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14 Hernandez & Tammy Tyler,
15 individually, and on behalf of other
16 members of the public similarly
situated

17 **UNITED STATES DISTRICT COURT**
18 **CENTRAL DISTRICT OF CALIFORNIA**
19 **SOUTHERN DIVISION**

20 MICHAEL HERNANDEZ & TAMMY
21 TYLER, individually, and on behalf of
other members of the public similarly
situated,

22 Plaintiffs,

23 vs.

24 HYUNDAI MOTOR AMERICA, INC., a
25 Delaware corporation, KIA MOTOR
26 AMERICA, INC., a Delaware corporation,
27 and ZF TRW AUTOMOTIVE HOLDINGS
28 CORP., a Delaware corporation,
Defendants.

Case No.:

CLASS ACTION COMPLAINT

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1 For their complaint against Hyundai Motor America, Inc., Kia Motor America,
2 Inc., and ZF TRW Automotive Holdings Corp. (collectively “Defendants”),
3 Plaintiffs Michael Hernandez and Tammy Tyler (collectively “Plaintiffs”),
4 individually, and on behalf of all other members of the public similarly situated,
5 based on information and belief, allege as follows:

6 **NATURE OF THE ACTION**

7 1. This case presents yet another example of an airbag manufacturer and
8 automakers conspiring to conceal a deadly airbag defect, once again putting profits
9 ahead of safety. Indeed, over the past five years, tens of millions of U.S. consumers
10 have seen their Takata-manufactured airbags recalled for a deadly defect resulting
11 in seven automakers paying a collective \$1.5 billion in class action settlements. In
12 this case, the National Highway Traffic Safety Administration (“NHTSA”)
13 estimates some 12.5 million vehicles may contain a defective Airbag Control Unit
14 (“ACU”) designed and manufactured by ZF-TRW and supplied to numerous
15 vehicle manufacturers, including Hyundai, Kia, Mitsubishi, Toyota, Honda and Fiat
16 Chrysler US (“FCA”). The defect in the ACU occurs because the application-
17 specific integrated circuit (“ASIC”) becomes over stressed by excess electrical
18 energy generated during the crash. This ASIC defect then causes a failure in the
19 ACU and neither the airbags nor the seat belt pretensioners will deploy.

20 2. ZF-TRW, Hyundai, and Kia became aware of the ACU defect as early
21 as 2011, but did nothing to protect consumers or warn of the product dangers until
22 2018. From 2011 through 2015, ZF-TRW, Hyundai, and Kia investigated airbag
23 non-deployments in several Kia and Hyundai vehicles but failed to inform NHTSA
24 that there was an issue until the end of 2015. Even after advising NHTSA in 2015,
25 each of these companies downplayed the severity and frequency of these non-
26 deployment crashes. It was not until February and June of 2018 that Hyundai and
27 Kia, respectively, issued product recalls as to a small segment of their vehicles.
28 Throughout this nearly decade long period, unsuspecting U.S. consumers purchased

1 Class Vehicles (defined below) with defective ACUs which indisputably pose a
2 grave safety risk.

3 3. The defective ACUs create a dangerous condition that gives rise to a
4 clear, substantial, and unreasonable danger of death or personal injury. ZF-TRW,
5 Hyundai, and Kia put profits ahead of safety by continuing to equip vehicles with
6 ACUs year after year, even though they knew or should have known those ACUs
7 were defective. Despite the number of airbag failures, injuries, and deaths caused
8 by the ASIC Defect, ZF-TRW, Hyundai, and Kia were slow to fully investigate the
9 problem and slow to report the danger to drivers and passengers of all ACU
10 equipped vehicles. Only after several deaths, injuries, and investigations did
11 Hyundai and Kia choose to recall a fraction of their vehicles equipped with the
12 ASIC Defect.

13 4. As a result of this misconduct, Plaintiffs and members of the proposed
14 Classes were harmed and suffered actual damages. Plaintiffs and the Classes did
15 not receive the benefit of their bargain; rather, they purchased or leased vehicles
16 that are of a lesser standard, grade, and quality than represented, and they did not
17 receive vehicles that met ordinary and reasonable consumer expectations regarding
18 safe and reliable operation. Purchasers or lessees of the Class Vehicles paid more,
19 either through a higher purchase price or higher lease payments, than they would
20 have had the ASIC Defect been disclosed. Plaintiffs and the Classes were deprived
21 of having a safe, defect-free airbag installed in their vehicles, and ZF-TRW,
22 Hyundai, and Kia unjustly benefited from their unconscionable delay in recalling
23 its defective products, as they avoided incurring the costs associated with recalls
24 and installing replacement parts for years.

25 5. Plaintiffs and the Classes also suffered damages in the form of out-of-
26 pocket and loss-of-use expenses and costs.

27 6. Plaintiffs and the Classes also suffered damages as a result of ZF-
28 TRW, Hyundai, and Kia's concealment and suppression of the facts concerning the

1 safety, quality, and reliability of Hyundai and Kia vehicles with the defective ACUs.
2 ZF-TRW, Hyundai, and Kia's false representations and omissions concerning the
3 safety and reliability of those vehicles and their concealment of the known safety
4 defects plaguing those vehicles and the Hyundai and Kia brands caused Plaintiffs
5 and Class members to purchase, lease, or retain Hyundai and Kia vehicles of
6 diminished value.

7 **JURISDICTION AND VENUE**

8 7. Jurisdiction is proper in this Court pursuant to 28 U.S.C. §§ 1331,
9 1961, 1962 and 1964, because Plaintiffs' RICO and Magnusson-Moss claims arise
10 under federal law. Also, Jurisdiction is proper in this Court pursuant to the Class
11 Action Fairness Act, 28 U.S.C. § 1332(d), because members of the proposed
12 Plaintiff Classes are citizens of states different from each Defendant's home state,
13 and the aggregate amount in controversy exceeds \$5,000,000, exclusive of interest
14 and costs. Further, greater than two-thirds of the members of the Class reside in
15 states other than the states in which Defendants are a citizens.

16 8. In addition, under 28 U.S.C. § 1367, this Court may exercise
17 supplemental jurisdiction over the state law claims because all of the claims are
18 derived from a common nucleus of operative facts and are such that Plaintiffs
19 ordinarily would expect to try them in one judicial proceeding.

20 9. This Court has personal jurisdiction over Plaintiffs because Plaintiffs
21 submit to the Court's jurisdiction.

22 10. This Court also has personal jurisdiction over New Chrysler under 18
23 U.S.C. § 1965(d) because it is found, has agents, or transacts business in this
24 District.

25 11. Venue lies within this judicial district under 28 U.S.C. § 1391(b)(1)
26 and (c)(2) because Defendants' contacts are sufficient to subject them to personal
27 jurisdiction in this District, and therefore, Defendants reside in this District for
28 purposes of venue, or under 28 U.S.C. § 1391(b)(2) because certain acts giving rise

1 to the claims at issue in this Complaint occurred, among other places, in this
2 District.

3 **THE PARTIES**

4 **I. Defendants**

5 12. Hyundai Motor America, Inc. (“HMA”) is a Delaware corporation
6 with its principal place of business located at 10550 Talbert Avenue, Fountain
7 Valley, California. HMA is a citizen of the State of California.

8 13. Kia Motor America, Inc. (“KMA”) is a Delaware corporation with its
9 principal place of business located at 111 Peters Canyon Road, Irvine, California.
10 KMA is a citizen of the State of California.

11 14. ZF TRW Automotive Holdings Corp. (“ZF-TRW”), is a Delaware
12 corporation with its principal place of business located at 12001 Tech Center Drive,
13 Livonia, Michigan and ZF is a citizen of the States of Delaware and Michigan. ZF-
14 TRW was formed as of May 15, 2015 when ZF Friedrichshafen AG acquired TRW
15 Automotive Holdings Corp. All references to ZF-TRW include the actions of TRW
16 Automotive Holdings Corp. prior to the acquisition.

17 **II. Plaintiffs**

18 15. Plaintiff Michael Hernandez resides in Aliso Viejo, California. He
19 owns a 2019 Hyundai Sonata, which he purchased new in March 2019 from Tuttle-
20 Click Hyundai in Irvine, California. To Plaintiff’s knowledge, the airbags in his
21 vehicle have not been repaired or replaced. The value of Plaintiff’s 2019 Hyundai
22 Sonata has been diminished as a result of the ASIC Defect. If Plaintiff had known
23 about the ASIC Defect, Plaintiff would not have purchased his 2019 Hyundai
24 Sonata or would not have paid as much as he did for it.

25 16. Plaintiff Tammy Tyler resides in Baton Rouge, Louisiana. She owns a
26 2013 Kia Forte, which she purchased new in January 2013 from All Star Kia in
27 Baton Rouge, Louisiana. To Plaintiff’s knowledge, the airbags in her vehicle have
28 not been repaired or replaced. The value of Plaintiff’s 2013 Kia Forte has been

1 diminished as a result of the ASIC Defect. If Plaintiff had known about the ASIC
2 Defect, Plaintiff would not have purchased her 2013 Kia Forte or would not have
3 paid as much as she did for it.

4 **GENERAL FACTUAL ALLEGATIONS**

5 **I. Definitions**

6 17. Plaintiffs bring this action on behalf of themselves and all persons
7 similarly situated who purchased or leased Class Vehicles (defined below).
8 Plaintiffs seek redress individually and on behalf of those similarly situated for
9 economic losses stemming from ZF-TRW, HMK, and KMA's manufacture, sale or
10 lease, and false representations concerning the defective airbags in the Class
11 Vehicles, including but not limited to diminished value. Plaintiffs, on behalf of
12 themselves and those similarly situated, seek to recover damages, statutory
13 penalties, and injunctive relief/equitable relief.

14 18. "Class Vehicles" refers to the: (a) Kia Forte 2013; (b) Kia Forte Koup
15 2013; (c) Kia Optima 2013-2019; (d) Kia Optima Hybrid 2012-2016; (e) Kia
16 Sedona 2014; (f) Hyundai Sonata 2013-2019; (g) Hyundai Sonata Hybrid 2013-
17 2019.

18 19. "Defective ACUs" refers to all airbag control units designed and
19 manufactured by ZF-TRW that include ASICs that are susceptible to electrical
20 overstress (the "ASIC Defect"), including all ZF-TRW ACUs that were installed in
21 the Class Vehicles.

22 20. "Hyundai-Kia Defendants" refers collectively to defendants HMA and
23 KMA.

24 21. "Hyundai-Kia Entities" refers to all the below listed companies that
25 participated in the conduct for which Plaintiffs are bringing this action including
26 the Hyundai-Kia Defendants and Hyundai MOBIS Co. Ltd. ("MOBIS"), a foreign
27 limited liability company under the laws of South Korea that is a parts supplier for
28 the Kia and Hyundai family of companies.

1 **II. The ACU and ASIC Defect**

2 22. The part of the airbag at issue in this matter is the ASIC that triggers
3 airbag deployment. The Hyundai-Kia Defendants equipped each of the Class
4 Vehicles with an Advanced Airbag System as well as an airbag control unit
5 (“ACU”). The ACU was designed and manufactured by ZF-TRW. The ACU is
6 designed to detect when a crash will occur and deploys the airbag to prevent injury
7 to the driver and passengers of the vehicle. A crucial component of this crash
8 detection system is an application-specific integrated circuit (“ASIC”).¹ When the
9 ASIC is functioning properly, the ACU will detect the severity of a crash, deploy
10 the airbags if necessary, and engage the seatbelt pretensioners.

11 23. The ASIC in the Class Vehicles’ ACUs are defective because they are
12 susceptible to electrical overstress (“EOS”) which allows excess electrical signals
13 produced during the crash to overload the ASIC and prevent the deployment of the
14 airbag and the seat belt pretensioners.

15 24. A failure of the ASIC due to EOS greatly increases the risk of injury
16 to the vehicle occupants during a crash. According to media reports, there were six
17 crashes in Hyundai and Kia vehicles as of March 2018 where the ASIC of the ACU
18 was overstressed.² From these accidents, four people were killed and six others
19 were injured.³

20 25. In 2016, Fiat Chrysler Automobiles (“FCA”) issued a recall of over
21 1.4 million vehicles due to this defect.
22
23

24
25 ¹ In the documents cited within this complaint, the ASIC is also referred to as the
26 “ASIC.”

27 ² *Hyundai and Kia Under Scrutiny for Air Bag Failures After 4 Deaths*, NBC
28 News, March 18, 2018, <https://www.nbcnews.com/news/us-news/hyundai-kia-under-scrutiny-air-bag-failures-after-4-deaths-n857701>.

³ *Id.*

1 26. After NHTSA began investigating other car manufacturers for similar
2 non-deployments due to the ZF-TRW ACU, it was revealed that both Kia and
3 Hyundai brand cars from model years 2011 through 2013 were plagued by this same
4 defect. In February of 2018, Hyundai issued an initial recall for 150,000 vehicles
5 due to the above defect, but in October of 2018 increased the number of vehicles
6 recalled to 581,000. In August of 2018, Kia issued a recall for 507,000 vehicles due
7 to the same defect.

8 27. On April 19, 2019, NHTSA issued a statement that the Office of
9 Defects Investigation had decided to expand its investigation into the ASIC Defect,
10 which includes an estimated 12.3 million vehicles. The 2018 recalls by the
11 Hyundai-Kia Defendants were not sufficient to protect consumers from the dangers
12 of the defective ACU.⁴

13 28. The Hyundai-Kia Defendants and ZF-TRW knew and had reason to
14 know of this defect well before the issuance of any recalls in 2018, but concealed
15 this defect from the public. Defendants worked in concert to delay the reporting of
16 this defect to consumers and to regulators to protect each Defendant's financial
17 interests. Further, the Defendants acted to conceal the depth of this problem and the
18 number of incidents that occurred worldwide. Only after multiple years, accidents,
19 deaths, and formal investigations did the Defendants begin to act to correct a
20 problem that should never have occurred.

