

1 Steve W. Berman (*pro hac vice* to be filed)  
2 *steve@hbsslaw.com*  
3 HAGENS BERMAN SOBOL SHAPIRO LLP  
4 1301 Second Avenue, Suite 2000  
5 Seattle, WA 98101  
6 Telephone: (206) 623-7292  
7 Facsimile: (206) 623-0594

8 Christopher R. Pitoun (SBN 290235)  
9 *christopherp@hbsslaw.com*  
10 HAGENS BERMAN SOBOL SHAPIRO LLP  
11 301 N. Lake Avenue, Suite 920  
12 Pasadena, CA 91101  
13 Telephone: (213) 330-7150  
14 Facsimile: (213) 330-7152

15 *Attorneys for Plaintiffs*  
16 [Additional counsel listed on signature page]

17 UNITED STATES DISTRICT COURT  
18 CENTRAL DISTRICT OF CALIFORNIA  
19 SOUTHERN DIVISION

20 NICOLE THORNHILL, JANET  
21 O'BRIEN, and DAVID SHAPIRO,  
22 individually and on behalf of all others  
23 similarly situated,

24 Plaintiffs,

25 v.

26 HYUNDAI MOTOR COMPANY,  
27 HYUNDAI MOTOR AMERICA, KIA  
28 MOTORS CORPORATION, and KIA  
MOTORS AMERICA, INC.,

Defendants.

No.

**CLASS ACTION COMPLAINT**

**JURY TRIAL DEMANDED**

**TABLE OF CONTENTS**

**Page**

I. INTRODUCTION..... 1

II. JURISDICTION AND VENUE..... 3

III. THE PARTIES ..... 4

    A. Plaintiffs ..... 4

    B. Defendants..... 7

IV. FACTUAL ALLEGATIONS..... 9

    A. The Engine Defect afflicts numerous engine platforms. .... 9

    B. The Engine Defect results in a serious risk of spontaneous fires across multiple models and years. .... 13

    C. Defendants issue piecemeal, inadequate, and incomplete recalls. .... 19

    D. Defendants’ pre-sale durability testing ..... 28

V. CLASS ALLEGATIONS..... 30

VI. TOLLING OF STATUTES OF LIMITATIONS ..... 33

    A. Discovery Rule Tolling..... 33

    B. Fraudulent Concealment Tolling ..... 33

    C. Estoppel..... 34

VII. CALIFORNIA LAW APPLIES TO THE CLAIMS OF THE NATIONWIDE CLASS..... 34

VIII. CLAIMS ALLEGED ..... 35

FIRST CAUSE OF ACTION VIOLATIONS OF CALIFORNIA’S CONSUMER LEGAL REMEDIES ACT (“CLRA”) (Cal. Civ. Code § 1750, *et seq.*) (on behalf of the Nationwide Class or, alternatively, the California Class)..... 35

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

SECOND CAUSE OF ACTION VIOLATIONS OF THE CALIFORNIA UNFAIR COMPETITION LAW (Cal. Bus. & Prof. Code § 17200) (on behalf of the Nationwide Class or, alternatively, the California Class) ..... 37

THIRD CAUSE OF ACTION VIOLATION OF CALIFORNIA FALSE ADVERTISING LAW (Cal. Bus. & Prof. Code § 17500, *et seq.*) (on behalf of the Nationwide Class or, alternatively, the California Class) ..... 39

FOURTH CAUSE OF ACTION VIOLATION OF THE SONG-BEVERLY ACT – BREACH OF IMPLIED WARRANTY (Cal. Civ. Code §§ 1792, 1791.1, *et seq.*) (on behalf of the Nationwide class or, alternatively, the California Class)..... 40

IX. REQUEST FOR RELIEF ..... 42

X. DEMAND FOR JURY TRIAL ..... 42

1 Plaintiffs, based on the investigation of counsel and experts, file this lawsuit  
2 individually and on behalf of a class. Plaintiffs allege as follows:

3 **I. INTRODUCTION**

4 1. The most important duty of a car manufacturer is to provide consumers  
5 with a safe car. A second related duty is to warn consumers and fix a car where the  
6 manufacturer learns of a vehicle defect that implicates serious safety issues.

7 2. Hyundai and Kia breached these fundamental duties. Certain Hyundai  
8 and Kia vehicles equipped with gasoline direct injection (“GDI”) and multipoint fuel  
9 injections (“MPI”) engines (“Class Vehicles”)<sup>1</sup> contain an engine defect that presents  
10 consumers with an unacceptable risk of engine failure and spontaneous engine fire  
11 while driving.

12 3. Hyundai and Kia knew before selling the Class Vehicles that their  
13 engines were defective, prone to premature and catastrophic failure, and posed an  
14 unreasonable risk of non-collision engine failures and fires. A design and/or  
15 manufacturing defect exists in the Class Vehicles that causes the engine’s moving  
16 parts, such as connecting rod bearings, to prematurely wear to the point that the engine  
17 parts seize, which stops engine operation while running (the “Engine Defect”). Engine  
18 seizure often causes internal parts, such as the connecting rods, to break and knock a  
19 hole in the engine, permitting fluids to leak and ignite a fire.

20 4. The Engine Defect exposes putative class members to an unreasonable  
21 and increased risk of accident, injury, or death should their vehicle’s engine fail while  
22 in operation, let alone spontaneously ignite. The Engine Defect also exposes  
23

24 \_\_\_\_\_  
25 <sup>1</sup> On information and belief, the Class Vehicles include, but are not limited to: 2012  
26 MY Hyundai Santa Fe; 2011-2013, 2016 MY Hyundai Sonata Hybrid; 2015-2016 MY  
27 Hyundai Veloster; 2012-2015 MY Kia Forte; 2012-2015 MY Kia Forte Koup; 2011-  
28 2013 MY Kia Optima Hybrid; 2012-2013 MY Kia Sorento; 2014-2015 MY Kia Soul;  
2012 MY Kia Sportage. Plaintiffs reserve the right to supplement or amend the Class  
Vehicles after conducting discovery.

1 passengers and other drivers on the road to an unreasonable and increased risk of  
2 accident, injury, or death.

3 5. The Engine Defect plagues an ever-increasing number of Hyundai and  
4 Kia vehicle models, years, and engines, including the Class Vehicles. Many putative  
5 class members, including Plaintiffs Nicole Thornhill, Janet O'Brien, and David  
6 Shapiro, have already experienced catastrophic engine failure because of the Engine  
7 Defect, costing them thousands of dollars in repairs.

8 6. The catastrophic engine failure and fire risk is the direct result of a defect  
9 known to, concealed by, and still unremedied by Hyundai and Kia. Not only did  
10 Hyundai and Kia actively conceal the Engine Defect from consumers, but they also  
11 did not timely reveal that the Engine Defect poses a serious safety hazard.

12 7. Hyundai and Kia knew or should have known about the Engine Defect  
13 from: (1) putative class member complaints and warranty claims made directly to  
14 Hyundai and Kia; (2) technical service bulletins and safety recalls issued by Hyundai  
15 and Kia in an attempt to address the Engine Defect; (3) widespread complaints on the  
16 internet and lodged with NHTSA; and (4) Hyundai and Kia's own pre-sale durability  
17 testing of the Class Vehicles.

18 8. Despite Hyundai and Kia's knowledge of the Engine Defect, the  
19 automakers have issued piecemeal and belated recalls over the last six years—most  
20 recently, the recall of the Class Vehicles—all while omitting similar vehicles without  
21 apparent explanation.

22 9. Because of Hyundai and Kia's unfair, misleading, deceptive, and/or  
23 fraudulent business practices, in failing to disclose the Engine Defect to Plaintiffs and  
24 putative class members, owners and lessees of the Class Vehicles have suffered losses  
25 in money and property. Had Plaintiffs and the putative class members known of the  
26 Engine Defect, they would not have purchased or leased those vehicles, or would have  
27 paid substantially less for them. Engine failure and fire in the Class Vehicles also  
28

1 requires expensive repairs, car rentals, car payments, towing charges, time off work,  
2 and other miscellaneous costs. Moreover, because of the Engine Defect and Hyundai  
3 and Kia’s concealment, the Class Vehicles have a lower market value and are  
4 inherently worth less than they otherwise would be.

5 10. Plaintiffs bring this action to redress Hyundai and Kia’s misconduct.  
6 Plaintiffs seek recovery of damages and a repair under state consumer-protection  
7 statutes and implied warranties, and reimbursement of all expenses associated with the  
8 repair or replacement of the Class Vehicle.

9 **II. JURISDICTION AND VENUE**

10 11. This Court has subject matter jurisdiction under the Class Action Fairness  
11 Act of 2005 (“CAFA”), 28 U.S.C. §§ 1332(d)(2) and (6) because: (i) there are one  
12 hundred or more class members, (ii) there is an aggregate amount in controversy  
13 exceeding \$5,000,000.00 exclusive of interest and costs, and (iii) there is minimal  
14 diversity because at least one plaintiff and one defendant are citizens of different  
15 states. This Court also has supplemental jurisdiction over the state law claims under 28  
16 U.S.C. § 1367.

17 12. Venue is proper in this judicial district under 28 U.S.C. § 1391 because  
18 Defendants transact substantial business and are headquartered in this district.  
19 Defendants advertised in this district and received substantial revenue and profits from  
20 sales and/or leases of the Class Vehicles in this district. Defendants also have a  
21 manufacturing plant in this district. Therefore, a substantial part of the events and/or  
22 omissions giving rise to the claims occurred, in part, within this district.

23 13. This Court has personal jurisdiction over Defendants by virtue of their  
24 transactions and business conducted in this judicial district, and because Defendants  
25 are headquartered in California. Defendants have transacted and done business, and  
26 violated statutory and common law, in the State of California and in this judicial  
27 district.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**III. THE PARTIES**

**A. Plaintiffs**

14. Plaintiff and proposed class representative Nicole Thornhill is a resident and citizen of Ventura, California. In May 2018, Ms. Thornhill purchased a 2012 Kia Optima Hybrid with a 2.4-liter Theta II MPI engine from a private seller in California. Ms. Thornhill purchased the Optima because all her research indicated that it was a safe vehicle, and the vehicle had low mileage and a clean CarFax. Ms. Thornhill had friends with Kias that told her they loved their cars, and her partner worked on Kia and Hyundai advertising campaigns years ago and loved their vehicles, too. She thought she was buying a safe, reliable vehicle. In August 2018, just months after financing the vehicle purchase, Ms. Thornhill was driving to work when she noticed a knocking noise coming from the engine. She dropped the vehicle off at a local mechanic to inspect it that same day. The mechanic said the engine was on the verge of failure and needed immediate repair. Ms. Thornhill took the vehicle to Kirby Kia of Ventura in Ventura, California, where it found the engine had a “lower-end knock from crank area” and required replacement of the short block. Because Ms. Thornhill was still making payments on the vehicle, as well as insuring it, she had to charge the nearly \$7,000 engine repair to a credit card. The vehicle sat at the dealership for six months awaiting the short block needed for the repair. This waiting period negatively affected Ms. Thornhill’s life and livelihood, as she could not afford a rental vehicle and instead relied on public transportation or borrowing her partner’s car for her 60 mile-per-day commute to work. Finally, on February 9, 2019, her vehicle was repaired and returned to her. Roughly one year later, Kia finally recalled her vehicle for the Engine Defect. Ms. Thornhill would not have purchased the vehicle, or she would have paid less for it, had she known about the Engine Defect.

