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CLERK U.S. DISTRICT COURT
CENTRAL DIST. OF CALIF.
LOS ANGELES

BY _____

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

LINDA PALACIOS, SONIA
PALACIOS, and FERNANDO
PALACIOS, on behalf of themselves
and all others similarly situated,

Plaintiffs,

v.

HYUNDAI MOTOR AMERICA;

Defendant.

Case Number: SA013-00075- CJC
CANX

CLASS ACTION COMPLAINT

- (1) **Violations of California Consumer Legal Remedies Act**
- (2) **Violations of Unfair Business Practices Act**
- (3) **Breach of Implied Warranty**
- (4) **Breach of Written Warranty Under the Magnuson-Moss Warranty Act, 15 U.S.C. § 2301 et seq.**
- (5) **Breach of Express Warranty**

1 Plaintiffs Linda Palacios, Sonia Palacios, and Fernando Palacios (collectively
2 “Plaintiffs”) bring this action, on behalf of themselves and all others similarly
3 situated, against Defendant Hyundai Motor America (“Hyundai”), and allege as
4 follows:

5 **NATURE OF THE CASE**

6 1. The sunroof assembly installed in Hyundai Veloster 2012 and 2013
7 model year vehicles equipped with a panoramic sunroof (“Class Vehicles”) suffers
8 from one or more design and/or manufacturing defects that causes the sunroofs to
9 explode without warning (the “Exploding Sunroof Defect”). Although defects in
10 material, manufacturing, and workmanship are covered by Hyundai’s New Vehicle
11 Limited Warranty, Hyundai has failed to adequately repair the Exploding Sunroof
12 Defect under warranty.

13 2. Hyundai knows of the Exploding Sunroof Defect and knows that
14 consumers are not aware of the risk that their sunroofs could explode without
15 warning. Nevertheless, Hyundai refused to acknowledge that there was any
16 problem for over a year and has recently issued only a partial recall limited to 2012
17 Veloster vehicles manufactured from November 1, 2011 through April 17, 2012.
18 Hyundai has still not informed current owners and lessees of other Class Vehicles
19 about the Exploding Sunroof Defect, has not disclosed the Exploding Sunroof
20 Defect to purchasers and lessors of 2013 model Class Vehicles, and continues to
21 market and promote the 2013 model Class Vehicles as safe.

22 3. The Class Vehicles present a safety hazard and are unreasonably
23 dangerous to consumers. The Exploding Sunroof Defect can cause glass to fly
24 throughout the car at high speed and without warning, putting passengers at risk of
25 physical injury. The explosion and flying glass can also injure or startle the driver,
26 thereby contributing to car accidents, which can cause personal injury or death.

1 consumers in California and nationwide. Most, if not all, of the events complained
2 of below occurred in or emanated from Hyundai's corporate headquarters located in
3 Fountain Valley, California. Plaintiffs' counsel's Declaration, as required under
4 California Civil Code section 1780(d), is attached as Exhibit 1.

5 15. Venue is proper in this District under 28 U.S.C. § 1391 (a)-(c)
6 because, inter alia, substantial parts of the events or omissions giving rise to the
7 claim occurred in the District and/or a substantial part of property that is the subject
8 of the action is situated in the District.

9 **SUBSTANTIVE ALLEGATIONS**

10 16. Since at least 2011, Hyundai has designed, manufactured, distributed,
11 sold, and leased the Class Vehicles. Upon information and belief, it has sold,
12 directly or indirectly through dealers and other retail outlets, thousands of Class
13 Vehicles in California and nationwide.

14 17. The Class Vehicles come equipped with a panoramic sunroof
15 assembly, a premium option available as part of a package costing approximately
16 \$2,000.

17 18. Hyundai widely advertises the Class Vehicles as safe. For example, on
18 December 20, 2012, Hyundai's website touted that "We loaded Veloster with safety
19 inside and out."

20 19. Hyundai provides owners and lessees of Class Vehicles with a New
21 Vehicle Limited ("NVL") Warranty. The NVL Warranty states that Hyundai will
22 repair or replace, free of charge, any part that is defective in material or
23 workmanship under normal use for 5 years or 60,000 miles, whichever comes first.

24 20. The Exploding Sunroof Defect could cause the panoramic sunroof to
25 explode at any time, showering the car and its occupants with glass. Drivers and
26 passengers have no warning, putting them at serious risk of personal injury or
27 death.

