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CENTRAL DIST. OF CALIF.  
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**UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA**

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**SOUTHERN DIVISION**

15 JEREMY WILTON, Individually and  
on behalf of all others similarly  
16 situated,

17

Plaintiff,

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v.

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KIA MOTORS AMERICA, INC., a  
domestic corporation, HYUNDAI  
20 MOTOR AMERICA, INC., a domestic  
corporation,

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Defendants.

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CASE NO.: SACV12 - 01917 JVS (ANx)

CLASS ACTION

**COMPLAINT FOR DAMAGES AND  
EQUITABLE RELIEF**

JURY TRIAL DEMANDED

1 Plaintiff Jeremy Wilton, through his undersigned counsel, files this Class  
2 Action Complaint for violation of California law, and the federal Magnuson-Moss  
3 Warranty Act, 15 U.S.C. § 2301, *et seq.* (the “MMWA”), for himself and all others  
4 similarly situated against Kia Motors America, Inc. (“Kia”) and Hyundai Motor  
5 America, Inc. (“Hyundai”) (collectively “Defendants”). Plaintiff alleges, on  
6 information and belief, except for information based on personal knowledge, which  
7 allegations are likely to have evidentiary support after further investigation and  
8 discovery, as follows:

9 **NATURE OF THE ACTION**

10 1. Defendants market and sell numerous models of vehicles in the United  
11 States, including the following 2011 through 2013 models: 2013 Hyundai Accent,  
12 Azera, Elantra, Genesis, Santa Fe, Tucson and Veloster; 2013 Kia Rio, Sorento,  
13 Soul and Sportage; 2012 Hyundai Accent, Azera, Elantra, Genesis, Sonata, Tucson  
14 and Veloster; 2012 Kia Optima hybrid, Rio, Sorento, Soul and Sportage; 2011  
15 Hyundai Elantra and Sonata hybrid; and 2011 Kia Optima hybrid (the “Subject  
16 Vehicles”).

17 2. Over the past two years, Defendants have uniformly represented in  
18 product advertising that each of the Subject Vehicles will obtain a standard mile  
19 per gallon range. However, based on a federal government investigation spawned  
20 by many consumer complaints, both Defendants have recently admitted that the  
21 calculations for these ranges were miscalculated and uniformly wrong. This is  
22 material to consumers, since as stated by Gina McCarthy of the U.S.  
23 Environmental Protection Agency (“EPA”): “Consumers rely on the window  
24 sticker to help make informed choices about the cars they buy.”

25 3. According to the EPA, this is not a situation where the company  
26 complied with EPA testing procedures in accordance with regulations promulgated  
27 by the government, but rather admittedly failed to comply with such procedures  
28 and regulations. This action does not seek to alter or amend Defendants’

1 obligations for providing correct mileage calculation statements, which Defendants  
2 admittedly did not do. These representations were made in the Subject Vehicles'  
3 advertising, including brochures, billboards, and publicly disseminated  
4 commercials.

5 4. These false representations are violations of California law and the  
6 MMWA.

7 5. Defendants engaged in an extensive advertising campaign emanating  
8 from California and taking place throughout the United States and Canada. Part of  
9 the goal of this advertising campaign was to convince consumers that many Subject  
10 Vehicles achieved gas mileage in the 40 mile per gallon range, which is a very  
11 important threshold for marketing purposes. While the differences vary, in almost  
12 all the circumstances in question as a result of the downward adjustment the  
13 vehicles will not reach that level -- a fact that was and is material to Plaintiff and  
14 the reasonable consumer who purchased or leased at least one of the Subject  
15 Vehicles.

16 6. Because of this deceptive advertising campaign, and the claims made  
17 therein, Defendants have charged a price premium for the Subject Vehicles and/or  
18 increased demand therefor. While Defendants have attempted to address this  
19 admitted problem by offering consumers debit cards, they either know or  
20 reasonably should know what they are offering will not reimburse consumers for  
21 their actual out of pocket losses as the debit card is only for certain mileage  
22 differences, requires them to visit their car dealer for "verification" purposes, is not  
23 in cash such that they can count on the entire amount not being used, and fails to  
24 provide compensation for the fact that many consumers, such as Plaintiff, would  
25 not have bought or leased these vehicles at the prices they did if the true facts had  
26 been timely disclosed.

27 7. This action is brought by Plaintiff on behalf of a class comprising all  
28 similarly situated consumers who purchased or leased one or more of the Subject

1 Vehicles other than for resale or distribution and seeks to halt the use of a “refund”  
2 program that does not fully compensate consumers for their losses and does not  
3 operate as a release of claims, or at a minimum ensures it is an offset against actual  
4 losses, as well as to correct the misperception that such false and deceptive  
5 advertising has created in the minds of consumers and obtain full redress for those  
6 who purchased or leased one or more Subject Vehicles.