15. Plaintiff and proposed class representative Janet O’Brien is a resident and citizen of Ferndale, Michigan. In September 2012, Ms. O’Brien purchased a new 2012

1 Kia Sportage EX with a 2.4-liter Theta II MPI engine from Al Serra Kia of Grand  
2 Blanc in Michigan. The vehicle came with the manufacturer's standard warranty. This  
3 warranty was a selling point for Ms. O'Brien, as she interpreted it as indication about  
4 the quality of the vehicle and Kia's commitment to stand behind its product. Over the  
5 July 4, 2019 holiday weekend, the vehicle suffered catastrophic engine failure while  
6 Ms. O'Brien was driving to a local dog park, leaving her stranded on the side of the  
7 road with her two dogs in the summer heat. She had just paid the vehicle off a few  
8 months before in April. Two Kia dealerships inspected the vehicle and blamed the  
9 engine failure on lack of maintenance, even though Ms. O'Brien had it routinely  
10 serviced by her local Kia dealership and the dealership had the records to confirm this.  
11 After shopping the engine replacement around and receiving a quote for \$8,000 from  
12 one Kia dealership, Ms. O'Brien sold the vehicle to an online auction house for around  
13 \$2,000. But for the catastrophic engine failure caused by the Engine Defect,  
14 Ms. O'Brien estimates her vehicle was worth around \$10,000 based on regular offers  
15 to buy it that she received from metro Detroit-based Kia dealerships. During the  
16 tumultuous three weeks her vehicle was inoperable, Ms. O'Brien spent about \$3,200  
17 in rental car fees and had difficulty finding and buying a new car given the July  
18 holiday. She eventually purchased a Subaru that she had to drive to Ohio to pick up.  
19 Roughly a year-and-a-half after Ms. O'Brien's catastrophic engine failure, Kia finally  
20 recalled her vehicle for the Engine Defect. But the recall only offers relief for vehicle  
21 owners' with engines that fail before 150,000 miles, and Ms. O'Brien's engine failure  
22 occurred at 153,000 miles. Ms. O'Brien would not have purchased the vehicle, or she  
23 would have paid less for it, had she known about the Engine Defect.

24 16. Plaintiff and proposed class representative David Shapiro is a resident  
25 and citizen of Topanga, California. In May 2018, Mr. Shapiro purchased a used 2016  
26 Hyundai Sonata Hybrid with a 2.0-liter Nu GDI HEV engine from Anaheim Pre-  
27 Owned Cars in Pomona, California. Because the vehicle was under 50,000 miles and  
28



1 less than five years old at the time of purchase, it was still covered by Hyundai’s new  
2 car warranty. Mr. Shapiro selected this vehicle because of its hybrid electric engine  
3 and favorable test drive of a family member’s Hyundai. In November 2020,  
4 Mr. Shapiro’s daughter was pulling the vehicle out from their home when she heard  
5 the engine make concerning noises. Mr. Shapiro had the car towed to Keyes Hyundai  
6 Van Nuys. The vehicle’s engine had failed and it sat at the dealership for the next two  
7 months awaiting arrival of a replacement engine, all while Mr. Shapiro fought with  
8 Hyundai to cover the costs of the repair. Initially, Hyundai denied responsibility and  
9 warranty coverage for the engine failure altogether. The service representative first  
10 told Mr. Shapiro that he had failed to maintain his vehicle properly. After Mr. Shapiro  
11 did some research and discovered the engine issue was more widespread, he requested  
12 the dealership ask Hyundai to cover the cost. The dealership sent his request to  
13 Hyundai and it finally agreed to pay seventy-five percent of the repair costs, but  
14 Mr. Shapiro would have to cover the remainder. More than a month later, the  
15 dealership told Mr. Shapiro the long block replacement was no longer available and  
16 they would have to install a short block instead—a twenty percent cost increase for the  
17 repair. This meant Mr. Shapiro’s share would go from \$1,500 to \$2,500 since the total  
18 repair was now \$9,000. At this point, Mr. Shapiro had been renting a car out-of-pocket  
19 for over two months despite requesting one. Again, he demanded a rental vehicle, but  
20 was denied. He incurred roughly three months of rental costs while his vehicle was  
21 inoperable. Only after the vehicle was finally recalled in December 2020, did Hyundai  
22 inform him that it would fully cover the engine replacement. Hyundai also finally  
23 agreed to supply a rental car in January 2021. Mr. Shapiro’s vehicle was repaired and  
24 returned to him in February 2021. Mr. Shapiro would not have purchased the vehicle,  
25 or he would have paid less for it, had he known about the Engine Defect.

1 **B. Defendants**

2 17. Defendant Hyundai Motor Company (“HMC”) is a South Korean  
3 multinational automaker headquartered in Seoul, South Korea. HMC, together with  
4 Defendants Kia Motors Corporation, Kia Motors America, Inc., and Hyundai Motor  
5 America, comprise the Hyundai Motor Group, which manufactures the Class Vehicles  
6 at issue in this Complaint. HMC is the parent corporation of Hyundai Motor America.

7 18. Defendant Hyundai Motor America (“HMA”) is an automobile design,  
8 manufacturing, distribution, and/or service corporation doing business within the  
9 United States. HMA designs, develops, manufactures, distributes, markets, sells,  
10 leases, warrants, services, and repairs passenger vehicles, including the Hyundai Class  
11 Vehicles.

12 19. Defendant HMA is incorporated and headquartered in the state of  
13 California with its principal place of business at 10550 Talbert Avenue, Fountain  
14 Valley, California 92708. HMA is the American sales, marketing, and distribution arm  
15 of its parent company, HMC, overseeing sales and other operations across the United  
16 States. HMA distributes and sells a complete line of Hyundai vehicles through more  
17 than 800 dealers throughout the United States. Money received from the purchase or  
18 lease of a Hyundai vehicle from a dealership flows from the dealer to HMA and HMC  
19 (together, “Hyundai”). Hyundai uses its nationwide dealerships as a means to  
20 communicate with Plaintiffs and putative class members.

21 20. On information and belief, Defendant HMA is responsible for the  
22 distribution, service, repair, installation, and decisions regarding the Hyundai Class  
23 Vehicles as they relate to the Engine Defect.

24 21. On information and belief, Defendant HMA developed the post-purchase  
25 owner’s manuals, warranty booklets, and other information related to maintenance  
26 recommendations and/or schedules for the Hyundai Class Vehicles.

1           22. Defendant HMA engages in continuous and substantial business in  
2 California.

3           23. Defendant Kia Motors Corporation (“KMC”) is a South Korean  
4 multinational automaker headquartered in Seoul, South Korea. KMC is the parent  
5 corporation of Kia Motors America, Inc. As of December 31, 2017, Defendant KMC’s  
6 largest shareholder is HMC, which holds 33.88 percent of KMC’s stock.<sup>2</sup>

7           24. Defendant Kia Motors America, Inc. (“KMA”) is an automobile design,  
8 manufacturing, distribution, and/or service corporation doing business within the  
9 United States. KMA designs, develops, manufactures, distributes, markets, sells,  
10 leases, warrants, services, and repairs passenger vehicles, including the Kia Class  
11 Vehicles.

12           25. Defendant KMA is incorporated and headquartered in the state of  
13 California with its principal place of business at 111 Peters Canyon Road, Irvine,  
14 California 92606. KMA is the American sales, marketing, and distribution arm of its  
15 parent company, KMC, overseeing sales and other operations across the United States.  
16 KMA distributes and sells a complete line of Kia vehicles through more than 755  
17 dealers throughout the United States. Money received from the purchase or lease of a  
18 Kia vehicle from a dealership flows from the dealer to KMA and KMC (together,  
19 “Kia”). Kia uses its nationwide dealerships as a means to communicate with Plaintiffs  
20 and putative class members.

21           26. On information and belief, Defendant KMA is responsible for the  
22 distribution, service, repair, installation, and decisions regarding the Kia Class  
23 Vehicles as they relate to the Engine Defect.

24  
25  
26  
27           <sup>2</sup> 2017 KMC Annual Report, available at [https://pr.kia.com/en/company/ir/ir-](https://pr.kia.com/en/company/ir/ir-library/annual-report.do)  
28 [library/annual-report.do](https://pr.kia.com/en/company/ir/ir-library/annual-report.do) (last visited Mar. 10, 2021).

1 27. On information and belief, Defendant KMA developed the post-purchase  
2 owner's manuals, warranty booklets, and other information related to maintenance  
3 recommendations and/or schedules for the Kia Class Vehicles.

4 28. Defendant KMA engages in continuous and substantial business in  
5 California.

6 29. On information and belief, the design, manufacture, modification,  
7 installation, and decisions regarding the Class Vehicles and their engines were made  
8 exclusively by Defendants.

#### 9 IV. FACTUAL ALLEGATIONS

##### 10 A. The Engine Defect afflicts numerous engine platforms.

11 30. In 2009, Defendants announced their first line of GDI engines in the  
12 United States, the "Theta II" engines.<sup>3</sup> The Theta II engines eventually included a  
13 turbocharged 2.0-liter model and a naturally aspirated 2.4-liter model.<sup>4</sup> On information  
14 and belief, Hyundai used Theta II GDI engines in certain Elantra, Sonata, Santa Fe and  
15 Santa Fe Sport, and Tucson vehicles, and Kia used these engines in certain Optima,  
16 Sorento, and Sportage vehicles.

17 31. Defendants also manufacture and use a 2.4-liter Theta II MPI engine. On  
18 information and belief, Hyundai used these Theta II MPI engines in certain Sonata  
19 Hybrid and Santa Fe vehicles, and Kia used them in certain Optima Hybrid, Sportage,  
20 Sorento, Forte, and Forte Koup vehicles.

21 32. In 2010, Defendants debuted another, smaller GDI engine, the "Gamma"  
22 1.6-liter engine.<sup>5</sup> In or around 2011, Defendants developed a turbocharged version of  
23 the 1.6-liter Gamma GDI engine. On information and belief, Hyundai used the  
24

25 \_\_\_\_\_  
26 <sup>3</sup> <https://www.caranddriver.com/news/a18737484/hyundai-unveils-new-2-4-liter-direct-injection-four-cylinder/> (last visited Mar. 10, 2021).

27 <sup>4</sup> <https://www.hyundainews.com/en-us/releases/2291> (last visited Mar. 10, 2021).

