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24 **UNITED STATES DISTRICT COURT**
25 **CENTRAL DISTRICT OF CALIFORNIA**

26 NOEMI CAUDILLO, on behalf of
27 herself and all others similarly
28 situated,

Plaintiff,

v.

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

Defendants.

Case No. _____

CLASS ACTION COMPLAINT

DEMAND FOR JURY TRIAL

1 Plaintiff Noemi Caudillo, on behalf of herself and all others similarly situated,
2 alleges the following against Defendants Kia Motors America, Inc. and Kia Motors
3 Corporation (collectively, “Kia”):

4 **SUMMARY OF CASE**

5 1. Historically, automobile sunroofs have been modestly sized, spanning just a
6 small portion of the roof over the driver’s and front passenger seats. Starting in the mid-
7 2000s, manufacturers introduced a substantially larger style of “panoramic” sunroof,
8 which spans almost the whole roof. These sunroofs are aesthetically pleasing, and thus
9 command a premium price, but also pose new and significant engineering challenges.
10 Replacing metal roofs with large plates of glass requires precision in the strengthening,
11 attachment, and stabilization of the glass. Several manufacturers have failed to meet
12 these demands, with three issuing safety recalls because their panoramic sunroofs
13 spontaneously shatter.

14 2. Several Kia models have the same problem. Over two hundred Kia drivers
15 have now complained that their panoramic sunroofs shattered suddenly and without
16 warning. The shattering occurs so powerfully that startled drivers later compare it to a
17 gunshot that is followed by shards of glass raining down. Kia admits it is “a leader in
18 such incidents,” but even though its competitors and the federal government have
19 acknowledged a seemingly obvious truth—that shattering sunroofs are dangerous—Kia
20 not only refuses to warn drivers of the danger but also continues to sell and lease the
21 vehicles without disclosing the defect.

22 3. Kia’s conduct violates well-established California law, including the
23 Consumers Legal Remedies Act and Unfair Competition Law. On behalf of the class
24 she proposes to represent, Plaintiff Noemi Caudillo seeks awards of damages and
25 appropriate equitable relief, including an order enjoining Kia from continuing to sell
26 vehicles without disclosing the defect to its customers.

1 **PARTIES**

2 4. Plaintiff Noemi Caudillo is a citizen and resident of Littlefield, Lamb
3 County, Texas.

4 5. Defendant Kia Motors America, Inc. is a California corporation with its
5 headquarters and principal place of business in Irvine, California.

6 6. Defendant Kia Motors Corporation has its headquarters in Seoul, South
7 Korea, located at 12, Heolleung-ro, Seocho-gu, Seoul.

8 **JURISDICTION AND VENUE**

9 7. This Court has jurisdiction over this action under the Class Action Fairness
10 Act, 28 U.S.C. § 1332(d). There are at least 100 members in the proposed class, the
11 aggregated claims of the individual class members exceed the sum or value of
12 \$5,000,000, exclusive of interests and costs, and this is a class action in which Kia and
13 more than two-thirds of the proposed plaintiff class are citizens of different states.

14 8. This Court may exercise jurisdiction over Kia because Kia has located its
15 American headquarters in California; is registered to conduct business in California; has
16 sufficient minimum contacts in California; and intentionally avails itself of the markets
17 within California through the promotion, sale, marketing, and distribution of its vehicles,
18 thus rendering the exercise of jurisdiction by this Court proper and necessary.

19 9. Venue is proper in this District under 28 U.S.C. § 1391 because Kia Motors
20 America, Inc., is headquartered in this district and Kia Motors Corporation is a foreign
21 entity; and a substantial part of the events or omissions giving rise to Plaintiff's claims
22 occurred in this District.

23 **SUBSTANTIVE ALLEGATIONS**

24 **The Kia Panoramic Sunroof Defect**

25 10. Kia manufactures, markets, and distributes mass produced automobiles in
26 the United States under the Kia brand name. The Kia automobile models that are the
27 focus of this case are the 2011-2015 Sorento, Optima, and Sportage, and the 2014-2015
28 Soul and Cadenza models.

1 11. Starting in the 2011 model year, Kia introduced vehicles with an optional
2 upgrade of a factory-installed panoramic sunroof. Panoramic sunroofs are a relatively
3 new alternative to traditional sunroofs—they are both wider and longer than traditional
4 sunroofs, covering most of the vehicle’s roof.

5 12. Kia generally markets the panoramic sunroofs as a luxury upgrade, since
6 the sunroofs provide extra light and an “open air” feeling while driving, and charges its
7 customers several thousand dollars for the upgrade. The actual material cost of the
8 panoramic sunroofs is fairly low, making the option one of the most profitable features
9 in the automotive industry.

10 13. Panoramic sunroofs are made of tempered or laminated glass that attaches
11 to tracks, which in turn are set within a frame attached to the vehicle. Most panoramic
12 sunroofs, including those offered by Kia, include a retractable sunshade. Examples of
13 panoramic sunroofs appear in the photographs below:

14
15 2013 Kia Sorento



2012 Kia Optima



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15 14. Panoramic sunroofs present manufacturing, design, and safety challenges
16 for manufacturers because the large plates of glass take up much of the surface area of
17 the vehicle's roof.