### 7 JURISDICTION AND VENUE

8 8. This Court has jurisdiction over the subject matter presented by this  
9 Complaint because it is a class action arising under 28 U.S.C. § 1332(d), which,  
10 under the Class Action Fairness Act of 2005 (“CAFA”), Pub. L. No. 109-2, 119  
11 Stat. 4 (2005), explicitly provides for the original jurisdiction of the federal courts  
12 of any class action in which any member of the class is a citizen of a state different  
13 from any defendant, and in which the matter in controversy exceeds in the  
14 aggregate the sum of \$5,000,000, exclusive of interest and costs. Plaintiff allege  
15 that the total claims of individual class members are in excess of \$5,000,000 in the  
16 aggregate, exclusive of interest and costs, as required by 28 U.S.C. § 1332(d)(2)  
17 and (5). Plaintiff Jeremy Wilton is a citizen of the State of Washington, whereas  
18 Defendants can be considered citizens of California. Therefore, diversity of  
19 citizenship exists under CAFA as required by 28 U.S.C. § 1332(d)(2)(A). Plaintiff  
20 alleges that the total number of members of each of the proposed class is greater  
21 than 100, under 28 U.S.C. § 1332(d)(5)(B).

22 9. Venue in this District is proper under 28 U.S.C. § 1391(b) because  
23 Defendants’ principal places of business and corporate headquarters that are the  
24 nerve center of their North American operations are located in this District and  
25 Division, both conduct business within, may be found in, and are subject to  
26 personal jurisdiction in this District and Division.

### 27 PARTIES

28 10. On personal knowledge, Plaintiff Jeremy Wilton is an individual

1 consumer over the age of eighteen. At all relevant times, he resided in Snohomish  
2 County, Washington. Plaintiff Wilton purchased a 2012 Kia Rio on or about  
3 January 28, 2012. Plaintiff was exposed to Defendants' false and deceptive  
4 advertising claims as detailed below. Based on spiraling gas prices a substantial  
5 factor in his decision to purchase his vehicle was the representation it would  
6 achieve 40 miles per gallon. He could never achieve that level. Plaintiff Wilton  
7 believes he paid a price premium for his vehicle based on the claim it would  
8 achieve over 40 miles per gallon, and would not have paid a price premium, if he  
9 would have purchased this vehicle at all, had the true facts been disclosed to him.  
10 Plaintiff thus has standing to assert all of the claims set forth as he suffered injury in  
11 fact and a loss of money or property as a result of Defendants' conduct.

12 11. Defendant Kia Motors America, Inc. is a domestic corporation whose  
13 corporate offices and North American headquarters are at 111 Peters Canyon Road,  
14 Irvine, California 92606. Defendant's primary officers and directors are located in  
15 this District and its principal place of business and operations are in this District.  
16 For purposes of diversity jurisdiction, based on its substantial corporate presence  
17 and officers and directors located here, Defendant can be considered a citizen of  
18 California.

19 12. Defendant Hyundai Motor America is a domestic corporation whose  
20 corporate headquarters for North America are located at 10550 Talbert Ave.,  
21 Fountain Valley, California 92708. Defendant's primary officers and directors are  
22 located in this District and its principal place of business and operations are in this  
23 District. For purposes of diversity jurisdiction, based on its substantial corporate  
24 presence and officers and directors located here, Defendant can be considered a  
25 citizen of California. Hyundai has a controlling 34 percent ownership interest stake  
26 in Kia and the companies share the same chairman, Mong-Koo Chung and the  
27 same testing facilities. The misrepresented miles per gallon figures were based on  
28 testing done at the Hyundai testing facilities. Pursuant to the above Defendant

1 Hyundai Motor America and Defendant Kia Motors America, Inc. are jointly and  
 2 severally liable for the acts and omissions alleged herein.

3 13. Defendants and their subsidiaries, affiliates, and other related entities,  
 4 and their respective employees were the agents, servants and employees of  
 5 Defendants, and each was acting within the purpose and scope of that agency and  
 6 employment.

7 14. Whenever reference is made to any act by Defendants or their  
 8 subsidiaries, affiliates, and other related entities, such allegation shall be deemed to  
 9 mean that the principals, officers, directors, employees, agents, and/or  
 10 representatives of Defendants committed, knew of, performed, authorized, ratified  
 11 and/or directed that act or transaction for Defendant while engaged in the scope of  
 12 their duties.

