

1 ROSNER, BARRY & BABBITT, LLP
Hallen D. Rosner, SBN: 109740
2 Christopher P. Barry, SBN: 179308
10085 Carroll Canyon Road, Suite 100
3 San Diego, California 92131
TEL: (858) 348-1005
4 FAX: (858) 348-1150

5 ROMANO STANCROFF & MIKHOV, PC
Steve Mikhov SBN: 224676
6 640 S. San Vicente, Suite 230
Los Angeles, CA 90048
7 TEL: (323) 936-2274
FAX: (323) 939-7973
8 Attorneys for Plaintiff

CONFORMED COPY
OF ORIGINAL FILED
Los Angeles Superior Court

NOV 25 2009

John A. Clarke, Executive Officer/Clerk
By A.E. LaFleur-Clayton, Deputy

10 SUPERIOR COURT OF THE STATE OF CALIFORNIA

11 IN AND FOR THE COUNTY OF LOS ANGELES - CENTRAL DISTRICT

12 NOLBERTA L. HERMOSA,
13 individually and on behalf of all
others similarly situated,

14 Plaintiff,

15 v.

16 GONZALES AUTOMOTIVE
GROUP, INC., a California
17 Corporation, d.b.a. CASA DE
GONZALES CHRYSLER JEEP;
18 KIA MOTORS AMERICA, INC.; and
DOES 1 through 10, inclusive,

20 Defendants.

CASE NO. **BC426981**

CLASS ACTION

COMPLAINT FOR INJUNCTIVE
RELIEF, RESTITUTION, AND
DAMAGES:

1. VIOLATION OF THE CONSUMERS LEGAL REMEDIES ACT- CLASS CLAIM;
2. VIOLATION OF THE AUTOMOBILE SALES FINANCE ACT - CLASS CLAIM;
3. UNLAWFUL, UNFAIR, FRAUDULENT BUSINESS ACTS & PRACTICES - CLASS CLAIM;
4. VIOLATION OF THE CONSUMERS LEGAL REMEDIES ACT - INDIVIDUAL CLAIM;
5. UNLAWFUL, UNFAIR, FRAUDULENT BUSINESS ACTS & PRACTICES - INDIVIDUAL CLAIM;
6. INTENTIONAL MISREPRESENTATION - INDIVIDUAL CLAIM;
7. NEGLIGENT MISREPRESENTATION - INDIVIDUAL CLAIM; AND
8. VIOLATION OF SONG-BEVERLY WARRANTY ACT- INDIVIDUAL CLAIM.

1 Plaintiff NOLBERTA L. HERMOSA, individually as to all causes of action, and on
2 behalf of all others similarly-situated as to the First through Third Causes of Action,
3 alleges as follows on information and belief, formed after an inquiry reasonable under
4 the circumstances:

5 INTRODUCTION

6 1. Plaintiff is one of many customers who, during the past several years,
7 purchased a vehicle from Defendant Gonzales Automotive Group, Inc. (hereinafter
8 "Dealership" and/or "Gonzales Automotive"), an automobile dealership in Los Angeles
9 County, California. After Plaintiff and other consumers signed purchase contracts for
10 vehicles, Gonzales Automotive contacted them and told them that the deal needed to
11 be changed in one way or another. Gonzales Automotive then had these customers sign
12 a subsequent purchase contract for the same vehicle that was backdated to the date
13 of the original purchase contract.

14 2. Gonzales Automotive violated state and federal financial disclosure laws
15 by backdating the subsequent purchase contracts, thereby charging interest before the
16 consummation date, misstating the annual percentage rate, misstating the finance
17 charge, charging compound interest, and/or causing the holder of the contract to collect
18 a higher finance charge than permitted. Gonzales Automotive also violated
19 California's "single document" rule for vehicle sale contracts because the subsequent
20 purchase contracts do not state all of the agreements between the buyer and seller with
21 respect to the total cost of the vehicle and the terms of payment including, but not
22 limited to, the actual date of consummation, the correct annual percentage rates, the
23 correct finance charges, and/or the correct amounts financed.

24 3. The conduct herein described violates, *inter alia*, the Automobile Sales
25 Finance Act ("ASFA") (Civil Code §2981, *et seq.*), the Consumers Legal Remedies Act
26 ("CLRA") (Civil Code §1750, *et seq.*), and the Unfair Competition Law ("UCL") (Bus. &
27 Prof. Code §17200, *et seq.*). Further, the illegal practice of backdating contracts is a
28

1 policy, procedure, and/or practice at Gonzales Automotive. Thus, class relief is
2 appropriate to remedy such practices.

3 **JURISDICTION AND VENUE**

4 4. This Court has jurisdiction over all causes of action asserted herein
5 pursuant to the California Constitution, Article VI, Section 10, because this case is a
6 cause not given by statute to other trial courts.

7 5. This Court has jurisdiction over Defendants because each are
8 individuals, associations, or corporations that are either authorized to conduct or, in
9 fact, do conduct substantial business in the State of California, County of Los Angeles.

10 6. Venue is proper in this County pursuant to Code of Civil Procedure
11 §395(b) because the acts upon which this action is based occurred in this County. The
12 contracts for products and services at issue in this case were entered into in this
13 County and communications from Defendants were received in this County. Thereby,
14 Plaintiff and Class members were injured and/or subjected to irreparable harm in this
15 venue. Defendants received substantial compensation and profits from its products
16 and services in this County, caused misrepresentations to be disseminated, entered
17 into agreements and transactions, and breached agreements in this County. Thus,
18 Defendant's liability arose primarily in this County.

19 **PARTIES**

20 7. Plaintiff Nolberta Laura Hermosa is an individual residing in the City of
21 Norwalk, County of Los Angeles, State of California.