28 <sup>5</sup> *Id.*

1 Gamma GDI engine in certain Accent, Elantra, Kona, Sonata, Tucson, and Veloster  
2 vehicles, and Kia used these engines in certain Forte, Rio, and Soul vehicles.

3 33. In or around 2013, Defendants introduced another GDI engine to its  
4 lineup, the “Nu” 2.0-liter model.<sup>6</sup> Although first introduced in a 1.8-liter size in 2010,  
5 the Nu GDI engine line was expanded in 2012 to include this 2.0-liter version. On  
6 information and belief, Kia used the Nu 2.0-liter GDI engines in certain Forte, Optima,  
7 and Soul vehicles, while Hyundai used these engines in certain Tucson, Elantra, and  
8 Sonata Hybrid vehicles.

9 34. On information and belief, the Class Vehicles are equipped with various  
10 MPI and GDI engines that contain the Engine Defect. The Engine Defect causes the  
11 vital engine parts, including but not limited to the connecting rod and connecting rod  
12 bearings, to wear and fail prematurely. The worn engine parts can result in abnormal  
13 knocking noise from the engine and illumination of the oil pressure warning light.  
14 Worse, it can seize and break while driving, immediately ceasing engine operation and  
15 often knocking a hole in the engine block. Leaking engine fluids can ignite, causing a  
16 sudden engine fire. Along with creating a severe driving hazard and increasing the  
17 chance of injury or death, the Engine Defect causes serious, extensive, and expensive  
18 damage to the engine and even total loss of the Class Vehicle.

19 35. Despite the Engine Defect, Defendants marketed their vehicles to  
20 Plaintiffs and putative class members as safe, reliable, and functional, and touted their  
21 engines. Below are examples pulled from Defendants’ vehicle brochures:  
22  
23  
24  
25  
26  
27

---

28 <sup>6</sup> <https://www.hyundai.com/en-us/releases/1726> (last visited Mar. 10, 2021).

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28



**A new way to roll®**

Introducing the all-new 2014 Kia Soul. Everything from an available 2.0L Gasoline Direct Injection (GDI) engine\* to a panoramic sunroof\* is designed to make every drive more exciting than ever. Unique exterior styling — complemented by a striking interior with soft-touch material throughout — gives Soul a personality all its own. Three trim levels along with a choice of packages allow you to add impressive options. Like all new Kia models, Soul comes with an industry-leading, 10-year/100,000-mile warranty program.†

**A new way to roll®**

Introducing the all-new 2014 Kia Soul. Everything from an available 2.0L Gasoline Direct Injection (GDI) engine\* to a panoramic sunroof\* is designed to make every drive more exciting than ever. Unique exterior styling — complemented by a striking interior with soft-touch material throughout — gives Soul a personality all its own. Three trim levels along with a choice of packages allow you to add impressive options. Like all new Kia models, Soul comes with an industry-leading, 10-year/100,000-mile warranty program.†

**EXCERPT FROM 2014 KIA SOUL BROCHURE**

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

2016 HYUNDAI SONATA HYBRID

# THE NEW SONATA HYBRID. COMMON SENSE IS NOW MORE SENSUOUS THAN EVER.

**T**ell Hyundai engineers to find room for improvement, and you know what you'll get? In the all-new, totally redesigned 2016 Sonata Hybrid, you get more room – more passenger room, and more cargo room. In fact, by redesigning the hybrid battery system packaging and moving it under the trunk floor, we've given the new Sonata Hybrid more total interior volume than any hybrid in its class.<sup>1</sup>

You also get more fuel efficiency. Powered by a new 2.0L GDI hybrid engine, the 2016 Sonata Hybrid delivers an EPA-estimated 44 MPG on the highway.<sup>2</sup> And the improvements don't stop there. Its regenerative braking system captures more electric charge than the previous model, and its steering and suspension systems are more dynamic. Its safety systems are more advanced, too, with available technologies like Blind Spot Detection, Forward Collision Warning, and more.

Now here's where common sense gets sensuous. Sonata Hybrid's sleek new exterior is a more sophisticated design – an expression of our Fluidic Sculpture accented by LED Daytime Running Lights, unique LED taillights and Eco-spoke alloy wheels. The aerodynamic benefits of a full underbody cover and active air flaps behind the front grille contribute to an industry-leading 0.24 drag coefficient that helps the car slip through the air (boosting Sonata Hybrid's fuel efficiency even further).

Inside, the cabin is more luxurious, with standard dual automatic temperature control and available features like a heated steering wheel, ventilated front seats and heated front/rear seats. We even found room for improvement in America's Best Warranty. The hybrid-related components of Sonata Hybrid are covered for 10 years or 100,000 miles with a lifetime hybrid battery warranty. No other car in its class can match that.

<sup>1</sup>Claim based on comparison of specifications on manufacturer websites. <sup>2</sup>EPA estimates for comparison only. Mileage may vary. Your actual mileage will vary with options, driving conditions, driving habits and vehicle's condition.



You also get more fuel efficiency. Powered by a new 2.0L GDI hybrid engine, the 2016 Sonata Hybrid delivers an EPA-estimated 44 MPG on the highway.

EXCERPT FROM 2016 HYUNDAI SONATA HYBRID BROCHURE



Step on the gas, and feel how eagerly it accelerates off the line. That's Gasoline Direct Injection giving its 1.6-liter engine a stunning combination of 138 horsepower and outstanding fuel economy.

EXCERPT FROM 2015 HYUNDAI VELOSTER BROCHURE

**B. The Engine Defect results in a serious risk of spontaneous fires across multiple models and years.**

36. Complaints submitted to Defendants and to NHTSA via Vehicle Owner Questionnaires (“VOQ”) reveal a large number of Defendants’ vehicles catching on fire. In 2019, NHTSA opened an investigation into non-collision engine fires in Defendants’ vehicles in response to a petition from the Center for Auto Safety after identifying more than 3,000 reports of non-collision fires in Hyundai and Kia vehicles,



1 including Class Vehicles.<sup>7</sup> In the course of this investigation, NHTSA expanded its  
2 scope to include additional vehicles, including the Class Vehicles, as fire reports grew.

3 37. Before NHTSA began its investigation, the Center for Auto Safety  
4 reviewed non-collision fire data and found, in NHTSA's VOQ database alone, at least  
5 120 reports of 2011-2014 Optima, Sorento, Sonata, or Santa Fe vehicles catching fire  
6 without a preceding collision.<sup>8</sup> There were also 229 separate complaints regarding  
7 melted wires in the engine bay, smoke, and burning odors, indicating potential fires.<sup>9</sup>  
8 The vast majority of complaints that discuss the origins of the vehicle fires state that  
9 smoke and/or flames are first seen emanating from the engine bay before engulfing the  
10 car in flames.

11 38. Based on the high volume of non-collision vehicle fires, on June 11,  
12 2018, the Center for Auto Safety petitioned NHTSA to investigate a fire-causing  
13 defect in 2011-2014 Kia Optima and Sorento, and Hyundai Sonata and Santa Fe  
14 vehicles.<sup>10</sup> On July 24, 2018, the Center filed an addendum to its original petition,  
15 requesting NHTSA expand the investigation to include 2010-2015 Kia Soul vehicles.<sup>11</sup>  
16  
17

---

18 <sup>7</sup> See NHTSA PE19-003 (Hyundai), available at [https://static.nhtsa.gov-  
19 /odi/inv/2019/INOA-PE19003-2613.PDF](https://static.nhtsa.gov-/odi/inv/2019/INOA-PE19003-2613.PDF) (last visited Mar. 10, 2021); NHTSA PE19-  
20 004 (Kia), available at <https://static.nhtsa.gov/odi/inv/2019/INOA-PE19004-4727.PDF>  
(last visited Mar. 10, 2021).

21 <sup>8</sup> See 2011-14 Hyundai Kia Fire Complaints excel spreadsheet containing NHTSA  
22 complaint data, available at [http://www.autosafety.org/wp-content/uploads/2018/06/  
23 2011-14-Hyundai-Kia-Fire-Complaints-FINAL.xlsx](http://www.autosafety.org/wp-content/uploads/2018/06/2011-14-Hyundai-Kia-Fire-Complaints-FINAL.xlsx) (last visited Mar. 10, 2021).

24 <sup>9</sup> *Id.*

25 <sup>10</sup> See June 11, 2018 Center for Auto Safety Petition, available at  
[https://www.autosafety.org/wp-content/uploads/2018/06/Center-for-Auto-Safety-Kia-  
26 Hyundai-Fire-Defect-Petition.pdf](https://www.autosafety.org/wp-content/uploads/2018/06/Center-for-Auto-Safety-Kia-Hyundai-Fire-Defect-Petition.pdf) (last visited Mar. 10, 2021).

27 <sup>11</sup> See July 24, 2018 Center for Auto Safety Petition, available at  
[https://www.autosafety.org/wp-content/uploads/2018/06/Center-for-Auto-Safety-  
28 Addendum-to-June-11-2018-petition-regarding-Kia-Hyundai-fires.pdf](https://www.autosafety.org/wp-content/uploads/2018/06/Center-for-Auto-Safety-Addendum-to-June-11-2018-petition-regarding-Kia-Hyundai-fires.pdf) (last visited  
Mar. 10, 2021).

1           39. In October 2018, as reports of these fires continued to increase, the  
2 Center for Auto Safety publically called on Defendants to recall these vehicles, saying,  
3 “Since our call for an investigation into these Kia and Hyundai non-collision fires, we  
4 have seen reports of *almost one fire every single day across these five models.*”<sup>12</sup> The  
5 statement went on to say, “The number and severity of these complaints, when people  
6 are simply driving their cars on the highway, is frightening. It is long past time for Kia  
7 and Hyundai to act. Car fires put everyone on the road in significant danger.”

8           40. The Center for Auto Safety reported that between June 12 and October  
9 12, 2018, it learned of 103 additional fire reports, amounting to an 85% increase.

10           41. While automakers occasionally produce vehicles that catch fire, when  
11 compared to these Hyundai and Kia vehicles, the Center for Auto Safety noted that  
12 there is enough of a statistical disparity to suggest a systemic issue. More specifically,  
13 in its June 7, 2018 review of all NHTSA-reported cases of non-collision fires  
14 involving similar class and size vehicles, the Center found there were 22 reported  
15 cases in competitor vehicles as opposed to 120 for the Kia and Hyundai models.<sup>13</sup> The  
16 June 11, 2018 Petition noted that Defendants’ competitors Honda and Toyota sold 3.4  
17 million comparable vehicles in the U.S. to Defendants’ approximately 2.2 million  
18 vehicles, and that “[w]hen factoring in the number of vehicles of these types sold per  
19 manufacturer compared to the number of fire complaints, the differences are even  
20 more profound.”<sup>14</sup>

---

23           <sup>12</sup> October 12, 2018 Center for Auto Safety Press Release, available at  
24 [https://www.autosafety.org/center-for-auto-safety-demands-recall-of-2-9-million-  
25 2011-2014-kia-and-hyundai-vehicles-after-almost-one-non-collision-fire-report-every-  
day-for-four-months/](https://www.autosafety.org/center-for-auto-safety-demands-recall-of-2-9-million-2011-2014-kia-and-hyundai-vehicles-after-almost-one-non-collision-fire-report-every-day-for-four-months/) (last visited Mar. 10, 2021).