13 **FACTUAL ALLEGATIONS**

14 15. On November 2, 2012, the EPA announced the results of an  
 15 investigation into allegations that certain 2011-2013 model vehicles manufactured  
 16 by Hyundai and Kia uniformly overstated the estimated gas mileage. The EPA  
 17 found the gas mileage was overstated in 13 Hyundai and Kia models, with some  
 18 models overstating the mileage by as much as 6 mpg.

19 16. The seven Hyundai models and six Kia models affected by the EPA  
 20 investigation and their mpg discrepancies (“Subject Vehicles”) are identified in the  
 21 table below:

22  
 23 **Hyundai - Kia 2013 Model Year Fuel Economy Label Changes**

Manuf	Model	Type	City FE (MPG)			Highway FE (MPG)		
			old	new	change	old	new	change
Hyundai	Accent	Automatic	30	28	-2	40	37	-3
		Manual	30	28	-2	40	37	-3
	Azera	3.3L Automatic	20	20	0	30	29	-1

1	Elantra	1.8 L Automatic	29	28	-1	40	38	-2
2		1.8 L Manual	29	28	-1	40	38	-2
3		1.8 L Blue Automatic	30	28	-2	40	38	-2
4		1.8 L GT Automatic	28	27	-1	39	37	-2
5		1.8 L GT Manual	27	26	-1	39	37	-2
6		Elantra Coupe Automatic	28	27	-1	39	37	-2
7		Elantra Coupe Manual	28	28	-1	40	38	-2
8								
9	Genesis	5.0 L R-Spec Automatic	16	16	0	25	25	0
10		3.8 L Automatic	19	18	-1	29	28	-1
11								
12	Santa Fe	2.4 L Sport Automatic 4wd	21	20	-1	28	26	-2
13		2.4 L Sport Automatic 2wd	22	21	-1	33	29	-4
14		2.0 L Sport Automatic 4wd	20	19	-1	27	24	-3
15		2.0 L Sport Automatic 2wd	21	20	-1	31	27	-4
16								
17	Tucson	2.4L Automatic 4wd	21	20	-1	28	27	-1
18		2.4L Automatic 2wd	22	21	-1	32	30	-2
19		2.4L Manual 4wd	20	19	-1	27	25	-2
20		2.4L Manual 2wd	21	20	-1	29	27	-2
21		2.0L Automatic 2wd	23	22	-1	31	29	-2
22		2.0L Manual 2wd	20	20	0	27	26	-1
23								
24	Veloster	Automatic	29	28	-1	40	37	-3
25		Manual	28	27	-1	40	37	-3
26		Turbo Automatic	25	24	-2	34	31	-3
27								
28								

1			Turbo Manual	26	24	-2	38	35	-3
2	Kia	Rio	Automatic	30	28	-2	40	36	-4
3			Manual	30	29	-1	40	37	-3
4			Eco Automatic	31	30	-1	40	36	-4
5		Sorento	2.4 L Automatic 4wd SIDI	21	20	-1	28	26	-2
6			2.4 L Automatic 2wd SIDI	22	21	-1	32	30	-2
7									
8		Soul	1.6 L Soul Eco	29	26	-3	36	31	-5
9			1.6 L Soul Automatic	27	25	-2	35	30	-5
10									
11			1.6 L Soul Manual	27	25	-2	35	30	-5
12			2.0 L Soul Eco	27	24	-3	35	29	-6
13			2.0 L Soul Automatic	26	23	-3	34	28	-6
14			2.0 L Soul Manual	26	24	-2	34	29	-5
15		Sportage	2.4 L Automatic 4wd	21	20	-1	28	27	-1
16									
17			2.4 L Automatic 2wd	22	21	-1	32	30	-2
18			2.4 L Manual 4wd	20	19	-1	27	25	-2
19									
20			2.4 L Manual 2wd	21	20	-1	29	27	-2
21			2.0 L Automatic 2wd	22	21	-1	29	28	-1
22			2.0 L Automatic 4wd	21	20	-1	26	25	-1
23									
24									

**Hyundai - Kia 2012 Model Year Fuel Economy Label Changes**

27	Manuf	Carline	Model	City FE (MPG)			Highway FE (MPG)		
				old	new	change	old	new	change
28	Hyundai	Accent	1.8 L Automatic	30	28	-2	40	37	-3

