

1 Richard D. McCune, State Bar No. 132124
 rdm@mccunewright.com
 2 David C. Wright, State Bar No. 177468
 dcw@mccunewright.com
 3 Steven A. Haskins, State Bar. No. 238865
 sah@mccunewright.com
 4 Mark I. Richards, State Bar No. 321252
 mir@mccunewright.com
 5 **MCCUNE WRIGHT AREVALO LLP**
 3281 Guasti Road, Suite 100
 6 Ontario, California 91761
 Telephone: (909) 557-1250
 7 Facsimile: (909) 557-1275

8 *Attorneys for Plaintiff and the Putative Class*

9
 10
 11
 12 **IN THE UNITED STATES DISTRICT COURT**
 13 **FOR THE CENTRAL DISTRICT OF CALIFORNIA**
 14

15
 16 SEBASTIEN FRICHE on behalf of
 himself and all others similarly
 17 situated,

18 Plaintiff,

19 v.

20 HYUNDAI MOTOR CO.; HYUNDAI
 MOTOR AMERICA; and Does 1
 21 through 5, inclusive,

22 Defendants.
 23

Case No.: 8:21-cv-1324

CLASS ACTION COMPLAINT

DEMAND FOR JURY TRIAL

TABLE OF CONTENTS

1			
2			<i>Page</i>
3	I	INTRODUCTION	1
4	II	JURISDICTION AND VENUE.....	6
5	III	PARTIES	7
6		A. Plaintiff Sebastien Friche	7
7		B. Defendants.....	7
8		C. Unknown Defendants.....	7
9	IV	FACTUAL ALLEGATIONS	8
10		A. Plaintiff-Specific Allegations.....	8
11		B. Class-Wide Allegations.....	11
12	V	CLASS ACTION ALLEGATIONS.....	15
13	VI	CAUSES OF ACTION.....	18
14		A. Claims Brought on Behalf of the Nationwide Class	18
15		COUNT I: VIOLATIONS OF THE MAGNUSON-MOSS	
16		WARRANTY ACT.....	18
17		B. Claims Brought on Behalf of the California Class	20
18		COUNT II: VIOLATIONS OF THE CONSUMER LEGAL	
19		REMEDIES ACT (“CLRA”).....	20
20		COUNT III: VIOLATIONS OF THE CALIFORNIA UNFAIR	
21		COMPETITION LAW.....	22
22		COUNT IV: VIOLATION OF CALIFORNIA FALSE ADVERTISING	
23		LAW	23
24		COUNT V: BREACH OF EXPRESS WARRANTY	25
25		COUNT VI: BREACH OF IMPLIED WARRANTY	26
26			
27			
28			

TABLE OF CONTENTS (cont.)

Page

COUNT VII: COMMON LAW FRAUDULENT CONCEALMENT .. 27

COUNT VIII: VIOLATIONS OF THE SONG-BEVERLY ACT –
BREACH OF IMPLIED WARRANTY 28

VII PRAYER FOR RELIEF 29

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

1 **CLASS ACTION COMPLAINT**

2 Plaintiff SEBASTIEN FRICHE, on behalf of himself and on behalf of a class of
3 other similarly situated individuals, complains of and alleges the following causes of
4 action against Defendants HYUNDAI MOTOR CO., incorporated in South Korea, and
5 HYUNDAI MOTOR AMERICA, a California Corporation (collectively referenced
6 herein as “Hyundai”); and DOES 1 through 5, inclusive, as follows:

7 **I INTRODUCTION**

8 1. Plaintiff Sebastien Friche brings this class action on behalf of himself
9 individually and a class of current and former owners and lessees of 2019-2021 model
10 year Hyundai Kona EV vehicles and 2020 model year Hyundai Ioniq EV vehicles
11 (collectively, the “Class Vehicles”) marketed and sold by Hyundai with false
12 representations regarding the safety and range of the Class Vehicles’ batteries.¹

13 2. This action arises from the pervasive false advertisements disseminated by
14 Hyundai that overstate the potential travel range of the Class Vehicles’ battery packs. As
15 it happens, the battery used in the Class Vehicles can only attain the promised range by
16 charging the battery to a dangerous degree. Starting in October 2020, a series of fires
17 prompted mass recalls of vehicles in Hyundai’s home country of South Korea. As a part
18 of responding to that recall, Hyundai reprogrammed the battery so that the vehicles would
19 travel less distance than the promised range.

20 3. In 2017, Hyundai introduced a line of electric vehicles called the Ioniq. The
21 Ioniq distinguished itself by coming in three separate levels of electrification: hybrid,
22 plug-in hybrid, and fully electric. The electric version of the Ioniq, however, came with a
23
24
25
26

27 ¹ Plaintiff reserves the right to amend or add to the vehicle models included in the
28 definition of Class Vehicles after conducting discovery.

1 relatively short travel range of 124 miles, a range notable for falling far short of other
2 electric vehicles then in the marketplace.²

3 4. Two years later, Hyundai introduced a new plug-in, all-electric Sports
4 Utility Vehicle (SUV) called the Hyundai Kona EV, an electrified version of its gas-
5 powered crossover SUV Kona first introduced two years earlier. The Kona EV was
6 Hyundai's version of an all-electric vehicle competing with emerging all-electric vehicle
7 lines promoted by new market entrants like Tesla, Nissan, and BMW. The stakes were
8 particularly high for Hyundai, who was attempting to vastly increase the range of its
9 electric vehicles so as to fully compete with competitors such as Tesla, while providing
10 an environmentally-responsible alternative to gas-guzzling SUVs. And the reviews were
11 highly positive. One reviewer "walked away wondering how anyone could justify buying
12 a daily gasoline driver when you can have a 258-mile electric crossover like this."³

13 5. To successfully market an all-electric vehicle to the American buying public,
14 increased range is critical. Because battery charging takes more time than re-filling a
15 gasoline tank, an all-electric vehicle's usefulness is directly related to the distance the
16 automobile can travel before needing a recharge. Therefore, electric car buyers
17 particularly rely on manufacturer representations regarding the automobile's ability to
18 travel a specified distance on a single charge. Indeed, price and range are two primary
19 considerations of consumers when deciding to purchase an electric vehicle. This is
20 particularly true for SUVs, which are preferred for longer, more out-of-the-way trips,
21 making vehicle range significant to those that may find themselves driving in
22 circumstances far from available vehicle chargers.

