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Additional Counsel on Signature Page

Attorney(s) for Plaintiff
and the Class

REGINA LITTLE, on behalf of herself and all others similarly situated,	:	SUPERIOR COURT OF
	:	NEW JERSEY-LAW DIVISION
	:	UNION COUNTY
	:	
Plaintiff	:	DOCKET NO. UNN-L-0800-01
	:	
v.	:	
	:	JURY TRIAL DEMANDED
KIA MOTORS AMERICA, INC.	:	
	:	CLASS ACTION
Defendant	:	

AMENDED COMPLAINT - CLASS ACTION

I. NATURE OF THE ACTION

1. Plaintiff brings this action on her own behalf and on behalf of all other persons similarly situated for damages arising from violations by Defendant, Kia Motors America, Inc., of the New Jersey Consumer Fraud Act, N.J.S.A. 56:8-1(d) (“CFA”); the California Business and Professions Code, §§ 17200, 17500 (“CBPC”); breach of implied warranty and express warranty; and, violations of the Magnuson-Moss Warranty Improvement Act, 15 U.S.C. § 2301 et seq. (“MMWA”).

2. Defendant's "Sephia" automobiles contain a defective brake system that substantially affects their use, value, and safety. Specifically, the brakes prematurely wear

and/or malfunction causing the Sephia vehicle to be unable to stop, suffer an impaired stopping performance, exhibit increased stopping distances, brake shudder, brake vibration, unpredictable and violent brake pedal pressures, brake lock tip, and loss of control when activated, all of which diminishes the Sephia vehicle's value. The brake system defect causes brake pads and rotors to excessively wear, squeal and groan, requiring constant repair attempts and replacement. As a result, purchasers and lessees of Defendant's "Sephia" are at serious risk of sudden, unexpected, and dangerous occurrences, including but not limited to being unable to stop the vehicles in a safe and reliable manner. Moreover, consumers of Defendant's "Sephia" automobiles are being deprived of normal and reasonable use of the vehicles without alternatives, other than to drive with the defect and/or to return the vehicles for constant, ineffective repair attempts on a regular basis. Additionally, Defendant, acting through its authorized dealers, violates the express and implied warranties that have been given with the Sephia vehicles by failing to extend warranty coverage for needed repairs and/or by charging consumers for repairs and replacements necessitated by the brake system defect.

II. THE PARTIES

3. Plaintiff Regina Little is an adult individual and a citizen of the State of New Jersey, residing at 17 Berkeley Terrace, Plainsfield, New Jersey 07062. She brings this action in her own right and as on behalf of all others similarly situated.

4. Defendant Kia Motors America, Inc. ("KMA") is a corporation duly organized and existing under the laws of the State of California, having a principal place of business at 9801 Muirlands Boulevard, Irvine, California 92618-2521 and its Eastern Region offices at 3000 Atrium Way, Suite 400, Mt. Laurel, New Jersey 08054. KMA engages in continuous and substantial business in the State of New Jersey and in Union County. Defendant, for all model

years material herein, designs, manufactures and sells automobiles under the "Kia" name, designating the vehicle as the "Sephia" model. Defendant issued the warranty set forth in the warranty booklet delivered with each new Sephia, and is responsible for the brake system defect.

5. Upon information and belief, no claim of the Plaintiff or of any individual Class member meets the jurisdictional requirements of 28 U.S.C § 1332, pertaining to federal jurisdiction based upon diversity of citizenship, and no basis exists for any other type of federal court jurisdiction.

III. FACTUAL ALLEGATIONS

6. Throughout the Class Period specified below, Defendant KMA expressly warranted the Sephia vehicle to all purchasers and lessees as set forth in the warranty booklet.

Pages 2 and 4 of the Warranty and Consumer Information Manual state:

WELCOME FROM KMA

- The latest engineering techniques have been incorporated into the design and production of all Kia Vehicles in order to please each driver. From the moment you get behind the wheel of your new Kia Vehicle, you'll notice how satisfying it feels. A feeling you'll also be pleased to know how strong we stand behind every Kia Vehicle. The New Vehicle 36 month/36,000 Mile Limited Warranty described in this manual is one of the finest available.

