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16 *Attorneys for Plaintiffs and the Putative Class*

17 * *Pro hac vice application to be submitted*

18 **IN THE UNITED STATES DISTRICT COURT**
19 **FOR THE CENTRAL DISTRICT OF CALIFORNIA**

20 CHRISTOPHER STANCZAK and
21 ROSE CREPS, on behalf of themselves
22 and all others similarly situated,

23 Plaintiffs,

24 v.

25 KIA MOTORS AMERICA, INC. and
26 Does 1 through 10, inclusive,

27 Defendants.

Case No.: 8:17-cv-1365

CLASS ACTION COMPLAINT

1. Violation of the California Consumer Legal Remedies Act (Cal. Civ. Code § 1750, *et seq.*);
2. Violation of California Unfair Competition Laws (Cal. Bus. & Prof. Code § 17200);
3. Violation of California False Advertising Law (Cal. Bus. & Prof. Code §§ 17500, *et seq.*);
4. Violation of Maine Unfair Trade Practices Act (Me. Rev. Stat. Ann. tit. 5, § 205, *et seq.*);
5. Breach of Express Warranty;
6. Breach of Implied Warranty;
7. Breach of Written Warranty Under the Magnuson-Moss Warranty Act (15 U.S.C. § 2301, *et seq.*);
8. Common Law Fraud;
9. Breach of the Duty of Good Faith and Fair Dealing;

10. Violation of the Song-Beverly Act –
Breach of Implied Warranty (Cal. Civ.
Code §§ 1792, 1791.1, *et seq.*)

DEMAND FOR JURY TRIAL

PLAINTIFFS’ CLASS ACTION COMPLAINT AND JURY DEMAND

Plaintiffs Christopher Stanczak and Rose Creps bring this action against Defendant Kia Motors America, Inc. (“KMA”) and Does 1 through 10 (collectively “Defendant”), by and through their attorneys, individually and on behalf of all others similarly situated, and allege as follows:

INTRODUCTION

1. This is a class action lawsuit brought by Plaintiffs on behalf of themselves and a class of current and former owners and lessees with Theta 2.0-liter and 2.4-liter gasoline direct injection engines (the “GDI Engines”) installed in certain Kia Optima, Sportage, and Sorento vehicles (the “Class Vehicles”).¹

2. This action arises from KMA’s failure to disclose to Plaintiffs and similarly situated consumers, despite its longstanding knowledge, that the engines in the Class Vehicles contain, *inter alia*, a latent defect that results in the restriction of oil flow through the connecting rod bearings, as well as to other vital areas of the engine. This defect – which typically manifests itself during and shortly after the limited warranty period has expired – will cause the Class Vehicles to experience catastrophic engine failure and stalling while in operation.

3. Significantly, the presence of this defect, resulting in restricted oil flow within the engines, poses a safety risk to the operator and passengers of the Class

¹ Upon information and belief, the Class Vehicles include the following: MY 2015-16 Optima, MY 2015-16 Sportage, and MY 2105-16 Sorento. Plaintiffs reserve the right to amend or add to the vehicle models and model years included in the definition of Class Vehicles after conducting discovery.

1 Vehicles. The failure to have sufficient engine lubrication can cause complete and
2 catastrophic engine failure while the Class Vehicles are in operation at any time and
3 under any driving conditions or speed. This exposes the driver and occupants of the Class
4 Vehicles, as well as others who share the road with them, to an increased risk of accident,
5 injury, or death. As discussed further herein, numerous owners and lessees of the Class
6 Vehicles have experienced engine damage and catastrophic failure while operating the
7 Class Vehicles, thus placing themselves and those around them in immediate danger.

8 4. Not only did KMA actively conceal the fact that particular components
9 within the Class Vehicles' engines are prone to failure, they did not reveal that the
10 existence of the defect would diminish the intrinsic and resale value of the Class Vehicles
11 and lead to the safety concerns described herein.

12 5. KMA has long been aware of the defect described herein. Yet, KMA has
13 routinely refused to repair the Class Vehicles without charge when the defect manifests.
14 Indeed, in many cases KMA has even refused to disclose the existence of the defect when
15 Class Vehicles displaying symptoms consistent with the defect are brought in for service,
16 instead choosing to ignore the defect until it has caused significant mechanical problems
17 necessitating costly repairs.

18 6. Many other owners and lessees of the Class Vehicles have communicated
19 with Defendant KMA and/or its agents to request that they remedy and/or address the
20 defect and/or resultant damage at no expense. Defendant KMA has routinely failed to do
21 so even within the warranty period.

22 7. KMA has also refused to take any action to correct this concealed defect
23 when it manifests in the Class Vehicles outside of the warranty period. Because the
24 defect can manifest shortly outside of the warranty period for the Class Vehicles – and
25 given KMA's knowledge of this concealed, safety related defect – Defendant KMA's
26 attempt to limit the warranty with respect to the engine defect is unconscionable and
27 unenforceable here.

28

1 8. Despite notice and knowledge of the defect from the numerous complaints it
2 has received, information received from dealers, National Highway Traffic Safety
3 Administration (“NHTSA”) complaints, and its own internal records, including durability
4 testing, KMA has not recalled the Class Vehicles to repair the engine defect, offered its
5 customers suitable repairs or replacements free of charge, or offered to reimburse its
6 customers who have incurred out-of-pocket expenses to repair the defect.

7 9. As a result of Defendant KMA’s unfair, deceptive and/or fraudulent business
8 practices, owners and/or lessees of the Class Vehicles, including Plaintiffs, have suffered
9 an ascertainable loss of money and/or property and/or loss in value. The unfair and
10 deceptive trade practices committed by Defendant KMA were conducted in a manner
11 giving rise to substantial aggravating circumstances.

12 10. Had Plaintiffs and other Class Members known of the defect at the time of
13 purchase or lease, they would not have bought or leased the Class Vehicles, or would
14 have paid substantially less for them.

15 11. Plaintiffs are also informed and believe, and on that basis allege, that as the
16 number of complaints increased, and Class Members grew dissatisfied with the
17 performance of the Class Vehicles, Defendant KMA was forced to acknowledge that the
18 Class Vehicles suffer from an inherent defect.

19 12. As a result of the defect and the monetary costs associated with attempting
20 to repair the defect, Plaintiffs and the Class Members have suffered injury in fact,
21 incurred damages, and have otherwise been harmed by Defendant’s conduct.

22 13. Accordingly, Plaintiffs bring this action to redress KMA’s violations of
23 California’s consumer fraud statutes and the Maine Unfair Trade Practices Act, and also
24 seek recovery for Defendant’s breach of express warranty, breach of implied warranty,
25 breach of the duty of good faith and fair dealing, and common law fraud.

26 **JURISDICTION**

27 14. This Court has subject matter jurisdiction of this action pursuant to 28
28 U.S.C. § 1332 of the Class Action Fairness Act of 2005 because: (i) there are 100 or more

1 class members, (ii) there is an aggregate amount in controversy exceeding \$5,000,000,
2 exclusive of interest and costs, and (iii) there is minimal diversity because at least one
3 plaintiff and one defendant are citizens of different States. This court has supplemental
4 jurisdiction over the state law claims pursuant to 28 U.S.C. § 1367.

5 15. This Court has personal jurisdiction over Defendant because it has
6 conducted substantial business in this judicial district, and intentionally and purposefully
7 placed Class Vehicles into the stream of commerce within the districts of California and
8 throughout the United States.

9 **VENUE**

10 16. Venue is proper in this judicial district pursuant to 28 U.S.C. §1391 because
11 Defendant KMA's main corporate headquarters is located in this district, transacts
12 business in this district, is subject to personal jurisdiction in this district, and therefore is
13 deemed to be a citizen of this district. Additionally, there are one or more authorized Kia
14 dealers within this district and Defendant KMA has advertised in this district and has
15 received substantial revenue and profits from their sales and/or leasing of Class Vehicles
16 in this district; therefore, a substantial part of the events and/or omissions giving rise to
17 the claims occurred, in part, within this district.

18 **PARTIES**

19 **A. Plaintiff Chris Stanczak**

20 17. Plaintiff Chris Stanczak is a citizen of the State of California, and currently
21 resides in Lincoln, California.

22 18. On or about October 8, 2014, Plaintiff leased a new 2015 Kia Optima LX
23 (VIN: KNAGM4A73F5554289) from Roseville Mitsubishi-Kia located in Roseville,
24 California. During his lease term, Plaintiff purchased his 2015 Kia Optima LX.

25 19. In or about August 22, 2016, while driving on the highway, Plaintiff
26 Stanczak began to hear an unusual engine noise upon acceleration. He then brought his
27 vehicle to Roseville Mitsubishi-Kia, an authorized Kia dealership located in Roseville,
28 California, that same day.

1 20. Roseville Kia had Plaintiff Stanczak's vehicle in its possession for diagnosis
2 until on or about August 30, 2016. A service technician found, and notated in the repair
3 order, that they had discovered metal shavings inside the vehicle's engine and that the
4 vehicle's engine would need to be replaced. Plaintiff Stanczak then requested that such
5 needed repairs be completed at no charge pursuant to the terms of the factory warranty.
6 Plaintiff Stanczak's request was denied.

7 21. Because Plaintiff Stanczak was denied the requested warranty repair, he then
8 took his vehicle home so that he obtain a second opinion regarding the needed repairs. On
9 the following day, while Plaintiff Stanczak was merging onto a highway, the engine in
10 his vehicle seized and catastrophically failed while he was traveling at approximately 35
11 miles per hour. Fortunately, Plaintiff Stanczak was able to quickly pull his vehicle to the
12 side of the road. He then phoned for road service and paid approximately \$180 to have
13 his vehicle towed back to Roseville Mitsubishi-Kia.

14 22. Plaintiff Stanczak's vehicle remained at Roseville Mitsubishi-Kia from
15 August 31, 2016, until October 3, 2016. Representatives of Roseville Mitsubishi-Kia
16 initially informed Plaintiff Stanczak that the vehicle's long block needed to be replaced,
17 but that the necessary parts were on backorder.

18 23. Plaintiff Stanczak then contacted Kia's corporate offices and requested that
19 Kia cover the necessary repairs under its warranties. Kia's corporate representative
20 declined to honor Plaintiff Stanczak's request. Plaintiff Stanczak also requested rental car
21 coverage since he was without his vehicle, which Kia also declined. Kia also informed
22 Plaintiff Stanczak that the long block for his vehicle was actually no longer in production
23 and, as a result, they needed to order a used long block.

24 24. Roseville Mitsubishi-Kia quoted Plaintiff Stanczak approximately \$3,200
25 for the used engine. Plaintiff Stanczak inquired where it was ordering the engine from so
26 he could check the price. Upon further investigation, Plaintiff Stanczak found that the
27 price for the engine was actually \$2,210 and that the dealership was attempting to charge
28 him a \$1,000 "finder's fee" on the engine.

1 25. Plaintiff Stanczak purchased the engine himself from Kia's source and had it
2 shipped to the dealership. Plaintiff Stanczak paid Roseville Mitsubishi-Kia approximately
3 \$1,980.00 for labor to install the used engine in his vehicle.

4 26. At all times relevant herein, Plaintiff Stanczak adhered to Kia's
5 recommended maintenance intervals.

6 27. Plaintiff Stanczak has suffered an ascertainable loss as a result of
7 Defendant's omissions and/or misrepresentations associated with the engine defect,
8 including, but not limited to, out of pocket losses associated with the engine defect,
9 diminished value of his vehicle, and other consequential damages.

10 28. Neither Defendant, nor any of their agents, dealers, or other representatives
11 informed Plaintiff Stanczak of the existence of the defect prior to, or any time after, his
12 purchase.

13 **B. Plaintiff Rose Creps**

14 29. Plaintiff Rose Creps is a citizen of the State of Maine, and currently resides
15 in Auburn, Maine.

16 30. On or about April 21, 2015, Plaintiff Creps purchased a new Kia Optima EX
17 (VIN: 5XXGN4A79FG394415) from Rowe Kia Auburn, an authorized Kia dealership
18 located in Auburn, Maine.

19 31. In or about July 23, 2016, with approximately 43,473 miles on the odometer,
20 while accelerating to merge onto a highway, Plaintiff Creps heard a loud banging noise
21 originating from the engine. Plaintiff Creps immediately pulled over and called Rowe Kia
22 Auburn and made an appointment to bring her vehicle in so the dealership could evaluate
23 it.

24 32. The dealership informed Plaintiff Creps that her PCV valve "was bad" and
25 needed to be replaced. The dealership also informed Plaintiff Creps that they found
26 sludge in the engine oil. Plaintiff Creps requested warranty repairs and the dealership
27 informed her that the PCV valve would be replaced under Kia's warranty but that it
28

1 would not “clean the engine” of the sludge under the warranty and required Plaintiff
2 Creps to pay approximately \$294.71 for this service, which Plaintiff Creps paid.

3 33. In or about early August 2016, Plaintiff Creps was driving her vehicle in
4 New Jersey before a flight when she accelerated to merge across traffic when her vehicle
5 again made a loud knocking noise when accelerating before it shut off entirely while
6 Plaintiff Creps was operating it. Plaintiff Creps had it towed to a Kia dealership in New
7 Jersey who examined her vehicle, filled it with oil, and instructed her to drive it back to
8 her dealership in Auburn, Maine, which Plaintiff Creps did.

9 34. Plaintiff Creps brought her vehicle to Rowe Kia Auburn in or about August
10 8, 2016, with approximately 44,688 miles on the odometer, and requested free repairs
11 under the terms of Kia’s warranties. The dealership informed Plaintiff Creps that her
12 engine needed to be replaced. The dealership also informed Plaintiff Creps that she
13 needed to produce documentation for all oil changes in order to receive warranty repairs,
14 otherwise she would be required to pay out of pocket for any repairs.

15 35. At all times relevant herein, Plaintiff Creps adhered to Kia’s recommended
16 maintenance intervals. Plaintiff Creps, however, did not keep receipts of each oil change.
17 Upon contacting the independent repair shop that Plaintiff Creps used for her oil changes,
18 the repair shop was only able to locate receipts for two of her oil changes but, because the
19 repair shop did not keep electronic records, it was unable to provide Plaintiff Creps with
20 receipts for all of her oil changes.

21 36. Plaintiff Creps brought her receipts to the dealership, which denied her
22 warranty claim, and quoted her approximately \$5,324.21 in parts and labor for an engine
23 replacement.

24 37. Plaintiff Creps then contacted Kia’s corporate office and again requested
25 warranty repairs. Kia corporate denied her request but offered her a payment of
26 approximately \$1,200.00 as a goodwill gesture, which Plaintiff Creps declined.