24 ² See Mark Phelan, Detroit Free Press, *2017 Hyundai Ioniq Electric Car Is Long On*
25 *Features, Short On Range* (July 12, 2017), available at
26 [https://www.freep.com/story/money/cars/mark-phelan/2017/07/13/2017-hyundai-ioniq-](https://www.freep.com/story/money/cars/mark-phelan/2017/07/13/2017-hyundai-ioniq-electric-car-review/469235001/)
27 [electric-car-review/469235001/](https://www.freep.com/story/money/cars/mark-phelan/2017/07/13/2017-hyundai-ioniq-electric-car-review/469235001/) (last viewed Aug. 5, 2021); Car and Driver, *Driven: 2017*
28 *Hyundai Ioniq Electric* (Feb. 23, 2017), available at
[https://www.caranddriver.com/reviews/a15099362/2017-hyundai-ioniq-electric-first-](https://www.caranddriver.com/reviews/a15099362/2017-hyundai-ioniq-electric-first-drive-review/)
[drive-review/](https://www.caranddriver.com/reviews/a15099362/2017-hyundai-ioniq-electric-first-drive-review/) (last viewed Aug. 5, 2021).

³ See [https://cleantechnica.com/2019/02/10/hyundai-kona-ev-there-is-almost-no-reason-](https://cleantechnica.com/2019/02/10/hyundai-kona-ev-there-is-almost-no-reason-to-buy-a-gasoline-car-now-cleantechnica-review/)
[to-buy-a-gasoline-car-now-cleantechnica-review/](https://cleantechnica.com/2019/02/10/hyundai-kona-ev-there-is-almost-no-reason-to-buy-a-gasoline-car-now-cleantechnica-review/) (last viewed Aug. 5, 2021).

1 6. When Hyundai offered the Kona EV to the general public, it advertised that
2 each vehicle had a travel range of 258 miles without recharging.⁴ Hyundai has continued
3 to make that same representation since it started marketing the Kona EV to the general
4 public.⁵

5 7. The same representations were made by various certified Hyundai dealers
6 selling the Kona EV, stating that the Kona EV could travel “up to 258 miles without
7 needing to stop.”⁶ These representations were made on the basis of direction from
8 Hyundai regarding the Class Vehicles’ range.

9 8. In 2020, Hyundai upgraded the battery in its Ioniq EV vehicles, increasing
10 the vehicle’s advertised range from 124 miles to 170 miles. While boasting a lower range
11 than the Kona and other electric vehicles, the 2020 version of the Ioniq was a significant
12 increase in capacity from previous versions of the automobile.

13 9. Lithium-ion batteries are a key component of electric vehicles because of
14 their high specific energy, high power, and long lifecycle. However, safety concerns
15 related to unexpected fires have been well documented—including several fires that have
16 afflicted similar vehicles in South Korea, as well as other countries where Hyundai offers
17 the Class Vehicles for sale to the public. These fires are well-known to Hyundai, and yet
18 it continues to sell the Class Vehicles in the United States.

19 10. Hyundai is also aware of widespread reports that the same battery it uses in
20 the Class Vehicles is also under suspicion of causing dozens of battery fires in Chevrolet
21 Bolt electric vehicles manufactured by one of Hyundai’s primary automotive rivals,
22 General Motors.

23
24
25 ⁴ See <https://www.hyundainews.com/en-us/releases/2670> (last visited Aug. 5, 2021)

26 ⁵ See <https://www.hyundaiusa.com/us/en/vehicles/kona-electric> (“With an EPA-estimated
27 range of 258 miles with zero emissions, it has the highest of any all-electric subcompact
28 SUV.”) (last viewed Aug. 5, 2021).

⁶ See <https://www.hyundaiofmorenovalley.com/blog/what-is-the-range-for-the-2021-hyundai-kona-electric-vehicle/> (last viewed Aug. 5, 2021).

1 11. Furthermore, in the United States, the National Transportation Safety Board
2 reported 17 Tesla and 3 BMW i3 lithium-ion battery fires to the United Nations
3 Economic Commission for Europe’s Electrical Vehicle Safety International Working
4 Group. In other words, not only are the risks of lithium-ion battery fires well-
5 documented, there is an established and growing history of such fires regarding the
6 battery used in the Class Vehicles.

7 12. While lithium-ion batteries provide singular advantages that meet the
8 challenges manufacturers are trying to achieve for their electric vehicles—power and
9 range—lithium-ion battery fires are especially dangerous because they pose fire hazards
10 which are significantly different to other fire hazards in terms of initiation, spread,
11 duration, toxicity, and extinction.

12 13. Significantly, the documented fires in the Class Vehicles do not appear to
13 have resulted from any type of external abuse, but rather have resulted from an internal
14 failure of the battery while the cars are sitting in a parked, non-operative state. This type
15 of spontaneous ignition caused by thermal runaway has been reported to cause at least
16 80% of lithium-ion battery fires.

17 14. Unfortunately, it appears that Hyundai is another in the long line of
18 automobile manufacturers to have traded safety concerns for increased range, pushing the
19 Class Vehicles’ range beyond the battery’s capability in order to market the vehicle’s
20 battery range despite warnings published by the National Highway Traffic Safety
21 Administration, in October 2017, that overcharging lithium-ion batteries can result in one
22 of several exothermic reactions that have the potential to initiate thermal runaway
23 resulting in the spontaneous ignition.

24 15. According to the National Highway Traffic Safety Administration, proper
25 management of the electrical loads (i.e., electrical balancing) among cells in a pack helps
26 maintain overall charge and discharge performance within an acceptable range, and
27 prevent overdischarge or overcharge conditions. Because temperature is a key indicator
28 of cell electrical performance (e.g., hotter cells may discharge or charge more quickly

1 than colder cells), thermal management strategies must be integrated into the battery
2 system design to monitor charging and discharging events and mitigate potentially
3 problematic conditions.

4 16. Plaintiff alleges that the lithium-ion batteries and related management
5 systems of the Class Vehicles are defective and unsafe in that they fail to prevent thermal
6 runaway and spontaneous ignition of the batteries in the Class Vehicles.

