

1 Jordan L. Lurie (SBN 130013)
 Jordan.Lurie@capstonelawyers.com
 2 Tarek H. Zohdy (SBN 247775)
 Tarek.Zohdy@capstonelawyers.com
 3 Cody R. Padgett (SBN 275553)
 Cody.Padgett@capstonelawyers.com
 4 Karen L. Wallace (SBN 272309)
 Karen.Wallace@capstonelawyers.com
 5 Capstone Law APC
 1875 Century Park East, Suite 1000
 6 Los Angeles, California 90067
 Telephone: (310) 556-4811
 7 Facsimile: (310) 943-0396

8 Troy L. Isaacson, Esq., (Cal. Bar No. 186834, NV Bar No. 6690)
 Norberto J. Cisneros, Esq., (Cal. Bar No. 182001, NV Bar No. 8782)
 9 Barbara M. McDonald, Esq., (Cal. Bar No. 281722, NV Bar No. 11651)
 MADDOX | ISAACSON | CISNEROS LLP
 10 11920 Southern Highlands Parkway, Suite 100
 Las Vegas, Nevada 89141
 11 Telephone: (702) 366-1900
 Facsimile: (702) 366-1999

12
 13 Attorneys for Plaintiffs Nicholas and Shawna Wylie

14 UNITED STATES DISTRICT COURT
 15 CENTRAL DISTRICT OF CALIFORNIA
 16

17 NICHOLAS WYLIE and SHAWNA
 WYLIE (fka BROWN),
 18 individually, and on behalf of a class
 of similarly situated individuals,

19 Plaintiffs,

20 v.

21 HYUNDAI MOTOR AMERICA, a
 22 California corporation,

23 Defendant.
 24
 25
 26

Case No.: 8:16-CV-02102

**CLASS ACTION COMPLAINT
 FOR:**

- (1) Violation of Nevada Deceptive Trade Practices Act
- (2) Breach of Common Law Implied Warranty of Merchantability and Breach of Implied Warranty pursuant to Nev. Rev. Stat. §§104.2314 and 104A.2212
- (3) Breach of Implied Warranty pursuant to the Magnuson-Moss Warranty Act
- (4) Unjust Enrichment

DEMAND FOR JURY TRIAL

INTRODUCTION

1
2 1. Plaintiffs Nicholas and Shawna Wylie (“Plaintiffs”) bring this action
3 for themselves and on behalf of all persons in the United States who purchased
4 or leased any Hyundai Veloster, Hyundai Sonata (Eco) and Hyundai Elantra
5 (Eco) vehicles equipped with a 7-speed dual-clutch automatic transmission
6 (DCT) (collectively, “Hyundai Vehicles” or “Class Vehicles”)¹ designed,
7 manufactured, marketed, distributed, sold, warranted, and serviced by Hyundai
8 Motor America, a California corporation (“Hyundai” or “Defendant”).

9 2. In October 2014, Hyundai premiered its 7-speed DCT, designed to
10 “provide an improvement in fuel consumption and CO2 emission compared to a
11 conventional six-gear automated transmission, while acceleration performance
12 increases” and featuring two dry clutches that transfer engine power
13 “independently into the odd and even gear train to always be ready to shift into
14 the next gear.”² However, Plaintiffs allege on information and belief that
15 Hyundai’s 7-speed DCT contains a design defect in the Transmission Control
16 Module (“TCM”) that causes, among other problems, failure to shift, stalling,
17 delayed acceleration, or loss of power (“TCM Defect”). The TCM is a small
18 electronic component within the powertrain that processes data from various
19 sensors throughout the engine in order to determine the optimal gear for shifting
20 and fuel-economy.

21 3. On information and belief, the TCM is defective because it fails to
22 interpret data from the vehicle’s sensors properly, thus miscalculating both the

23
24 ¹ On information and belief, Hyundai vehicles equipped with the 7-speed
25 DCT include: 2016 Hyundai Veloster (Turbo), 2016-2017 Hyundai Tucson (Eco,
Sport, Limited), 2017 Hyundai Sonata (Eco), 2017 Hyundai Elantra (Eco)

26 ² *Hyundai to showcase new downsized turbocharged engines and seven-*
27 *speed dual-clutch transmission in Paris*, Hyundai Corporate News (Oct. 2,
28 2014),
http://worldwide.hyundai.com/WW/Corporate/News/News/DF_WW_GLOBAL_NEWS_141002_2.html?selx2=transmission

1 appropriate gear and the correct shift timing, which results in an unresponsive
2 accelerator pedal and stalling.

3 4. Since 2015, in an effort to address owner complaints regarding the
4 TCM Defect, Hyundai has issued Technical Service Bulletins (“TSBs”), as
5 detailed below. However, these efforts failed to resolve the TCM Defect.

6 5. On information and belief, the Hyundai Vehicles are equipped with
7 the same or substantially similar 7-speed DCT and have the same or substantially
8 identical TCMs, and the TCM Defect is the same for all Class Vehicles.

9 6. The TCM Defect causes unsafe conditions, including the
10 transmission failing to shift, stalling, and delayed or unresponsive acceleration,
11 especially from a stop. These conditions are hazardous because they severely
12 affect the driver’s ability to control the vehicle during normal driving conditions
13 and prevent drivers from accelerating to maintain safe speeds in traffic. For
14 example, the TCM Defect may make it difficult for drivers to accelerate safely
15 from traffic stops because Class Members’ vehicles hesitate, fail to shift gears,
16 and stall when drivers try to accelerate from stops.³

17
18 ³ See, for example, this 2016 Hyundai Veloster owner’s complaint to the
19 National Highway Traffic Safety Administration (“NHTSA”): (2016 Hyundai
20 Veloster, 10/12/2016) MOST IMPORTANTLY IS THE SAFETY
21 **REGARDING THE 7 SPEED DUAL CLUTCH TRANSMISSION. IT IS**
22 **INTERMITTENT, BUT I HAVE CAPTURED IT ON CAMERA THREE**
23 **TIMES - ONCE PRIOR TO THE TRANSMISSION PARTS BEING**
24 **REPLACED, AND THEN THE ENTIRE TRANSMISSION. AND TWICE**
25 **AFTER THE ENTIRE TRANSMISSION WAS REPLACED. JUST LAST**
26 **FRIDAY, I COULDN'T DRIVE THE VEHICLE BECAUSE IT SEIZED**
27 **TO SHIFT AND ACCELERATE PROPERLY FIVE TIMES IN A ROW,**
28 **THE MOST IT HAS EVER HAPPENED. I HAD IT TOWED TO THE**
DEALERSHIP AND WAS PLACED BACK INTO A RENTAL. TODAY, THE
DEALERSHIP SAYS "THEY CAN'T FIND ANYTHING WRONG" (THIS
HAS BEEN SAID OVER THE COURSE OF 5 MONTHS BECAUSE IT'S
INTERMITTENT) AND THEY'RE FORCING ME TO RETURN THE
RENTAL - LEAVING ME WITH UNSAFE TRANSPORTATION YET
AGAIN. (Safecar.gov, Search for Safety Problems (Oct. 27, 2016), [http://www-](http://www-odi.nhtsa.dot.gov/owners/SearchSafetyIssues)
odi.nhtsa.dot.gov/owners/SearchSafetyIssues)(emphasis added).

