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CIVIL BUSINESS OFFICE 13
CENTRAL DIVISION

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CLERK - SUPERIOR COURT
SAN DIEGO COUNTY, CA

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 SAN DIEGO COUNTY – HALL OF JUSTICE DIVISION

10
11 BJAY BAKER, an individual; and
ANNIE-MARIE BAKER, an individual,

12 Plaintiffs

13 v.

14 HYUNDAI MOTOR AMERICA, a
15 California corporation; and
DOES 1 through 10,

16 Defendants.
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Case No.: 37-2012-00099300-CU-NP-CTL

COMPLAINT

1. VIOLATION OF SONG-BEVERLY
CONSUMER WARRANTY ACT

FACTS

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2 7. On or about November 18, 2008, Plaintiffs purchased that certain 2008
3 Hyundai Veracruz with vehicle identification number KM8NU13C18U048290 (the
4 "Hyundai Veracruz"). Although the purchase contract was signed by Plaintiff Annie-
5 Marie Baker's father (and the vehicle was originally registered in his name), it was
6 Plaintiffs who selected, test drove, and agreed to purchase the Hyundai Veracruz.
7 Plaintiffs indirectly made the down payment and directly made all payments due on the
8 vehicle. The Hyundai Veracruz was at all times purchased, paid for, controlled, and
9 operated exclusively by and for the benefit of Plaintiffs. The registration for the
10 Hyundai Veracruz was subsequently transferred to Plaintiffs.

11 8. On or about June 17, 2010, Plaintiffs returned the Hyundai Veracruz to
12 one of Hyundai's authorized warranty repair facilities for repair of a defect that causes
13 the vehicle to shake, results in an unsafe loss of power, causes the check engine warning
14 light to illuminate, and which causes the fuel gauge to malfunction (hereafter the
15 "Defect"). Hyundai's authorized repair facility thereafter returned the Hyundai
16 Veracruz to Plaintiffs without properly repairing the Defect.

17 9. On or about June 24, 2010, Plaintiffs returned the Hyundai Veracruz to
18 one of Hyundai's authorized warranty repair facilities for repair of the Defect. However,
19 the authorized repair facility thereafter returned the Hyundai Veracruz to Plaintiffs
20 without properly repairing the Defect.

21 10. On or about November 10, 2010, Plaintiffs returned the Hyundai Veracruz
22 to one of Hyundai's authorized warranty repair facilities for repair of the Defect.
23 However, the authorized repair facility thereafter returned the Hyundai Veracruz to
24 Plaintiffs without properly repairing the Defect.

25 11. On or about May 11, 2011, Plaintiffs returned the Hyundai Veracruz to one
26 of Hyundai's authorized warranty repair facilities for repair of the Defect. However, the
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1 authorized repair facility thereafter returned the Hyundai Veracruz to Plaintiffs without
2 properly repairing the Defect.

3 12. On or about August 13, 2011, Plaintiffs returned the Hyundai Veracruz to
4 one of Hyundai's authorized warranty repair facilities for repair of the Defect. However,
5 the authorized repair facility thereafter returned the Hyundai Veracruz to Plaintiffs
6 without properly repairing the Defect.

7 13. On or about October 10, 2011, Plaintiffs returned the Hyundai Veracruz to
8 one of Hyundai's authorized warranty repair facilities for repair of the Defect. However,
9 the authorized repair facility thereafter returned the Hyundai Veracruz to Plaintiffs
10 without properly repairing the Defect.

11 14. Plaintiffs requested that Hyundai repurchase or replace the Hyundai
12 Veracruz under California's "lemon law." However, even though Hyundai knew or
13 should have known that Plaintiffs were entitled to a vehicle repurchase or replacement
14 under the Song-Beverly Consumer Warranty Act, Hyundai refused to offer any remedy
15 whatsoever.

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17 FIRST CAUSE OF ACTION

18 Violation of the Song-Beverly Consumer Warranty Act

19 15. Plaintiffs incorporate by reference the allegations set forth in paragraphs 1
20 through 14.

21 16. Hyundai is the warrantor of the Hyundai Veracruz's express warranty.

22 17. Pursuant to the Hyundai Veracruz's express warranty, Hyundai undertook
23 to preserve or maintain the utility or performance of the Hyundai Veracruz or provide
24 compensation if there was a failure in such utility or performance.

25 18. The Hyundai Veracruz has and has had serious defects and
26 nonconformities to warranty including, but not limited to, the Defect described above.

1 19. Under the Song-Beverly Consumer Warranty Act (the "Warranty Act"), the
2 Hyundai Veracruz is a "consumer good" leased primarily for family or household
3 purposes and Plaintiffs have used the vehicle primarily for those purposes.

4 20. Plaintiffs are "buyers" of consumer goods under the Warranty Act.

5 21. The foregoing defects and nonconformities to warranty manifested
6 themselves within the applicable express warranty period. The nonconformities
7 substantially impair the use, value and/or safety of the Hyundai Veracruz.

8 22. Plaintiffs delivered the vehicle to authorized repair facilities for Hyundai
9 vehicles for repair of the nonconformities on numerous occasions.

10 23. Such authorized repair facilities were unable to conform the Hyundai
11 Veracruz to the applicable express warranties after a reasonable number of attempts.

12 24. By failure of Hyundai to remedy the defects as alleged above, or to issue a
13 refund or replacement, Hyundai is in breach of its obligations under the Act.

14 25. Plaintiffs are entitled to justifiably revoke acceptance of Hyundai Veracruz
15 under the Warranty Act.

16 26. Under the Warranty Act, Plaintiffs are entitled to reimbursement of all
17 payments made towards the Hyundai Veracruz (less the amount directly attributable to
18 Plaintiffs' use of the Hyundai Veracruz prior to discovery of the nonconformities).

19 27. Plaintiffs are entitled to damages resulting from Hyundai's failure to
20 comply with its obligations under the Warranty Act.

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

25 29. Plaintiffs are entitled, in addition to the other amounts recovered, to a civil
26 penalty of up to two times the amount of actual damages because Hyundai willfully
27 failed to comply with its responsibilities under the Warranty Act.
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PRAYER FOR RELIEF

Plaintiffs pray for judgment against Defendants, as follows:

1. For damages of \$35,481.28, or such other amount as proven at trial, and punitive damages;
2. For rescission of the purchase contract and restitution of all monies expended;
3. For a civil penalty of \$70,962.56 as permitted under the Warranty Act;
4. For prejudgment interest at the legal rate;
5. For attorney's fees, costs of suit, and out-of-pocket expenses; and
6. For such other and further relief as the Court deems just and proper under the circumstances.

LAW OFFICE OF MICHAEL R. VACHON, ESQ.
Attorney for Plaintiffs Bjay & Annie-Marie Baker



Michael R. Vachon, Esq.

Date: June 20, 2012