

Jonathan A. Michaels, Esq. (SBN 180455)

(jmichaels@mlgaplc.com)

Kyle Gurwell, Esq. (SBN 289298)

(kgurwell@mlgaplc.com)

Ryan Jones, Esq. (SBN 301138)

(rjones@mlgaplc.com)

MLG, APLC

151 Kalmus Dr., Suite A-102

Costa Mesa, CA 92626

Telephone: (949) 581-6900

Facsimile: (949) 581-6908

Attorneys for Plaintiffs,
Zachary McCready, Brianne Schumpert,
individually, and on behalf of all others similarly situated

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF ORANGE

ZACHARY MCCREADY; BRIANNE
SCHUMPERT, individually, and on behalf of all
others similarly situated;

Plaintiffs,

vs.

HYUNDAI MOTOR AMERICA, a California
corporation; KIA MOTORS AMERICA, INC., a
California corporation; DOES 1 through 25;

Defendants.

Case No.

CLASS ACTION

**COMPLAINT FOR DAMAGES AND
EQUITABLE RELIEF**

- JURY TRIAL DEMANDED -

Table of Contents

1 I. INTRODUCTION 3
2 II. PARTIES 3
3 A. Defendants..... 3
4 B. Plaintiffs 4
5 III. JURISDICTION AND VENUE 4
6 IV. FACTUAL ALLEGATIONS 5
7 A. The Defective Power Window System 5
8 B. The Affected Cars 7
9 C. Defendants Conceal the Defect 7
10 D. Misrepresentations to the Public About Safety 7
11 E. Diminished Value of the Cars 9
12 V. CLASS ACTION ALLEGATIONS 9
13 A. Class Definitions 9
14 B. Class Certification Requirements..... 9
15 VI. EQUITABLE TOLLING..... 10
16 A. Discovery Rule..... 10
17 B. Fraudulent Concealment 11
18 C. Estoppel..... 11
19 VII. CLAIMS FOR RELIEF 12
20 FIRST CAUSE OF ACTION 12
21 SECOND CAUSE OF ACTION 14
22 THIRD CAUSE OF ACTION 16
23 Violation of the Consumer Legal Remedies Act, 16
24 Cal. Civ. Code § 1750, *et seq.*..... 16
25 FOURTH CAUSE OF ACTION 21
26 Fraudulent Concealment 21
27 FIFTH CAUSE OF ACTION 23
28 Unjust Enrichment 23
VIII. PRAYER FOR RELIEF..... 24
IX. DEMAND FOR JURY TRIAL 25

1 **I. INTRODUCTION**

2 1. In today’s world, vehicle automatic window systems are virtually standard equipment.
3 Armed with powerful motors, front and back windows now roll up, or down, with the instant touch of a
4 small button. While this feature is designed to further everyday conveniences, it is not without peril.

5 2. This case deals with the serious problem of what happens when a human appendage –
6 fingers, a hand, a neck – get caught in the path of a motor-driven power window that is on an automatic
7 path to rollup. To prevent the risk of serious injury or death, the federal government has promulgated
8 “Federal Motor Vehicle Safety Standard” 118, or FMVSS 118 as it is commonly called, which has a
9 “stop-and-reverse” requirement for all such windows. Under FMVSS 118, the automatic window must
10 stop and reverse when encountering a foreign object, such as a small child’s hand or finger. Having a
11 stop-and-reverse system that complies with FMVSS 118 ensures that the consuming public will be safe
12 and protected from the strong motors that can inflict such tremendous damage.

13 3. Defendants Hyundai and Kia are duty bound to comply with the federal standards, yet are
14 egregiously producing millions of cars with stop-and-reverse systems that do not comply with FMVSS
15 118, subjecting consumers and their children to serious risk of injury or death. The Plaintiffs in this case
16 now seek to protect consumers by holding automotive juggernauts Hyundai and Kia accountable for
17 their flagrant violation of the Federal Motor Vehicle Safety Standards, endangering public safety.

18
19 **II. PARTIES**

20 **A. Defendants**

21 4. Defendant Hyundai Motor America is a California corporation, with its corporate
22 headquarters located in this district at 10550 Talbert Avenue, Fountain Valley, California 92708.
23 Hyundai is a manufacturer and distributor of new motor vehicles under the Hyundai brand. Hyundai
24 markets, leases, warrants, and oversees regulatory compliance and warranty servicing of Hyundai-brand
25 vehicles through a network of dealers throughout the United States from its headquarters in California.
26 Hyundai also creates and distributes the warranties and other written materials that accompany the sale
27 and lease of Hyundai-branded vehicles throughout California, and makes decisions concerning warranty
28 coverage of customer vehicles when problems arise.

1 5. Defendant Kia Motors America, Inc. is a California corporation, with its corporate
2 headquarters located in this district at 111 Peters Canyon Road, Irvine, California 92606. Kia is a
3 manufacturer and distributor of new motor vehicles under the Kia brand. Kia markets, leases, warrants,
4 and oversees regulatory compliance and warranty servicing of Kia-brand vehicles through a network of
5 dealers throughout the United States from its headquarters in California. Kia also creates and distributes
6 the warranties and other written materials that accompany the sale and lease of Kia-branded vehicles
7 throughout California, and makes decisions concerning warranty coverage of customer vehicles when
8 problems arise.

