

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF OHIO**

<b>TOM KONDASH</b> , on behalf of himself and all others similarly situated,	)	Case No. 1:15-cv-506
	)	
Plaintiff,	)	<b><u>CLASS ACTION COMPLAINT</u></b>
v.	)	<b><u>JURY TRIAL DEMANDED</u></b>
	)	
<b>KIA MOTORS AMERICA, INC.</b> , and <b>KIA MOTORS CORPORATION</b> ,	)	
	)	
Defendants.	)	
	)	
	)	

Plaintiff Tom Kondash, on behalf of himself and all others similarly situated, alleges the following against Defendants Kia Motors America, Inc. and Kia Motors Corporation (collectively, “Kia”):

**SUMMARY OF CASE**

1. Historically, automobile sunroofs have been modestly sized, spanning just a small portion of the roof over the driver and front passenger seats. Starting in the mid-2000s, manufacturers introduced a substantially larger style of “panoramic” sunroof, which spans almost the whole roof. These sunroofs are aesthetically pleasing, and thus command a premium price, but also pose new and significant engineering challenges. Replacing metal roofs with large plates of glass requires precision in the strengthening, attachment, and stabilization of the glass. Several manufacturers have failed to meet these demands, with three issuing safety recalls because their panoramic sunroofs spontaneously shatter.

2. Several Kia models have the same problem. Over two hundred Kia drivers have now complained that their panoramic sunroofs shattered suddenly and without warning. The

shattering occurs so powerfully that some startled drivers have compared it to a gunshot that is followed by shards of glass raining down. Kia admits it is “a leader in such incidents,” but even though its competitors and the federal government have acknowledged a seemingly obvious truth—that shattering sunroofs are dangerous—Kia not only refuses to warn drivers of the danger but also continues to sell and lease the vehicles without disclosing the defect.

3. Kia’s conduct violates well-established consumer protection laws of numerous states, including Ohio. On behalf of the classes he proposes to represent, Plaintiff seeks awards of damages and appropriate equitable relief, including an order enjoining Kia from continuing to sell vehicles without disclosing the defect to its customers.

**PARTIES**

4. Plaintiff Tom Kondash is a citizen and resident of Mason, Warren County, Ohio.

5. Defendant Kia Motors America, Inc. is a California corporation with its headquarters and principal place of business in Irvine, California.

6. Defendant Kia Motors Corporation has its headquarters in Seoul, South Korea, located at 12, Heolleung-ro, Seocho-gu, Seoul.

**JURISDICTION AND VENUE**

7. This Court has jurisdiction over this action under the Class Action Fairness Act, 28 U.S.C. § 1332(d). There are at least 100 members in the proposed class, the aggregated claims of the individual class members exceed the sum or value of \$5,000,000, exclusive of interests and costs, and this is a class action in which Kia and more than two-thirds of the proposed plaintiff class are citizens of different states.

8. This Court may exercise jurisdiction over Defendants because they do substantial business in this State and within this District, receive substantial compensation and profits from

the marketing, distribution, sales and servicing of motor vehicles in this District, and have engaged in the unlawful practices described in this Complaint in this District, so as to subject themselves to personal jurisdiction in this District, thus rendering the exercise of jurisdiction by this Court proper and necessary.

9. Venue is proper in this District under 28 U.S.C. § 1391 because Plaintiff Kondash resides in this District, and also purchased a Kia vehicle in this District; Defendant Kia Motors Corporation is a foreign entity; and a substantial part of the events or omissions giving rise to Plaintiff's claims occurred in this District.

### **SUBSTANTIVE ALLEGATIONS**

#### **The Kia Panoramic Sunroof Defect**

10. Kia manufactures, markets, and distributes mass produced automobiles in the United States under the Kia brand name. The Kia automobile models that are the focus of this case are the 2011-2015 Sorento, Optima, and Sportage, and the 2014-2015 Soul and Cadenza models.

11. Starting in the 2011 model year, Kia introduced vehicles with an optional upgrade of a factory-installed panoramic sunroof. Panoramic sunroofs are a relatively new alternative to traditional sunroofs—they are both wider and longer than traditional sunroofs, covering most of the vehicle's roof.

12. Kia generally markets the panoramic sunroofs as a luxury upgrade, since the sunroofs provide extra light and an "open air" feeling while driving, and charges its customers several thousand dollars for the upgrade. The actual material cost of the panoramic sunroofs is fairly low, making the option one of the most profitable features in the automotive industry.

13. Panoramic sunroofs are made of tempered or laminated glass that attaches to tracks, which in turn are set within a frame attached to the vehicle. Most panoramic sunroofs, including those offered by Kia, include a retractable sunshade. Examples of panoramic sunroofs appear in the photographs below:

2013 Kia Sorento



2012 Kia Optima



14. Panoramic sunroofs present manufacturing, design, and safety challenges for manufacturers because the large plates of glass take up much of the surface area of the vehicle's roof.

