

PE05-035
HYUNDAI
8/26/2005
REQUEST NO. 4
PART 6 OF 6

**SUMMONS
(CITACION JUDICIAL)**

SUM-100

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)

**NOTICE TO DEFENDANT:
(AVISO AL DEMANDADO):**

**KIA MOTORS AMERICA, INC. aka
KIA MOTORS COMPANY; WEST VALLEY KIA;
and DOES 1 to 20, Inclusive,**

**YOU ARE BEING SUED BY PLAINTIFF:
(LO ESTÁ DEMANDANDO EL DEMANDANTE):**

**21ST CENTURY INSURANCE COMPANY,
As Subrogee of [REDACTED]**

DEC - 3 2004

1:40 UT

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.courtinfo.ca.gov/selfhelp/espanol/), en la biblioteca de leyes de su condado o en la corte que le queda más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.courtinfo.ca.gov/selfhelp/espanol/) o poniéndose en contacto con la corte o el colegio de abogados locales.

The name and address of the court is:
(El nombre y dirección de la corte es):

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
LOS ANGELES COUNTY - VAN NUYS
6230 SYLMAR AVENUE
VAN NUYS, CA 91401**

CASE NUMBER:
(Número del Caso):

04509957

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:

(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):

**LAW OFFICES OF FRED M. CHARNESSE
6700 FALLBROOK AVENUE, SUITE 192
WEST HILLS, CA 91307-3530
(818) 999-5609; (818) 999-5985 - Fax**

**FRED M. CHARNESSE, ESQ. SB#44961
LEIGH E. CHARNESSE, ESQ. SB#185567**

Our File Number: Y-5087

DATE:

(Fecha)

JOHN A. CLARKE

Clerk, by
(Secretario)

Deputy
(Adjunto)

ANGELICA SANCHEZ

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)

(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).

NOTICE TO THE PERSON SERVED: You are served

1. ☐ as an individual defendant.
2. ☐ as the person sued under the fictitious name of (specify):

3. ☒ on behalf of (specify): **Kia Motors America, Inc.**
under: ☒ CCP 418.10 (corporation) ☐ CCP 418.80 (minor)
☒ CCP 418.20 (defunct corporation) ☐ CCP 418.70 (conservatee)
☐ CCP 418.40 (association or partnership) ☐ CCP 418.90 (authorized person)
☐ other (specify):

4. ☐ by personal delivery on (date):

Page 1 of 1

1 **LAW OFFICE OF
FRED M. CHARNES**

2 **6700 Fallbrook Ave., Suite 192**

3 **West Hills, CA 91307**

4 **(818) 999-5609**

5 **By: Fred M. Charness**

6 **State Bar No. 44961**

7 **Attorneys for Plaintiff**

8 [REDACTED]

9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
10 **FOR THE COUNTY OF LOS ANGELES - CHATSWORTH COURT**
11 **LIMITED JURISDICTION**

12 [REDACTED]

CASE NO.

13 Plaintiff,

14 Vs.

15 **COMPLAINT FOR DAMAGES:**
16 **1. STRICT PRODUCTS LIABILITY;**
17 **2. BREACH OF WARRANTY;**
18 **3. NEGLIGENCE;**

19 KIA MOTORS AMERICA, INC. aka
20 KIA MOTORS COMPANY; WEST
21 VALLEY KIA; and DOES 1 to 20,
22 Inclusive.

23 **AMOUNT OF PRAYER EXCEEDS**
24 **\$10,000.00**

25 Defendant(s).

26 COMES NOW the Plaintiff, 21st CENTURY INSURANCE COMPANY, and
27 alleges as follows:

28 STATEMENT OF FACTS

(Applicable to All Causes of Action)

1. Plaintiff, 21st CENTURY INSURANCE COMPANY, is, and at

1 all times herein mentioned was, a corporation duly authorized to
2 transact an insurance business under and by virtue of the laws of
3 the State of California, and at all times herein mentioned did
4 insure [REDACTED] under policy insurance
5 providing, among other things, Comprehensive coverage pursuant to
6 policy No.: AP1833524-04, for a 2003 Kia Sedona EX, VIN No.
7 KNDUP131036 [REDACTED]
8

9 2. Defendant, KIA MOTORS AMERICA INC. aka KIA MOTORS
10 COMPANY, is, and at all times herein mentioned was, a duly
11 organized Corporation authorized to do business within the State
12 of California, with its principal place of business located at
13 9801 Muirlands Blvd., P.O. Box 52410, Irvine, California, 92619,
14 and believed to have placed a certain Kia Sedona EX automobile
15 (hereinafter the "Product") into the stream of commerce.
16

17 3. Defendant, WEST VALLEY KIA, is, and at all times herein
18 mentioned was, a duly organized Corporation authorized to do
19 business within the State of California, with its principal place
20 of business located at 21535-A Roscoe Blvd., Canoga Park,
21 California, 91304, and believed to have placed a certain Kia
22 Sedona EX automobile (hereinafter the "Product") into the stream
23 of commerce.
24

25 4. The true names and capacities of Defendants sued herein
26 as DOES 1 through 20, inclusive, are unknown to Plaintiff who
27 therefore sues said Defendants by such fictitious names.
28

1 Plaintiff will amend this complaint to show such true names and
2 capacities when they have been ascertained. Reference herein to
3 specifically-named Defendants shall be deemed to also refer to and
4 include said fictitiously-named Defendants.
5

6 5. Plaintiff is informed and believes that in doing the
7 acts alleged herein, the Defendants, and each of them, were acting
8 on behalf of each of the remaining Defendants and were acting
9 within the course and scope of his/her/it's agency, employment
10 and/or representative capacity. Plaintiff is informed and
11 believes that each of the Defendants affirmed, ratified, condoned,
12 and/or participated in all of the acts of the remaining Defendants
13 and in the acts of their agents, employees, and/or representatives
14 as alleged herein.
15

16 6. At all times herein mentioned, Plaintiff provided
17 insurance coverage to its insured(s), [REDACTED]
18 [REDACTED], as herein alleged pursuant to an automobile policy
19 which among other things provided Comprehensive Coverage for
20 fire loss and damage, subject to a \$500.00 deductible which
21 Plaintiff's insured assigned to Plaintiff for collection herein.
22 Plaintiff's insurance policy contains a right of subrogation for
23 all sums paid to its insured pursuant to the obligations imposed
24 by said policy.
25

26 7. At all times herein mentioned, Defendants, and each of
27 them, represented and warranted that their Product was of good
28

1 quality build and covered by an industry leading ten (60) month
2 and/or 60,000 mile warranty. At all times herein mentioned,
3 Plaintiff's insured's vehicle was a 7 month old 2003 Kia Sedona
4 with approximately 11,000 miles.

5
6 8. On or about October 16, 2003, while Plaintiff's
7 insured was driving said Kia Sedona, the insured noticed smoke
8 coming into the cabin of the vehicle from under the dash. The
9 insured pulled the vehicle over, stopped the engine, removed the
10 key and exited the vehicle. A severe passenger compartment fire
11 resulted in the total loss of the vehicle. The fire resulted
12 from the defective insulation of the wiring harness of the
13 vehicle which came into contact with the vehicle body and
14 resulted in the short circuiting of the electrical system. Said
15 insured vehicle was being operated in a careful, prudent,
16 customary and foreseeable manner, and said failure of the wiring
17 harness thereby proximately caused the damages herein alleged in
18 the sum of \$21,375.33, as damages and loss of use to the
19 insured's vehicle, the sum of which includes the insured
20 deductible.

21
22 **FIRST CAUSE OF ACTION**

23 **Strict Products Liability**

24 **Against all Defendants**

25 9. Plaintiff re-alleges and refers to the allegations
26 contained in Paragraphs 1 through 8 above of this complaint and
27 incorporates said allegations herein by reference.
28

1
2 10. Defendants, KIA MOTORS AMERICA INC. aka KIA MOTORS
3 COMPANY, WEST VALLEY KIA and DOES 1 to 20 , Inclusive, designed,
4 manufactured, assembled, inspected, marketed and advertised for
5 sale, placed within the stream of commerce, and warranted the
6 Product.

7
8 11. At all times herein mentioned, Defendants, and each of
9 them, knew that the Product would be purchased and used by
10 members of the public without inspection for defects or hazards.

11
12 12. On or about March 23, 2003, Plaintiff's insured
13 purchased the Product from Defendants. The insured brought the
14 vehicle in for service at Defendant authorized dealer on
15 multiple occasions complaining of an electrical burning smell.
16 The insured last brought the vehicle/Product to the Defendants
17 for a normal service and identified the electrical burning smell
18 on October 2, 2003. The insured was repeatedly advised that the
19 burning smell was normal and just a coating applied for
20 transportation - Plaintiff's insured believed and trusted
21 Defendants representations. On March 16, 2003 the
22 vehicle/Product was being used in the manner in which it was
23 reasonably intended, to wit: Plaintiff's insured was simply
24 driving near the intersection of [REDACTED]
25 [REDACTED] California, when a fire suddenly erupted within the cabin
26 compartment of the Product. The Product reached Plaintiff's
27 insured without substantial change in its condition from the
28

1 time it left the custody and control of the defendants.

2 13. At the time Plaintiff's insured was using said Product
3 as herein alleged, said Product was defective and unsafe for its
4 intended purpose and use in that it was designed, manufactured,
5 and assembled in such a way as to operate and/or fail to operate
6 in a manner that a reasonable consumer would have anticipated,
7 such that the defects within the wiring harness were latent and
8 not readily observable to a lay person, and further, Defendants
9 failed to inspect for defects in materials and workmanship
10 despite repeated warnings by the insured. Plaintiff's insured
11 was reassured by Defendant's authorized agent/dealer that the
12 electrical burning smell was normal and was nothing more than a
13 coating applied to the vehicle for transport; such failures and
14 defects constituted latent defects which could not be seen by a
15 reasonable consumer and would not have been anticipated by
16 Plaintiff's insured. The Product was defective and dangerous
17 and thereby proximately caused the loss and resulting damages
18 herein alleged in the amount of \$21,375.33.

19
20 14. As a proximate result of the defective and dangerous
21 condition of the Product as herein alleged, Plaintiff's
22 insured's Kia Sedona EX was damaged and Plaintiff's insured
23 sustained costs and expenses reimbursable in the amount of
24 \$21,375.33 which Plaintiff was required to pay to its insured
25 pursuant to said policy of insurance, and which sum was in fact
26 paid, minus the insured's assigned deductible.

1 15. Plaintiff has demanded of the Defendants, and each of
2 them, payment of the above-described damages, but no part
3 thereof has been paid.

4
5 **SECOND CAUSE OF ACTION**

6 **Breach of Warranty**

7 **Against all Defendants**

8 16. Plaintiff re-alleges and refers to the allegations
9 contained in Paragraphs 1 through 15 above of this complaint and
10 incorporates said allegations herein by reference.