9
10 **B. Plaintiffs**

11 6. At all times mentioned in this Complaint, Plaintiff Zachary McCready is, and at all
12 relevant times was, an individual residing in Orange County, State of California. Plaintiff Zachary
13 McCready owns a 2019 Hyundai Kona that contains the power window defect that is at issue in this
14 class action lawsuit. The value of McCready's 2019 Hyundai Kona has been diminished as a result of
15 the power window defect and the danger the vehicle poses to its occupants. If McCready had known
16 about the power window defect, he would not have purchased his 2019 Hyundai Kona, or he would have
17 not paid as much as he did for it.

18 7. At all times mentioned in this Complaint, Plaintiff Brianne Schumpert is, and at all
19 relevant times was, an individual residing in Orange County, State of California. Plaintiff Brianne
20 Schumpert owns a 2018 Kia Sorento which also has the power window defect discussed herein. As with
21 the Hyundai owned by McCready, the value of Schumpert's 2018 Kia Sorento has been diminished as a
22 result of the power window defect. If Schumpert had known about the power window defect, she would
23 not have purchased his 2018 Kia Sorento or would have not paid as much as she did for it.

24
25 **III. JURISDICTION AND VENUE**

26 8. This Court has subject matter jurisdiction over all causes of action alleged in this
27 Complaint pursuant to the California Constitution, Article VI, § 10, and is a Court of competent
28 jurisdiction to grant the relief requested. Plaintiffs' claims for violations of Business & Professions

1 Code § 17200, et seq., the Song Beverly Act, the Consumer Legal Remedies Act, fraudulent
2 concealment and for unjust enrichment, arise under the laws of the State of California, are not preempted
3 by federal law, do not challenge conduct within any federal agency’s exclusive domain, and are not
4 statutorily assigned to any other trial court.

5 9. The Defendants transact business in the State of California. The unlawful conduct
6 occurred in substantial part within the State of California and was intended to and did substantially
7 affect business and commerce within this State.

8 10. Venue is proper in this Court pursuant to California Code of Civil Procedure §§ 395 and
9 395.5 because the Defendants conduct substantial business in the County of Orange, and the injuries that
10 have been sustained as a result of Defendants’ dangerous conduct occurred, in part, in the County of
11 Orange.

12
13 **IV. FACTUAL ALLEGATIONS**

14 **A. The Defective Power Window System**

15 11. To ensure uniformity of vehicle safety and to protect the public from dangerous vehicles,
16 the National Highway Traffic Safety Administration, or NHTSA, has developed a series of Federal Motor
17 Vehicle Safety Standards that regulate vehicle development. The Safety Standards, or FMVSS
18 regulations as they are known, mandate everything from seatbelt configuration to airbag placement, and
19 ensure that vehicles are produced with human safety in mind. Without the benefit of FMVSS
20 regulations, manufacturers would be free to produce vehicles as they see fit, regardless of whether they
21 were safe to be placed on public highways. Hence, automakers would only go to the expense of
22 designing cars safety if they found it to be economically viable. In such a world, the human loss and
23 suffering would be extreme.

24 12. One of the important FMVSS regulations that shield vehicle occupants from serious harm
25 is FMVSS 118 – the regulation that governs power window systems. Under FMVSS 118, vehicles
26 produced and sold in the United States from 2008 forward are required to have a “stop-and-reverse”
27 mechanism that is intended to prevent fingers and hands from being severed by the powerful motors that
28 close automatic windows. Under the regulation, automatic windows are required to stop closing, and

1 reverse direction, upon encountering a foreign obstruction of 100 newtons of pressure. A “newton” is an
2 international unit of force, named after Sir Isaac Newton for his work on classical mechanics, namely his
3 second law of motion. A pressure point of 100 newtons translates to 22.5 pounds of force, meaning that
4 under FMVSS 118 a vehicle’s automatic window system can exert no more than 22.5 pounds of force on
5 a foreign object before stopping and reversing direction. Because the edge of a window is narrow like
6 the blade of a knife, the pressure point is greatly pronounced, magnifying the amount of pressure one
7 would feel upon contact – much in the same way a woman’s high heel has a concentrated amount of
8 pressure when accidentally stepping on a person’s foot. The FMVSS requirement that automatic
9 windows exert no more than 100 newtons of pressure, or 22.5 pounds of force, is intended to prevent the
10 tremendous harm that could occur to a vehicle occupant if a finger, hand or neck were accidentally caught
11 in the window. At 100 newtons, a finger will generally bruise, but it will still be intact.

12 13. The Hyundai and Kia vehicles that are the subject of this class action lawsuit have
13 automatic window systems that fail to comply with FMVSS 118; that is, the windows fail to stop and
14 reverse at 100 newtons of pressure. As a result, vehicle occupants are at risk losing fingers or hands,
15 and even their lives by getting heads or necks stuck in the closing power windows.

16 14. A simple carrot can illustrate the massive amount of force the Hyundai and Kia window
17 systems exert. A raw carrot requires 200 newtons of pressure to slice through it, meaning that an
18 automatic window system that complies with FMVSS 118 would never be able to chop a carrot in two.
19 Yet, the Hyundai and Kia automatic windows regularly slice carrots in half, exerting more than twice the
20 amount of pressure allowed by federal law.

21 15. As manufacturers of vehicles sold in the United States, Hyundai and Kia are keenly
22 aware of the requirements of FMVSS No. 118, but they nonetheless manufacture and sell millions of
23 vehicles that exceed the permissible force of 100 newtons, in violation of FMVSS 118. As a result, the
24 consuming public is unknowingly place in the path of great danger.