15. One aspect of the challenge is the material make-up of the glass. Whereas some manufacturers, such as Volvo and Honda, have used a laminated glass, others, such as Kia, Hyundai, and Volkswagen, have opted to install panoramic sunroofs with a toughened glass featuring a ceramic print area. The ceramic print area had been small in conventional sunroofs, but increased in panoramic sunroofs. The Korea Automobile Testing & Research Institute, a vehicle safety testing institute, has concluded that the enamel used for ceramic print areas in Kia vehicles impairs the strength of the glass, making the glass not only less durable than the usual toughened glass, but also less durable than ordinary glass.

16. Another challenge presented by the panoramic sunroofs is the need to ensure the sunroof glass is fastened to the vehicle with the appropriate degree of tightness. Kia and other manufacturers seek to fasten the sunroof in a manner that reduces road and wind noise and to make the sunroofs less susceptible to leaking rainwater. At the same time, the sunroof may be weakened with the exertion of pressure, as flexing and vibration caused in ordinary driving can impose stress and ultimately shattering of the glass.

17. In the Kia models at issue, the compromised tempered glass cannot withstand the pressures and flexing that the sunroof frame and vehicle demand. The consequence is that under ordinary driving conditions the glass spontaneously shatters as seen below:

Kia Soul<sup>1</sup>



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<sup>1</sup> Kia Motors Worldwide, Facebook (Aug. 28, 2013): [https://www.facebook.com/photo.php?fbid=677450568951396&set=bc.AbpJvea\\_oSRkZ9mVIf9DetwBIIktfqGNajUQDVYT2YIDMhuiH0n8xILrL4PCoicmhBVBctS3OSTWX4IugyizpxuzjudjiDqpOlvKXJql8ftdoIIxqZPEIkECQzB7tO4aWYGdX4WlrmEIOE8HAICqzbEpnS8OwU5CXtF4XdVmXweShg&type=1&opaqueCursor=Abqx3itcoHRlq\\_NBIf1dJgvWfN6G69vugLf4GCAT2zi4875Dn1GxWfjIdOkHC7u0apufp3uBAFhLknIHRYCs5TM89QhWizc\\_0LcC7UUb5RmNrx2Lz-l6RHmlS\\_t3XqTPaWp95hQTKRRcBib\\_UQQ4f0wdQkBBD0wMnR3Bk6M9qib0SmA&theater](https://www.facebook.com/photo.php?fbid=677450568951396&set=bc.AbpJvea_oSRkZ9mVIf9DetwBIIktfqGNajUQDVYT2YIDMhuiH0n8xILrL4PCoicmhBVBctS3OSTWX4IugyizpxuzjudjiDqpOlvKXJql8ftdoIIxqZPEIkECQzB7tO4aWYGdX4WlrmEIOE8HAICqzbEpnS8OwU5CXtF4XdVmXweShg&type=1&opaqueCursor=Abqx3itcoHRlq_NBIf1dJgvWfN6G69vugLf4GCAT2zi4875Dn1GxWfjIdOkHC7u0apufp3uBAFhLknIHRYCs5TM89QhWizc_0LcC7UUb5RmNrx2Lz-l6RHmlS_t3XqTPaWp95hQTKRRcBib_UQQ4f0wdQkBBD0wMnR3Bk6M9qib0SmA&theater) (last viewed 6/25/2015).

Kia Sportage



2014 Kia Cadenza



Kia Optima<sup>2</sup>



18. Kia acknowledged in a submission to the NHTSA that it is the “leader in such incidents.” But even though vehicles with similar issues made by Audi, Hyundai, and Volkswagen, all underwent recalls attributed to identified defects, Kia claims its sunroofs shatter only as a result of impacts from objects on the roadway. Driver reports have been inconsistent with Kia’s position, however.

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<sup>2</sup> Plaintiff Tom Kondash’s 2012 Kia Optima.

19. Below are just a few examples of the numerous complaints lodged with the NHTSA. Few, if any, of the drivers who have contacted the federal government have reported that the shattering occurred because of an external object striking their vehicle. The complaints are also viewable online at [www.safercar.gov](http://www.safercar.gov).<sup>3</sup>

2011 Kia Sorento: The car is a 2011 and is only 3 months old had just pulled out of a driveway and was going down the road when I heard a crack and a loud pop. After that noise the whole sunroof fell in on me as I was driving, all of the glass and metal holding the glass. It seems the glass had popped up before it fell in on me. My back was scratched and the vehicle was damaged. The sunroof was replaced by the dealership and also a gouged door panel. There are still small scratches on the interior and the roof of the car from the glass.  
(NHTSA ID: 10345933 – Date Complaint Filed: 07/28/2010)

