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13 **UNITED STATES DISTRICT COURT**
14 **NORTHERN DISTRICT OF CALIFORNIA**

15 JAMES JAVIER MAURICO, individually,
16 and on behalf of all others similarly
17 situated,

18 Plaintiff,

19 v.

20 KIA MOTORS AMERICA, INC.; and
21 DOES 1 through 10, inclusive,

22 Defendant(s).

Case No.

CLASS ACTION

**CLASS ACTION COMPLAINT FOR
DAMAGES AND EQUITABLE
RELIEF**

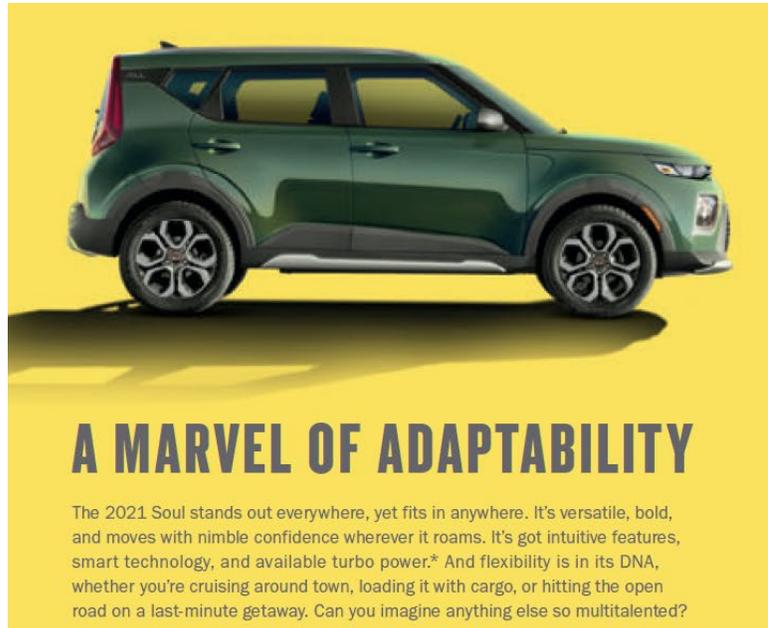
DEMAND FOR JURY TRIAL

1 Plaintiff James Javier Maurico (“Plaintiff”), individually, and on behalf of all others
2 similarly situated, hereby complains against Defendant Kia Motors America, Inc. (“Kia”)
3 and DOES 1 through 50 (“Defendants”) and alleges as follows:

4 **INTRODUCTION AND FACTUAL ALLEGATIONS**

5 1. This is a class action brought by Plaintiff, on behalf of himself and other
6 similarly situated persons, against Defendants. Plaintiff seeks damages and equitable
7 remedies for himself and the Class (defined in paragraph ¶ 18 below).

8 2. This case involves Kia’s Soul SK3 models (which, on information and belief,
9 span from model years 2020 to 2021) (the “Kia Soul” or “Class Vehicles”) that are
10 equipped with a 60/40-split folding rear bench seat. Defendants’ market and promote the
11 Kia Soul as a “marvel of adaptability”:



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22 3. Defendants’ marketing materials also represent that the Kia Soul’s split-
23 folding rear seat allows vehicle owners to “fit your friends and their luggage.”

24 4. Unfortunately, Defendants’ representations were too clever by half. When
25 the driver’s side of the split rear seat is folded down, no seat belt is accessible for the
26 passenger-side rear seat passenger (the “Rear Seat Belt Inaccessibility Defect”):



5. Defendants never disclosed this defect to buyers or lessors before they bought or leased the Class Vehicles. Reasonable buyers and lessors would not have discovered this defect before buying or leasing the vehicle. The Rear Seat Belt Inaccessibility Defect is only apparent when one folds down the driver’s side of the split folding rear seat.

6. Defendants warrants that each Kia Soul they manufacture, distribute and sells is free from defects in material, workmanship, or factory preparation, representing that such warranty is “best in class” and provides “peace of mind you can trust”:

Peace of Mind You Can Trust.



KBB Ratings & Reviews
 What do independent experts and real-life Soul owners have to say?



Best-in-Class Warranty
 Our industry leading Kia 10-year/100,000-mile warranty covers you with quality and confidence.



#1 Brand in Initial Quality
 Kia is the #1 Ranked Brand, Mass Market, 6 Years in a Row.
[Learn More >](#)

7. Although this defect occurred at the time of manufacture (*i.e.*, within the warranty period), Defendants have refused to repair or remedy the Rear Seat Belt Inaccessibility Defect. Plaintiff and members of the Class have requested Defendants to repair their vehicles, but Defendants have not or cannot repair the defect. Defendants have also failed to recall the Kia Soul to address the defect, alter its manufacturing

1 processes and/or materials, or refund any costs, damages or loss of use that Plaintiff and
2 members of the Class have incurred as a result of the Rear Seat Belt Inaccessibility Defect.