11
12 17. Defendants and each of them, knew that the product
13 would be purchased and used without inspection for defects; the
14 Defendants implied, represented and warranted that the product
15 was in fact safe and fit for use by members of the general
16 public, the product was in fact defective when it left the
17 control of Defendants; the product was being used in a manner
18 intended by Defendants and reasonably foreseeable by Defendants
19 as involving a substantial danger not readily apparent to the
20 public and Plaintiff's insured; adequate warnings of the danger
21 were not given to Plaintiff's insured who was the purchaser and
22 user of said product.

23
24 18. The product was defective and dangerous in that it had
25 a latent defect(s) in the vehicle wiring harness that passed
26 through the engine compartment through the fire wall and into
27 the passenger compartment which constituted the manufacture and
28

1 assembly of said Product which was not readily discoverable and
2 rendered the product not fit for its intended use by members of
3 the public.

4
5 19. As a direct and proximate result of the failure of the
6 product to perform in the manner implied, represented and
7 warranted, Plaintiff sustained damaged as herein alleged, when
8 Plaintiff was required to make payment pursuant to the insurance
9 policy for the total loss damage to the insureds vehicle caused
10 by a fire resulting from the defective wiring harness short
11 circuiting.

12
13 **THIRD CAUSE OF ACTION**

14 **Negligence**

15 **Against all Defendants**

16 20. Plaintiff re-alleges and refers to the allegations
17 contained in Paragraphs 1 through 19 above of this complaint and
18 incorporates said allegations herein by reference.

19
20 21. Defendants, and each of them, owed Plaintiff's insureds
21 a duty to maintain, inspect, control, supervise, warn, design,
22 assemble, and manufacture said Product, for sale to the public, so
23 as not to subject Plaintiff's insureds to an unreasonable risk of
24 harm, injury or damage by allowing or creating a dangerous
25 condition within the product.

26
27 22. Defendants, and each of them, breached said duty by
28

1 their failure to take reasonable precautions in the design,
2 manufacture and assembly of the Product to proper industry
3 standards with regard to the electrical wiring harness, and to
4 make reasonable inspections and recommendations for replacement
5 of the electrical components when the purchaser complains of the
6 smell of electrical burning, so as to ascertain, discover and
7 remedy said defective and/or dangerous conditions under their
8 control, and to take meaningful measures to remedy, repair, or
9 adequately warn Plaintiff's insureds of said defects and/or
10 dangerous conditions of the electrical wiring harness prior to
11 the loss herein described. The failure of Defendants to
12 adequately warn of the potential catastrophic consequences of a
13 failure to inspect, repair and/or replace the electrical wiring
14 harness is a proximate cause of the loss herein.

15
16 23. Defendants, and each of them, were the proximate cause
17 of the damage to Plaintiff as herein alleged in the sum of
18 \$21,375.33.

19
20 WHEREFORE, Plaintiff prays for judgment against the
21 Defendants, and each of them, for:

- 22 1. Property Damage and Loss of Use in the sum of
- 23 \$21,375.33;
- 24 2. Costs of suit incurred herein;
- 25 3. Interest from the date of loss, pursuant to Civil Code
- 26 Section 3287 & 3291;
- 27 4. Such other and further relief as the Court may deem
- 28

just and proper.

DATED: November 4, 2004

By: 

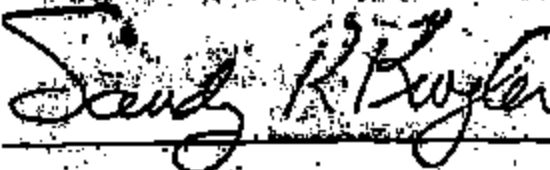
FRED M. CHARNESSE
Attorney for Plaintiff
21st Century Insurance
Company

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES**

PLAINTIFF(S)/PETITIONER(S) DEFENDANT(S)/RESPONDENT(S)	CASE NUMBER	FILE STAMP
	NOTICE OF CASE ASSIGNMENT	

TO THE PLAINTIFF(S) AND THE ATTORNEY OF RECORD:

**YOU ARE HEREBY NOTIFIED THAT THE ABOVE MATTER HAS BEEN ASSIGNED FOR ALL PURPOSES,
INCLUDING TRIAL, TO JUDGE JAMES A. KADDO, PRESIDING IN DEPARTMENT NWL, IN THE SUPERIOR COURT,
LOCATED AT 8230 SYLMAR AVENUE, VAN NUYS, CA 91401**



JUDGE SANDY R. KRIEGLER

Hon. Sandy Kriegl, Supervising Judge

CERTIFICATE OF SERVICE

I am not a party to the within action, and I certify that I personally served a true copy of the above notice to the plaintiff or his attorney of record by delivering the copy to the designated representative/attorney service at the time of filing of the original complaint.

I am not a party to the within action, and I certify that I personally served a true copy of the above notice to the plaintiff or his attorney of record by delivering the copy in person this date to counsel for plaintiff or plaintiff in pro per.

**A CORPORATION MUST BE
REPRESENTED BY A LICENSED
CALIFORNIA ATTORNEY**

**JOHN A. CLARKE, Executive Officer/Clerk
of the Superior Court, County of Los Angeles**

By:  Deputy

R.S. Karapetyan

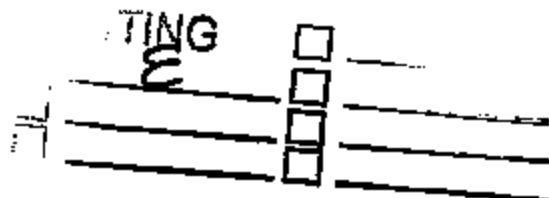
Service of Process Transmittal Form

Los Angeles, California

12/06/2004

Via Federal Express (Overnight)

TO: Mark Goldzweig
Kia Motors America, Inc.
9801 Mulholland Boulevard
Irvine, CA 92718-2521



RE: PROCESS SERVED IN CALIFORNIA

FOR KIA MOTORS AMERICA, INC. Domestic State: Ca

ENCLOSED ARE COPIES OF LEGAL PROCESS RECEIVED BY THE STATUTORY AGENT OF THE ABOVE COMPANY AS FOLLOWS:

1. TITLE OF ACTION: [REDACTED] etc., vs Kia Motors America, Inc., etc., et al

2. DOCUMENT(S) SERVED: Summons, Complaint, Notice of Case Assignment

3. COURT: Superior Court of California, County of Los Angeles
Case Number 04E08957

4. NATURE OF ACTION: Complaint for alleged breach of warranties.

5. ON WHOM PROCESS WAS SERVED: CT Corporation System, Los Angeles, California

6. DATE AND HOUR OF SERVICE: By Process server on 12/03/2004 at 13:40

7. APPEARANCE OR ANSWER DUE: Within 30 days

8. ATTORNEY(S): Law Offices of Fred M. Charness
818-999-5809
6700 Fallbrook Ave.
Suite 182
West Hills, CA 91307

9. REMARKS: i-Note sent 12/06/2004 to TCUNEO@KIAUSA.COM-Note sent 12/06/2004 to
MGOLDZWEIG@KIAUSA.COM

CC: Tania Cuneo Legal Executive Assistant
Kia Motors America, Inc.
PO Box 52410
Irvine, CA 92618-2410

SIGNED CT Corporation System
PER Jara J. Keprios /MV
ADDRESS 818 West Seventh Street
Los Angeles, CA 90017
SOP WS 0008819711

1 Anthony E. Sonnett (SBN 163182)
Jocelyn A. Julian (SBN 173225)
2 SONNETT & ASSOCIATES
3 333 South Grand Avenue, Suite 3550
Los Angeles, CA 90071
4 T: (213) 628-2200
F: (213) 628-2221

5 Attorneys for Defendant
KIA MOTORS AMERICA, INC.
6

ORIGINAL FILED
Los Angeles Superior Court

FEB 02 2005

John A. Clarke, Clerk
By Kimberly Platten, Deputy

7
8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **COUNTY OF LOS ANGELES - VAN NUYS COURTHOUSE**
10

11 [REDACTED]
12 **COMPANY**
13 [REDACTED]

14 **Plaintiff,**

15 **v.**

16 **KIA MOTORS AMERICA, INC. aka KIA**
MOTORS COMPANY; WEST VALLEY
KIA; and DOES 1 through 20, inclusive,

17 **Defendants.**
18

CASE NO. 04EC0957

Complaint Filed: December 3, 2004

DEFENDANT KIA MOTORS AMERICA,
INC.'S ANSWER TO PLAINTIFF'S
COMPLAINT FOR DAMAGES AND
DEMAND FOR A JURY TRIAL

Hon. James A. Kaddo
Dept. NWI

19 **TO ALL PARTIES AND TO THEIR ATTORNEYS OF RECORD:**

20 **COMES NOW Defendant KIA MOTORS AMERICA, INC. ("Kia"), for itself alone and**
21 **for no other defendant or cross-defendant, and for its Answer to plaintiff's Complaint on file**
22 **herein alleges as follows:**

23 **1. Kia denies each and every, all and singular, generally and specifically, allegation**
24 **contained in the Complaint and each cause of action thereof; denies that Kia is liable under the**
25 **theories or in the manner set forth in the Complaint, or at all; and denies that plaintiff was**
26 **damaged as a result of the alleged conduct of Kia as set forth in the Complaint and each cause of**
27 **action thereof, or at all.**

28 **///**

1 AS A FIRST SEPARATE AFFIRMATIVE DEFENSE

2 2. Kia alleges that the Complaint, in whole or in part, fails to state a claim upon
3 which relief can be granted.

4 AS A SECOND SEPARATE AFFIRMATIVE DEFENSE

5 3. Kia alleges that any damages which plaintiff may have sustained, as set forth in
6 the Complaint herein and which resulted in the damages as therein alleged, were caused in whole
7 or in part by the contributory negligence and/or culpable conduct of the plaintiff or its insured, or
8 their failure to exercise the care ordinarily exercised by a prudent person, and not as a result of
9 any negligence, culpable conduct, or breach of warranty on the part of Kia, and that such
10 negligence and/or culpable conduct bars and/or diminishes plaintiff's recovery.

11 AS A THIRD SEPARATE AFFIRMATIVE DEFENSE

12 4. Kia alleges that plaintiff's injuries and damages, if any, were caused or
13 contributed to by the negligence or fault of other individuals, firms, corporations, or entities over
14 whom Kia has or had no control or right of control, and for whom it is not responsible, and that
15 plaintiff's recovery, if any, should therefore be diminished or barred in accordance with law.

16 AS A FOURTH SEPARATE AFFIRMATIVE DEFENSE

17 5. Kia alleges that any recovery or settlement plaintiff may obtain from such other
18 individuals, firms, corporations, or entities over whom Kia has or had no control or right of
19 control must reduce or bar altogether any recovery or judgment which plaintiff might obtain from
20 Kia.

21 AS A FIFTH SEPARATE AFFIRMATIVE DEFENSE

22 6. Kia alleges that plaintiff's claims are barred by any release and/or releases
23 executed by plaintiff and individuals, firms, corporations, or entities other than Kia.

24 AS A SIXTH SEPARATE AFFIRMATIVE DEFENSE

25 7. Kia alleges that any damages sustained by plaintiff were the result of the
26 unreasonable, unforeseeable, and inappropriate misuse and/or abuse of the subject vehicle by the
27 plaintiff or plaintiff's insured.

