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CLERK U.S. DISTRICT COURT
CENTRAL DIST. OF CALIF.
SANTA ANA

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25 UNITED STATES DISTRICT COURT

26 CENTRAL DISTRICT OF CALIFORNIA

27 CONSTANCE SIMS and SAMMY
28 RODRIGUEZ, individually and on behalf
of all others similarly situated,

Plaintiffs,

v.

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

Defendants.

Case No. **SACV13-01791 AG (DFMx)**

CLASS ACTION

CLASS ACTION COMPLAINT

JURY TRIAL DEMANDED

CLASS ACTION COMPLAINT

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, 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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1 a. The gas tank is located immediately underneath the rear
2 passenger seats and forward of the cargo area and is not sufficiently protected.
3 Locating the tank under the rear passenger seats poses a danger to occupants
4 of the rear seats, and, for this reason, the gas tank must either be shielded or
5 attached to the underside of the vehicle with reinforcing straps. However, the
6 gas tank in the Defective Vehicles is unshielded, and the gas tank is bolted to
7 the vehicle underbody instead of being strapped. Failure to use straps, as most
8 auto manufacturers do, increases the risk that the gas tank will shift or
9 dislodge and ignite in a major collision.
10

11 b. The service cover for the fuel pump is plastic and is located
12 immediately underneath the rear seat cushion. It is unreasonably dangerous to
13 locate the fuel pump here and use a plastic service cover, particularly given the
14 other gas tank defects referenced immediately above. This location, coupled
15 with the use of a plastic instead of a metal fuel pump service cover, increases
16 the likelihood that, in a major collision, fire will penetrate the rear cabin
17 through the plastic service cover like a “blow torch.”
18

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

15 **III. PARTIES**

16 13. Plaintiff Constance Sims (“hereinafter “Plaintiff Sims”) is a resident of
17 Fort Worth, Texas. Plaintiff Sims owns a 2013 model year Kia Soul Sport. Plaintiff
18 chose the Soul Sport in part because she wanted a safely designed and manufactured
19 vehicle. Plaintiff Sims saw advertisements for Kia vehicles before she purchased the
20 Soul, and, although she does not recall the specifics of many of the advertisements,
21 she does recall that safety and quality were consistent themes across the
22 advertisements she saw. These representations about safety and quality influenced
23 Plaintiff’s decision to purchase the Soul. Plaintiff Sims did not learn of the gas tank
24 defects until about June 2013. Had Kia disclosed the gas tank defects, Plaintiff Sims
25 would not have purchased her Soul Sport, or would have paid less than she did.
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1 14. Plaintiff Sammy Rodriguez (“hereinafter “Plaintiff Rodriguez”) is a
2 resident of Orange, California. Plaintiff owns a 2011 model year Kia Soul Exclaim
3 and a 2013 model year Kia Soul Exclaim. Plaintiff Rodriguez chose both Kia
4 vehicles in part because he wanted a safely designed and manufactured vehicle.
5 Plaintiff Rodriguez saw advertisements for Kia vehicles before he purchased both
6 Souls, and, although he does not recall the specifics of many of the advertisements,
7 he does recall that safety and quality were consistent themes across the
8 advertisements he saw. These representations about safety and quality influenced
9 Plaintiff’s decision to purchase both Kia Souls. Plaintiff Rodriguez did not learn of
10 the gas tank defects until about November 2013. Had Kia disclosed the gas tank
11 defects, Plaintiff Rodriguez would not have purchased either Soul Exclaim, or would
12 have paid less than he did.
13

14
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.
20

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. Perhaps the most notorious example of a dangerous gas tank is provided by the Ford Pinto models of the late 1960s and early 1970s. The fuel tank in these Pintos was positioned behind the rear axle and in front of the rear bumper and suffered from other flaws, such as an insufficiently reinforced filler neck that would tear away from the tank in a collision and spill fuel beneath the car. As a result of these defects, the Pinto gas tank had a propensity to burst into flames in even low-speed collisions. Numerous people burned to death in collisions involving the Pinto, leading to many lawsuits in which it was revealed that Ford was aware of the dangers presented by the defective tanks but made the decision to sell the Pinto anyway because the projected costs to Ford of remedying the defect outweighed Ford's estimate of the total damage payouts that it would be exposed to for wrongful deaths and personal injuries. The National Highway Traffic Safety Administration ("NHTSA") eventually forced a recall.

19. 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.

1 20. Over the years, vehicle manufacturers have made certain design and
2 manufacturing decisions to protect the gas tank against failure in collisions. For
3 example, most manufacturers place the gas tank above or in front of the rear axle and
4 not immediately behind the rear bumper (as was done in the early Pinto models), so
5 that the tank cannot be easily penetrated in rear collisions.
6

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

10 22. A gas tank shield is made of a separate piece of sheet metal, which
11 holds the gas tank in place and substantially improves the tank's ability to withstand
12 puncture in an accident.
13

14 23. Reinforcing straps tie the gas tank to the frame of the vehicle and ensure
15 that the tank will not dislodge or drop in an accident. Below is a photograph of the
16 underside of a non-Kia vehicle (a 2006 Honda civic) that has its gas tank secured
17 with straps:
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24. Failure to use a gas tank shield or reinforcing straps, as most auto manufacturers do, increases the risk that the gas tank will dislodge and ignite in a major collision.