1 **B. The Affected Cars**

2 16. The affected cars are Hyundai and Kia passenger vehicles equipped with a power
3 window automatic stop-and-reverse system, manufactured from July 2008 to present, and sold to
4 California residents (“Class Vehicles”).

5
6 **C. Defendants Conceal the Defect**

7 17. Defendants are well aware of FMVSS No. 118 because they are required by federal law
8 to comply with it. As a result, Defendants must have completed testing of their vehicles in order to
9 ascertain whether they are in compliance with the FMVSS. From this, it follows that Defendants are
10 aware of the results of their testing regarding their vehicles in regard to FMVSS No. 118 and are aware
11 that their vehicles pose an unreasonable danger to the vehicle occupants.

12 18. With full knowledge of the potential dangers that their power windows pose to the
13 vehicle occupants, and with full knowledge that compliant power window auto reversal systems exist
14 which significantly decrease risk of injury, Defendants nonetheless continue to manufacture, market,
15 and distribute Class Vehicles which can cause great bodily injury and death.

16 **D. Misrepresentations to the Public About Safety**

17 19. The Hyundai and Kia Defendants failed to inform or notify consumers, Plaintiffs and the
18 Class (defined below) of the power window defect, while at the same time marketing and representing
19 that the Class Vehicles are safe and reliable. Plaintiffs were exposed to and consumed Defendants’
20 advertisements and marketing materials prior to purchasing or leasing the Class Vehicles. The
21 misleading statements and omissions about Class Vehicles’ safety in the Defendants’ advertising and
22 marketing materials influenced Plaintiffs’ decisions to purchase or lease Class Vehicles. Examples of
23 the representations of safety to the public include:

- 1 a. **Hyundai** – Defendant Hyundai boasts of safety awards received for their 10 new
2 Hyundai models.



- 19
20 b. **Kia** – Defendant Kia advertised simply advertised “Safe”.



1 **E. Diminished Value of the Cars**

2 20. Plaintiffs and members of the Class (defined below) purchased or leased Class Vehicles
3 unaware of the power window defect within, and thus suffered other damages related to their purchase
4 or lease of the Class Vehicles in the form of diminished market value, and loss of the benefit of their
5 bargain as a direct result of Defendants’ misrepresentations and omissions regarding the Class Vehicles’
6 characteristics and the existence of the power window defect. The power window defect within the
7 Class Vehicles diminishes the value and exposes drivers and passengers of the Class Vehicles to
8 unreasonable safety risks.

9
10 **V. CLASS ACTION ALLEGATIONS**

11 **A. Class Definitions**

12 21. Plaintiffs bring this as a class action pursuant to California Code of Civil Procedure § 382
13 on behalf of themselves and all California residents who purchased or leased a Class Vehicle (“Class
14 Members”).

15 22. Excluded from each Class are Defendants Hyundai and Kia, as well as their employees,
16 officers, directors, legal representatives, heirs, and successors, wholly or partly owned subsidiaries or
17 affiliates of Defendants, Class Counsel and their employees, and the judicial officers, their immediate
18 family members, and associated court staff assigned to this case.

19
20 **B. Class Certification Requirements**

21 23. As explained in *Ticconi v. Blue Shield of Calif. Life & Health Ins. Co.*, 160 Cal. App. 4th
22 528 (2008), California looks to Rule 23 of the Federal Rule of Civil Procedure when defining the
23 appropriate characteristics of a Class.

24 24. This action satisfies the requirements of Federal Rule of Civil Procedure 23(a)(1) because
25 there are a substantial number of Class Vehicles throughout California and beyond, individual joinder of
26 all Class members is impracticable.

27 25. This action satisfies the requirements of Federal Rule of Civil Procedure 23(a)(2). The
28 questions of law and fact, described throughout this Complaint, are common to the class because they

1 arise from the same course of conduct from Defendants. A sampling of the common claims include: 1)
2 the Class Vehicles contain defective components, 2) that Defendants knew of defective components
3 within the Class Vehicles; 3) Defendants failed to take any remedial action which resulted in damages to
4 the Class members, 4) that Defendants failed to notify or warn Class members of the defective
5 components, 5) that Defendants had a duty to warn Class members of the defective components; 6) that
6 Defendants actively concealed and misled Class members as to the safety of the Class Vehicles, 7) that
7 Defendants breached implied warranties, including the warranty of merchantability.

8 26. This action satisfies the requirements of Federal Rule of Civil Procedure 23(a)(3). The
9 claims of the representative parties are typical of the claims of the class.

10 27. This action satisfies the requirements of Federal Rule of Civil Procedure 23(a)(4). The
11 representative parties will fairly and adequately protect the interests of the class because they have
12 retained counsel experienced in prosecuting consumer class action lawsuits with the financial resources
13 to pursue these claims and the commitment to follow through with prosecution of these claims.

14 28. Each of the Classes are ascertainable because their members can be readily identified
15 using vehicle registration records, sales records, production records, and other information kept by
16 Defendants or third parties in the usual course of business and within their control. Plaintiffs anticipate
17 providing appropriate notice to the Class in compliance with Federal Rules of Civil Procedure
18 23(c)(1)(2)(A) and/or (B), to be approved by the Court after class certification, or pursuant to court order
19 under Rule 23(d).

20 21 **VI. EQUITABLE TOLLING**

22 **A. Discovery Rule**

23 29. The causes of action alleged here did not accrue until Plaintiffs and proposed Class
24 members discovered that the Class Vehicles had the defective Power-windows.