27 38. During this time, Plaintiff Creps was unable to drive her vehicle and paid
28 approximately \$576.93 for a rental car from August 8, 2017, until August 26, 2016.

1 39. After being denied warranty repairs by both Rowe Kia Auburn and Kia's
2 corporate office, Plaintiff Creps was forced to pay the \$5,324.21 to replace her engine
3 because Plaintiff Creps needed a working vehicle.

4 40. Plaintiff Creps has suffered an ascertainable loss as a result of Defendant's
5 omissions and/or misrepresentations associated with the engine defect, including, but not
6 limited to, out of pocket losses associated with the engine defect, diminished value of her
7 vehicle, and other consequential damages.

8 41. Neither Defendant, nor any of their agents, dealers, or other representatives
9 informed Plaintiff Creps of the existence of the defect prior to, or any time after, her
10 purchase.

11 **C. Defendant KMA**

12 42. Defendant KMA is an automobile design, manufacturing, distribution,
13 and/or service corporation doing business within the United States. Furthermore,
14 Defendant KMA designs, develops, manufactures, distributes, markets, sells, leases,
15 warrants, services, and repairs passenger vehicles, including the Class Vehicles.

16 43. Defendant KMA is incorporated and headquartered in the state of California
17 with its principal place of business at 111 Peters Canyon Road, Irvine, California 92606.
18 KMA is the U.S. sales and marketing division, which oversees sales and other operations
19 across the United States. KMA distributes Kia vehicles and sells these vehicles through
20 its network of more than 700 dealerships. Money received from the purchase of a Kia
21 vehicle from a dealership flows from the dealer to KMA.

22 44. Upon information and belief, the distribution, service, repair, installation,
23 and decisions regarding the GDI Engine as it relates to the engine defect within the Class
24 Vehicles were performed exclusively by Defendant KMA.

25 45. Upon information and belief, Defendant KMA developed the post-purchase
26 owner's manuals, warranty booklets, and information included in maintenance
27 recommendations and/or schedules for the Class Vehicles.

28 46. KMA engages in continuous and substantial business in California.

1 47. The true names and capacities of the defendants sued herein as DOES 1
2 through 10, inclusive, are currently unknown to Plaintiffs, who therefore sue such
3 defendants by such fictitious names. Each of the defendants designated herein as a DOE
4 is legally responsible in some manner for the unlawful acts referred to herein. Plaintiffs
5 will seek leave of Court to amend this Complaint to reflect the true names and capacities
6 of the defendants designated herein as DOES when such identities become known.

7 48. Based upon information and belief, Plaintiffs allege that at all times
8 mentioned herein, each and every Defendant was acting as an agent and/or employee of
9 each of the other Defendants, and at all times mentioned was acting within the course and
10 scope of said agency and/or employment with the full knowledge, permission, and
11 consent of each of the other Defendants. In addition, each of the acts and/or omissions of
12 each Defendant alleged herein were made known to, and ratified by, each of the other
13 Defendants.

14 **CALIFORNIA LAW APPLIES**

15 49. It is appropriate to apply California law to the nationwide claims because
16 California's interest in this litigation exceeds that of any other state.

17 50. As discussed above, Defendant KMA is located in Irvine, California and is
18 the sole entity in the contiguous 48 U.S. states responsible for distributing, selling,
19 leasing and warranting Kia vehicles.

20 51. KMA's customer relations, engineering, marketing, and warranty
21 departments are all located in KMA's Irvine campus. KMA's customer service complaint
22 address is Kia Motors America Consumer Affairs Department, P.O. Box 52410, Irvine,
23 California 92619-2410. KMA's customer relations department is responsible for fielding
24 customer complaints and monitoring customer complaints posted to Kia or third-party
25 websites. KMA's warranty and engineering departments are both responsible for the
26 decisions to conceal the engine defect from KMA's customers, and for instituting a
27 policy to systematically deny warranty coverage to those who experienced engine failure
28 caused by the defect.

1 52. Based on the foregoing, such policies, practices, acts, and omissions giving
2 rise to this action were developed in, and emanated from, Defendant's headquarters in
3 Irvine, California. As detailed below, KMA also came to know, or should have come to
4 know, of the engine defect through the activities of KMA divisions and affiliated entities
5 located within California. Accordingly, the state of California has the most significant
6 relationship to this litigation and its law should govern.

7 **TOLLING OF STATUTES OF LIMITATIONS**

8 53. Any applicable statute(s) of limitations have been tolled by Defendant's
9 knowing and active concealment and denial of the facts alleged herein. Plaintiffs and the
10 members of the Class could not have reasonably discovered the true, latent nature of the
11 engine defect until shortly before this class action litigation was commenced.

12 54. In addition, even after Plaintiffs and Class Members contacted KMA and/or
13 its authorized dealers for vehicle repairs concerning the engine defect, they were
14 routinely told by Defendant and/or through its dealers that the Class Vehicles were not
15 defective. As described below, the true cause of the premature and catastrophic failure in
16 the Class Vehicles is a defect that results in restricted oil flow.

17 55. Defendant KMA was and remains under a continuing duty to disclose to
18 Plaintiffs and the Members of the Class the true character, quality, and nature of the Class
19 Vehicles, that the manufacturing defect will result in restricted oil flow and catastrophic
20 engine failure, that they will require costly repairs, pose safety concerns, and diminish the
21 resale value of the Class Vehicles. As a result of the active concealment by Defendant
22 KMA, any and all applicable statutes of limitations otherwise applicable to the
23 allegations herein have been tolled.

24 **FACTUAL ALLEGATIONS**

25 **A. The Defective Engine Components within the Class Vehicles**

26 56. Kia Motors Corporation ("KMC"), one of the leading motor vehicle
27 manufacturers in Korea, was established in December 1944 under the laws of the
28 Republic of Korea to manufacture and sell a range of passenger cars, recreational

1 vehicles and other commercial vehicles in the domestic and international markets. As of
2 December 31, 2016, Kia Motors Corporation’s largest shareholder is Hyundai Motor
3 Company, which holds 33.88 percent of KMC’s stock.² Hyundai Motor Company
4 (“HMC”) is a multinational corporation with over 75,000 employees worldwide. HMC is
5 currently the fourth largest automobile manufacturer in the world.

6 57. KMA is the American sales, marketing, and distribution arm of KMC. KMA
7 offers a complete line of vehicles through more than 755 dealers throughout the United
8 States.

9 58. According to its website, Hyundai builds the Theta 2.4 liter 4-cylinder
10 Gasoline Direct Injection and Theta 2.0 liter 4-cylinder Turbo engines. As a result,
11 “[c]astings of engine blocks, heads and crankshafts are delivered from suppliers and
12 machined to HMMA’s exact specifications.”³

13 59. Upon information and belief, certain GDI Engines, which KMC and
14 Defendant KMA used in the Class Vehicles, were manufactured by Hyundai.

15 **1. The GDI Engines**

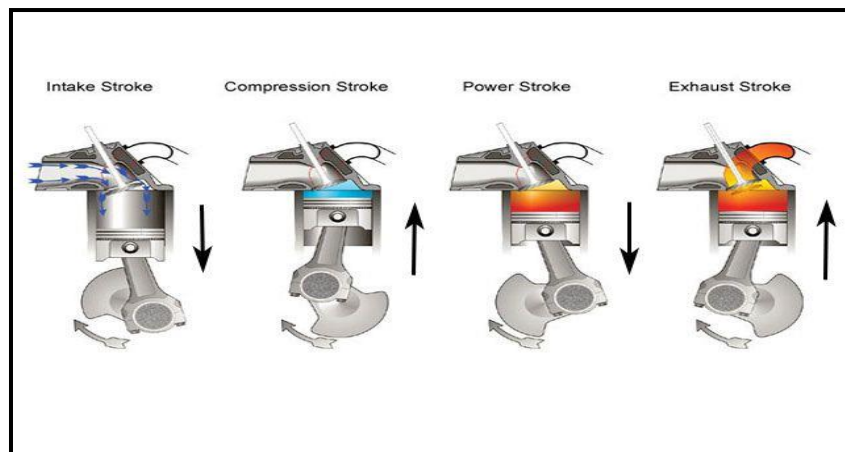
16 60. The Theta 2.0 liter and 2.4 liter engines contained in the Class Vehicles
17 contain a gasoline direct-injection (“GDI”) fuel delivery system. Kia advertises that
18 “[i]t’s the Gasoline Direct Injection engine that helps a Kia deliver outstanding
19 performance—in both power and fuel use. GDI injects highly-pressurized fuel directly
20 into the cylinders during the engine’s combustion cycle. The result is an increased quality
21 of combustion and efficiency. By making smarter use of fuel, GDI also reduces
22 emissions. What the driver experiences is still the most critical element of any powertrain
23 technology. And with GDI, the driver enjoys smooth, powerful acceleration and a longer
24 time between refueling.”

25
26
27 ² http://www.kia.com/worldwide/about_kia/investor_relations/annual_report.do (2016 Annual Report,
28 pg. 67) (last visited August 7, 2017).

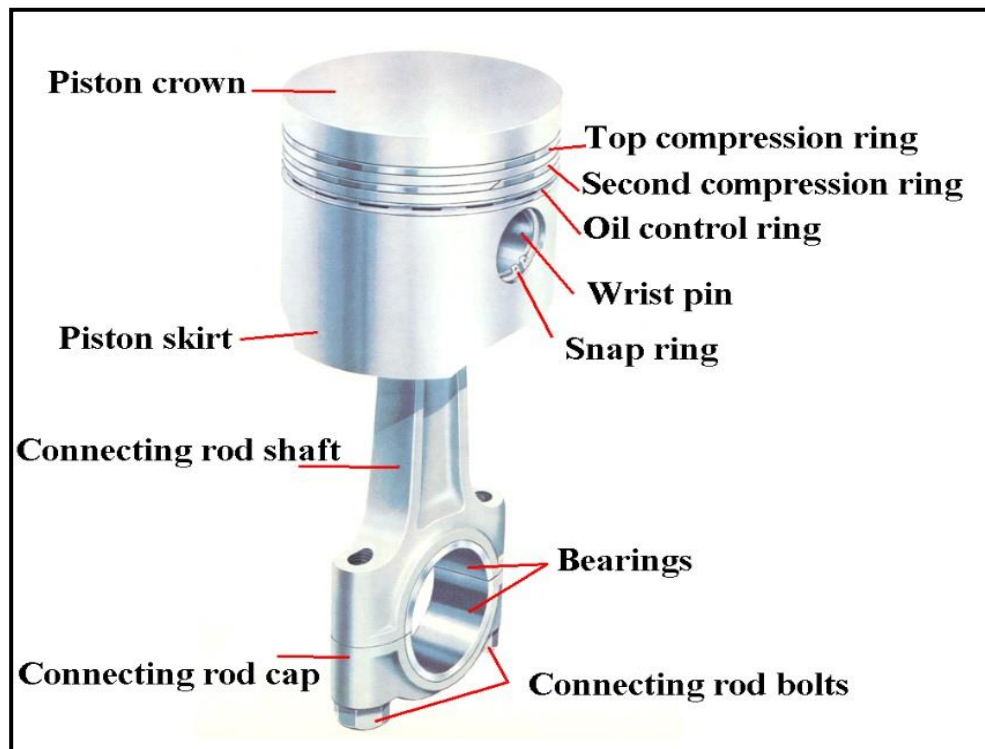
³ https://www.hyundaiusa.com/about-hyundai/news/Corporate_newengine-20091120.aspx (last visited
August 7, 2017).

1 61. Hyundai has also made similar public statements regarding the design of the
2 GDI engine: “[t]his shorter, more direct path of fuel delivery, allows for greater control of
3 the fuel mixture at the optimum moment, thus improving efficiency. The fuel is injected
4 by a camshaft-driven, high pressure pump that operates at pressures up to 2,175 psi.
5 Direct injection also utilizes a higher than normal 11.3:1 compression ratio for increased
6 power. The pistons are ‘dished’ to increase combustion efficiency in the cylinder. This
7 powerplant delivers best-in-class fuel economy, best-in-class four-cylinder horsepower
8 and best-in-class torque.”

9 62. As background, the GDI Engines contained in the Class Vehicles use four
10 reciprocating pistons to convert pressure into a rotating motion. Gasoline is mixed with
11 air in the combustion chambers of the engine. To generate such rotating motion, a four-
12 step sequence is used (the “Combustion Cycle”). First, the intake stroke begins with the
13 inlet valve opening and a vaporized fuel mixture is pulled into the combustion chamber.
14 Second, the compression stroke begins with the inlet valve closing and the piston
15 beginning its movement upward, compressing the fuel mixture in the combustion
16 chamber. Third, the power stroke begins when the spark plug ignites the fuel mixture,
17 expanding the gases and generating power that is transmitted to the crankshaft. And
18 fourth, the exhaust stroke begins with the exhaust valve opening and the piston moving
19 back up, forcing the exhaust gases out of the cylinder. The exhaust valve then closes, the
20 inlet valve opens, and the Combustion Cycle repeats itself. A diagram of Combustion
21 Cycle is below:



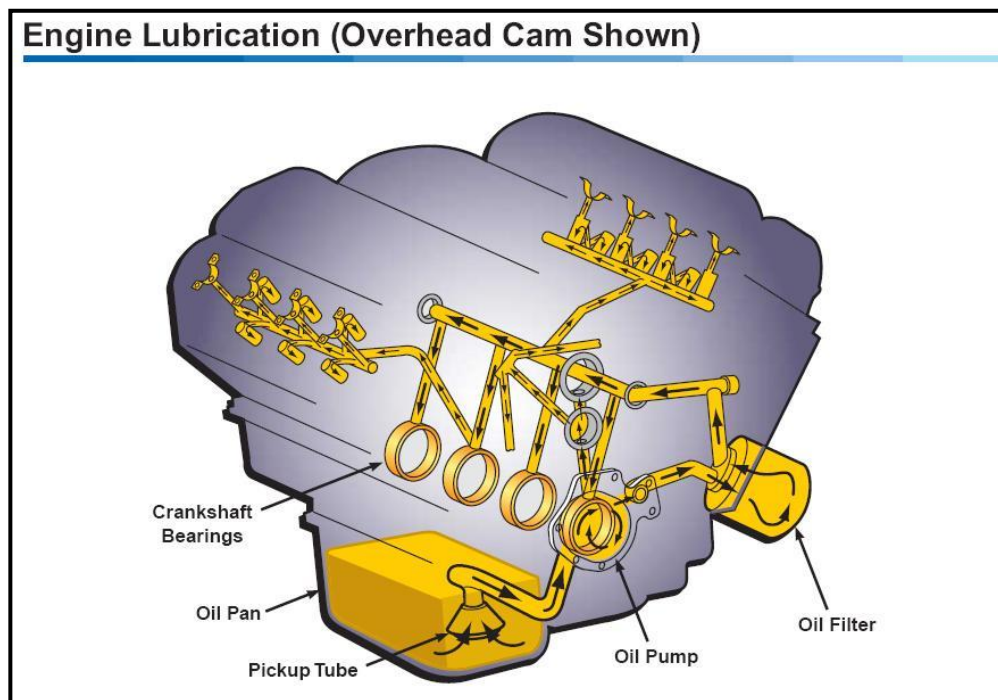
1
2 63. The pistons are connected to the crankshaft via the connecting rod. As the
3 connecting rod moves up and down during the Combustion Cycle, this causes the
4 crankshaft to rotate, ultimately resulting in power to the drive wheels of the vehicle.
5 During this cycle, the crankshaft rotates many thousands of times per minute within
6 each connecting rod. In order to reduce friction and prolong longevity, this design
7 utilizes a bearing placed between the connecting rod and crankshaft surfaces. As a
8 result, the connecting rod bearings allow the crankshaft to rotate within the connecting
9 rods during the Combustion Cycle. An exemplar diagram of the piston, connecting rod,
10 connecting rod bearing and crankshaft are shown below:



24 Figure 3-70.—Connecting rod bearings.

25 64. When the Class Vehicles are in operation, engine oil is used to lubricate
26 the piston, cylinder wall, connecting rod bearings and other rotating and moving
27 components as the piston moves up and down through the four-stroke sequence. Engine
28 oil is necessary to reduce wear on moving parts throughout the engine, improve sealing,

1 and cool the engine by carrying away heat from the moving parts. Engine oil also cleans
2 and transports contaminants away from the engine to the engine oil filter. Oil is pumped
3 and pressurized throughout the engine by the oil pump. The oil pump draws oil from the
4 oil pan, located underneath the piston and crankshaft. The oil pump forces engine oil
5 through the oil filter and then through passages in the engine to properly lubricate and
6 reduce friction in internal moving engine components. The oil then returns to the oil
7 pan through small drainage holes located throughout the engine where it will be
8 recirculated by the oil pump. Below is a diagram illustrating the typical path and
9 channels of engine oil lubrication in an overhead cam engine:



23 65. The connecting rod bearings are also lubricated with engine oil in order to
24 allow the crankshaft to rotate within the connecting rods. A close up picture of a
25 functional connecting rod bearing is below:
26
27
28



2. Previous GDI Engine Recalls

66. On or about September 20, 2015, Hyundai Motor America recalled certain model year 2011-2012 Sonata vehicles manufactured at Hyundai Motor Manufacturing Alabama and equipped with the 2.4L and 2.0T GDI Engines. (*See Exhibit 1.*)

67. According to the Hyundai GDI Recall, Hyundai determined that metal debris may have been generated from factory machining operations as part of the manufacturing of the engine crankshaft during December 11, 2009, to April 12, 2012.

As a result, and according to the Hyundai GDI Recall:

[i]f the debris is not completely removed from the crankshaft's oil passages, it can be forced into the connecting rod oiling passages restricting oil flow to the bearings. Since bearings are cooled by oil flow between the bearing and journal, a reduction in the flow of oil may raise bearing temperatures increasing the potential of premature bearing wear. A worn connecting rod bearing will produce a metallic, cyclic knocking noise from the engine which increases in frequency as the engine rpm increases. A worn connecting rod bearing may also result in illumination of the oil pressure lamp in the instrument cluster. If the vehicle continues to be driven with a worn connecting rod

1 bearing, the bearing can fail, and the vehicle could stall while in
2 motion.

3 68. Hyundai went on to explain, in Safety Recall Report 15V-568, that it
4 became aware of engine-related warranty claims in the field. Furthermore, “[t]he vast
5 majority of those claims evidenced that customers were responding to substantial noise,
6 or the vehicle’s check engine light, and bringing their vehicles to service as a result of
7 those warnings. Many customers also complained after the warranty was no longer
8 available.”

9 69. In or around September 2, 2015, Hyundai decided to issue a safety recall
10 for approximately 470,000 model year 2011-2012 Sonata vehicles manufactured
11 December 11, 2009, to April 12, 2012, at Hyundai Motor Manufacturing Alabama and
12 equipped with either a 2.0 liter or 2.4 liter Gasoline Direct Injection engine. (*See*
13 Exhibit 2.)

14 70. The recall provided notification to owners of the issue, inspection, and
15 replacement of the engine assembly, as necessary, free of charge. Additionally, Hyundai
16 increased the warranty for the engine sub-assembly (short block) to 10 years/120,000
17 miles for both original and subsequent owners.

18 71. In April 2017, Hyundai and Kia announced that they were recalling an
19 additional 1.4 million vehicles with the GDI Engines because it received widespread
20 reports that the engines could fail and stall, *i.e.* the same reason for the first recall. This
21 recall included the 2013-2014 Hyundai Santa Fe, 2011-2014 Kia Optima, 2011-2013
22 Kia Sportage, 2012-2014 Kia Sorento.

23 72. The Class Vehicles have not been recalled despite having the same engine
24 and Plaintiffs and Members of the Class notifying Kia about their engines stalling and
25 failing while being operated.

26 **3. Engine Failures within the Class Vehicles**

27 73. Upon information and belief, the connecting rod bearings in the GDI
28 Engines undergo a prolonged failure as metal debris circulates throughout the engine
via the engine oil. Over time, and as a result of these contaminants in the oiling system,

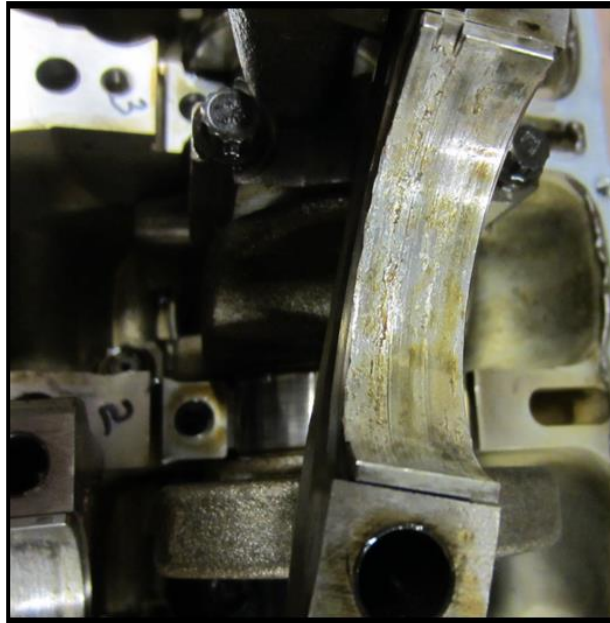
1 the connecting rod bearings begin to fracture. Once the connecting rod bearings
2 fracture, large amounts of metal debris begin to accumulate in the engine oil. As a
3 result, the oil becomes so contaminated with metal debris that the oil filter can no
4 longer remove the plethora of contaminants and maintain the necessary oil pressure
5 within the engine. This contaminated engine oil is recirculated throughout the engine by
6 the oil pump, causing damage to the various engine components and eventually results
7 in sudden and unexpected catastrophic engine failure. If the vehicle is being operated on
8 the highway at the time of the engine failure, it will ultimately result in a high-speed
9 stalling event.

10 74. Additionally, as the connecting rod bearings continue to fracture, the
11 acceptable tolerances between the bearings, the connecting rod, and the crankshaft
12 rapidly deteriorate. Eventually, the Class Vehicles begin producing a “knocking” sound
13 originating from the engine as a result of the deteriorating bearings. In some instances,
14 the defective connecting rod bearings may eventually cause the piston to break through
15 the engine block as a result of the deterioration.

16 75. A photograph of a fractured connecting rod bearing removed from a GDI
17 Engine is included below. As shown in the photograph, the bearing has fractured and
18 worn away to the point of laying flush along the inside of the connecting rod. A large
19 fracture is also plainly visible along the bottom left side of the bearing.



1 76. After the connecting rod bearings fail and metal debris is circulated
2 throughout the engine via the engine oil, damage is caused to other key engine
3 components. As pictured below, the main cap – which fastens the crankshaft to the
4 engine – can also be damaged by the metal debris in the engine oil. After the main cap
5 is damaged, play between the main cap and engine develops, which also leads to
6 catastrophic engine failure.



18 77. As a result of the defect, the Class Vehicles suffer from restricted and
19 inadequate engine oil lubrication. As explained above, engines are designed to have oil
20 distributed throughout the engine through lubrication channels. When operating properly,
21 the engine oil is distributed throughout the engine by the oil pump and then flows back to
22 the oil pan where it is redistributed throughout the engine.

23 78. In the Class Vehicles, the lubrication channels become clogged and
24 restricted as a result of the defect, even under normal use and proper maintenance. When
25 the lubrication channels clog, engine oil is unable to be both pumped throughout the
26 engine (through the oil pump) and is also unable to adequately return to the oil pan,
27 causing a condition known as oil starvation. This results in insufficient lubrication
28

1 throughout the Class Vehicle’s engine, which causes premature wear of the engine
2 components and catastrophic engine failure.

3 79. The engine defect poses serious safety and security issues for operators and
4 occupants of the Class Vehicles. By way of example, the California Department of Motor
5 Vehicles asserts that stalled engines pose a significant safety risk and, as part of its safety
6 curriculum, instructs how to properly respond to a stalled action in order to avoid further
7 risk of injury.

8 80. NHTSA takes a similar view of engine failure during vehicle operation. For
9 instance, according to *Forbes*, in 2011 the NHTSA recalled certain Chrysler and Dodge
10 vehicles due to “engine seizure because of connecting rod bearing failure Engine
11 seizure could increase the risk of a crash.”⁴

12 81. Defendant KMA failed to adequately research, design, test, and/or
13 manufacture the Class Vehicles before warranting, advertising, promoting, marketing,
14 and selling the Class Vehicles as suitable and safe for use in an intended and/or
15 reasonably foreseeable manner.

16 **B. Defendant KMA’s Knowledge of the Engine defect**

17 82. Plaintiffs’ experiences are by no means isolated or outlying occurrences.
18 Indeed, the internet is replete with examples of blogs and other websites where
19 consumers have complained of the exact same engine defect within the Class Vehicles
20 and complaints from earlier model year Kia owners and lessees with the same engines.
21 Upon information and belief, Defendant KMA, through (1) their own records of
22 customers’ complaints, (2) dealership repair records, (3) records from the National
23 Highway Traffic Safety Administration (“NHTSA”), (4) warranty and post-warranty
24 claims, (5) internal durability testing, and (6) other various sources, were well aware of
25 the engine defect but failed to notify consumers of the nature and extent of the problems
26 with the GDI Engines or provide any adequate remedy.

27
28 ⁴ <http://www.forbes.com/sites/altheachang/2011/09/30/engine-problems-prompt-chrysler-recalls/> (last visited August 7, 2017).

1 83. KMA routinely monitors the internet for complaints similar in substance to
2 those quoted below. KMA's customer relations department routinely monitors the
3 internet for customer complaints, and KMA has retained the services of third-parties to
4 do the same. Further, the customer relations division regularly receives and responds to
5 customer calls concerning, *inter alia*, product defects. Through these sources, KMA was
6 made aware of the engine defect. The complaints also indicate KMA's knowledge of the
7 defect and its potential danger.

8 84. KMA is experienced in the design and manufacture of consumer vehicles.
9 As an experienced manufacturer, KMA likely conducts testing on incoming batches of
10 components, including the GDI Engine, to verify that the parts are free from defects and
11 comply with KMA's specifications. Accordingly, KMA knew or should have known that
12 the engine used in the Class Vehicles is defective and likely to fail prematurely, costing
13 Plaintiffs and Class Members thousands of dollars in expenses.

14 85. Moreover, KMA also should have known of the connecting rod bearing
15 defect and insufficient lubrication channels because of the sheer number of reports of
16 engine problems relating to the connecting rod bearings and/or lubrication channels. For
17 instance, KMA's customer relations department, which interacts with Kia-authorized
18 service technicians in order to identify potentially widespread vehicle problems and assist
19 in the diagnosis of vehicle issues, has received numerous reports of engine problems
20 relating to the connecting rod bearings and lubrication channels. Customer relations also
21 collects and analyzes field data including, but not limited to, repair requests made at
22 dealerships and service centers, technical reports prepared by engineers that have
23 reviewed vehicles for which warranty coverage is requested, parts sales reports, and
24 warranty claims data.

25 86. KMA's warranty department similarly reviews and analyzes warranty data
26 submitted by its dealerships and authorized technicians in order to identify defect trends
27 in its vehicles. KMA dictates that when a repair is made under warranty (or warranty
28 coverage is requested), service centers must provide KMA with detailed documentation

1 of the problem and the fix that describes the complaint, cause, and correction, and also
2 save the broken part in case KMA later determines to audit the dealership or otherwise
3 verify the warranty repair. For their part, service centers are meticulous about providing
4 this detailed information about in-warranty repairs to KMA because KMA will not pay
5 the service centers for the repair if the complaint, cause, and correction are not
6 sufficiently described.

7 87. KMA knew or should have known about the engine defect because of the
8 high number of replacement parts likely ordered from KMA. All Kia service centers are
9 required to order replacement parts, including engines, piston assemblies, and connecting
10 rod bearings directly from KMA. Other independent vehicle repair shops that service
11 Class Vehicles also order replacement parts directly from KMA. KMA routinely monitor
12 part sales reports, and are responsible for actually shipping parts requested by dealerships
13 and technicians. Thus, KMA has detailed, accurate, and real-time data regarding the
14 number and frequency of replacement part orders. The sudden increase in orders for the
15 GDI Engines and engine components used in the Class Vehicles was known to KMA,
16 and should have alerted it to the scope and severity of the engine defect.

17 88. In February 2012, KMA issued a technical service bulletin (“TSB”) to its
18 authorized dealerships regarding an engine knocking noise. TSBs are documents used by
19 automotive manufacturers to inform dealership technicians about new information,
20 including vehicle problems, new repair procedures, and improved parts. In TSB
21 No. ENG114R1, KMA acknowledged that the earlier model years of the Class Vehicles
22 with identical engines were defective and experienced a “knocking noise.” As a result,
23 KMA directed dealers to blame the engine defect on the use of aftermarket oil filters and
24 instructed the dealers to replace the aftermarket oil filter with a genuine Kia oil filter. The
25 TSB also explained that this “repair” is not covered under warranty. KMA has failed to
26 provide any post-sale notification to owners and lessees regarding the use of only genuine
27 Kia oil filters in the Class Vehicles. Instead, KMA attempts to circumvent warranty
28 obligations related to the engine defect by faulting customers for use of an aftermarket oil

1 filter. The defective connecting rod bearings and oil lubrication channels are not,
2 however, caused by the use of an aftermarket engine oil filter. Despite KMA's
3 knowledge of this fact, KMA has not informed Plaintiffs of the true cause of the defective
4 connecting rod bearings and insufficient oil lubrication channels.

