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5 Attorneys for Plaintiff, on behalf of itself  
6 and all others similarly situated

7  
8 UNITED STATES DISTRICT COURT  
9 NORTHERN DISTRICT OF CALIFORNIA

10  
11 NAVAHO TOUR, INC., on behalf of  
itself and all others similarly situated,

12  
13 Plaintiff,

14 v.

15  
16 TEMSA NORTH AMERICA, INC;  
TEMSA GLOBAL SANAYI VE  
17 TICARET A.S.; TEMSA ULASIM  
ARACLARI SANAYI VE TICARET  
18 A.S.; TEMSA EUROPE NV; HACI  
OMER SABANCI HOLDING A.S.,  
19 and DOES 1-100,

20 Defendants.  
21  
22  
23  
24

Case No. 3:18-cv-6401

**COMPLAINT – CLASS ACTION**

- 1) BREACH OF EXPRESS WARRANTIES
  - 2) BREACH OF IMPLIED WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE
  - 3) BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY AND FITNESS
  - 4) TORTIOUS BREACH OF WARRANTY
  - 5) NEGLIGENT DESIGN AND FAILURE TO WARN
  - 6) NEGLIGENT MISREPRESENTATION
  - 7) DECLARATORY JUDGMENT
- AND DEMAND FOR JURY TRIAL**

25 **CLASS ACTION COMPLAINT**

26 Plaintiff, NAVAHO TOUR, INC., (“Plaintiff”) on behalf of itself and all  
27 others similarly situated, by and through undersigned counsel, sues Defendants,  
28 TEMSA NORTH AMERICA, INC; TEMSA GLOBAL SANAYI VE TICARET

1 A.S.; TEMSA ULASIM ARACLARI SANAYI VE TICARET A.S.; HACI OMER  
2 SABANCI HOLDING A.S.; and DOES 1 – 100, (collectively referred to as  
3 "Defendants") and alleges as follows:

4 **THE PARTIES**

5 1. At all times material herein Plaintiff, NAVAHO TOUR, INC., was and  
6 is a California Corporation with its principal place of business located at 691 S.  
7 Irolo Street, Ste. 1411, Los Angeles, California, 90005.

8 2. At all times material herein Defendant, TEMSA NORTH AMERICA,  
9 INC ("Defendant"), is a Tennessee corporation with its principal place of business  
10 located at 4501 N. Access Road, Chattanooga, Tennessee, 37415.

11 3. At all times material herein Defendant, TEMSA GLOBAL SANAYI  
12 VE TICARET AS., is a foreign corporation, organized and existing under the laws  
13 of the Republic of Turkey, with its principal place of business located at Kısıklı Cad.  
14 Şehit Teğmen İsmail Moray Sok. No:2/1 34662 Altunizade - İstanbul, Turkey.

15 4. At all times material herein, Defendant TEMSA EUROPE NV, is a  
16 foreign corporation, organized and existing under the laws of Belgium, with its  
17 principal place of business located at Dellingsstraat, 32 Mechelen, 2800 Belgium.

18 5. At all times material herein Defendant TEMSA ULASIM ARACLARI  
19 SANAYI VE TICARET A.S. is a foreign corporation organized and existing under  
20 the laws of the Republic of Turkey with its principal place of business located at  
21 Sarıhamzalı Mahallesi, Turhan Cemal Beriker Bulvarı, No: 563/A Seyhan/Adana  
22 01110, Turkey.

23 6. At all times material herein Defendant, HACI OMER SABANCI  
24 HOLDING AS is a foreign corporation, organized and existing under the laws of the  
25 Republic of Turkey, with its principal place of business located at Konaklar  
26 Mahallesi, Sabancı Ak Center Girişi No:2, 34330 Beşiktaş/İstanbul. Plaintiff is  
27 informed and believes, and based thereon alleges, that Defendant HACI OMER  
28 SABANCI HOLDING AS is the parent company of Defendant TEMSA GLOBAL

1 SANAYI VE TICARET AS.

2 7. Plaintiff is informed and believes, and based thereon alleges that, at all  
3 times material herein Defendants are in the business of manufacturing, designing,  
4 testing, assembling, supplying, selling, importing, and distributing buses, trucks, and  
5 coaches, including the "TS45" Temsa coach bus model and its component parts that  
6 are the subject of this lawsuit.

7 8. The true names and/or capacities, whether individual, corporate,  
8 associate or otherwise, of Defendants DOES 1 through 100, inclusive, and each of  
9 them, are unknown to Plaintiff and the Class Members, who therefore sue said  
10 Defendants by such fictitious names. Plaintiff and the Class Members are informed  
11 and believe, and upon such information and belief allege, that each of the  
12 Defendants fictitiously named herein as a DOE is legally responsible, negligently or  
13 in some other actionable manner, for the events and happenings hereinafter referred  
14 to, and proximately caused the injuries and damages to Plaintiff and the Class  
15 Members hereinafter alleged. Plaintiff and the Class Members will seek leave of  
16 Court to amend this Complaint to assert the true names and/or capacities of such  
17 fictitiously named Defendants when the same have been ascertained.

