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16 UNITED STATES DISTRICT COURT
17
18 CENTRAL DISTRICT OF CALIFORNIA

19 CONSTANCE SIMS and SAMMY
20 RODRIGUEZ, individually and on behalf
21 of all others similarly situated,

22 Plaintiffs,

23 v.

24 KIA MOTORS AMERICA, INC., and
25 KIA MOTORS CORPORATION,

26 Defendants.

Case No. 8:13-cv-01791-AG-DFM

CLASS ACTION

**THIRD AMENDED CLASS ACTION
COMPLAINT**

JURY TRIAL DEMANDED

FILED
2014 APR 14 PM 3:39
CLERK U.S. DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
SAN JUAN ANA
BY _____

1 Plaintiffs, for their Class Action Complaint, allege the following upon
2 personal knowledge as to themselves and their own acts, and as to all other matters
3 upon information and belief, based upon the investigation made by and through their
4 attorneys:

5
6 **I. INTRODUCTION**

7 1. The first priority of a car manufacturer should be to deliver a safe car,
8 particularly a car with a safe gas tank. A corollary of this rule is that a car
9 manufacturer must take all reasonable steps to protect the gas tank from being
10 dislodged and ruptured in an accident and to ensure that a gas tank fire does not
11 immediately invade the passenger cabin.

12 2. This case arises from the breach of both rules by defendants Kia Motors
13 America, Inc. and Kia Motors Corporation (collectively, “Kia” or “defendants”), and
14 this action seeks relief for injuries sustained as the result of defendants’ design,
15 manufacture, marketing, and sale of vehicles in the United States with defective gas
16 tanks.

17 3. Plaintiffs bring this class and representative action on behalf of a Class
18 defined as all persons who purchased, leased and/or currently own or lease a Kia
19 vehicle model that (i) has a gas tank that is either not connected to the underside of
20 the vehicle with reinforcing straps or is not protected by a whole-tank shield, and/or
21 (ii) has a plastic fuel pump service cover that is accessible from the passenger
22 compartment of the car (hereinafter “Defective Vehicles”).

23 4. The Defective Vehicles contain gas tanks that are defective and
24 dangerous for at least the following reasons (referred to collectively as the “gas tank
25 defects”):
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a. The gas tank is located immediately underneath the rear passenger seats and forward of the cargo area and is not sufficiently protected. Locating the tank under the rear passenger seats poses a danger to occupants of the rear seats, and, for this reason, the gas tank must either be shielded or attached to the underside of the vehicle with reinforcing straps. However, the gas tank in the Defective Vehicles is unshielded, and the gas tank is bolted to the vehicle underbody instead of being strapped. Failure to use straps, as most auto manufacturers do, increases the risk that the gas tank will shift or dislodge and ignite in a major collision.

b. The service cover for the fuel pump is plastic and is located immediately underneath the rear seat cushion. It is unreasonably dangerous to locate the fuel pump here and use a plastic service cover, particularly given the other gas tank defects referenced immediately above. This location, coupled with the use of a plastic instead of a metal fuel pump service cover, increases the likelihood that, in a major collision, fire will penetrate the rear cabin through the plastic service cover like a “blow torch.”

5. The gas tank defects make the Defective Vehicles unreasonably dangerous. Because of the foregoing gas tank defects, passengers sitting in the rear seats in Defective Vehicles are sitting atop veritable gas bombs that, in a major collision, have the propensity to explode and immediately engulf rear occupants in flames. There has been at least one accident in which this nightmare scenario resulted, killing three passengers traveling in a Defective Soul in Texas.

1 6. The gas tank defects present a significant and unreasonable safety risk
2 exposing Defective Vehicle owners and their passengers to a risk of serious injury or
3 death.

4 7. Kia’s sale of the Defective Vehicles and failure to disclose the gas tank
5 defects constitute a violation of California’s Unfair Competition Law, a violation of
6 California’s Consumer Legal Remedies Act, a violation of the California False
7 Advertising Law, breach of the implied warranty of merchantability, and fraudulent
8 concealment.¹

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10 8. Plaintiffs and the Class have been damaged by Kia’s misrepresentations,
11 concealment and non-disclosure of the gas tank defects in the Defective Vehicles,
12 and because they were misled into purchasing or leasing vehicles of a quality
13 different than they were promised, and paid more for the vehicles than they would
14 have had the gas tank defects been disclosed.

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16 **II. JURISDICTION AND VENUE**

17 9. This Court has diversity jurisdiction over this action under 28 U.S.C.
18 § 1332(a) and (d) because the amount in controversy for the Class exceeds
19 \$5,000,000, and Plaintiffs and other putative Class members are citizens of a
20 different state than Defendants.

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22 10. This Court has personal jurisdiction over Plaintiffs because Plaintiffs
23 submit to the Court’s jurisdiction. This Court has personal jurisdiction over the
24 defendants because defendants conduct substantial business in this District. Many of
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26
27 ¹ Should the Court decline to apply California law to claims of non-California
28 residents Plaintiffs will seek leave to allege the applicable laws in the fifty
states.

1 the actions giving rise to the complaint took place in this District, including all
2 advertising and marketing decisions for the affected cars.

3 11. Venue is proper in this District under 28 U.S.C. § 1391 because
4 defendants, as corporations, are deemed to reside in any judicial district in which
5 they are subject to personal jurisdiction, and because decisions about the design,
6 manufacture, marketing, and sale of Defective Vehicles were made in the District.
7 Additionally, defendants transact business within the District, and a substantial part
8 of the events establishing the claims arose in this District.

9
10 12. Upon information and belief, most, if not all, of the critical acts relating
11 to the Defective Vehicles arose out of California. Vehicle research and design and
12 marketing and advertising are also in part developed, controlled, and implemented in
13 and from California.

14 **III. PARTIES**

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16 13. Plaintiff Constance Sims (“hereinafter “Plaintiff Sims”) is a resident and
17 citizen of Fort Worth, Texas. Plaintiff Sims owns a 2013 model year Kia Soul Sport.
18 Plaintiff chose the Soul Sport in part because she wanted a safely designed and
19 manufactured vehicle. Plaintiff Sims saw advertisements for Kia vehicles before she
20 purchased the Soul, and, although she does not recall the specifics of many of the
21 advertisements, she does recall that safety and quality were consistent themes across
22 the advertisements she saw. These representations about safety and quality
23 influenced Plaintiff’s decision to purchase the Soul. Plaintiff Sims did not learn of
24 the gas tank defects until about June 2013. Had Kia disclosed the gas tank defects,
25 Plaintiff Sims would not have purchased her Soul Sport, or would have paid less than
26 she did.
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1 14. Plaintiff Sammy Rodriguez (“hereinafter “Plaintiff Rodriguez”) is a
2 resident and citizen of Orange, California. Plaintiff owns a 2011 model year Kia
3 Soul Exclaim and a 2013 model year Kia Soul Exclaim. Plaintiff Rodriguez chose
4 both Kia vehicles in part because he wanted a safely designed and manufactured
5 vehicle. Plaintiff Rodriguez saw advertisements for Kia vehicles before he
6 purchased both Souls, and, although he does not recall the specifics of many of the
7 advertisements, he does recall that safety and quality were consistent themes across
8 the advertisements he saw. These representations about safety and quality
9 influenced Plaintiff’s decision to purchase both Kia Souls. Plaintiff Rodriguez did
10 not learn of the gas tank defects until about November 2013. Had Kia disclosed the
11 gas tank defects, Plaintiff Rodriguez would not have purchased either Soul Exclaim,
12 or would have paid less than he did.
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15 15. Defendant Kia Motors America, Inc. is a California corporation with its
16 principal place of business located at 111 Peters Canyon Road in Irvine, California.
17 At all relevant times, Kia was actively involved, from its facilities and also from its
18 Irvine headquarters, in designing, marketing, distributing, and selling Defective
19 Vehicles in California and the United States.
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21 16. Defendant Kia Motors Corporation (“KMC”) is a Korean corporation
22 headquartered in Seoul, Korea. Kia Motors America is a subsidiary of KMC. At all
23 relevant times, KMC was actively involved in designing, manufacturing, assembling,
24 marketing, distributing, and selling Defective Vehicles in California and the United
25 States.
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IV. FACT ALLEGATIONS

A. Vehicle Manufacturers Must Design and Build Vehicles with Safe Gas Tanks

17. Because a gas tank is filled with a highly volatile liquid, it poses a hazard to the occupants of the car. For example, in a collision, a gas tank that is not properly protected can leak or explode and engulf the car and its occupants in flames.

