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21 **UNITED STATES DISTRICT COURT**
22 **CENTRAL DISTRICT OF CALIFORNIA**

23 BILLY GLENN, *et al.*,
24 Plaintiffs,
25 v.
26 HYUNDAI MOTOR AMERICA, *et*
27 *al.*,
28 Defendants.

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

**PLAINTIFFS' NOTICE OF MOTION
AND MOTION TO DIRECT NOTICE
OF PROPOSED CLASS ACTION
SETTLEMENT**

Date: February 25, 2019
Time: 8:30 a.m.
Judge: The Hon. David O. Carter
Courtroom: 9D

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on February 25, 2019, or as soon thereafter as the matter may be heard, before the Honorable David O. Carter, District Judge of the United States District Court for the Central District of California, in Courtroom 9D, Ronald Reagan Federal Building, United States Courthouse, 411 West Fourth Street, Santa Ana, California, 92701, Plaintiffs Billy Glenn, Kim Fama, Jahan Mulla, Kathy Warburton, Roxana Fitzmaurice, and Corinne Kane will, and hereby do, move for entry of an order directing notice of their proposed settlement to the proposed settlement class, approving the proposed notices and notice plan set forth in the settlement agreement pursuant to Fed. R. Civ. P. 23(e), appointing Class Counsel pursuant to Fed. R. Civ. P. 23(g), and setting a schedule for final settlement approval.

Plaintiffs' motion is based on this notice; the accompanying memorandum of points and authorities; the declaration of David Stein and all attachments thereto (including the Settlement Agreement); the declaration of Kim Stephens, and all other papers filed and proceedings had in this action.

DATED: January 30, 2019

Respectfully submitted,

GIBBS LAW GROUP LLP

By: /s/ David Stein

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26 HYUNDAI MOTOR AMERICA, *et*
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28 Defendants.

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

**PLAINTIFFS' MEMORANDUM IN
SUPPORT OF MOTION TO DIRECT
NOTICE OF PROPOSED CLASS
ACTION SETTLEMENT**

Date: February 25, 2019
Time: 8:30 a.m.
Judge: The Hon. David O. Carter
Courtroom: 9D

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Evon v. Law Offices of Sidney Mickell, 688 F.3d 1015 (9th Cir. 2012) 21
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In re Volkswagen “Clean Diesel” Mktg., Sales Practices, & Prod. Liab. Litig., 895 F.3d 597.....passim
Just Film v. Buono, 847 F.3d 1108 (9th Cir. 2017) 22
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1 INTRODUCTION

2 Plaintiffs are pleased to report that after three years of litigation, the parties
3 have finalized a proposed class settlement that is ready to undergo the court-
4 approval process. As the Court may recall from earlier proceedings, this suit alleged
5 the existence of a known defect in certain Hyundai models that makes their
6 panoramic sunroofs prone to shattering. Plaintiffs alleged that Hyundai acted
7 unlawfully by selling the vehicles, particularly by doing so without first warning
8 consumers of the defect. Plaintiffs also alleged that Hyundai breached its warranty
9 by refusing to provide free repairs once the panoramic sunroofs shattered. As a
10 result, Plaintiffs and alleged class members had borne significant and unnecessary
11 expense: shattered-sunroof repairs often exceed \$1,000. Plaintiffs also alleged that
12 many class members would not have purchased their vehicles had they been warned
13 of the defect, given the fright that the shattering can cause drivers.

14 Hyundai denies that there is any defect in its panoramic sunroofs and claims
15 that (i) it has been notified by a very small percentage of owners and lessees that
16 their vehicle’s panoramic sunroof shattered while parked or driving; (ii) there is no
17 evidence that these shatterings were caused by anything other than impact from road
18 debris and other road hazards; (iii) Hyundai does not believe that the shattering
19 poses a safety issue – Hyundai has received no reports of accidents or serious
20 injuries and the sunroofs are made with tempered safety glass, which is designed to
21 break into small rounded pieces; and (iv) Hyundai has an interest in its customers’
22 satisfaction and has therefore agreed to the settlement of this matter.

23 Without requiring further delay and expense to litigate each of these disputed
24 issues, the proposed settlement is instead poised to deliver meaningful relief to the
25 class right away. The settlement largely shifts the expenses related to a shattered
26 panoramic sunroof away from individual class members and onto Hyundai. The
27 settlement doubles the length of the sunroof warranty—to 10 years and 120,000
28 miles—and requires Hyundai to provide free repairs going forward even when

1 Hyundai believes road debris is to blame. In addition, class members will be eligible
2 to recover 100% reimbursement of their out-of-pocket costs for sunroof repairs,
3 repairs to paint or upholstery, and related costs for rental cars and tow trucks.

4 The settlement also provides benefits recognizing that a shattering event may
5 be frightening, and some class members may no longer wish to own their vehicles.
6 Through the settlement, all class members will be warned directly of the risk of
7 shattering. Anyone who has experienced the shattering firsthand can claim \$200 as
8 compensation. And class members who receive the settlement notice, and then
9 decide they no longer wish to own their vehicle because of the shattering risk, have
10 two options: they can sell their vehicle, replace it with a non-Hyundai, and claim up
11 to \$600; or, they can trade-in for a new Hyundai without a panoramic sunroof and
12 claim \$1,000.

13 Class Counsel, having spoken with many class members over the past few
14 years and having previously resolved other automotive defect class actions, believe
15 this settlement provides strong relief to the class and is worthy of the Court's
16 approval. In support of this motion, they attach a copy of the full settlement
17 agreement, including exhibits. *See* Declaration of David Stein, Exhibit 1. Below,
18 they provide additional information about the settlement benefits, the class release,
19 and why the settlement class should be certified. Given the strength of the
20 settlement, and the certifiability of the settlement class, Plaintiffs respectfully request
21 that the Court direct notice to the class, appoint Class Counsel under Rule 23(g),
22 and set a schedule for final settlement approval.

23 HISTORY OF THE LITIGATION

24 This proposed class action began in December 2015, (Compl., ECF No. 1),
25 and was brought by Plaintiffs from six states. (2d Am. Compl., ECF No. 66.) They
26 allege that Hyundai manufactured and sold vehicle models with a known defect: the
27 vehicles' panoramic sunroofs are prone to shattering without warning, both when
28 the vehicles are parked and when being driven. Plaintiffs alleged that the sunroof

1 shattering is accompanied by a loud and startling noise and then, if the sun shade is
2 not closed, tempered safety glass could fall onto the driver or passengers. Although
3 there have been no reported collisions or injuries, Plaintiffs alleged that drivers
4 report being frightened by the shattering and temporarily distracted from the road.
5 (*Id.*, ¶ 26.)

6 In addition, the shattered sunroofs are often expensive to repair—with many
7 repairs allegedly exceeding \$1,000 in cost. (*See, e.g.*, Class Cert. Exs. 109-14, ECF
8 Nos. 97-29–97-34.) Plaintiffs alleged that while Hyundai was obligated to repair the
9 sunroofs for free—at least when they failed within the 5-year, 60,000-mile warranty
10 period—Hyundai dealerships frequently declined to repair the shattered sunroofs
11 under warranty. In doing so, dealerships often cited a provision of the warranty
12 contract that excludes coverage for “stone chipping.” (*See* Class Cert. Memo., ECF
13 No. 93-4, at 15-17.)

14 Given these alleged facts, Plaintiffs asserted that Hyundai breached its implied
15 warranty obligations (by selling defective vehicles); violated six state consumer
16 protection statutes (by concealing the defect); was unjustly enriched (through the
17 proceeds from the vehicle sales); and breached its express warranty obligations (by
18 often refusing to provide free repairs). (2d Am. Compl. at ¶¶ 88-147.)

19 Since the case began, it has been fiercely contested. Hyundai has consistently
20 denied the core allegations and challenged Plaintiffs’ legal theories. Early on,
21 Hyundai twice moved to dismiss the complaint. (ECF Nos. 41, 71.) The Court
22 granted the first motion in part and denied Hyundai’s second motion in full. (ECF
23 Nos. 55, 76.)

24 The parties then engaged in protracted discovery. Plaintiffs reviewed over
25 100,000 pages of documents from Hyundai. (Stein Decl., ¶ 4.) They also obtained
26 documents from six third parties through subpoenas; conducted inspections of failed
27 panoramic sunroofs collected by Hyundai; and served sets of interrogatories and
28 requests for admission on Hyundai (to which Hyundai responded). (*Id.*) Hyundai,

1 for its part, served discovery requests on each of the named Plaintiffs, obtained and
2 reviewed their documents, and took their depositions. (*Id.*) All told, the parties took
3 23 depositions in the case, including depositions in Korea, Georgia, Alabama,
4 Michigan, and throughout California. (*Id.*) During discovery, the parties engaged in
5 dozens of meet-and-confer discussions (both by phone and through
6 correspondence). (*Id.*) Through those efforts they minimized their disputes, but still
7 presented five discovery disputes to Magistrate Judge Scott for resolution. (*Id.*)

8 In June 2017, Plaintiffs filed their motion for class certification. (ECF Nos. 93-
9 94.) Plaintiffs supported the motion with over 150 exhibits and supporting
10 declarations from four experts (two liability experts and two damages experts). (ECF
11 Nos. 93-97.) Hyundai filed its opposition to the motion on August 16, 2017, along
12 with reports from six of its own experts. (ECF Nos. 105-113.) Around the same
13 time, Hyundai also filed a motion alleging spoliation of evidence and filed four
14 *Daubert* motions seeking the exclusion of all of Plaintiffs' expert reports. (ECF Nos.
15 104, 123-127.) Plaintiffs opposed all five of Hyundai's motions, (ECF Nos. 156-160,
16 183), and filed their reply in support of class certification on October 2, 2017. (ECF
17 Nos. 145-158.) The parties also briefed two ex parte motions filed by Hyundai in
18 connection with class certification. (ECF Nos. 164-166, 173.) The Court held a
19 multi-hour hearing on class certification on November 6, 2017. (ECF No. 194.)

20 Following the hearing but before the Court issued a class certification opinion,
21 the parties began discussing whether a compromise resolution of the litigation might
22 be feasible, and they ultimately agreed to conduct a mediation. (Stein Decl., ¶ 6.)
23 The parties mediated in July 2018 with the help of retired United State Magistrate
24 Judge Jay C. Gandhi. (*Id.*) With Judge Gandhi's assistance, the parties were able to
25 reach an agreement in principle on all of the material terms of the relief to be
26 provided to the class. (*Id.*) The parties have since prepared the formal settlement
27 agreement now before the Court, which involved cooperative efforts for much of
28 2018 to finalize the terms of the agreement and to prepare and finalize the

1 agreement's exhibits and this motion. (Stein Decl., ¶ 9.) The parties also recently
2 reached an agreement as to reimbursement of Plaintiffs' attorney's fees and costs, as
3 well as service awards to the class representatives. (*Id.*, ¶ 7.)

4 The details of the settlement follow below.

5 OVERVIEW OF THE SETTLEMENT

6 **I. The proposed settlement class**

7 The settlement contemplates certification of the following settlement class:

8 *All persons and entities who bought or leased a Class Vehicle in the United States,*
9 *excluding its territories, as of the date of Preliminary Approval, and all persons who*
10 *bought or leased a Class Vehicle while on active military duty in the Armed Forces*
11 *of the United States as of the date of Preliminary Approval.*

12 (Stein Decl., Ex. 1 (the "Settlement"), Sec. I.D.)¹ For purposes of that definition, the
13 term "Class Vehicles" refers to the following Hyundai vehicle models to the extent
14 they came factory-equipped with a panoramic sunroof and were bought or leased in
15 the United States, excluding the territories, or abroad while a class member was on
16 active military duty: (i) 2011-2016 model year Sonata Hybrid, (ii) 2010-2016 model
17 year Tucson, (iii) 2012-2016 model year Sonata, (iv) 2012-2016 model year Veloster,
18 (v) 2013-2016 model year Santa Fe, (vi) 2013-2016 model year Santa Fe Sport, (vii)
19 2013-2016 model year Elantra GT, (viii) 2012-2016 model year Azera, and (ix)
20 2015-2016 model year Genesis. (*Id.*, Sec. 1.F.)