18 9. Plaintiff and the Class Members are informed and believe, and based  
19 thereupon allege, that at all times mentioned herein, Defendants, and each of them,  
20 including DOES 1 through 100, were the agents, servants, employees, alter-egos,  
21 and/or joint venturers of their co-Defendants, and were, as such, acting within the  
22 course, scope and authority of said agency, employment and/or joint venture, and  
23 that each and every Defendants, as aforesaid, when acting as a principal, was  
24 negligent in the selection and hiring of each and every Defendants as an agent,  
25 employee and/or joint venturer.

26 10. At all times material herein Defendants were and are registered to do  
27 business in the United States, and transacted a substantial amount of business  
28 throughout the United States, including California.

1 11. At all times material herein Defendants have substantial and not  
2 isolated contact within the State of California and are subject to the jurisdiction of  
3 California courts.

4 **JURISDICTION AND VENUE**

5 12. Jurisdiction is proper pursuant to 28 U.S.C. § 1332 (d), the Class  
6 Action Fairness Act of 2005, because the proposed Class consists of more than 100  
7 members; the amount in controversy exceeds the jurisdictional requirement of  
8 \$5,000,000 exclusive of costs and interest; and diversity exists. The Court may also  
9 exercise supplemental jurisdiction over Plaintiff's and Class Member's state law  
10 claims pursuant to 28 U.S.C. § 1367.

11 13. Venue in this District satisfies the requirements of 28 U.S.C. §  
12 1391(b)(1-2) because a substantial amount of the events and occurrences giving rise  
13 to the claims occurred in this District, or a substantial part of the property that is the  
14 subject of this action is situated in this District.

15 **BACKGROUND**

16 14. TEMSA manufactures and distributes buses and coaches under its own  
17 brand in domestic and international markets. TEMSA's manufacturing facility in  
18 Adana, Turkey has a single-shift annual production capacity of 4,500 buses and  
19 coaches and 6,000 light trucks, totaling 10,500 vehicles per year.<sup>1</sup> TEMSA's Adana  
20 facility is the manufacturing site for the TS 45, TS 35E and TS 30 coaches for the  
21 United States market; the Avenue buses, LD coachesHD, Maraton and the MD 9  
22 and MD 7 midi-coaches for the European market.<sup>2</sup>

23 15. TEMSA is rapidly increasing its market share in the United  
24 States. TEMSA exports 40 % of its total bus and coach production – with 94 % of  
25 its exports directed at Western Europe and the United States. Moreover, TEMSA  
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27 <sup>1</sup> <https://www.temsa.com/Kurumsal.aspx?lng=2#2>

28 <sup>2</sup> *Id.*

1 owns distributor and dealership networks in 30 countries, including the United  
2 States, and more specifically, California.<sup>3</sup>

3 16. Plaintiff Navaho Tour, Inc., is in the business of providing buses and  
4 motor coaches for the transportation of passengers for hire. On or around April  
5 2017, Plaintiff purchased at least one of Defendants' TS45 motor coaches ("Subject  
6 Vehicle"), from one of TEMSA's distributors located in Northern California, with  
7 intention of utilizing the Subject Vehicles for business purposes.

8 17. After purchasing the Subject Vehicle, Plaintiff immediately began  
9 experiencing significant mechanical and electrical defects. These defects include,  
10 but are not limited to, significant vibration during operation of the Subject Vehicle,  
11 among other manufacturing and design defects. These mechanical and electrical  
12 defects are so significant that the Subject Vehicle is deemed highly unreliable for  
13 service. Moreover, Plaintiff's customers refuse to ride in the Subject Vehicle due to  
14 the mechanical and electrical failures. This has severely impacted Plaintiff's ability  
15 to conduct its business.

16 18. Plaintiff was completely unaware of the dangerous and defective  
17 condition of the Subject Vehicle until after it was purchased and placed into  
18 Plaintiff's regular course of business. Plaintiff purchased the Subject Vehicle with  
19 the understanding that it was suitable to perform duties for which it was  
20 manufactured and made.

21 19. From on or around March 2017 through December 2017, Plaintiff  
22 took the Subject Vehicle for repair on approximately six separate occasions and,  
23 still, the Subject Vehicle remains defective. As a direct and proximate result of  
24 Defendants' defective vehicle, Plaintiff has suffered substantial damage, including,  
25 but not limited to, diminished value of the Subject Vehicle, out-of-pocket costs such  
26 as repair invoices and related hotel/taxi charges, and the costs to replace the Subject  
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28 <sup>3</sup> *Id.*

1 Vehicle with a suitable replacement motor coach.

2       20. Plaintiff is informed and believes and based thereon alleges that the  
3 above mentioned the defects in the Subject Vehicle are not isolated events. Plaintiff  
4 is informed and believes, and based thereon alleges, that most, if not all, of  
5 Defendants' TS45 motor coaches contain manufacturing and design defects such  
6 that they have been found to be highly unreliable for service and not suitable to  
7 perform duties for which they were manufactured and made.

