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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

LINDA SHORT and OLIVIA PARKER, on
behalf of themselves and all others similarly
situated,

Plaintiffs,

v.

HYUNDAI MOTOR AMERICA, INC.,
HYUNDAI MOTOR COMPANY, KIA
MOTORS AMERICA, INC., and KIA
MOTORS CORPORATION,

Defendants.

No. 2:19-cv-318

COMPLAINT—CLASS ACTION

JURY DEMAND

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1 Plaintiffs bring this action on behalf of themselves and all others similarly situated,
2 against the Defendants collectively referred to as “Hyundai”—Hyundai Motor America, Inc., and
3 Hyundai Motor Company—and the Defendants collectively referred to as “Kia”—Kia Motors
4 America, Inc., and Kia Motors Corporation. Hyundai owns a controlling interest in Kia and
5 directs its operations. Plaintiffs allege the following based upon information and belief, the
6 investigation of counsel, and personal knowledge as the factual allegations pertaining to
7 themselves.
8

9 I. INTRODUCTION

10 1. This case arises out of Hyundai’s and Kia’s failure to disclose or remedy several
11 serious defects of design and manufacturing that can cause the engines of certain vehicles
12 equipped with gasoline direct-injection (“GDI”) engines to suddenly stall while at speed or to
13 burst into flames.
14

15 2. These vehicles include the 2011-2013 Hyundai Tucson, the 2012-2016 Kia Soul,
16 and the 2011-2012 Kia Sportage.

17 3. Hyundai and Kia knew or should have known about these defects before these
18 vehicles went on sale, and it failed to correct these dangerous defects or disclose them to their
19 customers. Moreover, once the vehicles were on the road, Hyundai and Kia failed to recall and
20 repair these defective vehicles for years, leading to hundreds or thousands of engine failures,
21 sudden stalls, and fires.
22

23 4. Only recently—after years of concealing serious safety defects—have Hyundai
24 and Kia begun to recall these vehicles, but as described more fully below, such a recall will be
25 inadequate to remedy the problem or to compensate the customers who bore the risk that their
26 cars might suddenly stall while driving or, worse, burst into flames.

1 5. In the past, Hyundai and Kia have recalled numerous vehicles with GDI engines
 2 to repair defects that could lead to engine fires, but fires have recurred despite the recalls, and
 3 Hyundai and Kia are recalling many of those vehicles yet again for the same problems.
 4 Consumers have every reason to suspect that a recall at this late date will not be an adequate
 5 solution to the defect. These consumers also have every reason to suspect that now that the
 6 problem has become known and publicized, the resale values of their vehicles has likely
 7 plummeted. These consumers did not get the vehicles they bargained for at the time of purchase,
 8 have gone years without an adequate repair, may have suffered diminished resale value, and
 9 cannot now be made whole merely by recalling and repairing the vehicles.
 10

11 6. According to the National Highway Traffic Safety Administration (NHTSA),
 12 Hyundai is recalling 120,000 SUVs, and Kia is recalling 505,652 vehicles, each of which suffers
 13 from a serious defect. The affected vehicles (“Class Vehicles”) are as follows:
 14

Model Year	Model	Number
2012-2016	Kia Soul	378,967
2011-2013	Hyundai Tucson	120,000+
2011-2012	Kia Sportage	32,296

15 7. Over 375,000 2012-2016 model year Kia Soul vehicles are being recalled due to a
 16 design defect wherein the catalytic converter can overheat and become damaged, resulting in
 17 abnormal combustion in the engine, damage to the pistons and resulting connecting rod failure.
 18 These catastrophic failures can result in sudden stalls during normal driving and engine fires.
 19 Kia’s proposed recall and repair involves changing the catalytic converter software to a
 20 reprogrammed version used on 2017 and up vehicles, meaning that Kia has known about—but
 21 concealed and failed to remedy—this defect since at least 2016. Moreover, due to the rigorous
 22
 23
 24
 25
 26

1 regulatory certification process for emissions components, it is unlikely that this repair could
2 actually be effectuated without the involvement, consent, and testing of environmental
3 regulators.

4 8. Over 120,000 2011-2013 model year Hyundai Tucson SUVs are being recalled
5 due to a manufacturing defect wherein, due to improper sealing during engine production, oil
6 leaks can lead to engine damage, sudden stalls during normal operation, and/or engine fires.
7 Hyundai professes not to know—almost nine years after the first of these vehicles entered
8 production—the cause of this defect and has not yet proposed a solution despite agreeing to
9 recall the vehicles.
10

11 9. Over 32,000 Kia Sportage vehicles from the 2011 to 2012 model years are being
12 recalled due to a manufacturing defect wherein the oil pan was not properly sealed during engine
13 production. As a result, an oil leak can develop and lead to engine damage, sudden stalls during
14 normal operation, and/or engine fires.
15

16 10. Hyundai and Kia alike concealed these defects for years, despite hundreds of
17 consumer complaints of spontaneous catastrophic engine failures, stalls, and fires. The recalls
18 now being conducted were forced by a NHTSA investigation that grew in part out of concern
19 over the timeliness and scope of Hyundai's prior recalls for defects that could lead to engine fires
20 in vehicles equipped with similar engines. Congress eventually summoned Kia and Hyundai
21 executives to appear and testify about these defects, but these executives refused to appear.
22

23 11. Because of the inherent engine defects and Defendants' concealment of the same,
24 Plaintiffs and other owners and lessees of the Class Vehicles unknowingly assumed the risk of
25 catastrophic engine failures and fires—and concomitant risk of injury or death—resulting from
26 defects that Hyundai and Kia knew or should have known about before the vehicles were ever

1 sol; learned of or should have learned of from the hundreds or thousands of engine failures, fires,
2 and complaints from consumers that followed; and concealed and failed to remedy for years.

3 12. As a result of Defendants' conduct, Plaintiffs and other owners and lessees of the
4 Class Vehicles overpaid at the time of purchase or lease for vehicles that were actually defective,
5 have or will suffer the costs associated with extensive repairs, have owned and leased vehicles
6 that were less valuable than those for which they bargained, and have seen their vehicles likely
7 lose market value. Defendants still have not provided to Plaintiffs the vehicles bargained for, and
8 even a future repair would not restore purchasers and lessees to the benefits of ownership for
9 which they bargained and that they would have received but for the defect.
10

11 **II. PARTIES**

12 **A. Defendants**

13 13. Defendant **Hyundai Motor America, Inc.**, (HMA) is a manufacturer and
14 distributor of new motor vehicles under the Hyundai brand and is incorporated and
15 headquartered in the state of California. Its principal place of business is located at 10550 Talbert
16 Avenue, Fountain Valley, California. Hyundai Motor America distributes, markets, leases,
17 warrants, and oversees regulatory compliance and warranty servicing of Hyundai brand vehicles
18 through a network of over 800 dealers throughout the United States from its headquarters in
19 California. Hyundai Motor America also creates and distributes the warranties and other written
20 materials that accompany the sale and lease of Hyundai-branded vehicles throughout the United
21 States, and makes decisions concerning warranty coverage of customer vehicles when problems
22 arise.
23
24

25 14. Defendant **Hyundai Motor Company** (HMC) is a multinational auto
26 manufacturer with its headquarters in Seoul, South Korea. Hyundai Motor Company controls and

1 operates its subsidiaries in the Hyundai Motor Group, which includes Hyundai Motor America,
2 Inc., as well as Kia Motors Corporation and Kia Motors America, Inc. Activities of the Hyundai
3 Motor Group include the design, manufacture, and testing of the engines and vehicles at issue in
4 this complaint. Revenue from the distribution and sale of Hyundai-branded vehicles in the
5 United States flows from Hyundai Motor America, Inc., to its corporate parent, Hyundai Motor
6 Company.

7
8 15. Defendant **Kia Motors America, Inc.**, (KMA) is a manufacturer and distributor
9 of new motor vehicles under the Kia brand and is incorporated and headquartered in the state of
10 California. Its principal place of business is located at 111 Peters Canyon Road, Irvine,
11 California. Kia Motors America, Inc., markets, leases, warrants, and oversees regulatory
12 compliance and warranty servicing of Kia brand vehicles through a network of over 700 dealers
13 throughout the United States from its headquarters in California. KMA also creates and
14 distributes the warranties and other written materials that accompany the sale and lease of Kia-
15 branded vehicles throughout the United States, and makes decisions concerning warranty
16 coverage of customer vehicles when problems arise.

17
18 16. Defendant **Kia Motors Corporation** (KMC) is a multinational auto manufacturer
19 with its headquarters in Seoul, South Korea. It is the corporate parent of Kia Motors America,
20 Inc., and is a part of the Hyundai Motor Group. Defendant Hyundai Motor Company holds a
21 controlling stake in Kia Motors Corporation. Revenue from the distribution and sale of Kia-
22 branded vehicles in the United States flows from KMA to its corporate parent, KMC.

23
24 **B. Plaintiffs**

25 17. Plaintiff **Linda Short** is a citizen of Washington state who resides in Redmond.
26 She leased a new 2013 Hyundai Tucson on or about March 30, 2013, and then purchased the

1 vehicle at the end of the lease, at which time the vehicle was still covered by the manufacturer's
2 warranty. Had the defect and risk of fire or stalling been known at the time of lease and purchase,
3 Plaintiff would not have leased or purchased the vehicle or would have paid considerably less for
4 it. Plaintiff regularly services the vehicle but is now concerned about driving it due to the
5 dangers resulting from the defect and believes that its market value has been diminished as a
6 result of the defect.

8 18. Plaintiff **Olivia Parker** is a citizen of California who resides in Joshua Tree. In
9 September 2018 she purchased a used 2014 Kia Soul for approximately \$15,000. Had the defect
10 and risk of fire or stalling been known at the time of purchase, Plaintiff would not have
11 purchased the vehicle or would have paid considerably less for it. Plaintiff has serviced the
12 vehicle regularly but is now concerned about driving it due to the dangers resulting from the
13 defect and believes that its market value has been diminished as a result of the defect.