18. Given the hazards posed by a vehicle's gas tank, vehicle manufacturers must take reasonable steps to design and manufacture a gas tank that is not susceptible to failure in collisions and that, if fire in the gas tank does result, the fire does not immediately explode into the passenger cabin of the vehicle so that occupants have an opportunity to escape the burning car.

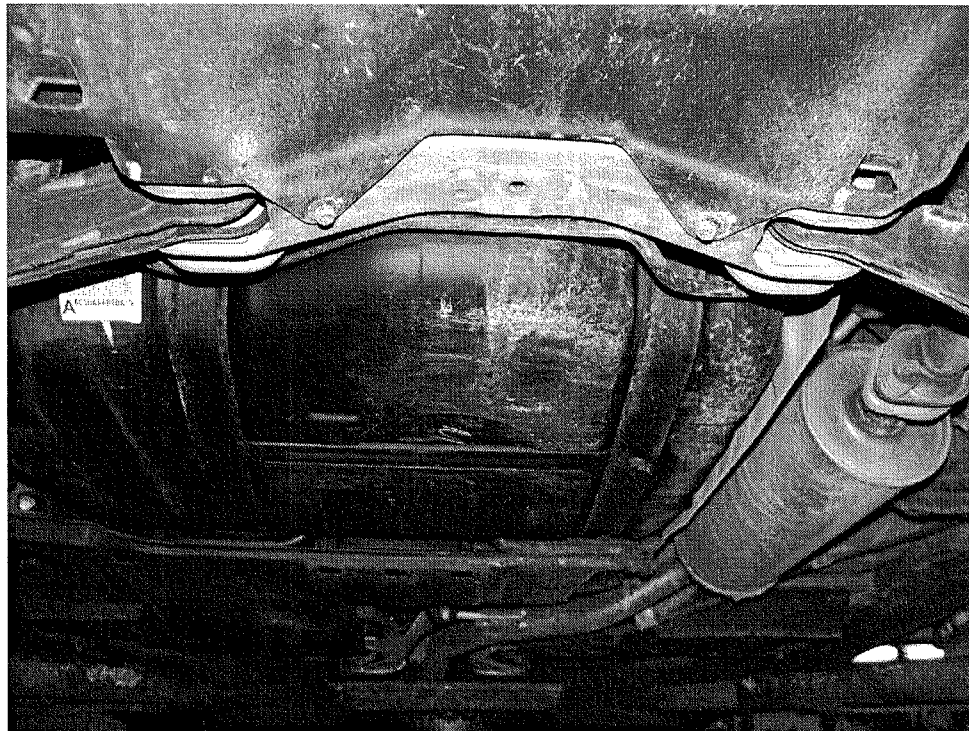
19. Over the years, vehicle manufacturers have made certain design and manufacturing decisions to protect the gas tank against failure in collisions. For example, most manufacturers place the gas tank above or in front of the rear axle and not immediately behind the rear bumper (as was done in the early Pinto models), so that the tank cannot be easily penetrated in rear collisions.

20. Another standard safety device is to shield or strap the gas tank. Almost all cars sold in the United States have a gas tank that is either protected by a shield or reinforcing straps.

21. A gas tank shield is made of a separate piece of sheet metal, which holds the gas tank in place and substantially improves the tank's ability to withstand puncture in an accident.

22. Reinforcing straps tie the gas tank to the frame of the vehicle and ensure that the tank will not dislodge or drop in an accident. Below is a photograph of the

1 underside of a non-Kia vehicle (a 2006 Honda civic) that has its gas tank secured
2 with straps:
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17 23. Failure to use a gas tank shield or reinforcing straps, as most auto
18 manufacturers do, increases the risk that the gas tank will dislodge and ignite in a
19 major collision.

20 24. Other safe design and manufacturing considerations must be given to
21 the vehicle's fuel pump. The fuel pump transmits the gas from the tank to the
22 engine, and it must be located in a safe place. Although not common, in some
23 vehicle models, technicians can access the fuel pump through the passenger cabin if
24 the fuel pump needs service. It is easier and less costly to access the fuel pump in
25 this manner than it is to remove the fuel tank to access the pump when the fuel pump
26 is located inside the gas tank itself. But when the fuel pump is accessible through the
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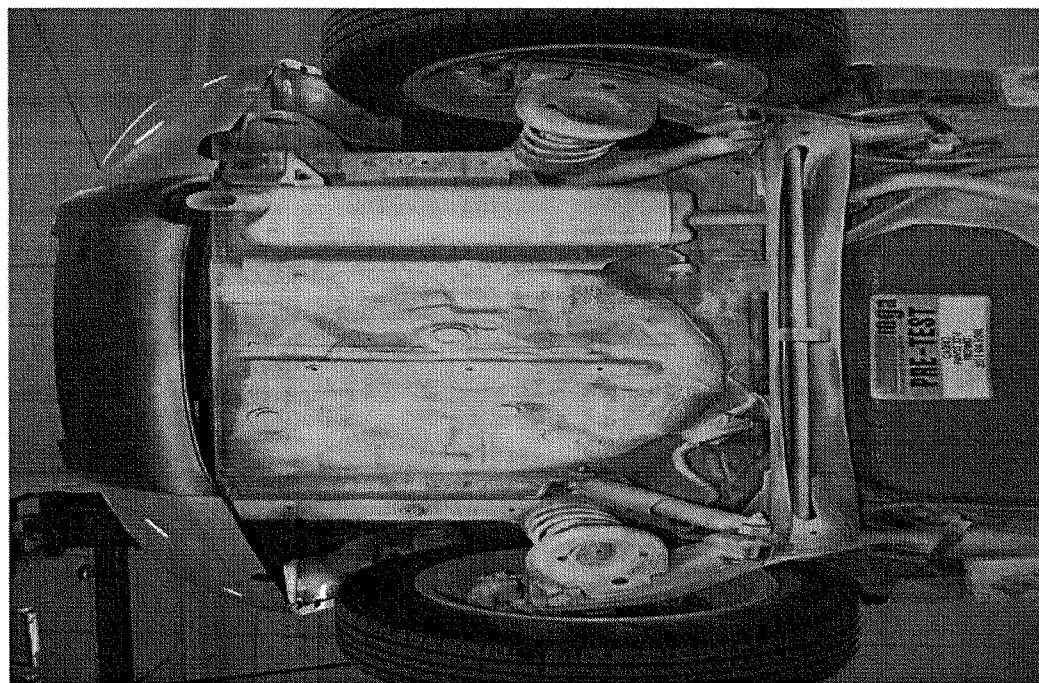
1 passenger cabin, manufacturers must ensure that the “service cover” for the fuel
2 pump is made of metal and appropriately affixed so that a fire in gas tank cannot
3 quickly melt through the cover and invade the vehicle.
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5 25. Unfortunately, and as discussed in greater detail below, Kia has not
6 heeded the foregoing safe design and manufacturing guidelines in the Defective
7 Vehicles and has, as a result, unnecessarily exposed its customers and their
8 passengers to an enhanced risk of serious injury or death in the event of an accident.

