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19 UNITED STATES DISTRICT COURT
20 CENTRAL DISTRICT OF CALIFORNIA
21 WESTERN DIVISION

22 KATELYN MCNERNEY, SHERRY
23 MASON, CAMRI NELSON,
24 CAMERON CUNNINGHAM, AND
25 ALLISON BROWN, on behalf of
26 themselves and all others similarly
27 situated,

28 Plaintiffs,

v.

KIA AMERICA, INC., a California
corporation, and HYUNDAI MOTOR
AMERICA, a California corporation,

Defendants.

Case No.: 8:22-cv-01548

CLASS ACTION

CLASS ACTION COMPLAINT

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1 All allegations made in this Complaint are based upon information and belief
2 except those allegations that pertain to Plaintiffs, which are based on personal
3 knowledge. Each allegation in this Complaint either has evidentiary support or,
4 alternatively, pursuant to Rule 11(b)(3) of the *Federal Rules of Civil Procedure*, is likely
5 to have evidentiary support after a reasonable opportunity for further investigation or
6 discovery.

7 I. NATURE OF THIS ACTION

8 1. Plaintiffs bring this proposed class action for damages and injunctive relief
9 on behalf of themselves and all other persons and entities nationwide who purchased or
10 leased 2011-2022 Kia vehicles or 2015-2022 Hyundai vehicles equipped with
11 traditional “insert-and-turn” steel key ignition systems (the “Vehicles” or “Class
12 Vehicles”) manufactured by defendant Kia America, Inc. (“Kia”) or Hyundai Motor
13 America (“Hyundai”) (collectively, “Defendants”). Unlike most vehicles, the Class
14 Vehicles are not equipped with an “immobilizer” preventing them from being started
15 unless a code is transmitted from the Vehicle’s specific smart key.

16 2. This security vulnerability (the “Defect”) makes the Vehicles incredibly
17 easy to steal, allowing thieves to steal Vehicles by simply opening the steering columns
18 and using a common USB charging cord or similar metal object to start the engine.

19 3. Viral videos on TikTok and YouTube give step-by-step instructions on
20 how to steal Class Vehicles without a key, and reports of stolen Kia and Hyundai
21 Vehicles have skyrocketed across the country. In fact, the “Kia Challenge,” widely
22 shared on social media platforms, dares people to break in and then use a USB cord to
23 start the cars. The videos show teens and young adults going for joy rides and in some
24 cases, even abandoning or crashing the cars. The incidents have turned dangerous, with
25 suspects and bystanders being seriously injured or killed following unsafe driving and
26 crashes related to the thefts.

1 4. Defendants have long known or should have known of the Defect from
2 multiple sources. According to Police, thieves have been exploiting a security flaw in
3 Kia vehicles made since 2011 and Hyundai vehicles made since 2015. Yet Defendants
4 failed to disclose and actively concealed the Defect from the public, and continue to
5 manufacture, distribute, and sell the Vehicles without disclosing the Defect.

6 5. Plaintiffs bring this action for violation of relevant state consumer
7 protection acts and for breach of implied warranties on behalf of a nationwide class and
8 state classes of Vehicle lessees and owners. Plaintiffs seek damages and equitable relief
9 on behalf of themselves and all others similarly situated.

10 **II. JURISDICTION AND VENUE**

11 6. This Court has subject matter jurisdiction over this action under 28 U.S.C.
12 § 1332(d)(2), as amended by the Class Action Fairness Act of 2005, because the amount
13 in controversy exceeds \$5,000,000, exclusive of interests and costs, and because this is
14 a class action in which the members of the classes and Defendants are citizens of
15 different states. This Court also has supplemental jurisdiction over the state law claims
16 pursuant to 28 U.S.C. § 1367.

17 7. Venue is proper in this judicial district under 28 U.S.C. § 1391 because
18 Defendants are citizens of California with headquarters located in this district.

19 **III. PARTIES**

20 **A. Plaintiffs**

21 8. Katelyn McNerney is an Illinois citizen residing in Crystal Lake, Illinois.

22 9. Plaintiff McNerney leased a new 2022 Kia Seltos in August 2021 from
23 Gary Lang Kia in McHenry, Illinois. Plaintiff McNerney paid a \$2,000.00 down
24 payment and is paying \$399.99 a month to lease the Vehicle.

25 10. On July 27, 2022, Plaintiff McNerney's Vehicle was stolen in Milwaukee,
26 Wisconsin.

1 11. When the Vehicle was subsequently located, its steering column cladding
2 was found removed. The thieves left behind the USB cord they used to steal the Vehicle.
3 There were paint marks along the sides of the vehicle, the back window was smashed
4 out, and glass was everywhere inside the Vehicle. All told, the Vehicle suffered
5 approximately \$4,600.00 in damage. Plaintiff McNerney's insurer will cover the costs
6 of repair except for her \$500 deductible. However, many of the parts that are needed to
7 repair the Vehicle are back-ordered so it will be in the shop for at least a month.

8 12. Plaintiff McNerney has suffered an ascertainable loss as a result of
9 Defendant Kia's wrongful conduct associated with Defect including, but not limited to,
10 her insurance deductible, and overpayment and diminished value of the Vehicle.

11 13. Sherry Mason is a citizen of Ohio residing in Cincinnati, Ohio.

12 14. Plaintiff Mason purchased a new 2020 Kia Sorrento from Jeff Wyler Kia
13 in Fairfield, Ohio.

14 15. Plaintiff Mason's Vehicle was stolen on July 14, 2022. During the theft,
15 the Vehicle's alarm did not activate.

16 16. The thieves trashed the inside of Plaintiff Mason's Vehicle including under
17 the steering wheel column where the thieves ripped off the steering column cladding to
18 start the Vehicle.

19 17. While her Vehicle is still being repaired, the estimated cost to fix her
20 Vehicle is approximately \$1,500. Plaintiff Mason will have to pay her auto insurance
21 policy's \$1,000 deductible. Plaintiff Mason has also had to pay car rental expenses while
22 her Vehicle was being repaired.

23 18. Plaintiff Mason learned from the repair facility representative that there is
24 nationwide parts shortage for the steering column cladding because of the extremely
25 high number of Vehicle thefts and the resulting destruction of this part. According to
26 the repair facility, there is at least a 6-month waiting period for the replacement part.

1 19. Plaintiff Mason has suffered an ascertainable loss as a result of Defendant
2 Kia's wrongful conduct associated with Defect including, but not limited to, her
3 insurance deductible, and overpayment and diminished value of the Vehicle.

4 20. Cameron Cunningham is a citizen of Ohio.

5 21. Plaintiff Cunningham owned a 2013 Kia Optima.

6 22. Plaintiff Cunningham's Vehicle was stolen on June 24, 2022.

7 23. The thief crashed Plaintiff Cunningham's Vehicle into a tree, and the
8 Vehicle was a total loss. Prior to the theft of his Vehicle, the Blue Book value of Plaintiff
9 Cunningham's Vehicle was \$4,800.

10 24. Because Plaintiff Cunningham only had liability insurance on the Vehicle,
11 there is no insurance coverage to reimburse Plaintiff Cunningham for the total loss of
12 the Vehicle. Plaintiff Cunningham also paid a \$500 towing charge to have the totaled
13 Vehicle towed back to his Mother's home.

14 25. In addition, in the weeks prior to the theft of his Vehicle, Plaintiff
15 Cunningham paid about \$1,300 for a new battery and alternator. Because he had no
16 vehicle following the theft of his 2013 Kia Optima, Plaintiff Cunningham had to
17 purchase airfare to fly to Atlanta, Georgia.

18 26. Plaintiff Cunningham has suffered an ascertainable loss as a result of
19 Defendant Kia's wrongful conduct associated with Defect including, but not limited to,
20 his total loss of the Vehicle, towing charges, and overpayment and diminished value of
21 the Vehicle.

22 27. Camri Nelson is an Ohio citizen residing in Cincinnati, Ohio.

23 28. Plaintiff Nelson purchased a new 2019 Kia Forte from Taylor Kia located
24 in Lima Ohio.

25 29. Plaintiff Nelson's Vehicle was stolen on July 30, 2022.

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1 30. While the Vehicle was recovered by the police the next day, the Vehicle
2 was damaged as the window was smashed and the steering column cladding was
3 destroyed.