28 ///

AS A SEVENTH SEPARATE AFFIRMATIVE DEFENSE

8. Kia alleges that plaintiff or plaintiff's insured failed to comply with the written and oral instructions relating to use of the subject vehicle and this failure caused or contributed to the alleged damages, if any.

AS AN EIGHTH SEPARATE AFFIRMATIVE DEFENSE

9. Kia alleges that plaintiff's damages, if any, were caused by alteration or modification of the subject vehicle which is the subject of this lawsuit.

AS A NINTH SEPARATE AFFIRMATIVE DEFENSE

10. Kia alleges that plaintiff's damages, if any, were caused or contributed to by the misuse or abuse of and/or the failure to properly maintain and/or repair the product which is the subject of this lawsuit.

AS A TENTH SEPARATE AFFIRMATIVE DEFENSE

11. Kia alleges that plaintiff's claims and/or causes of action are barred, in whole or in part, by the doctrine of preemption.

AS AN ELEVENTH SEPARATE AFFIRMATIVE DEFENSE

12. Kia alleges that plaintiff's claims and/or causes of action are barred, in whole or in part, by waiver, estoppel, and/or laches.

AS A TWELFTH SEPARATE AFFIRMATIVE DEFENSE

13. Kia alleges that plaintiff's causes of action in the complaint against this defendant are barred by the applicable statute of limitations.

AS A THIRTEENTH SEPARATE AFFIRMATIVE DEFENSE

14. Kia alleges that plaintiff has failed to join a party or parties necessary and indispensable to this action.

AS A FOURTEENTH SEPARATE AFFIRMATIVE DEFENSE

15. Kia alleges that plaintiff's claims and/or causes of action, in whole or in part, are uncertain, ambiguous, and unintelligible.

AS A FIFTEENTH SEPARATE AFFIRMATIVE DEFENSE

16. Kia alleges that it may have additional defenses or claims available to it of which

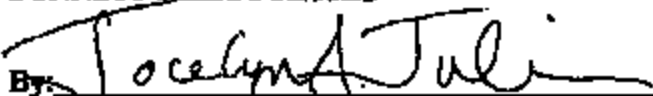
1 it is not now aware. Kia reserves the right to assert additional defenses or cross-claims,
2 counterclaims, or third-party claims as may be revealed to be appropriate through discovery or
3 otherwise.

4 WHEREFORE, KIA MOTORS AMERICA, INC. prays that nothing be taken by the
5 Complaint, for costs, and for all other relief as the Court may deem proper.

6 KIA MOTORS AMERICA, INC. HEREBY DEMANDS A TRIAL BY JURY.

7
8 DATED: February L, 2005

SONNETT & ASSOCIATES

9 By: 

10 Anthony E. Sonnett
11 Jocelyn A. Julian
12 Attorneys for Defendant
13 KIA MOTORS AMERICA, INC.
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PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I, *Elizabeth K. Aquino*, certify that I am over the age of 18 years and not a party to the within action; that my business address is 333 South Grand Avenue, Suite 3550 Floor Los Angeles, California 90071 (213) 628-2200; and that on this date, February 2, 2005, I served a true copy of the foregoing document(s) entitled: **DEFENDANT KIA MOTORS AMERICA, INC.'S ANSWER TO PLAINTIFF'S COMPLAINT FOR DAMAGES AND DEMAND FOR JURY TRIAL** to all parties in this action by placing a copy thereof in a sealed envelope addressed as follows:

SEE ATTACHED SERVICE LIST

_____ (By Overnight Courier) I caused each envelope to be sent by Federal Express

XXXX (By Mail) I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under practice, it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid at Los Angeles, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

_____ (By Hand) I caused each envelope to be delivered by hand to the offices listed above.

_____ (By Telecopy) I caused each document to be sent by Automatic Telecopier to the number shown on the attached service list.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on February 2, 2005 at Los Angeles, California.



Elizabeth K. Aquino

SERVICE LIST

[REDACTED] v. Kia Motors America, Inc.
Los Angeles County Superior Court- Van Nuys Courthouse, Case No. 04E08957

Fred M. Charness, Esq.
LAW OFFICE OF FRED M. CHARNES
6700 Fallbrook Avenue, Suite 192
West Hills, CA 91307

Attorney for Plaintiff
[REDACTED]
[REDACTED]
T [REDACTED]
F [REDACTED]

Diaz, Efrain

From: Tony Sonnett [TonySonnett@asonnettlaw.com]
Sent: Thursday, July 07, 2005 5:19 PM
To: fcharness@calsubrogation.com
Subject: [REDACTED] v. Kia

Dear Leigh,

Please permit this to provide a brief description of my client's analysis of the November 14, 2003 report of your expert William O. Hagerty on the cause and origin of the October 16, 2003 fire involving the 2003 Kia Sedona owned by the insured, Criselda Roa. As you know, this e-mail is a communication in furtherance of settlement efforts and no part hereof shall be admissible as evidence. The contents of this communication shall be excluded from evidence pursuant to Evidence Code Section 1162. If you do not so agree, please delete this e-mail without reading further.

ANALYSIS OF HAGERTY REPORT

Mr. Hagerty attributes the cause of the fire to the following:

"A main Kia wiring harness under the left side of the dashboard rubbed against the steel body of the car until the plastic wiring insulation was worn away. Eventually, the copper core inside the wires short circuited against the steel body panel . . ."

We agree with Mr. Hagerty as to the "hot spot" of the fire; that is, we agree that the area of origination of the fire was on the left side of driver's footwell area, under the left side of the dashboard. We would also be inclined to agree with Mr. Hagerty's conclusion that the fire was caused by the rubbing away of plastic insulation covering wires of a main wiring harness, leading to a short circuit of the wires. Where we diverge in opinion is with Mr. Hagerty's conclusion that the fire was the result of "the failure of the Kia manufacturing personnel to insure that a main wiring harness would not rub on a sharp piece of body panel." (Hagerty report at page 3-4.) There is simply no evidence to support that conclusion and substantial evidence to refute it, as set forth in detail below.

What we observed, and what is apparent from the photographs which accompany Mr. Hagerty's report, is that the aftermarket components, including, but not limited to the DVD player installed under the driver's seat (see Hagerty photo # 42), were powered by a wire or wires running into a main wiring harness of the vehicle. The main wiring harness from which power for these components was drawn runs to a point under the left side of the dashboard; that is, the wiring harness which powered the aftermarket components ultimately runs to the area of the origination of this fire.

Hagerty photos # 39 and #40 show wires for the DVD player and monitor (indeed unburned), which were run beneath the carpet of the driver's footwell. The wire providing power for those components was threaded behind the steel body panel on the left side of the footwell for connection up to a main wiring harness in the area of the origination of this fire. It was in the connection of these wires to a main wiring harness that the installer would of necessity have had to manipulate the wiring harness, apparently changing its position from one well protected from inadvertent contact with steel body panels to a position, as Hagerty states, "where it rubbed against the body." Given the location and placement of the wiring harness, it would be simply impossible for the installer to have accessed power for the components without having shifted the wire bundle from its original position.

These aftermarket installed by the insured at Noble Mobile Electronics, a vendor of the insured's own choosing, and not by and Kia dealer. As previously reported, we strongly believe that responsibility for the cause of this fire rests with the aftermarket component installer. The fact that the point of origin is not where the audio or video signal wires are connected to the components, or on the component side of the installation, but rather in the area where the installer chose to access power from the main wiring harness is entirely consistent with our cause and origin analysis.

Should you have any questions regarding this analysis, please do not hesitate to contact me.

Anthony Sonnett
 Sonnett & Associates

7/8/2005

333 South Grand Ave.
Suite 3550
Los Angeles, CA 90071
Phone: (213) 628-2200
Fax: (213) 628-2221
E-mail: asonnett@asonnettlaw.com

WARNING: This e-mail is covered by the Electronic Communications Privacy Act, 18 U.S.C. 2510-2521 and is legally privileged. It contains information from the law firm of Sonnett & Associates, P.C., which may be privileged, confidential and exempt from disclosure under applicable law. Dissemination or copying of this by anyone other than the addressee or the addressee's agent is strictly prohibited. If this electronic transmission is received in error, please notify Sonnett & Associates, P.C. immediately at (213) 628-2200. Thank you.

7/8/2005

SONNETT & ASSOCIATES

A PROFESSIONAL CORPORATION

333 SOUTH GRAND AVENUE, 35TH FLOOR
LOS ANGELES, CALIFORNIA 90071
TELEPHONE 213 628 2200
FACSIMILE 213 628 2221

Sender's e-mail:
jjulian@sonnettlaw.com

June 28, 2005

Mr. Efrain Diaz
Kia Motors America, Inc.
9801 Muirlands Blvd.
Irvine, California 92618-2521

JUN 29 2005

Re: [REDACTED] v. KIA MOTORS AMERICA, INC.
Los Angeles Superior Court, Case No: 04E08957

Dear Efrain:

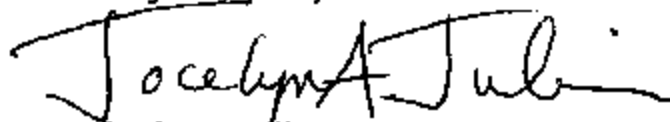
Enclosed are color copies of the vehicle photos given to us by plaintiff's counsel, along with a copy of William Hagerty's November 14, 2003 report.

We have asked plaintiff's counsel to provide us with additional copies of the photographs that were overlapping at the time that they were copied, specifically, photographs nos. 24-25, 27-29, 31-33, 37-38, and 44-45.

It is unclear from Hagerty's report whether he contends that the fire originated in the area depicted by photographs nos. 46-49 or the area depicted in photographs nos. 51-53. In any event, we should confirm whether the wiring in these areas differs from that in an exemplar vehicle.

If you have any questions or comments, please call me or Tony.

Very truly yours,



Jocelyn A. Julian
JAJ/

Enclosures

DF
STEVE ALEXANDER

NOV 19 2003

William O. Hagerty
California Private Investigator #21488
DBA Gemini Consulting, Inc
1835A - #511 Center City parkway
Escondido, CA 92025
(619) 981-8840 cell

November 14, 2003

[REDACTED]
Woodland Hills, CA [REDACTED]

Dear Mr. [REDACTED]

Re: Insured: [REDACTED]
Claim No: [REDACTED]
Gemini Case #: 031103

OVERVIEW

The insured purchased this vehicle new in March 2003. The vehicle came with a 60 month/60,000 mile warranty (see enclosure (1)).

From the time the vehicle was purchased, the insured noticed a burning, electrical smell. He complained about this smell to West Valley Kia on two occasions. The last complaint he made was during the visit for a 10,000-mile service on 10/2/03. Both times, he was told not to worry about it. The service writer told the insured that what he smelled was a "chemical preservative to prevent corrosion during ocean shipping, which is melting off the engine". The insured's complaint was not noted on the service order (see enclosure 2).