15 III. JURISDICTION AND VENUE

16 19. This Court has subject matter jurisdiction under the Class Action Fairness Act of
17 2005 ("CAFA"), 28 U.S.C. §§ 1332(d), because the putative class numbers more than 100, the
18 aggregate amount in controversy exceeds \$5,000,000 excluding costs and interest, and at least
19 one plaintiff and one defendant are citizens of different states. This Court has supplemental
20 jurisdiction over the state law claims alleged herein pursuant to 28 U.S.C. § 1367.

22 20. Venue is proper in this district pursuant to 28 U.S.C. § 1391 because a substantial
23 part of the events or omissions giving rise to Plaintiffs' claims occurred in this district.
24 Defendants have marketed, advertised, and sold the affected vehicles, including Plaintiff Short's
25 vehicle, and otherwise conducted extensive business, within this District.

1 **IV. FACTUAL ALLEGATIONS COMMON TO ALL CLAIMS**

2 21. Hyundai Motors Company, Hyundai Motor America, Kia Motors Corporation,
3 and Kia Motors America Inc. manufactured and sold defective engines and then concealed the
4 true nature of the engines and vehicles from consumers for years—consumers who were driving
5 vehicles that could burst into flames or suffer catastrophic engine failures at any moment.
6

7 **1. 2012-2016 Kia Soul catalytic converters overheat, resulting in catastrophic
8 engine damage and fires.**

9 22. In February 2019, Kia Motors America, Inc. (KMA) issued a recall for 378,967
10 **Soul** vehicles from the 2012 to 2016 model years, all of which have 1.6-liter direct injection
11 gasoline engines. In these engines the catalytic converter, which reduces pollutants in exhaust
12 emissions, is susceptible to overheating due to—according to Kia—a programming error. When
13 the catalytic converter overheats, abnormal combustion in the engine can result. This can damage
14 the pistons’ connecting rods, potentially fracturing the engine block and causing an oil leak.
15 Connecting rod failure, damaged pistons, and a cracked engine block can all cause sudden and
16 catastrophic engine failure during normal driving, and the resulting leakage of oil onto hot
17 engine parts can result in engine fires.¹
18

19 23. On November 16, 2018, KMA and Kia Motors Corporation (KMC), (collectively
20 Kia) submitted a response to Defect Petition (DP18-003) for the Kia Soul vehicle and did not
21 identify or report any potential defect trends. Between November 16 and December 5, 2018,
22 KMC analyzed Soul engine claim data and identified a relationship between catalytic converter
23 damage and engine fires. Upon KMC’s request, KMA collected data throughout December for
24 an evaluation of defect trends in suspect vehicles. Between January 7 and February 20, 2019,
25

26 _____
¹ Letter to Mr. J.S. Park: Overheated Catalytic Converter May Damage Engine for NHTSA Recall No. 19V120000
(Feb. 27, 2019), <https://static.nhtsa.gov/odi/rcf/2019/RCAK-19V120-4114.pdf> (last visited Mar. 1, 2019).

1 KMC engineers traveled to the United States to inspect 120 collected, potentially hazardous
2 parts. They identified the defect and confirmed the risk of sudden engine stalls and fires. More
3 than three months after Kia’s investigation began, KMC decided to conduct a safety recall due to
4 potential risk of fire on February 21, 2019.²

5
6 24. This investigation and recall is too little, too late. Kia was aware of the dangers of
7 an overheating catalytic converter in these engines since 2016. The Safety Recall Report for the
8 February 21, 2019 recall discloses that “[t]he [Electronic Control Unit] ECU logic for the
9 Catalytic Overheating Protection (COP) was changed and improved to prevent overheating of the
10 catalytic converter on July 27, 2016, beginning with the start of the 2017 MY Soul production.
11 However, the 2016 MY Soul production ended on August 11, 2016 with the previous COP ECU
12 logic.”³

13
14 25. Before vehicles are certified and offered for sale in the United States, they are
15 supposed to undergo rigorous durability testing in order to identify defects such as these.
16 Defendants are required to do this testing for each vehicle model and model year to be sold in the
17 United States. Kia’s website, press releases, and marketing materials describe “rigorous” testing
18 of both normal and extraordinary driving conditions, over long hours and thousands of miles and
19 in extreme weather and geography, to ensure the durability of Kia vehicles. Kia’s website touts
20 its testing: “We put our engines through rigorous testing in the highest, hottest, and coldest
21 places that a car can possibly be before we put them in our cars.”⁴

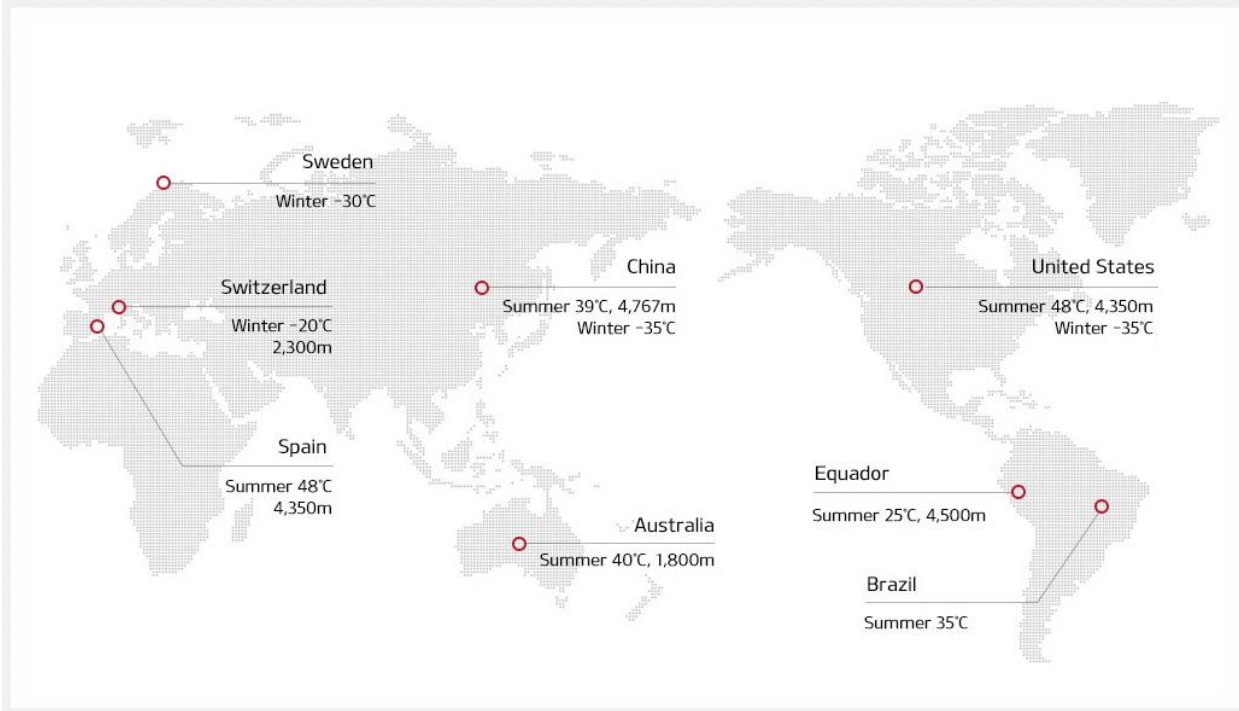
22
23
24
25 ² 2012-2016 MY Soul Engine Control Unit (ECU) Logic Chronology for NHTSA Recall No. 19V120000 (Feb. 22,
2019), <https://static.nhtsa.gov/odi/rcl/2019/RMISC-19V120-6176.pdf> (last visited Mar. 1, 2019).

26 ³ Part 573 Safety Recall Report for NHTSA Recall No. 19V120000 (Feb. 22, 2019),
<https://static.nhtsa.gov/odi/rcl/2019/RCLRPT-19V120-1711.PDF> (last visited Mar. 1, 2019).

⁴ http://www.kia.com/worldwide/experience_kia/rnd/performance.do (last visited Mar. 4, 2019).

1 Engines that can provide the power to run in any condition

2 We put our engines through rigorous testing in the highest, hottest and coldest places that a car can possibly be before we use them in our cars.



14

15 26. Kia's website goes on to describe several specific durability tests it conducts,

16 under the motto "We ruin our cars in various ways, identify causes and find solutions to them to

17 make our cars endure over a long time without fault."⁵ These tests include: 1. "item durability

18 tests" of individual parts, 2. "module durability tests" of entire assembled components, 3. a

19 "Belgian road test" of driving over rough cobbles to test noise, vibration, and harshness, 4. a

20 "high speed test," 5. a "corrosion test," 6. a "P/T test" of engine performance and temperature,

21 and 7. whole-vehicle safety/crash testing. It further describes testing for extreme weather

22 conditions as well as durability testing conducted on numerous test facilities around the world.

23

24

25

26

⁵ http://www.kia.com/worldwide/experience_kia/rnd/performance.do (last visited March 4, 2019).

Durability test

Seven ways to ruin your car

We ruin our cars in various ways, identify causes and find solutions to them to make our cars endure over a long time without fault.



27. Kia therefore knew or should have known about these defects before each affected model year ever went to market as a result of its durability testing. But Kia definitely knew about the problem and had a fix for it by mid-2016 at the latest, and introduced new programming that (presumably) remedied the problem for 2017 model year Soul vehicles. Kia's proposed recall repair is to simply reprogram 2012-2016 model year Souls with the newer programming, which illustrates that between 2016 and 2019, if not beginning before the 2012 model year went on the market, Kia actively concealed its knowledge of this dangerous defect from consumers and safety regulators alike despite hundreds of reports of catastrophic engine failures.

28. Numerous owners and lessees of 2012-2016 Soul vehicles have submitted complaints about catastrophic engine failures and fires to the National Highway Traffic Safety Administration. Some examples appear below.

1 2012 Kia Soul – NHTSA ID Number: 11128688

2 VEHICLE HAS 96000 MILES. WHILE DRIVING ON HIGHWAY BEGAN TO HEAR
3 RATTLING AND PINGING. ATTEMPTED TO MAKE IT TO REST AREA TO PULL
4 OVER AND INSPECT. HEARD LOUD BANG AND ENGINE STALLED. COASTED
5 INTO REST AREA. INSPECTION REVEALED OIL LEAKING FROM HOLE BLOWN
6 IN LOWER ENGINE BLOCK.