2011 Kia Sorento: My 2011 Kia Sorento's rear sunroof shattered. I went to open the main sunroof it shattered then I heard a pop. The entire rear section shattered I was less than a mile from a local Kia dealership (Pinehurst Kia) I left the car with the service dept I was contacted later that from the dealership I was told that glass was not covered and that they felt that nothing was wrong with their product. I contacted Kia directly and was told glass was covered then I was called back from Kia stating that the repair would not be warranty \$1280.00 was the cost for repairs> I was advised by the service director that the proper repair would include glass replacement and I should replace the frame housing. I found other cases of this same problem with the rear sunroof glass shattering at least nobody's been hurt yet. Is Kia waiting for someone to be injured before addressing this problem?  
(NHTSA ID: 10366885 – Date Complaint Filed: 11/19/2010)

2011 Kia Optima: I was driving my 2011 Kia Optima ex on a residential area. My speed was about 25 mph when suddenly there was a loud explosion sound. At the time that this occurred there were no cars or semis near my vehicle. After my 4 year old daughter and I recovered from the initial shock, I pulled over to check my vehicle and I notice the back window sunroof had a hole in the middle close by the shark tale and was still shattering. At that point, I had no other choice and had to drive my daughter to school. Once I dropped her off I dropped off my vehicle and a family members house and borrowed a vehicle, since my vehicle was unsafely to drive in that condition.  
(NHTSA ID: 10472025 – Date Complaint Filed: 08/23/2012)

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<sup>3</sup> These customer complaints are reproduced verbatim, and include uncorrected spelling and grammatical errors in the original.

2011 Kia Sorento: I was drive eastbound on I-70 in Colorado in the mountains near the Eisenhower tunnel at 2:40pm. There was no one in front of me on the road. Traffic was light. It was approximately 5 degrees F. I heard a loud bang and pulled over. I got out of the car. The front sunroof on my Kia Sorento exploded outward. Glass was pointing upwards. Nothing hit my car. It just happened. Glass was in a million little pieces. Luckily the inside shade was closed, otherwise glass would have fallen all over me and my son (in the back seat). I cleaned up the glass as best as I could. We called Kia roadside assistance, but ended up driving to the next town and getting some cardboard to temporarily keep the wind out, and drove home. We are waiting to see if Kia will cover it under warranty.

(NHTSA ID: 10492886 – Date Complaint Filed: 01/14/2013)

2013 Kia Sorento: While driving on a toll road at 65 mph, the sunroof violently exploded off the roof of the car. Sunroof was closed and fortunately, the sunroof shade was also closed which prevented most of the shattered glass from cutting my wife and I. Stopped the car and found the sunroof shattered with most of the sunroof missing. A car behind us was damaged by the glass flying off our roof. Only the metal sunroof frame remained on our roof. Did not see any flying rocks and found no evidence suggesting anything had hit the sunroof which was closed/flush with our roof. Sounded and felt like a rapid decompression in an aircraft. Had owned car for only 4 months so still under warranty. We've been waiting for almost 4 months for Kia to reimburse us for the cost of repair.

(NHTSA ID: 10514388 – Date Complaint Filed: 02/17/2013)

2012 Kia Optima: While traveling in the morning to work while on the interstate, a loud sound like a bomb or explosion occurred in my car, then glass from my sunroof fell down. My sun roof on my 2012 Kia Optima exploded. The minute this happened I looked up because I could hear and feel air from up above. My sunroof was shattered in tiny pieces. The noise by itself was so startling and frightening that it could have caused an accident if I would have reacted to the sound somehow while driving. Once pulled over, it was clear that the glass shattered out and up not downward so it was fairly apparent nothing landed on top of my roof to cause this. I filed a claim with my auto insurance. However, with that being said, I have now researched on the internet this issue and from what I am reading on line this has happened to many other people. I hope you are investigating this before this causes a real tragedy to someone's life! Please!

(NHTSA ID: 10515141 – Date Complaint Filed: 06/05/2013)

2013 Kia Optima: I was driving down the freeway about 7:30am on my way to work, beautiful day probably about 60 degrees at the time. My sunroof literally exploded. It sounded like a gunshot blast. It scared the heck out of me, I am lucky I didn't get into an accident. Nothing hit my car that is why I thought this was really strange. I dropped my car off at the dealer and of course they say they have never seen this before. I went on line and what do I fine? This has happened quit a bit. I am now waiting on Kia's engineers to let me know if Kia is going to

take care of the damages. My car isn't even a year old. I am afraid to drive my vehicle now, what if this happens again? I need some help in getting this dangerous issue resolved.