26           <sup>13</sup> See June 11, 2018 Center for Auto Safety Petition, available at  
27 [https://www.autosafety.org/wp-content/uploads/2018/06/Center-for-Auto-Safety-Kia-  
Hyundai-Fire-Defect-Petition.pdf](https://www.autosafety.org/wp-content/uploads/2018/06/Center-for-Auto-Safety-Kia-Hyundai-Fire-Defect-Petition.pdf) (last visited Mar. 10, 2021).

28           <sup>14</sup> *Id.*

1           42. Summarizing its findings on these five Hyundai/Kia vehicle models, the  
2 Center for Auto Safety found that as of July 23, 2018, NHTSA’s VOQ database  
3 contained reports of at least:

- 4           • 39 non-collision 2011-2014 Kia Sorento fires
- 5           • 36 non-collision 2011-2014 Kia Optima fires
- 6           • 23 non-collision 2010-2015 Kia Soul Fires
- 7           • 51 non-collision 2011-2014 Hyundai Sonata fires
- 8           • 12 non-collision 2011-2014 Hyundai Santa Fe fires
- 9           • **161 non-collision fires total**

10          43. Some typical examples of NHTSA non-collision fire complaints include:

11                           **2013 Hyundai Sonata – NHTSA ID No. 11115600**

12                           I WAS DRIVING MY VEHICLE ON THE 95 N GOING ONTO 295  
13 N HIGHWAY FOR APPROXIMATELY 1 HOUR WHEN IT  
14 STARTED TO LOSE POWER AND SMOKE. I PULLED OVER  
15 AND DISCOVERED VIA ANOTHER CAR PASSING BY THAT  
16 THE VEHICLE WAS ON FIRE AND IT WENT UP IN FLAMES.

17                           **2013 Kia Optima – NHTSA ID No. 11112989**

18                           TL\* THE CONTACT OWNED A 2013 KIA OPTIMA. WHILE  
19 DRIVING 60 MPH, SMOKE APPEARED UNDER THE VEHICLE  
20 ON THE DRIVER’S SIDE. THE CONTACT WAS ALERTED OF  
21 FLAMES BY OTHER MOTORISTS. THE CONTACT PULLED  
22 THE VEHICLE OVER TO THE SIDE OF THE ROAD AND EXITED  
23 ON THE PASSENGER SIDE. THERE WERE NO INJURIES  
24 SUSTAINED. THE FIRE DEPARTMENT EXTINGUISHED THE  
25 FIRE AND A POLICE REPORT WAS FILED. THE VEHICLE WAS  
26 TOWED AND DEEMED A TOTAL LOSS. THE CONTACT  
27 CALLED EARNHARDT KIA DEALER AT (602) 346-5400  
28 (LOCATED AT 2121 E BELL RD, PHOENIX, AZ 85022), BUT THE  
VEHICLE WAS NOT DIAGNOSED OR REPAIRED. THE  
MANUFACTURER WAS MADE AWARE OF THE FAILURE. THE  
VIN WAS NOT AVAILABLE. THE FAILURE MILEAGE WAS  
30,000.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**2012 Kia Sorento – NHTSA ID No. 11111708**

JUNE 23 DRIVING ON THE FREEWAY POPPING NOISECOMING FROM WHAT SOUNDED LIKE UNDER THE CAR RED ENGINE SYMBOL COMES ON IN THE LOWER LEFT HAND CORNER OF DASH IMMEDIATELY BEGIN GETTING OVER SECOND POPPING OCCURS WITHIN 10-15 SECONDS RED OIL LAMP LIGHT COMES ON RIGHT HAND SIDE OF DASHBOARD SMOKING FROM VEHICLE HAPPENS IMMEDIATELY GET TO SIDE OF FREEWAY ATTEMPT TO TURN OFF CAR RESTARTS ATTEMPT AGAIN TURNS OFF IMMEDIATELY GET OUT OF CAR AND RUN TOWARDS GOOD SAMARITAN WHO WITNESSES ENTIRE THING STOPS AND STAYS WITH ME ENTIRE TIME 911 CALLED ANOTHER VEHICLE PULLS OVER AS FRONT OF VEHICLE IS FULLY ENGULFED IN FLAMES AND ATTEMPTS TO EXTINGUISH FIRE BUT TO NO AVAIL FIRE TRUCKS AND FREEWAY ROADSIDE ASSISTANCE COME WITHIN 10 MINUTES OF INCIDENT EXTINGUISH FRONT OF MY VEHICLE TOWED IN MOTION AT BEGINNING ON FREEWAY PULLED OVER AND GOT OUT ON SIDE OF FREEWAY NHTSA RECALL NUMBER17V224 MAY AND OCTOBER 2017 JUST HAD 105,000 MILE MAINTENANCE DONE AT RALLY KIA ON JUNE 11

**2014 Kia Soul – NHTSA ID No. 11120580**

ON AUGUST 16, 2018 AT APPROX 1030 PM MY DAUGHTER WAS DRIVING ON ROUTE 5 IN HOLLIS CETNER MAINE AT APPROX 50 MPH AND CAR STARTED RUNNING ROUGH, SMOKE STARTED COMING FROM UNDER HOOD. PULLED OVER TO THE SIDE OF ROAD AND CAR WAS ON FIRE UNDERNEATH ENGINE, MELTING THE ENGINE. FOUND MELTED ENGINE PARTS (PISTON HEADS, CONNECTING RODS) ON THE GROUND ALONG WITH OTHER MELTED PARTS. FIRE WAS PUT OUT BY HOME OWNER ON ROUTE 5.

44. On August 21, 2018, in response to the Center for Auto Safety’s petition for investigation, NHTSA’s Office of Defects Investigations (“ODI”) opened a Defect Petition (DP18-003) to evaluate whether to grant or deny the petition. In September

1 and October 2018, ODI sent Information Request letters to Defendants requesting  
2 information on all engine and non-engine related fires in the vehicles identified in the  
3 Center for Auto Safety’s petition.

4 45. ODI’s initial inquiries to Defendants uncovered more than 3,000  
5 complaints of non-collision vehicle fires, and more than 100 injuries from these non-  
6 collision vehicle fires, in Class Vehicles.<sup>15</sup>

7 46. On March 29, 2019, based on its extensive analysis of the information  
8 obtained from Defendants and its review of other applicable materials, ODI granted  
9 the Center for Auto Safety’s petition and opened a preliminary evaluation to assess the  
10 scope, frequency, and potential safety-related consequences of alleged defects relating  
11 to non-collision vehicle fires in Hyundai’s 2011-2014 Sonata and Santa Fe, Kia’s  
12 2011-2014 Optima and Sorento, and Kia’s 2010-2015 Soul.

13 47. Notably, in its April 12, 2019 letters to Hyundai and Kia, ODI expanded  
14 the scope of its investigation into Defendants’ vehicles to include “all other [Hyundai  
15 and Kia] vehicles equipped with Theta II, Lambda II, Gamma and Nu engines,  
16 manufactured for sale or lease in the United States, including, but not limited to, the  
17 District of Columbia, and current U.S. territories and possessions.”<sup>16</sup> To date, this  
18 NHTSA investigation is ongoing.

19 48. On information and belief, Defendants were aware of the alarming failure  
20 rate of the Class Vehicles’ engines caused by the Engine Defect through but not  
21 limited to: (1) Defendants’ own records of customer complaints and warranty claims;  
22

---

23 <sup>15</sup> See NHTSA PE19-003 (Hyundai), available at [https://static.nhtsa.gov/  
24 /odi/inv/2019/INOA-PE19003-2613.PDF](https://static.nhtsa.gov/odi/inv/2019/INOA-PE19003-2613.PDF) (last visited Mar. 10, 2021); NHTSA PE19-  
25 004 (Kia), available at <https://static.nhtsa.gov/odi/inv/2019/INOA-PE19004-4727.PDF>  
(last visited Mar. 10, 2021).

26 <sup>16</sup> See Apr. 12, 2019 NHTSA Ltr. to Hyundai, available at [https://static.nhtsa.gov/  
27 odi/inv/2019/INIM-PE19003-74878.pdf](https://static.nhtsa.gov/odi/inv/2019/INIM-PE19003-74878.pdf) (last visited Mar. 10, 2021); See Apr. 12,  
28 2019 NHTSA Ltr. to Kia, available at [https://static.nhtsa.gov/odi/inv/2019/INIM-  
PE19004-74879.pdf](https://static.nhtsa.gov/odi/inv/2019/INIM-PE19004-74879.pdf) (last visited Mar. 10, 2021).

1 (2) dealership repair records; (3) NHTSA complaints; and (4) Defendants’ pre-sale  
2 durability testing.

3 **C. Defendants issue piecemeal, inadequate, and incomplete recalls.**

4 49. From 2015 to present, Defendants reluctantly and belatedly recalled  
5 hundreds of thousands of vehicles—including most recently the Class Vehicles—  
6 spanning many models and years, and equipped with a myriad of GDI and MPI  
7 engines, for the same Engine Defect.

8 50. In June 2015, NHTSA contacted Hyundai regarding instances of stalling  
9 events in 2011-2012 Hyundai Sonatas. “Hyundai explained that, as of that time, it did  
10 not consider the issue to be safety-related....”<sup>17</sup> NHTSA responded by, as Hyundai put  
11 it, “inform[ing] Hyundai of its concern over the potential for higher speed stalling  
12 events.”

13 51. Because of NHTSA’s prodding, in September 2015, Hyundai issued  
14 Recall No. 15V568000 for 470,000 MY 2011-2012 Hyundai Sonata vehicles equipped  
15 with 2.4L and 2.0L turbo GDI engines for a defect described as “connecting rod wear”  
16 that “may result in engine stall.”

17 52. In its NHTSA filings, Hyundai described the Recall No. 15V568000  
18 defect and manifestation as follows:

19 Hyundai has determined that metal debris may have been  
20 generated from factory machining operations as part of the  
21 manufacturing of the engine crankshaft during the subject  
22 production period. As part of the machining processes, the  
23 engine crankshaft is cleaned to remove metallic debris. If the  
24 debris is not completely removed from the crankshaft’s oil  
25 passages, it can be forced into the connecting rod oiling  
26 passages restricting oil flow to the bearings. Since bearings  
are cooled by oil flow between the bearing and journal, a  
reduction in the flow of oil may raise bearing temperatures

---

27 <sup>17</sup> Part 573 Safety Recall Report Chronology for NHTSA Recall No. 15V568000,  
28 Sept. 10, 2015, available at <https://static.nhtsa.gov/odi/rcl/2015/RCLRPT-15V568-9490.PDF> (last visited Mar. 10, 2021), at 2.

