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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

Thomas Copley, Marvin Coyner, and Elizabeth
Evans,

Plaintiffs,

v.

ZF TRW Automotive Holdings Corp., Hyundai
Motor America, Inc., and Kia Motor America,
Inc.,

Defendants.

No. 2:19-cv-00707

COMPLAINT – CLASS ACTION

JURY DEMAND

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1 Plaintiffs bring this action on behalf of themselves and all others similarly situated,
2 against Defendant ZF TRW Automotive Holdings Corp. (“ZF-TRW”), Hyundai Motor America,
3 Inc. (“HMA” or, with its corporate parents and affiliates, “Hyundai”), and Kia Motor America,
4 Inc. (“KMA” or, with its corporate parents and affiliates, “Kia”). Plaintiffs allege the following
5 based upon information and belief, the investigation of counsel, and personal knowledge as the
6 factual allegations pertaining to themselves.

7 **I. INTRODUCTION**

8 1. This case arises out of a longstanding and knowing failure by automakers and a
9 major parts supplier to disclose a potentially deadly defect in an essential safety system: the
10 control unit that determines whether and when airbags are deployed.

11 2. The defect involves an Airbag Control Unit (“ACU”) designed and manufactured
12 by Defendant ZF TRW Automotive Holdings Corp. and supplied to numerous vehicle
13 manufacturers, including Hyundai and Kia. The ACU defect is especially pernicious because it
14 manifests itself only when an accident occurs, and the safety features it controls are most needed:
15 in a crash. In a vehicle collision, an integrated circuit integral to the ACU system can be
16 overstressed by the electrical signals from the sensors connected to it and fail as a result,
17 preventing deployment of the airbags and seatbelt pretensioners.

18 3. The National Highway Traffic Safety Administration has announced that
19 approximately 12.3 million vehicles may contain a defective ACU. Much like the recent Takata
20 airbag scandal—which has involved tens of millions of vehicles and has resulted in a massive
21 recall and \$1.5 billion in class action settlements so far—these Defendants concealed and failed
22 to disclose a dangerous and potentially deadly defect in essential automotive safety systems from
23 their customers. Each Defendant knew about the defect for years before they took any action to
24 inform consumers or repair defective vehicles.

25 4. Between 2011 and 2015, HMA, KMA, and ZF-TRW investigated airbag failures
26 in Hyundai and Kia vehicles equipped with ZF-TRW ACU systems, but did not inform NHTSA

1 of any problem until late in 2015. HMA and KMA finally issued recalls for some vehicles in
2 2018 while continuing to downplay the serious risks posed by the defect. By that time, numerous
3 injuries and several deaths had already occurred as a result of the defect, and the risk remains
4 unmitigated in millions of vehicles. The Associated Press reports that at least four deaths have
5 resulted from this defect in Hyundai and Kia vehicles. Meanwhile, HMA and KMA continued to
6 sell vehicles equipped with dangerously defective parts.

7 5. In short, ZF-TRW apparently conspired with HMA and KMA to conceal a
8 dangerous and potentially deadly defect that already existed in millions of vehicles in order to
9 continue selling defective parts for installation in new vehicles. As a result of this conduct,
10 Plaintiffs and members of the putative classes alleged herein suffered actual damages, because
11 they did not receive the benefit of their bargain in purchasing or leasing affected vehicles.

12 6. Class Vehicles include the 2013 Model Year (“MY”) Kia Forte, 2013 MY Kia
13 Forte Koup, 2013-2019 MY Kia Optima, 2012-2016 MY Optima Hybrid, 2014 MY Kia Sedona,
14 2013-2019 MY Hyundai Sonata, and 2013-2019 MY Hyundai Sonata Hybrid. The list of class
15 vehicles may expand as discovery proceeds.

16 7. The vehicles purchased or leased by Plaintiffs and members of the putative
17 classes are and were at the time of purchase of a lesser standard and quality than represented and
18 were not fit for the ordinary purpose of providing safe transportation for which they were
19 purchased. Each purchaser or lessee of an affected vehicle paid more than they would have if the
20 truth about the ACU defect had been disclosed to them. Meanwhile, each Defendant profited
21 from the continued installation of defective parts in new vehicles and the delay in recalling their
22 dangerously defective products. The Defendants’ concealment of the true nature of the affected
23 vehicles induced and caused the Plaintiffs and members of the classes to purchase and/or lease,
24 and to continue to own, lease, and/or operate, Hyundai and Kia vehicles of diminished value.
25 Plaintiffs and Class members have also suffered damages in the form of out-of-pocket costs
26 related to the loss of use of affected vehicles.

1 **II. PARTIES**

2 **A. Defendants**

3 8. Defendant **ZF TRW Automotive Holdings Corp. (ZF-TRW)** is a major
4 automotive parts supplier. ZF-TRW is incorporated in Delaware and is headquartered at 12001
5 Tech Center Drive, Livonia, Michigan. ZF-TRW was formed in May 2015 following the
6 acquisition of predecessor entity TRW Automotive Holdings Corp. by German multinational
7 parts supplier ZF Friedrichshafen AG.

8 9. Defendant **Hyundai Motor America, Inc. (HMA)** is a manufacturer and
9 distributor of new motor vehicles under the Hyundai brand and is incorporated and
10 headquartered in the state of California. Its principal place of business is located at 10550 Talbert
11 Avenue, Fountain Valley, California. Hyundai Motor America distributes, markets, leases,
12 warrants, and oversees regulatory compliance and warranty servicing of Hyundai brand vehicles
13 through a network of over 800 dealers throughout the United States from its headquarters in
14 California. Hyundai Motor America also creates and distributes the warranties and other written
15 materials that accompany the sale and lease of Hyundai-branded vehicles throughout the United
16 States, and makes decisions concerning warranty coverage of customer vehicles when problems
17 arise.

18 10. Defendant **Kia Motors America, Inc. (KMA)** is a manufacturer and distributor
19 of new motor vehicles under the Kia brand and is incorporated and headquartered in the state of
20 California. Its principal place of business is located at 111 Peters Canyon Road, Irvine,
21 California. Kia Motors America, Inc. markets, leases, warrants, and oversees regulatory
22 compliance and warranty servicing of Kia-brand vehicles through a network of over 700 dealers
23 throughout the United States from its headquarters in California. KMA also creates and
24 distributes the warranties and other written materials that accompany the sale and lease of Kia-
25 branded vehicles throughout the United States, and makes decisions concerning warranty
26 coverage of customer vehicles when problems arise.

1 **B. Plaintiffs**

2 11. Plaintiff **Thomas Copley**, a resident of Edmonds, Washington, owns a 2015
3 Hyundai Sonata. Plaintiff purchased the Class Vehicle for approximately \$22,330 in January
4 2015 from Hyundai of Everett. Plaintiff has received no information from ZF-TRW or HMA
5 regarding the defective and potentially dangerous Airbag Control Unit, and does not believe the
6 defective parts have been repaired or replaced. Plaintiff would not have purchased the Class
7 Vehicle, or would have paid less for it, had he known that the vehicle contained the ACU defect.

8 12. Plaintiff **Marvin Coyner III**, a resident of Surprise, Arizona, owns a 2017 Kia
9 Optima. Plaintiff Coyner purchased the Class Vehicle for approximately \$18,000 in November
10 2017 from Rodeo Kia in Avondale, Arizona. Plaintiff has received no information from ZF-
11 TRW or KMA regarding the defective and potentially dangerous Airbag Control Unit, and does
12 not believe the defective parts have been repaired or replaced. Plaintiff would not have
13 purchased the Class Vehicle, or would have paid less for it, had he known that the vehicle
14 contained the ACU defect.

15 13. Plaintiff **Elizabeth Evans**, a resident of Yuba City, California, owns a 2018 Kia
16 Optima. Plaintiff purchased the Class Vehicle for approximately \$23,000 in April 2018 from
17 Geweke Ford-Kia in Yuba City, California. Plaintiff has received no information from ZF-TRW
18 or KMA regarding the defective and potentially dangerous Airbag Control Unit, and does not
19 believe the defective parts have been repaired or replaced. Plaintiff would not have purchased the
20 Class Vehicle, or would have paid less for it, had she known that the vehicle contained the ACU
21 defect.

22 **III. JURISDICTION AND VENUE**

23 14. This Court has subject matter jurisdiction under the Class Action Fairness Act of
24 2005 (“CAFA”), 28 U.S.C. §§ 1332(d), because the putative class numbers more than 100, the
25 aggregate amount in controversy exceeds \$5,000,000 excluding costs and interest, and at least
26 one plaintiff and one defendant are citizens of different states. More than two-thirds of Class

1 members reside in states other than the states of which Defendants are citizens. This Court has
2 supplemental jurisdiction over the state law claims alleged herein pursuant to 28 U.S.C. § 1367.

3 15. Venue is proper in this District pursuant to 28 U.S.C. § 1391 because Defendants'
4 contacts are sufficient to subject them to personal jurisdiction in this District and/or because a
5 substantial part of the events or omissions giving rise to Plaintiffs' claims occurred in this
6 District. Defendants have marketed, advertised, and sold the affected vehicles, including the
7 vehicle owned by Plaintiff Copley, and otherwise conducted extensive business, within this
8 District.

9 **IV. FACTUAL ALLEGATIONS COMMON TO ALL CLAIMS**

10 16. HMA and KMA sold vehicles equipped with dangerously defective airbag
11 control units and then, along with ZF-TRW, the manufacturer and supplier of those defective
12 parts, concealed the true nature of these important safety systems and the vehicles that contained
13 them from consumers for years. Meanwhile, ZF-TRW continued to provide defective parts and
14 HMA and KMA continued to install them in Hyundai and Kia vehicles and sell them to
15 unsuspecting consumers.

16 **A. The Airbag Control Unit Defect and Investigation**

17 17. An automobile airbag has one job: to operate as a safety device when vehicle
18 occupants are at risk of sustaining injuries in a collision. To work, an automotive airbag must
19 quickly and effectively deploy when required. In the Class Vehicles equipped with ZF-TRW
20 Airbag Control Units (ACU), a defective ACU may fail to deploy during a collision—the one
21 time an airbag is needed—due to electrical overstress (EOS).

22 18. EOS occurs when a specific electronic component (called an application specific
23 integrated circuit, or ASIC) experiences a voltage or current beyond its specified limit.¹ In effect,
24

25 ¹ Matthew Schwartz, *Government Expands Airbag Investigation To Include More Than 12 Million Vehicles*, NPR
26 (Apr. 24, 2019), <https://www.npr.org/2019/04/24/716614132/government-expands-air-bag-investigation-to-include-more-than-12-million-vehicle> (last visited May 2, 2019).

1 it means that this component is overloaded by precisely the electrical signal from a crash sensor
2 that is supposed to trigger airbag (and seatbelt pretensioner) deployment, instead resulting in an
3 overloaded and useless ASIC.

4 19. Failure of the ASIC due to this condition can prevent appropriate airbag and
5 seatbelt pretensioner deployment just when these safety features are needed most. According to
6 the National Highway and Traffic Safety Administration (NHTSA), ZF-TRW ACUs “may suffer
7 electrical overstress due to harmful signals (electrical transients) produced by the crash event,
8 causing the unit to stop working during the crash.”²

9 20. NHTSA has initiated a probe into the defect, which has caused airbags and
10 seatbelt pretensioners to fail to deploy after collision in Hyundai and Kia vehicles. According to
11 the Associated Press, these failures may have killed at least four people and injured another six.