25. Other safe design and manufacturing considerations must be given to the vehicle's fuel pump. The fuel pump transmits the gas from the tank to the engine, and it must be located in a safe place. Although not common, in some vehicle models, technicians can access the fuel pump through the passenger cabin if the fuel pump needs service. It is easier and less costly to access the fuel pump in this manner than it is to remove the fuel tank to access the pump when the fuel pump is located inside the gas tank itself. But when the fuel pump is accessible through the passenger cabin, manufacturers must ensure that the "service cover" for the fuel

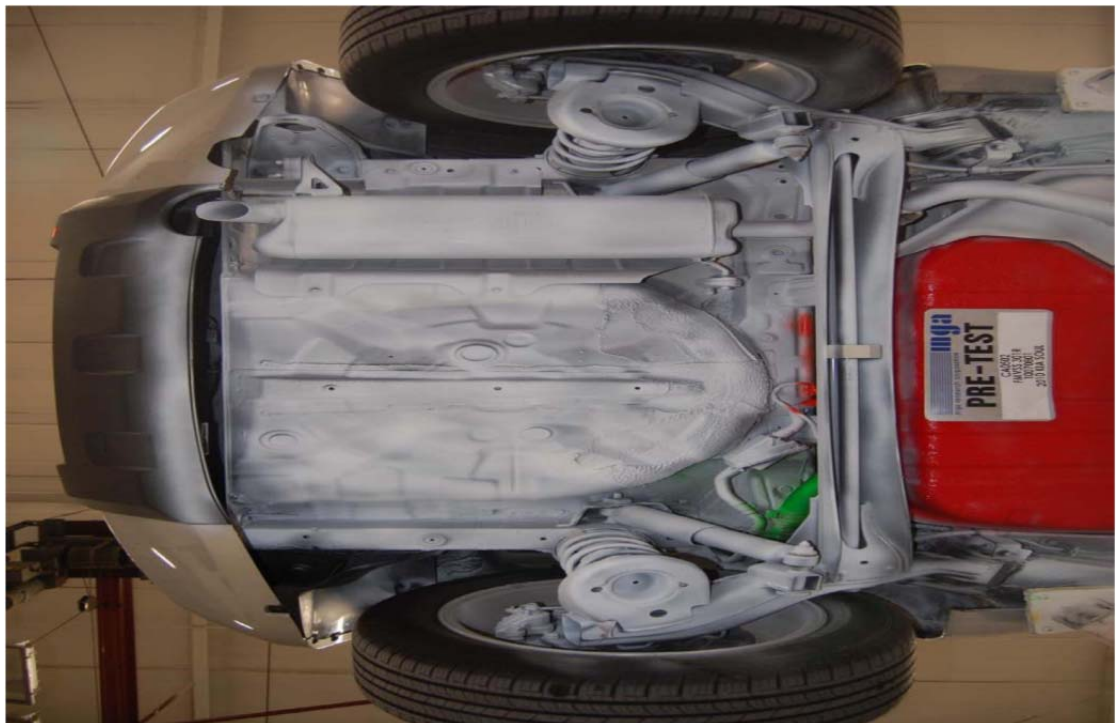
1 pump is made of metal and appropriately affixed so that a fire in gas tank cannot
2 quickly melt through the cover and invade the vehicle.

3 26. Unfortunately, and as discussed in greater detail below, Kia has not
4 heeded the foregoing safe design and manufacturing guidelines in the Defective
5 Vehicles and has, as a result, unnecessarily exposed its customers and their
6 passengers to an enhanced risk of serious injury or death in the event of an accident.
7

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

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

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



1 28. 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 29. 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 30. 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 31. 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 32. 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.

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

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





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

35. 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.

36. 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 Falsely Promoted the Defective Vehicles as Safe**

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

4 38. For example, in brochures for the Sedona, Optima, Forte, and Cadenza,
5 Kia promotes its vehicles as “DESIGNED TO HELP PROTECT DRIVER &
6 PASSENGERS.”

7
8 39. 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 40. 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 41. 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.”
28

1 “Advanced safety systems designed to expect the
2 unexpected.”

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

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

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

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

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

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

22 46. Throughout the relevant period, Kia possessed vastly superior
23 information to that of consumers – if not exclusive information – about the design
24 and function of the gas tanks in the Defective Vehicles.

25 47. To date, Kia has never notified consumers of the gas tank defects.
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² 2012 Brochure.

D. The Gas Tank Defects Have Damaged Plaintiffs and the Class

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

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

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

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

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

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

E. Choice of Law Allegations

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

55. Kia is headquartered in Irvine, California.

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

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

58. Tom Kearns, the Chief Designer for Kia Motors America, has said that the Defective Soul “was a collaborative effort between our design studio in California and our design studio in Korea.”