21 **III. Defendants Knew of the ACU Defect Years before Instituting a Partial**
22 **Recall**

23 29. As early as August of 2011, the Defendants knew of the problems with
24 the ASIC but chose to cover up these facts. There was a motor vehicle crash in
25 China involving a Kia Forte where the airbags did not deploy. MOBIS requested
26

27
28 ⁴ NHTSA, ODI Resume, April 19, 2019, Investigation: EA 19-001,
<https://static.nhtsa.gov/odi/inv/2018/INOA-PE18003-9810.PDF>.

1 that ZF-TRW analyze the crash data to determine why there was no deployment.
2 ZF-TRW observed that there was damage to the ASIC that was “consistent with
3 EOS.”⁵ Instead of investigating the matter further, the Hyundai-Kia Motor
4 Company (“HKMC”) “communicat[ed] its assessment that the incident was a
5 commanded nondeployment”⁶ and considered the matter closed.

6 30. Despite HKMC’s attempts to sweep the defects under the rug,
7 Defendants became aware of several other non-deployment incidents. In February
8 2012, HMA was notified of a collision involving a 2011 Hyundai Sonata in which
9 the airbag failed to deploy. The investigation revealed that the ASIC failed due to
10 EOS. However, HMA concluded that the problem was due to “numerous
11 aftermarket accessories installed in the vehicle” and was not related to any prior
12 non-deployment accidents.⁷

13 31. In March of 2012, MOBIS again referred a post-crash analysis to ZF-
14 TRW related to failed airbag deployment—this time for a crash involving a Kia
15 Forte in Egypt. Once again, ZF-TRW found that the ASIC damage was “consistent
16 with EOS,” and once again HKMC “communicat[ed] its assessment that the
17 incident was a commanded nondeployment.”⁸ After this analysis in May of 2012,
18 ZF-TRW communicated directly with HKMC and MOBIS “about the investigation
19 of field events observed with EOS.”⁹ As of 2012, nothing was reported publicly
20

21 ⁵ Part 573 Safety Recall Report filed by ZF-TRW, TRW Automotive Inc. (ZF)
22 Chronology, *available at* <https://oemdtc.com/1408/air-bags-seat-belt-pretensioners-may-be-disabled-trw-air-bag-control-units> [hereinafter ZF
23 Chronology].

24 ⁶ *Id.*

25 ⁷ Part 573 Safety Recall Report filed by HMA, Attachment A, Amended
26 Chronology, *available at* <https://static.nhtsa.gov/odi/rcl/2018/RMISC-18V137-8310.pdf> [hereinafter Hyundai Chronology].

27 ⁸ ZF Chronology, *supra* note 5.

28 ⁹ *Id.*

1 about the danger of EOS of ASICs in the ACUs manufactured and installed in the
2 Class Vehicles.

3 32. As late as May of 2013, ZF-TRW documented a “potential warranty
4 concern” related to the ACU ASIC.¹⁰ This document was circulated to vehicle
5 manufacturers, including under information and belief the Hyundai-Kia Entities.¹¹
6 This document described a potential condition of the ASIC that resulted in an
7 intermittent power connection, which may cause EOS damage to the ASIC.¹² This
8 document also recommended countermeasures to prevent such damage.¹³

9 33. In March of 2014, KMA received notice of a lawsuit complaint
10 alleging non- deployment of an airbag in a 2012 Kia Forte. Approximately one year
11 later in March of 2015, KMA began to examine the airbag and determine the cause
12 for the failure to deploy.¹⁴

13 34. It is important to note that during the time period where the Defendants
14 were first learning about the defect with the ASICs, Hyundai was being investigated
15 by NHTSA for improperly delaying a recall of Genesis cars to fix a brake defect.¹⁵
16 In 2014, Hyundai agreed to settle the matter, and NHTSA stated that Hyundai “must
17 change the way they deal with safety-related defects.”¹⁶ In 2016, a whistleblower
18

19 ¹⁰ Part 573 Safety Recall Report filed by FCA, FCA Chronology, *available at*
20 <https://static.nhtsa.gov/odi/rcl/2016/RMISC-16V668-4323.pdf> [hereinafter FCA
21 Chronology].

22 ¹¹ *See id.*

23 ¹² *Id.*

24 ¹³ *Id.*

25 ¹⁴ Part 573 Safety Recall Report filed by KMA, KMA Chronology, *available at*
26 <https://static.nhtsa.gov/odi/rcl/2018/RMISC-18V363-5570.pdf> [hereinafter Kia
27 Chronology].

28 ¹⁵ David Shepardson, *U.S. Probes Air Bag Failures in Deadly Hyundai, Kia Car*
Crashes, Reuters, March 17, 2018, [https://www.reuters.com/article/us-autos-
recall/u-s-probes-air-bag-failures-in-deadly-hyundai-kia-car-crashes-
idUSKCN1GT0HD](https://www.reuters.com/article/us-autos-recall/u-s-probes-air-bag-failures-in-deadly-hyundai-kia-car-crashes-idUSKCN1GT0HD).

¹⁶ *Id.*

1 within of one of the Hyundai-Kia Defendants also reported concerns to NHTSA
2 about the scope and timeliness of three recalls carried out in the U.S.¹⁷

3 35. In February of 2015, HMA requested that ZF-TRW review data from
4 another crash in which the airbags in a Hyundai Sonata did not deploy.¹⁸ ZF-TRW
5 did not analyze these results until April of 2016.¹⁹ Once again, ZF-TRW found that
6 the ASIC damage was “consistent with EOS,” and once again HKMC
7 “communicat[ed] its assessment that the incident was a commanded
8 nondeployment.”²⁰

9 36. In May of 2015, HMA was notified of a collision involving yet another
10 2011 Sonata where the airbags failed to deploy. HMA did not inspect the vehicle or
11 the ACU until October of 2015, and also requested assistance from ZF-TRW. ZF-
12 TRW’s analysis indicated that internal damage to the ASIC due to EOS.²¹ NHTSA
13 investigation into the ACU ASIC Defect began at some point during the summer of
14 2015.²²

15 37. While the Defendants were investigating several airbag non-
16 deployment crashes in 2015 and 2016, ZF-TRW was also performing an in depth
17 analysis of several crashes related to FCA’s investigation into the ASIC Defect.²³
18 ZF-TRW was heavily involved in FCA’s investigation into 11 crashes involving
19 airbag non-deployment.²⁴ As early as June of 2015, ZF-TRW proposed that the
20 EOS failures of the ASIC could be due to excess electrical charge generated during
21

22
23 ¹⁷ *Id.*

24 ¹⁸ ZF Chronology, *supra* note 5.

25 ¹⁹ *Id.*

26 ²⁰ *Id.*

27 ²¹ Hyundai Chronology, *supra* note 7.

28 ²² Kia Chronology, *supra* note 14.

²³ FCA Chronology, *supra* note 10

²⁴ *Id.*

1 the crash,²⁵ which was a critical development in the investigation. Despite this
2 knowledge, ZF-TRW refused to connect the EOS problems in the Hyundai and Kia
3 vehicle to the defect discovered in the FCA investigation until February of 2018.²⁶

4 38. From June 2015 through January of 2016, KMA and the Kia Motor
5 Company (“KMC”) attempted to determine the cause of two non-deployments in
6 Kia Forte vehicles. KMA, KMC, MOBIS, and ZF-TRW performed inspections and
7 analyses of these vehicles and incidents.²⁷ ZF-TRW analyzed the data in early
8 December of 2015 and found that in both vehicles’ ACUs, the ASICs were damaged
9 by EOS.²⁸ Once again HKMC stepped in and “communicat[ed] its assessment that
10 one of the incidents was a commanded nondeployment and the other [was] under
11 investigation.”²⁹ HKMC, MOBIS, and ZF-TRW also begin to engage in regular
12 meetings to discuss how they would handle the NHTSA investigation and non-
13 deployments. On February 5, 2016, ZF-TRW held a voluntary meeting with
14 NHTSA to discuss the ACU investigation and the number of incidents involving
15 non deployed airbags across multiple manufacturers.³⁰ Twenty days later, ZF-TRW
16 met with HKMC and MOBIS to discuss ZF-TRW’s meeting with NHTSA and the
17 “incidents involving nondeployments with observed EOS.”³¹ In May of 2016, ZF-
18 TRW met with HKMC and MOBIS in person again to discuss the investigation. On
19 July 19, 2016, ZF-TRW attended another meeting with the NHSTA, and 20 days
20 later attended another in person meeting with HKMC and MOBIS to discuss the
21 NHTSA meeting.³² In July and August of 2016, ZF-TRW informed HKMC that
22

23 ²⁵ *Id.*

24 ²⁶ Hyundai Chronology, *supra* note 7.

25 ²⁷ Kia Chronology, *supra* note 14.

26 ²⁸ ZF Chronology, *supra* note 5.

27 ²⁹ *Id.*

28 ³⁰ *Id.*

³¹ *Id.*

³² *Id.*

1 that discussions with NHTSA and FCA did not require a recall by the Hyundai-Kia
2 Defendants.³³

3 39. On information and belief, Defendants engaged in discussions to delay
4 and otherwise diffuse the NHTSA investigation into the Hyundai-Kia Defendants'
5 actions. Despite knowledge of approximately ten crashes around the world
6 involving Hyundai or Kia vehicles with EOS damage to the ASICs of the ACUs,
7 Defendants worked together to obstruct the NHTSA investigation and to delay any
8 recall as far into the future as possible. On information and belief, the Hyundai-Kia
9 Defendants repeatedly misrepresented the cause of airbag non-deployment in many
10 crashes, or concealed the true causes, so that it appeared the ASIC Defect did not
11 occur in Hyundai and Kia vehicles.

12 40. Between July and November of 2016, HMA received reports of two
13 additional 2011 Sonata crashes where airbag non-deployments were observed.³⁴
14 HMA referred the ACUs for review to ZF-TRW. ZF-TRW downloaded the data in
15 November of 2016 and February of 2017.³⁵ In August of 2016, KMA requested that
16 ZF-TRW download and review ACU data for another Kia Forte crash involving the
17 non-deploying of an airbag.³⁶ In March of 2017, MOBIS requested an analysis for
18 another crash involving a Kia Forte in China where the airbag did not deploy.³⁷

19 41. In August of 2017, ZF-TRW analyzed the data from two of the
20 Hyundai Sonata crashes and one of the Kia Forte crashes.³⁸ In all three crashes, ZF-
21 TRW observed damage to the ASICs that is consistent with EOS. HKMC then
22
23
24

25 ³³ Kia Chronology, *supra* note 14.

26 ³⁴ Hyundai Chronology, *supra* note 7.

27 ³⁵ ZF Chronology, *supra* note 5.

28 ³⁶ *Id.*

³⁷ *Id.*

³⁸ *Id.*

1 communicated its usual message “that all three incidents were commanded
2 nondeployments.”³⁹

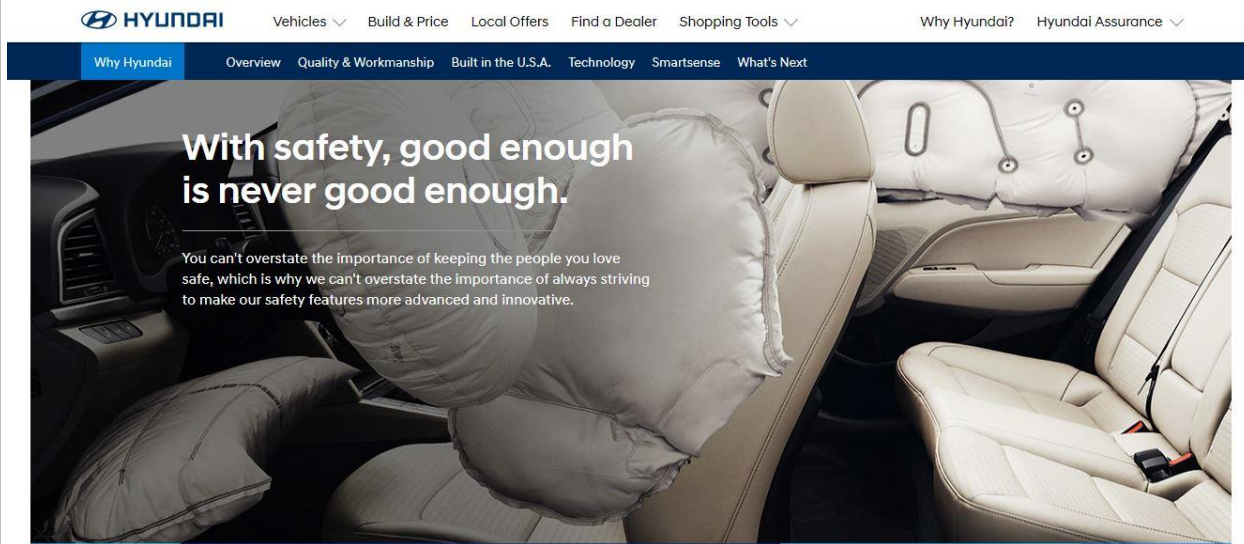
3 42. On February 27, 2018, HMA issued the voluntary recall of all 2011
4 model year Sonatas due to the ASIC Defect. Then on June 1, 2018, KMA agreed to
5 voluntarily recall all 2010 through 2013 model year Fortes and Forte Koups, all
6 2011 through 2013 model year Optimas, Opitma Hybrids, and all 2011 through
7 2012 model year Sedonas. Finally, in October of 2018, HMA expanded its recall to
8 all 2011 through 2013 model year Sonatas, and all 2011 through 2012 Sonata
9 Hybrids.

