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8

9 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**
10 **IN AND FOR THE COUNTY OF MARICOPA**

11 STATE OF ARIZONA, *ex rel.* MARK
BRNOVICH, Attorney General,

Case No: CV2016-016307

12 Plaintiff,

STIPULATED CONSENT JUDGMENT

13 vs.

14 HYUNDAI MOTOR COMPANY;
15 HYUNDAI MOTOR AMERICA;
KIA MOTORS CORPORATION, INC.; and,
16 KIA MOTORS AMERICA, INC.,

17 Defendants.

18 Plaintiff State of Arizona *ex rel.* Mark Brnovich, the Attorney General, filed a complaint
19 alleging violations of the Arizona Consumer Fraud Act, Ariz. Rev. Stat. ("A.R.S.") §§ 44-1521
20 to 44-1534 (the "CFA"), against Defendants Hyundai Motor Company, Hyundai Motor
21 America, Kia Motors Corporation, Inc., and Kia Motors America, Inc.

22 Plaintiff and Defendants, by their counsel, have agreed to the entry of this Consent Judgment by
23 this Court without trial or adjudication of any issue of fact or law and without admission of any
24 wrongdoing or admission of any of the violations of the CFA or any other law as alleged by Plaintiff.
25 The Plaintiff and Defendants agree to entry of this Consent Judgment to avoid the expenses associated
26 with further investigation or litigation.

1 Consent Judgment is fair, reasonable and in the public interest.

2 NOW THEREFORE, upon the consent of the Parties hereto, IT IS HEREBY ORDERED,
3 ADJUDGED AND DECREED AS FOLLOWS:

4 **I. PARTIES**

5 1.1 Plaintiff is the State of Arizona (the "State").

6 1.2 Defendants are Hyundai Motor Company, Hyundai Motor America, Kia Motors
7 Corporation, Inc., and Kia Motors America, Inc., as defined below.

8 **II. JURISDICTION**

9 2.1 Pursuant to A.R.S. § 44-1528, jurisdiction of this Court over the subject matter and
10 over the Defendants for the purpose of entering into and enforcing this Consent Judgment is admitted.
11 Defendants admit the Court's jurisdiction over them for the limited purpose of entering and enforcing
12 this Consent Judgment pursuant to the terms set forth herein, but do not concede jurisdiction as to other
13 matters before this Court, be they past, present or future. Jurisdiction is retained by this Court for the
14 purpose of enabling the State of Arizona, by and through its Attorney General, or the Defendants to
15 apply to this Court for such further orders and directions as may be necessary or appropriate for the
16 construction and modification of the injunctive provisions herein or execution of this Consent
17 Judgment, including enforcement of this Consent Judgment and punishment for any violation of this
18 Consent Judgment.

19 2.2 If the State of Arizona, through its Attorney General, is required to file a Complaint or
20 other filing in order to enforce any provision of this Consent Judgment against any (or all) Defendants,
21 the particular Defendant involved in such Complaint or other filing shall pay all court costs and
22 reasonable attorneys' fees associated with any successful Complaint or other filing to enforce any
23 provision of this Consent Judgment against such Defendant. The Defendants waive any defect
24 associated with service of the State of Arizona's Complaint and this Consent Judgment and do not
25 require issuance or service of a Summons.

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1 **III. VENUE**

2 3.1 Pursuant to the provisions of A.R.S. § 12-401, venue as to all matters between the
3 Parties hereto relating to or arising out of this Consent Judgment shall lie exclusively in the Superior
4 Court of the State of Arizona in and for the County of Maricopa, or other State Court of competent
5 jurisdiction in the same district.

6 **IV. DEFINITIONS**

7 As used in this Consent Judgment, the following words or terms shall have the following
8 meanings:

9 4.1 "Advertise," "Advertisement," or "Advertising" shall mean all marketing directed to
10 consumers residing in the United States and shall mean any written, oral, or electronic statement,
11 illustration, or depiction that is designed to create interest in the purchasing of, impart information
12 about the attributes of, publicize the availability of, or promote the sale or use of goods or services,
13 whether the statement is made directly to a consumer or appears in a brochure, newspaper, magazine,
14 freestanding insert, marketing kit, leaflet, circular, mailer, book insert, letter, catalog, poster, chart,
15 billboard, public-transit card, point-of-purchase display, package insert, package label, product
16 instructions, electronic mail, website, homepage, film, slide, radio, television, cable television,
17 program-length commercial or "infomercial," mobile media, social media, or any other medium
18 directed to consumers residing in the United States. For purposes of this Consent Judgment,
19 Advertising shall not include Tier 2 or Tier 3 Advertisements, which are Advertisements, in whatever
20 form, whose claims and representations are principally developed by and distributed to consumers
21 residing in the United States by persons other than Defendants, and which have not been reviewed and
22 approved by the legal departments of Hyundai Motor America or Kia Motors America, Inc., or their
23 respective outside counsel at their direction, prior to being disseminated into the marketplace.
24 Furthermore, Hyundai Motor America and Kia Motors America, Inc., each for itself, represents that
25 they have and will maintain procedures and practices requiring Advertisements to be reviewed and
26 approved by their legal departments, or by their respective outside counsel at their direction, prior to

1 being disseminated into the marketplace.