18 15. One aspect of the challenge is the material make-up of the glass. Whereas
19 some manufacturers, such as Volvo and Honda, have used a laminated glass, others, such
20 as Kia, Hyundai, and Volkswagen have opted to install panoramic sunroofs with a
21 toughened glass featuring a ceramic print area. The ceramic print area had been small in
22 conventional sunroofs, but increased in panoramic sunroofs. The Korea Automobile
23 Testing & Research Institute, a vehicle safety testing institute, has concluded that the
24 enamel used for ceramic print areas in Kia vehicles impairs the strength of the glass,
25 making the glass not only less durable than the usual toughened glass, but also less
26 durable than ordinary glass.

27 16. Another challenge presented by the panoramic sunroofs is the need to
28 ensure the sunroof glass is fastened to the vehicle with the appropriate degree of

1 tightness. Kia and other manufacturers seek to fasten the sunroof in a manner that
2 reduces road and wind noise and to make the sunroofs less susceptible to leaking
3 rainwater. At the same time, the sunroof may be weakened with the exertion of pressure,
4 as flexing and vibration caused in ordinary driving can impose stress and ultimately
5 shattering of the glass.

6 17. In the Kia models at issue, the compromised tempered glass cannot
7 withstand the pressures and flexing that the sunroof frame and vehicle demand. The
8 consequence is that under ordinary driving conditions the glass spontaneously shatters as
9 seen below:

10
11 Kia Sportage



Kia Soul¹



¹ Kia Motors Worldwide, Facebook (Aug. 28, 2013):
https://www.facebook.com/photo.php?fbid=677450568951396&set=bc.AbpJvea_oSRkZ9mVIf9DetwBIIktfqGNajUQDVYT2YIDMhuiH0n8xILrL4PCoicmhBVBctS3OSTWX4IugyizpxuzjudjiDqpOlvKXJql8ftdoIIxqZPEIkECQzB7tO4aWYGdX4WlrmEIOE8HA1CqzbEpnS8OwU5CXtF4XdVmXweShg&type=1&opaqueCursor=Abqx3itcoHRlq_NBIflJgvWfN6G69vugLf4GCAT2zi4875Dn1GxWfjjdOkHC7u0apufp3uBAFhLknIHYRCs5TM89QhWizc_0LcC7UUb5RmNrx2Lz-l6RHmlS_t3XqTPaWp95hQTKRRcBIbUQQ4f0wdQkBBD0wMnR3B_k6M9qib0SmA&theater (last viewed 6/25/2015).

2014 Kia Cadenza²



18. Kia acknowledged in a submission to the NHTSA that it is the “leader in such incidents.” But even though vehicles with similar issues made by Audi, Hyundai, and Volkswagen, all underwent recalls attributed to identified defects, Kia claims its

² Photo of Plaintiff Noemi Caudillo’s vehicle just after her sunroof burst.

1 sunroofs shatter only as a result of impacts from objects on the roadway. Driver reports
2 have been inconsistent with Kia's position, however.

3 19. Below are just a few examples of the numerous complaints lodged with the
4 NHTSA. Few, if any of the drivers who have contacted the federal government have
5 reported that the shattering occurred because of an external object striking their vehicle.
6 The complaints are also viewable online at www.safercar.gov.

7
8 2011 Kia Sorento: The car is a 2011 and is only 3 months old had just
9 pulled out of a driveway and was going down the road when I heard a crack
10 and a loud pop. After that noise the whole sunroof fell in on me as I was
11 driving, all of the glass and metal holding the glass. It seems the glass had
12 popped up before it fell in on me. My back was scratched and the vehicle
13 was damaged. The sunroof was replaced by the dealership and also a
14 gouged door panel. There are still small scratches on the interior and the
15 roof of the car from the glass.

16 (NHTSA ID: 10345933 – Date Complaint Filed: 07/28/2010)

17
18 2011 Kia Sorento: My 2011 Kia Sorento's rear sunroof shattered. I went to
19 open the main sunroof it shattered then I heard a pop. The entire rear
20 section shattered I was less than a mile from a local Kia dealership
21 (Pinehurst Kia) I left the car with the service dept I was contacted later that
22 from the dealership I was told that glass was not covered and that they felt
23 that nothing was wrong with their product. I contacted Kia directly and was
24 told glass was covered then I was called back from Kia stating that the
25 repair would not be warranty \$1280.00 was the cost for repairs> I was
26 advised by the service director that the proper repair would include glass
27 replacement and I should replace the frame housing. I found other cases of
28 this same problem with the rear sunroof glass shattering at least nobody's

1 been hurt yet. Is Kia waiting for someone to be injured before addressing
2 this problem?

3 (NHTSA ID: 10366885 – Date Complaint Filed: 11/19/2010)
4

5 2011 Kia Optima: I was driving my 2011 Kia Optima ex on a residential
6 area. My speed was about 25 mph when suddenly there was a loud
7 explosion sound. At the time that this occurred there were no cars or semis
8 near my vehicle. After my 4 year old daughter and I recovered from the
9 initial shock, I pulled over to check my vehicle and I notice the back
10 window sunroof had a hole in the middle close by the shark tale and was
11 still shattering. At that point, I had no other choice and had to drive my
12 daughter to school. Once I dropped her off I dropped off my vehicle and a
13 family members house and borrowed a vehicle, since my vehicle was
14 unsafely to drive in that condition.