7 17. Hyundai can no longer hide the Battery Defect from the general public,
8 given the amount of time that has now passed since the Kona's release. Hyundai has now
9 identified more than ten fires in South Korea traceable to the Kona's battery pack.

10 18. In light of those fires, Hyundai has announced a mass recall of the Kona
11 vehicles sold in South Korea, citing the risk of short circuit potentially caused by the
12 faulty battery packs installed in the vehicles. The solution to the recall was to reprogram
13 the battery pack such that it would only charge to 90% of its promised capacity. When
14 translated into range, this means that the Kona's range will drop approximately 26
15 miles—10% of the advertised 258. Hyundai has represented in South Korea that it
16 intends to make the reprogramming a permanent fix for the problem. Nevertheless, the
17 last fire experienced in a Kona vehicle just last month, occurred in a vehicle that had
18 already performed the recommended reprogramming, raising questions about whether the
19 reprogramming fix was actually a fix at all.

20 19. Unfortunately, Hyundai failed to be candid with American purchasers and
21 has concealed that its representations regarding the Class Vehicles' battery range were
22 false, based only on unreasonable usage of the battery to the extent that the risk of fire
23 was vastly increased, even while the Class Vehicles are in operation. Defendant failed to
24 disclose that the existence of the defect would diminish owners' usage of the Class
25 Vehicles, as well as their intrinsic and resale value.

26 20. Hyundai knew or should have known that the Class Vehicles were being
27 advertised and sold with false and misleading representations regarding the range of the
28 Class Vehicles and the risk of fire posed by the defective batteries. Yet, notwithstanding

1 its knowledge, Hyundai has failed to compensate owners and lessees who purchased the
2 Class Vehicles. Instead, Hyundai has implemented a solution reducing the range of the
3 Class Vehicles 10% below what was advertised.

4 21. As a result of Hyundai's unfair, deceptive and/or fraudulent business
5 practices, owners and/or lessees of the Class Vehicles, including Plaintiff, have suffered
6 an ascertainable loss of money and/or property and/or loss in value. Hyundai has
7 conducted these unfair and deceptive trade practices in a manner giving rise to substantial
8 aggravating circumstances.

9 22. Had Plaintiff and other Class members known at the time of purchase or
10 lease of the true range of the Class Vehicles and the propensity of the batteries installed
11 in the Class Vehicles to burst into flame, they would not have bought or leased the Class
12 Vehicles, or would have paid substantially less for them.

13 23. As a result of the lower ratings and the monetary costs associated therewith,
14 Plaintiff and the Class members have suffered injury in fact, incurred damages, and have
15 otherwise been harmed by Hyundai's conduct.

16 24. Accordingly, Plaintiff brings this action to redress Hyundai's multiple
17 violations of the law with regard to the Battery Defect.

18 **II JURISDICTION AND VENUE**

19 25. This Court has diversity jurisdiction over this action under 28 U.S.C. § 1332
20 (d) because the amount in controversy for the Class exceeds \$5,000,000 and many
21 putative class members are citizens of a different state than Defendant.

22 26. This Court has personal jurisdiction over Plaintiff because Plaintiff submits
23 to the Court's jurisdiction. This Court has personal jurisdiction over Defendant Hyundai
24 because it conducted and continues to conduct substantial business in the District, and
25 because it has committed the acts and omissions complained of herein in the District,
26 including the marketing and leasing of the Class Vehicles in this District. Hyundai Motor
27 America also has its headquarters located in this District, in the city of Fountain Valley,
28 California.

1 could short-circuit and lead to an engine fire. Hyundai has stated that the subject batteries
2 are equipped with “battery cells manufactured in the LG Energy Solutions China
3 (Nanjing) plant in which the Anode (Negative) tab can be folded. A folded Anode tab in
4 the battery cell could allow the Lithium plating on the Anode tab to contact the Cathode,
5 resulting in an electrical short. An electrical short internally within battery cell(s)
6 increases the risk of a vehicle fire while parked, charging, and/or driving.”⁷

7 37. But Hyundai’s recalls have been decidedly short of solutions, failing to
8 resolve the problems caused by the Battery Defect. Hyundai announced that it planned to
9 “notify owners to bring their vehicles to their nearest Hyundai dealership for inspection
10 and replacement of the Li-ion battery, if necessary.” It also stated that it would update the
11 Class Vehicles’ software “to allow for detection of abnormalities in the high-voltage
12 battery system while parked.” And in the meantime, Hyundai advised Class Vehicle
13 owners to “park their vehicles outdoors and/or away from structures until their vehicle is
14 remedied.” These interim steps and half-measures provide very little relief to consumers
15 who have lost the promised range on their vehicles, live in constant fear that their
16 vehicles will spontaneously incinerate, and in some cases are not even able to drive their
17 vehicles

18 38. Plaintiff’s experience is a typical one. After Plaintiff became aware of the
19 Hyundai recall, his wife took the Vehicle to his local certified dealer, Hyundai Moreno
20 Valley, for service related to the recall. When the recall was completed, he was told that
21 Hyundai had reduced the Vehicle’s range by 20 percent to compensate for decreasing the
22 risk of a potential battery malfunction. The dealer representative they spoke to told them
23 to drive in an “economical” fashion.

24 39. In June 2021, Hyundai used a remote software download to restrict the
25 Vehicle’s battery range to 205 miles—another 10 percent drop in range capacity.
26
27

28 ⁷ See <https://owners.hyundaiusa.com/us/en/resources/general-information/recall-200-information-and-implementation-plan.html>

1 40. On July 20, 2021, Plaintiff’s wife returned the Vehicle to the dealer to fix a
2 tire. The service advisor checked the vehicle inspection number and told her the dealer
3 would have to impound the vehicle until Hyundai could replace the battery. The service
4 advisor told her that the seizure would occur for an unspecified amount of time, but
5 potentially up to six months (or even longer). The dealer explained that because of the
6 fire risk posed by the vehicle, it could not release the car to her. The service
7 representative made various representations to Plaintiff’s wife while seizing the vehicle,
8 including asserting that “if anything happens, your insurance will not cover anything.”
9 Hyundai also refused to provide her with a loaner automobile, though it finally helped her
10 procure a rental. The rental, however, does not replace the Vehicle’s services because it
11 (1) uses gasoline, creating additional cost the Friches sought to avoid by purchasing the
12 Kona in the first place and (2) the Friches’ two driving-age children cannot drive the
13 rental car. Furthermore, the rental vehicle does not have carpool privileges or Fast Trak
14 discount rates like the Vehicle does.

