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12
13 IN THE SUPERIOR COURT OF CALIFORNIA
14 COUNTY OF SACRAMENTO

DEPARTMENT
ASSIGNMENTS
Case Management 44
Law and Motion 53
Minors Compromise 45

15 LOUIS BIRD, individually, and on behalf of
others similarly situated
16
17 Plaintiff,
18 v.
19 HYUNDAI MOTOR AMERICA; and DOES
1-100, inclusive
20 Defendants.

Case No.
CLASS ACTION COMPLAINT FOR:
**Violations of the Consumers Legal Remedies
Act, Civil Code § 1750 et seq.;**
**Violations of the Unfair Competition Law, Bus.
& Prof. Code § 17200 et seq.; and**
**Violations of the False Advertising Law, Bus. &
Prof. Code § 17500 et seq.**
Jury Trial Demanded

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25 Plaintiff, by his attorneys, brings this action on behalf of himself and all others
26 similarly situated against Hyundai Motor America ("Hyundai" or "Defendant"). Plaintiff alleges
27 the following on information and belief, except as to those allegations that pertain to the named
28 Plaintiff:

FILED
Superior Court Of California,
Sacramento
07/03/2012
emedina
By _____, Deputy
Case Number:
34-2012-00127249

1
2 NATURE OF THE ACTION

3 1. Plaintiff brings this action challenging Hyundai’s deceptive representations and
4 omissions regarding the fuel economy of the 2011 and 2012 Hyundai Elantra (“Elantra”). As part
5 of Hyundai’s broad-based media advertising campaign designed to capitalize on public concern
6 over escalating gasoline prices, Hyundai utilized high-impact television, Internet, and print
7 advertisements that misleadingly touted the vehicle as “THE 40-MPG ELANTRA” and failed to
8 clearly and conspicuously disclose certain federally required information regarding the estimated
9 miles per gallon (“MPG”) that the Elantra could achieve under normal driving conditions.

10 2. Federal Trade Commission (“FTC”) regulations require automobile manufacturers
11 to make clear and conspicuous disclosures regarding advertised fuel economy, including MPG
12 estimates for city driving and highway driving. Specifically, where an advertisement makes a
13 general fuel economy claim without reference to either city or highway driving, the estimated city
14 MPG must be disclosed. For television ads, if an estimated MPG representation appears in the
15 video portion of the ad, the city MPG disclosure must also appear in the video, and if the
16 estimated MPG is audio, the disclosure of the city MPG must be included in the audio.

17 3. Hyundai’s widespread television advertising campaign marketing the 2011 and
18 2012 Elantra, however, claimed that the Elantra generally achieves 40 MPG, while omitting the
19 required disclosure that the 40 MPG figure is the *highway mileage* estimate only, and without
20 disclosing in the voiceover the *city mileage* estimate. Even where required disclosures did appear
21 in the Elantra commercials, they were neither clear nor conspicuous since Hyundai flashed the
22 disclosures at the bottom of the screen in tiny, faint text for only an instant, making them
23 extremely difficult to see unless the frame was frozen.

24 4. Hyundai broadcast the 40 MPG claim without proper disclosures through other
25 media channels as well. Some magazines published multiple pages of Elantra advertisements in a
26 single issue, all boldly displaying a “40 MPG” claim or “THE 40-MPG ELANTRA” slogan either
27 without city/highway disclosures or with illegible disclosures at the bottom of the page.
28

1 Additionally, Hyundai's website is rife with 40 MPG representations that do not clearly and
2 conspicuously disclose that 40 MPG is a highway estimate.

3 5. Hyundai's misrepresentations and omissions regarding the Elantra's fuel economy
4 in its advertising, public statements and marketing were a material factor in inducing Plaintiff and
5 class members to purchase the Elantra. As a result, thousands of California consumers who
6 purchased the Elantra based on false and misleading fuel economy claims are not realizing the
7 savings in fuel costs they had expected based on the advertised fuel economy performance.

8 6. Plaintiff brings this action on behalf of himself and on behalf of a class of
9 California residents who purchased or leased 2011 or 2012 Elantras ("Class members"). Plaintiff
10 and Class members assert claims against Hyundai under the Consumers Legal Remedies Act
11 ("CLRA"), Civil Code section 1750 et seq., Unfair Competition Law ("UCL"), Business &
12 Professions Code section 17200 et seq., and False Advertising Law ("FAL"), Business &
13 Professions Code section 17500 et seq. Plaintiff seeks an order enjoining Hyundai's false and
14 deceptive "40 MPG" marketing campaign. Plaintiff and Class members also seek restitution,
15 damages and equitable relief, including disgorgement of profits, and appropriate attorney's fees
16 and costs.

17 THE PARTIES

18 7. Plaintiff Louis Bird ("Bird" or "Plaintiff") resides in Sacramento, California. On
19 May 4, 2011, Bird purchased a new 2011 Elantra Limited from Roseville Hyundai in Roseville,
20 California, for \$22,851.26.