12 21. While the ACU was developed with electrical circuitry to protect the ASIC from
13 electrical circuit-limit issues (such as the EOS condition described above), these protections are
14 ineffective when they matter most as a result of the defect described here. The ACU is located
15 inside the passenger compartment. The electrical wiring connecting the ASIC to sensors is
16 located at the front of the vehicle. During a collision, that crash event “in and of itself” produces
17 electrical signals, delivered from the sensors to the ACU via wiring that runs through the ASIC.
18 The nature of the defect is that these signals—the signals that the ACU is supposed to interpret in
19 order to trigger airbag and seatbelt pretensioner deployment—themselves overload and damage
20 the ASIC and render the ACU useless, preventing airbag and seatbelt pretensioner deployment.³

21 22. For consumers who own and lease the Class Vehicles, this defect poses a high
22 risk of injury and likely decreases the value of vehicles purchased in part due to reasonable
23 expectations of safety.

24 23. Numerous complaints, injuries and deaths caused by this potentially deadly defect

25 _____
26 ² ODI Resume: Airbag ACU Electrical Overstress, NHSTA Office of Defects Investigation (Apr. 19, 2019),
<https://static.nhtsa.gov/odi/inv/2019/INOA-EA19001-2536.PDF> [hereinafter ODI Resume].

³ *Id.*

1 sparked a series of investigations and recalls. Investigations of the airbag failures in Hyundai and
2 Kia vehicles equipped with ZF-TRW ACU systems were initiated by HMA, KMA and ZF-TRW
3 between 2011 and 2015, but none of the Defendants notified NHTSA about the potentially
4 deadly defect until late in 2015, and even then failed to notify consumers.

5 24. In March 2017, NHTSA opened an investigation involving the ZF-TRW ACU
6 parts installed in HMA and KMA vehicles in order to discover why airbags and seatbelt
7 pretensioners were not deploying in frontal collisions.⁴

8 25. By 2018, safety recalls were issued by HMA and KMA for certain vehicles
9 equipped with an airbag system in which the ACU was susceptible to EOS during certain frontal
10 crash events. Because these recalls covered only a small portion of the Class Vehicles, they were
11 ultimately misleading: a recall of numerous vehicles that purports to resolve a defect tends to
12 lead owners of other, similar vehicles to believe that their vehicles are not affected. Here, though,
13 the 2018 recalls did not come close to solving the entire problem.

14 26. HMA's February 27, 2018 recall of 154,753 potentially affected Hyundai vehicles
15 covered 2011 MY Hyundai Sonatas manufactured between December 11, 2009 and September
16 29, 2010.⁵ On April 18, 2018, Hyundai expanded the recall to include an additional 425,305 MY
17 2012-2013 Sonata and 2011-2012 Sonata Hybrid vehicles.⁶

18 27. KMA's June 1, 2018 recall of 507,587 potentially affected Hyundai vehicles
19 covered 2010-2013 MY Kia Fortes manufactured between February 24, 2009 and August 31,
20 2012; 2011-2012 MY Kia Optima Hybrids manufactured between February 15, 2011 and August
21 31, 2012; 2010-2013 MY Kia Forte Koups manufactured between June 5, 2009 and August 31,
22 2012; 2011-2013 MY Kia Optimas manufactured between August 12, 2010 and August 31,

23
24 ⁴ Tom Krisher, *US expands probe into airbag failures to 12.3M vehicles*, The Associated Press (Apr. 23, 2019),
<https://www.apnews.com/0a9f1191d3624327a04865c590825229> (last visited May 2, 2019).

25 ⁵ Part 573 Safety Recall Report for NHTSA Recall No. 18V-137 (Feb. 27, 2018),
<https://static.nhtsa.gov/odi/rcr/2018/RCLRPT-18V137-5161.PDF>.

26 ⁶ *2013 Hyundai Sonata, Airbags/Seat Belt Pretensioners may be Disabled Recall*, NHTSA (Feb. 27, 2018),
<https://www.nhtsa.gov/vehicle/2013/HYUNDAI/SONATA#recalls>.

1 2012; 2011-2012 MY Kia Sedonas manufactured between March 3, 2010 and August 14, 2012.

2 28. The recalled vehicles' ACU systems all contained a ZF-TRW ASIC susceptible to
3 EOS during crash events. As the NHTSA Safety Recall reports describe the defect, "if the ASIC
4 becomes damaged, the front airbags and seatbelt pretensioners may not deploy in certain frontal
5 crashes where deployment may be necessary, thereby increasing the risk of injury." The reports
6 further cite inadequate circuit protection as the cause of the defect.⁷ The investigations into the
7 ACU system defects in these vehicles and the recalls they led to were sparked by four deaths and
8 six injuries.⁸

9 29. These 2018 recalls were only signs of a much broader and more insidious issue
10 with ZF-TRW ACUs in Kia and Hyundai vehicles. On April 19, 2019, NHTSA's Office of
11 Defects Investigation announced the expansion of its investigation into ZF-TRW ACUs in
12 various MY 2010 to 2019 vehicles. The total population of vehicles equipped with hazardous
13 and defective ACU systems, according to NHTSA, is more than 12.3 million in the U.S. alone.⁹

14 30. Defendants HMA, KMA and ZF-TRW were aware or should have been aware of
15 the extent of the ACU defects. Yet the 2018 recalls issued by HMA and KMA were limited and
16 allowed for deadly and dangerous vehicles to stay on the road while leading these vehicles'
17 owners or lessees to believe that the problem was being addressed in full, if they were aware of
18 the limited recall at all.

19 **B. Defendants Knew About the ACU Defect**

20 31. As early as August 2011, Defendants were aware of an issue with the ACU
21 system in ZF-TRW airbags. After a Kia Forte's airbags failed to deploy during a crash event in
22 China, HMA's and KMA's parent company, through its parts and service arm, requested that
23 supplier ZF-TRW analyze the incident. At the time, the cause of the event was described as a

24 _____
25 ⁷ Part 573 Safety Recall Report for NHTSA Recall No. 18V-363 (June 1, 2018),
<https://static.nhtsa.gov/odi/rcl/2018/RCLRPT-18V363-7061.PDF>.

26 ⁸ Tom Krisher, *US probes 4 deaths in Hyundai-Kia cars when airbags failed*, The Associated Press (Mar. 17, 2018),
<https://apnews.com/3ef0e4356d3b4478aaf4c5a66a363fb0> (last visited May 3, 2019).

⁹ ODI Resume, *supra* note 2.

1 commanded nondeployment—that is, an incident in which the ACU processed the signals from
2 the sensors that detected the crash and told the airbags not to deploy.¹⁰

3 32. In February 2012, HMA was notified of a collision involving a 2011 Hyundai
4 Sonata in which the airbags did not deploy, and enlisted ZF-TRW for assistance and explanation
5 of the incident. Further inspection in June 2012 of the ACU showed that the ASIC component in
6 the ACU had been damaged by an EOS condition.¹¹

7 33. In March 2012, ZF-TRW analyzed a Kia Forte crash in Egypt in which the
8 airbags did not deploy, observing that the damage on the ASIC was consistent with EOS. Once
9 again, the incident was described as a commanded nondeployment.¹²

10 34. On May 17, 2012, ZF-TRW notified HMA's and KMA's parent company about
11 the relationship between airbag and seatbelt pretensioner nondeployment and EOS, but by the
12 end of 2012, nothing had been reported publicly.¹³

13 35. In March 2014, a lawsuit was filed against KMA alleging nondeployment of
14 frontal airbags in a 2012 MY Kia Forte. In July of the same year, KMA received and responded
15 to an inquiry from NHTSA regarding the same incident.¹⁴

16 36. Nearly a year went by before HMA, on February 15, 2015, and KMA, on May 6,
17 2015, requested airbag nondeployment data for vehicles (a Hyundai Sonata and Kia Forte) that
18 experienced airbag nondeployments in accidents. This happened again in December 2015 with
19 four more Kia Fortes. ZF-TRW once again observed damage to the ASIC components consistent
20 with EOS.¹⁵

21 37. Between March and June 2015, KMA attempted to download data from an ACU
22

23 ¹⁰ TRW Automotive Inc. (ZF) Chronology, NHTSA (last updated June 13, 2018),

<https://static.nhtsa.gov/odi/rcf/2018/RMISC-18E043-5831.pdf> [hereinafter ZF Chronology].

24 ¹¹ 573 Defect Information Report for Recall 174 Attachment A, NHTSA (last updated Apr. 18, 2018)

<https://static.nhtsa.gov/odi/rcf/2018/RMISC-18V137-8310.pdf> [hereinafter Hyundai Chronology].

25 ¹² *Id.*

¹³ *Id.*

26 ¹⁴ Forte, Forte Koup, Optima, Optima Hybrid, Sedona ACU Chronology, NHTSA (last updated May 28, 2018),

<https://static.nhtsa.gov/odi/rcf/2018/RMISC-18V363-5570.pdf> [hereinafter Kia Chronology].

¹⁵ *Id.*

1 and was unable to communicate with the module. KMA requested ZF-TRW's help to obtain the
2 data, and was again unsuccessful. An engineering consultant concluded that the front impact
3 sensors ("FIS") were compromised before the airbag signal could be transmitted. KMA and ZF-
4 TRW were aware that damage to the FIS compromised airbag response. That summer, ZF-TRW
5 advised KMA that NHTSA was investigating a wide range of models with ZF-TRW ACUs due
6 to the possibility of airbag and seatbelt pretensioner nondeployment.¹⁶

7 38. An internal review by ZF-TRW and Kia from October 2015 to January 2016 led
8 to the conclusion that:

9 1) power terminal and front impact sensors (FIS) did not reveal any issues related to
10 airbag non-deployment; 2) inspection of wiring confirmed no issues with interior ACU
11 power terminal and ground terminal circuit; and 3) FISs disconnected during crash
12 event.¹⁷

13 39. On February 5, 2016, ZF-TRW met with NHTSA to discuss the EOS issues
14 observed on its ACUs and the consequential nondeployment of airbags and seatbelt
15 pretensioners.¹⁸ This same day, ZF-TRW advised KMA that it had provided information to
16 NHTSA regarding all manufacturers that used the affected ACU and ASIC parts. According to
17 NHTSA, that report from ZF-TRW includes unverified and incorrect information regarding Kia
18 vehicles.¹⁹

19 40. Shortly after, on February 25, 2016, ZF-TRW met with Hyundai and Kia in South
20 Korea to discuss the continued investigation of EOS-related nondeployments and its interactions
21 with NHTSA. At the meeting, KMA inquired of ZF-TRW whether an EOS-related defect caused
22 any Kia airbag nondeployments. ZF-TRW advised that it had not²⁰, even though such events had
23 been documented by ZF-TRW since March 2012—ZF-TRW's analysis of the March 2012 crash
24

25 ¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ ZF Chronology, *supra* note 10.

¹⁹ Kia Chronology, *supra* note 13.