1 increasing the potential of premature bearing wear. A worn  
 2 connecting rod bearing will produce a metallic, cyclic  
 3 knocking noise from the engine which increases in frequency  
 4 as the engine rpm increases. A worn connecting rod bearing  
 5 may also result in illumination of the oil pressure lamp in the  
 6 instrument cluster. If the vehicle continues to be driven with  
 a worn connecting rod bearing, the bearing can fail, and the  
 vehicle could stall while in motion.<sup>[18]</sup>

7 53. Subsequently, in December 2015, Hyundai issued a Technical Service  
 8 Bulletin (TSB) to dealerships about Recall No. 15V568000 and the steps for  
 9 performing recall procedures. The TSB instructed dealerships to conduct “an Engine  
 10 Noise Inspection to confirm [the engine’s] normal operation” and that the sound test  
 11 would “help indicate if the engine is operating normally or if an excessive connecting  
 12 rod bearing wear condition in the engine crankcase may be present.” The TSB went on  
 13 to describe the consequences if the defect manifested, stating, “If the vehicle continues  
 14 to be driven with a worn connecting rod bearing, the bearing can fail, and the vehicle  
 15 could stall while in motion, increasing the risk of a crash.”<sup>19</sup>

16 54. Tellingly, Hyundai breezed over the inherent risk of vehicle fires  
 17 associated with the defect in both its descriptions to vehicle owners/lessees and  
 18 dealers, settling on the more benign outcome, a stall, over the deadly ones,  
 19 catastrophic engine failure and/or fire.<sup>20</sup>

20  
 21 <sup>18</sup> *Id.* at 1.

22 <sup>19</sup> Dec. 2015 Remedy Instructions and TSB, available at  
 23 <https://static.nhtsa.gov/odi/rcl/2015/RCRIT-15V568-3933.pdf> (last visited Mar. 10,  
 2021), at 1.

24 <sup>20</sup> *See, e.g.*, “Recall 17V226000[:] Engine Wears and Seizes,” [RepairPal.com](https://repairpal.com), Mar.  
 25 31, 2017, available at <https://repairpal.com/recall/17V226000> (last visited Mar. 10,  
 26 2021) (noting that, despite the defect consequences being limited to “engine seizing  
 27 [that] would possibly strand occupants or cause an accident,” the reality is that the  
 28 bearings inside the engine “could wear prematurely due to machining issues during  
 manufacturing[, and i]f the engine seizes as a result, a fire could occur, and the engine  
 would lose vehicle propulsion”).

1           55. Hyundai’s December 2015 TSB in Recall No. 15V568000 only called for  
2 engine replacement if the vehicle did not pass the sound test. If the engine did pass, no  
3 actual repair was made to the vehicle, its engine, or any other parts. Hyundai simply  
4 instructed the dealers to swap out the vehicle’s dipstick and top off the oil. This left  
5 “passing” vehicles and their owners vulnerable to future development and  
6 manifestation of the Engine Defect and its dire consequences.

7           56. In March 2017, Hyundai issued Recall No. 17V226000 for 572,000 MY  
8 2013-2014 Hyundai Sonata and Santa Fe Sport vehicles equipped with 2.0L and 2.4L  
9 GDI engines for a defect described as “bearing wear” that “may result in engine  
10 seizure.”

11           57. In its NHTSA filings, Hyundai described the Recall No. 17V226000  
12 defect and manifestation as follows:

13                   The subject engines may contain residual debris from factory  
14 machining operations, potentially restricting oil flow to the  
15 main bearings and leading to premature bearing wear. A worn  
16 connecting rod bearing will produce a cyclic knocking noise  
17 from the engine and may also result in the illumination of the  
18 oil pressure lamp in the instrument panel. Over time, the  
bearing may fail and the vehicle could lose motive power  
while in motion.<sup>[21]</sup>

19           58. In June 2017, Hyundai issued a TSB and Dealer Best Practice Guide to  
20 dealers addressing the issue in the 2013-2014 Sonata and Santa Fe vehicles. The  
21 documents describe a defect identical to that in the earlier Sonata model years and  
22 orders the same purported “fix”:

23                   The engines in certain 2013-2014 model year Sonata (YF)  
24 and Santa Fe Sport (AN) vehicles equipped with 2.4L and  
25 2.0T GDI engines may contain residual debris from factory  
machining operations, potentially restricting oil flow to the

---

26  
27           <sup>21</sup> Part 573 Safety Recall Report for NHTSA Recall No. 17V226000, Mar. 31,  
28 2017, available at <https://static.nhtsa.gov/odi/rcl/2017/RCLRPT-17V226-4558.pdf>  
(last visited Mar. 10, 2021), at 1.



1 main bearings and leading to premature bearing wear. Over  
2 time, a bearing may fail and the vehicle could lose power  
while in motion.

3 Indications of a worn connecting rod bearing include:

- 4 1. Knocking noise from the engine
- 5 2. Reduced power and/or hesitation
- 6 3. Illumination of the “Check Engine” warning lamp
- 7 4. Illumination of engine oil pressure warning lamp

8 The service process consists of an inspection and dipstick, oil  
and oil filter replacement. If the vehicle does not pass the  
inspection, the dealer will replace the engine.<sup>[22]</sup>

9 59. Much like Hyundai’s earlier 2011-2012 Sonata recall, in its Part 573  
10 Safety Recall Report for NHTSA Recall No. 17V226000, Hyundai summarily  
11 explains that, “Over time, the bearing may fail and the vehicle could lose motive  
12 power while in motion.”<sup>23</sup> Careful not to even use the word “stall,” Hyundai’s 2017  
13 “recall inspection” of later model year Sonatas for a malfunction mechanically known  
14 to be associated with vehicle fires demonstrates Hyundai’s continued concealment of  
15 the Engine Defect and its consequences to this day.

16 60. Notably, in its chronology submission for the recall associated with  
17 subsequent model year Sonatas (NHTSA Recall No. 17V226000), Hyundai conceded  
18 that its recall was the result of Hyundai “continu[ing] to monitor engine-related field  
19 data” from the original 15V568000 recall group and “noting an increase in claims  
20 relating to the subsequent model years.”<sup>24</sup>

21 61. Again attempting to mitigate the gravity of the Engine Defect, Hyundai  
22 noted in its chronology submission to NHTSA that “the majority of claims for engine  
23

---

24 <sup>22</sup> June 2017 Dealer Best Practice Guide, available at  
25 <https://static.nhtsa.gov/odi/rcl/2017/RCMN-17V226-4739.pdf> (last visited Mar. 10,  
2021), at 3.

26 <sup>23</sup> Part 573 Safety Recall Report for NHTSA Recall No. 17V226000, Mar. 31,  
27 2017, available at <https://static.nhtsa.gov/odi/rcl/2017/RCLRPT-17V226-4558.pdf>  
(last visited Mar. 10, 2021), at 2.

28 <sup>24</sup> *See id.*

1 replacement indicated that customers were responding to substantial noise or the  
2 vehicle’s check engine or oil pressure warning lights (and bringing their vehicles to  
3 service as a result of those warnings).”<sup>25</sup> In other words, Hyundai was relying on  
4 customers to prevent their own catastrophic engine failure that could *at best* result in a  
5 moving stall and *at worst* result in a vehicle fire.

6 62. In March 2017, Kia also issued a recall virtually identical to that of  
7 Hyundai: Recall No. 17V224000 for 618,160 MY 2011-2014 Optima, 2012-2014  
8 Sorento, and 2011-2013 Sportage vehicles equipped with 2.0L turbo GDI or 2.4L GDI  
9 engines for a defect described as “bearing wear” that “may result in engine seizure.”

10 63. In its NHTSA filings, Kia described the Recall No. 17V224000 defect  
11 and manifestation as follows:

12 Metal debris may have been generated from factory  
13 machining operations as part of the manufacturing of the  
14 engine crankshaft which may not have been completely  
15 removed from the crankshaft’s oil passages during the  
16 cleaning process. In addition, the machining processes of the  
17 crankpins caused an uneven surface roughness. As a result,  
18 the metal debris and uneven surface roughness can restrict oil  
19 flow to the bearings, thereby increasing bearing temperatures  
20 causing premature bearing wear. A worn connecting rod  
21 bearing will produce a cyclic knocking noise from the engine  
22 and may also result in the illumination of the engine warning  
23 lamp and/or oil pressure lamp in the instrument panel. If the  
24 warnings are ignored and the vehicle is continued to be  
25 driven, the bearing may fail and the vehicle could stall while  
26 in motion.<sup>[26]</sup>

27 64. But in Kia’s September 2017 TSB to dealers for Recall No. 17V224000,  
28 in addition to the metal debris problem, it lists an extra cause for the oil restriction:

---

26 <sup>25</sup> *Id.*

27 <sup>26</sup> Part 573 Safety Recall Report for NHTSA Recall No. 17V224000, Mar. 31,  
28 2017, available at <https://static.nhtsa.gov/odi/rcr/2017/RCLRPT-17V226-4558.pdf>  
(last visited Mar. 10, 2021), at 2.

1 “the additional machining processes of the crankpins may have caused uneven surface  
2 roughness.”<sup>27</sup> The TSB states, “These combined conditions can restrict oil flow to the  
3 bearings increasing the potential for premature bearing wear.”<sup>28</sup>

4 65. Kia’s recall procedure mirrored that of Hyundai’s in its two recalls:  
5 perform the sounds test, and if the engine passes, simply change out the color-coded  
6 dipstick and change the oil. If the car does not pass, replace the engine.<sup>29</sup>

7 66. Curiously, in its chronology submitted to NHTSA regarding Recall No.  
8 17V224000, Kia notes that when it learned of the Hyundai 15V568000 recall in  
9 September 2015, it “check[ed] Theta engine manufacturing process for Optima on  
10 separate assembly line and identifie[d] different procedures and no issues.”<sup>30</sup> But the  
11 chronology goes on to say that from January to April 2016, the engine remanufacturer  
12 Translead conducted a “detailed review of all recent Kia warranty returned engines”  
13 and identified “*oil delivery issue* with Theta GDI engines (Optima, Sportage &  
14 Sorento).”<sup>31</sup> (Emphasis added.) As Kia’s warranty claims increased through 2016, it  
15 extended the warranties on these vehicles, but still waited until March 2017 to issue a  
16 formal recall after finally focusing “on anticipatory risk compared to absence of  
17 accidents or injuries.”<sup>32</sup>

---

20  
21 <sup>27</sup> Revised Remedy Instructions and TSB for NHTSA Recall No. 17V224000, Sept.  
22 1, 2017, available at <https://static.nhtsa.gov/odi/rcl/2017/RCRIT-17V224-4127.pdf>  
(last visited Mar. 10, 2021), at 1.

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

24 <sup>29</sup> *See id.*

25 <sup>30</sup> Chronology addendum to Second Amended Part 573 Safety Recall Report for  
26 NHTSA Recall No. 17V226000, Aug. 23, 2017, available at  
<https://static.nhtsa.gov/odi/rcl/2017/RMISC-17V224-3802.pdf> (last visited Mar. 10,  
2021), at 1.