21 8. Defendant Hyundai Motor America is a corporation duly organized and existing
22 under the laws of the State of California with its principal place of business located at 10550
23 Talbert Ave., Fountain Valley, California 92708. Hyundai is a wholly owned U.S. subsidiary of
24 Hyundai Motor Company ("HMC"). Hyundai markets Hyundai's automobile products from its
25 Fountain Valley, California headquarters. Hyundai Motor America is the affiliate or franchisor of
26 the Hyundai dealerships including the dealership from which Bird purchased his Elantra.

27 9. The true names or capacities, whether individual, corporate, associate, or
28 otherwise, of Does 1 through 100, inclusive, are unknown to the representative Plaintiff, who

1 therefore sues said Defendants by such fictitious names. Representative Plaintiff is informed and
2 believes and thereon alleges that each of the Defendants sued herein as a Doe is legally
3 responsible in some manner for the events and happenings referred to herein, and will ask leave
4 of this court to amend the Complaint to insert their true names and capacities in place and instead
5 of the fictional names when the same becomes known to the representative Plaintiff.

6 10. At all relevant times, Defendants, and each of them, were the agents and
7 employees of each of the remaining Defendants, and were at all times acting within the purpose
8 and scope of said agency and employment, and each defendant has ratified and approved said
9 agency and employment, and each defendant has ratified and approved the acts of its agent.

10 **JURISDICTION AND VENUE**

11 11. This Court has jurisdiction of this action under Article VI, section 10 of the
12 California Constitution and section 410.10 of the Code of Civil Procedure. Jurisdiction is also
13 proper under Business & Professions Code section 17200 et seq. and Civil Code section 1750 et
14 seq.

15 12. Jurisdiction over Hyundai is also proper because Hyundai has purposely availed
16 itself of the privilege of conducting business activities in California and because Hyundai
17 currently maintains systematic and continuous business contacts with this State, and has many
18 thousands of customers who are residents of this State and who do business with Hyundai.

19 13. Plaintiff does not assert any claims arising under the laws of the United States of
20 America. The amount in controversy in this action does not exceed \$74,999 with respect to the
21 Plaintiff's claim and the claim of each Class member. Moreover, all Class members are currently
22 residents of the State of California.

23 14. Venue is proper in this Court because Hyundai does business in this County and
24 throughout the State of California, substantial transactions took place in this County, Hyundai has
25 received substantial profits from consumers who reside in this County, and because Plaintiff is a
26 resident of this County.

1 **STATUTORY AND REGULATORY SCHEME**

2 15. Under the Energy Policy Conservation Act of 1975 (“EPCA”), the Environmental
3 Protection Agency (“EPA”) promulgated regulations requiring automobile manufacturers to
4 attach a label, known as a “Monroney sticker,” listing fuel economy estimates developed by the
5 EPA to the windshield or side window of each new automobile manufactured in a model year. (49
6 U.S.C § 32901 et seq.) The EPA establishes the test methods and calculations for determining
7 fuel economy estimates under the EPCA. (49 U.S.C § 32904.)

8 16. Each year, the EPA releases a city estimate, a highway estimate, and a combined
9 city and highway estimate for all models of new vehicles that manufacturers plan to sell. (See 49
10 U.S.C. §32901; 40 C.F.R. § 600.209-85.) The estimates are supposed to “help consumers
11 compare the fuel economy of different vehicles for both city and highway driving” when
12 “shopping for new vehicles.”¹ Fuel economy estimates are calculated pursuant to a methodology
13 developed by the EPA, but each individual car manufacturer typically conducts the actual test.
14 This lawsuit does not challenge the EPA methodology for establishing fuel economy estimates or
15 testing guidelines for automobiles, but rather challenges the misrepresentative manner in which
16 Hyundai uses the EPA estimates in its advertising.

17 17. As part of the EPCA scheme, the FTC regulates automobile manufacturers’
18 advertising of fuel economy rates. FTC regulations prohibit manufacturers and dealers from
19 “mak[ing] any express or implied representation in advertising concerning the fuel economy of
20 any new automobile *unless such representation is accompanied by ... clear and conspicuous*
21 *disclosures.*” (16 C.F.R. § 259.2(a), emphasis added.) An “express or implied fuel economy
22 representation [is] one which a reasonable consumer, upon considering the representation in the
23 context of the entire advertisement, would understand as referring to the fuel economy
24 performance of the vehicle or vehicles advertised.” (*Id.* at fn.1.)

25 18. At the center of this lawsuit are the federal rule requirements that: (1) where an
26 advertisement makes “[a] general fuel economy claim without reference to either city or highway,

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28 _____
¹ EPA, *Regulatory Announcement: EPA Issues New Test Methods for Fuel Economy Window Stickers*, EPA420-F-06-069 (Dec. 2006), <http://www.epa.gov/fueleconomy/420f06069.htm>.

1 . . . *the ‘estimated city MPG’ must be disclosed.*” (16 C.F.R. § 259.2(a)(1)(iii), emphasis added.);
2 and, (2) advertisements for new cars must also disclose “[t]hat the [EPA] is the source of the
3 ‘estimated city MPG’ and ‘estimated highway MPG’ and that the numbers are estimates.” (16
4 C.F.R. § 259.2(a)(2).) If an estimated MPG representation appears in the video portion of a
5 television advertisement, the disclosure must also appear in the video, and if the estimated MPG
6 is audio, the disclosure must be audio. (16 C.F.R. § 259.2(a)(2), fn. 5.)