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

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

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

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

V. CLASS ALLEGATIONS

A. The Nationwide Class

63. 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

1 vehicle with reinforcing straps or is not protected by a
2 whole-tank shield, or (ii) has a plastic fuel pump service
3 cover that is accessible from the passenger compartment of
the car (hereinafter “Defective Vehicles”).

4 64. Excluded from the Nationwide Class are Kia, its employees, co-
5 conspirators, officers, directors, legal representatives, heirs, successors and wholly or
6 partly owned subsidiaries or affiliated companies; class counsel and their employees;
7 and the judicial officers and their immediate family members and associated court
8 staff assigned to this case, and all persons within the third degree of relationship to
9 any such persons. Also excluded are any individuals claiming damages from
10 personal injuries allegedly arising from the Kia Soul.
11

12 65. The Defective Vehicles included in the Class are at least the following
13 models: Model year 2010-2013 Kia Soul, Kia Soul + (*plus*), Kia Soul! (*exclaim*), or
14 Kia Soul Sport (hereinafter “Defective Soul”).
15

16 66. Plaintiffs are informed and believe that Kia manufactured and sold to
17 consumers hundreds-of-thousands of Defective Vehicles in the United States through
18 the present. All of these vehicles were marketed and sold with gas tank defects.
19 Accordingly, individual joinder of all class members is impracticable.
20

21 67. The Class expressly disclaims any recovery for physical injury resulting
22 from the gas tank defects. Nevertheless, the increased risk of injury from the gas
23 tank defects serves as an independent justification for the relief sought by plaintiffs
24 and the Class.

25 68. The Class can be readily identified using registration records, sales
26 records, production records, and other information kept by defendants or third parties
27 in the usual course of business and presently within their control.
28

1 69. Questions of law and fact are common to the Class and predominate
2 over questions affecting only individual members, including, *inter alia*, the
3 following:

- 4 (a) Whether the Defective Vehicles suffer from gas tank defects;
5 (b) Whether Kia concealed the defects;
6 (c) Whether Kia misrepresented that the Defective Vehicles were
7 safe;
8 (d) Whether Kia engaged in fraudulent concealment;
9 (e) Whether Kia engaged in unfair, unlawful and/or fraudulent
10 business practices by failing to disclose that the Defective Vehicles were
11 designed, manufactured and sold with defective gas tanks;
12 (f) Whether the alleged conduct by Kia violated laws as alleged in
13 this Complaint;
14 (g) Whether defendants violated California law, including the CLRA,
15 CAL. CIV. CODE §§ 1750, *et seq.*; the UCL, CAL. BUS. & PROF. CODE §§
16 17200, *et seq.*, and the California False Advertising Law, CAL. BUS. & PROF.
17 CODE §§ 17500, *et seq.*;
18 (h) Whether Plaintiffs and the members of the Class are entitled to
19 equitable and/or injunctive relief; and
20 (i) Whether defendants' unlawful, unfair and/or deceptive practices
21 harmed Plaintiffs and the members of the Class.
22

23 70. Plaintiffs' claims are typical of the claims of the Class members as
24 described above, and arise from the same course of conduct by Kia. The relief
25 Plaintiffs seek is typical of the relief sought for the absent Class members.
26
27
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1 71. Plaintiffs will fairly and adequately represent and protect the interests of
2 all absent Class members. Plaintiffs are represented by counsel competent and
3 experienced in product liability, consumer protection, and class action litigation.

4 72. A class action is superior to other available methods for the fair and
5 efficient adjudication of this controversy, since joinder of all the individual Class
6 members is impracticable. Furthermore, because the damages suffered by each
7 individual Class member may be relatively small, the expense and burden of
8 individual litigation would make it very difficult or impossible for individual Class
9 members to redress the wrongs done to each of them individually, and the burden
10 imposed on the judicial system would be enormous.

11 73. The prosecution of separate actions by the individual Class members
12 would create a risk of inconsistent or varying adjudications with respect to individual
13 Class members, which would establish incompatible standards of conduct for
14 defendants. In contrast, the conduct of this action as a class action presents far fewer
15 management difficulties, conserves judicial resources and the parties' resources, and
16 protects the rights of each Class member.

17 74. Plaintiffs are not aware of any obstacles likely to be encountered in the
18 management of this action that would preclude its maintenance as a class action.
19 Plaintiffs anticipate providing appropriate notice to be approved by the Court after
20 discovery into the size and nature of the Class.
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VI. CAUSES OF ACTION

COUNT I

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

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

76. Plaintiffs assert this claim for violation of the California Consumer Legal Remedies Act (“CLRA”) on behalf of Plaintiffs and the members of the Class.