4 31. While Plaintiff Nelson has insurance to cover the damage, she will be
5 responsible for and will have to pay the insurance policy's \$500 deductible.

6 32. Plaintiff Nelson has suffered an ascertainable loss as a result of Defendant
7 Kia's wrongful conduct associated with Defect including, but not limited to, her
8 insurance deductible, and overpayment and diminished value of the Vehicle.

9 33. Allison Brown is a citizen of the state of Ohio and resides in Cincinnati,
10 Ohio.

11 34. Plaintiff Brown owns a 2016 Hyundai Sonata.

12 35. Plaintiff Brown's Vehicle was stolen on June 30, 2022 and was recovered
13 by the police on July 1, 2022.

14 36. Plaintiff Brown's Vehicle was damaged as a result of the theft including
15 the steering column cladding.

16 37. Plaintiff Brown's Vehicle is sitting at a Jeff Wyler Hyundai awaiting
17 repairs. According to a representative at Jeff Wyler Hyundai, the repair process is being
18 significantly delayed because there is a nationwide parts shortage to accomplish the
19 repair due to the number of Vehicles being stolen.

20 38. While Plaintiff Brown has insurance to cover the damage, she will be
21 responsible for and will have to pay the insurance policy's \$500 deductible. Plaintiff
22 Brown has also incurred expenses for rental cars, Ubers, and has missed work due to
23 not having transportation.

24 39. Plaintiff Brown has suffered an ascertainable loss as a result of Defendant
25 Hyundai's wrongful conduct associated with Defect including, but not limited to, her
26 total loss of the Vehicle, towing charges, and overpayment and diminished value of the
27 Vehicle.

28

1 **B. Defendants**

2 40. Defendant Kia America, Inc. is a California corporation with a principal
3 place of business at 111 Peters Canyon Road, Irvine, California 92606.

4 41. Defendant Hyundai Motor America is a California corporation with a
5 principal place of business at 10550 Talbert Avenue, Fountain Valley, California 92708.

6 **IV. FACTUAL ALLEGATIONS**

7 42. Immobilizers have been proven to deter auto theft. Indeed, a 2016 study
8 reflects that the use of immobilizers lowered the overall rate of car thefts by 40% over
9 a ten-year period.¹

10 43. Recognizing the value of immobilizers as an anti-theft device, countries
11 across the globe require immobilizers to be installed as standard equipment in new
12 vehicles. For example, the European Union has required immobilizers as a standard
13 feature for all new vehicles since 1998, Australia since 2001, and Canada since 2007.²

14 44. Kia and Hyundai, however, have largely refused to implement
15 immobilizers as standard technology in virtually all of their vehicle lines. Defendants
16 have long been aware of the anti-theft benefits attendant to making immobilizers a
17 standard feature on their vehicles based on the immobilizer mandates of other countries
18 in which Kia and Hyundai sell their vehicles. Kia and Hyundai sell virtually identical
19 vehicles to the Class Vehicles in countries with immobilizer requirements, but have
20 largely failed to equip Vehicles sold in the United States with the same immobilizer
21 technology designed to prevent auto theft.

22 45. Kia and Hyundai likely refused to implement this technology as a standard
23 feature in the Class Vehicles as a cost-saving measure to improve their profitability.

24
25
26 ¹ Jan C. van Ours & Ben Vollaard, The Engine Immobilizer: A Non-Starter For
27 Car Thieves, THE ECONOMIC JOURNAL, Vol. 126, No. 593, 1264, 1283 (June 2016).

28 ² *Id.* at 1265.

1 46. Given the ease with which Class Vehicles can be stolen, the United States
2 has experienced a swell in reported car thefts of Vehicles. For instance, in Milwaukee,
3 where Plaintiff McNerney’s Vehicle was stolen, two of the three vehicle makes
4 accounting for nearly 60% of vehicle thefts are Kia and Hyundai.³

5 47. The cost to repair stolen Vehicles can be substantial. The cost to repair a
6 window and steering column on a Class Vehicle alone can exceed \$3,000.⁴ Because
7 cars taken on joy rides often experience further damage, the owner’s total cost to repair
8 their vehicle often exceed \$10,000.⁵

9 48. Moreover, due to the alarming rate in which Class Vehicles are being
10 stolen, Defendants’ authorized dealers and repair shops are experiencing shortages of
11 the parts needed to repair them. Some parts are backordered up to eight weeks⁶

12 49. The federal government has long recognized that “stolen cars constitute a
13 major hazard to life and limb on the highways.” 33 Fed. Reg. 6, 471, (Apr. 27, 1968).
14 Moreover, “cars operated by unauthorized persons are far more likely to cause
15 unreasonable risk of accident, personal injury, and death than those which are driven by
16 authorized individuals.” *Id.*

17 50. The rate at which these Vehicles are being stolen is so high that certain
18 auto insurance companies are either refusing to insure these Vehicles or have raised the
19 rates. The following statement from Progressive was recently released to ABC 7 News
20 Denver:

21 _____
22 ³ [https://www.tmj4.com/news/local-news/honda-hyundai-kias-among-milwaukees-](https://www.tmj4.com/news/local-news/honda-hyundai-kias-among-milwaukees-most-stolen-cars-police-warn)
23 [most-stolen-cars-police-warn](https://www.tmj4.com/news/local-news/honda-hyundai-kias-among-milwaukees-most-stolen-cars-police-warn) (last accessed Aug. 17, 2022);
24 [https://www.cbs58.com/news/most-stolen-cars-in-milwaukee-kia-hyundai-and-honda-](https://www.cbs58.com/news/most-stolen-cars-in-milwaukee-kia-hyundai-and-honda-models)
[models](https://www.cbs58.com/news/most-stolen-cars-in-milwaukee-kia-hyundai-and-honda-models) (last accessed Aug. 19, 2022).

25 ⁴ [https://www.jsonline.com/story/news/solutions/2021/02/03/motorvehicle-thefts-](https://www.jsonline.com/story/news/solutions/2021/02/03/motorvehicle-thefts-up-152-milwaukee-so-far-2021/4266701001/)
26 [up-152-milwaukee-so-far-2021/4266701001/](https://www.jsonline.com/story/news/solutions/2021/02/03/motorvehicle-thefts-up-152-milwaukee-so-far-2021/4266701001/) (last accessed Aug. 17, 2022).

27 ⁵ *Id.*

28 ⁶ *Id.*

1 We're committed to providing affordable insurance solutions
2 for consumers based on the particular level of risk while also
3 ensuring our policies are accurately priced. Due to the theft
4 risk that some Hyundai and Kia vehicles present, in many
5 cases it makes these vehicles difficult to insure, so we have
6 adjusted our acceptance criteria for new business on some of
7 these models. We'll continue to monitor how this issue plays
8 out, and are hopeful to be able to revisit our decision if the
9 theft risk diminishes and community awareness improves.⁷

6 51. Other harms caused by the auto theft include increased insurance premiums
7 foisted upon the victims of these crimes, other property that is stolen or damaged in the
8 process, and the diminution in value of the Class Vehicles being targeted.

9 52. Notably, the Vehicles fail to comply with Federal Motor Vehicle Safety
10 Standard ("FMVSS") 114, which requires: "Each vehicle must have a starting system
11 which, whenever the key is removed from the starting system prevents: (a) The normal
12 activation of the vehicle's engine or motor; and (b) Either steering, or forward self-
13 mobility, of the vehicle, or both."

14 53. If the Vehicles were manufactured to comply with this FMVSS, they would
15 not be stolen at such alarming rates because when the key is removed from the starting
16 system, both steering and forward self-mobility would be prevented.

17 54. Recognizing the gravity of the problem, Defendants have announced that
18 all new model vehicles will be equipped with an immobilizer.⁸ But this change offers
19 little consolation to the thousands of consumers whose defective Vehicles remain
20 vulnerable to theft.

21 55. Defendants have long known the security benefits offered by immobilizers.
22 Indeed, Defendants have been selling virtually identical vehicles equipped with
23 immobilizers overseas for decades, and have even incorporated immobilizers as
24

25 ⁷ <https://www.theautopian.com/progressive-reportedly-wont-insure-some-kias-and-hyundais-because-theyre-too-easy-to-steal/> (last accessed August 18, 2022).