1		1.8 L Manual	30	28	-2	40	37	-3
2	Azera	3.3L Automatic	20	20	0	29	28	-1
3	Elantra	1.8 L Automatic	29	28	-1	40	38	-2
4		1.8 L Manual	29	28	-1	40	38	-2
5								
6	Genesis	5.0 L Automatic	17	17	0	26	25	-1
7		4.6 L Automatic	17	16	-1	26	25	-1
8		5.0 L R-Spec Automatic	16	16	0	25	25	0
9								
10		3.8 L Automatic	19	18	-1	29	28	-1
11	Sonata	Hybrid	35	34	-1	40	39	-1
12	Tucson	2.4L Automatic 4wd	21	20	-1	28	27	-1
13		2.4L Automatic 2wd	22	21	-1	32	30	-2
14		2.4L Manual 4wd	20	19	-1	27	25	-2
15		2.4L Manual 2wd	21	20	-1	29	27	-2
16		2.0L Automatic 2wd	23	22	-1	31	29	-2
17		2.0L Manual 2wd	20	20	0	27	26	-1
18	Veloster	Automatic	29	27	-2	38	35	-3
19		Manual	28	27	-1	40	37	-3
20	Kia	Optima Hybrid	35	34	-1	40	39	-1
21		Rio Automatic	30	28	-2	40	36	-4
22		Manual	30	29	-1	40	37	-3
23	Sorento	2.4 L Automatic 4wd SIDI	21	20	-1	28	26	-2
24		2.4 L Automatic 2wd SIDI	22	21	-1	32	30	-2
25								
26	Soul	1.6 L Soul Eco	29	26	-3	36	31	-5
27		1.6 L Soul Automatic	27	25	-2	35	30	-5
28		1.6 L Soul Manual	27	25	-2	35	30	-5
		2.0 L Soul Eco	27	24	-3	35	29	-6

1		2.0 L Soul Automatic	26	23	-3	34	28	-6
2		2.0 L Soul Manual	26	24	-2	34	29	-5
3	Sportage	2.4 L Automatic 4wd	21	20	-1	28	27	-1
4		2.4 L Automatic 2wd	22	21	-1	32	30	-2
5		2.4 L Manual 4wd	20	19	-1	27	25	-2
6		2.4 L Manual 2wd	21	20	-1	29	27	-2
7		2.0 L Automatic 2wd	22	21	-1	29	28	-1
8		2.0 L Automatic 4wd	21	20	-1	26	25	-1

**Hyundai - Kia 2011 Model Year Fuel Economy Label Changes**

Manuf	Carline	Model	City FE (MPG)			Highway FE (MPG)		
			old	new	change	old	new	change
Hyundai	Elantra	1.8 L Automatic	29	28	-1	40	38	-2
		1.8 L Manual	29	28	-1	40	38	-2
	Sonata	Hybrid	35	34	-1	40	39	-1
Kia	Optima	Hybrid	35	34	-1	40	39	-1

17. Defendants distribute, market, and sell the Subject Vehicles throughout the United States and Canada. According to defendants, over 900,000 of the Subject Vehicles were sold in the United States, and 172,000 of these vehicles were sold in Canada.

18. The EPA investigation into the Subject Vehicles was initiated after the EPA received numerous consumer complaints alleging Subject Vehicle owners were getting substantially less than the manufacturers' represented miles per gallon. There have also been complaints from other car manufacturers that the miles per gallon on Hyundai and Kia vehicles were substantially and routinely overestimated.

19. The EPA routinely conducts audits of vehicles to confirm the represented mileage is correct. Despite this, an EPA finding that a vehicle

1 manufacturer overstated gas mileage is a rarity. Since 2000, only twice has the  
2 EPA auditing program uncovered vehicles whose mileage stickers were incorrect  
3 and needed to be relabeled, both of which involved only a single vehicle model.  
4 The EPA's Hyundai/Kia investigation is the first instance where the EPA has found  
5 a large number of vehicles from the same manufacturers deviated significantly from  
6 the manufacturer represented mileage figures.

7 20. With fuel prices at an all-time high, Plaintiff was looking for a fuel-  
8 efficient car.

9 21. Prior to purchase, Plaintiff saw and relied upon Defendants'  
10 advertising campaign for the Subject Vehicles, including advertising brochures  
11 prepared by Defendants and disseminated by their dealer network. He bought his  
12 vehicle relying on the gas mileage claims made by Defendants related to their  
13 vehicle. In discussing the gas mileage of these vehicles, Defendants represented the  
14 Kia Rio will achieve average City/Highway mileage of 30/40 mpg. These  
15 statements were also contained on the vehicles' pricing sticker.

16 22. Plaintiff felt this was the best way to make a contribution to the  
17 general welfare and save money with much improved performance and believed  
18 they paid a premium for their vehicles because of this represented higher fuel  
19 economy. However, since purchasing his Subject Vehicle, Plaintiff has received  
20 materially less miles per gallon average than advertised by Defendants.

21 23. Other consumers have reported similar experiences and complained to  
22 the U.S. Environmental Protection Agency to launch an investigation into such  
23 discrepancies.