22 8. Defendant Gonzales Automotive Group, Inc., d.b.a. Casa de Gonzales
23 Chrysler Jeep, (hereinafter "Dealership" and/or "Gonzales Automotive"), a California
24 Corporation, is a new and used car dealership conducting business in the City of South
25 Gate, County of Los Angeles, State of California.

26 9. Defendant Kia Motors America, Inc., is a California Corporation, the
27 importer and warrantor of Kia vehicles, is registered to and doing business in the
28 County of Los Angeles, State of California.

1 annual percentage rate greater than 0.00% (the "Class," made up of
2 "Class Members").

3 15. In this lawsuit, Plaintiff and the Class seek both equitable relief,
4 including declaratory, injunctive, restitutionary, and other equitable monetary relief
5 and economic and statutory damages as set forth more fully below, including, but not
6 limited to, full rescission and restitution of any purchase contract entered into by any
7 Class Member.

8 16. Specifically excluded from the proposed Class are the Court and its staff,
9 Defendants, any entity in which any of the Defendants has a controlling interest, and
10 the officers, directors, affiliates, legal representatives, heirs, successors, subsidiaries,
11 and/or assigns of any such individual or entity.

12 **A. NUMEROSITY OF THE CLASS**

13 17. The proposed Class is so numerous that the individual joinder of the Class
14 Members in one action is impracticable. The exact number and the identities of the
15 Members of the Class are unknown at this time and can only be ascertained through
16 appropriate investigation and discovery.

17 **B. EXISTENCE AND PREDOMINANCE OF COMMON QUESTIONS**
18 **OF LAW AND FACT**

19 18. Common questions of law and fact arising out of the claims here at issue
20 exist as to all members of the Class and predominate over any individual issue. These
21 common legal and factual questions include, but are not limited to, the following:

- 22 a. whether Gonzales Automotive's practice of backdating subsequent
23 purchase contracts violates California's consumer protection statutes
24 including, *inter alia*, the CLRA, the ASFA, and/or the UCL;
25 b. the amount of revenues and profits Gonzales Automotive received, and/or
26 the amount of monies or other obligations imposed on, or lost by, Class
27 Members as a result of such wrongdoing;

28 ///

1 c. whether Class Members are threatened with irreparable harm and are
2 entitled to injunctive and other equitable relief and, if so, what is the
3 nature of such relief;

4 d. whether Class Members are entitled to rescission, payment of actual,
5 incidental, consequential, exemplary, punitive, and/or statutory damages
6 plus interest thereon, and, if so, what is the nature of such relief.

7 **C. TYPICALITY OF CLAIMS**

8 19. In regard to members of the Class, Gonzales Automotive engaged in the
9 standard practice of having customers sign subsequent Retail Installment Sale
10 Contracts and backdating the subsequent contract to the date of the original purchase
11 contract.

12 20. Plaintiff and each Class Member purchased a vehicle for personal use and
13 signed a subsequent Retail Installment Sale Contract(s) that was backdated to the
14 date of their original contract (not the actual date signed) and included financing at an
15 annual percentage rate greater than 0%.

16 21. Plaintiff's claims are typical of the claims of members of the Class.

17 **D. ADEQUATE REPRESENTATION**

18 22. Plaintiff will fairly and adequately protect the interests of the members
19 of the Class in that she does not have irreconcilable conflicts with or interests
20 materially antagonistic to those of other Class Members.

21 23. Plaintiff has retained attorneys experienced in the prosecution of class
22 actions, including consumer class actions.

23 **E. SUPERIORITY AND SUBSTANTIAL BENEFITS OF CLASS**
24 **LITIGATION**

25 24. To the extent it is an element for establishing class certification for
26 certain causes of action, a class action is superior to other available methods for the
27 fair and efficient group-wide adjudication of this controversy and, as applicable,
28 possesses substantial benefits. Individual joinder of all Class Members is

1 impracticable, and no other group method of adjudication of all claims asserted herein
2 is more efficient and manageable while at the same time provides all the remedies
3 available to ensure the full purpose of this State's consumer protection laws are
4 effectuated. Furthermore, as the damages suffered by each individual Class Member
5 may be relatively small and the relief sought discrete, the expense and burden of
6 individual Class Members to redress the wrongs done to them, and the cost to the court
7 system of adjudicating such litigation on an individual basis, would be substantial. To
8 counsel's knowledge there has not been any substantial litigation concerning this
9 controversy commenced against the parties. It is not anticipated that there will be any
10 difficulties in the management of this litigation due to the focus of the wrongdoing on
11 Gonzales Automotive's conduct and its knowledge of the true facts. Individualized
12 litigation would also present the potential for varying, inconsistent, or contradictory
13 judgments and would magnify the delay and expenses of all parties and the court
14 system resulting from multiple trials asserting the same factual issues. The conduct
15 of this action as a class action presents fewer management difficulties, conserves the
16 resources of the parties and the court system, and protects the rights of each Class
17 Member as compared to other methods for the group-wide adjudication of this
18 controversy. Thus, the Class and the court system achieve substantial benefits by the
19 prosecution of this action on a class-wide basis by avoiding the burden of multiple
20 litigation involving identical claims, as well as by aiding legitimate business
21 enterprises in curtailing illegitimate competition and ensuring a therapeutic effect on
22 those companies such as Gonzales Automotive that indulge in fraudulent practices.

23 25. Notice of the pendency of any resolution of this action can be provided to
24 the Class Members by publication and/or individual mailed notice, as appropriate
25 under California law, and the costs of such notice are properly imposed on Gonzales
26 Automotive.