15 (NHTSA ID: 10472025 – Date Complaint Filed: 08/23/2012)
16

17 2011 Kia Sorento: I was drive eastbound on I-70 in Colorado in the
18 mountains near the Eisenhower tunnel at 2:40pm. There was no one in
19 front of me on the road. Traffic was light. It was approximately 5
20 degrees F. I heard a loud bang and pulled over. I got out of the car. The
21 front sunroof on my Kia Sorento exploded outward. Glass was pointing
22 upwards. Nothing hit my car. It just happened. Glass was in a million little
23 pieces. Luckily the inside shade was closed, otherwise glass would have
24 fallen all over me and my son (in the back seat). I cleaned up the glass as
25 best as I could. We called Kia roadside assistance, but ended up driving
26 to the next town and getting some cardboard to temporarily keep the wind
27 out, and drove home. We are waiting to see if Kia will cover it under
28 warranty.

1 (NHTSA ID: 10492886 – Date Complaint Filed: 01/14/2013)

2
3 2013 Kia Sorento: While driving on a toll road at 65 mph, the sunroof
4 violently exploded off the roof of the car. Sunroof was closed and
5 fortunately, the sunroof shade was also closed which prevented most of the
6 shattered glass from cutting my wife and I. Stopped the car and found the
7 sunroof shattered with most of the sunroof missing. A car behind us was
8 damaged by the glass flying off our roof. Only the metal sunroof frame
9 remained on our roof. Did not see any flying rocks and found no evidence
10 suggesting anything had hit the sunroof which was closed/flush with our
11 roof. Sounded and felt like a rapid decompression in an aircraft. Had
12 owned car for only 4 months so still under warranty. We've been waiting
13 for almost 4 months for Kia to reimburse us for the cost of repair.

14 (NHTSA ID: 10514388 – Date Complaint Filed: 02/17/2013)

15
16 2012 Kia Optima: While traveling in the morning to work while on the
17 interstate, a loud sound like a bomb or explosion occurred in my car, then
18 glass from my sunroof fell down. My sun roof on my 2012 Kia Optima
19 exploded. The minute this happened I looked up because I could hear and
20 feel air from up above. My sunroof was shattered in tiny pieces. The noise
21 by itself was so startling and frightening that it could have caused an
22 accident if I would have reacted to the sound somehow while driving. Once
23 pulled over, it was clear that the glass shattered out and up not downward so
24 it was fairly apparent nothing landed on top of my roof to cause this. I filed
25 a claim with my auto insurance. However, with that being said, I have now
26 researched on the internet this issue and from what I am reading on line this
27 has happened to many other people. I hope you are investigating this before
28 this causes a real tragedy to someone's life! Please!

1 (NHTSA ID: 10515141 – Date Complaint Filed: 06/05/2013)

2
3 2013 Kia Optima: I was driving down the freeway about 7:30am on my way
4 to work, beautiful day probably about 60 degrees at the time. My sunroof
5 literally exploded. It sounded like a gunshot blast. It scared the heck out of
6 me, I am lucky I didn't get into an accident. Nothing hit my car that is why
7 I thought this was really strange. I dropped my car off at the dealer and of
8 course they say they have never seen this before. I went on line and what do
9 I fine? This has happened quit a bit. I am now waiting on Kia's engineers
10 to let me know if Kia is going to take care of the damages. My car isn't
11 even a year old. I am afraid to drive my vehicle now, what if this happens
12 again? I need some help in getting this dangerous issue resolved.

13 (NHTSA ID: 10565575 – Date Complaint Filed: 02/24/2014)

14
15 2011 Kia Sorento: Tl-the contact owns a 2011 Kia Sorento. The contact
16 state that the sunroof exploded while he drove at 35 mph the fractured glass
17 fell into the vehicle and the sunroof front bar fell on the contact's head. The
18 contact suffered a cut to his shoulder. The vehicle was not repaired. The
19 manufacturer was not made aware of the failure. The approximate failure
20 and current mileage was 30,000. Updated 04-29-14

21 (NHTSA ID: 10583122 – Date Complaint Filed: 04/16/2014)

22
23 2013 Kia Sorento: The contact owns a 2013 Kia Sorento. The contact stated
24 that while he drove at 65 mph, the sunroof exploded. The contact suffered
25 cuts to his hands. The front passenger suffered cuts on the back and hands.
26 The passenger in the rear suffered cuts to the hands. The vehicle was taken
27 to the dealer where the failure was not diagnosed. The vehicle was not
28

1 repaired. The manufacturer was made aware of the failure. The failure and
2 current mileage was 26,700.

