

# Exhibit A3

1 Robert Ahdoot (SBN 172098)  
rahdoot@ahdootwolfson.com  
2 Tina Wolfson (SBN 174806)  
twolfson@ahdootwolfson.com  
3 Theodore Maya (SBN 223242)  
tmaya@ahdootwolfson.com  
4 **AHDOOT & WOLFSON, PC**  
5 2600 West Olive Avenue, Suite 500  
Burbank, CA 91505  
6 Telephone: (310) 474-9111  
7 Facsimile: (310) 474-8585

8 *Attorneys for Plaintiffs and the Putative Class*

9 [Additional counsel appear on signature page]

10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**IN THE UNITED STATES DISTRICT COURT  
FOR THE CENTRAL DISTRICT OF CALIFORNIA  
SOUTHERN DIVISION**

DAVID GRIESEMER, JEROME  
GOLDSCHHEIN, MARILYN  
GOLDSCHHEIN, TAYLOR  
VANDERSLICE, ZACHERY CURRY,  
LAURA ANN HARRIS, JULIANN  
MAGUIRE, and JL JOSHUA SMITH,  
individually and on behalf of all others  
similarly situated,

Plaintiffs,

v.

KIA AMERICA, INC.,

Defendant.

Case No. 8:22-cv-01545-FWS-JDE

**SECOND AMENDED CLASS  
ACTION COMPLAINT**

**JURY TRIAL DEMANDED**

Judge: Hon. Fred W. Slaughter  
Ctrm: 10D

1 Plaintiffs David Griesemer, Jerome Goldschein, Marilyn Goldschein, Taylor  
2 Vanderslice, Zachery Curry, Laura Ann Harris, Juliann Maguire, and JL Joshua  
3 Smith, (collectively, “Plaintiffs”), by and through their attorneys, file this action on  
4 behalf of themselves and all others similarly situated against Defendant Kia  
5 America, Inc. (“Defendant” or “Kia”), and allege as follows:

6 **NATURE OF THE ACTION**

7 1. Plaintiffs bring this action individually, and on behalf of a  
8 nationwide class and, separately, classes for the states of South Carolina, Florida,  
9 Missouri, Illinois, North Carolina, and Rhode Island (more fully defined below),  
10 for the benefit and protection of purchasers and lessees of Kia’s model year 2016  
11 and 2017 Optima and 2017 Sportage vehicles (together, the “Vehicle(s)” or “Class  
12 Vehicle(s)”).

13 2. As alleged herein, the Class Vehicles are defective and unsafe. The  
14 Vehicles are plagued by a dangerous defect that results in power window regulator  
15 failure that causes the Vehicles’ automatic windows to malfunction, function  
16 intermittently, or become non-operational. This poses a significant safety hazard to  
17 drivers and occupants of Class Vehicles.

18 3. Window regulator failure presents a safety issue because windows  
19 protect against occupant ejection during a crash. Side windows are also critical to  
20 the proper operation of side airbags. Furthermore, an open window presents an  
21 emergency egress in the event of an accident or when drivers and passengers are  
22 otherwise unable to exit through vehicle doors, e.g., in the event of a crash that leaves  
23 the doors inoperable. When a Vehicle is parked in certain climates, inoperable  
24 windows can expose drivers and occupants to unsafe interior temperatures  
25 (exceeding 110 degrees Fahrenheit) that can impair the safe operation of the Vehicle.  
26 Inoperable open windows increase the risk of theft.

1           4.     The defect is the result of both the power window system being  
2 comprised of inadequate materials and improper workmanship in the production of  
3 the window system and window regulator such that normal operation of the  
4 automatic windows causes the window regulator to break and otherwise fail  
5 (the “Defect”).

6           5.     Kia has identified the root cause of the Defect, including through  
7 internal documents and reports addressing the window regulator failure in the Class  
8 Vehicles. On information and belief, the Defect results from a window regulator  
9 drum gear separating and/or breaking in the Vehicles.

10          6.     Kia is and has been well aware of the Defect. Consumers presenting  
11 Class Vehicles for a Defect-related repair are informed that Kia knows about the  
12 issue. Nevertheless, when owners and lessees of the Class Vehicles seek a repair for  
13 the Defect, they routinely are told there is no recall or fix, and they are forced to  
14 repair this safety issue at their own expense. Obtaining an attempted repair for the  
15 Defect is not cheap. Class members report paying hundreds of dollars or more to  
16 obtain a repair for one window, and often are forced to pay for multiple window  
17 regulator failures at the same time or in close proximity.

18          7.     Prior to selling the Vehicles, Kia knew about the Defect, yet omitted  
19 and kept this material fact from Plaintiffs and other class members. Rigorous pre-  
20 release testing of the windows, including testing that replicates actual consumer use  
21 of the windows, made Kia aware of the Defect.

22          8.     Kia has also issued technical service bulletins (“TSB”) that are directly  
23 related to the Defect. The Defect is also widely discussed and complained about,  
24 including on message boards devoted to the Kia Optima and Kia Sportage and in  
25 complaints made directly to the National Highway Traffic Safety Administration  
26 (NHTSA), all of which Kia is aware of and monitors. Nevertheless, Kia has failed  
27

1 to recall the Vehicles, has not successfully remedied the Defect, has not made owners  
2 and lessees of the Class Vehicles whole, and has not made the Class Vehicles safe.

3 9. The defective power window systems included in the Class Vehicles  
4 did not perform as warranted, and Kia omitted information about the Defect from  
5 consumers.

6 10. As a result of Kia's misconduct, Plaintiffs and class members were each  
7 injured on account of receiving Vehicles that were fundamentally different from  
8 what they believed they were purchasing, and less valuable than was represented.

9 11. In manufacturing, marketing, and selling and/or leasing these unsafe  
10 Vehicles, Kia has engaged in unfair, deceptive, and misleading consumer practices,  
11 and has breached warranties with the Vehicles' purchasers and lessees, including  
12 Plaintiffs.

13 12. As a result of the Defect, Plaintiffs and class members are unable to  
14 utilize their Vehicles in a safe manner, and have incurred damages.

15 13. The Defect presents a safety concern, and though numerous consumers  
16 have complained about it, Kia has failed to adequately address the Defect.

17 14. Plaintiffs bring this action to obtain redress for those who have  
18 purchased or leased the Vehicles across the United States. Plaintiffs seek remedies  
19 for Kia's breaches of implied warranties, fraud, unjust enrichment, violations of state  
20 consumer protection laws, and seek declaratory and injunctive relief to prevent Kia's  
21 continued misconduct.

22 **JURISDICTION AND VENUE**

23 15. This Court has subject matter jurisdiction under 28 U.S.C.  
24 § 1332(d)(2)(A) because the claims relating to the matter in controversy exceed  
25 \$5 million, exclusive of interest and costs, the proposed classes have at least 100  
26 members, and this is a class action in which certain of the class members (including  
27 Plaintiffs) and Defendant are citizens of different states.

1 16. Venue is proper in this judicial District under 28 U.S.C. § 1391 because  
2 Kia is headquartered in this judicial District, Kia conducts significant business  
3 throughout this District, and a substantial part of the acts and omissions giving rise  
4 to Plaintiffs’ claims occurred in, or emanated from, this District.

5 17. At all pertinent times, Kia was engaged in the marketing,  
6 advertisement, sale, and lease of the Class Vehicles, which are the subject of this  
7 lawsuit, in this District and throughout the United States.

8 **PARTIES**

9 **Plaintiff David Griesemer**

10 18. Plaintiff David Griesemer is an adult individual who resides in and is a  
11 citizen of Summerville, South Carolina. In January 2016, Plaintiff Griesemer  
12 purchased a brand new 2016 Optima from Stokes Kia, an authorized Kia dealership  
13 located in Goose Creek, South Carolina. Plaintiff uses the Class Vehicle for family  
14 and household use, and he is the primary user of the Vehicle.

15 19. In or about September 2021, Plaintiff began experiencing the Defect in  
16 his Optima. In a span of just over nine months—between on or about September 13,  
17 2021 and June 29, 2022—all four windows (i.e., front and back driver and passenger  
18 side windows) experienced the Defect due to window regulator failure.

19 20. Plaintiff presented his Vehicle for repair each time to Kia Country of  
20 Charleston located in Charleston, South Carolina. The total cost to repair the four  
21 windows was nearly \$2,000, and Plaintiff was forced to pay approximately a \$100  
22 deductible for each window, forcing him to incur approximately \$400 out of pocket  
23 for the repairs.

24 21. While Kia’s dealership temporarily eliminated the Defect in part at  
25 Plaintiff’s cost, Kia has failed to permanently repair or otherwise correct the Defect  
26 in the Vehicle to permit him to safely continue driving it without the risk of the  
27 power windows failing again.

1           22. Plaintiff anticipates that he will soon experience the window regulator  
2 Defect and resultant power window failure as he continues to use the Class Vehicle.

3           23. Plaintiff has sustained out of pocket damages, has lost time associated  
4 with getting the Vehicle repaired, and lost use of his Vehicle during the time it was  
5 being repaired, all because of the Defect.

6           24. Because of the Defect, and Kia’s inability or refusal to permanently  
7 remedy the issue, Plaintiff continues to be exposed to a safety risk associated with  
8 window regulator failure in their Class Vehicle.

9           25. At the time of purchasing the Vehicle, Plaintiff did not know that the  
10 Vehicle contains an unsafe Defect that causes power window failure, and that he  
11 would not be able to safely drive the Vehicle without risk of the power windows  
12 failing. Had Kia disclosed the Defect on its website, through its dealership, in its  
13 warranty manual, or elsewhere prior to them purchasing his Class Vehicle, Plaintiff  
14 would not have purchased the Vehicle, or would not have paid the purchase price  
15 that he did. Plaintiff relied upon Kia that it was providing the full picture of  
16 information regarding his Vehicle and relied upon the idea that Kia would not  
17 withhold material information about safety defects in the Vehicle, including the  
18 Defect. As a result, Plaintiff received less than what he paid for his Vehicle and did  
19 not receive the benefit of his bargain.

20           **Plaintiffs Jerome and Marilyn Goldschein**

21           26. Plaintiffs Jerome and Marilyn Goldschein are adult individuals who  
22 reside in and are citizens of Delray Beach, Florida. In or about January 2016,  
23 Plaintiff Marilyn Goldschein purchased a brand new 2016 Optima from Grieco Kia,  
24 an authorized Kia dealership located in Delray Beach, Florida. Plaintiffs use the  
25 Class Vehicle for family and household use; Marilyn Goldschein is the primary user  
26 of the Vehicle.

27

28

1 27. In or about late June 2019, the Goldscheins began experiencing the  
2 Defect when the Vehicle's front passenger automatic window failed. Plaintiffs  
3 scheduled a repair and presented the Vehicle for repair to Grieco Kia on June 28,  
4 2019. At this time, the Vehicle was still under warranty. Plaintiff Marilyn  
5 Goldschein waited at the dealership during the repair, which Plaintiffs believe took  
6 approximately two hours.

7 28. In or about late July 2019, the Goldscheins' Vehicle again experienced  
8 the Defect when the rear passenger automatic window failed. Plaintiffs scheduled a  
9 repair and presented the Vehicle for repair to Kia Delray, an authorized Kia  
10 dealership located in Delray Beach, Florida, on July 23, 2019. At this time the  
11 Vehicle was still under warranty. Plaintiff Marilyn Goldschein waited at the  
12 dealership during the repair, which Plaintiffs believe took approximately two hours.

13 29. In or about early September 2019, the Goldscheins' Vehicle  
14 experienced the Defect yet again when the Vehicle's driver's side front automatic  
15 window failed. Around this time Plaintiffs purchased a strip of rubber to help jam  
16 the window closed, for which they paid approximately \$10. Plaintiffs scheduled a  
17 repair and presented the Vehicle for repair to Kia Delray on September 5, 2019. At  
18 this time the Vehicle was still under warranty. Plaintiff Marilyn Goldschein waited  
19 at the dealership during the repair, which Plaintiffs believe took approximately  
20 two hours.

21 30. On or about August 24, 2022, the Goldscheins' Vehicle experienced  
22 the Defect for a fourth time when the Vehicle's passenger front window failed again.  
23 At this time the Vehicle was no longer under warranty. Plaintiff Jerome Goldschein  
24 attempted to make an appointment to have the window repaired, but was told Kia  
25 Delray did not have a necessary part in stock, as it was back ordered. Plaintiff Jerome  
26 Goldschein spent approximately three hours calling Kia dealerships and other repair  
27 shops throughout Florida, searching for one that would be able to repair the Defect.

1 Eventually, Plaintiffs determined that Body Perfect Auto Collision, a repair shop  
2 located in Longwood, Florida, was the closest location that had the back-ordered  
3 part in-stock.

4 31. On or about September 22, 2022, Plaintiff Marilyn Goldschein drove  
5 the nearly 200 miles from Delray Beach, Florida to Body Perfect Auto Collision in  
6 Longwood, Florida. Upon her arrival, Body Perfect Auto Collision determined that  
7 an additional part would be necessary to address the Defect, and an order was placed  
8 for that part on September 22, 2022 at a cost of approximately \$240.

9 32. The Goldscheins were without their Vehicle for five days while it was  
10 repaired. Plaintiff Marilyn Goldschein was able to pick up the Vehicle from Body  
11 Perfect Auto Collision on September 27, 2022. In all, the Goldscheins paid a total of  
12 \$715.19 to Body Perfect Auto Collision for the parts and labor necessary to address  
13 the Defect.