9 **B. The Gas Tank Defects in the Defective Vehicles**

10 **1. The gas tank in the Defective Vehicles lacks the crucial protections**
11 **provided by shielding and strapping.**

12 26. In the Defective Vehicles, the gas tank is located just forward of the rear
13 axle and immediately under the rear passenger seats, as depicted in red in the
14 following photograph of a Defective Soul:



1 27. Given the gas tank's location and proximity to the rear passengers, the
2 tank must be designed and manufactured in a manner that ensures the safety of those
3 in the car. It was not.

4 28. In the Defective Vehicles, Kia failed to shield or strap the gas tank –
5 omitting both of these crucial protections. It did so despite the fact that Kia has
6 straps in certain models.

7 29. Again, failing to use a gas tank shield or reinforcing straps increases the
8 risk that the gas tank will dislodge and ignite in a major collision. The risk is
9 particularly heightened in the Defective Vehicles because of the gas tank's location
10 immediately under the rear passenger seats.

11 30. This is a defect and presents a significant safety risk exposing Defective
12 Vehicle owners and their passengers to a risk of serious injury or death in the event
13 of an accident.

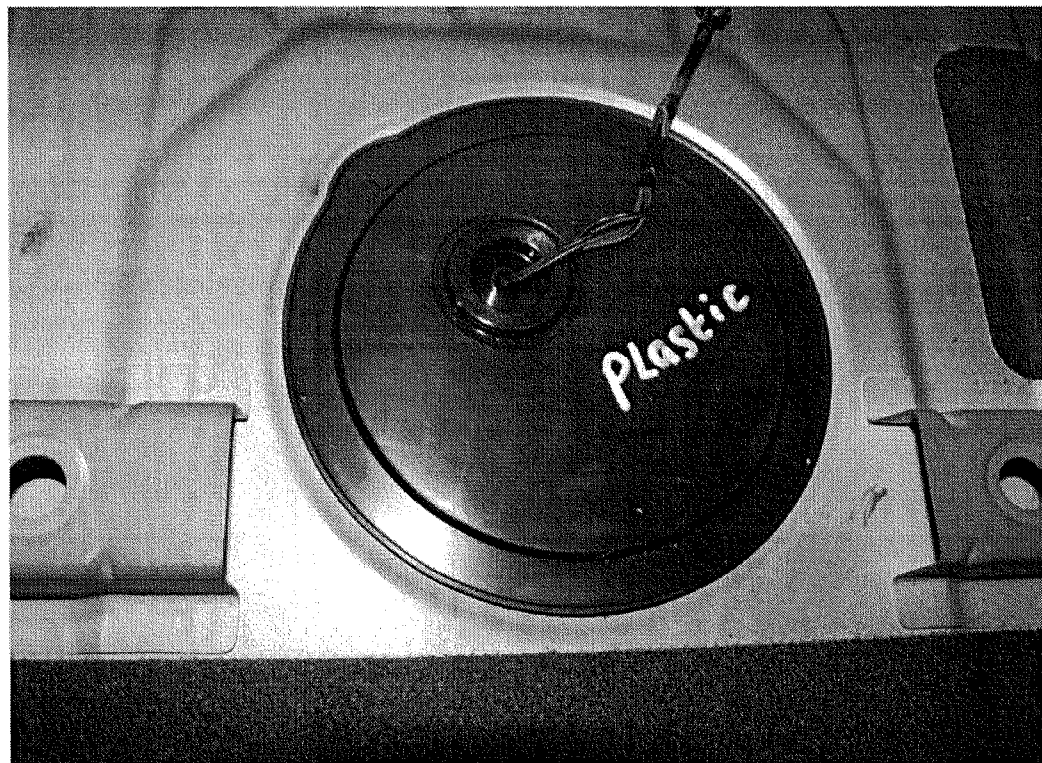
14 31. Kia is well aware of the need to affix the gas tank by using reinforcing
15 straps. Kia has used straps on some of its vehicles and issued a recall in 2011 of
16 2003-2007 model year Spectra's in northern climates where road salt is used. As the
17 recall notice explained:

18 THERE IS A POSSIBILITY THAT CORROSION OF
19 THE FUEL TANK STRAPS WHICH HOLD THE TANK
20 MAY OCCUR AS A RESULT OF PROLONGED
21 EXPOSURE TO ROAD SALT. AS A RESULT OF THE
22 CORROSION, ONE OR BOTH STRAPS MAY
23 SEPARATE ALLOWING THE FUEL TANK TO
24 CONTACT THE GROUND AND POSSIBLY DISRUPT
25 THE INTEGRITY OF THE TANK. **CONSEQUENCE:**
26 THE FUEL TANK CAN FALL FROM THE VEHICLE
27 AND STRIKE THE GROUND WHICH COULD CAUSE
28 A FUEL LEAK. LEAKING FUEL CAN CREATE A
FIRE HAZARD.

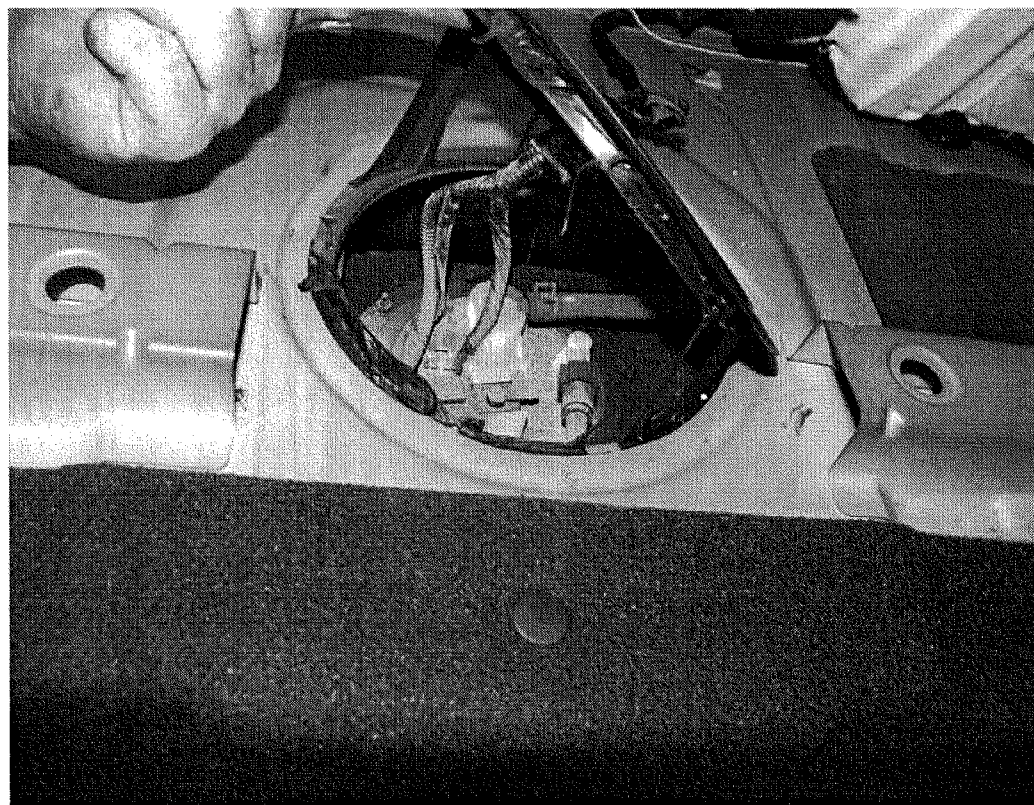
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2. The fuel pump cover in the Defective Vehicles is located immediately under the rear seat cushion and is made of plastic, increasing the likelihood of a “blow torch” fire in the rear compartment.