27 <sup>31</sup> *Id.*

28 <sup>32</sup> *Id.* at 2.

1           67. Throughout all three recalls, Defendants boasted no reports of accidents  
2 or injuries associated with the Engine Defect.<sup>33</sup> Even if taken as true, this means  
3 Hyundai and Kia would have hundreds of thousands of defective vehicle drivers *wait*  
4 *to be injured or die* as a result of a defect that admittedly results in moving stalls and  
5 spontaneous vehicle fires.

6           68. However, based on NHTSA’s March 29, 2019 decision to open  
7 preliminary evaluations into Defendants’ high incidence of non-collision fires in  
8 certain Class Vehicles, we now know that Defendants’ claims of no injuries are false.  
9 By that time, Defendants had received *at least 100* reports of injuries related to these  
10 non-collision vehicle fires.<sup>34</sup> And this number is likely to continue to grow, as NHTSA  
11 expands its investigation to include all Hyundai and Kia vehicles equipped with Theta  
12 II, Lambda II, Gamma and Nu GDI engines, including all Class Vehicles.

13           69. In addition to NHTSA’s investigation into non-collision fires in  
14 Defendants’ vehicles, the federal agency also previously opened Recall Queries  
15 (RQ17003 and RQ17004) into Hyundai’s recall of 2011-2014 Sonata and 2013-2014  
16 Santa Fe vehicles with “Theta II” engines (Recall Nos. 15V-568 and 17V-226), and  
17 Kia’s recall of 2011-2014 Optima, 2012-2014 Sorento, and 2011-2013 Sportage  
18 vehicles with “Theta II” engines (Recall No. 17V-224). The Recall Queries, opened on  
19 May 18, 2017, scrutinize both the timeliness and scope of Defendants’ “Theta II”  
20 engine recalls and Defendants’ compliance with reporting requirements. These  
21 NHTSA investigations are ongoing.

22  
23  
24           <sup>33</sup> See *id.*; Part 573 Safety Recall Report for NHTSA Recall No. 17V226000, Mar.  
25 31, 2017, available at <https://static.nhtsa.gov/odi/rc1/2017/RCLRPT-17V226-4558.pdf>  
(last visited Mar. 10, 2021).

26           <sup>34</sup> See NHTSA PE19-003 (Hyundai), available at [https://static.nhtsa.gov/](https://static.nhtsa.gov/odi/inv/2019/INOA-PE19003-2613.PDF)  
27 [odi/inv/2019/INOA-PE19003-2613.PDF](https://static.nhtsa.gov/odi/inv/2019/INOA-PE19003-2613.PDF) (last visited Mar. 10, 2021); NHTSA PE19-  
28 004 (Kia), available at <https://static.nhtsa.gov/odi/inv/2019/INOA-PE19004-4727.PDF>  
(last visited Mar. 10, 2021).

1           70. In or around October 2018, Kia began sending owners and lessees of  
2 2011-2014 Optima, 2012-2014 Sorento, and 2011-2013 Sportage vehicles letters  
3 regarding a “Product Improvement Campaign” in response to widespread reports of  
4 non-collision vehicle fires that stated:

5           Kia Motors America, Inc. is conducting an important  
6 Product Improvement Campaign to perform a software  
7 update on all 2011-2013 MY Optima vehicles equipped with  
8 2.4L Gasoline Direct Injection (“GDI”) and 2.0L  
9 Turbocharged GDI (“T-GDI”) engines, and some 2014 MY  
10 Optima vehicles equipped with 2.4L GDI and 2.0L T-GDI  
11 engines to protect the engine from excessive connecting rod  
12 bearing damage. The update will be done free of charge and  
13 will only involve the addition of newly developed computer  
14 software for the Engine Control Unit (“ECU”).

15           Kia recently developed a Knock Sensor Detection System  
16 (“KSDS”) that detects vibrations indicating the onset of  
17 excessive connecting rod bearing wear in the engine. The  
18 KSDS is designed to alert a vehicle driver at an early stage of  
19 bearing wear before the occurrence of severe engine damage  
20 including engine failure.

21           71. In or around late January 2019, Kia expanded this “Product Improvement  
22 Campaign” to include later model years of Optima, Sorento, and Sportage vehicles.

23           72. In or around February 15, 2019, Hyundai followed suit by issuing a  
24 “Product Improvement Campaign” for certain 2011-2018 Sonatas, 2013-2018 Santa  
25 Fe Sports, and 2014-2015, 2018 Tucsons. The campaign provides the same or similar  
26 Knock Sensor Detection System as in the Kia vehicles.

27           73. In December 2020, Hyundai and Kia finally recalled the Class Vehicles  
28 under Recall Nos. 20V746000 (Hyundai) and 20V750000 (Kia) for the same Engine  
Defect plaguing other vehicles that were the subject of NHTSA’s investigations and  
recalled earlier.

1           74. Hyundai’s Recall No. 20V746000 includes 128,948 vehicles across four  
2 models that are equipped with 2.4-liter Theta II MPI, 2.0-liter Nu GDI, and 1.6-liter  
3 Gamma GDI engines manufactured between June 2010 and July 2016 at plants in  
4 Alabama and the Republic of Korea. Hyundai’s associated NHTSA filings indicate all  
5 vehicles from this recall “were determined jointly by Hyundai and NHTSA’s Office of  
6 Defects Investigation (“ODI”) during a review of Hyundai’s response(s) to  
7 investigations PE19-003.”

8           75. Kia’s Recall No. 20V750000 includes 294,756 vehicles across six models  
9 that are equipped with 2.4-liter Theta II MPI and 2.0-liter Nu GDI engines  
10 manufactured between February 2011 and May 2015 at unspecified plants or the Kia  
11 Hwasung Plant. Kia’s associated NHTSA filings indicate all vehicles from this recall  
12 were determined through a review of vehicle production records.

13           76. While the MPI engines in the Class Vehicles are recalled for the Engine  
14 Defect for the first time here, the Nu and Gamma GDI engines were previously  
15 recalled in connection with a defect that sounds suspiciously similar to the Engine  
16 Defect.

17           77. On February 22, 2019, Kia recalled 2012-2016 Souls with 1.6-liter  
18 Gamma GDI engines for what it described as an overheating catalytic converter. A  
19 closer review of the defect summary reveals that the defect causes the same damage  
20 and risk as that of the Engine Defect here, stating, “[the] damage may result in an  
21 engine stall,” “[a] broken connecting rod may puncture the engine block allowing  
22 engine oil to escape,” and such “leaking oil may contact the exhaust, increasing the  
23 risk of a fire.”

24           78. Defendants have also attempted to alleviate public and governmental  
25 scrutiny of its vehicles’ increased incidence of engine failures and fires by initiating  
26 other recalls in the various models plagued by engines fires, but these recalls fail to  
27  
28

1 adequately explain and remedy the Engine Defect broadly observed across so many of  
2 Defendants' vehicles.

3 79. In December 2018, Defendants recalled certain 2011-2014 Hyundai  
4 Sonata, 2013-2014 Hyundai Santa Fe Sport, 2011-2017 Kia Optima, 2012-2017 Kia  
5 Sorento, and 2011-2018 Kia Sportage vehicles previously repaired under Recall Nos.  
6 15V-568, 17V-226, and 17V-224, citing the problem as a damaged high pressure fuel  
7 pipe connecting to the fuel pump outlet during an engine replacement procedure.

8 80. In February 2019, Hyundai recalled certain 2011-2013 Tucson vehicles  
9 and Kia recalled certain 2011-2012 Sportage vehicles, claiming the engine oil pan  
10 could leak and, if not addressed, lead to engine damage and a moving stall. This recall  
11 implicates only a fraction of the Class Vehicles and does not otherwise explain the  
12 widespread engine failures and fires.

13 81. Given Defendants' slow issue of recalls over time for the same Engine  
14 Defect, the recent inclusion of certain MPI engines in such recalls for the first time,  
15 and persistent reports of non-collision engine failures and fires across many models  
16 with various engines, Plaintiffs have reason to believe the Engine Defect extends  
17 beyond the Class Vehicles plead here or in other related cases. Plaintiffs reserve their  
18 right to amend the Class Vehicles as discovery warrants.

19 **D. Defendants' pre-sale durability testing**

20 82. Defendants are experienced in the design and manufacture of consumer  
21 vehicles. As experienced manufacturers, Defendants conduct tests like pre-sale  
22 durability testing on incoming components, including the engine, to verify the parts  
23 are free from defects and align with Defendants' specifications.

24 83. Kia conducts expansive presale durability testing on its vehicles to make  
25 sure they "endure over a long time without fault."<sup>35</sup> This presale testing includes seven  
26

27 <sup>35</sup> <https://www.kia.com/id/experience/innovation-story/performance.Theta.html>  
28 (last visited Mar. 10, 2021).

1 different types of durability tests: (1) an item durability test; (2) a module durability  
2 test; (3) a Belgian road test; (4) a high-speed test; (5) a corrosion test; (6) a P/T test;  
3 and (7) a vehicle test. Kia conducts these tests in extreme weather conditions including  
4 coldness and heat.

5 84. In addition, John Juriga, the Director of Powertrain at Kia in 2015, stated  
6 that Kia's validation testing is among the toughest in the automotive industry.<sup>36</sup>  
7 Among other things, this validation testing runs the engine at maximum throttle (the  
8 maximum speed the engine can operate under) while under full load "so we're  
9 stressing the components as much as possible and we run it virtually nonstop for 300  
10 hours." After, Kia does an "overrun spec" where it runs it over spec for 10-20 hours to  
11 make sure it can survive past the red line limits in order to "make sure these products  
12 stay durable in the customers' hands."

13 85. Moreover, Kia also uses "the most extreme and rigorous vehicle testing  
14 program ever devised by the company."<sup>37</sup> As part of this test, Kia stimulates stop-and-  
15 go driving repeated over several times to "put additional strain on the engine,  
16 transmission and HVAC systems and eliminate any possible flaws." In addition, at its  
17 Mojave Proving Grounds test site, Kia utilizes a "high-speed oval, gravel off-road  
18 tracks, high-vibration road surfaces, brake test facilities and different gradients" that  
19 "enable engineers to evaluate and refine the ride, handling, brakes and NVH of  
20 prototype and production vehicles."

21 86. On information and belief, Hyundai conducts durability testing on its  
22 vehicles that is similar to Kia's testing.<sup>38</sup>

24 <sup>36</sup> <https://www.youtube.com/watch?v=GNPB3RtHN2M> (last visited Mar. 10, 2021).

25 <sup>37</sup> [https://www.thenewsmarket.com/global/kia-motors-corporation/death-valley-  
26 hot-weather-test-for-all-new-kia-sportage/s/bfe8a9b5-9786-4e73-a648-2970972d74f1](https://www.thenewsmarket.com/global/kia-motors-corporation/death-valley-hot-weather-test-for-all-new-kia-sportage/s/bfe8a9b5-9786-4e73-a648-2970972d74f1)  
(last visited Mar. 10, 2021).