7 2014 Kia Soul – NHTSA ID Number: 11173144

8 WHILE DRIVING ON THE HIGHWAY, THE DASH BOARD STARTED TURN OFF
9 AND ON THE CAR BEGAN TO LOSE POWER. I PULLED OFF TO THE SIDE AND
10 THE LIGHTS ON THE DASH CAME ON AND THE CAR SHUT DOWN
11 COMPLETELY. WITHIN A FEW MINUTES SMOKE STARTED COMING FROM THE
12 HOOD OF THE CAR FOLLOWED BY A SMALL FIRE. I GOT OUT OF THE CAR AND
13 THE FIRE GREW AND COMPLETELY BURNED THE CAR.

14 2016 Kia Soul – NHTSA ID Number: 11180538

15 AFTER A SHORT DRIVE, I PARKED MY 2016 KIA SOUL IN THE GARAGE AND 15
16 MINUTES LATER I HEARD A NOISE IN THE GARAGE. MY HUSBAND OPENED
17 THE DOOR TO THE GARAGE AND FOUND FLAMES COMING FROM THE
18 STATIONARY KIA. THE ENTIRE GARAGE CAUGHT FIRE AND INCLUDED MY
19 OTHER CAR WHICH WAS AN INFINITI G35. THE PRIMARY FLAMES WERE
20 COMING OUT OF THE HOOD/FRONT RIGHT FENDER SEAM WITH MINOR
21 FLAMES UNDERNEATH THE KIA. WE KNOW THAT THE FIRE STARTED IN THE
22 PASSENGER SIDE OF THE ENGINE COMPARTMENT OF THE KIA SOUL. THE
23 VEHICLE WAS LESS THAN ONE YEAR OLD, HAD APPROXIMATELY 6000 MILES,
24 AND HAD ONLY BEEN SERVICED ONCE AT THE HENDERSON KIA DEALERSHIP
25 FOR AN OIL CHANGE. ... WE HAD TO MOVE OUT OF OUR HOME FOR FIVE
26 MONTHS WHILE THE HOUSE WAS BEING REPAIRED. THERE WAS OVER
\$142,000 DAMAGE TO OUR HOME AND PERSONAL PROPERTY.

2. **2011-2013 Hyundai Tucson and 2011-2012 Kia Sportage oil pans were improperly sealed during manufacturing, leading to spontaneous and catastrophic engine stalls and fires.**

29. Manufacturing defects leading to oil pan leaks in the 2011-2013 Hyundai Tucson and 2011-2012 Kia Sportage have caused serious risk of harm in the form of spontaneous engine stalling and engine fire.

30. Alongside the Kia Soul recall described above, Hyundai issued a recall of 120,000 Tucson SUVs from the 2011 to 2013 model years due to potential engine pan oil leaks caused by

1 insufficient sealing between the oil pan and the engine block.⁶ If unaddressed, the engine oil pan
2 leakage may cause engine damage that leads to increased risk of fire or a stalled engine at high
3 speeds. These engines were also manufactured at the Ulsan plant and sold to unsuspecting
4 consumers.

5
6 31. Two Hyundai Tucson Safety Recall Reports were submitted on February 5, 2019
7 and February 15, 2019. Both reports identified that vehicles produced from March 1, 2010, to
8 December 31, 2012, needed to be recalled for safety purposes, but the later Safety Recall Report
9 specified that potentially hazardous Tucson vehicles were equipped with 2.4L engines
10 manufactured at the Ulsan plant—the same engines identified in the Kia 2011-2012 Sportage
11 recall. More telling, this is also the same engine involved in 2015 and 2017 recalls of other
12 vehicles for engine fire defects, some of which were recalled yet again in 2019 because the fires
13 could recur even after recall repairs were conducted. Based on information NHTSA received
14 from HMC, the recall of Tucson vehicles was required to minimize exposure to risk of stalling or
15 fire.⁷

16
17 32. Despite the fact that this dangerous defect persists in vehicles manufactured as
18 long ago as 2010, and despite several failed recalls of other models equipped with the same
19 engine over the past several years, as of March 2019 Hyundai *still* has not identified the cause of
20 the defect or proposed a repair for it, despite agreeing to recall the Tucson.

21
22 33. Once again numerous owners and lessees of 2011-2013 Hyundai Tucson SUVs
23 complained to NHTSA. Some examples follow:

24
25
26 ⁶ Part 573 Safety Recall Report for NHTSA Recall No. 19V063000 (Feb. 15, 2019),
<https://static.nhtsa.gov/odi/rcl/2019/RCLRPT-19V063-6813.PDF> (last visited Mar. 2, 2019).

⁷ Part 573 Safety Recall Report for NHTSA Recall No. 19V063000 (Feb. 5, 2019),
<https://static.nhtsa.gov/odi/rcl/2019/RCLRPT-19V063-6690.PDF> (last visited Mar. 2, 2019); *Id.*

1 2012 Hyundai Tucson NHTSA ID Number: 11103584

2 CATASTROPHIC ENGINE FAILURE ON A 2012 TUCSON WITH ONLY 80K MILES.
3 THE VEHICLE WAS REGULARLY SERVICED. HEARD A FAINT TICKING COMING
4 FROM THE ENGINE WHILE DRIVING, AND LATER THAT DAY, THE ENGINE
5 BLEW. APPARENTLY THE THETA 2 ENGINE THE VEHICLE USES IS KNOWN FOR
6 FAILURE, BUT THE HYUNDAI DEALERSHIP I TOOK THE VEHICLE TO CLAIMED
7 ONLY ABOUT 2% OF THESE CARS WERE AFFECTED, AND I WAS JUST
8 "UNLUCKY". NO WARNING LIGHTS, NOTHING. WAS ON THE INTERSTATE
9 DURING RUSH HOUR AT THE TIME OF THE INCIDENT, AND WAS ALMOST HIT
10 BY MULTIPLE VEHICLES BECAUSE OF THIS.

11 2013 Hyundai Tucson NHTSA ID Number: 11119738

12 ON JUNE 17, 2018 MY ENGINE BLEW ON MY 2013 TUCSON, LESS THAN 75000
13 MILES. WE WERE TRAVELING ON THE INTERSTATE AT SPEEDS OF 75 MILES
14 PER HOUR WHEN THE ENGINE BEGAN TO KNOCK THEN LOOSE SPEED.
15 TRAFFIC ALL AROUND US WAS TRAVELING AT 75-80 MILES PER HOUR, VERY
16 SCARY AS WE WERE GOING 10-15 MILES PER HOUR WHEN WE MANAGED TO
17 PULL OFF ON AN EXIT AND THE ENGINE SIMPLY DIED AND NEVER WOULD
18 RESTART. WE HAD TO PUSH IT THROUGH A BUSY INTERSECTION TO A GAS
19 STATION. WE HAD IT TOWED TO THE LOCAL HYUNDAI DEALER WHERE IT
20 STILL SITS 2 MONTHS LATER WAITING ON AN ENGINE TO BE DELIVERED.

21 34. Kia Motors America, Inc. (KMA) issued a recall of approximately 32,296
22 Sportage vehicles from the 2011 and 2012 model years due to potential oil pan leaks. The
23 affected vehicles are equipped with 2.4L engines supplied by Hyundai Motor Company (HMC)
24 Ulsan plant.⁸

25 35. During vehicle assembly these oil pans may have received insufficient sealing,
26 leading to low oil levels that can cause engine damage. A damaged engine can cause the engine
to stall, increasing the risk of a crash. Furthermore, oil leaks increase the risk of fire.⁹

⁸ Part 573 Safety Recall Report for NHTSA Recall No. 19V101000 (Feb. 15, 2019),
<https://static.nhtsa.gov/odi/rcl/2019/RCLRPT-19V101-5937.PDF> (last visited Mar 1, 2019).

⁹ Letter to Mr. J.S. Park, Engine Oil Leak May Cause Stall or Fire for NHTSA Recall No. 19V101000 (Feb. 27,
2019), <https://static.nhtsa.gov/odi/rcl/2019/RCAK-19V101-1869.pdf> (last visited Mar 1, 2019).

1 36. On January 29, 2019, Kia Motors Corporation (KMC) was notified by HMC's
2 Ulsan factory of a potential production issue related to the assembly of the oil pan seal that could
3 cause engine stalling or fire. Between then and February 7, 2019, KMC reviewed engine oil pan
4 replacement warranty claims that had been submitted due to reports of oil leakage. Only then did
5 KMC advise KMA to conduct a review of its respective data. From February 8 to February 12,
6 2019, KMA conducted review of warranty claim data before advising KMC to review results. By
7 February 13, 2019, KMC had decided to conduct a recall of more than 30,000 Kia Sportage
8 vehicles.¹⁰

9
10 37. Despite the fact that this dangerous defect persists in vehicles manufactured as
11 long ago as 2010, it took until 2019 for Kia to admit the defect existed, identify the cause of the
12 problem, and commence a recall. This is, again, despite the fact that Kia has previously recalled
13 several vehicles equipped with the same or similar engines, which suffered the same or similar
14 defects, over the past several years.

15
16 38. As with the other defects described above, numerous owners and lessees of 2011-
17 2012 Kia Sportage vehicles have complained of sudden engine stalls and fires to NHTSA. Some
18 examples follow.

19 2011 Kia Sportage NHTSA ID Number: 11099905

20
21 MY SON WAS DRIVING ON ROUTE 1 IN DELAWARE AT AROUND 60 MILES AN
22 HOUR. ROUTE 1 IS A 2 LANE HIGHWAY. THE CAR SHUT OFF WHILE HE WAS
23 DRIVING AT THE ABOVE MENTIONED SPEED. AFTER SEVERAL ATTEMPTS TO
24 START THE CAR WE HAD TO GET THE CAR TOWED TO MY MECHANIC. MY
25 MECHANIC DID A DIAGNOSTIC ON THE ENGINE AND TOLD ME THE ENGINE
26 HAD LOCKED. HE SAID THE ENGINE WASN'T GETTING THE PROPER OIL FLOW
TO IT.

¹⁰ 2011-2012 MY Sportage Engine Oil Pan Leak Chronology for NHTSA Recall No. 19V101000
(Feb. 15, 2019), <https://static.nhtsa.gov/odi/rc1/2019/RMISC-19V101-5877.pdf> (last visited Mar. 2, 2019).