15 41. At all relevant times herein, the Vehicle was covered by Hyundai’s new
16 vehicle limited warranty, including the vehicle’s 5-year/60,000-mile New Vehicle
17 Limited Warranty, its 10-Year/100,000-Mile Powertrain Limited Warranty, and its
18 lifetime electric battery warranty. In particular, Hyundai represents that if the “lithium-
19 ion polymer battery fails, Hyundai will replace the battery and cover recycling costs for
20 the old battery free of charge to the original owner.”

21 42. Since Hyundai seized the Vehicle, Plaintiff has continued to contact
22 Hyundai to determine when it will be released. Hyundai has not told Plaintiff when it
23 plans to replace the battery, how it plans to replace the battery, or when it will ever
24 release the Vehicle. Hyundai has told Plaintiff that even after it replaces the battery, the
25 battery will be covered by a different warranty with a term that lasts only ten years.
26 Hyundai now refuses to communicate with Plaintiff, stating that there is nothing it can do
27 but impound the Vehicle.
28

1 **B. Class-Wide Allegations**

2 43. Under regulations issued by the United States Environmental Protection
3 Agency, every new car and truck or SUV up to 10,000 pounds sold in the United States
4 must have a fuel economy label or window sticker that contains certain information about
5 the vehicles. Included among this information for electric vehicles is a vehicle's miles-
6 per-gallon ("MPG") equivalent estimates, which converts the range of the vehicle's
7 battery into an equivalent mileage as measured by miles per gallon. These ratings have
8 been given to consumers since the 1970s and are posted for the customers' benefit to help
9 them make valid comparisons between vehicles' MPGs when shopping for a new vehicle.
10 This is particularly important for electric vehicles, as consumers generally pay a premium
11 for electric vehicles as compared to gasoline-powered vehicles, and one reason for that
12 premium is the accrued savings over time of driving an electric-powered over a gasoline-
13 powered vehicle.

14 44. Automobile manufacturers are required by law to prominently affix a label
15 called a "Monroney sticker" to each new vehicle sold. The Monroney sticker sets forth,
16 the vehicle's fuel economy (expressed in MPGe for electric vehicles), the driving range,
17 estimated annual fuel costs, the fuel economy range of similar vehicles, and a statement
18 that a booklet is available at the dealership to assist in comparing the fuel economy of
19 vehicles from all manufacturers for that model year, along with pricing and other
20 information.

21 45. Hyundai advertised the Class Vehicles' driving range as being 258 miles (for
22 the Kona EV) and 170 miles (for the Ioniq EV) in order to compete in the electric vehicle
23 market. Hyundai had spent millions of dollars designing and manufacturing the Class
24 Vehicles as a competitor to other electric vehicles in the marketplace, and one of the
25 ways that Hyundai decided to distinguish the Class Vehicles from other vehicles was
26 their driving range.

27 46. Now, of course, Hyundai has put Class Vehicle owners in a conundrum.
28 Hyundai's purported software fix will decrease the range of the vehicle such that owners

1 will not be able to drive as far without recharging their battery, thus incurring extra time
2 and cost to recharge their vehicle than promised when they purchased it. And Class
3 Vehicles owners have no assurances that the “software fix” actually fixes the problem,
4 given recent reports coming out of South Korea. They are instead required to continue
5 using the same batteries that caused the fires alleged in this complaint, with replacements
6 only promised sometime far off in the future, if at all.

7 47. Hyundai has stated that the recall covers thousands of the Class Vehicles. As
8 a result, each and every one of the Class Vehicles—including Plaintiff’s vehicle—will
9 lose 10% more of its driving range.

10 48. Plaintiff, as well as members of the putative Class, reasonably relied on
11 Hyundai’s material, yet false, representations regarding the Class Vehicles’ range and
12 equivalent miles per gallon.

13 49. A reasonable consumer would expect and rely on Hyundai’s advertisements,
14 including the new vehicle Monroney stickers, to truthfully and accurately reflect the
15 Class Vehicles’ driving range. Further, a reasonable consumer in today’s market attaches
16 material importance to the advertisements of electric mileage, as energy efficiency is one
17 of the most, if not the most, important considerations in making a purchase or lease
18 decision for most consumers.

19 50. Hyundai manufactures automobiles, but Hyundai does not sell vehicles
20 directly to consumers; instead, those vehicles are sold exclusively to authorized Hyundai
21 dealerships who, in turn, re-sell them to consumers.

22 51. Persons or entities seeking to become an authorized Hyundai dealership
23 must complete and submit a Hyundai dealer application form provided by Hyundai
24 Motor America. Authorized Hyundai dealerships in the United States are governed by a
25 detailed Hyundai Motor America Dealer Sales and Service Agreement. (*See* Hyundai
26 Motor America Dealer Sales and Service Agreement, Ex. 1.) This agreement provides
27 that:

28 **DEALER is an integral part of a network of authorized
Hyundai Dealers dedicated to the vigorous and effective**

1 promotion and sale of Hyundai Products. Accordingly,
2 DEALER agrees to use its best efforts to effectively promote
3 and sell Hyundai Products to Customers in DEALER's primary
4 market area.

5 . . .

6 HMA and DEALER recognize the benefits which may be
7 derived from a comprehensive joint advertising effort by
8 Hyundai Dealers. Accordingly, HMA agrees to assist Hyundai
9 Dealers, including DEALER, in the establishment of a
10 cooperative advertising association. DEALER agrees to
11 cooperate with HMA in the formation of such association and,
12 once it is established, to participate actively and to contribute to
13 it in accordance with the by-laws of the association.

14 52. Additionally, after the initial point of sale, Hyundai also contemplates that its
15 agents and other dealers will purchase the vehicles and resell them to consumers.