77. Defendants are “persons” under CAL. CIV. CODE § 1761(c).

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

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

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

1 81. These representations were material to Plaintiffs and the Class. If
2 Plaintiffs and the Class had known that the Defective Vehicles had the gas tank
3 defects, Plaintiffs and the Class would not have purchased or leased them or paid as
4 much for the vehicles as they did. Whether the Defective Vehicles have gas tank
5 defects is a fact that a reasonable consumer would consider important in selecting a
6 vehicle to purchase or lease.
7

8 82. Defendants knew of the gas tank defects because they knew that most
9 other car models had either gas tank shields or straps. Despite this knowledge prior
10 to the manufacture and sale of the Defective Vehicles, defendants uniformly
11 concealed this defect from consumers. Despite having a duty to warn Plaintiffs
12 about the inherent dangers presented by this defect, defendants have failed to do so.
13

14 83. Plaintiffs and the members of the Class have been directly and
15 proximately injured by defendants' conduct.

16 84. Further, each of the Plaintiffs face an increased risk of future harm that
17 would not be present if defendants had not designed, manufactured, and sold
18 vehicles that had the gas tank defects. Plaintiffs risk irreparable injury as a result of
19 defendants' acts and omissions in violation of the CLRA, and these violations
20 present a continuing risk to plaintiffs as well as to the general public.
21

22 85. Pursuant to CAL. CIV. CODE § 1780(a), Plaintiffs seek an order enjoining
23 defendants from engaging in the methods, acts, or practices alleged herein and
24 requiring it to remedy the Defective Vehicles' gas tank defects. This can be done by
25 affixing sheet metal over the plastic fuel pump service cover and adding reinforcing
26 straps to hold the gas tank in place or adding a gas tank shield. Plaintiffs on
27 November 13, 2013 sent a letter complying with CAL. CIV. CODE § 1782(d). After
28

1 mailing appropriate notice and demand under CIVIL CODE § 1782(a) & (d), Plaintiffs
2 will subsequently amend this Complaint to also include a request for damages.

3 86. Plaintiffs include affidavits with this Complaint that show that venue in
4 this District is proper, to the extent such an affidavit is required by CAL. CIV. CODE
5 § 1780(d).
6

7 **COUNT II**

8 **VIOLATION OF THE CALIFORNIA UNFAIR COMPETITION LAW** 9 **(CAL. BUS. & PROF. CODE § 17200, *et seq.*)**

10 87. Plaintiffs and the Class incorporate by reference each preceeding and
11 succeeding paragraph as though fully set forth at length herein.

12 88. Plaintiffs assert this claim for violations of California's Unfair
13 Competition Law ("UCL"), Bus. & Prof. Code §§ 17200, *et seq.*, on behalf of
14 themselves and the Class members.

15 89. Defendants' misrepresentations, omissions, and concealment as alleged
16 herein constitute unfair, unlawful and fraudulent business acts or practices that had
17 the capacity to, and did, deceive consumers in violation of the UCL.
18

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

22 91. Defendants have violated the fraudulent prong of section 17200 because
23 the misrepresentations and omissions regarding the safety of their vehicles as set
24 forth in this Complaint were likely to deceive a reasonable consumer, and the
25 information would be material to a reasonable consumer.
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28

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

9 93. These representations were material to plaintiffs and the Class. If
10 plaintiffs and the Defective Vehicles had gas tank defects, Plaintiffs and the Class
11 would not have purchased or leased them or paid as much for the vehicles as they
12 did. Whether the Defective Vehicles have gas tank defects is a fact that a reasonable
13 consumer would consider important in selecting a vehicle to purchase or lease.
14

15 94. Defendants knew of the defect because they knew that most other car
16 models had either gas tank shields or straps and/or in-compartment fuel pump
17 service caps made of steel. Despite this knowledge prior to the manufacture and sale
18 of the Defective Vehicles, defendants uniformly concealed this defect from
19 consumers. Despite having a duty to warn Plaintiffs about the inherent dangers
20 presented by these defects, defendants have failed to do so.
21

22 95. Defendants have violated the unfair prong of section 17200 because the
23 acts and practices set forth in the Complaint, including the manufacture and sale of
24 vehicles with the gas tank defects and defendants’ failure to adequately investigate,
25 disclose and remedy, offend established public policy, and because the harm they
26 cause to consumers greatly outweighs any benefits associated with those practices.
27 Defendants’ conduct has also impaired competition within the automotive vehicles
28

1 market and has prevented Plaintiffs from making fully informed decisions about
 2 whether to purchase or lease the Defective Vehicles and/or the price to be paid to
 3 purchase or lease the Defective Vehicles.

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

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

11 98. Plaintiffs request that this Court enter such orders or judgments as may
 12 be necessary to: enjoin defendants from continuing their unfair, unlawful, and/or
 13 deceptive practices; restore to the Class members any money defendants acquired by
 14 means of unfair, unlawful and deceptive trade practices; and disgorge any profits
 15 defendants received as a result of their unfair, unlawful and/or deceptive practices, as
 16 provided in CAL. BUS. & PROF. CODE § 17203 and CAL. CIV. CODE § 3345; and for
 17 such other relief set forth below.
 18

19 **COUNT III**

20 **FALSE ADVERTISING** 21 **(CAL. BUS. & PROF. CODE § 17500, *et. seq.*)**

22 99. Plaintiffs and the Class incorporate by reference each preceeding and
 23 succeeding paragraph as though fully set forth at length herein.