32. The service cover for the fuel pump is plastic and is located underneath the rear seat cushion as shown in the following photographs taken of a Defective Soul:



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33. Thus, the only thing separating the rear passenger from these plastic fuel pump service covers is the seat cushion on which the passenger sits.

34. This is a *highly* dangerous location for a fuel pump service cover made of plastic, *particularly given the other gas tank defects itemized above that already make the gas tank unreasonably dangerous*. This location, coupled with the use of a plastic instead of a metal fuel pump service cover that is screwed to the floor pan of the vehicle, increases the likelihood that fire will penetrate the rear cabin in a “blow torch” effect in a major collision.

35. This is a defect and presents a significant safety risk exposing Defective Vehicle owners and their passengers to a risk of serious injury or death in the event of an accident.

1 **C. Kia Had a Duty to Disclose the Gas Tank Defects but Did Not**

2 36. The gas tank defects described herein are material safety defects that
3 Kia was under a duty to disclose.

4 37. As reasonable consumers, Plaintiffs and the Class would have behaved
5 differently had Kia disclosed the gas tank defects. If Plaintiffs and the Class had
6 known that the Defective Vehicles had the gas tank defects, Plaintiffs and the Class
7 would not have purchased or leased their Defective Vehicles, or would have paid
8 less than they did. Whether the Defective Vehicles have gas tank defects is a fact
9 that a reasonable consumer would consider important in selecting a vehicle to
10 purchase or lease. The gas tank defects are material to consumers because the
11 defects present serious safety issues and place the driver and passengers at risk of
12 harm. Reasonable persons would expect that the Defective Vehicles would not have
13 gas tank defects rendering those tanks unsafe, and reasonable persons would find the
14 concealed information regarding the gas tank defects material.
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16 38. As the developer and manufacturer of the Defective Vehicles, Kia had
17 exclusive knowledge of the gas tank defects and the dangers that those defects pose –
18 something that Plaintiffs, as lay persons, would not know, appreciate, or understand
19 without Kia's disclosure.
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21 39. Kia was well aware of the need to strap its gas tanks and recognized in
22 prior recall notices for other vehicles that failure to properly affix gas tanks to the
23 vehicle may result in the tanks falling and striking the ground which could cause a
24 fuel leak that could ignite.
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1 40. Kia also knew of the gas tank defects because it knew that, as a matter
2 of sound engineering practice, most other car models had either gas tank shields or
3 straps, including some of Kia's own models.

4 41. Kia also knew of the gas tank defects because it knew that, as a matter
5 of sound engineering practice, most other car models that use in-compartment fuel
6 pump service caps have service caps made of metal (and not plastic), including some
7 of Kia's own models.

8 42. Furthermore, as a result of the well-publicized Ford Pinto gas tank
9 explosions from the 1970s, Kia engineers were also well aware of the hazards that
10 defective gas tanks pose to vehicle occupants. The fuel tank in the Pintos was
11 positioned behind the rear axle and in front of the rear bumper and suffered from
12 other flaws, such as an insufficiently reinforced filler neck that would tear away from
13 the tank in a collision and spill fuel beneath the car. As a result of these defects, the
14 Pinto gas tank had a propensity to burst into flames in even low-speed collisions.
15 Numerous people burned to death in collisions involving the Pinto, leading to many
16 lawsuits in which it was revealed that Ford was aware of the dangers presented by
17 the defective tanks but made the decision to sell the Pinto anyway because the
18 projected costs to Ford of remedying the defect outweighed Ford's estimate of the
19 total damage payouts that it would be exposed to for wrongful deaths and personal
20 injuries. Kia, in addition to all other auto manufacturers selling vehicles in the
21 United States, was well aware of the Pinto experience, and this informed Kia's
22 design of its own vehicles.
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1 **D. Kia Falsely Promoted the Defective Vehicles as Safe**

2 43. In marketing and advertising materials, Kia has consistently promoted
3 the Defective Vehicles as safe.

4 44. For example, in brochures for the Sedona, Optima, Forte, and Cadenza,
5 Kia promotes its vehicles as “DESIGNED TO HELP PROTECT DRIVER &
6 PASSENGERS.”
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8 45. Kia also advertised and promoted the quality of its vehicles. Examples
9 include its “Pride of Quality” slogan, which appeared in a brochure for its Rio
10 model, under which Kia explains:

11 **PRIDE OF QUALITY**

12 Kia Motors designs and develops vehicles and
13 rigorously puts them to the test at high-tech
14 facilities and proving grounds worldwide.
15 The result is a full line of vehicles with world-
class quality.

16 46. Another example is Kia’s “Delivering on a promise” pledge, which
17 appeared in brochures for the Sedona, Optima, Forte, Cadenza, and Sorento models:

18 **Delivering on a promise**

19 Kia is committed to producing world-class
20 vehicles to suit almost every driving need.
21 This promise has led to the development of
22 stylish vehicles with an extraordinary
23 combination of precision engineering,
24 outstanding performance, innovative features
and advanced safety systems. The value
found in every Kia vehicle has been widely
recognized

25 47. Examples of other advertising and promotional material for the
26 Defective Soul include the following safety representations:

27 “Safety engineering for your peace of mind.”
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“Advanced safety systems designed to expect the unexpected.”

“Soul’s active safety systems are engineered to help you avoid accidents, and its passive systems are designed to help minimize injuries when they are unavoidable. This means that front to back and top to bottom, Soul is engineered to help ensure everyone’s well-being. . . . The result? A whole lot of peace of mind.”

“Safety awards from IIHS and NHTSA for added peace of mind.”

48. Kia also promoted the Soul, Sorento, and Optima as a “Top Safety Pick”² with “advanced safety systems,” with “safety awards from IIHS and NHTSA for added peace of mind.”

49. A brochure/advertisement for the 2013 Soul proclaims that the Kia Soul is a “2012 Top Safety Pick Insurance Institute For Highway Safety” and that this award provided added “peace of mind.”

50. Given the gas tank defects itemized above, marketing statements that the Defective Vehicles are safe, are “world class,” and have “world-class quality” are false and misleading.

51. Kia made these representations to boost vehicle sales knowing that the gas tanks in the Defective Vehicles were defective.

52. Kia’s representations are capable of being reasonably interpreted as statements of objective fact, and the statements are capable of being proved false given that the gas tank defects are inherently dangerous.

² 2012 Brochure.

1 53. Throughout the relevant period, Kia possessed vastly superior
2 information to that of consumers – if not exclusive information – about the design
3 and function of the gas tanks in the Defective Vehicles.

4 54. To date, Kia has never notified consumers of the gas tank defects.

5
6 **E. The Gas Tank Defects Have Damaged Plaintiffs and the Class**

7 55. The gas tank defects have caused damage to Plaintiffs and the Class.