1 2012 Kia Sportage NHTSA ID Number: 11170454

2 MY DAUGHTER WAS DRIVING ON THE INTERSTATE AT ABOUT 70MPH WHEN
3 ENGINE SEIZED. SHE WAS IN THE LEFT LANE BUT THANKFULLY MANAGED TO
4 GET INTO THE EMERGENCY LANE WITHOUT BEING HIT BY OTHER MOTORIST.
5 VEHICLE ONLY HAD 68K MILES ON IT. KIA DOES NOT ACCEPT
6 RESPONSIBILITY FOR THIS EVEN THOUGH IT COVERS OTHER SPORTAGES &
7 OPTIMAS WITH THE SAME ENGINE FOR SAME EXACT PROBLEM. THANKFUL
8 MY DAUGHTER DID NOT GET HURT BUT SHE WAS LEFT WITH A \$5,500 BILL
9 THAT WE HAD TO PAY TO FIX. KIA NEEDS TO EXPAND THE ENGINE RECALL
10 TO ALL OF THE ENGINES AND NOW THEY ARE RECALLING SOME FOR A FIRE
11 HAZARD. KIA NEEDS TO STEP UP BEFORE SOMEONE IS KILLED!

12 39. For each of these defects, Hyundai and Kia durability testing before these vehicles
13 ever went on sale should have identified the issue. But the Defendants have also been on notice
14 for years of the defects through NHTSA complaints and warranty claims, as well as prior recalls
15 of vehicles equipped with the same or similar GDI engines, and have done nothing but conceal
16 the defect until now. The proposed recalls now follow investigations prompted by Defendants’
17 failure to adequately remedy *another* set of defects that can cause engine fires.

18 **3. Hyundai and Kia Have a Pattern of Defects That Can Result In Engine
19 Failure and Fires.**

20 40. Hyundai is familiar with engine defects and has a track record of failing to
21 adequately remedy them. The company issued a similar recall in September 2015 after
22 prompting by the NHTSA: Hyundai issued Recall No. 15V568000 for 470,000 MY 2011-2012
23 Hyundai Sonata vehicles manufactured at Hyundai Motor Manufacturing Alabama that were
24 equipped with 2.0 liter and 2.4 liter “Theta II” GDI engines due to reported stalling events and
25 numerous engine-related warranty claims.¹¹ At the time, Kia did not recall any vehicles, though
26 some shared the same “Theta II” engines.

¹¹ Part 573 Safety Recall Report Chronology for NHTSA Recall No. 15V568000,
(Sept. 10, 2015), <https://static.nhtsa.gov/odi/rc1/2015/RCLRPT-15V568-9490.PDF> (last visited Mar. 1, 2019), at 2.
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1 41. The defect and its consequences were described in NHTSA’s Safety Recall
2 Report from September 2015 as follows:

3 Hyundai has determined that metal debris may have been generated from factory
4 machining operations as part of the manufacturing of the engine crankshaft during the
5 subject production period. As part of the machining processes, the engine crankshaft is
6 cleaned to remove metallic debris. If the debris is not completely removed from the
7 crankshaft’s oil passages, it can be forced into the connecting rod oiling passages
8 restricting oil flow to the bearings. Since bearings are cooled by oil flow between the
9 bearing and journal, a reduction in the flow of oil may raise bearing temperatures
10 increasing the potential of premature bearing wear. A worn connecting rod bearing will
11 produce a metallic, cyclic knocking noise from the engine which increases in frequency
12 as the engine rpm increases. A worn connecting rod bearing may also result in
13 illumination of the oil pressure lamp in the instrument cluster. If the vehicle continues to
14 be driven with a worn connecting rod bearing, the bearing can fail, and the vehicle could
15 stall while in motion.¹²

16 42. Unfortunately, Hyundai did not recall nearly enough vehicles. In March 2017,
17 Hyundai expanded its initial recall to 572,000 MY 2013-2014 Sonata and Santa Fe Sport
18 vehicles with 2.0 liter and 2.4 liter GDI “Theta II” engines for the same manufacturing debris-
19 related issues, describing the defect as follows:

20 The subject engines may contain residual debris from factory machining operations,
21 potentially restricting oil flow to the main bearings and leading to premature bearing
22 wear. A worn connecting rod bearing will produce a cyclic knocking noise from the
23 engine and may also result in the illumination of the oil pressure lamp in the instrument
24 panel. Over time, the bearing may fail and the vehicle could lose motive power while in
25 motion.¹³

26 43. That same day, Kia recalled 618,000 MY 2011-2014 Optima, 2012-2014 Sorento
and 2011-2013 Sportage vehicles, all of which had the “Theta II” engine as well.¹⁴ Just like

¹² *Id.* at 1.

¹³ Part 573 Safety Recall Report for NHTSA Recall No. 17V226000 (Mar. 31, 2017), available at <https://static.nhtsa.gov/odi/rcr/2017/RCLRPT-17V226-4558.pdf> (last visited Mar. 1, 2019), at 1.

¹⁴ David Shepardson, *Kia, Hyundai expand U.S. engine fire recalls by 534,000 vehicles*, Reuters (Feb. 28, 2019), <https://www.reuters.com/article/us-kia-motors-recall/kia-hyundai-expand-u-s-engine-fire-recalls-by-534000-vehicles-idUSKCN1QH2EB> (last visited Mar. 1, 2019).

1 Hyundai's recall, the potentially restricted oil flow to the main bearings could lead to premature
2 bearing wear and eventual bearing failure, causing the engine to stall.

3 Metal debris may have been generated from factory machining operations as part of the
4 manufacturing of the engine crankshaft which may not have been completely removed
5 from the crankshaft's oil passages during the cleaning process. In addition, the machining
6 processes of the crankpins caused an uneven surface roughness. As a result, the metal
7 debris and uneven surface roughness can restrict oil flow to the bearings, thereby
8 increasing bearing temperatures causing premature bearing wear. A worn connecting rod
9 bearing will produce a cyclic knocking noise from the engine and may also result in the
10 illumination of the engine warning lamp and/or oil pressure lamp in the instrument panel.
11 If the warnings are ignored and the vehicle is continued to be driven, the bearing may fail
12 and the vehicle could stall while in motion.¹⁵

13 44. The delay in expanding the recall to all affected vehicles between 2015 and 2017
14 caught the attention of NHTSA, which launched an investigation in May of 2017 into concerns
15 that both companies' recalls should have been issued earlier. Nearly two more years went by as
16 Hyundai and Kia kept receiving reports of engine fires in vehicles containing Theta II engines.

17 45. While NHTSA was investigating the "timeliness and scope" of the March 2017
18 Sonata and Santa Fe engine recalls, it relayed to Hyundai that there had been a number of
19 engine-stall and spontaneous fire claims for the Tucson equipped with GDI engines. This
20 investigation eventually led to the 2011-2013 Hyundai Tucson and 2011-2012 Kia Sportage oil
21 leak recall described above.¹⁶

22 46. In January 2019, Hyundai recalled 100,000 2011-2014 Sonata and 2013-2014
23 Santa Fe Sport vehicles, and Kia recalled 68,000 2011-2014 Optima, 2012-2014 Sorento, and
24 2011-2013 Sportage vehicles.¹⁷ These vehicles had already been involved in an earlier recall that

25 ¹⁵ Part 573 Safety Recall Report for NHTSA Recall No. 17V224000 (Mar. 31, 2017) available at
<https://static.nhtsa.gov/odi/rcr/2017/RCLRPT-17V224-2355.PDF> (last visited Mar. 1, 2019), at 2.

26 ¹⁶ Andrew Krok, *Hyundai, Kia recall 500,000 cars over fire concerns*, CNet (Feb. 28, 2019),
<https://www.cnet.com/roadshow/news/hyundai-kia-recall-500000-cars-fire-concerns/> (last visited Mar. 1, 2019).

¹⁷ Andrew Krok, *Hyundai adds 100,000 cars to Kia's engine-fire recall*, CNet (January 17, 2019),
<https://www.cnet.com/roadshow/news/hyundai-recall-engine-fire-kia/> (last visited Mar. 4, 2019); Andrew Krok,

1 could include engine replacement, but fires could recur despite that purported repair. Hyundai
2 has previously repaired cars with similar defects, only to have the problems recur either because
3 the replacement parts suffered from the same defects or because other parts were damaged by the
4 repair process. Consumers therefore have reason to worry that just recalling and repairing the
5 Class Vehicles may not solve these serious and dangerous defects.

6
7 47. Despite the 300-plus vehicle fire reports NHTSA received, Hyundai and Kia
8 representatives initially dismissed the dangers their vehicles posed to consumers, claiming that
9 “[i]n some very rare instances—a rate of less than 1 percent—the affected engines have caught
10 on fire. An exhaustive study has confirmed that there is no defect trend outside of that identified
11 in the related recalls causing non-collision fires in Hyundai vehicles.”¹⁸ Even if this estimate is
12 accurate, 1% of the over 1.7 million or more vehicles Defendants have recalled for engine fire
13 risks so far amount to 17,000 engine fires suffered by American consumers, more than 5,000 of
14 them concerning the Class Vehicles at issue here.

15
16 48. Defendants’ irresponsibly slow reaction and failure to adequately remedy the
17 stalling and engine fires caused by their defective vehicles drew the interest of the Senate
18 Commerce Committee, which invited the automakers to defend their lack of response. Though
19 they were asked to “promptly identify and respond to defects that may pose a fire risk” at a
20 November 14, 2018 hearing, and despite the ongoing investigation into why hundreds or
21 thousands of their vehicles were spontaneously bursting into flames, the Hyundai and Kia
22 executives refused to attend the congressional hearing.

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Kia Optima, Sorento, Sportage recalled a second time for fire risks, CNet (January 16, 2019),
<https://www.cnet.com/news/kia-optima-sorento-sportage-recall-fire-risks/> (last visited Mar. 4, 2019).

¹⁸ Kyle Hyatt, *Center for Auto Safety calls out Hyundai and Kia over lack of fire recall*, CNet (Oct. 12, 2018),
<https://www.cnet.com/roadshow/news/hyundai-kia-center-for-auto-safety-fire-recall/> (last visited Mar. 1, 2019).