1 21. Numerous consumer complaints concerning the Exploding Sunroof
2 Defect in Class Vehicles have been lodged with the National Highway Traffic
3 Safety Administration (“NHTSA”). One woman explained: “*All of the sudden*
4 *there was a loud bang like a gunshot, and I heard something raining down on my*
5 *car . . . I looked in the mirror and saw glass flying everywhere . . . The glass was in*
6 *my hair, down the back of my shirt and my pants.*” Numerous complaints
7 concerned explosions that occurred while the vehicles were in motion, including at
8 highway speeds, putting the drivers and passengers at risk of injury or collision and
9 endangering the drivers and passengers of other vehicles as well. These complaints
10 reflect the sudden, dangerous nature of the Exploding Sunroof Defect and
11 Hyundai’s refusal to honor its warranty or to take responsibility for the Exploding
12 Sunroof Defect. The complaints also demonstrate Hyundai’s awareness of the
13 defect and how potentially dangerous the defective condition is.

14 22. On or about December 20, 2012, the NHTSA reported that Hyundai is
15 recalling 2012 model year Veloster vehicles manufactured between November 1,
16 2011 and April 17, 2012 with panoramic sunroof assemblies because “the
17 panoramic glass panel may break while the vehicle is in motion leading to personal
18 injury or a vehicle crash.” The recall, however, does not apply to 2013 model year
19 Veloster vehicles or 2012 model year Veloster vehicles manufactured outside the
20 recall window.

21 23. Hyundai’s only purported “solution” to the problem is to replace the
22 exploded sunroof with an identical one. Hyundai offers customers no assurance
23 that the sunroof will not explode again, leaving customers and their passengers
24 potentially in danger every time they drive.

25 24. Because the Exploding Sunroof Defect is caused by defects in material
26 and/or workmanship, Hyundai is obligated to cover repairs to the panoramic
27 sunroof during the NVL Warranty period. Hyundai, however, refuses to adequately
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1 repair consumers' vehicles under the NVL Warranty. Until recently, Hyundai
2 refused to publicly acknowledge that the Exploding Sunroof Defect even existed.
3 Hyundai's recent recall still refuses to acknowledge the defect in 2013 model
4 Velosters and 2012 model Velosters manufactured before November 1, 2011 or
5 after April 17, 2012. Hyundai's refusal to honor the warranty harms the Plaintiffs
6 and Class members by forcing them to incur out-of-pocket costs on covered repairs
7 and by depriving them of the safe transportation they believed they had purchased.

8 25. Hyundai has long known that the Class vehicles have an Exploding
9 Sunroof Defect. Hyundai has exclusive access to information about the Exploding
10 Sunroof Defect through its dealerships, pre-release testing data, warranty data,
11 customer complaint data, and replacement part sales data, among other sources of
12 aggregate information about the problem. In contrast, the Exploding Sunroof
13 Defect was not known or reasonably discoverable by Plaintiffs and Class members
14 prior to purchase and without experiencing the defect first hand and exposing
15 themselves to an unreasonable safety risk.

16 26. Hyundai has actively concealed the Exploding Sunroof Defect from
17 consumers. Even when vehicle owners present their cars after the sunroof has
18 exploded, Hyundai's policy is to simply replace it with an identical, defective part,
19 act as if the problem had been solved, and continue concealing the Exploding
20 Sunroof Defect from prospective Veloster purchasers or lessees. Hyundai knew
21 that potential car buyers and lessees would deem the Exploding Sunroof Defect to
22 be material such that reasonable consumers who knew of the defect either would
23 have paid less for the Class Vehicles or would not have purchased or leased a Class
24 Vehicle at all.

25 27. Hyundai has a duty to disclose the Exploding Sunroof Defect and the
26 associated repair costs to Class Vehicles owners, among other reasons, because the
27 defect poses an unreasonable safety hazard; because Hyundai has exclusive
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1 knowledge or access to material facts about the Class Vehicles and their panoramic
2 sunroof assembly that are not known or reasonably discoverable by Plaintiffs and
3 Class Members; and because Hyundai has actively concealed the Exploding
4 Sunroof Defect from its customers.

5 28. As a result of Hyundai's practices, Plaintiffs and Class members
6 purchased vehicles they otherwise would not have purchased, paid more for those
7 vehicles than they would have paid, were subjected to an unreasonable risk to their
8 safety, and unnecessarily paid, and will continue to pay, excessive, unreasonable,
9 and unforeseeable repair costs as a result of the Exploding Sunroof Defect.