10 **IV. Defendants’ Misrepresentation and Omissions to the Public and NHTSA**

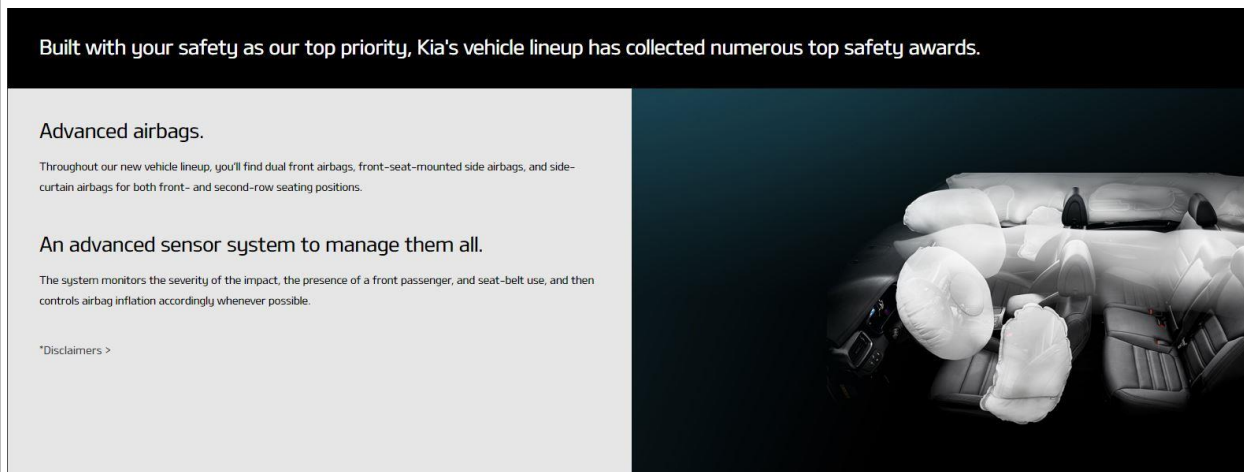
11 43. At all relevant times, in advertisements and promotional materials, the
12 Hyundai-Kia Defendants continuously maintained that Hyundai and Kia-branded
13 vehicles were safe and reliable and uniformly concealed the ASIC Defect. Plaintiffs,
14 directly or indirectly, were exposed to these advertisements or promotional
15 materials prior to purchasing or leasing Class Vehicles. The misleading statements
16 about Class Vehicles’ safety in the Hyundai-Kia Defendants’ advertisements and
17 promotional materials were material to decisions to purchase or lease Class
18 Vehicles.

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28 ³⁹ *Id.*

1 44. The Hyundai-Kia Defendants both advertise their vehicles as safe and
2 reliable vehicles with safety as one of their top priorities. Hyundai makes the
3 following claims on its advertising website:⁴⁰



14 45. Kia goes even further to make explicit safety claims as to its airbag
15 systems:⁴¹



23 46. Defendants also made misrepresentations to the public, through
24 NHTSA, when reporting incidents to NHTSA. On information and belief, the
25 Hyundai-Kia Defendants purposefully omitted the reports of airbag non-
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28 ⁴⁰ <https://www.hyundaiusa.com/why-hyundai/safety.aspx>.

⁴¹ <https://www.kia.com/us/en/content/technology/safety>.

1 deployment crashes outside of North America where it was found that the ASIC
2 was damaged by EOS.⁴²

3 47. Defendants also misrepresented the results of their investigations. In
4 eight separate crashes involving non-deployments, ZF-TRW concluded eight times
5 that the damage to the ASICs were consistent with EOS and in each of those eight
6 crashes the Hyundai-Kia Defendants concluded that the failure to deploy the airbag
7 was either inconclusive or was the result of a “commanded nondeployment.”⁴³ As
8 a result, the Defendants represented, to NHTSA and the public that the incidents of
9 EOS damage to the ASIC were much less frequent than what actually occurred.

10 **TOLLING OF THE STATUTE OF LIMITATIONS**

11 **I. Fraudulent Concealment**

12 48. Defendants have known of the ASIC Defect since at least August
13 2011, when they first learned that airbag non-deployments were caused by the ASIC
14 Defect as a result of EOS. Defendants obtained further knowledge of the ASIC
15 Defect after August 2011, when they learned of the results of additional field
16 incidents involving the Defective ACUs, and recalls by other automakers.
17 Defendants have concealed from, or failed to notify, Plaintiffs, Class members, and
18 the general public of the full and complete nature of the ASIC Defect.

19 49. Although the Hyundai-Kia Defendants acknowledged in 2018 to
20 safety regulators that some of the ACUs were defective, for years, the Hyundai-Kia
21 Defendants did not fully investigate or disclose the seriousness of the issue and in
22 fact concealed and downplayed the widespread prevalence of the problem. To this
23 day ZF-TRW has refused to acknowledge that their product is defective or initiate
24 a recall of its Defective ACUs.

27 ⁴² ZF Chronology, *supra* note 5.

28 ⁴³ *Id.*

1 50. Any applicable statute of limitations has therefore been tolled by
2 Defendants' knowledge, active concealment, and denial of the facts alleged herein,
3 which behavior is ongoing.

4 **II. Estoppel**

5 51. Defendants were, and are, under a continuous duty to disclose to
6 Plaintiffs and proposed Class members the true character, quality, and nature of the
7 Class Vehicles. They actively concealed the true character, quality, and nature of
8 the vehicles, and knowingly made misrepresentations about the quality, reliability,
9 characteristics, and performance of the vehicles. Plaintiffs and proposed Class
10 members reasonably relied upon Defendants' knowing, and affirmative
11 misrepresentations and/or active concealment of these facts. Based on the
12 foregoing, Defendants are estopped from relying on any statute of limitations in
13 defense of this action.

14 **III. Discovery Rule**

15 52. The causes of action alleged here did not accrue until Plaintiffs and
16 proposed Class members discovered that their vehicles had the Defective ACUs.

17 53. Plaintiffs and proposed Class members, however, had no realistic
18 ability to discern that their vehicles were defective, until after either the Defective
19 ACUs failed, or their vehicles were recalled. Even then, Plaintiffs and proposed
20 Class members would have had no reason to discover their causes of action, because
21 of Defendants' active concealment of the true nature of the defect.

22 **CLASS ACTION ALLEGATIONS**

23 54. The proposed Classes' claims all derive directly from a single course
24 of conduct by Defendants. This case is about the responsibility of Defendants, at
25 law and in equity, for their knowledge, conduct, and products. Defendants have
26 engaged in uniform and standardized conduct toward the proposed Classes. They
27 did not differentiate, in degree of care or candor, in their actions or inactions, or in
28 the content of its statements or omissions, among individual Class members. The

1 objective facts on these subjects are the same for all Class members. Within each
2 Claim for Relief asserted by the respective proposed Classes, the same legal
3 standards govern. Additionally, many—and for some, all—states share the same
4 legal standards and elements of proof, facilitating the certification of multistate or
5 nationwide classes for some or all claims. Accordingly, Plaintiffs bring this lawsuit
6 as a class action on their own behalf, and on behalf of all other persons similarly
7 situated, as members of the proposed Classes pursuant to Federal Rules of Civil
8 Procedure 23(a), (b)(2), and/or (b)(3), and/or (c)(4). This action satisfies the
9 numerosity, commonality, typicality, adequacy, predominance, and superiority
10 requirements of those provisions.

11 **I. The Class**

12 55. Plaintiffs bring this action, and seek to certify and maintain it as a class
13 action, under Federal Rules of Civil Procedure 23(a), (b)(2), and/or (b)(3), and/or
14 c(4), on behalf of themselves, and a Nationwide Consumer Class defined as follows:

15 All persons in the United States who purchased or leased a Class
16 Vehicle.

17 56. Excluded from each Class are ZF-TRW, and the Hyundai-Kia
18 Defendants; their employees, officers, directors, legal representatives, heirs, and
19 successors; wholly or partly owned subsidiaries or affiliates of Defendants; Class
20 Counsel and their employees; and the judicial officers, their immediate family
21 members, and associated court staff assigned to this case.

22 **II. Numerosity**

23 57. This action satisfies the requirements of Federal Rule of Civil
24 Procedure 23(a)(1). There are millions of Class Vehicles nationwide. Individual
25 joinder of all Class members is impracticable.

26 58. Each of the Classes are ascertainable because their members can be
27 readily identified using vehicle registration records, sales records, production
28 records, and other information kept by Defendants or third parties in the usual

1 course of business and within their control. Plaintiffs anticipate providing
2 appropriate notice to the Class in compliance with Federal Rules of Civil Procedure
3 23(c)(1)(2)(A) and/or (B), to be approved by the Court after class certification, or
4 pursuant to court order under Rule 23(d).

5 **III. Predominance of Common Issues**

6 59. This action satisfies the requirements of Federal Rules of Civil
7 Procedure 23(a)(2) and (b)(3), because questions of law and fact that have common
8 answer and predominate over questions affecting only individual Class members.
9 These include, without limitation, the following:

- 10 (a) Whether the Class Vehicles suffer from the ASIC Defect;
- 11 (b) Whether Defendants knew, or should have known, about the
12 ASIC Defect, and, if so, how long Defendants have known of the
13 defect;
- 14 (c) Whether Defendants had a duty to disclose the defective nature
15 of the Class Vehicles to Plaintiffs and Class members;
- 16 (d) Whether Defendants omitted and failed to disclose material
17 facts about the Class Vehicles;
- 18 (e) Whether Defendants' concealment of the true defective nature
19 of the Class Vehicles induced Plaintiffs and Class members to act to
20 their detriment by purchasing the Class Vehicles;
- 21 (f) Whether Defendants' conduct tolls any or all applicable
22 limitations periods by acts of fraudulent concealment, application of the
23 discovery rule, or equitable estoppel;
- 24 (g) Whether Defendants misrepresented that the Class Vehicles
25 were safe;
- 26 (h) Whether Defendants engaged in unfair, deceptive, unlawful
27 and/or fraudulent acts or practices, in trade or commerce, by failing to
28

1 disclose that the Class Vehicles were designed, manufactured, and sold
2 with defective airbag components;

3 (i) Whether Defendants' conduct, as alleged herein, was likely to
4 mislead a reasonable consumer;

5 (j) Whether Defendants' statements, concealments, and omissions
6 regarding the Class Vehicles, were material, in that a reasonable
7 consumer could consider them important in purchasing, selling,
8 maintaining, or operating such vehicles;

9 (k) Whether Defendants violated State consumer protection
10 statutes, and if so, what remedies are available under those statutes;

11 (l) Whether the Class Vehicles were unfit for the ordinary purposes
12 for which they were used, in violation of the implied warranty of
13 merchantability;

14 (m) Whether Defendants' unlawful, unfair, and/or deceptive
15 practices harmed Plaintiffs and the Classes;

16 (n) Whether the Class Vehicles have suffered a diminution of value
17 as a result of those Vehicles' incorporation of the airbags at issue;

18 (o) Whether Defendants have been unjustly enriched by its conduct;

19 (p) Whether Defendants should be declared responsible for
20 notifying all Class members of the ASIC Defect, and ensuring that all
21 vehicles with the airbag ASIC Defect are promptly recalled and
22 repaired;

23 (q) Whether Defendants conspired with others to violate RICO; and

24 (r) Whether Defendants associated with any enterprise engaged in,
25 or the activities of which affect, interstate or foreign commerce, to
26 conduct or participate, directly or indirectly, in the conduct of such
27 enterprise's affairs through a pattern of racketeering activity.
28

1 **IV. Typicality**

2 60. This action satisfies the requirements of Federal Rule of Civil
3 Procedure 23(a)(3), because Plaintiffs' claims are typical of the claims of the Class
4 members, and arise from the same course of conduct by Defendants. The relief
5 Plaintiffs seek is typical of the relief sought for the absent Class members.

6 **V. Adequate Representation**

7 61. Plaintiffs will fairly and adequately represent and protect the interests
8 of the Classes. Plaintiffs have retained counsel with substantial experience in
9 prosecuting consumer class actions, including actions involving defective products.

10 62. Plaintiffs and their counsel are committed to vigorously prosecuting
11 this action on behalf of the Classes, and have the financial resources to do so.
12 Neither Plaintiffs nor their counsel have interests adverse to those of the Classes.

13 **VI. Superiority**

14 63. This action satisfies the requirements of Federal Rule of Civil
15 Procedure 23(b)(2), because Defendants have acted and refused to act on grounds
16 generally applicable to each Class, thereby making appropriate final relief with
17 respect to each Class as a whole.

18 64. This action satisfies the requirements of Federal Rule of Civil
19 Procedure 23(b)(3), because a class action is superior to other available methods for
20 the fair and efficient adjudication of this controversy. The common questions of law
21 and fact regarding Defendants' conduct and responsibility predominate over any
22 questions affecting only individual Class members.

23 65. Because the damages suffered by each individual Class member may
24 be relatively small, the expense and burden of individual litigation would make it
25 very difficult or impossible for individual Class members to redress the wrongs
26 done to each of them individually, such that most or all Class members would have
27 no rational economic interest in individually controlling the prosecution of specific
28 actions; and the burden imposed on the judicial system by individual litigation—by

1 even a small fraction of the Class—would be enormous, making class adjudication
2 the superior alternative under Federal Rule of Civil Procedure 23(b)(3)(A).