(NHTSA ID: 10565575 – Date Complaint Filed: 02/24/2014)

2011 Kia Sorento: TI-the contact owns a 2011 Kia Sorento. The contact state that the sunroof exploded while he drove at 35 mph the fractured glass fell into the vehicle and the sunroof front bar fell on the contact's head. The contact suffered a cut to his shoulder. The vehicle was not repaired. The manufacturer was not made aware of the failure. The approximate failure and current mileage was 30,000. Updated 04-29-14

(NHTSA ID: 10583122 – Date Complaint Filed: 04/16/2014)

2013 Kia Sorento: The contact owns a 2013 Kia Sorento. The contact stated that while he drove at 65 mph, the sunroof exploded. The contact suffered cuts to his hands. The front passenger suffered cuts on the back and hands. The passenger in the rear suffered cuts to the hands. The vehicle was taken to the dealer where the failure was not diagnosed. The vehicle was not repaired. The manufacturer was made aware of the failure. The failure and current mileage was 26,700.

(NHTSA ID: 10584650 – Date Complaint Filed: 04/25/2014)

2012 Kia Optima: I was parked in a secured police parking garage that no one has access to except police officers. Upon getting into my car, placing it into drive and beginning to move forward out of the parking space, there was a loud noise that sounded like glass shattering. I exited my vehicle to find that my sunroof had exploded into thousands of pieces. There was nothing that struck the glass that caused this to happen. Upon doing research, I discovered that this is a problem that the Kia vehicles sunroofs have. Kia is aware of the problem and is telling me that I will have to pay for the replacement. My vehicle is still under warranty which does not seem to matter to Kia. Kia is telling me that this incident occurred because there was an object that caused this to happen. I told them that I was in the vehicle barely moving when this happened. They do not want to take responsibility for the problem.

(NHTSA ID: 10592152 – Date Complaint Filed: 05/17/2014)

2014 Kia Sportage: My sunroof exploded. I had just entered the highway (there was no overpass near me) merging into traffic. I heard a loud pop like a gun shot and glass rained down on me. I immediately called my dealership and drove it in. There was no determination as to the cause. Dealership had to completely replace the sunroof. Had to claim on my insurance and pay the deductible - roughly total repair cost was 1200.00.

(NHTSA ID: 10690204 – Date Complaint Filed: 02/24/2015)

### **Kia's Knowledge of the Defect**

20. Kia has long known that its panoramic sunroofs are prone to unexpected and dangerous shattering. By 2012, for example, Kia initiated a formal internal investigation into the problem, and the following year, the NHTSA Office of Defects Investigation began its own investigation into the reports of spontaneous shattering of panoramic sunroofs in Kia Vehicles.

21. It is likely that Kia knew of the defect well before it began its formal investigation in 2012. A survey of the driver complaints, for example, shows that the sunroofs often shatter within months of purchase, and the complaints to the NHTSA above show that drivers back in 2010 and 2011 were already reporting the problem. Kia monitors the NHTSA website for emerging problems with its vehicles.

22. Kia also uses a variety of other means to track data about how its vehicles are performing in the days, weeks, and months after they are sold. Kia collects information from drivers and dealerships, including through complaints, warranty claims, replacement parts data, and other aggregated data sources. Even earlier, Kia studies and tracks potential vehicle defects through exhaustive pre-release testing. Given the speed and frequency with which the defect becomes apparent, it is not plausible that these various sources of data did not alert Kia early on to the defect. Kia has nearly exclusive access to this information, however.

### **The Dangers Posed to Class Vehicle Occupants**

23. As the NHTSA, the Korea Automobile Testing & Research Institute, and various manufacturers have acknowledged, the sudden shattering of a panoramic sunroof endangers drivers, passengers, and others on the road. Panoramic sunroofs, which are intended to last the life of the vehicle, are also an expensive upgrade option that can cost thousands of dollars to replace. A reasonable person considering whether to purchase or lease a Kia vehicle would

therefore want to be told about the panoramic sunroof defect so that they could opt against paying the thousands of dollars for a “luxury upgrade” or simply forego purchasing the vehicle altogether.

24. When the Kia panoramic sunroofs shatter, they make a sudden and extremely loud noise, followed by shards of glass raining down onto the driver and passengers. Drivers report that the falling shards of glass have cut them and their passengers and have also caused damage to the interior of the vehicles. Drivers have also reported a number of near-miss accidents that occurred after they were startled or distracted by the shattering. Likewise, both Kia and the NHTSA have received reports of injuries resulting from Kia panoramic sunroofs shattering.

25. Other manufacturers concur. When Volkswagen initiated a safety recall for shattering panoramic sunroofs, for example, it acknowledged that drivers “could be injured by falling glass,” and that “[i]f the glass panel were to break while the vehicle is in motion, it could cause driver distraction, increasing the risk of a crash.”<sup>4</sup> And when Hyundai initiated its recall, it too acknowledged that the shattering of panoramic sunroofs “relates to motor vehicle safety,” including by posing a risk of cutting vehicle occupants.