5 **1. Complaints by Other Class Members**

6 89. Representative examples of complaints on the NHTSA website regarding the
7 Class Vehicles are included below (with emphasis supplied in capitalized bold,
8 underlined letters)⁵:

9 ***a. KIA GDI Engine Complaints***

10 Vehicle: 2015 Kia Optima
11 Date Complaint Filed: 05/10/2017
12 Date of Incident: 04/28/2017
13 Component(s): ENGINE
14 NHTSA ID Number: 10984694

15 **SUMMARY:**

16 ENGINE LOCKED UP DURING ACCELERATION
17 TO 40 MPH WHY MERGING INTO TRAFFIC
18 FOUND OUT ENGINE HAS A BENT ROD. OIL AND
19 COOLENT WHERE SUFFICIENT BUT KIA WILL NOT
20 FIX OR REPLACE. COULD OF CAUSED MY WIFE
21 TO CRASH OR BE HIT BY TRAFFIC

22 Vehicle: 2015 Kia Optima
23 Date Complaint Filed: 05/03/2017
24 Date of Incident: 11/26/2016
25 Component(s): ENGINE
26 NHTSA ID Number: 10983354

27 **SUMMARY:**

28 ENGINE LIGHT CAME ON, THEN THE OIL LIGHT.
I STOPPED TO CHECK OIL. THERE WAS NO OIL
ON THE DIPSTICK. I CHECKED FOR LEAKS.
FOUND NONE. I ADDED 2 QUARTS. THE ENGINE

⁵ The foregoing complaints are reproduced as they appear on the NHTSA website. Any typographical errors are attributable to the original author of the complaint.

1 WAS KNOCKING. I TOOK IT TO THE
2 DEALERSHIP. MY CAR WAS UNDER WARRANTY.
3 BUT WOULDN'T REPLACE IT. IT WOULD COST
4 ME \$7200. SO I TRIED TO DRIVE IT HOME, AND IT
5 QUIT.THE ENGINE SHUT DOWN. I HAD TO HAVE
6 IT TOWED HOME. THIS WAS IN NOVEMBER 2016.
7 AND IT IS STILL DOWN. THEN I HEARD KIA IS
8 GETTING A CLASS ACTION LAWSUIT AGAINST
9 THEM, FOR OIL FLOW ISSUES. I'M STILL PAYING
10 ON THE CAR. I FINANCED THROUGH MY CREDIT
11 UNION. SO THEY ALREADY GOT THERE MONEY.
12 I THINK THAT IS WHY THEY ARE SCREWING ME
13 OVER. TO BE CLEAR I HAD JUST LEFT THE
14 DEALERSHIP WHEN IT QUIT. IT NEVER MADE A
15 SOUND, THE DEALERSHIP HAD IT 3 DAYS.

13 Vehicle: 2015 Kia Optima
14 Date Complaint Filed: 01/09/2017
15 Date of Incident: 11/01/2016
16 Component(s): ENGINE
17 NHTSA ID Number: 10943930

SUMMARY:

18 2015 KIA OPTIMA WAS OUT OF OIL @ 22,000
19 MILES AND NO INDICATOR LIGHT HAD GONE
20 ON WHEN IT WAS TAKEN TO AN OIL CHANGE.
21 THE OIL CHANGE PLACE WAS THE ONE THAT
22 INDICATED THAT THE VEHICLE HAD NO OIL IN
23 IT. IT STARTED MAKING SOME RATTLING NOISE
24 SPECIALLY GOINT UPHILL SO I TOOK IT IN TO
25 KIA SERVICE DEPARTMENT. THEY DIAGNOSED
26 IT WITH "SLUDGE" IN THE ENGINE AND ENGINE
27 WOULD HAVE TO BE REPLACED. I HAD TO
28 PROVE 3 PREVIOUS RECEIPTS OF OIL CHANGES
OTHERWISE THE WARRANTY WOULD NOT
COVER IT. I DO NOT HAVE THOSE RECEIPTS
AND 16 DAYS LATER TOOK IT TO THE SAME
PLACE I DID MOST RECENT OIL CHANGE
BECAUSE OIL LIGHT HAD TURNED ON. THE
VEHICLE AGAIN HAD NO OIL IN IT. THE TOPPED

1 IT OFF BUT MENTIONED THAT IT WAS NOT
2 NORMAL FOR SUCH A RECENT MODEL TO BE
3 BURNING OIL. VEHICLE IS STILL RUNNING BUT
4 MAKES RATTLING NOISE ONCE IN A WHILE,
5 PRODUCES WHITE SMOKE OUT OF EXHAUST
6 PIPE AND I HAVE TO PUT OIL IN IT EVERY
7 COUPLE OF DAYS. I CANNOT AFFORD TO BUY A
8 NEW ENGINE. I AM A SINGLE MOM AND NEEDS
9 A RELIABLE VEHICLE TO GET TO WORK.

9 Vehicle: 2015 Kia Optima
10 Date Complaint Filed: 11/03/2016
11 Date of Incident: 11/02/2016
12 Component(s): ENGINE
13 NHTSA ID Number: 10923952

SUMMARY:

14 THE VEHICLE WAS IN MOTION AND HAD AN OIL
15 CHANGE THE PREVIOUS DAY. THE VEHICLE
16 LOST POWER AND AN AUDIBLE CLICKING OR
17 TAPPING NOISE CAME ON WHILE DRIVING ON
18 THE HIGHWAY. MY WIFE HAD JUST ENOUGH
19 TIME TO PULL OFF INTO A LOCAL BUSINESS
20 AND PARKED THE CAR. I TOOK IT TO KIA AND
21 THEY ADVISED THERE WAS "SLUDGE" IN THE
22 ENGINE AND WE HAD NOT BEEN MAINTAIN THE
23 VEHICLE PROPERLY. OFFERED TO PRODUCE
24 RECORDS BUT THEY ADVISED THEY STILL
25 WOULD NOT COVER IT. *TR

23 Vehicle: 2015 Kia Optima
24 Date Complaint Filed: 09/29/2016
25 Date of Incident: 07/22/2016
26 Component(s): ENGINE
27 NHTSA ID Number: 10910586

SUMMARY:

28 ENGINE FAILURE AT 15 MONTHS OLD AND
42,000 MILES. KIA DENIED WARRANTY

1 COVERAGE BECAUSE I COULD NOT PROVE OIL
2 CHANGES. SAME COMPLAINT AS THOUSANDS
3 OF OTHER KIA VEHICLES, HAPPENED
4 ABRUPTLY, CAR STARTING MAKING LOUD
5 RATTLING NOISE ON ACCELERATION WHILE
6 DRIVING, NO WARNING, SLUDGE IN ENGINE. I
7 HAD TO PAY OUT OF POCKET FOR A NEW
8 ENGINE TO BE INSTALLED WITH NO
9 ASSISTANCE FROM KIA OR MY LOCAL
10 DEALERSHIP.

9 Vehicle: 2015 Kia Optima
10 Date Complaint Filed: 09/09/2016
11 Date of Incident: 06/10/2016
12 Component(s): ENGINE
13 NHTSA ID Number: 10905150

SUMMARY:

14 MY 2015 KIA OPTIMA HAS 23000 MILES.. I
15 COULDN'T REMEMBER WHEN I HAD THE OIL
16 CHANGED,BUT I WAS DRIVING ON 75 COMING
17 FROM FLA. THE AC STOP WORKING AND THEN
18 SHORTLY AFTER THAT THE CAR STARTED TO
19 SLOW DOWN. IT FINALLY CAME TO A
20 COMPLETE STOP, WHEN I GOT IT TO THE KIA
21 DEALERSHIP THEY INFORMED ME THAT THE
22 ENGINE HAD SEIZED .BECAUSE THE SAID I
23 COULD NOT PROVE THAT THE OIL HAD BEEN
24 CHANGED,THE WARRANTY WOULD NOT COVER
25 IT. I BOUGHT THE CAR BRAND NEW. ONLY HAD
26 IT 15 MONTHS. THERE WAS NO WARNING
27 LIGHTS OR ANY SIGNS OF TROUBLE .KIA WILL
28 NOT FIX IT, THEY WANT ALMOST 8.000 TO PUT
IN A NEW ENGINE.

26 Vehicle: 2015 Kia Optima
27 Date Complaint Filed: 09/07/2016
28 Date of Incident: 09/04/2016

1 Component(s): ENGINE
2 NHTSA ID Number: 10904330

3 **SUMMARY:**

4 AS I WAS DRIVING MY 2015 OPTIMA TO THE
5 STORE MY CHECK ENGINE LIGHT CAME ON.
6 THE NEXT DAY I STARTED MY CAR AND HEARD
7 A RATTLING OR TICKING SOUND, THIS WAS ON
8 LABOR DAY, SO I TURNED MY CAR OFF AND
9 CALLED THE DEALERSHIP. DUE TO HOLIDAY
10 THE SERVICE DEPT WAS NOT OPEN. I CALLED
11 THEM AGAIN ON TUESDAY SEPT 6TH AND WAS
12 ADVISED THEY WOULD HAVE IT TOWED. I
13 RECEIVED A PHONE CALL ON TUESDAY
14 EVENING STATING MY MOTOR HAS SLUDGE
15 AND NEEDS TO BE REPLACED.

13 Vehicle: 2015 Kia Optima
14 Date Complaint Filed: 09/06/2016
15 Date of Incident: 09/03/2016
16 Component(s): ENGINE
17 NHTSA ID Number: 10904201

18 **SUMMARY:**

19 2015 KIA OPTIMA, ONLY 47K MILES....ENGINE
20 FAILURE...THE DEALERSHIP SAYS ITS SLUDGE...
21 AND I HAVE TO PROVIDE ALL MY
22 MAINTENANCE RECORDS. IT STARTED WITH
23 WHITE SMOKE COMING OUT OF THE TAILPIPE
24 AND LOUD RATTLING NOISE WHEN I
25 ACCELERATED, THEN THIS PAST SATURDAY, IT
26 STARTED TO SHAKE VIOLENTLY AND THE
27 CHECK ENGINE LIGHT WENT ON . I HAD TO GET
28 IT TOWED. THIS IS KIA'S FAULT!!! NOT MINE.
I'VE DONE THE SAME ROUTINE MAINTENANCE
ON MY TOYOTA AND HONDA WHICH HAD OVER
100K MILES WITH NO PROBLEMS! I AM BEING
TOLD BY KIA THAT IT WON'T BE COVERED
UNDER THE WARRANTY.

1
2 Vehicle: 2015 Kia Optima
3 Date Complaint Filed: 06/15/2016
4 Date of Incident: 06/04/2016
5 Component(s): ENGINE
6 NHTSA ID Number: 10874312

7 **SUMMARY:**

8 MY 2015 KIA OPTIMA HAS 26,456 MILES. THE
9 LAST OIL CHANGE WAS PERFORMED AT 26,064
10 MILES. ON 6/4/16 WHILE DRIVING APPROX.
11 50MPH IN 3 LANE TRAFFIC THE ENGINE SEIZED
12 UP, CAR SHUT DOWN AND INTERIOR FILLED
13 WITH SMOKE. HAD VEHICLE TOWED TO KIA.
14 WAS TOLD IT NEEDS A NEW ENGINE DUE TO
15 SLUDGE IN THE OIL. KIA IS REFUSING TO
16 HONOR THE WARRANTY BECAUSE I CANNOT
17 PRODUCE RECEIPTS FOR PREVIOUS OIL
18 CHANGES. I HAVE RESEARCHED AND MANY
19 OTHER KIA VEHICLES ARE HAVING VERY
20 SIMILAR PROBLEMS WITH LOW MILES! THERE
21 HAS TO BE SOMETHING WRONG THAT KIA IS
22 NOT AWARE OF OR IS JUST NOT WILLING TO
23 ADMIT. NOT ONLY WILL THEY NOT FIX MY
24 VEHICLE BUT I FEAR SOMEONE IS GOING TO
25 GET HURT OR EVEN KILLED. I INFORMED KIA
26 OF MY CONCERN BUT THEY DID NOT SEEM TO
27 CARE.

22 Vehicle: 2015 Kia Optima
23 Date Complaint Filed: 05/24/2016
24 Date of Incident: 10/15/2015
25 Component(s): ENGINE
26 NHTSA ID Number: 10870505

27 **SUMMARY:**

28 TL* THE CONTACT OWNS A 2015 KIA OPTIMA.
WHILE DRIVING 60 MPH, SMOKE EMITTED FROM
THE ENGINE COMPARTMENT WITHOUT
WARNING. THE VEHICLE WAS TAKEN TO THE
DEALER. THE TECHNICIAN DIAGNOSED THAT

1 THE NUMBER TWO CYLINDER WAS DEFECTIVE
2 AND NEEDED TO BE REPLACED. THE VEHICLE
3 WAS NOT REPAIRED. THE FAILURE MILEAGE
4 WAS 58,000.

5 **b. Previous Model Year Kia GDI Engine Complaints**

6 Vehicle: 2011 Kia Optima
7 Date Complaint Filed: 10/16/2014
8 Component(s): ENGINE
9 Date of Incident: 10/12/2014
10 NHTSA ID Number: 10645013
11 Manufacturer: Kia Motors America
12 Vehicle Identification No. (VIN): KNAGN4A61B5 . . .

13 **SUMMARY:**
14 TL* THE CONTACT OWNS A 2011 KIA OPTIMA.
15 THE CONTACT STATED THAT **WHILE DRIVING**
16 **75 MPH AT NIGHT WITH THE CRUISE**
17 **CONTROL ACTIVATED. THERE WAS SMOKE**
18 **COMING FROM UNDER THE HOOD AND THE**
19 **VEHICLE ENGULFED INTO FLAMES. THE FIRE**
20 **DEPARTMENT EXTINGUISHED THE FIRE. A**
21 **POLICE/FIRE REPORT WAS FILED AND THERE**
22 **WERE NO INJURIES REPORTED. THE VEHICLE**
23 **WAS DESTROYED AND THE CAUSE OF THE FIRE**
24 **WAS NOT DETERMINED. THE MANUFACTURER**
25 **WAS NOT MADE AWARE OF THE FAILURE. THE**
26 **FAILURE MILEAGE WAS 51.500.**

27 Vehicle: 2011 Kia Optima
28 Date Complaint Filed: 04/16/2015
Date of Incident: 03/31/2015
Component(s): ELECTRICAL SYSTEM. ENGINE
NHTSA ID Number: 10706020
Manufacturer: Kia Motors America
Vehicle Identification No. (VIN): KNAGN4A72B5 . . .