24 485. California Business and Professions Code § 17500 states: "It is
 25 unlawful for any ... corporation ... with intent directly or indirectly to dispose of real
 26 or personal property ... to induce the public to enter into any obligation relating
 27
 28

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

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

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

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

26 488. Plaintiffs and members of the Class have suffered an injury in fact,
27 including the loss of money or property, as a result of defendants’ unfair, unlawful
28 and/or deceptive practices. In purchasing or leasing their vehicles, the Plaintiffs

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

5
6 489. Accordingly, Plaintiffs overpaid for their Defective Vehicles and did not
7 receive the benefit of their bargain.

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

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

18 **COUNT IV**

19 **BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY** 20 **(CAL. COM. CODE § 2314)**

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

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

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

1 104. 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, are not safe for occupants and thus not fit for ordinary purposes.

5 105. Defendants breached the warranty of merchantability implied by law for
6 the Defective Vehicles.
7

8 106. Notice of breach is not required because Plaintiffs and Class members
9 did not purchase their automobiles from defendants directly.

10 107. Plaintiffs and Class members are intended third-party beneficiaries of
11 contracts between Kia and its dealers, who have no rights under the warranty
12 agreements provided with the vehicles. Such agreements were intended to benefit
13 the ultimate consumers, and the Plaintiffs and Class members are intended
14 beneficiaries of defendants' implied warranties.
15

16 108. As a direct and proximate result of defendants' breach of the implied
17 warranty of merchantability, Plaintiffs and the Class have been damaged in an
18 amount to be proven at trial.
19

20 COUNT V

21 FRAUDULENT CONCEALMENT

22 109. Plaintiffs and the Class incorporate by reference each preceeding and
23 succeeding paragraph as though fully set forth at length herein.

24 110. Defendants concealed and/or suppressed material facts concerning the
25 gast tank defects.

26 111. Defendants had a duty to disclose the gas tank defects because they
27 consistently marketed the Defective Vehciles as safe, that the vehicles incorporated
28

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

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

17 113. Defendants actively concealed and/or suppressed these material facts, in
18 whole or in part, with the intent to induce Plaintiffs and the Class to purchase or
19 lease Defective Vehicles at a higher price for the vehicles, which did not match the
20 vehicles’ true value.
21

22 114. Defendants know and knew that gas tanks must be shielded or strapped,
23 yet they chose not to adopt either protection in order to save money. The same is
24 true of defendants’ decision to use a plastic fuel pump service cover instead of a
25 metal one.
26

27 115. Defendants still have not made full and adequate disclosure and
28 continue to defraud Plaintiffs and the Class.

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

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

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

24 **PRAYER FOR RELIEF**

25 WHEREFORE, Plaintiffs, individually and on behalf all others similarly
26 situated, respectfully request that this Court enter a judgment against defendants and
27 in favor of Plaintiffs, and grant the following relief:
28

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

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

7 C. Award Plaintiffs and Class members actual, compensatory damages, as
8 proven at trial, except in those situations where actual damage does not exceed the
9 minimum statutory damage, in which case the statutory minimum damage should be
10 awarded;
11

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

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

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

19 G. Award Plaintiffs and the Class members their reasonable attorneys'
20 fees, costs, and pre-judgment and post-judgment interest; and

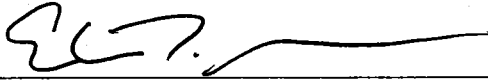
21 H. Award Plaintiffs and the Class members such other further and different
22 relief as the nature of the case may require or as may be determined to be just,
23 equitable, and proper by this Court.
24
25
26
27
28

JURY TRIAL DEMAND

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

DATED: November 13, 2013

HAGENS BERMAN SOBOL SHAPIRO LLP

By: 

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E-mail: mrobinson@rcrlaw.net

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

2 1. I am a party plaintiff in *Constance Sims and Sammy Rodriguez,*
3 *individually and on behalf of all others similarly situated v. Kia Motors America,*
4 *Inc. and Kia Motors Corporation, Defendants.* Pursuant to Cal. Civ. Code §
5 1780(d), I make this declaration in support of the Class Action Complaint and the
6 claim therein for relief under Cal. Civ. Code § 1780(a). I have personal knowledge
7 of the facts stated herein and, if necessary, could competently testify thereto.
8

9 2. This action for relief under Cal. Civ. Code § 1780(a) has been
10 commenced in a county that is a proper place for trial of this action because
11 Defendants do business in this District (the Central District of California) and
12 throughout the State of California.
13

14
15 This declaration is signed under penalty of perjury under the laws of the State
16 of California and the United States this 13th day of November, 2013.

17
18 By 
19 Constance Sims
20
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22
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28

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

2 1. I am a party plaintiff in *Constance Sims and Sammy Rodriguez,*
3 *individually and on behalf of all others similarly situated v. Kia Motors America,*
4 *Inc. and Kia Motors Corporation, Defendants.* Pursuant to Cal. Civ. Code §
5 1780(d), I make this declaration in support of the Class Action Complaint and the
6 claim therein for relief under Cal. Civ. Code § 1780(a). I have personal knowledge
7 of the facts stated herein and, if necessary, could competently testify thereto.
8

9 2. This action for relief under Cal. Civ. Code § 1780(a) has been
10 commenced in a county that is a proper place for trial of this action because
11 Defendants do business in this District (the Central District of California) and
12 throughout the State of California.
13

14
15 This declaration is signed under penalty of perjury under the laws of the State
16 of California and the United States this 14 day of November, 2013.