1 49. In response to Defendants’ refusal to appear before Congress, Jason Levine,
2 executive director of the Center for Auto Safety, said: “Until Hyundai and Kia are willing to take
3 responsibility for the three million vehicles on the road that could burst into flames at any
4 minute—with no apparent warning to the driver—we will continue to press for a recall and full
5 and thorough investigation. There has already been one death and a few injuries associated with
6 these vehicle fires. How many people need to be horrifically burned before someone takes
7 action?”¹⁹

9 50. Though more than three years had gone by since the original 2015 recall of
10 vehicles with “Theta II” engines, Kia claimed in late 2018 that the company was working with
11 the Senate committee to “analyze all relevant information associated with any fire or other
12 safety-related matters and will take any necessary corrective action in a timely manner.”²⁰
13 However, Defendants’ failure to respond proactively to these dangerous defects, and lengthy
14 concealment of them, is unsurprising in light of the previous delays and failed recall of the
15 “Theta II” engines.
16

17 **4. Defendants’ Actions Have Caused Class Members Significant Harm.**

18 51. Owners and lessees of Class Vehicles did not receive the vehicles they bargained
19 for at the time of purchase. Had they known the true nature of these vehicles, they would have
20 paid less for them, or chosen to purchase other vehicles instead, because they believed that they
21 were purchasing safe vehicles free of major, dangerous defects. As a result of Defendants’
22 conduct—in failing to remedy dangerous defects Defendants knew or should have known about,
23

24 _____
25 ¹⁹ Jackie Callaway, *Kia, Hyundai CEOs refuse to attend Senate hearing to explain cause of car fires*, ABC Action
26 News (Nov. 8, 2018, updated Dec. 10, 2018), <https://www.abcactionnews.com/news/local-news/i-team-investigates/kia-hyundai-ceos-refuse-to-attend-senate-hearing-to-explain-cause-of-car-fires> (last visited Mar. 1, 2019).

²⁰ *Id.*

1 **Nationwide Class:**

2 All persons or entities in the United States (including its territories and the
3 District of Columbia) who purchased or leased a Class Vehicle.

4 55. In addition to the Nationwide class, and pursuant to Federal Rules of Civil
5 Procedure Rule 23(c)(5), Plaintiffs seek to represent the following State Classes as well as any
6 subclasses or issue classes as Plaintiffs may propose and/or the Court may designate at the time
7 of class certification:

8 **Washington State Class:**

9 All persons or entities in the state of Washington who purchased or leased a Class
10 Vehicle.

11 **California State Class:**

12 All persons or entities in the state of California who purchased or leased a Class Vehicle.

13 56. Excluded from the Classes are individuals who have personal injury claims
14 resulting from the conduct and defects alleged herein; Defendants and their subsidiaries,
15 affiliates, and officers; all persons who timely elect to exclude themselves from the Classes; and
16 Judge to whom this case is assigned and his or her immediate family. Plaintiffs reserve the right
17 to revise the Class definitions based on information learned through discovery.

18 57. Certification of Plaintiffs' claims for classwide treatment is appropriate because
19 Plaintiffs can prove the elements of their claims regarding liability and entitlement to damages
20 on a classwide basis using the same evidence as would be used to prove those elements in
21 individual actions alleging the same claim. This action has been brought and may be properly
22 maintained on behalf of the Nationwide Class and/or State Class proposed herein under Federal
23 Rule of Civil Procedure 23.
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1 58. Plaintiffs reserve the right to modify the definition of the Nationwide and/or any
2 State Class prior to class certification.

3 **B. Class Certification Requirements**

4 59. **Numerosity: Rule 23(a)(1):** The members of the Class are so numerous and
5 geographically dispersed that individual joinder of all Class members is impracticable. Plaintiffs
6 are informed and believe, based on available information on the volume of sales and recalls of
7 Class Vehicles, that there are no fewer than 500,000 members of the Class. The precise number
8 of Class members may be ascertained from Defendants' records and vehicle registration records.
9 Class members may be notified of the pendency of this action by recognized, Court-approved
10 notice dissemination methods, which may include U.S. mail, electronic mail, Internet postings,
11 social media, and published notice.
12

13 60. **Commonality and Predominance: Rules 23(a)(2) and 23(b)(3):** This action
14 involves significant common questions of law and fact, which predominate over any questions
15 affecting individual Class members, including, but not limited to:
16

17 A. Whether Defendants engaged in the conduct alleged herein;

18 B. Whether Defendants designed, advertised, marketed, distributed, leased,
19 sold, or otherwise placed Class Vehicles into the stream of commerce in the United
20 States;

21 C. Whether the Class Vehicles have the defects alleged herein, and whether
22 those defects constitute a safety defect;

23 D. Whether Defendants knew or should have known that the Class Vehicles
24 contained defects as alleged herein;
25
26

1 E. Whether a reasonable consumer would consider the defects alleged herein
2 and their consequences material to the decision to purchase or lease a Class Vehicle;

3 F. When Defendants discovered, knew, or should have known of the
4 existence of the defects alleged herein;

5 G. Whether the Class Vehicles can be made to comply with applicable
6 emissions standards if the proposed recall repairs are effectuated without substantially
7 degrading the performance, efficiency, or advertised emissions of the Class Vehicles;

8 H. Whether Plaintiffs and the other Class members overpaid for their Class
9 Vehicles as a result of the defects and Defendants' concealment thereof;

10 I. Whether Defendants had a duty to disclose the true nature of the Class
11 Vehicles to Plaintiffs and Class members;

12 J. Whether Plaintiffs suffered out-of-pocket losses as a result of the defects
13 alleged herein and whether they will suffer out-of-pocket losses as a result of the
14 proposed recalls;

15 K. Whether Defendants omitted, concealed, and/or failed to disclose material
16 facts about the Class Vehicles;

17 L. Whether Defendants' concealment of the true nature of the Class Vehicles
18 would have induced a reasonable consumer to act to his or her detriment by purchasing
19 and/or leasing the Class Vehicles;

20 M. Whether Plaintiffs and the other Class members are entitled to equitable
21 relief, including, but not limited to, restitution or injunctive relief;

22 N. Whether the remedies proposed below for each group of Class Vehicles
23 would constitute adequate and appropriate relief for the Class;

Year and Model	Defendants' Proposed Recall	Proposed Class Relief
2012-2016 Kia Soul	Reprogram catalytic converter	Buyback or, if repair is possible, recall and monetary compensation
2011-2012 Kia Sportage	Repair/reseal oil pan	Recall and monetary compensation
2011-2013 Hyundai Tucson	Unknown	Buyback or, if repair is possible, recall and monetary compensation

O. Whether Plaintiffs and the other Class members are entitled to damages and other monetary relief and, if so, in what amount; and

P. Whether Defendants continue to unlawfully conceal and misrepresent whether additional vehicles, besides those reported in the press to date, are in fact Class Vehicles.

61. **Typicality: Rule 23(a)(3):** Plaintiffs' claims are typical of the claims of the Class members whom they seek to represent under Federal Rule of Civil Procedure 23(a)(3), because Plaintiffs and each Class member purchased a Class Vehicle and were similarly injured through Defendants' wrongful conduct as described above. Plaintiffs and the other Class members suffered damages as a direct proximate result of the same wrongful practices by Defendants. Plaintiffs' claims arise from the same practices and courses of conduct that give rise to the claims of the other Class members. Plaintiffs' claims are based upon the same legal theories as the claims of the other Class members.

62. **Adequacy: Rule 23(a)(4).** Plaintiffs will fairly and adequately represent and protect the interests of the Class members as required by Federal Rule of Civil Procedure 23(a)(4). Plaintiffs have retained counsel competent and experienced in complex class action litigation, including vehicle defect litigation and other consumer protection litigation. Plaintiffs

1 intend to prosecute this action vigorously. Neither Plaintiffs nor their counsel have interests that
2 conflict with the interests of the other Class members. Therefore, the interests of the Class
3 members will be fairly and adequately protected.

4 **63. Declaratory and Injunctive Relief: Rule 23(b)(2).** Defendants have acted or
5 refused to act on grounds generally applicable to Plaintiffs and the other members of the Class,
6 thereby making appropriate final injunctive relief and declaratory relief, as described below, with
7 respect to the Class as a whole.
8

9 **64. Superiority: Rule 23(b)(3).** A class action is superior to any other available
10 means for the fair and efficient adjudication of this controversy, and no unusual difficulties are
11 likely to be encountered in the management of this class action. The damages or other financial
12 detriment suffered by Plaintiffs and the other Class members are relatively small compared to the
13 burden and expense that would be required to individually litigate their claims against
14 Defendants, so it would be impracticable for members of the Class to individually seek redress
15 for Defendants' wrongful conduct. Even if Class members could afford individual litigation, the
16 court system could not. Individualized litigation creates a potential for inconsistent or
17 contradictory judgments, and increases the delay and expense to all parties and the court system.
18 By contrast, the class action device presents far fewer management difficulties and provides the
19 benefits of single adjudication, economies of scale, and comprehensive supervision by a single
20 court.
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1 **VI. EQUITABLE TOLLING**

2 **A. Discovery Rule**

3 65. Plaintiffs and Class members did not discover, and could not have discovered
4 through the exercise of reasonable diligence, Defendants' deception concerning the defects
5 alleged herein.

6 66. Defendants' concealment was effective until a NHTSA investigation prompted by
7 consumer complaints forced Defendants to institute the recent recall campaign.

8 67. Plaintiffs and Class members could not have discovered through the exercise of
9 reasonable diligence that Defendants were concealing the defects alleged herein until the
10 NHTSA recall campaign revealed it to the public.

11 68. Unless a class member experienced a catastrophic engine failure, Plaintiffs and
12 class members would have no reason to discover the defects alleged herein, and even if they did
13 experience such a failure, would have no reason to discover the existence of a widespread defect
14 and effort to conceal it.

15 69. Plaintiffs and Class members therefore did not discover, and did not know of,
16 facts that would have caused a reasonable person to suspect that Defendants had concealed
17 information about defects in the Class Vehicles until shortly before this action was filed.

18 70. For these reasons, all applicable statutes of limitation have been tolled by
19 operation of the discovery rule with respect to claims as to the Class Vehicles.

