FILED

1 2 3 4 5	Elaine T. Byszewski (SBN 222304) Hagens Berman Sobol Shapiro LLP 301 North Lake Avenue, Suite 203 Pasadena, CA 91101 Tel. (213) 330-7150 Fax (213) 330-7152 E-mail: elaine@hbsslaw.com	CLEDING! -2 PM 4: 02 CLEDING CALIF	
6 7 8 9	Steve W. Berman Hagens Berman Sobol Shapiro LLP 1918 Eighth Avenue, Suite 3300 Seattle, WA 98101 Tel. (206) 623-7292 Fax. (206) 623-0594 E-mail: steve@hbsslaw.com		
11	Attorneys for Plaintiffs and the Class		
13	UNITED STATES DISTRICT COURT CENTRAL DISTRICT OF CALIFORNIA OF THE SHOW THE STATE OF THE SHOW THE SHO		
14 15 16 17	NICOLE MARIE HUNTER, E. BRANDON BOWRON, and GIUSEPPINA ROBERTO, individually and on behalf of all others similarly situated,	CLASS ACTION COMPLAINT	
18	Plaintiffs,	JURY TRIAL DEMANDED	
19	v. (
20 21	HYUNDAI MOTOR AMERICA, and KIA MOTORS AMERICA, INC.,		
22	Defendants.		
23			
24 25 26 27	Plaintiffs Nicole Marie Hunter, E. Bi individually and on behalf of all others sim and Demand for Jury Trial the following:	randon Bowron, and Giuseppina Roberto, ilarly situated, allege as their Complaint	
28	- I CLASS ACTION COMPLAINT	_	

CLASS ACTION COMPLAINT

I. OVERVIEW

- 1. Plaintiffs bring this class and representative action for a Class defined as: "All persons who currently own or lease a Hyundai or Kia automobile whose EPA fuel economy ratings were less than the fuel economy rating produced by the applicable federal test."
- 2. Defendants have adopted, promulgated, represented, and benefited from inaccurate fuel efficiency numbers. These fuel economy ratings result from mandated tests outlined and specified in federal law, and they exist to help foster realistic numbers with which consumers can compare one of the most important factors in new-car buyers' purchase decisions.
- 3. Defendants' EPA fuel economy ratings and advertising statements overstated the actual numbers that the required testing would have produced by a material amount. A recent press announcement confirmed at least a three percent difference in 900,000 Hyundai and Kia vehicles—35 percent of all 2011 to 2013 model-year vehicles—sold through October 31, 2012.
- 4. Plaintiffs each purchased a car whose EPA fuel economy ratings and advertised fuel efficiency numbers were inaccurate and higher than they would have been if proper test procedures were followed.
- 5. Plaintiff Nicole Marie Hunter owns a 2012 Hyundai Accent. Plaintiff Hunter's Accent was marketed as having a fuel economy of 30 miles per gallon in the city, and 40 miles per gallon on the highway. According to Hyundai Motor America's announcement, the 2012 Hyundai Accent's fuel economy is subject to at least a three-percent downward adjustment. Therefore, Plaintiff Hunter's Accent actually has a fuel economy of approximately 29.1 city miles per gallon and 38.8 highway miles per gallon or less.

6.

Plaintiff Bowron's Genesis was marketed as having a fuel economy of 19 city miles per gallon and 29 highway miles per gallon. Though the 2011 Hyundai Genesis sedan was not mentioned in Hyundai Motor America's announcement, the 2011 Hyundai Genesis sedan's fuel economy is subject to at least a three-percent

Plaintiff E. Brandon Bowron owns a 2011 Hyundai Genesis sedan.

Therefore, Plaintiff Bowron's Genesis actually has a fuel economy of approximately 18.43 city miles per gallon and 28.13 highway miles per gallon or less.

downward adjustment, just like the 2012-2013 Hyundai Genesis sedan vehicles.

- 7. Plaintiff Giuseppina Roberto owns a 2012 Kia Sorento 2WD. Plaintiff Roberto's Sorento was marketed as having a fuel economy of 22 miles per gallon in the city, and 32 miles per gallon on the highway. According to Kia Motors America's announcement, the 2012 Kia Sorento's fuel economy is subject to at least a three-percent downward adjustment. Therefore, Plaintiff Roberto's Sorento actually has a fuel economy of approximately 21.34 city miles per gallon and 31.04 highway miles per gallon or less.
- 8. The material misstatements in the fuel economy estimates were made regarding certain Hyundai and Kia vehicles whose testing was improperly performed. Defendants now concede that the following Hyundai vehicles had inaccurate fuel efficiency number: 2011-2013 Elantra (including the Coupe and the GT); 2011-2012 Sonata Hybrid; 2012-2013 Veloster; 2012-2013 Tucson; 2012-2013 Genesis; 2012-2013 Azera; 2012-2013 Accent; and 2013 Santa Fe Sport (together, the "Listed Hyundai Models"). And these Kia vehicles: 2012 Optima Hybrid; 2012-2013 Rio; 2012-2013 Sorento; 2012-2013 Soul (including the ECO); and 2012-2013 Sportage (together, the "Listed Kia Models").
- 9. The testing errors may extend to other Hyundai and Kia models and model years.