17
18 By 
19 Sammy Rodriguez
20
21
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28

UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA
CIVIL COVER SHEET**I. (a) PLAINTIFFS** (Check box if you are representing yourself ☐)

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

DEFENDANTS (Check box if you are representing yourself ☐)

KIA MOTORS AMERICA, INC., and KIA MOTORS CORPORATION

(b) Attorneys (Firm Name, Address and Telephone Number. If you are representing yourself, provide same information.)

Elaine T. Byszewski - HAGENS BERMAN SOBOL SHAPIRO LLP
301 North Lake Avenue, Suite 203
Pasadena, CA 91101
(213) 330-7150

(b) Attorneys (Firm Name, Address and Telephone Number. If you are representing yourself, provide same information.)

II. BASIS OF JURISDICTION (Place an X in one box only.)

- ☐ 1. U.S. Government Plaintiff
☐ 2. U.S. Government Defendant
☐ 3. Federal Question (U.S. Government Not a Party)
☒ 4. Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES-For Diversity Cases Only
(Place an X in one box for plaintiff and one for defendant)

- | | | | | | |
|---|---|---------------------------------------|---|--------------------------------|--------------------------------|
| Citizen of This State | PTF <input checked="" type="checkbox"/> 1 | DEF <input type="checkbox"/> 1 | Incorporated or Principal Place of Business in this State | PTF <input type="checkbox"/> 4 | DEF <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business in Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input checked="" type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. ORIGIN (Place an X in one box only.)

- ☒ 1. Original Proceeding
☐ 2. Removed from State Court
☐ 3. Remanded from Appellate Court
☐ 4. Reinstated or Reopened
☐ 5. Transferred from Another District (Specify)
☐ 6. Multi-District Litigation

V. REQUESTED IN COMPLAINT: JURY DEMAND: ☒ Yes ☐ No (Check "Yes" only if demanded in complaint.)

CLASS ACTION under F.R.Cv.P. 23: ☒ Yes ☐ No **MONEY DEMANDED IN COMPLAINT:** \$ 5,000,000+

VI. CAUSE OF ACTION (Cite the U.S. Civil Statute under which you are filing and write a brief statement of cause. Do not cite jurisdictional statutes unless diversity.)
State law claims subject to 28 U.S.C. § 1332(a) and (d).