26. In connection with the Hyundai recall, the NHTSA wrote that the breaking of the panoramic sunroof could lead “to personal injury or a vehicle crash.” In connection with an Audi recall, the NHTSA wrote that “should the sunroof’s glass break while the vehicle is in use, the

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<sup>4</sup> Jenna Reed, *VW Recalls Certain Beetle Models Over Potential Panoramic Sunroof Issue*, glassBYTEs.com (Dec. 11, 2014), <http://www.glassbytes.com/2014/12/vw-recalls-certain-beetle-models-over-potential-panoramic-sunroof-issue/>; Volkswagen of America, Inc., *Volkswagen Issues Voluntary Recall* (Dec. 7, 2014), <https://media.vw.com/release/856/>.

falling glass could cut and injure the driver or passengers [and] could also distract the driver, increasing the risk of a crash.”

27. The Korea Automobile Testing & Research Institute likewise concluded that the sudden shattering of a panoramic sunroof while driving may cause “abrasions due to shattered glass” and also cause the “risk of secondary accidents.”

### **Kia Refuses to Warn Drivers**

28. Despite the high number of complaints and the danger posed by the defect, Kia continues to conceal its existence from current drivers and potential customers alike. Kia has not warned consumers at the point of sale or lease (or instructed its dealerships to do so), and has made no effort to alert drivers to the risk.

29. Kia continues to conceal the defect even though it knows that the defect is not reasonably discoverable by drivers unless they experience the defect first hand and are thus exposed to the attendant safety risks.

30. Kia remains silent even as it continues to receive complaints from frightened drivers and even as the NHTSA investigation has been expanded and escalated because “the rate of ... reported incidents is concerning.”

31. As a result of Kia’s inaction and silence, many drivers are unaware that they purchased, and continue to drive, unsafe and unreliable vehicles, and Kia continues to profit from the sale and lease of vehicles to unwitting consumers.

32. The other manufacturers to have had vehicles with similar panoramic sunroof problems—Audi, Hyundai, and Volkswagen—have all voluntarily initiated safety recalls as a result, notifying drivers of the danger and offering to repair the sunroofs free of cost.

**DEFENDANTS HAD PRIOR NOTICE THAT THEIR DECEPTIVE AND UNFAIR CONDUCT VIOLATED THE OHIO CONSUMER SALES PRACTICES ACT**

33. Because this action is brought in federal court, rather than a state court in Ohio, Plaintiff is not obligated to plead or establish before class certification that Kia had advance notice of the deceptive nature of its conduct.

34. In the alternative, Defendants were on notice that marketing, distributing and selling vehicles with defective panoramic sunroofs that spontaneously burst is illegal. *See, e.g., Fribourg v. Vandemark*, No. CA99-02-017, 1999 WL 552741 (Oh. Ct. App. July 26, 1999) (OPIF No. 10001874); *Howard v. Norman's Auto Sales*, No. 02AP-1001, 2003 WL 21267261 (Oh. Ct. App. June 3, 2003) (OPIF 10002164); *Mason v. Mercedes-Benz USA, LLC*, No. 85031, 2005 WL 1995087 (Oh. Ct. App. Aug. 18, 2005) (OPIF No. 10002383); *Blankenship v. CFMOTO Powersports, Inc.*, 944 N.E.2d 769 (Oh. Ct. Comm. Pl. Jan. 2011) (OPIF No. 10002922); *see also Nessel v. Whirlpool Corp.*, No. 07-3009, 2008 WL 2967703 (N.D. Ohio Jul. 25, 2008); *In re Philips/Magnavox Television Litig.*, No. 09-3072, 2010 WL 3522787 (D.N.J. Sep. 1, 2010); *Nelson v. Nissan N. Am., Inc.*, 894 F. Supp. 2d 558 (D.N.J. 2012).

**PLAINTIFF'S EXPERIENCE**

**Plaintiff Tom Kondash**

35. Plaintiff Tom Kondash purchased a 2012 Kia Optima in approximately 2012 from the King's Kia dealership located in Cincinnati, Ohio.

36. In mid-July 2015, Mr. Kondash was driving on a highway with his wife with the sunroof closed. Suddenly, they heard an extremely loud noise as the sunroof burst, raining glass into their car. The wind began to whip the sunshade around and dump broken glass over Mr. Kondash and his wife, causing small cuts and glass splinters to their arms and legs.