16 53. As set forth above, Hyundai Dealers are contractually obligated to use “best
17 efforts to effectively promote and sell Hyundai Products to Customers in DEALER's
18 primary market area” and “to take all reasonable steps to provide service and parts for all
19 Hyundai Motor Vehicles, regardless of where purchased, and whether or not under
20 warranty; to ensure that necessary repairs on Customer vehicles are accurately diagnosed
21 and performed in accordance with the highest professional standards; to advise the
22 Customer and obtain his or her consent prior to the initiation of any repairs; and, to treat
23 the Customer courteously and fairly at all times.” This is true for both new and used
24 Hyundai vehicles. Even though these warranties are issued by the manufacturer and run
25 with vehicles when Hyundai sells the vehicles to the dealers, they are intended by both
26 Hyundai and the dealers to benefit the consumer that ultimately purchases the Hyundai
27 vehicles.

28 54. All new Hyundai vehicles are sold to the public with factory warranties
issued by Hyundai, including a New Vehicle Limited Warranty. Corrosion, powertrain,
and state and federal emissions warranties. Hyundai’s warranties were not intended to
benefit the initial dealer that it is in privity of contract with; instead, they were intended
to benefit the ultimate consumer of the vehicle and purchasers of the vehicles—whether
used or new—are third-party beneficiaries of these contractual warranties.

1 55. The Hyundai Warranty Manual for the Class Vehicles expressly provides:

2 **WARRANTOR**

3 Hyundai Motor America (HMA) warrants your new 2019
4 Hyundai vehicle pursuant to the limited warranties described in
5 this Owner's Handbook.

6 **APPLICABILITY**

7 . . .

8 The New Vehicle Limited, Anti-Perforation Limited, Federal
9 Emission Performance, Federal Emission Design and Defect,
10 California Emission Control Systems, and Replacement Parts
11 and Accessories Limited warranty coverage described in this
12 handbook apply to the vehicle regardless of a change in
13 ownership, and are transferable to subsequent owners.

14 The 10 years/100,000 miles Powertrain Limited Warranty is not
15 transferable and applies only to the original owner, as defined
16 under "Original Owner" included in the Powertrain Limited
17 Warranty (Original Owner) section of this Owner's Handbook.

18 56. For their part, the authorized Hyundai Dealers agree and are obligated to
19 "perform warranty service on each Hyundai Motor Vehicle at the time of predelivery
20 service and when requested by the owner according to the requirements of the Hyundai
21 Warranty Policies and Procedures Manual."

22 57. Finally, the Hyundai Motor America Dealer Sales and Service Agreement's
23 provision on "Warranties" makes it clear that the warranties Hyundai issues with its
24 vehicles are intended for the benefit of the ultimate consumers:

25 **WARRANTIES ON HYUNDAI PRODUCTS**

26 DEALER understands and agrees that the only warranties that
27 will be applicable to each new Hyundai Product sold to
28 DEALER by HMA will be the written limited warranty or
warranties expressly furnished by FACTORY or HMA or as
stated in the Hyundai Warranty Policies and Procedures
Manual, as it may be revised from time to time. With respect to
DEALER, such limited warranties are in lieu of all other
warranties, express or implied, including any implied warranty
of merchantability or fitness for a particular purpose or any
liability for commercial losses based on negligence or strict
liability. Except for its limited liability under such written
warranty or warranties, neither FACTORY nor HMA assumes
any other warranty obligation or liability. DEALER is not
authorized to assume any additional warranty obligations or

1 liabilities on behalf of HMA or FACTORY. Any such
2 additional obligations or liabilities assumed by DEALER will
be solely the responsibility of DEALER.

3 58. Because the sale of Hyundai vehicles from Hyundai to its authorized
4 dealers is meant for the sole purpose of facilitating the sale of these vehicles to the
5 public, including Plaintiff, and because the ultimate purchasers of the Hyundai vehicles
6 are the intended beneficiaries of the warranties issued by Hyundai that run with the
7 vehicles, Plaintiff and the Class Members are intended third-party beneficiaries to the
8 sale of these vehicles by Hyundai to its authorized dealers and, therefore, are entitled to
9 the application of the third-party beneficiary exception to the privity requirement for the
10 assertion of express and implied warranty claims asserted herein.

11 **V CLASS ACTION ALLEGATIONS**

12 59. Plaintiff brings this action on his own behalf, and on behalf of a nationwide
13 class pursuant to Federal Rules of Civil Procedure, Rule 23(a), 23(b)(2), and/or 23(b)(3)
14 defined as follows:

15 **Nationwide Class:**

16 All persons or entities in the United States who are current or former
17 owners and/or lessees of a Class Vehicle.

18 60. Alternatively, Plaintiff seeks to represent the following class of California
19 consumers:

20 **California Class:**

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

23 61. Together, the Nationwide Class and the described statewide classes shall be
24 collectively referred to herein as the "Class." Excluded from the Class are Hyundai, its
25 affiliates, employees, officers and directors, persons or entities that purchased the Class
26 Vehicles for resale, and the Judge(s) assigned to this case. Plaintiff reserves the right to
27 modify, change, or expand the Class definitions based on discovery and further
28 investigation.

1 62. Numerosity: Upon information and belief, the Class is so numerous that
2 joinder of all members is impracticable. While the exact number and identities of
3 individual members of the Class are unknown at this time, such information being in the
4 Hyundai's sole possession and obtainable by Plaintiff only through the discovery process,
5 Plaintiff believes, and on that basis alleges, that thousands of Class Vehicles have been
6 sold and leased in states that are the subject of the Class.

7 63. Existence and Predominance of Common Questions of Fact and Law:
8 Common questions of law and fact exist as to all members of the Class. These questions
9 predominate over the questions affecting individual Class members. These common legal
10 and factual questions include, but are not limited to, whether:

- 11 a. the Class Vehicles were sold with the existing Battery Defect;
- 12 b. Hyundai knew about the Battery Defect but failed to disclose it and its
13 consequences to Hyundai customers;
- 14 c. a reasonable consumer would consider the defect or its consequences
15 to be material;
- 16 d. Hyundai should have disclosed the Battery Defect's existence and its
17 consequences; and
- 18 e. Hyundai's conduct violates the laws and statutes described herein.