7 FACTUAL ALLEGATIONS

8 **A. The “40-MPG Elantra” Marketing Campaign**

9 19. Hyundai launched a comprehensive multi-media advertising campaign promoting
10 the Elantra for the model years 2011 and 2012 that touted the Elantra’s superior fuel economy
11 compared to similar compact cars. The EPA fuel economy estimates for the 2011 and 2012
12 Hyundai Elantra are 29 estimated city MPG, 40 estimated highway MPG, and 33 estimated
13 combined city and highway MPG.

14 20. Hyundai’s advertisements showcased “THE 40-MPG ELANTRA” in television
15 commercials, print advertisements and on the Internet *without clearly and conspicuously*
16 *disclosing to consumers that the figure was the EPA estimate for highway driving and/or*
17 *without clearly and conspicuously disclosing the city MPG estimate.*

18 21. On television, Hyundai aired at least four distinct commercials advertising the
19 2011 Elantra emphasizing general “40 MPG” claims without reference to city or highway, which
20 failed to include the disclosures required under the FTC regulations.

21 22. For example, several of Hyundai’s 2011-2012 Elantra television advertisements
22 conclude with a flash of a white screen that reads “THE 40-MPG ELANTRA” in large, black,
23 capitalized font while a voiceover says “The 40 mile per gallon Elantra.” At the bottom of the
24 white screen is a very small, faint print in black letters that reads “2011 Elantra 29 City/40 Hwy.
25 EPA Estimates. Actual Mileage may vary.” This print is illegible unless the frame is frozen. The
26 disclosure’s location at the bottom of the screen, the size and resolution of the font, and the
27 duration of its presence on the screen make the disclosure almost impossible to see, let alone read.
28 The audio portion of these television commercials fail to disclose the estimated city MPG and that

1 the **“40 MPG” figure is an EPA estimate for highway driving** as required by the FTC
2 regulations.

3 23. Another television commercial concludes by flashing quickly at the bottom of the
4 screen in small, faint black text against a dark, flickering background, “2011 Elantra 29 City/40
5 Hwy. EPA Estimates. Actual Mileage may vary.” Again, this disclosure is illegible unless the
6 frame is frozen. As the text fades, a voiceover says, “The 40 mile per gallon Elantra.” The
7 voiceover fails to disclose the estimated city MPG and that the **“40 MPG” figure is an EPA**
8 **estimate for highway driving** figure as required by the FTC regulations.

9 24. Hyundai’s website advertisements for the 2011 Elantra similarly make generalized
10 40 MPG claims, even by displaying phrases such as “2011 Hyundai Elantra, style, space and 40
11 MPG” and “2011 Hyundai Elantra 40 MPG achieved by design” in the title field of Internet
12 browser applications, without clearly and conspicuously disclosing that these are highway
13 estimates and without referencing the 29 MPG city estimate.

14 25. Hyundai’s website advertisements for the 2012 Elantra prominently displayed the
15 40 MPG highway fuel economy figure with a numbered footnote reference but no link to
16 corresponding footnote text. Only by clicking a separate link at the bottom of the ad in tiny font
17 labeled *“Legal”* which was not identified as containing the footnote to the 40 MPG figure could
18 the footnote text providing the city estimate be found.

19 26. Hyundai’s 2011-2012 Elantra print advertisements also prominently used the
20 generalized “40 MPG” claims without clearly and conspicuously making the required disclosures
21 regarding the Elantra’s estimated fuel economy. In the March 2011 issue of Wired magazine, a
22 national publication distributed in California, for example, Hyundai ran a print advertisement that
23 contained a paragraph of small white text amidst a black background that read, in part, “[t]he
24 2011 Elantra. With more style, more leg room, and more straight talk than any car in its class, it
25 gets 40 MPG on every trim level, standard.” Beneath the paragraph, in much larger, capitalized,
26 white text, the advertisement reads, “THE 40 MPG ELANTRA.” At the bottom of the page is a
27 disclosure in tiny, grey text that reads, “2011 Elantra 29 City/40 Hwy. EPA Estimates. Actual
28 Mileage may vary.”

1 27. Hyundai’s “40 MPG” Elantra marketing campaign also appeared in published
2 print advertisements in local magazines promoting the 2011 Elantra in connection with Hyundai’s
3 sponsorship of the Los Angeles Dodgers baseball team. One such advertisement depicts a large,
4 white “40” painted on a teal wooden fence with white text underneath reading, “MPG OF THE
5 ELANTRA.” Another print advertisement shows a vintage baseball card containing the Elantra’s
6 name and picture next to a gold award statue graphic inscribed with “40 MPG.”² These print
7 advertisements do not disclose that this is a highway figure or that the EPA is the source of the
8 estimated “40 MPG” figure.