WHAT IS COVERED

- Kia Motor America, Inc. warrants that your new Kia Vehicle is free from defects in material or workmanship, subject to the following terms and conditions. An Authorized Kia Dealer will make necessary repairs, using new or remanufactured parts, to correct any problem covered by this limited warranty without charge to you.

Warranty Coverage

- **Basic Warrant Coverage**
Except as limited or excluded below, all components of your new Kia Vehicle are covered for 36 months or 36,000 miles, whichever comes first, from the earlier date of either retail delivery or first use of the Kia Vehicle.

A copy of the express warranty, as delivered to consumers in the warranty manual, is attached hereto as Exhibit A.

7. Despite this express warranty, Defendant has known for years that the brake system utilized on its Sephia model automobiles are defective in materials and/or workmanship and/or longevity. Defendant has issued at least two different technical service bulletins ("TSBs") in 1996 and 1997 relating to the presence of brake defects in the 1995 and subsequent models, and notwithstanding the same, this defect and others persist in the models manufactured after that time and up through the present. Additionally, there are in excess of 300 complaints that have been filed with the National Highway Transportation Safety Administration ("NHTSA") alone for the brake system defect for the Sephia vehicles for the models/years 1998, 1999 and 2000. The problem is so widespread that a multitude of consumers have asserted claims against the Defendant based upon the brake system defect, and Defendant has had adverse awards and verdicts entered against it based upon this very defect.

8. While Defendant has recognized the defect, it has nonetheless attempted to persuade consumers by misrepresentation that the symptoms, including brake grinding and groaning noises, shudders and vibrations upon application are "normal characteristics of all braking systems." See a copy of Defendant's Brake Bulletin that is distributed to consumers, attached hereto as Exhibit B.

9. Despite Defendant's knowledge about the brake system defect, Defendant has failed to warn or notify consumers of the defect, either before or after taking possession of the vehicle, and has failed to effectively repair or offer to effectively repair consumers' vehicles.

10. The brake system defect is a systemic design, materials and workmanship defect and not merely a manufacturing peculiarity of a select number of Defendant's Sephia

automobiles. The brake system defect has, does or will affect all members of the Class in the manners set forth above. Because the defect appears suddenly and without warning and its risk of manifesting cannot be predicted in a reliable manner by a consumer, the risk of the defect's sudden manifestation currently affects all members of the Defendant and the public at large.

11. It is well accepted that functioning brake system components are required for the normal, usual and safe operation of an automobile, and the normal use of a vehicle should not require replacement of brakes, pads, calipers and/or rotors before 20,000 miles of use, at a minimum.

12. In the sale of its Sephia vehicles, Defendant warranted that the vehicles were equipped with a standard functional brake system that was safe and free from defects. The brake system and its constituent components and materials, including the brake pads, calipers and rotors do not comply with Defendant's warranties.

13. Defendant, through its agents, has received requests from a multitude of Class members, including the named Plaintiff herein, to effectively repair the brake system defect, but Defendant has failed to do so. Defendant has, however, by and through its agents, admitted and/or notified dealer personnel and consumers that it is aware that the defect exists, but cannot, or will not, propose a repair and/or solution for it, in violation of the express and implied warranties issued. Defendant has admitted, through its duly authorized and designated representative, that it will not repair the defect.

14. Given such admissions, Defendant, through its agents, has been requested by multiple members of the Class, including the named Plaintiff herein, to exchange the affected automobiles or for rescission of contracts of sale or lease thereof, which requests have been denied by Defendant, pursuant to an established policy and procedure mandating such denial.

15. The experience of the representative Plaintiff is typical of the experiences of the other Class members in that she has requested repair of the brake defect under warranty, numerous times, but Defendant's efforts have failed to fix the problem.