3 8. The Rear Seat Belt Inaccessibility Defect also poses a substantial safety
4 hazard because a passenger in the back has no access to the seat belt when the driver's
5 side of the split rear seat is folded down. Thus, the passenger is exposed to a serious risk
6 of injury or death if the Kia Soul is involved in a car accident.

7 9. Plaintiff brings this class action to remedy Defendants' ongoing unfair
8 business practices and to compensate Class members for the costs and damages caused
9 by the Rear Seat Belt Inaccessibility Defect.

10 **JURISDICTION AND VENUE**

11 10. This Court has subject matter jurisdiction of this action pursuant to 28
12 U.S.C. § 1332 of the Class Action Fairness Act of 2005 because: (i) there are 100 or more
13 Class members, (ii) there is an aggregate amount in controversy exceeding \$5,000,000,
14 exclusive of interest and costs, and (iii) there is minimal diversity, because at least one
15 plaintiff and defendant are citizens of different states. This Court has supplemental
16 jurisdiction over the state law claims pursuant to 28 U.S.C. § 1367.

17 11. Venue is proper in this District pursuant to 28 U.S.C. § 1391, because the
18 unlawful practices are alleged to have been committed in this District, and Defendant
19 regularly conducts business in this District.

20 **PARTIES**

21 12. Plaintiff is a citizen and resident of California. Plaintiff purchased a 2020 Kia
22 Soul.

23 13. Kia is a corporation organized under the laws of the State of California with
24 its principal place of business in Irvine, California. Kia is registered to conduct business
25 in California and has dealerships throughout the state, including several in San Francisco
26 County.

27 14. Defendants DOES 1 through 50 are persons or entities whose true names
28 and capacities are presently unknown to Plaintiff, who therefore sues them by such

1 fictitious names. Plaintiff is informed and believes and on that basis alleges that each of
2 the fictitiously named defendants perpetrated some or all of the wrongful acts alleged
3 herein, is responsible in some manner for the matters alleged herein, and is jointly and
4 severally liable to Plaintiff. Plaintiff will seek leave of court to amend this complaint to
5 state the true names and capacities of such fictitiously named defendants when
6 ascertained.

7 15. At all times mentioned herein, each named defendant and each DOE
8 defendant was the agent or employee of each of the other Defendants and was acting
9 within the course and scope of such agency or employment and/or with the knowledge,
10 authority, ratification and consent of the other Defendants. Each defendant is jointly and
11 severally liable to Plaintiff and to the members of the proposed Class.

12 **TOLLING OF THE STATUTE OF LIMITATIONS**

13 16. Kia had exclusive knowledge of the defective nature of the Kia Soul, and
14 knew that the defect was not known or reasonably discoverable by Plaintiff or Class
15 members without experiencing the defect firsthand (and thus exposing their passengers
16 to an unreasonable safety hazard). Only Defendants had access to information about the
17 design and manufacture of the Class Vehicles and significant risks associated with driving
18 without sufficient rear seat belt accessibility.

19 17. The Kia Soul Rear Seat Belt Inaccessibility Defect cannot be detected until
20 the rear split-seat is folded down. Accordingly, Plaintiff and Class members were not
21 reasonably able to discover the problem until after purchasing or leasing the Kia Souls,
22 despite their exercise of due diligence.

23 **CLASS ALLEGATIONS**

24 18. Pursuant to Rules 23(a), (b)(2), and (b)(3) of the Federal Rules of Civil
25 Procedure, Plaintiff brings this action on behalf of himself and all others similarly situated
26 as members of the proposed Class. This action satisfies the numerosity, commonality,
27 typicality, adequacy, predominance, and superiority requirements of those provisions.

28 19. The Class is defined as all persons in the United States who purchased or

1 leased any of the Class Vehicles.

2 20. Excluded from the Class are Defendants, their employees, co-conspirators,
3 officers, directors, legal representatives, heirs, successors and wholly or partly owned
4 subsidiaries or affiliated companies; class counsel and their employees; and the judicial
5 officers and their immediate family members and associated court staff assigned to this
6 case. Also excluded are any individuals claiming damages from personal injuries arising
7 from the Rear Seat Belt Inaccessibility Defect.

8 21. Pursuant to Rule 23(a)(1), the Class is so numerous that joinder of all
9 members is impracticable. Due to the nature of the trade and commerce involved, the
10 members of the Class are geographically dispersed throughout the country and joinder of
11 all class members would be impracticable. While the exact number of Class members is
12 unknown to Plaintiff at this time, Plaintiff believes there are at least 10,000 members in
13 the Class.

14 22. Pursuant to Rule 23(a)(3), Plaintiff's claims are typical of the claims of the
15 other members of the Class. Plaintiffs and other Class members all own or lease a Kia
16 Soul that contains the Rear Seat Belt Inaccessibility Defect. Kia's policies concerning
17 repair of the Rear Seat Belt Inaccessibility Defect applied uniformly to all members of the
18 Class. Plaintiffs and Class members purchased or leased the Kia Souls with the reasonable
19 expectation that Defendants would abide by their express and implied warranties.
20 Plaintiffs and the members of the Class have all sustained injury in that the rear seats in
21 their Kia Souls do not operate as intended; they are required to pay additional sums to
22 rectify the Rear Seat Belt Inaccessibility Defect; they have lost the use of some of the
23 vehicle's functionality, and the value of the Kia Souls have decreased due to Defendants'
24 wrongful conduct.