25 30. Plaintiffs could not have discovered with reasonable diligence that their Class Vehicle
26 was defective within the time period of any applicable statute of limitations.

27 31. Plaintiffs and proposed Class members had no realistic ability to discern that their
28 vehicles were defective until after either the defective Power-windows failed, or their vehicles were

1 recalled. Even then, Defendants' active concealment of the true nature of the defect gave Plaintiffs and
2 proposed Class members no reason to discover the causes of action.

3
4 **B. Fraudulent Concealment**

5 32. Defendants have known of the Power window defect since at least July 2008, but have
6 actively concealed from, or failed to notify, Plaintiffs, Class members, and the general public of the full
7 and complete nature of the power window defect.

8 33. The power-windows were defective for years prior to disclosure, and the Hyundai and
9 Kia Defendants did not fully investigate or disclose the seriousness of the issue.

10 34. Instead, the Hyundai and Kia Defendants concealed and downplayed the widespread
11 prevalence of the problem. To this day, Defendants have refused to acknowledge that their product is
12 defective or to initiate a recall of their defective power-windows.

13 35. Any applicable statute of limitations has therefore been tolled by Defendants' knowledge,
14 active concealment, and denial of the facts alleged herein, which behavior is ongoing.

15
16 **C. Estoppel**

17 36. Defendants have an ongoing duty to disclose to Plaintiffs and proposed Class members
18 the true character, quality, and nature of the Class Vehicles. They actively concealed the true character,
19 quality, and nature of the vehicles, and knowingly made misrepresentations about the quality, reliability,
20 characteristics, and performance of the vehicles. Plaintiffs and proposed Class members reasonably
21 relied upon Defendants' knowing, and affirmative misrepresentations and/or active concealment of these
22 facts. Based on the foregoing, Defendants are estopped from relying on any statute of limitations in
23 defense of this action.

1 **VII. CLAIMS FOR RELIEF**

2
3 **FIRST CAUSE OF ACTION**

4 **Violation of the Song-Beverly Consumer Warranty Act**
5 **and Breach of the Implied Warranty of Merchantability**

6 37. Plaintiffs incorporate and reallege all preceding allegations as though fully set forth
7 herein.

8 38. Plaintiffs bought or leased the Class Vehicles manufactured by the Hyundai and Kia
9 Defendants.

10 39. Each Class Vehicle is a “consumer good” as defined by Cal. Civ. Code § 1791(a).

11 40. Plaintiffs and members of the Class are “consumers” as defined by Cal. Civ. Code §
12 1791(b).

13 41. The Hyundai and Kia Defendants are each a “manufacturer” as defined by Cal. Civ. Code
14 § 1791(j).

15 42. At the time of purchase the Hyundai and Kia Defendants were in the business of
16 manufacturing consumer goods.

17 43. At the time of transfer by sale or lease, the Hyundai and Kia Defendants provided
18 Plaintiffs and members of the Class with the implied warranty of merchantability as set forth in Cal. Civ.
19 Code §§ 1791.1(a) and 1792.

20 44. The Class Vehicles were not of the same quality as those generally acceptable in the
21 trade, nor sanctioned by the Hyundai and Kia Defendants.

22 45. The Class Vehicles were not fit for the ordinary purposes for which the goods are used
23 because they were equipped with defective power window systems, which among other things, may fail
24 to stop and reverse direction either before contacting a test rod with appropriate federally mandated
25 properties, or before exerting a squeezing force of 100 newtons on a qualifying object obstructing the
26 closing window, leading to an unreasonable likelihood of serious bodily injury or death to vehicle
27 occupants, instead of protecting vehicle occupants from bodily injury during foreseeable operation.
28

1 46. Because of the power window system defect, the Class Vehicles are not safe to drive, and
2 thus not fit for ordinary purposes.

3 47. The Class Vehicles did not measure up to the promises or facts stated on the advertising
4 because the advertising leads consumers to believe the vehicles are safe and uniformly fails to disclose
5 the power window defect.

6 48. The Hyundai and Kia Defendants breached the implied warranty of merchantability by
7 manufacturing and selling Class Vehicles equipped with defective power-window systems which may
8 result in great bodily harm or death for human body parts caught in a closing window. The defective
9 power-window systems have deprived the Plaintiffs of the benefit of their bargain and have caused
10 excessive depreciation in value of the Class Vehicles.

11 49. Notice of breach is not required because Plaintiffs and the Class did not purchase their
12 automobiles directly from the Hyundai and Kia Defendants. Furthermore, on information and belief, the
13 Hyundai and Kia Defendants are already on notice by way of their knowledge of the issues, through
14 customer complaints, numerous complaints filed against it and/or others, internal investigations, and
15 individual letters and communications sent by consumers.

16 50. As a direct and proximate result of the Hyundai and Kia Defendants' breach of their
17 duties under California Law, Plaintiffs and the Class received goods whose dangerous condition
18 substantially impairs their value. Plaintiffs and the Class have been damaged by the diminished value,
19 malfunctioning, and non-use of their Class Vehicles.

20 51. Under Cal. Civ. Code §§ 1791.1(d) and 1794, Plaintiffs and the Class are entitled to
21 damages and other legal and equitable relief including, at their election, the purchase price of their Class
22 Vehicles or the overpayment or diminution in value of their Class Vehicles.

23 52. Under Cal. Civ. Code § 1794, Plaintiffs and the Class are entitled to costs and attorneys'
24 fees.