16. On or about March 1, 1999, Plaintiff purchased a 1999 Kia Sephia automobile, manufactured by Defendant, from Salerno Duane Kia ("Salerno"), an authorized Kia dealer which automobile bears the vehicle identification number KNAFB1210X5781449. Plaintiff purchased the vehicle primarily for personal, family or household use. The price of the automobile, including registration charges, document fees and sales tax, and excluding other collateral charges not specified, totaled more than \$13,000.00. A copy of the Retail Installment Sales Contract is attached hereto as Exhibit C. Furthermore, included within the purchase price of Plaintiff's vehicle, and as consideration for the purchase, Defendant provided Plaintiff with the warranty set forth in paragraph 6 above. See Exhibit A.

17. Defendant failed to advise Plaintiff that her Sephia contained the brake system defect, and prior to her using the vehicle, Plaintiff had no reason to know of the defect. Since the purchase of her Sephia vehicle, Plaintiff's Sephia has consistently exhibited and suffered from the brake system defect, and Plaintiff's use of her Sephia has been constantly and substantially impaired. Specifically, Plaintiff has been forced to take her Sephia vehicle to the Defendant's authorized dealerships, including Hillside Kia, for brake failure and malfunction due to the defect, an inability to stop the vehicle upon brake pedal application, brake grinding, excessive shuddering and vibration of the vehicle upon application, and increased stopping distance on several occasions.

18. The Sephia owned by the Plaintiff was returned to Defendant's dealers for the brake concern, under warranty, on at least five occasions. Defendant refused to provide warranty

copies of repair invoices at one dealer, Hillside Kia. Personnel at Hillside Kia advised Plaintiff that the brake complaints would not be logged in the warranty records, as per procedures mandate by Defendant. Plaintiff also requested warranty repairs to correct the brake defect at Dan Kia on at least two occasions, for which the dealer told her to return at a later date for invoice copies.

19. Due to the defect, Plaintiff has demanded timely rescission of her purchase of the vehicle from the Defendant. Defendant has refused to honor her demand. Furthermore, and despite Plaintiff's complaints and the numerous repair attempts and replacements of the brakes and rotors, Defendant has failed to correct the defect, and Defendant's agents from Salerno, Hillside Kia and Dan Kia have advised Plaintiff that Defendant is well aware of the defect, but will not correct it. As a result, the defect persists at the time of the filing of this action.

20. As a direct and proximate result of Defendant's conduct, as is set forth above and as gives rise to the causes of action contained in the enumerated Counts below, Plaintiff and the Class:

(a) are entitled to a declaration that Defendant's conduct as set forth herein constitutes a violation of the CFA, the CBPC, a breach of implied and express warranties, and a violation of the MMWA;

(b) are entitled to be notified and warned about the brake system defect and, accordingly, are entitled to the entry of final injunctive relief compelling Defendant to issue a notification and warning, to all Class members concerning such defect;

(c) are entitled to actual damages, representing:

(i) the failure of consideration in connection with and/or difference in value arising out of the variance between Defendant's automobiles as warranted and Defendant's automobiles containing the brake system defect;

(ii) the depression of resale value of the automobiles suffered by Plaintiff and the Class arising out of the brake system defect;

(iii) sufficient funds to permit Plaintiff and the Class to obtain effective repairs for each affected automobile using proper parts and adequately trained labor;

(iv) a refund of all monies paid out-of-pocket by Plaintiff and the Class as compensation for all out-of-pocket expenses that the Plaintiff and the Class have incurred as a result of the being unable to use the vehicle, including any and all alternate forms of transportation; and

(v) rescission of their contracts of sale and/or lease, as appropriate.

IV. CLASS ACTION ALLEGATIONS

21. Plaintiff brings this action as a class action pursuant to Rule 4:32 of the Rules Governing Civil Practice on behalf of herself and on behalf of all persons who purchased and/or leased Kia Sephia automobiles within six years preceding the filing of this action (the "Class"). Excluded from the Class are (i) all persons who are currently engaged in or have been engaged in litigation and/or arbitration with Defendant concerning defects in the Sephia model automobile; (ii) all persons who have executed valid releases in connection with claims related to defects in the Sephia model automobiles; (iii) all Judges, judicial officers and members of their immediate families; and (iv) all persons who have or may have claims for personal injuries arising out of or in any way related to alleged defects in the Sephia model automobiles, which claims arose prior to entry of judgment and distribution of the relief sought herein.