²⁰ *Id.*

1 event in Egypt noted that “damage on the ASIC [] is consistent with EOS.”²¹

2 41. On April 25 and 26, 2016, HMA requested that ZF-TRW analyze data from two
3 more nondeployment events. ZF-TRW again attributed the damage on the ASIC to EOS.²²

4 42. Between May 24-26, 2016, executives of ZF-TRW, Hyundai, and Kia held
5 another in-person meeting to discuss the ongoing EOS analysis and investigation. These groups
6 met again on July 29, 2016 after ZF-TRW had another in-person meeting with NHTSA on July
7 19, 2016.²³ At that point, years after Defendants knew or should have known about the defect, or
8 were reckless in not knowing about it, no information had been provided to consumers.

9 43. The Defendants’ slow response to a dangerous and potentially deadly problem for
10 which they were responsible, regarding a technological issue about which they knew or should
11 have known as far back as 2011, was insufficient. On September 23, 2016, NHTSA requested
12 data for itself and consumers from ZF-TRW pertaining to its supply of ACUs with certain
13 ASICs.²⁴

14 44. Between July and November 2016, HMA received two additional reports of
15 collisions involving Hyundai Sonata vehicles in which ACUs and seatbelt pretensioners had not
16 deployed. HMA reassessed the prior analyses of similar incidents and ZF-TRW once again
17 confirmed the ACUs had been damaged internally by EOS. Despite this, and instead of
18 acknowledging the problem, Hyundai concluded “that it was possible that [airbag] deployment
19 was not warranted.”²⁵

20 45. From November 3, 2016 to January 31, 2018, HMA and KMA requested data
21 from ZF-TRW related to eight different events involving nondeployment of ACUs attributed to
22 EOS in six Hyundai Sonatas and two Kia Fortes. But it was not until December 2017 that HMA
23 engaged a third-party engineering firm to study and analyze the circumstances and facts

24 _____
25 ²¹ ZF Chronology, *supra* note 10.

26 ²² *Id.*

²³ *Id.*

²⁴ *Id.*

²⁵ Hyundai Chronology, *supra* note 11.

1 surrounding ACU failures.²⁶

2 46. On information and belief, ZF-TRW was informed by HMA and KMA that
3 NHTSA was requesting information about incidents involving defective ACUs and
4 consequential airbag nondeployment in January/February 2018. During a meeting on February
5 21, 2018, Defendants noted that the circumstances associated with the defect mechanism bore
6 many similarities to recall campaign 16V-668, where EOS was the root cause of airbag
7 nondeployment during collisions in Fiat Chrysler vehicles that used ZF-TRW ACU parts.

8 47. On February 22, 2018, “ZF-TRW asserted that EOS on the ACU could be caused
9 by negative transients originating from certain vehicle components such as the wire harness
10 connecting the ACU to the frontal crash sensors, and could be prevented by circuit protection
11 installed in ACU’s used by later model year (2013+) Hyundai Sonatas.”²⁷ Defendants had been
12 certain of the source of the defect and aware of a fix, yet deceived consumers about the extent of
13 the issue in Class Vehicles with the same ACU systems, limiting its investigation and recall to
14 Sonatas.

15 48. After more than six years of investigations into the defective airbag sensor
16 technology and only at the prompting of a deeper NHTSA investigation, HMA voluntarily
17 recalled more than 154,000 2011 MY Hyundai Sonatas on February 27, 2018.²⁸ The recall
18 Hyundai issued detailed:

19 The subject vehicles are equipped with an Airbag Control Unit (“ACU”) which detects a
20 crash signal and commands deployment of the airbags and seatbelt pretensioner. In some
21 airbag non-deployment allegations, electrical overstress (“EOS”) was observed on an
Application Specific Integrated Circuit (“ASIC”) inside the ACU.²⁹

22 49. Between March 19, 2018 and March 28, 2018, HMA conducted seven crash tests
23 developed by its internal Research and Development team and a third-party engineering firm.
24

25 ²⁶ *Id.*

26 ²⁷ *Id.*

²⁸ ZF Chronology, *supra* note 10.

²⁹ Part 573 Safety Recall Report for NHTSA Recall No. 18V-137, *supra* note 5.

1 EOS damage to the ACU was replicated in three of the seven test crashes, with one of the
2 confirmed EOS events resulting in ACU nondeployment.³⁰

3 50. This level of replicability, along with what ZF-TRW, HMA and KMA did (and
4 failed to do) next, indicates several serious deficiencies in ZF-TRW, HMA and KMA's response
5 to this defect. One is that a major safety defect that manifests in three out of seven tested vehicles
6 should have been detected in durability and safety testing long before the Class Vehicles entered
7 the market. A second is that once HMA and KMA became aware of the potential problem,
8 testing would almost certainly have revealed the defect—but they waited at least six years before
9 testing for the presence of this potentially deadly defect. A third is that any further delay
10 represents an unconscionable failure to act to remedy the defect. More than a year after these
11 conclusive tests, though, most Class Vehicles have not been recalled. At each step, Defendants
12 delayed their response, concealed the defect, thereby continuing to endanger consumers.

13 51. On April 11-12, 2018, three ACUs from the HMA crash test vehicles were
14 analyzed by Hyundai, NHTSA and ZF-TRW representatives. In all three ACUs, an internal
15 electrical short occurred on the 5-volt VCC line of the DS84 ASIC. One of the three ACUs
16 contained visible evidence of EOS.³¹

17 52. Years of ACU defects caused by EOS confirmed by ZF-TRW, along with
18 multiple deaths and injuries, had not been enough to elicit prompt action on the part of
19 Defendants. Finally, on April 18, 2018, after multiple crash tests and ongoing inquiries by
20 NHTSA, Hyundai expanded the recall to include an additional 425,305 MY 2012-2013 Sonata
21 and 2011-2012 MY Sonata Hybrid vehicles for the same defects.

22 53. If anything, this should have been the canary in the coal mine for HMA and KMA
23 to aggressively evaluate the safety hazards of their other vehicles also equipped with the same
24 ZF-TRW ACUs.

25
26 ³⁰ Hyundai Chronology, *supra* note 11.

³¹ *Id.*

1 54. Only after several more NHTSA-prompted data requests did Defendants begin to
2 take action. Following NHTSA's announcement of its Preliminary Evaluation of Certain
3 Hyundai and Kia vehicles instigated by reports of ACU and seatbelt pretension failure on March
4 16, 2018 (PE18-003); one NHTSA and three HMA requests for ZF-TRW data regarding three
5 crash tests and one crash event in March and April; an Information Request issued to ZF-TRW
6 by NHTSA seeking more information about its ACUs; and a NHTSA and KMA-prompted
7 analysis request of ACUs from Kia Forte vehicles collected in NHTSA's investigation; KMA
8 *finally* issued its first recall for 507,000 vehicles related to the same ACU defect on June 1,
9 2018.³² This recall was for 2010-2013 MY Kia Fortes, 2011-2012 MY Kia Optima Hybrids,
10 2010-2013 MY Kia Forte Koup, 2011-2013 MY Kia Optimas, and 2011-2012 MY Kia
11 Sedonas.

12 55. Initially, KMA only agreed to recall the 2010-2013 Kia Forte and Forte Koup
13 vehicles based on NHTSA's conclusion that the ACUs in these vehicles did not contain adequate
14 circuit protection to prevent EOS from occurring during a crash event. On May 18, 2018, based
15 on its engineering analysis of other Kia models equipped with the same ZF-TRW ACUs as the
16 Forte and Forte Koup, KMA determined that NHTSA's conclusion also required the recall of
17 2011-2013 Optima, 2011-2012 Optima Hybrid and 2011-2012 Sedona, regardless of recorded
18 ACU failures in those vehicles.³³ By this same logic, the presence of the same defective ZF-
19 TRW ACU parts in other vehicle makes and models also warrants proper safety precautions to
20 be taken by those responsible for creating the safety hazards.

21 56. But even after these initial recalls, Defendants failed to tell consumers that certain
22 new vehicles could be equipped with defective airbags and seatbelt pretensioners.

23 57. NHTSA's statement on April 19, 2019 announced the expansion of its
24 investigation of this ACU defect—the EOS condition in the ASIC—to more than 12.3 million
25

26 ³² ZF Chronology, *supra* note 10.

³³ Hyundai Chronology, *supra* note 11.

1 vehicles, including additional HMA and KMA models.³⁴

2 58. Defendants were aware of the defects in their products, yet delayed reporting until
3 the last possible moment. Even then, the vehicle recalls did not go far enough to adequately
4 cover the affective vehicles and prevent more deaths and injuries from ACU defects from
5 occurring. Defendants deliberately concealed ACU defects from the public as long as they could,
6 worked together to conceal the true causes, and misrepresented the severity and breadth of the
7 defect, abdicating their responsibility to prevent the possibility of death, injury and/or hazard that
8 faced consumers.

9 **C. Defendants Concealed the Defect**

10 59. Defendants misled consumers about the safety of their Hyundai- and Kia-branded
11 vehicles. A reasonable consumer purchases a car assuming that in the unfortunate event of a
12 collision, airbags and seatbelt pretensioners will deploy appropriately and as advertised, and seat
13 belt mechanisms will function.

14 60. Defendants advertised to consumers that the vehicles they were selling were safe
15 and reliable despite the fact that for many years, Defendants knew that vehicles equipped with
16 ZF-TRW ACU systems could potentially experience EOS upon impact.

17 61. For example, Kia advertises that the 2019 Optima is equipped with standard
18 safety features including Dual Front Seat Mounted Side Airbags and Front Seat-Belt
19 Pretensioners.³⁵



21 62. For the 2018 Hyundai Sonata, Hyundai claims in a promotional video about
22 safety features that “because the best way to handle an accident is to avoid being involved in one
23 in the first place, the new Sonata offers some of the most innovative preventative safety
24

25 ³⁴ ODI Resume, *supra* note 2.

26 ³⁵ 2019 Kia Optima, Kia Motors America, Inc., <https://www.kia.com/us/en/vehicle/optima/2019/features> (last visited May 10, 2019).

1 technology around.”³⁶ Nearly 1.25 million people die in road crashes each year—on average,
 2 3,287 deaths per day.³⁷ Car manufacturers are responsible for protecting consumers from
 3 preventable injuries. But this is not the first time that these defendants have failed to uphold
 4 basic safety standards. HMA agreed to pay a \$17.35 million fine to settle a NHTSA investigation
 5 into recall delays for 43,000 Genesis cars with brake defects in 2014. The same year, NHTSA
 6 said that Hyundai “must change the way they deal with safety-related defects.” Hyundai
 7 promised improvements, but five years later, the safety of HMA vehicles is still in question.³⁸

8 63. Investigations into the EOS defect in the ZF-TRW ACU caused by EOS began in
 9 2011. Defendants misrepresented the results of these investigations, often attributing the causes
 10 of ACU failures during crash events to “commanded nondeployment” or reporting that an
 11 event’s results were still under investigation. But as long ago as August 2011, ZF-TRW
 12 concluded that damage on the ASIC was consistent with an EOS condition resulting from a
 13 crash-related signal. Ever since, Defendants misled and continue to mislead the public to believe
 14 that the cars equipped with the same ACUs, built with the same defective ASICs, will protect
 15 drivers and passengers in the unfortunate event of a collision.