1 7. Since at least 2015, through consumer complaints and dealership
2 repair orders, among other internal sources, Defendant knew or should have
3 known that the 7-speed DCT in the Class Vehicles contained a design defect that
4 diminishes the drivability of the Class Vehicles and causes safety hazards, in part
5 because the same concerns were expressed regarding the 2016-2017 Hyundai
6 Tucson that is equipped with the same 7-speed DCT and TCM. For example, a
7 2016 Hyundai Tucson owner complained to the NHTSA on December 14, 2015:

8 THE PROBLEM THAT I AM HAVING IS WHEN I START TO
9 ACCELERATE GOING THROUGH THE GEARS 1,2,3 AND 4
10 THERE IS A HUGE, PAUSE/DELAY IN SHIFTING THROUGH
11 THE GEARS. IN FACT THERE HAS BEEN MAY TIMES WHEN
12 I START TO ACCELERATE THE GEARS PAUSES AND I HIT
13 THE GAS AGAIN AND THE VEHICLE DOES NOT
14 ACCELERATE AT ALL THE RPM'S GO UP SOMETIMES PAST
15 6 AND THE TRANSMISSION START BURNING. I EVEN GOT
16 AN SAFETY DISPLAY MESSAGE THAT THE TRANSMISSION
17 IS OVERHEATED AND TO PULL OVER FOR SAFETY UNTIL
18 IT COOLS DOWN. NOTE I ONLY HAVE 5719 MILES AND MY
19 4TH TIME TAKING IT BACK TO THE DEALERSHIP FOR
20 SERVICE. I AM DRIVING IN FEAR EVERYTHING BECAUSE
21 THIS PROBLEM HAPPENS WHEN IT WANTS TO
22 SOMETIMES THE VEHICLES DRIVES PERFECT THEN THE
23 NEXT MINUTE I'M HAVING THE SAME ISSUE. THIS
24 PROBLEM IS HAPPENING AT A STREET LIGHT, STOP SIGN,
25 STOP AND GO TRAFFIC ON THE STREETS AND ON THE
26 FREEWAY, WHEN I AM SLOWING DOWN TO MAKE A
27 TURN THEN ACCELERATE AND IN THE MORNING,
AFTERNOON AND AT NIGHT. I AM AFRAID WHEN I START
TO ACCELERATE THEN THE NEXT SECOND I CANNOT
ACCELERATE THAT THE CAR BEHIND ME OR IF I AM
CHANGES LANES AND STOP ACCELERATING THAN
ANOTHER VEHICLE WILL CRASH INTO ME. I DON'T KNOW
IF THE PROBLEM IS THE ACTUAL TRANSMISSION AND OR
SOFTWARE RELATED, BUT IT IS UNSAFE AND I DO NOT
WANT TO DRIVE THIS VEHICLE ANYMORE. THIS
PROBLEM IS OFF AND AND ON, BUT WHEN IT DOES
HAPPEN IT DOES NOT STOP THE PROBLEM UNTIL I TURN
THE CAR OFF. SOMETIMES IT CONTINUES TO HAPPEN OR
NOT. FOR EXAMPLE LAST TIME I HAD THE PROBLEM WAS
ON SAT. NIGHT WHILE I WAS OUT WITH MY FAMILY IN
THE CAR. THE TRANSMISSION WAS OVERHEATING, IT
COOLED OFF AND ABOUT AN HOUR LATER I DRIVE IT
HOME AND IT WAS OKAY. I DROVE IT TO THE
DEALERSHIP THIS MORNING WITH NO ISSUES. I AM IN
SALES AND DRIVE A LOT AND CANNOT AFFORD THESE
ISSUES FOR SAFETY REASONS AND FOR WORK.⁴

28 ⁴ Safercar.gov, *Search for Safety Problems* (Oct. 27, 2016), <http://www->

1 8. On information and belief, Defendant’s corporate officers, directors,
2 or managers knew about the TCM Defect but failed to disclose it to Plaintiffs
3 and Class Members, at the time of sale, lease, repair, and thereafter.

4 9. In fact, in or around August 2016, Hyundai issued a Technical
5 Service Bulletin (“TSB”) for Hyundai Tucson vehicles equipped with the 7-
6 speed DCT and a limited recall in September 2016 for certain of the same
7 vehicles informing its dealers that a faulty “transmission clutch application logic
8 can result in a delayed engagement when accelerating from a stop” or fail to
9 accelerate at all “if the accelerator pedal is repeatedly cycled.” Hyundai dealers
10 were instructed to reprogram the TCM in the affected vehicles. However, both
11 the TSB and the recall were limited to the 2016 Tucson, despite owners
12 complaining of similar issues in other Hyundai vehicles equipped with the same
13 7-speed DCT.

14 10. Because Hyundai will not notify Class Members that the 7-speed
15 DCT is defective, Plaintiffs and Class Members (as well as members of the
16 general public) remain subject to dangerous transmission malfunctions that can
17 occur without warning.

18 11. The alleged TCM Defect was inherent in each Hyundai Vehicle and
19 was present in each Hyundai Vehicle at the time of sale.

20 12. Hyundai knew about and concealed the TCM Defect present in
21 every Class Vehicle, as well as its attendant hazardous conditions, from Plaintiffs
22 and Class Members, at the time of sale, lease, repair, and thereafter. In fact,
23 instead of repairing the defects in the 7-speed DCT, Hyundai either refused to
24 acknowledge their existence or performed repairs that simply masked them.

25 13. If they had known about these defects at the time of sale or lease,
26 Plaintiffs and Class Members would not have purchased or leased the Class

27
28

[odi.nhtsa.dot.gov/owners/Search SafetyIssues](http://odi.nhtsa.dot.gov/owners/SearchSafetyIssues)

1 Vehicles or would have paid less for them.

2 14. As a result of the TCM Defect, Plaintiffs and Class Members were
3 harmed and suffered actual damages in that the Class Vehicles' transmission
4 components are substantially certain to fail before their expected useful lives
5 have run.

6 THE PARTIES

7 Plaintiffs Nicholas and Shawna Wylie

8 15. Plaintiffs Nicholas and Shawna Wylie ("Plaintiffs") are Nevada
9 citizens who reside in Boulder City, Nevada.

10 16. On or around October 31, 2015, Plaintiffs purchased a new 2016
11 Hyundai Veloster Turbo, equipped with a 7-speed DCT, from Henderson
12 Hyundai Superstore, an authorized Hyundai dealer in Clark County.

13 17. Plaintiffs' Hyundai vehicle has and continues to exhibit the TCM
14 Defect described herein.

15 18. Specifically, on or around July 6, 2016, with approximately 15,180
16 miles on the odometer, Plaintiffs brought their vehicle to Henderson Hyundai
17 complaining that the vehicle's "TRANS WENT TO 7000RPMS IN SPORT
18 MODE ON HIGHWAY, FEELS LIKE SLIPPING." A Hyundai service
19 technician inspected the vehicle but could not confirm any transmission-related
20 faults, and no repairs were performed. Plaintiffs continued to experience
21 symptoms of the TCM Defect, including hesitating and jerking on acceleration.

22 19. Then, on or around August 8, 2016, with approximately 15,724
23 miles on the odometer, Plaintiffs brought their vehicle back to Henderson
24 Hyundai because the transmission was jerking and surging on acceleration or the
25 RPMs would spike with no acceleration. The service technician inspected the
26 vehicle but failed to make any repairs.

27 20. Further, on or around August 17, 2016, with approximately 15,946
28 miles on the odometer, Plaintiffs brought their vehicle back to Henderson

1 Hyundai because the transmission was still surging and shuddering in stop and
2 go traffic situations, as well as rolling back on inclines when they tried to
3 accelerate from a stop. During this visit, the gear actuator assembly, the shift
4 lever control assembly, and the TCM were replaced on Plaintiffs' vehicle.

5 21. Plaintiffs continued to experience issues with their Hyundai
6 Veloster such that on or around October 7, 2016, with approximately 17,802
7 miles on the odometer, Plaintiffs brought their vehicle to Henderson Hyundai
8 again because the vehicle failed to accelerate from stops while pressing the
9 accelerator pedal or hesitated to accelerate before "jumping into gear and start
10 speeding." The service technician inspected the vehicle but again could not
11 confirm any vehicle faults, and no repairs were performed.