- 10. Hyundai and Kia conducted inadequate and inaccurate EPA fuel economy testing on various vehicle models resulting in vehicles whose miles-pergallon EPA fuel economy ratings were less than that produced by the appropriate federal testing. Hyundai and Kia have now admitted their testing methods were incorrect and produced artificially high fuel economy ratings. These misstatements are material because the EPA numbers provide a necessary tool for vehicle comparison for consumers when evaluating vehicles to lease or purchase.
- 11. Hyundai and Kia represented to customers their vehicles had achieved specific MPG estimates. The EPA testing methods are required by federal law, but Hyundai's and Kia's testing methods were flawed and insufficient. They produced inaccurate fuel economy ratings that did not comply with federal regulations.
- 12. Hyundai and Kia knew or should have known facts indicating the inaccuracies in the promised gas mileages of their vehicles. Defendants consciously or recklessly disregarded facts that indicated the fuel economy ratings were erroneous and overstated. Standard internal testing and investigation, especially reviews precipitated by consumer complaints to the National Highway Traffic Safety Administration's Office of Defects Administration ("ODI"), should have revealed the problem. Hyundai and Kia willfully and uniformly failed to identify and correct its misstatements. Hyundai's and Kia's failure to disclose the defects in their fuel economy testing constitutes an actionable misrepresentation, an unfair, unlawful, fraudulent, and deceptive business practice in violation of California's consumer protection law, and a breach of the express warranties offered by Hyundai and Kia. Hyundai's and Kia's failure to comply with federal law violates the unfair competition law.
- 13. This action seeks relief for the injuries sustained as the result of the inaccurate testing methods used by Hyundai and Kia to ascertain the fuel economy

1	
2	
3	
4	
5	
6	
7	
8	
9	
10	
11	
12	
13	
14	
15	
16	
17	
18	
19	
20	
21	
22	ĺ
23	
24	
25	

ratings of their vehicles and material misstatements regarding those ratings used in the marketing and sales of certain 2011-2013 Hyundai and Kia vehicles in the United States by Defendant Hyundai Motor America ("Hyundai" or "HMA") and Defendant Kia Motors America, Inc. ("Kia" or "KMA") (together, "Defendants").

14. Plaintiffs and the Class have been damaged by Hyundai's and Kia's misrepresentations, concealment, and non-disclosure of the incorrect fuel economy numbers, because they were misled into purchasing Hyundais and Kias of a quality different than they were promised, and paying higher fuel costs they would not otherwise have paid.

II. JURISDICTION AND VENUE

- 15. This Court has diversity jurisdiction over this action under 28 U.S.C. § 1332(a) and (d) because the amount in controversy for the Class exceeds \$5,000,000, and Plaintiffs and other putative Class members are citizens of a different state than Defendants.
- 16. This Court has personal jurisdiction over the Plaintiffs because Plaintiffs Hunter, Bowron, and Roberto submit to the Court's jurisdiction. This Court has personal jurisdiction over the Defendants because both Defendant Hyundai Motor America and Defendant Kia Motors America are headquartered in the District and conduct substantial business in the District. Many of the actions giving rise to the complaint took place in the District, including all executive decisions relating to the fuel efficiency and EPA numbers, and all advertising and marketing decisions for the affected cars.
- 17. Venue is proper in this District under 28 U.S.C. § 1391 because Defendants, as corporations, are "deemed to reside in any judicial district in which [they is] subject to personal jurisdiction," and because decisions about the design, manufacture, marketing, and sale of the Hyundais' and Kias' fuel economy ratings

2728

were made in the District. Because Hyundai and Kia reside in the District, Hyundai and Kia transact business within the District, and a substantial part of the events establishing the claims arose in this District, venue is proper.

- 18. Upon information and belief, most, if not all, of the critical acts relating to Hyundai arise out of California, including Hyundai's decisions regarding the content and use of the EPA fuel economy ratings and all advertising decisions relating to mileage efficiency. Vehicle research and design and marketing and advertising are also developed, controlled, and implemented in and from California.
- 19. Hyundai Motor America is headquartered in Fountain Valley, California. According to the website for Hyundai's United States operations, HMA "handles all marketing, sales, and product development, as well as administrative services for Hyundai in the USA." It also contracts with a third party, Innocean, headquartered in Huntington Beach, California, to help with its advertising and media affairs. On the engineering and design side, Hyundai operates its California Design and Technical Center, which is a \$30 million design facility "fitted with the world's most advanced visualization, graphics, and clay-modeling technologies, keeping Hyundai at the forefront of car technology and design." Hyundai also signed a memorandum of understanding with two California research universities the University of California, Berkeley, and University of California, Davis—in establishing the Hyundai Center of Excellence, which founded a collaboration project in Hyundai's larger R&D joint research and professional development program, working to strengthen Hyundai's R&D competency by working with the world's leading universities and companies.
- 20. California is also home to Hyundai Capital America, the facility that handles the leasing and financing of Hyundai automobiles in the United States.

 Hyundai Capital America is headquartered in Irvine, California and "currently serves

2728

25

1	
2	
3	
4	
5	
6	
7	
8	
9	
10	
11	
12	
13	
14	
15	
16	
17	
18	
19	
20	

more than 1,500 Hyundai and Kia dealerships and more than a million customers in the U.S." Hyundai also operates proving grounds located in California City, California. According to Hyundai's website, this testing facility "covers 4,300 acres with eight different driving courses, including a 2.75-mile winding track, a 3.3-mile hill road, and a durability loop that includes a range of special surfaces, from cobblestones to potholes." Hyundai has many dealerships in California, producing approximately twenty percent of its total sales. In 2009, there were approximately 63 Hyundai dealerships in California.

- 21. Hyundai America Technical Center, Inc. ("HATCI"), a wholly owned subsidiary of Hyundai Motor Company, Korea, is responsible for the technical development of cars and trucks in North America, including governmental certification issues. HATCI has two branch offices in the Los Angeles, California area.
- 22. Upon information and belief, most, if not all, of the critical acts relating to Kia arise out of California, including Kia's decisions regarding the content and use of the EPA fuel economy ratings and all advertising decisions relating to mileage efficiency. Vehicle research and design and marketing and advertising are also developed, controlled, and implemented in and from California.
- 23. Kia Motors America is headquartered in Irvine, California. KMA is the sales, marketing, and distribution arm for all United States operations. According to its website, KMA's corporate headquarters is a \$130 million, custom-built facility that houses the KMA U.S. sales division, and its marketing, public relations, consumer affairs, technical service, research and development, product planning, and administration departments. The Irvine, California, facility is also home to the state-of-the-art Kia Design Center America, a 236,000 square feet campus on 21.7 acres.