10 **PLAINTIFFS LINDA, SONIA, AND FERNANDO PALACIOS**

11 29. On or about October 19, 2012, Plaintiffs Fernando Palacios and Sonia
12 Palacios purchased a new 2013 Hyundai Veloster from Frank Smith Hyundai in
13 Pharr, Texas, for their mother, Plaintiff Linda Palacios. The vehicle came
14 equipped with the panoramic sunroom assembly. Hyundai did not inform the
15 Palacioses before their purchase that the Veloster's panoramic sunroof assembly
16 was defective or that the sunroof might explode without warning. Like all class
17 members, the Palacioses would not have purchased the vehicle had they known
18 these material facts, or would have paid less for it.

19 30. On or about December 4, 2012, the sunroof exploded while Linda
20 Palacios was parked. The explosion sent shattered glass all over the car, damaging
21 the seats. The force of the explosion was so great that it bent the metal frame
22 surrounding the sunroof assembly. By fortunate chance, Mrs. Palacios was not in
23 the car when the sunroof exploded.

24 31. Mrs. Palacios took the car to Frank Smith Hyundai for repair. At first,
25 the dealership denied that there was any known issue with the Veloster sunroof and
26 told her that the repair might not be covered under warranty. Later, the dealership
27 offered to replace the sunroof but only with an identical part, presumably
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1 containing the identical dangerous defect. The dealership could give Mrs. Palacios
2 no assurance that the sunroof would not explode again. The dealership did not offer
3 to repair the seats damaged by the exploding glass.

4 32. Mrs. Palacios reasonably feared driving in a vehicle whose sunroof
5 could explode at any time. She informed the dealership that she did not consider
6 the offered repair adequate.

7 33. As a result of the dealership's failure to offer an adequate repair, Mrs.
8 Palacios was deprived of the use of her vehicle.

9 **CLASS ACTION ALLEGATIONS**

10 34. Plaintiffs bring this lawsuit as a class action on behalf of themselves
11 and all others similarly situated as members of the proposed Class pursuant to
12 Federal Rules of Civil Procedure 23 (b)(3), (b)(1), and/or (b)(2). This action
13 satisfies the numerosity, commonality, typicality, adequacy, predominance, and
14 superiority requirements of those provisions, and is defined as follows:

15 All current and former owners or lessees in the United States
16 (including its territories and the District of Columbia) of a 2012 or
17 2013 Model Year Hyundai Veloster vehicle with a panoramic sunroof
18 assembly (the "Class").

19 35. Excluded from the Class are Hyundai; any affiliate, parent, or
20 subsidiary of Hyundai; any entity in which Hyundai has a controlling interest; any
21 officer or director of Hyundai; any successor or assign of Hyundai; and any Judge
22 to whom this case is assigned as well as his or her immediate family and staff.

23 36. Plaintiffs also reserve the right to amend the Class definition if
24 discovery and further investigation reveal that the Class should be expanded or
25 otherwise limited.

1 37. Ascertainability: The class definition is sufficiently objective such that
2 membership in the class can be readily determined by reference to objective
3 criteria, that being ownership or leasing of a Class Vehicle.

4 38. Numerosity: Members of the Class are so numerous that their
5 individual joinder herein is impracticable. Thousands of Class Vehicles have been
6 sold or leased in the United States. Class members may be notified of the pendency
7 of this action by mail, supplemented (if deemed necessary or appropriate by the
8 Court) by published notice.

9 39. Existence and predominance of common questions: Common
10 questions of law and fact exist as to all members of the Class and predominate over
11 questions affecting only individual Class Members. These common questions
12 include the following:

- 13 a. Whether Hyundai provided Plaintiffs and Class members with a
14 vehicle installed with a defective sunroof assembly;
- 15 b. Whether the fact that the sunroof assembly is defective would be
16 considered material by a reasonable consumer;
- 17 c. Whether Hyundai has a duty to disclose the Exploding Sunroof
18 Defect to Plaintiffs and other Class members;
- 19 d. Whether Hyundai has violated the Consumers Legal Remedies
20 Act, CAL. CIV. CODE § 1750 *et seq.*, as alleged in this complaint;
- 21 e. Whether Hyundai has engaged in unlawful, unfair, or fraudulent
22 business practices in violation of California Business and
23 Professions Code section 17200 *et seq.*, as alleged in this
24 complaint;
- 25 f. Whether Hyundai's refusal to adequately repair the Exploding
26 Sunroof Defect breached the express warranty;

- 1 g. Whether the replacement of the sunroof assembly with an
- 2 identical part, without addressing the defect that caused the
- 3 sunroof to explode, fulfills Hyundai's obligations under its
- 4 express warranty;
- 5 h. Whether Plaintiffs and the other Class members are entitled to
- 6 equitable relief, including but not limited to restitution or a
- 7 preliminary and/or permanent injunction;
- 8 i. Whether Plaintiffs and the other Class members are entitled to
- 9 damages and other monetary relief; and
- 10 j. Whether Hyundai breached the express warranty and implied
- 11 warranty of merchantability.