27 26. This action is also properly certified to proceed on a class-wide basis
28 because:

- 1 a. the prosecution of separate actions by the individual Class Members
2 would create a risk of inconsistent or varying adjudications with respect
3 to individual Class Members, thus establishing incompatible standards
4 of conduct for Gonzales Automotive;
- 5 b. due to the nature of the relief sought, the prosecution of separate actions
6 by individual Class Members would create a risk of adjudication with
7 respect to them that would, as a practical matter, be dispositive of the
8 interests of the other Class Members not parties to such adjudications or
9 could substantially impair or impede the ability of such Class Members
10 to protect their interests; and
- 11 c. Gonzales Automotive has acted or refuses to act in respects generally
12 applicable to the Class, thereby making appropriate final injunctive relief
13 with regard to the Class Members as a whole in terms of the equitable
14 relief sought.

15 **SUMMARY OF FACTS COMMON TO THE CLASS**

16 27. During the Class period, it was Gonzales Automotive's practice and/or
17 policy that when a purchase contract was rescinded, and a subsequent purchase
18 contract was entered into for the same vehicle with the same customer, the date
19 recorded on the subsequent purchase contract was not the date the subsequent
20 purchase contract was executed but the date the customer signed the original purchase
21 contract.

22 28. Each Class Member purchased a vehicle for personal use from Gonzales
23 Automotive. Each Class Member executed an "Acknowledgement of Rewritten
24 Contract" form (or a similar form) and each Class Member entered into a subsequent
25 purchase contract with Gonzales Automotive that was backdated to the date of the
26 original purchase contract.

27 ///

28 ///

1 29. The financial disclosures in the final purchase contract signed by each
2 Class Member were based on a consummation date of the date shown on the contract,
3 not the date the contract was signed and consummated.

4 30. The final purchase contracts for each Class Member do not contain all of
5 the agreements between the buyer and the seller as they do not disclose, among other
6 things, the date of consummation, the accurate APR, and/or finance charge disclosures,
7 and/or the charges prior to consummation.

8 SUMMARY OF FACTS RELATIVE TO PLAINTIFF'S INDIVIDUAL
9 PURCHASE

10 31. In March 2009, Ms. Hermosa saw an advertisement by Gonzales
11 Automotive Group, Inc., d.b.a. Casa de Gonzales Chrysler Jeep (hereinafter "Gonzales
12 Automotive," "Dealership," or "Defendant") concerning a used 2005 Town & Country
13 minivan for approximately \$9,000 with no down payment. At the time, Ms. Hermosa
14 owed a 1992 Ford Explorer with over 85,000 miles on it, which needed a number of
15 repairs and was no longer reliable. As such, she called Gonzales Automotive and made
16 an appointment with "Tony" to discuss the possible purchase of the 2005 Town &
17 Country minivan.

18 32. Accordingly, on March 22, 2009, Ms. Hermosa went to Gonzales
19 Automotive's dealership with her son to meet with Tony. However, when she arrived
20 at the dealership, she was told that Tony was with another customer and she was
21 directed to another salesperson, Marisol Santamaria. When Ms. Hermosa told
22 Ms. Santamaria that she was interested in the 2005 Town & Country minivan that the
23 dealership had advertised, Ms. Santamaria told her that Gonzales Automotive had sold
24 the minivan the day before. At that time, Ms. Santamaria told Ms. Hermosa that they
25 had other good quality used cars available for sale.

26 33. First, Ms. Hermosa was shown a 2006 or 2007 red Toyota vehicle, which
27 Gonzales Automotive had advertised was a "prior rental" vehicle. Ms. Hermosa told
28

1 Ms. Santamaria that she was not interested in the Toyota because she did not wish to
2 purchase a prior rental vehicle.

3 34. Next, Ms. Santamaria showed Ms. Hermosa a used 2005 Kia Spectra, VIN
4 KNFAE122855117395 (hereinafter "the Vehicle"). The Vehicle had a sign on the
5 window that stated "previous owner."

6 35. Ms. Hermosa questioned Ms. Santamaria about the history of the Vehicle,
7 specifically inquiring what the sign meant by "previous owner." Ms. Santamaria told
8 Ms. Hermosa that the sign meant the Vehicle had only one previous owner. At that
9 point, Ms. Hermosa asked Ms. Santamaria if the Vehicle, like the red Toyota she had
10 been shown previously, was also a prior rental vehicle. Ms. Santamaria stated the
11 Vehicle had not been a prior rental vehicle.

12 36. Ms. Hermosa repeatedly asked Gonzales Automotive for a Carfax report
13 on the Vehicle and Gonzales Automotive stated it would provide her with one. Despite
14 her repeated requests – made both to Ms. Santamaria and the store manager, Miguel
15 – Gonzales Automotive never provided Ms. Hermosa with a Carfax report on the
16 Vehicle.

17 37. The Vehicle was also advertised as coming with Defendant Kia's express
18 warranty covering the Vehicle for 10 years or 100,000 miles, whichever occurred first.

19 38. At Ms. Santamaria's instructions, Ms. Hermosa completed a credit
20 application.

21 39. Ms. Hermosa asked to take the Vehicle for a test-drive. Ms. Santamaria
22 agreed but stated the Vehicle was low on gas and thus they could only drive around the
23 dealership's lot. During the test drive, Ms. Hermosa heard some unusual noises and
24 inquired whether Gonzales Automotive would fix the noises before she purchased the
25 Vehicle. Gonzales Automotive agreed to do so.

26 40. After returning from the test drive, Ms. Hermosa was shown into the
27 finance office. Once in the finance office, the Finance Manager told Ms. Hermosa that
28 she should purchase an alarm for the Vehicle. Gonzales Automotive told her the alarm

1 would cost \$500 extra. Ms. Hermosa was told, however, that if she purchased the
2 alarm, her insurance premiums for the Vehicle would be lower. Based on that
3 representation, Ms. Hermosa agreed to purchase the alarm for the Vehicle.

4 41. In violation of the Civil Code Section 2982.2, Ms. Hermosa was not
5 provided with a disclosure statement showing her what her monthly payments would
6 be with and without purchase of the alarm. Additionally, in violation of the California
7 Used Car Buyer's Bill of Rights, Gonzales Automotive failed to inform Ms. Hermosa
8 that she could purchase a contract cancellation option.