25 23. Pursuant to Rule 23(a)(4) and (g)(1), Plaintiff will fairly and adequately
26 represent and protect the interests of the members of the Class. Plaintiff is a member of
27 the Class and does not have any conflict of interest with other Class members. Plaintiff
28 has retained and is represented by competent counsel who are experienced in complex

1 class action litigation, including automobile warranty and consumer class actions such as
2 the present action.

3 24. Pursuant to Rule 23(b)(2), Kia has acted or refused to act on grounds
4 generally applicable to the Class, thereby making appropriate final injunctive relief or
5 corresponding declaratory relief with respect to the Class as a whole. In particular, Kia has
6 failed to properly replace, repair or rectify the Rear Seat Belt Inaccessibility Defect.

7 25. Pursuant to Rules 23(a)(2) and (b)(3), common questions of law and fact
8 exist as to all members of the Class and predominate over any questions solely affecting
9 individual members thereof. Among the common questions of law and fact are as follows:

- 10 a. Whether Defendants had knowledge of the Rear Seat Belt
11 Inaccessibility Defect prior to selling the Class Vehicles to Plaintiff
12 and Class members;
- 13 b. Whether Defendants concealed the Rear Seat Belt Inaccessibility
14 Defect to Plaintiff and Class members;
- 15 c. Whether the Rear Seat Belt Inaccessibility Defect is a material fact
16 Plaintiff and Class members would have attached importance to when
17 making the decision to purchase or lease the Class Vehicles;
- 18 d. Whether Defendants made false and misleading statements, which
19 Plaintiff and Class members relied upon, to entice them to purchase
20 or lease the Class Vehicles;
- 21 e. Whether Defendants misrepresented the value and capabilities of the
22 Class Vehicles;
- 23 f. Whether Defendants misrepresented the purpose and effect of the
24 60/40 rear seat function;
- 25 g. Whether Defendants' material misrepresentations and omissions
26 regarding the Rear Seat Belt Inaccessibility Defect were likely to
27 deceive Plaintiff and Class members;
- 28 h. Whether Defendants' business practices, including the manufacture,

1 distribution and sale of the Class Vehicles with the Rear Seat Belt
2 Inaccessibility Defect which Defendants have failed to adequately
3 investigate, disclose and remedy, offend establish public policy and
4 cause harm to consumers that greatly outweighs any benefits
5 associated with those practices;

6 i. Whether Defendants' conduct in marketing, selling, and leasing the
7 Class Vehicles constitutes violations of the Consumers Legal
8 Remedies Act, Cal. Civ. Code §§ 1750, *et seq.*;

9 j. Whether Defendants breached their express warranties regarding the
10 Rear Seat Belt Inaccessibility Defect;

11 k. Whether Defendants breached the implied warranty of
12 merchantability as a result of the Rear Seat Belt Inaccessibility Defect;

13 l. Whether Plaintiff and Class members are entitled to damages,
14 restitution, restitutionary disgorgement, equitable relief, and/or other
15 relief; and

16 m. The amount and nature of such relief to be award to Plaintiff and the
17 Class.

18 26. Pursuant to Rule 23(b)(3), a class action is superior to other available
19 methods for the fair and efficient adjudication of this controversy because joinder of all
20 Class members is impracticable. The prosecution of separate actions by individual
21 members of the Class would impose heavy burdens upon the courts and Defendants, and
22 would create a risk of inconsistent or varying adjudications of the questions of law and
23 fact common to the Class. A class action would achieve substantial economies of time,
24 effort and expense, and would assure uniformity of decision as to persons similarly
25 situated without sacrificing procedural fairness.

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1 **CLAIMS FOR RELIEF**

2 **FIRST CAUSE OF ACTION**

3 **BREACH OF EXPRESS WARRANTY**

4 **CAL. COM. CODE § 2313**

5 **(ON BEHALF OF PLAINTIFF AND THE CLASS AGAINST**
6 **DEFENDANTS)**

7 27. Plaintiff incorporates the paragraphs alleged above as if fully set forth herein.

8 28. This claim is brought by Plaintiff on behalf of himself and the Class against
9 Defendants.

10 29. Kia is and was at all relevant times a manufacturer, distributor and seller of
11 the Class Vehicles and there a merchant with respect to motor vehicles. *See* Cal. Com.
12 Code § 2104.

13 30. Pursuant to Cal. Com. Code § 2313, “[e]xpress warranties by the seller are
14 created [by] ... [a]ny affirmation of fact or promise made by the seller to the buyer which
15 relates to the goods[.]” The affirmation of fact or promise “becomes part of the basis of
16 the bargain [and] creates an express warranty that the goods shall conform to the
17 affirmation or promise.” *Id.*

18 31. Kia supplied an express warranty to Plaintiff and Class members who
19 purchased or leased its Kia Souls.