16 64. Defendants advertised and promised functional safety features in their vehicles
 17 and airbags, and consumers paid the price. Had the truth about the Class Vehicles been known by
 18 consumers, they would have reasonably made different purchasing choices.

19 V. CLASS ACTION ALLEGATIONS

20 A. Class Definitions

21 65. Pursuant to Rules 23(a), (b)(2), and (b)(3) of the Federal Rules of Civil Procedure,
 22 Plaintiffs bring this action on behalf of themselves, the Nationwide Class, and State Classes,

23 ³⁶ *2019 Hyundai Sonata, Video Tour*, Hyundai Motor America, <https://www.hyundaiusa.com/sonata/index.aspx> (last
 24 visited May 10, 2019).

³⁷ *Road Safety Facts*, Ass’n for Safe Int’l Road Travel, <https://www.asirt.org/safe-travel/road-safety-facts/> (last
 25 visited May 10, 2019).

³⁸ David Shepardson, *U.S. probes air bag failures in deadly Hyundai, Kia car crashes*, Reuters (Mar. 17, 2018),
 26 [https://www.reuters.com/article/us-autos-recall/u-s-probes-air-bag-failures-in-deadly-hyundai-kia-car-crashes-
 idUSKCNIGT0HD](https://www.reuters.com/article/us-autos-recall/u-s-probes-air-bag-failures-in-deadly-hyundai-kia-car-crashes-idUSKCNIGT0HD) (last visited May 3, 2019).

1 defined as:

2 **Nationwide Class:**

3 All persons or entities in the United States (including its territories and the
4 District of Columbia) who purchased or leased a Class Vehicle.

5 66. In addition to the Nationwide class, and pursuant to Federal Rules of Civil
6 Procedure Rule 23(c)(5), Plaintiffs seek to represent the following State Classes as well as any
7 subclasses or issue classes as Plaintiffs may propose and/or the Court may designate at the time
8 of class certification:

9 **Arizona State Class:**

10 All persons or entities in the state of California who purchased or leased a Class
11 Vehicle.

12 **California State Class:**

13 All persons or entities in the state of California who purchased or leased a Class
14 Vehicle.

15 **Washington State Class:**

16 All persons or entities in the state of Washington who purchased or leased a Class
17 Vehicle.

18 67. Excluded from the Classes are individuals who have personal injury claims
19 resulting from the conduct and defects alleged herein; Defendants and their subsidiaries,
20 affiliates, and officers; all persons who timely elect to exclude themselves from the Classes; and
21 the Judge to whom this case is assigned and his or her immediate family. Plaintiffs reserve the
22 right to revise the Class definitions based on information learned through discovery.

23 68. Certification of Plaintiffs' claims for classwide treatment is appropriate because
24 Plaintiffs can prove the elements of their claims regarding liability and entitlement to damages
25 on a classwide basis using the same evidence as would be used to prove those elements in
26 individual actions alleging the same claim. This action has been brought and may be properly
maintained on behalf of the Nationwide Class and/or State Class proposed herein under Federal

1 Rule of Civil Procedure 23.

2 69. Plaintiffs reserve the right to modify the definition of the Nationwide and/or any
3 State Class prior to class certification.

4 **B. Class Certification Requirements**

5 70. **Numerosity: Rule 23(a)(1):** The members of the Class are so numerous and
6 geographically dispersed that individual joinder of all Class members is impracticable. Plaintiffs
7 are informed and believe, based on available information on the volume of sales and recalls of
8 Class Vehicles, that there are no fewer than 500,000 members of the Class. The precise number
9 of Class members may be ascertained from Defendants' records and vehicle registration records.
10 Class members may be notified of the pendency of this action by recognized, Court-approved
11 notice dissemination methods, which may include U.S. mail, electronic mail, Internet postings,
12 social media, and published notice.

13 71. **Commonality and Predominance: Rules 23(a)(2) and 23(b)(3):** This action
14 involves significant common questions of law and fact, which predominate over any questions
15 affecting individual Class members, including, but not limited to:

16 A. Whether Defendants engaged in the conduct alleged herein;

17 B. Whether Defendants HMA and KMA designed, advertised, marketed,
18 distributed, leased, sold, or otherwise placed Class Vehicles into the stream of commerce
19 in the United States;

20 C. Whether Defendant ZF-TRW designed, manufactured, and distributed
21 defective ACU parts for installation in Class Vehicles;

22 D. Whether the Class Vehicles have the defect alleged herein, and whether
23 that defect constitutes a safety defect;

24 E. Whether Defendants knew or should have known that the Class Vehicles
25 contained defects as alleged herein;

26 F. Whether a reasonable consumer would consider the defects alleged herein

1 and their consequences material to the decision to purchase or lease a Class Vehicle;

2 G. When Defendants discovered, knew, or should have known of the
3 existence of the defects alleged herein;

4 H. Whether Plaintiffs and the other Class members overpaid for their Class
5 Vehicles as a result of the defects and Defendants' concealment thereof;

6 I. Whether Defendants had a duty to disclose the true nature of the Class
7 Vehicles to Plaintiffs and Class members;

8 J. Whether Plaintiffs suffered out-of-pocket losses as a result of the defects
9 alleged herein and whether they will suffer out-of-pocket losses as a result of any
10 proposed recall;

11 K. Whether Defendants omitted, concealed, and/or failed to disclose material
12 facts about the Class Vehicles;

13 L. Whether Defendants' concealment of the true nature of the Class Vehicles
14 would have induced a reasonable consumer to act to his or her detriment by purchasing
15 and/or leasing the Class Vehicles;

16 M. Whether Defendants' conduct as alleged herein was likely to mislead a
17 reasonable consumer;

18 N. Whether the Class Vehicles are unfit for the ordinary purposes for which
19 they were sold;

20 O. Whether Defendants' unlawful, unfair, and/or deceptive practices harmed
21 Plaintiffs and Class members;

22 P. Whether Defendants' conduct tolls any or all applicable limitations period
23 by acts of fraudulent concealment, application of the discovery rule, or estoppel;

24 Q. Whether Plaintiffs and the other Class members are entitled to equitable
25 relief, including, but not limited to, restitution or injunctive relief;

26 R. Whether Plaintiffs and the other Class members are entitled to damages

1 and other monetary relief and, if so, in what amount; and

2 S. Whether Defendants continue to unlawfully conceal and misrepresent
3 whether additional vehicles, besides those reported in the press to date, are in fact Class
4 Vehicles.

5 72. **Typicality: Rule 23(a)(3):** Plaintiffs' claims are typical of the claims of the
6 Class members whom they seek to represent under Federal Rule of Civil Procedure 23(a)(3),
7 because Plaintiffs and each Class member purchased a Class Vehicle and were similarly injured
8 through Defendants' wrongful conduct as described above. Plaintiffs and the other Class
9 members suffered damages as a direct, proximate result of the same wrongful practices by
10 Defendants. Plaintiffs' claims arise from the same practices and courses of conduct that give rise
11 to the claims of the other Class members. Plaintiffs' claims are based upon the same legal
12 theories as the claims of the other Class members.

13 73. **Adequacy: Rule 23(a)(4).** Plaintiffs will fairly and adequately represent and
14 protect the interests of the Class members as required by Federal Rule of Civil Procedure
15 23(a)(4). Plaintiffs have retained counsel competent and experienced in complex class action
16 litigation, including vehicle defect litigation and other consumer protection litigation. Plaintiffs
17 intend to prosecute this action vigorously. Neither Plaintiffs nor their counsel have interests that
18 conflict with the interests of the other Class members. Therefore, the interests of the Class
19 members will be fairly and adequately protected.

20 74. **Declaratory and Injunctive Relief: Rule 23(b)(2).** Defendants have acted or
21 refused to act on grounds generally applicable to Plaintiffs and the other members of the Class,
22 thereby making appropriate final injunctive relief and declaratory relief, as described below, with
23 respect to the Class as a whole.

24 75. **Superiority: Rule 23(b)(3).** A class action is superior to any other available
25 means for the fair and efficient adjudication of this controversy, and no unusual difficulties are
26 likely to be encountered in the management of this class action. The damages or other financial

1 detriment suffered by Plaintiffs and the other Class members are relatively small compared to the
2 burden and expense that would be required to individually litigate their claims against
3 Defendants, so it would be impracticable for members of the Class to individually seek redress
4 for Defendants' wrongful conduct. Even if Class members could afford individual litigation, the
5 court system could not. Individualized litigation creates a potential for inconsistent or
6 contradictory judgments, and increases the delay and expense to all parties and the court system.
7 By contrast, the class action device presents far fewer management difficulties and provides the
8 benefits of single adjudication, economies of scale, and comprehensive supervision by a single
9 court.

10 VI. EQUITABLE TOLLING

11 A. Discovery Rule

12 76. Plaintiffs and Class members did not discover, and could not have discovered
13 through the exercise of reasonable diligence, Defendants' deception concerning the defects
14 alleged herein.

15 77. Plaintiffs and Class members could not have discovered through the exercise of
16 reasonable diligence that Defendants were concealing the defects alleged herein. Unless a Class
17 member experienced a failure of the airbag system to deploy in a crash, Plaintiffs and Class
18 members would have no reason to discover the defects alleged herein, and even if they did
19 experience such a failure, would have no reason to discover the existence of a widespread defect
20 and effort to conceal it.

21 78. Plaintiffs and Class members therefore did not discover, and did not know of,
22 facts that would have caused a reasonable person to suspect that Defendants had concealed
23 information about defects in the Class Vehicles until shortly before this action was filed.

24 79. For these reasons, all applicable statutes of limitation have been tolled by
25 operation of the discovery rule.

1 **B. Fraudulent Concealment**

2 80. All applicable statutes of limitation have also been tolled by Defendants'
3 knowing, active and ongoing fraudulent concealment of the facts alleged herein. Defendants
4 concealed the defects, minimized the cause, effects, and dangers of the defects, and failed to
5 disclose or remedy the defects.

6 81. Defendants have known of the defect since at least 2011, and subsequently
7 learned more as reports of accidents in which airbags failed to deploy mounted and Defendants
8 investigated. Defendants did not disclose the defect even to safety regulators until 2018, and
9 even then concealed the true scope of the problem from regulators and consumers alike.

10 82. As of May 10, 2019, NHTSA is investigating the problem, but neither ZF-TRW
11 nor HMA or KMA have initiated a safety recall of the defective parts and vehicles.

12 83. Thus, all applicable statutes of limitation have been tolled as result of Defendants'
13 knowing, ongoing, and active concealment of the defect alleged herein.

14 **C. Estoppel**

15 84. Defendants were and are under a continuous duty to disclose to Plaintiffs and
16 Class members the true nature of the Class Vehicles. Instead, they actively concealed the true
17 and potentially dangerous character of the Class Vehicles. Plaintiffs and Class members
18 reasonably relied on Defendants' misrepresentations and omissions of these facts, and
19 Defendants are therefore estopped from relying on any statutes of limitation in defense of this
20 action.

21 **VII. CLAIMS FOR RELIEF**

22 **A. Claims Asserted on Behalf of the Nationwide Class**

23 **COUNT I**
24 **BREACH OF IMPLIED AND EXPRESS WARRANTY**
Magnuson-Moss Warranty Act (15 U.S.C. §§ 2301, et seq.)