3 (NHTSA ID: 10584650 – Date Complaint Filed: 04/25/2014)
4

5 2012 Kia Optima: I was parked in a secured police parking garage that no
6 one has access to except police officers. Upon getting into my car, placing
7 it into drive and beginning to move forward out of the parking space, there
8 was a loud noise that sounded like glass shattering. I exited my vehicle to
9 find that my sunroof had exploded into thousands of pieces. There was
10 nothing that struck the glass that caused this to happen. Upon doing
11 research, I discovered that this is a problem that the Kia vehicles sunroofs
12 have. Kia is aware of the problem and is telling me that I will have to pay
13 for the replacement. My vehicle is still under warranty which does not
14 seem to matter to Kia. Kia is telling me that this incident occurred because
15 there was an object that caused this to happen. I told them that I was in the
16 vehicle barely moving when this happened. They do not want to take
17 responsibility for the problem.

18 (NHTSA ID: 10592152 – Date Complaint Filed: 05/17/2014)
19

20 2014 Kia Sportage: My sunroof exploded. I had just entered the highway
21 (there was no overpass near me) merging into traffic. I heard a loud pop like
22 a gun shot and glass rained down on me. I immediately called my
23 dealership and drove it in. There was no determination as to the cause.
24 Dealership had to completely replace the sunroof. Had to claim on my
25 insurance and pay the deductible - roughly total repair cost was 1200.00.

26 (NHTSA ID: 10690204 – Date Complaint Filed: 02/24/2015)
27
28

1 **Kia’s Knowledge of the Defect**

2 20. Kia has long known that its panoramic sunroofs are prone to unexpected
3 and dangerous shattering. By 2012 for example, Kia initiated a formal internal
4 investigation into the problem, and the following year, the NHTSA Office of Defects
5 Investigation began its own investigation into the reports of spontaneous shattering of
6 panoramic sunroofs in Kia Vehicles.

7 21. It is likely that Kia knew of the defect well before it began its formal
8 investigation in 2012. A survey of the driver complaints, for example, shows that the
9 sunroofs often shatter within months of purchase, and the complaints to the NHTSA
10 above show that drivers back in 2010 and 2011 were already reporting the problem. Kia
11 monitors the NHTSA website for emerging problems with its vehicles.

12 22. Kia also uses a variety of other means to track data about how its vehicles
13 are performing in the days, weeks, and months after they are sold. Kia collects
14 information from drivers and dealerships, including through complaints, warranty
15 claims, replacement parts data, and other aggregated data sources. Even earlier, Kia
16 studies and tracks potential vehicle defects through exhaustive pre-release testing. Given
17 the speed and frequency with which the defect becomes apparent, it is not plausible that
18 these various sources of data did not alert Kia early on to the defect. Kia has nearly
19 exclusive access to this information, however.

20 **The Dangers Posed to Class Vehicle Occupants**

21 23. As the NHTSA, the Korea Automobile Testing & Research Institute, and
22 various manufacturers have acknowledged, the sudden shattering of a panoramic sunroof
23 endangers drivers, passengers, and others on the road. Panoramic sunroofs, which are
24 intended to last the life of the vehicle, are also an expensive upgrade option that can cost
25 thousands of dollars to replace. A reasonable person considering whether to purchase or
26 lease a Kia vehicle would therefore want to be told about the panoramic sunroof defect
27 so that they could opt against paying the thousands of dollars for a “luxury upgrade” or
28 simply forego purchasing the vehicle altogether.

1 24. When the Kia panoramic sunroofs shatter, they make a sudden and
2 extremely loud noise, followed by shards of glass raining down onto the driver and
3 passengers. Drivers report that the falling shards of glass have cut them and their
4 passengers and have also caused damage to the interior of the vehicles. Drivers have
5 also reported a number of near-miss accidents that occurred after they were startled or
6 distracted by the shattering. Likewise, both Kia and the NHTSA have received reports
7 of injuries resulting from Kia panoramic sunroofs shattering.

8 25. Other manufacturers concur. When Volkswagen initiated a safety recall for
9 shattering panoramic sunroofs, for example, it acknowledged that drivers “could be
10 injured by falling glass,” and that “[i]f the glass panel were to break while the vehicle is
11 in motion, it could cause driver distraction, increasing the risk of a crash.”³ And when
12 Hyundai initiated its recall, it too acknowledged that the shattering of panoramic
13 sunroofs “relates to motor vehicle safety,” including by posing a risk of cutting vehicle
14 occupants.

15 26. In connection with the Hyundai recall, the NHTSA wrote that the breaking
16 of the panoramic sunroof could lead “to personal injury or a vehicle crash.” In
17 connection with an Audi recall, the NHTSA wrote that “should the sunroof’s glass break
18 while the vehicle is in use, the falling glass could cut and injure the driver or passengers
19 [and] could also distract the driver, increasing the risk of a crash.”

20 27. The Korea Automobile Testing & Research Institute likewise concluded
21 that the sudden shattering of a panoramic sunroof while driving may cause “abrasions
22 due to shattered glass” and also cause the “risk of secondary accidents.”

23
24 ³ Jenna Reed, *VW Recalls Certain Beetle Models Over Potential Panoramic Sunroof*
25 *Issue*, glassBYTES.com (Dec. 11, 2014), [http://www.glassbytes.com/2014/12/vw-](http://www.glassbytes.com/2014/12/vw-recalls-certain-beetle-models-over-potential-panoramic-sunroof-issue/)
26 [recalls-certain-beetle-models-over-potential-panoramic-sunroof-issue/](http://www.glassbytes.com/2014/12/vw-recalls-certain-beetle-models-over-potential-panoramic-sunroof-issue/); Volkswagen of
27 America, Inc., *Volkswagen Issues Voluntary Recall* (Dec. 7, 2014),
28 <https://media.vw.com/release/856/>.