26

21

22

23

24

25

27

24. KMA shares the same proving grounds as Hyundai Motor America, in California City, California. According to its website, the California proving ground is where "performance and endurance tests are conducted on all Kia vehicles sold in the US and locally developed parts." KMA also contracts with the Los Angelesbased creative agency David & Goliath for all its advertising campaigns. Kia also has many dealerships in California (52), which produce approximately 15-20 percent of its total sales.

III. PARTIES

- 25. Plaintiff Nicole Marie Hunter is a resident and citizen of Washington. She owns a 2012 Hyundai Accent. She saw advertisements and the EPA fuel economy window stickers that represented a certain number of miles per gallon during the week before she purchased her vehicle on June 20, 2011. She recalls these advertisements and the window sticker stated she would receive 30 miles per gallon in the city, and 40 miles per gallon on the highway. These advertisements and the window sticker influenced her decision to purchase her Hyundai Accent. Had those advertisements and window sticker or any other materials disclosed she would not receive such favorable mileage, she would not have purchased her Hyundai Accent or paid as much as for it.
- 26. Plaintiff E. Brandon Bowron is a resident and citizen of Arizona. He owns a 2011 Hyundai Genesis sedan. He saw advertisements and the EPA fuel economy window stickers that represented a certain number of miles per gallon during the one month before he purchased his vehicle on September 27, 2012. He recalls these advertisements and the window sticker stated he would receive 19 city miles per gallon and 29 highway miles per gallon. These advertisements and the window sticker influenced his decision to purchase his Hyundai Genesis. Had those advertisements and window sticker or any other materials disclosed he would not

receive such favorable mileage, he would not have purchased his Hyundai Genesis or paid as much as for it.

- 27. Plaintiff Giuseppina Roberto is a resident and citizen of Illinois. She owns a 2012 Kia Sorento 2WD. She saw advertisements and the EPA fuel economy window stickers that represented a certain number of miles per gallon before she purchased her vehicle on December 31, 2011. She recalls these advertisements and the window sticker stating she would receive the stated miles per gallon. These advertisements and the window sticker influenced her decision to purchase her Kia Sorento. Had those advertisements and window sticker or any other materials disclosed she would not receive such favorable mileage, she would not have purchased her Kia Sorento or paid as much as for it.
- 28. Defendant Hyundai Motor America is a California corporation with its national headquarters in Fountain Valley, California. HMA is a subsidiary of Hyundai Motor Company. At all times, HMA was actively involved, from its facilities and also from the Irvine, California Hyundai & Kia California Design & Technical center, in designing, manufacturing, assembling, marketing, distributing, and selling Hyundais sold in the United States.
- 29. Defendant Kia Motors America is a California corporation with its national headquarters in Irvine, California. KMA is a subsidiary of Kia Motors Corporation. Kia operates out of its headquarters in Irvine, California and has a design center in Irvine. At all times, KMA was actively involved in designing, manufacturing, assembling, marketing, distributing, and selling Kias sold in the United States.
- 30. Hyundai Motor Company ("HMC"), a Korean corporation, is not a party to this lawsuit. HMC is the parent corporation of HMA.

31. Kia Motors Corporation ("KMC"), a Korean corporation, is not a party to this lawsuit. KMC is the parent corporation of KMA.

IV. FACTUAL ALLEGATIONS

- A. The EPA requires specific fuel economy testing methods.
- 32. Under regulations issued by the United States Environmental Protection Agency ("EPA"), every new car and truck or SUV up to 10,000 pounds sold in the United States (the "New Vehicles") must have a fuel economy label or window sticker that contains the vehicle's miles-per-gallon ("MPG") estimates, and the EPA provides the data used on these labels. The fuel economy ratings have been given to consumers since the 1970s and are posted for the customers' benefit to help them make valid comparisons between vehicles' MPGs when shopping for a new vehicle.
- 33. In 2006, the EPA revised the testing methods used to determine fuel economy ratings (for both city and highway mileage) appearing on the window stickers of all New Vehicles. This revision became effective beginning with 2008 model-year vehicles.
- 34. Before the revision, two laboratory tests were used to determine the ratings for city and highway fuel economy. Both tests were performed under mild climate conditions (75 degrees Fahrenheit) and included acceleration rates and driving speeds that were lower than those used by drivers in the real world. Neither test was run while using accessories (i.e., air conditioning), and the highway test topped out at 60 miles per hour with an average speed of 48 miles per hour.
- 35. The EPA's revision incorporated several significant changes to the prior testing methods. First, the tests now include factors such as high speeds, quicker accelerations, air conditioning use, and driving in cold temperatures, which bring the MPG estimates closer to consumers' actual fuel economy. Second, beginning with the 2011 model year, certain heavier vehicles (such as SUVs and vans up to 10,000

3 4

5

6 7 8

10

11

9

1213

15

14

1617

18

19

2021

22

23

2425

26

27

28

pounds gross vehicle weight) must have fuel economy labels. Third, the EPA required a change in the design and content of window stickers for vehicles manufactured after September 1, 2007, to allow consumers to more easily compare the fuel economy of different vehicles.