The insured also states that on some occasions, the power window switches would intermittently not operate the windows.

On July 19, 2003, the insured had aftermarket audio and video equipment installed.

On October 16, 2003, [REDACTED] had been driving his vehicle for approximately 5 minutes. She turned on the air conditioning. She then

Immediately she saw smoke from under the left side of the dashboard. She pulled the vehicle into the Wall Mart parking lot where Wall Mart employees extinguished the fire with chemical extinguishers. [REDACTED] says that during the fire, although she was out of the vehicle and had the ignition key in her hand, the windshield wipers began operating, the headlights began flashing and the engine starter motor turned over the engine.

ASSIGNMENT

Gemini Consulting was assigned to inspect and photograph the claimant's vehicle to identify the origin and cause of this fire.

CONCLUSION

This was an accidental fire. A main Kia wiring harness under the left side of the dashboard rubbed against the steel body of the car until the plastic wiring insulation was worn away. Eventually, the copper core inside the wires short-circuited against the steel body panel (see photos 51-53).

The short circuit immediately ignited nearby plastic and rubber components. The operation of the windshield wipers, lights and starter motor are often observed during electrical fires.

The aftermarket audio and video wires are unburned (see photos 36-44).

All other fire causes were considered and eliminated.

A near new vehicle should not catch fire. Representatives from Kia should be asked to inspect the vehicle.

DISCUSSION

The vehicle was inspected at Insurance Auto Auction, North Hollywood, CA on November 10, 2003.

Year, make and model:	2003 Kia Sedona
Color body:	White mini van
Transmission:	Automatic

Drive: 2-wheel front
License: 5BRM 161 Mar 04 CA
VIN: KNDUP131036
DOM: 1/18/03
Odometer: 10995 (per 10/10/03 work order)
Keys: Yes
Driveable: No

This near new vehicle in excellent condition sustained a severe passenger compartment fire. The fire consumed rubber and plastic components, electrical wiring and the plastic dashboard on the left side of the steering column. The fire smoked the front windshield above the fire. According to the insured, the rear hatch glass and the right side passenger door glass were broken during fire fighting efforts. All tires are still inflated. There is no flame impingement on the outside paint.

The fire did not spread to the engine compartment. All fluids are at satisfactory levels. The alternator and battery are unburned. Nine electrical fuses are operated (see photos 16-23 for specific fuses).

The hot spot of the fire was at the left side of the driver dashboard, to the left of the steering column. There are numerous Kia factory wires, which are covered with a green copper oxide. This indicates severe electrical activity during the fire (see photos 46-49).

There is another Kia wiring harness, which appears to have welded itself to the body at the far left side of the driver foot well (see photos 51-53). This harness was left attached to the body panel pending an anticipated inspection by Kia personnel.

To determine if the July 2003 installation of the audio and video components caused or contributed to the fire, the audio and video components were removed from their locations to inspect the wires attached to them. If, during the installation of the audio or video components, they were incorrectly wired, there would be indications of short-circuiting to the rear of the components. No indication of short-circuiting was located at or near any audio or video components.

The cause of this passenger compartment fire was the failure of the Kia manufacturing personnel to insure that a main wiring harness would not

rub on a sharp piece of body panel. The smell that the insured reported to the Kia dealership from new, as well as the intermittent electric window operation indicate that the electrical issues were present in this vehicle from the manufacturing floor. The operation of the wipers, lights and starter motor observed by the insured confirm that this was an electrical fire.

In summary, a wiring harness was incorrectly installed where it rubbed against the body. Eventually, the plastic wiring insulation rubbed through and allowed the wire to short circuit.

This report is based upon evidence and information available at the time of preparation. Any new evidence or information, which becomes available, may necessitate a revision or amendment to this report.

Thank you for calling Gemini Consulting. If we may answer questions regarding this report, or if we may be of further assistance, please do not hesitate to contact this office.

Respectfully submitted,
GEMINI CONSULTING INCORPORATED


William O. Hegerty
Certified Vehicle Fire Investigator #8444-3577
California Private Investigator #21488

Enclosure: (1) Kia warranty
(2) West Valley Kia work order of 10/10/03
(3) Photos 1-53

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**CLAIM PHOTOGRAPH
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POLICY NO.