21 **II. Benefits to the settlement class**

22 As noted, the proposed settlement contains various features intended to shift
23 most sunroof-shattering costs away from class members and on to Hyundai:

24 Warranty extension: The original new vehicle warranty for Class Vehicles
25 covered the vehicles' sunroof for the earlier of 5 years or 60,000 miles. The proposed

26 ¹ As detailed in the settlement agreement, excluded from the class are Hyundai,
27 certain affiliated companies and personnel, any judge to whom this case is assigned
28 (as well as his or her spouse, and all persons within the third degree of relationship
to either of them, as well as the spouses of such persons), and anyone who
purchased a Class Vehicle solely for the purpose of resale. (Settlement, Sec. 1.D.)

1 settlement doubles that warranty. Sunroof shattering will now be covered for free
2 through 10 years and 120,000 miles. (Settlement, Sec. II.A.1.) The full 100% of costs
3 associated with the repair will be free—this includes any replacement parts, all labor,
4 and any sort of diagnostic or inspections that may be needed. (*Id.*, Sec. II.A.3.) The
5 extended warranty also covers any damage to Class Vehicles’ paint or upholstery
6 caused by broken glass and provides for free “loaner vehicles” while repairs are
7 being made. (*Id.*, Secs. I.A.5, 1.Q.) And, perhaps most critically, the extended
8 warranty coverage may not be denied on the grounds that the sunroof shattered due
9 to incidental contact with a stone or other road debris. (*Id.*, Sec. II.A.6.) The full
10 extended warranty also runs with the vehicle to subsequent owners. (Sec. II.A.4.)

11 Reimbursement for prior shattered-sunroof repairs: During the time that Class
12 Vehicles have been on the road, some class members have incurred out-of-pocket
13 repair costs related to shattered sunroofs. (*See, e.g.*, Class Cert. Exs. 109-14, ECF
14 Nos. 97-29–97-34.) In addition, a number have incurred related costs—sometime
15 when the sunroof shatters, the broken glass will scratch the outside or interior of the
16 vehicle. (*Id.*) The proposed settlement reimburses class members for all shattered-
17 sunroof-related repairs, including to exterior paint or interior upholstery.
18 (Settlement, Secs. I.Q, II.C.1.) Class members can recover their full, reasonable out-
19 of-pocket expenses, including the payment of insurance copays and deductibles. (*Id.*,
20 Sec. II.B.1)

21 Reimbursement for rental cars, towing, and other necessary services: To the
22 extent class members incurred rental car, towing, or any other such expense
23 reasonably related to a shattered-sunroof repair, they will also be entitled to full
24 reimbursement of those expenses as well. (Settlement, Secs. I.P, II.C.1.)

25 Streamlined claims process: To ensure these reimbursements will be made to a
26 maximum number of eligible class members, the parties devised an easy-to-navigate
27 claims process. First, the claim form is a single page (front and back), and
28 completing the form will generally require nothing more from class members than

1 confirming their contact information and vehicle identification number, checking
2 the boxes corresponding to the types of reimbursement they seek, writing in the
3 requested dollar amount, and signing, dating, and submitting the claim form. (*See*
4 Claim Form, Settlement, Ex. C.) Class members will be able to submit the claims by
5 mail or electronically, whichever they prefer. (Settlement, Sec. III.1) In many cases,
6 few supporting documents are required to be submitted with the claim forms. (Claim
7 Form, Settlement, Ex. C; Settlement, Sec. II.C.2.) For all repairs at a Hyundai
8 dealership, for example, Hyundai will take on the burden of accessing information
9 that shows the date, nature, and cost of the repair. (Settlement, Sec. II.B.2.) All a
10 class member will need to demonstrate is that he or she incurred the cost—for
11 example, by submitting a credit card bill. (*Id.*) Class members who paid cash for a
12 sunroof repair at a Hyundai dealership and do not have documentation can still
13 recover their full costs through an attestation. (*Id.*) Non-dealership repairs will
14 require only slightly more: a repair invoice or other document showing the date,
15 nature, and price paid for the repair. (*See id.*, Secs. I.M, II.C.1.)

16 Beyond the above, the proposed settlement will also take measures to inform
17 the class about the risk of sunroof shattering, compensate those who experienced it
18 firsthand, and compensate those who no longer wish to own a vehicle:

19 Warning drivers about sunroof shattering: The settlement contains several
20 mechanisms to inform class members about the possibility of sunroof shattering. In
21 addition to the class notice (which will be disseminated by mail and email as
22 discussed below), Hyundai will provide class members with color-printed
23 informational brochures. (Settlement, Ex. D; Settlement, Secs. IV.C.6.) The
24 brochures will be designed to be kept with the owner's manual and will serve as
25 additional notice of the potential for panoramic sunroof shattering. (*Id.*)

26 Compensation for those who experience the shattering: In addition to the
27 various monetary benefits already discussed, any class member who experienced a
28 negative experience (such as surprise or inconvenience) from being inside a vehicle

1 when the sunroof shattered will be entitled to claim an additional \$200 payment.
2 (Settlement, Sec. II.D.1.) The same streamlined claims process discussed above
3 applies.

4 Lost confidence compensation: Finally, the parties are hopeful that those class
5 members who continue to own a Class Vehicle will be satisfied in knowing they are
6 receiving a comprehensive extended warranty—so that they are likely to be covered
7 in the event their sunroof shatters. But should some class members, upon receiving
8 notice of the settlement, lose confidence in their panoramic sunroof and no longer
9 wish to own their Class Vehicle, there is compensation available. Those who sell
10 their Class Vehicle and buy a non-Hyundai vehicle can claim up to \$600; those who
11 trade in for a new Hyundai (with no panoramic sunroof) can receive a \$1,000 rebate.
12 (Settlement, Sec. II.E.1, E.3.) To qualify, class members must trade in or sell their
13 Class Vehicle within 90 days of the settlement notice and must submit a claim with
14 an attestation and documents reflecting the details of the transaction. (*Id.*)

15 **III. The scope of class members' release of claims**

16 In exchange for the benefits provided under the settlement, class members will
17 provide a comprehensive release of claims against Hyundai and related entities.
18 Class members will release all claims relating to the Class Vehicles based on (i) the
19 facts alleged in any of the complaints filed in this case (including all legal claims that
20 could arise from their facts), (ii) the shattering of panoramic sunroofs, (iii) the
21 alleged defect, and (iv) marketing related to the durability of the sunroofs.
22 (Settlement, Secs. I.N., VI.) The agreement does not release claims for (i) personal
23 injury, except to the extent that claims for shock, surprise, annoyance, and
24 inconvenience or similar harm resulting from class members having witnessed the
25 breakage, unaccompanied by any physical injury, or (ii) damage to any tangible
26 property owned by a third party. (*Id.*) Hyundai will also release Plaintiffs and their
27 attorneys from any claims related to this litigation or settlement. (*Id.*, Secs. I.O, VI.)
28

1 **IV. The provision for attorney’s fees, costs, and service awards**

2 In August 2018, after the parties had already mediated with Judge Gandhi
3 and agreed to the material terms of classwide relief, they for the first time broached
4 the subject of attorney’s fees, litigation cost reimbursements, and class representative
5 service awards—during a second full-day mediation with Judge Gandhi. (Stein
6 Decl., ¶ 7.) Although the parties were not able to resolve the issue that day, they
7 continued negotiations with Judge Gandhi’s assistance and ultimately reached
8 agreement through which Plaintiffs may seek up to \$5,400,000 for their combined
9 attorney’s fees, litigation costs, and for class representative service awards (\$5,000
10 per Plaintiff). (*Id.*; Settlement, Sec. V.2.) In light of the considerable effort
11 undertaken to litigate this case over the past three years, and since Plaintiffs’
12 attorneys have already advanced over \$750,000 to prosecute this litigation (including
13 for expert fees and to travel to Korea and elsewhere), any fee awarded will be less
14 than the lodestar that counsel generated in achieving this result for the class. (Stein
15 Decl., ¶ 7.) Counsel will provide additional detail, consistent with Rule 23(h), when
16 they file a formal fee motion after class notice is disseminated. In that motion,
17 Plaintiffs will provide a thorough description of their attorneys’ hourly rates and
18 efforts in this litigation, to enable the Court to assess their reasonable lodestar, and
19 will summarize the litigation costs incurred.

20 **THE COURT SHOULD DIRECT NOTICE TO THE SETTLEMENT CLASS**

21 In years past, district courts have commonly undertaken a “preliminary
22 approval” process when first evaluating a proposed class action settlement. In
23 December 2018, this process was formalized. *See* Fed. R. Civ. P. 23(e)(1). Under the
24 new rule: “The court must direct notice [of the proposed settlement] in a reasonable
25 manner to all class members who would be bound by the proposal if giving notice is
26 justified by the parties’ showing that the court will likely be able to: (i) approve the
27 proposal under Rule 23(e)(2); and (ii) certify the class for purposes of judgment on
28 the proposal.” Fed. R. Civ. P. 23(e)(1)(B).

1 Below, Plaintiffs detail why this motion should be granted and notice should
2 be sent to the settlement class. In short, the settlement is poised to provide valuable
3 benefits to the class, making the settlement fair, reasonable, and adequate, and thus
4 worthy of the Court's approval. And certification of the class for settlement purposes
5 is appropriate under both Rule 23(a) and Rule 23(b)(3).

6 **I. The proposed settlement merits approval.**

7 "The decision to give notice of a proposed settlement to the class is an
8 important event. It should be based on a solid record supporting the conclusion that
9 the proposed settlement will likely earn final approval after notice and an
10 opportunity to object." Fed. R. Civ. P. 23(e)(1), 2018 Advisory Committee's Notes.
11 A careful review at this stage of the proceedings is important, as the next step will be
12 the costly and time-consuming process of disseminating class notice. *See* Newberg
13 on Class Actions § 13:10 (5th ed.).

14 The revised Rule 23 now provides a checklist of factors to consider when
15 assessing whether a proposed settlement is fair, reasonable, and adequate. *See* Fed.
16 R. Civ. P. 23(e)(B)(2). (Previously, the Ninth Circuit and other courts had developed
17 their own lists of factors to be considered; the revised Rule 23 "directs the parties to
18 present [their] settlement ... in terms of [this new] shorter list of core concerns." Fed.
19 R. Civ. P. 23(e)(2), Advisory Committee's Notes.)

20 Below, Plaintiffs analyze each of the Rule 23(e)(2) factors in turn, and do so
21 bearing in mind the Ninth Circuit's recent admonition that the key "underlying
22 question remains this: Is the settlement fair?" *In re Volkswagen "Clean Diesel" Mktg.,*
23 *Sales Practices, & Prod. Liab. Litig.*, 895 F.3d 597, 611 (9th Cir. 2018); *accord* Fed. R.
24 Civ. P. 23(e)(2), 2018 Advisory Committee's Notes ("The central concern in
25 reviewing a proposed class-action settlement is that it be fair, reasonable, and
26 adequate."). As will be discussed, the settlement is fair, and the Rule 23(e)(2) factors
27 weigh in favor of approving it.

28

1 **A. The class representatives and Class Counsel have adequately**
2 **represented the class.**

3 Under Rule 23(e)(2)(A), the first factor to be considered is the adequacy of
4 representation by the class representatives and attorneys. This analysis includes “the
5 nature and amount of discovery” undertaken in the litigation. Fed. R. Civ. P.
6 23(e)(2)(A), Advisory Committee’s Notes.