36. The vehicle manufacturers conduct the MPG tests and transmit the data to the EPA, which certifies the numbers. The EPA tests approximately 150 to 200 vehicles a year (fifteen percent of all possible vehicle configurations) to ensure their performance matches the mileage and emissions data submitted to the EPA by automakers.

B. Hyundai's and Kia's foundation for calculating fuel economy ratings was flawed.

37. Auto manufacturers use "coastdown" tests to help calculate their fuel economy ratings. Coastdown testing simulates aerodynamic drag, tire rolling resistance, and drivetrain frictional losses and provides the technical data used to program the test dynamometers that generate EPA fuel economy ratings. In a coastdown test, a vehicle is brought to a high speed on a flat, straight road and then set coasting in neutral until it slows to a low speed. By recording the time the vehicle takes to slow down, it is possible to model the forces affecting the vehicle. Coastdown tests are governed by tests developed by The Society of Automotive Engineers ("SAE"). SAE developed a standard procedure (J2263-Dec 2008) to perform road load measurement using coastdown testing, and a standard procedure (J1263-Mar 2010) to perform road load measurement and dynamometer simulation using coastdown testing, and the current government-approved standard for road load measurement using onboard anemometry and coastdown testing techniques is SAE International Standard J2263. These standards must be followed by federal regulation. The data relating to speed and distance are recorded by special

instruments, and to account for various factors that might affect the results. The test produces data that identifies or maps the drag of a vehicle.

- 38. Done correctly, a coastdown requires planning, data collection, and data processing. Data variability and error can be controlled, but several factors must be considered under the SAE standards, including calculation of the mass of the vehicle, tire pressure, weather and environmental factors (e.g., wind speed, air temperature, humidity, and barometric pressure), aerodynamic factors, road surface, experiment design and methodology, measurement errors and data acquisition systems, and vehicle qualifications. The SAE procedure on coastdown testing includes an appendix with FORTRAN code that processes experimental velocity data and produces a mathematical vehicle force model.
- 39. Defendants' fuel economy rating discrepancies resulted from procedural errors during "coastdown" testing at the companies' joint testing operations in Korea. The methods implemented by Hyundai and Kia to test fuel economy were not under the EPA's requirements and were insufficient in design, procedure, content, execution, and/or completeness. The fuel economy ratings were affected, inaccurate, and overstated.
- 40. Part of a coastdown test is validation of results. Defendants knew or should have known their testing methodology was flawed, as their stated fuel economy ratings were uniformly inaccurate across a large segment of vehicles and model years.
 - C. Different Hyundai and Kia models and model years were subject to flawed fuel economy testing methods.
- 41. Between 2011 and 2013, Hyundai manufactured, marketed, and sold at least eight models of Hyundai that contained flawed MPG estimates. Likewise, between 2011 and 2013, Kia manufactured, marketed, and sold at least five models

6 7

8 9

10 11

12

13 14

15 16

17

18 19

20 21

23

22

24 25

26

27

28

of Kia that contained flawed MPG estimates. Consumers have complained to the EPA and to NHTSA's ODI about the inaccurate fuel economy ratings in many of these models. These consumers are concerned because they based their decisions to purchase these Hyundai or Kia models on the material factor of fuel economy, and they are not receiving the MPGs they were promised.

- 42. An owner of a 2011 Hyundai Genesis complained to ODI that although the car was rated at 20 MPG city and 30 MPG highway, "the mileage has consistently been poor," and that even driven on the highway with cruise control with no extra weight, the car achieved only 24 MPG. The owner complained, "It has never approached 25 MPG, let alone 30 MPG." Likewise, Plaintiff Bowron's 2011 Hyundai Genesis only achieved 22.8 miles per gallon on the highway during a recent trip from Arizona to California, and it only achieves approximately 17-18 miles per gallon in the city.²
- 43. An owner of a 2012 Kia Sorento complained to ODI that although the car had an EPA miles-per-gallon rating of 21 city/28 highway/23 combined, he or she had "never once achieved true calculated fuel economy of over 20 MPG since owning this vehicle," even though the car was driven "in a fairly rural area with hardly any stop-and-go traffic," carrying no excess weight, and with all four tires inflated to the manufacturer's specification.
- An owner of a 2012 Hyundai Elantra complained to ODI he or she had bought the Elantra "due to the fact it advertised 40 miles/gallon on highway and 29

All quotes of complaints from NHTSA's ODI database are available at http://www-odi.nhtsa.dot.gov, date last visited November 1, 2012. For the convenience of the Court, online quotes have been lightly edited for punctuation and consistency of abbreviations but not for content.

² Similarly, Plaintiff Hunter's 2012 Hyundai Accent did not achieve the stated 40 MPG on the highway during a recent cross-country trip.

9 10

12

11

14

13

1516

17

18

19

2021

22

23

2425

26

2728

city," but was only able to achieve approximately 18 MPG, with lows of 10.9 MPG and a high of 24.8 MPG.

45. An owner of a 2011 Hyundai Santa Fe complained to ODI that the car "is supposed to get 20-26 miles per gallon," but "while driving [on] the highway from Florida to North Carolina, it got 15 miles to the gallon." The owner complained, "The mileage is a lie. The car is not getting what they claim it should."