37. Mr. Kondash took his vehicle to a Kia dealership the following day. His vehicle is currently awaiting repair.

**CLASS ACTION ALLEGATIONS**

38. Pursuant to Rule 23 of the Federal Rules of Civil Procedure, Plaintiff brings this action on behalf of himself and the following proposed nationwide class, within which “Class Vehicle” is defined to include all 2011-2015 model year Kia vehicles with factory-installed panoramic sunroofs:

Nationwide Class:

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

39. Plaintiff Kondash also seeks to represent an Ohio sub-class, defined as follows:

Ohio Sub-Class:

*All persons who purchased or leased a Class Vehicle in Ohio.*

Excluded from the proposed class(es) is Kia; any affiliate, parent, or subsidiary of Kia; any entity in which Kia has a controlling interest; any officer, director, or employee of Kia; any successor or assign of Kia; anyone employed by counsel in this action; any judge to whom this case is assigned, his or her spouse; and members of the judge’s staff; and anyone who purchased a Class Vehicle for the purpose of resale.

40. Members of the proposed class(es) are readily ascertainable because the class definition is based upon objective criteria.

41. **Numerosity.** Kia sold thousands of Class Vehicles, including a substantial number in Ohio. Members of the proposed class(es) likely number in the thousands and are thus too numerous to practically join in a single action. Class members may be notified of the

pendency of this action by mail, supplemented by published notice (if deemed necessary or appropriate by the Court).

42. **Commonality and Predominance.** Common questions of law and fact exist as to all proposed class members and predominate over questions affecting only individual class members. These common questions include:

- a. Whether the panoramic sunroofs in Class Vehicles have a propensity to spontaneously shatter;
- b. Whether Kia knew or should have known that its panoramic sunroofs have a propensity to spontaneously shatter, and if so, when it discovered this;
- c. Whether the knowledge of this propensity would be important to a reasonable person, for example, because it poses an unreasonable safety hazard;
- d. Whether Kia disclosed or concealed the existence of the sunroofs' propensity to shatter from potential customers;
- e. Whether Kia has breached its warranty by failing to provide free repairs of damage and reimbursement for losses resulting from the defective sunroofs; and
- f. Whether Kia should be required to notify class members about the sunroofs' propensity to spontaneously shatter and cease its practice of providing identical replacement sunroofs.

43. **Typicality.** Plaintiff's claims are typical of the claims of the proposed class(es). Plaintiff and the members of the proposed class(es) all purchased or leased Class Vehicles with panoramic sunroofs that contain a propensity to spontaneously shatter, giving rise to substantially the same claims.

44. **Adequacy.** Plaintiff is an adequate representative of the proposed class(es) because his interests do not conflict with the interests of the members of the class(es) he seeks to represent. Plaintiff has retained counsel competent and experienced in complex class action litigation, and will prosecute this action vigorously on class members' behalf.

45. **Superiority**. A class action is superior to other available means for the fair and efficient adjudication of this dispute. The injury suffered by each class member, while meaningful on an individual basis, is not of such magnitude as to make the prosecution of individual actions against Kia economically feasible. Even if class members themselves could afford such individualized litigation, the court system could not. In addition to the burden and expense of managing many actions arising from the defective panoramic sunroofs, individualized litigation presents a potential for inconsistent or contradictory judgments. Individualized litigation increases the delay and expense to all parties and the court system presented by the legal and factual issues of the case. By contrast, a class action presents far fewer management difficulties and provides the benefits of single adjudication, economy of scale, and comprehensive supervision by a single court.

46. In the alternative, the proposed class(es) may be certified because:
- a. the prosecution of separate actions by the individual members of the proposed class would create a risk of inconsistent adjudications, which could establish incompatible standards of conduct for Kia;
  - b. the prosecution of individual actions could result in adjudications, which as a practical matter, would be dispositive of the interests of non-party class members or which would substantially impair their ability to protect their interests; and
  - c. Kia has acted or refused to act on grounds generally applicable to the proposed class(es), thereby making appropriate final and injunctive relief with respect to the members of the proposed class(es) as a whole.

**FIRST CAUSE OF ACTION**

**Violation of Ohio Consumer Sales Practices Act (“OCSPA”), Chapter 1345.  
(Plaintiff Kondash individually and on behalf of the proposed Ohio Sub-Class)**

47. Plaintiff Kondash realleges the paragraphs above as if fully set forth herein.

48. Plaintiff Kondash and Ohio Sub-Class members are “consumers” as defined by O.R.C. § 1345.01(D), and their purchases and leases of the Class Vehicles with the defective sunroofs installed in them are “consumer transactions” within the meaning of O.R.C. § 1345.01(A).

49. Defendants are “suppliers” as that term is defined in Ohio Rev. Code § 1345.01(C).

50. The OCSPA, O.R.C. § 1345.02, broadly prohibits unfair or deceptive acts or practices in connection with a consumer transaction. Specifically, and without limitation of the broad prohibition, the Act prohibits suppliers from representing: (i) that goods have characteristics or uses or benefits which they do not have; (ii) that their goods are of a particular quality or grade they are not; and (iii) that the subject of a consumer transaction has been supplied in accordance with a previous representation, if it has not. *Id.* Defendants’ conduct as alleged above and below constitutes unfair and/or deceptive consumer sales practices in violation of O.R.C. § 1345.02.