11-10-03

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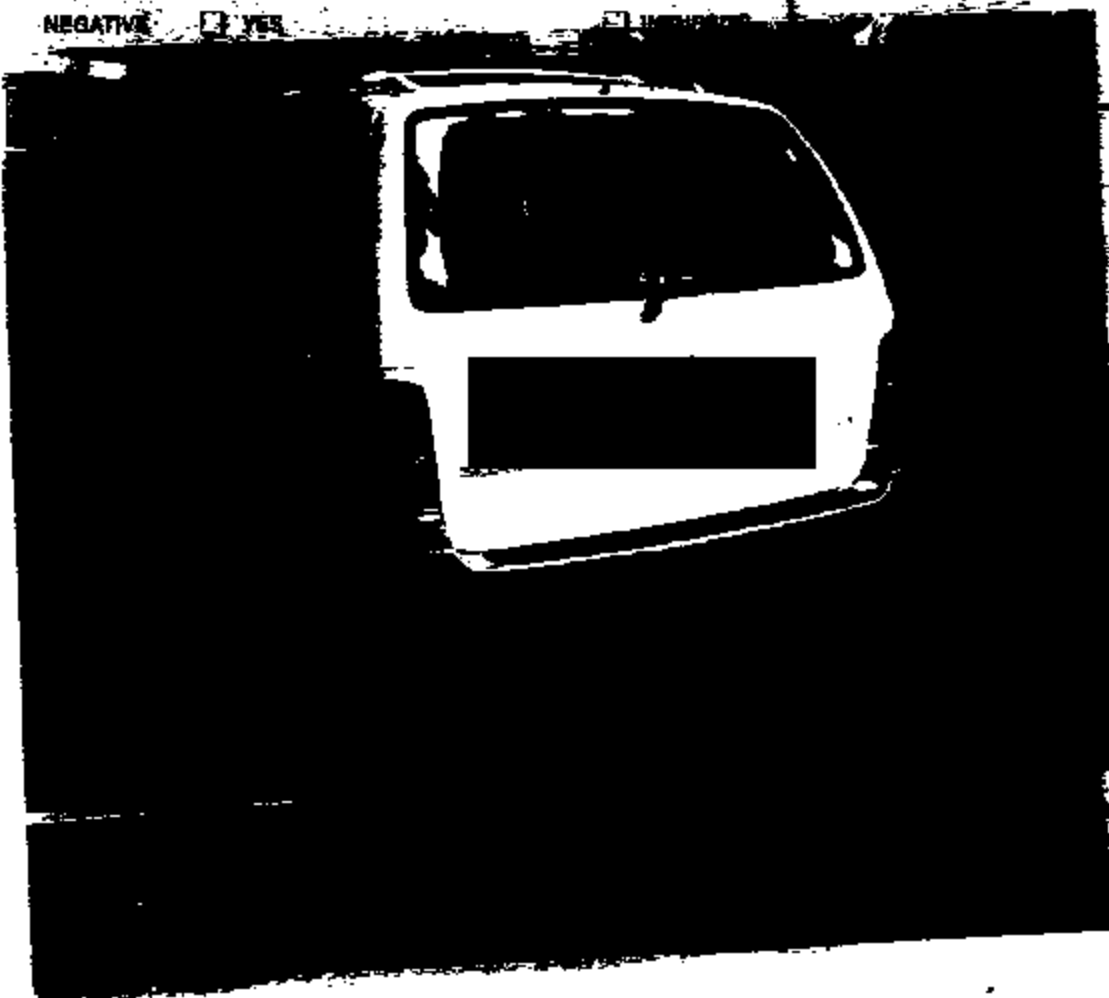
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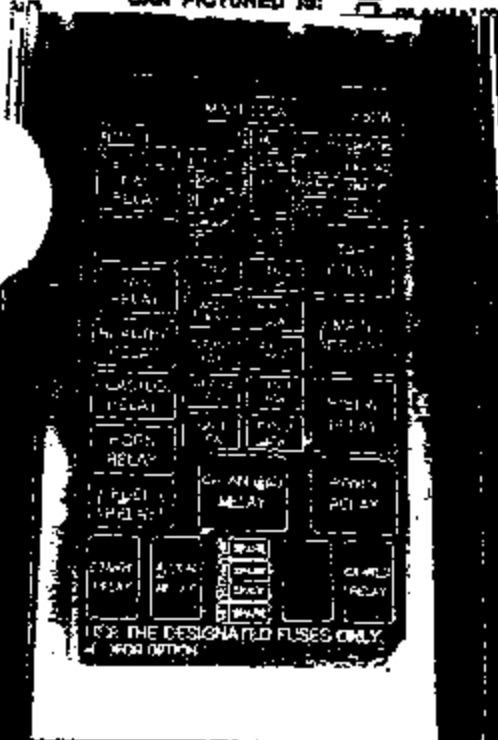
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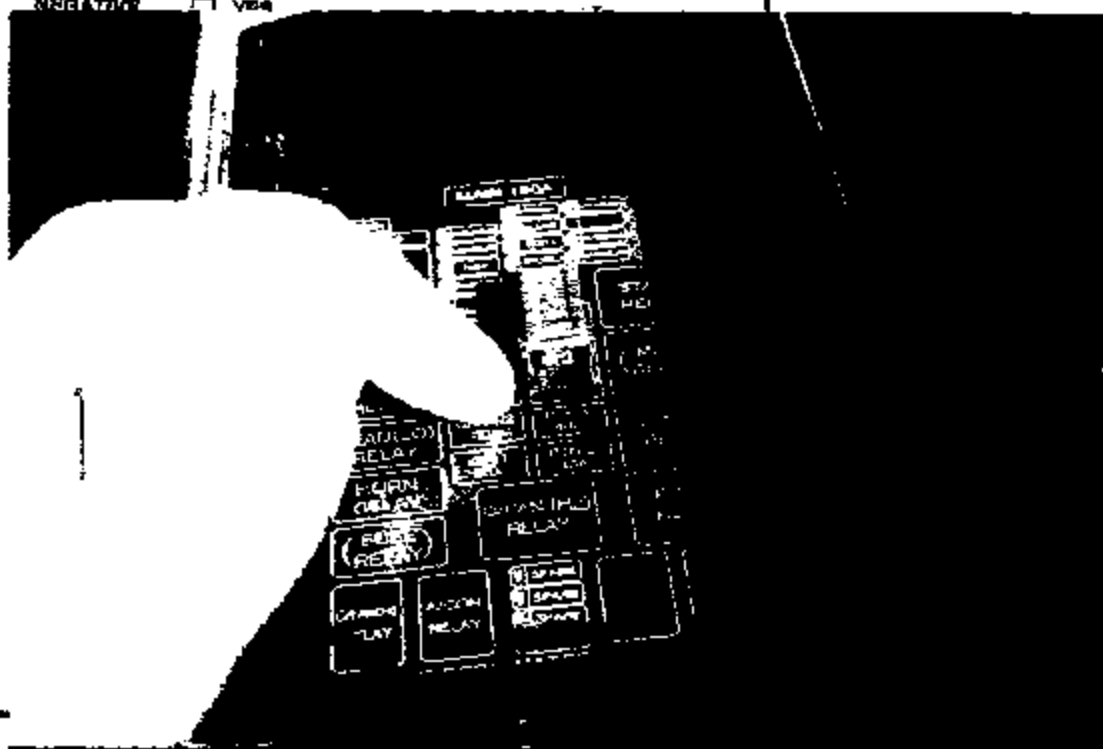
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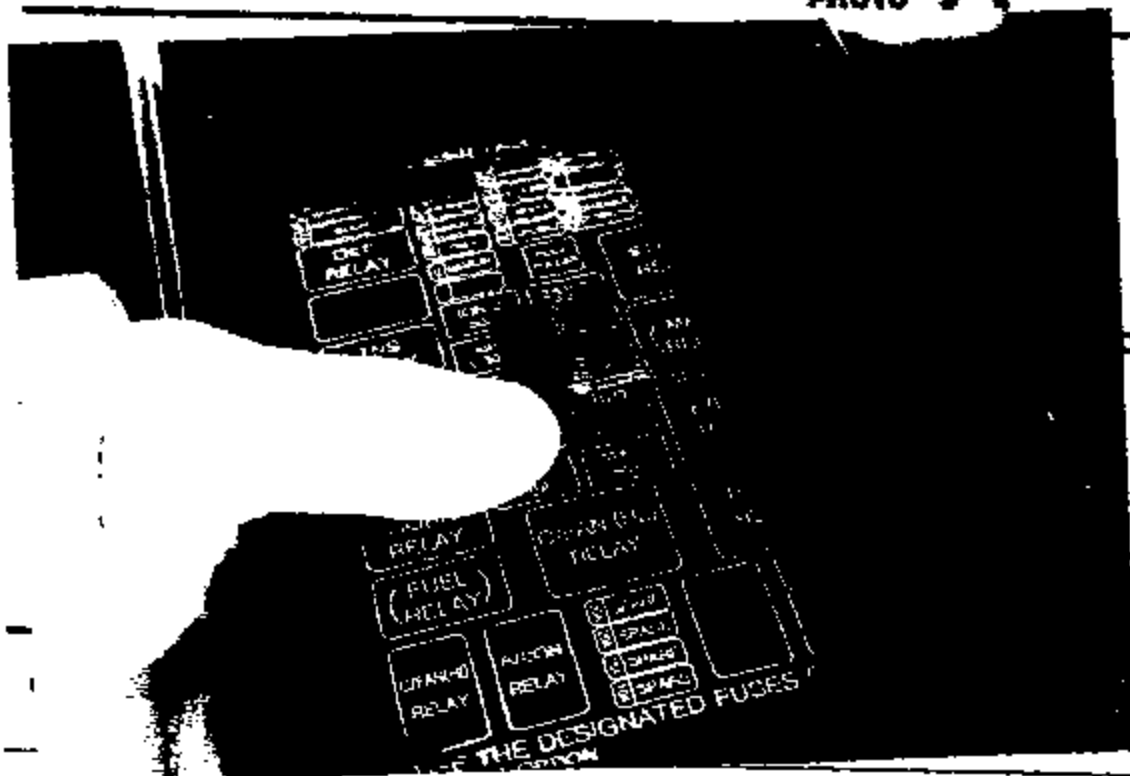
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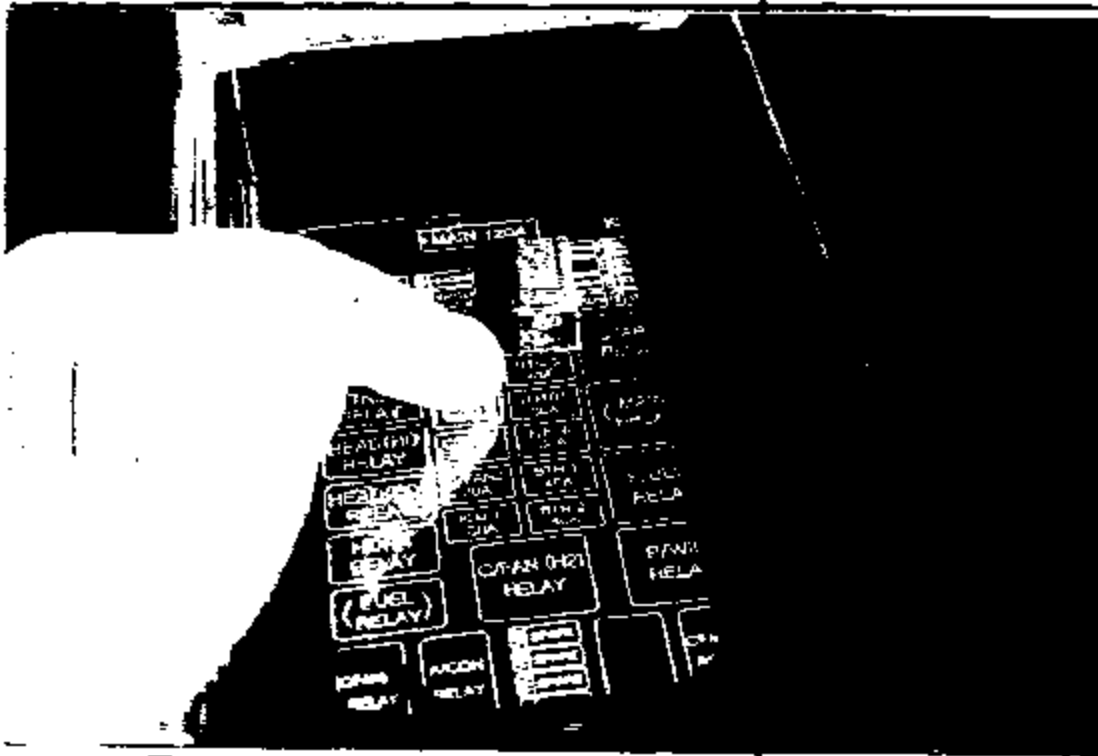
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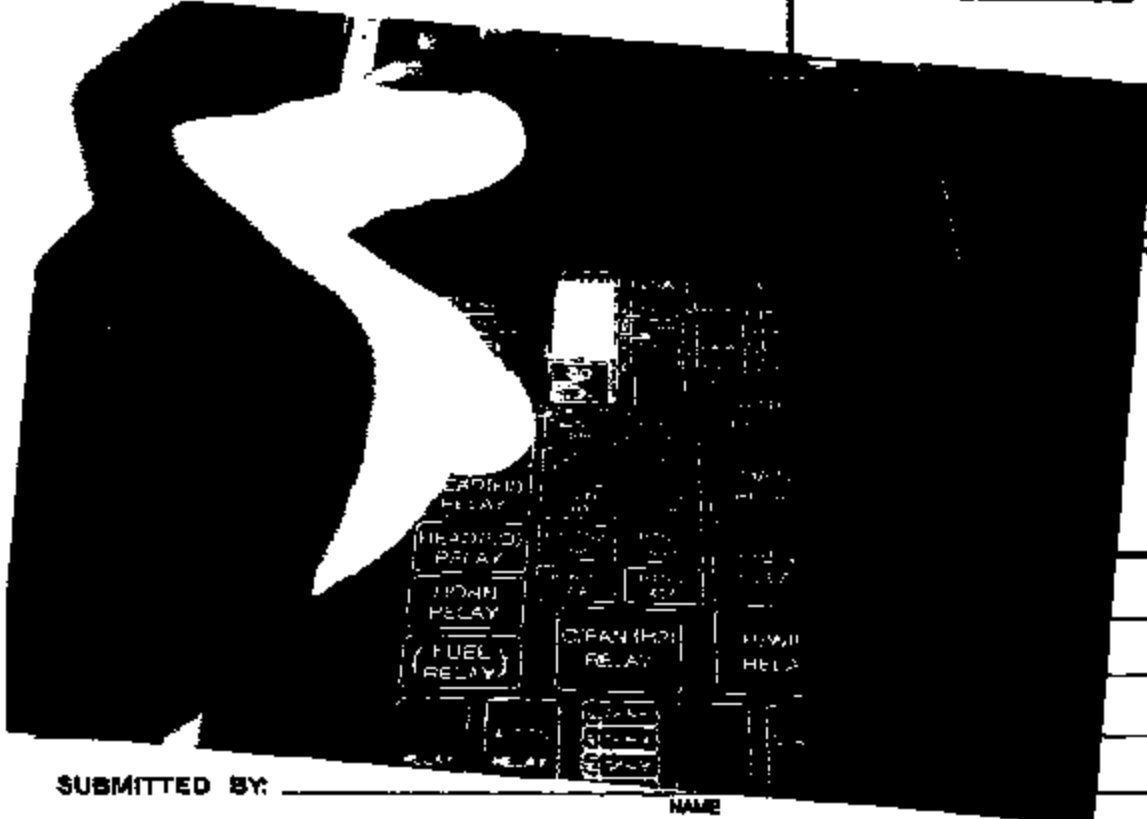