24 24. Such discrepancies are material to consumers, since if the average  
25 consumer drives 12,000 miles per year and as stated under California law the  
26 average useful life of such vehicles is 120,000 miles, this results in additional costs  
27 of thousands of dollars per consumer over the estimated useful life of these  
28 vehicles, in addition to the premiums paid for these vehicles.

1           25. Because of the EPA's investigation, it was recently publicly revealed  
2 Plaintiff and other class members were correct, and that Defendants'  
3 representations about the gas mileage in the Subject Vehicles were materially  
4 misstated between one and six miles per gallon. The EPA discovered inflated  
5 gasoline economy numbers on a wide range of Hyundai and Kia models in an  
6 investigation sparked by consumer complaints. The exaggerated numbers had  
7 helped push some of the models into the much-vaunted 40 miles per gallon club.  
8 This appeared to be a concerted effort, as the EPA said it had come across the same  
9 problem only twice since 2000. "This is the first time where a large number of  
10 vehicles from the same manufacturer have deviated so significantly," the EPA said.

11           26. Both defendants admitted these errors and blamed "procedural errors"  
12 at their joint testing operations in South Korea for the overstated fuel economy  
13 claims. "I sincerely apologize to all affected Hyundai and Kia customers, and I  
14 regret these errors occurred," said W.C. Yang, chief technology officer of  
15 Hyundai/Kia research and development, in a statement.

16           27. As further evidence of the materiality of these discrepancies to the  
17 reasonable consumer, Edmonds.com analyst John O'Dell predicted the partnership,  
18 which forms the world's fifth-largest car making group by sales, will be long  
19 dogged by the EPA revelations. "Whether an honest mistake or a deliberate  
20 corporate effort to fudge the numbers, the fact that the companies' ballyhooed 40  
21 MPG cars are no longer members of that august club," he said on or about  
22 November 2, 2012. "In an industry where reputation is so important, this will  
23 undoubtedly give both carmakers ugly black eyes."

24           28. Plaintiff's previous attempts to correct these issues by complaining to  
25 Hyundai or Kia to have this mileage problem corrected have been frustrating and  
26 without success, as he was previously told by Kia or Hyundai representatives there  
27 was nothing wrong with his vehicle. These new revelations are directly contrary to  
28 what Hyundai and Kia were publicly telling consumer just a few weeks ago.

1           29. Defendants' advertising brochures, print and broadcast advertisements,  
2 also fail to comply with the requirements of the Federal Trade Commission for  
3 advertisements of gas mileage figures as set forth in 16 C.F.R. § 259. Such  
4 representations and omissions of material fact were a significant factor in Plaintiff's  
5 decision to purchase his Subject Vehicle. If Defendants had disclosed they had  
6 miscalculated or misrepresented the actual mileage figures or he would obtain  
7 worse gas mileage, Plaintiff would not have bought the vehicle or paid the premium  
8 price he did. Based on the dollar amounts at issue, such representations over gas  
9 mileage were material.

10           30. Recognizing the materiality of these misrepresentations, Defendants  
11 announced they were each adopting a "refund" program that would reimburse  
12 consumers for their losses. However, this program is fraught with problems. First,  
13 there is no indication individual notice will be sent to Class members. Second, it  
14 only seeks to reimburse consumers for mileage discrepancies that are "recalled" by  
15 the vehicle dealer. Third, it does not offer consumers the ability to return their  
16 vehicles or obtain reimbursement for the price premium they paid. Fourth, it only  
17 offers consumers debit cards for reimbursement, even though it is well known that  
18 consumers routinely do not use the full value of such cards.

19           31. While such a program is recognition of the materiality of these issues  
20 to consumers, such a program requires Court supervision and provide consumers  
21 the opportunity to obtain full refunds or at least a more robust cash refund  
22 mechanism.

23           32. As Defendants should have had the correct mileage information cited  
24 herein in its possession prior to marketing the Subject Vehicles and was placed on  
25 notice by consumers early on that the represented figures it was reporting to  
26 consumers were not correct, it either knew or reasonably should have known it was  
27 overstating the miles per gallon claims for each of the Subject Vehicles.

28           33. Defendants apparently placed profit before integrity in the marketing

1 and sale of the Subject Vehicles. Plaintiff and members of the Class suffered  
2 injury in that they and others spent money on products that were not what they  
3 were represented to be and therefore lacked the value Defendants led them to  
4 believe and/or for which they paid in a premium purchase or lease price for a  
5 Subject Vehicle.