9 42. The Finance Manager then prepared the various purchase documents for
10 Ms. Hermosa to sign, and Ms. Hermosa was simply instructed where to sign and initial
11 those documents. A copy of the March 22, 2009 Retail Installment Sale Contract
12 ("RISC #1") is attached as Exhibit 1 to this Complaint. RISC #1 called for 48 monthly
13 payments of \$221.11, with a total finance charge of \$3,441.46. The cash price of the
14 Vehicle was \$7,717.00.

15 43. Approximately three or four days later, Gonzales Automotive called
16 Ms. Hermosa and said she had to come in to re-do her contract. When she asked why,
17 Ms. Hermosa was told that the finance company wanted a change. Ms. Hermosa was
18 told that she would have to pay a little more per month but that the change would
19 "benefit" her because she would pay less overall since it was going to be a shorter term.

20 44. When Ms. Hermosa arrived at Gonzales Automotive that day, she met
21 with a different Finance Manager. Again, Ms. Hermosa was told that she would be
22 paying more per month but for fewer months so it was a good change for her. Based
23 on Gonzales Automotive's representations, Ms. Hermosa signed the second Retail
24 Installment Sale Contract on March 25, 2009 ("RISC #2"). A true and correct copy of
25 RISC #2 is attached hereto as Exhibit 2. RISC #2 called for 42 monthly payments of
26 \$241.61, with a total finance charge of \$2,975.80. The cash price of the Vehicle was
27 \$7,717.00.

28 ///

1 45. Ms. Hermosa also signed an "Acknowledgement of Rewritten Contract"
2 form, stating the "contract was change [sic] because the bank approved at 7171.82 OTD
3 20.75 rate 42 months." At no time was Ms. Hermosa told that she did not have to sign
4 RISC #2 but could get her trade-in vehicle back and walk away from the deal. The
5 Acknowledgement form was dated March 25, 2009. A true and correct copy of the
6 Acknowledgment is attached hereto as Exhibit 3.

7 46. The second purchase contract, RISC #2, which Ms. Hermosa executed
8 with Gonzales Automotive on March 25, 2009, was dated the date of RISC #1 –
9 March 22, 2009.

10 47. California Vehicle Code §11614(a) provides it is unlawful for a lessor-
11 retailer licensed in this state to "Make or disseminate, or cause to be made or
12 disseminated, before the public in this state, in any newspaper or other publication, or
13 any advertising device, or by oral representation, or in any manner or any means
14 whatsoever, any statement that is untrue or misleading and that is known, or which
15 by the exercise or reasonable care should be known, to be untrue or misleading"

16 48. California Vehicle Code §11713(a) provides it is unlawful for any licensed
17 dealer to "Make or disseminate, or cause to be made or disseminated, before the public
18 in this state, in any newspaper or other publication, or any advertising device, or by
19 public outcry or proclamation, or in any manner or any means whatsoever, any
20 statement that is untrue or misleading and that is known, or which by the exercise or
21 reasonable care should be known, to be untrue or misleading"

22 49. California Code of Regulations §260.02 provides that express
23 advertisements of a vehicle's prior use or ownership history must be accurate. It also
24 relatedly requires that "rental vehicles" "shall be clearly identified as such" in all
25 advertisements and elsewhere.

26 50. Unbeknownst to Ms. Hermosa, but certainly known or should have been
27 known to Gonzales Automotive, the Vehicle was, in fact, a prior rental vehicle,
28 previously owned by a major rental car company. The prior rental history of the

1 Vehicle is a material fact for Ms. Hermosa and other consumers, which was required
2 to be clearly and conspicuously disclosed in all advertisements. None of the
3 advertisements for the Vehicle stated that it was a prior rental and Gonzales
4 Automotive expressly told Ms. Hermosa that the Vehicle was *not* a prior rental vehicle.
5 Furthermore, Gonzales Automotive intentionally concealed the Vehicle's prior rental
6 vehicle status when it prepared and had Ms. Hermosa sign a "Vehicle Prior History
7 Disclosure" form that indicated that Vehicle had been a "dealer registered vehicle" but
8 failed to disclose that the Vehicle was either a "dealer rental vehicle" or a "prior or
9 private rental vehicle."

10 51. Subsequent to the sale, Ms. Hermosa began experiencing significant
11 electrical problems with the Vehicle. On several occasions, various electrical systems
12 would malfunction leading to a loss of radio power, a speedometer that failed to
13 properly or accurately display the Vehicle's speed, loss of engine power, and
14 malfunctioning check engine and seat belt warning indicators. On at least two
15 separate occasions, the Vehicle has lost all power while Ms. Hermosa was driving the
16 Vehicle.

17 52. Ms. Hermosa has taken the Vehicle to Gonzales Automotive, a Kia-
18 authorized repair facility, on numerous occasions, for repair of these persistent
19 electrical problems. However, to date, Kia has been unable to repair the Vehicle or to
20 conform the Vehicle to the express and implied warranties that accompanied its sale
21 to Ms. Hermosa.

22 53. The Vehicle remains unrepaired and unsafe to drive.

23 54. Gonzales Automotive is, on information and belief, a licensed dealer and
24 lessor-retailer in this state within the terms of the California Vehicle Code Sections
25 285 and 373.

26 ///

27 ///

28 ///

1 **FIRST CAUSE OF ACTION**

2 **Violation of Consumers Legal Remedies Act, Civil Code Section 1750, *et***
3 ***seq.* – Class Claim Against Defendants Gonzales Automotive and**
4 **Does 1-10**

5 55. Plaintiff, on her own behalf and on behalf of the Class Members,
6 incorporates by reference each and every allegation set forth in Paragraphs 1 through
7 54, inclusive, of this Complaint and further alleges as follows.