12 22. Despite Hyundai technicians inspecting their vehicle for symptoms
13 relating to the TCM Defect for a total of approximately 64 days, Plaintiffs
14 continue to experience those symptoms, including failure to shift, stalling, and
15 delayed or no acceleration.

16 23. Plaintiffs purchased their vehicle primarily for personal, family, or
17 household use. Hyundai manufactured, sold, distributed, advertised, marketed,
18 and warranted the vehicle.

19 24. Passenger safety and reliability were factors in Plaintiffs' decision
20 to purchase their vehicle. Prior to purchasing their vehicle, Plaintiffs spent time
21 researching the Hyundai Veloster on Hyundai's corporate website. Based on
22 their research, Plaintiffs believed that the Hyundai Veloster would be a safe and
23 reliable vehicle. Plaintiffs also test drove their vehicle with a dealership
24 salesperson prior to purchase.

25 25. Had Hyundai disclosed its knowledge of the TCM Defect before
26 they purchased their vehicle, Plaintiffs would have seen or heard such
27 disclosures and been aware of them. Indeed, Hyundai's omissions were material
28 to Plaintiffs. Like all members of the Class, Plaintiffs would not have purchased

1 their Class Vehicle, or would have paid less for it, had they known of the TCM
2 Defect.

3 26. At all times, Plaintiffs, like all Class Members, have driven their
4 vehicle in a manner both foreseeable and in which it was intended to be used.

5 **Defendant**

6 27. Defendant Hyundai Motor America is a corporation organized and
7 in existence under the laws of the State of California and registered to do
8 business in the State of California. Hyundai Motor America's Corporate
9 Headquarters are located at 10550 Talbert Avenue, Fountain Valley, California
10 92708. Hyundai Motor America designs, manufactures, markets, distributes,
11 services, repairs, sells, and leases passenger vehicles, including the Class
12 Vehicles, nationwide and in California. Hyundai Motor America is the
13 warrantor and distributor of the Class Vehicles in the United States.

14 28. At all relevant times, Defendant was and is engaged in the business
15 of designing, manufacturing, constructing, assembling, marketing, distributing,
16 and selling automobiles and motor vehicle components in Orange County and
17 throughout the United States of America.

18 **JURISDICTION**

19 29. This is a class action.

20 30. Plaintiffs and other members of the Proposed Class are citizens of
21 states different from the home state of Defendant.

22 31. On information and belief, aggregate claims of individual Class
23 Members exceed \$5,000,000.00 in value, exclusive of interest and costs.

24 32. Jurisdiction is proper in this Court pursuant to 28 U.S.C. § 1332(d).

25 **VENUE**

26 33. Hyundai, through its business of distributing, selling, and leasing the
27 Class Vehicles, has established sufficient contacts in this district such that
28 personal jurisdiction is appropriate. Defendant is deemed to reside in this district

1 pursuant to 28 U.S.C. § 1391(a).

2 34. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(a).

3 **FACTUAL ALLEGATIONS**

4 35. Hyundai began development of its new dry 7 speed dual-clutch
5 transmission (“DCT”) in 2011: “The design phase [for the DCT] was started in
6 early 2011, and the mass production started finally in September 2014 at the
7 Hyundai-Dymos plant located in South Korea.”⁵ On information and belief,
8 Hyundai learned of the TCM defect during this period.

9 36. As discussed above, Hyundai premiered the 7-speed DCT in
10 October 2014. Designed to “provide an improvement in fuel consumption and
11 CO2 emission compared to a conventional six-gear automated transmission,
12 while acceleration performance increases,” the 7-speed transmission uses two
13 dry clutches with an actuator for each to transfer engine power independently
14 into the odd and even gears to minimize “torque interruption.”⁶ However,
15 Plaintiffs allege on information and belief that Hyundai’s 7-speed DCT contains
16 a design defect in the Transmission Control Module (“TCM”) that causes, among
17 other problems, failure to shift, stalling, and delayed or no acceleration (“TCM
18 Defect”).

19 37. On information and belief, the TCM is defective because it fails to
20 interpret data from the vehicle’s sensors properly, thus miscalculating the

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22 ⁵ Chang-Yeon Cho, *More Efficiency with the Dry Seven-speed Dual-clutch*
23 *Transmission by Hyundai*, ATZ Worldwide 118:6, 38 (June 2016),
24 [https://www.atz-](https://www.atz-magazine.com/download/More%20Efficiency%20with%20the%20Dry%20Seven-speed%20Dual-clutch%20Transmission%20by%20Hyundai.pdf)
25 [magazine.com/download/More%20Efficiency%20with%20the%20Dry%20Seven-speed%20Dual-clutch%20Transmission%20by%20Hyundai.pdf](https://www.atz-magazine.com/download/More%20Efficiency%20with%20the%20Dry%20Seven-speed%20Dual-clutch%20Transmission%20by%20Hyundai.pdf) (last visited
Nov. 17, 2016).

26 ⁶ *Hyundai to showcase new downsized turbocharged engines and seven-*
27 *speed dual-clutch transmission in Paris*, Hyundai Corporate News (Oct. 2,
28 2014),
[http://worldwide.hyundai.com/WW/Corporate/News/News/DF_WW_GLOBAL
NEWS_141002_2.html?selx2=transmission.](http://worldwide.hyundai.com/WW/Corporate/News/News/DF_WW_GLOBAL_NEWS_141002_2.html?selx2=transmission)

1 appropriate gear and shift timing and causing an unresponsive accelerator pedal,
2 delayed or no acceleration, and stalling.

3 38. The alleged TCM Defect is inherent in all Class Vehicles and is the
4 same for all Class Vehicles.

5 39. Since at least December 2015, Hyundai was aware of the defects of
6 the 7-speed DCT based on consumer complaints both online and to its authorized
7 dealers and repair facilities. Hyundai, however, failed to disclose these known
8 defects to consumers. As a result of this failure, Plaintiffs and Class Members
9 have been damaged.

10 **The TCM Defect Poses an Unreasonable Safety Hazard**

11 40. The TCM Defect causes unsafe conditions, including, but not
12 limited to, the vehicle failing to shift, stalling, and failing or hesitating to
13 accelerate. These conditions present a safety hazard because they severely affect
14 the driver's ability to control the vehicle's acceleration during normal driving
15 conditions and prevent drivers from maintaining the appropriate and expected
16 speed of traffic flow. As an example, these conditions may make it difficult for
17 drivers to safely accelerate from traffic stops because Class Members' vehicles
18 hesitate, fail to shift gears, and stall when drivers apply the accelerator pedal
19 from stops.