29 **SUMMARY:**
30 TL* THE CONTACT OWNS A 2011 KIA OPTIMA.
31 **WHILE TRAVELING AT APPROXIMATELY 50**
32 **MPH AND ATTEMPTING TO SLOW DOWN FOR**
33 **A STOP LIGHT. THE VEHICLE STALLED**
34 **WITHOUT WARNING AND FAILED TO**
35 **RESTART. THE VEHICLE WAS TOWED TO AN**
36 **AUTHORIZED DEALER WHO DIAGNOSED THAT**
37 **THE STARTER BURNED OUT AND THAT THE**
38 **ENGINE SEIZED. THE DEALER REPLACED THE**
39 **STARTER AND WAS NOT ABLE TO DIAGNOSE**
40 **THE SOURCE OF THE FAILURE. THE CONTACT**
41 **WAS INFORMED THAT A MORE EXTENSIVE**
42 **DIAGNOSIS WAS REQUIRED AND THE ENGINE**
43 **NEEDED TO BE TAKEN APART. THE ENGINE**

1 FAILURE WAS NOT REPAIRED BY THE DEALER.
2 THE VEHICLE WAS NOT ABLE TO BE DRIVEN.
3 THE MANUFACTURER WAS NOTIFIED OF THE
4 FAILURE. THE FAILURE MILEAGE WAS NOT
5 AVAILABLE.

6 Vehicle: 2011 Kia Optima
7 Date Complaint Filed: 05/29/2015
8 Date of Incident: 05/27/2015
9 Component(s): ENGINE. SERVICE BRAKES
10 NHTSA ID Number: 10722186
11 Manufacturer: Kia Motors America
12 Vehicle Identification No. (VIN): KNAGM4A7XB5 . . .

13 **SUMMARY:**

14 I HAVE A 2011 KIA OPTIMA LX. 2.4 LITER
15 ENGINE. ALWAYS KEEP UP ON THE
16 MAINTENANCE AND OIL CHANGES. CAR IS IN
17 GREAT SHAPE. I WAS NOT EXPERIENCING ANY
18 ISSUES. WARNINGS. NO CHECK ENGINE/OIL
19 LIGHTS. NO NOISES. ABSOLUTELY NOTHING.
20 **THEN LAST NIGHT MY CAR JUST SPATTERED
21 AND CUT OFF WHILE BEING DRIVEN.
22 APPARENTLY WHEN THE ENGINE CUTS OFF,
23 SO DOES THE BRAKES. THERE WAS NO WAY
24 TO PUSH THE BRAKES. SO I HAD TO TRY TO
25 SAFELY COAST TO THE SIDE OF THE ROAD.
26 WITH NO BRAKES AND NO POWER STEERING.
27 I FINALLY PULLED OVER. TRIED TO RESTART
28 THE CAR AND THERE WAS SUCH A LOUD
KNOCKING NOISE. AND SOME SOUEALING
NOISES AS WELL. THE CAR WILL NO LONGER
START EITHER. I HAD A MECHANIC LOOK AT IT
TODAY AND SAYS THE ENGINE IS "JUST GONE."
NO EXPLANATIONS AT ALL. I VERIFIED THAT
THE KIA OPTIMA AND THE HYUNDAI SONATA
ARE THE SAME MANUFACTURER AND USE THE
SAME ENGINES. I SEE THERE ARE WAY MORE
COMPLAINTS ABOUT THE 2011 HYUNDAI
SONATA WITH THIS SAME ISSUE. I WILL TRY TO
NOTIFY KIA AND SEE IF THEY ARE WILLING TO
STEP UP AND CORRECT THIS EVEN WITH THE
WARRANTY EXPIRING 7.000 MILES AGO. SINCE I
AM THE SECOND OWNER. I HAVE FOUND MANY
COMPLAINTS ABOUT THIS SAME THING FOR
BOTH THE 2011 OPTIMAS AND SONATAS. THIS IS
SO DANGEROUS BECAUSE THERE ARE NO
WARNINGS. AND THE ENGINE CUTS OFF IN
TRAFFIC. WHICH ALSO CAUSES THE BRAKES
AND STEERING TO GO OUT. NOT SAFE AT ALL.**

Vehicle: 2011 Kia Optima

1 Date Complaint Filed: 08/24/2015
2 Date of Incident: 08/24/2013
3 Component(s): ENGINE
4 NHTSA ID Number: 10778079
5 Manufacturer: Kia Motors America
6 Vehicle Identification No. (VIN): KNAGM4A7XB5 . . .

7 **SUMMARY:**
8 DRIVING DOWN EXPRESS WHEN ENGINE
9 STARTED TO LOOSE OIL. PULLED OVER ON
10 SHOULDER. NOTICE A CLICKING NOISE AND
11 SMELLED BURNING OIL. DEALER FOUND HOLE
12 IN SIDE OF ENGINE BLOCK. STATED NEEDS NEW
13 ENGINE AND QUOTED AND ESTIMATED PRICE
14 OF \$5,875.64 FOR A USED ENGINE WITH 46,000
15 MILES INSTALLED. HAD CAR REPAIRED AT
16 ANOTHER PLACE FOR \$5477.06 WITH 41,000
17 MILES. THIS SHOP SAID THE ENGINE HAD A ROD
18 KNOCK THEN LOCKED UP. NEEDS THE ENGINE
19 REPLACED. **THIS IS THE SAME 2.4 LITER**
20 **ENGINE THAT IS BEING RECALLED FOR THE**
21 **HYUNDAI SONATAS.**

22 Vehicle: 2011 Kia Optima
23 Date Complaint Filed: 09/29/2015
24 Date of Incident: 06/21/2015
25 Component(s): ENGINE
26 NHTSA ID Number: 10778375
27 Manufacturer: Kia Motors America
28 Vehicle Identification No. (VIN): KNAGM4A72B5 . . .

29 **SUMMARY:**
30 TL* THE CONTACT OWNS A 2011 KIA OPTIMA.
31 **WHILE DRIVING AT APPROXIMATELY 40 MPH.**
32 **THE CHECK ENGINE WARNING LIGHT**
33 **ILLUMINATED. THE DRIVER SHUT OFF THE**
34 **VEHICLE AND IT FAILED TO RESTART. THE**
35 **VEHICLE WAS TOWED TO A DEALER WHO**
36 **DIAGNOSED THAT THE ENGINE NEEDED TO BE**
37 **REPLACED. THE MANUFACTURER WAS**
38 **NOTIFIED OF THE FAILURE. THE VEHICLE WAS**
39 **NOT REPAIRED. THE FAILURE MILEAGE WAS**
40 **71,106.**

41 Vehicle: 2011 Kia Optima
42 Date Complaint Filed: 11/09/2015
43 Date of Incident: 10/31/2015
44 Component(s): ELECTRICAL SYSTEM . ENGINE
45 NHTSA ID Number: 10789435
46 Manufacturer: Kia Motors America
47 Vehicle Identification No. (VIN): KNAGM4A79B5 . . .

1 **SUMMARY:**
2 **WHILE DRIVING 70 MPH ON THE HIGHWAY**
3 **MY 2011 KIA OPTIMA ENGINE SHUT DOWN**
4 **AND WOULD NOT ACCELERATE AND THE**
5 **BRAKES WOULD NOT FUNCTION. LUCKILY, I**
6 **SAFELY MADE IT TO THE FAR SHOULDER OF**
7 **THE HIGHWAY ONLY TO FIND THAT MY CAR**
8 **WAS SMOKING AND SMELLED LIKE SOMETHING**
9 **WAS BURNING. HAD TO GET THE CAR TOWED**
10 **TO THE DEALERSHIP AND THEY INFORMED THE**
11 **ENGINE NEEDS TO BE REPLACED AND THE**
12 **STARTER IS ALSO FRIED. I HAVE SEEN FOUR**
13 **COMPLAINTS SO FAR OF 2011 KIA OPTIMA'S**
14 **WITH THE SAME ISSUE AND AM SURE I WILL**
15 **FIND MORE. THAT SEEMS LIKE TOO MUCH OF A**
16 **COINCIDENCE THAT IT HAPPENS SO**
17 **FREOUENTLY WITH THESE MODELS AND THERE**
18 **ISN'T ANY SORT OF RECALL. NO BREAKS AT 70**
19 **MPH IS PRETTY DANGEROUS. I HAVE**
20 **CONTACTED MY ATTORNEY AND HOPE THIS**
21 **MANUFACTURER WILL DO THE RIGHT THING.**

13 Vehicle: 2011 Kia Optima
14 Date Complaint Filed: 12/13/2015
15 Date of Incident: 12/06/2015
16 Component(s): ENGINE
17 NHTSA ID Number: 10809924
18 Manufacturer: Kia Motors America
19 Vehicle Identification No. (VIN): KNAGM4A75B5 . . .

17 **SUMMARY:**
18 **WAS DRIVING DOWN THE INTERSTATE AND**
19 **THE CAR DIED AFTER PULLING OFF TO THE**
20 **SHOULDER TRIED TO START THE CAR AND ALL**
21 **IT WOULD DO WAS CLICK. TOWED THE CAR**
22 **HOME THINKING IT WAS AN ALTERNATOR OR**
23 **SOMETHING SIMPLE. NEXT MORNING LOOKED**
24 **AT THEN CHANGED THE BATTERY AND TRIED**
25 **TO GET IT STARTED IN SLIGHTLY TURNED**
26 **OVER BUT NOT ENOUGH TO START CALLED THE**
27 **DEALER TO DROP IT OFF AND THEY SAID CAR**
28 **WAS SEIZED OUT OF WARRANTY AND NEEDS**
 THE ENGINE REPLACED. AFTER SEARCHING
 ON THE INTERNET AND LOOKING AT
 COMPLAINTS FOUND THAT MY ENGINE WAS
 BUILT AT THE SAME PLANT AS THE HYUNDAI
 SONATA SAME ENGINE. WHICH IS RECALLED
 FOR THIS SAME EXACT PROBLEM . I AM
 WONDERING WHY KIA ACTED LIKE THE
 CANT BELIEVE THIS WOULD HAPPEN WHEN
 THESE CARS SHOULD BE RECALLED ALSO .
 WHAT CAN BE DONE HERE ? I WILL NOT LET
 THIS GO IT IS WRONG KIA'S SHOULD BE
 LOOKED INTO AND RECALLED

1
2
3 Vehicle: 2011 Kia Optima
4 Date Complaint Filed: 02/29/2016
5 Date of Incident: 05/09/2015
6 Component(s): ENGINE
7 NHTSA ID Number: 10838965
8 Consumer Location: SAN ANTONIO, TX
9 Manufacturer: Kia Motors America
10 Vehicle Identification No. (VIN): KNAGM4A76B5 . . .

11 **SUMMARY:**

12 TL-THE CONTACT OWNS A 2011 KIA OPTIMA.
13 **THE CONTACT STATED THAT WHILE**
14 **DRIVING APPROXIMATELY 60 MPH, AN**
15 **ABNORMAL SOUND EMITTED FROM UNDER**
16 **THE HOOD OF THE VEHICLE AS THE CHECK**
17 **ENGINE OIL WARNING LIGHT FLICKERED.**
18 THE VEHICLE WAS TAKEN TO AN INDEPENDENT
19 MECHANIC WHERE IT WAS DIAGNOSED THAT
20 THE CONNECTING ROD FAILED AND THE
21 ENGINE NEEDED TO BE REPLACED. THE
22 VEHICLE WAS NOT REPAIRED. THE
23 MANUFACTURER WAS NOT NOTIFIED OF THE
24 FAILURE. THE FAILURE MILEAGE WAS 92,000. SS

25
26
27 Vehicle: 2012 Kia Optima
28 Date Complaint Filed: 09/23/2014
Date of Incident: 09/22/2014
Component(s): ENGINE
NHTSA ID Number: 10638362
Manufacturer: Kia Motors America
Vehicle Identification No. (VIN): 5XXGN4A7XCG . . .

SUMMARY:

DRIVING VEHICLE AT 35-40 MPH. ALL OF A
SUDDEN ENGINE STOPPED. THERE WAS HEAVY
SMOKE COMING FROM UNDER THE HOOD AND
SMELLED OF AN ELECTRICAL FIRE. SMOKE
DISSIPATED AFTER 15 MINUTES. VEHICLE WAS
UNABLE TO BE RESTARTED AND HAD TO BE
TOWED TO KIA DEALERSHIP IN TURNERSVILLE
NJ. SPOKE WITH DEALERSHIP ON 9/23 AND WAS
TOLD STARTER AND ENGINE NEEDS TO BE
REPLACED. *TR

Vehicle: 2012 Kia Optima
Date Complaint Filed: 09/26/2014
Date of Incident: 09/11/2014
Component(s): ENGINE
NHTSA ID Number: 10639417

1 Manufacturer: Kia Motors America
2 Vehicle Identification No. (VIN): Not Available . . .

3 **SUMMARY:**

4 TL* THE CONTACT OWNS A 2012 KIA OPTIMA.
5 **THE CONTACT STATED THAT WHILE**
6 **DRIVING AT APPROXIMATELY 70 MPH. THE**
7 **ENGINE STALLED WITHOUT WARNING. IN**
8 **ADDITION, A STRONG ELECTRICAL BURNING**
9 **ODOR EMITTED INSIDE OF THE VEHICLE. THE**
10 **VEHICLE WAS TOWED TO A DEALER FOR**
11 **DIAGNOSIS. THE MECHANIC INFORMED THAT**
12 **THE STARTER AND ASSOCIATED FUSES WERE**
13 **COMPLETELY BURNT. THE VEHICLE WAS**
14 **REPAIRED. THE CONTACT STATED THAT AFTER**
15 **THE REPAIRS WERE PERFORMED, THE VEHICLE**
16 **FAILED TO START. THE VEHICLE WAS TAKEN**
17 **BACK TO THE DEALER WHO RECOMMENDED**
18 **THE ENGINE NEEDED TO BE REPLACED. THE**
19 **VEHICLE WAS NOT REPAIRED. THE**
20 **MANUFACTURER WAS NOTIFIED OF THE**
21 **FAILURE. THE VIN WAS UNAVAILABLE. THE**
22 **APPROXIMATE FAILURE MILEAGE WAS 55,000.**

23 Vehicle: 2012 Kia Optima
24 Date Complaint Filed: 09/30/2015
25 Date of Incident: 08/02/2015
26 Component(s): ENGINE
27 NHTSA ID Number: 10778891
28 Manufacturer: Kia Motors America
Vehicle Identification No. (VIN): 5XXGN4A76CG . . .