26 ⁸ <https://urbanmilwaukee.com/2021/07/24/two-thirds-of-all-milwaukee-auto-thefts-are-kia-and-hyundai-vehicles/> (last accessed Aug. 17, 2022).

1 standard technology into select higher-end models, but Defendants have simply refused
2 to follow their competitors by making it standard technology on their lower-cost brands.

3 56. The ease with which the Class Vehicles may be stolen is not surprising to
4 Defendants. Upon information and belief, Defendants have known of the unusually high
5 rate of thefts experienced by Class Vehicles for many years, through scores of customer
6 complaints relayed through their dealers.

7 57. Moreover, Defendants must have known how these Vehicles were being
8 stolen because they sell replacement parts to dealerships and autobody shops around the
9 country that are needed to repair the stolen Vehicles. Because the Vehicles are being
10 stolen in the same way, Defendants would have experienced a spike in orders for the
11 same replacement parts.

12 58. But Defendants continued to sell the Class Vehicles, flooding the market
13 with more unsafe cars susceptible to theft. Only when the problem became too large to
14 ignore did Defendants decide to introduce immobilizer technology to all future new
15 vehicles going forward.

16 59. Meanwhile, the Class members who have previously purchased the
17 Vehicles remain vulnerable.

18 V. CHOICE OF LAW ALLEGATIONS

19 60. Because this Complaint is brought in California, California's choice of law
20 regime governs the state law allegations in this Complaint. Under California' choice of
21 law rules, California law applies to the claims of all Class members, regardless of their
22 state of residence or state of purchase.

23 61. Because Defendants are headquartered—and made all decisions relevant
24 to these claims—in California, California has a substantial connection to, and materially
25 greater interest in, the rights, interests, and policies involved in this action than any other
26 state. Application of California law to Defendants and the claims of all Class members
27 would not be arbitrary or unfair.

1 62. Plaintiffs plead claims on behalf of a nationwide class because the laws for
2 each state do not vary materially for these claims. Alternatively, Plaintiffs plead state
3 law classes claims as indicated below. This Complaint refers to the nationwide and state
4 classes collectively as the “Class,” unless noted otherwise.

5 **VI. CLASS ACTION ALLEGATIONS**

6 63. Plaintiffs bring this action on behalf of themselves and all others similarly
7 situated under Fed. R. Civ. P. 23.

8 64. Subject to confirmation, clarification and/or modification based on
9 discovery to be conducted in this action, the classes that Plaintiffs seek to represent shall
10 be defined as follows:

11 All persons and entities nationwide that purchased or leased a Class
12 Vehicle (the “Nationwide Class”).

13 All persons and entities that purchased or leased a Class Vehicle in
14 the State of Illinois (the “Illinois Class”).

15 All persons and entities that purchased or leased a Class Vehicle in
16 the State of Ohio (the “Ohio Class”).

(Collectively, the “Class” unless otherwise noted.)

17 65. Excluded from the Class are: (1) Defendants, any entity in which
18 Defendants have a controlling interest, and their legal representatives, officers,
19 directors, employees, assigns and successors; (2) the Judge to whom this case is
20 assigned and any member of the Judge’s staff or immediate family; and (3) Class
21 Counsel.

22 66. Plaintiffs seek only damages and injunctive relief on behalf of themselves
23 and the Class members. Plaintiffs disclaim any intent or right to seek any recovery in
24 this action for personal injuries, wrongful death, or emotional distress suffered by
25 Plaintiffs and/or the Class members.

26 67. While the exact number of Class members is unknown to Plaintiffs at this
27 time and can only be determined by appropriate discovery, membership in the Class is
28 ascertainable based upon the records maintained by Defendants and governmental

1 officials. Upon information and belief, Defendants have sold and leased many
2 thousands of Vehicles nationwide during the relevant time period. Therefore, the Class
3 members are so numerous that individual joinder of all Class members is impracticable
4 under Fed. R. Civ. P. 23(a)(1).

5 68. Common questions of law and fact exist as to all Class members. These
6 common legal and factual questions include:

- 7 (a) Whether Defendants designed, advertised, sold, and placed the Class
8 Vehicles into the stream of commerce;
9 (b) Whether the Class Vehicles were sold with the Defect described above;
10 (c) Whether the Defect in the Class Vehicles is a safety and/or security defect
11 that created a foreseeable risk of harm to Plaintiffs and the Class;
12 (d) Whether Defendants breached implied warranties made to the Class
13 members;
14 (e) Whether Defendants knew about the Defect and, if so, how long
15 Defendants have known about the Defect;
16 (f) Whether Defendants concealed the Defect;
17 (g) Whether Defendants' conduct violates consumer protection statutes,
18 warranty laws, and other laws asserted herein;
19 (h) Whether the Class members have suffered damages as a result of the
20 conduct alleged herein, and if so, the measure of such damages, including
21 diminution of value and deprivation of the benefit of the bargain; and
22 (i) Whether the Class members are entitled to injunctive relief.

23 69. Plaintiffs' claims are typical of the claims of the Class members whom they
24 seek to represent under Fed. R. Civ. P. 23(a)(3) because Plaintiffs and each Class
25 member have a Vehicle with the same Defect.

26 70. Plaintiffs will fairly and adequately represent and protect the interests of
27 the Class members as required by Fed. R. Civ. P. 23(a)(4). Plaintiffs are adequate
28 representatives because their interests do not conflict with the interests of the Class
members. Further, Plaintiffs have retained counsel competent and experienced in
complex class action litigation, including automotive defect class action litigation, and
Plaintiffs intend to prosecute this action vigorously. Therefore, the interests of the Class
members will be fairly and adequately protected.

71. A class action is appropriate under Fed. R. Civ. P. 23(b)(3) because questions of law or fact common to Class members predominate over any questions affecting only individual members, and a class action is superior to any other available means for fairly and efficiently adjudicating the controversy. In this regard, the Class members' interests in individually controlling the prosecution of separate actions is low given the magnitude, burden, and expense of individual prosecutions against large corporations such as Defendants. It is desirable to concentrate this litigation in this forum to avoid burdening the courts with individual lawsuits. Individualized litigation presents a potential for inconsistent or contradictory results and also increases the delay and expense to all parties and the court system presented by the legal and factual issues of this case. By contrast, the class action procedure here will have no management difficulties. Defendants' records and the records available publicly will easily identify the Class members. The Defect is common to all Vehicles; therefore, the same common documents and testimony will be used to prove Plaintiffs' claims as well as the claims of the Class members. Finally, proceeding as a class action provides the benefits of single adjudication, economies of scale, and comprehensive supervision by a single court

72. A class action is appropriate under Fed. R. Civ. P. 23(b)(2) because, as stated above, Defendants have acted or refused to act on grounds that apply generally to the Class members, so that final injunctive relief or corresponding declaratory relief is appropriate as to all Class members.

VII. CLAIMS

A. Claims Brought on Behalf of the Nationwide Class

COUNT I BREACH OF IMPLIED WARRANTY (BASED ON CALIFORNIA LAW)

73. Plaintiffs re-allege and incorporate each and every allegation set forth above as if fully written herein.

74. This count is brought under California law on behalf of a Nationwide Class.

1 75. As detailed herein, Defendants designed, manufactured, distributed, and
2 sold the Class Vehicles knowing that consumers like Plaintiffs and the Class would
3 purchase these products from Kia and Hyundai’s authorized dealers as a means of
4 transportation

5 76. As merchants of the Class Vehicles, Kia and Hyundai warranted to the
6 Plaintiffs and the Class that the Class Vehicles were fit for the ordinary purpose for
7 which they are used.

8 77. Plaintiffs relied on this warranty to their detriment.

9 78. The Class Vehicles are not “merchantable” because they are not reasonably
10 fit for the ordinary purpose for which they are sold, which is to provide safe, reliable
11 transportation. To the contrary, the Class Vehicles pose a substantial safety hazard
12 because the Defect renders them vulnerable to theft, making them prime targets to be
13 used as instrumentalities through which thieves engage in reckless driving or other
14 criminal activity.

15 79. Sufficient privity of contract exists to assert this implied warranty claim.

16 80. Defendants market and advertise the sale of the Class Vehicles in various
17 media outlets across the United States, including to the Plaintiffs and the Class.