8 56. A car purchased or leased with a defect is worth less than the equivalent
9 car leased or purchased without the defect.

10 57. A car purchased or leased under the reasonable assumption that it is
11 “safe” as advertised is worth more than a car known to be subject to the risk of
12 explosion in a crash as a result of the gas tank defects.

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14 58. Purchasers and lessees paid more for the Defective Vehicles, through a
15 higher purchase price or higher lease payments, than they would have had the gas
16 tank defects been disclosed. Thus, Plaintiffs and the Class overpaid for their
17 Defective Vehicles as a result of the gas tank defects. Plaintiffs did not receive the
18 benefit of the bargain.

19 59. Furthermore, Plaintiffs and the Class are stuck with unsafe vehicles.

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21 60. Indeed, there has been at least one accident in which the gas tank was
22 dislodged in an accident involving a Defective Vehicle. For example, in April 2013,
23 a Defective Soul exploded in a collision in Texas as a result of the gas tank defects,
24 and all three passengers in the rear compartment of the car burned to death.

25 **F. Choice of Law Allegations**

26 61. Upon information and belief, a substantial amount, if not most, of the
27 critical acts that form the basis for each and every Plaintiff and Class member’s
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1 claims against Kia emanated out of California, including Kia's decisions regarding
2 the design and manufacture of the Defective Vehicles' gas tank systems.

3 62. Kia is headquartered and has its principal place of business in Irvine,
4 California.

5 63. Kia's headquarters in Irvine houses the Kia U.S. sales division, and its
6 marketing, public relations, consumer affairs, technical service, research and
7 development, product planning, and administration departments.

8 64. The Irvine, California, facility is also home to the Kia Design Center
9 America, a 236,000 square foot campus on 21.7 acres.

10 65. Tom Kearns, the Chief Designer for Kia Motors America, has said that
11 the Defective Soul "was a collaborative effort between our design studio in
12 California and our design studio in Korea."

13 66. Kia's proving grounds are located in California City, California. The
14 California proving ground is where performance and endurance tests are conducted
15 on all Kia vehicles sold in the U.S.

16 67. Kia also contracts with the Los Angeles-based creative agency David &
17 Goliath for all its advertising campaigns.

18 68. All marketing and advertising campaigns falsely promoting the
19 Defective Vehicles as safe and reliable were conceived and designed in California.

20 69. Kia also has many dealerships in California (approximately 52), which
21 produce approximately 15-20 percent of its total sales.

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V. CLASS ALLEGATIONS

A. The Nationwide Class

70. Pursuant to Rules 23(a), (b)(2), and (b)(3) of the Federal Rules of Civil Procedure, Plaintiffs bring this action on behalf of themselves and a Nationwide Class initially defined as follows:

All individuals or entities that purchased, leased, and/or currently own or lease a Kia vehicle model that (i) has a gas tank that is either not connected to the underside of the vehicle with reinforcing straps or is not protected by a whole-tank shield, and/or (ii) has a plastic fuel pump service cover that is accessible from the passenger compartment of the car (hereinafter “Defective Vehicles”).

71. Excluded from the Nationwide Class are Kia, its employees, co-conspirators, officers, directors, legal representatives, heirs, successors and wholly or partly owned subsidiaries or affiliated companies; class counsel and their employees; and the judicial officers and their immediate family members and associated court staff assigned to this case, and all persons within the third degree of relationship to any such persons. Also excluded are any individuals claiming damages from personal injuries allegedly arising from the Kia Soul.

72. The Defective Vehicles included in the Class are at least the following models:

- Model year 2009-2014 Kia Soul, Kia Soul + (*plus*), Kia Soul! (*exclaim*), or Kia Soul Sport (hereinafter “Defective Soul”).
- Model year 2006-2014 Rio.
- Model year 2009-2014 Forte.
- Model year 2004-2009 Amanti.
- Model year 2000-2006 Optima.

1 73. Plaintiffs are informed and believe that Kia manufactured and sold to
2 consumers hundreds-of-thousands of Defective Vehicles in the United States through
3 the present. All of these vehicles were marketed and sold with gas tank defects.
4 Accordingly, individual joinder of all class members is impracticable.
5

6 74. The Class expressly disclaims any recovery for physical injury resulting
7 from the gas tank defects. Nevertheless, the increased risk of injury from the gas
8 tank defects serves as an independent justification for the relief sought by plaintiffs
9 and the Class.

10 75. The Class can be readily identified using registration records, sales
11 records, production records, and other information kept by defendants or third parties
12 in the usual course of business and presently within their control.
13

14 76. Questions of law and fact are common to the Class and predominate
15 over questions affecting only individual members, including, *inter alia*, the
16 following:

- 17 (a) Whether the Defective Vehicles suffer from gas tank defects;
18 (b) Whether Kia concealed the defects;
19 (c) Whether Kia misrepresented that the Defective Vehicles were
20 safe;
21 (d) Whether Kia engaged in fraudulent concealment;
22 (e) Whether Kia engaged in unfair, unlawful and/or fraudulent
23 business practices by failing to disclose that the Defective Vehicles were
24 designed, manufactured and sold with defective gas tanks;
25 (f) Whether the alleged conduct by Kia violated laws as alleged in
26 this Complaint;
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1 (g) Whether defendants violated California law, including the CLRA,
2 CAL. CIV. CODE §§ 1750, *et seq.*; the UCL, CAL. BUS. & PROF. CODE §§
3 17200, *et seq.*, and the California False Advertising Law, CAL. BUS. & PROF.
4 CODE §§ 17500, *et seq.*;

5
6 (h) Whether Plaintiffs and the members of the Class are entitled to
7 equitable and/or injunctive relief; and

8 (i) Whether defendants' unlawful, unfair and/or deceptive practices
9 harmed Plaintiffs and the members of the Class.

10 77. Plaintiffs' claims are typical of the claims of the Class members as
11 described above, and arise from the same course of conduct by Kia. The relief
12 Plaintiffs seek is typical of the relief sought for the absent Class members.

13
14 78. Plaintiffs will fairly and adequately represent and protect the interests of
15 all absent Class members. Plaintiffs are represented by counsel competent and
16 experienced in product liability, consumer protection, and class action litigation.

17 79. A class action is superior to other available methods for the fair and
18 efficient adjudication of this controversy, since joinder of all the individual Class
19 members is impracticable. Furthermore, because the damages suffered by each
20 individual Class member may be relatively small, the expense and burden of
21 individual litigation would make it very difficult or impossible for individual Class
22 members to redress the wrongs done to each of them individually, and the burden
23 imposed on the judicial system would be enormous.

24
25 80. The prosecution of separate actions by the individual Class members
26 would create a risk of inconsistent or varying adjudications with respect to individual
27 Class members, which would establish incompatible standards of conduct for
28

1 defendants. In contrast, the conduct of this action as a class action presents far fewer
2 management difficulties, conserves judicial resources and the parties' resources, and
3 protects the rights of each Class member.

4 81. Plaintiffs are not aware of any obstacles likely to be encountered in the
5 management of this action that would preclude its maintenance as a class action.
6 Plaintiffs anticipate providing appropriate notice to be approved by the Court after
7 discovery into the size and nature of the Class. CAUSES OF ACTION

8
9 **COUNT I**

10 **VIOLATIONS OF THE CONSUMER LEGAL REMEDIES ACT**
11 **(CAL. CIV. CODE § 1750, *et seq.*)**

12 82. Plaintiffs and the Class incorporate by reference each preceeding and
13 succeeding paragraph as though fully set forth at length herein.