8 56. The vehicles purchased by Plaintiff and each Class Member constitute
9 “goods” bought for use primarily for personal, family, or household purposes pursuant
10 to Civil Code Section 1761(a).

11 57. Plaintiff and each Class Member are “consumers” pursuant to Civil Code
12 Section 1761(d).

13 58. Defendants Gonzales Automotive and Does 1-10 are “persons pursuant
14 to Civil Code Section 1761(c).

15 59. The advertisement and sale of the vehicles to Plaintiff and each Class
16 Member are “transactions” pursuant to Civil Code Section 1761(e).

17 60. The policies, acts, and/or practices engaged in by Gonzales Automotive
18 and alleged herein were intended to, and did, result in the sale of the vehicles at issue
19 to Plaintiff and the Class Members primarily for personal, family, or household
20 purposes, and violated and continue to violate the Consumers Legal Remedies Act
21 (“CLRA”), in at least the following respects: (1) representing that a transaction confers
22 or involves rights, remedies, or obligations which it does not have or involve, or
23 which are prohibited by law; and (2) representing that the subject of a transaction has
24 been supplied in accordance with a previous representation when it has not.

25 61. On October 14, 2009, Plaintiff served Gonzales Automotive via certified
26 and regular mail a CLRA notification and demand on behalf of all persons who
27 (a) purchased a vehicle from Gonzales Automotive for personal use; (b) on a later date
28 rescinded their original purchase contract; and (c) signed a subsequent contract(s) for

1 the purchase of the same vehicle, which contract was dated the date of the original
2 purchase contract and involved financing at an annual percentage rate greater than
3 0.00% (the "Class").

4 62. On October 29, 2009, Gonzales Automotive responded via its attorneys
5 that it would not provide any of the remedies requested by Plaintiff.

6 63. Civil Code Section 1780(a)(2) provides that a consumer is entitled to an
7 injunction prohibiting acts or practices which violate the Act. Plaintiff alleges that
8 Gonzales Automotive has established a pattern and practice of: (1) backdating
9 subsequent purchase contracts to the date of the original purchase contracts;
10 (2) improperly completing second contracts for the purchase of a vehicle; (3) charging
11 interest before consummation; (4) collecting or causing to be collected finance charges
12 in excess of disclosed finance charges; (5) charging compound interest in simple
13 interest contracts, and/or (6) failing to include all agreements between the buyer and
14 the seller in a single document. Plaintiff, on behalf of herself and the Class Members,
15 seeks an order enjoining Defendants from the acts, methods, and practices as set forth
16 in the complaint.

17 64. Plaintiff and the Class Members seek all available remedies pursuant to
18 Civil Code § 1780, including restitution and attorneys' fees and costs according to proof
19 at time of trial.

20 **SECOND CAUSE OF ACTION**

21 **Violation of the Automobile Sales Finance Act, Civil Code Section 2981, et**
22 **seq. – Individual and Class Claim Against Defendants Gonzales Automotive**
23 **and Does 1-10**

24 65. Plaintiff, on her own behalf and on behalf of the Class Members,
25 incorporates by reference each and every allegation set forth in Paragraphs 1 through
26 64, inclusive, of this Complaint and further alleges as follows.

27 ///
28 ///

1 66. The purchase contracts executed by Plaintiff and each Class Member for
2 their vehicles are “conditional sale contracts” pursuant to Civil Code Section 2981(a).

3 67. Gonzales Automotive is a “seller” pursuant to Civil Code Section 2981(b).

4 68. Plaintiff and each Class Member are “buyers” pursuant to Civil Code
5 Section 2981(c).

6 69. The vehicles purchased by Plaintiff and each Class Member are “motor
7 vehicles” pursuant to Civil Code Section 2981(k).

8 70. Vehicle Code Section 5901(c) states that consummation of a sale occurs
9 when the purchaser has signed a purchase contract and taken physical possession of
10 the vehicle.

11 71. Gonzales Automotive and Plaintiff, and each Class Member,
12 consummated their original purchases upon signature of their original purchase
13 contracts and taking delivery of their respective vehicles. Those transactions were
14 rescinded when Plaintiff and each Class Member returned to Gonzales Automotive
15 with their vehicles and signed an “Acknowledgement of Rewritten Contract” or
16 similar form which explicitly stated “the original contract entered into between myself
17 and the Dealer has been mutually rescinded and no longer has any legal effect.”

18 72. Gonzales Automotive and Plaintiff, and each Class Member,
19 consummated their final purchase on the date the subsequent purchase contract was
20 signed by Plaintiff and each Class Member, respectively, and Plaintiff and each Class
21 Member took delivery of their vehicles. By backdating the subsequent purchase
22 contract to the date of the now-rescinded original purchase contract, thereby charging
23 interest before consummation, Gonzales Automotive violated Civil Code
24 Section 2982(a), which requires all conditional sales contracts to comply with the
25 disclosure requirements of Regulation Z. The backdated purchase contracts also
26 improperly charged Plaintiff and the Class Members compound interest.

27 73. By backdating the final purchase contract to the date of the original
28 purchase contract, Gonzales Automotive overstated the payment that was due for the

1 annual percentage rate shown on the contract. The actual annual percentage rate,
2 based on a contract consummation date of the final purchase contract, varied from the
3 disclosed annual percentage rate by more than Regulation Z permits. Likewise, the
4 actual finance charges, based on a contract consummation date of the final purchase
5 contract, varied from the disclosed finance charge by more than Regulation Z permits.