20 41. Many purchasers and lessees of the Class Vehicles have experienced
21 problems with the 7-speed DCT. Complaints filed by consumers with the
22 National Highway Traffic Safety Administration ("NHTSA") and elsewhere
23 online demonstrate that the defect is widespread and dangerous and that it
24 manifests without warning. The complaints also indicate Defendant's awareness
25 of the problems with the transmission and how potentially dangerous the
26 defective condition is for consumers. The following are some safety complaints
27 relating to the TCM Defect (spelling and grammar mistakes remain as found in
28 the original) (Safercar.gov, *Search for Safety Issues* (October 28, 2016),

1 <http://www-odi.nhtsa.dot.gov/owners/SearchSafetyIssues/>);

2 **2016 Hyundai Veloster**

- 3 a. 2/10/2016 THIS BRAND NEW CAR BREAKS DOWN ON MY
4 TEENAGER. IT HAS DONE SO ON ME AS WELL. HAD IT
5 INTO THE DEALER AND AUTO SHOPS AND THEY CNT
6 FIND ANYTHING WRONG. THIS CAR LEA VES MY KID
7 STRANDED IN THE MIDDLE OF NOWHERE. NOT SAFE.
8 GOES INTO LIMP MODE AND STALLS
- 9 b. 9/3/2016 ACCELERATING BY ITSELF, LUNGING IN STOP/GO
10 TRAFFIC.MOTOR REVS INTO PASSING GEAR ALL THE
11 WAY TO 6500 RPM. BUT STAYS IN THE CURRENT SPEED,
12 AND SOMETIMES WILL HOLD AT CERTAIN RPM EVEN IF
13 NOT ON GAS, VERY LAGGY IN REV I FEEL I'M DRIVING
14 OLDER CAR WITH MESSED UP TRANSMISSION
- 15 c. 10/2/2016 CAR SOMETIMES ACCELERATES BY ITSELF
16 EVEN WHEN OFF THE GAS AND ON THE BRAKES. LUNGES
17 IN STOP AND GO TRAFFIC. PASSING GEAR SOMETIMES
18 REVS UP TO 6500RPM'S BUT STAYS IN THE CURRENT
19 SPEED. SOMETIMES CAR STAYS AT A CERTAIN RPM EVEN
20 IF NOT ON THE GAS AND WONT SLOW DOWN. BAD LAG
21 AND TERRIBLE DEAD SPOTS IN ACCELERATION. I FEEL
22 LIKE TRANSMISSION IS NOT COMMUNICATING WELL
23 WITH CONTROL MODULE AND GAS PEDAL POSITION
24 SENSOR IS WAY OFF THE MARK. CAR HAS PUT ME IN LIFE
25 THREATENING SITUATIONS BUT HYUNDAI SERVICE SAYS
26 THEY CAN'T REPRODUCE THE PROBLEM BUT ONLY
27 DROVE IT 7 MILES. I BOUGHT CAR BRAND NEW AND JUST
28 TURNED 5800 MILES BUT HAS BEEN BACK FOR THIS
PROBLEM 4 TIMES NOW.
- d. 10/12/2016 WHEN THE CAR IS STOPPED AT A LIGHT OR IN
TRAFFIC WITH THE FOOT ON THE BREAK WHEN YOU
RELEASE YOUR FOOT OFF THE BREAK THE CAR LURCHES
FORWARD - MUST BE SOMETHING WITH THE NEW DUAL
CLUTCH 7-SPEED TRANSMISSION. PLEASE HYUNDAI FIX
THIS BEFORE SOMEONE GETS HURT OR KILLED
- e. 10/12/2016 RECENTLY THERE WAS A RECALL ISSUES FOR
THE 2016 TUCSON DCT. MY 2016 VELOSTER TURBO DCT
HAS HAD THE IDENTICAL ISSUES, WHICH BEGAN JUST A
FEW MONTHS AFTER PURCHASING THE CAR BRAND NEW.
IT'S BEEN IN AND OUT OF THE DEALERSHIP FOR 5
MONTHS NOW, TOTALING OVER 70 DAYS. THERE HAVE
BEEN GAS ISSUES - GAS FUMES SMELL OUTSIDE AND
INSIDE VEHICLE, LOSING GAS ABNORMALLY FAST WHEN
DRIVING, GAS TANK NOT FILLING TO FULL. THE AC
RATTLES INTERMITTENTLY AND HAS BLOWN HEAT OFF
AND ON. MOST IMPORTANTLY IS THE SAFETY
REGARDING THE 7 SPEED DUAL CLUTCH TRANSMISSION.
IT IS INTERMITTENT, BUT I HAVE CAPTURED IT ON
CAMERA THREE TIMES - ONCE PRIOR TO THE
TRANSMISSION PARTS BEING REPLACED, AND THEN THE

1 ENTIRE TRANSMISSION. AND TWICE AFTER THE ENTIRE
 2 TRANSMISSION WAS REPLACED. JUST LAST FRIDAY, I
 3 COULDN'T DRIVE THE VEHICLE BECAUSE IT SEIZED TO
 4 SHIFT AND ACCELERATE PROPERLY FIVE TIMES IN A
 5 ROW, THE MOST IT HAS EVER HAPPENED. I HAD IT
 6 TOWED TO THE DEALERSHIP AND WAS PLACED BACK
 7 INTO A RENTAL. TODAY, THE DEALERSHIP SAYS "THEY
 8 CAN'T FIND ANYTHING WRONG" (THIS HAS BEEN SAID
 9 OVER THE COURSE OF 5 MONTHS BECAUSE IT'S
 10 INTERMITTENT) AND THEY'RE FORCING ME TO RETURN
 11 THE RENTAL - LEAVING ME WITH UNSAFE
 12 TRANSPORTATION YET AGAIN. I'VE RISKED MY LIFE FOR
 13 MONTHS TRYING TO CAPTURE VIDEO PROOF, AND I
 14 HAVE SENT THE VIDEO PROOF TO HYUNDAI - YET THEY
 15 ARE STILL MAKING MY RETURN THE RENTAL AND ARE
 16 NOT FIXING THE VEHICLE, NOR DO THEY HAVE A FIX
 17 FOR IT (ALREADY REPLACED THE ENTIRE TRANSMISSION
 18 AND COMPUTER!!). THIS IS A VIDEO I CREATED AND
 19 UPLOADED TO YOUTUBE, SUMMARIZING SOME OF
 20 WHAT'S GONE ON AND THE VIDEO PROOF I HAVE.
 21 [HTTPS://WWW.YOUTUBE.COM/WATCH?V=1Y3ECBR07EM](https://www.youtube.com/watch?v=1Y3ECBR07EM) I
 22 HAVE OPENED A CASE WITH NEVADA CONSUMER
 23 AFFAIRS WHO HAS ALREADY REVIEWED MY CASE AND
 24 TRIED NEGOTIATING WITH HYUNDAI. THEY HAVE
 25 INSTRUCTED ME TO OPEN A CASE WITH NHTSA AND THE
 26 DMV.

14 2016 Hyundai Tucson

15 f. Hyundai-Forums.com

16 i. "Overcoming turbo lag?" Thread⁷

17 1) 8/28/15 Hi all, I mentioned in another thread that I
 18 experienced acceleration lag at times when driving the
 19 Tucson's 1.6L turbo engine. Now that I have more experience
 20 with it, I'm convinced this is turbo lag, something I'm
 21 learning to get used to since this is my first time using a
 22 turbocharged engine. It's definitely most noticeable at a dead
 23 stop. I thought there was no lag then, but since experimenting
 24 with the acceleration, it's definitely noticeable when I punch
 25 the gas hard off the line. There seems to be some trick though
 26 to getting more smoother acceleration from a dead stop that
 I'm trying to figure out. If I FLOOR it, the car has to think
 about it for a few seconds before it decides to go. But if I
 press the gas lightly and then press down tepidly, it's more
 responsive. I think there's a trick to spooling it at a certain
 RPM before punching the gas, because this approach has
 been hit or miss for me. I haven't been watching the RPMs
 but there does seem to be a matter of practicing this until I
 get the timing right, revving it up at the right RPM before I
 really hit the gas. I think it's more noticeable for me because

27 ⁷ [http://www.hyundai-forums.com/2016-tucson-ix35-models/405994-](http://www.hyundai-forums.com/2016-tucson-ix35-models/405994-overcoming-turbo-lag.html)
 28 [overcoming-turbo-lag.html](http://www.hyundai-forums.com/2016-tucson-ix35-models/405994-overcoming-turbo-lag.html) (last visited Nov. 17, 2016).