14 83. Plaintiffs assert this claim for violation of the California Consumer
15 Legal Remedies Act ("CLRA") on behalf of Plaintiffs and the members of the Class.

16 84. Defendants are "persons" under CAL. CIV. CODE § 1761(c).

17 85. Plaintiffs and the members of the Class are consumers who purchased
18 goods (automobiles) from defendants for personal, family, or household purposes.

19 86. Representing that goods (including automobiles) have characteristics,
20 uses, or benefits which they do not have, representing that goods are of a particular
21 standard, quality or grade if they are of another, and advertising goods with intent
22 not to sell them as advertised constitute unfair or deceptive trade practices under the
23 provisions of the CLRA, CAL. CIV. CODE §§ 1770(a)(5), (7), and (14).

24 87. Defendants made numerous material statements about the safety and
25 quality of the Defective Vehicles that were either false or misleading. Defendants
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27
28

1 misrepresented that the Defective Vehicles were safe, that the vehicles incorporated
2 “[a]dvanced safety systems,” were of “world-class” quality, were a “top safety pick,”
3 and that the Soul was “engineered to help ensure everyone’s well-being.” Each of
4 these statements contributed to the deceptive context of defendants’ unlawful
5 advertising and representations as a whole.
6

7 88. Independent of a duty not make misrepresentations, Kia was also under
8 a duty to disclose the gas tank defects. Defendants knew of the gas tank defects
9 because (i) they knew from prior recall notices for Kia vehicles that failure to
10 properly affix gas tanks to the vehicle may result in the tanks falling and striking the
11 ground which could cause a fuel leak that could ignite; (ii) as a matter of sound
12 engineering practice, most other car models had either gas tank shields or straps,
13 including some of Kia’s own models; (iii) as a matter of sound engineering practice,
14 most other car models that use in-compartment fuel pump service caps have service
15 caps made of metal (and not plastic), including some of Kia’s own models; and (iv)
16 as a result of the well-publicized Ford Pinto gas tank explosions in the 1970s, Kia
17 engineers were well aware of the hazards that defective gas tanks pose to vehicle
18 occupants and the need to protect against defective gas tanks. Despite this
19 knowledge prior to the manufacture and sale of the Defective Vehicles, defendants
20 uniformly concealed this defect from consumers. Despite having a duty to warn
21 Plaintiffs about the inherent dangers presented by this defect, defendants have failed
22 to do so.
23
24

25 89. These representations and omissions were material to Plaintiffs and the
26 Class. As reasonable consumers, Plaintiffs and the Class would have behaved
27 differently had Kia disclosed the gas tank defects. If Plaintiffs and the Class had
28

1 known that the Defective Vehicles had the gas tank defects, Plaintiffs and the Class
2 would not have purchased or leased their Defective Vehicles, or would have paid
3 less than they did. Whether the Defective Vehicles have gas tank defects is a fact
4 that a reasonable consumer would consider important in selecting a vehicle to
5 purchase or lease. The gas tank defects are material to consumers because the
6 defects present serious safety issues and place the driver and passengers at risk of
7 harm. Reasonable persons would expect that the Defective Vehicles would not have
8 gas tank defects rendering those tanks unsafe, and reasonable persons would find the
9 concealed information regarding the gas tank defects material.
10

11 90. Defendants also intentionally concealed the gas tank defects, of which
12 Plaintiffs were unaware until about June 2013. As noted, Defendants were under a
13 duty to disclose the gas tank defects to Plaintiffs and the Class; Defendants
14 concealed or suppressed those defects with intent to defraud; Plaintiffs were unaware
15 of the concealed or suppressed facts and would not have acted the same had they
16 known of the concealed or suppressed facts; and, as a result of the concealment and
17 suppression, Plaintiffs and the Class have sustained damage.
18

19 91. Plaintiffs and the members of the Class have been directly and
20 proximately injured by defendants' conduct.
21

22 92. Further, each of the Plaintiffs face an increased risk of future harm that
23 would not be present if defendants had not designed, manufactured, and sold
24 vehicles that had the gas tank defects. Plaintiffs risk irreparable injury as a result of
25 defendants' acts and omissions in violation of the CLRA, and these violations
26 present a continuing risk to plaintiffs as well as to the general public.
27
28

1 93. Pursuant to CAL. CIV. CODE § 1780(a), Plaintiffs seek restitution,
2 damages, and an order enjoining defendants from engaging in the methods, acts, or
3 practices alleged herein and requiring it to remedy the Defective Vehicles’ gas tank
4 defects. This can be done by affixing sheet metal over the plastic fuel pump service
5 cover and adding reinforcing straps to hold the gas tank in place or adding a gas tank
6 shield. Plaintiffs also seek an award of costs and attorneys’ fees. Plaintiffs on
7 November 13, 2013 sent a letter complying with CAL. CIV. CODE § 1782(d).
8

9 94. Plaintiffs include affidavits with this Complaint that show that venue in
10 this District is proper, to the extent such an affidavit is required by CAL. CIV. CODE
11 § 1780(d).
12

13 **COUNT II**

14 **VIOLATION OF THE CALIFORNIA UNFAIR COMPETITION LAW
15 (CAL. BUS. & PROF. CODE § 17200, *et seq.*)**

16 95. Plaintiffs and the Class incorporate by reference each preceeding and
17 succeeding paragraph as though fully set forth at length herein.

18 96. Plaintiffs assert this claim for violations of California’s Unfair
19 Competition Law (“UCL”), Bus. & Prof. Code §§ 17200, *et seq.*, on behalf of
20 themselves and the Class members.

21 97. Defendants’ misrepresentations, omissions, and concealment as alleged
22 herein constitute unfair, unlawful and fraudulent business acts or practices that had
23 the capacity to, and did, deceive consumers in violation of the UCL.
24

25 98. Defendants have violated the unlawful prong of section 17200 by their
26 violations of the Consumer Legal Remedies Act, CAL. CIV. CODE § 1750, *et seq.*, as
27 set forth in Count I by the acts and practices set forth in this Complaint.
28

1 99. Defendants have violated the fraudulent prong of section 17200 because
2 the misrepresentations and omissions regarding the safety of their vehicles as set
3 forth in this Complaint were likely to deceive a reasonable consumer, and the
4 information would be material to a reasonable consumer.
5

6 100. Defendants made numerous material statements about the safety and
7 quality of the Defective Vehicles that were either false or misleading. Defendants
8 misrepresented that the Defective Vehicles were safe, that the vehicles incorporated
9 “[a]dvanced safety systems,” were of “world-class” quality, were a “top safety pick,”
10 and that the Soul was “engineered to help ensure everyone’s well-being.” Each of
11 these statements contributed to the deceptive context of defendants’ unlawful
12 advertising and representations as a whole.
13

14 101. Independent of a duty not make misrepresentations, Kia was also under
15 a duty to disclose the gas tank defects. Defendants knew of the gas tank defects
16 because (i) they knew from prior recall notices for Kia vehicles that failure to
17 properly affix gas tanks to the vehicle may result in the tanks falling and striking the
18 ground which could cause a fuel leak that could ignite; (ii) as a matter of sound
19 engineering practice, most other car models had either gas tank shields or straps,
20 including some of Kia’s own models; (iii) as a matter of sound engineering practice,
21 most other car models that use in-compartment fuel pump service caps have service
22 caps made of metal (and not plastic), including some of Kia’s own models; and (iv)
23 as a result of the well-publicized Ford Pinto gas tank explosions in the 1970s, Kia
24 engineers were well aware of the hazards that defective gas tanks pose to vehicle
25 occupants and the need to protect against defective gas tanks. Despite this
26 knowledge prior to the manufacture and sale of the Defective Vehicles, defendants
27
28

1 uniformly concealed this defect from consumers. Despite having a duty to warn
2 Plaintiffs about the inherent dangers presented by this defect, defendants have failed
3 to do so.