6 34. Such conduct is ongoing and continues to this date. Despite receiving  
7 informal demands to remedy the issues complained of prior to the initiation of this  
8 action, Defendants have failed and/or refused to correct and remedy its conduct  
9 informally, necessitating this action.

### 10 CLASS ALLEGATIONS

11 35. Plaintiff brings this class action under Rule 23 of the Federal Rules of  
12 Civil Procedure (“FRCP”) and seeks certification of the claims and issues in this  
13 action pursuant to the applicable provisions of Rule 23. The proposed class is  
14 defined as:

15 All persons who purchased or leased a Subject Vehicle sold by  
16 Defendants in either the United States or Canada before November 3,  
17 2012 other than for resale or distribution (the “Class”). Excluded  
18 from the Class are officers and directors of Defendants, members of  
19 the immediate families of the officers and directors of Defendants,  
20 and the legal representatives, heirs, successors and assigns and any  
21 entity in which they have or have had a controlling interest.

22 36. Defendants’ practices and omissions were applied uniformly to all  
23 members of the Class during the Class Period, so that the questions of law and fact  
24 are common to all members of the Class. All members of the Class were and are  
25 similarly affected by having been exposed to the misrepresentations, purchased or  
26 leased and used the Subject Vehicles for their intended and foreseeable purpose,  
27 and the relief sought is for the benefit of Plaintiff and members of the Class.

28 37. The Class is so numerous that joinder of all members would be

1 impractical. As there are over 900,000 sales of the Subject Vehicles in the effected  
2 states, the number of affected consumers would at least be in the hundreds of  
3 thousands, making joinder impossible.

4 38. Questions of law and fact common to each Class member exists that  
5 predominate over questions affecting only individual members, including, *inter*  
6 *alia*:

7 (a) Whether Defendants' practices and representations made  
8 in connection with the labeling, advertising, marketing, promotion and  
9 sale of the Subject Vehicles were deceptive, unlawful or unfair,  
10 thereby violating the California Unfair Competition Law ("UCL"),  
11 Cal. Bus. & Prof. Code § 17200, *et seq.* and California's False  
12 Advertising Law (the "FAL"), Cal. Bus. & Prof. Code § 17500, *et seq.*  
13 and the other state laws set forth;

14 (b) Whether Defendants' practices and representations made  
15 in connection with the labeling, advertising, marketing, promotion and  
16 sale of the Subject Vehicles constituted a systematic breach of  
17 warranty, in violation of state law and the MMWA; and

18 (c) Whether Defendants' conduct injured consumers and if  
19 so, the extent of the injury.

20 39. The claims asserted by Plaintiff are typical of the claims of the Class  
21 members, as his claims arise from the same course of conduct by Defendants and  
22 the relief sought is common. Plaintiff, like all Class members, was exposed to  
23 Defendants' misrepresentations and suffered injury.

24 40. Plaintiff will fairly and adequately represent and protect the interests  
25 of the Class members. Plaintiff has retained counsel competent and experienced in  
26 both consumer protection and class action litigation.

27 41. Certification of this class action is appropriate under F.R.C.P. 23(b)  
28 because the above questions of law or fact common to the respective members of

1 the Class predominate over questions of law or fact affecting only individual  
2 members. This predominance makes class litigation superior to any other method  
3 available for the fair and efficient adjudication of these claims.

4 42. Absent a class action, it would be highly unlikely that the Plaintiff or  
5 any other Class members could protect their own interests because the cost of  
6 litigation through individual lawsuits would exceed any expected recovery.

7 43. Certification is also appropriate because Defendants have acted or  
8 refused to act on grounds applicable to the Class, making appropriate final  
9 injunctive relief with respect to the Class as a whole.

10 44. Further, given the large number of purchasers and lessees of the  
11 Subject Vehicles, allowing individual actions to proceed in lieu of a class action  
12 would risk yielding inconsistent and conflicting adjudications.

13 45. A class action is a fair and appropriate method for the adjudication of  
14 this controversy, in that it will permit many claims to be resolved in a single forum  
15 simultaneously, efficiently, and without the unnecessary hardship that would result  
16 from the prosecution of numerous individual actions and the duplication of  
17 discovery, effort, expense and burden on the courts that such individual actions  
18 would engender.

19 46. The benefits of proceeding as a class action, including providing a  
20 method for obtaining redress for claims that would not be practical to pursue  
21 individually, outweigh any difficulties that might be argued regarding the  
22 management of this class action.

23 **COUNT I**

24 **Unlawful, Unfair, and Fraudulent Business Acts**  
25 **and Practices – Violation of Cal. Bus. & Prof. Code § 17200, et seq.**

26 47. Plaintiff repeats every allegation contained in the paragraphs above  
27 and incorporates such allegations by reference. Plaintiff brings this cause of action  
28 on behalf of the Class.