1 I'm at a higher elevation in very warm weather. As the
2 weather gets colder I suspect the lag will be less noticeable.
3 In the meantime I'm trying to adapt how I accelerate to see if
4 I can at least minimize the lag. If anyone can offer
5 suggestions on how to adjust my driving here to help mitigate
6 the lag, let me know.

7 2) 8/29/15 ...Giving it light throttle like your doing will give the
8 turbo a head start for the heavy throttle but from a dead stop
9 there is not much you can do with this engine to get instant
10 boost, aside from maybe holding in the brake and revving the
11 engine for a second prior to flooring it.

12 3) 8/29/2015 They did tell me there was a break-in period for
13 the engine that will smooth out acceleration, hopefully by my
14 first oil change I'll start noticing that myself too.

15 4) 9/2/2015 I have test driven 3 of the 2016 Tucson Limited
16 versions and 2 of the 3 had serious acceleration/turbo lag. It
17 was enough lag that causes me concern in regard to
18 purchasing this vehicle...

19 ii. "Slow/rough shifting into reverse" Thread⁸

20 1) 10/9/2015 Hi, Has anybody else experienced what seems like
21 a difficult time shifting into reverse? It seems to me that
22 when I try to shift into reverse, it takes the transmission a bit
23 of time (1-2 seconds) to decide that it is willing to go
24 backwards and even once it does get going, it seems rough.
25 The car only has about 600 miles on it...

26 g. YouTube Video, "2016 Hyundai Tuscon [sic] DCT Transmission
27 Problem" Comments

28 i. 2/11/16 ...At random times, usually from a stop, but sometimes
when pulling into traffic, the transmission will "freak out".
When this happens, the engine will rev to high RPMs, usually
around 5,000, but the transmission will not send much power, if
any, to the wheels. It behaves as if it is either in neutral, has the
clutch mostly disengaged, or is attempting to start in a higher
gear. This has already caused me to put the vehicle into the
shop twice. I consider this to be a very hazardous defect. As I
mentioned, this happened once after I pulled out of a parking
lot into the normal flow of traffic. The vehicle became
essentially disabled, and I had to put my hazard flashers on, and
hope that I did not get hit from behind.

ii. 5 months ago (approx. 6/2016) My 2016 Tucson does the same
exact thing. I actually used your video to show them when they

⁸ <http://www.hyundai-forums.com/2016-tucson-ix35-models/418434-slow-rough-shifting-into-reverse.html> (last visited Nov. 17, 2016).

⁹ My Broken Hyundai, *2016 Hyundai Tuscon DCT Transmission Problem*, YouTube (Feb. 11, 2016), https://www.youtube.com/watch?v=TCVtr_zcyrs.

1 told me it was normal and not to worry. Mine likes to do it
2 while trying to go in reverse. Revs up to 5000-6000 rpms and
3 doesn't move an inch. I'm worried it will catch and I will fly out
4 of my parking spot. Anyway, Hyundai reset my transmission
5 computer and said that everything should be fine now that it is
6 back to factory settings. The problems started at about 4500
7 miles on the car. Guess we will see.

8 iii. 3 months ago (approx.. 8/2016) Same thing happened to me
9 on July 22nd. The dealership replaced a double clutch
10 actuator assy and a actuator assy-clutch. It ran great for three
11 weeks and just happened again. I have a case open and I'm
12 taking it back to the dealership. Hyundai is aware of the issue,
13 but I'm not sure if they know what the fix is...

14 iv. 4 months ago (approx. 7/2016) This was happening to our
15 new Hyundai Tucson. We took the car to the dealer and
16 refused to take the car home when they said it was fine... So
17 we requested that they have a tech drive it home every night
18 for a week. He was able to confirm that there was a problem.
19 We then called Hyundai and filed a "lemon law claim" all
20 while the dealership was "trying" to fix. They brought a
21 Hyundai engineer to the dealership and he confirmed that
22 there was no way to fix and now Hyundai is buying back our
23 car including sales tax...4 months ago (approx. 7/2016) I have
24 the same problem with my Tucson 2016, AWD 1.6 Limited.
25 Thanks for the video as I didn't have any evidence of this until
26 now. My car is currently at the dealership and like you said,
27 they can't find anything wrong with it, can't recreate the
28 problem. About a week ago I stopped at the traffic light on a
red and couldn't move from that spot when the light turned
green. The car was in a Drive mode and was revving like on a
racing track, but wasn't moving. I had a long line of cars
behind me and it was not just embarrassing, but really scary.
My 5 year old son asked: "mama, did you forget to put the gas
in?" I had to put the car in a Parking mode, then back into
Driving and pushed the gas again, but it still wasn't going
anywhere. Then I put it back in Parking, turned it off
completely, started it again and pushed the gas, hoping that
full restart would fix the issue. There was no change in my
car's behavior even after the restart. I kept on pumping the
gas pedal and after 30-40 seconds, something happened and
my car finally started moving. It slooooooowly rolled over the
intersection on already yellow light but it wasn't going any
faster than 5 mi/hr no matter what I tried. Then I pulled into
the parking lot and turned my car off again. After this restart
it was acting normally again as nothing had happened, so I
was able to get to work and back. When I dropped my car at
the dealership at the end of the week, they weren't able to find
any issues besides just saying that Tucsons are known for
"slow gear switching issues" like the teeth not griping fast
enough to switch to the next level or something like that. This
is not slow switching, this is not switching at all!

Veloster Turbo Forum Discussion, Veloster.org, (last
visited October 28, 2016, <http://www.veloster.org/>).

1 h. "Turbo lag on '16 vt" Thread

2 i. Posted on 5/24/2016 by KJPitt: So I've notice a really bad
3 turbo lag in my '16 vt auto dct. When the light turns green and
4 I proceed as normal and I can feel it pull and then all the
5 sudden it like hesitates and pulls again, jerking and all. The
6 lag is strong in this car and even my gf notice it too. Is there
7 something I can do to help with this massive turbo lag. It's
8 gotten really annoying. Thanks in advance yall.

9 ii. Posted on 5/24/2016 by TooGqForYou: (WITH TRACTION
10 CONTROL OFF) i can concur to this. its like hesitant, very
11 hard to explain. almost jumpy at times. the dct does take its
12 time to switch the gears, you can actually hear them switch
13 sometimes. I usually gradually step on it to get to WOT. but
14 in those gradual stages, its like a gnar pull then norm then
15 gnar pull again all in one pull if that makes any sense lol. is
16 that the turbo?

17 iii. Posted on 6/12/2016 by ken oath: We bought a brand new vt
18 the first thing I noticed was the rough acceleration took it
19 back to the dealers, no one new looked up this web site and
20 found the answer we bought the car for 5 yrs warranty so I'm
21 reluctant to do after market mods at 100% throttle it seems to
22 be ok so we drive it easy or floor it if a K&N filter helps and
23 won't stuff the warranty I might go for something like that

24 i. "Turbo lagging?" Thread

25 i. Posted on 4/27/2016 by winozzle: I have a 2016 VT manual
26 with all the upgrades. I bought her brand new January 21 and
27 have just under 2500 miles on her. From day one, it seems
28 that the turbo lags when I accelerate in any gear. Now, I
realize this isn't exactly a speed machine, but I wouldn't
expect a new car to feel like it's chugging when I press the gas
pedal. I've not had a chance to have the dealer check her
out...my boyfriend says he feels the hesitation, too. Please
also note that I traded in a '14 VT (manual) with about 15K
miles that did not hesitate and seemed a lot more peppy. From
the small bit of interweb searching I've done, some say it's a
firmware upgrade issue, or perhaps and intercooler issue? PS:
I've never done any mod's to a car so be gentle. I'd much
prefer to have the dealership do their thing before I do
anything on my own.