1 **Kia Refuses to Warn Drivers**

2 28. Despite the high number of complaints and the danger posed by the defect,
3 Kia continues to conceal its existence from current drivers and potential customers
4 alike. Kia has not warned consumers at the point of sale or lease (or instructed its
5 dealerships to do so), and has made no effort to alert drivers to the risk.

6 29. Kia continues to conceal the defect even though it knows that the defect is
7 not reasonably discoverable by drivers unless they experience the defect first hand and
8 are thus exposed to the attendant safety risks.

9 30. Kia remains silent even as it continues to receive complaints from
10 frightened drivers and even as the NHTSA investigation has been expanded and
11 escalated because “the rate of ... reported incidents is concerning.”

12 31. As a result of Kia’s inaction and silence, many drivers are unaware that they
13 purchased, and continue to drive, unsafe and unreliable vehicles, and Kia continues to
14 profit from the sale and lease of vehicles to unwitting consumers.

15 32. The other manufacturers to have had vehicles with similar panoramic
16 sunroof problems—Audi, Hyundai, and Volkswagen—have all voluntarily initiated
17 safety recalls as a result, notifying drivers of the danger and offering to repair the
18 sunroofs free of cost.

19 **PLAINTIFF’S EXPERIENCE**

20 33. Plaintiff Noemi Caudillo and her husband purchased a 2014 Kia Cadenza in
21 April 2015 from the Gene Messer Kia dealership located in Lubbock, Texas. At the time
22 of purchase, the vehicle had approximately 700 miles and had never been titled.

23 34. In mid-June 2015, Ms. Caudillo was driving on Highway 349 near Midland,
24 Texas, with the flow of traffic. The sunroof of her vehicle was closed. Without warning,
25 Ms. Caudillo heard a very loud bang and then realized shattered glass was falling from
26 the ceiling of her Kia. The sunshade, which had been pulled closed, was flopping about
27 in the wind. Terrified, Ms. Caudillo pulled off of the road and discovered that her
28 sunroof had shattered, though there was no sign that anything had struck her vehicle.

1 35. Ms. Caudillo promptly contacted and then took her vehicle to the Kia
2 dealership. Dealership personnel denied there was a known defect and told her that she
3 would therefore have to pay for the repair. After inspecting the vehicle, the Kia
4 dealership's service personnel first suggested that her sunroof had been hit by a rock,
5 then suggested that it broke due to cabin pressure.

6 **CLASS ACTION ALLEGATIONS**

7 36. Pursuant to Rule 23 of the Federal Rules of Civil Procedure, Plaintiff brings
8 this action on behalf of herself and the following proposed nationwide class, within
9 which "Class Vehicle" is defined to include all 2011-2015 model year Kia vehicles with
10 factory-installed panoramic sunroofs:

11 Nationwide Class:

12 *All persons who purchased or leased a Class Vehicle in the United States.*

13 37. In the alternative, Plaintiff seeks to represent a Texas state class defined as
14 follows:

15 Texas Class:

16 *All persons who purchased or leased a Class Vehicle in Texas.*

17 38. Excluded from the proposed class(es) is Kia; any affiliate, parent, or
18 subsidiary of Kia; any entity in which Kia has a controlling interest; any officer, director,
19 or employee of Kia; any successor or assign of Kia; anyone employed by counsel in this
20 action; any judge to whom this case is assigned, his or her spouse; and members of the
21 judge's staff; and anyone who purchased a Class Vehicle for the purpose of resale.

22 39. Members of the proposed class(es) are readily ascertainable because the
23 class definition is based upon objective criteria.

24 40. **Numerosity**. Kia sold thousands of Class Vehicles, including a substantial
25 number in California and Texas. Members of the proposed class(es) likely number in the
26 thousands and are thus too numerous to practically join in a single action. Class
27 members may be notified of the pendency of this action by mail, supplemented by
28 published notice (if deemed necessary or appropriate by the Court).

1 41. **Commonality and Predominance.** Common questions of law and fact
2 exist as to all proposed class members and predominate over questions affecting only
3 individual class members. These common questions include:

- 4 a. Whether the panoramic sunroofs in Class Vehicles have a propensity
5 to spontaneously shatter;
- 6 b. Whether Kia knew or should have known that its panoramic sunroofs
7 have a propensity to spontaneously shatter, and if so, when it
8 discovered this;
- 9 c. Whether the knowledge of this propensity would be important to a
10 reasonable person, for example, because it poses an unreasonable
11 safety hazard;
- 12 d. Whether Kia disclosed or concealed the existence of the sunroofs'
13 propensity to shatter from potential customers;
- 14 e. Whether Kia has breached its warranty by failing to provide free
15 repairs of damage and reimbursement for losses resulting from the
16 defective sunroofs; and
- 17 f. Whether Kia should be required to notify class members about the
18 sunroofs' propensity to spontaneously shatter and cease its practice of
19 providing identical replacement sunroofs.