4 102. These representations and omissions were material to Plaintiffs and the
5 Class. As reasonable consumers, Plaintiffs and the Class would have behaved
6 differently had Kia disclosed the gas tank defects. If Plaintiffs and the Class had
7 known that the Defective Vehicles had the gas tank defects, Plaintiffs and the Class
8 would not have purchased or leased their Defective Vehicles, or would have paid
9 less than they did. Whether the Defective Vehicles have gas tank defects is a fact
10 that a reasonable consumer would consider important in selecting a vehicle to
11 purchase or lease. The gas tank defects are material to consumers because the
12 defects present serious safety issues and place the driver and passengers at risk of
13 harm. Reasonable persons would expect that the Defective Vehicles would not have
14 gas tank defects rendering those tanks unsafe, and reasonable persons would find the
15 concealed information regarding the gas tank defects material.

16 103. Despite having a duty to warn Plaintiffs about the inherent dangers
17 presented by these defects, defendants have failed to do so.

18 104. Defendants have violated the unfair prong of section 17200 because the
19 acts and practices set forth in the Complaint, including the manufacture and sale of
20 vehicles with the gas tank defects and defendants' failure to adequately investigate,
21 disclose and remedy, offend established public policy, and because the harm they
22 cause to consumers greatly outweighs any benefits associated with those practices.
23 Defendants' conduct has also impaired competition within the automotive vehicles
24 market and has prevented Plaintiffs from making fully informed decisions about
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1 whether to purchase or lease the Defective Vehicles and/or the price to be paid to
2 purchase or lease the Defective Vehicles.

3 105. All of the wrongful conduct alleged herein occurred, and continues to
4 occur, in the conduct of defendants' business. Defendants' wrongful conduct is part
5 of a pattern or generalized course of conduct that is still perpetuated and repeated,
6 both in the State of California and nationwide.

7
8 106. Plaintiffs have suffered an injury in fact, including the loss of money or
9 property, as a result of defendants' unfair, unlawful and/or deceptive practices.

10 107. Plaintiffs request that this Court enter such orders or judgments as may
11 be necessary to: enjoin defendants from continuing their unfair, unlawful, and/or
12 deceptive practices; restore to the Class members any money defendants acquired by
13 means of unfair, unlawful and deceptive trade practices; and disgorge any profits
14 defendants received as a result of their unfair, unlawful and/or deceptive practices, as
15 provided in CAL. BUS. & PROF. CODE § 17203 and CAL. CIV. CODE § 3345; and for
16 such other relief set forth below.
17

18 **COUNT III**

19 **FALSE ADVERTISING**
20 **(CAL. BUS. & PROF. CODE § 17500, et. seq.)**

21 108. Plaintiffs and the Class incorporate by reference each preceding and
22 succeeding paragraph as though fully set forth at length herein.

23 109. California Business and Professions Code § 17500 states: "It is
24 unlawful for any ... corporation ... with intent directly or indirectly to dispose of real
25 or personal property ... to induce the public to enter into any obligation relating
26 thereto, to make or disseminate or cause to be made or disseminated ... from this
27
28

1 state before the public in any state, in any newspaper or other publication, or any
2 advertising device, ... or in any other manner or means whatever, including over the
3 Internet, any statement ... which is untrue or misleading, and which is known, or
4 which by the exercise of reasonable care should be known, to be untrue or
5 misleading.”

6
7 110. Defendants caused to be made or disseminated through California and
8 the United States, through advertising, marketing and other publications, statements
9 that were untrue or misleading, and which were known, or which by the exercise of
10 reasonable care should have been known to defendants, to be untrue and misleading
11 to consumers and Plaintiffs.

12
13 111. Defendants made numerous material statements about the safety and
14 quality of the Defective Vehicles that were either false or misleading. Defendants
15 misrepresented that the Defective Vehicles were safe, that the vehicles incorporated
16 “[a]dvanced safety systems,” were of “world-class” quality, were a “top safety pick,”
17 and that the Soul was “engineered to help ensure everyone’s well-being.” Each of
18 these statements contributed to the deceptive context of defendants’ unlawful
19 advertising and representations as a whole.

20
21 112. Defendants have violated section 17500 because the misrepresentations
22 and omissions regarding the safety and quality of their vehicles as set forth in this
23 Complaint were material and likely to deceive a reasonable consumer.

24
25 113. Plaintiffs and members of the Class have suffered an injury in fact,
26 including the loss of money or property, as a result of defendants’ unfair, unlawful
27 and/or deceptive practices. In purchasing or leasing their vehicles, the Plaintiffs
28 relied on defendants’ misrepresentations and/or omissions with respect to the safety

1 and quality of the vehicles. Defendants' representations turned out not to be true
2 because of the gas tank defects. Had the Plaintiffs known this, they would not have
3 purchased or leased the Defective Vehicles and/or paid as much for them.

4 114. Accordingly, Plaintiffs overpaid for their Defective Vehicles and did not
5 receive the benefit of their bargain.

6 115. All of the wrongful conduct alleged herein occurred, and continues to
7 occur, in the conduct of defendants' business. Defendants' wrongful conduct is part
8 of a pattern or generalized course of conduct that is still perpetuated and repeated,
9 both in the State of California and nationwide.

10 116. Plaintiffs request that this Court enter such orders or judgments as may
11 be necessary to enjoin defendants from continuing their unfair, unlawful, and/or
12 deceptive practices and to restore to Plaintiffs and members of the Class any money
13 defendants' acquired by unfair competition, including restitution and/or
14 restitutionary disgorgement, and for such other relief set forth below.

15
16
17 **COUNT IV**

18 **BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY**
19 **(CAL. COM. CODE § 2314)**

20 117. Plaintiffs and the Class incorporate by reference each preceeding and
21 succeeding paragraph as though fully set forth at length herein.

22 118. Defendants are and were at all relevant times a merchant with respect to
23 motor vehicles under CAL. COM. CODE § 2104.

24 119. A warranty that the Defective Vehicles were in merchantable condition
25 was implied by law in the instant transaction, pursuant to CAL. COM. CODE § 2314.
26
27
28

1 120. The Defective Vehicles, when sold and at all times thereafter, were not
2 in merchantable condition and are not fit for the ordinary purpose for which cars are
3 used. Specifically, the Defective Vehicles are inherently defective as a result of the
4 gas tank defects, present unreasonably safety risks, are not safe for occupants and
5 thus not fit for ordinary purposes. Moreover, the dangerous defects exist without
6 regard to how the driver operates the vehicle. In other words, the defects present an
7 unreasonable danger when the driver operates the vehicle in the normal course and
8 without driving dangerously.
9

10 121. Defendants breached the warranty of merchantability implied by law for
11 the Defective Vehicles.
12

13 122. Notice of breach is not required because Plaintiffs and Class members
14 did not purchase their automobiles from defendants directly.
15

16 123. Plaintiffs and Class members are intended third-party beneficiaries of
17 contracts between Kia and its dealers, who have no rights under the warranty
18 agreements provided with the vehicles. Such agreements were intended to benefit
19 the ultimate consumers, and the Plaintiffs and Class members are intended
20 beneficiaries of defendants' implied warranties.
21

22 124. As a direct and proximate result of defendants' breach of the implied
23 warranty of merchantability, Plaintiffs and the Class have been damaged in an
24 amount to be proven at trial.
25

COUNT V
FRAUDULENT CONCEALMENT

26 125. Plaintiffs and the Class incorporate by reference each preceeding and
27 succeeding paragraph as though fully set forth at length herein.
28

1 126. Defendants concealed and/or suppressed material facts concerning the
2 gas tank defects.