6 74. By backdating the final purchase contract to the date of the original
7 purchase contract, Gonzales Automotive violated the ASFA's single document rule.
8 The final purchase contract does not accurately set forth the terms of payment for the
9 motor vehicle because it misstates the annual percentage rate, the finance charge, and
10 what the true monthly payment should be based on the disclosed annual percentage
11 rate. The final purchase contract also fails to disclose the interest charged prior to
12 consummation. The only means of determining the true annual percentage rate,
13 finance charge, and monthly payment is through review of other documents stating the
14 date the final contract was actually consummated.

15 75. By backdating the final purchase contract, Gonzales Automotive also
16 violated Civil Code Section 2982(j) by causing the holder to charge, collect, or receive
17 a finance charge which exceeds the disclosed finance charge.

18 76. Plaintiff and each Class Member have been damaged by Gonzales
19 Automotive's violations of the ASFA. Since the violations include violations of Civil
20 Code Sections 2981.9, 2982(a), and 2982(j), Plaintiff and each Class Member are
21 entitled to return of all monies paid under the contracts pursuant to Civil Code
22 Section 2983 and the option of rescinding their contract pursuant to Civil Code
23 Section 2983.1. Plaintiff also seeks attorneys' fees and costs pursuant to Civil Code
24 Section 2983.4 and requests an injunction prohibiting Gonzales Automotive from
25 engaging in the illegal practices alleged herein.

26 ///

27 ///

28 ///

1 **THIRD CAUSE OF ACTION**

2 **Commission of Unlawful, Unfair, and/or Fraudulent Business Acts and**
3 **Practices, Bus. & Prof. Code Section 17200, et seq.**

4 **- Class Claim Against Defendant Gonzales Automotive and Does 1-10**

5 77. Plaintiff, on her own behalf and on behalf of the Class Members,
6 incorporates by reference each and every allegation set forth in Paragraphs 1 through
7 76, inclusive, of this Complaint and further alleges as follows.

8 78. Gonzales Automotive's acts, omissions, misrepresentations, practices,
9 and/or non-disclosures constituted unlawful, unfair, and fraudulent business acts and
10 practices within the meaning of California Business & Professions Code
11 Sections 17200, et seq.

12 79. Plaintiff, and the Class Members have suffered injury in fact and have
13 lost money as a result of Defendant's unfair competition.

14 80. Gonzales Automotive has engaged in "unlawful" business acts and
15 practices by the following: (1) backdating subsequent purchase contracts to the date
16 of the original purchase contracts; (2) violating the single document rule in Civil Code
17 Section 2981.9; (3) improperly completing second contracts for the purchase of a
18 vehicle; (4) charging interest before consummation; (5) collecting or causing to be
19 collected finance charges in excess of disclosed finance charges; (6) charging compound
20 interest in simple interest contracts; and/or (7) failing to include all agreements
21 between the buyer and the seller in a single document. These policies, acts, and/or
22 practices were intended to and did violate, *inter alia*, the CLRA and the ASFA.
23 Accordingly, Defendant has violated Business & Professions Code Section 17200's
24 proscription against engaging in an "unlawful" business act or practice.

25 81. Defendant has also engaged in a "fraudulent" business act or practice in
26 that the representations and omissions of material fact described above have a
27 tendency and likelihood to deceive purchasers of these vehicles.

28 ///

1 82. Defendant has also engaged in an "unfair" business act or practice in that
2 the justification for selling vehicles based on the misrepresentations and omissions of
3 material fact delineated above is outweighed by the gravity of the resulting harm,
4 particularly considering the available alternatives, and offends public policy, is
5 immoral, unscrupulous, unethical, and offensive, or causes substantial injury to
6 consumers.

7 83. The above-described unlawful, fraudulent, and/or unfair business acts
8 and/or practices conducted by Defendant continue to this day and present a threat to
9 Plaintiff, the Class Members, and the general public in that Defendant has failed to
10 publicly acknowledge the wrongfulness of its actions and provide full equitable
11 injunctive and monetary relief as required by the statute.

12 84. Pursuant to California Business & Professions Code Section 17203,
13 Plaintiff may seek an order of this Court requiring Defendant to immediately cease
14 such acts of unfair competition and enjoining Defendant from continuing to conduct
15 business via the unlawful, fraudulent, and/or unfair business acts and/or practices set
16 forth in this Complaint and from failing to fully disclose the true nature of their
17 misrepresentations, and ordering Defendant to engage in a corrective notice and
18 advertising campaign. Plaintiff additionally requests an order from the Court
19 requiring Defendant provide complete equitable monetary relief so as to prevent
20 Defendant from benefitting from the practices that constitute unfair
21 competition or the use or employment of any monies resulting from the sale of these
22 vehicles, including requiring the payment of restitution of any monies as may be
23 necessary to restore any money or property which may have been acquired by means
24 of such acts of unfair competition.

25 ///
26 ///
27 ///
28 ///

1 FOURTH CAUSE OF ACTION

2 **Violation of Consumers Legal Remedies Act, Civil Code Section 1750, et**
3 **seq. – Individual Claim Against Defendant Gonzales Automotive and Does**

4 1-10

5 85. Plaintiff incorporates by reference each and every allegation set forth in
6 Paragraphs 1 through 84, inclusive, of this Complaint and further alleges as follows.
7 This cause of action is brought by Plaintiff individually.

8 86. The Vehicle constitutes a “good” bought primarily for personal, family, or
9 household purposes pursuant to Civil Code Section 1761(a).

10 87. Defendants Gonzales Automotive and Does 1-10 are “persons” pursuant
11 to Civil Code Section 1761(c).

12 88. Plaintiff is a “consumer” pursuant to Civil Code Section 1761(d).

13 89. The advertisement and sale of the Vehicle to Plaintiff is a “transaction”
14 pursuant to Civil Code Section 1761(e).