12 40. Typicality: Plaintiffs' claims are typical of the claims of the Class,

13 because, among other things, Plaintiffs purchased a Class Vehicle, which contains

14 the same defective sunroof assembly found in all other Class Vehicles.

15 41. Adequacy: Plaintiffs are adequate representatives of the Class because

16 their interests do not conflict with the interests of the members of the Class they

17 seek to represent. Plaintiffs have retained counsel competent and experienced in

18 complex class action litigation, and Plaintiffs intend to prosecute this action

19 vigorously. The interests of the members of the Class will be fairly and adequately

20 protected by Plaintiffs and their counsel.

21 42. Superiority: The class action is superior to other available means for

22 the fair and efficient adjudication of this dispute. The injury suffered by each Class

23 member, while meaningful on an individual basis, is not of such magnitude as to

24 make the prosecution of individual actions against Hyundai economically feasible.

25 Even if Class members themselves could afford such individualized litigation, it

26 would place an excessive and unnecessary burden on the court system. In addition

27 to the burden and expense of managing myriad actions arising from the Exploding

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1 Sunroof Defect, individualized litigation presents a potential for inconsistent or
2 contradictory judgments. Individualized litigation increases the delay and expense
3 to all parties and the court system presented by the legal and factual issues of the
4 case. By contrast, the class action device presents far fewer management
5 difficulties and provides the benefits of single adjudication, economy of scale, and
6 comprehensive supervision by a single court.

7 43. In the alternative, the Class may be certified under Rule 23(b)(1) and
8 23(b)(2) because:

- 9 a. The prosecution of separate actions by the individual members
10 of the Class would create a risk of inconsistent or varying
11 adjudication with respect to individual Class members which
12 would establish incompatible standards of conduct for Hyundai;
- 13 b. The prosecution of separate actions by individual Class
14 members would create a risk of adjudications with respect to
15 them which would, as a practical matter, be dispositive of the
16 interests of other Class members not parties to the adjudications,
17 or substantially impair or impede their ability to protect their
18 interests; and
- 19 c. Hyundai has acted or refused to act on grounds generally
20 applicable to the Class, thereby making appropriate final and
21 injunctive relief with respect to the members of the Class as a
22 whole.

23 **FIRST CAUSE OF ACTION**
24 **(Violation of the Consumers Legal Remedies Act,**
25 **CAL. CIV. CODE § 1750, et seq.)**

26 44. On behalf of themselves and all others similarly situated, Plaintiffs re-
27 allege as if fully set forth, each and every allegation set forth herein.

28 45. Hyundai is a "person" under CAL. CIV. CODE §1761(c).

1 46. Plaintiffs and the other Class members are “consumers” under CAL.
2 CIV. CODE §1761(d).

3 47. Plaintiffs and the other Class members engaged in “transactions” under
4 CAL. CIV. CODE §1761(e), including the purchase or lease of Class Vehicles and the
5 presentation of Class Vehicles for repair or replacement of the sunroof assembly to
6 Hyundai dealerships.

7 48. As set forth herein, Hyundai’s acts, policies, and practices undertaken
8 in transactions intended to result and which did result in the sale or lease of Class
9 Vehicles, violate sections 1770(a)(5), (a)(7), (a)(9), (a)(14), and (a)(16) of the
10 CLRA in that: (a) Hyundai represents that its goods have sponsorship, approval,
11 characteristics, uses, or benefits which they do not have; (b) Hyundai represents
12 that its goods are of a particular standard, quality, or grade, but are of another; (c)
13 Hyundai advertises its goods with intent not to sell them as advertised; and (e)
14 Hyundai represents that its goods have been supplied in accordance with a previous
15 representation when they have not.

16 49. The existence of the Exploding Sunroof Defect is a material fact.

17 50. Plaintiffs and other Class members were unaware of the defective
18 sunroof assembly when they purchased the Class Vehicles. Consumers value
19 reliability and dependability of automobiles and automobile parts, especially
20 concerning vital safety issues such as the dangerous sunroof assembly in the Class
21 Vehicles. Had they known that the sunroof assembly was defective, Plaintiffs and
22 other Class members would not have purchased or leased the Class Vehicles, or
23 would have done so at lower prices.

