee failed, and it did so because of design defects in the Grand Cherokee existing when it left the manufacturer's control.

98. Jeep knew or should have known of the defective design of the Grand Cherokee and that, as a result, it was unreasonably dangerous.

99. While history has shown the ZF Shifter causes serious injury and death to operators, it adds no additional utility beyond that offered by traditional automatic shifters, which were readily available, inexpensive, and devoid of the unsafe aspect of the ZF shifter. Had a traditional shifter been used, the risk of injury or death from an inadvertent vehicle rollaway would have been eliminated or rendered insignificant.

100. But, beyond this, Jeep could still have kept its drivers safe from the ZF shifter by incorporating a safety override (as it did for other cars) that automatically engaged the electronic

parking brake when the driver's door was opened and the seatbelt was unbuckled. This override would cure the unsafe aspect of the ZF Shifter without impairing any purported usefulness or imposing unreasonable costs. This sensible, cost-effective feature would have prevented Mr. Malone's and many others' injuries and harm.

101. The Jeep Grand Cherokee and ZF Shifter performed exactly as intended by Jeep, and yet the vehicle was unreasonably dangerous. The danger inherent in the ZF shifter was not obvious to Mr. Malone or the general public, nor could they have avoided danger with additional care in the use of the shifter.

102. The defects in design and inspection made the Grand Cherokee unreasonably dangerous, unfit, and unsafe for its intended use and caused the Grand Cherokee to fail to perform as an ordinary user would expect when used in its intended and foreseeable manner.

103. Jeep did not warn or alert purchasers or users of the foregoing dangers, despite knowledge of them.

104. As a direct and proximate result of the defects in the Grand Cherokee's design and manufacture and Jeep's failures to warn, Mr. Malone has sustained injuries, damages, and loss.

105. Jeep is liable to Mr. Malone for the injuries and damages caused by the above defects and inadequacies in the design and manufacture of the Grand Cherokee.

PRAYER FOR RELIEF

106. WHEREFORE, Plaintiff John J. Malone prays for judgment against Defendant Jeep in an amount to be determined by the trier of fact for her losses, damages, and harms, economic and noneconomic, for punitive and statutory damages, and for all costs, attorneys fees, expert witness fees, filing fees, pre-judgment and post-judgment interest, and such other further relief as the Court may deem appropriate, just, and proper.

DEMAND FOR JURY TRIAL

107. Plaintiff demands a jury trial for all claims so triable.

DATED: August 26, 2016

Respectfully submitted,

/s/ Kristen A. Johnson

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CERTIFICATE OF SERVICE

I, Kristen A. Johnson, hereby certify that I caused a copy of the above complaint to be filed electronically via the Court's electronic filing system. Those attorneys who are registered with the Court's electronic filing system may access this filing through the Court's system, and notice of this filing will be sent to those parties by operation of the Court's CM/ECF system.

Dated: August 26, 2016

/s/ Kristen A. Johnson
Kristen A. Johnson (BBO #667261)