42. The TCM Defect poses an unreasonable safety risk for Class
Members, as well as the drivers, passengers, and pedestrians sharing the road
with Class Vehicles. A driver's ability to accelerate and merge into traffic as
necessary are critical to a vehicle's safe operation. A defect that prevents such
safe operation poses a safety hazard not only to the driver but also to the general

1 public and clearly increases the risk of accidents.

2 **Hyundai Has Exclusive Knowledge of the TCM Defect**

3 43. Hyundai has had superior and exclusive knowledge of the TCM
4 Defect and knew or should have known that the defect was not known or
5 reasonably discoverable by Plaintiffs and Class Members before they purchased
6 or leased the Class Vehicles.

7 44. Plaintiffs are informed and believe and based thereon allege that
8 before Plaintiffs purchased their Class Vehicles, and since at least 2015, Hyundai
9 knew about the TCM Defect in the 7-speed DCT through sources not available to
10 consumers, including pre-release testing data, early consumer complaints about
11 the TCM Defect to Hyundai and its authorized dealers, testing conducted in
12 response to those complaints, high failure rates of the 7-speed DCT in other
13 Hyundai vehicles, most notably the Hyundai Tucson, replacement part sales data,
14 and other aggregate data from Hyundai dealers, among other internal sources of
15 information about the problem.

16 45. As described above, in or around August 2016, Hyundai issued
17 Service Bulletin #5NP-X7J3D-10 for Hyundai Tucson vehicles equipped with
18 the 7-speed DCT informing its dealers that the “TRANSMISSION CLUTCH
19 APPLICATION LOGIC CAN RESULT IN A DELAYED ENGAGEMENT
20 WHEN ACCELERATING FROM A STOP...[AND] THE INABILITY TO
21 MOVE THE VEHICLE IN TRAFFIC MAY INCREASE THE RISK OF A
22 CRASH.” Hyundai did not provide any details regarding the remedies available
23 for the transmission issues at that time.

24 46. Then, on or around September 6, 2016, Hyundai recalled a limited
25 number of 2016 Hyundai Tucson vehicles equipped with 7-speed DCTs for a
26 faulty “transmission clutch application logic [that] can result in a delayed
27 engagement when accelerating from a stop” or fail to accelerate at all “if the
28 accelerator pedal is repeatedly cycled.” Hyundai dealers were instructed to

1 reprogram the TCM in the affected vehicles. However, the recall was limited to
2 these specific vehicles, despite owners complaining of similar issues in other
3 Hyundai vehicles equipped with the same 7-speed DCT.

4 47. The existence of the TCM Defect is a material fact that a reasonable
5 consumer would consider when deciding whether to purchase or lease a vehicle
6 with the 7-speed DCT. Had they known that the Class Vehicles were equipped
7 with defective 7-speed DCTs, Plaintiffs and other Class Members would not
8 have purchased or leased the Class Vehicles or would have paid less for them.

9 48. Reasonable consumers, like Plaintiffs, expect that a vehicle's
10 transmission is safe, will function in a manner that will not pose a safety hazard,
11 and is free from defects. Plaintiffs and Class Members further reasonably expect
12 that Hyundai will not sell or lease vehicles with known safety defects, such as
13 the TCM Defect, and will disclose any such defects to consumers when it learns
14 of them. They did not expect Hyundai to fail to disclose the TCM Defect to
15 them and to continually deny the defect.

16 49. Despite Hyundai's knowledge of this defect, it continues to
17 manufacture, market, distribute and sell to otherwise unsuspecting purchasers
18 defective vehicles.

19 **Hyundai Has Actively Concealed the TCM Defect**

20 50. While it has been fully aware of the TCM Defect in the Class
21 Vehicles, Hyundai actively concealed the existence and nature of the defect from
22 Plaintiffs and Class Members at the time of purchase, lease, or repair and
23 thereafter. Specifically, Hyundai failed to disclose or actively concealed at and
24 after the time of purchase, lease, or repair:

- 25 (a) any and all known material defects or material nonconformity
26 of the Class Vehicles, including the defects relating to the 7-
27 speed DCT;
28 (b) that the Class Vehicles, including their 7-speed DCT, were

1 not in good in working order, were defective, and were not fit
2 for their intended purpose; and

3 (c) that the Class Vehicles and their 7-speed DCT were defective,
4 despite the fact that Hyundai learned of such defects as early
5 as 2015 through failure rates, customer complaints, and other
6 internal sources.

7 51. When consumers present the Class Vehicles to an authorized
8 Hyundai dealer for repair of the 7-speed DCT, rather than repair the problem
9 under warranty, Hyundai dealers either inform consumers that their vehicles are
10 functioning properly or conduct repairs that merely mask the defect.

11 **CLASS ACTION ALLEGATIONS**

12 52. Plaintiffs bring this lawsuit as a class action on behalf of themselves
13 and all others similarly situated as members of the proposed Class pursuant to
14 Federal Rules of Civil Procedure 23(a), 23(b)(2), and 23(b)(3). This action
15 satisfies the numerosity, commonality, typicality, adequacy, predominance, and
16 superiority requirements of those provisions.

17 53. The Class and Sub-Class are defined as:

18 **Nationwide Class:** All individuals in the United States who
19 purchased or leased any Hyundai Veloster Turbo vehicle equipped
with a 7-speed DCT (the “Nationwide Class” or “Class”).

20 **Nevada Sub-Class:** All members of the Nationwide Class who
reside in the State of Nevada.

21 **Implied Warranty Sub-Class:** All members of the Nationwide
22 Class who purchased or leased their vehicles in the State of Nevada.

23 54. Excluded from the Class and Sub-Classes are: (1) Defendant, any
24 entity or division in which Defendant has a controlling interest, and their legal
25 representatives, officers, directors, assigns, and successors; (2) the Judge to
26 whom this case is assigned and the Judge’s staff; (3) any Judge sitting in the
27 presiding state and/or federal court system who may hear an appeal of any
28

1 judgment entered; and (4) those persons who have suffered personal injuries as a
2 result of the facts alleged herein. Plaintiffs reserve the right to amend the Class
3 and Sub-Class definitions if discovery and further investigation reveal that the
4 Class and Sub-Class should be expanded or otherwise modified.

5 55. Numerosity: Although the exact number of Class Members is
6 uncertain and can only be ascertained through appropriate discovery, the number
7 is great enough such that joinder is impracticable. The disposition of the claims
8 of these Class Members in a single action will provide substantial benefits to all
9 parties and to the Court. The Class Members are readily identifiable from
10 information and records in Defendant's possession, custody, or control, as well
11 as from records kept by the Department of Motor Vehicles.

12 56. Typicality: Plaintiffs' claims are typical of the claims of the Class
13 in that Plaintiffs, like all Class Members, purchased or leased a Class Vehicle
14 designed, manufactured, and distributed by Hyundai and equipped with a 7-
15 speed DCT. The representative Plaintiffs, like all Class Members, have been
16 damaged by Defendant's misconduct in that they have incurred or will incur the
17 cost of repairing or replacing the defective 7-speed DCT components.
18 Furthermore, the factual bases of Hyundai's misconduct are common to all Class
19 Members and represent a common thread resulting in injury to all Class
20 Members.