20 **B. Fraudulent Concealment**

21 71. All applicable statutes of limitation have also been tolled by Defendants'
22 knowing, active and ongoing fraudulent concealment of the facts alleged herein.
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1 72. Defendants concealed the defects, minimized the cause, effects, and dangers of
2 the defects, and failed to disclose or remedy the defects. Even now, with NHTSA recalls
3 pending, Defendants offer a fix that is almost certainly inadequate for one defect. As to another,
4 Defendants do not even to know the cause of the defect—a defect that has existed for at least
5 nine years and is, purportedly, to be fixed by a recall that fails to identify any available repair.

6
7 **C. Estoppel**

8 73. Defendants were and are under a continuous duty to disclose to Plaintiffs and
9 Class members the true character, quality, and nature of the Class Vehicles, including the
10 vehicles' defects as alleged herein, and the inevitable repairs, costs, time, and monetary damage
11 resulting therefrom. Defendants actively concealed the true character, quality, and nature of the
12 Class Vehicles.

13 74. Based on the foregoing, Defendants are estopped from relying on any statutes of
14 limitations in defense of this action.

15
16 **VII. CLAIMS FOR RELIEF**

17 75. California state law applies to the claims of the Nationwide Class because
18 Defendants' United States operations are headquartered in California. Defendants HMA and
19 KMA distribute, market, warrant, and test all Hyundai and Kia vehicles, respectively, sold or
20 leased in the United States, including the Class Vehicles. Although these actions take place and
21 have effects wherever in the United States the vehicles are sold, leased, registered, and operated,
22 Defendants' operations for distributing, engineering and testing, marketing, warranting and
23 supervising service of the Class Vehicles are located in California, and on information and belief,
24 many of the decisions concerning Defendants' unfair, deceptive, and unlawful conduct emanated
25 from these California headquarters.
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COUNT I
FRAUD BY CONCEALMENT
(Common Law)

76. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

77. Plaintiffs bring this claim on behalf of themselves and the Nationwide Class, or alternatively, each of the State Classes, against all Defendants.

78. The Defendants intentionally concealed, suppressed, and failed to disclose the material fact that the Class Vehicles had design and manufacturing defects that could result in sudden and catastrophic engine stalling, failure, and fire. Defendants knew or should have known the true facts, due to their involvement in the design, installation, calibration, manufacture, durability testing, and warranty service of the engines, catalytic converters, and ECU programming in the Class Vehicles. And yet, at no time did any of these Defendants reveal the truth to Plaintiffs or the Class. To the contrary, each Defendant concealed the truth, intending for Plaintiffs and the Class to rely on these omissions. Each Plaintiff and Class member purchased or leased a Class Vehicle believing, in reliance on Defendants' statements and omissions, it to be safe and free from major engine defects.

79. A reasonable consumer would not know that the catalytic converter in Kia Soul vehicles could overheat, resulting in catastrophic engine failure and/or fire. Plaintiffs and the members of the Class did not know of the facts which were concealed from them by Defendants. Moreover, as ordinary consumers, Plaintiffs and the members of the Class did not, and could not, unravel the deception on their own.

80. Defendants had a duty to disclose that these defects existed. Defendants had such a duty because the true facts were known and/or accessible only to them and because they knew

1 these facts were not known to or reasonably discoverable by Plaintiffs or the members of the
2 Class unless and until the defect manifested in their personal vehicle. As alleged herein,
3 Defendants denied and concealed the defects in the face of consumer complaints and regulatory
4 investigations. Plaintiffs and Class members did not, and could not, unravel Defendants’
5 deception on their own.
6

7 81. Defendants also had a duty to disclose the true nature of these vehicles as a result
8 of its prior recalls. By issuing recalls of certain vehicles and representing that these represented
9 the full population of affected vehicles, Defendants led consumers and even safety regulators to
10 believe, at least for a time, that they were remedying the engine fire problems. In fact, these
11 recalls—in addition to being unsuccessful—failed to include hundreds of thousands of
12 additional vehicles that suffered from similar major defects.
13

14 82. Had the material facts been timely revealed, Plaintiffs and the Class would not
15 have purchased the Class Vehicles, or would have paid less for them. Class Vehicles have also
16 diminished in value as a result of Defendants’ fraud. Accordingly, Defendants are liable to
17 Plaintiffs and the members of the Class for damages in an amount to be proven at trial.
18

19 83. Defendants’ acts were committed wantonly, maliciously, oppressively,
20 deliberately, with intent to defraud; in reckless disregard of the rights of Plaintiffs and the Class;
21 and to enrich themselves. Their misconduct warrants an assessment of punitive damages in an
22 amount sufficient to deter such conduct in the future, which amount shall be determined
23 according to proof at trial.

24 84. Plaintiffs plead this count pursuant to the laws of California, where Defendants’
25 United States operations are headquartered, on behalf of all members of the Class. As necessary,
26 and in the alternative, Plaintiffs may allege state subclasses, based on the residences at pertinent

1 times of members of the Class, to allege fraudulent concealment under the laws of states other
2 than California.

3
4 **COUNT II**
5 **IMPLIED AND WRITTEN WARRANTY**
6 **Magnuson-Moss Warranty Act (15 U.S.C. §§ 2301 *et seq.*)**

7 85. Plaintiffs incorporate by reference each and every prior and subsequent allegation
8 of this Complaint as if fully restated here.

9 86. Plaintiffs assert this cause of action on behalf of themselves and the other
10 members of the Nationwide Class.

11 87. This Court has jurisdiction to decide claims brought under 15 U.S.C. § 2301 by
12 virtue of 15 U.S.C. § 2310(d).

13 88. The Class Vehicles are a “consumer product,” as that term is defined in 15 U.S.C.
14 § 2301(1).

15 89. Plaintiffs and Class members are “consumers,” as that term is defined in 15
16 U.S.C. § 2301(3).

17 90. Each Defendant is a “warrantor” and “supplier” as those terms are defined in 15
18 U.S.C. § 2301(4) and (5).

19 91. 15 U.S.C. § 2310(d)(1) provides a cause of action for any consumer who is
20 damaged by the failure of a warrantor to comply with an implied or written warranty.

21 92. As described herein, Defendants provided Plaintiffs and Class members with
22 “implied warranties” and “written warranties” as those terms are defined in 15 U.S.C. § 2301.

23 93. Defendants have breached these warranties. The Class Vehicles are defective, as
24 described above, which resulted in the problems and failures also described above.
25
26

1 94. By Defendants’ conduct as described herein, including knowledge of the defects
2 inherent in the vehicles and Defendants’ action, and inaction, in the face of the knowledge,
3 Defendants have failed to comply with their obligations under their written and implied
4 promises, warranties, and representations.

5 95. In their capacity as warrantors, and by the conduct described herein, any attempts
6 by Defendants to limit the implied warranties in a manner that would exclude coverage of the
7 defects is unconscionable and any such effort to disclaim, or otherwise limit, liability for the
8 defective the software and supporting systems is null and void.

9 96. All jurisdictional prerequisites have been satisfied.

10 97. Plaintiffs and members of the Class are in privity with Defendants in that they
11 purchased Class Vehicles from Defendants via their agents.

12 98. As a result of Defendants’ breach of warranties, Plaintiffs and Class members are
13 entitled to revoke their acceptance of the vehicles, obtain damages and equitable relief, and
14 obtain costs pursuant to 15 U.S.C. § 2310.

15
16
17 **COUNT III**
18 **VIOLATIONS OF THE CALIFORNIA UNFAIR COMPETITION LAW**
19 **(Cal. Bus. & Prof. Code § 17200, et seq.)**

20 99. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set
21 forth herein.

22 100. Plaintiffs bring this action on behalf of themselves and the Nationwide Class
23 against all Defendants or, in the alternative, Plaintiff Parker brings this claim on behalf of the
24 California State Class against all Defendants.

25 101. California Business and Professions Code § 17200 prohibits any “unlawful,
26 unfair, or fraudulent business act or practices.”

1 102. Defendants have engaged in unlawful, fraudulent, and unfair business acts and
2 practices in violation of the UCL by knowingly and intentionally concealing the serious defects
3 in the Class Vehicles from Plaintiffs and Class members, as well as the risks of serious harm and
4 monetary damage stemming therefrom. This information was material to Plaintiffs and Class
5 members, just as it would be to any reasonable consumer.
6

7 103. Defendants were in a superior position to know the true nature of the Class
8 Vehicles and Plaintiffs and Class members could not discover the true facts about the defects
9 through ordinary and reasonable diligence. Defendants also had a duty to disclose the defects
10 because they constitute a safety issue for drivers and passengers of Class Vehicles.
11

12 104. Defendants' failure to disclose these facts violated the UCL, breached these duties
13 to disclose, and injured Plaintiffs and Class members. Plaintiffs and Class members could not
14 reasonably have avoided these injuries.

15 105. These acts were likely to deceive the public, and did in fact deceive Plaintiffs,
16 about material information.

17 106. Plaintiffs request that this Court enter such orders or judgments as may be
18 necessary to enjoin Defendants from continuing their unfair, unlawful, and/or deceptive practices
19 and to restore to Plaintiffs and members of the Class any money Defendants acquired by unfair
20 competition, including restitution and/or restitutionary disgorgement, as provided in Cal. Bus. &
21 Prof. Code § 17203 and Cal. Bus. & Prof. Code § 3345; and for such other relief set forth below.
22

23 **COUNT IV**
24 **VIOLATIONS OF THE CALIFORNIA FALSE ADVERTISING LAW**
(Cal. Bus. & Prof. Code § 17500, et seq.)

25 107. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set
26 forth herein.

1 108. Plaintiffs bring this action on behalf of themselves and the Nationwide Class
2 against all Defendants or, in the alternative, Plaintiff Parker brings this claim on behalf of the
3 California State Class against all Defendants.