19 64. Typicality: Plaintiff's claims related to the alleged software reprogramming
20 and resulting limitation of the Class Vehicles' driving range are typical of the claims of
21 the Class because Plaintiff purchased his vehicles with the same battery defect as other
22 Class members, and each vehicle must receive the alleged software reprogramming.
23 Furthermore, Plaintiff and all members of the Class sustained monetary and economic
24 injuries including, but not limited to, ascertainable losses arising out of Hyundai's
25 wrongful conduct by limiting the Class Vehicles' driving range below the advertised
26 distance. Plaintiff advances these same claims and legal theories on behalf of himself and
27 all absent Class Members.
28

1 65. Adequacy: Plaintiff adequately represents the Class because his interests do
2 not conflict with the interests of the Class he seeks to represent, he has retained counsel
3 who are competent and highly experienced in complex class action litigation, and he
4 intends to prosecute this action vigorously. Plaintiff and his counsel are well-suited to
5 fairly and adequately protect the interests of the Class.

6 66. Superiority: A class action is superior to all other available means of fairly
7 and efficiently adjudicating the claims brought by Plaintiff and the Class. The injury
8 suffered by each individual Class member is relatively small in comparison to the burden
9 and expense of individual prosecution of the complex and extensive litigation
10 necessitated by Hyundai's conduct. It would be virtually impossible for Class members
11 on an individual basis to effectively redress the wrongs done to them. Even if Class
12 members could afford such individual litigation, the courts cannot. Individualized
13 litigation presents a potential for inconsistent or contradictory judgments. Individualized
14 litigation increases the delay and expense to all parties and to the court system,
15 particularly where the subject matter of the case may be technically complex. By
16 contrast, the class action device presents far fewer management difficulties, and provides
17 the benefits of single adjudication, an economy of scale, and comprehensive supervision
18 by a single court. Upon information and belief, individual Class members can be readily
19 identified and notified based on, *inter alia*, Hyundai's vehicle identification numbers,
20 warranty claims, registration records, and database of complaints.

21 67. Hyundai has acted, and refused to act, on grounds generally applicable to the
22 Class, thereby making appropriate final equitable relief with respect to the Class as a
23 whole.

1 **VI CAUSES OF ACTION**

2 **A. Claims Brought on Behalf of the Nationwide Class**

3 **COUNT I**

4 **VIOLATIONS OF THE MAGNUSON-MOSS WARRANTY ACT**

5 **(15 U.S.C. § 2301, *et seq.*)**

6 **(By Plaintiff on behalf of the Nationwide Class, or alternatively,**
7 **the California Class)**

8 68. Plaintiff and the Class incorporate by reference each preceding and
9 succeeding paragraph as though fully set forth at length herein.

10 69. Plaintiff brings this claim on behalf of himself and on behalf of the
11 Nationwide Class or, alternatively, on behalf of the California Class.

12 70. Plaintiff and the Class members are “consumers” within the meaning of the
13 Magnuson-Moss Warranty Act, 15 U.S.C. § 2301(3).

14 71. Hyundai is a supplier and warrantor within the meaning of 15 U.S.C.
15 §§ 2301(4)-(5).

16 72. The Class Vehicles, including Plaintiff’s vehicle, are “consumer products”
17 within the meaning of 15 U.S.C. § 2301(1).

18 73. Hyundai’s 5-year/60,000-mile new vehicle limited warranty is a “written
19 warranty” within the meaning of 15 U.S.C. § 2301(6).

20 74. Hyundai’s 10-year/100,000-mile powertrain limited warranty is a “written
21 warranty” within the meaning of 15 U.S.C. § 2301(6).

22 75. Hyundai’s lifetime electric battery warranty is a “written warranty” within
23 the meaning of 15 U.S.C. § 2301(6).

24 76. Hyundai breached its express warranties by:

- 25 a. selling and leasing Class Vehicles with a battery that was defective in
26 materials and/or workmanship, requiring repair or replacement within
27 the warranty period; and
28

1 b. refusing and/or failing to honor the express warranties by repairing or
2 replacing the battery without leaving the Class Vehicles with the same
3 capability as advertised to the purchasers.

4 77. Plaintiff and the other Class members relied on the existence and length of
5 the express warranties in deciding whether to purchase or lease the Class Vehicles.

6 78. Hyundai's breach of its express warranties has deprived Plaintiff and the
7 other Class Members of the benefit of their bargain.

8 79. The amount in controversy of Plaintiff's individual claims meets or exceeds
9 the sum or value of \$25.00. In addition, the amount in controversy meets or exceeds the
10 sum or value of \$50,000 (exclusive of interests and costs) computed on the basis of all
11 claims to be determined in this suit.

12 80. Hyundai has been given reasonable opportunity to cure its breach of the
13 written warranties. Alternatively, Plaintiff and the other Class members are not required
14 to do so because affording Defendant a reasonable opportunity to cure its breach of
15 written warranties was, and is, futile.

16 81. As a direct and proximate cause of Hyundai's breach of the written
17 warranties, Plaintiff and the other Class members sustained damages and other losses in
18 an amount to be determined at trial. Hyundai's conduct damaged Plaintiff and the other
19 Class Members, who are entitled to recover actual damages, consequential damages,
20 specific performance, diminution in value, costs, including statutory attorney fees and/or
21 other relief as deemed appropriate.

1 **B. Claims Brought on Behalf of the California Class**

2 **COUNT II**

3 **VIOLATIONS OF THE CONSUMER LEGAL REMEDIES ACT (“CLRA”)**

4 **(Cal. Civ. Code § 1750, *et seq.*)**

5 **(By Plaintiff on behalf of the Nationwide Class, or alternatively,**
6 **the California Class)**

7 82. Plaintiff and the Class incorporate by reference each preceding and
8 succeeding paragraph as though fully set forth at length herein.

9 83. Hyundai is a “person” as that term is defined in California Civil Code
10 § 1761(c).

11 84. Plaintiff and the Class members are “consumers” as that term is defined in
12 California Civil Code §1761(d).