14 33. Plaintiff Marilyn Goldschein spent six hours total driving to and from  
15 Longwood, Florida and Body Perfect Auto Collision. The Goldschein Plaintiffs  
16 believe they spent about \$56 on gas during those drives. In addition, the Goldscheins  
17 believe they spent about \$30 on toll roads during those drives.

18 34. While Kia's dealerships temporarily eliminated the Defect, Kia has  
19 failed to permanently repair or otherwise correct the Defect in the Vehicle in order  
20 to permit the Goldschein Plaintiffs to safely continue driving it without the risk of  
21 the power windows failing again.

22 35. The Goldschein Plaintiffs anticipate that they will soon experience the  
23 window regulator Defect and resultant power window failure as they continue to use  
24 the Class Vehicle.

25 36. The Goldschein Plaintiffs have sustained out of pocket damages, have  
26 lost time associated with getting the Vehicle repaired, and lost use of their Vehicle  
27 during the time it was being repaired, all because of the Defect.

28

1 37. Because of the Defect, and Kia’s inability or refusal to permanently  
2 remedy the issue, the Goldschein Plaintiffs continue to be exposed to a safety risk  
3 associated with window regulator failure in their Class Vehicle.

4 38. At the time of purchasing the vehicle, the Goldschein Plaintiffs did not  
5 know that the Vehicle contains a Defect that causes power window failure, and that  
6 they would not be able to safely drive the vehicle without risk of the power windows  
7 failing. Had Kia disclosed the Defect on its website, through its dealership, in its  
8 warranty manual, or elsewhere prior to them purchasing the Class Vehicle, the  
9 Goldschein Plaintiffs would not have purchased the Vehicle, or would not have paid  
10 the purchase price that they did. Plaintiffs relied upon Kia to provide the full picture  
11 of information regarding their Vehicle, and relied upon the idea that Kia would not  
12 withhold material information about safety defects in the Vehicle, including the  
13 Defect. As a result, Plaintiffs received less than what they paid for their Vehicle and  
14 did not receive the benefit of their bargain.

15 **Plaintiff Taylor Vanderslice**

16 39. Plaintiff Taylor Vanderslice is an adult individual who resides in and is  
17 a citizen of Columbia, Missouri. In or about July 2023, Plaintiff Vanderslice  
18 purchased a used 2016 Optima from AA Auto Sales, a used car dealership located  
19 in Independence, Missouri. Plaintiff uses the Class Vehicle for family and household  
20 use, and she is the primary user of the Vehicle.

21 40. When Plaintiff Vanderslice purchased her Vehicle, both the rear  
22 driver’s side window and rear passenger side window were not functioning due to  
23 the Defect. In or about August 2023, Plaintiff Vanderslice presented her Vehicle to  
24 AA Auto Sales for diagnosis and repair of the issue.

25 41. Plaintiff Vanderslice purchased two new window motors and paid for  
26 their installation in an attempt to fix the issue, at a cost of approximately \$400.  
27 Plaintiff Vanderslice lost the use of the Vehicle for two days while it was examined

1 and the motors were replaced, forcing her to arrange alternate means of  
2 transportation at her own expense. These attempted repairs ultimately failed to fix  
3 the problem, whereupon Plaintiff Vanderslice discovered that the windows were not  
4 functioning due to the Defect in the window regulators.

5 42. In or about September 2023, the front passenger side window of  
6 Plaintiff Vanderslice's Vehicle also began experiencing the Defect and failed to  
7 function. At this time, three of the windows in Plaintiff Vanderslice's Vehicle are  
8 non-operational due to the Defect. Plaintiff Vanderslice has been unable to  
9 permanently repair or otherwise correct the Defect in her Vehicle to permit her to  
10 safely continue driving it without the safety risks posed by the failure of the power  
11 windows.

12 43. Plaintiff anticipates that she will continue to experience the window  
13 regulator Defect and resultant power window failure as she uses the Class Vehicle.  
14 She further anticipates that the Defect will manifest in the front driver's side window  
15 of the Vehicle.

16 44. Plaintiff has sustained out of pocket damages, has lost time associated  
17 with getting the Vehicle repaired, and lost use of her Vehicle during the time it was  
18 being repaired, all because of the Defect.

19 45. Because of the Defect, and Kia's inability or refusal to permanently  
20 remedy the issue, Plaintiff continues to be exposed to a safety risk associated with  
21 window regulator failure in their Class Vehicle.

22 46. At the time of purchasing the Vehicle, Plaintiff did not know that the  
23 Vehicle contains an unsafe Defect that causes power window failure, and that she  
24 would not be able to safely drive the Vehicle without risk of the power windows  
25 failing. Had Kia disclosed the Defect on its website, through its dealership, in its  
26 warranty manual, or elsewhere prior to Plaintiff purchasing her Class Vehicle,  
27 Plaintiff would not have purchased the Vehicle, or would not have paid the purchase

28

1 price that she did. Plaintiff relied upon Kia that it was providing the full picture of  
2 information regarding her Vehicle and relied upon the idea that Kia would not  
3 withhold material information about safety defects in the Vehicle, including the  
4 Defect. As a result, Plaintiff received less than what she paid for her Vehicle and did  
5 not receive the benefit of her bargain.

6 **Plaintiff Zachery Curry**

7 47. Plaintiff Zachery Curry is an adult individual who resides in and is a  
8 citizen of Chicago Heights, Illinois. In 2021, Plaintiff Curry purchased a used 2017  
9 Sportage from Kunes Auto Group of Macomb, a third-party dealership located in  
10 Macomb, Illinois. Plaintiff uses the Class Vehicle for family and household use, and  
11 he is the primary user of the Vehicle.

12 48. In or about July 2022, Plaintiff began experiencing the Defect in his  
13 Sportage. Plaintiff presented his Vehicle to a local Kia dealership and was quoted in  
14 excess of \$500 for the repair. While looking for a more affordable repair option,  
15 Plaintiff Curry was deprived of the use of the failed driver's side front window for  
16 nearly a year.

17 49. In or about May 2023, Plaintiff Curry took his Vehicle to Fernandez  
18 Auto Glass, a repair shop in Chicago, Illinois. Plaintiff Curry spent approximately  
19 \$215 for the repair.

20 50. Plaintiff Curry has recently noticed that the passenger side rear window  
21 in his Vehicle is not operating properly. Plaintiff maintains the window in closed  
22 state and is deprived from the functionality of the window due to the Defect.

23 51. Kia has failed to permanently repair or otherwise correct the Defect in  
24 the Vehicle to permit him to safely continue driving.

25 52. Plaintiff anticipates that he will continue experiencing the window  
26 regulator Defect and resultant power window failure as he continues to use the Class  
27 Vehicle.

1 53. Plaintiff has sustained out of pocket damages, has lost time associated  
2 with getting the Vehicle repaired, and lost use of his Vehicle during the time it was  
3 being repaired, all because of the Defect.

4 54. Because of the Defect, and Kia's inability or refusal to permanently  
5 remedy the issue, Plaintiff continues to be exposed to a safety risk associated with  
6 window regulator failure in his Class Vehicle.

7 55. At the time of purchasing the Vehicle, Plaintiff did not know that the  
8 Vehicle contains an unsafe Defect that causes power window failure, and that he  
9 would not be able to safely drive the Vehicle without risk of the power windows  
10 failing. Had Kia disclosed the Defect on its website, through its dealership, in its  
11 warranty manual, or elsewhere prior to Plaintiff purchasing his Class Vehicle,  
12 Plaintiff would not have purchased the Vehicle, or would not have paid the purchase  
13 price that he did. Plaintiff relied upon Kia that it was providing the full picture of  
14 information regarding his Vehicle and relied upon the idea that Kia would not  
15 withhold material information about safety defects in the Vehicle, including the  
16 Defect. As a result, Plaintiff received less than what he paid for his Vehicle and did  
17 not receive the benefit of his bargain.

18 **Plaintiff Laura Ann Harris**

19 56. Plaintiff Laura Ann Harris is an adult individual who resides in and is  
20 a citizen of Wake Forest, North Carolina. In December 2019, Plaintiff Harris  
21 purchased a used 2016 Optima from Westgate Kia, an authorized Kia dealership  
22 located in Wake Forest, North Carolina. Plaintiff uses the Class Vehicle for family  
23 and household use, and she is the primary user of the Vehicle.

24 57. In early 2021, Plaintiff began experiencing the Defect in her Optima.  
25 In a span of a year and a half—between in or about April 2021 and October 2022—  
26 all four windows (i.e., front and back driver and passenger side windows)  
27 experienced the Defect due to window regulator failure.

1           58. Plaintiff presented her Vehicle for repair each time to Westgate Kia.  
2 The total cost to repair the four windows was nearly \$2,000. Due to a backorder of  
3 the replacement parts, Plaintiff Harris was deprived of the use of the failed window  
4 for several weeks each time a window regulator needed to be replaced.

5           59. While Kia's dealership temporarily eliminated the Defect in part at  
6 Plaintiff's cost, Kia has failed to permanently repair or otherwise correct the Defect  
7 in the Vehicle to permit her to safely continue driving it without the risk of the power  
8 windows failing again.

9           60. Plaintiff anticipates that she will soon experience the window regulator  
10 Defect and resultant power window failure as she continues to use the Class Vehicle.

11           61. Plaintiff has sustained out of pocket damages, has lost time associated  
12 with getting the Vehicle repaired, and lost use of her Vehicle during the time it was  
13 being repaired, all because of the Defect.

14           62. Because of the Defect, and Kia's inability or refusal to permanently  
15 remedy the issue, Plaintiff continues to be exposed to a safety risk associated with  
16 window regulator failure in her Class Vehicle.

17           63. At the time of purchasing the Vehicle, Plaintiff did not know that the  
18 Vehicle contains an unsafe Defect that causes power window failure, and that she  
19 would not be able to safely drive the Vehicle without risk of the power windows  
20 failing. Had Kia disclosed the Defect on its website, through its dealership, in its  
21 warranty manual, or elsewhere prior to Plaintiff purchasing her Class Vehicle,  
22 Plaintiff would not have purchased the Vehicle, or would not have paid the purchase  
23 price that she did. Plaintiff relied upon Kia that it was providing the full picture of  
24 information regarding her Vehicle and relied upon the idea that Kia would not  
25 withhold material information about safety defects in the Vehicle, including the  
26 Defect. As a result, Plaintiff received less than what she paid for her Vehicle and did  
27 not receive the benefit of her bargain.

28

1           **Plaintiff Juliann Maguire**

2           64. Plaintiff Juliann Marie Maguire is an adult individual who resides in  
3 and is a citizen of Newport, North Carolina. On September 30, 2017, Plaintiff  
4 Maguire purchased a used 2016 Optima from Deacon Jones Kia, an authorized Kia  
5 dealership located in Goldsboro, North Carolina. Plaintiff uses the Class Vehicle for  
6 family and household use, and she is the primary user of the Vehicle.

7           65. In 2021, Plaintiff began experiencing the Defect in her Optima. In a  
8 span of just over nine months—between on or about September 13, 2021 and June  
9 29, 2022—all four windows (i.e., front and back driver and passenger side windows)  
10 experienced the Defect due to window regulator failure.

11           66. Plaintiff presented her Vehicle for repair three times to Wayne’s  
12 Automotive Group located in Morehead City, North Carolina. The total cost to repair  
13 the three windows was approximately \$2,400, and Plaintiff was deprived of the use  
14 of her vehicle while it remained at the repair shop several days each time the window  
15 regulators needed to be replaced. The passenger side rear window has not yet been  
16 repaired and remains inoperative due to the Defect.

17           67. While Plaintiff obtained repairs for three of the four windows at her  
18 expense, Kia has failed to permanently repair or otherwise correct the Defect in the  
19 Vehicle to permit her to safely continue driving it without the risk of the power  
20 windows failing again.

21           68. Plaintiff anticipates that she will continue experiencing the window  
22 regulator Defect and resultant power window failure as she continues to use the  
23 Class Vehicle.

24           69. Plaintiff has sustained out of pocket damages, has lost time associated  
25 with getting the Vehicle repaired, and lost use of her Vehicle during the time it was  
26 being repaired, all because of the Defect.

27           70. Because of the Defect, and Kia’s inability or refusal to permanently  
28

1 remedy the issue, Plaintiff continues to be exposed to a safety risk associated with  
2 window regulator failure in their Class Vehicle.

3 71. At the time of purchasing the Vehicle, Plaintiff did not know that the  
4 Vehicle contains an unsafe Defect that causes power window failure, and that she  
5 would not be able to safely drive the Vehicle without risk of the power windows  
6 failing. Had Kia disclosed the Defect on its website, through its dealership, in its  
7 warranty manual, or elsewhere prior to Plaintiff purchasing her Class Vehicle,  
8 Plaintiff would not have purchased the Vehicle, or would not have paid the purchase  
9 price that she did. Plaintiff relied upon Kia that it was providing the full picture of  
10 information regarding her Vehicle and relied upon the idea that Kia would not  
11 withhold material information about safety defects in the Vehicle, including the  
12 Defect. As a result, Plaintiff received less than what she paid for her Vehicle and did  
13 not receive the benefit of her bargain.