25 53. The Hyundai and Kia Defendants' breach of the implied warranty of merchantability was
26 a substantial factor in causing Plaintiffs' harm.

1 61. Defendants' active concealment of the dangers and risks posed by the Class Vehicles
2 and/or the defective Power-windows were material to Plaintiff and Class members. Defendants
3 misrepresented, concealed, and failed to disclose or remedy defects with the intention that consumers
4 would rely on the misrepresentations, concealments and omissions.

5 62. These acts were likely to mislead the public as to existing defects, and did in fact deceive
6 Plaintiffs, about material information. Had they known the truth, Plaintiffs and Class members who
7 purchased or leased the Class vehicles would not have purchased or leased them or would have paid
8 significantly less for them.

9 63. The Hyundai and Kia Defendants also violated the unfairness prong of § 17200 by
10 knowingly and intentionally concealing from Plaintiffs and the Class that the Class Vehicles suffer from
11 a design defect while simultaneously obtaining money from Plaintiff and Class members.

12 64. Defendants' failure to adequately investigate, disclose, and remedy, offend established
13 public policy because the harm it causes to consumers greatly outweighs any benefits associated with
14 those practices. The Hyundai and Kia Defendants' conduct has also impaired competition within the
15 automotive vehicles market and has prevented the Plaintiffs and the Class from making fully informed
16 decisions about whether to purchase or lease Class Vehicles with the defective Power-windows installed
17 in them or the price to pay to purchase or lease them.

18 65. The Hyundai and Kia Defendants violated the fraudulent prong of § 17200 because of the
19 misrepresentations and omissions they made in marketing the Class Vehicles as being equipped with
20 standard safety features including power window systems while failing to disclose that the Power-
21 windows have a potentially deadly defect. Defendants' active concealment of the dangers and risks
22 posed by the Class Vehicles or the defective Power-windows installed in them are likely to mislead the
23 public.

24 66. Plaintiffs and the Class have suffered injuries in fact, including the loss of money or
25 property, because of the Hyundai and Kia Defendants' unfair, unlawful, or deceptive practices. As set
26 forth above, each member of the Class, in purchasing or leasing Class Vehicles with the defective
27 Power-windows, relied on the misrepresentations or omissions of the Hyundai and Kia Defendants with
28

1 respect of the safety and reliability of the vehicles. Had Plaintiffs and the Class known the truth, they
2 would not have purchased or leased their vehicles, or not paid as much for them.

3 67. All the wrongful conduct alleged herein occurred and continues to occur in the conduct of
4 the Hyundai and Kia Defendants' businesses. The Hyundai and Kia Defendants' wrongful conduct is
5 part of a pattern or generalized course of conduct that is still ongoing.

6 68. As a direct and proximate result of the Hyundai and Kia Defendants' unfair and deceptive
7 practices, Plaintiffs and the Class have suffered and will continue to suffer actual damages.

8 69. Plaintiffs and the Class request that this Court enter such orders or judgments as may be
9 necessary to enjoin the Hyundai and Kia Defendants from continuing the unfair, unlawful, or deceptive
10 practices, as provided in Cal. Bus. & Prof. Code § 17203; and for such other relief requested herein.

11
12 **THIRD CAUSE OF ACTION**

13 **Violation of the Consumer Legal Remedies Act,**

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

15 70. Plaintiffs incorporate and reallege all preceding allegations as though fully set forth
16 herein.

17 71. Plaintiffs bring this claim on behalf of themselves and the members of the Class under
18 the laws of California against the Hyundai and Kia Defendants pursuant to the Consumer Legal
19 Remedies Act ("CLRA") Cal. Civ. Code §1750, *et seq.*

20 72. Plaintiffs and the Class are each a "consumer" within the meaning of Cal. Civ. Code §
21 1761(d).

22 73. The Class Vehicles are "goods" as defined in Cal. Civ. Code § 1761(a).

23 74. The Hyundai and Kia Defendants are "persons" as defined in Cal. Civ. Code § 1761(c).

24 75. The CLRA prohibits "unfair or deceptive acts or practices undertaken by any person in a
25 transaction intended to result or which results in the sale or lease of goods or services to any consumer."
26 Cal. Civ. Code § 1770(a).

27 76. The Hyundai and Kia Defendants have engaged in unfair or deceptive acts or practices
28 that violated Cal. Civ. Code § 1750, by representing that the Class Vehicles or the defective power-

1 windows installed in them have characteristics, uses, benefits, and qualities which they do not have;
2 representing that they are of a particular standard, quality, and grade when they are not; advertising them
3 with the intent not to sell or lease them as advertised; and representing that the subject of a transaction
4 involving them has been supplied in accordance with a previous representation when it has not.

5 77. In the course of business, the Hyundai and Kia Defendants failed to disclose and actively
6 concealed the dangers and risks posed by the Class Vehicles or the defective power-windows installed in
7 them as described herein and otherwise engaged in activities with a tendency or capacity to deceive.

8 78. The Hyundai and Kia Defendants also engaged in unlawful trade practices by
9 representing that the Class Vehicles or the defective power-windows installed in them have qualities
10 which they do not have, representing that the vehicles are of higher quality than they actually are,
11 advertising the Class Vehicles with the intent not to sell or lease them as advertised, and omitting
12 material facts while describing them.

13 79. The Hyundai and Kia Defendants are liable for engaging in unfair and deceptive acts or
14 practices in the conduct of trade or commerce in violation of the CLRA.