13 85. Hyundai engaged in unfair and deceptive acts in violation of the CLRA by
14 the practices described above, and by knowingly and intentionally concealing from
15 Plaintiff and Class members that the Class Vehicles suffer from a defect(s) (and the costs,
16 risks, and diminished value of the vehicles as a result of this problem). These acts and
17 practices violate, at a minimum, the following sections of the CLRA:

- 18 • (a)(5) Representing that goods or services have sponsorships,
19 characteristics, uses, benefits or quantities which they do not
20 have, or that a person has a sponsorship, approval, status,
21 affiliation or connection which he or she does not have;
 - 22 • (a)(7) Representing that goods or services are of a particular
23 standard, quality, or grade, or that goods are of a particular style
24 or model, if they are of another; and
 - 25 • (a)(9) Advertising goods and services with the intent not to sell
26 them as advertised.
- 27
28

1 86. Hyundai’s unfair or deceptive acts or practices occurred repeatedly in its
2 trade or business, were capable of deceiving a substantial portion of the purchasing
3 public, and imposed a serious safety risk on the public.

4 87. Hyundai knew that the Class Vehicles’ battery was defectively designed or
5 manufactured, would create risks of fire and premature failure, and were not suitable for
6 their intended use.

7 88. Hyundai had the duty to Plaintiff and the Class members to disclose the
8 Battery Defect and the defective nature of the Class Vehicles because:

- 9 a. Hyundai was in a superior position to know the true state of facts
10 about the Battery Defect and associated repair costs in the Class
11 Vehicles;
- 12 b. Plaintiff and the Class members could not reasonably have been
13 expected to learn or discover that the Class Vehicles had dangerous
14 defects until manifestation of the defects;
- 15 c. Hyundai knew that Plaintiff and the Class members could not
16 reasonably have been expected to learn about or discover the Battery
17 Defect and its associated repair costs; and
- 18 d. Hyundai actively concealed the Battery Defect, its causes, and
19 resulting effects.

20 89. In failing to disclose the Battery Defect and the associated safety risks and
21 repair costs resulting from it, Hyundai has knowingly and intentionally concealed
22 material facts and breached its duty to disclose.

23 90. The facts Hyundai concealed or did not disclose to Plaintiff and the Class
24 members are material in that a reasonable consumer would have considered them to be
25 important in deciding whether to purchase the Class Vehicles or pay a lesser price. Had
26 Plaintiff and the Class known the Class Vehicles were defective, they would not have
27 purchased the Class Vehicles or would have paid less for them.

28

1 other manner or means whatever, including over the Internet, any statement . . . which is
2 untrue or misleading, and which is known, or which by the exercise of reasonable care
3 should be known, to be untrue or misleading.

4 104. Hyundai caused to be made or disseminated through California and the
5 United States, through advertising, marketing, and other publications, statements that
6 were untrue or misleading, and which were known, or which by the exercise of
7 reasonable care Hyundai should have known to be untrue and misleading to consumers,
8 including Plaintiff and other Class members.

9 105. Hyundai has violated section 17500 because its misrepresentations and
10 omissions regarding the safety, reliability, and functionality of the Class Vehicles were
11 material and likely to deceive a reasonable consumer.

12 106. Plaintiff and the other Class members have suffered injuries in fact,
13 including the loss of money or property, resulting from Hyundai's unfair, unlawful,
14 and/or deceptive practices. In purchasing or leasing their Class Vehicles, Plaintiff and the
15 other Class members relied on Hyundai's misrepresentations and/or omissions with
16 respect to the Class Vehicles' safety and reliability. Hyundai's representations were
17 untrue because it distributed the Class Vehicles with the Defect. Had Plaintiff and the
18 other Class members known this, they would not have purchased or leased the Class
19 Vehicles, or would not have paid as much for them. Accordingly, Plaintiff and the other
20 Class members did not receive the benefit of their bargain.

21 107. All of the wrongful conduct alleged herein occurred, and continues to occur,
22 in the conduct of Hyundai's business. Hyundai's wrongful conduct is part of a pattern or
23 generalized course of conduct that is still perpetuated and repeated, both in the state of
24 California and nationwide.

25 108. Plaintiff, individually and on behalf of the other Class members, requests
26 that the Court enter such orders or judgments as may be necessary to enjoin Hyundai
27 from continuing its unfair, unlawful, and/or deceptive practices, and restore to Plaintiff
28 and the other Class members any money Hyundai acquired by unfair competition,

1 including restitution and/or restitutionary disgorgement, and for such other relief set forth
2 below.

3 **COUNT V:**
4 **BREACH OF EXPRESS WARRANTY**
5 **(Based on California Law)**
6 **(By Plaintiff on behalf of the Nationwide Class, or alternatively,**
7 **the California Class)**

8 109. Plaintiff and the Class incorporate by reference each preceding and
9 succeeding paragraph as though fully set forth at length herein.

10 110. Hyundai provided all purchasers and lessees of the Class Vehicles with the
11 express warranties described herein, which became part of the basis of the parties'
12 bargain. Accordingly, Hyundai's warranties are express warranties under state law.

13 111. Hyundai distributed the defective parts causing the Battery Defect in the
14 Class Vehicles, and said parts are covered by Hyundai's warranties granted to all Class
15 Vehicle purchasers and lessors.

16 112. Hyundai breached these warranties by selling and leasing Class Vehicles
17 with the Defect, requiring repair or replacement within the applicable warranty periods,
18 and refusing to honor the warranties by providing free repairs or replacements during the
19 applicable warranty periods.

20 113. Plaintiff notified Hyundai of its breach within a reasonable time, and/or was
21 not required to do so because affording Hyundai a reasonable opportunity to cure its
22 breaches would have been futile. Hyundai also knew about the Battery Defect but chose
23 instead to conceal the Battery Defect as a means of avoiding compliance with its
24 warranty obligations.

25 114. As a direct and proximate cause of Hyundai's breach, Plaintiff and the other
26 Class members bought or leased Class Vehicles they otherwise would not have, overpaid
27 for their vehicles, did not receive the benefit of their bargain, and their Class Vehicles
28

1 suffered a diminution in value. Plaintiff and the Class members have incurred and will
2 continue to incur costs related to the Battery Defect’s diagnosis and repair.

3 115. Any attempt to disclaim or limit these express warranties vis-à-vis
4 consumers is unconscionable and unenforceable under the circumstances here.
5 Specifically, Hyundai’s warranty limitations are unenforceable because it knowingly sold
6 a defective product without giving notice of the Battery Defect to Plaintiff or the Class.