20 32. Kia breached the express warranty by refusing to repair, replace or otherwise
21 rectify the Rear Seat Belt Inaccessibility Defect.

22 33. Based on the facts alleged herein, any limitations in duration and/or
23 remedies contained in the express warranty are unconscionable, unenforceable and/or
24 should be tolled. A gross disparity in bargaining power exists between Kia, on one hand,
25 and Plaintiff and Class members, on the other. Neither Plaintiff nor Class members were
26 in a position to negotiate the terms and conditions of the express warranty—it was a take
27 it or leave it scenario. Kia knew prior to the distribution and sale of the Class Vehicles that
28 they contained the Rear Seat Belt Inaccessibility Defect. Despite this knowledge, Kia

1 concealed this material fact from consumers and made misleading partial representations
2 regarding the scope of its express warranty. Plaintiff and Class members were therefore
3 ill-informed when making their decision to purchase or lease the Class Vehicles or whether
4 they should pay the retail price for the Class Vehicles. Had Toyota disclosed the Rear Seat
5 Belt Inaccessibility Defect to Plaintiff and Class members, it would have materially
6 affected their decision to buy or lease the Class Vehicles or how much they should pay for
7 the Class Vehicles with the defect. In addition, neither Plaintiff nor Class members had
8 access to Kia's internal documents including, but not limited to, consumer and dealership
9 complaints relating to the defect, design and material specifications, and pre-sale reports
10 and investigations into the defect. Therefore, in order to make Plaintiff and Class members
11 whole, any limitation on duration or remedies should be deemed unconscionable,
12 unenforceable and/or tolled.

13 34. As a direct and proximate result of Kia's breach of its express warranty,
14 Plaintiff and Class members sustained injuries and damages and are entitled to legal and
15 equitable relief against Defendants, including economic damages, rescission or other relief
16 as appropriate.

17 35. WHEREFORE, Plaintiff prays for relief as set forth below.

18 **SECOND CAUSE OF ACTION**
19 **BREACH OF THE IMPLIED WARRANTY OF MERCHANTABILITY**
20 **CAL. COM. CODE § 2314**
21 **(ON BEHALF OF PLAINTIFF AND THE CLASS AGAINST**
22 **DEFENDANTS)**

23 36. Plaintiff incorporates the paragraphs alleged above as if fully set forth herein.

24 37. This claim is brought by Plaintiff on behalf of himself and the Class against
25 Defendants.

26 38. Kia manufactured, distributed and sold the Class Vehicles throughout its
27 chain of authorized dealerships in the continental United States and is therefore, at all
28 relevant times, a merchant with respect to motor vehicles. *See* Cal. Com. Code § 2104.

1 39. Pursuant to Cal. Com. Code § 2314, a warranty that the Class Vehicles are in
2 merchantable condition is implied by operation of law.

3 40. The Class Vehicles, when sold or leased and at all times thereafter, were not
4 merchantable and not fit for the ordinary purpose for which cars are used because the
5 Class Vehicles contain the Rear Seat Belt Inaccessibility Defect which, as alleged above,
6 expose rear seat passengers to potentially severe bodily injury if the Class Vehicles are
7 involved in an accident.

8 41. Plaintiff and Class members are entitled to assert this breach of implied
9 warranty claim because they are third-party beneficiaries to the sales contract between Kia
10 and the authorized dealers from which Plaintiff and Class members purchased or leased
11 their Class Vehicles. Plaintiff and Class members have more than incidentally benefitted
12 from the sales contract between Kia and its authorized dealerships. Plaintiff and Class
13 members purchased their Class Vehicles from Kia's authorized dealers who, are
14 themselves, agents of Kia. The dealerships, who purchased the Class Vehicles from Kia,
15 were never intended to be the ultimate purchasers or lessees of the Class Vehicles. The
16 intended beneficiaries are the ultimate purchasers or lessees of the Class Vehicles (i.e.,
17 Plaintiff and Class members). The authorized dealers would lose money if they held onto
18 the Class Vehicles. The authorized dealers had no rights under the express warranty
19 supplied with the Class Vehicles. The express warranty was designed for and intended to
20 benefit Plaintiff and Class members and did not start until the Class Vehicles were
21 delivered to them. Accordingly, as the intended third-party beneficiaries, Plaintiff and
22 Class members are entitled to maintain this implied warranty claim against Kia.

23 42. Kia's breach of the implied warranty of merchantability directly and
24 proximately caused Plaintiff and Class members to suffer economic losses including, but
25 not limited to, damages at the point of sale in terms of the difference between the value
26 of the defective product as promised and the value of the product as delivered, and also
27 paying for defective products and entering into transactions they would not have entered
28 into but for Kia's acts, as well as costs to repair the Rear Seat Belt Inaccessibility Defect.