20 42. **Typicality.** Plaintiff's claims are typical of the claims of the proposed
21 class(es). Plaintiff and the members of the proposed class(es) all purchased or leased
22 Class Vehicles with panoramic sunroofs that contain a propensity to spontaneously
23 shatter, giving rise to substantially the same claims.

24 43. **Adequacy.** Plaintiff is an adequate representative of the proposed class(es)
25 because her interests do not conflict with the interests of the members of the class(es) she
26 seeks to represent. Plaintiff has retained counsel competent and experienced in complex
27 class action litigation, and will prosecute this action vigorously on class members'
28 behalf.

1 44. **Superiority.** A class action is superior to other available means for the fair
2 and efficient adjudication of this dispute. The injury suffered by each class member,
3 while meaningful on an individual basis, is not of such magnitude as to make the
4 prosecution of individual actions against Kia economically feasible. Even if class
5 members themselves could afford such individualized litigation, the court system could
6 not. In addition to the burden and expense of managing many actions arising from the
7 defective panoramic sunroofs, individualized litigation presents a potential for
8 inconsistent or contradictory judgments. Individualized litigation increases the delay and
9 expense to all parties and the court system presented by the legal and factual issues of
10 the case. By contrast, a class action presents far fewer management difficulties and
11 provides the benefits of single adjudication, economy of scale, and comprehensive
12 supervision by a single court.

13 45. In the alternative, the proposed class(es) may be certified because:

- 14 a. the prosecution of separate actions by the individual members of the
15 proposed class would create a risk of inconsistent adjudications,
16 which could establish incompatible standards of conduct for Kia;
- 17 b. the prosecution of individual actions could result in adjudications,
18 which as a practical matter, would be dispositive of the interests of
19 non-party class members or which would substantially impair their
20 ability to protect their interests; and
- 21 c. Kia has acted or refused to act on grounds generally applicable to the
22 proposed class(es), thereby making appropriate final and injunctive
23 relief with respect to the members of the proposed class(es) as a
24 whole.
- 25
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27
28

1 **FIRST CAUSE OF ACTION**

2 **Unlawful, Unfair, and Fraudulent Business Practices**

3 **Cal. Bus. & Prof. Code § 17200 *et seq.***

4 **(Plaintiff individually and on behalf of the proposed Nationwide class)**

5 46. Plaintiff realleges the paragraphs above as if fully set forth herein.

6 47. Kia has violated and continues to violate California's Unfair Competition
7 Law, Cal. Bus. & Prof. Code § 17200, *et seq.*, which prohibits unlawful, unfair, or
8 fraudulent business acts or practices.

9 48. Kia's acts and practices, as alleged in this complaint, constitute unlawful,
10 unfair, and fraudulent business practices, in violation of the Unfair Competition Law. In
11 connection with the sale of Class Vehicles to Plaintiffs and class members, Kia failed to
12 disclose—at the point of sale or otherwise—material information about the Class
13 Vehicles—namely, that the panoramic sunroofs in Class Vehicles are defective and pose
14 a safety hazard.

15 49. Kia's business acts and practices are unlawful in that they violate the
16 Consumers Legal Remedies Act, Civil Code § 1750, *et seq.*

17 50. These acts and practices also constitute fraudulent practices in that they are
18 likely to deceive a reasonable consumer. As described above, Kia knowingly conceals
19 and fails to disclose at the point of sale that its panoramic sunroofs have a propensity to
20 spontaneously shatter, endangering the personal safety of drivers and passengers and
21 requiring immediate repair. Had Kia disclosed this fact, Plaintiff Caudillo, the members
22 of the proposed class, and reasonable consumers would not have purchased Kia vehicles
23 or would have paid significantly less for them.

24 51. Kia's conduct also constitutes unfair business practices in that:

- 25 a. The gravity of harm to Plaintiff and the proposed class from Kia's
26 acts and practices far outweighs any legitimate utility of that conduct;
- 27 b. Kia's conduct is immoral, unethical, oppressive, unscrupulous, or
28 substantially injurious to Plaintiff and the proposed class; and

1 c. Kia's conduct undermines or violates the stated policies underlying
2 the Consumers Legal Remedies Act—to protect consumers against
3 unfair and sharp business practices and to promote a basic level of
4 honesty and reliability in the marketplace.

5 52. As a direct and proximate result of Kia's business practices, Plaintiff and
6 the proposed class members suffered injury in fact and lost money or property, because
7 they purchased and paid for vehicles and upgrades that they otherwise would not have,
8 or in the alternative, would have paid less for.

9 53. Plaintiff and the proposed class members are entitled to equitable relief
10 including an order directing Kia to disclose the existence of the defect to class members,
11 restitution and disgorgement of all profits paid to Kia as a result of its unfair, deceptive,
12 and fraudulent practices, attorneys' fees and costs, and a permanent injunction enjoining
13 Kia from such unfair deceitful and fraudulent practices.

14 **SECOND CAUSE OF ACTION**

15 **Violation of the Consumers Legal Remedies Act**

16 **Cal. Civ. Code § 1750, *et seq.***

17 **(Plaintiff individually and on behalf of the proposed Nationwide class)**

18 54. Plaintiff realleges the paragraphs above as if fully set forth herein.