24 51. Reasonable consumers expect, among other things:

25 a. That new vehicles, including Class Vehicles, would be equipped
26 with safe and reliable parts and would not be sold with
27 undisclosed safety defects;

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- 1 b. That new vehicles, including Class Vehicles, would be
- 2 manufactured in a manner not to cause sudden spontaneous
- 3 explosions of glass;
- 4 c. That new vehicles, including Class Vehicles, would function
- 5 properly for the duration of the warranty and that defects will be
- 6 covered under the warranty.

7 52. Hyundai had a duty to disclose the sunroof assembly defect in the
8 Class Vehicles for various reasons, including that:

- 9 a. The existence of the defect poses an unreasonable risk to the
- 10 safety of the Plaintiffs and other Class members;
- 11 b. The defect's existence is contrary to Hyundai's representations
- 12 and consumers' expectations;
- 13 c. Hyundai's concealment of the defect and/or Hyundai's failure to
- 14 disclose the defect was likely to deceive reasonable consumers;
- 15 d. Hyundai intentionally concealed the defect with the intent to
- 16 defraud consumers;
- 17 e. Hyundai's concealment of the defect harmed the Plaintiffs and
- 18 other Class members; and
- 19 f. Hyundai never intended to fulfill its warranty obligation to
- 20 adequately repair the defect in the sunroof assembly or the
- 21 damage caused thereby.

22 53. In addition, Hyundai was under a duty to Plaintiffs and the Class to
23 disclose the defective nature of the Class Vehicles:

- 24 a. Hyundai was in a superior position to know the true state of
- 25 facts about the safety defect and associated repair costs in the
- 26 Class Vehicles;

1 b. Plaintiffs and the Class Members could not reasonably have
2 been expected to learn or discover that the Class Vehicles had a
3 dangerous safety defect until after they purchased the Class
4 Vehicles; and

5 c. Hyundai knew that Plaintiffs and the Class Members could not
6 reasonably have been expected to learn or discover the safety
7 defect and the associated damages that it causes.

8 54. In failing to disclose the Exploding Sunroof Defect and the associated
9 repair costs, Hyundai has knowingly and intentionally concealed material facts and
10 breached its duty not to do so.

11 55. The facts concealed or not disclosed by Hyundai to Plaintiffs and the
12 Class are material in that a reasonable consumer would have considered them to be
13 important in deciding whether to purchase Defendant's Class Vehicles or pay a
14 lesser price. Had Plaintiffs and the Class known the defective nature of the Class
15 Vehicles, they would not have purchased the Class Vehicle or would have paid less
16 for it.

17 56. As a result of Hyundai's practices, Plaintiffs and the other Class
18 members have suffered harm.

19 57. Pursuant to the provisions of CAL. CIV. CODE § 1780, Plaintiffs seek an
20 order enjoining Hyundai from the unlawful practices described herein, a declaration
21 that Hyundai's conduct violates the CLRA, and attorneys' fees and costs of
22 litigation.

23 58. Plaintiffs have provided Hyundai with notice of its alleged violations
24 of the CLRA pursuant to California Civil Code § 1782(a). If, within 30 days of the
25 date of the notification letter, Defendant fails to provide appropriate relief for its
26 violation of the CLRA, Plaintiffs will amend this Complaint to seek monetary,
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1 compensatory, and punitive damages, in addition to the injunctive and equitable
2 relief that Plaintiffs seek now.

3 **SECOND CAUSE OF ACTION**

4 **(For unlawful, unfair, and fraudulent business practices under**
5 **California Business and Professions Code § 17200 et seq.)**

6 59. Plaintiffs, on behalf of themselves and all others similarly situated, re-
7 allege, as if fully set forth, each and every allegation set forth herein.

8 60. Hyundai's acts and practices, as alleged in this complaint, constitute
9 unlawful, unfair and/or fraudulent business practices, in violation of the Unfair
10 Competition Law, CAL. BUS. & PROF. CODE § 17200, et seq.

11 61. The business practices engaged in by Hyundai that violate the Unfair
12 Competition Law include failing to disclose at the point of sale, the point of repair,
13 or otherwise, that the sunroof assembly is defective.

14 62. Hyundai engaged in unlawful business practices by violating the
15 Consumer Legal Remedies Act, CAL. CIV. CODE § 1750 et seq.; the Magnuson-
16 Moss Warranty Act, U. S.C. § 2301 et seq.; and by engaging in conduct, as alleged
17 herein, that breaches the express and implied warranties.