25 85. Plaintiffs incorporate by reference all preceding allegations as though fully set
26 forth herein.

1 86. Plaintiffs bring this Action on behalf of themselves and the Nationwide Class
2 against HMA and KMA.

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

5 88. Plaintiff and members of the Class are “consumers” within the meaning of
6 15 U.S.C. § 2301(3).

7 89. HMA and KMA are each a “supplier” and “warrantor” within the meaning of 15
8 U.S.C. § 2301(4) and (5), respectively.

9 90. The Class Vehicles are “consumer products” within the meaning of 15 U.S.C.
10 § 2301(1).

11 91. 15 U.S.C. § 2310(d)(1) provides a cause of action for any consumer who is
12 damaged by the failure of a warrantor to comply with a written or implied warranty.

13 92. The amount in controversy of Plaintiff’s individual claims meets or exceeds
14 \$25.00 in value. In addition, the amount in controversy meets or exceeds \$50,000 in value
15 (exclusive of interest and costs) on the basis of all claims to be determined in this lawsuit.

16 93. HMA and KMA provided Plaintiff and each member of the Class with “written
17 warranties” and “implied warranties,” as identified above, which are covered under 15 U.S.C.
18 § 2301(6) and (7), respectively.

19 94. The terms of these warranties became part of the basis of the bargain when
20 Plaintiff and each member of the Class purchased their Class Vehicles.

21 95. HMA and KMA have breached these warranties. The Class Vehicles are
22 defective, as described above, which resulted in the problems and failures also described above.

23 96. By HMA’s and KMA’s conduct as described herein, including knowledge of the
24 defects inherent in the vehicles and HMA’s and KMA’s action, and inaction, in the face of the
25 knowledge, HMA and KMA have failed to comply with their obligations under their written and
26 implied promises, warranties, and representations.

1 97. Affording HMA and KMA a reasonable opportunity to cure its breach of written
2 warranties would be unnecessary and futile. At the time of sale or lease of each Class Vehicle,
3 HMA and KMA knew, or should have known, of their misrepresentations and/or material
4 omissions concerning the Class Vehicles' inability to perform as warranted, but nonetheless
5 failed to rectify the situation and/or disclose the design defect. Under the circumstances, the
6 remedies available under any informal settlement procedure would be inadequate and any
7 requirement that Plaintiff or members of the Class resort to an informal dispute resolution
8 procedure and/or afford HMA and KMA a reasonable opportunity to cure its breach of
9 warranties is excused and thereby deemed satisfied. Pursuant to 15 U.S.C. § 2310(e), Plaintiffs
10 are entitled to bring this class action, and are not required to give HMA and KMA notice and an
11 opportunity to cure, until such time as the Court determines the representative capacity of
12 Plaintiffs pursuant to Rule 23 of the Federal Rules of Civil Procedure.

13 98. In their capacity as warrantors, and by the conduct described herein, any attempts
14 by HMA and KMA to limit the implied warranties in a manner that would exclude coverage of
15 the defects is unconscionable and any such effort to disclaim, or otherwise limit, liability for the
16 defective software and supporting systems is null and void.

17 99. All jurisdictional prerequisites have been satisfied.

18 100. Privity of contract is not required here because Plaintiffs and each member of the
19 Class are intended beneficiaries of HMA's and KMA's implied and express warranties. The
20 warranty agreements were designed for and intended to benefit consumers only. Finally, privity
21 is also not required because the Class Vehicles are dangerous instrumentalities due to the defect
22 alleged herein.

23 101. As a direct and proximate result of HMA's and KMA's breach of the written and
24 implied warranties, Plaintiff and each member of the Class have suffered damages.

25 102. Plaintiffs, individually and on behalf of the Class, seek all damages permitted by
26 law, including compensation for the monetary difference between the Class Vehicles as warranted

1 and as sold; compensation for the reduction in resale value; the cost of purchasing, leasing, or
2 renting replacement vehicles, along with all other incidental and consequential damages, statutory
3 attorney fees, and all other relief allowed by law.

4 **COUNT II**
5 **FRAUD BY CONCEALMENT**

6 103. Plaintiffs incorporate by reference all preceding allegations as though fully set
7 forth herein.

8 104. Plaintiffs bring this cause of action on behalf of themselves and the Nationwide
9 Class or, in the alternative, on behalf of the State Classes, against all Defendants.

10 105. Defendants failed to disclose the defect in each of the Class vehicles and
11 represented that the vehicles were equipped with airbags. Through advertisements, and other
12 avenues, Defendants consistently represented that their vehicles were equipped with airbags.
13 Any reasonable consumer would believe these representations to mean that the airbags were
14 functional, not defective.

15 106. Defendants concealed and suppressed the fact that the Class Vehicles had a defect
16 in the ACUs since at least August of 2011, when the airbag non-deployment crashes were first
17 attributed to damage of the ASIC by EOS. Defendants failed to disclose and actively concealed
18 the dangers and risks posed by the Class Vehicles and/or the defective ACUs installed in them.
19 This was a material fact about which the Defendants had knowledge and that they concealed
20 from Plaintiffs and Class members to mislead them.

21 107. Plaintiffs and Class Members did not know this fact and could not have
22 discovered it through reasonably diligent investigation.

23 108. Defendants had a duty to disclose that the Defect existed in the AOC during an
24 EOS or car collision because 1) the Defendants had exclusive knowledge of the material, the
25 suppressed facts; 2) the Defendants took affirmative actions to conceal the material facts,
26 including by not timely notifying NHTSA and consumers and by making partial representations

1 about the existence of airbags that were misleading without the disclosure of the fact that the
2 Class Vehicles contained defects which made the airbags essentially ineffectual during a
3 collision—the specific instance when effective airbags are needed.

4 109. When each named Plaintiff decided to buy a Class Vehicle they received no
5 information from ZF-TRW, KMA or HMA regarding the defective and potentially dangerous
6 Airbag Control Unit. The failure to disclose the defect was consistent and pervasive. In
7 advertising and materials provided with each Class Vehicle the ACU defect was uniformly
8 concealed from Plaintiffs and consumers.

9 110. Defendants intentionally concealed, suppressed and failed to disclose the ACU
10 defect in the Class Vehicles and the nature of risk that the airbags would not deploy in an
11 accident. The full and complete nature of the defect was concealed from Plaintiffs, Class
12 members, and the general public. Defendants knew or should have known the true facts. And yet,
13 at no time did any of the Defendants reveal the truth to Plaintiffs or the Class. Instead, each
14 Defendant concealed the truth, intending that Plaintiffs and the Class would rely on their
15 concealment, which Plaintiffs and the Class did.

16 111. A reasonable consumer would not have expected that when a vehicle is advertised
17 as equipped with airbags that the airbags would not deploy in real-world accidents. Plaintiffs and
18 members of the Class did not know of the facts which were concealed from them by Defendants.
19 Moreover, Plaintiffs and the members of the Class did not, and could not, unravel the deception
20 on their own, because the only way to find out about the defect would be to experience a car
21 accident in which the airbags did not deploy.

22 112. Defendants had a duty to disclose the true nature of the defect in light of their
23 representation that the vehicles were equipped with airbags because a reasonable consumer
24 would believe that if a vehicle has airbags, the airbags would function when needed. Having
25 volunteered information about the airbags, Defendants had the duty to disclose the whole truth.

26 113. Although HMA acknowledged in 2018 to safety regulators that some of the ACUs

1 were defective, for years, the Defendants did not fully investigate or disclose the seriousness of
2 the issue and in fact concealed and downplayed the widespread prevalence of the problem. ZF-
3 TRW, by virtue of its direct participation in communications with NHTSA about the defect, was
4 complicit in concealing the defect for years.

5 114. On information and belief, Defendants have still not made full and adequate
6 disclosures and continue to defraud Plaintiffs and the members of the Class by concealing
7 material information regarding the defects in the ACUs and the likelihood that airbags will fail to
8 deploy when needed.

9 115. But for Defendants' fraud, Plaintiffs and the members of the Class would not have
10 purchased the Class Vehicles, or would have paid less for them. Plaintiffs and members of the
11 Class have sustained damage because they purchased vehicles that were not as represented and
12 because they own Class Vehicles that should never have been placed in the stream of commerce
13 because of their inherent safety risks, because the vehicles are diminished in value as a result of
14 Defendants' fraud, and because the vehicles were not worth the full price paid at the time of
15 purchase.. Accordingly, Defendants are liable to Plaintiffs and the members of the Class for
16 damages in an amount to be proven at trial.

17 116. Defendants' acts were done wantonly, maliciously, oppressively, deliberately
18 with the intent to defraud and in reckless disregard of the rights of Plaintiffs and the Class and
19 the safety of consumers and the public at large; and to enrich themselves through additional
20 vehicle sales. Their misconduct warrants an assessment of punitive damages sufficient to deter
21 such conduct in the future, which amount shall be determined according to proof at trial.

22 **COUNT III**
23 **VIOLATIONS OF THE CALIFORNIA UNFAIR COMPETITION LAW**
24 **(Cal. Bus. & Prof. Code § 17200, et seq.)**

25 117. Plaintiffs incorporate by reference all preceding allegations as though fully set
26 forth herein.

118. Plaintiffs bring this cause of action on behalf of themselves and the Nationwide

1 Class, or in the alternative, Plaintiff Evans brings this behalf of the California Class, against all
2 Defendants.

3 119. California law applies to the Nationwide Class because the unlawful, unfair, or
4 fraudulent acts and practices complained of emanated primarily from California, where HMA
5 and KMA have their principal places of business.

6 120. California's Unfair Competition Law ("UCL"), Business and Professions Code §
7 17200, prohibits any "unlawful, unfair, or fraudulent business act or practices."

8 121. Defendants are "persons" within the meaning of Cal. Bus. & Prof. Code §17201.

9 122. Defendants (1) failed to disclose and concealed the existence and nature of the
10 ACU defect and the dangers and risks posed by the Class Vehicles and/or the defective ACUs
11 installed in them; (2) touted the safety of the vehicles through its marketing, advertising and
12 broadly disseminated representations that the Class vehicles were safe and equipped with
13 standard safety features including airbags, and (3) failed to promptly notify vehicle owners,
14 purchasers and dealers of the defective Class Vehicles and/or defective ACUs. In so doing, the
15 Defendants have engaged in at least the following unlawful, unfraudulent, and unfair business
16 acts and practices in violation of the UCL:

17 A. by knowingly and intentionally concealing from Plaintiffs and other Class
18 members that the Class Vehicles suffer from a design defect while obtaining money from
19 Plaintiffs and Class members;

20 B. by marketing Class Vehicle as being equipped with standard safety
21 features including airbags while failing to discuss that the ACUs have a defect;

22 C. by violating federal law, the Federal Motor Vehicle Safety Standard
23 ("FMVSS") 573, which governs a motor vehicle manufacturer's responsibility to notify
24 NHTSA of a motor vehicle defect, by failing to promptly notify vehicle owners,
25 purchases, dealers and NHTSA of the defective Class Vehicles and/or the Defective
26 ACUs installed in them and failing to remedy the defect. See 49 C.F.R. § 573.6.