19 55. Kia is a "person" within the meaning of Civil Code §§ 1761(c) and 1770,
20 and has provided "goods" within the meaning of Civil Code §§ 1761(b) and 1770.

21 56. Plaintiff and members of the class are "consumers" within the meaning of
22 Civil Code §§ 1761(d) and 1770, and have engaged in a "transaction" within the
23 meaning of Civil Code §§ 1761(e) and 1770.

24 57. Kia's acts and practices, which were intended to result and which did result
25 in the sale of Class Vehicles with defective sunroofs, violate § 1770 of the Consumers
26 Legal Remedies Act in that:

27 a. Kia represents that its vehicles and panoramic sunroofs had
28 characteristics, uses, or benefits which they do not have;

- b. Kia advertises its goods with intent not to sell them as advertised;
- c. Kia represents that its vehicles and panoramic sunroofs are of a particular standard, quality, or grade when they are not;
- d. Kia represents that a transaction conferred or involved rights, remedies, or obligations which they do not; and
- e. Kia represents that its goods have been supplied in accordance with a previous representation when they have not.

58. As described above, Kia knew that the panoramic sunroofs in its vehicles have a propensity to spontaneously shatter, but concealed and failed to disclose this fact to consumers at the point of sale or otherwise. Kia intended that Plaintiff and the members of the proposed class rely on this act or omission in deciding to purchase their vehicles and sunroofs.

59. Had Kia adequately disclosed the defect, Plaintiff, members of the proposed class, and reasonable consumers would not have purchased or would have paid less for their vehicles and sunroofs.

60. Pursuant to California Civil Code § 1780, Plaintiff seeks an order enjoining Kia from the unlawful practices described above, a declaration that Kia's conduct violates the Consumers Legal Remedies Act, and attorneys' fees and costs of litigation.

61. Pursuant to the provisions of Cal. Civ. Code § 1782(a), Plaintiff will send a notice letter to Kia to provide them with the opportunity to correct their business practices. If Kia does not thereafter correct its business practices, Plaintiffs will amend (or seek leave to amend) the complaint to add claims for monetary relief, including restitution and actual damages under the Consumers Legal Remedies Act.

THIRD CAUSE OF ACTION

Violation of Texas Deceptive Trade Practices-Consumer Protection Act

Tex. Bus. & Com. Code § 17.41, *et seq.*

(Plaintiff individually and on behalf of the proposed Texas class)

62. Plaintiff realleges the paragraphs above as if fully set forth herein.

1 63. The purposes of the Texas Deceptive Trade Practices and Consumer
2 Protection Act (DTPA) is to “protect consumers against false, misleading, and deceptive
3 practices, unconscionable actions, and breaches of warranty and to provide efficient and
4 economical procedures to secure such protection,” and it is liberally construed to effect
5 those purposes. Tex. Bus. & Com. Code § 17.44.

6 64. Plaintiff and Texas class members are “consumers,” Class Vehicles are
7 “goods,” and Kia was engaged in “trade or commerce” as those terms are defined by §
8 17.45 of the DTPA.

9 65. Kia has violated section 17.50(a)(1) and 17.46(b)(24) of the DTPA by
10 failing to disclose to Plaintiff and Texas class members that the sunroofs installed in
11 Class Vehicles have a propensity to spontaneously shatter and that this poses a safety
12 hazard.

13 66. Kia’s omissions were intended to induce Plaintiff and Texas class members
14 to purchase sunroofs and Class Vehicles that they otherwise would not have purchased at
15 a price they otherwise would not have paid. Plaintiff and Texas class members relied
16 upon Kia’s omissions to their detriment, purchasing vehicles and sunroofs they
17 otherwise would not have purchased at a price they otherwise would not have paid.

18 67. Kia has also violated section 17.50(a)(3) of the DTPA by selling vehicles
19 with panoramic sunroofs that spontaneously shatter. Kia’s conduct constitutes an
20 unconscionable course of action, as Kia took advantage of Plaintiff and Texas class
21 members’ lack of knowledge to a grossly unfair degree and has left them with cars of
22 sharply diminished value.

23 68. As a direct and proximate result of Kia’s conduct, Plaintiff and other
24 members of the Texas class have been harmed in that they purchased vehicles and
25 sunroofs that they otherwise would not have, paid more for Class Vehicles than they
26 otherwise would have, paid for diagnoses, repairs, and replacements, and/or rental cars,
27 and are left with vehicles of diminished value and utility because of the defect.
28 Meanwhile, Kia has sold more Class Vehicles than it otherwise could have and charged

1 inflated prices for Class Vehicles, unjustly enriching itself thereby.

2 69. Kia is liable to Plaintiff and Texas class members for damages in amounts
3 to be proven at trial, including attorneys' fees recoverable pursuant to § 17.50(d) of the
4 DTPA, costs, and treble damages.

5 70. Pursuant to §17.50 of the DTPA, Plaintiff and the Texas class seek
6 damages, a declaration that Kia's conduct is unlawful, and an order requiring Kia to
7 adequately disclose and repair the dashboard defect.

8 **FOURTH CAUSE OF ACTION**

9 **Unjust Enrichment**

10 **(Plaintiff individually and on behalf of the proposed Nationwide class)**

11 71. Plaintiff realleges the paragraphs above as if fully set forth herein.