15 90. Pursuant to the Consumers Legal Remedies Act, the following unfair
16 methods of competition and unfair or deceptive acts or practices are prohibited under
17 the following subsections of Section 1770(a): (2) misrepresenting the source,
18 sponsorship, approval or certification of goods or services; (3) misrepresenting the
19 affiliation, connection, or association with, or certification by, another; (5) representing
20 that goods or services have sponsorship, approval, characteristics, uses, or benefits
21 which they do not have; (7) representing that goods or services are of a particular
22 standard, quality, or grade, if they are of another; (9) advertising goods or services with
23 intent not to sell them as advertised; (13) making false or misleading statements of fact
24 concerning reasons for, existence of, or amounts of price reductions; (14) representing
25 that a transaction confers or involves rights, remedies, or obligations which it does not
26 have or involve, or which are prohibited by law; (16) representing that the subject of
27 a transaction has been supplied in accordance with a previous representation when it
28 has not; and (19) inserting an unconscionable provision in a contract.

1 96. Gonzales Automotive's acts, omissions, misrepresentations, practices,
2 and/or non-disclosures constituted unlawful, unfair, and/or fraudulent business acts
3 and/or practices within the meaning of California Business & Professions Code §17200,
4 *et seq.*

5 97. Plaintiff has suffered injury in fact and has lost money or property as a
6 result of Gonzales Automotive's unlawful, unfair, and/or fraudulent business practices.

7 98. Gonzales Automotive has engaged in "unlawful" business acts and/or
8 practices by selling prior rental vehicles without the proper disclosure, and by failing
9 to provide customers with copies of their credit applications. These acts, policies,
10 and/or practices were intended to and did violate, *inter alia*, the Consumers Legal
11 Remedies Act (Civ. Code §1770, *et seq.*), the Automobile Sales Finance Act (Civil Code
12 §2981, *et seq.*), Vehicle Code §§11614(a) and 11713(a), and California Code of
13 Regulations §260.02.

14 99. Accordingly, Gonzales Automotive has violated Business & Professions
15 Code §17200's proscription against engaging in an "unlawful" business act or practice.

16 100. Gonzales Automotive has also engaged in a "fraudulent" business act or
17 practice in that the representations and omissions of material fact described above
18 have a tendency and likelihood to deceive consumers and purchasers of these vehicles
19 and did in fact deceive Plaintiff.

20 101. Gonzales Automotive has also engaged in an "unfair" business act or
21 practice in that the justification for selling vehicles based on the misrepresentations
22 and omissions of material fact delineated above is outweighed by the gravity of the
23 resulting harm, particularly considering the available alternatives, and offends public
24 policy, is immoral, unscrupulous, unethical, and offensive, or causes substantial injury
25 to consumers.

26 102. The above-described unlawful, fraudulent, and/or unfair business acts and
27 practices conducted by Gonzales Automotive continue to this day and present a threat
28 to Plaintiff and/or members of the general public in that Gonzales Automotive has

1 failed to publicly acknowledge the wrongfulness of its actions and provide full equitable
2 injunctive and monetary relief as required by the statute.

3 103. Pursuant to California Business & Professions Code §17203, Plaintiff
4 seeks an order of this Court requiring Gonzales Automotive to immediately cease such
5 acts of unfair competition and enjoining Gonzales Automotive from continuing to
6 conduct business via the unlawful, fraudulent, and/or unfair business acts and/or
7 practices set forth in this Complaint and from failing to fully disclose the true nature
8 of their misrepresentations, and ordering Gonzales Automotive to engage in a
9 corrective notice and advertising campaign. Plaintiff additionally requests an order
10 from the Court requiring that Gonzales Automotive provide complete equitable
11 monetary relief so as to prevent it from benefitting from the practices that constitute
12 unfair competition or the use or employment of any monies resulting from the sale of
13 these vehicles, including requiring the payment of restitution of any monies as may be
14 necessary to restore to Plaintiff any money or property which may have been acquired
15 by means of such acts of unfair competition.

16 **SIXTH CAUSE OF ACTION**

17 **Intentional Misrepresentation – Individual Claim Against Defendants**

18 **Gonzales Automotive and Does 1-10**

19 104. Plaintiff incorporates by reference each and every allegation set forth
20 in Paragraphs 1 through 103, inclusive, of this Complaint and further alleges as
21 follows. This cause of action is brought by Plaintiff individually.

22 105. At the time of purchase, and afterwards, Dealership made the
23 misrepresentations as set forth in Paragraphs 32, 35-37, 39-41, 43, 45-46, and 50. The
24 identity of Dealership's employees who made the misrepresentations to Plaintiff
25 are stated in Paragraphs 32 and 36. Names of Dealership's employees whom
26 Plaintiff does not know are known to Dealership and are or should be stated in
27 documents in Dealership's possession.

28 ///

1 106. At the time of purchase, and afterwards, Dealership omitted from the
2 statements it had made material facts as set forth above, the disclosure of which were
3 necessary in order to make Dealership's other statements not misleading. These
4 omissions include, but are not limited to the following: Plaintiff did not have to sign the
5 second purchase contract but could, instead, receive her down payment back and walk
6 away from the deal, that the Vehicle was a prior rental vehicle, the mechanical
7 problems Plaintiff experienced with the Vehicle were pre-existing, the true terms of the
8 vehicle's warranty coverage, the finance company(ies) did not require the terms of the
9 second contract, and an unconscionable arbitration clause was inserted in the contract.

10 107. At all times Dealership either had actual or constructive notice of the true
11 facts but nonetheless intentionally or recklessly concealed these facts from
12 Plaintiff.

13 108. Dealership made these representations and omitted material facts with
14 the intent to defraud Plaintiff and induce Plaintiff to purchase the Vehicle. At the time
15 Plaintiff purchased the vehicle she did not know, or have reason to know, that
16 Dealership was making false and misleading representations and had omitted material
17 facts. Plaintiff acted in justifiable reliance upon the truth of the representations which
18 misled them as to the nature and extent of the facts concealed. Plaintiff was justified
19 in his reliance as Dealership held itself out as a professional in the automotive sales
20 and leasing industry and Plaintiff had no reason to doubt its representations.