4 109. California Business & Professions Code § 17500 provides that “It is unlawful for
5 any . . . corporation . . . with intent directly or indirectly to dispose of real or personal property . .
6 . to induce the public to enter into any obligation relating thereto, to make or disseminate or cause
7 to be made or disseminated . . . from this state before the public in any state, in any newspaper or
8 other publication, or any advertising device, . . . or in any other manner or means whatever,
9 including over the Internet, any statement . . . which is untrue or misleading, and which is known,
10 or which by the exercise of reasonable care should be known, to be untrue or misleading.”
11

12 110. Defendants caused to be made and/or disseminated untrue or misleading statements
13 throughout California and the United States, which were known or should have been known to
14 Defendants to be untrue and misleading to consumers, including Plaintiffs and Class members.
15

16 111. This conduct occurred in the course of Defendants’ businesses, and is part of a
17 continuing pattern or generalized course of conduct in California and throughout the United States.
18

19 112. Defendants’ conduct violated the California False Advertising law because their
20 misleading omissions concerning the safety and functionality of Class Vehicles were material
21 and likely to deceive a reasonable consumer.

22 113. Plaintiffs and the other Class Members have suffered an injury in fact, including
23 the loss of money or property, as a result of Defendants’ unfair, unlawful, and/or deceptive
24 practices. In purchasing or leasing Class Vehicles, Plaintiffs and Class members relied on
25 Defendants’ misrepresentations and/or omissions concerning the safety and reliability of the
26 Class Vehicles. These representations were untrue because the Class Vehicles contained serious

1 safety defects that could result in catastrophic engine failure, engine stalls, and fires. Had
2 Plaintiffs and Class members known this, they would not have purchased or leased Class
3 Vehicles at all, or would have paid significantly less for them. Plaintiffs and other Class
4 members overpaid at the time of purchase for vehicles that were not what they bargained for, and
5 did not receive and still have not received the benefit of their bargain.
6

7 114. Plaintiffs request that this Court enter such orders or judgments as may be
8 necessary to enjoin Defendants from continuing their unfair, unlawful, and/or deceptive practices
9 and to restore to Plaintiffs and Class members any money Defendants acquired by these
10 practices, including restitution and/or restitutionary disgorgement, and for such other relief set
11 forth below.
12

13 **COUNT V**
14 **VIOLATIONS OF THE CONSUMER LEGAL REMEDIES ACT**
15 **(Cal. Civ. Code § 1750 *et seq.*)**

16 115. Plaintiffs incorporate by reference each preceding paragraph as though fully set
17 forth herein.

18 116. Plaintiffs bring this action on behalf of themselves and the Nationwide Class
19 against all Defendants or, in the alternative, Plaintiff Parker brings this claim on behalf of the
20 California State Class against all Defendants.

21 117. Defendants are “person[s]” under Cal. Civ. Code § 1761(c).

22 118. Plaintiffs and Class members are “consumers,” as defined by Cal. Civ. Code
23 § 1761(d), who purchased or leased one or more Class Vehicles.

24 119. The California Legal Remedies Act (“CLRA”) prohibits “unfair or deceptive acts
25 or practices undertaken by any person in a transaction intended to result or which results in the
26 sale or lease of goods or services to any consumer[.]” Cal. Civ. Code § 1770(a). Defendants have

1 engaged in unfair or deceptive acts or practices that violated Cal. Civ. Code § 1750, *et seq.*, as
2 described above and below by, at a minimum, representing that Class Vehicles have
3 characteristics, uses, benefits, and qualities which they do not have; representing that Class
4 Vehicles are of a particular standard, quality, and grade when they are not; advertising Class
5 Vehicles with the intent not to sell or lease them as advertised; and representing that the subject
6 of a transaction involving Class Vehicles has been supplied in accordance with a previous
7 representation when it has not.
8

9 120. In the course of their business, Defendants intentionally or negligently concealed
10 and suppressed material facts concerning the serious and dangerous engine defects affecting the
11 Class Vehicles. The Defendants concealed the truth about the defects and failed to make any
12 adequate effort to remedy them despite the fact that they knew or should have known about them
13 for years.
14

15 121. Plaintiffs and Class members had no way of discerning that Defendants had
16 falsely and deceptively concealed these latent defects unless and until the defects manifested
17 themselves by causing a catastrophic and sudden engine failures, stalls, or fires. Plaintiffs and
18 Class members could not unravel this deception on their own until the announcement—too
19 late—of the inadequate proposed recall described above. For the Hyundai Tucson, Defendants do
20 not even know the cause or extent of the defect and have no proposed repair despite announcing
21 a recall. For the Kia Soul, the proposed recall is likely to be inadequate, if not impossible,
22 because it requires reprogramming an emissions component without regulatory certification.
23

24 122. Defendants' actions constitute a violation of the CLRA. Defendants knew or
25 should have known the true nature of these vehicles as a result of pre-sale durability testing, of
26 complaints and warranty claims by consumers to Defendants directly as well as to NHTSA, and

1 of its previous failed recalls of related engines for similar defects.

2 123. Defendants owed Plaintiffs a duty to disclose the defects and their resulting safety
3 risks because they:

4 A. Possessed exclusive knowledge that they were manufacturing, selling, and
5 distributing vehicles throughout the United States with dangerous defects;

6 B. Intentionally concealed the foregoing from regulators, Plaintiffs, and Class
7 members; and/or

8 C. Made incomplete representations, via earlier recalls of related vehicles for
9 similar defects, concerning the safety and presence of defects in the Class Vehicles, while
10 actually purposefully withholding material facts from Plaintiffs that contradicted these
11 representations.
12

13 124. Defendants' unfair and deceptive acts or practices were likely to and did in fact
14 deceive reasonable consumers, including Plaintiffs, about the true safety, roadworthiness, and
15 value of the Class Vehicles.
16

17 125. Plaintiffs and Class members have suffered ascertainable loss and actual damages
18 as a direct and proximate result of Defendants' concealment of and failure to disclose material
19 information. Plaintiffs and Class members who purchased or leased Class Vehicles would not
20 have done so at all, or would have paid significantly less for them, if their true nature was
21 known.
22

23 126. Meanwhile, Defendants had an ongoing duty to all of their customers to refrain
24 from unfair and deceptive practices under the CLRA. All owners of Class Vehicles suffered
25 ascertainable loss as a result of Defendants' deceptive and unfair acts and practices made in the
26 course of Defendants' business.

1 127. Defendants' violations present a continuing risk to Plaintiffs as well as to the
2 general public. Defendants' unlawful acts and practices complained of herein affect the public
3 interest.

4 128. Under Cal. Civ. Code § 1780(a), Plaintiffs and the California Class seek monetary
5 relief against Defendants measured as the overpayment for their vehicles caused by Defendants'
6 violations of the CLRA as alleged herein.

7 129. Plaintiffs also seek punitive damages against Defendants because they carried out
8 reprehensible conduct with willful and conscious disregard of the rights and safety of others,
9 subjecting Plaintiffs and the California Class to potential cruel and unjust hardship as a result.
10 Defendants intentionally and willfully deceived Plaintiffs on life-or-death matters, and concealed
11 material facts that only Defendants knew. Defendants' unlawful conduct constitutes malice,
12 oppression, and fraud warranting punitive damages under Cal. Civ. Code § 3294.
13

14 130. Plaintiffs further seek an order enjoining Defendants' unfair or deceptive acts or
15 practices, restitution, punitive damages, costs of court, attorneys' fees under Cal. Civ. Code
16 § 1780(e), and any other just and proper relief available under the CLRA.

17 131. Plaintiffs, through undersigned counsel, have provided Defendants notice of their
18 violations of the CLRA in compliance with Cal. Civ. Code § 1782(a).
19

20
21 **COUNT VI**
22 **VIOLATIONS OF THE SONG-BEVERLY CONSUMER WARRANTY ACT FOR**
23 **BREACH OF IMPLIED WARRANTIES**
24 **(Cal. Civ. Code §§ 1791.1 & 1792)**

25 132. Plaintiffs incorporate by reference each preceding paragraph as though fully set
26 forth herein.

133. Plaintiff Parker brings this action on behalf of herself and the California State

Class against all Defendants.
COMPLAINT—CLASS ACTION
(Case No. 2:19-cv-318) - 37

KELLER ROHRBACK L.L.P.
1201 Third Avenue, Suite 3200
Seattle, WA 98101-3052
TELEPHONE: (206) 623-1900
FACSIMILE: (206) 623-3384

1 134. Plaintiffs and the other Class members who purchased or leased the Class
2 Vehicles in California are “buyers” within the meaning of Cal. Civ. Code § 1791(b).

3 135. The Class Vehicles are “consumer goods” within the meaning of Cal. Civ. Code
4 § 1791(a).

5 136. Defendants are “manufacturer[s]” of the Class Vehicles within the meaning of
6 Cal. Civ. Code § 1791(j).

7 137. Defendants impliedly warranted to Plaintiffs and the other Class members that its
8 their Class Vehicles were “merchantable” within the meaning of Cal. Civ. Code §§ 1791.1(a) &
9 1792, however, the Class Vehicles do not have the quality that a buyer would reasonably expect
10 and are not fit for the ordinary purposes for which they were sold because the Class Vehicles and
11 their engines contained inherent defects at the time of sale. These defects can cause the Class
12 Vehicles to suffer catastrophic, sudden engine failure, stalls, and fires.

13 138. The Class Vehicles are therefore not fit for the purpose of providing safe and
14 reliable transportation. Defendants knew or should have known the use for which the Class
15 Vehicles were purchased—namely, providing safe and reliable transportation. Defendants
16 impliedly warranted that the Class Vehicles—and their engines—manufactured and distributed
17 by Defendants were of merchantable quality and fit for such use.

18 139. Because the Class Vehicles are defective, Defendants’ actions breached the
19 implied warranty that the Class Vehicles were of merchantable quality and fit for the use for
20 which they were purchased and violated the Song-Beverly Warranty Act.
21
22
23
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26

1 **COUNT VII**
2 **VIOLATIONS OF THE WASHINGTON CONSUMER PROTECTION ACT**
3 **(Wash. Rev. Code Ann. §§ 19.86.010, et seq.)**

4 140. Plaintiffs incorporate by reference each preceding paragraph as though fully set
5 forth herein.

6 141. Plaintiff Short brings this action on behalf of herself and the Washington State
7 Class.

8 142. Defendants, Plaintiff Short, and members of the Washington State Class are
9 “persons” within the meaning of Wash. Rev. Code § 19.86.010(2).