1 43. Based on the facts alleged herein, any limitations in duration and/or
2 remedies related to the implied warranty claim are unconscionable, unenforceable, and/or
3 should be tolled.

4 44. Plaintiff and Class members are entitled to legal, injunctive and equitable
5 relief against Defendants, including damages, injunctive relief (such as a recall,
6 replacement and restitution), attorneys' fees, costs and/or other relief as appropriate.

7 45. WHEREFORE, Plaintiff prays for relief as set forth below.

8 **THIRD CAUSE OF ACTION**
9 **VIOLATION OF THE SONG-BEVERLY CONSUMER WARRANTY ACT**
10 **FOR BREACH OF EXPRESS WARRANTY**
11 **CAL. CIV. CODE §§ 1791.2 & 1793.2**
12 **(ON BEHALF OF PLAINTIFF AND THE CALIFORNIA CLASS MEMBERS**
13 **AGAINST DEFENDANTS)**

14 46. Plaintiff incorporates the paragraphs alleged above as if fully set forth herein.

15 47. This claim under the Song-Beverly Consumer Warranty Act ("SBCWA") for
16 breach of express warranty is brought by Plaintiff on behalf of himself and Class members
17 who purchased or leased the Class Vehicles in California (the "California Class Members).

18 48. Plaintiff and California Class Members are "buyers" within the meaning of
19 the SBCWA. *See* Cal. Civ. Code § 1791(b).

20 49. The Class Vehicles are "consumer goods" within the meaning of Cal. Civ.
21 Code § 1791(a).

22 50. Toyota is a "manufacturer," "distributor," and "retail seller" within the
23 meaning of the SBCWA.

24 51. Plaintiff and California Class Members bought or leased Class Vehicles
25 manufactured, distributed and sold by Kia. The sale or lease of the Class Vehicles were
26 accompanied by an express warranty from Kia within the meaning of Cal. Civ. Code §§
27 1791.2 and 1793.2. The Seat Belt Inaccessibility Defect in the Kia Souls existed at the time
28 of sale or lease. The defect substantially impairs the use and value of the Class Vehicles

1 and jeopardizes the safety of passengers in the Class Vehicles. Despite notice of this
2 defect, Kia has denied and continues to deny coverage of the damages caused by defect
3 within its express warranty.

4 52. Pursuant to Cal. Civ. Code §§ 1793.2 and 1794, Plaintiff and California Class
5 Members are entitled to damages and other legal and equitable relief including, at their
6 election, the purchase price of or a buyback of their Class Vehicles, or the overpayment
7 or diminution in value of their Class Vehicles.

8 53. Pursuant to Cal. Civ. Code § 1794, Plaintiff and California Class Members
9 are also entitled to costs and reasonable attorneys' fees.

10 54. WHEREFORE, Plaintiff prays for relief as set forth below.

11 **FOURTH CAUSE OF ACTION**
12 **VIOLATION OF THE SBCWA FOR BREACH OF THE IMPLIED**
13 **WARRANTY OF MERCHANTABILITY**
14 **CAL. CIV. CODE §§ 1791.1 & 1792**
15 **(ON BEHALF OF PLAINTIFFS AND THE CALIFORNIA CLASS**
16 **MEMBERS AGAINST DEFENDANTS)**

17 55. Plaintiff incorporates the paragraphs alleged above as if fully set forth herein.

18 56. This claim under the SBCWA for breach of the implied warranty of
19 merchantability is brought by Plaintiff on behalf of himself and the California Class
20 Members.

21 57. Plaintiff and California Class Members are “buyers” within the meaning of
22 the SBCWA. *See* Cal. Civ. Code § 1791(b).

23 58. The Class Vehicles are “consumer goods” within the meaning of Cal. Civ.
24 Code § 1791(a).

25 59. Kia impliedly warranted to Plaintiff and California Class Members that its
26 Class Vehicles are “merchantable” within the meaning of Cal. Civ. Code §§ 1791.1(a) and
27 1792. Section 1791.1(a) states: “Implied warranty of merchantability” or “implied warranty
28 that goods are merchantable” means that the consumer goods meet each of the following:

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

5 60. The Class Vehicles are unmerchantable and unfit for their ordinary purposes
6 because they contain the Rear Seat Belt Inaccessibility Defect which creates a substantial
7 risk of serious injury for passengers riding in the Class Vehicles.

8 61. Toyota breached the implied warranty of merchantability by manufacturing,
9 distributing and selling the Class Vehicles with the Rear Seat Belt Inaccessibility Defect.
10 The defect has caused Plaintiff and California Class Members to not receive the benefit
11 of their bargain and have caused their Class Vehicles to depreciate in value. In addition,
12 Plaintiff and California Class Members have been damaged by incurring out-of-pocket
13 expenses and loss of use of their Class Vehicles.