18 81. Defendants advertise their authorized dealer network on their respective
19 websites and task them with administering the promotional material and warranty
20 information for new Class Vehicles to prospective consumers throughout the nation.
21 Through Defendants’ websites, consumers obtain information about vehicles; design
22 specific vehicles to meet his or her needs; obtain information about the value of trade-
23 in vehicles; request additional marketing materials; and request quotes for vehicle.
24 Defendants then send these consumers to “authorized dealers” to consummate sales and
25 leases.

26 82. Defendants control various details regarding their dealers’ operations
27 through various written agreements, such as: (i) granting each dealer a license to use
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1 their respective trademarks and intellectual property; (ii) furnishing each dealer with
2 marketing materials to assist in the sale of their vehicles; (iii) providing training to
3 dealership personnel to assist in their sales activities; and (iv) prohibiting their dealers
4 from engaging in certain practices that otherwise detract from their respective brands or
5 undermine the sale of their respective vehicles, including the Class Vehicles.

6 83. Plaintiffs purchased and/or leased their respective Vehicles from
7 “authorized dealers” with the understanding that these dealers were acting on behalf of
8 Defendants.

9 84. The sole and express purpose that each authorized Kia and Hyundai dealer
10 has when it acquires the vehicles from Kia and Hyundai is to immediately re-sell them
11 to the end-users like Plaintiffs and the Class members.

12 85. Defendants’ conduct, and the conduct of their respective dealers, thus
13 create a justifiable belief on the part of Plaintiffs and Class members that the dealers are
14 agents of Kia and/or Hyundai, which the Plaintiffs relied on to their detriment.

15 86. Thus, each Kia and Hyundai dealership operates as the actual and/or
16 apparent agent of the Defendants–manufacturers named herein, which satisfies any
17 privity requirement.

18 87. Moreover, the purchase and/or lease agreements between the Plaintiffs and
19 their respective dealers were entered directly and primarily for Kia and Hyundai’s
20 benefit.

21 88. Likewise, any contract whereby Defendants’ authorized dealers acquire the
22 Class Vehicles from Defendants to resell to the end-user is also for the express benefit
23 of Plaintiffs and the Class. On information and belief, Defendants’ authorized dealers
24 make little money on the actual sale or lease of new vehicles, including the Class
25 Vehicles.

26 89. Plaintiffs and the members of the Class therefore have standing to assert
27 implied warranty claims against Defendants by virtue of their status as intended, third–
28

1 party beneficiaries of these dealership sales agreements, which further satisfies the
2 privity requirement.

3 90. Privity thus exists between Defendants on the one hand, and the Plaintiffs
4 and the Class on the other by virtue of the express warranties provided through their
5 purchase and/or lease agreements.

6 91. Moreover, the Magnuson–Moss Warranty Act (“MMWA”) provides that
7 when a manufacturer offers a written warranty, it may limit the duration of an implied
8 warranty to the duration of an express warranty, but it cannot disclaim implied
9 warranties all together. *See* 15 U.S.C. § 2308(a) (“No supplier may disclaim or modify
10 . . . any implied warranty to a consumer with respect to such consumer product if (1)
11 such supplier makes any written warranty to the consumer with respect to such
12 consumer Product. . . .”). A manufacturer should not be permitted to avoid this
13 prohibition by claiming an ostensible lack of privity when the manufacturer itself chose
14 its distribution model.

15 92. Imposing a rigid privity requirement in this case would permit Defendants
16 to escape both the letter and spirit of the MMWA through their preferred distribution
17 scheme; one in which the only parties in strict privity that can assert an implied warranty
18 claim are Defendants’ own dealers who would never need to assert the claim in the first
19 instance.

20 93. Consequently, any rigid application of a state law privity requirement
21 would violate the Supremacy Clause and be preempted. *See* U.S. Const. art. VI (“This
22 Constitution, and the Laws of the United States which shall be made in Pursuance
23 thereof . . . shall be the supreme Law of the Land; and the Judges in every State shall be
24 bound thereby, any Thing in the Constitution or Laws of any State to the Contrary
25 notwithstanding.”).

26 94. As a direct and proximate result of Defendants’ breach of these implied
27 warranties, Plaintiffs and the Class have suffered damages, injury in fact, and
28

1 ascertainable loss in an amount to be determined at trial. These damages include, but
2 are not limited to, overpayment for the Class Vehicles, insurance deductibles to get the
3 stolen Class Vehicles repaired, the cost to replace other property stolen in connection
4 with the thefts of Vehicles, the loss of use of the Vehicles, costs associated with the
5 replacement of the totaled Class Vehicles, and/or the diminution in value of the stolen
6 Class Vehicles that were totaled.

7 95. The circumstances described herein caused Defendants' exclusive or
8 limited remedy to fail its essential purpose, such that the Plaintiffs and the Class may
9 seek alternative remedies. Indeed, these warranties have denied the Plaintiffs and the
10 Class the benefit of their respective bargains, which presupposes they were (or are) able
11 to use the Class Vehicles in a meaningful manner without the ever-present risk of them
12 being stolen.

13 96. Further, Kia and Hyundai's exclusion and/or limitation of consequential
14 damages in their New Vehicle Limited Warranties is unconscionable and void for the
15 reasons stated above.

16 97. Accordingly, the Plaintiffs and the Class are entitled to damages flowing
17 from Defendants' breach of their implied warranties, as well as all consequential and
18 incidental damages resulting from this breach.

19 98. Plaintiffs and Class members have complied with all obligations under the
20 warranty, or otherwise have been excused from performance of said obligations as a
21 result of Defendants' conduct described herein. Affording Defendants a reasonable
22 opportunity to cure the breach of written warranties therefore would be unnecessary and
23 futile.

24 **COUNT II**
25 **VIOLATIONS OF MAGNUSON MOSS WARRANTY ACT,**
26 **15 U.S.C. §§ 2301**

27 99. Plaintiffs repeat and reallege the preceding paragraphs as if fully set forth
28 herein.

1 100. Plaintiffs bring this claim on behalf of the Nationwide Class.

2 101. Congress enacted the MMWA, 15 U.S.C. §§ 2301 et seq., to address the
3 widespread misuse of merchants’ express warranties and to protect consumers from
4 deceptive warranty practices. The MMWA imposes civil liability on any “warrantor”
5 who fails to comply with any obligation under a written or corresponding implied
6 warranty. *Id.* § 2310(d)(1).

7 102. The Class Vehicles are “consumer products” as defined in 15 U.S.C. §
8 2301(1).

9 103. Plaintiffs and members of the Class are “consumers” as defined in 15
10 U.S.C. § 2301(3).

11 104. Kia and Hyundai are “suppliers” and “warrantors” as those terms are
12 defined in 15 U.S.C. § 2301(4) & (5), respectively

13 105. In connection with the sale and/or lease of the Class Vehicles, Defendants
14 supplied Plaintiffs and the Class with “written warranties” as that term is defined in 15
15 U.S.C. § 2301(6).

16 106. 15 U.S.C. § 2310(d)(1) provides that “a consumer who is damaged by the
17 failure of the supplier, warrantor, or service contractor to comply with any obligation
18 under [the MMWA], or a written warranty, implied warranty, or service contract, may
19 bring suit for damages and other legal and equitable relief in any court of competent
20 jurisdiction in any state.”

21 107. 15 U.S.C. § 2301(d)(1) provides a cause of action for any consumer who
22 is damaged by the failure of a warrantor to comply with an implied warranty.

23 108. Defendants provided Plaintiffs and Class members with an implied
24 warranty of merchantability in connection with the purchase or lease of their vehicles
25 that is an “implied warranty” within the meaning of the Magnuson-Moss Warranty Act,
26 15 U.S.C. § 2301(7). As a part of the implied warranty of merchantability, Defendants
27 warranted that the Vehicles were fit for their ordinary purpose and would pass without
28

1 objection in the trade as designed, manufactured, and marketed, and were adequately
2 contained, packaged, and labeled.

3 109. Defendants breached its implied warranties, as described herein, and is
4 therefore liable to Plaintiffs under 15 U.S.C. § 2310(d)(1). The Defect rendered the
5 Vehicles unmerchantable and unfit for their ordinary use of driving when they were sold
6 or leased, and at all times thereafter.