7 Here, the class representatives have diligently represented the class. They
8 actively participated over multiple years of litigation; produced documents and
9 written discovery responses; and sat for deposition. (Stein Decl., ¶ 8.) Throughout,
10 they have remained in contact with Plaintiffs’ counsel, stayed apprised of the
11 litigation, and have acted with the interests of the class in mind. (*Id.*)

12 Plaintiffs’ counsel have also adequately represented the class. They have
13 vigorously prosecuted this case, having briefed two motions to dismiss, several
14 discovery motions, a class certification motion, four *Daubert* motions, and a
15 spoliation motion. (Stein Decl., ¶ 5.) They engaged in protracted discovery,
16 conducting and defending 23 depositions, and reviewing over 100,000 pages of
17 documents. (*Id.*, ¶ 4.) They also engaged the services of four experts who submitted
18 testimony in support of certification. (*Id.*, ¶ 5.) These efforts have led counsel to
19 advance over \$750,000 in litigation expenses on behalf of the class, with no
20 assurance that those expenses would be reimbursed. (*Id.*, ¶ 7.)

21 Finally, proposed Class Counsel have successfully litigated many prior
22 consumer class actions, including over 20 automotive defect class actions, and have
23 brought that experience and knowledge to bear on behalf of the class. (*Id.*, ¶ 2.)

24 **B. The proposed settlement was negotiated at arm’s length.**

25 The second Rule 23(e)(2) factor asks the Court to confirm that the proposed
26 settlement was negotiated at arm’s length. Fed. R. Civ. P. 23(e)(2)(B). As with the
27 preceding factor, this can be “described as [a] ‘procedural’ concern[], looking to the
28 conduct of the litigation and of the negotiations leading up to the proposed

1 settlement.” Where, like here, the settlement was negotiated before the Court
2 certified a litigation class, “there is an even greater potential for a breach of fiduciary
3 duty by class counsel, [which] require[s that] the district court ... undertake an
4 additional search for more subtle signs that class counsel have allowed pursuit of
5 their own self-interests and that of certain class members to infect the
6 negotiations.” *In re Volkswagen*, 895 F.3d at 610-11 (quoting *In re Bluetooth Headsets*
7 *Litig.*, 654 F.3d 935, 946-47 (9th Cir. 2011)).

8 There are multiple indicia here of the arm’s length nature of the negotiations.
9 *See, e.g., Kulesa v. PC Cleaner, Inc.*, No. 12-cv-0725, 2014 WL 12581770, at *8 (C.D.
10 Cal. Aug. 26, 2014) (considering *Bluetooth* and finding no indicia of collusion since
11 class members received substantial monetary relief; the requested fees were clearly
12 disclosed in the notice; and settlement negotiations were overseen by a mediator).

13 First, the parties did not begin negotiations until mid-2018, after the case had
14 been pending for over two years. (Stein Decl., ¶ 6.) By then, the parties had already
15 conducted extensive discovery, engaged in pretrial motion practice, and fully briefed
16 class certification. (*Id.*); *Wannemacher v. Carrington Mortg.*, No. 12-cv-2016, 2014 WL
17 12586117, at *8 (C.D. Cal. Dec. 22, 2014) (finding no signs of collusion where
18 “significant ... discovery [was] conducted”; “plaintiffs had already drafted a class
19 certification brief”; and before “exploring settlement, the parties litigated the case for
20 a year”).

21 Second, the parties resolved the litigation with the assistance of retired U.S.
22 Magistrate Judge, Jay C. Gandhi of JAMS. (Stein Decl., ¶ 6.) “[T]he involvement of
23 a neutral or court-affiliated mediator or facilitator in [the parties’] negotiations may
24 bear on whether they were conducted in a manner that would protect and further the
25 class interests.” Rule 23(e)(2)(B), Advisory Committee’s Notes; *accord Pederson v.*
26 *Airport Terminal Servs.*, No. 15-cv-02400, 2018 WL 2138457, at *7 (C.D. Cal. April 5,
27 2018) (the oversight “of an experienced mediator” reflected noncollusive
28 negotiations). The parties conducted a full day of mediation under Judge Gandhi’s

1 supervision in July 2018, during which they were able to reach agreement on the
2 material terms of the settlement. (Stein Decl., ¶ 6.).

3 Third and finally, the manner in which the fee negotiations occurred also
4 demonstrates the arm’s length and non-collusive nature of the negotiations. The
5 parties never discussed attorney’s fees until after the parties had already agreed to
6 the material terms of the class’s relief. (Stein Decl., ¶ 7.) Instead, the parties agreed
7 that while they would later try to resolve the fee issue, even if unsuccessful they
8 would present this settlement to the Court and then litigate a contested fee motion—
9 something Class Counsel and Hyundai have done before. (*Id.*) With the further
10 assistance of Judge Gandhi, however, the parties resolved the fee issue, beginning
11 with a second full day of mediation and then with follow-up negotiations under
12 Judge Gandhi’s continued supervision. (*Id.*) In sum, to the extent one or more *In re*
13 *Bluetooth* considerations requires extra scrutiny to ensure the process here was free
14 from collusion, the Court can be confident of the arm’s length nature of the process.

15 **C. The quality of relief to the class weighs in favor of approval.**

16 The third factor to be considered is whether “the relief provided for the class is
17 adequate, taking in to account: (i) the costs, risks, and delay of trial and appeal; (ii)
18 the effectiveness of any proposed method of distributing relief to the class, including
19 the method of processing class-member claims; (iii) the terms of any proposed award
20 of attorney's fees, including timing of payment; and (iv) any agreement required to
21 be identified under Rule 23(e)(3).” Fed. R. Civ. P. 23(e)(2)(C). Under this factor, the
22 relief “to class members is a central concern.” Fed. R. Civ. P. 23(e)(2)(C), Advisory
23 Committee’s Notes; *In re Volkswagen*, 895 F.3d at 611 (the “factors and warning
24 signs” identified in *Bluetooth* “are just guideposts”; the focus is fairness).

25 **1. The settlement provides strong relief for the class.**

26 The relief to be provided to the settlement class is strong. As discussed above,
27 the settlement effectively shifts the cost of the expensive sunroof-shattering repairs
28 from class members to Hyundai. Hyundai is obligated to pay for the full cost of the

1 repairs through the vehicle’s first 10 years and 120,000 miles (whichever comes
2 first). (Settlement, Sec. II.A.1.) Previously, Hyundai would only perform repairs for
3 free if the sunroof shattered while it was under warranty within 5 years and 60,000
4 miles—and even then Hyundai dealers would sometimes not provide free repairs
5 because of a contractual “glass chipping” provision excluded warranty coverage.
6 (See Class Cert. Memo., ECF No. 93-4, at 15-17.) In addition, Hyundai will
7 reimburse—in full—reasonable shattering-related costs borne by class members.
8 (Settlement, Sec. II.B.) Class members who paid for a rental car, towing service, or
9 some other such service in connection with a shattered-sunroof repair will be able to
10 claim full reimbursement of those costs too. (*Id.*, Sec. II.C.)

11 The settlement also provides meaningful relief to address the potential fright
12 caused by the shattering. Class members will receive notice of the alleged defect
13 (including through a color-printed brochure designed to be kept with the owner’s
14 manual). (Settlement, Secs. 1.H, IV.C.6.) They can then decide for themselves
15 whether they wish to continue owning and driving the vehicles. If a class member
16 receives notice, learns of the risk of shattering, and decides that he or she no longer
17 wishes to drive their Class Vehicle, the class member can sell their vehicle and claim
18 up to \$600 through an ADR process or trade in for a new Hyundai without a
19 panoramic sunroof and receive \$1,000. (*Id.*, Sec. II.E.1.) Finally, for those class
20 members who already experienced surprise or inconvenience from a Class Vehicle
21 sunroof shattering while they were in the vehicle, those class members can claim an
22 additional \$200. (*Id.*, Sec. II.D.1.)

23 This relief, from Plaintiffs’ perspective, readily satisfies the Rule 23 standard
24 of fair, reasonable, and adequate. While there can always be theoretical room for
25 improvement, this settlement provides substantial benefits to the class. The benefits
26 compare favorably with prior automotive defect settlements: Class Counsel have
27 successfully resolved a number of prior automotive defect class actions, including
28 several here in the Central District. *E.g.*, *Parkinson v. Hyundai Motor Am.*, No. 06-cv-

1 0345 (C.D. Cal.); *Browne v. Am. Honda Motor Co., Inc.*, No. 09-cv-06750 (C.D. Cal.);
2 *Yaeger v. Subaru of Am., Inc.*, No. 1:14-cv-04490 (D.N.J.); *In re Hyundai Sonata Engine*
3 *Litig.*, No. 15-cv-01685 (N.D. Cal.). Although each settlement is different, and
4 tailored to the unique facts of the underlying case, the quality of the class relief here
5 is at least on par with those other cases—and Class Counsel thus wholeheartedly
6 supports approval of this settlement. *See, e.g., Parkinson*, No. 8:06-cv-345, ECF No.
7 271 (reimbursements of between 50-100% of the repair cost depending on mileage);
8 *Yaeger*, No. 1:14-cv-04490, ECF No. 49 (warranty extension through 8 years,
9 100,000 miles and repair reimbursements); *Browne*, No. 09-cv-06750, ECF No. 27
10 (50-100% repair reimbursements); *In re Hyundai Sonata*, No. 15-cv-01685, ECF No.
11 57-2 (providing 10-year, 120,000-mile warranty extension and repair
12 reimbursements).

13 **2. Continued litigation would entail substantial cost, risk, and delay.**

14 Almost all class actions involve high levels of cost, risk, and lengthy-duration,
15 which supports the Ninth Circuit’s “strong judicial policy that favors settlements,
16 particularly where complex class action litigation is concerned.” *Linney v. Cellular*
17 *Alaska P’ship*, 151 F.3d 1234, 1238 (9th Cir. 1998). Here, had the parties not settled,
18 the litigation would likely have been risky, protracted, and costly.

19 Although the parties have completed much of discovery, they likely would
20 have briefed a Rule 23(f) appeal after the Court’s certification ruling, followed by
21 summary judgment, further *Daubert* motions, motions in limine, a possible
22 decertification motion, and then trial. Each stage would have added risk and
23 necessarily imposed delay before relief could be provided to the class. As to the
24 merits of the case, Plaintiffs believe they ultimately would have been able to
25 demonstrate that all Class Vehicles were sold with a common defect that renders
26 them prone to sunroof shattering, and that Hyundai knew about the problem but
27 failed to disclose it. But Plaintiffs’ counsel also recognize, based on their experience
28 in other automotive defect class litigation, that their case could fail on liability, or at

1 least be whittled down. For example, Hyundai believes it would be able to
2 demonstrate that the evidence adduced by Plaintiffs does not establish the existence
3 of a defect: Hyundai has offered a vigorous defense that the sunroof-shattering is
4 quite rare; even in Plaintiffs' assessment of the evidence, the shattering occurs in just
5 1-2% of Class Vehicles, and Hyundai's assessment of the evidence is that sunroof-
6 shattering occurs far less frequently than even that. Hyundai would also argue that
7 while it covered some sunroof repairs under warranty, any coverage denied was
8 lawful given the warranty exclusion for glass damage caused by "stone chipping."
9 And Hyundai might have a colorable defense that it did not conceal information
10 about the sunroofs because it did not discover the problem until after it had sold
11 many of them.

12 Even if Plaintiffs prevailed on these issues through trial, an appeal would
13 likely follow, taking another two-plus years to resolve. Also, if the parties had
14 proceeded with a California class trial as a bellwether approach (as the parties and
15 Court discussed at the certification hearing), still more time, expense, and risk would
16 come from trying the other state cases. At best, a class recovery would come by
17 2021, and during that time, some class members would inevitably discard repair
18 receipts and other evidence. In other words, a victory at trial might not even yield
19 superior results to this settlement, but the risk and cost of litigation (already over
20 \$750,000) would be much higher. All of these considerations favor settlement; the
21 class will receive meaningful relief now—not years down the road.

