

1 CARLOS M. LAZATIN (S.B. #229650)  
clazatin@omm.com  
2 MICHAEL REYNOLDS (S.B. #270962)  
mreynolds@omm.com  
3 O'MELVENY & MYERS LLP  
400 South Hope Street  
4 Los Angeles, California 90071-2899  
Telephone: (213) 430-6000  
5 Facsimile: (213) 430-6407

6 Attorneys for Defendant  
HYUNDAI MOTOR AMERICA  
7

8 **UNITED STATES DISTRICT COURT**  
9 **CENTRAL DISTRICT OF CALIFORNIA**  
10 **SOUTHERN DIVISION**

11  
12 BILLY GLENN, KATHY  
WARBURTON, KIM FAMA, and  
13 CORINNE KANE, on behalf of  
themselves and all others similarly  
14 situated,

15 Plaintiffs,

16 v.

17 HYUNDAI MOTOR AMERICA and  
HYUNDAI MOTOR COMPANY,  
18

19 Defendants.  
20  
21  
22  
23  
24  
25  
26  
27  
28

Case No. 8:15-CV-02052-DOC-KES

**CLASS ACTION**

**NOTICE OF MOTION AND  
MOTION TO DISMISS AND/OR  
STRIKE ALLEGATIONS IN  
FIRST AMENDED COMPLAINT**

**JURY TRIAL DEMANDED**

Concurrently filed/lodged with  
[Proposed] Order

Hearing Date: May 23, 2016  
Time: 8:30 a.m.  
Courtroom: 9D  
Judge: Hon. David O. Carter

1 TO ALL PARTIES AND THEIR COUNSEL OF RECORD:

2 PLEASE TAKE NOTICE THAT on May 23, 2016, at 8:30 a.m., or as soon  
3 thereafter as the matter may be heard, in Courtroom 9D of the above-captioned  
4 Court, located at 411 West Fourth Street, Santa Ana, California 92701, Defendant  
5 Hyundai Motor America (“Hyundai”) will move this Court for an order dismissing  
6 and/or striking Plaintiff’s First Amended Complaint (“FAC”), Docket No. 38,  
7 pursuant to Federal Rules of Civil Procedure 12(b)(6) and 26(f).

8 Specifically, Defendant seeks an order:

9 (1) dismissing Plaintiffs’ First and Second Causes of Action, brought under  
10 the California Unfair Competition Law and Consumer Legal Remedies Act,  
11 because Plaintiffs’ claims are all governed by the laws of other states;

12 (2) dismissing Plaintiffs’ First, Second, Third, and Fourth Causes of Action  
13 because they are all grounded in an alleged fraudulent omission but fail to meet the  
14 pleading standards of Rule 8 and Rule 9(b);

15 (3) dismissing Plaintiff Billy Glenn’s Third Cause of Action, brought under  
16 the Alabama Deceptive Trade Practices Act (“Alabama DTPA”), because he  
17 waived his rights under that statute by electing to pursue common law remedies and  
18 because the Alabama DTPA does not recognize claims for fraudulent omission;

19 (4) dismissing Plaintiff Kim Fama’s Third Cause of Action, brought under  
20 the New Hampshire Consumer Protection Act, because she cannot bring a claim  
21 under that statute based on a fraudulent omission;

22 (5) dismissing Plaintiffs’ Fourth Cause of Action, for unjust enrichment,  
23 because the parties’ dispute is governed by an express warranty that neither party  
24 disputes is valid and enforceable and because unjust enrichment is not an  
25 independent cause of action under California, Texas, or New Hampshire law;

26 (6) dismissing Plaintiff Glenn’s Fifth Cause of Action, brought under the  
27 Magnuson-Moss Warranty Act (“MMWA”), because he fails to allege he complied  
28 with the MMWA’s requirement that he exhaust the informal dispute resolution

1 process provided in his written warranty;

2 (7) dismissing or striking Plaintiffs’ class allegations because Plaintiffs lack  
3 standing to represent purchasers or lessees of vehicles they did not purchase  
4 themselves; and

5 (8) dismissing or striking Plaintiffs’ request for an injunction forcing a recall  
6 of the Class Vehicles because such relief should be subject to the primary  
7 jurisdiction of the National Highway Traffic Safety Administration’s (“NHTSA”)  
8 investigation regarding panoramic sunroofs and is preempted by NHTSA’s  
9 authority to order and administer recalls under the Safety Act, *see Crosby v. Nat’l*  
10 *Foreign Trade Council*, 530 U.S. 363, 372–73 (2000).

11 This Motion is made following the conference of counsel pursuant to Local  
12 Rule 7-3 which took place on March 17, 2016.

13 This Motion is based on this Notice of Motion and Motion, the concurrently  
14 filed Memorandum of Points and Authorities, Appendix of Variations in State Law,  
15 Request for Judicial Notice, Declaration of Michael Reynolds, and all other  
16 pleadings, papers, and evidence on file in this matter, any matters properly subject  
17 to judicial notice, and such other matters or argument as may be provided on or  
18 before the hearing hereof.

19 Dated: March 24, 2016

CARLOS M. LAZATIN  
MICHAEL REYNOLDS  
O’MELVENY & MYERS LLP

22 By: /s/ Carlos M. Lazatin  
23 CARLOS M. LAZATIN

24 Attorneys for Defendant  
25 HYUNDAI MOTOR AMERICA

26  
27  
28