D. Hyundai and Kia promoted the fuel economy of their vehicles.

46. Hyundai has consistently promoted the fuel economy of its vehicles. Hyundai refers to its vehicles' MPG estimates in its advertising to consumers and developed "ebrochures" as part of its marketing campaign. The 2013 ebrochure for the Genesis sedan stated: "In 2010, Hyundai announced plans to strive for a corporate fuel economy rating that exceeds the U.S. government's stated average fuel economy (CAFE) standards for our lineup of passenger cars and light duty trucks. Through May of 2012, our Blue Drive products and technologies are well on their way towards keeping Hyundai ahead of National Highway Traffic Safety Administration guidelines." The 2012 Accent ebrochure stated that the Accent manages "a best-in-class standard 40 mpg fuel economy rating on the highway" and "achieves a category-leading 30 mpg city/40 mpg highway rating, making it one of four Hyundai nameplates to eclipse the 40 mpg mark." The Hyundai website promotes the 2013 Accent as "[t]he first subcompact to offer 40-MPG fuel economy" and states it "delivers greater standard highway fuel efficiency than any other car in its class." Likewise, the 2013 Veloster ebrochure touts that the vehicle

³ See http://viewer.zmags.com/publication/235df2e8#/235df2e8/16 (last visited Nov. 2, 2012).

⁴ See https://www.hyundaiusa.com/ebrochure/accent/ (last visited Nov. 1, 2012).

⁵ See https://www.hyundaiusa.com/vehicles/2013/accent/ and https://www.hyundaiusa.com/vehicles/2013/accent/performance.aspx (both last visited Nov. 1, 2011).

"burns rubber, not fuel" and delivers "40 MPG on the highway—a testament to Hyundai being named America's most fuel-efficient car company."

47. Kia has also promoted its vehicles' fuel economy. Kia's website states that the Optima Hybrid, Rio, Soul, and Sportage have all received the EPA SmartWay Certification Mark—a designation given by the EPA "to the cleanest most fuel efficient vehicles." Kia stated the Sorento was named NADAguides June Featured Vehicle of the Month, a recognition based in part on the vehicle's MPG.

E. Hyundai and Kia had superior knowledge of the inaccurate fuel economy testing.

- 48. At all times, Hyundai and Kia possessed vastly superior information to that of consumers about the inaccurate results of their fuel economy testing and the corresponding increase in MPG ratings provided to consumers through advertisements and the vehicles' window stickers.
- 49. In a letter to President Obama and the EPA Administrator dated January 12, 2012, Consumer Watchdog noted "a wide gap between the EPA-certified MPG and real-world numbers of the Hyundai Elantra in both drivers' and professional testers' results."

⁶ See http://viewer.zmags.com/publication/0f3aab68#/0f3aab68/6 (last visited Nov. 2, 2012).

⁷ See http://www.kia.com/#/optima-hybrid/allawards/recognition; http://www.kia.com/#/rio/allawards/recognition; http://www.kia.com/#/soul/allawards/recognition; and http://www.kia.com/#/sportage/allawards/recognition (all last visited Nov. 1, 2012).

⁸ See http://www.kia.com/#/sorento/allawards/recognition (last visited Nov. 1, 2012).

⁹ Consumer Watchdog, http://www.consumerwatchdog.org/resources/ltrwhitehousempg011212_0.pdf (last visited Nov. 2, 2012). Plaintiffs request that the Court take note that these are attorneys on one of the cases for which Plaintiffs are not intending to submit as a related case.

- 50. Consumers use the window sticker to compare material vehicle qualities to help make informed choices about the cars they buy.
- 51. In comparing the Chevrolet Cruze (EPA rating of 28-30 MPG combined) and the Hyundai Elantra (EPA rating of 33 MPG combined), Consumer Watchdog stated that the Elantra fell below its estimated MPG by twelve percent for the 2012 model and seven percent for the 2011 model. Consumer Reports' average for the Elantra was 29 MPG, Motor Trends' was 25.9 MPG, and USA Today's tester could not achieve an overall mileage higher than the low 20s. 11
- 52. And even though the Cruze surpassed its estimated MPG by three percent in 2012 and seven percent in 2011, its lower stated MPG estimates put it at a disadvantage in the market.¹²
- 53. Hyundai is willfully intending consumers will rely on its advertised MPG estimates and attempts to mask the actual MPG estimate.

V. CLASS ACTION ALLEGATIONS

54. Plaintiffs seek certification of a Class defined as follows:

All persons who currently own or lease a Hyundai or Kia automobile whose EPA fuel economy ratings were less than the fuel economy rating produced by the applicable federal test.

Excluded from the Class are Defendants, their employees, co-conspirators, officers, directors, legal representatives, heirs, successors and wholly or partly owned subsidiaries or affiliated companies; class counsel and their employees; and the judicial officers and their immediate family members and associated court staff

¹⁰ *Id*.

¹¹ *Id*.

¹² *Id*.

assigned to this case, and all persons within the third degree of relationship to any such persons.

- 55. Beginning with model-year 2008 vehicles, federal law requires all cars, light-duty trucks, and heavier vehicles up to 10,000 pounds to undergo fuel economy testing methods that include factors such as high speeds, quicker accelerations, air conditioning use, and driving in cold temperatures. Hyundai and Kia represented to the Class that the Listed Hyundai Vehicles and the Listed Kia Vehicles satisfied the EPA's testing requirements.
- 56. Plaintiffs are informed and believe that Hyundai sold at least approximately 600,000 of the Listed Hyundai Vehicles, and Kia sold approximately 300,000 Listed Kia Vehicles. Plaintiffs are informed and believe that all of these vehicles were marketed and sold with inaccurate fuel economy estimates, and that other vehicles may be included. Accordingly, the Class consists of hundreds-ofthousands of individuals nationwide, making individual joinder of all the Class Members impracticable.
- 57. The Class can be readily identified using vehicle window stickers, sales records, production records, and other information kept by Defendants or third parties in the usual course of business and presently within their control.
- 58. Questions of law and fact are common to the Class and predominate over questions affecting only individual members, including, *inter alia*:
 - a) Whether a model year of a vehicle received proper testing for its fuel economy rating;
 - b) Whether a model year's stated EPA fuel economy rating was inaccurate;
 - Whether Defendants violated federal law with their testing methods or c) presentation of EPA fuel economy ratings;