2 4.2 "Authorized Third Parties" shall mean: (1) those automotive dealers authorized to sell
3 Motor Vehicles pursuant to valid and duly executed sales and service agreements with Hyundai Motor
4 America and/or Kia Motors America, Inc.; (2) advertising agencies that have valid and duly executed
5 agreements with Hyundai Motor America and/or Kia Motors America, Inc. and are authorized to create
6 Advertisements that include fuel economy claims; or (3) those dealer associations that have valid and
7 duly executed agreements with Hyundai Motor America and/or Kia Motors America, Inc. to offer,
8 Advertise and/or sell Motor Vehicles manufactured by the Defendants and make fuel economy claims.

9 4.3 "Attorney General" shall mean the Attorney General of Arizona and the Office of the
10 Attorney General of Arizona.

11 4.4 "Consent Judgment" shall mean this document.

12 4.5 "Covered Conduct" shall mean the advertising, promotional and marketing practices of
13 Defendants and their affiliates, investigated by the MSWG under their respective state consumer
14 protection laws, regarding fuel economy claims concerning certain 2011, 2012 and 2013 model year
15 Hyundai and Kia Motor Vehicles that are listed in Exhibit A, attached hereto, and all claims that have
16 been alleged in the Complaint against Defendants.

17 4.6 "Defendants" shall mean Hyundai Motor Company, Hyundai Motor America, Kia
18 Motors Corporation, Inc. and Kia Motors America, Inc., and their subsidiaries, predecessors,
19 successors, and assigns. "Defendant," unless specifically stated otherwise, shall be used to refer to any
20 of the four Defendants, as applicable.

21 4.7 "Effective Date" shall mean the date on which a copy of this Consent Judgment, duly
22 executed by Defendants and by the signatory Attorney General, is approved by and becomes a
23 judgment of the Court.

24 4.8 "Motor Vehicle" shall mean a vehicle that is self-propelled and is manufactured
25 primarily for use on public streets, roads, or highways but does not include a vehicle operated on rail
26 lines.

1 Attorney General release the Defendants and all of their officers, directors, affiliates, subsidiaries,
2 parent companies, predecessors, successors and assigns (collectively, the "Released Parties") from the
3 following: all civil claims, causes of action, damages, restitution, fines, costs and penalties resulting
4 from, arising from or related to the Covered Conduct that the State of Arizona by and through its
5 Attorney General, has asserted or could have asserted against the Released Parties pursuant to the CFA
6 on or before the Effective Date, (collectively, the "Released Claims").

7 7.2 Notwithstanding any term of this Consent Judgment, the following do not comprise
8 Released Claims:

- 9 a. private rights of action;
- 10 b. claims of environmental or tax liability;
- 11 c. criminal liability;
- 12 d. claims for property damage;
- 13 e. claims alleging violations of State or federal securities laws;
- 14 f. claims alleging violations of State or federal antitrust laws; and
- 15 g. any obligations created under this Consent Judgment.

16 VIII. CONSENT TO JUDGMENT

17 8.1 Except as provided in Section VII (Release) above, the Consent Judgment shall not be
18 construed or used as a waiver or limitation of any cause of action, defense, or any affirmatively granted
19 rights otherwise available to the Parties in any action, including, where applicable, Defendants' rights
20 to defend themselves from or make any arguments in any claims or suits of any kind, including without
21 limitation, individual, group or class claims or suits, relating to the subject matter or terms of this
22 Consent Judgment.

23 8.2 Defendants, by and through their counsel, acknowledge that they have read this Consent
24 Judgment, are aware of their right to a trial in this matter and have waived that right.

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1 b. The Attorney General shall, upon reasonable notice including, but not limited to
2 the notice outlined in Section 9.1(a), above, be permitted reasonable access to
3 obtain relevant, non-privileged, non-work-product records and documents in the
4 possession, custody or control of the relevant Defendant that relate to its
5 compliance with the issue that was the subject of the notice.