- 18 63. Hyundai engaged in unfair business practices by, among other things:
 - 19 a. Engaging in conduct that is immoral, unethical, oppressive,
 - 20 unscrupulous, or substantially injurious to Plaintiffs and other
 - 21 members of the Class;
 - 22 b. Engaging in conduct that undermines or violates the stated
 - 23 policies underlying the CLRA and the Magnuson-Moss
 - 24 Warranty Act, each of which seeks to protect consumers against
 - 25 unfair and sharp business practices and to promote a basic level
 - 26 of honesty and reliability in the marketplace; and
 - 27 c. Engaging in conduct that causes a substantial injury to
 - 28 consumers, not outweighed by any countervailing benefits to

1 consumers or to competition, which the consumers could not
2 have reasonably avoided.

3 64. Hyundai engaged in fraudulent business practices by engaging in
4 conduct that was and is likely to deceive consumers acting reasonably under the
5 circumstances.

6 65. As a direct and proximate result of Hyundai's unfair and fraudulent
7 business practices as alleged herein, Plaintiffs suffered injury in fact and lost money
8 or property, in that they purchased a vehicle they otherwise would not have
9 purchased, paid for sunroof assembly diagnoses, repairs, and replacements, and are
10 left with Class Vehicles of diminished value and utility because of the defective
11 sunroof assembly. Meanwhile, Hyundai has sold and leased more Class Vehicles
12 and sunroof assembly parts than it otherwise could have and charged inflated prices
13 for Class Vehicles, unjustly enriching itself thereby.

14 66. Plaintiffs and Class members are entitled to equitable relief including
15 restitution of all fees, restitutionary disgorgement of all profits accruing to Hyundai
16 because of its unfair, fraudulent, and deceptive practices, attorneys' fees and costs,
17 declaratory relief, and a permanent injunction enjoining Hyundai from its unfair,
18 fraudulent, and deceitful activity.

19
20 **THIRD CAUSE OF ACTION**
21 **(For Breach of Written Warranty Under the Magnuson-Moss**
22 **Warranty Act, 15 U.S.C. § 2301 et seq.)**

23 67. Plaintiffs, on behalf of themselves and all others similarly situated, re-
24 alleges, as if fully set forth, each and every allegation set forth herein.

25 68. Plaintiffs and the other Class members are "consumers" within the
26 meaning of the Magnuson-Moss Warranty Act, 15 U.S.C. § 2301(3).

27 69. Hyundai is a "supplier" and "warrantor" within the meaning of
28 sections 2301(4)-(5).

1 70. The Class Vehicles are “consumer products” within the meaning of
2 section 2301(1).

3 71. Hyundai’s express warranty is a “written warranty” within the
4 meaning of section 2301(6).

5 72. Hyundai breached the express warranty by:

- 6 a. Extending a 5 year/60,000 mile New Vehicle Limited Warranty
7 with the purchase or lease of the Class Vehicles, thereby
8 warranting to repair or replace any part defective in material or
9 workmanship at no cost to the owner or lessee;
- 10 b. Selling and leasing Class Vehicles with sunroof assembly that
11 were defective in material and workmanship, requiring repair or
12 replacement within the warranty period; and
- 13 c. Refusing to honor the express warranty by adequately repairing
14 the sunroof assembly and instead charging for repair and
15 replacement parts or replacing the sunroof assembly only with
16 an identically defective part.

17 73. Hyundai’s breach of the express warranty has deprived the Plaintiffs
18 and the other Class members of the benefit of their bargain.

19 74. The amount in controversy of the Plaintiffs’ individual claims meet or
20 exceeds the sum or value of \$25. In addition, the amount in controversy meets or
21 exceeds the sum or value of \$50,000 (exclusive of interests and costs) computed on
22 the basis of all claims to be determined in this suit.

23 75. Hyundai has been afforded a reasonable opportunity to cure its breach
24 of written warranty, including when Plaintiffs and other Class members brought
25 their vehicles in for diagnoses and repair of their sunroof assemblies.

26 76. As a direct and proximate cause of Hyundai’s breach of written
27 warranty, Plaintiffs and Class members sustained damages and other losses in an
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1 amount to be determined at trial. Hyundai's conduct damaged Plaintiffs and Class
2 members, who are entitled to recover actual damages, consequential damages,
3 specific performance, diminution in value, costs, attorneys' fees, rescission, and/or
4 other relief as appropriate.

5
6 **FOURTH CAUSE OF ACTION**
7 **(For Breach of Express Warranty)**

8 77. Plaintiffs, on behalf of themselves and all others similarly situated, re-
9 allege, as if fully set forth, each and every allegation set forth herein.

10 78. Hyundai provided all purchasers and lessees of the Class Vehicles with
11 the express warranty described herein, which became a material part of the bargain.

12 79. The sunroof assembly and its component parts were manufactured
13 and/or installed by Hyundai in the Class Vehicles and are covered by the express
14 warranty.