22 **3. The settlement agreement provides for an effective distribution of**
23 **proceeds to the class and a streamlined claims process.**

24 The settlement contemplates an efficient and effective distribution process.
25 Hyundai is required to review all claims within 60 days of receiving them, and to
26 send written notice to each class member of (i) the amount to be paid, (ii) the basis
27 for paying less than the amount claimed (if applicable), (iii) the class member's right
28 to attempt to cure any deficiency, and (iv) the class member's right to participate in

1 ADR (if applicable—class members have the right under the settlement to initiate a
2 BBB-administered ADR process if dissatisfied with the resolution of their claim).
3 (Settlement, Secs. II.E.3, III.4.) Then, once the settlement receives final approval
4 and takes effect, Hyundai must make payment to each individual class member who
5 makes an adequate claim within 30 days through a preloaded debit card—effectively
6 the same as cash, since the cards work at ATMs and at any merchants that accept
7 Visa cards. (*Id.*, Sec. III.8.)

8 The settlement also contains unique provisions for class members who seek
9 compensation for trading in and selling their Class Vehicles after receiving notice of
10 the settlement. Those sales and trade-ins actions will necessarily occur quickly, likely
11 before the Court can consider final approval, so Hyundai has agreed to pay those
12 claims within 60 days—rather than waiting for the settlement to be finally approved
13 and go into effect. To facilitate that quick payment, participating class members will
14 execute individualized releases (which mimic the general class release in the
15 settlement agreement). (Settlement, Sec. II.E.2; *see also* Sec. II.E.3.)

16 Finally, the claims process is streamlined. The parties negotiated a provision
17 that minimizes the need for class members to gather supporting documents. Class
18 members who are claiming reimbursement for repairs performed at a Hyundai
19 dealership need not document the nature of the repair—Hyundai has agreed to take
20 steps to obtain that type of information directly from its dealerships. (Settlement,
21 Sec. II.B.2.) Class members who paid cash for repairs can attest to the amount of
22 their payment. (*Id.*, Sec. II.B.2.c.) And the claim form itself is designed to be simple.
23 (*Id.*, Ex. C.) The claims process thus poses no artificial hurdles and should
24 encourage class member participation in the settlement.

25 **4. The terms of the proposed award of attorney’s fees, including**
26 **timing of payment, also support settlement approval.**

27 Nothing about the negotiated attorney’s fee award should detract from the
28 fairness of the settlement. As discussed, the parties (under Judge Gandhi’s

1 supervision) finalized the material terms of the classwide relief under the settlement
2 before broaching the subject of attorney’s fees—so there is no risk that the attorney’s
3 fee agreement impacted the nature of the class relief. (Stein Decl., ¶ 7.) Had the
4 parties not negotiated the fee, they would still have proceeded with this settlement
5 and simply would have litigated the fee before this Court. (*Id.*) In addition, though
6 Hyundai agreed not to contest Plaintiffs’ fee motion, that agreement was itself
7 secured through arm’s length negotiations under the supervision of Judge Gandhi,
8 and of course remains subject to this Court’s approval once Plaintiffs file their
9 supporting motion. *See* Fed. R. Civ. P. 23(h).

10 Also of note, the fee and cost reimbursements, if approved, will compensate
11 counsel at a rate lower than their usual billing rates given the amount of time they
12 have devoted to this litigation. (Stein Decl., ¶ 7.) Had the fee amount been litigated
13 rather than negotiated, a multiplier could have been awarded and the fees
14 substantially higher. *Sadowska v. Volkswagen Grp. of Am.*, No. CV 11-00665, 2013 WL
15 9600948, at *9 (C.D. Cal. Sept. 25, 2013) (approving negotiated fee award 1.37
16 times the lodestar and noting that “[m]ultipliers can range from 2 to 4 or even
17 higher.”) Under the settlement, however, Hyundai has agreed not to contest a
18 combined award of \$5,400,000, which will be reduced to about \$4.6 million once
19 litigation expenses are reimbursed and class representative service awards are paid.
20 (Settlement, Sec. V.2; Stein Decl., ¶ 7.) This will amount to a negative multiplier—
21 rather than a more common positive multiplier. (Stein Decl., ¶ 7.) And while
22 Plaintiffs acknowledge that an award of several million dollars can sound quite large
23 in the abstract, this litigation required a massive undertaking by counsel. The case
24 lasted three years, involved 23 depositions (all around the country and in Korea), the
25 review of over 100,000 pages of discovery documents, 5 discovery motions, 2
26 motions to dismiss, 4 *Daubert* motions, the briefing of an evidence spoliation motion,
27 the full briefing of class certification (which featured over 150 exhibits in support of
28 the motion), and working with 4 experts in support of Plaintiffs’ case. (Stein Decl.,

1 ¶¶ 4-5.) The proposed award is thus appropriate, which Plaintiffs will detail further
2 when they file their Rule 23(h) motion for attorney’s fees.

3 **5. The parties have no other agreements pertaining to the settlement.**

4 Court also must evaluate any agreement made in connection with the
5 proposed settlement. *See* Fed. R. Civ. P. 23(e)(2)(C)(iv), (e)(3). Here, the settlement
6 agreement before the Court is the only extant agreement. (Stein Decl., ¶ 9.)

7 **D. The settlement treats all settlement class members equitably.**

8 The final Rule 23(e)(2) factor turns on whether the proposed settlement “treats
9 class members equitably relative to each other.” Fed. R. Civ. P. 23(e)(2)(D).

10 “Matters of concern could include whether the apportionment of relief among class
11 members takes appropriate account of differences among their claims, and whether
12 the scope of the release may affect class members in different ways that bear on the
13 apportionment of relief.” Fed. R. Civ. P. 23(e)(2)(D), Advisory Committee’s Notes.

14 Here, the settlement generally treats all class members the same. All current
15 owners and lessees will be provided an extended warranty of the same 10-year,
16 120,000-mile duration. To the extent they receive different compensation under the
17 settlement, it will be proportionate to their actual harms. For example, only those
18 class members who spent money on sunroof repairs or related expenses will be
19 reimbursed for such expenses. *See, e.g., Altamirano v. Shaw Indus., Inc.*, No. 13-cv-
20 00939, 2015 WL 4512372, at *8 (N.D. Cal. July 24, 2015) (finding no preferential
21 treatment because the settlement “compensates class members in a manner generally
22 proportionate to the harm they suffered on account of [the] alleged misconduct”).
23 Once reimbursed for their repair expenses, those class members will stand in an
24 identical posture to all other class members—at that point, none will have suffered
25 unreimbursed, out-of-pocket repair costs.

26 Much the same could be said about those class members who experienced the
27 shattering firsthand or those who decide to trade in or sell their vehicles after
28 receiving notice of the settlement. Not all class members will suffer these types of

1 harms, but those who do will be eligible for the same compensation. The same is
2 true for the class’s release: all class members will provide an identical release—it
3 does not vary by class member or subset of the class. As a result, the settlement
4 treats all class members equitably, further supporting approval of the settlement.

5 Finally, though the class representatives will receive an additional \$5,000, the
6 extra payment is in recognition for the service they performed on behalf of the class,
7 and the Ninth Circuit has approved such awards. *Boyd v. Bank of Am. Corp.*, No. 13-
8 cv-0561-DOC, 2014 WL 6473804, at *7 (C.D. Cal. Nov. 18, 2014) (citing *Staton v.*
9 *Boeing Co.*, 327 F.3d 938, 976-77 (9th Cir. 2003)). The awards here are comparable
10 to the “typical incentive awards in the Ninth Circuit, where \$5,000 is presumptively
11 reasonable.” *Smith v. Am. Greetings Corp.*, No. 14-cv-02577, 2016 WL 362395, at *10
12 (N.D. Cal. Jan. 29, 2016). And the awards are warranted given the class
13 representatives’ efforts to respond to over 20 discovery requests each and to sit for a
14 full-day deposition. (Stein Decl., ¶¶ 4, 8.)

15 * * *

16 For all these reasons, the proposed settlement merits approval.

17 **II. Certification of the class will be appropriate for settlement purposes.**

18 The second prerequisite for directing notice of the settlement to the class is a
19 determination that the class is likely to meet the requirements for certification for
20 settlement purposes. Fed. R. Civ. P. 23(e)(1)(B)(ii). Certification requires that all
21 four elements of Rule 23(a) and at least one prong under Rule 23(b) be satisfied. In
22 addition, Court must assure itself that the proposed forms of notice to the class are
23 the “best notice that is practicable under the circumstances.” Fed. R. Civ. P.
24 23(c)(2)(B). “In the settlement context, a court must pay undiluted, even heightened,
25 attention to class certification requirements.” *In re Volkswagen*, 895 F.3d at 606.

1 **A. The class satisfies the requirements of Rule 23(a) for settlement**
2 **purposes.**

3 **1. The class members are too numerous to be joined.**

4 The first Rule 23(a) requirement is that the proposed class be so numerous that
5 joinder of all members is impracticable. *See* Fed. R. Civ. P. 23(a)(1). Here, this
6 “numerosity” requirement is easily satisfied. Hyundai sold over 500,000 Class
7 Vehicles nationwide, and many have been resold in the years since, such that the
8 total number of class members is even higher.

9 **2. The action involves common questions of law or fact.**

10 Under Rule 23(a)(2), there must be “questions of law or fact common to the
11 class,” meaning the class’s claims “must depend upon a common contention” such
12 that “determination of [their] truth or falsity will resolve an issue that is central to
13 the validity of each one of the claims in one stroke.” *Wal-Mart Stores v. Dukes*, 564
14 U.S. 338, 350 (2011). In past cases, the Ninth Circuit has held that plaintiffs “easily
15 satisfy the commonality requirement,” where the class claims turn on questions
16 including (i) whether Class Vehicles are defective; (ii) whether the defendant was
17 aware of the defect; and (iii) whether the defendant concealed the nature of the
18 defect. *Wolin v. Jaguar Land Rover N. Am.*, 617 F.3d 1168, 1172 (9th Cir. 2010). For
19 settlement purposes, the commonality requirement is thus satisfied; the
20 “circumstances of each particular class member ... retain a common core of factual
21 or legal issues with the rest of the class.” *Evon v. Law Offices of Sidney Mickell*, 688
22 F.3d 1015, 1029 (9th Cir. 2012).

23 **3. Plaintiffs’ claims are typical of those of the class.**

24 Rule 23(a)(3) requires that “the claims or defenses of the representative
25 parties [be] typical of the claims or defenses of the class.” “[T]he typicality
26 requirement is permissive and requires only that the representative’s claims are
27 reasonably co-extensive with those of absent class members; they need not be
28 substantially identical.” *Rodriguez v. Hayes*, 591 F.3d 1105, 1124 (9th Cir. 2010).

1 Plaintiffs have alleged the same claims as everyone else who bought or leased a
2 Class Vehicle: Hyundai sold them a vehicle allegedly prone to sunroof shattering.
3 This common course of conduct gives rise to the same reasonably co-extensive
4 claims for all class members for purposes of settlement. *See Just Film v. Buono*, 847
5 F.3d 1108, 1117 (9th Cir. 2017).

6 **4. Plaintiffs and their counsel have and will continue to fairly**
7 **and adequately protect the interests of the class.**

8 The final Rule 23(a) requirement demands that “the representative parties will
9 fairly and adequately protect the interests of the class.” Fed. R. Civ. P. 23(a)(4). This
10 requirement is met as long as the named plaintiffs and their counsel (1) have no
11 conflicts of interest with other class members, and (2) will prosecute the action
12 vigorously. *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1020 (9th Cir. 1998).

13 As discussed above in the context of settlement approval, there has been
14 adequate representation of the class throughout this litigation. There are no intra-
15 class conflicts; to the contrary, Plaintiffs and the members of the classes share the
16 same interest in holding Hyundai accountable for selling defective Class Vehicles. In
17 addition, the class representatives’ years-long effort to obtain relief demonstrates
18 their commitment to furthering the class’s interests. (Stein Decl., ¶ 8.) Plaintiffs’
19 counsel, for their part, are experienced attorneys with a history successfully litigating
20 complex class actions, including against Hyundai and other manufacturers. (*Id.*, Ex.
21 2, Resume.) They successfully opposed two motions to dismiss, uncovered key
22 documents in discovery, and engaged experts to help explain technical issues in this
23 litigation. (*Id.*, ¶¶ 4-5.) There is no reason to doubt the adequacy of this
24 representation.