29 **SUMMARY:**

30 I WAS DRIVING ON I 95 ON OUR WAY HOME
31 FROM FLORIDA. WE WERE PASSING
32 FAYETTSVILLE .NC WHEN MY CAR ENGINE
33 MADE SOME KNOCKING NOISE AND THEN THE
34 ENGINE LIGHT CAME ON. BEFORE I CAN PULL
35 TO THE SHOULDER. **THE CAR STALLED.LOST**
36 **POWER AT 70 MLS PER HR. WE WERE LUCKY**
37 **NO ONE HIT US AS I WAS SLOWLY**
38 **NAVIGATING TO THE SHOULDER. I HAD IT**
39 **TOWED TO A KIA DEALERSHIP IN**
40 **FAYETTSVILLE.NC. THEY SAID ENGINE SEIZED**
41 **UP AND NEEDS TO BE REPLACE. THE CAR HAS**
42 **71.000MLS BUT KIA DENIED MY WARRANTY**
43 **CLAIM SO I END UP PAYING \$5.700 FOR A**
44 **REMANUFACTURED ENGINE.**

45 Vehicle: 2012 Kia Optima
46 Date Complaint Filed: 12/14/2015

1 Date of Incident: 11/28/2015
2 Component(s): ENGINE
3 NHTSA ID Number: 10809989
4 Manufacturer: Kia Motors America
5 Vehicle Identification No. (VIN): 5XXGR4A69CG . . .

6 **SUMMARY:**

7 THE VEHICLE HIT 63,000 MILES DURING THIS
8 INCIDENT. AS I WAS MERGING ONTO THE
9 EXPRESSWAY AT 50MPH. I GOT THE VEHICLE
10 TO 60MPH AND THE SPEEDOMETER GAUGE
11 FROZE AT 60MPH. THEN, THE RPM GAUGE
12 DROPPED TO 0. SUDDENLY THE ENGINE LOST
13 POWER. THE BRAKES LOCKED UP AND
14 BEFORE I GOT THE CAR OFF TO THE
15 SHOULDER AT A COMPLETE STOP. THE
16 ENGINE CUT OUT COMPLETELY. THE ENGINE
17 WOULD NOT START AT ALL AFTER IT CUT OUT.
18 I THEN BROUGHT THE VEHICLE TO A
19 DEALERSHIP WHERE THEY DEEMED A NEW
20 ENGINE AS THE CURRENT ENGINE BLEW.

21 Vehicle: 2012 Kia Optima
22 Date Complaint Filed: 01/21/2016
23 Date of Incident: 01/13/2016
24 Component(s): ENGINE
25 NHTSA ID Number: 10821364
26 Manufacturer: Kia Motors America
27 Vehicle Identification No. (VIN): 5XXGR4A67CG . . .

28 **SUMMARY:**

DRIVING AT APPROXIMATELY 50 MPH ON
THE PARKWAY. ENGINE STALLED WITHOUT
WARNING AND WOULD NOT RE-START. I HAD
THE CAR TOWED TO A SHOP WHERE THEY
INFORMED ME THE ENGINE HAD SEIZED. THERE
WAS DEFINITELY OIL IN THERE AS I HAD AN OIL
CHANGE WITHIN THE LAST COUPLE OF WEEKS..
THE CAR HAS 72K MILES ON IT AND I AM THE
SECOND OWNER SO NOT COVERED BY KIA'S
NON-TRANSFERABLE 10YR/100K MI WARRANTY.
WORKING WITH KIA CUSTOMER SERVICE.
WAITING TO HEAR BACK FROM A SUPERVISOR.

Vehicle: 2013 Kia Optima
Date Complaint Filed: 06/14/2013
Date of Incident: 06/12/2013
Component(s): ENGINE
NHTSA ID Number: 10519827
Manufacturer: Kia Motors America
Vehicle Identification No. (VIN): 5XXGR4A63DG . . .

SUMMARY:

DRIVING ON A CITY ROAD DURING NORMAL TRAFFIC (4:30PM EST) MY VEHICLE BEGAN TO MAKE LARGE RATTLING NOISE FROM THE ENGINE COMPARTMENT. AT FIRST I THOUGHT I HAD PICKED UP SOMTHING ON THE ROAD. BUT AS I ACCELERATED/DECCELERATED THE NOISE BECAME LOUDER/SOFTER. I IMMEDIATLEY CONTACTED MY KIA DEALERSHIP. AFTER SPEAKING TO THE SERVICE MANAGER HE TOLD ME TO BRING THE VEHICLE IN NEXT WEEK SINCE THAT WOULD BE THE SOONEST IT COULD BE LOOKED AT. I INFORMED HIM THAT I DID'NT THINK I COULD EVEN MAKE IT HOME LET ALONE WAIT A WEEK TO BRING THE VEHICLE IN. HE STATED I COULD DROP IT OFF. BUT IT WOULD NOT BE LOOKED AT UNTIL NEXT WEEK. EITHER WAY, WITHIN 10 MIUTES OF DRIVING A LARGE BANGING NOISE WENT OFF UNDER THE HOOD. ENGINE OIL SPRAYED THROUGHT THE ENGINE COMPARTMENT AND I HAD COMPLETE LOSS OF POWER. KIA ROADSIDE ASSISTANCE TOWED THE VEHICLE TO THE DEALERSHIP WHERE THEY HAVE INFORMED ME THAT THE ENGINE NEEDS TO BE REPLACED. THE VEHICLE IS LESS THAN 2 WEEKS OLD AND HAD 600 MILES WHEN THIS OCCURED. I INFORMED THE DEALERSHIP I WOULD NOT WANT A VEHICLE WITH A REPLACED ENGINE AND THEY HAVE INFORMED ME THAT IS MY ONLY OPTION. I WILL NOT BE PURCHASING FROM KIA AGAIN AS THERE WAS NO SUPPORT FROM THEIR CORPORATE CUSTOMER SERVICE EITHER. *TR

Vehicle: 2013 Kia Optima
Date Complaint Filed: 08/17/2015
Date of Incident: 08/12/2015
Component(s): ENGINE
NHTSA ID Number: 10749310
Manufacturer: Kia Motors America
Vehicle Identification No. (VIN): 5XXGN4A72DG . . .

SUMMARY:

THE EVENING OF 8/12/15 I WAS DRIVING DOWN A 4 LANE CITY ROAD. 2 LANES EACH DIRECTION. THE ENGINE COMPLETELY SHUT OFF LEAVING ME WITH NO POWER AND IN A VERY DANGEROUS SITUATION WITH SUDDEN DECELERATION AND VEHICLES COMING UP FROM BEHIND. FORTUNATELY, NO ONE HIT ME AND I WAS ABLE TO MOVE THE CAR OUT OF TRAFFIC. NO ENGINE MAINTENANCE/WARNING LIGHTS CAME ON PRIOR TO THE ENGINE FAILURE. WE HAVE BEEN INFORMED THE

1 ENGINE IS LOCKED UP AND WILL NEED
2 COMPLETELY REPLACE WITH A NEW ENGINE.
3 ROUTINE MAINTENANCE. INCLUDING KIA'S
4 22,500 MILE RECOMMENDED MAINTENANCE
5 WAS PERFORMED ONLY 16 DAYS PRIOR ON
6 7/27/15. DAVE GREEN, KIA ARAPAHOE SERVICE
7 MANAGER, INFORMED TODAY (8/17/15) THAT
8 THEY HAVE SEEN SEVERAL INSTANCES OF THIS
9 IN THE PAST WEEK. THEY BELIEVE THERE IS A
10 CONNECTION TO THE HOT WEATHER. WHAT
11 EVER THE CAUSE THIS HAS A VERY HIGH
12 POTENTIAL TO CAUSE DEATH OR EXTREME
13 INJURY

8 90. Upon information and belief, KMA regularly monitors these NHSTA
9 databases as part of its ongoing obligation to identify potential defects in its vehicles.
10 NHTSA complaints establish that KMA knew, or should have known, of the engine
11 defect *at least* as early as June 14, 2013, years before the Class Vehicles at issue in this
12 litigation were sold. Upon information and belief, Defendant became aware of the engine
13 defect earlier than June 2013 through: (1) Defendant's own records of customers'
14 complaints, (2) dealership repair records, (3) records from NHTSA, (4) warranty and
15 post-warranty claims, (5) durability testing and part sales, and (6) other various sources.

16 **C. KMA's Warranty-Related Practices**

17 91. KMA issued two relevant warranties with each Class Vehicle: a "New
18 Vehicle Limited Warranty," and a "Powertrain Warranty."

19 92. Under the basic New Vehicle Limited Warranty, KMA agreed to repair
20 defects reported within the earlier of 5 years or 60,000 miles.

21 93. Under the Powertrain Warranty, KMA agreed to repair defects affecting
22 various powertrain components through 10 years and 100,000 miles. According to the
23 Warranty and Consumer Information Manual, Powertrain Coverage Components include:

24 **In the Engine:** Cylinder block, cylinder head and all internal parts, timing gear,
25 seals and gaskets, valve cover, flywheel, oil pump, water pump and turbo charger.

26 **In the Transaxle:** Transmission case and all internal parts, torque converter, drive
27 shafts, universal joints, front hubs, bearings, seals and gaskets.

28

1 **In the Transmission:** Transmission case, transfer case, torque converter and all
2 internal parts, seals, and gaskets.⁶

3 94. KMA instructs vehicle owners and lessees to bring their vehicles to a Kia
4 dealership for the warranty repairs. Many owners and lessees have presented Class
5 Vehicles to Kia dealerships with complaints related to the engine defect.

6 95. KMA has evaded its warranty obligations by failing to tell consumers that
7 their vehicles are defective and by representing that the cause of the defect is the owner's
8 neglect to properly maintain the engine oil and/or engine oil level. This representation,
9 however, is false as the engine is inherently defective and will inevitably fail.

10 96. In addition, KMA has also evaded its warranty obligations by requiring
11 consumers to produce the entire maintenance history of the Class Vehicles, including a
12 mandate that all oil changes be completed at a Kia dealership, before determining
13 whether to make the necessary repairs under warranty. KMA, however, knows that the
14 defect in the Class Vehicles' engines manifests even if the owner or lessee has followed
15 Kia's oil change guidelines. Even if consumers produce their vehicles' maintenance
16 history, KMA blames the defect and engine failure on the consumer, refuses to cover the
17 necessary repairs under warranty, and charges as much as \$10,000 to repair/replace the
18 engine.

19 97. Kia also advertises that it offers "an industry-leading Kia 10-year or
20 100,000-mile warranty program." With respect to the powertrain warranty, however, Kia
21 publicizes the existence of 10 year/100,000 mile powertrain warranty but fails to mention
22 that subsequent owners only receive powertrain warranty coverage for 5 years/60,000
23 miles. As such, subsequent owners are left to discover the limited warranty coverage
24 after purchasing their vehicle. Kia's failure to cover repairs under the powertrain
25 warranty between 5 years/60,000 miles and 10 years/100,000 miles is therefore
26

27
28 ⁶ See, e.g., http://www.kia.com/us/k3/content/media/all/warranty/2014_warranty.pdf (last visited August 7, 2017).

1 98. unconscionable and unenforceable. A typical Kia advertisement touting its
2 warranty is pictured below:



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11
12 99. In many instances, consumers have incurred and will continue to incur
13 expenses for the diagnosis of the defect, despite such defect having been contained in the
14 Class Vehicles when manufactured by Defendant, repair and replacement of the GDI
15 Engine and the unnecessary and premature replacement of the connecting rods, crank
16 shaft, oil pump, and other engine components.

17 100. Furthermore, a number of Class Members, who presented their Class
18 Vehicles to Kia dealerships because of issues related to the defective connecting rod
19 bearings and insufficient engine oil lubrication channels, were denied warranty repairs
20 and, instead, informed that nothing was wrong with their vehicles. As a result, after
21 expiration of the warranty period, Class Members are forced to pay costly repairs to
22 correct the defect.

23 **CLASS ALLEGATIONS**

24 101. Plaintiffs bring this action on their own behalf, and on behalf of a
25 nationwide class pursuant to Federal Rules of Civil Procedure 23(a), 23(b)(2), and/or
26 23(b)(3).

27 **Nationwide Class:**

28 All persons or entities in the United States who are current or former owners and/or lessees of a Class Vehicle.

1
2 102. In the alternative to the Nationwide Class, and pursuant to Federal Rule of
3 Civil Procedure 23(c)(5), Plaintiffs seek to represent the following state classes only in
4 the event that the Court declines to certify the Nationwide Class above. Specifically, the
5 state classes consist of the following:

6 **California Class:**

7 All persons or entities in California who are current or former
8 owners and/or lessees of a Class Vehicle for primarily personal,
9 family or household purposes, as defined by California Civil
Code § 1791(a).

10 **Maine Class:**

11 All persons or entities in Maine who are current or former
owners and/or lessees of a Class Vehicle.

12 103. Together, the California Class, the Maine Class, and the Nationwide Class
13 shall be collectively referred to herein as the “Class.” Excluded from the Class are KMA,
14 its affiliates, employees, officers and directors, persons or entities that purchased the
15 Class Vehicles for resale, and the Judge(s) assigned to this case. Plaintiffs reserve the
16 right to modify, change, or expand the Class definitions based on discovery and further
17 investigation.

18 104. Numerosity: Upon information and belief, the Class is so numerous that
19 joinder of all members is impracticable. While the exact number and identities of
20 individual members of the Class are unknown at this time, such information being in the
21 sole possession of Defendant and obtainable by Plaintiffs only through the discovery
22 process, Plaintiffs believe, and on that basis allege, that hundreds of thousands of Class
23 Vehicles have been sold and leased in each of the states that are the subject of the Class.

24 105. Existence and Predominance of Common Questions of Fact and Law:
25 Common questions of law and fact exist as to all members of the Class. These questions
26 predominate over the questions affecting individual Class Members. These common legal
27 and factual questions include, but are not limited to, whether:

28 a. The Class Vehicles were sold with a defect;

- 1 b. KMA knew of the defect but failed to disclose the problem and its
2 consequences to its customers;
- 3 c. A reasonable consumer would consider the defect or its consequences
4 to be material;
- 5 d. KMA has failed to provide free repairs as required by its New Vehicle
6 Limited Warranty and/or Powertrain Warranty;
- 7 e. KMA should be required to disclose the existence of the defect; and
- 8 f. KMA's conduct violates the California Legal Remedies Act,
9 California Unfair Competition Law, and the other statutes asserted
10 herein.