10 143. Defendants are engaged in “trade” or “commerce” within the meaning of Wash.
11 Rev. Code § 19.86.010(2).

12 144. The Washington Consumer Protection Act (“Washington CPA”) makes unlawful
13 “[u]nfair methods of competition and unfair or deceptive acts or practices in the conduct of any
14 trade or commerce.” Wash. Rev. Code § 19.86.020.

15 145. In the course of their business, Defendants intentionally or negligently concealed
16 and suppressed material facts concerning the serious and dangerous engine defects affecting the
17 Class Vehicles. The Defendants concealed the truth about the defects and failed to make any
18 effort to remedy them despite the fact that they knew or should have known about them for
19 years.
20

21 146. Plaintiffs and Class members had no way of discerning that Defendants had
22 falsely and deceptively concealed these latent defects unless and until the defects manifested
23 themselves by causing catastrophic and sudden engine failures, stalls, or fires. Plaintiffs and
24 Class members could not unravel this deception on their own until the announcement—too
25 late—of the inadequate proposed recall described above. For the Hyundai Tucson, Defendants do
26

1 not even know the cause or extent of the defect and have no proposed repair despite announcing
2 a recall. For the Kia Soul, the proposed recall is likely to be inadequate, if not impossible,
3 because it requires reprogramming an emissions component without regulatory certification.

4
5 147. Defendants' actions constitute a violation of the Washington CPA. Defendants
6 knew or should have known the true nature of these vehicles as a result of pre-sale durability
7 testing, of complaints and warranty claims by consumers to Defendants directly as well as to
8 NHTSA, and of its previous failed recalls of related engines for similar defects.

9 148. Defendants owed Plaintiffs a duty to disclose the defects and their resulting safety
10 risks because they:

11 A. Possessed exclusive knowledge that they were manufacturing, selling, and
12 distributing vehicles throughout the United States with dangerous defects;

13 B. Intentionally concealed the foregoing from regulators, Plaintiffs, and Class
14 members; and/or

15 C. Made incomplete representations, via earlier recalls of related vehicles for
16 similar defects, concerning the safety and presence of defects in the Class Vehicles, while
17 actually purposefully withholding material facts from Plaintiffs that contradicted these
18 representations.
19

20 149. Defendants' unfair and deceptive acts or practices were likely to and did in fact
21 deceive reasonable consumers, including Plaintiffs, about the true safety, roadworthiness, and
22 value of the Class Vehicles.
23

24 150. Plaintiffs and Class members have suffered ascertainable loss and actual damages
25 as a direct and proximate result of Defendants' concealment of and failure to disclose material
26 information. Plaintiffs and Class members who purchased or leased Class Vehicles would not

1 have done so at all, or would have paid significantly less for them, if their true nature was
2 known.

3 151. Meanwhile, Defendants had an ongoing duty to all of their customers to refrain
4 from unfair and deceptive practices under the Washington CPA in the course of their business.

5 152. Defendants' violations present a continuing risk to Plaintiffs as well as to the
6 general public. Defendants' unlawful acts and practices complained of herein affect the public
7 interest.

8 153. Pursuant to Wash. Rev. Code § 19.86.090, Plaintiff and the Washington Class
9 seek an order enjoining Defendants' unfair and/or deceptive acts or practices, damages, punitive
10 damages, and attorneys' fees, costs, and any other just and proper relief available under the
11 Washington CPA. Because Defendants' actions were willful and knowing, Plaintiff's damages
12 should be trebled. *Id.*

13
14
15 **COUNT VIII**
16 **BREACH OF THE IMPLIED WARRANTY OF MERCHANTABILITY**
17 **(Wash. Rev. Code Ann. §§ 62A.2-314 and 62A.2A-212)**

18 154. Plaintiffs incorporate by reference each preceding paragraph as though fully set
19 forth herein.

20 155. Plaintiff Short brings this Count on behalf of herself and the Washington State
21 Class against all Defendants.

22 156. Defendants are and were at all relevant times "merchants" with respect to motor
23 vehicles under Wash. Rev. Code § 62A.2-104(1) and 62A.2A-103(1)(t), and "sellers" of motor
24 vehicles under § 2.103(a)(4).

25 157. With respect to leases, Defendants are and were at all relevant times "lessors" of
26 motor vehicles under Wash. Rev. Code § 62A.2A-103(1)(p).

1 158. The Class Vehicles are and were at all relevant times “goods” within the meaning
2 of Wash. Rev. Code §§ 62A.2-105(1) and 62A.2A-103(1)(h).

3 159. A warranty that the Class Vehicles were in merchantable condition and fit for the
4 ordinary purpose for which vehicles are used is implied by law pursuant to Wash. Rev. Code §§
5 62A.2-314 and 62A.2A-212.

6 160. Defendants sold and/or leased Class Vehicles that were not in merchantable
7 condition and/or fit for their ordinary purpose in violation of the implied warranty. The vehicles
8 were not in merchantable condition because they were not in merchantable condition or fit for
9 the ordinary purpose for which they were sold—namely, providing safe and reliable
10 transportation.
11

12 161. Defendants’ breach of the implied warranty of merchantability caused damage to
13 the Plaintiff and Washington State Class members who purchased or leased the defective
14 vehicles. The amount of damages due will be proven at trial.
15

16 **COUNT IX**
17 **WASHINGTON “LEMON LAW”**
18 **(Wash. Rev. Code Ann. § 19.118.005, et seq.)**

19 162. Plaintiffs incorporate by reference each preceding paragraph as though fully set
20 forth herein.

21 163. Plaintiff Short brings this Count on behalf of herself and the Washington State
22 Class against all Defendants.

23 164. Plaintiff and the Washington Class own or lease “new motor vehicles” within the
24 meaning of Wash. Rev. Code § 19.118.021(12), because these vehicles are self-propelled
25 primarily designed for the transportation of persons or property over the public highways and
26 were originally purchased or leased at retail from a new motor vehicle dealer or leasing company

1 in Washington. These vehicles do not include vehicles purchased or leased by a business as part
2 of a fleet of ten or more vehicles at one time or under a single purchase or lease agreement or
3 those portions of a motor home designated, used, or maintained primarily as a mobile dwelling,
4 office, or commercial space.

5
6 165. Defendants are “manufacturer[s]” of the Class Vehicles within the meaning of
7 Wash. Rev. Code § 19.118.021(8) because they are in the business of constructing or assembling
8 new motor vehicles or are engaged in the business of importing new motor vehicles into the
9 United States for the purpose of selling or distributing new motor vehicles to new motor vehicle
10 dealers.

11 166. Plaintiff and the Washington Class are “consumers” within the meaning of Wash.
12 Rev. Code § 19.118.021(4) because they entered into an agreement or contract for the transfer,
13 lease, or purchase of a new motor vehicle, other than for purposes of resale or sublease, during
14 the eligibility period as defined by Wash. Rev. Code § 19.118.021(6).

15
16 167. The Class Vehicles did not conform to their implied or express warranties as
17 defined by Wash. Rev. Code § 19.118.021(22), during the “eligibility period,” defined by Wash.
18 Rev. Code § 19.118.021(6), or the coverage period under the applicable written warranty,
19 because they contained dangerous inherent defects. These defects substantially impaired the use,
20 market value, and/or safety of the Class Vehicles.

21
22 168. Defendants had actual knowledge of the conformities during warranty periods.
23 But the nonconformities continued to exist throughout this term, as they have not been fixed.
24 Plaintiff and class members are excused from notifying Defendants of the nonconformities
25 because they were already fully aware of the problem and any repair attempt is futile.
26

1 169. Defendants have had a reasonable opportunity to cure the nonconformities
2 because of their actual knowledge of, creation of, and attempt to conceal the nonconformities,
3 but have not done so as required under Wash. Rev. Code § 19.118.031.

4 170. For vehicles purchased, Plaintiff and the Washington Class demand a full refund
5 of the contract price, all collateral charges, and incidental costs. Wash. Rev. Code §
6 19.118.041(1)(b). For vehicles leased, Plaintiff and the Washington Class demand all payments
7 made under the lease including but not limited to all lease payments, trade-in value or inception
8 payment, security deposit, and all collateral charges and incidental costs. The Plaintiff and the
9 Washington Class also ask to be relieved of any future obligation to the lessor or lienholder. *Id.*
10 Plaintiff and the Washington Class reject an offer of replacement and will retain their vehicles
11 until payment is tendered.
12

13 **VIII. PRAYER FOR RELIEF**

14 WHEREFORE, Plaintiffs, individually and on behalf of the members of the Nationwide
15 Class and State Classes, respectfully request that the Court grant certification of the proposed
16 Nationwide Class and State Classes, including the appointment of Plaintiffs as named
17 representatives thereof, the appointment of the undersigned as Class Counsel, and the
18 designation of any appropriate issue classes and/or subclasses, under the applicable provisions of
19 Fed. R. Civ. P. 23, and that the Court enter judgment in their favor and against Defendants, as
20 follows:
21

22 A. A declaration that any applicable statutes of limitations are tolled due to the
23 fraudulent concealment alleged in this complaint, and that Defendants are estopped from relying
24 on any statutes of limitation in defense;
25
26

1 B. An order enjoining Defendants from continuing the unlawful, unfair, and
2 fraudulent business practices alleged herein;

3 C. Appropriate injunctive and equitable relief requiring Defendants to repair and/or
4 buy back all Class Vehicles, and to fully reimburse and make whole all Class members for all
5 costs and economic losses associated therewith;

6 D. Damages, including actual, compensatory, restitution, incidental, consequential,
7 costs, multiple or punitive under applicable law, and disgorgement in an amount to be
8 determined at trial;

9 E. A determination that Defendants are financially responsible for all Class notice
10 and administration of Class relief;

11 F. An order requiring Defendants to pay both pre- and post-judgment interest on any
12 amounts awarded;

13 G. An award of costs and attorneys' fees;

14 H. Leave to amend this Complaint to conform to the evidence produced in discovery
15 and at trial; and

16 I. Such other or further relief as the Court may deem appropriate, just, and
17 equitable.

18
19
20 **IX. DEMAND FOR JURY TRIAL**

21 Plaintiffs hereby demand a jury trial for all claims so triable.

22
23
24 DATED this day of March, 2019.

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