22. The Class is so numerous that joinder of all members is impracticable. According to KMA's press releases, KMA sold over 166,000 Sephia automobiles in the United States of America for the years of 1997, 1998 and 1999.

23. There are questions of law and fact common to the Class. Representative questions of law and fact include:

(a) whether Defendant's Sephia automobiles possess the brake system defect alleged herein;

(b) whether Defendant lacks the means to repair the defect or replace the defective brake system defect alleged herein;

(c) whether Defendant's conduct violates the CFA or the CBPC;

(d) whether the brake system defect constitutes a breach of the implied warranty of merchantability and of express warranty;

(e) whether Defendant has violated and continues to violate the MMWA;

(f) whether members of the Class are entitled to a declaration that Defendant's conduct as set forth herein constitutes a violation of the CFA, a breach of implied and express warranty, and a violation of the MMWA;

(g) whether members of the Class are entitled to be notified and warned about the brake system defect and, accordingly, are entitled to the entry of final injunctive relief compelling Defendant to issue a notification and warning to all Class members concerning such a defect;

(h) whether members of the Class are entitled to actual damages, representing

(i) the failure of consideration in connection with and/or difference in value arising out of the variance between Defendant's automobiles as warranted and Defendant's automobiles containing the brake system defect;

(ii) the depression of resale value of the automobiles suffered by Plaintiff and the Class arising out of the brake system defect;

(iii) sufficient funds to permit Plaintiff and the Class themselves to repair each affected automobile using proper parts and adequately trained labor;

(iv) **compensation for all out-of-pocket monies expended by the Plaintiff and the members of the Class for repair attempts and loss of use of the vehicles; and**

(j) whether members of the Class are entitled to rescind their contracts of sale and/or lease, as appropriate.

24. The claims of Plaintiff are typical of the claims of the Class. As with all members of the Class, Plaintiff bought Defendant's Sephia automobile. Defendant failed to warn or notify Plaintiff of the defect and failed to effectively repair or offer to repair Plaintiff's automobile. Plaintiff's automobile did, like all of Defendant's Sephia model automobiles, contain the defect. The defect appeared suddenly and without warning in Plaintiff's automobile. Plaintiff requested that Defendant, through its agents, repair the brake system defect, but Defendant, by and through its agents, has admitted to Plaintiff that there is currently no repair. Plaintiff has requested rescission of her purchase, but Defendant, through its agents, has refused.

25. **Plaintiff will fairly and adequately assert and protect the interests of the Class because:**

(a) Plaintiff has retained counsel experienced in the prosecution of class action litigation and automobile litigation, which counsel will adequately represent the interests of the Class;

(b) Plaintiff and her counsel are aware of no conflicts of interest between Plaintiff and absent Class members or otherwise;

(c) Plaintiff has or can acquire adequate financial resources to assure that the interests of the Class will not be harmed; and

(d) Plaintiff is knowledgeable concerning the subject matter of this action and intends vigorously to prosecute this litigation

26. A class action provides a fair and efficient method for adjudicating this controversy, because:

(a) common questions of law or fact predominate over any questions affecting only individual members. No significant questions of law or fact that might affect only individual members or a subclass of individual members exist that cannot be managed through effective subclass definitions, jury interrogatory modifications, or otherwise, consistent with sound and creative judicial management, due process of law, and fundamental fairness to Plaintiff and the Class;

(b) Plaintiff is aware of no difficulties likely to be encountered in the management of the action as a class action. Indeed, given the design defect present in all of Defendant's Sephia model automobiles, and given Defendant's uniform treatment of the members of the Class and uniform inability to repair the defect or replace the defective brake systems, Plaintiff believes that this action properly invokes the class action procedural device;