21 57. Commonality: There are numerous questions of law and fact
22 common to Plaintiffs and the Class that predominate over any question affecting
23 only individual Class Members. These common legal and factual issues include
24 the following:

- 25 (a) Whether Class Vehicles suffer from defects relating to the 7-
26 speed DCT;
27 (b) Whether the defects relating to the 7-speed DCT constitute an
28 unreasonable safety risk;

- 1 (c) Whether Defendant knows about the defects relating to the 7-
2 speed DCT and, if so, how long Defendant has known of the
3 defect;
- 4 (d) Whether the defective nature of the 7-speed DCT constitutes a
5 material fact;
- 6 (e) Whether Defendant has a duty to disclose the defective nature
7 of the 7-speed DCT to Plaintiffs and Class Members;
- 8 (f) Whether Plaintiffs and the other Class Members are entitled
9 to equitable relief, including a preliminary and/or permanent
10 injunction;
- 11 (g) Whether Defendant knew or reasonably should have known of
12 the defects relating to the 7-speed DCT before it sold and
13 leased Class Vehicles to Class Members;
- 14 (h) Whether Defendant should be declared financially responsible
15 for notifying all Class Members of the problems with the
16 Class Vehicles and for the costs and expenses of repairing and
17 replacing the defective 7-speed DCT components;
- 18 (i) Whether Defendant breached the implied warranty of
19 merchantability pursuant to the Magnuson-Moss Act;
- 20 (j) Whether Defendant breached the common law implied
21 warranty of merchantability; and
- 22 (k) Whether Defendant breached the implied warranty of
23 merchantability pursuant to Nev. Rev. Stat. §598.0903, *et seq.*

24 58. Adequate Representation: Plaintiffs will fairly and adequately
25 protect the interests of the Class Members. Plaintiffs have retained attorneys
26 experienced in the prosecution of class actions, including consumer and product
27 defect class actions, and Plaintiffs intend to prosecute this action vigorously.

28 59. The Prerequisites of Rule 23(b)(2) are Satisfied: the prerequisites to

1 maintaining a class action for injunctive and equitable relief pursuant to Fed. R.
2 Civ. P. 23(b)(2) exist as Defendant has acted or refused to act on grounds
3 generally applicable to the Class thereby making appropriate final injunctive and
4 equitable relief with respect to the Class as a whole.

5 60. The prosecution of separate actions by members of the class would
6 create a risk of establishing incompatible standards of conduct for the Defendant.
7 For example, one court might decide that the challenged actions are illegal and
8 enjoin them, while another court might decide those same actions are not illegal.
9 Individual actions may, as a practical matter, be dispositive of the interests of
10 Class members, who would not be parties to those actions.

11 61. Defendant's actions are generally applicable to the Class as a whole,
12 and Plaintiffs seek, *inter alia*, equitable remedies with respect to the class as a
13 whole.

14 62. Defendant's systemic policy and practices as set forth in this
15 Complaint make declaratory relief with respect to the class as a whole
16 appropriate.

17 63. Predominance and Superiority: Plaintiffs and Class Members have
18 all suffered and will continue to suffer harm and damages as a result of
19 Defendant's unlawful and wrongful conduct. A class action is superior to other
20 available methods for the fair and efficient adjudication of the controversy.
21 Absent a class action, most Class Members would likely find the cost of
22 litigating their claims prohibitively high and would therefore have no effective
23 remedy at law. Because of the relatively small size of the individual Class
24 Members' claims, it is likely that only a few Class Members could afford to seek
25 legal redress for Defendant's misconduct. Absent a class action, Class Members
26 will continue to incur damages, and Defendant's misconduct will continue
27 without remedy. Class treatment of common questions of law and fact would
28 also be a superior method to multiple individual actions or piecemeal litigation in

1 that class treatment will conserve the resources of the courts and the litigants,
2 and will promote consistency and efficiency of adjudication.

3 **FIRST CAUSE OF ACTION**

4 **(Violation of the Nevada Deceptive Trade Practices Act**

5 **Nev. Rev. Stat. § 598.0903, *et seq.*)**

6 64. Plaintiffs incorporate by reference the allegations contained in the
7 preceding paragraphs of this Complaint.

8 65. Plaintiffs bring this cause of action on behalf of themselves and on
9 behalf of the members of the Nevada Sub-Class.

10 66. The Nevada Deceptive Trade Practices Act (“Nevada DTPA”), Nev.
11 Rev. Stat. § 598.0903, *et seq.* prohibits deceptive trade practices. Nev. Rev. Stat.
12 § 598.0915 provides that a person engages in a “deceptive trade practice” if, in
13 the course of business or occupation, the person: “5. Knowingly makes a false
14 representation as to the characteristics, ingredients, uses, benefits, alterations or
15 quantities of goods or services for sale or lease or a false representation as to the
16 sponsorship, approval, status, affiliation or connection of a person therewith”;
17 “7. Represents that goods or services for sale or lease are of a particular standard,
18 quality or grade, or that such goods are of a particular style or model, if he or she
19 knows or should know that they are of another standard, quality, grade, style or
20 model”; “9. Advertises goods or services with intent not to sell or lease them as
21 advertised”; or “15. Knowingly makes any other false representation in a
22 transaction.”

23 67. Defendant’s actions as set forth below occurred in the conduct of
24 trade or commerce.

25 68. By failing to disclose and concealing the defective nature of the 7-
26 speed DCT from Plaintiffs and prospective Class Members, Defendant violated
27 the Nevada DTPA, as it represented that the Class Vehicles and their
28 transmissions had characteristics and benefits that they do not have and

1 represented that the Class Vehicles and their transmissions were of a particular
2 standard, quality, or grade when they were of another.

3 69. Defendant's unfair and deceptive acts or practices occurred
4 repeatedly in Defendant's trade or business, were capable of deceiving a
5 substantial portion of the purchasing public, and imposed a serious safety risk on
6 the public.

7 70. Defendant knew and continues to know that the Class Vehicles and
8 their 7-speed DCTs suffered from an inherent defect, were defectively designed,
9 and were not suitable for their intended use.

10 71. Defendant was under a duty to Plaintiffs and Class Members to
11 disclose the defective nature of the 7-speed DCT and/or the associated repair
12 costs because:

- 13 (a) Defendant was in a superior position to know the true state of
14 facts about the safety defect in the Class Vehicles' 7-speed
15 DCT;
- 16 (b) Plaintiffs and Class Members could not reasonably have been
17 expected to learn or discover that their 7-speed DCT had a
18 dangerous safety defect until it manifested; and
- 19 (c) Defendant knew that Plaintiffs and Class Members could not
20 reasonably have been expected to learn of or discover the
21 safety defect.

22 72. In failing to disclose the defective nature of the 7-speed DCT,
23 Defendant knowingly and intentionally concealed and continues to conceal
24 material facts and breached its duty not to do so.

25 73. The facts Defendant concealed from or failed to disclose to
26 Plaintiffs and Class Members are material in that a reasonable consumer would
27 have considered them to be important in deciding whether to purchase or lease
28 the Class Vehicles or pay less. Had they known that the Class Vehicles' 7-speed

1 DCTs were defective, Plaintiffs and Class Members would not have purchased or
2 leased the Class Vehicles or would have paid less for them.

3 74. Plaintiffs and Class Members are reasonable consumers who do not
4 expect the transmissions installed in their vehicles to exhibit problems such as
5 failure to shift, stalling, and delayed or no acceleration.

6 75. This is the reasonable and objective consumer expectation relating
7 to vehicle transmissions.

8 76. Plaintiffs and the Class are entitled to equitable relief.

9 **SECOND CAUSE OF ACTION**

10 **(Breach of Common Law Implied Warranty of Merchantability and Breach**
11 **of Implied Warranty Pursuant to**
12 **Nev. Rev. Stat. §§ 104.2314 and 104A.2212)**

13 77. Plaintiffs incorporate by reference the allegations contained in the
14 preceding paragraphs of this Complaint.

15 78. Plaintiffs bring this cause of action against Defendant on behalf of
16 themselves and on behalf of the members of the Implied Warranty Sub-Class.

17 79. Defendant was at all relevant times the manufacturer, distributor,
18 warrantor, and/or seller of the Class Vehicles. Defendant knew or had reason to
19 know of the specific use for which the Class Vehicles were purchased or leased.