14 **Plaintiff JL Joshua Smith**

15 72. Plaintiff JL Joshua Smith is an adult individual who resides in and is a  
16 citizen of North Providence, Rhode Island. In September 2019, Plaintiff Smith  
17 purchased a used 2016 Optima from Used Car Genius, a third-party vehicle  
18 dealership that was located in West Warwick, Rhode Island (now permanently  
19 closed). Plaintiff uses the Class Vehicle for family and household use, and he is the  
20 primary user of the Vehicle.

21 73. In or about September 2021, Plaintiff began experiencing the Defect in  
22 his Optima. Over the course of a year and a half—between in or about October 2021  
23 and June 2023—three windows experienced the Defect due to window regulator  
24 failure.

25 74. Plaintiff presented his Vehicle for repair each time to Kia of Attleboro  
26 located in Attleboro, Massachusetts. At each visit, the dealership told Plaintiff Smith  
27 that the part was out of stock and had to be ordered. Plaintiff had to purchase and

1 use tape to keep the failed window in a closed state by manually pulling a window  
2 up and taping it to the frame of the door. The total cost to repair the three windows  
3 was approximately \$1,000.

4 75. While Kia's dealership temporarily eliminated the Defect in part at  
5 Plaintiff's cost, Kia has failed to permanently repair or otherwise correct the Defect  
6 in the Vehicle to permit him to safely continue driving it without the risk of the  
7 power windows failing again.

8 76. Plaintiff anticipates that he will soon experience the window regulator  
9 Defect and resultant power window failure as he continues to use the Class Vehicle.

10 77. Plaintiff has sustained out of pocket damages, has lost time associated  
11 with getting the Vehicle repaired, and lost use of his Vehicle during the time it was  
12 being repaired, all because of the Defect.

13 78. Because of the Defect, and Kia's inability or refusal to permanently  
14 remedy the issue, Plaintiff continues to be exposed to a safety risk associated with  
15 window regulator failure in his Class Vehicle.

16 79. At the time of purchasing the Vehicle, Plaintiff did not know that the  
17 Vehicle contains an unsafe Defect that causes power window failure, and that he  
18 would not be able to safely drive the Vehicle without risk of the power windows  
19 failing. Had Kia disclosed the Defect on its website, in its warranty manual, or  
20 elsewhere prior to Plaintiff purchasing his Class Vehicle, Plaintiff would not have  
21 purchased the Vehicle, or would not have paid the purchase price that he did.  
22 Plaintiff relied upon Kia that it was providing the full picture of information  
23 regarding his Vehicle and relied upon the idea that Kia would not withhold material  
24 information about safety defects in the Vehicle, including the Defect. As a result,  
25 Plaintiff received less than what he paid for his Vehicle and did not receive the  
26 benefit of his bargain.

27

28



1 83. California hosts a significant portion of Kia's U.S. operations,  
2 including sales and service offices and financial service offices, among others. Kia's  
3 research and design facilities are located in California.

4 84. In addition, the conduct that forms the basis for each and every class  
5 member's claims against Defendant emanated from Kia's headquarters in California  
6 and is consistent with directives of Defendant's personnel in California.

7 85. Kia's marketing and advertising personnel are located at its California  
8 headquarters, and the advertising and marketing schemes, as well as the Owner's  
9 Guides and Owner's Manuals describing the safety and performance of the Vehicles  
10 (which omitted to describe the Defect), were made and implemented from Kia's  
11 California headquarters.

12 86. Kia's California personnel implemented its deceptive advertising  
13 scheme and other materials and have refused to repair the Defect in Plaintiffs'  
14 Vehicles.

15 87. Defendant's personnel responsible for communicating with dealers  
16 regarding known problems with the defective Vehicles are also located at the  
17 California headquarters, and the decision to not inform authorized dealers of the  
18 Defect was made and implemented from Kia's California headquarters.

19 88. Defendant has significant contacts with the state of California, and the  
20 conduct at issue herein emanated from California.

21 **SUBSTANTIVE ALLEGATIONS**

22 89. This action is brought against Defendant on behalf of Plaintiffs and all  
23 persons who purchased or leased Kia's model year 2016-2017 Optima and 2017  
24 Sportage vehicles. The models and model years of vehicles comprising the Class  
25 Vehicles are subject to revision based upon information learned through the  
26 discovery process.

27 90. Kia America, Inc. is the marketing and distribution arm of Kia Motors  
28

1 Corporation based in Seoul, Korea. Headquartered in Irvine, California, Kia touts  
2 itself as having “been the highest ranked mass market brand in initial quality for five  
3 consecutive years according to J.D. Power, and is recognized as one of the 100 Best  
4 Global Brands by Interbrand.”<sup>1</sup> Kia “offers a complete range of vehicles sold through  
5 a network of nearly 800 dealers in the U.S.”<sup>2</sup>

6 91. In a press release published on Kia’s website, [www.kiamedia.com](http://www.kiamedia.com), Kia  
7 quotes its president Michael Cole as stating, “Kia is committed to building the safest  
8 vehicles possible” and that the six Top Safety Pick (TSP) ratings Kia recently  
9 received from the Insurance Institute for Highway Safety (IHS) reflect Kia’s  
10 “commitment and reaffirms Kia’s continued effort to strive for safety improvement  
11 and advancement in every model” it produces.<sup>3</sup>

12 92. Kia sells Class Vehicles to its authorized distributors and dealerships,  
13 which, in turn, sell or lease those vehicles to consumers. After these dealerships sell  
14 cars to consumers, including Plaintiffs and members of the classes, they purchase  
15 additional inventory from Kia to replace the Vehicles sold and leased, increasing  
16 Kia’s revenues. Thus, Plaintiffs’ and class members’ purchases of Vehicles accrue  
17 to the benefit of Kia by increasing its revenues.

18 ***Overview of the Kia Optima***

19 93. The Kia Optima is a mid-size sedan that was initially introduced in  
20 2000 as a 2001 model (first generation).

21 94. In 2016, the Optima entered its fourth generation, which according to  
22 Kia, “defie[d] the staid midsize sedan segment with its exquisite design [and]  
23

---

24 <sup>1</sup> KIA MEDIA, [https://www.kiamedia.com/us/en/media/pressreleases/16009/kia-](https://www.kiamedia.com/us/en/media/pressreleases/16009/kia-receives-six-top-safety-pick-ratings-from-insurance-institute-for-highway-safety)  
25 [receives-six-top-safety-pick-ratings-from-insurance-institute-for-highway-safety](https://www.kiamedia.com/us/en/media/pressreleases/16009/kia-receives-six-top-safety-pick-ratings-from-insurance-institute-for-highway-safety)  
(last visited Jan. 12, 2024).

26 <sup>2</sup> *Id.*

27 <sup>3</sup> *Id.*

1 abundance of premium convenience features.”<sup>4</sup> Kia quotes its vice president of  
2 product planning Orth Hedrick as stating, “[t]he all-new Optima encompasses  
3 everything the outgoing model did so well but does it even better. It has matured in  
4 all the right ways, from the European sport-sedan design to the premium materials  
5 to its improved ride and handling . . . The all-new Optima retains the signature  
6 personality of its predecessor, but we’ve literally improved everything, providing  
7 more space, better ergonomics, more technology and greater refinement.”<sup>5</sup>

8 95. In the press release, Kia’s vice president, Orth Hedrick states: “Kia is  
9 known for superior design, quality engineering and intuitive technology. Kia  
10 continues to rack up the recognition from the auto industry . . . This latest honor from  
11 Kelley Blue Book reconfirms the Optima and Sportage as outstanding offerings in  
12 their segments and acknowledges Kia’s world-class vehicle line-up.”<sup>6</sup>

13 ***Overview of the Kia Sportage***

14 96. The Kia Sportage is a compact SUV first built in 1995. Originally, it  
15 was a mini-SUV developed with a Lotus engineering base platform, but the second  
16 generation Sportage has grown in size to become a compact crossover SUV.<sup>7</sup>

17 97. The fourth generation Sportage was introduced for model year 2017.  
18 According to Kia: “The all-new 2017 Sportage, the fourth generation of Kia Motors  
19 America’s longest-running nameplate, wraps a stunning and contemporary design  
20 around a structure that is both stiffer and more spacious than ever before. Advanced  
21

---

22 <sup>4</sup> KIA MEDIA, <https://www.kiamedia.com/us/en/models/optima/2016> (last visited  
23 Jan. 12, 2024).

24 <sup>5</sup> *Id.*

25 <sup>6</sup> KIA MEDIA, [https://www.kiamedia.com/us/en/media/pressreleases/12727/kia-  
26 optima-and-kia-sportage-ranked-top-10-most-awarded-vehicles-of-2017-by-  
27 kelley-blue-books-kbbcom](https://www.kiamedia.com/us/en/media/pressreleases/12727/kia-optima-and-kia-sportage-ranked-top-10-most-awarded-vehicles-of-2017-by-kelley-blue-books-kbbcom) (last visited Jan. 12, 2024).

28 <sup>7</sup> AUTOPEDIA WIKI, [https://autopedia.fandom.com/wiki/Kia\\_Sportage](https://autopedia.fandom.com/wiki/Kia_Sportage) (last  
visited Jan. 12, 2024).

1 driver assistance technologies, significant suspension and steering improvements,  
2 and available intelligent AWD vastly improve the Sportage’s driving dynamics  
3 while premium materials and world-class craftsmanship create a class-up experience  
4 in an otherwise utilitarian segment.”<sup>8</sup> Kia’s vice president Orth Hedrick stated,  
5 “[i]nstead of bland utility, the Sportage combines distinctly European and sporty  
6 styling with thoughtful design and functionality, including innovative packaging,  
7 premium materials, a turbocharged engine and surprising features.”<sup>9</sup>

8 ***The Defective Power Window Systems in the Optima and Sportage***

9 98. The Class Vehicles are equipped with defective power window  
10 systems.<sup>10</sup> Each Vehicle has a power window switch that controls the door’s  
11 window.<sup>11</sup>

12 99. Due to a defect in materials and workmanship, the window regulator  
13 drum/gear are prone to separating and breaking, resulting in an inoperative window  
14 regulator and the malfunction of the power windows system. By nature, the Defect  
15 becomes increasingly severe over time.

16 100. Window regulator failure in the Vehicles presents a severe safety issue  
17 for several reasons. First, automobile windows protect against occupant ejection  
18 during a crash, yet when the Defect manifests in the Vehicles, class members are  
19 often left with non-functioning windows that have fallen down into the car doors and  
20 cannot be “rolled up.” Second, side windows are critical to the proper operation of

21 \_\_\_\_\_  
22 <sup>8</sup> KIA MEDIA, <https://www.kiamedia.com/us/en/models/sportage/2017> (last visited  
23 Jan. 12, 2024).

24 <sup>9</sup> *Id.*

25 <sup>10</sup> KIA, *Kia Sportage: Description and Operation*,  
[https://www.kispmanual.com/description\\_and\\_operation-1087.html](https://www.kispmanual.com/description_and_operation-1087.html) (last visited  
26 Jan. 12, 2024).

27 <sup>11</sup> KIA, [https://www.ksportagegl.com/power\\_windows-110.html](https://www.ksportagegl.com/power_windows-110.html) (last visited Jan.  
28 12, 2024).

1 side airbags. Third, being able to open a window, when needed, presents an  
2 emergency egress in the event of an accident or when drivers and passengers are  
3 otherwise unable to exit through vehicle doors, such as in the event of a crash that  
4 leaves the doors inoperable. For class members who have experienced the Defect in  
5 a way that prevents them from “rolling down” the windows in their Vehicles, they  
6 cannot use the windows as egress in the event of an emergency where the car doors  
7 become inoperable. Fourth, when a Vehicle is parked in certain climates, inoperable  
8 windows can expose drivers and occupants to unsafe interior temperatures  
9 (exceeding 110 degrees Fahrenheit) that can impair the safe operation of the Vehicle.  
10 Finally, inoperable open windows increase the risk of theft.

11 101. Clearly, the Defect presents a safety concern, and though numerous  
12 consumers have complained about it, Kia has failed to adequately address the Defect.

13 102. The internet is replete with complaints from Class Vehicle owners and  
14 lessees who, like Plaintiffs, have experienced the unsafe Defect and resultant  
15 malfunctioning power windows. Kia did not repair or otherwise correct the Defect  
16 in the Vehicles to permit Plaintiffs or class members to safely continue driving their  
17 Vehicles without risk of the window regulator being damaged or routinely failing,  
18 resulting in the automatic windows becoming non-operational.

19 103. Entire message board threads are devoted to complaints and discussions  
20 about the Defect. For example, on [optimaforums.com](https://www.optimaforums.com), there is a discussion thread  
21 entitled “Power windows not working on 2016 Kia Optima,” with numerous  
22 complaints and discussions about the Defect.<sup>12</sup> A sampling of the discussion is below  
23 (all sic):

24  
25  
26 <sup>12</sup> OPTIMA FORUMS, *Power windows not working on 2016 Kia Optima*,  
27 [https://www.optimaforums.com/threads/power-windows-not-working-on-2016-  
kia-optima.171741/](https://www.optimaforums.com/threads/power-windows-not-working-on-2016-kia-optima.171741/) (last visited Jan. 12, 2024).