25 **B. The class meets the requirements of Rule 23(b)(3) for settlement**
26 **purposes.**

27 “In addition to meeting the conditions imposed by Rule 23(a), the parties
28 seeking class certification must also show that the action is maintainable under Fed.

1 R. Civ. P. 23(b)(1), (2) or (3).” *Hanlon*, 150 F.3d at 1022. Here, for settlement
2 purposes, the settlement class is maintainable under Rule 23(b)(3), as common
3 questions predominate over any questions affecting only individual members and
4 class resolution is superior to other available methods of adjudication. *Id.* As
5 alleged, class members’ claims depend primarily on whether their sunroofs are
6 defective, raising predominantly common questions courts have found to justify
7 class treatment. *See, e.g., Wolin*, 617 F.3d at 1173 (common issues predominated in
8 multistate automotive defect litigation); *Hanlon*, 150 F.3d at 1022-1023 (common
9 issues predominated in suit involving auto defect); *Chamberlan v. Ford Motor Co.*, 223
10 F.R.D. 524, 526 (N.D. Cal. 2004) (same).

11 Similarly, there can be little doubt that resolving all settlement class members’
12 claims through a single class action is superior to a series of individual lawsuits.
13 “From either a judicial or litigant viewpoint, there is no advantage in individual
14 members controlling the prosecution of separate actions. There would be less
15 litigation or settlement leverage, significantly reduced resources and no greater
16 prospect for recovery.” *Hanlon*, 150 F.3d at 1023. Finally, in the settlement context,
17 there can be no objection that class proceedings would present the sort of intractable
18 management problems that sometimes override the collective benefits of class
19 actions, “for the proposal is that there be no trial.” *Amchem Prods., Inc. v. Windsor*,
20 521 U.S. 591, 620 (1997).

21 **C. The settlement provides the best method of notice practicable.**

22 Before approving a class settlement, “[t]he court must direct notice in a
23 reasonable manner to all class members who would be bound by the proposal.”
24 Fed. R. Civ. P. 23(e)(1). Where the settlement class is certified under Rule 23(b)(3),
25 the notice must also be the “best notice that is practicable under the circumstances,
26 including individual notice to all members who can be identified through reasonable
27 effort.” Fed. R. Civ. P. 23(c)(2)(B).

1 Here, the parties agreed to provide individual notice by both U.S. mail and
2 email (where available). (*See* Settlement, Sec. IV.C.1-2.) In addition, the parties have
3 agreed to publish a settlement website, on which will be posted a long-form class
4 notice. (Settlement, Ex. A; Sec. IV.C.3.) For the U.S. mail notice, Hyundai will
5 derive up-to-date mailing addresses for class members by employing the services of
6 R.L. Polk, IHS Markit, or a similar third-party entity, to utilize the most current
7 address data from state agencies. (*Id.*, Sec. IV.C.1.) For any individual notice that is
8 returned as undeliverable, Hyundai will also conduct an advanced address search
9 using Hyundai’s customer database information regarding the Class Vehicle owner
10 to obtain a deliverable address. (*Id.*)

11 Plaintiffs request that the Court approve this method of notice as the best
12 practicable under the circumstances. *See, e.g., Rannis v. Recchia*, 380 F. App’x. 646,
13 650 (9th Cir. 2010) (finding mailed notice to be the best notice practicable where
14 reasonable efforts were taken to ascertain class members addresses). The notices
15 comply with Rule 23(c)(2)(B) in that they “clearly and concisely state in plain, easily
16 understood language” the nature of the action; the class definition; the class claims,
17 issues, or defenses; that the class member may appear through counsel; that the
18 court will exclude from the class any member who requests exclusion; the time and
19 manner for requesting exclusion; and the binding effect of a class judgment on class
20 members. (*See* Settlement, Exs. A, B.) The notice is also consistent with the sample
21 provided by the Federal Judiciary Center.²

22 Notice of the proposed settlement will also be provided to the U.S. Attorney
23 General and appropriate regulatory officials in all 50 states, as required by the Class
24 Action Fairness Act, 28 U.S.C. § 1715. (Settlement, Sec. IV.A.1.) Hyundai will
25 provide these government officials with copies of all required materials so that the
26 states and federal government may make an independent evaluation of the
27 settlement and bring any concerns to the Court’s attention prior to final approval.

28 _____
² *See* <https://www.fjc.gov/sites/default/files/2016/ClaAct04.pdf>.

THE COURT SHOULD SET A SCHEDULE FOR FINAL APPROVAL.

Once the Court directs notice of the settlement to the class, the next steps in the settlement approval process are to schedule a final approval hearing, allow time for notice to be sent to the class and an opportunity for class members to submit objections and opt-out requests, and allow the parties to conduct appropriate objector discovery if needed.³

The parties thus propose the following schedule:

Hyundai to disseminate class notice:	60 days after entry of order
Plaintiffs to file a motion for settlement approval and award of attorney’s fees:	90 days after entry of order
Deadline for class members to opt out of or object to the settlement	120 days after entry of order
Replies in support of final approval and fee application:	150 days after entry of order
Hyundai to file affidavit attesting that notice was disseminated as ordered:	155 days after entry of order
Final Approval hearing:	165 days after entry of order

CONCLUSION

For the foregoing reasons, the parties respectfully request that the Court enter the accompanying proposed order directing notice of the proposed settlement to the class, appointing Class Counsel, and setting a hearing for the purpose of deciding whether to grant final approval of the settlement.

³ See, e.g., Final Order and Judgment, *Milano v. Interstate Battery Sys. of Am., Inc.*, No. 4:10-CV-02125 (N.D. Cal. July 5, 2012) (ECF No. 106) (noting that objector repudiated his objection in deposition testimony); *In Re: MagSafe Apple Power Adapter Litig.*, No. 5:09-CV-01911, 2015 WL 428105, at *2 (N.D. Cal. May 29, 2012) (authorizing objector depositions)

1 DATED: January 30, 2019

Respectfully submitted,

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3
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14 *Attorneys for Plaintiffs*

15
16 UNITED STATES DISTRICT COURT
17 CENTRAL DISTRICT OF CALIFORNIA

18 BILLY GLENN, KATHY WARBURTON,
19 KIM FAMA, CORINNE KANE, ROXANA
FITZMAURICE, and JAHAN MULLA, on
20 behalf of themselves and all others similarly
situated,

21 Plaintiffs,

22 v.

23 HYUNDAI MOTOR AMERICA and
24 HYUNDAI MOTOR COMPANY,

25 Defendants.

NO. 8:15-cv-02052-DOC-KES

**DECLARATION OF KIM D.
STEPHENS IN SUPPORT OF
MOTION TO DIRECT
NOTICE OF PROPOSED
CLASS ACTION
SETTLEMENT**

26
27 DECLARATION OF KIM D. STEPHENS IN
SUPPORT OF MOTION TO DIRECT NOTICE OF
28 PROPOSED CLASS ACTION SETTLEMENT
(8:15-cv-02052-DOC-KES) - 1

1 I, Kim D. Stephens, declare as follows:

2 1. I am a member of Tousley Brain Stephens PLLC, counsel for
3 Plaintiffs in this action. I submit this declaration in support of Motion to Direct
4 Notice of Proposed Class Action Settlement. I have personal knowledge of the
5 facts set forth herein and am competent to testify thereon.

6 2. I am one of Tousley Brain Stephens PLLC's senior litigators. I
7 received my law degree (with honors) in 1981 from the University of
8 Washington, and served as a judicial extern clerk for the Honorable Eugene A.
9 Wright, Ninth Circuit Federal Court of Appeals. After that clerkship, I joined
10 Haggard, Tousley & Brain, the predecessor to Tousley Brain Stephens PLLC. At
11 Tousley Brain Stephens PLLC, I concentrate my practice in complex commercial
12 and class action litigation with special emphasis on consumer, securities,
13 financial, construction products, and business law matters. I have been appointed
14 special attorney general to handle cases for the state of Washington, lead counsel
15 to manage both state and federal class actions, and have extensive experience
16 litigating multiple plaintiff, multi-district and class action cases involving
17 securities fraud, environmental contamination, products liability, anti-trust and
18 consumer fraud issues in state and federal courts.

19 3. My colleague, Jason T. Dennett, received his law degree from the
20 University of Oregon in 2000 and served as a judicial extern clerk for the
21 Honorable Ann Aiken, U.S. District Court, District of Oregon. After that
22 clerkship, he joined Carlson & Dennett, P.S. In 2013, Carlson & Dennett, P.S.
23 joined Tousley Brain Stephens PLLC. At Tousley Brain Stephens PLLC, Mr.
24 Dennett concentrates his practice in complex civil and class action litigation with
25 special emphasis on consumer, securities, financial, and business law matters.

26
27 DECLARATION OF KIM D. STEPHENS IN
28 SUPPORT OF MOTION TO DIRECT NOTICE OF
PROPOSED CLASS ACTION SETTLEMENT
(8:15-cv-02052-DOC-KES) - 2

1 4. In addition to the work Mr. Stein describes, Plaintiffs' counsel
2 worked extensively with numerous experts to develop a root cause analysis for
3 the allegedly defective sunroofs involved in this case. We expended many
4 thousands of hours and many hundreds of thousands of dollars on these expert
5 analyses. The expert opinions and analyses were complete at the time of
6 settlement.

7 5. My firm anticipated being lead trial counsel if this matter proceeded
8 to trial. At the time of settlement, we were meeting regularly to outline trial
9 tasks, to create, authenticate and admit trial exhibits, and to select and condense
10 trial testimony. The court indicated it was not inclined to continue the trial date
11 and we were preparing accordingly.

12 6. Tousley Brain Stephens PLLC has extensive experience in class
13 action litigation and has both prosecuted and defended numerous multi-million
14 dollar class actions, including the following cases in the areas of consumer
15 protection, product liability, securities, and employment:

16 **Consumer**

- 17 • Appointed sole interim lead counsel in *In re Premera Blue Cross*
18 *Custody Data Security Breach Litigation*, multi-district litigation
19 pending in the U.S. District Court for the District of Oregon. The
20 lawsuit alleges that Premera allowed a massive breach of its data
21 systems, permitting hackers access to the personal, medical, and
22 financial information of more than 11 million Premera subscribers
23 and employees.
- 24 • Appointed sole class counsel in *Ikuseghan v. Multicare Health*
25 *System*, U.S. District Court for the Western District of Washington to
26

27 DECLARATION OF KIM D. STEPHENS IN
28 SUPPORT OF MOTION TO DIRECT NOTICE OF
PROPOSED CLASS ACTION SETTLEMENT
(8:15-cv-02052-DOC-KES) - 3

1 represent a nationwide class asserting Telephone Consumer
2 Protection Act (TCPA) claims. In approving the settlement and fee
3 award, the court noted that “class counsel obtained an extraordinarily
4 good result for the class following an arm’s-length negotiation.
5 Under the approved settlement, class members will receive as much
6 as they would have received had they successfully litigated their
7 claims under the TCPA. This recovery is significantly superior to
8 other TCPA class action settlements that have been approved in this
9 Circuit.” With individual class member recoveries ranging from
10 \$2,500 to over \$19,000 per approved claim, the settlement is
11 believed to be the largest individual class member recovery in any
12 TCPA case.