6 c. The Attorney General shall, upon reasonable notice including, but not limited to
7 the notice outlined in Section 9.1(a), above, and subject to applicable discovery
8 rules, have reasonable access to take depositions and/or examinations under oath
9 of the relevant Defendant's officers, directors, employees, agents and contractors
10 with relevant knowledge, each of whom may have counsel present, relating to its
11 compliance with the issue that was the subject of the notice and its compliance
12 with the Consent Judgment in its entirety.

13 9.2 Within the time period specified in Section 9.1(a)(3), the relevant Defendant shall
14 provide to the Attorney General a written response, executed by a duly authorized representative of the
15 Defendant, containing either a statement explaining why it believes it is in compliance with this
16 Consent Judgment, or a detailed explanation of how the alleged violation occurred and a statement
17 explaining how it intends to address the alleged breach, along with a request to meet with and present
18 to the Attorney General if so desired. In the event the Defendant provides such timely response and
19 request, the Attorney General shall provide the Defendant with the opportunity to meet with and
20 present to, either in person or telephonically, a duly authorized representative of the Attorney General
21 to discuss the alleged violation and the Defendant's response thereto. If the Attorney General's
22 representative makes a good faith effort to schedule and attend such meeting within forty (40) days
23 after the date of written notification to the relevant Defendant, but the meeting does not occur, the
24 Attorney General may take any action after those forty (40) days has passed. At such meeting, the
25 Defendant may present evidence demonstrating its compliance with all applicable laws or its efforts to
26 address the alleged breach. The Attorney General has the sole discretion to accept or reject any

1 evidence the Defendant may care to present. Such meeting shall be conducted at the Defendant's
2 expense. If Defendant requests and the Attorney General's representative agrees that the meeting be
3 held in person, the meeting shall take place at the Attorney General's primary office.

4 9.3 If the relevant Parties agree to extend the response deadline, pursuant to Section
5 9.1(a)(3), the forty (40) day timeline set forth in Section 9.2 shall also be extended the same number of
6 days.

7 9.4 The Attorney General, on behalf of the State of Arizona, may assert that a Defendant has
8 violated the Consent Judgment in a separate civil action to enforce this Consent Judgment, or seek any
9 other relief afforded by law for such violation(s), but only after providing the relevant Defendant with
10 the opportunities to respond to the notification described in Section 9.1(a) and to meet and confer as set
11 forth in Section 9.2. However, such Attorney General may take any action without prior notice where
12 the Attorney General reasonably concludes that, because of a specific practice, a threat to the health or
13 safety of the public requires immediate action. The Attorney General shall give notice to the relevant
14 Defendant as required by law.

15 9.5 An alleged violation of this Consent Judgment by one of the Defendants cannot be the
16 Attorney General's sole basis to subject any other Defendant to the remedies and procedures set forth in
17 Section IX (Monitoring for Compliance).

18 9.6 Nothing in this Section shall be construed to limit the Attorney General's authority
19 provided under the laws of the State of Arizona, including but not limited to A.R.S § 44-1524.

20 **X. NOTICES UNDER THIS CONSENT JUDGMENT**

21 10.1 Any notices required to be sent to the State or to Defendants under this Consent
22 Judgment shall be sent by overnight courier service (*e.g.*, FedEx, UPS) and e-mail, with overnight
23 delivery costs incurred by the State to be billed to the recipient Defendant(s). The documents shall be
24 sent to the following addresses:

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26 ///

1 For the Attorney General of Arizona:

2 Alyse C. Meislik
3 Assistant Attorney General
4 1275 West Washington Street
5 Phoenix, Arizona 85050-2997
6 consumer@azag.gov
7 Tel: 602-542-8327
8 Fax: 602-542-4377

9 For Hyundai Motor Company:

10 Head of International Legal Team
11 Hyundai Motor Company
12 12 Heolleung-ro
13 Seocho-Gu, Seoul 06797
14 Republic of Korea
15 JFlannery@hmausa.com
16 JErB@hmausa.com

17 For Hyundai Motor America:

18 Executive Vice President & General Counsel
19 Hyundai Motor America
20 10550 Talbert Avenue
21 Fountain Valley, CA 92708
22 JFlannery@hmausa.com
23 JErB@hmausa.com

24 For Kia Motors Corporation, Inc.:

25 Head of International Legal Team
26 Kia Motors Corporation
12 Heolleung-ro
Seocho-Gu, Seoul 06797
Republic of Korea
JYoon@kiausa.com
MGoldzweig@kiausa.com

For Kia Motors America, Inc.:

Executive Vice President & General Counsel
Kia Motors America, Inc.
111 Peters Canyon Road
Irvine, CA 92606-1790
JYoon@kiausa.com
MGoldzweig@kiausa.com

Any Party may change its designated notice recipient(s) by written notice to the other Parties.