14 62. Pursuant to Cal. Civ. Code §§ 1791.1(d) and 1794, Plaintiffs and California
15 Class Members are entitled to damages and other legal and equitable relief, including, at
16 their election, the purchase price of or a buyback of their Class Vehicles, or the
17 overpayment or diminution in value of their Class Vehicles. Pursuant to Cal. Civ. Code §
18 1794, Plaintiff and California Class Members are also entitled to costs and reasonable
19 attorneys’ fees.

20 63. WHEREFORE, Plaintiff prays for relief as set forth below.

21 **FIFTH CAUSE OF ACTION**
22 **VIOLATION OF THE CONSUMERS LEGAL REMEDIES ACT**
23 **CAL. CIV. CODE §§ 1750, ET SEQ.**
24 **(ON BEHALF OF PLAINTIFF AND THE CLASS AGAINST**
25 **DEFENDANTS)**

26 64. Plaintiff incorporates the paragraphs alleged above as if fully set forth herein.

27 65. This claim is brought by Plaintiffs on behalf of himself and the Class under
28 the Consumers Legal Remedies Act (the “CLRA”).

1 66. The CLRA prohibits “unfair methods of competition and unfair or
2 deceptive acts or practices undertaken by any person in a transaction intended to result or
3 which results in the sale or lease of goods or services to any consumer ...” Cal. Civ. Code
4 § 1770.

5 67. Kia is a “person” as defined by Cal. Civ. Code § 1761(c).

6 68. The Class Vehicles are “goods” as defined by Cal. Civ. Code § 1761(a).

7 69. Plaintiff and Class members are “consumers” as defined by Cal. Civ. Code §
8 1761(d).

9 70. As alleged in detail above, Kia omitted and concealed the Rear Seat Belt
10 Inaccessibility Defect and its consequences from Plaintiff and Class members. Kia also
11 made false and misleading statements about the capabilities, functionalities and safety of
12 the Class Vehicles.

13 71. In relying on those material omissions and misrepresentations when
14 purchasing or leasing the Class Vehicles, Plaintiff and Class members were deceived and
15 have been damaged. Had Kia been truthful, Plaintiff and Class members would not have
16 purchased or leased the Class Vehicles or would have paid less for the vehicles.

17 72. Kia’s conduct, as hereinabove described, is in violation of Cal. Civ. Code
18 §1770 on the following grounds:

- 19 a. (a)(2): misrepresenting the source, sponsorship, approval or
20 certification of goods or services;
- 21 b. (a)(5): representing that goods or services have sponsorship, approval,
22 characteristics, ingredients, uses, benefits, or quantities which they do
23 not have;
- 24 c. (a)(7): representing that goods are of a particular standard, quality, or
25 grade, if they are another;
- 26 d. (a)(9): advertising goods with the intent not to sell them as advertised;
27 and
- 28 e. (a)(16): representing that goods have been supplied in accordance

1 with a previous representation when they have not.

2 73. Kia knew—before the distribution and sale of the Class Vehicles—that the
3 vehicles contained the Rear Seat Belt Inaccessibility Defect. Kia had a duty to disclose the
4 defect because it had exclusive knowledge of the defect prior to making sales and leases
5 of the Class Vehicles and because it made misrepresentations about the capabilities,
6 functionalities, and safety of the Class Vehicles. In addition, Kia was under a duty to
7 disclose because:

- 8 a. Kia was in a superior position to know the true state of facts about
9 the Rear Seat Belt Inaccessibility Defect—a defect that can pose a
10 safety risk; and
- 11 b. Plaintiff and Class members did not know, nor could they reasonably
12 have been expected to learn or discover the Class Vehicles have a
13 defect that affects operability and creates safety concerns until after
14 purchase or lease of the Class Vehicles; and
- 15 c. Kia concealed the true nature of the design or manufacturing defect
16 that exists in the Kia Souls, as well as the costs associated with
17 remedying the problem, to induce Plaintiff and Class members to act
18 thereon.

19 74. The facts concealed or not disclosed by Kia to Plaintiff and Class members
20 are material in that a reasonable consumer would have considered them to be important
21 in deciding whether to purchase or lease the Class Vehicles or pay a lesser price. Had
22 Plaintiff and Class members known about the Rear Seat Belt Inaccessibility Defect, they
23 would not have purchased or leased the Class Vehicles, or they would have paid less.

24 75. As a direct and proximate result of Kia's unfair and deceptive acts or
25 practices, Plaintiff and Class members have been harmed. Under Cal. Civ. Code § 1780(a),
26 Plaintiff and Class members seek an order enjoining Kia from further engaging in the
27 unfair and deceptive acts and practices alleged herein, and restitutionary relief to remedy
28 Toyota's violations of the CLRA as alleged herein. On April 22, 2021, Plaintiff notified

1 Kia of the damages resulting from the Rear Seat Belt Inaccessibility Defect in his Class
2 Vehicle in satisfaction of Cal. Civ. Code § 1782. If Kia does not rectify the defect on a
3 class basis, Plaintiff will amend this complaint to add a claim for damages.