12 72. Kia has long known that its panoramic sunroofs have a propensity to shatter
13 spontaneously, posing a serious safety risk, which it concealed and failed to disclose to
14 Plaintiff and the proposed class members.

15 73. As a result of its fraudulent acts and omissions related to the defective
16 sunroofs, Kia obtained monies which rightfully belong to Plaintiff and the class
17 members to the detriment of Plaintiff and the proposed class members.

18 74. Kia appreciated, accepted, and retained the non-gratuitous benefits
19 conferred by Plaintiff and the proposed class members, who without knowledge of the
20 defect paid a higher price for their vehicles and sunroofs which actually had lower
21 values. Kia also received monies for vehicles and sunroofs that Plaintiff and the
22 proposed class members would not have otherwise purchased.

23 75. It would be inequitable and unjust for Kia to retain these wrongfully
24 obtained profits.

25 76. Kia's retention of these wrongfully-obtained profits would violate the
26 fundamental principles of justice, equity, and good conscience.

27 77. Plaintiff and the class are entitled to restitution of the profits unjustly
28 obtained, plus interest.

1 **FIFTH CAUSE OF ACTION**

2 **Negligence**

3 **(Plaintiff individually and on behalf of the proposed Nationwide class)**

4 78. Plaintiff realleges the paragraphs above as if fully set forth herein.

5 79. Kia owed Plaintiff and the class a duty to provide thorough notice of known
6 safety defects, such as the panoramic sunroofs' propensity to shatter.

7 80. Once it discovered the sunroofs' propensity to shatter, Kia also owed
8 Plaintiff and the proposed class a duty to ensure that an appropriate repair procedure was
9 developed and made available to consumers.

10 81. Kia owed also Plaintiff and the proposed class a duty not to engage in
11 fraudulent or deceptive conduct, including the knowing concealment of material
12 information such as the sunroofs' propensity to shatter. This duty is independent of any
13 contractual duties Kia may owe or have owed.

14 82. Under the TREAD Act, Kia owed an independent duty to send notice to
15 Class Vehicle owners, purchasers, and dealers whenever it "learns the vehicle or
16 equipment contains a defect and decides in good faith that the defect is related to motor
17 vehicle safety." 49 U.S.C. § 30118(c). Despite Kia's awareness of the panoramic
18 sunroof defect, it failed to timely notify owners, purchasers, and dealers. This duty is
19 independent of any contractual duties Kia may owe or have owed to them.

20 83. A finding that Kia owed a duty to Plaintiff and the class would not
21 significantly burden Kia. Kia has the means to efficiently notify drivers of Class
22 Vehicles about dangerous defects. The cost borne by Kia for these efforts is insignificant
23 in light of the dangers posed to Plaintiff and the class by Kia's failure to disclose the
24 panoramic sunroof defect and provide an appropriate notice and repair.

25 84. Kia's failure to disclose the defect in Class Vehicles to consumers and
26 NHTSA is a departure from the reasonable standard of care. Accordingly, Kia breached
27 its duties to Plaintiff and the class.

28

1 85. Kia's conduct was contrary to public policy favoring the disclosure of
2 defects that may affect customer safety; these policies are embodied in the TREAD Act,
3 and the notification requirements in 49 C.F.R. § 573.1, *et seq.*

4 86. As a direct, reasonably foreseeable, and proximate result of Kia's failure to
5 exercise reasonable care to inform Plaintiff and the class about the defect or to provide
6 appropriate repair procedures for it, Plaintiff and the class have suffered damages in that
7 they spent more money than they otherwise would have on Class Vehicles which are of
8 diminished value.

9 87. Plaintiff and the class could not have prevented the damages caused by
10 Kia's negligence through the exercise of reasonable diligence. Neither Plaintiff nor the
11 class contributed in any way to Kia's failure to provide appropriate notice and repair
12 procedures.

13 88. Plaintiff and the class seek to recover the damages caused by Kia. Because
14 Kia acted fraudulently and with wanton and reckless misconduct, Plaintiff also seeks an
15 award of punitive damages.

16 **PRAYER FOR RELIEF**

17 WHEREFORE, Plaintiff requests that the Court enter a judgment awarding
18 the following relief:

19 a. An order certifying the proposed class(es), and appointing Plaintiff
20 and her counsel to represent the class(es);

21 b. An order awarding Plaintiff and the class members their actual
22 damages, punitive damages, and/or any other form of monetary relief provided by law;

23 c. An order awarding Plaintiff and the class(es) restitution,
24 disgorgement, or other equitable relief as the Court deems proper;

25 d. An order requiring Kia to adequately disclose and repair the Defect;

26 e. An order awarding Plaintiff and the class(es) pre-judgment and post-
27 judgment interest as allowed under the law;

28

1 f. An order awarding Plaintiff and the class(es) reasonable attorney fees
2 and costs of suit, including expert witness fees; and

3 g. An order awarding such other and further relief as this Court may
4 deem just and proper.

5 **JURY DEMAND**

6 Pursuant to Fed. R. Civ. P. 38(b), Plaintiffs demand a trial by jury for all issues so
7 triable under the law.

8
9 DATED: June 25, 2015

Respectfully submitted,

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