15 80. The Hyundai and Kia Defendants have known of the power window defect since at least
16 the time they were required to comply with FMVSS No. 118, which was the year 2007. The Hyundai
17 and Kia Defendants failed to disclose and actively concealed the dangers and risks posed by the Class
18 Vehicles or the defective power-windows installed in them.

19 81. The Hyundai and Kia Defendants engaged in unfair or deceptive business practices in
20 violation of the CLRA by failing to disclose and actively concealing known defects involving the failure
21 of the power-windows to stop and reverse, or otherwise account for an obstruction when operating, thus
22 putting at risk body parts and lives of passengers.

23 82. Defendants engaged in these acts of concealment in order to ensure that consumers would
24 purchase the Class Vehicles.

25 83. The Hyundai and Kia Defendants knew or should have known that their conduct violated
26 the CLRA.

27 84. The Hyundai and Kia Defendants made material statements about the safety and
28 reliability of the Class Vehicles or the defective power-windows installed in them that were either false

1 or misleading, such as representing the Class Vehicles to be “safe” and “reliable,” despite their
2 knowledge of the power window defect and failure to reasonably investigate.

3 85. The Hyundai and Kia Defendants concealed the dangers and risks posed by the Class
4 Vehicles or the defective power-windows installed in them and their tragic consequences and allowed
5 unsuspecting car purchasers to continue to buy or lease the Class Vehicles and to continue driving
6 highly dangerous vehicles.

7 86. The Hyundai and Kia Defendants owed the Plaintiffs and the Class a duty to disclose the
8 true safety and reliability risks of the Class Vehicles or the defective power-windows installed in them
9 because the Hyundai and Kia Defendants:

- 10 a. Possessed exclusive knowledge of the dangers and risks posed by the foregoing;
- 11 b. Intentionally concealed the dangers and risks from Plaintiffs and the Class; or
- 12 c. Made incomplete representations about the safety and reliability of the foregoing
13 generally, while purposefully withholding material facts from the Plaintiffs and the Class
14 that contradicted these representations.

15 87. The Class Vehicles or the defective power-windows installed in them pose an
16 unreasonable risk of death or serious bodily injury to the Class, passengers, other motorists, pedestrians,
17 and the public at large, because the defective Power-windows are inherently defective and dangerous in
18 that the defective power-windows fail to react safely to an obstruction of 100 newtons or greater – in
19 other words, the defective power windows can and have amputated body part extremities, and could or
20 have broken necks.

21 88. The Hyundai and Kia Defendants have also failed to promptly notify vehicle owners,
22 purchases, dealers, and NHTSA of the defective Class Vehicles or the defective power-windows
23 installed in them and failed to remedy the Power window defect. This is a further violation of the CLRA
24 by way of violating the TREAD Act, 49 U.S.C. § 30101, and its accompanying regulations.

25 89. The TREAD Act and its regulations requires manufacturers to disclose known vehicle
26 defects related to motor vehicle safety. 49 U.S.C. § 30118(c)(1) & (2).

27 90. The TREAD Act requires manufacturers to promptly notify vehicle owners, purchasers,
28 and dealers of the defect and remedy the defect. 49 U.S.C. § 30118(b)(2)(A) and (B).

1 91. The TREAD Act requires manufacturers to file a report with NHTSA within five
2 working days of discovering “a defect in a vehicle or item of equipment has been determined to be
3 safety related, or a noncompliance with a motor vehicle safety standard has been determined to exist.”
4 49 C.F.R. § 573.6(a) and (b). At a minimum, the report to NHTSA must include: the manufacturer’s
5 name; the identification of the vehicles or equipment containing the defect, including the make, line,
6 model year, and years of manufacturing; a description of the basis for determining the recall population;
7 how those vehicles differ from similar vehicles that the manufacturer excluded from the recall; and a
8 description of the defect. 49 C.F.R. § 276.6(b), (c)(1), (c)(2), & (c)(5).

9 92. The manufacturer must also promptly inform NHTSA regarding: the total number of
10 vehicles or equipment potentially containing the defect, the percentage of vehicles estimated to contain
11 the defect, a chronology of all principal events that were the basis for the determination that the defect
12 related to motor vehicle safety, including a summary of all warranty claims, field or service reports, and
13 other information, with its dates of receipt, and a description of the plan to remedy the defect. 49 C.F.R.
14 § 276.6(b) and (c).

15 93. The TREAD Act provides that any manufacturer who violates 49 U.S.C. § 30166 must
16 pay a civil penalty to the U.S. Government. The current penalty “is \$7,000 per violation per day,” and
17 the maximum penalty “for a related series of daily violations is \$17,350,000.” 49 C.F.R. § 578.6(c).

18 94. The Hyundai and Kia Defendants engaged in deceptive business practices prohibited by
19 the CLRA and Cal. Civ. Code § 1750, by failing to disclose and by actively concealing dangers and
20 risks posed by the defective Power-windows, by selling vehicles while violating the TREAD Act.

21 95. The Hyundai and Kia Defendants knew that the Class Vehicles or the defective power-
22 windows installed in them contained the power window defect that could cause death, serious injury,
23 and property damage, but the Hyundai and Kia Defendants failed for many years to inform NHTSA of
24 this defect.

25 96. The Hyundai and Kia Defendants’ unfair or deceptive acts or practices were likely to and
26 did in fact deceive reasonable consumers, including the Class members, about the true safety and
27 reliability of the Class Vehicles or the defective power-windows installed in them.