9 28. Hyundai’s advertising campaign for the 2011 and 2012 Elantra has coincided with
10 skyrocketing sales numbers. Hyundai had the second largest increase in new car sales in
11 California for 2011 and has reported record monthly sales for 2012, which were “helped by
12 improved Sonata and Elantra sales.”³ Hyundai posted sales of 133,536 Elantras for the 2011
13 model year, and had sold 61,237 Elantras as of mid-May 2012.⁴

14 **B. Consumer Outrage Over Deceptive “40-MPG” Advertising Claims**

15 29. Despite positive sales numbers, a quick Internet search reveals scores of
16 complaints posted by new 2011 and 2012 Elantra owners outraged that they cannot achieve the
17 advertised “40 MPG” under any conditions, or even the estimated 29 MPG on city streets. After
18 receiving such complaints from frustrated Elantra owners, Consumer Watchdog sent letters to
19 Hyundai urging the company “to remove or qualify your prominent MPG claims in your holiday
20 advertising until [EPA] re-testing validates or disputes Hyundai’s [fuel economy] tests” and to
21 discontinue the general “40 MPG” claims in any commercials Hyundai planned to air in the
22 “prime slots [Hyundai purchased] during the Super Bowl” because the information in Hyundai’s
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24 ² Hilary Craig, *Hyundai & the LA Dodgers*, The Ad Buzz (Jul. 29, 2011),
25 <http://theadbuzz.com/2011/07/hyundai-the-la-dodgers/>.

26 ³ Nathalie Tadena, *Hyundai February US Sales Up 17% As Sonata, Elantra Sales Rise*, WSJ.com
27 (Mar. 1, 2012), <http://online.wsj.com/article/BT-CO-20120301-713822.html>; see Mark Lacter,
28 *California New Car Sales Increase 10% in 2011*, LA Observed (Jan. 20, 2012),
http://www.laobserved.com/biz/2012/01/california_new_car_s.php.

⁴ Hyundai, *2012 US Retail Sales* (May 5, 2012) and *2011 US Retail Sales* (Jan. 15, 2012),
[http://worldwide.hyundai.com/WW/Corporate/InvestorRelations/IRActivities/SalesPerformance/
USRetailSales/index.html](http://worldwide.hyundai.com/WW/Corporate/InvestorRelations/IRActivities/SalesPerformance/USRetailSales/index.html).

1 advertisements left buyers unable to make accurate comparisons between vehicles.⁵ Consumer
2 Watchdog continues to receive complaints from Elantra owners who were induced to purchase
3 the vehicle by the false and misleading “40 MPG” claims in Hyundai’s advertisements and who
4 have been forced to pay increased fuel costs as a result.

5 30. For example, a California consumer submitted the following complaint to
6 Consumer Watchdog’s website in April 2012:

7 I recently bought a Hyundai Elantra Limited (2012). ... I did several months of
8 research and test drove several vehicles (Prius, Focus). Based off of price and
9 [MPG], I finally decided to purchase the Elantra. ... After crunching numbers I
10 figured that over a time span of 8 years, I would save enough on gas buying the
11 Elantra that it was actually cheaper to buy the Elantra instead of the Prius.
12 However, I am only averaging about 23-25 [MPG] in this car. This means I am not
13 saving enough on gas to make this a smart buy. I’m not even getting close to what
14 was advertised, and I gave up my car that I loved because I was trying to save
15 money I’m really frustrated because I disregarded other vehicles based on the
16 advertised [MPG] of this car and I gave up my car I didn’t want to get rid of. I feel
17 lied to and I feel that I have had money taken right out of my pocket.

18 31. Consumer Watchdog has received similar complaints from around the country:

19 “I purchased my 2012 Elantra a month ago. I drive all highway miles. I average
20 32-33 MPG, nowhere near the 40MPG claimed. The 40 MPG is why I purchased
21 this vehicle.” (Consumer, Illinois)

22 “I own a 2012 Hyundai Elantra Limited. I get 33 MPG on Hwy and about 23 in
23 city. The other manufacturers state their cars get up to 40 MPG. Hyundai
24 specifically states theirs gets 40 MPG. They are selling vehicles by being dishonest
25 to buyers. They should not be able to advertise 40 MPG.” (Consumer, Kentucky)

26 “In April of this year I purchased a new 2011 Hyundai Elantra. That decision was
27 based largely on the 40 MPG the company claims this car is capable of. I believe
28 Hyundai is guilty of misleading the public into thinking the Elantra is an economy
car which it certainly isn't.” (Consumer, New York)

“We bought a 2012 hyundai because of the 40-47 Highway [MPG]. My Husband
Drives 110 miles a day on the Freeway. He is averaging 28 to 29 [MPG]. When
we Purchased the Vehicle (3-3-12) The salesman told us this vehicle would get 40-
47 [MPG]. We have seen the 2012 Hyundai Elantra Advertised on TV 40 mpg.
This was the only reason we Purchased the Vehicle.” (Consumer, Oregon)

⁵ Letter from Consumer Watchdog to Hyundai, p. 1 (Dec. 14, 2011),
<http://www.consumerwatchdog.org/resources/elantra-dh-1.pdf>; see also Letter from Consumer
Watchdog to President Barack Obama (Jan. 12, 2012), *available at*
http://www.consumerwatchdog.org/resources/ltrwhitehousempg011212_0.pdf; Letter from
Consumer Watchdog to EPA (Nov. 30, 2011),
<http://www.consumerwatchdog.org/resources/ltrpaelantra11292011.pdf>.