11 106. Typicality: All of Plaintiffs' claims are typical of the claims of the Class
12 because Plaintiffs purchased Class Vehicles with the same engine defect, defective
13 vehicle design, and defective engine, as did each member of the Class. Furthermore,
14 Plaintiffs and all Members of the Class sustained monetary and economic injuries
15 including, but not limited to, ascertainable losses arising out of Defendant's wrongful
16 conduct. Plaintiffs are advancing the same claims and legal theories on behalf of
17 themselves and all absent Class Members.

18 107. Adequacy: Plaintiffs are adequate representatives because their interests do
19 not conflict with the interests of the Class that they seek to represent, they have retained
20 counsel competent and highly experienced in complex class action litigation, and they
21 intend to prosecute this action vigorously. The interests of the Class will be fairly and
22 adequately protected by Plaintiffs and their counsel.

23 108. Superiority: A class action is superior to all other available means of fair
24 and efficient adjudication of the claims of Plaintiffs and Members of the Class. The
25 injury suffered by each individual Class member is relatively small in comparison to the
26 burden and expense of individual prosecution of the complex and extensive litigation
27 necessitated by Defendant KMA's conduct. It would be virtually impossible for Members
28 of the Class individually to redress effectively the wrongs done to them. Even if the
29 Members of the Class could afford such individual litigation, the court system could not.
30 Individualized litigation presents a potential for inconsistent or contradictory judgments.

1 Individualized litigation increases the delay and expense to all parties, and to the court
2 system, presented by the complex legal and factual issues of the case. By contrast, the
3 class action device presents far fewer management difficulties, and provides the benefits
4 of single adjudication, an economy of scale, and comprehensive supervision by a single
5 court. Upon information and belief, members of the Class can be readily identified and
6 notified based on, *inter alia*, Defendant’s vehicle identification numbers, warranty
7 claims, registration records, and database of complaints.

8 109. Defendant has acted, and refused to act, on grounds generally applicable to
9 the Class, thereby making appropriate final equitable relief with respect to the Class as a
10 whole.

11 **FIRST CAUSE OF ACTION**

12 **VIOLATIONS OF CALIFORNIA’S CONSUMER LEGAL REMEDIES ACT**

13 **(“CLRA”) (Cal. Civ. Code § 1750, *et seq.*)**

14 **(On Behalf of the Nationwide Class or, Alternatively, the California Class)**

15 110. Plaintiffs and the Class incorporate by reference each preceding and
16 succeeding paragraph as though fully set forth at length herein.

17 111. Plaintiffs bring this claim on behalf of themselves and on behalf of the
18 Nationwide Class. Alternatively, Plaintiff Stanczak bring this claim on behalf of himself
19 and on behalf of the California Class against KMA.

20 112. KMA is a “person” as that term is defined in California Civil Code
21 § 1761(c).

22 113. Plaintiffs and the Class Members are “consumers” as that term is defined in
23 California Civil Code §1761(d).

24 114. KMA engaged in unfair and deceptive acts in violation of the CLRA by the
25 practices described above, and by knowingly and intentionally concealing from Plaintiffs
26 and Class Members that the Class Vehicles suffer from a defect(s) (and the costs, risks,
27 and diminished value of the vehicles as a result of this problem). These acts and practices
28 violate, at a minimum, the following sections of the CLRA:

1 (a)(2) Misrepresenting the source, sponsorship, approval or
2 certification of goods or services;

3 (a)(5) Representing that goods or services have sponsorships,
4 characteristics, uses, benefits or quantities which they do not
5 have, or that a person has a sponsorship, approval, status,
6 affiliation or connection which he or she does not have;

7 (a)(7) Representing that goods or services are of a particular
8 standard, quality, or grade, or that goods are of a particular style
9 or model, if they are of another; and

10 (a)(9) Advertising goods and services with the intent not to sell
11 them as advertised.

12 115. KMA's unfair or deceptive acts or practices occurred repeatedly in KMA's
13 trade or business, were capable of deceiving a substantial portion of the purchasing
14 public, and imposed a serious safety risk on the public.

15 116. KMA knew that the Class Vehicles and GDI Engines were defectively
16 designed or manufactured, would fail prematurely, and were not suitable for their
17 intended use.

18 117. KMA was under a duty to Plaintiffs and the Class Members to disclose the
19 defective nature of the Class Vehicles and the defective nature of the connecting rod
20 bearings and insufficient engine oil lubrication channels because:

- 21 a. KMA was in a superior position to know the true state of facts about
22 the safety defect and associated repair costs in the Class Vehicles and
23 their engines;
- 24 b. Plaintiffs and the Class Members could not reasonably have been
25 expected to learn or discover that the Class Vehicles and their engine
26 had dangerous safety defect until manifestation of the defect;
- 27 c. KMA knew that Plaintiffs and the Class Members could not
28 reasonably have been expected to learn or discover the safety and
security defect and the associated repair costs that it causes until the
manifestation of the defect; and
- d. KMA actively concealed the safety and security defect and the
associated repair costs by asserting to Plaintiffs and Class Members

1 that the cause of their engine problems was the result of Plaintiffs' and
2 the Class Members' inability to maintain the proper engine oil levels
3 despite knowing the repairs needed to correct the defect.

4 118. In failing to disclose the engine defect and the associated safety risks and
5 repair costs that result from it, KMA has knowingly and intentionally concealed material
6 facts and breached its duty not to do so.

7 119. The facts concealed or not disclosed by KMA to Plaintiffs and the Class
8 Members are material in that a reasonable consumer would have considered them to be
9 important in deciding whether to purchase KMA's Class Vehicles or pay a lesser price.
10 Had Plaintiffs and the Class known about the defective nature of the Class Vehicles and
11 their engines, they would not have purchased the Class Vehicles or would have paid less
12 for them.

13 120. Plaintiffs have provided KMA with notice of its violations of the CLRA
14 pursuant to California Civil Code § 1782(a).

15 121. Plaintiffs' and the other Class Members' injuries were proximately caused
16 by Defendant's fraudulent and deceptive business practices.

17 122. Therefore, Plaintiffs and the other Class Members seek all relief available
18 under the CLRA.

19 **SECOND CAUSE OF ACTION**

20 **VIOLATIONS OF THE CALIFORNIA CALIFORNIA UNFAIR**
21 **COMPETITION LAWS**

22 **(Cal. Bus. & Prof. Code § 17200)**

23 **(On Behalf of the Nationwide Class or, Alternatively, the California Class)**

24 123. Plaintiffs and the Class incorporate by reference each preceding and
25 succeeding paragraph as though fully set forth at length herein.

26 124. Plaintiffs bring this claim on behalf of themselves and on behalf of the
27 Nationwide Class. Alternatively, Plaintiff Stanczak brings this claim on behalf of himself
28 and on behalf of the California Class against KMA.

1 125. The California Unfair Competition Law (“UCL”) prohibits acts of “unfair
2 competition,” including any “unlawful, unfair or fraudulent business act or practice” and
3 “unfair, deceptive, untrue or misleading advertising.” Cal. Bus. & Prof. Code § 17200.

4 126. KMA has engaged in unfair competition and unfair, unlawful or fraudulent
5 business practices by the conduct, statements, and omissions described above, and by
6 knowingly and intentionally concealing from Plaintiffs and the Class Members that the
7 Class Vehicles suffer from a defect (and the costs, safety risks, and diminished value of
8 the vehicles as a result of these problems). KMA should have disclosed this information
9 because they were in a superior position to know the true facts related to the defect, and
10 Plaintiffs and Class Members could not reasonably be expected to learn or discover the
11 true facts related to the defect.

12 127. The defective connecting rod bearings and insufficient engine oil lubrication
13 channels constitute a safety issue that triggered KMA’s duty to disclose the safety issue
14 to consumers.

15 128. These acts and practices have deceived Plaintiffs and are likely to deceive
16 the public. In failing to disclose the defect and suppressing other material facts from
17 Plaintiffs and the Class Members, Defendant breached its duties to disclose these facts,
18 violated the UCL, and caused injuries to Plaintiffs and the Class Members. The omissions
19 and acts of concealment by KMA pertained to information that was material to Plaintiffs
20 and the Class Members, as it would have been to all reasonable consumers.

21 129. The injuries suffered by Plaintiffs and the Class Members are greatly
22 outweighed by any potential countervailing benefit to consumers or to competition, nor
23 are they injuries that Plaintiffs and the Class Members should have reasonably avoided.

24 130. KMA’s acts and practices are unlawful because they violate California Civil
25 Code §§ 1668, 1709, 1710, and 1750 *et seq.*, and California Commercial Code § 2313.

26 131. Plaintiffs seek to enjoin further unlawful, unfair and/or fraudulent acts or
27 practices by KMA, to obtain restitutionary disgorgement of all monies and revenues
28

1 generated as a result of such practices, and all other relief allowed under California
2 Business & Professions Code § 17200.

3 **THIRD CAUSE OF ACTION**

4 **VIOLATION OF CALIFORNIA FALSE ADVERTISING LAW**

5 **(Cal. Bus. & Prof. Code § 17500, *et seq.*)**

6 **(On Behalf of the Nationwide Class or, Alternatively, the California Class)**

7 132. Plaintiffs and the Class incorporate by reference each preceding and
8 succeeding paragraph as though fully set forth at length herein.

9 133. Plaintiffs bring this claim on behalf of themselves and on behalf of the
10 Nationwide Class. Alternatively, Plaintiff Stanczak brings this claim on behalf of himself
11 and on behalf of the California Class against KMA.

12 134. California Business & Professions Code § 17500 states: “It is unlawful for
13 any . . . corporation . . . with intent directly or indirectly to dispose of real or personal
14 property . . . to induce the public to enter into any obligation relating thereto, to make or
15 disseminate or cause to be made or disseminated . . . from this state before the public in
16 any state, in any newspaper or other publication, or any advertising device, . . . or in any
17 other manner or means whatever, including over the Internet, any statement . . . which is
18 untrue or misleading, and which is known, or which by the exercise of reasonable care
19 should be known, to be untrue or misleading.”

20 135. KMA caused to be made or disseminated through California and the United
21 States, through advertising, marketing and other publications, statements that were untrue
22 or misleading, and which were known, or which by the exercise of reasonable care should
23 have been known to KMA, to be untrue and misleading to consumers, including Plaintiffs
24 and the other Class Members.

25 136. KMA has violated section 17500 because the misrepresentations and
26 omissions regarding the safety, reliability, and functionality of its Class Vehicles as set
27 forth in this Complaint were material and likely to deceive a reasonable consumer.
28

1 137. Plaintiffs and the other Class Members have suffered an injury in fact,
2 including the loss of money or property, as a result of KMA's unfair, unlawful, and/or
3 deceptive practices. In purchasing or leasing their Class Vehicles, Plaintiffs and the other
4 Class Members relied on the misrepresentations and/or omissions of KMA with respect
5 to the safety and reliability of the Class Vehicles. KMA's representations were untrue
6 because the Class Vehicles are distributed with defective connecting rod bearings and
7 insufficient engine oil lubrication channels. Had Plaintiffs and the other Class Members
8 known this, they would not have purchased or leased their Class Vehicles and/or paid as
9 much for them. Accordingly, Plaintiffs and the other Class Members overpaid for their
10 Class Vehicles and did not receive the benefit of their bargain.

11 138. All of the wrongful conduct alleged herein occurred, and continues to occur,
12 in the conduct of KMA's business. KMA's wrongful conduct is part of a pattern or
13 generalized course of conduct that is still perpetuated and repeated, both in the state of
14 California and nationwide.

15 139. Plaintiffs, individually and on behalf of the other Class Members, request
16 that this Court enter such orders or judgments as may be necessary to enjoin KMA from
17 continuing their unfair, unlawful, and/or deceptive practices and to restore to Plaintiffs
18 and the other Class Members any money KMA acquired by unfair competition, including
19 restitution and/or restitutionary disgorgement, and for such other relief set forth below.

20 **FOURTH CAUSE OF ACTION**

21 **VIOLATION OF MAINE UNFAIR TRADE PRACTICES ACT**

22 **(On Behalf of the Maine Class)**

23 140. Plaintiffs and the Class incorporate by reference each preceding and
24 succeeding paragraph as though fully set forth at length herein.

25 141. Plaintiff Creps brings this claim on behalf of herself and on behalf of the
26 Maine Class against KMA.

27 142. Plaintiff Creps and the Maine Class are persons as that term is defined by
28 Me. Rev. Stat. Ann. tit. 5, § 206(2).

1 143. KMA is engaged in “trade” and “commerce” as those terms are defined by
2 Me. Rev. Stat. Ann. tit. 5, § 206(3).

3 144. Maine’s Unfair Trade Practices Act prohibits “[u]nfair methods of
4 competition and unfair or deceptive acts or practices in the conduct of any trade or
5 commerce.” Me. Rev. Stat. Ann. tit. 5, § 207.

6 145. KMA has engaged in unfair competition and unfair, unlawful or fraudulent
7 business practices by the conduct, statements, and omissions described above, and by
8 knowingly and intentionally concealing from Plaintiff Creps and the Class Members that
9 the Class Vehicles suffer from a defect (and the costs, safety risks, and diminished value
10 of the vehicles as a result of these problems). KMA should have disclosed this
11 information because they were in a superior position to know the true facts related to the
12 defect, and Plaintiff Creps and Class Members could not reasonably be expected to learn
13 or discover the true facts related to the defect.

14 146. The defective connecting rod bearings and insufficient engine oil lubrication
15 channels constitute a safety issue that triggered KMA’s duty to disclose the safety issue
16 to consumers.

17 147. These acts and practices have deceived Plaintiff Creps and are likely to
18 deceive the public. In failing to disclose the defect and suppressing other material facts
19 from Plaintiff Creps and the Class Members, Defendant breached its duties to disclose
20 these facts, violated Maine’s Unfair Trade Practices Act, and caused injuries to Plaintiff
21 Creps and the Class Members. The omissions and acts of concealment by KMA pertained
22 to information that was material to Plaintiff Creps and the Class Members, as it would
23 have been to all reasonable consumers.

24 148. The injuries suffered by Plaintiff Creps and the Class Members are greatly
25 outweighed by any potential countervailing benefit to consumers or to competition, nor
26 are they injuries that Plaintiff Creps and the Class Members should have reasonably
27 avoided.