8       21. Defendants have manufactured and distributed hundreds of TS45 motor  
9 coaches throughout the United States. The TS45 Subject Vehicles manufactured by  
10 Defendants and distributed by Defendants throughout the United States suffer from  
11 a common manufacturing and design defect that renders the Subject Vehicles  
12 unreliable and un-marketable in Plaintiff's and the putative class members'  
13 respective businesses.

14       22. This is a defect that Defendants knew, or should have known, about  
15 before releasing the Subject Vehicles into the stream of commerce. The Subject  
16 Vehicles defects are such that Defendants cannot fix them, and that eventually led  
17 Plaintiff and the putative class members to stop utilizing Subject Vehicles in their  
18 vehicle fleet. This defect caused Plaintiff and the putative class members to suffer  
19 substantial damages.

20       23. The Subject Vehicles are defective, which results in the vehicles failing  
21 to operate under all conditions and all applications on a consistent and reliable basis,  
22 even after repeated warranty repairs and replacements. These repeated warranty  
23 repairs and replacements failed to repair or correct the defect, resulting in damages  
24 to Plaintiff and the putative class members. Damages include diminished value of  
25 the Subject Vehicles, out-of-pocket costs such as repair invoices and related  
26 hotel/taxi charges, and the costs to replace the Subject Vehicles with a suitable  
27 replacement motor coach.

28

**CLASS ACTION ALLEGATIONS**

1  
2 24. Plaintiff, Navaho Tour, Inc., a California Corporation, brings this  
3 action on behalf of itself and all others similarly situated, pursuant to the Federal  
4 Rules of Civil Procedure Rule 23(a), (b)(2), and (b)(3) and on behalf of the  
5 following class(es) of persons:

6 Nationwide Class – All persons and entities, in the United States, who  
7 are users, purchasers, subsequent purchasers, owners, subsequent  
8 owners, and lessors of Defendants' TS45 motor coach vehicles.

9 25. Excluded from the Classes are: (1) the officers and directors of any of  
10 the Defendants; (2) any judge or judicial officer assigned to this matter and his or  
11 her immediate family and staff; and (3) any legal representatives, successor, or  
12 assigns of any excluded persons or entities.

13 26. This action is properly maintained as a class action because Plaintiff  
14 can prove the elements of each claim on a class-wide basis, using the same  
15 evidence that Plaintiff would use to maintain and prove an individual action. Thus,  
16 the action may be properly maintained on behalf of each of the proposed Classes  
17 pursuant to Fed. R. Civ. P. 23.

18 27. The Members of each Class are so numerous that joinder of all  
19 members would be impracticable. The precise number of Class Members is  
20 unknown at this time. However, based on information and belief, the members of  
21 the Class are made up of over fifty members who purchased TEMSA's TS45 motor  
22 coach vehicle.

23 28. Questions of law and fact common to the Class Members predominate  
24 over any questions affecting any individual member, and a class action is superior to  
25 all other available methods for the fair and efficient adjudication of the controversy.

26 29. Common questions of law and fact include but are not limited to:

27 a. Whether Defendants manufactured, distributed, delivered,  
28 supplied, inspected, marketed, leased and/or sold TS45 Motor Coach

- 1 Vehicles that were defective;
- 2 b. Whether the TS45 Motor Coach Vehicles experienced or caused
- 3 repeated instances of mechanical and electrical failures, as well as other
- 4 issues that prevented the TS45 Motor Coach Vehicles from operating
- 5 properly;
- 6 c. Whether Defendants breached its express warranties by its conduct;
- 7 d. Whether Defendants breached its implied warranties by its conduct;
- 8 e. Whether Defendants negligently misrepresented the performance of
- 9 the subject TS45 Motor Coach Vehicles in its written marketing
- 10 materials;
- 11 f. Whether Defendants acted in a negligent manner designing,
- 12 manufacturing, marketing and selling the subject TS45 Motor Coach
- 13 Vehicles to end users who were owners or lessees;
- 14 g. Whether the Defendants' TS45 Motor Coaches were defective, which
- 15 defect could not be corrected by the repair or replacement of parts or
- 16 components, or the employment of reasonable and customary labor;
- 17 h. Whether the Defendant was negligent in the design and manufacture
- 18 of the TS45 Motor Coaches;
- 19 j. Whether the Class Representative and members of the putative class
- 20 are entitled to recover compensatory, exemplary, incidental,
- 21 consequential, and/or other damages as a result of Defendant's unlawful
- 22 and tortious conduct.

23 30. Plaintiff's claims are typical of the Class Members' claims because the

24 Class Members were comparably injured through Defendants' illegal and wrongful

25 conduct as described herein.

26 31. Plaintiff is an adequate Class Representative because Plaintiff is

27 committed to prosecuting the action and has retained competent counsel experienced

28 in litigation of this nature. Plaintiff's claims are typical of the claims of other

1 Members of the Class and Plaintiff have the same non-conflicting interests as the  
2 other Class Members. Plaintiff and its counsel would fairly and adequately  
3 represent the interests of the Class Members.