15 80. Hyundai breached the express warranty by:

- 16 a. Extending a 5 year/60,000 mile New Vehicle Limited Warranty
17 with the purchase or lease of the Class Vehicles, thereby
18 warranting to repair or replace any part defective in material or
19 workmanship at no cost to the owner or lessee;
- 20 b. Selling and leasing Class Vehicles with sunroof assemblies that
21 were defective in material and workmanship, requiring repair or
22 replacement within the warranty period; and
- 23 c. Refusing to honor the express warranty by adequately repairing
24 the sunroof assembly and instead charging for repair and
25 replacement parts or replacing the sunroof assembly only with
26 an identically defective part.

27 81. Plaintiffs notified Hyundai of the breach within a reasonable time
28 and/or was not required to do so because affording Hyundai a reasonable

1 opportunity to cure its breach of written warranty would have been futile. Hyundai
2 was also on notice of the defect from the complaints and service requests it received
3 from Class members, from repairs and/or replacements of the sunroof assemblies,
4 complaints to the NHTSA, and through its own maintenance records and other
5 internal data.

6 82. As a direct and proximate cause of Hyundai's breach, Plaintiffs and
7 the other Class members have suffered damages and continue to suffer damages,
8 including economic damages at the point of sale or lease, that is, the difference
9 between the value of the vehicle as promised and the value of the vehicle as
10 delivered. Additionally, Plaintiffs and the other Class members either have
11 incurred or will incur economic damages at the point of repair in the form of the
12 cost of repair.

13 83. Plaintiffs and the other Class members are entitled to legal and
14 equitable relief against Hyundai, including actual damages, consequential damages,
15 specific performance, rescission, attorneys' fees, costs of suit, and other relief as
16 appropriate.

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18 **FIFTH CAUSE OF ACTION**
19 **(For Breach of Implied Warranty)**

20 84. Plaintiffs, on behalf of themselves and all others similarly situated, re-
21 allege, as if fully set forth, each and every allegation set forth herein.

22 85. Hyundai was at all relevant times the manufacturer, distributor,
23 warrantor, and/or seller of the Class Vehicles. Defendant knew or had reason to
24 know of the specific use for which the Class Vehicles were purchased.

25 86. Hyundai provided Plaintiffs and Class Members with an implied
26 warranty that the Class Vehicles and any parts thereof are merchantable and fit for
27 the ordinary purposes for which they were sold. However, the Class Vehicles are
28 not fit for their ordinary purpose of providing reasonably reliable and safe

1 transportation because the Class Vehicles have a defect in the sunroof assembly that
2 can put the lives of its occupants and other drivers who share the road with them at
3 risk.

4 87. Hyundai impliedly warranted that the Class Vehicles were of
5 merchantable quality and fit for such use. This implied warranty included, among
6 other things, a warranty that the Class Vehicles and their sunroof assemblies would
7 be fit for their intended use while the Class Vehicles were being operated.

8 88. Contrary to the applicable implied warranties, the Class Vehicles and
9 their sunroof assemblies at time of sale and thereafter were not fit for their ordinary
10 and intended purpose of providing Plaintiffs and the Class Members with reliable
11 and safe transportation. Instead, the Class Vehicles are defective, including but not
12 limited to the Class Vehicles having a defect in their sunroof assemblies.

13 89. Hyundai's actions, as complained of herein, breached the implied
14 warranty that the Class Vehicles were of merchantable quality and fit for such use.

15 **PRAYER FOR RELIEF**

16 WHEREFORE, Plaintiffs, on Plaintiffs' own behalf and on behalf of the
17 Class, prays for judgment as follows:

- 18 a. For an order certifying the Class and appointing Plaintiffs and
19 their counsel to represent the Class;
- 20 b. For a declaration that Defendant is financially responsible for
21 notifying all Class Members about the defective nature of the
22 Class Vehicles and the Exploding Sunroof Defect;
- 23 c. For an order awarding Plaintiffs and the members of the Class
24 actual damages, consequential damages, specific performance,
25 and/or rescission, except that for now, Plaintiffs seek only
26 equitable and injunctive relief with respect to their claims under
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California's Consumer Legal Remedies Act, California Civil Code section 1750 *et seq.*;

- d. For an order awarding Plaintiffs and the members of the Class restitution, or other equitable relief as the Court deems proper;
- e. For an order enjoining Hyundai from continuing to engage in unlawful business practices as alleged herein;
- f. For an order awarding Plaintiffs and the members of the Class pre-judgment and post-judgment interest;
- g. For an order awarding Plaintiffs and the members of the Class reasonable attorneys' fees and costs of suit, including expert witness fees, as allowed by law;
- h. For an order awarding Plaintiffs and the members of the Class reasonable attorneys' fees and costs of suit, including expert witness fees, pursuant to California Code of Civil Procedure § 1021.5, the common fund theory, or any other applicable statute, theory, or contract;
- i. For an order awarding such other and further relief as this Court may deem just and proper.

