EXHIBIT A

Nos. 09-55104, 09-55105

IN THE

United States Court of Appeals for the Ninth Circuit

BRIAN J. WOLIN,
Plaintiff-Appellant,

v.

JAGUAR LAND ROVER NORTH AMERICA, LLC,
Defendant-Appellee.

KENNETH GABLE,
Plaintiff-Appellant,

v.

JAGUAR LAND ROVER NORTH AMERICA, LLC,
Defendant-Appellee.

On Appeal from the United States District Court for the
Central District of California
The Honorable Andrew J. Guilford

PETITION FOR REHEARING EN BANC

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determined would "predominate" over the proposed class, let alone measure how they compare to the common issues. Of course, there is no need to do so under the rule endorsed by the panel and the Sixth Circuit because the whole inquiry begins and ends with the allegations in the complaint—which rarely acknowledge the idiosyncratic proofs required to resolve the claims.

The panel's decision, in short, renders class-certification in these sorts of cases a fait accompli. And by assuming that these claims are peculiarly immune to individualized factors, the panel has transformed litigation into a high-stakes wager for both the plaintiffs and the defendant: a defect alleged to cause no injury other than vague diminution in value will always be demonstrated (or disproved) by common "generalized evidence." Slip op. 11993. No shades of gray; no accounting for differences among vehicles, drivers, or owners; and no recognition that each person's vehicle has been driven for different numbers of miles, maintained differently, used in different ways on different terrains, and sold and possibly re-sold multiple times.

ARGUMENT

I. THE PANEL'S DECISION EXACERBATES AN ACKNOWLEDGED CIRCUIT SPLIT AND CONFLICTS WITH PREVIOUS DECISIONS OF THIS COURT.

1. The panel's decision squarely conflicts with the Seventh Circuit's decision in In re Bridgestone/Firestone. As in this case, the plaintiffs in In re