7 110. Plaintiffs used their respective Class Vehicles in a manner consistent with
8 their intended use and performed every duty required of them under the terms of the
9 warranty, except as may have been excused or prevented by Defendants' conduct or by
10 operation of law.

11 111. Plaintiffs and the Class seek to recover damages resulting directly from
12 Defendants' breach of their implied warranties and their deceitful and unlawful conduct
13 described herein. These damages include, but are not limited to, overpayment for the
14 Class Vehicles, insurance deductibles to get the stolen Class Vehicles repaired, the cost
15 to replace other property stolen in connection with the thefts of their Vehicles, the loss
16 of use of their respective Vehicles, costs associated with the replacement of the totaled
17 Class Vehicles, and/or the diminution in value of a stolen Class Vehicles that were not
18 totaled.

19 112. The MMWA also permits "other legal and equitable" relief. 15 U.S.C. §
20 2310(d)(1). Plaintiffs seek reformation of Defendants' respective written warranties to
21 comport with their obligations under the MMWA and with consumers' reasonable
22 expectations. Plaintiffs also seek to enjoin Defendants from acting unlawfully as alleged
23 herein.

24 113. Finally, Plaintiffs intend to seek such an award as prevailing consumers at
25 the conclusion of this case. The MMWA provides for an award of costs and expenses,
26 including attorneys' fees, to prevailing consumers in the Court's discretion. 15 U.S.C.
27 § 2310(d)(2).
28

**COUNT III
UNJUST ENRICHMENT**

1
2 114. Plaintiffs repeat and reallege the preceding paragraphs as if fully set forth
3 herein. This claim is brought under California law on behalf of the Nationwide class.

4 115. This claim is pleaded in the alternative to any contract-based claims
5 asserted by the Plaintiffs noted above. *See* Fed. R. Civ. P. 8(d)(2). Moreover, a claim
6 for unjust enrichment is properly brought where, as here, Defendants contend that their
7 warranties do not cover damages stemming from the Defect.

8 116. Plaintiffs bought and/or leased their Vehicles new, directly from a Kia or
9 Hyundai dealership.

10 117. Every year, Defendants make millions of dollars in revenue selling and
11 leasing new Vehicles through their respective dealer networks across the United States.

12 118. Plaintiffs allege upon information and belief that consumers are permitted
13 to buy Vehicles directly from Defendants, but that the proceeds flow through various
14 dealers and/or related companies (e.g., their finance companies) back to Defendants.

15 119. Accordingly, the purchase and lease of new Vehicles confers a direct
16 monetary benefit on Defendants.

17 120. Used Vehicle purchasers also conferred a benefit on Defendants.
18 Defendants profit off the replacement parts needed to service and repair these Vehicles.

19 121. Further, as more used Vehicles stay in the stream of commerce,
20 Defendants' brand awareness rises, which is of substantial value to vehicle
21 manufacturers. Defendants have touted their vehicles as not only reliable and durable,
22 but also as having lower depreciation rates and ownership costs over their useful lives.⁹

23 122. Defendants tout these benefits to promote the sale and lease of their new
24 cars for pecuniary benefit.

25
26
27 ⁹ [https://www.kiamedia.com/us/en/media/pressreleases/15857/kia-sweeps-](https://www.kiamedia.com/us/en/media/pressreleases/15857/kia-sweeps-intellichoice-cpo-awards)
28 [intellichoice-cpo-awards](https://www.kiamedia.com/us/en/media/pressreleases/15857/kia-sweeps-intellichoice-cpo-awards) (last accessed Aug. 19, 2022)

1 123. Accordingly, Plaintiffs and the Class conferred a benefit upon Defendants,
2 whether directly, indirectly, or through one or more affiliate entities.

3 124. Defendants knew and appreciated the benefits conferred upon them
4 through the sale of the Class Vehicles to Plaintiffs and members of the Class. Many of
5 the Vehicles were financed through Kia Motor Finance or Hyundai Motor Finance

6 125. Notably, federal law mandates that Kia and Hyundai maintain records of
7 first-time purchasers of Class Vehicles, *see* 49 U.S.C. § 30117(b), and remain able to
8 identify the owners of their used cars, including the owners of certain Class Vehicles,
9 to comply with recall notification procedures under applicable law. *See id.* §
10 30119(d)(1)(A).

11 126. Defendants have long represented to the consuming public that the Class
12 Vehicles are safe, reliable, and durable even though they knew of the Defect. Not only
13 did Defendants fail to equip the Class Vehicles with an industry standard anti-theft
14 device, they failed to comply with FMVSS 114.

15 127. As a result of Defendants' wrongful conduct, unsuspecting consumers like
16 Plaintiffs and the Class overpaid for the Vehicles and incurred additional costs, thereby
17 earning more profit.

18 128. Defendants continued to market the Class Vehicles despite knowing that
19 they were unsafe and susceptible to theft, foisting the cost they would otherwise have
20 been forced to bear through a voluntary recall or otherwise on Plaintiffs and the Class.

21 129. Under these circumstances, it would be unjust to allow Defendants to
22 accept and retain the benefits identified herein without paying Plaintiffs and the Class
23 them for their value.

24 **COUNT IV**
25 **VIOLATIONS OF THE CALIFORNIA CONSUMER**
26 **LEGAL REMEDIES ACT**
(CAL. CIV. CODE § 1750, ET SEQ.)

27 130. Plaintiffs incorporate by reference all preceding allegations as though fully
28 set forth herein.

1 131. Plaintiffs bring this claim as part of the Nationwide Class.

2 132. California’s Consumers Legal Remedies Act (“CLRA”), Cal. Civ. Code
3 § 1750, *et seq.*, proscribes “unfair methods of competition and unfair or deceptive acts
4 or practices undertaken by any person in a transaction intended to result or which results
5 in the sale or lease of goods or services to any consumer.”

6 133. The Vehicles are “goods” as defined in Cal. Civ. Code § 1761(a).

7 134. Plaintiffs and the other Class members are “consumers” as defined in Cal.
8 Civ. Code § 1761(d), and Plaintiffs, the other Class members, and Defendants are
9 “persons” as defined in Cal. Civ. Code § 1761(c).

10 135. As alleged herein, Defendants made misleading representations and
11 omissions concerning the benefits, performance, and safety of the Vehicles.

12 136. In purchasing or leasing the Vehicles, Plaintiffs and other Class members
13 were deceived by Defendants failure to disclose its knowledge of the Defect.

14 137. Defendants’ conduct as described herein was and is in violation of the
15 CLRA. Defendants’ conduct violates at least the following enumerated CLRA
16 provisions:

- 17 i. Cal. Civ. Code § 1770(a)(5): Representing that goods have
18 sponsorship, approval, characteristics, uses, benefits, or quantities
19 that they do not have.
- 20 ii. Cal Civ. Code § 1770(a)(7): Representing that goods are of a
21 particular standard, quality, or grade if they are of another.
- 22 iii. Cal. Civ. Code § 1770(a)(9): Advertising goods with intent not to
23 sell them as advertised.
- 24 iv. Cal Civ. Code § 1770(a)(16): Representing that goods have been
25 supplied in accordance with a previous representation when they
26 have not.
- 27
28

1 138. Defendants intentionally and knowingly misrepresented and omitted
2 material facts regarding the Vehicles with an intent to mislead Plaintiffs and Class
3 members.

4 139. In purchasing or leasing the Vehicles, Plaintiffs and other Class members
5 were deceived by Defendants' failure to disclose their knowledge of the Defect.

6 140. Plaintiffs and other Class members had no way of knowing Defendants'
7 representations were false, misleading, and incomplete or knowing the true nature of the
8 Defect.

9 141. As alleged herein, Defendants engaged in a pattern of deception and public
10 silence in the face of a known Defect. Plaintiffs and other Class members did not, and
11 could not, unravel Defendants' deception on their own.

12 142. Defendants knew or should have known their conduct violated the CLRA.

13 143. Defendants owed Plaintiffs and the Class members a duty to disclose the
14 truth about the Defect because the defect created a safety hazard and Defendants:

- 15 i. Possessed exclusive knowledge of the Defect,
16 ii. Intentionally concealed the foregoing from Plaintiffs and Class
17 members; and/or
18 iii. Made incomplete representations in advertisements and on its
19 website, failing to warn the public of the Defect.