4 32. Class treatment is superior to any other available means of prosecution  
5 of fair and efficient adjudication of this controversy. There are no unusual  
6 difficulties that are likely to arise in the management of this action. The damages  
7 and other financial detriment suffered by Plaintiff and Class Members are small  
8 compared to the burden and expense of prosecuting each action individually. Thus,  
9 it would be impracticable for Plaintiff and Class Members to bring individual  
10 actions against Defendants for its wrongful and illegal conduct. Further, class  
11 treatment benefits the courts. Individualized litigation promises inconsistent or  
12 contradictory judgments, unnecessary overlap of resources, and increases the delay  
13 and expense to all those accessing the courts. Class treatment brings with it the  
14 benefit of a single adjudication, the supervision of a single court, and the  
15 consolidation of the courts' and the parties' resources.

16 33. The prosecution of separate actions by individual Class Members  
17 would create the risk of inconsistent or varying adjudications with respect to  
18 individual Class Members which would establish incompatible standards of conduct  
19 for Defendants or which would, as a practical matter, be dispositive of the interests  
20 of the other members not parties to the adjudication or substantially impair or  
21 impede their ability to protect their interests. Defendants have acted, or refused to  
22 act, on grounds generally applicable to, and causing injury to the Class Members.  
23 Therefore, preliminary and final injunctive relief and damages for Defendants'  
24 illegal conduct is appropriate.

25 **FIRST CLAIM: BREACH OF EXPRESS WARRANTIES**

26 **(Against All Defendants and Does)**

27 34. Plaintiff and the putative Class Members incorporate all preceding  
28 paragraphs and allegations as if stated fully herein.

1 35. Defendants expressly warranted its TS45 Motor Coach Vehicles to be  
2 free from defects in material and workmanship in the Limited Warranty as well as  
3 on its website. Contrary to the warranted representations, TEMSA's TS45 Motor  
4 Coach Vehicles were not free of defects in material and workmanship at the time  
5 they were delivered to the Class Representatives and members of the putative Class.

6 36. Defendants knew, or should have known that the TS45 Motor Coach  
7 Vehicles were defective, and that its defect could not be corrected.

8 37. Thus, Defendants have breached their express warranties.

9 38. Defendants expressly warranted that they would correct the defect in its  
10 TS45 Motor Coach Vehicles and has failed to do so.

11 39. Defendants were notified of the defects in the manufacture and/or  
12 design of the TS45 Motor Coach Vehicles but failed to correct them.

13 40. By failing to provide TS45 Motor Coach Vehicles that met the express  
14 warranties and failing to correct the known defects, the warranties have failed their  
15 essential purpose.

16 41. As a direct and proximate result of Defendants' breach of express  
17 warranty, the Class Representatives and members of the putative Class have  
18 suffered financial loss and other damages.

19 **SECOND CLAIM: BREACH OF IMPLIED WARRANTY OF FITNESS**

20 **FOR A PARTICULAR PURPOSE**

21 **(Against All Defendants and Does)**

22 42. Plaintiff and the putative Class Members incorporate all preceding  
23 paragraphs and allegations as if stated fully herein.

24 43. Defendant impliedly warranted that TS45 Motor Coach Vehicles were  
25 free from defects and were suitable to perform duties for which they were  
26 manufactured and made; however, the TS45 Motor Coach Vehicles delivered to the  
27 Class Representative and members of the putative Class were defective at the time  
28 they were delivered to the Class Representatives and members of the putative Class.

1 44. Defendants breached the implied warranty that the TS45 Motor Coach  
2 Vehicles were fit for the particular purpose of sold or leased, i.e. a commercial on  
3 the highway passenger bus.

4 45. Additionally, the Defendants breached the implied warranties to correct  
5 the defects in the TS45 Motor Coach Vehicles through repair, replacement or the  
6 labor needed to do so.

7 46. Defendant impliedly warranted that the repairs to the Motor Coach  
8 Vehicles would correct the defects in the Subject Vehicles, however they have failed  
9 to do so. Thus, Defendants breached the implied warranty of good and workmanlike  
10 performance applicable to the repair services of their Motor Coach Vehicles.

11 47. Defendants were notified of the defects of the Subject Vehicles but  
12 have failed to correct them.

13 48. As a direct and proximate result of the Defendants' breach of these  
14 warranties, Plaintiffs and the class have experienced frequent failures, malfunctions  
15 and shutdowns of the vehicles, loss of use of the vehicles and the revenue derived  
16 there from, a loss of value of their Motor Coach Vehicles, as well as loss or  
17 diminution of value, consequential damages and other related damages.

18 **THIRD CLAIM: BREACH OF IMPLIED**  
19 **WARRANTY OF MERCHANTABILITY**

20 **(Against All Defendants and Does)**

21 49. Plaintiff and the putative Class Members incorporate all preceding  
22 paragraphs and allegations as if stated fully herein.