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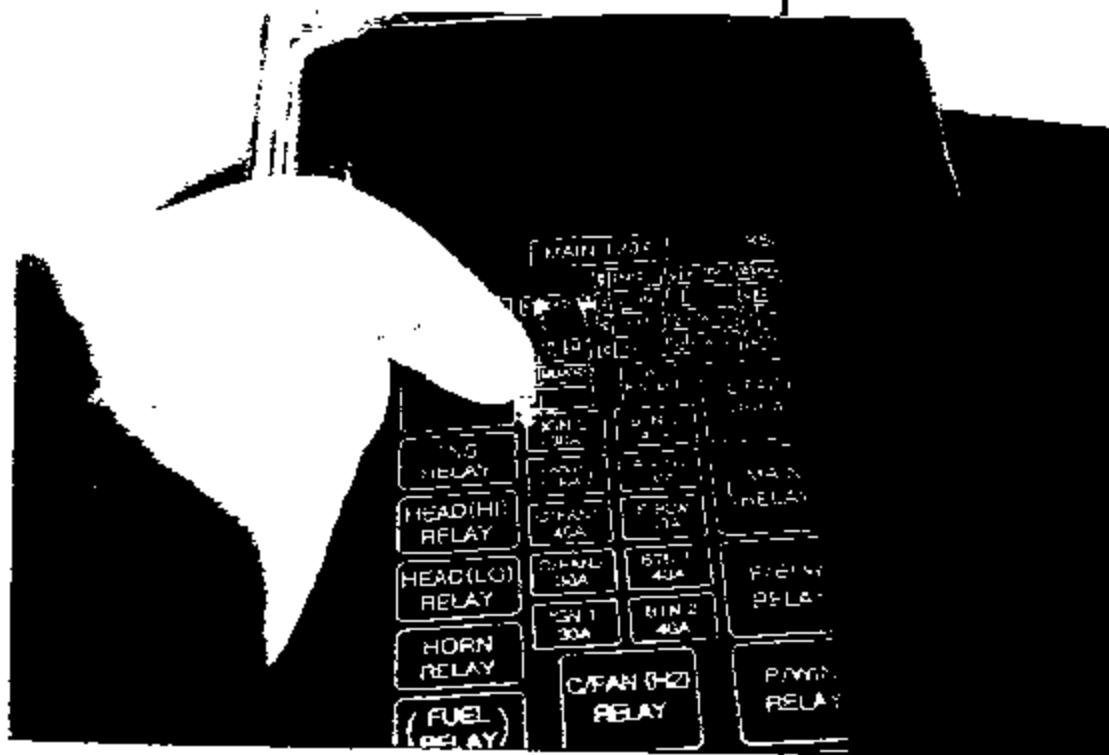
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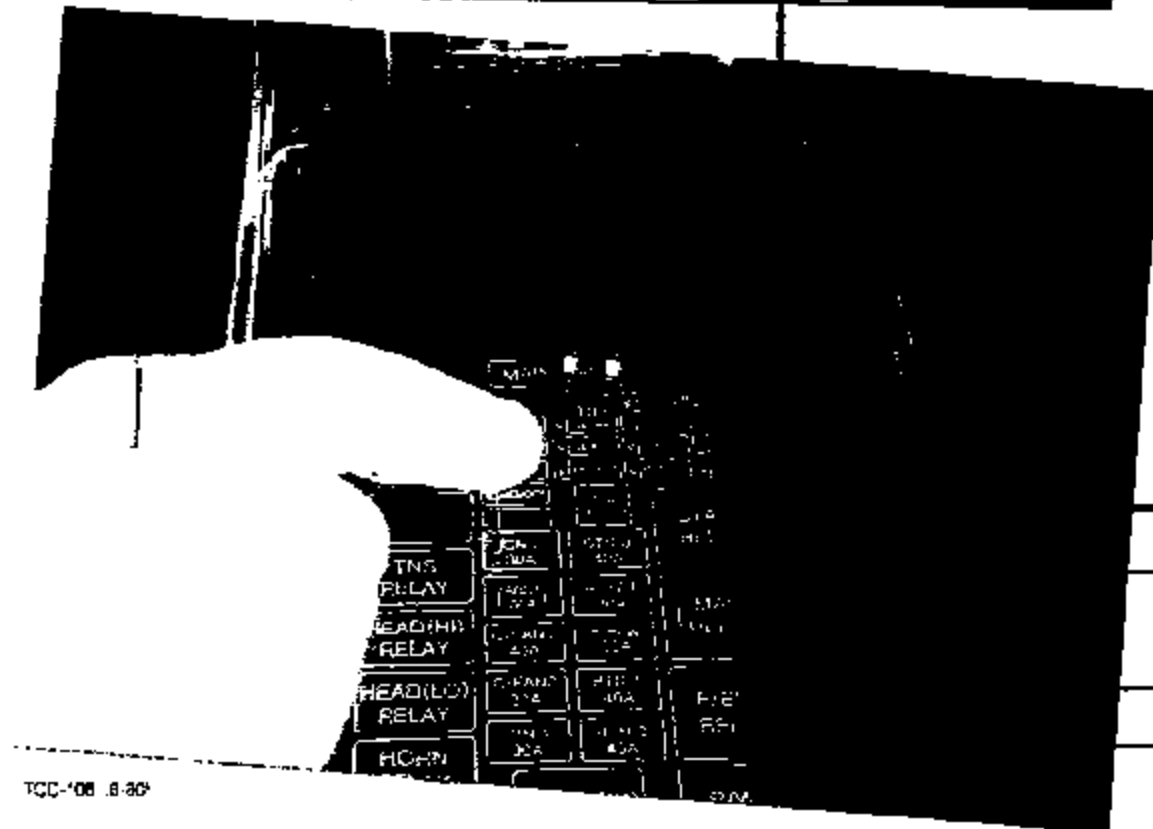
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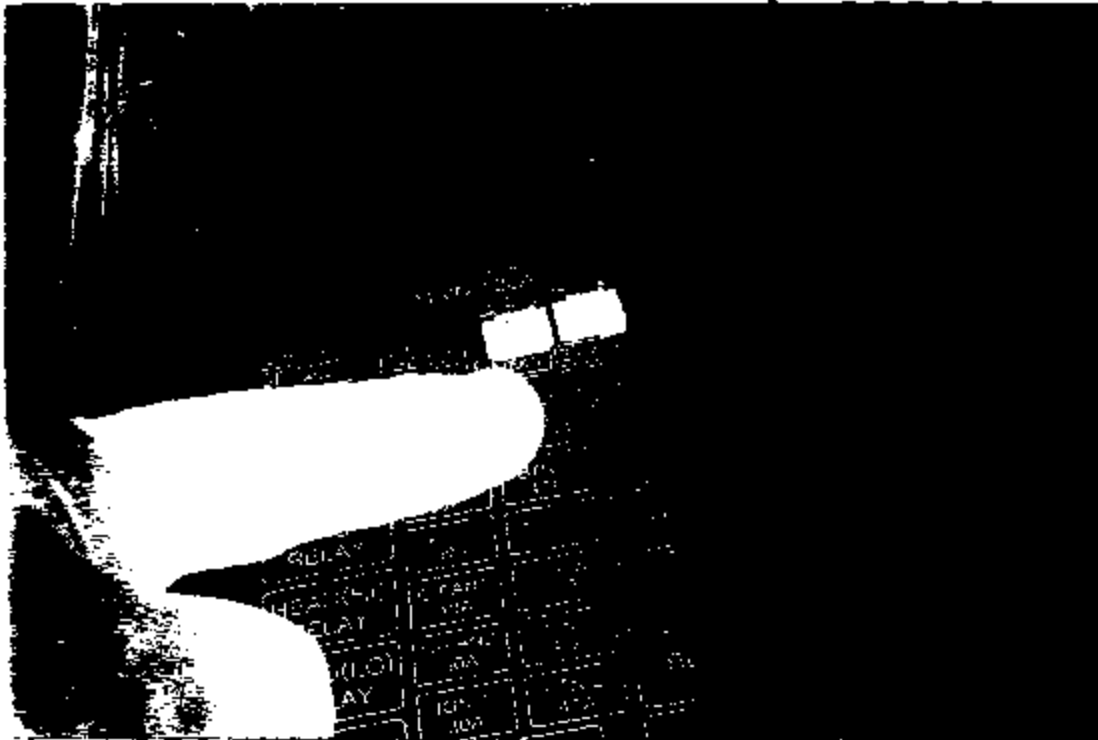
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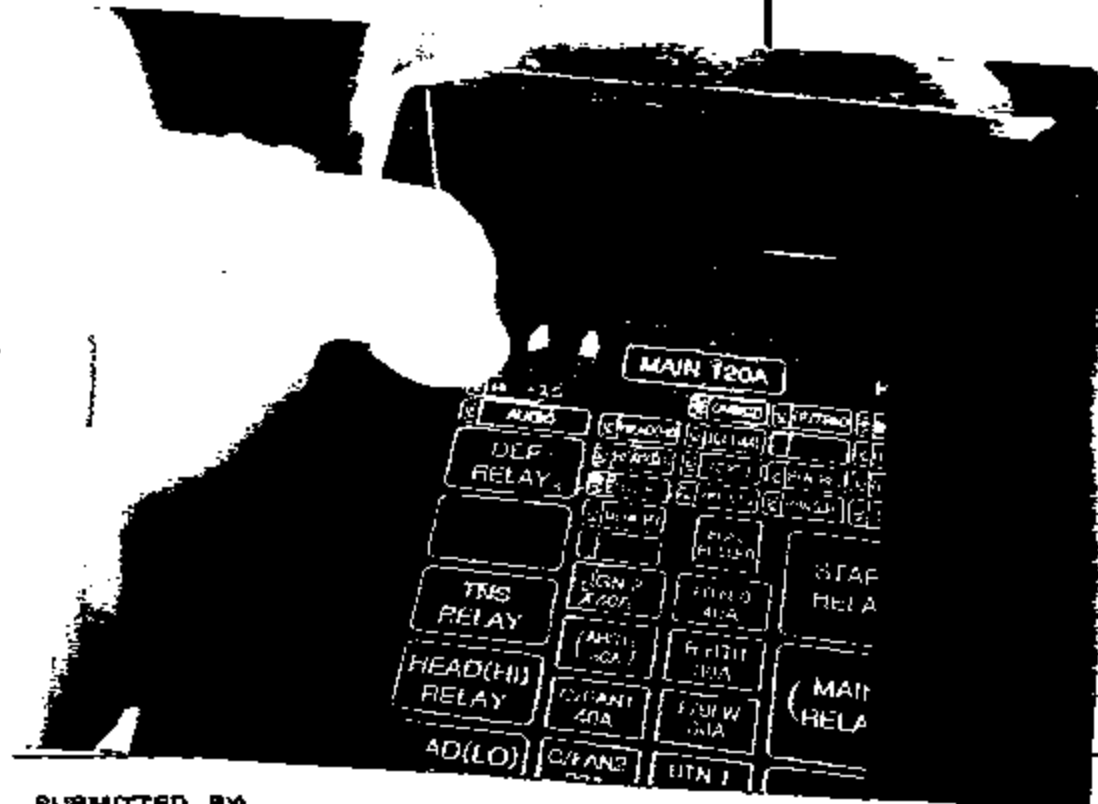
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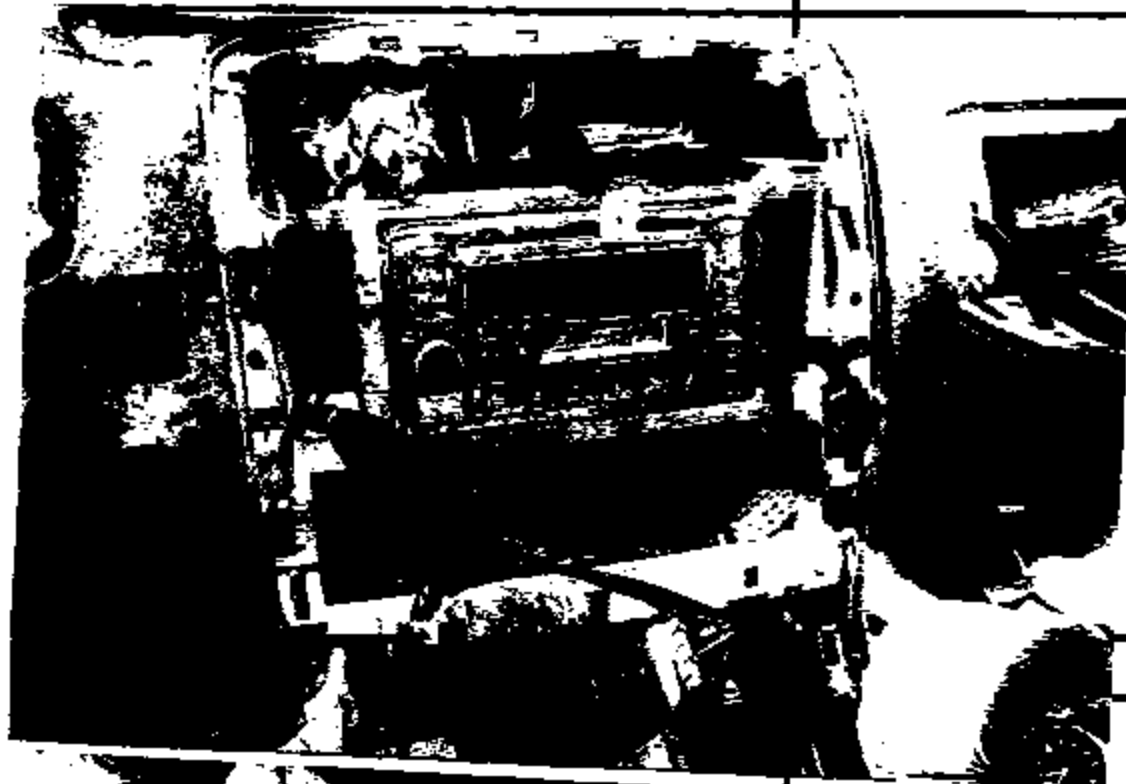
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INSURED