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



**Jim9858**

Registered

Joined Feb 14, 2022

1 Posts

#44 · Feb 14, 2022



I have 2016 Optima. Drivers window went out in Nov 2021. Motor was working but window would not go up or down. Due to Covid shortages had to buy last on from dealer and got hosed. When I took it apart to replace the regulator I found the drum gear that the motor interacts with was stripped out on the old regulator. I went ahead and replaced with new one and it works fine. Within a month the other three regulators went bad. Motor works But windows don't go up or down. I took to dealer as there is obviously a problem with the manufacture of the windows After speaking to Service manager I found out that it is a known problem with the drum gear in the regulators. While not issuing a recall, Kia did published a technical bulletin explaining the problem and detailing how to replace the drum gear. if your DIY replacing the regulator is really easy. Haven't tackled the drum gear replacement yet. Parts are limited supply and back ordered Currently holding windows up from inside with a suction cup on each window that you would use to lift tile or glass. bought at home depot while I figure out next step.



**Holly Katelyn**

Registered

Joined Nov 2, 2021

1 Posts

#43 · Nov 2, 2021



My back driver window stopped working in March, then my back passenger went less than a week later, got both of them fixed... fast forward to august, my front driver window went out, then lastly my front passenger window stopped working as well only a few short days later. I've had the parts ordered since august and supposedly they're still not in and it's now November. I find it strange that each of my windows stopped working within a week or less of each other. I think they should look into a recall

Ericglo

Save Share



**karmirkle**

Registered

Joined Oct 18, 2021

2 Posts

#40 · Oct 18, 2021



I also have a 2016 Kia Optima and both of my back windows have gone out - I took it to Kia and unfortunaly my car was no longer under warranty - I did not have the money to fix them so they no longer work but one of my friends at work has a Kia Sportage and she has had to have all 4 of hers replaced under warranty and now she just told me today that one of them is out again. I honestly belive it is a warranty issue - Kia needs to persue the issue immediately.

Save Share



**PJW**

Registered

Joined Mar 17, 2021

2 Posts

#33 · Sep 5, 2021



Let me set the record straight with these poorly designed Kia Window Regulators. No, it's not the master switch as each motor still works and makes the sound of it "wanting" to work. My wife has a 2016 Kia Optima LX (Florida) with 90K miles on it. In April, the rear passenger went out. Watched some videos, researched the method and for \$250, that door was fixed. It's not hard at all, get the proper tools and you can do it. Fast forward to August 20, 2021. The front passenger window fails. On Sept 3rd, 2021 the rear passenger goes out and then TODAY, the Driver side WINDOW REGULATOR goes dead. The motor still hums likes its about to roll the window down, but nothin. Driver side window falls into the door panel, now I have to fish it out. The first one I replaced revealed wear in the plastic wheels . It's poorly and cheaply designed and any engineer that worked on this ought to be ashamed they put their name on this crappy design. It will cost us \$1,000 just in parts to fix all of the windows. My Ford F-250 never had stuff like this happen to it's motorized windows. And it's a 2002 Ford F-250 with 218,000 miles on the meter.



**Lynda**  
Registered   
Joined Sep 9, 2021  
2 Posts

#36 · Sep 9, 2021

I am frustrated as well. I have a 2016 Kia Optima. Within a month I had three windows that went bad. I don't understand how three windows can go bad all at the same time. I had the driver window repaired and it was around \$600 for one window. Both of my back windows have not been repaired yet. This is ridiculous. I am making a complaint directly to Kia regarding this issue. If anyone has any other suggestions I am open to them.

Save Share



**Gerry**  
Registered   
2016 Kia Optima  
Joined Oct 28, 2017  
8 Posts

#27 · Sep 4, 2020

2016 Optima LX I have had to replace all 4 window regulators over the last year and a half. the same issue on all 4 units the teeth disintegrated in the small plastic gear which the motor mounts into. As the second owner of this vehicle I was only able to get one replaced under warranty before I passed 60,000 miles.

Save Share



**Whitney**  
Registered   
Joined Aug 27, 2020  
14 Posts

Discussion Starter · #1 · Aug 27, 2020 (Edited)

ORIGINAL: I have a 2016 Kia Optima with, as of now, roughly 58,000 miles on it and have had it for a little over three years. When the first window (rear passenger) stopped working, it was between Oct. 2019 and Nov. 2019. Luckily, the glass was up, but neither switches would allow it to go up and/or down. The motor did, however, make a noise as if it were trying to go up and/or down. At the time, I didn't have the money to comfortably spare in order to fix said window. I figured I'd save up and get it fixed in a few weeks. Then, as I'm getting enough saved to have the first window fixed, window number two (rear driver) gave out with the same issue. It would make a noise, but nothing. Fast forward to March 2020, COVID is getting big and we're in shut down, then out goes the third window (passenger side). I wasn't so lucky with this one because it was all the way down. Same as the first two, makes noise, just won't go up and/or down. A couple of weeks ago, my final working window called it quits. Has anyone else had the same experience and does it sound like there may be something faulty with wiring? To me it's rather odd that all gave out within less than a year. Should I chance taking it to a Kia dealership and paying out of pocket for all four to be fixed or try to file a complaint with NHTSA? (I know it isn't technically a safety issue, but an issue nonetheless.)

UPDATE: I took my car to my local Kia dealership to see if my car was covered under the 60K mile warranty, per someone's advice on here. (Thank you, by the way.) Seems that all four of my regulators have gone bad. The employee I spoke with verified that my car is covered under warranty still and that he hadn't seen anything happen like that before. After about 30 more minutes a different employee approached me telling me my car was ready to go. As she walked me out to the car she informed me that they've been seeing this issue a lot recently on optimas and sportages. She believes Kia needs to do a recall on the windows because there is definitely something faulty in there. Now, these two employees sit right next to each other in the same space. He told me he's not seen anything like this and she's saying it's been happening a lot lately. Needless to say, I'm not a huge fan of this dealership (big fat liars). Didn't leave there on a good note a year ago because of a lie, but at about 45 minutes away it's the closest to me. Just going to get my car fixed and washing my hands of that place. Anyway, thank you to all for your input! I really appreciate it!

WINDOWS are SIMILARLY affected with numerous complaints and discussion about the

1 Defect<sup>13</sup>:



2 **clockhart52**

3 Registered

4 Joined Sep 26, 2021  
5 3 Posts

Discussion Starter · #1 · Sep 26, 2021

I have a 2016 Kia Optima. My third window has went out in my Kia. I'm down to one working window with two taped up and the other one has fallen so I can't pull it up. When I tell you I am over Kia I mean it. My motor when out in 2020 and was replaced under warranty. My trunk Latch is broken and is taped up, which their is a recall for this but the Optimas are not covered. I'm a single mother and have never had as many problems with a car as I have had this one for it to be 5 years old. I had to put my car in the shop for it going into limp mode. This was covered due to recall but Kia offered no loaner car so I had to pay 1300 dollars for a rental to get me around for 21 days until they could look at my car due to the number of kia's they were working on. I will never purchase another Kia AGAIN and I Pray I can get into a safer car soon for me and my kids!



10 **KingFatty**

11 Registered

12 2012 Black SX Prem.  
13 & Tech.

14 Joined May 1, 2013  
15 2,591 Posts

#9 · Oct 14, 2021

Is there a good way to diagnose window issues, determine whether it's a switch or something behind the door panel?

My situation is the rear window, driver's side, doesn't go up or down.

The difficulty is the symptoms changed over time, and at first it seemed to be a simple switch failure, but now it seems like something else. Can a window go bad like described below, or could it be that multiple switches failed and also the window failed? How would I figure out which parts are good or bad?

At first the window worked fine using the rear controls located at that window, and using the master switches at the driver's seat, I could roll up the window but not down.

I thought the problem was just with the master switch at the driver's seat not being able to roll down that rear window. And sure enough, over time, the master switch gradually lost the ability to roll up the window too, while the rear seat at the window worked fine. Then over time, the rear seat couldn't do anything, and now that rear window is just stuck in place, closed, and no switch can make it move. So maybe the problem is not a switch at all, and it's just been a strange failure, or maybe it's both the switches and the window motor being the problem?

Anyway, for windows, how do I figure out what went wrong and what parts are still good, like a general troubleshooting approach?

16 <sup>13</sup> OPTIMA FORUMS, *Power Windows*,  
17 <https://www.optimaforums.com/threads/power-windows.173208/> (last visited  
18 Jan. 12, 2024).

1 105. Another site called carcomplaints.com<sup>14</sup> contains numerous complaints  
2 about the Defect:

3 **2016 KIA OPTIMA OWNER COMMENTS** (PAGE 2 OF 2)

4 # **12** **Optima EX** MAR 25  
Automatic transmission 74,000 miles **2020**

5 REAR DRIVER'S DOOR WINDOW WON'T GO UP OR DOWN - Very strange and odd at first, I never have passengers. I  
6 barely even roll down the back windows - probably 30 times the whole time having my car, as the original owner starting  
at 7 miles on the odometer. I can hear the motor in the window, at first thought it was the switch and then discovered it  
was the window regulator after a few searches. Suggested part price \$275 and that's without labor.

7 - **Howard K.**, Coral Springs, FL, US

8 # **11** **Optima EX 2.4L 4L** JAN 30  
Automatic transmission 87,000 miles **2020**

9 SO my drivers side window is the only window that works, ive never had a car where all but one window regulator goes out  
with in months of each other. i live in florida so my windows are usually always up considering the heat down here. no  
kids no pets. wtf kia?

10 - **Jennifer L.**, Lakeland, FL, US

11 # **10** **Optima LX 2.4L** MAR 17  
Automatic transmission 75,500 miles **2020**

12 Window #1 of that has had the regular break. Again, you have to replace the entire panel to solve the issue of the window  
13 falling down.

14 - **Norma R.**, West Palm Beach, US

15 # **9** **Optima LX 2.4L** AUG 04  
Automatic transmission 71,000 miles **2019**

16 Ok, so this is the fourth of 4 window regulators that has failed in the last 7 months. Each window's regulator had to be  
replaced. I replaced the part myself and is easy to do. It cost 250, but the only thing broken was a small 3 inch cog which  
would have cost a few bucks if they sold it separately to the entire plastic panel it attaches too. Total waste of plastic and  
17 time and money.

18 - **T J.**, Pompano Beach, FL, US

19 # **8** **Optima LX 2.4L** JUL 10  
Automatic transmission 70,000 miles **2019**

20 Ok, so this is the third of 4 window regulators that has failed. I replaced the part myself. It cost 250, but the only thing  
broken was a small 3 inch cog which would have cost a few bucks if they sold it separately to the entire plastic panel it  
attaches too. Total waste of plastic and time and money.

21 - **T J.**, Pompano Beach, FL, US

22 # **7** **Optima LX 2.4L** APR 10  
Automatic transmission 68,000 miles **2019**

23 Ok, so this is the second of 4 window regulators that has failed. I replaced the part myself. It cost 250, but the only thing  
broken was a small 3 inch cog which would have cost a few bucks if they sold it separately to the entire plastic panel it  
attaches too. Total waste of plastic, time and money. Very poor quality parts

24 - **T J.**, Pompano Beach, FL, US

25  
26 <sup>14</sup> CARCOMPLAINTS.COM, *2016 Kia Optima Window Regulator Failure*,  
27 [https://m.carcomplaints.com/Kia/Optima/2016/windows\\_windshield/window\\_re](https://m.carcomplaints.com/Kia/Optima/2016/windows_windshield/window_regulator_failure.shtml)  
28 [gulator\\_failure.shtml](https://m.carcomplaints.com/Kia/Optima/2016/windows_windshield/window_regulator_failure.shtml) (last visited Jan. 12, 2024).

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

**# 6**      **Optima LX 2.4L**      DEC 10  
Automatic transmission    65,000 miles      **2018**

This is the first of 4 window regulators that has failed. It failed just after my warranty was up and it I replaced the part myself. It cost 250, but the only thing broken was a small 3 inch cog which would have cost a few bucks if they sold it separately to the entire plastic panel it attaches too. Total waste of plastic and time and money.

- T J., Pompano Beach, FL, US

**# 5**      **Optima**      MAY 25  
Automatic transmission    33,687 miles      **2019**

3 of my power windows are now not working. The rear passenger side wouldn't roll up about 5 months ago, then a few weeks ago the rear drivers side, and today the passenger side window. Each door and the driver door make the sound of trying to work up and down but the windows will not move. I had to hand pull the windows up and use suction cups or door stoppers until I can take it in. In watching some YouTube videos on the subject it looks like more than I can handle. These windows were in no way abused by kids playing around with them or any type of misuse, I am single, no kids and live in Florida where I barely roll my windows down and prefer using the A/C. I suppose it will be a matter of weeks before the drivers side door does the same. Is anyone else experiencing this?

**Update from Jul 25, 2019**

My car is going to the dealership tomorrow for 4 new regulators. The lady said you should of brought it in sooner, my reply was "yeah that would of been 4 separate appointments and 4 separate pains in my...." Anyway I am grateful the warranty covers it, but who is to say this won't just happen again.

- Sherry P., Saint Petersburg, FL, US

**# 4**      **Optima**      OCT 01  
Automatic transmission    33,500 miles      **2018**

I'm now on window #3 of the mechanism not working. The dealer has replaced them but I've never heard of or experienced 3 window mechanisms going on 1 vehicle. I asked them to check the last one and supposedly they did.

- Samantha K., Cape Coral, US

**# 3**      **Optima**      JUL 01  
Automatic transmission    33,000 miles      **2018**

This is now the second window mechanism that has stopped working on my vehicle.