23 50. Defendants impliedly assured that the TS45 Motor Coach Vehicles they  
24 leased or sold the Class Representatives and members of the putative Class were  
25 free from defects and were suitable to perform duties for which they were  
26 manufactured and made; however, the Subject Vehicles delivered to the Class  
27 Representative and members of the putative Class were defective at the time they  
28 were delivered to the Class Representatives and members of the putative Class.

1           51.     Consequently, Defendants breached the implied warranty of  
2 merchantability, i.e. a commercial on the highway passenger bus.

3           52.     Defendants impliedly warranted that the repairs to the TS45 Motor  
4 Coach Vehicles would correct the defect in its Vehicles in a good and workmanlike  
5 manner, however the TS45 Motor Coach Vehicles have failed to be corrected. Thus,  
6 Defendants have breached the implied warranty to correct its Vehicle in a good and  
7 workmanlike manner.

8           53.     Defendants were notified of the defects of the Vehicles but have failed  
9 to correct them.

10          54.     As a direct and proximate result of the Defendants' breach of these  
11 warranties Plaintiffs and the class have experienced frequent failures, malfunctions  
12 and shutdowns of the vehicles, loss of use of the vehicles and the revenue derived  
13 there from, a loss of value of their Vehicles, as well as loss or diminution of value,  
14 consequential damages and other related damages.

15                   **FOURTH CLAIM: TORTIOUS BREACH OF WARRANTY**

16                                   **(Against All Defendants and Does)**

17          55.     Plaintiff and the putative Class Members incorporate all preceding  
18 paragraphs and allegations as if stated fully herein.

19          56.     Defendants impliedly warranted that its TS45 Motor Coach Vehicle  
20 was of good and merchantable quality-fit and safe for its ordinary intended use.

21          57.     The TS45 Motor Coach Vehicles were in fact defective, which defect  
22 existed at the time the Vehicles were sold.

23          58.     As a direct and proximate result of the defects and Defendants' breach  
24 as alleged, Plaintiffs and the members of the putative Class were caused to suffer  
25 loss attributable to the diminished value of the Vehicles, and consequential damages  
26 and to have expended sums to provide alternative transportation to stranded  
27 passengers, and loss of use for the vehicles. The defects in the TS45 Motor Coach  
28 Vehicles rendered the Vehicles unfit for their intended purpose (on highway

1 transportation of passengers) and not of merchantable quality.

2 **FIFTH CLAIM: NEGLIGENT DESIGN AND FAILURE TO WARN**

3 **(Against All Defendants and Does)**

4 59. Plaintiff and the putative Class Members incorporate all preceding  
5 paragraphs and allegations as if stated folly herein.

6 60. Defendants knew-or in the exercise of reasonable care should have  
7 known that the TS45 Motor Coach Vehicles were not capable of reliable operation,  
8 causing repeated and frequent after treatment failures, malfunctions and shutdowns,  
9 rendering the Vehicles inoperable for the transportation of passengers.

10 61. Defendants knew or in the exercise of reasonable care should have  
11 known that the TS45 Motor Coach Vehicles' frequent malfunctions, failures and  
12 shutdowns, could not be repaired and were not corrected, nor correctable, in spite of  
13 frequent warranty repairs performed by Defendants authorized technicians.

14 62. Defendants knew or in the exercise of reasonable care should have  
15 known that the TS45 Motor Coach Vehicles had not been adequately tested for  
16 reliable operation and that it is incapable of effective operation sufficient to meet the  
17 demands of third party consumers.

18 63. Defendants failed to disclose that the TS45 Motor Coach Vehicles were  
19 susceptible to frequent malfunctions, failures and shutdowns, could not be repaired  
20 were not corrected nor correctable in spite of frequent warranty repairs performed by  
21 Defendants authorized technicians.

22 64. As a direct and proximate result of the Defendants' negligence  
23 Plaintiffs and the class have experienced frequent malfunctions, failures and  
24 shutdowns of the vehicles, loss of use of the Vehicles and the revenue derived there  
25 from, and a loss of value of their Vehicles as well as loss or diminution of value,  
26 consequential damages and other related damages.

27 **SIXTH CLAIM: NEGLIGENT MISREPRESENTATION**

28 **(Against All Defendants and Does)**

1           65. Plaintiff and the putative Class Members incorporate all preceding  
2 paragraphs and allegations as if stated fully herein.

3           66. Defendants stated that “TEMSA puts highest emphasis on quality,  
4 reliability and longevity of the products. Because of the company’s passion for  
5 quality and value, TEMSA ensures that it sources parts from the world’s leading  
6 manufacturers, making TEMSA the bus expert that can give the customer far more –  
7 for less”<sup>4</sup> when in fact Defendant knew-or in the exercise of reasonable care should  
8 have known that the TS45 Motor Coach Vehicles had not been adequately designed,  
9 manufactured or tested for reliable operation and that it was incapable of effective  
10 operation sufficient to meet the demands and expectations of third party consumers  
11 on a consistent and reliable basis.