POLICY NO.

PHOTO # 1 TAKEN

DATE

NEGATIVE ☐ YES
AVAILABLE? ☐ NO

CAR PICTURED IS: ☐ INSURED'S
☐ CLAIMANT'S

PHOTO # 2 TAKEN

DATE

NEGATIVE ☐ YES
AVAILABLE? ☐ NO

CAR PICTURED IS: ☐ INSURED
☐ CLAIMANT

51

ACH HERE

52

ACH HERE

SUBMITTED BY:

NAME

DATE

INSURED

CLAIM PHOTOGRAPH RECORD

POLICY NO.

PHOTO # 1 TAKEN

DATE

NEGATIVE ☐ YES
AVAILABLE? ☐ NO

CAR PICTURED IS:

☐ INSURED'S
☐ CLAIMANT'S

PHOTO # 2 TAKEN

DATE

NEGATIVE ☐ YES
AVAILABLE? ☐ NO

CAR PICTURED IS:

☐ INSURED
☐ CLAIMANT

53

ATTACH HERE

ATTACH HERE

ATTACH HERE

COMMENTS:

SUBMITTED BY:

NAME

DATE



KIA MOTORS

LEGAL NOTICE OF CASE SETTLEMENT Request for Action

To: Regional Consumer Affairs Manager cc: NCA
☐ Central ☒ Eastern ☐ Southern ☒ Western

From: Efrain Diaz Date: July 18, 2005

PLEASE BE ADVISED THE FOLLOWING LEGAL MATTER HAS BEEN SETTLED:

Customer Name: [REDACTED] (K232443)
VIN: KNDUP13103 [REDACTED]
Reason for Settlement: Fire
Name of KMA Outside Counsel: Tony Sonnett
Address of Outside Counsel: 333 South Grand Ave, Ste 3550
Los Angeles, CA 90071
Phone # of KMA Outside Counsel: 213 628-2200

Type of Action: ☒ Lawsuit ☐ Attorney Demand Letter

SETTLEMENT INFORMATION:

The total settlement amount is \$12,000.00. The terms of the settlement are as follows:

☐ Kia to repurchase vehicle

Lender Name:
Lender Phone #:
Loan #:

☒ Kia to pay attorneys' fees

Customer's Attorney's Name: Fred Charness
8700 Fallbrooke Ave.
Suite 91307
West hills, CA 91307

Total Amount of Check Payable to Customer & Attorney: \$12,000.00

Amount of Attorneys' Fees Included in above check: \$unknown

☐ Kia to replace vehicle. Details, if any:

☒ Cash Settlement: This is a subrogation settlement. Please make check in the amount of \$12,000.00 payable to [REDACTED] and the Law Office of Fred Charness and forward the original settlement draft to Efrain Diaz. Thank you.

☐ Other

This transaction must be completed by _____.

Please be advised that the following steps must be taken:

- Contact with KMA Outside Counsel to confirm settlement terms & vehicle turn-in coordination
- Settlement checks requested
- KMA outside counsel to obtain signed Authorization for Payoff and signed Settlement Agreement prior to release of checks
- Notify me when vehicle turn-in completed

SONNETT & ASSOCIATES

A PROFESSIONAL CORPORATION

333 SOUTH GRAND AVENUE, SUITE 3150
LOS ANGELES, CALIFORNIA 90071
TELEPHONE 213 628 2260
FACSIMILE 213 628 2321

sender's e-mail:
jjulian@asonnettlaw.com

July 12, 2005

VIA EMAIL

Mr. Efrain Diaz
Kia Motors America, Inc.
9801 Muirlands Boulevard
Irvine, CA 92618

Re: [REDACTED] v. KIA MOTORS AMERICA, INC.
Los Angeles Superior Court, Case No: 04B08957

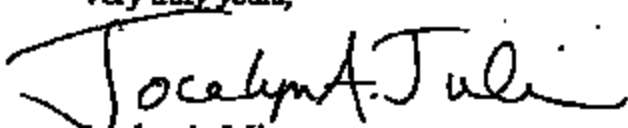
Dear Efrain:

In settlement of the above-referenced case, please provide a check in the amount of \$12,000.00 made out to "21st Century Insurance Co. and its attorneys of record, Law Office of Fred Charness."

Also attached is a copy of the W-9 Form received from plaintiff's counsel.

Please let us know if you need any additional information.

Very truly yours,


Jocelyn A. Julian
JAJ/ska

Enclosure

**Request for Taxpayer
Identification Number and Certification**

Give form to the
requester. Do not
send to the IRS.

Print or type
See Specific Instructions on page 2.

Name **[REDACTED]**

Business name, if different from above _____

Check appropriate box ☒ Individual Sole proprietor ☐ Corporation ☐ Partnership ☐ Other _____ ☐ Except from backup withholding

Address (number, street, and city or town, state) **SUIT [REDACTED]** Requester's name and address (optional) _____

City, state, and ZIP code **WEST HILLS, CA [REDACTED]**

List account number(s) here _____

Part I Taxpayer Identification Number (TIN)

Enter your TIN in the appropriate box. For individuals, this is your social security number (SSN). However, for a resident alien, sole proprietor, or disregarded entity, see the Part I instructions on page 2. For other entities, it is your employer identification number (EIN). If you do not have a number, see how to get a TIN on page 2.

Social security number

--	--	--	--	--	--	--	--	--	--

Note: If the account is in more than one name, see the chart on page 2 for guidelines on whose number to enter.

Employer identification number

Part II Certification

Under penalties of perjury, I certify that:

1. The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me), and
2. I am not subject to backup withholding because (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding, and
3. I am a U.S. person (including a U.S. resident alien).

Certification instructions. You must cross out Part II above if you have been notified by the IRS that you are currently subject to backup withholding because you have failed to report all interest and dividends on your tax return. For real estate transactions, Item 2 does not apply. For mortgage interest paid, acquisition or abandonment of secured property, cancellation of debt, contributions to an individual retirement arrangement (IRA), and certain transactions other than interest and dividends, you will not be notified to sign the Certification, but you must provide your correct TIN.

Sign Here Signature of U.S. person

7-11-05

Purpose of Form

A person who is required to file an information return with the IRS must get your correct taxpayer identification number (TIN) to report, for example, income paid to you, real estate transactions, mortgage interest you paid, acquisition or abandonment of secured property, cancellation of debt, or contributions you made to an IRA.

Use Form W-9 only if you are a U.S. person (including a resident alien), or give your correct TIN to the person requesting it (the requester) and, where applicable, to:

1. Certify the TIN you are giving is correct (or you are waiting for a number to be issued).
2. Certify you are not subject to backup withholding.
3. Claim exemption from backup withholding if you are a U.S. exempt payee.

If you are a foreign person, use the appropriate Form W-8. See Pub. 515, *Withholding of Tax on Nonresident Aliens and Foreign Entities*.

Note: If a requester gives you a form over mail, Form W-9 is required for your TIN; you must use the requester's form if it is substantially similar to this Form W-9.

What is backup withholding? Persons making certain payments to you must, under certain conditions, withhold and pay to the IRS 30% of such payments after December 31, 2001 (28% after December 31, 2003). This is called "backup withholding." Payments that may be subject to backup withholding include interest, dividends, broker and barter exchange transactions, rents, royalties, nonemployee pay, and certain payments from gaming boat operators. Not all transactions are not subject to backup withholding.

You will not be subject to backup withholding on payments you receive if you give the requester your correct TIN, make the proper certification, and report all your taxable interest and dividends on your tax return.

Payments you receive will be subject to backup withholding if:

1. You do not furnish your TIN to the requester; or
2. You do not certify your TIN when required (see the Part II instructions on page 2 for details); or
3. The IRS tells the requester that you furnished an incorrect TIN; or
4. The IRS tells you that you are subject to backup withholding because you did not report all your interest and dividends on your tax return for reportable interest and dividends (2003), or

5. You do not certify to the requester that you are not subject to backup withholding under 4 above for reportable interest and dividend accounts opened after 1983 only.

Certain payees and payments are exempt from backup withholding. See the instructions on page 2 and the separate instructions for the Requester of Form W-9.

Penalties

Failure to furnish TIN. If you fail to furnish your correct TIN to a requester, you are subject to a penalty of \$50 for each such failure unless your failure is due to reasonable cause and you act with due diligence.

Civil penalty for false information with respect to withholding. If you make a false statement with no reasonable basis that results in no backup withholding, you are subject to a \$500 penalty.

Criminal penalty for falsifying information. Willfully falsifying certifications or statements may subject you to criminal penalties including fines and/or imprisonment.

Abuse of TINs. If the requester discloses or uses TINs in violation of Federal law, the requester may be subject to civil and criminal penalties.

SETTLEMENT AGREEMENT AND RELEASE OF ALL CLAIMS

This Settlement Agreement and Release of all Claims (hereafter referred to as "RELEASE") is entered into by and between the following parties:

[REDACTED] (hereinafter referred to as "PLAINTIFF") and KIA MOTORS AMERICA, INC. and its related entities, subsidiaries, parent companies and distributors, and all of their employees, personal representatives, attorneys, successors or predecessors in interest, insurance companies, insurance adjusters, insurance agents, brokers, dealers, agents, and authorized sales or service facilities (hereafter collectively referred to as "KIA").

Whereas, in consideration of TWELVE THOUSAND DOLLARS (\$12,000.00), inclusive of all attorney's fees and costs, PLAINTIFF hereby releases, acquits and forever discharges KIA from any and all actions, causes of action, claims, demands, damages, costs, loss of services, claims for civil penalties, expenses and compensation which PLAINTIFF has asserted or may assert in the future on account of, or in any way growing out of, any and all known and unknown claims, property damage claims, alleged breaches of warranty, incidental and intangible damage claims relating to the 2003 Kia Sedona EX owned by plaintiff's insured [REDACTED] VIN: KNDUF131006424237 ("the subject vehicle"), the facts of which, in part, are set forth in that certain lawsuit filed in the Superior Court of the State of California, Los Angeles County, entitled [REDACTED] as Plaintiffs of Chelida Roe and Jose Jordana, Plaintiff, vs. KIA MOTORS AMERICA, INC. aka KIA MOTORS COMPANY; WEST VALLEY KIA; and DOES 1 to 20, Inclusive, Defendants," Case Number 04308937, which case is based upon the allegations, claims and causes of action stated in the Complaint.