1 **XI. GENERAL PROVISIONS**

2 11.1 This Consent Judgment shall be binding upon the Parties and their successors and
3 assigns. In no event shall assignment of any right, power or authority under this Consent Judgment
4 void a duty to comply with this Consent Judgment.

5 11.2 Defendants shall use reasonable efforts to notify their officers, directors, employees,
6 agents and contractors responsible for carrying out and effecting the terms of this Consent Judgment of
7 the obligations, duties and responsibilities imposed on Defendants by this Consent Judgment.

8 11.3 This Consent Judgment represents the full and complete terms of the settlement entered
9 into by the Parties hereto.

10 11.4 Within thirty (30) days of the Effective Date, Hyundai Motor America and Kia Motors
11 America, Inc. shall, each for itself, provide its respective Authorized Third Parties with a copy or notice
12 and description of this Consent Judgment.

13 11.5 If the Defendants discover that any third party described in Paragraph 11.4 is violating
14 this Consent Judgment, the Defendants shall send notice to the third party requesting that it cease and
15 desist from the violation(s). The Defendants shall conduct an investigation of a third party upon
16 written notice by the State that the third party is violating an applicable provision of this Consent
17 Judgment and shall advise the State of the results of the investigation.

18 11.6 If any portion of this Consent Judgment is held invalid by operation of law, the
19 remaining terms of this Consent Judgment shall not be affected and shall remain in full force and effect.

20 11.7 Nothing in this Consent Judgment shall be construed to waive, limit or expand any claim
21 of sovereign immunity the State may have in any action or proceeding.

22 11.8 Unless otherwise prohibited by law, any signatures by the Parties required for entry of
23 this Consent Judgment may be executed in counterparts, each of which shall be deemed an original, but
24 all of which shall together be one and the same Consent Judgment.

25 11.9 Any failure of the State to exercise its rights under this Consent Judgment shall not
26 constitute a waiver of its rights hereunder.

1 11.10 Except as expressly provided herein, nothing contained in this Consent Judgment shall
2 be construed to waive or limit any right of action by any person or entity.

3 11.11 In the event that any state or federal constitutional right, statute, regulation or conduct
4 pertaining to the subject matter of this Consent Judgment is modified, enacted, promulgated or
5 interpreted by the State of Arizona, a Federal Court or Federal agency, and this Court holds that such
6 state or federal constitutional right, statute, regulation or conduct is in conflict with any provision of
7 this Consent Judgment so that Defendants cannot comply with both, Defendants may comply with the
8 state or federal constitutional right, statute or regulation or may engage in such conduct. Such action
9 shall constitute compliance with the counterpart provision of this Consent Judgment. Defendants shall
10 provide all members of the MSEC with sufficient advance notice of any judicial or administrative
11 proceeding in which the meaning or interpretation of any such state or federal constitutional right,
12 statute, regulation or conduct is at issue, so as to allow any member of the MSEC or MSWG the
13 opportunity to intervene and be heard.

14 11.12 Should Defendants seek a modification of this Consent Judgment for any reason other
15 than as provided for in paragraph 11.11, prior to applying to the Court, Defendants shall send a written
16 notification of their intent to seek modification to all members of the MSEC. The MSEC will consult
17 with the MSWG and shall respond to Defendants' notification within forty-five (45) days of receiving
18 such notification. Defendants may apply to the Court after the forty-five (45) day period has ended.

19 **XII. COMPLIANCE WITH ALL LAWS**

20 12.1 Nothing in this Consent Judgment shall be construed as relieving Defendants of their
21 respective obligations to comply with all State and federal laws, regulations or rules or as granting
22 permission to engage in any acts or practices prohibited by such law, regulation or rule.

23 **XIII. REPRESENTATIONS AND WARRANTIES**

24 13.1 Hyundai Motor America warrants and represents that it advertises Hyundai Motor
25 Vehicles in the United States.

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1 **JOINTLY APPROVED AND SUBMITTED FOR ENTRY:**

2 **Mark Brnovich**
3 **Attorney General**

4 
5 Alyse C. Meislik
6 Assistant Attorney General

Dated: 10/27/16

6 on behalf of the State of Arizona

7 
8 Jeong G. Seo
9 Vice President
10 Hyundai Motor Company

Dated: 10-24-16

11 on behalf of Hyundai Motor Company

12 
13 W. Gerald Flannery, Jr.
14 Executive Vice President & General
15 Counsel
16 Hyundai Motor America

Dated: 10-24-16

16 on behalf of Hyundai Motor America

17 
18 Jeong G. Seo
19 Vice President
20 Kia Motors Corporation, Inc.