3 66. The conduct of this action as a class action presents far fewer
4 management difficulties; far better conserves judicial resources, and the parties’
5 resources; and far more effectively protects the rights of each Class member than
6 would piecemeal litigation. Compared to the expense, burdens, inconsistencies,
7 economic infeasibility, and inefficiencies of individualized litigation, the challenges
8 of managing this action as a class action are substantially outweighed by the benefits
9 to the legitimate interests of the parties, the court, and the public of class treatment
10 in this court, making class adjudication superior to other alternatives, under Federal
11 Rule of Civil Procedure 23(b)(3)(D).

12 67. Plaintiffs are not aware of any obstacles likely to be encountered in the
13 management of this action that would preclude its maintenance as a class action.
14 Federal Rule of Civil Procedure 23 provides the Court with the authority and
15 flexibility to maximize the efficiencies and benefits of the class mechanism, and
16 reduce management challenges. The Court may, on motion of Plaintiffs, or on its
17 own determination, certify nationwide, statewide and/or multistate classes for
18 claims sharing common legal questions; utilize the provisions of Rule 23(c)(4) to
19 certify any particular claims, issues, or common questions of fact or law, for class-
20 wide adjudication; certify and adjudicate bellwether class claims; and utilize Rule
21 23(c)(5) to divide any Class into subclasses.

22 68. The Classes expressly disclaim any recovery in this action for physical
23 injury resulting from the ASIC Defect without waiving or dismissing such claims.
24 Plaintiffs are informed and believe that injuries suffered in crashes as a result of
25 Defective ACUs implicate the Class Vehicles; constitute evidence supporting
26 various claims, including diminution of value; and are continuing to occur because
27 of Defendants’ delays and inaction regarding the commencement and completion
28

1 of recalls. The increased risk of injury from the ASIC Defect serves as an
2 independent justification for the relief sought by Plaintiffs and the Classes.

3 **REALLEGATION AND INCORPORATION BY REFERENCE**

4 69. Plaintiffs reallege and incorporate by reference all of the preceding
5 paragraphs and allegations of this Complaint, including the Nature of Claims,
6 Factual Allegations, Tolling Allegations, and Class Action Allegations, as though
7 fully set forth in each of the following Claims for Relief asserted on behalf of the
8 Nationwide Class and the Statewide Classes.

9 **CLAIMS FOR RELIEF**

10 **VI. Nationwide Claims**

11 **A. Federal Claims**

12 **Count 1**

13 **Violation of the Racketeer Influenced and Corrupt Organizations Act**

14 **18 U.S.C. § 1962(c)**

15 70. Plaintiffs bring this claim on behalf of themselves, and the members
16 of the proposed Nationwide Class, against the Defendants, with regard to the
17 defective ACUs that the Defendants manufactured, sold, or misrepresented as safe.

18 71. The Hyundai-Kia Defendants, ZF-TRW, and MOBIS are all “persons”
19 under 18 U.S.C. § 1961(3).

20 72. Plaintiffs and Class members are “person[s] injured in his or her
21 business or property” by reason of the Hyundai-Kia Defendants’ and ZF-TRW’s
22 violation of RICO within the meaning of 18 U.S.C. § 1964(c).

23 73. Since the first reports of the ASIC Defect in 2011, ZF-TRW and the
24 Hyundai-Kia Defendants shared information about airbag non-deployments, jointly
25 and secretly; investigated the possible causes of those failed deployments; delayed
26 and/or prevented the release of inculpatory information; misled regulatory
27 authorities; and maintained a consistent public posture as to the scope of vehicles
28 affected by the Defective ACUs, and the safety risks those airbags posed. The

1 Hyundai-Kia Defendants' close cooperation with ZF-TRW on issues surrounding
2 the ASIC Defect, and joint participation in predicate acts described below, evidence
3 not only the formation of a common purpose to conduct the Defective ACU RICO
4 Enterprise through a pattern of racketeering activity, but also a conspiracy to
5 participate in a RICO enterprise by conducting the affairs of such an enterprise
6 through a pattern of racketeering activity.

7 **i. The Defective ACU RICO Enterprise**

8 74. The following persons, and others currently unknown, are or have been
9 members of, and constitute an "association-in-fact enterprise," within the meaning
10 of RICO, and will be referred to herein collectively as the Defective ACU RICO
11 Enterprise:

12 (a) ZF-TRW, who, designed and manufactured the Defective ACUs
13 and provided services to the Hyundai-Kia Defendants and MOBIS in
14 the event of post-crash investigations. ZF-TRW knew that the ACUs
15 contained the dangerous ASIC Defect, the scope and nature of which
16 they concealed from and misrepresented to the public and regulators for
17 close to a decade and still refuse to entirely acknowledge.

18 (b) MOBIS, who, with ZF-TRW's guidance, supplied millions of
19 Defective ACUs knowing that they contained the ASIC Defect, the
20 scope and nature of which they concealed from and misrepresented to
21 the public and regulators for close to a decade and still refuse to entirely
22 acknowledge.

23 (c) The Hyundai-Kia Defendants, who designed, manufactured,
24 and sold millions of vehicles equipped with Defective ACUs that it
25 knew, or were reckless in not knowing, contained the ASIC Defect, the
26 scope and nature of which they concealed from and misrepresented to
27 the public and regulators since August of 2011, while falsely and
28

1 inaccurately representing that their vehicles were safe, thereby
2 deceiving Plaintiffs and Class members.

3 75. The Defective ACU RICO Enterprise, which engaged in, and whose
4 activities affected interstate and foreign commerce, includes individuals and
5 corporate entities associated in fact within the meaning of 18 U.S.C. § 1961(4) and
6 consists of “persons” associated together for a common purpose. The Defective
7 ACU RICO Enterprise had an ongoing organization with an ascertainable structure
8 and functioned as a continuing unit with separate roles and responsibilities.

9 76. At all relevant times, Defendants operated, controlled, or managed the
10 Defective ACU RICO Enterprise through a variety of actions. The Hyundai-Kia
11 Defendants’ participation in the Defective ACU RICO Enterprise was necessary for
12 the successful operation of its scheme to defraud, because the Hyundai-Kia
13 Defendants manufactured, marketed, and sold Class Vehicles with the Defective
14 ACUs; concealed the nature and scope of the ASIC Defect; and profited from such
15 concealment. ZF-TRW’s participation in the Defective ACU RICO Enterprise was
16 necessary for the successful operation of the scheme to defraud, because ZF-TRW
17 designed and provided support related to analysis of ACU data. Finally, MOBIS’s
18 participation in the scheme was necessary for the successful operation of the
19 enterprise, because MOBIS supplied the Defective ACU components that were
20 installed in the Class Vehicles.

21 77. The members of the Defective ACU RICO Enterprise all served a
22 common purpose: to maximize the revenue and profitability of its members by
23 delaying the recall of the Defective ACUs and continuing to unlawfully sell
24 unreasonably dangerous vehicles containing Defective ACUs.

25 78. The members of the Defective ACU RICO Enterprise pursued their
26 common purpose by engaging in a pattern of racketeering activity that included a
27 common fraudulent scheme to increase sales by omitting information from the
28 public regarding the defects in the airbags. Each member of the Defective ACU

1 RICO Enterprise benefited from the common purpose and the common fraudulent
2 scheme that supported it. Specifically, the Hyundai-Kia Defendants sold or leased
3 more Class Vehicles and received more for those vehicles than they would have
4 otherwise, had the scope and nature of the ASIC Defect not been concealed.
5 Similarly, ZF-TRW and MOBIS sold more Defective ACUs to the Hyundai-Kia
6 Defendants than they would have otherwise, had the scope and nature of the ASIC
7 Defect not been concealed.

8 **ii. Pattern of Racketeering Activity**

9 79. The Hyundai-Kia Defendants, ZF-TRW, and MOBIS conducted and
10 participated in the conduct of the affairs of the Defective ACU RICO Enterprise
11 through a long-running pattern of racketeering activity, beginning August of 2011,
12 and continuing to this day, consisting of numerous and repeated violations of the
13 federal mail and wire fraud statutes, which prohibit the use of any interstate or
14 foreign mail or wire facility for the purpose of executing a scheme to defraud, in
15 violation of 18 U.S.C. §§ 1341 and 1343.

16 80. For Defendants, the purpose of the scheme to defraud was to conceal
17 the scope and nature of the ASIC Defect found in millions of Defective ACUs in
18 the United States in order to avoid incurring the expenses associated with repairing
19 the ASIC Defect in vehicles that the Hyundai-Kia Defendants were obligated to
20 recall. By concealing the scope and nature of the ASIC Defect in its millions of
21 Defective ACUs, Defendants also maintained and boosted consumer confidence in
22 the Hyundai and Kia brands and avoided remediation costs and negative publicity,
23 all of which furthered the scheme to defraud and helped the Hyundai-Kia
24 Defendants, ZF-TRW, and MOBIS sell more vehicles and airbags than they
25 otherwise would have sold and for a much higher price or profit.

26 81. As detailed in the general factual allegations, Defendants were well
27 aware of the risks of an EOS event damaging the ASIC during a crash event but
28 intentionally subjected Plaintiffs and Class members to those risks, or consciously

1 disregarded those risks, in order to maximize their profits. Moreover, even after the
2 Defendants were aware of multiple airbag non-deployments in ZF-TRW ACUs
3 installed in vehicles for which the Hyundai-Kia Defendants were responsible to
4 recall, and vehicles with the ASIC Defect began maiming and killing vehicle
5 occupants in other manufacturers' vehicles in the field, Defendants continued to
6 conceal the nature and scope of the ASIC Defect from regulators and the public.
7 This enabled Defendants to escape investigation and the costs associated with
8 recalls.

9 82. To further the scheme to defraud, the Hyundai-Kia Defendants
10 conspired with ZF-TRW and MOBIS to, and did repeatedly, misrepresent and
11 conceal the nature and scope of the ASIC Defect. As late as the end of 2017,
12 Defendants refused to publicly acknowledge that a uniform defect existed in all
13 vehicles with ACU components, when in fact Defendants knew that the ASIC
14 Defect was a fundamental, uniform defect—i.e., the vulnerability of the ASIC
15 during a crash event to EOS causing a failed deployment of the airbag and seatbelt
16 pretensioners—that plagues every ZF-TRW ACU, and manifests itself across the
17 country, and the world.

18 83. To further the scheme to defraud, the Hyundai-Kia Defendants
19 promoted and touted the safety, reliability, and quality of its vehicles, while
20 simultaneously concealing the nature and scope of the ASIC Defect.

21 84. To carry out or attempt to carry out the scheme to defraud Defendants
22 have conducted or participated in the conduct of the affairs of the Defective ACU
23 RICO Enterprise through the following pattern of racketeering activity that
24 employed the use of the mail and wire facilities, in violation of 18 U.S.C. § 1341
25 (mail fraud) and § 1343 (wire fraud):

26 (a) Defendants devised and furthered the scheme to defraud by use
27 of the mail, telephone, and internet and transmitted or caused to be
28 transmitted, by means of mail and wire communication travelling in

1 interstate or foreign commerce, writing(s) and/or signal(s), including
2 the Hyundai-Kia Defendants' websites, communications with NHTSA,
3 statements to the press, and communications with other members of the
4 Defective ACU RICO Enterprise, as well as advertisements and other
5 communications to their customers, including Plaintiffs and Class
6 members; and

7 (b) Defendants utilized the interstate and international mail and
8 wires for the purpose of obtaining money or property, by means of the
9 omissions, false pretense, and misrepresentations described herein.

10 85. Since August of 2011, Defendants' pattern of racketeering activity in
11 violation of the mail and wire fraud statutes included, but was not limited to, the
12 following:

13 (a) From August of 2011 through at least 2017, Defendants
14 repeatedly transmitted, or caused to be transmitted, by means of the
15 mail and wire facilities travelling in interstate or foreign commerce,
16 between the Hyundai-Kia Defendants in California and ZF-TRW's
17 facilities in Michigan, countless shipments of, and payments for,
18 millions of ACUs. These regular, repeated shipments facilitated and
19 furthered the scheme to defraud.

20 (b) Around August of 2011, Defendants transmitted or caused to be
21 transmitted, by means of mail and wire communication travelling in
22 interstate or foreign commerce, among the Hyundai-Kia Defendants in
23 California and ZF-TRW in Michigan, communications concerning an
24 airbag non-deployment that occurred during a crash in China. ZF-TRW
25 communicated that the damage to the ASIC was caused by EOS, but
26 the Hyundai-Kia Defendants represented that incident was a
27 "commanded nondeployment" and thus was not the result of a defect.
28 The Hyundai-Kia Defendants failed to timely disclose these facts to the

1 public and regulators in order to conceal the scope and nature of the
2 ASIC Defect and to promote the purported safety of the Hyundai-Kia
3 Defendants vehicles.

4 (c) Around March of 2012, Defendants transmitted or caused to be
5 transmitted, by means of mail and wire communication travelling in
6 interstate or foreign commerce, among the Hyundai-Kia Defendants in
7 California and ZF-TRW in Michigan, communications concerning an
8 airbag non-deployment that occurred during a crash in Egypt. ZF-TRW
9 communicated that the damage to the ASIC was caused by EOS, but
10 the Hyundai-Kia Defendants represented that incident was a
11 “commanded nondeployment” and thus was not the result of a defect.
12 The Hyundai-Kia Defendants failed to timely disclose these facts to the
13 public and regulators in order to conceal the scope and nature of the
14 ASIC Defect and to promote the purported safety of the Hyundai-Kia
15 Defendants vehicles.