51. By failing to disclose and actively concealing the dangers and risks posed by the Class Vehicles and/or the defective sunroofs installed in them, Defendants engaged in deceptive business practices prohibited by the Ohio CSPA, including: (i) representing that its vehicles and panoramic sunroofs had characteristics, uses, or benefits which they do not have; (ii) advertising its goods with intent not to sell them as advertised; (iii) representing that its vehicles and panoramic sunroofs are of a particular standard, quality, or grade when they are not;

(iv) representing that a transaction conferred or involved rights, remedies, or obligations which they do not; and (v) representing that its goods have been supplied in accordance with a previous representation when they have not.

52. Defendants' actions as set forth above occurred in the conduct of trade or commerce.

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

54. Defendants also engaged in unlawful trade practices by employing deception, deceptive acts or practices, fraud, misrepresentations, or concealment, suppression or omission of any material fact with intent that others rely upon such concealment, suppression or omission, in connection with the sale of the Class Vehicles and/or the defective sunroofs installed in them.

55. Kia has known of the defective sunroofs since at least 2012, when it initiated a formal internal investigation into the problem. Prior to installing the defective sunroofs in their vehicles, Defendants knew or should have known of the defective sunroofs, because: the NHTSA Office of Defects Investigation began its own investigation into the reports of spontaneous shattering of panoramic sunroofs in Kia Vehicles; Kia conducted a survey of driver complaints that the sunroofs often shatter within months of purchase; complaints to the NHTSA, which Kia monitors with respect to its vehicles, show that drivers back in 2010 and 2011 were reporting the problem; and a variety of other means to track data about how its vehicles are performing after they are sold, including through complaints, warranty claims, replacement parts data, and other aggregated data sources.

56. Defendants' unfair or deceptive acts or practices, including these concealments, and omissions of material facts, had a tendency or capacity to mislead, tended to create a false impression in consumers, were likely to and did in fact deceive reasonable consumers, including Plaintiff, about the true safety and reliability of Class Vehicles and/or the defective sunroofs installed in them, and the true value of the Class Vehicles.

57. Defendants intentionally and knowingly misrepresented material facts regarding the Class Vehicles and/or the defective sunroofs installed in them with an intent to mislead Plaintiff and the Ohio Sub-Class.

58. Defendants knew or should have known that their conduct violated the Ohio CSPA.

59. To protect their profits and to avoid remediation costs and a public relations nightmare, Defendants concealed the dangers and risks posed by the defective sunroofs installed in the Class Vehicles, and allowed unsuspecting new and used car purchasers to continue to buy/lease the Class Vehicles, and allowed them to continue driving dangerous vehicles.

60. Defendants owed Plaintiff a duty to disclose the true safety and reliability of the Class Vehicles and/or the defective sunroofs installed in them because Defendants: (a) Possessed exclusive knowledge of the dangers and risks posed by the foregoing; (b) Intentionally concealed the foregoing from Plaintiff; and/or (c) Made incomplete representations about the safety and reliability of the foregoing generally, while withholding material facts from Plaintiff that contradicted these representations.

61. Defendants' failure to disclose and active concealment of the dangers and risks posed by the defective sunroofs in Class Vehicles were material to Plaintiff and the Ohio Sub-Class. A vehicle made by a reputable manufacturer of safe vehicles is worth more than an

otherwise comparable vehicle made by a disreputable manufacturer of unsafe vehicles that conceals defects rather than promptly remedies them.

62. Plaintiff and the Ohio Sub-Class suffered ascertainable loss caused by Defendants' misrepresentations and their failure to disclose material information. Had he been aware of the defective sunroofs installed in the Class Vehicles, Plaintiff and the Ohio Sub-Class either would have paid less for his vehicle or would not have purchased or leased it at all. Plaintiff and the Ohio Sub-Class did not receive the benefit of their bargain as a result of Defendants' misconduct.

63. Defendants' violations present a continuing risk to Plaintiff, the Ohio Sub-Class, as well as to the general public. Defendants' unlawful acts and practices complained of herein affect the public interest.

64. As a direct and proximate result of Defendants' violations of the Ohio CSPA, Plaintiff and the Ohio Sub-Class have suffered injury-in-fact and/or actual damage.

65. As a result of the foregoing wrongful conduct of Defendants, Plaintiff and the Ohio Sub-Class have been damaged in an amount to be proven at trial, and seek all just and proper remedies, including, but not limited to, actual and statutory damages, an order enjoining Defendants' deceptive and unfair conduct, treble damages, court costs and reasonable attorneys' fees, pursuant to Ohio Rev. Code § 1345.09, *et seq.*

## **SECOND CAUSE OF ACTION**

### **Unjust Enrichment (Plaintiff individually and on behalf of the proposed Nationwide class)**

66. Plaintiff realleges the paragraphs above as if fully set forth herein.

67. Kia has long known that its panoramic sunroofs have a propensity to shatter spontaneously, posing a serious safety risk, which it concealed and failed to disclose to Plaintiff and the proposed class members.