12           67. Defendants represented that it would perform warranty repairs on the  
13 TS45 Motor Coach Vehicles to correct defects when Defendant knew-or in the  
14 exercise of reasonable care should have known that the TS45 Motor Coach Vehicles  
15 were incapable of effective operation sufficient to meet the demands and  
16 expectations of third party consumers on a consistent and reliable basis and that  
17 such a defect could not be correct by any warranty work.

18           68. Defendants were negligent in making the representations as aforesaid  
19 because, as alleged herein, it should have known the representations to be false and  
20 misleading.

21           69. Defendants made the representations uniformly to the Plaintiffs and the  
22 putative Class in its written marketing materials, warranties, and operations manuals  
23 that were distributed throughout the United States by Defendants and bus dealers  
24 selling Defendants’ product, and Defendants intended or expected that Plaintiffs and  
25 the Class would rely on the statements in purchasing Defendants’ product and in  
26 submitting the vehicles to Defendants’ warranty repairs.

27  
28 <sup>4</sup> <https://www.temsa.com/kurumsal.aspx?lng=2#2>

1           70. As a direct and proximate result of the Defendants' negligence,  
2 Plaintiffs and the class have experienced frequent malfunctions, failures and  
3 shutdowns of the TS45 Motor Coach Vehicles, loss of use of the Vehicles and the  
4 revenue derived therefrom, and a loss of value of their TS45 Motor Coach Vehicles,  
5 as well as loss or diminution of value, consequential damages and other related  
6 damages.

7                           **SEVENTH CLAIM: DECLARATORY JUDGMENT**

8                                   **(Against All Defendants and Does)**

9           71. Plaintiff and the putative Class Members incorporate all preceding  
10 paragraphs and allegations as if stated fully herein.

11           72. Defendants drafted both of the Express Warranties referred to above  
12 without negotiation with Plaintiffs or the Class.

13           73. The Limited warranties require that the TS45 Motor Coach Vehicles be  
14 free of defects in material and workmanship and impose upon Defendant the  
15 obligation to correct the defects.

16           74. There is a real and actual controversy regarding the meaning and  
17 impact of the language in Defendants' warranties. In order to resolve this  
18 controversy, Plaintiff request that, pursuant to 28 U.S.C. § 2201, this Court declare  
19 the respective rights and duties of the parties with respect to the warranty rights in  
20 this matter and, in particular, that the Court declare:

21           a. That the TS45 Motor Coach Vehicles are defective in material and  
22 workmanship in that the Vehicles were not designed, built and equipped to  
23 conform at the time of sale with the demands and expectations of third party  
24 consumers without causing repeated and frequently after treatment failures  
25 resulting in malfunctions, failures and shutdowns with the Vehicles becoming  
26 inoperable for the transportation of passengers;

27           b. That the TS45 Motor Coach Vehicles could not and cannot be corrected  
28 through repair and/or replacement of parts or components;

1 c. That the defects in the TS45 Motor Coach Vehicles are material and require  
2 disclosure to all owners and lessees of the Subject Vehicles;

3 d. That the defects in the TS45 Motor Coach Vehicles could not and cannot  
4 be corrected through repair and/or replacement of parts or components is  
5 material and requires disclosure to all owners and lessees of the Subject  
6 Vehicles;

7 e. That the defects in the TS45 Motor Coach Vehicles are warrantable under  
8 the Warranties issued by Defendants and require remediation by the  
9 replacement of the entire Vehicle with a Vehicle that is not defective;

10 f. That all persons, entities, and users of the TS45 Motor Coach Vehicles are  
11 to be provided with the best practicable notice of the defects, and that the  
12 defects have not and cannot be corrected by repairs or replacement of existing  
13 emissions components, which cost shall be borne by Defendant;

14 g. That Defendants knew or should have known that the TS45 Motor Coach  
15 Vehicles were defective, and that such defects could not and cannot be correct  
16 by the repair or replacement of existing components when Defendants first  
17 manufactured the Vehicles, any and all disclaimers and limitations contained  
18 in the Vehicles Warranties are invalid and unenforceable;

19 h. That Defendants establish an inspection and recall program to be  
20 communicated to the Class which will require Defendants to replace the  
21 existing TS45 Motor Coach Vehicles, with a Vehicle that conforms to  
22 customer expectations and is not defective;

23 i. That the TS45 Motor Coach Vehicles is not of good and merchantable  
24 quality-fit and safe for its ordinary intended use; and

25 j. That Defendants' repair and replacement of existing Vehicle components  
26 does not, and is not a correction of the defects in the TS45 Motor Coach  
27 Vehicles.

28 75. A valid case or controversy exists sufficient for this court to declare the

1 rights and remedies of the parties in that Plaintiffs are unsure of their rights against  
2 Defendants pursuant to the written warranties, the applicability, validity and  
3 enforceability of any disclaimers and limitations of those warranties.