7 116. The time limits contained in Hyundai’s warranty period were also
8 unconscionable and inadequate to protect Plaintiff and Class members. Among other
9 things, Plaintiff and Class members had no meaningful choice in determining these time
10 limitations, the terms of which unreasonably favored Hyundai. A gross disparity in
11 bargaining power existed between Hyundai and the Class members because Hyundai
12 knew or should have known that the Class Vehicles were defective at the time of sale and
13 would fail well before their useful lives.

14 117. Plaintiff and Class members have complied with all obligations under the
15 warranty, or otherwise have been excused from performance of said obligations as a
16 result of Hyundai’s conduct.

17 **COUNT VI**

18 **BREACH OF IMPLIED WARRANTY**

19 **(Based on California Law)**

20 **(By Plaintiff on behalf of the Nationwide Class, or alternatively,**
21 **the California Class)**

22 118. Plaintiff and the Class incorporate by reference each preceding and
23 succeeding paragraph as though fully set forth at length herein.

24 119. Hyundai was at all relevant times the manufacturer, distributor, warrantor,
25 and/or seller of the Class Vehicles. Hyundai knew or had reason to know of the specific
26 use for which the Class Vehicles were purchased.

27 120. Hyundai provided Plaintiff and Class members with an implied warranty
28 that the Class Vehicles and any parts thereof are merchantable and fit for the ordinary

1 purposes for which they were sold. However, the Class Vehicles are not fit for their
2 ordinary purpose of providing reasonably reliable and safe transportation at the time of
3 sale or thereafter because, inter alia, the Class Vehicles suffered from a Battery Defect at
4 the time of sale. Therefore, the Class Vehicles are not fit for their particular purpose of
5 providing safe and reliable transportation.

6 121. Hyundai impliedly warranted that the Class Vehicles were of merchantable
7 quality and fit for such use. This implied warranty included, among other things: (i) a
8 warranty that the Class Vehicles and battery packs manufactured, supplied, distributed,
9 and/or sold by Hyundai were safe and reliable for the purpose for which they were
10 installed; and (ii) a warranty that the Class Vehicles would be fit for their intended use.

11 122. Contrary to the applicable implied warranties, the Class Vehicles at the time
12 of sale and thereafter were not fit for their ordinary and intended purpose of providing
13 Plaintiff and the other Class members with reliable, durable, and safe transportation.
14 Instead, the Class Vehicles suffer from a defective design(s) and/or manufacturing
15 defect(s).

16 123. Hyundai's actions, as complained of herein, breached the implied warranty
17 that the Class Vehicles were of merchantable quality and fit for such use.

18 **COUNT VII**

19 **COMMON LAW FRAUDULENT CONCEALMENT**

20 **(Based on California Law)**

21 **(By Plaintiff on behalf of the Nationwide Class, or alternatively,**
22 **the California Class)**

23 124. Plaintiff and the Class incorporate by reference each preceding and
24 succeeding paragraph as though fully set forth at length herein.

25 125. Hyundai made material omissions concerning a presently existing or past
26 fact. For example, Hyundai did not fully and truthfully disclose to its customers the true
27 nature of the Defect, which was not readily discoverable until years later. As a result,
28

1 Plaintiff and the other Class members were fraudulently induced to lease and/or purchase
2 the Class Vehicles with the said Battery Defect and all problems resulting from it.

3 126. Hyundai made these statements with knowledge of their falsity, intending
4 that Plaintiff and the Class members rely on them.

5 127. As a result of these omissions and concealments, Plaintiff and the Class
6 members incurred damages including loss of intrinsic value and out-of-pocket costs
7 related to repair of the systems.

8 128. Plaintiff and the Class members reasonably relied on these omissions and
9 suffered damages as a result.

10 **COUNT VIII**

11 **VIOLATIONS OF THE SONG-BEVERLY ACT – BREACH OF IMPLIED**
12 **WARRANTY**

13 **(Cal. Civ. Code §§ 1792, 1791.1, *et seq.*)**

14 **(By Plaintiff on behalf of the Nationwide Class, or alternatively,**
15 **the California Class)**

16 129. Plaintiff and the Class incorporate by reference each preceding and
17 succeeding paragraph as though fully set forth at length herein.

18 130. At all relevant times hereto, Hyundai was the manufacturer, distributor,
19 warrantor, and/or seller of the Class Vehicles. Hyundai knew or should have known of
20 the specific use for which the Class Vehicles were purchased.

21 131. Hyundai provided Plaintiff and the Class members with an implied warranty
22 that the Class Vehicles, and any parts thereof, are merchantable and fit for the ordinary
23 purposes for which they were sold. The Class Vehicles, however, are not fit for their
24 ordinary purpose because, inter alia, the Class Vehicles suffered from an inherent defect
25 at the time of sale.

26 132. The Class Vehicles are not fit for the purpose of providing safe and reliable
27 transportation because of the Battery Defect.

28

1 Dated: August 9, 2021

Respectfully submitted,

2 MCCUNE WRIGHT AREVALO LLP

3 By: /s/ David C. Wright

4 David C. Wright
5 Richard D. McCune
6 Steven A. Haskins
7 Mark I. Richards
8 MCCUNE WRIGHT AREVALO, LLP
9 3281 E. Guasti, Road, Suite 100
10 Ontario, California 91761
11 Telephone: 909-557-1250
12 Facsimile: 909-557-1275
13 Email: dcw@mccunewright.com
14 Email: rdm@mccunewright.com
15 Email: sah@mccunewright.com
16 Email: mir@mccunewright.com
17 Attorneys for Plaintiff and the Putative Class

18 **JURY DEMAND**

19 Plaintiff, on behalf of himself and the putative Class, demand a trial by jury on all
20 issues so triable.

21 MCCUNE WRIGHT AREVALO LLP

22 By: /s/ David C. Wright

23 David C. Wright
24 Richard D. McCune
25 Steven A. Haskins
26 Mark I. Richards
27 MCCUNE WRIGHT AREVALO, LLP
28 3281 E. Guasti, Road, Suite 100
Ontario, California 91761
Telephone: 909-557-1250
Facsimile: 909-557-1275
Email: dcw@mccunewright.com
Email: rdm@mccunewright.com
Email: sah@mccunewright.com
Email: mir@mccunewright.com

Attorneys for Plaintiff and the Putative Class