VII. NATURE OF SUIT (Place an X in one box only.)

OTHER STATUTES	CONTRACT	REAL PROPERTY CONT.	IMMIGRATION	PRISONER PETITIONS	PROPERTY RIGHTS
<input type="checkbox"/> 375 False Claims Act	<input type="checkbox"/> 110 Insurance	<input type="checkbox"/> 240 Torts to Land	<input type="checkbox"/> 462 Naturalization Application	Habeas Corpus:	<input type="checkbox"/> 820 Copyrights
<input type="checkbox"/> 400 State Reapportionment	<input type="checkbox"/> 120 Marine	<input type="checkbox"/> 245 Tort Product Liability	<input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 463 Alien Detainee	<input type="checkbox"/> 830 Patent
<input type="checkbox"/> 410 Antitrust	<input type="checkbox"/> 130 Miller Act	<input type="checkbox"/> 290 All Other Real Property	TORTS	<input type="checkbox"/> 510 Motions to Vacate Sentence	<input type="checkbox"/> 840 Trademark
<input type="checkbox"/> 430 Banks and Banking	<input type="checkbox"/> 140 Negotiable Instrument	PERSONAL PROPERTY	PERSONAL PROPERTY	<input type="checkbox"/> 530 General	SOCIAL SECURITY
<input type="checkbox"/> 450 Commerce/ICC Rates/Etc.	<input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment	<input type="checkbox"/> 310 Airplane	<input checked="" type="checkbox"/> 370 Other Fraud	<input type="checkbox"/> 535 Death Penalty	<input type="checkbox"/> 861 HIA (1395ff)
<input type="checkbox"/> 460 Deportation	<input type="checkbox"/> 151 Medicare Act	<input type="checkbox"/> 315 Airplane Product Liability	<input type="checkbox"/> 371 Truth in Lending	Other:	<input type="checkbox"/> 862 Black Lung (923)
<input type="checkbox"/> 470 Racketeer Influenced & Corrupt Org.	<input type="checkbox"/> 152 Recovery of Defaulted Student Loan (Excl. Vet.)	<input type="checkbox"/> 320 Assault, Libel & Slander	<input type="checkbox"/> 380 Other Personal Property Damage	<input type="checkbox"/> 540 Mandamus/Other	<input type="checkbox"/> 863 DIWC/DIWW (405 (g))
<input type="checkbox"/> 480 Consumer Credit	<input type="checkbox"/> 153 Recovery of Overpayment of Vet. Benefits	<input type="checkbox"/> 330 Fed. Employers' Liability	<input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 550 Civil Rights	<input type="checkbox"/> 864 SSID Title XVI
<input type="checkbox"/> 490 Cable/Sat TV	<input type="checkbox"/> 160 Stockholders' Suits	<input type="checkbox"/> 340 Marine	BANKRUPTCY	<input type="checkbox"/> 555 Prison Condition	<input type="checkbox"/> 865 RSI (405 (g))
<input type="checkbox"/> 850 Securities/Commodities/Exchange	<input type="checkbox"/> 190 Other Contract	<input type="checkbox"/> 345 Marine Product Liability	<input type="checkbox"/> 422 Appeal 28 USC 158	<input type="checkbox"/> 560 Civil Detainee Conditions of Confinement	FEDERAL TAX SUITS
<input type="checkbox"/> 890 Other Statutory Actions	<input type="checkbox"/> 195 Contract Product Liability	<input type="checkbox"/> 350 Motor Vehicle	<input type="checkbox"/> 423 Withdrawal 28 USC 157	FORFEITURE/PENALTY	<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant)
<input type="checkbox"/> 891 Agricultural Acts	<input type="checkbox"/> 196 Franchise	<input type="checkbox"/> 355 Motor Vehicle Product Liability	CIVIL RIGHTS	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881	<input type="checkbox"/> 871 IRS-Third Party 26 USC 7609
<input type="checkbox"/> 893 Environmental Matters	REAL PROPERTY	<input type="checkbox"/> 360 Other Personal Injury	<input type="checkbox"/> 440 Other Civil Rights	<input type="checkbox"/> 690 Other	
<input type="checkbox"/> 895 Freedom of Info. Act	<input type="checkbox"/> 210 Land Condemnation	<input type="checkbox"/> 362 Personal Injury-Med Malpractice	<input type="checkbox"/> 441 Voting	LABOR	
<input type="checkbox"/> 896 Arbitration	<input type="checkbox"/> 220 Foreclosure	<input type="checkbox"/> 365 Personal Injury-Product Liability	<input type="checkbox"/> 442 Employment	<input type="checkbox"/> 710 Fair Labor Standards Act	
<input type="checkbox"/> 899 Admin. Procedures Act/Review of Appeal of Agency Decision	<input type="checkbox"/> 230 Rent Lease & Ejectment	<input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability	<input type="checkbox"/> 443 Housing/Accommodations	<input type="checkbox"/> 720 Labor/Mgmt. Relations	
<input type="checkbox"/> 950 Constitutionality of State Statutes		<input type="checkbox"/> 368 Asbestos Personal Injury Product Liability	<input type="checkbox"/> 445 American with Disabilities-Employment	<input type="checkbox"/> 740 Railway Labor Act	
			<input type="checkbox"/> 446 American with Disabilities-Other	<input type="checkbox"/> 751 Family and Medical Leave Act	
			<input type="checkbox"/> 448 Education	<input type="checkbox"/> 790 Other Labor Litigation	
				<input type="checkbox"/> 791 Employee Ret. Inc. Security Act	

FOR OFFICE USE ONLY:

Case Number:

SACV13-01791 AG (DFMx)

VIII. VENUE: Your answers to the questions below will determine the division of the Court to which this case will most likely be initially assigned. This initial assignment is subject to change, in accordance with the Court's General Orders, upon review by the Court of your Complaint or Notice of Removal.

Question A: Was this case removed from state court?	STATE CASE WAS PENDING IN THE COUNTY OF:	INITIAL DIVISION IN CACD IS:
<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	<input type="checkbox"/> Los Angeles	Western
If "no," go to Question B. If "yes," check the box to the right that applies, enter the corresponding division in response to Question D, below, and skip to Section IX.	<input type="checkbox"/> Ventura, Santa Barbara, or San Luis Obispo	Western
	<input type="checkbox"/> Orange	Southern
	<input type="checkbox"/> Riverside or San Bernardino	Eastern

Question B: Is the United States, or one of its agencies or employees, a party to this action?	If the United States, or one of its agencies or employees, is a party, is it:		INITIAL DIVISION IN CACD IS:
	A PLAINTIFF? Then check the box below for the county in which the majority of DEFENDANTS reside.	A DEFENDANT? Then check the box below for the county in which the majority of PLAINTIFFS reside.	
<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	<input type="checkbox"/> Los Angeles	<input type="checkbox"/> Los Angeles	Western
If "no," go to Question C. If "yes," check the box to the right that applies, enter the corresponding division in response to Question D, below, and skip to Section IX.	<input type="checkbox"/> Ventura, Santa Barbara, or San Luis Obispo	<input type="checkbox"/> Ventura, Santa Barbara, or San Luis Obispo	Western
	<input type="checkbox"/> Orange	<input type="checkbox"/> Orange	Southern
	<input type="checkbox"/> Riverside or San Bernardino	<input type="checkbox"/> Riverside or San Bernardino	Eastern
	<input type="checkbox"/> Other	<input type="checkbox"/> Other	Western