1 97. The value of the Class Vehicles has greatly diminished due to the acts and omissions of
2 the Hyundai and Kia Defendants. Now that the defects in the Hyundai and Kia Defendants' Class
3 Vehicles are known, the Class Vehicles are now worth significantly less than they otherwise would be.

4 98. The Hyundai and Kia Defendants' misrepresentations and failure to disclose material
5 information caused the Class ascertainable loss. If Plaintiffs and Class members had been aware of the
6 power window defect that existed in the Class Vehicles or the defective power-windows installed in
7 them and the Hyundai and Kia Defendants' complete disregard for safety, the Class members either
8 would have paid less for their vehicles or would not have purchased or leased them at all. Class
9 members did not receive the benefit of their bargain as a result of the Hyundai and Kia Defendants'
10 misconduct.

11 99. The Class risks irreparable injury because of the Hyundai and Kia Defendants' acts and
12 omissions in violation of the CLRA, and these violations present a continuing risk to the Class, as well
13 as to the general public. The Hyundai and Kia Defendants' unlawful acts and practices complained of
14 herein affect the public interest.

15 100. The recalls and repairs instituted by some of the Hyundai and Kia Defendants have not
16 been adequate. The recall is not an effective remedy and is not offered for all Class Vehicles and other
17 vehicles with defective Power-windows susceptible to the malfunctions described herein. Moreover,
18 The Hyundai and Kia Defendants' failure to comply with TREAD Act disclosure obligations continues
19 to pose a grave risk to the Class.

20 101. As a direct and proximate result of the Hyundai and Kia Defendants' violations of the
21 CLRA, the Class members have suffered injury-in-fact or actual damage. The Class currently own or
22 lease or within the class period have owned or leased Class Vehicles with defective power-windows
23 installed in them that are defective and inherently unsafe. The Class risk irreparable injury as a result of
24 the Hyundai and Kia Defendants' acts and omissions in violation of the CLRA, and these violations
25 present a continuing risk to the Class, as well as to the general public.

1 **FOURTH CAUSE OF ACTION**

2 **Fraudulent Concealment**

3 102. Plaintiffs incorporate and reallege all preceding allegations as though fully set forth
4 herein.

5 103. Plaintiffs allege this count on behalf of themselves individually, and the Class.

6 104. The Hyundai and Kia Defendants failed to disclose the defect in each of the Class
7 vehicles but instead represented that the vehicles were equipped with power window systems. Through
8 advertisements, and other marketing materials, Defendants consistently represented that their vehicles
9 were equipped with safe power window systems.

10 105. Any reasonable consumer would believe these representations to mean that the power
11 window systems were functional, not defective.

12 106. Defendants concealed and suppressed the fact that the Class Vehicles had a defect in the
13 power-windows since at least July 2008, when the power window defects were first attributed to injuries
14 and damage. Defendants failed to disclose and actively concealed the dangers and risks posed by the
15 Class Vehicles or the defective power-windows installed in them. This was a material fact about which
16 the Defendants had knowledge and that they concealed from Plaintiffs and Class members to mislead
17 them.

18 107. Plaintiffs and Class Members did not know this fact and could not have discovered it
19 through reasonably diligent investigation.

20 108. Defendants had a duty to disclose that the defect existed in the power-window systems
21 because 1) the Defendants had exclusive knowledge of the defects; 2) the Defendants actively concealed
22 the defects, including by not timely notifying NHTSA and consumers and by making partial
23 representations about the existence of power window systems that were misleading without the
24 disclosure of the fact that the Class Vehicles contained defects which made the power window systems
25 dangerous with the potential to cause death and great bodily injury.

26 109. When Plaintiffs bought or leased their respective Class Vehicles, they received no
27 information from the Hyundai and Kia Defendants regarding the defective and potentially dangerous
28 power-window systems. The failure to disclose the defect was consistent and pervasive. In advertising

1 and materials provided with each Class Vehicle the power window defect was uniformly concealed from
2 Plaintiffs and consumers.

3 110. Defendants intentionally concealed, suppressed and failed to disclose the power-window
4 systems defect in the Class Vehicles and the nature of risk that the power-window systems would cause
5 death or injury to person or property. The full and complete nature of the defect was concealed from
6 Plaintiffs, Class members, and the general public in order to protect their profits and to avoid recalls that
7 would hurt each brand's image and cost the Hyundai and Kia Defendants money. The Hyundai and Kia
8 Defendants concealed these facts at the expense of Plaintiffs and the Class.

9 111. Plaintiffs and the Class were unaware of these omitted material facts and would not have
10 acted as they did if they had known of the concealed or suppressed facts.

11 112. Had they been aware of the defective power-windows and the Defendants' disregard for
12 safety, Plaintiffs and the Class either would not have paid as much for their Class Vehicles or would not
13 have purchased or leased them at all.

14 113. Plaintiffs did not receive the benefit of their bargain as a result of the Hyundai and Kia
15 Defendants' fraudulent conduct.

16 114. Defendants' concealment and suppression of facts damaged Plaintiffs and the Class
17 because the vehicles diminished in value as a result of the Hyundai and Kia Defendants' concealment of,
18 failure to timely disclose, and/or misrepresentations concerning the serious power window defect in
19 many of Class Vehicles and the serious safety and quality issues caused by the Hyundai and Kia
20 Defendants' conduct.

21 115. The value of all Class members' vehicles has diminished as a result of the Hyundai and
22 Kia Defendants' fraudulent conduct in connection with the defective power-windows and made any
23 reasonable consumer reluctant to purchase any of the Class Vehicles, let alone pay what otherwise
24 would have been fair market value for the vehicles.