- 13 • As co-lead counsel in a consumer fraud class action, *Odom v.*
14 *Microsoft, et al.*, Superior Court, King County, Washington, we
15 successfully settled this action in 2010 after six years of hard-fought
16 litigation. We alleged that Microsoft Corporation and Best Buy
17 Stores, Inc. established MSN Internet accounts and trial
18 subscriptions in the names of class members without their
19 knowledge or approval and charged their credit or debit cards for this
20 unauthorized, unused service. The case settled with each class
21 member receiving a refund of up to \$75 for the MSN charges they
22 paid.
- 23 • As co-lead counsel in *Nelson v. Appleway Chevrolet, Inc.*,
24 160 Wn.2d 173 (2007), we successfully represented purchasers of
25 vehicles, parts, and services against certain automobile dealers in
26

27 DECLARATION OF KIM D. STEPHENS IN
28 SUPPORT OF MOTION TO DIRECT NOTICE OF
PROPOSED CLASS ACTION SETTLEMENT
(8:15-cv-02052-DOC-KES) - 4

1 Washington who were illegally charging purchasers Business and
2 Occupation tax. The class members received full refunds of all
3 illegally collected taxes in addition to attorneys' fees and costs.

- 4 • As co-lead counsel in *Cole v. Wells Fargo Bank N.A.*, U.S. District
5 Court, Western District of Washington, we successfully settled this
6 case on behalf of a national class of consumers charged excessive
7 fees on their accounts. Class members received full refunds of all
8 excessive fees, together with interest, attorneys' fees and costs.
- 9 • As co-lead counsel in *Michael Spafford, Jr. v. Echostar*
10 *Communications, Corporation*, U.S. District Court, Western District
11 of Washington, we successfully obtained an injunction on behalf of
12 Washington consumers prohibiting defendant from using automatic
13 dialing and announcing devices to sell satellite television
14 subscriptions and equipment in violation of Washington law.

15 **Product Liability**

- 16 • Co-lead counsel in the *In re Louisiana-Pacific Inner Seal Siding*
17 class action, which, with initial funding of \$275 million, was one of
18 the largest product liability class action settlements in the United
19 States. In November 1998, this settlement was augmented by
20 additional commitments for a total of more than \$500 million, over
21 \$240 million of which was paid to Washington residents.
- 22 • Co-lead counsel in the *Richison v. American Cemwood Corp.*
23 litigation related to defective shingles, which created a guaranteed
24 \$105-million settlement fund for a national class in the first phase of
25 litigation. The second phase, against Cemwood's insurers, created
26

27 DECLARATION OF KIM D. STEPHENS IN
28 SUPPORT OF MOTION TO DIRECT NOTICE OF
PROPOSED CLASS ACTION SETTLEMENT
(8:15-cv-02052-DOC-KES) - 5

1 an additional \$83-million settlement fund in 2003.

- 2 • Co-lead counsel in the *Behr Wood Sealants* settlement, which in
3 2003 created a national settlement fund of up to \$107.5 million, plus
4 \$25 million in attorneys' fees.
- 5 • Co-lead counsel in a national product liability class action against
6 Weyerhaeuser Company in San Francisco Superior Court, *Williams*
7 *et al. v. Weyerhaeuser Company*, the settlement of which
8 Weyerhaeuser values at approximately \$85 million.
- 9 • Co-lead counsel in *Delay v. Hurd Millwork Co.*, representing a
10 western states class of individuals that purchased windows allegedly
11 filled with inert gas. The case settled for \$5.3 million.
- 12 • Sole class counsel in *Barrett v. PABCO*, a national roofing shingles
13 product liability case, which settled on an unlimited claims-made
14 basis in 2006. That settlement more than doubled the value of
15 compensation available to homeowners under a Washington State
16 Attorney General Consent Decree, and opened claims to every
17 qualified homeowner in the nation, including those who were not
18 original purchasers of the roofing product at issue.
- 19 • Co-lead counsel in *Grays Harbor Christian School v. Carrier*
20 *Corporation*, where we successfully represented more than three
21 million national consumers to whom Carrier allegedly sold defective
22 high efficiency furnaces. The case settled on a national and
23 international basis when Carrier agreed to compensate consumers for
24 past failures and fix the alleged defect for free in the future.
- 25 • Co-lead counsel in *Zwicker v. General Motors, Inc.*, a case in which

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27 DECLARATION OF KIM D. STEPHENS IN
28 SUPPORT OF MOTION TO DIRECT NOTICE OF
PROPOSED CLASS ACTION SETTLEMENT
(8:15-cv-02052-DOC-KES) - 6

1 we represented more than four million consumers who purchased
2 vehicles with defective speedometers. The final settlement entitled
3 most class members to have their speedometers fixed for free.

- 4 • Co-lead counsel in *Splater et al. v. Thermal Ease Hydronic Systems, Inc. et al.*, in which we represented a class of Washington consumers
5 with defective tubing in their homes and obtained a seven-figure
6 settlement for our clients.
- 7 • Class counsel in *Stanley and Betty Pelletz v. Weyerhaeuser Company et al.*, where we represented a class of consumers who alleged that
8 their ChoiceDek decking was defective because it developed black
9 and gray mold spots throughout the decking and railing. The
10 settlement allows class members a free deck cleaning along with
11 application of a mold inhibitor and deck replacement or a full refund
12 if the cleaning does not work.
- 13 • As co-lead counsel in *Ross, et al. v. Trex Company, Inc.*, U.S.
14 District Court, Northern District of California, we represented a
15 national class of building owners with Trex decking products that
16 delaminated, flaked and crumbled. Allegations related to that defect
17 settled with class members receiving replacement product or cash.
- 18 • As class counsel in *Mahan v. Trex Company, Inc.*, U.S. District
19 Court, Northern District of California, we represented a national
20 class of building owners with Trex decking products that grew mold
21 and mildew internally. The settlement provided three tiers of cash
22 and product relief to affected homeowners.
- 23 • As co-lead counsel in *Carideo v. Dell*, U.S. District Court, Western
24

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27 DECLARATION OF KIM D. STEPHENS IN
28 SUPPORT OF MOTION TO DIRECT NOTICE OF
PROPOSED CLASS ACTION SETTLEMENT
(8:15-cv-02052-DOC-KES) - 7

1 District of Washington, we represented a class of Dell computer
2 owners whose laptop computers overheated. The case settled with
3 class members receiving partial reimbursement for the cost of their
4 laptop.

- 5 • As co-lead counsel for the plaintiff class in *Clemans v. New Werner*
6 *Co, et al.*, U.S. District Court, Western District of Washington, we
7 successfully obtained free replacement ladders for a national class of
8 approximately 300,000 consumers. The class alleged that Werner
9 pull-down attic ladders were unreasonably dangerous because of
10 defective hinges. The settlement was valued at \$48 million dollars.
- 11 • As co-counsel for a class representative health benefits trust in
12 *Neurontin Marketing Sales Practices and Products Liability*
13 *Litigation*, we represented a national class alleging that in an effort to
14 boost profits, Pfizer, Inc. and Warner-Lambert Co. sold the drug
15 Neurontin for uses for which it was neither approved by the U.S.
16 Food and Drug Administration nor medically effective. Pfizer Inc.
17 agreed to pay \$325 million to resolve the class's claim that Pfizer
18 defrauded insurers and other healthcare benefit providers by its off
19 label marketing of Neurontin.
- 20 • Appointed co-lead counsel in the MDL proceedings against
21 Monsanto Company related to the release of Round-up resistant
22 wheat. We successfully obtained a settlement for soft white wheat
23 farmers in the Pacific Northwest related to the May 2013 discovery
24 of genetically-modified wheat on a farm in Eastern Oregon, which
25 resulted in market disruptions to the exports of soft white wheat.

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27 DECLARATION OF KIM D. STEPHENS IN
28 SUPPORT OF MOTION TO DIRECT NOTICE OF
PROPOSED CLASS ACTION SETTLEMENT
(8:15-cv-02052-DOC-KES) - 8

1 Monsanto agreed to pay \$2.5 million into a settlement fund for
2 farmers and wheat growers in Washington, Oregon, and Idaho.

3 **Securities**

- 4 • As liaison counsel for a class of purchasers of certain mortgage
5 backed securities sold by Washington Mutual subsidiaries in *In re:*
6 *Washington Mutual Mortgage Backed Securities Litigation*. The
7 case settled for \$26 million shortly before trial.
- 8 • As sole class counsel in *Johnson v. Amgen Boulder, Inc.*, a case in
9 which we represented a national class that invested approximately
10 \$50 million with the world's largest biotechnology company to fund
11 the development of a genetically engineered molecule. That case
12 settled for payments totaling \$82 million.
- 13 • As sole class counsel in *Trimble et al. v. Holmes Harbor Sewer*
14 *District et al.*, a case in which we represented a national class of
15 bondholders. We achieved a 100% recovery for investors who had
16 purchased unlawfully issued bonds through several broker dealers.
17 The court's decision certifying the class is available on Westlaw® at
18 2003 WL 23100273.
- 19 • As sole class counsel in *Wolf et al. v. Asiamerica et al.*, a securities
20 fraud action against an international leveraged buy-out corporation.
21 That case settled for approximately 120% of the class's investment,
22 plus attorneys' fees and costs.
- 23 • As liaison counsel for a class of annuity owners in *LaPlant v. The*
24 *Northwestern Mutual Life Insurance Company*, who alleged that
25 Northwestern Mutual improperly changed the way it paid people

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27 DECLARATION OF KIM D. STEPHENS IN
28 SUPPORT OF MOTION TO DIRECT NOTICE OF
 PROPOSED CLASS ACTION SETTLEMENT
(8:15-cv-02052-DOC-KES) - 9

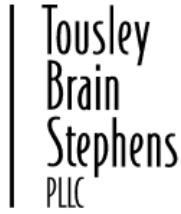
1 who purchased annuities from the company resulting in their loss of
2 dividend income over 20 years. The proposed settlement of \$84
3 million is awaiting final approval.

4 **Employment**

- 5 • Co-lead counsel in *Barnett et al. v. Wal-Mart Stores, Inc.*, a King
6 County Superior Court wage and hour class action in which we
7 represented a class of more than 88,000 current and former
8 employees who worked in Wal-Mart's Washington stores. The case
9 settled after almost eight years of litigation for up to \$35 million.
- 10 • Co-lead counsel in *Kirkpatrick v. Ironwood Communications, Inc.*, a
11 wage and hour class action in which we represented hourly
12 employees in Washington and Oregon, who alleged the company
13 failed to pay them for all hours worked, failed to provide them rest
14 and meal breaks, and made unlawful deductions to their paychecks.
15 The case settled for \$3 million.
- 16 • Co-lead counsel in *Godfrey v. Chelan County Public Utility District*,
17 in which we represented a class of utility employees who alleged that
18 they performed work for the District without being paid for their
19 work. The case settled with the District compensating the employees
20 and paying attorneys' fees and costs.
- 21 • Co-lead counsel in *McGinnity v. AutoNation, Inc.*, where we
22 obtained a \$2.34 million arbitration award on behalf of a class of
23 AutoNation car dealership workers who were unlawfully denied their
24 earned paid vacation benefits.
- 25 • Class Counsel in *Morden v. T-Mobile USA, Inc.*, in which we

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27 DECLARATION OF KIM D. STEPHENS IN
28 SUPPORT OF MOTION TO DIRECT NOTICE OF
PROPOSED CLASS ACTION SETTLEMENT
(8:15-cv-02052-DOC-KES) - 10

EXHIBIT 1



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TOUSLEY BRAIN STEPHENS PLLC has extensive experience in class action litigation and has both prosecuted and defended numerous multi-million dollar class actions, including the following cases in the areas of consumer protection, securities, product liability, and employment:

Consumer

- Appointed sole class counsel in *Ikuseghan v. Multicare Health System, U.S.* District Court for the Western District of Washington to represent a nationwide class asserting Telephone Consumer Protection Act (TCPA) claims. In approving the settlement and fee award, the court noted that “class counsel obtained an extraordinarily good result for the class following an arm’s-length negotiation. Under the approved settlement, class members will receive as much as they would have received had they successfully litigated their claims under the TCPA. This recovery is significantly superior to other TCPA class action settlements that have been approved in this Circuit.” With individual class member recoveries ranging from \$2,500 to over \$19,000 per approved claim, the settlement is believed to be the largest individual class member recovery in any TCPA case.
- As co-lead counsel in a consumer fraud class action, *Odom v. Microsoft, et al.*, Superior Court, King County, Washington, we successfully settled this action in 2010 after six years of hard-fought litigation. We alleged that Microsoft

Corporation and Best Buy Stores, Inc. established MSN Internet accounts and trial subscriptions in the names of class members without their knowledge or approval and charged their credit or debit cards for this unauthorized, unused service. The case settled with each class member receiving a refund of up to \$75 for the MSN charges they paid.