1 **C. Plaintiff's Factual Allegations**

2 32. Plaintiff's experience is materially similar to those expressed in the complaints set
3 out above.

4 33. Plaintiff Bird purchased a 2011 Elantra after seeing Hyundai's television
5 commercials, Internet advertisements, and other representations about the Elantra's fuel economy
6 estimates. Since purchasing the car, Plaintiff Bird has never observed numbers close to those
7 advertised. Bird's Elantra averages 33 MPG on the highway and between 20 MPG and 22 MPG
8 on city streets, with an overall gas mileage average of 29.92 MPG. Plaintiff Bird's routine
9 maintenance work on his Elantra has been performed exclusively by Hyundai's service
10 department mechanics. Bird has made several complaints to the Hyundai dealership about the gas
11 mileage, and he has been repeatedly instructed to fill his tires with more air. At one point, Bird
12 was told that he would start to see the advertised rates once his Elantra was "broken in" and had
13 reached 10,000 to 15,000 miles. Bird has driven approximately 25,000 miles and there has been
14 no improvement in fuel economy. Bird is very frustrated and would have purchased a different
15 car if Hyundai's advertisements had not led him to believe that the car would eventually get the
16 40 highway MPG as advertised. Bird has suffered injury in fact and lost money in the form of
17 increased fuel costs as a result of Hyundai's representations.

18 34. Plaintiff Bird saw Hyundai's generalized "40 MPG" representations in
19 advertisements regarding the fuel economy of the Elantra and these representations were a
20 material factor in his decision to purchase the Elantra. Plaintiff has incurred, and continues to
21 incur, unexpected increased fuel costs to operate his Elantra. Plaintiff would not have bought the
22 Elantra, and paid more money to re-fuel the vehicle, except for the representations about the
23 Elantra's fuel economy in Hyundai's advertising.

24 **CLASS ACTION ALLEGATIONS**

25 35. This action is brought on behalf of the Plaintiff individually and on behalf of all
26 others similarly situated pursuant to Code of Civil Procedure section 382 and Civil Code section
27 1781. Plaintiff seeks to represent the following class:

28 All California residents who purchased or leased a new Hyundai Elantra for model years

2011 and 2012.

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36. The proposed Class is composed of thousands of persons dispersed throughout the State of California and joinder is impracticable. The precise number and identity of Class members are unknown to Plaintiff but can be obtained from Hyundai's internal records.

37. There are questions of law and fact common to the members of the Class, which predominate over questions affecting only individual Class members.

38. Plaintiff is a member of the Class and Plaintiff's claims are typical of the claims of the Class.

39. Plaintiff is willing and prepared to serve the Court and the proposed Class in a representative capacity. Plaintiff will fairly and adequately protect the interests of the Class and has no interests adverse to or which conflict with the interests of the other members of the Class.

40. The self-interest of Plaintiff is co-extensive with and not antagonistic to those of absent Class members. Plaintiff will undertake to represent and protect the interests of absent Class members.

41. Plaintiff has engaged the services of counsel indicated below who are experienced in complex class litigation, will adequately prosecute this action, and will assert and protect the rights of and otherwise represent the Plaintiff and absent Class members.

42. The prosecution of separate actions by individual members of the Class would create a risk of inconsistency and varying adjudications, establishing incompatible standards of conduct for Hyundai.

43. Hyundai has acted on grounds generally applicable to the Class, thereby making relief with respect to the members of the Class as a whole appropriate.

44. A class action is superior to other available means for the fair and efficient adjudication of this controversy. Prosecution of the complaint as a class action will provide redress for individual claims too small to support the expense of complex litigation and reduce the possibility of repetitious litigation.

45. Plaintiff anticipates no unusual management problems with the pursuit of this Complaint as a class action.

1 **FIRST CAUSE OF ACTION**

2 **Violations of the Consumers Legal Remedies Act, Civil Code § 1750 et seq.**

3 46. Plaintiff incorporates by reference each of the preceding paragraphs as though
4 fully set forth herein.

5 47. This cause of action is brought pursuant to the California Consumers Legal
6 Remedies Act (“CLRA”), Civil Code section 1750 et seq. Plaintiff brings this action on his own
7 behalf and on behalf of the Class members, all of whom are similarly situated consumers within
8 the meaning of Civil Code section 1781.