4 76. This controversy is ripe for determination at this time because  
5 Defendants have not sufficiently or adequately corrected the defects in the TS45  
6 Motor Coach Vehicles, nor can they correct the defects. Moreover, Plaintiffs, and  
7 the putative class, continue to have repeated and frequent malfunctions and after  
8 treatment failures despite having submitted their vehicles to Defendants' authorized  
9 technicians for warranty remediation.

10 **PRAYER FOR RELIEF**

11 WHEREFORE, Plaintiff, individually and on behalf of the Class Members  
12 respectfully request that the Court enter judgment in their favor and against Defendants,  
13 as follows:

14 A. Certification of the proposed Classes; including appointment of Plaintiff as  
15 Class representative and Plaintiff's Counsel as Class Counsel;

16 B. An order temporarily and permanently enjoining Defendants from  
17 continuing the unlawful, deceptive, fraudulent, and unfair business practices alleged in  
18 this Complaint;

19 C. For Plaintiff and the Putative Class Members' past and future general  
20 damages, according to proof;

21 D. For Plaintiff and the Putative Class Members' past and future economic  
22 losses, according to proof;

23 E. For Plaintiff and the Putative Class Members' past and future lost wages,  
24 according to proof;

25 F. Costs, restitution, damages, including punitive damages, and disgorgement  
26 in an amount to be determined at trial;

27 G. An order requiring Defendants to pay both pre- and post-judgment interest  
28 on any amounts awarded;

- 1 H. An award of costs and attorneys' fees; and;
- 2 I. Any other relief the Court may deem appropriate.

3 DATED: October 18, 2018                      GIRARDI | KEESE

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5  
6 By:           /s/ Thomas V. Girardi            
7 THOMAS V. GIRARDI  
8 Attorneys for Plaintiff, on behalf of itself  
9 and all others similarly situated

10 **JURY TRIAL DEMAND**

11 Plaintiff demands a trial by jury on all claims so triable.

12 DATED: October 18, 2018                      GIRARDI | KEESE

13  
14  
15 By:           /s/ Thomas V. Girardi            
16 THOMAS V. GIRARDI  
17 Attorneys for Plaintiff, on behalf of itself  
18 and all others similarly situated  
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JS-CAND 44 (Rev. 06/17)

**CIVIL COVER SHEET**

The JS-CAND 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved in its original form by the Judicial Conference of the United States in September 1974, is required for the Clerk of Court to initiate the local docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

**I. (a) PLAINTIFFS**

NAVAHO TOUR, INC., on behalf of itself and all others similarly situated

(b) County of Residence of First Listed Plaintiff Los Angeles, CA  
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)  
Girardi |Keese, 1126 Wilshire Boulevard  
Los Angeles, CA 90017 Telephone: (213) 977-0211

**DEFENDANTS**

TEMSA NORTH AMERICA, INC., et al.

County of Residence of First Listed Defendant Hamilton, TN  
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

**II. BASIS OF JURISDICTION (Place an "X" in One Box Only)**

- 1 U.S. Government Plaintiff  3 Federal Question (U.S. Government Not a Party)
- 2 U.S. Government Defendant  4 Diversity (Indicate Citizenship of Parties in Item III)

**III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)**

	PTF	DEF		PTF	DEF
Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input checked="" type="checkbox"/> 4	<input type="checkbox"/> 4
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input checked="" type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6

**IV. NATURE OF SUIT (Place an "X" in One Box Only)**

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
110 Insurance	<b>PERSONAL INJURY</b>	625 Drug Related Seizure of Property 21 USC § 881	422 Appeal 28 USC § 158	375 False Claims Act
120 Marine	310 Airplane	690 Other	423 Withdrawal 28 USC § 157	376 Qui Tam (31 USC § 3729(a))
130 Miller Act	315 Airplane Product Liability	<b>LABOR</b>	<b>PROPERTY RIGHTS</b>	400 State Reapportionment
140 Negotiable Instrument	320 Assault, Libel & Slander	710 Fair Labor Standards Act	820 Copyrights	410 Antitrust
150 Recovery of Overpayment of Veteran's Benefits	330 Federal Employers' Liability	720 Labor/Management Relations	830 Patent	430 Banks and Banking
151 Medicare Act	340 Marine	740 Railway Labor Act	835 Patent—Abbreviated New Drug Application	450 Commerce
152 Recovery of Defaulted Student Loans (Excludes Veterans)	345 Marine Product Liability	751 Family and Medical Leave Act	840 Trademark	460 Deportation
153 Recovery of Overpayment of Veteran's Benefits	350 Motor Vehicle	790 Other Labor Litigation	<b>SOCIAL SECURITY</b>	470 Racketeer Influenced & Corrupt Organizations
160 Stockholders' Suits	355 Motor Vehicle Product Liability	791 Employee Retirement Income Security Act	861 HIA (1395ff)	480 Consumer Credit
<input checked="" type="checkbox"/> 190 Other Contract	360 Other Personal Injury	<b>IMMIGRATION</b>	862 Black Lung (923)	490 Cable/Sat TV
195 Contract Product Liability	362 Personal Injury—Medical Malpractice	462 Naturalization Application	863 DIWC/DIWW (405(g))	850 Securities/Commodities/Exchange
196 Franchise	<b>CIVIL RIGHTS</b>	465 Other Immigration Actions	864 SSID Title XVI	890 Other Statutory Actions
<b>REAL PROPERTY</b>	<b>PRISONER PETITIONS</b>		865 RSI (405(g))	891 Agricultural Acts
210 Land Condemnation	<b>HABEAS CORPUS</b>		<b>FEDERAL TAX SUITS</b>	893 Environmental Matters
220 Foreclosure	440 Other Civil Rights	463 Alien Detainee	870 Taxes (U.S. Plaintiff or Defendant)	895 Freedom of Information Act
230 Rent Lease & Ejectment	441 Voting	510 Motions to Vacate Sentence	871 IRS—Third Party 26 USC § 7609	896 Arbitration
240 Torts to Land	442 Employment	530 General		899 Administrative Procedure Act/Review or Appeal of Agency Decision
245 Tort Product Liability	443 Housing/Accommodations	535 Death Penalty		950 Constitutionality of State Statutes
290 All Other Real Property	445 Amer. w/Disabilities—Employment	<b>OTHER</b>		
	446 Amer. w/Disabilities—Other	540 Mandamus & Other		
	448 Education	550 Civil Rights		
		555 Prison Condition		
		560 Civil Detainee—Conditions of Confinement		