(c) the prosecution of separate actions by individual members of the Class would create a risk of inconsistent or varying adjudications with respect to individual Class members which would present the Defendant with incompatible standards of conduct. This is because the common questions of law and fact recited above could conceivably be answered by different courts and different fact finders in different ways, presenting Defendant with an inability to predict or manage its business affairs so that it does not run afoul of the law;

(d) the prosecution of separate actions by individual members of the Class would create a risk of adjudications which would as a practical matter be dispositive of the interests of other members not parties to such separate adjudications and which would substantially impair or impede the ability of such other members to protect their interests. This is so because separate actions by individual members of the Class would effectively result in findings of fact in the first individual action tried being accorded collateral estoppel effect in later actions;

(e) Plaintiff is aware of no class litigation already commenced in New Jersey by a member of the Class involving the issues presented in this action

(f) the Superior Court of New Jersey, Union County is appropriate for the litigation of the claims of the entire Class. This is so because the judges of this Court are learned and experienced in class action issues; because Defendant conducts substantial and continuous business in New Jersey and in the County of Union; because, on information and belief, a substantial number of members of the Class are citizens of the State of New Jersey; and because, to the extent that any member of the Class is not subject to the involuntary personal jurisdiction of this Court, he or she can be afforded the opportunity pursuant to "opt-out" or "opt-in" once class certification is granted, in accordance with due process of law;

(g) in view of the complexities of the issues and the expenses of litigation, the separate claims of individual Class members are insufficient in amount to support separate actions. This is so because, of the remedies sought by Plaintiff and the Class, the only one sufficiently substantial to perhaps merit individualized litigation is that of rescission, and even in that event the amount in controversy in any such individual action may not justify the intensity of effort and devotion of resources required to maximize the chances of an optimal result. The aggregation of claims in a class action ensures that there is a sufficient amount at stake so as to economically justify the best and most aggressive efforts in discovery, motions practice, and trial against the Defendant, whereas individualized claims may not justify such expenditures;

(h) it is unlikely that the amount which may be recovered by individual Class members in this action would be small in relation to the expense and effort of administering this action so as not to justify a class action. This is so because of the economies of scale presented by a class action in a case such as this. If handled as a class action, the claims in this action would be subject to a single discovery period, rather than a multiplicity of repetitive and redundant discovery periods in a multiplicity of individualized actions. Such class treatment makes the recovery of any given Class member large in relation to the expense and effort of discovery and other litigation procedures, since discovery and litigation efforts and costs can be capped as among the claims of each Class member, resulting in lesser per-Class-member expenditures in attorneys' fees and costs, which would otherwise, absent class treatment, threaten to overtake any recovery any Class member could expect to obtain in an individual action. Thus, the trial of a multiplicity of individual actions would cause a wasteful depletion of the limited resources of the Courts and litigants, and concentrating the litigation of many identical claims in one forum is desirable and in the interests of judicial economy and efficiency. Indeed, the

uniformity of the theories of liability and remedy against Defendant are such as to make class treatment especially efficient in this action;

(i) Defendant has acted or refused to act on grounds generally applicable to the Class, thereby making final equitable or declaratory relief appropriate with respect to the Class. As is recited above, Defendant has uniformly provided to the Class a vehicle with a uniform defect, and has uniformly failed or refused to repair the defect, to exchange Class members' automobiles, or to agree to a rescission of contracts of sale or lease. Plaintiff is aware of no variation in Defendant's treatment of those similarly situated to Plaintiff, and admissions by Defendant's duly authorized and designated representatives confirm the existence of a class-wide policy on the part of Defendant.

27. A nationwide class applying the substantive law of California is appropriate because KMA's United States headquarters are located in California and many, if not all, of KMA's warranty, advertising and promotional materials are created, developed, generated and distributed from its California headquarters. It is therefore proper and consistent with due process principles to hold KMA to the minimum standards set by California law with respect to all of its sales and warranty activities occurring with the United States.

28. In the alternative, a nationwide class applying the substantive law of New Jersey is appropriate because KMA's Eastern Region headquarters are located in Mt. Laurel, New Jersey and many, if not all, of KMA's warranty, advertising and promotional materials are created, developed, generated and distributed from its Eastern Region offices in New Jersey. It is therefore proper and consistent with due process principles to hold KMA to the minimum standards set by New Jersey law with respect to all of its sales and warranty activities occurring within the United States.