9 48. The acts and practices described in this Complaint were intended to result in the
10 sale of goods, specifically a motor vehicle, in consumer transactions. Defendants have violated,
11 and continue to violate, the CLRA, Civil Code section 1770, subdivisions (a)(9), (a)(7), (a)(16),
12 and (a)(5) by:

13 a. Making representations in television advertisements that the Elantra generally
14 achieves “40 MPG” by calling it “THE 40-MPG ELANTRA” in print and voiceover without
15 clearly and conspicuously disclosing that this is the highway mileage estimate and without
16 disclosing the city mileage in the voiceover; and

17 b. Making representations in Internet and print advertisements that the Elantra’s fuel
18 economy rates will result in less money spent on gas by prominently displaying the “40 MPG”
19 highway mileage figure without clearly and conspicuously displaying the city mileage estimate
20 and other required disclosures.

21 c. Making general “40 MPG” fuel economy representations about the Elantra in
22 Internet, print, and television advertisements without the required clear and conspicuous
23 disclosures with knowledge that the car does not perform up to such standards in normal driving
24 conditions.

25 d. Representing to consumers purchasing Elantras that the vehicle’s fuel economy
26 rates are as advertised without making the required clear and conspicuous disclosures.

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1 e. Representing in its advertising fuel economy characteristics for the Elantra that are
2 grossly inflated in light of its failure to clearly and conspicuously make the required fuel economy
3 disclosures.

4 49. Plaintiff and the Class members have suffered harm as a result of these violations.

5 50. Plaintiff has suffered as a result of Defendants' unlawful conduct because he
6 purchased the Elantra believing, based on Defendants' representations, that the Elantra would
7 achieve general fuel economy rates of "40 MPG" and save him fuel costs when he is now subject
8 to higher, unexpected fuel costs.

9 51. Defendants concealed from Plaintiff that the "40 MPG" figure related specifically
10 to the highway estimate of the Elantra and/or failed to clearly and conspicuously disclose the
11 estimated city MPG in the manner required by the FTC regulations.

12 52. Defendants' misrepresentations and omissions described in the preceding
13 paragraphs were intentional, or alternatively, made without the use of reasonable procedures
14 adopted to avoid such an error.

15 53. Defendants, directly or indirectly, have engaged in substantially similar conduct
16 with respect to Plaintiff and to each member of the Class.

17 54. Unless Defendants are enjoined from engaging in such wrongful actions and
18 conduct in the future, members of the consuming public will be further damaged by Defendants'
19 conduct.

20 55. Defendants, and each of them, aided and abetted, encouraged and rendered
21 substantial assistance in accomplishing the wrongful conduct and their wrongful goals and other
22 wrongdoing complained of herein. In taking action, as particularized herein, to aid and abet and
23 substantially assist the commission of these wrongful acts and other wrongdoings complained of,
24 each of the Defendants acted with an awareness of their primary wrongdoing and realized that
25 their conduct would substantially assist the accomplishment of the wrongful conduct, wrongful
26 goals, and wrongdoing.

27 56. Plaintiff and the Class are entitled to equitable relief on behalf of the members of
28 the Class in the form of an order, pursuant to Civil Code section 1780, subdivision (a)(1)-(3),

1 prohibiting Defendants from continuing to engage in the above-described violations of the
2 CLRA; actual damages for Plaintiff and Class members; restitution of property; punitive
3 damages; and any other relief the court deems proper, including special statutory damages
4 permitted by the CLRA. Plaintiff further seeks reasonable attorneys' fees under Civil Code
5 section 1780.

6 57. Pursuant to Civil Code section 1782, Plaintiff Bird notified Hyundai in writing, of
7 the particular violations of Civil Code section 1770 alleged in this complaint and demanded that
8 Hyundai rectify the problems associated with the practices alleged herein. This notice was sent
9 by certified mail, return receipt requested, at least 30 days prior to the filing of this complaint.
10 Specifically, according to the return receipt, Hyundai received Plaintiff's letter on April 25, 2012.
11 It has been more than 60 days since Hyundai received the notice and to date Hyundai has failed to
12 respond, let alone provide the relief demanded in Plaintiff's notice. Therefore, Plaintiff intends to
13 seek damages in addition to the further relief as described above.

14 **SECOND CAUSE OF ACTION**

15 **Violation of Business and Professions Code § 17200 et seq. –**

16 **Unlawful Business Acts and Practices**

17 58. Plaintiff incorporates by reference each of the preceding paragraphs as though
18 fully set forth herein.

19 59. Business & Professions Code section 17200 et seq. prohibits acts of "unfair
20 competition" which is defined by Business & Professions Code section 17200 as including any
21 "any unlawful, unfair or fraudulent business act or practice"

22 60. Hyundai and Does 1 through 100 have violated and continue to violate Business &
23 Professions Code section 17200's prohibition against engaging in "unlawful" business acts or
24 practices, by, inter alia, the following:

- 25 a. Violating the CLRA, Civil Code section 1750 et seq. (as alleged herein);
- 26 b. Violating Business & Professions Code section 17500 et seq. (as further
27 alleged herein); and
- 28 c. Violating part 259.2 of the Federal Trade Commission regulations by:

1 i. Making general fuel economy claims in television advertisements,
2 calling the vehicle the “40 MPG Elantra” in print and in the voiceover, without disclosing
3 whether the 40 MPG estimate referred to the city or highway fuel economy estimate in violation
4 of 16 C.F.R. section 259.2(a)(1)(iii);