- Samantha K., Cape Coral, US

**# 2**      **Optima**      MAY 01  
Automatic transmission    32,000 miles      **2018**

Its very frustrating that the window mechanism stops working

- Samantha K., Cape Coral, US

**# 1**      **Optima**      APR 01  
Automatic transmission    34,000 miles      **2019**


It is now all 4 window mechanisms have gone on my vehicle. I'm super pissed because the Dealer supposedly checked the last window mechanism to verify that it was working correctly.

- Samantha K., Cape Coral, US

106. The following are some examples of complaints from owners and lessees of the Vehicles concerning the Defect available through NHTSA's website<sup>15</sup>:

<sup>15</sup> See, e.g., NHTSA, 2016 Kia Optima Safety Ratings,

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

June 27, 2022 NHTSA ID NUMBER: 11471121 

**Components: VISIBILITY**

NHTSA ID Number: 11471121


Incident Date June 1, 2022

Consumer Location MONTGOMERY, AL

Vehicle Identification Number 5XXGT4L37GG\*\*\*\*

**Summary of Complaint**

CRASH	No	All 4 windows in my car has dropped down and won't go back up. Have to put a car cover over it to keep it from raining in it or to keep anything else out of it. I rarely rolled my windows down in this car every since I have purchased it and all of a sudden all the windows just drops down. This is a defect on the company part and not mine and i want to find out why I never received a recall letter to this effect for I have seen and read that there were cars recalled for the same problem that I am having with mine.
FIRE	No	
<b>INJURIES</b>	0	
DEATHS	0	

January 3, 2022 NHTSA ID NUMBER: 11446056 

**Components: VISIBILITY**

NHTSA ID Number: 11446056

Incident Date December 13, 2021

Consumer Location FORT VALLEY, GA


Vehicle Identification Number 5XXGT4L16GG\*\*\*\*

**Summary of Complaint**

CRASH	No	The contact's grandmother owns a 2016 Kia Optima. The contact stated that while driving at 25 MPH, the rear driver's side window inadvertently fell. There were no warning lights illuminated. The contact veered to the side of the road and pulled up the window manually. She then inserted a piece of paper in the upper right corner of the window to keep it in place. The contact stated that the failure reoccurred while driving. The front and rear driver's side windows and the rear passenger's side window also inadvertently fell. The contact inserted pieces of paper in the upper right corner of each window. The vehicle was taken to the dealer but was not diagnosed. The dealer informed the contact that the vehicle would be repaired at her expense. The manufacturer was notified of the failure but did not provide any assistance. The vehicle was not repaired. The failure mileage was approximately 83,500.
FIRE	No	
<b>INJURIES</b>	0	
DEATHS	0	

<https://www.nhtsa.gov/vehicle/2016/KIA/OPTIMA>; NHTSA, *2017 Kia Sportage Safety Ratings*, <https://www.nhtsa.gov/vehicle/2017/KIA/SPORTAGE/SUV/FWD> (last visited Jan. 12, 2024).

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

September 20, 2021 NHTSA ID NUMBER: 11433589 

**Components: VISIBILITY**

NHTSA ID Number: 11433589


Incident Date September 17, 2021

Consumer Location NASHVILLE, TN

Vehicle Identification Number 5XXGT4L35GG\*\*\*\*

**Summary of Complaint**

CRASH	No	Without heavy use (I don't often have passengers in the back seat), driver side rear window regulator/motor failed in May, causing the rear window to fall into the door while driving. This is a major safety issue as anything can go through the car - rain or debris. It was roughly \$600. This weekend, the same thing happened to another window out of the blue while having my dog in the back who nearly jumped out after it fell into the door. Now, the part is backordered and the Kia dealership has said it could be months before the window can be repaired and they offer no solution on how to keep the window up in the meantime. This is an expensive safety issue and should not be failing in multiple windows. My car only has 65k miles on it.
FIRE	No	
<b>INJURIES</b>	0	
DEATHS	0	

August 28, 2020 NHTSA ID NUMBER: 11351833 

**Components: ELECTRICAL SYSTEM, VISIBILITY**

NHTSA ID Number: 11351833

Incident Date June 13, 2019


Consumer Location MIRAMAR, FL

Vehicle Identification Number 5XXGU4L3XGG\*\*\*\*

**Summary of Complaint**

CRASH	No	TL* THE CONTACT OWNS A 2016 KIA OPTIMA. THE CONTACT STATED WHILE DRIVING 60 MPH, THE DRIVER'S AND PASSENGER'S SIDE REAR WINDOWS STARTED TO ROLL DOWN INDEPENDENTLY. THE CONTACT WAS UNABLE TO ROLL THE WINDOWS BACK UP. THE VEHICLE WAS TAKEN TO LOCAL DEALER RICK CASE KIA LOCATED 14500 W. SUNRISE BLVD, SUNRISE, FL 33323, (954) 715-7580, WHERE IT WAS DIAGNOSED WITH NEEDING THE WINDOW REGULATORS TO BE REPLACED. THE VEHICLE HAD BEEN REPAIRED BUT CONTINUED TO EXPERIENCE THE FAILURE. THE MANUFACTURER HAD NOT BEEN INFORMED OF FAILURE. THE FAILURE MILEAGE WAS 37,222.
FIRE	No	
<b>INJURIES</b>	0	
DEATHS	0	

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

February 19, 2021 NHTSA ID NUMBER: 11396979 

**Components: VISIBILITY/WIPER**

**NHTSA ID Number:** 11396979


**Incident Date** February 19, 2021

**Consumer Location** OVIEDO, FL

**Vehicle Identification Number** 5XXGT4L33GG\*\*\*\*

**Summary of Complaint**

CRASH	No	THE RIGHT REAR WINDOW SUDDENLY ROLLED DOWN WHILE DRIVING. CHECKS REVEAL THAT THE MOTOR THAT CONTROLS THE UPWARD/DOWNWARD MOVEMENT WAS INOPERABLE. I TOOK IT TO THE DEALER AND THEY CONFIRM THE MOTOR NEEDED CHANGING. I EXPLAINED TO THEM THAT I AM THE ONLY USER OF THE CAR AND THE BACK SEAT HAS NEVER BEEN USED, THEY STILL CHARGED \$650 TO REPLACE THE MOTOR. SIX MONTHS LATER THE SAME THING HAPPENED TO THE REAR LEFT WINDOW. I AM NOT IN A POSITION TO PAY ANOTHER \$650, SO I TRIED TO PLACE PAPER IN THE SPACE TO HOLD THE GLASS IN PLACE. NOW TODAY THE RIGHT FRONT GLASS JUST ROLLED DOWN WHILE DRIVING. I SPOKE WITH A KIA DRIVER I SAW IN THE PARKING LOT AT WALMART AND HE STATED THAT HE HAD SIMILAR PROBLEMS.
FIRE	No	
<b>INJURIES</b>	0	
DEATHS	0	

December 9, 2019 NHTSA ID NUMBER: 11287902 

**Components: ELECTRICAL SYSTEM, VISIBILITY/WIPER**

**NHTSA ID Number:** 11287902

**Incident Date** August 13, 2019


**Consumer Location** BOYNTON BEACH, FL

**Vehicle Identification Number** 5XXGT4L37GG\*\*\*\*

**Summary of Complaint**

CRASH	No	TL* THE CONTACT OWNS A 2016 KIA OPTIMA. THE CONTACT STATED THAT ALL FOUR WINDOW REGULATORS FAILED. THE CONTACT WAS UNABLE TO GET THE WINDOWS TO MOVE UPWARD AND CLOSE. THE CONTACT TOOK THE VEHICLE TO KIA DELRAY (LOCATED AT 2255 S FEDERAL HWY, DELRAY BEACH, FL 33483, 561-637-5500) WHO STATED THAT THE WINDOW REGULATORS FAILED FOR ALL FOUR WINDOWS AND NEEDED TO BE REPLACED. THE VEHICLE HAD NOT BEEN REPAIRED. THE MANUFACTURER WAS MADE AWARE OF THE FAILURE AND PROVIDED AUTHORIZATION TO REPAIR THE REAR WINDOWS. THE MANUFACTURER WAS CONTACTED AND PROVIDED CASE NUMBER: 13306734. THE APPROXIMATE FAILURE MILEAGE WAS 72,000.
FIRE	No	
<b>INJURIES</b>	0	
DEATHS	0	

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

July 22, 2022 NHTSA ID NUMBER: 11475325 

**Components: UNKNOWN OR OTHER**

**NHTSA ID Number:** 11475325

**Incident Date** July 22, 2020

**Consumer Location** PUNTA GORDA, FL

**Vehicle Identification Number** KNDPN3ACXH7\*\*\*\*

**Summary of Complaint**

<b>CRASH</b>	<b>No</b>	<p>On 7/22/2020 I brought my Sportage to Fuccillo Associats of Florida Inc. 202 Tamiami Trail, Port Charlotte Fl. 33953. At that time they took it upon themselves to change a window regulator drum gear on the driver's side. This was covered under warranty, even though the warranty was expired already. Part number 82473-D3000FFF. Then on 11/16/2021 the second regulator drum gear failed in the rear passenger behind drivers seat. The window fell and could not be closed. This was repaired at my expense at \$458.00 at 75,000 miles. Now as of July 1st the third window regulator drum gear failed on the passenger rear side. Now the window is inoperable and falls down. I alerted Kia to this issue and they attempted to change me a diagnostic fee and a \$450 replacement fee in a part they know is defective and has been a problem for them all across the country. Look on your own site and you will see many many complaints of windows that just fell and the window regulator will not bring the window back up. This window drum gear is defective and should nave been part of a national recall on all 4 windows as they were probably manufactured out of material that would not stand up to normal wear and tear.</p>
<b>FIRE</b>	<b>No</b>	
<b>INJURIES</b>	<b>0</b>	
<b>DEATHS</b>	<b>0</b>	

1 107. Kia has issued at least two TSBs related to the Defect under the  
2 following TSB numbers:

- 3 • BOD300<sup>16</sup>
- 4 • SA418

5 108. Despite issuing the foregoing TSBs—a tacit recognition of the Defect  
6 in and of itself—Kia has not issued a recall relating to the Defect.

7 ***Kia Knew the Power Window Systems in the Vehicles are Defective***

8 109. At the same time Kia was selling the Class Vehicles to Plaintiffs and  
9 the car-buying public, Kia was well aware of the problems with Class Vehicles’  
10 power window systems, both from the internal validation and testing that Kia  
11 performed and from its past experience and expertise.

12 110. Kia requires that each component is tested for durability before mass  
13 production. Kia employs several teams of engineers whose work is focused on  
14 testing the durability of the power window systems, including testing on the  
15 completed vehicle, bench testing, and simulation testing, exterior performance test  
16 engineers, electrical validation test technicians, and reliability test engineers  
17 responsible for guaranteeing full vehicle and component performance for durability  
18 requirements.

19 111. As part of Kia’s pre-sale testing, it performs open and close tests on the  
20 windows in its vehicles over thousands of cycles. These open/close tests replicate  
21 the actual use of the windows in the Class Vehicles and would have revealed to Kia  
22 that the Vehicles contain defective window regulators that, when they fail, cause the  
23 windows in the Vehicles to function intermittently or become inoperable.

24 112. Federal regulations require automobile manufacturers to build vehicles  
25 that comply with the Federal Motor Vehicle Safety Standards (49 C.F.R. § 571).

26 \_\_\_\_\_  
27 <sup>16</sup> NHTSA, *Kia Technical Service Bulletin* (March 2021),  
28 <https://static.nhtsa.gov/odi/tsbs/2021/MC-10189544-0001.pdf>.

1 The existence of these standards necessarily requires Kia to extensively test its  
2 vehicles prior to selling them. During the course of these and other quality validation  
3 testing conducted by its engineers prior to their sale, Kia became aware of the  
4 defective power window systems.

5 113. Kia was also aware of the Defect based upon the raft of negative  
6 consumer responses and reactions about the Class Vehicles, which in addition to its  
7 pre-sale testing, supports an inference of knowledge—yet it continued to sell and  
8 lease the Vehicles with the Defect.

9 114. Kia closely reviews Kia and Kia-related automobile message boards,  
10 consumer websites, complaints on the NHTSA website, and other websites and  
11 sources relating to its vehicles and defects, complaints, or other issues pertaining to  
12 the Kia’s vehicles, including the Class Vehicles. It specifically pays considerable  
13 attention to electrical and technological issues in its automobiles, as properly  
14 functioning electrical systems are necessary to ensure that critical safety features are  
15 operable.

16 115. Kia specifically monitors customers’ complaints made to NHTSA.  
17 Federal law requires automakers like Kia to be in close contact with NHTSA  
18 regarding potential automobile defects, including imposing a legal requirement  
19 (backed by criminal penalties) compelling the confidential disclosure of defects and  
20 related data by automakers to NHTSA, including field reports, customer complaints,  
21 and warranty data. *See* TREAD Act, Pub. L. No. 106-414, 114 Stat.1800 (2000).

22 116. Automakers have a legal obligation to identify and report emerging  
23 safety-related defects to NHTSA under the Early Warning Report requirements. *Id.*  
24 Similarly, automakers monitor NHTSA databases for consumer complaints  
25 regarding their automobiles as part of its ongoing obligation to identify potential  
26 defects in their vehicles, including safety-related defects. *Id.* Thus, Kia knew or  
27 should have known of the complaints about the Defect logged by NHTSA Office of

1 Defect Investigation (ODI), and the content, consistency, and large number of those  
2 complaints alerted, or should have alerted, Kia to the Defect.