27 <sup>38</sup> See, e.g., [https://www.hyundai.news/eu/model-news/hail-rain-or-shine-hyundai-  
28 motors-extreme-weather-testing/](https://www.hyundai.news/eu/model-news/hail-rain-or-shine-hyundai-motors-extreme-weather-testing/) (last visited Mar. 10, 2021).



1 V. CLASS ALLEGATIONS

2 87. Plaintiffs bring this action on behalf of themselves and as a class action  
3 under the provisions of Rules 23(a), b(2), and (b)(3) of the Federal Rules of Civil  
4 Procedure, on behalf of the following classes:

5 **Nationwide Class**

6 All persons or entities who purchased or leased a Class  
7 Vehicle in the United States.

8 **California State Class**

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

11 88. Excluded from the Classes are individuals who have personal injury  
12 claims resulting from the Engine Defect in the Class Vehicles. Also excluded from the  
13 Classes are Defendants and their subsidiaries and affiliates; all persons who timely  
14 elect exclusion from the Classes; governmental entities; and the Judge to whom this  
15 case is assigned and his/her immediate family. Plaintiffs reserve the right to revise the  
16 Class definitions based on information learned through discovery.

17 89. Certification of Plaintiffs' claims for class-wide treatment is appropriate  
18 because Plaintiffs can prove the elements of their claims on a class-wide basis using  
19 the same evidence as would be used to prove those elements in individual actions  
20 alleging the same claim.

21 90. This action has been brought and may be properly maintained on behalf  
22 of each of the Classes proposed herein under Federal Rule of Civil Procedure 23.

23 91. **Numerosity.** Federal Rule of Civil Procedure 23(a)(1): The members of  
24 the Classes are so numerous and geographically dispersed that individual joinder of all  
25 Class members is impracticable. While Plaintiffs are informed and believe that there  
26 are hundreds of thousands of members of the Class due to widespread sales of Class  
27 Vehicles nationwide, the precise number of Class members is unknown to Plaintiffs  
28 but may be ascertained from the Defendants' books and records. Class members may

1 be notified of the pendency of this action by recognized, Court-approved notice  
2 dissemination methods, which may include U.S. Mail, electronic mail, Internet  
3 postings, and/or published notice. Plaintiffs believe, and on that basis allege, that  
4 hundreds of thousands of Class Vehicles have been sold and leased nationwide.

5 92. **Commonality and Predominance.** Federal Rule of Civil Procedure  
6 23(a)(2) & (b)(3): This action involves common questions of law and fact that  
7 predominate over any questions affecting individual Class members, including,  
8 without limitation:

- 9 a. Whether Defendants engaged in the conduct alleged  
10 herein;
- 11 b. Whether Defendants designed, advertised, marketed,  
12 distributed, leased, sold, or otherwise placed the Class  
13 Vehicles into the stream of commerce in the United  
14 States;
- 15 c. Whether the Class Vehicles have and were sold with  
16 the Engine Defect;
- 17 d. Whether a reasonable consumer would consider the  
18 Engine Defect or its consequences to be material;
- 19 e. Whether the Engine Defect is a safety defect;
- 20 f. Whether Defendants knew of the Engine Defect but  
21 failed to disclose the problem and its consequences to  
22 consumers;
- 23 g. When Defendants discovered the Engine Defect, and  
24 what, if anything, they did in response;
- 25 h. Whether Defendants' conduct violates the California Legal  
26 Remedies Act, California Unfair Competition Law, California  
27 False Advertising Law, the Song-Beverly Act, and any other  
28 statutes asserted herein;
- i. Whether Plaintiffs and Class members overpaid for  
their Class Vehicles;

- 1           j.     Whether Plaintiffs and Class members experienced  
2           out-of-pocket losses as a result of the Engine Defect,  
3           and if so, how much; and
- 4           k.     Whether Plaintiffs and Class members are entitled to  
5           damages and other monetary relief and, if so, in what  
6           amount.

7           93.    **Typicality**. Federal Rule of Civil Procedure 23(a)(3): Plaintiffs' claims  
8           and Defendants' defenses thereto are typical of those of the Class members because,  
9           among other things, all Class members were comparably injured by Defendants'  
10          wrongful conduct described herein.

11          94.    **Adequacy**. Federal Rule of Civil Procedure 23(a)(4): Plaintiffs and their  
12          counsel are adequate because their interests do not conflict with the interests of the  
13          Class members they seek to represent; Plaintiffs have retained counsel competent and  
14          experienced in complex class action litigation; and Plaintiffs intend to prosecute this  
15          action vigorously. Plaintiffs and their counsel will fairly and adequately protect the  
16          Class members' interests.

17          95.    **Superiority**. Federal Rule of Civil Procedure 23(b)(3): A class action is  
18          superior to any other available means for the fair and efficient adjudication of this  
19          controversy and no unusual difficulties are likely to be encountered in the  
20          management of this class action. The damages or other financial detriment suffered by  
21          Plaintiffs and Class members are relatively small compared to the burden and expense  
22          that would be required to individually litigate their claims against Defendants, so it  
23          would be impracticable for Class members to individually seek redress for  
24          Defendants' wrongful conduct. Even if Class members could afford individual  
25          litigation, the court system could not. Individualized litigation creates a potential for  
26          inconsistent or contradictory judgments and increases the delay and expense to all  
27          parties and the court system. By contrast, the class action device presents far fewer  
28          management difficulties and provides the benefits of single adjudication, economy of

1 scale, and comprehensive supervision by a single court. On information and belief,  
2 Class members can be readily identified and notified based on, *inter alia*, Defendants'  
3 vehicle identification numbers, warranty claims, registration records, and database of  
4 complaints.

5 96. Defendants have acted, and refused to act, on grounds generally  
6 applicable to the Classes, thereby making appropriate final equitable relief with  
7 respect to the Classes as a whole.

## 8 VI. TOLLING OF STATUTES OF LIMITATIONS

### 9 A. Discovery Rule Tolling

10 97. Plaintiffs and Class members had no way of knowing about Defendants'  
11 deception with respect to the Engine Defect.

12 98. Within the time period of any applicable statutes of limitation, Plaintiffs  
13 and Class members could not have discovered through the exercise of reasonable  
14 diligence that Defendants were concealing the Engine Defect and misconduct  
15 complained of herein, or that Defendants were misrepresenting their true position with  
16 respect to the Engine Defect.

17 99. Plaintiffs and Class members did not discover, and did not know of, facts  
18 that would have caused a reasonable person to suspect that Defendants had concealed  
19 information about the Engine Defect in the Class Vehicles, which Plaintiffs discovered  
20 shortly before filing this action.

21 100. For these reasons, the discovery rule tolls all applicable statutes of  
22 limitation with respect to claims as to the Class Vehicles.

### 23 B. Fraudulent Concealment Tolling

24 101. Defendants concealed the Engine Defect, minimized the scope, cause,  
25 and dangers of the Engine Defect with inadequate recalls and purported remedies, and  
26 refused to investigate, address, and remedy the Engine Defect as it pertains to all Class  
27 Vehicles.

28

1           102. Based on the foregoing, Defendants’ knowing and active fraudulent  
2 concealment and denial of the facts alleged herein throughout the relevant period toll  
3 all applicable statutes of limitation.

4 **C. Estoppel**

5           103. Defendants were under a continuous duty to disclose to Plaintiffs and  
6 Class members the true character, quality, and nature of the Engine Defect, and the  
7 inevitable repairs, costs, time, and monetary damage resulting from the Engine Defect.

8           104. Based on the foregoing, Defendants are estopped from relying on any  
9 statutes of limitations in defense of this action.

10                   **VII. CALIFORNIA LAW APPLIES TO THE CLAIMS OF THE**  
11                   **NATIONWIDE CLASS**

12           105. California law applies to the nationwide claims because California’s  
13 interest in this litigation exceeds that of any other state.

14           106. Defendant HMA is headquartered in Fountain Valley, California, and is  
15 the sole entity in the United States responsible for distributing, selling, leasing, and  
16 warranting Hyundai vehicles, including the Hyundai Class Vehicles.

17           107. Defendant KMA is headquartered in Irvine, California and is the sole  
18 entity in the United States responsible for distributing, selling, leasing, and warranting  
19 Kia vehicles, including the Kia Class Vehicles.

20           108. Defendants each maintain their customer relations, engineering,  
21 marketing, and warranty departments at their corporate headquarters in this judicial  
22 district. Defendants’ customer relations department is responsible for fielding  
23 customer complaints and monitoring customer complaints posted to their respective  
24 websites or third-party websites.

25           109. Defendants’ warranty and engineering departments are responsible for the  
26 decisions to conceal the Engine Defect from the Class members.

27           110. Based on the foregoing, Defendants’ policies, practices, acts, and  
28 omissions giving rise to Plaintiffs’ and Class members’ claims were developed in, and

1 emanated from, Defendants’ headquarters in this judicial district in California. As  
2 detailed herein, Defendants knew or should have known about the Engine Defect  
3 through the activities of their divisions and affiliated entities located within California.  
4 Accordingly, the State of California has the most significant relationship to this  
5 litigation and its law should govern.

6 **VIII. CLAIMS ALLEGED**

7 **FIRST CAUSE OF ACTION**

8 **VIOLATIONS OF CALIFORNIA’S CONSUMER LEGAL REMEDIES ACT**  
9 **(“CLRA”) (CAL. CIV. CODE § 1750, *ET SEQ.*)**  
10 **(on behalf of the Nationwide Class or, alternatively, the California Class)**

11 111. Plaintiffs and the Class members incorporate by reference all paragraphs  
12 as though fully set forth herein.

13 112. Plaintiffs bring this claim on behalf of themselves and the Nationwide  
14 Class against Defendants. Alternatively, Plaintiffs Nicole Thornhill and David Shapiro  
15 bring this claim on behalf of themselves and the California Class against Defendants.

16 113. Defendants are persons as defined in California Civil Code § 1761(c).

17 114. Plaintiffs and the Class members are “consumers” as defined in  
18 California Civil Code §1761(d).

19 115. Defendants engaged in unfair and deceptive acts in violation of the  
20 CLRA through the practices described herein, and by knowingly and intentionally  
21 concealing the Engine Defect in the Class Vehicles from Plaintiffs and Class  
22 members, along with concealing the risks, costs, and monetary damage resulting from  
23 the Engine Defect. These acts and practices violate, at a minimum, the following  
24 sections of the CLRA:

- 25 • (a)(2) Misrepresenting the source, sponsorship, approval, or  
26 certification of goods or services;
- 27 • (a)(5) Representing that goods or services have sponsorships,  
28 characteristics, uses, benefits, or quantities which they do not have,

1 or that a person has a sponsorship, approval, status, affiliation, or  
2 connection which he or she does not have;

- 3 • (a)(7) Representing that goods or services are of a particular  
4 standard, quality, or grade, or that goods are of a particular style or  
5 model, if they are of another; and
- 6 • (a)(9) Advertising goods and services with the intent not to sell  
7 them as advertised.