1	
2	
3	
4	
5	
6	
7	
8	
9	
10	
11	
12	
13	
14	
15	
16	
17	
18	
19	
20	
21	
22	
23	
24	
25	
26	
27 28	
/ X	

- d) Whether a failure to accurately state EPA fuel economy ratings constitutes an unlawful business practice or act;
- e) Whether Defendants willfully concealed the error in fuel economy ratings or recklessly disregarded their falsity;
- f) Whether Defendants breached express warranties by misstating the EPA fuel economy ratings;
- g) Whether Defendants engaged in unfair, unlawful and/or fraudulent business practices under California's Unfair Competition Law ("UCL"), Cal. Bus. & Prof. Code §§ 17200, *et seq.*, by misstating the EPA fuel economy ratings on their vehicles' window stickers or in their advertisements, or in communications with the EPA;
- h) Whether the same conduct violated California's Consumer Legal Remedies Act ("CLRA"), Cal. Civ. Code §§ 1750, et seq.;
- i) Whether Defendants' unlawful, unfair and/or deceptive practices harmed Plaintiffs and the members of the Class;
- j) Whether Defendants were unjustly enriched by their deceptive practices; and
- k) Whether Plaintiffs and the members of the Class are entitled to equitable or injunctive relief.
- 59. Plaintiffs' claims are typical of the claims of the Class members and arise from the same conduct by Hyundai and Kia. The relief Plaintiffs seek is typical of the relief sought for the absent Class members.
- 60. Plaintiffs will fairly and adequately represent and protect the interests of all absent Class members. Plaintiffs are represented by counsel competent and experienced in both consumer protection and class action litigation.

- 61. A class action is superior to other available methods for the fair and efficient adjudication of this controversy, since joinder of all the individual Class members is impracticable. Because the damages suffered, and continued to be suffered, by each individual Class member may be relatively small, the expense and burden of individual litigation would make it very difficult or impossible for individual Class members to redress the wrongs done to each of them individually and the burden imposed on the judicial system would be enormous.
- 62. The prosecution of separate actions by the individual Class members would create a risk of inconsistent or varying adjudications regarding individual Class members, which would establish incompatible standards of conduct for Defendants. The conduct of this action as a class action presents far fewer management difficulties, conserves judicial resources and the parties' resources, and protects the rights of each Class member.

VI. CAUSES OF ACTION

FIRST CAUSE OF ACTION VIOLATION OF THE CALIFORNIA UNFAIR COMPETITION LAW (Cal. Bus. & Prof. Code § 17200, et seq.)

- 63. Plaintiffs reallege and incorporate by reference all paragraphs alleged herein.
- 64. California Business and Professions Code section 17200 prohibits any "unlawful, unfair, or fraudulent business act or practices." Defendants have engaged in unlawful, fraudulent, and unfair business acts and practices in violation of the UCL.
- 65. Defendants have violated the unlawful prong because they have failed to comply with the testing methods required by the EPA. 71 Fed. Reg. 77,872-01 (Dec. 27, 2006); 40 C.F.R. §§ 86, 600, 1037, 1066 (2011). Defendants' fuel

- economy rating discrepancies resulted from procedural errors during "coastdown" testing at the companies' joint testing operations in Korea, and, as a result, produced inaccurate fuel economy estimates requiring at least a three percent downward adjustment across the entire Class.
- 66. Defendants have violated the fraudulent prong of section 17200 because the misrepresentations and omissions regarding the MPG of their vehicles as set forth were likely to deceive a reasonable consumer, and the information would be material to a reasonable consumer.
- 67. Defendants have violated the unfair prong of section 17200 because the acts and practices set forth offend established public policy and because the harm they cause to consumers greatly outweighs any benefits associated with those practices. Defendants' conduct has also impaired competition within the automotive vehicles market and has prevented Plaintiffs from making fully informed decisions about whether to purchase or lease their vehicles and/or the price to be paid to purchase or lease them. Defendants' conduct also offends established public policy as delineated in the regulatory provisions described above and their underlying purposes.
- 68. The Named Plaintiffs have suffered injury in fact, including losing money or property, as a result of Defendants' unfair, unlawful and/or deceptive practices. As set forth in the allegations concerning each Plaintiff, in purchasing or leasing their vehicles, the Plaintiffs relied on the misrepresentations and/or omissions of Defendants regarding the MPG of the vehicles. Had the Named Plaintiffs known the true MPG they would not have purchased or leased their vehicles and/or paid as much for them. The Named Plaintiffs have already paid, and will be required to pay in the future, fuel costs over what they would have paid if Defendants had accurately disclosed their vehicles' fuel economy.

- 69. All of the wrongful conduct alleged herein occurred, and continues to occur, in the conduct of Defendants' business. Defendants' wrongful conduct is part of a pattern or generalized conduct that is still perpetuated and repeated, both in California and nationwide.
- 70. Plaintiffs request this Court enter such orders or judgments to enjoin Defendants from continuing their unfair, unlawful, and/or deceptive practices and to restore to Plaintiffs and members of the Class any money Hyundai and Kia acquired by unfair competition, as provided in CAL. Bus. & Prof. Code § 17203, and for such other relief set forth below.

SECOND CAUSE OF ACTION VIOLATION OF THE CALIFORNIA FALSE ADVERTISING LAW (Cal. Bus. & Prof. Code § 17500, et seq.)