3 117. Kia had knowledge, or should have known, about the Defect from all  
4 of these sources, yet it issued a series of TSBs that did nothing to remedy the Defect;  
5 continued to sell Class Vehicles with a well-known safety issue; declined to issue a  
6 recall despite the prevalence of the issue; and has sat on its hands as Kia dealerships  
7 routinely charge class members large sums of money when class members present  
8 their Vehicles for repair of the Defect after it inevitably manifests.

9 118. Kia had knowledge that its omissions regarding the safety and  
10 performance of the Vehicle were misleading, yet it continued to make the same  
11 omissions regarding the Vehicles to Plaintiffs and members of the proposed classes,  
12 despite the fact that Kia knew that the Vehicles were defective.

13 119. To date, Kia has failed to remedy the Defect and continued to sell the  
14 Class Vehicles despite its knowledge of the Defect.

15 120. To date, Kia has not demonstrated that it is capable of providing an  
16 adequate repair for the Defect, and Plaintiffs and class members do not know  
17 whether Kia is capable of providing a repair for the Defect. As such, and without the  
18 benefit of discovery, it is for all practical purposes impossible to know at this time  
19 whether a remedy at law or in equity will provide the appropriate full relief for  
20 Plaintiffs and members of the class. As a result, Plaintiffs, at this stage of the  
21 litigation, seek both restitution and a remedy at law, where the claims so permit.  
22 Further, Plaintiffs seek an injunction enjoining Kia and its agents, servants, and  
23 employees, and all persons acting under, in concert with, or for it from selling or  
24 leasing Class Vehicles without notice that they are subject to the Defect, which  
25 cannot be repaired, and that this remains the situation.

26  
27  
28

1 **THE LIMITED REMEDIES’ FAILURE OF THEIR ESSENTIAL PURPOSE**

2 121. Given the inherently defective nature of the Vehicles and their  
3 propensity to malfunction (or continue to malfunction) and require repair, and given  
4 Kia’s inability to repair the Defect and its non-disclosure and affirmative  
5 concealment of these facts, enforcement of the unilaterally imposed durational and  
6 damage limits of the express warranty would so oppress and surprise Plaintiffs and  
7 class members as to render these durational and damage limits unconscionable, and  
8 hence unenforceable.

9 122. Under the applicable warranty, Plaintiffs and class members are entitled  
10 to the repair and replacement of defective parts. However, because the Defect  
11 persists after any repairs and replacements authorized by Defendant are made, and  
12 because Defendant knew that these actions were insufficient to cure the Defect,  
13 Plaintiffs and class members are left without any remedy under a warranty to correct  
14 the Defect. Indeed, Defendant has had numerous opportunities to correct the Defect  
15 but has failed to do so.

16 123. When class members present their Vehicles for a Defect-related repair,  
17 Kia is unable to remedy the Defect. Continued presentment of Vehicles by Plaintiffs  
18 and class members to Kia in hopes of a repair or remedy would thus be futile. Simply  
19 put, Defendant’s express warranty fails its essential purpose, so that class members  
20 are without the benefit of their primary bargain—reliable and operational Vehicles  
21 that are safe and free of material defects.

22 124. The warranty service provided at Kia’s dealerships and Kia’s other  
23 agents’ facilities failed to fix the problems with the Vehicles. As a result of  
24 Defendant’s failure to properly or adequately repair the Defect, Plaintiffs suffered  
25 direct and reasonably foreseeable incidental damages and did not have the benefit of  
26 a safe and reliable Vehicle.

27  
28

1           **TOLLING OF THE STATUTE OF LIMITATIONS AND ESTOPPEL**

2           125. Any applicable statute of limitations has been tolled by Defendant’s  
3 knowing and active concealment of the Defect and misrepresentations and omissions  
4 alleged herein. Through no fault or lack of diligence, Plaintiffs and members of the  
5 class were deceived regarding the Class Vehicles and could not reasonably discover  
6 the Defect or Defendant’s deception with respect to the Defect.

7           126. Plaintiffs and class members did not discover and did not know of any  
8 facts that would have caused a reasonable person to suspect that the Defendant was  
9 concealing a defect and/or the Class Vehicles contained the Defect and the  
10 corresponding safety risk. As alleged herein, the existence of the Defect was material  
11 to Plaintiffs and members of the Class at all relevant times. Within the time period  
12 of any applicable statutes of limitations, Plaintiffs and members of the Class could  
13 not have discovered—through the exercise of reasonable diligence—the existence  
14 of the Defect or that the Defendant was concealing the Defect.

15           127. At all times, Defendant is and was under a continuous duty to disclose  
16 to Plaintiffs and class members the true standard, quality, and grade of the Class  
17 Vehicles and to disclose the Defect and corresponding safety risk due to their  
18 exclusive and superior knowledge of the existence and extent of the Defect in  
19 Class Vehicles.

20           128. Defendant knowingly, actively, and affirmatively concealed the facts  
21 alleged herein, and the Defect itself. Plaintiffs and class members reasonably relied  
22 on Defendant’s knowing, active, and affirmative concealment.

23           129. For these reasons, all applicable statutes of limitation have been tolled  
24 based on the discovery rule and Defendant’s fraudulent concealment, and Defendant  
25 is estopped from relying on any statutes of limitations.

26   **CLASS ACTION ALLEGATIONS**

27           130. Plaintiffs, individually and as a class action on behalf of similarly  
28

1 situated purchasers and lessees of the Vehicles pursuant to Federal Rule of Civil  
2 Procedure 23(b)(2) and (3), seek to represent the following class:

3 **Nationwide Class**

4 All owners and lessees of Kia's model year 2016 or 2017 Optima  
5 or 2017 Sportage automobiles purchased or leased in the United  
6 States and its territories

7 131. Plaintiffs also bring this action in the alternative on behalf of the  
8 following state classes:

9 **South Carolina Class**

10 All owners and lessees of Kia's model year 2016 or 2017 Optima  
11 or 2017 Sportage automobiles purchased or leased in the state of  
12 South Carolina.

13 **Florida Class**

14 All owners and lessees of Kia's model year 2016 or 2017 Optima  
15 or 2017 Sportage automobiles purchased or leased in the state of  
16 Florida.

17 **Missouri Class**

18 All owners and lessees of Kia's model year 2016 or 2017 Optima  
19 or 2017 Sportage automobiles purchased or leased in the state of  
20 Missouri.

21 **Illinois Class**

22 All owners and lessees of Kia's model year 2016 or 2017 Optima  
23 or 2017 Sportage automobiles purchased or leased in the state of  
24 Illinois.

25 **North Carolina Class**

26 All owners and lessees of Kia's model year 2016 or 2017 Optima  
27 or 2017 Sportage automobiles purchased or leased in the state of  
28 North Carolina.

**Rhode Island Class**

All owners and lessees of Kia's model year 2016 or 2017 Optima  
or 2017 Sportage automobiles purchased or leased in the state of  
Rhode Island.

1 132. Excluded from these classes are Defendant, as well as Defendant’s  
2 affiliates, employees, officers and directors, and the Judge to whom this case is  
3 assigned. Plaintiffs reserve the right to amend the definition of the classes if  
4 discovery and/or further investigation reveal that the classes should be expanded or  
5 otherwise modified.

6 133. Certification of Plaintiffs’ claims for class-wide treatment is  
7 appropriate because Plaintiffs can prove the elements of their claims on a class-wide  
8 basis using the same evidence as would be used to prove those elements in individual  
9 actions alleging the same claims.

10 134. **Numerosity:** The members of the Class are so numerous that joinder  
11 of all class members in a single proceeding would be impracticable. While the exact  
12 number and identities of individual members of the class is unknown at this time,  
13 such information being in the sole possession of Kia and obtainable by Plaintiffs  
14 only through the discovery process, Plaintiffs believe, and on that basis allege that  
15 over a hundred thousand Vehicles have been sold and leased in the United States.

16 135. **Existence/Predominance of Common Questions of Fact and Law:**  
17 Common questions of law and fact exist as to all class members and predominate  
18 over questions affecting only individual class members. Such common questions of  
19 law or fact include, *inter alia*:

- 20 a. whether Kia engaged in the conduct alleged herein;  
21 b. whether Kia omitted and misrepresented material facts to  
22 purchasers and lessees of Class Vehicles;  
23 c. whether Kia’s omissions and misrepresentations regarding the  
24 Class Vehicles were likely to mislead a reasonable consumer;  
25 d. whether Kia breached warranties with Plaintiffs and the other  
26 class members—including the implied warranty of  
27 merchantability—when it produced, distributed, and sold the

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

Class Vehicles;

- e. whether Plaintiffs’ and other class members’ Vehicles were worth less than as represented as a result of the Defect and conduct alleged herein;
- f. whether Plaintiffs and the other class members have been damaged and, if so, the extent of such damages; and
- g. whether Plaintiffs and the other class members are entitled to equitable relief, including but not limited to, restitution and injunctive relief.

136. Kia engaged in a common course of conduct giving rise to the legal rights sought to be enforced by Plaintiffs individually and on behalf of the other class members. Similar or identical statutory and common law violations, business practices, and injuries are involved. Individual questions, if any, are substantially overcome, in both quality and quantity, by the numerous common questions that dominate this action.

137. **Typicality:** Plaintiffs’ claims are typical of the claims of the other class members because, among other things, Plaintiffs and the other class members were injured through the substantially uniform misconduct described above. As with Plaintiffs, class members also purchased or leased a Class Vehicle containing the Defect. Plaintiffs are advancing the same claims and legal theories on behalf of themselves and all other class members, and no defense is available to Kia that is unique to Plaintiffs. The same events giving rise to Plaintiffs’ claims for relief are identical to those giving rise to the claims of all class members. Plaintiffs and all class members sustained monetary and economic injuries including, but not limited to, ascertainable losses arising out of Kia’s wrongful conduct in selling/leasing and failing to remedy the Class Vehicles.



1 142. Unless the classes are certified, Defendant will improperly retain  
2 monies that they received from Plaintiffs and members of the classes as a result of  
3 its conduct. Unless Defendant is required to change its conduct, it will continue to  
4 commit the violations and acts alleged herein and the members of the class and the  
5 general public will continue to be misled and harmed.

6 **CAUSES OF ACTION**

7 **COUNT I**

8 **Breach of the Implied Warranty of Merchantability**  
9 **(On Behalf of the Nationwide Class or, in the alternative, the Florida Class,**  
10 **Missouri Class, Illinois Class, North Carolina Class, and Rhode Island Class)**

11 143. Plaintiffs reallege and incorporate by reference the preceding  
12 paragraphs as if fully set forth herein.

13 144. Plaintiffs Jerome Goldschein and Marilyn Goldschein, Vanderslice,  
14 Curry, Harris, Maguire, and Smith bring this claim on behalf of the Nationwide Class  
15 or, in the alternative, under the laws of Florida, Missouri, Illinois, North Carolina,  
16 and Rhode Island, their respective home states.

17 145. Defendant is and was at all relevant times a merchant with respect to  
18 the Vehicles, and manufactured, distributed, warranted, and sold the Vehicles.

19 146. A warranty that the Vehicles were in merchantable condition and fit for  
20 the ordinary purposes for which they were sold is implied by law.

21 147. Plaintiffs and the other class members purchased the Vehicles  
22 manufactured and sold by Defendant in consumer transactions.

23 148. The Vehicles, when sold and at all times thereafter, were not in  
24 merchantable condition, and the automatic windows were not in merchantable  
25 condition and were not fit for the ordinary purpose for which cars are used. The  
26 Vehicles left Defendant's possession and control with defective power window  
27 systems that rendered them at all times thereafter unmerchantable, unfit for ordinary  
28 use, unsafe, and a threat to safety.



1           156. In addition, upon information and belief, Defendant received numerous  
2 complaints, notices of the need for repair and resulting safety issues, and requests  
3 for warranty repairs and coverage relating to the Defect from other members of  
4 the class.

5           157. In its capacity as a supplier and/or warrantor, and by the conduct  
6 described herein, any attempt by Defendant to disclaim or otherwise limit express  
7 warranties in a manner that would exclude or limit coverage for the Defect that was  
8 present at the time of sale and/or lease, which Defendant knew about prior to offering  
9 the Vehicles for sale and/or lease, and which Defendant did not disclose and did not  
10 remedy prior to (or after) sale and/or lease, is unconscionable, and Defendant should  
11 be estopped from pursuing such defenses.

12           158. Further, any such effort by Defendant to disclaim or otherwise limit  
13 liability for the Defect is null and void because Kia and its authorized agents (the  
14 dealers) have wrongfully, uniformly, and repeatedly refused and failed to properly  
15 repair or replace the defective regulators.

16           159. Specifically, Defendant's warranty disclaimers, exclusions, and  
17 limitations, to the extent that they may be argued to apply, were, at the time of sale,  
18 and continue to be, unconscionable and unenforceable to disclaim liability for a  
19 known, latent defect. Defendant knew when it first made these warranties and their  
20 limitations that the defect existed, and the warranties might expire before a  
21 reasonable consumer would notice or observe the defect. Defendant also failed to  
22 take necessary actions to adequately disclose or cure the Defect after the existence  
23 of the Defect came to the public's attention and sat on its reasonable opportunity to  
24 cure or remedy the Defect, its breaches of warranty, and consumers' losses. Under  
25 these circumstances, it would be futile to enforce any informal resolution procedures  
26 or give Defendant any more time to cure the Defect or cure its breaches of warranty.