COUNT I
VIOLATION OF CALIFORNIA BUSINESS &
PROFESSIONS CODE SECTIONS 17200 & 17500

29. Plaintiff realleges and incorporates by reference herein each and every allegation set forth above. This cause of action is brought by Plaintiff individually, on behalf of all others similarly situated and on behalf of the general public.

30. Defendant's advertising of Sephia vehicles without disclosure that the brake systems were and are defective was likely to mislead the public. Having failed to make such disclosures, Defendant was and is engaged in fraudulent business practices in violation of sections 17200 and 17500 of the CBPC.

31. Defendant's policy of charging customers for brake repairs even though the repairs were necessary because of factory defects was and is an unfair, fraudulent and unlawful business practice in violation of section 17200 of the CBPC.

32. Defendant's acts, as herein described, present a continuing threat to members of the public in that Defendant continues to engage in these deceptive practices and will not cease doing so unless and until an injunction is issued by this court.

33. As a direct result of the aforementioned acts, Defendant has unlawfully, unfairly and unjustly collected and continue to hold revenues and profits from affected members of the general public who have been victimized by the practices challenged herein. In accordance with the provisions of sections 17200 and 17203 of the CBPC, Plaintiff is entitled to an order enjoining the unfair, unlawful and fraudulent acts described herein; and directing Defendant to disgorge its ill-gotten gains and make full restitution to all persons who have suffered from such acts.

34. Plaintiff is entitled to an award of attorneys' fees and costs in prosecuting this action under California Code of Civil Procedure § 1021.5 because:

(a) A successful outcome in this action will result in the enforcement of important rights affecting the public interest by protecting the general public from unfair, unlawful and deceptive advertising and warranty practices;

(b) This action will result in a significant public benefit by causing the disgorgement of revenues improperly collected and retained by defendant, together with interest on that money and through the issuance of an injunction;

(c) Unless this Amended Complaint is prosecuted, the Defendant's activities will go unremedied and will continue; automotive consumers in the State of New Jersey will not recover money properly belonging to them; the deception is difficult to detect; and many consumers would not be aware that they were damaged by Defendant's wrongful practices; and

(d) Unless attorneys' fees, costs and expenses are awarded against Defendant, Plaintiff will not recover the full measure of her loss.

COUNT II
NEW JERSEY CONSUMER FRAUD ACT

35. Plaintiff hereby incorporates all facts and allegations set forth above by reference as if fully set forth at length herein.

36. Plaintiff and all members of the Class are each a "person" as defined by N.J.S.A. 56:8-1(d).

37. Defendant is a "person" as defined by N.J.S.A. 56:8-1(d).

38. Plaintiff and the Class purchased/leased Sephia model automobiles for personal, family or household purposes and have suffered ascertainable losses as a result of Defendant's breach of express warranty and other unlawful conduct as detailed herein.

39. The conduct of the Defendant, as set forth above, is violative of the CFA and Defendant's actions surrounding the repair process of the subject vehicle were unconscionable. Defendant's agents acted with a reckless and callous disregard regarding Plaintiff's and the Class' warranty claims involving the brake system defect, after Defendant represented the Sephia model automobiles as having characteristics or benefits that they do not have. Defendant has otherwise acted in an unconscionable way by using deception, fraud, false pretense, false promise and/or misrepresentation involving brake system warranty claims involving the defect. Defendant and its agents acted affirmatively in such a manner in violation of the CFA.

40. Defendant knowingly concealed, suppressed, or omitted facts, was aware the defect(s)/condition(s) could not or would not be repaired as warranted, refused to verify brake defect(s) and/or refused to execute warranty responsibilities as promised in writing. Plaintiff and the Class aver such acts constitute a refusal to perform the repairs in accordance with the warranty, in violation of the CFA.