- 71. Plaintiffs reallege and incorporate by reference all paragraphs alleged herein.
- 72. California Business and Professions Code § 17500 states: "It is unlawful for any...corporation...with intent directly or indirectly to dispose of real or personal property...to induce the public to enter into any obligation relating thereto, to make or disseminate or cause to be made or disseminated...from this state before the public in any state, in any newspaper or other publication, or any advertising device,...or in any other manner or means whatever, including over the Internet, any statement...which is untrue or misleading, and which is known, or which by the exercise of reasonable care should be known, to be untrue or misleading."
- 73. Defendants caused to be made or disseminated through California and the United States, through advertising, including stickers affixed to vehicle windows, statements that were untrue or misleading, and which were known, or which by

exercising reasonable care should have been known to Defendants, to be untrue and misleading to consumers and Plaintiffs.

- 74. Defendants have violated section 17500 because the misrepresentations and omissions regarding the fuel economy of their vehicles as set forth were material and likely to deceive a reasonable consumer.
- 75. The Named Plaintiffs have suffered injury in fact, including losing money or property, as a result of Defendants' false advertising. As set forth in the allegations concerning each plaintiff, in purchasing or leasing their vehicles, the Plaintiffs relied on the misrepresentations and/or omissions of Defendants regarding the MPG of their vehicles. Had the Named Plaintiffs known the true MPG they would not have purchased or leased their vehicles and/or paid as much for them. The Named Plaintiffs have already paid and will be required to pay in the future fuel costs over what they would have paid if Defendants had accurately disclosed their vehicles' fuel economy.
- 76. All of the wrongful conduct alleged herein occurred, and continues to occur, in the conduct of Defendants' business. Defendants' wrongful conduct is part of a pattern or generalized conduct that is still perpetuated and repeated, both in California and nationwide.
- 77. Plaintiffs request this Court enter such orders or judgments as may be necessary to enjoin Defendants from continuing their false advertising and to restore to Plaintiffs and members of the Class any money Hyundai or Kia acquired by unfair competition, and for such other relief set forth below.

THIRD CAUSE OF ACTION
VIOLATIONS OF THE CONSUMER LEGAL REMEDIES ACT
(Cal. Civ. Code § 1750, et seq.)

- 78. Plaintiffs reallege and incorporate by reference all paragraphs alleged herein.
 - 79. Defendants are "persons" under CAL. CIV. CODE § 1761(c).
- 80. Plaintiffs are "consumers," as defined by CAL. CIV. CODE § 1761(d), who purchased or leased one or more vehicles manufactured by Defendants.
- 81. Defendants both participated in unfair or deceptive acts or practices that violated the Consumer Legal Remedies Act ("CLRA"), CAL. CIV. CODE § 1750, *et seq.*, as described in this Complaint.
- 82. By employing deficient testing methods which produced inaccurate fuel economy estimates requiring at least a three percent downward adjustment across the Class, Defendants engaged in deceptive business practices prohibited by the CLRA, CAL. CIV. CODE § 1750, et seq., including (1) representing the vehicles have characteristics, uses, benefits, and qualities which they do not have; (2) representing the vehicles are of a particular standard, quality, and grade when they are not; and (3) advertising the vehicles with the intent not to sell them as advertised.
- 83. Defendants knew their testing methods were insufficient and therefore produced inaccurate fuel economy ratings. Defendants nevertheless failed to make appropriate disclosures despite their superior knowledge and affirmative misrepresentations to the contrary.
- 84. A reasonable consumer would not have purchased or paid as much as for the vehicles had Defendants disclosed the true fuel economy of the vehicles, as that information is material to a reasonable consumer.
- 85. Because of its violations of the CLRA detailed above, Defendants have caused and continue to cause actual damage to Plaintiffs and, if not stopped, will continue to harm them. Had the Named Plaintiffs known the true MPG they would not have purchased or leased their vehicles and/or paid as much for them. The

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
2324
24 25
25 26
20 27
28

Named Plaintiffs have already paid and will be required to pay in the future fuel costs over what they would have paid if Defendants had accurately disclosed their vehicles' fuel economy.

- 86. Under Civil Code § 1780(a), Plaintiffs and members of the Class seek injunctive and equitable relief for Defendants' violations of the CLRA. After mailing appropriate notice and demand under Civil Code § 1782(a) & (d), Plaintiffs will subsequently amend this Complaint to also include a request for damages. Plaintiffs and members of the class request this Court enter such orders or judgments as may be necessary to restore to any person in interest any money which may have been acquired with such unfair business practices, and for such other relief, including attorneys' fees and costs, as provided in Civil Code § 1780 and the Prayer for Relief.
- 87. Plaintiffs include an affidavit with this Complaint that shows venue in this District is proper, to the extent such an affidavit is required by CAL. CIV. CODE § 1780(d).

FOURTH CAUSE OF ACTION BREACH OF EXPRESS WARRANTY (Cal. Com. Code § 2313)

- 88. Plaintiffs reallege and incorporate by reference all paragraphs alleged herein.
- 89. Defendants are and were at all times merchants with respect to motor vehicles under CAL. COM. CODE § 2104.
- 90. In selling their vehicles, Defendants expressly warranted in advertisements, including in the stickers affixed to the windows of their vehicles, that their vehicles experienced a favorable fuel economy of specific MPGs, depending on the vehicle.

- 91. These affirmations and promises were part of the basis of the bargain between the parties.
- 92. Defendants breached these express warranties arising from their advertisements, including window stickers, because the fuel economy ratings for their vehicles are inaccurate.
- 93. Under CAL. COM. CODE § 2607(3)(A), Plaintiffs sent notice to Defendants.
- 94. As a direct and proximate result of Defendants' breach of express warranties, Plaintiffs and members of the Class have been damaged in an amount to be determined at trial.