16 (d) Around December 1 through December 3 of 2011, Defendants
17 transmitted or caused to be transmitted, by means of mail and wire
18 communication travelling in interstate or foreign commerce, among the
19 Hyundai-Kia Defendants in California and ZF-TRW in Michigan,
20 communications concerning airbag non-deployment that occurred
21 during two vehicle crashes. ZF-TRW communicated that the damage
22 to both ASIC was caused by EOS, but the Hyundai-Kia Defendants
23 represented that one incident was a “commanded nondeployment” and
24 the other was “under investigation.” The Hyundai-Kia Defendants
25 failed to timely disclose these facts to the public and regulators in order
26 to conceal the scope and nature of the ASIC Defect and to promote the
27 purported safety of the Hyundai-Kia Defendants vehicles.
28

1 (e) On April 25, 2016, Defendants transmitted or caused to be
2 transmitted, by means of mail and wire communication travelling in
3 interstate or foreign commerce, among the Hyundai-Kia Defendants in
4 California and ZF-TRW in Michigan, communications concerning an
5 airbag non-deployment that occurred during a crash. ZF-TRW
6 communicated that the damage to the ASIC was caused by EOS, but
7 the Hyundai-Kia Defendants represented that incident was a
8 “commanded nondeployment” and thus was not the result of a defect.
9 The Hyundai-Kia Defendants failed to timely disclose these facts to the
10 public and regulators in order to conceal the scope and nature of the
11 ASIC Defect and to promote the purported safety of the Hyundai-Kia
12 Defendants vehicles.

13 (f) Around August 24 and August 25 of 2016, Defendants
14 transmitted or caused to be transmitted, by means of mail and wire
15 communication travelling in interstate or foreign commerce, among the
16 Hyundai-Kia Defendants in California and ZF-TRW in Michigan,
17 communications concerning airbag non-deployment that occurred
18 during three vehicle crashes. ZF-TRW communicated that the damage
19 to all three ASIC was caused by EOS, but the Hyundai-Kia Defendants
20 represented that all three incidents were “commanded
21 nondeployments.” The Hyundai-Kia Defendants failed to timely
22 disclose these facts to the public and regulators in order to conceal the
23 scope and nature of the ASIC Defect and to promote the purported
24 safety of the Hyundai-Kia Defendants vehicles.

25 (g) Between 2011 and the end of 2017, ZF-TRW had knowledge
26 that the Hyundai-Kia Defendants were misrepresenting multiple airbag
27 non-deployment crashes as “commanded nondeployments.” However,
28 ZF-TRW acting in its role as part of the Defective ACU RICO

1 Enterprise did not report these misrepresentations to the public or state
2 or federal regulators. ZF-TRW also failed to report its knowledge of the
3 ASIC Defect to regulators and the public until many years after
4 discovering the issues.

5 (h) Between and around January and July of 2016, Defendants
6 caused to be transmitted, by means of mail and wire communication
7 travelling in interstate or foreign commerce, from the Hyundai-Kia
8 Defendants in California and ZF-TRW in Michigan to the offices of
9 federal regulators in Washington, D.C., misrepresentations and
10 omissions regarding the ASIC Defect, including that the defect was not
11 present in Hyundai and Kia brand vehicles. Defendants knew that these
12 statements were false and that the defect was present in millions of its
13 vehicles, and yet it did nothing to meaningfully notify the appropriate
14 regulators or notify the Class.

15 (i) On or around April 18, 2018, the Hyundai-Kia Defendants
16 caused to be transmitted, by means of mail and wire communication
17 travelling in interstate or foreign commerce, from the Hyundai-Kia
18 Defendants' offices in California to the offices of federal regulators in
19 Washington, D.C., misrepresentations and omissions regarding the
20 ASIC Defect, including a chronology of events that omitted numerous
21 airbag non-deployments of which the Hyundai-Kia Defendants were
22 aware, in order to conceal the scope and nature of the ASIC Defect and
23 to promote the purported safety of the Hyundai-Kia Defendants
24 vehicles.

25 (j) On or around August 30, 2018, the Hyundai-Kia Defendants
26 caused to be transmitted, by means of mail and wire communication
27 travelling in interstate or foreign commerce, from the Hyundai-Kia
28 Defendants' offices in California to the offices of federal regulators in

1 Washington, D.C., misrepresentations and omissions regarding the
2 ASIC Defect, including a chronology of events that omitted numerous
3 airbag non-deployments of which the Hyundai-Kia Defendants were
4 aware, in order to conceal the scope and nature of the ASIC Defect and
5 to promote the purported safety of the Hyundai-Kia Defendants
6 vehicles.

7 86. Defendants' conduct in furtherance of this scheme was intentional.
8 Plaintiffs and Class members were directly harmed as a result of Defendants'
9 intentional conduct. Plaintiffs, Class members, and federal regulators, among
10 others, relied on Defendants' material misrepresentations and omissions.

11 87. As described throughout this Complaint, on or after August of 2011,
12 the Hyundai-Kia Defendants, MOBIS, and ZF-TRW conspired to or did engage in
13 a pattern of related and continuous predicate acts. The predicate acts constituted a
14 variety of unlawful activities, each conducted with the common purpose of
15 defrauding Plaintiffs and other Class members—and obtaining significant monies
16 and revenues from them—while providing vehicles with Defective ACUs worth
17 significantly less than the purchase price paid. The predicate acts also had the same
18 or similar results, participants, victims, and methods of commission. The predicate
19 acts were related and not isolated events.

20 88. The predicate acts all had the purpose of generating significant revenue
21 and profits for Defendants at the expense of Plaintiffs and Class members. The
22 predicate acts were committed or caused to be committed by Defendants through
23 their participation in the Defective ACU RICO Enterprise and in furtherance of its
24 fraudulent scheme and were interrelated in that they involved obtaining Plaintiffs'
25 and Class members' funds and avoiding the expenses associated with remediating
26 the ASIC Defect.

27 89. By reason of and as a result of the conduct of Defendants, and in
28 particular, its pattern of racketeering activity, Plaintiffs and Class members have

1 been injured in their business and/or property in multiple ways, including but not
2 limited to:

3 (a) overpayment for leased or purchased Class Vehicles, in that
4 Plaintiffs paid for vehicles with safe airbag systems and obtained
5 vehicles with anything but, and were deprived of the benefit of their
6 bargain; and

7 (b) the values of the Class Vehicles have diminished, thus reducing
8 their resale values.

9 90. Defendants' violations of 18 U.S.C. § 1962(c) have directly and
10 proximately caused injuries and damages to Plaintiffs and Class Members, and
11 Plaintiffs and Class Members are entitled to bring this action for three times their
12 actual damages, as well as injunctive/equitable relief and costs and reasonable
13 attorneys' fees pursuant to 18 U.S.C. § 1964(a) and (c).

14 **Count 2**

15 **Violation of the Racketeer Influenced and Corrupt Organizations Act**

16 **18 U.S.C. § 1962(d)**

17 91. Plaintiffs bring this claim on behalf of themselves and members of the
18 Nationwide Class against the Defendants.

19 92. Plaintiffs re-allege and incorporate the allegations set forth above.

20 93. At all relevant times, the Hyundai-Kia Defendants, MOBIS, and ZF-
21 TRW were associated with the Defective ACU RICO Enterprise and agreed and
22 conspired to violate 18 U.S.C. § 1962(c), that is, agreed to conduct and participate,
23 directly and indirectly, in the conduct of the affairs of the Defective ACU RICO
24 Enterprise through a pattern of racketeering activity, in violation of 18 U.S.C. §
25 1962(d). The Hyundai-Kia Defendants, MOBIS, and ZF-TRW also agreed to the
26 objective of the conspiracy or to commit at least two racketeering predicate acts.

27 94. Over the course of the past nine years, Defendants shared information
28 about the Defective ACUs' inherent flaws, their inability to meet safety

1 specifications, and abnormal airbag deployments experienced by other automakers;
2 delayed and/or prevented the release of inculpatory information; and maintained a
3 consistent public posture as to the scope of vehicles affected by the Defective ACUs
4 and the safety risks those airbags posed. Defendants' close cooperation on issues
5 surrounding the ASIC Defect and joint participation in predicate acts described
6 below is evidence of the conspiracy.

7 95. Defendants committed, and caused to be committed, a series of overt
8 acts in furtherance of the conspiracy and to affect the objects thereof.

9 96. More specifically, the following conduct and overt acts demonstrate
10 the ongoing conspiracy between the Hyundai-Kia Defendants, MOBIS, and ZF-
11 TRW:

12 (a) Defendants continued to encounter non-deployments in ZF-
13 TRW ACUs installed in Hyundai and Kia branded vehicles, but agreed
14 to continue representing their vehicles as safe.

15 (b) Defendants also agreed to act so as to prevent any recall of the
16 Defective ACUs. The Hyundai-Kia Defendants did not commence an
17 official recall for their vehicles until 2018. Even then, the Hyundai-Kia
18 Defendants limited the scope of the recall to specific car model years.
19 The Hyundai-Kia Defendants falsely claimed that the risks caused by
20 the ASIC Defect was not present in any other models not recalled. The
21 Hyundai-Kia Defendants also mischaracterized the ASIC Defect as
22 occurring in a lower frequency than was known the Defendants. ZF-
23 TRW and MOBIS to the date of filing this complaint have never issued
24 a safety recall of the Defective ACU components.

25 97. Defendants agreed to and did conduct and participate in the conduct of
26 the Defective ACU RICO Enterprise's affairs through a pattern of racketeering
27 activity and for the unlawful purpose of defrauding Plaintiffs and Class members,
28 as more fully described above.

1 98. As a direct and proximate result of Defendants' conspiracy and
2 violation of 18 U.S.C. § 1962(d), Plaintiffs and Class members have been injured
3 in their business and/or property in multiple ways, including but not limited to:

4 (a) overpayment for leased or purchased Class Vehicles, in that
5 Plaintiffs paid for vehicles with safe airbag systems and obtained
6 vehicles with anything but, and have been deprived of the benefit of
7 their bargain; and

8 (b) the Class Vehicles' values have diminished, thus reducing their
9 resale values.

10 99. Had Defendants been entirely forthcoming with NHTSA and with the
11 public in a timely manner about the vast scope of the ASIC Defect and the grave
12 risks it posed to countless vehicle occupants, as was its duty, Plaintiffs would not
13 have suffered these harms. Defendants' conspiracy to commit mail fraud and/or
14 wire fraud was reasonably calculated to deceive persons of ordinary prudence and
15 comprehension and was committed with reckless indifference to the truth if not the
16 outright intent to deceive.

17 100. Plaintiffs and Class Members seek to hold the Defendants liable only
18 for damages resulting from conduct of the Hyundai-Kia Defendants, MOBIS, ZF-
19 TRW, their co-conspirators, and the Defective ACU RICO Enterprise that occurred
20 on or after August of 2011.

21 101. Defendants' conspiracy to violate 18 U.S.C. § 1962(c) was committed
22 with the specific intent to defraud, thereby entitling Plaintiffs to treble damages
23 under 18 U.S.C. § 1964(c).

24 102. Defendants' violations of 18 U.S.C. § 1962(d) have directly and
25 proximately caused injuries and damages to Plaintiffs and Class Members, and
26 Plaintiffs and Class Members are entitled to bring this action for three times their
27 actual damages, as well as injunctive/equitable relief and costs and reasonable
28 attorneys' fees pursuant to 18 U.S.C. §§ 1964(a) and 1964(c).

Count 3

Violation of the Magnuson-Moss Warranty Act, 15 U.S.C. § 2301

103. Plaintiffs bring this Count against all Hyundai-Kia Defendants, on behalf of themselves and members of the proposed Nationwide Class.

104. This Court has jurisdiction to decide claims brought under 15 U.S.C. § 2301 by virtue of 28 U.S.C. § 1332 (a)-(d).

105. The Class Vehicles are “consumer products” within the meaning of the Magnuson-Moss Warranty Act, 15 U.S.C. § 2301(1).

106. Any efforts to limit the implied warranties in a manner that would exclude coverage of the Class Vehicles is unconscionable, and any such effort to disclaim or otherwise limit liability for the Class Vehicles is null and void.

107. Any limitations on the warranties are procedurally unconscionable. There was unequal bargaining power between the Hyundai-Kia Defendants on the one hand, and Plaintiffs and the other Class members, on the other.

108. Any limitations on the warranties are substantively unconscionable. The Hyundai-Kia Defendants knew that the Class Vehicles were defective, and would continue to pose safety risks after the warranties purportedly expired. The Hyundai-Kia Defendants failed to disclose the ASIC Defect to Plaintiffs and the other Class members. Thus, the Hyundai-Kia Defendants’ enforcement of the durational limitations on those warranties is harsh and shocks the conscience.

109. Plaintiffs and each of the other Class members have had sufficient direct dealings with Hyundai or its agents (dealerships) to establish privity of contract.

110. Nonetheless, privity is not required here, because Plaintiffs and each of the other Class members are intended third-party beneficiaries of contracts between the Hyundai-Kia Defendants and their dealers, and specifically, of the implied warranties. The dealers were not intended to be the ultimate consumers of the Class Vehicles, and have no rights under the warranty agreements provided with

1 the Class Vehicles; the warranty agreements were designed for, and intended to
2 benefit, consumers. Finally, privity is also not required because the Class Vehicles
3 are dangerous instrumentalities due to the ASIC Defect.

4 111. Pursuant to 15 U.S.C. § 2310(e), Plaintiffs are entitled to bring this
5 class action, and are not required to give the Hyundai-Kia Defendants notice and an
6 opportunity to cure, until such time as the Court determines the representative
7 capacity of Plaintiffs pursuant to Rule 23 of the Federal Rules of Civil Procedure.