20 144. Defendants had a duty to disclose that the Vehicles were fundamentally
21 flawed as described herein, because the Defect created a safety hazard, and Plaintiffs
22 and the other Class members relied on Defendants' material misrepresentations and
23 omissions regarding the features of the Vehicles.

24 145. Defendants' conduct proximately caused injuries to Plaintiffs and the other
25 Class members that purchased the Vehicles and suffered harm as alleged herein.

26 146. Plaintiffs and the other Class members were injured and suffered
27 ascertainable loss, injury-in-fact, and/or actual damage as a proximate result of
28

1 Defendants' conduct in that Plaintiffs and the other Class members incurred costs,
2 including overpaying for their Vehicles that have suffered a diminution in value.

3 147. Defendants' violations cause continuing injuries to Plaintiffs and other
4 Class members.

5 148. Defendants' unlawful acts and practices complained of herein affect the
6 public interest.

7 149. Defendants knew of the Defect, and that the Vehicles were materially
8 compromised by it.

9 150. The facts concealed and omitted by Defendants from Plaintiffs and other
10 Class members are material in that a reasonable consumer would have considered them
11 to be important in deciding whether to purchase a Vehicle or pay a lower price. Had
12 Plaintiffs and the other Class members known about the defective nature of the Vehicles,
13 they would not have purchased the Vehicles or would not have paid the prices they paid.

14 151. Plaintiffs' and the other Class members' injuries were proximately caused
15 by Defendants' unlawful and deceptive business practices.

16 152. Pursuant to Cal. Civ. Code § 1780(a), Plaintiffs seek an order enjoining
17 Defendants from engaging in the methods, acts, or practices alleged herein, including
18 further concealment of the Defect.

19 153. Plaintiffs sent out a notice letter on August 18, 2022.

20 154. Pursuant to Cal. Civ. Code § 1782, if Defendant does not rectify its conduct
21 within 30 days, Plaintiffs intend to amend this Complaint to add claims under the Cal.
22 Civ. Code for:

- 23 i. Actual damages;
- 24 ii. Restitution of money to Plaintiffs and Class members, and the
25 general public;
- 26 iii. Punitive damages;

- iv. An additional award of up to \$5,000 to each Plaintiffs and any Class member who is a “senior citizen”;
- v. Attorneys’ fees and costs; and
- vi. Other relief that this Court deems proper.

COUNT V
VIOLATIONS OF CALIFORNIA’S UNFAIR COMPETITION LAW
(CAL. BUS. & PROF. CODE § 17200, *ET SEQ.*)

155. Plaintiffs incorporate by reference all preceding allegations as though fully set forth herein.

156. Plaintiffs bring this claim on behalf of the Nationwide Class.

157. California’s Unfair Competition Law (“UCL”), Cal. Bus. & Prof. Code § 17200, *et seq.*, proscribes acts of unfair competition, including “any unlawful, unfair or fraudulent business act or practice and unfair, deceptive, untrue, or misleading advertising.”

158. Defendants’ conduct, as described herein, was and is in violation of the UCL. Defendants conduct violates the UCL in at least the following ways:

- i. By failing to disclose that the Defect;
- ii. By selling and leasing Vehicles that suffer from the Defect;
- iii. By knowingly and intentionally concealing from Plaintiffs and the other Class members the Defect;
- iv. By marketing Vehicles as safe, convenient, and defect free, with cutting edge technology, all while knowing of the Defect; and
- v. By violating other California laws, including California consumer protection laws.

159. Defendants intentionally and knowingly misrepresented and omitted material facts regarding the Vehicles with intent to mislead Plaintiffs and the other Class members.

1 160. In purchasing or leasing the Vehicles, Plaintiffs and the other Class
2 members were deceived by Defendants' failure to disclose the Defect.

3 161. Plaintiffs and the other Class members reasonably relied upon Defendants'
4 false misrepresentations and omissions. They had no way of knowing that Defendants'
5 representations were false, misleading, and incomplete. As alleged herein, Defendants
6 engaged in a pattern of deception and public silence in the face of a known defect.
7 Plaintiffs and the other Class members did not, and could not, unravel Defendants'
8 deception on their own.

9 162. Defendants knew or should have known that its conduct violated the UCL.

10 163. Defendants owed Plaintiffs and the other Class members a duty to disclose
11 the truth about the Defect because the Defect created a safety hazard and Defendants:

- 12 i. Possessed exclusive knowledge of the Defect;
13 ii. Intentionally concealed the foregoing from Plaintiffs and the
14 other Class members; and/or
15 iii. Made incomplete representations by failing to warn the public
16 or to publicly admit the Defect.

17 164. Defendants had a duty to disclose the Defect, because Plaintiffs and the
18 other Class members relied on Defendants' material misrepresentations and omissions.

19 165. Defendants' conduct proximately caused injuries to Plaintiffs and the other
20 Class members that purchased the Vehicles and suffered harm as alleged herein.

21 166. Plaintiffs and the other Class members were injured and suffered
22 ascertainable loss, injury-in-fact, and/or actual damage as a proximate result of
23 Defendants' conduct in that Plaintiffs and the other Class members incurred costs,
24 including overpaying for their Vehicles that have suffered a diminution in value.

25 167. Defendants' violations cause continuing injuries to Plaintiffs and Class
26 members.

1 168. Defendants' unlawful acts and practices complained of herein affect the
2 public interest.

3 169. Defendants' misrepresentations and omissions alleged herein caused
4 Plaintiffs and the other Class members to make their purchases of their Vehicles. Absent
5 those misrepresentations and omissions, Plaintiffs and the other Class members would
6 not have purchased these Vehicles, would not have purchased these Vehicles at the
7 prices they paid, and/or would have purchased less expensive alternative vehicles that
8 did not contain the Defect and did not fail to live up to industry standards.

9 170. Accordingly, Plaintiffs and the other Class members have suffered injury-
10 in-fact, including lost money or property, as a result of Defendants' misrepresentations
11 and omissions.

12 171. Plaintiffs request that this Court enter such orders or judgments as may be
13 necessary to restore to Plaintiffs and Class members any money Defendants acquired
14 by unfair competition, including restitution and/or restitutionary disgorgement, as
15 provided in Cal. Bus. & Prof. Code § 17203 and Cal. Civ. Code § 3345; and for such
16 other relief as may be appropriate.

17 **COUNT VI**
18 **FRAUD BY CONCEALMENT**
19 **(BASED ON CALIFORNIA LAW)**

20 172. Plaintiffs incorporate by reference all preceding allegations as though fully
21 set forth herein.

22 173. Plaintiffs bring this claim on behalf of the Nationwide Class.

23 174. Defendants intentionally concealed the Defect.

24 175. Defendants further affirmatively misrepresented to Plaintiffs in advertising
25 and other forms of communication, including standard and uniform material provided
26 with each car and on its website, that the Vehicles they were selling had no significant
27 defects, that the Vehicles were reliable, and would perform and operate properly.

28 176. Defendants knew about the Defect when these representations were made.

1 177. The Vehicles purchased by Plaintiffs and the other Class members
2 contained the Defect.

3 178. Defendants had a duty to disclose Defect as alleged herein, because the
4 Defect created a safety hazard and Plaintiffs and the other Class members relied on
5 Defendants' material representations.

6 179. As alleged herein, at all relevant times, Defendants have held out the
7 Vehicles to be free from defects. Defendants touted and continue to tout the many
8 benefits and advantages of the Vehicles, but nonetheless failed to disclose important
9 facts related to the Defect. This made Defendants' other disclosures about the Vehicles
10 deceptive.

11 180. The truth about the Defect was known only to Defendants; Plaintiffs and
12 the other Class members did not know of these facts and Defendants actively concealed
13 these facts from Plaintiffs and Class members.

14 181. Plaintiffs and the other Class members reasonably relied upon Defendants'
15 deception. They had no way of knowing that Defendants' representations were false,
16 misleading, or incomplete. As consumers, Plaintiffs and Class members did not, and
17 could not, unravel Defendants' deception on their own. Rather, Defendants intended to
18 deceive Plaintiffs and Class members by concealing the true facts about the Vehicles.