28

1 149. The facts concealed or not disclosed by KMA to Plaintiff Creps and the
2 Class Members are material in that a reasonable consumer would have considered them
3 to be important in deciding whether to purchase KMA's Class Vehicles or pay a lesser
4 price. Had Plaintiff Creps and the Class known about the defective nature of the Class
5 Vehicles and their engines, they would not have purchased the Class Vehicles or would
6 have paid less for them.

7 150. Plaintiff Creps' and the other Class Members' injuries were proximately
8 caused by Defendant's fraudulent and deceptive business practices.

9 151. Plaintiff Creps has provided KMA with notice of these violations pursuant
10 to Me. Rev. Stat. Ann. tit. 5, § 213(1-A).

11 152. Plaintiff seeks all relief available under Maine's Unfair Trade Practices Act,
12 including the recovery of attorneys' fees and costs pursuant to Me. Rev. Stat. Ann, tit. 5,
13 § 213(2).

14 **FIFTH CAUSE OF ACTION**

15 **BREACH OF EXPRESS WARRANTY**

16 **(On Behalf of the Nationwide Class or, Alternatively, the California Class and the**
17 **Maine Class)**

18 153. Plaintiffs and the Class incorporate by reference each preceding and
19 succeeding paragraph as though fully set forth at length herein.

20 154. Plaintiffs bring this claim on behalf of themselves and on behalf of the
21 Nationwide Class. Alternatively, Plaintiff Stanczak brings this claim on behalf of himself
22 and on behalf of the California Class against KMA, and Plaintiff Creps brings this claim
23 on behalf of herself and on behalf of the Maine Class against KMA.

24 155. KMA provided all purchasers and lessees of the Class Vehicles with the
25 express warranties described herein, which became part of the basis of the bargain.
26 Accordingly, Defendant's warranties are express warranties under state law.
27
28

1 156. The parts affected by the defect, including the rotating assembly and engine
2 block, were distributed by KMA in the Class Vehicles and are covered by the warranties
3 KMA provided to all purchasers and lessors of Class Vehicles.

4 157. KMA breached these warranties by selling and leasing Class Vehicles with
5 the defect, requiring repair or replacement within the applicable warranty periods, and
6 refusing to honor the warranties by providing free repairs or replacements during the
7 applicable warranty periods.

8 158. Plaintiffs notified KMA of the breach within a reasonable time, and/or were
9 not required to do so because affording KMA a reasonable opportunity to cure its breach
10 of written warranty would have been futile. KMA also knew of the defect and yet have
11 chosen to conceal it and to fail to comply with their warranty obligations.

12 159. As a direct and proximate cause of KMA's breach, Plaintiffs and the other
13 Class Members bought or leased Class Vehicles they otherwise would not have, overpaid
14 for their vehicles, did not receive the benefit of their bargain, and their Class Vehicles
15 suffered a diminution in value. Plaintiffs and Class Members have also incurred and will
16 continue to incur costs related to the diagnosis and repair of the defective connecting rod
17 bearings and insufficient engine oil lubrication channels.

18 160. KMA's attempt to disclaim or limit these express warranties vis-à-vis
19 consumers is unconscionable and unenforceable under the circumstances here.
20 Specifically, KMA's warranty limitation is unenforceable because they knowingly sold a
21 defective product without informing consumers about the defect.

22 161. The time limits contained in Defendant KMA's warranty period were also
23 unconscionable and inadequate to protect Plaintiffs and members of the Class. Among
24 other things, Plaintiffs and Class Members had no meaningful choice in determining
25 these time limitations the terms of which unreasonably favored KMA. A gross disparity
26 in bargaining power existed between KMA and the Class Members, and KMA knew or
27 should have known that the Class Vehicles were defective at the time of sale and would
28 fail well before their useful lives.

1 distributed, and/or sold by KMA were safe and reliable for providing transportation and
2 would not experience premature and catastrophic engine failure; and (ii) a warranty that
3 the Class Vehicles and their engines would be fit for their intended use while the Class
4 Vehicles were being operated.

5 168. Contrary to the applicable implied warranties, the Class Vehicles and their
6 engines at the time of sale and thereafter were not fit for their ordinary and intended
7 purpose of providing Plaintiffs and the other Class Members with reliable, durable, and
8 safe transportation. Instead, the Class Vehicles suffer from a defective design(s) and/or
9 manufacturing defect(s).

10 169. Defendant KMA's actions, as complained of herein, breached the implied
11 warranty that the Class Vehicles were of merchantable quality and fit for such use.

12 **SEVENTH CAUSE OF ACTION**

13 **BREACH OF WRITTEN WARRANTY UNDER THE MAGNUSON-MOSS**

14 **WARRANTY ACT (15 U.S.C. § 2301, *et seq.*)**

15 **(On behalf of the Nationwide Class or, Alternatively, the California Class and the**
16 **Maine Class)**

17 170. Plaintiffs and the Class incorporate by reference each preceding and
18 succeeding paragraph as though fully set forth at length herein.

19 171. Plaintiffs bring this claim on behalf of themselves and on behalf of the
20 Nationwide Class. Alternatively, Plaintiff Stanczak brings this claim on behalf of himself
21 and on behalf of the California Class against KMA, and Plaintiff Creps brings this claim
22 on behalf of herself and on behalf of the Maine Class against KMA.

23 172. Plaintiffs and the Class are "consumers" within the meaning of the
24 Magnuson-Moss Warranty Act, 15 U.S.C. § 2301(3).

25 173. Defendant KMA is a "supplier" and "warrantor" within the meaning of 15
26 U.S.C. §§ 2301(4)-(5).

27 174. The Class Vehicles are "consumer products" within the meaning of 15
28 U.S.C. § 2301(1).

1 175. Defendant KMA's 5 year/60,000 miles Basic Warranty and 10 year/100,000
2 miles Powertrain Warranty are "written warranties" within the meaning of 15 U.S.C. §
3 2301(6).

4 176. Defendant KMA breached the express warranties by:

- 5 a. Providing a 5 year/60,000 miles Basic Warranty and a 10
6 year/100,000 miles Powertrain Warranty with the purchase or
7 lease of the Class Vehicles, thereby warranting to repair or
8 replace any part defective in material or workmanship at no
9 cost to the owner or lessee;
- 10 b. Selling and leasing Class Vehicles with engines that were
11 defective in materials and/or workmanship, requiring repair or
12 replacement within the warranty period; and
- 13 c. Refusing and/or failing to honor the express warranties by
14 repairing or replacing, free of charge, the engine or any of its
15 component parts in order to remedy the defective connecting
16 rod bearings and insufficient engine oil lubrication channels.

17 177. Plaintiffs and the other Class Members relied on the existence and length of
18 the express warranties in deciding whether to purchase or lease the Class Vehicles.

19 178. Defendant KMA's breach of the express warranties has deprived Plaintiffs
20 and the other Class Members of the benefit of their bargain.

21 179. The amount in controversy of Plaintiffs' individual claims meets or exceeds
22 the sum or value of \$25.00. In addition, the amount in controversy meets or exceeds the
23 sum or value of \$50,000 (exclusive of interests and costs) computed on the basis of all
24 claims to be determined in this suit.

25 180. Defendant KMA has been afforded a reasonable opportunity to cure its
26 breach of the written warranties and/or Plaintiffs and the other Class Members were not
27 required to do so because affording KMA a reasonable opportunity to cure its breach of
28 written warranties would have been futile. Defendant KMA was also on notice of the

1 alleged defect from the complaints and service requests it received from Class Members,
2 as well as from its own warranty claims, customer complaint data, and/or parts sales data.

3 181. As a direct and proximate cause of KMA's breach of the written warranties,
4 Plaintiffs and the other Class Members sustained damages and other losses in an amount
5 to be determined at trial. Defendant KMA's conduct damaged Plaintiffs and the other
6 Class Members, who are entitled to recover actual damages, consequential damages,
7 specific performance, diminution in value, costs, including statutory attorney fees and/or
8 other relief as deemed appropriate.

9 **EIGHTH CAUSE OF ACTION**

10 **COMMON LAW FRAUD**

11 **(On Behalf of the Nationwide Class or, Alternatively, the California Class and the**
12 **Maine Class)**

13 182. Plaintiffs and the Class incorporate by reference each preceding and
14 succeeding paragraph as though fully set forth at length herein.

15 183. Plaintiffs bring this claim on behalf of themselves and on behalf of the
16 Nationwide Class. Alternatively, Plaintiff Stanczak brings this claim on behalf of himself
17 and on behalf of the California Class against KMA, and Plaintiff Creps brings this claim
18 on behalf of herself and on behalf of the Maine Class against KMA.

19 184. KMA made material omissions concerning a presently existing or past fact.
20 For example, KMA did not fully and truthfully disclose to its customers the true nature of
21 the inherent defect with the GDI Engine, which was not readily discoverable until years
22 later, often after the New Vehicle Limited Warranty or the Powertrain Warranty has
23 expired. As a result, Plaintiffs and the other Class Members were fraudulently induced to
24 lease and/or purchase the Class Vehicles with the said defect and all of the resultant
25 problems.

26 185. These omissions were made by KMA with knowledge of their falsity, and
27 with the intent that Plaintiffs and the Class Members rely on them.

28

1 186. Plaintiffs and the Class Members reasonably relied on these omissions, and
2 suffered damages as a result.

3 **NINTH CAUSE OF ACTION**

4 **BREACH OF THE DUTY OF GOOD FAITH AND FAIR DEALING**

5 **(On Behalf of the Nationwide Class or, Alternatively, the California Class and the**
6 **Maine Class)**

7 187. Plaintiffs and the Class incorporate by reference each preceding and
8 succeeding paragraph as though fully set forth at length herein.

9 188. Plaintiffs bring this claim on behalf of themselves and on behalf of the
10 Nationwide Class. Alternatively, Plaintiff Stanczak brings this claim on behalf of himself
11 and on behalf of the California Class against KMA, and Plaintiff Creps brings this claim
12 on behalf of herself and on behalf of the Maine Class against KMA.

13 189. All contracts in California and Maine contain an implied covenant of good
14 faith and fair dealing. The implied covenant of good faith and fair dealing is an
15 independent duty and may be breached even if there is no breach of a contract's express
16 terms.

17 190. KMA breached the covenant of good faith and fair dealing by, *inter alia*,
18 failing to notify Plaintiffs and Class Members of the defective connecting rod bearings
19 and insufficient engine oil lubrication channels in the Class Vehicles, and failing to fully
20 and properly repair this defect.

21 191. KMA acted in bad faith and/or with a malicious motive to deny Plaintiffs
22 and the Class Members some benefit of the bargain originally intended by the parties,
23 thereby causing them injuries in an amount to be determined at trial.

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1 **TENTH CAUSE OF ACTION**

2 **VIOLATION OF THE SONG-BEVERLY ACT – BREACH OF IMPLIED**
3 **WARRANTY**

4 **(Cal. Civ. Code §§ 1792, 1791.1, et seq.)**

5 **(On Behalf of the Nationwide Class or, Alternatively, the California Class)**

6 192. Plaintiffs and the Class incorporate by reference each preceding and
7 succeeding paragraph as though fully set forth at length herein.

8 193. Plaintiffs bring this claim on behalf of themselves and on behalf of the
9 Nationwide Class. Alternatively, Plaintiff Stanczak brings this claim on behalf of himself
10 and on behalf of the California Class against KMA.

11 194. At all relevant times hereto, KMA was the manufacturer, distributor,
12 warrantor, and/or seller of the Class Vehicles. KMA knew or should have known of the
13 specific use for which the Class Vehicles were purchased.

14 195. KMA provided Plaintiffs and the Class Members with an implied warranty
15 that the Class Vehicles, and any parts thereof, are merchantable and fit for the ordinary
16 purposes for which they were sold. The Class Vehicles, however, are not fit for their
17 ordinary purpose because, *inter alia*, the Class Vehicles and their engines suffered from
18 an inherent defect at the time of sale that causes the Class Vehicles to experience
19 premature and catastrophic engine failure.

20 196. The Class Vehicles are not fit for the purpose of providing safe and reliable
21 transportation because of the defect.

22 197. KMA impliedly warranted that the Class Vehicles were of merchantable
23 quality and fit for such use. This implied warranty included, *inter alia*, the following: (i) a
24 warranty that the Class Vehicles and their engines were manufactured, supplied,
25 distributed, and/or sold by Kia were safe and reliable for providing transportation and
26 would not prematurely and catastrophically fail; and (ii) a warranty that the Class
27 Vehicles and their engines would be fit for their intended use – providing safe and
28 reliable transportation – while the Class Vehicles were being operated.

1 198. Contrary to the applicable implied warranties, the Class Vehicles and their
2 engines at the time of sale and thereafter were not fit for their ordinary and intended
3 purpose. Instead, the Class Vehicles are defective, including, but not limited to, the
4 engine defect and/or manufacture of the GDI Engines.

5 199. KMA's actions, as complained of herein, breached the implied warranty that
6 the Class Vehicles were of merchantable quality and fit for such use in violation of
7 California Civil Code §§ 1792 and 1791.1.

8 **PRAYER FOR RELIEF**

9 WHEREFORE, Plaintiffs, on behalf of themselves and members of the Class,
10 respectfully request that this Court:

- 11 A. determine that the claims alleged herein may be maintained as a class action
12 under Rule 23 of the Federal Rules of Civil Procedure, and issue an order
13 certifying one or more Classes as defined above;
- 14 B. appoint Plaintiffs as the representatives of the Classes and their counsel as Class
15 counsel;
- 16 C. award all actual, general, special, incidental, statutory, punitive, and
17 consequential damages and restitution to which Plaintiffs and the Class
18 Members are entitled;
- 19 D. award pre-judgment and post-judgment interest on such monetary relief;
- 20 E. grant appropriate injunctive and/or declaratory relief, including, without
21 limitation, an order that requires KMA to repair, recall, and/or replace the Class
22 vehicles and to extend the applicable warranties to a reasonable period of time,
23 or, at a minimum, to provide Plaintiffs and Class Members with appropriate
24 curative notice regarding the existence and cause of the engine defect;
- 25 F. award reasonable attorneys' fees and costs; and

26 //

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1 G. grant such further relief that this Court deems appropriate.

2
3 Dated: August 8, 2017.

Respectfully submitted,

4
5 By: /s/ David C. Wright
Richard D. McCune
David C. Wright
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15 *Pro Hac Vice Applications to be Submitted
16 Attorneys for Plaintiffs and Putative Class
17

18
19 **JURY DEMAND**

20 Plaintiffs, on behalf of themselves and the putative Class, demands a trial by jury
21 on all issues so triable.

22 MCCUNEWRIGHT LLP

23 By: /s/ David C. Wright
24 David C. Wright
25 Attorneys for Plaintiffs and Putative Class
26
27
28