Whereas, it is understood and agreed by and between the parties that by the execution of this Release, PLAINTIFF hereby fully and forever releases KIA from any and all claims which were, might or could have been alleged in any way related to the subject vehicle which existed or may have existed as of the date of PLAINTIFF's execution of this RELEASE.

WARRANT

All persons signing this RELEASE must read and understand it in its entirety and truly intend to terminate, irrevocably, all their rights to further pursue or prosecute their causes of action, demands or claims against the described parties. In particular, please note:

A. The extensive description of the persons released. Some of the persons released are not parties to the action to be dismissed, but nevertheless your dismissal of them is required as a necessary part of the settlement evidenced by this release.

B. You are waiving all rights under Cal. Civil Code § 1542, which provides as follows:

CERTAIN CLAIMS NOT AFFECTED BY GENERAL RELEASE -
A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release which, if known by him, must have materially affected his settlement with debtor.

IN ADDITION TO THE FOREGOING, PLEASE NOTE THE FOLLOWING FURTHER PROVISIONS OF THIS RELEASE AND THE SETTLEMENT IT EVIDENCES:

A. PLAINTIFF hereby declares and represents that it is effecting and executing this RELEASE after having received full legal advice as to its rights from its counsel.

B. Payment of the above-mentioned sum of TWELVE THOUSAND DOLLARS (\$12,000.00) to PLAINTIFF shall be in the form of a check payable to [REDACTED] and its attorneys of record, Law Office of Fred Chermansky and shall occur upon PLAINTIFF'S delivery to counsel for KIA an unmodified, fully executed original of this RELEASE and a fully executed Request for Dismissal of the entire Complaint with prejudice. The check payable to PLAINTIFF and its attorneys shall be deemed to have been paid upon the delivery by regular mail of said check to Leight Chermansky, Esq. of the Law Office of Fred Chermansky.

C. The above-mentioned consideration is the entire and only consideration for this RELEASE, and PLAINTIFF shall be responsible for the payment of any additional attorneys' fees and legal expenses, if any were incurred.

D. No other person or entity has any interest in the claims, demands, obligations or causes of action referred to in this RELEASE. PLAINTIFF has the sole right and exclusive authority to execute this AGREEMENT and receive the

sum specified in it. It has not sold, assigned, transferred, conveyed, or otherwise disposed of any of the claims, demands, obligations or causes of action referred to in this AGREEMENT and agrees to indemnify and hold harmless KIA from and against any claim, based on, related to, or arising out of any such sale, assignment, transfer, conveyance or other disposal.

H. It is understood and agreed by PLAINTIFF that the financial terms, including the history, background, and negotiation of the financial terms of this settlement and RELEASE remain confidential and shall not be disclosed to any third parties by PLAINTIFF or its attorneys, except to the extent that PLAINTIFF's attorneys are required to disclose the amount of fees earned by them for tax purposes.

I. It is further understood and agreed that this RELEASE is the compromise of a doubtful and disputed claim, and that the payment is not to be construed as an admission of liability on the part of KIA, by whom liability is expressly denied.

G. This RELEASE represents and constitutes the entire RELEASE and understanding among the parties hereto with respect to the subject matter of this RELEASE, and supercedes any and all prior oral and written agreements and understandings, and no representation, warranty, condition, understanding or release of any kind with respect to the subject matter hereof shall be relied upon by the parties unless incorporated herein. This RELEASE may not be amended or modified except by an express written agreement signed by KIA.

H. In entering into this RELEASE, PLAINTIFF represents that it has completely read the terms of this RELEASE, and the meaning and consequences of this RELEASE are fully understood and voluntarily accepted by PLAINTIFF.

I. In the event that one or more of the provisions, or portions thereof, of this RELEASE is determined to be illegal or unenforceable, the remainder of this RELEASE shall not be affected thereby and each remaining provision or portion thereof shall continue to be valid and effective and shall be enforceable to the fullest extent permitted by law.

J. This RELEASE may be pleaded as a full and complete defense to, and may be used as the basis for an injunction against, any action, suit or other proceeding which may be instituted, prosecuted or attempted in breach of this RELEASE.

K. In the event of any litigation hereafter filed by PLAINTIFF or KIA to interpret or enforce any provision of this RELEASE, or the settlement which gave rise thereto, the prevailing party shall be entitled to reasonable attorneys' fees and costs in addition to whatever other remedies may be available.

L. This RELEASE is executed in the State of California and shall be construed and interpreted in accordance with its laws.

M. This RELEASE shall become effective immediately upon execution by the PLAINTIFF.

N. PLAINTIFF agrees that this RELEASE will be binding with or without notarization of the execution of the release, and with or without a witnessing of the execution of the RELEASE.

Thereby accept and agree to each and every one of the terms of this document.

Date: 8/5, 2005

By: 

The content of this General Release of All Claims has been reviewed by and explained to plaintiff and is agreed to and approved as to form and content.

Date: 8-11, 2005

By: 

The Law Office of Paul Charnes
Counsel for Plaintiff
21st Century Insurance Company

As the authorized representative of Kia Motors America, Inc., I hereby accept and agree to each and every one of the terms of this document.

DATED: _____, 2005

By: _____

Authorized representative of
Kia Motors America, Inc.

DATED: 8/15, 2005

By: 

Sonnett & Associates
Counsel for Defendant
Kia Motors America, Inc.



KIA MOTORS

KIA MOTORS AMERICA, INC.
Legal Department
Corporate Headquarters
9901 Muirlands Blvd.
Irvine, CA 92618-2321
TEL: (949) 470-7096
FAX: (949) 470-2808

August 4, 2005

VIA FEDERAL EXPRESS

Tony Sonnett, Esq.
SONNETT & ASSOCIATES
333 South Grand Avenue
Suite 3550
Los Angeles, Ca 90071

RE: [REDACTED] v. Kia Motors America, Inc.

Dear Tony:

Enclosed please find check number [REDACTED] the amount of \$12,000.00 made payable to [REDACTED] and Law Office of Fred Charness, which represents the full settlement amount in the above referenced matter.

Additionally, please be advised that due to procedural changes within the department, we are requesting that you submit the final bill within 30 calendar days from receipt of this letter.

If you have any questions, please contact me at your earliest convenience.

Sincerely,

(Signed on the behalf of Mr. Diaz, to avoid delay)
Efrain Diaz
Paralegal

Enclosure



KIA MOTORS

KIA MOTORS AMERICA, INC.

9601 WILSHIRE BLVD.
PO BOX 52410
IRVINE, CALIFORNIA 92618-2410
(949) 478-7900

Check Number

Vendor Name 38778

INVOICE NUMBER	INV DATE	REMARK	GROSS AMOUNT	DISCOUNT	NET AMOUNT
KNDUP131036424237	07/19/05	ROA-671461	12,000.00		12,000.00
TOTAL			12,000.00		12,000.00



KIA MOTORS



KIA MOTORS

KIA MOTORS AMERICA, INC.

9601 WILSHIRE BLVD.
PO BOX 52410
IRVINE, CALIFORNIA 92618-2410
(949) 478-7900

Commerce Bank & Trust N.A.

No.

Date

08/02/05

\$ 12,000.00

PAY TWELVE THOUSAND AND 00/100

TO THE ORDER OF

WEST HILLS CA

BY

ATTORNEY OR PARTY WITHOUT ATTORNEY (Please see Address) FRED M. CHARNESSE LAW OFFICES OF FRED M. CHARNESSE 6700 FALLBROOK AVE., #192 WEST HILLS, CA 91307 Y-5007	TELEPHONE NO.: (818) 999-5609	FOR COURT USE ONLY
ATTORNEY FOR (Please) PLAINTIFF		
Exact name of court and name of judicial district and county, if any. LOS ANGELES COUNTY SUPERIOR COURT VAN NUYS DISTRICT		
PLAINTIFF/PETITIONER:		
DEFENDANT/RESPONDENT: KIA MOTORS AMERICA, INC. aka KIA MOTORS COMPANY, et al.,		
REQUEST FOR DISMISSAL <input checked="" type="checkbox"/> Personal Injury, Property Damage, or Wrongful Death <input checked="" type="checkbox"/> Motor Vehicle <input type="checkbox"/> Other <input type="checkbox"/> Family Law <input type="checkbox"/> Eminent Domain <input type="checkbox"/> Other (specify):		CASE NUMBER: 04E08957

— A conformed copy will not be returned by the clerk unless a method of return is provided with the document. —

1. TO THE CLERK: Please dismiss this action as follows:

- a. (1) ☒ With prejudice (2) ☐ Without prejudice
- b. (1) ☐ Complaint (2) ☐ Petition
 (3) ☐ Cross-complaint filed by (name):
 (4) ☐ Cross-complaint filed by (name):
 (5) ☒ Entire action of all parties and all causes of action
 (6) ☐ Other (specify):*

on (date):

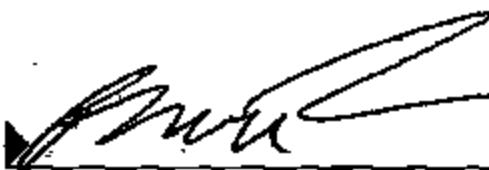
on (date):

Date: 08/11/05

FRED M. CHARNESSE

(TYPE OR PRINT NAME OF ☒ ATTORNEY ☐ PARTY WITHOUT ATTORNEY)

* If dismissal requested is of specified parties only, of specified causes of action only, or of specified cross-complaints only, so state and identify the parties, causes of action, or cross-complaints to be dismissed.



(SIGNATURE)

Attorney or party without attorney for **PLAINTIFF**

☒ Plaintiff/Petitioner ☐ Defendant/Respondent
☐ Cross-complainant

2. TO THE CLERK: Consent to the above dismissal is hereby given.**

Date:

(TYPE OR PRINT NAME OF ☐ ATTORNEY ☐ PARTY WITHOUT ATTORNEY)

** If a cross-complaint - or Response (Family Law) seeking affirmative relief - is on file, the attorney for cross-complainant (respondent) must sign this consent if required by Code of Civil Procedure section 581(i) or (j).

(SIGNATURE)
 Attorney or party without attorney for:

☐ Plaintiff/Petitioner ☐ Defendant/Respondent
☐ Cross-complainant

(To be completed by clerk)

3. ☐ Dismissal entered as requested on (date):
4. ☐ Dismissal entered on (date): as to only (name):
5. ☐ Dismissal not entered as requested for the following reasons (specify):
6. ☐ a. Attorney or party without attorney notified on (date):
 b. Attorney or party without attorney not notified. Filing party failed to provide
 ☐ a copy to conform ☐ means to return conformed copy

Date:

Clerk, by _____, Deputy