19 182. Defendants' false representations and omissions were material to
20 consumers because they concerned qualities of the Vehicles that played a significant
21 role in the value of the Vehicles.

22 183. Defendants had a duty to disclose the Defect and violations with respect to
23 the Vehicles because details of the true facts were known and/or accessible only to
24 Defendants, because Defendants had exclusive knowledge as to such facts, and because
25 Defendants knew these facts were not known to or reasonably discoverable by Plaintiffs
26 or Class members.

1 184. Defendants also had a duty to disclose because it made general affirmative
2 representations about the technological and safety innovations included with their
3 Vehicles, without telling consumers that the Vehicles had a fundamental Defect that
4 would affect the safety, quality, and performance of the Vehicle.

5 185. Defendants' disclosures were misleading, deceptive, and incomplete
6 because they failed to inform consumers of the additional facts regarding the Defect as
7 set forth herein. These omitted and concealed facts were material because they directly
8 impact the value of the Vehicles purchased by Plaintiffs and Class members.

9 186. Defendants have still not made full and adequate disclosures and continue
10 to defraud Plaintiffs and Class members by concealing material information regarding
11 the Defect.

12 187. Plaintiffs and Class members were unaware of the omitted material facts
13 referenced herein, and they would not have acted as they did if they had known of the
14 concealed and/or suppressed facts, in that they would not have purchased or paid as
15 much for cars with faulty technology, and/or would have taken other affirmative steps
16 in light of the information concealed from them. Plaintiffs' and Class members' actions
17 were justified. Defendants were in exclusive control of the material facts, and such facts
18 were not generally known to the public, Plaintiffs, or Class members.

19 188. Because of the concealment and/or suppression of facts, Plaintiffs and
20 Class members sustained damage because they own or lease Vehicles that are
21 diminished in value as a result of Defendants' concealment of the true quality of the
22 Vehicles' security systems. Had Plaintiffs and Class members been aware of the Defect
23 in the Vehicles, and the Defendants' disregard for the truth, Plaintiffs and Class
24 members would have paid less for their Vehicles or would not have purchased or leased
25 them at all.

26 189. The value of Plaintiffs' and Class members' Vehicles have diminished as
27 a result of Defendants' fraudulent concealment of the Defect, which has made any
28

1 reasonable consumer reluctant to purchase any of the Vehicles, let alone pay what
2 otherwise would have been fair market value for the Vehicles.

3 190. Accordingly, Defendants are liable to Plaintiffs and Class members for
4 damages in an amount to be proven at trial.

5 191. Defendants' acts were done wantonly, maliciously, oppressively,
6 deliberately, with intent to defraud, and in reckless disregard of Plaintiffs' and Class
7 members' rights and the representations that Defendants made to them, in order to
8 enrich Defendants. Defendants' conduct warrants an assessment of punitive damages in
9 an amount sufficient to deter such conduct in the future, which amount is to be
10 determined according to proof.

11 **COUNT VII**
12 **BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY**
13 **(CAL. COM. CODE § 2314)**

14 192. Plaintiffs incorporate by reference all preceding allegations as though fully
15 set forth herein.

16 193. Plaintiffs bring this claim on behalf of the Nationwide Class.

17 194. Defendants are and were at all relevant times merchants with respect to
18 motor vehicles under Cal. Com. Code § 2104.

19 195. A warranty that the Vehicles were in merchantable condition was implied
20 by law in the instant transaction, pursuant to Cal. Com. Code § 2314.

21 196. Defendants marketed the Vehicles as safe and reliable vehicles. Such
22 representations formed the basis of the bargain in Plaintiffs' and Class members'
23 decisions to purchase or lease the Vehicles.

24 197. Plaintiffs and other Class members purchased or leased the Vehicles from
25 Defendants, through Defendants' authorized agents for retail sales, through private
26 sellers, or were otherwise expected to be the eventual purchasers of the Vehicles when
27 bought from a third party. At all relevant times, Defendants were the manufacturers,
28 distributors, warrantors, and/or sellers of the Vehicles.

1 198. Defendants knew or had reason to know of the specific use for which the
2 Vehicles were purchased or leased.

3 199. Because of the Defect, the Vehicles were not in merchantable condition
4 when sold and are not fit for the ordinary purpose of providing safe and reliable
5 transportation.

6 200. Defendants knew about the Defect, allowing Defendants to cure their
7 breach of its warranty if they chose.

8 201. Defendants' attempt to disclaim or limit the implied warranty of
9 merchantability vis-à-vis consumers is unconscionable and unenforceable here.
10 Specifically, Defendants' warranty limitation is unenforceable because they knowingly
11 sold or leased a defective product without informing consumers about the Defect. The
12 time limits contained in Defendants' warranty periods were also unconscionable and
13 inadequate to protect Plaintiffs and other Class members. Among other things, Plaintiffs
14 and other Class members had no meaningful choice in determining these time
15 limitations, the terms of which unreasonably favored Defendants. A gross disparity in
16 bargaining power existed between Defendants and other Class members, and
17 Defendants knew of the defect at the time of sale.

18 202. Plaintiffs and Class members have complied with all obligations under the
19 warranty, or otherwise have been excused from performance of said obligations as a
20 result of Defendants' conduct described herein. Affording Defendants a reasonable
21 opportunity to cure the breach of written warranties therefore would be unnecessary and
22 futile.

23 203. Accordingly, Defendants are liable to Plaintiffs and Class members for
24 damages in an amount to be proven at trial.

25 **B. Claims Brought on Behalf of the Illinois Class**

26 **COUNT VIII**
27 **VIOLATION OF THE ILLINOIS CONSUMER FRAUD**
28 **AND DECEPTIVE BUSINESS PRACTICES ACT**
(815 ILCS 505/1, ET SEQ. AND 720 ILCS 295/1A)

1 204. Plaintiff McNerney (“Plaintiff” for purposes of all Illinois Class Counts)
2 incorporates by reference the allegations contained in the preceding paragraphs of this
3 complaint.

4 205. Plaintiff brings this claim on behalf of the Illinois Class.

5 206. The Illinois Consumer Fraud and Deceptive Business Practices Act
6 (“Illinois CFA”) prohibits “unfair or deceptive acts or practices, including, but not
7 limited to, the use of employment of any deception, fraud, false pretense, tales promise,
8 misrepresentation or the concealment, suppression or omission of any material fact, with
9 intent that others rely upon the concealment, suppression or omission of such material
10 fact . . . in the conduct of trade or commerce . . . whether any person has in fact been
11 misled, deceived, or damaged thereby.” 815 ILCS 505/2.

12 207. Defendant Kia is a “person” as that term is defined in 815 ILCS 505/1(c).

13 208. Plaintiff and Class members are “consumers” as that term is defined in 815
14 ILCS 505/1(e).

15 209. Defendant Kia violated the Illinois CFA by concealing and failing to
16 disclose the Defect. Defendant had an ongoing duty to Plaintiffs and the Illinois Class
17 to refrain from unfair and deceptive practices under the Illinois CFA in the course of its
18 business.

19 210. Plaintiffs and the Illinois Class suffered ascertainable loss and actual
20 damages as a direct and proximate result of Defendant Kia’s concealment,
21 misrepresentations, and/or failure to disclose material information.

22 211. Pursuant to 815 ILCS 505/10a(a), Plaintiff seeks monetary relief against
23 Defendant Kia in the amount of actual damages as well as punitive damages because
24 Defendant acted with fraud and/or malice and/or was grossly negligent.

25 212. Plaintiff also seeks an order enjoining Defendant Kia’s unfair and/or
26 deceptive acts or practices, attorneys’ fees, and any other just and proper relief available
27 under 815 ILCS 505/1, *et seq.*

COUNT IX
BREACH OF THE IMPLIED WARRANTY OF MERCHANTABILITY
(810 ILCS §§ 5/2-314 AND 5/2A-212)

1
2
3 213. Plaintiff incorporates by reference all preceding allegations as though fully
4 set forth herein.

5 214. Plaintiff brings this claim on behalf of the Illinois Class.

6 215. Defendant Kia was at all relevant times a “merchant” with respect to motor
7 vehicles under 810 ILCS §§ 5/2-104(1) and 5/2A-103(3), and a “seller” of motor
8 vehicles under § 5/2-103(1)(d).