1 123. Defendants' active concealment of the dangers and risks posed by the Class
2 Vehicles and/or the Defective ACUs were material to Plaintiffs and Class members, and
3 Defendants misrepresented, concealed, and failed to disclose and remedy the truth with the
4 intention that consumers would rely on their misrepresentation, concealments and omissions.
5 These acts were likely to mislead the public as to their defective nature, and did in fact deceive
6 Plaintiffs, about material information. Had they known the truth, Plaintiffs and Class members
7 who purchased or leased the Class vehicles would not have purchased or leased them, or would
8 have paid significantly less for them.

9 124. Defendants have engaged in unlawful, fraudulent, and unfair business acts and
10 practices in violation of the UCL by knowingly and intentionally concealing the ACU defect in
11 the Class Vehicles from Plaintiffs and Class members, as well as the risks of serious harm and
12 monetary damage stemming therefrom. This information was material to Plaintiffs and Class
13 members, just as it would be to any reasonable consumer.

14 125. Defendants were in a superior position to know the true nature of the Class
15 Vehicles and Plaintiff and Class members could not discover the true facts about the defects
16 through ordinary and reasonable diligence. Defendants had a duty to disclose the ACU defect
17 because it constitutes a safety issue for drivers and passengers of Class Vehicles.

18 126. Defendants' failure to disclose these facts violated the UCL, breached the duty to
19 disclose, and injured Plaintiffs and Class Members. Plaintiffs and Class members could not have
20 reasonably avoided these injuries.

21 127. Plaintiffs and Class members suffered ascertainable loss and actual damages as a
22 direct and proximate result of Defendants' misrepresentations, concealment and failure to
23 disclose material information. Pursuant to Cal. Bus. & Prof. Code § 17200, Plaintiffs and the
24 Class seek an order enjoining Defendants' unfair and/or deceptive acts or practices, and any such
25 orders or judgments as may be necessary to restore Plaintiffs and Class members any money
26 acquired by the unfair competition, including restitution and/or restitutionary disgorgement, as

1 provided in Cal. Bus. & Prof. Code §§ 17203 and 3345, and any other just and proper relief
2 available under the California UCL.

3 128. Plaintiffs request that this Court enter such orders or judgements as may be
4 necessary to enjoin the Defendants from continuing their unfair, unlawful, and/or deceptive
5 practices, as provided in Cal. Bus. & Prof. Code § 17203; and for such other relief set forth
6 below.

7 **COUNT IV**
8 **VIOLATIONS OF THE CONSUMER LEGAL REMEDIES ACT**
9 **(Cal. Civ. Code § 1750 *et seq.*)**

10 129. Plaintiffs incorporate by reference all preceding allegations as though fully set
11 forth herein.

12 130. Plaintiffs bring this cause of action on behalf of themselves and the Nationwide
13 Class, or in the alternative, Plaintiff Evans brings this cause of action on behalf of the California
14 Class, against all Defendants.

15 131. California law applies to the Nationwide Class because the unlawful, unfair, or
16 fraudulent acts and practices complained of emanated primarily from California, where HMA
17 and KMA have their principal places of business.

18 132. Defendants are “persons” within the meaning of Cal. Civ. Code § 1761(c).
19 Plaintiffs and Class members are “consumers” within the meaning of Cal. Civ. Code § 1761(d).

20 133. The California Legal Remedies Act (“CLRA”) prohibits “unfair or deceptive acts
21 or practices undertaken by any person in a transaction intended to result or which results in the
22 sale or lease of goods or services to any consumer[.]” Cal. Civ. Code § 1770(a).

23 134. As described above and below, Defendants engaged in unfair or deceptive acts or
24 practices that violated the CLRA by, among other things, representing that the Class Vehicles
25 have characteristics, uses, benefits, and qualities which they do not have; representing that the
26 Class Vehicles are of a particular standard, quality, and grade when they are not; advertising
Class Vehicles with the intent not to sell or lease them as advertised; and representing that the

1 subject of a transaction involving Class Vehicles has been supplied in accordance with a
2 previous representation when it has not.

3 135. In the course of their business Defendants failed to disclose and actively
4 concealed the dangers and risks posed by the Class Vehicles and/or the defective ACUs installed
5 in them as described herein and otherwise engaged in activities with a tendency or capacity to
6 deceive.

7 136. Defendants also engaged in unlawful trade practices by representing that the Class
8 Vehicles and/or the defective ACUs installed in them have characteristics, uses, benefits, and
9 qualities which they do not have; representing that they are of a particular standard and quality
10 when they are not; advertising them with the intent not to sell or lease them as advertised; and
11 omitting material facts in describing them. Defendants are directly liable for engaging in unfair
12 and deceptive acts or practices in the conduct of trade or commerce in violation of the CLRA.

13 137. Defendants have known of the Defect in the ACUs since at least August of 2011,
14 when the airbag non-deployment crashes were first attributed to damage of the ASIC by EOS.
15 Defendants failed to disclose and actively concealed the dangers and risks posed by the Class
16 Vehicles and/or the defective ACUs installed in them.

17 138. By failing to disclose and actively concealing the defect in Class Vehicles and by
18 marketing them as being equipped with airbags, and by presenting themselves as reputable
19 manufacturers that value safety, Defendants engaged in unfair or deceptive practices in violation
20 of the CLRA. Defendants deliberately withheld the information about the propensity of the
21 defective ACUs to fail to deploy airbags and seat belt pretensioners in a crash event due to the
22 ASICs being damaged by EOS, instead of protecting vehicle occupants from bodily injury during
23 accidents, in order to ensure that consumers would purchase the Class Vehicles.

24 139. Plaintiff and Class members had no way of discerning that Defendants had
25 deceptively concealed this defect unless and until the defect manifests itself in a vehicle
26 collision. Plaintiffs and Class Members could not unravel this deception on their own.

1 140. Defendants intentionally and knowingly misrepresented material facts regarding
2 the Class Vehicles and or the defective ACUs with an intent to mislead the Plaintiffs and Class
3 members.

4 141. Defendants' actions constitute a violation of the CLRA. Defendants knew or
5 should have known that their conduct violated the CLRA.

6 142. Defendants failed to disclose material information about the safety and reliability
7 of the Class Vehicles.

8 143. To protect their profits and to avoid remediation costs, Defendants concealed the
9 dangers and risks posed by the Class Vehicles and allowed unsuspecting consumers to purchase
10 Class Vehicles and drive highly unsafe vehicles.

11 144. Defendants owed Plaintiffs a duty to disclose the defect and its resulting safety
12 risk because they:

13 A. Possessed exclusive knowledge that they were supplying parts for,
14 manufacturing, and distributing vehicles throughout the United States with dangerous
15 defects;

16 B. Intentionally concealed the dangerous defects from Plaintiffs and Class
17 members; and/or

18 C. Made incomplete representations about the safety and reliability of the
19 Class Vehicles generally, while purposefully withholding material facts from the
20 Plaintiffs and the Class that contradicted these representations.

21 145. Defendants' unfair and deceptive acts or practices were likely to and did deceive
22 reasonable consumers, including Plaintiffs, about the safety, and value of the Class Vehicles. A
23 reasonable consumer would assume that if a vehicle was advertised as having airbags that the
24 airbags would function properly when necessary. By contrast, Defendants advertised their
25 vehicles as being equipped with airbags without disclosing the dangerous defect that could
26 prevent the potentially lifesaving airbag from deploying in a vehicle collision.

1 146. Plaintiffs and Class members have suffered ascertainable loss and actual damages
2 as a direct and proximate result of Defendants' concealment of and failure to disclose material
3 information. Plaintiffs and Class members who purchased or leased Class Vehicles would not
4 have done so at all, if their true nature was known.

5 147. Meanwhile, Defendants had an ongoing duty to consumers to refrain from unfair
6 and deceptive practices under the CLRA. All owners of Class Vehicles suffered ascertainable
7 loss as a result of Defendants' deceptive and unfair acts and practices made in the course of
8 Defendants' business.

9 148. Defendants' violations present a continuing risk to Plaintiffs as well as to the
10 general public. Defendants' unlawful acts and practices complained of herein affect the public
11 interest.

12 149. The Class Vehicles and the defective ACUs installed in them are inherently
13 dangerous and present an unreasonable risk of harm and serious bodily injury to the Class,
14 passengers, other motorists, pedestrians and the public at large, because the defective ACUs will
15 not deploy lifesaving safety measures of airbags and seatbelt pretensioners, which increases the
16 risk of serious bodily injury during accidents.

17 150. Defendants knew the Class Vehicles and or the defective ACUs installed in them
18 contained a defect that could cause failure to deploy of airbags and seatbelt pretensioners, but
19 Defendants failed for many years to inform NHTSA of this defect. HMA, KMA, and ZF-TRW
20 were each actively involved in the investigation of the defect, communicated directly with
21 NHTSA, and failed to inform the public of the defect. Consequently, the public, including the
22 Class, received no notice of the defect.

23 151. As a direct and proximate result of Defendants' violations of the CLRA, the Class
24 members have suffered an injury-in-fact and/or actual damage as a result of Defendants' acts and
25 omissions in violation of the CLRA, and the violations present a continuing risk to the Class as
26 well as the general public.

1 152. Plaintiffs further seek an order enjoining Defendants' unfair or deceptive acts or
2 practices.

3 **B. Claims Brought On Behalf of the State Classes**

4 **COUNT V**
5 **VIOLATION OF THE SONG-BEVERLY WARRANTY ACT**
6 **(Cal. Civ. Code § 1790 *et seq.*)**

7 153. Plaintiffs incorporate by reference all preceding allegations as though fully set
8 forth herein.

9 154. Plaintiff Evans bring this Action on behalf of herself and the California Class,
10 against HMA and KMA.

11 155. Plaintiff and other Class members who purchased or leased the Class Vehicles in
12 California are “buyers” within the meaning of Cal. Civ. Code § 1791(b).

13 156. The Class Vehicles are “consumer goods” within the meaning of Cal. Civ. Code §
14 1791(a).

15 157. HMA and KMA are “manufacturer[s]” of the Class Vehicles with the meaning of
16 Cal. Civ. Code § 1791(j).

17 158. Cal. Civ. Code § 1791.1(a) states: “Implied warranty of merchantability” or
18 “implied warranty that goods are merchantable” means that the consumer goods meet each of the
19 following:

- 20 i. Pass without objection in the trade under the contract description.
- 21 ii. Are fit for the ordinary purpose for which such goods are used.
- 22 iii. Are adequately contained, packaged, and labeled.
- 23 iv. Conform to the promises or affirmations of fact made on the
24 container or label.

25 159. HMA and KMA impliedly warranted to Plaintiffs and other Class members that
26 its Class Vehicles were “merchantable” within the meaning of Cal. Civ. Code §§ 1791.1(a) &
1792, however, the Class Vehicles do not have the quality that a buyer would reasonably expect

1 and are not fit for the ordinary purposes for which they were sold because the Class Vehicles and
2 their air bags contained an inherent defect at the time of sale. The Class Vehicles would not pass
3 without objection in the automotive trade because they were equipped with defective ACUs. This
4 defect may cause airbags to fail to deploy in a crash event, leading to an unreasonable likelihood
5 of serious bodily injury or death to vehicle occupants.