68. As a result of its fraudulent acts and omissions related to the defective sunroofs, Kia obtained monies which rightfully belong to Plaintiff and the class members to the detriment of Plaintiff and the proposed class members.

69. Kia appreciated, accepted, and retained the non-gratuitous benefits conferred by Plaintiff and the proposed class members who, without knowledge of the defect, paid a higher price for their vehicles and sunroofs which actually had lower values. Kia also received monies for vehicles and sunroofs that Plaintiff and the proposed class members would not have otherwise purchased.

70. It would be inequitable and unjust for Kia to retain these wrongfully obtained profits.

71. Kia's retention of these wrongfully-obtained profits would violate the fundamental principles of justice, equity, and good conscience.

72. Plaintiff and the class are entitled to restitution of the profits unjustly obtained, plus interest.

### **THIRD CAUSE OF ACTION**

#### **Negligence**

**(Plaintiff individually and on behalf of the proposed Nationwide class)**

73. Plaintiff realleges the paragraphs above as if fully set forth herein.

74. Kia owed Plaintiff and the class a duty to provide thorough notice of known safety defects, such as the panoramic sunroofs' propensity to shatter.

75. Once it discovered the sunroofs' propensity to shatter, Kia also owed Plaintiff and the proposed class a duty to ensure that an appropriate repair procedure was developed and made available to consumers.

76. Kia owed also Plaintiff and the proposed class a duty not to engage in fraudulent or deceptive conduct, including the knowing concealment of material information such as the sunroofs' propensity to shatter. This duty is independent of any contractual duties Kia may owe or have owed.

77. Under the TREAD Act, Kia owed an independent duty to send notice to Class Vehicle owners, purchasers, and dealers whenever it "learns the vehicle or equipment contains a defect and decides in good faith that the defect is related to motor vehicle safety." 49 U.S.C. § 30118(c). Despite Kia's awareness of the panoramic sunroof defect, it failed to timely notify owners, purchasers, and dealers. This duty is independent of any contractual duties Kia may owe or have owed to them.

78. A finding that Kia owed a duty to Plaintiff and the class would not significantly burden Kia. Kia has the means to efficiently notify drivers of Class Vehicles about dangerous defects. The cost borne by Kia for these efforts is insignificant in light of the dangers posed to Plaintiff and the class by Kia's failure to disclose the panoramic sunroof defect and provide an appropriate notice and repair.

79. Kia's failure to disclose the defect in Class Vehicles to consumers and NHTSA is a departure from the reasonable standard of care. Accordingly, Kia breached its duties to Plaintiff and the class.

80. Kia's conduct was contrary to public policy favoring the disclosure of defects that may affect customer safety; these policies are embodied in the TREAD Act, and the notification requirements in 49 C.F.R. § 573.1, *et seq.*

81. As a direct, reasonably foreseeable, and proximate result of Kia's failure to exercise reasonable care to inform Plaintiff and the class about the defect or to provide appropriate repair procedures for it, Plaintiff and the class have suffered damages in that they spent more money than they otherwise would have on Class Vehicles which are of diminished value.

82. Plaintiff and the class could not have prevented the damages caused by Kia's negligence through the exercise of reasonable diligence. Neither Plaintiff nor the class contributed in any way to Kia's failure to provide appropriate notice and repair procedures.

83. Plaintiff and the class seek to recover the damages caused by Kia. Because Kia acted fraudulently and with wanton and reckless misconduct, Plaintiff also seeks an award of punitive damages.

### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiff request that the Court enter a judgment awarding the following relief:

a. An order certifying the proposed class(es), and appointing Plaintiff and his counsel to represent the class(es);

b. An order awarding Plaintiff and the class members their actual damages, punitive damages, and/or any other form of monetary relief provided by law;

c. An order awarding Plaintiff and the class(es) restitution, disgorgement, or other equitable relief as the Court deems proper;

- d. An order requiring Kia to adequately disclose and repair the defect;
- e. An order awarding Plaintiff and the class(es) pre-judgment and post-judgment interest as allowed under the law;
- f. An order awarding Plaintiff and the class(es) reasonable attorney fees and costs of suit, including expert witness fees; and
- g. An order awarding such other and further relief as this Court may deem just and proper.

**JURY DEMAND**

Plaintiff demands a trial by jury on all issues so triable.

Dated: July 31, 2015

Respectfully submitted,

**LANDSKRONER GRIECO MERRIMAN, LLC**

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