4 76. Under Cal. Civ. Code § 1780(b), Plaintiff seeks an additional award against
5 Kia of up to \$5,000 for each member of the Class who qualifies as a “senior citizen” or
6 “disabled person” under the CLRA. Kia knew or should have known that its conduct was
7 directed to one or more members of the Class who are senior citizens or disabled persons.
8 Kia’s conduct caused one or more of these senior citizens or disabled persons to suffer a
9 substantial loss of property set aside for retirement or for personal or family care and
10 maintenance, or assets essential to the health or welfare of the senior citizen or disabled
11 person. One or more members of the Class, who are senior citizens or disabled persons,
12 are substantially more vulnerable to Kia’s conduct because of age, poor health or infirmity,
13 impaired understanding, restricted mobility, or disability, and each of them suffered
14 substantial physical, emotional, or economic damage resulting from Kia’s conduct.
15 Pursuant to Cal. Civ. Code § 3345, Plaintiff seeks an award of trebled damages on behalf
16 of all senior citizens and disabled persons comprising the California Class as a result of
17 Kia’s conduct alleged herein.

18 77. Pursuant to Section 1780(a)(4), Plaintiff also seeks punitive damages against
19 Kia because it carried out reprehensible conduct with willful and conscious disregard of
20 the rights and safety of others, subjecting Plaintiff and Class members to potential cruel
21 and unjust hardship as a result. *See* Cal. Civ. Code § 1780(a)(4). Kia intentionally and
22 willfully deceived Plaintiff and Class members, and concealed material facts that only it
23 knew. Kia’s unlawful conduct likewise constitutes malice, oppression, and fraud
24 warranting exemplary damages under Cal. Civ. Code § 3294.

25 78. Plaintiff further seeks an order awarding costs of court and attorneys’ fees
26 under Cal. Civ. Code § 1780(e), and any other just and proper relief available under the
27 CLRA.

28 ///

1 79. WHEREFORE, Plaintiff prays for relief as set forth below.

2 **SIXTH CAUSE OF ACTION**
3 **VIOLATION OF THE FALSE ADVERTISING LAW (“FAL”)**
4 **CAL. BUS. & PROF. CODE §§ 17500, *ET SEQ.***
5 **(ON BEHALF OF PLAINTIFF AND THE CLASS AGAINST**
6 **DEFENDANTS)**

7 80. Plaintiff incorporates the paragraphs alleged above as if fully set forth herein.

8 81. Plaintiff brings this cause of action individually and on behalf of the Class
9 against Defendants.

10 82. The FAL makes it “unlawful for any person to make or disseminate or cause
11 to be made or disseminated before the public in this state, . . . in any advertising device . .
12 . or in any other manner or means whatever, including over the Internet, any statement,
13 concerning . . . personal property or services, professional or otherwise, or performance
14 or disposition thereof, which is untrue or misleading and which is known, or which by the
15 exercise of reasonable care should be known, to be untrue or misleading.”

16 83. Kia committed acts of false advertising, as defined by the FAL, by using false
17 and misleading advertising statements to promote the sale and lease of the Class Vehicles.
18 Defendants knew or should have known that Plaintiff and Class members reasonably
19 expected that their Kia Souls would have an accessible seatbelt for the right rear passenger
20 when only the driver’s side of the 60/40 rear bench seat was folded down. This is the
21 reasonable and objective consumer expectation. Kia knew that the Kia Souls were
22 defectively designed or manufactured and not suitable for their intended and/or expected
23 use. Notwithstanding that knowledge, Kia has continued to sell and lease Kia Souls
24 without any change in the design or installation of the rear seat or its seat belts. Defendant
25 has also continued to sell and lease Kia Souls without disclosing to the public that the
26 right rear seat belt is not accessible when the driver’s side of the rear seat is folded down.
27 Defendant continues to market the Kia Soul as “a marvel of adaptability.”

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1 84. Kia knew or should have known, through the exercise of reasonable care,
2 that its representations were false and misleading and likely to deceive Plaintiff and Class
3 members into purchasing the Class Vehicles.

4 85. As a direct and proximate result of these false and misleading advertising
5 statements, Plaintiff and Class members have suffered injury by purchasing the Class
6 Vehicles. Had Kia been truthful and adequately warned about the Rear Seat Belt
7 Inaccessibility Defect, Plaintiff and Class members would have been better informed and
8 been in a better position to determine whether to purchase or lease the vehicle or how
9 much to pay for it. But by misrepresenting the benefits, capabilities, functionality and
10 safety of the Class Vehicles, and misleading consumers, Kia deprived Plaintiff and Class
11 members from making an informed decision.

12 86. Plaintiff brings this cause of action pursuant to Cal. Bus. & Prof. Code
13 § 17535 for injunctive relief to enjoin the deceptive practices described herein, to require
14 Defendants to issue adequate warnings to consumers, and to restore to Plaintiff and Class
15 members the money they paid for the Class Vehicles. Plaintiff and the Class members are
16 therefore entitled to: (a) an order requiring Defendants to cease the acts of unfair
17 competition alleged herein; (b) full restitution of the monies paid by Plaintiff and Class
18 members to Defendants as a result of their deceptive practices; (c) interest at the highest
19 rate allowable by law; and (d) the payment of Plaintiff's attorneys' fees and costs pursuant
20 to, *inter alia*, Cal. Civ. Proc. Code § 1021.5.