Question C: Location of plaintiffs, defendants, and claims?	A. Los Angeles County	B. Ventura, Santa Barbara, or San Luis Obispo Counties	C. Orange County	D. Riverside or San Bernardino Counties	E. Outside the Central District of California	F. Other
Indicate the location in which a majority of plaintiffs reside:	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Indicate the location in which a majority of defendants reside:	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Indicate the location in which a majority of claims arose:	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

C.1. Is either of the following true? If so, check the one that applies: <input checked="" type="checkbox"/> 2 or more answers in Column C <input type="checkbox"/> only 1 answer in Column C and no answers in Column D Your case will initially be assigned to the SOUTHERN DIVISION. Enter "Southern" in response to Question D, below. If none applies, answer question C2 to the right. →	C.2. Is either of the following true? If so, check the one that applies: <input type="checkbox"/> 2 or more answers in Column D <input type="checkbox"/> only 1 answer in Column D and no answers in Column C Your case will initially be assigned to the EASTERN DIVISION. Enter "Eastern" in response to Question D, below. If none applies, go to the box below. ↓
Your case will initially be assigned to the WESTERN DIVISION. Enter "Western" in response to Question D below.	

Question D: Initial Division?	INITIAL DIVISION IN CACD
Enter the initial division determined by Question A, B, or C above: →	SOUTHERN DIVISION

UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA
CIVIL COVER SHEET

IX(a). IDENTICAL CASES: Has this action been previously filed in this court and dismissed, remanded or closed? ☒ NO ☐ YES

If yes, list case number(s): _____

IX(b). RELATED CASES: Have any cases been previously filed in this court that are related to the present case? ☐ NO ☒ YES

If yes, list case number(s): SACV 13-01269 CJC (JPRx)

Civil cases are deemed related if a previously filed case and the present case:

- (Check all boxes that apply) ☐ A. Arise from the same or closely related transactions, happenings, or events; or
- ☒ B. Call for determination of the same or substantially related or similar questions of law and fact; or
- ☐ C. For other reasons would entail substantial duplication of labor if heard by different judges; or
- ☐ D. Involve the same patent, trademark or copyright, and one of the factors identified above in a, b or c also is present.

**X. SIGNATURE OF ATTORNEY
 (OR SELF-REPRESENTED LITIGANT):** _____

DATE: November 13, 2013

Notice to Counsel/Parties: The CV-71 (JS-44) Civil Cover Sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law. This form, approved by the Judicial Conference of the United States in September 1974, is required pursuant to Local Rule 3-1 is not filed but is used by the Clerk of the Court for the purpose of statistics, venue and initiating the civil docket sheet. (For more detailed instructions, see separate instructions sheet).

Key to Statistical codes relating to Social Security Cases:

Nature of Suit Code	Abbreviation	Substantive Statement of Cause of Action
861	HIA	All claims for health insurance benefits (Medicare) under Title 18, Part A, of the Social Security Act, as amended. Also, include claims by hospitals, skilled nursing facilities, etc., for certification as providers of services under the program. (42 U.S.C. 1935FF(b))
862	BL	All claims for "Black Lung" benefits under Title 4, Part B, of the Federal Coal Mine Health and Safety Act of 1969. (30 U.S.C. 923)
863	DIWC	All claims filed by insured workers for disability insurance benefits under Title 2 of the Social Security Act, as amended; plus all claims filed for child's insurance benefits based on disability. (42 U.S.C. 405 (g))
863	DIWW	All claims filed for widows or widowers insurance benefits based on disability under Title 2 of the Social Security Act, as amended. (42 U.S.C. 405 (g))
864	SSID	All claims for supplemental security income payments based upon disability filed under Title 16 of the Social Security Act, as amended.
865	RSI	All claims for retirement (old age) and survivors benefits under Title 2 of the Social Security Act, as amended. (42 U.S.C. 405 (g))

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

NOTICE OF ASSIGNMENT TO UNITED STATES JUDGES

This case has been assigned to District Judge Andrew J. Guilford and the assigned Magistrate Judge is Douglas F. McCormick.

The case number on all documents filed with the Court should read as follows:

SACV13-01791 AG (DFMx)

Pursuant to General Order 05-07 of the United States District Court for the Central District of California, the Magistrate Judge has been designated to hear discovery related motions.

All discovery related motions should be noticed on the calendar of the Magistrate Judge.

Clerk, U. S. District Court

November 13, 2013

Date

By Maria Barr
Deputy Clerk

NOTICE TO COUNSEL

A copy of this notice must be served with the summons and complaint on all defendants (if a removal action is filed, a copy of this notice must be served on all plaintiffs).

Subsequent documents must be filed at the following location:

☐ Western Division
312 N. Spring Street, G-8
Los Angeles, CA 90012

☒ Southern Division
411 West Fourth St., Ste 1053
Santa Ana, CA 92701

☐ Eastern Division
3470 Twelfth Street, Room 134
Riverside, CA 92501

Failure to file at the proper location will result in your documents being returned to you.