5 ii. Failing to disclose in television advertisements the estimated city
6 MPG in the audio portion of the television advertisement as required by the regulations in
7 violation of 16 C.F.R. section 259.2(a)(1)-(2);

8 iii. Displaying neither clear nor conspicuous disclosures in television,
9 print, and Internet advertisements in violation of 16 C.F.R. section 259.2(a);

10 iv. Making general fuel economy claims of “40 MPG” in print
11 advertisements without any reference to, or distinction between, city and highway rates, that EPA
12 is the source of the number, or that the number is an estimate, in violation of 16 C.F.R. section
13 259.2(a)(1)-(2); and

14 v. Failing to make the required disclosures in Internet advertisements,
15 specifically (a) in Hyundai’s website advertisements for the 2011 Elantra, which contain general
16 “40 MPG” claims in the titles of web pages and in the body of the text without any accompanying
17 clear and conspicuous disclosures, and (b) in Hyundai’s website advertisements for the 2012
18 Elantra, which fail to disclose that the “40 MPG” highway figure is an EPA estimate in violation
19 of 16 C.F.R. sections 259.2(a)(1)-(2).

20 61. Plaintiff and all members of the Class suffered injury in fact as a result of
21 Defendants’ unlawful business acts and practices when each was required to pay fuel costs in
22 excess of what a Class member would have paid if Hyundai had accurately disclosed the Elantra’s
23 fuel economy.

24 62. As a result of Hyundai’s and Does 1 through 100’s violations of the Business &
25 Professions Code section 17200, Plaintiff and Class members are entitled to equitable relief in the
26 form of full restitution of all monies paid for unexpected fuel costs and disgorgement of the
27 profits derived from Hyundai’s unlawful business acts and practices.
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1 63. Plaintiff also seeks an order enjoining Hyundai from continuing its unlawful
2 business practices and from such future conduct.

3 **THIRD CAUSE OF ACTION**

4 **Violation of Business and Professions Code § 17200 et seq. –**

5 **Unfair Business Acts and Practices**

6 64. Plaintiff incorporates by reference each of the preceding paragraphs as though
7 fully set forth herein.

8 65. Such acts of Hyundai and Does 1 through 100, as described above, and each of
9 them, constitute unfair business acts and practices.

10 66. Hyundai's and Does 1 through 100's conduct does not benefit consumers or
11 competition. Indeed the injury to consumers and competition is substantial.

12 67. The gravity of the consequences of Hyundai's and Does 1 through 100's conduct
13 as described above outweighs any justification, motive or reason therefore and is immoral,
14 unethical, oppressive, unscrupulous, and offends established public policy as delineated in the
15 regulatory provisions and their underlying purposes.

16 68. Plaintiff and all members of the Class suffered injury in fact as a result of
17 Defendants' unfair business acts and practices when each was required to pay fuel costs in excess
18 of what a Class member would have paid if Hyundai had accurately disclosed the Elantra's fuel
19 economy.

20 69. As a result of Hyundai's and Does 1 through 100's violations of the Business &
21 Professions Code section 17200 et seq., Plaintiff and Class members are entitled to equitable
22 relief in the form of full restitution of all monies paid for unexpected fuel costs and disgorgement
23 of the profits derived from Hyundai's unfair business acts and practices.

24 70. Plaintiff also seeks an order enjoining Hyundai and Does 1 through 100 from such
25 future conduct.

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1 **FOURTH CAUSE OF ACTION**

2 **Violation of Business & Professions Code § 17200 et seq. –**

3 **Fraudulent Business Practices**

4 71. Plaintiff incorporates by reference each of the preceding paragraphs as though
5 fully set forth herein.

6 72. Hyundai and Does 1 through 100 have violated and continue to violate Business &
7 Professions Code section 17200’s prohibition against engaging in “fraudulent” business acts or
8 practices, by, inter alia, the following:

9 a. Making general “40 MPG” fuel economy representations about the Elantra in
10 Internet, print, and television advertisements without the required clear and conspicuous
11 disclosures;

12 b. Making representations in television advertisements that the Elantra generally
13 achieves “40 MPG” by calling it “THE 40-MPG ELANTRA” in print and voiceover without
14 clearly and conspicuously disclosing that this is the highway mileage estimate and without
15 disclosing the city mileage in the voiceover; and

16 c. Making representations in Internet and print advertisements that the Elantra
17 generally achieves “40 MPG” by prominently displaying the 40 MPG highway mileage figure
18 without clearly and conspicuously displaying the city mileage estimate and other required
19 disclosures.

20 73. These representations and/or omissions have deceived and are likely to deceive
21 Plaintiff, the Class, and California consumers in connection with their decision to purchase
22 Elantras. Defendants’ representations and/or omissions also have deceived and are likely to
23 deceive Plaintiff, the Class and California consumers with respect to the fuel economy of the
24 Elantra and the expected savings in fuel costs. Defendants’ representations and/or omissions
25 were material and were a substantial factor in Plaintiff’s decision to purchase his Elantra.