20 80. Defendant provided Plaintiffs and Class Members with an implied
21 warranty that the Class Vehicles and their components and parts are
22 merchantable and fit for the ordinary purposes for which they were sold.

23 However, the Class Vehicles are not fit for their ordinary purpose of providing
24 reasonably reliable and safe transportation because, inter alia, the Class Vehicles
25 and their 7-speed DCTs suffered from an inherent defect at the time of sale and
26 thereafter are not fit for their particular purpose of providing safe and reliable
27 transportation.

28 81. Defendant impliedly warranted that the Class Vehicles were of

1 merchantable quality and fit for such use. This implied warranty included,
2 among other things: (i) a warranty that the Class Vehicles and their 7-speed DCT
3 that were manufactured, supplied, distributed, and/or sold by Hyundai were safe
4 and reliable for providing transportation; and (ii) a warranty that the Class
5 Vehicles and their 7-speed DCT would be fit for their intended use while the
6 Class Vehicles were being operated.

7 82. Contrary to the applicable implied warranties, the Class Vehicles
8 and their 7-speed DCT at the time of sale and thereafter were not fit for their
9 ordinary and intended purpose of providing Plaintiffs and Class Members with
10 reliable, durable, and safe transportation. Instead, the Class Vehicles are
11 defective, including the defective design of their 7-speed DCT and its TCM.

12 83. The alleged TCM Defect is inherent in each Class Vehicle and was
13 present in each Class Vehicle at the time of sale.

14 84. As a result of Defendant's breach of the applicable implied
15 warranties, owners and/or lessees of the Class Vehicles suffered an ascertainable
16 loss of money, property, and/or value of their Class Vehicles. Additionally, as a
17 result of the TCM Defect, Plaintiffs and Class Members were harmed and
18 suffered actual damages in that the Class Vehicles' 7 speed DCT components,
19 including the TCM, are substantially certain to fail before their expected useful
20 life has run.

21 85. Defendant's actions, as complained of herein, breached the implied
22 warranty that the Class Vehicles were of merchantable quality and fit for such
23 use in violation of Nevada Common Law Implied Warranties and Nevada
24 Revised Statutes §§ 104.2314 and 104A.2212.

25 **THIRD CAUSE OF ACTION**

26 **(Breach of Implied Warranty under the Magnuson-Moss Warranty Act,**
27 **15 U.S.C. §§ 2303 et seq.)**

28 86. Plaintiffs incorporate by reference the allegations contained in the

1 preceding paragraphs of this Complaint.

2 87. Plaintiffs bring this cause of action on behalf of themselves and on
3 behalf of the Nationwide Class, or, in the alternative, on behalf of the Nevada
4 Sub-Class, against Defendant.

5 88. The Class Vehicles are a “consumer product” within the meaning of
6 the Magnuson-Moss Warranty Act, 15 U.S.C. § 2301(1).

7 89. Plaintiffs and Class Members are “consumers” within the meaning
8 of the Magnuson-Moss Warranty Act, 15 U.S.C. § 2301(3).

9 90. Defendant is a “supplier” and “warrantor” within the meaning of the
10 Magnuson-Moss Warranty Act, 15 U.S.C. § 2301(4)-(5).

11 91. Hyundai impliedly warranted that the Class Vehicles were of
12 merchantable quality and fit for such use. This implied warranty included,
13 among other things: (i) a warranty that the Class Vehicles and their 7-speed DCT
14 that were manufactured, supplied, distributed, and/or sold by Hyundai were safe
15 and reliable for providing transportation; and (ii) a warranty that the Class
16 Vehicles and their 7-speed DCT would be fit for their intended use while the
17 Class Vehicles were being operated.

18 92. Contrary to the applicable implied warranties, the Class Vehicles
19 and their 7-speed DCT at the time of sale and thereafter were not fit for their
20 ordinary and intended purpose of providing Plaintiffs and Class Members with
21 reliable, durable, and safe transportation. Instead, the Class Vehicles are
22 defective, including the defective design of their TCM.

23 93. Defendant’s breach of implied warranties has deprived Plaintiffs
24 and Class Members of the benefit of their bargain.

25 94. The amount in controversy of Plaintiffs’ individual claims meets or
26 exceeds the sum or value of \$25,000. In addition, the amount in controversy
27 meets or exceeds the sum or value of \$50,000 (exclusive of interests and costs)
28 computed on the basis of all claims to be determined in this suit.

1 of all reimbursement, restitution, and disgorgement from Defendant. Plaintiffs'
2 counsel are entitled to recover their reasonable attorneys' fees and expenses as a
3 result of the conference of a pecuniary benefit on behalf of the Class and will
4 seek an award of such fees and expenses at the appropriate time.

5 **RELIEF REQUESTED**

6 106. Plaintiffs, on behalf of themselves, and all others similarly situated,
7 request the Court to enter judgment against Defendant, as follows:

- 8 (a) An order certifying the proposed Class and Sub-Classes,
9 designating Plaintiffs as named representative of the Class,
10 and designating the undersigned as Class Counsel;
- 11 (b) A declaration that Defendant is financially responsible for
12 notifying all Class Members about the defective nature of the
13 7-speed DCT, including the need for periodic maintenance;
- 14 (c) An order enjoining Defendant from further deceptive
15 distribution, sales, and lease practices with respect to Class
16 Vehicles; compelling Defendant to issue a voluntary recall for
17 the Class Vehicles pursuant to. 49 U.S.C. § 30118(a);
18 compelling Defendant to remove, repair, and/or replace the
19 Class Vehicles' defective TCM with suitable alternative
20 product(s) that do not contain the defects alleged herein;
21 enjoining Defendant from selling the Class Vehicles with the
22 misleading information; and/or compelling Defendant to
23 reform its warranty, in a manner deemed to be appropriate by
24 the Court, to cover the injury alleged and to notify all Class
25 Members that such warranty has been reformed;
- 26 (d) A declaration requiring Defendant to comply with the various
27 provisions of the Nevada DTPA alleged herein and to make
28 all the required disclosures;

- 1 (e) Any and all remedies provided pursuant to the Nevada DTPA
- 2 and Nevada Implied Warranty of Merchantability;
- 3 (f) Any and all remedies provided pursuant to the Magnuson-
- 4 Moss Warranty Act;
- 5 (g) A declaration that Defendant must disgorge, for the benefit of
- 6 the Class, all or part of the ill-gotten profits it received from
- 7 the sale or lease of its Class Vehicles, or make full restitution
- 8 to Plaintiffs and Class Members;
- 9 (h) An award of attorneys' fees and costs, as allowed by law;
- 10 (i) An award of pre-judgment and post-judgment interest, as
- 11 provided by law;
- 12 (j) Leave to amend the Complaint to conform to the evidence
- 13 produced at trial; and
- 14 (k) Such other relief as may be appropriate under the
- 15 circumstances.

16 **DEMAND FOR JURY TRIAL**

17 107. Pursuant to Federal Rule of Civil Procedure 38(b) and Southern
18 District of California Local Rule 38.1, Plaintiffs demand a trial by jury of any
19 and all issues in this action so triable.

20 Dated: November 22, 2016

Respectfully submitted,

21 Capstone Law APC

22
23 By: /s/ Jordan L. Lurie

24 Jordan L. Lurie
25 Tarek H. Zohdy
26 Cody R. Padgett
27 Karen L. Wallace
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MADDOX | ISAACSON | CISNEROS LLP

By: /s/ Norberto J. Cisneros
Troy L. Isaacson, Esq.
Norberto J. Cisneros, Esq.
Barbara McDonald, Esq.

Attorneys for Plaintiffs Nicholas and
Shawna Wylie

ClassAction.org

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