6 160. Because of the defect the Class Vehicles are not fit for the purpose of providing
7 safe and reliable transportation. HMA and KMA knew or should have known the use for which
8 the Class Vehicles were purchased – namely, providing safe and reliable transportation. HMA
9 and KMA impliedly warranted that the Class Vehicles—and their air bags—manufactured, and
10 distributed by HMA and KMA were of merchantable quality and fit for such use.

11 161. The defective ACUs have deprived Plaintiffs of the benefit of their bargain and
12 have caused the Class Vehicles to depreciate in value.

13 162. HMA and KMA had notice of these issues, through customer complaints,
14 numerous complaints filed against it and/or others, internal investigations and consumer
15 communications.

16 163. The Class Vehicles are not adequately labeled because the labeling fails to
17 disclose the Defect. HMA and KMA failed to warn about the dangerous defect in the Class
18 Vehicles.

19 164. As a direct and proximate result of the HMA and KMA Defendants' breach of
20 their duties under California's Lemon Law, Plaintiffs and the Class received goods whose
21 dangerous condition substantially impairs their value. Plaintiffs and the Class have been
22 damaged by the diminished value, defect, and non-use of their Class Vehicles.

23 165. Because the Class Vehicles are defective, HMA and KMAs' actions breach the
24 implied warranty that the Class Vehicles were of merchantable quality and fit for the use for
25 which they were purchased and violated the Song-Beverly Warranty Act.

26 166. Under Cal. Civ. Code §§ 1791.1(d) and 1794, Plaintiffs and the Class are entitled

1 to damages and other legal and equitable relief including, at their election, the purchase price of
2 their Class Vehicles or the overpayment or diminution in value of their Class Vehicles.

3 167. Under Cal. Civ. Code §1794, Plaintiffs and the Class are entitled to costs and
4 attorneys' fees.

5 **COUNT VI**
6 **VIOLATIONS OF THE WASHINGTON CONSUMER PROTECTION ACT**
7 **(Wash. Rev. Code §§ 19.86.010, et seq.)**

8 168. Plaintiffs incorporate by reference all preceding allegations as though fully set
9 forth herein.

10 169. Plaintiff Copley brings this Action on behalf of himself and the Washington Class
11 against all Defendants.

12 170. Defendants, Plaintiffs, and Washington Class members are “persons” within the
13 meaning of RCW § 19.86.010(1).

14 171. Defendants are engaged in “trade” or “commerce” within the meaning of RCW §
15 19.86.010(2).

16 172. The Washington Consumer Protection Act (“Washington CPA”) makes unlawful
17 “[u]nfair methods of competition and unfair or deceptive acts or practices in the conduct of any
18 trade or commerce.” RCW § 19.86.020.

19 173. In the course of their business, Defendants, through their agents, employees,
20 and/or subsidiaries, violated the Washington CPA by intentionally or negligently concealing and
21 suppressing material facts concerning the serious and dangers defect affecting Class Vehicles.
22 Defendants concealed the truth about the defect and failed to make any effort to remedy the
23 defect despite the fact that they knew or should have known about the defect for years.

24 174. Plaintiffs and Class Members had no way of discerning that Defendants
25 deceptively concealed the defect unless and until the defect manifests itself by failing to deploy
26 airbags during a vehicle collision.

175. Defendants' actions constitute a violation of the Washington CPA. Defendants

1 knew or should have known the nature of the defect.

2 176. Defendants owed Plaintiffs a duty to disclose the defect and the resulting safety
3 risk because they:

4 A. Possessed exclusive knowledge that they were supplying defective parts
5 for, manufacturing, and distributing vehicles throughout the United States with dangerous
6 defects;

7 B. Intentionally concealed the defect from regulators, Plaintiffs, and Class
8 Members; and/or

9 C. Made incomplete representations about the safety and reliability of the
10 Class Vehicles generally, while purposefully withholding material facts from the
11 Plaintiffs and the Class that contradicted these representations.

12 177. Defendants' unfair and deceptive acts or practices were likely to and did deceive
13 reasonable consumers, including Plaintiffs, about the safety, and value of the Class Vehicles.

14 178. Plaintiffs and Class Members have suffered ascertainable loss and actual damages
15 as a direct and proximate result of Defendants' concealment of and failure to disclose material
16 information. Plaintiffs and Class members who purchased or leased Class Vehicles would not
17 have done so at all, or would have paid significantly less for them, if their true nature was
18 known.

19 179. Meanwhile, Defendants had an ongoing duty to all of their customers to refrain
20 from unfair and deceptive practices under the Washington CPA in the course of their business.

21 180. Defendants' violations present a continuing risk to Plaintiffs as well as to the
22 general public. Defendants' unlawful acts and practices complained of herein affect the public
23 interest.

24 181. Pursuant to RCW § 19.86.090, Plaintiffs and the Washington Class seek an order
25 enjoining Defendants' unfair and/or deceptive acts or practices, damages, punitive damages, and
26 attorneys' fees, costs and any other just and proper relief available under the Washington CPA.

1 Because Defendants' actions were willful and knowing, Plaintiff's damages should be trebled.

2 *Id.*

3 **COUNT VII**
4 **BREACH OF THE IMPLIED WARRANTY OF MERCHANTABILITY**
5 **(Wash. Rev. Code §§ 62A.2-314 and 62A.2A-212)**

6 182. Plaintiffs incorporate by reference all preceding allegations as though fully set
7 forth herein.

8 183. Plaintiff Copley brings this Action on behalf of himself and the Washington Class
9 against HMA and KMA.

10 184. Defendants HMA and KMA are and were at all relevant times "merchants" with
11 respect to motor vehicles under RCW § 62A.2-104(1), and "sellers" of motor vehicles under
12 RCW 62A.2-103(d).

13 185. With respect to leases, Defendants are and were at all relevant times "lessors" of
14 motor vehicles under RCW § 62A.2A-103(1)(p).

15 186. The Class Vehicles are and were at all relevant times "goods" within the meaning
16 of RCW §§ 62A.2-105(1).

17 187. A warranty that the Class Vehicles were in merchantable condition and fit for the
18 ordinary purpose for which vehicles are used is implied by law pursuant to RCW §§ 62A.2-314.

19 188. Defendants HMA and KMA sold and/or leased Class Vehicles that were not in
20 merchantable condition and/or fit for the ordinary purpose for which they were sold-namely
21 providing safe and reliable transportation.

22 189. HMA and KMAs' breach of the implied warranty of merchantability caused
23 damage to the Plaintiffs and Class Members who purchased or leased the defective vehicles. The
24 amount of damages will be proven at trial.

25 **COUNT VIII**
26 **WASHINGTON "LEMON LAW"**
(Wash. Rev. Code § 19.118.005, et seq.)

190. Plaintiffs incorporate by reference all preceding allegations as though fully set

1 forth herein.

2 191. Plaintiff Copley brings this Action on behalf of himself and the Washington Class
3 against HMA and KMA.

4 192. Plaintiff Copley and members of the Washington Class own or lease “new motor
5 vehicles” within the meaning of RCW §19.118.021(12), because these vehicles because these
6 vehicles are self-propelled primarily designed for the transportation of persons or property over
7 the public highways and were originally purchased or leased at retail from a new motor vehicle
8 dealer or leasing company in Washington. These vehicles do not include vehicles purchased or
9 leased by a business as part of a fleet of ten or more vehicles at one time or under a single
10 purchase or lease agreement or those portions of a motor home designated, used, or maintained
11 primarily as a mobile dwelling, office, or commercial space.

12 193. Defendants HMA and KMA are “manufacture[s]” of the Class Vehicles within
13 the meaning of RCW § 19.118.021(8) because they are in the business of constructing or
14 assembling new motor vehicles or are engaged in the business of importing new motor vehicles
15 into the United States for the purpose of selling or distributing new motor vehicles to motor
16 vehicle dealers.

17 194. Plaintiff Copley and the members of the Washington Class are “consumers”
18 within the meaning of RCW § 19.118.021(4) because they entered into an agreement or contract
19 for the transfer, lease, or purchase of a new motor vehicle, other than for purposes of resale or
20 sublease, during the eligibility period as defined by RCW § 19.118.021(6).

21 195. The Class Vehicles did not conform to their implied or express warranties as
22 defined by RCW § 19.118.021(22), during the “eligibility period” defined by RCW §
23 19.118.021(6), or the coverage period under the applicable written warranty because the vehicles
24 contained a dangerous defect. The defect substantially impaired the safety, use and market value
25 of the Class Vehicles.

26 196. HMA and KMA had actual knowledge of the nonconformities during warranty

1 periods. But the nonconformities continued to exist throughout this term, as they have not been
2 fixed. Plaintiff and the class members are excused from notifying Defendants HMA and KMA of
3 the nonconformities because they were already fully aware of the problem.

4 197. HMA and KMA have had a reasonable opportunity to cure the nonconformities
5 because of their actual knowledge of, creation of and failure to disclose the nonconformities, but
6 have not done so as required under RCW § 19.118.031.

7 198. For vehicles purchased, Plaintiff Copley and the Class demand a full refund of
8 the contract price, all collateral charges, and incidental costs. RCW § 19.118.041(1)(b). For
9 vehicles leased, Plaintiff Copley and the Washington Class demand all payments made under the
10 lease including but not limited to all lease payments, trade-in value or inception payment,
11 security deposit, and all collateral charges and incidental costs. Plaintiff Copley and the
12 Washington Class also ask to be relieved of any future obligation to the lessor or lienholder. *Id.*
13 Plaintiff and the Washington Class reject an offer of replacement and will retain their vehicles
14 until payment is tendered.

15 **COUNT IX**
16 **ARIZONA CONSUMER FRAUD ACT**
(Ariz. Rev. Stat. § 44-1521, et seq.)

17 199. Plaintiffs incorporate by reference all preceding allegations as though fully set
18 forth herein.

19 200. Plaintiff Coyner brings this Action on behalf of himself and the Arizona Class
20 against all Defendants.

21 201. The Defendants, Plaintiffs, and Class members are “persons” within the meaning
22 of Ariz. Rev. Stat. § 44-1521(6). The Class Vehicles are “merchandise” within the meaning of
23 A.R.S. § 44-1521(5).

24 202. The Defendants were engaged in “sale[s]” within the meaning of A.R.S. §44-
25 1521(7).

26 203. The Arizona Consumer Fraud Act (“Arizona CFA”) makes unlawful “any

1 deception, deceptive or unfair act or practice, fraud, false pretense, false promise,
2 misrepresentation, or concealment, suppression or omission of any material fact with intent that
3 others rely on such concealment, suppression, or omission, in connection with the sale or
4 advertisement of any merchandise.” A.R.S. § 44-1522(A). HMA, KMA and ZF-TRW
5 participated in deceptive acts, including fraud, concealment, suppression and omission, that
6 violated the Arizona CFA. By failing to disclose and actively concealing the dangers and risks
7 posed by the Class Vehicles and/or the defective ACUs installed in them, HMA, KMA and ZF-
8 TRW engaged in deceptive practices prohibited by the Arizona CFA.