**V. ORIGIN (Place an "X" in One Box Only)**

- 1 Original Proceeding
- 2 Removed from State Court
- 3 Remanded from Appellate Court
- 4 Reinstated or Reopened
- 5 Transferred from Another District (specify)
- 6 Multidistrict Litigation—Transfer
- 8 Multidistrict Litigation—Direct File

**VI. CAUSE OF ACTION**

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

Action under 28 U.S.C. section 1332; 28 U.S.C. section 2201

Brief description of cause:

Diversity; Declaratory relief

**VII. REQUESTED IN COMPLAINT: CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, Fed. R. Civ. P.** DEMAND \$

CHECK YES only if demanded in complaint:  
JURY DEMAND:  Yes  No

**VIII. RELATED CASE(S), IF ANY (See instructions):**

JUDGE

DOCKET NUMBER

**IX. DIVISIONAL ASSIGNMENT (Civil Local Rule 3-2)**

(Place an "X" in One Box Only)  SAN FRANCISCO/OAKLAND  SAN JOSE  EUREKA-MCKINLEYVILLE

DATE 10/18/2018

SIGNATURE OF ATTORNEY OF RECORD

/s/ Thomas V. Girardi

**INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS-CAND 44**

**Authority For Civil Cover Sheet.** The JS-CAND 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved in its original form by the Judicial Conference of the United States in September 1974, is required for the Clerk of Court to initiate the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I. a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
- b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
- c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)."
- II. Jurisdiction.** The basis of jurisdiction is set forth under Federal Rule of Civil Procedure 8(a), which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
- (1) United States plaintiff. Jurisdiction based on 28 USC §§ 1345 and 1348. Suits by agencies and officers of the United States are included here.
  - (2) United States defendant. When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
  - (3) Federal question. This refers to suits under 28 USC § 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
  - (4) Diversity of citizenship. This refers to suits under 28 USC § 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS-CAND 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerk(s) in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.
- V. Origin.** Place an "X" in one of the six boxes.
- (1) Original Proceedings. Cases originating in the United States district courts.
  - (2) Removed from State Court. Proceedings initiated in state courts may be removed to the district courts under Title 28 USC § 1441. When the petition for removal is granted, check this box.
  - (3) Remanded from Appellate Court. Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
  - (4) Reinstated or Reopened. Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
  - (5) Transferred from Another District. For cases transferred under Title 28 USC § 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
  - (6) Multidistrict Litigation Transfer. Check this box when a multidistrict case is transferred into the district under authority of Title 28 USC § 1407. When this box is checked, do not check (5) above.
  - (8) Multidistrict Litigation Direct File. Check this box when a multidistrict litigation case is filed in the same district as the Master MDL docket. Please note that there is no Origin Code 7. Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC § 553. Brief Description: Unauthorized reception of cable service.
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Federal Rule of Civil Procedure 23. Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction. Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS-CAND 44 is used to identify related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.
- IX. Divisional Assignment.** If the Nature of Suit is under Property Rights or Prisoner Petitions or the matter is a Securities Class Action, leave this section blank. For all other cases, identify the divisional venue according to Civil Local Rule 3-2: "the county in which a substantial part of the events or omissions which give rise to the claim occurred or in which a substantial part of the property that is the subject of the action is situated."

**Date and Attorney Signature.** Date and sign the civil cover sheet.

# ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Temsu TS45 Motor Coaches Suffer from 'Mechanical and Electrical Defects,' Class Action Alleges](#)

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