- As co-lead counsel in *Nelson v. Appleway Chevrolet, Inc.*, 160 Wn.2d 173 (2007), we successfully represented purchasers of vehicles, parts, and services against certain automobile dealers in Washington who were illegally charging purchasers Business and Occupation tax. The class members received full refunds of all illegally collected taxes in addition to attorneys' fees and costs.
- As co-lead counsel in *Cole v. Wells Fargo Bank N.A.*, U.S. District Court, Western District of Washington, we successfully settled this case on behalf of a national class of consumers charged excessive fees on their accounts. Class members received full refunds of all excessive fees, together with interest, attorneys' fees and costs.
- As co-lead counsel in *Michael Spafford, Jr. v. Echostar Communications, Corporation*, U.S. District Court, Western District of Washington, we successfully obtained an injunction on behalf of Washington consumers prohibiting defendant from using automatic dialing and announcing devices to sell satellite television subscriptions and equipment in violation of Washington law.

Securities

- As sole class counsel in *Johnson v. Amgen Boulder, Inc.*, we represented a national class that invested approximately \$50 million with the world's largest

biotechnology company to fund the development of a genetically engineered molecule. That case settled for payments totaling \$82 million.

- As sole class counsel in *Trimble et al. v. Holmes Harbor Sewer District et al.*, Superior Court, Island County, Washington, we represented a national class of bondholders. We achieved a 100% recovery for investors who had purchased unlawfully issued bonds through several broker dealers.
- As sole class counsel in *Wolf et al. v. Asiamerica et al.*, Superior Court, King County, Washington, we represented a national class in a securities fraud action against an international leveraged buy-out corporation. The case settled for approximately 120% of the class's investment, plus attorneys' fees and costs.
- As liaison counsel in *In re Washington Mutual Mortgage-Backed Securities Litigation*, U.S. District Court, Western District of Washington, we represented a class of purchasers of mortgage-backed certificates issued and underwritten by Washington Mutual and related entities. The named Plaintiffs alleged that the defendants violated federal securities laws by misrepresenting the underwriting procedures used to originate the mortgage loan collateral. The case settled for \$26 million.

Data Breach

- Appointed sole interim lead counsel in *In re Premera Blue Cross Custody Data Security Breach Litigation*, multi-district litigation pending in the U.S. District Court for the District of Oregon. The lawsuit alleges that Premera allowed a massive breach of its data systems, permitting hackers access to the personal,

medical, and financial information of more than 11 million Premera subscribers and employees.

- Served on the plaintiffs' steering committee in multi-district litigation to prosecute claims of financial institutions in the *In re The Home Depot, Inc. Customer Data Security Breach Litigation*, No. 14-md-02583 (N.D. Georgia) related to its 2014 data breach. The financial institutions sought to recover losses they incurred in reissuing cancelled credit cards and paying fraud claims. The financial institutions alleged that Home Depot intentionally neglected its data security to maximize profits. Hon. Thomas W. Thrash, Jr., United States District Court Judge for the Northern District of Georgia, granted final approval to a \$43.5 million settlement to cover financial institution losses, attorneys' fees and costs.

Product Liability

- As co-lead counsel in the *In re Louisiana-Pacific Inner Seal Siding* class action, U.S. District Court, District of Oregon, we initially settled one of the largest product liability class action settlements in the United States for \$275 million. In November 1998, this settlement was augmented by additional commitments for a total of more than \$500 million, over \$240 million of which was paid to Washington residents.
- As co-lead counsel in the *Richison v. American Cemwood Corp.*, Superior Court, San Joaquin County, California, we settled this litigation, related to defective shingles, creating a guaranteed \$105-million settlement fund for a national class in the first phase of litigation. The second phase, against Cemwood's insurers, created an additional \$83-million settlement fund in 2003.

- As co-lead counsel in the *Behr Wood Sealants* settlement, Superior Court, San Joaquin County, California, we created a national settlement fund in 2003 of up to \$107.5 million, plus \$25 million in attorneys' fees.
- As co-lead counsel in a national product liability class action against Weyerhaeuser Company in San Francisco Superior Court, *Williams et al. v. Weyerhaeuser Company*, we settled the claims against Weyerhaeuser for approximately \$85 million.
- As co-lead counsel for the plaintiff class in *Clemans v. New Werner Co, et al.*, U.S. District Court, Western District of Washington, we successfully obtained free replacement ladders for a national class of approximately 300,000 consumers. The class alleged that Werner pull-down attic ladders were unreasonably dangerous because of defective hinges. The settlement was valued at \$48 million dollars.
- As co-counsel for a health benefits trust in *Neurontin Marketing Sales Practices and Products Liability Litigation*, we represented a national class alleging that in an effort to boost profits, Pfizer, Inc. and Warner-Lambert Co. sold the drug Neurontin for uses for which it was neither approved by the U.S. Food and Drug Administration nor medically effective. Pfizer Inc. agreed to pay \$325 million to resolve the class's claim that Pfizer defrauded insurers and other healthcare benefit providers by its off label marketing of Neurontin.
- As co-lead counsel in *Delay v. Hurd Millwork Co.*, Superior Court, Spokane County, Washington, we represented a Western States class of individuals that

purchased windows allegedly filled with inert gas. The case settled for \$5.3 million.

- As sole class counsel in *Barrett v. PABCO*, Superior Court, King County, Washington, a national roofing shingles product liability case, we settled the case on an unlimited claims-made basis in 2006. That settlement more than doubled the value of compensation available to homeowners under a Washington State Attorney General Consent Decree, and opened claims to every qualified homeowner in the nation, including those who were not original purchasers of the roofing product.
- As co-lead counsel in *Grays Harbor Christian School v. Carrier Corporation*, U.S. District Court, Western District of Washington, we successfully represented national consumers to whom Carrier allegedly sold defective high efficiency furnaces. The case settled on a national and international basis when Carrier agreed to compensate consumers for past failures and fix the alleged defect for free in the future. Three million consumers were covered under the settlement, which was valued at more than \$300 million.
- As co-lead counsel in *Zwicker v. General Motors, Inc.*, U.S. District Court, Western District of Washington, we represented more than four million consumers who purchased vehicles with defective speedometers. The court granted final settlement approval, which entitles most class members to have their speedometers fixed for free.
- As co-lead counsel in *Splater et al. v. Thermal Ease Hydronic Systems, Inc. et al.*, Superior Court, King County, Washington, we represented a class of

Washington consumers with defective tubing in their homes and obtained a seven-figure settlement for our clients.

- As co-lead class counsel in *Stanley and Betty Pelletz v. Weyerhaeuser Company et al.*, U.S. District Court, Western District of Washington, we represented a class of consumers who alleged that their ChoiceDek decking was defective because it developed black and gray mold spots throughout the decking and railing. The settlement allows class members a free deck cleaning along with application of a mold inhibitor and deck replacement or a full refund if the cleaning does not work.
- As co-lead counsel in *Ross, et al. v. Trex Company, Inc.*, U.S. District Court, Northern District of California, we represented a national class of building owners with Trex decking products that delaminated, flaked and crumbled. Allegations related to that defect settled with class members receiving replacement product or cash.
- As co-lead class counsel in *Mahan v. Trex Company, Inc.*, U.S. District Court, Northern District of California, we represented a national class of building owners with Trex decking products that grew mold and mildew internally. The settlement provided three tiers of cash and product relief to affected homeowners.
- As co-lead counsel in *Carideo v. Dell*, U.S. District Court, Western District of Washington, we represented a class of Dell computer owners whose laptop computers overheated. The case settled with class members receiving partial reimbursement for the cost of their laptop.

- Appointed co-lead counsel in the MDL proceedings against Monsanto Company related to the release of Round-up resistant wheat. We successfully obtained a settlement for soft white wheat farmers in the Pacific Northwest related to the May 2013 discovery of genetically-modified wheat on an Eastern Oregon farm, which resulted in market disruptions to the exports of soft white wheat. Monsanto agreed to pay \$2.5 million into a settlement fund for farmers and wheat growers in Washington, Oregon, and Idaho.

Employment

- As co-lead counsel in *Barnett et al. v. Wal-Mart Stores, Inc.*, Superior Court, King County, Washington, we represented a class of more than 88,000 current and former employees who worked in Wal-Mart's Washington stores. The case settled after almost eight years of litigation for up to \$35 million.
- As co-lead counsel in *Kirkpatrick v. Ironwood Communications, Inc.*, U.S. District Court, Western District of Washington, we represented hourly employees in Washington and Oregon, who alleged the company failed to pay them for all hours worked, failed to provide them rest and meal breaks, and made unlawful deductions to their paychecks. The case settled for confidential sums.
- As co-lead counsel in *Godfrey v. Chelan County Public Utility District*, U.S. District Court, Eastern District of Washington, we represented a class of utility employees who alleged that they performed work for the Utility District without being paid for their work. The case settled with the Utility District compensating the employees and paying attorneys' fees and costs.

- As co-lead counsel in *McGinnity v. AutoNation, Inc.*, a private, class arbitration, we obtained a \$2.34 million arbitration award on behalf of a class of AutoNation car dealership workers who were unlawfully denied their earned paid vacation benefits.
- As class Counsel in *Morden v. T-Mobile USA, Inc.*, U.S. District Court, Western District of Washington, we obtained certification of a nationwide collective action of current and former employees of a major wireless telecommunication carrier, which had been allegedly misclassified as exempt from wage and hour laws. The parties reached a \$2 million settlement of the case.

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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

BILLY GLENN, *et al.*,

Plaintiffs,

v.

HYUNDAI MOTOR AMERICA, *et al.*,

Defendants.

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

**[PROPOSED] ORDER GRANTING
MOTION TO DIRECT NOTICE OF
PROPOSED CLASS ACTION
SETTLEMENT**

1 The parties to this litigation have entered into a Settlement Agreement, which
2 if approved, would resolve this putative class action. Plaintiffs Billy Glenn, Kathy
3 Warburton, Kim Fama, Corinne Kane, Roxana Fitzmaurice, and Jahan Mulla have
4 filed a motion to direct notice of the proposed class action settlement, which
5 Defendants Hyundai Motor America and Hyundai Motor Company support. The
6 Court has read and considered the Settlement Agreement and all exhibits thereto,
7 including the proposed claim form, notices, and informational brochure, and
8 concludes that it is appropriate to direct notice in a reasonable manner to all Class
9 members who would be bound by the proposal, since the parties' showing
10 establishes that the Court will likely be able to (i) approve the proposal under Rule
11 23(e)(2), and (ii) certify the class for purposes of judgment on the proposal. *See* Fed.
12 R. Civ. P. 23(e)(1)(B).

13 The Court now GRANTS the pending motion and makes the following
14 findings and orders:

15 1. Capitalized terms not otherwise defined herein shall have the same
16 meaning as set forth in the Settlement Agreement.

17 **LIKELY APPROVAL OF THE PROPOSED SETTLEMENT**

18 2. The Court has reviewed the terms of the Settlement Agreement, the
19 exhibits thereto, Plaintiffs' motion papers, the declarations of counsel, and all
20 argument made.

21 3. The Settlement Agreement is the product of over three years of
22 litigation, including two rounds of motions to dismiss briefing, several discovery
23 motions, Plaintiffs' motion to certify a litigation class, four *Daubert* motions, a
24 spoliation motion, and extensive discovery.