21 109. As a direct and proximate result of Dealership's fraudulent
22 representations, omissions of material fact, and/or wrongful conduct, Plaintiff has
23 suffered damages, including actual, general, consequential, and incidental damages
24 according to proof at trial.

25 110. Dealership acted with malice, oppression, and/or fraud toward Plaintiff
26 within the meaning of Civil Code Section 3294. In particular, Dealership's conduct
27 included misrepresentations by Finance Managers and sales persons, among others,
28

1 authorized to act on Dealership's behalf. Plaintiff is, therefore, entitled to punitive
2 damages.

3 111. Plaintiff hereby alleges fraud in the inducement to enter into the purchase
4 contract, and therefore is entitled to rescission of the purchase contract and restitution
5 and attorneys' fees and costs in an amount according to proof at trial.

6 **SIXTH CAUSE OF ACTION**

7 **Negligent Misrepresentation – Individual Claim Against Defendants**

8 **Gonzales Automotive and Does 1-10**

9 112. Plaintiff incorporates by reference each and every allegation set forth in
10 Paragraphs 1 through 111, inclusive, of this Complaint and further alleges in the
11 alternative to the Fifth Cause of Action as follows. This cause of action is brought by
12 Plaintiff individually.

13 113. The representations made by Dealership as alleged in Paragraphs 32, 35-
14 37, 39-41, 43, 45-46, and 50 were not true.

15 114. Regardless of its actual belief, Dealership made the representations
16 without any reasonable grounds for believing them to be true.

17 115. Dealership failed to exercise due care in ascertaining the accuracy of the
18 representations made to Plaintiff.

19 116. Dealership made the representations for the purpose of inducing Plaintiff
20 to rely upon them, and to act, or refrain from acting, in reliance thereon.

21 117. Plaintiff was unaware of the falsity of the representations and acted in
22 reliance upon the truth of those representations and was justified in relying upon those
23 representations.

24 118. As a direct and proximate result of Dealership's negligent
25 misrepresentations of material fact, Plaintiff has suffered damages, including actual,
26 consequential, and incidental damages according to proof of trial.

27 ///

28 ///

1 119. Plaintiff alleges fraud in the inducement to enter into the purchase
2 contracts, and therefore is entitled to rescission of the purchase contract, restitution,
3 and attorneys' fees and costs in an amount according to proof at trial.

4 **SEVENTH CAUSE OF ACTION**

5 **Violation of the Song-Beverly Consumer Warranty Act- Individual Claim**
6 **Against Defendants Gonzales Automotive, Kia Motors America, and Does**

7 1-10

8 120. Plaintiff incorporates by reference each and every allegation set forth in
9 Paragraphs 1 through 119, inclusive, of this Complaint and further alleges as follows.
10 This cause of action is brought by Plaintiff individually.

11 121. Pursuant to the Song-Beverly Consumer Warranty Act (hereinafter the
12 "Act") Civil Code sections 1790 *et seq.*, the Vehicle constitutes "consumer goods"
13 purchased primarily for family or household purposes and Plaintiff has used the
14 vehicle primarily for those purposes.

15 122. Plaintiff is a "buyer" of consumer goods under the Act.

16 123. Defendant Gonzales Automotive is a "seller" and "retailer" under the Act.

17 124. Defendant Kia Motors America, Inc. is a "seller," "retailer" and/or
18 "distributor" under the Act.

19 125. The sale of the Vehicle to Plaintiff was accompanied by an implied
20 warranty that the vehicle was merchantable. The sale of the Vehicle to Plaintiff was
21 also accompanied by Dealership's implied warranty of fitness. The sale of the Vehicle
22 was also accompanied by Defendants' express warranties described above to preserve
23 and maintain the utility and performance of the Vehicle, and/or to provide
24 compensation in the event of a failure in utility or performance.

25 126. The foregoing defects and nonconformities to warranty manifested
26 themselves within the applicable warranty period. The nonconformities substantially
27 impair the use, value, and/or safety of the Vehicle.

28 ///

1 127. Plaintiff delivered the Vehicle to Defendants for repair of the
2 nonconformities.

3 128. Defendants have refused and/or failed to conform the Vehicle to, and/or
4 honor, the applicable warranties.

5 129. Notwithstanding Plaintiff's entitlement thereto, Defendants have refused
6 Plaintiff's demands for a refund or replacement.

7 130. By the failure of Defendants to remedy the defects as alleged above, or to
8 issue a refund or replacement, Defendants are in breach of their obligations under the
9 Act.

10 131. Plaintiff is entitled to justifiably revoke acceptance of the Vehicle under
11 the Act.

12 132. Under the Act, Plaintiff is entitled to reimbursement of the purchase price
13 paid for the Vehicle less that amount directly attributable to use by Plaintiff prior to
14 discovery of the nonconformities.

15 133. Plaintiff is entitled to all incidental, consequential, and general damages
16 resulting from Defendants' refusal and/or failure to comply with their obligations under
17 the Act.

18 134. As Defendants' failure and refusal to comply with the Act regarding its
19 express warranties was willful, Plaintiff is entitled to a civil penalty.

20 135. Plaintiff is entitled under the Act to recover as part of the judgment a sum
21 equal to the aggregate amount of costs and expenses, including attorney's fees,
22 reasonably incurred in connection with the commencement and prosecution of this
23 action.

24 **PRAYER FOR RELIEF**

25 WHEREFORE, Plaintiff prays for judgment as follows, on behalf of herself, and
26 the members of the Class, as appropriate for the particular causes of action:

27 1. An Order certifying the Class under the appropriate provisions of
28 California law, and appointing Plaintiff and her counsel to represent the Class.