26 74. Plaintiff and all members of the Class suffered injury in fact as a result of
27 Defendants’ fraudulent business acts and practices when each was required to pay fuel costs in
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1 excess of what a Class member would have paid if Hyundai had accurately disclosed the Elantra's
2 fuel economy.

3 75. As a result of Defendants' violations, Plaintiff and Class members are entitled to
4 equitable relief in the form of full restitution of all monies paid for unexpected fuel costs and
5 disgorgement of the profits derived from Hyundai's fraudulent business acts and practices.

6 76. Plaintiff also seeks an order enjoining Hyundai and Does 1 through 100 from such
7 future conduct.

8 **FIFTH CAUSE OF ACTION**

9 **For Violations of the False Advertising Law, Bus. & Prof. Code § 17500 et seq.**

10 77. Plaintiff incorporates by reference each of the preceding paragraphs as though
11 fully set forth herein.

12 78. Hyundai and Does 1 through 100 violated California's False Advertising Law,
13 Business & Professions Code section 17500 et seq. by:

14 a. Making general "40 MPG" fuel economy representations about the Elantra in
15 Internet, print, and television advertisements without the required clear and conspicuous
16 disclosures;

17 b. Making representations in television advertisements that the Elantra generally
18 achieves "40 MPG" by calling it "THE 40-MPG ELANTRA" in print and voiceover without
19 clearly and conspicuously disclosing that this is the highway mileage estimate and without
20 disclosing the city mileage in the voiceover; and

21 c. Making representations in Internet and print advertisements that the Elantra
22 generally achieves "40 MPG" by prominently displaying the 40 MPG highway mileage figure
23 without clearly and conspicuously displaying the city mileage estimate and other required
24 disclosures.

25 79. These representations and/or omissions have deceived and are likely to deceive
26 Plaintiff, the Class and California consumers in connection with their decision to purchase
27 Elantras. Defendants' representations and/or omissions also have deceived and are likely to
28 deceive Plaintiff, the Class and California consumers with respect to the fuel economy of the

1 Elantra and the expected savings in fuel costs. Defendants' representations and/or omissions
2 were material and were a substantial factor in Plaintiff's decisions to purchase his Elantra. Thus,
3 Plaintiff and Class members were deprived of their monies and property as a result of
4 Defendants' acts and practices. Had Plaintiff and Class members known the actual facts, they
5 would not have purchased Elantras and paid gasoline costs in excess of what a Class member
6 would have paid if Hyundai had accurately disclosed the Elantra's fuel economy.

7 80. Defendants, directly and indirectly, have engaged in substantially similar conduct
8 to each Plaintiff and to each member of the Class.

9 81. Defendants, and each of them, aided and abetted, encouraged and rendered
10 substantial assistance in accomplishing the wrongful conduct and their wrongful goals and other
11 wrongdoing complained of herein. In taking action, as particularized herein, to aid and abet and
12 substantially assist the commission of these wrongful acts and other wrongdoings complained of,
13 each of the Defendants acted with an awareness of his/her/its primary wrongdoing and realized
14 that his/her/its conduct would substantially assist the accomplishment of the wrongful conduct,
15 wrongful goals, and wrongdoing.

16 82. Plaintiff and Class members have suffered injury by Defendants' violation of
17 Business & Professions Code section 17500 et seq.

18 83. Plaintiff and all members of the Class suffered injury in fact as a result of
19 Defendants' fraudulent methods of competition when each was required to pay fuel costs in
20 excess of what a Class member would have paid if Hyundai had accurately disclosed the Elantra's
21 fuel economy.

22 84. As a result of Defendants' violations, Plaintiff and Class members are entitled to
23 equitable relief in the form of full restitution of all monies paid for unexpected fuel costs and
24 disgorgement of the profits derived from Hyundai's fraudulent business acts and practices.

25 85. Plaintiff also seeks an order enjoining Hyundai and Does 1 through 100 from such
26 future conduct.

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1 **PRAYER FOR RELIEF**

2 WHEREFORE, Plaintiff, on his own behalf and on behalf of the Class, prays for relief as
3 follows:

4 1. An Order certifying the proposed Class pursuant to Code of Civil Procedure
5 section 382 and Civil Code section 1780 et seq. and appointing Plaintiff to represent the proposed
6 Class and designating his counsel as Class Counsel;

7 2. An Order enjoining Hyundai from future violations of the CLRA, 16 C.F.R.
8 section 259.2, Business & Professions Code section 17200 et seq., and Business & Professions
9 Code section 17500 et seq., as alleged herein;

10 3. An Order awarding Plaintiff and the Class restitution and/or disgorgement,

11 4. An Order awarding Plaintiff actual, statutory and punitive damages;

12 5. An Order awarding Plaintiff attorneys' fees, expert witness fees and other costs,
13 including pre-judgment and post-judgment interest thereon; and

14 6. Such other relief as the Court deems proper.

15 **JURY DEMAND**

16 Plaintiff demands a trial by jury on all issues so triable.

17
18 Respectfully submitted,

19 DATED: July 3, 2012

20 CONSUMER WATCHDOG

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