1           160. As such, Defendant should be estopped from disclaiming liability for  
2 its actions.

3           161. Privity of contract is not required for consumer implied warranty claims  
4 under the relevant laws. However, Plaintiffs and the other class members had  
5 sufficient direct dealings with Defendant and its agents (dealers) to establish privity  
6 of contract.

7           162. Kia’s authorized dealers are agents of Kia, and there is a factually  
8 plausible agency relationship between Kia and its dealerships. This agency is  
9 factually supported by at least the following: 1) Kia issued a series of TSBs to its  
10 dealerships relating to the window regulator at issue in this litigation; 2) Kia’s  
11 warranty directs Class Vehicle owners to present their vehicles to Kia authorized  
12 dealerships for repairs; and 3) Kia requires dealerships to submit detailed data to it  
13 regarding repairs performed at dealerships. These considerations demonstrate the  
14 agency relationship between Kia and its dealerships, with whom Plaintiffs interacted  
15 and transacted as alleged herein.

16           163. Privity is also not required in this case because Plaintiffs and the other  
17 class members are intended third-party beneficiaries of contracts between Defendant  
18 and its dealers (i.e., its agents); specifically, they are the intended beneficiaries of  
19 Defendant’s implied warranties. The dealers were not intended to be the ultimate  
20 consumers of the Vehicles; the warranty agreements were designed for, and intended  
21 to benefit, only the ultimate consumers—such as Plaintiffs and the other class  
22 members. Privity is also not required because Plaintiffs’ and the other class  
23 members’ Vehicles are inherently dangerous due to the aforementioned defects and  
24 nonconformities.

25           164. Kia also had direct dealings with Plaintiffs and Class members by  
26 providing warranties directly to Plaintiffs and Class members. Kia provided  
27 the NVLW directly to Plaintiffs and Class members, creating privity between  
28

1 the parties.

2 165. Plaintiffs and the other class members suffered and will suffer  
3 diminution in the value of their Vehicles, out-of-pocket losses related to repairing,  
4 maintaining, and servicing their defective Vehicles, costs associated with arranging  
5 and obtaining alternative means of transportation, and other incidental and  
6 consequential damages recoverable under the law.

7 **COUNT II**  
8 **Fraud/Fraudulent Omission**  
9 **(On Behalf of the Nationwide Class or, in the alternative, the Missouri Class,**  
10 **Illinois Class, North Carolina Class, Rhode Island Class)**

11 166. Plaintiffs reallege and incorporate by reference the preceding  
12 paragraphs as if fully set forth herein.

13 167. Plaintiffs Vanderslice, Curry, Harris, Maguire, and Smith bring this  
14 claim on behalf of the Nationwide Class or, in the alternative, under the laws of  
15 Missouri, Illinois, North Carolina, and Rhode Island, their respective home states.

16 168. Defendant actively, intentionally, and knowingly concealed,  
17 suppressed, and/or omitted material facts including the existence of the Defect and  
18 the standard, quality, or grade of the Vehicles and the fact that the Vehicles contain  
19 a Defect and corresponding safety risk, with the intent that Plaintiffs and class rely  
20 on Defendant's omissions. As a direct result of the Defendant's fraudulent conduct,  
21 as alleged herein, Plaintiffs and members of the class have suffered actual damages.

22 169. Defendant knew at the time of sale or lease and thereafter that the  
23 Vehicles contained the Defect, omitted material information about the safety of the  
24 Vehicles, and actively concealed the Defect and never intended to adequately repair  
25 the Defect during the warranty periods. To date, Defendant has not provided  
26 Plaintiffs and members of the class with an adequate repair or remedy for the Defect.

27 170. Defendant possessed superior and exclusive knowledge regarding the  
28 Defect, and therefore had a duty to disclose any information relating to the safety

1 and functionality of key safety features in the Vehicles.

2 171. The Defect is material to Plaintiffs and the members of the class  
3 because Plaintiffs and the members of the class had a reasonable expectation that the  
4 Vehicles would not contain a Defect that prevents them from properly using their  
5 automatic windows and that exposes them and others to a safety risk. No reasonable  
6 consumer expects a vehicle to contain a concealed Defect in materials or  
7 workmanship, such as the Defect as well as its associated safety risk.

8 172. Plaintiffs and members of the class would not have purchased or leased  
9 the Vehicles but for Defendant's omissions and concealment of material facts  
10 regarding the nature and quality of the Vehicles and the existence of the Defect and  
11 corresponding safety risk, or would have paid less for the Vehicles.

12 173. Kia knew its concealment and suppression of the Defect was false and  
13 misleading, and knew the effect of concealing those material facts. Kia knew its  
14 misstatements, concealment, and suppression of the Defect would sell more Vehicles  
15 and would discourage Plaintiffs and the members of the Class from seeking  
16 replacement or repair of the Defect during the applicable warranty periods. Further,  
17 Defendant intended to induce Plaintiffs and class members into purchasing or  
18 leasing the Vehicles and to discourage them from seeking replacement or repair of  
19 the Defect in order to decrease costs and increase profits.

20 174. Defendant acted with malice, oppression, and fraud.

21 175. Plaintiffs and the members of the Class reasonably relied upon  
22 Defendant's knowing misrepresentations, concealment and omissions. As a direct  
23 and proximate result of Defendant's misrepresentations, omissions and active  
24 concealment of material facts regarding the Defect and the associated safety risk,  
25 Plaintiffs and the members of the Class have suffered actual damages in an amount  
26 to be determined at trial.

27

28

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

**COUNT III**  
**Unjust Enrichment**  
**(On Behalf of the Nationwide Class, or in the alternative, the Missouri Class, Illinois Class, North Carolina Class, and Rhode Island Class)**

176. Plaintiffs reallege and incorporate by reference the preceding paragraphs as if fully set forth herein.

177. Plaintiffs Vanderslice, Curry, Harris, Maguire, and Smith bring this claim on behalf of the Nationwide Class or, in the alternative, under the laws of Missouri, Illinois, North Carolina, and Rhode Island, their respective home states.

178. This claim is pleaded in the alternative to the other claims herein, and seeks restitution of ill-gotten gains.

179. As a direct and proximate result of Kia’s omissions concerning and its failure to disclose the known Defect, Kia has profited through the sale and lease of the Vehicles and subsequently by profiting on the purchase of replacement parts and charging Plaintiffs and other Class Members for expensive repairs to their Vehicles when the window regulators inevitably fail. Although these Vehicles are purchased through Kia’s agents, the money from the Vehicle sales flows directly back to Kia.

180. As a result of its wrongful acts, concealments, and omissions of the Defect in its Vehicles, as set forth above, Kia charged higher price for the Vehicles than the Vehicles’ true value. Plaintiffs and members of the class paid that higher price for their Vehicles to Kia’s authorized distributors and dealers, which are in Kia’s control.

181. Additionally, as a direct and proximate result of Kia’s failure to disclose known Defect in the Vehicles, Plaintiffs and class members have Vehicles that will require high-cost repairs that can and therefore have conferred an unjust substantial benefit upon Kia.

182. Kia has been unjustly enriched due to the known Defect in the Vehicles through the receipt and use of money paid for the defective vehicles, sale of

1 replacement parts, and performance of window regulator repairs, that added to  
2 Kia's profits when said money should have remained with Plaintiffs and the  
3 class members.

4 183. As a result of Kia's unjust enrichment, Plaintiffs and the class members  
5 have suffered damages.

6 184. Equity and good conscience militate against allowing Kia to retain its  
7 ill-gotten gains, and requires disgorgement and restitution of the same.

8 **COUNT IV**  
9 **Violations of South Carolina Unfair Trade Practices Act**  
10 **S.C. Code Ann. §§ 39-5-10, et seq.**  
11 **(On Behalf of Plaintiff David Griesemer and the South Carolina Class)**

12 185. Plaintiff Griesemer realleges and incorporates by reference the  
13 preceding paragraphs as if fully set forth herein.

14 186. Plaintiff Griesemer brings this claim on behalf of himself and on behalf  
15 of members of the South Carolina Class.

16 187. South Carolina's Unfair Trade Practices Act ("SC UTPA") prohibits  
17 "unfair or deceptive acts or practices in the conduct of any trade or commerce." S.C.  
18 Code Ann. § 39-5-20.

19 188. Kia is a "person," as defined by S.C. Code Ann. § 39-5-10(a).

20 189. Kia advertised, offered, or sold goods or services in South Carolina and  
21 engaged in trade or commerce directly or indirectly affecting the people of South  
22 Carolina, as defined by S.C. Code Ann. § 39-5-10(b).

23 190. Kia's acts and practices had, and continue to have, the tendency or  
24 capacity to deceive.

25 191. Kia's representations and omissions were material because they were  
26 likely to deceive reasonable consumers about the quality of the power window  
27 systems in a Vehicle, and defective nature of the automatic windows.

28 192. A reasonable consumer would consider the quality of the power

1 window systems in a Vehicle, and defective nature of the automatic windows to be  
2 important when making a decision whether to purchase or lease a Vehicle. The  
3 disclosure of the defective power window systems would have influenced  
4 prospective buyers not to enter into transactions.

5 193. Kia intended to mislead Plaintiffs and South Carolina Class members  
6 and induce them to rely on its misrepresentations and omissions.

7 194. Plaintiff and South Carolina Subclass members seek all monetary and  
8 non-monetary relief allowed by law, including damages for their economic losses;  
9 treble damages; punitive damages; injunctive relief; and reasonable attorneys' fees  
10 and costs.

11 **COUNT V**

12 **VIOLATION OF MISSOURI'S MERCHANDISING PRACTICES ACT**  
13 **Mo. Rev. Stat. § 407.005, et seq.**  
14 **(On Behalf of Plaintiff Vanderslice and the Missouri Class)**

15 195. Plaintiff Vanderslice realleges and incorporates by reference the  
16 preceding paragraphs as if fully set forth herein.

17 196. Plaintiff Vanderslice brings this claim on behalf of herself and on  
18 behalf of members of the Missouri Class.

19 197. The Missouri Merchandising Practices Act ("MMPA") prohibits the  
20 "act, use or employment by any person of any deception, fraud, false pretense,  
21 false promise, misrepresentation, unfair practice or the concealment, suppression,  
22 or omission of any material fact in connection with the sale or advertisement of  
23 any merchandise in trade or commerce . . . whether committed before, during or  
24 after the sale, advertisement or solicitation." Mo. Rev. Stat. § 407.020(1).

25 198. Kia is a "person" as defined in the MMPA. Mo. Rev. Stat. §  
26 407.010(5). The Class Vehicles are "merchandise" within the meaning of the  
27 MMPA. Mo. Rev. Stat. § 407.010(4). Kia is and was engaged in "trade" or  
28 "commerce" under the MMPA. Mo. Rev. Stat. § 407.010(7).

1           199. Kia engaged in unlawful trade practices by employing deception,  
2 deceptive acts or practices, fraud, misrepresentations, or concealment,  
3 suppression, or omission of material facts regarding the Class Vehicles. Kia's  
4 conduct, as described herein, in misrepresenting the Vehicles' features, while  
5 omitting the material fact that Vehicles contained defective power window  
6 systems, constitutes an unfair and deceptive practice and were likely to mislead a  
7 reasonable consumer.

8           200. A reasonable consumer would consider the quality of the power  
9 window systems in a Vehicle, and defective nature of the automatic windows, to  
10 be a material fact when making a decision whether to purchase or lease a Vehicle.  
11 Knowing this, Kia misrepresented that the Class Vehicles were safe and did not  
12 contain the Defect.

13           201. Plaintiff Vanderslice purchased her Vehicle for personal, family, or  
14 household use. In doing so, Plaintiff Vanderslice and the Missouri Class members  
15 acted reasonably in relying on Kia's unfair practices as described herein,  
16 including Kia's representation that the Vehicles contained non-defective power  
17 window systems.

18           202. As a result of their reasonable reliance on Kia's deception, deceptive  
19 acts or practices, fraud, misrepresentations, or concealment, suppression, or  
20 omission of material facts regarding the Class Vehicles, Plaintiff Vanderslice and  
21 Missouri Class members incurred damages, including but not limited to  
22 diminution in the value of their Vehicles, out-of-pocket losses related to repairing,  
23 maintaining, and servicing their defective Vehicles, costs associated with  
24 arranging and obtaining alternative means of transportation, and other incidental  
25 and consequential damages recoverable under the law.

26           203. Plaintiff seeks all relief authorized under the MMPA, including  
27 attorney's fees, punitive damages, and such equitable relief as the Court deems  
28

1 proper to protect Plaintiff and Class members from Defendants’ unlawful actions  
2 as describe herein.

3 **COUNT VI**

4 **Violation of Illinois Consumer Fraud and Deceptive Business Practices Act**  
5 **815 Ill. Comp. Stat. 505/1, et seq.**  
6 **(On Behalf of Plaintiff Curry and the Illinois Class)**

7 204. Plaintiff Curry realleges and incorporates by reference the preceding  
8 paragraphs as if fully set forth herein.

9 205. Plaintiff Curry brings this claim on behalf of himself and on behalf  
10 of the members of the Illinois Class.