3 127. Defendants had a duty to disclose the gas tank defects because they
4 consistently marketed the Defective Vehicles as safe, that the vehicles incorporated
5 “[a]dvanced safety systems,” were of “world-class” quality, were a “top safety pick,”
6 and that the Soul was “engineered to help ensure everyone’s well-being.” Once
7 defendants made these safety and quality representations to the public, defendants
8 were under a duty to disclose omitted facts regarding the gas tank defects, because
9 where one does speak one must speak the whole truth and not conceal any facts
10 which materially qualify those facts stated. One who volunteers information must be
11 truthful, and the telling of a half-truth calculated to deceive is fraud.
12

13
14 128. In addition, defendants had a duty to disclose these omitted material
15 facts because they were known and/or accessible only to defendants who have
16 superior knowledge and access to the facts, and defendants knew they were not
17 known to or reasonably discoverable by Plaintiffs and the Class. These omitted facts
18 were material because they directly impact the safety of the Defective Vehicles.
19 Whether a gas tank is designed and manufactured with appropriate safeguards is a
20 material safety concern.
21

22 129. Defendants actively concealed and/or suppressed these material facts, in
23 whole or in part, with the intent to induce Plaintiffs and the Class to purchase or
24 lease Defective Vehicles at a higher price for the vehicles, which did not match the
25 vehicles’ true value.
26

27 130. Defendants know and knew that gas tanks must be shielded or strapped,
28 yet they chose not to adopt either protection in order to save money. The same is

1 true of defendants' decision to use a plastic fuel pump service cover instead of a
2 metal one.

3 131. Defendants still have not made full and adequate disclosure and
4 continue to defraud Plaintiffs and the Class.

5 132. Plaintiffs and the Class were unaware of these omitted material facts
6 and would not have acted as they did if they had known of the concealed and/or
7 suppressed facts. Plaintiffs' and the Class's actions were justified. Defendants were
8 in exclusive control of the material facts and such facts were not known to the
9 public, plaintiffs, or the Class.

10 133. As a result of the concealment and/or suppression of the facts, Plaintiffs
11 and the Class sustained damage. For those Plaintiffs and Class members who elect
12 to affirm the sale, these damages, pursuant to CAL. CIV. CODE § 3343, include the
13 difference between the actual value of that which Plaintiffs and the Class members
14 paid and the actual value of that which they received, together with additional
15 damages arising from the sales transaction, amounts expended in reliance upon the
16 fraud, compensation for loss of use and enjoyment of the property, and/or lost
17 profits. For those Plaintiffs and Class members who want to rescind the purchase,
18 then those Plaintiffs and Class members are entitled to restitution and consequential
19 damages pursuant to CAL. CIV. CODE § 1692.

20 134. Defendants' acts were done maliciously, oppressively, deliberately, with
21 intent to defraud, and in reckless disregard of Plaintiffs' and the Class's rights and
22 well-being to enrich Defendants. Defendants' conduct warrants an assessment of
23 punitive damages in an amount sufficient to deter such conduct in the future, which
24 amount is to be determined according to proof.

PRAYER FOR RELIEF

1
2 WHEREFORE, Plaintiffs, individually and on behalf all others similarly
3 situated, respectfully request that this Court enter a judgment against defendants and
4 in favor of Plaintiffs, and grant the following relief:

5 A. Determine that this action may be maintained as a Class action and
6 certify it as such under Rule 23(b)(3), or alternatively certify all issues and claims
7 that are appropriately certified; and designate and appoint Plaintiffs as Class
8 Representatives and their counsel as Class Counsel;

9
10 B. Declare, adjudge and decree the conduct of the defendants as alleged
11 herein to be unlawful, unfair and/or deceptive, and enjoin any such future conduct;

12 C. Award Plaintiffs and Class members actual, compensatory damages, as
13 proven at trial, except in those situations where actual damage does not exceed the
14 minimum statutory damage, in which case the statutory minimum damage should be
15 awarded;

16
17 D. Alternatively, if elected by Plaintiffs and the Class, require defendant to
18 repair the defective gas tanks or provide a comparable vehicle that do not have gas
19 tank defects;

20 E. Award Plaintiffs restitution of all monies paid to defendants as a result
21 of unfair business practices;

22 F. Award Plaintiffs and the Class members exemplary damages in such
23 amount as proven at trial;

24 G. Award Plaintiffs and the Class members their reasonable attorneys'
25 fees, costs, and pre-judgment and post-judgment interest; and
26
27
28

1 H. Award Plaintiffs and the Class members such other further and different
2 relief as the nature of the case may require or as may be determined to be just,
3 equitable, and proper by this Court.
4

5 **JURY TRIAL DEMAND**

6 Plaintiffs, by counsel, request a trial by jury on their legal claims, as set forth
7 herein.
8

9 DATED: April 14, 2014 HAGENS BERMAN SOBOL SHAPIRO LLP

10
11 By: 

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CERTIFICATE OF SERVICE

On April 14, 2014, I caused the foregoing to be manually filed with the Clerk of the Court. I also caused a copy to be sent via electronic mail to the following attorneys of record:

- **Elaine T. Byszewski**
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Steve W. Berman

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I, Constance Sims, do hereby declare and state as follows:

1. I am a party plaintiff in *Constance Sims and Sammy Rodriguez, individually and on behalf of all others similarly situated v. Kia Motors America, Inc. and Kia Motors Corporation, Defendants*. Pursuant to Cal. Civ. Code § 1780(d), I make this declaration in support of the Class Action Complaint and the claim therein for relief under Cal. Civ. Code § 1780(a). I have personal knowledge of the facts stated herein and, if necessary, could competently testify thereto.

2. This action for relief under Cal. Civ. Code § 1780(a) has been commenced in a county that is a proper place for trial of this action because Defendants do business in this District (the Central District of California) and throughout the State of California.

This declaration is signed under penalty of perjury under the laws of the State of California and the United States this 13th day of November, 2013.

By 
Constance Sims

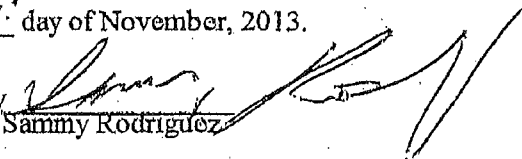
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I, Sammy Rodriguez, do hereby declare and state as follows:

1. I am a party plaintiff in *Constance Sims and Sammy Rodriguez, individually and on behalf of all others similarly situated v. Kia Motors America, Inc. and Kia Motors Corporation, Defendants*. Pursuant to Cal. Civ. Code § 1780(d), I make this declaration in support of the Class Action Complaint and the claim therein for relief under Cal. Civ. Code § 1780(a). I have personal knowledge of the facts stated herein and, if necessary, could competently testify thereto.

2. This action for relief under Cal. Civ. Code § 1780(a) has been commenced in a county that is a proper place for trial of this action because Defendants do business in this District (the Central District of California) and throughout the State of California.

This declaration is signed under penalty of perjury under the laws of the State of California and the United States this 11 day of November, 2013.

By 
Sammy Rodriguez