9 216. The Vehicles are and were at all relevant times “goods” within the meaning
10 of 810 ILCS §§ 5/2-105(1) and 5/2A-103(1)(h).

11 217. A warranty that the Vehicles were in merchantable condition and fit for the
12 ordinary purpose for which vehicles are used is implied by law pursuant to 810 ILCS
13 §§ 28-2-314 and 28-12-212.

14 218. These Vehicles, when sold and at all times thereafter, were not in
15 merchantable condition and are not fit for the ordinary purpose for which cars are used.
16 Specifically, the Vehicles are defective in that the defects in that the Defect rendered
17 them unsafe, inconvenient, and imperfect such that Plaintiff and the other Illinois Class
18 members would not have purchased the Vehicles had they known of the Defect.

19 219. Defendant Kia knew about the Defect at the time of purchase, allowing it
20 to cure their breach of warranty if it chose.

21 220. Defendant Kia was provided notice of these issues by numerous complaints
22 against it, including the instant Complaint, and by customer complaints, letters, emails
23 and other communications from Class members and from dealers and other repair
24 facilities.

25 221. As a direct and proximate result of Defendant Kia’s breach of the implied
26 warranty of merchantability, Plaintiff and the other Illinois Class members have been
27 damaged in an amount to be proven at trial, including, but not limited to, benefit-of-the-
28 bargain damages, restitution and/or diminution of value.

1 **C. Claims Brought on Behalf of the Ohio Class**

2 **COUNT X**
3 **VIOLATIONS OF THE CONSUMER SALES PRACTICES ACT**
4 **(OHIO REV. CODE §§ 1345.01, ET SEQ)**

5 222. Plaintiffs Mason, Nelson, Cunningham, and Brown (“Plaintiffs,” for
6 purposes of all Ohio Class Counts) incorporate by reference all preceding allegations as
7 though fully set forth herein.

8 223. Plaintiffs bring this claim on behalf of the Ohio Class.

9 224. Plaintiffs and the other Ohio Class members are “consumers” as defined
10 by the Ohio Consumer Sales Practices Act, Ohio Rev. Code § 1345.01 (“OCSPA”).

11 225. Defendants are “suppliers” as defined by the OCSPA. Plaintiffs’ and the
12 other Ohio Class members’ purchases or leases of Class Vehicles were “consumer
13 transactions” as defined by the OCSPA.

14 226. By failing to disclose and actively concealing the Defect, Defendants
15 engaged in deceptive business practices prohibited by the OCSPA, including engaging
16 in acts or practices which are unfair, misleading, false, or deceptive to the consumer.

17 227. Defendants knew that the Vehicles were defectively manufactured, and
18 were not suitable for their intended use. Defendants nevertheless failed to warn
19 Plaintiffs about the Defect despite having a duty to do so.

20 228. Defendants owed Plaintiff a duty to disclose the Defect, because
21 Defendants:

- 22 i) Possessed exclusive knowledge of the Defect rendering the Class
23 Vehicles more unreliable and less safe than similar vehicles;
- 24 ii) Intentionally concealed the Defect; and/or
- 25 iii) Made incomplete representations about the characteristics and
26 performance of the Vehicles, while purposefully withholding
27 material facts from Plaintiffs that contradicted these representations.

28 229. Defendants’ unfair or deceptive acts or practices were likely to, and did in
fact, deceive reasonable consumers, including Plaintiffs, about the true performance and

1 characteristics of the Vehicles.

2 230. The Ohio Attorney General has made available for public inspection prior
3 state court decisions which have held that the acts and omissions of Defendants in this
4 Complaint, including, but not limited to, the failure to honor both implied warranties,
5 the making and distribution of false, deceptive, and/or misleading representations, and
6 the concealment and/or non-disclosure of a dangerous defect, constitute deceptive sales
7 practices in violation of the OCSPA. These cases include, but are not limited to, the
8 following:

- 9 i) *Mason v. Mercedes Benz USA, LLC* (OPIF #10002382);
10 ii) *State ex rel. Betty D. Montgomery v. Honda Motor Co.* (OPIF
11 #10002123);
12 iii) *State ex rel. Betty D. Montgomery v. Bridgestone/Firestone, Inc.*
13 (OPIF#10002025);
14 iv) *Bellinger v. Hewlett-Packard Co.* (OPIF #10002077);
15 v) *Borrer v. MarineMax of Ohio,* (OPIF #10002388);
16 vi) *State ex rel. Jim Petro v. Craftmatic Organization, Inc.* (OPIF
17 #10002347);
18 vii) *Mark J. CrawHonda, et al. v. Joseph Airport Toyota, Inc.* (OPIF
19 #10001586);
20 viii) *State ex rel. William J. Brown v. Harold Lyons, et al.* (OPIF
21 #10000304);
22 ix) *Brinkman v. Mazda Motor of America, Inc.* (OPIF #10001427);
23 x) *Khouri v. Don Lewis* (OPIF #100001995);
24 xi) *Mosley v. Performance Mitsubishi aka Automanage* (OPIF
25 #10001326);
26 xii) *Walls v. Harry Williams dba Butch's Auto Sales* (OPIF #10001524);;
27 and
28

1 xiii) *Brown v. Spears* (OPIF #10000403);

2 xiv) *State ex rel. Brown v. Bud Fletcher Used Cars, Inc.* (OPIF
3 #10000228)

4 xv) *State ex rel. Celebrezze v. Metro Toyota, Inc.* (OPIF #10001194);
5 and

6 xvi) *Shellhorn v. Kohler Chrysler-Plymouth, Inc.*, (OPIF #10001309)

7 231. As a result of its violations of the OCSPA detailed above, Defendants
8 caused actual damage to Plaintiffs and the Ohio Class and, if not stopped, will continue
9 to harm Plaintiffs and the Ohio Class. The Defect has caused the value of Class Vehicles
10 to decrease.

11 232. Plaintiffs and the Class sustained damages as a result of Defendants'
12 unlawful acts and are, therefore, entitled to damages and other relief as provided under
13 the OCSPA.

14 233. Plaintiffs also seek court costs and attorneys' fees as a result of Defendants'
15 violation of the OCSPA as provided in Ohio Rev. Code § 1345.09.

16 **COUNT XI**
17 **BREACH OF IMPLIED WARRANTY IN TORT**
18 **(BASED ON OHIO LAW)**

19 234. Plaintiffs incorporate by reference all preceding allegations as though fully
20 set forth herein.

21 235. Plaintiffs bring this claim on behalf of the Ohio Class.

22 236. The Class Vehicles contained the Defect, resulting in loss of the Vehicles'
23 crucial safety and reliability functions, as detailed herein more fully.

24 237. The Defect existed at the time these Class Vehicles left the hands of
25 Defendants.

26 238. Based upon the dangerous product defect and its certainty to occur,
27 Defendants failed to meet the expectations of a reasonable consumer. The Class
28 Vehicles failed their ordinary, intended use because of the Defect prevents the Vehicles

1 from being safely and reliably used as a reasonable consumer would expect. Moreover,
2 it presents a serious danger to Plaintiffs and the other Class members that cannot be
3 eliminated without significant cost.

4 239. The Defect in these Class Vehicles was the direct and proximate cause of
5 economic damages to Plaintiffs and the Ohio Class.

6 **PRAYER FOR RELIEF**

7 WHEREFORE, Plaintiffs, on their own behalf and on behalf of the Class
8 members, respectfully request judgment against Defendants as follows:

- 9 (A) certifying the proposed Nationwide Class and State Law Classes;
10 (B) appointing Plaintiffs and their counsel to represent the Classes;
11 (C) ordering injunctive relief, restitution, disgorgement, and/or other
12 appropriate relief;
13 (D) awarding compensatory, punitive, exemplary, and other recoverable
14 damages;
15 (E) awarding reasonable attorney's fees and expenses;
16 (F) awarding pre-judgment and post-judgment interest;
17 (G) awarding such other and further relief as this Court may deem just and
18 proper.

19 **JURY DEMAND**

20 Plaintiffs demand a trial by jury of all issues so triable.

21 Dated: August 19, 2022

22 Respectfully submitted,

23 HAGENS BERMAN SOBOL SHAPIRO LLP

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