11 206. The Illinois Consumer Fraud and Deceptive Business Practices Act,  
12 815 Ill. Comp. Stat. 505/2 prohibits unfair or deceptive acts or practices in  
13 connection with any trade or commerce. Specifically, the Act prohibits suppliers  
14 from representing that their goods are of a particular quality or grade they are not.

15 207. Kia is a “person” as that term is defined in the Illinois Consumer  
16 Fraud and Deceptive Practices Act, 815 Ill. Comp. Stat. 505/1(c).

17 208. Plaintiff Curry is a “consumer” as that term is defined in the Illinois  
18 Consumer Fraud and Deceptive Practices Act, 815 Ill. Comp. Stat. 505/1(e).

19 209. Kia ’s unfair or deceptive acts or practices occurred repeatedly in its  
20 trade or business, were capable of deceiving a substantial portion of the purchasing  
21 public, and imposed a serious safety risk on the public.

22 210. Kia knew that the Class Vehicles’ window regulators were defective,  
23 would fail prematurely, and were not suitable for their intended use.

24 211. Kia had the duty to Plaintiff Curry and the Illinois Class members to  
25 disclose the Defect because:

- 26 a. Kia was in a superior position to know the true state of facts  
27 about the Defect and its associated costs;
- 28 b. Plaintiff Curry and the Illinois Class members could not

1 reasonably have been expected to learn or discover that the  
2 Class Vehicles had defects until those defects became  
3 manifest;

4 c. Kia knew that Plaintiff Curry and the Illinois Class members  
5 could not reasonably have been expected to learn about or  
6 discover the Defect.

7 212. In failing to disclose the Defect and its resulting safety risks, Kia  
8 has knowingly and intentionally concealed material facts and breached its duty  
9 to disclose.

10 213. The facts Kia concealed or did not disclose to Plaintiff Curry and the  
11 Illinois Class members are material in that a reasonable consumer would have  
12 considered them to be important in deciding whether to purchase the Class  
13 Vehicles or pay a lesser price. Had Plaintiff Curry and the Illinois Class known  
14 the Class Vehicles were defective, they would not have purchased the Class  
15 Vehicles or would have paid less for them.

16 214. Kia 's conduct caused Plaintiff's damages as alleged.

17 215. As a result of Kia 's wrongful conduct, Plaintiff Curry and the Illinois  
18 Class have been damaged in an amount to be proven at trial, including, but not  
19 limited to, actual damages, court costs, and reasonable attorneys' fees pursuant to  
20 815 Ill. Comp. Stat. 505/1, *et seq.*

21 **COUNT VII**

22 **Violation of Illinois Uniform Deceptive Trade Practices Act**  
23 **815 Ill. Comp. Stat. 510/1, *et seq.* and 720 Ill. Comp. Stat. 295/1A**  
24 **(On Behalf of Plaintiff Curry and the Illinois Class)**

25 216. Plaintiff Curry realleges and incorporates by reference the preceding  
26 paragraphs as if fully set forth herein.

27 217. Plaintiff Curry brings this claim on behalf of himself and on behalf  
28 of the members of the Illinois Class.





1 themselves and on behalf of the members of the North Carolina Class.

2 230. Kia advertised, offered, or sold goods or services in North Carolina  
3 and engaged in trade or commerce directly or indirectly affecting the people of  
4 North Carolina, as defined by N.C. Gen. Stat. Ann. § 75-1.1(b).

5 231. Kia engaged in unfair and deceptive acts and practices in or affecting  
6 commerce, in violation of N.C. Gen. Stat. Ann. § 75-1.1.

7 232. Kia's representations and omissions were material because they were  
8 likely to deceive reasonable consumers.

9 233. Kia intended to mislead Plaintiffs Harris and Maguire and the North  
10 Carolina Class members and induce them to rely on its misrepresentations and  
11 omissions.

12 234. Had Kia disclosed to Plaintiffs Harris and Maguire and the North  
13 Carolina Class members that it misrepresented the quality of Class Vehicles,  
14 omitted material information regarding the Defect, and was otherwise engaged in  
15 deceptive, common business practices, Kia would have been unable to continue  
16 in business and it would have been forced to disclose its actual intentions. Instead,  
17 Kia represented that the Class Vehicles were safe. Plaintiffs Harris and Maguire  
18 and the North Carolina Class members acted reasonably in relying on Kia's  
19 misrepresentations and omissions, the truth of which they could not have  
20 discovered.

21 235. Kia acted intentionally, knowingly, and maliciously to violate North  
22 Carolina's Unfair Trade Practices Act, and recklessly disregarded Plaintiffs Harris  
23 and Maguire and the North Carolina Class members' rights. Kia's knowledge of  
24 the Defect put it on notice that the Class Vehicles were not as it advertised.

25 236. As a direct and proximate result of Kia's unfair and deceptive acts  
26 and practices, Plaintiffs Harris and Maguire and the North Carolina Class  
27 members have suffered actual damages, including power window systems,

28

1 diminution in value of the Vehicles, out-of-pocket losses related to repairing,  
2 maintaining, and servicing their defective Vehicles, costs associated with  
3 arranging and obtaining alternative means of transportation, and other incidental  
4 and consequential damages recoverable under the law.

5 237. Plaintiffs Harris and Maguire and the North Carolina Class members  
6 seek all monetary and nonmonetary relief allowed by law, including actual  
7 damages, treble damages, and attorneys’ fees and costs.

8 **COUNT IX**

9 **VIOLATIONS OF THE RHODE ISLAND UNFAIR TRADE PRACTICES**  
10 **AND CONSUMER PROTECTION ACT**  
11 **R.I. Gen. Laws § 6-13.1-1 et seq. (“UTPCPA”)**  
12 **(On Behalf of Plaintiff Smith and the Rhode Island Class)**

13 238. Plaintiff Smith realleges and incorporates by reference the preceding  
14 paragraphs as if fully set forth herein.

15 239. Plaintiff Smith brings this claim on behalf of himself and on behalf  
16 of the members of the Rhode Island Class.

17 240. Plaintiff Smith, Rhode Island Class members, and Defendant are  
18 “persons” within the meaning of UTPCPA § 6-13.1-1(3).

19 241. The UTPCPA provides that “unfair or deceptive acts or practices in  
20 the conduct of any trade or commerce are hereby declared unlawful.” R.I. Gen.  
21 Laws § 6-13.1-2.

22 242. The UTPCPA makes unlawful the following “unfair or deceptive  
23 acts or practices” committed by Kia through the conduct alleged herein:

- 24 a. “Using deceptive representations . . . in connection with goods or  
25 services” (UTPCPA § 6-13.1-1(6)(iv));
- 26 b. “Representing that goods . . . have . . . characteristics, . . . uses,  
27 benefits . . . that they do not have . . .” (UTPCPA § 6-13.1-1(6)(v));
- 28 c. “Representing that goods . . . are of a particular standard, quality,

- 1 or grade . . . if they are of another” (UTPCPA § 6-13.1-1(6)(vii));
- 2 d. “Advertising goods . . . with intent not to sell them as advertised”
- 3 (UTPCPA § 6-13.1-1(6)(ix));
- 4 e. “Engaging in any other conduct that similarly creates a likelihood
- 5 of confusion or of misunderstanding” (UTPCPA § 6-13.1-
- 6 1(6)(xii));
- 7 f. “Engaging in any act or practice that is unfair or deceptive to the
- 8 consumer” (UTPCPA § 6-13.1-1(6)(xiii)); and
- 9 g. “Using any other methods, acts, or practices that mislead or
- 10 deceive members of the public in a material respect” (UTPCPA §
- 11 6-13.1-1(6)(xiv)).

12 243. Defendant acted in the face of prior notice that its conduct was

13 deceptive and unfair. Material omissions and misrepresentations concerning a

14 product constitute a violation of the statute.

15 244. Kia’s conduct, as described above, in misrepresenting the Vehicles’

16 features, while omitting the facts that Vehicles contained defective power window

17 systems, constitutes an unfair and deceptive practice and was likely to mislead a

18 reasonable consumer.

19 245. A reasonable consumer would consider the quality of the power

20 window systems in a Vehicle, and defective nature of the automatic windows, to be

21 important when making a decision whether to purchase or lease a Vehicle. The

22 disclosure of the defective power window systems would have influenced

23 prospective buyers not to enter into transactions.

24 246. Kia knew before the time of sale to Plaintiff Smith and the other class

25 members, or earlier, that Vehicles were produced with defective power window

26 systems that posed a serious safety threat to drivers and passengers. Through

27 knowledge of manufacture and production of the power window systems, internal

1 product testing, consumer complaints, and past experience, Defendant learned of the  
2 Defect. The existence and ubiquity of the Defect is illustrated by the numerous  
3 publicized consumer complaints and disputes. Defendant's issuance of a series of  
4 TSBs directed to Vehicles' window regulator shows actual knowledge.

5 247. Kia's conduct in refusing to perform the necessary repairs to Plaintiff  
6 Smith's and Class members' Vehicles constituted unfair conduct.

7 248. Kia's practices offend public policy, are immoral, unethical,  
8 oppressive, and unscrupulous, cause substantial injury to consumers, and pose a risk  
9 to public safety.

10 249. As a direct and proximate result of Kia's unfair and deceptive conduct,  
11 as alleged herein, Plaintiff Smith and the other Class members have suffered injury-  
12 in-fact, including the following:

- 13 a. Plaintiffs and the other Class members, in purchasing or  
14 leasing the Vehicles, received cars worth less than as  
15 represented in that they paid for a car with a power window  
16 system free of defects, but did not receive that which they  
17 paid for;
- 18 b. Plaintiff Smith and the other Class members suffered  
19 diminution in value of the Vehicles due to the existence of the  
20 Defect in their Vehicles; and
- 21 c. Plaintiff Smith and the other Class members were faced with  
22 the choice of repairing their Vehicles at substantial cost and  
23 inconvenience or being without their vehicles at substantial  
24 cost and inconvenience.

25 250. As a result of Defendant's unfair and deceptive conduct, Plaintiff Smith  
26 and the other Class members have suffered actual damages, including power window  
27 systems, diminution in value of the Vehicles, out-of-pocket losses related to

1 repairing, maintaining, and servicing their defective Vehicles, costs associated with  
2 arranging and obtaining alternative means of transportation, and other incidental and  
3 consequential damages recoverable under the law.

4 251. Had Plaintiff Smith and the other Class members been aware of the  
5 omitted and misrepresented facts, i.e., that the Vehicles they purchased and leased  
6 were defective and would cost them several hundreds of dollars when the power  
7 window systems failed, Plaintiff Smith and the other Class members would not have  
8 purchased and leased the Vehicles or would have paid significantly less for them  
9 than they actually paid.

10 252. As a direct and proximate result of Defendant's violations of the  
11 Rhode Island UTPCPA, Plaintiff Smith and the Rhode Island Class have been  
12 injured.

13 253. Plaintiff Smith and the Rhode Island Class have suffered injuries in  
14 fact and actual damages, including financial losses and property damage, resulting  
15 from the Defect due to Defendant's violations of the UTPCPA. These injuries are  
16 of the type that the UTPCPA was designed to prevent and are the direct and  
17 proximate result of Defendant's unlawful conduct.

18 254. Pursuant to R.I. Gen. Laws § 6-13.1-5.2, Plaintiff Smith and the  
19 Rhode Island Class request actual damages or five hundred dollars (\$500),  
20 whichever is greater; damages equal to three (3) times the amount of actual  
21 damages; equitable and declaratory relief; reasonable attorneys' fees; and any  
22 other appropriate relief allowed for under the UTPCPA.

23 **PRAYER FOR RELIEF**

24 WHEREFORE, Plaintiffs, on behalf of themselves and members of the  
25 proposed classes, pray for judgment as follows:

- 26 a) Certification of the classes under Federal Rule of Civil Procedure 23;  
27

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

- b) Appointment of Plaintiffs as representatives of classes and their counsel as class counsel;
- c) Compensatory and other damages for economic and non-economic damages;
- d) An award of restitution and/or disgorgement;
- e) An injunction requiring Defendant to cease and desist from engaging in the alleged wrongful conduct and to engage in a corrective advertising campaign;
- f) Statutory pre-judgment and post-judgment interest on any amounts;
- g) Payment of reasonable attorneys’ fees and recoverable litigation expenses as may be allowable under applicable law; and
- h) Such other relief as the Court may deem just and proper.

**JURY DEMAND**

Plaintiffs demand a trial by jury on all causes of action so triable.

Dated: April 16, 2024

Respectfully submitted,

/s/ Robert R. Ahdoot  
 Robert Ahdoot (SBN 172098)  
 rahdoot@ahdootwolfson.com  
 Tina Wolfson (SBN 174806)  
 twolfson@ahdootwolfson.com  
 Theodore Maya (SBN 223242)  
 tmaya@ahdootwolfson.com  
**AHDOOT & WOLFSON, PC**  
 2600 W. Olive Avenue, Suite 500  
 Burbank, California 91505  
 Telephone: (310) 474-9111  
 Facsimile: (310) 474-8585

Anthony L. Parkhill (*pro hac vice*)  
 aparkhill@barnowlaw.com  
 Riley W. Prince (*pro hac vice*)  
 rprince@barnowlaw.com  
**BARNOW AND ASSOCIATES, P.C.**  
 205 W. Randolph Street, Suite 1630  
 Chicago, IL 60606

Telephone: (312) 621-2000

*Counsel for Plaintiffs and the Proposed Class*

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