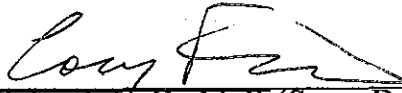
DEMAND FOR JURY TRIAL

Plaintiffs demand a trial by jury on all claims so triable.

Dated: January 11, 2013

Respectfully submitted,

CADDELL & CHAPMAN

By: 

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Attorneys for Plaintiffs

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DECLARATION OF CORY S. FEIN

1 I, Cory S. Fein, declare:

2
3 1. I am admitted, in good standing, to practice as an attorney in the State
4 of California. All of the matters set forth herein are within my personal knowledge,
5 except those matters that are stated to be upon information and belief. As to such
6 matters, I believe them to be true.
7

8 2. Pursuant to CAL. CIV. CODE § 1780(d), this Declaration is submitted in
9 support of Plaintiff's selection of forum for trial of Plaintiff's cause of action
10 alleging violation of California's Consumer Legal Remedies Act.
11

12 3. On information and belief, Defendant Hyundai Motor America
13 ("Hyundai") is a California corporation with its principal place of business in
14 Fountain Valley, Orange County, California.
15


16 4. Hyundai, through its business of distributing, selling, and leasing
17 vehicles, has established sufficient contacts in this district such that personal
18 jurisdiction is appropriate. Hyundai is deemed to reside in this district pursuant to
19 28 U.S.C. § 1391(a).
20

21 5. In addition, a substantial part of the events or omissions giving rise to
22 Plaintiff's claims and a substantial part of the property that is the subject of this
23 action are in this district. Accordingly, venue is proper in this Court pursuant to 28
24 U.S.C. § 1391(a).
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6. Based on the facts set forth herein, this Court is a proper venue for the prosecution of Plaintiff's cause of action alleging violation of California's Consumer Legal Remedies Act. *See* CAL. CIV. CODE § 1780(d).

I declare under penalty of perjury under the laws of the State of California and the United States of America that the foregoing is true and correct and that this declaration was executed by me on this 11th day of January, 2013, at Houston, Texas.


Cory S. Fein

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

NOTICE OF ASSIGNMENT TO UNITED STATES MAGISTRATE JUDGE FOR DISCOVERY

This case has been assigned to District Judge Cormac J. Carney and the assigned discovery Magistrate Judge is Arthur Nakazato.

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

SACV13- 75 CJC (ANx)

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

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 St., Rm. G-8
Los Angeles, CA 90012

Southern Division
411 West Fourth St., Rm. 1-053
Santa Ana, CA 92701-4516

Eastern Division
3470 Twelfth St., Rm. 134
Riverside, CA 92501

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

AO 440 (Rev. 06/12) Summons in a Civil Action (Page 2)

Civil Action No. _____

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____
was received by me on *(date)* _____.

I personally served the summons on the individual at *(place)* _____
_____ on *(date)* _____; or

I left the summons at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____, and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* _____, who is
designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____; or

I returned the summons unexecuted because _____; or

Other *(specify)*: _____

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ 0.00.

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

VIII(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): _____

VIII(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): _____

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.

IX. VENUE: (When completing the following information, use an additional sheet if necessary.)

(a) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which EACH named plaintiff resides.

Check here if the government, its agencies or employees is a named plaintiff. If this box is checked, go to item (b).

County in this District:*	California County outside of this District; State, if other than California; or Foreign Country
	Linda Palacios - Texas Sonia Palacios - Texas Fernando Palacios - Texas

(b) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which EACH named defendant resides.

Check here if the government, its agencies or employees is a named defendant. If this box is checked, go to item (c).

County in this District:*	California County outside of this District; State, if other than California; or Foreign Country
Orange	

(c) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which EACH claim arose.

Note: In land condemnation cases, use the location of the tract of land involved.

County in this District:*	California County outside of this District; State, if other than California; or Foreign Country
Orange	

* Los Angeles, Orange, San Bernardino, Riverside, Ventura, Santa Barbara, or San Luis Obispo Counties

Note: In land condemnation cases, use the location of the tract of land involved

X. SIGNATURE OF ATTORNEY (OR PRO PER):

Date January 11, 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. (g))