41. As a result of Defendant's conduct, Plaintiff and the Class have suffered ascertainable losses and are entitled to the remedies prayed for above and recapitulated in the prayer for relief below.

WHEREFORE, Plaintiff and the Class respectfully pray for the following relief:

(a) An Order certifying the Class as defined above and appointing the undersigned as counsel for the Plaintiff and the Class, pursuant to Rule 4:32;

(b) Judgment in favor of Plaintiff and the Class and against Defendant, awarding actual damages in the form of (i) the variance in value between Defendant's automobiles as warranted and Defendant's automobiles containing the brake system defect; (ii) the depression of resale value of the automobiles suffered by Plaintiff and the Class arising out of the brake system

defect; (iii) those funds necessary to repair each affected automobile using proper parts and adequately trained labor; and (iv) compensation for out-of-pocket monies spent on repair attempts and loss of use of the vehicle;

(c) An Order requiring Defendant to provide notice to the Class under Rule 4:32;

(d) An Order declaring Defendant's conduct as set forth herein to be a violation of the CBPC, the CFA, a breach of the implied warranty of merchantability, a breach of express warranty, and a violation of the MMWA;

(e) An Order affording the Class final injunctive relief compelling Defendant to notify members of the Class of the defect complained of herein and providing them a right of free repair and replacement;

(f) An Order awarding Plaintiff and the Class treble damages on applicable Counts;

(g) An Order awarding Plaintiff and the Class the costs and expenses associated with the prosecution of this action, including reasonable attorney's fees;

(h) Such other and further legal or equitable relief as to the Court shall seem just, proper and fair.

COUNT III
BREACH OF THE IMPLIED WARRANTY OF MERCHANTABILITY

42. Plaintiff and the Class incorporate by reference each preceding and succeeding paragraph as though fully set forth at length herein.

43. Defendant's Sephia automobiles are not of merchantable quality and not fit for the ordinary purposes for which such products are used, given the brake system defect.

44. As a direct and proximate result of Defendant's breach of the implied warranty of merchantability, Plaintiff and the Class are entitled to the remedies prayed for above and recapitulated in the prayer for relief below

WHEREFORE, Plaintiff and the Class respectfully pray for the following relief:

(a) an Order certifying the Class as defined above and appointing the undersigned as counsel for the Plaintiff and the Class, pursuant to Rule 4:32.

(b) judgment in favor of Plaintiff and the Class and against Defendant, awarding actual damages in the form of the greater of \$100 or (i) the variance in value between Defendant's automobiles as warranted and Defendant's automobiles containing the brake system defect; (ii) the depression of resale value of the automobiles suffered by Plaintiff and the Class arising out of the brake system defect; (iii) those funds necessary to repair each affected automobile using proper parts and adequately trained labor; and (iv) compensation for out-of-pocket monies spent on repair attempts and loss of use of the vehicle;

(c) an Order requiring Defendant to provide notice to the Defendant under Rule 4:32.

(d) an Order declaring Defendant's conduct as set forth herein to be a violation of the CBPC, the CFA, a breach of the implied warranty of merchantability, a breach of express warranty, and a violation of the MMWA.

(e) An Order affording the Class final injunctive relief compelling Defendant to notify members of the Class of the defect complained of herein and providing them a right of free repair and replacement;

(f) An Order awarding Plaintiff and the Class treble damages on applicable Counts;

(g) An Order awarding Plaintiff and the Class the costs and expenses associated with the prosecution of this action, including reasonable attorney's fees; and

- (h) Such other and further legal or equitable relief as to the Court shall seem just, proper and fair.

COUNT IV
VIOLATION OF THE MAGNUSON-MOSS WARRANTY IMPROVEMENT ACT

45. Plaintiff and the Class incorporate by reference each of the above paragraphs as though fully set forth at length herein.