1           48. This cause of action is brought under the California Unfair  
2 Competition Law (“UCL”), California Business & Professions Code § 17200, *et*  
3 *seq.*, which provides that “unfair competition shall mean and include any unlawful,  
4 unfair or fraudulent business act or practice and unfair, deceptive, untrue or  
5 misleading advertising and any act prohibited by Chapter I (commencing with  
6 Section 17500) as Part 3 of Division 7 of the Business and Professions Code.”  
7 Defendants’ practices were intended to promote the sale or lease of the Subject  
8 Vehicles and constitute unfair, deceptive and/or unlawful business practices within  
9 the meaning of California Business & Professions Code § 17200, *et seq.*

10           49. Defendants committed unfair business acts and/or practices.  
11 Specifically, Defendants engaged in extensive national marketing and advertising  
12 to promote and sell the Subject Vehicles as having higher gas mileage than they  
13 could achieve and that were calculated in violation of federal regulations.

14           50. The utility of Defendants’ practices related to the advertising,  
15 marketing, promotion and sale of the Subject Vehicles misrepresenting or without  
16 disclosing, or in adequately disclosing, the true material facts stated above is  
17 negligible, if there is any utility at all, when weighed against the harm to the  
18 general public and members of the Class.

19           51. The adverse impact upon members of the general public and the Class  
20 who purchased or leased and used one of the Subject Vehicles outweighs any  
21 reasons or justifications by Defendants for the unfair business practices Defendants  
22 employed, particularly considering the reasonably available alternatives.

23           52. Defendants had an improper motive (profit before accurate marketing)  
24 in their practices related to the advertising, marketing, promotion and sale of the  
25 Subject Vehicles.

26           53. Using such unfair business acts and practices was and is under the sole  
27 control of Defendants, and was deceptively concealed from Plaintiff, other  
28 members of the Class, and the general public such that they could not reasonably

1 determine this inaccuracy prior to purchasing or leasing the Subject Vehicles.

2 54. Defendants engaged in deceptive business acts or practices by  
3 misrepresenting, failing to disclose, or adequately disclose, to the consumers  
4 targeted by and exposed to Defendants' advertising and promotional campaign the  
5 accurate miles per gallon that would be achieved by the Subject Vehicles as  
6 represented.

7 55. These deceptive acts and practices had a capacity, tendency, and/or  
8 likelihood to deceive or confuse reasonable consumers into believing the Subject  
9 Vehicles could achieve the represented miles per gallon that they could not achieve  
10 or did not have.

11 56. Defendants also engaged in unlawful business practices by violating  
12 the state and federal laws set forth herein the requirements of the Federal Trade  
13 Commission for advertisements of gas mileage figures as set forth in 16 C.F.R. §  
14 259, committing systematic violations of the state consumer protection statutes and  
15 warranty laws detailed herein. Defendants also violated the MMWA, as alleged.  
16 The violations of these laws serve as predicate violations of the "unlawful" prong  
17 of the California Business & Professions Code § 17200, *et seq.*

18 57. As purchasers of one of the Subject Vehicles who, as alleged above,  
19 were exposed to the misrepresentations and would not have paid the prices they  
20 did, if at all, if the true facts had been disclosed to them, Plaintiff has standing and  
21 is entitled to seek all available remedies under the UCL.

22 58. Under California Business & Professions Code § 17203, as a result of  
23 Defendants' violations of the UCL, Plaintiff and members of the Class are entitled  
24 to injunctive relief restitution for out-of-pocket expenses, and an order disgorging  
25 from Defendants and restoring to members of the California Class all monies that  
26 may have been acquired by Defendants because of such unfair, deceptive and/or  
27 unlawful business acts or practices.

28 59. Under California Civil Code § 3287(a), Plaintiff and members of the

1 Class are further entitled to pre-judgment interest as a direct and proximate result  
2 of Defendants' wrongful conduct. The amount on which interest is applied is a  
3 sum certain and capable of calculation in an amount according to proof.

4 **COUNT II**

5 **Untrue, Misleading or Deceptive Advertising – Violation of**  
6 **Cal. Bus. & Prof. Code § 17500, *et seq.***

7 60. Plaintiff repeats every allegation contained in the paragraphs above  
8 and incorporates such allegations by reference. Plaintiff brings this cause of action  
9 on behalf of the Class.