8 112. Furthermore, affording the Hyundai-Kia Defendants an opportunity to
9 cure their breach of written warranties would be unnecessary and futile here. At the
10 time of sale or lease of each Class Vehicle, The Hyundai-Kia Defendants knew,
11 should have known, or was reckless in not knowing of its misrepresentations and
12 omissions concerning the Class Vehicles' inability to perform as warranted, but
13 nonetheless failed to rectify the situation and/or disclose the defective design. Under
14 the circumstances, the remedies available under any informal settlement procedure
15 would be inadequate and any requirement that Plaintiffs resort to an informal
16 dispute resolution procedure and/or afford The Hyundai-Kia Defendants a
17 reasonable opportunity to cure their breach of warranties is excused and thereby
18 deemed satisfied.

19 113. Plaintiffs and the other Class members would suffer economic
20 hardship if they returned their Class Vehicles but did not receive the return of all
21 payments made by them. Because the Hyundai-Kia Defendants are refusing to
22 acknowledge any revocation of acceptance and return immediately any payments
23 made, Plaintiffs and the other Class members have not re-accepted their Defective
24 Vehicles by retaining them.

25 114. The amount in controversy of Plaintiffs' individual claims meets or
26 exceeds the sum of \$25. The amount in controversy of this action exceeds the sum
27 of \$50,000, exclusive of interest and costs, computed on the basis of all claims to
28 be determined in this lawsuit. Plaintiffs, individually and on behalf of the other

1 Class members, seek all damages permitted by law, including diminution in value
2 of their vehicles, in an amount to be proven at trial. In addition, pursuant to 15
3 U.S.C. § 2310(d)(2), Plaintiffs and the other Class members are entitled to recover
4 a sum equal to the aggregate amount of costs and expenses (including attorneys'
5 fees based on actual time expended) determined by the Court to have reasonably
6 been incurred by Plaintiffs and the other Class members, in connection with the
7 commencement and prosecution of this action.

8 115. Plaintiffs also request, as a form of equitable monetary relief, re-
9 payment of the out-of-pocket expenses, and costs they have incurred in attempting
10 to rectify the ASIC Defect in their vehicles. Such expenses and losses will continue
11 as Plaintiffs and Class members must take time off from work, pay for rental cars
12 or other transportation arrangements, child care, and the myriad of expenses
13 involved in going through the recall process.

14 116. The right of Class members to recover these expenses as an equitable
15 matter—to put them in the place they would have been but for the Hyundai-Kia
16 Defendants' conduct—presents common questions of law. Equity and fairness
17 requires the establishment by Court decree, and administration under Court
18 supervision, of a program funded by the Hyundai-Kia Defendants, using
19 transparent, consistent, and reasonable protocols, under which such claims can be
20 made and paid.

21 **B. Common Law Claims**

22 **Count 4**

23 **Fraud**

24 117. Plaintiffs bring this claim on behalf themselves and the members of
25 the Nationwide Class under the common law of fraud, as there are no true conflicts
26 (case-dispositive differences) among various states' laws of fraud. In the
27 alternative, Plaintiffs bring this claim under the laws of the states where Plaintiffs
28 and Class Members purchased their Class Vehicles.

1 118. The Hyundai-Kia Defendants concealed and suppressed material facts
2 regarding the Defective ACUs—most the fact that they were equipped with
3 Defective ACUs which, among other things, fail to deploy airbags or seat belt
4 pretensioners as a result of the ASIC’s vulnerability to EOS.

5 119. The Hyundai-Kia Defendants took steps to ensure that its employees
6 did not reveal the known safety ASIC Defect to regulators or consumers.

7 120. On information and belief, the Hyundai-Kia Defendants still have not
8 made full and adequate disclosure, continues to defraud Plaintiffs and the Class,
9 and continue to conceal material information regarding the ASIC Defect that exists
10 in the Class Vehicles.

11 121. The Hyundai-Kia Defendants had a duty to disclose the ASIC Defect
12 because they:

13 (a) Had exclusive and/or far superior knowledge and access to the
14 facts, and the Hyundai-Kia Defendants knew the facts were not known
15 to or reasonably discoverable by Plaintiffs and the Class;

16 (b) Intentionally concealed the foregoing from Plaintiffs and Class
17 Members; and

18 (c) Made incomplete representations about the safety and reliability
19 of the Defective ACUs and, by extension, the Class Vehicles, while
20 purposefully withholding material facts from Plaintiffs that
21 contradicted these representations.

22 122. These omitted and concealed facts were material because they would
23 be relied on by a reasonable person purchasing, leasing, or retaining a new or used
24 motor vehicle and because they directly impact the value of the Class Vehicles
25 purchased or leased by Plaintiffs and the Class. Whether a manufacturer’s products
26 are safe and reliable and whether that manufacturer stands behind its products are
27 material concerns to a consumer. Plaintiffs and Class Members trusted the Hyundai-
28

1 Kia Defendants not to sell or lease them vehicles that were defective or that violated
2 federal law governing motor vehicle safety.

3 123. The Hyundai-Kia Defendants concealed and suppressed these material
4 facts to falsely assure purchasers and consumers that its airbags were capable of
5 performing safely, as represented by the Hyundai-Kia Defendants and reasonably
6 expected by consumers.

7 124. The Hyundai-Kia Defendants also misrepresented the safety and
8 reliability of their vehicles, because they either (a) knew but did not disclose the
9 ASIC Defect; (b) knew that they did not know whether their safety and reliability
10 representations were true or false; or (c) should have known that their
11 misrepresentations were false.

12 125. The Hyundai-Kia Defendants and actively concealed and/or
13 suppressed these material facts, in whole or in part, to protect their profits and to
14 avoid recalls that would hurt each brand's image and cost the Hyundai-Kia
15 Defendants money. The Hyundai-Kia Defendants and ZF-TRW concealed these
16 facts at the expense of Plaintiffs and the Class.

17 126. Plaintiffs and the Class were unaware of these omitted material facts
18 and would not have acted as they did if they had known of the concealed or
19 suppressed facts.

20 127. Had they been aware of the Defective ACUs and the Hyundai-Kia
21 Defendants and callous disregard for safety, Plaintiffs and the Class either would
22 not have paid as much for their Class Vehicles or would not have purchased or
23 leased them at all.

24 128. Plaintiffs did not receive the benefit of their bargain as a result of the
25 Hyundai-Kia Defendants' fraudulent conduct.

26 129. Because of the concealment and/or suppression of the facts, Plaintiffs
27 and the Class sustained damage because they own vehicles that diminished in value
28 as a result of the Hyundai-Kia Defendants' concealment of, failure to timely

1 disclose, and/or misrepresentations concerning the serious ASIC Defect in millions
2 of Class Vehicles and the serious safety and quality issues caused by the Hyundai-
3 Kia Defendants' conduct.

4 130. The value of all Class members' vehicles has diminished as a result of
5 the Hyundai-Kia Defendants' fraudulent conduct in connection with the Defective
6 ACUs and made any reasonable consumer reluctant to purchase any of the Class
7 Vehicles, let alone pay what otherwise would have been fair market value for the
8 vehicles.

9 131. Accordingly, the Hyundai-Kia Defendants are liable to the Class for
10 their damages in an amount to be proven at trial, including, but not limited to, their
11 lost benefit of the bargain or overpayment for the Class Vehicles at the time of
12 purchase, the diminished value of the Defective ACUs and the Class Vehicles,
13 and/or the costs incurred in storing, maintaining or otherwise disposing of the
14 Defective ACUs.

15 132. The Hyundai-Kia Defendants' acts were done maliciously,
16 oppressively, deliberately, with intent to defraud, and in reckless disregard of
17 Plaintiffs' and the Class's rights and well-being and with the aim of enriching the
18 Hyundai-Kia Defendants. The Hyundai-Kia Defendants' conduct, which exhibits
19 the highest degree of reprehensibility, being intentional, continuous, placing others
20 at risk of death and injury, and effecting public safety, warrants an assessment of
21 punitive damages in an amount sufficient to deter such conduct in the future, which
22 amount is to be determined according to proof.

23 **Count 5**

24 **Unjust Enrichment**

25 133. Plaintiffs bring this claim on behalf of themselves and the members of
26 the Nationwide Class under the common law of unjust enrichment, as there are no
27 true conflicts (case-dispositive differences) among various states' laws of unjust
28

1 enrichment. In the alternative, Plaintiffs bring this claim under the laws of the states
2 where Plaintiffs and Class Members reside and/or purchased their Class Vehicles.

3 134. The Hyundai-Kia Defendants have received and retained a benefit
4 from the Plaintiffs and inequity has resulted.

5 135. The Hyundai-Kia Defendants benefitted through their unjust conduct,
6 by selling Class Vehicles with a concealed safety-and-reliability related defect, at a
7 profit for more than these Vehicles were worth to Plaintiffs, who overpaid for these
8 Vehicles, and/or would not have purchased these Vehicles at all; and who have been
9 forced to pay other costs.

10 136. It is inequitable for the Hyundai-Kia Defendants to retain these
11 benefits.

12 137. Consumer Plaintiffs do not have an adequate remedy at law.

13 138. As a result of the Hyundai-Kia Defendants' conduct, the amount of its
14 unjust enrichment should be disgorged in an amount to be proven at trial.

15 **C. California Statutory Claims**

16 **Count 6**

17 **Violation of Song-Beverly Consumer Warranty Act for Breach of Implied**
18 **Warranty of Merchantability**

19 139. Plaintiffs bring this claim on behalf of themselves and the members of
20 the Class under the laws of California against the Hyundai-Kia Defendants with
21 regard to Class Vehicles that the Hyundai-Kia Defendants manufactured or sold.

22 140. Plaintiffs and members of the Class are "buyers" within the meaning
23 of Cal. Civ. Code § 1791(b).

24 141. The Class Vehicles are "consumer goods" within the meaning of Cal.
25 Civ. Code § 1791(a).

26 142. The Hyundai-Kia Defendants are a "manufacturer" of the Class
27 Vehicles within the meaning Cal. Civ. Code § 1791(j).

28

1 143. The Hyundai-Kia Defendants impliedly warranted to the Plaintiffs that
2 their Class Vehicles were “merchantable” within the meaning of Cal. Civ. Code §§
3 1791.1(a) and 1792; however, the Class Vehicles do not have the quality that a
4 buyer would reasonably expect, and were therefore not merchantable.

5 144. Cal. Civ. Code § 1791.1(a) states:

6 “Implied warranty of merchantability” or “implied warranty that goods are
7 merchantable” means that the consumer goods meet each of the following:

- 8 1. Pass without objection in the trade under the contract description.
- 9 2. Are fit for the ordinary purposes for which such goods are used.
- 10 3. Are adequately contained, packaged, and labeled.
- 11 4. Conform to the promises or affirmations of fact made on the
12 container or label.

13 145. The Class Vehicles would not pass without objection in the automotive
14 trade because they were equipped with Defective ACUs, which among other things,
15 may fail to deploy airbags and seat belt pretensioners in a crash event due to the
16 ASICs being damaged by EOS, leading to an unreasonable likelihood of serious
17 bodily injury or death to vehicle occupants, instead of protecting vehicle occupants
18 from bodily injury during accidents.

19 146. Because of the ASIC Defect, the Class Vehicles are not safe to drive,
20 and thus not fit for ordinary purposes.

21 147. The Class Vehicles are not adequately labeled because the labeling
22 fails to disclose the ASIC Defect. The Hyundai-Kia Defendants failed to warn about
23 that dangerous ASIC Defect in the Class Vehicles.

24 148. The Hyundai-Kia Defendants breached the implied warranty of
25 merchantability by manufacturing and selling Class Vehicles equipped with
26 Defective ACUs containing the ASIC Defect which among other things, may fail
27 to deploy airbags and seat belt pretensioners in a crash event due to the ASICs being
28

1 damages by EOS. The Defective ACUs have deprived the Plaintiffs of the benefit
2 of their bargain, and have caused the Class Vehicles to depreciate in value.

3 149. Notice of breach is not required because Plaintiffs and the Class did
4 not purchase their automobiles directly from the Hyundai-Kia Defendants.
5 Furthermore, on information and belief, the Hyundai-Kia Defendants had notice of
6 these issues by their knowledge of the issues, through customer complaints,
7 numerous complaints filed against it and/or others, internal investigations, and
8 individual letters and communications sent by consumers before the Hyundai-Kia
9 Defendants issued the recalls and after the allegations of the ASIC Defect became
10 public.

11 150. As a direct and proximate result of the Hyundai-Kia Defendants'
12 breach of their duties under California's Lemon Law, Plaintiffs and the Class
13 received goods whose dangerous condition substantially impairs their value.
14 Plaintiffs and the Class have been damaged by the diminished value,
15 malfunctioning, and non-use of their Class Vehicles.

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

20 152. Under Cal. Civ. Code § 1794, Plaintiffs and the Class are entitled to
21 costs and attorneys' fees.

22 **Count 8**

23 **Violation of the California Unfair Competition Law Cal. Bus. & Prof. Code §**
24 **17200**

25 153. Plaintiffs bring this claim on behalf of themselves and the members of
26 the Class against the Hyundai-Kia Defendants.

27 154. Cal. Bus. & Prof. Code § 17200 prohibits acts of "unfair competition,"
28 including any "unlawful, unfair or fraudulent business act or practice" and "unfair,

1 deceptive, untrue or misleading advertising. . . .” The Hyundai-Kia Defendants
2 engaged in conduct that violated each of this statute’s three prongs.

3 155. The Hyundai-Kia Defendants committed an unlawful business act or
4 practice in violation of § 17200 by their violations of the Consumer Legal Remedies
5 Act and Cal. Civ. Code § 1750 as set forth below, by the acts and practices set forth
6 in this Complaint.

7 156. The Hyundai-Kia Defendants also violated the unlawful prong because
8 they have engaged in violations of the TREAD Act, 49 U.S.C. § 30101, and its
9 accompanying regulations by failing to promptly notify vehicle owners, purchases,
10 dealers, and NHTSA of the defective Class Vehicles and/or the Defective ACUs
11 installed in them and failing to remedy the ASIC Defect.