Dated: 10-24-16

21 on behalf of Kia Motors Corporation, Inc.

22 
23 John Yoon
24 Executive Vice President & General
25 Counsel
26 Kia Motors America, Inc.

Dated: 10-24-16

1 on behalf of Kia Motors America, Inc.

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1 **APPROVED AS TO FORM FOR ENTRY:**

2 **Mark Brnovich**
3 **Attorney General**

4 Alyse Meislik
5 Alyse C. Meislik
6 Assistant Attorney General

Dated: 10/27/16

7 on behalf of the State of Arizona

8 Joshua Akbar
9 Joshua Akbar
10 AZ Bar No. 025339
11 Dentons US LLP
12 2398 E. Camelback Road, Suite 850
13 Phoenix, AZ 85016-9007
14 602-508-3900
15 joshua.akbar@dentons.com

Dated: 10/26/16

16 on behalf of Hyundai Motor Company,
17 Hyundai Motor America, Kia Motors
18 Corporation, Inc. and Kia Motors America,
19 Inc.
20
21
22
23
24
25
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Exhibit A

EXHIBIT A

HYUNDAI VEHICLES

2013 Model Year

2013 Accent (automatic transmission; 1.6 liter engine)
2013 Accent (manual transmission; 1.6 liter engine)
2013 Azera (automatic transmission; 3.3 liter engine)
2013 Elantra (automatic transmission; 1.8 liter engine)
2013 Elantra (manual transmission; 1.8 liter engine)
2013 Elantra Coupe (automatic transmission; 1.8 liter engine)
2013 Elantra Coupe (manual transmission; 1.8 liter engine)
2013 Elantra GT (automatic transmission; 1.8 liter engine)
2013 Elantra GT (manual transmission; 1.8 liter engine)
2013 Genesis (automatic transmission; 3.8 liter engine)
2013 Genesis R-Spec (automatic transmission; 5.0 liter engine)
2013 Santa Fe Sport 2WD Turbo (automatic transmission; 2.0 liter engine)
2013 Santa Fe Sport 2WD (automatic transmission; 2.4 liter engine)
2013 Santa Fe Sport 4WD Turbo (automatic transmission; 2.0 liter engine)
2013 Santa Fe Sport 4WD (automatic transmission; 2.4 liter engine)
2013 Tucson 2WD (automatic transmission; 2.0 liter engine)
2013 Tucson 2WD (automatic transmission; 2.4 liter engine)
2013 Tucson 2WD (manual transmission; 2.0 liter engine)
2013 Tucson 4WD (automatic transmission; 2.4 liter engine)
2013 Veloster Turbo (automatic transmission; 1.6 liter engine)
2013 Veloster (automatic transmission; 1.6 liter engine)
2013 Veloster (manual transmission; 1.6 liter engine)

KIA VEHICLES

2013 Model Year

2013 Rio 2WD (automatic transmission; 1.6 liter engine)
2013 Rio 2WD (manual transmission; 1.6 liter engine)
2013 Rio 2WD (automatic (Eco) transmission; 1.6 liter engine)
2013 Sorento 2WD (automatic transmission; 2.4 liter engine (GDI))
2013 Sorento 4WD (automatic transmission; 2.4 liter engine (GDI))
2013 Soul 2WD (automatic transmission; 1.6 liter engine)
2013 Soul 2WD (manual transmission; 1.6 liter engine)
2013 Soul 2WD (automatic transmission; 2.0 liter engine)
2013 Soul 2WD (manual transmission; 2.0 liter engine)
2013 Soul ECO 2WD (automatic transmission; 1.6 liter engine)
2013 Soul ECO 2WD (automatic transmission; 2.0 liter engine)
2013 Sportage 2WD (automatic transmission; 2.0 liter engine)
2013 Sportage 2WD (automatic transmission; 2.4 liter engine)
2013 Sportage 2WD (manual transmission; 2.4 liter engine)
2013 Sportage 4WD (automatic transmission; 2.0 liter engine)
2013 Sportage 4WD (automatic transmission; 2.4 liter engine)
2013 Sportage 4WD (manual transmission; 2.4 liter engine)

2012 Model Year

2012 Rio 2WD (automatic transmission; 1.6 liter engine)
2012 Rio 2WD (manual transmission; 1.6 liter engine)
2012 Sorento 2WD (automatic transmission; 2.4 liter engine (GDI))
2012 Sorento 4WD (automatic transmission; 2.4 liter engine (GDI))