10 61. The conduct and actions of Defendants complained of herein  
11 constitute unlawful, unfair and/or fraudulent actions in violation of the False  
12 Advertising Law (the "FAL"), California Business & Professions Code §§ 17500,  
13 *et seq.*

14 62. Defendants overstated the miles per gallon ratings for the Subject  
15 Vehicles when they reasonably should have known those representations were  
16 deceptive, inaccurate, and likely to deceive reasonable consumers and cause them  
17 to buy the vehicles. Such representations were made in or originated in and  
18 emanated from this State. Members of the Class were exposed to such claims. As  
19 purchasers and lessees of the Subject Vehicles exposed to the misrepresentations at  
20 issue Plaintiff would not have paid the prices he did for the Subject Vehicle, if at  
21 all, if the true facts had been disclosed. Plaintiff has standing and is entitled to  
22 bring this action seeking all available remedies under the FAL.

23 63. Under California Business & Professions Code § 17535, Plaintiff seek  
24 an order for injunctive relief and also to engage in a corrective advertising  
25 campaign to correct the misperceptions in the market created by Defendants'  
26 conduct. Because of Defendants' violations of the FAL, Plaintiff is also entitled to  
27 restitution for out-of-pocket expenses in terms of the price or price premium they  
28 paid for the Subject Vehicles and excess gasoline costs, or an order disgorging

1 from Defendants and restoring to members of the Class all monies that may have  
2 been acquired by Defendants because of such acts or practices.

3 64. Under California Civil Code § 3287(a), Plaintiff and members of the  
4 Class are further entitled to pre-judgment interest as a direct and proximate result  
5 of Defendants' wrongful conduct. The amount on which interest is applied is a  
6 sum certain and capable of calculation, and they are therefore entitled to interest in  
7 an amount according to proof.

### 8 **COUNT III**

#### 9 **Breach of Express and Implied Warranty**

10 65. Plaintiff repeats every allegation contained in the paragraphs above  
11 and incorporates such allegations by reference. Plaintiff brings this cause of action  
12 on behalf of the Class.

13 66. Plaintiff and other members of the Class formed a contract with  
14 Defendants when they purchased or leased a Subject Vehicle or based on the  
15 promises and affirmations of fact made by Defendants on the Subject Vehicles and  
16 in advertising, upon which Plaintiff and members of the Class were exposed to and  
17 acted in positive and material response to in purchasing or leasing the Subject  
18 Vehicles at the prices they did. These representations constitute express warranties  
19 that became part of the basis of the bargain.

20 67. Such representations also created implied warranties that the Subject  
21 Vehicles conformed to such representations and would pass without objection in  
22 the trade or industry.

23 68. All conditions precedent to seeking liability under this claim for  
24 breach of express and implied warranty have been performed by or on behalf of  
25 Plaintiff.

26 69. Defendants breached the terms of these express and implied  
27 agreements and warranties by not providing Subject Vehicles that provide and  
28 conform with the promised benefits, as described above.



1 requirement under the MMWA or otherwise that Plaintiff resort to any informal  
2 dispute settlement procedure and/or afford Defendants a reasonable opportunity to  
3 cure the breach of warranties described above is excused and/or has been satisfied.

4 79. Because of Defendants' breaches of warranty, Plaintiff and the Class  
5 members have sustained damages and other losses in an amount to be determined at  
6 trial as described above, and therefore are entitled to recover damages, costs,  
7 attorneys' fees, rescission, and/or other relief as deemed appropriate.

8 **PRAYER FOR RELIEF**

9 WHEREFORE, Plaintiff, for himself and all others similarly situated, pray  
10 for relief against Defendants, jointly and severally under each Count in this  
11 Complaint as follows:

12 1. For an order certifying the Class and appointing Plaintiff's counsel as  
13 Class Counsel;

14 2. For an award of equitable relief as follows:

15 a. An order enjoining Defendants from continuing to engage, use,  
16 or employ any unlawful, unfair and/or deceptive business acts or practices and from  
17 refusing to engage in a corrective advertising campaign;

18 b. An order awarding restitution for out-of-pocket expenses and  
19 economic harm and disgorging and restoring all monies that may have been  
20 acquired by Defendants because of such acts and/or practices;

21 3. For an award of damages as permitted by law;

22 4. For an award of attorneys' fees under, *inter alia*, Cal. Code Civ. Proc.  
23 § 1021.5, and the MMWA;

24 5. For pre- and post-judgment interest on any amounts awarded;

25 6. For an award of costs; and

26 7. For an Order providing such further relief as may be found just and  
27 proper.

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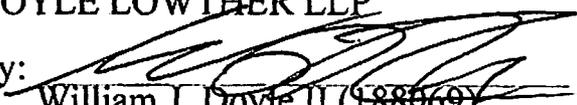
**JURY DEMAND**

Plaintiff demands a trial by jury on all issues so triable.

DATED: November 5, 2012

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