12 157. Federal Motor Vehicle Safety Standard (“FMVSS”) 573 governs a
13 motor vehicle manufacturer’s responsibility to notify the NHTSA of a motor
14 vehicle defect within five days of determining that a defect in a vehicle has been
15 determined to be safety-related. See 49 C.F.R. § 573.6.

16 158. The Hyundai-Kia Defendants violated the reporting requirements of
17 FMVSS 573 by failing to report the ASIC Defect or any of the other dangers or
18 risks posed by the Defective ACUs within five days of determining the defect
19 existed, and failing to recall all Class Vehicles.

20 159. The Hyundai-Kia Defendants violated the common-law claim of
21 negligent failure to recall, because the Hyundai-Kia Defendants knew or should
22 have known that the Class Vehicles and/or the Defective ACUs installed in them
23 were dangerous and/or were likely to be dangerous when used in a reasonably
24 foreseeable manner; the Hyundai-Kia Defendants became aware of the attendant
25 risks after they were sold; The Hyundai-Kia Defendants continued to gain
26 information further corroborating the ASIC Defect and dangers posed by it; and the
27 Hyundai-Kia Defendants failed to adequately recall the defective vehicles in a
28

1 timely manner, which failure was a substantial factor in causing harm to Plaintiffs
2 and the Class, including diminished value and out-of-pocket costs.

3 160. The Hyundai-Kia Defendants committed unfair business acts and
4 practices in violation of § 17200 when they concealed the existence and nature of
5 the ASIC Defect and the dangers and risks posed by the Class Vehicles and/or the
6 Defective ACUs installed in them. The Hyundai-Kia Defendants represented that
7 the Class Vehicles and/or the Defective ACUs installed in them were reliable and
8 safe when, in fact, they are not.

9 161. The Hyundai-Kia Defendants also violated the unfairness prong of §
10 17200 by failing to properly administer the numerous recalls of Class Vehicles with
11 the Defective ACUs installed in them.

12 162. The Hyundai-Kia Defendants violated the fraudulent prong of § 17200
13 because the misrepresentations and omissions regarding the safety and reliability of
14 the Class Vehicles and/or the Defective ACUs installed in them as set forth in this
15 Complaint were likely to deceive a reasonable consumer and the information would
16 be material to a reasonable consumer.

17 163. The Hyundai-Kia Defendants committed fraudulent business acts and
18 practices in violation of § 17200 when they concealed the existence and nature of
19 the ASIC Defect and the dangers and risks posed by the Class Vehicles and/or the
20 Defective ACUs installed in them, while representing in their marketing,
21 advertising, and other broadly disseminated representations that the Class Vehicles
22 and/or the Defective ACUs installed in them were reliable and safe when, in fact,
23 they are not. The Hyundai-Kia Defendants' active concealment of the dangers and
24 risks posed by the Class Vehicles and/or the Defective ACUs installed in them are
25 likely to mislead the public with regard to their true defective nature.

26 164. The Hyundai-Kia Defendants violated the unfair prong of § 17200
27 because of the acts and practices set forth in the Complaint, including the
28 manufacture and sale of Class Vehicles and/or the Defective ACUs installed in them

1 and The Hyundai-Kia Defendants' failure to adequately investigate, disclose, and
2 remedy, offend established public policy, and because of the harm they cause to
3 consumers greatly outweighs any benefits associated with those practices. The
4 Hyundai-Kia Defendants' conduct has also impaired competition within the
5 automotive vehicles market and has prevented the Plaintiffs and the Class from
6 making fully informed decisions about whether to purchase or lease Class Vehicles
7 and/or the Defective ACUs installed in them and/or the price to be paid to purchase
8 or lease them.

9 165. Plaintiffs and the Class have suffered injuries in fact, including the loss
10 of money or property, as a result of the Hyundai-Kia Defendants' unfair, unlawful,
11 and/or deceptive practices. As set forth above, each member of the Class, in
12 purchasing or leasing Class Vehicles with the Defective ACUs installed in them,
13 relied on the misrepresentations and/or omissions of the Hyundai-Kia Defendants
14 with respect of the safety and reliability of the vehicles. Had Plaintiffs and the Class
15 known the truth, they would not have purchased or leased their vehicles and/or paid
16 as much for them.

17 166. All of the wrongful conduct alleged herein occurred and continues to
18 occur in the conduct of the Hyundai-Kia Defendants' businesses. The Hyundai-Kia
19 Defendants' wrongful conduct is part of a pattern or generalized course of conduct
20 that is still perpetuated and repeated.

21 167. As a direct and proximate result of the Hyundai-Kia Defendants'
22 unfair and deceptive practices, Plaintiffs and the Class have suffered and will
23 continue to suffer actual damages.

24 168. Plaintiffs and the Class request that this Court enter such orders or
25 judgments as may be necessary to enjoin the Hyundai-Kia Defendants from
26 continuing its unfair, unlawful, and/or deceptive practices, as provided in Cal. Bus.
27 & Prof. Code § 17203; and for such other relief set forth below.

Count 9

Violation of the Consumer Legal Remedies Act Cal. Civ. Code § 1750

169. Plaintiffs bring this claim on behalf of themselves and the members of the Class under the laws of California against the Hyundai-Kia Defendants.

170. The Class Vehicles are “goods” as defined in Cal. Civ. Code § 1761(a).

171. The Hyundai-Kia Defendants are “persons” as defined in Cal. Civ. Code § 1761(c).

172. Plaintiffs and Class members are “consumers” as defined in Cal. Civ. Code § 1761(d).

173. California’s Consumers Legal Remedies Act (“CLRA”), Cal. Civ. Code § 1750, prohibits “unfair or deceptive acts or practices undertaken by any person in a transaction intended to result or which results in the sale or lease of goods or services to any consumer[.]” Cal. Civ. Code § 1770(a).

174. The Hyundai-Kia Defendants have engaged in unfair or deceptive acts or practices that violated Cal. Civ. Code § 1750, as described above and below, by among other things, representing that the Class Vehicles and/or the Defective ACUs installed in them have characteristics, uses, benefits, and qualities which they do not have; representing that they are of a particular standard, quality, and grade when they are not; advertising them with the intent not to sell or lease them as advertised; and representing that the subject of a transaction involving them has been supplied in accordance with a previous representation when it has not.

175. In the course of its business, the Hyundai-Kia Defendants failed to disclose and actively concealed the dangers and risks posed by the Class Vehicles and/or the Defective ACUs installed in them as described herein and otherwise engaged in activities with a tendency or capacity to deceive.

176. The Hyundai-Kia Defendants also engaged in unlawful trade practices by representing that the Class Vehicles and/or the Defective ACUs installed in them have characteristics, uses, benefits, and qualities which they do not have;

1 representing that they are of a particular standard and quality when they are not;
2 advertising them with the intent not to sell or lease them as advertised; and omitting
3 material facts in describing them. The Hyundai-Kia Defendants are directly liable
4 for engaging in unfair and deceptive acts or practices in the conduct of trade or
5 commerce in violation of the CLRA. Defendant parent companies are also liable
6 for their subsidiaries' violation of the CLRA, because the subsidiaries act and acted
7 as the parent companies' general agents in the United States for purposes of sales
8 and marketing.

9 177. The Hyundai-Kia Defendants have known of the ASIC Defect in the
10 Defective ACUs since at least August of 2011, when the airbag non-deployment
11 crashes were first attributed to damage of the ASIC by EOS. The Hyundai-Kia
12 Defendants failed to disclose and actively concealed the dangers and risks posed by
13 the Class Vehicles and/or the Defective ACUs installed in them.

14 178. By failing to disclose and by actively concealing the ASIC Defect in
15 the Class Vehicles and/or the Defective ACUs installed in them, by marketing them
16 as safe, reliable, and of high quality, and by presenting themselves as reputable
17 manufacturers that value safety, the Hyundai-Kia Defendants engaged in unfair or
18 deceptive business practices in violation of the CLRA. The Hyundai-Kia
19 Defendants deliberately withheld the information about the propensity of the
20 Defective ACUs to fail to deploy airbags and seat belt pretensioners in a crash event
21 due to the ASICs being damaged by EOS, instead of protecting vehicle occupants
22 from bodily injury during accidents, in order to ensure that consumers would
23 purchase the Class Vehicles.

24 179. The Hyundai-Kia Defendants intentionally and knowingly
25 misrepresented material facts regarding the Class Vehicles and/or the Defective
26 ACUs installed in them with an intent to mislead the California Consumer Plaintiffs
27 and the California Consumer Class.
28

1 180. The Hyundai-Kia Defendants knew or should have known that their
2 conduct violated the CLRA.

3 181. As alleged above, the Hyundai-Kia Defendants made material
4 statements about the safety and reliability of the Class Vehicles and/or the Defective
5 ACUs installed in them that were either false or misleading. The Hyundai-Kia
6 Defendants' representations, omissions, statements, and commentary have included
7 selling and marketing the Class Vehicles as "safe" and "reliable," despite its
8 knowledge of the ASIC Defect or its failure to reasonably investigate it.

9 182. To protect their profits and to avoid remediation costs and a public
10 relations nightmare, the Hyundai-Kia Defendants concealed the dangers and risks
11 posed by the Class Vehicles and/or the Defective ACUs installed in them and their
12 tragic consequences and allowed unsuspecting new and used car purchasers to
13 continue to buy/lease the Class Vehicles and to continue driving highly dangerous
14 vehicles.

15 183. The Hyundai-Kia Defendants owed the Plaintiffs and the Class a duty
16 to disclose the true safety and reliability of the Class Vehicles and/or the Defective
17 ACUs installed in them because the Hyundai-Kia Defendants:

- 18 (a) Possessed exclusive knowledge of the dangers and risks posed
19 by the foregoing;
- 20 (b) Intentionally concealed the foregoing from Plaintiffs and the
21 Class; and/or
- 22 (c) Made incomplete representations about the safety and reliability
23 of the foregoing generally, while purposefully withholding material
24 facts from the Plaintiffs and the Class that contradicted these
25 representations.

26 184. The Class Vehicles and/or the Defective ACUs installed in them posed
27 and/or pose an unreasonable risk of death or serious bodily injury to the Class,
28 passengers, other motorists, pedestrians, and the public at large, because the

1 Defective ACUs are inherently defective and dangerous in that the Defective ACUs
2 will not deploy lifesaving safety measures of airbags and seatbelt pretensioners,
3 which increases the risk of bodily injury during accidents to drivers and passengers.

4 185. The Hyundai-Kia Defendants' unfair or deceptive acts or practices
5 were likely to deceive reasonable consumers, including the Class, about the true
6 safety and reliability of the Class Vehicles and/or the Defective ACUs installed in
7 them. The Hyundai-Kia Defendants intentionally and knowingly misrepresented
8 material facts regarding the Class Vehicles and/or the Defective ACUs installed in
9 them with an intent to mislead the Class.

10 186. The Hyundai-Kia Defendants has also violated the CLRA by violating
11 the TREAD Act, 49 U.S.C. § 30101, and its accompanying regulations by failing
12 to promptly notify vehicle owners, purchases, dealers, and NHTSA of the defective
13 Class Vehicles and/or the Defective ACUs installed in them and failing to remedy
14 the ASIC Defect.

15 187. Under the TREAD Act and its regulations, if a manufacturer learns
16 that a vehicle contains a defect and that defect is related to motor vehicle safety, the
17 manufacturer must disclose the defect. 49 U.S.C. § 30118(c)(1) & (2).

18 188. Under the TREAD Act, if it is determined that the vehicle is defective,
19 the manufacturer must promptly notify vehicle owners, purchasers, and dealers of
20 the defect and remedy the defect. 49 U.S.C. § 30118(b)(2)(A) & (B).

21 189. Under the TREAD Act, manufacturers must also file a report with
22 NHTSA within five working days of discovering "a defect in a vehicle or item of
23 equipment has been determined to be safety related, or a noncompliance with a
24 motor vehicle safety standard has been determined to exist." 49 C.F.R. § 573.6(a)
25 & (b). At a minimum, the report to NHTSA must include: the manufacturer's name;
26 the identification of the vehicles or equipment containing the defect, including the
27 make, line, model year, and years of manufacturing; a description of the basis for
28 determining the recall population; how those vehicles differ from similar vehicles

1 that the manufacturer excluded from the recall; and a description of the defect. 49
2 C.F.R. § 276.6(b), (c)(1), (c)(2), & (c)(5).

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

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

14 192. The Hyundai-Kia Defendants engaged in deceptive business practices
15 prohibited by the CLRA and Cal. Civ. Code § 1750, by failing to disclose and by
16 actively concealing dangers and risks posed by the Defective ACUs, by selling
17 vehicles while violating the TREAD Act, and by other conduct as alleged herein.

18 193. The Hyundai-Kia Defendants knew that the Class Vehicles and/or the
19 Defective ACUs installed in them contained the ASIC Defect that could cause a
20 failure of deployment of airbags and seat belt pretensioners, but the Hyundai-Kia
21 Defendants failed for many years to inform NHTSA of this defect. Consequently,
22 the public, including the Class, received no notice of the ASIC Defect. The
23 Hyundai-Kia Defendants failed to inform NHTSA or warn the Class, and the public
24 about these inherent dangers, despite having a duty to do so.

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

1 195. Because the Hyundai-Kia Defendants fraudulently concealed the
2 ASIC Defect in Class Vehicles and/or the Defective ACUs installed in them,
3 resulting in negative publicity once the ASIC Defect finally began to be disclosed,
4 the value of the Class Vehicles has greatly diminished. In light of the stigma
5 attached to Class Vehicles by the Hyundai-Kia Defendants' conduct, they are now
6 worth significantly less than they otherwise would be.