21 87. WHEREFORE, Plaintiff prays for relief as set forth below.

22 **SEVENTH CAUSE OF ACTION**
23 **VIOLATIONS OF THE UNFAIR COMPETITION LAW**
24 **CAL. BUS. & PROF. CODE §§ 17200, ET SEQ.**
25 **(ON BEHALF OF PLAINTIFFS AND THE CLASS AGAINST**
26 **DEFENDANTS)**

27 88. Plaintiff incorporates the paragraphs alleged above as if fully set forth herein.

28 89. This claim is brought by Plaintiff and on behalf of the Class for violations of

1 the Unfair Competition Law (the “UCL”).

2 90. The UCL broadly prohibits acts of “unfair competition,” including any
3 “unlawful, unfair or fraudulent business act or practice” and “unfair, deceptive, untrue or
4 misleading advertising.” Cal. Bus. & Prof. Code § 17200.

5 91. A business act or practice is “unfair” under the UCL if the reasons,
6 justifications and motives of the alleged wrongdoer are outweighed by the gravity of the
7 harm to the alleged victims. Kia has engaged in “unfair” business practices and/or acts by
8 failing to disclose the Rear Seat Belt Inaccessibility Defect to Plaintiff and Class members;
9 by refusing to provide warranty coverage for the defect; and by misleading consumers
10 about the capabilities, functionalities and safety of the Class Vehicles. The acts and
11 practices alleged herein are “unfair” because they caused Plaintiff and Class members, and
12 reasonable consumers like them, to believe that Kia was offering something of value that
13 did not, in fact, exist. Kia intended for Plaintiffs and Class members to rely on its
14 omissions and misleading statements. As a result, purchasers and lessees, including
15 Plaintiff, reasonably perceived that they were receiving Class Vehicles with certain
16 benefits. This perception induced reasonable purchasers to purchase or lease the Class
17 Vehicles which they would not otherwise have done had they known the truth. As alleged
18 above, the gravity of the harm to Class members resulting from these unfair acts and
19 practices outweighs any conceivable reasons, justifications and/or motives of Kia for
20 engaging in such deceptive acts and practices. By committing the acts and practices alleged
21 above, Kia engaged in “unfair” business practices within the meaning of the UCL.

22 92. A business act or practice is also “fraudulent” under the UCL if it is likely to
23 deceive members of the consuming public. Kia engaged in a uniform course of conduct
24 which was intended to, and did in fact, deceive Plaintiff and Class members into buying
25 or leasing the Class Vehicles. Toyota’s course of conduct and misleading representations
26 were fraudulent within the meaning of the UCL because they deceived Plaintiffs, and were
27 likely to deceive Class members, into believing they were receiving benefits that did not,
28 in fact, exist.

1 93. A business act or practice is also “unlawful” under the UCL if it violates any
2 other law or regulation. As alleged above, Kia has violated the Commerical Code, SBWCA,
3 CLRA, and FAL, and other laws as set forth herein.

4 94. Through its fraudulent, unfair, and unlawful acts and practices, Kia has
5 improperly obtained money from Plaintiff and Class members. Plaintiff seeks to enjoin
6 further unlawful, unfair and/or fraudulent acts or practices by Kia relating to the Rear
7 Seat Belt Inaccessibility Defect and from violating the UCL in the future by selling Class
8 Vehicles with the defect. Plaintiff also seeks to obtain restitutionary disgorgement of all
9 monies and revenues generated as a result of such practices, require notice of the defect
10 be provided to Class members, and all other relief allowed under Cal. Bus. & Prof. Code
11 § 17200 including, but not limited to, restitution and attorneys’ fees and cost under Cal.
12 Civ. Proc. Code § 1021.5.

13 95. WHEREFORE, Plaintiff prays for relief as set forth below.

14 **PRAYER FOR RELIEF**

15 96. Plaintiff seeks judgment in favor of himself and the proposed Class for
16 the following:

- 17 a. an order certifying the proposed Class and appointing Plaintiff and
18 his counsel to represent the Class;
- 19 b. injunctive and declaratory relief as pleaded or as the Court may deem
20 proper;
- 21 c. an award of damages and restitution in favor of Plaintiff and the Class;
- 22 d. interest as allowable by law;
- 23 e. an award of reasonable attorneys' fees as provided by applicable law;
- 24 f. all costs of suit; and
- 25 g. such other and further relief as this Court deems just and proper.

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DEMAND FOR JURY TRIAL

Plaintiff respectfully demands a jury trial for all claims so triable

DATED: April 27, 2021 THE VEEN FIRM, P.C.

By: /s/Steven A. Kronenberg

Anthony L. Label
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DATED: April 27, 2021 BISNAR | CHASE LLP

By: /s/Jerusalem F. Beligan

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