9 204. In the course of their business, HMA, KMA and ZF-TRW failed to disclose and
10 actively concealed the dangers and risks posed by the Class Vehicles and/or the defective ACUs
11 installed in them as described herein and otherwise engaged in activities with a tendency and
12 capacity to deceive. The Defendants used deception, used a deceptive act or practice, used fraud,
13 and concealed, suppressed and omitted material information about the ACUs in the Class
14 Vehicles and/or the Defective ACUs installed in them— namely Defendants failed to disclose that
15 the ACUs were defective and posed a safety risk to consumers, Plaintiffs, and the public at large.

16 205. Defendants omitted material facts in connection with the sale or advertisement of
17 the Class Vehicles to increase sales of the Class Vehicles. Defendants intended that consumers,
18 Plaintiffs and Class Members rely upon the deception and unlawful practice.

19 206. As alleged herein, Defendants have known of the defect since at least August of
20 2011, including through ACU development, testing incidents, and public recalls. Defendants
21 failed to disclose and actively concealed the dangers and risks posed by the Class Vehicles
22 and/or the defective ACUs installed in them.

23 207. The Defendants knew or should have known that this conduct was prohibited by
24 the Arizona CFA.

25 208. By failing to disclose and by actively concealing the defect in the Class Vehicles
26 and/or the defective ACUs installed in them, Defendants used deception in connection with the

1 sale or advertisement of merchandise in violation of the Arizona CFA. Defendants deliberately
2 withheld the information about the propensity of the Defective ACUs, which may fail to deploy
3 airbags and seat belt pretensioners in a crash event due to the ASICs being damaged by EOS,
4 leading to an unreasonable likelihood of serious bodily injury or death to vehicle occupants,
5 instead of protecting vehicle occupants from bodily injury during accidents, in order to ensure
6 that consumers would purchase the Class Vehicles.

7 209. In the course of Defendants' businesses, Defendants willfully failed to disclose
8 and actively concealed the dangerous risks posed by the ASIC Defect discussed above. This
9 deception was compounded by advertisements that the vehicles contained airbags (while not
10 disclosing the known risks and defects associated with such airbags that consumers were
11 unaware of). This had a tendency to mislead consumers and create a false impression of safety to
12 consumers and was likely to deceive consumers about the safety and reliability of the Class
13 Vehicles.

14 210. Plaintiff Coyner and members of the Arizona Class suffered ascertainable loss
15 caused by the Defendants' deceptive practice and failure to disclose material information
16 concerning the defect. Had Plaintiff and Class members been aware of the defect that existed in
17 the Class Vehicles and/or the defective ACUs installed in them Plaintiff Coyner and members of
18 the Arizona Class either would not have paid as much for their vehicles or would not have
19 purchased or leased them at all. Plaintiff Coyner and the Class did not receive the benefit of the
20 bargain as a result of Defendant's misconduct.

21 211. Plaintiff Coyner and the Arizona Class seek to recover actual damages in an
22 amount to be determined at trial; an order enjoining the Defendants' deceptive practices,
23 attorneys' fees; and any other just and proper relief available under Ariz. Rev. Stat. § 44-1528.

24 **COUNT X**
25 **BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY**
26 **(Ariz. Rev. Stat. §§ 47-2314 and 47-2A212)**

212. Plaintiffs incorporate by reference all preceding allegations as though fully set

1 forth herein.

2 213. Plaintiff Coyner brings this Action on behalf of himself and the Arizona Class
3 against HMA and KMA.

4 214. HMA and KMA were at all relevant times “merchants” with respect to motor
5 vehicles under Ariz. Rev. Stat. § 47-2104(A) and 47-2a103(c), and “sellers” of motor vehicles
6 under §47-2103(A)(4).

7 215. With respect to the leases, HMA and KMA are and were at all relevant times
8 “lessors” of motor vehicles under Ariz. Rev. Stat. §47-2a103(A)(16).

9 216. A warranty that the Class Vehicles were in merchantable condition and fit for the
10 ordinary purpose for which vehicles are used is implied by law pursuant to Ariz. Rev. Stat. §§
11 47-2314..

12 217. HMA and KMA sold and/or leased Class Vehicles that were not in merchantable
13 condition and/or fit for their ordinary purpose in violation of the implied warranty. The Class
14 Vehicles were not in merchantable condition and were not fit for their ordinary purpose because
15 the defect made them inherently dangerous.

16 218. HMA’s and KMA’s breaches of the implied warranty of merchantability caused
17 damage to Plaintiff Coyner and the Arizona Class. The amount of damages due will be proven at
18 trial.

19 **VIII. PRAYER FOR RELIEF**

20 WHEREFORE, Plaintiffs, individually and on behalf of the members of the Nationwide
21 Class and State Classes, respectfully request that the Court enter judgment against HMA, KMA,
22 and ZF-TRW as follows:

23 A. A declaration that any applicable statutes of limitations are tolled due to
24 the fraudulent concealment alleged in this complaint, and that Defendants are estopped
25 from relying on any statutes of limitations in defense;

26 B. An order enjoining Defendants from continuing the unlawful, deceptive,

1 fraudulent, and unfair business practices alleged in this Complaint;

2 C. An award to Plaintiffs and Class Members of compensatory, exemplary,
3 and punitive remedies and damages and statutory penalties, including interest, in an
4 amount to be proven at trial;

5 D. Injunctive and equitable relief in the form of a recall and program to
6 repair, modify, and/or buy back all Class Vehicles, and to fully reimburse and make
7 whole all Class members for all costs and economic losses;

8 E. Costs, restitution, compensatory damages for economic and out-of-pocket
9 costs, multiple damages under applicable states' laws, punitive and exemplary damages
10 under applicable law;

11 F. A Defendant-funded program, using transparent, consistent, and
12 reasonable protocols, under which out-of-pocket and loss-of-use expenses and damages
13 claims associated with the defective ACUs in Class Vehicles can be made and paid so
14 that Defendants, not Plaintiffs and Class members, absorb the losses and expenses fairly
15 traceable to the recalls of the vehicles and correction of the defect;

16 G. A declaration that the Defendants must disgorge, for the benefit of
17 Plaintiffs and Class Members, all or part of the ill-gotten profits they received from their
18 sale or lease of the Class Vehicles or make full restitution to Plaintiffs and Class
19 members;

20 H. All applicable statutory and civil penalties;

21 I. An award of costs and attorneys' fees;

22 J. An order requiring Defendants to pay both pre- and post-judgment interest
23 on any amounts awarded;

24 K. Leave to amend this Complaint to conform to the evidence produced in
25 discovery and at trial; and

26 L. Such other or further relief as the Court may deem appropriate, just, and

1 equitable.

2 **IX. DEMAND FOR JURY TRIAL**

3 Plaintiffs hereby demand a jury trial for all claims so triable.

4
5 DATED this 10th day of May, 2019.

6 KELLER ROHRBACK L.L.P.

7
8 By s/ Lynn Lincoln Sarko

9 By s/ Gretchen Freeman Cappio

10 By s/ Ryan McDevitt

11 By s/ Erika Keech

12 Lynn Lincoln Sarko, WSBA #16569

13 Gretchen Freeman Cappio, WSBA #29576

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24
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CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

(b) County of Residence of First Listed Plaintiff (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

DEFENDANTS

County of Residence of First Listed Defendant (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff, 2 U.S. Government Defendant, 3 Federal Question (U.S. Government Not a Party), 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

Table with columns for Plaintiff (PTF) and Defendant (DEF) citizenship and business location (Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, Incorporated or Principal Place of Business In This State, Incorporated and Principal Place of Business In Another State, Foreign Nation).

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Click here for: Nature of Suit Code Descriptions.

Large table with categories: CONTRACT, REAL PROPERTY, CIVIL RIGHTS, TORTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES.

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding, 2 Removed from State Court, 3 Remanded from Appellate Court, 4 Reinstated or Reopened, 5 Transferred from Another District (specify), 6 Multidistrict Litigation - Transfer, 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

Brief description of cause:

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE DOCKET NUMBER

DATE SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
- (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
- (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
 United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.
 United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
 Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
 Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If there are multiple nature of suit codes associated with the case, pick the nature of suit code that is most applicable. Click here for: [Nature of Suit Code Descriptions](#).
- V. Origin.** Place an "X" in one of the seven boxes.
 Original Proceedings. (1) Cases which originate in the United States district courts.
 Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441.
 Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
 Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
 Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
 Multidistrict Litigation – Transfer. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407.
 Multidistrict Litigation – Direct File. (8) Check this box when a multidistrict case is filed in the same district as the Master MDL docket. **PLEASE NOTE THAT THERE IS NOT AN ORIGIN CODE 7.** Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
 Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
 Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.

AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

Western District of Washington

Thomas Copley, Marvin Coyner,
and Elizabeth Evans, on behalf of themselves and
all others similarly situated,

Plaintiff(s)

v.

Civil Action No. 2:19-cv-00707

ZF TRW Automotive Holdings Corp., Hyundai Motor
America, Inc., and Kia Motor America, Inc.,

Defendant(s)

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address)

Hyundai Motor America, Inc.

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you
are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ.
P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of
the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney,
whose name and address are:

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint.
You also must file your answer or motion with the court.

CLERK OF COURT

Date:

Signature of Clerk or Deputy Clerk

Civil Action No. 2:19-cv-318

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____
was received by me on *(date)* _____ .

I personally served the summons on the individual at *(place)* _____
_____ on *(date)* _____ ; or

I left the summons at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____ , and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* _____ , who is
designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____ ; or

I returned the summons unexecuted because _____ ; or

Other *(specify)*:

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ 0.00 .

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

Print

Save As...

Reset

AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

Western District of Washington

Thomas Copley, Marvin Coyner,
and Elizabeth Evans, on behalf of themselves and
all others similarly situated,

Plaintiff(s)

v.

Civil Action No. 2:19-cv-00707

ZF TRW Automotive Holdings Corp., Hyundai Motor
America, Inc., and Kia Motor America, Inc.,

Defendant(s)

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address)

Kia Motor America, Inc.

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you
are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ.
P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of
the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney,
whose name and address are:

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint.
You also must file your answer or motion with the court.

CLERK OF COURT

Date:

Signature of Clerk or Deputy Clerk

Civil Action No. 2:19-cv-318

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____
was received by me on *(date)* _____ .

I personally served the summons on the individual at *(place)* _____
_____ on *(date)* _____ ; or

I left the summons at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____ , and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* _____ , who is
designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____ ; or

I returned the summons unexecuted because _____ ; or

Other *(specify)*:

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ 0.00 _____ .

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

Print

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Reset

AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

Western District of Washington

Thomas Copley, Marvin Coyner,
and Elizabeth Evans, on behalf of themselves and
all others similarly situated,

Plaintiff(s)

v.

Civil Action No. 2:19-cv-00707

ZF TRW Automotive Holdings Corp., Hyundai Motor
America, Inc., and Kia Motor America, Inc.,

Defendant(s)

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address)

ZF TRW Automotive Holdings Corp.

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you
are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ.
P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of
the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney,
whose name and address are:

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint.
You also must file your answer or motion with the court.

CLERK OF COURT

Date:

Signature of Clerk or Deputy Clerk

Civil Action No. 2:19-cv-318

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

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_____ on *(date)* _____ ; or

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_____, a person of suitable age and discretion who resides there,
on *(date)* _____ , and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* _____ , who is
designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____ ; or

I returned the summons unexecuted because _____ ; or

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Server's address

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