7 196. The Hyundai-Kia Defendants' failure to disclose and active
8 concealment of the dangers and risks posed by the Defective ACUs in Class
9 Vehicles were material to the Class. A vehicle made by a reputable manufacturer of
10 safe vehicles is worth more than an otherwise comparable vehicle made by a
11 disreputable manufacturer of unsafe vehicles that conceals defects rather than
12 promptly remedies them.

13 197. The Class suffered ascertainable loss caused by the Hyundai-Kia
14 Defendants' misrepresentations and its failure to disclose material information. Had
15 they been aware of the ASIC Defect that existed in the Class Vehicles and/or the
16 Defective ACUs installed in them and the Hyundai-Kia Defendants' complete
17 disregard for safety, the Class members either would not have paid as much for their
18 vehicles as they did or would not have purchased or leased them at all. Class
19 members did not receive the benefit of their bargain as a result of the Hyundai-Kia
20 Defendants' misconduct.

21 198. The Class risk irreparable injury as a result of the Hyundai-Kia
22 Defendants' acts and omissions in violation of the CLRA, and these violations
23 present a continuing risk to the Class, as well as to the general public. The Hyundai-
24 Kia Defendants' unlawful acts and practices complained of herein affect the public
25 interest.

26 199. The recalls and repairs instituted by The Hyundai-Kia Defendants have
27 not been adequate. The recall is not an effective remedy and is not offered for all
28 Class Vehicles and other vehicles with Defective ACUs susceptible to the

1 malfunctions described herein. Moreover, The Hyundai-Kia Defendants’ failure to
2 comply with TREAD Act disclosure obligations continues to pose a grave risk to
3 the Class.

4 200. As a direct and proximate result of the Hyundai-Kia Defendants’
5 violations of the CLRA, the Class members have suffered injury-in-fact and/or
6 actual damage. The Class currently own or lease or within the class period have
7 owned or leased Class Vehicles with Defective ACUs installed in them that are
8 defective and inherently unsafe. The Class risk irreparable injury as a result of the
9 Hyundai-Kia Defendants’ acts and omissions in violation of the CLRA, and these
10 violations present a continuing risk to the Class, as well as to the general public.

11 **D. Louisiana Statutory Claims**

12 **Count 10**

13 **Breach of Implied Warranty of Merchantability/ Warranty against**
14 **Redhibitory Defects (La. Civ. Code Art. 2520, 2524)**

15 201. Plaintiffs bring this claim on behalf of themselves and the members of
16 the Class under the laws of Louisiana against the Hyundai-Kia Defendants with
17 regard to Class Vehicles that the Hyundai-Kia Defendants manufactured or sold.

18 202. The Hyundai-Kia Defendants were at all relevant times “merchants”
19 with respect to motor vehicles.

20 203. At the time Plaintiffs and the Class acquired their Class Vehicles, those
21 vehicles had a redhibitory defect within the meaning of La. Civ. Code Ann. art.
22 2520, in that (a) the Class Vehicles and/or the Defective ACUs installed in them
23 were rendered so inconvenient that Plaintiffs either would not have purchased the
24 Class Vehicles had they known of the ASIC Defect, or, because the Defective ACUs
25 so diminished the usefulness and/or value of the Class Vehicles such that it must be
26 presumed that the Plaintiffs would not have purchased the Class Vehicles, but for a
27 lesser price.
28

1 204. No notice of the defect is required under La. Civ. Code Ann. art. 2520,
2 since the Hyundai-Kia Defendants had knowledge of the ASIC Defect in the Class
3 Vehicles and/or the Defective ACUs installed in them at the time they were sold to
4 Plaintiffs and the Class. Furthermore, on information and belief, the Hyundai-Kia
5 Defendants had notice of these issues by their knowledge of the issues, through
6 customer complaints, numerous complaints filed against it and/or others, internal
7 investigations, and individual letters and communications sent by consumers before
8 the Hyundai-Kia Defendants issued the recalls and after the allegations of the ASIC
9 Defect became public.

10 205. Under La. Civ. Code Ann. art. 2524, a warranty that the Class Vehicles
11 and/or the Defective ACUs installed in them were in merchantable condition, or fit
12 for ordinary use, was implied by law in the transactions when Plaintiffs and Class
13 members purchased their Class Vehicles.

14 206. The Class Vehicles and/or the Defective ACUs installed in them, when
15 sold and at all times thereafter, were not merchantable and are not fit for the ordinary
16 purpose for which cars and airbags are used. Specifically, they are inherently
17 defective and dangerous in that the Defective ACUs which among other things, may
18 fail to deploy airbags and seat belt pretensioners in a crash event due to the ASICs
19 being damaged by EOS, leading to an unreasonable likelihood of serious bodily
20 injury or death to vehicle occupants, instead of protecting vehicle occupants from
21 bodily injury during accidents.

22 207. As a direct and proximate result of the Hyundai-Kia Defendants'
23 breach of the warranties of merchantability, Plaintiffs and the Class have been
24 damaged in an amount to be proven at trial.

Count 11

Violations of the Louisiana Unfair Trade Practices and Consumer Protection Law (La. Rev. Stat. § 51:1401, et seq.)

208. Plaintiffs bring this claim on behalf of themselves and the members of the Class under the laws of Louisiana against the Hyundai-Kia Defendants with regard to Class Vehicles that the Hyundai-Kia Defendants manufactured or sold.

209. The Hyundai-Kia Defendants, Plaintiffs, and the Louisiana State Class members are “persons” within the meaning of La. Rev. Stat. § 51:1402(8). Plaintiffs and the Class members are “consumers” within the meaning of La. Rev. Stat. § 51:1402(1).

210. The Hyundai-Kia Defendants are engaged in “trade” or “commerce” within the meaning of La. Rev. Stat. § 51:1402(10).

211. The Louisiana Unfair Trade Practices and Consumer Protection Law (“Louisiana CPL”) makes unlawful “deceptive acts or practices in the conduct of any trade or commerce.” 28 La. Rev. Stat. § 51:1405(A). The Hyundai-Kia Defendants both participated in misleading, false, or deceptive acts that violated the Louisiana CPL. By failing to disclose and actively concealing the dangers and risks posed by the Class Vehicles and/or the Defective ACUs installed in them, the Hyundai-Kia Defendants engaged in deceptive business practices prohibited by the Louisiana CPL.

212. In the course of their business, the Hyundai-Kia Defendants failed to disclose and actively concealed the dangers and risks posed by the Class Vehicles and/or the Defective ACUs installed in them as described herein and otherwise engaged in activities with a tendency or capacity to deceive. The Hyundai-Kia Defendants also engaged in unlawful trade practices by employing deception, deceptive acts or practices, fraud, misrepresentations, or concealment, suppression or omission of any material fact with intent that others rely upon such concealment,

1 suppression or omission, in connection with the sale of the Class Vehicles and/or
2 the Defective ACUs installed in them.

3 213. As alleged above, the Hyundai-Kia Defendants have known of the
4 ASIC Defect in the Defective ACUs since at least August of 2011, including
5 through ACU development, testing incidents, and public recalls. The Hyundai-Kia
6 Defendants failed to disclose and actively concealed the dangers and risks posed by
7 the Class Vehicles and/or the Defective ACUs installed in them.

8 214. By failing to disclose and by actively concealing the ASIC Defect in
9 the Class Vehicles and/or the Defective ACUs installed in them, by marketing them
10 as safe, reliable, and of high quality, and by presenting themselves as reputable
11 manufacturers that value safety, the Hyundai-Kia Defendants engaged in unfair or
12 deceptive business practices in violation of the Louisiana CPL. The Hyundai-Kia
13 Defendants deliberately withheld the information about the propensity of the
14 Defective ACUs which among other things, may fail to deploy airbags and seat belt
15 pretensioners in a crash event due to the ASICs being damaged by EOS, leading to
16 an unreasonable likelihood of serious bodily injury or death to vehicle occupants,
17 instead of protecting vehicle occupants from bodily injury during accidents, in order
18 to ensure that consumers would purchase the Class Vehicles.

19 215. In the course of the Hyundai-Kia Defendants' business, they willfully
20 failed to disclose and actively concealed the dangerous risks posed by the ASIC
21 Defect discussed above. The Hyundai-Kia Defendants compounded the deception
22 by repeatedly asserting that the Class Vehicles and/or the Defective ACUs installed
23 in them were safe, reliable, and of high quality, and by claiming to be reputable
24 manufacturers that value safety.

25 216. The Hyundai-Kia Defendants' unfair or deceptive acts or practices,
26 including these concealments, omissions, and suppressions of material facts, had a
27 tendency or capacity to mislead and create a false impression in consumers, and
28 were likely to and did in fact deceive reasonable consumers, including Plaintiffs

1 and the Class, about the true safety and reliability of Class Vehicles and/or the
2 Defective ACUs installed in them, the quality of the Hyundai-Kia Defendants'
3 brands, and the true value of the Class Vehicles.

4 217. The Hyundai-Kia Defendants intentionally and knowingly
5 misrepresented material facts regarding the Class Vehicles and/or the Defective
6 ACUs installed in them with an intent to mislead Plaintiffs and the Class.

7 218. The Hyundai-Kia Defendants knew or should have known that their
8 conduct violated the Louisiana CPL.

9 219. As alleged above, the Hyundai-Kia Defendants made material
10 statements about the safety and reliability of the Class Vehicles and/or the Defective
11 ACUs installed in them that were either false or misleading. The Hyundai-Kia
12 Defendants' representations, omissions, statements, and commentary have included
13 selling and marketing the Class Vehicles as safe and reliable, despite their
14 knowledge of the ASIC Defect or their failure to reasonably investigate it.

15 220. To protect their profits and to avoid remediation costs and a public
16 relations nightmare, the Hyundai-Kia Defendants concealed the dangers and risks
17 posed by the Class Vehicles and/or the Defective ACUs installed in them and their
18 tragic consequences, and allowed unsuspecting new and used car purchasers to
19 continue to buy/lease the Class Vehicles, and allowed them to continue driving
20 highly dangerous vehicles.

21 221. The Hyundai-Kia Defendants owed Plaintiffs and the Class a duty to
22 disclose the true safety and reliability of the Class Vehicles and/or the Defective
23 Airbags installed in them because the Hyundai-Kia Defendants:

- 24 (a) Possessed exclusive knowledge of the dangers and risks posed
25 by the foregoing;
- 26 (b) Intentionally concealed the foregoing from Plaintiffs and the
27 Class; and/or
28

1 (c) Made incomplete representations about the safety and reliability
2 of the foregoing generally, while purposefully withholding material
3 facts from Plaintiffs and the Class that contradicted these
4 representations.

5 222. Because the Hyundai-Kia Defendants fraudulently concealed the
6 ASIC Defect in Class Vehicles and/or the Defective ACUs installed in them,
7 resulting in negative publicity once the ASIC Defect finally began to be disclosed,
8 the value of the Class Vehicles has greatly diminished. In light of the stigma
9 attached to Class Vehicles by the Hyundai-Kia Defendants' conduct, they are now
10 worth significantly less than they otherwise would be.

11 223. The Hyundai-Kia Defendants' failure to disclose and active
12 concealment of the dangers and risks posed by the Defective ACUs in Class
13 Vehicles were material to Plaintiffs and the Louisiana Consumer Sub-Class. A
14 vehicle made by a reputable manufacturer of safe vehicles is worth more than an
15 otherwise comparable vehicle made by a disreputable manufacturer of unsafe
16 vehicles that conceals defects rather than promptly remedies them.

17 224. Plaintiffs and the Class suffered ascertainable loss caused by the
18 Hyundai-Kia Defendants' misrepresentations and their failure to disclose material
19 information. Had they been aware of the ASIC Defect that existed in the Class
20 Vehicles and/or the Defective ACUs installed in them, and the Hyundai-Kia
21 Defendants' complete disregard for safety, Plaintiffs and the Class either would not
22 have paid as much for their vehicles or not purchased or leased them at all. Plaintiffs
23 and the Class did not receive the benefit of their bargain as a result of the Hyundai-
24 Kia Defendants' misconduct.

25 225. The Hyundai-Kia Defendants' violations present a continuing risk to
26 Plaintiffs, the Class, as well as the general public. The Hyundai-Kia Defendants'
27 unlawful acts and practices complained of herein affect the public interest.
28

1 paid, for the reimbursement of the reasonable expenses occasioned by
2 the sale, for damages, and for reasonable attorney fees;

3 (e) A Defendant-funded program, using transparent, consistent, and
4 reasonable protocols, under which out-of-pocket and loss-of-use
5 expenses and damages claims associated with the Defective ACUs in
6 Plaintiffs' and Class Members' Class Vehicles, can be made and paid,
7 such that the Hyundai-Kia Defendants and ZF-TRW, not the Class
8 Members, absorb the losses and expenses fairly traceable to the recalls
9 of the vehicles and correction of the Defective ACUs;

10 (f) A declaration that the Hyundai-Kia Defendants and ZF-TRW
11 must disgorge, for the benefit of Plaintiff and Class Members, all or
12 part of the ill-gotten profits they received from the sale or lease of the
13 Class Vehicles or make full restitution to Plaintiffs and Class Members;

14 (g) An award of attorneys' fees and costs, as allowed by law;

15 (h) An award of prejudgment and post judgment interest, as
16 provided by law;

17 and

18 (i) Such other relief as may be appropriate under the circumstances.
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DEMAND FOR JURY TRIAL

Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, Plaintiffs demand a jury trial as to all issues triable by a jury.

Dated: April 29, 2019

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