25 4. Based on its review, the Court finds that the Court will likely be able to
26 approve the proposed settlement as fair, reasonable, and adequate under Rule
27 23(e)(2). *See* Fed. R. Civ. P. 23(e)(1)(B)(i). The Settlement Agreement: (a) results
28 from efforts by Class Representatives and Class Counsel who adequately

1 represented the class; (b) was negotiated at arm's length with the assistance of
2 former United States Magistrate Judge Jay C. Gandhi; (c) provides relief for the
3 class that is adequate, taking into account: (i) the costs, risks, and delay of trial and
4 appeal; (ii) the effective proposed method of distributing relief to the class, including
5 the method of processing class-member claims; and (iii) the terms of the proposed
6 award of attorney's fees, including timing of payment; and (d) treats Class Members
7 equitably relative to each other.

8 **LIKELY CERTIFICATION OF CLASS**

9 5. The Court further finds that the Court will likely be able to certify the
10 Class for purposes of judgment on the proposal. *See* Fed. R. Civ. P. 23(e)(1)(B)(ii).
11 The Court preliminarily certifies the following Class pursuant to Rule 23(b)(3) of the
12 Federal Rules of Civil Procedure:

13 All persons and entities who bought or leased a Class Vehicle in the
14 United States, excluding its territories, as of the date of Preliminary
15 Approval, and all persons who bought or leased a Class Vehicle while
16 on active military duty in the Armed Forces of the United States as of
17 the date of Preliminary Approval.¹

18 6. The Court finds that this action is likely to be certified as a class action,
19 for settlement purposes only, pursuant to Fed. R. Civ. P. 23(a) and (b)(3). The Court
20 preliminarily finds for settlement purposes that: (a) the Class certified herein
21 numbers at least in the hundreds of thousands of persons, and joinder of all such
22 persons would be impracticable, (b) there are questions of law and fact that are
23 common to the Class, and those questions of law and fact common to the Class
24 predominate over any questions affecting any individual Class Member; (c) the

25 _____
26 ¹ Excluded from the Class are Defendants; any affiliate, parent, or subsidiary of HMA or HMC; any
27 entity in which HMA or HMC has a controlling interest; any officer, director, or employee of HMA or
28 HMC; any successor or assign of HMA or HMC; any judge to whom this Action is assigned, his or her
spouse, and all persons within the third degree of relationship to either of them, as well as the spouses
of such persons; and anyone who purchased a Class Vehicle solely for the purpose of resale (*e.g.*, new
or used car dealerships).

1 claims of the Plaintiffs are typical of the claims of the Class they seek to represent for
2 purposes of settlement; (d) a class action on behalf of the Class is superior to other
3 available means of adjudicating this dispute; and (e) Plaintiffs and Class Counsel are
4 adequate representatives of the Class. Defendants retain all rights to assert that the
5 action may not be certified as a class action, other than for settlement purposes. The
6 Court also concludes that, because the action is being settled rather than litigated,
7 the Court need not consider manageability issues that might be presented by the trial
8 of a nationwide class action involving the issues in this case. *See Amchem Prods., Inc.*
9 *v. Windsor*, 521 U.S. 591, 620 (1997).

10 7. Pursuant to Rule 23(g), the Court appoints Eric H. Gibbs and David
11 Stein of Gibbs Law Group LLP and Kim D. Stephens and Jason T. Dennett of
12 Tousley Brain Stephens PLLC to serve as Class Counsel for the Class.

13 **NOTICE AND ADMINISTRATION**

14 8. The Court directs Defendants to fulfill their notice duties and
15 responsibilities specified in this Order and the Settlement Agreement.

16 9. IHS Markit / State Agency Class Information: IHS Markit is authorized
17 to obtain vehicle registration information concerning owners or lessees of class
18 vehicles from the appropriate state agencies for the sole purpose of mailing the
19 notice, and the relevant state agencies shall make the appropriate vehicle
20 registrations available to IHS Markit for this purpose only.

21 10. The Court finds that the provisions for Notice to the Class set forth in
22 the Settlement Agreement satisfy the requirements of due process and Federal Rule
23 of Civil Procedure 23 and provide the best notice practicable under the
24 circumstances, including individual notice to all members who can be identified
25 through reasonable effort. The Notice is reasonably calculated to apprise Class
26 Members of the nature of this litigation; the scope of the Class, the Class claims,
27 issues, or defenses; the terms of the Settlement Agreement; the right of Class
28 Members to appear, object to the Settlement Agreement, and exclude themselves

1 from the Settlement Class and the process for doing so; of the Final Approval
2 Hearing; and of the binding effect of a class judgment on the Class. The Court
3 therefore approves the proposed methods of providing Notice, and the Claim Form,
4 and directs HMA to proceed with providing Notice to Class Members, at its sole
5 cost, pursuant to the terms of the Settlement Agreement and this Order.

6 11. No later than _____ [60 days after the of entry of this Order] (the
7 “Notice Date”), HMA shall substantially complete its notice obligations consistent
8 with the specifications of the Settlement Agreement, including by disseminating
9 notice to all reasonably identifiable Class members by U.S. Mail, email, and through
10 publication of the dedicated settlement website (with a link to the dedicated
11 settlement website from www.hyundaiusa.com/myhyundai).

12 12. No later than ten days before the hearing on final approval of this
13 settlement, Defendants shall provide an affidavit for the Court, with a copy to Class
14 Counsel, attesting that notice was disseminated in a manner consistent with the
15 Settlement Agreement, including its exhibits.

16 **OBJECTIONS AND EXCLUSIONS**

17 13. Class Members who wish to opt-out and exclude themselves from the
18 Class may do so by submitting such request in writing consistent with the
19 specification listed in the Class notice no later than _____ [60 days after the
20 Notice Date listed in paragraph 11].

21 14. To be valid, each request for exclusion must:

- 22 a. State the Class member’s full name and current address,
- 23 b. Provide the model year and Vehicle Identification Number
24 (“VIN”) of his/her/its Class Vehicle(s) and the approximate
25 date(s) of purchase or lease, and
- 26 c. Specifically and clearly state his/her/its desire to be excluded
27 from the settlement and from the Class.

1 15. Defendants shall report the names of all Class members who have
2 submitted a request for exclusion to Class Counsel on a weekly basis, beginning 30
3 days after the Notice Date.

4 16. All Class members who do not opt out and exclude themselves shall be
5 bound by the terms of the Settlement Agreement upon entry of the Final Approval
6 Order and Judgment.

7 17. Any Class member who wishes to object to the Settlement must, no
8 later than _____ [60 days after the Notice Date listed in paragraph 11], submit
9 a written notice of objection to the addresses listed in the Class notice.

10 18. The written objection must contain the following:

- 11 a. The Class member's full name, current address, and current
12 telephone number;
- 13 b. The model year and VIN of his/her/its Class Vehicle(s);
- 14 c. A statement of the objection(s), including all factual and legal
15 grounds for the position;
- 16 d. Whether it applies only to the objector, to a specific subset of the
17 Class, or to the entire Class;
- 18 e. Copies of any documents the objector wishes to submit in
19 support;
- 20 f. A signature and date on the objection; and
- 21 g. A list of any other objections submitted by the objector, or by any
22 counsel assisting the objector, to any class action settlements
23 submitted in any court in the United States in the previous five
24 years (or, if the Class member or his or her counsel has not made
25 any such prior objection, the Class member shall affirmatively so
26 state in the written materials provided with the objection).

27 19. Lawyers asserting objections on behalf of Class members must: (a) file a
28 notice of appearance with the Court within 120 days of the entry of this Order; (b)

1 file a sworn declaration attesting to his or her representation of each Class Member
2 on whose behalf the objection is being filed or file (in camera) a copy of the contract
3 between that lawyer and each such Class Member; and (c) comply with the
4 procedures described in the Settlement Agreement.

5 20. If the objecting Class member intends to appear, in person or by
6 counsel, at the final approval hearing, the objecting Class member must so state in
7 the objection. Any Class member who does not state his or her intention to appear
8 in accordance with the applicable deadlines and other specifications, or who has not
9 filed an objection in accordance with the applicable deadlines and other
10 specifications, will be deemed to have waived any objections to the settlement and
11 will be barred from speaking or otherwise presenting any views at the final approval
12 hearing.

13 21. The filing of an objection allows Class Counsel or counsel for HMA to
14 notice such objecting person for and take his, her, or its deposition consistent with
15 the Federal Rules of Civil Procedure at an agreed-upon location, and to seek any
16 documentary evidence or other tangible things that are relevant to the objection.
17 Failure by an objector to make himself/herself/itself available for a deposition or
18 comply with expedited discovery requests may result in the Court striking the
19 objection and otherwise denying that person the opportunity to be heard. The Court
20 may tax the costs of any such discovery to the objector or the objector's counsel
21 should the Court determine that the objection is frivolous or made for improper
22 purpose.

23 22. These procedures and requirements for objecting are intended to ensure
24 the efficient administration of justice and the orderly presentation of any Class
25 member's objection to the settlement, in accordance with the due process rights of
26 all Class members.

1 **PRELIMINARY INJUNCTION**

2 23. All Class Members and/or their representatives, who do not timely and
3 properly exclude themselves from the Class are, pending the Court's ruling on the
4 motion for final approval of the settlement, preliminarily barred and enjoined from
5 directly, indirectly, derivatively, in a representative capacity, or in any other
6 capacity, filing, commencing, prosecuting, maintaining, intervening in, participating
7 in, conducting, or continuing any action in any forum (state or federal) as individual
8 actions, class members, putative class members, or otherwise against the Releasees
9 (as that term is defined in the Settlement Agreement) in any court or tribunal
10 asserting any of the claims released by Releasors (as that term is defined in the
11 Settlement Agreement) under the terms of the Settlement Agreement, and/or from
12 receiving benefits from any lawsuit, administrative or regulatory proceeding, or
13 order in any jurisdiction, based on those released claims. In addition, all such
14 persons are hereby barred and enjoined from filing, commencing, or prosecuting a
15 lawsuit against Defendants (or against any of their related parties, parents,
16 subsidiaries, or affiliates) as a class action, a separate class, or group for purposes of
17 pursuing a putative class action (including by seeking to amend a pending complaint
18 to include class allegations or by seeking class certification in a pending action in
19 any jurisdiction) on behalf of Class Members who do not timely exclude themselves
20 from the Class, based on the claims released by Releasors under the Settlement
21 Agreement. Pursuant to 28 U.S.C. §§ 1651(a) and 2283, the Court find that issuance
22 of this preliminary injunction is necessary and appropriate in aid of the Court's
23 continuing jurisdiction and authority over the Action.

24 **FINAL APPROVAL HEARING AND SCHEDULE**

25 24. The Court will hold a hearing on entry of final approval of the
26 settlement, an award of fees and expenses to Class Counsel, and service awards to
27 the Class Representatives at 8:30 a.m. on _____ [approximately 105 days
28 after the Notice Date], in Courtroom 9D of the United States District Court for the

1 Central District of California, 411 West Fourth Street, Santa Ana, California 92701-
2 4516. At the final approval hearing, the Court will consider: (a) whether the
3 settlement should be approved as fair, reasonable, and adequate for the Class, and
4 judgment entered on the terms stated in the settlement; and (b) whether Plaintiffs'
5 application for an award of attorney fees and expenses to Class Counsel and service
6 awards to Class Representatives ("Fee Application") should be granted.

7 25. Plaintiffs shall move for final settlement approval and approval of
8 attorney's fees, litigation expense reimbursements, and class representative service
9 awards no later than _____ [30 days after the Notice Date]. To the extent Plaintiffs
10 file an omnibus motion seeking both final approval and attorney's fees, they shall
11 have leave to exceed the page limit set by local rule but their motion shall not exceed
12 50 pages in length. No later than _____ [90 days after the Notice Date], Plaintiffs
13 may file reply papers, if any.

14 26. The Court reserves the right to adjust the date of the final approval
15 hearing and related deadlines. In that event, the revised hearing date or deadlines
16 shall be posted on the settlement website referred to in the Class notice, and the
17 parties shall not be required to re-send or republish notice to the Class.

18
19 IT IS SO ORDERED.

20
21
22 Dated: _____

23 HON. DAVID O. CARTER
24 U.S. DISTRICT COURT JUDGE
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