8 116. Defendants' unfair and deceptive acts or practices occurred repeatedly in  
9 Defendants' trade or business, were capable of deceiving a substantial portion of the  
10 purchasing public, and imposed a serious safety risk on the public.

11 117. Defendants knew the Class Vehicles' engines were defectively designed  
12 or manufactured, would fail prematurely, were prone to cause fires, and were not  
13 suitable for their intended use.

14 118. Defendants had a duty to Plaintiffs and Class members to disclose the  
15 defective nature of the Class Vehicles' engines because:

16 a. Defendants were in a superior position to know the true state of  
17 facts about the Engine Defect and associated repair costs in the Class Vehicles and  
18 their engines;

19 b. Plaintiffs and Class members could not reasonably have been  
20 expected to learn or discover that the Class Vehicles and their engines had a dangerous  
21 safety defect until manifestation of the Engine Defect; and

22 c. Defendants knew that Plaintiffs and Class members could not  
23 reasonably have been expected to learn or discover the Engine Defect and the  
24 associated repair costs until manifestation of the Engine Defect.

25 119. In failing to disclose the Engine Defect and the associated safety risks and  
26 repair costs that result from it, Defendants have knowingly and intentionally concealed  
27 material facts and breached their duty to disclose.

28





1 herein, and by knowingly and intentionally concealing the Engine Defect in the Class  
2 Vehicles from Plaintiffs and Class members, along with concealing the risks, costs,  
3 and monetary damage resulting from the Engine Defect. Defendants should have  
4 disclosed this information because they were in a superior position to know the true  
5 facts related to the Engine Defect, and Plaintiffs and Class members could not  
6 reasonably be expected to learn or discover the true facts related to the Engine Defect.

7 128. The Engine Defect causing catastrophic engine failure and fire in the  
8 Class Vehicles constitutes a safety issue that triggered Defendants' duty to disclose the  
9 safety issue to consumers.

10 129. Defendants' acts and practices have deceived Plaintiffs and are likely to  
11 deceive the public. In failing to disclose the Engine Defect and suppressing other  
12 material facts from Plaintiffs and Class members, Defendants breached their duties to  
13 disclose these facts, violated the UCL, and caused injuries to Plaintiffs and Class  
14 members. Defendants' omissions and concealment pertained to information that was  
15 material to Plaintiffs and Class members, as it would have been to all reasonable  
16 consumers.

17 130. The injuries suffered by Plaintiffs and Class members are not greatly  
18 outweighed by any potential countervailing benefit to consumers or to competition,  
19 nor are they injuries that Plaintiffs and Class members should have reasonably  
20 avoided.

21 131. Defendants' acts and practices are unlawful because they violate  
22 California Civil Code §§ 1668, 1709, 1710, and 1750, *et seq.*, and California  
23 Commercial Code § 2313.

24 132. Plaintiffs seek to enjoin further unlawful, unfair, and/or fraudulent acts or  
25 practices by Defendants, to obtain restitutionary disgorgement of all monies and  
26 revenues generated as a result of such practices, and all other relief allowed under  
27 California Business & Professions Code § 17200.  
28

1 **THIRD CAUSE OF ACTION**

2 **VIOLATION OF CALIFORNIA FALSE ADVERTISING LAW**  
3 **(CAL. BUS. & PROF. CODE § 17500, *ET SEQ.*)**  
4 **(on behalf of the Nationwide Class or, alternatively, the California Class)**

5 133. Plaintiffs and the Class members incorporate by reference all paragraphs  
6 as though fully set forth herein.

7 134. Plaintiffs bring this claim on behalf of themselves and the Nationwide  
8 Class against Defendants. Alternatively, Plaintiffs Nicole Thornhill and David Shapiro  
9 bring this claim on behalf of themselves and the California Class against Defendants.

10 135. California Business & Professions Code § 17500 states: “It is unlawful  
11 for any . . . corporation . . . with intent directly or indirectly to dispose of real or  
12 personal property . . . to induce the public to enter into any obligation relating thereto,  
13 to make or disseminate or cause to be made or disseminated . . . from this state before  
14 the public in any state, in any newspaper or other publication, or any advertising  
15 device, . . . or in any other manner or means whatever, including over the Internet, any  
16 statement . . . which is untrue or misleading, and which is known, or which by the  
17 exercise of reasonable care should be known, to be untrue or misleading.”

18 136. Defendants caused to be made or disseminated through California and the  
19 United States, through advertising, marketing and other publications, statements that  
20 were untrue or misleading, and which were known, or which by the exercise of  
21 reasonable care should have been known to Defendants, to be untrue and misleading  
22 to consumers, including Plaintiffs and the Class members.

23 137. Defendants violated section 17500 because their misrepresentations and  
24 omissions regarding the safety, reliability, and functionality of the Class Vehicles as  
25 described herein were material and likely to deceive a reasonable consumer.

26 138. Plaintiffs and Class members have suffered an injury in fact, including  
27 the loss of money or property, because of Defendants’ unfair, unlawful, and/or  
28 deceptive practices. In purchasing or leasing their Class Vehicles, Plaintiffs and the

1 Class members relied on the misrepresentations and/or omissions of Defendants with  
2 respect to the safety and reliability of the Class Vehicles. Defendants' representations  
3 and/or omissions were untrue because the Class Vehicles are distributed with a  
4 defective engine. Had Plaintiffs and the Class members known this, they would not  
5 have purchased or leased their Class Vehicles or paid as much for them. Accordingly,  
6 Plaintiffs and the Class members overpaid for their Class Vehicles and did not receive  
7 the benefit of their bargain.

8 139. All of the wrongful conduct alleged herein occurred, and continues to  
9 occur, in the conduct of Defendants' businesses. Defendants' wrongful conduct is part  
10 of a pattern or generalized course of conduct that is still perpetuated and repeated, both  
11 in California and nationwide.

12 140. Plaintiffs, individually and on behalf of the Class members, request this  
13 Court enter such orders or judgments as necessary to enjoin Defendants from  
14 continuing their unfair, unlawful, and/or deceptive practices, to restore to Plaintiffs  
15 and the Class members any money Defendants acquired by unfair competition,  
16 including restitution and/or restitutionary disgorgement, and for such other relief  
17 permitted.

18 **FOURTH CAUSE OF ACTION**

19 **VIOLATION OF THE SONG-BEVERLY ACT –**  
20 **BREACH OF IMPLIED WARRANTY**  
21 **(CAL. CIV. CODE §§ 1792, 1791.1, ET SEQ.)**  
**(on behalf of the Nationwide class or, alternatively, the California Class)**

22 141. Plaintiffs and the Classes incorporate by reference all paragraphs as  
23 though fully set forth herein.

24 142. Plaintiffs bring this claim on behalf of themselves and the Nationwide  
25 Class against Defendants. Alternatively, Plaintiffs Nicole Thornhill and David Shapiro  
26 bring this claim on behalf of themselves and the California Class against Defendants.

1           143. At all relevant times hereto, Defendants were the manufacturer,  
2 distributor, warrantor, and/or seller of the Class Vehicles. Defendants knew or should  
3 have known the specific use for which the Class Vehicles were purchased.

4           144. Defendants provided Plaintiffs and Class members with an implied  
5 warranty that the Class Vehicles, and any parts thereof, are merchantable and fit for  
6 the ordinary purposes for which they were sold. The Class Vehicles, however, are not  
7 fit for their ordinary purpose because, *inter alia*, the Class Vehicles contained an  
8 inherent defect at the time of sale that causes the Class Vehicles to experience  
9 premature and catastrophic engine failure and fire.

10           145. The Class Vehicles are not fit for the purpose of providing safe and  
11 reliable transportation because of the Engine Defect.

12           146. Defendants impliedly warranted that the Class Vehicles were of  
13 merchantable quality and fit for such use. This implied warranty included, *inter alia*,  
14 the following: (i) a warranty that the Class Vehicles and engines manufactured,  
15 supplied, distributed, and sold by Defendants were safe and reliable for providing  
16 transportation and would not prematurely and catastrophically fail or catch fire; and  
17 (ii) a warranty that the Class Vehicles and their engines would be fit for their intended  
18 use—providing safe and reliable transportation—while the Class Vehicles were  
19 operated.

20           147. Contrary to the applicable implied warranties, the Class Vehicles and  
21 their engines at the time of sale and thereafter were not fit for their ordinary and  
22 intended purpose. Instead, the Class Vehicles are defective, including, but not limited  
23 to, the Engine Defect and/or manufacturing of the GDI and MPI engines.

24           148. Defendants' actions, as described herein, breached the implied warranty  
25 that the Class Vehicles were of merchantable quality and fit for such use in violation  
26 of California Civil Code §§ 1792 and 1791.1.

**IX. REQUEST FOR RELIEF**

WHEREFORE, Plaintiffs, individually and on behalf of members of the Nationwide and California State Classes, respectfully request that the Court enter judgment in their favor and against the Defendants, as follows:

A. Certification of the proposed Nationwide and California State Classes, including appointment of Plaintiffs as class representatives and appointment of Plaintiffs’ counsel as Class Counsel;

B. Damages, including actual, compensatory, general, special, incidental, statutory, punitive, and consequential damages, costs, and disgorgement in an amount to be determined at trial;

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

D. Grant appropriate injunctive and/or declaratory relief, including, without limitation, an order requiring Defendants to repair, recall, and/or replace the Class vehicles or, at a minimum, to provide Plaintiffs and Class members with appropriate curative notice regarding the existence and cause of the Engine Defect;

E. An award of reasonable costs and attorney fees; and

F. Such other or further relief as may be appropriate.

**X. DEMAND FOR JURY TRIAL**

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

Dated: March 12, 2021

Respectfully submitted by,

HAGENS BERMAN SOBOL SHAPIRO LLP

By: /s/ Christopher R. Pitoun  
Christopher R. Pitoun  
301 N. Lake Avenue, Suite 920  
Pasadena, CA 91101  
Tel.: (213) 330-7150  
Fax: (213) 330-7152  
[christopherp@hbsslw.com](mailto:christopherp@hbsslw.com)

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

Steve W. Berman (*pro hac vice* to be filed)  
HAGENS BERMAN SOBOL SHAPIRO LLP  
1301 Second Avenue, Suite 2000  
Seattle, WA 98101  
Tel.: (206) 623-7292  
Fax: (206) 623-0594  
[steve@hbsslaw.com](mailto:steve@hbsslaw.com)

Rachel E. Fitzpatrick (*pro hac vice* to be filed)  
HAGENS BERMAN SOBOL SHAPIRO LLP  
11 W. Jefferson St., Suite 1000  
Phoenix, AZ 85003  
Tel.: (602) 840-5900  
Fax: (602) 840-3012  
[rachelf@hbsslaw.com](mailto:rachelf@hbsslaw.com)

*Attorneys for Plaintiffs*