46. Plaintiff and the Class are "consumers" as defined by 15 U.S.C. § 2301(3).

47. Defendant is "supplier," "warrantor," and "service contractors" as defined by 15 U.S.C. §§ 2301(4), 2301(5), and 2301(8)

48. The Kia Sephia is a "consumer product" as defined by 15 U.S.C. § 2301 (1).

49. The MMWA requires Defendant to be bound by all warranties implied by state law.

50. Section 15 U.S.C. § 2310(d)(1) of the MMWA provides that a consumer who is damaged by the failure of a supplier, warrantor, or service contractor to comply with any obligation under this title, or under a written warranty, implied warranty, or service contract, may bring suit for damages and other legal and equitable relief in any court of competent jurisdiction in any State.

51. As a direct and proximate result of Defendant's breach of warranty, Plaintiff and the Class are entitled to the remedies prayed for above and recapitulated in the prayer for relief below.

WHEREFORE, Plaintiff and the Class respectfully pray for the following relief:

(a) An Order certifying the Defendant as defined above and appointing the undersigned as counsel for the Plaintiff and the Class, pursuant to Rule 4:32;

(b) Judgment in favor of Plaintiff and the Class and against Defendant, awarding actual damages in the form of the greater of \$100 or (i) the variance in value between Defendant's automobiles as warranted and Defendant's automobiles containing the brake system defect; (ii) the depression of resale value of the automobiles suffered by Plaintiff and the Class arising out of the brake system defect; (iii) those funds necessary to repair each affected automobile using proper parts and adequate trained labor; and (iv) compensation for out-of-pocket monies spent on repair attempts and loss of use of the vehicle;

(c) An Order requiring Defendant to provide notice to the Class under Rule 4:32.

(d) An Order declaring Defendant's conduct as set forth herein to be a violation of the CBPC, the CFA, a breach of the implied warranty of merchantability, a breach of express warranty, and a violation of the MMWA.

(e) An Order affording the Class final injunctive relief compelling Defendant to notify members of the Class of the defect complained of herein and providing them a right of free repair and replacement;

(g) An Order awarding Plaintiff and the Class treble damages on applicable Counts;

(l) An Order awarding Plaintiff and the Class the costs and expenses associated with the prosecution of this action, including reasonable attorney's fees;

(m) Such other and further legal or equitable relief as to the Court shall seem just, proper and fair.

COUNT V
BREACH OF EXPRESS WARRANTY

52. Plaintiff and the Class incorporate by reference each preceding and succeeding paragraph as though more fully set forth at length herein

53. The brake system defect constitutes a breach of Defendant's express written warranty sold with the KMA Sephia model automobiles.

54. As a direct and proximate result of Defendant's breach of warranty, Plaintiff and the Class are entitled to the remedies prayed for above and recapitulated in the ad damnum;

WHEREFORE, Plaintiff and the Class respectfully pray for the following relief:

(a) An Order certifying the Class as defined above and appointing the undersigned as counsel for the Plaintiff and the Class, pursuant to Rule 4:32;

(b) Judgment in favor of Plaintiff and the Class and against Defendant, awarding actual damages in the form of the greater of \$100 or (i) the variance in value between Defendant's automobiles as warranted and Defendant's automobiles containing the brake system defect; (ii) the depression of resale value of the automobiles suffered by Plaintiff and the Class arising out of the brake system defect; (iii) those funds necessary to repair each affected automobile using proper parts and adequately-trained labor; and (iv) compensation for out-of-pocket monies spent on repair attempts and loss of use of the vehicle;

(c) An Order requiring Defendant to provide notice to the Class under Rule 4:32;

(d) An Order declaring Defendant's conduct as set forth herein to be a violation of the CBPC, the CFA, a breach of the implied warranty of merchantability, a breach of express warranty, and a violation of the MMWA;

(e) An Order affording the Class final injunctive relief compelling Defendant to notify members of the Defendant of the defect complained of herein and providing them a right of free repair and replacement;

(g) An Order awarding Plaintiff and the Class treble damages on applicable Counts;

(n) An Order awarding Plaintiff and the Class the costs and expenses associated with the prosecution of this action, including reasonable attorney's fees; and

(o) Such other and further legal or equitable relief as to the Court shall just, proper and fair.

RODRIGUEZ & RICHARDS, LLC

Dated: June , 2001

By: _____

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