FIFTH CAUSE OF ACTION FRAUD (Based on California Common Law)

- 95. Plaintiffs reallege and incorporate by reference all paragraphs alleged herein.
- 96. Defendants affirmatively misrepresented and concealed material facts concerning the fuel economy of their vehicles.
- 97. Defendants had a duty to disclose the true fuel economy based on their superior knowledge and affirmative misrepresentations to the contrary.
- 98. Defendants affirmatively misrepresented and/or actively concealed material facts, in whole or in part, intending to induce Plaintiffs and members of the Class to purchase their vehicles and at a higher price than they otherwise would have.
- 99. Plaintiffs and the Class were unaware of these omitted material facts and would not have acted as they did if they had known of the concealed and/or suppressed facts.

1	
2	a
3	
4	
5	
6	
7	h
8	
9	r
10	
11	r
12	r
13	
14	r
15	
16	
17	
18	
19	h
20	
21	h
22	r
23	
24	c
25	f
26	
27	
28	

100. Because of the concealment and/or suppression of the facts, Plaintiffs and the Class sustained damage in an amount to be determined at trial.

SIXTH CAUSE OF ACTION NEGLIGENT MISREPRESENTATION (Based on California Common Law)

- 101. Plaintiffs reallege and incorporate by reference all paragraphs alleged herein.
- 102. Defendants made fuel economy representations to Plaintiffs and members of the Class that were not true.
- 103. Defendants had no reasonable grounds for believing these representations were true when they made them, yet they intended that Plaintiffs and members of the Class rely on these representations.
- 104. Plaintiffs reasonably relied on Defendants' representations and as a result Plaintiffs and members of the Class were harmed.

SEVENTH CAUSE OF ACTION UNJUST ENRICHMENT / COMMON LAW CLAIM FOR RESTITUTION (Based on California Common Law)

- 105. Plaintiffs reallege and incorporate by reference all paragraphs alleged herein.
- 106. Because of their wrongful acts and omissions, Defendants charged a higher price for their vehicles than the vehicles' true value and Defendants obtained monies which rightfully belong to Plaintiffs.
- 107. Defendants enjoyed the benefit of increased financial gains, to the detriment of Plaintiffs and other Class members. It would be inequitable and unjust for Defendants to retain these wrongfully obtained profits.

	ı
1	
2	
3	
4	
5	
6	
7	
8	
9	
10	
11	
12	
13	
14	
15	
16	
17	
18	
19	
20	
21	
22	
23	
24	
25	
26	
27	ĺ
28	۱

108. Plaintiffs, therefore, seek an order requiring Defendants to make restitution to them and other members of the Class.

VII. PRAYER FOR RELIEF

WHEREFORE, Plaintiffs, individually and on behalf all others similarly situated, respectfully request this Court enter a judgment against Defendants and in favor of Plaintiffs, and grant the following relief:

- A. Determine this action may be maintained as a Class action with respect to the Class and certify it as such under Rule 23(b)(3), or alternatively certify all issues and claims that are appropriately certified, and designate and appoint Plaintiffs as Class Representatives and their counsel as Class Counsel;
- B. Declare, adjudge and decree the conduct of the Defendants as alleged herein to be unlawful, unfair and/or deceptive;
- C. Notify all Class members about the inaccurate fuel economy ratings at Hyundai's and Kia's expense and provide correct fuel economy ratings;
- D. Award Plaintiffs and Class members actual, compensatory damages, as proven at trial;
- E. Award Plaintiffs restitution of all monies paid to Defendants as a result of unlawful, deceptive, and unfair business practices;
- F. Award Plaintiffs and the Class members reasonable attorneys' fees, costs, and pre- and post-judgment interest; and
- G. Award Plaintiffs and the Class members such other further and different relief as the nature of the case may require or as may be determined to be just, equitable, and proper by this Court.

VIII. JURY TRIAL DEMAND

Plaintiffs, by counsel, request a trial by jury on their legal claims, as set forth herein.

1	DATED: November 2, 2012	Hagens Berman Sobol Shapiro LLP
2		
3		
4		By: 27 (SDN 222204)
5		Elaine T. Byszewski (SBN 222304) 301 North Lake Avenue, Suite 203
		Pasadena, CA 91101
6		Tel. (213) 330-7150
7		Fax (213) 330-7152 E-mail: elaine@hbsslaw.com
8		
9		Steve W. Berman Hagens Berman Sobol Shapiro LLP
10		1918 Eighth Avenue, Suite 3300
11		Seattle, WA 98101 Tel. (206) 623-7292
		Fax. (206) 623-0594
12		E-mail: steve@hbsslaw.com
13		Robert B. Carey
14		Camille S. Bass Hagens Berman Sobol Shapiro LLP
15		11 West Jefferson Street, Suite 1000
16		Phoenix, AZ 85003 Tel. (602) 840-5900
17		Fax (602) 840-3012
		E-mail: rob@hbsslaw.com E-mail: camilleb@hbsslaw.com
18		
19		Attorneys for Plaintiffs and the Class
20		
21		
22		
23		
24		
25		
26		
27		

DECLARATION RE CLRA VENUE

- I, Nicole Marie Hunter, do hereby declare and state as follows:
- 1. I am a party plaintiff in Nicole Marie Hunter, E. Brandon Bowron, And Giuseppina Roberto, individually and on behalf of all others similarly situated v. Hyundai Motor America, and Kia Motors America, Inc.. Pursuant to Cal. Civ. Code § 1780(d), I make this declaration in support of the Class Action Complaint and the claim therein for relief under Cal. Civ. Code § 1780(a). I have personal knowledge of the facts stated herein and, if necessary, could competently testify thereto.
- 2. This action for relief under Cal. Civ. Code § 1780(a) has been commenced in a county that is a proper place for trial of this action because Hyundai Motor America, and Kia Motor America does business throughout the State of California.

This declaration is signed under penalty of perjury under the laws of the State of California this 2nd day of November 2012.