25 116. Accordingly, the Hyundai and Kia Defendants are liable to the Class for their damages in
26 an amount to be proven at trial, including, but not limited to, their lost benefit of the bargain or
27 overpayment for the Class Vehicles at the time of purchase, the diminished value of the defective
28

1 power-windows and the Class Vehicles, and/or the costs incurred in storing, maintaining or otherwise
2 disposing of the defective power-windows.

3 117. The Hyundai and Kia Defendants' acts were done maliciously, oppressively, deliberately,
4 with intent to defraud, and in reckless disregard of Plaintiffs' and the Class's rights and well-being and
5 with the aim of enriching the Hyundai and Kia Defendants. The Hyundai and Kia Defendants' conduct,
6 which exhibits the highest degree of reprehensibility, being intentional, continuous, placing others at risk
7 of death and injury, and effecting public safety, warrants an assessment of punitive damages in an
8 amount sufficient to deter such conduct in the future, which amount is to be determined according to
9 proof.

10 **FIFTH CAUSE OF ACTION**

11 **Unjust Enrichment**

12 118. Plaintiffs incorporate and reallege all preceding allegations as though fully set forth
13 herein.

14 119. Plaintiffs bring this claim against the Hyundai and Kia Defendants on behalf of
15 themselves and the members of the Class under the common law theory of unjust enrichment.

16 120. The Hyundai and Kia Defendants have received and retained a benefit from the Plaintiffs
17 and inequity has resulted.

18 121. The Hyundai and Kia Defendants benefitted through their unjust conduct, by selling
19 Class Vehicles with a concealed safety-and-reliability related defect, at a profit, for more than these
20 Class Vehicles were worth.

21 122. Plaintiffs overpaid for these Class Vehicles and defective components within or would
22 not have purchased these Class Vehicles at all, and who have been forced to pay other costs.

23 123. It is inequitable for the Hyundai and Kia Defendants to retain these benefits.

24 124. Plaintiffs do not have an adequate remedy at law.

25 125. As a result of the Hyundai and Kia Defendants' conduct, the amount of their unjust
26 enrichment should be disgorged, in an amount to be proven at trial.
27
28

1 **VIII. PRAYER FOR RELIEF**

2 1. Plaintiffs, for themselves and all others similarly situated, request the Court to enter
3 judgment against the Hyundai and Kia Defendants as follows:

- 4 a. An order certifying the proposed Class, designating Plaintiffs as the named
5 representatives of the Class, designating the undersigned as Class Counsel, and making
6 such further orders for the protection of Class members as the Court deems appropriate,
7 under Rule 23 of the Federal Rules of Civil Procedure, as discussed by *Ticconi v. Blue*
8 *Shield of Calif. Life & Health Ins. Co.*, 160 Cal. App. 4th 528 (2008);
- 9 b. A declaration that the power window systems in the Class Vehicles are defective;
- 10 c. An order enjoining the Defendants from further deceptive, fraudulent, unlawful and
11 unfair business practices, and such other injunctive relief that the Court deems just and
12 proper;
- 13 d. An award to Plaintiffs and Class Members of compensatory, exemplary, and punitive
14 remedies and damages and statutory penalties, including interest, in an amount to be
15 proven at trial;
- 16 e. An award to Plaintiffs and Class Members for the return of the purchase prices of the
17 Class Vehicles, with interest from the time it was paid, for the reimbursement of the
18 reasonable expenses occasioned by the sale, for damages, and for reasonable attorney
19 fees;
- 20 f. A Defendant-funded program, using transparent, consistent, and reasonable protocols,
21 under which out-of-pocket and loss-of-use expenses and damages claims associated with
22 the Defective power windows in Plaintiffs' and Class Members' Class Vehicles, can be
23 made and paid, such that the Hyundai and Kia Defendants, not the Class Members,
24 absorb the losses and expenses fairly traceable to the recalls of the vehicles and
25 correction of the defective power windows;
- 26 g. A declaration that the Hyundai and Kia Defendants must disgorge, for the benefit of
27 Plaintiff and Class Members, all or part of the ill-gotten profits they received from the
28

1 sale or lease of the Class Vehicles or make full restitution to Plaintiffs and Class
2 Members;

- 3 h. An award of attorneys’ fees and costs, as allowed by law;
- 4 i. An award of prejudgment and post judgment interest, as provided by law; and
- 5 j. Such other relief as may be appropriate under the circumstances.

6
7 **IX. DEMAND FOR JURY TRIAL**

8
9 **MLG, APLC**

10 Dated: October 29, 2019

11 By: *Jonathan Michaels*
Jonathan A. Michaels, Esq.

12 Jonathan A. Michaels, Esq. (SBN 180455)
 13 (jmichaels@mlgaplc.com)
 14 Kyle Gurwell, Esq. (SBN 289298)
 (kgurwell@mlgaplc.com)
 15 Ryan Jones, Esq. (SBN 301138)
 (rjones@mlgaplc.com)
 16 **MLG, APLC**
 17 151 Kalmus Dr., Suite A-102
 Costa Mesa, CA 92626
 18 Telephone: (949) 581-6900
 Facsimile: (949) 581-6908

19
20 Attorneys for Plaintiffs,
Zachary McCready, Brianne Schumpert

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Class Action Alleges 'Stop-and-Reverse' Function for Hyundai, Kia Automatic Windows Not Federally Compliant](#)
